TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 256

THE GOODYEAR TIRE & RUBBER COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964

VOL. I, pp. 1 to 852

In the

United States Court of Appeals

For the Seventh Circuit

No. 13339

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner,* vs. FEDERAL TRADE COMMISSION, *Respondent.*	Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX

Summary of proceedings below 1
Amended Complaint 5
Answer of Goodyear Company 13
Answer of Goodyear Company, Inc. 19
Answer of Atlantic to Complaint as amended by order of May 21, 1956 26
Order sustaining Interlocutory Appeal 35
Motion of Goodyear Company and Goodyear Company, Inc., to withdraw issues and to strike evidence 38
Answer in opposition to motion, etc. 39
Order denying motion to withdraw issues and to strike evidence 45
Interlocutory Appeal of Respondents 46
Answer in opposition to Interlocutory Appeal 61
Order denying Interlocutory Appeal 88
Order on motion to strike evidence 90
Initial Decision 94
Final Order 114
Opinion of the Commission 118
Petition for Review 188

TRANSCRIPT OF PROCEEDINGS.

Admissions of Respondents 199
Documents marked for identification 203
Offer of exhibits 219, 237, 393, 441, 459, 482, 601
Colloquy 223, 248, 1432, 2369
Stipulation re testimony of Atlantic personnel 366
Stipulation re Atlantic testimony 415
Stipulation re Goodyear testimony 447, 512

Data re three marketing areas 468
Stipulation re Warren and Hunterdone Counties in New Jersey 2342
Stipulation re Gay testimony 2343
Statement of Crawford Bryant 2347

WITNESSES FOR THE COMMISSION.

Testimony of:

Balloran, Francis J. 771
Best, Rolland C. 1208
Blumenthal, David B. 306
Booz, Elmer H., Jr. 757
Chambers, John 257
Colby, William 874
Connell, Conrad 709
Drennan, Robert B. 931
Duboff, Myer 533
Edrington, Russell H. 1298
Edwards, William E. 1308
Franks, William Lee 789
Ferguson, Richard 882
Freeland, Edgar D., Jr. 1244
Govoruhk, Nicholas 1051
Hayes, Sherman 869
Heald, Felix B. 802
Heller, Edward C. 499
Hill, George J., Jr. 488
Hinderscheid, W. F. 571, 687
Hoffman, Jack 291
Hooper, James 1257
Huether, Lewis A. 1252
Iacona, Aniello L. 637
Johnson, Tyler L. 743

Kernaghan, Thomas J. 669
Kevis, Douglas W. 312
Lang, Elmer 1220
Lanza, Michael Thomas 853
Marabella, Joseph 815
Matthews, James 554, 604
McCandless, Robert H. 695
McIntire, James L. 905
McMaster, Joseph B. 1109
Migan, John J. 1150
Myers, James M., Jr. 939
Norris, Oster 1145
Osborn, Samuel Kriete 962
Pollock, Isidore Jack 660
Roettger, E. Edmond G. 1036
Sander, Homer August 1293
Savage, Eugene 1160
Scheiner, Joseph 1279
Smith, William C. 1011
Vick, John J. 677
Walker, George Stanley Drew 896
Wetzel, Glenn L. 320

WITNESSES FOR RESPONDENT.

Testimony of:
Buongiorne, Frank R. 1611
Carlson, Robert O. 1888
Cary, Reuben 2188
Colley, Dwight T. 2348
Cooley, Russell E. 1583
Connelly, Joseph M. 2154
Detwiler, Charles K. 2083
Elko, Donald 1939

Gaestel, Wilbur D. 1815
Gloth, Israel 2027
Godino, Alfred 1925
Grossman, Sam 1740
Hathaway, Holland M. 1474, 1555
Hayes, Thomas A., Jr. 2114
Jones, Thomas E. 1970
Klein, Robert 2139
Lott, Charles Henry 1772
Luongo, Rudolph N. 1963
Mann, Isadore 1952
Mapes, August 1791
Marino, Joseph A. 1751
Maseyko, George Paul 1667
McCarthy, Harold F. 2043
Molinaro, Dominic, Jr. 2068
Mulholland, Richard G. 2300
Munch, Edward B. 1550
Provost, Robert C. 1932
Rhoades, O. Harris 2169
Ringenary, Edward 1909
Shafer, Albert H. 2208
Snow, Edward L. 2061
Thomas, Richard D. 1565
Vayda, Albert J. 2136
Walsh, Charles A., Jr. 2248
Wash, Joseph J. 1720
Way, William L. 2147
Wright, Harry W., Jr. 1686
Wyckoff, Charles P. 1705
Zarella, George 2046

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3679.

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets.....2375
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks.....2378
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord.....2379
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks.....2380
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman.....2381
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al...2383
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord.....2385
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al.....2387
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman.....2388
9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the company's preference for the Goodyear program:".....2389
Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan".....2393
11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental".....2395
12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors.....2397

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached 2398
14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2403
15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker 2404
16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr. 2406
17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman 2408
18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord 2410
19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman 2412
20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman 2413
21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord 2415
22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman 2416
23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow" 2417
24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers 2419
25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting" 2429
26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting" 2430

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline" 2431

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2432

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2435

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2436

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers" 2437

32—Inter-Office Communication, February 28, 1951, from W. E. Blank, attention of L. A. Knight..2438

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers 2439

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2441

35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2445

36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2446

37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2447

38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2448

39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2449

40 A-B—Letter, February 9, 1951; from S. J. Heideman to J. E. Mayl, with enclosure.....2451

41 A-E—Goodyear Form G-1209, with descriptive note 2453

42 A-B—Goodyear Form G-1204, with descriptive note 2458

43 A—Goodyear Form G-1201, with descriptive note 2459

44 A-B—Goodyear Form G-1208, with descriptive note 2460

44 C—Goodyear Form G-1207 2461

44 D—Goodyear Form B-91.....2462

44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement.....2463

44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2464

44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2465

45 A-B—Goodyear Form B-80, with descriptive note 2466

46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl.....2467

47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al.....2469

47 C-D—Goodyear Sales Department Instructions, May 31, 1951.....2472

47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2475

48 A-F—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951" 2477
49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord 2484
50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman 2485
51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman 2487
51 A—Goodyear Form A98101L, "Request for Identification Field Service" 2489
52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company" 2491
53—Summary of Sales and Commissions covered by the Sales Commission Plan 2492
54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953" 2493
55—Goodyear Tabulation of TBA Volume of Commissions to Various Oil Companies, 1951, 1952, and the First Six Months of 1953 2493
56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord 2494
56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr. 2495
57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman 2496

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord 2497
59 A-E—Letter Agreement, January 1, 1950, from Goodyear to Shell Oil Company, with Exhibit A attached 2498
59 F-I—Letter Agreement, January 8, 1953, from Goodyear to Shell American Petroleum Company, with Exhibit A attached 2503
60—Memorandum, November 6, 1951, from R. G. Miller to J. A. Bailey 2508
61—Unsigned document, "Outline of Discussion The Shamrock Oil & Gas Corporation, Amarillo, Texas, Tuesday—November 27, 1951" 2512
62 A-E—Letter Agreement, March 11, 1952, from Goodyear to The Shamrock Oil and Gas Corporation, with Exhibit A attached 2515
63—Letter, August 29, 1952, from Leo J. Wilmeth to R. G. Miller 2521
64 A-E—Letter Agreement, September 5, 1952, from Goodyear to Carter Oil Company, with Exhibit A attached 2522
65 A-C—Memorandum, September 5, 1952, from S. A. Gaylord to certain District Managers and Division Managers 2527
66 A-L—Copy of "The Carter Dealer", December 1952 2533
67 A-B—Unsigned letter, July 14, 1937, to Sherwood Brothers, Inc. 2545
68 A-B—Letter Agreement, March 1, 1944, from Goodyear to Sherwood Brothers Incorporated 2547
68 C—Letter Agreement, December 21, 1955, from Sherwood Brothers Incorporated to S. A. Gaylord 2550

69—Letter Agreement, September 25, 1944, from Goodyear to Sinclair Refining Company.....2551

70 A-C—Letter Agreement, October 1, 1947, from Goodyear to Sinclair Refining Company, with attachment 2554

71 A-D—Letter Agreement, May 1, 1952, from Goodyear to Mid-Continent Petroleum Corp., with Exhibit A attached 2558

72—Letter, January 15, 1952, from Victor Holt, Jr. to T. E. Fitzgerald.....2563

73 A-B—Letter, June 20, 1953, from C. R. Mitchell to W. J. Wixson.....2564

73 C—Letter Agreement, May 16, 1955, from Goodyear to Mid-Continent Petroleum Corporation 2568

73 D-G—Letter Agreement, May 16, 1955, from Goodyear to D-X Sunray Oil Company, with Exhibit A attached 2569

74 A-D—Letter Agreement, June 19, 1952, from Goodyear to The Frontier Refining Company, with Exhibit A attached.....2573

75—Memorandum, June 12, 1952, from J. W. Basista to C. W. Thorp 2579

76—Letter, March 5, 1953, from J. W. Basista to Claude A. Weber 2581

76 A—Letter, December 9, 1954, from H. E. Armitage to Goodyear 2582

77 A-D—Letter Agreement, January 1, 1953, from Goodyear to Quaker State Oil Refining Corporation, with Exhibit A attached 2583

78 A-B—Document, undated and unsigned, with heading "Carter Oil Company T. B. A. Sales Potential" 2588

79 A-F—Letter Agreement, January 26, 1955, from Goodyear to Anderson-Prichard Oil Corporation, with Exhibits A, B and C attached.....2590

79 G—Letter, February 18, 1955, from E. K. Ketcham to Goodyear 2597

79 H-J—Unexecuted Letter Agreement dated August 9, 1949 from Goodyear to Ashland Oil & Refining Company, with attachment.....2598

79 K—Letter, September 13, 1949, from Everett F. Wells to Sam Gaylord.....2602

79 L—Letter, September 28, 1949, from S. A. Gaylord to E. F. Wells.....2603

79 M—Letter, July 12, 1950, from W. E. Cameron to Don W. Detjen.....2604

79 N-O—Memorandum, March 24, 1950, from S. A. Gaylord to H. E. Hoerster.....2605

79 P-V—Document, unsigned, January 3, 1950, with heading "Special Account Instructions Ashland Oil & Refining Company, Inc., Ashland, Kentucky Sales Commission" 2608

79 W—Document, undated and unsigned, with heading "Goodyear Districts".....2621

80 A-T—Goodyear Organization Charts 2623

80 U—Map entitled "Goodyear Regions & Districts" 2643

81 A-F—Atlantic Organization Charts 2644

82 A-C—Outline Maps of Atlantic Marketing Regions—Philadelphia-New Jersey Region, New York Region, New England Region.....2650

83 A-C—Outline Maps of Atlantic Marketing Regions—W. Penna. Region, E. Penna. Region, Southern Region 2653

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952 2657
85 A-B—Atlantic Lease Form B/3191, 6/49.....2660
86 A-B—Atlantic Lease Form, B/3191, 4-52.....2664
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2669
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station".....2672
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2672
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191.....2678
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *" 2679
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station"..2680
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants..2681
88 E1-2—Atlantic Lease Form B-3191Y, 5/55.....2683
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement 2689
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement 2690
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement 2692
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2697
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants..2702
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants..2704
93—Atlantic Form of "Commission Agreement"....2708

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2711
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2715
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2721
96—Atlantic Form B-3119, 10/50, "Authorized Distributor's Agreement" 2727
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2730
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2733
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2735
98 A-G—Atlantic Form of Distributor Contract....2737
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2743
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider.....2749
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2754
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers".....2759
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2762
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al.....2764
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study" 2765
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2791
102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments.....2801

104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic 2807
105 A-B—Letter Agreement, January 12, 1954, from Firestone to Atlantic 2810
105 C—Letter Agreement, November 3, 1954, from Atlantic to Firestone 2813
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone 2814
121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachments 2816
122—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2821
123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord 2822
124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman 2823
125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord 2824
126 A-B—Letter Agreement, April 3, 1951, from Atlantic to Goodyear 2825
126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear 2827
126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear 2828
127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company Sales Commission" 2829
128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall 2842
129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley 2844
130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda 2845

131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson.....2852
132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al.....2853
133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region 2854
134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for the marketing of Tires, * * *".....2857
136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment 2859
137 A-E—Document entitled "Duties of the Dealer Salesman" 2865
138—Unsigned memorandum, June 25, 1951, to F. M. Neall 2871
139 A—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger 2872
140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman 2873
140 A-C—Three Atlantic Forms B-139, 10/51, Dealers' Credit Card Sales Slips 2875
141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis 2879
142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman 2880
143—Letter, July 9, 1951, to William Stockton.....2881
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2882
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2883

145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2884
146 A-B—Document entitled "Staff meeting held 7/14/52" 2887
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13" 2889
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr. 2890
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program" 2891
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantic's T. B. A. Policy" 2892
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell 2893
152—Atlantic form letter, to Atlantic Dealers and Atlantic Petroleum Distributors, beginning "Here is the most important T. B. A. news * * *" 2894
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2895
155 A-H—Document entitled "1951 Sales Plan New York Region Basis" 2896
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C" 2902
155 J—Document entitled "1951 Sales Plan—Report of Progress—Appendix D" 2903
155 L—Document entitled "Appendix E" 2905
155 M—Document entitled "Summary of Results" .. 2906
156—Document dated January 5, 1951 entitled "Station Modelization Policy" 2907

157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2908
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman....2909
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord 2911
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments.....2912
160 Q-Y—Document entitled "Goodyear Associate Dealers—New Jersey" 2927
161—Unsigned letter, July 30, 1951, to W. J. Jackson 2936
161 A-B—Document bearing two colums headed "Location" and "Reason" 2937
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman....2939
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord 2940
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman 2942
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman 2943
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill 2944
166—Letter, October 11, 1951, from J. W. O'Neill to S. J. Heideman 2945
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman 2946
167 A-M—Handwritten document entitled "Refusals" 2947
168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel.....2958
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis.....2959

170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment 2960
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment 2968
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment 2973
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis 2975
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, *et al.*, June 1, 1951, with attachment .. 2975
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman 2982
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman 2983
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletin #17" 2984
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman 2985
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord 2986
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y." .. 2987
179 J—Form entitled "Atlantic-Goodyear Accounts" . 3002
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)." 3002
180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman 3004
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill 3005

182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 3006
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 3007
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries" .. 3009
198—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951" 3011
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950" 3013
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949" 3015
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950" 3017
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949" 3019
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950" 3021
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949" 3023
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950" 3025
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs. 1949" 3027
202—Tabulation entitled "Final T. B. A. Sales—October 1950" 3029
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950" 3030
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949" 3031
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950" 3032

204 A—Tabulation entitled "Final T. B. A. Sales—December 1950" 3033
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949" 3035
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950" 3036
206—Letter, August 28, 1952, from D. T. Colley 3037
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers 3038
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951" 3040
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951" 3040
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951" 3041
211—Document entitled "Atlantic Progress Report", October 29, 1951 3042
212—Document entitled "Atlantic Progress Report", December 24, 1951 3043
215 A-B—Atlantic Credit Card—1950 3045
216 A-B—Atlantic Credit Card—1951 3046
217 A-B—Atlantic Credit Card—1952 3047
218 A-B—Atlantic Credit Card—1953 3048
219 A-B—Atlantic Credit Card—1954 3049
220 A-B—Atlantic Credit Card—1955 3050
221 A-B—Atlantic Credit Card—1956 3051
222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50) 3052
223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51) 3053
226 A-H—Letter, July 7, 1950, from Paul Castleberry, Jr. to Atlantic with attachments 3054

227 A-K—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear with attachments 3062
228 A-K—Goodyear Forms G-1204 (3-50) with covering Form G-703 (2-42) 3073
247 A—Document entitled "Goodyear T. B. A. is a natural for plus sales and profits".....3084
247 B—Booklet entitled "Goodyear T. B. A. Plan"..3098
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling 3127
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman 3128
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic 3129
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation" 3130
257 A—Letter, November 12, 1953, Atlantic to Aniello L. Iacona 3131
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic 3132
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania.....3133
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro 3134
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro 3136
259—Letter, July 5, 1956, from Atlantic to A. Bennett 3137
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson 3138
261—Letter, October 21, 1955, from Atlantic to Charles Davis 3139
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice 3140

263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio 3141
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly 3142
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel 3143
266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette 3144
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith 3145
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco 3146
269—Letter, January 5, 1955, from W. J. McCambridge, Jr. to Duane Olthof 3147
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski 3148
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski 3149
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw 3151
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco 3152
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers 3153
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman.....3153
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al.....3155
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments.....3156

280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al.....3160

281 A-B—Document entitled "Sales Meeting February 19, 1951".....3162

282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card 3164

283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3167

284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al.....3171

285—Letter, March 5, 1951, from E. W. McCreary to E. M. Fiffick, et al.....3174

286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment 3175

287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al.....3178

288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3179

289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers 3184

290 A-I—Memorandum, August 6, 1951, with attachments 3185

291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3197

292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3200

294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews 3203
295—Document entitled "Branches as of January 1, 1950" 3205
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950" 3205
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive" 3206
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell 3208
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott 3209
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co.....3212
302—Letter, December 22, 1950, from C. Connell to J. S. Parks 3213
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville 3214
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell 3215
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst 3216
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst 3218
307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co.....3221
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3223
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell 3224

310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell 3225
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville 3227
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher 3229
314 B—Document entitled "Exide Wholesale Distributors by States and Cities November 1, 1950" 3231
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951" 3239
314 D—Document entitled "Exide Wholesale Distributors by States and Cities May 1, 1957" 3247
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley.....3269
328—Letter, April 5, 1948, John R. Sherwood to S. K. Osborne 3273
329—Certified copy of complaint in Osborn v. Sinclair Refining Company 3275
330—Certified copy of answer in Osborn v. Sinclair Refining Company 3298
331—Goodyear Form B-304 (11-56), "Goodyear Batteries Suggested Retail Prices".....3303
332—Goodyear Form B-308 (11-56), "Goodyear Batteries 352 Dealer Prices".....3305
333—Goodyear Form B-166 (10-51), "Goodyear Battery Policy and Sales Program Effective October 31, 1951" 3307
334—Memorandum of conversation on stationery of Bowers Battery and Spark Plug Co. beginning "Conversation—Mr. Nicholas J. Govoruhk— * * *" 3311
335—Baltimore Battery Co. Invoice No. 2376.....3312
336—Baltimore Battery Co. Invoice No. 3201.....3313

337—Baltimore Battery Co. Invoice No. 2361.....3314
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column.....3315
339—Goodyear Service Stores Invoice dated 12-27-55..3316
340—Letter, October 22, 1954, from J. R. Sherwood to J. B. McMaster.....3317
346—Newspaper advertisement of Plotkin's Tire Sales 3318
347—Letter, May 26, 1952, from Shell Oil Company to James W. Hooper 3319
348 A-B—Shell Form SR 1771-1 (Rev. 1/53), "Service Station Manager's Agreement".....3320
349—Letter, June 2, 1954, from Shell Oil Company to W. E. Edwards 3327
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks 3328
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments 3330
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3343
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions" 3344
377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade".....3345
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951" 3347
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951" 3348
387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3349

389 A-B—Document entitled "Products Eligible Under Sales Commission Plan" 3350
391 A-C—Document dated 10-21-55 entitled "Shell Oil Co.—Sales Commission" 3353
392 A-B—Letter, June 3, 1948, from R. C. Mueller to E. C. Flinn 3360
393—Goodyear intra-company memorandum, 7-8-48, from S. A. Gaylord to E. C. Flinn.....3362
394 A-C—Goodyear document entitled "District Instruction No. 1086A", October 19, 1948.....3363
395 A-B—Letter, December 19, 1951, from Butler Doolittle to C. H. Mead, Jr.....3369
396 A-H—Letter, October 9, 1950, from R. E. Sewell to O. E. Scholz, with attachments.....3371
397 A-B—Letter, January 30, 1953, from J. W. Basista to George L. Switzer.....3385
398 A-D—Letter, August 24, 1948, unsigned to Gibson 3389
399 A-C—Document entitled "Shell Oil Company Schedule 'A'—Part 2-3-4" 3393
400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments 3397
401—Document entitled "Distribution List for Sales Department Correspondence" 3413
402 A-M—Memorandum, December 31, 1952, from R. L. Edmonston, with attachments 3414
403 A-S—Document entitled "Various Types of Dealers", with attachments 3426
404 A-C—Sherwood Form SB-2833 500 9-51, "Bailment Agreement" 3433
405 A-B—Sherwood Form SB 118—3M—11-50, "Equipment Rental Agreement" 3444

406 A-B—Sherwood Form SB 2072-R 500 10-51, "Dealer Permit" 3451
407 A-D—Sherwood Form SB 1601-A—1M—8-51, "Service Station Lease" 3458
408—Document entitled "Amendment of Service Station Lease" 3467
409—Document entitled "Termination of Service Station Lease" 3469
410 A-B—Sherwood Form SB 106—3M—7-50, "Dealer Sales Agreement" 3470
411—Memorandum, March 10, 1953, from Fred D. McCauley to George B. P. Ward.....3476
412 A-H—Document dated on first page 1-1-50, entitled "Sherwood Bros., Inc., Baltimore, Md.—Sales Commission" 3476
413—Sherwood Form SB 2081-CS—(2500 6-46).....3490
414—Memorandum, March 28, 1944 to De Hoff.....3493
415—Memorandum, March 29, 1944, McCauley to De Hoff 3494
416—Memorandum, March 29, 1944, McCauley to De Hoff 3497
417—Memorandum, March 21, 1944, McCauley to De Hoff 3498
418 A-B—Letter, July 13, 1944, from Fred D. McCauley to Ted Hardy 3500
419—Unsigned letter, July 27, 1944, to Butler Doolittle 3502
420 A-B—Letter, July 29, 1944, from Fred D. McCauley to John B. Mann 3503
421—Letter, August 19, 1944, from F. D. McCauley to Butler Doolittle 3506
422 A-B—Memorandum, November 2, 1944, from John R. Sherwood to Fred McCauley.....3507

423 A-C—Letter, May 29, 1945, from Butler Doolittle to Fred McCauley 3510
424—Letter, June 6, 1945, from Fred D. McCauley to John D. Mann.....3513
425 A-B—Letter, December 31, 1945, from Fred D. McCauley to John D. Mann.....3515
426—Letter, January 15, 1946, from Fred D. McCauley to J. A. Lewin.....3517
427—Letter, January 23, 1946, from Fred D. McCauley to John B. Mann.....3519
428—Letter, March 6, 1946, from Fred D. McCauley to Paul Spahr 3520
429—Copy of letter, March 11, 1946, from A. W. Littleton to Miller Chevrolet Sales 3521
430 A-B—Memorandum, August 6, 1946, from John R. Sherwood to Mr. Lawson, with attachment....3522
431—Unsigned Sherwood letter agreement dated July 30, 1946 3525
432—Letter, August 20, 1946, from John R. Sherwood to H. G. Harper.....3526
433—Letter, June 3, 1947, from Fred D. McCauley to John D. Mann 3528
434 A-B—Letter, July 17, 1947, from Fred D. McCauley to Howard Landon, et al.....3529
435—Report of Goodyear TBA Commissions by Agency Territories—Year 1947 3532
436—Report of Goodyear TBA Commissions by Agency Territories 3533
437—Letter, April 30, 1948, from H. W. Van Horn to Jackson Manufacturing Company.....3534
438—Memorandum, September 23, 1947, from Fred D. McCauley to John Sause 3535

439—Letter, September 19, 1952, from G. R. DeHoff to all Betholine Sinclair Dealers Authorized to Honor Credit Cards.....3536
440—Document entitled "CIC-Sales 1952".....3537
441—Letter, August 23, 1948, from Butler Doolittle to Fred D. McCauley 3537
442—Letter, September 21, 1948, from H. W. Van Horn to Butler Doolittle 3539
443—Letter, September 3, 1948, from H. W. Van Horn to R. G. Crawford 3541
444—Letter, January 7, 1949, from H. W. Van Horn to J. A. Nelsen 3542
445—Letter, August 9, 1949, from H. W. Van Horn to all Betholine-Sinclair Dealers 3543
446—Memorandum, June 23, 1950, from Fred D. McCauley to Mr. Van Horn 3545
447 A-E—Letter, June 19, 1946, from Fred D. McCauley to Mrs. Mabel Harmon, with attachments 3546
448—Goodyear Form A98101L, "Request for Goodyear Tires Identification Truck Service".....3553
449—Memorandum, May 12, 1947, from Roland DeHoff to "Doc" Allen 3555
450 A-B—Letter, August 25, 1952, from H. W. Van Horn to Butler Doolittle.....3555
451 A-B—Letter, January 6, 1950, from Fred D. McCauley to W. S. Martel.....3557
452 A-B—Memorandum, January 2, 1948, from Fred D. McCauley to John Leimbach.....3560
453—Letter, February 23, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562
454 A-B—Letter, February 29, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562

455—Handwritten Inter-Office Memorandum, March 5, 1948 from S. W. Holsinger to "Mac".....3565
456 A-B—Handwritten Inter-Office Communication, March 20, 1948, from L. J. Balling to F. D. McCauley 3566
457—Document, dated Dec. 14, '51, entitled "Dealer TBA Survey" 3568
458—Letter, April 25, 1952, from H. W. Van Horn to D. A. Hilleary 3569
459—Memorandum, June 3, 1952, from Harry J. Weller to Mr. Jurgens 3570
460—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commissions, Resale and Own Consumption December and January 1 to December 31, 1944" 3571
461 A-C—Memorandum, December 12, 1945, from Fred D. McCauley to John R. Sherwood, with attachments 3572
462—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1945" 3574
463 A-B—Letter, March 13, 1946, from John R. Sherwood to T. J. Beddingfield 3575
464—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1946".....3577
465 A-B—Letter, January 7, 1947, from John R. Sherwood to R. S. Wilson.....3578
466—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1, to December 31, 1947" 3580

467—Memorandum, October 16, 1947, McCauley to DeHoff 3581

468—Memorandum, January 26, 1951, from Fred D. McCauley to G. R. DeHoff 3582

469—Document entitled "'Total T. B. A. Volume sold to Betholine-Sinclair Dealers on Which We Receive Commission" 3583

470—Document entitled "Sherwood Brothers, Inc. Sales by Goodyear Districts January 1, 1952 through December 31, 1952" 3584

472—Sinclair Form 35 10 9-54, "Marketer Agreement" 3585

473—Sinclair Form 1800—25M—6-57, "Equipment Rental Agreement" 3596

474—Sinclair Form 1601-B—25M—10-57, "Station Lease" 3604

475—Sinclair Form 731-D—20M—10-57, "Refined Oil Sales Agreement-Dealer" 3615

476—Sinclair Form 2081—25M—5-57 3622

477—Sherwood Credit Identification Card 1954 3625

478—Sinclair Credit Identification Card 1957 3626

479—Document entitled "Agreement of Merger Between Sinclair Refining Company and Sherwood Brothers, Incorporated", dated as of December 7, 1955 3627

483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley 3639

484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne 3642

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow 3645
2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow 3651
3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company 3652
4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow 3653
20—Atlantic booklet entitled "TBA Program" 3654
31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments 3672

	Original	Print
Proceedings in the United States Court of Appeals for the Seventh Circuit	3680	3680
Opinion, Swygert, J.	3680	3680
Judgment	3696	3697
Final decree affirming and enforcing order to cease and desist	3697	3698
Order allowing certiorari	3700	3699

APPENDIX.

SUMMARY OF PROCEEDINGS BELOW

1956

Jan. 11—Original complaint issued against The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

Apr. 16—Answers filed by The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

Apr. 30—Motion filed by counsel supporting the complaint to amend the complaint by making The Goodyear Tire & Rubber Company, Inc.* an additional party respondent.

May 22—Order Amending Complaint filed by the Hearing Examiner.

July 6—Answers to the complaint as amended filed by Respondents.

Sept. 17—Pretrial conference in Washington, D.C. before Hearing Examiner Kolb.

Sept. 26—Counsel supporting the complaint filed motions to the Hearing Examiner to certify the proceeding to the Commission and to the Commission to affirm and modify the Hearing Examiner's Order Amending Complaint.

Oct. 8—Memorandum filed by Goodyear in opposition to motions of Sept. 26.

Oct. 11—Order filed by Hearing Examiner granting Sept. 26 motion of counsel supporting the complaint for certification of the proceeding to the Commission.

Oct. 26—The Commission issued its Order Affirming Hearing Examiner's Order Amending Complaint.

---

*The Goodyear Tire & Rubber Company, Inc. was a wholly-owned subsidiary of The Goodyear Tire & Rubber Company which since 1956 has been merged into it parent company. Both companies are hereinafter referred to collectively as "Goodyear", and The Atlantic Refining Company is hereinafter referred to as "Atlantic".

Oct. 29—Pretrial conference held in Washington, D.C. before Hearing Examiner Kolb.

Oct. 30—Pretrial conference held in Washington, D.C. before Hearing Examiner Kolb.

Oct. 30—Initial hearing held in Washington, D.C. before Hearing Examiner Kolb.

Nov. 9—Interlocutory Appeal Brief filed by counsel supporting the complaint appealing a ruling made by the Hearing Examiner at initial hearing on October 30, 1956 rejecting certain evidence.

Nov. 26—Answer to Interlocutory Appeal filed by Atlantic.

Nov. 26—Answering brief in opposition to Interlocutory Appeal filed by Goodyear.

Dec. 5—The Comission's Order Sustaining Interlocutory Appeal issued.

1957

Mar. 7-Dec. 12*—Hearings for presentation of evidence by counsel supporting the complaint held before Hearing Examiner Kolb.

Dec. 2—Motion filed by Goodyear to withdraw issues and to strike evidence with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

Dec. 12—Answer in opposition to Goodyear motion of December 2 filed by counsel supporting the complaint.

1958

Jan. 2—Hearing Examiner's order denying motion of Goodyear to withdraw issues and to strike evidence filed.

Jan. [illegible]—Order of the Hearing Examiner Closing the Case for the Taking of Testimony in Support of the Complaint and Fixing Time Within Which to File Motions, filed.

Jan. 31—Interlocutory Appeal to the Hearing Examiner's Order of January 2, filed by Goodyear.

---

*Hearings were conducted in Washington, D.C., Philadelphia, Pa., Wilmington, Del. and Baltimore, Md. on the following dates within this period: Mar. 7, June 13, 14, 24, 25, 26, 27, 28, July 1, 2, 3, Nov. 18, 19, 20, 21, 26, 27 and Dec. 12.

Feb. 12—Answer in Opposition to January 31 Interlocutory Appeal of Goodyear filed by counsel supporting the complaint.

Feb. 19—Motion filed by Atlantic to Strike Evidence Received Subject to Atlantic's Motion to Strike or Over Atlantic's Objection.

Feb. 19—Motion filed by Atlantic with respect to Firestone issues.

Feb. 17—Motion to strike evidence filed by Goodyear.

Mar. 3—Counsel supporting the complaint filed answer in opposition to Atlantic's motion of February 17, 1958.

Mar. 7—Counsel supporting the complaint filed an answer in opposition to Atlantic's motion of February 14, 1958.

Mar. 7—Counsel supporting the complaint filed an answer in opposition to Goodyear's motion of February 17, 1958.

Mar. 21—The Commission issued Order Denying Interlocutory Appeal filed by Goodyear January 31.

Mar. 24—The Hearing Examiner filed an order denying Atlantic's motion filed February 17 relating to Firestone issues.

Mar. 24—The Hearing Examiner filed an order disposing of Atlantic's motion of February 14.

Mar. 24—The Hearing Examiner issued an order denying in part and granting in part Goodyear's motion of February 17.

June 30-Nov. 19*—Defense hearings held before Hearing Examiner Kolb.

1959

Apr. 1—Proposed Findings of Fact, Conclusion of Law and Order filed by counsel supporting the complaint.

June 15—Proposed Findings of Fact and Conclusions filed by Goodyear.

---

*Hearings were conducted in Baltimore, Md., Washington, D.C. and Philadelphia, Pa. on the following dates within this period: June 30, July 1, 2, 3, 8, 9, 11 and Nov. 5, 6, 7, 17, 18, 19. On the final day, counsel supporting the complaint called on rebuttal witness and Respondent Atlantic one sur-rebuttal witness. Respondent Goodyear called no witnesses.

June 15—Proposed Findings of Fact and Conclusions and Brief in support thereof filed by Atlantic.

July 31—Reply Brief filed by counsel supporting the complaint.

Oct. 21—Hearing Examiner entered Order closing all proceedings before the Hearing Examiner.

Oct. 23—The Hearing Examiner's Initial Decision filed (servel on Goodyear on November 16, 1959).

1960

Apr. 22—Appeal Brief of counsel supporting the complaint filed.

Apr. 22—Appeal Brief of Atlantic filed.

May 25—Answering Brief of counsel supporting the complaint filed.

May 25—Answering Brief of Goodyear filed.

May 25—Answering Brief of Atlantic filed.

June 23—Oral argument before the Federal Trade Commission.*

1961

Mar. 14—The Federal Trade Commission's Opinion and Order served on Goodyear.

Apr. 21—Motion to Suspend Effective Date of Final Order filed by Goodyear.

Apr. 21—Motion to Postpone Effective Date of Commission's Final Order filed by Atlantic.

Apr. 28—Counsel supporting the complaint filed Answer to Separate Motions of Respondents to Stay Effective Date of Order to Cease and Desist Herein.

May 10—Petition to Review and Set Aside Order of the Federal Trade Commission filed by Goodyear.

May 26—Federal Trade Commission issued order denying motions by Goodyear and Atlantic to suspend the effective date of the Final Order.

July 26—Federal Trade Commission issued Order Granting Motion to Correct Transcript.

---

*Commissioners: Earl W. Kintner, Chairman, Robert T. Secrest, Sigurd Anderson and William C. Kern. Commissioner Tait did not sit.

37 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

In the Matter of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations.	Docket No. 6486

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc. and The Atlantic Refining Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges as follows:

Paragraph One: Respondent, The Goodyear Tire & Rubber Company (hereinafter sometimes rferred to as "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear operates its business directly and through several wholly owned or controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

Respondent, The Goodyear Tire & Rubber Company, Inc. (hereinafter sometimes referred to as "Goodyear, Inc."),

is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear, Inc. is a wholly owned subsidiary of Goodyear, engaging, among other things, in the sale of the latter's products. The principal officers of Goodyear and Goodyear, Inc. are the same and the two companies share the same principal office and place of business. Goodyear, Inc. is operated under the control and direction of Goodyear and is used as an instrument by the latter primarily for marketing purposes. All of the acts of Goodyear, Inc. referred to in this complaint were for and in behalf of Goodyear.

38 Respondent, The Atlantic Refining Company, (hereinafter sometimes referred to as "Atlantic"), is a corportation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 260 South Board Street, Philadelphia, Pennsylvania.

Paragraph Two: Goodyear is the largest manufacturer of rubber products in the United States, manufacturing a variety of rubber and associated products, including tires and inner tubes. The total net sales of Goodyear made directly and through its subsidiaries were more than one billion dollars in 1954.

Goodyear, Inc. sells various products manufactured by Goodyear, including tires and inner tubes. It also purchases for resale and distribution batteries, automotive parts and accessories and other items referred to as Car and Home Merchandise. Said products are sold directly to the consuming public through approximately 500 company owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various States of the United States.

Certain of said products, namely, tires, inner tubes,

batteries, automotive parts and accessories, and certain Car and Home Merchandise items, are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this complaint.

Paragraph Three: Atlantic is a large producer and distributor of petroleum products. Directly or through its wholly owned or controlled subsidiaries, Atlantic is engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum wholesalers (hereinafter referred to as "distributors") and service stations. In 1954 its sales and operating revenue totaled more than one-half billion dollars. Atlantic also acts as an agent in promoting the sale of the TBA products of certain companies, including those of respondent Goodyear, Inc., in the manner hereinafter described.

Paragraph Four: In the course and conduct of their said businesses respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship said products, including said TBA products, or cause them to be shipped, from the States in which said products are manufactured or warehoused to purchasers thereof located in other States of the United States and the District of Columbia.

Paragraph Five: In the course and conduct of their said business of promoting and selling TBA products in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms.

39 Paragraph Six: Goodyear, Inc. sells said TBA products directly and through wholesalers to many

classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products.

Atlantic sells its petroleum products, directly and through distributors, to more than 10,000 service stations. In addition to petroleum products, a substantial number of these stations sell TBA products.

Paragraph Seven: In connection with the sale of TBA products in commerce, Goodyear, Inc. has entered into a contract with Atlantic under which Atlantic agrees to promote the sale of said TBA products to the service stations and distributors selling Atlantic's petroleum products in part of its sales territory. Atlantic has also entered into a substantially similar agreement with the Firestone Tire & Rubber Company (hereinafter referred to as Firestone) as to the stations and distributors selling its petroleum products in the remainder of its sales territory.

Under said contract Goodyear, Inc. pays Atlantic an "override" commission, ranging from 7½% to 10% on the net sales of TBA products to service stations and distributors selling Atlantic's petroleum products, in return for the influence and aid given by Atlantic in promoting said sales. Atlantic has a large number of service stations and distributors affiliated with it which sell only its petroleum products and, pursuant to its agreements with Goodyear, Inc. and Firestone, in various ways, urges, recommends and persuades the operators of these outlets to purchase the TBA products of Goodyear, Inc. and Firestone. Said stations and distributors at no time authorized or requested Atlantic to find for them, or commit them to, a source of supply for TBA products. Said stations and

distributors do not receive any part of the override commission.

Said service stations and distributors are operated ostensibly as independently owned business enterprises. However, their relationship with Atlantic is such that they are subject to its control. Such control is inherent in the power Atlantic has by virtue of the various types of contracts of employment, leases, purchase contracts, credit card contracts, franchises and other agreements between it and said service stations and distributors with respect to petroleum products and the occupancy, operation, use and tenure of the stations, other premises, facilities and equipment. Said agreements are for short terms and may be terminated or cancelled by Atlantic without reason at the end of the term or prior thereto for non-performance of certain provisions. Some of said provisions are so broad and general as to be susceptible of arbitrary interpretation and thus afford a basis for termination of the agreement by Atlantic.

Thus, the economic welfare of said service stations and distributors is largely dependent upon Atlantic. If Atlantic chooses, for whatever reason or no reason, to terminate said franchise or other agreements, the operator of the service station or distributor either loses his business entirely or must change to a different brand of petroleum products or change location or both, depending upon the type of lease arrangement involved. Such termination would result in great financial loss and irreparable injury to the operator, such as loss of his business, customer goodwill, sales, profits, and cost of relocation.

By virtue of these circumstances, Atlantic can greatly influence and control the purchasing and marketing activities of said service stations and distributors. Such influence and control has been and is being exercised by Atlantic over its affiliated service stations and distributors

by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodyear, Inc. and Firestone, the sellers designated by it.

Paragraph Eight: By virtue of said override commission agreement which Atlantic has entered into with Goodyear, Inc., the latter has sold substantial quantities of TBA products in commerce to said service stations and distributors. Goodyear, Inc. has been increasingly successful in selling TBA products to said service station and distributor market controlled by Atlantic. For example, Goodyear, Inc. made such sales, under said agreement, amounting to $2,445,808 in 1951 and $4,175,890 in 1952, on which it paid Atlantic commissions of $239,250 and $411,743, respectively, for those years.

Also, under the agreement between the Atlantic and Firestone, as described hereinbefore, the latter has sold substantial quantities of TBA products to said service stations and distributors. Firestone made such sales amounting to $3,809,843 in its fiscal year 1952 and $4,796,304 in its fiscal year 1953, on which it paid Atlantic commissions of $354,354 and $446,286, respectively, for those years.

Paragraph Nine: In addition, Goodyear, Inc. has entered into the same or a substantially similar override agreement with other oil companies, including the Shell Oil Company. Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reasons as hereinabove alleged as to Atlantic. By virtue of said agreements, Goodyear, Inc. has been and is
41 increasingly successful in selling TBA products to the service station and distributor market controlled by said oil companies. For example, under such an agreement, Goodyear, Inc. made sales amounting to $11,857,287 in 1951, and $16,595,761 in 1952, on which it paid the Shell

Oil Company commissions of $1,091,385 and $1,523,122, respectively, for those years.

Paragraph Ten: Many competitors of Goodyear, Inc. and Firestone are unable to sell their TBA products to a substantial number of said distributors and service stations because of said override agreements. Many of these competitors do not pay override commissions to any oil company.

Paragraph Eleven: Among the effects of the adoption and use by respondents of said override commission agreements, and each of them, under the circumstances and in the manner hereinabove alleged are that they have:

1. Foreclosed a large and substantial amount of business to manufacturers, distributors, wholesalers and other vendors who compete with Goodyear, Inc. and Firestone in the sale of TBA products.
2. Injured, lessened, prevented and destroyed competition between Goodyear, Inc. and Firestone and between each of them and other manufacturers, distributors, wholesalers and other vendors of TBA products in the sale of said products.
3. Increased substantially the amount of TBA products business done by Goodyear, Inc. and Firestone.
4. Deprived a substantial number of petroleum distributors and service station operators of their right to act as independent businessmen by denying them freedom of choice as to the TBA products which they may purchase and stock for resale.
5. Deprived the consuming public of equal access to the TBA products of competitors of Goodyear, Inc. and Firestone and other advantages which would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

42 Paragraph Twelve: Said agreements between respondents and said agreements between a respondent and others not parties herein, and the acts and practices of respondents thereunder, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

43. Enclosure B—List of Specific Changes Made By Amended Complaint.

1. The name of respondent The Goodyear Tire & Rubber Company, Inc. is added to the caption of the complaint and is also added in the fourth line of the first unnumbered paragraph of the complaint.

2. A paragraph describing respondent The Goodyear Tire & Rubber Company, Inc. has been added as subparagraph 2 of Paragraph One of the complaint.

3. Paragraph Two of the complaint has been rewritten as now appears in the amended complaint.

4. In Paragraphs Three, Six, Seven, Eight, Nine, Ten and Eleven, wherever the name Goodyear appeared in the original complaint the name Goodyear, Inc. has been substituted in the amended complaint.

5. In Paragraph Seven of the amended complaint the first sentence has been changed to read as follows:

> "In connection with the sale of TBA products in commerce, Goodyear, Inc. has entered into a contract

with Atlantic under which Atlantic agrees to promote the sale of said TBA products to the service stations and distributors selling Atlantic's petroleum products in part of its sales territory."

51 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

ANSWER OF THE GOODYEAR TIRE & RUBBER COMPANY TO THE COMPLAINT, AS AMENDED.

The Goodyear Tire & Rubber Company, by its attorneys, for its answer to the complaint of the Federal Trade Commission, as amended by the order amending the complaint of the hearing examiner

I.

Answering generally the allegations of the complaint, as amended, alleges:

A. The sales commission plan, which is the subject of the complaint, as amended, is a practical, efficient and inexpensive method of distribution of essential TBA products to motorists through thousands of independent service stations throughout the United States.

52 B. Said sales commission plan is a legitimate and competitive method of marketing which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

C. Said sales commission plan is a part of intense and legitimate competition among suppliers of TBA products for the business of said service stations.

D. Said sales commission plan is not in violation of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) or any other statute.

E. The bringing and prosecution of the complaint and the complaint, as amended, is not in the public interest.

II.

Answering the specific allegations of the complaint, as amended, alleges:

1. As to paragraph 1 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that respondent, The Goodyear Tire & Rubber Company (herein called "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office
53 and place of business located at 1144 East Market Street, Akron, Ohio and that Goodyear operates its business directly and does business with several subsidiaries and that The Goodyear Tire & Rubber Company, Inc. (herein called "Goodyear, Inc."), is a subsidiary which sells Goodyear's products.

Denies each and every allegation of the second unnumbered paragraph, except admits Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 1144 East Market Street, Akron, Ohio; that Goodyear, Inc. is a wholly-owned subsidiary of Goodyear and sells products of Goodyear; that some of the principal officers of Goodyear are also officers of Goodyear, Inc. and that the two companies share the same principal office and place of business.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the third unnumbered paragraph, except as such facts are admitted by The Atlantic Refining Company (herein called "Atlantic"), in its answer to the complaint, as amended.

2. Admits the allegations of paragraph 2 of the complaint, as amended.

54 3. Denies each and every allegation of paragraph 3 of the complaint, as amended, except admits that

Atlantic is a producer and distributor of petroleum products and admits that Atlantic renders sales assistance to certain companies, including Goodyear, Inc., in promoting the sale of TBA products and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 as to the business operations of Atlantic, except as such allegations are admitted by Atlantic in its answer to the complaint, as amended.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint, as amended, except admits so much of the allegations of paragraph 4 of the complaint, as amended, as to respondents Goodyear and Goodyear, Inc. as are allegations of fact and not legal conclusions.

5. Denies each and every allegation of paragraph 5 of the complaint, as amended, except admits that Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. As to paragraph 6 of the complaint, as amended,

55 Admits the allegations of the first unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the second unnumbered paragraph, except admits that a number of stations selling the petroleum products of Atlantic sell TBA products.

7. As to paragraph 7 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to TBA products as to the terms of which contract reference is made to the contract itself and admits that Atlantic has entered into a sales commission agreement with respect to TBA products with The Firestone Tire & Rubber Com-

pany as to the terms of which agreement reference is made to the agreement itself.

Denies each and every allegation of the second unnumbered paragraph, except admits that Goodyear, Inc. has a sales commission contract with Atlantic for TBA products as to the terms of which contract reference is made to
56 the contract itself; admits that Goodyear, Inc. pays Atlantic sales commissions pursuant to said contract and admits that pursuant to said contract Atlantic renders sales assistance in connection with the sale by Goodyear, Inc. of TBA products covered by said contract; admits that the stations and distributors selling the petroleum products of Atlantic do not receive any part of any commission paid to Atlantic under said contract; and denies knowledge or information sufficient to form a belief as to the truth of the allegation that stations and distributors selling the petroleum products of Atlantic at no time authorized or requested Atlantic to find for them, or commit them to, a source of supply for TBA products.

Denies each and every allegation of the third unnumbered paragraph, except admits that the service stations and distributors selling the petroleum products of Atlantic are operated as independently-owned business enterprises and that Atlantic has various contractual arrangements with said service stations and distributors as to which arrangements reference is made to the contracts themselves.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth unnumbered paragraph.

57 Denies each and every allegation of the fifth unnumbered paragraph.

8. As to paragraph 8 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has sold

TBA products to service stations and distributors selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Atlantic and that Goodyear, Inc. has paid commissions to Atlantic pursuant to said contract in substantially the amounts stated in the last sentence of said unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the second unnumbered paragraph.

9. Denies each and every allegation of paragraph 9 of the complaint, as amended, except admits that Goodyear, Inc. has entered into sales commission agreements with oil companies other than Atlantic as to the terms of which agreements reference is made to the agreements themselves; admits that pursuant to such agreements said oil companies have rendered and render sales assistance to Goodyear, Inc.; admits that Goodyear, Inc. has made sales of TBA products to service stations selling petroleum products of such oil companies and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Shell Oil Company and that Goodyear, Inc. has paid commissions to the said oil company pursuant to said contract in the amounts stated in the last sentence of said paragraph 9 of the complaint, as amended.

58

10. Denies each and every allegation of paragraph 10 of the complaint, as amended, except admits that some suppliers of TBA products do not use a sales commission arrangement for the marketing of some or all TBA products.

11. Denies each and every allegation of paragraph 11 of the complaint, as amended.

12. Denies each and every allegation of paragraph 12 of the complaint, as amended.

III.

As further defenses to the complaint and order amending complaint of the Federal Trade Commission, respondent, Goodyear, alleges:

59 1. The complaint and order amending complaint do not comply with Section 5(b) of the Federal Trade Commission Act in that:

(a) The complaint, as amended by the order amending complaint, was not premised upon a finding by the Federal Trade Commission that it had reason to believe that Goodyear has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce and by a finding that it appears to the Commission that a proceeding by it with respect to Goodyear would be in the interest of the public.

(b) The complaint, as amended by the order amending complaint, was not issued and served upon Goodyear by the Commission.

(c) The complaint, as amended by the order amending complaint, does not contain a notice of hearing upon a day and at a place therein fixed at least 30 days after the service of the complaint, as amended.

2. The complaint, as amended by the order amending complaint, does not comply with Rules 3.3 and 3.6 of
60 the Rules of Practice of the Federal Trade Commission in that:

(a) The complaint, as amended by the order amending complaint of the hearing examiner is not a complaint issued and served by the Federal Trade Commission.

(b) The complaint, as amended by the order amending complaint, does not provide notice of the time and place for hearing at least 45 days after service of the complaint, as amended.

Wherefore, respondent, The Goodyear Tire & Rubber Company, prays that the complaint, as amended by the order amending complaint of the hearing examiner be, dismissed.

Dated: July 6, 1956.

Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
Mathias F. Correa,
63 Wall Street,
New York 5, New York,
Attorneys for The Goodyear Tire & Rubber Company.

61 BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

ANSWER OF THE GOODYEAR TIRE & RUBBER COMPANY, INC.

The Goodyear Tire & Rubber Company, Inc. by its attorneys, for its answer to the complaint of the Federal Trade Commission, as amended by the order amending complaint of the hearing examiner

I.

Answering generally the allegations of the complaint, as amended, alleges:

A. The sales commission plan, which is the subject of the complaint, as amended, is a practical, efficient and inexpensive method of distribution of essential TBA products to motorists through thousands of independent service stations throughout the United States.

62 B. Said sales commission plan is a legitimate and competitive method of marketing which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

C. Said sales commission plan is a part of intense and legitimate competition among suppliers of TBA products for the business of said service stations.

D. Said sales commission plan is not in violation of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) or any other statute.

E. The bringing and prosecution of the complaint and the complaint, as amended, is not in the public interest.

II.

Answering the specific allegations of the complaint, as amended, alleges:

1. As to paragraph 1 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that respondent, The Goodyear Tire & Rubber Company (herein called "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office
63 and place of business located at 1144 East Market Street, Akron, Ohio and that Goodyear operates its business directly and does business with several subsidiaries and that The Goodyear Tire & Rubber Company, Inc. (herein called "Goodyear, Inc."), is a subsidiary which sells Goodyear's products.

Denies each and every allegation of the second unnumbered paragraph, except admits Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 1144 East Market Street, Akron, Ohio; that Goodyear, Inc. is a wholly-owned sub-

sidiary of Goodyear and sells products of Goodyear; that some of the principal officers of Goodyear are also officers of Goodyear, Inc. and that the two companies share the same principal office and place of business.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the third unnumbered paragraph, except as such facts are admitted by The Atlantic Refining Company (herein called "Atlantic"), in its answer to the complaint, as amended.

2. Admits the allegations of paragraph 2 of the complaint, as amended.

64 3. Denies each and every allegation of paragraph 3 of the complaint, as amended, except admits that Atlantic is a producer and distributor of petroleum products and admits that Atlantic renders sales assistance to certain companies, including Goodyear, Inc., in promoting the sale of TBA products and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 as to the business operations of Atlantic, except as such allegations are admitted by Atlantic in its answer to the complaint, as amended.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint, as amended, except admits so much of the allegations of paragraph 4 of the complaint, as amended, as to respondents Goodyear and Goodyear, Inc. as are allegations of fact and not legal conclusions.

5. Denies each and every allegation of paragraph 5 of the complaint, as amended, except admits that Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. As to paragraph 6 of the complaint, as amended,

65 Admits the allegations of the first unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the second unnumbered paragraph, except admits that a number of stations selling the petroleum products of Atlantic sell TBA products.

7. As to paragraph 7 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to TBA products as to the terms of which contract reference is made to the contract itself and admits that Atlantic has entered into a sales commission agreement with respect to TBA products with The Firestone Tire & Rubber Company as to the terms of which agreement reference is made to the agreement itself.

Denies each and every allegation of the second unnumbered paragraph, except admits that Goodyear, Inc. has a sales commission contract with Atlantic for TBA products as to the terms of which contract reference is made to the contract itself; admits that Goodyear, Inc. pays Atlan-
66 tic sales commissions pursuant to said contract and admits that pursuant to said contract Atlantic renders sales assistance in connection with the sale by Goodyear, Inc. of TBA products covered by said contract; admits that the stations and distributors selling the petroleum products of Atlantic do not receive any part of any commission paid to Atlantic under said contract; and denies knowledge or information sufficient to form a belief as to the truth of the allegation that stations and distributors selling the petroleum products of Atlantic at no time authorized or requested Atlantic to find for them, or commit them to, a source of supply for TBA products.

Denies each and every allegation of the third unnumbered paragraph, except admits that the service stations and distributors selling the petroleum products of Atlantic

are operated as independently-owned business enterprises and that Atlantic has various contractual arrangements with said service stations and distributors as to which arrangements reference is made to the contracts themselves.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth unnumbered paragraph.

67 Denies each and every allegation of the fifth unnumbered paragraph.

8. As to paragraph 8 of the complaint, as amended, Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has sold TBA products to service stations and distributors selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Atlantic and that Goodyear, Inc. has paid commissions to Atlantic pursuant to said contract in substantially the amounts stated in the last sentence of said unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the second unnumbered paragraph.

9. Denies each and every allegation of paragraph 9 of the complaint, as amended, except admits that Goodyear, Inc. has entered into sales commission agreements with oil companies other than Atlantic as to the terms of which agreements reference is made to the agreements them-

68 selves; admits that pursuant to such agreements said oil companies have rendered and render sales assistance to Goodyear, Inc.; admits that Goodyear, Inc. has made sales of TBA products to service stations selling petroleum products of such oil companies and admits that Goodyear, Inc. has made sales covered by its sales commis-

sion contract with Shell Oil Company and that Goodyear, Inc. paid commissions to the said oil company pursuant to said contract in the amounts stated in the last sentence of said paragraph 9 of the complaint, as amended.

10. Denies each and every allegation of paragraph 10 of the complaint, as amended, except admits that some suppliers of TBA products do not use a sales commission arrangement for the marketing of some or all TBA products.

11. Denies each and every allegation of paragraph 11 of the complaint, as amended.

12. Denies each and every allegation of paragraph 12 of the complaint, as amended.

III.

As further defenses to the complaint and order amending complaint of the Federal Trade Commission, respondent, Goodyear, Inc., alleges:

69 1. The complaint and order amending complaint do not comply with Section 5(b) of the Federal Trade Commission Act in that

(a) The complaint and order amending complaint were not preceded by a finding by the Federal Trade Commission that it had reason to believe that Goodyear, Inc., has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce and by a finding that it appears to the Commission that a proceeding by it with respect to Goodyear, Inc. would be in the interest of the public.

(b) The complaint, as amended by the order amending complaint, was not issued and served upon Goodyear, Inc. by the Commission.

(c) The complaint and order amending complaint do not contain a notice of a hearing upon a day and at a place therein fixed at least 30 days after the service of the complaint and order amending complaint.

2. The complaint and order amending complaint do not comply with Rules 3.3 and 3.6 of the Rules of
70 Practice of the Federal Trade Commission in that

(a) The complaint, as amended by the order amending complaint of the hearing examiner is not a complaint issued and served by the Federal Trade Commission.

(b) The complaint, as amended by the order amending complaint, does not provide notice of the time and place for hearing at least 45 days after service of the complaint, as amended.

Wherefore, respondent, The Goodyear Tire & Rubber Company, Inc., prays that the complaint, as amended by the order amending complaint of the hearing examiner be, dismissed.

Dated: July 6, 1956.

Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
Mathias F. Correa,
63 Wall Street,
New York 5, New York,
Attorneys for The Goodyear Tire & Rubber Company, Inc.

71 BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

ANSWER OF THE ATLANTIC REFINING COMPANY TO COMPLAINT AS AMENDED BY ORDER OF MAY 21, 1956.

Atlantic Refining Company (hereinafter referred to as "Atlantic") reserving to itself all, and all manner of, objections to the uncertainties and insufficiencies of the Complaint of the Federal Trade Commission as amended by the Order dated May 21, 1956 of Earl J. Kolb, Hearing Examiner, makes answer thereto as follows:

The Complaint as thus amended is defective upon its face for the reason that it does not state that the Federal Trade Commission has reason to believe that The Goodyear Tire & Rubber Company, Inc., a party respondent in the proceeding, has violated the provisions of Section 5 of the Federal Trade Commission Act and does not state
72 that it appears to the Commission that a proceeding against said respondent would be in the public interest.

Atlantic makes further answer to the numbered paragraphs of the Complaint as follows:

Paragraph One: Atlantic was incorporated in 1870 under the laws of the State of Pennsylvania, and has engaged in business continuously since that date. Its principal office and place of business is located at 260 South Broad Street in Philadelphia, Pennsylvania.

Atlantic is without knowledge of the corporate structure, location, officers, business or activities of respondent The Goodyear Tire & Rubber Company (referred to in the amended Complaint and hereinafter as "Goodyear") and its various subsidiaries, except as hereinafter noted. The Goodyear Tire & Rubber Company, Inc. (referred to in the amended Complaint and hereinafter as "Goodyear,

Inc.") is the only corporation of the Goodyear group with which Atlantic has business relations. Its principal office and place of business is located at 1144 East Market Street, Akron, Ohio.

73 Paragraph Two: Atlantic is without knowledge of the business or activities of Goodyear. Goodyear, Inc. is engaged in the business of selling TBA products generally as described in Paragraph Two of the amended Complaint. Certain products, such as tires, inner tubes, batteries, automotive parts and accessories, are properly described as "TBA" products.

Paragraph Three: Atlantic has refined and sold superior quality petroleum products longer than any other major refiner on the East Coast and placed in operation the first modern type automotive service station facility in this country. Hence, Atlantic has been engaged in competition during almost the entire life span of the oil industry.

Directly or through wholly owned subsidiaries Atlantic now engages in substantially all branches of the petroleum industry. It purchases about half of its refinery crude oil requirements, and a great majority of the locations where Atlantic gasoline, motor oil and automotive lubricants are sold to the motorist consumer are owned by, or leased from owners other than Atlantic to dealers who operate service stations at such locations. Atlantic's annual
74 sales of such petroleum products to distributors and service station dealers constitute a small percentage of the market.

Atlantic denies that the Complaint fairly describes the manner in which it renders TBA sales assistance.

Paragraph Four: Atlantic admits that Goodyear, Inc. is engaged in commerce in TBA products. The averments as to Atlantic are denied except as hereinafter stated.

Atlantic markets petroleum products, including various

grades of heating oils, waxes, liquid propane, industrial lubricants, asphalts, solvents, and a wide variety of other petroleum and petrochemical products. It is not a manufacturer of TBA, and since 1952 it has not been a wholesale distributor of TBA.

Service station dealers selling certain Atlantic petroleum products, such as gasoline, motor oil and automotive lubricants, are situated in a 17-State marketing area comprising the Eastern Seaboard States from New Hampshire to Florida and portions of Ohio and West Virginia. Atlantic makes no sales in the District of Columbia to distributors or service station dealers, and does not operate any wholesale facilities or service stations in the District.

75. With the exceptions noted below, Atlantic admits that petroleum products sold by it are shipped from the States in which such products are manufactured, refined, stored or warehoused to terminals, bulk plants, or bulk storage located in other States for the purpose of sale and distribution to resellers and consumers in such other States, but denies that such course of conduct confers any jurisdiction in the Federal Trade Commission, insofar as Atlantic is concerned, with respect to the matters here in controversy.

Substantially all gasoline, motor oil and automotive lubricants sold by Atlantic to petroleum wholesalers and petroleum retailers located and doing business in Pennsylvnia are manufactured, refined, shipped and sold within the State of Pennsylvania, and are not manufactured, refined nor warehoused outside such State nor shipped into it from outside its borders.

Paragraph Five: Admitted that Goodyear, Inc. is in competition with others in selling TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

76 Atlantic has never been a manufacturer of TBA. For any years prior to 1952 Atlantic was a purchaser-reseller of TBA, and during such time was engaged in competition with other corporations, partnerships, individuals and firms who also sold TBA. Atlantic's TBA activities since 1952 have been devoted to assisting Goodyear, Inc. and others to sell TBA.

Paragraph Six: Denied as averred. Atlantic sells certain of its petroleum products to petroleum distributors and to several thousand service station dealers, the more progressive and competitive of which purchase TBA products from others for resale to the motoring public.

Service stations are convenient, logical, and necessary points for satisfying the TBA needs of motorists. For this reason, the modern service station has become a large and important market for TBA products, and the retail sale of such products has become an integral, essential part of the modern retail service station business. Dealers who operate modern service stations have found that a competitively priced, readily available, nationally advertised superior quality TBA line increases their petroleum products and related services business, supplements their
77 income from the sale of petroleum products, and is essential to the successful, competitive conduct of their retail service station business.

In order for Atlantic to survive in the intensely competitive business of selling gasoline, motor oil, and automotive lubricants it must utilize a system of distribution based on modern retail service stations operated by competent dealers. Atlantic cannot compete effectively with other oil companies unless dealers purchasing Atlantic's petroleum products are competitive at the retail level, any many of such dealers cannot compete successfully unless the TBA component of their retail business is competitive with the TBA selling activity of their retail competitors.

Many other economic realities explain and justify Atlantic's interest in the purchase and resale of superior quality TBA by distributors and dealers who handle principally Atlantic petroleum products.

Paragraph Seven: Atlantic has entered into contracts with Goodyear, Inc. providing for the rendering of certain services by Atlantic in connection with the sale of Goodyear TBA. Atlantic has also entered into con-
78 tracts of a generally similar nature with The Firestone Tire and Rubber Company, which is not a respondent in this proceeding. As to the terms of such contracts, reference is made to the contracts themselves. Atlantic denies that the Complaint fairly paraphrases, summarizes, or states the terms and effects of such contracts, and also denies the further allegations of Paragraph Seven except as hereinafter expressly stated.

Sales commissions paid by Goodyear, Inc. to Atlantic are compensation for services rendered by Atlantic. Atlantic admits that petroleum distributors and service station dealers purchasing Atlantic petroleum products receive no part of Atlantic's TBA sales commissions. The prices they pay for Goodyear TBA are necessarily competitive with prices paid by other dealers and distributors. Atlantic began withdrawing from the position of a TBA purchaser-reseller on an experimental basis during 1950 and by the latter part of 1951 had ceased to be a wholesale distributor of TBA. The economically essential wholesaler distributive function formerly performed by Atlantic is now carried out by a substantial number of separate corporation, partnerships, individuals and firms whose competitve
79 opportunities were significantly enhanced or were created by Atlantic's withdrawal as a wholesale distributor of TBA.

Atlantic, since 1952, has neither manufactured nor purchased and sold TBA for resale. Atlantic has committed no one to the purchase or sale of Goodyear TBA.

Insofar as the motoring public in Atlantic's marketing area is concerned, oil companies compete with each other principally through the distributive medium of petroleum distributors and retail dealers. As to Atlantic this fundamental economic fact means that its competitive survival depends on two broad standards of business performance, namely:

(1) The economic necessity for Atlantic to support its distributor and dealer customers by being competitive with other oil companies as to all the essential components of the business, beginning with product quality and price and extending through the range of other factors to the competent rendering of expert economic advice and the furnishing of business-building counsel, which all customers can accept or reject, in whole or in part; and

(2) The economic necessity for Atlantic's reseller customers to be competitive with their competition as to
80 all the essential components of the business, beginning with product quality and price and extending through the range of other factors to the competent rendering of those services which the motoring public demands in return for its patronage.

Atlantic, having reached the conclusion that it would prefer not to engage as a direct participant in the TBA business, either as manufacturer or a wholesale distributor, found that the only economically feasible alternative compatible with the competitive necessities of the market place was and is the endorsement, sponsorship, and active support of one or more other efficient, reliable sources of supply—i.e., the Sales Commission Plan, an ordinary business method openly adopted and extensively employed in the industry over a period of many years.

The concept of commercial "control,"—i.e., control of resellers' buying practices, and the opposing concept of

salesmanship,—i.e., urge, recommended and endeavor to persuade, are contradictory concepts. Atlantic denies the "control" alleged in the Complaint.

Atlantic admits that it recommends, urges and endeavors to persuade petroleum products reseller customers to
81 purchase some Goodyear TBA. Many of Atlantic's customers purchase little or no TBA from recommended Goodyear, Inc. TBA supply points. Large quantities of TBA sold to and by such petroleum reseller customers of Atlantic are not TBA products manufactured, distributed, or sold by Goodyear, Inc. or by The Firestone Tire & Rubber Company.

Atlantic has no "contracts of employment" with its gasoline reseller customers.

Atlantic admits that its "credit card contracts" are subject to a 48-hour concellation right. Neither the existence nor exercise of such cancellation right has resulted in control of its customers' buying practices.

With respect to the remaining types of contracts alleged to exist between Atlantic and petroleum distributors and service station dealers, Atlantic cannot be certain of the intended meaning or relevance of the descriptive conclusion "short term" but asserts that if the word "short" is measured by any reasonable yardstick in the light of existing market conditions and legitimate business considerations, Atlantic has not entered into any "short term" contracts of the type alleged. Atlantic's contracts are definite as to term, as required by law, and Atlantic denies that
82 the expiration of a designated term imposes upon it a legal duty to renew an expired agreement.

Atlantic denies that its contracts with distributors and service station dealers contain provisions so broad and general as to be susceptible of arbitrary interpretation by Atlantic or that Atlantic has so attempted to interpret any

provisions of such contracts. The provisions of such contracts are lawful and reasonably definite.

Atlantic admits that some of its contracts contain certain provisions providing for cancellation in the event of non-performance, but denies that the enforcement of a lawful right based on non-performance can simultaneously constitute the breach of any legal duty to the party whose non-performance gives rise to the cancellation right.

Atlantic's policy with respect to petroleum distributors and service station dealers is that such potential TBA customers are free to accept or reject any TBA program suggested and recommended by Atlantic. This policy has been publicized and called to the attention of Atlantic's petroleum products reseller customers on many occasions,
83 both in writing and orally, since Atlantic's adoption of the Sales Commission Plan. Atlantic's Management has consistently and diligently pursued a course of action reasonably calculated to achieve the objective of adequately informing its field force as to the meaning and scope of such policy and to assure itself that the policy was and is faithfully translated into actual practice.

Service station dealer customers of Atlantic who purchase Goodyear TBA are in direct competition with adjacent or nearby service stations selling the same or other brands of TBA products.

Paragraph Eight: Atlantic denies that Goodyear, Inc. in 1951 and 1952 sold the quantities of TBA products specified in the Complaint in commerce to distributors and service station dealers handling Atlantic petroleum products, and denies the averment that the service station and distributor TBA market was or is "controlled" by Atlantic. Atlantic admits that certain amounts of Goodyear TBA were sold to such petroleum distributors and service station dealers by recommended Goodyear, Inc. TBA supply

points and that the total amount thus sold in 1952, the
84. first complete calendar year of full scale operation under the Sales Commission arrangement with Goodyear, Inc. was greater than the corresponding total amount sold in 1951.

Although The Firestone Tire & Rubber Company is not a respondent herein, the admissions, denials, and explanations set forth above are applicable to the allegations of the Complaint respecting or relating to the Firestone Tire & Rubber Company.

Paragraph Nine: Atlantic is without knowledge of the facts averred and demands proof thereof to the extent, if any, that such facts may be deemed relevant to the Complaint against Atlantic.

Paragraph Ten: Atlantic denies that competitors of Goodyear, Inc. and The Firestone Tire & Rubber Company are unable to sell their TBA products and merchandise to petroleum distributors and service station dealers because of any agreement entered into by Atlantic. Atlantic has no knowledge of the extent to which unnamed competitors of Goodyear, Inc. and The Firestone Tire & Rubber Company have elected to pay sales commissions to other oil companies.

85. Paragraph Eleven: Atlantic denies each allegation of Paragraph Eleven of the Compaint.

Paragraph Twelve: Atlantic denies each and every averment of paragraph twelve of the Complaint. Atlantic entered into the above referred to Agreements with Goodyear, Inc. and The Firestone Tire & Rubber Company for the main and lawful purpose of increasing competition at all levels of distribution in the TBA and petroleum products business. Atlantic's acts and practices pursuant to and under such Agreements have been consistent with and reasonably related to the accomplishment of such purpose.

Wherefore, The Atlantic Refining Company respectfully prays that the Complaint be dismissed and that final judgment be entered for it.

Charles I. Thompson,
Attorney for Defendant, The Atlantic Refining Company.

Of Counsel:
Ballard, Spahr, Andrews & Ingersoll,
1035 Land Title Building,
Philadelphia 10, Pennsylvania.

Dated:

152 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

Commissioners:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

ORDER SUSTAINING INTERLOCUTORY APPEAL.

This matter having been heard on an interlocutory appeal, filed by counsel in support of the complaint, from rulings of the hearing examiner excluding from the record certain evidence relating to the extent and effect of the commission agreement between the respondent, The Atlantic Refining Company (hereinafter referred to as Atlantic) and The Firstone Tire and Rubber Company (hereinafter referred to as Firestone), and ther evidence relating to the existence, extent and operation of alleged commission agreements between the respondent, The Goodyar Tire &

Rubber Company, Inc. (hereinafter referred to as Goodyear, Inc.) and a number of oil companies other than Atlantic; and

It appearing that the basis for the rulings complained of was that evidence of the relationships between Atlantic and Firestone and between Goodyear, Inc., and oil companies other than Atlantic have no bearing on the issues in this proceeding, which proceeding is concerned only with the contractual relationship between Atlantic and Goodyear, Inc., and the acts and practices engaged in pursuant thereto; and

It further appearing, however, that the allegations of the complaint are not limited to the existence of and activities under the commission contract between respondents Atlantic and Goodyear, Inc., but relate also to a
153 general course of competitive action by each of said respondents, under which respondent Atlantic is charged with having unlawfully entered into and acted under contracts with both Goodyear, Inc., and Firestone providing for the receipt by it of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., and Firestone to service stations controlled by Atlantic, and respondent Goodyear, Inc., is alleged to have unlawfully entered into and acted under similar contracts with a number of oil companies, including Shell Oil Company and Atlantic, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., to service stations controlled by said oil companies; and

The Commission being of the opinion that the evidence rejected by the hearing examiner apparently was relevant and material to the direct issues thus raised by the complaint and that, if so, it should have been received in support of said issues:

It is Ordered that the appeal of counsel in support of the complaint be, and it hereby is, sustained.

It Is Further Ordered that the hearing examiner be, and he hereby is, directed to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Atlantic and Firestone and of the alleged similar commission contracts between respondent Goodyear, Inc., and each of a number of oil companies other than respondent Atlantic. Such evidence relating to the contract between Atlantic and Firestone should be admitted as against respondent Atlantic unconditionally and as against respondent Goodyear, Inc., subject to a subsequent motion to strike upon a proper showing; and the evidence relating to the alleged contracts between Goodyear, Inc., and the oil companies other than Atlantic should be admitted as against respondent Goodyear, Inc., unconditionally and as against respondent Atlantic subject to the same type of motion.

By the Commission.

Robert M. Parrish,
Secretary.

Issued: December 5, 1956.

J. W. G. WCK.

226 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

MOTION OF THE GOODYEAR TIRE & RUBBER COMPANY AND THE GOODYEAR TIRE & RUBBER COMPANY, INC. TO WITHDRAW ISSUES AND TO STRIKE EVIDENCE.

To the Honorable Earl J. Kolb, Hearing Examiner:

The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc. (herein collectively called "Goodyear"), by their attorneys, move pursuant to Rule 3.8 of the Commission Rules of Practice and Procedure for an order granting the following relief:

(a) Withdrawing from this proceeding any issue legal or factual as to the Goodyear-Shell Oil Company Sales Commission Plan.

227 (b) Striking all evidence heretofore received in this case with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

The reasons for the motion are as follows:

1. Identical legal and factual issues as to the Goodyear-Shell Oil Company Sales Commission Plan are raised both in this proceeding and in the proceeding, Docket No. 6487, in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents.

2. The same Hearing Examiner has been assigned to hear testimony, receive evidence and determine the issues in both proceedings. The Hearing Examiner has already heard on the issue of the Goodyear-Shell Oil Company Sales Commission Plan the testimony of the same witness in both proceedings (Tr. 2092-93). Said testimony, although purporting to cover the same subject matter, differed in material respects as between the proceedings.

3. There is reason to believe that if the present course is followed, the Hearing Examiner will receive in
228 Docket No. 6487 additional evidence and testimony with respect to the Goodyear-Shell Oil Company Sales Commission Plan. Such testimony may in some instances again involve witnesses who have testified in this proceeding.

4. Upon the foregoing facts, it is manifest that Goodyear has been and is being deprived of its rights to a fair hearing as guaranteed by the Constitution and laws of the United States.

Dated: December 2, 1957.

Cahill, Gordon, Reindel & Ohl,
By Thomas C. Mason,
63 Wall Street,
New York 5, New York,
Attorneys for The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

231 BEFORE FEDERAL TRADE COMMISSION.
(Caption—6486)

ANSWER IN OPPOSITION TO MOTION OF RESPONDENTS GOODYEAR TIRE & RUBBER COMPANY AND THE GOODYEAR TIRE & RUBBER COMPANY, INC., TO WITHDRAW ISSUES AND TO STRIKE EVIDENCE.

Come Now counsel in support of the complaint and, in opposition to the Motion to Withdraw Issues and to Strike Evidence, filed on December 2, 1951, by counsel for respondents Goodyear Tire & Rubber Company and The

Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as respondent Goodyear), urge that said motion be denied for the reasons hereinafter set forth.

Respondent Goodyear's motion specifically prays for an order granting the following relief:

> "(a) Withdrawing from this proceeding any issue legal or factual as to the Goodyear-Shell Oil Company Sales Commission Plan.
>
> (b) Striking all evidence heretofore received in this case with respect to the Goodyear-Shell Oil Company Sales Commission Plan."

Respondent Goodyear's motion cites four "reasons" why such relief should be granted. It is contended that identical legal and factual issues as to the Goodyear-Shell Sales Commission Plan are raised in this proceeding and in Docket No. 6487, in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents; 232 that the same Hearing Examiner has been assigned to hear testimony, receive evidence and determine the issues in both proceedings; that one witness already has testified, and other witnesses may testify, in both proceedings concerning the Goodyear-Shell Sales Commission Plan; that the testimony of the one witness who has already testified in both proceedings (Tr. 2092-2093) differed in material respects as between the two proceedings; and, therefore, "it is manifest that Goodyear has been and is being deprived of its rights to a fair hearing as guaranteed by the Constitution and laws of the United States."

Just how it is "manifest" that respondent Goodyear's rights to a fair hearing are being impaired, and just how "the Constitution and laws of the United States" are being violated are nowhere set forth in the motion.

I. Evidence Relating to the Goodyear-Shell Oil Company Sales Commission Plan Comes Within the Scope of the Instant Complaint.

The complaint in the instant matter alleges that respondent Goodyear has entered into TBA Sales Commission Plans with The Atlantic Refining Company, also named as a respondent herein, and with other oil companies, including the Shell Oil Company (Paragraph Nine), in violation of Section 5 of the Federal Trade Commission Act, for reasons set forth in the complaint.

The Commission, in its Order Sustaining Interlocutory Appeal issued December 5, 1956, directed the Hearing Examiner "to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Atlantic and Firestone *and of the alleged similar commission contracts between respondent Goodyear, Inc., and each of a number of oil companies other than respondent Atlantic.*" (Emphasis supplied.)

In arriving at its ruling, the Commission held that the allegations of the complaint relate "*to a general course of competitive action by each of said respondents,* under which . . . respondent Goodyear, Inc., is alleged to have unlawfully entered into and acted under similar contracts *with a number of oil companies, including Shell Oil Company* and Atlantic, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., to service stations controlled by said oil companies." (Emphasis supplied.)

233 It is abundantly clear from the foregoing that evidence relating to the Goodyear-Shell Sales Commission Plan comes within the scope of the complaint in the

instant proceeding and is admissible in the manner set forth in the Commission's Order Sustaining Interlocutory Appeal issued December 5, 1956; therefore, such evidence should not be stricken or such issues withdrawn in this proceeding.

II. The Same Hearing Examiner Sitting in Similar Proceedings Involving Identical Legal and Factual Issues Does Not and Will Not Deprive Respondent Goodyear of Procedural Due Process.

Assuming arguendo that the same legal and factual issues are present in both this proceeding and Docket 6487 with respect to the Goodyear-Shell Oil Company Sales Commission Plan, it does not and will not deprive respondent Goodyear of a fair hearing in this proceeding.

In *Federal Trade Commission* v. *Cement Institute, et al.*, one respondent alleged bias on the part of the Commission and asked for disqualification of the Commission on the grounds that the Commission, or at least some members thereof, had previously filed reports with the Congress and with the President concluding that the multiple basing point system as used in the cement industry was unlawful. In rejecting this contention, the Supreme Court stated in part (*Federal Trade Commission* v. *Cement Institute, et al.*, 333 U. S. 683, 700-703), as follows:

> "Neither the Tumey decision [*Tumey* v. *Ohio*, 273 U. S. 510] nor any other decision of this Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law. *In fact, judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions both of law and fact.* Certainly, the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court." (Emphasis supplied.)

234 In reaching the above conclusion, the Supreme Court stated at page 701, *Federal Trade Commission* v. *Cement Institute et al., supra,* that respondents "produced evidence—volumes of it. They were free to point out to the Commission by testimony, by cross-examination of witnesses, and by arguments, conditions of the trade practice under attack which they thought kept these practices within the range of legally permissible business activities."

In the instant proceedings, respondent Goodyear already has cross-examined witnesses concerning the Goodyear-Shell Sales Commission Plan and is "free to point out" to the Hearing Examiner and the Commission, by testimony and by arguments, conditions which they believe bring the alleged unlawful method of competition "within the range of legally permissible business activities".

In *Whitaker Cable Corporation* v. *Federal Trade Commission,* 239 F. 2d 253, respondent contended that it was denied a fair hearing because the same Hearing Examiner sat in a factually related matter involving certain customers of respondent. In rejecting this contention, the Circuit Court of Appeals, Seventh Circuit, stated at 256, 257, as follows:

> "Finally, petitioner complains that the hearing examiner in this proceeding also held a hearing in a factually related matter in which petitioner did not participate. That proceeding involved eight automotive parts jobbers charged with knowingly inducing and receiving discriminatory prices by means of a group buying arrangement in violation of Section 2(f) of the Clayton Act, as amended. Petitioner was not a party to that proceeding and the issues were not the same as those involved in the instant case. Any order that might have issued in that proceeding could not have affected or prejudiced petitioner. We fail to see in what manner petitioner was prejudiced and petitioner does not indicate in what way it was prej-

udiced other than its assertion that such conduct by the hearing examiner violated 'concepts of basic fairness.' But see *Dolcin Corp.* v. *Federal Trade Com-*
235 *mission*, App. D. C., 219 F. 2d 742, 745-46, cert. denied 348 U. S. 981; cf. *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 700-703."

As in the Whitaker case, *supra*, any order that might issue in Docket 6487 (Firestone-Shell), cannot affect or prejudice respondent Goodyear in Docket 6486. This fact was called to the attention of counsel for respondent Goodyear by the Hearing Examiner when counsel first raised the subject matter of the motion now under consideration on November 26, 1957 (Tr. 2034-2036). At that time, the Hearing Examiner stated (Tr. 2035): "Since you are not a party to the other case, it would not affect you."

Conclusion.

In view of the foregoing, it is submitted that respondent Goodyear's Motion to Withdraw Issues and to Strike Evidence should be denied.

Respectfully submitted,

James S. Kelaher,
Peter J. Dias,
Eugene Kaplan,
Counsel Supporting the Complaint.

December 12, 1957.

238 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * * *.

ORDER DENYING MOTION OF THE GOODYEAR TIRE & RUBBER COMPANY AND THE GOODYEAR TIRE & RUBBER COMPANY, INC., TO WITHDRAW ISSUES AND TO STRIKE EVIDENCE.

This matter is before the hearing examiner upon motion of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., to withdraw from this proceeding any issue legal or factual as to the Goodyear-Shell Oil Company Sales Commission Plan, and to strike all evidence in this case with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

It is respondents' contention that because of the reception of evidence by the same hearing examiner, concerning the Goodyear-Shell Oil Company Sales Commission Plan in both this proceeding and in Docket No. 6487 in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents, deprives the respondents of their rights to a fair hearing.

The hearing examiner in making this initial decision must issue a finding of fact which must be based upon the record in the proceeding in which such finding is made. It would be unlawful and in violation of the Administrative Procedure Act for the hearing examiner to give consideration to any matters not appearing in the record.

239 The motion of respondents is based upon the premise that the hearing examiner cannot or will not proceed lawfully in the issuance of an initial decision in this proceeding.

It is the opinion of the hearing examiner that there is no merit to respondents' contention.

It Is Therefore Ordered that the motion of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., to withdraw issues and to strike evidence, be, and the same is hereby, denied.

Earl J. Kolb,
Hearing Examiner.

January 2, 1958.

247 BEFORE FEDERAL TRADE COMMISSION.
(Caption—6486)

INTERLOCUTORY APPEAL OF RESPONDENTS THE GOODYEAR TIRE & RUBBER COMPANY AND THE GOODYEAR TIRE AND RUBBER COMPANY, INC.

This is an interlocutory appeal by the two Goodyear respondents from an adverse ruling by the Hearing Examiner on a motion to strike evidence and withdraw issues from this proceeding.

The purpose of the motion was to cure what we believe to be a fundamental violation of Goodyear's right to procedural process under the Constitution and laws of the United States.

This violation of fundamental rights exists because the Hearing Examiner is receiving extensive testimony on
248 one of the fact issues of this proceeding in a co-pending proceeding in which Goodyear is not represented.

Our reason for prosecuting an interlocutory appeal is our belief that if the violation continues, it may become impossible to eliminate the error from the case. A further reason is that respondents Goodyear are now engaged in preparing for the defense case. If the relief requested below is granted, the scope of the defense will be reduced and the proceedings will be expedited.

Request for Oral Argument.

The issues raised on the motion and on this appeal are of such importance that we respectfully request the privilege of oral argument before the Commission.

The Violation of Due Process Complained of.

The problem to which this appeal is addressed is that the Hearing Examiner is, during the pendency of this
249 proceeding, presiding over another proceeding covering issues of fact and law identical with those involved in this case.

The evidence so being received by the Hearing Examiner on one of the very fact issues in this proceeding is not merely documentary. It includes a large amount of oral testimony, some of which involves additional testimony of witnesses who have already appeared in this proceeding.

Thus, wholly ex parte to respondents Goodyear, the Hearing Examiner is receiving a large amount of information as to the facts of this case, is hearing the argument of counsel and is inevitably forming impressions, opinions and conclusions as to the credibility of witnesses and issues of fact directly involved in this case.

In complaining of this situation, we do not wish to attack the integrity, competence or fairmindedness of the Hearing Examiner.

250 Our point is that under the circumstances of this case, it is humanly impossible to avoid importing into this case impressions and conclusions formed in the other.

The Duplication of Issues.

In order to understand how this extraordinary situation came about, it is necessary to consider the complaints by which the proceedings before the Hearing Examiner were initiated.

The particular trade practice under attack in these com-

plaints, known as the sales commission plan, is a method of marketing tires, batteries and accessories (collectively called TBA) by tire companies through oil company outlets.

Under this plan the oil company agrees to render to the tire company, sales assistance in the marketing of TBA products to dealers selling the petroleum products of the oil company. In return, the tire company pays the oil company a commission for this service.

251 In attacking this practice, the Commission brought three identical complaints, each of which named as respondents a tire company and an oil company who were parties to a sales commission arrangement (Dockets 6485, 6486 and 6487).

Each complaint asserts that the particular arrangement was a violation of Section 5 of the Federal Trade Commission Act (Par. 12 of complaints). Each places main emphasis on the oil company's relationship to and treatment of its dealers as a source of illegality (Par. 7 of complaints). Although the asserted restraint of trade must necessarily involve the existence of an arrangement between two parties, there is no charge of any conspiracy.

The problem of duplication of issues arises from the fact that the complaints do not, however, confine their charges of illegality to the particular sales commission arrangement between the respondent tire and oil companies.

252 Instead, each complaint additionally alleges that the oil company respondent has another sales commission arrangement with another tire company (Par. 7 of complaints). Each of the complaints further alleges that the tire company respondent has entered into a number of additional sales commission arrangements with other oil companies whose relations with their dealers are similar to those of the oil company respondent (Par. 9 of complaints).

By so challenging in each complaint the legality of a

number of sales commission arrangements, the complaints have brought about a duplication of issues in the three separate proceedings. Thus in the *Goodyear-Atlantic* proceeding, the legality of Goodyear's sales commission arrangement with Shell is called into question.

At the same time, in the *Firestone-Shell* case (Docket 6487), the legality of the same sales commission arrangement between Shell and Goodyear is challenged.

253 It is the duplication of hearings and the receipt of evidence and testimony with respect to this issue in the *Goodyear-Atlantic* and *Firestone-Shell* proceedings which has resulted in the deprivation of due process which is complained of in this interlocutory appeal.

Our motion before the Hearing Examiner sought to eliminate this error by striking evidence and by withdrawing the common issue of the legality of the Goodyear-Shell sales commission plan from the *Goodyear-Atlantic* proceeding.

The Prior Interlocutory Appeal.

In order to place the particular issues here raised in context, it is also necessary to discuss the prior interlocutory appeal brought by the attorney supporting the complaint challenging certain exclusionary rulings of the Hearing Examiner.

During the early stages of the three proceedings, the Hearing Examiner was concerned with the problem
254 of the multiplication of fact issues brought about by the allegations challenging the legality of sales commission arrangements with non-respondent tire and oil companies.

The Hearing Examiner accordingly limited the evidence to be received as to the sales commission arrangement between the respondent oil company and non-respondent tire company and refused to receive evidence as to sales

commission arrangements between the respondent tire company and non-respondent oil companies (Tr. 52-54).

The attorneys supporting the complaints took an interlocutory appeal from these rulings and the Commission with certain limitations, upheld their contention that evidence was to be received as to all such sales commission arrangements (Order Sustainng Interlocutory Appeal issued December 5, 1956).

This determination was based on the ground that the rejected evidence "was relevant and material to the direct issues thus raised by the complaint."

255 Although the danger that this would produce in certain instances duplication of issues in the three proceedings before the same Hearing Examiner was called to the Commission's attention, the Commission did not treat this matter in its order.

The Duplication of Evidence.

At the time of the interlocutory appeal, it appeared that counsel supporting the complaint intended to avoid or minimize the problem arising from the duplication of issues in contemporaneous proceedings pending before the same Hearing Examiner.

On the interlocutory appeal the attorney supporting the complaint represented that evidence as to non-respondent oil companies would be restricted. He asserted:

> "It is not necessary, under the circumstances herein, to adduce evidence with respect to Goodyear's agreements with 'other oil companies' to the same exfent as with respect to Goodyear's agreement with Atlantic." (Interlocutory Appeal Brief, November 9, 1956, p. 17.)

256 Furthermore, during the bulk of the hearings, the attorney supporting the complaint avoided the taking of testimony with respect to non-respondent oil companies.

Indeed, counsel rested his case without introducing any testimony as to most of Goodyear's arrangements with non-respondent oil companies. Evidence as to such oil companies was confined to the agreements themselves, plus a few sales statistics.

Toward the end of the hearing in the *Goodyear-Atlantic* case, the attorney supporting the complaint did, however, call to the stand a number of witnesses as to the operation of the Goodyear-Shell sales commission plan. These included two former Shell dealers (Hooper, Tr. 1937 *et seq.*, Edwards, Tr. 2037 et seq.) and persons who competed for the business of Shell dealers (Govoruhk, Tr. 1545 et seq., Norris, Tr. 1692 et seq., Migan, Tr. 1699 et seq., Savage, Tr. 1727 et seq., Best, Tr. 1828 et seq., Lang, Tr. 1861 et seq., Scheiner, Tr. 1965 et seq., Sander, Tr. 2011 et seq.).

257 Up to this point there had been no field testimony taken in the *Firestone-Shell* proceeding.

The problem of serious overlapping of testimony as to the legality of the Goodyear-Shell sales commission arrangement became evident to Goodyear just prior to the testimony of the last witness in the *Goodyear-Atlantic* case. On this occasion counsel supporting the complaint called as his witness a former Shell employee who also was a former Shell dealer to testify in detail as to the operations of the Goodyear-Shell sales commission plan.

Prior to calling the witness, the attorney supporting the complaint informed counsel for Goodyear that the hearings were being scheduled so as to permit the same witness to testify on the same or subsequent day in the *Firestone-Shell* case (Tr. 2034).

Although no error would be committed until the witness was called in the *Firestone-Shell* proceeding, counsel for Goodyear felt constrained to call to the attention of
258 the Hearing Examiner the fact that the situation was

pregnant with error and that Goodyear's constitutional rights would be violated if the Hearing Examiner proceeded to receive such testimony as to the Goodyear-Shell sales commission arrangements in another proceeding (Tr. 2034-2036).

Thereafter, the Hearing Examiner permitted the witness to testify in both proceedings (Docket 6486, Tr. 2037-2214; Docket 6487, Tr. 506-655).

In addition, the Hearing Examiner proceeded a few days later to hold extensive hearings on the Goodyear-Shell sales commission plan in the *Firestone-Shell* proceeding.

We have now learned that additional hearings are scheduled in the *Firestone-Shell* proceedings in which at least fourteen witnesses who have previously testified in the *Goodyear-Atlantic* proceeding will be called to the stand. Several of such witnesses will undoubtedly testify once again on the subject of the Goodyear-Shell sales commission arrangement.

259

Point I.

Goodyear Is Being Deprived of Its Rights to Procedural Due Process Under the Constitution and the Administrative Procedure Act.

We have been unable to find any case dealing with the extraordinary situation here involved—that of a Hearing Examiner in one proceeding contemporaneously presiding over an adjudication of the same issue of fact and law in another proceeding in which one of the parties is not present.

There are no analogies to the situation in the function of courts. It would not be usual for a judge to try more than one case at the same time.

The instant situation does, however, come exactly within the condemnation of a specific provision of the Adminis-

trative Procedure Act. Thus Section 5(c) of that Act, provides, in pertinent part:

"Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer
260 [Hearing Examiner] shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate."

This is, of course, not a suitation where an ex parte consideration of evidence is authorized by law. Plainly by hearing the testimony of witnesses and by consulting with and hearing arguments of counsel in another case, the Hearing Examiner is consulting persons on facts in issue without the opportunity for Goodyear to participate.

The attorney supporting the complaint may argue that although this section of the Act specifically and literally reads upon the present situation that it should not be applied because it was directed at a more common abuse. That abuse was that of consultation by the Hearing Examiner of an agency with the investigative or other staff of the agency. There is no justification for giving the statute any such limited construction.

For one thing, it is clear that the draftsmen of the provision had no intention of restricting the prohibi-
261 tion merely to contacts with members of the agency. If that had been intended it could have been simply stated. In the sentence immediately following, there is, moreover, a specific provision against members of the investigative staff of an agency advising in connection with a decision.

What the section obviously was addressed to was the receipt of information by a Hearing Examiner as to a fact in issue before him in a pending proceeding from anyone, whether within or without the agency, without the opportunity for the parties involved to participate.

The receipt of information by presiding over a co-pend-

ing proceeding involving the identical fact issue where a party to the first proceedings is not represented, violates both the literal scope and spirit of the prohibition.

Apart from the specific provision of Section 5(c), it is plain that the procedure now being followed by the
262 Hearing Examiner violates the purpose of a number of sections of the Administrative Procedure Act codifying rights under the constitutional guarantees of due process.

Once it is accepted that it is impossible for a Hearing Examiner in the present situation to avoid importation of knowledge received from the one proceeding into his decision with respect to the other, it is plain that the unrepresented party is being denied the right to appear by counsel, the right to conduct cross-examination and the right that the proceeding against him be decided only on the record of that proceeding (Administrative Procedure Act, §§ 6(a), 7(c) and 7(d)).

Point II.

The Hearing Examiner's Ruling was Based on Erroneous Premises.

The Hearing Examiner in his order of January 2, 1958 denying our motion, stated as follows:

> "It is respondents' contention that because of the reception of evidence by the same hearing examiner concerning the Goodyear-Shell Oil Company Sales
> 263 Commission Plan in both this proceeding and in Docket No. 6487 in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents, deprives the respondents of their rights to a fair hearing.
>
> "The hearing examiner in making his initial decision must issue a finding of fact which must be based upon the record in the proceeding in which such finding is made. It would be unlawful and in violation of the Administrative Procedure Act for the hearing examiner to give consideration to any matters not

appearing in the record. The motion of respondents is based upon the premise that the hearing examiner cannot or will not proceed lawfully in the issuance of an initial decision in this proceeding.

"It is the opinion of the hearing examiner that there is no merit to respondents' contention."

With all due deference and respect to the Hearing Examiner, it seems plain that his reasoning merely begs the question. The fact that he must by law confine his determination to the record, does not remove his disability so to do. It does not change the fact that compartmentalization of one's mind to remove impressions and information derived from another contemporaneous case is a physical impossibility.

264 There is, moreover, a more subtle way in which respondents Goodyear will be prejudiced by efforts of the Hearing Examiner to confine his decision to the record. It seems fair to assume that the Hearing Examiner appreciates that in any attempt to appraise the credibility of witnesses on the basis of their demeanor before him, it would be impossible to segregate impressions received as to the same witness in the two proceedings.

What the Hearing Examiner must intend is to avoid taking into account the conduct of the witness before him and, by some extraordinary mental effort, attempt to decide the case as if he were merely reading the dry record. This in itself would deprive Goodyear of the benefit of one of the most important functions of the Hearing Examiner—a function which is particularly important in this case.

265 This case beings into question the conduct of oil companies with respect to their dealers. As is usual in such cases, much of the testimony adduced by the Commission involves that of a selected group of disgruntled former dealers with obvious bias against the oil company.

Additionally, there is the interested testimony of marginal TBA suppliers who as competitors of the tire company are also interested witnesses.

There is, moreover, already of record considerable conflict in testimony as to what was said to dealers by company employees and as to what the dealers reported to others had been said to them by company employees. These conflicts will undoubtedly be multiplied when the defense case is presented.

The accurate appraisal of the credibility of such biased and interested testimony and the resolution of conflicts in testimony can only be accomplished by an impartial appraisal of the credibility of the witnesses by the Hearing Examiner derived from observing their demeanor and conduct in open proceedings.

266 See, *Gamble-Skogmo, Inc.* v. *Federal Trade Commission*, 211 F. 2d 106 (8th Cir. 1954).

Against this background, any attempt by the Hearing Examiner to decide this case as if he were merely reading the dry record, would in and of itself involve a violation of due process.

As stated in *S. Buchsbaum & Co.* v. *Federal Trade Commission*, 153 F. 2d 85 (7th Cir. 1946):

> "Congress has authorized the appointment of Examiners in such cases and they are the eyes and ears of the Commission. There is no complaint as to this delegated power, but it certainly cannot be said that the appointment would free the Examiner from the duty of observing the demeanor of witnesses, for this would amount to a lack of due process to which petitioner is entitled." (p. 87.)

Point III.

The Authorities Advanced In Opposition to the Motion Were Not Pertinent.

In opposing our motion before the Hearing Examiner, the attorney supporting the complaint placed main
267 reliance on two cases which are not pertinent to the issues raised by the motion.

The first of these cases was *Federal Trade Commission* v. *Cement Institute, et al.*, 333 U. S. 683, 700-703 (1948). In the *Cement Institute* case, respondents claimed that the Commission was disqualified to pass upon the basing point system of the cement industry because the Commission had previously reported to Congress its view that it was illegal.

Thus this situation did not involve any contemporaneous receipt of information through the trial of another proceeding in which the parties were not represented. It involved instead merely a claim of prejudice from having expressed an opinion on the same general subject.

Moreover, there does not appear to have been any contention that the Commission was unable to resolve contested fact issues before it without reference to information outside of the record.

268 In sustaining the qualifications of the Commission to try the basing point case, the Supreme Court (333 U. S. 700-703), analogized the situation to that of a judge assigned to retry a case after reversal on appeal.

That situation is substantially different from the situation here presented.

One fundamental distinction is that parties to the retrial have been represented in the earlier one. Thus there is no problem of receipt of evidence in a proceeding where a party was not represented. Also, the evidence introduced

at the first trial, unless ruled inadmissible on appeal, is generally available upon retrial.

There is, moreover, an obvious distinction between consecutive trials of the same issue where the parties are aware of what has gone before and contemporaneous hearings of the same issue where the non-represented party is debarred from participating in the second proceeding.

269 The second authority relied on by the attorneys supporting the complaint is *Whitaker Cable Corporation* v. *Federal Trade Commission*, 239 F. 2d 253, 7th Cir. 1956). In that case the Hearing Examiner apparently, during the trial of a Section 2(a) proceeding, accepted an assignment to the trial of a 2(f) proceeding involving in part some of the same transactions. It does not appear from either the opinion of the Court of Appeals or that of the Commission, to what extent the evidence actually received covered the same fact issues.

Furthermore, it appears that at least before the Commission, the respondent company did not raise the same issues as here. As indicated in the Commission's opinion (Docket No. 5722, April 29, 1955), the respondent's contention was "that the implied effect of the examiner's accepting the appointment and proceeding to take evidence in another hearing was that this case had already been adjudicated" (p. 2).

Thus the assertion of impropriety was that acceptance of the appointment to try the new proceeding showed

270 pre-judgment of the earlier proceeding, rather than the prejudice to be derived from the receipt of testimony in the second proceeding.

The Court of Appeals in upholding the Examiner's conduct stated as follows:

> "Finally, petitioner complains that the hearing examiner in this proceeding also held a hearing in a

factually related matter in which petitioner did not participate. That proceeding involved eight automotive parts jobbers charged with knowingly inducing and receiving discriminatory prices by means of a group buying arrangement in violation of Section 2(f) of the Clayton Act, as amended. Petitioner was not a party to that proceeding and the issues were not the same as those involved in the instant case. Any order that might have issued in that proceeding could not have affected or prejudiced petitioner. We fail to see in what manner petitioner was prejudiced and petitioner does not indicate in what way it was prejudiced other than its assertion that such conduct by the hearing examiner violated 'concepts of basic fairness.' But, see *Dolcin Corp.* v. *Federal Trade Commission*, App. D. C. 219 F. 2d 742, 745-46, 'cert. denied 348 U. S. 981; cf. *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 700-703.'' (pp. 256-257.)

It is to be noted that here, unlike the *Whitaker* case, the issue of fact and law as to the Goodyear-Shell sales
271 commission plan is identical both in the *Goodyear-Atlantic* and *Firestone-Shell* proceedings. It is also to be noted, since the sales commission plan is terminable on short notice, that an order in either proceeding will directly affect Goodyear.

Reference should also be made to the case *Dolcin Corporation* v. *Federal Trade Commission*, 219 F. 2d 742 (D. C. Cir. 1954). The facts of that case are also different from the situation here presented.

There the parties in a second proceeding before the same Hearing Examiner had stipulated that medical evidence as to a questioned drug in the first proceeding would form part of the record in the second case involving a similar drug. The Hearing Examiner decided the second case first, and the Commission affirmed.

The complaint of the respondent was not against the

receipt of evidence in the second proceeding but the
272 fact that at the time of his oral argument before the Commission, the issue had in effect been already decided. Thus the assertion was made that the Commission may have been prejudiced by the prior argument.

The court held that these facts were insufficient to show bias or disqualification on the part of the Commission. The Court noted that the respondent had not taken such steps as were open to him to have delayed the determination in the second proceeding.

Conclusion.

The proceedings before the Hearing Examiner involve a substantial violation of respondents Goodyear's rights to constitutional due process. They also involve a direct violation of specific provisions of the Administrative Procedure Act.

The motion before the Hearing Examiner is designed to cure the error so injected into the procedings. Accord-
273 ingly, the motion should have been granted by the Hearing Examiner and his denial of the motion should be reversed in this interlocutory appeal.

Dated: January 31, 1958.

Respectfully submitted,
Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
Mathias F. Correa,
63 Wall Street,
New York 5, New York,
Attorneys for The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

277 UNITED STATES OF AMERICA

Before Federal Trade Commission.

* * (Caption—6486) * *

ANSWER IN OPPOSITION TO INTERLOCUTORY APPEAL OF RESPONDENTS THE GOODYEAR TIRE & RUBBER COMPANY AND THE GOODYEAR TIRE & RUBBER COMPANY, INS.

Come now counsel in support of the complaint, pursuant to Section 3.20(b) (1) of the Commission's Rules of Practice, and, in answer to the Interlocutory Appeal of Respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., both of whom are hereinafter referred to jointly as respondent Goodyear, filed on January 31, 1958, state that (1) said Appeal should not be entertained by the Commission; (2) if entertained, said Appeal should be denied, and (3) request for oral argument should be denied, for the reasons hereinafter set forth.

I. History.

On December 2, 1957, counsel for respondent Goodyear filed a Motion to Withdraw Issues and to Strike Evidence with the Hearing Examiner, specifically praying for an order granting the following relief:

"(a) Withdrawing from this proceeding any issue legal or factual as to the Goodyear-Shell Oil Company Sales Commission Plan.

"(b) Striking all evidence heretofore received in this case with respect to the Goodyear-Shell Oil Company Sales Commission Plan."

278 Respondent Goodyear's motion cited certain "reasons" why such relief should be granted, namely, that

identical legal and factual issues as to the Goodyear-Shell Sales Commission Plan are raised both in this proceeding and in Docket No. 6487, in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents; that the same Hearing Examiner has been assigned to hear testimony, receive evidence and determine the issues in both proceedings; that one witness already has testified, and other witnesses may testify, in both proceedings concerning the Goodyear-Shell Oil Company Sales Commission Plan; that the testimony of the one witness (Edwards) who has already testified in both proceedings differed in material respects as between the two proceedings; that there is reason to believe that if the present course is followed, the Hearing Examiner will receive additional evidence and testimony in Docket 6487 concerning the Goodyear-Shell Oil Company Sales Commission Plan which may involve, in some instances, witnesses who have testified in this proceeding. Respondent Goodyear stated that, for the "reasons" stated, "it has been and is being deprived of its rights to a fair hearing as guaranteed by the Constitution and laws of the United States." No authorities were cited by respondent Goodyear in support of said motion.

Counsel supporting the complaint filed an Answer in Opposition to said motion on December 12, 1957, in which it was stated that evidence relating to the Goodyear-Shell Oil Company Sales Commission Plan comes within the scope of the complaint in this proceeding pursuant to the Commission's Order Sustaining Interlocutory Appeal, issued December 5, 1956, and further, assuming arguendo that the same legal and factual issues are present in both this proceeding and Docket 6487 with respect to the Goodyear-Shell Oil Company Sales Commission Plan, it does not and will not deprive respondent Goodyear of a fair hearing in this proceeding.

The Hearing Examiner, on January 2, 1958, entered an

Order Denying Motion of respondent Goodyear, in which he stated in part:

> "The hearing examiner in making his initial decision must issue a finding of fact which must be based upon the record in the proceeding in which such finding is made. It would be unlawful and in violation of the Administrative Procedure Act for the hearing examiner to give consideration to any matters not appearing in the record.
>
> 279 "The motion of respondents is based upon the premise that the hearing examiner cannot or will not proceed lawfully in the issuance of an initial decision in this proceeding.
>
> "It is the opinion of the hearing examiner that there is no merit to respondents' contention."

It should be noted that respondent Shell Oil Company in Docket 6487 filed a motion with the Hearing Examiner to withdraw the Goodyear-Shell Oil Company Sales Commission Plan issues from that proceeding. Respondent Shell's motion was also denied by the Hearing Examiner and is presently on Interlocutory Appeal to the Commission.

II. The Interlocutory Appeal Should Not Be Entertained As the Issues Raised Therein Have Already Been Ruled Upon by the Commission.

The Interlocutory Appeal of respondent Goodyear should not be entertained by the Commission as it raises issues which were ruled upon by the Commission in its Order Sustaining Interlocutory Appeal issued December 5, 1956. Events leading to the Commission's Order of December 5, 1956, may be summarized as follows:

The complaint in the instant matter alleges, inter alia, that respondent Goodyear has entered into TBA Sales Commission Plans with respondent The Atlantic Refining Company, and with other oil companies, including the Shell Oil Company, which is specifically named in the complaint

(Paragraph Nine), in violation of Section 5 of the Federal Trade Commission Act, for reasons set forth in the complaint. The complaint alleges (Paragraph Nine) that respondent Goodyear made sales amounting to $11,857,287 in 1951, and $16,595,761 in 1952, on which it paid the Shell Oil Company commissions, under the Sales Commission Plan, of $1,091,385, and $1,523,122, respectively, for those years.

During the course of the hearings held on October 30, 1956, counsel supporting the complaint offered in evidence a number of documents in support of the allegations of Paragraph Nine of the complaint relating to respondent Goodyear's Sales Commission Plans with oil companies other than respondent Atlantic. Certain of the offered 280 documents related specifically to the Goodyear-Shell Oil Company Sales Commission Plan (CX ID 55, 59A-E). The Hearing Examiner ruled that all of such offered documents, including CX ID 55 and 59A-E, were inadmissible. (Tr. 53, 54.) This ruling, among others, was appealed to the Commission by counsel supporting the complaint, and reference is herewith made to the Interlocutory Appeal Brief of counsel supporting the complaint filed November 9, 1956, in this regard.

The prior Interlocutory Appeal of counsel supporting the complaint filed November 9, 1956, squarely raised the issue which respondent Goodyear now raises for the second time. Counsel supporting the complaint, in its Interlocutory Appeal Brief, defined the issue at page 7 therein as follows:

"Statement of the Issue.

"Where the allegations of a complaint challenge a method of doing business, are similar acts and practices employed by a respondent *with another or others not parties to the proceeding* admissible in evidence in proving the scope, effect and unlawfulness of the challenged acts and practices?" (Emphasis supplied.)

Under section IV, E, (pp. 16, 17) of said Interlocutory Appeal Brief, counsel supporting the complaint contended that "the rejected evidence relating to 'other oil companies' is relevant to the issues" raised by the complaint.

Respondent Goodyear, in its Answering Brief, filed November 26, 1956, opposing said Interlocutory Appeal, joined issue, inter alia, on the relevancy of evidence relating to respondent Goodyear's Sales Commission Plans with non-respondent oil companies, including Shell Oil Company (see pp. 8, 9, 11-14 thereof).

Counsel for respondent Goodyear also directed the Commission's attention to the three complaints attacking the Sales Commission Plan (Dockets 6485, 6486 and 6487) and argued that such complaints "are virtually identical except for the companies named as respondents" (p. 3); and that there was "a confusing overlap of factual allegations among the three parallel complaints" (p. 4), citing as examples, among others, that "Goodyear is involved in the Firestone case, in which it is not a party; . . . and Shell is involved in the Goodyear case, in which it is not a party" (p. 5). Because of such "duplication of issues," it was argued that the hearing examiner's ruling should be affirmed.

281

Counsel for respondent Goodyear based its opposition to the Interlocutory Appeal of counsel supporting the complaint in major part on the "duplication of issues" argument, which it now raises for the second time throughout its present Interlocutory Appeal.

It is interesting to note that counsel for respondent Goodyear argued, at pages 11-14 of their Answering Brief, that counsel supporting the complaint intended "to omit proof on the one critical fact necessary to lend the least semblance of relevancy in these proceedings to Goodyear's relations with the non-respondent oil companies—the alleged identity of control by the oil companies of their dealers."

This conclusion was based on an erroneous construction of certain language in the Interlocutory Appeal Brief of counsel supporting the complaint and, in fact, such evidence was subsequently introduced into the record by counsel supporting the complaint. It is such evidence as relates to the Goodyear-Shell Oil Company Sales Commission Plan which now forms the basis for respondent's Interlocutory Appeal. In short, counsel for respondent Good year now move to strike the very evidence which they previously considered to be of the utmost evidentiary significance and relevancy in this proceeding!

The Commission entered its Order Sustaining Interlocutory Appeal on December 5, 1956, in which it stated, in part, as follows:

> "It appearing that the basis for the rulings complained of was that evidence of the relationships between Atlantic and Firestone and between Goodyear, Inc., and oil companies other than Atlantic have no bearing on the issues in this proceeding, which proceeding is concerned only with the contractual relationship between Atlantic and Goodyear, Inc., and the acts and practices engaged in pursuant thereto; and
>
> "It further appearing, however, that the allegations
> 282 of the Complaint are not limited to the existence of and activities under the commission contract between respondent Atlantic and Goodyear, Inc., but relate also to *a general course of competitive action* by each of said respondents, under which . . . respondent Goodyear, Inc., is alleged to have unlawfully entered into and acted under similar contracts with a number of oil companies, *including Shell Oil Company* and Atlantic, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., to service stations controlled by said oil companies; and
>
> "The Commission being of the opinion that the evidence rejected by the hearing examiner apparently

was relevant and material to the direct issues thus raised by the complaint and that, if so, it should have been received in support of said issues." (Emphasis supplied.)

Whereupon, the Commission ordered that the hearing examiner receive into the record "such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract *between . . . respondent Goodyear, Inc., and each of a number of oil companies other than respondent Atlantic.*" (Emphasis supplied.) It was further ordered that such testimony should be admitted as against respondent Goodyear, Inc., unconditionally and as against respondent Atlantic subject to a subsequent motion to strike upon a proper showing.

Evidence has been received by the Hearing Examiner in accordance with the Commission's order of December 5, 1956, and it is certain of such evidence which now forms the basis of respondent Goodyear's Motion to Withdraw Issues and to Strike Evidence relating to the Goodyear-Shell Sales Commission Plan in their Interlocutory Appeal.

Counsel for respondent Goodyear blithely attempt to distinguish the issues ruled upon in the Commission's prior order of December 5, 1956, from the issues raised by its present Interlocutory Appeal as follows:

283 "This [prior] determination was based on the ground that the rejected evidence 'was relevant and material to the direct issues thus raised by the complaint.'

"Although the danger that this would produce in certain instances *duplication of issues* in the three proceedings before the same Hearing Examiner was called to the Commission's attention, *the Commission did not treat this matter in its order.*" (Emphasis supplied.)

This presumed distinction between the issues previously resolved and the issues raised by the present interlocutory appeal, which is the only distinction advanced, is without merit because it is obvious that the Commission must have considered the fact that the same Hearing Examiner was assigned to this proceeding and to Dockets 6485 and 6487; that the three complaints attacked the TBA override commission arrangements between certain tire companies and oil companies; that certain of the respondents named in such complaints were also non-respondents in other of the three complaints; and that allegations relating to the Goodyear-Shell Oil Company Sales Commission Plan were involved both in this proceeding and in Docket 6487. All such matters, including the "duplication of issues" argument of counsel for respondent Goodyear, and related matters, were before the Commission at that time and had to be resolved before the Commission ruled as it did in its Order of December 5, 1956.

For the reasons stated, we contend that the issues now raised by counsel for respondent Goodyear in their Interlocutory Appeal have already been ruled upon by the Commission and, therefore, such Appeal should not be entertained by the Commission, as it does not come within the provisions of Section 3.20 of the Commission's Rules of Practice governing Interlocutory Appeals.

III. The Interlocutory Appeal, If Entertained, Should Be Denied.

While we contend that all of the issues raised by the present Interlocutory Appeal necessarily were resolved and ruled upon by the Commission in its Order of December 5, 1956, we further respectfully submit that, if the Inter-
284 locutory Appeal is entertained, it should be denied, for the following reasons.

A. The Issue.

The basic issue raised by respondent Goodyear may be stated as follows:

> Does the fact that the same Hearing Examiner is receiving oral testimony in another case (Docket 6487), in which respondent Goodyear is not a part, and which involves allegations relating to the Goodyear-Shell Oil Company Sales Commission Plan, deprive respondent Goodyear of procedural due process under the Constitution and laws of the United States in this proceeding.

Counsel for respondent Goodyear contend that, "wholly ex parte to respondents Goodyear, the Hearing Examiner is receiving a large amount of information [in Docket 6487] as to the facts of this case, is hearing the argument of counsel and is enevitably forming impressions, opinions and conclusions as to the credibility of witnesses and issues of fact directly involved in this case. * * * under the circumstances of this case, it is humanly impossible to avoid importing into this case impressions and conclusions formed in the other." (Interlocutory Appeal Brief, p. 3.)

In determining whether respondent Goodyear's fundamental rights to procedural due process are being violated in this proceeding, it is only necessary to determine whether said respondent is being accorded a fair hearing under the Administrative Procedure Act, for as stated by Senator McCarran in discussing said Act in the Senate on March 12, 1946, prior to its passage:

> "[The Administrative Procedure Act], the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or anotehr by agencies of the Federal Government. *It is*

designed to provide guaranties of due process in administrative procedure." (Emphasis supplied.) (Senate Doc. No. 248, 79th Cong., 2d Session, p. 298.)

285 Counsel for respondent Goodyear raise various arguments in support of their position, all of which center around the fact that the same Hearing Examiner is the presiding officer in this proceeding and in Docket 6487, in which respondent Goodyear is not a party, in both of which proceedings allegations are involved relating to the Goodyear-Shell Oil Company Sales Commission Plan, and in both of which oral testimony is being received into the record with respect thereto. The lack of merit to such contentions as they relate to the Administrative Procedure Act is set forth hereinafter.

B. Section 5(c) of the Administrative Procedure Act Is Not Being Violated in This Proceeding.

Counsel for respondent Goodyear argue under Point I (pp. 13-16) of their brief that Section 5(c) of the Administrative Procedure Act is being violated under the circumstances here present. They admit, however, that they "*have been unable to find any case*" in support of such contention.

Section 5(c) of the Administrative Procedure Act is entitled Adjudication, and reads as follows

> "(c) *Separation of Functions*—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. *Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate;* nor shall such officer be responsible to or subject to the

supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. * * *'" (Emphasis supplied.)

286 The underscored clause above is that portion of Section 5(c) which counsel for respondent Goodyear contend is being violated. As stated by them, at page 14 of their brief: "Plainly by hearing the testimony of witnesses and by consulting with and hearing arguments of counsel in another case, the Hearing Examiner is *consulting* persons on facts in issue without the opportunity for Goodyear to participate." (Emphasis supplied.)

It is only necessary to read Section 5(c) in its entirety and to review the legislative history thereof to place it in proper perspective. The Section is entitled "Separation of Function." and it patently is directed at separating the adjudicative function from the investigative and prosecutive functions of administrative agencies.

The Report of the Senate Committee on the Judiciary on the Administrative Procedure Act, submitted November 19, 1945, summarizes the provisions of Section 5(c) as follows:

"(c) Separation of Functions—Officers who preside at the taking of evidence must make the decision or recommended decision in the case. They may not consult with any person or party except openly and upon notice, save in the disposition of customary ex parte matters, and they may not be made subject to the supervision of prosecuting officers. The latter may not participate in the decisions, except as witness or counsel in public proceedings. * * *

"The gist of the subsection is that no investigating

> or prosecuting officer shall directly or indirectly in any manner influence or control the operations of hearing and deciding officers, except as a participant in public proceedings, and even then in no different fashion than the private parties or their representatives." (Senate Doc. No. 248, 79th Cong., 2d Session, p. 203.)

The Report of the House Committee on the Judiciary, on the Administrative Procedure Act, submitted May 3, 1946, likewise states with respect to Section 5(c):

> "The purpose of this section is to assure that no investigating or prosecuting officer shall directly or indirectly in any manner influence or control the operations of hearing and deciding officers, except as a participant in public proceedings, and even then in no different fashion than the private parties or their representatives. The separation of functions here required must be reflected in the rules of organization and procedure issued pursuant to section 3(a). * * *" (Senate Doc. No. 248, supra, p. 262.)

287

The separation of functions provision of Section 5(c) is embodied in Section 3.15(e) of the Commission's Rules of Practice, and reference is made thereto.

The obvious purpose of Section 5(c) of the Administrative Procedure Act, and Section 3.15(e) of the Commission's Rules of Practice, is to maintain the judicial independence of Hearing Examiners in adversary proceedings before administrative agencies.

Counsel for respondent Goodyear are far afield when they contend that the Hearing Examiner in this proceeding is consulting with witnesses and counsel in Docket 6487 in violation of the provisions of Section 5(c). To say that the Hearing Examiner herein is consulting with counsel for respondents Shell Oil Company and The Firestone Tire & Rubber Company, as well as with counsel supporting the complaint, and witnesses, in Docket 6487, does violence not only to any recognized definition of the

word "consult", but also to the spirit and purpose of Section 5(c).

The Hearing Examiner herein is not consulting with anyone when he sits as the presiding officer in another adversary proceeding (Docket 6487) in which he must reach a judicial determination based on the evidence adduced by both sides in that proceeding. For this reason, counsel for respondent Goodyear's further argument that they are entitled to "notice and opportunity . . . to participate" in Docket 6487 within the meaning of Section 5(c) is based on an unwarranted construction of Section 5(c), and is entirely without merit.

C. Other Provisions of the Administrative Procedure Act Are Not Being Violated In This Proceeding.

Counsel for respondent Goodyear also contend, at page 16 of their brief, that Sections 6(a), 7(c) and 7(d) of the Administrative Procedure Act are being violated be-
288 cause said respondent is "being denied the right to appear by counsel, the right to conduct cross-examination and the right that the proceeding against [Goodyear] be decided only on the record [of this proceeding]."

This argument contains two principal contentions, namely, (1) that respondent Goodyear has a right to participate in Docket 6487, under Section 6(a) of said Act, and (2) that the Hearing Examiner is importing "knowledge received" from Docket 6487 into the record in this proceeding and therefore must go beyond the record to reach his decision herein, in violation of Sections 7(c) and 7(d) of said Act.

I.

With respect to the first contention set forth above, it is well settled that it is not necessary for an administrative agency to name all parties to an agreement or contract as

respondents in a complaint in order to determine whether such agreement or contract is in violation of a Federal statute.

In the area of public law the rights and interests of the public are of primary concern, and not the private rights of individual parties. Because of this different perspective, there is little, if any, need for the rules governing indispensable or necessary parties in private litigation. As stated by the United States Supreme Court in *National Licorice Co.* v. *NLRB,* 309 U. S. 350, 363, 366 (1940):

> "In a proceeding so narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights.
>
> * * * * * *
>
> "... in proceedings before the Federal Trade Commission, the *order restraining unfair methods of competition may preclude the performance of outstanding contracts by the offenders. Such orders have never been challenged because the holders of the contracts were not made parties.* E.g. *Butterick Co.* v. *Federal Trade Commission,* 4 F. 2d 910; *Q. R. S. Music Co.* v. *Federal Trade Commission,* 12 F. 2d 730; *J. W. Kobi Co.* v. *Federal Trade Commission,* 23 F. 2d 41. Cf. *Federal Trade Commission* v. *Beech-Nut Co.,* 257 U. S. 441." (Emphasis supplied.)

289 The Commission was under no legal compulsion to name Goodyear as a respondent in Docket 6487. Not being a party thereto, respondent Goodyear has no right to appear by counsel, or to conduct cross-examination, in such proceeding.

It is important to observe, however, that respondent Goodyear is being accorded the rights of a party in this proceeding, which also attacks the legality of the TBA Sales Commission Plan, including the right of due notice, cross-examination, presentation of evidence, objection, mo-

tion, argument, and all other fundamental rights, including the right of appeal, as provided in the Administrative Procedure Act and as embodied in Section 3.16(b) of the Commission's Rules of Practice. It is being, and will be, afforded every opportunity to defend the allegations of the complaint herein, so that its protestations concerning an alleged lack of "due process" in this proceeding are entirely without foundation.

Reference is also made to the Interlocutory Appeal Brief of counsel supporting the complaint filed November 9, 1956, at pages 19-21, wherein it was stated that it is not necessary for an administrative agency to name all parties to an agreement as respondents in a complaint to determine the legality of an alleged unfair method of competition. This contention necessarily was one of the factors taken into consideration by the Commission in ruling as it did in its Order Sustaining Interlocutory Appeal of December 5, 1956.

Counsel for respondent Goodyear did not challenge this prior contention of counsel supporting the complaint in their reply brief filed November 26, 1956, and even now do not cite any authorities in support of their position that they are a necessary party to Docket 6487.

II.

The second contention of counsel for respondent Goodyear, as set forth above, is that the Hearing Examiner is importing "knowledge received" from Docket 6487 into the record in this proceeding and therefore must go beyond the record herein to reach his decision, in violation of Sections 7(c) and 7(d) of the Administrative Procedure Act.

290 This argument runs throughout counsel's Appeal Brief and arises in various places therein (e.g. pp. 2-7, 9-12, 16). It is based on an alleged duplication of issues

and duplication of evidence in this proceeding and Docket 6487 with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

Counsel for respondent Goodyear contend that the complaint herein raises a separate legal issue as to each of Goodyear's sales commission agreements with Atlantic and approximately twelve other oil companies, including Shell Oil Company, thereby raising approximately thirteen legal issues in all. By applying this same reasoning to Docket 6487, they argue that the Goodyear-Shell Oil Company agreement, among others, presents a separate legal issue in that proceeding, thus resulting in a "duplication of issues" as between this proceeding and Docket 6487. Based on their construction of the two complaints, they conclude that the legality of the Goodyear-Shell Oil Company Sales Commission Agreement is a separate issue in each case, and further conclude that each of the numerous other Sales Commission Agreements alleged in both complaints raises separate issues as to their legality. It is on the basis of this reasoning that they rest their Interlocutory Appeal.

The foregoing argument of counsel for respondent Goodyear was rejected and effectively answered by the Commission in its Order of December 5, 1956, when it ruled that the allegations of the complaint herein "relate . . . to a general course of competitive action", and not solely to the Sales Commission Agreement between the named respondents, Goodyear and Atlantic.

Viewed in its proper perspective, the legality of the Goodyear-Shell Oil Company Sales Commission Agreement is not a separate issue to be determined in either this proceeding or Docket 6487. The basic issue common to both cases, as well as to Docket 6485, is whether the method, plan or system of merchandising TBA products through oil company outlets by means of overriding sales commission agreements constitutes "a general course of competi-

tive action" in violation of Section 5 of the Federal Trade Commission Act.

291 Neither the complaint in this proceeding nor in Docket 6487 raises separate issues with respect to each separate Sales Commission Agreement, and, for this reason, the arguments of counsel for respondent Goodyear are based on an erroneous and rejected premise from their very inception.

Nevertheless, counsel for respondent Goodyear argue that they are being prejudiced in this proceeding because certain witnesses testified herein and also in Docket 6487 with respect to the Goodyear-Shell Oil Company Sales Commission Agreement. Counsel argue that it is "impossible" for the Hearing Examiner to "avoid importation of knowledge received" in Docket 6487 into the record in this proceeding, in violation of Sections 7(c) and 7(d) of the Administrative Procedure Act.

The names of the witnesses referred to by counsel are set forth at page 10 of their brief, as follows: Edwards, Hooper, Govoruhk, Norris, Migan, Savage, Best, Lang, Scheiner, and Sander. All of these witnesses testified in this proceeding, and counsel were of the belief that certain of them would subsequently be called as witnesses in Docket 6487. (Only witness Edwards had testified in both cases up to the filing of the Interlocutory Appeal.) However, only five of the ten listed witnesses in this proceeding actually appeared as witnesses in Docket 6487, viz: Edwards, on November 26, 1957, and Hooper, Savage, Lang, and Scheiner on February 3, 1957.

The heart of respondent Goodyear's appeal centers on the oral testimony of these five witnesses, particularly that of witness Edwards (see p. 2 of Respondent's Motion filed December 2, 1957). For this reason, it is important to consider the circumstances surrounding the testimony of such witnesses in this proceeding:

1. Witness Edwards.

Counsel for respondent Goodyear were advised by counsel supporting the complaint on October 18, 1957, that William E. Edwards would be called to testify in this matter on November 26, 1957. Such disclosure was in accordance with an oral agreement between counsel to inform one another of the names of prospective witnesses at least 30 days in advance of hearing date, if possible, to afford an opportunity for counsel to prepare for
292 cross-examination at the immediate conclusion of direct examination of a witness. At that time, counsel for respondent Goodyear were also advised that Mr. Edwards had previously publicly testified on April 30, 1957, before the (Roosevelt) Subcommittee No. 5 of the House of Representatives Select Committee on Small Business, on Distribution Practices in the Petroleum Industry.

Witness Edwards, who was formerly a District Sales Representative for the Shell Oil Company, and also a Shell Service Station Dealer, was called as a witness in this proceeding on the morning of November 26, 1957 (Tr. 2033-2083). At the conclusion of the direct examination of this witness, counsel for respondent Goodyear, in direct contravention of the agreement between counsel previously referred to, requested that cross-examination of witness Edwards be deferred until after the appearance of this witness in Docket 6487 (Tr. 2083-4). Over objection, counsel's request was granted (Tr. 2084-6).

Thereafter, on the afternoon of the same day, November 26, 1957, witness Edwards testified on direct, and subsequent cross-examination by counsel for Shell Oil Company (Docket 6487, Tr. 506-655).

At the conclusion of witness Edwards' testimony in Docket 6487, counsel for respondent Goodyear requested further deferment of cross-examination in this proceeding

until the following morning, and this request was granted (Tr. 2087-8).

On the morning of November 27, 1957, witness Edwards was recalled to the stand in this proceeding and underwent an extensive and intensive cross-examination by counsel for respondent Goodyear which covered (1) his direct testimony in this proceeding on the previous day; (2) his testimony in Docket 6487 on the previous day; and (3) his testimony on April 30, 1957, before the Roosevelt Subcommittee (Tr. 2090-2214). During this cross-examination, counsel had before them the transcripts of witness Edwards' testimony on the previous day in both this proceeding and Docket 6487, and a transcript of his testimony before the Roosevelt Subcommittee.

The cross-examination of witness Edwards began at approximately 9:30 a.m. and was not concluded until after the luncheon recess that same day. Witness Edwards' appearance as a witness in this proceeding covered a period of more than six hours.

293 Counsel for respondent Goodyear had more than one month within which to conduct any investigation they desired, except contacting the witness, to prepare for the cross-examination of witness Edwards. Further, in direct violation of a prior agreement, they requested and received permission to defer the examination of witness Edwards until after his appearance in Docket 6487. Thereafter, the Hearing Examiner accorded them the widest latitude in cross-examining witness Edwards in this proceeding. Yet counsel for respondent Goodyear now contend that the appearance of witness Edwards in Docket 6487 constitutes a lack of due process because (1) they should have been afforded an opportunity to cross-examine witness Edwards in Docket 6487, and (2) the Hearing Examiner cannot possibly make a finding on the record in this proceeding without taking into consideration

the testimony of witness Edwards, as well as his credibility, in Docket 6487.

The facts with respect to witness Edwards' appearance as a witness herein refute even the slightest suggestion that respondent Goodyear's rights have been, or are being, violated. The Hearing Examiner has had every opportunity to observe the demeanor and to judge the credibility of the witness Edwards in this proceeding, without resort to any other proceeding in which he may have appeared. In fact, respondent Goodyear's motion to strike the testimony of this witness only serves to emphasize its relevance and importance with respect to the issues raised by the complaint in this proceeding.

2. Other Witnesses.

Counsel for respondent Goodyear were advised by letter dated July 12, 1957, of the fact that Messrs. Hooper, Savage, Lang and Scheiner, among others, were to be called as witnesses in Baltimore, Md. This disclosure was in accordance with the agreement between counsel relating to the exchange of the names of witnesses prior to their appearance, referred to heretofore. Because of necessary delays, the hearings in Baltimore were not held until November 18-21, 1957, so that counsel for respondent Goodyear had more than four months within which to conduct any investigation they desired, exclusive of contacting the witness, prior to such hearings. Further, all such witnesses were subjected to extensive cross-examination by counsel for respondent Goodyear.

294 Here again, the Hearing Examiner has had every opportunity to observe the demeanor and conduct of such witnesses and to judge their credibility in this proceeding, without resort to any other proceeding in which they might testify. Further, counsel for respondent Goodyear were afforded ample opportunity, which presumably

they used, to prepare for the cross-examination of these witnesses, and were given wide latitude in conducting such examination. (See Hooper, Tr. 1937 et seq., Savage, Tr. 1727 et seq., Lang, Tr. 1861 et seq., Scheiner, Tr. 1965 et seq.) It is also important to note that the testimony of witnesses Savage, Lang, and Scheiner, on their efforts to sell TBA into the Shell market, was limited by the Hearing Examiner in this proceeding to Shell service stations carrying Goodyear TBA as distinguished from Firestone TBA.

Why it would be necessary for the Hearing Examiner to consider the testimony of these witnesses, as well as that of witness Edwards, in another proceeding in order to arrive at his decision herein is never made clear in respondent Goodyear's Appeal Brief. They continually resort to such unsupported statements as "under the circumstances of this case, it is humanly impossible [for the Hearing Examiner] to avoid importing into this case impressions and conclusions formed in the other" (p. 4); "*once it is accepted* that it is impossible for a Hearing Examiner in the present situation to avoid importation of knowledge received from the one proceeding into his decision with respect to the other, it is plain that [the Administrative Procedure Act is being violated]" (p. 16, emphasis supplied); and "compartmentalization of one's mind to remove impressions and information derived from another contemporaneous case is a physical impossibility" (p. 17).

No authorities, either legal or psychological, are submitted in support of such rash assumptions. Such arguments are metaphysical and ad hominem in nature and are as unwarranted as they are psychologic. The subject of this psychoanalysis, the Hearing Examiner, whose mental processes are so dogmatically analyzed, does not agree with counsel for respondent Goodyear and states in his Order Denying their Motion "that there is no merit in respondents' contention." In reaching this conclusion, the Hearing

Examiner makes it clear that his initial decision in this proceeding will be based on the record herein, in accordance
295 with the provisions of the Administrative Procedure Act, without resort to Docket 6487.

In view of the foregoing, we respectfully submit that the facts do not support the contentions of counsel for respondent Goodyear that the Hearing Examiner must necessarily go beyond the record in this proceeding to arrive at his initial decision, in violation of Sections 7(c) and 7(d) of the Administrative Procedure Act.

D. The Hearing Examiner's Use of the Word "Record" Was Proper.

As a further argument (pp. 18-20, Appeal Brief), counsel for respondent Goodyear have seized upon the Hearing Examiner's use of the word record in his order denying their motion as implying that he intends "to avoid taking into account the conduct of witnesses before him" (p. 18, Appeal Brief) and thus deprive respondent of its right to have the credibility of witnesses appraised by the Hearing Examiner.

The Hearing Examiner was paraphrasing Section 7(c) of the Act when he stated that "It would be unlawful and in violation of the Administrative Procedure Act for the Hearing Examiner to give any consideration to any matters not appearing in the *record.*" Section 7(c) provides, in part, that no order shall "be issued, except upon consideration of the whole *record* . . ." The following Section 7(d) defines the "Record" as: "The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive *record* for decision in accordance with 8 . . . (Emphasis supplied.)

The Hearing Examiner correctly paraphrased Section 7(c) of the Administrative Procedure Act in his Order. This does not mean, however, that the Hearing Examiner is fore-

closed from judging the credibility of the witnesses. In fact, Section 8(b) of the Administrative Procedure Act entitled "Decisions", provides that "*All decisions* (*including initial . . . decision*) *shall become a part of the record* and include a statement of (1) *findings and conclusions, as well as the reasons or basis therefor,* upon all the material issues of fact, law, or discretion presented on the record . . ." (Emphasis supplied.)

296 As explained in the Report on the Administrative Procedure Act of the House Committee on the Judiciary, filed May 3, 1946, with respect to Section 8(b):

> "Findings and conclusions must include all the relevant issues of law and fact presented by the record . . . Where oral testimony is conflicting or subject to doubt of its credibility, the credibility of witnesses would be a necessary finding if the facts are material . . ." (Senate Doc. No. 248, supra, p. 273.)

When read in proper context within the framework of the Administrative Procedure Act, it is apparent (1) that the Hearing Examiner's reference to the "record" in his Order Denying Motion was proper; and (2) that the Hearing Examiner in no manner implied therein that he intended to confine his initial decision to the so-called "day record" (p. 18, Appeal Brief). On the contrary, there is no reason to doubt that the Hearing Examiner will impartially appraise the credibility of witnesses on the basis of his observation of their demeanor and conduct in this proceeding, in full compliance with the spirit and purpose of the Administrative Procedure Act, and consistent with the authorities in point set forth at page 20 of the Appeal Brief, viz: *Gamble-Skogmo, Inc.* v. *Federal Trade Commission,* 211 F. 2d 106 (8th Cir. 1954), and *S. Buchsbaum & Co.* v. *Federal Trade Commission,* 153 F. 2d 85 (7th Cir. 1946).

E. The Same Hearing Examiner Sitting in Docket 6487 Does Not and Will Not Deprive Respondent Goodyear of Procedural Due Process.

Counsel for respondent Goodyear take exception to authorities advanced in support of the proposition that the same Hearing Examiner sitting in Docket 6487 and in this proceeding does not, and will not, result in a deprivation of due process (Point III, pp. 20-26, Appeal Brief). The cases in question are *Federal Trade Commission* v. *Cement Institute, et al.*, 333 U. S. 683 (1948), and *Whitaker Cable Corporation* v. *Federal Trade Commission*, 239 F. 2d 253 (7th Cir. 1956).

297 In the *Cement Institute case*, supra, at 702-703, the Court stated:

> "Neither the *Tumey* decision [*Tumey* v. *Ohio*, 273 U. S. 510] nor any other decision of this Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case *after he had expressed an opinion* as to whether certain types of conduct were prohibited by law. *In fact, judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions both of law and fact.* Certainly, the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court." (Emphasis supplied.)

As stated by the Supreme Court in the *Cement Institute* case, supra, at 701, respondents "produced evidence—volumes of it. They were free to point out to the Commission by testimony, by cross-examination of witnesses, and by arguments, conditions of the trade practice under attack which they thought kept these practices within the range of legally permissible business activities."

Counsel for respondent Goodyear contend that the facts of the *Cement Institute* case, supra, were so different that the decision of the Supreme Court is inapplicable to the

instant matter. We believe these so-called distinctions to be without merit. Respondents are receiving a full and fair hearing in this proceeding, and the fact remains that even if the Hearing Examiner herein actually renders an Initial Decision in Docket 6487 prior to his determination in this proceeding, it would not be a violation of procedural due process, under the Supreme Court decision in Cement Institute, supra. A fortiori, where the Hearing Examiner sitting in a factually related case has not even rendered his Initial Decision in either case, as is the situation here, the *Cement Institute* decision would also be applicable.

298 In the *Whitaker Cable Corporation* case, supra, the Circuit Court of Appeals stated, at 256, 257, as follows:

> "Finally, petitioner complains that the hearing examiner in this proceeding also held a hearing in a factually related matter in which petitioner did not participate. That proceeding involved eight automotive parts jobbers charged with knowingly inducing and receiving discriminatory prices by means of a group buying arrangement in violation of Section 2(f) of the Clayton Act, as amended. Petitioner was not a party to that proceeding and the issues were not the same as those involved in the instant case. Any order that might have issued in that proceeding could not have affected or prejudiced petitioner. We fail to see in what manner petitioner was prejudiced and petitioner does not indicate in what way it was prejudiced other than its assertion that such conduct by the hearing examiner violated 'concepts of basic fairness.' But see *Dolcin Corp.* v. *Federal Trade Commission*, App. D. C., 219 F. 2d 742, 745-46, cert. denied 348 U. S. 981; cf. *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 700-703."

Counsel for respondent Goodyear attempt to distinguish the facts in the *Whitaker Cable* case, supra, from the instant matter. However, the fact remains that the same

Hearing Examiner, received evidence of sales and shipments by Whitaker to a buying group in a factually related matter (Docket 5767, *Cotton States, Inc. et al.*) arising under Section 2(f) of the Clayton Act, as amended, while at the same time the legality of respondent Whitaker's pricing system under Section 2(a) of said Act was at issue in that proceeding (Docket 5722).

As stated by Attorneys for the Commission in their Brief before the United States Court of Appeals for the Seventh Circuit in the *Whitaker* case, supra, at pages 26, 27:

299 As in the Whitaker case, supra, wherein the Court affirmed the Commission's Order to Cease and Desist, there is no charge of personal bias or prejudice here. On the contrary, counsel for respondent Goodyear state that they "do not wish to attack the integrity, competence or fairmindedness of the Hearing Examiner" (p. 3, Appeal Brief). The facts before the Court of Appeals in the Whitaker case, supra, make its ruling on this point apposite to the facts upon which respondent Goodyear bases its Appeal herein.

Counsel for respondent Goodyear also attempt to distinguish *Dolcin Corporation v. Federal Trade Commission*, 219 F. 2d 742 (D. C. Cir. 1954). The court therein held that the Commission was not disqualified from issuing an Order against respondent Dolcin because it had previously entered a similar Order in another matter (Docket 5741, *Norton Corp., et al.*) in which the same Hearing Examiner presided, and in which the same medical evidence as adduced in the Dolcin case was stipulated into the record in the Norton case. The court stated, supra at 746:

> "The occurrences here do not establish bias or disqualification on the part of the Commission; *certainly nothing is shown sufficient to invalidate the hearing and the subsequent decision.* Cf. *Federal Trade Com-*

mission v. *Cement Institute*, 333 U. S. 683, 700 (1948); *United States* v. *Morgan*, 313 U. S. 409, 420-421 (1941)." (Emphasis supplied.)

The decision of the Court of Appeals in the Dolcin case, supra, is clearly in point here. The same Hearing Examiner based his Initial Decision in the factually related Norlon matter on the same medical evidence adduced in the Dolcin case, and in fact, rendered his Initial Decision in the Norlon matter in January 1952, prior to his similar Initial Decision in the Dolcin matter the following month.

The authorities cited above plainly support the proposition that the same Hearing Examiner sitting in Docket 6487 does not, and will not, deprive respondent Goodyear of procedural due process in this proceeding.

300 For the reasons stated under this Section III, it is respectfully submitted that the Interlocutory Appeal of respondent Goodyear, if entertained, should be denied.

IV. The Request for Oral Argument Should Be Denied.

Counsel for respondent Goodyear request oral argument in support of their Interlocutory Appeal (p. 2, Appeal Brief). It is respectfully submitted that such request should not be granted under the circumstances present herein because (1) the Interlocutory Appeal raises issues which have already been ruled upon by the Commission and therefore should not be entertained (see Section II herein); (2) the respective Briefs of opposing counsel form a sufficient basis upon which to decide the merits of the Interlocutory Appeal, if entertained by the Commission; and (3) the scheduling of oral arguments would only serve to unduly delay further hearings in this proceeding.

V. Conclusion.

It is respectfully submitted that (1) the Interlocutory Appeal of respondent Goodyear should not be entertained, for reasons set forth in Section II herein; (2) if entertained, said Interlocutory Appeal should be denied, for reasons set forth in Section III herein; and (3) the request of counsel for oral argument should not be granted, for reasons set forth in Section IV herein.

Respectfully submitted,

James S. Kelaher,
Peter J. Dias,
Eugene Kaplan,
Counsel Supporting the Complaint.

February 12, 1958.

406 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

Commissioners:

John W. Gwynne, Chairman.
Robert T. Secrest.
Sigurd Anderson.
William C. Kern.
Edward T. Tait.

ORDER DENYING INTERLOCUTORY APPEAL.

Respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., having filed with the Commission an interlocutory appeal from the hearing examiner's order of January 2, 1958, denying their motion to withdraw from this proceeding any issue as to the Goodyear-Shell Oil Company Sales Commission Plan, and to strike all evidence heretofore received in this case

with respect to said Goodyear-Shell Oil Company Sales Commission Plan; and

It appearing that it is the respondents' contention that because of the reception of evidence by the same hearing examiner, concerning the Goodyear-Shell Oil Company Sales Commission Plan in both this proceeding and Docket No. 6487 in which the Goodyear companies are not parties, these respondents are deprived of a fair hearing; and

It further appearing that the question thus presented was considered and in effect determined adversely to the respondents in the Commission's disposition on December 5, 1956, of an interlocutory appeal theretofore filed by counsel in support of the complaint from rulings of the hearing examiner excluding from the record evidence of the type here involved; and

407 The Commission being of the opinion that the aforesaid determination of the question renders unnecessary its further consideration at this time:

It Is Ordered that the respondents' appeal and their request for oral argument in support thereof be, and they hereby are, denied.

By the Commission.

Robert M. Parrish,
Secretary.

(Seal)

Issued: March 21, 1958.

408 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

ORDER DENYING IN PART AND GRANTING IN PART THE MOTION OF THE GOODYEAR TIRE & RUBBER COMPANY AND THE GOODYEAR TIRE & RUBBER COMPANY, INC., TO STRIKE EVIDENCE.

This proceeding is before the hearing examiner upon motion of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as Goodyear) to strike certain evidence, and answer thereto filed by counsel supporting the complaint.

1. The specifications contained in the motion to strike may be divided into the following categories:

A. Testimony and exhibits relating to The Firestone Tire & Rubber Company which has been received subject to motion to strike by Goodyear and also evidence contained in stipulations pertaining to The Firestone Tire & Rubber Company.

B. Testimony and other evidence pertaining to Sherwood Brothers, Incorporated and Sinclair Refining Company.

C. Inter-office documents of The Atlantic Refining Company.

D. Lingenfelser testimony.

E. Testimony relating to state of mind of a prior witness.

409 2. Testimony and Exhibits Received Subject to Motion to Strike by Goodyear. The testimony and exhibits, including stipulated facts relative to contracts and transactions between The Firestone Tire & Rubber Com-

pany and The Atlantic Refining Company, were received in evidence subject to motion to strike by respondent Goodyear in compliance with a previous order of the Commission relative to such evidence. After reviewing the record, the hearing examiner is of the opinion that no connection has been established between Goodyear and The Firestone Tire & Rubber Company contracts with The Atlantic Refining Company, and that the testimony and exhibits introduced with reference to The Firestone Tire & Rubber Company contracts with The Atlantic Refining Company should be stricken as to respondent Goodyear.

3. Testimony and Evidence re: Sherwood Brothers Incorporated and Sinclair Refining Company. While Sherwood Brothers Incorporated was a separate corporate entity, it was a wholly owned subsidiary of Sinclair Refining Company. It had a commission agreement with Goodyear from March 1, 1944, to December 31, 1955. At that time it was absorbed by the parent company, Sinclair Refining Company, and became the Sherwood Division thereof. After December 31, 1955, the Sherwood Division continued under the commission agreement previously entered into between Goodyear and Sinclair Refining Company covering accessories only. In view of the above, the testimony and other evidence relating to contracts and dealings between Goodyear and both Sherwood Brothers Incorporated and Sinclair Refining Company are competent, relevant and material as to respondent Goodyear.

4. Inter-Office Documents of The Atlantic Refining Company. With reference to exhibits which are inter-office documents of The Atlantic Refining Company, it appears from the record that the contractual relationship between Goodyear and The Atlantic Refining Company has been established by other competent evidence in this proceeding. These exhibits might not be competent to show the existence of the contractual relationship between the

two respondents, but this contractual relationship having been established, these exhibits are competent to show the steps taken to implement and carry out the contracts and also to show action taken preliminary to the entering into of the contracts. It is, accordingly, the opinion of the hearing examiner that the documents are competent, relevant and material.

410 5. The Frederick Lingenfelser Testimony. This testimony relates to the solicitation of battery business from the Atlantic distributor prior to the entering into of a TBA contract with The Firestone Tire & Rubber Company. It is the opinion of the hearing examiner that no connection has been shown as to respondent Goodyear with reference to this testimony and that it should be stricken insofar as respondent Goodyear is concerned.

6. Testimony Relating to the State of Mind of a Prior Witness. The evidence admitted over objection of respondent Goodyear pertaining to the state of mind of Atlantic dealers has been reviewed by the hearing examiner, and it appears that the objections were fully argued and considered at the time it was offered. The hearing examiner sees no reason for disturbing his rulings on evidence heretofore made during the course of the trial and while witness was on the stand.

It is Therefore Ordered that the motion of the respondent Goodyear to strike testimony, exhibits and stipulated facts pertaining to contracts and transactions between The Firestone Tire & Rubber Company and The Atlantic Refining Company be sustained and said testimony, exhibits and stipulated facts are hereby stricken as to Goodyear, but remain in the record as to The Atlantic Refining Company.

It Is Further Ordered that motion of the respondent Goodyear to strike testimony and other evidence pertain-

ing to Sherwood Brothers Incorporated and Sinclair Refining Company be, and the same is hereby, denied.

It Is Further Ordered that the motion of the respondent Goodyear to strike exhibits which are internal documents of The Atlantic Refining Company be, and the same is hereby, denied.

It Is Further Ordered that motion of the respondent Goodyear to strike the testimony of Frederick Lingenfelser, appearing in the record at pages 1087-1105, be, and the same is hereby, sustained and said testimony stricken as to the respondent Goodyear.

It Is Further Ordered that the motion of the respondent Goodyear to strike certain testimony pertaining to the state of mind of Atlantic dealers is hereby denied.

Earl J. Kolb,
/s/ Earl J. Kolb,
Hearing Examiner.

March 21, 1958.

1124 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

INITIAL DECISION.

BY Earl J. Kolb, Hearing Examiner.

James S. Kelaher and Peter J. Dias, for the Commission.

Cahill, Gordon, Reindel & Ohl, New York New York, by Thomas C. Mason and Mathias F. Correa, for respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pennsylvania, by Frederic L. Ballard, Jr., for respondent The Atlantic Refining Company.

This proceeding is based upon an amended complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful certain contracts entered into between respondents The Goodyear Tire & Rubber Company, Inc., a wholly owned subsidiary of respondent The Goodyear Tire & Rubber Company and the Atlantic Refining Company, whereby The Goodyear Tire & Rubber Company, Inc., agreed to pay The Atlantic Refining Company a sales commission on all tires, batteries and accessories sold by said The Goodyear Tire & Rubber Company, Inc., to service stations and other outlets of the Atlantic Refining Company. The amended complaint further
1125 charged that respondent The Goodyear Tire & Rubber Company, Inc., had entered into similar contracts with certain oil companies other than The Atlantic Refining Company, and that The Atlantic Refining Company

had entered into a similar contract with The Firestone Tire & Rubber Company.

This proceeding is now before the hearing examiner for final consideration upon the amended complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions filed by all parties and briefs in support thereof, and reply briefs. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by the parties, and their briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings of fact, conclusions drawn therefrom and order:

1. Respondent The Goodyear Tire & Rubber Company is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company is engaged in the manufacture and in the sale and distribution of rubber products including tires and inner tubes, directly and through several wholly owned and controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

2. Respondent The Goodyear Tire & Rubber Company, Inc., (hereinafter sometimes referred to as "Goodyear") is a wholly owned subsidiary corporation of The Goodyear Tire & Rubber Company, organized under the laws of the State of Delaware with its office and principal place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company, Inc., is engaged in the sale and distribution in interstate commerce of tires, inner tubes, batteries, automotive parts and accessories

which are known to the trade as TBA products and will be hereinafter so referred to.

3. Respondent the Atlantic Refining Company (hereinafter sometimes referred to as ("Atlantic") is a corporation organized, existing and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at 260 South Broad Street, Philadelphia, Pennsylvania. Said respondent is engaged in the production and in the sale and distri-
1126 bution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers (hereinafter referred to as "distributors") and to service stations.

4. Respondent Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. This marketing territory is divided into six marketing regions which are, in turn, subdivided into twenty-nine districts, consisting of a city or other marketing center and the surrounding territory. The marketing regions and districts are as follows:

Region	District
New England	Providence, R. I.
	Springfield, Mass.
	Hartford, Conn.
	Boston, Mass.
	New Haven, Conn.
New York	Syracuse, N. Y.
	Southern Tier, N. Y.
	Albany, N. Y.
	Rochester, N. Y.
	Watertown, N. Y.
	Buffalo, N. Y.
Philadelphia-New Jersey	Philadelphia-Suberban, Pa.
	South Jersey
	Newark (or North Jersey)

Region	District
Eastern Pennsylvania	Reading, Pa. Allentown, Pa. Wilkes-Barre, Pa. Harrisburg, Pa. Williamsport, Pa. Wilmington, Del.
Western Pennsylvania	Pittsburgh, Pa. Altoona, Pa. Greensburg, Pa. Erie, Pa.
Southern	Charlotte, N. C. Baltimore, Md. Richmond, Va. Jacksonville, Fla. Miami, Fla.

1127 5. As of April 30, 1956, there were approximately 394 salesmen calling on dealers and distributors of gasoline and lubricants, including service stations. These salesmen are divided into various classifications, dependent upon the functions which they perform as follows:

Type	Approximate Number	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to "promotable dealers", which term includes lessee dealers and contract dealers interested in complete service station operation.
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.

Type	Approximate Number	Function
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teaching involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

1128 6. All of respondent Atlantic's salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also for over-all gains) by those of their assigned dealers who have been in operation for a minimum of twelve months.

7. Respondent Atlantic sells its petroleum products to more than 5,500 retail dealers, a substantial number of whom operate service stations (as distinguished from grocery stores, garages, and other like outlets), and to more than 200 distributors who, in turn, sell said products to more than 2,800 retail outlets, a substantial number of

whom operate service stations. These retail dealers and distributors are divided into the following classifications:

Present Designation	Percentage of Total Regional Gasoline Sales By Each Customer Class	
	1951 Percent	1955 Percent
1. Company-operated Station	.1	0.1
2. Lessee Dealer	32	39.1
3. Contract Dealer	23	18.1
4. Commercial Account	15	16.6
5. Wholesale Dealer	3	1.1
6. Distributor	24	24.0
7. Jobber	2	1.0
Total	100	100.0

8. The usual form of lease entered into by respondent Atlantic and its lessee dealers was for a term of one year, with automatic renewal from year to year unless written notice was given prior to the expiration of any term. Rental provided by any lease was usually a flat rental plus a cents-per-gallon charge, dependent upon location of station, financial condition of lessee and potential income.

Such lease contained provisions relating to the use, 1129 maintenance and general appearance of the station.

In the event of breach of any of the terms, conditions or covenants of the lease by the lessee, it was provided that Atlantic may, at its option, terminate the lease.

9. On April 1, 1953, respondent Atlantic adopted a long-term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory operation became eligible for a three-year lease with rental remaining the same during the entire period.

10. Tires, batteries and accessories have become a necessary and integral part of the business operation of the

Atlantic dealer. He cannot profitably and successfully operate his business without the added revenue from that portion of his business which also enables the dealer to give complete service to his customers. The service station is important to TBA manufacturers as an outlet for distributing to customers. It is to the interest of The Atlantic Refining Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

11. Prior to March 1951 (except as to three districts in which the Sales Commission Plan was tested beginning in 1950) respondent Atlantic purchased TBA for resale either directly or indirectly to Atlantic dealers. This purchase for resale arrangement was first begun in 1932 when respondent Atlantic began the sale and distribution of tires manufactured by the Lee Rubber & Tire Corporation. In 1937 a contract was executed with the Electric Storage Battery Company for the purchase and resale of Exide batteries in the Philadelphia region which was expanded to all marketing regions in 1945. Accessory items were added from time to time, including DuPont polishes, Thermoid fan belts, American Chain and Cable Company's weed chains and Fram oil filters. Distribution of such products to Atlantic dealers and distributors was made by respondent Atlantic either directly or through about forty-five warehouses located throughout its marketing area or through Atlantic supply dealers who distributed such products to other Atlantic dealers.

12. During the period that respondent Atlantic continued on the purchase and resale plan, Atlantic service stations were identified as sellers of such sponsored TBA products as Lee tires and Exide batteries, and to some extent of other TBA handled.

1130 13. In 1951 after a test of the Sales Commission

Plan of Goodyear and Firestone in three districts, Atlantic adopted the complete Sales Commission Plan of these companies in all six of its marketing regions. Atlantic assigned the entire marketing area by allocating the New York, New England and Philadelphia-New Jersey regions to Goodyear and the three remaining regions to Firestone.

14. The sales commission agreement entered into between The Atlantic Refining Company and The Goodyear Tire & Rubber Company, effective March 1, 1951, provided for the payment of commissions to Atlantic on the sales by Goodyear of its tires, batteries and accessories to Atlantic outlets, including service stations, distributors and consignees. The consideration of this agreement was the services to be rendered by the Atlantic sales organization in promoting the sale of Goodyear TBA products as outlined in said agreement. This agreement provided, among other things, for the payment of a commission of 10 percent on all sales of TBA to Atlantic dealer outlets, and 7½ percent on all sales of TBA to Atlantic franchise petroleum distributors. The Atlantic Refining Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company, effective as of March 1, 1951.

15. The services which were performed by The Atlantic Refining Company pursuant to its contract with Goodyear and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Atlantic personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodyear or Firestone, and when dealers were selected would at times give advance notice of station openings or changes to Goodyear or Firestone and intro-

duce the new dealers to the sales representatives of Goodyear or Firestone permitting such salesmen to complete any unfinished business with the outgoing dealer and enabling them to anticipate and to move promptly in handling the requirements of the new dealers.

(b) Atlantic gave assistance to dealers in arranging Goodyear or Firestone TBA supplies; took TBA orders from Atlantic dealers for either Goodyear or Firestone; and recommended the minimum Goodyear or Firestone inventory to be carried by the Atlantic dealer.

1131 (c) Atlantic frequently conducted dealer meetings at which the sale of TBA was discussed, in some instances with the active participation of Goodyear or Firestone.

(d) Atlantic operated training schools for dealers and prospective dealers which included suggestions for displaying and merchandising TBA. In the discussion of TBA, Goodyear or Firestone products were used exclusively during the training school course.

(e) Atlantic incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodyear or Firestone, and participated in promotions instituted by either Goodyear or Firestone.

(f) Atlantic also conducted tire clinics jointly with the personnel of Goodyear or Firestone which were important in familiarizing dealers in the care and repair of Goodyear or Firestone tires.

(g) Atlantic made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge, which served to augment the sale of Goodyear or Firestone TBA.

16. The sales of Goodyear TBA and commissions paid thereon under the Atlantic-Goodyear Sales Commission

Plan were substantial as is shown by the following tabulation:

	Total Sales	Total Commissions
1951	$ 2,445,808	$ 239,250
1952	4,175,890	411,743
1953	5,067,565	500,437
1954	5,284,743	523,048
1955	5,700,121	557,599
1/56-6/56	3,133,905	296,988
Total	$25,808,032	$2,529,065

1132 17. The substantiality of the sales and commissions under the Atlantic Firestone TBA Sales Commission Plan is shown by the following tabulation for the years 1951 to 1956:

	Total Sales	Total Commissions
1951	$ 3,243,350	$ 299,524
1952	4,349,616	404,948
1953	5,050,381	469,784
1954	4,867,689	452,083
1955	5,562,936	506,199
1/56-6/56	2,545,798	234,317
Total	$25,619,770	$2,366,855

18. Under date of March 1, 1951, Atlantic sent a form letter to all Atlantic dealers entitled "A Statement of Atlantic's TBA Policy". This letter announced the adoption of the TBA Sales Commission Plan and included therein the statement that "Your acceptance or rejection of the program is a matter of your own choice". Under date of August 28, 1952, respondent Atlantic addressed a similar form letter to all its dealers entitled, "A Restatement of Atlantic's TBA Policy". Under date of June 24,

1955, a similar letter entitled "No Forcing" was sent to all Atlantic dealers, and since that time has been given to new Atlantic dealers.

19. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Atlantic and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Atlantic with Goodyear and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has deprived other suppliers of TBA of a substantial portion of the TBA business of the Atlantic petroleum outlets.

20. In support of the charges of the complaint, sixteen former Atlantic dealers were called to testify in this proceeding. With the exception of three of these 1133 dealers, they testified to various forms of coercion, adopted by Atlantic salesmen in an effort to induce them to purchase sponsored TBA. Some of these witnesses testified that they had received the so-called non-forcing letter, but that they were told by Atlantic salesmen that these letters were not controlling insofar as purchases of non-sponsored TBA was concerned. The testimony of the witnesses called to support the complaint pertaining to coercion is as follows:

(a) John Chambers, an Atlantic lessee from November 1952 to November 1954, purchased the bulk of his TBA from the Goodyear supplier. Atlantic salesmen were always reminding him, that when his lease expired or was cancelled Atlantic would only accept sponsored merchandise, and that outside merchandise would not be accepted at all. This witness also testified that it was pointed out to him on a number of occasions that the acceptance or rejection of the Goodyear plan was up to the dealers.

(b) James Matthews, an Atlantic lessee from 1947 to

1957, was told at a meeting that dealers were free to buy wherever they saw fit, but whenever salesmen called they told him differently. At the time of the change-over from Lee to Goodyear, his Lee signs were removed from his station, and he was told to get rid of Lee tires and Auto-Lite batteries and handle Goodyear. Matthews testified that he discontinued the Lee tires because he did not want his lease cancelled because of non-sponsored TBA. He was requested by Atlantic salesmen in 1953 to sign a mutual cancellation, but he promised to follow the line and went 100 percent with Goodyear. He took ten Auto-Lite batteries in trade, to which objection was made. Atlantic also objected to his handling DuPont anti-freeze. Matthews left the station in May 1957 due to bad health. He recalled receiving non-forcing letter dated March 1, 1951.

(c) Aniello L. Iacono, an Atlantic lessee from 1952 to 1954, had difficulty with Parris, the authorized TBA supplier, and began buying non-sponsored tires and batteries. He was asked by Atlantic salesman to get rid of the tires and batteries and when he refused, the salesman made an inspection of his place and claimed he was using untrained personnel, improper uniform, improper display, and maintaining a dirty station. His lease was not renewed.

(d) Isidore Jack Pollock, an Atlantic lessee from 1940 to 1953, testified that Atlantic salesmen objected to his purchase of a number of Lee tires at a special price, however, the sales supervisor stated that this would be satisfactory because of the number of years that Pollock had been with Atlantic, and he continued to purchase Lee tires thereafter. He purchased some Bowers batteries, and salesmen told him he was going to have his lease cancelled. Pollock left the station to take over a tavern.

1134

(e) Francis J. Ballaron, an Atlantic lessee from 1953

to 195[illegible], carried Goodyear tires and batteries purchased through Miller, an authorized distributor. He kept non-sponsored tires on oil rack where Atlantic would not see them. Ballaron testified that he left the station because of pressure every month for not buying TBA where he should.

(f) James M. Meyers, Jr., an Atlantic dealer from 1950 to 1951, testified that he discussed non-forcing letter with Atlantic salesmen who told him to try buying other merchandise and find out what the letter meant.

(g) Norris Stein, was an Atlantic lessee, beginning July 26, 1954. About six months later he discontinued exclusive purchase of Firestone and was told by Atlantic salesmen that he would not long be an Atlantic operator. He stated that he had received no-forcing letter of June 22, 1955. Terminated his lease for reasons not involving TBA.

(h) Thomas J. Sullivan, Jr., an Atlantic lessee from 1953 to 1954, was told that Atlantic would like him to obtain all his products from Firestone. He bought some Bowers batteries and also Exide and was told by Atlantic salesman not to sell the batteries as they were not as good as Firestone and that he didn't want them displayed in the station. He removed the batteries from display. Sullivan further testified that he returned the Exide batteries and discontinued the Bowers batteries as he felt that if he rubbed Atlantic the wrong way that he would be in their disfavor, and that his lease might not be renewed. He stated that the Atlantic representative made no direct threats, but always left the impression that if he did not operate the way Atlantic wanted him to, the chances were that his lease would not be renewed. The Atlantic salesman always questioned him when he bought non-sponsored items and gave him the impression that he was expected to buy Firestone products. The salesman would ask him from

time to time why he did not buy Firestone, and he got to the point where he bought all items from Firestone because he was afraid of no lease renewal. It was put to 1135 him that he would not be forced to buy Firestone products, but Atlantic more or less expected him to do so. Sullivan sent in cancellation of lease because of price controversy.

(i) John Galle, an Atlantic lessee from 1954 to 1956, discussed with Atlantic salesman an offer of batteries and tires at prices lower than Firestone, and salesman informed him that he had signed an agreement to purchase TBA from Firestone and should not go against this agreement, and in addition Atlantic would not like to see competitive brands to Firestone in the station. He did not purchase these items, but continued to purchase Firestone tires and batteries. He received the non-forcing letter on June 22, 1955, but did not discuss it with the Atlantic salesman.

(j) Harry N. Hawes, an Atlantic lessee beginning in 1945, had three stations. In the first station he bought only Firestone TBA. In the second station carried Lee tires, and Atlantic salesman wanted to know what they were doing there, but he continued to handle them. In the third station he sold only Lee tires and some accessories from Firestone without much comment from Atlantic. Lease was not renewed on the second station, and the third station lease was cancelled at his request. Atlantic salesman refused to let the new dealer take over the Lee tires and batteries on hand.

(k) Richard Brown, Atlantic lessee from October 1955 to April 1957, because of dissatisfaction with Firestone, began to purchase Goodrich tires. Atlantic salesman told him that he did not like the purchase of non-sponsored items, as it was affecting his salary.

(l) James Parag, an Atlantic lessee from August 1, 1955, to March 1956, became dissatisfied with Firestone

and began purchasing Goodyear tires and accessories from different sources. When Atlantic salesman saw the merchandise on his shelves he told him that he could not handle them, that if he did not handle what Atlantic handled he would lose his lease, and also because it also affected the salesman's commission.

(m) James R. Kelly, an Atlantic lessee from September 1952 to March 1953, began with Firestone TBA. Later sold whatever tires customers wanted. Atlantic salesman would not let him change window valances, he was told to leave them alone to keep the station uniform. Had some Goodyear and Goodrich tires which he kept in the back room. He felt he would get in trouble if he did not.

1136 21. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodyear, were called as witnesses in this proceeding. This testimony was taken in three areas—Philadelphia, Pennsylvania, Wilmington, Delaware, and Baltimore, Maryland. These parties testified generally that they had difficulty in selling TBA to Atlantic stations and testified specifically as to reasons given by certain Atlantic dealers for not buying or selling their TBA items. This testimony as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* v. *Loewe*, 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone.

22. In the course of its defense in this proceeding, The Atlantic Refining Company introduced the testimony of thirty-six Atlantic dealers and two ex-dealers. Substantially all of these witnesses testified to selling non-spon-

sored TBA in varying amounts without objection by Atlantic. Most of them testified to having received the non-forcing letter issued by Atlantic similar to the letter of March 1, 1951, which this record shows was delivered to all its dealers and prospective dealers.

23. The hearing examiner recognized that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record as a whole shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carried some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer demand. There was also in some instances evidence of confusion as to the definition of accessories among the dealers, as some included as accessories items generally considered as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodyear. Many of the dealers called maintained a high sales volume in gasoline gallonage and also oil, and Atlantic would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such dealers.

1137 24. It is clear from the record in this proceeding that the Atlantic dealers did not consider the non-forcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the change-over and prospective dealers thereafter had the right to select or reject the TBA

sales program offered by Atlantic. The prospective dealer making application for an Atlantic station would not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salemen insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

25. After giving consideration to the testimony of the various witnesses appearing in this proceeding, and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure were used on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items.

Conclusions.

1. The complaint does not charge, nor does the evidence introduced in this proceeding prove, the existence of a conspiracy between Goodyear and Atlantic to restrict and restrain competition in the sale and distribution of TBA products.

2. There is no evidence that The Goodyear Tire & Rubber Company, or The Goodyear Tire and Rubber Company, Inc., engaged in, or participated in, any of acts or practices designed to force dealers and distributors of the Atlantic Refining Company to purchase Goodyear TBA products.

3. Neither the sales commission contract between Atlantic and Goodyear nor the contracts between Atlantic

and its dealers and distributors contain any clause or provision requiring such dealers or distributors to purchase only Goodyear TBA.

4. In making a determination as to whether leases made by Atlantic with its dealers are used to suppress competition, the extent to which they are in conformity with
1138 reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive, and the renewal and cancellation provisions of the leases are in conformity with those which ordinarily appear in many leases of property.

5. The consideration for the payment of commission to Atlantic under the sales commission contract is based upon substantial services rendered by Atlantic in promoting the sale of Goodyear TBA to Atlantic dealers and distributors.

6. No inference or implication can be drawn from the contractual relationship between Atlantic and its dealers, that the degree of control by Atlantic over its dealers is sufficient to force its dealers to purchase only sponsored TBA.

7. The evidence in this proceeding shows that leases have, on occasion, been cancelled because of TBA practices involving the purchase or display of non-sponsored TBA products.

8. It is further concluded that for the purpose of inducing the purchase of sponsored TBA by Atlantic dealers, Atlantic representatives did, in fact, coerce, and attempt to coerce, and force Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and Atlantic accepted the benefits of such acts and practices. These acts of coercion consisted of demands that dealers discontinue the purchasing and displaying of non-sponsored TBA under threat of lease cancellation, non-renewal of lease or other corrective action. Such coercion need not be 100 percent

effective in order to constitute an unfair method of competition or unfair act or practice in violation of the Federal Trade Commission Act.

9. The charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion even though it be found that the contracts entered into by the parties are not illegal.

10. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein.

11. The acts and practices of The Atlantic Refining Company, as herein found, which involve coercion of its dealers are all to the prejudice of the public and have
1139 a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Order.

It Is Ordered that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale and distribution of tires, inner tubes, batteries and other automotive parts, accessories and supplies (hereinafter referred to as "TBA products"), in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Inducing, or attempting to induce, the purchase of TBA products of a particular supplier by Atlantic dealers by threatening to cancel or to not renew lease of dealer or to take other retaliatory action if said products are not purchased.

2. Threatening the cancellation or non-renewal of any contract or lease if the dealer purchases or continues to purchase TBA products not sponsored, recommended or approved by the respondent, or
1140 the sale of which is not promoted by the respondent.
3. Threatening the cancellation or non-renewal of any contract or lease if the dealer displays or continues to display TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.
4. The performance of any acts of intimidation or coercion, either through statements, oral or written, made directly to dealers or by representatives of respondent, which are designed to, or have, the purpose or effect of intimidating or coercing respondent's dealers or other customers to purchase TBA products sold by any designated supplier sponsored, recommended or approved by respondent.
5. Compelling, or attempting to compel, dealers by any means or method to sell and distribute only products supplied by a designated supplier sponsored, recommended or approved by respondent.
6. Preventing, or attempting to prevent its dealers by means of threats, intimidation or coercion, from handing or displaying TBA or other similar products which the respondent does not sponsor, recom-
1141 mend or approve, or the sale of which is not promoted by the respondent.

It Is Further Ordered that the complaint be, and it is hereby, dismissed as to respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

/s/ Earl J. Kolb,
Hearing Examiner.

October 23, 1959.

1445 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

Commissioners:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern

FINAL ORDER.

Counsel supporting the complaint and respondent The Atlantic Refining Company having filed cross-appeals from the hearing examiner's initial decision in this proceeding; and

The Commission having considered said appeals, including the briefs and oral arguments of counsel and the entire record, and having rendered its opinion denying the appeal of respondent The Atlantic Refining Company and granting in part and denying in part the appeal of counsel supporting the complaint, and having determined that the initial decision should be modified in certain respects:

It Is Ordered that the findings and conclusions of the initial decision be, and they hereby are, modified and supplemented to conform with the findings, conclusions and views set forth in the accompanying opinion of the Commission:

It Is Further Ordered that the following be, and it hereby is, substituted for the order contained in said initial decision:

It Is Ordered that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any

1446 corporate or other device, in connection with the

promotion, or offering for sale, or sale and distribution of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Goodyear Tire & Rubber Company, or the Goodyear Tire & Rubber Company, Inc., or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, and/or accessories, whereby The Atlantic Refining Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Atlantic petroleum products by any marketer or distributor of TBA products other than The Atlantic Refining Company;
2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as sales agent or for otherwise sponsoring, recommending urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of Atlantic petroleum products;
3. Using or attempting to use any contractural or other device, such as, but not limited to, agreements, leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by any distributor or marketer of such products other than The Atlantic Refining Company to or through any wholesaler or retailer of Atlantic petroleum products:

4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Atlantic outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of
1447 such products other than The Atlantic Refining Company to any wholesaler or retailer of Atlantic petroleum products;

5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of Atlantic petroleum products to purchase any brand or brands of TBA products;

6. Preventing or attempting to prevent any wholesaler or retailer of Atlantic petroleum products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

It Is Further Ordered that respondents The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., (hereinafter collectively referred to as "Goodyear"), corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" as defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Atlantic Refining Company or with any other marketing oil company whereby Goodyear, directly or indirectly, pays or con-

tributes anything of value to any such marketing oil company in connection with the sale of TBA products by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Atlantic Refining Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;

1448 3. Reporting or participating in the reporting to The Atlantic Refining Company or any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

It Is Further Ordered that the initial decision as so modified and supplemented be, and it hereby is, adopted as the decision of the Commission.

It Is Further Ordered that respondents The Atlantic Refining Company, The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the aforesaid order to cease and desist.

By the Commission.

/s/ Robert M. Parrish,

Secretary.

Issued: March 9, 1961.

1449 BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

Commissioners:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern

OPINION OF THE COMMISSION.

By Kintner, Chairman:

This proceeding is based upon an amended complaint charging The Goodyear Tire & Rubber Company and its wholly owned selling subsidiary, The Goodyear Tire & Rubber Company Inc., (hereinfater collectively referred to as "Goodyear"), and The Atlantic Refining Company with acts, practices and agreements constituting a violation of Section 5 of the Federal Trade Commission Act. 15 U. S. C. § 45 (1958). Respondents answered admitting in part the allegations of the complaint but denying that Section 5 had been contravened.

The principal issue framed by the pleadings is the legality of a contract between these respondents calling for the payment by Goodyear of a sales commission to Atlantic in return for sales assistance in promoting automotive tires, batteries, and accessories (hereinafter referred to as "TBA" or "TBA products") of Goodyear to retail and wholesale petroleum outlets of Atlantic. In addition, Atlantic is charged with having entered into a substantially identical agreement with The Firestone Tire and Rubber Company, and Goodyear is charged with having entered into such agreements with a number of oil companies other than Atlantic, including Shell Oil

1450 Company.[1] Although Atlantic and Goodyear are the only respondents in the instant case, Shell and Firestone are joined as respondents in a companion case, Docket 6487, and in another companion case, Docket 6485, The Texas Company and The B. F. Goodrich Company are paired as respondents.

The complaint charges, in substance, that the success enjoyed by Goodyear and Firestone in selling to Atlantic outlets has been purchased at the expense of competing TBA suppliers at the manufacturing and wholesale levels. Counsel supporting the complaint contend that the Atlantic-Goodyear and Atlantic-Firestone sales commission contracts are unlawful because, *in conjunction with Atlantic's economic power over its ostensibly independent wholesale and retail petroleum outlets,* these contracts operate to stifle the free choice of Atlantic's retail and wholesale dealers insofar as their TBA purchases are concerned. Among the unlawful competitive effects stemming from Atlantic's sales commission contracts charged by the complaint are these: (1) That suppliers of TBA competing with Goodyear and Firestone at the wholesale level have been foreclosed from access to Atlantic's retail outlets on the same competitive terms as have been made available to Goodyear and Firestone; (2) That competing manufacturers of tires and other TBA items have been foreclosed from access to Atlantic's wholesale distributors on the same competitive terms as have been made available to Goodyear and Firestone; (3) That competition between Goodyear and Firestone in selling to wholesale and retail

1. Other oil companies having sales commission arrangements with Goodyear include Anderson-Pritchard Oil Corp., Ashland Oil and Refining Co., The Carter Oil Co., D-X Sunray Oil Co., Quaker State Refining Co., Richfield Oil Co. (accessories only), The Shamrock Oil and Gas Corp., Shell Oil Co., and Sinclair Refining Co. (accessories only).

outlets of Atlantic has been destroyed; (4) That a substantial number of Atlantic's petroleum distributors and service station operators have been denied their right to act as independent businessmen in exercising freedom of choice as to TBA products which they may purchase and stock for resale; and (5) That the consuming public has been deprived of the benefits of free competition at the wholesale and retail levels insofar as TBA distribution through service station outlets under the sales commission plan is concerned.

1451 Respondents deny these allegations and assert that their sales commission contract is a legitimate and competitive method of distributing TBA which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public

After hearings extending from the latter part of 1956 into November 1958, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to Goodyear but holding that Atlantic, by forcing a substantial number of its dealers to purchase sponsored TBA through threats of lease cancellation or other retaliatory action, has engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. He further held that the charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion on the part of Atlantic even though the sales commission contracts themselves are not illegal. An order was entered against Atlantic prohibiting future acts of coercion or intimidation designed to force Atlantic dealers to purchase TBA products sponsored by Atlantic.

Both sides have appealed from the initial decision. Counsel supporting the complaint contend that, while the order entered by the hearing examiner is well supported by the evidence of record, it will not be an effective means of

remedying the unlawful effects on competition caused by the sales commission plan. They seek an order restraining respondents from continuing with their present sales commission agreement and enjoining them from entering into similar agreements in the future. They also contend that Atlantic should be enjoined from purchasing TBA products from any manufacturer or other vendor of such products for resale to any wholesalers or retailers of Atlantic petroleum products, " . . . or for distribution in any other manner, directly or indirectly, to any of the aforesaid wholesalers or retailers of Atlantic petroleum products."

Reply briefs were filed by Atlantic and Goodyear to the appeal brief of counsel supporting the complaint, and by counsel supporting the complaint to the appeal brief of Atlantic. Oral argument was heard by the Commission on June 23, 1960, and the matter is now before the Commission for decision. We find that Atlantic has in fact coerced 1452 a substantial number of its dealers to purchase substantial amounts of sponsored TBA through threats of lease cancellation or other retaliatory action. We further find that Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. For reasons set forth hereinafter, we conclude that the exercise of this power by Atlantic through the use of the sales commission plan in favor of Goodyear constitutes an unfair method of competition and an unfair act or practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

Characteristics of the Sales Commission Plan.

Motorists may purchase replacement TBA items from several major classes of distributors. Manufacturers of these items, for example, Goodyear and Firestone, maintain either company-owned or franchised wholesale and retail distribution outlets in all of the marketing areas for TBA products considered in the course of the hearings in this case. Gasoline service stations constitute a second major class of outlets for TBA products. According to a 1947 market survey relied upon by Goodyear in implementing its sales commission program with The Shamrock Oil and Gas Corporation of Amarillo, Texas, motorists purchase approximately 37 percent of their replacement tires and tubes, 44 percent of their replacement batteries, and 20 percent of their automotive accessories from gasoline service stations.[2]

The complaint in this case alleges that "service stations by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products." The truth of this allegation is conceded by both Goodyear and Atlantic, and Goodyear also admits that it ". . . sells TBA products directly and through wholesalers to many customers, including service stations, who purchase for resale to consumers for replacement use in their automobiles."

1453 Service station operators may purchase their requirements of TBA from two principal sources: (1) Local wholesale TBA dealers, representing Firestone, or

2. Atlantic estimated in 1948 that approximately 21 percent of all replacement passenger tires are sold by service stations. Although Atlantic's estimate is considerably lower than Goodyear's, it is nevertheless clear that service stations account for a substantial percentage of total TBA replacement items sold to motorists.

Goodyear, or some other TBA manufacturer; or (2) Oil companies chiefly engaged in refining and distributing petroleum products which also purchase TBA products from manufacturers of these items, for resale along with the refinery products such oil companies distribute through their respective marketing organizations. TBA purchased by oil companies for resale may either be branded with a particular oil company's principal brand, for example, "Gulf," or with a private brand controlled by an oil company but used exclusively for TBA and not for refinery products, for example "Atlas," or with the supplying manufacturer's own brand, for example, "Lee" (tires) or "Exide" (batteries).

No particular term is used in the industry to describe the marketing technique whereby service station operators purchase TBA from independent local wholesalers, but the term "purchase-resale" is customarily used to characterize the marketing technique whereby oil companies purchase and resell TBA to their respective service station dealers. The sales commission method of distributing TBA is a hybrid deriving certain of its attributes from the first and other attributes from the second of these marketing techniques. Both the purchase-resale plan and the sales commission plan make use of the marketing facilities of marketing oil companies, but in different ways and with differing competitive effects. This may be illustrated by contrasting the purchase-resale method of distributing TBA used by Atlantic prior to 1951 with the sales commission method adopted by Atlantic in 1951 and used by the company since that time.

Atlantic's Puprchase and Resale Plan.-Sometime in 1932, Atlantic commenced to purchase "Lee" tires from the Lee Rubber and Tire Corporation and to resell such tires to its wholesale and retail petroleum distributors. Later, in 1937, Atlantic commenced to purchase "Exide" batteries from

the Electric Storage Battery Company (hereinafter referred to as "Exide") and resell such batteries, along with "Lee" tires, to Atlantic dealers. Thereafter, Atlantic began to purchase and resell the following automotive accessories:

1454 Products	Supplier
DuPont polishes and chemicals	E. I. du Pont de Nemours and Company Wilmington, Delaware
Thermoid fan belts and radiator hose	Thermoid Corporation Trenton, New Jersey
Fram oil filters	Fram Corporation Providence, Rhode Island
Schrader valves	A. Schrader Sons Brooklyn, New York
Weed chains	American Chain and Cable Company York, Pennsylvania

Among the duties undertaken by Atlantic in connection with this program were the purchasing, financing, shipping, warehousing and selling of TBA items to its various classes of retail and wholesale petroleum dealers. Commenting on his company's TBA program in 1950, Mr. S. J. Heideman, TBA Manager for Atlantic, commented that "We receive a good gross margin in keeping with the duties left to us. . . ." Moreover, the overall satisfaction of Atlantic's dealers with the Lee-Exide arrangement was evidenced by the results of a TBA brand preference survey undertaken by Atlantic's Sales-Research Section in 1948 and 1949. More than 1,000 service station dealers representing seven major oil companies, including Atlantic, located in 47 cities from Massachusetts to Florida were interviewed during the course of this survey. Of the Atlantic dealers interviewed, 67 percent preferred Lee tires and 79 percent preferred Exide

batteries over competing brands of tires and batteries. Eleven percent of Atlantic's dealers stated a preference for Goodyear tires, 4 percent for Firestone tires, and the remainder announced a preference for various other tire brands. No preference for any particular brands of accessory items was found to exist, although "A definitely unsatisfactory supplier-dealer relationship" on accessories was observed. Sixty-seven percent of the Atlantic dealers contacted indicated that they would rather obtain their TBA requirements from several sources rather than a single source, the principal reasons given therefor being price advantages and the variety of brands. Of the remaining 33 percent of Atlantic dealers, who preferred 1455 a single source of supply for TBA products, less than 4 percent gave as a reason the fact that the single supplier could provide them with a complete line of TBA—better service was given as a reason by 35 percent of the Atlantic dealers preferring a single source of supply, and price was given as a reason by an additional 32 percent.

Atlantic's Changeover to the Sales Commission Plan.

Contemporaneously with the TBA brand preference survey of service station dealers described above, Atlantic management was actively considering possible alternatives to their purchase-resale arrangement with Lee. On January 19, 1948, exploratory letters were sent to five major tire manufacturers, The Goodyear Tire & Rubber Company, United States Rubber Company, The B. F. Goodrich Company, The Firestone Tire & Rubber Company, and General Tire & Rubber Company, inquiring ". . . what interest you may have in the sale of your tires and tubes through Atlantic outlets." The tire companies were informed of Atlantic's desire ". . . to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise."

To assist the tire companies in preparing their quotations,

Atlantic estimated it would require approximately 300,000 passenger tires and 40,000 truck tires annually, with tube requirements approximating 70 percent of tire requirements. Proposals were requested not only as to principal brands of the tire companies ("Goodyear," "Firestone," etc.) but also as to secondary brands controlled by these companies ("Kelly-Springfield," "Fisk," "Federal," "Miller" and "Hood") and as to private brands as well. Mansfield Tire and Rubber Company and Lee were also contacted and requested to submit proposals on a private brand tire.

A detailed analysis of responses received from the various tire companies was presented to Mr. D. T. Colley, Vice President in Charge of Domestic Sales of Atlantic, in a memorandum of June 22, 1948, from the company's TBA Manager, Mr. Heideman. This memorandum concluded with the statement:

> "This presentation and Atlantic's benefits with the several companies has been discussed at length with the members of the T. B. A. Products Committee. It was their unanimous opinion that Lee appeared to be the best choice for our company. To their approval, I would like to add my own, since it is my opinion
> 1456 after careful analysis that the Lee franchise is the best available at the present time for Atlantic."

In a subsequent memorandum of August 24, 1948, Mr. Heideman set forth several reasons why a proposed experiment then under consideration involving the sale of Firestone tires in one sales district of Atlantic should not be adopted:

> "It is apparent . . . that it would be unreasonable to expect too great an expansion of our present sales by the addition of a better known tire. As a matter of fact, it is our opinion that there is a very real possibility of a smaller market with Firestone due to their presently established company stores and distrib-

utors. Volume purchase requirements would leave a great number of our dealers in a poor competitive position.

"... neither Firestone batteries nor accessories have the national acceptance of the lines we presently handle ... [T]here is certainly an indication that consumer acceptance of the Firestone brand in batteries is very limited."

Nevertheless, negotiations with the tire companies continued throughout the remainder of 1948, and in May 1949, Goodyear expressed its willingness to offer a TBA program to Atlantic. However, it was Firestone which was selected for Atlantic's first experiment with the sales commission plan. In a letter of January 10, 1950, to the Regional Manager of its New York Region, an Atlantic official explained:

"As you know, for the past year we have been studying T.B.A. as to its profitability to the Company. Our most recent findings indicate that it is questionable whether this venture is paying us to the degree that the effort expended warrants.

"In our approaches to the subject, we have had discussions with various major tire manufacturers who, as you know, are interested in handling the entire T.B.A. line, paying us a commission.

* * * * *

1457 "The proposition that seems most acceptable to us is one offered by Firestone. I will not attempt to go into detail covering this proposition, but when you come to Philadelphia for the Regional Manager's Meeting next week, Mr. Heidemann (sic) plans to sit down with you and go over the proposition with the thought in mind that you will elect to have your Region be the guinea-pig."

As it turned out, however, the Firestone plan was not introduced into the New York area. Instead, operations under the Firestone commission plan began in Atlantic's

Erie, Pennsylvania, district on March 30, 1950, and in the Wilmington, Delaware, district on April 4, 1950. Operations under a sales commission plan with Goodyear commenced on an experimental basis in Atlantic's Newark, New Jersey, sales district on June 12, 1950. After these programs were instituted, Atlantic's Sales Research Section conducted a secret poll in July and August, 1950 among 600 of the 750 Atlantic dealers and distributors in the three TBA test districts. The purpose of this poll was to determine the preference of Atlantic dealers as between the Lee-Exide program and the sales commission program. Of the 123 dealers responding to the poll, 45 percent preferred the new sales commission plan, 40 percent preferred the former Lee-Exide arrangement, and 15 percent showed no preference for either plan.

In December, 1950, Atlantic contacted seven manufacturers of batteries, including Exide and Gould-National Batteries, Inc., ". . . in an attempt to discover whether they had at present or contemplated in the future a battery program for direct dealer merchandising similar to the commission plan offered by certain tire companies." This suggests that Atlantic was considering limiting the sales commission contracts with Firestone and Goodyear to tires and tubes only, or perhaps to tires, tubes and automotive accessories only, with a separate sales commission arrangement for batteries with a supplier who could furnish a more widely-known battery than the "Firestone" and "Goodyear" brands. (Actually Goodyear does not manufacture batteries, but instead purchases batteries marked with the "Goodyear" label from Electric Auto-Lite Company and Gould-National Batteries, Inc.)

Favorable replies were received from several of the battery manufacturers, with Exide showing particular interest in such a program. This company's manager for automotive

replacement sales, responded to the Atlantic inquiry on December 22, 1950:

1458 "Currently all Exide automotive replacement battery sales to dealers are made through our Wholesale Distributors, thus affording prompt delivery through many warehouses.

"Your letter of December 15 inquires as to our plans for a commission arrangement to be offered national oil accounts on direct sales to dealers. We believe that our experience with this type of operation in past years should be of great value to you. Therefore, I suggest that immediately after the first of January you arrange for a meeting with interested members of your organization for a complete discussion of the many phases of this subject."

Negotiations between Atlantic and Exide were never consummated, however, and on February 14, 1951 a sales official of Exide reported to his superior as follows:

"Mr. S. J. Heidman (sic), T.B.A. manager of the Atlantic Refining Company called today to give me advance confidential information regarding a decision made this morning by top management of the Atlantic Refining Company regarding future handling of T.B.A. sales to Atlantic dealers.

"Effective as quickly as the changeover can be made, all T.B.A. sales to Atlantic dealers will be handled on a commission arrangement.

* * * * *

". . . Both Firestone and Goodyear had previously been approached regarding a plan whereby they would sell tires only to the Atlantic Refining Company accounts on a commission arrangement and had flatly refused such a plan insisting that either the complete program or none be sold by them."

TBA Manager Heideman submitted a memorandum entitled "T.B.A. Conversion to Firestone & Goodyear Programs" to Vice President Colley of Atlantic on March 21,

1951, summarizing the changeover to the sales commission program:

1459 "On February 14th, the decision was made to swing over to the Commission Plan of T. B. A. marketing effective March 1st. It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania, and the South) were to market the program of the Firestone Tire and Rubber Company. *The split was largely a matter of regional selection, decided upon by local advantages enjoyed by the respective rubber companies but influenced by staff determinations to have the two rubber companies competing in different localities for an equal share in the development of the Atlantic dealer's T. B. A. business.* Although this move was sudden, events leading up to it were developed in an orderly fashion over a period of years.

* * * * * *

"It will be interesting to review some of the advantages that we enjoy under the Commission Plan. We are relieved of the purchasing function . . . . We do not warehouse or deliver any merchandise; we are not involved in the handling of accounts, such as invoicing or credit and collection work; we do not issue catalogs or price books nor do we have to provide point-of-sale promotional helps. All of these responsibilities as well as sales training help are assumed by the rubber manufacturers. We assist in the selling job as well as in the dealer training and merchandising task, and for this effort receive a commission which varies according to class of account and type of merchandise, but has been averaging well over 9%.

". . . We are indeed fortunate in having these two companies competing against one another for a more secure or favorable position with Atlantic. We stand to gain from this arrangement whether we are in a buyer's or seller's market.

"We have tried to estimate how our 1950 actual experience on T. B. A. would have compared with the same volume of performance if it were accomplished under the Commission Plan. Our T. B. A. volume
1460 *excluding the three test districts* amounted to seven and a half million dollars. Our gross profit ranging from 20 to 30% on the different products amounted to approximately $1,664,000. Estimated expenses chargeable to this operation total $2,071,000. This would indicate a loss of about $407,000."[3] (Emphasis added.)

Map I, below, shows the manner in which Atlantic's marketing area was finally divided between Goodyear and Firestone. Although the three regions assigned to Firestone constitute a much greater geographical area than do the regions assigned to Goodyear, the TBA sales volume by the two rubber companies to Atlantic dealers and distributors within their respective assigned areas has generally been very nearly the same in every year since 1951, as indicated by Table I, below. This table shows that during the first 6 years of Atlantic's operation under the sales commission plan, Firestone's sales volume to Atlantic accounts totalled $26,078,095 and exceeded the sales volume of Goodyear by only $105,000.

---

3. Whether Atlantic's purchase-resale program was as unprofitable in reality as appeared from the accounting procedures used by the oil company was questioned in a memorandum from the sales manager of Exide to the vice-president of this company in February, 1951:

"The accounting procedure set up by the Atlantic Refining Company was such that expenses charged against T. B. A. sales appeared to make this operation unprofitable. As a result of this and because the top management of the Atlantic Refining Company believed that their own men should participate only in the sales of petroleum products, it was decided early in 1950 to try out the Firestone and Goodyear sales commission plan . . ."

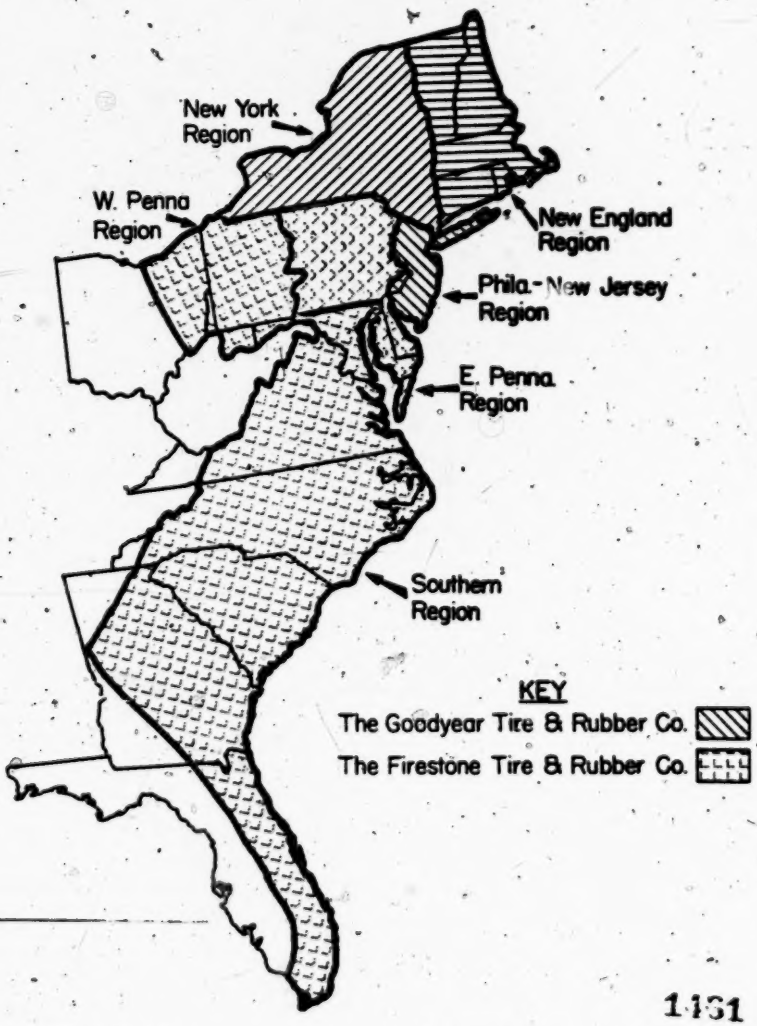
132

MAP 1

THE ATLANTIC REFINING CO.

DIVISION OF MARKETING REGIONS
BY TBA SALES COMMISSION PLANS

EFFECTIVE MARCH 1, 1951



1131

1462 **Table 1.**

TBA Sales Volume by Firestone and Goodyear to Atlantic Accounts, and Commissions Paid Thereon, June, 1950 Through June, 1956.

	Goodyear Sales Volume	Firestone Sales Volume	Goodyear Commissions	Firestone Commissions
6-50/12-50	$ 165,578	$ 458,325[1]	$ 15,447	$ 43,894[1]
1951	2,445,808	3,243,350	239,250	299,524
1952	4,175,890	4,349,616	411,743	404,948
1953	5,067,565	5,050,381	500,437	469,784
1954	5,284,743	4,867,689	523,048	452,083
1955	5,700,121	5,562,936	557,599	506,199
1-56/6-56	3,133,905	2,545,798	296,988	234,317
Total	$25,973,610	$26,078,095	$2,544,512	$2,410,749

1. Includes period from April, 1950 through December, 1950.

Note: In 1950, the sales commission plan was used in only 3 of Atlantic's 34 sales districts. The sales commission plan was not introduced in all 34 Atlantic sales districts until March 1, 1951.

In 1952, the first full year in which the sales commission plan was operative in all Atlantic sales districts, combined sales of Goodyear and Firestone TBA to Atlantic dealers and distributors amounted to $8,525,506, and the two rubber companies paid a total of $816,691 in sales commissions to Atlantic. The success with which Atlantic transferred its own former TBA sales volume under the purchase-resale plan to Goodyear and Firestone under the sales commission plan may be gauged from the fact that Atlantic's TBA sales volume in 1949, the last full year of operation under the purchase-resale plan, amounted to $6,697,471. In 1950 Atlantic continued the purchase-resale plan in all

except 3 of its 29 sales districts, and in that year the oil company's TBA sales volume was $7,581,760.

1463 The sales gains accruing to Goodyear and Firestone as a consequence of their sales commission contracts with Atlantic were accompanied by a corresponding loss in sales by Lee and Exide even though both companies made vigorous efforts to retain the business of Atlantic dealers and distributors after Atlantic switched to the sales commission plan. Lee opened new factory branches in Hartford, Connecticut; Providence, Rhode Island; and Syracuse, New York for this specific purpose. All branches of Exide were instructed to make it "their number one job" to solicit the business of Atlantic dealers and distributors. Nevertheless, within nine months after Atlantic began sponsoring Goodyear TBA on March 1, 1951, Lee concluded that "approximately 25% of the Atlantic Refining Company business will be salvaged this year." Seven months after the changeover, Exide found that it had retained all or part of the business of 22.5 percent of the better Atlantic accounts and all or part of the business of 24.7 percent of the total number of Atlantic accounts. Thus, some 75 percent of Lee-Exide sales to Atlantic distributors and dealers were lost within a nine-month period in 1951, even though a market survey conducted by the Atlantic Sales Research Section in 1949 had shown that 67 percent of Atlantic dealers and distributors preferred Lee tires and 79 percent preferred Exide batteries.

Lee's Vice President in Charge of Sales, Mr. W. F. Hinderscheid, complained bitterly to Atlantic about the wholesale replacement of Lee advertising signs at Atlantic stations with Goodyear advertising signs shortly after the sales commission plan was undertaken on a test basis by Atlantic in 1950:

"I was under the impression, also, where dealers

wanted to continue to handle Lee Tires through us it would be allright for them to do so and we could still have our identification on those locations, however, I find that even though the dealers continue to handle our tires their stations are identified with competitive signs. For instance, in the Newark District our identification is being taken down and Goodyear will be erected even though the dealer still wants to handle Lee Tires."

TBA sales by Firestone and Goodyear to Atlantic outlets continued to grow, and by 1955, the last full year for which data are available, combined sales of the two rubber
1464 companies under their sales commission contracts with Atlantic amounted to $11,263,057. In order fully to understand the devastating competitive effects on manufacturers and wholesalers of TBA products competing with Firestone and Goodyear which have resulted from the latter two companies' sales commission contracts with Atlantic, however, some further understanding of the functioning of the sales commission system is necessary.

Mechanics of the Sales Commission System.

Goodyear and Firestone maintain either company-owned or franchised wholesale outlets in most of the principal cities and in many smaller communities throughout the entire marketing area of Atlantic Refining Company. Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. As has been shown, this marketing territory is subdivided into six sales regions, three of which have been assigned to Goodyear and three to Firestone (See Map I, supra.)

In cities and towns where Atlantic retail stations are located, such stations are assigned to a local Goodyear

distributor (if in Atlantic's New England, New York or Philadelphia-New Jersey sales regions) or to a local Firestone distributor (if in Atlantic's Eastern Pennsylvania, Western Pennsylvania or Southern sales regions). The assigned TBA distributor is intended to be the supply point from which the Atlantic dealer will purchase a substantial percentage of his requirements of TBA.

The vast majority of Atlantic's retail service stations are operated by independent businessmen who either own or lease their stations. These dealers not only buy and sell Atlantic petroleum products, but also offer TBA at their stations, and in addition perform various automotive services and repairs. Atlantic maintains sales offices throughout its marketing area and employs salesmen whose duty it is to solicit orders for Atlantic petroleum products from Atlantic dealers, and to perform other functions for the oil company in its dealings with its service station operators.

When orders for petroleum products are obtained, the salesmen cause such products to be delivered to the Atlantic dealers, who pay for them at time of delivery or at other specified times. The same Atlantic salesmen 1465 also act as sales agents for Goodyear or Firestone, soliciting TBA orders from Atlantic dealers, frequently accompanied on their rounds by salesmen employed by either the local Goodyear or Firestone distributors. If TBA orders are obtained, such orders are turned in to the appropriate TBA suppliers—the local distributors of either Goodyear or Firestone—who deliver the merchandise and are paid by the Atlantic dealers. The TBA suppliers, in turn, make reports of such sales to the District Sales Offices of their respective companies, either Goodyear or Firestone.

Under the terms of the sales contracts between Goodyear and Atlantic and Firestone and Atlantic, Atlantic is

entitled to a commission amounting to 10 percent of the net sales value of all sponsored (i. e., Goodyear or Firestone) merchandise sold by Atlantic retail dealers, as consideration for the assistance given by the Atlantic sales organization in obtaining TBA orders from Atlantic dealers.[4] These payments are made by Goodyear and Firestone directly to Atlantic each month. Atlantic incurs no expense in connection with the purchasing, financing or warehousing of the TBA so supplied and has received sales commissions from Goodyear and Firestone over the years equivalent to more than 9 percent of the net sales value of all TBA products sold by these rubber companies to Atlantic dealers and distributors.[5]

---

4. Atlantic has some 236 wholesale distributors, and is entitled to a commission of 7½ percent on purchases of sponsored TBA by these jobbers, compared with 10 percent on purchases by Atlantic's retail dealers.

5. Goodyear's reasons for entering into its sales commission agreement with Atlantic were set forth in a "Confidential" memorandum of February, 1951, written by Mr. S. A. Gaylord, Goodyear's Manager of Sales to oil company outlets:

> ". . . : As you know we have recognized the desirability of Atlantic distribution for many years and the need for more oil company distribution in the new territory now assigned to us, which represents more than 50% of the Atlantic T.B.A. sales and potential.
>
> "Early last year when supplies were plentiful and signs for the future pointed to over-production and increased competition, we mutually agreed on the marketing experiment with Atlantic in our respective Newark District territories with a commitment for expanded territory if the Goodyear Commission Plan proved successful—which it did.
>
> "It is true that even at a late date we could have withdrawn from our commitment to Atlantic, however, we would have been out of the account for keeps and our competition [Firestone], which placed no restrictions on moving in, would have the account 100 percent.

1466 Tires and tubes comprise the most important of the three components of the TBA line, accounting for about 70 percent of total TBA sales to Atlantic outlets, with batteries and accessories representing about 15 percent each. Goodyear produces its own tires and tubes, and the more important categories of automotive accessories, including tire retread and repair materials, fan belts and radiator hose. Batteries marked with the "Goodyear" label are purchased for resale from Electric Auto-Lite Company and Gould-National Batteries, Inc., while the following accessories are purchased by Goodyear for resale under the original manufacturer's own brands:

1467

Accessory	Brand	Manufacturer
Spark Plugs	AC	AC Spark Plug Div., General Motors Corp.
Oil Filters	AC	Same as above
Oil Filters	Purolator	Purolator Products, Inc.
Cleaners, Polishes and Waxes	du Pont	E. I. du Pont de Nemours & Co., Inc.
Cleaners, Polishes	Johnson	S. C. Johnson & Son, Inc.
Cleaners, Polishes and Waxes	Simoniz	Simoniz Company
Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss, Inc.
Radiator Chemicals	du Pont	E. I. du Pont de Nemours & Co., Inc.
Radiator Chemicals	Warner	Warner-Patterson Co.
Auto Lamps and Bulbs	Westinghouse	Lamp Division, Westinghouse Electric Corp.
Wiper Blades	Anco	The Anderson Company

The sales commission method of distributing TBA products thus affects competitive relationships among

". . . The decision of our Management was made after consideration of all factors and particularly because it gave Goodyear the opportunity of entering into a long-term relationship with Atlantic providing our performance is satisfactory."

producers and distributors of various products, all linked by but one common factor: the motor vehicle. As a consequence, in order to show the network of unlawful trade restraints and inhibitions permeating the sales commission system of distributing TBA, it is necessary first to describe the marketing structure of Atlantic and to define the manner in which this company exercises control over its wholesale and retail petroleum distributors, and next to describe how the sales commission plan enables Goodyear to integrate such market control into its own system of distribution.

Distribution System of Atlantic Refining Company.

Atlantic is a major integrated producer, refiner, and distributor of petroleum products. The company was organized in 1860, and was acquired by Standard Oil Company in 1874. Since the dissolution of the Standard Oil Trust in 1911, Atlantic has been operated as a sepa-
1468 rate corporate entity. In 1948, Mr. S. J. Heideman of Atlantic stated that "Atlantic's percentage of the National gasoline market is 2½% . . ."; and since the oil company markets its gasoline along the Atlantic Coast states and in parts of Ohio and West Virginia only, it may be inferred that Atlantic's share of gasoline sales in its own marketing area is substantially in excess of 2½ percent. Sales and operating revenue of this oil company totalled more than one-half billion dollars in 1954.

Atlantic markets its refinery products to three major classes of customers: (1) wholesale distributors; (2) retailers (chiefly service stations but including also garages, grocery stores, restaurants with outside gasoline pumps, etc.); and (3) commercial accounts. This opinion is not concerned with the last-named group, which accounted for 16.6 percent of total gasoline sales by Atlantic in 1954.

as these accounts are customers who purchase for their own consumption and not for resale.

Atlantic sold gasoline and other petroleum products directly to some 5,537 retail customers in 1956, and these direct retail dealers accounted for 57.2 percent of total gasoline sales by Atlantic in 1955. Atlantic's direct dealers are of two classes: (1) Lessee dealers, who accounted for 39.1 percent of total Atlantic gasoline sales in 1955; and (2) Contract dealers, who accounted for 18.1 percent of gasoline sales by Atlantic in the same year. Shown below in Table II are the numbers of lessee and contract dealers purchasing petroleum products directly from Atlantic in each of its marketing regions in June, 1956:

Table II.

Numbers of Direct Lessee and Contract Dealers of Atlantic Refining Company in June 1956, by Marketing Regions.

Region	Lessee Dealers	Contract Dealers
New England	495	220
New York	321	263
Philadelphia-New Jersey	481	640
1469 Eastern Pennsylvania	480	1075
Western Pennsylvania	317	725
Southern	399	121
Grand Total	2493	3044

Lessee Dealers. The principal characteristic distinguishing lessee dealers from contract dealers is that the former do not own their own business properties, but instead lease them from Atlantic. Lease terms range from three months to three years; most lessee-dealers operate under one-year leases, however. The leasehold instrument does not require the lessee to handle Atlantic products, but does pro-

vide that the premises shall be used for the operation of a "first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets." Rental payments by lessees are based on specified percentages of gross monthly sales of all types of merchandise, including TBA. These percentages are as follows:

0 percent	First $500 monthly
6 percent	Next $2000 monthly
5 percent	Next $2000 monthly
4 percent	Next $2000 monthly
3 percent	Over $6500 monthly

At the time he executes his lease with Atlantic, each lessee-dealer is required to sign a separate document known as an "Eleven Point Lease Letter". This letter defines standards of operation for Atlantic lessee-dealers. Illustrative of these is the standard for "Housekeeping":

> "1. Housekeeping—Clean, sanitary premises, inside and out."

Other standards set forth in the "Eleven Point Lease Letter" are "Use and Upkeep", "Display", "Illumination", "Personnel", "Hours of Operation" ("Uniform daily operating schedule based on buying habits of potential trade in the area"), "Services", "Adequate Inventory", "Sales Promotion", "Prices", and "Accounting". These standards of operation are implemented by Atlantic not only through the surveillance of its sales force, but also by the employment of "Phantom Customer Inspectors".[6]

1470

---

6. Witness John Chambers, former Atlantic lessee-dealer who testified in support of the complaint in this proceeding, received the following letter from his former Atlantic District Sales Manager on October 14, 1954:

Since its adoption on April 1, 1953, the "Eleven Point Lease Letter" has been used by Atlantic to interpret and enforce Paragraph Three of dealer leases which, as noted, provides that ". . . the sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station . . ."; thus the "Lease Letter" is an integral part of the lease itself. This is shown by the regularity with which Atlantic warns lessee-dealers in writing that their leases will be terminated if stated defaults with respect to the provisions of the "Eleven Point Lease Letter" are not remedied within fifteen days.[7]

1471 Prior to about August 1953, Atlantic's written agreements with its lessee-dealers also included an "Atlantic Franchise Agreement", providing for their purchase of motor fuels and automotive lubricants from their oil company lessor under stated terms and conditions. In recent years, only automotive lubricants have been covered by

"Dear John:

"Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

"This is the kind of job which makes us all very happy and certainly is an important factor in running a profitable service station."

Witness Chambers' lease was subsequently terminated because he refused to go along with Atlantic's pricing policy and because he did not purchase sufficient quantities of sponsored TBA.

7. Here, for example, is a letter dated December 8, 1953 to dealer Michael J. Clifford, Baltimore, Maryland:

"1. From observations, we note that your regular hours of operation are such that we believe your market area is not being properly supplied.

"2. We also note from observations that inventories maintained in your station are not adequate to serve normal customer needs without delay."

(This dealer's lease was terminated January 4, 1954, for noncompliance with the above defaults.)

written purchase agreements between Atlantic and its lessees. Nevertheless, the facts of record clearly establish that Atlantic lessees purchase and resell Atlantic motor fuels exclusively.

Notwithstanding the economic power possessed by an oil company as a consequence of being both landlord and supplier to its lessee-dealer customers, the powers and responsibilities of an oil company's lessee-dealer ". . . satisf[y] all the requirements of an independent enterprise." *United States* v. *Richfield Oil Corp.*, 99 F. Supp. 280, 288 (1951) aff'd, 337 U. S. 922 (1952). Judge Yankwich's comments in the Richfield case as to the relationship of an oil company to its lessee-dealers apply with equal force to the instant case:

> "Implicit in the contract is the lessee's assumption of obligation and responsibility for his own acts upon the premises and those of his employees in their relation to the public, who come in contact with them during the time of his dominion. The lessee is not the employee of Richfield. Richfield pays him no wages or other remuneration. He must carry his own workmen's compensation. He is not carried on their books as an employee for the purpose of social security taxes or any of the withholding taxes, state or federal, incidental to the employer-employee relationship. Richfield is not required to withhold any moneys from him for income tax purposes. Neither are they required to perform any of the duties just mentioned as to any of the employees who may assist the lessees in the conduct of the station or of any auxiliary repair work upon the premises. The lessee is solely responsible for his own conduct and that of his employees which may cause damage to the persons or property of others." [99 F. Supp. at 288.]

Contract Dealers. There were 3,044 contract dealers of Atlantic as of June 1956, and of this number about 50 percent operated service stations (as distinguished from

grocery stores, garages, and similar outlets with gasoline pumps on the premises). Non-service station outlets
1472 generally do not purchase and resell TBA products; all service station outlets, however, are regarded as potential purchasers of TBA under Atlantic's agreements with Goodyear and Firestone.

Although contract dealers either own their own service station properties, or lease them from parties other than Atlantic, these dealers are subject to the control of Atlantic as a consequence of various contractual agreements between such dealers and Atlantic. Chief among these is an agreement having the following principal provisions:

> "1. Equipment Loan. Atlantic, reserving the right of addition, change, substitution, and maintenance, lends to Buyer [the contract dealer] for the purpose of storage and sale of motor fuel purchased solely from Atlantic and for no other purpose, equipment that has been installed or which Atlantic may install, which shall remain personalty and the property of Atlantic, and which Buyer shall not remove, but shall repair and maintain as follows:" [Lists equipment.]
>
> "2. Sale and Delivery. Provides that the contract dealer shall buy a specified number of gallons of motor fuel annually from Atlantic; that deliveries will not exceed one-eighth of such gallonage monthly; that the contract dealer 'shall order and accept not less than one-twentieth of such annual gallonage in any calendar month'; and that the times, manner and quantities of delivery shall be in accordance with Atlantic's current practice."

The agreement further provides that all petroleum products delivered thereunder shall be paid for at prices established by Atlantic. The term of such agreement is generally for one year, and may be terminated by either party at the end of the original or any subsequent term by giving 60 days notice. Upon termination, Atlantic is entitled to repossess any equipment loaned to the dealer, with or

without legal process. If the agreement is cancelled by Atlantic because of breach by the dealer, the dealer must pay a fixed sum to Atlantic as reimbursement for cost of installation and removal of the equipment or, at its option, Atlantic may leave the equipment in place and require the dealer to pay a fixed sum for the value of the equipment and improvements. The equipment most frequently loaned (without charge) by Atlantic to contract dealers includes gasoline pumps, underground storage tanks, compressors, air towers, lifts, signs, outside lighting and poster frames.

1473 Both lessee-dealers and contract dealers have agreements with Atlantic relating to annual purchases of specified quantities of automotive lubricants, and to the terms upon which credit may be extended by these dealers to the approximately 160,000 holders of Atlantic credit cards.

Wholesale Distributors. This class of customers purchases refinery products from Atlantic for resale under the oil company's brand names. Wholesale distributors maintain bulk storage tanks capable of receiving truck deliveres of gasoline from Atlantic, and maintain their own delivery equipment for transporting such gasoline from their bulk storage tanks to retail customers, including service stations. There were 236 wholesale distributors of Atlantic products in 1956, who resold to 2,897 service stations, as shown by Table III:

Table III.

Numbers of Wholesale Distributors of Atlantic Refining Company, and Service Stations Supplied By Them In June 1956, By Marketing Regions.

Region	Distributors	Service Stations
New England	8	151
New York	39	238
Philadelphia-New Jersey	0	0
Eastern Pennsylvania	77	925
Western Pennsylvania	26	410
Southern	77	1,173
Grand Total	236	2,897

Atlantic had wholesale distributors in each of its six principal marketing regions in 1956, with the exception of the Philadelphia-New Jersey region. (There were 1,121 Atlantic service station outlets in the Philadelphia-New Jersey region in 1956, but all were supplied directly by the oil company.) These distributors accounted for 24 percent of total gasoline sales by Atlantic in each of the years 1951 and 1954. Eighty-seven percent of the 1474 2,897 service stations supplied by wholesale distributors of Atlantic in 1956 were in the Eastern Pennsylvania, Western Pennsylvania, and Southern regions; the remaining 13 percent were in the New England and New York regions.

Wholesale distributors are parties to the same type of sales contracts for automotive fuels and lubricants with Atlantic as are Atlantic's contract service station dealers. Moreover, Atlantic has the power to change the source of supply for service station dealers from Atlantic itself to wholesale distributors. During the period from April 1950 to June 30, 1956, Atlantic reassigned 53 contract service

station dealers in the Wilmington, Delaware and Baltimore, Maryland sales districts from itself to particular wholesale distributors in those districts. Atlantic's use of the power to expand a wholesale distributor's retail market by adding to the number of service stations supplied by such distributor in order to induce such distributor to purchase and resell sponsored TBA to his service station customers was described by witness Lingenfelser, a salesman for Reading Batteries, Inc. (now the Reading Battery Division of the Electric Auto-Lite Company), who testified in support of the complaint.

The Issue of Coercion.

The complaint in this case charges that Atlantic has caused its various classes of dealers to purchase substantial quantities of Goodyear or Firestone TBA through the use of threats to terminate either their tenure as lessees (if lessee-dealers) or their petroleum supply and equipment loan contracts (if contract dealers). It is conceded by counsel supporting the complaint that when Atlantic adopted the sales commission system on March 1, 1951, all its dealers were informed by letter entitled "A Statement of Atlantic's TBA Policy" as follows:

> "Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. *However, your acceptance or rejection of the program is a matter of your own choice.*" (Emphasis added.)

Notwithstanding this initial statement of policy by Atlantic, repeated periodically thereafter in form letters sent to its dealers, counsel supporting the complaint contend that in practice this officially-proclaimed policy has been 1475 ignored by Atlantic and that in fact, Atlantic dealers

have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA. This contention is supported by the testimony of former Atlantic dealers who appeared as witnesses and further reinforced by the testimony of witnesses representing many suppliers of TBA engaged in competition with Firestone and Goodyear, who testified that they encountered difficulty in selling TBA to Atlantic dealers because the latter group felt that they were required to purchase sponsored TBA and feared reprisal by Atlantic if they purchased non-sponsored items. Testimony of the competing TBA suppliers as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* v. *Loewe,* 235 U. S. 522 (1915). This testimony was received not as proof of the facts recited, but for the purpose of showing the state of mind of the Atlantic dealers. Such testimony is competent to show that Atlantic dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone TBA.

Among the former Atlantic dealers who testified in support of the complaint, several recounted specific instances in which either express or implied threats of lease cancellation were made. Other ex-Atlantic dealers testified to incidents occurring during their tenure as Atlantic lessees which made it apparent to them that they were expected to handle either Goodyear or Firestone TBA, and that if they failed to purchase sufficient quantities of such TBA, that their relationship with Shell might be terminated.

Typical of the former Atlantic dealers testifying in support of the complaint was witness John Chambers, who operated an Atlantic station in the Philadelphia area from

1945 until November 28, 1954. He gave this account of the events occurring when Atlantic changed over from the Lee-Exide program to the sales commission plan in 1951:

> Q. Mr. Chambers, referring . . . to the dealer meeting when the switch-over to the Goodyear TBA line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?
>
> A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

1476 Thereafter, witness Chambers commenced purchasing Goodyear TBA from the local Goodyear distributor to whom he had been assigned, a Mr. Parris. From time to time, however, he also purchased TBA products from other suppliers in his area. Among these were the following:

Chester Auto Parts Chester, Pennsylvania	Waxes and other accessories
V. J. Auto Parts Sharon Hill, Pennsylvania	Accessories, including "Barsleak", a radiator sealer
C. A. Powers Chester, Pennsylvania (A Goodyear tire distributor)	Recapped tires, and also some new Goodyear tires and tubes

Witness Chambers testified that he was criticized by Atlantic salesmen for purchasing accessories from wholesalers other than Mr. Parris, his assigned supplier:

> Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris?
>
> A. Yes.
>
> Q. Would you please state some instances?
>
> A. . . . the one that is greatest in my memory right now was the Barsleak, . . . Joe Connelly was Atlantic [salesman] at the time, and Joe would pick it up and

say, "What are you doing with this," and he would set it back down.

* * * * *

Q. Were any comments other than the one referred to made by Atlantic representatives concerning the purchases of TBA from local jobbers other than Ed Parris?

* * * * *

A. Why yes, there was great criticism, shall I say, in reference to outside [i. e., non-sponsored] merchandise.

Q. Who made these criticisms?

* * * * *

1477 The Witness: Why salesmen who represented the company.

Q. Which company?

A. Atlantic.

* * * * *

Q. Where did these conversations take place between the Atlantic salesmen and you?

A. Many times over a cup of coffee and sometimes out in the driveway.

Q. Would it generally be a private conversation?

A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature?

A. It was never done openly.

Subsequently, in November 1954, witness Chambers was notified that his lease would not be extended beyond December 31, 1954. He discussed this with Mr. Parris, his TBA supplier, who was also a former employer of witness Chambers:

Q. . . . what was the substance of your conversation with Mr. Parris?

A. I asked, "what in the world happened, what could I do." He said, "Jack, you have been turned in

by three [Atlantic] . . . salesmen for buying outside merchandise." I said "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise.[8]

1478 The above testimony must be assessed in the light of that given by Mr. Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester Pennsylvania. His company sells automotive parts, batteries and accessories (but no tires) at wholesale. Witness Wetzel gave this account of his conversation with witness Chambers:

Q. Do you recall other conversations with other Atlantic dealers or Sinclair dealers, along similar lines?

A. Yes. John Chambers.

Q. Please state the time as nearly as you can, the place, and what was stated.

A. I would approximate the time as about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.

* * * * *

Q. Now will you please state what the conversation was?

A. Jack said to me: "Glen, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Further testimony as to the state of mind of witness Chambers in 1953 and 1954 was given by witness Joseph

8. Atlantic regarded witness Chambers as an excellent service station operator, as is shown by the letter to him of October 14, 1954, quoted supra, note 6. This letter of commendation was received by witness Chambers just one month before he received notification that his lease would be terminated.

Marabella, a partner in the firm of V. J. Auto Parts Company, Folcroft, Pennsylvania. Mr. Marabella testified as follows:

> Q. And did you solicit Bars Leak (sic) business from Mr. Chambers when he was an Atlantic lessee-dealer?
>
> A. Yes sir.
>
> 1479 Q. And what was your experience with respect to sale of Bars Leak to Mr. Chambers?
>
> A. My, well, business relations and experience with Mr. Chambers had been the same as with other gentlemen I have mentioned, enjoying good business relations, good sales on Bars Leak, up until the time he was told to remove it from his ~~self~~ shelf, . . .

Later, witness Marabella tried to sell Mansfield tires and tubes to witness Chambers and to another Atlantic dealer named Booz:

> A. Well, in the latter part of 1954 with Mr. Booz, Elmer Booz, Wycombe Avenue and McDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz' tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes." And that was the extent of the conversation.
>
> Q. Do you recall any other conversations with Atlantic dealers along similar lines?
>
> A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same answer, that he couldn't put anything but Goodyear in there.

Documentary evidence taken from the files of Atlantic reveals the vigor with which Atlantic carried out its campaign to replace Lee tires and Exide batteries with Good-

year and Firestone TBA products. The minutes of a meeting of Atlantic's Regional TBA coordinators held on
1480 October 21, 1951, reveal that as of that date, "New England reported that approximately 98% of their accounts have been signed on a Goodyear program and that they are getting about 75% of the tire business they formerly enjoyed from these accounts. New York reported that they had about 96% of their accounts signed on a Goodyear program and that they were getting about 65% of their former tire business . . ." By December 24, 1951, an Atlantic report showed that virtually all Atlantic dealers in Goodyear's assigned territory who were potential purchasers of TBA had signed contracts agreeing to handle Goodyear products.

Accompanying the campaign to sign Atlantic dealers to Goodyear contracts was a drive to install Goodyear signs and advertising materials in Atlantic stations throughout Goodyear's assigned marketing areas. This is an excerpt from a letter of July 30, 1951, from Atlantic's TBA sales manager, Mr. Heideman, to another Atlantic official:

> "I asked Mr. O'Neill of the Goodyear Tire & Rubber Company to supply me with a list of the Atlantic dealers in the Philadelphia Region who refused to be identified on the Goodyear Program. Attached is a list of 46 dealers who, for reasons indicated, have refused this service.
>
> "You will probably wish to review the respective portions of this list with the District Managers concerned. Undoubtedly, facilities for identification are not the best at some of these locations, but with the others it is apparent that the proprietors have not been sold on the Goodyear program. In such instances, I believe that additional sales effort is called for. In any event, would you be kind enough to advise me at your convenience what action you have taken with regard to this list."

Mr. Heideman followed this letter up himself on August 21, 1951, with a letter to Mr. S. A. Gaylord, Manager, Petroleum Sales Department, of Goodyear:

> "I wonder if you can furnish me promptly with a report on the progress of the subject program. I should like to have this information broken down by our regional territories. As I understand it, the signs are
> 1481 being erected by Goodyear crews, but the decals are being erected by outside agencies. Furthermore, at the present time when we locate an Atlantic dealer who is without any Goodyear identification or without one or the other signs or decals, we do not know whether an unsuccessful attempt has been made to complete the assignment or whether all or part of the job, whatever the case may be, is scheduled for attention.
>
> "We should like to interest ourselves in the cases where an unsuccessful attempt has been made to provide the Goodyear identification. Perhaps this information could be made available to us in simplest form by stating the Atlantic District areas that have been covered by either sign crews or agencies that are applying the decals, and by supplying us a list of the dealers where attempts to erect decals or signs were unsuccessful.
>
> "I have already received a list of this type for the Philadelphia and South Jersey areas, and this has been referred to our District Managers for further attention. However, I do not know if this is a partial or complete list of the dealers in that territory who could not be identified with Goodyear signs."

Atlantic's "sales efforts" met with complete success, for the entire group of 46 recalcitrant dealers referred to in Mr. Heideman's letter of July 30 was thereafter signed to Goodyear contracts and Goodyear advertising signs were installed at their stations. The letter of complaint from Lee Rubber and Tire Corporation to Atlantic over the question of removal of Lee advertising signs from Atlantic stations has already been referred to, supra at page 15.

And on March 5, 1951, Mr. E. W. McCreery, another Lee vice president, stated in an intra-company memorandum referring to the Atlantic sales regions assigned to Firestone:

> "In analyzing salesmen's reports on their calls on Atlantic acounts and with other information that we have, we are doubtful that many of the #2 type stations will stay on Lee tires. Because these stations are leased from Atlantic, some on a month-to-month basis, others on 90 days or longer basis, they are not in a position to take an independent stand and as a result will probably find it expedient to handle Firestone tires."

1482 In our opinion, the documentary evidence in this record—only a fraction of which is referred to above—and the testimony of the various representatives of suppliers of TBA competing with Goodyear and Firestone previously adverted to lend credence to the testimony of the ex-Atlantic dealers who gave evidence in support of the complaint in this proceeding. We affirm the hearing examiner's finding that agents of Atlantic have in fact coerced a substantial number of Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and that Atlantic has accepted the benefits of such coercion in the form of sales commissions.

Respondent Atlantic cites *United States* v. *J. I. Case Co.*, 101 F. Supp. 856 (D. C. Minn. 1951) as authority for the proposition that the hearing examiner erred in concluding that Atlantic has coerced a substantial number of its dealers in violation of Section 5 of the Federal Trade Commission Act. This District Court opinion is commonly regarded as a notable exception to the trend of decisions dealing with the subject of exclusive dealing.[9] But we need not dwell on the *Case* decision, since the subject of

9. Robinson, *Providing for Orderly Marketing of Goods*, 15 A. B. A. Antitrust Sec. 282, 308 (1959).

coercive practices has received careful scrutiny from the Seventh Circuit and from the Supreme Court in a line of cases in the field of automotive financing. In *United States* v. *General Motors Corp.*, 121 F. 2d 376 (7th Cir. 1941), General Motors and its affiliates, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Inc., appealed from a conviction of criminal conspiracy in violation of the Sherman Act. The indictment charged that these defendants had conspired to coerce franchised dealers of General Motors Corporation to finance their purchases and sales of automobiles through General Motors Acceptance Corporation. In affirming the criminal convictions, the court stated:

> "The record leaves no doubt that the dealer body as a whole was made acutely aware and had knowledge of the set policy of the appellants with respect to the use of GMAC financing facilities. The fear of cancellation or refusal to renew contracts was great, so much so that the dealer was reluctant to refuse the terms and policies dictated by the appellants."

1483 Approving the trial judge's instructions to the jury in the *General Motors* case, the Supreme Court stated in *Ford Motor Co.* v. *United States*, 335 U. S. 303 at 316-317 (1948):

> ". . . Their plain effect is to draw a line between such practices as cancellation of a dealer's contract, or refusal to renew it, or discrimination in the shipment of automobiles, as a means of influencing dealers to use GMAC, all of which falls within the common understanding of 'coercion,' and other practices for which 'persuasion,' 'exposition' or 'argument' are fair characterizations."

We are of the opinion that the record contains ample evidence to support the hearing examiner's finding that Atlantic has coerced and forced a substantial number of

its dealers to purchase sponsored TBA. However, we regard these overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself. The more dramatic and immediate impact of this system, to be sure, is upon retail service station dealers of Atlantic and other oil company dealers similarly situated. Their freedom to buy and sell as independent merchants is shown to be less complete in practice than in theory. Yet from the point of view of the antitrust laws, it is the competitive effects of the sales commission system on competitors of Goodyear and Firestone which raise the most grave questions in this proceeding.

We turn, therefore, from an examination of the restrictive effects of the sales commission system upon service stations as buyers of TBA to an assessment of this system's impact upon wholesale and retail distributors 1484 of TBA engaged in competition with wholesale and retail distributors of Goodyear and Firestone. Preliminary to this inquiry, however, it will be helpful to have a more detailed understanding of the manner in which the sales commission plan enables Goodyear to integrate into its own nationwide distribution system the economic power possessed by Atlantic over its wholesale and retail petroleum outlets.

The Sales Commission Plan in Goodyear's System of Distribution.

Goodyear is the largest manufacturer of rubber products in the United States, with net sales of more than one billion dollars in 1954. The company has tire and tube factories located respectively in the states of Ohio, Alabama, Michigan, California and Kansas. There are 57 Goodyear warehouses across the land, and Goodyear tires, tubes and accessories are distributed to wholesale and retail distribu-

tors through these warehouses. Batteries, because of the weight factor, are not warehoused by Goodyear except for emergency needs; all Goodyear wholesalers order "Goodyear" batteries directly from the factories of the two companies which produce "Goodyear" batteries under contract: Electric Auto-Lite Company and Gould-National Batteries, Inc.

Goodyear has approximately 500 company-owned and operated retail stores throughout the United States, and these stores also sell at wholesale. Apart from such company stores, there are more than 12,000 independent franchised stores selling Goodyear products at wholesale and retail and an unknown but very substantial number of firms not franchised by Goodyear but which purchase and resell Goodyear merchandise in the same manner as franchised Goodyear dealers. Franchised dealers are sometimes referred to as "direct" accounts, and non-franchised dealers in Goodyear merchandise are sometimes referred to as "indirect" or "associate" accounts.

All direct Goodyear accounts, which include independent franchised Goodyear dealers, wholesale petroleum distributors of Atlantic, and some retail petroleum dealers of Atlantic, execute a franchise agreement with the Goodyear Company itself, and purchase Goodyear products from the nearest Goodyear District Sales Office. Indirect, or associate Goodyear dealers do *not* have contracts with the Goodyear Company and do *not* purchase Goodyear TBA from the Goodyear District Sales Office. Instead, they usually execute a "Goodyear Associate Dealer Agreement" with the particular Goodyear wholesaler to which they are assigned. Such wholesaler may be either a
1485 company-owned store, a franchised independent dealer of Goodyear, an Atlantic wholesale petroleum distributor, or an Atlantic retail petroleum dealer. Indirect, or associate, dealers normally purchase from the whole-

saler to which they have been assigned, and normally pay higher prices for merchandise than do direct dealers of Goodyear.

Most service station customers, including Atlantic stations, are classified as indirect or associate dealers by Goodyear, although, as noted, some Atlantic stations are direct dealers of Goodyear and function as supply points to other Atlantic stations which are merely associate dealers. (The term "supply point" is used by respondents to refer to the local TBA supplier to which local Atlantic stations have been assigned.) A number of Atlantic wholesale distributors of petroleum products also function as supply points for Goodyear, and distribute TBA to the same retail stations which the wholesale distributors supply with Atlantic petroleum products. A supply point, then, is a local wholesaler of Goodyear TBA, although it may also be a retail dealer of Goodyear, a retail dealer of Atlantic, or a wholesale distributor of Atlantic as well. In the three marketing regions of Atlantic assigned to Firestone, the same classification of Atlantic dealers into direct and indirect accounts of Firestone is found as is described above with respect to Goodyear, and in all other material respects the sales commission plan between Atlantic and Firestone functions in substantially the same manner as does the sales commission plan between Atlantic and Goodyear described herein.

An integral part of the Goodyear-Atlantic and Firestone-Atlantic sales commission plans is the assignment or allocation of each Atlantic retail outlet to a specific supply point designated by Goodyear or Firestone. When a new Atlantic station is opened, or when a new dealer replaces a retiring operator, Atlantic reports to Goodyear (or to Firestone, as the case may be) the name and address of the new Atlantic dealer on an appropriate Goodyear (or Firestone) form. The Goodyear (or Firestone) District

Manager then assigns this outlet to a specific supply point and notifies the supply point and the Atlantic outlet of the assignment which has been made. No sales commission is paid to Atlantic unless the Atlantic outlet purchases from the designated supply point to which it has been assigned. In other words, even though an Atlantic dealer purchases Firestone or Goodyear TBA exclusively, unless he 1486 buys from his assigned supply point, Atlantic receives no sales commission. One reason why Goodyear does not pay a sales commission when TBA merchandise is purchased by an oil company dealer from someone other than his assigned supply point was set forth in a letter dated December 19, 1951, addressed to an official of Shell Oil Company, and signed by the Baltimore District Manager of Goodyear:

> "I am returning to you, unsigned, two G-1209's which request that G. D. Armstrong Co., Inc., of Laytonsville, Md., be approved as a supplying dealer for Laurel Park Servicenter at Laurel Park, Md., and Bowie Shell Service at Bowie, Md.
>
> • • • • •
>
> "My reason for taking this attitude is the fact that we very definitely discourage our dealers from selling Goodyear tires outside of their authorized territory, and in servicing either Laurel or Bowie, the Armstrong Company are out of their territory.
>
> "A situation of this kind, of course, presents us with a serious problem for, naturally, we are not in a position to dictate to any good dealer exactly where he may sell the merchandise which he purchases from us—all we can do is ask that they remain within the boundaries which we establish. However, in the case of oil company stations where we have already authorized and established an ample number of supply points, all with good service, we cannot pay the oil company in question a commission on merchandise delivered by a dealer who is operating outside of his territorial boundaries."

Although in some cases Atlantic dealers are assigned to more than one supply point of Goodyear, in none of Atlantic's marketing regions are Atlantic dealers assigned to supply points of both rubber companies. For, as has been shown, Atlantic's sales commission contract with Goodyear is confined to the company's New England, New York and Philadelphia-New Jersey sales regions, whereas Atlantic's sales commission contract with Firestone is operative only in the Eastern Pennsylvania, Western Pennsylvania and Southern sales regions of the oil company.

1487 A reporting technique has been established whereby Atlantic may determine the exact amount of sponsored TBA purchased by each Atlantic outlet from its assigned supply point or points each month. As both rubber companies use substantially the same reporting procedure, only the one used by Goodyear need be described in detail here.

Once every month each Goodyear supply point submits a report to the Goodyear District Sales Office for his district, showing his sales of TBA during the past month to each Atlantic outlet assigned to him.[10] The Goodyear District Sales Office then compiles these reports into a master list, showing TBA purchases by each individual Atlantic dealer from his assigned supply point during the past month, and sends copies of this list to Atlantic and to Goodyear's home office in Akron, Ohio. Although these forms provide the basis for computation of sales commission accruing to Atlantic each month, they also afford Atlantic a means of determining the volume of sponsored

10. One exception is Atlantic service stations acting as supply points. A 7½ percent commission is paid by Goodyear to Atlantic on the net sales value of TBA *purchases* by these Atlantic supply point dealers, and, consequently, no further commission is paid by Goodyear on the resale of merchandise by such Atlantic supply points to other Atlantic stations supplied by them.

TBA purchases by individual Atlantic dealers during that time.

A different procedure is followed with respect to TBA purchases by wholesale distributors of Atlantic (including, as indicated by footnote 10, supra, Atlantic retail dealers functioning as supply points). Wholesale distributors purchase directly from the Goodyear or Firestone district offices, and then resell such TBA to their retail dealers. Some 2,897 Atlantic retail outlets were supplied by wholesale distributors in 1956. Atlantic receives a 7½ percent sales commission on the net sales value of all sponsored TBA *purchased by* wholesale distributors, but no additional sales commission is paid when such purchased TBA is resold to retail dealers supplied by the wholesale distributors.

Goodyear has sales commission contracts with a number of other marketing oil companies, and these agreements are in all material respects identical with the Goodyear-Atlantic contract. Total sales by Goodyear under its sales commission contracts with such other oil companies, including Shell Oil Company and D-X Sunray Oil Company, increased from about $16,700,000 in 1951 to about $36,105,000 in 1955, with sales commissions paid thereon by Goodyear increasing from approximately $1,600,000 in 1951 to approximately $3,300,000 in 1955. The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA. Witness S. K. Osborn, for example, was a Sinclair dealer for 20 years, from May 1936 until May 1956. He was also a distributor of Firestone tires, and could therefore purchase Firestone tires at lower prices than Goodyear tires. He testified that he stocked Firestone tires exclusively at his service station until 1948, at which time he was given a notice of lease cancellation:

1488

A. It was a few days after I got the lease cancel-

lation. I was disturbed about it, and I wanted to find out what it was all about. I called up the company and finally got an interview with Mr. Weller, and Mr. McCauley [Sinclair officials] . . . I asked them why I was getting a lease cancellation. They told me that I wasn't doing the right things by them, that Goodyear tires, batteries and accessories were just as much Sinclair products, just as important to the company, as Betholine gas, Sinclair Gas, whatever they were marketing, and Opaline oil. And I promised to go along with their wishes. I gave them an order for Goodyear merchandise. In a few days I had a new lease.

Q. You say you gave them an order for Goodyear TBA merchandise. Do you recall the approximate amount of the order?

A. A thousand or more dollars worth.[11]

In order to keep his service station lease, therefore, this Firestone distributor was placed in the anomalous position of having to purchase Goodyear TBA, a competing brand, in order to maintain his status as lessee of a Sinclair service station.

1489 Another former lessee-dealer, witness MacMasters, who operated a Sinclair station from 1944 until 1954, testified that he purchased Bowers batteries for resale at his station up to sometime in 1947 or 1948. At that time he was summoned to a conference with top-level Sinclair personnel at the oil company's offices:

A. We went into a conference room, some sort of conference room that had quite a large table. They put me on one side of the table, and the other three down the other side.

So, to make the conversation short, Mr. McCauley

11. In *Osborn* v. *Sinclair Refining Co.*, ... F. 2d ..... (4th Cir. 1960), the Court of Appeals held that the facts recited above by witness Osborn constituted an unlawful tying contract violative of Section 1 of the Sherman Act.

was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers because they took care of me during the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our [Goodyear] batteries or else."

And that was the end of the meeting.

Many other advantages accrue to Goodyear, and Firestone as well, as a consequence of their sales commission contracts with oil companies. A prime advantage is participation with each oil company's sales force in a number of joint merchandising programs. This advantage commences with the selection of persons to operate newly-opened service stations or to replace outgoing dealers in previously-operated stations. A continuing responsibility of Atlantic salesmen is to help newly-recruited dealers get established. Through these salesmen, the local Goodyear or Firestone supply points are notified of the names and addresses of new dealers before they actually take over operation of their stations and, as a result, before local competitors of Goodyear and Firestone in any community become aware of a new dealer's identity. This policy was implemented by a memorandum of April 25, 1952, by Atlantic's TBA Manager Heideman to Atlantic personnel:

1490 "Station Openings. We ask that you instruct your Districts to establish, as a regular practice, automatic and advance notice to the Goodyear District Office, of the openings of any new stations, or of change in proprietorship at any dealer location. Such notice will be mutually beneficial to both Goodyear and ourselves. It will enable Goodyear to complete any un-

finished business with the outgoing dealer and, further, will enable them to anticipate and to move promptly in handling the new dealer's requirements."

The importance of advance notification is indicated by the fact that the initial stocking order of TBA costs approximately $1,000—for large stations the amount may be much greater. And Atlantic's turnover of dealers is high. During 1955, 720 lessees of Atlantic ceased operation and had to be replaced, representing a turnover of about 29 percent of the oil company's total number of lessee-dealers in that year. Moreover, during the period March 1950 to June 1956, 389 *new* Atlantic stations commenced operations. Frequently these new or replacement dealers have recently completed Atlantic training schools in which Goodyear and Firestone TBA were used in demonstrations, and have already formed biases in favor of one or the other brand. However, the new dealer has not choice as to which of the two brands he will purchase and display—if his station is located in the three Sales Regions of the company in which Goodyear is sponsored, then he must take Goodyear TBA, and if his station is located in the three Sales Regions of Atlantic assigned to Firestone, then he must take the Firestone program.

Numerous other examples of joint merchandising programs favorable to the rubber companies having sales commission agreements with Atlantic could be cited. Although Atlantic officials stated in an intra-company memorandum, shortly before the inception of the sales commission program that "Practically all sales promotional expenses [will be] assumed by supplier [Goodyear]," Atlantic aggressively assists in carrying out the Goodyear program in various ways. For example, Atlantic salesmen obtain TBA orders from dealers and send them to local Goodyear supply points, recommend minimum Goodyear TBA inventories to dealers, coordinate special Goodyear promotional

programs with radio, television, and other forms of advertising by the Atlantic company and its dealers, and assist dealers in arranging Goodyear TBA displays. Atlantic credit card facilities are also available to motorists 1491 wishing to purchase Goodyear TBA products from Atlantic stations. Without doubt, however, the most effective joint merchandising tactic is dual solicitation, or "double-teaming." This refers to the practice of an Atlantic salesman accompanying a Goodyear or Firestone salesman in calls upon service station operators to urge them to purchase sponsored TBA.

Goodyear's heavy reliance upon double-teaming to convert Atlantic dealers from the Lee-Exide program to Goodyear TBA was set forth in a "Confidential" memorandum of February 27, 1951, from Mr. S. A. Gaylord, manager of the rubber company's sales commission programs with oil companies, to Goodyear District Managers located within the three Atlantic Sales Regions assigned to Goodyear:

> "You have been advised of the Sales Organization Meetings [between Goodyear and Atlantic sales personnel]. Mr. McConky [Goodyear Northeast Division Manager] will keynote for his Division. He will welcome the opportunity and pledge strong support and cooperation. No doubt he will stress the importance of Atlantic and Goodyear personnel getting acquainted and teaming up together when presenting the Goodyear franchise to Atlantic dealers. Because the Atlantic salesman has the 'in,' but cannot be expected to know the Goodyear story at the start, so by team work the Goodyear Sales Representative will make the presentation and also assist in training the Atlantic Representative.
>
> "Two purposes will be accomplished by this teaming activity—first the Atlantic salesman will learn the basic details of our Franchise Presentation and, secondly—our Goodyear salesman will be very favorably introduced to the account through the sales influence of the Atlantic Representative, also bring up this point with your men."

Thereafter, on August 7, 1951, a Goodyear official wrote to Atlantic's TBA Manager, Mr. Heideman:

> "Having reviewed your letter of July 30th, I am pleased to outline below for your consideration steps that I suggest be followed in the handling of a new Atlantic Dealer on the Goodyear T.B.A. Program:
>
> "1. Arrange for double team contract by the Goodyear and Atlantic salesman."

1492 Nine additional steps were outlined in this letter of August 7, the fifth being to "Take stock order (Tires, Batteries and Accessories)" and the sixth being to "Furnish initial price lists, tires, batteries and accessories." Goodyear thus appeared confident that the presence of an Atlantic salesman together with the Goodyear representative would render unnecessary any higgling or haggling over price before obtaining an intial order for TBA from Atlantic dealers.

Similar confidence in the efficacy of double-teaming activity was expressed in a memorandum setting forth action to be taken to introduce the sales commission plan to Atlantic outlets in the three Sales Regions assigned to Firestone:

> "Double-teaming activity with Firestone and oil company salesmen is then scheduled in order to sell the oil company's dealers on the Commission Plan."

Atlantic's Vice President, Mr. D. T. Colley, inaugurated the sales commission program on March 1, 1951, with the following letter to the oil company's sales force:

> "I am sure that the new T.B.A. program which we have carefully selected has so many advantages that it will not be difficult to convince Atlantic dealers and distributors of its superior merit. This job is to be done with the use of all the sales equipment and knowledge that we, or our suppliers, have at our respective commands. *I expect the results of our salesmanship to be highly successful.*

"You can appreciate the fact that under no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers. The sales you make must be made on the merits of the program and your ability to sell the dealer on its advantages to him. *Any evidence that coercion or misrepresentation were used in securing acceptance would be most embarrassing to our company.* This program is a challenge to your sales ability. I am confident that you will do a fine selling job." (Emphasis added.)

These quotations reflect the belief of Goodyear and Firestone, as well as Atlantic, that the presence of an Atlantic salesman is the almost indispensable ingredient needed
1493 to insure the success of the two rubber companies in selling their TBA products to Atlantic dealers under the sales commission plan. Perhaps one reason for this is that the annual evaluation by Atlantic salesmen of their respective lessee-dealers carries substantial weight with District Managers of Atlantic when the latter group make decisions as to extensions of dealers' leases for another year. Although respondent Atlantic has made vigorous efforts to create a record image of the typical Atlantic lessee-dealer as a stoutly independent businessman, able to close up shop as an Atlantic lessee on Saturday night and reopen down the street in a Sinclair or an Esso station the following Monday morning, the record as a whole suggests that this is a romanticized picture of a small businessman who is, more often than not, in a woefully weak bargaining position vis-a-vis his oil company lessor.

The typical lessee-dealer's dependence upon his lessor-supplier is explained by the following facts: The cost of constructing an average Atlantic service station is about $50,000. Few men who become service station operators have this amount of money—many have as little as $1,000, and very few have as much as $15,000. Most marketing oil

companies, therefore, build a substantial portion of their own stations and lease them to operators. The lessee-dealer uses his own capital to purchase an initial inventory of petroleum products, TBA, and tools and for other expenses incurred in commencing operations. It is frequently necessary for incoming dealers to borrow several thousand dollars from Atlantic in order to purchase these initial stocks of goods. Nor is the income of the typical lessee-dealer sufficient to enable him eventually to purchase his own station. Although an exceptional dealer with an unusually high-gallonage station may earn as much as $20,000 per year, the average annual net income of Atlantic dealers is in the range of 6 to 10 thousand dollars. But no matter how long an operator may remain as lessee, and no matter how much he strives to establish goodwill in his community, the time may come when his lease is not renewed—for any one of a number of reasons or for no reason at all except that the lessor would prefer to have someone else operate that particular station.

Many of the control devices available to Atlantic in its relationship with lessee-dealers are also applicable to contract dealers. Many of the latter are indebted to Atlantic, and most of them lease storage tanks, gasoline pumps
1494 and other equipment from their oil company supplier.

These equipment leases specify that such equipment may not be used for storage or sale of petroleum products purchased from any supplier other than Atlantic. And serious inconveniences would be caused for any contract dealer whose petroleum supply contract with Atlantic was not renewed from year to year.

Service station operators are understandably susceptible to the urgings and recommendations of their oil company suppliers and lessors in the matter of TBA. The Goodyear salesman encounters less buyer resistance on the part of such a customer when an oil company salesman is

standing nearby adding his endorsement to the sales presentation of the Goodyear representative. The technique of dual solicitation ("double-teaming") thus symbolizes in microcosm the competitive effects of the sales commission method of distributing TBA when introduced throughout the entire marketing area of a major oil company. It is to these macrocosmic effects that we now turn.

Competitive Effects of The Sales Commission Plan At The Manufacturing, Wholesale and Retail Levels.

A glance at MAP I, supra, suffices to show that competition between Firestone and Goodyear in selling to Atlantic oil company accounts have been wrecked by the operation of the sales commission system. But other evidence of record is available in abundance to illustrate the same point. The following is an exchange of correspondence between Atlantic and Goodyear concerning Republic Oil Company, a wholesale distributor of Atlantic products in Pittsburgh, Pennsylvania. (Atlantic's Western Pennsylvania sales region, it will be recalled, is assigned to Firestone.)

On August 2, 1951, Mr. E. C. Sauter, District Manager of Goodyear in Pittsburgh, addressed the following letter to Mr. F. W. McConky, Jr., Manager of Goodyear's Northeast Division:

"Republic Oil Co.

"This is a Pittsburgh concern who are acting as distributor of Atlantic products in parts of Pennsylvania and Northern West Virginia.

"The retail division of this company operates about seventy-five (75) service stations. They have never gone into a TBA program and at present have no tire hook-ups. They are in process, however, of trying to get a deal with one of the major tire companies
1495 and would like to entertain a proposition from Goodyear whereby we would sell their stations direct or through supplying dealers at a price which would be in

line with each outlet's volume with an override to the oil company.[12]

"Possibly we could use this additional distribution in the Pittsburgh area, particularly on passenger tires and tubes, so if you are interested possibly we should take the matter up with Petroleum Sales for their comments."

Thereafter, on August 3, 1951, the matter was referred by Mr. McConky to Mr. S. A. Gaylord of Goodyear in Akron:

"The attached from Eddie Sauter regarding Republic Oil and the possibility of their handling our products is a matter, in my opinion, for Akron decision, inasmuch as they [meaning Republic Oil] are distributors of Atlantic products.

"I don't want to spend any time lining up with these people if for example Atlantic-Philadelphia would prefer they handle Firestone, since this is the tire being handled by Atlantic in that area.

"Of course, I am not acquainted with the influence Atlantic might be able to bring to bear in forcing these people to a decision as to the line of tires that they—Atlantic—would like them to handle.

"At any rate, will you explore this from a management standpoint and advise so we can proceed according to Atlantic's desires."

On August 9, 1951, Mr. Gaylord addressed the following letter to Atlantic's TBA Manager, Mr. Heideman:

1496 "Mr. Sauter, our District Manager at Pittsburgh, and Mr. McConky, advises that subject account is

12. Many service station operators and TBA dealers use the term "override commission" or "overriding commission" in referring to payments by a TBA manufacturer to an oil company such as those made by Goodyear and Firestone to Atlantic. However, as respondents and their witnesses usually use the term "sales commission" to refer to such payments, we are using "sales commission" in this opinion.

considering marketing T. B. A. products and have invited us to submit a proposal.

"Before taking any action in the matter we felt that we should take the matter up with you for further guidance and your good counsel in the matter.

"Will appreciate hearing from you on this as soon as possible."

On August 14, 1951, Mr. Heideman replied to Mr. Gaylord under the heading "Republic Oil Company":

"Your note of August 9th has been received. Any overtures on your company's part to the subject could upset negotiations that we have underway at present. It was thoughtful of you to consult us and needless to say we appreciate it *as we will also appreciate your rejection of the invitation.*" (Emphasis added.)

Not only has competition between Goodyear and Firestone been eliminated as a result of these companies' sales commission contracts with Atlantic, but even within Atlantic's sales regions assigned to Goodyear, competition among Goodyear wholesalers for the business of Atlantic accounts has been eliminated through the assignment of each Atlantic account to a designated supply point. There are 1,155 independent franchised Goodyear dealers in the Atlantic marketing territories assigned to Goodyear, but only 128 of these dealers, or 11 percent, are supply points for Atlantic dealers. The remainder, representing 89 percent of all Goodyear dealers in the three Atlantic sales regions, are substantially foreclosed from access to Atlantic accounts.

Nor is this anticompetitive allocation of customers by Goodyear among its wholesale distributors confined to Atlantic accounts alone—nine other oil companies have sales commission contracts with Goodyear, and as shown by Table IV, below, only a minute fraction of the total number of Goodyear dealers in any of these oil companies' marketing areas have been nominated as supply points for local oil company outlets:

1497 **Table IV.**

Goodyear Dealers Acting As Supply Points for Oil Company Outlets Compared With Total Number of Goodyear Dealers In Each Oil Company's Marketing Area.

Name of Oil Company	Total Number of Goodyear Dealers in Marketing Area	Number of Goodyear Supply Points
Anderson-Pritchard	3,825	28
Ashland & Subsidiaries	2,387	87
Carter	1,509	73
D-X Sunray	6,772	162
Quaker State	482	14
Richfield	1,691	3
Shamrock	1,717	25
Shell	10,756	679
Sinclair	10,963	10
Atlantic	1,155	128

The extent to which competition among Goodyear's own dealers at the wholesale level has been shattered by the operation of the sales commission plan may be inferred from the data in Table IV. In Shell's marketing area, for example, there are 10,756 Goodyear dealers; yet only 679 of these dealers have been appointed as supply points to Shell stations. In the marketing territory of D-X Sunray Oil Company there are 6,772 Goodyear dealers, but only 162 have been granted the privilege of becoming a supply point. And in Atlantic's New England, New York, and Philadelphia-New Jersey sales regions, only 128 out of 1,155 Goodyear distributors have been named as supply points.

To illustrate the elimination of competition among TBA wholesale dealers caused by the sales commission plan, evidence adduced in the course of hearings in Atlantic's Philadelphia-Suburban Sales District (one of several sales

districts comprising Atlantic's Philadelphia-New Jersey Sales Region) may be considered. As of June 30, 1956, there were 226 lessee dealers and 291 contract dealers of Atlantic in this district. These dealers were assigned to three Goodyear company stores and six independent franchised Goodyear distributors in the Philadelphia metropolitan area as follows:

1498 **Table V.**

Goodyear Supply Points in Atlantic's Philadelphia-Suburban Sales District and Atlantic Dealers Assigned to Them, 1956.

Supply Points	1955 Total Sales	No. Lessee Dealers*	No. Contract Dealers*
Goodyears District Office	$ 43,845	2	6
Harvey W. George	239,906	45	49
F. C. Glenn	300,723	52	42
E. F. Miller	239,900	39	19
Frank Hagan	130,682	(54 dealers)**	
Ellwood E. Kieser	420,788	40	116
Edward Parris	160,100	(61 dealers)**	
Goodyear Store (Jenkintown)	None	2	4
Goodyear Store (Norristown)	None	8	1
	$1,535,944		

* Includes some duplication due to 11 lessee dealers and 5 contract dealers having two alternate sources of supply.

** No breakdown is available as to the numbers of lessee and contract dealers, respectively, supplied by these two supply points. Mr. Hagan was supply point to a total of 54 lessee and contract dealers of Atlantic, and Mr. Parris to a total of 61 lessee and contract dealers of the oil company.

Witness Elmer H. Booz, for example, an Atlantic lessee dealer from 1952 until 1956, testified that Mr. Edward Parris was the designated Goodyear TBA supply point for dealers in his area. He stated that although he could have purchased Goodyear tires from other dealers at lower prices than from Mr. Parris, that he nevertheless obtained about 85 percent of his TBA requirements from Mr. Parris. One competing Goodyear dealer offered tires to Mr. Booz at a discount from list price of 10 percent plus 5 percent, plus 2 percent whereas Mr. Parris gave only a 10 percent discount, plus 2 percent discount for cash.

1499 As to competing brands of tires, Mr. Booz testified that he could make more profit on several such brands than he could on Goodyear tires. Lee tires were available at a discount from list price of 10 plus 10 plus 10 percent, plus 2 percent for cash. Moreover, the witness stated that he could never resell Goodyear tires at list price because "there is always someone from the Goodyear company or somebody else that is going to knock you down on it."[13]

Witness Francis J. Balloran commenced operating an Atlantic station in 1953 and was a contract dealer for Atlantic at the time he testified in this proceeding. He stated that after becoming an Atlantic dealer he purchased Goodyear TBA from his designated supplier, Mr. E. F. Miller (Table V, supra):

> Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller?
>
> A. That's right.
>
> Q. Why did you buy your Goodyear TBA from Mr. Miller?

13. When Atlantic was considering adopting the Goodyear TBA program an intracompany memorandum recognized that Atlantic dealers would face " . . . a maximum amount of competition from established dealers and company stores, because it is reported that every county, marketing town and shopping center now has a Goodyear store or distributor."

A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.

Q. Was it a matter of your own choice?

A. No, sir.

* * * * *

Q. Did you want to purchase TBA from Mr. Miller?

A. Not truthfully, no.

Q. Why didn't you?

A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to send a man with a truck and waste an hour and a half to go pick it up and bring it back.

1500 Q. Could you have purchased Goodyear tires at a cheaper price in the area?

A. Yes, sir.

Q. What was the name of the supplier?

A. Hires and Kocher.

Witness Balloran also testified that he occasionally purchased brands of tires other than Goodyear, but did not display them openly:

Q. Did you purchase U. S. tires from Harris and Leonard?

A. That's right.

Q. Were such tires advertised, U. S. tires?

A. Not out of my place they weren't.

Q. Where did you keep such tires?

A. Back on the racks, back on the oil racks, where they couldn't be seen.

Q. Seen by whom?

A. Any of the Atlantic men that came in there, the bosses.

* * * * *

Q. Did you purchase Lee tires?

A. Yes, sir.

Q. And where did you keep them?

A. On the racks, sir . . .

Nineteen witnesses representing eleven TBA wholesale suppliers in the Philadelphia-Suburban District engaged in competition with one or more of the six Goodyear supply points named in Table V, supra, testified in sup-
1501 port of the complaint. Without exception, these witnesses gave evidence that they were able to sell little or no TBA products to Atlantic dealers in their areas, and that such Atlantic dealers had stated that they must purchase their TBA needs from one or more of the designated Goodyear supply points listed in Table V.

Witness Michael T. Lanza, partner in the Philadelphia firm of Lanza Tire Service, stated that his company sells Goodyear and Firestone tires and tubes, as well as other brands, and also Exide batteries. He further stated that there are from 45 to 60 Atlantic service stations in his sales area, and that all such stations stock and advertise Goodyear tires and batteries. Witness Lanza identified Messrs. Fred Glenn and Harvey George as Goodyear TBA suppliers to Atlantic service stations in the North Philadelphia marketing area of Lanza Tire Service.

Witness Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester, Pa., testified that his company sells Willard batteries, Dayton Rubber Co. fan belts and radiator hose, AC, Purolator and Fram oil filters, and a wide assortment of automotive waxes, polishes, and cleaners in competition with other sellers of TBA in his company's marketing area, including Mr. Edward Parris. Witness Wetzel stated that it is "rather futile" to attempt to sell automotive batteries to Atlantic dealers, and "very difficult" to sell automotive accessories to them. On cross-examination he was asked this question:

Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now?

A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They

buy six or eight cans of merchandising to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Witness Myer Duboff is an outside salesman for Lancaster Auto Supply Company of Philadelphia. This firm competes with Goodyear dealers Frank Hagan, E. F. Miller and Ellwood Kieser, supra, Table V. Witness Duboff testified that he had solicited the business of about 35 Atlantic stations in his area, all of which advertise Goodyear products "... right down the line." 1502 He stated that he had been told by a number of Atlantic dealers that they were unable to buy TBA items from him because they "must buy from the company." On cross-examination he was queried as to statements made to him by one Atlantic dealer:

Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road?

A. That is right.

Q. As having said something to you about inability to buy from you. I am not clear as to what he said.

A. Do you want me to state what he said to me. He said to me. "I can't buy from you."

Q. Had he been buying from you?

A. He was buying odds and ends and every time I come in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said "Why not," and he says "They know what I am doing," and I didn't think that was right.

Many other examples of such testimony could be cited, not only by former Atlantic dealers and by TBA suppliers from the Philadelphia area, but from other marketing areas of Atlantic as well. These facts are clear: Atlantic has allocated three of its six marketing regions to Firestone and the other three to Goodyear. Firestone's sales

to Atlantic outlets amounted to $5,562,936 in 1955, the last full year for which data are available, and in the same year the rubber company paid commissions amounting to $506,199 to Atlantic. Goodyear's sales to Atlantic outlets amounted to $5,700,121 in 1955 and its sales commission payments to the oil company totalled $557,559.

We find that Atlantic has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gasoline distribution facilities to cause its dealers to purchase very substantial amounts of a different class of products, TBA. This finding, in conjunction with Atlantic's market position and the
1503 volume of TBA affected, would appear to bring this case within the Supreme Court's ruling in *Northern Pac. Ry. Co.* v. *United States*, 356 U. S. 1 (1958) and the more recent decision by the Fourth Circuit in *Osborn* v. *Sinclair Refining Co.*, ... F. 2d ..... (4th Cir. 1960).

The Court held in the *Northern Pacific* case that tying arrangements are *per se* violative of Section 1 of the Sherman "... whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the tied product and a 'not insubstantial' amount of interstate commerce is affected" (356 U. S. at 6). The content of the phrase "sufficient economic power" with respect to the tying product was defined by the Fourth Circuit recently in the *Osborn* case.

Osborn was a lessee of Sinclair Refining Company from 1936 to 1948, at which time his lease was terminated and a new lease entered into which was continued until May 1956, when it was finally cancelled by Sinclair. During the years of Osborn's tenure as a Sinclair dealer, the oil company or its subsidiary, Sherwood Bros., Inc., was party to a sales commission contract with Goodyear in all material respects identical to the Goodyear-Atlantic and the Firestone-Atlantic arrangements in the instant

case. Osborn filed suit for treble damages under the Sherman Act, claiming that the sale of Goodyear TBA to Sinclair dealers in Maryland was in furtherance of an illegal restraint of trade. On appeal, the court held that Sinclair had gone beyond mere salesmanship in inducing its dealers to carry substantial quantities of Goodyear TBA if they wished to continue selling Sinclair gasoline under their lease and sales agreements with Sinclair.[14] As phrased by the court, quoting its own earlier decision in *McElhenny v. Western Auto Supply Co.*, 268 F. 2d 332, 338 (4th Cir. 1959):

> "Probably nothing is more firmly settled in our anti-trust jurisprudence than that an illegal contract may be inferred from all the circumstances."

1504 According to the court, Sinclair had violated Section 1 of the Sherman Act through a series of *implied* tie-in agreements with its dealers in Maryland. Moreover, the court did not regard it as significant that Sinclair had not required its dealers to purchase all their requirements of TBA from Goodyear:

> "To insist upon such exclusivity in a tie-in would be inconsistent with the trend of decisions in this area. If a substantial amount of commerce is restricted by such arrangements, the standard for illegality would seem to have been met."

As to the requirement of "sufficient economic power" in the tying commodity—Sinclair's position in the petroleum retail market—the court found that in 1956, Sinclair had operated about 300 out of some 2300 retail service

14. Sinclair did not have a sales commission plan in effect throughout its entire marketing area, but only in Maryland and, to some extent, in adjacent states. ..... F. 2d ..... at ..... Osborn, plaintiff in the case discussed above, testified in the instant proceeding as a witness in support of the complaint.

stations in Maryland and that those stations had sold about 10 percent of the total sale of gasoline in the same state in that year. This was held to afford Sinclair sufficient economic power in the gasoline market appreciably to restrain commerce in TBA. No one questioned the finding that Goodyear TBA purchased by Sinclair dealers in Maryland comprised a substantial amount of commerce. Accordingly, the implied tie-in agreements between Sinclair and its dealers were held to constitute a *per se* violation of the Sherman Act.

Here we find that Atlantic, which describes itself as ". . . a large producer and distributor of petroleum products" whose operating revenue "totalled more than one half billion dollars" in 1954, distributes gasoline directly to more than 5,500 retail service stations and through wholesale distributors to more than 2,800 additional service stations in 17 states along the Atlantic Seaboard. Approximately 81 percent of Atlantic total sales of gasoline in 1955 were accounted for by these approximately 8,300 retail service stations.

But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases. The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral ~~tying~~ tying agreements, and this power is a fact existing independently of the particular method of distributing 1505 or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The record of this case conclusively establishes, in our

minds, that the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels. Firestone dealers are foreclosed from Atlantic outlets in regions assigned to Goodyear, and Goodyear dealers are foreclosed from Atlantic outlets in regions assigned to Firestone. Even within regions assigned to Goodyear, or to Firestone, only those Goodyear or Firestone dealers fortunate enough to be nominated as "supply points" have any prospect of sales to Atlantic dealers. Wholesale TBA dealers representing other tire manufacturers, for example United States Rubber Company, Lee Rubber and Tire Corporation, and Mansfield Tire and Rubber Company testified to their inability to sell tires to Atlantic service station dealers, except up an occasional "pick-up" basis when a motorist demands a tire brand other than the locally-sponsored offering available at the station.

Battery manufacturers and certain accessory suppliers are, if possible, even more severely disadvantaged by the sales commission system than are tire companies competing with Firestone and Goodyear. Local wholesale distributors of Exide, Willard, Bowers and other brands of batteries testified to their inability to sell batteries to Atlantic stations except upon a pick-up basis. The most shocking feature of the sales commission system as to batteries, however, is the fact that the sales commission contracts with Atlantic enable Goodyear and Firestone to exclude *their own suppliers of batteries* from the wholesale and retail markets represented by Atlantic service station outlets. For the evidence of record indicates that Goodyear and Firestone both refused to execute sales agreements relating only to tires and tubes, but insisted that it include *all* TBA items sold by them or none. An analogous situation exists as to certain accessory products,

for example, "Mac's" brand of polishes, waxes, and cleaners.

Moreover, as one of the chief characteristics of the sales commission plan is that it strengthens wholesale distributors of Goodyear and Firestone by pre-empting for their benefit a substantial segment of all of the various local wholesale TBA markets in Atlantic's marketing area, 1506 the sales commission system stands as a bar to the *expansion* by smaller TBA manufacturers of their own distributive organizations. As respondents concede, a substantial proportion of all replacement TBA items sold to motorists are accounted for by service stations and "service stations, . . . constitute a large and increasingly important market" for TBA products. Thus, the competitive dislocations engendered by the sales commission plan at the wholesale level extend backward to the manufacturing level.

Finally, the unfair competitive advantages resulting from the sales commission plan are not confined to the manufacturing and wholesale levels—they extend forward to the retail level as well. Many of the wholesalers who testified in this proceeding *also* sell at retail, directly to motorists. To the extent, therefore, that suppliers of TBA competing with distributors of Goodyear and Firestone at the wholesale level are weakened by the operation of the sales commission system, the dealers are also weakened at the retail level, in instances where they are engaged in retail as well as wholesale operations.

Counsel for Atlantic contend, however, that no competitive consequences attend the sales commission plan which did not characterize the purchase-resale program employed by Atlantic prior to 1951. This point deserves consideration since it implies that no useful purpose would be served by outlawing the sales commission plan between Goodyear and Atlantic as Atlantic would merely return

to the purchase-resale method of distributing TBA, with the result that Goodyear and Firestone dealers would lose a substantial volume of sales, but without improving the lot of competing TBA suppliers as they would still be unable to sell TBA to Atlantic dealers. We believe this argument to be without merit for several reasons.

First of all, what course of action Atlantic may follow with respect to TBA if the sales commission plan is outlawed is entirely speculative. Assuming for the moment, however, that Atlantic will return to the purchase-resale plan and flout the antitrust laws by requiring its dealers to handle Atlantic TBA exclusively, or even substan-
1507 tially,[15] it is obvious that local wholesalers of TBA competing with Firestone and Goodyear dealers in Atlantic's marketing area will at least no longer be laboring under the handicap of their competitors representing Firestone and Goodyear having already pre-empted a substantial share of the local wholesale TBA market. As the situation stands under the sales commission plan, local dealers representing Firestone and Goodyear are assured of a substantial chunk of the market before the competitive race at the wholesale level even begins (See Table V., supra). Abolition of the sales commission system will at least terminate the unjust advantage presently enjoyed by distributors of Firestone and Goodyear over local competitors representing other tire manufacturers and TBA suppliers.

Not only do the competitive effects of the sales commission plan differ from those of the purchase-resale plan at the wholesale level, but at the manufacturing level as well. When Atlantic was considering changing from the purchase and resale of Lee tires and Exide batteries to some

15. Cf., *Standard Oil Co.* v. *United States*, 337 U. S. 293 (1949); *Northern Pac. Ry. Co.* v. *United States, supra; Osborn* v. *Sinclair Refining Co., supra; United States* v. *Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959).

other method of merchandising TBA, it contacted several of the larger tire and rubber companies, including Goodyear, Firestone, The B. F. Goodrich Company, United States Rubber Company and General Tire and Rubber Company inquiring "'. . . what interest you may have in the sale of your tires and tubes through Atlantic accounts.'" Propositions were requested not only as to principal brands of these manufacturers, but as to secondary brands controlled by them and private brands as well. At the same time, Atlantic also contacted Mansfield Tire and Rubber Company and Lee Rubber and Tire Corporation soliciting proposals from them to furnish a private brand tire to Atlantic. This suggests that the smaller tire companies are able to compete with their smaller competitors in selling tires to oil company accounts on a purchase and resale basis. The evidence also shows, however, that the smaller tire companies are unable to compete with larger tire manufacturers for the business of oil companies using the sales commission plan because the smaller tire companies lack distribution facilities which blanket the entire sales area of a major marketing oil company desiring to adopt the sales commission plan. This was established by the testimony of Vice-President Colley of Atlantic, who appeared as a witness on behalf of this respondent.

A major oil company's decision to adopt the sales commission method of distributing TBA thus inaugurates a vicious cycle of injurious competitive effects: smaller
1508 tire and rubber companies are unable to compete in the first instance for the business of the oil company desiring to adopt a sales commission plan because they lack widespread distribution facilities at the wholesale and resale levels; and yet the operation of the sales commission plan stands as a bar to future expansion of the smaller tire companies' distributive systems since they are thereby foreclosed from a substantial segment of the wholesale and

retail market after the oil company has adopted a sales commission plan offered by a larger tire company.

We believe that the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution). Other anticompetitive effects of the sales commission system are so obvious that they require no detailed consideration. The public suffers because it cannot rely upon competitive rivalry among local TBA wholesalers to insure that service station outlets will be able to obtain price savings which may be passed along to consumers. And, too, the system prevents the service station operator himself from using his buying power to further his own business advantage instead of that of his oil company supplier. As the Court of Appeals said in its recent Osborn decision, in a situation identical in its essentials with the present case, insofar as the service station dealer is concerned:

> "Because of its financial interest in having its lessee-dealers sell Goodyear TBA rather than competing brands, Sherwood-Sinclair engaged in a course of conduct designed to bring about this result. The facts in this case utterly fail to reveal any business motive for the defendant's policy that its dealers should handle Goodyear products instead of others. Admittedly, it was proper for Sinclair-Sherwood to desire its lessees to carry a complete, high-quality line of TBA. It is conceded, however, that there are other competing brands, and there is no suggestion that Goodyear was superior to the other brands of TBA, or that there was any benefit to the dealers in handling Goodyear rather than one of the other lines."

1509 Several additional points are raised by Atlantic, but we believe only one of these requires detailed consideration in this opinion. Respondent contends that it was error, violative of due process of law, for the same

hearing examiner to have presided over and rendered initial decisions in both this case and in Docket 6487, The Firestone Tire & Rubber Company and Shell Oil Company. The crux of the contention seems to be that the hearing examiner could not possibly have rendered his initial decision in this case solely upon the basis of the record of the instant proceeding, since he also heard testimony and received evidence involving Atlantic's sales commission plan with Firestone in Docket 6487. As respondent puts it, "While Atlantic has the utmost respect for the Hearing Examiner's integrity and ability, Atlantic submits that he could not humanly exclude from consideration his impression of the witnesses' demeanor and credibility in the Firestone-Shell proceedings and that his decision against Atlantic based on impressions gained in those other proceedings is a violation of due process."

Our study of the initial decision and of the record in this case indicates that there is no basis for the claim that the hearing examiner considered extra-record evidence in making his findings of fact and conclusions of law. Substantial evidence is present in the record of this case to support every finding of fact and conclusion of law by the hearing examiner. In any event, our own independent study of the record herein is the basis for the findings of fact and conclusions of law set forth in this opinion.

Conclusion.

Other exceptions of respondents Atlantic and Goodyear have been considered and rejected. The appeal of respondent Atlantic is denied. The appeal of counsel supporting the complaint is granted in part and denied in part. The initial decision, to the extent that it is contrary to the views expressed in this opinion, will be modified to conform with such views. An appropriate order will be entered.

March 9, 1961.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

The Goodyear Tire & Rubber Company, *Petitioner,*
vs.
Federal Trade Commission, *Respondent.*
No. 13339.

PETITION TO REVIEW AND SET ASIDE ORDER OF THE FEDERAL TRADE COMMISSION.

To the Honorable Judges of the Court of Appeals for the Seventh Circuit:

Petitioner The Goodyear Tire & Rubber Company, a corporation, pursuant to Section 5(c) of the Federal Trade Commission Act (15 U. S. C. 45), respectfully requests this Court to review and set aside an order and decision of the Federal Trade Commission, respondent herein, entered In the Matter of The Goodyear Tire & Rubber Company, a corporation, and The Atlantic Refining Company, a corporation, Federal Trade Commission Docket No. 6486, and respectfully shows:

I.

Jurisdiction and Venue.

Petitioner is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business located in the City of Akron, Ohio. This proceeding is brought by petitioner under Section 5(c) of the Federal Trade Commission Act (15 U. S. C. 45) to review and set aside the aforesaid order of the Federal Trade Commission. The venue is based upon the

provision of that section permitting any person, partnership or corporation required by an order of the Federal Trade Commission to cease and desist, to obtain judicial review by filing a written petition with the court of appeals of the United States within any circuit where the method of competition or the act or practice in question was used or where such person, partnership or corporation resides or carries on business. Petitioner carries on business in Illinois, Indiana and Wisconsin and has district offices and retail outlets within this area.

II.

A Concise Statement of the Nature of the Proceedings.

On or about January 11, 1956 the Federal Trade Commission issued its original complaint against petitioner and The Atlantic Refining Company. On May 22, 1956 the complaint was amended by adding The Goodyear Tire & Rubber Company, Inc., a wholly-owned subsidiary of respondent The Goodyear Tire & Rubber Company, as a party respondent. (Since the date of this amendment The Goodyear Tire & Rubber Company, Inc. has been merged into its parent company.)

The amended complaint alleged that the operation of a so-called sales commission arrangement for marketing tires, batteries and automobile accessories (TBA) in effect between petitioner and Atlantic under which petitioner paid Atlantic a commission for promoting the sale of petitioner's TBA products to petroleum outlets of Atlantic, violated Section 5 of the Federal Trade Commission Act. In addition, petitioner is charged with having entered into substantially similar arrangements with the Shell Oil Company and with other unnamed oil companies not parties to the proceeding, and Atlantic is charged with having entered into a substantially similar arrangement with The Fire-

stone Tire & Rubber Company which was not a party to the proceeding. It was claimed that all such agreements, and the acts and practices of Atlantic and petitioner thereunder, constituted unfair methods of competition and unfair acts and practices within the intent and meaning of the Act. The complaint did not allege a conspiracy but in essence charged that the various agreements were illegal because of the control which Atlantic and which the various non-respondent oil companies having agreements with petitioner exercised over service stations and distributors selling their respective petroleum products.

On or about July 6, 1956 petitioner filed its answer to the amended complaint in which it acknowledged that it had entered into a sales commission contract with Atlantic and that it had entered into sales commission agreements with oil companies other than Atlantic, but in which it denied that it had violated the Federal Trade Commission Act and in which it affirmatively pleaded inter alia that the sales commission plan is a practical, efficient and inexpensive method of distribution of TBA products to motorists and that it is a legitimate and competitive method of marketing which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

Between the latter part of 1956 and November 1958 hearings were held in Washington, D. C., Philadelphia, Pennsylvania, Wilmington, Delaware and Baltimore, Maryland before Hearing Examiner Earl J. Kolb. On October 23, 1959 the Hearing Examiner filed his Initial Decision dismissing the complaint as to petitioner but concluding that Atlantic had coerced a substantial number of its dealers into purchasing sponsored TBA. The Hearing Examiner entered an order against Atlantic prohibiting future acts of coercion.

Both counsel supporting the complaint and Atlantic ap-

pealed from the Hearing Examiner's Initial Decision and Order. Petitioner filed a reply to the appeal brief of counsel supporting the complaint. On June 23, 1960 oral argument was had before the Federal Trade Commission with one of the five Commissioners not participating. The opinion of the Commission dated March 9, 1961 denied the appeal of Atlantic and granted in part and denied in part the appeal of counsel supporting the complaint. The Commission thereupon issued a final order which, among other things, directs Atlantic to cease and desist from entering into any contract, agreement or combination, express or implied, with petitioner or with any other rubber company or tire manufacturer or any other supplier of tires, batteries and/or accessories whereby Atlantic receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Atlantic petroleum products by any marketer or distributor of TBA products other than Atlantic.

With respect to petitioner, the Hearing Examiner's Initial Decision dismissing the complaint was reversed and petitioner was enjoined, among other things, from having sales commission arrangements with Atlantic or with any other marketing oil companies.

The order entered by the Federal Trade Commission with respect to petitioner provides as follows:

> "It Is Further Ordered that respondents The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company; Inc. (hereinafter collectively referred to as 'Goodyear'), corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as 'TBA products') in commerce, as 'commerce' is defined in the Federal Trade Commission Act,

do forthwith cease and desist from, directly or indirectly:

"1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Atlantic Refining Company or with any other marketing oil company whereby Goodyear, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;

"2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Atlantic Refining Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;

"3. Reporting or participating in the reporting to The Atlantic Refining Company or any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company."

Said order further provides that the petitioner shall, within sixty days after service of said order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with said order.

III.

Grounds for Relief.

The grounds on which relief is sought are:

1. The Commission has erred in concluding that petitioner has violated Section 5 of the Federal Trade Commission Act.

2. The Commission has failed to state adequately its findings as to the facts as required by said statute and by the Administrative Procedure Act.

3. Such findings and conclusions as the Commission has made are not supported by the evidence.

4. Among the statements made in the Commission's opinion which are not supported by the evidence and which may or may not constitute findings of fact or conclusions of law are statements to the effect:

(a) that the sales commission contract between respondent Atlantic and petitioner has unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels;

(b) that respondent Atlantic has coerced a substantial number of its dealers to purchase substantial quantities of sponsored TBA through threats of lease cancellation or other retaliatory action;

(c) that respondent Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics;

(d) that respondent Atlantic has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gasoline distribution facilities, to cause its dealers to purchase substantial amounts of TBA;

(e) that petitioner's agreements with non-respondent oil companies are in all material respects identical with the sales commission contract between petitioner and respondent Atlantic;

(f) that non-respondent oil companies have employed coercive tactics in requiring their dealers to purchase petitioner's TBA products;

(g) that competition between petitioner and non-respondent Firestone has been eliminated as a result of these companies' sales commission contracts with respondent Atlantic;

(h) that competition among petitioner's wholesalers for the business of respondent Atlantic's accounts has been eliminated through the assignment of each Atlantic account to a designated supply point;

(i) that there has been an anticompetitive allocation of customers by petitioner among its wholesale distributors handling the petroleum products of respondent Atlantic or the petroleum products of non-respondent companies;

(j) that petitioner refused to execute sales agreements relating only to tires and tubes but insisted that such agreements include all TBA items sold by petitioner or none;

(k) that smaller tire companies are unable to compete with larger tire manufacturers for the business of oil companies using the sales commission plan because the smaller tire companies lack distribution facilities or for any other reason.

5. The inferences drawn by the Commission based upon the facts of record are erroneous in fact and in law.

6. There is insufficient evidence from which the Commission can lawfully conclude that the sales commission

contract between petitioner and respondent Atlantic, or that anything petitioner has done pursuant to said contract, constitutes unfair methods of competition or unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

7. The Commission's interpretation and application of Section 5 of the Federal Trade Commission Act is contrary to the intent of Congress as expressed in the legislative history and is contrary to the general public interest and to prior judicial decisions.

8. Mecause of the manner in which this case and two companion cases (Docket No. 6485 and Docket No. 6487) were heard contemporaneously by a single Hearing Examiner, the Commission in this proceeding has deprived petitioner of its rights to a fair hearing and has denied petitioner its rights to procedural due process under the Constitution and the Administrative Procedure Act.

9. The order of the Commission is not warranted by the facts, is not supported by adequate findings, is arbitrary and exceeds the jurisdiction of the Commission.

10. The Commission's order discriminates against petitioner and violates the Fifth Amendment of the Constitution in that it arbitrarily denies petitioner the opportunity for competing for business and thereby deprives it of valuable property rights without due process of law.

IV.

Relief Prayed.

Wherefore, petitioner respectfully prays that this Court review the aforesaid proceedings and the order to cease and desist entered thereon, and set aside said findings, conclusions and order, as well as direct the Commission to dismiss its complaint against petitioner and to award such further or alternative relief as may seem just and proper to the Court.

Dated: May 10, 1961.

Respectfully submitted,
Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
Mathis F. Correa,
80 Pine Street,
New York 5, New York,
Attorneys for The Goodyear Tire & Rubber Company.

1 BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—6486) *

Room 332
Federal Trade Commission Bldg.
Washington, D.C.
Tuesday, October 30, 1956

Met, pursuant to agreement, at 1:00 p.m.

Before: Earl J. Kolb, Hearing Examiner.

Appearances:

James S. Kelaher, William J. Boyd, Jr., and Peter J. Dias, Attorneys for the Federal Trade Commission.

Thomas C. Mason, and David Ingraham, Attorneys for the Respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire and Rubber Company, Inc., Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York, N.Y.

Frederic L. Ballard, Jr., and Joseph K. Gordon, of Ballard, Spahr, Andrews & Ingersoll, attorneys for the Respondent, The Atlantic Refining Company, 1035 Land Title Building, Philadelphia 10, Penna.

2 PROCEEDINGS.

Hearing Examiner Kolb: This is the initial hearing in the matter of Goodyear Tire and Rubber Company and the Atlantic Refining Company, Docket 6486.

Mr. Kelaher: Mr. Examiner, to bring this matter up to date, I would like the record to show that pre-trial conferences were held on September 17, 1956, October 29, 1956 and the morning of October 30, 1956.

During the course of these pre-trial conferences and also as a result of informal discussions between counsel for the Respondents and counsel in support of the complaint, we have materially reduced the testimony to be adduced by counsel supporting the complaint.

During the course of the conferences and informal discussions we discussed three topics in general: (1) admissions (2) documents to be submitted by counsel in support of the complaint, and (3) possible stipulations as to the facts.

I would like to take this opportunity to commend the spirit with which counsel for the Respondents entered into these discussions. They have been very cooperative.

As the first order of business, I would like to hand to your Honor a copy of joint admissions of the Goodyear Tire and Rubber Company, the Goodyear Tire and Rubber Company, Inc., and the Atlantic Refining Company (handing) covering paragraphs 1 through 8 of the complaint as amended.

Hearing Examiner Kolb: Do you wish this to be read into the record and copied by the reporter?

Mr. Kelaher: Yes, your Honor.

Mr. Mason: No objection.

Mr. Ingraham: No objection.

Hearing Examiner Kolb: Will you copy this into the record, please?

(The document referred to is as follows:

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

Admissions of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., The Atlantic Refining Company.

The Goodyear Tire & Rubber Company (hereinafter referred to as "Goodyear"), The Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as "Goodyear, Inc.") and The Atlantic Refining Company (hereinafter referred to as "Atlantic"), make the admissions set forth below solely for the purpose of this proceeding and for no other action, case or proceeding. The making of
4 these admissions is not a concession that the facts so admitted are relevant or material to this proceeding or that they establish a cause of action or basis for a proceeding under Section 5 of the Federal Trade Commission Act. Insofar as the admissions cover matters as to which any respondent denied knowledge in its answer, such respondent makes these admissions in reliance on the admissions of the other respondents.

1. Goodyear is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear operates its business directly and does business with several subsidiaries.

Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal offices and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear Inc., is a wholly-owned subsidiary of Goodyear and sells products of Goodyear. Some of the principal officers of Good-

year are also officers of Goodyear, Inc. and the two companies share the same principal office and place of business.

Atlantic is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at
5 260 South Broad Street, Philadelphia, Pennsylvania.

2. Goodyear is the largest manufacturer of rubber products in the United States, manufacturing a variety of rubber and associated products, including tires and inner tubes. The total net sales of Goodyear made directly and through its subsidiaries were more than one billion dollars in 1954.

Goodyear, Inc. sells various products manufactured by Goodyear, including tires and inner tubes. It also purchases for resale and distribution automotive batteries, parts and accessories and other items referred to by Goodyear as Car and Home Merchandise. Said products are sold directly to the consuming public by approximately 500 company-owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various states of the United States.

Automotive tires, inner tubes and batteries and certain automotive parts, accessories and supplies are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories.)

3. Atlantic is a large producer and distributor of petroleum products. Directly or through its wholly-owned or controlled subsidiaries, Atlantic is engaged in substantially all branches of the petroleum industry. It produces
6 crude oil from its wells, cracks and refines gasoline and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum retail dealers, some of whom operate service stations, and petroleum wholesalers (hereinafter referred to as "distribu-

tors"). In 1954 its sales and operating revenue totalled more than one-half billion dollars. In certain cases, under a written contract (as amended) with Goodyear, Inc., Atlantic promotes the sale of certain TBA products and certain Car and Home Merchandise sold by Goodyear, Inc.

4. In the course and conduct of their businesses, Goodyear and Goodyear, Inc. ship certain products, including TBA products, or cause them to be shipped from the states in which said products are manufactured or warehoused to purchasers thereof located in other states of the United States and the District of Columbia.

In the course and conduct of its business, Atlantic ships some of its petroleum products from the states in which such products are manufactured, refined, stored or warehoused to terminals, ~~milk~~ bulk plants, or bulk storage located in other states for the purpose of sale and distribution to resellers and consumers in such other states.

5. Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and, as hereinafter more fully described, Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. Goodyear, Inc. sells TBA products directly and through wholesalers to many classes of customers, including service station operators who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They have constituted an increasingly important market for TBA products at the present time.

Atlantic sells its petroleum products to more than 5,600 retail dealers, a substantial unmber of whom operate service stations, and to distributors who in turn sell said products to more than 2,800 retail dealers, a substantial

number of whom operate service stations. In addition to petroleum products, a substantial number of the dealers sell TBA products.

7. Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to certain TBA products and certain Car and Home Merchandise, as to the terms of which reference is made to the contract itself and to the various amendments thereto. Atlantic has alsa entered into a contract containing generally similar terms with the Firestone Tire and Rubber Company (here-
8 inafter referred to as "Firestone"). The respondents reserve the right to move to strike from the record this and all other references to Firestone contained herein and to object to the admission in evidence of any other testimony relating to Firestone.

There are a large number of dealers and distributors who sell principally Atlantic petroleum products. Under its sales commission contracts with Goodyear, Inc. and Firestone, Atlantic recommends, urges and endeavors to persuade some of these dealers and distributors in specified areas to purchase the products to which the aforesaid sales commission contracts relate and receives sales commissions in return for such services. Such urging, recommendation and persuasion is a factor which, with many other factors, causes some of these dealers and distributors to make purchases of products covered by the contracts. The dealers and distributors do not receive any part of commissions paid under the contracts.

The dealers and distributors selling the petroleum products of Atlantic operate as independently owned business enterprises. Atlantic has various contractual arrangements with said dealers and distributors as to which arrangements reference is made to the contracts themselves.

8. Goodyear, Inc. has sold TBA products and certain

Car and Home Merchandise to dealers and distributors
9 selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales. Goodyear, Inc. made sales covered by its agreement with Atlantic, amounting to $2,445,808 in 1951 and $4,175,890 in 1952, on which it paid Atlantic commissions of $239,250 and $411,743 respectively.

Firestone reported sales covered by its agreement with Atlantic amounting to $3,809,843 in its fiscal year 1952 and $4,796,304 in its fiscal year 1953, on which it paid Atlantic commissions of $354,354 and $446,286 respectively.

Mr. Kelaher: The second subject I would like to discuss relates to the documents to be marked for identification as submitted by counsel in support of the complaint. During the pre-trial conference yesterday and this morning, we prepared a list of identification numbers and descriptions of such documents and we move that that be incorporated into the record at this time.

I would like to call your Honor's attention to the fact that the first portion of that list has been transcribed and is now available, and the second portion of the list should be available for introduction into the record before this hearing is adjourned this afternoon.

I would also like to call your Honor's attention to
10 the fact that this list of documents and Commission exhibits for identification numbers has not been checked and is being offered subject to verification and possible minor changes in the descriptions.

Hearing Examiner Kolb: This does not show the items objected to or not objected to.

Mr. Kelaher: I was coming to that, Your Honor. I will now list the items broken down into the various categories.

Hearing Examiner Kolb: First I suppose we better have

the reporter mark the exhibits as directed in the pre-trial conference document, which will be copied into this present record to show the identification of the exhibits.

Mr. Mason: That is agreeable.

Mr. Ballard: Yes.

The documents referred to and identified in pre-trial conference this date were marked as Commission's exhibits for identification as follows:

Cxid	Description.
1-A through C	Letter dated January 19, 1948, from J. S. Parks, Purchasing Agent, ARCo, to S. A. Gaylord, Goodyear, Inc., with attachment.
2	Letter dated February 27, 1948, from S. A. Gaylord, Manager Petroleum Sales Department, Goodyear, Inc., to J. S. Parks, ARCo.
11 3	Letter dated March 29, 1948, from J. S. Parks, ARCo, to S. A. Gaylord, Goodyear, Inc.
4-A and B	Letter dated May 4, 1949, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.
5-A and B	Memo dated August 29, 1949, from S. A. Gaylord, Goodyear, Inc., to Mayl, Holt, Osmun, Metzger, Harper, Cameron, Harrah, and Gaylord, re "Atlantic Refining."
6	Letter dated May 23, 1950, from S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Company, enclosing Exhibit CXID 7.
7	Letter dated 5-23-50, from S. J. Heideman, ARCo, to E. R. Cox, et al., ARCo, enclosed with CXID 6.
8-A and B	Letter dated May 25, 1950, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.
9-A through E	Document undated and unsigned, the opening words of which are "Here, then, are the important reasons for the company's preference for the Goodyear program:"

10-A through E Memo dated May 31, 1950, unsigned entitled: "Atlantic Refining Co.—Sales Commission."

12 11-A and B Undated, unsigned memorandum entitled "Goodyear-Atlantic Program Experimental."

12 Letter dated 6-12-50, from A. R. Sanborn, ARCo, to Atlantic dealers and petroleum distributors in Newark district.

13-A through E Letter contract dated June 1, 1950, from Goodyear, Inc., to ARCo, with Exhibit A attached.

14 Letter dated July 5, 1950, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.

15-A and B Memo dated August 2, 1950, from Gaylord, Goodyear, to L. W. Baker, Assistant Counsel, Goodyear, entitled "Atlantic Refining Co."

16-A and B Letter dated April 3, 1951, from D. T. Colley, V. P., ARCo, to Victor Holt, Jr., V. P., Goodyear Co., with acceptance by Goodyear, Inc.

17-A and B Letter dated June 16, 1950, from S. A. Gaylord to S. J. Heideman, ARCo.

18-A and B Intra-company memo dated July 25, 1950, from J. W. Basista, Goodyear, to S. A. Gaylord, copies to Holt, et al. Subject: "Atlantic Refining Company, Newark District."

19 Letter dated November 2, 1950, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.

13 20-A and B Letter dated 6-29-50, S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.

21 Letter dated 7-1-50, S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co.

22-A and B Letter dated 1-23-51, J. W. Basista, Goodyear, Inc., to S. J. Heideman, ARCo.

23-A and B Memorandum by S. A. Gaylord, undated, entitled "Oil Company Sales Material 1950 Advance Information—Details to Follow."

24-A through G "Confidential" memo from S. A. Gaylord, Goodyear, Inc., to seven district managers re "Atlantic Refining Company."

25 Document entitled "Proposed Outline of Meeting, Atlantic-Goodyear sales organization meeting."

26 Document entitled "Suggested Atlantic-Goodyear Introductory Dealer Meeting."

27 Document entitled "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline."

28-A and B Document entitled "The Atlantic Refining Company Sales Personnel, Territory Assigned to Goodyear."

14 29 Document entitled "Sample of Atlantic Letter to Dealers, etc."

30 Document entitled "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials."

31 Document entitled "Goodyear Introductory Package for Atlantic Dealers."

32 Inter-Office Communication dated February 28, 1951, from W. E. Blank, Battery Sales, (Sales Manager, Replacement Sales, Auto-Lite Battery Corporation.) to L. A. Knight, of Auto-Lite copy to J. C. Thomas, Goodyear.

33 Memo dated March 12, 1951, from G. L. Wright, Goodyear to District Operating Managers. Subject: "Atlantic-Lee Adjustments."

34-A through D Letter dated March 12, 1951, from H. E. Ammerman, Goodyear, Inc., to six District Service Representatives. Subject: "Atlantic Refining Company", with enclosure.

35 Letter dated May 1, 1951, from S. A. Gaylord Goodyear, Inc., to S. J. Heideman, ARCo. Subject: Schrader inventory.

36 Letter dated May 7, 1951, from W. C. Hoffman, ARCo, to S. A. Gaylord, Goodyear, Inc. Subject: Schrader inventory.

15 37 Letter dated May 28, 1951, from S. J. Heideman ARCo to S. A. Gaylord, Goodyear. Subject: "Goodyear Program Exide Battery Adjustments."

38 Letter dated June 1, 1951, from S. A. Gaylord, Goodyear, to S. J. Heideman, ARCo.

39 Document dated March 1, 1951, entitled "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries."

40-A and B Letter dated 2-9-51, from S. J. Heideman, ARCo, to J. E. Mayl, Goodyear Co., with enclosure. Pencilled notation on margin of enclosure.

41-A through E Goodyear, Inc., Form G-1209, original and three copies, including descriptive note.

42-A and B Goodyear, Inc., form G-1204 (1-51), including descriptive note.

43-A and B Goodyear, Inc., Form G-1201 (1-50), including descriptive note.

44-A and B Goodyear, Inc., Form G-1208 (1-51), including descriptive note.

45-A and B Goodyear, Inc., Form B-80 (6-50), including descriptive note.

46-A and B Goodyear, Inc., inter-office letter dated
16 3-7-51, S. A. Gaylord to J. E. Mayl. Subject: "Atlantic Refining Co., Philadelphia."

47-A and B Letter dated 4-26-51, J. P. Miller, ARCo, to R. S. Zinn, Wilmington, Delaware, et al. Subject: "Tire Adjustments—Atlantic-Lee Road Hazard Guaranty."

48-A through F Pages 2-5 of ARCo document entitled "Goodyear TBA Bulletin #22," dated 6-29-51, including transmittal note, W. C. Hoffman, ARCo, to S. A. Gaylord, Goodyear. The fifth page of this exhibit is entitled "The Atlantic Refining Company Progress through June 25, 1951."

49 Letter of 7-31-51, from S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co. Subject Goodyear Program.

50-A and B Letter dated 8-6-51, S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo. Subject: Major Home Appliances.

51 Letter dated 8-7-51, from J. O'Neill, Goodyear, Inc., to S. J. Heideman, ARCo.

52-A and B Goodyear tabulation entitled "Summary of Sales and Commissions covered by the Sale Commission Plan—Atlantic Refining Company."

17 53 Goodyear tabulation entitled "Summary of Sales and Commissions covered by the Sales Commission Plan," listing eight oil companies.

54 Goodyear tabulation entitled "Dollar Volume of Sales to Atlantic Accounts upon which Commissions were paid and amounts of such commissions, 1951, 1952, and the first six months of 1953."

55 Goodyear tabulation showing names of 13 oil companies with which Goodyear, Inc., had Commission arrangements, et cetera.

56 Memo dated August 3, 1951, from F. W. McConky, Jr., Goodyear, to S. A. Gaylord, Subject: "Republic Oil Co."

57 Letter dated August 9, 1951, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo. Subject: "Republic Oil Company."

58 Letter dated August 14, 1951, from S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co. Subject: "Republic Oil Company."

59-A through E Letter contract dated January 1, 1950, from Goodyear, Inc., to Shell Oil Company, New York, New York, enclosing Exhibit A.

18 60-A through C Goodyear intra-company memo dated November 6, 1951, from R. G. Miller, to J. A. Bailey, Subject: "The Shamrock Oil & Gas Corporation, Amarillo, Texas."

61-A through G Document entitled "Outline of Discussion, The Shamrock Oil & Gas Corporation," dated November 27, 1951.

62-A through E Letter contract dated March 11, 1952, from Goodyear, Inc., to The Shamrock Oil and Gas Corporation, with Exhibit A.

63 Letter dated August 29, 1952, from Leo J. Wilmeth, Shamrock, to R. G. Miller, Goodyear.

64-A through E Letter contract dated September 5, 1952, Goodyear, Inc., to Carter Oil Company, Denver, Colorado, with Exhibit A attached.

65-A through C Intra-company memo dated September 5, 1952, from S. A. Gaylord, Goodyear, Inc., to certain named Goodyear personnel. Subject: "The Carter Oil Company."

66-A through L Copy of the "Carter Dealer", Special Goodyear Edition, December, 1952, published by Carter Oil Company.

19 67-A and B Unsigned letter contract, 7-14-37, between Goodyear, Inc. (R. S. Wilson) and Sherwood Brothers, Inc.

68-A and B Letter contract, 3-1-44, between Goodyear, Inc., and Sherwood Brothers, Incorporated, Baltimore, Md.

69-A through C Letter contract, 9-25-44, between Goodyear, Inc., and Sinclair Refining Company, New York, N. Y.

70-A through C Amendment of 10-1-47 to agreement of 9-25-44 between Goodyear, Inc., and Sinclair Refining Company.

71-A through D Letter agreement, 5-1-52, Goodyear, Inc., with Mid-Continent Petroleum Corp., Tulsa, Oklahoma, with Exhibit A attached.

72 Letter 1-15-52, Victor Holt, Jr., Goodyear, Inc., to T. E. Fitzgerald, Mid-Continent Petroleum Corporation.

73-A and B Letters 6-20-53, C. R. Mitchell, Goodyear, Inc., to W. J. Wixson, Mid-Continent Petroleum Corp. Subject: "Mid-Continent-Goodyear, TBA Program."

74-A through D Letter agreement, 6-19-52, Goodyear, Inc., with the Frontier Refining Company, Denver,
20 Colorado, with Exhibit A attached.

75-A and B Goodyear, Inc., intra-company letter, 6-12-52, from J. W. Basista to C. W. Thorp. Subject: "The Frontier Refining Company."

76 Letter, 3-5-53, from J. W. Basista, Goodyear, Inc., to Claude A. Weber, The Frontier Refining Company.

77-A through D Letter agreement, 1-1-53, Goodyear, Inc., with Quaker State Oil Refining Corp., Sterling Oil Division, St. Mary's, West Virginia, with Exhibit A attached.

78-A and B Unsigned and undated memorandum entitled "Carter Oil Company TBA Sales Potential."

79 Reserved.

80 Reserved.

81-A through F Organization charts dated 5-3-49, 6-27-52, 2-12-54, 11-16-54, 11-4-55, and 9-15-56, for ARCo Domestic Sales Department.

82-A through C Outline maps of ARCo marketing regions —Philadelphia—New Jersey Region, New York Region; New England Region.

83-A through C Outline maps ARCo Marketing Regions—Western Pennsylvania Region; Eastern Pennsylvania Region; Southern Region.

21 84-A through C Description of ARCo Domestic Marketing Regions and customer classifications, dated 8-21-52, with attachment.

85-A and B ARCo lease Form B-3191, 6/49.

86-A and B ARCo lease Form B-3191, 4-52.

87 ARCo Form B-3191B, 4-52, entitled "Atlantic Franchise Agreement."

88 ARCo Form B-3191-A, 12/48, entitled "Equipment and Apparatus Inventory—Class 2 Station."

89 ARCo agreement Form B-3194, 10/50.

90-A and B ARCo agreement Form B-3107A, 11-50.

91 ARCo Agreement Form B 3105, 10-50.

92-A and B ARCo Agreement Form B 3121, 2-51.

93-A through C ARCo "Commission Agreement" Form 1951.

94-A through D ARCo "Commission Dealer Agreement" Form (undated).

95-A through C ARCo Form B 3143, 4-52, entitled "Authorized Distributor's Agreement."

96 ARCo Agreement Form B 3119, 10-50, entitled "Authorized Distributors Agreement."

97 ARCo Form B-42, 6/50, entitled "Loaned Equipment Contract."

98-A through G ARCo contract form containing the
22 following introductory clause in Paragraph 1. "Atlantic hereby constitutes Distributor a representative solely for the purpose of . . ."

99 Form of letter dated 1-19-48, J. S. Parks, ARCo, addressed separately to Goodyear Tire & Rubber Co., U. S. Rubber Co., B. F. Goodrich Co., Firestone Tire & Rubber Co., and General Tire & Rubber Co.

100-A through C Memo of 8-24-48, S. J. Heideman. Subject: "Firestone Line."

101-A through Z-20 Document entitled "T. B. A. Study", dated May, 1949, Sales Research Section, the Atlantic Refining Co.

102-A through D Memo dated 8-22-49, K. M. Ford, ARCo, to T. E. Kelly, ARCo, with attachment entitled "Marketing Alternatives." And inter-office memorandum dated 8-24-49, from T. E. Kelly to D. T. Colley: Re: "TBA Marketing."

103 Letter 1-10-50, F. M. Neall, ARCo, to G. V. Ostrander, ARCo. Re: "TBA, Firestone Tire & Rubber Company."

104-A through C Letter Contract dated 3-30-1950, H. D. Tompkins, Firestone, to D. T. Colley, ARCo.

23 105-A and B Letter Amendment dated 1-12-54, H. D. Tompkins, Firestone, to D. T. Colley, ARCo, amending the contract dated 3-30-50.

106-A and B Letter dated 4-20-51, D. T. Colley, ARCo, to H. D. Tompkins, Firestone, extending territorial area of letter agreement dated 3-30-50.

107 ARCo inter-office letter dated 2-27-50, from F. M. Neall to D. T. Colley, re: "Firestone Tire & Rubber Company."

108-A through J Unsigned document dated 3-17-50 entitled "Presentation to Atlantic Personnel in Connection with the Introduction of the Firestone Commission Plan."

109-A through I Document entitled "Report on Meeting for the Discussion of the Firestone Commission Plan" referring to meeting March 17, Friday.

110 ARCo inter-office letter dated 3-21-50 to G. H. Milligan, subject: "TBA Firestone Commission Plan."

111 ARCo intra-company letter dated 4-11-50 to W. J. Griffiths, subject: "TBA Firestone."

112 Unsigned memo dated 4-20-50 entitled "Plan for
24 Handling Adjustments for Atlantic Dealers on Lee Tires to be Replaced with Firestone Tires."

113 Unsigned memo dated 4-20-50 entitled "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries."

114-A through D ARCo memo dated 5-11-50 by G. H. Milligan, re: "TBA Firestone Commission Plan District Office Accounting Procedure."

115 Supplemental memo dated 7-3-50 entitled "TBA Firestone Commission Plan District Office Accounting Procedure."

116-A and B Letter dated 9-29-50, G. M. Elliot, Firestone, to S. J. Heideman, ARCo, with attachment.

117 Unsigned, undated document entitled "Firestone Commission Plan Checklist."

118-A and B ARCo inter-office letter dated 3-13-50 addressed to B. M. Boor, et al, re: "TBA Firestone Commission Plan for Erie, Pennsylvania District, Newark, N. J., District, Wilmington, Delaware, District."

119-A and B ARCo inter-office letter dated 3-17-50 from S. J. Heideman to D. T. Colley re: "Firestone Program."

120 ARCo intra-company letter dated 7-26-50 addressed to B. M. Boor, et al, re: "TB & A Equipment."

121-A through D Unsigned contract form dated 7-10-50, Goodyear, Inc., to ARCo with marginal notations.

122 Letter, 7-5-50, Goodyear, Inc., S. A. Gaylord to S. J. Heideman, ARCo.

123 Letter, 11-8-50, S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear, Inc., re: TBA Goodyear Commission Plan.

124 Letter, 11-29-50, S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo with marginal notations.

125 Letter, 12-14-50, S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co., re: TBA Goodyear Commission Plan.

126-A and B Letter, 4-3-51, D. T. Colley, ARCo, to Victor Holt, Jr., Goodyear Co., extending territorial area of letter agreement of June 1, 1950.

127-A through H Unsigned memo dated 5-31-50, entitled "Atlantic Refining Company—Sales Commission."

26 128-A and B ARCo inter-office letter dated 5-10-50 addressed to F. M. Neall re: "TBA Commission Plan."

129 ARCo inter-office letter dated 5-17-50 from F. M. Neall to D. T. Colley, re: "TBA Commission Plan."

130-A through G Memorandum 6-16-50 to Accounting by S. J. Heideman re: "Goodyear TBA Bulletin #G-1" and attached memorandum entitled "Accounting Procedure in Connection with Goodyear Plan for Sale of TBA Products in Newark, N. J., District," dated 6-6-50.

131 ARCo inter-office letter dated July 26, 1950, from TBA Section to W. J. Jackson re: "Battery Charging Equipment, Newark, N. J."

132 ARCo intra-company memorandum dated 8-2-50 from R. Borden to B. M. Boor, et al.

133 ARCo inter-office letter 6-12-50, E. D. Walter to All Sales Personnel, Philadelphia and New Jersey Region, re: "TBA."

134 Undated ARCo document beginning: "Recently you have been introduced to a new plan for the marketing of Tires . . ."

135-A through C Memo entitled "Commission Plan"

27 beginning: "In view of the contemplated adoption of the Commission Plan in one or more sales regions . . ."

136-A through E Inter-office letter dated 3-21-51 from S. J. Heideman to D. T. Colley re: "TBA Conversion to Firestone & Goodyear Programs."

137-A through E Document entitled "Duties of the Dealer Salesman" with marginal notations including date 5-16-51.

138 ARCo inter-office memo dated June 25, 1951, to F. M. Neall re: "Staff Meeting Report."

139-A and B ARCo inter-office memorandum bearing notation TBA, SJH, dated January 15, 1952, to A. B. Hersberger, re: "Staff Meeting Report."

140 ARCo intra-company letter dated May 3, 1951, from M. G. Davis to S. J. Heideman, re: "Lee Tires."

141 ARCo intra-company letter dated May 10, 1951, from W. C. Hoffman to M. G. Davis, re: "Lee Tires."

142 ARCo intra-company letter dated June 20, 1951, from M. G. Davis to W. C. Hoffman, re: "Lee Tires."

28 143 ARCo inter-office memo dated July 9, 1951, bearing notation TBA SJH to William Stockton re: "Goodyear & Firestone Programs."

144 ARCo inter-office letter dated November 13, 1951, from William Stockton to S. J. Heideman, re: "Goodyear and Firestone Programs."

145 ARCo inter-office letter, dated June 18, 1952, from S. J. Heideman to William Stockton re: "Credit Card Sales."

146-A and B ARCo memorandum entitled "Staff Meeting held 7-14-52," beginning with paragraph 4 entitled "Credit Card Policy—1953."

147 Excerpt from the Atlantic Refining Company Annual Report for the year ending December 31, 1951, dated March 12, 1952, pages 12-13, headed "Marketing."

148 ARCo inter-office letter 2-27-51, bearing notation "TBA. HKP." Addressed to E. R. Cox, Jr.

149 ARCo form letter dated 3-1-51, re TBA program.

150 ARCo form letter, 3-1-51, re "A Statement of Atlantic's TBA Policy."

151 Letter dated 3-26-51, from R. M. Taitt, ARCo, to C. Connell, Electric Storage Battery Company, re "A Statement of Atlantic's TBA Policy.

29 152 ARCo form letter to Atlantic dealers and Atlantic petroleum distributors, beginning "Here is the most important TBA news * * *."

153-A and B ARCo inter-office memorandum, 4-5-51, from R. M. Taitt to Noble Hall. Re: "Firestone-Goodyear Warehousing."

154 ARCo intra-company letter dated 1-18-51, from R. W. Reed to F. M. Neall, et al., re "1951 New York Region Sales Plan."

155-A through H ARCo document entitled "1951 Sales Plan, New York Region Basis."

156 ARCo memorandum dated January 5, 1951, entitled "Station Modelization Policy."

157 ARCo intra-company letter dated 2-21-51, bearing notation TBA HKP, to G. V. Ostrander, re "Goodyear Commission Plan, 1951 Sales Plan."

158 ARCo inter-office letter, dated 1-26-51, from J. O. Estlow to S. J. Heideman, re Proposed TBA program.

159 Letter dated March 28, 1951, from S. J. Heideman, ARCo to S. A. Gaylord, Goodyear Co. re "Goodyear Program Service Station Identification."

30 160-A through P ARCo interoffice memorandum from W. J. Jackson to W. C. Hoffman, dated Jpne 5, 1951, entitled "Goodyear Program Station Identification."

161 ARCo interoffice memorandum bearing notation TBA SJH, dated July 30, 1951, to W. J. Jackson, re "Goodyear Program Atlantic Dealer Identification."

162 ARCo interoffice memo, dated August 20, 1951. From W. J. Jackson to F. C. Bowman, re "Goodyear Identification Dealer Locations."

163 Letter dated August 21, 1951, from S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co. Re: "Goodyear Program Atlantic Station Identification."

164 Letter dated August 24, 1951, from J. W. Basista, Goodyear, Inc., to S. J. Heideman, ARCo. Re: "Atlantic-Goodyear Identification."

165 Letter dated August 29, 1951, from J. W. O'Neill, Goodyear, Inc., to S. J. Heideman, ARCo. Re: "Goodyear Program—Atlantic Station Identification," with marginal notations.

31 166 Letter dated October 11, 1951, from J. W. O'Neill, Goodyear, Inc., to S. J. Heideman, ARCo.

167 Letter dated October 15, 1951, from J. W. O'Neill, Goodyear, Inc., to S. J. Heideman, ARCo.

168 ARCo intra-company letter dated October 17, 1951, from W. C. Hoffman to L. K. Maisel, re "Goodyear Program Atlantic Station Identification."

169 ARCo intra-company letter dated October 17, 1951, W. C. Hoffman to M. G. Davis, attention T. L. Walsh, re "Goodyear Program Atlantic Station Identification."

170-A through F ARCo inter-office letter dated October 24, 1951, from W. C. Hoffman to W. J. Jackson, subject: "Goodyear Program Atlantic Station Identification," with attached five-page list.

171-A through D ARCo intra-company letter, W. C. Hoffman to M. G. Davis, attention T. L. Walsh, re "Goodyear Program Atlantic Station Identification," with attached three-page list.

172-A and B ARCo intra-company letter dated October 24, 1951, W. C. Hoffman to L. K. Maisel, re "Good-
32 year Program Atlantic Station Identification," with attached one-page list.

173 ARCo intra-company letter, dated July 17, 1951, W. C. Hoffman to M. G. Davis, et al, re "Goodyear Program Progress Report."

174 ARCo intra-company letter dated September 7, 1951, M. G. Davis to S. J. Heideman, re "Goodyear Program."

175 ARCo intra-company letter dated July 19, 1951, L. K. Maisel to S. J. Heideman, re "Goodyear Program Progress Report."

176 ARCo's Goodyear TBA Bulletin #17, dated April 25, 1952, entitled "Goodyear Program."

177 Letter dated 8-20-51, S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo, re "Jennings Bros., Cranston, R. I."

178 Letter dated 8-29-51, W. C. Hoffman, ARCo, to S. A. Gaylord, Goodyear Co. re "Goodyear Program, Jennings Bros., Cranston, R. I."

179-A through I ARCo document entitled "Goodyear Program—Minutes—Goodyear TBA Coordinators' Meeting, October 12, 1951, Syracuse, New York," by W. C. Hoffman, Acting Secretary.

33 180 ARCo intra-company letter dated May 13, 1952, L. E. Card to S. J. Heideman, re "Purolator," including marginal notation.

181 Letter dated May 19, 1952, W. C. Hoffman, ARCo, to J. W. O'Neill, Goodyear Co., re "Purolator Products."

182 Letter dated May 29, 1952, from J. W. O'Neill, Goodyear, Inc., to W. C. Hoffman, ARCo, re "Purolator Products."

183 ARCo interoffice letter dated 5-1-52, from W. J. Butler to S. J. Heideman, re "Goodyear Tire Display," with marginal notation.

184 Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries." Referring to Goodyear distribution.

185 ARCo's "Firestone TBA Bulletin #17," dated April 25, 1952, subject: "Firestone Program," by S. J. Heideman

186 Letter dated July 18, 1952, G. M. Elliott, Firestone, to S. J. Heideman, ARCo.

187 ARCo intra-company letter dated 9-3-52, from J. O. Long to W. L. Schmidt, et al. re "Procedure: TBA Firestone."

34 Mr. Kelaher: I will now read a list of the numbers of the documents as to which neither Respondent Goodyear, Respondent Goodyear, Inc. or Respondent Atlantic, has objection:

Commission exhibits for identification 1-A through C; 2; 3; 4-A and -B; 6; 7; 8-A and B; 13-A through -E; 14; 16-A and -B; 20-A and -B; 21; 22-A and -B; 23-A and -B; 25; 26; 28-A and -B; 29; 30; 31; 35; 36; 40-A and- B; 41-A through -E; 42-A and -B; 43-A and -B; 44-A and -B; 45-A and -B; 48-A through -F; 49; 50-A and -B; 51; 52-A and -B; 54; 81-A through -F; 82-A through -C; 83-A through -C; 85-A and -B; 86-A and -B; 87; 88; 89; 90-A and -B; 91; 92-A and -B; 93-A through -C; 94-A through -D; 95-A through -C; 96; 97; 98-A through -G; 99; 104-A through -C; 105-A and -B; 106-A and -B; 121-A through -D; 122; 123; 124; 125; 126-A and -B; 147; 148; 149; 150; 151; 152; 158; 176; 180; 181; 182; 183; and 184.

As to the documents referred to, I move that they be offered in evidence.

Hearing Examiner Kolb: Is there any objection?

Mr. Mason: No objection.

Mr. Ballard: No.

Hearing Examiner Kolb: There being no objection, the exhibits marked for identification and just enumerated will be received in evidence.

35 (The documents referred to, heretofore marked for identification, are received in evidence as COMMISSION'S EXHIBITS 1-A through -C; 2; 3; 4-A and -B; 6; 7; 8-A and -B; 12; 13-A through -E; 14; 16-A and -B; 20-A and -B; 21; 22-A and -B; 23-A and -B; 25; 26; 28-A and -B; 29; 30; 31; 35; 36; 40-A and -B; 41-A through -E; 42-A and -B; 43-A and -B; 44-A and -B; 45-A and -B; 48-A through -F; 49; 50-A and -B; 51; 52-A and -B; 54; 81-A through -F; 82-A through -C; 83-A through -C; 85-A

and -B; 86-A and -B; 87; 88; 89; 90-A and -B; 91; 92-A and -B; 93-A through -C; 94-A through -D; 95-A through -C; 96; 97; 98-A through -G; 99; 104-A through -C; 105-A and -B; 106-A and -B; 121-A through -D; 122; 123; 124; 125; 126-A and -B; 147; 148; 149; 150; 151; 152; 158; 176; 180; 181; 182; 183; and 184.)

Mr. Kelaher: There was a second list of documents to which Goodyear has no objection, and by Goodyear I refer to Goodyear Company and Goodyear Inc., but which are tentatively objected to by Atlantic and upon which we request the Examiner to defer ruling. In other words, they will not be offered into evidence at this time. They are: Commission's exhibits for identification 5-A, -B; 15-A, -B; 18-A, -B; 24-A through -G; and 27.

Hearing Examiner Kolb: These documents were marked for identification but are not being offered, is that it?

36 Mr. Kelaher: That is correct. There is a tentative objection by Respondent Atlantic which may be resolved during the course of conferences on the stipulation as to the facts.

The next list refers to documents marked for identification as Commission's exhibits to which Respondent Atlantic has no objection, but as to which there is a tentative objection by Respondent Goodyear, Inc. Commission's exhibits for identification number 64-A through-E; 84-A through -C; 102-A through -D; 128-A and -B; 129; 131; 133; 136-A through -E; 153-A and -B; 154; 157; and 179-A through -J. The documents enumerated are not being offered in evidence at this time.

The next list of Commission's exhibits for identification relate to documents which require further consideration by Respondents but as to which no objection will ultimately be made as to their introduction into evidence. Is that correct?

Mr. Mason: I think that the way we should state that

is that as to some of these documents we are not clear that some further explanatory material would not be necessary. We probably will be able to eliminate that kind of thing in the course of our stipulation, so we will then probably remove any objection. I don't want to have the understanding at this time that all objections will be removed though.

Mr. Kelaher: With that explanation by counsel for the Respondents, I will proceed to enumerate the documents in this particular category: Commission's exhibits for
37 identification 9-A through -E; 10-A through -E; 11-A and -B; 17-A and -B; 19; 32; 33; 34-A through -D; 37; 38; 39; 46-A and -B; 47-A and -B; 56; 57; 58; 101-A through Z-20; 117; 127-A through -H; 130-A through -G; 132; 134; 135-A through -C; 137-A through -E; 138; 139-A and -B; 140; 141; 142; 143; 144; 145; 146-A and -B; 155-A through -H; 156; 159; 160-A and through -P; 161 through 169, both inclusive; 170-A through -F; 171-A through -D; 172-A and -B; 173; 174; 175; 177; and 178.

The documents just enumerated are not at this time being offered into evidence.

There are two remaining categories, the first of which concerns documents as to which all Respondents object on the grounds that they include references to the Firestone Tire and Rubber Company. Such documents are Commission's exhibits for identification number 100-A through -C; 103; 107; 108-A through -J; 109-A through -I; 110; 111; 112; 113; 114-A through -D; 115; 116-A and -B; 117—and I might add that 117 is also objected to on other grounds and was included in the prior list—118-A and -B; 119-A and -B; 120; 135-A through -C; 153-A and -B, which also was included in a prior list.

Mr. Ballard: A portion of that document only.

Mr. Kelaher: A portion of that document only, 153.

Mr. Mason: Yes.

Mr. Ballard: That is, the portion relating to Firestone.

38 Mr. Kelaher: (Continuing.) —185; 186; and 187.

I will withhold offering those documents temporarily until I complete the list.

Mr. Mason: If your Honor please, I would like the record at this point to show that Mr. Kelaher is correct in saying that we have the common objection that these are Firestone documents as to each of them. That is not to say, however, that there may not be some other objection specific to one or more of the documents. I just don't want to waive other objections at this point. I believe all of them, however, have the Firestone objection.

Mr. Kelaher: The remaining list relates to oil companies, which have contracts with Respondent Goodyear, Inc. as to which objection is made by all respondents, subject, I presume, also to the statement just made by Mr. Mason.

Mr. Mason: That is correct.

Mr. Kelaher: Commission's exhibits for identification numbers 53; 55; 59-A through -E; 60-A through -C; 61-A through -G; 62-A through -E; 63; 64-A through -E; 65-A through -C; 66-A through -L; 67-A and -B; 68-A and -B; 69-A and -C; 70-A through -C; 71-A through -D; 72; 73-A and -B; 74-A through -D; 75-A and -B; 76; 77-A through -D; and 78-A and -B.

Your Honor, may we go off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

39 Mr. Kelaher: Your Honor, at this time I would like to offer in to evidence Commission's exhibits for identification which have been classified as to which respondents object, either in whole or in part because reference is made to the Firestone Tire and Rubber Company which is not named as a respondent in this case but which is

referred to in the complaint as having an overriding sales commission agreement with respondent Atlantic.

Those documents, for the purpose of record are these Commission exhibits for identification numbers 103.

Hearing Examiner Kolb: 100 A-C and 103. Did I hear you wrong?

Mr. Kelaher: I'm sorry, 100 A-C, 103, 107 through 120, 135 A-C, 153 A-B, and 185, 186 and 187. Before the ruling is made on the admissibility of such documents I beg leave of the Examiner to be heard on the question of their admissibility.

Hearing Examiner Kolb. I assume that they will object. What their objections are they have a right to answer. Do you offer those exhibits now?

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: Do you want to state your objections?

Mr. Mason: We believe, your Honor, that these documents are in the same category of documents that were embraced in your Honor's ruling in the case involving Texas and Goodrich and Firestone. That is that Firestone is not a respondent to the case that any detail of evidence with respect to the arrangement in Firestone has nothing to do with Goodyear in the case particularly and that it is outside of the scope of the complaint.

We have acquiesced in your Honor's ruling in the Texas-Goodrich case that evidence as to the contracts themselves and as to the basic statistics as to sales may go in but we have objected and registered our objections to those documents which set forth the detail of the Firestone plan and I am speaking now to my objection from the Goodyear people.

Mr. Ballard: Speaking for Atlantic, your Honor, I can add to Mr. Mason's statement, the fact is that Firestone is not a party, that the relationship between Firestone

and Atlantic seems far alien to the relationship between Goodyear and Atlantic and we feel that evidence directed to the details of relationship between Firestone and Atlantic are a needless cluttering of the record and can lead only to confusion in your Honor's consideration of the issues before him which relate to another relationship and we also are prepared to acquiesce in the ruling in the Goodrich-Texas Company proceedings and in fact have in our admissions admitted the existence and general similarity of the Firestone-Atlantic contract and the size of the sales reported thereunder by Firestone and the size of the commissions paid thereunder.

41 Mr. Kelaher: Mr. Examiner, before I take each of the objections seriatim, I would like to review the complaint for the purpose of showing that these questioned documents are relevant to and come within the scope of the complaint.

The complaint alleges that the sales commission agreement and the acts and practices thereunder between Atlantic and Goodyear are unlawful. The complaint also alleges in paragraph 7 thereof that Atlantic has entered into a "substantially similar agreement", which counsel for respondents have just acknowledged, with Firestone, and that the agreement and the acts and practices thereunder are unlawful as set forth in paragraphs 11 and 12 of the complaint.

I would refer you to paragraph 11, subparagraph 2, which specifically states that among the effects of the adoption and use by respondents of said override commission agreement and each of them under the circumstances and in the manner here and as before alleged are that they have, as stated in subparagraph 2, "injured, lessened, prevented and destroyed competition between Goodyear, Inc., and Firestone."

If permitted, we propose to show documents which will

substantiate that allegation of the complaint. Those documents will show that the Atlantic Refining Company has six marketing regions, three of which are designated as the New York Region, the New England Region, and the Philadelphia-New Jersey Region.

Three other Regions are described by Atlantic as
42 the Western Pennsylvania Region, the Eastern Pennsylvania Region, and the Southern Region. We propose to show that the sales commission plan agreements referred to in this complaint are market foreclosure devices. They are market devices which not only eliminate, they atomize competition. If permitted, we will show that Atlantic after exploring possible marketing alternatives actually assigned three marketing regions to Goodyear, namely the New York, New England and Philadelphia-New Jersey Regions, and actually assigned three Regions to Firestone, namely the Western Pennsylvania, Eastern Pennsylvania, and Southern Regions, both agreements to become effective simultaneously on March 1, 1951.

It is our contention that the control and influence which Atlantic has in this market is reflected in the manner in which they assign markets, and we contend that this plan, this sales commission plan, is simply that, is strictly a market control plan. We are not concerned here primarily with contracts between Atlantic and Goodyear. We are concerned here primarily with the dominant position of Atlantic Refining Company in this market, and I would stress the point by stating that the Firestone contract, the Firestone statistics, and the Firestone mechanics, the operational mechanics of the Firestone plan will prove beyond a shadow of a doubt one important element of this case, and it is relevant to the Goodyear contract from that standpoint, and that important fact is that these tire
43 companies, Goodyear and Firestone, have actually entered into contracts in restraint of trade through the

instrumentality of the Atlantic Refining Company, which are patently violations of Section 1 of the Sherman Act which bring them within the purview of Section 5 of the Federal Trade Commission Act.

That is the allegation we intend to substantiate and we feel we are severely restricted and hampered in our offers of proof and in our documentary proof if we are not permitted to introduce such evidence.

I would like to take the objections made seriatim by first Goodyear. They say Firestone is not a respondent. Well, that is true, Firestone is not a respondent, but it isn't necessary that Firestone be a respondent. This is a complaint in the public interest. The Commission has seen fit to attack this problem through this type of a complaint. It is for the protection of public rights. We are here interested in the elimination of trade restraints for eliminating the preservation of competition in the interests of the public. We are not interested in private rights. The Commission often has cases which transgress public rights and therefore contracts are abrogated or ruled invalid by the Federal Trade Commission and the courts. I refer your Honor to the National Licorice case 309 U. S. 350, where the Supreme Court stated that in proceedings before the Federal Trade Commission, the order restraining

44 unfair methods of competition may preclude the performance of outstanding contracts by the offender. Such orders have never been challenged because the owners of the contracts were not made parties, and that is exactly the situation in this case.

In addition to the fact that the Firestone contract and the actual practices thereunder including the entire plan eliminates competition, and that is another thing I would like to mention, it is true that the motivating force of this plan lies in the contracts. It sounds in contract to that extent. However, once the dealer is signed, once the At-

lantic dealer is signed to a Firestone contract, or once he has signed a Goodyear contract, other trade restraints raise their ugly head. This plan is simply saturated with trade restraints, and we feel that we should have an opportunity to present evidence to substantiate that statement. For example, once an Atlantic dealer is signed to a Goodyear contract, and the same thing applies to the Firestone contract, the Atlantic dealer is told where he must buy his supplies, his Goodyear supplies or Firestone supplies. He can't go to any Goodyear dealer, even to a Goodyear dealer in the area or even to a Firestone dealer in the area, he must go to the designated supply point. This plan has all types of ramifications over and above the contracts themselves, and the contracts are very innocuous. There is one preliminary contract entered into by Atlantic and Goodyear which is dated in June, 1950, and it took them six months to work out the terms of the contract. These contracts are very innocuous in their meaning, and we have proof of that statement. Those documents are already in evidence to show that. So that takes care of the first point. Coming back again to Goodyear's objections we state it isn't necessary for Firestone to be named as a respondent.

The second objection by the Counsel for Goodyear was that the detailed arrangements have no bearing on the Goodyear-Atlantic plan. I think that I have covered that subject thoroughly. We say that the detailed arrangements between Firestone and Atlantic do have an essential bearing on the Goodyear-Atlantic plan. There is no question about it. If it weren't for Atlantic's command of the market the Goodyear plan would not be in effect today, and I would like to add at this point that the contracts I am referring to between Goodyear and Atlantic and between Firestone and Atlantic were entered into as of March 1, 1951, and to this date there has been a complete elimination

of competition between Goodyear and Firestone in attempts to sell the entire Atlantic market.

Firestone sells in areas in the New York area, Firestone sells in the New England area and Firestone sells in the Philadelphia-New Jersey area, but they do not sell to Atlantic stations in those areas. There is a hands-off policy and we can prove it and likewise Goodyear since 1951 sells in the Western Pennsylvania area, they sell in the Eastern Pennsylvania area, they sell in the Southern area, but they do not sell to Atlantic stations in those areas because there is a common understanding and an agree-
47 ment that Firestone has been assigned those areas.

Now we are not saying that this is a conspiracy case although it has all the elements of a conspiracy case, but we do think it is important to show that Atlantic has domination and control of the market. That is an essential and vital part of our case.

Now going down through other objections by Counsel for Goodyear he stated that he would acquiesce as to the contracts themselves and as to the statistics. Of course, that in and of itself shows nothing. As I stated the contract is very innocuous. The statistics taken as a whole are meaningless. We can't show; we are prohibited if our documents don't go in, we are prohibited from showing how this program operates and its effect on the Goodyear-Atlantic plan.

His further objection and his last objection was to the mechanics of the Firestone plan. Well, as I have just stated the trade restraints in this case are barely underway by the time the mechanics of this plan go into effect. There are all types of trade restraints involved here and we think we should have an opportunity to show how this plan works.

Now as to Counsel for respondent Atlantic, who has raised similar objections. First he states that respondent

Firestone is not a respondent. I believe I have answered that contention. He states secondly that the relations between Firestone and Atlantic are foreign and alien to
48 the Goodyear-Atlantic contract.

I think we have shown that they are not foreign and alien, they are an inseparable part of the Goodyear-Atlantic contract.

Third, it would lead to confusion. Of course I don't think I have to comment on that one. His fourth statement was that he acquiesced as to the contracts themselves and as to the statistics, and there again I say that it is not enough for our purposes. So on the basis of this statement I move the documents referred to be admitted in evidence.

Hearing Examiner Kolb: Mr. Kelaher, your chief objection as I understand it is an inability to show that there has been a division of territory.

Mr. Kelaher: It is our inability to show the dominance.

Hearing Examiner Kolb: I can't see how a ruling which I have made in the other case would prohibit you from showing a division of the territory, that Goodyear could not sell except in certain states.

Mr. Kelaher: Well, as we understand your ruling on the other case, and I am very happy to have that ruling clarified for the purpose of this case, I am assuming that that type of testimony would have been excluded. I would be very happy—

Hearing Examiner Kolb: I couldn't exclude testimony as to where Goodyear sells.

Mr. Kelaher: There is an exclusion of testimony
49 as to—referring now to the Goodrich-Texas Company case.

Hearing Examiner Kolb: I say if I follow the same ruling you would still be able in this case to show the territory or extent of the territory in which Goodyear sold and the division of the territory.

Mr. Kelaher: Yes, but we wouldn't be able to implement our allegation that competition has been eliminated. We have documentary proof going in to that question.

Hearing Examiner Kolb: The thing that bothers me is that you appear to be proceeding on a conspiracy case without pleading a conspiracy.

Mr. Kelaher: I tried to make it perfectly clear, Your Honor, that we are not proceeding on a conspiracy case. I simply make the statement that both contracts and the acts and practices under both contracts are essential to show the market domination and influence of Atlantic.

Atlantic simply assigns these areas to these people. We are attacking this sales commission plan. We say it is a market control device. It so happens that Goodyear is in now and Firestone is in. Tomorrow Atlantic may decide to put two other companies in there and we intend to show that they have that power.

Hearing Examiner Kolb: If Atlantic makes a contract with Firestone to sell in certain states and makes a contract with Goodyear to sell in certain states—

50 Mr. Kelaher: That is right.

Hearing Examiner Kolb: (Continuing.) —and you have no agreement among the three of them that the territory is being divided how are you going to prove a case against Goodyear by using Firestone?

Mr. Kelaher: We are going to show, as we allege in the complaint, that the sales commission plan was entered into by Goodyear with the understanding that it was assigned three territories. We are going to show, if we are permitted, we have documentary proof of the fact that Goodyear does not go into the Firestone areas and vice versa. We say it is pertinent to show that the sales commission plan is a market control device.

It has a direct bearing on the Goodyear plan. One plan can't exist without the other. If this were not a market

control device Firestone would be competing with Goodyear in the Goodyear territory and vice versa but they are not doing that.

Hearing Examiner Kolb: Do you have anything further to say?

Mr. Mason: No, Your Honor, except to say this, I think that Your Honor, in knowing the fact that this is not a conspiracy case, that there are not allegations of a division of territories between the three parties, has put your finger on the very nub of the problem here. The extent to which these people, the attorneys supporting the complaint, 51 would like to go into details of transactions with strangers so far as Goodyear is concerned is just going to completely confuse the case and take it out of what at least we understand it to be, an allegation that Goodyear and Atlantic together have participated in an unfair trade practice and that it is togetherness of their participation that makes this unfair trade practice.

Mr. Kelaher: The complaint also alleges, I might add, that Firestone and Atlantic are engaged in a similar unfair trade practice and one is part and parcel of the other.

Hearing Examiner Kolb: Would you consider this evidence as to Firestone to be admissible against Atlantic but not to Goodyear?

Mr. Kelaher: I would go that far. I think it is definitely admissible against Atlantic. I don't think there is any question about it being admissible against Atlantic.

Hearing Examiner Kolb: Where would you be if it was one and not the other?

Mr. Kelaher: It would show that the sales commission plan is what we claim it is. It is a market control plan. I think when you ask me whether I would hold it admissible against Goodyear it makes little difference whether it is admissible against Goodyear if the ultimate fact is found, namely that this is a market control device. It is a market

allocation device. It is a customer allocation device. That is what we are attempting to reach in these cases.

52 I think it could be stated that it would be admissible against Atlantic and even with that limited applicability I think it would aid our presentation of the evidence. However, I would like to discuss that for a moment.

Hearing Examiner Kolb: I feel this way, this question has been raised and it is before the Commission now in the Goodrich case. If you feel that there is enough difference between this case and the Goodrich case to take it out of here perhaps the best way for me to do would be to refuse the acceptance of these documents and let you take another appeal at the same time, let them both be argued together.

Mr. Kelaher: We do contend, leave there be no misunderstanding on this point, that the basic issues are the same but we do think we have presented enough differences to show that the evidence we are referring to in this particular case would be admissible.

Hearing Examiner Kolb: I did have in mind deferring my decision until the Commission had acted upon the other appeal. However, if you wish to appeal this on that ground as well I can today sustain the objections and you can take your appeal to the Commission on this if you wish to do that. Whichever you wish.

Mr. Kelaher: Well, I would appreciate a ruling on the matter.

Hearing Examiner Kolb: All right then. Let the

53 record show that the objections to the exhibits which were enumerated as applying to Firestone are sustained.

Mr. Kelaher: May we have a five minute recess.

Hearing Examiner Kolb: Five minute recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Mr. Examiner, for purposes of the record, we would appreciate an amplification of your ruling as it pertains to this matter if you so desire.

Hearing Examiner Kolb: I don't see that any amplification should be made really. The matter is before the Commission in the other case and I would like to see what the Commission does about it before I do anything as a matter of fact. I am giving you an opportunity to appeal this ruling if you feel the division of territory has any bearing on it. I sustained the objection so that you could take your appeal at the same time with the Goodrich matter and have them both disposed of with the Commission.

Mr. Kelaher: I take it from your statement your ruling in this matter is based on your rulings in docket 6485.

Hearing Examiner Kolb: There is no use in me making another ruling in the thing.

Mr. Kelaher: Thank you, Your Honor. There was another category of documents marked for identification,

54 they being documents which relate to or incorporate, they are in references to oil companies which have sales commission plan agreements with respondent Goodyear, Incorporated.

I ask now what your ruling would be with respect to such documents which I now offer in evidence.

Mr. Mason: Your Honor, we object to the introduction of these documents in evidence, objection that they present precisely the same issues that were raised as to non-respondent oil companies in the Texas-Goodrich cases and because the issues are identical I will not engage in any extended argument in support of my objection.

Hearing Examiner Kolb: As I stated before, I might have some doubt as to Firestone but I have no doubt as to the inadmissibility of documents with reference to oil companies so I will sustain the objections to Exhibits 53, 55, 59 through 78.

Mr. Kelaher: I take it here again that your ruling is based on similar rulings in docket 6485.

Hearing Examiner Kolb: The matter is before the Commission and so I am leaving it before the Commission with the opportunity to appeal if you wish in this proceeding.

Mr. Kelaher: Thank you, Your Honor. I think that concludes the subjects as to which we had intended to discuss this afternoon. I lave it to Counsel for respondents whether or not there is anything further at this time.

Mr. Mason: We have no further business for Your Honor.

55 Mr. Kelaher: One more thing, Your Honor, for the record.

(Discussion off the record.)

Hearing Examiner Kolb: As a result of discussions off the record it was decided to have no further hearings until the Commission has decided the appeal and I am accordingly cancelling the hearings now set for November 7, 8, and 9, and November 12, 13, and 14, and resetting this matter for December 3 through December 7.

Mr. Kelaher: Your Honor, I would like to state that prior to the December 3 hearings Counsel for the respondent and Counsel for the complaint will attempt to resolve by stipulation the type of testimony elicited from top level officials in docket 6485.

Mr. Mason: We will do that.

Hearing Examiner Kolb: I have no objection to expediting the case any way you can.

Mr. Kelaher: Thank you.

Hearing Examiner Kolb. I guess that is all in this case.

* * * * *

57 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, at our last hearing we had

a number of exhibits marked for identification as shown on the transcript at pages 10 through 33 inclusive. Of that group certain documents were introduced into the record without objection by counsel for respondent Goodyear or respondent Atlantic. That list appears at page 34 of the transcript. Those documents were received into evidence as appears at page 35 of the transcript.

There were certain other documents which were not offered into evidence at that time. Since the last hearing conferences have been held with counsel for respondents and we now have another list of documents as to which counsel for respondents, Atlantic and Goodyear, offer no objection, and at this time I would like to offer them into evidence.

They are: Commission Exhibits for identification 9-A through E inclusive; 17-A and B; 19; 37; 38; 39, and let the record show that Commission Exhibit for identification No. 39 was an enclosure to Commission Exhibit for identification No. 37; 47-A and B, and let the record show that this copy of this document was found or obtained from the files of respondent Goodyear; 127-A through H inclusive; 159;

160-A through P inclusive, and let the record show that
58 a copy thereof was forwarded to respondent Goodyear;
163; 164; 165; 166; 167; 177; and 178.

I now offer such documents in evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: There being no objection the documents will be received in evidence as Commission's Exhibits 9-A through E inclusive; 17-A and B; 19; 37; 38; 39; 47-A and B; 127-A through H inclusive; 159; 160-A through P inclusive; 163; 164; 165; 166; 167; 177; and 178.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 9-A through E inclusive; 17-A and B; 19; 37; 38; 39; 47-A and B; 127-A

through H inclusive; 159; 160-A through P inclusive; 163; 164; 165; 166; 167; 177; and 178 were received in evidence.)

Mr. Kelaher: Your Honor, there is a group of documents which have been marked as Commission exhibits for identification numbering about ten as to which no objection has been raised by Goodyear but as to which Atlantic Refining Company indicates that it may object. In order to expedite the proceedings I will offer the first of these into evidence.

I now offer Commission Exhibit for identification 5-A and B into evidence. This document is a memorandum dated August 29, 1949 from S. A. Gaylord, Goodyear, Inc., to Messrs. Mayl and other Goodyear personnel in re: "Atlantic Refining."

Mr. Ballard: Objection.

Hearing Examiner Kolb: What is the nature of the objection?

Mr. Ballard: Our objection to that is this is simply an internal document of the Goodyear Company; there is no showing nor even any claim that it was communicated to Atlantic Refining or by the Atlantic Refining and because of that we object to its being entered as against Atlantic or ~~United~~ Refining Atlantic. This is one of a group and we will have the same objection to the entire group all of which are from the Goodyear files and do not appear to have been communicated to the Atlantic or Atlantic Refining Companies.

Hearing Examiner Kolb: Do they ~~appear~~ appear in the Goodyear file?

Mr. Kelaher: Yes, sir; there is no objection to their admissibility on the part of respondent Goodyear. The only objection raised is the lack of knowledge on the part of respondent Atlantic. However, they specifically refer to the Atlantic-Goodyear sales commission plan.

(The document was handed to the Examiner.)

Hearing Examiner Kolb: This is an inter-office communication?

Mr. Kelaher: Yes, your Honor.

60 Hearing Examiner Kolb: Inter-office communication of Goodyear?

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: The document will be received subject to the motion to strike of Atlantic.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 5-A and B, was received in evidence.)

Mr. Kelaher: I now offer into evidence nine other documents which fall into the same category as Commission's Exhibit 5-A and B, and are subject to the same objection by Atlantic counsel and are also, I would think, subject to the same ruling by your Honor.

They are Commission Exhibits for identification 11-A and B; 15-A and B; 18-A and B; 24-A through G inclusive; 27; 32; and let the record show that L. A. Knight, named therein is an employee of the Auto-Lite Battery Corporation; 33; 34-A through D inclusive; and 46-A and B.

Mr. Mason: Goodyear has an objection.

Mr. Ballard: Your Honor, those documents are in the same classification as 5-A and B; they are all Goodyear inter-office or intra-company documents found in the Goodyear files and for that reason I have the same objection.

Hearing Examiner Kolb: They will be received under the same ruling subject to a motion to strike of
61 Atlantic. That applies to Exhibit 11-A and B; 15-A and B; 18-A and B; 24-A to G inclusive; 27; 32; 33; 34-A to D inclusive; 46-A and B inclusive.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 11-A and B, 15-A and B, 18-A and B, 24-A through G inclusive, 27, 32, 33, 34-A through D inclusive, and 46-A and B, were received in evidence.)

Mr. Ballard: Your Honor, may I correct one statement that I made? I doubt that it is going to change any results. It appears that Exhibit 32 is not an inter-office communication of the Goodyear Company, it is an inter-office communication of the Auto-Lite Company of which a copy was found in the Goodyear file and the objection is the same.

Hearing Examiner Kolb: Same ruling.

Mr. Kelaher: That is correct, your Honor. May we go off the record a minute, please?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, we have another category of documents marked for identification which were found in the files of Atlantic Refining Company and as to which Atlantic interposes no objection but counsel for respondent Goodyear does.

62 At this time I would like to offer into evidence Commission Exhibits for identification 84-A to C inclusive; 102-A through D inclusive; 128-A and B; 129; 130-A through G; 131; 132; 133; 136-A to E inclusive; 137-A to E inclusive; 138; 140; 141; 142; 143; 144; 145; 146-A and B; 154; 155-A through H inclusive; 157; 161 162; 168; 169; 170-A through F inclusive; 171-A through D inclusive; 172-A and B; 173; 174; 175; 179-A through I.

I now offer the foregoing exhibits into evidence.

Mr. Ballard: Your Honor, Atlantic has no objection provided the record will show with respect to Exhibit 137 A-E that Atlantic does not admit that—let me say that document is entitled "Duties of the Dealer-Salesmen." Atlantic does not admit that that document was ever officially accepted, promulgated or used by Atlantic. As a matter of fact, sir, we don't know exactly who made it or for what purpose, but it was never adopted or promulgated as an official description of the duties of the dealer-salesmen by

the company. If the record will show that we are not admitting that then we have no objection to its admission into evidence.

Hearing Examiner Kolb: It came from Atlantic files?

Mr. Balard: Yes, sir; it did. We have no doubt that it was made by someone in Atlantic and to that degree it is authentic, but it's not a company document.

63 Hearing Examiner Kolb: All right.

Mr. Mason: Your Honor, our objection here is the same objection that was made by Atlantic when the situation was reversed. These are internal documents found in the files of Atlantic. Goodyear had no notice and therefore, we object to them as lacking competency as evidence against Goodyear.

Hearing Examiner Kolb: The documents enumerated will be received into evidence subject to the motion to strike on the part of Goodyear Tire and Rubber Company.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 84-A through C inclusive, 102-A through D inclusive, 128-A and B, 129, 130-A through G inclusive, 131, 132, 133, 136-A through E inclusive, 137-A through E inclusive, 138, 140, 141, 142, 143, 144, 145, 146-A and B, 154, 155-A through H inclusive, 157, 161, 162, 168, 169, 170-A through F inclusive, 171-A through D inclusive, 172-A and B, 173, 174, 175, 179-A through I inclusive, were received in evidence.)

Mr. Kelaher: At this time I offer into evidence Commission's Exhibit for identification numbers 56, 57, and 58.

Mr. Ballard: With respect to Exhibit 56, your Honor, Atlantic has the same objection that we registered
64 before, namely, that it is an internal document of the Goodyear Company found in the Goodyear files. In fact, all three of these were found in the Goodyear files, but 57 and 58 were addressed to and received by Atlantic.

Exhibit 56 is an internal Goodyear document and we object to it as against Atlantic.

Hearing Examiner Kolb: Exhibit 58 is not, is it?

Mr. Kelaher: Exhibit 58 is a communication from Atlantic Refining Company to Goodyear.

Mr. Ballard: Exhibits 57 and 58 are between the two respondents, they were actually found, however, in the Goodyear files, but we don't object to either 57 or 58.

Hearing Examiner Kolb: You are just objecting to 56?

Mr. Ballard: Yes, sir; and simply because it's an internal document and not binding on us.

Hearing Examiner Kolb: The document 56 will be received into evidence subject to a motion to strike on the part of Atlantic.

Documents 57 and 58 will be received in evidence.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 56, 57 and 58, were received in evidence.)

Mr. Kelaher: Your Honor, the next group of documents relate to the sales commission plan between Atlantic
65 Refining Company and the Firestone Tire and Rubber Company. These documents were offered into evidence at the last hearing and a ruling was made thereon, after objection by counsel for respondents. An appeal was made from that ruling to the Commission and these documents come within the category of exhibits offered into evidence subject to that ruling. The list consists of Commission exhibits for identification 100-A through C inclusive; 103; 107; 108-A through J inclusive; 109-A through I inclusive; 110; 111; 112; 113; 114-A through D inclusive; 115; 116-A and B; 117; 118-A and B; 119-A and B; 120; 135-A through C inclusive; 153-A and B; 185; 186; and 187. These documents are now offered into evidence, your Honor.

Mr. Mason: If your Honor please, we wish to preserve our objection as to these documents because they do relate

to Firestone. I understand they are within the scope of the ruling that the Commission had on that matter, but in addition we object to these documents because they are internal documents, that is, documents found in Atlantic files and documents in which Goodyear had no knowledge, so we press competency objection so far as Goodyear is concerned as to these documents.

Mr. Ballard: Your Honor, we wish, of course, to preserve our position with respect to the ruling which your Honor made and the Commission overruled and we don't want to sacrifice that by letting in anyway and we will press it on appeal or otherwise, but we recognize that these documents are within the scope of the Commission's ruling.

66

Hearing Examiner Kolb: In compliance with the Commission's ruling the documents enumerated will be received into evidence subject to the motion to strike on the part of Goodyear.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 100-A through C inclusive, 103, 107, 108-A through J inclusive, 109-A through I inclusive, 110, 111, 112, 113, 114-A through D inclusive, 115, 116-A through B, 117, 118-A and B, 119-A and B, 120, 135-A through C inclusive, 153-A and B, 185, 186, 187, were received in evidence.)

Mr. Kelaher: Off the record, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, the next category of documents were previously offered into evidence and relate to the sales commission plan between respondent Goodyear and certain other oil companies. They also are subject to the Commission's ruling with respect to such documents.

The Commission's ruling that I am referring to is their Order issued December 5, 1956.

67 The list of documents are identified as Commission's Exhibits for identification numbers 53; 55; 59-A through E inclusive; 60-A through C inclusive; 61-A through G inclusive; 62-A through E inclusive; 63; 64-A through E inclusive; 65-A through C inclusive; 66-A through L inclusive; 67-A and B; 68-A and B; 69-A through C inclusive; 70-A through C inclusive; 71-A through D inclusive; 72; 73-A and B; 74-A through D inclusive; 75-A and B; 76; 77-A through D inclusive; and 78-A and B.

We now offer these documents into evidence, your Honor.

Mr. Ballard: Your Honor, on behalf of Atlantic particularly we recognize that these are the documents covered by the Commission's ruling, we press for the record the objection that they were found in the Goodyear files and are not binding on or are competent against Atlantic.

Mr. Mason: Goodyear has the same objection as was made to, I think a prior attempt to introduce these documents into evidence and just wishes to preserve its position and objects to their admissibility.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The objection of Goodyear will be overruled and in accordance with the Commission's ruling on appeal the

68 documents will be received into evidence subject to motion to strike by Atlantic.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 53, 55, 59-A through E inclusive, 60-A through C inclusive, 61-A through G inclusive, 62-A through E inclusive, 63, 64-A through E inclusive, 65-A through C inclusive, 66-A

through L inclusive, 67-A and B, 68-A and B, 69-A through C inclusive, 70-A through C inclusive, 71-A through D inclusive, 72, 73-A and B, 74-A through D inclusive, 75-A and B, 76, 77-A through D inclusive, and 78-A and B, were received in evidence.)

Mr. Mason: If your Honor please, I would like to make one statement of explanation in connection with a document which is document 67-A and B. This appears to be an agreement between Sherwood Brothers and Goodyear, it's unsigned; actually the fact is that it is really a draft, there never was such an agreement. The document by the way is dated July 14, 1937.

Mr. Kelaher: Your Honor, I think the record should also show that although there was no written agreement, although Commission Exhibit 67-A and B apparently was unexecuted, respondent Goodyear did have an overriding or a sales commission plan in effect with Sherwood Brothers, Inc., Baltimore, Maryland, in or about that 69 date. This document either preceded the beginning of that plan with Sherwood Brothers or the plan was in effect at that time.

Mr. Mason: Well, I take it that whatever facts are involved here will be introduced into evidence. I simply wanted to indicate that that document is not an actual agreement, it's an unexecuted document.

Mr. Kelaher: That's right.

Hearing Examiner Kolb: What document is that?

Mr. Kelaher: Exhibit 67-A and B.

(The above-mentioned document was handed to the Examiner.)

Hearing Examiner Kolb: I will correct my ruling to provide that Exhibit 67-A and B is subject to the motion to strike also by Goodyear.

Mr. Kelaher: Your Honor, at this time I would like to withdraw Commission Exhibit marked for identification as CX-id-10-A through E.

Hearing Examiner Kolb: Let the record show the exhibit withdrawn.

(The document referred to, heretofore marked for identification Commission's Exhibit 10-A through E inclusive, was withdrawn.)

Mr. Kelaher: This exhibit is a duplicate of Commission Exhibit 127-A through H.

Your Honor, at this time I would like to offer into
70 evidence Commission Exhibit for identification Number 139-A and B. This is an Atlantic Refining Company interoffice memorandum bearing notation "TBA—SJH" dated January 15, 1952, to A. B. Hersberger, re: "Staff meeting report," and refers to both Goodyear and Firestone sales commission plans.

Mr. Mason: Goodyear objects to the admissibility of this document in so far as it refers to Firestone on the same basis as earlier documents and in addition objects to the admissibility on the ground that the document being an internal memorandum of the Atlantic Refining Company it is not competent evidence against Goodyear.

Mr. Ballard: Your Honor, I believe that would fall within the Commission's ruling as far as it relates to Firestone, we would like to preserve our position on that matter but we would realize that you are bound by the Commission's ruling as far as the Firestone references are concerned.

Hearing Examiner Kolb: The objection will be overruled as far as Atlantic is concerned. As far as Goodyear is concerned it is received with motion to strike with respect to Firestone.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 139-A and B, was received in evidence.)

Mr. Kelaher: Your Honor, at this time I would like to

introduce into evidence Commission Exhibit for iden-
71 tification Number 134 which is an undated document found in the files of Atlantic Refining Company and relates to a survey made by Atlantic in certain areas subject to the Atlantic sales commission plans with Firestone and Goodyear.

Mr. Mason: Goodyear objects to the competency of this document not only because it has no notice of the document, it having come from Atlantic files, but because the document itself purports to reflect a survey and to which there is no evidence in the record, there is no way of knowing who made the survey, what kind of techniques were used, or what the information on the document actually means.

Hearing Examiner Kolb: May I see the document?

(The document was handed to the Examiner.)

Mr. Kelaher: We take the position, your Honor, that the document is self-explanatory and call your Honor's attention to the fact that respondent Atlantic interposes no objection to its admissibility.

Hearing Examiner Kolb: The document will be received in evidence subject to the motion to strike on the part of Goodyear.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 134, was received in evidence.)

Mr. Kelaher: Your Honor, at this time I would like to offer into evidence Commission Exhibit 156 which is
72 an Atlantic Refining Company memorandum dated January 5, 1951, entitled "Station Modelization Policy."

Mr. Mason: Goodyear objects to the competency of this document since it had no notice of it. Furthermore, the document does not appear to relate to the commission plan of Goodyear or anything connected with the case.

Mr. Kelaher: Your Honor, the document—excuse me, go ahead, Mr. Ballard.

Mr. Ballard: Your Honor, Atlantic joins in the second objection as being not relevant to the case. The document appears to have simply to do with a plan or program for modernization although the word is "modelizing," I thing modernizing might be more accurate, modernizing the physical appearance of certain stations in some area or other and it just doesn't have, as far as I can see, anything to do with the subject matter of this proceeding.

Mr. Kelaher: Your Honor, the document refers to or relates, rather, to Atlantic's policy or relationship with its dealers which are alleged to be subject to the control and influence of Atlantic.

(The document was handed to the Examiner.)

The modelization policy is referred to in Commission Exhibit 155-E as relating to Class 2 dealers.

This policy illustrates the uniformity which Atlantic desires to have among certain of its dealer outlets
73 or possibly all of its dealer outlets.

Mr. Mason: So far all it indicates is there was such a document in the Atlantic files.

Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 156, was received in evidence.)

Mr. Kelaher: Off the record, please.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Your Honor, at this time I would like to

offer into evidence Commission Exhibit for identification 101-A through Z-20 inclusive. This is a document entitled "TBA Study," dated May 1949, Sales Research Section, the Atlantic Refining Company.

Your Honor, this document reflects a study made by or under the supervision of the Sales Research Section of respondent Atlantic. It relates to the opinions and attitudes of 1,071 dealers in 47 cities from Massachusetts to Florida and the results of the survey are shown in the
74 document which I now offer into evidence.

Mr. Mason: Let me ask whether counsel supporting the complaint intends to introduce any evidence that this is what he says it is, other than the document it is?

Mr. Kelaher: I would like to call counsel's attention to the front page of the document which states, "TBA Study," and has thereon Sales Research Section, The Atlantic Refining Company.

This document was found in the files of Atlantic Refining Company.

Mr. Mason: My question is do you intend to introduce any evidence, because my position may be changed depending on whether you intend to actually introduce evidence to support the introduction of the document at some later time.

Mr. Kelaher: Your Honor, we take the position that the source data for this survey is in the hands of the respondent, Atlantic and we intend only to introduce the study in so far as it relates to respondent Atlantic. We would have no objection to the document being introduced in camera because of the numerous other non-respondents and non-parties referred to therein.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Mason: I would like to ask the reporter to
75 read the part of counsel's statement when he said that as to whom he was introducing it.

(The reporter read the following statement:

"Mr. Kelaher: Your Honor, we take the position that the source data for this survey is in the hands of the respondent Atlantic and we intend only to introduce the study in so far as it relates to respondent Atlantic. . . .")

Mr. Mason: Is that your position, Mr. Kelaher? I don't yet know where the record stands on your offer.

Hearing Examiner Kolb: I think he is striking the question on the matter you were talking about.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, we are offering this with respect to respondent Atlantic to show the research engaged in by respondent Atlantic in determining which marketing alternative it would adopt. This survey was made in or about May 1949 preceeding the adoption of the Goodyear-Atlantic sales Commission Plan and preceding the adoption of the Firestone-Atlantic sales commission plan, but it was an important factor in Atlantic's determination with respect to its adoption of such plans.
76 I would like to refer your Honor to Commission Exhibit 136-B which is an interoffice memorandum from Mr. S. J. Heideman of Atlantic to Mr. D. T. Colley of Atlantic entitled, "TBA Conversion to Firestone and Goodyear Programs."

In the second full paragraph of 136-B the following appears:

"Having established the fact that our TBA pro-

gram was somewhat unique among oil companies we then employed an outside agency to sample opinions of both Atlantic dealers and competitive dealers in our area. The important finding from this survey was that our present program was far from flawless and that there was a great deal of dissatisfaction with it among our dealers. The dealers of other marketers appeared more content with the TBA programs that were available to them."

We take the position that this survey was an important consideration in Atlantic's determination to adopt Goodyear sales commission plan and the Firestone sales commission plan.

Mr. Mason: If your Honor please, I am not clear on the present status of this record, whether counsel supporting the complaint is offering this document solely against Atlantic or whether it is being offered against
77 Goodyear as well. I wish counsel would take a position on that because obviously I don't have to object if he is not offering it against me.

Mr. Kelaher: Our position, your Honor, is that we are offering it generally because of its relevancy to the sales commission plans adopted by Atlantic with respect to both Goodyear and Firestone.

Mr. Mason: In that event, your Honor, I do object to the competency of the document. It is quite obviously the result of a lot of work done by persons unknown, according to procedures unknown, and reflects conclusions the accuracy and meaning of which is so far as I can see unknown, and for that reason Goodyear objects to its competency in evidence against Goodyear.

Mr. Ballard: Your Honor, with respect to Atlantic Refining Company I am also a little at a loss to know what this document is being offered for.

Mr. Kelaher said that he was offering it to show the research that had been done by Atlantic before adopting the sales commission plan. For that purpose, and if limited to that purpose, we would have no objection to it. Atlantic would admit that it had done this research.

He then read to your Honor from a letter, an inter-office letter, purporting to summarize what this study means.

If Mr. Kelaher is offering it to show that that is what
78 it means, again we would have no objection. I suspect, however, that Mr. Kelaher is offering it as most evidence is offered, to show the truth of the statements and reliability of the statements made in it and if that is his purpose we must object because, as Mr. Mason has said, the statements were obtained from persons unknown, by methods unknown. As a matter of fact, as far as we can tell the questions stated here were not the questions that were asked of the dealers, the answers stated here are not the answers that the dealers gave, the dealers were chosen on a basis which is not what you would normally associate with the word "random," and as to whether the study shows what is said on the first page or not, of course, no one could tell.

I think it is customary in these hearings to start with the assumption that a document will be identified by a competent witness before it is offered into evidence and the witness will be available for examination as to the meaning and make-up of the document.

So far we have waived that requirement with respect to all the exhibits that have been offered. In this case we do not wish to waive that requirement if the document is to be offered to prove the truth of the statements made therein, and we would feel that we would insist upon our right to have Mr. Kelaher produce a witness, and we would, of course, be glad to assist him in so far as we
79 are able in selecting the right witness so this document

can be properly described before it is offered into evidence.

Mr. Mason: If your Honor please, if I can say one further word as to Goodyear's position here.

The offering of this document against Goodyear is very similar to the situation that would be presented if the Commission were trying to introduce a survey made by an expert. At least that minimum qualification should be gone through before a document which is quite obviously on its face the type of thing that would be testified to by an expert is accepted in evidence for any purpose whatsoever against Goodyear.

Mr. Kelaher: Your Honor, I did think I made it clear that we are offering this document in order to show the results shown therein, reflected therein. For example, the Atlantic dealers, there is a caption with respect to Atlantic dealers throughout the survey and certain facts are expressed therein with respect to those Atlantic dealers.

Now, counsel for both respondent Atlantic and respondent Goodyear are contending that we are not introducing this survey through a witness. However, I would like to call your Honor's attention to the fact that the source data is in the hands of respondent Atlantic.

I would also like to call your Honor's attention to an article in 58 Yale Law Journal, 1242, entitled "The
80 Trial of Economic and Technological Issues of Fact: II." by Professor George H. Dession, which is one of the leading articles in this field.

With respect to specially prepared material he states under C:

> "The principle is clearly established that trial judges have wide discretion to permit the use of prepared or predigested material (as distinguished from responsive oral answers in interrogation by counsel in open

court, and from original source data) 'when reasonably helpful under the particular circumstances.'

"Summary: Where facts in issue can only be ascertained by the inspection of voluminous records, papers, books of account, or other data, the best evidence rule will be relaxed, and an oral or written summary allowed in evidence. The question is when the original sources thus summarized must already be in evidence, or at least available to the opposing party. But, however this may be determined, it is clear that the original sources must be of an admissible character.

"The foundation will usually be considered sufficient: (1) where the source data is produced in court, but not offered in evidence, or (2) where it is made available to the opposing party for purposes of check,
81 and cross examination, but not produced in court because of practical inconvenience, or (3) where the source data consists of public records, et cetera . . ."

which is number 3 and is not pertinent to this argument.

However, the source data is in the hands of respondent Atlantic, they have access to it, they certainly are in a position to know the basic data which entered into the survey itself.

Actually, they are in the position of attacking the reliability of a survey made under the, or made by or under the supervision of the company's own employees. I think there is a presumption that the survey was based upon sound principles.

Hearing Examiner Kolb: That might be true, Mr. Kelaher, if you were proceeding against Atlantic alone, but you also have Goodyear involved here and I think that Goodyear is entitled to know the nature and extent to which this survey was made, how it was done, and who did it.

and a few more facts which could be testified to by a witness before it becomes competent.

Mr. Kelaher: Your Honor, are you stating that it would be or are you implying that it might be admissible as against Atlantic subject to a motion to strike by Goodyear?

Hearing Examiner Kolb: Your statements, I think, would apply if you were proceeding only against
82 Atlantic. You have two respondents here, you have Goodyear and you have Atlantic, and the difficulty you run into when you admit a document against one respondent is that it more or less smears the other eventually some place along the line, and under those circumstances I think that you probably should put a witness on the stand to give some information as to how this was conducted and the nature of it, and some information before it becomes competent.

Mr. Kelaher: Your Honor, I would like to state that that information is in the hands of respondent Atlantic, if they will furnish the witness we'll be glad to put him on the stand.

Hearing Examiner Kolb: I think counsel has agreed to give you a witness if you wish it.

Mr. Ballard: Yes, sir; I have agreed both before and on the record to do what I can to help Mr. Kelaher substantiate this thing if he wants to try to do it.

Hearing Examiner Kolb: Do you want to withdraw the offer at this time?

Mr. Kelaher: Your Honor, we suggest that it may be somewhat analogous to the documents which related to one named respondent and not the other which have been admitted into evidence subject to a motion to strike by the one respondent which has not had knowledge of the material.

Hearing Examiner Kolb: Well, counsel has agreed
83 to produce a witness for you. I think that some information should be in the record as to what this is other than a bunch of fractional figures or percentages.

Mr. Kelaher: Well, your Honor, we withdraw our offer.

Hearing Examiner Kolb: Let the record show that Exhibit No. 101 is withdrawn for the present.

Mr. Kelaher: However, your Honor, I believe it is clear it will be subject to renewal at a later date?

Hearing Examiner Kolb: Yes, it is withdrawn at this time.

Mr. Kelaher: Your Honor, we have three additional documents the first of which is a letter from G. V. Ostrander, Manager, New York Marketing Region, of Atlantic to Mr. D. T. Colley of Atlantic, dated April 19, 1950, entitled, "Firestone Tire and Rubber Company," which we ask to be marked as Commission's Exhibit for identification 188.

(The document referred to was marked Commission's Exhibit 188 for identification.)

Mr. Kelaher: We now offer this document in evidence, your Honor.

Hearing Examiner Kolb: Could I see the document a minute, Mr. Kelaher?

(The document was handed to the Examiner.)

Mr. Mason: The objections of Goodyear, your
84 Honor, with respect to this document are similar to those we have made in earlier instances. We press again our objection that documents having solely to do with Firestone should not be admitted in evidence in this proceeding and also this is a document from the files of Atlantic Refining Company as to which Goodyear has no notice.

Hearing Examiner Kolb: Under the Commission's ruling the document will be received in evidence subject to a motion to strike on the part of Goodyear.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 188 was received in evidence.)

Mr. Kelaher: We would now like to have marked for identification a document dated May 18, 1950 from M. G. Davis, Manager of Sales Promotion, New England Marketing Region, Atlantic, to Mr. S. J. Heideman of Atlantic as Commission's Exhibit 189 for identification.

(The document referred to was marked Commission's Exhibit 189 for identification.)

Mr. Kelaher: We would like to offer this document into evidence, your Honor.

Mr. Mason: We have the same objection, your Honor, and ask that it not be received.

Hearing Examiner Kolb: The document will be received in evidence subject to the motion to strike on
85 the part of Goodyear.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 189, was received in evidence.)

Mr. Kelaher: I would now like to have marked as Commission's Exhibit 190 for identification a document found in the files of Atlantic Refining Company from H. D. T, Vice President, presumably of the Firestone Tire and Rubber Company, to Mr. H. E. Powell, District Manager of Firestone Tire and Rubber Company, Pittsburgh, Pennsylvania.

(The document referred to was marked Commission's Exhibit 190 for identification.)

Mr. Kelaher: We ask that that be received in evidence.

Mr. Mason: Goodyear again objects to the competency of this document, first, it relates solely to Firestone and secondly, it's a document which Goodyear has no notice.

Hearing Examiner Kolb: The document will be received into evidence, Commission's Exhibit No. 190, subject to a motion to strike on the part of Goodyear.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 190, was received in evidence.)

87 Room 112,
U. S. Customs House and Appraisers Bldg.,
2nd and Chestnut Streets,
Philadelphia, Pa.,
Thursday, June 13, 1957.

Met, pursuant to notice, at 10:30 a.m.

88 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: At this time I would like to offer into evidence map entitled "Atlantic Philadelphia Metropolitan and Suburban District," with Commission exhibit number to be assigned tomorrow.

Hearing Examiner Kolb: You wish to question the witnesses on that?

Mr. Kelaher: Yes, your Honor.

Hearing Examiner Kolb: Is there any objection to that?

Mr. Thompson: No objection, sir.

Mr. Kelaher: I would like to call John Chambers to the stand.

Mr. Thompson: Mr. Examiner, for the convenience of you, sir, and counsel, we have had this map of the Philadelphia Suburban District blown up, and you will see an enlarged edition of it on the wall. I thought it might be a help to everybody.

Hearing Examiner Kolb: Very well.

JOHN CHAMBERS, was thereupon called as a witness for the Commission, and, having been first duly sworn,
89 testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name?

A. John Chambers.

Q. Your home address?

A. 14 Sycamore Avenue, Alden, Delaware County, Pennsylvania.

Q. Mr. Chambers, were you at one time employed in an Atlantic service station?

A. I was.

Q. Will you please state the period during which you were employed and by whom, and with whom?

A. Well, I would say from the latter part of '45 until the latter part of '48 with Ed Parris.

Q. Where was his station located?

A. Chester Pike and Clifton Avenue, Sharon Hill.

Q. After your employment with Mr. Parris, what was your next occupation?

A. Then I became a dealer at 2nd and Lloyd, Chester.

Q. What kind of a dealer did you become?

A. A lessee dealer.

Q. During what period did you operate the station at 2nd and Lloyd Streets?

A. From November of '48 until November of '52.

90 Q. And what type lease or what was the term of your lease during that period?

A. Yearly.

Q. Then in November of 1952 what transpired?

A. I moved to the location at Chester Pike and Clifton Avenue, Sharon Hill.

Q. And during what period were you at that location?

A. From November of 1952 until November of 1954.

Q. And what type station was that?

A. Lessee.

Q. Was it an Atlantic station?

A. That is right.

Q. And what was the term of your lease during the period when you were at the Sharon Hill station?

A. Three to six months.

Q. Is that renewable every three months?

A. Yes.

91 Q. Mr. Chambers, just to clear the record, during the period 1945 on or during the period when you were employed, were you with an Atlantic station?

A. Oh, yes, sir.

Q. And during the period of your first lease was that at an Atlantic station?

A. That is right.

Q. When you began operating as a lessee dealer in November of 1948, what TBA did you carry in your station?

A. Lee and Exide tires.

Q. You mean Exide batteries?

A. Exide batteries, I meant, and much of my TBA was outside jobbers.

Q. Your accessories were from local jobbers?

A. That is right.

Q. How long did you continue to carry these tires and Exide batteries and the line of accessories you were handling?

A. Until the change was made.

92 Q. And do you recall the events leading up to the change you referred to?

A. No, I don't recall anything other than came about.

Q. At or about what time did the change take effect?

A. I could not be exact on that.

Q. And what was the change, what was the change you are referring to?

A. The change was from Lee tires, of course, Exide batteries, to a 100 percent Goodyear.

Q. Was Goodyear a 100 percent Goodyear TBA?

A. Everything.

Q. What was included in that line, Goodyear tires?

A. Batteries, fan belts and the accessories that goes along.

Q. Did you in or about March of '51 attend a meeting of Atlantic dealers?

A. Oh, yes.

Q. What was the purpose of the meeting?

A. Well, to inform us the company was making that change and they felt it was better for the entire industry, that is, our service station business.

Q. When you say the company, to whom are you referring?

A. Whoever was handling the meeting at that time, I don't recall.

Q. What was the name of the company?

93 A. Goodyear and Atlantic.

Q. And approximately how many dealers were present at that meeting?

A. Well, I guess fifty or sixty.

Q. And after you were informed of the change-over as you call it, did you then begin to purchase Goodyear TBA?

A. Oh, yes.

By Mr. Kelaher:

Q. Did you observe whether other dealers changed to Goodyear TBA after the meeting referred to?

A. Yes.

Mr. Thompson: I object unless the other dealers which Mr. Kelaher is referring to are specified.

94 Mr. Mason: I object also.

Hearing Examiner Kolb: You may answer that.

By Mr. Kelaher:

Q. You may answer it.

A. Well, certainly I saw the merchandise around in other stations.

Q. And did you see the Goodyear TBA line go into the other stations?

A. Oh, sure.

Mr. Mason: I move to strike unless the stations are identified.

Mr. Kelaher: Your Honor, that is a matter of cross-examination.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. From whom did you begin to purchase your Goodyear TBA line?

A. From the Company distributor who was Ed Parris.

Q. At the time of the switch-over were any steps taken to identify your station with Goodyear signs of any type?

A. Yes, I just recall them putting these things across the window, I guess Decals or what have you, across the entire front of the building and re-sleeved a lot of my fan belts and hoses and identified them.

Mr. Mason: I move to strike the answer unless 95 "they" are identified.

The Witness: Goodyear re-sleeved the fan belts.

By Mr. Kelaher:

Q. Would you explain what is meant by re-sleeving?

A. Well, there was some thermoid belts and the sleeves were taken from that and Goodyear sleeves were put on it.

Q. You mean there was a change of brand name from thermoid to Goodyear?

A. That is right.

Q. Mr. Chambers, after March of 1951, did you purchase any TBA from suppliers other than Mr. Parris?

A. Yes.

Q. Would you please state the names of some of these jobbers at least from whom you purchased and the type of products you purchased?

A. I would say Chester Auto Parts.

Q. Will you please give the city where they are located?

A. Chester.

Q. Pennsylvania.

A. Right. Mac's Products is one.

Q. Is Mac's Products a line of chemical or waxes?

A. Chemicals and waxes.

Q. That would be an accessory item, is that right?

A. That's right. Of course, C. A. Powers, on recapping, snow grips.

96 Q. Where is C. A. Powers located?

A. Chester.

Q. What is C. A. Powers?

A. A Goodyear distributor.

Q. Did you purchase new tires and tubes from C. A. Powers?

A. Yes.

Q. In quantity or—

A. Never much quantity, no.

Q. Where was the bulk of your new Goodyear tires that you purchased?

A. Purchased from the distributor.

Q. And you say you had recapping done by C. A. Powers?

A. Right.

Q. Did Mr. Parris have recapping facilities?

A. No, not at that time.

Q. And would you name some of the other companies from whom you purchased?

A. Hymen Stein, who was in Chester, Zerex and Zerone.

Q. They are anti-freezes, are they not?

A. That is right. Then Auto Parts and Radiator Company in Chester, we purchased all polishes.

Q. And accessories. You can just identify them as accessories, tires, and batteries.

A. Just accessories.

97 Q. Were there any others you can recall?

A. Not in 1951.

Q. Well, from then on, from then until you left—

A. Well, V. J. Auto Parts in Sharon Hill, accessories, and Barrodin Auto Supplies in Philadelphia.

Q. Is that B-a-r-r-o-d-i-n?

A. That is right.

Q. And did you purchase a product known as Barsleak from any of these jobbers?

A. Yes, sir.

Q. Who did you purchase that from?

A. Barrodin.

Q. That's an accessory item, is it not?

A. Yes.

Q. What products did you purchase from V. J. Auto Parts?

A. Why, usually I would pick up items that I would have to have immediately and some accessories when there was a deal involved.

Q. Did you purchase Barsleak from V. J. Auto Parts?

A. I believe so.

Q. From whom did you purchase the bulk of your accessories?

A. The distributor, Ed Parris.

Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris?

98 A. Yes.

Q. Would you please state some instances?

A. Well, I mean, there is the one that is the greatest in my memory right now was the Barsleak, and of course Joe Connelly was saleman at that time, and Joe would pick it up any say, "What are you doing with this," and he would set it back down.

By Mr. Kelaher:

Q. Were any comments other than the one referred to made by Atlantic representatives concerning the purchases of TBA from local jobbers other than Ed Parris?

Mr. Thompson: I object to the form of the question. The only testimony so far has been with reference to something called Barsleak which I have never heard of.

Mr. Mason: Objection.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You may answer.

A. Why, yes, there was great criticism, shall I say,

99 in reference to outside merchandise.

Q. Who made these criticisms?

Mr. Mason: Just a moment, I move to strike the statement, the witness' answer, unless the statement is clarified, it is too general.

Hearing Examiner Kolb: I understand what Mr. Kelaher is doing, he is clarifying it.

Mr. Kelaher: Would you please read back the last question?

(The stenographer read back the last question as follows:

"Q. Who made these criticisms?")

The Witness: Why, salesmen who represented the company.

By Mr. Kelaher:

Q. Which company?

A. Atlantic.

Q. Would you name some of the salesmen, if you please?

A. Of course, I only had about four during my time of dealership with Atlantic.

Q. Who were they?

A. There was Joe Connelly, Joe Muldoon, and Steve Petrison. There were three and the first was Al Vayda.

Mr. Mason: If your Honor please, I would like to move to strike the entire line unless the criticisms as such 100 are identified. We are still talking in terms of a very general word; it is meaningless.

Hearing Examiner Kolb: I assume the following series of questioning will bring it out.

Mr. Mason: I want it to be understood I am placing an objection and we will move to strike if it isn't brought out.

By Mr. Kelaher:

Q. Mr. Chambers, did the men or did any of the men you have mentioned make such criticisms?

A. You were always reminded that on check-out.

Q. What is meant by check-out?

A. Well, they were going—when you left the business, in other words, when they expired your lease or when they cut your lease, they would only accept that merchandise that they sold or handled. The outside merchandise would not be accepted at all.

Q. In other words, if your lease expired, are you stating

that Atlantic would not buy back any outside merchandise you purchased in the TBA line?

A. That is right, from outside sources if they did not handle it.

Q. And where did these conversations take place between the Atlantic salesmen and you?

A. Many times over a cup of coffee and sometimes 101 out in the driveway.

Q. Would it generally be a private conversation?

A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature?

A. It was never done openly.

Q. What was your experience with respect to advertising of TBA when you—

Mr. Mason: Pardon me, have you left the line that has to do with criticism?

Mr. Kelaher: We covered that quite entirely.

Mr. Mason: I move to strike because the criticisms have never been identified. All we have is a very general characterization and statements that have been made.

By Mr. Kelaher:

Q. Mr. Chambers, you named a number of Atlantic salesmen—

Mr. Mason: I would like to have a ruling.

Hearing Examiner Kolb: The criticism which has been referred to was the statement with reference to the non-return of products which were not Goodyear. The objection will be overruled and the motion to strike denied.

* * * * * * *

102 By Mr. Kelaher:

Q. Mr. Chambers, with respect to advertising in your station, what was your experience during your time as an

Atlantic lessee dealer with respect to the advertisement of TBA products?

A. Well, as a dealer, you bought a package deal; I mean you paid for a package deal on advertising and of course they handled it for you.

Q. By "they" you mean who?

A. Atlantic handled the entire thing on a month-to-month basis; in other words, you bought it as a package deal.

Q. What products did you have advertised in your station?

103 A. All products sponsored by Atlantic, Goodyear.

Q. Did you advertise products not sponsored by Atlantic in the Goodyear TBA line?

A. Oh, no.

Q. Did you say no?

A. No.

Q. Why did you not advertise such non-sponsored products?

Mr. Mason: I object to the form of the question.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You may answer.

A. Well, because it wasn't handled by the company and it wasn't included in the package advertising, and of course it just wasn't done.

Q. Did you ever attempt to advertise non-sponsored TBA?

A. Only through, shall we say, stickers or Decals on various things at the station.

Q. Was any comment ever made by such advertising, non-sponsored TBA by Atlantic representatives?

A. In reference to those advertisements?

Q. Yes.

A. Yes, sir.

Q. What comments were made?

104 A. To take them off.

Mr. Thompson: That is objected to unless the person who said that is identified.

By Mr. Kelaher:

Q. Will you please state the person who said that, from Atlantic?

A. Mr. Arnholt.

Q. Did you use credit cards at your station?

A. Yes, sir.

Q. Atlantic credit cards?

A. Yes, sir.

Q. And what products were you able to sell or what products did you sell on Atlantic credit cards?

Mr. Thompson: I object to that.

By Mr. Kelaher:

Q. What TBA products?

Mr. Thompson: Let's have the question read back.

(The stenographer read back the question as follows:

"Q. What products were you able to sell or what products did you sell on Atlantic credit cards?")

Mr. Thompson: It is obviously a double question.

Hearing Examiner Kolb: Reframe your question.

By Mr. Kelaher:

Q. What brand of TBA products did you sell on Atlantic credit cards?

105 A. Well, on the credit cards there was some flexibility. Now on the polishes and what have you, why, we never ran into any trouble on the small items. But like most businesses you could not expect Atlantic who was

handling Goodyear tires to finance or charge Lee or Century, or something else.

Q. You never attempted to charge other than Goodyear on the credit cards?

A. Not on the big items; no, sir.

Q. What type of uniform did you normally wear at the station?

A. Well, we had a rented one that we paid for from—gee, I don't remember who it was.

Q. Was there ever a time when you did not wear the uniform you purchased?

A. There were many times; we got three suits a week on the rented setup and there were times when the suits were dirty and they were maybe on a holiday and something came in, of course.

Q. Did you ever change your type of cap?

A. Yes, once. I was never much for wearing a cap except these peak kind that service station people have.

Q. What kind did you wear?

A. I bought a leather hat, it's used by sportsmen; and at the time I bought a red one.

106 Q. Was any comment ever made by an Atlantic representative with respect to your uniform?

A. Yes. Mr. Arnholt asked me was I a gunner.

Q. Would you explain the incident?

A. Well, he apparently did not like the hat on me. He, with Mr. Connelly and Mr. Sanborn on the morning—

Q. All of Atlantic?

A. Yes, the hat was taken from my head and thrown in the waste paper basket.

Q. Who took the hat off your head?

A. Arnholt.

Q. What happened after that?

A. He took it out of the waste paper basket and put it back on my head again.

Q. At your request?

A. Yes.

Q. Did you keep books and records of your service station operation as an Atlantic lessee dealer?

A. Daily.

Q. Were those records inspected by an Atlantic representative?

A. Yes, I gave them full freedom to check my books and records at any time.

Q. Did that include inspection of your TBA purchases?

A. Anything that was in the book, sir, they were 107 free to check.

Mr. Kelaher: Mr. Examiner, I have a document which I would like to identify as Commission's Exhibit 274 for the reason that other documents have been identified, have been assigned numbers up to that number which will be put into evidence tomorrow.

Hearing Examiner Kolb: All right.

(Document identified as Commission's Exhibit 274.)

By Mr. Kelaher:

Q. Mr. Chambers, I hand you Commission's Exhibit 274 and ask you to state what that is.

A. Well, this is a letter that was sent out by Atlantic.

Q. Would you please give us the date?

A. This is October 14, 1954.

Q. And who was it from?

A. It is A. R. Sanborn, District Sales Manager, Philadelphia and Suburban.

Q. And would you please read the letter?

A. "Mr. John Chambers, Chester Pike and Clifton Avenue, Sharon Hill, Pennsylvania.

"Dear John: Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

"This is the kind of job which makes us all feel very happy and it certainly is an important factor in running
108 a profitable service station.

"Keep up the good work!

"Cordially yours"—Mr. Sanborn.

Mr. Kelaher: Strike the word—I think the word "feel" should be stricken, it does not appear in the letter.

Mr. Mason: Are you going to offer the document in evidence?

Mr. Kelaher: I have identified it. Are you making an objection?

Mr. Mason: No; simply as to its admissibility as to Goodyear. Goodyear is a stranger to this transaction.

Mr. Kelaher: I move that Commission's Exhibit 274 be received in evidence.

Mr. Thompson: No objection on behalf of Atlantic.

Mr. Mason: Goodyear objects because this is obviously a transaction that is between a third person and the witness and I do not believe the document will be admissible.

Hearing Examiner Kolb: The objection will be overruled.

(COMMISSION'S EXHIBIT 274 received in evidence.)

By Mr. Kelaher:

Q. Mr. Chambers, was it customary for the Phantom Customer Inspector to call at your station during your years as an Atlantic lessee dealer?

A. I think the Phantom was something new; I mean,
109 Atlantic was always service-minded and of course service and cleanliness is the basis of good business. Through these inspections, they kind of kept the boys on their toes. Many times they would receive a bonus such as a dollar or a certificate for a dollar, for the service rendered, and the merchandise displayed at the location and the cleanliness of the location. Of course, the 290 there is based on service, display, and cleanliness.

Q. Did you know or did you have any reason to know when the Phantom Customer Inspector was in your station?

A. No.

Q. Were you ever advised in advance of his appearance?

A. No, not on this chap; but some of the other ones we used to get a chain letter or by a phone.

By Mr. Kelaher:

Q. Mr. Chambers, you stated that you were an Atlantic lessee dealer until November, 1954. Would you please state the reasons leading up to November, 1954, when you left the Atlantic service station at Sharon Hill? In other words, state the reasons leading up to your termination of your lease in November, 1954.

Mr. Thompson: That is objected to; there has been no testimony that any of this has been terminated by anyone.

Hearing Examiner Kolb: Objection sustained.

By Mr. Kelaher:

Q. Mr. Chambers, you stated that you were an Atlantic lessee dealer until November, 1954. Would you please explain why you did not continue as an Atlantic lessee dealer after that date?

A. Well, because they cancelled my lease; that is the reason I wasn't a dealer.

Q. Would you explain that, please?

A. Well, I mean, I kind of think a lot of things led up to it. I just don't know exactly where to start.

Q. Well, let me ask you this: You received a letter dated October 14, 1954. Did any events transpire after that date?

A. When I received that letter, I was on my way out then.

Q. You were?

A. Yes.

Q. Why did you think you were on your way out then?

111 A. I was told I was on my way out.

Q. Would you please explain that?

A. Yes, I will. Atlantic was going on a commission basis with gasoline, which was fixing price, shall I say. We had to buy the gas or did not buy it, they put it in, stuck their tanks in and then we were charged with what we sold at a price. The salesman who was Steve Petrison made the rounds and according to my memory, he told me that he called on ten locations and out of ten locations he got five acceptances for the commission basis and five refusals. The five refusals were in an area, a given area of Sharon Hill, Darby, Collingdale, Glenolden, and they were not going to put up with that any longer.

Q. Who wasn't going to put up with it?

A. The salesman.

Q. Referring to the Atlantic salesman?

A. Yes. And we were going to have to take the commission deal and at that time he told me it did not make any difference whether I took it or not, my lease wasn't being renewed.

Q. Please go on.

A. I mean—

Q. Did he make any statement to you at that time?

A. Well, I said, "Is that it," I mean, "Are you serious?" He said, "Yes, dead serious." "Of course,

112 John," I said, this isn't my decision, it is the decision that was handed down from top level." I said, "It is rather cold and sudden, wouldn't you say?" He said, "That's the way it is, we are going to bust this up one way or another."

Q. What was he referring to?

A. A clique; that is, dealers that were trying to stay together. Can I go back a little bit?

Q. Yes, go ahead.

A. There were times in our business when we kind of felt as dealers we ought to make a few decisions ourselves. Many of the decisions were handed down by top level in the office, I believe, and maybe their intentions were good and maybe they were not. Nevertheless, we feel as dealers that we should operate as independent business men and make some decisions ourselves. We pay the rent and we know we have the location and we know we have obligations to meet. And many times the company through the competition factor which exists today even still would not go along with us to meet the tank-wagon price of the competitive deal.

Q. I see.

A. In other words, we will say a company would sell a tank wagon at 19.9 and we would still charge 21.9 on the tank wagon, yet we were expected to meet competition.

Q. I see. Even though the competitors had a lower price.

A. Yes, many of the dealers got together and we 113 said, "Look, we will meet competition when the company comes along with us and gives us a helping hand." At that time they had a zoned area, it ran like the Chinese Wall. This guy got it on this side of the fence and this guy did not get it on this side of the fence.

Q. By getting it, you are referring to—

A. A subsidy they gave, and while we tried to band together and hold our price until the company did something to help us. There were times when I had a cardboard sign or an "A" sign that we have out in front that we use for advertising purposes of either Goodyear tires or Goodyear batteries, or Atlantic Hi-Arc. You turn the face around on those and we painted the sign on them—26.9 or 23.9. I was asked by Mr. Arnholt to get two professional four by eight signs and this involved quite a hassle because I

checked into the price of the outside plywood and it ran me too much money. So I of course did not get the signs. So he said that when I told him I refused to get the sign, he said that—that is Mr. Arnholt—said to remember this conversation in the future because one day it would come up. So I kind of think that as far as my association with Atlantic which—

Q. Mr. Chambers, I want to keep you on this. After your conversation with Mr. Petrison did you go to Atlantic or to an Atlantic representative?

114 A. No, I asked through Steve Petrison to have an interview with Mr. Sanborn, to try to reason it out; I mean, I had moved to Sharon Hill with the thought of staying in Sharon Hill.

Q. I see.

A: I joined a service club and I was quite active in and around the town to try to put things on their feet up there and make a dollar myself. Of course, I had a lot at stake. At that time I was having family trouble at home and of course I was—everything piled up at once.

Q. At this time did you discuss the matter with Mr. Parris?

A. Yes; I, of course went to Ed because Ed to me in the years I had been with Atlantic, of course I started with him as a—

Q. Excuse me, Mr. Chambers, what was the substance of your conversation with Mr. Parris?

A. I asked, what in the world happened, what could I do. He said, "Jack, you have been turned in by three dealer salesmen for buying outside merchand[illegible]" I said, "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise.

Mr. Thompson: I object to this and ask it be stricken, your Honor. It is totally hearsay.

Hearing Examiner Kolb: He is stating a conversa-

115 tion he had.

Mr. Thompson: No, sir; he is stating what somebody said, somebody else said.

Mr. Kelaher: No, he is not; he is stating the substance of his conversation with Parris.

Mr. Thompson: The only possible relevance would be that it is a repetition of what Mr. Parris said and what somebody else said. This would be clearly within your double hearsay ruling.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Kelaher:

Q. About what approximate time did your conversation with Mr. Parris take place? I am referring to the month.

A. It would be in—I am only guessing, I cannot be accurate, I would say it was around the first week in November.

Q. And you state that you left in November of 1954. How did that come about?

A. That would be—actually, it would be in October when I was there rather than November 1st, it was the 13th of November I was checked out.

Q. Mr. Chambers, did Atlantic salesmen take TBA orders from you?

A. Yes.

Q. And, Mr. Chambers, when you checked out, as 116 you say, November of 1954 did you have an inventory TBA on hand?

A. Did I have an inventory?

Q. Yes, an inventory of TBA on hand?

A. Oh, yes.

Q. And did you or did Atlantic purchase any of that inventory?

A. Well, the purchase was to include everything that Atlantic sold and if the incoming dealer wanted to buy the outside merchandise they would not stop him, but that

was a personal check between the incoming dealer and myself.

Q. With respect to TBA, what did Atlantic re-purchase from you or purchase from you, rather?

A. Well, only that merchandise that they handled.

Q. Are you referring to the Goodyear TBA line?

A. That is right.

Q. Mr. Chambers, referring back to the time, to the dealer meeting when the switch-over to the Goodyear TBA line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?

A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

Q. Mr. Chambers, did Atlantic periodically hold so-called dealer meetings?

A. Yes, sir.

117-A Q. Did you ever attend any of those meetings?

A. Fairly near all of them.

Q. Was TBA ever mentioned at such meetings?

A. Well, yes, it would come up to that point; I mean, many of them were sales promotional meetings.

Q. Who would be present at such meetings of that type?

A. Well, the head of sales.

Q. For Atlantic?

A. Yes.

Q. Would anyone from Goodyear ever be present?

A. Only if a new product was coming out for something.

Q. They would be present on occasions?

A. Oh, yes.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: We will take a short recess at this point.

(A short recess taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Thompson.

Q. Mr. Chambers, when you left Atlantic in November of 1954, you took over the Esso station at 4th and Sproul Streets in Chester?

Mr. Kelaher: Objection as irrelevant.

117-B Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. Did you understand the question?

A. Yes. The address is 9th and Welch.

Q. Is that close to 4th and Sproul?

A. Five squares and one.

Q. What was that again?

A. 9th and Welch.

Q. Would you mind pointing out that location to us on the Chester map?

A. It would be right in this area here, sir (indicating on the map.).

Mr. Kelaher: Mr. Examiner, if counsel is marking the map, perhaps some symbol should be made.

Mr. Thompson: That is my copy, for my information.

By Mr. Thompson:

Q. That is rather a prize station, isn't it?

Mr. Kelaher: Objection, your Honor. He is referring to his present Esso station. It is irrelevant in this proceeding, your Honor.

Hearing Examiner Kolb: The objection is overruled.

Mr. Kelaher: I might add that our direct examination, counsel is going beyond the scope of the direct examination.

118 Mr. Thompson: This is not beyond the scope.

Hearing Examiner Kolb: It may be involved in this.

By Mr. Thompson:

Q. That is rather a prize station, isn't it?

A. No, sir; I would not say so, sir.

Q. You are doing very well there, aren't you?

Mr. Kelaher: Objection.

The Witness: I am doing all right.

By Mr. Thompson:

Q. Mr. Chambers, you also did well for Atlantic in the station you had for them, didn't you?

A. I thought I did, sir.

Q. May I go back a little bit in your history. You started the history of your career in the oil business with the year 1945. That was right after the war, was it not?

A. Right.

Q. Before the war, weren't you a direct employee of Atlantic Refining Company?

A. Just for six months, sir.

Q. But then after the war, when you took the Sharon Hill station, Ed Parris to whom you have referred was the lessee, was he not?

A. That is right.

Q. Now, at the time, was he not what is called the 119 key dealer for the Atlantic Company, distributing Lee tires?

A. That is right, sir.

Q. And you very quickly became the manager of that station, didn't you?

A. Well, not quickly, sir; there was three dealers went out ahead of me.

Q. I meant the Sharon Hill station that Mr. Parris had under the lease, you were the manager of that station.

A. I became manager of that station, yes.

Mr. Kelaher: Your Honor, Mr. Chambers, has referred

to another Sharon Hill station and I think the record should be clear as to the period involved and the location of the station involved.

By Mr. Thompson:

Q. I am now talking, Mr. Chambers, about the year 1945 to 1948 when you were an employee.

A. That is right.

Q. Of Ed Parris at the Sharon Hill station of which you subsequently became the lessee, is that correct?

A. Not of that location; no, sir.

Q. Not the same station?

A. No, sir; I went from there to 2nd and Lloyd.

Q. Yes, but later you did get the same Sharon Hill station.

A. Yes, sir; later I came back.

120 Q. Now, having served as manager for Ed Parris, you were promoted to your own station, weren't you, at 2nd and Lloyd?

A. That is correct.

Q. And that was on Mr. Parris' recommendation, was it not?

A. I think so, sir.

Q. And you had that station from November of 1948 until November of 1952, I think you testified?

A. That is correct, sir.

Q. And you did a mighty fine job for Atlantic there, didn't you?

A. I think so, sir.

Q. Now, at the time of what you call the change-over, you were at the 2nd and Lloyd station, were you not?

A. That is right.

Q. Now, didn't the same Ed Parris became the distribution point for Goodyear?

A. That is right, sir.

Q. And at that time you were very close to him, were you not?

A. I always was.

Q. So that quite naturally you would buy TBA from him whether it be Lee or Goodyear, would you not?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

The Witness: Yes.

121 By Mr. Thompson:

Q. Now, you referred to a meeting that you attended in the spring of 1951 when Atlantic announced to about fifty local dealers that they were going to go on the Goodyear plan?

A. Yes.

Q. I am now going to hand you a photostatic copy—Mr. Kelaher, instead of asking for the original—of Commission's Exhibit 150. Mr. Chambers, I show you a letter dated March 1, 1951 which is a photostatic carbon copy of a letter which is Exhibit 150 in this case and ask you whether you recall receiving that letter.

A. I probably did.

Q. You have no present recollection of it?

A. No.

Q. Well, at the meeting to which you referred did the Atlantic spokesman say to you dealers that the Goodyear plan was something which you could accept or reject and the choice was yours, words to that effect?

A. Probably could have.

Q. As a matter of fact they did, didn't they, Mr. Chambers?

A. I don't recall exactly.

Q. But that was the general sense of the meeting?

A. That was the general sense of it.

Q. Do you recall a similar meeting which was held
122 in August 28, 1952 when Mr. Mulholland became At-
lantic's TBA coordinator, a breakfast meeting, with door prizes. Do you remember that particular meeting?

A. No, not offhand, I don't recall it, sir. Could you enlighten me?

Mr. Keleher: Just answer the question.

The Witness: No, I don't.

By Mr. Thompson:

Q. You did refer to having attended a number of Atlantic dealer meetings?

A. Yes, sir.

Q. Wasn't it pointed out to you on a number of occasions that the acceptance or rejection of a Goodyear plan was up to you fellows?

A. That is right.

Q. Mr. Chambers, having done a good job at 2nd and Lloyd, you were promoted again by Atlantic, weren't you?

A. No, sir, no.

Q. To the Sharon Hill station?

A. No, that is not a promotion, sir.

Q. Didn't you regard that as a promotion?

A. Did I regard it as a promotion?

A. Yes.

Q. If you drop from around 22,000 a month or 23,000
a month down to 9 and 10,000 a month, would you
123 consider that a promotion? I went up there on my ability to build it.

Q. Well, Mr. Chambers, the Sharon Hill station was leased to you at your specific request, wasn't it?

A. That is right; I wanted to move up there.

Q. You wanted to move up there.

A. That is right.

Q. Isn't it true that the 2nd and Lloyd Streets station was on the old Industrial Highway?

A. Well, it is still on the same Industrial Highway.

Q. It is the old Industrial Highway, isn't it, which had been by-passed by the new Industrial Highway?

A. No, sir; it is still the same highway.

Q. But it is just opposite the Ford Assembly plant, isn't it?

A. That is correct.

Q. There is not an awful lot of traffic that goes by there.

Mr. Kelaher: Objection, your Honor.

The Witness: It would not be safe to walk across the street at four o'clock without watching the light, that is how much traffic.

By Mr. Thompson:

Q. When the Sharon Hill station came up, you knew of course that Atlantic was going to reconstruct it, didn't you?

124 A. Yes, I did.

Q. And that was in a very competitive well-traveled area, wasn't it?

A. That is right.

Q. But you were in effect at that time taking over a station which you were just opening, weren't you?

A. Explain that to me, sir.

Q. It was re-opened as a new station, wasn't it?

A. I went in the old location.

Q. At the old location but it was re-opened as a new station.

A. I went through the construction of it, yes.

Q. So when you started to operate that station, you had to build the gallonage up, didn't you?

A. Yes.

Q. You did it very quickly, didn't you?

A. Well, not as quickly as I would have liked.

Q. But Atlantic was very well pleased with the way you handled it, weren't they?

A. They did not indicate so, sir.

Q. How about the salesmen, weren't they all close friends of yours?

A. Well, I think so.

Q. Joe Connelly?

A. Yes, I think so.

125 Q. He had nothing but praise for you, didn't he?

A. Joe always had a good word for me, sir.

Q. Isn't that also so about Muldoon and Petrison?

A. I can speak only for Joe; I had more contacts with Joe than I did with the other two.

Q. He was the one who was your salesman for the longest period of time?

A. That is correct.

Q. Now, there was certainly never any problems so far as Atlantic was concerned about your housekeeping. You got nice letters from them, didn't you?

A. Well, that letter, yes.

Q. As far as TBA is concerned, you were a star salesman, weren't you?

A. Well, you will have to reclassify "star salesman".

Q. If anybody in the service station business sells TBA at the rate of say thirty dollars for a 1,000 gallons of gasoline, isn't that considered exceptionally high and very good salesmanship?

A. Yes, I think it is.

Q. Isn't that just precisely what you did?

A. I thought I ran figures like that.

Q. You were running very high on TBA, weren't you?

A. I thought I did, yes.

Q. You were operating in an extremely competitive

126 neighborhood, weren't you?

A. Yes, extremely.

Q. The fact Sharon Hill, there are just a lot of competitive TBA outlets within a very short distance, is that not true?

A. Yes, like on any other highway, I think.

Q. Isn't that particular highway sometimes called "Gasoline Alley"?

A. I never heard it referred to as that; the lower end, not that upper end.

Q. Now, you were referred, by the way, to the Red Cap.

A. Yes.

Q. After Mr. Arnholt criticized that, didn't you put up a gag on him by getting some of the other dealers to wear red caps, too?

A. Never, sir; never.

Q. Didn't you do it just as a joke on Mr. Arnholt?

A. Never, sir.

Q. Now, I direct your attention, Mr. Chambers, to the fall of 1954. You testified, I believe, that you had at the Sharon Hill station entered into a series of rather short term leases with Atlantic.

A. I thought—from the time of the new one, they were short term leases, yes.

Q. And those short term leases were during what 127 you fellows called the build-up of the station, weren't they?

A. The construction.

Mr. Kelaher: Objection; it was not identified who those fellows were.

Mr. Thompson: By "you fellow", of course I am referring to the service station operators.

The Witness: I don't know as we had anything to do with it. The leases were brought in from the main offices, we did not write the leases.

By Mr. Thompson:

Q. Of course, you did not write the leases, Mr. Chambers, but you signed them, didn't you?

A. Well, yes, if you wanted to stay in there, you signed it.

Mr. Thompson: I would like to have marked for identification a document entitled, in large letters: "Atlantic", which purports to be a lease of October 1, 1954, between John Chambers and the Atlantic Refining Company.

(The document referred to was marked Atlantic Exhibit Number 1 for identification.)

By Mr. Thompson:

Q. Mr. Chambers, I show you Atlantic Exhibit Number 1 and ask you whether that is your signature on the back of it.

A. Yes, that is mine.

128 Q. Now, may I call your attention to the fact, sir, that this lease runs from October 1, 1954 to the 31st of December of 1954.

A. Yes.

Q. Now, do you recall discussions with Atlantic's representatives prior to the execution of this October 1st. lease?

A. Discussions?

Q. Yes, about the terms of your lease.

A. I recall something but as to just what, I don't know. It was as to the rent.

Q. Well, at that time Muldoon was your salesman, was he not?

A. I don't recall, sir.

Q. Well, was it Petrison?

A. It was one or the other.

Q. Well, both of them were very anxious to keep you in that station, weren't they?

A. They were anxious to keep me in it, sir?

Q. Yes.

A. If they were I had no indication of it, sir.

Q. Mr. Chambers, do you recall that you were offered a long-term lease on October 1, 1954 at a higher rental than you had previously been paying?

A. No, I don't recall; if I was I turned it down 129 because of the higher rental setup.

Q. Wasn't your difficulty with Atlantic with respect to the amount of the minimum rent that you would pay under your leases during the build-up phase of this Sharon Hill station?

A. I would say that was about it.

Q. Now, did you ever have any discussions with either Mr. Muldoon or Mr. Petrison with respect to Atlantic's cost of this Sharon Hill station and the amount of rent which is required to get a fair return from its investment?

A. Yes, I had a few, and I thought a lot of the figures were over rated.

Q. You had been paying $275 a month minimum rent at the station, hadn't you?

A. I don't recall the figures; if that was what it is, that is it.

Q. May I refer you to the October 1st lease.

A. Yes, if it is on there it must be.

Q. That lease was for $275, wasn't it?

A. That is right.

Q. That is the rent you had been paying, is that not true?

A. If it is on there I paid it.

Q. Didn't Mr. Petrison and Mr. Muldoon tell you that in order to get a fair return on the investment the
130 company would require $322 a month? Does that refresh your memory?

A. Yes, it does come back to me now.

Q. And they did offer you long-term lease for $322 a month, didn't they?

A. I don't recall, sir; I cannot say.

Q. If that is their recollection, you would not dispute it, would you?

Mr. Kelaher: Objection, your Honor.

The Witness: If I cannot remember, I cannot dispute something I do not remember.

By Mr. Thompson:

Q. Didn't you turn down a further lease of this property because they wanted you to pay $322 a month?

A. I disputed the rental setup because the gallonage was not—

Q. Do you recall the lease—

Mr. Kelaher: Will you finish your answer?

The Witness: Well, I just don't rightly recall. It seems to me like this was around the 3rd, I think the 3rd or it was to be the third rent increase in less than two years which wasn't giving me, I don't think, a fair chance in getting built to the peak. There was no telling what the peak was there and they were giving me no chance.

By Mr. Thompson:

Q. You, of course, were exceeding your minimum on 131 gallonage, weren't you?

A. No, sir; I was not.

Q. You were not?

A. No, sir. There are price factors there that was in the picture.

Q. Well, I perhaps did not make myself clear. I know of course that is a price war area, is it not?

A. Yes, predominantly a price war area.

Q. There is very strict competition.

A. Yes.

Q. Just from the point of view of the number of gallons

sold, you were exceeding the so-called minimum requirements for the station, weren't you?

A. No, sir; and my records will show.

Q. Had you received a proposition from Esso before the termination of your October 1st lease?

A. Well, when I had my notice, when I was given my notice, of course to look real fast. I had offers from all of the companies, sir.

Q. When you say your notice, what do you mean, sir?

A. When Petrison told me they were not renewing my lease.

Q. But, sir, may I refresh your recollection again. You actually did renew your October 1, 1954 lease, that was in effect on November 13th when you retired from the sta-

131-A tion, was it not?

A. No.

Q. May I refresh your recollection?

Mr. Thompson: May I ask that this document be marked as an exhibit? For the purposes of better identification, this is called, "Mutual Consent of Cancellation."

(The document referred to was marked Atlantic Exhibit Number 2 for identification.)

Mr. Thompson: Would your Honor care to see this?

Hearing Examiner Kolb: Thank you.

By Mr. Thompson:

Q. Mr. Chambers, I am handing you Atlantic Exhibit Number 2, called "Mutual Consent of Cancellation," and I ask you whether that is your signature on the bottom of that document.

A. That is.

Q. Does this document refresh your recollection with respect to the details of termination of the October 1st lease?

A. Surely if you were told in October you were not

going to have a job in December, what would you do, would you try to find another job?

Q. I think I am asking the questions, sir.

A. What do you want me to say, sir?

Q. My prior question was, whether you did not have
132 a proposal from the Esso Company before you signed the October 1st, 1954 lease?

A. No, sir, not before then.

Q. When did you get the Esso proposal?

A. Why, I got it by phone shortly after I had the notification or I was told that my lease was not going to be renewed in December, and then I got a phone call from a good friend of mine who had this station. And, of course, as I say, other ones moved in, too, and I accepted this one in Chester but it was after this here, because it wasn't until after I was told that my lease would not be renewed when I started to make phone calls.

Mr. Thompson: If your Honor please, I assume I may substitute a photostat of the two exhibits.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: No objection.

Mr. Thompson: That is all the questions, Mr. Chambers, that I have to ask you. Thank you very much, sir.

Mr. Mason: No questions, your Honor.

Mr. Kelaher: I have a few questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Chambers, Atlantic Exhibit Number 1 states that your lease was entered into as of the first day of October, 1954, is that correct?

133 A. Yes.

Q. And did Mr. Petrison give you oral notice that your lease would not be renewed after the signing of the lease?

A. No, it was during this period that this other happened.

Q. In other words, did the lease come before the notice?

A. Yes.

Q. Mr. Chambers, on cross-examination you stated that there were certain rent increases during the period of your operation at the Sharon Hill station, is that correct?

A. That is right.

Q. Will you explain that, please? As I understand it, at that time you were on the three-months lease, is that correct?

A. Yes, sir.

Q. Would you please state how those rent increases came about or the extent of them and so on?

A. Well, I don't remember exactly; it would be difficult for me to say. All I know is that the latter rent increases I felt were unfair until the station really got on its feet.

Q. Would the rent increases be concurrent with the new lease going into effect; for example, would they put the rental in the lease, in other words?

A. The rental was always in the lease.

Q. So the leases would speak for themselves as to 134 the rentals?

A. That is correct, sir.

Q. Do you recall what your first rental was at the Sharon Hill station?

A. Not exactly, no, I thought it was around $200.

Q. Do you recall the amount of the increase and when it occurred, the first increase?

A. Why, I think—there again I am not positive, I think it was either $250 or $275, I cannot be positive of that.

Q. When was that increase?

A. I cannot say.

Q. Do you recall how many increases there were during the period of your operation?

A. As I said before, it seemed to me as though, on this last lease, that would have been the third.

Q. And the last lease you referred to is Atlantic Exhibit Number 1, I believe. Would you look at that and state whether that was the last lease you signed with Atlantic.

A. Yes, that would be the last one.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No, sir.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

135 (Short recess.)

Hearing Examiner Kolb: The hearing will come to order.

JACK HOFFMAN was thereupon called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you please state your full name and business address?

A. Jack Hoffman,—my home address?

Q. Business address.

A. 5913 Ridge Avenue, Roxborough, Philadelphia.

Q. And the name of your company?

A. Philadelphia Wholesale Distributors, Incorporated

Q. And what is your position with that company?

A. Salesman.

Q. How long have you been with the company?

A. Thirty years.

Q. And you have been a salesman all that time?

A. Yes, sir.

Q. What type of business is the company engaged in?

A. We are wholesale distributors of automotive merchandise.

136 And among the products that you handle, you handle tires, batteries and accessories?

A. In a limited way—we have discontinued tires.

Q. How about batteries?

A. Batteries; we are Exide distributors.

Q. How about chemicals; what do you handle?

A. DuPont, Hollingshead, Simonize, Johnson's, Prestone chemicals.

Q. Now, for the record, will you define chemicals. That is a broad field.

A. Chemicals are polishes, anything pertaining to preservation, finishes on an automobile, paint, touch-up, removers, solvents.

Q. How about spark plugs and fillers?

A. We carry a complete line of spark plugs and fillers and also other items.

Q. How about belts and hoses?

A. We carry the Gates line in belts and hoses.

Q. All those things other than batteries, are they commonly referred to as accessories?

A. They are referred to in the TBA industry as accessories.

Q. Does your company also handle so-called hard parts?

A. Yes, we do.

Q. And what are included among hard parts?

137 A. Hard parts we would classify as equipment in the operation of a service station and the servicing of automobiles equipment.

Q. Name just a few of those.

A. Well, do you mean manufacturers or the items?

Q. Items.

A. Lubricating equipment, which the service station comprises, and drain pans, oil mixtures, floor jacks.

Q. How about mufflers and ignition parts?

A. We do not carry any automotive parts, no replacements parts.

Q. I see. What type customers do you sell to, Mr. Hoffman?

A. Well, we deal with the service stations and car dealers, independent repair shops, some hardware stores, electrical shops, and sporting goods stores.

Q. And your sales area, the company's sales area, is what?

A. The company's sales area is metropolitan Philadelphia area and that includes Bucks County, Delaware County, Chester County.

Q. Are there other firms similarly engaged in the sale of similar products?

A. Yes, very many of them.

Q. There are many, you say?

138 A. Yes.

Q. How do you rank in the field, do you know?

A. We are one of the key distributors.

Q. How many salesmen does the company employ?

A. We have nine salesmen.

Q. How are they compensated?

A. I cannot answer that, I am on a straight commission basis.

Q. Do you deliver your products that you sell, do you, personally?

A. Our own trucks deliver our merchandies.

Q. How many trucks do you have?

A. I think we have five.

Q. Do they have regular scheduled trips?

A. That is right.

Q. How often do they go out, do you have any idea?

A. We deliver in my territory once and twice a week. In some territories there is one delivery a week and in other parts of the territory, twice a week.

Q. You mentioned your territory, what is your sales territory?

A. The greater part of Delaware ~~County~~ County, south of Haverford Road including West Chester and Chester County.

Q. Do you attempt to sell to service stations?

A. We do sell to service stations.

139. Q. You, yourself?

A. Yes.

Q. And are there any Atlantic stations in your territory?

A. Yes.

Q. Can you give us some idea of how many there are?

A. Well, I could not answer that. I would say in Delaware County, I'm making a rough guess, there should be approximately forty to fifty Atlantic service stations.

Q. And how many of those—do you call on all of those?

A. We did at one time; we do not today. I have about six active, I had eight active Atlantic dealers I would say today.

Q. And there are forty or fifty in your own territory?

A. I would say so, I cannot give you the exact number.

Q. Have you ever attempted to sell to the others?

A. We have sold them over a period of years, yes.

Q. Did you lose those accounts?

A. We drift away from them, I would say. I would not say we lost them, I would say that we drifted away.

Q. You drifted away and for what reason?

A. We could not get enough volume of business from those dealers.

Q. When was that that you formerly sold them?

A. Well, pre-wartime and during the war.

Q. World War II?

140 A. Prior to 1945.

Q. And prior to 1945 you could sell them, is that correct?

A. Yes, we had but very few problems.

Q. And when did you start losing them?

A. Well, I would say when Atlantic established their own TBA setup.

Q. Will you place that, roughly?

A. I would say '45, after the war.

Q. Now, when you were selling to them, you were selling them these TBA products, were you not?

A. That is right.

Q. You say you have about eight active accounts, is that correct?

A. That is right.

Q. What do you sell to those stations?

A. Well, we sell those stations, the lessee Atlantic stations, we sell them mostly merchandise they cannot secure from the TBA jobber.

Q. Such as what?

A. Well, we sell them some chemicals possibly that they don't have; we can sell them lubricants also. There are not too many items. We sell them chamois, possibly, washing materials, items pertaining to lubrication.

Q. You mentioned that you can sell that to the

141 lessee Atlantic stations. Of these eight stations, about how many are lessee stations, do you know?

A. I would say six of them.

Mr. Thompson: I object to that; how can this man possibly know which is a lessee station and which isn't?

Hearing Examiner Kolb: He can answer if he knows.

By Mr. Dias:

Q. Do you know which of these eight are lessee stations?

A. Yes, six of them are lessee stations.

Q. Six of the eight?

A. Yes.

Q. And of those six you sell them the products you just mentioned, is that correct?

A. Right.

Q. What other type Atlantic station is there?

A. Well, then there is an Atlantic dealer who has a garage where he does automotive repairing, where he has gasoline pumps in front of his station.

Q. Would he be a lessee dealer?

A. No, he would not, I do not believe so; definitely not.

Q. How about batteries, are you able to sell any of these stations batteries?

A. Not today, no.

Q. Not today. Have you ever sold them any batteries?

A. Yes.

142 Q. When was that?

A. Some years ago we sold them batteries; I would say ten years ago, twelve years ago.

By Mr. Dias:

Q. How often do you call on these eight Atlantic stations that you sell?

143 A. Weekly.

Q. You call on them weekly?

A. As a rule; maybe we may miss one or two weeks but as a rule they are a weekly call.

Q. Do you go into the station, you go to the stations yourself, is that right?

A. Yes.

Q. And have you observed any advertising on the premises of TBA products other than your own?

A. The Goodyear merchandise primarily, with their decals on the windows and possibly the dealers make up their own signs of sales of Goodyear tires and Goodyear batteries.

Q. And from your own observation have you seen anything in those Atlantic stations other than Goodyear TBA products?

Mr. Thompson: What Atlantic stations are you talking about?

Mr. Dias: We are talking about the eight he sells to.

The Witness: Yes, you will find other products in Atlantic stations other than their regular TBA items.

By Mr. Dias:

Q. Such as?

A. Such as those supplied by the TBA supplier.

Q. Do you know who the TBA supplier is in your area?

A. Yes, very well.

144 Q. Who is he?

A. Ed Parris is one and Ernie Miller is the other one, —Miller's Automotive Supplies.

Q. And do you know where they are located?

A. Yes, I do. Ed Parris' is in Glenolden on McDade Boulevard and Miller's Automotive Supplies is Garrett Road in Upper Darby.

Q. Will you name those eight stations you sell to, Mr. Hoffman?

A. Will I name them?

Q. Yes.

A. Well, do I have to name them? I don't want to involve any of my customers in this. Yes, I will name them, it is all right. Roger Rossi in Upper Darby; John Clark in Havertown; Richard Connor in West Chester; George

Hewitt in West Chester; Floyd Mohney in Alden, and John Hanighan in Upper Darby. Those are lessee stations. I have two contract accounts.

Q. Will you name those?

A. Sharon Hill Garage in Sharon Hill and Little's Atlantic Station in Chester Heights.

Q. Did any of these stations open up new during the time that you have been selling that area?

A. Yes.

Q. Were you able to sell—

145 A. All of the lessee stations are new stations.

Q. Have you ever been able to sell them an original stocking order?

A. We did years ago. Some of these are newer dealers and some are older dealers.

Q. Which ones?

A. I would not say stocking orders, no.

Q. When did you first call on these stations after they opened up, did you call on them?

A. I have known these boys for a period of years possibly before they were Atlantic dealers, some of these boys.

Q. When did you get orders from them?

A. At times when I called them.

Q. Was that as soon as they opened up their stations?

A. Well, I would not say; no, I would say that, after they were established.

Q. When you first started selling to them, did they have any TBA supplies in their stations?

A. Yes, they did.

Q. Do you recall the brand names?

A. Well, they were—

Mr. Thompson: I certainly object to that, sir. There is not sufficient identification. You are talking apparently about stations scattered over the whole metropolitan area.

146 Mr. Dias: He is talking about the six or eight lessees.

The Witness: I am talking about six customers.

Mr. Thompson: The last prior question referred to contract dealers. Mr. Dias, would you make it specific, so we can follow.

By Mr. Dias:

Q. Let us refer only to these lessee dealers of yours. Let us go down the list.

Mr. Thompson: May I ask whether the last question has been answered?

Mr. Dias: That was my impression.

Mr. Thompson: If it did, I have no objection; but if it did not you are running the entire metropolitan area Philadelphia and I most strenuously object.

Mr. Dias: We were referring to the lessees referred to by the witness.

The Witness:

Yes.

By Mr. Dias:

Q. As to Roger Rossi, is that correct, how long has he been in business?

A. I would say Roger has been in business for twenty-five years.

Q. Now when did you first start selling him?

A. I sold Roger when he was a partner of Van Le-
147 roy Bond in Upper Darby.

Q. And Clark, John Clark?

A. I knew John when he was one of the Atlantic salesmen and after John got his station we sold him some items.

Q. Will you give me some idea of the volume you sold to the Clark station?

A. Very little.

Q. And you sell that station any batteries?

A. No, sir.

Q. Do you know what brand of batteries he carries?

A. He carries Goodyear.

Q. How about Richard Carr?"

A. That is Connor, Richard Connor.

Q. When did you first start selling to him?

A. After he opened his station in Westchester.

Q. When was that?

A. I guess Dick has been there about five years, I would say.

Q. Were you able to sell him anything when he first opened up?

Mr. Thompson. I don't know what this word "able to sell" means, and I object to it. I don't know whether we are talking about the capacity of the man as a salesman or what ability we are referring to. The question has been constantly asked and I just don't understand it. It 148 does not help the record.

Hearing Examiner Kolb: I will sustain the objection.

By Mr. Dias:

Q. Did you or did you not sell to this gentleman?

A. Yes.

Q. And when did you first sell to him?

A. After he opened his station.

Q. How soon after he opened?

A. I would say several months.

Q. Was he stocked with other TBA merchandise?

A. Yes.

Q. What merchandice.

A. Well, the regular TBA line that Atlantic carries, Goodyear tires and batteries, chemicals.

Q. Were you able to sell him any batteries?

A. No, sir.

Q. Your next dealer was George Hewitt. Will you tell us when he opened up?

Mr. Thompson: Is that H-e-w-i-t-t?

The Witness: That is right. He has been a customer of mine for a couple of years but there is very little merchandise we sold him.

By Mr. Dias:

Q. Does he handle TBA products?

149 A. Of Goodyear and Atlantic.

Q. And your next dealer, Mr. Mohney?

A. Floyd Mohney.

Q. And how long have you been selling to Mr. Mohney?

A. Well, Mr. Mohney is a customer of ours for thirty some years and I have sold him about fifteen years.

Q. Does he carry TBA products?

A. Yes, Atlantic and Goodyear TBA.

Q. And your next lessee—

A. John Hanigan is a very small account.

Q. Does he handle TBA products?

A. That is right and Goodyear.

Q. Those supplied on the contract stations, you have two. Will you name the first one and tell me what you sell.

A. Sharon Hill Garage, we sell him some items. We sell him oil.

Q. Does he handle TBA?

A. Right.

Q. And what products?

A. Supplied by the TBA Goodyear distributor.

Q. And your next contract man?

A. Erwin Little in Chester Heights. That is one of our better accounts. He has been an Atlantic dealer since 1928.

Q. What do you sell to him?

150 A. We sell him batteries, Exide batteries and he is one of our best accounts.

Q. Do you sell him any accessories?

A. We sell him accessories, Kendall oil.

Q. Does he handle any other batteries?

A. No, sir; he does not.

Q. Now, in addition to these years that you have been in that sales territory, have you ever sold a new station, a new Atlantic station?

A. What type of merchandise are you referring to?

Q. Batteries or accessories?

A. No.

Q. Have you called on any new ones?

A. Yes.

Q. Have you observed other TBA products in the stations?

A. Very few; that is, on the newer stations. I would say those TBA products are those supplied by the TBA distributor primarily, particularly on the new stations.

Q. And what products were they that they were carrying, what brand?

A. The company station?

Q. Yes.

A. Which they purcahsed from the TBA supplier, you mean?

Q. No, these new stations you called upon.

A. Well, they would carry Goodyear tires, Good-
151 year batteries, the duPont line, Johnson, Simonize items that are carried by the TBA distributor.

Q. Are you familiar with the Goodyear battery accessory line?

A. As a competitor, I am. In other words, what do you mean by that?

Q. As a competitor, you are familiar with it?

A. Yes.

By Mr. Dias:

Q. You offer delivery service, do you not?

A. That is right, we do.

Q. And will you state again how often you offer delivery service?

A. Most of my territory. We make a delivery once a week and in some parts of the territory twice a week.

Q. Now, if you know, does the Goodyear supplier furnish or offer better service, delivery service?

A. He could, yes, because he is right in the area. We are a few miles distance from our dealer and we haven't 152 any fast delivery service. We have our routine delivery, and that is all.

Q. Are there any Shell stations in your territory?

A. I don't recall any.

Q. How about Sinclair?

A. Yes.

Q. And do you have some idea of how many there are?

A. Sinclair; there may be twenty or more Sinclair stations in Delaware County.

Q. In your sales territory?

A. Yes.

Q. Are you able to sell those?

Mr. Mason: I object to this line of questioning.

Mr. Thompson: I object also on behalf of Atlantic.

By Mr. Dias:

Q. Do you sell to Sinclair stations?

A. Yes.

Q. And what do you sell to them?

A. We sell—

Mr. Mason: I object to the line of questions as not being relevant to this lawsuit. There is certainly no connection in this setup so far as any new issues were brought up by the pleadings.

Mr. Dias: I thought that was settled by the Commission's order in regard to other oil companies.

153 Sinclair is one of the other oil companies that does business with Goodyear.

Mr. Mason: Not on a sales commission basis.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Atlantic.

By Mr. Dias:

Q. What do you sell to the Sinclair station?

Mr. Thompson: May I inquire, sir, for my own information whether this record shows that there is an arrangement between Goodyear and Sinclair for the supply of accessories to the Sinclair dealers under a sales commission plan?

Mr. Dias: You will find there is a commission plan with regard to accessories. Am I right about that?

Mr. Thompson: That was not my question. My question was whether the record showed it.

Mr. Dias: That was my answer; I thought there was an exhibit in here dealing with that.

Mr. Thompson: I have not seen it if there is, sir.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: Back on the record.

Mr. Dias: Let the record show, Commission's Exhibit 69-A through 70-c shows the existence of a contract, an accessory contract between Goodyear and Sinclair.

154 Mr. Mason: Does the Commission attorney concede that agreement does not apply to batteries and accessories and that it only applies to merchandise?

Mr. Dias: We should let the contract speak for itself.

Mr. Mason: I just wanted to have it in the record for the moment, we are going to have a line of questions on this and unless we are sure about it we don't want them

to go beyond the scope of the sales commission arrangement.

Mr. Dias: Yes, we will agree that it applies only to accessories in this area. We are not prepared to stipulate as to all areas.

By Mr. Dias:

Q. Now, limiting your replies only to accessories, Mr. Hoffman, do you sell accessories to Sinclair stations?

A. Yes, we do sell, sir.

Q: Will you tell us what accessories in particular you sell them?

A. Polishes, inner tubes, anti-freeze.

Q. Belts and hoses?

A. No, no belts and hoses; some pieces of equipment, jacks, some lubricating equipment.

Q. Do you know who the supplier is of Goodyear accessories for the Sinclair stations?

155 A. I don't know; they changed it some time. Superior tire had been it at one time, I don't know whether they are still the TBA distributor or not. I am not positive.

Mr. Dias: Your witness, Mr. Thompson.

Mr. Thompson: May I have a few minutes' recess?

Hearing Examiner Kolb: Yes, we will take a short recess.

(Short recess taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: I have no questions, sir.

Hearing Examiner Kolb: We will adjourn at this time until two o'clock.

(Whereupon, the hearing adjourned at 1:15 p.m. to reconvene at two o'clock p.m.)

156 **Afternoon Session.**

(2:00 P. M.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: Mr. Blumenthal, please.

Thereupon, DAVID B. BLUMENTHAL was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. David B. Blumenthal, 5913 Ridge Avenue, Roxborough.

Q. And the name of your company?

A. Philadelphia Wholesale Distributors.

Q. What is your position with the company?

A. Salesman.

Q. How long have you been with the company?

A. Thirty-eight years.

Q. Thirty-eight.

Q. Have you been a salesman all that time?

A. All that time.

Q. What is your sales territory, Mr. Blumenthal?

A. I would say it covers north of Hunting Park Avenue, north of Jenkintown, and Bucks County—part
157 **of Bucks County, I should say, and Montgomery County, Roxborough, Manayunk.**

Q. Do you work on a salary or commission?

A. Commission.

Q. What type customers do you sell to?

A. Mostly car dealers at the present time, and I would say maybe 20 percent service stations.

Q. Among those service stations are there any Atlantic stations?

A. I have one at the present time.

Q. Have you ever sold to more Atlantic stations?

A. Oh, yes. In the years gone by I have sold a lot of them.

Q. Will you tell us roughly how many is "a lot"?

A. Twenty-five.

Q. What type product—

A. Or thirty.

Q. What type products did you sell them formerly?

A. Well, as Mr. Hoffman related, we handled the full line of chemicals, and in those days I would sell them batteries, AC products, that is oil filters, plugs, and the kindred chemical lines—Dupont, whatever was the prevailing chemical at that particular day. I mean each year there is a new polish comes out, as you all know.

For instance, we handle turtle wax for the last two or three years as a polish. We are distributors of 158 Turtle Wax. Years previous to that there would be another wax. We would sell things like that to Atlantic dealers that they couldn't get through TBA.

Q. Why did you stop selling to Atlantic stations?

A. I just gave it up as a bad job. It was a question of making stops and not getting any business so I concentrated more on car dealers and stations that I could sell.

Q. How long ago was that?

A. It started about ten years ago, I guess.

Q. Do you sell to one Atlantic station now?

A. At the present time.

Q. Are there other Atlantic stations in your territory?

A. Oh, yes.

Q. Have you ever called on those stations?

A. Well, I have called on a few of them to try to sell

them some of the items that we handle. And in some cases I was successful. I mean kindred lines, not the lines that they handle, TBA. But as I said before, there is not enough to it and I more or less gave it up.

Q. On these Atlantic stations in your territory, do you observe them as you make your rounds? Have you noticed them?

A. Oh, sure. I go right past them.

Q. And in those you stop at, will you tell us what they advertise on their station in the line of TBA?

A. You have your Goodyear batteries and Good-
159 year tires. That seems to be the feature on their windows, the decals. Other than that I don't see—unless they may put a streamer in the window, like Dupont, Exide, or something like that.

Q. You mentioned that you formerly sold them Exide batteries and Dupont line?

A. That is right.

Q. Can you give us some idea of the volume that you sold them?

A. Going back a few years, I would say it goes back maybe twelve years, ten years, the Dupont people supplied you with missionary men. You would go around with those missionary men, call on the accounts. It could be Atlantic or anything, whatever happened to be in the territory that particular day.

We always wrote up a lot of business in the Dupont line. When you asked for volume, I have written up as high as a thousand dollars in one day on Dupont. Of course it was a very good day. I am going back to the days when we sold 15 or 20 cases to a dealer and you would make 15 stops and you would sell a lot of merchandise.

Q. You talked about the Dupont line. What was your experience in the Exide line, Exide batteries?

A. With Exide, in those days, you would sell some

dealers Exide and they might prefer Willard or they might prefer something else. In those days they were handling practically anything.

160 Q. When did you begin to lose the Dupont line, do you recall? Lose sales in the DuPont line?

A. The only thing that I can tell you is this, and I can't put my finger on the date, but I would say maybe four or five years ago the Atlantis men would go around with the Dupont missionary men to the Atlantic dealers. Naturally by the time we got there it was too late.

Q. Can you relate a similar experience with reference to Exide batteries?

A. No, I couldn't.

Q. Do you recall any specific instances of loss of sale? Any specific stations, Atlantic stations?

A. Any number of them. I mean—you don't want names on this, do you? It could be ten or twelve stations in a particular vicinity where the Dupont manufacturer—the Dupont man, when he went out with me, would tell me there is no use going in that station, I was there with the Atlantic salesman a couple of weeks ago.

Q. Were you offering your Dupont line at the same price?

A. Definitely.

Q. Have you ever called on new Atlantic station operators in your territory?

A. No, sir.

Q. You have not? In the loss of specific Atlantic accounts did the operator ever give you any reason for refusing to buy?

161 Mr. Thompson: I object to the question unless it is made definite with respect to the time, the place.

Hearing Examiner Kolb: The question calls for a Yes or No answer; objection overruled.

By Mr. Dias:

Q. Did any Atlantic station operator ever give you a reason why he did not buy your merchandise?

A. I could answer that Yes or No. Some Yes and some No. That is the only thing I could tell you.

Q. As to those who did give you a reason, where the answer is Yes, can you give us the time and place and the name of the operator?

A. Sir, I would rather not do that. I would rather tell you my experience and let it go on from there, because I don't want to implicate any dealers in this thing. All I can tell you is this: That the proof of the pudding is that if you went into an Atlantic dealer and they—for instance, we do a big job on AC products. That is cartridges, spark plugs, which is one of the key lines that we carry. And it was practically impossible to sell them lines like that—cartridges or plugs.

You would go in and ask them about it and they would simply say, "We have enough, we will remember you the next time," or pass it off like that. There was never any definite reason for not buying, No.

Q. Do you recall what those particular stations were 162 handling in the TBA lines, what products?

A. They were handling the AC line, and Goodyear belt line, Dupont line. They are the three numbers that we were particularly interested in—AC, Dupont, and the battery line.

Q. Do you know where they got those lines from?

A. I know where my dealers get them from.

Q. Where do they get them from?

A. Mr. Glenn, Chestnut Hill.

Q. Mr. Glenn?

A. He is the Atlantic distributor.

Q. Is Mr. Glenn located in the Mount Airy section.

A. He is located at Willow Grove Avenue and Germantown Avenue. That would be Chestnut Hill.

Q. Do you furnish delivery service in your territory, Mr. Blumenthal?

A. Oh, yes.

Q. How often do you furnish delivery service?

A. Well, in my particular case I get service out there pretty promptly. I would say my territory overlapping I get every other day service. In some cases, every day.

Q. Is that an important feature in selling to the Atlantic stations?

A. I wouldn't think so.

Q. You do not?

A. No.

163. Not the lines that we handle. There may be ignition or hard parts where they get a car that they have to repair and they have to have something in a hurry. But if a man is going to buy Dupont polish he doesn't run down to the last can before he has to re-order, or the same thing goes for spark plugs or cartridges.

In other words, if we could call on him every week and keep a supply up, it would necessitate a 24-hour service as far as delivery goes.

Mr. Dias: That is all, Mr. Chairman.

Cross-Examination.

Hearing Examiner Kolb: Cross-examine.

By Mr. Thompson:

Q. You sell to service station dealers for cash or credit?

A. Credit and cash.

Q. Depending upon the individual financial responsibility of each?

A. That is right.

Mr. Thompson: I have no other questions.

Hearing Examiner Kolb: That is all, Mr. Blumenthal. Thank you very much for coming down.

(Witness excused.)

164 Mr. Dias: Mr. Kevis, please.

Whereupon DOUGLAS W. KEVIS, was called as a witness for the Commission and, having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. Douglas W. Kevis, 1309 West Ninth Street, Chester, Pennsylvania. That is Harris and Leonard.

Q. What type business is Harris and Leonard in?

A. Distributor of U. S. Tires. We have our own capping shop.

Q. Do you handle any products other than tires?

A. Tires tubes, batteries and recapping. That is the extent of it.

Q. What about the company sales area? Can you define that for us, please?

A. Yes. Chester. We go out as far as Chadds Ford. We don't go into 69th Street. We go down by the river all the way up to the Philadelphia Airport.

Q. What type of customer, class of customer, does Harris and Leonard sell?

A. We sell industrial accounts, commercial accounts, gas stations, new car dealers, garages.

165 Q. How many salesmen does the company employ?

A. We have two salesmen on the routes that cover gas stations, new car dealers, and garages. Joe Leonard and myself take care of the industrial and commercial business.

Q. Did you at one time solicit service station business?

A. Yes, I did.

Q. Can you tell us when that was?

A. Back in 1953 or 1954.

Q. For how many years prior to that?

A. I would say about six.

Q. How long have you been with the company?

A. Ten years.

Q. Have you been a saleman with the company that length of time?

A. Yes. Six months I spent in the office and then I went outside selling.

Q. How are you compensated? Salary or commission?

A. Salary and commission.

Q. Does your company have delivery trucks? Do you afford delivery service?

A. Yes. Two routes. They pick up and deliver twice a week. They stop in the service stations and garages. Then we have two trucks equipped with air compressors that take care of the industrial and the garages if they need it.

Q. How often do your service station account trucks 166 make deliveries?

A. They can make it any time. They will run back to the store, get it and take it out if it is a fast deal. But then they usually cover twice a week.

Q. You mentioned that there were two other salesmen that now solicit the service station accounts, among other accounts?

A. Yes.

Q. Who are those two?

A. Bob Brennan and William Colby.

Q. What was your territory when you were soliciting service station accounts?

A. Part of Chester, Media, all the way in. We didn't go into 69th Street. We went as far as Clifton Heights and down the river.

Q. Did you cover that territory in selling to, among others, service stations from the time you first started selling up to 1954, is that correct?

A. That's right.

Q. During the time that you were soliciting service station business, Mr. Kevis, were there any Atlantic service stations in your sales territory?

A. Yes.

Q. Can you give us some idea of how many there were?

A. That is a hard one. I can't come up with that just like that. There were quite a few.

167 Q. Did you solicit all those stations?

A. Oh, yes. Stopped at all those stations.

Q. Were you able to sell all of them?

A. Some recapping, and once in a while new tires if they—just in spots where they needed something in a hurry, a special thing.

Q. Among the Atlantic stations did you have any that bought your tires on a stock basis?

A. Well, there was one or two, but they were independents. They weren't set up as a class B station.

Mr. Thompson: I object to "independents" and ask that the answer be stricken.

The Witness: In other words, a man owned a building and everything else. He had Atlantic products in there.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Dias:

Q. What other type Atlantic station was there?

A. Just company-owned, I imagine.

Q. Were you able to sell or did you sell to company-owned stations on a stock basis?

A. No.

Q. Did you sell them any batteries on a stocking basis?

A. Once in a while, yes. Not too much.

168 Q. Was that on a stocking basis?

A. No, not on a stocking basis.

Q. With those company-owned stations, were you able to do any business with them?

A. Oh, yes.

Q. What type business?

A. Recapping.

Q. Among Atlantic stations, how often did you call on those stations in your territory?

A. Twice a week.

Q. On all of them?

A. Yes.

Q. Do you recall now the tires and batteries they carried in their stations?

A. Goodyear Tires, and Goodyear Batteries. They handled Lee before they had Goodyear.

Q. Can you tell us when that was, approximately?

A. I can't come up with that. I don't know that. I don't remember.

Q. Do you know in your sales territory at that time who the Goodyear supply point was? Who the Goodyear supplier was?

A. Yes. It was Miller, over in the 69th Street area. He used to come into Drexel Hill and points there. Then there was Ed Parris. He was in Sharon Hill at the time and

169 he finally moved into Glenolden, on McDade Boulevard.

Q. Were you at any time able to do any more business with the Atlantic stations?

A. How do you mean, "any more business?"

Q. You state that you were able to do some, that you did recapping and that you could sell an occasional tire or battery?

A. That's right.

By Mr. Dias:

Q. Have you ever sold any Atlantic stations on a stocking basis, tires and tubes?

A. Yes.

Q. What type stations were they?

170 A. I come back to that again.

Mr. Mason: I object on the ground the question has been asked and answered.

Hearing Examiner Kolb: Objection overruled.

The Witness: It is a station that isn't owned by Atlantic, and has Atlantic pumps in there.

By Mr. Dias:

Q. On the other type station that is owned by Atlantic, have you ever sold those stations, any of them, at any time, tires or batteries on a stocking basis?

A. Not on a stocking basis.

Q. By the way, what do you consider a stocking basis?

A. If a man puts in about 40 or 50 tires, I consider that a stocking basis, if he carries your line.

Q. In making calls on Atlantic stations, or in attempting to sell to them, did any operator ever give you any reason why he did not buy your line?

Mr. Thompson: I object to that question for the same reason as has been stated on this record before. No specification as to time or place or identity of people.

Hearing Examiner Kolb: That is a preliminary question I believe that requires a "yes" or "no" answer.

By Mr. Dias:

Q. You may answer. Was there such a situation?

A. I can give you a "yes" on that but I want to

171 explain something to you.

Hearing Examiner Kolb: He will ask you a further question.

By Mr. Dias:

Q. The answer is "yes," is that correct?

A. Yes.

Q. Can you tell us a situation, or when it occurred?

A. I can't tell you when it occurred but I can tell you where it occurred.

Q. Can you tell me where and with whom?

A. With Jim Myers, over on Westchester Pike in Manoa.

Q. Can you give us a time, roughly, on that? Was it in 1954 or prior to that?

A. I wouldn't even begin to go into that. I couldn't really say the time.

Q. What did Mr. Meyers tell you?

Mr. Thompson: That is objected to, without some specification as to time—as to a time which would show it had relevancy in this proceeding.

Hearing Examiner Kolb: Can't you say, Mr. Witness, whether it was in the last few years or longer, or what period of time generally?

The Witness: Well, it was before I started on commercial accounts, I can tell you that. I don't known when.

172 By Mr. Dias:

Q. And you started on commerical accounts when?

A. About 1953.

Q. Have you been selling to that station, to that operator?

A. Been selling recapping, yes.

Q. Have you sold him any tires?

A. No.

Q. Or batteries?

A. No. I think we sold him one set of white-walls one time that he needed in a hurry.

Q. How about batteries?

A. No, no batteries.

Q. Can you recall, how long had he been buying from you?

A. Do you mean prior to this?

Q. Prior to the time that you went over on commercial accounts.

A. I would say he had been buying from us for a couple of years.

Q. That would be about—

A. I am not sure of this time limit in here. I am just sort of more or less guessing.

Q. Did he carry other tires and batteries and accessories in his station?

A. Yes.

Q. Do you recall what type or what brand?

173 A. It was Goodyear. Goodyear tires and batteries.

Q. If I suggest the year 1952, would that refresh your recollection as to when this conversation took place?

A. I couldn't tell you on that.

Q. You can't answer?

A. No.

Q. Did he ever carry anything other than Goodyear tires, batteries and accessories?

A. Not that I know of.

Q. Sir?

A. No, not that I know of.

Q. How about the price lines in U. S. Tires, Mr. Kevis, what are the various price lines? Do they have a first line, second line?

A. Now a third line. They had two lines before, at that time.

Q. Are they comparable to the price lines of the Goodyear tires

A. Oh, yes. In fact the list price is exactly the same.

Q. It is the same?

A. Yes.

Mr. Dias: That is all.

Cross Examination by Mr. Thompson.

Q. Your principal competitor in this business is C. A. Powers?

174 A. That's right.

Q. Am I correct in my understanding that your company and C. A. Powers sell to about 100 percent of the Atlantic stations in your Chester area? Almost all of them?

Mr. Dias: May I have that question?

The Witness: I couldn't answer that one. I don't know what C. A. Powers is doing. I attend to my own business.

By Mr. Thompson:

Q. But that is your principal competitor?

A. I would say yes.

Q. And Powers is also soliciting the Atlantic stations in your territory?

A. I believe so, yes.

Q. You have been out of this particular phase of the business since 1954, haven't you?

A. 1953 I think.

Q. Which of your salesmen handles the service stations in the area that you formerly had in your sales territory?

A. That route was split. They cover the whole thing now. It is split up into two routes.

Mr. Thompson: Thank you.

Mr. Dias: Will you read Mr. Thompson's last question?

(Question read.)

175 *Redirect Examination by Mr. Dias.*

Q. Was it your testimony that you sell to a hundred percent of the Atlantic accounts, or solicit?

A. We solicit them. We don't sell to them. You are talking territory now, generally?

Q. In the territory that we were discussing, your territory, yes.

A. Yes.

Mr. Dias: That is all.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(A recess was taken.)

176 Hearing Examiner Kolb: Come to order please.

Thereupon, GLENN L. WETZEL, was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address, please.

A. Home address?

Q. Yes.

A. Glenn L. Wetzel, 316 Arlington Avenue, Milmont Park, Pennsylvania.

Q. What is your position with Chester Auto Parts, Inc., Mr. Wetzel?

A. I am the president.

Q. Where is that company located?

A. Ninth and Hyatt Street, Chester.

Q. Will you describe generally the history of your com-

pany, that is, as to when it began, the type of products sold, and so forth.

A. It was begun right at the end of the war when I came out of service. It was then a partnership. It existed as a partnership for nine years, at which time I bought out my partner and formed a corporation of Chester Auto Parts Company, Inc.

177 Q. Do you recall the year when the company was organized as a partnership originally?

A. June 1, 1946.

Q. Do you recall the date when it was organized as a corporation?

A. April 1, 1955.

Q. What is the business of Chester Auto Parts, Inc.?

A. Parts, paint, chemicals, machine shop.

Q. Do you sell what are commonly described as TBA items?

A. Yes, sir.

Q. What is the marketing area of your company?

A. Delaware County.

Q. Delaware County, Pennsylvania.

A. Yes.

Q. How many salesmen do you employ?

A. Two and myself. I work on the road also. So there are actually three salesmen.

Q. How are the salesmen other than yourself compensated? On a salary or commission or both?

A. The salesmen—speaking of the other two—are compensated on a commission basis.

Q. What type of delivery service do you have?

A. Four trucks.

Q. Do you have an office staff?

A. Yes, sir.

178 Q. How many are in your office staff?

A. Thirteen in my employ all together.

Q. Do you maintain a stock of inventory at your place of business?

A. Yes, sir.

Q. Including so called TBA items?

A. Yes, sir.

Q. Would you please state the principal TBA products and brand names carried by your company?

A. Willard batteries, AC filters, Purolator filters, Fram filters, Dupont chemicals, Mac'sit chemicals, Hollingshead or Whiz products.

Q. What are they? What type products are they?

A. The last three that I mentioned?

Q. Yes.

A. They are primarily your chemicals, as they are known in the trade. That is your polishes, cleaners, radiator products, et cetera.

Q. To what type of customers do you sell? By "you" I mean your company.

A. Service stations, car dealers, independent garage men, body shops, used-car dealers, industrial accounts. Commercial or industrial accounts.

Q. Is your company generally competitive as to price, quality, and service with other sellers of TBA products
179 in your area?

A. Yes, sir.

Q. Do you sell fan belts?

A. Yes, sir.

Q. What brand do you carry?

A. It is Dayton Rubber. The manufacturer's name is Modac.

Q. Do you carry hose and belts of any type?

A. Yes, sir; same manufacturer.

Q. And same brand name?

A. Yes, sir.

Q. How long have you been an outside salesman with the company?

A. Eleven years.

Q. Since its inception?

A. Yes.

Q. Are there any Atlantic service stations in your marketing area?

A. Yes, sir.

Q. Approximately how many?

A. The exact number of Atlantic stations I couldn't tell you. I can more probably tell you the ones that we call on. It would be approximately 20, I would say.

Q. How frequently do you call on such stations?

A. That varies. Some of the accounts that don't buy or buy very little in the way of hard items are called on 180 possibly twice a month. The others may be called on four times a month.

Q. What has been your experience with respect to sales of TBA products to Atlantic service stations?

Mr. Mason: I object to the form of the question. It is too broad.

Hearing Examiner Kolb: Read the question.

(Read.)

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. You may answer.

A. Well, shall we start at the beginning?

Q. Yes. Start back in 1947.

A. In 1947 and '48 sales to Atlantic stations were exceptionally good. At that particular time—

Q. Are you confining yourself to TBA in your answer?

A. Yes, tires, batteries, accessories, filters, fan belts; the standard line.

It was not too difficult to obtain—

Mr. Thompson: May I understand this. I understand you say tires, batteries, and accessories. I did not understand you before to say that you carried tires.

The Witness: Excuse me. I don't carry tires. I meant batteries and your other rubber products, other than tires—hoses and fan belts.

181 At that time it wasn't difficult to sell Willard batteries because batteries were scarce. If you went in and had batteries, it was possible for you to sell them. Brands were not important, whether it was Exide, Williard, Auto Lite, or whatever it was; they were all using whatever they could obtain.

At that particular time we tried to develop the Macsit line ourselves, which had not been marketed to any great extent through service stations in that area. And I felt that inasmuch as it was a line which no one else had, if I developed it, it was mine.

By Mr. Kelaher:

Q. What did that line consist of?

A. That was your wax and radiator, speciality lines. Waxes, polishes, et cetera. I was successful in building that to a point where my purchase approximated $5,000 to $6,000 a year. However, about that time—

Q. Pardon me for interrupting. Would you state what time that was, what year?

A. I would say 1949 I began to peak out on that. 1949 or 1950. Somewhere in that vicinity.

Mr. Mason: Are these purchases confined to Atlantic stations?

Hearing Examiner Kolb: So I understood.

Mr. Kelaher: He is talking about his own purchases.

182 The Witness: I am speaking of my purchases.

To go back to 1949 or 1950 and break out all indi-

vidual service station sales would, well, if you gentlemen would like to do it, I will give you the records.

Mr. Mason: That is the vice of this kind of testimony. It is meaningless.

Mr. Kelaher: If we are given an opportunity, we will develop this.

Mr. Thompson: I do understand Mr. Kelaher, that this line of questioning applies to the business generally and not to Atlantic stations.

Mr. Kelaher: I will let the witness answer that question.

By Mr. Kelaher:

Q. You stated that your peak sales reached $5,000 or $6,000 maximum about 1949 or 1950?

A. Yes, sir.

Q. And the $5,000 or $6,000 represents the purchase price of your company, by your company of the Mac's-It line?

A. Yes.

Q. To whom did you sell the Mac's-It line?

A. The Mac's-It line was sold to service stations, which included Atlantic, Sinclair.

Q. Approximately—

A. No Sun and no Gulf. We have never done much 183 business with either of those two. Basically Sinclair and Atlantic.

Q. Do you know approximately how many Atlantic and Sinclair stations you were selling to at that time? How many Atlantic stations were you selling Mac's-It to at that time?

A. I would approximate 20 or 25 stations. It is difficult to say specifically at this time.

Q. Approximately how many Sinclair stations was the Mac's-It line sold to at that time?

A. Probably 15 to 20.

Mr. Mason: May it be understood that I have a running objection to questions concerning Sinclair stations?

184 Hearing Examiner Kolb: The objection as to the Sinclair stations will be overruled so far as Goodrich is concerned, and it will be received subject to a motion to strike so far as Goodyear is concerned.

Mr. Thompson: I understand this is applicable to all these questions.

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. What was your normal markup on the Mac's-It line at that time?

A. I grossed 20 percent on resale of that merchandise. That is wholesale, not resale. In other words, I bought it at 60 and sold it at 40, approximately.

Q. So a $5,000 purchase would represent about a $6,000 annual volume of sales, is that correct?

A. Yes.

Q. Did you—who were the pricnipal purchasers of the Mac's-It line at that time?

A. Atlantic and Sinclair.

Q. Now, would you take the story from there?

A. About that point the TBA structure began to develop within the service station marketing area, and I saw my sales of Mac's-It drifting away. It was being supplied through TBA structure of distribution rather than the jobber structure of distribution. and it continued

185 to drop to a point where I decided to drop the line. In other words, that was the distribution of the line. I had to sell something that I wasn't in competition with TBA in order to remain within the market.

Mr. Mason: Can you fix the time?

The Witness: I would say about 1951.

By Mr. Kelaher:

Q. You lost the market about 1951 on?

A. It began to drop in '50 and continued to drop until 1951, about 1951 I took on the distributorship of Hollingshead or Whiz products.

Q. Did you continue to purchase the Mac's-It line after 1951?

A. Yes, but only by demand. My purchases of Mac's-It dropped to a tenth of my purchases. I was below a thousand dollars in purchases of Mac's-It products.

186 By Mr. Kelaher:

Q. About 1951, did you observe to whom the Atlantic stations were purchasing the Mac's-It line from?

A. Ed Parris.

Q. Who is Ed Parris?

A. He is the Atlantic TBA distributor in Glenolden. At that time I think he was located in Sharon Hill and has since moved to Glenolden.

Q. Can you give us the names of any Atlantic dealers whose business was lost—whose Mac's-It business was lost to Mr. Parris?

A. Yes.

Q. Would you please state those names and their station locations, if you can?

A. Burt Rehill—

Mr. Thompson: Is this a matter within this witness' knowledge, Mr. Kelaher?

By Mr. Kelaher:

Q. I would like your answer to be based on your own knowledge.

187 A. This is on my own knowledge. They were my own accounts.

Q. Go ahead.

Mr. Thompson: Just a minute. Would you mind repeating the question?

(Question read.)

By Mr. Kelaher:

Q. Go ahead.

Mr. Thompson: I don't understand, sir, whether he is saying that it is to his own knowledge that he lost the accounts, or to his own knowledge that Mr. Parris lost the accounts.

Mr. Kelaher: To his own knowledge that he, meaning Mr. Wetzel, lost the accounts to Mr. Parris.

Mr. Thompson: How could he know whether he lost it to Mr. Parris?

Mr. Kelaher: Let the witness answer that.

Hearing Examiner Kolb: I think we are getting too technical.

The Witness: It is very easy to answer. The packages come in with Ed Parris' name right on them.

By Mr. Kelaher:

Q. Go ahead. Give the names.

A. John Rehill—

Q. Let's get the first one.

A. Burt Rehill.

188 Burt Rehill, 9th and Kerlin; John Rehill.

Q. Would you give the city, too?

A. That is Chester. John Chambers, Second and Lloyd; Al Kohler, 22nd and Edgmont; Laughead Service Station, Lynwood; Joe Boice. That would be Chester Pike and Oak Lane. That is Folcroft, I guess there.

Joe Abel, Fairview Road and Chester Pike, Crum Lynne.

Q. Did you at one time sell the Mac's-It line to a Chet Drozdowsky, Eddystone, Pennsylvania?

A. Yes.

Q. What was your experience on the sale of the Mac's-It line to Mr. Drozdowsky?

A. The same situation.

Q. And he was an Atlantic dealer?

A. Yes, at that time there was another man in there by the name of Charley Miller, at Chester's present location, and Chet was located at about 10th and Morton.

Q. He was at 10th and Morton location when this incident occurred?

A. Charley Miller was in on that other group. He was at the Eddystone location.

Q. Did you also lose the business of Charles Miller?

A. Yes.

Q. Was he an Atlantic dealer?

A. Yes.

Q. Did you at one time sell the Mac's-It line to 189 George Curney of Ninth and Flower Street, Chester, Pennsylvania?

A. Yes.

Q. What was your experience with Mr. Curney?

A. Well, George came in just—that had previously been Burt Rehill's station there, and he moved from there to Ninth and Kerlin, and George came in about the time that I began to push the Hollingshead line or the Whiz line. George had bought small quantities of Mac's-It, but he went on to the Hollingshead line to a greater extent.

George just came into the picture about the time I went into transition from Mac's-It to Whiz.

Q. Did you at one time sell the Mac's-It line to an Atlantic dealer named Bill Sikorsky?

A. Yes. At the time I sold him he owned his own location. I never lost Bill's business.

Q. Where was he located?

A. He was at—he operated as Chester Highland Garage. He was at the corner of Highland Avenue and I

believe Chichester Road, a Chester post office. It could possibly be a Feltonville post office.

Q. You stated that he owned his own station. Didn't these other Atlantic people own their own stations?

A. No, sir.

Q. Did you at one time sell the Mac's-It line to a Jack Pollock?

190 A. Yes. That is the location that Burt Rehill formerly had. Jack Pollock was in that location before Burt. These dealers move around.

Q. What was your experience with respect to sales of the Mac's-It line to Mr. Pollock?

A. It was a comparable situation.

Q. By that do you mean that the Mac's-It line business was lost to Mr. Parris?

A. That is right.

Q. Do you recall the names of any Sinclair dealers to whom you sold the Mac's-It line, and whose business was eventually lost?

A. Yes. I think I can name a few of those.

Mr. Mason: I have my objection.

Hearing Examiner Kolb: It will be the same ruling as the previous. We will have that standing objection and ruling. And also on Sinclair.

By Mr. Kelaher:

Q. Will you answer the question?

A. Ed Roszel. That would be Post Road, trainer. It is right at the Sinclair refinery.

Q. Continue.

A. Jim Medcalf. That would be Ninth Street, right at the Delaware line. I don't know what the post office is there.

Q. Is that in Chester, Pennsylvania?

191 A. It is just out of the State of Delaware. It is just off of—it is at the foot of the Sun refinery. After

you pass the Sun refinery it is the next station past there.

Q. Did you at one time sell the Mac's-It line to a Sinclair dealer named George Nichols, 15th and Providence Road, Chester, Pennsylvania?

A. Yes.

* * * * *

By Mr. Kelaher:

Q. Mr. Wetzel, based on your own knowledge and experience, will you please state to whom the Mac's-It line business was lost with respect to the Sinclair stations?

A. Originally it was lost to a man by the name of Odijan. He has since deceased and has been replaced by Superior Tire.

Q. Where is Superior Tire Company located?

A. I am sorry, I can't give you their address.

Q. Is it in Philadelphia?

A. It is in West Philadelphia, I believe.

Q. What products did Steve Odijan supply, or what 192 line of products, TBA products, did Mr. Odijan, and later Superior Tire Company, supply?

A. Goodyear.

Q. Did you at one time sell the Mac's-It line to a Sinclair dealer or dealers by the name of Radewon Brothers?

Mr. Thompson: When you say "could", I suppose you mean "did you"?

Mr. Kelaher: I thought I said "did you".

Mr. Thompson: I thought you said "could you".

By Mr. Kelaher:

Q. Did you?

A. Yes.

Q. What is your experience with respect to Radewon Brothers with respect to the Mac's-It line?

A. Same situation.

Q. Was that business lost to Odijan?

A. Originally, yes.

Q. Did Radewon Brothers have two Sinclair stations?

A. Yes, one in Media, and one in Folsom.

193 Q. Did you at one time sell the Mac's-It line to a Sinclair dealer named Fusco Motors, Swarthmore, Pennsylvania?

A. Yes.

Q. What was your experience with respect to this dealer?

A. Same thing.

Q. Same as the others?

A. Yes.

Q. By that do you mean that you lost the Mac's-It line to Mr. Odijan?

A. Yes.

Q. Originally; and then Superior Tire Company?

A. Yes.

Q. For the record, would you please state whether Mr. Pollock owned his own station.

A. No, he did not.

Q. You stated that you also sold the Hollingshead line under the brand name of Whiz, I believe.

A. Yes.

Q. What Whiz brand line? What constitutes the Whiz brand line?

A. Very comparable to your Dupont or your Mac's-It line, or Simoniz line. It constitutes polishes, cleaners, radiator specialties, sealers, et cetera.

Q. Would you state your company's experience with respect to the Whiz line of waxes and polishes among

194 Atlantic and Sinclair stations particularly?

A. Well, when you have salesmen working on commission, you have to have something that they can sell. So finding that the Mac's-It line was drifting away for us,

there was only one solution, to find something else to sell it and try to have it exclusively, which we did.

We took on the Hollingshead line and tried to replace wherever we could the Mac's-It line within the operations that were then using Mac's-It. They had originally been Dupont. We changed them from Dupont to Mac's on a selling basis. Now we had to unsell what we had sold and sell the Whiz, which we proceeded to do. We built that up to very comparable figures to our Mac's-It line.

Q. Comparable figures? Will you state approximately what your annual purchases were built up to?

A. In the vicinity of $6,000. Somewhere between $5,000 and $7,000 annual purchases.

Q. What was your general mark-up on the Whiz line?

A. The same as on the Mac's-It—20 percent.

Q. So a $6,000 volume would be a $7,200 selling volume?

A. Yes, sir.

Q. Who were your principal purchasers of the Whiz line?

A. Our previous purchasers of the Mac's-It line.

Q. And then were your previous purchasers of the Mac's-It line—did they continue to purchase Mac's-It products?

195 A. We replaced them pretty completely. It took about a year or a year and a half, but we pretty well replaced them.

Q. What was your experience with respect to the Whiz line? Would you please state the years you are speaking of?

A. We began with Whiz, I would say, in late 1951 or probably early 1952, and the build-up period was probably the same length of time, a year or a year and a half. So we probably peaked out somewhere around late 1953 or '54 on our Whiz products.

Q. Would you please state your experience with respect

to the Whiz line in so far as it relates to the Atlantic market?

A. There again the product was available to the TBA distributor, or whatever they wished to call that individual, through Goodyear, and our sales were again replaced. In other words, the repeat business was lost to us and picked up by the TBA distributor.

Q. Was that repeat business picked up on the Whiz line or on another line?

A. It was picked up on the Whiz line.

Q. Which was handled by Mr. Parris?

A. Yes.

Q. And by the Superior Tire Company at that time?

A. Yes.

Q. Did you lose any of the business of the Atlantic or Sinclair service stations on the Whiz line?

196 A. Yes, sir.

Q. You did?

A. Yes.

Q. Can you give us the names of the Atlantic dealers to whom that business was lost?

A. Exactly the same group.

Q. The same group—

A. In other words, it was a repetition of the Mac's-It development and loss.

Q. Can you give us the names—and by "the same group" you are referring to the names you previously stated with respect to the Mac's-It line?

A. Yes. Probably with the exceptions of where dealers had either moved or been replaced by other dealers. But they were the same locations.

Q. Can you give us the names of the Sinclair dealers whose business you lost on the Whiz line?

A. It would be the same that I gave you on the Mac's-It.

Q. The same Sinclair dealers, or locations, possibly, if a dealer had—

A. You are better off to name it as locations, because the dealers do change from time to time.

Q. Can you tell me whether your purchases and sales of the Whiz line declined from that peak period you
197 referred to, late 1953 or '54?

A. Yes, sir, it has. My purchases this past year on Whiz were below $500.

Q. Were the bulk of your sales of this line to Atlantic and Sinclair stations as previously?

A. Yes.

Q. Do you recall any conversations with Atlantic dealers relating to your loss of business on the Mac's-It or Whiz lines?

A. Yes.

Q. Would you please state the names of the individuals with whom you had such discussions, and the approximate time?

• • • • •

198 A. Burt Rehill; 1952.

Q. For purposes of convenience, I think it would be just as well if you gave us the substance of the conversation as you went along. Would you state what reason Mr. Rehill gave you at that time?

Mr. Mason: I object to the form of the question. If he wants to have what he said, all right. But let's have no characterizations.

Mr. Kelaher: That is exactly what I am asking him.

Mr. Mason: That is not what you asked him.

Mr. Thompson: Will you accept the amendment?

Mr. Kelaher: I will accept the amendment.

By Mr. Kelaher:

Q. Just state the conversation.

A. The conversation was to this effect—

Mr. Thompson: May we have the place where it occurred?

199 Mr. Kelaher: Yes.

A. In his place of business. "Sorry, Glenn, but I have to reserve this for Ed Parris. You understand the situation. I am in an Atlantic station. I must buy from an Atlantic TBA distributor."

By Mr. Kelaher:

Q. Do you recall any other conversations with other Atlantic dealers or Sinclair dealers, along similar lines?

A. Yes. John Chambers.

Q. Please state the time as nearly as you can, the place, and what was stated.

A. I would approximate the time at about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.

Mr. Mason: I would like to have the answer read.

(Read.)

Mr. Mason: I move to strike everything in that answer after "it was to the effect" because it is not clear from the answer whether he is reciting a conversation that actually took place, a speculation of his as to a conversation that may have taken place somewhere else, or what.

Mr. Kelaher: He is referring specifically to a con-

200 versation.

Mr. Mason: You heard the answer read.

Hearing Examiner Kolb: Are you describing a conversation that you had?

The Witness: I am describing a conversation that I had.

By Mr. Kelaher:

Q. What did Mr. Chambers—

Mr. Mason: I object to the description. It starts with "to the effect". It does not purport to be a conversation at all but the impression of the witness.

By Mr. Kelaher:

Q. State as nearly as you can what Mr. Chambers said to you.

Mr. Thompson: Before he answers that question; I think the record is becoming confused again. It is my understanding that you are still referring to the Whiz line?

The Witness: Yes.

Mr. Thompson: And this conversation was about the Whiz line?

The Witness: Let's call it the chemical line.

By Mr. Kelaher:

Q. The chemical line, which would include Mac's-It, Whiz, and so on.

A. That's right, because Jack was still using some 201 Mac's-It at that time.

Mr. Thompson: I am thoroughly confused.

Mr. Kelaher: Your Honor, I think I should be permitted to conduct this examination. I am trying to get the substance of the conversation that he had with Mr. Chambers some time in 1954.

Mr. Thompson: I am merely trying to find the subject matter of the conversation.

Mr. Kelaher: I think we will develop it.

Hearing Examiner Kolb: Go ahead.

The Witness: The subject matter was TBA products generally, exclusive of tires.

By Mr. Kelaher:

Q. Now will you please state what the conversation was?

A. Jack said to me: "Glenn, I am going to have to stop

buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Mr. Thompson: I move the answer be stricken. It obviously is double hearsay. The man is saying what one Jack Chambers said to him what somebody in Atlantic said to him.

Hearing Examiner Kolb: He is explaining his reasons why he can't buy that product. I think the answer is admissible. I will overrule the objection.

202 By Mr. Kelaher:

Q. At that time did you make any remarks to Mr. Chambers? Do you recall whether you answered him?

A. None that I can recall.

Mr. Thompson: May I ask whether it is the purpose of this testimony to impeach Mr. Chambers, who testified that he had no TBA difficulties whatever with Atlantic?

Mr. Kelaher: He did. I believe you were listening to a different witness this morning.

Mr. Thompson: Is it the purpose to impeach Mr. Chambers?

Mr. Kelaher: It definitely is not. It is to corroborate Mr. Chambers.

By Mr. Kelaher:

Q. Now getting back to Mr. Burt Rehill, will you state what that discussion related to?

A. TBA products, exclusive of batteries or tires.

Mr. Thompson: The TBA products exclusive of tires and batteries? And accessories?

The Witness: I have batteries, but I wasn't discussing batteries with him. I do not have tires for sale.

By Mr. Kelaher:

Q. You say batteries and accessories, including the Mac's-It and Whiz lines and your other products. Did you

sell your line in general to Atlantic and Sinclair stations prior to about 1951?

A. Did I sell?

203 Q. Did you sell them?

A. Yes, sir.

Q. What was your approximate volume of sales to those stations at that time?

A. I couldn't give you that figure without going back into the sales record.

Q. Since that time have you lost business to Atlantic and Sinclair dealers?

Mr. Mason: I object to the question such as that. He has already announced that he doesn't know what his figures are and can't give them from his head for a prior period.

Hearing Examiner Kolb: He doesn't know what he sold. He might be able to say what he lost. Objection overruled.

Mr. Mason: If he had his figures here, we would know what the facts were.

By Mr. Kelaher:

Q. I will restate the question. Taking your 1951 sales volume as 100 percent, did you increase, decrease, or remain constant with respect to your volume of sales of batteries and accessories to Atlantic and Sinclair dealers?

A. Sales to service stations are definitely down. That I can vouch for, because I know what has given rise

204 to existing sales at the present time, because I analyze those things myself. I want to know where I am selling my merchandise. And I know that I am not selling it to service stations in general.

Q. Does that include Atlantic and Sinclair service stations?

A. Yes, sir.

Q. Would you say then that there has been a decrease

in sales volume since the peak period, or since the 1951 or 1950 level?

A. To service stations?

Q. Yes.

A. Yes.

Q. To Atlantic and Sinclair service stations.

Would you have any approximate idea of the percentage of decline since that time?

Mr. Mason: I object to an approximate idea.

Hearing Examiner Kolb: Objection overruled.

A. Service stations, 80 percent decrease.

By Mr. Kelaher:

Q. Eighty percent decrease. Does that apply to Atlantic and Sinclair stations?

A. Yes, sir.

Q. Are there any Shell service stations in your area?

A. No, sir.

205 Q. Mr. Wetzel, do you solicit the business of Atlantic or Sinclair service stations who are either opening as new stations or where a new operator is taking over?

A. Yes, sir, I do.

Q. What has been your experience with selling batteries and accessories to such stations?

A. You can't.

Q. Who supplies, based on your knowledge and observation, who supplies TBA to the stations indicated?

A. Goodyear.

Q. Is that true of the designated Goodyear supply points?

A. Yes, sir.

Q. Based on your observation and knowledge of the market, what type of advertising is done by Atlantic and Sinclair dealers with respect to TBA items?

A. Goodyear primarily. They have a valance type advertising and outdoor signs.

Q. Based on your knowledge and experience prior to 1951, what type of advertising was carried by the Atlantic stations? What type of tire, rather.

A. At that time there was more diversified TBA. As I recall, Thermoid belts and hose were in at that time.

Q. Do you recall the tires that were carried at that time?

A. Lee.

Q. Do you recall the batteries?

206 A. Some were Lee. And then others of course were buying off-brand merchandise. There were some Reading batteries, some Cadmidyne.

Q. Were there any Exide batteries displayed?

A. Yes, I believe there were. I feel sure there were.

Q. Mr. Wetzel, you may have answered this, but I don't think I asked you. Do you know approximately how many Sinclair service stations are in your marketing area?

A. I don't have any idea of the total number of Sinclair stations.

Q. Is it over 25 or 30?

A. I would say 25 to 30.

Q. Do you solicit such stations?

A. Yes, sir.

Q. How often do you solicit such stations?

A. Usually once a week. If they are smaller stations, they may be only solicited twice a month.

Q. Are you able to sell to any Atlantic or Sinclair stations on what is known as a stocking basis?

Mr. Thompson: I object to the use of the words "are you able to." Maybe he is, or maybe he isn't.

By Mr. Kelaher:

Q. Do you sell?

A. We are speaking now of TBA?

Q. Yes.

207 Mr. Mason: Not TBA.

Mr. Kelaher: Speaking of batteries and acces-

sories. I think the record can show that when he refers to TBA, it is noted that Mr. Wetzel does not handle tires.

Mr. Thompson: My understanding, when he speaks of TBA, is that he is speaking of the Whiz line of accessories basically.

Mr. Kelaher: He is speaking of his complete line.

By Mr. Kelaher:

Q. Will you go ahead?

A. Some isolated hard parts are stocked by some of the stations that do minor repair work.

Q. Are hard parts included in the category known as TBA?

A. No.

Q. Now with respect to the battery and accessory lines you carry, what has been your experience?

A. I don't have any stocking accounts.

Q. Are you referring now to Atlantic and Sinclair stations?

A. Yes, sir.

Q. Mr. Wetzel, you stated that you solicit Atlantic and Sinclair stations. Do you solicit them for your own complete line of so-called—batteries and accessories?

A. Well, it is a rather futile attempt on batteries. The chemical lines, yes, we try. Filters, fan belts, hoses, again fall back into a category that is very difficult to sell
208 against the competition that you have in there.

Q. But you do attempt to get that business; is that correct?

A. Yes, sir.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: Cross examine.

Mr. Thompson: May we have a five-minute recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

209 Hearing Examiner Kolb: On the record.

Cross-Examination by Mr. Thompson.

Q. Mr. Wetzel, in your business biography, in view of the fact that Shell counsel is present, shouldn't we note on the record that you at one time worked for Shell?

A. Yes, sir.

Q. And after you left Shell you started this business of your own in Chester?

A. Yes, sir.

Q. You have done very well with it, haven't you?

A. It is successful.

Q. Approximately how many accounts do you have, Mr. Wetzel?

A. How many accounts?

Q. Yes.

A. Of all descriptions?

Q. How many people do you sell to among the categories that you described?

A. Approximately 250, I would say.

Q. What is this Whiz line? Is that a full or a short line of so-called chemicals?

A. It is a full line.

Q. I am not sure if the record is clear on what you told us about that Whiz line. Am I correct that after you had developed the Mac's line—that is M-a-c-'-s?

210 A. Yes.

Q. You switched your accounts to the Whiz line?

Mr. Kelaher: He is characterizing the witness' testimony. He didn't state that.

Mr. Thompson: I asked whether my understanding was correct, Mr. Kelaher.

The Witness: I didn't switch my Mac's accounts. I switched the Whiz accounts.

By Mr. Thompson:

Q. In other words, you have been selling about a dozen Atlantic dealers Mac's products, and commencing about 1951 you commenced to build up the Whiz line and sold that to them?

A. I sold the Mac's line originally. When sales on Mac's began to drop as a result of my inability to continue to sell them, I had to find a line which would replace Mac's that I could sell without competing with the existing suppliers of Mac's at that time. So I went to Whiz, and the accounts who were then buying Mac's through TBA were sold on the basis of profitability, premiums, and profit on Whiz as against Mac's-It. And they dropped the Mac's-It line and began to buy the Whiz line.

Q. That began to happen about 1951 or 1952?

A. I would say in that vicinity; yes, sir.

Q. At that time was the Whiz line promoted by Goodyear, was that a part of their TBA line?

211 A. Being included in and being promoted by I think is a definite point. It was not being promoted by. It was in the Goodyear line, but not being promoted by.

Q. But it was being sold by Goodyear?

A. It was in their line.

Q. Was it being sold by Ed Parris?

A. He had it available.

Q. And in spite of that competition from Ed Parris and Goodyear you built up the Whiz line to the same volume that you previously enjoyed on your Mac's-It line?

A. Yes, sir.

Q. You did that over a period of about two years?

A. Yes, sir.

Q. During all of that time Parris had it for sale?

A. He had it available if he wished to sell it.

Q. Are you inferring that Parris just stepped out of

that particular type of competition and let you have those dealers, or what?

A. He is not in a position to be able to compete with my salesmen for this reason: He operates a business with two people, where it requires me thirteen. In other words, my delivery service and my selling services are services that he does not need.

Q. You sell a large number of Atlantic stations at the moment, don't you?

212 A. TBA items?

Q. Yes.

A. None.

Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now?

A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They buy six or eight cans of merchandise to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Q. How many competitors do you have in your accessories business in your part of the country?

A. Selling the same lines I sell?

Q. Selling the same types of accessories.

A. Selling the same lines, none.

Q. Selling the same types of accessories?

A. Three, in Chester.

Q. Who are they?

A. Motor Car, that is Motor Car Service; Auto Parts and Radiator; and E. B. Krausen.

Q. How about Philadelphia Wholesale Distributors?

A. Philadelphia Wholesale Distributors? They have a very few service station accounts most of which are Esso.

Mr. Kelaher: Are you referring to your marketing area?

213 The Witness: Yes.

By Mr. Thompson:

Q. What do you mean by "very few"?

A. I buy from Philadelphia Wholesale, and for that reason they respect my marketing area. Accounts that they had previous to the time that they sold to me on a jobber basis they have retained. Such accounts include G. M. Stull, which is a Ford agency; Luke Motors, which is the Oldsmobile agency; Maloney's Esso; John Chambers' Esso; —

Q. At his new Esso station?

A. At his new station.

Q. That is about the lot?

A. Chester Lincoln Mercury.

Q. No Atlantic?

A. Not to the best of my knowledge.

Q. Were you at the hearings this morning?

A. No, sir.

Q. You didn't hear Mr. Hoffman's testimony?

A. No, sir.

Q. How about Harris and Leonard? Aren't they your competitors?

A. No. I do not handle tires.

Q. How about Bowles? Are they your competitors?

Mr. Kelaher: Will you state the full name?

A. Bowes Corporation.

No, sir, they are not.

214 Mr. Kelaher: And their office?

Mr. Thompson: The principal office?

Mr. Kelaher: The one you are referring to.

Mr. Thompson: I don't know what their principal office is.

By Mr. Thompson:

Q. How about R. C. Chemical Company? Are they competitors of yours?

A. They have all off-brand merchandise and I do not

consider them a competitor because the amount of merchandise that they sell in the Chester area is negligible.

Q. How about off-brand? What do you mean? Not nationally advertised?

A. Yes, sir.

Q. How about John Stewart?

A. John Stewart's lines are specialized lines such as car wash and bulk driveway items and bulk whiteside wall cleaner.

Q. Is he a competitor of yours?

A. Not in that category because most of the items I sell are resale items which would be sold on a resale basis and not self-consumed.

Q. Is V. J. Auto Parts one of your competitors, or do they carry off-brand merchandise?

A. V. J. would be considered a competitor. However, they are on the outskirts of my territory. They are in
215 Sharon Hill. That is just about the maximum of our territory.

Q. How about Lancaster Auto Supply?

A. I don't cross paths.

Q. Do you know Frank Buckingham?

A. Yes, sir.

Q. He has a station at Second and Lloyd, Chester?

A. Yes, sir.

Q. The station John Chambers formerly had?

A. Yes.

Q. Does he buy from you?

A. TBA items, no; hard items, yes.

Q. Doesn't he buy Puralator oil filters from you?

A. On the same basis that other dealers do, in quantities of one or two to fill in until such time as he can get a shipment from Ed.

Q. Is it your impression that he buys exclusively or substantially exclusively from the Goodyear supply point?

A. I would say 95 percent of his merchandise.

Q. Do you know his station at all and what he has for sale there?

A. It has been possibly three or four months since I have been in that territory, or in Frank's station. But basically I have some idea of some of the merchandise that is in there.

Q. Would you say I was exaggerating if I suggested to you that he had eight independent suppliers besides yourself?

216 A. No, that is very possible, but what is he buying from those eight suppliers?

Q. Perhaps you could tell me, sir, since you are on the stand.

A. You tell me who the suppliers are and I can probably tell you what he is buying.

Q. Delaware County Auto Parts. What do you suppose he buys from them?

A. Delaware County Motor Parts?

Q. Auto parts.

A. Well, it is possible that he bought some DuPont anti-freeze from them.

Q. How about the DuPont chemical line?

A. It is possible that he may have bought some DuPont chemicals. I think they do handle it on a sub-jobber basis.

Q. How about Zerone and Zerex?

A. I mentioned that.

Mr. Kelaher: Objection, your Honor.

Mr. Thompson: Why?

Mr. Kelaher: Zerone and Zerex aren't part of the Goodyear TBA line. Anti-freeze is not a part of the Goodyear TBA.

Hearing Examiner Kolb: Is it or isn't it?

Mr. Kelaher: It is not. Anti-freeze is not a part of the Goodyear TBA.

217 Mr. Mason: I want to hear his Honor's ruling on this. I have a motion to strike.

Hearing Examiner Kolb: You say that anti-freeze is not—

Mr. Kelaher: That is right. The records will indicate that. I think counsel will concede that point.

Mr. Thompson: That is correct.

Mr. Ballard: It is correct as far as Atlantic is concerned. We don't know any more than that. We don't handle—

Mr. Kelaher: That is what I am referring to. This is an Atlantic station?

Mr. Thompson: Oh, yes.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Mason: On that basis, your Honor, I move that all previous testimony with respect to Whiz be stricken because that is not a part of the Goodyear TBA line.

Hearing Examiner Kolb: That is a comparable product that is put out by Goodyear. Waxes, polishes, radiator solvents and so forth.

Mr. Mason: Whiz is not a part of the Goodyear TBA line, and there has been a good deal of testimony that he has lost business to Goodyear with respect to Whiz.

The Witness: That testimony was dated.

Hearing Examiner Kolb: As I understand, anti-
218 freeze is not a TBA product. The Whiz products are TBA products so far as they are comparable.

Mr. Mason: As I understand it, anti-freeze is a TBA product but is not part of the Goodyear TBA line.

Hearing Examiner Kolb: Motion will be denied.

By Mr. Thompson:

Q. Do you know from your observation of the Buckingham station whether he buys from the Bowes Corporation oil filters and stocks them?

A. From the Bowes Corporation?

Q. Yes.

A. It would be impossible for me to say.

Q. He does stock Bardahl, does he not?

Mr. Kelaher: Objection. Bardahl is not a TBA item. It is a motor oil.

Mr. Thompson: You are correct. I will withdraw that question.

By Mr. Thompson:

Q. Did you say you didn't know the R. C. Chemical Company?

A. I know that.

Q. Does Mr. Buckingham buy part of his so-called chemical line from the R. C. Chemical Company?

A. That would be difficult for me to say. I don't know.

Q. I don't want to be too prolonged on one station. You of course do sell Conneen, Chester Pike and Fairview Road?

219 A. Yes, sir.

Q. A large number of other suppliers do the same thing, don't they?

A. I couldn't say. I know that I sell him. I don't know what my competition sells him.

Q. How about Earl Connors?

A. At Ninth and Flower?

Q. Yes.

A. We sell Connors hard items, yes.

Q. How about DiFelice, at Ridley Park?

A. Yes, sir; I sell him hard items.

Q. You also sell him such things as Purolator filters, don't you?

A. Yes, sir. There is an interesting situation there. Perhaps you would be interested in hearing it. I sold him a bonanza deal and he was told to send it back to me.

Q. By whom?

A. TBA distributor.

Q. Did he?

A. He refused to. There were eight filters out of the bonanza and he told him to take them out of the new bonanza he was going to get from TBA, take them out and send them to me.

Q. The fact is that this man buys from about eight different suppliers, isn't that true?

A. That I couldn't say. I don't know where he buys.

220 Q. How often do you go to see him?

A. Once a week.

Q. You don't know what he buys and stocks?

A. I know the merchandise he stocks.

Q. Do you know how many sources of supply he has?

A. I know that he buys hard items from Eddy Davis, and he buys hard items from myself. Where he is buying his chemicals other than Ed Parris I couldn't hazard a guess.

Q. I think you mentioned Drozdowski before?

A. Yes, sir.

Q. He still buys quite a bit from you, doesn't he?

A. Hard items, yes.

Q. And from a lot of other people? I mean he buys accessories from a lot of people, doesn't he?

A. That I could not say.

Q. He buys Purolator and AC filters from you?

A. No, sir, he does not.

Q. How about Sam Dugross?

A. No, sir. I do not have him on the books.

Q. He is not on your books at all? He is a customer of V. J. Auto Parts.

A. I don't know the gentleman.

Q. You don't know him?

A. No, sir.

Q. Is Main and Ridge, in Darby, out of your area?

221 A. Yes.

Q. How about Gillipan, Edgemont Avenue and Maple, Brookhaven?

A. That is Al Kahler's son-in-law?

Q. Yes.

A. Yes, he buys hard items from us.

Q. Frank Lancaster, Chester?

A. Hard items.

Q. Also Purolator?

A. I haven't sold Frank any more than two Purolators at a time in the past year and a half.

Q. He buys from C. A. Powers, doesn't he?

A. That I don't know.

Q. Delaware County Auto Parts?

A. No.

Q. You don't know who his suppliers are?

A. No.

Q. How much do you know about Mr. Mann's business at Haverford and Brookhaven Road?

A. I don't know.

Q. Is he one of your accounts?

A. No.

Q. Bill McKee, at West Chester Pike and Newton Road?

A. I sold Bill McKee hard items when he was at the station Al Kahler's son-in-law now has. I haven't seen him since he moved to Newtown Square.

222 Q. Do you know who does sell him?

A. I couldn't tell you now.

Q. How about Joseph Raffa? Is he one of your accounts?

A. He is in our marketing area but doesn't buy from us.

Q. You sell quite a bit to both Rehills, don't you?

A. Hard items, very definitely; mufflers, tail pipes.

Q. That is all? That is all you sell them?

A. Yes.

Q. Are your sales primarily for cash or credit to the service stations?

A. About 75 percent charge and 25 percent cash.

Mr. Thompson: May I have a one-minute recess to consult counsel?

Hearing Examiner Kolb: Yes.

(A brief recess was taken.)

223 Mr. Thompson: I have no further questions.

By Mr. Mason:

Q. Mr. Wetzel, when did you first learn that you were going to testify here?

A. Is there a date on that subpena?

Q. It was by virtue of the subpena that you first learned?

A. Yes.

Q. Had you been asked previously whether you would be willing to testify?

A. Yes, sir.

Q. Who asked you?

Mr. Kelaher: Objection. I can't see any relevance to this line of questioning.

Mr. Mason: This is cross examination.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Mason: Read the question.

(Question read.)

The Witness: I was asked by the Federal Trade Commission.

By Mr. Mason:

Q. Did the Federal Trade Commission happen to be represented by a person with a name at that time?

Mr. Kelaher: Objection, your Honor. I think he has answered the question. Any representative of the
224 Federal Trade Commission would be acting in an official capacity. I see no reason for putting names in the record.

Hearing Examiner Kolb: He can testify as to who he talked to.

By Mr. Mason:

Q. Who was it?

A. Mr. Kelaher, I don't believe I talked to you the first time, did I? There were three gentlemen, were there not, originally?

Mr. Kelaher: That's right.

By Mr. Mason:

Q. When did this original conversation take place?

Mr. Kelaher: I think, in order to get the record straight, if he wants to go into it, I can give him the dates, going back a few years, when the Federal Trade Commission representatives called on him.

Mr. Mason: I don't intend to question him very long.

Hearing Examiner Kolb: Let him go along.

The Witness: I would say it probably has been sometime this year. The very early part of this year, I believe. The exact date I couldn't tell you.

By Mr. Mason:

Q. At this original conversation, were either of these two gentlemen in the room present?

225 A. This gentleman here was present.
(Indicating Mr. Kelaher.)

Q. At that time did you make available to the members of the Federal Trade Commission any of your books and records?

A. Yes, sir.

Q. Could you just tell us which books and records they were?

A. My purchases.

Q. And did they have the figures on these purchases as a result of this conversation? Did they take notes?

A. Notes were taken, yes.

Q. Let me ask you this: How would you feel about letting the other side have a chance to look at your records?

A. No objection whatsoever.

Q. So we can go and take a look at your records?

A. Sure. With my permission.

Q. At a time—

A. At my permission. I don't want you going into my place of business without my permission. I will be there at the time.

Q. Of course. We would like to work out such reasonable arrangements as we could. Did you, at this time, make any statements in writing?

Mr. Kelaher: At which time are you referring to?

Mr. Mason: At the first occasion.

The Witness: In writing? No.

226 By Mr. Mason:

Q. Have you ever at any time given any member of the Federal Trade Commission a statement in writing?

A. Not in writing, no.

Mr. Mason: I have no further questions.

Mr. Kelaher: I have some redirect, Mr. Examiner.

Redirect Examination by Mr. Kelaher.

Q. In order to get the record straight on the sequence of brand names with respect to Mac's-It, Whiz, et cetera, who was the original supplier of the Mac's-It line in your marketing area?

A. The original supplier?

Q. The original jobber-supplier.

A. From 1940 until 1946—

Q. I am talking about the period since you—

A. Since I have been it? I was.

Q. Just give us the date approximately, when did you begin to develop it? I think you have done it already.

A. 1946 actually when we first went in business. We had the line made available to us I would say in late 1946. 1947 was the development year.

Q. When was the Mac's-It line taken on by the Goodyear TBA supply point; Mr. Parris, first?

A. The exact date would be hard to say, Mr. 227 Kelaher. I don't know.

Mr. Thompson: It appears of record.

Mr. Kelaher: I think there is a little confusion on it.

By Mr. Kelaher:

Q. Was it taken on as a part of the Goodyear TBA line?

A. Yes. It appeared in the Goodyear TBA catalog, the product appeared in there, and it was available to the distributor. At what time it became available I couldn't tell you. It may have been available as early as 1946. It may not have been available until 1948 or 1949. But it did appear in the catalog at the time that I began to lose business.

Q. You are referring to the Goodyear catalog?

A. Yes, sir.

Q. Did that appear in the Goodyear TBA catalog when Atlantic dealers originally began to purchase the Goodyear TBA line?

A. I believe it did.

Q. Then you stated, in the sequence of events, that you began to sell the Whiz line?

A. Yes, sir.

Q. To Atlantic dealers and Sinclair dealers?

A. Yes, sir.

Q. With respect to your loss of the Whiz line of business, was that business lost to the Whiz, a Whiz line
228 carried by the Goodyear TBA supply points?

A. Yes, sir.

Q. When did they begin to sell the Whiz line?

A. They began to take orders on it after I had sold it.

Q. Although it had been in the Goodyear TBA line prior to that?

A. Yes, sir.

Q. In response to a question by Mr. Thompson, he alluded to the fact that you had sold approximately 12 Atlantic stations at the peak. Would you state whether that is correct or incorrect?

A. I would say it is closer to 20.

Q. Approximately how many Sinclair stations did you sell at your peak?

A. Fifteen to twenty. Probably forty, close to forty stations involved in both categories.

Q. You have testified that your sales volume on Mac's-It line and on the Whiz line ranged from say 6,000 to 7,200 dollars, approximately?

A. Yes, sir.

Mr. Thompson: I object to that and suggest that Mr. Kelaher write his brief at the proper point. This is just repetitious.

Mr. Kelaher: It isn't.

Hearing Examiner Kolb: The objection will be over-
229 ruled.

By Mr. Kelaher:

Q. I ask you now if that is considered a large sales volume on one brand of waxes and polishes?

A. For that particular marketing area, it is a good volume.

Q. Would that apply both to the Mac's-It volume and the Whiz volume?

A. Yes, sir.

Q. You were asked on cross-examination about a number of Atlantic service station dealers. I am going to ask you about each of these dealers to the best of our ability to take notes on them. There may be some confusion on names.

The first one you were asked about is a man identified as Frank Buckingham, I believe?

A. Yes, sir.

Q. What main line of TBA does that Atlantic dealer carry?

A. DuPont. You mean, as far as chemicals? He carries Goodyear tires, Goodyear batteries, Goodyear belt and hose line. I believe Frank carries Purolator, I am not sure. They have a couple of filters available to them.

Q. Who is the principal supplier of TBA products to this dealer?

A. Parris.

Q. What brands of TBA are advertised by Mr. Buckingham?

A. Goodyear.

230 Q. Does that include a Goodyear valance, a window valance, for example?

A. Yes, sir, I believe it does.

Q. Is there an outdoor sign?

A. I couldn't be definite on that. Most of them do.

Q. The next one you were questioned about was a Mr. Conneen. What brand of tires does Mr. Conneen carry?

A. Goodyear.

Q. What brand of batteries does he carry?

A. Goodyear.

Q. Who is his principal supplier of accessories?

A. Parris.

Q. And that is the Goodyear TBA line?

A. Yes, sir.

Q. Goodyear accessory line. What brand of TBA does Mr. Conneen advertise?

A. Goodyear.

Q. The next one—

Mr. Thompson: Do you know the answer to these questions?

Mr. Kelaher: I think I am entitled to develop this in my own way.

Mr. Thompson: Not unless he knows what he is talking about. I think you ought to develop that he knows the answer.

231 By Mr. Kelaher:

Q. These are based on your own knowledge?

A. Yes, sir.

Mr. Thompson: Are these based on your own knowledge?

The Witness: I am in Conneen's station every week.

Mr. Thompson: I think his memory has improved remarkably since cross-examination.

Mr. Kelaher: I think that is an unfair statement. He answered counsel's questions very clearly.

Mr. Thompson: I do not withdraw the statement.

Mr. Mason: I join in the statement.

By Mr. Kelaher:

Q. You were asked about a dealer by the name of Earl Connors?

A. Yes.

Q. Do you call on Mr. Connors' service station?

A. No, sir.

Q. Do you have any reason to know by observation what line of TBA he carries?

A. Unless it has changed since George Curney relinquished the station to Connors, it will be Goodyear.

Q. When was that station relinquished? Approximately?

A. I would say about 90 days ago. Perhaps four months.

Q. Up to that time they carried Goodyear TBA line?

A. Yes, sir.

232 Q. And, based on your observation of that station, do you know what brand of TBA was advertised?

A. It was Goodyear at that time.

Q. When you say Goodyear, you are also referring to waxes and chemicals which may be in the Goodyear line, is that right?

A. Yes, sir.

Q. And other accessories?

233 Mr. Mason: And others that may not be in the Goodyear line but sold by the Goodyear distributor.

By Mr. Kelaher:

Q. Let me ask you with respect to non-sponsored brands which are not in the Goodyear line. Do you see advertisements of such?

A. Mr. Kelaher, that is hard to say. These flash items come into the picture and go out. Somebody gets a demand, we will say, for Turtle Wax and he gets five, six, or seven calls for it. He is liable to step out, buy a case of it, stick a banner up. If it begins to die off, the banner comes down, and the merchandise remains on the shelf until such time as it is eventually sold. That does come into the picture and it does change.

Q. With respect to window valances and outdoor signs, what identification is used? In the Atlantic stations that you have so far referred to.

A. The ones that I am calling on weekly, in the upper territory, DiFelice, Coneen, Crawford-Bryant and those boys, definitely have Goodyear advertisements. Their window valances are Goodyear.

Q. Without going into each individual station mentioned

by counsel for respondent, I would like to ask you, based on your knowledge and experience, what the main line of TBA is that they carry—that each of them carries?

234 A. Goodyear in the rubber line, which constitutes the belts, hose, and rubber. Goodyear in the batteries. Dupont in the chemical lines. Purolator or AC in the filter lines.

Q. Would you say in general that they carry the Goodyear TBA line?

A. Yes, sir.

Q. With respect to all these Atlantic dealers what is their primary advertising, window valances and outdoor signs and so on?

A. It falls right in the same category as their TBA supply.

Q. And you're referring to the Goodyear TBA line?

A. Yes, sir.

Q. With respect to all these dealers, in order to clarify the record, I believe you stated—let me ask you: Do you sell hard parts to all these accounts?

A. Not all of them.

Q. Do you sell batteries and accessories on a regular basis to these accounts?

A. Occasionally we will sell a battery. It is during the daylight hours and they happen to be out of one particular number and they have an immediate sale and they have a car that they can hold it long enough to run to the store and pick it up or give us a call and ask us if we can shoot one battery to them. In other words, what we term shotgun delivery and shotgun sale.

235 Q. Would it be fair to say that you sell them on a fill-in basis, to these Atlantic dealers?

A. It wouldn't even be fill-in. It is sporadic. You may go three months and never sell them a battery, and then

sell them a battery today, one tomorrow, and then not sell them one for six months.

Q. With respect to accessories, does that same answer apply?

A. Yes. It holds in chemicals on the basis of a half dozen cans to carry me over. That has been going on for several years.

Q. And the primary supplier of all these Atlantic dealers is Mr. Parris?

A. Yes, sir.

Q. You were asked a question about Mr. DiFelice?

A. Yes, sir.

Q. You made reference in your answer to a bonanza deal. Would you explain what the so-called bonanza deal is?

A. This spring Purolator brought out an assortment of filters, constituted approximately a $35 investment. For another $1.95, as I recall, there was a set of dishes in there, service for four. It was all packaged in a unit. Dishes and filters packaged in a unit.

It so happened that I received delivery before Ed Parris received delivery, and so wherever there were Purolators I tried to sell the bonanza deal. I sold the bonanza 236 deal to Gino Di Felice. Approximately three weeks after I had sold it to him I stopped in and he said, "You got me in a mess of trouble with this bonanza deal." I said, "What is the matter?" He said, "I am supposed to send this thing back to you, but I refused to do it because there were nine filters sold."

I said, "If it will give you any heartaches, send it back." He said he wouldn't send them back, he would keep them.

Q. Did he indicate who asked him to send them back?

A. Yes.

Q. Who?

A. The salesman who was calling on him.

Q. Who was the salesman?

A. The Atlantic salesman.

Q. You were asked on cross-examination about being employed by Shell. Would you please state what your position was with Shell?

A. Shell?

Q. Shell Oil Company?

A. My last employment with Shell, post-war, was industrial lube oil engineer, State of Virginia.

Q. Are you a graduate chemical engineer?

A. Yes, sir.

Mr. Kelaher: That is all.

237 *Recross Examination by Mr. Mason.*

Q. Mr. Wetzel, I want to get clear in my own mind this business of the dates when you reached the peak of your sales of Whiz. Am I correct in recalling that you said it was 1948 and 1949?

A. Not Whiz. It was Mac's first.

Q. Am I also correct in recalling that it was about that time that you saw Mac's appear in the Goodyear TBA catalogue?

A. It was at the time of the beginning of the decrease that Mac's came in and was available to the service station for the TBA distributors.

Q. I am trying to fix dates. That was about 1950? 1948, 1949?

A. That is possible. I would rather take a look at my records and show you when my purchases decreased and then I can better tell you the exact date.

Q. We would have done a lot better if we had had your records here.

One thing I want to make clear, do you realize there was no arrangement between Goodyear and Atlantic back in the period that you were testifying about?

A. That I couldn't say. I don't know—

Mr. Kelaher: Objection, your Honor.

Mr. Mason: This is a matter of record. I want to
238 ask the witness whether or not he had that in mind when he was testifying.

Mr. Kelaher: I think he is mischaracterizing his testimony.

Hearing Examiner Kolb: It is cross-examination. Objection overruled.

By Mr. Mason:

Q. Did you have in mind the fact that there was no arrangement between Goodyear and Atlantic?

A. Let me put it this way—

Q. Just answer my question.

Mr. Reporter, would you read the question?

(Question read.)

By Mr. Mason:

Q. Let me amend the question to add: When you testified with respect to the dropping off of your sales of Mac's. You understand the question?

A. In other words, you would like me to quote a date at what time Mac's sales decreased?

Mr. Mason: Mr. Reporter, can you read the question as amended?

(Question read.)

A. Was I aware of it?

By Mr. Mason:

Q. Yes. At the time you testified earlier?

239 A. My earlier testimony I think if you check, will be approximately 1951 as a drop-off period. I think that is what I said. I feel pretty sure because it was in that vicinity that I changed from Mac's to Whiz, and then

the build-up period on Whiz was from say late 1951 or early 1952 through the 1952-53 era.

Q. Did you ever look in the Goodyear catalogue to see whether Whiz was in it?

A. It isn't in it now.

Q. Was it ever in it?

A. Oh, yes.

Q. When was it in it?

A. I would say the Whiz products appeared from probably 1950 to 1953.

By Mr. Mason:

Q. Would it refresh your recollection if I told you that it is the understanding of Goodyear personnel with me here that the only Whiz product that has ever been advertised was Motor Rhythm, and that appeared in the catalogue from 1952 to 1954?

A. This I know: Mr. Bittenbender, of Whiz, definitely called on Ed Parris and I know that Ed Parris had available the entire Whiz line. To the best of my knowledge Mr. Bittenbender, as I recall talking to Mr. Bittenbender, all that material did come from Goodyear.

Q. So that is your understanding. But it could be 240 possible that you are wrong?

A. It is pretty difficult to say what is in what catalogues or what year. Do you know what was in Sears-Roebuck in 1953?

Q. In other words, you are not sure of your testimony?

A. Well, I know that it was made available to the dealers through Ed Parris.

Q. But you do not know whether or not it was a part of the Goodyear TBA program with Atlantic?

A. No, I couldn't say absolutely.

Mr. Mason: Thank you.

No further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Wetzel. Thank you.

(Witness excused.)

• • • • •

242 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Mr. Examiner, counsel for respondent Atlantic, and counsel supporting the complaint, have entered into a stipulation with respect to the testimony of appropriate officers and employees of Atlantic if called as witnesses in this matter.

It is our understanding that this stipulation will make it unnecessary to call officers and employees of respondent Atlantic insofar as we know at this time. However, it is clearly understood that this does not foreclose counsel supporting the complaint from calling such officers and employees of respondent Atlantic if circumstances later dictate.

I would also like to state that counsel for respondent Atlantic have cooperated fully in preparing this stipulation and that it will greatly expedite the trial of this matter.

Hearing Examiner Kolb: Let the record show that the stipulation was executed by both parties, and if satisfactory it will be read into the record at this time.

Mr. Ballard: It is satisfactory to be read into the record as far as Atlantic is concerned.

Mr. Kelaher: "United States of America. Before Federal Trade Commission. In the Matter of The Good-
243 year Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

"Stipulation re testimony of the Atlantic Refining Company personnel.

"Counsel for respondent, The Atlantic Refining Company ('Atlantic'), and counsel supporting the Complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the Complaint in this proceeding, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

"1. Organization of Domestic Sales Department.

"1.1 Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine), and the Southern Atlantic States. For administrative purposes this marketing territory is divided into six regions. CX 82A-C and 83A-C indicate the boundaries of these regions as of August 1952, and there have been no material changes since that date. Within the boundaries of the various 244 regions are large areas such as the State of Georgia (except for metropolitan Louisville, Augusta and Savannah) and the State of South Carolina (except for metropolitan Rock Hill and Dillon) in which Atlantic sells only to distributors and not to dealers, and other large areas such as New York, N. Y., and substantially the entire northern half of the State of Georgia where Atlantic has no outlets at either the distributor or the dealer level.

"1.2 Sales of Atlantic products to petroleum retail dealers and petroleum wholesalers are made by Atlantic's Domestic Marketing Department (formerly called 'Domestic Sales Department'). The organization of this department for the period 1949 through 1956 is shown in CX 81A-F.

"1.3 Within the Domestic Marketing Department there is a Regional Manager for each of the six sales regions. Such Regional Managers are entrusted with broad authority to implement the Company's over-all sales policies within their regions.

"1.4 The regions are subdivided into districts consisting in general of a city or other marketing center and the surrounding territory. A District Manager reporting to the Regional Manager is in charge of each district. The present districts are as follows:

"New England

Providence
Springfield
245 Hartford
Boston
New Haven

"New York

Syracuse
Southern Tier
Albany
Rochester
Watertown
Buffalo

"Phila.-New Jersey

Phila.-Sub.
South Jersey
North Jersey

"Eastern Pennsylvania

Wilmington
Allentown
Wilkes-Barre
Harrisburg
Reading
Williamsport

"Western Pennsylvania
Pittsburgh
Altoona
Greensburg
Erie

"South
Charlotte
Baltimore
Richmond
Jacksonville
Miami

"1.5 Each district has a staff of salesmen of various types reporting to the District Manager. The number of salesmen differs in accordance with the number and importance of customers and potential customers in the
246 district. As of April 30, 1956, there were in the aggregate approximately 394 salesmen calling on dealers and distributors, an average of about 13 salesmen per district. The designations, approximate numbers and functions of these salesmen were as follows:

Type	Approximate No.	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to 'promotable dealers', which term includes lessee dealers and contract dealers interested in complete service station operation.
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.

Type	Approximate No.	Function
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teaching involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

All Atlantic salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also over-all gains) by those of their assigned dealers who have been in operation for a minimum of 12 months. Extra compensation for gasoline gains ranges from $4.70 per three months for
248 a 2 percent gain on deliveries of 299,999 gallons or less in the three-month period (as compared with the corresponding period in the preceding year) to $233.94 per three months on gains of 21 percent or more on deliveries of 3,000,000 gallons or more in a like period. Extra compensation for motor oil, TBA and for over-all gains are computed on a similar basis taking into account the quan-

tity delivered and the percentage gain in the specified period.

"1.6 Within the Domestic Marketing Department there is a TBA Section Manager who is the staff person responsible for implementing TBA policies on a company-wide basis. Within each region the TBA Coordinator, reporting to his regional manager, is the staff person responsible for implementing Atlantic's TBA policies in his region. He advises, informs and assists the districts in his region in developing their TBA program. The current TBA coordinators and the regions to which they are assigned are as follows:

TBA Coordinator	Region
H. H. Roller	New England
L. K. Maisel	New York
W. J. Jackson	Philadelphia—New Jersey
G. E. Fearn	Eastern Pennsylvania
R. E. West	Western Pennsylvania
E. M. Singleton	Southern

"1.7 The Atlantic employees readily identifiable as being concerned with TBA and the approximate per-
249 centage of time spent by them in that connection are as follows:

(a) Employees devoting their full time to TBA:

Number	Classification
1	Manager, TBA Section
1	Field Assistant, TBA Section
1	Office Assistant, TBA Section
6	Region TBA Coordinators

(b) Salesmen concerned with TBA:

"The different types of salesmen described in paragraph 1.5 devote different percentages of their time to TBA, the largest percentage being devoted by the promotable dealer

salesman and the smallest by the general salesman. On an overall basis it is believed that between 10 percent and 20 percent of these salesmen's time is devoted to TBA.

(c) Additional officials of the Domestic Marketing Department concerned with TBA:

"The officials listed below, together with their respective subordinate executive, administrative, secretarial, accounting and sales supervisory personnel, devote a portion of their time to TBA, the exact amount of which cannot be determined. For relationships of the various divisions and sections as of 8/15/56, see CX 81A. Certain of these relationships have since been revised.

Number	Classification
1	General Manager, Domestic Marketing Department.
1	Assistant General Manager, Domestic Marketing Department.
1	Manager, Product Sales Division.
1	Manager, Marketing Operations Division.
1	Manager, Service Station Section, Operations Division.
1	Manager, Sales Promotion Section.
1	Manager, Advertising Section.
1	Manager, Credit & Collection Division.
1	Manager, Real Estate Division.
1	Manager, Market Research Division.
6	Managers, Marketing Regions.
6	Managers, Region Sales Groups.
7	Region Direct Marketing Managers.
29	Managers, Marketing Districts.

"2. Leases, Contracts and Relationships with Customers.

"2.1 The designation and description of customer classifications for Atlantic's Domestic Marketing Department as of August 1952 and the percentage of total gasoline sales for 1951 are set forth in CX 84A-C. The corresponding designations at present and the corresponding percentages of total gasoline sales for 1955 are:

Designation in 1952	Present Designation and Percentage of Total Gasoline Sales for 1955
I	Company-operated station, 0.1 percent
II	Lessee dealer, 39.1 percent*
III	Contract dealer, 18.1 percent*
IV	Commercial account, 16.6 percent
V	Wholesale dealer, 1.1 percent*
VI	Distributor, 24.0 percent*
VII	Jobber, less than 1.0 percent

* Commissions are paid under the sales commission plan on purchases by these classes of customer.

"2.2 There are no leases or contracts between Atlantic and the managers of company-operated stations. As of September 30, 1956, there were 7 permanent company-operated stations and 39 temporary company-operated stations. The latter are stations intended for operation by a lessee which are temporarily operated by company employees while the lessee is being selected or trained.

"2.3 Typically, the documents between Atlantic and lessee dealers are as follows:

"(a) Dealer lease on Form B-3191.

"(b) Accompanying document referred to as 'Eleven Point Lease Letter', not identified by number or title.

"(c) Equipment and apparatus inventory, Form B-3191A.

"(d) Agreement covering purchase of Atlantic 252 automotive lubricants, Form B-3105.

"CX 88A-1 through 88D, respectively, are current versions of the foregoing forms.

"2.4 Prior to August 1956 the lease form in use in the New York region contained different provisions as to the determination of rentals in paragraph 4 from the lease in use in other regions, the New York form being designated as B-3191Y. (CX 88E-1—E-2) Prior to August of 1954 provisions respecting the credit card privilege of lessee dealers were contained in a separate agreement, Form B-3194 (CX 89, 89A), instead of in paragraph 14 of B-3191 as at present.

"2.5 Typically, the documents between Atlantic and contract dealers are as follows:

(a) Equipment loan and sale of motor fuel agreement, Form B-3107A (CX 90A-B, 90-C-D).

(b) Agreement covering purchase of Atlantic automotive lubricants, Form B-3105 (CX 91, 88D).

(c) Credit card agreement, Form B-3194 (CX 89, 89A).

(d) Loaned Equipment Contract, Form B-42 (CX 97, 97A).

"2.6 Typically, gasoline distributors enter into an Authorized Distributor's Agreement, Form B-3143 (CX 95A-C, 95D-F), and an Authorized Distributor's Agreement relating to Atlantic Automotive Lubricants, Form B-3119 (CX 96, 96A); certain distributors enter into a Commission Distributors Consignment Agreement, not identified by number (CX 98H-L); wholesale dealers selling gasoline do not normally enter into any kind of contract with Atlantic; certain wholesale dealers selling gasoline enter into a Commission Agent Consignment Agreement, not identified by number (CX 98M-Q); and gasoline jobbers enter into a Bulk Sales Agreement, Form B-3137 (CX 98R-T).

"2.7 The following exhibits are forms used in or prior to 1952, the present status of which is indicated:

CX No.	Form Designation	Status
87	B-3191B	Discontinued.
92A-B	B-3121	Has always been and still is used with commercial accounts only.
93A-C	Commission Agreement Form	Replaced by Contract Sales Agreement Form.
94A-D	Commission Dealer Agreement Form	Replaced by Contract Sales Agreement Form.
97	B-42	Originally used primarily for commercial accounts; used today also for certain non-gasoline equipment of some dealers.
98A-G	Commission Distributor Agreement	Use discontinued about 1950; some agreements may still be in effect.
254		

The forms referred to in the preceding and following paragraphs have been revised from time to time. In revising forms, Atlantic follows the general practice of indicating the year and month of the revision immediately following the form number, and thereafter uses the revised forms when leases and agreements in the old forms expire. Thus, at any particular time agreements may be outstanding in several different versions.

"2.8 Form B-3188 'Contract Sales Agreement—Trained Dealers' (CX 98U-V) is the form of agreement which, on occasion, is entered into between Atlantic and newly-trained dealers. This agreement, which provides in effect for sales of gasoline (but not other products) on consignment, is in addition to the regular B-3191 lease and is for a maximum period of 9 months, with an option for cancellation by either party at the end of 6 months.

"2.9 Where extraordinary competitive conditions adversely affect normal dealer operations, Atlantic is willing to enter into a Contract Sales Agreement, not identified by number (CX 98W-X), which also provides in effect for sales of gasoline on a consignment basis.

"2.10 With the exceptions noted in paragraph 2.8 and 2.9 above, Atlantic does not sell to dealers on what might be described as a consignment basis.

"2.11 On April 1, 1953, Atlantic adopted a long-
255 term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory operation is eligible for a 3-year lease on Form B-3191 containing an exclusive right on the dealer's part to cancel without cause as of any annual anniversary date on 60 days' notice, the rental remaining the same during the entire 3-year period. At the same time, Atlantic adopted the Eleven Point Lease Letter referred to in paragraph 2.3 (CX 88B) defining standards of satisfactory operation by lessee dealers. Prior to April 1, 1953, leases were customarily on a year to year basis. Under the present policy the salesmen report to the district manager what they consider instances of unsatisfactory operation by lessee dealers, and the district manager decides whether to issue a warning letter.

"2.12 In the years 1950 to 1955, inclusive, Atlantic made loans to its distributors for working capital or to finance the acquisition, construction or improvement of facilities as follows:

Year	No. Distributors Borrowing (non-cumulative)	Total Amount Lent
1950	1	$ 22,000
1951	1	10,000
1952	1	25,000
1953	0	0
1954	5	257,000
1955	0	0

256 "Loans are not made to distributors' customers. Loans are made to contract dealers for the same purposes as loans to distributors, but the number and amounts of such loans could not be determined without a costly and time-consuming survey.

"As of the specified dates, loans to lessee dealers, primarily to finance the acquisition of equipment, tools and inventory, were outstanding as follows:

As of These Dates	This Number of Lessee Dealers	Owed This Much Money	Against Loans Which Originally Amounted to
12/31/51	418	$140,834	$195,401
12/31/52	362	425,403	650,002
12/31/53	420	539,520	875,792
12/31/54	412	526,186	856,376
12/31/55	418	481,170	827,817

"Atlantic's policy is to charge interest on all loans. The handling of recommended TBA is not a requisite for obtaining a loan, and no records are kept as to whether distributors or dealers who obtain loans do or do not sell recommended TBA.

"2.13 Atlantic provides a five weeks' training course in service station operation for prospective lessee dealers (who, upon completion of the course, are signed as lessees as stations become available for them) and also for contract dealers. On occasion, distributors' dealers at-
257 tend these courses. Also, in many cases, an Atlantic Service Salesman works with the newly-trained dealer during the first two weeks of actual operation. In addition, there is a program of in-station training for all established dealers conducted by Atlantic Service Salesmen, including clinics for dealers' employees.

"In these training courses and clinics recommended TBA items are used as 'props'.

"The five-week dealer training course involves a total

of 180 hours, which are divided approximately equally between classroom and on-the-job instruction.

"Technical subjects make up the major portion, entailing at least 98 hours and including such topics as:

The Internal Combustion Engine
Lubrication Practice
Wheel Bearing Packing Procedure
Servicing Electro-Hydraulic Mechanisms
Car Waxing and Polishing Methods
Servicing Automatic Transmissions
Tire Changing and Repairing
Electrical System Servicing
Cooling System Servicing

"Courses on business management account for about 36 hours and cover such topics as bookkeeping, taxes, employee selection and training, and techniques for evalu-
258 ating business progress.

"Training in salesmanship and sales promotion covers a minimum of 26 hours and relates to solicitation, market surveys, displays and advertising.

"Many of the courses, including some already referred to, relate to TBA, but without reference to any particular brand, except as props may be used in demonstrations. They cover the following: a description of what TBA comprises, and its economic importance to the dealer; the techniques for selling TBA, including direct solicitation, merchandise display and advertising; methods of installing and servicing the various types of TBA; selling TBA under the Atlantic credit card system; methods by which a dealer can evaluate his sales performance with respect to TBA; and methods for protecting the inventory of TBA from loss by deterioration and pilferage.

"About 8 hours of the course deals with the recommended line of TBA.

"2.14 Any dealer, to do business successfully, requires an initial stock of TBA. Atlantic assists him in evaluating the anticipated volume and nature of the business and deciding upon the amount of the initial stock. As part of its promotional activities under its sales commission contracts, Atlantic also attempts to convince him of the advantages of carrying the recommended brands but makes clear to him that he has every right to handle the TBA
259 brands he believes in. When there is a change of dealers at a station, the TBA stock on hand, regardless of brand, becomes available for purchase by the incoming dealer if he desires to purchase it, unless the outgoing dealer prefers to retain it for sale at a new location. The determination as to items to be sold is made by the dealers. Atlantic generally assists in securing prices on the various items and in estimating the salability of questionable items, such as shopworn or obsolete goods and used equipment. In cases where the purchase of any part of the stock is to be financed by Atlantic, Atlantic will purchase the same from the outgoing dealer and immediately transfer it to the incoming dealer against a note for the purchase price. In the infrequent instances where no replacement dealer is immediately available, Atlantic will purchase the TBA stock of the outgoing dealer to the extent it believes such stock will be acceptable to the new dealer when one is obtained. While in general Atlantic purchases salable recommended TBA items, at times non-recommended items may be purchased if they are in salable condition. No adjustment is made as between Atlantic and the outgoing dealer in respect of their relative contributions to the good will of Atlantic, the dealer or the station.

"2.15 Atlantic provides equipment of various types and in varying degrees to its dealers, the assortment furnished to lessee dealers being relatively complete and
260 to contract dealers less extensive. 'Atlantic' signs

and infrequently other items are provided to distributors for their dealers. There is no official list of such equipment, but the items most frequently provided to contract dealers include pumps, tanks, compressors, air towers, lifts, 'Atlantic' sign, outside lighting and poster frames, and to lessee dealers include, in addition to the foregoing, fire extinguishers, work benches, shelving and desks. No charge is made for these items to contract dealers or to distributors, and in the case of lessee dealers the items are considered part of the leased premises. No figures are available as to the average value of equipment supplied either to lessee or contract dealers or to distributors.

"2.16 Atlantic uses television, radio, newspapers, billboards, and (to a small extent) magazines to advertise Atlantic gasolines, motor oils, lubricants and car conditioning services and also to advertise TBA items and service without regard to brand. Such advertising is paid for entirely by Atlantic. Atlantic also has a sales promotion program involving the furnishing of driveway posters and other dealer aids to the dealers, direct mailings to credit card holders, and other promotional devices. Atlantic will guide individual lessee and contract dealers, distributors and distributors' dealers in preparation of promotional material, and will reimburse lessee and contract dealers (but not distributors or their dealers) 261 for a part of the cost of advertising through direct mail, radio, handbills and newspapers (without regard to the brand of TBA which may be included), with the limitation that Atlantic's share of any dealer's advertising is limited to 1½ percent of the dealer's gross annual sales. For 1955 the total reimbursement under this program was $16,021.67 to both lessee and contract dealers; records do not disclose the totals for each such group separately. The records maintained are not kept in a manner that

shows how this figure was split between promotional material for TBA and other products and services.

262 "2.17 Atlantic's average property investment in a newly constructed lessee-operated station which it owns, including land, building and equipment, is presently about $50,000.

"2.18 Service station operation requires land, buildings, equipment, tools, supplies and merchandise, which may be acquired as appropriate, by purchase for cash or on credit, by lease, rental or loan, or by consignment. The facilities may be simple or elaborate; the equipment, new or used; and the merchandise, basic or extensive. It is therefore impossible to establish meaningful average, minimum or maximum figures for investments by contract dealers and distributors. Because there is a greater uniformity in the design of leased stations at the present time, the minimum initial investment of a lessee dealer can be estimated at about $4,000 for the average lessee station, which sells about 15,000 gallons per month. Of this investment, approximately $500 would be in equipment and supplies, $1,000 in cash, and the balance in merchandise for resale. The minimum initial investment would be about $3,000 for a low-gallonage, lessee station and about $15,000 for a very high-gallonage, lessee station.

"2.19 Following is a list of service station services that Atlantic dealers should be able to render satisfactorily:

1. Driveway Service (filling gas tank, cleaning
263 windshield and lights, et cetera.)
2. Chassis Lubrication.
3. Other Lubrication Services:
   A. Oil Change
   B. Transmission
      a. Conventional
      b. Automatic

C. Differential
D. Air Cleaners
E. Speedometer Cable
F. Electro-Hydraulic Mechanisms
G. Front Spring Unit Housing (Knee Action)
H. Front Wheel Bearings
I. Lube Fitting Installation
J. Oil Type (Wet) Clutch
K. Hydraulic Steering Mechanisms

Services Occasionally Required

L. Universal Joints
M. Metal Covered Springs
N. Clutch Release Bearing

4. Battery Service

A. Preparation of Dry Batteries for Sale
B. Testing by Open Circuit Testers (and Hydrometer)
C. Adding Water
D. Cleaning Terminals
E. Fast Charging
264 F. Slow Charging
G. Installing Batteries—6 Volt—12 Volt
H. Installing Battery Cables and Holddowns

5. Tire and Tube Services

A. Inflating Properly
B. Demounting and Mounting Conventional and Tubeless
C. Tube Repairing—Hot and Cold Patches
D. Rotating Tires
E. Minor Casing Repairs
F. Wheel Balancing (only if proper balancing equipment is available.)

6. Cooling System Service
   A. Draining and Flushing
   B. Cleaning and Protecting
   C. Anti-freeze Servicing
7. Fan Belts
8. Radiator Hose
9. Shock Absorber Service
10. Brake Fluid—adding to master cylinder—bleeding
11. Electrical System
    A. Ignition Wires
    B. Lamps and Lights
    C. Fuses and Circuit Breakers
12. Oil Filter and Filter Cartridges
13. Heater Hose
265 14. Spark Plugs—Testing, Cleaning, Regapping
15. Thermostats and Pressure Caps
16. Windshield Wiper Blades and Arms Service
17. Tire Chain Installation and Repair
18. Car Washing
19. Car Waxing and Polishing

266 "In addition to the services listed, Atlantic encourages lessee and contract dealers to do 'tune ups', 'adjustments' and minor repairs. Atlantic discourages general repairs which occupy so much space or personnel as to interfere with fundamental service station activities.

2.20 Service stations require long hours of operation. The hours of a particular station are determined by the buying habits of the trade where the station is located and the hours of competitive dealers. There are wide differences between stations in the number of hours of operation per week, on particular days of the week and in different seasons of the year. Atlantic expects its dealers to keep competitive hours but does not specify particular hours for particular stations. In the case of a few stations

(generally operated by lessees) it is economically advisable to keep open 24 hours a day, and Atlantic encourages the dealers to do so.

"2.21 Atlantic makes available to its dealers a suggested system of service station bookkeeping, including bookkeeping materials (CX 191 A-Q). A minority of Atlantic's dealers are believed to use this suggested form of bookkeeping. While the number using this form might be expected to increase under the new lease form B-3191 (7/56) (CX 88 A-1—A-3), no such trend has yet become apparent.

"2.22 Atlantic does not establish TBA quotas, but 267 does recommend to all dealers handling TBA the maintenance of a balanced stock of these items. The exact items and the quantity of each such recommendation depend upon the volume of business, the type of customers, the location, the proximity to sources of supply, the availability of capital for investment in merchandise, and storage facilities. In making their recommendations, Atlantic sales men may, on occasion, use the Goodyear * * * Atlantic does not guarantee the credit of its dealers to suppliers of TBA or other items purchased by them.

"2.23 Dealer meetings (at which all Atlantic dealers are welcome, including lessee dealers, contract dealers and distributors' customers) are held from time to time by Atlantic salesmen or regional or district staff personnel, the regional TBA Coordinator, Goodyear * * *, either alone or jointly with Atlantic personnel, and manufacturers of accessories sold by Goodyear * * *. Manufacturers of tires, batteries and accessories not sold by Goodyear * * * also hold meetings for dealers, including Atlantic dealers. The frequency, location and character of dealer meetings depend upon many circumstances, including the personalities and methods of the persons and groups who hold such meetings and the funds and facilities available. The cost of such

meetings is borne by the company or companies holding the same.

268 "2.24 During 1955 Atlantic had on the average about 2480 stations available for operation by lessee dealers, an increase of about 160 over the average for 1954. In the course of the year 1955, about 720 lessee dealers ceased to operate as lessees of Atlantic and had to be replaced by Atlantic.

"3. Atlantic's TBA Program Before 1950 and Exploration of Alternatives.

"3.1 Before 1950 Atlantic purchased tires, batteries and accessories for resale to Atlantic dealers. It handled principally Lee tires, Exide batteries, Du Pont polishes and chemicals, Thermoid fan belts and radiator hose, Weed chains, Fram oil filters and cartridges, Schrader valves, and other brands of other accessories. With immaterial exceptions, purchases of these items were made by Atlantic direct from the manufacturer. The company names and addresses of these manufacturers are as follows:

Brand Name	Manufacturer
Lee	Lee Tire & Rubber Company 22nd and Race Streets, Philadelphia, Pennsylvania.
Exide	Electric Storage Battery Company 42 South 15th Street, Philadelphia, Pennsylvania.
Du Pont	E. I. Pu Pont de Nemours and Company Wilmington, Delaware.
269 Thermoid	Thermoid Corporation Trenton, New Jersey.
Weed	American Chain and Cable Company York, Pennsylvania.
Fram	Fram Corporation Providence, Rhode Island.
Schrader	A. Schrader Sons 470 Vanderbilt Avenue, Brooklyn, New York.

"3.2 In 1947 the Domestic Marketing Department, recognizing the fundamental importance of a TBA program to Atlantic, its dealers and their customers, initiated an investigation to determine whether there were more desirable TBA programs than that under which Atlantic was then operating. CX 99 is the form of letter dated January 19, 1948, from Atlantic to the rubber companies named therein, which was one of the first steps in that investigation. CX 1 is a copy of the letter in such form sent to Goodyear.

"3.3 After having initially declined to make a proposal in response to Atlantic's inquiry of January 19, 1948 (CX 1A—3A), Goodyear expressed its willingness to do so in a letter dated May 4, 1949. CX 4 is a copy of that letter.

"3.4 Atlantic made sales of TBA products to its dealers and distributors in the years 1949, 1950, and 1951 as indicated on CX 193.

270 "4. Introduction of Sales Commission Program on Test basis.

* * * * * *

271 "4.5 CX 121 is a draft of a proposal agreement between Goodyear and Atlantic, including Exhibit A thereto, which was not executed. CX 122 and 123 are correspondence between the parties referring to changes in this draft. CX 127-A-H comprises two Goodyear documents apparently sent to Atlantic for information. CX 13 is the contract as finally agreed upon, which (although dated June 1, 1950) was executed and delivered in December 1950. CX 124 and 125 are the letters transmitting the 272 executed counterparts of the agreement. CX 126 is an amendment to the agreement extending it to cover the Philadelphia-New Jersey, New York and New England Regions of Atlantic effective March 1, 1951. CX 126C and 126D are further amendments to the agreement dated July

7, 1954, and September 15, 1954, respectively. These are all the amendments to date.

"4.6 Operations under the agreement with Goodyear began in Newark on June 12, 1950. CX 130 sets forth the accounting procedure in connection with this operation, which is essentially the same as the procedure currently in effect in the three regions where Atlantic promotes the sale of Goodyear TBA. CX 131 sets forth Atlantic's recommendation as to battery charging equipment in the Newark District, which is essentially the same as its recommendation in all regions where it promotes the sale of Goodyear TBA.

"5. Adoption of Sales Commission Program on Company-Wide Basis.

"5.1 Subsequent to April 1950, progress reports were made purporting to report the number of dealers in the test districts accepting the program and the volume of TBA sales reported by Goodyear * * * in the test districts as compared with sales by Atlantic in the corresponding periods of 1949. ~~CX 116B is a copy of one such report and~~ * * *

strike

273 "5.2 In July and August, 1950, Atlantic distributed a questionnaire to 80 percent of its dealers and distributors in the test districts. Of the 600 dealers and distributors to whom questionnaires were sent, about 120 executed and returned them. CX 134 is a copy of the questionnaire form showing in each answer space the total number of dealers and distributors who checked that space on their individual questionnaire, except for questions 3 and 4 from which are omitted those preferences for a combination of two or more sources. No information is available as to the omitted answers to questions 3 and 4 or as to the breakdown between dealers and distributors.

"5.3 In January 1951 Atlantic considered extending the test program to one or more regions. * * * The Phila-

delphia-New Jersey Regional Manager expressed his willingness and indicated a preference for Goodyear. (CX 158 is an inter-office letter from the Manager of this region relating to this general question.) * * * On February 14, 1951, Lee Tire and Rubber Company, failing to obtain
274 a long-term contract with Atlantic covering the other two regions, canceled its contract effective March 1. This precipitated the decision to adopt the sales commission plan for all six regions. In the light of this decision the New York and New England Regional Managers expressed a preference for Goodyear, and Atlantic arranged to extend the coverage of its contract with Goodyear to those regions as well as the Philadelphia-New Jersey region. * * * There is no formal record of Atlantic's informing Goodyear as to the regions covered by Atlantic's sales commission contract with Firestone or informing Firestone as to the regions covered by Atlantic's sales commission contract with Goodyear, but this soon became a matter of common knowledge in the industry.

"5.4 * * * CX 155 is the 1951 Sales Plan for the New York Region which was in preparation at the time of the decision to adopt the sales commission program in that area. CX 154 is an inter-office letter from R. W. Reed, administrative assistant to D. T. Colley, to S. J. Heideman and others forwarding the plan for comments. CX 157 is a letter, written after the decision to adopt the sales commission program in New York, from H. K. Paxson,
275 assistant to S. J. Heideman, to the Manager of the New York Region, commenting on the plan and pointing out changes required by the adoption of the sales commission program.

"5.5 CX 149 is the form of letter sent by D. T. Colley under date of March 1, 1951, to all Atlantic sales personnel announcing adoption of the sales commission program. CX 150 is the form of letter on the same subject sent by

D. T. Colley under the same date to all Atlantic dealers. CX 148 is an inter-office letter dated February 27, 1951, transmitting the foregoing form letters to Mr. E. R. Cox, Manager of Atlantic's Sales Promotion Section, with instructions that they be printed and mailed promptly. On August 28, 1952, a copy of CX 206 was sent to every Atlantic dealer, and thereafter and until July 1955 a copy of this letter and CX 150 was given to each new Atlantic dealer. In July 1955, a copy of a similar letter (CX 207) was sent to every Atlantic dealer and since that date has been given to each new Atlantic dealer.

"5.6 CX 136 is a letter from S. J. Heideman to D. T. Colley written three weeks after the adoption of the sales commission program and reporting on the transition to the new sales method.

276 "6. Transition to Sales Commission Program

"6.1 In 1950, when the test program was initiated, Atlantic turned over to * * * Goodyear lists naming all Atlantic dealers and distributors in the * * * Newark test district, * * * who to its knowledge handled TBA to any extent and commenced solicitation of these prospects to promote sales of the recommended brand of TBA. Shortly after March 1, 1951, Atlantic turned over similar lists of dealers and distributors and began similar solicitation in the balance of its regions. CX 173-175 are the only remaining records relating to the transmittal of such lists to * * * Goodyear * * *. Goodyear Form G-1209, * * * were prepared for the dealers and distributors named on the lists, and with rare exceptions Goodyear * * * approved the payment of commission on purchases of such dealers or distributors.

"6.2 Since prior to 1950, Atlantic has recommended to lessees the observance at their stations of the policy re-

specting signs which Atlantic follows at company-owned and operated stations. CX 132, which was written during the period of the test operation, sets forth this policy and its applications. Upon the adoption of the sales commission plan, Atlantic's Service Station and Sales De-
277 velopment Committees approved the design of Goodyear * * * signs recommended for use on Atlantic lessee stations selling Goodyear * * * TBA. Goodyear * * * then arranged for installation of such signs at stations handling their respective brands of TBA.

"6.3 From time to time Goodyear sign crews reported to Goodyear and Goodyear in turn reported to Atlantic the names of dealers (both lessee and contract) who would not permit Goodyear identification and, where possible, the reasons given for such action. From time to time Atlantic requested and Goodyear supplied supplemental lists of such dealers. Atlantic salesmen then revisited such dealers and attempted to convince them of the advantages of taking on the Goodyear line, if they did not already carry it, and displaying Goodyear identification. CX 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, and 172 are inter-company and inter-office correspondence relating to these activities. Atlantic did not and does not keep records of the identification displayed by its dealers and cannot state how many of the dealers who originally refused to permit Goodyear identification ultimately agreed to display the same.

"6.4 During the first months of the new program Atlantic obtained from Goodyear * * * progress reports
278 showing the number of dealers taking on the respective TBA lines and other information. CX 48F, and 208 through 214F are copies of such of these reports as were found in Atlantic's files.

"6.5 When the sales commission program was adopted, Atlantic had outstanding obligations to dealers who had purchased Lee tires and Exide batteries from Atlantic in

respect of guarantees which Atlantic had authorized the dealers to make. Atlantic was obligated to reimburse the dealer for his net cost in fulfilling guaranty obligations, i.e., the difference between the dealer's cost of the replacement article and any amount paid by the dealer's customer in the transaction. This net cost was shared between Atlantic and Goodyear * * *. The tire company supply points handled the replacement transactions and Atlantic paid the tire company Atlantic's share of the cost. The total amount paid by Atlantic to Goodyear was approximately $6,637.05 * * *. CX 47A-B and 47C-D are copies of memoranda dealing with the Lee and Exide adjustments, respectively.

"6.6 In 1951 and prior years, Atlantic credit cards specified that "tires, tubes, batteries and accessories" might be charged thereon. For the year 1950 and prior years, the credit card guides, the only instructions to Atlantic dealers on the subject, indicated that the credit
279 privilege was limited to 'new Lee tires and tubes and Exide batteries.' The credit card guide in use in 1951 and 1952 indicated that the credit privilege was limited to tires and tubes, recapping, batteries and automotive accessories 'recommended by Atlantic.' Similarly, on the 1952 credit card which was distributed in October of 1951 and was in effect from December 1951 to December 1952, 'tires, tubes, recapping, batteries, and automotive accessories recommended by Atlantic' were specified as the TBA items for which the credit card would be honored. In 1953 and subsequent years both Atlantic credit cards and the credit card guides have specified that tires, tubes, recapping, batteries and automotive accessories might be charged thereon without any limitation to those 'recommended by Atlantic.' CX 146 is the minutes of a staff meeting at which Atlantic's present credit card policy was recommended to management. CX 215 through 221 are the credit

cards for the years 1950 through 1956 and CX 222 through 225 are the credit card guides for those years. Atlantic keeps no record of TBA credit sales broken down by dealer classes. The estimated numbers of credit card holders for years 1951-1956 are as follows:

280

Year	Number of Credit Card Accounts (Estimated)
1951	73,000
1952	82,000
1953	96,000
1954	116,000
1955	130,000
1956	161,000

"6.7 In 1951 certain Atlantic personnel suggested that action be taken to limit the extension of credit to TBA supplied by Goodyear * * *. CX 140-145 relate to this proposal. No action was ever authorized or taken on this suggestion.

7. Supplemental Data

281 "7.3 On the dates specified in the left-hand column Atlantic had the following numbers of lessee and contract dealers in the Eastern Pennsylvania, Western Pennsylvania and Southern marketing regions.

282

	Lessee Dealers			Contract Dealers		
	E. Pa.	W. Pa.	S.	E. Pa.	W. Pa.	S.
March 1950	451	234	249	1854	1341	548
December 1950	468	239	253	1776	1305	476
April 1951	468	244	263	1770	1246	465
December 1951	469	258	261	1739	1113	429
December 1952	484	270	268	1617	1059	366
December 1953	473	284	301	1179	929	318
December 1954	487	298	362	1054	853	191
December 1955	496	312	392	1096	749	134
June 1956	480	317	399	1075	725	121

"7.4 The following table shows for the dates specified the number of gasoline distributors and the approximate number of distributors' service station customers in each of Atlantic's marketing regions:

	March 1950		March 1951		March 1952		June 1956	
	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.
New England	8	*	8	*	7	*	8	151
New York	39	*	40	*	42	*	48	238
Phila.-N.J.	16	*	8	*	5	*	0	0
Eastern Pa.	52	*	53	*	54	*	77	925
Western Pa.	36	*	32	*	32	*	26	410
South	111	*	103	*	96	*	77	1173
	262		244		236		236	2897

* Data unobtainable.

283 Mr. Kelaher: There are certain documents referred to in the stipulation which have not as yet been offered in evidence. I am referring to the stipulation just entered into the record. At this time we would like to have the following documents assigned specific Commission Exhibit numbers for identification.

The document identified as Atlantic Dealer Lease Form B-3191, 7/56, to be identified as Commission Exhibits 88-A-1 and 88-A-2.

Attached to this exhibit is a document entitled Schedule A, Attachment to Form B-3191 7/56 Lease, to be identified as 88-A-3.

Atlantic document referred to as "Eleven Point Lease Letter," not identified by number or title, to be identified as CX 88-B.

Document identified as Atlantic equipment and apparatus inventory, Form B-3191A 10/54, to be identified as Commission Exhibit 88-C.

The next document is Atlantic agreement covering pur-

chase of Atlantic automotive lubricants, Form B-3105 8/53, to be identified as CX 88-D.

Atlantic Dealer Lease Form B-3191Y 5-55, to be identified as 88-E-1 and 88-E-2. Referred to in the stipulation in paragraph 2.4.

I now offer the documents identified as Commission
284 Exhibits 88-A-1 through 88-E-2 into evidence.

Mr. Ballard: No objection.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the documents will be received in evidence as Commission Exhibits 88-A-1 through 88-E-2.

(The documents heretofore marked COMMISSION EXHIBITS 88-A-1, 88-A-2, 88-A-3, 88-B, 88-C, 88-D, 88-E-1, and 88-E-2 for identification, were received in evidence.)

Mr. Kelaher: Atlantic credit card agreement, Form B-3194 2/53, to be identified as Commission Exhibit 89-A. We offer 89-A into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 89-A.

(The document heretofore marked COMMISSION EXHIBIT 89-A for identification was received in evidence.)

Mr. Kelaher: Atlantic Bailment Agreement, Form B-3107A 7-55, to be identified as Commission Exhibit 90-C and D. We now offer Commission Exhibit 90-C and D into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

285 Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibits 90-C and D.

(The document heretofore marked COMMISSION EX-

HIBIT 90-C and D for identification was received in evidence.)

Mr. Kelaher: For purposes of the record Commission Exhibit 89-A previously received in evidence is referred to in paragraph 2.4 of the stipulation. Commission Exhibit 90-C and D are referred to in paragraph 2.5 of the stipulation.

Atlantic Loaned Equipment Contract, Form B-42, 8/53, to be identified as Commission Exhibit 97-A.

We now offer Commission Exhibit 97-A into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 97-A.

(The document heretofore marked COMMISSION 97-A for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 97-A is referred to in paragraph 2.5 of the stipulation.

Atlantic Authorized Distributor's Agreement Form B-3143, 8/54 to be identified as Commission Exhibits 95-D, E, and F. Commission Exhibit 95-D, E and F is now offered into evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection 286 the document will be received in evidence as Commission Exhibit 95-D to F inclusive.

(The document heretofore marked COMMISSION EXHIBIT 95-D, E, and F for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 95-D, E and F is referred to in paragraph 2.6 of the stipulation.

Atlantic Authorized Distributors Agreement, Form B-3119, 11-53, to be identified as Commission Exhibit 96-A. We now offer Commission Exhibit 96-A into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 96-A.

(The document heretofore marked COMMISSION EXHIBIT 96-A for identification was received in evidence.)

Mr. Kelaher: Atlantic Commission Distributor Consignment Agreement, to be identified as Commission Exhibit 98-H through L. We now offer Commission Exhibit 98-H through L in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 98-H to L.

287 (The document heretofore marked COMMISSION EXHIBIT 98-H through L for identification was received in evidence.)

Mr. Kelaher: Atlantic Commission Agent Consignment Agreement, to be identified as Commission Exhibit 98-M through Q. We now offer Commission Exhibit 98-M through Q into evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence.

(The document heretofore marked COMMISSION EXHIBIT 98-M through Q for identification was received in evidence.)

Mr. Kelaher: Atlantic Bulk Sales Agreement, Form B-3137 J. L. IM, 11/46, to be identified as Commission Exhibit 98-R through T. We offer the document in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 98-R to T.

(The document heretofore marked COMMISSSION EXHIBIT 98-R through T for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 96-A to 98H through T are referred to in paragraph 2.6 of the stipulation.

Atlantic Contract Sales Agreement, Trained Deal-
288 ers, Form B-3188, 7/56, to be identified as Commission Exhibit 98-U and V into evidence.

Mr. Ballard: No objection.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 98-U and V.

(The document heretofore marked COMMISSION EXHIBIT 98-U and V for identification was received in evidence.)

Mr. Kelaher: The document is referred to in paragraph 2.8 of the stipulation.

Atlantic Contract Sales Agreement, effective 3/26/56, to be identified as CX 98-W through X. We now offer CX 98-W through X into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 98-W to X, inclusive.

(The document heretofore marked COMMISSION EXHIBIT 98-W through X for identification was received in evidence.)

Mr. Kelaher: CX 98-W through X, inclusive, is referred to in paragraph 2.9 of the stipulation.

Atlantic's "Dealer Accounting System," 9-54, consist-
ing of the "Guide to the Records" (7 pages) and com-
289 ponent Forms Nos. 1-8 listed and described thereon.

We now offer Commission Exhibit 191-A through Q into evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 191-A through Q.

(The document heretofore marked COMMISSION EXHIBIT 191-A through Q for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 191-A through Q is referred to in pargaraph 2.21 of the Stipulation.

Firestone TBA Suggested Stock and Inventory Guide for Service Station Dealers, copyright 1956, Rev. 3-56, to be identified as CX 192. We now offer CX 192 into evidence.

Mr. Mason: If your Honor please, Goodyear respondents make the same objection to this document that they have heretofore made to other Firestone documents. If it is agreeable with your Honor, I will simply refer to that as the Firestone objection as to any future document.

Hearing Examiner Kolb: All documents or exhibits pertaining to Firestone will be received in evidence as to Atlantic, and subject to motion to strike so far as Goodyear is concerned. That will take care of all the documents in this list we have.

290 (The document heretofore marked COMMISSION EXHIBIT 192 for identification was received in evidence.)

291 Mr. Kelaher: CX 192 is referred to in Paragraph 2.22 of the stipulation. Letter dated April 6, 1948, from S. A. Gaylord, manager, petroleum sales department, Goodyear, Inc., to Mr. J. S. Parks, purchasing agent, ARCO, to be identified as CX 3A. We now offer CX 3A into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: There being no objection, document 3A will be received in evidence.

(Whereupon, COMMISSION'S EXHIBIT 3A was received in evidence.)

Mr. Dias: For identification, a Commission's Exhibit 193, ARCO tabulation entitled "Atlantic TBA marketing, 1949 through 1951," referred to in the stipulation, Paragraph 3.4. I offer the document in evidence.

Mr. Ballard: I would like to state for the record, while I have no objection to this document going in evidence, it should be clear that this is a tabulation prepared for purposes of this case and is not one of the business records of Atlantic.

Mr. Mason: No objection.

Mr. Ballard: May I also state further that this was prepared at the request of Commission's counsel.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 193.

292 (Whereupon, COMMISSION'S EXHIBIT 193 was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 105-C, letter amendment agreement dated November 3, 1954, from D. T. Colley, Vice-President, ARCo, to Mr. H. D. Tompkins, Vice-President, Firestone, referred to in the stipulation, Paragraph 4.3. I offer it in evidence.

Mr. Mason: Note the Firestone objection as to Goodyear.

Hearing Examiner Kolb: Commission's Exhibit 105-C will be received in evidence as to Atlantic, and subject to a motion to strike as to Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 105-C was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 126-C, letter amendment agreement dated July 7, 1954, from D. T. Colley, Vice-President, ARCo, to Mr. Victor Holt, Jr., Vice-President, Goodyear, Inc., referred to in the stipulation at Paragraph 4.5. I now offer it in evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 126-C.

(Whereupon, COMMISSION'S EXHIBIT 126-C was received in evidence.)

293 Mr. Dias: For identification as Commission's Exhibit 126-D, letter amendment agreement dated September 15, 1954, from D. T. Colley, Vice-President, ARCo, to Mr. Victor Holt, Jr., Vice-President, Goodyear, Inc. I offer it in evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 126-D.

(Whereupon, COMMISSION'S EXHIBIT 126-D was received in evidence.)

Mr. Dias: Exhibit 126-D is referred to in the stipulation at Paragraph 4.5.

For identification as Commission's Exhibit 194, ARCo Tabulation—Summary—May Sales 1950, and two months Sales through May, 1950—Atlantic Erie and Wilmington Districts, referred to in Paragraph 5.1 of the stipulation. I offer the document in evidence.

Mr. Mason: I note an objection to this document. Although it isn't apparent on the face of the document, actually it refers solely to statistics in the Firestone area.

Mr. Kelaher: That is correct.

Hearing Examiner Kolb: The document, Commission's Exhibit 194, will be received in evidence as to Atlantic, and subject to motion to strike on the part of Goodyear.

294 (Whereupon, COMMISSION'S EXHIBIT 194 was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 195-A through -C, letter dated June 2, 1950, from G. M. Elliot, Petroleum Sales, Firestone, to Mr. Leon Serven, ARCo. inclosing April 1950 TBA "Summary." (CX 195-B)

and "Erie District" (CX 195-C). I offer those in evidence.

Mr. Mason: Goodyear has the Firestone objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 195-A through -C as to Atlantic, and subject to a motion to strike on the part of Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 195-A through -C was received in evidence.)

Mr. Dias: For identification as 196-A and -B, letter dated June 6, 1950, from G. M. Elliot, Petroleum Sales, Firestone, to Mr. S. J. Heideman, ARCo, inclosing TBA summary through May 27, 1950, Wilmington and Erie Districts. I offer them in evidence.

Mr. Mason: Firestone objection as to Goodyear.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 196-A and -B as to Atlantic, subject to a motion to strike on the part of Goodyear.

295 (Whereupon, COMMISSION'S EXHIBIT 196-A and -B was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 197-A and -B, letter dated June 23, 1950, from S. J. Heideman, ARCo, to Mr. J. A. Addison, Sales Manager, Firestone, inclosing TBA "Sales Comparison—month of May, 1950, versus 1949," Wilmington and Erie Districts. I offer them in evidence.

Mr. Mason: Goodyear has the Firestone objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 197-A and -B as to Atlantic, and subject to motion to strike by Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 197-A and -B was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 198-A and -B, ARCo tabulations entitled "Final TBA Sales, June, 1950," by ARCo Marketing Regions, and "Sales Comparison—month of June, 1950 versus 1949," for Wilmington, Erie and Newark Districts. I offer them in evidence.

Mr. Mason: Insofar as this document gives Firestone statistics, I have the Firestone objection. In some of the regions here there is no sales commission plan effective between Goodyear and Atlantic.

Hearing Examiner Kolb: The figures have been 296 combined here, is that it?

Mr. Kelaher: The document shows data for the six marketing regions of Atlantic. It also shows data for so-called test areas, two of which were under the Firestone TBA program and one of which was under the Goodyear TBA program. And Commission's Exhibit 198-B likewise shows data for the Wilmington, Delaware, and Erie, Pennsylvania, districts which were under the Firestone TBA program, and the Newark, New Jersey, district which was under the Goodyear TBA program.

Hearing Examiner Kolb: Commission's Exhibit 198-A and -B will be received in evidence. Statement by counsel indicates the application of the relative figures to Atlantic and Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 198-A and -B was received in evidence.)

Mr. Dias: For identification as 199-A and -B, ARCo tabulations entitled "Final TBA Sales—July, 1950" by ARCo Marketing Regions, and "Sales Comparison—month of July, 1950 versus 1949," for Wilmington, Erie and Newark Districts.

Mr. Kelaher: The same remarks with respect to CX 198-A and -B apply to CX 199-A and -B with respect to the data shown thereon.

Hearing Examiner Kolb: Wilmington area districts are Firestone, and Newark is Goodyear, is that it?

Mr. Kelaher: Yes, your Honor.

297 Mr. Mason: I object to this document insofar as Counsel's statement has indicated the portions that refer to the Firestone area. As to that I have the Firestone objection.

Hearing Examiner Kolb: Based upon counsel's statement, it appears that the document on its face shows application to Firestone and to Goodyear. Under these circumstances, the document will be received in evidence as Commission's Exhibit 199-A and -B.

(Whereupon, COMMISSION'S EXHIBIT 199-A and B was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 200-A and B, ARCo tabulations entitled "Final TBA Sales—August 1950" by ARCo Marketing Regions, and "Sales Comparison—month of August, 1950 versus 1949," for Wilmington, Erie and Newark Districts. I offer it in evidence.

Mr. Kelaher: The same comment previously made with respect to CX 198-A and B applies to CX 200-A and B.

Mr. Mason: Goodyear objects to the document insofar as it contains data exclusively relating to the area in which Goodyear does not have a sales-commission arrangement.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 200-A and B for the reasons stated on the previous exhibit.

(Whereupon, COMMISSION'S EXHIBIT 200-A and B was received in evidence.)

298 Mr. Dias: For identification as Commission's Exhibit 201-A and B, ARCo tabulations entitled "Final TBA Sales—September 1950," by ARCo Marketing Regions, and "Sales Comparison—month of September, 1950

versus 1949" for Wilmington, Erie and Newark Districts. I offer it in evidence.

Mr. Kelaher: The same comments previously made with respect to CX 198-A and B apply to CX 201-A and B.

Mr. Mason: I have the same objection as to the previous document. I assume it is covered by your Honor's ruling.

Hearing Examiner Kolb: Yes.

The document will be received in evidence as Commission's Exhibit 201-A and B, for the reasons stated as to the previous two exhibits.

(Whereupon, COMMISSION'S EXHIBIT 201-A and B was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 202, ARCo tabulation entitled "Final TBA Sales—October 1950," by ARCo Marketing Regions. I offer it in evidence.

Mr. Mason: Goodyear has the same objection as to the immediately preceding documents, and assumes it is covered by your Honor's ruling.

Hearing Examiner Kolb: The document will be re-
299 ceived in evidence as Commission's Exhibit 202.

(Whereupon, COMMISSION'S EXHIBIT 202 was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 203-A through C, ARCo tabulations entitled "Final TBA Sales—November 1950," by ARCo Marketing Regions, and "Sales Comparison—month of November, 1950 versus 1949" for Newark, Wilmington and Erie Districts (CX 203-B) and "Dollars per thousand gallons of gasoline, Class 2 dealers, cumulative July through November, 1950," by ARCo Marketing Region, and Newark, Wilmington and Erie Districts (CX 203-C). I offer them in evidence.

Mr. Mason: Goodyear has the same objection as to the documents immediately preceding, and assume it is covered by the same ruling.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 203-A through C.

(Whereupon, COMMISSION'S EXHIBIT 203-A through C was received in evidence.)

Mr. Dias: For identification as 204-A through C, ARCo tabulations entitled "Final TBA Sales—December 1950," by ARCo Marketing Regions, and "Sales Comparison—month of December, 1950 versus 1949," for Newark, Wilmington and Erie Districts (CX 204-B), and "Dollars per thousand gallons of gasoline, Class 2 dealers, cumulative July through December 1950," by Marketing Regions, 300 and Newark, Wilmington and Erie Districts (CX 204-C). I offer them in evidence.

Mr. Mason: Goodyear has the same objection as to the documents immediately preceding, and assume it is covered by the same ruling.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 204-A through C, subject to the same ruling.

(Whereupon, COMMISSION'S EXHIBIT 204-A through C was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 205, ARCo tabulation entitled "Summary," showing "December Sales" and "two-months sales through December 1950" for Erie and Wilmington Districts. I offer it in evidence.

All exhibits from CX 194 through CX 205 are referred to in stipulation paragraph 5.1.

Mr. Mason: As to this we have the straight Firestone objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 205 as to Atlantic, and subject to a motion to strike for Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 205 was received in evidence.)

301 Mr. Dias: Let the record show that the preceding twelve exhibits, commencing at Exhibit 194, through Commission Exhibit 205, are referred to in the stipulation at paragraph 5.1.

For identification as Commission Exhibit 206, Atlantic Form letter dated August 28, 1952 from D. T. Colley, Vice-President, ARCo. to all Atlantic dealers in re: "A Re-Statement of Atlantic's TBA Policy". I offer it in evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 206.

(The document heretofore marked COMMISSION EXHIBIT 206 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 207, Atlantic form letter dated June 24, 1955 from Manager, Marketing Region, addressed "To All Atlantic Dealers, in re 'No Forcing'."

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit No. 207.

(The document heretofore marked COMMISSION EXHIBIT 207 for identification was received in evidence.)

302 Mr. Dias: Let the record show that Exhibits 207 and 206 are referred to in the stipulation at paragraph 5.5.

Mr. Dias: For identification as Commission Exhibit 208, tabulation entitled "The Atlantic Refining Company, Progress through May 21, 1951." I offer the document.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit No. 208.

(The document heretofore marked COMMISSION EXHIBIT NO. 208 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 209, tabulation entitled "The Atlantic Refining Company, Progress through May 28, 1951." I offer it in evidence.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 209.

(The document heretofore marked COMMISSION EXHIBIT 209 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 210, tabulation entitled "The Atlantic Refining Company, Progress through August 20, 1951." I offer it in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Mason: No, sir.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 210.

303 (The document heretofore marked COMMISSION EXHIBIT NO. 210 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 211, tabulation entitled, "Atlantic Progress Report," dated October 29, 1951, with distribution to Messrs. S. J. Heideman, Atlantic; F. W. McConky, Jr., Northeast Division Manager, New York; S. A. Gaylord, Manager, Petroleum Sales, Akron; J. W. O'Neill, Division Petroleum Representative, Philadelphia. I offer the document in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 211.

(The document heretofore marked COMMISSION EXHIBIT 211 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 212, tabulation entitled "Atlantic Progress Report," dated December 24, 1951, with distribution to Messrs. S. J. Heideman, Atlantic; F. W. McConky, Jr., Northeast Division

Manager, New York; S. A. Gaylord, Manager, Petroleum Sales, Akron; J. W. O'Neill, Division Petroleum Representative, Philadelphia. I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 212.

304 (The document heretofore marked COMMISSION EXHIBIT 212 for identification was received in evidence.)

305 Mr. Dias: For identification as 213-A through F, letter dated May 14, 1951, from G. M. Elliot, petroleum sales, Firestone, to Mr. Leon Serven, ARCO (CX 213-A), inclosing "summary" of sales for March, 1951, and the first five months of fiscal year (CX 213-B), with breakdown for ARCO, marketing regions (E. Pa., W. Pa., and Southern), by Firestone and Atlantic Districts (CX 213-C-F). I offer it in evidence.

Mr. Mason: This is a document that is exclusively Firestone so we have a Firestone objection as to it.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 213-A through F as to Atlantic, subject to motion to strike as to Goodyear.

(The document referred to was marked Commission Exhibit 213-A through F for identification.)

Mr. Dias: For identification as Commission Exhibit 214-A through D, Firestone tabulations dated April 19, 1951, entitled "The Atlantic Refining Company, Progress Through 4-14-51" for three Marketing Regions (CX 214-A) and for each Marketing Region by Atlantic and Firestone Districts (CX 214-B-D). I offer those in evidence.

Mr. Mason: Firestone objection as to Goodyear.

Hearing Examiner Kolb: Do the tabulations show the extent of application of the two?

Mr. Kelaher: They are all Firestone.

306 Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 214-A through D as to Atlantic, subject to motion to strike as to Goodyear.

(The document heretofore marked for identification COMMISSION EXHIBIT 214-A through D, was received in evidence.)

Mr. Dias: For identification as 214-E, Firestone tabulation entitled "The Atlantic Refining Company, Summary, April Sales, and Fiscal Year Sales Through April 1951" for three ARCo. Marketing Regions. I offer it in evidence.

Mr. Mason: Firestone objection as to that. There is a handwritten notation at the bottom: "CK received, $38,552.47."

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 214-E as to Atlantic, and subject to a motion to strike as to Goodyear.

(The document heretofore marked for identification COMMISSION EXHIBIT 214-E was received in evidence.)

Mr. Dias: For identification as 214-F, Firestone tabulation entitled, "The Atlantic Refining Company, Summary, December, 1951, and 2 months Sales Thru December, 1951" for three ARCo. Marketing Regions by Firestone Districts. I offer it in evidence. There is a notation on the bottom in handwriting "Check received, $24,616.48."

Mr. Mason: Firestone objection.

307 Hearing Examiner Kolb: The document will be received in evidence as 214-F as to Atlantic, and subject to a motion to strike by Goodyear.

(The document heretofore marked for identification COMMISSION EXHIBIT 214-F was received in evidence.)

Mr. Dias: Let the record show that the preceding nine Commission Exhibits commencing with 208 through 214-F inclusive, are referred to in the stipulation at paragraph 6.4.

For identification as Commission Exhibit 47-C and D, Goodyear Sales Department Instructions dated 5-31-51, subject: "Handling Exide Battery Adjustments for Atlantic Dealers." I offer it.

Mr. Ballard: I have no objection.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission Exhibit 47-C and D.

(The document heretofore marked for identification COMMISSION EXHIBIT 47-C and D was received in evidence.)

Mr. Dias: Let the record show that the Commission Exhibits 47-C and D are referred to in the stipulation at paragraph 6.5.

For identification as Commission Exhibit 215-A, ARCO credit card, year 1950.

308 For identification as Commission Exhibit 215-B, ARCo. Credit Card—Year 1950.

For identification as Commission Exhibit 216-A and B, ARCo. Credit Card—Year 1951.

For identification as Commission Exhibit 217-A and B, ARCo. Credit Card—Year 1952.

For identification as Commission Exhibit 218-A and B, ARCo. Credit Card—Year 1953.

For identification as Commission Exhibit 219-A and B, ARCo. Credit Card—Year 1954.

For identification as Commission Exhibit 220-A and B, ARCo. Credit Card—Year 19

For identification as Commission Exhibit 221-A and B, ARCo. Credit Card—Year 1956.

I offer them all in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection, the documents will be received in evidence as Commission

Exhibit 215-A and B through Commission Exhibit 221-A and B.

(The documents heretofore marked for identification EXHIBIT 215-A and B through COMMISSION EXHIBIT 221-A and B were received in evidence.)

Mr. Dias: For identification as Commission Exhibit 222, document entitled "Credit Card Guide—Atlantic" numbered 960 R-10M-6-50.

309 I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 222.

(The document heretofore marked for identification COMMISSION EXHIBIT 222 was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 223, document entitled "Credit Card Guide—Atlantic" numbered 1028-14 M-1-51.

I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 223.

(The document heretofore marked for identification COMMISSION EXHIBIT 223 was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 224-A and B, document entitled "Atlantic Credit Card Guide" number 1310-12M-3-53.

I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 224-A and B.

310 (The document heretofore marked for identification COMMISSION EXHIBIT 224-A and B was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 225, "Atlantic Credit Card Guide" numbered 2129-13M-6-56. (12 pages.)

I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission Exhibit 225.

(The document heretofore marked for identification COMMISSION EXHIBIT 225 was received in evidence.)

Mr. Dias: Let the record show that the precedings eleven exhibits, commencing at 215-A and B, through 225, are referred to in the stipulation at paragraph 6.6.

Hearing Examiner Kolb: We will recess until 2 o'clock.

(Whereupon, at 12:53 p. m. a recess was taken until 2 o'clock.)

311 Afternoon Session.

(2:30 p. m.)

Mr. Dias: Mr. Examiner, I offer for identification the following Commission exhibits:

As Commission Exhibit 80-R, Goodyear Organization Chart—Tire Sales Division (Akron)—as of 4-22-57.

As Commission Exhibit 80-S, Goodyear Organization Chart—Tire Sales Division (Field)—as of 4-22-57.

As Commission Exhibit 80-T, Goodyear Organization Chart—Tire Division—as of 4-22-57.

As Commission Exhibit 80-U, Maps entitled "Goodyear Regions & Districts" (current).

As Commission Exhibit 229, Goodyear Price List and Supplement—"Automobile Tires and Tubes"—effective 1-1-57, revised 2-11-57 (10 pp.).

As Commission Exhibit 230, Goodyear Price List—

"Tube Type Pneumatic Truck Tires and Tubes"—effective 1-1-57 (12 pp.).

As Commission Exhibit 231, Goodyear Price List—"Tubeless Pneumatic Truck Tires"—effective 1-1-57 (8 p.).

As Commission Exhibit 232, Goodyear Price List—"Natural Rubber Truck Tubes"—effective 1-1-57 (1 p.).

As Commission Exhibit 233, Goodyear "Discounts to Dealers from 'Goodyear Price' to Code Price' "—effective 1-1-57, revised 2-11-57 (2 pp.).

As Commission Exhibit 234, Goodyear Price List—"Motorcycle Tires and Tubes"—effective 1-1-57 (2 pp.).

312 As Commission Exhibit 235, Goodyear Price List—"Farm Tractor and Implement Tires, Tubes, Rims"—effective 1-1-57 (12 pp.).

As Commission Exhibit 236, Goodyear Price List—"Industrial Tires and Tubes"—effective 1-1-57 (8 pp.).

As Commission Exhibit 237, Goodyear "Confidential Ready Reference Chart Showing Application of Discounts to .Contract Dealers"—effective 1-1-57, revised 2-11-57 (4 pp.).

As Commission Exhibit 238, Goodyear "Tire Retreading and Repairing Price List"—effective 9-1-56 (13 pp.).

As Commission Exhibit 239, Goodyear "Retread and Repair Materials—Dealers Price List"—effective 5-18-56 (16 pp.).

As Commission Exhibit 240 A-D, Goodyear Batteries—Suggested Retail Prices (2 pp.)—352 Dealer Prices (2 pp.)—Jobber Prices—Jobber A Prices—effective 11-12-56 (6 pp.).

As Commission Exhibit 240 E-H, Goodyear Batteries—Suggested Retail Prices (3 pp.)—Jobber Prices—Jobber A Prices—(Western Division)—effective 11-12-56 (5 pp.).

As Commission Exhibit 241, "Goodyear Battery Policy and Sales Program"—effective 2-20-57 (4 pp.).

As Commission Exhibit 242, Goodyear "Car and Home Merchandise Price List—Spring and Summer 1957"—Price List W—Direct Goodyear Dealers Only—dated 1-57 (59 pp.).

313 As Commission Exhibit 243, Goodyear "Car and Home Merchandise Price List—Spring and Summer 1957"—Price List 75—Direct Goodyear Dealers Only—dated 1-57 (55 pp.).

As Commission Exhibit 244, Goodyear "Car and Home Merchandise Price List—Spring and Summer 1957"—Price List D—dated 1-57 (124 pp.).

As Commission 245, Goodyear "Car and Home Merchandise Price List—Spring and Summer 1957"—Price List TBA—dated 1-57 (27 pp.).

As Commission Exhibit 246, "Goodyear Car and Home Merchandise, Spring and Summer, 1957"—Retail Catalog.

As Commission Exhibit 44-C, Goodyear Form G-1207 (1-56)—entitled "Record of Sales to Oil Co. Associate Dealers".

As Commission Exhibit 44-D, Goodyear Form B-91 (1-57)—entitled "General Line Sales by Customer".

As Commission Exhibit 44-E, Goodyear Form B-61 (11-54)—entitled "Associate Dealer Agreement", and "Associate Dealer Agreement Stub."

As Commission Exhibit 44-F, Goodyear Form G-110 (1-51)—entitled "Service Station Agreement," and "Service Station Agreement Stub."

As Commission Exhibit 44-G, Goodyear Form G-110 (5-56)—entitled "Service Station Agreement," and "Service Station Agreement Stub."

314 As Commission Exhibit 247-B, Goodyear TBA Inventory Guide S-9884, Rev. 8-56—entitled "Goodyear TBA Plan" (26 pp.).

Hearing Examiner Kolb: Let the documents be marked as requested.

(The documents referred to were marked Commission's Exhibits 80-R, 80-S, 80-T, 80-U, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240 A-D, 240 E-H, 241, 242, 243, 244, 245, 246, 44-C, 44-D, 44-E, 44-F, 44-G, and 247-B, for identification.)

Mr. Dias: I offer the foregoing exhibits.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: There being no objection, the documents will be received in evidence as Commission Exhibits 80-R, S, T, U, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240-A through D, 240-E to H, 241, 242, 243, 244, 245, 246, 44-C, 44-D, 44-E, 44-F, 44-G, and 247-B.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 80-R through U, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240-A through D, 240-E to H, 241, 242, 243, 244, 245, 246, 44-C through G, and 247-B for identification, were received in evidence.)

315 Mr. Dias: The following stipulation has been agreed upon by counsel: Counsel for respondent, The Atlantic Refining Company ("Atlantic"), and counsel supporting the complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the complaint in this proceeding, and asked the following questions, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

316 CX 5A

Q. "Identify Neall."

A. In August 1949, F. M. Neall was Manager of Product Sales & Sales Development Division, Domestic Marketing Department, Atlantic.

CX 7

Q. "Identify E. R. Cox, Jr., Leon Serven, W. F. Stotz."

A. As of May 1950—E. R. Cox, Jr. was Manager, Sales Promotion Section, Atlantic. Leon Serven was Assistant Controller, Controller's Office—Domestic, Atlantic. W. F. Stotz was Senior Attorney, Legal Department, Atlantic.

CX 9A-E

Q. "Identify as to date, author, etc."

A. CX 9A-C was prepared by S. J. Heideman at some time prior to Atlantic's decision to test the sales commission plan in the test districts.

CX 9D-E is a separate document which was prepared by S. J. Heideman at some time prior to the commencement of the sales commission test program in the Newark District.

CX 9D

Q. "Identify Sales Promotion Section."

A. See under CX 179D.

CX 29

Q. "Dates."

A. Letters in this form were sent out by Atlantic
317 in the New England, New York, and Philadelphia-New Jersey Regions, except in the Newark, New Jersey District, on or about February 20, 1951.

CX 35 and 36

Q. "Develop further data re Schrader inventory."

A. Further data are unobtainable.

Q. "Is Schrader part of the Goodyear TBA line?"

A. Yes.

CX 39

Q. "Was document enclosed with CX 38?"

A. No.

CX 47B

Q. "Obtain copy of Atlantic-Lee Guaranty Forms."

A. A copy of that form is attached. (CX 47E.)

CX 48A-F

Q. "Who do TBA Bulletins go to?"

A. TBA bulletins are directed to Atlantic's TBA Co-ordinators in the various regions.

Q. "Is copy sent to Goodyear?"

A. Only occasionally.

Q. "Who are Automotive Missionary Men? Atlantic Refining Co. or Goodyear or both?"

A. They were employees of Goodyear.

Q. "What fan belts did Atlantic sell prior to commission plan?"

A. "Thermoid" brand, made by the Thermoid Corp., Trenton 8, N. J.

318 Q. "Review Progress Report."

A. See part 6 of stipulated testimony of Atlantic personnel.

CX 84A, B

Q. "Check current regions, etc."

A. There have been no material changes in the territories of the regions since the exhibit was prepared.

CX 100A-C

Q. "Distribution of document."

A. This was a memorandum for Mr. Heideman's file and, as far as can be ascertained, was not distributed to anyone else.

Q. "Describe Sales Promotion Department."

A. See under CX 179D.

CXID 101A-Z20

Q. "Origin, etc. Is basic data available?"

A. Reports are available for interviews believed to have been conducted in Boston, Mass., Fall River, Mass., Johnstown, Pa., Philadelphia, Pa., Pittsburgh, Pa., and Trenton, N. J. The Atlantic employee witness having the best knowledge of the origin and method is J. L. McIntire.

CX 102A

Q. "Identify J. M. McIlvain."

A. In August 1949, J. M. McIlvain was Chief Industrial Engineer, Industrial Engineering Department, Atlantic.

CX 104A-C

Q. "Firestone agreement, 3/30/50. Review C, D, 319 CE, DE, B and E classifications."

A. The agreement describes such classifications correctly.

CX 107

Q. "Identify Keen, Stotz, and Johns."

A. In February 1950—

William Keen was Manager, Operations Division, Domestic Marketing Department, Atlantic.

William F. Stotz was Senior Attorney, Legal Department, Atlantic.

Roy W. Johns was General Counsel, Atlantic.

CX 108A-J

Q. "Origin, date of meeting."

A. This document is believed to have been prepared by S. J. Heideman for presentation at the meeting of March 17, 1950, at which the persons listed on CX 109 were in attendance.

Q. "Explain antifreeze policy (CX 108I)."

A. Atlantic had decided to continue to sell antifreeze on a purchase and resale basis.

CX 109A-I

Q. "Explain policy on 'close out' merchandise (CX 109B(b)."

A. See paragraph 2.14 of stipulated testimony of Atlantic personnel.

Q. "Identify Mr. Stockton."

A. As of March 1950, William Stockton was Credit Manager, Domestic Marketing Department, Atlantic.

320 CX 109H

* * * * * *

CX 110

Q. "Identify SJH."

A. In March 1950, S. J. Heideman was Manager, TBA Section, Atlantic.

CX 111

Q. "Identify SJH and W. J. Griffiths."

A. In April 1950—

S. J. Heideman was Manager, TBA Section, Atlantic.

William J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

321-A CX 112, 113

Q. "Check origin, etc., and termination dates."

A. It cannot be determined by whom these documents were prepared.

The arrangement was terminated as indicated under CX 139A-B.

CX 114A

Q. "Obtain list, referred to under (3), of Firestone District Managers and District Offices."

A. The list referred to cannot be found.

Q. "Obtain Forms S-468."

A. A copy of this form is included in the data which were furnished in response to List C, par. 8(h).

CX 114B

Q. "Check accounts classifications on which commissions are paid."

A. The classifications in Par. 7 of CX 114B are correct as stated, except that the outlet designations have been changed as indicated by paragraph 2.1 of the stipulated testimony of Atlantic personnel.

321-B CX 114D

Q. "Identify personnel listed."

A. As of May 1950—

B. M. Boor was Manager, Western Pennsylvania Region, Atlantic.

Leon Serven was Assistant Controller, Controller's Office—Domestic, Atlantic.

S. J. Heideman was Manager, TBA Section, Atlantic.

J. C. Rigby was in the Auditing Department, Atlantic.

J. M. McAllister was in the Sales Statistical Section, Accounting Department, Atlantic.

J. P. Miller, Jr. was General Auditor, Atlantic.

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

C. P. Mumma was Manager, Sales Group, Eastern Pennsylvania Region, Atlantic.

G. A. Fearn was TBA Coordinator, Eastern Pennsylvania Region, Atlantic.

R. S. Zinn was Manager, Wilmington, Delaware District, Domestic Marketing Department, Atlantic.

CX 115

Q. "Identify writer."

A. This document was probably written by E. E. Sickles, then an Assistant Chief Accountant in the Phil-

adelphia Sales Accounting Division of the Accounting Department, Atlantic.

Q. 'What are 'O' Type dealer supply points referred to?''.

322 CX 116B

Q. "Identify Mr. Burkett."

A. In September 1950, H. C. Burkett was Manager, Erie, Pennsylvania District, Domestic Marketing Department, Atlantic.

CX 117

Q. "Origin, etc. Who made corrections?"

A. This document is believed to have been prepared and corrected by S. J. Heideman, Manager, TBA Section, Atlantic, and to have been a working paper for his own use.

CX 118A

Q. "Identify Stotz, Cox, Griffiths."

A. In March 1950—

W. F. Stotz was Senior Attorney, Legal Department, Atlantic.

E. R. Cox was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

Q. "Obtain data referred to in paragraph 2 of letter."

A. The data, if compiled, cannot be located.

CX 120

Q. "Identify Griffiths and RMT."

A. In July 1950—

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

R. M. Taitt was Office Assistant, TBA Section, Atlantic.

323 CX 127A-E, CX 127F-H

Q. "Review for origin, distribution, etc."

A. CX 127A-E were prepared by Goodyear, and CX 127F-H are believed to have been prepared by Goodyear. Apparently, these copies were distributed to S. J. Heideman, Manager, TBA Section, Atlantic, and were given by him to H. K. Paxson, Assistant Manager of that section.

CX 127H

Q. "Retroactive accounts. Explain."

A. Occasionally there is delay in submitting or securing approval of a G-1209 with respect to a petroleum company account. This was more frequent in the early stages of the program. In such a case, a belated G-1209 was prepared, pre-dated to the commencement of the account's TBA purchases, so that the oil company could collect the commissions due on such purchases.

CX 128A-B

Q. "Origin. Identify Sanborn."

A. Author: S. J. Heideman, Manager, TBA Section, Atlantic.

In May 1950, A. R. Sanborn was Manager, Newark, New Jersey District, Domestic Marketing Department, Atlantic.

CX 130-B

Q. "Obtain list of dealers and distributors in Newark for solicitation, and also list of those signed."

A. Neither of such lists can be located.

Q. "Describe Sales Statistical Section."

324 A. This is a section of the Marketing Accounting Division of the Accounting Department, which performs the various statistical functions required by the Domestic Marketing Department.

Q. "Obtain monthly G-1204 lists for Newark for June and July 1950."

A. A copy of each of these lists is attached, covering the

three periods June 12-20, June 21-July 20, and July 21-August 20. (CX 226A-H, 227A-K, 228A-K, respectively).

Q. "When did Newark plan start?"

A. June 12, 1950.

CX 132

Q. "Identify the following:"

A. In August 1950—

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

H. H. Ingersoll was Manager, Southern Region, Atlantic.

H. W. Jollie was Manager, New England Region, Atlantic.

E. R. Cox, Jr. was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

C. P. Mumma was Manager, Sales Group, Eastern Pennsylvania Region, Atlantic.

W. W. Pleasants was Manager, Plant Development and Maintenance Section, Operations, Domestic Marketing Department, Atlantic.

Ed Stanton was Supervisor, Direct Marketing Sub-Group, Philadelphia-New Jersey Region, Atlantic.

Q. "Describe Service Station Committee."

A. This is an advisory committee which recom-
325 mends policies concerning the appearance and arrangement of facilities of Atlantic service stations.

CX 134

Q. "Origin, date of survey, areas included."

A. This survey was made in July and August 1950 by the Sales Research Section at the request of the Domestic Marketing Department, and was conducted by mail among dealers and distributors in the Newark, Wilmington and

Erie districts. See paragraph 5.2 of stipulated testimony of Atlantic personnel.

Q. "Describe Sales Research Section."

A. This is a section in the Domestic Marketing Department in Philadelphia which performs the research functions of that department.

Q. "Who was in charge of the section when the survey was made?"

A. Noble Hall.

CX 135A-C

Q. "Origin, date, distribution, etc."

A. See paragraph 5.4 of stipulated testimony of Atlantic personnel.

CX 135A

Q. "Who are Chairman and Committee (and members) referred to in first paragraph?"

A. The Committee was composed of regional TBA coordinators. The Chairman was S. J. Heideman. See under CX 135A-C.

Q. "Obtain data itemized under 1(1-7)."

326 A. The listing was merely of suggested steps for possible ultimate action when and if the contemplated program was adopted. There is no indication that the items listed were ever compiled or assembled.

CX 135B

Q. "Explain E."

A. See paragraph 6.2 of stipulated testimony of Atlantic personnel.

Q. "Explain K."

A. The Standards of Operation are policies prepared by the Service Station Committee. See explanation under CX 132.

Q. "Explain M."

A. If and when the sales commission plan in contem-

plation was adopted, it was expected that the Atlantic regions and districts affected would arrange to return for credit all unused signs, stands, merchandise, etc., which they had in stock.

CX 135C

Q. "Explain O."

A. See stipulated testimony of Atlantic personnel, paragraph 6.6.

CX 136A

Q. "Who attended the February 14, 1951 meeting?"

A. This exhibit does not refer to a meeting. On the date mentioned a decision was made by the Domestic Marketing Department, as indicated by the document.

327 See paragraph 5.6 of stipulated testimony of Atlantic personnel.

CX 136B

Q. "Identify survey referred to."

A. The survey referred to is that reflected by CXD 101A-Z20.

Q. "Which 4 regions wanted new program?"

A. Eastern Pennsylvania—Philadelphia, New Jersey—Western Pennsylvania—Southern.

See paragraph 5.3 of stipulated testimony of Atlantic personnel.

CX 137A E

Q. "Origin, date, distribution, etc."

A. This was prepared by the New York Region in connection with its 1951 Sales Plan (CX 155A H).

Q. "Explain I, 2, e."

A. The operations procedures prescribe the care and maintenance of Atlantic's property and safety precautions to be observed.

Q. "Explain I, 4."

A. This was an informal report of the erection of competitive service stations.

Q. "Explain I, 6."

A. The dealer salesman was expected to assist in keeping at a minimum the outstanding balances owed to Atlantic by its dealers by recommending credit limits applicable to his dealers and by making collections from them when accounts became overdue.

328 Q. "Explain I, 8."

A. B 30 is the standard Atlantic ticket evidencing a delivery of merchandise to a dealer or distributor. For the purpose of auditing delivery and collection reports of its drivers, Atlantic had its salesmen secure from its dealers periodically copies of such tickets left with them.

Q. "Explain I, 12."

A. The dealer salesman is expected to encourage each dealer to operate his station in the most effective manner, and to make specific recommendations to that end.

Q. "Explain I, 13, a."

A. See explanation for paragraph III D of CX 155A H.

Q. "Explain I, 14, a."

A. "Unit control" was a system of inventory control available for use by dealers.

Q. "Explain I, 14, b."

A. The phrase "minimum stock standards" refers to the minimum inventories of products which should be maintained under good operating practice.

Q. "Explain I, 14, c."

A. The dealer salesman is expected to recommend various steps for keeping a dealer's stock in salable condition, such as storage and display techniques which will avoid package damage, return of shopworn merchandise for repackaging, and the practice of selling the oldest stock first.

329 Q. "Explain I, 19, c."

A. The dealer salesman is expected to report informally, and as appropriate action by Atlantic's competitors.

Q. "Explain II."

A. The District Dealer Bank is a list maintained by each district office of persons who are interested in becoming Atlantic lessee dealers.

Q. "Explain III, 1."

A. The guide, copies of which are no longer available, outlined the respective responsibilities of various Atlantic employees in assisting a new dealer to become established.

Q. "Explain IV, 3."

A. To the extent that a dealer maintains books establishing sales goals and measuring performance and makes them and his bookkeeping records available, the salesman is expected to review the data and advise the dealer how to improve his efficiency and sales effectiveness.

Q. "Explain V, 3."

A. The service station school then current is described under paragraph II A of CX 155A H.

Q. "Explain V, 4 and V, 7."

A. The Retail Instructor was equivalent to the present service salesman and provided on-the-job instruction. See paragraph 1.5 of the stipulated testimony of Atlantic personnel.

Q. "Explain V, 8."

330 A. The merchandising and sales promotion instruction involved the general principles of such subjects and, as such, was applicable to all products regardless of brand.

Q. "Explain V, 10."

A. The salesman is expected to make certain that each dealer is aware of prices for goods and services which are being charged and services which are being rendered by

his competitors, and to advise the dealer to the extent the latter desires, how to maintain profitable operations under competitive conditions.

Q. "Explain V, 11, a."

A. To the extent that an annual review consultation does not assist a dealer in establishing sales goals and merchandising programs for particular products or services, the salesman is expected to aid the dealer in that regard, but only to the extent the dealer wishes.

Q. "Explain V, 13."

A. The provision seems self-explanatory.

CX 138

Q. "Identify SJH."

A. In June 1951, S. J. Heideman was Manager, TBA Section, Atlantic.

CX 139A B

Q. "Identify SJH."

A. In January 1952, S. J. Heideman was Manager, TBA Section, Atlantic.

331 Q. "Check adjustment cut-off date of March 31, 1952."

A. The cut-off date for Lee tire adjustments was July 31, 1952 and for Exide batteries was July 1, 1952.

Q. "Identify C. O. Domestic and J. O. Long."

A. Controller's Office—Domestic, of which J. O. Long was Chief Accountant.

Q. "Is antifreeze under S. C. P. with Goodyear * * *"

A. Not in the case of Atlantic.

CX 140

Q. "Identify B 139's."

A. B 139 is the designation of the sales slip form used by dealers to make sales on credit to Atlantic credit card holders.

A typical B 139 form as revised in October 1951, is attached. (CX 140AC)

CX 141, 142

Q. "What was correct information?"

A. See paragraphs 6.6 and 6.7 of stipulated testimony of Atlantic personnel.

CX 143, 144

Q. "Identify William Stockton and SJH."

A. In July and November 1951, William Stockton was Credit Manager, Domestic Marketing Department, Atlantic. At the same times, S. J. Heideman was Manager, TBA Section Atlantic.

332 CX 145

Q. Identify Taitt and Stockton."

A. In June 1952, R. M. Taitt was Office Assistant, TBA Section, Atlantic, and William Stockton was Credit Manager Domestic Marketing Department, Atlantic.

Q. "Obtain list attached to Taitt's letter of February 11, 1952."

A. Attached is a copy of the letter of February 11, 1952 with its attached list. (CX 145A D)

* * * * *

CX 146A B

Q. "Origin, date, distribution, etc."

A. This is part of the minutes of a regular meeting of the staff of the Domestic Marketing Department, i.e., the Vice President of Marketing, the Assistant General Manager of Domestic Marketing, and the Managers of the principal units of the department. Such minutes are normally distributed to members of the staff, the Sales Personnel Manager, and the Foreign Marketing Manager.

333 The date of the meeting is as indicated on the document itself.

Q. "Explain reference in 4(d)(1) to 'Class 2 Program'."

A. The phrase "Class 2 Program" referred to efforts then being made by Atlantic to strengthen lessee dealer marketing.

CX 148, 149, 150

Q. "Review re distribution."

A. The distribution specified in CX 148 was made.

Q. "Identify E. R. Cox, Jr."

A. As of February 1951, E. R. Cox, Jr. was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

CX 151

Q. "Identify Taitt."

A. In March 1951, R. M. Taitt was Office Assistant, TBA Section, Atlantic.

CX 153A B

Q. "Identify R. M. Taitt."

A. In April 1951, R. M. Taitt was Office Assistant, TBA Section, Atlantic.

Q. "Are distribution points still the same?"

A. Yes.

CX 154

Q. "Identify personnel."

A. As of January 1951—

Porter B. Caldwell was Manager, Gasoline Solvents and Naptha Section, Domestic Marketing Department, Atlantic.

334 J. J. Mulvey was Manager, Fuel Oil Section, Domestic Marketing Department, Atlantic.

H. B. Stone was Manager, Lubricants, Wax and Process Section, Domestic Marketing Department, Atlantic.

CX 155A-H

Q. "Author."

A. The plan was prepared by the New York Region.

Q. "Obtain complete sales plan plus appendices."

A. The masked portions of CX 155A-H relate to motor oil, kerosene, furnace oil, residual oils, and technical products, and are thus irrelevant.

Appendices A-1—A-6 represent the table on CX 155B-D broken down for each of the 6 districts in the New York Region and would, therefore, seem too detailed and trivial for inclusion here. Appendix B relates only to gasoline and is omitted as irrelevant. Copies of Appendices C, D and E (referred to in paragraph III F of CX 155) are attached (CX 155I, 155J-K, and 155L-M, respectively).

Q. "Were similar plans for other regions set up?"

A. Yes.

CX 155B

Q. "Gallons?"

A. Yes.

CX 155C, D

Q. "What is 1 unit—T & B?"

A. See Appendix C to the Plan.

335 Q. "Were stations assigned quotas on this basis?"

A. No.

CX 155E-G

Q. "Explain II A."

A. At the time, Atlantic's Red, White & Blue course was a one week informal dealer training program in service station operation, including the technical aspects of automobile servicing. In New York, the retail instructors were to expand their instruction to include the subjects mentioned, namely product merchandising and display.

Q. "Explain II D."

A. The Four Step Method of Instruction is an instructional technique, having the following primary steps:

1. Prepare the student.
2. Present the operation to him.

3. Try out his performance.

4. Follow up on his performance after completion of the instruction.

Q. "Explain II E."

A. The retail instructors were to utilize the D. P. A. CASE plan in teaching dealers how to sell. These letters are initials for instructive phrases and words as follows:

D—Determine the customer's need.

P—Point out that need to the customer.

A—Ask him to buy.

336 CASE stands for "Convenience," "Appearance," "Safety," and "Economy."

Q. "Explain III A."

A. Event openings are promotional devices for attracting customers, utilizing attractive station decoration, advertising, publicity, and possibly premiums.

Q. "Explain III B."

A. Efforts were to be made to modernize existing leased stations in accordance with currently accepted standards of appearance and layout.

Q. "Explain III C."

A. Each Marketing District was to maintain a list of potential lessee dealers and employees for such dealers, and to have its personnel constantly alert to opportunities to recruit such dealers and employees.

Q. "Explain III D."

A. The Dealer Annual Review is an annual informal meeting of each lessee dealer, his salesman, the supervisor of the salesman, and the Dealer Sales Manager, at which the dealer's prior performance and future plans are discussed and the dealer is advised how to achieve greater efficiency and profitability.

Q. "Explain III E."

A. Facilities were to be made available at which the training described under II A hereof could be provided.

Q. "Explain III F."

337 A. Quarterly dealer progress reports were made to check on the performance of lessee dealers. A copy of the report form is attached, designated "Appendix E."

Q. "Explain III G."

A. Prizes were to be awarded to dealers for excellence in service, and dealer performance was to be measured under normal operating conditions by Atlantic personnel visiting stations as customers.

Q. "Explain IV B."

A. When a new contract dealer is added Atlantic must incur expense for pumps and other equipment. A formula was used to determine whether the anticipated sale of petroleum products by a particular dealer would justify Atlantic's incurring the necessary expense and hence taking on that dealer.

Q. "What is C. R. S. (VI)?"

A. Commission Route Salesman.

Q. "Explain X A."

A. In establishing region-wide sales goals for TBA, consideration was given not only to normal sales increases by established outlets but also to sales by new outlets.

Q. "Explain X B."

A. The formulas referred to were the ratios stated in sections VI, VII, and VIII on CX 155C-D.

Q. "Explain X C."

A. The coordinator's plan provided for the train-
338 ing of dealers and Atlantic personnel in the features and application of new products, sales techniques, etc. through clinics and double teaming in the field with salesmen, and for assistance to dealers in planning events, holiday promotions, mass displays, and budget selling plans.

Q. "Explain XI."

A. This section lists the meetings to be held during the year and the approximate frequency. Paragraphs A and

B refer respectively to meetings of Atlantic district and regional managers and to meetings of Atlantic district personnel.

CX 156

Q. "Origin, distribution, etc."

A. This document was part of the 1951 New York Region Sales Plan (CX 155A-H).

Q. "Refer to Sales & Operations Groups."

A. Sales Groups are personnel responsible for the Sales activities of the Domestic Marketing Department.

Operations Groups are personnel of the Operations Department, which is described under CX 183 hereof.

Q. "To whom does policy apply (Class 2, 3)?"

A. The policy applied to Class 2 stations in its entirety and to Class 3 stations as provided in paragraph (2) and in the first sentence of paragraph (3).

CX 157

Q. "Identify HKP (Paxson)."

339 A. In February 1951, H. K. Paxson was Assistant Manager, TBA Section, Atlantic.

Q. "Refers to appendices, etc."

A. See under CX 155A-H.

CX 159

Q. "Identify E. R. Cox and Mr. Fritsch."

A. In March 1951

E. R. Cox was Manager Sales Promotion Section, Domestic Marketing Department, Atlantic.

Paul R. Fritsch was in the Identification Division, Goodyear.

Q. "Describe Service Station Committee."

A. See under CX 132.

CX 160A

Q. "Identify J. O'Neill."

A. In June 1951, J. O'Neill was Division Petroleum Representative, Philadelphia, Goodyear.

Q. "Obtain description of Territories 7G, etc."

A. The various territories indicated by the number and letter symbols are Atlantic's salesmen's territories. Their respective areas are as indicated by the addresses of the retail outlets listed under each on CX 160 C-P.

Q. "Obtain New Jersey list."

A. A copy of the list is attached (CX 160Q-Y).

CX 161

Q. "Identify SJH."

340-A A. In July 1957, S. J. Heideman was Manager TBA Section, Atlantic.

Q. "Obtain list of 46 dealers."

A. A copy of the list is attached (CX 161A-B).

Q. "Advise as to action taken."

A. On July 24, 1951 the respective managers of Atlantic's Philadelphia-Suburban and South Jersey Districts were requested to have their personnel communicate with the 46 dealers and to report the results of such action. No reports having been received from the districts by August 20, 1951, follow-up letters were sent both managers on that date (see CX 162). On October 15, 1951, Goodyear sent Atlantic a list of stations not yet identified, which included all of the 46 dealers except the following (see CX 167):

P. Di Cicco, 26th & Snyder Sts., Philadelphia, Pa.

Henry's, Chester & McKinley, Norwood, Pa.

A. E. Mapes, 9th & Bay, Ocean City, N. J.

S. Van Sant, Townsend Inlet, N. J.

I. Wells, 34th & Asbury, Ocean City, N. J.

is not known whether or not identification arrangements were made with the 5 dealers listed above prior to October 15, 1951.

Q. "Obtain names of those who were eventually signed."

A. The lists attached to CX 160A indicate that all the 46 dealers signed Goodyear contracts.

Q. "Were 46 dealers all Class 3?"

340-B A. No.

CX 165

Q. "Obtain list of N. E. refusals."

A. A copy of the list (on 2 sheets) is attached (CX 165A-C).

CX 167

Q. "Obtain attached lists."

A. A copy of each of the lists is attached (CX 167A-M).

CX 170A-F

Q. "Were refusals all Class 3 dealers?"

A. No.

Q. "How many were later identified?"

A. This information is unobtainable.

Q. "What are valance structural difficulties?"

341 A. "Valance structural difficulties" refers to buildings of retail outlets which lack the type of windows on which valances can be applied.

CX 171A-D

Q. "Were refusals Class 3 dealers?"

A. Refusals included Class 2 and Class 3 dealers.

CX 172A-B

Q. "Were refusals Class 3 dealers?"

A. Refusals included Class 2 and Class 3 dealers.

CX 161—172A-B

Q. "Which of these dealers were later identified by Goodyear?"

A. No records were kept with respect to which dealers were later identified. Only with respect to CX 172B do any Atlantic personnel have any recollection, and of the

dealers listed thereon the TBA Coordinator recalls that at least the following subsequently displayed Goodyear identification:

Frank Funk
F. H. Buongiorne
Ray Cochran
Ken Alt

CX 173

Q. "Obtain TBA Bulletin #17, June 1, 1951."

A. A copy is attached. (CX 173A-E.)

CX 174, 175

Q. "How many outlets were signed as Goodyear 342 dealers or associate dealers?"

A. This information is unobtainable.

CX 177

Q. "Who is Jennings Bros.? Explain."

A. See Goodyear comments on this exhibit.

CX 179C

Q. "Obtain form referred to in D. general."

A. A copy is attached. (CX 179J.)

Q. "Was this form used in other two regions?

A. No.

CX 179D

Q. "Describe Sales Promotion Section."

A. This is a section of the Domestic Marketing Department which provides sales promotion service to that department. To that end it devises and prepares programs, projects, and material designed to increase the sale of products and services by Atlantic retail outlets of all types.

CX 179E

Q. "Explain Training Program Plan."

A. This refers to the program for conveying to Atlan-

tic field sales personnel in areas outside the three original test districts information concerning the mechanics of the sales commission plan and the products involved.

CX 179G

Q. "Explain XV 2."

343 A. At the time, lessee dealers in the New York Region paid as rental for their stations an amount equal to 6% of their gross dollar income from sales of products (other than gasoline and Diesel fuel) without regard to brand and from services rendered. Hence, if their TBA sales were reduced, rentals received by Atlantic would likwise be smaller.

Q. "Identify U. S. I."

A. U. S. Industrial Chemicals Co., Atlantic's source of menthanol or evaporative type antifreeze.

Q. "Obtain recommendation under XVII."

A. A copy of the recommendation of August 17, 1951, is attached. (CX 179K.)

CX 180, 181, 182

Q. "Describe 'Fram' and 'Purolator'."

A. "Fram" and "Purolator" are brand names of automotive oil filter equipment manufactured by Fram Corp., Providence 16, R. I. and Purolator Products, Inc., 970 New Brunswick Ave., Rahway, N. J., respectively.

CX 183

Q. "Describe Operations Department, Sales Development Committee, AR 50 design station."

A. The Operations Department is responsible for constructing, equipping and maintaining the plants, service stations and other properties under the jurisdiction of the Domestic Marketing Department.

344 The Sales Development Committee is an advisory committee of the Regional Sales Managers which makes recommendations to the Domestic Marketing Department

of action designed to increase the sales of products by Atlantic directly and through Atlantic outlets.

AR 50 is the designation of the service station design adopted by Atlantic marketing management in 1950.

* * * * * *

CX 186

Q. "Identify Mr. Bergh."

A. In July 1952, Charles F. Bergh was a buyer in Atlantic's Purchasing Department.

CX 187

Q. "Identify all names listed."

A. In September 1952—

W. L. Schmidt was Chief Accountant, Western Pennsylvania Region, Atlantic.

E. E. Sickels was Chief Accountant, Eastern Pennsylvania Region, Atlantic.

Fred Wanders was Chief Accountant, Southern Region, Atlantic.

J. O. Long was Chief Accountant, Controller's Office—Domestic, Atlantic.

345 Charles F. Bergh was a buyer in Atlantic's Purchasing Department.

J. P. Miller, Jr. was General Auditor, Atlantic.

R. G. Mulholland was Manager, TBA Section, Atlantic.

* * * * * *

346 CX 170B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.

Class	Number
2	3
3	33

CX 171B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.

Class	Number
2	0
3	6

CX 171C

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.

Class	Number
2	5
3	7

CX 172B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.

Class	Number
2	4
3	0

347 Q. "State the classifications of the 4 dealers who are recalled to have subsequently displayed Goodyear identification."

A.

Dealer	Class
Frank Funk	2
F. H. Buongiorne	2
Ray Cochran	2
Ken Alt	3

348 Mr. Ballard: May it please the Examiner, with reference to the foregoing stipulations, I would like to point out that at page 62 of the record I stated with respect to Exhibit 137 that Atlantic did not admit that the document was ever officially accepted, promulgated, or used. I further stated that Atlantic was not certain as

to the circumstances under which that document had been prepared. Subsequent investigation has disclosed that the document was in fact adopted by the New York region in connection with its 1951 sales plan, and the correct information with respect to the document is contained in the foregoing stipulation under an appropriate reference to CX 137-A through E.

Mr. Dias: Mr. Examiner, I offer for identification the following Commission documents: As 47-E, Atlantic-Lee Guaranty Form. This appears in paragraph 3 of the Stipulation.

As Commission Exhibit 226 A-H, Letter dated July 7, 1950 from Paul Castleberry, Jr., District Operating Manager (Goodyear, Newark, New Jersey) to Mr. Leon Serven, ARCo, attaching G-1204 data for the period June 12-20, 1950. (CX 226 B-H.) This appears in paragraph 13 of the Stipulation.

As Commission Exhibit 227 A-K, Letter dated August 18, 1950, from Assistant Controller, ARCo, to Goodyear in re Form G-1204 data for the Newark District, June 21—July 20, 1950. (CX 227 B-K:) This appears in paragraph 13 of the Stipulation.

349 As Commission Exhibit 228 A-K, Goodyear Form G-1204 data for the Newark District, July 21—August 20, 1950. This appears in paragraph 13 of the Stipulation.

As Commission Exhibit 140 A-C, ARCo Form B-139, revised October, 1951. This appears in paragraph 23 of the Stipulation.

As Commission Exhibit 145 A-D, ARCo inter-office letter dated 2/11/52 from R. M. Taitt to Mr. William Stockton, in re "Credit Card Sales", with attached list. (CX 145 B-D.) This appears in paragraph 24 of the Stipulation.

As Commission Exhibit 155 I-M, Appendices C (CX 155 I), D (CX 155 J, K); E (CX 155 L) and Summary (CX 155 M), to 1951 New York Region Sales Plan. This appears in paragraph 27 of the Stipulation.

As Commission Exhibit 160 Q-Y, South Jersey District Dealer list referred to in CX 160 A. This appears in paragraph 34 of the Stipulation.

As Commission Exhibit 161 A-B, List of 46 Dealers referred to in CX 161. This appears in paragraph 35 of the Stipulation.

As Commission Exhibit 165 A-C, Letter dated August 28, 1951, from A. P. DeWolf (DeWolf Valance Company) to Goodyear, Attention J. O'Neil, enclosing two lists referred to in letter. This appears in paragraph 35a of the Stipulation.

As Commission Exhibit 167 A-M, List of Atlantic 350 Dealers in various Districts referred to in CX 167. This appears in paragraph 35a of the Stipulation.

As Commission Exhibit 173 A-E, ARCo.'s "Goodyear T. B. A. Bulletin #17", dated June 1, 1951 (CX 173 A-C), enclosing Goodyear Progress Reports through 5/21/51 (CX 173 D) and 5/28/51 (CX 173 E). This appears in paragraph 37 of the Stipulation.

As Commission Exhibit 179 J, New York Region Form, unidentified by number, entitled "Atlantic—Goodyear Accounts (Signed on G-1209)", referred to in "D. General" on CX 179 C. This appears in paragraph 37 of the Stipulation.

As Commission Exhibit 179 K, Recommendation of 8/17/51, commencing "Petroleum Representative—Review and Recommendation)", referred to in "XVII Petroleum Representative" on CX 179 G. This appears in paragraph 37 of the Stipulation.

Hearing Examiner Kolb: The documents will be marked for identification as described.

(The documents referred to were marked Commission's Exhibits 47-E, 226 A-H, 227 A-K, 228 A-K, 140-A-C, 145 A-D, 155 I-M, 160 Q-Y, 161 A-B, 165 A-C, 167 A-M, 173 A-E, 179-J, and 179-K for identification.)

351 Mr. Dias: I offer the above described documents in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Ballard: No objection to any of the exhibits.

Mr. Mason: Goodyear's position as to the documents so offered, as to 47-E, no objection.

Hearing Examiner Kolb: 47 will be received in evidence as Commission Exhibit 47-E.

(The document referred to, heretofore marked COMMISSION EXHIBIT 47-E for identification, was received in evidence.)

Mr. Mason: As to 226-A through H, no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 226-A to H.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 226-A through H for identification, was received in evidence.)

Mr. Mason: 227-A to K, no objection.

Hearing Examiner Kolb: The document will be received in evidence.

(The document referred to, heretofore marked COMMISSION EXHIBIT 227-A through K for identification, was received in evidence.)

Mr. Mason: As to Exhibit 228-A to K, no objection.

Hearing Examiner Kolb: The document will be re-
352 ceived in evidence.

(The document referred to, heretofore marked COMMISSION EXHIBIT 228-A to K for identification, was received in evidence.)

Mr. Mason: As to offered Exhibit 140-A through C, no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 140-A through C.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 140-A through C for identification, was received in evidence.)

Mr. Mason: As to Commission Exhibit 145-A through D, we have the same objection that we had I believe to 145, that it was a document which was internal to Atlantic; that there is no indication that it was received by Goodyear or known to Goodyear, and that it should not be binding on Goodyear.

Hearing Examiner Kolb: The document 145-A to D will be received in evidence as to Atlantic, and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION EXHIBIT 145-A through D for identification, was received in evidence.)

Mr. Mason: As to offered Exhibit 155-I to M, Goodyear has the same objection.

Hearing Examiner Kolb: The document will be re-
353 ceived in evidence as Commission Exhibit 155-I to M as to Atlantic, subject to motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION EXHIBIT 155-I through M for identification, was received in evidence.)

Mr. Mason: As to 160-Q to Y, we have no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 160-Q to Y.

(The document referred to, heretofore marked COMMISSION EXHIBIT 160-Q to Y for identification, was received in evidence.)

Mr. Mason: As to Commission Exhibit 161-A and B, this is a list which appears to be an internal Atlantic document. We have no indication from our own records that we ever received it, and accordingly object to its being binding on Goodyear.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 161-A and B as to Atlantic, and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COM-

MISSION EXHIBIT 161-A and B for identification, was received in evidence.)

Mr. Mason: As to 165-A through C, we have no objection.

Hearing Examiner Kolb: The document will be re-
354 ceived in evidence as Commission Exhibit 165-A through C.

(The document referred to, heretofore marked COMMISSION EXHIBIT 165-A through C for identification, was received in evidence.)

Mr. Mason: As to 167-A through M, we have no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 167-A through M.

(The document referred to, heretofore marked COMMISSION EXHIBIT 167-A through M for identification, was received in evidence.)

Mr. Mason: As to 173-A through E, it is our understanding these are internal Atlantic documents as to which Goodyear had no notice, and therefore accordingly object.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 173-A through E as to Atlantic, subject to a motion to strike by Goodyear.

Mr. Mason: As to 179-J, it appears to be a form as such. We haven't heretofore objected to Atlantic forms, but as I understand it this is connected up with an earlier document, 179-A to I, which is an internal memorandum of Atlantic, and I gather this is being introduced as an elaboration, and in that sense we do object to its introduction.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 179-J as to Atlantic,
355 subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION EXHIBIT 179-J for identification, was received in evidence.)

Mr. Mason: As to 179-K, we have an objection, that it is an internal Atlantic document as to which there is no indication that Goodyear had notice.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 179-K, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION EXHIBIT 179-K for identification, was received in evidence.)

356 Hearing Examiner Kolb: United States of America, Before Federal Trade Commission. In the Matter of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

Stipulation re testimony of the Goodyear Tire & Rubber Company, and The Goodyear Tire & Rubber Company, Inc. ("Goodyear") personnel.

Counsel for respondent, The Goodyear Tire & Rubber Company, and The Goodyear Tire & Rubber Company, Inc. ("Goodyear"), and counsel supporting the Complaint agree and stipulate that if appropriate officers and employees of Goodyear were called as witnesses by counsel supporting the Complaint in this proceeding, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding. For the purpose of this stipulation both the Goodyear Tire & Rubber Company and the Goodyear Tire & Rubber Company, Inc., are referred to as "Goodyear".

357 **Goodyear Response to Request for Additional Information Concerning Certain Exhibits.**

CX 23

Q. "Date of Document."

A. January or February, 1950.

Q. "Obtain ten issues of Goodyear Merchandiser furnished Oil Company accounts."

A. Submitted herewith. (CX 23-C to 23-L, inc.)

Q. "(Obtain) special Service Station Edition of Goodyear 1950 Advertising Book."

A. Submitted herewith is a photostat copy of the cover and index page of Goodyear's 1950 Advertising Book. (CX 23M.) Goodyear knows of no "special Service Station Edition" of this book and believes the reference thereto in CX 23 A is a reference to Goodyear's 1950 Advertising Book. This book contains 116 pages and Goodyear has been able to locate only one copy. This is available for inspection or copying, if necessary.

CX 25

Q. "Date, place, etc., of meetings."

A. Information is set forth on CX 24-B.

CX 26

Q. "Date, place, etc., of meetings."

A. Goodyear-Atlantic dealer meetings were held during March and April, 1951 in the following cities:

358 New England Region: Boston, Mass., N. Boston, Mass., S. Boston, Mass., Providence, R. I., Worcester, Mass., Springfield, Mass., Pittsfield, Mass., Hartford, Conn., Bridgeport, Mass., New Haven, Conn., Fall River, Mass.

New York Region: New York, N. Y., Buffalo, N. Y., Rochester, N. Y., Danville, N. Y., Syracuse, N. Y., Oneida, N. Y., Elmira, N. Y., Binghamton, N. Y., Watertown, N. Y., Malone, N. Y., Albany, N. Y., Newburgh, N. Y.

Philadelphia, Pa.-New Jersey Region: Philadelphia, Pa. (3 meetings), Trenton, N. J., Camden, N. J., Atlantic City, N. J.

CX 28

Q. "Date."

A. Shortly prior to February 27, 1951.

CX 30-31

Q. "Dates."

A. Shortly prior to February 27, 1951.

CX 35-36

Q. "Develop further data re Schrader Inventory. Is Schrader part of Goodyear TBA line, etc."

A. Schrader products were and still are part of the Goodyear TBA line. When Atlantic adopted the sales commission plan it had no need for its inventory of Schrader products. Goodyear was willing to take over this inventory and thought this was easier than the proposed arrangement whereby Atlantic would return the goods to Schrader.

359 CX 51

Q. "Obtain identification Form A-98101L."

A. Submitted herewith is the current version of Form A-98101L. (CX 51 A) No copies of the version in use as of 8/7/51 have been located.

CX 11

Q. "Identify."

A. This exhibit was written by R. W. Keil and J. W. Basista of Goodyear shortly prior to the commencement of

the Newark test program which commenced on June 12, 1950. It was intended to be a tentative outline for field representatives to guide them in organizing the test. R. W. Keil was then working on the Newark program. He is now a Goodyear Petroleum Representative in New York assigned to the Shell program. J. W. Basista is identified on the Goodyear list of "Names Appearing on Documents."

Q. "What is the extent of Newark District territory?"

A. Goodyear's Newark District consists of the following counties:

N. Y.: Orange, Rockland, Sullivan.

N. J.: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren (except for Alpha and Phillipsburg).

CX 17

Q. "Identification Division, Advertising Depart-
360 ment (Goodyear)—Describe function."

A. The chief function of the Identification Division, Advertising Department is to furnish to Goodyear dealers signs and display materials to identify them as sales outlets for Goodyear products.

CX 18

Q. "Was Suburban Oil Co., Mt. Vernon, N. Y. signed to Goodyear contract?"

A. No.

CX 19

Q. "Reference to Field Operating Department."

A. We assume that this is a request for a general description of the Field Operating Department. This department, formerly officially designated Wholesale Field Operating Department, is now called Field Operating Control. It performs the function of prescribing and adminis-

tering procedures to be followed in executing the sales policies established by the sales departments. The Department has jurisdiction over all district offices, field sales accounting offices and five Car and Home warehouses.

CX 24

Q. "Date."

A. Shortly prior to February 27, 1951.

Q. "See 24-C reference to Phillipsburg meeting this week and display used there. Was this Phillipsburg, N. J.?"

361 A. It is not now known whether or not the reference is to Phillipsburg, N. J. In any event, the meeting referred to has no connection with Atlantic Refining Co. or with the Atlantic TBA program.

Q. "In what towns and cities, etc. were Dealer Meetings held?"

A. See response for CX 26.

Q. "Reference to Goodyear men."

A. We assume this is a request for identification of the Goodyear men referred to in the document. See Goodyear list of "Names Appearing on Documents."

Q. "Reference to Advertising Dept. Describe generally."

A. The advertising Department at Goodyear is headed by K. C. Zonsius, Director of Advertising, who reports to Mr. R. S. Wilson, Executive Vice President.

Under Mr. Zonsius are various managers and staff personnel divided generally according to product groupings.

The function of the Advertising Department is to determine promotion strategy in conjunction with the Sales Departments, to translate strategy into advertising, usually in conjunction with outside agencies, and either to supervise its publication by Goodyear in various media or to make it available to Goodyear's customers for their own use as they may desire.

CX 32

362 Q. "Review for identification of names."

A. Names are: W. E. Blank, Sales Manager, Replacement Sales, Auto-Lite Battery Corporation; L. A. Knight, of Auto-Lite; J. C. Thomas, Manager, Storage Battery and Brake Lining, Goodyear.

CX 34.

Q. "Reference to B-19 and B-19A forms (obtain)."

A. Copies of Form B-19 as used in 1951 cannot be found. Form B-19A was merely a gummed sticker with a number on it that was attached to the returned tire so as to identify the tire with the customer's claim.

Q. "Also reference to Service Department Policy. Describe generally."

A. Goodyear's Service Policy is based on its Lifetime Tire Guarantee:

> "Every tire or tube of our manufacture bearing our name and serial number, is guaranteed to be free from defects in workmanship and material without limit as to time or mileage. If our examination shows such tire or tube has failed under the terms of this guarantee, we will either repair it or make a reasonable allowance on the purchase of a new tire or tube.
>
> "This guarantee is made for the exclusive benefit of the owner actually using these products, is not assignable, and no claim hereunder will be recognized
> 363 unless submitted on our standard claim form duly filled out and signed by such owner.
>
> "There is no other warranty or liability, express or implied, applicable to these products. No representative has authority to make any representation, promise, or agreement except as stated herein."

With the exception of the second paragraph, which was added in 1952, this has been the form of guarantee in force since prior to March, 1951.

By referring claims for adjustment to Goodyear, tires may be adjusted under this guarantee by Goodyear dealers or stores, either by repairing them free of charge or making a reasonable allowance on a replacement. When a dealer presents to Goodyear a repair bill or a tire properly adjusted in accordance with Goodyear's policy, he is reimbursed for his expense of adjustment, plus a handling fee of 10% of the adjustment price. This applies to all Goodyear dealers, whether or not covered by a Sales Commission Plan.

CX 39.

Q. "Was document enclosed with CX 38."

A. No. It was presumably enclosed with CX 37.

CX 46.

Q. "What is Battery Merchandiser?"

A. A battery merchandiser is a battery display rack with a trickle charger so that batteries placed for dis-
364 play will be kept charging.

CX 56-57-58

Q. "56 refers to attached from Eddie Sauter. Obtain letter. Identify Republic."

A. Copy of letter is submitted herewith. Republic is identified in the letter. (CX 56-A)

CX 59

Q. "Identify signers."

A. Victor Holt, Jr. and W. D. Shilts for Goodyear, and J. G. Jordan, Shell Vice-President.

Q. "Was this the first contract with Shell?"

A. This is the first and only written contract with Shell.

CX 60

Q. "Do 8 and 12 totals refer to towns or stations?"

A. The answer to this appears in the document itself. With respect to the totals on CX 60-A, there is an omission or error in addition in the column containing the figure "8".

CX 61

Q. "Who were present at discussion?"

A. S. A. Gaylord, Goodyear Petroleum Sales Department; R. G. Miller, Goodyear District Manager, Oklahoma City; J. A. Bailey, Goodyear Division Manager, Southwest Division; L. J. Wilmeth, Shamrock.

CX 65

Q. "Reference to Identification Department (G) describe."

365 A. See response for CX 17.

Q. "Also check names, 65-C-D. C. Roads, Fred La Boyteaux, Ed Bohmer, R. E. Sewell and J. L. Warren."

A. On the date in question these men held the following positions with Goodyear:

D. C. Roads—Staff, Sales Promotion—Advertising.

Fred La Boyteaux—Manager, Store Planning & Display Dept.

Ed Bohmer—Section Head, Sales Accounting Dept.

R. E. Sewell—Petroleum Representative, N. Y.

J. L. Warren—Staff. Petroleum Sales Dept.

CX 66

Q. "Check statistics—are more recent available?"

A. This document was not prepared by Goodyear. However, the figures on CX 66-F reflect the estimate of Mr. Thorp, Goodyear's Western Division Manager and an experienced man in the TBA business. They were not based on officially published figures. Goodyear does have availabe corresponding figures for subsequent years.

CX 64

Q. "Check Identification."

A. Signed by Victor Holt, Jr. and W. D. Shilts for Goodyear, and J. R. McWilliams, Vice-President of Carter.

CX 67

Q. "Check Identification."

A. There are no signatures.

366 CX 68

Q. "Check Identification."

A. Signed by J. E. Mayl and W. M. Mettler for Goodyear, and John R. Sherwood, Vice-President of Sherwood.

CX 69

Q. "Check Identification."

A. Signed by R. S. Wilson and W. M. Mettler for Goodyear, and J. E. Dyer for Sinclair.

CX 70

Q. "Check Identification."

A. Signed by J. E. Mayl and W. M. Mettler for Goodyear, and Ernest L. Hughes for Sinclair.

CX 71

Q. "Check Identification."

A. Signed by Victor Holt, Jr. and W. M. Mettler for Goodyear, and T. E. Fitzgerald, Vice-President of Mid-Continent.

CX 73

Q. "Identify names."

A. Names appearing on the document and not identified are as follows:

J. C. Arnold—Manager, South-Central Division (Goodyear)

S. A. Gaylord—Manager, Petroleum Sales Dept. (Goodyear)

R. G. Miller—District Manager, Oklahoma City (Goodyear)

C. R. Mitchell—Petroleum Representative (Goodyear)
S. B. Caldwell—Mid-Continent, Southern Division Manager.
367 Bill Harris—Mid-Continent, Southern Division TBA Manager

Q. "(Identify) also references to D-X dealers, 'A' bracket, etc."

A. "D-X" is the trade name of Mid-Continent petroleum products. "A" bracket refers to the billing level of a dealer annually purchasing $15,000 or more of Goodyear merchandise.

Q. "Reference to 'Dual Program' Explain."

A. This refers to the fact that Mid-Continent had a TBA program with Firestone in addition to its program with Goodyear.

CX 74

Q. "Identify signatures."

A. Signed by Victor Holt, Jr. and W. M. Mettler for Goodyear, and M. H. Robineau, President of Frontier.

CX 75

Q. "Identify C. W. Thorp."

A. Goodyear's Division Manager, Los Angeles.

Q. "Reference to Petroleum Sales Dept. Describe generally."

A. The Petroleum Sales Department is concerned with the selling of Goodyear TBA by the outlets of petroleum companies which are both refiners and marketers of petroleum products. This department promotes selling ideas, policies and programs, and coordinates these with the activities of petroleum company sales personnel.

CX 77

Q. "Identify signatures."

368 A. Signed by Victor Holt, Jr. and W. M. Mettler

for Goodyear, and W. R. Reitz, President of Quaker State.

CX 78

Q. "Check date, author."

A. Author—J. W. Basista, Goodyear Petroleum Sales Department. Date—Late Spring, 1952.

Q. "Refers to Sales Research Department. Describe generally."

A. This department is now called the Business Research Dept. It obtains, analyzes and presents company, industry and business information of special interest to officers of the company and to the various division and department managers.

CX 159

Q. "Identify Mr. Fritsch."

A. Paul R. Fritsch—Staff, Identification Division (Goodyear), now Manager of this Division.

CX 160

Q. "Identify J. O'Neill."

A. Goodyear's Division Petroleum Representative, Philadelphia, Pa., now Assistant District Manager, Philadelphia.

CX 177

Q. "Who is Jennings Bros.? Explain."

A. According to the document, this was an independent wholesalers in Cranston, Rhode Island. Mr. Gaylord did not know if this Atlantic account was to be classified as
an oil company supplying dealer, in which case Atlan-
369 tic would get a 10% commission on Car & Home
merchandise, or whether it qualified as a jobber, in which case Atlantic would get a 7½% commission. Either way, it made no difference to Jennings.

370 **Names Appearing On Documents 10-29-56.**

Names		Positions
Howard E. Ammerman	1-1-34	Manager Service Department
	8-1-56	Special Assignments
Howard F. Aul	3-1-50	Philadelphia, Pennsylvania Service Representative
	1-1-56	Philadelphia, Pennsylvania Manager District Service Department
Louis A. Barnes	4-1-50	Assistant Manager, Wholesale Field Operations
	10-1-54	Manager, Wholesale Operating
	1-1-56	Manager, Wholesale Operating
Joseph W. Basista	6-1-50	Senior Staff Petroleum Sales Department
	11-1-56	Assistant Manager Petroleum Sales
David T. Buchanan	1-1-40	Staffman Advertising
	1-1-56	Manager, Advertising and Sales Promotion
Wilford E. Cameron, Sr.	7-1-39	Staff Man Petroleum Sales Retired—10-1-51
Paul Castleberry, Jr.	1-23-50	Newark, New Jersey District Oper. Manager
	10-1-50	Birmingham, Alabama Credit and Collection Clerk
	10-16-50	GS Birmingham, Alabama Assistant Store Manager—Operating
Russel S. Colton	4-6-50	Albany, New York District Service Representative
	7-28-52	Albany, New York Headquarters Burlington, Vermont Field Representative #2
	Exited 4-30-55	
Henry F. Cook	7-31-46	Senior Staff
	1-1-56	Advt. Manager—Tire Depts.

371

William W. Evans	3-1-49	Syracuse, N. Y. Service Repres.
	1-2-52	Syracuse, New York Headquarters Auburn, New York Field Repres.
	Exited 7-15-53	
Paul R. Fritsch	1-1-40	Staff Man—Identification
	1-1-56	Manager—Identification Div.
Samuel A. Gaylord	1-1-34	Manager Petroleum Sales
	11-1-56	Special Assignments
Henry G. Harper, Jr.	4-1-45	Manager Associated Mdse.
	11-1-51	New Toronto, Canada—Vice President in charge sales

Names		Positions
Louis R. Harrah	2-16-45	Staff Man
	Deceased—8-17-50	
Victor Holt, Jr.	5-1-44	Manager Tire Department
	12-1-49	Vice President Chg. Tire Sales Div.
	4-2-56	Vice President
Charles F. Knight	4-1-50	New York, New York Assistant District Manager
	6-1-52	Buffalo, New York District Manager
	11-1-54	Cleveland, Ohio District Manager
	1-1-56	Cleveland, Ohio Assistant Div. Manager Retail Headquarters, Chicago, Illinois
	8-16-56	Cleveland, Ohio Assistant Division Manager Retail
John A. Lewin	6-1-44	Manager—Dealer Division
	Present	Manager—Dealer Division
Isaac D. Love	6-1-49	Newark, New Jersey District Manager
Fred W. McConky, Jr.	12-15-44	New York, New York Manager N. E. Divn.
	12-1-52	New York, New York Manager N. E. Divn. Assistant Vice President
372		
Joseph E. Mayl	6-1-44	Vice President Sales Manager Tire Sales Div.
	12-1-49	Vice President & Sales Coordinator
	6-27-52	Vice President & General Manager Films—Foam & Flooring Div.
William M. Mettler	1-1-34	Assistant Secretary
	Deceased—6-7-55	
Clair L. Metzger	6-15-48	Assistant Manager Trade Relations
	11-1-51	Manager Associated Merchandise.
Jay T. Miller	10-21-36	Boston Chg. Service Dept.
	7-1-51	Boston, Massachusetts Service Representative
	1-1-56	Boston, Massachusetts Manager Dist. Service Dept.
Joseph W. O'Neill	1-1-47	Philadelphia, Pennsylvania Field Representative
	8-1-51	Philadelphia, Pennsylvania Div. Petroleum Representative
	11-1-54	Philadelphia, Pennsylvania Assistant District Manager

Names		Positions
Clarence C. Osmun	5-1-44	Manager Trade Relations
	12-1-52	Sales Managers Office
	Retired—2-29-56	
William O. Reid	7-7-47	Hartford, Connecticut Dist. Service Repres.
	1-1-56	Hartford, Connecticut Mgr. Dist. Service Dept.
Charles E. Ross	12-1-47	Manager Retread & Repair Matls. Sales
	3-16-54	Manager Retread & Repair Matls. Sales
	10-16-54	Senior Staffman Comml. Sales
Harry J. Ryan	11-1-46	New York, New York District Manager
373		
Edward C. Sauter	12-1-50	Pittsburgh, Pennsylvania District Manager
	5-1-54	Manager Cycle Tire Sales
John W. Silk	8-16-50	Buffalo, New York Service Representative
	10-1-51	New York, New York Petroleum Repres. Tr.
	11-1-51	New York, New York Field Representative #1
	6-1-52	New York, New York Field Representative #2
	Exited—6-30-52	
Joseph C. Thomas	1-1-50	Manager Storage & Brake Lining
George L. Wright	5-1-49	Manager Wholesale Field Oper. Department
	Exited—4-15-51	
Kenneth C. Zonsius, Sr.	9-1-36	Manager—Auto Tire Div.—Tire Department
	1-1-52	Director of Advertising
	1-1-56	Director of Advertising

374 Mr. Dias: Mr. Examiner I would like to have the following documents identified for the record:

As Commission's Exhibit 23-C, "Goodyear merchandiser, January-February, 1950," (12 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibits 23-D, 23-D-1, and 23-D-2, "Goodyear merchandiser, March 1950" (12 pages), and inclosed flyer entitled "Goodyear New Farm Tire Demon-

strator" (2 pages), and Business Reply Post Card identified as "MDSR-March, 1950." The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibits 23-E and 23-E-1, "Goodyear Merchandiser, April, 1950" (8 pages), and inclosed flyer headed "First Peak Promotion in '50 Breaks April 19-29" (2 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-F, "Goodyear Merchandiser, May 1950" (8 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibits 23-G, 23-G-1, and 23-G-2, "Goodyear Merchandiser, June, 1950" (12 pages), and inclosed flyer entitled "Special July 4th Offer" (2 pages), and Business Reply Post Card relating thereto. The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-H, "Goodyear Merchandiser, July, 1950" (12 pages). The related Commission's Exhibit is Number 23-A and B.

375 As Commission's Exhibits 23-I and 23-I-1, "Goodyear Merchandiser, August 1950" (12 pages), and enclosed Business Reply Post Card identified as "MDSR-August 1950." The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-J, "Goodyear Merchandiser, September 1950" (8 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-K, "Goodyear Merchandiser, October 1950" (8 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-L, "Goodyear Merchandiser, November-December 1950" (8 pages). The related Commission's Exhibit is Number 23A and B.

As Commission's Exhibit 23-M, Cover and Index Page of Goodyear Book entitled "1950 Advertising, Dealer Ad-

vertising and Sales Promotion". (2 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 51-A, Goodyear Form A 98101L (current) entitled "Request for Identification Field Service." The related Commission's Exhibit is Number 51.

As Commission's Exhibit 56-A, Goodyear Inter-Company letter dated 8-2-51 from E. C. Sauter, District Manager (Pittsburgh, Pennsylvania) to F. W. McConky, Jr., Manager, Northeast Division, New York, New York. The related Commission's Exhibit is Number 56.

376 Hearing Examiner Kolb: The exhibits may be marked as requested.

(Whereupon, the documents referred to were marked Commission's Exhibits 23-C, 23-D, 23-D-1, 23-D-2, 23-E, 23-E-1, 23-F, 23-G, 23-G-1, 23-G-2, 23-H, 23-I, 23-I-1, 23-J, 23-K, 23-L, 23-M, 51-A, and 56-A for identification.)

Mr. Dias: I offer the above-described documents in evidence.

Hearing Examiner Kolb: Are there any objections?

Mr. Mason: We have no objections to the documents offered.

Mr. Ballard: I would like to note for the record that my former objection to Commission's Exhibit 56 will extend to 56-A.

Hearing Examiner Kolb: There being no objection, the following documents will be received in evidence: Commission's Exhibits 23-C, 23-D, 23-D-1, 23-D-2, 23-E, 23-E-1, 23-F, 23-G, 23-G-1, 23-G-2, 23-H, 23-I, 23-I-1, 23-J, 23-K, 23-L, 23-M, and 51-A. Commission's Exhibit 56-A will be received in evidence as to Goodyear, subject to a motion to strike by Atlantic.

(Whereupon, COMMISSION'S EXHIBITS 23-C, 23-D, 23-D-1, 23-D-2, 23-E, 23-E-1, 23-F, 23-G, 23-G-1, 23-G-2, 23-H, 23-I, 23-I-1, 23-J, 23-K, 23-L, 23-M, 51-A, and 56-A were received in evidence.)

377 Hearing Examiner Kolb: We will take a five-minute recess.

(A recess was taken.)

378 Mr. Dias: Mr. Examiner, I would like to have the following documents marked for identification:

As Commission Exhibit 248-A, a map of area comprising the ARCo Philadelphia — Suburban District.

As Commission Exhibit 249, Map of area comprising the ARCo Wilmington, Delaware, and Baltimore, Maryland Districts.

As Commission Exhibit 250, letter dated November 2, 1955, from M. G. Davis, ARCo, Manager of Marketing, Eastern Pennsylvania Region, to Mr. Norris A. Stein, Lancaster & Ford Avenues, Wilmington, Delaware.

As Commission Exhibit 251, letter dated February 7, 1956, from M. G. Davis, ARCo, Manager of Marketing, Eastern Pennsylvania Region, to Mr. Alfred H. Trivits, East Side Route #13 & Oak Lane, Laurel, Delaware.

As Commission Exhibit 252, letter dated December 21, 1956, from M. G. Davis, ARCo, Manager of Marketing, Eastern Pennsylvania Region, to Mr. William A. White, Sr., 205-09 French Street, Wilmington, Delaware.

As Commission Exhibit 253, letter dated May 2, 1955, from H. M. Hathaway, District Manager, ARCo (Baltimore) to Messrs. Abraham Berman and Morton Shor, Atlantic Service Station, Reisterstown Road and Fordleigh Lane, Baltimore, Maryland.

As Commission Exhibit 254-A, letter dated December 8, 1953, from J. C. Burns, District Manager, ARCo (Baltimore), with notation attached, to Mr. Michael J. Clifford, Park Heights and Garrison Avenues, Baltimore,

379 Maryland.

As Commission Exhibit 254-B, letter dated January 4, 1954, from M. G. Davis, Manager of Marketing, Southern Region, ARCo (Termination Notice) to Mr. Mi-

chael J. Clifford, Park Heights and Garrison Avenues, Baltimore, Maryland.

As Commission Exhibit 255, letter dated October 13, 1954, from A. R. Sanborn, District Manager, Philadelphia-Suburban District, ARCo to Mr. G. B. Gason-Niebling, Carlisle Street and Hunting Park Avenue, Philadelphia, Pennsylvania.

As Commission Exhibit 256-A, letter dated September 20, 1954, from Leslie Geer, ARCo, to Mr. Albert J. Hoffman, 1502 Tonnelle Avenue, North Bergen, New Jersey.

As Commission Exhibit 256-B, letter dated September 30, 1954, from Stanley W. Bradley, Esq., Bradley and Huck, 7 Hillside Avenue, Tenafly, New Jersey, to ARCo, Newark 5, New Jersey, Attention: Mr. Leslie Geer.

As Commission Exhibit 256-C, document entitled "Mutual Consent of Cancellation," between Mr. Albert J. Hoffman, North Bergen, New Jersey, and ARCo, dated November 15, 1954.

As Commission Exhibit 257-A, letter dated November 12, 1953, from "PNJ:EMcC", ARCo, to Mr. Aniello L. Iacona, Providence Road and South Avenue, Secane, Pennsylvania.

As Commission Exhibit 257-B, letter dated November 19, 1953, from Francis J. Catania, Esq., Catania & Gorbey, 106 East Fifth Street, Chester Del. Co. Penna., to ARCo, Philadelphia 1, Pennsylvania, Attention: A. R. San-
380 born.

As Commission Exhibit 257-C, letter from Legal Department, ARCo, dated November 25, 1953, to Francis J. Catania, Esq., 106 East Fifth Street, Chester, Pennsylvania, with cc to Bartley T. Garvey, Esq., Federal Trade Commission, Washington 25, D. C.

As Commission Exhibit 258-A, letter dated May 22, 1956, from Leslie Geer, ARCo, to Mr. Thomas J. Policastro, Hudson Boulevard and 88th Street, North Bergen, New Jersey.

As Commission Exhibit 258-B, letter dated June 4, 1956, from Leslie Geer, ARCo, to Mr. Thomas J. Policastro, Hudson Boulevard and 88th Street, North Bergen, New Jersey.

As Commission Exhibit 259, letter dated July 5, 1956, from "LEC:MEM," District Manager, ARCo, to Mr. A. Bennett, Pawtucket and Ferris, Rumford 16, Rhode Island.

As Commission Exhibit 260, letter dated July 13, 1956, from "LEC:MEM", District Manager, ARCo, to Mr. R. L. Bisson, 469 Benefit Street, Pawtucket, Rhode Island.

As Commission Exhibit 261, letter dated October 21, 1955, from ARCo, By:—District Manager ("LEC/mw"), to Mr. Charles Davis, West Shore Road and Carpenter Street, Warwick, Rhode Island.

As Commission Exhibit 262, letter dated April 1st, 1954, from ARCo, W. F. van Haagen, District Sales Manager, to Mr. Herman DeFelice, c/o Herm's Atlantic Serv. Sta., Willow & Nicoll Streets, New Haven, Connecticut.

381 As Commission Exhibit 263, letter dated February 21, 1956, from ARCo, District Manager "LEC:MEM", to Mr. Leo F. DiMaio, 392 Broadway & Courtland Street, Providence, Rhode Island.

As Commission Exhibit 264, letter dated January 12, 1956, from ARCo, District Manager ("LEC:MEM"), to Mr. Howard F. Hambly, Atlantic Super Service, 205 Meeting Street, Providence, Rhode Island.

As Commission Exhibit 265, letter dated April 1st, 1954, from ARCo, W. F. van Haagen, District Sales Manager, to Mr. Lawrence E. Noel, c/o Larry's Atlantic Serv. Sta., Watertown, and Bunker Hill Avenues, Waterbury, Connecticut.

As Commission Exhibit 266, letter dated July 27, 1956, from ARCo, R. P. Eldridge, to Mr. J. D. Ouelette, Main and Bancroft Streets, Springfield, Massachusetts.

As Commission Exhibit 267, letter dated February 21,

1956, from ARCo, District Manager ("LEC:MEM"), to Mr. Joseph S. Smith, Hartford Avenue and Killingly Street, Providence, Rhode Island.

As Commission Exhibit 268-A, letter dated November 5, 1954, from ARCo, Regional Manager of Marketing ("jap"), to Mr. Joseph D. Greco, Culver Parkway and Shelford Road, Irondequoit, New York.

As Commission Exhibit 268-B, letter dated Novem-
382 ber 10, 1954, from Joseph D. Greco, Culver Parkway and Shelford Road, Rochester, New York, to ARCo, Syracuse 1, New York, Attention: G. V. Ostrander.

As Commission Exhibit 269, letter dated January 5, 1955, from ARCo, W. J. McCambridge, Jr., District Manager, to Mr. Duane Olthof, Atlantic Service Station, 502 Broadway, Elmira, New York.

As Commission Exhibit 270-A, letter dated January 11, 1955, from G. V. Ostrander, Manager of Marketing, ARCo, to Mr. Walter F. Pawlowski and Mr. Matthew W. Kowalski, d/b/a Walt & Matt's Service, Bailey Avenue and Genesee Street, Buffalo, New York.

As Commission Exhibit 270-B, letter dated November 19, 1954, from John S. Wall, Acting Manager of Marketing, ARCo, to Mr. Walter F. Pawlowski and Mr. Matthew W. Kowalski, d/b/a Walt & Matt's Service, Bailey Avenue and Genesee Street, Buffalo, New York.

As Commission Exhibit 271, letter dated June 30, 1954, from J. S. Wall, Acting Manager of Marketing, ARCo, to Mr. Kenneth S. Shaw, 92-98 Broadway, Saranac Lake, New York.

As Commission Exhibit 272, letter dated August 30, 1954, from G. V. Ostrander, Manager of Marketing, ARCo, to Mr. Joseph A. Stocco, 230 Elizabeth Street, Utica, New York.

As Commission Exhibit 248-B, a map of area comprising

the ARCo Philadelphia Metropolitan and Suburban District.

383 Hearing Examiner Kolb: The exhibits may be marked as requested.

(The documents referred to were marked Commission's Exhibits 248-A and B, 249, 250, 251, 252, 253, 254-A and B, 255, 256-A, B, and C, 257-A, B, and C, 258-A and B, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268-A and B, 269, 270-A and B, 271, and 272, for identification.)

Mr. Dias: I offer the above described documents in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Mason: As to 248-A and B, and 249, we have no objection.

Hearing Examiner Kolb: Do you have any objection, Mr. Ballard?

Mr. Ballard: No, sir.

Hearing Examiner Kolb: There being no objection, the documents will be received in evidence as Commission Exhibits 248-A and B, and 249.

(The documents referred to, heretofore marked COMMISSION EXHIBITS 248-A and B, and 249 for identification, were received in evidence.)

Mr. Ballard: No objection to Exhibit 250.

Hearing Examiner Kolb: Mr. Mason?

Mr. Mason: As to offered Exhibit 250, we object on two grounds. One, that it is correspondence between

384 the Atlantic Refining Company and a stranger to this lawsuit, a document of which Goodyear has no notice.

Furthermore, it deals with a service station in an area as to which there is no sales commission arrangement in effect between Goodyear and Atlantic.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 250 as to Atlantic, and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 250 for identification, was received in evidence.)

Mr. Mason: As to Commission Exhibit 251, we have the same objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 251 as to Atlantic, and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 251 for identification, was received in evidence.)

Mr. Mason: As to Commission Exhibit 252, we have the same objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 252 as to Atlantic, and subject to a motion to strike by Goodyear.

385 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 252 for identification, was received in evidence.)

Mr. Mason: As to 253, we have the same objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 253, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 253 for identification, was received in evidence.)

Mr. Mason: As to 254-A, we have the same objection.

Hearing Examiner Kolb: The document will be received in evidence as to Atlantic, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 254-A for identification, was received in evidence.)

Mr. Mason: As to 254-B, we have the same objection.

Hearing Examiner Kolb: The document will be received

in evidence as Commission Exhibit 254-B as to Atlantic, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 254-B for identification, was received in evidence.)

Mr. Mason: As to offered exhibits 255 through 272, 386 we have only the single objection that these are letters between the Atlantic Refining Company and strangers to the proceeding as to which Goodyear had no notice.

Hearing Examiner Kolb: The following exhibits will be received in evidence: 255, 256-A to C, 257-A to C, 258-A and B, 259 through 267, 268-A and B, 269, 270-A and B, 271, and 272, as to Atlantic, subject to a motion to strike by Goodyear.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 255, 256-A to C, 257-A to C, 258-A and B, 259 through 267, 268-A and B, 269, 270-A and B, 271 and 272 for identification, were received in evidence.)

387 Hearing Examiner Kolb: The following data supplied by the Atlantic Refining Company concerning the three market areas designated by Counsel in support of the Complaint, namely, Philadelphia Suburban District; Wilmington, Delaware district; and Baltimore, Maryland district, will be received in evidence, with notation of the fact that portions of this data apply only to Goodyear, and portions apply only to Firestone.

The stipulation is as follows:

Data submitted by Atlantic Refining Company concerning the three marketing areas designated by the Federal Trade Commission in The Matter of The Goodyear Tire & Rubber Company, The Atlantic Refining Company, Corporations, Docket No. 6486. Dated: May 29, 1957.

Philadelphia-Suburban District.

1. Area comprising the Philadelphia-Suburban District: See map attached (CX 248-A).

2. Names of Atlantic and Goodyear personnel concerned with TBA in the Philadelphia-Suburban District:

(a) Names of Atlantic personnel:

J. O. Estlow—Region Manager—Philadelphia-New Jersey Region.

A. R. Sanborn—Region Sales Group Manager, Philadelphia-New Jersey Region.

F. H. Romer—Region Direct Marketing Manager, New Jersey Region.

388 W. J. Jackson—Region T. B. A. Coordinator, New Jersey Region.

E. D. Smyth—District Manager, Philadelphia-Suburban District.

C. H. Pence—Philadelphia—Suburban District Dealer Sales Manager.

G. A. Arnholt—Philadelphia—Suburban District Sales Supervisor.

W. Handy—Philadelphia—Suburban District Sales Supervisor.

E. McConaghy—Philadelphia—Suburban District Sales Supervisor.

Promotable Dealer Salesmen:

John Mantini
R. C. Dunham
Daniel Reynolds
Jack Diamond
Edward O'Driscoll
J. Kearns
Thomas Hayes
Jack Hoffman
S. Petrison
Joseph Snyder
James Gallagher
William Keen
Joseph Muldoon

General Salesmen:

W. H. Weaver
N. B. Ludwig
George Gill
Philip Hopely
E. L. McKenna
George Headly

Service Salesmen:

Matthew Murray
Don Keyser
Charles Rowland
John McKernan
J. McIvor
M. Petrillo
F. Jones, Jr.
B. McWilliams
S. McLoughlin
R. C. Ringling
E. D. Barr

389 (b) Names of Goodyear personnel with whom Atlantic personnel of this District come in contact:

T. Butler Doolittle—District Manager
Luther Hutchinson—Assistant District Manager
A. H. Shafer—Regional Petroleum Representative
J. W. Fitzgerald—District Petroleum Representative
Fred Schaake—Truck Tire Representative
J. Burke—General Line Salesman
J. Cavanaugh—General Line Salesman
Stan. Panza—General Line Salesman
C. McKeag—General Line Salesman
W. Whitaker—General Line Salesman
John Pease—General Line Salesman
John Curry—General Line Salesman
Gordon Harder—Store Manager
R. Weymouth—Store Manager

3. Names and addresses of Goodyear supply points serving dealers and distributors in the Philadelphia—Suburban District:

Goodyear Tire & Rubber Company, 2750 North Broad Street, Philadelphia, Pennsylvania.

@ Harvey W. George, 3301 Princeton Avenue, Philadelphia, Pennsylvania.

† F. C. Glenn, 8006 Germantown Avenue, Philadelphia, Pennsylvania.

* Frank Hagan, 54th and Chester Avenue, Philadelphia, Pennsylvania.

390 ** Elwood E. Kieser, 1527 Fairmount Avenue, Philadelphia, Pennsylvania.

† E. F. Miller, 809 Garrett Road, Upper Darby, Pennsylvania.

* Edward Parris, McDade Boulevard and Ashland Avenue, Glenolden, Pennsylvania.

Goodyear Tire & Rubber Company, 708 Summit Avenue, Jenkintown, Pennsylvania.

Goodyear Tire & Rubber Company, 310 Main Street, Norristown, Pennsylvania.

@ Former Atlantic contract dealer.

† Former Atlantic lessee dealer.

* Present Atlantic lessee dealer.

** Mr. Kieser conducts his TBA supply operations separately from his operations as an Atlantic lessee dealer and is classified by you as an independent Dealer Supply Point.

4. Data on the nominations of Atlantic outlets in the Philadelphia-Suburban District to Goodyear as of June 30, 1956:

Type of Atlantic Outlet	Total Number of Atlantic Outlets	Number Covered by Form G-1200†	Goodyear Classification§	
			Dealers	Associate Dealers
(a) Lessee Dealers	226	174	2*	226*
(b) Contract Dealers	434	228	6‡	289‡
(c) Distributors	0	0		
(d) Customers of Distributors	0	0		

391

* Two lessee dealers have chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, presumably because each classification offers some advantages not afforded by the other. Such dealers are included in both categories in these figures.

‡ Four contract dealers have chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, presumably because each classification offers some advantages not afforded by the other. Such dealers are included in both categories.

§ Information as to actual signing of franchise agreements is not available. It is believed that virtually all dealers covered by a G-1209 and a large majority of the customers of Atlantic supplying dealers sign at least an initial franchise.

† Indicates the number of dealers regarded as potential TBA purchasers on whose purchases, if any, a commission will be paid, and not the number to whom sales were made. Does not include 61 customers of Edward Parris and 54 customers of Frank Hagan, both of whom are Atlantic supplying dealers.

392 5. Total dollar sales of Goodyear TBA in the Philadelphia-Suburban District in 1955 on which Atlantic received a commission are shown below**. These sales figures are the actual prices paid by the Atlantic dealer, regardless of whether he is classified by Goodyear as a "Dealer" or "Associate Dealer".

Supply Points		Lessee and Contract Dealers* Tires	Batteries	Accessories	Total
Goodyear District Office	2750 N. Broad St., Phila.	$ 18,022	$ 9,363	$ 16,460	$ 43,845
Harvey W. George	3301 Princeton Ave., Phila.	140,758	33,477	65,671	239,906
F. C. Glenn	8006 Germantown Ave., Phila.	159,764	48,549	92,410	300,723
E. F. Miller	809 Garrett Rd., Bywood	136,009	41,679	62,212	239,900
Frank Hagan†	54th & Chester Ave., Phila.	81,015	16,678	32,989	130,682
Ellwood E. Kieser	1527 Fairmount Ave., Phila.	251,752	56,315	112,721	420,788
Edward Parrist†	McDade Blvd. & Ashland Ave., Glenolden	103,134	21,708	35,258	160,100
Goodyear Tire & Rubber Co.	708 Summit Ave., Jenkintown, Pa.	0	0	0	0
Goodyear Tire & Rubber Co.	310 Main St., Norristown, Pa.	0	0	0	0
*Total		$890,454	$227,769	$417,721	$1,535,944

** Atlantic has no distributors in this district.

* A breakdown between lessee and contract dealers can be obtained only by a costly and time-consuming analysis of voluminous records.

† In the case of these Atlantic supplying dealers the sales figures are the prices paid by the supplying dealer and not by his customer.

393 6. Names and addresses of Atlantic distributors in the Philadelphia-Suburban District who are covered by a Form G-1209:

Atlantic has no distributors in this district.

7. Atlantic dealers in the Philadelphia-Suburban District who became dealers of Atlantic gasoline distributors.

Not applicable.

8. Current addresses of Atlantic Training Facilities in the Philadelphia-Suburban District:

Classrooms:

Germantown Jewish Community Center, Lincoln Drive and Emlen Street, Philadelphia, Pennsylvania.

Training Stations:

Joseph Barton, Ellet and McCallum Street, Philadelphia, Pennsylvania.

Charles Schock, Henry Avenue and Leverington Street, Philadelphia, Pennsylvania.

9. Names and then current business addresses of dealers and distributors in the Philadelphia-Suburban District whose relationships with Atlantic ceased in 1954 or 1955 under the circumstances indicated:

(a) Leases or contracts cancelled during their terms are shown below. In all cases, formal termination was either by notice of cancellation from the dealer, by mutual cancellation by the dealer and Atlantic, or by death of the dealer.

394 (1) Lessee Dealers:

Leonard A. Anderson, Huntington Pike and Penn Street, Rockledge, Pennsylvania.

Harry Angelo, Island Road and Brewster Avenue, Philadelphia, Pennsylvania.

Joseph Arico, West Chester Pike and Marlboro Road, Stonehurst, Pennsylvania.

Edward F. Ausman, Montgomery Pike and Levering Mill Road, Cynwyd, Pennsylvania.

William Barton, Easton Road and Fair Oaks, Horsham, Pennsylvania.

Morris Bilson, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Morris Blum, Cheltenham Avenue and Pittman Road, Philadelphia, Pennsylvania.

W. G. Bond, Route #100, Uwchland, Pennsylvania.

Thomas Calvanesa, Chester Pike and Knowles Avenue, Glenolden, Pennsylvania.

Lynn Abbott Carden, Wycombe Avenue and Marshall Road, Lansdowne, Pennsylvania.

Bartholomew G. Casiello, Rising Sun Avenue, Front and Louden Streets, Philadelphia, Pennsylvania.

John Chambers, Chester Pike and Clifton Avenue, Sharon Hill, Pennsylvania.

Arthur Chapis, West Chester Pike and Naylor's
395 Run Road, Llanerch, Pennsylvania.

Albert Chase, Roosevelt Boulevard and Adams Avenue, Philadelphia, Pennsylvania.

William A. Crisman, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Arthur R. Cummins, DeKalb Pike and Ford Street, Bridgeport, Pennsylvania.

Ralph D'Ambrosio, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Alex DeCarlo, Long Lane and Alderbrook Road, Stonehurst, Pennsylvania.

Walter J. Donko, Durham and Hulmeville Roads, Midway, Pennsylvania.

Frank Eney, Jr., 262 Lincoln Highway, Fairless Hills, Pennsylvania.

William Eyer, Township Line Road and Church Road, Abington, Pennsylvania.

William R. Foster, 8759 Frankford Avenue, Philadelphia, Pennsylvania.

David J. Fowler, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Archibold W. Garvin, Jr., Bethlehem Park and Valley Green Road, Whitemarsh Township, Pennsylvania.

G. B. Gason-Niebling, Carlisle Street and Hunting Park Avenue, Philadelphia, Pennsylvania.

396 Mario Germani, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Angelo Giordano, 22nd and Bainbridge Streets, Philadelphia, Pennsylvania.

Alfred Godino, Belmont Avenue opposite Jefferson Street, Lower Merion Township, Pennsylvania.

John P. Hanlon, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Thomas Hanna, Front and Coral Streets, Philadelphia, Pennsylvania.

George G. Hewitt, Chester Pike and Fairview Road, Leiperville, Pennsylvania.

George Hinds, Frankford and Briston Pike, Croydon, Pennsylvania.

Louis Huber, Southwest Corner York Road and Moreland Avenue, Hatboro, Pennsylvania.

T. A. Kennedy, Cottman Street and Roosevelt Boulevard, Philadelphia, Pennsylvania.

Howard M. Kinsey, Route No. 100, Uwchland, Pennsylvania.

Albert Kohler, 22nd and Edgemont Avenue, Chester, Pennsylvania.

Samuel Levin, 5th and Bristol Streets, Philadelphia, Pennsylvania.

Angelo F. Lutz, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

397 Angelo Lutz, Belmont Avenue opposite Jefferson Street, Lower Merion Township, Pennsylvania.

Thomas Major, Torresdale Avenue and Levick Street, Philadelphia, Pennsylvania.

Harold J. Maloney, Frankford and Tyson Street, Philadelphia, Pennsylvania.

Charles A. McCafferty, Baltimore Pike and Providence Road, Media, Pennsylvania.

John and Robert McClay, Aramingo, Frankford and Deveraux Streets, Philadelphia, Pennsylvania.

Charles McKeefrey, West Chester Pike and Kirklyn Avenue, Kirklyn, Pennsylvania.

John J. Medelka, Lansdowne and Stratford Avenue, Pennsylvania.

Harold Miller, Island Road and Brewster Avenue, Philadelphia, Pennsylvania.

Anthony J. Morengo, Frankford Avenue and Tyson Street, Philadelphia, Pennsylvania.

Ronald C. Morrison, Rt. No. 100, Uwchland, Pennsylvania.

John A. Murray, Wadsworth and Cheltenham Avenues, Philadelphia, Pennsylvania.

Svend Nielsen, 262 Lincoln Highway, Fairless Hills, Pennsylvania.

Herman J. Polsky, N. W. Corner Bustleton Avenue and Knorr Street, Philadelphia, Pennsylvania.

398 Earl E. Rambo, Long Lane and Alderbrook Road, Stonehurst, Pennsylvania.

Thurman Riter, Garrett and Huntley Roads, Upper Darby, Pennsylvania.

Fred Rosato, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Donald T. Rothera, Roosevelt Boulevard and Cheltenham Avenue, Philadelphia, Pennsylvania.

Walter Runyon, N. S. Chester Park West of Hinkson Boulevard, Ridley Park, Pennsylvania.

Walter Runyon, Church Lane and Bailey Road, Yeadon, Pennsylvania.

Theodore Salvina, 10th, Ridge, and Callowhill Street, Philadelphia, Pennsylvania.

Boyd J. and Billy B. Sanderson, 262 Lincoln Highway, Fairless Hills, Pennsylvania.

Edward J. Santarlas, 28th Street and Passyunk Avenue, Philadelphia, Pennsylvania.

George Schofield, Ridge and Leverington Avenues, Philadelphia, Pennsylvania.

John Schtaba, Huntingdon Pike and Penn Street, Rockledge, Pennsylvania.

Donald Schurr, Montgomery Park and Levering Mill Road, Cynwyd, Pennsylvania.

399 Francis G. Shea, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Benjamin J. Skalski, Carlisle and Hunting Park Avenues, Philadelphia, Pennsylvania.

Sports Parking, Inc., 21st and Lehigh Avenue, Philadelphia, Pennsylvania.

Frank E. Stapleford, Jr., Easton and Bradfield Roads, Roslyn, Pennsylvania.

Louis Stein, Marshall Road and Owens Avenue, Lansdowne, Pennsylvania.

Frank Sweeney, Route 413 and Leamberis Avenue, West Bristol, Pennsylvania.

Paul Trapp, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Carl Unger, Route 413 near Newportville Road, Bristol, Pennsylvania.

Vernell L. VanAlstine, Naylor's Run Road, Llanerch, Pennsylvania.

Joseph Winnemore, Chester Pike and Knowles Avenue, Glenolden, Pennsylvania.

Alexander Zabielski, Bridge and Thompson Streets, Philadelphia, Pennsylvania.

(ii) Contract Dealers:

Alden Park Manor Garage, Chelten and Wissahickon Avenues, Philadelphia, Pennsylvania.

William Anderson, MacDade Boulevard and Wolfenden Street, Collingdale, Pennsylvania.

400 Bryner Chevrolet Company, 525 Township Line, Elkins Park, Pennsylvania.

James L. Burns, Jr., Main Street and Forrest Avenue, Jeffersonville, Pennsylvania.

Century Buick, Inc., S. E. Corner 18th and Jackson Streets, Philadelphia, Pennsylvania.

Cipressi Brothers, 6230 State Road, Philadelphia, Pennsylvania.

DeKalb Filling Station, Brown and DeKalb Streets, Norristown, Pennsylvania.

John DeNenno, Route 202, Dilworthtown, R. D., West Chester, Pennsylvania.

Dintenfoss & Cohen, S. E. Corner 11th and Race Streets, Philadelphia, Pennsylvania.

Fernwood Garage, 5934 Baltimore Avenue, Philadelphia, Pennsylvania.

Joseph Groner, Parkland, Pennsylvania.

Haddington Motor Service, 1654 North 57th Street, Philadelphia, Pennsylvania.

Henry S. Hoffman, Long Lane and Wildwood Avenue, East Lansdowne, Pennsylvania.

Godfrey J. Holmes, Haverford Road West of Wynnewood Road, Ardmore Park, Pennsylvania.

Juniata Auto Service, Erie Avenue and Bennington Street, Philadelphia, Pennsylvania.

401 Lehigh Service Garage, 2712 North 5th Street, Philadelphia, Pennsylvania.

George MacKissic, 150 South Main Street, Yardley, Pennsylvania.

Montgomery County Motors, Inc., Easton Road North of Maple Avenue, Horsham, Pennsylvania.

Moss Auto Repair, 860 North 40th Street, Philadelphia, Pennsylvania.

Newton Ford Company, Inc., Sycamore Street, Newton, Pennsylvania.

Norman's Service Station, Easton Road and Laurel Avenue, Horsham, Pennsylvania.

William J. O'Driscoll, S. E. corner Crystal and Tioga Streets, Philadelphia, Pennsylvania.

Albert Paul, S. W. corner 6th Street and Columbia Avenue, Philadelphia, Pennsylvania.

George S. Raynes Garage, 2431 Gordon Street, Philadelphia, Pennsylvania.

Adam Secoda, Welsh Road and Roosevelt Boulevard, Philadelphia, Pennsylvania.

J. W. Stevens, 108 South Keswick Avenue, Glenside, Pennsylvania.

Vince and Ralph's Service Station, 6055 Hazel Avenue, Philadelphia, Pennsylvania.

402 Edward A. Wheaton, 63rd and Dicks Avenue, Philadelphia, Pennsylvania.

Lewis White, 2658-60 Island Road, Philadelphia, Pennsylvania.

Harry W. Wiley, 1532-67th Avenue, Philadelphia, Pennsylvania.

(iii) Distributors:

None.

(b) Leases or contracts expired and were not renewed because of either the individual decision of Atlantic or the dealers, or the mutual decision of both:

(i) Lessee Dealers:

John Black, Huntingdon Turnpike and Bethayres Road, Bethayres, Pennsylvania.

James J. Bradley, West Chester Pike and Keystone Avenue, Upper Darby, Pennsylvania.

Aniello L. Iacono, Providence Road and South Avenue, Secane, Pennsylvania.

Howard Konkle, Wycombe Avenue and Marshall Road, Lansdowne, Pennsylvania.

Robert H. Mortimer, Torresdale Avenue and Levick Street, Philadelphia, Pennsylvania.

Arthur A. Mostardi, St. Lawrence Road and West Chester Pike, Highland Park, Pennsylvania.

403 Felix Piera, Lindbergh Boulevard and Wheeler Street, Philadelphia, Pennsylvania.

John P. Rafferty, Lindberg Boulevard and Wheeler Street, Philadelphia, Pennsylvania.

James E. Russell, N. W. corner 39th and Market Streets, Philadelphia, Pennsylvania.

Eugene A. Scott, Lancaster Pike and Wynnewood Road, Wynnewood, Pennsylvania.

Joseph K. Wilson, Baltimore Pike and Oak Lane Avenue, Clifton Heights, Pennsylvania.

(ii) Contract Dealers:

Anderson Tire Exchange, 613 Spring Garden Street, Philadelphia, Pennsylvania.

Cardona Brothers, 2635 West Passyunk Avenue, Philadelphia, Pennsylvania.

Carolselli's Service Station, Baltimore Pike and Saxer Avenue, Springfield, Pennsylvania.

Clock Service Station, S. W. corner 30th Street and Allegheny Avenue, Philadelphia, Pennsylvania.

H. W. Forth, DeKalb Pk., Bridgeport, Pennsylvania.

Fred C. Powell, Bradford Avenue, West Chester, Pennsylvania.

Michael Rose, 200 East Roosevelt Boulevard, Philadelphia, Pennsylvania.

Tony's Auto Repair, 1125 South 13th Street, Philadelphia, Pennsylvania.

404 (iii) Distributors:

None.

* * * * * *

431 Mr. Dias: Mr. Examiner, I would like to have the following documents marked for identification:

As Commission Exhibit 80-A through C, Goodyear Organization Charts—Sales Division, Tire Sales Departments, Associated Merchandise (January, 1950).

As Commission Exhibit 80-D through F, Goodyear Organization Charts—Sales Division, Tire Sales Departments, Associated Merchandise (January, 1951).

As Commission Exhibit 80-G through I, Goodyear Organization Charts—Sales Division, Tire Sales Departments, Associated Merchandise (1952).

As Commission Exhibit 80-J and K, Goodyear Organization Charts—Tire Sales Division, Tire Divisions—(1953).

As Commission Exhibit 80-L and M, Goodyear Organiza- Charts—Tire Sales Division, Tire Divisions—(1954).

As Commission Exhibit 80-N and O, Goodyear Organiza-

tion Charts—Tire Sales Division (Akron), Tire Division (1955).

As Commission Exhibit 80-P and Q, Goodyear Organization Charts—Tire Sales Division (Akron), Tire Division (1956).

As Commission Exhibit 59-F through I, Letter Agreement dated January 8, 1953, between Goodyear and Shell American Petroleum Company, Kokomo, Indiana, with Exhibit A attached (4 pages).

432 As Commission Exhibit 76-A, Letter dated December 9, 1954, from H. E. Armitage, Vice President, the Frontier Refining Co., Denver, Colorado, to Goodyear.

As Commission Exhibit 76-B, Letter dated January 28, 1955, from S. A. Gaylord, Manager, Petroleum Sales, Goodyear, to The Frontier Refining Company, 410 Boston Building, Denver 2, Colorado.

As Commission Exhibit 73-C, Letter dated May 16, 1955, from Goodyear to Mid-Continental Petroleum Corporation, Tulsa 2, Oklahoma, transmitting letter agreement of even date.

As Commission Exhibit 73-D through G, Letter Agreement dated May 16, 1955, between Goodyear and D-X Sunray Oil Company, Tulsa 2, Oklahoma (formerly Mid-Continent Petroleum Corporation) with Exhibit A attached (4 pages).

As Commission Exhibit 79-A through F, Letter Agreement dated January 26, 1955, between Goodyear and Anderson-Prichard Oil Corporation, Liberty Bank Building, Oklahoma City 2, Oklahoma, with Exhibits A, B (Form G-1209) and C (Form G-1204) attached (6 pages).

As Commission Exhibit 79-G, Letter (amendment) dated February 18, 1955, from Anderson-Prichard Oil Corporation, Liberty Bank Building, Oklahoma City 2, Oklahoma, to Goodyear.

As Commission Exhibit 247-A, Goodyear TBA Basic Inventory Guide—Form S 9903, 2-50 (16 pages).

433 As Commission Exhibit 79-H through J, Unexecuted letter contract dated August 9, 1949, between Goodyear and Ashland Oil and Refining Company, Ashland, Kentucky (3 pages).

As Commission Exhibit 79-K, Letter dated September 13, 1949, from Everett F. Wells, Vice President, Ashland Oil and Refining Company to Mr. Sam Gaylord, Goodyear.

As Commission Exhibit 79-L, Letter dated September 28, 1949, from Mr. S. A. Gaylord, Manager, Petroleum Sales Department, Goodyear, to Mr. E. F. Wells, Vice President, Ashland Oil and Refining Company, Ashland, Kentucky.

As Commission Exhibit 79-M, Letter dated July 12, 1950, from W. E. Cameron, Petroleum Sales Department, Goodyear to Mr. Don W. Detjen, Ashland Oil and Refining Company, Ashland, Kentucky, enclosing CX 79-N, O, 79 P-V and 79-W.

As Commission Exhibit 79-N and O, Goodyear Inter-Company letter dated March 24, 1950, from S. A. Gaylord, Manager, Petroleum Sales Department, to H. E. Hoerster, District Manager, Cincinnati, Ohio, with carbon copies to Messrs. J. E. Stone (Ashland) and W. E. Cameron, L. R. Harrah and L. H. Shepherd (Goodyear) with same letter sent to eight designated Goodyear Districts and copy to Buffalo District (Goodyear) in re: "Ashland Oil & Refining Company, Ashland, Kentucky."

434 As Commission Exhibit 79-P through V. Goodyear document entitled "Special Account Instructions Ashland Oil & Refining Company, Inc., Ashland, Kentucky Sales Commission," dated 1-3-'50.

As Commission Exhibit 79-W, Goodyear document entitled "Goodyear Districts" (1 page).

(The documents referred to were marked Commission's

Exhibits 80-A through Q; 59-F through I; 76-A and B; 73-C through G; 79-A through G; 247-A; 79-H through W, for identification.)

Mr. Dias: I offer the above described documents in evidence.

Mr. Ballard: Atlantic has no objection to Commission Exhibit 80-A through Q.

Mr. Mason: Goodyear has no objection to any of those exhibits.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibit 80-A through Q.

(The documents heretofore marked for identification COMMISSION EXHIBIT 80-A through Q, was received in evidence.)

Mr. Ballard: With respect to Commission Exhibit 59-F through I, Commission Exhibit 76-A and B, 73-C through G, and 79-A through G, Atlantic objects because these documents appear to relate solely to Goodyear and other oil companies. ~~There is no showing that Atlantic was other oil companies.~~ There is no showing that Atlantic 435 was a party to them or charged with notice of them.

Mr. Mason: As to these same Exhibits, Goodyear object to their introduction in evidence because they relate to transactions between Goodyear and non-respondents to oil companies, and so in Goodyear's view are not a proper subject of this proceeding.

Hearing Examiner Kolb: The objection as to Goodyear to Exhibit 59-F to I will be overruled. The document will be received in evidence as to Goodyear, subject to a motion to strike as to Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 59-F to I, was received in evidence.)

Hearing Examiner Kolb: As to Commission Exhibit 76-A, same ruling, as to Goodyear the objection is over-

ruled, and the document will be received in evidence as to Goodyear, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 76-A, was received in evidence.)

Hearing Examiner Kolb: As to Commission Exhibit 76-B, the objection of Goodyear is overruled. The document will be received in evidence as to Goodyear, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification
436 COMMISSION EXHIBIT 76-B, was received in evidence.)

Hearing Examiner Kolb: As to Commission Exhibit 73-C through G, the objection of Goodyear will be overruled. The documents will be received in evidence, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 73-C through G, was received in evidence.)

Hearing Examiner Kolb: As to Commission Exhibit 79-A to G, the objection of Goodyear is overruled. The document will be received in evidence as to Goodyear, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 79-A to G, was received in evidence.)

Mr. Ballard: With respect to Commission Exhibit 247-A, Atlantic has no objection.

Mr. Mason: Goodyear has no objection to Commission Exhibit 247-A.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 247-A.

(The document heretofore marked for identification COMMISSION EXHIBIT 247-A, was received in evidence.)

Mr. Ballard: With respect to Commission Exhibit
437 79-H through W. Atlantic has the same objections for the same reasons as specified with respect to Commission Exhibit 59-F through I and subsequent documents.

Mr. Mason: As to Commission Exhibit 79-H through W, Goodyear has the objection that these documents relate to Goodyear's relations with non-respondent oil companies and so have no proper relevance to this proceeding.

Hearing Examiner Kolb: The objection of Goodyear to Commission's Exhibit 79-H through W for identification will be overruled. The documents will be received in evidence as Commission Exhibits 79-H through W as to Goodyear, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 79-H through W, was received in evidence.)

* * * * *

440 Mr. Kelaher: Mr. Examiner, before we call our first witness, I would like to make a statement with respect to several documents in the record.

With respect to the documents in the record referred to or identified as Commissions' exhibits 255 to 272, inclusive, appearing on pages 379 through 383 of the record, it should be noted that they were all of the warning letters sent by Atlantic during the period June, 1950, through June, 1956, to which dealers in the three marketing regions in which the Goodyear TBA sales commission plan was in effect.

It should also be noted that warning letter was sent to Mr. Robert R. Esposito, Morris Avenue, Morrison Road, Springfield, New Jersey, but that the papers are unavailable because the file was inadvertently destroyed.

It should also be noted that the data requested in item

7 for the Wilmington, Delaware and Baltimore districts appearing at pages 410 and 424 respectively of the record was for the period April, 1950, through June 30, 1956.

I would like to call Mr. George Hill to the stand, please.

GEORGE J. HILL, JR., was thereupon called as a witness for the Commission, and having been duly sworn, testified as follows:

441 *Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. George J. Hill, Jr., 112 Julianna Terrace, Collingdale.

Q. Are you here in response to a subpena?

A. Yes, sir.

Mr. Kelaher: Will you hand your subpena to the Examiner.

The Witness: (Handing.)

By Mr. Kelaher:

Q. Mr. Hill, were you at one time an Atlantic leasee dealer?

A. Yes, sir.

Q. Will you please state the period during which you were an Atlantic leasee dealer?

A. August 1949 to December 1956.

Q. And please state the location of your station.

A. McDade, below Chestnute Street, in Darby, Pennsylvania.

Q. Now beginning in 1949, would you please state what TBA products you sold?

A. Lee of Conshohocken tires, Exide batteries, Fram filters, Dupont products, chemical products, and Thermoid fan belts, Thermoid hoses.

Q. From whom were such products purchased?

A. From Edward Parris.

Q. And where was Mr. Parris located?

A. At that time at Clifton Avenue on Chester Pike in Sharon Hill.

442 Q. And for how long a period did you carry the products you just named? Up until what time?

A. From the time I had started into the station.

Q. And did you then subsequently carry Goodyear TBA?

A. Yes, sir.

Q. When did you begin to carry Goodyear TBA?

A. I believe it was in March of 1951, but I am not definitely sure.

Q. And in or about that time, did you attend an Atlantic dealer meeting?

A. I did, sir.

Q. And where was the location of that meeting?

A. 69th Street, at a restaurant, I believe Kostik's.

Q. Who were present at that meeting?

A. I would say in the neighborhood of approximately 40 dealers, Goodyear representatives, and also Atlantic.

Q. Were those 40 dealers you referred to Atlantic dealers?

A. Yes, sir.

Q. And what transpired at that meeting?

A. We had a training film showing the various qualities of the Goodyear tire and sponsoring the program they were about to set up on Goodyear merchandise and batteries.

Q. At that time was it announced that Atlantic was to sponsor the Goodyear TBA line?

A. Yes, sir.

443 Q. And do you recall whether Atlantic representatives indicated that you were free to buy any other TBA of your choice?

Mr. Correa: I object to this leading and suggestive form of examination, if your Honor please, on a matter of this kind. I think we might have the witness' recollection unaided.

Hearing Examiner Kolb: I will sustain the objection to the form of the question.

By Mr. Kelaher:

Q. Mr. Hill, what was the purpose of the meeting just referred to?

A. My impression was to get across the quality and construction of the Goodyear merchandise and to show how the program would actually work and be a better product, sell better.

Q. Did Atlantic at that time state that it was going to sponsor Goodyear TBA, if you know?

A. Yes, sir.

* * * * * *

Q. After the meeting in question, Mr. Hill, what brand of TBA or what TBA line did you begin to carry?

A. Well, in the beginning I had a sufficient stock of Lee—in fact, I had about 75 to 80 tires and I didn't buy Goodyear tires right off the bat because I was con-
444 cerned about what I had in stock.

Now in a few incidents we run into such as filters and such where as I run out of one, I replace it with the other, but it wasn't a mass change-over.

Q. When you say replace it with the other, what do you mean?

A. They carried AC and Purolator.

Q. By "they," who are you referring to?

A. Atlantic, but—

Q. Who did you begin to purchase—

Mr. Thompson: (Interposing) He didn't finish his answer.

Mr. Kelaher: Excuse me.

A. I would say Atlantic was—it was actually through Ed Parris, the same distributor that we had with Lee.

By Mr. Kelaher:

Q. Do I understand you to say that Mr. Parris then became the Goodyear TBA supplier?

A. Yes, sir, TBA distributor.

Q. Now, you stated that you continued to carry Lee tires. Were you satisfied with carrying Lee tires—

A. Up until that point I was happy with them because they had a road hazard guarantee and they were cheaper in price and we made a little more money on them.

Q. Did the Goodyear tire have a road hazard guarantee?

445 A. No, sir.

Q. Was the Goodyear tire price higher than the Lee price?

A. They were higher because you didn't quite get the discounts we got with Lee.

Q. I see. Now did you have any tire signs hanging in your station when you entered the premises in August of 1949?

A. I did.

Q. What type of signs did you have?

A. The outdoor, big sign, that was electrically lit up.

Q. Did you know of your own knowledge how long that sign had been at that particular station.

A. Well, I have been in that neighborhood since 1937 and it was there when I come in the neighborhood.

Q. After you changed—or rather, after March of 1951, was the Lee sign still on the premises, in March 1951?

A. In March 1951, I believe it was still on the premises.

446 Q. Were you advised by anyone that the Lee sign was to be taken down?

A. Yes, sir.

Q. Who advised you?

A. Lee of Conshohocken.

Q. And what did Lee of Conshohocken represent to you?

A. They told me they had word to take the sign down.

* * * * * *

Q. State the substance of the conversation between you and the Lee of Conshohocken representative.

A. Larry Deemer from Lee, the Branch Manager, asked me if I wanted the sign taken down. They had word to have it removed.

Q. And did he indicate whom he had received the word from?

A. No.

Mr. Thompson: It doesn't matter what was indicated.

The Witness: (Continuing) And he asked me if I wanted to fight the issue and I said "no."

By Mr. Kelaher:

Q. You said "no." What happened thereafter?

447 A. The sign was removed.

Q. And was it replaced by another type of sign?

A. Goodyear.

Q. And were you permitted thereafter, or did you thereafter advertise Lee tires?

Mr. Thompson: Which question are you asking?

Mr. Kelaher: I will withdraw the first one.

By Mr. Kelaher:

Q. Did you thereafter advertise Lee tires?

A. Nothing other than the tire stands.

Mr. Correa: I didn't hear that.

The Witness: Nothing other than the tire stands.

By Mr. Kelaher:

Q. Where were the tire stands located?

A. In front of the station with tires.

Q. Did you have thereafter any signs advertising—

A. (Interposing) Outside, no, sir.

Q. —(Continuing)—Lee tires.

Why didn't you advertise Lee tires thereafter?

A. Well, I had, as I say, a pretty heavy stock and I was trying to pair them off and I would have to buy tires in between to try to match them up in pairs to get rid of them. But I had no advertisement other than the tire stands when the change-over was made.

Q. Did you ever attempt to advertise Lee tires after that time?

448 A. No, sir.

Q. Why didn't you?

(After pause.)

Q. You may answer the question.

A. I really don't know. I mean, I just felt that I didn't want to buck the issue.

By Mr. Kelaher:

Q. After March 1951 was any other advertising placed on your premises with respect to TBA?

A. Decals in the top of the windows, with Goodyear on them. And of course the original Goodyear tire sign.

Q. So your station was identified as Goodyear TBA thereafter, is that correct?

A. That is right.

Q. Do you know approximately the value of the stock of Lee tires you had on hand in or about March, 1951?

A. Rough guess, about a thousand dollars, I would say.

Q. Thereafter, who was your primary supplier of TBA products?

A. Mr. Ed Parris.

Q. And what line did you purchase from him?

A. Goodyear batteries, tires, AC filter, and he still had Dupont products. We had Goodyear fan belts
449 in place of Thermoid and Goodyear hose in place of Thermoid.

Q. Did you have any Thermoid fan belts on hand when the change-over occurred?

A. Yes, sir, they were re-sleeved. In other words, they put the Goodyear numbers on them for us.

Q. They put the Goodyear brand name on them too?

A. Yes, and they re-sleeved them to the Goodyear numbers.

Q. Now did you pay for your advertising from Lee?

A. No.

Q. Did you pay for your advertising, the advertising furnished by Goodyear?

A. Yes.

Q. Did you do a credit card business, Mr. Hill?

A. Yes, sir.

Q. Incidentally, about what was your gallonage at your station?

A. 32,000 to 35,000.

Q. Were you one of the larger dealers in that area?

A. Maybe the largest in Darby.

Q. And approximately how much of your business was on credit, do you recall?

A. Well, I always felt proud to say about one hundred dollars a day.

Q. That would be approximately how much of your overall business, percentage-wise?

450 A. Twenty-five percent.

Q. During the period you were in the station, when you originally went into the station, what was the term of your lease?

A. One year. The original lease, I believe, was only six months and then I got a year.

Q. And were there rent increases during that period?

A. Definitely.

Q. How often did the rent increases occur?

A. Well, I would say once a year, on the average. That is, as the station progressed.

Q. Do you recall one occasion where your rent was raised to a minimum of $100?

A. Yes, I do.

Q. Would you please state what happened at that time?

A. Well, in that particular case it was raised over $100 as a minimum and I protested it and was quite put out about it, but it didn't do me a lot of good to protest it. I didn't get anywhere and when I was done, why, I signed a lease and forgot about it.

Q. Do you recall what that increase was from, what your prior rent was, before it hit $100 minimum?

A. No I don't, sir.

Q. Do you recall when your last lease was entered into?

A. The end of 1954.

451 Q. And do you recall the circumstances surrounding the signing of it?

A. Well, I was handed a lease on the last day of the month in the afternoon and they told me I had to get it back in the mail by that night to make it legal.

Q. When?

A. Have the lease back in the mail by that night and I had very little time to look over the lease. It was on the last day of the month and I signed a three-year lease thinking it was a one-year lease, and didn't know it.

Q. How many hours, approximately, did you have to make up your mind?

A. Four and a half to five hours. I had to look it over

while work was still going on and it was a pretty busy afternoon.

Q. How many hours did you keep your station open from the time you entered into business?

A. Twenty-four hours a day.

Q. Was there ever a time when you desired to reduce the number of hours of station operation?

A. Well, in 1955 business started to drop on the last shift, I mean the business was doing just about as well, but the expenses had gone up, manpower, rent, overhead, light and heat, so the station for the next two years just stood at a standstill, financially, and I would operate that night shift at probably about a $5.00 a day loss, by
452 my figures. So I would liked to have dropped that shift, but I couldn't get together and couldn't get permission to drop it.

Q. Permission from whom?

A. From the Atlantic representatives to drop it.

Q. Do you recall—

Mr. Thompson: (Interposing) I object to this line of questions and answer and ask they be stricken unless there is a specific identification of who in Atlantic talked to him and what was said. The testimony that Atlantic wouldn't give permission is just a conclusion of this witness, and meaningless on the record.

Mr. Kelaher: I intend to develop this further, your Honor.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: I should like to object to this entire line on behalf of the respondent Goodyear on the ground that all of this is res inter alios acta.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. Mr. Hill, do you recall a conversation with Atlantic representatives in connection with the incident you are now referring to?

A. Well, I run into a problem on my night shift with manpower—

453 Mr. Correa: The question was "Do you recall." I move the answer be stricken.

Hearing Examiner Kolb: Read the question.

(Question read.)

A. Yes.

By Mr. Kelaher:

Q. Would you please state the circumstances, the conversation, rather, and identify the other party.

A. Stephen Petrison, the Atlantic salesman.

Q. Now would you please state the conversation?

A. Well, I was telling him about my problems on the night shift, that I thought I would have to close the station at those hours, that I couldn't make them pay. He said, well, he thought that the company wouldn't go for a closing at night time and he thought if I had any ideas like that, that it would be best to give up the station, sooner than run into trouble, more or less leave the station if I thought I would have to close it. They thought that the station should be open.

Q. What happened after that?

A. Well, I didn't make up my mind at that time. That was around Labor Day, and I went on another month and a half before I actually decided to give up the station.

Q. When did you give up the station?

A. I signed a mutual cancellation in October of 1956.

454 Q. Mr. Hill, referring back to the meeting at Kostick's in or about March 1951, do you recall whether

Atlantic representatives stated that you had your choice of the brand of TBA you could carry?

A. I don't really remember, sir.

Q. And you stated that there were approximately 40 other dealers, Atlantic dealers, present at that meeting?

A. That is right.

Q. Now based on your own knowledge, do you know whether those other Atlantic dealers changed over to the Goodyear TBA line at the time you did?

A. I only know a few personally. I mean, I know a lot of them to see them, but I only knew maybe 10 or 12 personally. They changed, of course.

• • • • •

By Mr. Kelaher:

Q. At that time, Mr. Hill, did you have any reason for discontinuing the sale of Lee tires?

A. For discontinuing the sale?

455 Q. Yes, sir.

A. Yes. In order to purchase the tires, I had to purchase them from Bryn Mawr and in order to adjust the tires, I had to adjust at Bryn Mawr and we would lose an hour's time every time we had a—

Q. I am referring to the March 1951 meeting, up to that time you were—

A. (Interposing)—Satisfied with them.

Q. You were satisfied with Lee tires?

A. That's right.

Q. Mr. Hill, before the change-over to Goodyear, I believe you stated you were buying Lee tires from Mr. Parris, is that correct?

A. That is true.

Q. And would the adjustment be made—

A. (Interposing.) Be done by Mr. Parris.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross examination?

Mr. Thompson: Atlantic Refining has no questions, sir.

Mr. Correa: We have none, if your Honor please.

Hearing Examiner Kolb: That is all, Mr. Hill.

(Witness excused.)

Mr. Kelaher: Mr. Examiner, I would like to call Mr. Heller.

456 EDWARD C. HELLER was thereupon called as a witness for the Commission, and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. Edward C. Heller, 55th and Walnut; 5500 Walnut, Philadelphia, Pa.

Q. And the name of your company?

A. E. P. Rotzell Company.

Q. Will you describe your company's business, please?

A. Hard parts, accessories, service station, garage, car dealer equipment.

Q. How about—

Mr. Thompson: (Interposing.) May I have that answer read? I couldn't follow that.

Hearing Examiner Kolb: Read the answer please.

(Answer read.)

By Mr. Dias:

Q. Are you familiar with the term "TBA"?

A. Yes, sir.

Q. Do you know what that includes?

A. Yes, sir.

Q. Does your company handle tires?

A. No tires.

457 Q. How about batteries?

A. Yes, sir.

Q. Will you name the brand of batteries?

A. Delco.

Q. Have you always carried Delco batteries?

A. No, sir.

Q. How long have you carried them?

A. A little over a year.

Q. And prior to that time—

A. (Interposing.) Willard.

Q. How long did you carry Willard?

A. Prior to my coming with the company.

Q. How long was that?

A. Well, I came with the company seven years ago.

Q. Have you been a salesman with Rotzell for those 7 years?

A. That's right, sir.

Q. How about filters, what brand of filters?

A. Purolator.

Q. And have you carried those for the full seven years?

A. Yes, sir.

Q. How about belts and hoses?

A. Durkee-Atwood.

Q. Spark-plugs?

A. Champion.

Q. Chemicals?

458 A. The Dupont chemical line.

Q. What class customer does the Rotzell Company solicit?

A. Service stations, independent repair shops, garages, car dealers.

Q. What is the company's general trade area, do you know?

A. In what way?

Q. The company as a whole, the Rotzell Company, where do they sell?

A. All over the city of Philadelphia, Delaware County.

Q. Is that the entire trading area of the company?

A. Well, they do sell some over in Jersey, through the office, but that isn't in the salesmen's category.

Q. How many salesmen are employed?

A. Five.

Q. And how are they compensated, salary or commission?

A. Straight commission.

Q. Does Rotzell Company offer delivery service?

A. Yes, sir.

Q. How many trucks do they operate for that purpose?

A. Five.

Q. How many does the Rotzell Company—does the Rotzell Company have any branches?

A. Yes, sir. We have the main store and four branches.

Q. Can you give the addresses?

A. 18th and Christian—

459 Q. (Interposing.) Is that the main store?

A. No, the main store is 1627 Fairmont Avenue; the branch at 18th and Christian, one at 55th and Walnut, and one on Lancaster Pike in Ardmore and one 6118 Germantown Avenue.

460 Q. Now, what is your particular sales territory?

A. West Philadelphia and eastern Delaware County.

Q. And do you solicit service stations?

A. Yes, sir.

Q. Are there any Atlantic stations in your sales territory?

A. Yes, sir.

Q. Do you sell batteries or accessories to any of those Atlantic stations?

A. Very very little.

Q. Do you have any regular accounts among the Atlantic stations?

A. Yes.

Q. Can you state how many?

A. Probably four or five of them.

Q. Can you tell us how many stations, Atlantic stations, there are in your sales territory?

A. Probably around 30, 35.

Q. Have you called on the 35 or 40 from time to time?

A. I have.

Q. And can you give us some idea how often you called upon them?

A. Well, I may, if I start to call on a new customer, I may call on him five or six weeks, straight in a row, if I see nothing, then I drop it and maybe once every two weeks, if I still get no business, then I drop down to 461 a month and after that I forget about it.

Q. I see. And how many stations would you say you sell to regularly, Atlantic stations?

A. Oh, in hard parts, such as king pins and bushings, mufflers, tail pipes, those items, I have four or five Atlantic customers that buy. But nothing in the TBA line.

Q. Now, on these Atlantic stations, that buy these hard parts, do you try to sell them batteries and accessories?

A. Yes, sir, I have.

Q. And how about the others, do you solicit their business for batteries and accessories?

A. Yes, sir.

Q. These stations, these Atlantic stations in your sales territory, do you recall the type, or do they carry TBA?

A. Yes, sir.

Q. And do you recall the brands that are advertised by the stations?

A. Goodyear tires, batteries.

Q. Is that true of all of them?

A. (Continuing.) Du Pont Chemicals.

Q. And is that true of all the stations, all the Atlantic Stations?

A. In my area, yes, sir.

Q. Have you ever called on a new Atlantic station? Have any new Atlantic stations opened in your sales territory.

462 A. Yes, sir.

Q. And have you called on those new stations?

A. Yes, sir, I have.

Q. How soon after they opened?

A. Oh, I try to watch and call within the week.

Q. And have you ever sold anything to those stations?

A. Some jacks, equipment that he may need, tire tools, or jacks that he may need for the driveway service.

Q. Have you sold them batteries or accessories?

A. No, sir.

Q. Have you called on new operators of old stations?

A. Yes, sir.

Q. And what has been your experience with those?

A. Practically the same.

Q. Now, on those new stations that opened up, did they have TBA supplies?

A. Yes, sir.

Q. Do you recall the brand they had?

A. Goodyear tires and batteries.

Q. And did the new operators of old stations have TBA on their premises?

A. That is right.

Q. And what was it?

A. Same brands.

Q. Do you recall any Atlantic stations that pur-

463 chased your TBA line at any time and then subsequently discontinued?

A. Well, a year or so ago we had the Du Pont Chemicals representative with us and we were the first ones to have him in the city of Philadelphia. I sold a couple of the Atlantic dealers, fellows I had known, and I ran into an Atlantic salesman later on, and after that, I had no more sales of the Du Pont Chemicals. As one dealer told me, that he was to save it for the Atlantic salesman the next time he came around.

Mr. Thompson: I object to it and move the answer be stricken unless it makes the test laid down by your Honor, of identification of the time, place and names.

By Mr. D[redacted]s:

Q. Can you recall the name of the dealer and the time this was told to you?

A. I can't recall the dealer, but I know the salesmen, Joseph Snyder, with the Atlantic Refining Company.

Q. Now, the dealers, you don't recall his name? Where was his station, do you recall that?

A. Fifty-five and Walnut.

Q. And can you give us a time, approximately that that occurred?

A. You mean the date?

Q. The date that he told you he—

A. No, I couldn't. I couldn't.

464 Q. Well, you stated about a year ago, did you not?

A. Yes it was about a year ago. It was—if I had to give you the month or the—the month that it happened. I couldn't. But that particular—it was not this past Spring, Spring a year ago, we had the Du Pont Chemical man with us first rather than the Atlantic salesmen. They come in the Spring of the year and work with each one of their jobbers, with their jobber salesmen, their merchandising men, they try to help the salesmen in each territory put over that particular product.

Q. Are there any Atlantic station in your sales territory that advertise other than Goodyear TBA?

A. Only independents.

Q. And what is an independent?

A. Where he owns his own property.

Q. Do you know of any that fit that category?

A. Yes, sir, I do.

Q. Can you name them for us?

A. Frank Myers, 57 and Pine, Joe Klein at 38th and Walnut, and Rabins Brothers at 38th and Girard.

Q. And what do those stations advertise in the TBA line?

A. Frank Myers is Lee tires and Lee batteries, so is Joe Klein, Rabin Brothers is Lee tires, but batteries I couldn't tell you what their brand battery is.

Q. Do you know who the Goodyear supplier is in your sales territory?

A. There is two or three of them.

Q. Can you name them?

A. Frank Hagan, Ernie Miller, Ed Parris fringes my territory.

Q. Can you give us some addresses?

A. Frank Hagan is 54th and Chester Avenue, Miller is on Garrett Road in Upper Darby, and Ed Parriss is out on Sharon Hill or Glenolden, I don't know which he is now.

By Mr. Dias:

Q. Are you in competition in the sale of these TBA items with Messrs. Hagan and Miller and Parriss?

A. Yes, sir.

Q. Do you offer delivery service to these accounts?

A. Yes, sir.

Q. How often do you give them delivery service?

A. Why, I have seen customers get delivery service as high as four or five times within one day.

Q. Now, if you know—

466 Mr. Thompson: I move the answer be stricken as non-responsive.

Hearing Examiner Kolb: Read the question and answer.

(The reporter read the question and answer as follows:

"Question: How often do you give them delivery service?

"Answer: Why, I have seen customers get delivery service as high as four or five times within one day.")

Hearing Examiner Kolb: Were you referring to his delivery service—

Mr. Dias: Delivery service, his own company.

Mr. Correa: His question was what do they offer, not what is received.

Mr. Thompson: Not that he sent—

Hearing Examiner Kolb: I will overrule it and let it stand.

By Mr. Dias:

Q. Are you familiar with the Goodyear battery, Mr. Heller?

A. In what way, I am familiar with the battery, yes.

Q. Have you had any occasion to compare your battery with theirs?

Mr. Correa: I ask that the witness be instructed to answer that yes or no, because I will object to any

467 expansion on this until the witness is qualified.

Hearing Examiner Kolb: Answer yes or no.

The witness: Only as far as price-wise, to sell a dealer.

By Mr. Dias:

Q. How does your battery compare price-wise?

A. Competitive.

Q. And by that what do you mean? Competitive price-wise with Goodyear is the same less or more?

A. One battery could be more, another a little less, but I think over the whole line, they would be very competitive.

Q. Mr. Heller, referring to these Goodyear supplier points, Mr. Frank Hagan, does he compete with you and do you compete with him in your entire sales territory?

A. No, well, I think he has a certain amount of service stations that he is supposed to take care of. I don't know how their set up is as far as knowing how many dealers he has or what his territory is. I don't know.

Q. You don't know. Is that same true of Ernie Miller?

A. That is right.

Q. You don't know.

A. I don't know what their area or territory would comprise.

Mr. Dias: That is all, your Honor.

468 Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

469 Hearing Examiner Kolb: The hearing will come to order.

Cross examination.

Cross-Examination by Mr. Thompson.

Q. Mr. Heller, are you familiar with the over-all business of the Rotzell Company?

A. Yes, sir.

Q. You have a subsidiary that operates out the main line, haven't you?

A. That's one of our branch stores.

Q. One of your companies?

A. That's right.

Q. As a matter of fact, sir, isn't it true that your company was just incorporated a year or two ago and succeeded to another company that had been operated by Mr. Rotzell?

A. That's right, sir; he passed away and Mr. MacPherson took it over.

Q. Mr. MacPherson took it over?

A. That's right.

Q. In recent years your company has been doing very well, has it not?

A. Yes, sir.

Q. Do you ever see the Dunn and Bradstreet reports on your company?

470 A. No, sir; I have not.

Q. Am I correct in my understanding that the volume of your sales and your profits have been substantially increasing in the last few years since Mr. MacPherson took it over?

A. That I couldn't say; I don't get into the books that—

Q. In dealing with service stations generally, do you offer to sell them on cash or do you give them credit?

A. We have both.

Q. Does that depend upon the appraisal of the financial standing of each of the prospective customers?

A. I take a credit statement and turn it into the office and it's up to the office to pass them on credit.

Q. Now, when you say you take a credit statement, do you mean you ask each of the service stations whom you solicit to give you information with respect to his own financial standing?

A. No, not his financial standing.

Q. Well, how do you determine when you solicit a service station whether it be Atlantic or any other one, whether you are going to offer to sell him for cash or for credit?

A. I ask him if he would like to have an open account and if he gives us the references that our office will open the account it's opened for him for credit.

Q. Could you tell us approximately how many of the

Atlantic accounts you have solicited you have offered to sell on credit?

471 A. Twelve or fifteen of them.

Q. And there are 30 to 40 in your own particular sales area?

A. That's right, sir.

Q. Now, going back, if I may, to three of the service stations whom you called "independent"—

A. Independent, that's right, sir.

Q. I think you said they owned those stations?

A. That's right, sir.

Q. Did you mean that they owned them or that Atlantic does not own them?

A. They own them—those three own them themselves.

Q. And they are what are sometimes referred to as contract dealers? Contract stations?

A. Indepe[illegible]t.

Q. Are you familiar with that?

A. Not as contract dealers, but as independent dealers.

Q. Do you solicit those three accounts?

A. Yes, sir.

Q. Are they regular customers of yours?

A. Yes, sir.

Q. What do you sell them?

A. Hard parts, chemicals and accessories.

Q. Do you sell them batteries?

A. Fill-in batteries. I have sold all three of them batteries.

472 Q. By fill-in batteries, you mean special order?

A. Yes.

Q. They don't buy batteries regularly from you?

A. Not regularly; no, sir.

Q. Approximately how many active accounts does your company have in all of Philadelphia and Delaware County, do you know?

A. No, I do not.

Q. How many active accounts do you personally handle in your sales territory?

A. About 120.

Q. And those are in various categories, I assume, of the type you have mentioned, some garages?

A. That's right, sir.

Q. Some commercial accounts, or don't you handle them?

A. No, we have a regular fleet commercial man that calls on nothing but those accounts.

Q. Do the five trucks owned by the company handle deliveries to all of the Philadelphia and Delaware County area in which you operate?

A. Yes, sir.

Q. They certainly couldn't make four or five deliveries to very many of them, could they?

A. Each store has his own truck.

Q. Each store has one truck?

A. That's right. Each store has one truck.

473 Q. And your particular store is—

A. Fifty-fifth and Walnut.

Q. And out of that store you handle deliveries to West Philadelphia and Delaware County?

A. That's right, sir.

Q. And one truck attempts to service that whole geographical area?

A. That's right, sir.

Q. Would you mind telling me what you are talking about when you refer to hard parts because the phrase is new to me and I don't quite understand it.

A. King pins, brakes, wrist pins, rings, upper pins and bushings on the front end, coil spring, motor and chassis parts.

Q. It's the sort of equipment which is used for minor repairs of automobiles?

A. That's right, sir.

Q. Is that type of business also handled by Suburban Auto Parts Company?

A. Yes, sir.

Q. That company, then, is covering the same area that you sell to, is it not?

A. No, sir; they come to City Line and go from there West.

Q. In other words, they operate in Montgomery County?

A. That's right, sir.

474 Q. And you handle Delaware County?

A. That's right, sir.

Q. Yours is an extremely competitive business, is it not?

A. Yes, sir.

Q. Do you know how many companies there are that are attempting to sell hard parts and accessories in West Philadelphia and Delaware County?

Mr. Dias: I object to the form of the question, to the use of the word "attempting".

Hearing Examiner Kolb: The objection will be overruled.

Mr. Dias: I think Commission's Counsel is restricted to the phrase "sell to".

Mr. Thompson: I shall be happy to rephrase the question, sir, if there is any objection at all on the part of the staff.

By Mr. Thompson:

Q. Do you know about how many companies competing with Rotzell solicit accounts in West Philadelphia and Delaware County?

A. Probably 15 or 18 of them, maybe more.

Q. Thank you, that's all I had.

Mr. Correa: I have no questions at the moment.

Mr. Thompson: Thank you so much, sir.

Hearing Examiner Kolb: Any further questions?

475 Mr. Dias: Just a minute.

That's all, your Honor.

Hearing Examiner Kolb: That's all, Mr. Heller. Thank you very much.

(Witness excused.)

Mr. Kelaher: May we go off the record, your Honor?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. The hearing will come to order.

Mr. Kelaher: Mr. Examiner, counsel for respondent Goodyear and counsel supporting the complaint have entered into a stipulation with respect to the testimony of appropriate officers and employees of Goodyear if called as witnesses in this matter.

This stipulation will make it unnecessary to call officers and/or employees of respondent Goodyear in so far as we know at this time. However, it's clearly understood that this does not foreclose counsel supporting the complaint from calling such officers and employees of respondent Goodyear if circumstances later dictate. In that connection I would like to state that we are presently attempting to stipulate further testimony in the matter with respect to counsel for respondent Goodyear.

I would also like to add that counsel for respondent
476 Goodyear have cooperated fully in preparing this stipulation and along with the stipulations we have entered into with counsel for respondent Atlantic we feel that they have greatly expedited the trial of this matter.

At this time I would like to have the stipulation read into the record.

Hearing Examiner Kolb: You may proceed.

Mr. Correa: No objection.

Mr. Kelaher: United States of America, Before the Federal Trade Commission.

In the Matter of The Goodyear Tire and Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

Stipulation Re Testimony of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

It is hereby stipulated and agreed by counsel for the respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., and by counsel supporting the Complaint that if appropriate officers and employees of said respondents were called as witnesses by counsel supporting the Complaint in this proceding, they would testify in the manner set forth below, and that the facts stated below may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in 477 lieu of such testimony.

The statements set forth below are made solely for the purpose of this proceeding and for no other action, case or proceding.

For the purpose of this stipulation both The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc. are referred to as "Goodyear."

Company Organization—Sales of TBA
(As of April 22, 1957).

1. E. J. Thomas, President, is the Chief Executive Officer of Goodyear. Under the Chief Executive Officer the Company is divided into three areas—Production, Finance, Sales—each under the general jurisdiction of an Executive Vice President.

2. Mr. R. S. Wilson, Executive Vice President—Sales, has general jurisdiction over sales including sales of TBA. Under Mr. Wilson, Mr. Victor Holt, Jr., Vice President, has direct supervision over the Tire Sales Division. (CX-80-R.)

3. O. E. Miles, Sales Manager, Tire Division, reports directly to Mr. Holt. (CX 80-R.)

4. Reporting to Mr. Miles are six Regional Managers (Eastern, Southern, Central, Midwest, Southwest and Western.). Under the six Regional Managers are forty-nine District Managers. (CX-80-S and CX-80-U.)

5. Also reporting directly to Mr. Holt is R. W. 478 Fitzgerald, General Merchandising Manager, who has supervision over the Petroleum Sales Department, located in Akron. C. A. Eaves, Jr., became Manager of the Petroleum Sales Department on November 1, 1956, when S. A. Gaylord, Manager since January 1, 1934, became Consultant. Mr. Gaylord retired on January 31, 1957. (CX 80-T.)

6. Mr. Fitzgerald also has jurisdiction over the Associated Merchandise Department of which C. L. Metzger is Manager. The Associated Merchandise Department includes the Battery Sales Department, J. C. Thomas, Manager, and the Car & Home Merchandise Department, A. E. Patterson, Jr., Manager. The two latter departments

are charged with procurement and merchandising of, respectively, batteries and automotive accessories, sold by the Company at wholesale to dealers and at retail through its stores. (CX 80-T.)

7. Also reporting directly to Mr. Holt is L. W. Moore, General Manager, Retail Stores. Mr. Moore has over-all supervision of the approximately five hundred retail stores owned and operated by the Company and located throughout the country. These retail stores also sell at wholesale. Each store is supervised at the field level under the Manager of the District in which it is situated. (CX 80-R.)

8. Working under the various District Managers are approximately four hundred and eighty Goodyear salesmen, called "general line salesmen," who solicit and service Goodyear tire dealers. Compensation paid to the 479 general line salesmen is in the form of salary plus bonus based upon sales quotas reflecting the potential of their territory.

9. The tire dealers solicited and served by the Goodyear general line salesmen include over 12,000 independent franchised Goodyear tire dealers plus an unknown but very substantial number of dealers who sell Goodyear tires but who have no contracts with Goodyear. Most of the contract dealers handle batteries and accessories, but this is at their election. Full TBA is available to them but is not required. The contract dealers sell to anyone who will buy—motorists, other dealers, commercial accounts, industrial accounts, government accounts, etc. Many solicit petroleum service stations and some may solicit oil company distributors.

10. The general line salesmen do not ordinarily attempt to call regularly on the many thousands of petroleum service stations scattered throughout the country. Instead they concentrate most of their sales efforts on the TBA

supplying dealers who in turn solicit and service their petroleum service station customers.

11. "TBA Supplying Dealer" is a term used to designate a franchised Goodyear tire dealer who, as a part of his normal business (which may and often does include retailing) serves as a wholesaler of Goodyear TBA to petroleum service stations. He buys his TBA from Goodyear on the same regular program as to price, dis-
480 counts, terms, product availability, etc., as is extended to all other Goodyear tire dealers, including even some petroleum service stations which, because of the nature or volume of their TBA business, may elect to purchase directly from Goodyear, in which event they would be franchised directly as Goodyear tire dealers.

12. The TBA supplying dealer is also solicited and assisted, particularly with respect to the petroleum service stations which he supplies, by one or more Goodyear Petroleum Representatives. Of a total of thirty-eight Petroleum Representatives, four are currently assigned to work on the Atlantic TBA program. The function of the Petroleum Representative is to cooperate closely with all oil company sales personnel in training and assisting petroleum service stations in selling TBA, thus furnishing liaison at the field level between Goodyear and the petroleum company as well as between Goodyear and the petroleum service stations. Goodyear's Petroleum Representatives are compensated on a salary basis.

13. The names of the four Petroleum Representatives currently assigned to work on the Atlantic TBA program are as follows:

Albert H. Shafer—Division Petroleum Representative
John Fitzgerald—Philadelphia-New Jersey Region
Frederick J. Dowling—New England Region (Deceased 4/26/57, successor to be named)
John P. Anthony, Jr.—New York Region.

481 Products—

14. The entire range of Goodyear passenger and truck tires is made available to Atlantic accounts under the sales Commission Plan.

Passenger tires are offered in all sizes, tube-type or tubeless, black or white sidewall, and in various types and thread designs. They are priced as follows:

Price Category	Brand
Premium line	—Double Eagle (10 different sizes)
	—Captive-Air (10 different sizes)
	—Blue Streak (6 different sizes)
	—Nylon custom Super-Cushion (13 different sizes)
First line	—Custom Super-Cushion (22 different sizes) (also sold for original equipment purposes)
Second line	—De Luxe Super-Cushion (8 different sizes)
	—Nylon De Luxe Super-Cushion (5 different sizes)
Third line	—Super-Cushion (3 different sizes)

Premium line tires are made with Nylon cord, first and second line tires with both nylon and rayon, and third line tires with rayon.

Truck tires are also available in all sizes, in many
482 different types and tread designs. The principal groupings, according to use, are highway, off-the-road and industrial. Truck tires represent 7 percent to 10 percent in dollar volume of all Goodyear tires sold under the Sales Commission Plan with Atlantic.

Goodyear's current prices for passenger and truck tires are shown in GX Nos. 229-237 inclusive.

15. In addition to tires and tubes, the products manufactured by Goodyear and sold under the Sales Commission Plan with Atlantic are:

Retread and repair materials
Fan Belts
Radiator hose

Goodyear's current prices for these products are shown in the following exhibits: CX 238, CX 239 (Retread and repair materials); CX Nos. 242-246 inclusive (Fan belts); CX 242-246 inclusive (Radiator Hose).

16. Products sold by Goodyear under the Atlantic Sales Commission Plan which are purchased from others for resale are:

Automotive batteries
Various automotive accessories.

17. Automotive batteries are manufactured for Goodyear for resale under its own brand, in approximately equal quantities, by Electric Auto-Lite Company, main
483 office at Toledo, Ohio, and Gould-National Batteries, Inc., main office at St. Paul, Minnesota. Batteries manufactured for Goodyear are both wet and dry charge and are of various different qualities, sizes and types. Current price lists for batteries are shown in CX Nos. 240-A-D, 240-E-H and 241.

18. The more important categories of automotive accessories purchased by Goodyear for resale under the manufacturer's brand to Atlantic service stations under the Sales Commission Plan include:

Accessory	Brand	Mfrs. Address
Spark Plugs	AC	AC Spark Plug Div. General Motors Corp. 1300 North Dort Highway Flint 2, Michigan
Oil Filters	AC	—See above—

Accessory	Brand	Mfrs. Address
Oil Filters	Purolator	Purolator Products Inc. 970 New Brunswick Ave. Rahway, New Jersey
Cleaners, Polishes and Waxes	du Pont	E. I. Du Pont de Nemours & Co., Inc. Specialties Div. Wilmington 98, Delaware
Cleaners, Polishes and Waxes	Johnson	S. C. Johnson & Son, Inc. Racine, Wisconsin
484		
Cleaners, Polishes and Waxes	Simoniz	Simoniz Company 2101 Indiana Ave. Chicago, Illinois
Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss Co. Inc. 6040 N. Figueroa St. Los Angeles 42, California
Radiator Chemicals	du Pont	—See above—
Radiator Chemicals	Warner	Warner-Patterson Co. 920 South Michigan Ave. Chicago 5, Illinois
Auto Lamps and bulbs	Westing-house	Lamp Division Westinghouse Electric Corp. MacArthur Avenue Bloomfield, New Jersey
Wiper blades	Anco	The Anderson Company Gary 40, Indiana

Current price lists covering the above accessories are shown in CX Nos. 242-246, inclusive.

19. The number of automotive batteries and automotive accessories which Goodyear sells to Atlantic accounts under the Sales Commission Plan is but a very small part of the total number of such items which Goodyear purchases and resells to all its customers.

Flow of Distribution—

485 20. The flow of tires and tubes from Goodyear factory to consumer, via the Sales Commission Plan with Atlantic, is generally:

(a) Goodyear Factory
to
(b) Goodyear District Warehouse
to
(c) Wholesaler, i.e., "Supply point"
1. Goodyear Tire Dealer
2. Goodyear Service Store
3. 100 percent Petroleum Jobber
to
(d) Petroleum Service Station
to
(e) Consumer

The Goodyear tire and tube factories are located at Akron, Ohio; Gadsden, Alabama; Jackson, Michigan; Los Angeles, California; and Topeka, Kansas.

Goodyear District Warehouses are located in the following cities:

Albany, N. Y.	Buffalo, N. Y.
Atlanta, Ga.	Charlotte, N. C.
Baltimore, Md.	Chicago, Ill.
Birmingham, Ala.	Cincinnati, Ohio
Boston, Mass.	Cleveland, Ohio
486 Columbus, Ohio	New Orleans, La.
Dallas, Texas	Oklahoma City, Okla.

Denver, Colo.	Omaha, Nebr.
Des Moines, Iowa	Peoria, Ill.
Detroit, Mich.	Philadelphia, Pa.
El Paso, Texas	Phoenix, Ariz.
Fargo, N. D.	Pittsburgh, Pa.
Grand Rapids, Mich.	Portland, Ore.
Harrisburg, Pa.	Richmond, Va.
East Hartford, Conn.	St. Louis, Mo.
Houston, Texas	Sacramento, Calif.
Indianapolis, Ind.	Salt Lake City, Utah
Jacksonville, Fla.	San Antonio, Texas
Jersey City, N. J.	San Francisco, Calif.
North Kansas City, Mo.	Seattle, Wash.
Los Angeles, Calif.	Spokane, Wash.
Memphis, Tenn.	East Syracuse, N. Y.
Miami, Fla.	Wichita, Kansas
Milwaukee, Wis.	
Minneapolis, Minn.	

21. The flow of batteries from the manufacturer to consumer, via the Sales Commission Plan with Atlantic, is generally:

(a) Battery Manufacturer's Factory
to
487 (b) Wholesaler, i.e., "Supply Point"
1. Goodyear Tire Dealer
2. Goodyear Service Store
3. 100 percent Petroleum Jobber
to
(c) Petroleum Service Station
to
(d) Consumer

Because of the weight factor, stocks are carried in Goodyear District Warehouses only for emergency or convenience purposes. Any customer, whether wholesaler or re-

tailer, may—and frequently Atlantic Service Stations do—order direct factory shipment; currently the minimum order for this purpose is ten batteries.

The battery manufacturers' factories are located as follows:

Electric Auto-Lite Company—
Toledo, Ohio—Main Office
Reading Battery Division
Reading, Penna.
Niagara Falls, New York
P. O. Box 336
3125 Highland Ave.
East Point, Ga.
P. O. Box 309
Lawrence Ave.
488 Owosso, Mich.
P. O. Box 97
951 South Aiken Rd.
Vincennes, Ind.
P. O. Box 591
Oklahoma City, Okla.
P. O. Box 1965
600 South West Third Street
Oakland, Calif.
P. O. Box 126
Elmhurst Sta.
Paramount, Calif. (L A)
7701 East Compton Blvd.

Gould National Batteries, Inc.—
Chicago Heights, Ill.
12th & McKinley Streets
Dallas, Texas
4935 Cass St.
Denver, Colo.
2315 15th St.

East Point, Georgia
117 East Taylor Ave.
Houston, Texas
P. O. Box #14475
489 Leavenworth, Kansas
1901 South Fourth Street
La Puente, Calif. (L A)
14500 Nelson Ave.
Lynchburg, Va.
2800 Carroll Ave.
Marlboro, Mass.
303 Mechanic St.
Memphis, Tenn.
P. O. Box #3975 Lamar Station
North Bergen, N. J.
2101 85th Street
Ogden, Utah
160 West 28th Street
West Salem, Oregon
576 Patterson Ave.
St. Paul, Minn.
1025 No. Lexington Ave.
Zanesville, Ohio
1606 Moxahala Ave.
Main Office—St. Paul, Minn.
First National Bank Building

22. The flow of automotive accessories from the supplier to the consumer, via the Sales Commission Plan with Atlantic, is generally:

490 (a) Supplier
to
(b) Goodyear Car and Home Merchandise Warehouse. (9 in number)
to

(c) Wholesaler, i. e., "Supply Point"
1. Goodyear Tire Dealer
2. Goodyear Service Store
3. 100 percent Petroleum Jobber
to
(d) Petroleum Service Station
to
(e) Consumer

The suppliers of automotive accessories are located in various states. The nine Goodyear Car and Home Merchandise Warehouses are located in or near the following cities:

Boston, Mass.	Kansas City, Mo.
Chicago, Ill.	Los Angeles, Calif.
Cleveland, Ohio	Philadelphia, Pa.
Dallas, Texas	Portland, Ore.
Gadsden, Ala.	

With the exception of Boston and Dallas, none of the above warehouses are located at the same address as any of the Goodyear District Warehouses listed in Par. 20 above.

23. In some instances an Atlantic service station may buy TBA direct as a franchised Goodyear dealer, in 491 which event there would be no intervening wholesaler. On occasion such a service station may supply other service stations, thereby functioning as a wholesaler as well as retailer.

Supply Points—

24. The function of a supply point is to satisfactorily sell, service and supply TBA to its customers at wholesale competitive prices. This requires the carrying of balanced stocks of these items and the maintaining of adequate

facilities and equipment, often including one or more TBA Supply Trucks with driver salesmen.

25. Each Goodyear District Manager is responsible for distribution in his territory, and it is therefore part of his job and responsibility to find and provide supply points which will render the best service to those Atlantic accounts in his territory purchasing Goodyear TBA. Supply points buy and sell on the same terms as do all wholesalers of Goodyear's products and they receive no extra compensation for servicing Atlantic accounts under the Sales Commission Plan.

26. The number of Atlantic accounts served by a given supply point naturally varies according to local market factors. The average is approximately 16.

27. The majority of supply points serving Atlantic accounts are independent franchised Goodyear tire dealers—TBA Supplying Dealers. Such dealers are entirely 492 independent businesses. They sell Goodyear TBA or competitive lines of TBA to whomever they please, whether petroleum or non-petroleum accounts and without reference to whether or not such customers are connected with any Sales Commission Plan. Some Atlantic service stations serve as supply points but Atlantic does not designate which ones are to serve as such.

28. In some local areas there is a lack of independent dealers with adequate facilities for satisfactorily functioning as a supply point, or there is a lack of such dealers desiring to assume the responsibilities involved in being a TBA Supplying Dealer. In such areas the Goodyear District Manager may select the nearest Goodyear Service Store to act as the authorized supply point.

29. In certain local areas where neither independent dealers nor Goodyear service Stores are available to serve Atlantic accounts, such accounts may be supplied directly from Goodyear Districts and/or warehouses.

30. Atlantic actively participates in the improvement of TBA supply service to Atlantic petroleum outlets. It calls the attention of Goodyear to any inadequacy or weakness in the supply point service and suggests ways in which better service can be rendered. Such suggestions may include the addition of new supply points, enlargement of inventory or improvement in delivery service.

Similarly, improvements may be initiated by Good-
493 year itself or by suggestions offered by the supply points or by the Atlantic dealers purchasing Goodyear TBA.

Mechanical Features and Forms—

31. Commissions are paid monthly by check from Goodyear's Accounting Department in Akron. Under the sales commission plan Atlantic receives a commission of 7½ percent on sales of Goodyear TBA to Atlantic's franchised distributors. No further commissions are paid with respect to any Goodyear TBA which Atlantic service stations may purchase from the Atlantic distributors. Some Atlantic service stations may buy a part of their Goodyear TBA from Atlantic franchised distributors and part from designated supply points. In such cases Atlantic receives the ten percent commission only on those purchases from the designated supply points. In order that the payments due Atlantic under the terms of the Agreement may be accurately computed upon the basis of reliable sales figures, certain forms are used.

32. Form G-1209 (CX 41-B) is the basic record which shows that sales by the Goodyear supply points to the designated Atlantic dealer are subject to the payment of a sales commission by Goodyear to Atlantic. Generally the form is, in the first instance, prepared by Atlantic and forwarded to the Goodyear District Manager. The Goodyear District Manager designates on the form the supply

points whose sales to the particular dealer will be
494 subject to the payment of a sales commission by Goodyear to Atlantic. The Goodyear approval of the account for the payment of sales commission is indicated by the District Manager's signature to the form. (In rare cases, less than one percent of the time, approval by Goodyear may be withheld for such reasons as temporary inability to establish a supply point.) Copies of the completed G-1209 Form are distributed to the Goodyear District Office, the Atlantic District Office, the Goodyear general line salesman working in the area and to the Goodyear Service Store, if any, which is approved as a supply point for the account. An independent dealer serving as a supply point for Atlantic accounts is furnished a list of such customers.

33. Goodyear's policy is to solicit all Atlantic service stations in the territory covered by the Sales Commission Plan with Atlantic. Occasionally Goodyear will sell to an Atlantic service station for which a G-1209 has not been issued. When this occurs, Goodyear will recommend to Atlantic that a G-1209 be issued.

34. Independent dealers serving Atlantic accounts as supply points under the Plan submit monthly to the Goodyear District Office reports of their Goodyear TBA sales to said accounts. These reports are generally made by the supplying dealers on Form G-1201 (CX 43-B). Such reports are not made by Atlantic service stations which
may act as supply points since commissions are paid
495 with respect to their purchases, not with respect to their sales.

35. In rare instances the independent supplying dealer does not maintain adequate bookkeeping facilities which would enable him to readily fill out and submit the G-1201 Forms. Also, occasionally, periodic checks by Goodyear of purchase volume against reported sales reveal that the

G-1201's submitted by a particular supplying dealer are inaccurate. In either of these cases, the use of the G-1201 will be discontinued and the sales of the dealer to his Atlantic accounts will be reported on Form G-1208 (CX 44-B). This Form is generally made out by the dealer and a Goodyear general line salesman working together from the dealer's invoices.

36. Goodyear Service Stores serving Atlantic accounts as supply points under the Plan submit monthly to the Goodyear District Office reports of their TBA sales to said accounts. These reports are made on Form G-1207 (CX 44-C).

37. In those instances where an Atlantic account is supplied on a direct franchise from a Goodyear District and/or warehouse, the District Office maintains a record of the TBA sales on Form B-91 (CX 44-D).

38. Form G-1204 (CX 42-B) lists all of the Atlantic dealers covered by Form G-1209 and records all of the sales for each particular month with respect to which commissions are to be paid by Goodyear to Atlantic.
496 Names of the Atlantic dealers are entered on the Form by Atlantic and the Form is forwarded to Goodyear. Thereafter, Goodyear fills out the remainder of the Form from information obtained from Forms G-1201, G-1208, G-1207 and B-91 which has been collected by the District Office.

39. Copies of the completed G-1204's are submitted monthly by the Goodyear District Office to Atlantic and to Goodyear, Akron and are used for calculating the commissions due Atlantic.

40. One other Form has been received in evidence, Form B-80 (CX 45-B) which has no connection with the Sales Commission Plan. This Form is maintained by each Goodyear District Office and on it are accumulated all sales including those reported on the above-mentioned Forms

and those having nothing to do with the Sales Commission Plan. Names of customers are not written down on the B-80, this form merely being a master summary of all sales used for general accounting purposes.

Atlantic Dealers—

41. The great majority of Atlantic dealers designated on Form G-1209 are indirect Goodyear accounts. These are accounts which purchase Goodyear TBA from a direct Goodyear franchised dealer. A number of Atlantic dealers are themselves direct Goodyear dealers and purchase their Goodyear TBA directly from the Goodyear district.
497 Such indirect and direct dealers may sign Forms designated as Associate Dealer Agreements (CX 44-E) and Goodyear Service Station Agreements (CX 44-F and CX 44-G), respectively. Goodyear is a party to the direct franchise contract but not to the indirect franchise contract.

42. Goodyear generally learns from Atlantic that a new Atlantic service station has opened up or that a new operator has taken over an existing Atlantic station. Such a dealer is contacted by the Atlantic sales representative and by either a Goodyear general line salesman, a Goodyear Petroleum Representative or a representative of the Goodyear supply point. Each of these persons will endeavor to promote the sale of Goodyear TBA to the Atlantic dealer. If it appears that such a dealer is a potential customer for TBA, a G-1209 Form will be issued in the manner described above.

43. Atlantic accounts which are direct Goodyear dealers are called on by Goodyear general line salesmen at such intervals as will assure maximum sales results. These accounts generally carry a large inventory, and visits by Goodyear general line salesmen will be at one, two, four

or six week intervals depending upon the particular necessities.

44. Atlantic accounts which are indirect or Associate Dealers are visited by the salesmen of their supply points.

Such accounts normally carry a small inventory and
498 depend upon frequent solicitation and quick service.

Their supply point salesmen call on them bi-weekly or at least once a week. These indirect accounts are so numerous and their individual unit volume of purchases are so low that Goodyear considers it to be more economical and efficient to have them solicited by their nearby supply points than by its general line salesmen who are primarily concerned with direct accounts.

45. All Atlantic accounts, whether direct Goodyear dealers or Associate Dealers, are regularly solicited for TBA by Atlantic Salesmen who carry Goodyear TBA order blanks. While Atlantic does not take title to the Goodyear products, its salesmen take orders which they forward to the supply points.

46. A number of Atlantic accounts as to which a Form G-1209 has been issued do not in fact buy any Goodyear TBA products. Many Atlantic accounts buy competing TBA products. All such accounts, however, continue to be solicited by Goodyear, by Atlantic and by supply point salesmen.

47. Goodyear prepares an inventory guide (CX 247-B) which is made available to all petroleum service station customers including Atlantic stations. The guide is based on the actual experience of thousands of average and high-gallonage service station outlets. The purpose of the guide

is to recommend quantities and types of merchandise
499 to be carried so as to secure maximum sales with minimum dollar investment.

48. Goodyear and Atlantic have agreed upon the design of metal signs and window valances which are made

available by Goodyear to all Atlantic outlets on a no-charge basis. In certain cases Atlantic dealers may want special signs such as electrical signs. These are available on a rental basis.

49. Cooperative advertising is available to all Atlantic service stations, direct dealers and associate dealers, on the same basis it is offered to all other Goodyear dealers and associate dealers. The types of cooperative advertising currently available embrace newspaper, radio, television and telephone directory advertising.

Additional Facts About the Goodyear-Atlantic Relationship and the Sales Commission Plan—

50. Goodyear had never had any kind of marketing arrangement with Atlantic prior to the commencement of the Sales Commission Plan in the Newark area on June 12, 1950. Goodyear solicited TBA business from Atlantic service stations for many years prior to June 1950. However, Goodyear's staff was never able to regularly call on and adequately service all Atlantic stations in any given area.

51. The sales commission agreement entered into by Goodyear and Atlantic was the result of negotiations 500 between the two companies following the receipt by Goodyear of Atlantic's letter of January 19, 1948 (CX 1-A). On April 6, 1948 Goodyear declined to make a proposal to Atlantic (CX 3-A), but under date of May 4, 1949 it notified Atlantic of its interest in discussing the subject of marketing TBA through petroleum service stations (CX 4-A-B). In May 1950 Atlantic notified Goodyear of its desire to test the Sales Commission Plan in the Newark area. Operation of the Newark test commenced on June 12, 1950. Subsequently, as of March 1, 1951, the plan was adopted by Atlantic for three of its marketing

regions—the New England Region, the New York Region, and the Philadelphia-New Jersey Region.

52. If there were no Sales Commission Plan with Atlantic, Goodyear and its supply points would have to increase very substantially the size of their sales forces and the extent of their sales promotion efforts in order to solicit and service the Atlantic accounts now buying Goodyear TBA in the manner and on the scale possible under the present plan.

Dated: June 24, 1957.

501 Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
63 Wall Street,
New York 5, New York,
Attorneys for the Goodyear Tire & Rubber Company and the Goodyear Tire & Rubber Company, Inc., Respondents.

Counsel Supporting the Complaint.

502 Mr. Kelaher: Your Honor, our next witness is scheduled for 2:00 o'clock, so I suggest that we adjourn until that time.

Hearing Examiner Kolb: He won't be here until 2:00?

Mr. Kelaher: He may be here at 1:30.

Hearing Examiner Kolb: Do you want to adjourn until 1:30 or do you want to adjourn until 2:00?

Mr. Kelaher: How about counsel for the respondents?

Mr. Correa: We are here, your Honor, far from home and our offices and our regular businesses, so that it doesn't matter to us.

Hearing Examiner Kolb: If he will be here at 1:30 I suggest we return at 1:30; however, if he won't be here then, why, that is something else.

Mr. Kelaher: We have every reason to believe he will be here at 1:30, your Honor.

Hearing Examiner Kolb: All right. The hearing will be adjourned until 1:30.

(Whereupon, at 11:35 o'clock a. m., the hearing in the above-entitled matter was recessed to reconvene at 1:30 o'clock p. m. this day.)

503 Afternoon Session.

(1:40 p. m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: I call Mr. Duboff.

MYER DUBOFF, was thereupon called as a witness on behalf of the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address for the record, please?

A. Myer Duboff, 45th and Lancaster Avenue, Philadelphia, Pa.

Q. And the name of the company?

A. Lancaster Auto Supply, 4500 Lancaster Avenue.

Q. What type business is the Lancaster Auto Supply Company in?

A. Well, we sell automotive parts, we sell supplies, machine shop work, anything in the automotive business. We sell oil filters, spark plugs, fan belts, radiator hoses, anything and everything in the business.

Q. Can you give us the trade names of the products you handle in the chemical line for example?

A. DuPont, Prestone.

504 Q. How about fan belts and hoses?

A. That is Raybestos.

Q. And batteries?

A. Exide, AC oil filters.

Q. That will do. What is the sales area of the company, Mr. Duboff?

A. Well, we are actually selling all over Philadelphia. We sell in the suburbs of Philadelphia, and the outside area.

Q. So to what class of customers do you sell?

A. Service stations, independent garages, industrial people, and well, contractors, we sell to stores, we try to cover every phase of the business.

Q. How many salesmen are employed there?

A. At the present time I believe there are about four.

Q. How are they compensated?

A. Salary plus commission.

Q. Is that the way you are compensated, too?

A. That's right, sir.

Q. Do you operate any trucks for delivery purposes?

A. We have two, three, we have I would say about five or six vehicles for service.

Q. Do you use those trucks for delivery service?

A. We use them for pick-up and delivery, yes, sir.

Q. How long have you been with the company, Mr. Duboff?

A. I would say roughly about 10 years.

505 Q. And in what capacity?

A. As a salesman, outside salesman.

Q. And what is your sales territory for the company?

A. Well, I can go anywhere, actually. If a fellow—in other words, if I know somebody in another section of

town, I can go up there and do business. I am not limited; I have the entire city at my disposition, anywhere I want to travel.

Q. What type customer do you solicit?

A. Everything and anybody in the business, the same thing as I said before.

Q. That includes service stations?

A. Service stations, garages, stores.

Q. In your sales territory, are there any Atlantic stations?

A. Yes, there are.

Q. Do you solicit their business?

A. Yes, I try to solicit their business.

Q. Do you sell to any of them?

A. I sell to a few independents. I can't sell to the company-owned stations, impossible.

Q. Will you define an independent?

A. Independent is a man that owns his own building, and is just selling Atlantic products, more or less their gas and oil.

Q. Do you have some idea of the number of Atlantic stations in your territory?

A. I would say anywhere between 30 and 35 that 506 I actually could maybe do business with.

Q. And do you solicit those, all of those?

A. No, I gave them up for a bad job to tell the truth, because you keep on going in there and they say they can't buy from you; not all of them, some of them.

Q. Do you sell to any of them?

A. Independents, we do, yes.

Q. What other type are there?

A. I beg your pardon?

Q. What other type stations?

A. Well, there is company-owned stations.

Q. I see. Now as to the independents, what do you sell to those stations, Atlantic stations?

A. To the independents we sell the entire line, to tell the truth. We sell wherever we can, fan belts, hoses, spark plugs, filters. We sell a complete line to them.

Q. And as to the other type Atlantic stations, do you sell to any of those on a regular basis?

A. I don't quite understand the question, sir.

Q. You have named independent Atlantic stations and company-owned Atlantic stations—

A. (Interposing.) I see what you mean.

Q. Now to company-owned stations, do you sell to any of those?

A. No, I can't sell them.

Q. Do you sell them anything outside of the TBA line?

507 A. I was at one time selling mufflers and some other things that didn't pertain to any of the products of the company.

Q. When did you sell to them?

A. Well, I would say within a period—to some of them. Now I don't remember exactly, about a year ago or something like that.

Q. You—at any time were you able to sell to any of the—in years past—able to sell to any of the Atlantic stations?

A. How many years are you speaking about, sir?

Q. Well, when was the last time you were able to sell to them?

A. Well, it is getting tougher and tougher to sell them, to tell the truth.

Well, I would say within the last couple of years it is getting worse.

Q. Do you continue to solicit their business?

A. I try to, but it is like barking up a tree. I mean,

you can't do anything with these fellows; they must buy from the company and that is the answers I get.

Mr. Thompson: I move that last answer be stricken, sir.

Hearing Examiner Kolb: Read the answer, please.

(Answer read.)

Hearing Examiner Kolb: Motion to strike denied.

508 By Mr. Dias:

Q. Can you state specifically the name of any Atlantic dealer that told you that?

A. I. Mann, at Brookhaven and Haverford Road.

Q. And can you place a time on that, please?

A. Well, that is every time.

Q. When was the last time you called on him?

A. A couple of months ago, I would say four or five or six weeks ago.

Q. Are there any others who made similar statements to you?

A. Well, they all beat around the bush. They just don't come out directly; they tell you they must still buy from their supplier.

Mr. Correa: Could we have these conversations fixed, the date, with whom, and exactly what was said, instead of these conclusionary answers?

Hearing Examiner Kolb: Try to fix the time of your conversations.

By Mr. Dias:

Q. Can youn fix a time that these conversations took place, and the name of the party with whom you had the conversations?

A. Well, I. Mann has been right along, five or six weeks ago, and I will state that and that is true.

Q. Then I asked you if there was another one. Was there another instance of that?

509 A. Well, I can't actually at this time give you a specific date and time and specific persons because lots of time some of these fellows have given up their stations instead of going on with what they are doing.

Q. You say there are about 35 Atlantic stations in your sales territory?

A. I would say at least that, yes, sir.

Q. Have you noticed the type TBA that is carried in those stations?

A. Yes, sir.

Q. What brand is primarily advertised?

A. Goodyear products right down the line. Goodyear, AC spark plugs, AC filter, also their batteries, radiator hoses and fan belts.

Q. Do you know who the Goodyear supplier is in your territory?

A. Well, the one that I run into mostly is Frank Hagan.

Q. Are there any others?

A. Well, there is Ernie Miller up on Westchester Pike; there is Ellwood Kieser downtown.

Q. Are your products competitive with the Goodyear products sold by these three supply points?

A. Yes, sir.

Mr. Correa: I object to that, if your Honor please.

Hearing Examiner Kolb: Did you say the products, 510 are they competitive?

Mr. Dias: Yes, sir.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: I submit, if your Honor please, it is impossible to tell what the witness means or what counsel means for that matter by "competitive".

Hearing Examiner Kolb: I think we all understand it.

Mr. Correa: I beg to differ with your Honor. I don't understand what it means, and I submit it has no such

well recognized meaning to make this kind of evidence admissible in this proceeding.

Hearing Examiner Kolb: I overruled the objection.

Mr. Correa: Exception.

Hearing Examiner Kolb: Read the question to the witness.

(The reporter read the question and answer as follows: "Question: Are your products competitive with the Goodyear products sold by these three supply points? Answer: Yes, sir.")

Mr. Correa: May I supplement my objection by adding that the witness has not been qualified as able to testify to this matter and therefore there is no proper foundation laid.

Mr. Dias: This man has been a salesman for 10 years in the automotive supply business. I think case law 511 will sustain the position on the question to the effect that a man that has been in the business the length of time he has is certainly qualified to testify that, whether or not he is in competition with any given product.

Mr. Correa: If competition means, for example, quality, the witness, I submit, is not qualified. We have no showing in this record as to whether he is sufficiently expert to be able to deal with the relative merits of one battery and another battery, or one tire and another tire, let's say.

Hearing Examiner Kolb: I ruled on the objection. Proceed.

By Mr. Dias:

Q. If I have asked you this, you can stop me. Did I get the brand names of the products that you sell, batteries—

A. (Interposing.) Yes, you did.

Mr. Dias: That is all.

Hearing Examiner Kolb: Cross examination.

Cross-Examination by Mr. Thompson.

Q. You said there were four salesmen for the company, Mr. Duboff?

A. Yes, sir.

Q. Were all four of them selling all over the city of Philadelphia and the suburbs?

512 A. We do, sir.

Q. Do you all sell the full line of all of the merchandise, wholesaled by Lancaster Auto Supply Company?

A. I don't get that, sir.

Mr. Thompson: Would you read the question, please?

(Question read.)

The Witness: Wholesale and retail.

By Mr. Thompson:

Q. I guess I didn't make my question clear. Are all four of you engaged in soliciting whatever accounts you want all over the city?

A. Yes, and the suburbs.

Q. And all four of you try to sell all of the different items of merchandise which is handled by Lancaster Auto Supply, is that correct?

A. That is true.

Q. So that all four of you might be calling on the same garage?

A. Never on the same one. We all know each other's customers; sometimes I can't sell a man and the other fellow can.

Q. Your company does a lot of repair work, does it not?

A. I wouldn't say to the extent we used to, years ago. We don't repair cars. We do shop work.

Q. Does the phrase "hard parts", is that familiar to you?

A. Yes, sir.

513 Q. That is your company's specialty, is it not?

A. No, I wouldn't say that, sir. We only have two men in the shop. We used to have six and eight and ten people in the shop at one time.

Q. No, but your company sells hard parts to various retailers throughout the city, do you not?

A. Yes, sir.

Q. And that is your specialty, is it not?

A. No, it is not our specialty, no, sir.

Q. About 75 percent of your sales?

A. No, sir.

Q. What percentage, would you say?

A. I would say 20 percent, as a top. We only keep this as a background more or less to get the other business, but I am not in a position to tell you exact percentages. I only say 20 percent out of the sky, I don't know. I know it is very little.

Q. How about service station equipment, do you sell that?

A. Yes, we sell that.

Q. And that is a fairly large part of your business, is it not?

A. No, it is not, no, sir.

Q. What is the largest part of your business, accessories?

A. No, everything but hard parts, sir. Well, if you say accessories, your spark plugs, oil filters, fan belts,
514 hoses, that is repeat business, it is quite a bit, a lot of business.

Q. And that is your principal business?

A. Batteries, antifreeze. Yes, sir.

Q. And service stations are your principal customers?

A. Not necessarily. I wouldn't say principal. We do have other customers besides service stations.

Q. The company made great progress in their annual volume of sales in recent years, hasn't it?

A. I don't know. I am not in a position to answer that.

Q. How about your end of the business? Hasn't that been increasing substantially, your own sales?

A. My business is all right, yes, sir.

Q. About 70 percent of your sales are cash, are they not?

A. No, they are not.

Q. What percentage would you say?

A. I don't know, again, I do not know the percentages of cash against charge. I am only a salesman, sir.

Q. How about from your experience as a salesman, aren't most of your sales for cash?

A. No, sir.

Q. You handle credit accounts?

A. I don't handle them personally, no. We have a credit department that takes care of that.

Q. But you handle accounts to whom your company extends credit?

515 A. Yes, if the man is open, I certainly give him credit to leave him sign for it until the following month.

Q. What percentage of the service station accounts that you sell to are on credit and what percentage are on cash, approximately?

A. Of my own experience, sir?

Q. Yes, your own accounts.

A. Oh, my accounts. Well, I would say about 70 percent, at least, 70 percent that are charge accounts.

Q. And the others are for cash?

A. Yes, somewheres around that.

Q. How do you deliver when it is for cash? Do you drive a truck?

A. Oh, no, sir.

Q. What do you do, take an order—

A. (Interposing.) Either I phone it in or I write it up the next day and pass it on to the boys to pull the orders and write it up and get it out.

Q. And the deliveries are made COD?

A. If it is a cash customer, yes, sir.

Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road.

A. That is right.

Q. As having said something to you about inability to buy from you. I was not clear as to what he said.

516 A. Do you want me to state what he said to me? He said to me "I can't buy from you".

Q. Had he been buying from you?

A. He was buying odds and ends and every time I came in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said, "Why not," and he says "They know what I am doing," and I didn't think that was right.

Q. Isn't he presently buying Exide batteries from you?

A. He is not. He hasn't in years.

Q. Brake linings?

A. He might have bought some brake linings in between. Not to amount to anything, as far as I know.

Q. Jacks?

A. Jacks, no, I don't think he bought a jack. Maybe five years ago he might have.

Q. Wheel puller?

A. No, I don't think anything along that line. He did buy an impact tool from me, sir.

Q. What is an impact tool?

A. That speeds up putting the tires on and taking heads off of engines.

Q. Does your company sell assorted tools for service stations?

A. Yes, we sell assorted tools.

517 Q. Do you supply Mr. Mann with those?

A. I wouldn't say so, necessarily. He might have picked up odds and end tools he needed to fill in or something like that.

Q. Well now, let's take these hard parts. I think you said you found it impossible to sell anything to Atlantic stations?

A. Yes, sir.

Q. And that applies to hard parts, too?

A. Well, I wouldn't say—it would be the same if I walked in and see the man and asked him, I would say, ask if I can help him, anything you need along these lines, suggest these things, and hard parts is—the only time you get a hard part, you wouldn't sell a hard part directly in selling. The man would pick the telephone up and he called for delivery on a hard part.

Q. That same comment applies, would it, to service station equipment?

A. Depending on the service station equipment, sir.

Q. Do you find it impossible to sell service station equipment to Atlantic owned stations?

A. I wouldn't say that. Most of them were getting them from Alemite. They were getting their equipment from Alemite and I might be able to sell small parts, small grease guns or repair fittings, or ends, or maybe an assortment of grease fittings.

518 Q. Do you try to sell service station equipment and hard parts to the Atlantic-owned stations?

A. I wish I could, sir.

Q. Do you try?

A. I have been on the street and I just bat my head against the wall.

Q. They just won't buy anything from you?

A. They give you the same stock answer, what I said before. The same answer is what I get.

Q. And that is so regardless of what you try to sell them?

A. No, I wouldn't say that. If they want a hard part, they might call me. I don't know everything that is going on. I am in the street. They may call in, I don't know, and it goes through the works.

Q. Mr. I. Mann is the only one that you can now recall who told you that he couldn't buy from you because they wouldn't let him or something like that?

A. There are other fellows told me that.

Q. Who?

A. Who were they? Well, there was D'Ascenzo Service Station there.

Q. Where is he located?

A. He is at 49th and Lancaster, I think.

Q. And he is what you call an independent?

A. Yes, sir.

519 Q. On what side?

A. Well—

Q. He owns his own station?

A. Yes, sir.

Q. What did he say to you?

A. Well, he said they were putting the pressure on and he is right now ready to give it up, Atlantic, entirely, just on account of the pressures exerted on him, that is what he told me.

Q. Anybody else you can think of?

A. I beg your pardon?

Q. Any other names?

A. Quite a number of fellows are out of business today. I mean, I have been travelling the same territory for years and a lot of these fellows are out of business today. I can't recall the names.

Q. Have you now mentioned all the names that you can recall?

A. No, I wouldn't say that. Maybe another date I might be able to get them down. Charles Robinson was another one. He is out of business.

Q. Where was he?

A. 63rd and Ludlow.

Q. What was he?

A. He was a company-owned station.

Q. Are there any other names that you can recall?

320 A. I couldn't recall at the present time, sir.

Q. Do you know what the brush-off technique is?

A. Well, yes.

Q. Did you ever have it applied to you?

A. Well, on the street you are liable to get anything, sir.

Q. Liable to get it from almost anyone, aren't you?

A. That is right.

Mr. Thompson: That is all.

By Mr. Correa:

Q. Is this Mr. I. Mann of whom you spoke, does he sell tires?

A. Tires?

Q. Yes.

A. I guess he does. We don't sell tires, sir.

Q. Have you been in his shop, place of business?

A. Yes.

Q. Have you seen tires there for sale?

A. Yes, sir, I saw them.

Q. What kind?

A. I don't know anything about tires, I don't sell them. I don't know anything about it. I don't sell tires, I wasn't concerned with them.

Q. Isn't it a fact that he sells Lee tires?

A. I don't know.

Q. You can't recall it, sir?

A. No, sir, I don't have anything to do with tires.

521 Mr. Correa: I have no further questions.

Redirect Examination by Mr. Dias.

Q. You were asked whether or not the company's business had increased. Has your own business increased in your sales territory?

A. Well, my business is increased on account of the higher dollar now, everything costing more, more or less.

Q. How much of that increase was due to larger or greater sales or more numerous sales to Atlantic stations?

A. Well, I took an independent man at 66th and Haverford Avenue and that man has been giving me over a thousand dollars a month from an independent gas station.

Q. What brand?

A. Atlantic gas station, and he has since changed over this last week.

Q. What was his name?

A. James Amen.

Q. What type merchandise were you selling him?

A. The complete line, Exide batteries, AC filters, AC spark plugs. I changed over from Goodyear belts to Raybestos last week so I will be selling Rabestos instead of Goodyear fan belts.

Q. Did you give us his address?

A. 66th and Haverford Avenue.

522 Q. Can you recall any other Atlantic business that has resulted in your particular increase in business in your territory?

A. Particular—what?

Q. In TBA, that is.

A. I didn't quite get the question, sir.

Q. You have testified that your business in your territory has increased?

A. It has.

Q. And you have stated that your business with James Amen for example, runs about a thousand dollars a month?

A. That is right.

Q. Now my question is: Are there other Atlantic stations that buy similar lines from you?

A. No, I can't do any business with them, sir.

Q. Then is the overall increase in business in your territory due to increase in Atlantic sales, sales to Atlantic stations?

A. Is the overall business—

Q. Is your overall increase in sales in your territory a result of increased sales to Atlantic stations?

A. I still—you better word that again.

Q. Let me pass that up. On cash sales, do you get credit for cash sales that may be made?

A. Not so much, no. I don't get too much credit, 523 unless I know who the account is. There is a special folder on cash sales, I have a girl taking care of it. It is a long story. I get it and yet I don't. I will put it that way.

Q. You mentioned that Mr. Robinson said something about pressure. What did he tell you?

A. He told me everything under the sun. That man told me everything. This has been going on—the gas station has been taken over a number of times, a couple of fellows since, and all the time he had it, it was tough. It was tough grinding there. He said he had to buy, he had to buy from the dealers, is what he told me.

Q. Can you tell us when that was?

A. That is going back, I would say, about six years ago, I guess.

Q. Now let me return to the increase in business in your territory. Mr. Thompson asked you if your business had increased, do you recall that, in your territory?

A. Has it increased?

Q. It has increased?

A. It has, yes, sir.

Q. It has, you say?

A. Yes, sir.

Q. Can you recall roughly what it was, what your monthly business was, for example?

A. Well, I know I am keeping going up the ladder,
524 I will put it that way.

Q. Now in going up the ladder, is it due to increased sales to more Atlantic stations?

A. No, no, sir. In other words, if I had more Atlantic stations, I would have more volume. I would love to do business with them.

Q. Now you also mentioned that D'Ascenzo complained of pressure. Can you recall what type of pressure, did he mention that?

A. No, he said they are bothering the life out of me, he is fed up to here and ready to throw in the sponge.

Q. Who did he refer to as they?

A. Atlantic Refining.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Any further questions?

Recross Examination by Mr. Correr.

Q. Were you interviewed by representatives of Federal Trade Commission prior to your testimony here?

A. Was I—what?

Q. Were you interviewed by representatives of Federal Trade Commission?

A. A man came into the store, yes.

Q. When?

A. That has been a long while ago.

525 Q. Give me an estimate.

A. An honest estimate, now wait a minute. I would say about six months ago.

Q. Was that the last time?

A. That is the last time I saw the man, that is right.

Q. Was that the only time?

A. That's right.

Q. Did you give any statement in writing concerning the matters about which you have testified?

A. I didn't give any statement in writing, no, sir.

Q. Have you written him or anybody else connected with the Federal Trade Commission any letters?

A. No, sir.

Q. Nothing at all in writing?

A. No, sir.

Mr. Correa: I have nothing further.

By Mr. Thompson:

Q. Mr. Duboff, were you advised by the representative of the Federal Trade Commission of the nature of this proceedings when he called upon you?

A. I wasn't advised about it, the nature of it. He just asked me questions about what was going on and I told him I couldn't sell Atlantic gas stations.

Q. Did he tell you this proceeding was pending?

A. What, sir?

526 Q. Did he tell you that this proceeding had been started?

A. No, sir, no, sir, I never knew anything at all about it, that is was pending.

Mr. Thompson: That is all.

By Mr. Correa:

Q. Did he tell you you might be called as a witness in a proceeding?

A. Yes, he told me I might be called as a witness, yes.

Q. But he didn't tell you what the proceeding was in respect to which you might be called as a witness?

A. No, he just asked me about different questions, what is going on in the field, and I just told him, so I said I would be glad to tell the truth, which I am telling, is the truth. I said I would be glad to sit up there and tell the truth what is going on.

Q. Did you just offer to be a witness without knowing of any proceeding or did you know there was a proceeding?

A. He did not tell me there was a proceeding of any kind.

Q. But he did tell you you might be needed as a witness?

A. I don't recall.

Q. There was some discussion, I gather, from what you told us about your testifying as a witness.

A. No, I don't recall him saying I would be a witness. He asked me about what was going on and I told him what was going on in the field.

527 Q. Didn't you say a moment ago he told you you might be needed as a witness?

Mr. Dias: Your Honor, I object to this line of questioning. I don't see it is relevant.

Mr. Correa: He said that a moment ago, if your Honor please. I think his credibility is in issue.

Mr. Dias: I don't see how it affects this proceeding one way or another.

Mr. Correa: If he says one thing five minutes ago and another thing now, that affects his credibility. Maybe that doesn't affect this proceeding in your idea, but it does in mine.

Hearing Examiner Kolb: Objection overruled. Read the question, please.

(The reporter read the question as follows: "Question: Didn't you say a moment ago he told you you might be needed as a witness?")

The Witness: If I said that, I made a mistake, because I don't recall him ever saying I might be a witness against Atlantic Refining. I do not recall that.

By Mr. Correa:

Q. But your present recollection, as of this moment, is that there was no discussion between you and this individual about your testifying as a witness?

A. There was no discussion, no, sir.

528 Q. That is your best present recollection?

A. That is right, sir.

Mr. Correa: That is all.

By Mr. Thompson:

Q. When did you learn you were going to be a witness?

A. When I got the subpoena from them.

Q. When the Federal Trade Commission representative called upon you, did you tell him about your conversation with Mr. I Mann?

A. I told him about that, yes, sir.

Q. Did you tell him to the same effect that you have testified here, about what Mr. Mann said?

A. Well, I might not be wording it word for word, but more or less it would be somewhat similar.

Q. Well, I am curious to know how you could have done that if it is true, as you testified, that the Federal Trade Commission representative came to see you six months ago, and you had this conversation with Mr. Mann five or six weeks ago?

A. You asked me if the case was pending, and I said, I don't know about a case pending.

Mr. Thompson: Read the question, please, and you listen carefully.

(Question read.)

A. Well, the Federal Trade Commission man came 529 into our place, it wasn't against Atlantic Refining,

sir. And any question that you are asking me, might I have them mixed up with another case entirely.

By Mr. Thompson:

Q. Did he come back and see you again?

A. I don't recall.

Q. Don't you recall whether he came back to see you again?

A. He didn't come back to see me the second time.

Q. That is what I mean.

A. No, no, I didn't see him the second time.

Q. You haven't yet explained how you could have told a man six months ago something that happened five or six weeks ago.

A. That happened before then. I am bringing that same answer back that happened years ago.

Mr. Thompson: That is all.

Mr. Correa: One further question.

By Mr. Correa:

Q. Did this Federal Trade Commission representative that you saw make notes of what you told him?

A. Yes, he was writing something down, yes, I think he might have. I don't know. I didn't see what he was writing down.

Q. But he was making notes?

A. He was writing something down, yes, sir.

Mr. Correa: That is all.

530 Mr. Dias: Nothing further.

Hearing Examiner Kolb: That is all, Mr. Duboff.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

531 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Matthews to the stand, please.

JAMES MATTHEWS was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. James Matthews, 208 Woodcrest Road, Wallingford Summit, R.D. 20, Media, Pennsylvania.

Q. Are you here in response to a subpoena?

A. Yes, sir.

Mr. Kelaher: Would you please hand it to the Examiner.

The Witness: (Handing.)

By Mr. Kelaher:

Q. Mr. Matthews, were you at one time an Atlantic leasee dealer?

A. Yes, sir.

Q. During what period and at what locations?

A. December 10, 1947 to August 15, 1949 in Darby.

Q. Would you give the addresses as you go along?

A. That was McDade Boulevard.

532 Q. Do you have any further identification on that location?

A. That is all. Just McDade Boulevard, Darby.

Q. Then did you have a station after that?

A. August 15, 1949 until June 1, 1954, Church Lane and Bailey Road in Yeadon.

Q. And after that did you operate an Atlantic station?

A. From June 1, 1954 to May 7, 1957, Baltimore Pike and Providence Road in Media.

Q. So you operated as an Atlantic leasee dealer from December 10, 1947 until last month, is that correct?

A. Correct.

Q. Mr. Matthews, when you entered your station December 10, 1947, what TBA did you begin to carry?

A. Exide batteries, Lee tires, Fram oil filters, Auto-Lite spark-plugs, Thermoid fan belts.

Q. And who was your principal supplier of TBA products?

A. Ed Parris, in Sharon Hill at that time.

Q. Do you recall attending a meeting of Atlantic dealers in or about March 1951?

A. I do.

Q. Do you recall where that meeting was held?

A. Kasfik's in Upper Darby, I believe, if I am not mistaken.

Q. And what was the purpose of the meeting?

Mr. Correa: I object to that, if your Honor please.

533 Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Would you please state who was present at the meeting?

A. Who what?

Q. Who were present at the meeting?

A. In regards to who, the company or—

Q. If there were company representatives there, just state whether—were there Atlantic dealers present?

A. Yes, sir.

Q. Were there representatives of the Atlantic Refining Company present?

A. Yes, sir.

Q. Was there a representative of Goodyear present?

A. I can't be sure.

Q. What transpired at the meeting?

A. We were told that they were going to make a change or switch in their TBA.

Q. By "they," who are you referring to?

A. The company, in regards to the stations. In other

words, they were going to take on—in others words, sponsor new products.

Q. What was the new product?

A. Goodyear tires and batteries and Goodyear accessories.

Q. And by "they," are you referring to Atlantic Refining Company?

534 A. Yes.

Q. At that time were you advised that you could purchase whatever brand of TBA you desired?

A. Yes, sir.

Q. And which brand of TBA did you desire to purchase, which brand of tires, rather?

A. Lee.

Q. Now in or about that time, did you have—or prior to that meeting, rather, did you have what is known as service station identification, did you have signs in your service station?

A. Yes, we had decals in the windows, and signs outside also.

Q. Did you have a Lee sign outside?

A. Yes, in Darby I had a neon sign.

Q. Was that a large sign?

A. (Nodding affirmatively.) I am not positive whether it was a neon sign, but it was a lighted sign.

Q. How long had that been in your station?

A. It was in Darby when I took the station over in Darby.

Q. Now during the period in or about March 1951 you stated you were at the Yeadon station, is that correct?

A. That is correct.

Q. Did you have advertising of any type on your Yeadon station prior to March 1951, and what type of advertising did you have there, TBA advertising?

535 A. We had decals in the windows at the top.

Q. What brands were advertised?

A. Exide and Lee.

Q. Now, after this meeting in or about March 1951, did you continue to have Lee and Exide signs in your station?

A. (Nodding negatively.) They were taken down and others were put up.

Q. Would you please explain that in a little detail?

A. Well, I wasn't there when it occurred. They came in when I wasn't there and took down the signs and put up these other decals.

Q. By "they," whom do you mean?

Mr. Thompson: He said he wasn't there.

The Witness: I wasn't there, but I was told it was a representative from Goodyear and an Atlantic man was with him.

By Mr. Kelaher:

Q. Did you ask that the Lee and Exide signs be taken down?

A. I did not.

Q. Did you do anything about the Goodyear signs that were put up?

A. I took them down.

Q. What happened after that?

A. They came back out and put the Goodyear signs up again.

Q. Did they remove the Lee and Exide signs?

536 A. I had no more Lee and Exide signs to put up. They removed them the first time. The next time they came back and put them up after I took them down.

Q. How long after you removed them did they return and put the Goodyear signs up?

A. A week or so, as soon as they found out they were down.

Q. Now during the period prior to March 1951, you

stated that you sold Lee tires. Had you built up a fairly good volume in Lee tires?

A. Very good.

Q. And were you satisfied with Lee tires, price-wise?

A. Yes, sir.

Q. And were you satisfied with Lee tires as to the guarantee offered?

A. (Nodding affirmatively.)

Q. What type of guarantee was on the tires?

A. They had an unconditional guarantee; they also guaranteed against road hazard, over and above material and workmanship.

Q. And by road hazard, would you explain that a bit, what is meant by that guarantee?

A. Well, if you hit a curb and break it or hit a hole in the road and break it, it was still adjustable, based on the mileage it had travelled.

Q. And did Goodyear have a similar road hazard guarantee?

A. No.

537 Q. Did you desire—did you continue to sell Lee tires?

A. For some time after that, yes.

Q. How long after that did you continue to sell Lee tires?

A. Until, I would guess, very early in 1953.

Q. What happened at that time?

A. The company changed salesmen.

Q. By "company," you are referring to Atlantic?

A. Yes, sir.

Q. Who was the new salesman?

A. Bill Way.

Q. Will you please explain what relationship that has to do with your sale of Lee tires?

A. Well, prior to that time, I was bothered very little

with the salesmen. I very rarely saw him, and I don't think he knew what I was doing and if he did, he didn't care because he was leaving the company.

Q. In early 1953 you stated Mr. Way became the Atlantic salesman. Now would you please state what connection that has with your Lee tire sales?

A. He came out—I think his first trip was around—or he was brought around by the former salesman and introduced and nothing was said and the next time he came in a couple of days later, nothing was said. And two days later, he came in with his supervisor, Mr. Arnholt, and at that time everything broke loose then.

538 Q. By "everything broke loose," would you explain what you mean?

A. They told me what to do or else.

Q. What did they tell you?

A. They told me to get rid of Lee tires and to let's get with the company.

Q. "Let's get with the company"?

A. (Nodding affirmatively.)

Q. And did they make any comments with respect to accessories?

Mr. Thompson: Who is "they" at this point?

Mr. Kelaher: I am referring to Mr. Way and Mr. Arnholt.

The Witness: Yes, in regard to batteries they did because I had Auto-Lite batteries at that time.

By Mr. Kelaher:

Q. What comment did they make with respect to the Auto-Lite batteries?

A. They told me I had to handle Goodyear.

Q. Did you want to continue to handle Lee tires?

A. I did.

Q. And did you continue to handle Lee tires?

A. No.

Q. Why didn't you?

A. I didn't want my lease cancelled. I wanted my lease renewed when it terminated.

339 Q. Were you at any time asked by Atlantic representatives to sign a mutual cancellation of the lease?

A. I was.

Q. Would you please state when that was?

A. That was about two weeks after Mr. Arnholt and Mr. Way were there.

Q. And you fix that time early in 1953?

A. Correct.

Q. I would like for you to state just what happened then—with respect to the mutual cancellation of the lease document?

A. He came out and told me he had a cancellation for me to sign—

Q. (Interposing.) Who is "he"?

A. Mr. Way. I told him I wouldn't sign it. He told me I had to sign it and I said I didn't have to sign it. So we argued for three hours, and I didn't sign it.

Q. Was there any mention made of TBA during that conversation?

A. Sure, that is the reason he brought it out.

Q. What did Mr. Way say with respect to TBA?

A. He said I wasn't buying from the company as I was supposed to so they figured it was better for everyone concerned if I signed a mutual and they cancel my lease and I said I didn't want my lease cancelled and I said if I
340 cancelled mutual, I was making a liar out of myself.

Q. What did you say to Mr. Way as a result of the conversation?

A. I just told him I wouldn't sign it, but I told him I would be good and follow the line—actually, after we argued for two and a half to three hours, he told me then, he

softened before I did, and he told me that he couldn't force me to, and he couldn't do anything about putting me out until my lease expired in June, but that at that time my lease wouldn't be renewed. So I said all right, I will be a good boy and if I don't show a great increase in TBA and so forth by then, then you can cancel my lease and that way I felt I was going out because they wanted me to, but there was nothing I could do about it. I still wasn't making a liar out of myself by signing a mutual.

Q. After that conversation, did you increase your purchases of Goodyear TBA?

A. I did.

Q. And did you decrease your purchases of Lee tires and other non-sponsored brands of TBA?

A. Completely.

Q. So you went one hundred percent Goodyear at that time, is that correct?

A. I did.

* * * * *

541 By Mr. Kelaher:

Q. Did you want to change from Lee tires to Goodyear tires?

A. No.

Q. Why did you change from Lee tires to Goodyear?

A. Atlantic pressure.

Q. Did you purchase at any time Auto-Lite batteries. I believe you mentioned them, that you had them at one time.

A. (Nodding affirmatively.) I purchased Auto-Lite batteries in Yeadon, and I purchased them in Media.

Q. From whom did you purchase the Auto-Lite batteries?

A. Auto Gear and Parts, in Lansdowne.

Q. Who was the salesman?

A. Mr. Wilbur.

Q. Is he a friend of yours?

A. More or less, yes.

Q. And was any comment ever made by Atlantic representatives with respect to your purchase of the Auto-Lite batteries?

A. Yes.

Q. Are you saying yes?

A. Yes, sir.

Q. Would you please state the circumstances surrounding such comments and the approximate time thereof?

542 A. In the fall of 1954 I purchased 10 Auto-Lite batteries, and I was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease.

Q. Who told you that?

A. Mr. Hayes.

Q. Is Mr. Hayes present today?

A. Yes, sir.

Q. Would you identify him?

A. Yes, sir. (Indicating.)

Mr. Thompson: I didn't hear what Mr. Hayes said. May I have it repeated?

Hearing Examiner Kolb: Read the answer.

(Answer read.).

By Mr. Kelaher:

Q. Who was your Goodyear TBA supplier in Yeadon?

A. Mr. Parris, he was in Sharon Hill at that time.

Q. And who was your Goodyear TBA supplier when you moved to Media?

A. The same.

Q. Mr. Parris was your Goodyear supplier at all times?

A. Yes, sir.

Q. And prior to taking on the Goodyear TBA line, he

supplied you with Lee tires, Exide batteries, and other lines of accessories?

543 A. Yes, sir.

Q. After the mutual cancellation of lease incident, you stated you went one hundred percent Goodyear. At any time after that did you attempt or did you purchase at any time after that non-sponsored TBA?

A. In small quantities, occasionally.

Q. Was anything ever said about that by Atlantic personnel?

A. I was warned every time I did it and they found out about it.

Q. Would you please state the names of the Atlantic representatives that warned you?

A. Mr. Hayes and also Mr. Parris, of course, he wasn't an Atlantic representative, but he was selling.

Q. You mean the TBA supply man, Mr. Parris, also warned you?

A. Yes, sir. One particular incident, I had some MOA on the shelves and he thought it was foreign merchandise, Mr. Hayes, and he asked me where I got it and then he found out it came from Parris.

Q. MOA? What is that?

A. Motor oil additive, made by DuPont.

Q. And you referred to that, you said that was purchased from Mr. Parris?

A. (Nodding affirmatively.)

Q. And did Mr. Hayes think you had purchased it from Mr. Parris?

544 A. Not at the time. He found out later I had.

Q. And did you have a Mr. Hoffman call on you?

A. I did.

Q. Did he ever make any comments about the non-sponsored TBA in your station?

A. Yes.

Q. What did he say?

Mr. Correa: Could we have a time and place fixed?

Mr. Kelaher: Yes, we will do that.

The Witness: Yes. Shortly after Mr. Hoffman came into the territory, which was January 1, 1957, he and I had a discussion about DuPont's antifreeze, because the company always handled Prestone.

Q. What did he say?

A. He said—

Q. By "he" I mean Mr. Hoffman.

A. He asked me what I was doing with DuPont's antifreeze and I told him that you had to have a certain amount of it for those customers that demanded it, but I only purchased it a case at a time, trying to make things as easy as possible.

Q. And do you recall any other incidents with Mr. Hoffman similar to the one you just mentioned?

A. No. But I recall one incident where he came in the office and I had a top coat and a jacket and I was on the way to the cleaners, and he threw them on the floor
545 and I only had laid them down long enough to talk to him because I was driving to the cleaners, on the way to the cleaners, and I saw him in the station and stopped in and carried them in with me. He took them and threw them on the floor.

Q. This is Mr. Hoffman you are referring to?

A. That is right.

Q. Was he doing that as a gag?

A. It might have been a gag to him, but it wasn't a gag to me. He told me to get them out of the front office.

546 Q. Did you receive advertising material from Goodyear?

A. I did, not because I ordered it, but because they sent it and billed me for it.

Q. In other words, they sent you advertising material without your request, is that correct?

A. Uh huh.

Q. Are you saying "yes"?

A. They did.

Q. Did Atlantic salesmen or Mr. Parris ever write up tire orders without your reques?

A. The salesman did, he sent in oil filters one time without my request and there were so many complaints from other dealers that Mr. Parris called me a day later and after he had sent them and said he understood that was the situation and he wanted to know if I wanted to send them back.

Q. What type oil filters were they? What brand?

A. AC.

Q. Now, with respect to tire orders, did Atlantic salesmen write up tire orders for you?

A. Usually Mr. Parris did.

Q. And would you request certain purchases or how was this done?

A. Usually they'd come in and say "What sizes do you want?" It wasn't how many, they knew if you had a buck why they—and could afford to pay for them they were going to send them in.

547 Mr. Thompson: I move the answer be stricken.

Mr. Kelaher: I think it's perfectly proper, your Honor.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Kelaher:

Q. After the time in March or in 1953 when you discussed the mutual cancellation of lease document with Atlantic representatives, did you ever purchase non-sponsored TBA in large quantities?

A. No, sir.

Q. Why didn't you?

A. I knew better.

Q. When you stated you knew better, would you just explain that in a little detail.

A. Well, if I wanted to stay a dealer I knew I couldn't do it.

Q. You know you'd—

A. In other words, you couldn't do it and get away with it.

Q. After that period when you did purchase non-sponsored TBA I believe you testified the comments were made by Atlantic representatives about it, is that correct?

A. That's correct.

Q. Mr. Matthews, you were an Atlantic lessee dealer from December 10, 1947 until last month, a period of 548 approximately ten years?

A. Correct.

* * * * *

By Mr. Kelaher:

Q. Mr. Matthews, you stated that you left your station May 7, 1957. Would you state whether or why you left your station at that time?

A. Due to my health.

Q. And did you at that time have an inventory on hand?

A. I did, of about stock and equipment $13,000.

Q. Did Atlantic repurchase any of the inventory?

A. They took most of the inventory and a small part of the equipment but equipment that I was told that I must buy when I went there they left me holding, which I'm still holding, approximately $3,000 worth of today.

Q. Did you have any Fram oil filters in your inventory?

A. I did, I had about 36 and I still have them.

Q. Would Atlantic repurchase them?

A. No, sir.

549 Q. They were non-sponsored?

A. No, they were sponsored.

Q. They were sponsored when?

A. I bought them from the previous dealer when I went there as dealer merchandise.

Q. Prior to '51?

A. That was in '54 when I bought them, June 1st.

Q. You bought those from Mr. Parris?

A. From Mr. McCafferty when I moved to the station.

Q. I see. But you didn't buy them from Mr. Parris?

A. They had been purchased from him.

Q. They had been?

A. Sure, I assume that they had.

Q. Mr. Matthews, you stated that you received advertising material from Goodyear. Prior thereto did you receive advertising material from Lee?

A. Certainly.

Q. Was there any charge for that advertising?

A. Not to my knowledge, no.

Q. Are you familiar with the gentleman referred to as the phantom customer inspector of Atlantic?

A. No.

Q. Did you ever have your station inspected as far as you know?

A. In regards to what now? Maybe I'm not clear
550 on this when I answered.

Q. With respect to over-all operations?

A. Oh, sure. Sure.

Q. And how often would that occur?

A. Depending on what condition he found the station in.

Q. What do you mean by that?

A. Well, if you got a poor score why he came back oftener.

Q. Did you know when the phantom would be in the station or when the phantom was coming?

A. No.

Q. Do you recall attending Atlantic dealer meeting at Kosticks Restaurant during the summer of 1952?

A. No. It's possible that I did, but I can't just exactly say.

Q. Do you recall attending a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation came up?

A. No. Not definitely, no.

In 1953, I think it was in March, there were two men came into my place and conducted an investigation and I remember them at that time, but whether that was the only time I was ever approached from anybody from the Trade Commission.

Q. I'm referring now to a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation was mentioned. Do you recall any such meeting?

551 A. I remember one meeting we had when—but I can't say when it was exactly, when we were told that there was an investigation going on and that we were free to buy where we saw fit and so on and so forth; and that's what we were told at the meeting, but then after the meeting when the salesman came around and talked to us individually we were told something else.

Q. What else were you told?

Mr. Correa: May I ask, if your Honor please, that counsel identify who is "we" and who is doing the telling that all of this remains in the midst of anonymity.

By Mr. Kelaher:

Q. At the meeting you referred to who made the statements you have just alluded to?

A. At the meeting?

Q. Yes.

A. Representatives of the company, Atlantic.

Mr. Thompson: Who were they, is your next question.

Mr. Correa: And who was the "we"?

By Mr. Kelaher:

Q. Do you recall the name of the Atlantic representative who made the statement at the meeting?

A. Our salesman at that time was there, Mr. Arnholt was there.

Q. What was his name?

A. I can't tell you who the salesman was at that 552 time because I can't recall exactly when the meeting was.

Q. Did Mr. Arnholt make any statements?

A. The speeches were made and Mr. Arnholt took part.

Q. He took part?

A. Yes, sir.

Q. And you stated at the meeting he stated the substance of what you just mentioned, right?

A. Correct.

Q. After that time—

Mr. Correa: May we have the "we" identified? The witness says "we were told this," there's been no identification of who "we" was.

The Witness: The Atlantic dealers, as you might suppose that's who it would be.

By Mr. Kelaher:

Q. This was meeting of the Atlantic dealers?

A. That's correct.

Q. Now, after the meeting you have reference to you stated Atlantic salesman came in and told you something else, is that right?

A. That's correct.

Q. Now, who was the Atlantic salesman who came into your place?

A. Mr. Way.

Q. What did Mr. Way tell you?

553 Mr. Correa: May we have the time fixed?

By Mr. Kelaher:

Q. Yes. We are trying to.

A. Yes, it was early in 1953.

Q. And what did Mr. Way tell you?

A. That's when Mr. Way and I had the trouble that I just went through, the whole thing, lease, cancellation and so forth.

Q. I see.

Was that when he told you that you should not carry Lee tires?

A. That's right.

Q. At that Atlantic dealer meeting that you have reference to was any mention made of a Federal Trade Commission investigation?

A. I couldn't honestly say.

Mr. Kelaher: No further questions, your Honor.

Mr. Thompson: May we have just a minute?

Hearing Examiner Kolb: Yes.

(Discussion off the record.)

Hearing Examiner Kolb: Do you want to excuse the witness now until tomorrow morning at 9:00 o'clock. Is that it?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Is that all right with you,

554 Mr. Matthews?

The Witness: Yes, sir.

Hearing Examiner Kolb: All right; tomorrow morning at 9:00 o'clock.

Mr. Dias: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I would like to call Mr. Hinderscheid to the stand, plase.

W. F. HINDERSCHEID was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. W. F. Hinderscheid, 1139 Rock Creek Road, Gladwyne, Pennsylvania.

Q. Are you here in response to a subpoena, Mr. Hinderscheid?

A. Yes, I am.

Q. And what is your position with Lee Tire and Rubber Company?

A. Lee Rubber and Tire Corporation, I'm Vice President in Charge of Sales.

555 Q. You are Vice President in Charge of Sales of Lee Rubber and Tire Corporation, right?

A. That's right.

Q. Now, would you please explain the relationship between Lee Rubber and Tire Corporation and Lee Tire and Rubber Corporation, isn't it?

A. Well, at the present time there isn't any. All there is is Lee Rubber and Tire Corporation. Prior to a year ago, why, Lee Tire and Rubber Company of New York, Inc. was a sales company which was a subsidiary of Lee Rubber and Tire Corporation.

Q. But since that time it has been—

A. (Interposing.) Abolished, the Lee Tire and Rubber Company. Now it's Lee Rubber and Tire Corporation.

Q. For how long a period have you been Vice President in Charge of Sales?

A. November 1, 1948.

Q. Mr. Hinderscheid, prior to about March 1951 Lee had a sales contract with Atlantic Refining Company, is that right?

A. That's right.

Q. And when did that contract first become effective?

A. Well, I can't tell you just when that particular contract became effective because there had been contracts prior to that particular one.

556 Q. Yes. Well, when did the relationship with Atlantic first begin, that's what I'm trying to find out.

A. June 10, 1932.

Q. And that was the first contract entered into with Lee—between Lee and Atlantic, is that correct?

A. That's correct.

Q. And how long did the Lee-Atlantic contract remain in effect? I'm talking about the series of contracts?

A. Well, the series of contracts from June 10, 1932 to March 15, 1951.

Q. And during the period when the Lee-Atlantic contract was in effect what was your form of distribution of Lee tires to the Atlantic market?

A. Our form of distribution to the Atlantic market was we had tires with the Atlantic Refining Company and they distributed to their dealers and service stations.

Q. Did you sell such tires to Atlantic Refining Company?

A. Yes.

Q. Did Lee physically deliver the tires to Atlantic for their warehousing and redistribution?

A. No, we delivered them to the Atlantic warehouses, they did the distribution themselves.

Q. And were there Atlantic warehouses in the entire marketing area in which Atlantic sells petroleum products?

A. I beg your pardon?

557 Q. Did you sell and distribute Lee tires to Atlantic's entire marketing area?

A. Not their entire marketing area; no.

Q. What part of it didn't you sell and distribute Lee tires to?

A. Well, I think they had marketing in the State of Ohio and we didn't have any Lee tires out there with Atlantic.

Q. Aside from that exception you sold and distributed tires to Atlantic in the remainder or the greater portion of their market?

A. I would say we did in a greater portion up until March about 1950.

Q. What happened in March 1950?

A. Well, Atlantic tested out distribution on a different basis in two or three spots between March 1950 and March 1951.

Q. And would you please name those areas?

A. Erie, Pennsylvania; Wilmington, Delaware; Newark, New Jersey.

Q. And were you advised by Atlantic that they were to undergo these so-called tests in those areas?

A. Yes.

Q. And were you also advised by Atlantic to solicit the sale of Lee tires in those test areas?

A. It was agreeable with Atlantic Refining Company for us to do so.

558 Q. I'm referring now to the sales to Atlantic stations.

A. Yes, sir.

Q. Now, Mr. Henderscheid, did you bring with you documents as specified in Specification 1 of the subpoena duces tecum?

A. Well, I had two different letters here—

Hearing Examiner Kolb: You may want to refer to this. (Handing document to the witness.)

The Witness: Specification I. I have it.

By Mr. Kelaher:

Q. Specification I.

A. I have it here.

Q. Are those documents authentic records of the Lee Tire and Rubber Company?

A. You're taking—

Q. I'm talking about the documents referred to in specification I of the subpoena.

A. Number I?

Q. Yes.

A. Yes.

Q. In addition to Specification I you were also requested to furnish certain data in Specification II. Do you have that material with you?

A. Which is Specification II?

Q. That is attached to the subpoena.

A. Yes, I have that.

Mr. Thompson: If you are showing something to
559 the witness, may counsel see it, Mr. Kelaher?

Mr. Kelaher: Certainly.

The Witness: That is Specification II you ask here for a list of Lee factory branches as of January 1, 1950.

By Mr. Kelaher:

Q. That's right. Do you have such a list?

A. Yes.

Q. And in the second request it asks for a list of Lee factory branches set up in the Atlantic Refining Company marketing areas subsequent to January 1, 1950 together with month and year each branch began operations.

A. I have that.

Q. And do you have the item called for in item 3?

A. I have that.

Q. And the last was for number and names of personnel referred to in items 1 to 19 inclusive of Specification I. List of official positions as of dates of documents.

A. I have that.

Mr. Kelaher: If agreeable to counsel we would like to have the photostatic copies called for in Specification I used in place of the originals.

Mr. Thompson: What do you mean by used?

Mr. Kelaher: For introduction into evidence.

Mr. Thompson: You mean to put into evidence?

Mr. Kelaher: Yes, sir.

560 Mr. Thompson: Well, unless I'm sadly mistaken you are not going to get most of them in evidence. I have no objection to the offer.

Hearing Examiner Kolb: You will make them for identification.

Mr. Kelaher: (To the witness.) May I have the documents?

The Witness: The ones that you sent to me, the photostatic copies? I have them numbered 1 to 19, the way you —numerical order.

Mr. Kelaher: And you also have the answer to specification—

The Witness: I have the answers to Specification II to number 1, number 2, number 3 and number 4.

Mr. Thompson: Unless it's a military secret could we know what Specification II is?

Mr. Kelaher: You certainly may.

Mr. Thompson: Is there a copy counsel could see?

Mr. Correa: I join the request, although I gather this has nothing to do with my client's part of the case.

Hearing Examiner Kolb: Do you want the documents marked for identification by the reporter?

Mr. Kelaher: Just a second, your Honor.

Off the record, your Honor.

* * * * *

572 Mr. Kelaher: I would like to have the next document identified as Commission Exhibit 277. This is a letter dated June 16, 1950 from W. F. Hinderscheid to Mr. S. J. Heideman, Manager, TBA Sales, Atlantic Refining Company, Philadelphia, Pennsylvania.

573 (The document referred to was marked Commission's Exhibit 277 for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I show you Commission Exhibit 277 and ask you if this is a copy of a letter you sent to Mr. Heideman, dated June 16, 1950 (handing document to the witness).

A. Yes.

Mr. Kelaher: I now offer Commission Exhibit 277 into evidence.

Mr. Correa: I'll have to have a moment, if your Honor please. I have an exceedingly bad photostat which is going to take me a moment or two to read.

Mr. Thompson: Atlantic obviously has no objection to the offer, sir.

Mr. Correa: If your Honor please, on behalf of Goodyear we do object to this document. It is apparent that there has been no foundation laid as against Goodyear; no claim is made as I understand it that Goodyear had any notice of this document or that this document came from the files of Goodyear or has anything to do with Goodyear.

Further on the face of the document it is perfectly apparent from its context as well that it refers wholly and solely to some dealings taking place between Atlantic Refining Company and Firestone Company which is, as to Goodyear, completely res inter alios acta and, there-

574 fore, I object to its being offered in evidence against Goodyear.

Hearing Examiner Kolb: This is a survey made just prior to taking over the Goodyear line?

Mr. Correa: Well, I don't know—

Mr. Kelaher: That's correct, your Honor. There was a test survey with Goodyear in Newark, New Jersey, and with Firestone in Erie, Pennsylvania and Wilmington, Delaware.

Mr. Correa: I see no reference to Goodyear in it and further I don't see even if it did refer to Goodyear how it could possibly be binding on Goodyear and how its introduction into this trial against Goodyear could fail but to commit hopeless prejudice against Goodyear in respect to the trial of the issues posted in the complaint herein.

Hearing Examiner Kolb: Overruled. The document will be received in evidence as Commission Exhibit Number 277.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 277, was received in evidence.)

Mr. Kelaher: I now ask the reporter to identify as Commission Exhibit 278 for identification a tabulation from Mr. D. R. McAvoy, dated 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District," to Messrs. Hinderscheid, Pettingell and Segur. That is Item 4 of Specification 1 of Mr. Hinderscheid's subpoena.

575 (The document referred to was marked Commission's Exhibit 278 for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I hand you Commission Exhibit 278 for identification and ask you to state what that is. (Handing document to the witness.)

A. That is the volume of sales that was done with

Atlantic dealers and stations in the Newark District for the period between June and December inclusive—

Q. Of what year?

A. 1950.

Q. And during that period didn't Atlantic conduct a so-called test program with respect to Goodyear TBA in the Newark district?

A. As far as I know they did.

Q. And wasn't the purpose of this tabulation to inform you and other officials of Lee what sales were actually made to Atlantic refining accounts in the Newark district during that period?

Mr. Correa: I object, if your Honor please, to counsel leading the witness on this kind of thing. Counsel is telling the witness what the purpose of the tabulation was rather than vice versa, and I submit that vice versa is the proper and only proper procedure.

Mr. Kelaher: I'm asking—

576 Hearing Examiner Kolb: I think counsel is correct. You take a round-about-way of doing it. Go ahead.

By Mr. Kelaher:

Q. In June 1950, was Lee selling Atlantic Refining Company tires for distribution in the Newark, New Jersey district?

A. Yes.

Q. With respect to July 1950, were sales being made by Lee to Atlantic for distribution by Atlantic sales and distributors in the Newark, New Jersey district?

A. No.

Q. And does that same answer apply to August, September, October, November and December of 1950?

A. Yes.

Q. Now, would you please state what the column headed "Dollar Sales" and underneath that is "Month," and

underneath that is "ACC." Would you please state what they mean?

A. Well, the dollar sales means the volume of business that we did in those particular months which are listed on the left hand side and the ACC means accumulative.

Q. Now, who was the Charles W. Krieg Company?

A. A warehouse distributor that handles our tires in the Newark district.

Q. And what is the reference to New York branch mean?

A. We had a branch in New York City, our own operated.

Q. Does that refer to sales by the New York branch 577 during the months indicated?

A. That's right.

Q. In the Newark district?

A. Not in the Newark district.

Q. It states at the top, "Monthly Sales to the Newark Refining District."

A. That means the Newark district as far as Kreig is concerned and I presume in the Newark district we are figuring certain portions that our New York branch handled there that would come under the marketing area of the Newark district for the Atlantic Refining Company.

Q. In other words, as I understand your answer, this tabulation would relate to sales made by Lee to Atlantic accounts in Atlantic's Newark sales district, is that correct?

A. It would to the extent we were able to figure that's what it covered.

Q. Right. And down at the very bottom of the tabulation there is a heading "1940 AR Co. Sales based on 13.7 percent regional sales (last 6 months, 1949.)" Would you explain what that means, please.

A. Well, that is a figure that we estimated and we had no specific way of knowing, but it was purely an estimate on our part as to the amount of business we received

through Atlantic Refining Company when they were handling Lee tires.

I couldn't say that that figure was correct because,
578 it was more or less an estimate.

Q. I see.

A. We had no way of knowing.

Q. And this column entitled up at the top "Passenger tires" there are four columns, Passenger tires, truck tires, PASS tubes, TR tubes, and underneath that, Month and ACC, under each one. Would you explain what that is, please?

A. Under Pass period tires, that means passenger tires, and the month was the individual month and the ACC is the accumulation, and under Truck tires, why, it's the same as passenger tires, and passenger tubes and truck tubes, we use the same formula on the four of them as we did on the dollar or the monetary value.

Q. And does the number 676, for example, under July, Passenger Tires, represent the unit number of tires sold or dollar volume?

A. 676?

Q. Yes.

A. Unit, passenger tires sold.

Q. Thank you.

Mr. Kelaher: Mr. Examiner, I offer Commission Exhibit 278 in to evidence.

Mr. Thompson: Now, may I inquire the purpose of the offer, sir?

Mr. Kelaher: Yes. The purpose is to show, I think
579 it is self-explanatory, is to show sales made by Lee to Atlantic accounts in Atlantic's Newark district during the period mentioned on the tabulation.

Mr. Thompson: Is it the purpose to compare sales by Lee during certain months of 1949 with certain sales made during the same months of 1950?

Mr. Kelaher: Yes, it is. I think that comparison is made on the tabulation.

Mr. Thompson: Mr. Examiner, I object to the exhibit as completely meaningless because of Mr. Hinderscheid's statement which I was quite sure he would have to make, that the 1949 sales represent 13.76 percent of the regional sales made by Atlantic during 1949 and that was just a guess figure. It is perfectly obvious that instead of guessing 13.76 percent of Atlantic's sales in this particular region if Mr. Hinderscheid's people had guessed 6 percent, the comparison would have been exactly the opposite, the other way. It would have shown an increase in 1950 over 1949 instead of a decrease; unless there is some basis for the 13.76 percent, I submit the whole exhibit does nothing but encumber the record.

Hearing Examiner Kolb: Do you have any remarks on this, Mr. Kelaher?

Mr. Kelaher: Yes, I would like to ask the witness a further question along that line.

580 Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Hinderscheid, what was the 13.76 percentage based upon?

Mr. Thompson: If you know, sir, of course.

By Mr. Kelaher:

Q. If you know?

A. The 13.—this sheet shows 13.7 percent, as near as we could figure, why the 13.7 percent was the regional sales of the New York region for the Atlantic Refining Company, as I said before, when we applied it to Newark why it was an estimate on our part and I wouldn't—couldn't verify that this was 13.7 of 14.2 or 12.6.

Q. Was that the best estimate of your—

A. That is the best estimate that we could make.

Q. At the time?

A. At the time, that's right, but I couldn't say that this was an accurate figure.

Q. Was that estimate made for purposes of comparison with the 1950 figures?

A. Well, that's what we did on this sheet, made a comparison.

Q. That was the purpose of it, was it not?

A. That's right.

Q. And why were you forced to make an estimate?

A. We weren't forced to make an estimate.

581 Q. Why did you make an estimate?

A. We wanted to see how we were going from a sales standpoint.

Q. And wasn't it true, that the only alternative you had was to make an estimate because you, prior to that period in 1950, you had sold Lee tires to Atlantic and Atlantic had resold the tires in the Newark area? Isn't that correct?

A. They did, but we had this warehouse distributor of ours at the same time.

Q. So you could tell from your own records the points of distribution to Lee tires going into the Newark district, isn't that correct?

A. The main thing was to see what was necessary for us to increase our sales in that particular area. That was the main reason for it.

Q. And you knew that the distribution points you have mentioned there, you have listed on the tabulation, were the points which distributed Lee tires to Atlantic for resale into the Newark district before the Goodyear TBA test program began in that district. Isn't that correct?

A. I don't quite follow you.

Q. Well, let's put it this way. Prior to about June 1950 you were selling Lee tires to Atlantic, isn't that right?

A. That's right.

Q. And they were being distributed from certain distribution points, isn't that correct, to Atlantic?

582 A. That's correct.

Q. So that Atlantic itself had the record of sales to Atlantic accounts in the Newark district, isn't that correct?

A. I don't know, I presume that they did.

Q. Well, you were selling to Atlantic and not to the dealers?

A. We were selling to Atlantic.

Q. Right. So in order to make a comparison you had to estimate what the sales volume was to the dealers?

A. I might clarify this. We had no way of knowing what Atlantic's sales were in the Newark area because the Newark area as far as Atlantic was concerned, the reports that we received from Atlantic Refining Company not only included Newark but they included Syracuse, Rochester, Buffalo, Binghamton and so on, see, and I knew in that particular area of the whole of New York State that they were running approximately 13.7 or thereabouts and that is the reason I used that particular figure.

Q. So you personally—

A. (Interposing.) No, as far as Newark was concerned, Newark could have been lower than that, or it could have been higher but I had our people use the best figures that we had available. I knew that they weren't accurate.

Mr. Kelaher: Your Honor, I think it is clearly admissible.

583 Hearing Examiner Kolb: Any further objections?

The objection will be overruled, the document will be received in evidence as Commission Exhibit Number 278.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 278, was received in evidence.)

Hearing Examiner Kolb: We will recess for five minutes.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, I would like to have the next document identified as Commission Exhibit 279-A through D, which is identified as Item 5 on Specification I on Mr. Hinderscheid's subpoena, it may be described as follows: It is a memorandum and attached three page tabulation from H. K. Paxson to Messrs. Hinderscheid, McCreery and Segur, the first sentence of which reads, and I quote:

> "This will complete the record for Atlantic's test districts . . ."

That would be 279-A.

Exhibit 279-B is a tabulation attached thereto identified as follows: "Month by month sales to Atlantic Refining Company accounts in Erie District," signed with the name H. K. Paxson, and the date 3/16/51 thereon.

584 Exhibit 279-C is also appended thereto and it is identified as "Month by Month sales to Atlantic Accounts in Wilmington district." With the name H. K. Paxson and the date 4/2/51 appearing thereon and also the names Messrs. Hinderscheid, Segur and Niedringhaus.

Exhibit 279-B also had the names Messrs. Hinderscheid, McCreery, and Segur thereon.

Exhibit 279-D states "Monthly sales to Atlantic Refining Accounts in Newark district," with the name H. K. Paxson and the date 4/11/51, with the names Messrs. Hinderscheid, Pettingell, and Segur thereon.

(The document referred to was marked Commission's Exhibit 279-A through D inclusive for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I would like to call your attention to Exhibit for identification 279-A which is the first page of this group (handing document to the witness), and ask you to state what that means?

A. Page 4 here is the same as I just finished testifying on on the Newark—

Q. (Interposing.) That is 279-D that he has reference to now, your Honor, and that is the same as Commission Exhibit 278, correct?

A. That's correct.

Q. Excepting it is for a longer period, isn't that right?

585 A. Yes, it's for two additional months, January and February.

The page 2 covers the number of accounts that had been handling Atlantic products dealers and service stations in the Erie district—

Q. That is CX id. 279-B. Does that run for what period?

A. April of 1950 to February 1951.

Q. And is the data included thereon similar to that you testified to with respect to Commission Exhibit 278?

A. Well, it doesn't have exactly the same information. It does as far as dollar sales are concerned, but it doesn't have the units as 278 had.

Q. Right.

And would you please describe what would be sheet number 3 which is Commission Exhibit for identification 279-C.

A. You have reference now to the Wilmington district on it?

Q. Yes.

A. I don't know what number these are.

Q. To the Wilmington district.

A. Well, that is the same as the Erie—similar information as the Erie and Newark.

Q. And do the 1949 figures contained on these tabulations, 279-B and C reflect the best estimate that could be made by you and your staff with respect to 1949 sales to Atlantic accounts in the areas designated?

586 A. Well, we used the same formula on Wilmington and Erie as we did on the Newark set up.

Mr. Kelaher: Your Honor, I would offer 279-A through D into evidence.

Mr. Correa: If your Honor please, may I ask your leave to ask the witness a question or two on voir dire with respect to a possible objection I have to this exhibit or significant parts thereof?

Hearing Examiner Kolb: Yes.

Voir Dire Examination by Mr. Correa.

Q. Sir, referring to 279-B which is the second page of the exhibit before you, what is the significance of the Erie district in connection with that tabulation?

A. Well, Erie was—279-B?

Q. Yes, it is the second page of the exhibit before you.

A. Well, Erie was a test case the same as Newark and Wilmington was as far as Atlantic was concerned.

Q. Test of what, sir?

A. Of the selling of other than Lee products there, in fact, as far as Erie is concerned, why, it was a testing out of the Firestone.

Q. Firestone?

A. Firestone in Erie.

Q. And I draw your attention to 279-C, being the

587 third page of the exhibit before you and ask you, sir, with respect to that tabulation what is the significance of the Wilmington district?

A. Well, that was a test case on Firestone tires in Wilmington.

Q. That is also concerned with Firestone?

A. That's right.

Mr. Correa: If your Honor please, I object to this exhibit in its totality, because it's aready been stated by the witness that 279-D is no more than another copy of 278 already in evidence; so I take it that part of the exhibit in and of itself would furnish no warrant for its admission at this junction.

I object to the admission of 279 with particular reference to 279-B and C because they refer to matters between Atlantic Refining Company and Firestone and do not involve the Goodyear Tire and Rubber Company and the respondent in the proceeding whom I represent. I submit, if your Honor please, that not only are they objectionable on the ground I have stated earlier, res inter alios acta, but in addition their admission into this proceeding is prejudicial to the respondent Goodyear and would result in the denial to that respondent to rights to proceed with due process to which it is entitled as well as its rights under the administrative procedure act and other relevant law.

588 Hearing Examiner Kolb: Any objection to me seeing a copy of it?

Mr. Kelaher: No, Mr. Examiner. I would like to correct counsel, he is under the mistaken impression that 279-D is the same as Commission Exhibit 278.

Exhibit 279-D includes the months of January and February 1951 which are not on Commission Exhibit 278 in addition to the same data which is on Commission Exhibit 278.

Mr. Correa: The witness has said they were the same, if your Honor please. Maybe the counsel is right and the witness is wrong.

The Witness: That's right. There are two additional months on it.

Hearing Examiner Kolb: I understood him to say it included a couple of more months.

Mr. Correa: In that event, if your Honor please, I will make my objection specifically to 279-B and C.

Hearing Examiner Kolb: I don't understand, Mr. Hinderscheid, you speak of a comparative tabulation. Doesn't this show the number of accounts you sold and the amount of sales in that particular area? Is that it or what does that show?

The Witness: That shows the number of accounts that we sold by months and the dollar volume of business. That is, your Honor, if you have 279—

589 Hearing Examiner Kolb: What connection does that have to do with Firestone?

The Witness: Well, it just so happened that in that particular area, the test case was on Firestone tires, whereas in the Newark test case it was on Goodyear tires.

Hearing Examiner Kolb: Regardless of who you were testing, this shows the sales of Lee in that particular area for the particular months?

The Witness: That's right.

Hearing Examiner Kolb: Any objections, Mr. Thompson?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Thompson: I have a couple of questions on voir dire first, if I may.

Voir Dire Examination by Mr. Thompson.

Q. I didn't understand, sir, referring now to B which is the second page and relates to the Erie district.

A. Yes, sir.

Q. How you got the 26.66 percent of Atlantic's 1949 sales in order to make a comparison with your own 1950 direct sales.

A. Well, where we arrived at the 26.66 percent was that of all of our sales to Atlantic Refining Company, 26.66 per-

cent was made in the Western Pennsylvania Region for Atlantic Refining Company and that is the only information that we had available to determine approximately how
590 many Lee tires Atlantic Refining Company sold in the Erie district because the Erie district was part of the Western Pennsylvania region. So, with the limited information that we had available why we used the information that we had available and we were assuming that Erie would be about the same as the remainder of Western Pennsylvania, that is I couldn't say that the 26.66 was accurate for Erie, it could be a different figure as far as Erie was concerned, but it was the best figure we had available to use to make a calculation.

Q. But, you do know sir, from the exhibit, if I may pursue that a little further, you do know from your own records that in 1950, during the test period, that is 1950 and in January and February of 1951, your company sold $94,853.29 in value of tires in the Erie district. Is that correct, sir?

A. That's right.

Q. Then when you make your comparison with the Atlantic Refining Company sales for ten months you derive a figure of $99,599.39 by using a percentage of 26.66 percent. Is that correct, sir?

A. Yes, sir.

Q. In other words, you allocated to Erie 26.66 percent of the sales which had been made to Atlantic for the Western Pennsylvania region in 1949. Is that correct, sir?

A. I have to think a little on it, it's been seven or
591 eight years since these figures had been made up.

Q. It is very confusing to me, sir, that is why I'm asking you these questions.

May I restate the same question in perhaps a more simple manner?

A. Yes.

Q. You were assuming for purposes of exhibit 279-B that in 1949, 26.66 percent of the sales made to Atlantic's Western Pennsylvania region had been for dealers in the Erie district. Is that correct?

A. That's right.

Q. Did you have a basis for that 26.66 percent figure, sir? Do you know why—

A. (Interposing.) At this time I can't tell you why the 26.66 percent—

Q. (Interposing.) Then when you come to Exhibit 279-C which refers to the Wilmington district you used a 12 percent figure, is that correct?

A. That's right. There it is.

Q. And was that estimate also made by you for purposes of determining what the Wilmington district sales of Atlantic Refining Company had been in 1949 as compared with a much larger region?

A. I don't think the 12 percent or the 26.66 percent that I arrived at those figures, that is the people that
592 worked these reports up, why, arrived at those figures and they were the best figures that they had available to work with. I didn't work up the figures at all.

Q. And you are not presently able to explain what method they used for computing it?

A. No.

Mr. Thompson: I object, sir, simply because I think all of these exhibits ought to be better authenticated than Mr. Hinderscheid is able to do. I am not referring any criticism of him in his position, he wouldn't know how these things were made up.

By Mr. Kelaher:

Q. Mr. Hinderscheid, who was Mr. H. K. Paxson whose name appears on those documents?

A. At that time, when those reports were made up, Mr.

Paxson was manager of our marketing research department and I might explain that on the one there for New Jersey or Newark there, why, we had Mr. McAvoy who had been previously manager of Marketing Research, Mr. McAvoy left the company and Mr. Paxson took over at that time as manager of Marketing Research.

Q. Mr. Hinderscheid, were these estimates made by men in the Lee organization qualified to make such estimates?

A. Well, I thought they were qualified.

Q. Thank you.

593 A. I don't know if they were qualified or not, but I thought they were.

Q. Well, the manager of the Market Research would have certain skills along those lines, would he not?

A. I imagine he had certain reasons to make a 26.66 instead of some other figure.

Q. Thank you.

Mr. Thompson: I think, sir, that this sort of tabulation is obviously proper for inter-company information but when you come to a law suit where an issue is whether the Lee company did or did not lose sales in a particular period of time, I think it's entirely too vague to be worthy of credibility and therefore of admissibility.

Mr. Kelaher: Mr. Examiner, I would like to call your attention to the fact that the same considerations are present here as were present when we discussed Commission Exhibit 278 which was admitted into evidence.

Hearing Examiner Kolb: The objection will be overruled, the document will be received in evidence as Commission's Exhibit 279-A to D.

(The document referred to, heretofore marked COMMISSION EXHIBIT 279-A through D inclusive, was received in evidence.)

Mr. Correa: Does that apply, your Honor, to our objection?

594 Hearing Examiner Kolb: I am passing on all objections made before me at the time.

Mr. Correa: Do these two parts of the exhibit having to do with another company not a respondent here—we are expected to defend as to what Firestone did, if your Honor please, or didn't do?

Hearing Examiner Kolb: I made my ruling.

Mr. Kelaher: Your Honor, I would like to have the document marked as Commission Exhibit for identification 280 which is a memorandum which is titled "Memorandum for Lee operating staff dated February 16, 1951 from Mr. A. A. Garthwaite, President, to Messrs. Brasaemle, Garthwaite, Jr., Hinderscheid, Leach, Nellen and Pouchot.

(The document referred to was marked Commission's Exhibit 280 for identification.)

Mr. Kelaher: It is also noted thereon that carbon copies went to Messrs. Conway, Dollison, Ikirt, Ingersoll.

By Mr. Kelaher:

Q. Mr. Hinderscheid, I show you Commission Exhibit for Identification 280 and ask you to state if that is an authentic copy of the memorandum from Mr. Garthwaite to you and others?

A. That's right.

Q. And where the other gentlemen named on the document members of the Lee Organization?

A. Lee Rubber and Tire Corporation, yes.

595 Mr. Kelaher: Your Honor, I offer Commission's exhibit for identification 280 into evidence.

Mr. Correa: May I inquire for what purpose, if your Honor please?

Mr. Kelaher: Your Honor, this is a document which is dated February 16, 1951, from the President of Lee to Lee operating personnel concerning the Lee-Atlantic contract, which expired on or about that date.

Hearing Examiner Kolb: Have you another copy here I could see?

Mr. Thompson: If anyone can read that document, I might object to it.

Mr. Correa: That is why I asked the purpose, because I can't read it.

Hearing Examiner Kolb: Any objection?

Mr. Correa: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's exhibit 280.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 280 for identification, was received in evidence.)

Mr. Kelaher: Your Honor, I would like to have marked as Commission's exhibit for identification 281-A and -B a two-page memorandum dated February 19, 1951 entitled "Sales Meeting," and the first sentence of which reads
596 as follows: "1. Atlantic Refining Company Contract cancelled effective March 1, 1951".

(The document referred to above was marked Commission's exhibit 281-A, -B for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I hand you Commission's exhibit for identification 281-A and -B and ask you to describe what it is, please?

A. This was an agenda for a sales meeting called for February 19, 1951 to advise our sales staff of the cancellation of the contract that we had with Atlantic Refining Company.

Q. Where was the meeting held?

A. Why, this meeting was held in Conshohocken, at our general office.

Q. And were you present at the meeting?

A. I was.

Mr. Kelaher: I offer Commission's Exhibit 281-A and -B in evidence.

Hearing Examiner Kolb: Any objection?

Mr. Correa: If your Honor please, the document is not, I suppose, in any sense prejudicial, but I am constrained as a member of the Bar to object to loading the record with this type of trivia. This is an agenda of a sales meeting; presumably the meeting took place; presumably they followed the agenda; maybe they didn't, who knows.

But what earthly use this can have toward the advance-
597 ment of the determination of the issues of fact in this case, I must confess escapes me entirely and I can't sit here and let the record be loaded with inconsequential material of this character and I object to it on that ground.

Mr. Kelaher: Your Honor, I would like to call your attention to the date, February 19, 1951, which was the month during which Lee's contract with Atlantic, which had been in effect from 1932 on, was terminated.

Mr. Correa: I don't deny for a moment it is a significant time, your Honor, in terms of the facts of the case. All I am saying is that the probative value of this piece of paper is nil and we are just loading the record.

Mr. Thompson: If your Honor please, I hate to disagree with my friend, but I think this paper, at least in one respect, has great significance and great probative value.

Now I particularly call your attention to item 2 c "Atlantic dealers and distributors are free to handle Lee tires and other accessories once bought through Atlantic." That is a fact we would almost admit in this case, Mr. Correa.

Mr. Correa: That is conceded. I don't think there is any doubt about that. It is cumulative.

Hearing Examiner Kolb: The objection will be over-

ruled. The document is received in evidence as Commission's exhibit 281-A and -B.

598 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 281-A and -B for identification, was received in evidence.)

Mr. Kelaher: Your Honor, I would like to have marked for identification as Commission's exhibit 282-A and -B the letter from Mr. Hinderscheid, W. F. Hinderscheid, Vice President in Charge of Sales, to all Atlantic dealers, dated February 20, 1951, with a postcard attached, identified as Commission's exhibit 282-B.

(The document referred to was marked Commission's exhibit 282-A and -B for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, is this your signature appearing on Commission's Exhibit 282-A?

A. Is that my signature?

Q. Yes.

A. No, that isn't my signature.

Q. Is that your name?

A. Yes, but it is not my signature.

Q. Did someone sign it for you?

A. They did.

Q. With your permission?

A. Yes, with my permission, but it is not my signature.

Mr. Kelaher: I now offer Commission's exhibit 282-A and -B into evidence.

599 Hearing Examiner Kolb: Any objection?

Mr. Correa: No objection.

Mr. Thompson: No objection.

Hearing Examiner Kolb: It will be received in evidence as Commission's exhibit 282-A and -B.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 282-A and -B for identification, was received in evidence.)

600 Mr. Kelaher: Your Honor, I would like to have marked for identification as Commission's exhibit 283 A through C inclusive, a Lee Tire and Rubber Company of New York Memorandum dated February 21, 1951 from A. G. P. Segur to seven branches: Cincinnati, Columbus, Louisville, and others; and an attached two-page Lee Tire and Rubber Company of New York memorandum dated February 21, 1951 from Mr. Segur addressed to all branch managers.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. Go ahead with the identification of all the exhibits at one time.

Mr. Kelaher: For clarification, concerning Commission's exhibit 283 A-C, the covering letter is 283-A, and the copy of the letter referred to therein is identified as Commission's exhibit 283-B and -C.

For identification as Commission's exhibit 284-A and -B, a two-page Lee Tire and Rubber Company of New York, Inc. memorandum dated February 26, 1951 from H. L. Pettingell to Messrs. Iringer, Polson, Copeland, and Thompson.

For identification as Commission's Exhibit 285, a memorandum dated March 5, 1951 from E. W. McCreery to Messrs. Fiffick, McGinn, Bartley and Simpson, the first line of which reads as follows: "In analyzing salesmen's reports" and so forth.

601 For identification as Commission's exhibit 286-A and -B, a Lee Tire and Rubber Company of New York, Inc., memorandum dated March 5, 1951 from A. G. P. Segur to "Regional Sales Managers and Branch Managers," which memorandum is to be identified as exhibit 286-A; and attached thereto a copy of the Atlantic Refining Company letter dated March 1, 1951 from D. T. Colley,

entitled "A statement of Atlantic's T. B. A. Policy," to be identified as Commission's exhibit 286-B.

For identification as Commission's exhibit 287, a Lee Tire and Rubber Company of New York, Inc. memorandum dated March 16, 1951 from E. W. McCreery to Messrs. Simpson, McGinn, McPeak, Allen, et al.

For identification as Commission's exhibit 288-A through D inclusive, a two-page Lee Tire and Rubber Company of New York, Inc. memorandum dated August 3, 1951 from W. F. Hinderscheid to "Regional Managers and Branch Managers," marked "Confidential"; and attached thereto a copy of a letter dated July 31, 1951 from Mr. Hinderscheid to Mr. Dwight Colley, Vice President in charge of sales, The Atlantic Refining Company, Philadelphia, Pennsylvania, to be identified as Commission's exhibit 288-C; and also attached thereto a copy of a reply letter dated August 2, 1951 from Mr. Colley to Mr. Hinderscheid to be identified as Commission's exhibit 288-D.

To be identified as Commission's exhibit 289 for identification, a Lee Tire and Rubber Company of New
602 York, Inc. memorandum dated August 6, 1951, from W. F. Hinderscheid to "Regional Managers and Branch Managers," the first sentence of which reads as follows: "Since writing the attached letter", and so forth.

To be identified as Commission's exhibit 290, A through I inclusive, a Lee Tire and Rubber Company of New York, Inc. memorandum dated August 6, 1951, one page, to be identified as Commission's exhibit 290-A-I, to Messrs. Foraker, McCreery, Miedringhaus, Pettingell, and Riddick; and attached thereto an eight page tabulation containing sales data as to AR and DAR accounts for the months of March, April, May and June 1951 by regions.

Hearing Examiner Kolb: That shows on the face of the document, doesn't it?

Mr. Kelaher: Yes, sir. All right.

For identification as Commission's exhibit 291, A through C, a Lee Tire and Rubber Company of New York, Inc. memorandum dated October 23, 1951 from H. K. Paxson to Messrs. Hinderscheid, Segur, and Anthony, entitled "Re AR and DAR accounts," and attached thereto a two-page tabulation entitled 'August 1951 AR and DAR Accounts," by H. K. Paxson dated 10-18-51.

For identification as Commission's exhibit 292, A through C, a Lee Tire and Rubber Company of New York, Inc. memorandum dated November 28, 1951 from H. K.
603 Paxson to Messrs. Hinderscheid, Segur, and Anthony, entitled "Re AR and DAR accounts," and attached thereto a two-page tabulation entitled "September 1951 AR and DAR Accounts," by H. K. Paxson, dated 11-28-51.

To be identified as Commission's exhibit 293 A and B, a letter dated August 14, 1952 from E. W. M., Vice President, to B. M. Boor, Atlantic Refining Company, Pittsburgh, Pennsylvania, and an attached memorandum dated August 12, 1952 from Erie, Pensylvania branch to Mr. E. W. McCreery, entitled "Atlantic Refining Co. Leased Stations."

Hearing Examiner Kolb: Is this a letter to or from Atlantic?

Mr. Kelaher: That is a letter from Lee to Atlantic. I would like to ask the witness if the initials E. W. M., Vice President, refer to E. W. McCreery?

The Witness: It does.

Mr. Kelaher: Thank you.

The documents referred to above were marked Commission's exhibits 283-A, -B, -C; 284-A, -B; 285; 286-A, -B; 287; 288-A, -B, -C, -D; 289; 290-A, -B, -C, -D, -E, -F, -G, -H, -I; 291-A, -B, -C; 292-A, -B, -C, and 293-A, -B for identification.)

Mr. Kelaher: Your Honor, I would like to ask the wit-

ness a question with respect to one designation in certain of these documents before I offer them into evidence.

604 By Mr. Kelaher:

Mr. Hinderscheid, there are several tabulations here beginning with Commission's exhibit for identification 290, and on through several others, in which reference is made to Ar accounts and DAR accounts. I would like you to explain what those symbols mean.

A. Well, the AR accounts means those accounts that are handling Atlantic or were handling Atlantic Refining Company products.

Q. They are Atlantic outlets, is that right?

A. To the best of our knowledge, they were. And the DAR accounts are other accounts that we kept a record of that our salesmen were out trying to get a contract for or sign up to replace some of these Atlantic refining company accounts that we know wouldn't buy other brands of tires.

Q. Well, my understanding then is that you mean the DAR accounts refer to non-Atlantic service stations?

A. That is right. But it was due to the cancellation of the Atlantic Refining Company contract, but they had nothing to do whatsoever with Atlantic Refining Company; they were other accounts we signed up and started to sell.

Mr. Kelaher: Mr. Examiner, I would like to offer these documents into evidence, beginning with 283 A through C inclusive through 293 A through B, with the exception of

605 the portions of those which appear in certain of the documents beginning I believe with Commission's exhibit 290 A through I, where reference is made to DAR accounts. We are offering only the portions of those tabulations which refer to AR accounts, which reflect sales to Atlantic Refining outlets.

Hearing Examiner Kolb: Any objection?

Mr. Thompson: I am in a fair state of confusion with respect to the exhibits that have AR and DAR accounts on them, and I would like to look at them before I answer. I can answer as to the rest of them very quickly. I think those exhibits are 290 and 291 and 292.

Hearing Examiner Kolb: What do the initials DAR stand for?

The Witness. Those were accounts that we, after cancellation of Atlantic Refining Company contract, that we were able to go out and sign up immediately.

Hearing Examiner Kolb: They were still Atlantic Refining Company?

The Witness: No, they weren't handling any Atlantic products; they were just other accounts.

Mr. Kelaher: In the same area?

The Witness: Yes, approximately the same area.

Hearing Examiner Kolb: Then the AR doesn't refer to Atlantic Refining?

The Witness: It was just a designation as far as we were concerned.

606 Mr. Thompson: May I ask a questioin or two on Voir Dire?

Hearing Examiner Kolb: All right.

Voir Dire Examination by Mr. Thompson.

Q. I wonder whether you are not mistaken inadvertently about that. I am showing you one of those exhibits, and I refer you to the AR accounts and the column referring to DAR accounts, and I ask you whether the DAR accounts weren't Atlantic Refining Company Distributors?

A. No, they weren't.

Q. Are you sure of that?

A. I am positive.

By Mr. Correa:

Q. Sir, is the DAR, does that stand for anything, does that stand for any words beginning with the letters DAR respectively?

A. I will tell you what this stands for as far as words are concerned. Due to Atlantic Refining Company cancellation of the contract.

Q. Then these are former Atlantic Refining Company—

A. (Interposing.) It had nothing to do with Atlantic Refining Company whatsoever.

Mr. Thompson: Your Honor, in view of that—the hour is getting very late—I wonder if we might have a 607 chance to review these particular exhibits, in view of the witness' explanation because it puts them in an entirely new light so far as I am concerned. I had thought, in reviewing this before, and trying to understand and analyze them, that DAR meant distributor of Atlantic Refining Company, and now I have to take time to try to understand them in the light of Mr. Hinderscheid's explanation. So, could we reserve any objection we might have to these three exhibits until in the morning?

Hearing Examiner Kolb: Is it something Mr. Hinderscheid might have to explain, He wasn't to be here tomorrow.

Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: May I ask the status of those documents?

Hearing Examiner Kolb: They are just identified. I thought Mr. Thompson wanted to wait until tomorrow morning to have them offered.

Mr. Thompson: That was only the three.

Mr. Correa: I join him in the objection to those three, but I have no objection to the others.

Mr. Thompson: I have an objection, sir, to 289.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

(Witness temporarily excused.)

608 Hearing Examiner Kolb: Let's go through them in an orderly fashion. There is no objection to 283 A through C, is that right?

(No response.)

And there is no objection to 284-A and -B?

(No response.)

They will be received in evidence.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 283-A, -B, -C; and 284-A and -B, were received in evidence.)

Hearing Examiner Kolb: Exhibit 285, is there objection?

(No response.)

It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 285 was received in evidence.)

Hearing Examiner Kolb: Exhibit 286-A and B?

(No response.)

It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 286-A, and -B for identification was received in evidence.)

Hearing Examiner Kolb: 287?

(No response.)

It will be received in evidence.

609 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 287 for identification, was received in evidence.)

Hearing Examiner Kolb: Exhibit 288, do you have objection to that?

Mr. Thompson: No objection to 288.

Hearing Examiner Kolb: It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBITS 288-A, -B, -C, -D for identification was received in evidence.)

Hearing Examiner Kolb: Exhibit 289?

Mr. Thompson: Yes, sir, I have an objection to that. It is simply based on the ground that in that document it is apparent from the face of it that Mr. Hinderscheid attempted to state not the policy of the Lee Company, which of course he could do, but the policy of the Atlantic Refining and Goodyear Company.

Hearing Examiner Kolb: May I see the document?

Mr. Thompson: (Reading to the Examiner.)

Mr. Kelaher: Your Honor, Commission's Exhibit 289 is a follow-up to Commission's Exhibit 288 A through D, which is already in evidence.

Hearing Examiner Kolb: Have you completed your objection, Mr. Thompson?

610 Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: It will be overruled, and the document will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 289 for identification, was received in evidence.)

Hearing Examiner Kolb: Exhibits 290, 291, and 292 it is agreed that we hold them until tomorrow.

How about 293?

Mr. Thompson: I have no objection. And may I comment here, Mr. Kelaher, the reply to that letter I have here and we might save time by putting that in as a Commission exhibit, if you like, or otherwise we will put it in later.

Hearing Examiner Kolb: Let's hold that until tomorrow morning.

Mr. Correa: Mr. Examiner, I have an objection to 293-A and B, because it is apparent on the face of 293-B that both exhibits refer to an incident which has nothing to do with the respondent Goodyear; it involved apparently something arising in the area of the Firestone.

Hearing Examiner Kolb: May I see that?

Mr. Correa: (Handing to Examiner.)

Hearing Examiner Kolb: Your objection is to the attachment?

Mr. Correa: To both, because the other doesn't have any point except with the attachment, and the whole
611 incident around which both evolved makes it clear it had nothing to do with the respondent Goodyear.

Hearing Examiner Kolb: You have no objection, Mr. Thompson?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: The document will be received in evidence as to Atlantic and received subject to motion to strike on the part of Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 293-A and -B for identification, was received in evidence.)

* * * * * *

613 JAMES MATTHEWS, resumed the stand and testified further as follows:

Cross-Examination by Mr. Thompson.

Q. Mr. Matthews, I am going to show you one of the Commission's exhibits in this case, identified as CX-150. This isn't the original exhibit but I won't bother to get it because I have a photostat.

Mr. Kelaher, I am going to use a photostat instead of the one that is in evidence, if I may, of this letter.

Mr. Kelaher: Certainly.

By Mr. Thompson:

Q. And I will ask you whether you recall receiving a letter addressed to you in the form of Exhibit CX-150 dated March 1, 1951, signed by Dwight T. Colley, Vice President of Atlantic Refining? (Handing document to the witness.)

A. So?

Mr. Kelaher: I believe—

Mr. Thompson: There is a question.

614 Mr. Kelaher: Would you state the question; I don't know whether he knows there is a question pending.

Mr. Thompson: Let's have it read.

(The reporter read the following question:

"Question: I will ask you whether you recall receiving a letter addressed to you in the form of Exhibit CX-150 dated March 1, 1951, signed by Dwight T. Colley, Vice President of Atlantic Refining?")

The Witness: I do.

By Mr. Thompson:

Q. I am going to now show you Commission's Exhibit CX-206, dated August 28, 1952, also signed by Mr. Colley, called "A Restatement of Atlantic's TBA Policy," and ask you whether you recall receiving a letter in that form addressed to you? (Handing document to the witness.)

A. I do.

Q. And I now show you Commission's Exhibit CX-207 addressed by Mr. J. O. Estlow on June 24, 1955, to all Atlantic dealers and ask you whether you recall receiving that letter? (Handing document to the witness.)

Mr. Kelaher: I beg your pardon, is that an exhibit and what is the number on that?

Hearing Examiner Kolb: 207

A. That one I don't recall.

615 By Mr. Thompson:

Q. I am going to ask you about a fourth communication sent to all Atlantic dealers and show you Exhibit 282, I guess, Mr. Kelaher, that is CX-282, one of the exhibits you offered yesterday?

Mr. Kelaher: Yes, sir.

By Mr. Thompson:

Q. Signed by Mr. Hinderschied, of the Lee Tire & Rubber Company dated February 20, 1951, and ask you whether you as a former Lee dealer recall receiving that letter? (Handing document to the witness.)

A. I don't recall receiving that letter or the post card attached.

Q. If you did receive the letter you did not send back the post card attached?

Mr. Kelaher: Objection, your Honor, he doesn't recall receiving the letter.

Hearing Examiner Kolb: The objection is overruled, cross-examination.

A. I don't recall receiving the letter.

By Mr. Thompson:

Q. Then my question was if you did receive the letter you didn't send back the post card?

A. I didn't answer that part.

Q. What is the answer?

616 A. Well, if I didn't recall receiving the letter naturally I wouldn't send back the card.

Q. In any event to the best of your recollection you did not send back a card to Lee saying that you wanted to deal in Lee tires?

A. I didn't receive the letter.

Q. You say you did not receive the letter?

A. To the best of my knowledge I didn't receive the letter.

Q. You were a fairly regular attendant at Atlantic dealer meetings, weren't you?

A. Correct.

Q. You referred to one yesterday held in the spring of 1951 at which you were told that the Goodyear TBA program was for you to accept or reject?

A. Correct.

Q. On how many subsequent occasions were similar statements made at dealer meetings? Quite frequently, were they not?

A. That's the only one in particular that I recall.

Q. And that was in the early part of '51?

A. Right.

Q. Well, you testified yesterday to another one which you said was in '52 and as I recall your testimony you said that shortly after that meeting in spite of those assertions by the Atlantic people, Mr. Way and Mr. Arnholt came out and told you the contrary. Was that a correct statement yesterday?

617 A. It was.

Q. So, there was more than one meeting at which you were told—

A. I said I did not recall at the present time.

Q. Do you now recall both of them?

A. The meeting at the beginning when we were told about this new TBA program, we were told at that time and we were told once at a later date.

Q. And that was in '52 or '53?

A. I would say that it was either late in '52 or early in '53. I can't be positively sure which.

Q. Fall of '52, perhaps?

A. I can't be sure.

Q. Called a "Football meeting?"

A. I can't be sure.

Q. Are you sure you went to that?

A. I went to all of them except one meeting that I remember missing.

Q. At every such meeting were not similar statements about no forcing made by the Atlantic representatives?

A. I don't recall it. I wouldn't say at every meeting; no.

Q. But you did receive two letters to that effect from Mr. Colley that you have already testified to?

A. I received two letters, the third letter I don't recall receiving.

618 Q. Now, after Atlantic adopted the Goodyear plan were you asked by Lee to sign an associate dealer franchise for Lee tires?

A. It's possible but I don't recall it.

Q. Did you sign such a franchise?

A. Well, if I don't recall it, I don't recall signing it.

Q. After March of '51 from whom did you buy Lee tires?

A. From their branch in Bryn Mawr.

Q. The branch in Bryn Mawr?

A. Yes.

Q. At that time you were in Yeadon?

A. Yes, sir.

Q. With whom in the Bryn Mawr branch did you deal?

A. Mr. Deemer.

Q. Did Mr. Way and Mr. Arnholt tell you some time in 1953 to discontinue selling Lee tires?

A. Either later in the fall of '52 or early in the spring of '53.

Q. Now, precisely who said what?

A. Mr. Way told me to get rid of the Lee tires or else they would get rid of me, to get them off of the racks and get them out of the station.

Q. And that was the entire conversation?

A. That was the heart of the conversation.

Q. Was this at the time Mr. Way suggested you
619 sign a mutual cancellation of your lease?

A. That was about two weeks prior to the time.

Q. Now, you say that was part of the conversation, was that the entire conversation and where was it held, was it held at your station?

A. Yes, sir.

Q. What was the entire conversation?

A. That's the main part of the conversation I remember.

Q. You don't now recall any other part of the conversation?

A. Nothing definite; no.

Q. Did you report to Lee what you say Mr. Way said?

A. I did not.

Q. Did you report to Mr. Colley?

A. I did not.

Q. Mr. Estlow?

A. No, sir.

Q. Well—

A. I didn't know anything about this report letter that you are talking about or I most certainly would have. That's the third letter you showed me there.

Q. You are now referring to a letter which was written in 1955 which, of course, you didn't know anything about?

A. No, I didn't know anything about.

Q. This was in 1953, did you say?

A. That's what I say, I don't know anything about that.

620 Q. But you had received two prior letters from Mr. Colley at the time of this alleged conversation with Mr. Way, had you not?

A. I don't know—I didn't look at the dates on the letters.

Q. You can refresh your recollection by looking at

them again. One was in '52, one was in '51. (Showing documents to the witness.)

A. That would be before then, sure.

Q. Yes. So that you had already received those letters from Mr. Colley when Mr. Way is supposed to have said these things to you, correct?

A. Mr. Way did say them; there's no supposition about it.

Q. Well, we'll find that out later.

Now, you said something about a Lee sign having been taken down at your premises when you were away?

A. A sign from the windows were taken out, the decals.

Q. And how about the Lee tire sign on the station, was that taken down?

A. There wasn't any Lee tire sign at my Yeadon station, there was a Lee tire sign at the Darby station.

Q. And when you moved in 1949 from Darby to Yeadon there was no Lee sign on your station?

A. There was a Lee sign in Darby, yes, in '49, but there was no Lee sign in Yeadon.

Q. Was there a Lee decal?

621 A. Yes.

Q. I beg your pardon?

A. Yes.

Q. What is a decal?

A. It's a sign that's put on the inside of glass.

Q. Just pasted on the window?

A. That's right.

Q. And you say that was taken down?

A. That's right.

Q. At your Yeadon station?

A. Yes.

Q. Do you know by whom?

A. No, I wasn't there when it was taken down.

Q. You weren't there a lot of the time in those days, were you, Mr. Matthews?

A. I don't think that enters into it at all.

Q. We'll see whether it does. I would like you to answer my question.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

By Mr. Thompson:

Q. Is that true or false?

A. I don't have to answer—

Mr. Kelaher: Is what, your Honor?

Hearing Examiner Kolb: What is the question?

622 Mr. Thompson: The question is, "You were not at the station a lot of the time during those days, were you?"

The Witness: I wasn't at the station twenty-four hours. I worked a shift.

By Mr. Thompson:

Q. In fact, you were away from the station a great deal, weren't you?

There's a question.

A. Describe what you mean by "a great deal".

Q. I'm asking the questions, Mr. Matthews.

A. All right, make yourself more specific then.

Q. You can take your orders from the Examiner.

Hearing Examiner Kolb: Answer the questions as best you can, Mr. Matthews.

The Witness: I don't understand what he means by "a great deal," does he mean months, a year, or week? I took a vacation which I think everyone is entitled to.

Hearing Examiner Kolb: Answer the question. Were you there except for the vacation?

Mr. Kelaher: Your Honor, I think he's entitled to have a more specific question. A great deal of time means

a lot of things to a lot of people. I think it should be specified with respect to hours, days, months, etc.

Hearing Examiner Kolb: Ask another question.

Mr. Thompson: I'll come back to it if I may.

623 By Mr. Thompson:

Q. About this Lee decal, did you tell the Lee distributor in Bryn Mawr that the decal had been taken down?

A. I did not.

Q. Why not?

A. Pardon?

Q. Why not?

A. I didn't feel it was necessary.

Q. Did you ask for another one?

A. I did not.

Q. Why not?

A. I had them in stock.

Q. You had them in stock?

A. I did.

Q. Did you testify yesterday that it wasn't put back again because you only had one?

A. No, I didn't.

Q. Well, your testimony will speak for itself.

A. I said I didn't put it back, but I didn't say that I only had one.

Q. Why didn't you put it back?

Mr. Kelaher: Objection, your Honor, to—he stated it's a fact he didn't put it back.

Mr. Thompson: I said "Why didn't you put it back?"

The Witness: I didn't get to it until they come back 624 and put more Goodyear decals up.

By Mr. Thompson:

Q. Now, you said that about two weeks after Mr. Way told you to get the Lee tires out of your station he came

out with a proposed mutual cancellation of your lease, is that correct?

A. I would assume that it was approximately that time. After all, I didn't write it down and you're talking about something that happened five years ago.

Q. Now, that would make that incident the latter part of '52 or early part of '53, would it not?

A. It was the incident because my lease expired in May or June of '53, thereabouts, and it was, I would roughly guess, four to six months before my lease was due to expire.

Q. That would place it in the early part of '53?

A. Somewhere thereabouts.

Q. Now, you had been promoted from Darby to Yeadon by Atlantic, had you not?

A. I wouldn't call it a promotion.

Mr. Kelaher: Objection—all right.

By Mr. Thompson:

Q. Well, you had been moved to a more desirable station from Darby to Yeadon, hadn't you?

A. I wouldn't say it was.

Q. You hadn't been doing very well at Yeadon up to the early part of '53, had you?

A. I wouldn't say that.

625 Q. Gasoline volumes falling off?

A. Due to lack of support from the company and price condition; yes, sir.

Q. What do you mean by "lack of support from the company"?

A. They set up distress areas and I was left out.

Q. By "distress areas" you mean assistance to dealers on price?

A. Correct.

Q. Was that the reason your volume was falling off or

was it because you were away from the station a great deal of the time?

A. I would say that it was due to distress areas being set up around me and I was left out.

Q. You could, of course, say that but I have some other questions I want to ask you on that score.

At that time were you not involved in a trucking business?

A. To some extent, but I had drivers, I wasn't doing my own driving.

Q. Didn't you operate a fleet of trucks?

A. I operated one and for a short time two, if you would call that a fleet.

Q. And you drove one of them yourself at night, didn't you?

A. No, I didn't.

Q. Not at all?

626 A. There was occasions when I drove a truck, but I wasn't a steady truck driver; no.

Q. When Mr. Way come out to see you and suggested a cancellation of your lease, did he not say to you that your outside interests were interfering with the operation of the station?

A. He did not.

Q. Did he say to you you were spending so much time on your trucking business that you were not adequately handling this station?

A. He did not.

Q. Did he say to you that one of your problems was that you drove a truck at night and were unable to be at the station the next day?

A. He did not.

Q. Did he ask you to discontinue the trucking business?

A. He did not.

Q. He made no mention of the trucking situation at all?

A. No, sir; not to my recollection he didn't.

Q. And on that occasion you said yesterday that he talked to you for three hours?

A. Correct.

Q. And you have summed that three hour conversation up—

A. Strictly an argument whether or not I would sign a mutual.

Q. And you argued about that for three hours?

A. Correct.

627 Q. And there was no reference to your outside activities and outside interests?

A. Not to my recollection; no.

Q. At that conversation did Mr. Way refer to the fact that you were in the Christmas tree business?

Mr. Kelaher: Which business is this?

Mr. Thompson: This is just another one; I'm coming to some more.

Mr. Kelaher: I just didn't understand you.

Mr. Thompson: Be patient, Mr. Kelaher.

Mr. Kelaher: I didn't understand you.

Mr. Thompson: Christmas trees.

Mr. Kelaher: Thank you.

By Mr. Thompson:

Q. Was that discussed?

A. No, sir. Furthermore, there was never a Christmas tree sold from the station; I never had a Christmas tree at that time to market, and as far as owning a farm I do own a farm but I have never done two hours work on the farm myself. So, what the Christmas tree business has to do with it is nothing.

Q. It diverted your attention from the station; you spent a great deal of time up there, did you not?

A. I did not. I went home to see my people once in a while; they live in the neighborhood. Yes.

Q. And shortly after—

628 A. Which I certainly think I'm entitled to.

Q. During this conversation with Mr. Way did he ask you to accept his counsel and advice about how to run a station profitably?

A. Yes, if I would go one hundred percent Atlantic on TBA and so forth.

Q. That is scarcely an answer to my question and I move that the response be stricken.

A. I answered to the best of my ability.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Thompson:

Q. Did he ask you to cooperate with him in trying to make this a top Atlantic station?

A. I told him if he would let me go to the end of my lease he could do as he saw fit.

Q. Did the station's volume and performance after this discussion with Mr. Way begin to improve?

A. I would not say yes or no volumewise, I know as far as purchasewise it did.

Q. Didn't you begin to spend more of your time there?

A. No, I began to spend more of my money for Atlantic TBA.

Q. Did you begin to spend more of your time there?

A. No.

Q. When your lease came up for renewal in 1954

629 did you ask for a Media station?

A. When my lease came up in '54, I don't understand the question at all.

Q. Well, I'll try to make it as simple as I can for your benefit.

Did you ask for the Media station?

A. I didn't understand the first part in regard to lease. What did you say about when my lease came up?

Q. I'm asking the questions. Did you ask for the Media station?

Mr. Kelaher: Your Honor, he asked the prior question with the word "leasing" in it.

Hearing Examiner Kolb: Read the question.

Mr. Thompson: My question is "Did you ask for the Media station?"

Mr. Kelaher: Get the original question, please.

Mr. Thompson: Mr. Examiner, I don't like this witness' attitude.

Mr. Kelaher: Your Honor, the witness is attempting to answer questions. When they are vague and general—

Mr. Thompson: It's a perfectly simple question. I asked him whether he requested a Media station?

The Witness: Well, what happened to this question you asked concerning a lease? That's what I want to know.

Hearing Examiner Kolb: He has passed that, Mr. 630 Witness; just answer this question.

The Witness: What happened to that question, your Honor?

Hearing Examiner Kolb: It's never been answered.

The Witness: Did I ask for the Media station; yes.

By Mr. Thompson:

Q. Do you know who recommended you for it?

A. Do I know?

Q. Yes.

A. Who?

Q. Yes.

A. Mr. Parris.

Q. Who else?

A. Mr. Hayes.

Q. Did you know Tom Hayes before you went to Media?

A. I did not.

Mr. Kelaher: You say you did not know him?

The Witness: I did not.

By Mr. Thompson:

Q. Tom Hayes interviewed you before you took the Media station?

A. Correct.

Q. You and he got to be close friends, did you not?

A. Just what do you mean by "close friends"? In business—

Q. Any way you want to answer it, Mr. Matthews.
631 I don't much care.

Mr. Kelaher: What was the question, please?

(The reporter read the question as follows: "Question: You and he got to be close friends, did you not?")

The Witness: Could you define what you mean by "close friends"?

By Mr. Thompson:

Q. No.

A. You mean in a business way or social way?

Q. You just answer the question the best you can and then I'll keep on asking other questions until I get the answer that I want.

Mr. Examiner, may we note on the record that it's taken this witness, by my stop watch, one minute—

Hearing Examiner Kolb: The witness has stated he didn't understand the question. Ask another one.

By Mr. Thompson:

Q. I'll ask it this way. Were you and Mr. Tom Hayes close friends?

Hearing Examiner Kolb: That was the same question you asked before.

Mr. Thompson: Yes, sir.

The Witness: To what extent? Do you mean did we play cards together, did we—I don't know what you
632 mean. Whether you mean just as a dealer-salesman relationship or what?

Q. When you were at the Media station did Mr. Hayes have a discussion with you about Auto-Lite batteries?

A. He did.

Q. Is Mr. Hayes in the court room?

A. He is.

Q. Mr. Tom Hayes, would you stand up, please.

(A gentleman in the back of the court room stood up.)

Q. Is the gentleman who is standing up the person you are talking about?

A. Correct.

Q. It was no one else? It was this gentleman?

A. That's right; and Mr. Parris was with him.

Q. And he was with him at the time of the instance you are going to talk about.

Thank you, Mr. Hayes.

Now, precisely what was said and by whom?

A. Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and
633 didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—

Q. Not "they," what two people talking at once?

A. Not to put them on display.

Q. Who said that?

Mr. Kelaher: Your Honor, I think the witness should be permitted to answer a question fully and not be interrupted when he is—

Hearing Examiner Kolb: He's giving a conversation, is he not?

Mr Thompson: Yes, sir.

Hearing Examiner Kolb: Proceed with your conversation.

The Witness: So, they told me to put them out of sight until they got rid of them.

By Mr. Thompson:

Q. That's not my question. Who said that? Every time you answer I want to know what individual said what.

Hearing Examiner Kolb: Let the witness answer the question and then go back and find out if you want to.

By Mr. Thompson:

Q. May we have the question?

(The reporter read the following question and answer:

633 A "Question: Now, precisely what was said and by whom?

"Answer: Mr. Hayes and Mr. Parris came into the station and there were te nAuto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—

"Question: Not 'they,' what two people talking at once?")

Mr. Kelaher: From there, he should be permitted to answer that question fully.

Mr. Thompson: Who said that?

Hearing Examiner Kolb: He hadn't finished answering the proceeding question.

Mr. Thompson: I thought he had.

Hearing Examiner Kolb: Had you finished your answer?

The Witness: No, sir.

Hearing Examiner: All right, finish your answer.

634 The Witness: How far had I gone when I was interrupted?

(The reporter read the following answer:

"Answer: Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—")

The Witness: So, I put them in the boiler room. They told me to put them out of sight, which I did, until I had gotten rid of them all.

But both Mr. Hayes and Mr. Parris referred to them as merchandise that should not be there.

By Mr. Thompson:

Q. Have you now finished your answer?

A. Yes, sir.

Q. Who said that?

A. I said Mr. Hayes and Mr. Parris both referred to them as merchandise which should not be there.

635 Q. But the conversation about the Auto-Lite batteries you referred to continuously as statements made

by "them." Who? Which of the two made the statements.

Mr. Dias: We can't hear counsel over here, your Honor, I'm sorry.

The Witness: I said both of them; Mr. Hayes and Mr. Parris.

By Mr. Thompson:

Q. Did they say it in chorus together?

A. No, but I don't remember which one said it first.

Q. Both of them said it?

A. Yes, sir.

Q. Each of them, separately said it?

Mr. Kelaher: Your Honor, he's answered the question in every conceivable way.

Hearing Examiner Kolb: All right.

By Mr. Thompson:

Q. Did each of them separately say it?

A. I said I didn't know which one said it first.

Q. That means both of them said it at one time or another?

A. Correct.

Q. That was the only incident relating to TBA which you testified to yesterday, was it not, during your tenancy at the Media station?

A. I mentioned a motor oil additive which Mr.
636 Hayes questioned but it had been purchased from Mr. Parris, he found out later, Mr. Hayes did.

Q. Was there any other incident during the years you were at Media when Mr. Hayes complained about non-Goodyear TBA at the station?

A. I don't just recall it at the very minute. You have it on the record there.

Q. But you have stated everything that you recollect along those lines?

A. Just at the minute I do. After all, a person's mind is ninety percent subconscious, the other ten conscious.

Mr. Kelaher: Would you read the answer, please?

(The reporter read the last answer.)

By Mr. Thompson:

Q. The Media station is located on the Baltimore Pike, is it not?

A. That's right.

Q. And the Baltimore Pike is being widened?

A. That's right.

Q. Has the widening started yet?

A. It has.

Q. Has that interferred with that station?

A. Not according to the new dealer it hasn't to any extent.

Q. Was the widening started while you were still there?

637 Mr. Kelaher: Your Honor, off the record a minute, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: May I have the last question read?

(The reporter read the pending question.)

The Witness: No, not at the point of the station it wasn't.

By Mr. Thompson:

Q. Had your gallonage dropped off severely due to the improvements on the Baltimore Pike before you left the station?

A. No, I wouldn't say so.

Q. Was the widening of Baltimore Pike one of the reasons why you wanted to step out of this station?

A. No.

Q. It had nothing to do with it?

A. No.

Q. Now, at the time you stepped out you had a three year lease from Atlantic, of course, didn't you?

A. Correct.

Q. And you asked Atlantic if they would be willing to cancel it?

A. I did.

Q. And you had no difficulty in getting Atlantic to 638 cancel it, did you?

A. No extreme difficulty, no.

Mr. Thompson: I think I shall now turn you over to the tender mercies of former District Attorney Mr. Mathias Correa of New York.

Mr. Correa: Off the record.

(Discussion off the record.)

By Mr. Correa:

Q. On the record I just have a few points I would like to clear up.

Now, sir, you said that you were at a meeting of Atlantic dealers at which there was discussion of an investigation. Do you remember giving that testimony?

Mr. Kelaher: Your Honor, I think—if I understand your question, I don't think there was any such testimony.

By Mr. Correa:

Q. Let me ask you this, sir: Do you remember being asked on your direct examination and making the following answer. This is at page 550 and 551 of the record:

"Question: I'm referring now to a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation was mentioned. Do you recall any such meeting?

"Answer: I remember one meeting we had when—but I can't say when it was exactly, when we were told

639 that there was an investigation going on and that we were free to buy where we saw fit and so on and so forth; and that's what we were told at the meeting, but then after the meeting and the salesman came around and talked to us individually we were told something else."

Do you remember that, sir?

A. Yes, sir.

Q. Now, sir, do you recall the date of that meeting?

A. No, sir.

Q. Do you recall the approximate date of it?

A. No, I would be guessing if I tried to establish about when it was.

Q. Do you recall the year in which it took place?

A. No, not definitely I don't. I would have to be guessing to—I could come close—

Q. (Interposing.) We don't want you to guess; we want your best recollection.

A. I could come close but I don't have it definitely established in my mind.

Q. You say you can tell us about when?

A. I could guess, I don't have anything established in my mind.

Q. You have no recollection?

A. No.

Q. All right. Now, you have said that after the
640 meeting the salesman came around and talked to you individually and you say "we were told something else." To whom does "we" refer to in your answer, sir?

A. Dealers in general.

Q. Well, does it refer to you in particular?

A. Yes.

Q. And to what other dealers to your knowledge, if you can?

A. Mr. Hill in Darby. George Hill.

Q. Mr. Hill in Darby. Anyone else?

A. That's the only one that I recall at the moment.

Q. So that when you said—"were told something else" in this answer at page 551 of the record you meant dealers in general, i.e. yourself and Mr. Hill of Darby, is that correct?

A. I meant myself and I knew of Mr. Hill in Darby at that time.

Q. Well, did you mean anybody else, sir, and if so, please name them.

A. I don't recollect anybody in particular at the moment.

Q. Do you recollect anybody in general?

A. Not at the moment.

Q. Now, sir, you recall that you were asked by Mr. Kelaher the following question and answer—on page 552 of the record:

"Question: Now, after the meeting you have refer-
641 ence to you stated Atlantic salesman came in and told you something else, is that right?

"Answer: That's correct.

"Question: Now, who was the Atlantic salesman who came into your place?

"Answer: Mr. Way.

"Question: What did Mr. Way tell you?"

And then I interposed and said: "May we have the time fixed."

"By Mr. Kelaher:

"Question: Yes, we are trying to.

"Answer: Yes, it was early in 1953."

Do you remember making those answers in response to those questions, sir?

A. Yes.

Q. Now, sir, does that refresh your recollection as to

the date of the meeting at which you were told there was an investigation going on?

A. No, not exactly.

Q. Well, does it refresh your recollection at least to the effect that the meeting was some time prior to early in 1953.

A. Well, this thing was brought up at more than one meeting.

Q. Please, I'd like to stay with the meeting you talked about at page 551 of the record now, if I may, sir.

A. I can't definitely say for sure now.

642 Q. And those answers I last read you do not refresh your recollection as to whether or not that meeting was some time prior to early 1953?

A. Yes, but this thing of—

Q. Could you answer my question?

Mr. Kelaher: Let him answer the question.

The Witness: Wait a minute—

Mr. Correa: Please, Mr. Witness, I'm not taking any directions from you.

Hearing Examiner Kolb: The witness is trying to answer your question.

The Witness: You're not trying to submit any question or answer, you confuse me.

Mr. Correa: Would you instruct the witness that he is not to make remarks to counsel that this is the matter of your Honor's controlling the court room and not the witness. I ask for instruction, if your Honor please.

Hearing Examiner Kolb: Read the question.

(The reporter read the following question:

"Question: And those answers I last read you do not refresh your recollection as to whether or not that meeting was some time prior to early 1953?")

Hearing Examiner Kolb: Can you answer that question, Mr. Witness?

The Witness: Pardon?

643 Hearing Examiner Kolb: Does that refresh your recollection as to that having occurred prior to early 1953?

The Witness: No, because this TBA subject was mentioned at so many meetings—

Hearing Examiner Kolb: Well, it would have to be prior to '53, would it not?

The Witness: Well, there were times when the TBA was mentioned prior to '53, but what happened at which meeting I just can't definitely say.

Hearing Examiner Kolb: The question was whether it was discussed prior to that time. Is that correct, Mr. Correa?

Mr. Correa: Yes. Well, if your Honor please, the question was as to his recollection of when a meeting at which an investigation was mentioned took place. Now, he said that at the meeting he was told one thing and thereafter salesmen came around and told him something else, and he says when asked when the salesman came around and told him something else that was early 1953.

Now, I asked him does that refresh your recollection—

The Witness: (Interposing.) That date is correct.

Mr. Correa: (Continuing:) —of when the meeting took place. That's all.

Hearing Examiner Kolb: We could spend all morning on this, Mr. Correa, but where are we going to be after you get finished with it?

644 Mr. Correa: If your Honor please, I submit that is not my fault. That is the witness. I dos't think these questions are particularly complicated or difficult and I don't see why we have had to spend this much time on it.

Hearing Examiner Kolb: You have spent considerable time on it. I was wondering why you were spending so

much time on it. That's up to you, you are making the record.

By Mr. Correa:

Q. Well now, sir, coming back to this meeting—

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. At which you were told there was an investigation going on. Were you told what kind of an investigation or by whom?

A. I don't recall.

Q. Well, were you told whether or not there was a Government investigation?

The answer is "no"?

A. I said I don't recall at the moment. No.

Q. You will have to answer audibly because the reporter doesn't get it otherwise.

Now, you said, sir, that in 1953, in March, there were two men came into your place and conducted an inves-
645 tigation. Do you remember that answer?

A. Yes, sir.

Q. Now, sir, was that before or after the conversation with Mr. Way concerning a mutual consent cancellation of lease which you have testified about as having taken place early in 1953?

A. That was after I had the discussion with Mr. Way.

Q. Now, do you know who these two men who came into your place and conducted an investigation were?

A. No, at the present time I don't. I know that they identified themselves at the time.

Q. As what, do you know?

A. I can't be sure.

Q. What is your best recollection?

A. Whether it was FBI or Federal Trade Commission, but they had proper credentials for an investigation.

Q. You said they conducted an investigation, what did they do?

A. They asked me questions.

Q. And what questions did they ask you and what answers did you give?

A. I don't recall at the moment. It was all recorded at the time.

Q. What was the subject matter of their questions, sir, if you can't recall the questions specifically?

A. I wouldn't want to guess right at the moment.

646 Q. I don't want you to guess, but haven't you any recollection?

A. No, I wouldn't guess if I had.

Q. You have no recollection of the subject matter of their questions?

A. Not right at the moment. No, sir.

Q. Was it dealing in narcotics?

Mr. Kelaher: Objection, your Honor. I think that is a frivolous question.

Mr. Correa: Well, I submit—

Hearing Examiner Kolb: Objection overruled.

The Witness: What was the question.

Mr. Correa: Read the question, please.

(The reporter read the pending question.)

The Witness: Well, if you must be radical, I would have to say no.

By Mr. Correa:

Q. Well, you recall it was not that?

A. I do.

Q. Do you have any recollection of what it was?

A. Not at the moment, sir.

Q. Now, do you recall whether or not you discussed with

these men who came into your place of business in March of 1953 the incident which you had related to us of your conversation with Mr. Way concerning the mutual consent to cancellation?

647 A. No, I don't recall.

Q. You have no recollection one way or the other on that?

A. No, sir.

Q. Did you discuss with these men who came into your place in March of 1953 the incident which you told us in your direct testimony occurred when advertising was placed in your place of business and subsequently removed by you?

A. I don't recall whether I discussed that point with them or not.

Q. Did they ask you questions on subjects related to either of those things?

A. I can't say whether they did or didn't.

Q. You have no recollection about that?

A. Not at the moment. No, sir.

Q. Now, sir, when this advertising was placed in your station you said you were not there, is that right?

A. That's correct.

Q. Who was?

A. The gentleman in charge of the place when I wasn't there. I wasn't out of town, I wasn't—

Q. I just asked you who was. We'll get on much faster if you will answer my questions.

A. I said the gentleman who was in charge—

Q. What was his name, if it's not a secret.

A. I don't recall at the moment.

648 Q. You don't remember his name?

A. No, sir.

Q. Now, don't you know, sir, didn't he tell you that he signed a receipt for that advertising saying that it had been installed to his satisfaction?

A. No, I wasn't—in fact, I was only gone a short time, I'd gone out for something and was working at the time and—

Q. (Interposing.) The question, if I may refresh your recollection, was don't you know?

A. That he signed, no; no, I didn't know that he signed.

Q. He didn't tell you that?

A. No, if he did I don't have any recollection of it.

Q. Now, sir, after this occasion in March of 1953 of which apparently you have no recollection, when was the next time you talked or corresponded with any Government investigators about the subject of your experience as an Atlantic station operator?

A. A week ago yesterday, by telephone.

Q. Where did that take place, sir?

A. I don't know exactly where the gentleman was when he called me.

Q. He called you?

A. That's correct.

Q. Now, sir, prior to your appearance here, have you discussed your testimony with anyone?

649 A. I have not, sir.

Mr. Correa: I have no further questions.

Mr. Kelaher: May we have a few minutes, your Honor?

Hearing Examiner Kolb: We will recess for five minutes.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Correa: If your Honor please, there is one further question I neglected to ask. May I have your Honor's leave to put it to the witness?

Hearing Examiner Kolb: Yes.

By Mr. Correa:

Q. Mr. Witness, on the occasion in March of 1953 when two Federal agents came to your place and in your words

conducted an investigation, did you, sir, in connection therewith sign any statement in writing?

A. I did.

Q. You did?

A. Yes, sir.

Mr. Correa: I call for its production.

Mr. Kelaher: I have that right here.

Mr. Correa: Thank you.

May we have a moment, if your Honor please?

650 Mr. Correa: No further questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Witness, I would like to ask you if this is the statement you signed and please state the date. (Handing document to the witness.)

A. That's correct. 3/3/53. (Document is returned to counsel.)

Mr. Kelaher: Mr. Examiner, I now ask that this statement be marked for identification as Commission Exhibit 294-A and B—two pages.

(The document referred to was marked Commission's Exhibit 294-A and B for identification.)

Mr. Kelaher: Mr. Examiner, Commission Exhibit for Identification 294-A and -B is a statement signed by Mr. James B. Matthews on March 3, 1953, in the presence of Attorney Examiner L. E. Janson, an Attorney Examiner of the Federal Trade Commission in response to questions concerning his service stations operation as an Atlantic Service Station lessee dealer located at Church Lane and Bailey Road, Yeadon, Pennsylvania.

I now offer Commission Exhibit 294-A and 294-B into evidence.

Mr. Correa: No objection.

Mr. Ballard: No objection.

651 Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 294-A and -B.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 294-A and 294-B, were received in evidence.)

By Mr. Kelaher:

Q. Mr. Matthews, when Atlantic changed over to the Goodyear TBA line, did they consult you or ask your preference with respect to their change-over?

A. No.

Q. Mr. Matthews, during your operation of the three service stations did you always pay your rent in full and promptly?

A. Did I always pay my rent?

Q. Did you always pay your rent?

A. My rental up until December of this year—or this past year—was paid on a gallonage basis and it was changed to a commission basis December 1, '56, and at that time we were—I left a deposit with the company of $650 in advance which is at, the company still have that at the present time because I haven't made settlement for the last month and the first 7 days of the next month.

Q. Up until that time you had—

A. It was always paid on a gallonage basis.

Q. And you paid it promptly, is that correct?

A. Well, within a few days—

652 Q. Within a specified time?

A. That's correct. Maybe I was late with a check once in a while for gasoline, but not any weeks or months or anything like that; just a matter of a couple of days.

Q. Did you ever receive a warning letter from Atlantic with respect to the cleanliness of your station during any of the three—in any of the three stations which you operated?

A. I can't ever say that I received anything in writing, I was told on a couple occasions that I should keep it cleaner, which we did in cooperation with the company.

Q. And did you normally keep a clean station?

A. Comparatively.

Q. And did you employ any personnel in your stations?

A. Yes, sir.

Q. And about how many hours did you keep the three stations open?

A. In Darby I operated 24 hours; in Yeadon I operated 17 hours—7 to 12—7:00 a. m. to 12:00 midnight; and in Media I operated 24 hours.

Q. And during all of the hours you have specified was either you or an employee of yours present at the station?

A. Yes, sir.

Q. Yesterday you referred to a Mr. Arnholt. Do you know what Mr. Arnholt's title was with Atlantic?

A. He was in a supervising capacity.

653 Q. And he was in charge of TBA in your area, is that correct? Sales supervisor.

Mr. Ballard: I object unless the witness knows the answer to this question.

Hearing Examiner Kolb: Does the witness know?

The Witness: He was in the sales department in the supervising capacity.

By Mr. Kelaher:

Q. Was he in charge of the various Atlantic salesmen such as Atlantic salesman Hayes and Hoffman who came into your station?

A. To the best of my knowledge, yes; he was their superior.

Q. And was he Atlantic salesman's Way's superior at that time?

A. Correct.

Mr. Kelaher: No further questions.

Mr. Correa: May I have the last exhibit?

(Document is handed to counsel for Goodyear.)

Recross Examination by Mr. Correa.

Q. Now, sir, remember I asked you whether on the occasion of this interview with Government investigators in March of 1953 you had said anything to them about the incident related on your direct examination when you
654 say Goodyear signs were put into your station in your absence and subsequently taken down by you. Do you remember that, you said you had no recollection.

A. Of it being mentioned at the time of the investigation?

Q. Yes.

A. I said I didn't have any definite recollection of it, no. But it was possible.

Q. I show you CX-294-A in evidence, and ask you does an examination of that exhibit refresh your recollection that you did not tell the Government investigators of any such incident? (Handing document to the witness.)

A. I don't see anything about it here.

Q. Well, my question, sir, is does it refresh your recollection that you did not tell the investigators of any such incident?

A. Well, I evidently didn't or they didn't write it down. I don't see it here.

Q. What is your recollection?

A. I still don't recall whether or not I did.

Q. Now, sir, you testified on direct examination that at this time your wish and desire was to sell Lee tires, is that correct?

A. That's correct.

Q. And that is the fact, is it?

A. That's right.

655 Q. And did you wish to sell Goodrich tires?

A. No, I never sold Goodrich tires. This question here that mentioned Goodrich tires the subject wasn't brought up by me.

Q. You hadn't given any thought to buying or to selling Goodrich tires prior to March of 1953?

A. Not to my recollection, no.

Q. So that it was the Federal Trade Commission Attorney Investigator who was promoting the Goodrich line, is that it?

Mr. Kelaher: I object to that characterization.

Mr. Correa: Withdrawn.

No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: Just a minute, your Honor, I think we do when they have completed with the document.

656 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Matthews.

(Witness excused.)

Mr. Dias: Mr. Iacono, please.

ANIELLO L. IACONA was thereupon called as a witness for the Commission, and having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Please state your full name and home address.

A. Aniello L. Iacona, 1026 Woodland Avenue, Sharon Hill, Pennsylvania.

Q. Did you at one time operate an Atlantic station?

A. Yes.

Q. Can you give us the address of that station, please?

A. Well, it was the corner of Providence Road and South Avenue, Secane, Pennsylvania.

Q. When did you go into that station?

A. January 18, 1952.

Q. And did you change stations at all after that period, or were you in the same station throughout your term with Atlantic?

A. I stayed right there, one place.

Q. When did you leave the Atlantic station?

A. October, 1954, I think.

Q. Now, if you will, please, give us the periods— 657 you signed a lease when you went into the station, did you?

A. I think the first lease I signed was a six-month lease and then another six-month lease and then a year lease. Two six-month leases and a year's lease.

Q. Let's talk about the first lease. Do you recall the period involved there?

A. January to June.

Q. January to June of 1952?

A. Yes, and then June to December.

Q. June to December of 1952?

A. Yes.

Q. And the year's lease ran from when?

A. I think I had a lease in January—from October to October, I guess it was, when I went out.

Q. When, at any rate, you received your first year's lease, that was the latter part of 1952 or early 1953, is that correct?

A. I think it was, yes.

Q. And the four leases you received, that was another year's lease?

A. I think I was there two years, total, altogether, 1952 to 1954. I went out in October, I know that.

Q. Now referring to the time you took this station originally, was that a new station?

A. Brand new, I opened it up brand new.

Q. Did you carry TBA in that station?

658 A. Yes.

Q. And what brand TBA did you carry?

A. Mostly Goodyear TBA; the distributor was Ed Parris, I had all Goodyear tires and DuPont's chemicals, Goodyear tubes, batteries; when I first went in I got $1340 worth of TBA from Ed Parris, the salesman wrote up the order for me when I was just getting in.

Q. Which salesman?

A. John Clark of Atlantic Refining Company.

Q. Do you recall when he wrote that order for you? Was it before you went into the station?

A. Before I went in, in December, I think. The station was supposed to be ready in November and bad weather held it up and I didn't go in until January.

Q. Was the TBA in the station when you moved in and started doing business?

A. It was sent there a couple of days before I opened up.

Q. Did you mention John Clark? You mentioned him as the salesman, didn't you?

A. That was the salesman at the time.

Q. How did you come to choose Goodyear TBA?

A. How did I come to choose it?

Q. Yes.

A. Well, I was getting into business and I was trying to get the station so he says when I got home the

659 station was mine if I wanted it, and I had to have $5,000 to go into the station and there was so much rent to start, for the first six months, and he says "We have a distributor by the name of Ed Parris," which had his place of business in Sharon Hill at Clifton Avenue and

Chester Pike at the time, and he says "You will get your TBA from him," tires, and tubes, and what-not. So he wrote up the order and I made out the check and paid him and Parris delivered the TBA, which was all Goodyear tires and tubes and the chemicals were DuPont's at the time.

Q. Did he ask you if that was what you wanted?

A. No, he didn't ask me.

Q. Did you carry anything other than Goodyear TBA thereafter?

A. Thereafter I did, yes. I had a problem there with adjustment on tires and I got kind of mad. They wouldn't make adjustment, so I started buying from Gaul Derr & Shearer and started putting in Century tires and tubes, Delco batteries and I put in Packard battery cables. And I put in other chemicals like Barsleak.

Q. Can you tell us roughly when that was you started buying those products?

A. I guess around 1953.

Q. The early part or the latter part of 1953?

A. I guess it was in the spring of the year, because I just got a load of tires in, 30, 60, 90 days and they wouldn't make adjustment on the tires that a customer of mine
660 got and that is when I got mad and called Ed Parris and told him to take the tires back if he wouldn't make an adjustment, and they refused to make the adjustment and I talked to the salesman from Gaul Derr & Shearer and he said Century tires were unconditionally guaranteed and that is what I wanted because I had to please my customers, and I had a couple of defective Century tires they made good. And it was, I guess in the spring of the year.

Q. That was after your second six-month lease?

A. I think it was the second or the year's lease.

Q. How do those leases operate? You went in and signed a lease for six months?

A. Yes, I mean they couldn't base your rent until the station got operating, that was their idea, to find out what the station would do and they would give you a year's lease. I think I had two six-month leases.

Q. After the expiration of the first six-month lease, did you get a new lease?

A. Six-month, yes.

Q. Did you actually get a lease or did they extend the first one?

A. You got another written lease that had to be signed.

Q. When the second one expired, did you get a new lease for a year?

A. Yes, a new lease for a year.

661 Q. During your first lease, when you carried—during the first six-month lease in your station, did you receive any complaints about the operation of your station?

A. No.

Q. During the course of your second six-month period, did you receive any?

A. It was during the year's lease when I started to get complaints.

Q. Can you tell us when this occurred, the first complaint?

A. When I started to handle outside merchandise, like Century tires and tubes, and outside chemicals.

Q. Can you tell us who it was that complained—

A. (Interposing.) It was Tom Hayes, George Arnholt and Ed Parris.

Q. Do you recall their conversation relative to those problems?

A. Well, I remember one time he walked in behind Mr. Arnholt and I had Century tires and Tom Hayes was in front of him and he says to Tom Hayes—I recall this question—he said, "What kind of a salesman are you with this man having Century tires in there," and Tom gave

me a dirty look. And when it blew over, Tom came in and said "I got the devil and you have to get rid of these tires." I said I wasn't going to. At the time I had a trickle charger that we used to put our wet batteries on and I had Delco batteries on the rack instead of Goodyear.

662 Q. Was there any comment as to that?

A. Yes. I was told to take them out, too. And then I refused to do it and I think this one month I hadn't bought hardly anything off Ed Parris, and the three of them, Tom Hayes and Ed Parris, come in and wanted to know what the trouble was, and Mr. Arnholt showed up, so I told Ed Parris what the trouble was, that I wasn't satisfied with the product because of their adjustment. It lost my customers on account of the adjustment, and I didn't think that was fair.

Q. Did you have any difficulty in connection with accessories? Did you carry accessories?

A. Yes, at the time I did.

Q. Fan belts, hoses?

A. Well, I carry, like I say, DuPont. We had a DuPont line of sealer and I used to carry Barsleak and I had Bardahl oil additive and Mr. Arnholt made a remark about that one day, that the Atlantic oil was so good we didn't need an additive, and I had people that used to ask for it.

Q. What about some of the other products you mentioned?

A. Barsleak, he didn't like the idea of having that on the shelf. He picked up a bottle of that and said "What is this," and he could read it, he knew what it was.

Q. How about fan belts?

A. I stuck to Goodyear fan belts and hoses. I had outside battery cables, like I said, Packard battery cables.

663 that I bought from Gaul Derr and Shearer.

Q. Was there any comment made by them about that?

A. Yes.

Q. What?

A. They were on the shelf when I checked out and the incoming dealer refused to buy them because it was outside merchandise.

Q. Did you do any advertising around your station?

A. What do you mean by advertising?

Q. Well, did you advertise any of the products which you carried other than Atlantic gasoline?

A. There was a Goodyear sign out on the pole, Atlantic and Goodyear tires.

Q. Did you advertise any of these other products you mentioned?

A. No, I just had them on the shelves, not outside.

Q. Did you ever put up signs or attempt to put up signs?

A. No.

Q. How did you come to terminate your lease in October of 1954? Was it your idea to get out, or what?

A. No, during the last year I was there, during the summer months, I remember Tom Hayes and George Arnholt coming out to reach an agreement and they tried to get me to sign it. I refused to sign it and he said, Mr. Arnholt said, he pulled an inspection on me and said I had a dirty station, which I didn't think was dirty myself. They seemed to think so. So he sent me a letter that may lawyer in Chester has, Mr. Katana, and in the letter they said they would give me one week to get the station in tip top shape and there was five counts against me. They were: untrained personnel, improper uniform, improper display, didn't keep a date book, which I refused to show them, because I didn't think it was their business, it was my business, I was running it, and I had a date book and I refused to show it to them every time he come in

664

and the five counts—the dirty station, that was the fifth count.

So I sent that letter to my lawyer and told him I didn't want to be bothered until my lease was up. I didn't receive any letter that they were going to cancel my lease. Tom Hayes said there was a new dealer coming in and that was the first of October, 1954 that he stopped in. Then I had a 7-up box out in front that George Arnholt didn't like because it was white and he says "Get that box out of here," and I refused to get it out and he said—it was a red, white and blue box, because it was 7-up, and he commented about that. I said I wasn't going to get it out, because it was my box, I bought it and paid for it, and he says Coca-Cola is putting out red boxes for Atlantic stations, which I thought was a fib myself, and he says that is why Coca-Cola is putting out a red box, and I said "If you want one, put one in, because I am not."

665 By Mr. Dias:

Q. I hand you Commission's exhibit 257-A and ask you if this is the five or six-point letter you referred to?

A. Yes, this is the letter.

Q. Taking these items one by one, "The standard of housekeeping maintained by you is deficient." What did that mean to you?

A. Read that again.

Q. "The standard of housekeeping maintained by you is deficient," lacking, in other words not up to par. What did that mean to you?

A. Well, at the time it didn't mean anything to me because I thought my station was as clean as any other Atlantic station around, because I used to go to other ones and I mean, the same station right now, I don't think it is as clean as they said it should be, even now. I go there about every day. I think I kept it cleaner than that when I had it. To me it looks like a pig pen today.

That is their idea, because I wouldn't keep their products in there, and that letter is some way to get you out of there.

By Mr. Dias:

Q. Let me refer you to number two now. "The efficiency of services performed at your station is not on a par with competition."

666 A. I didn't understand that myself, either. At the time we were in a price war. I don't know how you can stay in competition when you are having a price war and because I wasn't in a critical zone I wasn't allowed to go down in prices, so I say you can't meet competition.

Q. Number three: "You have not met the minimum requirements for display." What did that mean?

A. Well, I don't know. To me, I would have the proper display out of motor oil and tires. I don't know what else they wanted.

Q. Number four: "Personnel are poorly trained." How many personnel did you have?

A. At the time I had two full time and one part time and myself, four of us.

Q. How many hours did you keep the station open?

A. We were open from 7 a.m. to 11 p.m.

Q. Did you determine those hours yourself?

A. Yes, sir.

Well, they asked you, they would like you to keep open certain hours, but I thought those were good hours to keep, so I did.

Q. 7 a.m. to 11 p.m.?

A. Yes.

Q. How many shifts is that, off hand?

A. Two shifts.

667 Q. Did you have a man there at all times?

A. Yes, sir.

Q. Were you there most of the time?

A. Most of the time. If I wasn't there, there was somebody responsible there.

Q. Number five. "You do not have a regular program for expanding the sales involving direct mail campaigns, personal solicitation, and so on."

A. I didn't have personal solicitation, but I did have a mailing program.

Q. Of what type?

A. I would mail out cards on lubrication, tire sales, and what-not.

Q. Did you say tire sales?

A. I had a mailing list.

Q. You mentioned tire sales.

A. Yes.

Q. What type tire?

A. Good year tires.

Q. Number 6: "You do not maintain records adequate to reflect the financial status and return from various phases of your business."

A. I refused to show it to them, because it was my business not Atlantic Refining Company's business. I never went in to look at their books, and I didn't think they 668 had a right to look at my books, and that is the way I felt.

Q. Did anybody from Atlantic see your records ever?

A. Tom Hayes, the fellow in the courtroom.

Q. This was written in 1953. When did he see your records?

A. I have only showed them to him a couple of times. They expect to walk in and pick up your books and look at them any time. I would take them home so nobody could look at them but myself.

Q. What did those records contain?

A. It was a daily sheet of sales, how much TBA you would sell, and your labor for the day and gas and oil.

I have a date book from the day I started right up until today, with Cities Service, and I can show them every record they want to see, but I don't show anybody my records; the only person that sees them is the Government.

Q. Now after you received that letter, did you receive any other notice from Atlantic that you recall?

A. Notices?

Q. Yes, about inspections or anything of that sort?

A. No, only I had other inspections, but I mean this one particular inspection, after it was all over with, Tom Hayes said you came through with flying colors, and that was it. I never heard anything else. And we cleaned up because it was a special inspection as far as I was concerned, because George Arnholt was coming in to in-
669 spect himself, so just to keep peace, we cleaned the place up. It was spic and span. We keep it pretty decent for a service station.

Q. Have you ever heard of the phantom, Atlantic's phantom?

A. I heard of it, yes, but I don't remember him ever stopping around.

Q. You don't know whether he actually stopped in your station?

A. No. They might have, as far as I know.

Q. When you terminated, or when your lease was expired or cancelled, will you clear me upon that? Was it cancelled or not renewed?

A. I just didn't get a renewal. I figured all the trouble I had with them, I wasn't going to get another one anyhow.

Q. When did you first know it was not going to be renewed?

A. I guess the week before Tom stopped in and said

he had a new dealer. I don't remember receiving any letter. I am almost sure I didn't. I mean, I had to get out. It was either get out or kill George Arnholt, one or the other. That was the problem I had, believe me.

Q. Did Mr. Arnholt give you any special trouble?

A. Well, I mean, I didn't like his attitude and his ways. He was disagreeable, you couldn't reason with him. I mean like that stuff about a white soda box. I don't see that. And I even said, "What are you, a Communist or something?" If I want a white soda box, I paid for it. That man would drive you nuts. I wasn't going to Norristown on account of him.

670 Q. Did he give you trouble on TBA products?

A. Yes, he did, he certainly did.

Q. Products other than the Goodyear line, is that correct?

A. He didn't like the idea of having anything in there. At one time I told him, "Mr. Arnholt, I wish I had a tape recorder in here, I would hang you right now." He says, "I didn't say nothing." And I said, "I know you didn't, because I don't have a tape recorder and a couple of witnesses." He was sneaky, brother.

Q. You were told by Mr. Hayes about a week before your lease was to expire, and as far as you remember, that was the only—

A. (Interposing.) As far as I remember, that was it. I don't remember anything else.

Q. Do you know who took your station over?

A. Carmen Gerace.

Q. What did you do when you terminated the station? Did you sell your products to him?

A. I sold him everything, it was only a couple of things we had argument on that he wouldn't buy because they were outside merchandise, and then there was a trickle charged there which was Goodyear that I didn't want to

take with me and he refused to buy that, I had to leave it, and any outside merchandise I had he refused to buy. I don't remember everything I had.

671 Q. Was the Atlantic representative there during these negotiations?

A. Yes, Tom Hayes was there, the incoming dealer, the outgoing dealer, and I had my accountant with me.

Q. Did the Atlantic representative take any part in this closing out of the sale of products?

A. Yes, he wrote every item down he bought.

Q. That who bought?

A. The incoming dealer. I mean, each sheet was filled out with any merchandise he bought and we both had to sign it but when he came to outside merchandise, he refused to buy it.

He had gone to Atlantic's School and I guess he was taught not to buy anything from the outside.

Q. He came out of school?

A. Yes, he went to Atlantic's school.

Q. Did you have any difficulty, or did you sell him your Goodyear stock? Did you have Goodyear stock?

A. Yes, what I had he bought.

Q. Referring back to the time you started purchasing so-called outside TBA, can you name again for us the suppliers, the various suppliers you purchased from?

A. I bought off Gaul Derr & Shearer, in Philadelphia; I bought off of V. J. in Folcroft—at the time they were in Sharon Hill—and I bought off of Auto Parts and

672 Radiator in Folcroft, and I guess that is about it. And Ed Parris; he was the Atlantic distributor.

Mr. Dias: That is all.

Cross-Examination by Mr. Thompson.

Q. Mr. Iacona—did I pronounce your name correctly?

A. You did, sir.

Q. Do I correctly infer that you don't like George Arnholt?

A. Well, I don't, I will be truthful. I don't.

Q. But you do like Tom Hayes, don't you?

A. I am not too happy with Tom Hayes, I will be truthful.

Q. Did he push you around a bit?

A. He tried to, but I wouldn't let him.

Q. He came to see you pretty often, didn't he?

A. Quite often, yes, sir.

Q. These Atlantic salesmen get around once or twice a week to all the stations, don't they?

A. Sometimes more than that.

Q. Sometimes more?

A. Sometimes.

Q. Do you live around the neighborhood of this station, at Providence Road and South Avenue?

A. No, sir, I live in Sharon Hill, sir.

Q. That particular station is how far away from McDade Boulevard? Quite a ways, isn't it?

673 A. I would say it was within a mile. I might be wrong on that.

Q. It is out in the residential section of the county though, isn't it?

A. Well, it sits right around the street from the Secane station and there is only a few homes right around the station. There is more stores than homes in the area of the station, I would say.

Q. The old Tully-Secane (?) Golf Course is near the station?

A. Yes, that is half way between the station and McDade Boulevard.

Q. And that was a residential area?

A. There is a Catholic Church, Our Lady of Fatima, and school there now.

Q. And a lot of it has been turned into building developments?

A. That is part on Ashland Avenue side, and South Avenue.

Q. Closer to your station, just before the station opened, wasn't there quite a large building development?

A. Stores.

Q. And also a lot of houses?

A. Right in the area of the station?

Q. Yes.

A. Not close to it. There has been recently, in the past year, last couple of years.

674 Q. Well, do you know the people who live around there at all?

A. Do I know them?

Q. Yes.

A. Yes, quite a few of them.

Q. You talked about the station being late in opening. It was a new station, wasn't it?

A. Yes, sir.

Q. Do you remember why it was late?

A. Because of the bad weather, they run into bad weather, they was hoping to have it finished by December and run into bad weather and when I opened up, I opened up without a driveway, a macadam driveway, it was stone.

Q. Don't you recall that there was a neighboorhood protest against any kind of a gas station being opened at this location?

A. The building was almost finished then. Sure, there

was a protest against it, but I didn't know about it. I heard about it afterwards.

Q. Did you know that the Zoning Board of Adjustment turned down application for a station here?

A. For that particular place?

Q. Yes.

A. No, I did not. I was in the Service at the time, sir.

Q. When did you get out of Service?

675 A. Well, I got called back during the Korean War. I was in the Second World War and I got home in 1946 and was home four years and got called back in the Korean War, because I was in the Reserves and when I got out, I went with Atlantic.

Q. Did the people in the neighborhood after you opened the station tell you the story of the Zoning Board turning it down and they appealed to the courts?

A. There was a few people told me about it, yes.

Q. You knew about it anyhow?

A. I knew after I was there.

Q. Did they tell you whether the Judge put some special conditions down for the station?

A. They never told me.

Q. You were not familiar with that?

A. No, sir.

Q. Were you told that Atlantic was paying particular attention to the appearance of this station because of the neighborhood problem?

A. Not as far as I remember I wasn't told about that, no.

Q. Now you and your wife are both quite good horsemen, aren't you?

A. Yes, sir.

Q. I have seen you in horse shows, I think.

A. You have never seen me.

Q. I have seen your wife then, haven't I?

676 A. No, sir.

Q. Where was your stable, just close to the station?

A. Right across the street from the station.

Mr. Dias: I object, your Honor. I don't see what this has to do with the problem at hand. I think it is improper cross-examination.

Hearing Examiner Kolb: I think the last question is confined to the station, wasn't it?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Thompson: It is very definitely relevant.

Hearing Examiner Kolb: Proceed.

By Mr. Thompson:

Q. Now while you were running the station, you were running a stable across the way?

A. I wasn't running a stable. My wife takes care of the stable. That is what George Arnholt thought, that I was running the stable, and he was wrong.

Q. You acted as the stable hand, didn't you?

A. No, sir. I would walk over now and then, when I wasn't busy, when I had proper help in the station, but I wasn't running the stable.

Q. How many horses were you keeping in those days?

A. I wasn't keeping any; my wife was keeping them.

Mr. Dias: I object, your Honor.

677 Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. There was about 12 horses in the stable across the way, weren't there?

A. That was a good block away from the garage.

Q. You are not going to tell me your wife cleaned out the stalls for 12 horses?

A. I had hired men there.

Q. You did a lot of it yourself, didn't you?

A. No, sir, I did not, and to this day I don't.

Q. I am very fond of horses, and I know they require a good deal of attention.

A. I had proper help to take care of the stable.

Q. You don't still run it, do you?

A. Yes, sir, I do.

Q. At the same place?

A. Same place.

Q. Didn't you spend about as much time at the stable as at the station?

A. I spent more time at the station.

Q. But it is true, Mr. Iacono, that on a number of occasions you would go over and help your wife clean out the stalls?

A. Never. Never.

Q. You didn't do that ever?

A. No, sir.

678 Q. You just never helped her?

A. I had the proper help to take care of the stable. I would go over and ride on Sundays.

Q. If you never helped her at that stable, I think you are a brute.

A. I might be, but I had the proper help to take care of the stable.

Q. Isn't it also a fact that in the summer time you would attend this station in dungarees and with no shirt on and completely covered with the things that you find around a stable?

A. I had coveralls on all of the time, from Eastern Overall. I had proper uniforms.

Q. And you wore them yourself?

A. I had mine on, with my name on it, "Andy."

Q. And you didn't serve the station in dungarees and without a shirt?

A. Not me, no, never. I never waited on customers without a uniform on.

Q. You had quite a lot of arguments with Tom Hayes about it, anyhow, didn't you?

A. When they started sticking their nose in your outside business, I don't think that is right. They didn't have anything to do with the station.

Q. How about your use of the station—

679 A. (Interposing.) What do you mean?

Q. I haven't finished my question.

A. All right.

Q. Did you use it as a used car lot or for cars for sale?

A. I had cars at times for sale there, yes, maybe one or two.

Q. That was specifically prohibited by the lease, wasn't it?

A. I don't remember, it might have been.

Q. Did the neighbors complain to you about that use of the station?

A. About used cars?

Q. Yes.

A. Not that I remember, no, sir.

Q. Were you told that they complained to Atlantic about it?

A. If I was told, I stopped it.

Q. Did you charge parking fees at the station?

A. Never.

Q. You operated it as a parking lot for friends, didn't you?

A. What is that?

Q. You say you did?

A. And they still do today, sir.

Q. You did operate it as a parking lot?

A. Customers would leave their cars there to be serviced, they parked there, yes.

680 Q. Do you know a gentleman living in that neighborhood named Mr. John Dowling?

A. No, sir.

Q. You never heard of him?

A. I can't remember.

Q. D-o-w-l-i-n-g?

A. Maybe I would recognize him if I saw him in person.

Q. Maybe I can refresh your recollection by identifying him. Do you recall him as being the nuisance inspector of the township?

A. He was the nuisance—

Q. Yes. Do you recall him?

A. From Upper Darby?

Q. Yes.

A. The only inspector I remember was the inspector that came around to check the garage, the fire chief inspector.

Q. How about the Health Commissioner, do you remember him?

A. No, that is the only one I remember.

Q. Now did the nuisance inspector come around and make complaints about the sanitary conditions at your station?

A. (Nodding negatively.)

Q. He did not?

A. Not that I remember. The only one I remember at the station was the fire chief.

Q. Did the fire chief complain about the amount of refuse in back of the station?

681 A. No, sir.

Q. Did the nuisance inspector or the Health Commissioner—

A. (Interposing.) I don't remember the gentleman, sir.

Q. Not when you were there?

A. Not when I was there, no.

Q. Did your employees report to you that that had happened several times?

A. (Nodding negatively.) If anybody important ever came to the garage, they would write down and tell me about it. I don't remember any gentleman by that name stopping in and I don't remember receiving a letter from the Health Department.

Q. Do you remember neighborhood complaints about an old truck body you had on the station a long time?

A. And it was taken away.

Q. But you do remember the complaints?

A. Yes, but what has that got to do with TBA? I can't understand that. We are talking about TBA and you are talking about horses and truck bodies and used cars.

Q. Well, I will try to make the point after a while.

A. Okay.

Q. How about these lads you had working around the station. You say you had two full time employees,

A. Well, one was just graduated from high school and the other was my son.

Q. How old were they?

682 A. 18, one, and the other one 17, and I had an older gentleman who was 27.

Q. Is it important in the operation of a station for the employees to know what they are doing when a car comes in for service?

A. That's right.

Q. They have to know all kinds of mysterious things like lubrication, don't they?

A. That's right.

Q. Had these boys been trained?

A. Well, I wasn't even trained myself, when you get down to it.

Q. Yes, I think I would agree with that. You never went to a training school at all?

A. I didn't go to a training school, no.

Q. Without in the slightest deprecating a competitor of Atlantic, your training had been gained by City Service, had it not?

A. What do you mean gained?

Q. Had you been a City Service operator before you got the Atlantic station?

A. No, no, never.

Q. You took City Service station afterwards?

A. Yes, sir.

Q. You came right out of the Service into Atlantic?

683 A. That's right.

Q. Do you know a Mr. W. P. Ferguson who lives in the area?

A. In the Secane area? No, I don't think so.

Q. How about a Mr. Cyrus McKeown, do you know him?

A. Not by name, no, sir.

Q. You don't recognize the names or don't know their wives as customers of the station?

A. Not off hand, I don't, no, sir. It has been back too far.

Q. Were you advised by Tom Hayes that both of them had filed complaints about the lubrication service they got at your station, complaints with Atlantic, I mean?

A. Not that I remember.

Q. Were you advised by Tom Hayes that other complaints were filed with Atlantic about the rudeness of the employees at your station to customers?

A. Not that I remember, no, sir. They might have, but I don't remember.

Q. Did Mr. Hayes tell you what ratings you were getting on the inspection reports at this station?

A. Yes.

Q. Very bad, weren't they?

A. As far as they were concerned, sir. Hell, I can pull an inspection on them and give them the same rating and pull another one on you and give you the same rating. 684 I have been through a lot of inspections, believe me, and I still have inspections today with City Service, and by God they are better. That is their opinion. When they don't like you, by God, they give you anything.

Q. Do you get along well with City Service?

A. Yes, sir.

Q. You are much happier than you were with Atlantic?

A. That's right, and if you don't believe me, ask Frank Gibble, because he used to be with Atlantic.

Q. I congratulate you on your sense of humor.

Mr. Thompson: That is all.

Mr. Correa: I have no questions.

Hearing Examiner Kolb: Any further questions?

Mr. Dias: No, sir.

Hearing Examiner Kolb: That is all, you may be excused.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a five-minute recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Pollack to the stand.

685 ISIDORE JACK POLLOCK was thereupon called as a witness for the Commission and having been sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your full name?

A. Isidore Jack Pollock.

Q. What is your home address?

A. 7442 Malvern Avenue, Philadelphia.

Q. Were you at one time an Atlantic leasee dealer?

A. Yes.

Q. During what period and what locations?

A. 1940 to 1948, at 10th and Chestnut Street, Chester, and from 1948 to March of 1953 at 9th and Kerlin Street, in Chester.

Q. So you were an Atlantic leasee operator for 13 years approximately?

A. Approximately, yes.

Q. When you first became an Atlantic dealer in 1940, was TBA a very important factor in service stations?

A. No, very secondary.

Q. When did it become an important factor in service stations?

A. I would say approximately after the war, about 1946.

Q. And from that time on did it develop as an
686 important factor?

A. It developed very important. It was quite a bit of profit in the gasoline business.

Q. Now do you recall being notified by Atlantic that it was going to sponsor Goodyear?

A. Well, the first I have a recollection of that, we were called to have a luncheon or a buffet, a dinner, or something and I don't recall what it was, and at that meeting

or dinner or luncheon, it was broached that we were going to be connected with Goodyear products.

Q. And do you recall the approximate date of that?

A. The approximate date?

Q. Yes.

A. I am afraid I couldn't. It might have been possible sometime in 1951, I think, I am not sure.

Q. Could it have been in or about March, 1951?

A. It could have been. I am not sure.

Q. Now prior, up to that time, what brand tires had you been carrying?

A. Lee Tires.

Q. And what brand batteries?

A. Exide.

Q. And what brand of accessories? Just some of the more important brands?

A. Why, polishes of one sort or another; then, it wasn't Simonize. And some of the DuPont, and—

687 Q. Did you purchase Fram oil filters?

A. Yes.

Q. And Thermoid fan belts?

A. That is right.

Q. And from whom did you purchase, who was your primary supplier of TBA?

A. Ed Parris.

Q. Where was he then located?

A. He was then in Sharon Hill. I don't recall the exact address now. On Chester Pike.

Q. And after that announcement of the change-over by Atlantic to Goodyear, did Mr. Parris continue to sell Lee tires, Exide batteries, and the various brands of accessories you were carrying?

A. Why, he sold them until his supply ran out.

Q. Did he then become the Goodyear TBA supplier in your area?

A. That is correct.

Q. And after the change-over at that time was your station identified with Goodyear valances, window valances?

A. Yes.

Q. And was it identified with the Goodyear outdoor sign?

A. Yes.

Q. Prior thereto, did you have a Lee or Exide sign up?

A. Yes, I think I did.

688 Q. And were they removed?

A. They must have been.

Q. And were you advised that this change-over in identification was to take place?

A. No, sir.

Q. Was it done at your request?

A. No.

Q. Now did you continue to carry Lee tires after the change-over in or about March 1951?

A. Yes, I carried them until I sold the merchandise I had on hand.

Q. And did you begin to purchase Goodyear tires at that time?

A. Yes, I purchased Goodyear tires.

Q. And from whom did you purchase Goodyear tires?

A. From Ed Parris.

Q. And after your Lee tires ran out of stock, did you thereafter purchase Lee tires?

A. Yes, I bought Lee tires afterwards also.

Q. Can you state the circumstances surrounding your first purchase of Lee tires after the stock ran out?

A. Well, I was offered a very good deal, I thought, from Lee Tire, and I purchased them.

Q. About how many tires did you purchase?

A. Anywhere from 25 to 50, I believe.

Q. That would be a substantial purchase, would it not?

689 A. That is right.

Q. Was anything ever said about such purchase by Atlantic representatives?

A. There was a Mr. Vayda, and he sort of tried to raise the devil with me about why I purchased—

Q. (Interposing.) Who is Mr. Vayda?

A. He was my salesman.

Q. And for which company?

A. Atlantic Refining Company.

Q. Did anyone else from Atlantic make any comments about purchasing—

A. (Interposing.) A Mr. Arnholt. He was the immediate superior of Mr. Vayda.

Q. About what approximate date did this occur?

A. I beg your pardon?

Q. About what approximate time were the statements made by Mr. Vayda and Mr. Arnholt?

A. It must have been sometime in—possibly in the latter part of the summer or fall of 1951.

Q. Would you state the conversations you had with Mr. Vayda and Mr. Arnholt at the time?

A. Well, they had asked me why I purchased the tires.

Q. Do you mean Lee tires?

A. Yes, instead of buying from Goodyear. Or from Ed Parris. And I told them that it was cheaper, the

690 deal that I received, and if I could receive the same deal from Goodyear or Ed Parris, as I did from Lee, I would have purchased Goodyear, but as I didn't, I bought the Lee tires.

And Mr. Arnholt said, after all, you have been with the company for quite some years, there is no reason why you shouldn't continue to buy from the company.

Q. And thereafter, did you make purchases of Lee tires?

A. Yes.

Q. And was any comment ever made by any Atlantic representative?

A. Just a sly dig now and then.

Q. Who would make the sly digs?

A. Mr. Vayda.

Q. Now, did you purchase any brands of batteries, other than Goodyear brand, after March 1951?

A. Yes, Bowers batteries.

Q. Was anything ever said to you by an Atlantic representative in respect to your purchases of Bowers batteries?

A. Yes. I had a large sign outside with batteries on the display and they asked me to take them in, to remove them.

Q. Was the large sign, did the large sign advertise Bowers batteries?

A. That is right.

Q. Can you fix the approximate time when this occurred?

A. It was approximately, I would say, the spring of 1952.

691 Q. And do you recall the name of the Atlantic representative who made the statement to you?

A. Mr. Vayda.

Q. Did Mr. Vayda ever make any other comments to you with respect to the purchase of Goodyear TBA by you?

A. In what respect?

Q. Did he ever threaten you with cancellation?

A. Well, with this battery deal, through the heat of the argument, I told him to get off the premises and he told me he was going to have the lease cancelled, and that is the way it remained.

Q. And was that the argument over the Bowers batteries?

A. That is right.

Q. Mr. Pollock, would you state your approximate gallonage during the period when you were in business? That covers quite a bit of time, but—

A. Well, from approximately 50,000 to 80,000, per month.

Q. 50,000 to 80,000 gallons monthly?

A. It rose, it averaged, I would say, close to 65,000 throughout the time I was there.

Q. Were you one of the largest dealers in the Chester area?

A. I think so.

Q. Did you do any business on credit?

A. Credit? Personal or—

Q. I am referring to Atlantic credit cards.

692 A. Yes, quite a bit.

Q. And were you limited on such sales to sponsored TBA items?

A. Yes.

Mr. Thompson: I object to that. It calls for a construction of the agreement. There is no such restriction in the agreement.

Would you read the question, please?

(Question and answer read.)

Hearing Examiner Kolb: The objection will be overruled. It will stand.

Mr. Kelaher: Re-state your answer, Mr. Pollock.

The Witness: Yes, I said.

By Mr. Kelaher:

Q. After the change-over to Goodyear TBA, the only TBA products you could sell on Atlantic credit cards were Goodyear TBA products?

Mr. Thompson: That is objected to for the same reason.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. Mr. Pollock, after the change-over to Goodyear TBA, who was your primary supplier of accessories?

A. Ed Parris.

Q. And did you purchase other accessories from 693 other local suppliers?

A. Yes, I did.

Q. Would you name some of them?

A. Chester Auto Parts.

Q. Where are they located?

A. In Chester, on 9th—

Q. That is all right. And the next one?

A. Berrodin Auto supplies in Philadelphia, Lee tires and Bowers batteries, Auto Parts and Radiator, and Delaware County Motor Parts.

Q. Mr. Pollock, are you familiar with the Delaware County Gasoline Dealers' Association?

A. Yes. In fact, I was one of the first presidents.

Q. You were the first president?

A. One of the first. I mean, it had been in effect, I believe, in 1935 or 1936, and then it was in abatement until 1944, I think, and then it was re-activated then and that is when I became president.

Q. And who belonged to the Association?

A. Why, I would say close to 50 percent of the dealers in Delaware County.

Q. Including Atlantic dealers?

A. Atlantic, Esso, everyone.

Q. And what was the purpose of the Association?

A. To help the gasoline dealers in any way possible.

694 Q. In what respect?

A. In every respect, in trying to keep the companies from riding roughshod over all the dealers.

Q. And by companies, you are referring to various oil companies, including Atlantic Refining Company?

A. That is right, all of the oil companies.

Q. Now referring back to the change-over meeting, the luncheon, dinner, or whatever it was, at which you were advised of the change-over by Atlantic to Goodyear TBA, were other Atlantic dealers present at that meeting?

A. Oh, yes, I believe it was two territories. That is the Chester territory and I imagine it was the Delaware County territories, there are two or three salesmen's territories involved in there, I think.

Q. So there were quite a number of Atlantic dealers present?

A. That's right.

Q. Do you recall where that meeting was held?

A. I think, I am not sure, but we had so many meetings, quite a few meetings, but I think it was out on 69th Street, at— (After pause.)

Q. Would the restaurant be Kostik's? Would that refresh your recollection?

A. That is right.

Q. And based on your own observation and knowledge, after that announcement, did other Atlantic dealers in
695 your area change over to Goodyear TBA?

A. As far as I know of, quite a few did.

Q. Would you say the majority of them did?

A. Yes.

Mr. Kelaher: Nothing further, your Honor.

Cross-Examination by Mr. Thompson.

Q. Mr. Pollock, you had a lot of friends in Atlantic, didn't you?

A. Oh, definitely, everyone.

Q. You didn't mention Joe Connelly, who was your salesman the last couple of years after Vayda left?

A. That's right.

Q. And he was a very good friend of yours?

A. He was, yes.

Q. Now when you left the station, you left for the purpose of taking a tap room in Chester?

A. That is right. A tavern, please.

Q. Excuse me. I was going to ask you the address. Next time I get through Chester, I want to stop in.

A. I have had a lot of requests for my address for stopping in, and if all the people stopped in, I would have to enlarge my place. So far, I haven't.

Q. You will recall your lease had a cancellation provision whereby before the end of any year you could
696 notify Atlantic of your desire to leave?

A. That's right.

Mr. Thompson: I ask that this document be marked for identification as Respondent's exhibit A-3.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: The document will be marked Respondent's Exhibit A-3.

(The document referred to, was marked Respondent's exhibit A-3 for identification.)

By Mr. Thompson:

Q. Mr. Pollock, you remember this letter, of course? I am showing you Respondent's exhibit A-3 for identification.

A. Yes.

Q. Yes?

A. Yes, I do.

Q. This letter was sent special delivery registered by you wasn't it, attention Mr. Walters?

A. Right.

Q. And in addition to that, didn't you drop in at Atlantic and have a pleasant farewell session with Mr. Nelson and Mr. Walters?

A. Yes.

Q. And there was no hard feeling about your termination at all?

A. No, none at all.

697 Q. As a matter of fact, Atlantic was very sorry to lose you, weren't they? Didn't they so express themselves?

A. I thought I felt that feeling, and was glad of it.

Mr. Thompson: That is all.

Mr. Correa: I have no questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you, Mr. Pollock. You are excused.

(Witness excused.)

Mr. Dias: I would like to call Mr. Kernaghan.

THOMAS J. KERNAGHAN was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follow:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address for the record?

A. Thomas J. Kernaghan.

Q. And your business address?

A. 1627 Fairmont Avenue.

Q. And the name of the company?

A. Rotzell Company.

Q. Is that a branch store of the Rotzell Company?

A. That is the main office, 1627 Fairmont.

698 Q. That is the main office?

A. That's right.

Q. How long have you been employed by Rotzell?

A. Approximately 12 years.

Q. In what capacity?

A. Salesman.

Q. Do you sell the full Rotzell line?

A. That is right.

Q. Were you employed in the TBA business prior to the time that you were employed by Rotzell?

A. Yes.

Q. For how many years?

A. Oh, I would say 12 to 15.

Q. What is your sales territory, Mr. Kernaghan?

A. South Philadelphia.

Q. Do you solicit service stations?

A. Yes, we do.

Q. Are there any Atlantic service stations in your sales territory?

A. Yes, there are.

Q. Do you solicit their business?

A. About four I believe I solicit now.

Q. Do you know how many there are in your territory?

A. I would say approximately 12.

Q. You say you solicit four now. When did you

699 discontinue soliciting the others?

A. A number of years ago.

Q. Can you tell us about how many years ago?

A. About four.

Q. Why did you discontinue soliciting their business?

A. Well, due to the fact that it seemed that they were more or less compelled to buy from the distributor, their own distributors.

Q. Do these stations carry TBA supplies?

A. Yes, they do.

Q. Do you recall the brands that are advertised by the stations?

A. Well, there is—you mean in the way of tires and that?

Q. Tires, and batteries?

A. Well, of course they used to have Lee tires and now I understand it is the Goodyear tire, and DuPont chemical line, Prestone antifreeze.

Q. Have you observed that advertising about those stations?

A. Yes, I have.

Q. You say you sell to four. What products do you sell to them?

A. Mostly antifreeze today.

Q. Today. Did you sell anything other than antifreeze to them heretofore?

A. Yes, I used to be able to sell them the DuPont chemical line.

700 Q. How long ago was that?

A. That has been several years ago.

Q. Can you recall the names of those stations that were purchasing—

A. (Interposing.) There has been quite a change of dealers, and consequently I don't recall their names now. But one in particular I do know that I get antifreeze business from is the Previti. They had two stations, one at 18th and Dickison and the other at 17th and Passyunk.

Q. You sell him antifreeze today, is that correct?

A. I sold him last season.

Q. Yes, but I mean currently.

A. Yes, sir.

Q. Did you sell him any other products prior to current?

A. No, I didn't sell them anything.

Q. Have you solicited all these stations at one time or another?

A. Yes, I have.

Q. How often do you call on the stations you are now selling?

A. About every two weeks.

Q. Do you solicit business, battery business?

A. Well, we would like to, but I can't sell them.

Q. How about your accessories, fan belts, hose filters?

A. That is tied up in their TBA set-up.

Q. Do you attempt to sell those products to them?

701 A. We tried to, yes. I have tried to.

Q. What do you sell to those stations that you are now selling to, mainly?

A. Well, a few of them are doing repair work, and we sell them brakes, fuel pumps, in other words—

Q. (Interposing.) Are they so-called hard parts, is that what you mean?

A. Yes, sir.

Q. Do those stations handle TBA?

A. Yes, they do.

Q. What TBA products do they carry in those stations?

A. Well, tires, batteries and accessories.

Q. But what brand?

A. Well, of course, as I said before, it was Lee and I believe it is Goodyear batteries now and Goodyear tires, and—

Q. Do they have—excuse me, I am sorry. Go on and finish.

A. I believe, if I recall correctly, Thermoid belts, Goodyear belts today—they changed over from Thermoid to Goodyear.

Q. Do they advertise those products, Goodyear products, about the station?

A. Yes. I mean, they are on display and I would say they advertise them.

Q. Do they have banners or decals on the windows?

A. Yes.

702 Q. What store do you work out of in the Rotzell company?

A. The 18th and Christian Street store.

Q. So that the address you gave us earlier was the home office of Rotzell?

A. That is right.

Q. But you are working out of the 18th and Christian, is that right?

A. That is correct.

Q. And do you have truck service or delivery service?

A. Yes, we do.

Q. Do you, Mr. Kernaghan, know who the Goodyear supplier is in your sales territory?

A. I believe it is Ellwood Kieser.

Q. And are your products, your batteries, accessories, are they competitive with the products of Goodyear sold by Mr. Kieser?

Mr. Correa: I object to that question on the ground that it calls for a conclusion and judgment of the witness, and there is no proper foundation for it.

Hearing Examiner Kolb: The objection is overruled.

Mr. Dias: You may answer.

A. I would say they are, yes.

Mr. Dias: That is all.

703 *Cross-Examination by Mr. Ballard.*

Q. Mr. Kernaghan, I think you are with the same supplier as Mr. Heller, aren't you?

A. Yes, that is right.

Q. I think Mr. Heller told us that he served all kinds of customers; do you serve different classes of customers, too?

A. That is my privilege. I can solicit any sort of business, service stations, car dealers—

Q. (Interposing.) How about fleet accounts? Do you serve them?

A. Fleet accounts, yes. I have a few of those.

Q. What are the majority of your customers, what class?

A. Independent repair shops.

Q. You have some garages, too? Is that the same thing?

A. Yes.

Q. And some dealers, car dealers?

A. That is right.

Q. How many service stations all told?

A. Well, I have sorta gotten away from calling on service stations, due to the competition. I would say I have about 10 or 12 service stations today.

Q. How many customers all told?

A. About 175.

Q. And the area is generally in South Philadelphia?

704 A. South Philadelphia, yes.

Q. Are you free to go into other areas, if you wish?

A. With the permission of the office.

Mr. Ballard: I don't think I have any further questions.

By Mr. Correa:

Q. Mr. Kernaghan, you don't sell tires, do you?

A. No, we do not.

Q. Now you say you have 12 Atlantic stations in your territory?

A. How is that?

Q. Did you say you had 12 Atlantic stations or 12 service stations in your territory?

A. I call on about 12 service stations, including Atlantic.

Q. All told?

A. Yes.

Q. How many Atlantic?

A. I would say about 4.

Q. You say you sell four of the 12 service stations?

A. I have 12 service stations, yes.

Q. Do you know what line of tires the Atlantic service stations in your area sell?

A. Goodyear.

Q. Do you know whether any of them sell Lee tires?

A. Today, I don't know. I mean I know they used to sell Lee.

705 Q. You don't know whether they sell them still today or not, any of them?

A. I wouldn't be in a position to say.

Q. You are not really much interested in tires, are you?

A. That is right.

Mr. Correa: No further questions.

Hearing Examiner Kolb: Anything further?

Mr. Dias: I think there is a little confusion created by cross-examination.

Redirect Examination by Mr. Dias.

Q. I think you stated you sold to about 175 customers of all types?

A. That is right.

Q. And you call on about 10 or 12 service stations of all types?

A. That is right.

Q. And of that number about four are Atlantic stations, is that correct?

A. That is right.

Q. At any time since you have been employed by Rotzell did you sell to more service stations than these 10 or 12?

A. Yes, I used to call on quite a few service stations.

Q. How did the number of service stations at that time compare to the total number of customers in your sales territory—

706 Mr. Correa: (Interposing.) I object to the question unless at that time be fixed. We have no time.

Hearing Examiner Kolb: Try to fix the time, Mr. Dias.

By Mr. Dias:

Q. When you stated that you called on more service stations at one time, can you give us an approximate date on that?

A. Well, up until the time the oil companies came out with the TBA set-up, we were able to get some business from most any of the service stations.

Q. Approximately what time, when was that, do you recall?

A. I would say it was about eight years ago.

Q. About eight years ago?

A. Yes.

Q. All right then. Prior to that period of eight years ago, did you sell to more service stations than you sell to now?

A. That is right, yes, sir.

Q. And did you sell to more Atlantic service stations at that time?

A. No, I wouldn't say so.

Q. You did not?

A. No.

Mr. Dias: That is all, your Honor.

Mr. Ballard: No further questions.

Mr. Correa: No further questions.

707 Hearing Examiner Kolb: That is all, Mr. Kernaghan.

(Witness excused.)

Mr. Dias: I would like to call Mr. Vick.

JOHN J. VICK was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. State your full name and business address for the record please?

A. John J. Vick, 5913 Ridge Avenue, Philadelphia Wholesale Distributors, Incorporated.

Q. How long have you been employed by Philadelphia Wholesale Distributors?

A. Approximately 20 years.

Q. And in what capacity?

A. Salesman.

I wish to state that as a salesman, approximately 12 years.

Q. And prior to that time?

A. Inside.

Q. And what is your sales territory?

A. Primarily the Northeast, Frankford, Richmond, Kensington, Mayfair.

708 Q. Northeast Philadelphia?

A. That is right.

Q. What type customer do you solicit?

A. I solicit the service stations, fleet accounts, industrial accounts, and car dealers.

Q. Among your service stations, are there any Atlantic stations?

A. Yes, there are. There are, I believe—a rough estimate—25 Atlantic stations.

Q. In your sales territory?

A. That is right.

Q. And of that number, do you sell to any of them?

A. I sell to what I term an independent Atlantic sta-

tion, the person that owns his own property, approximately 10.

Q. What type product do you sell to him or to that type of station?

A. We sell him the entire TBA set-up, which includes batteries, polishes, antifreeze, oil, Kendall 2000 mile oil.

Q. Are there other type Atlantic stations in your territory?

A. Yes, they are what I call a lessee Atlantic station, one that pays rent to the Atlantic Refining Company?

Q. And you sell TBA products to those stations?

A. No, I don't.

Q. Do you attempt to sell to them?

• • • • •

710 The Witness: Referring to an instance, I made a call this morning on Mr. Scotty McArthur at Lawn-
711 dale and Erie Avenue. I stopped in and asked for a Prestone antifreeze order. Mr. McArthur stated he has already placed his order and I asked him with whom and he said Atlantic Refining Company.

I asked him if he would buy some Exide batteries and he said he is not allowed to buy them. I offered him a polish—if it is in order, I will also say the polish was $4.00 below the price of Atlantic's price, per case—and he said "I wish I could buy those deals, but I am not allowed to."

I also mentioned the fact I am going down to a hearing and he says "I wish you a lot of luck." He says, "I hope you can stop those fellows." That is an instance.

Another instance, I called on Mr. Ed Ringenary, Broad and Walnut Streets, and this was about two months ago. I call on him occasionally, and I asked him to buy Prestone, Exide Kendall, and he says, "Are you out of your mind? Why, they would cancel my lease out immediately." He says, "They even have spooks in the territory." I said, "What do you mean by spooks?" He says, "Why they

have fellows coming in here and trying to offer merchandise at lower prices just to see if you would buy from someone else." He again stated that he would even testify, if called, against the Atlantic Refining Company. He again
712 wished us a lot of luck and wished that we would organize to fight against Atlantic, against the pressure of their purchases.

I think that is sufficient.

By Mr. Dias:

Q. You state that you sell regularly to independents. What do you sell to them?

A. To the independent, a fellow that owns his own property, we sell him Kendall oil, we sell him Exide batteries, we sell him Prestone antifreeze, we sell him AC sparks, filters, Fram filters, and I would say a hundred percent of what he pleases to buy.

Q. These leased stations in your territory, do you recall whether or not they handle TBA products?

A. Yes, they do. They handle the same lines we distribute. They carry DuPont chemicals, they cary Johnson's chemicals, they carry Prestone antifreeze, they carry AC spark plugs, and filters, yet we are unable to secure their business.

Q. What type tires do they carry, do you recall?

A. We carry the Goodrich line of tires and we are not in a position to do a job with Goodyear because of the tire set-ups with the refining companies. We more or less do very little on tires.

Q. I was referring to the tires carried by these leased Atlantic stations in your section?

A. They carry the Goodyear tires.

Q. Batteries?

A. They carry Goodyear batteries.

713 If you wish another instance, I will give you another instance of an account—

Mr. Correa: (Interposing.) Is the examination being conducted by the witness or by counsel, may I inquire?

The Witness: I have been asked for instances; I offer another instance.

Hearing Examiner Kolb: He is answering as he thinks of them.

The Witness: I can't offer everything within five minutes, so I am just proceeding with the interrogation and the questions asked.

By Mr. Dias:

Q. Do you recall any other instances?

A. Mr. Bob Provost, Jr., Witaker and Hunting Park Avenue, I went in to offer him or solicit him DuPont antifreeze business, and he says: "What do you want, the roof to cave in on me? I would lose my lease immediately." So I asked him if he did any business with the jobbers, and he says very little. "The only time I give any business to a jobber is when I am out of a certain part that Atlantic doesn't carry and I will call on a jobber."

Q. Can you tell us when that occurred, when that conversation with Mr. Provost occurred?

A. This was about March.

Q. This year?

714 A. Yes.

Q. Mr. Vick, do you know who the Goodyear supplier is in your territory?

A. There are two that I know of, Ellwood Kieser and Harvey George.

Q. Harvey George?

A. Yes, as he is referred to.

Q. Can you give their addresses? We have the address of Ellwood Kieser. How about Harvey George?

A. He is up in the Northeast somewhere. I don't know his address. He covers the Northeast territory.

Q. If you know, Mr. Vick, do these Goodyear suppliers, Kieser and George, supply Atlantic stations?

A. Yes, they do.

Q. And if you know, do they both cover the same territory or different territories?

A. I don't know, I don't believe so. Ellwood Kieser operating, I believe, out of Fairmont Avenue covers more or less the downtown area, whereas Harvey George possibly covers from Erie Avenue North or approximately that territory.

Q. Mr. Vick, are your batteries and accessories and other itms in TBA line in competition with Goodyear batteries and accessories sold by Kieser and George?

A. Yes.

Mr. Correa: Give me a chance to object. I object,
715 your Honor, on the grounds I have heretofore stated, that it calls for a conclusion of the witness, it calls for the operation of the witness' mind, and is an objectionable question on every traditional ground, as I have stated in a court of law with respect to this type of question.

Hearing Examiner Kolb: Overruled.

Mr. Dias: Have you answered that?

Mr. Correa: Yes, I think he answered before I objected.

The Witness: I shall bring up an instance again before even this question was brought up, where in calling on Mr. McArthur, speaking of competitive prices, I offered him a case of polish $4.00 cheaper than Atlantic bills him for it, and he still couldn't buy it.

By Mr. Dias:

Q. What type of polish was that?

A. Johnson's polish.

Q. What type does he carry?

A. He carries Johnson's and DuPont's.

716 Mr. Dias: That is all.

Cross-Examination by Mr. Correa.

Q. Mr. Witness, do you sell tires?

A. We distribute tires, I don't sell them.

Q. Do you?

A. No, I don't.

Q. Have you ever sold a tire?

A. Yes.

Q. When?

A. Only to accommodate—I can't specifically—

Q. (Interposing.) When? Can't you answer my question?

A. I have no definite date of selling a tire.

Q. Can you give me an approximation?

A. An approximation, about one month ago.

Q. And how many tires have you sold in the last year?

A. About a dozen.

Q. Last five years?

A. A couple of dozen.

717 Q. And in the last ten years?

A. A couple dozen.

Q. So that means, I take it, that in the five years preceding the last five years, you sold none?

A. That's right.

Q. What tires have you sold, sir?

A. Goodrich.

Q. In every instance?

A. That is right. I also wish to state that I didn't sell to Atlantic dealers, if that is the question.

Q. Mr. Witness—

A. (Interposing.) You asked the question if I sold tires and I wish to state I didn't sell to Atlantic stations.

Mr. Correa: I think, Mr. Examiner, it would be helpful if the witness might be told to confine himself to answering questions responsively; we would get on faster.

Hearing Examiner Kolb: Just answer the questions that are asked.

The Witness: Yes, sir.

By Mr. Correa:

Q. Now sir, you have mentioned two or three dealers, Atlantic dealers, with whom you have had conversations, you say, which you related in the record?

A. That's right.

Q. And I take it you have supplied, prior to your
718 appearance here, supplied counsel for the Commission with the information concerning those dealers and what they had to say about this matter?

A. What information are you asking about?

Q. The information you gave us on the record a while ago.

A. No, how could I supply them when I made that call this morning. I didn't see these gentlemen this morning.

Q. The question was, did you or didn't you. You say no?

A. No, I didn't.

Q. All right, you have answered my question. Now you say you saw certain of these dealers, one I think you said two weeks ago and another two months ago, didn't you?

A. I didn't get that question.

Q. Did you tell us of a conversation you had with an Atlantic dealer two weeks ago and of another conversation you had with another Atlantic dealer two months ago?

A. That's right.

Q. Is it not the fact that the Atlantic dealer who, according to you, said he was willing to come and testify in this proceeding, was the one you interviewed two months ago?

A. That's right.

Q. Now did you advise counsel for the Commission of the willingness of this gentleman to come and testify in this proceeding?

A. This particular gentleman, yes.

719 Q. You did?

A. Yes, sir.

Q. Now did you advise them also of the conversation you had with the gentleman whom you interviewed, according to you, two weeks ago?

A. No, I didn't see the gentlemen two weeks ago.

Q. Now sir you said that the Atlantic stations in your territory are supplied by Ellwood Kieser and Harvey George?

A. That is right, sir.

Q. And they are Goodyear dealers, are they?

A. That is right.

Q. And they are in competition with you?

A. In what respect, sir, sales or—

Q. Sales, yes.

A. Yes.

Q. No doubt, is there?

A. Sales, yes.

Q. And if this proceeding would result in their competition with you being rendered less effective, that would be a consummation devoutly desired by you, would it not?

A. I think that is more or less the purpose of this meeting.

Mr. Correa: Thank you.

Mr. Ballard: No questions.

720 *Redirect Examination by Mr. Dias.*

Q. In reference to those men, Ellwood Kieser and Harvey George, did they offer you the type competition that you can't meet individually?

A. No, we offer the same things, there are standard prices. However, they are not permitted to buy from us, that is, the Atlantic service stations.

Q. Do you sell to other type service stations in your sales territory?

A. Yes, I do.

Q. And Mr. Kieser, Mr. George, are they competitive factors in those?

A. No, just in Atlantic stations is their—more or less their field and territory.

Q. As a matter of fact, do you know, if you know, do those two suppliers sell to any stations or dealers other than Atlantic stations?

A. None that I know of, sir.

Mr. Dias: That is all.

Recross Examination by Mr. Correa.

Q. Would you say they didn't, or you just don't know?

A. None that I know of.

Q. You just don't know?

721 A. None that I know of.

Q. You just don't know whether they did or not?

A. I say none that I know of.

Q. Would you mind answering the question?

A. What is the question?

Hearing Examiner Kolb: The witness answered the question.

Mr. Correa: I submit he hasn't, but I am not going to spend any more time—

Hearing Examiner Kolb: (Interposing.) There is no use in spending a half hour arguing about that.

Mr. Correa: I am not going to argue with this witness. He seems to be a frustrated lawyer.

The Witness: I wish I were.

Mr. Correa: That is all.

The Witness: Am I excused, sir?

Hearing Examiner Kolb: Yes.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until two o'clock.

(Whereupon, at 12:40 p.m. the hearing was adjourned to reconvene at 2:00 p.m. the same day.)

722 Afternoon Session.

(2:05 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Examiner, may I refer to Commission Exhibit 293-A and B which were received in evidence at the close of the hearing yesterday.

With the permission of staff counsel I desire to add to those exhibits as 293-C and -D the following two documents which are pertinent to the exhibit heretofore offered.

Exhibit 293-C is a letter from Mr. McCreery to Mr. Boor dated October 3, 1952 on the same subject matter as the letter of August 14, 1952, and Exhibit 293-D is a reply from Mr. Boor to Mr. McCreery dated October 7, 1952.

I understand there is no objection.

Mr. Kelaher: No objection.

Mr. Correa: If your Honor please, on the assumption which the proffer of the exhibits which I have not seen relate to the subject matter of 293-A and 293-B on behalf of Goodyear they are objected to on the ground that the whole subject matter of these four exhibits relates wholly and solely to dealings between Atlantic Refining Company and the Firestone and has nothing to do with Goodyear; therefore, is not material.

Hearing Examiner Kolb: Exhibits 293-C and -D will be received into evidence subject to the motion to strike 723 by Goodyear.

(The documents referred to were marked for iden-

tification as COMMISSION'S EXHIBITS 293-C and 293-D and were received in evidence.)

Mr. Thompson: May we withdraw these two documents from Atlantic's files so that we may substitute photostatic copies? That may be done?

Hearing Examiner Kolb: Yes.

Proceed.

Mr. Kelaher: I would like to recall Mr. Hinderscheid to the stand, please.

Mr. Thompson: Off the record for a moment, sir?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

W. F. HINDERSCHEID resumed the stand and testified further as follows:

Mr. Kelaher: Before questioning Mr. Hinderscheid further, Mr. Examiner, there were three exhibits offered into evidence yesterday, marked for identification yesterday, identified as CX-290-A through I, CX-291-A through C, and 292-A through C. Counsel for the respondents asked for an opportunity to examine the documents before deciding whether there would be any objection.

724 I now offer the documents into evidence—or at least I offer that portion of the documents which relate to AR accounts, Atlantic Refining accounts, and not to that portion of the documents which relate to DAR accounts.

Mr. Thompson: I object to any partial offer of the exhibits. I have no objection if they are offered as they appear.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 290-A to -I, 291-A to -C, and 292-A to -C.

(The documents referred to, heretofore marked for iden-

tification COMMISSION'S EXHIBITS 290-A through -I, 291-A through -C, and 292-A through -C, were received in evidence.)

Mr. Kelaher: Your Honor, at this time I would like to have the following documents marked for identification:

For identification as CX-294, a list of Lee—

Hearing Examiner Kolb: You have already used 294 on your statement for Mr. Matthews this morning.

Mr. Kelaher: I'm sorry. Thank you.

I would like to have marked as CX-295 a list which is a list of Lee factory branches as of January 1, 1950.

(The document referred to was marked for identification as Commission's Exhibit 295.)

Mr. Kelaher: For identification as Commission Ex- 725 hibit 296 a list of Lee factory branches set up in the Atlantic Refining Company marketing area subsequent to January 1, 1950, together with the month and year each branch began operations.

(The document referred to was marked Commission's Exhibit 296 for identification.)

Mr. Kelaher: As Commission Exhibit 297-A and -B the names and positions of Lee personnel referred to in Items 1 to 10 inclusive of Specification I of the subpoena duces tecum served upon Mr. Hinderscheid.

(The documents referred to were marked Commission's Exhibits 297-A and 297-B for identification.)

Mr. Kelaher: And 288-E—

Hearing Examiner Kolb: You have used 288—do you mean 298?

Mr. Kelaher: Excuse me, there is a reference made in CX-288 series to a memorandum and Mr. Hinderscheid was requested to furnish that memorandum so I think in order to keep the exhibits in proper order it should properly go with the 288 series.

Hearing Examiner Kolb: All right.

Mr. Kelaher: I call your Honor's attention to Commission Exhibit 288-C, the fourth paragraph of that letter from Mr. Hinderscheid to Mr. Dwight Colley of Atlantic, he states: "I am attaching a copy of the memoran-
726 dum" etc., and this CX-288-E is the memorandum referred to.

(The document referred to was marked Commission's Exhibit 288-E for identification.)

Mr. Kelaher: I now offer Commission Exhibits for identification 295, 296, 297-A and 297-B, and 288-E into evidence.

Mr. Thompson: At the moment, sir, I am wholly confused about what the exhibits are because I couldn't hear Mr. Kelaher. I will have to check with him.

If your Honor please, Atlantic has no objection to the CX-295, CX-296, CX-297-A or 297-B. So far as 288-E is concerned I have no objection if the offer is limited to the purpose of showing what complaint was registered by Lee with Mr. Colley of the Atlantic. If, on the other hand, the document is offered for the purpose of proving the facts stated therein, such facts are obviously hearsay and in so far as the author of the document, Mr. McCreery is concerned, and in a number of instances involve double or triple hearsay.

Mr. Correa: If your Honor please, the respondent Goodyear does not object to any of the proffered exhibits with the exception of Exhibit 288-E for identification and that is objected to by Goodyear on the ground that it appears from the face of the exhibit that this has to do wholly and solely with dealings between Atlantic and Firestone to which Goodyear was not only not privy but was in-
727 deed a stranger and it is immaterial and irrelevant in so far as any issue in this case concerning the respondent Goodyear Tire & Rubber Company is concerned.

Hearing Examiner Kolb: That applies only to 288?

Mr. Correa: Only to that one, if your Honor please. The others we have no objection to.

Hearing Examiner Kolb: May I see 288-E, please?

(The document was handed to the Examiner.)

Hearing Examiner Kolb: The document 288-E will be received in evidence subject to the qualifications specified by counsel for Atlantic and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked for identification COMMISSION EXHIBIT 288-E, was received in evidence.)

Mr. Kelaher: Your Honor, would you please state the qualification or have the qualification reread by the reporter?

Hearing Examiner Kolb: All right, will the reporter read the qualification?

(The reporter read the following statement:

"Mr. Thompson: * * * If, on the other hand, the document is offered for the purpose of proving the facts stated therein, such facts are obviously hearsay
728 and in so far as the author of the document, Mr. McCreery is concerned, and in a number of instances involve double or triple hearsay.")

Hearing Examiner Kolb: There being no objection to documents 295, 296 and 297-A and -B they will be received in evidence.

(The documents referred to, heretofore marked for identification COMMISSION EXHIBITS 295, 296, 297-A and 297-B were received in evidence.)

Direct Examination by Mr. Kelaher (Resumed).

Q. Mr. Hinderscheid, will you please state Mr. McCreery's position with the company?

A. Now or then?

Q. E. W. McCreery.

A. At what time?

Q. As of July '51.

A. He's Vice President and Regional Sales Manager, what is known in our organization as Region Number 4.

Q. And where was he located?

A. He was located in the General Offices, Lee Rubber & Tire Corporation, Conshohocken.

Q. And was he in charge of the regional offices in various parts of the country?

A. He was in charge of branch offices in certain 729 parts of the country.

Q. And were certain of such branch offices located in Pittsburgh, Altoona and Erie, Pennsylvania?

A. Yes.

Q. And the information stated by him in CX-288-E was based on reports from those branches, is that correct? (Handing document to the witness.)

A. I assume that they were, but I have no way of telling.

Q. That would be the normal operation procedure, wouldn't it?

A. The normal procedure was for him to get this information from the branch manager and the branch manager probably in turn received the information from the sales representative covering that particular territory.

Q. I see.

And that information contained in CX-288-E would be based on that procedure, is that correct?

A. That's right.

Mr. Kelaher: Your Honor, on the basis of Mr. Hinderscheid's statement we submit that Commission Exhibit 288-E is qualified for introduction into evidence as a record made in the regular course of business and should be admitted without qualification.

Hearing Examiner Kolb: This appears to be a report from Mr. McCreery as to information that came to
730 him from other sources and reported to Mr. Hinderscheid. I think that needs the qualification.

Mr. Kelaher: It is a report based on salesmen coming under the jurisdiction of Mr. McCreery.

Mr. Thompson: Are you through, Mr. Kelaher?

Mr. Kelaher: Yes. Does Mr. Thompson have anything further to say about CX-288-E or have you ruled finally on it?

Mr. Thompson: I understood your Honor ruled.

Hearing Examiner Kolb: I ruled on it.

By Mr. Kelaher:

Q. Mr. Hinderscheid, I just want to ask you whether or not it would be possible to get the names of the salesmen who were in the Wilmington Branch in April 1950? I'm referring to Commission Exhibit for identification 275-A through -H and asking if any of those salesmen are still with Lee, if you know?

A. To the best of my knowledge, why, none of them are with us today.

Q. None of them?

A. No.

Q. And could you furnish us not right now but within the next day or so with the names of the Lee salesmen who were in the Wilmington branch at that time?

A. 1950?

Q. April 1950.

731 A. I don't know whether I can get it within the next day or so because you are going back in the

records seven to eight years and I don't know just how available those records are.

Q. Say before Friday?

A. Yes. I think we could get them within two or three days.

Q. Thank you.

Mr. Kelaher: Your Honor, I just would like that the record to show that I do have—we do have an objection to the introduction of CX-288-E with the qualification appended.

Hearing Examiner Kolb: Do you want to withdraw it?

Mr. Kelaher: No, I just want to have the objection noted in the record.

Hearing Examiner Kolb: All right.

Mr. Kelaher: We have no further questions of Mr. Hinderscheid.

Mr. Thompson: May I have a second to confer with counsel, sir?

Hearing Examiner Kolb: All right.

Cross-Examination by Mr. Thompson.

Q. Mr. Hinderscheid, I was not able, sir, with the documents which I have read with some care to determine the extent to which your organization back in 1950 and 1951 operated through distributors as distinguished from your company branches.

732 Did you at that time have a number of independent distributors around the country?

A. Yes.

Q. And you do at the present time also, do you not, sir?

A. Yes, sir.

Q. The independent distributors—take Philadelphia, if I may for an example—are today directly soliciting with oil company service stations, are they not?

A. Distributors?

Q. Yes.

A. Our distributors?

Q. Yes.

A. Yes, I would imagine so.

Q. And were they doing that—

Mr. Kelaher: (Interposing.) Your Honor, I move the answer be stricken unless he knows of his own knowledge. He said he imagines so.

Hearing Examiner Kolb: Read the question and answer.

(The reporter read the following questions and answers:

"Question: The independent distributors — take Philadelphia, if I may for an example—are today directly soliciting with oil company service stations, are they not?

733 "Answer: Distributors?

"Question: Yes.

"Answer: Our distributors?

"Question: Yes.

"Answer: Yes, I would imagine so.")

Hearing Examiner Kolb: The answer may stand.

By Mr. Thompson:

Q. Of course, sir, you qualified your answer because you wouldn't know how your distributors were soliciting?

A. I wouldn't have any way of knowing that?

Q. They don't report to you who their customers are?

A. No.

Q. Now, were your independent distributors operating in the same way in 1950 and 1951?

A. Yes, they were soliciting dealer business.

Q. That would have been so in Newark and Erie, Wilmington, Baltimore, in fact, in places anywhere in the country, would it not?

A. Yes.

Q. So that referring, sir, to the portions of the Exhibits 290, 291 and 292 which refer to sales in various regions—

A. Yes, that's right.

Q. To Atlantic accounts, you were, I assume, merely reporting the sales which had been made by your own factory branches, is that not so?

734 A. That's right.

Q. And you would not either in 1950 or 1951 or today know the extent to which the various independent distributors in the various regions were also selling to Atlantic accounts?

A. It wouldn't be possible for us to know.

Q. It would be impossible to know.

Mr. Thompson: Thank you very much, sir; that's all I have.

Mr. Correa: I have nothing, sir.

Hearing Examiner Kolb: Further questions?

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That's all, Mr. Hinderscheid. Thank you.

(Witness excused.)

Mr. Dias: I call Mr. McCandless.

ROBERT H. McCANDLESS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Mr. McCandless, will you state your full name and spell your last name for the reporter.

A. Robert H. McCandless—Mc capital C-a-n-d-l-e-s-s.

Q. And your business address?

735 A. 8 East Ninth Street, Chester, Pennsylvania.

Q. And the name of your company?

A. Auto Parts and Radiator Company.

Q. What type of business is Auto Parts and Radiator, Mr. McCandless?

A. In the automotive replacement parts and equipment line.

Q. And does that include TBA products?

A. And TBA also.

Q. Do you handle tires?

A. Yes, sir.

Q. You do handle tires?

A. Yes, sir.

Q. What brand tire do you handle?

A. Inland tires.

Q. And your batteries?

A. Delco batteries.

Q. And can you name some of the more common accessories such as filters?

A. AC products, a complete line, Alemite CD-2.

Q. How about belts and hose?

A. Gates belts and hose, National Carbon products.

Q. What is the trade area of your company, Mr. McCandless?

A. We cover from the Delaware River as far as the Lincoln Highway.

Q. Lincoln what?

736 A. Lincoln Highway, and from the Philadelphia area as far as Delaware.

Q. Does the company employ salesmen?

A. Yes, sir.

Q. How many of them?

A. Three.

Q. And what kind or what class of customers are solicited by the company?

A. Garages, independent garages, service stations, fleets, industrial plants, car dealers.

Q. Does the company have delivery trucks?

A. Yes, sir.

Q. How many?

A. Approximately five.

Q. Five?

A. Five. Yes, sir.

Q. How are your salesmen compensated, salary or commission?

A. Strictly commission.

Q. Now, how long have you been employed by the company, Mr. McCandless?

A. Eight years.

Q. And of that time, have those eight years been as a salesman?

A. Yes, sir.

Q. What is your sales territory?

737 A. The Western part of Chester and as far as the Delaware State Line.

Q. Do you solicit the same type of customers as your company as a whole solicits?

A. Yes, sir.

Q. Or do you specialize in any one particular—

A. (Interposing.) No.

Q. You just solicit them all. I take it then, you solicit service stations?

A. Yes, sir.

Q. Are there any Atlantic service stations among your territory?

A. I have 12 in my territory.

Q. And do you solicit all of them?

A. Approximately seven.

Q. Approximately what?

A. Seven.

Q. What about the other five?

A. Well, I don't call on them any more.

Q. When did you last call on them?

A. Approximately two years ago.

Q. And why did you discontinue it?

A. Couldn't get any business out of them.

Q. These 12 stations in your territory, do they handle TBA products?

738 A. Yes, sir.

Q. Do you recall what brands they carry?

A. In the Chester area it's Goodyear.

Q. Do you sell in another area too?

A. Just one account that I call on in the Delaware area, he carries Firestone.

Q. Now, these seven that you call on, how often do you call on them?

A. Approximately every two weeks.

Q. And can you tell us what you sell to them?

A. A few oil filters, occasionally a few spark plugs, and small pieces of equipment, and some ignition parts.

Q. I see. By "equipment" is that what it known as hard parts?

A. Well, equipment that they use in the service stations.

Q. Oh, I see, service station equipment.

Now, these five, do you attempt to sell or do you solicit their business on your batteries? Do you attempt to sell them batteries?

A. No.

Q. You do not?

A. No, sir.

Q. Is there any reason for that?

A. Well, I couldn't sell them so I stopped talking about them.

739 Q. That is true with these five or seven stations that you are selling to now, is that correct?

A. Yes, sir.

Q. Or is that true of the five that you stopped calling on?

A. Out of the five I'd say all but one.

Q. All but one is what?

A. That I sell batteries to. That's a rare occasion, I mean, I don't push after them.

Q. Well, what is it that you attempt to sell mainly to those stations, then?

A. Ignition and brake parts.

Q. How about chemicals?

A. Chemicals, some chemicals and some polishes, which is a chemical also.

Q. Are you familiar with the Bert Rehill Atlantic Station?

A. I haven't called on him for a couple of years.

Q. Do you know where they are located?

A. Ninth and Kerlin Street.

Q. In where?

A. Chester, Pennsylvania.

Q. When was the last time you called on them?

A. Well, approximately two years I imagine.

Q. Three years ago?

A. Two years.

Q. Two years. Did you call on that station regularly?

740 A. Pretty regular for a while.

Q. For how long a period?

A. Maybe—approximately two years.

Q. For a year?

A. About two years.

Q. About two years?

A. Yes.

Q. Did you make any sales to that station?

A. I think I made one sale—one or two sales.

Q. And do you have—

A. Myself, actually myself.

Q. I see.

What do you mean by that?

A. Other times, you know they pick it up or call in the store and we give them delivery service on that.

Q. Do you get credit on sales of that kind?

A. Yes, sir.

Q. Do you know how often you called on that station during the year that you were calling on them or the two years?

A. Can I look at this record here?

Q. Are those your company records of calls and sales?

A. Yes, sir.

Q. Yes.

A. Well, I don't have the number of calls here, 12 times during one year.

741 Q. Which year was that?

A. 1954.

Q. And do you have a record of the total amount of sales?

A. $13.75.

Q. And do you recall what the products were?

A. No, I don't. Prior to that, 1953, there was one sale of $20.40.

Q. Do you know how often you called on him during that year?

A. No, there's no record here on it.

Q. Does the Bert Rehill station handle tires, batteries and accessories?

A. Yes, sir.

Q. What brand do they advertise on and about the station?

A. Goodyear, I believe.

Q. Now, are you familiar with the John Rehill Station at Fourth and Highland in Chester?

A. Yes, sir.

Q. Do you sell to that station at this time?

A. I haven't called on him since '54. In other words, I stopped calling on him in 1954, the end of '54.

Q. Why did you stop calling on him?

A. I couldn't do too much business with him.

Q. Did you sell him anything in 1954?

A. $68.67.

Q. And do you know how often you called on him 742 during that year?

A. I only made seven calls on him in that year.

Q. Do you have any information on other stations in your sales territory, Atlantic stations?

A. Yes, sir.

Q. Before we get off the John Rehill station, will you tell us whether or not he handles TBA?

A. Yes, sir.

Q. He does. And what brand of TBA does he handle?

A. Goodyear.

Q. Now, do you have other instances of Atlantic stations in your sales territory that you have called upon?

A. Pardon me?

Q. Do you have other instances of Atlantic stations in your sales territory that you have called upon?

A. Yes, sir.

Q. Would you name them, please?

A. Do you want the amounts or the number of calls?

Q. First I would like to know the name and address of the Atlantic station.

A. Buckingham's Atlantic, Second and Lloyd Streets in Chester.

Q. And do you sell to that station at this time?

A. No, sir.

Q. When was the last time you sold to that station?

743 A. I actually didn't sell him anything, he called the store and ordered it which I get credit for. In 1955 I made 8 calls for $211.44 worth of business.

Q. A total of eight calls in one year?

A. Yes, sir.

Q. And that was your total annual business?

A. That was a part of a year because I didn't have him for the full year of 1955.

In 1956 there was ten calls for $381.28.

Q. Did you sell him any batteries?

A. No, sir.

Q. Do you recall what it was that you sold to that station?

A. I imagine brake shoes would be the most important thing, brake shoes and these car rugs that you put on the floors and stuff like that.

Q. Car what?

A. Car rugs.

Q. Buckingham Atlantic Station, is that the name of it?

A. Yes, sir.

Q. Do they carry TBA?

A. Yes, sir.

Q. And what brand TBA do they carry?

A. Goodyear also.

Q. Do you have any other specific instances?

A. Village Green Atlantic Station.

744 Q. Village Green?

A. Village Green Atlantic, that's Concord and Scheivert Roads in Village Green, Pennsylvania.

Q. Now, do you sell to that station at this time?

A. No, he's out of business now; that is he went into another station, I believe, as of last Thursday, I believe he's not there any more.

Q. Well, up until the time that he closed out did you do any business with him?

A. Yes, sir.

Q. Can you tell us how much?

A. 1956, 19 calls, $786.19.

Q. And how about 1955?

A. Now, that was a new account that I took over. I don't believe he was there in '55. I couldn't say for sure because it is just a new account that I took over from another salesman in 1957—15 calls, $934.52.

Q. Do you recall what it was that you sold to that station?

A. Ignition, brakes, brake parts.

Q. Any batteries?

A. No batteries.

Q. Filters, chemicals?

A. A few chemicals.

Q. How about filters?

A. No filters.

745 Q. Did he handle TBA in that station?

A. Yes, sir.

Q. What brand TBA did he handle?

A. Goodyear.

Q. Do you have any other instances of stations that you have sold to?

A. S. K. Watson's Atlantic Station, Boothwyn and Meeting House Road, Boothwyn, Pennsylvania.

Q. Have you sold to him this year?

A. Yes.

Q. Is he one of your regular customers?

A. Since the first of this year.

Q. I see. And what do you sell to him?

A. Gates belts, hoses.

Q. How about batteries?

A. He does buy some batteries occasionally on call only. He doesn't stock them.

Q. Do you have any idea of the volume of business with him?

A. For 1957, $33.81.

Q. $33.81?

A. Yes.

Q. How about 1956?

A. '56, $161.94.

Q. Do you know how many calls you made on him that year?

A. This year I have only called on him since Janu-
746 ary, but there were 22 calls made on him in 1956.

Q. And this year do you know how often you have called on him?

A. About every two weeks.

Q. Does he handle TBA in his station?

A. I'm not too sure, I don't think he does. He doesn't carry a very large stock.

Q. Does he own his own station do you know?

A. Yes.

Q. How about this Village Green station, does that gentleman own his own station?

A. Village Green Atlantic?

Q. Yes.

A. No, that was a leased station.

Q. Do you have the names of any other of your customers there?

A. Harry and Jim's, Naamans Creek Road and Meeting House Road. That's in Ogden, Pennsylvania.

Q. What do you sell to him?

A. He's a pretty new station, so this year there is $104.93.

Q. When did he open up, do you recall?

A. I don't recall, someone else had that account until just recently.

Q. Do you recall what it was you sold to him?

A. A majority of the sales here were parts that he
747 called store and had delivered.

Q. What type parts? Is this hard parts?

A. I really couldn't say what they were.

Q. I see.

A. Minor parts for repairs, I imagine, like brake hoses and maybe a set of brake shoes.

Q. Do you have any other accounts which you sell to? Atlantic accounts?

A. Brookhaven Atlantic Station, Middletown Road, Brookhaven, Pennsylvania. Just for 1957 we have $50.

Q. You were not selling to him prior to '57?

A. I have only had him since the first of the year.

Q. Did some other salesman—

A. Some other salesman called on him.

Q. From your company, is that correct?

A. Yes, sir.

Q. Who would that be, do you know?

A. Quinton Siefert, he isn't with us any more.

Q. Do you recall what those sales consisted of, this 1957, $50?

A. The $50, that was for car rugs.

Q. Did you say only?

A. That's all, yes. You see, when they call in the store we don't know what they buy, actually, because our truck
delivers it out to them. When we write it on an order
748 pad we naturally know what we are selling him.

Q. You get a commission on his purchases anyway?

A. On anything that he buys.

Q. Have you given me your seven Atlantic stations or do you have others?

A. Well, there is one new one here, but he just opened recently.

Q. How recently did he open?

A. I'd say about two months ago.

Q. You have called on him, have you?

A. Yes, sir.

Q. How recently?

A. In May. I made one call on him in May and one on June the 7th, and that's the last time I called on him.

Q. Have you sold him anything?

A. Ignition.

Q. Can you place the date of his opening a little more closely, please. You say about two months ago.

A. I'm pretty sure it's some time in May.

Q. Some time in May?

A. Yes.

Q. Well, do you know how soon after he opened up you called upon him?

A. I'd say about two weeks.

Q. Did you offer him your line of batteries and accessories?

749 A. No, I didn't.

Q. To sell?

A. No.

Q. Why not?

A. Well, at that time he was pretty well tied up and he asked me to call back again. When I called back again that's when I sold him ignition, but I just stated where we were located and the type of services that we were performing and so forth and it's pretty hard to get everything over the first time, especially when the man is just new.

Q. Did he have any TBA in the station when you called on him?

A. Yes, sir.

Q. What brand was that?

A. Goodyear.

Q. Would you mind repeating the address of that station, please?

A. Castagna's Atlantic Station, Conchester Road, RFD #1, Boothwyn, Pennsylvania.

* * * * *

751 Q. Who are the Goodyear suppliers in your territory, do you know, Mr. McCandless?

A. Edward Parris.

Q. And does he cover—is he the supply point for all the stations in your territory including that Delaware? No, not the Delaware.

A. Not the Delaware station.

* * * * *

Q. Was it the Village Green Atlantic Station at Concord and Scheivert that is closed, is that the one you told me?

A. Well, it's not closed, the man that was in there he took another station, I believe, he's taken another 752 station and there is a new operator in it.

Q. But it's still an Atlantic station?

A. Yes, it's still an Atlantic station.

Q. And the man that was in there, what was his name, do you recall?

A. Edward Zoba.

Q. Has he opened another Atlantic station now?

A. He's opened a Sinclair station.

Q. Did you ever attempt to sell Mr. Zoba your batteries?

A. On some occasions, yes, sir.

Q. Did you sell him any?

A. No.

Q. How about your chemicals?

A. I tried to sell him but wasn't very successful.

Q. Filters?

A. No.

Q. Did you tell me that you made sales amounting to about $786 in 1956 to that station and $932 in 1957, was that the station?

A. Yes, sir.

Q. What did those sales consist of?

A. Mostly brakes, ignition, and maybe a small piece of equipment—brake parts.

Q. What type delivery service do you offer your customers?

A. Well, if it's an emergency we try to send it out
753 immediately within, oh, as long as it takes to get it on the truck if it's an emergency delivery. But we do have scheduled deliveries in the morning and in the afternoon. That is for more or less stock orders.

Q. I see. And is that daily?

A. Every day. Up until 12:30 on Saturday.

Mr. Dias: That's all.

Cross Examination by Mr. Ballard.

Q. Mr. McCandless, during your testimony you have been refreshing your recollection with some records in front of you, isn't that right?

A. Yes, sir.

Q. May I see those records, please?

(The witness handed the document to counsel.)

Q. You also have a letter there from the Federal Trade Commission?

A. Yes, sir.

Q. May I see that, please?

Mr. Dias: I would like to see the records myself, I haven't seen them either.

(The documents were handed to counsel by the witness.)

Mr. Correa: Are these made up from some record kept in your office?

754 The Witness: Yes, sir.

Mr. Ballard: We have no questions, your Honor.

Mr. Correa: I have no questions, if your Honor please.

Mr. Kelaher: May we have a recess?

Hearing Examiner Kolb: That's all, Mr. McCandless, thank you.

(Witness excused.)

Hearing Examiner Kolb: We'll recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Connell to the stand, please.

CONRAD CONNELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your full name and address, Mr. Connell?

A. Conrad Connell, Six East Amhurst Road, Kenwood, Pennsylvania.

Q. And are you an employee of the Electric Storage Battery Company?

755 A. I am.

Q. And for how many years have you been with that company?

A. For twenty-eight years.

Q. Twenty-eight years. And could you briefly describe the positions you have held with that company during that time?

A. I assume you mean briefly.

I started as a salesman in the Industrial Division in 1929; in 1937 I was transferred to Automotive Sales as Senior Salesman in the Philadelphia Branch; in 1949 I moved to the General Offices as Supervisor of Exide Replacement

Sales; about a year or two later the title was changed to Manager of Exide Replacement Sales; in 1954 I was made Sales Manager of the Northeast Region of the Exide Automotive Division of the Electric Storage Battery Company. That is the position I hold today.

Q. Are you familiar with the history of the—does your company manufacture the Exide brand of batteries?

A. We do.

Q. And do you also manufacture other brands of batteries either through the parent company or subsidiaries if you have subsidiaries?

A. Through the parent company; yes, sir.

Q. And what brands of batteries do you manufacture?

A. Well, as a proprietary brands we have Exide, Willard, and Grant in addition to which we manufacture
756 a number of other brands so-called private brands, I'm not sure that I can name them all.

Q. Name some.

A. We manufacture Atlas, Ford, Firestone, Mobile, I think of the important ones that would cover it.

Q. Thank you.

At one time did your company have a contract with Atlantic Refining Company in connection with the sale of Exide Batteries?

A. We did.

Q. And would you please state when that contract originally went into effect?

A. We had initially a contract on what I would term a local basis, on a region basis with the Atlantic Refining Company which I believe started in 1937.

Q. What do you mean by a local regional basis?

A. Only for the sale, it was an, I would say a trial balloon. I believe the initial start for the sale of batteries by the Atlantic Refining Company. That is my impression of it.

Q. And do you mean that certain areas were designated in which you had this trial run, so to speak?

A. I mean that we had a contract with the Philadelphia Region of the Atlantic Refining Company for distribution by them in that region.

Q. And then later was that contract expanded to 757 cover other regions of Atlantic?

A. Later we signed a contract for the national distribution; that is in the entire area in which Atlantic Refining operated.

Now, they didn't go into all the areas at one time but the contract was on a basis of their distributing Exide batteries throughout their operation.

Q. When did that contract go into effect, approximately?

A. I'll tell you, I believe—1949.

Q. 1949?

A. 1949, that's correct.

Q. And prior thereto, weren't you distributing Exide batteries for many years into various Atlantic marketing regions?

A. Into Atlantic marketing regions?

Q. Yes.

A. Yes, we were.

Q. I'm not quite clear on your reference to 1949. You stated that your original contract with Atlantic was in 1937.

A. That's correct.

Q. Now—and that was confined to the Philadelphia region or was that the Philadelphia-New Jersey Region of Atlantic?

A. I can't from memory define the boundary territories, but it was what Atlantic Refining considered their Philadelphia region.

Q. Now, after 1937 do you recall the dates when 758 you expanded the program in so far as Atlantic was concerned?

A. Well, the expansion would have taken place from the signing of the 1949 contract.

Q. At any time after 1937 did you enter into a contract with Atlantic to sell Exide batteries for distribution in any area other than the Philadelphia Region?

Mr. Thompson: I didn't understand the question.

The Witness: Mr. Kelaher, I have to correct a statement I made.

The contract on a national basis was made in 1945 rather than 1949.

By Mr. Kelaher:

Q. And from 1945 on you sold Exide batteries under a contract with Atlantic Refining Company for distribution to Atlantic outlets, is that correct?

A. That's correct.

Q. And would you just state briefly the flow of distribution of the Exide batteries to Atlantic outlets, all going to Atlantic outlets?

A. Well, Atlantic Refining were one of a number of distributors of Exide batteries in the territory. Our policy is to sell to distributors who in turn, and one of which was Atlantic Refining Company, sold to service stations, car dealers, any outlet, any retail outlet, consumer outlet for the sale of storage batteries.

759 Q. Well now, with reference to the batteries sold to Atlantic solely, were they physically handled by Atlantic and put in warehouses for redistribution or just how did that operate?

A. Just as you have described it and in exactly the same way as every other distributor; they bought from us at a standard distributor price, accepted delivery, billing, paid their bills, made their own deliveries.

Q. You dealt directly with Atlantic and not with Atlantic stations, is that correct?

A. That's correct.

Q. Now, Mr. Connell, you are here in answer to a subpoena duces tecum, are you not?

A. Yes, sir.

Q. And have you examined the documents referred to in Specification I of the Specifications attached to your subpoena?

A. Yes, I have.

Q. Are they true and accurate copies of documents in the files of the Electric Storage Battery Company?

A. They are.

Mr. Kelaher: Your Honor, at this time I would like to ask counsel for respondents if they will concede the authenticity of the documents mentioned in Specification I?

Mr. Thompson: If Mr. Connell says they are from 760 the files of the Electric Storage Battery, of course we will concede it.

Mr. Kelaher: We would also like to ask counsel if we may substitute photostats for the originals so that the originals may be kept in the files of Electric Storage Battery Company?

Mr. Thompson: Certainly.

Mr. Correa: No objection.

Mr. Kelaher: Thank you.

Your Honor, I think if agreeable to you and to counsel I will identify all the documents at one time.

Hearing Examiner Kolb: I think that would be better.

Mr. Kelaher: For identification as Commission Exhibit 298, letter dated June 15, 1950 from Mr. S. J. Heideman, Atlantic Refining Company to Mr. C. Connell, Manager Automotive Replacement Sales, Electric Storage Battery Company, 19th Street and Allegheny Avenue, Philadelphia 32, Pennsylvania.

As CX-299, the Electric Storage Battery Company memorandum dated June 29, 1950 from E. E. Stevenson to A. D. DeMott, in re: "AR Sales."

For identification as CX-300-A and 300-B, a two-page memorandum dated December 14, 1950, from E. E. Stevenson to A. D. DeMott, in re: "AR Sales."

Up in the upper right hand corner, the name quoted

761 Atlantic Refining Company appears.

With reference to CX-299 for identification, the name "Atlantic Refining Company" also appears in the upper right hand corner.

Mr. Thompson: I couldn't hear the last statement, the acoustics in the room, Mr. Kelaher.

Mr. Correa: Could we have it read, please?

(The reporter read the following statement:

"Mr. Kelaher: * * * With reference to CX-299 for identification, the name 'Atlantic Refining Company' also appears in the upper right hand corner.")

Mr. Kelaher: For identification as CX-301, letter dated December 15, 1950 from J. S. Parks, Purchasing Agent, by Charles F. Bergh, Atlantic Refining Company, to the Electric Storage Battery Company, Allegheny Avenue and 19th Street, Philadelphia 32, Pennsylvania, attention: Mr. C. A. Connell, Manager, Automotive Replacement Sales Division.

As CX-302 for identification, letter dated December 22, 1950, from C. Connell, Manager, Automotive Replacement Sales Division, the Electric Storage Battery Company, to Mr. J. S. Parks, Purchasing Agent, in the Atlantic Refining Company, 260 South Broad Street, Philadelphia, Pennsylvania.

762 As Commission's exhibit 303 for identification, the Electric Storage Battery Company memorandum dated January 4, 1951, from C. Connell to R. L. Sommerville, Assistant General Sales Manager, in re "A. R. sales," and with the name "The Atlantic Refining Company." in the upper right hand corner.

For identification as Commission's exhibit 304, letter dated February 5, 1951 from S. J. Heideman, The Atlantic Refining Company, to Mr. C. Connel, Manager, Automotive Replacement Sales, Electric Storage Battery Co., 19th Street and Allegheny Avenue, Philadelphia 32, Pennsylvania.

As Commission's exhibit 305-A and -B for identification, a two-page interoffice letter of the Electric Storage Battery Company dated February 14, 1951, from C. Connell to R. Whitehurst, Vice President, in re "Atlantic Refining Company."

As Commission's exhibit 306-A and -B for identification, a two-page interoffice letter from the Electric Storage Battery Company, dated February 22, 1951, from C. Connell to R. Whitehurst, Vice President, with carbon copy to R. L. Sommerville, in re "The Atlantic Refining Company."

Mr. Thompson: Where did you get this "in re"?

Mr. Kelaher: In place of "in re," put "subject."

As Commission's exhibit 307 for identification a letter dated February 23, 1951, from J. S. Parks, Purchasing
763 Agent, by Charles F. Bergh, the Atlantic Refining Company, to the Electric Storage Battery Company, Allegheny Avenue and 19th Street, Philadelphia 32, Pennsylvania, attention Mr. C. Connel, Manager, Automotive Replacement Sales Division.

As Commission's exhibit 308 for identification, letter dated March 7, 1951 from C. Connell, Manager, Automotive Replacement Sales Division, Electric Storage Battery Company, to Mr. J. S. Parks, Purchasing Agency, the Atlantic Refining Company, 260 South Broad Street, Philadelphia 1, Pennsylvania, attention Mr. C. F. Bergh.

As Commission's exhibit 309 for identification, the Electric Storage Battery Company interoffice letter dated March 13, 1951, from C. Connell to Atlanta Branch, J. A. Cronk; Boston Branch, T. G. Tynan; and five other branches and

named persons, with carbon copies to various Electric Storage Company personnel, subject "The Atlantic Refining Company."

As Commission's exhibit 310 for identification, the Electric Storage Battery Company memorandum dated August 16, 1951 from R. L. Sommerville to C. Connell, carbon copy to Mr. R. Whitehurst, with the name "Atlantic Refining Company" in the upper right hand corner.

As Commission's exhibit 311 for identification, the Electric Storage Battery Company interoffice letter dated October 3, 1951 from C. Connell to Assistant General Sales Manager, R. L. Sommerville, carbon copy to R. White-
764 hurst, subject, "Atlantic Refining Company."

As Commission's exhibit 312-A through -D for identification, Electric Storage Battery Company interoffice letter dated November 19, 1951 from R. S. Findley, Philadelphia Branch, to AR sales, Mr. C. Connell, in re "Atlantic Refining Co."

As Commission's exhibit 313 for identification, Electric Storage Battery Company interoffice letter dated December 19, 1951 from R. S. Findley, Philadelphia Branch, to AR sales, Mr. C. Connell, subject, "The Atlantic Refining Company."

(The documents referred to were marked Commission's exhibits 298; 299; 300-A, -B; 301; 302; 303; 304; 305-A-B; 306-A-B; 307; 308; 309; 310; 311; 312-A, -B, -C, -D; and 313 for identification.)

Mr. Kelaher: I offer Commission's exhibits 298 through 313 into evidence, your Honor.

Mr. Correa: If your Honor will give us a moment, I think we may be able to handle these all in one lot.

Hearing Examiner Kolb: All right.

Mr. Correa: If your Honor please, with respect to the proffered exhibits, we have no objection to the following: 298, 301, 302, 303, 304, 307, 308, 309, 310 and 311. Exhibits

for identification marked 299, 300-A-B, 305-A-B, 306-A-B, 312 and 313 are objected to, if your Honor please.

Hearing Examiner Kolb: The documents not ob-
765 jected to will be received in evidence: Commission's exhibits 298, 301, 302, 303, 304, 307, 308, 309, 310 and 311.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 298; 301; 302; 303; 304; 307; 308; 309; 310; and 311 for identification were received in evidence.)

By Mr. Kelaher:

Q. Mr. Connell, I show you Commission's exhibit for identification 299 and ask you to state who Mr. Stevenson is, and what his position was at the date of that letter?

A. Mr. Stevenson was what we knew as an automotive replacement salesman in the Exide Division, headquartering in the New York Branch, located in New York City.

Q. And the date of that letter is June 29, 1950, and at that time was Atlantic undertaking a test program with Goodyear with respect to the sale of Goodyear TBA in the Newark district?

A. You say at that time. I would have to look up dates. I believe that this was during the time that Atlantic Refining was operating this test program.

Q. And the letter has reference, the memorandum, has reference to that specific period, does it not?

A. It does, yes.

Q. I also show you Commission's exhibit for identification—

Mr. Thompson: May we take these one at a time, sir?

766 Mr. Kelaher: That is what I am doing, taking these two together.

By Mr. Kelaher:

Q. I ask you to note the date on that one, December 14, 1950, and would you please look at the name, Mr. Stevenson, and state whether he was the same Mr. Stevenson you just referred to?

A. That is right.

Q. And during the period in question, the Atlantic-Goodyear TBA test program was in effect in the Newark District, was it not?

A. That is correct.

Q. And the document you are looking at, Commission's exhibit for identification 300-A-B, refers to a survey made of the Atlantic accounts by Mr. Stevenson, is that correct?

A. That is correct.

Q. Were those reports made in the regular course of business and were they then referred to the home office?

Let me ask you first: Who is Mr. A. D. DeMott?

A. Mr. DeMott is what we knew as senior automotive replacement salesman in the New York Branch. Mr. Stevenson reported to him.

Q. Did Mr. DeMott in turn report to you?

A. Mr. DeMott actually reported to the New York Branch manager. In my position as manager of Re-
767 placement Sales, at that time I had no line authority over these men because the branch manager had been under him on automotive work and industrial work as well.

Q. Do these reports eventually—were they eventually sent to the main office, here in Philadelphia?

A. Sent to me, yes.

Mr. Kelaher: I submit, your Honor, that exhibits 299 and 300-A-B are qualified documents; they are relevant to this proceeding; and should be admitted into evidence. (Handing to Examiner.)

Among other things, they are records made in the regular course of business.

Mr. Correa: If your Honor please, I would like to call your Honor's attention with respect to Exhibit 299, taking them one by one, that this is a report by Mr. Stevenson of a conversation he had with a Goodyear distributor, who happened to be an Exide wholesaler distributor but who apparently was passing on to Mr. Stevenson gossip which he had come by in his capacity as a Goodyear tire distributor.

Now I submit that even though it may be business of this company to collect gossip, which I doubt, that that kind of a report falls within your Honor's double hearsay rule as clearly as it can be and can scarcely be characterized as—

Hearing Examiner Kolb: (Interposing.) Off the record.

(Discussion off the record.)

768 Hearing Examiner Kolb: On the record.

Mr. Thompson: On behalf of Atlantic, I join in the objection made by Mr. Correa with respect to 299. Do you wish to hear my objection to 300 or shall I defer that?

Hearing Examiner Kolb: Let me read this one.

The objection will be sustained, as to 299.

Mr. Thompson: If your Honor please, with respect to 300, A and B, the objection of Atlantic Refining Company is a qualified one. I have no objection to the admission of this report provided the second sentence on 300-A relating to one Joseph Wash be received merely to indicate a state of mind of Mr. Wash and not to prove the fact stated.

On exhibit 300-B, the same qualification in my view applies to the second sentence of the statement referring to one Joseph Marino, that is to say, I would have no objection to it as state of mind evidence provided it is limited to that particular subject.

Mr. Correa: We associate ourselves with the statement just made by Mr. Thompson, if your Honor please.

Mr. Kelaher: Your Honor, I would like to call your

attention to the fact that on Commission's exhibit 300-A and -B, they are willing to accept the credibility of the document excepting as to the statement made by Joseph Wash, which indicates—which states that "he advised
769 us that he has to stock Goodyears since this is a leased station," and there is a statement with respect to Joseph Marino, 300-B, that they advise that the majority of the batteries they sell are still Exides, but do not stock any number because of the constant pressure being exerted by the salesmen for the Atlantic Refining Company.

If they are willing to accept the other statements in the document, it is quite surprising that they would pick out two of the numerous reports here and qualify to that extent.

Mr. Thompson: That is the most naive remark I have heard for a long time, sir. It isn't surprising in the least. It is certainly what you would expect of me, if you think I am a good paston.

Mr. Kelaher: Clearly, if it has credibility as to 10 of them, it should have as to the other 2 and I think there is nothing naive about that. I think that is a naive objection.

Hearing Examiner Kolb: I think this comes within the Danbury-Hatters case and Lawlor vs. Loewe, in which the testimony as to the statements made by various parties was admitted as to the state of mind and not to prove the truthfulness of the statements. And I think this is certainly within that, and will have to be received on that basis and no other.

770 Mr. Kelaher: But as to all of them, not to two of them?

Hearing Examiner Kolb: The whole thing is received on the basis I just stated.

(The document referred to, heretofore marked as COMMISSION'S EXHIBIT 300-A and -B for identification was received in evidence.)

Mr. Thompson: I have no objection, sir, except as stated. Mr. Kelaher offered the document. My objection was a qualified one. So far as I am concerned, the rest of the document is in evidence, for any purpose anybody wants to use it for.

Mr. Kelaher: As I understand the Examiner's statement, the ruling applies to the entire document, isn't that correct?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Mr. Connell, I show you Commission's exhibit for identification 305-A and -B, and ask you whether you are the Mr. Connell who prepared that memorandum and forwarded it to Mr. R. Whitehurst?

A. That is correct.

Mr. Kelaher: Your Honor, I offer Commission's Exhibit 305-A and -B into evidence.

Mr. Correa: If your Honor please, we object to exhibit 305. This is a memorandum in which this witness purports to set forth the substance of a telephone call he had
771 from somebody connected with Atlantic Refining concerning a decision made by the top management of Atlantic Refining.

Now we submit, if your Honor please, that this testimony, if it were offered in the proper way and there is no reason shown why, with the witness sitting in the witness stand, his memorandum of the fact is offered rather than his testimony, except perhaps that his testimony would be clearly inadmissible and it is hoped that the memorandum on some theory or other might be used as a device for smuggling what would otherwise be inadmissible into the record. And we object to that, if your Honor please.

Mr. Kelaher: Mr. Examiner, I would like to be heard in answer to counsel's statement at your convenience.

Hearing Examiner Kolb: All right.

Mr. Kelaher: Mr. Examiner, this was a document made on February 14, 1951; it was made contemporaneously with the conversation that this gentleman had with Mr. Heidman, and he is available for—

Hearing Examiner Kolb: (Interposing.) You have the witness on the stand, and he didn't say anything about that. I think you ought to ask the witness a few questions.

By Mr. Kelaher:

Q. Mr. Connell, would you please state when this memorandum was drafted, the date when it was drafted?

A. Well, I think that is quite clear, it is dated
772 February 14, 1951, and I state that it was written after conversation, telephone conversation that same day.

Q. With whom?

A. Mr. S. J. Heidman.

Q. And he was with which company?

A. TBA Manager of the Atlantic Refining Company.

Q. And the memorandum was drafted the same day?

A. The same day.

Q. And this recounts the conversation you had with Mr. Heidman, is that correct?

A. That is correct.

Mr. Correa: Is this being offered as past recollection recorded, may I inquire, because if so, I submit that no proper foundation has been laid, and if not, I must confess as to being at a complete loss as to the theory on which it is offered.

Mr. Kelaher: You have the witness available for cross-examination.

Mr. Correa: But you have him available for direct examination.

Hearing Examiner Kolb: There appears to be no doubt

the conversation took place. The witness says the conversation was held. I overrule the objection.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 305-A and -B for identification were received in evidence.)

773 Mr. Correa: May I add on behalf of the Respondent Goodyear, the further objection that the subject of the document and—or the conversation which it purports to set forth is hearsay. It is not a conspiracy case here and statements made by or on behalf of the Respondent Atlantic Refining Company are in no way and in no sense binding or admissible against Respondent Goodyear except pursuant to the proper rules of evidence, which this document transgresses in every particular, we respectfully submit.

Hearing Examiner Kolb: I have ruled on the objection.

Mr. Correa: May the record show that your Honor additionally ruled on the separate objection of Goodyear based on—

Hearing Examiner Kolb: (Interposing.) You make your objections before I rule, not after I rule.

There have been several occasions when that has been done. I have attempted to rule on these as fairly as I possibly can, but I don't want to rule and have to hear arguments after I rule. That has been my position all the time in all these cases. If you want to object, make it before I rule.

Mr. Correa: If your Honor please, in this case—

Hearing Examiner Kolb: (Interposing) As far as I am concerned, I overrule your second objection.

Mr. Correa: Your Honor will appreciate I am in 774 some difficulty because many of these documents are objectionable as to both respondents on general grounds. They are additionally and independently objectionable as to the Respondent Goodyear on separate

grounds that perhaps are applicable only to that Respondent, and sometimes it is necessary to amend that separate objection to preserve Goodyear's position.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. I show you Commission's exhibit for identification 306-A and -B, and ask you to state further, Mr. Connell, whose name appears at the bottom of that document?

A. Mine.

Q. Would you please state the purpose of that memorandum?

Mr. Correa: I object to a statement of the purpose of the memorandum, if your Honor please.

Hearing Examiner Kolb: Ask him what it is.

By Mr. Kelaher:

Q. Would you please state what the memorandum is?

A. The memorandum is addressed to Mr. R. Whitehurst, Vice President, signed by me, subject, "Atlantic Refining Company." This memorandum is in the form of a report to Mr. Whitehurst, our Vice President, indicating the steps which we planned to take to attempt to retain the business that has been flowing through the Atlantic Refining Company for the sale of Exide batteries.

775 Q. Now the date of that is February 22, 1951, is that correct?

A. That is correct.

Q. When was your contract with Atlantic cancelled?

A. The official written cancellation from Mr. Parks was dated February 23, 1951.

Q. And when did you receive the notification that it was going to be cancelled from Atlantic?

A. Unofficially, February 14.

Q. And this second memorandum was written eight days thereafter?

A. Eight days thereafter, yes.

Mr. Kelaher: Mr. Examiner, I now offer COMMISSION'S EXHIBIT 306-A and -B into evidence.

Mr. Correa: If your Honor please, I wish to state my objection now, when your Honor is ready.

Hearing Examiner Kolb: Just a minute, please.

All right.

Mr. Correa: If your Honor please, as to the defendant Goodyear, this document, 306-A and -B is objected to on the ground that, as to the Defendant Goodyear, this is rank hearsay. These are statements and declarations made by various personnel of the Atlantic Refining Company, who is our co-respondent in this case, but we are not charged in this case as being in any conspiracy with the Atlantic Refining Company, we are not charged with being in any other relationship which would make their
776 statements and declarations binding on us as an exception to the hearsay rule, and consequently, as to us, this is just a collection of rank hearsay, and your Honor will see that, if your Honor would note, for example, the second sentence of the memorandum which reads "Additional information has been received from the Atlantic Refining Company, and steps have been taken with our branches to insure our retaining the maximum possible share of this business."

And down at the beginning of the third paragraph appearing on 306-A, "Mr. D. T. Colley, Vice President and General Manager of the Atlantic Refining Company, has already requested their Purchasing Department to formally notify"—and so forth, to do thus and so.

The very next paragraph, still on 306-A, "Mr. Heidman is now preparing letters to go out over Mr. Colley's signature, one to all of their dealers and the second" and so forth, as to what they are going to do.

On 306-B, the first paragraph beginning on that page,

"Mr. Colley has clearly indicated to Mr. Heidman"—now that is undoubtedly scuttle-but which Mr. Connell was getting from somebody in Atlantic Refining Company as to various things that that company was doing, and may or may not be admissible as against that respondent in this proceeding; from that proposition I resign, Mr.
777 Thompson will handle that quite adequately, I am sure.

But as to Respondent Goodyear, I submit this without any showing of a basis on which the admissions, if they be that, of our co-respondent, can be taken as against us, ought to be ruled inadmissible and we further, if your Honor please, make a separate and independent objection on general grounds, that I have never in my court or even in an administrative proceeding—with all due respect to the alleged or supposed informality and perhaps laxity so far as the rules of evidence are concerned of the administrative process—I have never heard of a proceeding whereby a witness was called to the witness stand, sworn, and instead of being asked to testify, was shown documents of his authorship and asked to identify them as being of his authorship, and not even asked to say the statements made in the document were true and correct, lest the statements might go in in sworn form, and then that pitiable excuse for evidence is offered in lieu of the testimony of the witness, without any showing that the witness lacks recollection, that he needs his recollection refreshed, or that he is in any other manner incapable of testifying and on all of those grounds, if your Honor please, we object to the proffered exhibit.

Mr. Thompson: If your Honor please, I join in Mr. Correa's objection.

Hearing Examiner Kolb: His objection is to Good-
778 year, and not to Atlantic.

Mr. Thompson: Yes, sir, and I shall revise my statement by saying I thoroughly concur in Mr. Correa's rea-

soning as a former instructor of evidence in the University of Pennsylvania Law School.

I don't know of any rule of evidence which permits a man to write a memorandum up and then bring it into court and say, "Here, I want to testify, here is what I wrote sometime ago," instead of having a memorandum which refreshes his present recollection, to which he can refer in the course of his testimony, or says he can't remember anything about it and it was all true when I wrote it and then it is admitted as past recollection.

As Mr. Correa says, that is the only way I know you can get these documents in which a witness writes.

Mr. Kelaher: Mr. Examiner, do you care to hear from counsel supporting the complaint?

Hearing Examiner Kolb: I want to hear from all of you before I rule and when you finish, I will rule, not before and not after.

Mr. Kelaher: I was never a professor in a law school on evidence, but—

Mr. Thompson: (Interposing) I thought that ought to be on the record.

Mr. Kelaher: (Continuing)—I do have some ability 779 to read and I think in Title 28, Section 1732 of the U. S. Code there is such a thing as records in the regular course of business. And that clearly says that a document prepared in the regular course of business, which this undoubtedly was, that records facts, contemporaneous in the event, were recorded, and I would like to call your Honor's attention to the fact that the Electric Storage Battery Company was vitally affected at that time. They had a contract in effect to supply Exide batteries to the entire Atlantic market, as of February 14, 1951, and the Electric Storage Battery Company, through Mr. Connell, was advised that that contract was no longer in effect and that the Goodyear Tire and Rubber Company

had entered into a TBA sales Commission plan with Atlantic covering three regions and that the Firestone Tire and Rubber Company had entered into a contract covering TBA sales in these other marketing regions of Atlantic, the three regions.

Therefore this company was vitally affected, they took steps as stated by the witness to attempt to retain as much of the business as they possibly could by selling directly to Atlantic dealers and I certainly think it is relevant, material, and it has great credibility.

Mr. Correa: May I inquire of counsel supporting the complaint, if your Honor please, on what theory, if he has any theory, he thinks that hearsay declarations made
780 by Atlantic officials to this witness are admissible against the Respondent Goodyear?

Mr. Kelaher: I think the document speaks for itself. Mr. Connell prepared the document. I suggest you ask him.

Hearing Examiner Kolb: It has never been clear in my mind, the way this complaint is pleaded, as to whether or not this is a conspiracy or not; I never have been able to figure that out.

Mr. Correa: All I can say to that your Honor is it seemed to me from other complaints which I have read that when it is the intent of the Commission to charge conspiracy, they generally charge it, ipsio verbis.

Certainly, if at this late stage in the matter we are now to be told that this is a charge of conspiracy, I shall have to plead surprise and take whatever remedies that may be available to me in light of being surprised by a change in theory on the part of counsel supporting the complaint when the case is well on its way through trial.

As a matter of fact, my attention has been directed to the fact, if your Honor please, that in a brief written by our learned friend supporting the complaint, in an interlocutory appeal to the Commission, earlier in this same

proceeding, at page 13, the statement appears and I quote: "While the complaint does not charge a conspiracy, we do contend that the contemporaneous contracts entered into by Atlantic with Goodyear and Firestone were utilized
781 to divide the Atlantic market and constitute contracts in restraint of trade within the meaning of Section 1 of the Sherman Act and as such are within the purview of Section 5 of The Federal Trade Commission Act."

That would appear to be a pretty—

Hearing Examiner Kolb: (Interposing) He was trying to say a conspiracy backwards there.

Mr. Correa: I am of the old fashioned school who believes that words mean what they say and when they say "While the complaint does not charge a conspiracy," I am old fashioned enough to take them at face value. Maybe they meant the opposite of what they said, George Orwell's 1984, but I am not that advanced.

Hearing Examiner Kolb: Well, Mr. Kelaher, this appears to me to be a memorandum written by the witness and if he said that certain things are proposed to be done, I am not quite clear from this whether or not they have been done. I sympathize with counsel for the respondent in raising the question with the witness on the stand of putting the document in which says that certain things are going to be done when you have the witness here and you can let him testify with reference to that document, or at least as to the correctness of what was or was not done.

Mr. Kelaher: May I be permitted to question him?
782 Hearing Examiner Kolb: Yes. He is called as a witness.

By Mr. Kelaher:

Q. Mr. Connell, let's start with the beginning of this document, and go down the line.

You state: "My letter of February 14 advised you of the

Atlantic Refining Company's change in policy for the handling of TBA sales to the dealers." Is that a correct statement?

Mr. Thompson: I object to this form of questioning of this witness.

This document which is before him either does or does not refresh his recollection.

Mr. Kelaher: I am at quite a loss to understand what is wanted by counsel. First they accuse me of not asking him about the document, and when I start, then they object.

Hearing Examiner Kolb: The document is a memorandum and he can refresh his recollection. Let him refresh his recollection and testify as to the document.

By Mr. Kelaher:

Q. Does that first sentence refresh your recollection as to events that happened at that time?

A. Yes, it does.

Q. Would you please state in your own words what the import of that first paragraph is?

783 Mr. Thompson: That is objected to, sir. That is not the way to examine a witness on the stand in my experience.

Mr. Correa: I associate myself with that objection.

By Mr. Kelaher:

Q. You stated that it refreshes your recollection with respect to Atlantic Refining Company's change in policy. Now would you please state what information you received with respect to the change in TBA sales?

Mr. Thompson: May I ask received from whom?

Mr. Kelaher: From Atlantic.

Mr. Thompson: From whom in Atlantic?

Mr. Kelaher: I am asking the witness.

Mr. Correa: What is the question, if I may ask, the pending question?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: From Atlantic.

Mr. Correa: That is objected to on behalf of the respondent Goodyear on the ground that it calls for hearsay as to Goodyear and is not binding on Goodyear.

Mr. Kelaher: Would you—

Hearing Examiner Kolb: (Interposing) As far as I am concerned, this complaint charges sufficient amount of conspiracy and I am not going to sustain the objection on the ground that Atlantic is involved and not Goodyear.

784 Mr. Correa: If your Honor please, then I have to submit that we have been misled by Counsel supporting the complaint, we have been, granted the complaint may be far from lucidly clear and no one would be faster to concede that than myself. We have had characterizations of the complaint and of the theory and specifically in respect of this point of conspiracy made formally and in briefs submitted to the Commission, when we were arguing, as your Honor will recall, the point in respect of which this matter of whether or not the complaint charged conspiracy was far from irrelevant and this is a very late date indeed in the proceeding to be told that despite their asseverations to the contrary, counsel supporting the complaint now claims that this complaint charges—

Hearing Examiner Kolb: He hasn't made any statement so far this afternoon. It is a question I have raised because you are sitting there and saying that this is a matter between the witness and Atlantic and you have nothing to do with it. When they come to Goodrich, he sits there and says its is a matter between the witness and Goodrich, and I have nothing to do with it, and then the complaint charges that the two of you, Goodyear and Atlantic, by means of this contract have done certain things, that is what the complaint charges. Then it must apply to both, whether

it is called a conspiracy in the course of action or
785 common course of action, or whatever they are going to call it. It just doesn't make sense to me.

Mr. Correa: If your Honor please, I submit with great respect that the complaint does not charge that the Goodyear and Atlantic together or in a common course of action did certain things. The charge is that Goodyear had a contract with Atlantic which provided for certain things to be done by Goodyear, which Goodyear did, and it charges that in connection with that contract, Atlantic did certain things and exercised certain influence and so forth over its dealers. That is what it charges. It doesn't charge any where conspiracy.

Hearing Examiner Kolb: That is what this witness is testifying to, what Atlantic did in connection with their dealers, in furtherance of the Goodyear and Atlantic contract and you are saying he can't testify because Goodyear is not involved.

Mr. Correa: I am saying, if your Honor please—

Hearing Examiner Kolb: (Interposing.) Well, we have to draw the line somewhere.

Mr. Correa: There is no exception to the hearsay rule under which this hearsay testimony, because that is what it is, let's face it, can be admitted in this proceeding, as binding on Goodyear. Now there is nothing in the world to stop counsel supporting the complaint from going
786 out and proving what Atlantic did in the ordinary and proper way, which they seemingly are allergic to, by getting testimony and witnesses and putting them on the stand and letting them testify directly. But for some reason they want to go around the barn and not get direct testimony, but get somebody who can only say as to what he was told by somebody else, and offer that for the truth, present somebody else, an absent declarant, if I may use the technical language of the law of evidence, and I object

to that, if your Honor please, and I submit that not only is here no basis in this complaint for the admission of any such evidence, but the complaint at least as explained and amplified by the statements of counsel supporting it, absolutely negates a basis of that kind and that is the basis, if your Honor please, of any objection and nothing else.

Hearing Examiner Kolb: Let me see that letter.

Mr. Kelaher: (Handing to the Examiner.)

Mr. Correa: May I add, before your Honor rules, because I wish to heed your Honor's admonition and complete my argument before your Honor rules, that it may well be that this seeming difficulty in which we find ourselves, owing to the application of the ordinary rules of evidence, and the difficulty which seems to arise about this complaint which one day has to be one thing for one purpose and another day another, a diametrically opposite thing,
787 for a different purpose, arises not out of the rules of evidence or even out of the philosophic principle of contradiction which says that a thing can not at one and the same time and in the same respect be and not be, but perhaps arises out of an adherent and basic weakness or inadequacy of the case attempted to be pleaded by this complaint against the respondent Goodyear.

Hearing Examiner Kolb: That will come out at the end of the case.

Mr. Correa: I agree, but I am quite serious in the suggestion I make. I think sometimes a weak case does not wait until the end to manifest itself.

Hearing Examiner Kolb: Well, I think the information contained in this letter, if properly approached by the witness, the witness could testify to it as far as Atlantic is concerned undoubtedly. I don't think you will question that.

Mr. Correa: No, if your Honor please. I make no point as to the admissibility of the evidence or the testimony

proffered against Atlantic one way or the other. My only objection is it being taken as against the respondent Goodyear.

Hearing Examiner Kolb: Well, that is where we get into difficulty.

Mr. Thompson: I wonder if we could have a one minute recess for me to consult with counsel.

788 Hearing Examiner Kolb: All right.

(Whereupon, a short recess was taken.)

789 Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Examiner, during the short recess there was a conference of counsel and it is stipulated in so far as Atlantic and staff counsel are concerned that the last sentence on Commission Exhibit 306-B is withdrawn from the offer of the document, and with that understanding, so far as Atlantic is concerned, I will withdraw my objection to the admissibility of the document and thereby save the time that would otherwise be involved in having Mr. Connell testify to its contents.

Hearing Examiner Kolb: Will you strike that last sentence off the exhibit?

Mr. Kelaher: It can be done with pencil.

Mr. Correa: If your Honor please, for the respondent Goodyear I am willing to withdraw so much of our objection as goes to the introduction of the document in lieu of testimony in the ordinary way by the witness. So much of our objection as would lie against the reception of the substance of the evidence contained in this document, whether given in the form of an exhibit or given in the form of testimonial declaration on the stand still stands, but I gather from your Honor's previous rulings that that is a matter with which your Honor feels you can best deal with at a later stage in this case.

Hearing Examiner Kolb: I suggest it be received
790 subject to your objection.

Mr. Correa: Thank you, your Honor.

Hearing Examiner Kolb: Commission Exhibit 306-A and B will be received in evidence under stipulation and subject to objection of counsel for Goodyear.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 306-A and B, were received in evidence.)

By Mr. Kelaher:

Q. Mr. Connell, I call your attention to the fact that Commission Exhibit for identification 312-A through D inclusive, and 313 are documents with the name, R. S. Findley at the bottom thereof, is that correct?

A. That's correct.

Q. Is Mr. Findley still an employee of the Electric Storage Battery Company?

A. He is.

Q. And can arrangements be made to have Mr. Findley appear at this hearing some time during the remainder of this week to testify in connection with these documents?

A. I believe they can.

Q. Thank you.

Mr. Kelaher: Your Honor, we will reserve offering Commission Exhibits 312-A through D and 313 into evi-
dence pending the appearance of Mr. R. S. Findley,
791 who authored the documents.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Any further questions of this witness?

Mr. Kelaher: Yes.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Connell, after your contract with Atlantic terminated in February of 1951 did you then sell Exide bat-

teries directly into Atlantic dealers, directly to Atlantic dealers, by that I'm talking about the Electric Storage Battery Company soliciting Atlantic accounts directly.

A. The first, did we directly sell to Atlantic dealers, the answer to that would be no; did we attempt to sell or sell any Atlantic accounts, the answer to that is yes, because Atlantic Refining had both what we considered, in our opinion, distributors as well as dealers or subdistributors, and those accounts we attempted to solicit ourselves with some degree of success, the dealers we attempted to have our other wholesale distributors solicit their business.

Q. So, the Electric Storage Battery Company through its own branch such as the Philadelphia branch did solicit certain Atlantic dealer accounts?

A. Not dealer accounts, distributor accounts.

792 Q. I'm referring to Atlantic Dealers who were classed by your company as distributor accounts, is that correct or are you referring to—

A. (Interposing.) Shall I put—Atlantic accounts who supplied other dealers?

Q. You are referring to Atlantic accounts classified as distributors by Atlantic, is that correct?

A. I can't say how they classify them. They were classified in our opinion as distributors, because the order indicated that they sold other Atlantic dealers, other dealers.

In other words, we do no business direct with dealers, only with distributors.

Q. Are you familiar with so-called supplying dealers, such as Harvey George and Mr. Parris, Ed Parris?

A. I would say that I knew some of them. I knew a few of them personally, others I knew by hearsay.

Q. Now, would that type of account be solicited directly by your company or not?

A. I would have to refresh my memory on that. I

would say that as this letter indicates, we actually signed up three Atlantic accounts as direct wholesale distributors, one located in New Oxford, the other in Lancaster, and the other in St. Thomas. They do not happen to include the ones you mentioned. Those accounts we signed direct and retained for quite some time.

793 Q. I would like to show you Commission Exhibit for identification 312-A through D and on 312-B for example, reference is made to Aero Oil Company, Incorporated, New Oxford, Pennsylvania; Herr Thompson Oil Company, Inc., Lancaster, Pennsylvania; E. C. Barnes and Son, St. Thomas, Pennsylvania.

Now, the letter states, "three former AR Company wholesalers were signed up under WD contracts and are now buying exclusively from us."

Now, is a WD contract signed by the Electric Storage Battery Company directly, by one of your salesmen directly?

A. With these accounts, yes; that is a wholesale distributor account, it—the WD represents wholesale distributor.

Q. Reference is made on that same page to AW contract. Would you explain who solicits that business?

A. We had for the purpose of obtaining better distribution to small subjobbers, an arrangement with wholesale distributors whereby they could solicit the business of the so-called subdistributors, or jobbers, who in turn solicited dealer business. They were sold at a lower price than the authorized dealer price.

Q. Does your company directly solicit the business of W dealers?

A. If you say directly solicit them, we had on occasion in connection with the wholesale distributor man, if
794 there was a question of can we get the business or if a distributor said "I would like to get Joe Smith, and I'm able to, will you help me get him as a subdistributor?"

then our man might work with them. But actually in most cases the soliciting was done by the wholesale distributor and agreed upon with us.

Q. Well—

A. That is approved by us.

Q. So these accounts named in Mr. Findley's letter identified as Commission Exhibit 312-A through D, could have been called on by Mr. Findley personally or by someone under his supervision, is that correct?

A. No. I should correct the statement in that you asked me, I thought, broadly what our arrangement was for obtaining W accounts. In the case of the Atlantic Refining Company, with these so-called Atlantic wholesalers, they solicited the business of these accounts and handled all business with them without our aid. Now, this—

Mr. Thompson: I don't think the record is clear on who you mean by "they." Do you mean that the wholesale distributors solicited the wholesale accounts?

The Witness: The Atlantic Refining Company solicited this business and agreed to sell them at wholesaler prices.

Now you haven't asked me to volunteer this—

By Mr. Kelaher:

Q. After your contract with Atlantic expired who 795 solicited these accounts, the company directly?

A. No, then we asked our remaining wholesale distributors to go after this business, on a W basis. The only ones that we solicited direct— Now, I shouldn't say the only ones, but the ones we solicited and we thought justified a direct wholesale distributor contract and obtained were these three named above, you see, Aero Oil, Thompson and E. C. Barnes.

Now, when Mr. Findley says "28 Atlantic wholesalers have been signed under W contract as follows:" he means they were accounts who had been sold by Atlantic Refining Company, who upon termination of our contract with At-

lantic Refining Company, our other wholesale distributors went after in an effort to get their business for Exide.

Q. At that time your company was working with these other wholesale distributors, is that correct?

A. We were doing everything we could to retain the business, as we do any time we lose any customer.

796 Mr. Thompson: The WD accounts, they were your direct large distributor accounts, and the so-called W accounts were sub-wholesalers?

The Witness: That is correct.

Mr. Thompson: Who were signed up by the large wholesale distributors?

The Witness: That is correct. The contract is an agreement that they would buy at a pre-determined subdistributor price.

Mr. Thompson: But the sub-distributors dealt with the W distributors, wholesale distributors or with your company direct?

The Witness: No, their dealers, they were billed, their collections were the responsibility, their credit was the responsibility of the wholesale distributor.

Now I certainly can't say that our man would never contact a wholesaler. Certainly he did anything he could to further the obtaining of Exide batteries, but the overall picture was a relationship with the wholesale distributor.

Mr. Thompson: Well, I think you said previously that Mr. Findley worked in cooperation with the wholesale distributors to get the W contracts, to get the sub-jobber business?

The Witness: Because you were talking about a broad proposition, we have all types of wholesale distributors

797 some do things on their own and some can not, some require guidance and assistance.

Mr. Thompson: So he was fully informed as to the accounts listed in the document that he referred to? They were in his sales territory, were they not?

The Witness: That is correct. This letter is a report to me as a result of my asking why they weren't selling more Exide batteries, and this is his answer.

Mr. Thompson: To whom?

The Witness: To anyone. Why his sales were off.

Mr. Thompson: Did you refer him specifically to sales to Atlantic Refining accounts?

The Witness: That one I can't answer, although I am of the opinion that I asked why, asked the Philadelphia Branch why their sales were off and what they were doing to pull them up.

Mr. Thompson: And this is Mr. Findley's answer to you?

The Witness: This is one of a number of answers I got.

Mr. Kelaher: In view of the witness' statements, I think it would probably be appropriate to call Mr. Findley, who was working in the market at the time and question him about conditions at that time.

Mr. Correa: The work on the stipulation is for
798 nothing, I take it, then. I don't know why we wasted the time.

Mr. Thompson: If your Honor please, it is 20 of six and in view of that statement, I obviously can not start the cross-examination of this witness tonight. If they were not going to call Mr. Findley, I was going to waive cross-examination, but since they are apparently, I would like to defer the cross-examination of Mr. Connell either until tomorrow morning or until after Mr. Findley has testified.

* * * * * *

800 Hearing Examiner Kolb: The hearing will come to order.

* * * * * *

806 Mr. Kelaher: Mr. Examiner, before we call a witness, I would like to state that we have appended a specification 2 to the subpena duces tecum served upon Mr.

Connell. It calls for a printed list of Exide wholesale distributors by states and cities and branches July 15, 1951 and also if available in printed form similar lists printed as of dates in 1950 and 1957, current.

If agreeable with counsel, I have been furnished with three lists dated July 15, 1951, November 1, 1950, and May 1, 1957, in response to this request, and I will now show them to counsel and if agreeable, it may be possible to stipulate these into the record without calling Mr. Connell back. (Handing to Respondent counsel.)

Mr. Kelaher: Your Honor, now that we have withdrawn 312 and 313, will the next number replace 312?

Hearing Examiner Kolb: No, it still remains that number. The next number will be 314.

Mr. Kelaher: At this time, your Honor, I would 807 like to have marked for identification as Commission's exhibit 314-A through D a letter from William P. Cairo, Assistant Secretary of the Electric Storage Battery Company, dated June 26, 1957 addressed to me, to be identified as 314-A; and to be identified as 314-B a document entitled "Exide Wholesale Distributors by States and Cities, November 1, 1950"; and to be identified as 314-C a document entitled Exide Wholesaler Distributors by States and Cities, July 15, 1951"; and to be identified as exhibit 314-D a document entitled "Exide Wholesale Distributors by States and Cities, May 1, 1957."

(The document referred to was marked Commission's exhibit 314-A, -B, -C, -D for identification.)

Mr. Kelaher: I now offer these documents into evidence.

Mr. Correa: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. Any objection?

Mr. Correa: No objection.

Mr. Thompson: I have no objection.

Mr. Kelaher: I would like the record to show that the exhibit just offered into evidence was furnished in response to specification 2 of a subpena served upon Mr. C. Connell of Electric Storage Battery Company.

Hearing Examiner Kolb: There being no objection, 808 the document will be received in evidence as Commission's exhibit 314-A through D inclusive.)

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 314-A, -B, -C, -D for identification was received in evidence.)

Mr. Thompson: If your Honor please, you will recall that yesterday we, with your permission, deferred the cross-examination of Mr. Connell.

I have at the present time no intention of recalling Mr. Connell for cross-examination upon the assumption that the record is clear and in the event, when we look at the record, we find that there are ambiguities in it or things which require clarification, I should like still to reserve th right to call him.

Hearing Examiner Kolb: You can make the request after you have examined the record.

Mr. Thompson: Yes, sir. We haven't up to this point on the record waived it. I just wanted to be clear on that.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I assume that that request will be made during this week so we can recall Mr. Connell this week?

Hearing Examiner Kolb: I assume so.

Mr. Thompson: Yes.

Mr. Dias: I call Mr. Johnson, please.

809 TYLER L. JOHNSON was thereupon called as a witness for the Commission and having been duly sworn, examined and testified as follows:

Direct Examination by Mr. Dias.

Q. State your name and business address for the record, Mr. Johnson.

A. Tyler L. Johnson, 6118 and 20 Germantown Avenue.

Q. What is the name of your Company?

A. E. P. Rotzell Company.

Q. What is your position with the Rotzell Company?

A. I am a salesman in that territory.

Q. How many years have you been employed by Rotzell?

A. 16 years.

Q. All that time as a salesman?

A. Part of that time as a store manager.

Q. How long was that and when?

A. Two years, a little over, as store manager, due to the death of my store manager.

Q. And how long ago was that?

A. That was—I had been with the company about two years—that would be 1942, from 1942 to 1944.

Q. Since that time you have been a salseman?

A. Yes, sir.

810 Q. What is your sales territory, Mr. Johnson?

A. Roxborough, Manayunk, Chestnut Hill, Germantown, Mount Airy, and I also cover east of Board Street, just a few scattered calls.

Q. Do you attempt to sell the full Rotzell line?

A. Yes, sir.

Q. To what classes of customers do you attempt to sell?

A. I call on gasoline stations, automboile repair shops, new car agencies, used car dealers.

Q. Do you sell-so-called hard parts?

A. Pardon?

Q. Do you sell hard parts?

A. Hard parts?

Q. Yes.

A. Yes, sir.

Q. Is that term familiar to you?

A. No, it is not.

Q. Repair parts.

A. Repair parts, yes.

Q. What do you include in repair parts?

A. Well, replacement parts for transmission, rears, motors, ignition parts, and batteries and fan belts, and all that would come under those parts.

Q. Batteries would?

A. All in the replacement parts line.

811 Q. Among the service stations in your territory, are there any Atlantic service stations?

A. Yes, sir.

Q. Can you tell us approximately how many there are?

A. Approximately 25 or 30.

Q. And do you solicit those stations?

A. I solicit quite a few of them, not all of them.

Q. How many do you solicit?

A. Well, I would say 15 or 20.

Q. How often do you call on them?

A. Approximately every two weeks.

Q. What about the remainder of the Atlantic stations in your territory, do you call on them at all?

A. Well, some of those stations are located in the Northeast section of the city and they are beyond our range of delivery.

Q. How many of those are there, do you have any idea?

A. Well, I would say it would be 10 or more over in that section.

Q. Well, confining yourself then just to those stations which are within your reachable area, your sales territory and those that you can reach, how many are there? Do you call on them all?

A. Yes, I call on approximately all of them in the Roxborough Manayunk and Germantown, Mount Airy and Chestnut Hill areas.

Q. What do you sell them?

812 A. Well, we try to sell them accessories, and when I say accessories, I mean the chemical lines, fan belts. And I also try, if they do any minor repairs, try to sell them mufflers, brakes, and ignition parts, fuel pumps, fuel lines.

Q. What particular products constitute the majority of your sales to those stations?

A. To all the Atlantic stations, the ones that are doing minor repairs, most of our sales are in brakes, mufflers, or ignition parts.

We try to sell them chemicals and batteries and fan belts, but—

Q. (Interposing.) Do you sell them those items, batteries, chemicals and fan belts?

A. No, we don't. We are not able to sell them any of those. The prices are all right, but most of them carry a stock of batteries and they just don't handle—don't touch our batteries at all.

Q. What batteries do they carry?

A. Well, they carry Goodyear batteries.

Q. How about fan belts and hoses?

A. They carry Goodyear fan belts and hoses.

Q. Was there ever a time that you were able to sell to those stations?

A. Yes, a few years back we were able to sell them hoses, some fan belts, and we were able to sell them chemicals, anti-freeze also.

813 Q. How about batteries?

A. Batteries, well, once in a while, if they needed one, but we were never able to sell them a stock of them.

Q. How long ago was that?

A. I would say four or five years ago.

Q. Are you familiar with the George Kee Atlantic station?

A. Yes, sir.

Q. What is his address?

A. 6201 Ridge avenue.

Q. Do you sell to that station?

A. Yes, sir.

Q. Can you tell us what you sell to him?

A. Why, we sell them antifreeze—not all of their requirements, just a part of their requirements. We sell them mufflers occasionally, and brake linings, shock absorbers.

Q. How about batteries?

A. No.

Q. Filters?

A. Oil filters, no.

Q. Chemicals?

A. Can't sell them any chemicals.

Q. Do you know where he buys his supplies from?

A. He buys his chemicals and his batteries and fan belts from the Goodyear distributor.

Q. Do you know the name of that distributor?

814 A. Fred Glenn.

Q. Do they advertise TBA products on the stations?

A. Yes, sir.

Q. What type do they advertise?

A. They advertise Goodyear products and also the DuPont chemical line. They have Goodyear signs—well, the DuPont chemical line is handled by the Goodyear distributor.

Q. Fred Glenn?

A. That is right.

Q. Are you familiar with the Tom Beale station?

A. Yes, he has an Atlantic station at 8601 Ridge Avenue.

Q. Do you solicit his business?

A. Yes, sir.

Q. What do you sell to him?

Mr. Correa: If your Honor please, I must object just on the grounds that this is cumulative. We have already had the Atlantic stations in this gentleman's territory dealt with in testimony of a whole group of them. If we go through each one by one, we can sit here for ever I suppose. I don't object to the testimony as such, although I don't think it is particularly relevant and material, but I do object to having to sit here for endless assimilation of the same points.

Mr. Dias: As I recall yesterday, your Honor, there was some criticism about the fact that we didn't have specific instances, and now we have specific instances and they say it is going to take too long.

815 I don't know how to satisfy the other side of the room.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: Exception.

By Mr. Dias:

Q. Are you familiar with the Tom Beale station?

A. I am acquainted with Tom Beale and his station, yes, sir.

Q. Do you sell any of your products to him?

A. The only products we sell him are brakes and mufflers.

Q. Do you try to sell him batteries?

A. Yes, sir.

Q. Filters?

A. Yes, sir.

Q. Chemicals?

A. And chemicals, yes, sir.

Q. How long have you been selling to that station, do you have any idea?

A. I have been calling on Tom Beale I think ever since he opened the station.

Q. How long has that been?

A. I would say—I wouldn't say positive, but eight or nine years.

Q. Does he advertise TBA products on the station?

A. Yes, sir.

Q. What products does he advertise?

816 A. He advertises the same line as the other stations, Goodyear tires and batteries, and DuPont chemicals.

Q. Do you know where he gets those products?

A. He gets those from TBA distributor.

Q. Do you know who the TBA distributor is?

A. Fred Glenn.

Q. Are you familiar with the Bill Crowley station?

A. Yes. He has an Atlantic station in Chestnut Hill.

Q. Do you solicit his business?

A. I have called on Bill Crowley for eight or nine years. And I am soliciting for all of what you would call TBA items, batteries, chemicals, and also our lines, mufflers, ignition parts, and antifreeze. The only thing we are able to sell him is a little antifreeze, and maybe once in a while some ignition parts. He doesn't do much repair work up there. He is mainly a service station in the sense of a service station, in that he does lubrication, tire changes, sells batteries, and does that type of work more than repair work.

Q. What brand TBA does he advertise on or about the station?

A. Goodyear brand; he has signs out front and on the windows.

Q. Do you know where he gets those supplies?

A. Fred Glenn.

Q. Are you familiar with the Bill Driskill station?

A. Yes, sir. Bill Driskill is at Germantown and Roumfort Road.

817 Mr. Thompson: May we have the spelling of that name?

The Witness: D-r-i-s-k-i-l-l.

By Mr. Dias:

Q. Will you state the items you sell him?

A. We sell Bill Driskill fuel pumps, mufflers, and batteries—pardon me, not batteries. Ignition parts. That is all we are able to sell him.

Q. Do you know whether or not he carries other TBA products?

A. H carries Goodyear's line of batteries and DuPont's chemical line and Goodyear tires and fan belts.

Q. Do you know where he gets those supplies?

A. From Fred Glenn. All of the territory which I cover, all of the territory, Germantown, Chestnut Hill and Roxborough, Manayunk, are covered by Fred Glenn, who is the Atlantic TBA distributor up there.

Q. I see. Are you familiar with John Bean's station?

A. Yes, John Bean is at Lincoln Drive and Mount Pleasant Avenue.

Q. How often do you solicit his business?

A. John Bean and myself are very friendly and have been for quite a number of years. I call on John about every week. I used to call more often than that. In fact, we used to have lunch together a couple of times a week.

Q. Does he buy—

A. (Interposing.) He buys ignition parts, brakes,
818 mufflers, and some antifreeze from us, but the chemical line, I can't sell him that anymore and filters, I can't sell him those, or I can't sell him batteries.

Q. You say you can't sell him the chemical line any more. Did you at one time?

A. At one time I sold John Bean quite a bit of chemicals. That was about five years ago. I used to sell him oil filters but since the change has been made to Goodyear, why, he sticks pretty much to that line.

Q. Does he advertise Goodyear on the station?

A. Yes, sir.

Q. Are you familiar with the Sid Samans station?

A. Yes. He owns his station. He is across the street, across Lincoln Drive and below John Bean. He has a small station there. He does lubrication and sells the Goodyear batteries and tires. We sell Sid mufflers, and brakes, that is about the only repair work that he does in his station.

Q. Does he carry TBA?

A. He carries Goodyear batteries and tires.

Q. Are you familiar with Lee Asher?

A. Lee Asher is at Germantown Avenue and Washington Lane and he does a very large repair business. When I say repairs, I mean in the minor repair field.

Q. Yes.

A. Motor tune-ups. We sell him ignition parts, we sell him fuel pumps, we sell him brakes and mufflers
819 and tail pipes. I have tried to sell him batteries, tried to sell him chemicals, but he buys from the Goodyear TBA distributor, Fred Glenn.

Q. Does he advertise the Goodyear products on the station?

A. Yes, sir.

Q. Are you familiar with the Amos Atlantic station.

A. Amos Atlantic is at Green and Queen Lane. He handles all of the Goodyear TBA line and we only sell him mufflers once in a while, and we were able to sell him a couple of little tire changing tools laterly, and a fuel pump. The rest of the lines he handles, why, we can't sell him.

Q. And does he advertise Goodyear TBA?

A. Yes, sir. Goodyear TBA and DuPont. We incidentally also carry a DuPont chemical line, number 7 line, which is handled by all these Atlantic dealers, but even though we carry that line, we still can't sell to them.

Q. If you know, are your prices the same as theirs?

A. Our prices are the same as the Atlantic distributor, yes.

Q. What sort of service do you offer?

A. We have the truck available at all times for delivery service, and the truck covers that territory from 8:30 in the morning until 5 o'clock at night.

Q. Do you know whether or not your service is as good as Glenn's?

A. I think our service is better. We deliver to a 820 lot of places as much as two and three times a day.

Q. Are you familiar with the Mahlon Craig station?

A. Yes, he is at 6242 Rising Sun Avenue.

Q. Do you sell him any TBA?

A. We sell him a large amount of brakes and ignition. That is about all we can sell Mahlon. He buys his—he advertises Goodyear and he buys his chemicals, number 7 chemicals and Goodyear tires from the TBA distributor in that territory, whose name is George. I don't know his first name. G-e-o-r-g-e.

Q. Can you name any other stations in your sales territory that you sell to?

A. There are other stations there. I am not very successful as far as selling them anything. I call on them fairly regularly, at least once every two weeks or once a month. There is Wayne Johnson, spelled the same as mine, s-o-n. He is at Ogontz Avenue and Washington Lane.

Q. Do you sell him anything?

A. Fuel pumps occasionally, mufflers oecasionally. No chemicals, no batteries, no antifreeze.

Q. Does he advertise TBA on the station?

A. He advertises Goodyear, and DuPont 7 line.

Q. Who is his supplier, Glenn or George?

A. Fred Glenn is his supplier.

Q. Are there any others?

A. Al's Atlantic, at York Road and Cheltham Avenue.

821 Q. What do you sell to that station?

A. The only thing we have been able to sell him, I called him about once a month. We sold him a little equipment for his service truck, a starting unit and a couple of jacks and a battery jumper cables. Those are emergency cables for road service.

Q. How about batteries, did you sell him those?

A. I haven't been able to sell him batteries, chemicals or anything else.

Q. What does he advertise on or about his station?

A. The Goodyear line and the number 7 line.

Q. Are there any others?

A. There are some other Atlantic stations. I can't remember them off hand.

Q. All those that you named, how often did you say you called on those people?

A. I call on them at least twice a month. On most of them. And some of them once a month. And when I call on them, we have a catalogue and I talk to them about all the items which they could possibly sell at a service station, oil filters, shock absorbers, I talk Delco batteries, and the different manufacturers whom we represent at different times have deals or have a Spring offer or a Fall offer, and at those times why, we solicit the service stations more extensively than we do in the in-between seasons because at that time they can sell more of
822 the chemicals and also we solicit them for antifreeze in the Spring and Fall.

Q. Have you any new Atlantic stations opened in your territory recently?

A. No, not in my immediate territory that I know of.

Q. Have any Atlantic stations changed hands recently in your territory? That you know of?

A. None that I know of.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Any cross-examination?

Cross-Examination by Mr. Ballard.

Q. Mr. Johnson, you said I think that you call on gasoline stations?

A. Yes, sir.

Q. Repair shops?

A. That's right.

Q. New car dealers?

A. Yes, and used car dealers.

Q. How many accounts do you call on all told?

A. I would say about 150 to 175.

Q. And the bulk of your sales are repair parts, aren't they?

A. Yes, sir, and when I say repair parts, I include ignition and shock absorbers and brakes on that.

Q. Yes, parts for minor everyday repairs?

823 A. That is right.

Q. And I suppose the garages are the best customers for that kind of parts, I take it?

A. The garage is our best customer for heavy repair work. What I mean by that is motor parts, ignition parts, brakes, mufflers, and transmission rear parts. The service station is our best outlet for chemicals and antifreeze, apparently because they see the customer more often than the garage.

Q. How many garages do you suppose there are in your list of 150 customers?

A. About half.

Q. And new car dealers and used car dealers would make up how much?

A. Well, I would include the new car dealers and the used car dealers in with the garages. That is the way I figure it, that way, because a new car dealer in his used car department will use the same parts as a garage for servicing used cars for resale and then we also are able to sell new car dealers parts for their own cars, like if they run short or—the car dealers today don't stock parts for their own cars over five years of age, except fast moving parts.

As an illustration, last week one of the agencies in our territory, one of my customers, purchased three rear springs from me for a 1949 automobile. They don't carry them any more.

824 Q. Well now, you say that for a while you were a store manager?

A. Yes.

Q. What branch was that?

A. See I originally came with Rotzell at the branch at 3917 North Broad which was closed and then they moved over to 5919 Germantown Avenue, or 5921 Germantown Avenue, and after we had been there for approximately a year, my store manager was taken ill and died and while he was sick he had shown me from time to time how to operate the store and I had helped him due to his illness.

Q. Now you call that a store. Is that a retail store? Could I go in and buy something there?

A. You can come in and buy something there and you would purchase it at list price unless you had an order from a garage man or from some company who would be entitled to a discount.

Q. In other words, that store sells to the public, just the way a service station or garage would sell?

A. Yes.

Q. Just to the consuming public?

A. If they come in and ask for it. Our sales on list price are very small. We are mainly wholesalers but we do display the merchandise, which we handle and we do have customers come in from time to time and purchase items.

Q. Now speaking about these various Atlantic
825 dealers, for instance Mr. George Kee, you don't know of course all the suppliers he deals with, do you?

A. No, only all I know is he deals with Fred Glenn and I know he deals with the Bowes Seal-Fast man. I don't know his name. They sell tube repairs.

Q. Do you happen to know that he also deals with Gaul Derr & Shearer?

A. I believe I have seen their salesman in there. You see, in service stations, salesmen from pretty nearly all the parts houses of which there are quite a few in Philadelphia, if they have branches within delivery distance, their salesmen will call on the same people that I call on.

Q. In other words, almost all of these stations that you named for us, other suppliers call on them just the way you do?

A. Yes, sir.

Mr. Ballard: I have no further questions.

Mr. Correa: I have a question or two.

By Mr. Correa:

Q. How many salesmen does the Rotzell Company of yours have?

A. Six — seven.

Q. And we had only three.

A. What?

Mr. Correa: That's all right. No further questions.

Mr. Thompson: May I ask a question off the record?

Hearing Examiner Kolb: Off the record.

826 (Discussion off the record.)

Hearing Examiner Kolb: On the record.

Redirect Examination by Mr. Dias.

Q. You stated on cross-examination that there are sales made over the counter at your store. Do you work on a commission?

A. Yes, sir.

Q. Do you get credit for those sales made over the counter if it is your customer that comes in?

A. If my customer comes into the store, I get credit for any purchases he makes and if he calls up, anything, any customers that I call on, whether they call up, whether I write the order or whether they come into the store, I get credit for their sales.

Q. You also stated that Rotzell has seven salesmen. I think we heard the other day there were five.

A. Well, we have four stores, under the name of E. P. Rotzell Company—

Mr. Correa: (Interposing.) I object to counsel impeaching his own witness.

Mr. Dias: I just want to clarify it, I am not trying to impeach the witness.

Mr. Correa: You are calling attention to the conflict between this witness of yours and another witness of yours, from your many Rotzell witnesses.

827 By Mr. Dias:

Q. Will you name all your salesmen and the area?

A. Well, in South Philadelphia territory, we have Thomas Kernaghan; in the West Philadelphia territory we have Ed Heller; in the Germantown territory, myself; and in the Fairmont, out of the Fairmont store, we have Charles Marriott, who calls on fleets.

Q. Does Mr. Marriott call on service stations, too?

A. He calls on some, but mostly on fleets.

Q. Who is the next one?

A. Herman Rabinowitz. He calls on the same type of accounts that I do.

Q. In what area?

A. He calls on the area north of Fairmont Avenue, Fairmont up to Lehigh, I believe, and then we have a store, it is a sub-store, Suburban Auto Supply, we have a man there by the name of George Walker, and—pardon me. I was wrong when I said seven. It is six.

Mr. Dias: That is all.

Hearing Examiner Kolb: Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

828 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Booz to the stand please.

ELMER H. BOOZ, JR. was called as a witness and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Elmer H. Booz, Jr., 312 Prospect Avenue, Secane, Pennsylvania.

Q. Were you at one time an Atlantic lessee dealer, Mr. Booz?

A. Yes.

Q. Where was your station located?

A. Wycombe and McDade Boulevard.

Q. And for how long a period did you operate that station?

A. February 14, 1952, to May 31, 1956.

Q. And prior to that time, did you operate another service station?

A. Yes, a Texas station, two blocks up.

Q. And did you bring any of the merchandise, the TBA merchandise, you had in the Texas station to your Atlantic station when you moved in?

A. Yes, I brought all the tires, tubes, batteries and accessories.

829 Q. And what kind of tires did you bring; what brand of tires?

A. B. F. Goodrich.

Q. What brand of batteries?

A. Goodrich.

Q. Who was the Atlantic representative with whom you discussed the change in operation?

A. Mr. Al Vayda.

Q. Did Mr. Al Vayda make any remarks with respect to the Goodrich tires and batteries?

A. He told me I could bring them up until I depleted the stock of them.

Q. And when you moved into your Atlantic station, what outdoor—was there an outdoor sign located on the station?

A. All there was was Goodyear signs.

Q. And how about the window valance?

A. They were Goodyear too.

Q. And were you, or did you rather, advertise the fact that you were selling B. F. Goodrich tires?

A. No.

Q. And did you have any other brand of tires in stock?

A. Yes; we had some Lees.

Q. And where had you obtained the Lee tires?

A. When the other dealer checked out we bought them off him.

Q. And was there any other brand of tires in the station?

A. Goodyear.

830 Q. Did you advertise the Lee tires?

A. No.

Q. Why didn't you?

A. Well we were mainly selling Goodyears.

Q. About what percentage of your stock at that time was Goodrich tires?

A. About one third.

Q. About what percent was Lee tires?

A. One third.

Q. And was the remaining one third Goodyear tires?

A. That is right.

Q. Now, after you moved into the station, how long did you continue to carry the Goodrich tires and batteries?

A. Until the stock was depleted.

Q. And after that, what brand did you carry?

A. Goodyear.

Q. And while the Goodrich batteries were in your place of business, in your Atlantic station, were you ever visited by a Mr. Arnholt?

A. Yes.

Q. And did Mr. Arnholt make any comment about the Goodrich batteries?

A. He covered the "rich" part on the battery and said, "Now it looks half right.'

Q. I guess it was no mere coincidence that the spon-
831 sored brand begins with G-o-o-d.

A. Right.

Q. Did you at any time carry the Bowers battery line?

A. Yes, I did.

Q. And where had you displayed the Bowers battery?

A. Well, I tried to keep them in the heater room.

Q. And where was the heater room?

A. In the back of the building.

Q. And why had you kept them in the back of the building?

A. Well, I had the only key for that.

Q. Was the because you didn't want Atlantic representatives to see the batteries?

A. Well, it wasn't good for them to see them.

• • • • •

By Mr. Kelaher:

Q. Did you at any time purchase from—let me ask you first from whom did you purchase your Goodyear TBA supplies?

A. Mainly from Ed Parris. Approximately 85 percent of it.

Q. I beg your pardon?

832 A. Approximately 85 percent of it.

Q. And could you have purchased Goodyear tires at a lower price than you were paying Mr. Parris?

A. Yes.

Q. Do you recall how long it took for your Goodrich tires and battery stock to become depleted?

A. Oh, I would say approximately about five or six months.

Q. And after that—

A. After all, when a man sees a Goodyear sign up, he expects to buy Goodyear tires, so you try to deplete it as fast as you can and sometimes you give a man a better price on a tire to get rid of it.

Q. And after that you never purchased Goodrich tires or batteries?

A. No.

Q. Now, who was your principal supplier of accessories?

A. Mr. Parris.

Q. And did you purchase accessories from other jobbers or other sellers of TBA in the area?

A. Yes.

Q. Would you name those suppliers, please?

A. V. J. Auto Parts, Auto Gear, and Auto Radiator.

833 Q. And what products did you purchase from V. J. Auto Parts?

A. Mostly Barsleak.

Q. And was any comment ever made by an Atlantic salesman with respect to your Bars stock?

A. Well, they didn't like it on the shelf and I asked if we could put it on the back shelf—

Mr. Thompson: May we have an identification of who the salesman was at the time?

By Mr. Kelaher:

Q. Do you recall approximately when that request was made by Atlantic?

A. I would say in '53, '54, the end of '53 or the beginning of '54. The name I couldn't tell you because we had a rough territory and the salesmen didn't last too long there. I mean, it was mostly price.

Q. Now, can you give us the name of some of the Atlantic salesmen who called on you?

A. Al Vayda, Joe Connelly, Joe Muldoon. I think there was another one in there.

Q. Was there a Mr. Petrison?

A. Well, there's one between Joe Muldoon and Steve Petrison, I believe.

Q. And was it one of those four men who made this comment about Barsleak?

A. Yes.

834 Mr. Thompson: Which one, please, Mr. Kelaher?

The Witness: That I couldn't tell you, after all, I can't remember back that far.

By Mr. Kelaher:

Q. It would be the salesman who was calling on you at the time you specified, is that correct?

A. That would be the one.

Q. Mr. Booz, did any Atlantic representative ever show you what is known as the "black book"?

A. Well, don't state it that way, that sounds pretty bad, it's more or less of a record book.

Q. I mean the color, I don't mean to imply what you are thinking, it's kept in a black binder.

A. Yes, it's a black binder and it's—it keeps all your TBA records in there, your gasoline and oil, what you purchase each month.

Q. Would the TBA—would it show specifically your TBA purchases as an Atlantic dealer?

A. That's right, what you bought from your Atlantic supplier.

Q. And in your case it would show what you bought from Mr. Parris?

A. That's right.

Q. And would it show any other purchases you might have made from other suppliers of TBA?

A. No.

835 Q. And would they ever make any comments about your TBA purchases?

Mr. Thompson: Who is "they" please, Mr. Kelaher?

By Mr. Kelaher:

Q. By "they" I'm talking about an Atlantic representative.

A. They would say, "You're a little low this month, you're going to be a little under this year; can we get it up to show a little bit of an increase," which we always did like to do.

Q. And they would refer—and they were referring to your TBA purchases from Mr. Parris?

A. That's right.

Q. Now, would you state who made such statements to you in the Atlantic organization?

A. I couldn't give you a truthful answer.

Q. Would Atlantic salesmen, Muldoon for example, have made such statements?

A. Well, out of all of them he'd be more than likely.

Q. Did Mr. Parris ever make such statements?

A. No.

Q. But as I understand it they had an accurate record from your purchases from your Goodyear TBA supply point?

A. That's right.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examine.

836 *Cross-Examination by Mr. Thompson.*

Q. Mr. Booz, am I not correct that you also were the lessee of another Atlantic Station, Naaman's Creek and Meeting House Road in Ogden?

A. That's right.

Mr. Kelaher: I beg your pardon, would you please read the question and answer, I didn't catch it.

(The reporter read the question and answer.)

By Mr. Thompson:

Q. And that was a new station which Atlantic was just opening up when you took it?

A. That's right. That was a brand new station.

Mr. Kelaher: Would you fix the time, please?

Mr. Thompson: I can ask the questions and I will come to it in my own inept way if I may.

Mr. Kelaher: I defer to the distinguished professor of evidence of Pennsylvania.

By Mr. Thompson:

Q. And that I think was about June of 1956, wasn't it, Mr. Booz?

A. That's right; June of '56, and November 15, '56.

Q. And you requested Atlantic to transfer you to that new station, didn't you?

A. That's right, due to price condition along Uycomb Mac Dade Boulevard.

837 Q. That is a tough place for a service station operator, isn't it?

A. That's right.

Q. Price wars all the time?

A. I figured there wouldn't be any out there, but, of course, there wasn't any customers out there either. (Laughter.)

Mr. Kelaher: Would you read the answer, please?

(The reporter read the answer.)

By Mr. Thompson:

Q. After you had been there a few months you had a proposition from Sun and wanted to take that and asked Atlantic to let you out of your lease. Is that about the story?

A. That's correct, it was a much better lease and a much better rent set up, and much more gallonage.

Q. As I understand it Atlantic was mightly sorry to lose you, Mr. Booz?

A. Well, I hope so, because I had good relations with them and I left under good terms, I hope.

Q. I show you, sir—

Mr. Thompson: Would you mark that please? That will be A-4.

(The document referred to was marked Respondent's Atlantic 4 for identification.)

Mr. Kelaher: May we see that?

Mr. Thompson: Yes, indeed. (Handing document 838 to counsel for the Commission.)

By Mr. Thompson:

Q. I show you a document marked A4 identified by the phrase at the top, "Mutual Consent of Cancellation," and ask you whether that is your signature on the document? (Handing document to the witness.)

A. Yes, it is.

Q. And I call your attention to the fact that the document says "Dealer received better offer from competition," and that was the reason why you left Atlantic, was it not?

A. That's right.

Mr. Thompson: I think, sir, I cannot offer this document at this time; I shall have to do so as part of Atlantic's case later.

At that time I think it is understood that I may substitute a photostat?

Mr. Kelaher: That is correct.

By Mr. Thompson:

Q. Mr. Booz, are you old enough to remember the old baseball phrase "Tinkers to Evers to Chance"?

A. No, I'm not quite that old. (Laughter.)

Q. You were Texaco to Atlantic to Sun, weren't you?

A. That's right.

Q. As a matter of fact, a good operator like yourself always has opportunities to go with other companies, isn't that true.

839 A. That's right.

Q. And you and George Hill have a happy partnership together now at a Sun station?

A. Do you realize it's one of the happiest relations we ever had?

Q. Sharing the responsibilities, neither of you have to work quite so hard, do you?

A. Let's put it this way: we are both working just as hard but better pleasure, we don't have as much pressure.

Q. Share the responsibilities?

A. Share the responsibilities and pressure from the company itself.

Q. Sun's not as aggressive as Atlantic, is it?

A. Well—

Mr. Kelaher: What was the question?

A. That's a way of putting it.

Q. Maybe that's why we sell more gasoline here than they do.

A. That's possibly true. We're pumping 50,000 and the station across the street, which is Atlantic, is only pumping 18,000.

Q. I'm sorry to say that I can't say truthfully I wish you luck. (Laughter.)

A. Well, if I may, I mean, this doesn't have any bearing on the case, I know—

Mr. Kelaher: Well, if it doesn't I suggest it not 840 be put into the record.

The Witness: Like a farmer, you have to plant a seed before you can harvest the crop. If Atlantic—

Mr. Thompson: The Examiner wants you to get back to the case, Mr. Booz.

By Mr. Thompson:

Q. Now, Vayda was the first salesman that you had on Mac Dade Boulevard?

A. That's right. He was a very good salesman.

Q. He didn't last as your salesman very long, did he, because Joe Connelly took it over.

A. That's right. Mr. Al Vayda went to a better job.

Q. With the Ford Motor Company?

A. That's right.

Q. And Joe Connelly took over, he was—

A. That's right, he was another good salesman.

Q. And he also went to a better job?

A. That's right.

Q. With Atlantic?

A. That's right.

Q. And then Muldoon took over for a very short time?

A. Very short.

Q. And then was followed by Steve Petrison?

A. No, I think there was another man in there, I'm not sure. He wasn't there too long, maybe it was a vacation for somebody else, but I'm pretty sure there was an-
841 other salesman in there.

Q. According to records I have—and see if this refreshes your recollection—Joe Connelly was your salesman from July of 1952 until sometime in 1954.

A. Yes.

Q. Now, you did make a reference to an incident which happened with a salesman in '53 or '54. Would it have been Joe Connelly you were talking about

A. If he was the salesman at that time that is who it would have been. That I can't remember.

Q. Did Joe every try to push you around?

A. No, Joe was very good.

Q. Well, how about Steve Petrison, did he ever push you around?

A. No, he didn't have that much of experience at the time.

(Laughter.)

Q. Fellows like Joe Connelly, Steve Petrison, of course, tried to sell you TBA, didn't they?

A. Pardon, what was that question?

Q. I said, Joe Connelly, Steve Petrison, Vayda, the various salesmen you had, tried to sell you TBA, didn't they?

A. That is right, yes, sir, they did.

Q. As a matter of fact, they carried TBA order books, didn't they?

A. Not all the time. Once in a while they had for-
842 gotten them and left them home; mainly that wasn't

their job to sell TBA, they would—DuPont had a run on something, so Joe would take half the territory and maybe Ed Parris would take the other half, the same way with Steve and Ed Parris, they would take half, and you might buy five or ten cases of DuPont or you might get in on a spring dating on tires.

Q. During those promotions and things like the spring dating on tires, the Atlantic salesmen were out trying to sell the Goodyear line, weren't they?

A. Yes.

Mr. Kelaher: Would you restate that question, please. This is getting to be a closed conversation over there, I am sorry to say. I know it is inadvertent. We can't hear what is going on.

(Question and answer read.)

Mr. Thompson: That is all for Atlantic.

Mr. Correa, do you have any question?

Mr. Correa: No questions.

Mr. Kelaher: May we have a moment, your Honor?

Redirect Examination by Mr. Kelaher.

Q. Mr. Booz, on cross-examination you were asked about your relationship with George Hill and you stated that it was very enjoyable because there was less pressure, among other things, there was less pressure from the oil company.

843 A. That is right.

Q. Well, Atlantic is like this gentleman here said, more aggressive, they are after you more to stock. The more stock you have, the more you are going to sell because you have got to sell to get your money to pay for the stock that you have got.

Q. So you are referring to more pressure to purchase Goodyear TBA?

A. That is right. Yes, it would be Goodyear TBA, that is all they sold.

Mr. Kelaher: That is all, your Honor.

Recross Examination by Mr. Thompson.

Q. Are these fellows pretty good TBA salesmen, Atlantic fellows?

A. They have got to be. I was first in the territory; I think Steve can tell you that, in 1954 I was first in tires, second in batteries and third in accessories. And that is out of 28 stations. And I was, I believe, the fourth highest in gallonage.

Q. When you sell TBA it is pretty profitable; you get a pretty good margin on TBA, don't you?

A. Not necessarily. On tires you are working approximately on about—I had it figured out one year there was 19 and a half percent, which isn't very good at all. Of course, you can never sell tires at list price, there is always someone from the Goodyear company or somebody else that is going to knock you down on it. If you could sell from list, you would only have to sell two tires a week, but that is impossible, so you sell a dollar over key and get your ten percent plus your two percent and discount, which comes out approximately to 19 percent, when you figure in your used tires.

844

Q. Then your Goodyear tire, of course, has to be competitive with the Kelly Springfield next door and the Goodrich tire?

A. Well, the Goodyear tire can't be competitive with Kelly, because we buy Kelly at a cheaper price. We can get quantity prices, which you can't do with Goodyear. You get a flat ten unless you bought some place else besides Ed Parris and then you get 10, five, and two, which I used to buy my white-walls there and my black-walls off Ed Parris. That was the best way I knew of keeping track of it.

Q. How about your mark-up on accessories, isn't that higher than the mark-up on tires?

A. That, too, is also how you buy. If you wait for your sales to come off, why you can buy at approximately 45 percent mark-up on it. If you don't, why it runs around 30 or 33 and a third. It all depends on who you buy it off of.

Q. A service station couldn't operate today without TBA though, could it?

A. No, that is definite. No, they couldn't.

845 Mr. Thompson: Thank you very much.

Further Redirect Examination by Mr. Kelaher.

Q. Mr. Booz, if I understood you correctly, you stated you could buy Goodyear tires at lower prices at suppliers other than Mr. Parris.

A. That is right. I could buy them at ten, five, and two, once in a while 10, 10, and two. And off of Lee you could get three tens and two.

Whether you bought one, 50, or a hundred from Ed. Parris, you would get 10, two, two-percent cash at the end of the month, 30 days.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Correa: No questions.

Hearing Examiner Kolb: That is all, thank you very much.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Balloran, please.

846 FRANCIS J. BALLORAN was called as a witness for and on behalf of the Commission and, having been first duly sworn, assumed the witness stand and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Francis J. Balloran; 4312 Florida Avenue, Florida Park, Newtown Square, Pennsylvania.

Q. And at one time did you operate an Atlantic service station?

A. Yes, I did.

Q. And were you a lessee dealer?

A. Yes, sir.

Q. And during what period was that station operated?

A. September 23, '53, to January 21, '57.

Q. And where was the station located?

A. Route 252, on Westchester Pike, Newtown Square.

Q. And would you tell us whether you were from Newtown Square—how long did you live there?

A. Forty-one years.

Q. Forty-one years?

A. Originally from Philadelphia.

Q. And—

847 Mr. Thompson: He doesn't look old enough to have been there 41 years.

The Witness: Well, I am just 60, young man.

Mr. Thompson: Thanks for the compliment.

By Mr. Kelaher:

Q. And were you active in civic affairs in Newtown Square?

A. Yes, sir. Scout Master; Fire Chief; Fire President; everything but the Mayor of the Town, pretty near.

Q. And did you serve in the Armed Forces of the country?

A. Both wars.

Q. Both World Wars?

A. Yes, sir.

Q. And did you have any sons who served in World War II?

A. Two; and one daughter, a nurse.

Q. I think you are to be congratulated on your record and your family's record.

Now, you stated that you began operating the Atlantic station in September—did you say September?

A. Twenty-third, yes, sir.

Q. September 23, 1953, and at that time what TBA did you carry?

Did you carry tires?

A. Yes, sir.

Q. Did you carry batteries?

A. Yes, sir.

848 Q. Did you carry accessories?

A. Everything.

Q. And what brand did you carry?

A. I carried Goodyear tires, Goodyear batteries; I carried DuPont accessories. Well, I carried all TBA that was furnished by Mr. Miller, our supplier.

Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller?

A. That's right.

Q. Why did you buy your Goodyear TBA from Mr. Miller?

A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.

Q. Was it a matter of your own choice?

A. No, sir.

Q. In or about November of 1955, did a Mr. Arnholt and Mr. Hayes visit you?

A. Yes, sir.

Q. And what was the purpose of their visit?

Mr. Correa: Objected to, if your Honor please.

By Mr. Kelaher:

Q. Would you please state the conversation you had with those gentlemen?

Hearing Examiner Kolb: Objection overruled.

A. Do you want me to answer that?

Mr. Kelaher: Yes, you may answer.

849 A. The conversation the main part of that day was that Mr. Arpholt said they would not renew my lease as of January the first, so I wanted to find out why. I asked why, and they couldn't tell me. They just said it was a lot of little things. Well, I had never been a gasoline station operator; I had taken this for my sons in the town and I knew very little about service stations, to be frank about it, only the pulling of the gas, but I figured that was —it was a good company. Their product was good, and I figured I'd take that station and build it for the boys.

Q. How many boys did you have?

A. Four.

I asked for a leave of absence from the U. S. Navy Department to get them started for the first year or two, and then that's what happened. Now, they said they wouldn't renew the lease from January the first, and my object from that point on was to find out why, and I tried all methods to find out.

Q. And at that time did you call on any of your neighbors for assistance in the matter?

A. Yes, sir. Senator George Wharton Pepper, who has been a personal friend of mine for about 40 years.

850 By Mr. Kelaher:

Q. Did you later have a conference with Atlantic officials concerning the matter?

A. Yes, sir. I was sent from Mr. Pepper's office to Atlantic, 260 South Broad Street.

Q. And what happened when you arrived at 260 South Broad Street?

A. Well, we went over with Mr. Brennan and Mr. Sanborne; we went over the different things that happened on the station; up to that time I had never received no letters or no complaints of anything, and Mr. Brennan asked me to hold off until he got some things straightened out, and he would come out to see me, which he did, about 36 hours —the second morning after I was there he came out to the station.

Q. This is Mr.—who are you speaking about?

A. Tom Brennan.

Q. And thereafter, did Mr. Brennan or anyone else from Atlantic come out to see you?

A. Yes, sir. There was Mr. Sanborne with him, and my recollection is that the salesman, Tom Hayes, Tom always came out.

Q. And at that time was anything done about your lease?

Mr. Thompson: Could we fix the approximate date,
851 Mr. Kelaher?

By Mr. Kelaher:

Q. Yes. I thought we had.

Would you state the approximate date you were visited by Mr. Sanborne, Mr. Brennan and Mr. Hayes?

A. I would have to take it from the letter from Mr. Colley.

Mr. Correa: May we inquire what letter? The witness made a gesture, if your Honor please, said the letter to

Mr. Colley there. I just wondered what he was talking about.

(The document was marked Commission's Exhibit 315-A and B for identification.)

By Mr. Kelaher:

Q. Mr. Balloran, I hand you a document identified as Commission's Exhibit 315-A and B and ask you to state what it is. (Document handed to the witness.)

Mr. Thompson: It is polite to show it to opposing counsel.

Mr. Kelaher: I thought after I identified it we would.

A. It was a letter written to Mr. Colley to find out what was happening—

Mr. Thompson: Objected to.

Mr. Kelaher: I just want you to say who it is from and to.

852 The Witness: From me to Mr. Colley, Vice President of Atlantic Refining Company.

By Mr. Kelaher:

Q. What is the date?

A. December 14, 1955.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I will now offer Commission Exhibit 315-A and 315-B into evidence.

Hearing Examiner Kolb: Any objection?

Mr. Thompson: No objection, but I don't think it has anything to do with the case.

Hearing Examiner Kolb: The letter is received in evidence—

Mr. Correa: I am sorry, if your Honor please. I realize we are phantom respondent here, but I still guess we had better preserve our record notwithstanding that, and our

character is well exemplified by this letter which is apparently a matter between the witness and Atlantic Refining having chiefly to do with the witness' sales of petroleum products and having nothing to do with TBA or the respondent Goodyear, or anything relating thereto. So I think as the respondent Goodyear, the matter is completely immaterial, irrelevant, and incompetent. I would like to note the objection.

853 Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence as Commission's Exhibit 315-A and B.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 315-A and B for identification, was received in evidence.)

Mr. Thompson: Are you going to substitute a photostat?

Mr. Kelaher: If that is agreeable we can do that.

By Mr. Kelaher:

Q. Now, this letter, CX 315-A and B, is dated December 14, 1955. Does that fix in your mind the visit of Mr. Sanborne, Mr. Brennan and Mr. Hayes?

A. Yes. It was just about a week later when those men come out.

Mr. Thompson: What was the date of that letter, Mr. Kelaher?

Mr. Kelaher: December 14, 1955.

By Mr. Kelaher:

Q. And at that time were you presented with a three-year lease?

A. Yes, sir.

Q. Did you accept the lease?

A. Yes, I did.

Q. Now, Mr. Balloran, you stated that you person-

854 ally were not too familiar with the service station business?

A. That is true.

Q. Did you have any employees in the service station?

A. Yes, sir, I had nine.

Q. Nine employees?

A. Yes, sir.

Q. And were any of your sons among the nine?

A. Yes, sir, two of them.

Q. Two of your sons?

A. Yes, sir.

Q. And who managed the station, principally?

A. My oldest son was the one that—I started to train him to manage the station by sending him to school and taking over, but he thought police work was better, so he quit the gas and went in the police work.

Q. What was his name?

A. Albert, Albert Balloran. Then I put my next son in.

Q. What is his name?

A. Charles. And left him take over. At that time I was not coming back for about six months.

Q. At that time what—

A. I was knocked out for about six months. I couldn't even go to work for six months.

Q. Did you personally work in the station from time to time?

A. I worked in the station six months from the 41
855 months I had it. I worked in that station 14 to 17 hours a day, seven days a week.

Q. So you did become familiar with service station operations?

A. I bet you.

Q. Now, you stated a few moments ago that you were furnished Goodyear TBA by a Mr. Miller.

A. Ernie Miller.

Q. E. F. Miller. Is he the Goodyear TBA supply point in this area?

A. Yes, sir; on Garrett Road.

Q. When you say that, you mean your purchased Goodyear TBA supplies?

A. That is true.

Q. Did you want to purchase TBA from Mr. Miller?

A. Not truthfully, no.

Q. Why didn't you?

A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to send a man with a truck and waste an hour and a half to go pick it up and bring it back.

Q. Could you have purchased Goodyear tires at a cheaper price in the area?

A. Yes, sir.

Q. What was the name of the supplier?

856 A. Hires and Kocher.

Q. And why didn't you purchase Goodyear tires from Hires and Kocher?

A. Why didn't I?

Q. Why didn't you?

A. I did.

Q. And did you purchase them in large quantities?

A. Yes. Their records will prove that I purchased tires in pretty large quantities.

Q. And did you purchase in large quanties from Mr. Miller?

A. As far as I could go, yes, but the—why I purchased from Hires and Kocher was a simple—I could get any tire I wanted in 20 minutes and I could get them cheaper than I could buy them off of Mr. Miller.

Q. Was anything ever said to you by Atlantic representatives about that situation?

A. No, sir, not offhand.

Q. Now, did you ever purchase any other brand of tires?

A. I practically purchased everything in the tire line. When my customers wanted Firestone, I bought a Firestone tire; if they wanted Royal—it was according to what the customer wanted. I was there to give them service and give them what they wanted.

Q. Were any comments ever made by Atlantic sales-
857 men about your purchases of other brands of tires?

A. Not directly, no, sir.

Q. Did you purchase U. S. tires from Harris and Leonard?

A. That's right.

Q. Were such tires advertised, U. S. tires?

A. Not out of my place they weren't.

Q. Where did you keep such tires?

A. Back on the racks, back on the oil racks where they couldn't be seen.

Q. Seen by whom?

A. Any of the Atlantic men that came in there, the bosses.

Q. Who came into your station?

A. Well, the main man that used to come into my station was Mr. Thomas Hayes, my salesman, and Mr. Arnholt would come out once in awhile.

Q. Would they make comments if they saw them?

A. I don't know.

Mr. Correa: I object.

The Witness: I wouldn't know that. I never displayed them; I never displayed any other make of tire.

By Mr. Kelaher:

Q. Did you purchase Lee tires?

A. Yes, sir.

Q. And where did you keep them?

A. On the racks, sir/ The Vice President of that
858 company lives right in my town. If he wanted Lee tires or his customers wanted Lee tires, I purchased Lee tires.

Q. And did you purchase U. S. tires on a regular stocking basis or on a fill-in basis?

A. Possibly all the off-brand tires were bought on the customers fill-in job.

859 Q. Would you state what you mean by "off-brand tires"?

A. Well, I'm handling Goodyear to begin with, if I buy a Royal or Lee or Firestone, or any make, to me that's an off-brand tire.

Q. So that you would only buy that type of a tire on a fill-in basis?

A. That's right. I can give you the men's name that ever bought them tires.

Q. Now was Mr. Miller's service on batteries?

A. The same way.

Q. Same way. What do you mean by that?

A. Well, you could get them or you couldn't get them, so you'd have to go somewhere else to buy them.

Q. Did he have them in stock in his place of business?

A. Not when I wanted them half the time.

Q. Where did you obtain the batteries if you couldn't obtain them from Mr. Miller?

A. Lee Tire, on Lancaster Pike.

Q. Did you always ask Mr. Miller first?

A. It was always a fact in our station that either one of the boys or any one of the fellows helping them, the assistant helping them would call Miller first before anything like that was bought.

Q. I see. What was the reason for that?

A. Well—

860 Q. Why did you call Miller first?

A. When you have a service station and you have men on there, a customer comes in there and wants to know the price of this or that, or what kind of battery, that fellow don't know the price, he's in a wrong position, if he has to run to me to ask for it or to know when to order, why it's wrong, I think.

Q. Who was the salesman who called on you from U. S. Tires, do you recall?

A. That was Bob—I don't know what his last name is.

Q. Would it refresh your recollection to mention that it might have been Bob Drennan?

A. Little Bob Drennan, he was the fellow that always came up there.

Q. And did you purchase anything from—well, did you do any recapping business for Mr. Drennan?

A. Plenty of it.

Q. And at that time was Mr. Miller in the recapping—did he have recapping facilities?

A. Yes. We'd just got a letter notifying us that Miller was going to start in the recapping business.

Q. At what time was that?

A. Oh, Lord, I'll never tell you no more, it was all approximately—all the way up. But I dealt with Harris and Leonard from the first day I—that he came around there.

• • • • •

862 By Mr. Kelaher:

Q. Now, you stated that you left the Atlantic station in January of 1957?

A. Yes, sir.

Q. Would you please state your reasons for leaving the station?

863 A. Pressure.

Q. Pressure?

A. That's right.

Q. What type of pressure?

A. Do you want to go back on the whole story?

Q. Was there any pressure on TBA?

A. The only pressure on TBA is when the monthly thing came around that they could generally tell you every nickel and dime that I bought off of Miller but nothing off of anybody else.

Q. And when you say "they" who are you referring to?

A. My salesman Mr. Hayes.

Q. And would he comment on your purchases from Mr. Miller?

A. Well, he could show me right there in figures what I purchased from him.

Q. And would he ever comment as to whether that was high or low, or so on?

A. Well no, not off-hand, it wouldn't be—it's just a thing of being told that you weren't buying the stuff you bought where you belonged. That's the way it meant to me, I don't know what it meant to them.

Q. And you considered that pressure to buy from Mr. Miller, right?

A. Positively.

Q. Mr. Balloran, did Mr. Miller have recapping 864 facilities when you began business in September of 1953?

A. I wouldn't be able to say that, but if he didn't he'd have them recapped for you, I believe that. I don't know whether he had his own facilities to do that or not, but I know if we sent them in there he'd have them done.

Q. Was it after that that you received the notice to the effect that he had recapping facilities?

A. That's right.

Q. And can you fix in your mind now approximately when that time was?

A. About a year and a half after I opened the station.

Q. And up to that time had you been having your recapping done by Harris and Leonard?

A. Harris and Leonard, right.

Q. Now, did you continue to have your recapping done by Harris and Leonard, by Mr. Miller?

A. Yes, practically all the way through until the last day in what I had left over he took back and returned my money for them.

Q. Who was that?

A. Harris and Leonard.

Q. Now, with respect to your purchases of batteries, in what quantities did you purchase Goodyear batteries from Mr. Miller?

A. Fifteen with one free every time; that's the way it worked out, if you bought 15 you had one free, you got a cheap battery free.

Q. Did you always request that many?

A. No, sir; sometimes we used to send in for two or three, four or five, according to different batteries that was needed in the automobiles. Like to keep so many of each type on hand to fit the different cars.

Q. And if you sent in for two or three as you mentioned, would you sometimes get 15 batteries back?

A. No, they'd try to sell you 15, but you didn't need that many.

Q. And would you sometimes keep the 15 or return them?

A. Yes, I'd keep them. We'd get rid of them, but half the time you'd have them laying around, especially the wet batteries they were the worst to lay around.

Q. They not only tried to sell them to you, they did sell them to you?

A. Well, that was their job.

Mr. Correa: I object, if your Honor please, as to the form of the question. It's cross-examination. The counsel

gets the answer; he doesn't like the question, he starts trying to force the witness to give him an answer. I object to this form of question.

Hearing Examiner Kolb: It's rather confusing, his answer. He said laying around. I think it's proper.

866 The objection is overruled.

By Mr. Kelaher:

Q. Did any of your employees ever have conversations with Mr. Hayes or Mr. Arnholt?

Mr. Thompson: I object to that, sir. How could you possibly know.

Hearing Examiner Kolb: Can you answer yes or no?

The Witness: Yes.

By Mr. Kelaher:

Q. And did such employees report to you about such conversations?

A. They told me just what took place.

Q. And did any of the reports concern TBA?

A. No, they did not.

Q. Are you presently an Atlantic dealer, Mr. Balloran?

A. Yes, sir. We have a station at Zieglerville, Pennsylvania, Route 29. That's a two pump station.

Q. Are you presently a contract dealer or lessee dealer?

A. I'm my own dealer this time.

Q. What do you mean you are your own dealer this time?

A. No one is going to tell me what to buy or sell from this station.

Q. Was anyone telling you what to buy or sell from the last station?

Mr. Correa: I object, if your Honor please. I

867 think the witness' testimony speaks for itself.

Hearing Examiner Kolb: The objection is overruled.

By Mr. Kelaher:

Q. You may answer.

A. Let me have that question again.

Mr. Kelaher: Will you read the question, please?

(The reporter read the following question:

"Question: Was anyone telling you what to buy or sell from the last station?")

By Mr. Kelaher:

Q. Did anyone tell you what to buy or sell at the last station?

A. Yes, they did. You couldn't sell anything on that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that its representatives are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station, I know that. Anybody knows that. The salesman knew it. That's why I left the station.

Mr. Kelaher: That's all, your Honor.

The Witness: If I invest my own money, I want to buy what I want to buy; I don't have nothing against the product, the thing is you have to do certain things and if you want to do that you might as well go to Russia.

868 By Mr. Kelaher:

Q. And you are stating that you had to buy Goodyear TBA from Miller, is that correct?

A. That's true.

* * * * * *

Mr. Thompson: Now, are you through, Mr. Kelaher?

Mr. Kelaher: I'm finished.

Mr. Thompson: This is one of the surprise witnesses, your Honor, as you know.

Mr. Kelaher: Your Honor, this is the only surprise witness we have brought in.

869 Mr. Thompson: This is one of the surprise witnesses I understand there are going to some more.

Mr. Kelaher: There is only one in Philadelphia, one in Wilmington.

Mr. Thompson: Under your Honor's ruling I think we may defer cross-examination until Friday—or was that a stipulation with you, Mr. Kelaher?

Mr. Kelaher: We have no objection if it's convenient for the witness to come back.

The Witness: I have to be at a settlement on Friday at 1:00 o'clock, that's at 69 Upper Darby.

Mr. Kelaher: Could you be here later in the day?

The Witness: Yes, sir; but I must be at the settlement for 1:00 o'clock.

Mr. Kelaher: What time would be convenient for you? Three o'clock?

The Witness: Give me an hour to get down here.

Mr. Kelaher: Could you come down in the morning?

The Witness: I'm at Zieglerville tomorrow unless it's absolutely necessary.

Mr. Thompson: I meant Friday morning.

The Witness: Friday morning, as long as I can get back there at the settlement, it's the Land Title—

Mr. Kelaher: If you could you come in any time convenient to you Friday morning. Could you come in at 10:00?

870 The Witness: Right, I'll be here at 10:00 o'clock.

Mr. Kelaher: That is agreeable then. That's all for the present, Mr. Balloran.

Hearing Examiner Kolb: The witness will be excused until Friday morning.

Mr. Correa: Off the record if I may, your Honor.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: If it please the Court: At this time I move the recall for further cross-examination of the witness Matthews and I base my motion upon the following grounds. We were given notice that the witness Matthews would be a witness only on Thursday before he appeared, despite the fact that apparently the witness had given a signed statement to the counsel supporting the complaint as long as four years ago and had not been in the employ of or had not been a lessee of the Atlantic Refining Company since May 7th, well over a month ago.

In view of the shortness of time we were unable, adequately, to search old files relating to the testimony of the witness as respects Goodyear and particularly in respect of the witness' claim that Goodyear, without his consent or commission, and against his will, in fact, had gone into his place of business and installed certain signs.

871 We have now been able to complete the search of these records and the company which under contract was charged with installing these signs in service stations has produced or has furnished us a form on which appears —it is a carbon copy of the form—and on which appears purportedly the signature of Matthews, underneath the legend, a printed legend reading in part: "This installation meets with my entire approval. No damage has been done to my property." Dealers signature, Matthews.

Now, I may say that we have compared the signature appearing hereon with the signature appearing on Commission's Exhibit 294-A and -B, and at least on inspection this appears to be an authentic signature, assuming that the signature on the exhibit is and that was, I believe, identified by the witness as being his veritable signature.

So, for these reasons we wish the recall of the witness for further cross-examination in the nature of impeachment.

Hearing Examiner Kolb: As I recall, Mr. Correa, you asked the witness some questions about the signing of this

document indicating to me at the time that you had some sort of a signed document.

Mr. Correa: No, if your Honor please.

Hearing Examiner Kolb: You should have produced it at the time you asked the witness about it.

872 Mr. Correa: If your Honor please, we did ask the witness whether in his absence, because all we had was his version of the facts at that time, whether in his absence this employee of his who was there had signed a document similar to this because, of course, we knew of the practice, and the witness, as I recall his testimony, said "I don't know. If he did he didn't tell me," which left the matter sort of up in the air. We did not know, of course, at that time that in truth and in fact the witness himself had signed such a document.

Mr. Kelaher: Mr. Examiner, two points I would like to make.

First, to get the record straight, when we notified counsel. I personally made a long distance call on January 17th to Mr. Ballard and to Mr. Mason to notify them that Mr. Matthews would appear as a witness. That was the first day that I knew that he was going to be called as a witness.

Hearing Examiner Kolb: What date was that?

Mr. Kelaher: That was on January 17th—

Hearing Examiner Kolb: January—

Mr. Kelaher: I mean June 17th, which was a week ago, and in so far as the signature is concerned, I would like to call your Honor's attention to the testimony of Mr.

873 Hinderscheid, Vice President in Charge of Sales of Lee. I recall showing him a document with his signature on it and apparently it conformed with his signature on other documents and he stated that he didn't sign it. So, I don't think you can just presume that Mr. Matthews signed this statement.

Mr. Correa: Well, if your Honor please, I submit that in any court in the land you are permitted to offer an identified signature and a questioned document and permit a jury to look at them both and decide, or a judge or any other trier of the fact. I never heard such a ridiculous proposition.

Hearing Examiner Kolb: The witness was called, you were notified a week ahead of time, the witness was examined, cross-examined and released. I think the request comes too late on that at this time.

Mr. Correa: All right.

Mr. Kelaher: I move we adjourn until 2:00 o'clock.

Hearing Examiner Kolb: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:18 o'clock p.m., the hearing in the above-entitled matter was recessed to reconvene at 2:00 o'clock p.m., this day.)

874 Afternoon Session.

(2:10 p.m.)

Hearing Examiner Kolb: Come to order.

Mr. Dias: I call Mr. Franks.

WILLIAM LEE FRANKS, was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Mr. Correa: If your Honor please, before we get into this witness, there is one matter of straightening out the record that I would like to make clear.

Just before we adjourned for lunch, I made a motion for the recall for further cross-examination of the witness Matthews and stated in the record my ground.

Now I should like that statement to stand as an offer of proof and in connection with that statement or in the course of that statement I referred to a paper signed by the witness Matthews, and I should like to have that paper at this point marked for identification, to stand as a part of my offer of proof.

Hearing Examiner Kolb: The document will be marked Respondent's exhibit G-1 for identification.

(The document referred to was marked Respondent's exhibit G-1 for identification.)

Hearing Examiner Kolb: Let the record show the 875 document marked for identification Respondent's exhibit G-1 will be received as part of the offer of proof.

(The document referred to, heretofore marked RESPONDENT'S EXHIBIT G-1 for identification, was received as an offer of proof.)

Direct Examination by Mr. Dias.

Q. Mr. Franks, will you state your full name and business address?

A. William Lee Franks, 8 East 9th Street, Chester, Pa.

Q. And the name of your company?

A. Auto Parts and Radiator Company.

Q. How long have you been with Auto Parts, Mr. Franks?

A. Five years.

Q. And in what capacity, sir?

A. Approximately two and a half years on the inside as a counter man and two and a half years on the outside as a salesman.

Q. Which two and a half years have been on the road?

A. The past two and a half years.

Q. What is your sales territory right now?

A. My sales territory right now is Media, Newtown

Square, West Chester, Folsom, Springfield, Paoli, Bryn Mawr.

Q. Did you have a different sales territory at one time?

A. Yes, I did.

Q. What was that, and over what period?

876 A. That was prior to January 1st, of this year.

Q. And what was that territory?

A. That territory consisted of Clifton Heights, Drexel Hill, Collingdale, Springfield, Folsom, and Woodlyn.

Q. And you worked that territory about a year and a half, is that correct? How long did you work that?

A. Just about two years.

Q. Well, confining your remarks then to that period of time prior to January 1, 1957, what type customers did you solicit?

A. Service stations, automobile dealers, independent repair shops, body shops and contractors.

Q. And among the service stations, were there Atlantic stations?

A. Yes, sir, there were.

Q. Can you tell us about how many Atlantic stations there were in your territory?

A. Nine.

Q. Did you sell to any of the nine?

A. Yes, sir, I did.

Q. How many?

A. Six.

Q. And can you tell us how often you called on the six?

A. Very faithfully once a week.

Q. And what about the other three?

A. Periodically.

877 Q. Did you call on them periodically during the two-year period?

A. Not during the whole two-year period.

Q. Have you ever sold those three?

A. No, sir.

Q. Of those three, referring to those three, did they handle TBA products?

A. Yes, sir.

Q. Do you recall the type brands they had, the brands they handled?

A. Goodyear tires, batteries, fan belts, hoses.

Q. Was that true of the three?

A. Yes, sir.

Q. Now the six that you sell to, can you tell us what you sell to each of them and can you name the stations?

A. Bryant's Atlantic station, MacDade Boulevard and Fairview Road in Woodlyn, Pennsylvania.

Q. Bryant?

A. Yes.

Q. What did you sell to that station?

A. The only thing I sell Bryant is mufflers, tail pipes, brakes, and so forth. I sell him no TBA items.

Q. Do you attempt to sell him those items, that is, TBA items?

A. Yes, sir.

878 Q. Does Bryant handle TBA?

A. I beg your pardon?

Q. Does he handle TBA?

A. Yes, sir.

Q. What brand?

A. Goodyear tires, batteries, fan belts, Prestone anti-freeze, DuPont chemicals.

Q. Can you name another station?

A. Russell's Atlantic station.

Q. What is his address?

A. 2319 Marshall Road, Lansdown, Pennsylvania.

Q. And what do you sell to him?

A. Mufflers, tail pipes, ignition.

Q. Have you tried to sell batteries and accessories to that station?

A. Yes, sir.

Q. Have you been able to sell those to him?

A. In the year 1955, when I called on Smedley Rusell, I received a pre-season order for Prestone antifreeze from him. During October of 1956 when I returned to get another pre-season order for the winter of 1956, at the time he wasn't ready to talk about antifreeze. A few weeks later I walked in and he had 10 cases sitting on the floor and I asked him why he didn't buy them from me, and his explanation was that they put pressure on him, and he 879 in turn still gave me an order for 10 cases of antifreeze.

Q. Who was he referring to when he said they put pressure on him?

A. The Atlantic distributor.

Q. Referring back to that Bryant station, can you give us some idea of your volume of sales to that station and the number of times you called on them?

A. Yes. In 1955 I called on him 18 times. I received total sales of $477.72.

Q. And in 1956?

A. In 1956 I called on him 20 times and I received $334.28.

Q. How about Russell's?

A. Russell's Atlantic station, in 1955 I called on him 29 times. I received $954.43 worth of business.

In 1956 I called on him 50 times and I received $1,865.11 worth of business.

Q. Can you name another station?

A. A & E Atlantic Station.

Q. What is their address?

A. Springfield Road and Ridley Avenue, Clifton Heights, Pennsylvania.

Q. And what do you sell to that station?

A. Brakes, mufflers, hard parts.

Q. What are hard parts?

A. Hard parts are upper control pins, king pins—

880 Q. (Interposing.) Yes. Are hard parts and repair parts synonymous? Do they mean the same thing?

A. Yes.

Q. Did you attempt to sell him batteries or accessories?

A. No, sir, I didn't.

Q. You did not?

Does he advertise on the station TBA products?

A. Yes, he does.

Q. And what is it he sells?

A. Goodyear tires, batteries, fan belts, hoses, Prestone antifreeze.

Q. Did I understand you to say you didn't attempt to sell him batteries?

A. No, sir.

Q. Or filters?

A. No, sir.

Q. Will you name the next station, please?

A. The next station is an independent station, Gill's Atlantic station, 2142 Darby Road, Havertown, Pennsylvania.

Q. And what products did you sell to Gill's?

A. Fan belts, hoses, ignition, brakes, chemicals, wire cable, antifreeze, equipment.

Q. And your volume of sales to him, do you have that?

A. During the year 1955 I called on him 36 times, I received a total of $1,706.65 worth of business.

881 And in 1956, I called on him 52 times, and I received $2,593.25 forth of business.

Q. Does that station handle TBA?

A. No, sir.

Q. It does not. Do they have any advertising at all about the station?

A. No, sir.

Q. Do you have another Atlantic station?

A. Herbey's Atlantic station, Burmont Road and Market Street, Drexel Hill, Pennsylvania.

Q. And your sales to that station?

A. During the year 1955 I called on him 29 times. I received a total of $314.86. During 1956 I called on him four times. I received a total of $534.44.

Q. And what type products did you sell to that station?

A. Mufflers, hard parts, brakes.

Q. How about batteries and accessories?

A. No, sir.

Q. Did you attempt to sell those to that station?

A. Yes, sir.

Q. Does that station carry TBA? Do they have tires in that station?

A. I am not sure. I think he has Goodyear tires and fan belts and hoses.

Mr. Ballard: I move to strike the last answer. The 882 witness is just hazarding a guess.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Dias:

Q. That is five. I believe you have one more station, is that correct?

A. Way's Atlantic Station, Township and State Road, Drexel Hill, Pennsylvania. During the year 1955 I called on him 11 times and received a total of $25.42 worth of business. During 1956 I called on him 31 times and received a total of $144.29 worth of business.

Q. And what were the type of products you sold to that station?

A. Car rugs, fuses, Every Ready bulbs, and that is about all.

Q. Did you attempt to sell any batteries to him?

A. No, sir.

Q. You did not?

A. No, sir.

Q. How about filters and other accessories?

A. No, sir.

Q. On these stations, Bryant's, Russell's and Herbey's, you have attempted to sell them your batteries and accessories and so forth, is that correct?

A. Yes, sir. Herbey's Atlantic is an independent station.

Mr. Correa: Is that the one the witness said didn't sell any TBA?

Mr. Dias: No.

883 By Mr. Dias:

Q. Referring to Bryant, you attempted to sell him batteries and accessories, did you?

A. Yes, sir.

Q. And they refused to buy?

A. Yes, sir.

Q. Did they give you any reason why they wouldn't buy?

A. Bryant said to me a couple of times "I have to 884 buy from Parris or I will be put out of my station."

Q. When did he tell you that?

A. July of 1956. During the month of October of 1956 when I tried to get a pre-season order of Prestone antifreeze, he told me that he could not give me an order for even one case because Ed Parris knew how much he used, he was going to send it in to him and he still had antifreeze on the shelf left over from the year 1955.

Q. Who is Parris?

A. Ed Parris is the Atlantic distributor.

Q. And is he the Atlantic distributor throughout your entire territory?

A. To the best of my knowledge, sir.

Q. Now you mentioned that you attempted to sell batteries and accessories to Russel's. Did Russell give you any reason for not buying batteris, or accessories?

A! The only reason Russell give me is "I have to play ball with them."

Q. With whom?

A. Ed Parris.

Q. Can you state when he made that statement?

A. That was during the month of July 1956. The incidents I talked about of the antifreeze was during October.

Q. Now, October 1956, did that relate to Bryant's or Russell's? I understood it related to Bryant.

885 A. It relates to Russell.

Q. Russell's?

A. Russell's.

Mr. Correa: Could I have that last question and answer read, if your Honor please?

Hearing Examiner Kolb: Read the question and answer.

(The reporter read as follows: "Qestion: Now, October, 1956, did that relate to Bryant's or Russell's? I understood it related to Bryant. Answer: It relates to Russell. Question: Russell's? Answer: Russell's.")

Mr. Correa: The man said Bryant said something. How can that relate to Russell?

Mr. Dias: I find now he originally testified in that regard and I lost track of it, in respect to Russell.

Mr. Correa: It doesn't make sense.

By Mr. Dias:

Q. To clarify it, did you have a similar experience with both Bryant and Russell?

A. Yes, sir, I did.

Q. And they both occurred during October, 1956, is that correct?

A. On the Prestone antifreeze incident, yes, sir.

Q. Does your company furnish delivery service?

A. Yes, sir.

Q. In your opinion are your products, your bat-
886 teries and accessories, competitive with those Good-
year products sold by Parris?

Mr. Correa: I object—

The Witness: (Interposing.) Yes, sir.

Mr. Correa: I object to the question and move to strike the answer in view of the witness having answered before I had an opportunity to object on the ground that no proper foundation has been laid. The witness has been asked to give an opinion without the slightest effort or even pretense, shall we say, of qualifying him as expert in any way.

Mr. Dias: I think the witness testified, your Honor, that Parris was the distributor in his territory. He must know whether or not he runs into his competition along the line.

Mr. Correa: I submit that that is complete non sequitur. Why must he know? He must know if he knows and if he knows, bring it out.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

Mr. Dias: Did you answer that question?

Mr. Correa: He answered the question before I had a chance to object.

Hearing Examiner Kolb: He answered the question.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examination?

887 *Cross-Examination by Mr. Ballard.*

Q. Mr. Franks, you were refreshing your recollection from a document there, were you not?

A. Yes, sir, these are my personal notes. (Handing to Mr. Ballard.)

Mr. Ballard: Thank you. (Returning to witness.)

By Mr. Ballard:

Q. Mr. Franks, how many accounts do you solicit regularly, of all kinds?

A. 276.

Q. Are the majority of those accounts service stations?

A. No, sir.

Q. Do you know what brand of antifreeze Ed Parris sells?

A. Yes, sir.

Q. What brand is it?

A. Prestone Antifreeze.

Q. He sells Prestone?

A. Yes, sir.

Q. Do you know what brand of antifreeze the Atlantic Refining Company sells?

A. DuPont's.

Q. DuPont?

A. Yes.

Q. And you yourself sell—

888 A. Prestone antifreeze.

Q. I think you said that you were a counterman for two and a half years?

A. Yes, sir.

Q. Does that mean that your company runs a retail store as well as your activities as a salesman?

A. Yes, sir.

Q. Where is that store located?

A. 8 East 9th Street, in Chester, Pennsylvania.

Q. Now all of the incidents you told us about, or all these customers you told us about, Bryant's Russell's, A & E, Gill's, Herbey's and Way's, those were your customers prior to the first of this year?

A. There is a few of them in there that are still my customers. A & E Atlantic I no longer call on. Gill's Atlantic I no longer call on. And Russell's Atlantic I no longer call on.

Q. That is because they are out of your territory?

A. Now, because they are out of my territory.

Q. Now, Mr. Franks, you have testified that a number of these stations purchased some or all of their TBA from Ed Parris, is that right?

A. Yes, sir, to the best of my knowledge.

Q. Is Bryant's one of those stations?

A. Yes, sir.

889 Q. Do you know where else Bryant purchases TBA?

A. No, sir.

Q. Do you know who else calls on him?

A. No, sir.

Q. But there are other TBA salesmen who do call on Bryant's?

A. Not to the best of my knowledge. I know there are other jobbers calling on him.

Q. Do you know which ones?

A. Yes, sir. Would you like me to name them?

Q. Yes.

A. Chester Auto Parts, Delaware County Motors, V. J. Auto Parts, and I guess that is about it.

Q. Would the same be true of Russell's, about the same group call on him?

A. No, there would be a different group calling on him.

Q. Could you tell us who would call on him?

A. Burrion Auto Supply.

Q. Who else?

A. Gaul Derr and Shearer, Clifton Auto Parts, Burmont Auto Supply.

Q. You wouldn't know how much those suppliers sell to those stations, would you?

A. No, sir.

Mr. Ballinger: No further questions.

Mr. Correa: I have only one question.

890 By Mr. Correa:

Q. Is Newtown Square in your territory?

A. Yes, sir.

Q. Did you ever call on a Mr. Ballaron?

A. No, sir.

Mr. Correa: No further questions.

Mr. Dias: That is all.

Hearing Examiner Kolb: That is all, Mr. Franks.

(Witness excused.)

Mr. Kelaher: Could we have a short recess?

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

Mr. Correa: If your Honor please, in connection with the testimony of the last witness, I believe there is a little confusion that ought to be cleared up in the interest of all of us.

I believe it is the fact, and indeed I think there was an objection made by one of counsel supporting the complaint sometime back on this ground, that antifreeze is shown by the Commission exhibits not to be embraced within the scope of the sales commission plan or agreement between Atlantic and Goodyear, that is, Prestone antifreeze. Am I correct on that?

Mr. Kelaher: That is my understanding, your
891 Honor, that Atlantic itself however sells antifreeze directly to the service stations. Is that correct?

Mr. Ballard: That is correct. Prestone antifreeze.

Mr. Correa: Of course Goodyear is not interested in what Atlantic sells to its stations directly and I don't think the issue is in this case.

Furthermore, I understand and perhaps counsel is informed on this, that Ed Parris in fact does not wholesale any kind of antifreeze.

Mr. Kelaher: Actually I am not informed on that. I would be glad to answer that if I could.

Mr. Correa: I thought perhaps you knew of that fact. We will show it in due course.

Mr. Kelaher: I would like to call Mr. Heald.

FELIX B. HEALD was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your name and home address.

A. Felix B. Heald, 1870 Eckard Avenue, Arlington, Pennsylvania.

Q. Were you at one time with Atlantic Refining Company, Mr. Heald?

A. Yes, sir.

892 Q. How many years?

A. A little over 20.

Q. And when did you leave Atlantic Refining Company?

A. The first of April, 1951.

Q. Immediately prior to that time, what was your position with Atlantic Refining Company?

A. Well, it was generally known as TBA supervisor.

Q. What section or what area?

A. New Jersey.

Q. Any particular section of New Jersey?

A. The southern part of New Jersey and also part of Delaware County.

Q. Part of Delaware County, in Pennsylvania?

A. That is right.

Q. Now after you left Atlantic, did you organize a jobbing concern?

A. Yes, sir.

Q. What was the name of that concern?

A. F & C Automotive Specialties, Incorporated.

Q. And when was that company organized or started in business?

A. In May of 1951.

Q. Would you please describe the business, what type of products you carried?

A. Well, it was a specialty jobbing business. I had a warehouse distributorship on three lines, namely, 893 Exide batteries, R. M. Hollingshead and Thermoid.

Q. What was the second one?

A. R. M. Hollingshead Company in Camden. They were warehouse deals that enabled me to sell to other jobbers on those three lines. The other lines I bought on a jobbing basis or where I didn't think there was enough volume, I bought on a so-called sub-jobbing basis.

Q. Would you please state which products you carried as a sub-jobber?

A. Fram—

Q. Fram? What products would that be?

A. Cartridges.

Q. Oil Filters?

A. Yes, sir. I bought on the bottom deal on Ever Ready and a few other lines. But the main lines were those three I first mentioned.

Q. Did you handle tires?

A. Yes, sir.

Q. What brand?

A. Lee tires.

Q. And were the brands you handled all nationally advertised brands?

A. Yes, sir, nothing else.

Q. What was the marketing area of F & C Automotive Specialties?

A. Well, the lower part of Montgomery County, and

894 New Jersey surrounding the Camden area, including Morrestown and Woodbury and Merchantville, and some in Philadelphia, not too much in the city.

Q. Do you have any delivery trucks?

A. Yes. I had a station wagon that I used as a delivery truck.

Q. And were you, yourself, an outside salesman for the concern?

A. Yes.

Q. And did you travel this marketing area you just described?

A. Yes, sir.

Q. Was your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Oh, yes.

Q. And what classes of customers did you sell to?

A. Gas stations, repair shops, car agencies.

Q. Did you call on Atlantic service stations?

A. Incidentally, I did forget to say that I put up a chemical line of four items, under my own brand, a car wash, a white wall cleaner, and what I called Speedy Wash and also a rubber cleaner, which I put up myself.

Q. When you say put up yourself, does that mean you prepared it?

A. That's right.

Q. And would that be classed as accessory items?

895 A. That's right, I would say so.

Q. Now I believe there is a question pending. Did you call upon Atlantic service stations?

A. I called on all of them, including Atlantic.

Mr. Thompson: I didn't understand the answer.

The Witness: I called on all service stations that I thought I could do business with. The Atlantic stations were pretty desirable because generally they had more business than the others, Atlantic, Sun and Standard.

By Mr. Kelaher:

Q. At the time you began operations, had Atlantic begun its sponsorship of the Goodyear TBA line in your marketing area?

A. They were just starting about that time.

Q. Was there a time when you were able to sell or when you did sell Lee tires, Exide batteries, Thermoid products, Fram products, and your other lines to the Atlantic service stations?

A. Yes, sir.

Q. During what period were you able to make such sales?

A. That was generally during 1951, probably into January of 1952.

Q. What happened after January of 1952?

A. It stopped.

Q. And did you at one time solicit the business of Mr. Charles Lott in Morrestown, New Jersey?

896 A. Yes, I did.

Q. And did you at one time sell to Mr. Lott?

A. Yes, sir.

Q. What products did he purchase?

A. He purchased several different products and he bought fan belts from me and I had a man come down from Trenton to resleeve them.

Q. What brand?

A. Thermoid belts.

Q. Who was the man who came from Trenton?

A. A representative of the Thermoid Rubber Company.

Q. Is their factory in Trenton?

A. Yes.

Q. What happened after that?

A. The next time I got there, they were all back to Goodyear again.

Q. Did you have any conversation with Mr. Lott concerning Thermoid products?

A. He asked me as a personal favor, he said, it embarrassed him for me to come in there and asked me as a personal favor would I desist and I said sure.

Q. So thereafter he did not purchase any TBA from you?

A. No.

Q. Why would it embarrass him for you to go in there?

Mr. Thompson: I object, sir.

897 By Mr. Kelaher:

Q. What was the substance of his conversation?

A. I am afraid I couldn't repeat it at the moment.

Q. Did you at one time call on a Gus Mapes?

A. Well, Gus Mapes, I used to go to Ocean City every summer and I have known him for many many years. And if he wanted to buy a few things, he would drop me a line, and when I went to the seashore, I would take them to him.

Q. Did he purchase Lee tires?

A. Yes.

Q. Exide batteries?

A. Yes.

Q. Car wash?

A. I sold him Speedy car wash, which can be used as a car wash.

Q. Did he continue to purchase those products from you?

A. No, he stopped.

Q. Did he give you a reason why he stopped?

A. He said that the supervisor there had really given him quite a hard time.

Q. The supervisor for which company?

A. Atlantic Refining Company.

Mr. Thompson: If your Honor please, this testimony is of course taken not to prove the fact, but really as state of mind testimony? Otherwise, of course I object to it.

898 Hearing Examiner Kolb: I think it is all right.

By Mr. Kelaher:

Q. Did Mr. Mapes make reference to any particular—

Mr. Thompson: Would you mind confining this—the acoustics in this room are rather bad and I have heard that name several times, but I haven't gotten it.

The Witness: Mr. Mapes, M-a-p-e-s.

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. Mr. Mapes, did he state the name of the Atlantic representative?

A. Why, he used th name of Mr. Kramer.

Q. Who was Mr. Kramer?

A. He was assistant supervisor in New Jersey, as I recall.

Q. Do you recall who he was assistant to?

A. Mr. Esbach.

Q. Mr. Heald, about what time did this incident occur?

A. This was in 1953.

Q. 1953?

A. Yes.

Q. And did Mr. Mapes discontinue purchasing the TBA from you?

A. Yes.

Q. Do you recall calling on a Lloyd Martin, Rising Sun Avenue and Godfrey Street, Philadelphia?

899 A. Yes.

Q. Did you sell TBA products to Mr. Martin?

A. I sold him quite a little.

Q. What type of products did you sell him?

A. Oh, generally most everything I had, until he ap-

proached me about—he had some obsolete radiator hoses, Thermoid hoses and he told me if I would arrange with the Thermoid factory, so he could exchange it for the more modern type of hose, he would buy fan belts from me and they agreed to send a man down to resleeve them and the next time I got there, it was all Goodyear again.

Q. When you talk about resleeving, you are referring to the change of brand name?

A. That is a practice in the business.

Q. Mr. Martin, did he continue to purchase TBA from you?

A. No. He said the pressure was too much.

* * * * *

By Mr. Kelaher:

Q. Do you recall the conversation he had with you?

A. I don't think so.

Q. Do you recall when he stopped purchasing TBA from you?

A. It was in 1952.

900 Q. Do you recall selling or soliciting the business of a Mr. —

Mr. Thompson: I move to strike the remark about pressure from the record.

* * * * *

Hearing Examiner Kolb: Motion to strike denied.

Mr. Thompson: But there was no foundation laid for the statement, sir.

Hearing Examiner Kolb: There was an objection and a motion to strike at the time the question was asked, and I ruled on that. So what the pressure was, we don't know and we are not concerned with that statement.

901 By Mr. Kelaher:

Q. Getting back to Mr. Martin. What TBA products was he carrying at the time he made this statement to you?

A. Well, he was carrying Goodyear tires. I never sold him any tires, nor batteries, but I sold him practically everything else.

Q. Was he carrying the Goodyear TBA line?

A. Yes, sir.

Q. And did he have Goodyear identification on his station?

A. Oh, yes.

Q. Now, do you recall soliciting the business of a Bob Rockfeller, Carlisle and Hunting Park Avenue, Philadelphia, Pennsylvania?

A. Yes, sir.

Q. And did you sell any TBA products to Mr. Rockfeller?

A. I sold him only car wash.

Q. And how were such deliveries made?

A. By truck.

Q. Did Mr. Rockfeller always accept delivery when you brought the car wash?

A. Well, there was one time when I delivered it he just waved me out and afterwards he told me the Atlantic salesman was in there.

Q. Well, when he waved you out did you go out and return later?

902 A. I just didn't go in, he just waved through the window.

Q. Now, do you recall soliciting the business of a Denny Denshaw, Decatur and Frankford Avenues, Philadelphia, Pennsylvania?

A. Yes, I did.

Q. Did you sell TBA products to Mr. Denshaw?

A. Yes, I did.

Mr. Thompson: Is this Denshaw, Benshaw, Henshaw?

Mr. Kelaher: Denshaw to rhyme with Denny.

The Witness: I sold him about everything.

By Mr. Kelaher:

Q. He bought Lee tires and Exide batteries?

A. Yes.

Q. Did he stop buying TBA from you?

A. Yes, he did.

Q. And did he give you a reason for stopping?

A. Well, in April of '52 he gave me an order for 200—I think I have a memorandum on it here. April the 12th, $222 and he called me up and told me—

Q. What did that consist of?

A. It was tires and batteries only.

Q. Lee tires and Exide batteries?

A. That's right.

Q. He called you—will you proceed?

A. He called me up and told me that there were 903 four Atlantic men over there and told him to send the tires back and asked me if I would mind. In the meantime by the time I got there he had sold some, but I took back merchandise to the extent of $162 rather than embarrass him.

Q. And thereafter, did Mr. Denshaw stop buying from you?

A. Very little, practically none.

Q. And what TBA was Mr. Denshaw selling in his station primarily?

A. Well, he was not selling the Goodyear filters, he was selling Fram filters which I was selling him.

Q. Was he selling Goodyear tires?

A. Yes, he had Goodyear tires.

Q. Was he selling Goodyear batteries?

A. No, he didn't have Goodyear batteries, he eventually did.

Q. What identification did he have in his station?

A. Well, of course all the Atlantic-owned stations have the Goodyear identification.

Q. Approximately how many Atlantic stations did you at one time sell to?

A. Well, I would say in the neighborhood of 20, possibly more.

Q. And did you lose the business of—

A. I lost them all eventually.

Q. Who were the Goodyear TBA supply points in
904 the area in which you served?

A. There was one in Westville.

Q. Westville, New Jersey?

A. Yes.

Q. Do you recall his name?

A. It was John something—his last name escapes me. There was one in Germantown.

Q. Would that be Mr. Glenn?

A. Yes.

Q. Was Mr. Parris a supply point in your area?

A. No, I didn't sell in his territory.

Q. How about Mr. Miller? E. Miller.

A. I didn't sell in his territory.

Q. Well, Mr. Heald, you stated that all Atlantic Service stations carry Goodyear TBA identification, is that correct?

A. Well, that was my experience.

Q. I mean based on your experience.

A. Based on my experience.

Q. Based on your experience at the time you were TBA supervisor for Atlantic what identification did Atlantic stations carry?

Mr. Thompson: I couldn't hear your question, Mr. Kelaher. The acoustics are bad.

(The reporter read the pending question.)

The Witness: They carried Exide when I was there.

905 By Mr. Kelaher:

Q. And Lee tires?

A. Yes.

Q. Based on your experience was there a change-over in that market area from Lee tires and Exide batteries to Goodyear TBA?

A. Yes.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: Cross examine.

Mr. Thompson: May we have a minute to confer with counsel?

Hearing Examiner Kolb: Yes.

Mr. Correa: May we have a moment's recess, if your Honor please?

Hearing Examiner Kolb: Yes. We'll take a recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, before cross begins I have one further question to ask the witness.

By Mr. Kelaher:

Q. How long did F and C Automotive Specialties, Inc., remain in business?

A. Four years.

906 Q. Do you recall the termination date or approximately the termination date?

A. January 31, '55.

Mr. Kelaher: That's all, your Honor.

Cross-Examination by Mr. Thompson.

Q. Sir, you tried to sell in quite a large geographical area, did you not?

A. Fairly so, yes.

Q. It's a pretty big territory, isn't it, all the way from Morrestown down to Delaware county?

A. I didn't sell in Delaware County, I think I stated that.

Q. I thought I understood you to say that was when you

were with Atlantic. You tried to take Montgomery, Philadelphia, and Bucks County?

A. That's right. The explanation of that, I worked generally around home and one day a week I went over to Jersey.

Q. But you worked generally around your own home and spent one day calling on accounts over in New Jersey?

A. That's right.

Q. Sir, weren't you slightly undercapitalized in this business?

A. Yes.

Q. And you were handling your deliveries with one 907 station wagon, I think you said?

A. That's right.

Q. That is a pretty tough deal to compete with the big wholesalers, isn't it?

A. It is. Of course, my son went with me in the beginning and I was relying on a fast start and I did get one but he was called back and sent to Korea after three months. That left me with the business.

Q. He was a lieutenant in the Marines, wasn't he?

A. Air Force.

Q. You know, of course, you are awfully well thought of down in Atlantic?

A. I hope so. I think well of them.

Q. There are a lot of nice things in the file about you.

A. Good.

Mr. Thompson: That's all I have, sir.

Mr. Correa: I have no further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all Mr. Heald.

(Witness excused.)

Hearing Examiner Kolb: Is that all you have?

Mr. Kelaher: Yes, your Honor.

Hearing Examiner Kolb: Before we adjourn I would

like to correct a ruling that I made on the record yes-
908 terday with reference to Mr. Correa's objection, I believe, to Commission's Exhibit No. 306-A, in which I admitted the document subject to objection.

Of course, that can be considered two ways. One of them is that I have overruled the objection but by specifying it might be interpreted as being a right to make a motion to strike later on in the case, I don't want to have that impression left, so I wish to strike that provision and subject to objection and simply overrule Mr. Correa's objection to the document.

Mr. Correa: And I take it, so that the record may be clear, your Honor understand that so far as we are concerned, speaking for the respondent Goodyear, our objection still stands of record.

Hearing Examiner Kolb: Your objection stands of record.

Mr. Correa: And the evidence is received over our objection?

Hearing Examiner Kolb: Over your objection.

Mr. Correa: And furthermore, on the matter of motion to strike, we conceive it to be our right to make a motion to strike any evidence which has been received over our objection at any time when we could conceive there to be grounds for such a motion.

Hearing Examiner Kolb: But I am not inviting
909 such a motion.

Mr. Correa: I understand. We don't always need an invitation, if your Honor please.

Hearing Examiner Kolb: The hearing is adjourned until 9:00 o'clock tomorrow morning.

* * * * *

911 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, at the close of

the direct examination of Mr. Connell, the Vice President of the Electric Storage Battery, day before yesterday, I reserved the right to cross-examination and intimated at the time that if staff counsel were not planning to call Mr. Findley of the Storage Battery Company, I would probably waive cross-examination.

In view of the fact that Mr. Kelaher stated yesterday that they were not calling Mr. Findley, I will waive cross-examination of Mr. Connell.

Mr. Correa: And I will also, if your Honor please.

Hearing Examiner Kolb: He is not expected to return.

Mr. Dias: No, he is waiting on call, as I understand it.

Mr. Correa: I think that is the way it was left.

Mr. Kelaher: Mr. Examiner, before we call a witness, it has been stipulated between counsel as to Mr. Heald, who was a witness yesterday, if he were called he would testify that the F&C Automotive Specialties, Inc., was located at 1201 York Road, Abington, Pennsylvania.

I would like to call Mr. Marabella.

912 JOSEPH MARABELLA was called as a witness for the Commission and, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Joseph Marabella; my home address is 31 King Avenue, Folcroft, Pennsylvania.

Q. Are you associated with V. J. Auto Parts Company?

A. Yes, sir.

Q. And what is your position with V. J. Auto Parts?

A. Partner.

Q. And who is your partner?

A. My brother, Vincent.

Q. And where is your firm located?

A. 1516 Chester Pike, Folcroft, Delaware County, Pennsylvania.

Q. Have you always been at that location?

A. No, sir. In March of '56 we moved from 111 Sharon Avenue, in Sharon Hill.

Q. And when did your firm begin business?

A. January 2, 1951.

Q. And you were at 111 Sharon Avenue from that time until—

A. Until March of '56.

Q. And from March of '56 to date you are at the 913 present location.

A. Yes, sir, at the present location.

Mr. Thompson: Mr. Kelaher, would you mind identifying where Folcroft is? Is that in Delaware County?

The Witness: It is in Delaware County; it is on the Chester Pike.

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. Would you please describe the principal products sold by your company?

A. Yes, sir.

Well, the biggest percentage is hard parts. By that I mean the mufflers, tail pipes, ignition, and so forth, and then our next biggest line is our chemical or what would be referred to as TBA items.

Q. Do you carry batteries?

A. Yes, sir.

Q. What brand?

A. Delco batteries.

Q. And what items in the chemical line do you carry?

A. Your DuPont line; simonize; Johnson products; Bars Leak, which is one of our biggest items, we are distributor on it.

Q. Spark plugs?

A. Yes, sir. A. C., Auto Lite.

Q. Do you sell filters?

914 A. Yes. Fram and AC.

Q. Do you sell belts and hoses?

A. Yes, sir. We are distributor on the Raybestos line.

Q. Tires?

A. Yes, sir, tires and tubes.

Q. What brand of tires?

A. The Mansfield tires and L&D tubes.

Q. Who makes the L&D tubes?

A. The Mansfield people do.

Q. Is that the Mansfield Tire and Rubber Company of Mansfield, Ohio?

A. Yes, it is.

Q. In what area does your company solicit business?

A. Well, we cover thoroughly 10-mile radius of the store.

Q. And where would—would you describe that in more detail?

A. Well, first of all, the store is midway between Philadelphia and Chester and it would take in, I'll say, 75 per cent of Delaware County; all of your Upper Darby area and all of your Chester area through Springfield.

Q. Do you stay solely in Delaware County?

A. No, we solicit business in North Philadelphia, and South Philadelphia, and so forth. Those are fellows who have given us the backbone of our business from the time we started out.

Q. I see.

915 A. But the biggest percentage of our business comes from that 10-mile radius right in Delaware County.

Q. And how many salesmen are employed by your company?

A. Two, sir.

Q. And does that include yourself?

A. That includes myself, yes, sir.

Q. And aside from yourself, how is your other salesman compensated?

A. Salary and commission; expenses.

Q. You have delivery trucks?

A. Yes, sir.

Q. How many.

A. Three trucks.

Q. And is your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Yes, sir.

Q. Now, would you please describe the classes of customers to whom you sell?

A. Car dealers, fleets, independent repair shops and service stations; contract and lessees.

Q. Are there any Atlantic service stations in your company's marketing area?

A. Yes, sir. I would say, oh, 25 to 30 in the area.

Q. Of that number do you know approximately how many own their own stations?

916 Mr. Thompson: I didn't hear the answer to the first question.

Mr. Kelaher: Of that number—you didn't hear the answer?

Mr. Thompson: The answer to the first question.

The Witness: I believe there is 25 to 30 Atlantic stations in that a[illegible] that we actively solicit.

By Mr. Kelaher:

Q. Of that number do you know how many own their own stations?

A. To my knowledge I would say no, but I do know of

three who do, and there may be more. But I do know positively three.

Q. Three of the 25 to 30?

A. Yes.

Q. And are the remainder company-owned stations?

A. Yes, I believe so, to my knowledge.

Q. Do you solicit business from Atlantic service stations?

A. Yes, sir; actively.

Q. And how frequently do you solicit such business?

A. Those fellows in our trading area are called on once a week.

Q. Do you call on all the 25 to 30 you have mentioned?

A. Yes, sir; every one in our area is actively solicited every week.

Q. What products do you sell to Atlantic service stations?

A. Well, there is a big problem. They will call us 917 for a nut and a bolt. We will deliver it. We sell primarily hard parts, but items that are to eventually end up on their shelves as stock, that is just only on a fill-in basis.

* * * * *

Q. Do you sell TBA items to Atlantic service stations?

A. No, sir, only on a fill-in basis.

Q. And are TBA items customarily stocked on the shelves or displayed on the shelves?

A. Yes, sir.

Q. And did you at one time solicit the business of Atlantic lessee dealer, Elmer Booz, Wycombe and McDade Boulevard, Darby, Pennsylvania?

A. Yes, sir, I did myself.

Q. Were you able to sell him TBA items?

A. For a period we were able to sell him some AC oil filter cartridges; that was the extent of the TBA that we

were able to sell Elmer, and that went on I'd say for a five or six month period, and he in turn informed me that he could not buy any more from us.

Mr. Thompson: Just a minute. I move the last answer be stricken on this ground: Mr. Booz has testified in
918 this case. The only possible relevance of the question and answer would be to ascertain Mr. Booz's state of mind. Had Mr. Kelaher desired to ascertain that fact, he could have asked Mr. Booz.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Kelaher: Would you read Mr. Marabella's answer, please?

(Answer read.)

Mr. Correa: I move to strike the answer, if your Honor please, on the grounds stated by Mr. Thompson, and it is patently unresponsive to the question.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. At or about what time did Mr. Booz start purchasing AC oil filter cartridges from you?

A. Spring of 1954.

Q. And do you recall the conversation you had with Mr. Booz at that time?

A. To a certain extent, yes.

Q. Would you state the conversation?

Mr. Correa: I object to the conversation, if your Honor please, on the grounds stated by Mr. Thompson, and on the additional ground that counsel apparently is seeking to impeach a witness whom he has offered and for whose
919 credibility he has vouched, because I could conceive of no other purpose of the question he has now put to the witness.

Mr. Kelaher: Just so the record will be clear, we are attempting to confirm the testimony of Mr. Booz.

Hearing Examiner Kolb: The objection will be overruled.

A. Well, as was my usual practice, I would go in and on items that Elmer stocked, would try to solicit his business, and at this particular time I went back in and checked his oil filter cartridges, and I saw he was low on some numbers. I marked them down and proceeded to try to obtain an order on the cartridges. Elmer said, "Well, Joe, I am sorry, but I must discontinue buying those cartridges from you." Well, I said, "Well, gee, you have been buying them for a short period of time, I realize. Would you mind telling me why?" He says, "Well, I am getting some pressure and that is as far as I can go."

Q. Did he say who was applying the pressure?

A. He said it was coming from Atlantic Refinery.

Q. And do you know who the supplier was who then sold him AC filter cartridges?

A. I believe it was the TBA distributor in the area, Mr. Parris.

Q. Now, did you sell an item called Bars Leak to Mr. Booz?

A. Yes, I did.

920 Q. And did you ever have any conversations with him with respect to Barsleak?

A. Yes, I did.

Q. Would you state the approximate time of the conversation?

A. Well, that was about the same time, which was in the Spring of 1954. Elmer had been buying it and doing a nice job on it. He had bought three or four cases and sold it. So I noticed that he was low on that, and I asked him, how about another case of Barsleak for stock, and he proceeded to tell me that if he bought it he would have

to put it in the back room. He couldn't display it any more because he was told by his Atlantic representative, salesman, to take it off the shelf and only put the line which was carried by Atlantic on the shelf.

So he said, "If I have to hide it in the back room, I would lose half of its salability, so why should I continue to buy it?"

Q. Was Mr. Booz carrying the Goodyear TBA line?

A. Yes, sir.

Q. Did you attempt to sell tubes, or DuPont chemicals to Mr. Booz?

A. Why on the tubes, I had given that up as a bad job, but the DuPont chemicals, yes. And all we ever got on the DuPont chemicals from Elmer was, as I refer to, we refer to in the business as fill-ins, where he needed a dozen 924 or a case of an item. We could not get any spring or fall orders.

Q. Did he ever give you any reason for not purchasing?

A. Yes. He told me he had to buy it from Atlantic.

Q. Did you solicit the business of Mr. Iocona, former Atlantic dealer in Secane, Pennsylvania?

A. I myself did personally, yes, sir.

Q. And were you able to sell any TBA items to Mr. Iocona?

A. No, sir. Just as I mentioned, on a fill-in basis.

Q. Did you solicit Mr. Iocona on business on Barsleak?

A. Yes, sir; that was another one.

Q. Did you sell him Barsleak?

A. Yes. I had been selling him Barsleak for, I'd say about a year, and he had been doing a nice job with it. And he also had to stop buying it.

Mr. Thompson: I move the answer be stricken.

By Mr. Kelaher:

Q. Did you have any conversation as—

Mr. Thompson: Mr. Kelaher—

Hearing Examiner Kolb: Read that last sentence.

Hearing Examiner Kolb: The motion to strike is denied.

Mr. Thompson: Your Honor did not hear the sentence to which I objected. It was the sentence before that.

Hearing Examiner Kolb: Read the whole sentence.

(Question and answer read.)

922 Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Did you have any conversations with Mr. Iocona with respect to Barsleak?

A. Yes, sir.

Q. And what was the conversation?

Mr. Thompson: That is objected to on the same ground I objected to the state of mind testimony about the prior witness, Mr. Booz.

Mr. Correa: And I join in the objection, if your Honor please, and submit this is a perfectly outrageous procedure, calling a witness such as this to testify concerning statements allegedly made by other people who have been called on the witness stand who gave no such testimony whatever.

Now I have never heard of any procedure like that being followed in any court, and I object to it and—

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. I will restate the question.

Did you ever have any conversations with Mr. Iocona as to why he stopped purchasing Barsleak?

A. Yes, sir; more or less along the same lines as Mr. Booz. He told me he in turn was told to remove it from his shelf.

Q. By whom?

923 A. By his Atlantic representative.

Mr. Thompson: May it be understood, sir, so that I won't be needlessly repetitious, that my objection applies to this entire line of testimony?

Mr. Correa: And may mine also apply?

Hearing Examiner Kolb: It may apply. The objection will be overruled.

By Mr. Kelaher:

Q. Can you state the approximate time of your conversation with Mr. Iocona?

Mr. Thompson: I can't hear you.

(Question read.)

A. Yes, sir. That was also—well, there was two conversations, one was in the spring and then prior to the fall season, anti-freeze season, of '54. Both were in 1954.

By Mr. Kelaher:

Q. And both were connected with the Barsleak?

A. Absolutely, yes, sir.

Q. Did you at one time sell simonize products to Mr. Iocona?

A. Yes, sir.

Q. Can you state the approximate time when such sales were made?

A. Well, that was also in the early part of '54 when we were actively soliciting Mr. Iocona's business.

Q. And did he continue to purchase Simoniz from you?

924 A. He did for approximately, I'd say a three-month period; he had bought one complete order and then informed me that he would have to stop buying Simoniz.

Q. And did he give you a reason why he would have to stop buying Simoniz products from you?

A. The same reason that most of these other fellows

have given us whenever they have stopped buying any merchandise from us, pressure from Atlantic.

Q. Have you attempted to solicit tube business from Atlantic dealers?

A. Yes, sir; myself, I have.

• • • • •

By Mr. Kelaher:

Q. Do you recall, or did you solicit the business of Carmen's Atlantic, South Avenue and Providence Road, with respect to the sale of tubes?

A. No, I myself did not, Mr. Kelaher. That is our other salesman who did that.

Q. Who would that be?

A. Jerry Tarquinio.

Q. Did you yourself solicit the business of any 925 Atlantic dealer with respect to tubes?

A. Yes, I did.

Q. And do you recall any instance with respect to such solicitation?

A. Yes, sir; on the tubes themselves the boys have told me that they would be glad to use us in a back order situation or a fill-in, but they could not give me or our company an order on L&D tubes.

Mr. Thompson: I move the answer be stricken, unless there is identification.

Hearing Examiner Kolb: Mr. Kelaher, I wish you would either follow through with your identification, which I assume you will—

Mr. Kelaher: That is correct.

By Mr. Kelaher:

Q. When you state "the boys," to whom are you referring?

A. I am referring to Jack Chambers; I am referring

to Elmer Booz; I am referring to Andy Iocona; those fellows in particular.

Mr. Thompson: It is understood that the same objection I made before applies to Mr. Jack Chambers, who was also a witness.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Such conversations were held with these gentle-926 men when they were Atlantic dealers?

A. Absolutely; yes, sir.

Q. Have such statements been made to you on more than one occasion?

A. Yes, sir.

Q. And could you fix the approximate time of such statements?

A. Well, Mr. Kelaher, most of this problem that did arise started in the spring of '54, through '55 and '56, up to the present, but the particular instances in my mind, two are in the fall of 1954 with Mr. Chambers and Mr. Booz, Mr. Iocona, you might say the latter part of '54.

Q. And did you solicit Barsleak business from Mr. Chambers when he was an Atlantic lessee-dealer?

A. Yes, sir.

Q. And was he at that time located at Sharon Hill, Pennsylvania?

A. Yes, sir.

Q. And did Mr. Chambers purchase Barsleak from you?

A. Yes, sir.

Q. And what was your experience with respect to the sale of Barsleak to Mr. Chambers?

A. My, well, business relations and experience with Mr. Chambers had been the same as with the other gentlemen I have mentioned, enjoying good business relations, good

sales on Barsleak, up until the time he was told to
927 remove it from his shelf, and he gave me the same answer that the other fellows had given me.

Q. When was that?

A. That was in the fall of 1954.

Q. Now, do you recall who succeeded Mr. Chambers at the Sharon Hill station?

A. A fellow by the name of Crum, Fred Crum.

Q. And did you solicit the Barsleak business from Mr. Crum?

A. Yes, I did.

Q. And what was your experience with respect to that?

A. Well, we succeeded in selling Mr. Crum, and I believe it was two or three cases we had sold him, and he also ran into the same road block. He was told to get it off of his shelf.

Q. And do you recall the approximate date of that conversation?

A. That was in '55, the latter part of '55.

Mr. Thompson: Would you be kind enough, Mr. Kelaher, to proceed with the identification to save me the trouble of moving to strike?

Hearing Examiner Kolb: I will ask counsel to make a motion to strike after he has done that.

Mr. Thompson: Yes, sir, before you rule. If I let a question go by, I have lost the opportunity.

Hearing Examiner Kolb: On this identification, you
928 still have your rights.

Mr. Thompson: You will be lenient then in that situation.

By Mr. Kelaher:

Q. Have you solicited DuPont, Johnson, or Simoniz product business from a Carmen's Atlantic?

Mr. Thompson: I move the testimony with respect to

Mr. Carmen be stricken because of lack of proper identification of the alleged conversation.

Mr. Kelaher: Mr. Examiner, I am continually interrupted; I am giving specific dates, names, products, if counsel can be patient.

Hearing Examiner Kolb: It might save a few objections if you ask if you had the conversation and when you had the conversation, and then the substance of the conversation; that will end all of the objections, rather than getting the time after the witness has testified what the conversation was.

Mr. Thompson: That is right.

Mr. Kelaher: Well, I would do that if I am first permitted to lay a foundation for the questions.

Mr. Thompson: Have you departed from Mr. Crum? Because you laid no foundation for his alleged state of mind.

Mr. Kelaher: I thought that was sufficiently covered.

By Mr. Kelaher:

Q. Are you familiar with, or did you solicit the 929 business of a Carmen's Atlantic, and if so, would you please state the location of the station?

Mr. Thompson: May I renew my motion to strike the alleged statements of one Mr. Carmen for lack of proper identification?

Hearing Examiner Kolb: I believe he said the conversation took place in 1954, did he not?

Mr. Thompson: I think—I do think he said sometime in 1954; there was no identification.

The Witness: 1955.

By Mr. Kelaher:

Q. Mr. Marabella, would you please state when your conversation with Mr. Crum took place?

A. 1955.

Mr. Thompson: May we have where?

The Witness: In Sharon Hill.

By Mr. Kelaher:

Q. Where is the station?

A. Sharon Hill.

Q. Location?

A. Clifton Heights and Chester Pike, in Sharon Hill, Fred Crum's Atlantic.

Q. And will you give us the location of Carmen's Atlantic station?

A. Carmen's Atlantic, South Avenue and Provi-
930 dence Road, Secane, Pa., Delaware County.

Q. Did you solicit TBA business from Carmen's Atlantic?

A. I did, yes, sir.

Q. And would you please state what your experience has been; if you had any conversations, when they took place and if they took place, the location of the conversation.

A. Yes, sir.

I had a conversation with Carmen in the spring of 1956 in his station, South Avenue and Providence Road, in Secane, concerning the spring program for DuPont chemicals. Carmen told me himself he would like very, very much to give me the order but that he had already been solicited by Atlantic and he had been more or less forced to promise them the order. I asked him to elaborate and he came out with the same thing that everyone else has come out with, which is pressure.

Q. Are you familiar with the location of Don Elko's Atlantic station?

A. Yes, sir.

Q. And where is that located?

A. That is the station at Clifton Avenue and Chester

Pike in Sharon Hill, that has had three or four dealers since it was built.

Q. Now, at the time Mr. Elko was there, please state whether or not you solicited TBA business from Mr. Elko; whether or not you had any conversations with Mr. Elko with respect thereto, and if so, the approximate dates
931 of the conversations and the locations of the conversations.

A. Well—

Mr. Thompson: I congratulate you, Mr. Kelaher, that is a splendid question.

A. Very frankly, on that particular account, it is covered by our other salesmen, but I myself had a personal contact, personal solicitation on the TBA item, namely Delco batteries, in January of this year, 1957; that took place in Don Elko's station. I solicited along with the Delco battery man his battery business, and he just threw up his hands. He said, "Joe, I would like to buy the batteries from you, but you know what I have been running into and what every other Atlantic man has been running into. I cannot put anything but a Goodyear battery in this place. If I don't have a battery I will be more than glad to buy it from you because I know you can give me the service and the price is right."

By Mr. Kelaher:

Q. Now, I take it you were unable to sell Delco batteries to Mr. Elko?

A. Absolutely.

• • • • •

932 By Mr. Kelaher:

Q. Did you at one time solicit the Bars Leak business from Mr. Elko? If so, please state when such solicitation took place; whether or not you made such sales; whether or not you had any conversations with Mr. Elko. If such

conversations were held, the approximate date of the conversation and the approximate location of the conversation.

Mr. Correa: I submit, your Honor, that is not a question; it is a questionnaire.

Mr. Kelaher: We would be very happy to save the time, Mr. Examiner—

A. Mr. Kelaher, I make it a practice to call on a fellow when he takes over a new station, no matter what company he is with. And I went out to see Mr. Elko the latter part of January, 1957. I acquainted him with the
933 prices of the various products that he had on his shelf, and I also solicited actively in his station on Clifton Avenue and Chester Pike in Sharon Hill, the sale of Bars Leak. He bought it and re-ordered. He was also told by his Atlantic representative to take it off the shelf. He refused and told the Atlantic man that it was better than the other product, and he was going to continue to keep it on the shelf, and to this day he still has it on his shelf.

By Mr. Kelaher:

Q. Could you give us the approximate date of your call on Mr. Elko when he opened the station?

A. That particular—that was not the opening of the station, that was in the latter part of January of '57, which was on this Bars Leak.

Q. I see.

A. And he had already opened.

Q. I see.

A. See, that particular account is in my other salesman's territory but I make it a point to go out and have personal contact in the, you know, near future, when a fellow has opened a station and go out and introduce myself and so forth.

Q. you stated that you sell Delco batteries. In what category or what category distributor are you for Delco?

A. Why, we are a warehouse distributor on Delco batteries; we received that distributorship in January, 1957.

934 Q. And do you purchase such batteries direct from the company itself?

A. United Motors, yes, sir.

Q. And as a wholesale distributor, what lots do you purchase in?

A. Three, four, five hundred at a time.

Q. Have you attempted to sell Delco batteries to John Branca, Yeadon, Pennsylvania?

A. No, I did not solicit that, that was solicited by my other salesman.

Q. And did you as a result of any conversations with Mr. Branca—

A. Not particularly on that, no.

Q. Did your company sell Delco batteries to Mr. Branca?

A. Not on a stock basis, no, sir.

Q. And did your salesman report to you the reasons why he was not selling on a stock basis?

A. Yes, sir.

Q. What did he report?

A. Only stocking Goodyear batteries; that was also in January of '57. We worked the whole week with the Delco battery representative.

Q. Have you attempted to sell, or have you solicited TBA business from new Atlantic service stations or Atlantic service stations with new operators?

935 A. Well, as I said, we do make it a practice of going out to these boys whether they are a new operator or—I mean a new station or a new operator taking over an old location, but all the initial order of stock or merchandise that would go on the shelf does come from Atlantic. We ourselves cannot break in on that.

Q. When you say it comes from Atlantic are you referring—

A. TBA distributor.

Q. Is that Mr. Parris in all these instances?

A. In all these instances in our area, yes, sir.

Q. And the stations you have reference to is, what type of identification is on the station, as to outdoor signs?

A. Well, the Atlantic and the Goodyear signs.

Q. Approximately how many Sinclair stations are in your area?

A. Twelve to 15, sir.

Q. And do you solicit the TBA business of Sinclair stations?

A. Yes, sir, actively.

Q. What has been your experience with respect to such business?

Mr. Correa: I object to that question, if your Honor please, that is too general.

By Mr. Kelaher:

Q. Well, have you solicited the business of a George Kaiser?

A. Yes, sir.

936 Q. And where is Mr. Kaiser located?

A. Mr. Kaiser is at Glenolden Avenue and Chester Pike, in Glenolden, Pennsylvania.

Q. And have you had any conversations with respect to the sale of TBA with Mr. Kaiser? If so, please give us the approximate time of the conversation, and the details of the conversation and so forth, and what type of a station does Mr. Kaiser operate.

Mr. Thompson: May it be understood, sir, that this testimony is taken subject to the Commission's ruling about Atlantic's later right to move to strike?

Hearing Examiner Kolb: Is this a Sinclair station?

Mr. Thompson: Yes, sir.

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: It will be received subject to a motion to strike on the part of Atlantic.

The Witness: Well, it's been identified that it is a Sinclair station.

• • • • • •

938 By Mr. Kelaher:

Q. Have you had any conversations with Mr. Kaiser—let me put it this way: confining your answers solely to accessories and not to batteries, or not to tires or tubes, have you had any conversations with Sinclair dealers with respect to the sale of accessories do you recall?

A. Well, when you say "accessories," are you referring to the chemical end of it?

Q. Yes.

• • • • • •

By Mr. Kelaher:

Would you please give us specific dates and conversations with Sinclair dealers?

A. Yes, sir. This spring, 1957, with George Kaiser, Sinclair, Glenolden Avenue and Chester Pike, Glenolden, I actively solicited his DuPont spring chemical order. He told me that he would like to give it to me, he would give me some fill-in business, but he'd been more or less
939 forced to promise it to the TBA distributor for Sinclair in the area and he also told me that they had a free merchandise program which we as a DuPont jobber did not have access to. Now, whether that was the TBA distributor's own deal or not, I don't know.

Q. Now, who was the TBA supplying dealer for Sinclair stations in your area?

A. Superior Tire.

Q. Do you happen to know their approximate location, what city they are in?

A. They were in Upper Darby on Garrett Road, but I believe they have moved. Their exact location now I do not know, sir.

Q. Do you recall any other conversations of a similar nature with other Sinclair dealers?

A. Chamberlain's Service at the same time, Chamberlain's Sinclair Service, Gardner Avenue and MacDade Boulevard in Glenolden, spring of this year, 1957, I spoke to Bob Chamberlain soliciting his DuPont order for the spring chemicals and he more or less told me, practically verbatim, the same thing.

Q. The same thing as Mr. Kaiser?

A. Practically the same thing as Mr. Kaiser.

Q. Do you recall any other Sinclair dealers with whom you had similar conversations?

A. Al and Gene Radewon, Morton Avenue and MacDade Boulevard.

940 Q. Would you give us the approximate time and other details?

A. That also was at the same time, this all happened in 1957, and I did succeed in selling him one case of merchandise but I also had to give him two free cans of DuPont chemicals in order to meet the competition that was put up by the TBA distributor.

Q. Now, did all these conversations take place at the station locations of these various dealers you referred to?

A. In the office of the station location itself.

Q. And did the conversations with the Atlantic dealers you have named—

A. (Interposing.) Yes, on the property, the location of the station.

Q. What has been your experience with respect to the sale of Mansfield tires in Atlantic stations?

A. Just on a fill-in basis, no stock orders whatsoever.

Q. And have any reasons ever been given you by Atlantic dealers for buying on a fill-in basis?

Mr. Thompson: Please go on and state the rest of the question.

A. Yes, sir; there's definite reasons given.

By Mr. Kelaher:

Q. Now, would you give us the details and I will state it briefly: Give us the details as to such conversations.

A. Well, in the latter part of 1954 with Mr. Booz, 941 Elmer Booz, Wycombe Avenue and MacDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz' tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes." And that was the extent of the conversation.

Q. Do you recall any other conversations with Atlantic dealers along similar lines?

A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same manner, that he couldn't put anything but Goodyear in there.

Q. Now, you stated that your company sells so-called hard parts. Are you able to sell hard parts to Atlantic stations?

A. Yes, sir; there is a—and that's a situation where the fellows do use us for delivery service, they are now allowed to do minor repairs, consequently they do call upon us for deliveries on mufflers, tail pipes and so forth, and we have no problem whatsoever soliciting their business on that.

Q. And you have no problem in selling them hard parts, is that correct?

A. No, sir.

942 By Mr. Kelaher: What has been your experience with respect to the sale of hard parts to Sinclair service stations?

A. No problem at all on that, sir.

Mr. Thompson: I couldn't understand the question, I'm sorry, would you mind repeating the question?

(The reporter read the question.)

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb. Cross-examine.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Cross-Examination by Mr. Thompson.

Q. Mr. Marabella—

A. Yes, sir.

Q. For identification I represent the Atlantic Refining Company in this case and the extremely handsome gentleman across the way represents the Goodyear Company.

Your business has progressed pretty well since you started it in '51 on an over-all basis, has it not?

A. Yes, sir.

943 Q. The gross sales have been increasing rapidly—

A. Yes, sir.

Q. And also your profit, have they not?

A. Not as much as we'd like them to, sir.

Q. Isn't that so of all of us?

A. I don't know.

Q. When were you first interviewed by a representative of the Federal Trade Commission about tires, batteries and accessories?

A. Three months ago.

Q. That was the first time the Federal Trade Commission called on you?

A. Yes, sir.

Q. And that would have been, then, about March of this year?

A. Yes.

Q. Have you discussed your testimony in this case with Jack Chambers, Elmer Booz, and Andy Iacona?

A. I haven't even talked to those fellows.

Q. So you don't know what they testified to when they were on the stand?

A. No, sir.

Q. Did I understand you to say that you can't sell orders for stocking of accessories at any of the Atlantic stations?

A. Yes, sir.

Q. You silicit them all, do you?

944 A. In our trading area, yes, sir.

Q. Does your trading area go out as far as Lynwood?

A. No, sir.

Q. I suppose that it obviously covers MacDade Boulevard?

A. Yes, sir.

Q. Do you solicit Ed Holmes?

A. Yes sir.

Q. Does he stock your accessories?

A. Ed Holmes, isn't he a contract station?

Q. I'm asking the question, Mr. Marabella. My question was whether you solicited him and whether he stocked your accessories which he bought from you?

A. When you speak of accessories you are referring to chemicals, sir. No, he does not buy those from me.

Q. How about Mansfield tires?

A. No, sir.

Q. Hard parts?

A. Yes, sir.

Q. Is he one of the Atlantic dealers who said that because of pressure he couldn't buy accessories from you or tires?

A. No, sir.

Q. Did he ever make any such remarks at all?

A. No, sir.

Q. Now, why can't you sell him tires and why can't you sell him accessories?

945 A. On the tubes I sell Mr. Holmes. I sell Mr. Holmes tubes.

Q. Why can't you sell him accessories?

A. Well, I believe that Mr. Holmes is a pretty fair minded man and he splits his business up.

Q. Among a lot of—

A. Jobbers.

Q. Among a lot of jobbers?

A. Yes, sir.

Q. Don't a great many of the Atlantic accounts do precisely that?

A. Not on TBA items, sir.

Q. Why not?

A. I wish I knew the answer to that.

Q. You don't know why Mr. Holmes doesn't buy TBA from you?

A. No, sir.

Q. He's never given you any reason?

A. I have never actively solicited too much of his TBA.

Q. Does he buy from Ed Parris, do you know?

A. That I couldn't tell you, sir.

Q. As a matter of fact, you can't tell us whether any of these Atlantic dealers buy from Ed Parris, can you?

A. Oh, yes I can.

Q. How?

A. I see invoices.

946 Q. You mean the dealers show you the invoices?

A. No. The invoices are laying on the desk just like in any other business.

Q. Just laying on the desk?

A. That's all.

Q. Well, who else besides yourself does sell TBA to Atlantic dealers in your sales territory? Who are your competitors?

A. Well, as far as competitors go, whether or not they sell TBA to Atlantic, I don't know. You have got Auto Parts and Radiator, with a branch store in Folcroft, the main store in Chester; E. B. Krausen in Chester. You have got Chester Auto Parts; you have got Motor Parts Service in Norwood; Prospect Park, rather; you have got Clifton Automotive, Clifton Heights, Pennsylvania, all actively soliciting in the area plus all the Philadelphia jobbers who travel out to the Chester Pike area, Gaul, Derr and Shearer.

Q. In—by and large do all of those dealers call on all of those stations?

A. Yes, sir.

Q. There must be a parade of jobbers into a station every day.

A. I have had it said to me that's all they do, is interview salesmen all day long.

Q. I have had it said to me, too, Mr. Marabella.

Chester Auto Parts, did you mention that, Mr. Wet-
947 zell's Company?

A. Yes, sir.

Q. Does your sales area go out as far as Morton?

A. Yes, sir.

Q. How about Walter McCullough. Do you solicit his account?

A. Yes, hard parts.

Q. Is that all you get from him?

A. That's right.

Q. Did he ever tell you why he doesn't buy tires, batteries and accessories from you?

A. Never personally, because I don't call on him.

Q. Your other salesman does, but your firm has never been able to sell him anything except hard parts?

A. We have sold occasionally on the chemicals on fill-in, but never what you would call a stock order, or batteries once in a while for delivery.

Q. Has your salesman ever reported to you why Mr. McCullough doesn't buy TBA from you?

A. Sir, I have never really asked him why because I only have so many hours in a day and I have more or less resigned myself to the fact that unless, I don't think we'll ever sell Atlantic TBA so I don't even bother.

Q. Do you think Atlantic puts pressure on Mr. McCullough?

A. I don't know. I don't know what his status is.

Q. Except for fellows like Chambers and Hill and
948 Booz, do you really know the status of any of the people you have talked about?

A. Elko, Don Elko, he's a lessee.

Q. You mentioned him.

A. George Hill who was down on MacDade Boulevard in Darby is a lessee.

Q. He's an old friend. He's been here.

A. Sam Dubrow's in Darby, he's a lessee.

Q. You mentioned him, didn't you?

How about your relationship with the Minka Brothers station down in Chester. Where is that, Sixth and Morton?

A. Yes, sir; but we don't do anything about that.

Mr. Kelaher: Which was that?

Mr. Thompson: Minka—M-i-n-k-a.

By Mr. Thompson:

Q. Do you solicit that account?

A. Yes, sir. Actually they are right in the heart of

three or four jobbers down there, and very frankly it would be foolish for those fellows to buy from us.

Q. They can get service right next door?

A. Yes, sir.

Q. Now, how about Sharon Hill Garage. That is a pretty big outfit?

A. Yes, sir.

Q. Do you deal with them?

949 A. Yes, we do.

Q. Do you sell them TBA?

A. Occasionally, yes.

Q. Do they stock Mansfield tires?

A. No, sir.

Q. Do they stock any of the accessories bought from you?

A. They do, but it's more or less as I mentioned on a fill in basis. Most all of his TBA is on a—as I mentioned —it's more or less a fill-in basis from us. We get no stock orders from him at all, other than hard parts.

Q. Mr. Marabella, I have forgotten who is running that Sharon Hill parts—

A. Tom.

Q. Do you remember his last name.

A. I can't pronounce his last name, it's an Italian name.

Q. Can you spell it?

A. I can't spell it either.

Q. Tom something-or-other?

A. I'm Italian and I can't pronounce it.

Q. Do you call on him personally?

A. No, the other salesman solicits him.

Q. You don't know of your own knowledge why he doesn't stock your TBA items?

A. Not of my own knowledge, no.

Q. Have you had reports from your salesman?

950 A. Yes.

Q. What were the reasons reported?

A. Well, he tries to—as I said, I don't know what his status is, but he does try to identify himself, through what I have found myself with Atlantic and Atlantic TBA items.

Q. And you mean on Goodyear when you say Atlantic TBA items?

A. On some items, as I say I have only been down there to talk to him once or twice and other—the other salesman contacts him.

Q. I see.

How about Pachel out at Morton, is he one of your customers?

A. No, the other boy contacts him.

Q. Do they stock or buy TBA from you?

A. No, sir; not from us; hard parts, yes.

Q. Has it been reported to you why?

A. No, sir.

Q. There has been no report to you of any Atlantic pressure on that account?

A. No specific report to me; no, sir.

Q. But nevertheless they don't stock your TBA, do they?

A. That's right, sir.

Q. Do you go out as far as Boothwyn?

A. No, sir.

Mr. Kelaher: Could I have that question reread?

951 (The reporter read the question.)

Mr. Kelaher: Would you mind identifying that in some way. We are strangers to Philadelphia and—

Mr. Thompson: Have you heard the answer? Perhaps you will lose interest when you hear the answer. The answer was "no."

Mr. Kelaher: I have lost interest.

By Mr. Thompson:

Q. Mr. Marabella, you referred to a store, do you people retail as well as wholesale? Do you sell over the counter at the store?

A. No, sir.

Q. So that the store is what, really headquarters, warehouse?

A. That's right, sir.

Q. By the way, are you selling Elmer Booz TBA now?

A. To a certain extent down there, yes.

Q. Is he stocking Mansfield tires?

A. No, sir; he's stocking tubes.

Q. Stocking tubes, and how about accessories?

A. Yes, sir.

Q. Buying them from you?

A. I would like to elaborate one minute. When you asked about Mansfield tires, he's not stocking and none of these boys are, because I gave up the Mansfield line.

Q. When did you do that?

952 A. Two years ago, sir; the latter part of 1955.

Q. That's quite enlightening. I didn't realize that from your prior testimony.

A. All I did was get rid of what I had on hand.

Q. Did you take on another tire line?

A. No, sir.

Q. Now, you have three trucks which service an area which I understand to be a radius of about ten miles from your store?

A. Yes, sir.

Q. Do those three trucks provide adequate delivery service?

A. During the Pennsylvania state inspection period, which is at present, I have to get another truck.

Q. In other words, to do a job out there you would require about four trucks?

A. I would need another truck.

Mr. Kelaher: I beg your pardon. What was your answer?

The Witness: The way it's been so busy we'll need another truck.

By Mr. Thompson:

Q. You couldn't handle that business with one truck, could you?

A. Absolutely not.

953 Q. How about with just one station wagon?

A. No, sir.

Q. You'd be broke, wouldn't you?

A. Yes, sir.

Mr. Thompson: That's all I have.

954 By Mr. Correa:

Q. Now, Mr. Marabella, you spoke of Mr. Iacona, and you said you sold what to Mr. Iacona?

A. Specifically hard parts, Bars Leak, which is a cooling system sealer.

Q. And what else?

A. And occasional fill-ins on various items of the TBA or what have you.

Q. Did you sell him tires?

A. No, sir.

Q. Did you sell him batteries?

A. Occasionally, when he needed a battery.

Q. Referring to the year 1953, did you solicit Mr. Iacona that year?

A. I did myself personally.

Q. You did?

A. Yes, sir.

Q. Did you attempt to sell him tires?

955 A. No, sir.

Q. Do you know what tires he stocked during that year?

A. No, sir; I do not.

Q. You were in his place of business around the time?

A. Yes, sir.

Q. You didn't happen to see his invoices?

A. No, sir.

Q. He kept them in the drawer of his station?

A. I might clarify that, sir. I can just see the top of the name of whose ever invoice it is, I don't make it a practice to go down and check prices or quantities of merchandise.

Q. Whatever your practice in the case of Mr. Iacona you didn't see his invoices?

A. Where he was buying his tires?

Q. Yes, sir.

A. No, sir.

Q. And you don't know?

A. No, sir.

Q. And you didn't try to sell him?

A. No, sir.

Q. You were selling Mansfield tires at the time?

A. Very, very few.

Q. Weren't you able to deliver as many as you could sell?

A. Not in '53; no, sir.

Q. Not in '53. So, you didn't want to sell him 956 tires in 1953?

A. Let's say maybe I didn't want to go round and round with Mr. Iacona in 1953.

Q. Did you take a look around his place to see what kind of tires he was stocking in 1953?

A. Very truthfully, sir, I couldn't tell you what type of tires he was stocking in 1953.

Q. Now, you said you did sell him an occasional battery in 1953, is that right?

A. Yes, sir; when it would be an odd battery that he did not carry in stock.

Q. What kind of batteries did you sell him?

A. Delco. We were a contract jobber at that time before we became a warehouse distributor.

Q. What kind of batteries was Mr. Iacona stocking in 1953?

A. I wouldn't truthfully know. I think that he was carrying some, I believe, Goodyears, sir.

Q. Is he stocking anything other than Goodyear?

A. Not to my knowledge.

Q. Would it help your recollection if I told you that Mr. Iacona testified here the day before yesterday that in the spring of 1953 he started putting in Delco batteries?

A. Well, I don't know who he was buying them from for stock, I can tell you that. I was getting the fill-in business for an odd job if he didn't have one on the shelf.

957 Q. Do you know whether or not he was buying the Delco batteries from Ed Parris?

A. That I couldn't tell you, sir.

Q. Did you make any effort to sell Mr. Iacona Delco batteries on a stocking basis in 1953?

A. I myself did. Yes, sir.

Q. What did he tell you?

A. Sticking with Goodyear. I know that I went in there myself every week up until the time Mr. Iacona left that location and I can truthfully say that he may have had them, if he did have the Delco batteries as you say he didn't have them on display.

Q. Not as I, as he says.

A. As Mr. Iacona says.

Q. I don't know what he said—

Mr. Kelaher: May we have the reference to the testimony?

Mr. Correa: Yes, sir. 659.

Mr. Kelaher: Thank you.

By Mr. Correa;

Q. Now, sir, did you sell Mr. Iacona in 1953 all the Delco batteries he bought on any basis, fill-in, stocking of what ever?

A. Did I?

Mr. Kelaher: Objection, your Honor; he would have 958 no way of knowing.

Mr. Correa: Well, if he knows.

Hearing Examiner Kolb: This is cross examination.

Mr. Kelaher: Certainly.

Mr. Correa: If he knows. That, I may say, is to be understood on all of my questions.

Mr. Kelaher: I think that the qualification should be stated orally in this type of question.

Mr. Correa: I think it should be clear.

The Witness: All I can say is he called us for a battery on a specific job. To my knowledge, as far as I can recollect, Mr. Iacona never bought any Delco batteries from me for stock.

By Mr. Correa;

Q. Did he buy them from any of your competitors?

A. That I couldn't tell you.

Q. Specifically do you know whether or not he bought them from Gaul, Derr, and Shearer?

A. I could not tell you, sir; I don't know.

Q. Now, sir, you have stated with respect to Sinclair stations that in the spring of 1957 you solicited George Kaiser to sell him some chemicals, was it?

A. Yes, sir.

Q. And you said that he told you he couldn't buy them from you because he had already promised to buy them
959 from, I think you said the Sinclair distributor was the way you put it.

A. Yes, sir.

Q. And also that he referred to a free merchandise program which was being offered by the Sinclair distributor?

A. Yes, sir.

Q. And I gather you were not offering a similar program?

A. It wasn't available to us.

Q. Well, didn't you tell us that you didn't know whether that was the distributors program or one—

A. (Interposing.) I did say that, sir.

Q. (Continuing.) —made available by—

A. (Interposing.) To my knowledge it wasn't with Johnsons, it wasn't with Simoniz, and it wasn't with DuPont.

Q. But you don't know whether or not that was the distributor's program?

A. I personally believe—

Q. (Interposing.) I'm not interested in your belief, I want your knowledge, sir.

A. I'll say specifically that it was the distributor's program because the merchandise was delivered with the free merchandise.

Q. Now, you said that at about the same time you also solicited a Mr. Chamberlain?

A. Yes, sir.

Q. And that he told you practically the same thing
960 as Kaiser?

A. Practically verbatim.

Q. Did he refer as well to the free merchandising program?

A. Yes, sir.

Q. And you said you sold to Al and Gene Radewon on the basis of giving them something free?

A. Two free cans; yes, sir.

Q. And that you had to do in order to meet the competition?

A. Yes, sir.

Mr. Correa: I have no further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: May we have a minute, your Honor?

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: Yes, I just have a few.

Redirect Examination by Mr. Kelaher.

Q. Mr. Marabella, you were asked on cross examination if your gross sales had increased during the period since you began business in 1951?

A. Yes, sir.

Q. Have your sales increased with respect to the sale of TBA items to Atlantic service stations?

A. Specifically, no, sir.

Q. So, the gross sales increase is not due at all to any increase in sales of TBA to Atlantic service stations?

961 A. No, sir; there's other factors involved. There's price increases, naturally, which puts your sales up.

Q. Have you increased your sale of hard parts?

A. Very much so, sir.

Q. And does that account primarily for your increase in gross sales?

A. That is the biggest factor but as I mentioned the price increases is a factor and also buying merchandise on a direct basis; in other words, not paying a premium to another distributor which gives us a greater profit margin.

Q. Such as on Delco batteries?

A. Yes, sir.

Q. You were asked on cross examination to give the names of various competitors. I noted that you did not mention the name of Mr. Parris. I would like to ask you whether Mr. Parris competes with you in your whole trading area?

A. As far as the Atlantic stations go, sir, when we speak of competitors I have about given up as far as the TBA goes on some of these other items and I speak of hard parts competitors.

Q. I see.

962 By Mr. Kelaher:

Q. Reference was made in cross examination to a Sharon Hill Garage. Do you know whether or not that is owned by the gentleman with the unpronounceable name, or whether it's a leased station?

A. To my knowledge it's not a lease operation; in fact, I believe it's a Mr. Lewis owns the building.

Q. And as the name would seem to indicate, is that primarily a garage for repair of automobiles?

A. Yes, primarily.

Q. Now, with respect to Mansfield tires, you stated on direct that you at one time—and I understood you to say that you were handling Mansfield tires to date—but you stated on cross you discontinued them. When you began business did you begin to handle Mansfield tires?

A. Not immediately.

Q. When did you begin handling them?

A. In 1952.

Q. Do you recall what part of '52?

A. I would say the spring of '52.

Q. And you continued to handle them until when?

963 A. Well, up until we sold our inventory out which was just up until the end of this spring.

Q. Until the spring of 1957?

A. Yes.

Q. I see.

Now, on cross examination you stated that you discontinued, did you say buying Mansfield tires in 1955?

A. Yes. That's when the contract terminated, the latter part of '55.

Q. But you had some Mansfield tires in stock that you continued to sell until—

A. Quite a few of them.

Q. And that stock was not depleted until the spring of 1957?

A. Yes, sir.

Q. Now, I would like to ask you about tubes. When did you begin to handle tubes?

A. Well, about the same time that we started handling tires.

Q. And do you still purchase tubes for resale?

A. Yes, sir.

Q. And I think you mentioned the brand name as L & D, is that correct?

A. Yes, but it's made by the Mansfield people.

Mr. Kelaher: No further questions, your Honor.

Mr. Thompson: No question.

Mr. Correa: No further questions.

964 Hearing Examiner Kolb: That's all, Mr. Marabella. Thank you.

(Witness excused.)

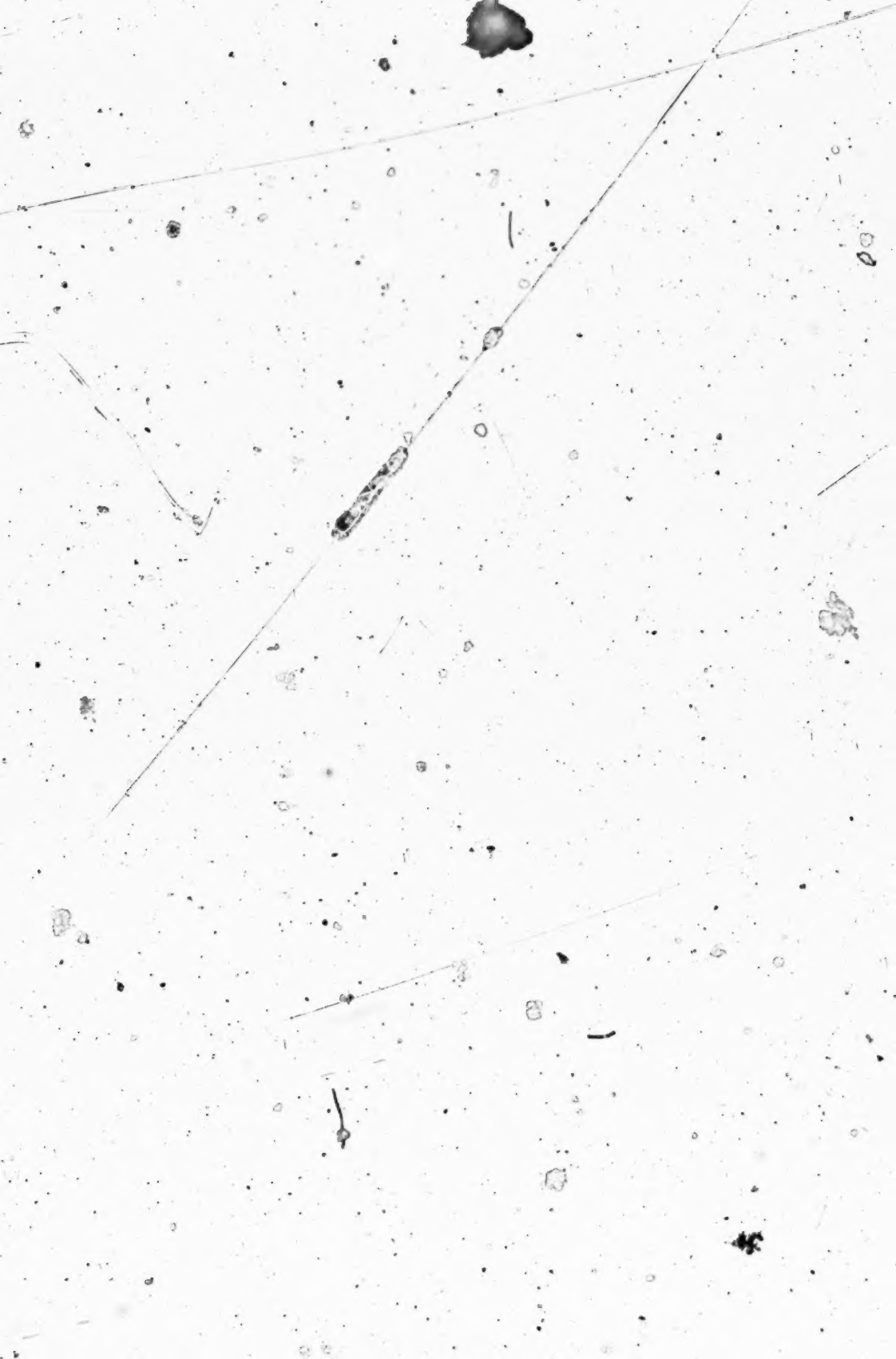
Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

965 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Lanza.



VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964

VOL. II, pp. 853 to 1610

In the

United States Court of Appeals

For the Seventh Circuit

No. 13339

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner,* vs. FEDERAL TRADE COMMISSION, *Respondent.*	Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

Summary of proceedings below 1
Amended Complaint 5
Answer of Goodyear Company 13
Answer of Goodyear Company, Inc. 19
Answer of Atlantic to Complaint as amended by order of May 21, 1956 26
Order sustaining Interlocutory Appeal 35
Motion of Goodyear Company and Goodyear Company, Inc., to withdraw issues and to strike evidence 38
Answer in opposition to motion, etc. 39
Order denying motion to withdraw issues and to strike evidence 45
Interlocutory Appeal of Respondents 46
Answer in opposition to Interlocutory Appeal 61
Order denying Interlocutory Appeal 88
Order on motion to strike evidence 90
Initial Decision 94
Final Order 114
Opinion of the Commission 118
Petition for Review 188

TRANSCRIPT OF PROCEEDINGS.

Admissions of Respondents 199
Documents marked for identification 203
Offer of exhibits 219, 237, 393, 441, 459, 482, 601
Colloquy 223, 248, 1432, 2369
Stipulation re testimony of Atlantic personnel 366
Stipulation re Atlantic testimony 415
Stipulation re Goodyear testimony 447, 512

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3679.

Data re three marketing areas..... 468
Stipulation re Warren and Hunterdone Counties in New Jersey 2342
Stipulation re Gay testimony.....2343
Statement of Crawford Bryant.....2347

WITNESSES FOR THE COMMISSION.

Testimony of:

Balloran, Francis J..... 771
Best, Rolland C.....1208
Blumenthal, David B..... 306
Booz, Elmer H., Jr..... 757
Chambers, John 257
Colby, William 874
Connell, Conrad 709
Drennan, Robert B..... 931
Duboff, Myer 533
Edrington, Russell H.....1298
Edwards, William E.....1308
Franks, William Lee 789
Ferguson, Richard 882
Freeland, Edgar D., Jr.....1244
Govoruhk, Nicholas 1051
Hayes, Sherman..... 869
Heald, Felix B..... 802
Heller, Edward C..... 499
Hill, George J., Jr..... 488
Hinderscheid, W. F.....571, 687
Hoffman, Jack 291
Hooper, James 1257
Huether, Lewis A.....1252
Iacona, Aniello L..... 637
Johnson, Tyler L..... 743

Kernaghan, Thomas J. 669
Kevis, Douglas W. 312
Lang, Elmer 1220
Lanza, Michael Thomas 853
Marabella, Joseph 815
Matthews, James 554, 604
McCandless, Robert H. 695
McIntire, James L. 905
McMaster, Joseph B. 1109
Migan, John J. 1150
Myers, James M., Jr. 939
Norris, Oster 1145
Osborn, Samuel Kriete 962
Pollock, Isidore Jack 660
Roettger, E. Edmond G. 1036
Sander, Homer August 1293
Savage, Eugene 1160
Scheiner, Joseph 1279
Smith, William C. 1011
Vick, John J. 677
Walker, George Stanley Drew 896
Wetzel, Glenn L. 320

WITNESSES FOR RESPONDENT.

Testimony of:
Buongiorne, Frank R. 1611
Carlson, Robert O. 1888
Cary, Reuben 2188
Colley, Dwight T. 2348
Cooley, Russell E. 1583
Connelly, Joseph M. 2154
Detwiler, Charles K. 2083
Elko, Donald 1939

Gaestel, Wilbur D. 1815
Gloth, Israel 2027
Godino, Alfred 1925
Grossman, Sam 1740
Hathaway, Holland M. 1474, 1555
Hayes, Thomas A., Jr. 2114
Jones, Thomas E. 1970
Klein, Robert 2139
Lott, Charles Henry 1772
Luongo, Rudolph N. 1963
Mann, Isadore 1952
Mapes, August 1791
Marino, Joseph A. 1751
Maseyko, George Paul 1667
McCarthy, Harold F. 2043
Molinaro, Dominic, Jr. 2068
Mulholland, Richard G. 2300
Munch, Edward B. 1550
Provost, Robert C. 1932
Rhoades, O. Harris 2169
Ringenary, Edward 1909
Shafer, Albert H. 2208
Snow, Edward L. 2061
Thomas, Richard D. 1565
Vayda, Albert J. 2136
Walsh, Charles A., Jr. 2248
Wash, Joseph J. 1720
Way, William L. 2147
Wright, Harry W., Jr. 1686
Wyckoff, Charles P. 1705
Zarella, George 2046

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets.....2375
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks.....2378
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord.....2379
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks.....2380
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman.....2381
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al...2383
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord.....2385
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al.....2387
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman.....2388
9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the company's preference for the Goodyear program:".....2389
Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan".....2393
11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental".....2395
12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors.....2397

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached.....2398
14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman.....2403
15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker.....2404
16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr.....2406
17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman.....2408
18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord.....2410
19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman.....2412
20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman.....2413
21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord.....2415
22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman.....2416
23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow"....2417
24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers.....2419
25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting".....2429
26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting".....2430

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline" 2431

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2432

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2435

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2436

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers".....2437

32—Inter-Office Communication, February 28, 1951, from W. E. Blank, attention of L. A. Knight..2438

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers 2439

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2441

35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2445

36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2446

37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2447

38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2448

39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2449
40 A-B—Letter, February 9, 1951, from S. J. Heideman to J. E. Mayl, with enclosure 2451
41 A-E—Goodyear Form G-1209, with descriptive note 2453
42 A-B—Goodyear Form, G-1204, with descriptive note 2458
43 A—Goodyear Form G-1201, with descriptive note 2459
44 A-B—Goodyear Form G-1208, with descriptive note 2460
44 C—Goodyear Form G-1207 2461
44 D—Goodyear Form B-91 2462
44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement 2463
44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2464
44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2465
45 A-B—Goodyear Form B-80, with descriptive note 2466
46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl 2467
47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al 2469
47 C-D—Goodyear Sales Department Instructions, May 31, 1951 2472
47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2475

48 A-F—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951" 2477

49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord 2484

50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman 2485

51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman 2487

51 A—Goodyear Form A98101L, "Request for Identification Field Service" 2489

52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company" 2491

53—Summary of Sales and Commissions covered by the Sales Commission Plan 2492

54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953" 2493

55—Goodyear Tabulation of TBA Volume of Commissions to Various Oil Companies, 1951, 1952 and the First Six Months of 1953 2493

56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord 2494

56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr. 2495

57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman 2496

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord 2497
59 A-E—Letter Agreement, January 1, 1950, from Goodyear to Shell Oil Company, with Exhibit A attached 2498
59 F-I—Letter Agreement, January 8, 1953, from Goodyear to Shell American Petroleum Company, with Exhibit A attached 2503
60—Memorandum, November 6, 1951, from R. G. Miller to J. A. Bailey 2508
61—Unsigned document, "Outline of Discussion The Shamrock Oil & Gas Corporation, Amarillo, Texas, Tuesday—November 27, 1951" 2512
62 A-E—Letter Agreement, March 11, 1952, from Goodyear to The Shamrock Oil and Gas Corporation, with Exhibit A attached 2515
63—Letter, August 29, 1952, from Leo J. Wilmeth to R. G. Miller 2521
64 A-E—Letter Agreement, September 5, 1952, from Goodyear to Carter Oil Company, with Exhibit A attached 2522
65 A-C—Memorandum, September 5, 1952, from S. A. Gaylord to certain District Managers and Division Managers 2527
66 A-I—Copy of "The Carter Dealer", December 1952 2533
67 A-B—Unsigned letter, July 14, 1937, to Sherwood Brothers, Inc. 2545
68 A-B—Letter Agreement, March 1, 1944, from Goodyear to Sherwood Brothers Incorporated 2547
68 C—Letter Agreement, December 21, 1955, from Sherwood Brothers Incorporated to S. A. Gaylord 2550

69—Letter Agreement, September 25, 1944, from Goodyear to Sinclair Refining Company 2551

70 A-C—Letter Agreement, October 1, 1947, from Goodyear to Sinclair Refining Company, with attachment 2554

71 A-D—Letter Agreement, May 1, 1952, from Goodyear to Mid-Continent Petroleum Corp., with Exhibit A attached 2558

72—Letter, January 15, 1952, from Victor Holt, Jr. to T. E. Fitzgerald.....2563

73 A-B—Letter, June 20, 1953, from C. R. Mitchell to W. J. Wixson.....2564

73 C—Letter Agreement, May 16, 1955, from Goodyear to Mid-Continent Petroleum Corporation 2568

73 D-G—Letter Agreement, May 16, 1955, from Goodyear to D-X Sunray Oil Company, with Exhibit A attached 2569

74 A-D—Letter Agreement, June 19, 1952, from Goodyear to The Frontier Refining Company, with Exhibit A attached.....2573

75—Memorandum, June 12, 1952, from J. W. Basista to C. W. Thorp 2579

76—Letter, March 5, 1953, from J. W. Basista to Claude A. Weber 2581

76 A—Letter, December 9, 1954, from H. E. Armitage to Goodyear 2582

77 A-D—Letter Agreement, January 1, 1953, from Goodyear to Quaker State Oil Refining Corporation, with Exhibit A attached 2583

78 A-B—Document, undated and unsigned, with heading "Carter Oil Company T. B. A. Sales Potential".....2588

79 A-F—Letter Agreement, January 26, 1955, from Goodyear to Anderson, Prichard Oil Corporation, with Exhibits A, B and C attached.....2590

79 G—Letter, February 18, 1955; from E. K. Ketcham to Goodyear 2597

79 H-J—Unexecuted Letter Agreement dated August 9, 1949 from Goodyear to Ashland Oil & Refining Company, with attachment.....2598

79 K—Letter, September 13, 1949, from Everett F. Wells to Sam Gaylord.....2602

79 L—Letter, September 28, 1949, from S. A. Gaylord to E. F. Wells.....2603

79 M—Letter, July 12, 1950, from W. E. Cameron to Don W. Detjen.....2604

79 N-O—Memorandum, March 24, 1950, from S. A. Gaylord to H. E. Hoerster.....2605

79 P-V—Document, unsigned, January 3, 1950, with heading "Special Account Instructions Ashland Oil & Refining Company. Inc., Ashland, Kentucky Sales Commission" 2608

79 W—Document, undated and unsigned, with heading "Goodyear Districts".....2621

80 A-T—Goodyear Organization Charts 2623

80 U—Maps entitled "Goodyear Regions & Districts" 2643

81 A-F—Atlantic Organization Charts 2644

82 A-C—Outline Maps of Atlantic Marketing Regions—Philadelphia-New Jersey Region, New York Region, New England Region.....2650

83 A-C—Outline Maps of Atlantic Marketing Regions—W. Penna. Region, E. Penna. Region, Southern Region 2653

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952 2657
85 A-B—Atlantic Lease Form B/3191, 6/49.....2660
86 A-B—Atlantic Lease Form, B/3191, 4-52.....2664
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2669
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station".....2672
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2672
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191.....2678
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *" 2679
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station"..2680
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants..2681
88 E1-2—Atlantic Lease Form B-3191Y, 5/55.....2683
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement 2689
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement 2690
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement 2692
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2697
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants..2702
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants..2704
93—Atlantic Form of "Commission Agreement"....2708

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2711
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2715
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2721
96—Atlantic Form B-3119, 10/50, "Authorized Distributor's Agreement" 2727
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2730
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2733
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2735
98 A-G—Atlantic Form of Distributor Contract....2737
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2743
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider.....2749
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2754
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers".....2759
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2762
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al.....2764
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study".....2765
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2791
102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments.....2801

104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic.....2807
105 A-B—Letter Agreement, January 12, 1954, from Firestone to Atlantic 2810
105 C—Letter Agreement, November 3, 1954, from Atlantic to Firestone.....2813
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone 2814
121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachment..2816
122—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2821
123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord 2822
124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman 2823
125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord 2824
126 A-B—Letter Agreement, April 3, 1951, from Atlantic to Goodyear 2825
126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear 2827
126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear 2828
127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company-Sales Commission" 2829
128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall 2842
129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley.....2844
130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda 2845

131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson.....2852
132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al.....2853
133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region 2854
134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for the marketing of Tires, * * *".....2857
136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment 2859
137 A-E—Document entitled "Duties of the Dealer Salesman" 2865
138—Unsigned memorandum, June 25, 1951, to F. M. Neall 2871
139 A—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger 2872
140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman 2873
140 A-C—Three Atlantic Forms B-139, 10/51, Dealers' Credit Card Sales Slips 2875
141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis 2879
142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman 2880
143—Letter, July 9, 1951, to William Stockton.....2881
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2882
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2883

145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2884
146 A-B—Document entitled "Staff meeting held 7/14/52" 2887
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13" 2889
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr. 2890
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program" 2891
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantic's T. B. A. Policy" 2892
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell 2893
152—Atlantic form letter, to Atlantic Dealers and Atlantic Petroleum Distributors, beginning "Here is the most important T. B. A. news * * *" 2894
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2895
155 A-H—Document entitled "1951 Sales Plan New York Region Basis" 2896
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C" 2902
155 J—Document entitled "1951 Sales Plan—Report of Progress—Appendix D" 2903
155 L—Document entitled "Appendix E" 2905
155 M—Document entitled "Summary of Results" 2906
156—Document dated January 5, 1951 entitled "Station Modelization Policy" 2907

157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2908
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman....2909
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord 2911
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments.....2912
160 Q-Y—Document entitled "Goodyear Associate Dealers—New Jersey" 2927
161—Unsigned letter, July 30, 1951, to W. J. Jackson 2936
161 A-B—Document bearing two colums headed "Location" and "Reason" 2937
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman....2939
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord 2940
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman 2942
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman 2943
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill 2944
166—Letter, October 11, 1951, from J. W. O'Neill to S. J. Heideman 2945
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman 2946
167 A-M—Handwritten document entitled "Refusals" 2947
168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel.....2958
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis.....2959

170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment 2960
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment 2968
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment 2973
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis.....2975
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, *et al.*, June 1, 1951, with attachment ..2975
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman 2982
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman 2983
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletin #17" 2984
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman 2985
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord 2986
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y."..2987
179 J—Form entitled "Atlantic-Goodyear Accounts".3002
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)." 3002
180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman 3004
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill 3005

182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 3006
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 3007
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries" ..3009
193—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951" 3011
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950" 3013
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949" 3015
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950" 3017
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949" 3019
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950" 3021
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949" 3023
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950" 3025
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs. 1949" 3027
202—Tabulation entitled "Final T. B. A. Sales—October 1950" 3029
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950" 3030
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949" 3031
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950" 3032

204 A—Tabulation entitled "Final T. B. A. Sales—December 1950" 3033
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949" 3035
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950" 3036
206—Letter, August 28, 1952, from D. T. Colley 3037
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers 3038
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951" 3040
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951" 3040
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951" 3041
211—Document entitled "Atlantic Progress Report", October 29, 1951 3042
212—Document entitled "Atlantic Progress Report", December 24, 1951 3043
215 A-B—Atlantic Credit Card—1950 3045
216 A-B—Atlantic Credit Card—1951 3046
217 A-B—Atlantic Credit Card—1952 3047
218 A-B—Atlantic Credit Card—1953 3048
219 A-B—Atlantic Credit Card—1954 3049
220 A-B—Atlantic Credit Card—1955 3050
221 A-B—Atlantic Credit Card—1956 3051
222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50) 3052
223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51) 3053
226 A-H—Letter, July 7, 1950, from Paul Castleberry, Jr. to Atlantic with attachments 3054

227 A-K—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear with attachments 3062
228 A-K—Goodyear Forms G-1204 (3-50) with covering Form G-703 (2-42) 3073
247 A—Document entitled "Goodyear T. B. A. is a natural for plus sales and profits".....3084
247 B—Booklet entitled "Goodyear T. B. A. Plan"..3098
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling 3127
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman 3128
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic 3129
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation" 3130
257 A—Letter, November 12, 1953, Atlantic to Aniello L. Iacona 3131
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic 3132
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania.....3133
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro 3134
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro 3136
259—Letter, July 5, 1956, from Atlantic to A. Bennett 3137
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson 3138
261—Letter, October 21, 1955, from Atlantic to Charles Davis 3139
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice 3140

263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio 3141
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly 3142
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel 3143
266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette 3144
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith 3145
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco 3146
269—Letter, January 5, 1955, from W. J. McCambridge, Jr. to Duane Olthof 3147
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski 3148
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski 3149
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw 3151
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco 3152
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers 3153
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman 3153
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al 3155
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3156

280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al.....3160

281 A-B—Document entitled "Sales Meeting February 19, 1951" 3162

282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card 3164

283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3167

284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al.....3171

285—Letter, March 5, 1951, from E. W. McCreary to E. M. Fiffick, et al.....3174

286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment 3175

287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al.....3178

288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3179

289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers 3184

290 A-I—Memorandum, August 6, 1951, with attachments 3185

291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3197

292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3200

294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews 3203
295—Document entitled "Branches as of January 1, 1950" 3205
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950" 3205
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive" 3206
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell 3208
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott 3209
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co. 3212
302—Letter, December 22, 1950, from C. Connell to J. S. Parks 3213
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville 3214
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell 3215
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst 3216
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst 3218
307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co. 3221
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3223
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell 3224

310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell 3225
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville 3227
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher 3229
314 B—Document entitled "Exide Wholesale Distributors by States and Cities November 1, 1950" 3231
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951"....3239
314 D—Document entitled "Exide Wholesale Distributors by States and Cities May 1, 1957".....3247
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley.....3269
328—Letter, April 5, 1948, John R. Sherwood to S. K. Osborne 3273
329—Certified copy of complaint in Osborn v. Sinclair Refining Company 3275
330—Certified copy of answer in Osborn v. Sinclair Refining Company 3298
331—Goodyear Form B-304 (11-56), "Goodyear Batteries Suggested Retail Prices".....3303
332—Goodyear Form B-308 (11-56), "Goodyear Batteries 352 Dealer Prices".....3305
333—Goodyear Form B-166 (10-51), "Goodyear Battery Policy and Sales Program Effective October 31, 1951" 3307
334—Memorandum of conversation on stationery of Bowers Battery and Spark Plug Co. beginning "Conversation—Mr. Nicholas J. Govoruhk— * * *" 3311
335—Baltimore Battery Co. Invoice No. 2376.....3312
336—Baltimore Battery Co. Invoice No. 3201.....3313

337—Baltimore Battery Co. Invoice No. 2361.....3314
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column.....3315
339—Goodyear Service Stores Invoice dated 12-27-55..3316
340—Letter, October 22, 1954, from J. R. Sherwood to J. B. McMaster.....3317
346—Newspaper advertisement of Plotkin's Tire Sales 3318
347—Letter, May 26, 1952, from Shell Oil Company to James W. Hooper 3319
348 A-B—Shell Form SR 1771-1 (Rev. 1/53), "Service Station Manager's Agreement".....3320
349—Letter, June 2, 1954, from Shell Oil Company to W. E. Edwards 3327
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks 3328
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments 3330
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3343
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions" 3344
377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade".....3345
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951" 3347
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951" 3348
387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3349

389 A-B—Document entitled "Products Eligible Under Sales Commission Plan" 3350
391 A-C—Document dated 10-21-55 entitled "Shell Oil Co.—Sales Commission" 3353
392 A-B—Letter, June 3, 1948, from R. C. Mueller to E. C. Flinn 3360
393—Goodyear intra-company memorandum, 7-8-48, from S. A. Gaylord to E. C. Flinn 3362
394 A-C—Goodyear document entitled "District Instruction No. 1086A", October 19, 1948 3363
395 A-B—Letter, December 19, 1951, from Butler Doolittle to C. H. Mead, Jr. 3369
396 A-H—Letter, October 9, 1950, from R. E. Sewell to O. E. Scholz, with attachments 3371
397 A-B—Letter, January 30, 1953, from J. W. Basista to George L. Switzer 3385
398 A-D—Letter, August 24, 1948, unsigned to Gibson 3389
399 A-C—Document entitled "Shell Oil Company Schedule 'A'—Part 2-3-4" 3393
400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments 3397
401—Document entitled "Distribution List for Sales Department Correspondence" 3413
402 A-M—Memorandum, December 31, 1952, from B. L. Edmonston, with attachments 3414
403 A-S—Document entitled "Various Types of Dealers", with attachments 3426
404 A-C—Sherwood Form SB-2833 500 9-51, "Bailment Agreement" 3433
405 A-B—Sherwood Form SB 118—3M—11-50, "Equipment Rental Agreement" 3444

406 A-B—Sherwood Form SB 2072-R 500 10-51, "Dealer Permit" 3451
407 A-D—Sherwood Form SB 1601-A—1M—8-51, "Service Station Lease" 3458
408—Document entitled "Amendment of Service Station Lease" 3467
409—Document entitled "Termination of Service Station Lease" 3469
410 A-B—Sherwood Form SB 106—3M—7-50, "Dealer Sales Agreement" 3470
411—Memorandum, March 10, 1953, from Fred D. McCauley to George B. P. Ward.....3476
412 A-H—Document dated on first page 1-1-50, entitled "Sherwood Bros., Inc., Baltimore, Md.—Sales Commission" 3476
413—Sherwood Form SB 2081-CS—(2500 6-46).....3490
414—Memorandum, March 28, 1944 to De Hoff.....3493
415—Memorandum, March 29, 1944, McCauley to De Hoff 3494
416—Memorandum, March 29, 1944, McCauley to De Hoff 3497
417—Memorandum, March 21, 1944, McCauley to De Hoff 3498
418 A-B—Letter, July 13, 1944, from Fred D. McCauley to Ted Hardy 3500
419—Unsigned letter, July 27, 1944, to Butler Doolittle 3502
420 A-B—Letter, July 29, 1944, from Fred D. McCauley to John B. Mann 3503
421—Letter, August 19, 1944, from F. D. McCauley to Butler Doolittle 3506
422 A-B—Memorandum, November 2, 1944, from John R. Sherwood to Fred McCauley.....3507

423 A-C—Letter, May 29, 1945, from Butler Doolittle to Fred McCauley 3510
424—Letter, June 6, 1945, from Fred D. McCauley to John D. Mann 3513
425 A-B—Letter, December 31, 1945, from Fred D. McCauley to John D. Mann 3515
426—Letter, January 15, 1946, from Fred D. McCauley to J. A. Lewin 3517
427—Letter, January 23, 1946, from Fred D. McCauley to John B. Mann 3519
428—Letter, March 6, 1946, from Fred D. McCauley to Paul Spahr 3520
429—Copy of letter, March 11, 1946, from A. W. Littleton to Miller Chevrolet Sales 3521
430 A-B—Memorandum, August 6, 1946, from John R. Sherwood to Mr. Lawson, with attachment 3522
431—Unsigned Sherwood letter agreement dated July 30, 1946 3525
432—Letter, August 20, 1946, from John R. Sherwood to H. G. Harper 3526
433—Letter, June 3, 1947, from Fred D. McCauley to John D. Mann 3528
434 A-B—Letter, July 17, 1947, from Fred D. McCauley to Howard Landon, et al 3529
435—Report of Goodyear TBA Commissions by Agency Territories—Year 1947 3532
436—Report of Goodyear TBA Commissions by Agency Territories 3533
437—Letter, April 30, 1948, from H. W. Van Horn to Jackson Manufacturing Company 3534
438—Memorandum, September 23, 1947, from Fred D. McCauley to John Sause 3535

439—Letter, September 19, 1952, from G. R. DeHoff to all Betholine Sinclair Dealers Authorized to Honor Credit Cards.....3536
440—Document entitled "CIC-Sales 1952".....3537
441—Letter, August 23, 1948, from Butler Doolittle to Fred D. McCauley 3537
442—Letter, September 21, 1948, from H. W. Van Horn to Butler Doolittle 3539
443—Letter, September 3, 1948, from H. W. Van Horn to R. G. Crawford 3541
444—Letter, January 7, 1949, from H. W. Van Horn to J. A. Nelsen 3542
445—Letter, August 9, 1949, from H. W. Van Horn to all Betholine-Sinclair Dealers 3543
446—Memorandum, June 23, 1950, from Fred D. McCauley to Mr. Van Horn 3545
447 A-E—Letter, June 19, 1946, from Fred D. McCauley to Mrs. Mabel Harmon, with attachments 3546
448—Goodyear Form A98101L, "Request for Goodyear Tires Identification Truck Service".....3553
449—Memorandum, May 12, 1947, from Roland DeHoff to "Doc" Allen 3555
450 A-B—Letter, August 25, 1952, from H. W. Van Horn to Butler Doolittle.....3555
451 A-B—Letter, January 6, 1950, from Fred D. McCauley to W. S. Martel.....3557
452 A-B—Memorandum, January 2, 1948, from Fred D. McCauley to John Leimbach.....3560
453—Letter, February 23, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562
454 A-B—Letter, February 29, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562

455—Handwritten Inter-Office Memorandum, March 5, 1948 from S. W. Holsinger to "Mac".....3565
456 A-B—Handwritten Inter-Office Communication, March 20, 1948, from L. J. Balling to F. D. McCauley 3566
457—Document, dated Dec. 14, '51, entitled "Dealer TBA Survey" 3568
458—Letter, April 25, 1952, from H. W. Van Horn to D. A. Hilleary 3569
459—Memorandum, June 3, 1952, from Harry J. Weller to Mr. Jurgens 3570
460—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commissions, Resale and Own Consumption December and January 1 to December 31, 1944" 3571
461 A-C—Memorandum, December 12, 1945, from Fred D. McCauley to John R. Sherwood, with attachments 3572
462—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1945" 3574
463 A-B—Letter, March 13, 1946, from John R. Sherwood to T. J. Beddingfield 3575
464—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1946".....3577
465 A-B—Letter, January 7, 1947, from John R. Sherwood to R. S. Wilson.....3578
466—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1, to December 31, 1947" 3580

467—Memorandum, October 16, 1947, McCauley to DeHoff 3581

468—Memorandum, January 26, 1951, from Fred D. McCauley to G. R. DeHoff.....3582

469—Document entitled "Total T. B. A. Volume sold to Betholine-Sinclair Dealers on Which We Receive Commission" 3583

470—Document entitled "Sherwood Brothers, Inc. Sales by Goodyear Districts January 1, 1952 through December 31, 1952" 3584

472—Sinclair Form 35 10 9-54, "Marketer Agreement" 3585

473—Sinclair Form 1800—25M—6-57, "Equipment Rental Agreement" 3596

474—Sinclair Form 1601-B—25M—10-57, "Station Lease" 3604

475—Sinclair Form 731-D—20M—10-57, "Refined Oil Sales Agreement-Dealer" 3615

476—Sinclair Form 2081—25M—5-57.....3622

477—Sherwood Credit Identification Card 1954.....3625

478—Sinclair Credit Identification Card 1957.....3626

479—Document entitled "Agreement of Merger Between Sinclair Refining Company and Sherwood Brothers, Incorporated", dated as of December 7, 1955 3627

483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley 3639

484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne 3642

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow 3645
2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow 3651
3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company.....3652
4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow.....3653
20—Atlantic booklet entitled "TBA Program".....3654
31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments.....3672

MICHAEL THOMAS LANZA was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Michael Thomas Lanza. 1500 East Duval Street, Germantown, Pennsylvania.

Q. Mr. Lanza, are you associated with the Lanza Tire Service?

A. I am, sir.

Q. What is your position with them?

A. Partner.

Q. And who are the other partners in the company?

A. My two brothers.

Q. What are their names?

A. Frank and Fred.

Q. How long has your company been in business?

A. Thirteen years.

Q. And where was your company first located?

A. 420 East Mechanic Street, Germantown.

Q. That is in the city of Philadelphia?

966 A. Yes, sir.

Q. How long were you at that location?

A. 12 years.

Q. And after that time, did you move to a new location?

A. 525 Armstrong. That is in Philadelphia.

Q. Are you engaged in the sale and distribution of new tires and tubes?

A. I am, sir.

Q. What tires do you sell?

A. Mainly Goodyears and Firestones. Of course if they want U. S., whatever they want, I try to get them.

Q. Primarily do you sell—

A. Goodyear and Firestone.

Q. Do you sell batteries?

A. Exide batteries.

Q. Are you also engaged in a recapping business?

A. That is my main business, recapping.

Q. Now what is your marketing area? In which area do you sell these products?

A. Northeast, part of Bucks County, part of Montgomery County, and North Philadelphia.

Q. When you say Northeast, are you referring to Northeast Philadelphia?

A. Out towards Bristol.

Q. Do you have delivery trucks?

967 A. Yes, sir.

Q. How many?

A. One delivery truck and we have two trucks on the road.

Q. Two trucks on the road?

A. Yes, sir.

Q. So in all you have three trucks which are used for delivery of merchandise to the customers?

A. Yes, three moving trucks.

Q. And are you, yourself, an outside salesman for the firm?

A. I am.

Q. Do you employ any other outside salesmen?

A. One.

Q. Is the other outside salesman compensated on a salary or a commission, or both?

A. Salary.

Q. Are there any Atlantic service stations in your trading area?

A. I would say anywhere from 45 to 50, possibly 60.

Q. Is your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Yes, sir.

Q. Now in addition to tires and batteries, do you also sell tubes?

A. Yes, sir.

Q. What brand of tubes?

968 A. Goodyear and Firestone.

Q. Do you solicit the business of the Atlantic stations you have mentioned?

A. The ones I come in contact with, yes.

Q. Approximately how often do you solicit such stations?

A. Twice a week.

Q. Are you able to obtain recapping business from such Atlantic stations?

A. Yes, sir.

Q. Are you able to obtain new tire business from such Atlantic stations?

A. Fill-in orders.

Q. Fill-in orders?

A. Yes.

Q. Are you able to obtain stocking business?

A. No, sir.

Q. Are you able to obtain battery business from Atlantic stations?

A. When Atlantic had the Exide batteries, I used to sell a lot of them, but since they took on Goodyear batteries, I sell very few.

Q. And are you able to sell tubes to Atlantic stations?

A. Yes, sir.

Q. You are able to sell some tubes?

A. Yes.

969 Q. Are you—

Mr. Correa: (Interposing.) Just a minute. Let the witness—

Mr. Kelaher: I will withdraw the question. Strike it from the record.

By Mr. Kelaher:

Q. Are new tubes sold on a stocking or fill-in basis?

A. Mostly fill-in basis.

Q. Based on your own knowledge, do you know what line of TBA products is carried by Atlantic service stations?

A: I don't fool with that, sir. I strictly stay with tires and batteries and recapping.

Q. What type or what brand of tires do the Atlantic service stations carry?

A. Goodyears and some Firestone. It all depends. Like in Bucks and Montgomery, most of them handle Firestone.

Q. I beg your pardon?

A. In Bucks County and Montgomery County, a lot of them handle Firestone.

Q. Are you talking about Atlantic service stations?

A. Yes, sir.

Q. You are talking about the stations who own their own—

A. (Interposing.) Atlantic stations.

Q. And what type signs do you find on Atlantic service stations?

970 A. Firestone and Goodyear.

Q. When you speak of Bucks County, what part—is that north of Philadelphia?

A. It would be Northeast.

Q. Northeast. And how far up?

A. Up in Bristol, and back in Feasterville.

Q. How do you spell that?

A. F-e-a-s-t-e-r-v-i-l-l-e.

Q. Now in the Philadelphia area, what brand of TBA is carried by Atlantic stations?

A. As far as tires and batteries, it is Goodyear.

Q. Do you solicit new tire, tube and battery business from these Atlantic stations?

A: Yes, sir.

Q. And you stated that you sell on a fill-in basis only, is that correct?

A. Only, no stock orders.

* * * * * *

971 By Mr. Kelaher:

Q. Mr. Lanza, do you know in the Philadelphia area who the Goodyear TBA suppliers are, to Atlantic service stations?

A. Up around the north, it is Fred Glenn, and then down in the northeast, it is George Harvey, or Harvey George, rather.

Mr. Kelaher: No further questions.

972 *Cross-Examination by Mr. Correa.*

Q. Mr. Lanza, you said that recapping or retreading was your main business?

A. Retreading, yes.

Q. That is really retreading, isn't it?

A. That is a better name for it, yes.

Q. That is your main business?

A. Yes, sir.

Q. And you are pretty successful retreaders, as I understand?

A. I do a lot of travelling, let's put it that way.

Q. And you have what, 20-some-odd molds?

A. We don't have them all connected, but we have approximately 22.

Q. That is a pretty big operation?

A. Yes.

Q. And most of the work is done by you, is that correct?

A. And my brothers.

Q. My information is that you personally put in 15, 16 hours a day?

A. A lot of hours.

Q. And you said on direct, I think, that that was your main business?

A. Recapping?

Q. Yes.

973 A. Yes, sir.

Q. Or retreading?

A. Yes, sir.

Q. Would you say it was 80 percent of your business?

A. I would think so.

Q. In addition to that, do you do retail business?

A. Yes, sir. Very very little though as far as door selling, but we do some; to say none at all wouldn't be right.

Q. You have retail customers?

A. Some, yes.

Q. To whom do you sell tires?

A. Mostly mine is wholesale.

Q. I see. And what portion of your business would be retailing?

A. Well, some recaps, some new tires. A very small portion of it.

Q. Ten percent, you would say?

A. About 20 percent, let's put it that way.

Q. The retreading business in recent years has become pretty profitable, hasn't it?

A. Well, I never knew what a tire was until about 13 years ago and since I have been on the road, I have seen my brothers put out some wonderful work, which made me a salesman in order to sell it.

Q. Isn't it true that over recent years in particular retreading has sort of come up?

974 A. In great momentum, yes.

Q. During the war, retreading got kind of a bad name, didn't it?

A. That was because of the merchandise.

Q. But in recent years it is quite a profitable business, I believe?

A. Yes, sir.

Q. And that would be true as contrasted with other phases of the tire business, such as even selling new tires, isn't that right?

A. Well, I don't know just how to put it. Naturally with the trend of recapping up, as it is, it would even require that you sell new tires too, because there is that many more cars on the street.

Q. But isn't actually an efficient operation such as you conduct more profitable than new tires?

A. Yes, sir.

Q. Would I be right in inferring that that accounts for the emphasis in your business on the retreading phase of it?

A. That my retreading is better—

Q. Yes.

A. Definitely, more in recapping than in new tires.

Q. You have no particular difficulty getting retreading business from Atlantic dealers, do you?

A. No, sir.

975 Q. You are quite successful in that as a matter of fact?

A. Yes, sir.

Q. Harvey George and Fred Glenn offer retreading services, don't they?

A. Yes, sir.

Q. And you have been able to outsell them to quite a few Atlantic dealers?

A. Here recently it has been getting a little bit off since you boys put up a new plant.

Q. Well, you can't blame us for trying to get your business, really.

Richard Kaiser of Abbington, Pennsylvania, is he an Atlantic dealer?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Yes, sir. He says I do anyway.

Q. Well, we will have to take his word for that, I guess.

A. Well, a lot of these guys tell you things and you take it for granted.

Q. How about Fred Phillips of Philadelphia? Is he an Atlantic dealer?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Yes, sir.

Q. And how about Charles Shock?

A. Yes, sir.

976 Q. Also of Philadelphia. Is he an Atlantic dealer?

A. Yes, in Roxborough.

Q. And you have a hundred percent of his business?

A. Yes, sir.

Q. James Amos, also Philadelphia. Is he an Atlantic dealer?

A. Yes, sir, Germantown.

Q. You have a hundred percent of his retreading business?

A. As far as I know.

Q That is what he tells you anyway, isn't it?

A. (Nodding affirmatively.)

Q. William Barton, also Philadelphia?

A. Yes, sir.

Q. He is an Atlantic dealer, is he not?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Not here recently.

Q. Not recently?

A. No.

Q. Well, have you still substantial business of William Barton on retreading?

A. Well, I would say yes.

Q. How about George Kee? Is he an Atlantic dealer?

A. Very good recapping customer.

Q. A hundred percent of his business?

A. Yes, sir.

977 Q. How about J. Ferrari? I don't have his first name.

A. No, sir.

Q. You don't have his business?

A. No, sir.

Mr. Kelaher: What is his name?

Mr. Correa: Ferrari. I don't know what the "J" stands for.

The Witness: Joseph.

By Mr. Correa:

Q. How about D. Pinelli? I don't know what the "D" stands for.

A. Pinelli's, in North Hills?

Q. Fairless Hills, I have here.

A. Oh, Danny, yes. Of course. He is in North Hills. Not North Hills, he is in Fairless Hills. He is over in General—

Q. Fairless Hills, right. You say he is over in General—

A. (Interposing.) He has been my customer for almost a year now.

Q. When you say he is over to General, are you referring to some competitor or—

A. (Interposing.) Yes. A stipulated guarantee.

Q. What competitor is that, sir? Is that General tire and Rubber Company?

A. Yes, sir.

Q. He has become a customer of theirs for retreading, is that it?

978 A. Yes, sir.

Q. And they have a guarantee on them?

A. With every tire, that is right, which I don't get.

Q. I see. And how about Mr. Kepp of Eddington, Pennsylvania?

A. I used to have him as a customer.

Q. But not any more?

A. No, sir.

Q. Who has him now?

A. I don't know, sir.

Q. I take it you have other Atlantic dealers, other than the ones I mentioned, who have been good customers of yours for retreading?

A. Yes, sir.

Q. Do you have other Atlantic dealers other than the ones I have mentioned, who give you all of their retreading business?

A. Yes, sir. I have all types of dealers, such as Calso, Sinclair, Tydol.

Q. I wish you all the continued success in your business.

Mr. Correa: That is all.

By Mr. Thompson:

Q. Mr. Lanza: I represent the Atlantic Refining Company. Who is your principal competitor? Does Harris & Leonard operate in your territory?

A. I don't know of him, sir.

Q. There are other people who handle retreading
979 and recapping business that try to sell accounts in your territory, aren't there?

A. Yes, sir.

Q. Who are your principal competitors?

A. Such as McCleary, Clock, and well, Goodyear too, Firestone as far as that goes. And then there is a lot of jobbers such as National Tire, J. P. Burke, and then there is Foster, Miller and Bierly, they are sending men out, and then you see a lot of jobbers going out on the street, too.

Mr. Thompson: That is all. Thank you very much.

Redirect Examination by Mr. Kelaher.

Q. Mr. Lanza, on cross-examination you gave some approximate percentages of your sales volume. You stated that approximately 80 percent of your volume was due to retreading?

A. Yes.

Q. And you gave a 20 percent figure. Would you state what that was?

A. Well, as far as new tires, I said the 20 percent figure, as far as selling, like people coming to the door, but of course, including the 20 percent as far as new tires and tubes and batteries, and who comes to the door.

Q. What part of that 20 percent would be wholesale, approximately?

(After pause.)

980 Q. On cross-examination I understood you to say that you sold very little in retail, is that correct?

A. Retail, yes.

Q. So the bulk of this 20 percent is wholesale?

A. Yes, as far as new tires and batteries.

Q. Now approximately what inventory stock, what is the value of inventory stock of new tires you keep on hand?

A. Well, I have run my inventory down because of the situation.

Q. What situation?

A. Right now it is out on the street.

Q. What do you mean? Will you explain that?

A. Well, the cheap tires now that is going out that makes it very difficult for recapping, and I have run my new tire sale down.

Q. If you know, what is your approximate inventory evaluation now?

A. I am just trying to figure. We did have a figure of $6,000 but we ran that down and I would say about $2,000.

Q. Does that include Goodyear?

A. I am including some of my camel back and all.

Q. Does that include Goodyear?

Mr. Thompson: Is that dollars or tires?

The Witness: Dollars, because I had run it way down. So I will be getting ready for my snow tires now.

By Mr. Kelaher:

981 Q. Does Mr. Glenn, the Goodyear TBA supplier you referred to, have recapping facilities on his premises?

A. No, sir. Not to my knowledge and I have known him for some time.

Q. Does Mr. George, the Goodyear TBA supplier you also mentioned, have recapping facilities?

A. I don't know, sir.

Q. Now you stated, in answer to a question on cross-examination, that—you made reference to "you boys" opening up a new recapping plant. What did you mean?

A. Goodyear down on Thompson Street, isn't it?

Q. This is Goodyear?

A. Yes.

Q. When did they open up that new plant?

A. I couldn't say the date.

Q. Was it in 1957 or 1956?

A. Before that. I couldn't tell you exactly. Goodyear could tell you.

Q. Has it been fairly recent?

Mr. Kelaher: Mr. Examiner, if there are any Goodyear gentlemen present, maybe they would supply us with the approximate date they opened up this Goodyear plant.

Mr. Correa: I am told that the plant has been here since 1952, but it has recently moved its location.

The Witness: That is right. There was one on 982 Ridley Avenue. Is that still in operation?

Mr. Correa: Now you are getting into details beyond me, I am afraid.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: Mr. Kelaher, do you want to stipulate as to the information furnished off the record?

Mr. Kelaher: Yes, that would be all right.

Mr. Correa: Because it is the fact and there is no reason why it shouldn't be on the record.

It is stipulated then that the Ridge plant was closed last week and we moved into a new plant last week on Richmond.

* * * * *

984 By Mr. Kelaher:

Q. With reference to J. Ferrari, in Bethayres, Pennsylvania, Mr. Ferrari is an Atlantic station.

Mr. Kelaher: For the record, all of these names I am about to refer to are Atlantic service stations.

Mr. Thompson: You mean they are, or are you asking him whether they are?

Mr. Correa: He has testified they are.

Mr. Kelaher: Yes.

985 By Mr. Kelaher:

Q. Have you done any recapping business for Mr. Ferrari?

A. To be specific, three tires and that has been about four years ago.

Q. When you say three tires are you referring to three recaps?

A. That is right.

Q. So he has not been a regular customer of yours?

A. No, sir.

Q. You referred to a Mr. Kepp?

A. Yes.

Q. Was he at one time a regular customer of yours, on recapping?

A. Yes, sir.

Q. And when did he discontinue being a regular customer, approximately?

A. Approximately three years ago.

Q. With reference to Mr. Richard Kaiser, Abington, Pennsylvania, is he a regular customer of yours?

A. In recapping, yes.

Q. Recapping, that is.

A. Yes.

Q. And has he ever made any statement to you recently concerning recapping business?

A. As far as recapping?

986 Q. Yes.

A. No, sir.

Q. I refer you to Fred Philips, in Philadelphia. Is he a regular customer of yours?

A. In recapping.

Q. And has there been any decrease in the recapping business with that account?

A. The only decrease I see is like I said before, when the cheap new tires came out.

Q. I am talking about—I would like you to confine your answers to this statement you made with reference to the Goodyear plant.

Mr. Correa: I submit, your Honor, that is most unfair. The witness' answer was completely responsive and counsel doesn't apparently like it, but that is no basis for suggesting that it was unresponsive.

By Mr. Kelaher:

Q. I would like to ask you about William Barton, of Philadelphia. You stated that he was a regular customer of yours, but not recently, I think was the way you put it. Is that correct?

A. As far as new tires are concerned.

Q. I am talking about recapping.

A. Well, like I say, since this cheap tire came out, my recapping has fell off.

987 Q. Did Mr. Barton ever make any statements to you with respect to shifting the recapping business?

A. Well, he has mentioned the fact that they might have to like give some recapping to Goodyear.

Q. And he was one of the dealers you have referred to as having made that remark?

A. Yes, sir.

Q. And your recapping business has decreased with Mr. Barton, isn't that correct?

A. No, the man was honest enough, he showed me a couple of tires he bought from Glenn, he said he bought a couple of tires off Glenn.

Q. Talking about recaps?

A. Yes, sir.

Mr. Kelaher: No further questions.

Recross Examination by Mr. Correa.

Q. Mr. Lanza, just one question. Fred Glenn has been offering recapping or retreading to Atlantic service stations, dealers, since at least 1952, isn't that correct?

A. Well, I guess he has.

Q. Don't you know that, sir, if you think back, cast your recollection back?

A. He has—let me put it this way: He has solicited recapping business.

988 Q. Since 1952 at least?

A. Well, what year I couldn't tell you.

Q. Well, as far back as you can remember, is that correct?

A. Even when I was on—there at McCollum and Elliott Street.

Q. So it would be pretty fair to say as far back as your business was, you can remember?

A. If you want to put it—I wouldn't say specifically just when.

Mr. Correa: I see. Nothing further.

Mr. Thompson: No further questions.

Hearing Examiner Kolb: Anything further?

Mr. Kelaher: No, your Honor.

Hearing Examiner Kolb: That is all, Mr. Lanza.

(Witness excused.)

Mr. Kelaher: I would like to call Mr. Hayes, please.

SHERMAN HAYES was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Sherman Hayes, 9814 Woodfern Road, Philadelphia 15, Pennsylvania.

Mr. Hayes, at one time were you an employee of 989 Tri-State Distributors, Inc., 7th and Lehigh Streets, Philadelphia?

A. 17th and Lehigh, that is right.

Q. During what period were you an employee there?

A. From 1946 until 1955.

Q. And during part of that period were you an outside salesman for the firm?

A. That is correct.

Q. And what period was that?

A. From 1954—the end of '53 until 1955.

Q. Did Tri-State Distributors at that time sell TBA products?

A. Yes, they did.

Q. What products did they sell?

A. DuPont chemicals, Gates fan belts, Purolator oil filters, Champion spark plugs, Simoniz, Goodyear tires, and Armstrong tires.

Q. Batteries?

A. Exide and Gould National batteries.

Q. When you became an outside salesman, what was your sales territory?

A. Parts of eastern Montgomery and Bucks County.

Q. Do you recall whether there were Atlantic service stations in your trading area?

A. Yes, there were.

Q. Do you know approximately how many?

A. I would say well over 50. I never actually counted them.

990 Q. And did you at one time call on a Russell Tompkins, an Atlantic dealer located at Butler and Lindenwold, Ambler, Pennsylvania?

A. That is correct.

Q. And did you solicit TBA business from Mr. Tompkins?

A. Yes, I did.

Q. And were you able to sell him any TBA?

A. I—

Mr. Corren: Has the date been fixed for this, may I inquire?

The Witness: 1954. I sold Russell Tompkins Exide batteries and DuPont Zerone and Zerex.

By Mr. Kelaher:

Q. And had Mr. Tompkins been buying any of those products prior to the time you became a salesman?

A. Yes, he had.

Q. And had he been buying Exide batteries prior to the time you took over the territory from your company?

A. Yes, he had.

Q. And did he continue to purchase Exide batteries from you?

A. No, he hadn't.

Q. If he gave you a reason, I would like you to state the reason, the approximate time, when it was given, and the location of the place where the conversation took place?

A. Well, it was in the Atlantic station at Butler Pike and Lindenwold Avenue in Ambler and the time was, 991 as close as I recall, late summer or early fall of 1954.

At the time I made the call at the station, I talked to Russ and his battery stock at that time was very depleted,

due to the hot weather and the sale of batteries at that particular time. And I talked to Russ about filling his battery merchandise with the batteries that he was turning over and the ones he would need. And he said, "I am sorry, but I can't buy Exide batteries." He said "I have had to place my order with the Goodyear TBA distributor for Goodyear batteries."

Q. Do you recall who was the Goodyear TBA distributor?

A. I believe it was Fred Glenn.

Q. And from that time on, were you unsuccessful in selling Exide batteries to him?

A. After that time I sold very few batteries to Russ Tompkins. It was a case of the consumer wanting an Exide battery and not a Goodyear battery.

Q. Then he might call on you for a battery?

A. That is right.

Q. Mr. Hayes, prior to the time you became an outside salesman for Tri-State Distributors, did you work in the—

A. I worked in the office and warehouse.

Q. In the warehouse?

A. That's right.

Q. And were you familiar with the inventory stock?

A. Yes, I was.

992 Q. And were you familiar with the records with respect to Exide batteries stock?

A. Well, I was in charge of the billing and so I did know where merchandise went.

* * * * *

By Mr. Kelaher:

Q. You stated, Mr. Hayes that you were with Tri-State Distributors a period of about 9 years. That would begin about 1946?

A. That is correct.

Q. Do you know, based on your own knewledge, what brand of batteries Atlantic stations were carrying at that time?

Mr. Correa: What time?

Mr. Kelaher: The beginning of 1946.

The Witness: Based on my own knowledge, I would say it would either be Lee or Exide, probably Exide mostly.

993 By Mr. Kelaher:

Q. Do you recall whether Atlantic stations began to carry other than Exide batteries at a later date?

A. At a later date?

Q. Yes.

A. Yes.

Q. What brand did they begin to carry?

A. Goodyear.

Mr. Kelaher: No further questions.

994 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

Q. Now, sir, you were an outside salesman for about a year, is that right?

A. Almost two years.

Q. Almost two?

A. That is right.

Q. And you told us of a conversation you had with Mr. Russell Tompkins.

A. That is correct.

Q. And Mr. Tompkins did change over from Exide batteries to Goodyear batteries at or about that time?

A. That is right.

Q. And isn't the fact, sir, that the reason Mr. Tompkins changed over was because Goodyear has just come out with a dry charge battery?

A. That is correct.

Q. And he told you that, didn't he?

A. That is right.

Q. Now, sir, where are you presently employed?

A. Lanza's Tire Service.

Q. That is the Mr. Lanza who preceded you on the witness stand?

A. That is correct.

995 Q. Now, sir, you know who Fred Glenn is?

A. Yes, sir.

Q. Now are you familiar with the fact that Fred Glenn has a service station at one time?

A. I believe I know that he had a service station.

Q. Do you know that he gave it up and sold out to an employee of his?

A. I wasn't aware of that fact, no.

Q. Do you know that thereafter Mr. Lanza took over the recapping business of that station?

A. No, I didn't.

Q. You didn't know that?

A. No, I don't.

Mr. Correa: I have no further questions.

Hearing Examiner Kolb: Atlantic have any questions?

Mr. Ballard: No, sir.

Hearing Examiner Kolb: Any redirect?

Redirect Examination by Mr. Kelaher.

Q. Mr. Hayes, how frequently did you service Mr. Tompkins on Exide batteries?

A. I made it a practice of calling on the stations at least once a week.

Q. Did you replace old batteries or deteriorated batteries and so on, to keep them in fresh stock?

996 A. We rotated stock that was slow-moving and didn't turnover, yes.

Mr. Kelaher: No further questions.

Mr. Correa: Nothing further.

Hearing Examiner Kolb: You are excused, thank you.

(Witness excused.)

Mr. Dias: Mr. Colby, please.

WILLIAM COLBY was called as a witness on behalf of the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your full name and business address?

A. William Colby, Harris and Leonard, 1301 West 9th Street, Chester, Pennsylvania.

Q. How long have you been employed by them?

A. Three years.

Q. In what capacity?

A. Salesman.

Q. For the entire three years?

A. Yes.

Q. And what is your sales territory?

A. Well, Hollyoak, Delaware, to West Philadelphia, 997 and Yeadon Chester Pike to Industrial Highway.

Q. What type accounts do you solicit?

A. Service stations, garages, new car dealers.

Q. Among the service stations are there any Atlantic stations in your territory?

A. Atlantic stations?

Q. Yes.

A. Yes.

Q. And can you tell us about how many there are?

A. Thirty or 35.

Q. And do you solicit any of those stations?

A. Twenty-three or so, 23 to 30.

Q. And how often do you call on them?

A. Two times a week.

Q. There are others in the territory then that you do not call on, is that correct?

A. Yes, there is a few I don't call on.

Q. Why is that?

A. Well, we never had too much success in calling on them and the territory is too big to fool with them.

Q. Have you called on them in the past, those remainders, above those that you call on regularly now?

(After pause.)

Q. You call on 23 now regularly?

A. That's right.

998 Q. The other 7, did you call on them regularly at one time?

A. When I first started I was calling on them pretty regularly.

Q. Of these 23 that you call on, do you sell them new tires?

A. Only on a fill-in basis, or what I mean by that is that if they need a tire for a specific job or something like that, I sell to them.

Q. And do you sell them batteries?

A. Very seldom.

Q. You attempt to sell them new tires and batteries, do you?

A. I have attempted to sell them new tires and batteries, yes.

Q. What are those stations advertising on or about their property in the line of TBA?

A. In my territory, well, in the Delaware territory it is Firestone, but in the Delaware County, it is Goodyear.

Q. Now, can you name some of your accounts for us, please, and tell us what you sell to them?

A. Well, there is Samuel Watson, Boothwyn, Pennsylvania; I sell him new tires. He owns his own station though, he does not lease it from the Atlantic Company.

Q. Does he buy on a stocking basis?

A. Yes, he does.

Q. How about recaps, do you have recap business with him?

A. Yes, he does.

Q. Can you name some others?

999 A. With recapping as the main thing, there is Gene DeFelice, of Ridley Park.

Q. Do you sell him any new tires?

A. I have sold him new tires, very seldom though. I mean, as I say, on a fill-in basis.

Q. Now each of these stations that you named, are these the stations that you call on twice a week?

A. Yes.

Q. Will you name another customer of yours, Atlantic station?

A. Earl Conners, of Chester.

Q. And what do you sell to Mr. Conners?

A. Well, I have sold him a few batteries, fill-in, where he needed them for a specific job; recapping; that is about it.

Q. Do you do recapping business with him regularly?

A. I do, yes. He doesn't do too much of it, but I think I do most of it.

Q. Have you tried to sell him new tires?

A. I try to sell them all new tires, but I mean I don't have too much luck with him.

Q. Can you name another account, Atlantic account?

A. Don Elko. That is in Sharon Hill. I do recapping with him.

Q. And how about batteries with Elko? Do you do any battery business with him?

A. No.

1000 Q. No new tires either?

A. No new tires or batteries.

Q. How long have you been doing recapping business with each of these that you have named so far?

A. Well, the first one, Watson, I have been doing that with him ever since I have been with the firm.

Conners, about a year and a half.

Elko, he has only been in business I would say about six to eight months, or maybe a little longer.

And DeFelice, for three years.

Q. Do you know who the Goodyear supplier is in that area?

A. Yes, Ed Parris; Edward Parris.

Q. And I believe you said you had an account or two in Delaware.

A. Yes.

. . . . . .

Q. How about Parris, does Parris do any recapping?

A. Mr. Parris, he doesn't do his own recapping to my knowledge. I mean, he gets recapping for dealers, but he doesn't do it himself I don't think.

Q. Can you name another customer?

A. Wait a minute. Larry Conneen.

1001 Q. Spell that.

A. Conneen.

Q. Where is he located?

A. Crum Lynne.

Q. Is that in Pennsylvania?

A. Yes, Crum Lynne, Pennsylvania.

Q. What type business do you do with him?

A. Recapping mainly.

Q. Can you name another customer?

A. John Stockett, of Glenolden.

Q. What type business did you do with him?

A. Recapping, and I have sold him occasionally a new tire.

Q. On Conneen, can you tell us how long you have been selling to him.

A. Roughly two years.

Q. And Stockett?

A. About the same time, about two years.

Q. Can you name another account?

A. Clarence Nelson's Atlantic in Darby.

Q. And the type of business with that station?

A. That is again as a recapping business.

Q. Any more?

A. Frank Buckingham's Atlantic, of Chester.

Q. What type of business is that?

A. Recapping.

1002 Q. Any more? Can you name another one?

A. Frank Lancaster's Atlantic of Chester.

Q. Is that recapping?

A. That is recapping and used tires.

Q. Used tires?

A. Yes. And occasionally I have sold Frank a new tire.

Q. Do you sell him any on a stocking basis?

A. No, none of these are on a stocking basis.

Q. Can you name another account?

A. A station under the name of Harry and Jim's Atlantic, of Boothwyn.

Q. And what is it you sell to them?

A. Recapping.

Q. Have you ever sold him any batteries?

A. No.

Q. All right. Can you name another one?

A. Ed Stowe, Atlantic. About two years ago I have sold him a couple new ones, and I have sold him recapping, but it is not too big an account.

Q. Can you name another one?

A. John Rehill, of Chester. That is about the majority of them, the main accounts.

Q. I did forget to ask you about Nelson, how long have you been selling to him.

A. Three years.

1003 Q. Buckingham?

A. Three years.

Q. Frank's?

A. Lancaster?

Q. Yes.

A. About a year.

Q. Harry and Jim's?

A. About eight months.

Q. Ed Stowe?

A. Three years.

Q. And John Rehill?

A. Off and on about three years.

Q. Has your business remained about the same with them through the years?

A. In regards to recapping, yes, up until these Atlantic companies have come out with a third line Goodyear tire, which has definitely hurt the recapping sales.

Q. And when was that, approximately, do you recall?

A. I would say that happened around six to eight months ago.

Q. By the way, you handle U. S. Royal's, isn't that correct?

A. That is correct.

Q. Do you have a U.S. Royal tire that is in the same price category as this cheap Goodyear you mentioned?

A. Well, we do, but I mean it would not pay us

1004 to sell it, there would be no profit in it.

Q. You have it though?

A. Yes, we could sell it to meet that price, but I mean

I would be making roughly 40 cents, and there is not too much sense in doing it.

Mr. Dias: That is all, your Honor.

Cross-Examination by Mr. Thompson.

Q. Mr. Colby, I represent the Atlantic Refining Company and this gentleman across the way, Goodyear.

A. Yes, sir.

Q. Are you the only Harris and Leonard salesman in the territory that you have described?

A. Well, in my territory, yes. We have another salesman that does the same job I do, and he takes from McDade to Westchester Pike.

Q. That is Mr. Kevis?

A. That is Mr. Drennen. Mr. Kevis is the commercial salesman.

Q. Your principal competitor is C. A. Powers, is it not?

A. Yes, I would say he is the principal one.

Q. Is it not a fact that Parris and Leonard and C. A. Powers virtually divide the recapping business down in the Chester-Delaware County area?

A. Yes, I imagine it is about 60-40.

1005 Q. Did you get the 60—

A. I would say so.

Q. And that is most of the recapping business down in that area, isn't it, the two of you together?

A. Well, now, Superior Tire, they are in there a little bit, but the two principal ones are Harris and Powers.

Q. But you get much more of the business than C. A. Powers, don't you?

I would say so.

Q. Isn't it also true you sell virtually all the Atlantic accounts in your area?

A. Yes, I sell all the recapping.

Q. And recapping, of course, is the Harris and Leonard specialty?

A. That is our main business.

Mr. Thompson: I have no further questions.

Mr. Correa: I have no questions.

Redirect Examination by Mr. Dias.

Q. Just one question because the acoustics are bad. Did you say you sold all the Atlantic stations all their recapping, or you sell all of them some recapping? Which is it?

A. Well, I mean it is hard to say what you sell a man. You don't know, but I would say 85 percent of the 1006 recapping is divided between Powers and Harris and Leonard, and I think I get the biggest amount of it.

Q. You do recapping then for all Atlantic stations, is that correct?

A. The ones I mentioned, yes.

Q. But you do not have it all in each of those stations?

A. No, that is pretty tough, to get it all.

Q. Are their other U. S. Royal distributors in your area, Mr. Colby?

A. No, not in that particular area there. The closest one I think would be Burke, I guess, in Philadelphia. He has come down in that area, but he is not too popular down there.

Q. Am I right in saying that Harris and Leonard is the sole U. S. Royal distributor in that area?

A. Yes.

Mr. Dias: That is all, your Honor.

Mr. Correa: No further questions.

Mr. Thompson: No further questions.

Hearing Examiner Kolb: That is all, Mr. Colby.

(Witness excused.)

Hearing Examiner Kolb: Any further witnesses this morning?

Mr. Kelaher: No further witnesses. I move we adjourn until 2:00 p.m.

Hearing Examiner Kolb: We will adjourn until 1007 2:00 o'clock.

(Thereupon, at 12:25 p.m., the hearing was adjourned, to reconvene at 2:00 o'clock p.m. this days.)

1008 Afternoon Session.

(2:10 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: Mr. Ferguson, please.

RICHARD FERGUSON was called as a witness for the Commission and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address, please?

A. Richard Ferguson, 8 East Ninth Street, Auto Parts and Radiator, Chester, Pa.

Q. How long employed?

A. Four years.

Q. And in what capacity?

A. Salesman.

Q. Have you been a salesman for the entire four years?

A. Well, yes, four years and about four months; four months inside and four years on the road.

Q. And what is your sales territory?

A. Delaware County, part of Philadelphia.

Q. Is any of your territory in the State of Delaware?

A. None at all.

Q. What type business do you solicit, Mr. Ferguson?

1009 A. Auto repairing, chemical business, anything that has to do yith automobile repair, gasoline engines and diesels.

Q. I mean, rather, the type of outlets or retail outlets that you call on. Do you call on service stations?

A. Service stations.

Q. Garages?

A. Garages; fleets; car dealers.

Q. You mentioned handling chemicals. What chemicals does your company handle, Mr. Furguson?

A. Well, we handle Prestone chemicals, cooling system chemicals; waxes, Prestone waxes; polishes and car wash, Johnson's wax; Rust Master chemical products; Carb-Master; almost any chemical they'd use in a service station or a garage.

Q. I am more interested now in knowing what all is in the Prestone chemical line. Is that more than just anti-freeze?

A. Oh, yes.

Q. Will you name the various items that are in the Prestone chemical line?

A. Well, there is Prestone anti-rust; Prestone 10-minute Flush; Prestone sealer, and Prestone prime, but it is just called prime, that is a gas line anti-freeze.

Q. Waxes and polishes, are they considered chemicals and in the Prestone line?

A. Yes. Prestone wax and there is a Prestone 1010 polish and Prestone car wash.

Q. In your sales territory, are there any Atlantic stations?

A. Oh, yes.

Q. And do you call on them?

A. Yes, I do. There are some I call on and some I do not call on.

Q. Well, how many are in your territory at all, can you tell us that?

A. Can I look at my notes here of my own?

Q. Yes.

A. There is about 15 of them in my territory, about 11 I call on, and the 11 I call on is only a few I call on steady; what I call steady is every week or every two weeks.

Q. How many do you call on steady?

A. Well, about seven of them steady.

Q. And the others that are in your territory, do you call on them periodically?

A. Once a month; once every two months.

Q. Have you ever called on them more often?

A. No, because I have a hard time selling them—I can only sell them hard parts.

Q. Of these stations that you do call on regularly, can you name them and tell us what it is that you sell to them?

A. Well, do you want me to give you the name of the station and tell you just what I sell to them?

1011 Q. If you can.

A. I can tell you if you want independents; I have a few independents included in that seven.

Q. What do you mean by independents?

A. Well, they own their own station; they are not lessees.

Q. Yes, include those.

A. Include those.

Well, I have first on the list here is Sandy's Cities Service; that is in Darby. If you would like to know the—

Q. Sandy's Cities Service?

A. Sandy's Service Stations; that is Atlantic, I am sorry, in Darby, and the only thing I can sell him is ignition

and brake lining and mufflers. That is all. He does stock my ignition.

Q. Sir?

A. He does stock my ignition.

Q. Is he an independent?

A. No. He is a lessee.

Q. All right.

A. I have John Stockett's Atlantic, in Glenolden. That is just ignition.

Now, Henry's Atlantic, Chester Pike in Norwood. That is an independent Atlantic station.

Mr. Ballard: I beg your pardon, I didn't get the name.

The Witness: Henry's Atlantic, at Chester Pike 1012 and McKinley Avenue, in Norwood. He is an independent Atlantic station, and I call on him regularly every week. He is a very good account. He buys practically all his chemicals from me plus all hard parts.

By Mr. Dias:

Q. All right, sir.

A. Minka Brothers, Atlantic, 6th and Morton, in Chester. They are an independent Atlantic station and a very good account of mine, and I sell them chemicals and hard parts. Between Chester Auto Parts and Auto Parts and Radiator we sell them all the chemicals.

Q. And did you say he was an independent?

A. Independent.

Q. M-i-n-k-a?

A. That's right. M-i-n-k-a, 6th and Morton.

Triangle, Atlantic, at Island and Suffolk Avenue, in Philadelphia, he is another independent Atlantic station, and I sell him Gates belts, hoses, a portion of his chemicals.

Q. Now these three stations that buy chemicals, which of your chemicals do they buy? Do they buy your Johnson's or your Prestone?

A. Henry's Atlantic buys Prestone chemicals; he is a very big—he sells a lot of waxes and he does sell Prestone wax.

Q. How about Minka?

A. Minka, they have Prestone and DuPont anti-
1013 rust chemicals. They do have some DuPont.

Q. And Triangle?

A. Triangle, I sell them Rust Master chemicals and Prestone chemicals.

Q. All right, sir.

Now, there is another station or two. That is five so far.

A. I have another one I call on quite regularly, Bakers Atlantic, Chester Pike and Eddystone. He is a lessee, and that is hard parts and equipment business. No chemical business at all.

And the rest I have down here I can tell you the number of calls and how much business it is, how much business I have got out of them and it doesn't pay and if you want me to tell you, I can tell you that.

Q. Yes, I'd like to have that.

A. These are lessees. Branca's Atlantic in Yeadon. That is at Church Lane and Bailey Road in Yeadon; there is another operator in, Frank has only been there about a year, and in 1956 I called on him 20 times and done $50.15 worth of business.

Q. How many times?

A. Twenty calls. That was all hard parts such as alemite hoses or something he needed for his grease equipment or muffler or tail pipe.

Q. What was your volume with him again? How
1014 many dollars worth of business?

A. $50.15.

Q. Thank you.

A. DeFelice, Atlantic, at Chester Pike and Hinkson

Boulvard, Ridley Park; in 1955 I called on him 14 times and sold him $171.19, my write-up business. That is no call-in business that is repairs on jacks and such as that. No chemicals and very few hard parts there. 1956, 11 times and $77.80.

I have Green's Atlantic at 204 East Fifth Street; 1956 I called on him 14 times and $16.34 worth of business.

Then Larry's Atlantic, Chester Pike and Fair Glenn Road in Crum Lynne; 1955 called 11 times and received $51.17 worth of business. Stopped calling on him only periodically; once every two or three months.

Q. What type of products?

A. Just Blue Streak ignitions and maybe a muffler or tail pipe.

Q. Of all of those stations that you named, Sandy's, John's, Stocketts, Henry's and so on, with the exception of Henry's, Minka and Triangle, do those stations carry TBA? Do they carry tires in those stations?

A. The independents or the lessees?

Q. All but the independents. What do the lessees carry?

A. The lessees, they carry Goodyear.

Q. Tires?

1015 A. Tires, batteries, accessories.

Q. And they advertise them about the station, do they?

A. Oh, yes.

Q. What about the three independtnts, do they all carry Goodyear TBA?

A. No, they don't.

Q. What does Henry's carry?

A. Henry handles Lee tires, Bowers batteries, they do handle Goodyear fan belts and Gates hoses.

Q. And how about Minka?

A. Minka, they also handle Lee tires; Lee batteries;

they do have some Goodyear batteries in there, too; Gates fan belts and Gates hoses.

Q. And Triangle?

A. Triangle, he doesn't stock tires. He buys them as he needs them and he will sell any kind that the customer wants. He is mostly in the repair business; batteries, he stocks some Delco and Gates fan belts and hoses.

Q. Since you have been on your territory have any new Atlantic stations opened in that territory?

A. Oh, yes.

Q. Have you called on them as soon as they have opened?

A. Well, I find it a losing proposition to call on Atlantic stations to try to get the equipment, because that is included right in the building.

1016 Q. Well, how about TBA products?

A. Well, there—that is all set up before I go there. I haven't even got a chance there.

Q. How about new operators of old stations where a station changes hands, have you ever called on them soon after they opened?

A. Yes, I have.

Q. Have you been able to sell any TBA in those stations?

A. None at all.

Q. Those new stations and where the stations have changed hands, what TBA do they carry?

A. Where they have changed hands?

Q. Yes. Where they've changed hands or in those instances where a new Atlantic station opens up, what TBA have you noticed in the stations?

A. Oh, Goodyear.

Q. Do you know who the Goodyear distributor is in your territory?

A. Ed Parris is a Goodyear distributor in my territory.

Q. How do your batteries, accessories, compare price and quality-wise with those of Parris?

A. Price is comparable, and quality, well, of course, I sell the Gates line, Delco batteries, I think I have a much better product to offer, a much better service to offer them.

Q. What type service do you offer?

1017 A. Well, if they were to need a battery, say in the morning, I could have it there in 20 minutes to a half hour or an hour at the most.

Q. And what is your brand battery?

A. Delco.

Mr. Dias: That is all, your Honor.

1018 Hearing Examiner Kolb: Any cross examination?

Cross-Examination by Mr. Ballard.

Q. Mr. Ferguson, how many accounts do you have all told?

A. It changes one month I might have 190, I take off and put on—I could be safe in saying 200.

Q. And do you call on the majority of them 15, 20 times a year?

A. No, I don't call on the majority of them. Some of them I call on once a week; my better accounts I call on once a week. There are a few I have to call on twice a week, some I call on every two weeks, every three weeks, once a month, and maybe once a year, just to get maybe an antifreeze order. And a lot of them I make phone calls to that I don't have to call on.

Q. You, of course, don't make a sale on every call, do you?

A. No.

Q. No salesman would do that, would he?

A. It's impossible to do that.

Q. When you mention a call, how long does a call take generally?

A. It depends, sometimes a call will take a half a day, sometimes it will—a normal call takes 20 minutes to half an hour.

Q. Sometimes you just stop in and pass the time of day with the fellow?

A. If he's busy I stop in and say hello and good-bye.

Q. A lot of other fellows call on your customers, too, don't they?

A. Oh, yes. There are quite a few salesmen.

Q. For instance, is that Henry's Atlantic Service that you told us about on Chester Road and McKinley Avenue?

A. A very good account.

Q. I think you said you sold him most of his accessories?

A. Well, I would say so. Yes, and all of his equipment.

Q. He does buy, however, from other suppliers, doesn't he?

A. I would say he does buy a little from Ed Parris, but he does do business with two other supply houses, three other supply houses that I know of besides myself.

Q. Which would they be?

A. Motor parts Service in Prospect Park, V.J Auto Parts in Sharon Hill and Philadelphia Wholesale, Philadelphia.

Q. Of Course, they sell him DuPont radiator chemicals, don't they?

Take Philadelphia Wholesale Distributors, they sell DuPont Radiator chemicals to him?

A. I don't know what they sell, but I last sold him Prestone chemicals and Rust Master.

Q. But you don't know whether they sell him radiator chemicals or not, do you?

1020 A. Well, I would say not because I don't recall seeing it on the shelf.

Q. How about Turtle wax?

A. Turtle wax, he buys that from Philadelphia Wholesale, I know that.

Q. Now, he gets his Wings oil from Delaware County Motor—

A. They are the only distributor of Wings Oil I know of.

Q. Does he have that on his shelf?

A. I couldn't say that for sure.

Q. Now, this Triangle Station that you mentioned is really a garage, isn't it?

A. That's right; it's an inspection station and repair shop.

Q. It has a pump or two outside?

A. It has three pumps.

Q. Three pumps. Does it have an island where you can drive in?

A. He has a big island, he does a big gas business down there; he does a lot of business with tractor trailers, he is mostly in the repair business though.

Q. Do you know how much business you are responsible for in a year? How much business do you write in a year?

A. What I write or the total?

Q. That you write.

1021 A. In a year?

Q. Yes, approximately.

A. I'll average between—about four thousand dollars a month. Some months I'll go over. This month I'm up to $5,500.

Q. Has this been a good year?

A. Very Good.

Q. Better than last?

A. Better than last.

Q. And last year was better than the year before?

A. Oh, yes.

Q. Business has been improving?

A. Every year.

Q. I congratulate you.

Do you know what the company's business is in a year?

A. No, I have no idea what the company does.

Q. The company has been growing though, hasn't it? It's added new branches?

A. Yes, it has.

Q. What was the most recent branch, do you know?

A. We bought Tri-State Auto Parts, I think they were a subjobber of Auto Gear there in Marcus Hook. That's our branch. It's still called Tri-State Auto Parts, I think.

Q. But your company bought it?

1022 A. That's right, we bought it. It's in Marcus Hook.

Q. When did that take place?

A. I couldn't say. About six months. I couldn't say for sure. About six or eight months ago.

Q. Mr. Ferguson, do you call on Ed Holmes' Atlantic station?

A. I do not know.

Q. Well—

A. I did at one time, I haven't called on him in four years, three and a half years. I called on him for about the first three months I went out on the road.

Q. Why don't you call on him now?

A. Because we all have a set territory and another salesman from our company calls on him.

Q. I see.

A. That was only a temporary deal.

Q. How about Walter McCollough. Do you know him in Morton?

A. I don't call on Morton at all. No, that's another salesman's territory in our company. He calls on him, I imagine.

Q. Well, you do call on Chester Drozdowski?

A. That's Bakers Atlantic, Chester Poke, and Eddystone Avenue in Eddystone.

Q. Do you call on him?

A. I do.

1023 Q. Do you sell him Gates Radiator Hose?

A. I sold him a deal of Gates radiator hose at one time, this was when I first went on the road. We hung the racks and everything, put the hoses up and collected the money. The next week I went around, it was changed over to Goodyear, now there's three or four Gates' hoses mixed in with the Goodyear even today.

Q. That is fairly common in the industry, isn't it?

A. I would say so, in Atlantic stations.

Q. Only in Atlantic stations?

A. Usually when you set up an account with a good line such as we carry, Gates hoses or fanbelts or Blue Streak ignitions, it's very, very rarely that they ever, ever change over. If you take the proper care of them.

Q. You also sell him Fram and AC?

A. No.

Q. You don't?

A. No Fram or AC.

Q. You do sell him Auto parts and equipment?

A. I sell him his equipment.

Q. You don't sell him parts?

A. I sell him a few parts, not to many.

Q. Doesn't he buy Champion plugs from you?

A. I don't handle Fram and I don't handle Champion.

Q. I see.

1024 Mr. Ballard: No more questions.

By Mr. Correa:

Q. Mr. Ferguson, you said something about batteries, didn't you? Did you mention a battery you sold?

A. Delco batteries.

Q. That's right. I couldn't remember for a moment. Do you offer those batteries to service stations on 30, 60, 90 basis? That is payment one-third in 30 days; one-third in 60 days, one-third in 90 days?

A. Sure, I'll do better than that.

Q. I mean do you customarily? I'm just wondering what your practice is.

A. Yes.

Q. Do yo uoffer them on any basis of a free battery if so many batteries are bought by the dealer?

A. Well, no; but we don't have any deal like that, so many free if you buy like 25 batteries, give them one free?

Q. Let's say 15.

A. I think if I took a deal like that to my boss I could get it through.

Q. Have you ever offered that deal is what I'm getting to?

A. No.

Q. Ed Parris does that, 15 batteries and one free battery.

A. I don't know.

Mr. Correa: I have no further questions.

1025 By Mr. Dias:

Q. Mr. Ferguson, you have been selling for four years?

A. That's right.

Q. Can you recall back during your first year, second year and third year, and now your current year, was there ever any time when you were selling to more Atlantic stations than you are today?

A. Well, no; I don't bother too much with the Atlantic stations because of their TBA set up. I don't bother too much with them. I have a few that I call on that I get hard parts business out of. In other words, I won't call on an Atlantic station unless he's a hustler and he will do

repair work that I can get hard parts business out of him, an occasional jack or a wheel balancer, something like that. Equipment sale.

Q. But you have tried them all from time to time, have you, tried to sell them batteries and fill-ins?

A. I have tried to sell them. Yes.

Q. You were asked about Bakers, have you tried to sell Baker any filters?

A. I have never tried to sell Baker any filters.

Q. How about other accessories?

A. Oh, I've tried to sell him other accessories such as Rust Master chemicals and Prestone chemicals and never had any luck with it.

1026 Q. Did he give you any reason why he wouldn't buy them from you?

A. Well, he wouldn't buy them because he knows if he did buy them his distributor would certainly tell him about it.

Mr. Dias: That's all, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Correa: Nothing further.

Mr. Ballard: No questions.

Hearing Examiner Kolb: That's all, Mr. Ferguson.

(Witness excused.)

Mr. Thompson: If your Honor please, when Mr. Balloron left the stand he was directed to return tomorrow morning for cross-examination. So far as Atlantic is concerned I have no questions that I want to ask Mr. Balloron and if Goodyear—

Mr. Correa: (Interposing.) So far as Goodyear is concerned, your Honor, we have had opportunity since Mr. Balloron left the stand to read his testimony and we are content to rest on Mr. Kelaher's cross-examination of him.

Mr. Kelaher: Thank you.

Mr. Correa: As eliciting all the points we needed.

Mr. Kelaher: Coming from you that is a compliment.

Mr. Thompson: We thought that would permit Mr. Balloron—

Hearing Examiner Kolb: (Interposing.) Mr. Bal-
1027 loron will then be released and will you notify him?

Mr. Kelaher: We will notify him.

Mr. Thompson: That will permit him to spend tomorrow morning with his old friend Senator Pepper.

Mr. Kelaher: That's right. He's a good friend to have, I may add.

Mr. Dias: I call Mr. Walker, please.

GEORGE STANLEY DREW WALKER, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. George Stanley Drew Walker of Suburban Auto Parts, 221 West Lancaster Avenue, Ardmore, Pennsylvania.

Q. And could you tell us how long you have been employed by Suburban Auto Parts?

A. Just four and a half years.

Q. Will you describe or tell us a little about Suburban Auto Parts, is that an independent Company?

A. Well, it's registered as an independent corporation and it's wholly owned by the owners of the A. P. Rotzell Company.

Q. It is considered to be a branch of Rotzell, actually?

A. Well, it's registered as a separate corporation,
1028 but we buy principally through Rotzell.

Q. Do you handle the same—

A. Yes, we handle all the same products that Rotzell handles.

Q. And what is your sales territory? How are you employed, you are a salesman, are you not?

A. I'm a salesman employed on commission.

Q. What is your sales territory?

A. Well, I operate west of City Line and between the Schuylkill River and West Chester, Pennsylvania.

Q. Will you tell us the type of customer that you solicit?

A. Well, independent garages, service stations, car dealers and some fleets.

Q. Did you say service stations?

A. Service stations, yes.

Q. Among the service stations are there any Atlantic stations?

A. There are a number of Atlantic stations in the territory, I don't go into all of them.

Q. Can you tell us approximately how many there are?

A. Well, there's from, oh, between 12 and 20, I imagine in that territory.

Q. How many do you call on, Mr. Walker?

A. Well, I call on about eight of them fairly regularly and the others I stop in once in a while.

Q. And how often is regularly?

1029 A. Well, about six of them once a week and the others maybe once a month.

Q. And those other four?

A. The other four, would be anything special comes up of interest I stop in there.

Q. The six that you call on regularly, can you tell us what products you sell to them? Can you name those stations?

A. Well, I sell mostly parts that they need in the repair business, mufflers, shock absorbers, if they need an odd battery that they don't stock in a hurry, we give them

that. In other words, if we give them better service where they'd lost a customer, we do that.

Q. Who is their regular supplier?

A. Ernest Miller of Upper Darby.

Q. What products does he supply?

A. Mostly Goodyear tires and batteries, DuPont chemicals and one or two others, I don't know his full line.

Q. These Atlantic stations in your territory, do they advertise TBA products about their stations?

A. Well, they have been on display on their shelves and they use the regular window streamers and that sort of thing.

Q. What products do they advertise?

A. They all have the full line of DuPont chemicals and the lessee stations have Goodyear tires and batteries, some of the independents have other brands.

1030 Q. How many independents are in your territory?

A. Well, there's either two or three. There's one out the end of this week and there's one, I think that went back under company control, so there are really only about two completely independent.

Q. How do you define "independent"?

A. Well, where the fellow has complete control over the real estate where he operates.

Q. And what do they advertise? What do those independents advertise?

A. Well, I think the two that are operating now have got Lee tires and one has got Lee batteries. The other has Willard batteries and then they have a variety of accessories. They carry the DuPont line.

Q. Would you care to name those two stations for us?

A. Lou Dorn in Broomall and there's Wynnewood Park Service Station on Haverford Road in Wynnewood. The other one is in Garrett Road, he's going out of business in another week, he's turning it over to another oil company, not Atlantic.

Q. These lessees in your territory, do you attempt to sell them batteries, your batteries?

A. Only we let them know that we have batteries and when they need them they can call.

* * * * *

1032 By Mr. Dias:

Q. Sir, let me ask you. Did they give you a reason?

A. Yes.

Q. Now, who was it gave you a reason? Which particular station operator, can you name him?

A. Jim Daley out in Kenwood.

1033 Q. And when did he make this statement to you?

A. The early part of this year.

Q. And what reason did he give you for not buying the batteries?

A. Because there was a possibility he might move from that station or Atlantic might give up the location and then he'd be stuck with them.

Q. Were there other similar statements by other dealers made to you?

A. Well, there's—

Mr. Correa: I object to that question, if your Honor please, "were other similar statements made to you by other dealers?"

Mr. Dias: I don't know how I can find out whether or not there were—

Hearing Examiner Kolb: I think that question is all right. He may answer yes or not to that.

Mr. Dias: You may answer yes or no, Mr. Walker.

The Witness: Yes.

By Mr. Dias:

Q. Now, will you tell us when and by whom and the substance of the statements?

A. Well, we always get the statement, whether it's a brush off is like the fellow who says, "Well, I'll keep you in mind." "Well, you know I can't handle your products because I have to handle the others."

1034 Q. I'm asking you for a specific statement by a specific operator. Can you recall any other Atlantic operator that made this specific statement to you?

A. I can recall some years ago when Al Godino was operating the station on Belmont Avenue in Belmont Hills saying he couldn't buy accessories from us even if he could get them cheaper.

Q. And did he tell you why he couldn't buy them from you?

A. Because he said that his contract with Atlantic, he'd have to get these accessories through their approved source.

Mr. Ballard: I now move to strike the last answer, your Honor, unless we know when some years ago is.

The Witness: Early part of '53.

By Mr. Dias:

Q. Did you say "several years"?

A. In the early part of '53 when I first started on the job.

Q. When in '53?

A. The early part of '53.

Q. You gave us his name?

A. Al Godino.

Mr. Dias: Off the record.

Hearing Examiner: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

1035 Mr. Ballard: I withdraw the motion to strike, your Honor, in order to straighten out the record.

By Mr. Dias:

Q. Mr. Walker, I may have asked you this, but if so I have forgotten.

Do you know who the Goodyear supplier is in your territory?

A. Yes. Ernest Miller of Upper Darby.

Mr. Dias: That's all, your Honor.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Ballard.

Q. Mr. Walker. you, of course, also call on Korbo, A. Korbo, trading as Korbo Brothers Atlantic Station?

A. No.

Q. You don't call on them?

A. No.

Q. Do you call on J. Gill at—

A. Occasionally, yes.

Q. And do you sell anything to Mr. Gill?

A. Not recently, no.

Q. Did you used to sell him anything?

A. We sold him a little but he has a brother-in-law working for a competitive house and so he gives the business to the family.

1036 Q. What house was that?

A. In Auto Gear and Radiator I think they call themselves in Chester.

Q. Are they big competitors of yours?

A. Not too much, but they come in on some products in some parts of the territory.

Q. How about Henry Matus at Haverford Road and Bryn Mawr?

A. Occasionally.

Q. What do you sell him?

A. Nothing lately. Some mufflers at one time.

Q. You don't sell him any chemicals?

A. No.

Q. Why doesn't he buy chemicals from you?

A. I haven't been calling on him too regularly, he hasn't been in there too long. I called on his predecessor.

Q. Did he ever give you any reason for not buying the chemicals?

A. No, he hasn't.

Q. Do you happen to know whether he's a lessee station or not?

A. I don't believe Atlantic owns that property.

Q. You don't think so?

A. And I don't know the terms of his lease.

Q. And now how about J. J. Ryan, do you go out as far as Radnor?

1037 A. Yes, I see Ryan once in a while, but I wouldn't classify Ryan as a service station: it's a grocery store.

Q. Do you sell him chemicals?

A. Once in a while.

Q. How about Davis Brothers in Bryn Mawr?

A. Well, Davis Brothers, at least they have got a garage there, but they hardly do any work in there at all.

Q. Do you sell them anything?

A. No, they don't use any of our parts.

Q. Do you call on them?

A. Once in a while just to say hellow. They don't do any business, it's just a store and garage.

Q. How about DeMar Company at—

A. That's Wynnewood Park Service Station?

Q. That's right.

A. I call on them.

Q. Do you sell them anything?

A. Chemicals occasionally and parts for his inspection station.

Q. Hard parts that is?

A. Yes.

Q. Did you ever sell him any batteries?

A. No. Well, if he's stuck for them once in a while, it's Willard batteries and he buys them from a jobber.

Q. How about Mr. Gill on Darby Road?

1038 A. I said I used to call on him. He's the one that has a relation in the business.

Q. That's right. Excuse me.

And the number of customers that you carry all told?

A. About 200.

Mr. Ballard: I have no further questions.

By Mr. Correa:

Q. Do you sell batteries, sir?

A. Yes.

Q. What kind? Perhaps you said but if you did I'm afraid I missed it.

A. Delco.

Q. And you offer batteries to sell to service stations?

A. Yes.

Q. Including Atlantic Service Stations?

Have you ever offered Delco batteries on the basis of one free battery with every 15?

A. No. Those batteries sell for the same price whether they go to a General Motors dealer or service station.

Q. So you don't make any offer?

A. We don't make any price concession to anybody.

Q. Now, does Mr. Ernest Miller offer batteries for sale, Goodyear batteries on the basis of 1 free with every 15 that the service station buys?

A. I don't know his price structure at all.

1039 Q. You don't know that?

A. I don't know what he does.

Mr. Correa: No further questions. Thank you.

Mr. Dias: That's all, sir.

Hearing Examiner Kolb: Is that all?

Mr. Dias: That's all.

Hearing Examiner Kolb: That's all, Mr. Walker.

(Witness excused.)

Hearing Examiner Kolb: We will take a five minute recess.

(Whereupon, a short recess was taken.)

1040 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: Mr. Examiner, we are now going to get back to Commission Exhibit for identification 101-A through Z-20. This is identified in the record at page 22, and I quote, "Document entitled 'TBA Study,' dated May, 1949, Sales Research Section, the Atlantic Refining Company."

At the hearing on March 7, 1957, at the beginning of page 73, this document was offered into evidence. At that time objections were raised by counsel for both respondents, and considerable discussion ensued, which carries through page 83 of the transcript. On page 83 of the transcript the offer was withdrawn tentatively as a result of your Honor's suggestion that a witness be called who would be qualified to discuss the document itself.

Since that time respondent Atlantic has furnished us with the name of J. L. McIntire, and at this time I would like to call him to the stand.

JAMES L. McINTIRE was called as a witness for the Commission and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Home Address?

1041 Q. Yes.

A. J. L. McIntire; 2258 North 53rd Street, Philadelphia.

Q. What is your first name?

A. James.

Q. And are you presently employed with Atlantic Refining Company?

A. Yes, sir, I am.

Q. And for how many years have you been employed with them?

A. Twenty-one.

Q. And at one time were you in the Sales Research Section of Atlantic Refining Company?

A. Yes, sir. I was.

Q. During what period?

A. Well, it ended in 1950, at the Korean War. I think it started about 1948, late '47 or early '48.

Q. And what were your duties in the Sales Research Section?

A. I was the manager of it.

Q. And what would the duties of the manager involve or entail?

Q. We would make studies in the market as we were requested by the sales managers, if they had a problem on which they wanted an analysis of the market or a consumer survey or dealer survey, then we would make it.

Q. Did you have training to make such studies?

A. No, sir, I am afraid not, except as I had ac-
1042 quired it by trial and error.

Q. Did you have prior experience in the field?

A. Yes. I had been a salesman before the war and then after the war I had worked for the Assistant General Manager of Sales, as a sort of a field investigator for him. That was the thing that eventually materialized into a formal Sales Research or Sales—I think we called it Sales Research Section.

Q. What has become—when did that become officially known as the Sales Research Section?

A. About 1948.

Q. Were you in charge of the Section?

A. Yes, I was the first person in charge.

Q. And just to—this may be repeating, but to clarify your duties, you did make surveys of various types for management, is that correct?

A. That is correct, yes, sir.

Q. And what type of surveys did you prepare?

A. Well, I will have to try to remember. Let's see, some surveys of course you had to employ outside interest just to make. Some surveys we made with our own personnel. We had four or five people in that section. We made such surveys as trying to evaluate the desirability of this prospective service station site versus this one. We ran what we called market studies to find out what per-
centage of the market the various brands of gasoline
1043 enjoyed in that particular market. We did a study connected with what the consumer wanted in his service station. In other words, did they want their windshield wiped, or didn't they, and things like that. There were quite a few. I can't remember them all, but that gives, I think, some idea.

Q. I now show you Commission Exhibit 101-A through Z-20 and ask you to state what it is?

A. That is the so-called TBA study that we made. This is May, 1949.

Q. Now were you in charge of this particular study?

A. Yes, sir, I was.

Q. Now would you please state what methods were used in preparing this study?

A. Well, I guess the method would be called a somewhat modified depth interview. We arranged through an outside firm, Stewart Dougall and Associates, to furnish interviews. I don't remember how many cities, but I suppose it is in here, and then one of the junior partners of Stewart Dougall and myself designed this questionnaire and Stewart Dougall's interviewers took it around and filled in the answers.

Q. So you and the associate designed the questionnaire upon which that survey is based?

A. Yes.

Q. Now on the first page of that, that would be Commission Exhibit for identification 101-B. I would like you to read the first paragraph there.

1044 A. "This study represents the opinions and the attitudes of 1,071 dealers in 47 cities from Massachusetts to Florida. These dealers were chosen on a random basis within the following limits."

Do you want the rest?

Q. Is this a correct statement?

A. Yes, sir.

"(1). a quota for each brand based on that brand's acceptance in the city.

"(2) Satisfy the definition of a promotable dealer."

Do you want me to read the rest?

Q. That will be sufficient.

Are any of the basic records still available which form the basis for this document 101-A to 101-Z-20?

A. I would say 85 percent of them seem to have dis-

appeared. Here and there a copy of the report and a couple of questionnaires, which are only a very small part of the whole. I even ascertained that the records of the company in New York were destroyed. They keep them four or five years, but this goes back some years. There is no complete data available.

Q. However, there are reports available, are there not?

A. Yes, sir, such as this one.

Q. I am talking about basic source data now.

A. There are one or two folders of basic source data.

Mr. Kelaher: Your Honor, at this time I would
1045 like to refer to a stipulation entered into with counsel for the respondent Atlantic and refer to page 318 of the transcript. In reference to a question as to whether or not—in response to a question concerning Commission Exhibit for identification 101-A through Z-20, the question was, "Origin and so forth, is basic data available?" "Answer. Reports are available for interviews believed to have been conducted in Boston, Massachusetts, Fall River, Massachusetts, Johnstown, Pennsylvania, Philadelphia, Pennsylvania, Pittsburgh, Pennsylvania, and Trenton, New Jersey."

Is that correct, Mr. McIntire?

The Witness: Yes, sir.

By Mr. Kelaher:

Q. Mr. McIntire, the reports available would show the questionnaire form that was used to prepare this summary, isn't that correct?

A. Oh, yes, sir.

Mr. Kelaher: Your Honor, at this time I offer Commission Exhibit 101-A through Z-20 into evidence (handing document to Examiner).

Mr. Ballard: Would you care to hear the respondents now, sir, or would you like to read it?

Hearing Examiner Kolb: Let me see what it says.

Mr. Ballard: Your Honor, with regard to this document, the first problem I have is the purpose for which
1046 it is offered.

As your Honor can see, it is a tabulation, under a number of headings, and I would like to find out if I could whether it is offered to prove that the dealers said the answers attributed to them, that that is their attitude, is it state of mind testimony, and if so, the dealers of course are not identified. When we know what the purpose of the offer is, your Honor, I would like to reserve the right to question this witness on voir dire in order to elucidate some points which I think have not been brought out about the nature of this study and the reliability of the information that is presented.

Mr. Mason: If your Honor please, we feel that this document is wholly irrelevant, so far as Goodyear is concerned. In the first place, it antedates any time that there was a sales commission arrangement between Goodyear and Atlantic.

Furthermore, it is in the nature of opinion evidence and it should be fully qualified by a detailed exposition of the techniques by which the document was prepared.

Mr. Kelaher: Mr. Examiner, we argued this at length on March 7, but I would like to call several important facts to your attention for your consideration. This was prepared in 1949—

Hearing Examiner Kolb: Let me see that transcript a minute please.

1047 (Document handed to Examiner.)

Hearing Examiner Kolb: I believe the purpose is stated in the record at the bottom of page 75.

Mr. Ballard: Mr. Kelaher, could I look at that record?

Your Honor, with respect to the statement at the bottom of page 75 of the record, to which you have directed our

attention, that statement is a statement by Mr. Kelaher, which reads as follows: "Your Honor, we are offering this with respect to respondent Atlantic to show you the research engaged in by respondent Atlantic in determining which marketing alternative it would adopt."

Your Honor, I am not certain what that language means. We, of course, admit and will be glad to stipulate, what research was done. In fact, the witness testified without objection as to the research that was made and if that is all Mr. Kelaher wishes, I don't see that the report itself adds anything to it. If by this language he wishes to bring in the substance of the report and not merely the fact that the research was done and the report was rendered, then we must object to it, your Honor.

And I again ask for an opportunity to question the witness before your Honor rules on admissibility.

Mr. Kelaher: Your Honor, just so there will be no misunderstanding about it, it would be sort of ridiculous
1048 to offer the survey if I just wanted to show it was made. I am offering the survey as proof of the facts stated therein. Its trustworthiness has been established; it was prepared by the Manager of the Sales Research Section of the Atlantic Refining Company. He has testified as to the sound procedures used. It reflects the preference of Atlantic dealers for TBA at that time, and I would like to call your Honor's attention to Commission Exhibit 136-A through D. This is an inter-office letter from Mr. S. J. Heidman, who at that time was Atlantic's manager of TBA sales, to D. T. Colley of Atlantic, who was and is Vice President of that company, and the subject matter is: "TBA conversion to Firestone and Goodyear programs," and it is stated right in the letter all the steps that were taken before Atlantic decided to convert to the Firestone and Goodyear TBA programs. And among such

steps I would like to read you a paragraph, the second full paragraph of 136-B.

"Having established the fact that our TBA program was somewhat unique among oil companies, we then employed an outside agency to sample opinions of both Atlantic dealers and competitive dealers in our area. The important finding from this survey was that our present program was far from flawless and that there was a great deal of dissatisfaction with it among our dealers. The dealers of other marketers appeared more content with the TBA programs that were available to them."

It is very clear, your Honor, that Atlantic placed great emphasis on this report. We think we are entitled to have that report in the record. It certainly is an important factor in this case. It is relevant; it is material; it is competent. And we think that we now have the witness here; counsel for either respondent has him available for cross-examination, and we see no reason why it shouldn't be admitted.

Mr. Mason: If your Honor please, I think this document is wholly inadmissible as to Goodyear. A minimum requirement to qualify such a document which purports to be a survey, is that the basic material be available, and here the witness says that it is unavailable. So that so far as we are concerned, we have no way of checking the authenticity and soundness of the procedures by which this document was arrived at.

Mr. Ballard: Your Honor, one point.

Mr. Kelaher, may I see that exhibit again?

(Document handed to counsel.)

Mr. Ballard: If this document is being offered in substantiation of the statements Mr. Kelaher read, which were to show that the present program was far from flawless and there was a great deal of dissatisfaction with it among Atlantic dealers, by the present program they

meant, of course, the program in 1949, then while it is cumulative evidence, we would not object to it, if that is what Mr. Kelaher says it shows.

1050 I might point out that as a perfectly good example of the fact that this document is an ambiguous one, those statements are somewhat difficult to reconcile with the statements on the face of the document itself. It appears that each person who reads this document can draw different conclusions from it, and I submit, your Honor, that it is not reliable evidence of the facts stated therein.

Mr. Kelaher: Now, your Honor, it was considered reliable evidence by Atlantic Refining Company when it converted to the Goodyear TBA program, and I think the record also shows they began this exploration of marketing alternatives prior to 1949.

Mr. Ballard: Will you stipulate with me that this document shows that Atlantic dealers were far from satisfied and that the program they were then using was far from flawless?

Mr. Kelaher: I am offering the document in evidence to speak for itself. You ask me to stipulate to something which is meaningless when we have the survey here.

Mr. Mason: Are you limiting your offer to Atlantic?

Mr. Kelaher: I am not.

Mr. Mason: Obviously the considerations of Goodyear are quite different from anything Mr. Kelaher mentioned.

Hearing Examiner Kolb: It looks to me as though the survey is exact and has been properly taken. If the

1051 underlying data is not available, it would seem to me that it would be competent to go in after cross examination of the witness. Atlantic had the survey made, they apparently had at one time these documents available; they know what it is all about, and I can't see how Atlantic can make an objection to it on the basis of the underlying data not being available.

Mr. Ballard: If your Honor please, if your feelings are as expressed, then I would like an opportunity to examine this witness in the matter of Voir Dire, before you finally rule.

Hearing Examiner Kolb: Yes, I intended to do that. I was just making those remarks as to my reaction at the present time. I am not ruling on the question. You may proceed.

Mr. Mason: Is your Honor ruling on the Goodyear objection?

Hearing Examiner Kolb: I don't know yet how much of the data is available.

Mr. Mason: I submit it is plain it hasn't been qualified yet.

Hearing Examiner Kolb: He said he has the data available for various localities.

Mr. Mason: Yes, but on the face of the document it says it covers the entire Atlantic marketing area
1051A and it has been testified that only a portion of the data exists and the witness testified that the records of the company making the survey have been destroyed and about 85 percent of the underlying material has been destroyed. Now that means that the data is not available for checking by Goodyear.

1052 *Voir Dire Examination by Mr. Ballard.*

Q. Mr. McIntire, with respect to this study, Commission's exhibit 101-A through Z-20, do you have in your file a copy of the questionnaire that was used in preparing this study?

A. Yes, sir.

Q. May I see that, please?

A. Yes, sir. (Handing.)

Mr. Ballard: I ask that the reporter mark this document as Respondent's exhibit A-5 for identification.

(The document referred to was marked Respondent's exhibit A-5 for identification.)

By Mr. Ballard:

Q. Now I refer you, sir, to the first page of this questionnaire, and ask you if those are the questions that were used in deciding whether the particular service station was a promotable dealer?

A. Some were. The one that says "Lubrication facilities," this was designed to screen out stations that the interviewers might erroneously include.

We had told them, evidently, from the front of this—I am sorry, the instructions aren't available—we wanted to get promotable dealers and one definition would be that he could provide lubrication facilities. So if the questionnaire had come in with no lubrication facilities, it
1053 would have been thrown out as a non-promotable dealer. The checking of the lubrication facilities is a sort of a check on the data here. Similarly, stations doing under 10,000 gallons of gasoline a year obviously is not what the oil company would call a promotable station, therefore we weren't particularly interested in their attitudes or opinions.

Q. Now if a man checked "yes" on lubrication facilities and showed over 10,000 gallons of gasoline a year, you would accept him as a promotable dealer, regardless of whether he owned the station or leased the station. Is that right?

A. Oh, yes; well, I am not sure whether it was 10,000 or 25,000 that we used as our final break on promotable, but the substance of your question—it didn't make any difference whether he owned or leased the station.

Q. Did it make any difference, if he leased it, whether he leased it from the oil company, from a distributor, or some other landlord?

A. Not a bit.

Q. You accepted all of those?

A. Yes. As far as defining a promotable dealer.

Q. And did it make any difference whether he purchased—I am now on this questionnaire—purchased from the oil company who owned the brand name, through a distributor, from an agent, from a wholesale dealer, or some other source?

A. No. That may sound confusing, but when we 1054 originally planned this survey, we had hoped to spend considerably more money and have a much much bigger sample, in which case we could have controlled all these various breaks and cross sample their asnwers, but we didn't have that, so a lot of this was never usable.

Q. So when this survey refers to petroleum supplier, that could mean the oil company?

A. Yes, sir.

Q. It could mean a distributor?

A. Yes, sir.

Q. It could mean an agent?

A. Yes, sir.

Q. It could mean a wholesale dealer?

A. Surely.

Q. And if there are any other sources, it could mean those?

A. Anybody who supplied them with petroleum products.

Q. Now, turning for a moment to—

Hearing Examiner Kolb: (Interposing.) Before you get away from that, if a man answered no on lubrication, but did purchase more than 10,000 gallons of gas, was that thrown out?

The Witness: I didn't understand you, sir.

Hearing Examiner Kolb: You were telling about lubricating facilities. Where the party would answer no, as to

having lubricating facilities, but does purchase more
1055 than 10,000 gallons of gasoline, would that be used?

The Witness: He would not be considered a promotable dealer.

Hearing Examiner Kolb: Regardless of the amount of gasoline he might use?

The Witness: Yes, sir.

By Mr. Ballard:

Q. Now, Mr. McIntire, there were instructions that went along with this questionnaire?

A. Yes there were instructions that went along with it.

Q. Were they written instructions?

A. They were written instructions, written and prepared by Stewart Dougall in conjunction with myself, because the interviewers were employees of Stewart Dougall.

Q. Did you search your files for copies of those instructions?

A. Yes. See, when I left, first of all remember I left the department and I think it has had three different managers since I left, and each one keeps different files and different systems, so what I did was contact the new present manager who assured me he had searched his files and there is no data relative to this survey there.

Q. Were the interviewers given oral instructions as well?

A. No, sir.

Q. They were given written instructions and the questionnaires?

A. That is correct.

1056 Q. Now turning to question 1 on page 1 of the report itself, that is, Commission's exhibit 101-C, you see at the top of the page a question which is in the form of a question.

Was that the question the interviewers were supposed to ask the station operator? Were those the words that they were supposed to use in asking the station operator the question?

A. No, sir.

Q. According to the questionnaire, what were those words?

Hearing Examiner Kolb: I thought this document was the questionnaire.

Mr. Ballard: The fact is that in preparing the report, that is to say—I don't want to make more of a mystery than this is—in preparing the report they used the form of questions, but those are not the questions that appear on the questionnaire. So in each case, you have to go back to the questionnaire and see what the question was, to find out the purport of the answers.

It is made even more difficult by the fact that they didn't follow the same numbering.

What I am trying to ask him is that the question which appears as question 1 of the report itself, the actual Commission exhibit, is not the same as the question which appears on the questionnaire.

I wanted to call that to your Honor's attention.

Mr. Kelaher: If I am looking at the same thing,
1057 Mr. Ballard is looking at, I can't see any great difference.

Mr. Ballard: Your Honor, the differences may not appear great in all cases. I think, as you progress, there may be some that are of more importance. But I want to call the witness' attention to the introductory remark, which the interviewer was supposed to make.

The Witness: The interviewer would read all of this and there was a multiple choice of three and a reason, so that multiple choice 1 was matched with its reason as 1, and the next multiple choice with its reasons, as 2, and

the further along you go, the more the spread between correlating questions and answers, but this was only prepared for our internal use, and therefore at the time it didn't appear very important. It appears rather important at this point, if you are trying to understand it, but it didn't eight years ago.

By Mr. Ballard:

Q. Now you asked the dealer this question; you asked the station operator—at least you hoped your investigators asked the station operator this question: "Assume for the moment that you did not carry a line of tires, batteries and accessories and you were just about to put in a line of such merchandise. Under such circumstances, do you think you would prefer to buy all your major TBA items from one source or from several sources?"

A. That is right.

1058 Q. The operator was then given an opportunity to check "one", "several", or "Don't know." Then the investigator was supposed to ask for answers to this question: "Why?" and those I take it were free answers?

A. That is correct.

Q. In other words, no answer was suggested to the operator there?

A. No, sir. They couldn't, because you were using women interviewers, who wouldn't have the faintest—at least I am sure the majority of them wouldn't—have any knowledge about such things.

Hearing Examiner Kolb: Where is your last question transferred into your survey?

Mr. Ballard: I am coming to that. The answers to the "Why?" question appear I believe—I hope your Honor will pardon a certain amount of leading—but I believe they appear do they not on page 2?

The Witness: No, they appear—

By Mr. Ballard:

Q. The answer to the "Why" question.

A. Oh, yes, they appear on 2 and 3.

Q. Pages 2 and 3 of the report itself, is that right?

A. Yes.

Q. And 2 is Commission's exhibit 101-D and 3 is 101-E?

A. That is a continuation of the same thing. May I explain?

1059 Mr. Ballard: Please do.

Mr. Kelaher: I think it might be helpful to let the witness explain this.

The Witness: This question was posed, just as Mr. Ballard said. I pose this question to this gentleman here and he says "one source." You check "one source," and you say "Why?". And he writes it in. The interviewer writes in what he says.

Now he would appear on page 1, under the caption "Prefer one source for TBA," but his "Why" would appear on page 2, under the caption "why do you prefer one source for your TBA (asked only of those making this preference in question 1).

Now the next gentleman says "Several." He would also appear on page 1, but down under the "Prefer several," but his "why" would appear over here on page 4 under the caption, Question 2(b), "Why do you prefer several sources? (asked only of those making this preference in 1).

Do you follow me?

Mr. Kelaher: That is very clear.

By Mr. Ballard:

Q. Now, Mr. McIntire, turning to page 2 of the report, Exhibit 101-D, this page purports to give the answers as to why those who preferred one source had that preference.

A. That is correct.

1060 Q. Now for instance the second column there headed "2" says "Price." I take it that you classified the various answers into these categories, is that right?

A. That is correct.

Q. If the man said—mentioned price protection, where would that be?

A. That would be in "Price."

Q. If he mentioned "long margin," where would that be?

A. "Price."

Q. If he mentioned "low price to the consumer"?

A. "Price."

Q. If he mentioned "quantity discounts," where would that be?

A. That would be "price."

Q. Now if he mentioned "guarantee by the supplier," where would that be?

A. That would be "guarantee."

Q. Suppose he mentioned guarantee by the manufacturer of the tires?

A. That would still be under "guarantee."

Q. I suppose it would be a variety of reasons that might be catalogued under "service," is that right?

A. Oh—

Mr. Kelaher: Objection, your Honor. I can appreciate Mr. Ballard's trying to expedite the matter, but I think on some questions it might be helpful if he just asked 1061 the witness what went under those categories.

Mr. Ballard: I will accept your recommendation, Mr. Kelaher.

By Mr. Ballard:

Q. Would you state, Mr. Witness, what is included under the category "service," if you know?

A. Well, I will try to remember. It is quite a while ago and I haven't done this kind of thing for a long time.

Certainly speedy delivery. Satisfaction billing in that the billing came out and they were the wrong bills and they were always in hassels back and forth with the supplier. Availability of merchandise, close by, which is more or less a corollary of delivery.

You see, these people, especially being in different cities and different nationalities, and what-not, sometimes they say the same thing in a variety of ways. And then it becomes as any type of survey of this nature, somebody has to arbitrarily sit down and say this is apples and this is oranges, and this is wrong and that is what we did.

By Mr. Ballard:

Q. The only way we could check your divisions into apples and oranges would be to examine the original questionnaires?

A. That is correct. The rule was, I know, that anything that said "guarantee", that is clean, and anything that has to do with money, whether it be margins, discounts, or what, that is "price."

1062 Now where we differentiated between for example "acceptance" and "quality," which are more or less synonymous, I couldn't tell you. "Service" would include assistance, promotional assistance as distinguished from advertising.

Q. Now I don't wish to prolong this unduly. It must be apparent that this same line of questioning could be repeated as to almost every question here.

But now I would like to call your attention to question number 4 of the report, which appears on page 7 of the report, Commission's exhibit 101-I. The questionnaire asks "What brand of tires would you prefer"—

Hearing Examiner Kolb: (Interposing.) Which document are you on now?

Mr. Ballard: The report, sir, itself, exhibit 101-I, page 7.

Mr. Dias: What is the comparable question?

Mr. Ballard: I think it is 3-A.

The Witness: 3(a), yes.

Mr. Ballard: Question 4 on the report shows the answers to question 3(a) on the questionnaire form. I am sorry, but it does.

By Mr. Ballard:

Q. Now the question that was asked—or at least that you believe was actually asked, was the one on the questionnaire under 3(a), is that right?

1063 A. That is correct.

Q. Would you read that question?

A. "Assuming that you are about to put in a line of TBA and forgetting your present commitments, which of the following named brands of tires (these represent about 4 out of every 5 tires sold) would you prefer to sell?" And then there is a list of Firestone, Goodyear, Lee, Goodrich, U.S., General, Kelly, Seiberling, Your Oil Company's Brand, and other. (Specify.)

And that, regardless of what they said, had to fall into something here. That pretty well covers it, doesn't it?

Then the next part of the question "Why would you prefer this brand?"

Q. Now in your capacity as head of this research section, did you think that that question was enough to distinguish the brand of tire from the method of selling same?

A. No, they are bound up together.

Q. In other words, if a man was handling Lee tires or you knew the method of selling and buying Lee tires, and expressed a preference for Lee tires, do you believe that his preference was for the brand or for buying pattern, or for both?

A. I don't know. That wasn't part of the reason for having this study made. We were trying to find out, as it said in the front, the attitude and opinion of our dealers.

Mr. Kelaher: These figures are on 101.

1064 By Mr. Ballard:

Q. Now keeping in mind the question, would that question—would the answers to that question be the foundation for your first conclusion on the first page of this survey? I refer to the conclusion that reads as follows: "A preference among Atlantic's dealers for Lee tires and Exide batteries".

A. That is satisfaction. That is very important.

In other words, that says—we felt our dealers—and of course all things are relative, but we felt our dealers were satisfied with what they had at that time.

Q. By "what they had" do you mean the brand or the buying pattern?

A. I mean both, because they could buy Lee tires from Lee's branch stores had they preferred Lee and not liked us to distribute Lee. There were Lee stores in most of the major cities, and had been since the days I was a salesman back before the war, who sold Lee tires to service stations, garages, and so forth, just as we were selling them to our dealers.

Q. In your view, does the answer show that dealers were satisfied with their way of buying or with the brand, or both?

A. Well, both.

Mr. Kelaher: Your Honor, he has answered the question two or three times. I think it is pretty clear by this time they preferred Lee tires.

Mr. Ballard: It seems they preferred both.

1065 The Witness: You must put it together with questions 8 and 6. Question 4 says what brand do you

prefer; question 6 says "What do you sell?" and question 8 says, "From what type of supplier would you prefer to buy?" and then on to question 10, and on a survey of this type, to get a conclusion, you have to put the various pieces together.

Mr. Kelaher: It still winds up Lee tires and Exide batteries, does it not?

Mr. Ballard: Are you questioning the witness?

Mr. Kelaher: I am just trying to follow you, hopping around and I hope you will forgive me.

Mr. Ballard: I am trying not to, any more than is necessary.

Mr. Kelaher: I know you are.

By Mr. Ballard:

Q. Turning now to question 7 in the report, which is Commission's exhibit for identification 101-M, the corresponding question on the questionnaire, I believe, is number 5(a), is that not right?

A. That is right.

Q. Check and be sure.

A. Yes.

Q. Now would you explain the circumstances under which the question was to be asked and the full question? In other words, would you tell us how that question fits into the questionnaire?

1066 Mr. Kelaher: Are you referring to 5(a)?

Mr. Ballard: Questionnaire 5(a).

The Witness: And question 7 in the answers. Well, 5(a) couldn't be asked unless you asked 4. 4 says, "What brand of tires do you carry now?" And you are given two places, (1) and (2).

And then it says, "If one or more brands are not the same as preferred," you ask them "Why don't you carry your preferred brand?"

But if one or more of the tires which they carry are the same as their preferred brand, you don't ask them. They become the "I do's."

By Mr. Ballard:

Q. What does the word "exclusively" have to do with it? I see that on question 5(a).

A. I don't know. I can't remember that much of the detail that far back.

Q. Was the investigator supposed to say "Why don't you carry your preferred brand," or was he supposed to say "Why don't you carry your preferred brand exclusively."?

A. Frankly, I couldn't tell you without the instructions because up here it says "If one or more are the same," then this was to be asked. Now whether we had in the instructions a break between the one only and the one or more, I don't know.

1067 Q. If a man had showed a preference for let's say Firestone tires, and he showed in number 4 that he was carrying both Firestone tires and Kelly tires, don't you think the question for 5(a) would be "Why don't you carry Firestone tires exclusively"?

A. I don't know.

Mr. Kelaher: Objection, your Honor. I think that is speculative.

Hearing Examiner Kolb: I think we are getting into speculation as to why these questions on this questionnaire were drawn. Certainly conclusions were reached from that questionnaire which became a part of the survey.

Mr. Mason: Which we don't have.

By Mr. Ballard:

Q. Now referring then to the reported answers, the answers to this question 7 in your report, you have there a category entitled "Obligation to Petroleum Supplier."

Would you state to the best of your recollection what kinds of answers you might have put under that?

A. This questionnaire was designed and the interpretation of it—this I do remember—to show us as unfavorably as possible. In other words, if there was anything on the shady zone, it was thrown against us, because we were looking for things which we should correct in order to improve, if necessary our relationship with our dealers.

Therefore, anything that implied any relationship 1068 whatsoever, be it friendly, contractual, or anything else, between the company and the dealer, which induced him to buy, was arbitrarily categorized "Obligations to Petroleum Supplier," and that gave you a piece there and of course competitive dealers were coded the same way, so your relative measurement remained true, but any inferences of corrected measures needed would be heavily weighted against us.

Does that explain it.

By Mr. Ballard:

Q. I think it does. If a dealer stated that he had a relationship—say he was a relation of his petroleum supplier's dealer, would that be—

A. What is that?

Q. If he was the brother-in-law of his petroleum supplier's salesman, would that be "Obligation to Petroleum Supplier"?

A. I don't recall we ever had one quite like that, but if he said "I like the salesman," or "I like the company," or "I always buy everything from the company," that was put in that category.

Q. That was put in "Obligation to Petroleum Supplier"?

A. Yes.

You must remember this thing was designed for our

internal usage and not designed for this particular type of thing or obviously it would have been—I mean by
1069 that the questions and answers at least would have carried the same numbers, so we wouldn't have to go back and fourth.

Q. Let me take one more question, and then I will stop. I am sure that my point has been gotten across.

Will you turn to the next page, which is page 12 of the report, Commission's exhibit 101-X. Now the question on that I think is 6(a) in the questionnaire?

A. Yes.

Q. Would you read the question and the questionnaire for us?

A. "Still assuming you were about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your tires?

"For example, to name a few types, there are: Your petroleum supplier; the tire manufacturer; the independent distributor of tires; another dealer acting as a supplier; an automotive jobber; a wagon peddler; other (Describe)".

In case they mentioned one that didn't fall into that category, they had the "other". And then "No preference."

Q. Now do you remember whether your instructions contained any definition of "buy", as, for instance, was a man instructed to consider who was selling, who was taking the orders, who was making delivery, who was sending the bills?

A. The interviewer?

Q. Yes. Was he instructed as to which of those
1070 was the man from whom the dealer was buying?

A. I doubt it. I don't remember.

Q. In other words, the dealer could use his choice as to who was selling and from whom he was buying?

A. Yes.

Mr. Ballard: I don't think I have any further questions, your Honor.

By Mr. Mason:

Q. Mr. McIntire, if some third person were asked to check the validity and reliability of this study, what material would they have to have before them to make such a check?

A. Well, you would have to have the questionnaires and I suppose, number two, the names and addresses of the people that filled them out, the people who were interviewed, I should say.

Q. Would you need to have this instruction sheet that went out with the questionnaire?

A. Sure, you would have to have the whole package, if you were out to spot check it, I imagine, leading up to it. If you were out to spot check it, you would have to have it, and those things were available up until — Stewart Dougall, who would have had the names and addresses, destroy their files after I think it is five years, so up until 1952 that material was available.

Q. If you had let's say I were to hire, on Good-
1071 year's behalf, a market research firm to check whether this was a sound study, what kind of material would they ask for, from your experience in this field?

A. They would ask you for the questionnaires.

Q. And the whole—

A. (Interposing.) And the instructions you gave to the interviewer.

Q. Are those questionnaires available?

A. I understand, from the thing read and that is the way I was told it, that there are about five cities out of

the 40-odd of which some part of the questionnaires are available. Of course it was a mass of data at the time that was taken.

Q. Would that remnant be enough to check the survey?

A. Oh, no. If you are going to check a survey, you have all—just as this survey says, you need a random sample. You have to set up some kind of a system. You would have to take a cross sample, in order to get a cross section, and that is just plain statistics.

Q. So that there is no way you know of now that the accuracy of this survey could be checked by a third party?

A. No, sir.

Mr. Mason: Your Honor, I renew Goodyear's objection to the admissibility of this document in evidence as to the truth of the matter asserted which I understand to be the offer of the attorney for the complaint.

1072 Mr. Kelaher: Your Honor, in that connection, I think the soundness of the survey has been amply demonstrated by examination of the witness. The entire quesitonnaire is available; this man has demonstrated he is a very competent analyst; and it seems to me there shouldn't be any question about his trustworthiness.

Mr. Mason: I think his testimony already indicates the fact that it is very dubious whether this data set down here actually reflected underlying work material and I think under those circumstances it would be highly prejudicial to Goodyear to admit this document into evidence.

Hearing Examiner Kolb: Well, as far as I am concerned, I don't see any reason why it shouldn't be admitted. This document has been prepared by Atlantic and the analyst has made his analyzation.

Of course now he brings some question about it which I think are too late now to sufficiently affect the document.

I will admit it so far as Atlantic is concerned, subject to motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 101-A through Z-20 for identification, was received in evidence.)

Mr. Mason: Could I have the Hearing Examiner's statement read, preceding his ruling?

(Statement read.)

1073 Mr. Mason: I take it the suggestion that these questions come too late doesn't apply to Goodyear?

Hearing Examiner Kolb: Well, I said subject to strike on the part of Goodyear. I am not impressed by the analyst questioning his own analyzation at this time in this proceeding.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. The questionnaire will be received in evidence as Commission's exhibit 101-Z-21 through 27.

Mr. Kelaher: I think the record should note that this document was previously identified as Respondent's exhibit A-5.

Hearing Examiner Kolb: All right.

(The document referred to, heretofore marked Respondent's Exhibit A-5 for identification, was re-marked COMMISSION'S EXHIBIT 101-Z-21 through 27, and received in evidence.)

Hearing Examiner Kolb: Anything further?

Mr. Kelaher: We have nothing further today, your Honor.

Hearing Examiner Kolb: We will adjourn until 9 tomorrow morning.

* * * * * *

1075 Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: I will call Mr. Drennan.

ROBERT B. DRENNAN was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your full name and business address?

A. Robert B. Drennan, Harris & Leonard, 1301 West 9th Street.

Q. How long have you been employed by Harris & Leonard?

A. Approximately four years.

Q. In what capacity?

A. As a salesman.

Q. Were you a salesman for the full four years?

A. That's right.

Q. Will you tell us what your sales territory is?

A. Oh, it consists of Media territory, MacDade Boulevard, and over in West Chester Pike and Upper Darby.

Q. Is any part of your territory in the State of Delaware?

A. No, sir.

Q. What type accounts do you solicit?

A. Mostly gas stations and new car dealers, a few commercial.

1076 Q. How often do you call on those accounts?

A. Twice a week.

Q. Are there any Atlantic service stations in your sales territory?

A. Yes, sir.

Q. Can you tell us how many?

A. There are quite a few. I call on 20 of them.

Q. Are there more than 20?

A. I would say so.

Q. Have you ever called on those others?

A. Yes, sir.

Q. When and how often?

A. Well, when I first took the territory over and when there is a new man goes in I call on him, and I can't do any business with him in recapping, then I don't bother any more.

Q. These 20 that you call on, do you solicit their business for new tires, recapping and batteries?

A. Yes, sir.

Q. What type business do you do with them?

A. Well, I do all 75 percent of their recapping, and a few of them on new tires.

Q. 75 percent. Will you explain that, please?

A. I would say 75 percent of their recapping. In other words, they are sending some of it out to somebody else; I am not getting all of it.

1077 Q. I see. Now can you name some of those accounts that you sell to?

A. Yes, sir. Joe Castagna; Hap Little's; Clover Leaf Service; Lloyd Ammon; Jimmy Matthews; Don McLaren; Vern Carron; Floyd Mohney; Edward Sprague; F. J. Balloran; Ed Zola; Bill McKee; Parks & Dawn; Russell's Atlantic; Ted Riter's Atlantic; Earl Shank's Atlantic; Young's Atlantic Service; Terence Atlantic; Tim Cappeli; and Bill Way.

Q. Mr. Drennan, now you have listed the Atlantic stations to which you sell, is that correct?

A. That is right, sir.

Q. And will you tell us the type business you do with each of them? Do they all buy about the same thing?

A. Yes, sir.

Q. Will you please tell us what they buy?

A. Well, they buy all their recapping from me, as I said, about 75 per cent of it, and a few of them buy new tires. Now and then.

Q. Sir?

A. Now and then, an occasional tube.

Q. Can you point out those that buy a new tire or tube occasionally?

A. Yes, sir. Vern Carron, in Springfield has bought tires from me. And Russell Smedley, on Marshall Road, in Drexel Hill, Russell's, has bought tires.

1078 Q. Are there any others?

A. Clover Leaf, he has bought tires from me. And Hap Little, he has bought tires from me. Balloran bought tires from me. Earl Shank; Young's Atlantic; and Terence's Atlantic.

Q. Is that all?

A. Yes, sir.

Q. Now those that buy the tires from you, did they buy on a stocking basis?

A. No, sir.

Q. How about batteries, do they buy batteries from you?

A. No, sir.

Q. Did any of these stations buy your batteries?

A. Well, I would say Clover Leaf now and then might have bought a battery from me.

Q. Any other stations?

A. No, sir.

Q. Did you offer them batteries, or offer to sell batteries to each of these stations?

A. Yes, sir.

Q. How often do you call on them?

A. Twice a week.

Q. Do these stations carry tires, batteries and accessories, all of them?

A. Yes, sir.

Q. Do you recall the type or brand that is adver-

1079 tised on or about the stations?

A. Yes, sir. Goodyear.

Q. Are there any exceptions, any in there that do not carry Goodyear?

A. Yes, sir, there is. Hap Little carries Firestone. Clover Leaf, he carries U. S. and Goodyear. And Earl Shank, he carries anything. Parks and Dawn, it is Lee. Young's Atlantic, it is Lee. And Terence's, why, he carries anything, Goodyear or U. S. He don't stock too many.

Q. Take Clover Leaf. Is that an Atlantic station?

A. Yes, sir.

Q. Does that operator own his own property?

A. No, he is an independent. He leases the property from somebody else.

Q. How about this Little's?

A. He owns his own property.

Q. How about Parks and Dawn?

A. He owns his own property.

Q. Earl Shank's?

A. He owns his own property.

Q. And Young's Atlantic?

A. Well, he is renting from somebody else.

Q. Other than Atlantic, you mean?

A. Yes, sir.

Q. How about Terence?

1080 A. He is renting from somebody else other than Atlantic.

Q. Now you stated that you have tried to sell them all new tires from time to time?

A. Yes, sir.

Q. Has any operator given you any reason why he wouldn't buy your tires?

A. Well, yes.

Q. Who, which operator?

A. Well, Floyd Mohney, Ed Sprague.

Q. Is that all?

A. Yes, sir.

Q. What did Floyd Mohney tell you, and when?

A. Well, he told me, he said, "After all," he said, "You can't bite the hand that feeds you."

Q. What did that mean to you?

A. Well—

Mr. Mason: (Interposing.) I object to that.

Hearing Examiner Kolb: Objection sustained.

By Mr. Dias:

Q. What else did he say?

A. Well, being as he is leasing from Atlantic, why, he thought he should handle their product.

Q. When was it he told you that?

A. About a year ago.

Q. What did Ed Sprague tell you? And when?

1081 A. Well, as a matter of fact, he told me about two weeks ago. He said, "After all, I am leasing from Atlantic, it would look bad if I bought a set of U. S. Royals off you and put it on the credit card for 30, 60 and 90 days."

Q. Are there any others that made statements to you?

A. Well, Smedley, I talked to Russell Smedley, I talked to him on tubes, and he stated that it wouldn't look right if I had U. S. Royal tubes sitting on the rack where I should be having Goodyear 'cause that is what he handled.

Q. When did he tell you that?

A. About a year ago.

Q. You mentioned that you also sold to Balloran?

A. Yes, sir.

Q. Hasn't Balloran left the station—what was the address of that station?

A. West Chester Pike and Newtown Road, Newtown Square.

Q. When did you start selling him?

A. When I first went with Harris & Leonard, approximately 4 years ago.

Q. What did you sell to him at that time?

A. I occasionally sold him a U. S. tire; he would call for it and I would run it out. And I did all his recapping.

Q. And did you continue to sell him all the time he was in the station?

A. Up until a few months ago, yes, sir.

1082 Q. When was that, approximately?

A. I would say maybe February, March. Back in that time.

Q. Did he leave his station at that time?

A. No, sir, he left the station about a month and a half or 2 months ago.

Q. Did he give you any reason why he discontinued purchasing from you?

A. Well, he said he wasn't carrying enough of his own stock on hand, and that he had to stock up on his own.

Q. Is that all he told you?

A. Yes, sir.

Q. Do you know who the Goodyear distributor is in your district, your territory?

A. Well, there is two of them. Ed Parris is one of them, and Miller, I think it is Ernie Miller.

Q. Do you know whether either of those gentlemen have recapping facilities?

A. No, sir, they don't. I know Ed Parris doesn't. I wouldn't say on Ernie Miller.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Ballard.

Q. Mr. Drennan, this list that you have furnished us was made up from your records?

1083 A. Yes, sir.

Q. And this constitutes all the Atlantic stations who were your regular customers?

A. Yes, sir.

Q. Harris and Leonard's specialty is recapping, isn't it?

A. That is right, 99 percent of our business is recapping.

Q. And your biggest competitors are C. A. Powers—

A. In that territory, yes.

Q. The Lanza people don't get down that way very much, do they?

A. Who?

Q. Are you familiar with that company?

A. I never heard of them.

Q. C. A. Powers are the biggest competitor of yours then?

A. Yes.

Q. Between you, you do most of the recapping business in your territory?

A. Yes, sir.

Q. Now are you pretty familiar with Mr. Parris?

A. I don't know him personally, but I meet him occasionally.

Q. I think he offers recapping, doesn't he?

A. Yes, sir.

Q. I suppose he arranges to have that done by what? Would it be Goodyear stores?

A. Goodyear in Philadelphia.

1084 Q. They have a plant here in Philadelphia?

A. That is right.

Q. I suppose he advertises that as factory recapping?

A. Yes, sir.

Q. And he offers that to the same Atlantic dealers that you do?

A. Yes.

Q. And do they deal with you?

A. Yes, I can give them quicker service. In other words, if they call me up at 8 o'clock in the morning, I can go out and pick the tires up and have them back the same day.

Q. Miller offers the same deal to his dealers, does he?

A. I imagine so.

Q. And I forget, what kind of batteries do you handle?

A. U. S.

Q. U. S. batteries?

A. That's right. It has our own U. S. name on it, made by National Carbide.

Q. What is your price on those batteries? What quantities do you offer them at?

A. Not any quantities. I sell them at distributor billing.

Q. Do you ever make a concession below that price?

A. No, sir.

Q. Ever put on a special deal of them?

A. No, sir, distributor billing is all.

1085 Q. You don't have this baker's dozen deal?

A. No, sir.

Q. Did you ever hear of that?

A. Yes, sir.

Q. I think—is it Miller or Parris that offers that?

A. I don't know.

Q. One free for every 15 or something like that?

A. Yes, something like that.

Q. You don't offer that?

A. No, sir.

Q. This fellow, Bill Way, he is one of your customers, isn't he?

A. Yes, sir.

Q. Do you know him pretty well?

A. Well, as a customer.

Q. He used to be an Atlantic salesman, I think?

A. Yes, sir, he did.

Q. I think he had about the same territory where his station is, didn't he?

A. Yes, sir.

Mr. Ballard: No further questions.

Mr. Mason: No questions.

Redirect Examination by Mr. Dias.

Q. Mr. Drennen, on that battery purchases, do you
1086 have any customers that purchase batteries on a stocking basis, whether Atlantic or anything else?

A. No, sir.

Mr. Dias: That is all.

Hearing Examiner Kolb: That is all, Mr. Drennen.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

1106 JAMES M. MYERS, JR. was thereupon called as a witness and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. James M. Myers, Jr., and I live at 214 Sugartown Road, Devon, Pennsylvania.

Q. And were you at one time an Atlantic lessee dealer?

A. Yes, sir.

Q. During what period?

A. It started sometime in May of 1950, and it ended September first, I believe, of 1951.

Q. And where was your station located?

A. At the corner of Eagle Road and West Chester Pike, Minoa, or Havertown, if you want to call it that.

Q. In Pennsylvania?

A. Yes, sir.

Q. Did you invest your own capital in the station?

A. Yes, sir.

1107 Q. Approximately how much?

A. I would say around—well, I said my own—it was partly borrowed capital, but it was from my father and my own, and about, I would say, around $7,000.

Q. Now when you began operations in May 1950, what TBA did you carry?

A. Well, Lee tires, Exide batteries, and I believe rubber products were Thermoid, and then just the other general run of polishes and all those things that you would have.

Q. And who was your supplier of TBA products?

A. Ernie Miller. Miller Automotive, I believe they call it.

Q. What was your reason for purchasing Lee tires, Exide batteries, Thermoid fan belts, and so forth from Mr. Miller?

A. Well, it was just—he handled the line for Atlantic and it was just understood that you purchased from him.

* * * * *

1108 By Mr. Kelaher:

Q. Did you attend training school at the time you opened the station?

A. Yes. I believe that I went to a training school, it seems to me it was for two weeks.

Q. Was that conducted by Atlantic?

A. Yes. A fellow by the name of Ed Krebs handled it and it was conducted at the corner of City Line and Con-

schohocken Avenue, at the Atlantic station, in the back room.

Q. And was TBA mentioned at that training school?

A. Yes.

Q. Were any specific TBA products mentioned at the training school?

A. Well, I really don't recall.

• • • • •

1109 By Mr. Kelaher:

Q. Prior to the time you became an Atlantic dealer, had you had experience in service station operations?

A. Yes, back many years before that I started with Esso, Standard Oil Company of Pennsylvania, as an employee. They didn't have dealerships in those days, and I worked in the service station and became a manager of a service station.

Q. About what year was that?

A. Well, I started 1930, I think, and about 1931 I took over as manager of the service station in Bryn Mawr and then from there I went to City Line and Bryn Mawr Avenue, which was one of their largest stations at that time.

Q. So that you were experienced as a service station operator?

A. Yes, I had a wonderful experience in the service station business.

Q. Now how long did you continue to carry Lee tires, Exide batteries, and the other TBA products you mentioned?

1110 A. Until the date when Atlantic changed over to Goodyear.

Q. And that was—

A. Which I can't recall the exact date. It has been four or five—four years ago, whenever it was.

Q. I show you Commission's exhibit 150, which was a letter sent by Mr. Colley to dealers, dated March 1, 1951, and ask you to read that, please.

A. Out loud?

Q. No, just to yourself.

A. All right, I have read it.

Q. Do you recall receiving that letter?

A. I don't want to say yes for the simple reason that I had letters, but if it was that letter, I couldn't say, it has been too long ago for me to identify that letter and be an honest man.

Q. But you did receive letters announcing the change, is that correct?

A. Yes, sir, that I did receive.

Mr. Kelaher: Your Honor, I think the record does show that this Commission's exhibit 150 was sent to all Atlantic dealers at that time.

Mr. Thompson: I will stipulate that is so.

By Mr. Kelaher:

Q. Now when the change-over to Goodyear TBA was announced by Atlantic, did any Atlantic represen-
1111 tative make any statement to you concerning the matter?

A. Yes, just that we were changing over to Goodyear. I mean, we were told that we were changing to Goodyear and we were not going to have Lee any more.

Mr. Thompson: Without the proper identification, I move to strike again.

Hearing Examiner Kolb: Well, he said it was around the middle of 1951 when the change-over was made.

Mr. Thompson: Yes, sir, but the person who made the remark hasn't been mentioned.

Mr. Kelaher: If counsel will be patient, for one question we will get to that.

By Mr. Kelaher:

Q. Who was the Atlantic representative who made that statement to you?

A. William Way.

Q. Do you recall the statement he made to you at the time, or the conversation?

A. No, I don't, sir. Just that we were changing, that was all, and no particular conversation, no excitement about it or anything.

Q. And did you then begin to purchase Goodyear TBA?

A. That's right.

Q. From whom?

A. Ernie Miller.

1112 Q. Now you stated at the time that you received a letter or letters from the Atlantic Refining concerning the change-over, is that correct?

A. Yes.

Q. And did such letters state that you had freedom of choice as to purchasing TBA?

A. I can't recall. [redacted] are speaking of the time of the actual change-over?

Q. Yes, at the actual change-over.

A. No, I don't recall it said freedom of choice or otherwise, at that particular point.

Q. Subsequent to that, did you receive a letter which stated that?

A. Yes, I did receive a letter later than that, stating that I had freedom of choice.

Q. Did you ever discuss that letter with salesman Way?

A. Yes, I did.

Q. What did you state to salesman Way?

A. I said "Bill, does that letter mean what it says?" and he said, "You try it and you will find out." That was the answer I received.

Q. So you continued to purchase Goodyear TBA?

A. That's right.

Q. Do you recall at one time that Atlantic used your station as a model station?

1113 A. I recall it very clearly.

Q. Do you recall the approximate time when that occurred?

A. All I can tell you is I would say the late winter or early spring of 1951.

Q. And would you just describe what transpired at that time, in your own words?

A. Well, there were four or five days where salesmen of the Atlantic Refining Company and what they called—I don't know what they were—fellows who worked on service stations, and helped the boys around to teach them different things, I don't know what they called them, but these men were brought in there, five, six or seven of them, and they worked to clean and scrub and paint and do all this sort of thing, and rearrange your inventory so it looks nice and all, coming to a point where, on this one particular lay, there would be certain gentlemen from Atlantic Refining Company come out there and just view this thing, as a model station.

I mean it was, everything was in place, in order, and that was the idea of the thing.

Q. Now was anything done with respect to TBA when they made your station into a model station?

A. Yes. Any items that I had, which I had very few of, which were foreign to the Atlantic ordinary TBA program, were not supposed to be in view.

Do you want me to go on, or do you want to question me?

1114 Q. Please go right ahead.

A. The night before this model station was to happen, which was to happen the next morning—by the way all the men were dressed in brand new coveralls, with

bow ties and we were to look real pretty. So they asked me if they could remove these items from my place.

Q. What specific items are you referring to?

A. I had a few foreign tires, as I recall.

Q. What brand?

A. I think I had a couple U. S. Royals laying around and a few Lees left, which I hadn't sold from the time I had them, and they asked me if they could remove them, and I told them absolutely not to take anything from my place, but the next morning when I came in they were gone and I understood they were hauled around in the—some of the men's cars, in the backs of the cars.

And I didn't receive those back for several days, and some of the things there I am sure I never got back because at the time I was very upset about it. It was just one of those things.

Q. Now did they also take some accessories at that time which were not in the sponsored line?

A. Yes, but I can't recall what they were. There was a number of items taken.

Q. And they were put in the cars of these Atlantic representatives?

1115 A. One thing I can remember was taken out of there. I used to sell a lot of seals for front wheel bearings, and I had a case—in those days we were not allowed to sell those things, and I had a case of them on the wall and that was removed and brought back to me later.

Q. Do you recall the brand name of that item?

A. No, but I can find out for you. They are now in certain stations, I see them.

Q. Now you stated that these items that you have mentioned, the only items that were taken out were non-sponsored TBA items, is that correct?

A. That's right.

Q. Did the company ever reimburse you for any of the TBA they failed to return to you?

A. They claimed they returned it all, so there was no such thing as reimbursement.

Q. But according to your statement, you don't think they did return it all?

A. That's right.

Q. At the time of the change-over to Goodyear TBA, was your station identified with Goodyear signs?

A. Yes.

Q. And did you request such identification?

A. No, but if we were going to sell Goodyear, we certainly had to have some identification, which I just understood.

1116 Q. Now prior to handling Goodyear TBA, you stated that you handled Lee tires, Exide batteries; were you dissatisfied with Lee tires and Exide batteries?

A. No, I never was. And there was a good reason.

Q. What was the reason?

A. Well, Lee had a fine guarantee with them, and we had no guarantee except for faulty workmanship with Goodyear, but we had a road hazard guarantee with Lee tires, a very fine one, which people liked.

Q. Now, price-wise, how did Lee tires compare with Goodyear?

A. Just about the same. You see, I bought them all from Ernie Miller and as near as I know they were around the same. I don't recall that.

* * * * *

1117 By Mr. Kelaher:

Q. Was it your own choice to purchase TBA from Miller's Automotive?

A. No.

Q. Were you called upon by other sellers of TBA?

A. Oh, yes.

Q. Do you recall a Mr. Douglas Kevis, of Harris and Leonard?

A. Yes, sir.

Q. Did he call on you?

A. Yes, for the whole time I was there.

Q. Did you give him any of your recapping business?

A. I gave him all my recapping business.

Q. At that time were you solicited for recapping business by Atlantic's representatives, or by Mr. Miller?

A. No, because Mr. Miller didn't have any recapping up until the point I left. I left soon after that, before he got into recapping. I understood we were going to have it, though. I had heard there was going to be recapping.

Q. Now, did Mr. Kevis ever solicit the sale of new U. S. tires from you?

A. Yes.

Q. Do you recall—did you purchase such new tires from him?

1118 A. No, I didn't.

1119 By Mr. Kelaher:

Q. Did Mr. Kevis solicit business from you after the change-over to Goodyear TBA?

1120 A. Yes.

Q. And did he solicit business from you prior to the change-over to Goodyear TBA?

A. Yes.

Q. And did other jobbers and sellers of TBA solicit business from you both prior and after the change-over to Goodyear TBA?

A. Yes.

Q. Would you name some of those other suppliers?

A. The ones I recall, well, Harris and Leonard you have. John Stewart was one, he sold service station supplies such as towels and that sort of thing, brooms, mops,

anything like that. Then there was Gaul Derr and Shearer, who has a very wide selection of anything to sell or for use I mean as tools or equipment in the service station.

And Aviation Auto Supply, was one, who had a wide selection of anything you wanted in service station supplies or TBA. Then there was an Upper Darby Automotive; they are now out of existence.

Q. Do they solicit TBA business from you?

A. Yes.

Q. Both before and after the change-over to Goodyear TBA?

A. Yes, sir.

Q. Did you purchase TBA from them?

A. Very, very little. I mean just odd items that 1121 maybe I couldn't get from Ernie Miller.

Q. What kind of business relations did you have with Atlantic representatives? Were they cordial or—

A. For the first four months, yes.

Q. What happened after that?

A. Well, for many years I believe we had had no wars on gas, and they started after I was in there about four months, in the business. And it was a very severe drop in prices and it was suggested that I lower my price on gasoline, which I couldn't see to do.

Q. Who suggested that?

A. The salesman told me, Bill Way, told me I should lower my price and get in line with the other dealers.

Q. The Atlantic salesman?

A. That's right.

Q. Do you remember his name?

A. Bill Way.

Q. Go ahead.

A. So I asked him what was going to happen; was I going to stay there and go broke or what, and he shrugged

his shoulders. So I told him unless they did something about it that I was going to do something about it. So he just smiled at me and the next day I proceeded, and I put a one page ad in the Havertownship News, advertising one quart of oil with every 10 gallons of gas. I also had four 4 x 8 signs put up on each side of my station, with the same information on it, on both sides, and then I proceeded to give these people the oil.

1122

At first I was paying for it, but I kept my price up where it was, didn't drop it, and then if the price finally went down to where it was three cents below where I was selling then I would start to lower slightly, keeping it three cents all the time above and that was paying for this oil I was giving away. And then Atlantic came through with subsistence, which they told me—Bill Way and he came and told me unless I complied with their wishes, and brought my prices in line with the other dealers, I would not get the subsistence.

So I warned him he better discuss it with the company lawyer before he started to do that, take exception to me over other dealers, so nothing more was done and I did get my subsistence, which was used to pay for this oil to give to the clients or customers, and I used that for four months under terrific pressure by Mr. Lukens and Mr. Arnholt and Mr. Bowman, Bill Way and Pete Lonenzo all were involved and came out there and gave me this terrible pressure and I refused to ever drop my price or do anything that would stop me from making money because I was making money when the rest were losing it and they were not going to tell me how to lose my money and that is what happened and that was the first trouble I had.

And then my relationship, of course, was very un-
1123 cordial during that period. They were rough.

Q. Now were all the men you just mentioned Atlantic representatives?

A. Every one.

Q. Did anything occur after that with respect to your—did you have any further instances with Atlantic after that?

A. Well, not about that.

Q. Did you have any incident with respect to any other matter concerning station operations?

A. Yes. In the spring of 1951, sometime in there, I just can't recall dates, it is four years ago, but I had purchased or had given Bill Way an order one day for $600 worth of oil, as I recall, of which there were 25 cases of Capital Motor Oil, which was their very cheap oil, sold in two-gallon cans, and that would be 75 cans, in other words, of oil.

Previous to that I had purchased larger quantities, but I had no place to put it and it would sit out around the building and would rust up and the cans would leak and I was taking a loss on it.

So I didn't want any more than that of it. And three days later, before this oil was received, I had a visit from Mr. Arnholt, and Bill Way and the TBA man, whose name I can't recall. It was George somebody. And he was the man who apparently sort of kept track of TBA for Atlantic. And Bill Way told me that when he walked in,

1124 they all walked in, and Bill Way told me that he would like to sell me one hundred cases of Capital Motor Oil. So I told him "I can't do that. I have just given you an order, I haven't received the oil yet, for $600 worth of oil, including 25 cases of this motor oil, Capital," and I just couldn't see my way clear to buy any more and have it lay around the place.

In fact, they told me I could park it out around the driveway, and I said "Yes, I guess I could put it on the roof, too," but after Bill stopped talking this George started next. And I was very courteous to Bill Way, but I

wasn't quite so courteous the next time, and I told that gentleman the same thing, and then Mr. Arnholt spoke to me and I was very discourteous and I told him that I had already told all three of them and if they had called on any other place except an Atlantic station, they couldn't violate the man's ethics the way they were doing with me, and I was too busy to talk to them and please leave.

By Mr. Kelaher:

Q. Did Atlantic representatives ever look at your records?

A. We were supposed to keep a record at all times of our sales each month and the salesmen would come in once a month and ask for that book and look at the record of sales.

Q. And did you ever have any conversations with an Atlantic salesman concerning your records?

A. Oh, yes, we would have conversations, but I 1125 don't know what you refer to.

Q. Did your records include sales of TBA?

A. Oh, yes. I kept an accurate record of that.

Q. Now you stated that you left—let me ask you this first. When you first went into the station in May 1950, how long a lease did you have?

A. Three months.

Q. And then that would take you up to about September, 1950, and at that time what lease did you have?

A. Then I received a one year lease.

Q. At that time did Atlantic have a three-year lease?

A. I don't think so. That came later. As I recall, and it was, I think, after my time, in fact. I heard about it, but I don't believe they did.

Q. Now you stated that you left the station in September 1951. Would you please state the circumstances which led up to your leaving the station?

A. Well, the first thing that happened was approximately the first of August—I received a visit out at my home. I had been sick for several days but Mr. Arnhold, Mr. Lukens and Bill Way came over and they just walked in and sat down in the living room and handed me a piece of paper saying that my lease was terminated as of September first. So I asked them if that was all there was to say, and they said "yes," and I said, "well then, that is fine." I will be seeing you, and they walked out.

1126 And so then I decided to go into Atlantic Refining and see if I could not reason with someone up near the top, which I did, and I got as far up as Mr. Bowman, who was there at that time, and he assured me I could do nothing and I was wasting my time there.

I asked him for reasons and the only reason I can recall that was given was that my place was not clean.

So I didn't say any more, but I went out and immediately had my 4 x 8 signs changed over to these words: "Atlantic has terminated my lease." Then I had a large "W H Y?" with a question mark, and then "Ask your Atlantic dealer, he knows." And I proceeded to stay there for the balance of that month until the time came for me to go.

And we left there 11 o'clock the last night I believe of the lease, and they had I think eight men out that day including a lawyer, they told me, and it was pretty rough sailing all day—

Mr. Thompson: (Interposing.) Who, me?

The Witness: You know, I believe it was. If you just smoked a pipe, I think it would be you.

By Mr. Kelaher:

Q. Now how did you gallonage run in the station?

A. When I opened, the first month I opened, we sold 40 or 41 thousand. I don't quite recall. It was over 40.

Q. Do you recall what Atlantic expected of a sta-
1127 tion that first month?

A. They told me 24 and I had told them that I was sure it would pump 40 because I knew the corner very well and was familiar with that whole area.

1128 Q. Were other dealers after that station at the time?

A. Yes, I understood. I was told by Mr. Arnholt there were many after it and I was in the leather business, and I came in there and we had—I did a sales job with him, and told him what I could do and he went along. And I finally received word from him by telephone, I called him from Pittsfield, Mass. one day when he had told me to call and he said the place was mine, and that night I picked up the phone and called Chicago and resigned from my position in the leather business. And I came down there, very innocently.

Q. And now you started at 40,000. Did you increase your gallonage?

A. Yes, the gallonage reached almost 50,000 in the month of August before I left. I may qualify that. It may be July, I'm not sure. There was one month it was over 49,000, either July or August, possibly July. And the next month was very close to that. It had moved up close to a 10,000 increase over the year.

Q. And did you always pay your rent promptly?

A. There was no such thing as paying rent promptly. That was deducted from your gasoline.

Q. And were you in your opinion a good station operator?

A. I still think I'm the best one around.

Q. And you were never given a reason by Atlantic for terminating your lease?

1129 A. No, sir.

Q. Now did Atlantic encourage promotion deals during various parts of the year?

A. Yes.

Q. Would you tell us a little bit about that?

A. Well, the number one promotion was the day I went in there, when we had search lights beaming up in the sky off a truck, using up a lot of electricity, by the way, and we had cigarettes we gave away, pack to every man and we had gardenias for the ladies—every lady, and all of that costs a lot of money and they also—Mr. Lomenzo suggested I have dancing girls on the driveway.

Mr. Thompson: I would like the record to show that that is the day I was at the station.

The Witness: They never were there.

Mr. Thompson: Neither was I.

By Mr. Kelaher:

Q. Who paid for this?

A. That was paid for by the dealer, by me. And as I recall the figure, it came close to $500 for all of that.

1130 Q. How much?

A. Around $500.

Q. Did they have promotions after that of any kind?

A. Yes, we had another promotion which they came out there about—and I just don't recall the details of that promotion. It was more of a sign promotion or that type of thing, or advertising, which we helped pay for. They were supposed to pay for part and we were supposed to pay for part, and we would pay for a part and that ran maybe several hundred dollars for that. That was—I don't know what point that happened.

Then I was told in the spring of 1951 that I should put on another driveway promotion like the first one.

Mr. Thompson: Tell me by whom, would you please?

The Witness: Yes, that was by Bill Way, and I guess Bill Way was the only one I can recall. I know for sure. The rest I wouldn't know. There may have been others.

By Mr. Kelaher:

Q. And the others would be Atlantic representatives, too?

A. If they did say that, and I don't want to say that because I might—I am not sure.

Q. What type of promotion was this one?

A. That was gardenias for the ladies and cigarettes for the men, I believe, again, that we went for, and we had that again, and—

Q. Who paid for that?

1131 A. I paid for that entirely myself.

Q. And did you need that type of promotion?

A. No, sir, I sure did not. Not with an increase of gallonage like I had and an increase in general business over the year, I needed no promotions or no advertising. I was having a job taking care of the business I had.

Q. So you only had this promotion at Atlantic's request?

A. That is exactly right.

Mr. Kelaher: No further questions.

Mr. Thompson: May we have a couple of minutes to consult counsel, your Honor?

Hearing Examiner Kolb: We will recess for five minutes.

(Whereupon, a short recess was taken.)

1132 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Thompson.

Q. Mr. Myers, I was a little curious about this model station you considered.

A. Yes, sir.

Q. Did you mind your station being a model?

A. I didn't think I was going to mind it, but I found out that I did mind it terribly before I was finished.

Q. That happened in 1951, didn't you say?

A. Yes, sir.

Q. And the purpose of it was to have a lot of Atlantic people come out and view a model station?

A. That's right.

Q. They did come out and take a lot of pictures?

A. Not a lot, just two people.

Q. They were top brass?

A. I think Mr. Bowman, Mr. Lukens.

Q. Fairly high Atlantic officials?

A. I guess you'd call them high.

Q. And you recall that a lot of pictures were taken of the station?

A. I don't believe any were taken.

Q. You don't. Well, you don't recall pictures being taken?

1133 A. No, I don't. No, sir.

Q. You yourself are rather photogenic?

A. I'd rather have you decide that than me.

Q. Modesty prevents you from answering.

Was your picture taken that day with these people?

I have to withdraw the question—

Mr. Kelaher: Objection.

By Mr. Thompson:

Q. Would it refresh your recollection if I asked you if your picture was taken with these people?

A. No, it wouldn't.

Q. Would it refresh your recollection if I suggested to you that this station of yours having become a short time model was later used for advertising purposes? Do you recall anything of the kind?

A. No, sir.

Q. I am going to ask you a few questions about the circumstances surrounding the failure of the Atlantic to renew your lease on September 1, 1951. That was correct, wasn't it?

A. I believe so.

Q. Before I come to that, it's my recollection that your testimony was inadvertent in one respect in fixing a date. I think you said that the model station incident occurred the latter part of 1951 and that the record does so say—

A. No, I didn't say that. I said I thought that it
1134 happened—mind you, this is four years ago—and I did say that I thought it happened in the latter part of the winter or the early part of spring.

Q. Yes. Would it refresh your recollection as to the date if I suggested to you that the model station incident occurred before Atlantic had adopted the Goodyear plan and was a kind of a set up arrangement for advertising purposes?

A. No, I wouldn't want to say that. I have no recollection of whether it was before or afterward. That is just something I can't remember. It's impossible to remember things back that far as to months and dates.

I know it was in the spring or late winter.

Q. But the change-over wasn't until after the 1st of March '51, was it?

A. You'll have to tell me, sir; I can't remember that.

Q. You didn't recall receiving a letter dated March 1, 1951 from Mr. Colley which announced the change-over? That was shown to you by Mr. Kelaher.

A. Yes, the one you brought over here?

Q. Yes, sir.

A. That exact letter I just wouldn't want to say that I could remember. It's impossible to remember that long the particular wording or anything of a letter and if I said otherwise it might not be true.

Q. But this model station incident must have been just about that time because that announcement, you will recall, was in March of 1951.

A. Spring starts when?

Q. I can't remember that year very well, can you?

A. It could have been, I said in late winter or early spring. It could have been after that—I just can't tell you.

Q. All right, sir.

Now, may we direct your attention to a couple of months later, that is to say the summer of 1951.

A. Yes, sir.

Q. Before your lease expired and before Mr. Arnholt visited you you retained counsel, did you not?

A. I did not.

Q. You did not, sir?

A. I have never had counsel.

Q. Didn't Arthur E. Dennis represent you?

A. No, sir; never heard of him.

Q. Well, this is extraordinary. Didn't you ask him to call on Atlantic on your behalf?

A. Never heard of such a man.

Q. Were you a member of the Delaware County Dealers Association?

A. Oh, yes.

Q. And do you recall making a speech at a meeting of that association? 1136

A. I believe I did.

Q. Do you recall Mr. Dennis as counsel for that association?

A. Well, see, he was counsel for the association, what he did was something else, but I did not retain counsel.

Q. Well, do you now recall Mr. Dennis?

A. I can't say yes. There was someone, and I can't recall if his name was Dennis or what took place at that time.

Q. How about Mr. Gorson, do you remember him? Another attorney in Delaware County.

A. Associated with the association, was he?

Q. Well, did Mr. Gorson ever represent you?

A. I don't know. I don't know the man's name. I never obtained counsel—private counsel from anyone. If it had anything to do—it could have been that someone from the association might have contacted Atlantic, there were a lot of—the association was trying, working for dealers at that time but they were not my counsel, my personal counsel.

Q. How about a Mr. Green. Did he ever represent you?

A. Yes, there was a Mr. Green that I spoke to, but he didn't represent me.

Q. Did he talk to Atlantic?

A. I believe he called them on the telephone and possibly stopped over there, but I mean he just did it as a friend and he told me there was nothing that could be done.

1137 Q. Did you authorize Mr. Green to threaten suit against Atlantic because of price discrimination against you?

A. Not that I recall.

Q. Did you assert a claim against Atlantic on the ground that they had not accorded you as much price protection during the price war as they had other dealers in your area?

A. No. I was concerned only with leaving the station at that time.

Q. Is it not a fact that when Mr. Arnhold came out to see you at your house he said in effect that it was obvious that you and Bill Way and he had not been getting along and it would probably be happier for both of you if the lease was just permitted to expire?

A. He probably did; but he didn't take into consideration my happiness. He made that statement.

Q. Didn't you reply to that and say that you agreed that you had not been getting along with Atlantic because of these price matters and that you might as well just let it ride?

A. There was no question I wasn't getting along with them at all, hadn't been.

Mr. Thompson: That's all.

Mr. Mason: I have no questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Myers, with respect to the motel station, 1138 did you request that your station be made a model station?

A. I certainly did not. It was Atlantic's request.

Q. And how many days were involved in changing the station over or in making the station a model station?

A. I would roughly say four or five days.

Q. And was your business disrupted during that time?

A. Yes, particularly the last day. The last day they painted my lifts red and no cars were allowed to come on my lifts that day because they would have left marks on the lifts. So, that's how my business was disrupted.

Q. Were you able to do a normal business on the days immediately prior thereto, when they were renovating the station or whatever they were doing to the station?

A. Fairly so. I mean, there were men trotting all around the place there and I was able to go along fairly well, the last day was the day that I couldn't do a normal business.

Q. Now, did Atlantic compensate you for the lost business or for the time involved?

A. No, and I suggested that, too, at the time, but there was no such thing.

Q. Now, what TBA identification was on the station when it was a model station?

A. Well, that gets back to the question that this gentleman (referring to Mr. Thompson) asked me which I'm not able to say, if it was prior to or after the change-over, you see, and I wouldn't want to say that, because I feel that it was after but I'm not sure. I can't recall dates for four years, and so it's impossible for me to answer that correctly.

1139

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: That's all, Mr. Myers.

(Witness excused.)

1416 McCawley Building,
37 Commerce Street,
Baltimore, Maryland.
18 November 1957.

Met, pursuant to adjournment, at 11:00 a.m.

* * * * *

1417 Hearing Examiner Kolb: The hearing will come to order.

* * * * *

SAMUEL KRIETE OSBORN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

1418 *Direct Examination.*

Mr. Correa: Your Honor, before counsel begins his examination of this witness I should like to move that the witnesses—that is, any future witnesses who are known by counsel to be such—be excluded.

Hearing Examiner Kolb: Do you have any witnesses here?

Mr. Kelaher: I think there is one at least, I know. Mr. McMasters, I believe, is here. I don't think there are any other witnesses to my knowledge.

Mr. Correa: I have to rely on your knowledge.

Hearing Examiner Kolb: Do you want Mr. McMasters excused?

Mr. Correa: Yes.

Hearing Examiner Kolb: Counsel has requested that you not stay in the hearing room, Mr. McMasters.

Mr. Correa: Not Mr. McMasters personally, but Mr. McMasters and any other witness.

I have nothing against Mr. McMasters as such.

(Mr. McMasters left the hearing room.)

By Mr. Kelaher:

Q. Will you please state your full name and home address?

A. Samuel Kriete Osborn.

Q. And your home address?

A. Sykesville, Route 3, Maryland.

1419 Q. Were you at one time employed by Sherwood Brothers, Inc.?

A. Yes, sir.

Q. Would you tell us when you were so employed?

A. Approximately May, 1932, until 1936 of the same month.

Q. In what capacity were you employed by Sherwood Brothers, Inc.?

A. Originally as the third man in the service station operation, and when I finally—in 1936 I was the manager of the station.

Q. Where was the station located?

A. Reisterstown, upon Westminster and Hanover Roads.

Q. After 1936 were you affiliated in any way with Sherwood Brothers, Inc.?

A. I leased the property from them.

Q. Are you referring to that same station location?

A. Same location; yes, sir.

Q. When did your lease begin?

A. The lease began approximately May 1936.

Q. How long did it continue?

A. I was there until May 31, 1956.

Q. When you first leased your station, what brand of TBA did you carry?

A. Firestone.

Q. At any time thereafter were you solicited for Goodyear TBA business by representatives of Sherwood Brothers, Inc.?

1420 A. Yes, sir.

Q. Would you please state when such solicitation was made, and in what manner?

A. In 1937, I think it was, the beginning of it, the first time that I noticed any great amount of sales on Goodyear, was a fellow by the name of Rhodes, I think his name was, a fellow by the name of Floyd Rimbey came out to see me one day.

Mr. Correa: If your Honor please, I take it it is understood that we have a continuing objection to this line of proof, on the ground that it is now patent that it does not involve transactions between Goodyear and Atlantic, the only two respondents named in this complaint—or rather I should say in the amended complaint.

Hearing Examiner Kolb: I don't know. He is being asked about Goodyear calling on him. I don't know what he will testify to. I assume this man is an Atlantic dealer, is that right?

Mr. Kelaher: No. This man is a Sinclair dealer.

Mr. Correa: Actually, all that has been proved up to the moment is that he is a dealer of some outfit called Sherwood Brothers, Inc.

Mr. Kelaher: Yes, your Honor, and the record will show that Sinclair Refining Company purchased Sherwood Brothers, Inc. during this period during which Mr. Osborn will testify, and that on or about January 1, 1956 Sher-
1421 wood Brothers, Inc. was merged with Sinclair Refining Company and is now known as the Sherwood Division of Sinclair Refining Company.

Mr. Correa: It may be, if your Honor please, that the record will show what Mr. Kelaher says it will show. But

my point is that it doesn't show any such thing now. I object to the proffered proof.

Mr. Kelaher: Your Honor, I beg to differ with learned counsel because we have an exhibit in—we requested counsel for Goodyear to furnish copies of all oil companies with whom Goodyear had sales commission plan agreements, and we have here identified in the record as Commission Exhibit 67-A and B a copy of the contract between Sherwood Brothers, Inc., Baltimore, Maryland, and Goodyear Tire and Rubber Company, dated July 14, 1937.

We also have a copy of a plan dated March 1, 1944 between Sherwood Brothers, Inc. and Goodyear Tire and Rubber Company, Inc.

Hearing Examiner Kolb: As long as this man is a Sinclair dealer the testimony will be received subject to a motion to strike by Atlantic.

Mr. Correa: My point is, if your Honor please, it is not clear what his status was at the time of which he is testifying, which I understand to be 1936.

Mr. Kelaher: 1937 now.

Mr. Correa: At least it is one year closer.

1422 Mr. Kelaher: Since he became a lessee dealer.

Mr. Correa: It is still pretty far waay. My understanding is that the exhibit to which counsel referred us, 67-A, is a copy of a letter which I understand was never executed. However, I will not follow counsel into the error of letting my statement substitute for proof. I will simply say that the physical exhibit referred to does not indicate that it was executed. As a matter of fact, it indicates the opportunities, because there is a note on it in substance saying that this will not be signed.

Hearing Examiner Kolb: I don't know what the hassle is about.

Mr. Witness, were you a Sinclair dealer in 1936?

The Witness: Yes, sir.

Hearing Examiner Kolb: And you have been a Sinclair dealer all the way up to 1956?

The Witness: Yes, sir.

Hearing Examiner Kolb: That is all.

Mr. Correa: I have the same objection, if your Honor please, to the offered proof on the grounds that I have stated.

Hearing Examiner Kolb: I will admit it, subject to a motion to strike.

Mr. Thompson: As to Atlantic, so that there will be a continuing objection on the part of Atlantic, a continuing motion will not be necessary?

1423 Hearing Examiner Kolb: No.

Mr. Correa: I take it the same is true as to Goodyear?

Hearing Examiner Kolb: Let's see when we get to it.

Mr. Correa: All I want is guidance as to whether I should make continuing objections or whether it is understood that I have an objection to the proof that is being offered.

Hearing Examiner Kolb: The testimony offered as to other oil companies will be subject to a motion to strike by Atlantic. The testimony offered as to other suppliers, as to Firestone, will be subject to a motion to strike by Goodyear.

Mr. Correa: My point, if I may insist, is that I would wish the record to show that the testimony is offered subject to our objection, whatever disposition your Honor may make of our objection. I want the record to show that we do object to it.

Hearing Examiner Kolb: Then make the objection and I will rule on it.

Mr. Correa: All right.

Mr. Thompson: Does that apply to Atlantic, too? I will make a formal objection if you like. I will object, sir,

to any testimony by this witness concerning the details, operation, or competitive effects of the overriding commission contract.

Between respondent Goodyear and Sherwood or
1424 Sinclair or Shell or any other oil companies: I understand, sir, that under the Commission's ruling any such testimony would be taken subject to my objection and subject to my motion to strike.

Hearing Examiner Kolb: No. Your objection will be overruled as to the oil companies.

Mr. Thompson: And received subject to my motion to strike.

Hearing Examiner Kolb: Received subject to a motion to strike on the part of Atlantic. Not received subject to a motion to strike on the part of Goodyear.

Mr. Thompson: I am speaking only for Atlantic, and have been for about a year.

Hearing Examiner Kolb: The motion by Goodyear will be overruled. The motion by Atlantic--the testimony will be received subject to a motion to strike by Atlantic.

Mr. Kelaher: If there are no further motions or rulings, we will get back to the witness.

By Mr. Kelaher:

Q. Mr. Osborn, you stated that a Mr. Rhodes and Mr. Rimbey called on you. Would you state the substance of the conversation?

Mr. Correa: Has a date been fixed, may I inquire, your Honor?

Mr. Kelaher: I think the date has been fixed.

1425 By Mr. Kelaher:

Q. Would you also restate the approximate time when the conversation took place, and the substance of the conversations?

A. It was approximately early 1937.

Q. Would you state the substance of the conversations?

Mr. Correa: I object, if your Honor please, to the question on the ground that no proper foundation has been laid. There is not even the proverbial scintilla of evidence that there was any sales commission plan in effect in 1937. And I am advised that the fact is there was not. But again I would point to the fact that the record shows no proof of that.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Go ahead, Mr. Osborn.

A. Mr. Rhodes, and Mr. Rimbey, called on me one day. And they were very insistent that I take on Goodyear tires, batteries and accessories, and insisted for three or four hours until I finally got mad and told them to get out.

Q. And at that time what brand of TBA were you carrying?

A. Firestone.

Q. Did you continue to carry Firestone TBA?

A. Yes, sir.

Q. At that time were you a distributor for Firestone TBA?

A. Yes, sir.

1426 Q. Did you continue to be a distributor for Firestone TBA for any period of time?

A. Still am.

Q. You still are?

A. Yes.

Q. At any time after this incident were you requested to purchase Goodyear TBA?

A. Yes, sir.

Q. Would you please state the details of any incident thereafter.

Mr. Correa: Could we have the date, too, please?

Mr. Kelaher: He hasn't testified as to that yet.

A. I wouldn't want to give any specific dates because it was I would say random from calls that Sherwood salesmen would make, also Goodyear salesmen. They were asking me to handle Goodyear tires and accessories.

Mr. Correa: I move to strike the last answer on the ground that the record shows that there was no sales commission plan in effect with the Sherwood Brothers, Inc. at any date prior to March 1, 1944.

Mr. Kelaher: Were any—

Mr. Correa: I have a motion pending if you would give me the courtesy of getting a ruling.

Mr. Kelaher: If you would give me the courtesy of getting my examination we can get some of these dates.

1427 Mr. Correa: I would like a ruling. This is orderly procedure.

Hearing Examiner Kolb: Motion denied.

By Mr. Kelaher:

Q. Were any such calls made during the period March 1—beginning after March 1, 1944 through the years 1944 1945 and so on?

A. Yes.

Q. Were such calls made in 1946? Was such solicitation made in 1946?

A. 1946? I wouldn't want to say definitely, one way or the other.

Mr. Correa: I move to strike that answer.

Hearing Examiner Kolb: Denied.

By Mr. Kelaher:

Q. Were any calls made in or about 1948?

A. Yes, sir.

Q. And prior thereto, in 1947, were any such calls made to your knowledge?

A. Yes.

Q. Did you on or about 1948 receive a letter of cancellation from Sherwood Brothers, Inc.?

A. Yes, sir.

Q. Do you recall the date of that letter, approximately?

A. April 8, I think.

1428 Q. Mr. Osborn, I show you a document and ask you to state what it is?

A. This is a letter of cancellation.

Q. What is the date on that?

A. April 5.

Q. Who is it from?

A. It is from Sherwood Brothers, Inc.

Q. To whom is it addressed?

A. S. Kriete Osborn, Hanover and Westminster Pikes, Reisterstown, Maryland.

Mr. Kelaher: Your Honor, I ask that the reporter identify this as a Commission exhibit.

Mr. Correa: Is it being offered in evidence or simply marked for identification?

Hearing Examiner Kolb: He has asked that it be identified at the present time.

(The document referred to was marked Commission Exhibit 328 for identification.)

Mr. Kelaher: Your Honor, I would like at this time to offer a photostatic copy of Commission Exhibit 328 in evidence.

Mr. Correa: The proferred exhibit is objected to, if your Honor please, on the ground that it doesn't have to do with the issues arising under the amended complaint herein.

Hearing Examiner Kolb: The objection will be
1429 overruled. The document will be received in evidence as Commission Exhibit 328.

(The document heretofore marked COMMISSION EXHIBIT 328 for identification was received in evidence.)

Mr. Thompson: Subject, of course, to Atlantic's motion to strike.

Hearing Examiner Kolb: Subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. Mr. Osborn, after you received the letter of cancellation dated April 5, 1948, did you have any conversation with representatives of Sherwood Brothers, Inc.?

A. Yes, sir.

Q. Would you please give us the approximate time and the substance of any such conversations?

A. It was a few days after I got the lease cancellation. I was disturbed about it, and I wanted to find out what it was all about. I called up the company and finally got an interview with Mr. Weller, and Mr. McCauley. I went down to see them. I went down to Sherwood's office to see Mr. Weller and Mr. McCauley about keeping my lease. I asked them why I was getting a lease cancellation. They told me that I wasn't doing the right things by them, that Goodyear tires, batteries, and accessories were just as much Sinclair products, just as important to the com-
1430 pany, as Betholine gas, Sinclair gas whatever they were marketing, and Opaline oil. And I promised to go along with their wishes. I gave them an order for Goodyear merchandise. In a few days I had a new lease.

Q. You say you gave them an order for Goodyear TBA merchandise. Do you recall the approximate amount of the order.

A. A thousand or more dollars worth.

Q. What products did you order?

A. Tires, batteries.

Q. Did you order any accessories?

A. I don't recall. It could have been.

Q. Prior to that conference with Mr. Weller and Mr. McCauley, what TBA products were you carrying in your Sinclair station?

A. Always Firestone.

Q. And prior to that time had you been buying any Goodyear TBA?

A. Some, but not much.

Q. And after that time did you begin to purchase Goodyear TBA?

A. Some.

Q. You stated you placed a thousand dollar order, is that correct?

A. That is correct.

Q. Would that be considered a substantial order?

A. Averagely good order, yes.

Q. After the reinstatement of your lease in 1948 1431 were you solicited for Goodyear TBA business at all?

A. Yes, sir.

Q. By whom?

A. By the Sherwood salesmen, and Goodyear salesmen.

Q. Do you recall the name of the Sherwood salesman?

A. No, sir. There is quite a few of them.

Q. Do you recall the name of the Goodyear salesmen?

A. Not at that time; no, sir.

Q. Who were your purchases of Goodyear TBA made from?

A. From the Goodyear district.

Q. The Goodyear district office?

A. Yes, sir.

Q. Where is that located?

A. Mount Royal Avenue.

Q. At that time or thereafter did you purchase any Goodyear TBA from Brooks-Huff Tire Company?

A. I could have, but it would have just been a matter of pickups.

Q. Your primary supply point was Goodyear district office?

A. Until 1956.

Q. What happened in 1956?

A. On January 1, 1956 I was notified that I was no longer a distributor for Goodyear, that I would get all my tires and batteries from Brooks-Huff. I did buy accessories still from the Goodyear district.

1432 Q. You stated that you were notified. You were notified by whom that you were no longer—

A. The Sherwood salesman.

Q. When did you begin to be a Goodyear district buyer or supplier?

A. A district distributor?

Q. Yes.

A. I can't exactly remember the time. I think it was approximately '46, sometime like that.

Q. Did you at any time purchase TBA from Baltimore Gas Light Company?

A. Yes, sir.

Q. What products did you purchase from Baltimore Gas Light Company?

A. Major items would be Walker oil filters.

Q. Did you purchase belts?

A. Gates belts, and miscellaneous.

Q. What brand of oil filter is in the Goodyear TBA line?

A. The one that I know of particularly is Purolator.

Q. Were you at any time asked to purchase Purolator filters by either the Goodyear salesman or Sinclair salesman?

A. Yes, sir.

Q. And when was such solicitation made?

A. From the time that the new station was built I was asked to handle it.

1433 Q. When was the new station built?

A. I think it was finished and I moved into it the latter part of 1954, I think.

Q. Was that—when you say new station, was that a remodeling or renovation of your old station, or a new site?

A. New station at the same place.

Q. At the same site?

A. Yes, sir.

Q. Beginning then at that point, who solicited you for Purolator filters?

A. Sherwood, or Sinclair salesman.

Q. What was his name?

A. Reymond Evans.

Q. Do you recall any specific incident in connection with such solicitation?

A. Well, what decided me to go along with them on Purolator filters was that Elmore Evans made a visit to my station.

Q. Who is Elmore Evans?

A. Sherwood-Sinclair employee. I don't know what capacity.

And he told me if I would change over to Purolators they would take all of the Walker filters that I had and would change them—exchange them for Purolator.

I had quite a few. Some of them were slow movers, so I made the deal.

Q. What price were you paying—how did the 1434 prices of the two brands compare?

A. I was classified as a distributor for Walker. The price I was paying was 50, and ten off of retail list.

Q. What discount were you getting on Purolator filters?

A. They offered me 40, and I asked them about being competitive, and they said they had no price like that to offer me. In spite of that, I still gave them a verbal order for the filters.

Q. You gave them a verbal order.

You mentioned in your testimony that you were told that the Walker filters would be replaced?

A. That's right.

Q. Were such Walker oil filters ever replaced?

A. No, sir.

Q. Do you have any knowledge as to why they were not replaced?

A. I attributed—

Mr. Correa: I object to that question, if your Honor please.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Were you contacted thereafter with respect to Purolator filters by any representative of the Sherwood Company or Sinclair Company?

A. After that? No, sir.

1435 Q. After you gave the verbal order?

A. No, sir.

Q. Did a Mr. McCauley ever contact you in connection with this matter?

A. He called me up over the 'phone.

Q. Was this after you placed your verbal order?

A. Yes, sir.

Q. What did he ask you? What was the substance of the conversation, and when did it take place?

A. He asked me if I told anyone that they were forcing me to take on Purolator filters. I told him that I had not.

Q. Did you ever inquire as to why your Purolator order was never filled?

A. Yes, sir.

Q. Who did you inquire of?

A. I called up to talk to Mr. Weller. Mr. Weller wasn't

available, so I talked to Elmore Evans, and asked him where the shipment of filters were that I had ordered. He said they didn't want any part of me in the filters.

Mr. Correa: Could I have the last part read?

(Answer read.)

By Mr. Kelaher:

Q. Did he indicate why?

A. No. He said if I wanted the filters I would just have to fill in.

1436 Q. Fill in with what?

A. Purolators.

Q. You stated earlier that you purchased Gates fan belts from Baltimore Gas Light Company?

A. Yes.

Q. Did you purchase them for any period of time? Were you a substantial purchaser of Gates fan belts?

A. I guess I was better than average.

Q. Were you ever solicited to buy Goodyear fan belts?

A. Yes, sir.

Q. When did such solicitation take place?

A. It was always the same time that the filters that they solicited.

Q. Is this in or about 19—late 1955, I believe you testified.

A. That's right.

Q. Would you please state the substance of any conversations you had regarding the solicitation of Goodyear fan belts?

A. After the filter incident there was a Goodyear man come out to me to change the belts, and I told him, No, I wasn't going to change the belts at that time. I heard enough about the filters. So I didn't give him permission. But I said that I would go along with him and change them at a later date.

Q. And did the time ever come when you did change to Goodyear fan belts?

1437 A. I wasn't there that long.

Q. Did you ever have any conversations with a Mr. DeHoff, of Sinclair, concerning TBA?

A. Yes, sir.

Q. Would you please state the approximate time of such conversations and the substance of the conversations?

A. It was right after I moved into the new station. I don't know whether it was late 1955 or early 1956. But it was after I moved into the new station.

Q. I believe you testified earlier that the station was completed in 1954.

A. Then it could be 1954-55. I don't remember the exact date. I know it was in the new station, right after I moved into the new station.

Q. And—

A. He come out to see me about Goodyear merchandise. He said he had spent a lot of money—the company had spent a lot of money. I told him I understood that and I wanted to go along with them the best I could. And he said it is important for you to have Goodyear merchandise here and sell as many of them as you can. I said that I would. I would put them in and display them and if the public preferred Goodyear, they would be sold with Firestone.

Q. At that time did you continue to sell Firestone TBA?

A. Yes, sir.

1438 Q. Did he make any comments at all with respect to your sale of Firestone TBA?

A. No. He didn't make any comments about it particularly. I made a few comments with him. It was a general conversation. In fact, it lasted three or four hours. In fact, it was a couple of times he came out to see me.

Q. Did he comment on your purchases of Goodyear TBA with respect to other Sinclair dealers?

A. He didn't particularly, but I told him, I said, "I don't see why it should be such a great issue because I was handling enough Goodyear merchandise or equal or better than the average station you have."

I said, "If I didn't sell any tires or any batteries, then it wouldn't be an issue, so why should it be an issue just because I am a good dealer?"

And he said, "I understand that."

Q. Did he at any time ask you to increase your purchases of Goodyear TBA?

A. He didn't say increase. He wanted me to handle more Goodyear TBA.

Q. Which would indicate an increase, would it not?

A. That's right.

Q. Did you have any conversations with the salesman for Baltimore Gas Light Company with respect to Walker filters or Gates fan belts?

1439 A. We talked about it a lot, naturally. But—

Mr. Correa: I object, if your Honor please, to the witness going beyond a responsive answer to this question. I don't mind him saying whether he had conversations or didn't, yes or no. But I will object to the substance of any such conversations.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Were you advised at any time by either a Goodyear or Sinclair salesman with respect to TBA quotas?

A. No, not as far as I was concerned. The salesman showed me where he had quotas.

Q. Which salesman was that?

A. Most any salesman that they have had. You see, they change salesmen at different times.

Q. Are you referring to the Sinclair salesman or the Goodyear salesman?

A. Sinclair salesman.

Q. When you say he showed you quotas, did he show you a quota for you specifically?

A. Well, it wasn't a quota for me. He was showing me the activity against the previous year, and so on.

Q. Did you at any time purchase DuPont chemicals, as they are called, DuPont accessories?

1440 A. Yes, sir.

Q. Who did you purchase such accessories from?

A. I purchased the last year that I was there mostly from Sinclair.

Q. And prior to that time did you purchase DuPont from any other supplier?

A. Yes, sir.

Q. Who?

A. Firestone; Baltimore Gas Light.

Q. Was your DuPont business solicited by Sinclair or Goodyear?

A. It was solicited with their general line. That was just one of their accessory products.

Q. At any time were you called on by DuPont salesmen and a Sinclair salesman jointly?

A. They both happened to be there at one time.

Q. When was that?

A. That was in 1956.

Q. What transpired at that time?

A. Well, the DuPont salesman was telling me about their price schedule, that I could make an extra ten for so many cases, free goods, stuff like that, and I didn't know anything about it. I had just gotten an order from Sinclair. I don't know whether you classify him as a salesman or a missionary. He travels with different suppliers. I have had him travel with Sinclair salesmen.

1441 Q. Do you recall his name?

A. No, I don't recall his name. This particular time he was with an R. J. Loock representative. When he was telling me about this, I hadn't gotten the advantage of it, and all I had to do was buy two or three more cases and I could have an extra ten or extra five, or whatever it was that was passed. And I said, "Meet Mr. Evans. He is the man I bought it from. Explain it to him."

He went over to talk to Mr. Evans and Mr. Evans was very indignant. He said he had enough to bother about without bothering about things like that. He said I was his customer anyway, so that was it.

Q. And Mr. Evans was the Sinclair salesman?

A. Yes, sir.

Mr. Correa: May we have Mr. Evans' first name identified? I understand there are two.

The Witness: Raymond.

By Mr. Kelaher:

Q. You say that was it. Then who did you place your order with?

A. I placed my order with him.

Q. With Mr. Raymond Evans?

A. He already had the order and I placed another order.

Q. You testified that you were a Sinclair dealer until sometime in 1956. What transpired in 1956?

1442 A. I got an order of cancellation May 1, 1956.

Q. Did you at that time confer with Sherwood officials or Sinclair officials concerning the matter?

A. I got in touch with them and asked them so that I could see them, and they gave me—let me come down to see them. They gave me a couple of hours to come down to see them.

Q. Did you go down to see them?

A. I went down to see them the following week.

Q. Who did you confer with?

A. I talked with Mr. Weller and Mr. Stuller. And Raymond Evans was there.

Q. What was the substance of that conference?

A. I went down to find out what I could do to keep my business. They told me they didn't know what I could do. There wasn't anything I could do; that they lost $1,500 on the location for 1955; they had somebody else to take over the location they felt could do a better job.

Q. Did they give you any other reason for the cancellation?

A. No other reason other than I wasn't doing enough business. They surveyed—they said they surveyed the location for 40,000 and I hadn't done any more than 20, and it was costing them money, and they felt that they could do better by another operation.

Q. Up until—

Mr. Correa: Excuse me. The witness said 30,000, 1443 and 20,000. I would like to inquire whether he meant dollars or gallons.

The Witness: Gallons.

By Mr. Kelaher:

Q. Is that gallons?

A. Gallons of gasoline, sir.

Q. Is that per month, or per year?

A. Per month.

Q. Do you know who succeeded you as lessee of your station?

A. Messrs. Paul and Norman Koenig.

Q. And did you ever have conversations with them or anyone connected with them concerning the matter?

Mr. Correa: I object to the witness giving any more than a responsive answer, yes or no.

Hearing Examiner Kolb: You may answer yes or no.

A. You will have to define that question. I don't know what you mean.

By Mr. Kelaher:

Q. Did you at any time ever talk to the Koenig brothers or anyone connected with them with respect to their taking over the Sinclair station that you formerly leased?

A. Other than—

Mr. Correa: I would like to have the witness answer in the first instance yes or no, as to whether he had such conversation.

1444 The Witness: Yes, I have.

By Mr. Kelaher:

Q. With whom did you have such conversation?

A. About the lease?

Q. Yes.

A. Ernest Koenig. That is their uncle.

Q. What is the substance of the conversation between you and Ernest Koenig?

Mr. Correa: That is objected to.

Hearing Examiner Kolb: Sustained.

By Mr. Kelaher:

Q. When did such conversation take place?

A. After I got my lease cancellation. Everybody knew that I had a cancellation.

Mr. Kelaher: Your Honor, do I understand your ruling to be that he cannot testify concerning the conversation he had as to his lease cancellation?

Hearing Examiner Kolb: He is not talking about the lease cancellation. He is talking about a conversation with the man who took over.

Mr. Correa: The uncle of the man.

By Mr. Kelaher:

Q. Prior to your lease cancellation had you increased the gallonage at your service station?

A. Yes, sir.

1445 Q. Would you please state what the approximate increase was in gallons per month?

A. I would say 10-15 percent over the previous year.

Q. Would you explain that? You say you increased it by 10 or 15 percent. Over which year?

A. To give you a picture of what it was, in the process of construction the gallonage got down to practically nothing. When I opened the station I did around 12 or 14 thousand the first month, and each month afterward I increased my gallonage, month after month.

Q. Beginning from the time in or about 1954-55 when the new station was completed, is that right?

A. Yes, sir.

Q. What advertising signs did you carry, if any, in your station at the time of your cancellation?

A. Nothing but Goodyear.

Q. Nothing but Goodyear?

A. Yes, sir.

Q. Was there a time prior to that when you carried any other brand of signs?

A. Yes. I used to advertise Firestone.

Q. When did you stop advertising Firestone?

A. I used to have a sign out on the light pole, just Firestone. It was taken down and Goodyear was put up.

Q. It was taken down when?

1446 A. I guess in 1948, '47, something like that.

Q. Who removed the sign?

A. A Goodyear sign man, or the Sinclair painters, I think it was.

Q. Was that sign replaced with a Goodyear sign?

A. Yes, sir.

Q. And did you request such a change?

A. No.

Q. Did you honor Sinclair credit cards at your station?

A. Yes, sir.

Q. What TBA products were honored on those credit cards?

A. We were only supposed to put Goodyear on them.

Q. Was that so stated on the credit card?

A. Yes, sir.

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: Yes.

(Thereupon, a short recess was taken.)

1447 Hearing Examiner Kolb: The hearing will come to order. You may proceed.

By Mr. Kelaher:

Q. Mr. Osborn, I believe you testified as to who succeeded you at the station where you were a leasee dealer. Would you give us the names of those operators again?

A. Messrs. Paul and Norman Koenig.

Q. Do you know when the Koenig Brothers were approached by Sinclair with respect to take over the station?

Mr. Correa: I object, if your Honor please?

The Witness: No.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Are the Koenig Brothers the present operators of that particular service station?

A. No, sir.

Q. When did they discontinue operations approximately?

A. I think the last part of July.

Q. What year?

A. This year.

Q. Do you have any knowledge as to the gallonage they were pumping during their term as leasees?

Mr. Correa: I object if your Honor please unless it be established that this is somehow competent proof.

1448 Hearing Examiner Kolb: Did the witness say he knew or didn't know?

The Witness: The man objected.

By Mr. Kelaher:

Q. Just answer.

A. Specific gallonage, I don't know.

* * * * * *

Q. Do you know the name of the present operator of that service station?

A. His name is Sergi. I think that is the way he spells it.

Q. During the period when you were a Sinclair dealer, did you attend dealer meetings?

A. Yes, sir.

Q. And who attended such meetings?

1449 A. Dealers.

Q. Who else attended them besides dealers?

A. Suppliers.

Q. Were they ever attended by a Goodyear TBA man?

A. Yes, sir.

Q. Do you recall whether—would you specify a Goodyear man or clarify? Are you referring to someone from the particular district store or district office?

A. It was the territory salesman who was generally there. Sometimes the district manager.

Q. And were any comments made with respect to TBA at such meetings?

A. Yes, sir.

Q. Were any comments made with respect to Goodyear TBA at such meetings?

A. Yes, sir.

* * * * * *

Q. How often were such meetings held, Mr. Osborn?

A. Generally in the spring of the year.

1450 Q. Do you recall any specific statements made by a Goodyear representative at any of such meetings?

Mr. Correa: Has the meeting been identified?

Mr. Kelaher: At any such meetings.

Mr. Correa: I would like to have a meeting identified.

Hearing Examiner Kolb: That is a preliminary question.

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: The witness may answer.

The Witness: It would be hard for me to remember specific statement at meetings.

By Mr. Kelaher:

Q. Do you recall any general statements made at any of such meetings, and if so, please identify the meeting?

A. They were sales meetings, and it was general talks by different officials of the company based around how we would sell more merchandise, and giving us reasons how to sell them, and ideas and so on.

Q. Would such a—was it normal for such a sales talk to be made at the meetings you attended over the course of years?

A. That is what they were, were sales meetings. It was product knowledge and different things.

Q. And just to clarify it, a Goodyear representative participated in such meetings, is that correct?

A. As a speaker?

1451 Q. As a speaker.

A. Not particularly as a speaker.

Q. Did they participate in any other way?

A. Well, to get acquainted with dealers.

Mr. Kelaher: No further questions.

Cross-Examination by Mr. Correa.

Q. Mr. Osborn, what are you doing now, sir?
A. Sitting here.
Q. Fair enough. What is your present occupation.
A. Service station operator.
Q. For whom do you operate a service station?
A. For myself.
Q. What brand of gasoline do you sell?
A. Shell.
Q. Do you lease your station from Shell?
A. I guess you would say Yes.
Q. You would have to do the same, so I don't know.
A. It is a complicated deal.

Mr. Kelaher: I object to this line of testimony, your Honor. It is going beyond the scope of the direct.

Mr. Correa: It seems to me it is clearly proper cross. I don't know how to deal with the objection because I can't understand any basis for it.

Hearing Examiner Kolb: I don't see the materiality of anything other than whether he is a Shell dealer 1452 now. And what his present arrangement is with Shell I don't think is material.

Mr. Correa: I wish to bring out whether or not he leased it, and apparently he does. Beyond that I have no interest in his present arrangement with Shell.

By Mr. Correa:

Q. Now, sir, when your arrangement with Sinclair terminated in May, 1956, did you have opportunity to lease service stations from other oil companies other than Shell or Sinclair?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

The Witness: I imagine I could if I wanted to go just any place to lease them.

By Mr. Correa:

Q. Were you not in fact approached by several other oil companies?

A. Not in Reisterstown.

Q. Were you approached anywhere by several other oil companies at that time?

A. Yes, sir.

Q. Would you name the companies in question?

A. Cities Service.

Q. Any others?

A. No.

Q. How about the Texas Company?

1453 A. No, sir.

Q. American Oil Company?

A. No, sir.

Q. Gulf?

A. No, sir.

Q. Atlantic?

A. No, sir.

Q. Did you have any conversations with representatives of those companies or any of them?

A. Had conversations with them, yes, sir.

Q. Did any of them offer you a lease?

A. There is only one specific company that offered me a station as a lease. These other companies that you are talking about were contacting me pertaining to a lease that I had.

Q. You were asked by counsel supporting the complaint as to whether you sold Goodyear TBA in 1946. And I think you said you might have had calls for it, and I made a note that you said, "I wouldn't want to say definitely." Do you remember that answer?

A. What was that, sir.

Q. I say you were asked as to whether or not you sold Goodyear TBA in 1946, on your direct examination. And

I understood your answer to be that you may have, if you had had calls for it, and you added, "I wouldn't want to say definitely." Do you remember making that answer?

1454 A. That's right.

Q. It is the fact, is it not, that in the years from 1946 up to the date of your termination of your arrangements with Sinclair, you purchased the highest amount of Goodyear TBA in the year 1946?

A. I wouldn't know, sir.

Q. You don't remember that at all?

A. No, I wouldn't say.

Q. Do you remember buying $7,200-odd dollars worth of Goodyear Tires from the Goodyear District in 1946?

A. It is very possible. I don't know.

Q. You have no recollection?

A. I say I don't remember specific amounts.

Q. You recall the tires were in somewhat short supply in 1946?

A. Yes.

Q. Didn't you recall that the Goodyear District had helped you in getting tires?

A. Helped me get tires.

Q. Yes, sir.

A. I don't say they helped me get tires, no.

Q. Do you recall getting tires through the Goodyear District?

A. Yes, sir.

Q. Did you also get them from some Goodyear stores?

A. Yes, sir.

Q. You referred to an incident in 1948 and I ask

1455 you, sir, is it not a fact that your total TBA purchases from Goodyear in the following year—1949—were less, by a considerable amount, than your total purchases of Goodyear TBA in the preceding year 1947?

A. I wouldn't know, sir.

Q. You don't recall that?

A. No, sir.

Q. Do you recall that in 1950 your TBA purchases from Goodyear were still less than they were in 1949?

A. No, sir.

Q. Do you recall that in 1951 your TBA purchases for Goodyear were less than they had been in 1949?

A. I wouldn't know, sir.

Q. As a matter of fact, in every year through 1953 your TBA purchases from Goodyear were less than they were in 1949; do you recall that?

A. I wouldn't know, sir.

Q. During the years from 1946 to 1956 you were a Firestone distributor, were you not?

A. Yes, sir.

Q. And did you maintain a place of business where you carried on your business as a Firestone distributor?

A. Yes, sir.

Q. Is that separate and apart from your service station?

A. Yes, sir.

1456 Q. Where was that with relation to the service station?

A. Adjacent to the station.

Q. What did that place of business consist of, sir?

A. Complete home and auto supplies.

Q. Was it a store?

A. Yes, sir; a store.

Q. And you carried tires in there?

A. Yes, sir.

Q. Batteries?

A. Yes, sir.

Q. And various kinds of accessories?

A. Yes, sir.

Q. And they were all Firestone?

A. Yes, sir.

Q. And that was true throughout this entire period? beginning with the year 1946?

A. Beginning in 1946, yes, sir.

Q. How long actually before that did it begin—did you begin to maintain that place of business?

A. That place of business?

Q. Yes.

A. I think it was 1946, sir.

Q. Did you have another Firestone store somewhere else?

A. Yes, sir. I had an interest in it.

Q. Where is that?

1457 A. Westminster.

Mr. Kelaher: I believe that is in Maryland, too, isn't it?

By Mr. Correa:

Q. It is in Maryland, is it not?

A. Yes, sir.

Q. The station which you are presently operating, sir, where is that situated in relation to the station you operated under lease from Sinclair in 1956?

A. The address is 2022 Main Street. It is toward Baltimore about a half block.

Q. What I was interested in, I gather it is about a half block from your prior station?

A. Yes, sir.

Q. You were asked about Sinclair credit cards?

A. Yes, sir.

Q. According to my note you stated in response to a question concerning the merchandise which could be put on, I believe was your expression, "We were only supposed to put Goodyear."

A. Yes, sir.

Q. What, in fact, did you do?

A. Sir?

Q. What was your actual practice as opposed to what you were supposed to do?

A. Practice?

1458 Q. Yes.

A. It was to stay as close to that as we possibly could.

Q. How close is that, sir?

A. I would say that they weren't always Goodyear Firestone put on the credit card.

Q. Were they sometimes Firestone?

A. Yes, sir.

Q. You told us that at the time you received the notice of cancellation of your lease in May, 1948, you had some discussion with Sinclair officials and they discussed your gallonage; is that correct?

A. Did you say prior or after?

Q. I said at the time of.

A. It was after I got my lease and cancellation; yes, sir.

Q. You also indicated that your gallonage in the station had been increasing prior to that time?

A. That's right.

Q. It is a fact, is it not, sir, that your gallonage at no time reached—that is, your annual gallonage—at no time, after 1946, reached the level it did in 1946?

A. I wasn't there to reach it, sir. Forty-six?

Q. 1946.

A. Oh, I was thinking of 1956. What did you say?

Q. Isn't it a fact that your annual gallonage in 1946 was higher than your annual gallonage at any time thereafter?

1459 A. That could be, sir. I don't know.

Q. You have no recollection?

A. No, sir.

Q. I suggest to you that your annual gallonage in 1946 was 258,955, and ask you does that refresh your recollection?

A. I never bothered about that, sir.

Q. Now, sir, I think you testified that there was some work done on your station by Sinclair in, I think you said it was completed in 1954, is that correct?

A. I think that is the year, yes, sir.

Q. Did that work involve rather extensive moderization of the station?

A. Yes, sir.

Q. Do you know how much Sinclair spent on that?

A. No, sir.

Q. Was the moderization of your station, which was completed in 1954, done at your request, sir?

A. Done at my request?

Q. Yes.

A. I had nothing to do with it, sir.

Q. You made no such request to Sinclair?

A. I may have made the request, but that had no bearing on it, sir.

Q. Let's take it in two parts. You did, in fact, make a request to Sinclair to modernize your premises prior 1460 to the time when they actually did modernize them?

A. They weren't my premises.

Q. The premises you leased.

A. I leased the station from Sinclair.

Q. And there came a time when Sinclair modernized the station, is that right?

A. That's right.

Q. Before they modernized the station, did you ask that the station be modernized?

A. It wasn't up to me to ask.

Q. Did you or didn't you?

A. We talked in general conversation about it, it would be nice to have a new station.

Q. You did ask?

A. I never asked in the way you are implying I asked.

Q. I mean in any way?

A. No.

Q. You did not in any manner or shape or form ask that the station be modernized?

A. No, because it couldn't be done that way.

Q. All I am interested in is asking did you or didn't you?

A. No, I never asked anybody to do anything like that.

Q. But you did have conversation about it?

A. Why, sure.

Q. In which you indicated—

1461 A. Wishful thinking. It would have been nice.

Q. And it ultimately was modernized?

A. Yes, sir.

Mr. Correa: I have no further questions.

Mr. Thompson: Mr. Examiner, this testimony of Mr. Osborn was taken, of course, subject to Atlantic Refining Company's motion to strike. I assume you do not wish me to press that motion now, even though the testimony related solely to the sales commission plan between Goodyear and—

Hearing Examiner Kolb: That we will take up at the close of the hearing.

Mr. Thompson: By asking Mr. Osborn a couple of questions, I am of course, not waiving the eventual motion to strike.

Mr. Correa: I have just one more question if I may.

By Mr. Correa:

Q. Mr. Witness, you are engaged in suing Sinclair at the moment, are you not, sir?

A. Yes.

Mr. Correa: That is all that I have.

By Mr. Thompson:

Q. Mr. Osborn, I represent the Atlantic Refining Company in this case and not Goodyear.

You know, of course, sir, that Atlantic has a sales commission plan with Firestone in the Baltimore area.

1462 Mr. Kelaher: Objection, your Honor. I don't know how the witness would be informed as to that.

Hearing Examiner Kolb: Objection overruled. If you know.

The Witness: Did I know that?

By Mr. Thompson:

Q. Yes.

A. By reading it in the papers, or something like that.

Q. I beg your pardon. I was under the impression that you had acted as a supply point for Firestone in handling one of the Atlantic leasee stations out at Reisterstown. Am I mistaken?

A. I was the supply point for all the stations.

Q. Yes. For Firestone, including, in particular, the Long Station at Reisterstown, am I not correct?

A. Yes.

Q. Mr. Osborn, you being a Firestone distributor and dealer for about 25 years—haven't you been?

A. Yes.

Q. It is a good company, is it not?

A. Yes, sir.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

Mr. Thompson: Perhaps you will stipulate it is a good company, Mr. Kelaher, and I won't have to ask these questions.

1463 Mr. Kelaher: I am not sure.

By Mr. Thompson:

Q. Didn't you recently win quite a sensational nation-wide contest for Firestone, sales contest, called the Tropicana?

A. Yes.

Q. You find, do you not, that Firestone is well regarded in Baltimore?

Mr. Kelaher: Your Honor, I object to this line of questioning. I think it is going far beyond the direct. He is testifying as to his experience as a Sinclair dealer. Mr. Thompson is going into his relations as a Firestone distributor in connection with the Atlantic program, apparently.

Mr. Correa: I think if your Honor please, Mr. Kelaher is objecting because this testimony, unlike all the rest of the witness's testimony, involves respondents and the issues in this complaint and not something else.

Mr. Thompson: If your Honor has any doubt I will quickly make it relevant.

Hearing Examiner Kolb: I wish you would. I don't know what it is all about.

Mr. Thompson: All right, sir. I will make it relevant.

By Mr Thompson:

Q. You testified I believe, sir, that you were a Firestone dealer and a Firestone distributor for about 25 years?

1464 A. Yes, sir.

Q. Even while you were a leasee of a single station?

A. Yes. sir.

Q. And during all of that period you sold a great deal of Firestone TBA, did you not?

A. Yes.

Q. One of your customers was the Long Station at Reisterstown, am I correct?

A. Yes.

Q. That is an Atlantic station?

A. Yes.

Q. Leased by Atlantic to Mr. Long?

A. Yes, sir.

Q. And Long has been a leasee of the Atlantic to your knowledge for many, many years, has he not?

A. Yes, sir.

Q. In fact, I think there were two Longs, were there not, father and son?

A. The one that had the station was Carrol Long until his death a couple of years ago, and then his brother took the station and is leasing it now.

Q. And he is Mr. John Long?

A. John Long.

Q. And it was a part of your functions, was it not, to offer Firestone TBA to the Long Station?

1465 A. Putting it that way, it wasn't part of my function to offer it to anybody other than what I could—who I could sell.

Q. I mean, sir, it was part of your sales activity?

A. Long came to me. I never bothered about going to him.

Q. But you did sell Mr. Long Firestone?

A. I sold him, yes, sir. And I sold every station in the country and surrounding country. They would come to me. I had no outside solicitation at all. They would come to me.

Q. Including a number of other Atlantic stations, am I not correct?

Mr. Kelaher: Objection to this line of questioning.

Hearing Examiner Kolb: Overruled.

The Witness: That is the only one that ever amounted to anything.

By Mr. Thompson:

Q. It is true, is it not, that the Long Station is quite close to the Sherwood Sinclair Station which you had?

A. Yes, sir.

Q. And quite close to the Shell Station?

A. That's right.

Q. And you know Mr. Long quite well, do you not?

A. Yes, sir.

Q. Is that station about a block from your present location?

A. About.

Q. Do you observe it from time to time, sir? Do
1466 you drop in and say hello to Mr. Long? Do you see the station?

A. Maybe once a month or so.

Q. Is it not true that the Long Station has a number of TBA competitive signs displayed?

Mr. Kelaher: Objection.

The Witness: I wouldn't know. Never having paid that much attention.

Hearing Examiner Kolb: Overruled.

1467 By Mr. Thompson:

Q. Don't they advertise Diamond and Brunswick tires?

A. I have never paid that much attention.

Q. Have you ever noticed a Delco Battery sign at the station?

A. I wouldn't know.

Q. How about the Esrine sign, have you ever noticed that?

A. No.

Q. Or the Gates sign, have you ever noticed that?

A. No.

Q. During the time when you were offering Firestone TBA to the Long station, is it not true that Mr. Long dealt with a number of other suppliers?

A. Yes, sir.

Q. And he is still doing it today, is he not?

A. As far as I know he is not buying much from me.

Q. Was Bearings Service one of his important suppliers, do you recall?

A. I wouldn't know.

Mr. Kelaher: Objection to this line of questioning.

The Witness: That is none of my business. I paid no attention to it. I don't know who he bought from.

Hearing Examiner Kolb: Overruled.

By Mr. Thompson:

Q. The R. J. Long Company is one of your competitors, is it not?

1468 A. Not any competitor of mine, no, sir.

Q. Because you just outdo him everywhere?

A. No, I buy from him.

Q. You buy from him?

A. Yes.

Q. They sell to the distributors?

A. Yes.

Q. At wholesale?

A. Yes, sir.

Mr. Kelaher: Your Honor, I would like to make this observation. If Mr. Thompson intends to go as far beyond direct as he has here, I think he should make this witness his own witness, if he is going to develop his business as a Firestone distributor.

Mr. Thompson: This is not beyond the direct. It shows the activity of this admirable gentleman during the time when he was a Sherwood lessee and when the Sherwood Company was under the Goodyear plan.

All of this testimony develops his complete freedom of action. It shows that he was also handling Firestone, and selling it just as a matter of routine next door to an Atlantic station.

Hearing Examiner Kolb: If that is the case, you should confine your questions to 1946, shouldn't you?

1469 Mr. Kelaher: He has also testified that he handled his two operations separately, your Honor. If he would confine his questions to what he handled in his stations, or his activities as a Sinclair dealer, I think it would be proper cross. I don't think this is proper cross.

Mr. Thompson: I would be happy to confine my questions, sir, to what happened before 1956. I would like to pick up a direct question of Mr. Kelaher's—

Mr. Kelaher: Excuse me. Before you go back to prior to 1956; at this point I would like to move to strike the testimony up to this point which relates to any period after 1956.

Hearing Examiner Kolb: I will let it stand.

By Mr. Thompson:

Q. Sir, you testified, I think, that at one time you were handling both the Goodyear line and the Firestone at your own station, and your comment was to this effect: "Let the public decide whether they want to buy Goodyear or Firestone." Is that a fair paraphrase?

A. Yes.

Q. In actual experience, which of the two lines did you find had more customer acceptance in Baltimore?

A. Firestone.

Q. Would that be so, sir, in your experience over the years?

A. Yes, sir.

1470 Mr. Thompson: Thank you very much, sir.

Mr. Kelaher: I have some further questions.

Mr. Correa: I have one question.

Mr. Kelaher: Go ahead.

By Mr. Correa:

Q. You are a former Firestone employee, are you not?

A. Yes, sir. I was also a former Goodrich employee and General employee.

Redirect Examination by Mr. Kelaher.

Q. Mr. Osborn, when were you a Firestone employee?

A. Up to 1932.

Q. During this period when you were a Sinclair lessee, were you in a position to purchase Firestone TBA at a lower price than Goodyear TBA for resale in your station?

A. Yes, sir.

Q. During this period when you were a Firestone distributor and also a Sinclair lessee operator, did you operate separate and distinct organizations with respect to your Firestone operation?

A. Yes, sir.

Q. As a Firestone distributor, what brand of batteries did you carry?

A. Firestone.

Q. And, of course, Firestone tires?

1471 A. Yes, sir.

Q. Did you carry the Firestone line of accessories?

A. Yes, sir.

Q. In your Sinclair station what brand of batteries did you carry?

A. I carried Firestone and Goodyear.

Q. What brand of tires did you carry?

A. Firestone and Goodyear.

Q. What brand of accessories did you carry, what lines?

A. Firestone mostly. It was in their catalog. They weren't brand tires particularly.

Q. Did you carry some Goodyear accessories?

A. Yes, sir.

Q. You were asked questions concerning the modernization of your station in or about 1954. How long did it take Sinclair to modernize your station or renovate?

A. It was the year, practically the whole year.

Q. Practically a year. During that time were you able to pump gasoline?

A. Well, we could, but it was awfully rough. It was hard to get into the place.

Q. During that period did you incur any financial loss due to the renovation of the station?

A. Yes, sir.

Q. Approximately in what amount?

1472 A. About $8,000.

Q. On cross-examination you were asked a question concerning yearly gallonage. You answered, as I recall, that you never bothered about that. Do you bother about monthly gallonage?

A. Yes. We generally—I generally total up the monthly gallonage to see how I am doing. But I can't remember what my gallonage was ten, fifteen, or twenty years ago.

Q. As a part of normal service station operation, do you normally calculate your gallonage by the month rather than by the year?

A. That's right.

Q. You were also asked by counsel for Respondent Goodyear whether or not you had filed suit.

Mr. Kelaher: At this point, your Honor, I have a certified copy of the suit which was filed by this gentleman. If the record is going to stand as it is, I would prefer to have it—

Hearing Examiner Kolb: Does that have anything to do with the issues in this proceeding?

Mr. Correa: I may say, if your Honor please, that I offered on cross-examination of this witness that he is engaged in suing Sinclair for the simple, classic reason

of bringing out every element in the picture which might tend to show bias or prejudice which would affect his testimony. I offered it solely on the issue of credibility.

1473 Mr. Kelaher: Just so the record will be clear, I would like to state that suit was filed June 26, 1957, by Mr. Osborn versus Sinclair Refining Company, in the District Court of Maryland, Civil Suit Number 9769.

Mr. Correa: I take it we can stipulate that the suit does not involve the sales commission plan but other issues.

Mr. Kelaher: The suit does involve the sales commission plan.

Mr. Correa: You read the complaint.

Mr. Kelaher: If there is any question about it, I will ask that the notarized and certified copy of the complaint be introduced in evidence. I also have the answer. I would put both of them in.

Mr. Thompson: If your Honor please, on behalf of Atlantic Refining Company, I would certainly object to any complaint filed by Mr. Osborn against Sinclair. It could have no possible relevance.

Mr. Correa: Particularly since it is perfectly apparent from Paragraph 8, the first sentence of Page 3 of the complaint, which Mr. Kelaher has tendered, that the basis of this suit is the alleged Purchase and Resale Plan. That is what is alleged in that paragraph.

Hearing Examiner Kolb: Since you brought it up on cross-examination, it looks to me like it might be

1474 competent and relevant.

Mr. Correa: If your Honor please, may I be heard on that a moment?

Hearing Examiner Kolb: All right.

Mr. Correa: If it had been that he was suing for assult and battery, let's say, or for negligent operation of

one of their trucks, causing an injury, I submit that it would still be relevant to show that the witness did have —was in the factual posture of suing the company about which he was testifying, as showing one of the elements that might conceivably color his mind and his emotional attitude.

Hearing Examiner Kolb: The nature of the suit would also be competent.

Mr. Correa: The nature of the suit was not brought out, if your Honor please, on cross. All we were seeking to establish is that he is suing. I don't know that the matter is terribly important, frankly, but I do think that this complaint is so far away from the issues of this case that to put it into this record is simply to add an element well calculated to lead to utter confusion. I don't know for what purpose, what limited purpose, it could conceivably be admissible.

Mr. Kelaher: I move that the complaint, identified as Civil Suit Number 9769, by Kriete Osborn, Sykesville, Maryland, plaintiff, versus Sinclair Refining Com-
1475 pany, 600 Fifth Avenue, New York, New York, 10 Light Street, Baltimore, Maryland, care of Corporation Trust Company, resident agent, 10 Light Street, Baltimore, Maryland, defendant in the District Court of Maryland, be offered into evidence as Commission's Exhibit 329.

And that Defendant's answer thereto in Civil Action Number 9769 in the United States District Court for the District of Maryland be marked as Commission's Exhibit 330.

Mr. Thompson: Your Honor has not ruled upon Atlantic Refining's objection. It is perfectly obvious to me that this complaint and answer is wholly irrelevant, incompetent, and immaterial as to any issue contained in the present complaint as to the Atlantic Refining Company.

Hearing Examiner Kolb: That is a suit against whom?

Mr. Kelaher: Sinclair Refining Company.

Hearing Examiner Kolb: It will be received, subject to a motion to strike by Atlantic.

Mr. Correa: And over our objection?

Hearing Examiner Kolb: Objection overruled. I think I indicated that before.

Mr. Correa: I am not sure, if your Honor please, and I want my record complete, that our objection is based upon the fact that this complaint shows on its fact that it does not involve the sales commission plan, among other grounds.

1476. (Whereupon, the documents referred to were marked COMMISSION'S EXHIBITS 329 and 330 for idenaification, and received in evidence.)

By Mr. Kelaher:

Q. Mr. Osborn, you were questioned about an Atlantic station identified as being operated by Mr. Long. Do you know whether Mr. Long was a lessee-operator or a so-called independent operator?

A. He was a lessee-operator, as far as I know.

Mr. Kelaher: No further questions.

Recross Examination.

Mr. Correa: First I should like, if your Honor please, at this time, to move, on the basis of Commission's Exhibit 329 in evidence, which your Honor will recall was admitted over our objection, that on the basis of that exhibit, and specifically upon the basis of so much of Paragraph 8 thereof—numbered paragraph 8—that states: "That on or prior to 1956, the defendant entered into agreements with manufacturers of tires, batteries, and other automobile parts and accessories pursuant to which such manufacturers purported to sell to the defendant tires, batteries and other automobile parts and accessories destined for

ultimate sale at retail through service stations selling gasoline manufactured by the defendant."

I move, on the basis of this exhibit, therefore, to
1477 strike all of this testimony of this witness with reference to the period prior to 1956.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Correa:

Q. Now, Mr. Witness, you testified a moment ago in response to Mr. Kelaher's questioning that at your Sinclair service station you sold Firestone and Goodyear batteries; is that correct?

A. Yes, sir.

Q. Are you familiar with this Commission's Exhibit 329, the complaint in your case against Sinclair?

A. No, sir.

Q. You are not familiar with it?

A. I don't know what you are talking about.

Q. I say, are you familiar with this complaint?

A. I am familiar with—I got a suit, that is all I know. I am not a lawyer, sir. I don't know what you are talking about.

Q. I wonder if you had read the complaint.

Mr. Kelaher: Your Honor, I object to any questions concerning the legal nature of the suit. I think they are wholly—

Mr. Correa: I can't understand counsel. Apparently it is all right if he does it but all wrong if I do it.

Mr. Kelaher: You are the one who raised the
1478 point; I didn't.

Mr. Correa: No, sir. I raised it for a perfectly proper reason, bearing on the credibility of the witness. I warned that we would get into this.

Mr. Kelaher: Let him answer the question. It is all right with me.

Hearing Examiner Kolb: Are you withdrawing your objection?

Mr. Kelaher: I withdraw it.

Hearing Examiner Kolb: The witness may answer.

Read the question.

(The reporter read the question.)

The Witness: I read the complaint, but I didn't memorize it.

By Mr. Correa:

Q. I direct your attention, sir, to Page 4 of this complaint.

Mr. Kelaher: Your Honor, I hope we are not going to try to start a lawsuit here.

Mr. Correa: You raised it.

Mr. Kelaher: He brought up the matter of the suit and that is why we introduced it.

Hearing Examiner Kolb: I think the complaint was offered to show the nature of the suit. The complaint shows the nature of the suit. I see no reason to examine this witness further as to what this is about.

1479 Mr. Correa: This goes to his credibility.

Hearing Examiner Kolb: I can't see that.

Mr. Correa: I don't think your Honor can at this moment because my line just started laying a foundation for it. I will be glad to state, in the absence of the witness, where I am going and what I expect to prove. I prefer not to state it in his presence. If I have to, I might as well withdraw the whole thing because my cross-examination will, in effect, have been stultified.

Hearing Examiner Kolb: Are we going over all this complaint word by word?

Mr. Correa: No, we are not. We are going over the parts that are relevant, a rather short line of examination that I have.

Hearing Examiner Kolb: The witness may be excused for a minute.

(The witness left the room.)

Mr. Correa: The witness has testified, not once but a couple of times at least, in the course of his testimony that he carried Goodyear and Firestone batteries.

In the complaint he states that "Plaintiff was unwilling to acceed to these requests and so informed representatives of the Defendant. However, Plaintiff did stock tires of Goodyear, in addition to those tires which he normally stocked, and also stocked only Goodyear batteries."

1480 Hearing Examiner Kolb: Your question is as to only Goodyear batteries?

Mr. Correa: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Kelaher: Is the question limited to that?

Hearing Examiner Kolb: That is all you are questioning him about that?

Mr. Correa: That is all.

Mr. Kelaher: Now? Or are you going into the whole complaint?

Hearing Examiner Kolb: I understand that is all that you have?

Mr. Correa: That is all that I have.

(The witness returned to the hearing room.)

Hearing Examiner Kolb: Let the witness see the complaint.

Mr. Correa: Does Paragraph 10 begin in the middle of Page 4?

Mr. Kelaher: Yes.

Mr. Correa: Then apparently I have a photostatic copy of the same thing.

Mr. Kelaher: This is a certified copy of the complaint.

By Mr. Correa:

Q. Mr. Witness, I direct your attention to the
1481 statements appearing on that page, which has been exhibited to you, and the paragraph preceding the paragraph marked "10".

A. You mean before?

Q. Yes.

A. That goes back to the next page then.

Q. It starts on the bottom of the next page, I believe.

Mr. Kelaher: So the record will be clear, you are referring to Paragraph 9?

Mr. Correa: That's right. Starting at the bottom of Page 3.

Hearing Examiner Kolb: Do you want him to read the whole paragraph or just part of it?

Mr. Correa: I would like him to read the whole paragraph, so he can read it in context.

By Mr. Correa:

Q. I have two questions.

You note in the complaint it is stated that, after you had informed representatives of the Defendant—referring to the Sinclair Company—that you would not acceed to their requests—and I paraphrase—

Mr. Kelaher: I think it states "accede fully."

Mr. Correa: That's right.

By Mr. Correa:

Q. It goes on to say: "Plaintiff"—referring to yourself—"did stock tires of the Goodyear Tire Company
1482 and Rubber Company in addition to those tires which he normally stocked."

To what tires would "which he normally stocked" refer?

A. Firestone and Goodyear.

Q. It goes on: "And also stocked only Goodyear batteries." Is that statement true, sir?

A. In 1956 I did only stock Goodyear batteries, and only bought Goodyear batteries.

Q. Did you also sell Goodyear batteries?

A. I had some Firestone in stock that I was disposing of, yes.

Q. So you did have Firestone as well as Goodyear batteries in stock?

A. But I made up my mind to buy and sell only Goodyear batteries, or sell out Firestone.

Q. That is in the service station?

A. That's right.

Q. When you say you made up your mind, that was as to the service station?

A. Yes.

Q. I take it you planned to continue selling Firestone batteries in the adjacent store?

A. I closed the store when they built the new station, and devoted my time completely to the station.

Mr. Correa: No further questions.

1483 *Redirect Examination by Mr. Kelaher.*

Q. You stated that you closed out the store when they built the new station. Did you operate a Firestone store up until that time?

A. That's right.

Q. And then you continued on as a Firestone distributor, though, did you?

A. That's right.

Q. Even though you closed out the store?

A. Yes, sir.

Hearing Examiner Kolb: Is that all?

Mr. Kelaher: That is all that I have.

Hearing Examiner Kolb: The witness may be excused.

(Witness excused.)

Mr. Correa: There is one point we are not sure is clear on the record. May we have a moment?

Thank you. No further questions.

Hearing Examiner Kolb: The hearing is recessed, to reconvene at 2:00 o'clock.

(Thereupon, at 1:05 p.m., the hearing was recessed, to reconvene at 2:00 p.m., this day.)

1484 Afternoon Session.

(2:18 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. William C. Smith to the stand.

WILLIAM C. SMITH was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. William C. Smith, Sr., 8413 Courtleigh Road, Baltimore 7.

Q. Mr. Smith, are you an employee of Baltimore Gas Light Company?

A. I am.

Q. And what is your position with that company?

A. I am the manager of the Automotive Hardware Division.

Q. How long have you been with Baltimore Gas Light Company?

A. Thirty-four years.

Q. What products are sold by the Automotive Hardware Division?

A. In the Automotive Division we sell such products as chemicals, oil, tires, batteries.

Q. Would you please name, as you go along, the 1485 brand names of the products you sell?

A. In chemicals we sell DuPont, Eveready lamps, Gould National batteries, Gates fan belts, Walker oil filters, Auto-Lite batteries, cables and wire, Black and Decker tools, and in our hardware division we sell the usual line of material sold to hardware stores.

Q. Do you sell spark plugs?

A. We sell Champion spark plugs.

Q. Are the products you mentioned and the brand names nationally advertised products?

A. Yes, they are.

Q. What is the sales area of your company with respect to the automotive department?

A. We cover metropolitan Baltimore south as far as Annapolis, north to Bel Air, Maryland, and west to Westminster.

Q. To what classes of customers do you sell? Which class of customers is solicited with respect to TBA?

A. We call on the filling service station, car dealer, garage—

Q. Are you including in your description the so-called commercial accounts?

A. (Continuing.) —the fleet accounts and some industrial accounts, where they are covered by a fleet setup.

Q. How many salesmen are employed in the Automotive Department.

A. We have two that are employed approximately 95 percent of the time spent selling automotive, and we have three approximately 50 to 60 percent of the time, or 1486 perhaps a little bit better, is spent in automotive.

Q. How many salesmen does the company employ overall?

A. Fifteen.

Q. And are the salesmen in your department compensated by salary or commission, or a combination thereof?

A. They are compensated by commission.

Q. How many trucks are operated by your Department?

A. Five. Now wait a minute. I had better revise that. Our company operates five trucks.

Q. How many are available for distribution of the Automotive Division products?

A. All of them are available.

Q. And are all of them used from time to time?

A. Yes.

Q. Are there Shell, Atlantic, and Sinclair service stations located in your trading area?

A. Yes.

1487 By Mr. Kelaher:

Q. Do you compete with other sellers of TBA in the trading area you described?

A. Yes.

Q. Do you know the names or can you tell us some of the jobbers with whom you compete, or other sellers?

A. Jobbers?

Q. Any one with whom you compete.

A. I can give you some of the names, yes. J. R. Hunt and Company; R. W. Norris; R. J. Loock. There are a number of other ones in there if you want me to continue.

Q. Do you compete with the Brooks-Huff Tire Company?

A. Yes, sir.

Q. Do you compete with the Stuart-Pressley Company?

A. Yes, sir, in certain areas.

Q. Do you compete with the Goodyear service stores?

A. We don't sell at retail.

Q. At wholesale?

A. In some respects I think that we do.

1488 Q. In the normal course of your duties have you compared the prices of your TBA line with the prices of other sellers of TBA lines in your trading area?

A. Yes, sir.

Q. How do those prices compare?

A. They are comparable.

Q. In the normal course of your duties have you compared the quality of your TBA line with the quality of other sellers of TBA in your trading area?

A. Yes.

1489 By Mr. Kelaher:

Q. Do you sell certain products which are also sold by other sellers of TBA as to brand?

A. Yes, sir.

Q. What arrangement do you have with the Walker people with respect to the distribution of Walker filters in your area?

By that I mean, how are you classed in their distributional scheme of things?

A. We are classed as a distributor.

Q. Did you at one time sell Walker oil filters to a Sinclair dealer by the name of Osborn?

A. Yes, sir.

Q. Where was Mr. Osborn located, where was his station located?

A. Reistertown, Maryland.

Q. At what level of distribution was Mr. Osborn with respect to Walker filters?

A. Jobber or sub-jobber.

1490 Q. What discount did he receive?

A. In most cases 60 percent.

Q. Was Mr. Osborn a large purchaser of Walker filters from your company?

A. I would say so, yes.

Q. During the period 1954 through 1956, or in 1956, did his purchases increase, decrease, or remain the same with respect to Walker filters?

A. His purchases in 1956 decreased.

Q. Do you have with you a record of Mr. Osborn's purchases during the period I just questioned you about?

A. In dollars, yes.

Q. Would you please state what they are?

A. In 1954, he purchased $239.76. In 1955, $232.94. In 1956, $156.48.

Mr. Correa: If the witness is reading would the record so indicate, please?

Mr. Kelaher: The witness is reading, yes.

By Mr. Kelaher:

Q. Are the figures you have given a summary of your account with Mr. Osborn during the period stated?

A. That is correct.

Q. And do the figures you gave relate to the purchase of Walker oil filters by Mr. Osborn from your company?

A. That is correct.

1491 Q. You gave some figures for 1956 for Mr. Osborn. Did Mr. Osborn purchase from you through the year 1956?

A. No, sir.

Q. When did he discontinue purchasing from you?

A. I would say it was approximately May.

Q. At any time prior to that did your business with Mr. Osborn increase, decrease, or remain the same during 1956?

Mr. Correa: That is prior to May, 1956?

Mr. Kelaher: Yes.

I will withdraw the question.

By Mr. Kelaher

Q. Who was your company salesman calling on Mr. Osborn?

A. Mr. Edmond Roettger.

Q. Did Mr. Roettger discuss Mr. Osborn's purchases with you at any time during 1956?

A. Yes, sir.

1494 By Mr. Kelaher:

Q. As I understand it, Mr. Smith, you did have a report from Mr. Roettger concerning Mr. Osborn, did you not?

A. That is right.

Q. At that time, at that point, did you take any steps or do anything in connection with that report?

A. Yes, I did. I called the sales manager of the Walker Manufacturing Company at Racine, Wisconsin, and talked to the assistant sales manager and told him what was occurring. I asked whether there was anything that he could help us do, or anything that he could do.

Q. Would you state the substance of your conversation with the representative of the Walker Company?

Mr. Correa: If your Honor please, this has not been connected yet with anything.

Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: That is the reference to the report received from the salesman?

Mr. Kelaher: With reference to the sale of Walker oil filters, that is correct.

1495 Hearing Examiner Kolb: I will overrule the objection.

By Mr. Kelaher:

Q. Go ahead.

A. Where were we?

Q. What was the substance of your conversation with the Walker representative?

A. I told him what had been reported to me, and asked him if he could do anything to prevent this picking up. He didn't know what he could do, but he told me that he would call their district representative and see whether he could help me in any way—help us in any way.

Mr. Correa: I move to strike the answer since it is now apparent that we have the hearsay, unsworn testimony, because that is what it is, retailed, secondhand by this witness who is himself under oath, of some unknown or anonymous Walker company assistant manager or something or other, whatever he is—we will probably never know and never see him, and certainly he is not going to come here and take oath to these things.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

By Mr. Kelaher:

Q. Would you state in substance what you told the Walker representative, verbatim insofar as you can remember.

Hearing Examiner Kolb: Mr. Kelaher, I think you
1496 are getting into the conversation which the salesman had and reported to Mr. Smith.

Mr. Kelaher: Yes.

Hearing Examiner Kolb: I don't think you can go at it that way.

By Mr. Kelaher:

Q. After your telephone conversation which you had testified to, did anything further occur?

A. I was called by Mr. Jones, of Walker, who is the district manager for Walker in this area.

Q. What is his name?

A. W. Hap—H-a-p—Jones. He told me that he had been called by his assistant sales manager and that he had—

Mr. Correa: Just a minute, if you please.

I dislike interrupting the witness, your Honor, but obviously I could not tell from the question if we were once more going into the field of unsworn testimony, which apparently we are.

Hearing Examiner Kolb: Let's let the witness answer and see.

A. (continuing)—that he had received a call from his assistant sales manager asking him to get in touch with Sinclair, Brooks-Huff, or Purolator, and check and see what the circumstances were.

Mr. Jones told me that he had called Brooks-Huff but could not reach anyone in authority.

1497 He had then called Sinclair and had talked to one of the TBA sales managers, as I recall the conversation.

By Mr. Kelaher:

Q. That was the extent of your conversation?

Mr. Correa: Just a moment. I make my motion to strike the conversation on all the grounds heretofore urged, to this completely unsworn testimony in the never, never quality as highlighted by the fact that according to my recollection Brooks-Huff never did supply Mr. Osborn with Purolators.

Hearing Examiner Kolb: He simply testified that he reported to them. I will let the answer stand.

Objection overruled. Motion to strike denied.

By Mr. Kelaher:

Q. Did you at one time sell Walker oil filters to a Sinclair service station lessee dealer by the name of Collins?

A. Yes, sir, we did.

Q. Do you recall where Mr. Collins' station was located?

A. It is on Belvedere Avenue and Pimlico Road.

Q. What products did you sell to Mr. Collins?

A. At that time, among others, we were selling Walker oil filters. We sold him some DuPont polishes, some tire chains, some Prestone.

Q. And do you still sell Walker oil filters or other products to Mr. Collins?

A. Practically none.

1498 Q. Do you have a record of your sales to Mr. Collins—

A. Yes, sir.

Q. (Continuing.) —during the past few years?

A. Do you want me to give you records of his total sales—our total to him for filters only.

Q. Give it the way you have it broken down.

A. In 1954, he purchased $373.56 in filters.

Q. Walker filters?

A. That is right, Walker filters. He purchased $895.15 miscellaneous material, including Prestone.

In 1955 he purchased equipment, tow crane, and a battery charger amounting to $555.20. He purchased miscellaneous material amounting to $230.80. And he purchased $517.45 worth of oil filters.

In 1956, during the month of January, he purchased $25.74 worth of oil filters. He purchased $39.55 worth of chains in January. In March he purchased a charger amounting to $75.61.

In August he purchased chains amounting to $9.03. He purchased nothing more that year.

In 1957 his purchases were $1.65 for a battery clip.

Q. You stated that in January 1957 he purchased $25.74 worth of—

A. January, 1956.

1499 Q. Of Walker oil filters? Is that correct?

A. That is right.

Q. Had he made any purchases of TBA items since that time?

A. No, he hasn't.

Q. And did Mr. Collins ever—

A. Unless you consider chains as TBA items.

Q. You have given us the—

A. Breakdown.

Q. (continuing) —breakdown of the items he purchased.

Did you ever discuss the matter of Mr. Collins' TBA purchases with Mr. Collins?

A. Yes, sir.

Q. Please state when or about when such discussion or discussions took place, and the substance of them?

A. It was somewhere—

Mr. Correa: That is objected to, if your Honor please.

Hearing Examiner Kolb: Objection overruled.

A. It was somewhere in January 1956. I can't give you the exact date. Mr. Collins called me on the telephone and told me that he was going to discontinue the purchase of Walker filters from us. I asked him why, and he told me that he had no complaint either as to the service we had given him, the price of the filter, or the quality, and that he felt very bad about discontinuing handling our fil-
1500 ters. He told me that for some while he had been trying to get his station improved and painted, and that every time he asked for these improvements the fact that he had a Walker filter display rack up was injected in the conversation, and that he wanted to get him station

cleaned up and painted up, and that he thought he had better go along with the oil company and discontinue Walker filters.

By Mr. Kelaher:

Q. What type filter did Mr. Collins purchase thereafter?

A. Purolator.

Q. How do you know he purchased Purolator?

A. I had been a customer of Mr. Collins. He lived—his place of business was very close to where I lived, and I had been dealing with him since 1951. I had bought practically all of my gasoline and oil from him—and all my gasoline from him during that time, and many other services. I would frequently get into his station, probably once or twice a week. I had been in his station several days before he called me, and he had his display of Walker filters up. Several days after he called me I went into his station and there were no Walker filters on display.

Q. Did Mr. Collins advise you as to what had happened to the Walker oil filters?

A. No, sir, he did not.

Q. Based on your personal knowledge and obser-
1501 vation of his station, has he thereafter displayed Walker oil filters?

A. We are the only distributors in Baltimore, and he has not bought Walker filters from us. And as far as I know he has never displayed them.

• • • • •

Q. Did you at any time in 1956 repurchase any stock from Mr. Osborn?

A. We took back for credit quite a bit of stock from Mr. Osborn.

Q. When was this done?

A. This was on June 11, 1956.

Q. What items did you repurchase from Mr. Osborn?

A. Walker filters, Dole thermostats—

Q. Just limit that to TBA items. Did you repurchase items in addition to TBA items?

A. One item. A Lawn Boy mulcher.

1502 Q. And the remainder was all TBA material?

A. Yes, sir.

Q. What was the total amount of that repurchase?

A. $1,213.66.

Q. Have your sales of Walker oil filters and Gates fanbelts increased, decreased, or remained the same since about 1954?

Mr. Correa: That is objected to, if your Honor please. It is immaterial and irrelevant.

Hearing Examiner Kolb: Overruled.

A. They have decreased.

By Mr. Kelaher:

Q. Do you have a summary of your records showing what the amount of your purchases have been of Walker oil filters and Gates fanbelts?

A. In 1955 we purchased 6600 units of Walker filters. In 1956 we purchased 5,385 units. In nine months of 1957 we purchased 3,767 units. I have no record of units prior to 1954 as there is no record of filters in units.

Q. Do you have a record in dollars?

A. Not with me. I do have.

Q. Do you have any records with you with respect to your purchase and sale of Gates fanbelts?

A. These are automotive fanbelts, in units.

Q. They are Gates?

A. Gates automotive fanbelts in units. I have this breakdown from 1950. Do you want me to go all the way?

1503 Q. Yes.

A. In 1950. 7,836.

1951: 4,102.

1952: 4,088.

1953: 3,097.

1954: 2,785.

1955: 4,288.

1956: 2,185.

1957: 2,025 through September.

* * * * *

By Mr. Kelaher:

Q. During the period in question, from about 1950 to date, based on your sales records and the reports of your salesmen, have your sales to Sinclair stations of Gates fanbelts and Walker filters increased, decreased, or remained the same?

Mr. Correa: That is objected to, if your Honor please.

Hearing Examiner Kolb: The objection will be overruled.

A. They have decreased.

1504 By Mr. Kelaher:

Q. During the same period 1950 to date, based on your business experience and on the reports of your salesmen, have your sales of Walker filters and Gates fanbelts increased, decreased or remained the same with respect to Shell service stations?

Mr. Correa: That is objected to, if your Honor please, on the ground that it violates, among other rules, the best evidence rule, the best evidence of the sales and what his records show as to his sales. I am sure that that proof that counsel wants may be here instead of the business based on his experience and reports of his salesman or whatever he heard in the market place or wherever he happened to hear it.

Hearing Examiner Kolb: Objection overruled.

(Question read.)

A. I wouldn't be able to answer that properly. I have no record, or do not have close enough touch to answer.

By Mr. Kelaher:

Q. Do you have with you a record of your sales of TBA items to Mr. Osborn in addition to those you have already given to us on Walker filters?

A. I have all of his purchases, tickets of his purchases. But I don't have them in any form book.

Q. Do you have a summary of the purchases of Mr. Osborn?

A. Which I have already given you.

1505 Q. You just gave us Walker filters. Do you have other items?

A. No, sir, not broken down.

Wait a minute, let's see. Yes, I do, too.

In 1954, Mr. Osborn purchased Gates amounting to $411.52. Walker to the amount of $239.76. Miscellaneous, to the amount of $3,155.81.

In 1955, Gates amounted to $389.35. Walker amounted to $232.94. Miscellaneous amounted to $1,680.22.

In 1956, Gates amounted to $99.02; Walker amounted to $156.48. Miscellaneous, $377.83.

Q. In this miscellaneous figure you have given us, are there any TBA items included in there?

A. Yes, sir, there are.

Q. And what proportion of his purchases would be of TBA items, if you know?

A. I can't give you that information. I haven't broken it down that far.

Q. What other items might be in there?

A. Tire chains, Prestone, lawn mowers. Those are some of the items I recall in there.

Mr. Kelaher: No further questions.

Mr. Thompson: If your Honor please, I move to strike this entire testimony on a wholly different ground. Of course I realize that the Commission has ruled that relationships between the Goodyear Tire & Rubber Company and the service stations of other oil companies must 1506 be received by you subject to my motion to strike.

That is not the situation here at all, sir. We have in this situation a company named Baltimore Gas and Light, which is not Goodyear, which has had relations apparently with service stations of Shell and service stations of Sinclair. Atlantic hasn't been mentioned. I don't think that this sort of testimony is within the ruling heretofore made by the Commission.

As to Atlantic I think it should be stricken entirely at this time, sir.

Hearing Examiner Kolb: I will let it stand, subject to a motion to strike.

Mr. Correa: With respect to the cross-examination, may I suggest it might be expedited if we could take a brief recess and during that time my associates and I could have the opportunity of examining these aidememoirs from which the witness has been largely testifying.

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

Q. Mr. Smith, your company is engaged in the wholesale distribution of a number of various kinds of 1507 products, is it not?

A. That is correct.

Q. Would they include such things as electrical light fixtures?

A. Yes.
Q. And electric clocks?
A. Yes.
Q. Doorbell chimes?
A. Yes.
Q. Electric percolators?
A. Yes.
Q. Garbage cans?
A. Yes.
Q. And a whole variety of items?
A. Oil.
Q. Wolf's Head oil, is it not?

(No response.)

What part of the total volume of business of your company is accounted for by your automotive supplies and parts business?

A. The department I head sells approximately from five to six hundred thousand dollars a year. Of that, approximately 40 to 50 percent is automotive supplies and accessories.

Q. How does that relate—that would be roughly $250,000 annual volume?

A. That is right. Between 250 and 300-thousand dollars.

1508 Q. How does that relate to the total annual volume of your company?

A. Roughly about one-tenth.
Q. About ten percent?
A. That is right.
Q. So that would be fair to say that your company is engaged primarily in businesses other than the automotive supplies and equipment business?

A. I don't think so. It is engaged in automotive supplies and equipment as much as it is in anything else.

Q. With the limitation to the extent of 10 percent of its total business?

A. If you want to put it that way, yes.

Q. You gave us some figures, and I won't attempt to repeat them—I didn't bother to write them all down—of sales of certain items. I think you included oil filters and fanbelts. Let me ask you, sir, is it a fact that the total sales of your company in every kind of thing they sell, that is the total of all sales, did decline in let's say 1956 as against 1955?

A. No, sir.

Q. By 138-odd thousand dollars?

A. Not to the best of my knowledge. I do not have the exact figures.

Q. Would you know that, sir?

A. I would not.

1509 Q. Would you know that the net profit of the operation had also declined by something on the order of 33⅓ percent?

A. I have no access to those figures.

Q. You wouldn't know about that?

A. No, sir.

Q. Do you hold any office in the corporation?

A. Yes, sir.

Q. What office do you hold?

A. Assistant secretary and treasurer.

Q. Assistant secretary and assistant treasurer?

A. Yes, sir.

Q. In your capacity as assistant treasurer don't you get exposed to the net profits picture of the company?

A. No, sir.

Q. You talked about a man named Osborn. Is he a competitor of yours?

A. No, sir.

Q. Do you know whether or not Mr. Osborn was a

wholesale distributor of Firestone tires, batteries, and accessories?

A. In Reisterstown, yes.

Q. Do you distribute in that area?

A. Not a great deal.

Q. Did you at all?

A. Yes.

Mr. Kelaher: Your Honor, I think he was com-
1510 pleting his answer.

Had you completed your answer?

Mr. Correa: If you hadn't, speak up.

The Witness: Will you read it?

(Answer read.)

By Mr. Correa:

Q. Do you feel you were cut off in some respect? Is there something you wish to add?

A. No, sir.

Q. Did you also distribute, to the extent you did distribute in that area, tires, batteries, and accessories?

A. We very seldom called on the same accounts that Mr. Osborn called on.

Mr. Correa: Will you read the question?

(Question read.)

The Witness: Will you read that again?

(Question read.)

A. Yes.

By Mr. Correa:

Q. Did you have any agreements or understanding with Mr. Osborn that you wouldn't call on the same accounts?

A. No.

Q. It just happened that way?

A. That is right.

Q. Does Firestone, so far as you know, sell a com-
1511 peting oil filter to the Walker filter?

A. I don't know that. I believe that they do.

Q. Do you know under what name it sells?

A. No.

Q. I suggest to you that it sells under the name of AC. Does that refresh your recollection at all?

A. No, sir; it does not.

Q. I suggest to you that there is also an oil filter sold by Firestone under the name Firestone. Does that refresh your recollection?

A. That might be so. I don't know that personally.

Q. I suppose you wouldn't know what price basis Mr. Osborn would be able to purchase Firestone oil filters?

A. No, I do not.

Q. Referring to the years 1954, 1955, 1956 and 1957, do you know, sir, that during those years Purolator had a promotional policy of giving free merchandise to dealers who purchased Purolator filters?

A. I know in '57 they did.

Q. That was a set of dishes, wasn't it, with every 26?

A. They have had several different promotions. I think that one of them was that promotion.

Q. Did your company, in respect of the sale of Walker filters in that same year, make any comparable offer?

A. Yes, sir.

1512 Q. What?

A. We had as one example—we gave—

Q. This is 1957, just so we tie it down.

A. 1957, you are talking about?

Q. Yes.

A. We gave a Black & Decker drill with the purchase of so many filters.

Q. How many?

Mr. Kelaher: Objection, your Honor, unless the information is submitted with respect to the Purolators' deal.

Mr. Correa: This is cross-examination. I am asking the questions. I am not testifying.

Hearing Examiner Kolb: Objection overruled.

Did you finish your answer?

The Witness: We gave a drill with the purchase of 48 filters.

1513 By Mr. Correa:

Q. Just to satisfy Mr. Kelaher, do you recall that Purolator gave a set of dishes with the purchase of 26 filters?

A. I do not recall that but vaguely. I think they did give a dish or some premium with the purchase of filters. I do not remember the exact figure.

Q. How about 1956? Did you in respect of your sale of Walker Filters give any promotional merchandise free?

A. We did have deals but I cannot recall them at the present time as to just exactly what they consisted of.

Q. This is with reference to last year, 1956.

A. 1956. I could not give you an exact answer as to what the deal consisted of.

Q. You talked some about a dealer named Collins, did you not?

A. Yes, sir.

Q. And you say, if I recall your testimony correctly, that Mr. Collins is near your place of residence and that you have been a customer of his for the purchase of gasoline for some time, is that correct?

A. That is correct.

Q. How far back?

A. From 1951.

Q. And you spoke of Mr. Collins speaking of wanting some kind of work done by the company around the station, is that right?

A. That is what he told me, yes.

1514 Q. And he told you that according to your testimony in, was it January, 1956, or am I wrong?

A. I think it was somewhere around that time. This was in 1956, which is at least a year ago. I am not absolutely positive of the time. I do think, though, that it was around January.

Q. Of 1956?

A. That's right.

Q. As a matter of fact, there had been considerable work done around that station between 1951 and January, 1956, had there not?

A. If it was, it wasn't so terribly apparent because his station looked rather rough.

Q. Hadn't two additional stalls been put in?

A. I would not answer that. I can tell you the appearance of the station was rough. I don't know what work had been done.

Q. Prescinding, if we may, from in your view of the rough appearance of the station, can you tell me did you notice the addition of two new stalls?

A. I did not notice the addition of two stalls, no.

Q. Did you notice that the area in back of the station had been paved for parking purposes during that period?

A. I know it is paved, part of it. I did not know that it had been done during that period.

1515 Q. Now, sir, does Mr. Collins sell tires in his station?

A. Yes, sir.

Q. What kind?

A. I believe that they are Goodyear.

Q. You never noticed?

A. I never noticed particularly the brand and tires, no.

Q. Did you notice that Mr. Collins displays tires in that station?

A. I have not paid particular attention to the brand of tires he sells.

Q. Have you ever tried to sell him Mansfield Tires, which I believe your company purveys?

A. No, sir, I have not.

Q. So, you have taken no interest in Mr. Collins as a potential tire customer?

A. There is not much use of taking interest in Mr. Collins' potential tire account.

Q. What is the policy of your company in selling Gates Belts with respect to obsolescence?

A. As a rule, we sell only the most popular belts. And as a rule there is very, very little obsolescence in those belts. If there is obsolescence, agreement is reached between the operator and the company as to what to do about it.

Q. Do you have any standard policy of regularly going into your customer's shelves and replacing obsolete belts?

1516 A. Our salesmen generally take care of the station stock. And if they find anything that is too obsolete, they generally take it up with me and ask me to return it.

Q. Do you have any standard policy of doing that at regular intervals?

A. No.

Q. Are you aware that Goodyear does have a standard obsolescence policy with respect to Goodyear belts, whereby once a year the dealer's stock is gone over and all obsolescent belts are replaced?

A. To my personal knowledge, no.

Q. May I inquire, sir, on what time terms you sell tires, batteries and accessories?

A. Most tires, batteries, and accessories are sold on two percent, 10th proximate.

Q. Is that true of large orders as well?

A. It is true in most cases, yes.

Q. You mentioned one of your competitors, Brooks-Huff, is that right?

A. Yes, sir.

Q. Do you know on what terms Brooks-Huff customarily sells large orders of tires, batteries, and accessories?

A. To my knowledge, no.

Q. Would it refresh your recollection if I suggested to you that Brooks-Huff sells on terms of 30, 60, 90 days?

1517 Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

The Witness: I don't know that personally. I can't answer the question.

By Mr. Correa:

Q. Do you sell truck tires?

A. We carry them. We sell very few.

Q. Do you mount truck tires for dealers who purchase your truck tires?

A. We do not.

Q. Are you aware that your competitor, Brooks-Huff, does offer this service?

A. I don't know about it personally, no.

Q. I am not certain I understand the qualification in your answer?

A. You asked me if I knew whether Brooks-Huff mounted tires for their customers?

Q. Dealer customers?

A. I do not know that, no.

Q. Do you, in general, in selling merchandise yourself, find it helpful to know what terms and conditions of sale and concession and the like are being offered by your competition?

A. Yes.

Q. As a matter of fact, as sales manager it really is part of your job, is it not, to know what your competition is doing?

1518 A. It is part of my job, yes.

Q. Do you give any deal on tubes?

A. On tubes?

Q. Yes.

A. Yes. Now wait a minute. Let's not say "a deal." We have a price.

Q. For example, would the price on a purchase of 24 tubes differ from the price on a purchase of less than 24, and if so, in what respect?

A. Yes.

Q. How?

A. It would be cheaper.

Q. By how much?

A. I can't give you the percentage.

Q. What would the percentage be on buying less than 24 tubes?

A. I can't give you that without checking my price sheet. There is not a definite percentage off. We figure on making a different percentage of profit on a larger volume purchased by the dealer.

Q. Is 24 a breaking point or is it some other figure?

A. As I recall it, it is one of my breaking points.

Q. How about 48?

A. That is another.

Q. Do you know what the percentage off is on 48?

A. Not without checking the price sheet.

1519 Q. Would I correctly guess that 72 is the next one?

A. I recall my price sheet break stops at 48. If someone is interested in larger quantities, then we quote a special price.

Q. Then, you really make ad hoc deal? I will withdraw that. You make a spot deal?

A. Yes, sir.

Q. Do you know that your competitor, Brooks-Huff, gives 15 percent off for a purchase of 72 tubes?

A. We don't use a discount. We have a net figure.

Q. I am sorry, I am afraid you misunderstood my question, Mr. Witness. I was not asking you about your own practice now. I was asking you whether you knew of the practice of your competitor, Brooks-Huff, in giving 15 percent off on a purchase of 72 tubes?

A. I do not know their price set up.

Q. You testified, unless I misunderstood—I will withdraw the question, subject to checking my notes.

Do you, sir, give free merchandise or equipment to your battery customers?

A. Sometimes, yes.

Q. Any regular policy in that respect?

A. We will have a deal occasionally where the man will buy six batteries, 12 batteries, and get a display stand or a tester at no charge.

1520 Q. Do you know what your competitor, Brooks-Huff, does in that respect?

A. No, sir.

Q. How about one of your other competitors, let's say, J. R. Hunt? Do you know what J. R. Hunt does in that respect?

A. They have similar deals but I cannot tell you the current deal or what that particular deal would be.

Q. Stuart-Pressley?

A. Same answer would apply to them.

Q. Do you know that your competitor, Brooks-Huff, is currently running a sales contest offering many prizes to dealers purchasing the most tires over a four-month period?

A. I do not know.

Mr. Correa: I have no further questions, but if your Honor please, I should like to ask that this witness be available for further cross-examination after the next witness has testified. I dislike to interfere with the gentleman's time but, your Honor will appreciate there are certain points that may arise on the testimony of the next witness which would warrant further cross-examination of this witness.

Hearing Examiner Kolb: Will you wait around?

Mr. Kelaher: Does counsel for Atlantic have any questions?

Mr. Thompson: I have no questions, sir.

Mr. Kelaher: No questions, your Honor.

1521 Hearing Examiner Kolb: You are excused for the time being until we finish with the next witness.

(The witness was temporarily excused.)

Hearing Examiner Kolb: We will have a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

E. EDMOND G. ROETTGER was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Will you give your name to the reporter?

The Witness: E. Edmond G. Roettger.

My address is 6005 Wakehurst Way, Baltimore 12.

By Mr. Kelaher:

Q. Are you an employee of the Baltimore Gas Light Company, Mr. Roettger?

A. Yes, sir.

Q. What is your capacity?

A. I am an outside salesman.

Q. How long have you been an outside salesman with Baltimore Gas Light Company?

A. For 11 years.

Q. In what territory do you solicit business?

1522 A. Principally the northwest part of Baltimore and Baltimore County and Car. County.

Q. Do you carry the line of products, the regular TBA line of the company?

A. Yes, sir. I sell the regular TBA line.

Q. That includes Walker Oil Filters and Gates Fan Belts?

A. Gates Belts, Champion Plugs, Everready Lamps, Prestone.

Q. Are there other sellers of TBA who sell to the same class of trade to whom you sell in your marketing area?

A. Yes, sir, there are many.

Q. Could you give us the names of some of those?

A. R. J. Loock, R. W. Norris, B&B Auto Supply. Most of the major oil companies market products of their own in the TBA set up.

Q. Do sellers of Goodyear TBA sell in your area?

A. Yes, sir.

Q. Does Brooks-Huff Tire Company sell in your area?

A. Yes.

Q. Does Goodyear itself, that is, through its service store or district store, sell in your territory, do you know?

A. That, I am not sure on how it is done, whether they sell directly or whether Brooks-Huff sells it, or how that is done.

Q. To what classes of customers do you sell?

A. I sell the automotive stations, car dealers, fleets, and independent repair shops in the automotive trade.

1523 Q. In your TBA line, do you carry a brand of tires, or line of tires?

A. Yes, sir; we do.

Q. What is the brand name?

A. The brand name is Mansfield.

1524 Q. Is that a large seller with you?

A. No, sir, it is not. I sell no tires.

Q. Do you sell a line of batteries?

A. Yes, we sell batteries.

Q. And accessories?

A. Yes, sir.

Q. And do you solicit business on batteries and accessories?

A. Yes, sir; I do.

Q. Approximately how many Sinclair stations are in your sales territory?

A. I would estimate about 40 to 45 stations.

Q. Do you solicit business from Sinclair stations and if so, how long have you been soliciting such business?

A. At the present time, I solicit actively from about six Sinclair stations. One time I sold about 15.

Q. You stated at one time. Approximately, when was that period you are referring to?

A. They declined one at a time for, I would say, probably the most of it was around six years ago.

Mr. Thompson: I understand that I have a continuing objection to this line of questioning, and my motion to strike may be made later?

Hearing Examiner Kolb: Yes. It is received subject to a motion to strike by Atlantic.

By Mr. Kelaher:

1525 Q. With respect to Sinclair Service Stations, has your particular volume of business increased, decreased, or remained the same since you began calling on them 11 years ago?

A. My volume has decreased over the past years in that I have lost a number of accounts on specific lines that I at one time had an automatic fill-in on.

Q. And would you please state the names of certain of such accounts?

A. One of them was Collins Service Station at Pimlico and Belvedere, a Sinclair station. Another was a station that is now Morning Star and Stephens, Pikesville, formerly A. E. Caltrider.

Another one that came under that heading would be Kriete Osborn, in Reisterstown, a Sinclair station.

Q. These are all Sinclair stations?

A. Yes.

1526 Q. What particular line or lines did you sell to Mr. Osborn?

A. Mr. Osborn I sold the Champion line, I sold the Gates line, I sold the Walker line, I sold the Dole thermostat line. They were the principal items that we sold him.

Q. Did you have any conversations with Mr. Osborn concerning his purchases of TBA from you, and if so, please state the approximate time, location, and substance of the conversation.

Mr. Correa: I object to this, if your Honor please. I can't conceive, in view of the fact that Mr. Osborn in his own person has been a witness here this morning, that this interrogation could have any significance, much less relevance or materiality, save in terms of impeaching Mr. Osborn, which I do not understand counsel, who has called him to the stand and vouched for him, is permitted to do.

I submit that the question and testimony, the question is wholly improper and I object to it.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. You may answer.

Mr. Correa: May I inquire of your Honor, is that the

answer, that counsel is entitled to impeach his own witness?

Hearing Examiner Kolb: I am not passing on any impeachment. I said the question is proper.

1527 Mr. Correa: May I inquire of counsel for what purpose the testimony is offered, because I must confess that no purpose is apparent other than impeachment.

Mr. Kelaher: Your Honor has ruled?

Hearing Examiner Kolb: I have ruled on the objection. You may proceed.

Mr. Correa: And I object respectfully to the failure of your Honor to require counsel to answer my question as to its purpose.

Mr. Kelaher: I think the purpose will become self evident when he testifies.

Mr. Correa: My objection stands.

The Witness: In January 1956 I made a periodic call on Mr. Osborn. Mr. Osborn asked me to come up and have a cup of coffee with him. And in the process of drinking the coffee, he told me that in the future he wanted me to stop filling in his stock of Walker oil filters, the reason being that he was subjected to, as he put it, pressure from the company to put in the Purolator line. He also told me that they made him an offer to pick up all of his Walker filters that he had in stock, plus whatever odd lots of Firestone that he had left over from many years ago, and replace those with Purolators of current numbers.

Mr. Correa: Is the answer finished? If the answer is finished, I should like at this time, in light of the

1528 answer, to renew my objection and to move to strike the testimony on the ground that it is now patent that there can have been no purpose to this proffered testimony other than impeachment by counsel supporting the complaint of their own witness. And this I conceive to be a completely and wholly improper purpose.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Kelaher:

Q. At that time, or immediately thereafter, did you report this incident to your superiors at Baltimore Gas Light Company?

A. Yes. I had had that happen at one other call, the same week, and I interpreted that as an industry trend or as a means of marketing. And I felt it was my duty to report to my superior that such a trend was in progress.

Mr. Correa: I move to strike the witness's interpretation.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Kelaher:

Q. Who was your superior at Baltimore Gas Light?

A. My superior at Baltimore Gas Light was Mr. William Smith.

Q. You stated that this same practice had occurred at some other station. Would you identify the other station?

A. The other station that it occurred at, at just about the same time, was Collin's station at Pimlico Road 1529 and Belvedere Avenue.

Q. Did you have any conversations with Mr. Collins with respect to the purchase of TBA, and if so, please state the approximate time, the place, and the substance of the conversation.

A. Yes. Mr. Collins—

Mr. Correa: Just a minute. That question is objected to as calling for rank and pure hearsay.

Hearing Examined Kolb: Overruled.

The Witness: Mr. Collins called me aside and told me that he—

By Mr. Kelaher:

Q. Would you fix the approximate time?

A. That was in the same week. That was January of 1956. Mr. Collins told me that he had had to discontinue

the use of Walker filters; that, as he put it, there were some two new pumps that he wanted, two new-type pumps that he wanted to have put in the station, and there were some repairs I think to the roof involved, and Mr. Elmore Evans had gotten him aside and told him that if he were going to go along with those repairs that they were going to have to cooperate more in the TBA line, which meant Purolator instead of Walker.

Q. Who was Mr. Elmore Evans with?

A. Mr. Elmore Evans is with Sinclair. He is not the direct TBA representative. There is another Mr. 1530 Evans, a local representative for that district. Mr. Elmore Evans has—I think he is a supervisor, sales supervisor or sales manager of some type.

Q. He is with Sinclair Refining?

A. With Sinclair Refining.

Mr. Collins expressed to me that he had nothing against our service, or our product, or against myself as a representative.

Q. And thereafter did you make any sales of TBA to Mr. Collins?

A. There were some small sales, but the largest thing that we sold in that particular station were Walker filters. He did a very good job on those. And after about a month of contact with not too much effort, I abandoned the call.

Q. Where did that conversation you have described take place?

A. It took place at Mr. Collins' station.

Q. And where did the conversation with Mr. Osborn take place?

A. The conversation with Mr. Osborn took place at the drug store across the street from Mr. Osborn's place of business.

Q. Did you, at one time, solicit business from a Sinclair dealer by the name of Caltrider?

A. Yes, I did.

Q. I think you testified a few minutes ago that 1531 you lost that account?

A. Right.

Q. When did you solicit business from Mr. Caltrider?

A. I solicited Mr. Caltrider since 1946, up until the time that he went out of business.

Q. And approximately when did he go out of business?

A. He went out of business in the latter part of 1956 or the first part of 1957. I don't recall exactly when.

Q. Did you ever have any conversations with Mr. Caltrider concerning the purchase of TBA, and if so, please state the approximate time, the place, and the substance of the conversation.

A. In 19—

Mr. Correa: Just a moment. I object, if your Honor please, on the ground that this is hearsay. He has been asked for conversation with a person who is not subject to cross-examination, and under all of the usual rules of law, which I understand to be applicable here, the question is objectionable.

Hearing Examiner Kolb: I understood the witness testified he sold him up until the time he went out of business. I don't see the purpose of the conversation.

Mr. Kelaher: The purpose of the conversation is to show under what circumstances the purchases of TBA were made by Mr. Caltrider from Mr. Roettger.

Hearing Examiner Kolb: I will overrule the ob-
1532 jection and see what the witness says.

The Witness: In 1948 we were selling Purolator filters instead of Walker. We hadn't put in the Walker line as yet. And I was filling in Mr. Caltrider's stock. That with me was not a regular function at the time. If

I checked the stock and told him he was short on such and such a number, usually I got the order.

I made the mistake of doing it in front of a person one day that I didn't know, and Caltrider was very short about this thing. The next week, when I was out to see him again, he told me that the man that I was speaking in front of was a Mr. Allen, whom he called "Doc Allen" with Sinclair, and that if I ever came in there again when he was there, just to say hello and go on about my businesse and come back later.

He also said at the time that he had heard about the episode of buying filters from me from someone down at the office; I don't know who.

By Mr. Kelaher:

Q. This conversation with Mr. Caltrider you placed when?

A. Took place when?

Q. Yes.

A. In 1948.

Q. Which episode was he referring to?

A. He was referring to the—I don't understand the question.

1533 Mr. Correa: I object to it, if your Honor please. The witness is not only giving us hearsay, we are getting mental hearsay. He is being called on for the operation of whoever his names's mind is. I think that is about as objectionable as you can get.

Mr. Kelaher: Mr. Examiner, the witness stated that in 1948, when he talked to Mr. Caltrider, he referred to certain episodes concerning filters, as I understood him. I am just trying to clarify his answer.

Mr. Correa: As I understood his testimony, he said Mr. Caltrider, if that is his name, had said that he had heard of the episode, et cetera, quoting Mr. Caltrider.

What Mr. Caltrider referred to I presume Mr. Caltrider would be the best witness on. Obviously, no one wants to call him.

• • • • •

1534 By Mr. Kelaher:

Q. What has your experience been since you began selling Sinclair stations in 1946?

A. When I began selling Sinclair stations in 1946—

Q. With respect to new stations.

A. In respect to new stations, there seemed to be a market. We would sell them some equipment and at
1535 the same time, sometimes, we would get an order for certain TBA items, chemicals, spark plugs, and filters and things of that type.

Over the past few years—and this came about gradually so I can't place it as to exactly what year it began to affect our operation—the Sinclair stations, the order seemed to be placed for the merchandise by the time the stations opened, by the time the operator is even on the premises.

We have little opportunity to sell anything to a new station before it is opened or to get in on the initial order of any merchandise.

Mr. Correa: I move, if your Honor please, to strike this answer, consisting as it does of rambling, conclusory disposition by the witness on the subject of his experience over an indefinite period of time with unnamed and unknown service stations.

Mr. Kelaher: He has discussed the trend from 1946 to date with Sinclair service stations. How he can be more definite than that I don't know.

Mr. Correa: This is a hearing where we are supposed to get testimony as to facts, not a lot of conclusions and generalities.

Hearing Examiner Kolb: I will overrule the objection. Motion to strike denied.

By Mr. Kelaher:

Q. What type of TBA products do you find adver-
1536 tised in Sinclair service stations?

A. Mostly—

Mr. Correa: Objection to this generality of such questions. I submit this is not testimony we are getting at all but an expression of views or opinion by the witness. I object to it.

Hearing Examiner Kolb: Objection overruled.

The Witness: Most of the advertising that is actively displayed in Sinclair stations is Goodyear merchandise or merchandise that is sold through the Sinclair setup. They do not—in fact I have had dealers who would refuse to post advertising on things that they had in stock. As they told me, the company didn't like it up there.

Mr. Correa: Just a moment. I move to strike that. Your Honor, we have this type of testimony, we have had dealers, unnamed, unspecified, who told me, they told me and so on. I submit this is not evidence according to any legal rule.

Mr. Kelaher: Mr. Examiner, I will ask him to be specific, as soon as I can get the question out.

Hearing Examiner Kolb: Bring the matter down to cases.

By Mr. Kelaher:

Q. Would you give us some specific examples of the situation just described?

Mr. Correa: Just to keep my record straight, I
1537 will object to that because that doesn't cure the evil at all. It seems to me we should start with specific cases, not get down to them.

The Witness: Osborn was one specific case. I at times asked him to put up certain displays and certain window posters on Walker filters. And he told me, "Just leave

well enough alone," he will sell the filters but not to antagonize anyone by putting it over the windows.

Caltrider was another one, went along with the same line of reasoning. He sold the filters but didn't want to attract a lot of attention by having the signs and displays on the windows and walls.

By Mr. Kelaher:

Q. Do you recall any other dealers?

A. Not directly.

* * * * * *

1538 Q. Are Walker oil filters sponsored as a part of the Goodyear TBA line?

A. No, sir, they are not.

Q. Are Gates fan belts a part of Goodyear TBA line?

A. No, sir, they are not.

Q. Are Gould National batteries part of the Goodyear TBA line?

A. No, sir.

Q. Champion spark plugs?

A. No, sir.

1539 Q. Now, with respect to such products, where are they generally displayed in Sinclair stations, if at all?

Mr. Correa: I object, if your Honor please. If the question includes batteries—as Mr. Kelaher knows, and conceded at Philadelphia on this very record, as it is the same case—the Sinclair sales commission plan does not cover batteries. I don't know why Mr. Kelaher proceeds to go into batteries when he knows perfectly well they are not covered by the plan.

Mr. Kelaher: I would like to say that they were covered up until January 1, 1956, I believe, when Sherwood Brothers, Inc., merged into Sinclair Refining Company.

We had asked for that information from counsel for some time, and in Philadelphia I wasn't sure of the status

of the arrangements here. But now it appears that Sherwood Brothers, Inc., did handle tires, batteries, and accessories, did receive commissions on Goodyear TBA up until January 1, 1956, and since that time they have received commissions on accessories only, if my information is correct.

Mr. Correa: If you will read the question, it reads in the present. It doesn't read in the past.

By Mr. Kelaher:

Q. Let's say prior to January 1, 1956, with respect to batteries and accessories, and since January 1, 1956, with respect to accessories, if that will clarify it.

1540 Hearing Examiner Kolb: You may answer.

The Witness: Non-sponsored TBA items, non-Sinclair sponsored TBA items, as they have been defined, were displayed in what I would say are conspicuous places in the station. By that I would say Gates fan belts were either hung on the side wall or across the back with the Gates nameplate over them.

Walker filters, we carried Walker filters in a rack which occupied a considerable amount of space, and they were usually displayed out in the lube room.

Champion plugs were kept right alongside the plug cleaner, which is usually out in the lube room.

By Mr. Kelaher:

Q. What is the lube room? That is not the main part of the station?

A. No.

Q. That is the adjacent—

A. That is the main part of the station. The stations are usually divided into an office, where their chemicals are kept, and then—

Q. You say "they were"; are you referring to the current situation, too?

A. Yes. Those items were kept out in the open.

* * * * *

1542 *Cross-Examination by Mr. Correa.*

Q. Mr. Witness: You testified about a conversation you say you had with Mr. Osborn?

A. Yes, sir.

Q. Do you know that Mr. Osborn was a witness here this morning?

A. Do I know that he was?

Q. Yes.

A. Yes, sir.

Q. And do you know that he was interrogated about his changing over from Walker Filters to Purolator Filters?

A. I don't know what he was interrogated about, sir. I know he was here.

Q. Do you know that he testified under oath to almost diametrically the opposite of what you have?

A. No, sir, I don't know—

Mr. Kelaher: Objection to that characterization of Mr. Osborn's testimony in the record.

Hearing Examiner Kolb: Overruled.

By Mr. Correa:

Q. Nobody told you, I take it, then, at any time up to this moment as you sit here, that your version and Mr. Osborn's version of what happened are not consistent with each other?

1543 A. No, sir.

Q. Sir, would you prefer to believe that Mr. Osborn testified under oath as to how this change came about and the circumstances, or what he told you not under oath in a casual conversation?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: I will sustain the objection. I don't think that is proper cross-examination.

Mr. Correa: I submit it is. The only reason it is improper—

Hearing Examiner Kolb: You had the witness excluded, so he knows nothing about what Mr. Osborn testified to.

Mr. Correa: I want to know what he was told, because this impeaching process is improper to begin with.

Hearing Examiner Kolb: You are asking the witness what he was told, and he said "nothing."

Mr. Correa: I am asking now, would he accept Mr. Osborn's sworn statement about the circumstances, or his unsworn statement.

Hearing Examiner Kolb: I will sustain the objection to that.

Mr. Correa: I submit it is improper.

By Mr. Correa:

Q. You stated that on this occasion Mr. Osborn told you that the offer had been made to him to replace
1544 the Walker oil filters he had, and as well to replace some Firestone equipment he had?

A. That is true.

Q. Oil filters, is that right?

A. That is true.

Q. I think you indicated that he had had those Firestone oil filters for a long time?

A. Yes, sir.

Q. Have you ever offered to replace them?

A. No, sir.

Mr. Correa: I have nothing further.

Mr. Thompson: No questions

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: That is all.

(The witness was excused.)

Mr. Kelaher: I can't ask the witness if he would have believed Mr. Collins under oath because Mr. Collins hasn't testified.

Mr. Examiner, they asked that Mr. Smith be held. Do they want to release Mr. Smith at this time?

Mr. Correa: I think in view of the fact that we have hearsay piled on hearsay, there is nothing we can accomplish by the further examination of Mr. Smith. He is not speaking of knowledge either. Apparently, none of these witnesses speak of knowledge. When they are so
1545 unfortunate to do so, counsel is quick to discredit them.

Mr. Kelaher: I think what you are trying to say is that Mr. Smith is excused, is that right?

Mr. Correa: He is excused.

Hearing Examiner Kolb: Are there any further witnesses?

Mr. Kelaher: Yes, we have, your Honor, in just a moment.

NICHOLAS GOVORUHK was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your full name and home address?

A. Nicholas Govoruhk. My home address is 2329 Harford Road, Baltimore 18.

Q. Are you connected with the AA Distributing Company?

A. I am.

Q. And the Baltimore Battery Company?

A. Yes, sir.

Q. What is the relationship of the Baltimore Battery Company to the AA Distributing Company?

A. The AA Distributing Company is a specialty in TBA lines of various products that I get from manufac-
1546 turers all over the country.

Q. When was the AA Distributing Company incorporated?

A. It is not incorporated. It is a company.

Q. Are you the sole owner of the company?

A. I am.

Q. Would you please state what the Baltimore Battery Company is, and what its relationship is to AA Distributing Company?

A. Baltimore Battery Company, I started that in 1951, in April. Do you want me to go into details?

Q. Are you the sole owner of the—

A. I am, of the Baltimore Battery Company.

Q. Is that a subsidiary related to the AA Distributing Company?

A. That's right.

Q. Do you make a distinction between the AA Distributing Company—

A. Yes, I do. I sell batteries practically only with Baltimore Battery Company.

Q. What products do you sell with the AA Distributing Company?

A. They number quite various.

Q. What type, what lines? Do you sell tires?

A. Well, I sell tires, I sell voltage regulators.

Q. Accessories?

A. A number of things. If you want me to go into detail.

1547 Q. Do you have a line of accessories which are sold by AA Distributing Company?

A. Yes, sir.

Q. So that you sell tires and accessories through AA Distributing Company presently, and you sell batteries through Baltimore Battery Company?

A. That's right.

Mr. Kelaher: Your Honor, I think it should be noted that when I refer to "your company" it means referring to specific products as defined here.

By Mr. Kelaher:

Q. Mr. Govoruhk, what line of TBA do you sell?

A. Presently?

Q. Yes, presently.

A. What line of TBA?

Q. Yes.

A. I sell batteries—

Mr. Correa: I object to the question as being outside the scope of the issues of this proceeding.

Mr. Kelaher: I am merely trying to establish at this time what this man's business is.

Hearing Examiner Kolb: Are you withdrawing your objection?

Mr. Correa: Yes, I will withdraw the objection since it is preliminary.

1548 By Mr. Kelaher:

Q. Would you state the principal TBA products sold by your company, the brands?

A. The brands?

Q. Yes.

A. Goodyear, Bowers.

Q. And give the products too.

A. Batteries—Goodyear, I would say about six months from this month I could have sold and have sold a great number of TBA products listed in the Goodyear catalogue.

Q. Are you a Goodyear distributor?

Goodyear TBA distributor?

A. I could at that time have bought anything that they sold at distributor's price.

Q. What time are you referring to?

A. In 1956.

Q. Let's go back and start in 1951 with Baltimore Battery Company. Beginning with 1951, what products did you sell, referring to TBA products?

A. I first started my business in '51 and I got in contact with Goodyear, and they sent a salesman down on Maderia Street at the time, in '51. I think that the gentleman's name was Bucker, who was my salesman at that time.

He was a representative of Goodyear, which is designated as Goodyear Service Store. That is where I was buying my products at that time.

1549 Q. So, that if I understand you correctly, you were buying Goodyear TBA at that time and reselling it, is that correct?

A. Yes, sir.

Q. To what class of accounts did you re-sell Goodyear TBA?

A. I tried to sell it to service stations, trucking concerns, taxicabs, each and everybody that would buy it.

Q. You mentioned Bowers Batteries. When did you begin to sell Bowers Batteries?

A. I practically sold them just as long as I have been in business.

Q. What is your sales territory?

A. I have no specific sales territory. I go as far as Lynchburg, Virginia; Washington.

Q. Do you sell in the Metropolitan Baltimore area?

A. Yes, sir.

Q. And are you the outside salesman for your company?

A. I am one of them.

Q. How many do you have?

A. At one time I had two.

Q. How many trucks or delivery cars do you have?

A. At present?

Q. Presently.

A. I have one car and one truck.

Q. And prior to 1957 did you ever have any more?

A. I had two trucks and two cars.

1550 Q. When was that?

A. In 19—the first part of 1956 to the—I will say the whole year practically of 1956.

Q. Up until that time?

A. Yes, sir.

Q. Do you sell any other brand of batteries besides Goodyear or Bowers?

A. Yes. At the one time I sold the Allied Battery, which is a subsidiary of Price Battery Manufacturing Company.

Q. Is that in Hamburg, Pennsylvania?

A. I think it is.

Q. You stated that you sold Goodyear TBA products since 1951, is that correct?

A. Yes, sir.

Q. Do you compete with other sellers of TBA products in the Metropolitan Baltimore area or other areas, in your sales area?

A. I compete with everybody that is out there.

Q. Could you give us the names of some of the companies with whom you compete in the Metropolitan Baltimore area?

A. You mean service stations or general trade?

Q. All jobbers.

A. R. J. Loock, Hunt, Baltimore Gas Light, Bowers Battery Company, Goodyear.

Q. Do you compete with Brooks-Huff Company?

A. Yes, sir.

1551 Q. Do you compete with Stuart-Pressley?

A. Yes, sir.

Q. Do you compete with Goodyear's own service stores or district stores?

A. Both of them.

Q. Are there Atlantic Service Stations in your sales district?

A. Yes, sir.

Q. Are there Sinclair Service Stations in your sales territory?

A. Yes, sir.

Q. And are there Shell Service Stations in your sales territory?

A. Yes, sir.

Q. Do you solicit it—

Mr. Thompson: Mr. Kelaher, I don't think we have had the territory defined, have we?

Hearing Examiner Kolb: Yes, right at the start he gave it.

Mr. Thompson: I think he said he sold in Virginia, but I don't think it has been defined.

Mr. Kelaher: He said as far south as Lynchburg, Virginia.

By Mr. Kelaher:

Q. When were you first given a Goodyear TBA distributorship?

A. You say TBA distributorship?

Q. Well, a distributorship. Explain what type it is.

A. That is the latter part, which is in December, 1955.

1552 Mr. Correa: May the record show that the witness refreshed his recollection by looking at some papers which he holds in his hands.

By Mr. Kelaher:

Q. In December, 1955, what type of distributorship were you given by Goodyear?

A. I was handed—again, I will refer back to a couple of books here; one is a Goodyear catalogue, which can be gotten in any counter of a Goodyear service store, Mount Royal and Oliver Streets, which is the address listed on this book.

Also, to use the right terms designated here, this says "distributors price" that the service stations would buy the TBA products at the price.

Mr. Correa: May I have the question and answer read back please.

(The reporter read the question and answer.)

Hearing Examiner Kolb: I don't believe the witness finished the answer, had he?

Mr. Kelaher: I don't believe so.

The Witness: There is another book, and how many underneath that, I don't know, which at the time which I got it, in 1956, was a white book that I could buy the TBA products, of which I could re-sell it and make a profit in the yellow book, the distributor's price.

By Mr. Kelaher:

1553 Q. With whom did you talk at Goodyear in connection with your Goodyear distributorship?

A. Bill Allen, which was at that time the manager of Goodyear's service store on Mount Royal and Oliver.

Q. Would you fix that time again, please?

A. That was the latter part of December of 1955.

Q. Do you recall the conversation you had with Mr. Allen at that time?

A. Yes, sir.

Q. Would you please state the substance of that?

A. I specifically mentioned the fact of going into Betho-

line, Sinclair and Shell stations and selling TBA products, especially batteries. He actually did tell me that I could sell them as long as the upper brackets wouldn't get wind of it.

1554 Q. As I understand it, Betholine and Sinclair are one and the same?

A. Yes, sir, at Light and Baltimore Streets.

Mr. Kelaher: Your Honor, Betholine is a brand name used by Sinclair.

Hearing Examiner Kolb: There is no argument. Go ahead.

By Mr. Kelaher:

Q. Thereafter did you attempt to sell—

Mr. Thompson: I think you ought to develop on the record what it is rather than comment on it.

By Mr. Kelaher:

Q. After your conversation with Mr. Allen did you solicit business from Shell or Sinclair service stations?

A. Yes, sir.

Q. And what was your experience?

A. I have here—again referring back to two pages—a suggested retail price list of batteries, by which, taking for example, Double Eagle dry-proof battery, retail suggested for $29.95, code, which is the price generally distributed to the service stations, they can buy that battery for $22.41 wet. Dry-charged it is $21.09, of which a majority of the Shell service stations, if they were handling Goodyear products and not Firestone, had that price list.

1555 Practically all of the Bethaline-Sinclair service stations are mailed those, or handed those by their representatives. I got the form number FB-305, of which I can sell that same battery to the service stations for $19.17, under-pricing my competitors.

Q. And who are your competitors in the Shell and Sinclair markets in the metropolitan Baltimore area.

A. Stu-Pressley, on Washington Boulevard; Brooks-Huff, which I think is out on Reisterstown Road; Goodyear Service Store, Mt. Royal and Oliver; and Goodyear District, Mt. Royal and Oliver.

Q. And what was your experience in—I take it from what you said that you could compete price-wise with Brooks-Huff and Stuart-Pressley, is that right?

A. Yes, sir.

Q. What was your experience in soliciting business from Shell or Sinclair stations?

A. Shortly after a circulation of these special—

Mr. Correa: May I ask at this time—if you will excuse my interrupting—the witness keeps referring in his answer to "these". I think it would be well to have them marked for identification and the witness could say when he waves the yellow one around or blue one what it is. I am afraid the record will be rather meaningless.

Mr. Kelaher: I ask that the document which I hand the reporter be marked as Commission Exhibit 331. This is a Goodyear battery price list B-304 (11-56), suggested 1556 retail prices, wet charge or dry charge, consisting of a front and prices also being listed on the back.

As Commission Exhibit 332, Goodyear batteries price list B-308 (11-56) effective November 12, 1956, front and back.

As Commission Exhibit 333, entitled "Goodyear battery policy and sales program," effective October 31, 1951, B-166 (10-51), consisting of four pages.

(The documents referred to were marked Commission Exhibits 331, 332, and 333 for identification.)

By Mr. Kelaher:

Q. I will withdraw the last question and ask this: Based on what you have said, what has been your experi-

ence since you began selling TBA in 1951 with respect to the solicitation of business from Shell, Sinclair, and Atlantic service stations?

A. I would say that I have been blocked by various ways of salesmen from Bethaline-Sinclair, specifically mentioning—I I don't know his exact name, but he is—

Q. Is he present here today?

A. No, not at this instant he is not. He had a territory back in 195—I think it was 1955—on Franklin and Fulton Streets. The service station was then operated by Joseph Rock, of which I sold him Goodyear batteries, Allied batteries. I displayed an Allied decal on his door, and Allied batteries across his window.

1557 The next visit I had after displaying these banners they were down off the windows and the salesman from Bethaline-Sinclair was there and he specifically said that he does not want any other identification other than Goodyear products.

Q. Did you attend a Sinclair dealer meeting in or about 1952?

A. That was one of my first attendances of Goodyear meetings. That one specifically I would say is a Goodyear meeting. They have service station meetings, also. That was held at the Lord Baltimore Hotel on Baltimore Street. At that particular time I found out that I could underprice my competitors and I tried to make a suggestion of seeing if I could sell service stations batteries. And at that particular time Mr. Harry Weller was present at the table, and Bucker was my salesman from Goodyear Service Store, and the invitation or the suggestion I made was declined and then told me that they had Brooks-Huff and Stu-Pressley handling that.

Q. Handling what?

A. Their batteries and the TBA line.

Q. And sales to which service stations?

A. Bethaline, Sinclair, and Shell.

Q. Thereafter did you solicit TBA business from Sinclair and Shell stations?

A. Yes, sir.

Q. What was your experience thereafter?

1558 A. The people that I sold Goodyear products to—Bethaline, Sinclair, and Shell—when I bring the products, Goodyear products to them, if there is a salesman of either Goodyear or the oil companies, they will wave me on until it is clear for me to come in.

I could mention a few that that was done to.

Q. Would you mention those, please?

A. May I look at my records to tell you?

Q. Yes, go right ahead.

A. Tucker's Service station, 1601 West Lafayette Avenue. If I may say—

Q. Is that in Baltimore, Maryland?

A. Yes, sir. If I may say, these people that I am mentioning have no knowledge that I am mentioning their names.

There is a service station at Gay and Patterson, Park Avenue, which is a Betholine-Sinclair Service Station. If you want me to give the ticket numbers of the products that I sold them—

Q. That won't be necessary.

Mr. Correa: That might conceivably identify the documents from which he is reading.

Hearing Examiner Kolb: You might find out whether he is selling the products involved here?

Mr. Kelaher: I think that has been established.

By Mr. Kelaher:

Q. Weren't you soliciting TBA business from these stations?

1559 A. Well, I can say what is on this paper, which is the invoice No. 2373, 7/4/56. Quantity: one: part

number A-217L. Article: Goodyear wet charge. Retail price: $25.35. I sold it to him for $17.12.

Hearing Examiner Kolb: That is a battery?

The Witness: Yes, sir.

Mr. Correa: I assume the witness is reading from invoices reflecting sales he made?

The Witness: That is right. Betholine, Sinclair, and Shell service stations.

Mr. Kelaher: As I understand it he is giving instances of names of dealers who have waved him on, and he has returned, is that right?

Mr. Correa: Specifically, he is reading from invoices of sales to these stations. Isn't that correct?

Mr. Kelaher: That is correct.

* * * * * *

Mr. Correa: I think that any documents from which the witness reads ought to be marked for identification so that—

1560 Hearing Examiner Kolb: He is using them as a record to give the names of the stations which he called on. You will have an opportunity to see them. He will give the names of them.

Mr. Correa: With great respect I still think the normal rule is as I have stated it.

Hearing Examiner Kolb: There is no use in cluttering up the record with papers. We have enough of them now.

Mr. Correa: I am not suggesting that they be received in evidence, I just ask that they be marked for identification.

By Mr. Kelaher:

Q. Will you state the names of the dealers you called on?

A. Zeigler's Betholine station, 36th Street, which he is

one that actually waved me on when the representatives were there.

Mr. Correa: Is there a date on the invoice?

The Witness: Yes, sir; 7/30/56.

Mr. Correa: That is the vice exactly. I move to strike that testimony, your Honor. It is outside the issues of this case. Counsel keeps doing this. I don't know why, at 20 minutes of six in the evening; when we have all had a long day we have to have stuff like this. It is completely outside the issues of this case. It is a battery sale.

By Mr. Kelaher:

Q. Did you have any similar occurrence, that is, 1561 waving on by Sinclair dealers prior to January 1, 1956?

A. Yes, sir.

Q. After January 1, 1956, were you waved on and later were able to sell accessories—not tires or batteries but accessories?

A. Yes, sir. To service stations.

Q. And Sinclair service stations?

A. Yes, sir.

Q. Does that apply also to any other service stations?

A. Atlantic service stations, Shell, Amoco, Esso, all of them.

Mr. Thompson: I move that the word "Atlantic" be stricken from the answer.

Mr. Kelaher: I think that Atlantic is one of the few that should be included.

Mr. Thompson: That is a serious motion. There is absolutely no foundation for that statement. Under all prior rulings of your Honor, if he is going to mention Atlantic stations, he must name names, places, dates, not just general "Atlantic stations" as he said.

By Mr. Kelaher:

Q. Do you have the names of any Atlantic stations or can you recall the names of any Atlantic stations?

Mr. Thompson: Wait a minute. I have an objection.

Hearing Examiner Kolb: That is a preliminary 1562 question.

By Mr. Kelaher:

Q. Do you recall the names of the Atlantic dealers who waved you on? Would you be in a position to obtain those names from your records?

A. I can actually clearly say that to my knowledge there are no Atlantic service stations that actually waved me on.

Q. There are none? What was your prior statement?

A. I was referring—you asked me if I remember correctly, to whom I was selling my TBA products, and that is why I mentioned Atlantic and Shell and all the service stations.

* * * * *

1563 By Mr. Kelaher:

Q. Have you had any discussions with Mr. Jones, the district manager of Goodyear Tire & Rubber Company in Baltimore, concerning the sale of Goodyear TBA to Sinclair stations?

A. Yes, sir.

Q. Would you state approximately when that conversation took place and what the substance of it was?

A. Precisely the year—you would have to tell me that; I think it has been about three years ago—I was approached, or a gentleman came into my place; which he identified himself to be a fair trades commissioner—I don't know his name.

Q. Federal Trade? I am asking you about a con-
1564 versation with Mr. Jones. You can answer Yes or No, and if so state what the conversation was.

A. I remember that conversation, not the exact date I couldn't give you, but—

Q. I will show you a memorandum and ask you if this refreshes your recollection?

Mr. Correa: I submit, your Honor, if the witness would put that down, I think that we are entitled to have the witness' recollection exhausted first before any refreshment is engaged in.

Hearing Examiner Kolb: I thought it had been exhausted.

Mr. Correa: Read the last answer.

(Answer read.)

Mr. Correa: He said he remembers the conversation. Let's have his recollection.

By Mr. Kelaher:

Q. Let's have the substance of the conversation. You may use any memo you care to to refresh your recollection, if necessary.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: Let's adjourn until 10:00 o'clock tomorrow morning.

Mr. Correa: Mr. Examiner, may I ask an instruc-
1565 tion to the witness that he bring back with him tomorrow the same papers which he had on the table here today, including specifically those invoices?

Hearing Examiner Kolb: You will bring those back tomorrow.

The Witness: Yes, sir.

1567 *Direct Examination (Resumed).*

Mr. Kelaher: Your Honor, at this time I would like to offer Commission's Exhibits 331, 332, and 333 into evidence.

Hearing Examiner Kolb: Is there any objection?

Mr. Correa: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Commission's Exhibits 331, 332, and 333.

(Whereupon, the documents referred to, heretofore marked COMMISSION'S EXHIBITS 331, 332, and 333 for identification, were received in evidence.)

Mr. Thompson: The exhibits, of course, are taken subject to my objection and motion to strike?

Hearing Examiner Kolb: Subject to motion to strike by Atlantic.

By Mr. Kelaher:

Q. Mr. Govoruhk, yesterday afternoon I asked you several questions about a conversation with Mr. Jones,
1568 of Goodyear. You stated at Page 1564 of the transcript, "I remember that conversation; not the exact date I couldn't give you, but—"

At that point I handed you a memorandum and asked you if that refreshed your recollection with respect—

Mr. Correa: At that point, if you will just read on, counsel, I objected on the ground, "I think we are entitled to have the witness' recollection exhausted first before any refreshment is engaged in."

And then the Examiner said, "I thought it had been exhausted."

Whereupon, I directed attention to the last answer, the last previous answer of the witness which begins, "I remember that conversation . . ."

I still stand on that position.

Mr. Kelaher: I understood the Examiner to rule that he could have his recollection refreshed by looking at this memorandum with respect to the date.

Mr. Correa: If you infer that from what I just read—

Hearing Examiner Kolb: I thought your question was on the time of the conversation, not the conversation itself.

Mr. Kelaher: I am talking about the time of the conversation.

Mr. Correa: I submit, if your Honor please, on this kind of thing, that we ought to have the witness' recollection as to the conversation refreshed. I don't know
1569 what this paper is that counsel is so anxious to prod the witness with. I do think I would like to have this man's testimony from his recollection, and then his recollection refreshed, if the need therefor appears.

Hearing Examiner Kolb: I agree with you so far as the conversation itself is concerned. We are concerned now only with the time of the conversation.

Mr. Correa: May I see the paper that it is proposed to exhibit to the witness before it is exhibited to him?

Mr. Kelaher: I think I have the right to show it to the witness, haven't I, your Honor?

Mr. Mason: Can't we see it first?

Hearing Examiner Kolb: He said he remembers the conversation.

Mr. Kelaher: But not the date. I am asking him to refresh his recollection as to the date.

(The document was handed to Mr. Correa.)

Mr. Correa: It is quite obvious that the purpose of this is to prompt the witness as to the conversation. I have stated my position. I assume your Honor will rule.

Hearing Examiner Kolb: Are you referring to the conversation—the pencil notation here at the bottom—the pencil notation?

Mr. Kelaher: This is the conversation (indicating). I am referring to this down here, yes.

1570 Hearing Examiner Kolb: Turn it over to him and show him that, and not the contents of the letter.

By Mr. Kelaher:

Q. Does that memorandum refresh your recollection as to the date of your conversation with Mr. Jones (handing to witness)?

A. Yes, sir.

Q. What is that date?

A. April 4, 1956.

Mr. Correa: May I ask that the document just exhibited to the witness be marked for identification at this time?

(Whereupon, the document referred to was marked Commission's Exhibit 334 for identification.)

By Mr. Kelaher:

Q. Mr. Govoruhk, would you please state the substance of the conversation in question?

A. I was at the Bowers Battery Company at Battery Avenue, after which I made a phone call to Goodyear, Mount Royal Avenue, and asked to talk to the district manager of Goodyear.

The secretary of Bowers Battery Company—her name is Hilda Zadlick—was on an extension taking notes—

Mr. Correa: Just a minute.

Mr. Kelaher: Your Honor, I think the witness should be permitted to answer. If they are going to keep heckling him, I don't think we are going to get very far.

Mr. Correa: Of course, counsel just happens to be

1571 tendering illegal evidence under the case of the United States versus Fallon and the United States versus Polakofs, in the Second Circuit, as counsel is doubtless aware, unless it is properly qualified.

Your Honor appreciates that under the holding of those cases this is a violation of the Communications Act, unless it is shown that the other party to the conversation was aware that the conversation was being intercepted.

Hearing Examiner Kolb: Is this man testifying as to a conversation which was listened to over the phone or is he testifying to the conversation he had?

Mr. Kelaher: As Mr. Correa knows, he is testifying to a direct conversation he had with Mr. Jones. He mentioned that someone was listening on an extension.

But the cases cited by Mr. Correa are not in point because we are not putting in a wire-tapping transcription of a conversation. This is this witness' conversation.

Hearing Examiner Kolb: Okay, proceed.

Mr. Correa: In the case cited, however, the party to the conversation was held not entitled to testify to it because of the illegality.

Mr. Kelaher: We can argue the legality later.

Hearing Examiner Kolb: Proceed.

By Mr. Kelaher:

Q. Will you go right ahead, Mr. Govoruhk?

1572 A. I called up Goodyear, and a gentleman who identified himself was Mr. Jones, district manager of Goodyear. I asked him and told him about the opposition that I received from going into the Betholine and Sinclair stations in selling batteries and asked him if there was any way that I could overcome that opposition.

He proceeded in telling me that Brooks-Huff was an established point of distribution for Goodyear products, and they have to protect him by all means at their power of other opposition coming into their territory, of which that letter that I recognize my signature of that date, Mrs. Zadlick typed the conversation with her notes that she took, and I signed that letter.

Mr. Correa: If your Honor please, I move to strike the witness' answer because the witness says this conversation took place on April 4, 1956, and that it related to the difficulty the witness alleges he was having going in, as he puts it, to Sinclair stations.

Your Honor will recall that at that time the only sales commission plan involving Sinclair applied only to accessories.

So unless this conversation and the difficulty and the whole subject is made responsive to the issues of this case —assuming it can be so made—I move to strike it.

Hearing Examiner Kolb: Is that a preliminary 1573 question in which he specified the products involved?

Mr. Kelaher: The products involved were Goodyear TBA products.

I think they are drawing a pretty fine line if we are trying to show control and influence with respect to accessories, and not with respect to tires and batteries, in a conversation of this type. Here is a Goodyear TBA distributor trying to get into the market.

Mr. Correa: If your Honor please, I don't understand this talk about a fine line. Either the T and the B—the tires and batteries—were under the plan or they weren't.

Counsel has conceded, as indeed he must concede, being the honest man that he is, that the tires and batteries were not under the plan at this time or at any time thereafter.

How can we have testimony about something that is not under the plan as a means of bolstering a case or attempted case with respect to things that are covered with the plan is something which completely eludes me.

Mr. Kelaher: I think it should be recalled that these Sinclair stations were under the plan until January 1, 1956, and this witness has testified that he has been unable to get in during all of that period.

So it doesn't seem proper to me that he should be re-

stricted or his answer should be restricted when a conversation took place four months after they decided
1574 to handle accessories only under the sales commission plan. The complaint alleges that the oil companies controlled and influenced their dealers.

Hearing Examiner Kolb: The objection will be overruled. Let's proceed.

Mr. Correa: Do I take it, your Honor, that we are going into evidence relating—

Hearing Examiner Kolb: You say after a certain period in 1956 only accessories were involved.

Mr. Correa: That is conceded, is it not?

Hearing Examiner Kolb: That is conceded. It has been in the record three or four times yesterday. We are not concerned with that.

If this man tries to sell tires, batteries, and accessories and testifies to that, you can't stop him because it happens to be tires and batteries involved with accessories.

Mr. Correa: The testimony, insofar as it relates to tires, batteries, is immaterial, irrelevant, and prejudicial, if I may say so.

Hearing Examiner Kolb: It has nothing to do with this case. I don't think so.

Mr. Correa: Furthermore, there has been no evidence that he sold any accessories.

Hearing Examiner Kolb: I don't know. We have had so many objections, I don't know what this witness
1575 has testified to.

Mr. Correa: If your Honor please, I feel obligated to discharge my duty to my client, whether that requires many objections or few. I suspect if counsel would ask his questions—

Hearing Examiner Kolb: I agree with you Mr. Correa, but I also think you should make your objections after

the witness has testified or before, and not during his testimony.

Mr. Correa: I think I have avoided that pretty much, but I shall endeavor to continue to do so.

By Mr. Kelaher:

Q. I would like to ask, at Page 1557 of the transcript, a name you gave yesterday, it quotes you as saying that a "Mr. Hooker was my salesman." I believe you said 'Bucher," is that correct?

A. That is correct.

Q. Is it B-u-c-h-e-r?

A. I think it is. The gentleman is right down there.

Mr. Kelaher: That is all, your Honor.

Mr. Correa: If your Honor please, before we commence cross-examination, I should like to have the opportunity of inspecting the papers which the witness testified from yesterday, additional to the price lists which have been marked and received in evidence.

Hearing Examiner Kolb: All right.

1576 Mr. Correa: Could we have a short recess for that purpose?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Before there is any cross-examination of this witness, may I call your attention to the fact that his testimony was received subject to Atlantic's objection, and I now move to strike the testimony.

The testimony is obviously unrelated to any issue or charge in the complaint against Atlantic Refining Company. I assume your Honor doesn't wish to rule upon that motion at the present time, and that I may press it at a later date.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Atlantic.

Mr. Correa: If your Honor please, I should like, before commencing any cross-examination of this witness, to have the record show the following, and that I make formally to your Honor the following request:

This witness testified yesterday and in so doing had before him a bundle of small oblong papers, apparently invoices which he keeps thumbing through and turning over as he was testifying and examining as he was testifying.

1577 Before we recessed and at the close of the witness' direct testimony I requested a recess so as to enable me to examine those papers in preparing for the cross-examination of this witness.

Your Honor will recall that this witness is one of these so-called "mystery" witnesses and consequently we have had most limited opportunity, if it can be called that at all, to prepare for cross-examination. We were nevertheless prepared in the interests of expediting this proceeding to go ahead.

Now, it appeared in the recess that the witness declines to turn these papers over to us for examination, saying in substance—and I think more or less exactly, and he can correct me if I misquote him—"You tell me which ones you want and I will give them to you." The answer to that is easy: I want them all.

If your Honor please, before going further on this matter so that we may be perfectly clear that we are not just stumbling over some technicality, I take it that there is no necessity for me to ask your Honor to issue a subpoena duces tecum, returnable forthwith to this witness calling for the production of these papers.

Hearing Examiner Kolb: That is not necessary.

Mr. Correa: I take it your Honor's direction to him is

the substance if not technically equivalent to that.
1578 And I submit, if your Honor please, that we are entitled to have this. We are entitled to have adequate opportunity for cross-examination as that is recognized in courts of the United States. That is an indispensable element of the right to a fair trial, of issues of importance to my client, and I submit further, if your Honor please, that the vaunted liberality of procedure in proceedings of this character—and we have and, I submit, with great respect, some rather extreme examples of it in terms of the type of testimony received—should be a two-way street.

It should not just be a one-way street which continues when counsel supporting the complaint wants to do something or examine something, but then shut down in the most narrow technicality when counsel for the respondent wishes to obtain production or inspection of papers essential to a proper cross-examination.

I respectfully move, your Honor, to direct the witness to hand over the papers for examination and that we have again a short recess to enable us to complete that examination which I do not contemplate is a lengthy affair.

1579 Hearing Examiner Kolb: The testimony of the witness was with reference to those stations or operators who had waved him on when he came in to deliver or to take an order. He went over his invoices to locate the ones who had done that. He testified as to the Tucker Service Station, a service station at Gay and Patterson, and Zeigler's Betholine Station at 36th Street. Those are the only three he testified to as having waved him on when he came to the stations. As to those, I will direct the witness to produce and give counsel for examination the invoices or reference to Tucker Service Station, Betholine Sinclair Station at Gay and Patterson, and the Zeigler's Betholine Station on 36th Street.

Mr. Correa: May I respectfully suggest to your Honor that precisely we are interested in the ones that didn't wave him on, and in establishing in the record what they are.

Hearing Examiner Kolb: I don't think you have a right to go over every document he has in his possession just because he testifies to three. You are entitled to see the ones testified to and nothing more and nothing less. That is my ruling, so we will go ahead from there if you want to look at them.

Mr. Correa: I must add to the record so there will be absolutely no doubt of my record here. I conceive this to be an invasion of my client's constitutional rights to a fair trial of these issues, and that we are hampered
1580 in cross-examination in a way which prevents us from conducting effective cross-examination or any cross-examination—

Hearing Examiner Kolb: You have made that speech before; so, let's go ahead.

Mr. Correa: Any cross-examination we conduct is made without waiving that objection.

Hearing Examiner Kolb: Do you want to see the documents which I have directed?

Mr. Correa: Yes. I would like to see whatever we can see. I would like to see more.

May I at this point formally request your Honor to issue a subpoena duces tecum to the witness for his invoice covering the period 1954 to date.

Hearing Examiner Kolb: No. I have required the witness to produce everything that is necessary on cross-examination at this time.

Mr. Correa: I am requesting—

Hearing Examiner Kolb: If you want to call the witness as your witness and make him your witness and ask

for a subpoena in that connection, I will be very glad to issue a subpoena.

Mr. Correa: I am asking for a subpoena in connection with cross-examination.

Hearing Examiner Kolb: No. I have taken care of cross-examination.

1581 *Cross-Examination by Mr. Correa.*

Q. Mr. Witness, would you be good enough to state for the record what documents you have before you?

Mr. Kelaher: Objection, your Honor.

Mr. Correa: Am I not to be permitted—

Hearing Examiner Kolb: Let me hear the question.

(Question read.)

Hearing Examiner Kolb: Objection overruled.

The Witness: I may answer?

Hearing Examiner Kolb: Yes.

The Witness: These documents consist of invoices to various places that I sold my TBA. They consist of invoices of products that I have bought from Goodyear. They consist of tires that I bought from Lee Tire and Rubber; batteries that I bought from Allied Battery Corporation.

By Mr. Correa:

Q. When you say tires, do you mean invoices representing tire purchases?

A. The actual invoices from the companies themselves and my own records. And I have invoices here, or literature, of the TBA that I sell myself. It consists of trucking concerns. It is quite a lot. I mean I have a whole file of them if you want them at home.

Mr. Kelaher: He is just asking what you have 1582 in front of you.

By Mr. Correa:

Q. I am just asking you with respect to the documents you have lying on the table in front of you, excluding the price list and catalogues.

A. Do you want the names or the general—

Q. I think you have given me what I wanted. Now, I want to ask you one or two other questions for identification.

One, how many separate pieces of paper are there?

A. Do you want me to count them?

Q. Yes, if you would be so good.

A. The invoices that is?

Q. Yes.

Mr. Kelaher: Your Honor, I object to this line of questioning. It is quite obvious that counsel is attempting to circumvent your ruling. If he wants to call this witness as his own witness, at the proper time, then, he should do so. I don't think he should circumvent your ruling by going through this procedure.

Hearing Examiner Kolb: If he wants to show I am wrong, let him show it.

Mr. Correa: I want at least to lay a proper factual foundation.

Hearing Examiner Kolb: I am letting you do it.

The Witness: You want me to count each one of them?

1583 By Mr. Correa:

Q. If you would be so good.

A. Some of them are duplicates. Seventy.

Q. Seventy pieces of paper. And can you tell me, sir, what period of time they cover?

A. Roughly?

Q. As accurately as you can be.

A. They are all mixed up.

Q. They are not in chronological order, I take it?

A. No.

Q. Perhaps, if you could run through them and tell me what years?

A. 11-3—1954; 12-10—'56; 1-10—'56; 12-10—'56; 12-8—'55. In my briefcase I have some actually from last week.

Q. I am not asking about the ones in your briefcase; although I may say I would be glad to have them, too. I take it the ruling would extend to them and this sample is sufficient for my purposes of the record.

Now, sir, one further question with respect to these papers. You have told us that they reflect purchases—among other things some of them reflect purchases by you of tires, batteries, and accessories from various suppliers. May I now ask you, do they also reflect sales to service stations of Sinclair?

A. That is what I was fumbling through yesterday 1584 and pulling out the ones that were referring to Sinclair stations. I was excluding the others.

Q. These that you produced—

A. There are some of them. There are more that I haven't brought out. I just brought some out.

Mr. Kelaher: I think you ought to limit the—

Hearing Examiner Kolb: He is talking about the ones on the table.

Mr. Kelaher: He is talking about these right here and no others, as I understand the question. Is that right?

Mr. Correa: I appreciate your assisting the witness, counsel.

The Witness: There are a few that I have at the present time here. I think they are all of them.

By Mr. Correa:

Q. In this batch we are engaged in identifying, are there any other invoices which represent sales to Sinclair service stations?

A. Not to my knowledge.

Q. Are there any invoices which represent sales to Shell service stations?

A. Not in this batch, there isn't.

Q. Are there any invoices which represent sales to Atlantic service stations?

A. No, not here. Not in this.

Q. There seems to be a little confusion at our 1585 table. Do I infer, sir, that all of these invoices that represent—in the group before you that represent sales to service stations, represent sales to Sinclair service stations?

A. No, sir.

Q. [redacted]e these three which you have handed me—which for identification purposes I will indicate are dated respectively, 7/30/56, 7/4/56—

The Witness: I work on the fourth of July.

Q. (Continuing.) —7/4/56, and 7/6/56—are they all of the invoices representing sales to Sinclair service stations which were in the group you had before you when you testified yesterday?

A. That is the ones that waved me on in this group, yes, sir.

Q. That isn't an answer to my question.

Read the question.

(Question read.)

A. Yes, sir.

Mr. Correa: I shall ask that these three invoices be marked for identification at this time.

Hearing Examiner Kolb: As Commission's Exhibits?

Mr. Kelaher: I would prefer to have them in as Com-

mission Exhibits if they are going in as this witness's testimony.

Hearing Examiner Kolb: In order to keep them together, do you have any objection to that?

1586 Mr. Correa: I am just asking at this time that they be marked for identification. I don't care how they are marked, just so they are identified.

Hearing Examiner Kolb: They will be marked Commission Exhibits 335, 336, and 337.

(Whereupon, the documents referred to were marked Commission Exhibits 335, 336, and 337 for identification.)

By Mr. Correa:

Q. Now, sir, you have testified, as I recall it, that you are in the business of distributing tires, batteries, and accessories in a territory which you told us extends as far south as Lynchburgh, Virginia?

A. Yes, sir.

Q. What are the other boundaries of that territory, sir?

A. Well, I go all over Maryland. Lynchburgh, Virginia, I call them dropping off points. I don't specifically know what territory you are looking for.

Q. I am looking for the territory in which you distribute, according to your testimony, tires, batteries, and accessories.

A. Virginia, Maryland, Washington.

Q. By Washington, you mean the District of Columbia?

A. Yes, sir.

Q. Is that it?

A. That is practically it.

Q. Is that a fair definition of it?

1587 A. Yes.

Q. Are you in any other business?

A. What are you talking about, any other business?

Q. In addition to your business of distributing tires, batteries and accessories, have you any other business that you carry on simultaneously with that business?

A. I buy automobiles and sell them, too.

Q. Any other business?

A. It depends on the circumstances. I will buy anything that I can sell for a profit, if it is legal.

Q. When you say that you buy automobiles and sell them, I take it you buy second-hand automobiles and re-sell them in the second hand market?

A. Yes, sir, and junk them too.

Q. And sometimes sell them for junk?

A. Yes.

Q. And you say, in general, you would buy any kind of merchandise which you can re-sell at a profit?

A. Even fix automobiles.

Q. You also do automobile repair work?

A. Yes, sir.

Q. Is there any other aspect of your business which you haven't mentioned?

A. I was in the real estate business, if you want to know. And I can still sell real estate if I have the opportunity.

1588 Q. Let me confine it timewise to 1954, '55 and '56, unless maybe the real estate business was in those years?

A. No. That practically covers the scope of my field.

Q. Don't you repair batteries?

A. Yes, sir. You said batteries.

Q. I said distribution of tires, batteries and accessories. I am sorry if I misled you. But you do repair batteries, don't you?

A. Yes, sir.

Q. Fixing your attention, if you would be so good, on the years 1954, '55, and '56, and '57 up to date, how have you allocated your time during those years between these various activities in which you have engaged?

A. That is a pretty lengthy thing to say. Just like

yesterday I testified and I worked until five o'clock this morning fixing my batteries.

Q. We can exclude testifying, I think, unless you do that on some regular basis, too.

A. I go out in the morning and I deliver my batteries and I make sales, take orders on the telephone, I send ~~post~~ cast cards out for the various items that I have, some that I am trying to get for import from overseas now. I forgot to tell you that.

Q. You are also an importer?

A. I hope to be.

Q. That, I take it, is in prospect, so that need not concern us here.

1589 A. There is money involved already. I don't know what you term that to be.

Q. I wish you all possible success in making money in the import or any other business, Mr. Witness. But what I am really trying to get at is the business you have testified about on direct, your tire, battery, and accessory distribution during these years that I have mentioned, and specifically what I am trying to find out is how much time you had available to turn to that business in view of your other activities?

A. My wife tells me that she is going to divorce me because she only sees me now and then. Sometimes I only get two or three hours of sleep for three or four days.

Q. Probably you wife would be a better witness to answer that?

A. Probably would be, sir. I sleep downstairs with my business most of the time.

Q. How extensive would your battery repair business be?

A. Do you mean percentagewise?

Q. Yes. Can you give me an estimate, say out of a

nomal work week, which I gather in your case is a great many hours, what—

A. Seventy-five percent.

Q. —time is engaged in the battery business?

A. Seventy-five percent.

Q. What percentage of your time would be engaged
1590 in the second hand automobile business.

A. That—now, you have to take that in the course of three years. I have only bought about three automobiles in three years.

Q. Then, that we could say probably would be fair to say was sporadic and timewise, not a very important part of your business?

A. That's right.

Q. Would that go also for your general purchasing and reselling of what we might call general merchandise, for lack of a better name?

A. No, sir.

Q. Sir?

A. I don't quite understand your point, but I don't think you are right. But if you rephrase it—

Q. I have no point sir. I am just trying to get some information as to the allocation of your time.

A. I said 25 percent of it is devoted to TBA.

Q. Then, we have 25 percent devoted to TBA, and 75 percent to repairing batteries?

A. That's right.

Q. And the excess beyond a hundred percent is devoted to these other activities?

A. If I were another man. I wish I were.

Q. You say you handle tires, batteries, and accessories?

1591 A. Yes, sir.

Q. Of your TBA operations, what percentage is accounted for by batteries?

A. If you want my auditor, he can tell you better than that. That is his department, not mine.

Q. Unfortunately, we don't have him here, or his records, and apparently we are not very successful in getting access to your records; so, will you give us your best estimation of that?

A. I wouldn't even venture to say. That is not my department. That is my wife's and my auditor's department. I don't even go into that. That is, my business here, TBA and fixing batteries. I just leave that to them. I wouldn't even go into that.

Q. So you don't—

A. No, sir. If you want my income tax returns, it will tell you.

Q. No, I just wanted to know. Here you are selling three types of—

A. If you want a record of a pin point of a fact of how many batteries I sold in a period of three months, I can give you an invoice.

1592 Q. I would like you to reflect back over these past three years which is essentially what we are talking about, and see if you can tell me, has your business been preponderantly in batteries, very little in batteries, preponderantly in accessories, preponderantly in tires—

A. If you say $30,000 of batteries in one year is preponderant or punitive, you can.

Q. What I mean is for the most part in batteries?

A. Now, you are talking about dollarwise or what?

Q. Well, you can definite it either way. Unitwise or dollarwise.

A. That is pretty hard to define.

Q. Take it dollarwise.

A. That is still ~~had~~ hard to define. I can take a hundred dollars and buy junk batteries from now to doomsday be-

cause I turn them over, I sell them, repair them, junk them, scrap them and buy parts.

Q. What is a junk battery?

A. That is a trade secret, if you don't mind. I would rather not stipulate that, unless I am forced to.

Q. I am not really trying to guess your trade secrets. I am trying to get some concept of your business. Would it be a used battery which you buy and rebuild and then resell?

A. Yes, sir.

Q. As a reconstructed battery?

1593 A. It might not even be a used battery. It might be a new battery not even put in a car. Would you classify that as a used one?

Q. Would you classify that as a junk battery?

A. They sell them to me as junk.

Q. Is it true that the batteries—and my people are looking at me because they realize I am a little over my head—is it true that a battery, that is a new battery, after it has been in stock, not used for a certain period of time, ~~deterioration~~ deteriorates in some way?

A. Even a dry-charge battery; yes, sir.

Q. So that when you say you buy new batteries, or they sell you new batteries for junk, you really mean batteries that because they haven't been moved have deteriorated to some extent?

A. Well, I put it this way: They think that the batteries that they sell me are junk, or not usable.

Q. But you know better?

A. I hope to. That is my business, just like you are a lawyer.

Q. Now, sir, how about accessries; what kind of accessories do you sell?

A. They vary quite a lot. You are talking about electric irons, drills, your whole TBA line and other things

too. Here is your Goodyear catalogue, Pliobond, shotguns, outboard motors, fans.

1594 Mr. Kelaher: I would like the record to show that the witness is reading from a Goodyear car and home merchandise catalogue, with the name Goodyear Service Stores, Mt. Royal and Oliver Streets, Baltimore 17, Maryland, spring and summer 1957, on the cover.

Mr. Correa: I take it there is no objection to our looking at that with respect to the witness' cross-examination.

Mr. Kelaher: I assume you have that right.

Mr. Correa: As has been pointed out to me, just for the sake of clarifying the record, a copy of this has already been marked in evidence heretofore as Commission Exhibit 246.

By Mr. Correa:

Q. Is that the 1957 one?

A. No, sir, this is 19—yes, summer and spring of 1957.

Q. It is identical with the exhibit. I take it from your answer, seriously, that you distribute all kinds of products?

A. I even bought anti-freeze from Goodyear and resold it to service stations, which is in the catalogue.

Q. Can you give me some notion of what your volume of business in dollars has been in TBA, let's say for the year 1955?

A. I wouldn't actually go into that, as I told you.

Q. Do you mean you know and won't tell us?

A. No, I don't know, actually.

Q. You have no notion?

A. Not—

1595 Q. Is it $100,000 a year?

A. No, I am not that rich.

Q. Is it $5,000?

A. More than that. As I said, vaguely I would say it is about $30,000.

Q. You say about $30,000?

A. Yes, sir.

Q. When you spoke of your sales of accessories in relation to the Goodyear catalogue, did you mean to imply that all the accessories you sell are Goodyear accessories, or do you also buy accessories for resale from other suppliers thereof?

A. I buy them from other suppliers.

Q. How about batteries, do you buy them—

A. I buy them from—just the same as Goodyear buys their batteries. They are not specifically from one manufacturer.

Q. And tires, do you deal also in tires?

A. Yes, sir.

Q. Where do you buy your tires?

A. I bought quite a few, at one time I bought $6,000 worth, from Dunlop Tire & Rubber Company. Then I buy them from U. S. I buy them from anybody that the price is the lowest at the time that I need them.

Q. Mr. Witness, at page 1551 and 1552 of the record you testified in substance that you were given a Goodyear TBA distributorship in December 1955. And at page 1596 1552 you said that in connection there with you were handed a copy of CX-246 and certain other papers which have been heretofore marked in this record as CX-333 and 331 and 332.

A. Here is another one if you want.

Q. I am sorry you couldn't have been handed CX-246 because that is the 1957 catalogue, and we were talking of 1955. I assume you mean the then current edition.

A. Yes. I am going to Goodyear today so I will get a new one.

Q. Now, sir, is your distributorship evidenced by any contract or agreement?

A. Here is an invoice from Goodyear, if you can call that an agreement.

Q. I am almost afraid to ask. Can I have that invoice?

A. You can borrow it. If you will give it right back to me.

Hearing Examiner Kolb: He said you can have it if you will give it back to him.

Mr. Correa: That is not very good.

The Witness: Do you want it broken down a little more?

Mr. Kelaher: May I see that, too, your Honor?

Mr. Correa: Yes. (Handing to counsel.)

Mr. Kelaher: I think they should be marked for identification, your Honor.

Mr. Correa: It is all right with me. I would be delighted.

1597 Hearing Examiner Kolb: Commission Exhibits 338 and 339.

(The documents referred to were marked for identification Commission Exhibits 338 and 339.)

By Mr. Correa:

Q. Sir, you have shown me in response to my question these exhibits for identification, CX-338 and 339. Let me ask you, referring to CX-339, which is an invoice covering I believe purchase of a battery, is it not?

A. That is right.

Q. (Continuing.) —is that a fairly typical invoice of your battery purchases?

A. That is at the time.

Q. And the invoice appears to be dated December 27, 1955. Commission Exhibit 338 for identification looks to be part of a form.

A. Do you want me to clarify it?

Q. Yes, I would appreciate it if you would be so kind.

A. That is a statement that they send me for the purchase of those batteries, of which one-third is paid in the month of January, one-third in the month of February and one-third in the month of March.

Q. Thirty, sixty and ninety terms.

A. Approved by the credit department of Goodyear.

Q. Is there any limitation on your credit?

1598 A. Look it up in Dun & Bradstreet. It is in there.

Q. I mean the Goodyear point at which you buy.

A. Not to my knowledge. I don't know.

Q. Not that you know of?

A. I go there and just sign for anything that I want.

Q. Do you have a dealer franchise agreement? Goodyear dealer?

A. You are talking about a regular form?

Q. Yes.

A. Never have.

Q. Did you have any kind of agreement reflecting this distributorship you say you had?

A. From the managers of the service stores; yes, sir.

Q. Let me exclude oral agreements. Any kind of written agreement.

A. You have the papers there of my power of buying through that limitation of discounts.

Q. Other than these papers which you have produced, CX-338 and CX-339, you have no written agreement?

A. If you want to call getting proper identification to identify service stations with Goodyear matters and all, the contract that I can send to Goodyear with a form, to get any kind of identification that I care to, that is a contract, I think.

Q. Do you have any form of agreement, either—

A. This is an agreement (indicating).

1599 Q. (Continuing.) —which is signed by you and signed by Goodyear?

A. That is signed by Goodyear and I just send it to them.

Q. May I see them?

A. Yes. (Handing to counsel.)

Q. The papers you handed me appear to be all forms—

A. That has to be approved by Akron.

Q. Unexecuted forms.

A. That has to be approved by Akron for me to receive that kind of merchandise, advertising.

Q. Other than these unexecuted forms and Exhibit CX-338 and 339, you have no written agreement reflecting your distributorship which you have testified about at page 1551 and 52 of the record?

A. If you want to call letters and all coming from Akron about the sales and various things, they give them to me automatically every month.

Mr. Kelaher: Your Honor, I ask that these documents—

Hearing Examiner Kolb: I don't think there is any need to clutter the record.

Mr. Correa: I tried to avoid that.

Mr. Kelaher: Let's read them into the record.

Hearing Examiner Kolb: I see no reason for it. He is trying to find out if he has a formal agreement.

1600 By Mr. Correa:

Q. Mr. Witness, you testified at pages 1552 and specifiically at 1553 of the record that when you were given a Goodyear TBA distributorship in December, 1955 you had a conversation with a Mr. Allen in which you mentioned—in the course of which you mentioned the fact of going into Betholine, Sinclair, and Shell stations and

selling TBA products, especially batteries. And you went on to say "He actually did tell me that I could sell them as long as the upper brackets wouldn't get wind of it."

Now, you have also testified this morning that thereafter—and on April 4, 1956—you telephoned a Mr.—you telephoned the Goodyear district office, and talked to—whom did you say?

Don't you remember his name, Mr. Witness?

A. I haven't talked to the gentleman that much. I mean I have a lot of names and all to remember.

Q. You don't remember his name?

A. Not offhand.

Q. Are you refreshing your recollection?

A. Yes, if you would like.

Q. Not if you put—

A. You have it. This is a photostat copy of your letter.

Q. What is the number?

A. I don't know your number.

1601 This is a photostat copy of what you have.

Hearing Examiner Kolb: It is Commission Exhibit 334.

Mr. Correa: The witness is referring to Commission's Exhibit 334.

The Witness: I think his name is Jones, without even looking at it.

By Mr. Correa:

Q. Do you know what Mr. Jones's position was in April, 1956?

A. He told me his position was district manager.

Q. You had been a Goodyear distributor for some four months at this time—three or four months?

A. In the terms of the power of my buying; yes, sir; buying power.

Q. In terms of your testimony is what I was referring to.

A. All right.

Q. In that connection had you had any connection to deal with the district manager?

A. No, sir.

Q. In any event you say you called Mr. Jones on April 4 and that you, at the time you called him, were at the place of business of the Bowers Battery and Spark Plug Company, is that right?

A. Yes, sir.

Q. And who was present?

A. When I made the phone call?

Q. Yes.

1602 A. Hilda Zadlick.

Q. Go ahead.

A. Mr. Sanders, which is the manager of Bowers Battery Company. Vick, who is a salesman at Bowers Battery Company.

Q. First name only?

A. He has a subpena. You will see him Thursday.

Q. Do you know his last name, sir?

A. No, I don't.

Q. You know him only as Vick?

A. Right.

Q. Anyone else?

A. There was—if I may ask the question of the gentleman from the Commission at the time the government was there. He wasn't present at the time I made that phone call.

Mr. Correa: Would you read that answer?

(Answer read.)

By Mr. Correa:

Q. Who—

A. How did I make it? There were various rooms. I made it in one room and he was in another.

Q. Who was the last gentleman you say—

Mr. Kelaher: Objection, your Honor. If he wasn't physically present when the call was made I see no point in going into that.

Hearing Examiner Kolb: Apparently he was 1603 present at the time, even though he wasn't in the room at the time the call was made.

By Mr. Correa:

Q. I would like to get his name, if I couldl.

A. I would have to ask this gentleman because he got it—

Mr. Kelaher: According to our record it was Donald V. Brady, attorney adviser, present at the Bowers Batttry office that day. Mr. Brady, I might add, has since died. I think he died last year.

Mr. Correa: We might as well have that in the record, that he is unavailable as a witness.

By Mr. Correa:

Q. How did you come to make the call, sir?

A. I got a little disgusted with the fact of going out to these stations and couldn't get anywhere with them, and he is over the service station manager. He is the authority actually in Maryland. So I wanted to know.

Q. Did anyone present suggest you make the call?

A. No, sir. It was my own suggestion.

Q. Did you discuss with Mr. Brady that you were going to make the call?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I didn't discuss with him that I was going to make it. I just said that well—may I say how this came about, more or less? I met Mr. Brady about four months
1604 ago. Before that.

By Mr. Correa:

Q. Four months before this?

A. Yes, sir. He asked me about complaints that he has received from various service stations, that I am able to sell them merchandise in the TBA line at a price less than they are getting it at that time. And that is how Mr. Brady got in contact with me. And at that time, April 4, I saw him down Bowers. So I just was disgusted, I was out that day, in the morning, I hit a couple of stations and I was disgusted. So I called up the manager. And that is what he told me.

Q. What did you say to Mr. Brady before you called up Mr. Jones?

Mr. Kelaher: Objection, your Honor. I see no need to go into his conversations with Mr. Brady at this time.

Hearing Examiner Kolb: Overruled.

A. I just told Mr. Brady that I was fed up with the whole doggone business and I was going full hog with him and just give him the testimony to the best that I can possibly give him, and I proceeding in calling up, making two phone calls at that time, at that day.

By Mr. Correa:

Q. Mr. Witness, could you please stay on the point? I realize this may be difficult for you. You made a phone call which is reflected, I take it, in this Exhibit CX-334?
1605 A. Yes, sir.

Q. Before you made that phone call you were present at the office of this Bowers Company, and present also was this Mr. Brady and Mr. Sanders?

A. Yes, sir.

Q. My question is, as it has been, did you have any conversation with Mr. Brady before you made the call about the call?

A. Not about the call; no, sir.

Q. Did you tell him you proposed to make a call?

A. No, sir.

Q. Then you told him you were going to testify?

A. I told him that I was going to—I got fed up and that I was going to give him all the assistance that is needed in whatever I can to help him in any way.

Q. But you didn't tell him you planned to call Mr. Jones?

A. No, sir.

Q. And then Mr. Brady left, did he?

A. No, sir. He was talking to Mr. Sanders, which is the manager there, and I just went in the other room, and that is when I made the phone call. I asked the assistance—

Q. Mr. Brady was in the adjacent room when you made the phone call?

A. Yes, sir.

Q. When you made the phone call where was Miss—I assume it is Miss Zadlick—

1606 A. She was at the extension right with me.

Q. You asked her to listen?

A. Yes, sir.

Q. Did you ask her to make any notes of what she heard?

A. Yes, sir.

Q. She did?

A. Yes, sir.

Q. And did you advise Mr. Jones that you had someone listening in and recording the conversation?

A. He didn't know that at the time. He was in the other room.

Q. Mr. Jones?

A. Oh, Mr. Jones?

Q. Yes.

A. No, sir.

Q. You didn't tell him that?

A. I don't think it was any of his business at the time.

Q. When you finished the telephone conversation did you go back into the room where Mr. Brady and Mr. Sanders were?

A. No, sir. I made another phone call.

Q. And when you finished that other phone call did you go back into the room where Mr. Brady and Mr. Sanders were?

A. Not until Mr. Brady and Mr. Sanders were finished with their conversation. I went outside and conducted the buying of my batteries from Bowers.

1607 Q. Then did you ultimately go back to the room where Mr. Sanders and Mr. Brady were?

A. After Miss Zadlick told me she had these letters typed and I signed them, then I went back in there.

Q. When you said "these letters written" did you include CX-334?

Mr. Kelaher: Will you show that to the witness, please?

The Witness: I have two. I don't know which you are referring to."

(A document was handed to the witness.)

The Witness: Would you repeat that?

By Mr. Correa:

Q. When you said Mrs. Zadlick told you that she had these letters written—

A. Typewritten.

Q. Did you include in the expression "these letters" Commission Exhibit 334?

A. Yes, sir.

Q. You said that when she told you that, you got the letters and signed them, is that right?

A. Yes, sir.

Q. I note that CX-334 has a longhand legend written in the lower right-hand side of it with a date, and a signature. I show you the exhibit and ask you is that—

A. That is my signature.

1608 Q. Can you tell us in whose hand that legend is written?

A. That is mine.

Q. Is that your signature?

A. Yes, sir.

Q. After you signed that and entered this notation, did you then go to the room where Mr. Sanders and Mr. Brady were?

A. Yes, sir.

Q. Did you have a conversation with them?

A. About the various—yes, sir, we did.

Q. Did you tell them of your conversation with Mr. Jones?

A. Yes, sir.

Q. Did you tell them that you had had it tapped?

Mr. Kelaher: Objection to the characterization of the testimony. That is not tapping, your Honor.

By Mr. Correa:

Q. Did you have it intercepted?

Mr. Kelaher: That is not tapping. Let's have it in the record.

Mr. Correa: According to the appeal—

Mr. Kelaher: You can argue all day and it is not tapping, and you know it. I don't want that characterization in the record.

Mr. Correa: At least—

The Witness: I do it every day. It is the secretary's job to listen in and take notes.

1609 By Mr. Correa:

Q. Did you tell Mr. Brady that the conversation had been recorded?

A. It wasn't recorded.

Q. Didn't you tell me a moment ago that you asked this lady to make notes?

A. Take notes, it is not recording on any tape.

Q. No, it was recorded on a strenographer's notebook, I presume?

A. That is right.

Q. Did you tell Mr. Brady it had been recorded in a stenographer's notebook?

A. I don't recollect if I did or didn't, to tell you the truth.

Q. Did you show Mr. Brady Exhibit 334?

A. I gave it to him. I didn't show it to him,

Q. You gave it to him?

A. Yes, sir.

Q. Did you tell him from what the typewritten part of Exhibit 334 had been prepared?

A. From what it was being—

Q. Had been prepared?

A. Yes, sir. I just said in the conversation, because Mrs. Zadlick and all was there at the time.

1610 Q. You testified before in proceedings of this character, Mr. Witness?

A. In what respect?

Q. Have you testified before in Federal Trade Commission proceedings?

A. No, sir. Not Federal Trade.

Q. Or proceedings by other governmental administrative agencies?

A. Yes, sir.

Q. What one?

A. A DX-2, California, in Washington, D. C.

Q. What was the agency involved in that?

A. Pardon?

Q. What was the agency?

A. It was the Bureau of Standards, Postal Inspector, Chamber of Commerce.

Q. You like testifying, don't you?

A. No, sir. It takes my time up and I am losing money.

Hearing Examiner Kolb: Is there anything further?

Mr. Correa: Just one comment, your Honor.

By Mr. Correa:

Q. One additional question.

Mr. Witness, CX-335 appears to be an invoice dated July 4, 1956. Could you tell me is the merchandise described there a battery?

A. Yes, sir.

1611 You testified that that is one of the people who waved you off?

A. Yes, sir.

Q. At the time CX-335 refers to, was he at that time a battery customer of yours primarily, when he was a customer?

A. When he was;

I don't know if he is tomorrow, but I sell him jacks and gum-out—that is TBA.

Q. Do you sell him batteries?

A. Yes, sir.

Q. And you say in addition you sell him jacks, and what was the other item?

A. Gum-out.

Q. Anything else?

A. Anything that I try to sell him. Sun glasses. I try to sell him anything that I have to sell.

Q. You have a very diversified line, don't you?

A. I try to.

Mr. Correa: I have nothing further.

Mr. Kelaher: Your Honor, at this time I would like to offer Commission Exhibits for identification 334 through 339 into evidence.

Mr. Correa: May I see them a moment?

Mr. Kelaher: I ask that photostatic copies be substituted for the originals.

1612 Mr. Correa: May I see them? I can't keep them in mind by numbers.

If your Honor please, we have no objection except I should note with respect to 334 that while I make the objection with great reluctance because its weight is practically nil in the context of the testimony, nevertheless there is no doubt that this was obtained by illegal means and is illegal evidence, and probably should be objected to on that ground. I don't press the objection with any great vigor, however, because of the inconsequential weight of the evidence.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 334 through 339.

(The documents heretofore marked COMMISSION EXHIBITS for identification 334 through 339 were received in evidence.)

Hearing Examiner Kolb: Is that subject to a motion to strike by Atlantic?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Subject to a motion to strike by Atlantic?

Mr. Correa: May I note on the record that objection to this last-mentioned exhibit is made, among other grounds, on the Fourth Amendment to the Constitution of the United States, as well as the Fifth.

I guess we must object also to some of these in-
1613 voices because they relate to sales, as I understand it,

sales of tires and batteries to Sinclair stations after January 1, 1956.

Hearing Examiner Kolb: Let's take a recess and get straightened out on the exhibits.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

The exhibits have been received in evidence. There is a question of additional objections. I think Mr. Correa said he hasn't any additional objections.

Mr. Kelaher: Before he makes the objection, I wish to state that I am offering the entire Exhibit 334 in evidence so there will be no misunderstanding. I think there was some discussion off the record.

Hearing Examiner Kolb: There is nothing on the record indicating other than that you are offering the entire exhibit.

Mr. Correa: I wish to add the general objection which goes to the exhibits to all the testimony of this witness, insofar as it relates to matters not in issue under any construction of the instant complaint, namely sales or attempts to sell tires and batteries to Sinclair stations on or after January 1, 1956.

Mr. Kelaher: I think your Honor formerly ruled on a similar objection prior to this one.

1614 Hearing Examiner Kolb: The objection is overruled. They have already been received in evidence.

Mr. Thompson: Subject to a motion to strike by Atlantic.

Hearing Examiner Kolb: That has already been taken care of.

Redirect Examination by Mr. Kelaher.

Q. During your cross-examination you mentioned on April 4, 1956 you made two telephone calls. We have already discussed your call to Mr. Jones. To whom was the other call made?

Mr. Correa: That is objected to as improper redirect. The witness did his best to get me to ask him about the other telephone call and I carefully refrained. I couldn't be more incurious.

Hearing Examiner Kolb: I think you brought it out in cross-examination.

Mr. Correa: With great respect, your Honor, I didn't. The witness brought it out, but I can't be charged with the unresponsiveness of the witness.

Hearing Examiner Kolb: You went step by step as to what he did during the entire time he was there. One of the things was the telephone conversations.

Mr. Correa: I respectfully object.

Hearing Examiner Kolb: Objection overruled.

1615 By Mr. Kelaher:

Q. Will you please state to whom the other call was made and the substance of the conversation?

Mr. Corea: I have a voir dire on this, if your Honor please, to preserve my record?

Hearing Examiner Kolb: We had better find out first to whom the telephone call was made. Or do you know?

Mr. Correa: No, I don't. I don't care to whom it was made. I wish to know if it was made under illegal conditions, in view of the fact that the other one was.

Mr. Kelaher: I don't think this is a proper subject for voir dire at this point.

Hearing Examiner Kolb: Let's first find out to whom the telephone call was made.

By Mr. Kelaher:

Q. Please state to whom the telephone call was made.

A. Mr. Johnson, credit manager of the Betholine credit card department.

Q. By Betholine are you referring to Sinclair?

A. Yes, sir.

Q. And—

Hearing Examiner Kolb: Do you want your voir dire now?

Mr. Correa: Yes, sir.

Hearing Examiner Kolb: All right.

1616 *Voir Dire Examination by Mr. Correa.*

Q. Mr. Witness, I take it this telephone call to Mr. Johnson was made either just before or just after the call, the other call to Mr. Jones about which you testified?

A. Yes, sir.

Q. Was it just before or just after?

A. The time is on the letter.

Q. Was this call to Mr. Johnson also listened in by Miss Hilda Zadlick?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. Was that done at your request?

A. Yes, sir.

Q. Was Mr. Johnson informed that this lady was on the line?

A. No, sir.

Q. Did she make a record of the conversation?

A. Pardon?

Q. Did she make a record of the conversation?

A. She took notes.

Q. Stenographic notes?

A. I don't know what kind of notes. The only note—the letter is actually what I saw. What notes she took I do not know.

1617 Q. Did she do that at your request?

A. Yes, sir.

Mr. Correa: I object, if your Honor please, on the basis of the testimony just given by the witness to any further testimony about this conversation.

Hearing Examiner Kolb: The objection will be overruled.

Redirect Examination (Resumed).

* * * * *

By Mr. Kelaher:

Q. Mr. Govoruhk, do you hold a Sinclair credit card?

1618 A. At the present time; no, sir.

Q. Did you at the time of the conversation in question hold a Sinclair credit card?

A. Yes, sir.

Q. Had you attempted to purchase TBA products from Sinclair service stations through the use of your Sinclair credit card?

A. Yes, sir.

Q. What had been your experience?

A. It was at Owens service station on Sinclair and Urban Avenue. I just drove in, got gas, and happened to have a dead battery. I wanted to buy one. They had Bowers batteries and I asked to get a Bowers battery put on my credit card.

Mr. Correa: Did we get a date?

Hearing Examiner Kolb: Let's let him finish.

Mr. Kelaher: Let him finish and I will handle the questions at this point.

Mr. Correa: As long as you do it properly, counsel. When you don't I will object. I am serving notice now.

Mr. Kelaher: I am sure you will.

The Witness: So that is the thing that happened before the telephone conversation—

By Mr. Kelaher:

Q. You didn't tell us what happened.

A. The attendant refused to give me the battery because he said all products have to be Betholine, Sin-
1619 clair or Goodyear products to be honored by the credit card.

Q. When did this conversation or this attempted use of your Sinclair credit card take place?

A. I would say a few months, approximately, before my telephone call.

Q. Now—

Mr. Correa: If your Honor please, I must move to strike, unless the date can be fixed more accurately, because if this incident occurred after January 1, 1956 I can't see that it has any probative force or relevance to the issues in this proceeding. We are not trying a case other than the sales commission plan so far as Sinclair is concerned, and we are trying, as I understand it, the plan they had and not some plan that they had at some previous time.

Mr. Kelaher: Your Honor, this testimony refers to the use of Sinclair credit cards.

Mr. Correa: To purchase batteries.

Mr. Kelaher: To purchase Goodyear TBA. We have asked Sinclair to produce credit cards which will show that Sinclair credit cards are limited to the purchase of Goodyear TBA, and that is what this testimony goes to.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Now state what the substance of your conversa-
1620 sation was to Mr. Johnson.

A. I called up Mr. Johnson and told him that I held a credit card number and gav ehim the credit card number at the time that he held, and told him that the occasion arised that I tried to purchase a battery from a service station and he declined to honor it because it wasn't a designated product so honored by the credit card. He went into details of stating that actually the fellow was in his bounds by refusing me, but if he did honor that product on my credit card and I in turn do not pay for the product when it is billed to me through mail, that in turn goes back to the service station and he is liable for the loss of the money.

Q. And you are referring now to the purchase of a non-Goodyear product, is that correct?

A. Yes, sir.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: I move to strike the testimony, if your Honor please. I point out to your Honor, if I may speak to this motion a moment, that we have here a matter which is of seriousness that transcends the particular small incident in connection with which it arises. Because this testimony is confined to batteries and to Sinclair and there was no sales commission plan affecting batteries and Sinclair at the time of the incident. The implications of this are if we are to have evidence in this proceeding
1621 contrary to what has been established heretofore, if precedent even in this proceeding has significance, if we are to have that kind of evidence we are going to broaden the issues out and obviously we will find ourselves in the position of trying something which not only is not but cannot conceivably arise under the pleadings in this particular case.

Hearing Examiner Kolb: I understand that the credit card situation will be developed through the Sinclair witness. I don't know what the materiality at the present time will be until that testimony is introduced. I will receive this subject to a motion to strike after the Sinclair testimony is in.

Mr. Thompson: May we note, sir, that all of the redirect is taken subject to Atlantic's objection and motion to strike?

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I would like to ask the witness if he can fix the date of that—the date when he went into the Owens service station—more firmly in his mind.

Mr. Correa: That is not a proper question in view of the witness having been here through all this colloquy. I am not sure that he caught the point but he may have.

Hearing Examiner Kolb: The witness is under oath.

The Witness: The only way that I can actually fix that is going back through my records. It can be done through the records of Betholine at the time that I bought gas prior to that at that particular service station.

1622

Mr. Kelaher: I think this witness should have an opportunity to examine his records and furnish the date, without having to recall him.

Mr. Correa: When was this telephone conversation?

Hearing Examiner Kolb: It is getting that much involved I am going to strike the entire testimony with reference to this conversation and be done with it, on the ground that the witness is unable to establish the exact time the conversation took place, and there is a question of whether or not it would be material if it occurred within certain periods.

Mr. Keller: Your Honor, he did state in his testimony—

By Dr. Kelaher:

Q. Didn't you say—

A. A couple of months prior to that.

Mr. Kelaher: I take exception to your Honor's ruling. I think it is very material, subject to being connected up with the date.

Hearing Examiner Kolb: I am not going to have this witness go out and have another hearing here for the purpose of establishing that telephone conversation.

Mr. Kelaher: No, your Honor, we are not—

1623 Hearing Examiner Kolb: I can't see that it amounts to that much under any circumstances.

Mr. Kelaher: He has established the date of the telephone conversation as April 4, 1956. The date of the conversation has been established. It is simply the time—

Hearing Examiner Kolb: Then we will let it stand, subject to a motion to strike after the Sinclair testimony is in.

Mr. Kelaher: No further questions.

Mr. Correa: No questions.

Hearing Examiner Kolb: The witness is excused.

(Witness excused.)

Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1624 Hearing Examiner Kolb: The hearing will be in order.

JOSEPH B. McMASTER was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination.

Hearing Examiner Kolb: Will you state your name for the record.

The Witness: Joseph B. McMaster.

Mr. Kelaher: Mr. Examiner, before I begin examination of this witness, I would like to ask for the exclusion of other witnesses we are calling, in accordance with Mr. Correa's motion. I understand—

Mr. Correa: There is no need to pussyfoot about it. Counsel has reference to Mr. McCauley, of the Sinclair Company, who is here and who has been subpoenaed by counsel for appearance ultimately, or I guess Friday in this proceeding. It has been subject to postponement.

The point, Mr. Examiner, is so far as Mr. McCauley in his capacity as a potential witness is concerned, of course we would have no objection to his exclusion.

However, as so often happens in trials, some of your witnesses are people who actually are working with counsel and assisting counsel in their factual preparation.

1625 That happens to be true of Mr. McCauley. I would be very much handicapped in the conduct of the case, particularly on this Sinclair aspect of it, if I have to proceed without such expert assistance as I can get. And I think this situation has occurred frequently, to my knowledge in any event, in cases in the United States District Courts, and more or less uniformly in those circumstances judges have made exception to the exclusion rule where the exclusion hit, for example, an expert or some other type of prospective witness who was also participating in the conduct of the case.

Hearing Examiner Kolb: Mr. McCauley may remain in the court room.

By Mr. Kelaher:

Q. Mr. McMaster, will you state your home address?

A. Sherwood Road, Cockeysville, Maryland.

Q. Mr. McMaster, were you at one time a Sinclair dealer?

A. Yes, sir.

Q. Would you please state what type of a dealer you were, with reference to whether or not you were a lessee?

A. I was a lessee dealer.

Q. At what location or locations did you operate service stations for Sinclair?

A. I operated a station originally at York and Woodbourne, 5316 York Road. I operated another station at
6412 York Road. That was York and Windwood sta-
1626 tion. And I was also financially interested in a sta-
tion at Harford and Southern.

Q. Would you please give us the approximate dates when you operated these stations, beginning with the first one you operated?

A. The first one I operated I took over in February 1944. I believe it was the first day of February or the last day of January 1944. And I stayed there myself, personally, until about November 1950.

I left there in November 1950, still holding a lease, and went to York and Windwood in November—approximately November 1950. I was financially interested in a station at Harford and Southern. I think it was less than a year, around the 1947-48 period, in there.

Q. So at one period during the 1947-48 period you operated the station you first referred to, and had a financial interest in the station you referred to—

A. The first reference made there I operated in 1944,

which would have been York and Woodbourne. 1947 and 1948 would be Harford and Southern.

Q. And you operated the York and Woodbourne station until November 1950?

A. Yes, sir.

Q. And thereafter, did you continue as lessee of that station?

A. Yes, sir, until approximately, roughly, around 1627 about a year's time. I think it was in the early part of 1952.

Q. Did someone operate that station for you?

A. Yes, sir.

Q. What is the name of the operator?

A. Floyd Dearborn.

Q. With respect to the station in which you had a financial interest, did someone lease that station in your name?

A. No, he leased that station in his own name. He was a former employee.

Q. What was the name of the lessee of that station?

A. Elwood Gray.

Q. With respect to the 6412 York Road station, how long did you operate that station?

A. I operated that station from, as I say, approximately 1950 until November 30, 1954.

Q. Beginning in 1954, when you began operation of your 5316 York Road station, what brand of batteries did you carry?

A. Wait a minute. You said "1954". Do you mean 1944?

Q. I thought I said 1944.

A. In 1944 I took over that station from George Leidner. I do not recall what type of battery that he had there at the time, that George had. But after I had been in there a few months I started out with Bower's battery and went along with Bower's battery for a period of time.

Q. From whom did you purchase the Bower's battery?

1628 A. From Bowers battery distributing point here in Baltimore.

Q. At that time—speaking about the period when you began to purchase Bowers batteries—were you solicited to buy Goodyear TBA batteries by Goodyear Tire and Rubber Company or a salesman thereof?

A. Solicitation sort of fell off during that time, as I recall, because it was during the war, and Goodyear at that time couldn't supply us with our necessary requirements. That was my reason for going with Bowers.

Q. How long did you continue to purchase Bowers batteries?

A. I purchased Bowers batteries up to and including probably around 1947-48.

Q. Were you a substantial purchaser of Bowers batteries?

A. Oh, yes.

Q. What happened in the latter part of 1947 or 1948?

A. In around 1947 Mr. McCauley sent me a letter to come down to the Sherwood office, Sherwood Sinclair office. So I thought, I wonder what this is for. So I went down. It wasn't lease-cancellation time.

So I went down and, as I recall, I know Mr. McCauley was there because he was the one that handled it, and I think Mr. Weller was there, and I believe Karl Cottman.

We went into a conference room, some sort of conference room that had quite a large table. They put me on one side of the table and the other three down the other side.

1629 So, to make the conversation short, Mr. McCauley was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers because they took care of me dur-

ing the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our batteries or else."

And that was the end of the meeting.

Q. By "our batteries," what batteries was he referring to?

A. Goodyear.

Mr. Thompson: It is of course understood, sir, that this testimony is taken subject to Atlantic's objection and eventual motion to strike?

Hearing Examiner Kolb: That is right.

By Mr. Kelaher:

Q. Thereafter, did you continue to buy Bowers batteries?

A. No, not for very long, because I knew what the "or else" meant.

Q. What did it mean to you?

A. It meant cancellation of my lease the next time 1630 it came up for renewal.

Q. Then what batteries did you purchase thereafter?

A. Goodyear batteries.

Q. How long did you continue to purchase Goodyear batteries?

A. I purchased Goodyear batteries from then on clear up to the time of final cancellation.

Q. At your various stations?

A. Yes, sir.

Q. Beginning in 1954, when you first commenced station operation as a Sinclair Service lessee, what brand of batteries did you purchase?

A. Will you repeat that?

Q. Beginning in 1954, what brand of tires did you carry in your respective stations?

A. Goodyear.

Q. Beginning in 1944.

A. In 1944, Goodyear tires.

Q. Then did you continue to buy—from whom did you purchase Goodyear tires?

A. Originally, if my memory serves me correctly, I purchased Goodyear tires mainly through the Goodyear store, I believe in 1944.

As a matter of fact, there is a friend of mine here in the room, Mr. Smith, who used to call on me, I think from Goodyear, during those first two years, I believe.

1631 Q. Then thereafter, from whom did you purchase Goodyear tires?

A. Brooks-Huff Goodyear came into the picture and we started to order our merchandise through them.

Q. Will you describe your tire purchases from 1946 up until 1954? Describe your source of supply.

A. The main source of supply during those years, right up to the latter part of 1952 or 1953, was Brooks-Huff, with the possible exception of a few instances where customers demanded certain other types of tires, other brands, and we secured those for them.

In 1952-53 Cronin Sons, distributor of Goodrich and Kelly, came into the picture, and Ezrine Tire Company. The reason I was primarily interested in Ezrine Tire Company is because they handled Goodyear merchandise at a better price, which gave me the opportunity of displaying Goodyear merchandise, figuring maybe that the Sinclair organization wouldn't catch on to the fact that I wasn't buying them through Brooks-Huff Goodyear.

Q. Approximately how much of a better price were you able to obtain from Ezrine Tire Company on your Goodyear tires?

A. I would safely say between ten and fifteen percent.

Q. To go back a second, how did your profit margin on Bowers batteries compare with your profit margin on Goodyear batteries?

1632 A. It was much better.

Q. Much better on which one?

A. On Bowers.

Q. Getting back to the tire situation, you stated that in 1952 or 1953 you began to purchase from other suppliers of tires. What tires did you purchase from the Cronin Tire Company?

A. I purchased some Goodrich from Cronin, mainly Goodrich from Cronin at that time.

Q. Were these also purchased at a lower price than you were then paying for Goodyear tires from Brooks-Huff?

A. Yes, sir.

Q. Were you solicited for Goodyear tire business by Sinclair representatives at or about this time?

Mr. Correa: May I inquire what time?

Mr. Kelaher: 1952-53.

The Witness: Would you repeat that?

By Mr. Kelaher:

Q. Were you solicited to buy Goodyear tires by either Brooks-Huff or by Sinclair representatives at or about that time?

A. Brooks-Huff Goodyear had a salesman who called on a regular day of the week, each and every week, and then you had the representatives from Sinclair dropping in continuously throughout the week.

Q. Was any comment ever made about your purchases of tires?

1633 A. Yes, sir. I remember one case in particular. Bob Vaughn, who was a salesman for Brooks-Huff Goodyear came into the office and they found out that I was buying from Ezrine Tire Company.

Bob came in and asked me where I had purchased these tires, because I hadn't been purchasing from Brooks-Huff Goodyear and he knew that something was wrong.

And I said, "Bob, I am buying them from Ezrine." I said, "They have a much better price."

He said, "We can't figure out where he is getting these tires."

I said, "I imagine he is getting them from Goodyear."

He said, "No, we mean his source of supply."

So he took a pad and pencil and he would take the tires one by one, that I had just gotten in—as a matter of fact, this day that he came in I had a pile on the floor, and he started one by one. He took the serial numbers off of each tire right down the line, and he said, "We will send this back and this way we can check as to where he is securing this merchandise."

Q. Were the tires he checked purchased by you from Ezrine Tire Company?

A. Yes, sir.

Q. They were Goodyear tires?

A. Yes, sir.

1634 Q. Did any representatives of Sinclair speak to you about your purchases of tires from other than Brooks-Huff Tire Company?

A. Usually Sinclair representatives, when they would come into your station, they didn't talk particularly in one vein. They talked Brooks-Huff Goodyear. It was a TBA, definitely a TBA setup.

When they talked it was a general-purchase situation. I mean they wouldn't say specifically one thing other than the fact if one thing wasn't handled it evidently was reported to the office and then you were handled down there like Mr. McCauley did to me that time.

Q. Where would these conversations with Sinclair representatives take place?

A. They all had different techniques. The salesmen were changed back and forth. You never knew when it was going to happen.

For instance, they had one salesman who worked for them—I don't know if he still does—named Elmore Evans. Elmore was one of the original salesmen that came to call upon me at Woodbourne Avenue.

Elmore would come in there and say, "Mac, come here, I want to see you in the back room a minute."

You would go in and you knew what he meant when he said "the back room." He would say, "Mac, we were
1635 checking over the inventories and so forth, and you are not purchasing so and so," or "I see something out front there. You know you owe this business to the company." And they would lay the law down to you, real good.

Mr. Correa: If the witness has finished his answer, I have a motion.

I move to strike the answer on the ground that it is completely unresponsive to the question, which was, "Where would these conversations take place."

I ask that the witness be instructed to answer the questions responsively, henceforth.

Hearing Examiner Kolb: I will let the answer stand. Answer the question as best you can.

By Mr. Kelaher:

Q. Mr. McMaster, do you recall the names of any other Sinclair representatives who called on you, in addition to Mr. Elmore Evans?

A. Well, Elmore Evans, Gus Wrede, Dave Stanbaugh, and I can't remember the one man's name, he only called on me a short time. They called him "Doc." I can't remember his last name.

Q. Did you ever have any conversations with these

Sinclair representatives concerning your purchases of tires from other than Brooks-Huff? If so, state where and the substance of the conversations.

1636 A. Shall I go into that Elmore Evans again?

Q. No. I think that answer stood.

Hearing Examiner Kolb: This might be a good time to break for lunch.

We will recess until 2:00 o'clock.

(Thereupon, at 12:33 p. m., the hearing was recessed, to reconvene at 2:00 p. m., this day.)

1637 Afternoon Session.

(2:00 p. m.)

Hearing Examiner Kolb: The hearing will be in order.

JOSEPH B. McMASTER resumed the stand and, having been previously duly sworn, testified further as follows:

Direct Examination (resumed).

Hearing Examiner Kolb: As to the subpoena duces tecum served upon officers of the Sinclair Refining Company, returnable November 22, 1957—the subpoena was served November 15th—counsel have agreed that an extension of time of 25 days from November 15th will be allowed for the purpose of determining whether or not compliance with the subpoena can be made, the terms modified, or motion to quash filed.

As to the witness Fred McCauley, who was also subpoenaed to appear on November 22nd, he will be excused until the return date of the subpoena, which will be determined after counsel has determined what is to be done and the date set by the hearing examiner.

You may proceed, Mr. Kelaher.

Read the last question.

(The reporter read the question.)

1638 By Mr. Kelaher:

Q. You may continue with your answer to that question.

A. As they would change the representatives in the territories, as I said previously, each one had a different technique of operation.

Q. You are speaking of Sinclair representatives?

A. Yes, sir.

Mr. Correa: If your Honor please, I dislike to interrupt the witness' answer, because your Honor has admonished me as to that. On the other hand, when I failed to interrupt this morning a long unresponsive answer, your Honor let the answer stand although telling the witness to answer responsively.

The question now is, did you ever have conversations with these Sinclair representatives?

The Witness: Yes, I did.

* * * * * *

1640 By Mr. Kelaher:

Q. Mr. McMaster, in your answer just give the approximate time of the conversation and the substance of the conversation.

A. There would be many times. It wouldn't be just one time. It would be many of them. I mean that is a repeated thing, as a constant application, regardless of what salesman or representative it was, when he would come into the office, if anything foreign was noticed in your inventory, a comment was made concerning it, "Where did you purchase it?"

Mr. Correa: With the deepest regret, because I would like to see these proceedings get on, and this witness is certainly intelligent enough to understand what is called

for, we can not have these speeches, I submit. Particularly not from an interested party to litigation involving at least one of the respondents.

Hearing Examiner Kolb: Objection overruled. Let's proceed.

The Witness: Mr. Wrede, for instance, would do it on the basis of not taking you into a back room but by taking you out to lunch or something like that, and asking you if you wouldn't kindly buy from Brooks-Huff Goodyear in such a nice way that you felt like you might be inclined to do so.

Others would do it in different manners. For instance, as I stated before, in Elmore Evan's case.

* * * * *

1641 Dave Stanbaugh, when he would come into the station, Dave would stand around and shoot the breeze, talk about generalities. He eventually would get around to the subject of TBA and why you weren't buying. You would say to him, "Well, Dave, if you could only get the company to give me a better price on these things, I could buy."

And Dave would say, "Well, Mac, there are things that you want and I am sure if you would go along with the company they would go along with you."

I would say, "Dave, I don't know what I want in particular except to do more business, and I can only do it with a fair price."

And he would say, "That is beyond my power. You will have to take that up with the others."

* * * * *

1642 By Mr. Kelaher:

Q. Mr. McMaster, during the period when you first began Sinclair station operation in 1944 and continuing on through your various stations, from whom did you purchase your accessories?

A. I purchased some from Brooks-Huff Goodyear when they came into the picture. I purchased from R. W. Norris, R. J. Loock, J. R. Hunt, and F&L Auto Supply.

Q. Beginning about 1951, did your purchases of Goodyear TBA from Brooks-Huff increase, decrease, or remain the same from then until you left the station in 1954?

Mr. Correa: The form of the question is objected to. Let counsel ask what the fact is and get into generalities only if we find the witness unable to give us the exact fact.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. Go ahead.

A. In 1951, I would say the latter part of 1951, my purchases from Brooks-Huff Goodyear in the TBA line materially started on a decline, mainly because of tires and other TBA items exclusive of batteries, primarily because Ezrine and Cronin Tire Companies could offer me a better price.

It wasn't because I objected to Brooks-Huff Goodyear, it was because I wanted a better price to be competitive. That is what I wanted.

1643 Mr. Correa: I move to strike all of the answer except the part responsive to the question which was that his purchases began to decline.

Hearing Examiner Kolb: Motion denied.

Mr. Correa: It is unresponsive.

By Mr. Kelaher:

Q. You stated that at one time you purchased Bower batteries. For how long a period did you purchase Bower batteries. Do you recall?

A. In the main, from about 1945 to about 1948.

Q. Did your purchase of Bowers batteries decline after your conference with Mr. McCauley and others?

A. It sure did.

Q. Did you receive a cancellation notice from Sinclair at any time?

A. Yes, sir. I received a cancellation notice from Sinclair in November, I think it was November 1, 1954.

Q. When was that effective?

Mr. Correa: I object to the question. The document is the best evidence. It speaks for itself.

Hearing Examiner Kolb: Do you have the cancellation notice?

Mr. Kelaher: I don't seem to have it.

Mr. Correa: I have it, or at least a photostatic copy that I would be glad to tender to counsel.

1644 Mr. Kelaher: It would be appreciated because I have asked Sinclair to furnish that.

Mr. Correa: You are referring to the adjourned subpoena?

Mr. Kelaher: That's right.

Mr. Correa: Probably you don't have it because of the adjournment.

Mr. Kelaher: I would first like to have this marked for identification.

(Whereupon, the document referred to was marked Commission's Exhibit 340 for identification.)

1645 By Mr. Kelaher:

Q. Will you please state what Commission Exhibit 340 for identification is?

A. This is—although I don't have my letter any more—this sounds very much like the one I received.

Mr. Correa: May I state on the record counsel that I suggest that we have this stand as the exhibit until you get your production under your subpoena, and then substitute the Sinclair copy.

Mr. Kelaher: That is agreeable.

Mr. Kelaher: I offer Commission Exhibit 340 into evidence.

Mr. Correa: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 340, subject to a motion to strike by Atlantic.

(Whereupon, the document, heretofore marked COMMISSION EXHIBIT 340 for identification, was received in evidence.)

By Mr. Kelaher:

Q. After you read your notice of cancellation identified as Commission Exhibit 340, did you discuss the matter with officials of Sinclair Refining Company?

A. Yes, sir; two of them, in fact.

Q. Please state the officials you talked to, and the substance of the conversation.

1646 Mr. Correa: And the date also?

By Mr. Kelaher:

Q. And the approximate date of the conversation.

A. First, I talked to Mr. Weller—Harry Weller—and that was within one day of receiving the cancellation. When I called him on the telephone, I asked him what the reason for the cancellation was. And he said, "Well, we feel like we can get a better operator."

I said, "How do you mean you can get a better operator?"

He said, "Mac, let's put it this way: we feel like we can get a better operation out there."

Q. Was that the extent of the conversation with Mr. Weller?

A. Yes, sir, it was very short.

Q. Thereafter, did you have a conversation with another Sinclair official?

A. Yes, sir: I called Mr. John R. Sherwood, and I

asked him that rumors had reached my ears that he was stating to my customers who were protesting this cancellation that I was uncooperative. I said, "On what grounds do you say that I am uncooperative?"

He said, "Well, Mac, let me cite to you what I mean."

He said, "You have a large sign on top of the building, a Sinclair sign, which you will not turn on at night when it gets dark."

I said, "Mr. Sherwood, I can't turn that sign on, 1647 or off, manually, because your men, servicemen, have put in time clocks, and since the installation of the sign, they have had two time clocks in there and neither one of those time clocks have operated efficiently. And they have asked me to leave everything alone, that they will get the proper time piece in there to operate the sign."

He said, "Mac, I didn't know that."

I said, "There are a lot of things you don't know, Mr. Sherwood that you ought to find out. Why don't you ask these men who told you that story?"

He said, "If I ask them, they will only tell me the same thing again."

I said, "Then, you are a pretty poor boss if you can't get the truth."

And that ended that conversation.

Q. Thereafter, did any other Sinclair representative talk to you concerning the matter?

A. Well, there was one other Sinclair representative, Bobby Neilson, came out to the station. He came out to the station approximately a week before I was to leave the station. And he said to me, "Mac, you are not going to give up your income and leave the station, are you?"

I said, "Yes, that is what I am going to do."

He said, "Why don't you go down and talk to them and tell them you will be a good boy?"

1648 He said, "I am sure if you will go down and talk to them and tell them that you will do the right thing that they will let you keep the station."

I said, "No, Bobby, I am not going to go down. I haven't done anything wrong and I don't intend to go down and discuss it with them."

• • • • •

Q. At the first Sinclair service station that you operated, did your monthly gallonage increase, decrease or remain the same during your operation of that station?

A. From 1944, when I took that station from George Leidner, if memory serves me right, it was approximately 12,000 gallons. If you will check the records, you will find that is about right. And up until 1950, in November, when I left that station, we were doing between 28 and 30 thousand gallons.

Q. That is monthly?

A. Yes, sir.

Q. Then, at your last Sinclair station, did your gallonage increase, decrease, or remain the same during your operation?

1649 A. It increased up until, I think, around 1953—between 1953 and '54, and I think it remained about the same. There may possibly have been a little increase in 1954 over 1953.

Q. Was there an opportunity for the gallonage increasing by the time you left?

A. Oh, yes. The station that I left there, they were very close to opening that Stewart Shopping Center which was next to the station, which I had looked forward to, because I had felt that that would definitely step up the gallonage. And the Food Fair on the other side of the station, was just starting in the process of being built.

• • • • •

1650 Q. Do you know of your own knowledge the names of any other Sinclair dealers who received cancellation notices on or about the same time you did?

A. Mike Tawney, out in Towson, who is the next station beyond mine.

Q. What was the location of his station?

A. He was in Towson proper, there, at the bottom of the hill. Mike went out the same day as I did. As a matter of fact, Sinclair had two crews on the change over of inventory in both stations at the same time. That is how I recall it.

Q. Did you discuss the matter with Mr. Tawney?

A. I went out to Mike shortly after I received my cancellation—

Mr. Correa: I object to anything but a Yes or No answer to the question.

The Witness: Yes, I discussed it with him.

* * * * *

1651 Q. When you handled Bowers batteries in your station, did you advertise much?

A. No, sir.

Q. What was your reason for not advertising such batteries?

A. Well, to advertise them or to put a sign out and write "special" on it or something, which you could do with that price range, was only to ask for trouble.

Q. What window valance and what outdoor signs were in your various stations?

A. Sherwood Sinclair took care of all of that. We bought a curb sign from them originally, when we went into the station. I think it cost $15.00. Then, maybe they would bring you out posters and so forth to put into those, advertising tires, or batteries, or different types of merchandise, gasoline,—in other words, if they would come

out with something in the gasoline field, they would put that in there.

Q. What brand of TBA products were advertised?

A. Goodyear.

• • • • •

1652 Q. Did you honor Sinclair credit cards at your service station?

A. Yes, sir.

Q. What TBA products were honored on such credit cards?

A. Goodyear.

Q. And did you at any time attempt to honor sales of any other brand of TBA merchandise?

A. Yes, sir, a couple of times.

Q. Was anything ever said about that by Sinclair?

A. It was rejected quite a few times. They sent it back and I had to pay cash.

Q. Did you ever have any discussions or conversations with Sinclair personnel concerning the matter?

A. I called in one time about—

Mr. Correa: Could a date be fixed?

1653 Mr. Kelaher: That is what he is giving right now, I think.

Mr. Correa: One time, is all I have.

Mr. Kelaher: He said "about".

By Mr. Kelaher:

Q. Go ahead.

A. I called him when I was at Woodbourne Avenue, about 1947. I had received back a credit card—not a credit card but a C. I. D. that I had turned in, and they sent it back to me and asked whether it was Goodyear merchandise on there? And it wasn't at that time because it was a special for one particular customer. They told me that it couldn't be honored because it wasn't Goodyear merchandise; that I had bought it elsewhere.

Q. Do you recall which merchandise it was?

A. It was tires, sir.

Q. Do you recall the brand?

A. I think it was O'Toole's General Tire Company.

Q. It was not a Goodyear tire?

A. No sir; no, sir.

Q. Did Sinclair representatives ever take orders for Goodyear TBA?

A. Yes, a few times. They would come in. For instance, if you had a special order—once in a while you would get an odd-sized tire or something odd in a battery. One of the Sinclair representatives would come
1654 in and you would say to him, for instance, "Bobby, how about calling up on the phone and getting this merchandise for me?"

They would call. Or if it wasn't an immediate order you could give it to them, they would take and write it down and call it in themselves.

Q. With whom would the order be placed?

A. Brooks-Huff.

Q. Did you request the order to be placed with Brooks-Huff?

A. Not all the time, sir. In some instances you would—for instance, ask for a special type battery. You wouldn't necessarily mean Brooks-Huff but when you gave it to a Sinclair representative, it was going to be Brooks-Huff.

Q. Were you ever advised by Sinclair representatives as to where your Goodyear TBA should be purchased?

A. Well, I stated before, that has happened for the whole time I have been in the service station business.

Q. Did they name the supply point?

A. That would be all the time. I mean, when they would come in, that you were to buy from Brooks-Huff Tire Company.

Mr. Kelaher: No further questions.

Cross-Examination by Mr. Thompson.

Q. May I make the usual objection?

Hearing Examiner Kolb: The testimony will be received, subject to a motion to strike by Atlantic.

By Mr. Correa:

1655 Q. Mr. McMaster, you have talked throughout your testimony about Sinclair officials and your dealing with Sinclair. And I put it to you, sir, the fact is that your lease was with a corporation known as Sherwood Brothers, Inc., is that not correct?

A. I wouldn't say that was correct, sir, because I don't know the innerworkings of this company.

Q. Let's not worry about the innerworkings. How about the outerworkings, at least the ones that you were familiar with, that is, your lease. Is that your lease with Sherwood Brothers, Inc.?

Mr. Kelaher: Objection. The lease will speak for itself. They have a copy of it and it will be produced in answer to the subpoena.

By Mr. Correa:

Q. I call upon the witness to produce his lease. Do you have it?

A. No, sir.

Q. Do you recall it was with Sherwood Brothers, Inc.?

A. No, sir, I do not.

Q. I show you what may be what I understand to be—and I can not authenticate this but perhaps you can recognize it—a copy of a service station lease between Sherwood Brothers, Inc., and Joseph B. McMaster, dated the fifth day of December, 1950, and bearing a stamp on it, "Cancelled, 11/3/54," and having two annexations, 1656 or two pages, apparently, annexed to it, each of them —one marked "Exhibit A" and the other marked "Exhibit A continued."

I ask you, sir, is that a copy of your lease?

A. It is a photostat or one of those processes, a copy.

Mr. Kelaher: I think the record should show that he has three unconnected pieces of paper. There is no indication that they even belong together.

Mr. Correa: I am informed they do. But I am relying on the witness to straighten us out on it because I cannot authenticate them.

The Witness: This, sir, I wouldn't know. I don't see any place where I have signed it there. But this is my signature, sir, and this is my signature here.

By Mr. Correa:

Q. Referring to the two pages marked respectively Exhibit A and Exhibit A continued?

A. Yes, sir.

Q. Do those papers I have shown you refresh your recollection in any way as to what your actual lease read in the respective mentioned, that is, was it not a lease with Sherwood Brothers, Inc.?

Mr. Kelaher: Your Honor, I have an objection to this type of interrogation because the lease is the best evidence and the lease can speak for itself.

1657 Mr. Correa: I submit, if your Honor please, that it is cross-examination. I am constantly learning in this proceeding, unless it is a legal innovation to me, that the best evidence rule is binding on cross-examination, counsel.

Mr. Kelaher: Most of the innovations seem to be of your own making.

Mr. Correa: Unfortunately that is not true, sir. I wish they were.

Hearing Examiner Kolb: I think, instead of characterizing that, you might address your remarks to the Examiner and let him dispose of them. Objection overruled. He hasn't identified this yet.

By Mr. Correa:

Q. Does it refresh your recollection?

A. The only thing I can say, that is my signature here and here. I have nothing that I see here as far as dates is concerned.

I don't see anything as far as dates are concerned on here.

I signed a lease at York and Woodbourne. I also signed a lease at York and Windwood. I can't say that this is the one because I haven't signed it. For this equipment, here, and so forth, this is my signature, that is correct. But for what station or what is it for?

Q. I suggest you have a look at the papers and see, after looking at them, if you find your recollection refreshed on that point.

1658 A. This one, here, sir, would be for Windwood.

Mr. Kelaher: I wonder if we could have these numbered. There are three unconnected pieces of paper. I don't know which one he is referring to.

The Witness: This is Exhibit A.

By Mr. Correa:

Q. Was Windwood your last station?

A. Yes, sir.

Q. 6412 York Road?

A. Yes, sir.

Mr. Correa: May I have the ones the witness referred to last, marked for identification, in response to counsel's very proper request.

Hearing Examiner Kolb: Do you want that marked as a Commission Exhibit?

Mr. Kelaher: No, your Honor. I am subpoenaing the lease.

Mr. Correa: I thought you asked to have it marked for identification.

Mr. Kelaher: Yes, as respondent's exhibit.

Mr. Correa: I don't care. I am not a technician. Anybody's exhibit you like.

Mr. Kelaher: I am not, either.

Mr. Correa: Then, I guess it gets marked for identification.

1659 Mr. Kelaher: That's right, as Respondent's Exhibit something or other.

Hearing Examiner Kolb: That will be marked as Respondent's Exhibit G-2.

(Whereupon, the document referred to was marked Respondent's Exhibit G-2 for identification.)

Mr. Correa: While we are at it, we might as well mark the other two.

Hearing Examiner Kolb: Do all three belong together?

Mr. Correa: Yes, they belong together. The witness has not connected them.

The Witness: This one here would be for Windwood too, sir.

Mr. Correa: Then, why not mark them G-2, -3 and -4.

Hearing Examiner Kolb: Very well.

(Whereupon, the documents referred to were marked Respondent's Exhibit G-3 and G-4 for identification.)

The Witness: This one, I don't see a signature here or anything else.

By Mr. Correa:

Q. I believe your notice of cancellation was marked in evidence, was it not, on your direct examination, or a copy of it?

Mr. Kelaher: Yes, the notice of cancellation.

By Mr. Correa:

1660 Q. And that is Exhibit 340. May I draw your attention to that, Mr. Witness, and ask you does that refresh your recollection—drawing your attention

specifically to the fact that that is signed "Sherwood Brothers, Inc." and ask you if that refreshes your recollection as to whether or not your lease in 1954, and indeed all prior leases, were in truth and in fact were Sherwood Brothers, Inc.?

A. No, sir, I will not agree to that. I say very well it could be that the lease of 1944 was with Sherwood Brothers.

But I do recall very vividly the many instances in which Sinclair was interjected into this thing, constantly. Approximately, in the 19—

Q. Mr. Witness, you are addressing yourself to your lease?

A. Yes. I would say that it is possible that the lease for York and Woodbourne could have been with Sherwood Brothers, Inc.

Q. That was your last station?

A. No, sir.

Q. That is your first station?

A. Yes, sir.

Q. And now your notice of cancellation was with respect to your last station, was it not?

A. Yes, sir.

Q. What is the date of that? You have the exhibit. I don't have a copy.

1661 A. It is October 22, 1954.

Q. By whom is that signed, sir?

A. John R. Sherwood.

Q. Is there a corporate signature above that?

A. Yes, sir. Sherwood Brothers, Inc.

Q. Does that refresh your recollection that at the time that notice of cancellation was served, your leasor was Sherwood Brothers, Inc., who notified you of the cancellation of your lease?

A. Well, this looks similar to it, but it is still, as

far as I am concerned—I haven't signed this—and as I say I knew Sinclair was in the picture. I wouldn't want to make a statement definitely that I knew it was with Sherwood or it was with Sinclair.

Q. You just don't know?

A. I don't know.

Q. Is that your answer?

A. That's right, sir.

Mr. Correa: If your Honor please, I would like at this moment to raise the point that upon all of the documentary and other evidence, but chiefly upon the documentary evidence in the record to this moment, I am going to move, and I will be guided, of course, by your Honor's wishes as to when your Honor would like to hear argument on such motion; I don't suggest we do it at
1662 this particular point but I think it ought to flag the point so that nobody can later come along and say I should have raised it earlier in light of this testimony—I am going to move to strike from this record all evidence relating to dealings between the respondent Goodyear and the corporation known as Sherwood Brothers, Inc., on the ground that the sales commission plan, agreements and everything else related thereto, pertaining to Sherwood Brothers, Inc., antedated not only the complaint herein—antedated the complaint herein and ceased to exist before the filing of the complaint herein, and that under any fair interpretation of the complaint, even giving it the broad and in my humble opinion an erroneous interpretation given by the Commission with respect to its issue of other oil companies, it would still not be applicable to an oil company with whom he had ceased, for whatever reason in this case—this corporate disappearance—had ceased to do business prior to the issuance of the complaint.

Hearing Examiner Kolb: Is it your position that Sinclair ceased to do business in Baltimore?

Mr. Correa: No, if your Honor please, Sinclair is a separate entity with whom we had contemporaneously, according to my understanding with our contract with Sherwood Brothers, Inc., contractual arrangements respecting the sale of TBA.

So far as the Sinclair contract—this is all I may
1663 say to your Honor in the record in documents which long antedate the testimony of this witness. But you see, the point is raised most pointedly and most clearly by this witness because this witness actually can testify only concerning the Sherwood, Inc.-Goodyear arrangements. He was no party to the Sinclair-Goodyear arrangements.

Hearing Examiner Kolb: You tell me that Sherwood has a TBA contractor in this locality. I assume Sinclair would have the oil end and take care of it themselves. Yet, your contract which you are attempting to identify now is a contract for the sale of oil as well as TBA, isn't is?

Mr. Correa: No, if your Honor please. The contract with which we are concerned and about which I know—as a representative of Goodyear, I know—deals only with the sale of TBA. And it was the separate contract with Sherwood, Inc., which ended with the corporate existence of that corporation.

Hearing Examiner Kolb: Isn't that a gas station lease?

Mr. Correa: The witness has that. Unfortunately in the photostating, the pagination got mixed up so the witness and counsel are quite correctly able to say that it is not clear that the pages are consecutive. But this we will straighten out as soon as we get the original lease.

The lease is with Sherwood Brothers, Inc. In this con-

nection I think it might be helpful to, your Honor, to
1664 refer your Honor—

Hearing Examiner Kolb: This is a lease to operate a filling station.

Mr. Correa: That's right.

Hearing Examiner Kolb: This is a new lease not with Sinclair, apparently, but with Sherwood Brothers.

Mr. Correa: That's right, Sherwood Brothers, Inc.

Hearing Examiner Kolb: Therefore, is Sinclair selling gasoline in this section other than through Sherwood?

Mr. Correa: Sherwood Brothers, Inc., I assume—and I am speaking, I must disclaim on the record, without knowledge of the detailed arrangements because I don't know what they were—I assume they were a distributor and a subsidiary of Sinclair and distributed Sinclair's products.

Hearing Examiner Kolb: I suggest we let the motion to strike stand until such time as we find out what Sherwood Brothers is on the record.

Mr. Correa: That is all right. As I stated earlier, I wanted to raise the point at this time because it seemed to me that the testimony of this witness, being what it was, made it incumbent upon me to at least call attention to the point. I am perfectly content to reserve argument of it until some later appropriate time, and I think possibly after we have the Sherwood proof in that situation may be clearer than it is now. But I felt it incumbent upon me to raise it.

1665 May we have a few moments recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Correa:

Q. Mr. Witness, you have testified in this proceeding on behalf of the counsel supporting the complaint and I suppose it is fair to bring out that it is the fact, isn't it, that you got, according to your own understanding, a $600,000 stake in the result of this proceeding?

Mr. Kelaher: Objection, your Honor, if this subject is being gone into. Apparently, he has reference to a suit filed by Mr. McMaster and it has no part in this proceeding. I had no intention to engage in a debate about any lawsuit which any witness has entered. I see no point in developing that line of testimony except to show that the witness has a suit and the nature of the suit.

Hearing Examiner Kolb: That is all the question asks for, I think. The objection will be overruled.

The Witness: Would you repeat the question.

(Question read.)

The Witness: I would say so, sir.

Mr. Kelaher: I object to the form of the question and move that the answer be stricken.

Hearing Examiner Kolb: I think the question asking the witness whether it is fair or not is objectionable. I will sustain the objection and strike the answer.

1666

Mr. Correa: I submit—

Hearing Examiner Kolb: If you want to ask him whether or not he has a suit pending, that is one thing. If you ask him whether or not it is fair is another thing.

Mr. Correa: May I have the question read?

(Question read.)

Hearing Examiner Kolb: You asked whether it was fair to bring that out. If you wish to ask another, go ahead.

By Mr. Correa:

Q. It is your understanding, is it not, that you have a $600,000 stake in the outcome of this proceeding?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Correa: If that isn't interest, I submit, your Honor, I don't know what is.

Hearing Examiner Kolb: You can ask him if he has a suit pending for the purpose of showing bias. You can do that if you want to.

I have ruled on the objection. You can ask him what you want to now.

Mr. Correa: May I be heard on these objections? I was not heard on this last.

1667 Hearing Examiner Kolb: I have ruled on it now. Go ahead.

By Mr. Correa:

Q. Is it your understanding, sir—and I am inquiring as to your state of mind, you understand—that you stand to win $600,000 if counsel supporting the complaint are successful in this proceeding?

Mr. Kelaher: Objection, your Honor. I would like to make this statement.

I greatly resent any implications going to the purpose of this proceeding. The Federal Trade Commission is only interested in the public interest. What we will obtain in this proceeding is, we hope—and it looks very much like there will be—an order to cease and desist.

Mr. Thompson: I move that statement be stricken.

Mr. Kelaher: Whether or not there are any public suits is not the concern of the Federal Trade Commission.

Mr. Correa: If your Honor please, with great respect for my learned friend's sincerity—and I am second to no

man in my believe in that—and his impassioned apologia for the Commission which he serves so ably, I do feel that the question is a proper questions and that counsel has been over sensitive to see in the question what I submit with great respect the question is not reasonably susceptible of, some animadversion upon the distinquished Commission he represents. All I am interested in probing at
1668 this moment is whether this witness has an interest in the outcome of this lawsuit. If this were a $25,000 accident case, I would be entitled to prove that. And I can't for the moment believe that in a case involving issues of the magnitude of those involved here, and the importance and ultimate financial impact which these issues and their determination will have, I am not entitled to show that.

Hearing Examiner Kolb: Is it your position that the determination by the Commission will govern your lawsuit, the other lawsuit?

Mr. Correa: No, your Honor, my position, as my question tried to state clearly, is that I am probing whether the witness so understands. Because, after all, this whole subject of interest is a question of what the witness thinks, primarily; what mental conditioning he brings to the stand when he testifies. And I want to show, indeed I believe the witness has already answered, although your Honor has seen fit to strike the answer, that this witness understands that the success in this particular proceeding by the attorney supporting the complaint will enhance at least his chances of getting $600,000. And that seems to me such an elemental and basic form of interest that I am entitled to have it on the record. It is for the trier of the facts to evaluate what significance it has ultimately.

1669 Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: I will overrule the objection. The witness may answer.

Mr. Burch: May I make a statement? It is only appropriate, as his personal attorney to whom Mr. Correa referred, that I be afforded the opportunity of stating his position as his counsel. The form of the question we have no objection to, and there can be no objection to asking a question of the witness as to whether he has a $600,000 suit pending which involves the facts testified to. But for him to put a question to the witness which asks him whether or not he stands to gain on the outcome of this proceeding is completely foreign to his litigation.

The litigation is separate and distinct. The proceedings here will have nothing whatever to do with the outcome of that litigation. It is not the same as a Clayton Act violation under Sherman Anti-trust where you have a conviction and a right of bringing in the conviction as prima facie evidence. The testimony here today will have no relation whatsoever to his private litigation, and I think it is highly unfair for Mr. Correa to give a loaded question to the witness in that respect.

If he wishes to ask the witness a question as to whether he has a $600,000 suit pending, I think that would be
1670 appropriate and I have no objection to the witness answering such a question. But not as to whether he will gain by it if some outcome results from these proceedings. And I think if he would reframe his question, we would have no objection, and I ask your Honor if you would see that the question is reframed.

Mr. Correa: May I ask, if your Honor please, that this gentleman who last spoke and who speaks so freely of loaded questions and unfairness to the witness, would give us his name for the record?

Mr. Burch: My name, which the stenographer has, is Francis Burch, attorney for Mr. McMaster in the pending

suit in the United States District Court for the Federal District of Maryland.

Mr. Correa: In view of all the colloquy, if your Honor please, I will withdraw the question and tackle the subject another way. But I think by now any useful purpose I might have served in terms of—any useful purpose has long since gone by the board. The question is withdrawn.

By Mr. Correa:

Q. Now, sir, it is a fact that you are suing the Goodyear Tire and Rubber Company, is it not?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

The Witness: I believe so, sir.

1671 By Mr. Correa:

Q. You are also suing the Sinclair Company?

A. Yes, sir; I believe so.

Q. The Sinclair Refining Company, I believe, is the proper name.

And you are also suing the Brooks-Huff Tire Company, are you not?

A. Right, sir.

Q. And you are suing them for $600,000, or is it $1,800,000?

A. Well, I can get along on the latter, sir.

Q. I would like to know your understanding of what is the amount you are suing for?

A. Six hundred, sir.

Q. Yoru attorney has been here throughout these proceedings, by these proceedings, I mean these proceedings in Baltimore in this room?

A. Yes, sir.

Q. And by your attorney, I, of course, refer to your attorney in connection with this lawsuit we have talked about?

1675 By Mr. Correa:

Q. Finally, Mr. Witness, have you observed the fact that your attorney has been sitting throughout your testimony with the counsel supporting the complaint and conferring with him from time to time throughout the testimony?

Mr. Kelaher: Objection, your Honor. I don't mind some questions but this is about the—

Mr. Correa: It is the fact, isn't it? Could it be stipulated? After all, I don't insist on the witness testifying.

Mr. Kelaher: What implications you are trying to raise by members of the bar—

Mr. Correa: No—

Hearing Examiner Kolb: I will sustain the objection. Let's get to something worthwhile in this case.

Mr. Correa: I have no further questions.

Mr. Kelaher: Your Honor, just to clarify the record: The action brought by Mr. McMaster was under Section 1 of the Sherman Act, and Section 3 of the Clayton Act, and asks for—

Mr. Correa: Just a moment. I object to counsel making statements of this kind. I assume this is going to be based on evidence and not statements of counsel.

Mr. Kelaher: You raised the point again, I haven't.

Mr. Correa: Are you introducing the complaint?

1676 Mr. Kelaher: I am not introducing the complaint.

Hearing Examiner Kolb: I think we might as well leave this alone. We have gone far enough. We have shown the existence of the suit and that is all.

Mr. Kelaher: I just want to show the nature of it.

Hearing Examiner Kolb: I don't think that is material.

Mr. Correa: I have no further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you, Mr. McMaster.

(Witness excused.)

1692 OSTER NORRIS was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Oster Norris, 1922 South Road, Baltimore 9, Maryland.

Q. Are you associated with the business of R. W. Norris and Sons, Inc.?

A. That is correct.

Q. And what is your position with that company?

A. Treasurer, Sales manager, and vice president.

Q. Vice president?

A. Yes.

Q. What is the business address of R. W. Norris and Sons?

A. 342 North Gay Street, Baltimore 3.

Q. How long have you been associated with the Norris Company?

A. Thirty-five years.

Q. Would you please describe the nature of your company's business?

A. We are in the automotive wholesale parts and supply business.

Q. Do you sell any other products?

1693 A. Well, we sell allied products such as rims and wheels, which are allied to the automotive industries. Also upholstery supplies for the same industry.

Q. Will you please describe the present sales area of your company?

A. Presently it covers the state of Maryland, District of Columbia, a small portion of West Virginia, a small portion of Virginia, and a small portion of Pennsylvania.

Q. Going back to in or about 1947, will you state the sales territory of your company, and whether or not you had any branches at that time?

A. It covered the same states, only it was more intensively covered, and the states of Virginia, Pennsylvania, and Delaware were incorporated at that time on a larger scale.

At that time, in 1946, and for a few years following that, we operated nine other stores than our main office. They were in Oxford and York, Pennsylvania; Dover, Delaware; Salisbury, Maryland; Fredericksburg, Virginia; Harrisonburg, Virginia; Winchester, Virginia, and Cumberland, Maryland. I believe that is nine.

Q. Since 1946 or 1947 have you closed any of such branches and, if so, approximately when, by year?

A. Well, between the years of 1948 and 1952 we closed our stores in Fredericksburg, Harrisonburg, Dover, Oxford, Pennsylvania, and Hagerstown. I think I omitted Hagerstown before.

Q. Since that time have any been closed?

1694 A. Since that time we have closed our Salisbury, Maryland, branch.

Q. In what year, approximately?

A. In 1954. Our York branch in 1953. And our Winchester branch in 1955.

Q. At the present time how many branches do you operate?

A. One branch. That is in Cumberland, Maryland.

Q. What so-called TBA items are carried by your company? What brands?

A. All nationally-known brands, such as Fram oil filter line, Gates fan belt line, tires and tubes, everything that can be used in the automotive business, really. Delco batteries.

Q. What brand spark plugs?

A. Autolite spark plugs.

Q. What brand of chemicals?

A. DuPont and others.

Q. Does your company also sell what are referred to as "hard parts"?

A. Yes, they do.

Q. What class of customers are solicited by your company?

A. Gasoline service stations, commercial or fleet accounts, car dealers are the main customers.

Q. How many salesmen are employed in the sale of TBA items, approximately?

1695 A. They would run between twelve and fifteen. That will vary.

Q. How are such salesmen compensated?

A. By commission.

Q. How many delivery trucks do you operate?

A. I would say eight.

Q. Is that in your main office?

A. Yes.

Q. Do you have any trucks in your—

A. We have one truck in Cumberland.

Q. How many salesmen are at Cumberland?

A. Two.

Q. Two of the total number you mentioned?

A. That's right. We have other men that do sell, but we don't consider them in the category of salesmen, of course.

Q. Mr. Norris, are there other sellers of TBA items in the marketing area in which you operate?

1696 A. Oh, yes.

Q. Could you give us the names of some of those, please?

A. The R. J. Loock Company, Baltimore Gas Light

Company, Replacement Parts Company, Service Parts Company, Monarch Products, Salvo Auto Parts, and I guess there would be sixty additional.

Q. Does your firm operate in areas where Brooks-Huff Tire Company operates?

A. Yes, sir.

Q. And Firestone Stores?

A. Very definitely.

Q. And Stuart-Pressley Company?

A. Yes.

Q. And Goodyear service stores and district stores?

A. Yes, sir.

Q How do your products compare as to price with these other sellers of TBA in your trading area?

A. I would say they are competitive in every respect, price, quality, both.

Q. "Price, quality—" what?

A. Both as to price and quality.

Q. How does your service compare?

A. We think it is every bit as good as any competitor we have.

Q. In both your former and your present mar-
1697 keting area, were there Shell, Atlantic, and Sinclair service stations?

A. Yes.

Q. You have testified that you closed—was it nine branches?

A. We closed eight.

Q. You have closed eight?

A. The ninth one is open.

Q. You have closed eight branches since 19—

A. Since 1948.

Q. Has this resulted in an increase or decline in your sales of TBA to the service station market?

A. Very definitely a decline.

Q. Do you have an approximation of the percentage of decline?

A. In TBA products?

Q. In TBA products to the service stations.

A. I would say approximately around thirty percent.

1698 Q. Has there been since about 1948 an increase or decrease, or has the volume remained the same, with respect to the sale of TBA to Shell and Sinclair service stations in your marketing area?

A. A decrease.

Q. And has that decrease been substantial?

A. We think so, yes, sir.

Mr. Kelaher: No further questions, your Honor.

Mr. Mason: No questions.

Mr. Ballard: Your Honor, I assume that all the testimony pertaining to Shell and Sinclair is received subject to a motion to strike?

Hearing Examiner Kolb: It is subject to a motion to strike by Atlantic.

You may be excused.

(Witness excused.)

Mr. Kelaher: We have one more witness who has traveled quite a distance. We would like to put him on.

1699 JOHN J. MIGAN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. John J. Migan, Randallstown, Maryland. I live at Church and MacDonald Road.

Q. Mr. Migan, are you an employee of the R. W. Norris and Sons Company?

A. Yes, sir.

Q. How long have you been associated with that firm?

A. It will be twenty-eight and a half years.

Q. What is your capacity with that firm?

A. I represent them as a salesmen on the road.

Q. Are you what is known as an outside salesman?

A. That's right.

Q. Have you been an outside salesman for some time?

A. Just about twenty years.

Q. What is your sales area?

A. I cover practically all of Baltimore County, part of Howard, part of Carroll, and part of Anne Arundel, and part of Prince Georges County.

1703 By Mr. Kelaher:

Q. Approximately how many Sinclair service stations are in your marketing area?

A. In the territory I cover I suppose there are fifty or better. I can't call on them all but I call on a good many of them.

Q. There are fifty or better, did you say?

A. Oh, yes.

Q. Approximately how many do you solicit?

A. I never took time to figure it. But I suppose about twenty or twenty-five I at least call on.

Q. Do you sell tires to Sinclair stations?

A. I do not.

Q. Do you sell batteries to Sinclair stations?

A. I don't believe I have a battery account in a Sinclair station right now. I have had them at times,
1704 but not in these days I don't, no.

Q. What brand of tires and batteries do you see in Sinclair stations?

A. Practically everything is Goodyear.

Q. What type of service station identification do you see with respect to TBA?

A. All Goodyear.

Q. What has been your—

Mr. Mason: If your Honor please, I would like to have a date fixed, because we do have this problem of Sinclair as opposed to Sherwood, and the difference between the plans.

If he is referring to the present time, it is obvious that his testimony doesn't bear on the sales commission plan which doesn't cover tires and batteries.

Hearing Examiner Kolb: They still call them Sinclair stations.

Mr. Mason: No. The old stations were Sherwood stations, and the present stations are Sinclair, and so identified. Sinclair stations are under a different arrangement than Sherwood was, and as to Sinclair there is no sales commission arrangement covering batteries and tires.

Mr. Kelaher: I beg to differ.

In one respect Sinclair signs have been in front of Sherwood stations for many years. They are Sinclair stations, in answer to his Honor's question.

1705 Mr. Mason: I am informed by the Sinclair people in the room that that is not the fact.

Mr. Kelaher: We have witnesses who will testify to that.

Mr. Mason: I don't think that has a bearing on my objection. I think we should have a time fixed, since there is this problem in the case, your Honor.

Hearing Examiner Kolb: Will you fix a time?

By Mr. Kelaher:

Q. What brands of gasoline are sold in these so-called Sinclair stations at the present time? What signs appear with respect to gasoline and petroleum products?

A. It is practically all Sinclair now, but there are a few places you can see Betholine yet, but not very much any more. They mostly all have changed back to the green signs of Sinclair.

Q. How long has this situation existed in your territory?

A. Gee, ever since they started. All the way up to today. They have been changed around so many different ways it is really hard to say. In the last couple of years I would say they have all gone to green, which is Sinclair.

Q. Prior to that time it was Sinclair—

A. It was yellow; Betholine before. What we would call a station Betholine, like Joe's Betholine Station, today is Joe's Sinclair Station. It has just been changed 1706 over in the last couple of years.

Q. Prior to that time, would the Sinclair products be sold in the Betholine stations?

A. Oh, yes. Quite a few of them had Sinclair signs at that time. I can recall back even as far as 1945-46 there were Sinclair signs.

Mr. Kelaher: Have we disposed of this motion or whatever it is?

Mr. Mason: My motion has to do with fixing a time.

Hearing Examiner Kolb: It has been fixed.

Mr. Mason: It has yet to be fixed.

Hearing Examiner Kolb: Two years.

Mr. Mason: He had the witness testifying as to his problem in selling tires and batteries, and we haven't had the time fixed as to when that occurred?

By Mr. Kelaher:

Q. When did you first experience difficulty in selling to Sinclair stations?

A. Between two and three years, I would say. Between two and three. Two years at least we have had so much difficulty, since it really went back to Sinclair.

Q. Back in the 1950's we will say, did you solicit business from the Sinclair stations?

A. Yes.

Q. Did you at that time sell them tires?

1707 A. No.

Q. Did you sell them batteries?

A. In some stations, yes.

Q. In the stations at that time what tires were—

A. It was all Goodyear at that time.

Q. The same with batteries?

A. Batteries was the same. That is correct.

Q. And accessories, what was your experience there?

A. I can go back to the years when Sherwood, if you could call it that, had Sinclair products. They recently, or in the last few years, have done away with that. It used to be their own brand, Sinclair. Then they went back to selling other advertised brands of merchandise, DuPont or some other type which they are selling today. They have done away with their names on the cans of a lot of it. But they used to have it Sinclair.

Q. There used to be Sinclair products in Sherwood stations, is that right?

A. Oh, yes. Yes, sir.

Q. Do you recall any conversations with Sinclair service station operators concerning TBA?

Mr. Mason: I suggest that question can be answered Yes or No. If we are going further, we want details.

The Witness: I would say yes.

1708 By Mr. Kelaher:

Q. Would you please state the approximate time and the names of any Sinclair service station operators with whom you discussed TBA?

A. I could almost say them all. But actually to name anyone—I stopped calling on one account I recall, about two years ago, which would be Arbutus Betholine, at that time it was called.

Prior to that we had sold him merchandise, such as batteries, anti-freeze, and so forth. The boys were very fair. They came to me and told me that they were compelled to throw out my line and take on lines that they were supposed to from the Sinclair Company.

Mr. Mason: I move to strike the testimony as being the rankest hearsay and obviously characterizations of the witness and not the person who spoke to him.

Mr. Kelaher: He is testifying as to what he was told by a service station operator or operators.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You placed that time about two years ago?

A. I would say it was a little longer than two years ago because when he cancelled his anti-freeze order from me he had already—it was too late then to try to rein-
1709 state him, or sell him. He had already placed his order, cancelled mine and placed his through Sherwood at that time.

Q. Would that place it sometime in 1955?

A. Yes.

Q. And up to that time were you selling him—what brand of batteries were you selling him?

A. I was selling him Delco batteries up until that time.

Q. After that time did you continue to sell him Delco batteries?

A. I did not. He told me I had to get them out.

Q. Do you recall the names of any other Sinclair dealers with whom you had conversations concerning TBA?

A. Well, I have one today out on Windsor Mill Road, 5816 Windsor Mill Road, George Schwartz.

Q. Would you state the substance of your conversation?

A. He is a personal friend and I do sell him a little merchandise. But I can't sell him what I would like to, due to the fact that he said he has to buy from Goodyear.

Q. Who is the Goodyear supplier in that area?

A. In that area I think it is Brooks-Huff.

1710 Q. Did you at one time call on a Sinclair dealer by the name of Osborn?

A. Yes, sir; I did.

Q. Did you call on him—

A. At Reisterstown.

Q. Did you call on him for any length of time?

A. I called on him ever since he was in business in that area, I suppose.

Q. Did you have any conversations with him concerning his TBA?

A. Oh, many a one; yes, sir.

1711 Q. Are there any Shell service stations in your marketing area? In your sales area?

A. Oh, yes, there are about I guess eight or ten in my area.

Q. Just a relatively few number of Shell, is that right?

A. That is right.

Q. Do you sell tires to Shell operators?

A. No, I do not.

Q. Do you sell batteries to Shell operators?

A. No, sir; I do not.

Q. Do you sell accessories to Shell operators?

A. No, sir, they are the hardest nuts to crack
1712 that I have to handle.

Q. What TBA products do you find in Shell service stations?

A. Well, they have Goodyear and Firestone.

Q. What service station identification do you find in Shell service stations with respect to TBA? I am
1713 referring now to window valances, outdoor signs, et cetera.

A. Most I see is all Goodyear. There is some Firestone.

Mr. Ballard: I move to strike the answer because it is Shell/Firestone.

Hearing Examiner Kolb: He is explaining the station. Some have Firestone and some have Goodyear. I see no occasion for striking at that point.

1714 By Mr. Kelaher:

Q. Based on your own knowledge, where are non-sponsored TBA items displayed in Sinclair stations? Do you get the question? By non-sponsored I am referring to TBA items other than Goodyear?

A. They would put them, most of them would put them in most any conspicuous place where it would be seen by the public or the buyer.

Q. Do you ever notice TBA products in the back of service stations?

A. Oh, yes.

Q. In back of Sinclair stations?

A. Yes, I have seen them back of there.

1715 By Mr. Kelaher:

Q. Do you know who the principal Goodyear TBA
1716 suppliers are for Sinclair stations in your sales area?

A. I don't suppose I would know them all.

Q. The principal ones?

A. I do know of Brooks-Huff and Pressley, out on Washington Boulevard. I understand Kunkel, in Bel Air.

Mr. Kelaher: No further questions.

1717 *Cross-Examination by Mr. Mason.*

Q. Mr. Migan, do you know a Sinclair service station operated by R. P. Haight?

A. Yes.

Q. About a block from where you live, isn't it?

A. Yes, sir.

Q. What TBA has he carried for years?

A. Well, I am not too familiar with him.

Q. But he is only a block away from where you live?

1718 Yes, sir.

Q. Isn't is a fact he carries Firestone TBA almost entirely?

A. I couldn't tell you. I never as in the station since he has taken over. Before that, when his brother had it, and Mr. —several other people had it before then, I was in there. But not since he took over.

By Mr. Ballard:

Q. Mr. Migan, my name is Ballard and I represent the Atlantic Refining Company.

Let me first ask you, how many accounts do you have all told that you call on?

A. That I call on?

Q. Yes.

A. I think on my list I have about 185.

Q. About how often do you get around to see them?

A. Some of them every two, some three, some every four weeks.

. . . . . .

1721 Q. Mr. Migan, are you the only supplier of Delco batteries in the city?

A. I wish we were.

Q. There are a number of others, is that right?

A. Indeed there are.

Q. What other suppliers handle Delco?

1722 A. Well, Parks and Hull. It is on Cathedral Street. Service parts company; and R. H. Boyd, I believe that is right.

I can't think of them that fast but there are quite a few of them. F and L Auto Supply; Salvo; I think Mazor Brothers. I just don't know them all. I have been in the meeting when they were all in one group but I can't recall who they were. I know there are quite a few of them.

. . . . . .

Redirect Examination by Mr. Kelaher.

Q. You were asked by counsel for respondent Goodyear about a service station operated by a Mr. Haight. You stated that you didn't call on that station when Mr. Hight oporated it but you were familiar with it prior thereto.

Approximately, when did the present Mr. Haight take over?

A. I would say about four years ago. I don't know exactly. I have known Mr. Haight since he was just a small tot.

Q. What brand of TBA was carried in the station 1723 when you were calling on it?

A. I could sell him most anything I wanted to prior to that.

Q. What service station identification was shown?

A. It was really a Goodyear set-up. He had other merchandise in them days. But alongside of me you might say. I didn't have to go in the back door or front to get my merchandise in. I did all right.

Q. What do you mean by going in the back door?

A. Well, you have to know a lot of tricks these days if you want to honestly make a living. I suppose you would call it that way. I can recall the days when we had no competition at all, you might say, in the TBA, or your other parts and accessories. They were all glad we had them, especially during the time when they were allocated, particularly during the war and after the war for a short period, when we had merchandise. I had merchandise allocated to me and I could place them any place I saw fit, and I helped a good many of these boys out, and they never forgot it. Today, I still get some business from them which I wouldn't get if I hadn't known them and been personally acquainted with them for years. That is the only way I can really get any volume at all. They do a lot of criticizing and a lot of talk, but still they come back to you and say, 'You helped me out, I will go along with you,'' which I do get them.

Q. Do you know whether the Haight Station is a 1724 company-owned station or an independent station?

A. I think it is a company-leased station. It is owned by the Randallstown Bank.

I think it is leased to Sherwood, or they lease it and then sub-lease it. I think that is the idea.

Mr. Mason: We will stipulate that it is a leasee station.

Mr. Kelaher: Do you mean by that that the prop-

erty is owned by someone other than Sinclair and then sub-leased to—

Mr. Mason: I can find out the facts. Yes, that is the fact.

Hearing Examiner Kolb: The operator doesn't own it in other words?

Mr. Mason: That's right. Whether—

The Witness: The operator doesn't own it.

1727 EUGENE SAVAGE was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your name and home address.

A. Eugene Savage, 4301 Fairview Avenue, Baltimore, Maryland.

Q. Mr. Savage, are you associated with the Burke-Savage Tire Company, Inc.?

A. I am.

Q. What is your position with that company?

A. I am an outside salesman and I am the treasurer of the firm.

Q. How long have you been with Burke-Savage?

A. I have been with Burge-Savage twelve years.

Q. How long have you been an outside salesman with that firm?

A. About nine years.

Q. That would put it back to about 1948, is that right?

A. Approximately.

Q. Will you please describe your company's business?

A. We are basically wholesalers. We go after the serv-

ice station and garage business. We also carry retail
1728 and commercial business.

Q. What products do you carry?

A. We carry two major brands. We carry the U. S. Royal line and we also carry the Armstrong tire line.

Q. Do you carry batteries?

A. We also carry batteries. U. S. Royal batteries.

Q. Do you carry accessories?

A. Not now, No. We dropped the complete accessories line.

Q. At one time did you carry a line of accessories?

A. Yes, we did.

Q. What brands and what products primarily?

Mr. Correa: Could we have a date fixed, please?

The Witness: When we carried the accessories?

Mr. Correa: When you dropped the accessories.

By Mr. Kelaher:

Q. We will develop that if you will just let me work this out. I think we will get right along.

Mr. Correa: Is there a mystery about it, Counsel?

Mr. Kelaher: He can't answer more than one question at a time.

By Mr. Kelaher:

Q. Go ahead.

A. What was the question?

(Question read.)

A. We carried U. S. Royal accessories. We car-
1729 ried the U. S. Royal fan belts; we carried the AC spark plugs; we carried the complete line of Whiz, which is a Hollingshead product, chemical line.

Q. During what period did you carry such products?

A. We were carrying the line when I came with the firm. We were carrying these accessories lines. I would

say that we were carrying the lines up until about six years ago.

Q. And after that time did you continue to carry any accessories at all?

A. We slowly went out of the accessories business and today we have nothing.

Q. Mr. Savage, how many salesmen does your firm employ?

A. Twelve salesmen.

Q. How are they compensated?

A. Do you mean today how many we employ?

Q. Today, yes.

A. Today we have eight salesmen.

Q. And at one time did you employ more salesmen?

A. Yes. When I went with the firm we had 12 salesmen.

Q. How are these salesmen compensated?

A. We pay our men a weekly salary. We pay them commissions on their sales. We also pay them a bonus at the end of the year.

Q. How many trucks does your firm operate?

A. We operate eight trucks.

1730 Q. What is the sales area of the company?

A. We cover the complete Baltimore area and sort of the outlying sections. I would say we cover say within a thirty-mile radius.

Q. Of Baltimore?

A. Of Baltimore.

Q. Are you a large wholesaler of U. S. Tires in this area?

A. I would say we are the largest tire wholesaler in the Baltimore area.

Mr. Correa: If your Honor please, I think I shall have to move to strike that answer as unresponsive because it leaves the question unclear. Counsel asked the question, is the witness' firm a large wholesaler of U. S. tires and the

witness replied by saying we are the largest tire wholesaler. Whether he means tires in general or U. S. tires is left obscure by the unresponsiveness.

The Witness: I would say we are the largest U. S. wholesalers.

Mr. Correa: That solves the problem.

By Mr. Kelaher:

Q. Who are some of the other sellers of tires in your sales area, large sellers?

A. Who are some of the other sellers of U. S. tires, or of other tires?

Q. Of other tires?

1731 A. Well, Brooks-Huff is in our area selling tires; Stuart-Pressley—

Q. Which brand?

A. Brooks-Huff carries the Goodyear tires.

Q. Did you mention Pressley?

A. Pressley also carries the Goodyear line. Also, of course the Goodyear store itself sells tires to dealers.

Q. Are there Firestone stores in Baltimore?

A. There are two Firestone stores that sell tires.

Q. And are there other sellers—who are the principal sellers of batteries in your sales area who sell other than U. S. batteries?

A. These batteries are also sold by the same suppliers. Brooks-Huff carries the Goodyear battery and so does Pressley carry Goodyear. And of course the Goodyear store also of course carries Goodyear batteries.

Q. What type of delivery service do you furnish to your customers?

A. We pride ourselves on the same day delivery service. We give our dealers when they call up, we give them the service the same day. In fact, it is not uncommon for us to make deliveries within two hours or so after they call.

Q. And do you know whether Brooks-Huff has similar delivery service?

A. To my knowledge, in talking to these dealers,
1732 they all tell me that Brooks-Huff uses a two-day delivery service. They tell them two-day delivery in that area, and and they only get deliveries on those two days.

Q. Do you mean by that that they will specify two days in the week?

A. That is right. In East Baltimore, for instance, they may tell the dealer he can get deliveries on Mondays and Thursdays. And that is the only two days he can call in and get deliveries.

* * * * * *

1733 By Mr. Kelaher:

Q. You stated that you have been an outside salesman from approximately 1948 to date with your company, is that correct?

A. That is correct.

Q. During the year 1955, approximately how many Sinclair stations were in your sales territory?

A. 1955?

Mr. Correa: I have the same objection, if your Honor please. I take it I can be understood as having a continuing objection to this line of questions, and the answers will be received subject to a motion to strike?

Hearing Examiner Kolb: Yes, that is right.

Mr. Correa: May I say further on this, I apprehend from the form of counsel's question that conceivably counsel is thinking of the wrong date. The date when the Sherwood plan ended and Sinclair took over was January 1, 1956.

Mr. Kelaher: That is why I asked about 1955.

Mr. Correa: Prior to that date?

Mr. Kelaher: 1955 is prior to January 1, 1956.

Mr. Thompson: Is it understood, your Honor, that any testimony relating to Sinclair or any oil company other than Atlantic is received subject to my standing objection?

Hearing Examiner Kolb: And a motion to strike.

1734 Mr. Correa: May I state further, if your Honor please, this one point because I am not at all certain it is in your Honor's mind respecting this objection. There was indeed in 1955 a Sinclair plan which covered only accessories. There was also a plan which ended December 31, 1955 with Sherwood Brothers, Inc., which covered TB and A—tires, batteries, and accessories.

If counsel means Sinclair stations, then I submit his question, even on his theory, has no relevance. If he means Sherwood Brothers, Inc., stations, then of course his question—

Hearing Examiner Kolb: That would be Betholine?

Mr. Correa: Betholine was the trade name in which gasoline was sold. They were called Betholine and Sherwood.

Mr. Kelaher: At that time Shewood Brothers, Inc. was a 100 percent owned subsidiary of Sinclair Refining Company.

Mr. Thompson: Does that appear of record?

Mr. Kelaher: No. I say at that time it was and we will substantiate that.

Mr. Correa: We will concede it.

Mr. Thompson: No, I don't concede it.

Mr. Correa: I don't think you would, because I don't see how this evidence bears on you.

Mr. Thompson: Furthermore, I don't think it is a correct statement of the fact.

1735 Mr. Correa: In 1955?

Hearing Examiner Kolb: I understand we have the Sinclair testimony to be received in the future.

Mr. Correa: We will leave it in the future then. We will make no concessions.

By Mr. Kelaher:

Q. Let me clarify this before you answer about the Sinclair stations. Did you carry accessories during the year 1956 at all in your line?

A. In 1956, with the exception of a few accessories that we had left over in stock, I say we were completely out of the accessories business. In 1956.

Q. Did you solicit accessories business at all in 1956?

A. No, we didn't.

Q. So there will be no controversy, I would like to have you confine your answers to the period up until January 1, 1956.

A. All right.

Q. During the year 1955, approximately how many Sinclair stations were in your sales area?

A. Approximately 50.

Q. What has been your experience during your period as an outside salesman in selling TBA to Sherwood or Sinclair stations?

Mr. Correa: I object to the form of that question, if your Honor please. Which does he mean, Sherwood
1736 stations under one plan, or Sinclair stations which were under another? I think to mix the two in one question is most unfair and misleading.

Mr. Kelaher: I will use the word "Sherwood" if it will make them happier because we are not going to quibble about it.

Mr. Correa: Let's stick to the facts. It is not a matter of making anybody happy, as far as I know.

A. You want to know what my experience is?

By Mr. Kelaher:

Q. Your experience from 1948 to 1955 in selling to Sherwood service stations.

A. I found that it was very tough with the oil company competition to stock tires in these stations. They were reluctant to stock any brands except Goodyear tires. I had no chance of putting in any sort of advertising or identification of U. S. or Armstrong tires. And in many cases the dealers completely stopped dealing with Burke-Savage.

1737 Q. Would you please state the names of Sinclair dealers whose business was lost during the period 1948 to 1955?

Mr. Correa: I take it counsel means Sherwood?

Mr. Kelaher: Sherwood, rather.

By Mr. Kelaher:

Q. Go ahead.

A. Due to the fact that these stations are lost—and I don't call on them anymore, their names sort of slipped my mind. I did take the chance to look at some of the older records that we did get volume from and do not anymore. We called on Tucker's Betholine station at 1601 Lafayette, from whom we do not receive any more business. In fact, I don't believe Mr. Tucker is in that station anymore.

Q. I would like you to describe with respect to these specific names which you may give, the general business you did with them, and whether or not you lost business, and if so, whether or not you had any conversations with these dealers, and the approximate dates of such conversations?

A. Mr. Tucker had U. S. Royal tires in his sta-
1738 tion and displayed them at one time, and called us—

Q. About what year?

A. Approximately 1952-53.

Q. Go ahead.

A. He called up Burke-Savage and asked us to take back all—

Mr. Correa: If your Honor please, I wish the witness would be told that if he had the conversation would he say it.

The Witness: Yes. I am the salesman and I have the direct contact with these stations. Mr. Tucker called me up and asked me to take back all the U. S. tires because he was told that he could not stock U. S., he had to stock Goodyear. We picked up the tires in the station. Not long after that he lost his lease or such and he is not with that location anymore.

By Mr. Kelaher:

Q. When he was saying "they" to whom was he referring? Did he state?

A. He was referring to Betholine.

Q. Go right ahead.

A. On 41st and Falls Road we called on a Russell Edrington. At one time he was our largest dollar-and-cents tire dealer that we had through service stations. He was a large tire merchant. He told me in person, not on the telephone, that his lease was in jeopardy because he
1739 did not handle tires through the oil company, and within a few months from that time he lost his lease. He is not with the location anymore.

Mr. Correa: Could we have a date on this conversation?

The Witness: This was around 1952. Mr. Patterson took over the same station. I called on him for several months. He told me he could not deal with me, otherwise he would lose his lease, also.

In 1952—

By Mr. Kelaher:

Q. When was your conversation with Mr. Patterson? Did you fix the date?

A. This was in the latter part of 1952. In 1952 Harry Simms, on—I can't quite get the location at this time, about the 4700 block of Reisterstown Road—Mr. Simms was a long lifetime school buddy of another salesman, and—

Q. Of your company?

A. At our company. They went to school together. Mr. Simms carried the U. S. Royal tires through the war years. We gave him as many tires as he needed at that time. And after the war years he dealt with Burke-Savage up until 1952. He called our salesman up, and I went out with our salesman and Mr. Simms told Mr. Nate Schmar and myself that he cannot carry our line of tires anymore, that his lease will be up in one week, the renewal of his lease, and we took our tires out. From that day we
1740 have never sold him any more tires.

Q. Is Mr. Simms at that same location?

A. I don't even know. I have never been back.

Q. When was this conversation with Mr. Simms?

A. It was sometime in 1952.

* * * * *

1741 Q. Did Mr. Rock discontinue purchasing tires from you prior to the time he lost his lease?

A. I would say it was almost instantaneous, that is, he carried tires up until the time that he lost his lease. We lost the business when he lost the station.

Q. Do you have any other former Sinclair customers whose names you can give us?

A. I have a station here, I have listed a man named Joe Fotia, who was sometime operating under the Manor Service Station at 2700 block of Old North Point Road. Mr. Fotia at one time carried—his purchases with Burke-Savage Tire Company ran in the neighborhood of 5 or 6 thousand dollars a year. And today his purchases run less than

$500. Mr. Fotia told me it was due to the fact that the oil company made him buy Goodyear tires.

Q. When did this conversation take place with Mr. Fotia?

A. About '53—between '53, possibly the end of '53 1742 or closer to '54.

Q. Did the volume of your sales to Mr. Fotia decline after that conversation?

A. Yes. We probably do less than $500 a year business with Mr. Fotia.

Q. And in 1955, approximately what volume would you say you did?

A. You mean before that?

Q. Before January 1, 1956?

A. We did 5 or 6 thousand dollars worth of business with him annually.

Q. That is before this conversation you stated?

A. That's right.

Q. You stated, just to clarify the record, when was this conversation again?

A. About the latter part of 1953.

Q. Was there a steady decline in your sales volume from that time to the present?

A. That's right.

Q. Do you have any other dealers?

A. Yes. Charles Bodine, 1501 Martin Boulevard. Mr. Bodine did between 6 and 7 thousand dollars worth of tire business with Burke-Savage from a period of around 1949 up until 1953; his annual purchases were about that. He told me approximately the same time that the oil company representatives had wanted him to handle Goodyear tires and at that time his sales dropped. Today we are 1743 doing about $1,000 a year business with Mr. Bodine.

Hearing Examiner Kolb: What kind of a station does he operate?

The Witness: This is a Sinclair Station.

Mr. Kelaher: Your Honor, all the stations that have been mentioned to date are Sinclair dealers.

Hearing Examiner Kolb: What about Sherwood?

Mr. Kelaher: These—

Hearing Examiner Kolb: You are confusing this record if you are talking about Sherwood Station and calling them Sinclair.

Mr. Kelaher: So there will be no confusion, any time I have used Sinclair, the names are used so interchangeably in the trade that it is difficult to disassociate them, but apparently Sherwood, we will say was Sherwood until January 1, 1956, and after that it became a division of Sinclair. So, if I have used Sinclair—

Hearing Examiner Kolb: It was Betholine up to 1956.

Mr. Kelaher: It was Sherwood Brothers, Inc.

Hearing Examiner Kolb: Didn't they handle Betholine rather than Sinclair?

Mr. Kelaher: They handled Betholine-Sinclair products, according to our information.

Mr. Thompson: I don't concede for a moment that Sherwood and Sinclair are synonymous, or that they are
1744 used interchangeably in the trade, I don't think there is any support in the record for that. I simply want to note the fact that I don't agree with Mr. Kelaher's statement.

Mr. Correa: It might be further noted, as your Honor will recall, the last witness yesterday was quite clear, and he was a man of long experience in the trade, on the difference between them. Sherwood Brothers, Inc., as I understand it, your Honor, was a separate corporate entity until December 31, 1955. They did distribute, among other things, petroleum products of Sinclair Company.

Mr. Kelaher: So there will be no confusion about this testimony, your Honor, Sherwood Brothers, Inc., was a

separate corporation until January 1, approximately January 1, 1956.

Mr. Correa: Exactly.

Mr. Kelaher: These dealers that we have discussed up to this point, that the witness has testified to, had leases with Sherwood Brothers, Inc.

Mr. Correa: That is correct.

Mr. Kelaher: And Goodyear had an override TBA commission with Sherwood Brothers, Inc., during that period.

Mr. Correa: We had a sales commission plan.

Mr. Kelaher: Otherwise known as the sales commission plan.

By Mr. Kelaher:

1745 Q. Was Mr. Bodine one of your largest accounts?

A. He was one of our largest service station accounts; that is right.

Mr. Correa: Excuse me. I may have missed it. Was there a date on the conversation with Mr. Bodine?

By Mr. Kelaher:

Q. What was the—

A. It seemed to me like, it seemed there was a pressure that all came about the same time, which was about the latter part of '53.

Mr. Correa: The question is when was the time.

The Witness: The latter part of '53.

Mr. Kelaher: I think that answers the question.

Mr. Correa: May the record show that throughout his testimony as to these specific names, the witness has been referring to a sheet of yellow paper which he has before him.

The Witness: Well—

Hearing Examiner Kolb: That is all right.

By Mr. Kelaher:

Q. Do you have the names of any other Sherwood dealers whom you were calling on at that time?

A. I have two more.

Q. Will you please state their names?

A. A partnership of Strickland and Ruttig, at 5910 Eastern Avenue. The account gave Burke-Savage
1746 approximately $4,000 worth of business annually up until '53, and at that time Mr. Strickland called me up and asked me to come down to the station, and told me that he will not be able to stock or display any more U. S. Royal Tires; in fact, we took back the tires that he had in stock and credited the account.

• • • • •

Q. Did you state what his purchases were up until that time?

A. Approximately $4,000.

Q. Was there a decline?

A. It declined from the latter part of '53; it started to decline at that point.

• • • • •

1747 By Mr. Kelaher:

Q. After your conversation with Mr. Ruttig?

A. No, Mr. Strickland.

Q. Did you cease having Strickland-Ruttig as a stocking customer?

A. After that conversation?

Q. Yes.

A. No. After this conversation there was no more stock carried.

Q. And your sales then were—

A. Our sales started to drop at that point.

Q. What was the approximate volume in 1954 and '55?

A. Approximately a thousand to $1,400. It would vary.

Q. And since that time, since your conversation with Mr. Strickland, where has Mr. Strickland, where has Mr. Strickland and Ruttig placed the tires they purchased from you?

A. They put a few tires in the backroom where they kept the oil. They did that for a while and finally they stopped doing that. Today, they carry complete Goodyear stock.

Q. Did you say you had another name?

A. I had a John Sinclair Station, Eastern and Kingston, and this was all about the same time, 1953. Mr. John
1748 Sludak—I don't think I know the correct spelling—he operated under John Sinclair Station—he sold John tires. I even sold him tires previously, when he was in another station, I sold him tires from approximately 1948 until 1953. At this time John told me that the oil companies were putting a lot of pressure on him and he could not handle any more U. S. Royal tires. And a few months later he left the station.

Q. Was John operating a Sherwood station?

A. That's right.

Q. Was Strickland and Ruttig operating a Sherwood station?

A. That's right.

Q. Where did Mr. John Zalondex place his U. S. tires after this conversation you had with him?

A. He also placed them in a backroom.

Q. Did you at one time call on a Sherwood station by the name of Rittermeyer at Pulaski Highway and Chesaco Street?

A. That's right.

* * * * * *

1749 Q. Did you have any conversations with Mr. Rittermeyer concerning the purchase of tires by him?

A. Yes, I did.

Q. Approximately, when was that conversation held, and what was the substance of it?

A. Well, let me—do I have that answer that— In other words, this is what I want to bring out: Mr. Rittermeyer—

Q. Is he an active account?

A. No. That is the reason I wrote the name down on here. I haven't seen the man in six years, and I don't think it is fair to answer that. I have more present conversations with these other dealers that I think I could answer.

Q. Who was the primary supplier of Goodyear tires, or of tires, to Sherwood stations during the period 1948 to 1955?

A. Brooks-Huff.

Q. Brooks-Huff, you testified, sells Goodyear tires?

A. That's right.

Q. How did your prices compare with Brooks-Huff prices during the period you are testifying to, 1948 to 1955?

A. Well, being of our large volume, we have al-
1750 ways worked on a short margin of profit. Our prices, we were able to sell these stations because our prices were lower. We gave a longer discount to the dealers on tires. In other words, we sold at a larger discount.

Q. You gave the dealers, you offered the dealers a lower price?

A. A lower price, that's right.

Q. How did your delivery service compare with Brooks-Huff Tire Company?

A. As I stated before, we give, we pride ourselves on same-day-delivery. Our competitors use a two-day-delivery service which gave us a tremendous advantage. We were able to sell these dealers from both price and delivery.

Q. What type of service station identification did you

see in Sherwood stations during the period 1948 to 1955, inclusive?

A. I saw only Goodyear identification.

Q. Window valance, you are referring to?

A. Yes.

Q. And outdoor signs?

A. Decals, metal signs hanging from the outside.

Q. Did you ever attempt to place any U. S. Royal or Armstrong advertising in such Sherwood stations during the period 1948 to 1955?

A. Yes, I did. I tried in many cases to get the dealers to advertise our products.

1751 By Mr. Kelaher:

Q. Did you ever solicit the business of new Sherwood stations or Sherwood stations whose operators changed during the period 1948 to 1955?

A. Yes, I did.

Q. Let me ask you if you have made sales to a new station, or a station with a new operator—I am referring to Sherwood stations—during the period 1948 to 1955?

A. We made very limited sales to new stations.

Q. Did you solicit such business?

1752 A. Yes, we did.

Q. Approximately, how many Atlantic stations are in your sales territory? And I might say, as I understand it, the Firestone-Atlantic TBA sales commission plan is still in effect in this area.

Mr. Thompson: When you say Atlantic, I presume you mean Sherwood.

Mr. Kelaher: I mean Atlantic.

Mr. Correa: I know nothing about the Firestone-Atlantic sales commission plan and concede nothing with respect to it.

Also, if your Honor please, if counsel is going into Atlantic, I take it the testimony may be received subject to my motion to strike.

Hearing Examiner Kolb: Subject to a motion to strike by Goodyear.

Mr. Thompson: I move at this time to strike all the testimony relating to Sherwood and Sinclair.

Hearing Examiner Kolb: The motion will be denied. The testimony will be received subject to a motion to strike by Atlantic.

• • • • •

1761 By Mr. Kelaher:

Q. Are there any Shell service stations in your 1762 area carrying identification other than Firestone?

A. Yes. I see some Goodyear identification in some of them.

Q. Do you recall any conversations with Shell dealers handling Goodyear, carrying Goodyear TBA identification, concerning the purchase of U. S. tires?

A. Yes. I called on a station named Steve's Shell, on Belvedere and Cordelia, that carried Goodyear tires. I sold him some U. S. Royal tires. And slowly he stopped handling Goodyear, and within several months from that point he was removed from the station.

Q. When—

A. This was aprpoximately 1953.

Q. Did you ever have any conversations with the operator of Steve's Shell?

A. Yes, I did.

• • • • •

Q. Just state specifically what your conversation was with the operator of Steve's Shell.

• • • • •

1763 The Witness: His conversation was that, due to the fact that he was handling our products, he had jeopardized his lease.

By Mr. Kelaher:

Q. Who are the principal suppliers of Goodyear products to Shell service stations in your marketing area?

A. I would say Brooks-Huff.

Q. Does Stuart-Pressley—

A. Stuart-Pressley also carries the Goodyear line to the Shell stations.

Q. How do your prices compare with these suppliers of Goodyear products to Shell service stations?

A. We were always able to sell these stations because our price was lower.

Q. How does your service compare?

A. We still pride ourselves on our two-day service, and to my understanding, we are competing against—we give same-day service, and we are competing against the two-day service.

Q. Have you attempted to place advertising matter relating to your firms' products in Shell service stations?

A. Yes, we—

Mr. Correa: Would you repeat that?

(The reporter read the question.)

Hearing Examiner Kolb: Selling Goodyear products.

1764 The Witness: Yes, we have. We tried to put identification in Shell stations, but the dealers would not allow us to put our identification in.

• • • • •

By Mr. Kelaher:

Q. You stated that you, at one time, carried a competitive line of accessories?

A. Yes, sir.

• • • • •

1765 Q. Did your sales of accessories increase, decrease, or remain the same on sales to Sherwood stations during the period 1948 through 1955?

A. They decreased.

Q. Was the decrease substantial?

A. They decreased to a point where we stopped handling them all together.

• • • • • •

1767 By Mr. Kelaher:

Q. Did your sale of accessories to Shell service stations carrying Goodyear identification increase, decrease, or remain the same since 1948?

A. They decreased.

Q. Did they decrease substantially?

A. They decreased into nothing.

• • • • • •

1768 Q. Mr. Savage, I would like to have you state more specifically how long your company carried accessory products?

A. As I said, the company was handling accessories—we have been in the business close to forty years, and the company was handling accessories when I went with the firm. In 1951 our accessories business started to drop off very badly, and over a period of a few short years we finally went out of the complete accessories line.

Q. In 1951 you still had a stock of accessories?

A. That's right.

Q. And you were soliciting—

A. We were still soliciting from our stock, but our sales had dropped off so badly because it was so tough to sell oil company leased service stations, that we eventually stopped buying accessories.

Q. After you stopped buying, you still had a stock on hand?

A. We still carried a stock, yes.

Q. You still solicited accessories business?

1769 A. We solicited from our stock.

Q. Until your stock was exhausted?

A. That's right.

Q. How long a period did it take to exhaust your stock?

A. Approximately two years.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1770 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

Q. I take it, sir, that you understood your assignment here this morning to be to testify against certain tire companies and certain oil companies, including—

Mr. Kelaher: Objection.

Mr. Correa: May I finish?

Mr. Kelaher: Yes, and I will object.

By Mr. Correa:

Q. (Continuing.) —including among the tire companies my client Goodyear, is that right?

Mr. Kelaher: I object to the form of the question.

Hearing Examiner Kolb: Objection overruled.

A. My only understanding was to come here today to tell the truth about our business.

By Mr. Correa:

Q. And you were telling the truth when counsel asked you who your competitors were—

A. That is right.

Q. (Continuing.) —in the sale of tires to service sta-

tion dealers and others? And you mentioned Brooks-Huff, a Goodyear dealer?

A. That is right.

Q. Pressley, a Goodyear dealer?

1771 A. That is right.

Q. A Goodyear store and the Firestone store?

A. That is right.

Q. Did you mean to imply that you have no other competitors in the sale of tires in this area?

A. No, I didn't.

Q. You have a great many others, do you not?

Mr. Kelaher: Let him answer.

Mr. Correa: He answered. He said "I didn't."

Mr. Kelaher: He hadn't completed his answer.

Hearing Examiner Kolb: Stop this controversy. Answer the question.

By Mr. Correa:

Q. The pending question is that you have a great many others, do you not?

A. Through service stations, no, there aren't a great many other ones. A very few. He asked me for some of my prime competitors, and I gave him a list of some of the prime competitors. There are several others, but not too many.

Q. Are Goodrich tires sold in your marketing area?

A. That is right.

Q. Who sells Goodrich tires?

A. There is a Goodrich store.

Q. Is the Goodrich store a competitor of yours?

A. That is right.

1772 Q. Are General tires sold in this marketing area?

A. Not in service stations, no. General is to my knowledge—I have never seen a General tire sold through service stations.

Q. Are Lee tires sold in this marketing area?

A. Very, very limited. Very limited in my customers that I call on, that I see about tires.

Q. Could you answer the question?

A. Are Lee tires sold in this area?

Q. In your marketing area?

A. Yes, Lee tires are sold. But in a small degree.

Q. You say that you had the same-day delivery—

A. That is right.

Q. (Continuing.) —in your company. And you said that Brooks-Huff has a two-day delivery?

A. That is right.

Q. Don't you know that the fact is that Brooks-Huff has the same-day delivery?

A. If they do, I have been in service stations when they have called Brooks-Huff on the phone, and actually heard conversations where they told them they couldn't deliver until certain days of the week.

Q. Don't you know it is a fact that Brooks-Huff currently maintains a truck to make deliveries in response to calls within a matter of hours?

A. You say currently. I don't like to cross-ex-
1773 amine you. Are you talking about—is that something new that he has just done in the last few months?

Q. I am asking you—no, it is not but I am asking you what is the situation now.

A. To my knowledge the situation is the same, because I have dealers calling me up very recently and telling me that they have actually called Brooks-Huff and couldn't get the merchandise right away, and they have called Burke-Savage because they knew they could get same-day delivery.

Q. You have said that you sold tires at a lower price than Brooks-Huff?

A. In most cases, yes.

Q. What tire were you referring to? U. S. Royal or Armstrong?

A. Both.

Q. Do you sell U. S. Royal and Armstrong at the same price?

A. Well, it is a pretty hard thing to—

Q. Don't you know whether you do or don't, Mr. Witness?

A. Yes, we do know.

Q. What is it?

A. Are you talking level for level?

Q. I am talking about the price that the dealer pays for the tire he buys.

A. We sell first line Armstrong tires at a lower price than we sell first line U. S. Royal tires. But we sell higher level tires in Armstrong at a better recovery than
1774 we sell premium U. S. tires. Does that answer your question?

Q. Do you sell U. S. batteries, also?

A. That is right.

Q. You mentioned Tucker's Betholine station among those you listed on your sheet of yellow paper?

A. Yes.

Q. And you said Tucker's Betholine station, if I recall correctly, that you were successful in selling him tires and that not long after he lost his lease?

A. That is right.

Q. Don't you know that it is the fact that Tucker never lost his lease and in fact has two stations under lease, previously from Sherwood and now from Sinclair?

A. He is still at that location, is that right? Mr. Tucker is still at the same location?

Q. Yes. As to one of the stations. The other you didn't mention.

A. He does not deal with Burke-Savage anymore.

Q. That is not the same thing as losing his lease, is it, Mr. Witness?

A. No, it isn't.

Q. You mentioned Mr. Rock?

A. That is right.

Q. And you said that he stopped buying tires from you and also lost his station?

1775 A. That is right.

Q. Did they happen together?

A. At the same time.

Q. Don't you know that Mr. Rock went broke and that that was the reason he discontinued his station?

A. He went broke?

Q. Don't you know that?

A. No, I didn't. He always paid his Burke-Savage bills.

Q. You mentioned John Zaloudex.

A. That is right.

Q. And you said that he was a customer of yours?

A. That is right.

Q. And that you had these conversations with him about the oil companies, is the way you phrased it, putting pressure on him?

A. That is right.

Q. And then a few months later he left the station?

A. That is right.

Q. Did you mean to imply, sir, that he left the station because of dealing with you?

A. I don't believe I said that. I said he left the station.

Q. You did. I am asking now did you mean to leave the impression on this record that his leaving the station had anything to do with his buying tires from you?

A. No, I didn't mean that. But I will say that
1776 Mr. Zaloudex did tell me that there was an awful lot of pressure on him.

Q. You said that, sir, on your direct examination.

Mr. Kelaher: Let him finish his answer.

Mr. Correa: If your Honor please, I submit this is completely unresponsive to my question. This witness is obviously just busting to get this statement about pressure in. He got it in once, he wants to repeat it now unresponsively and I submit I am entitled to be able to cross-examine him without having the witness acting as an advocate as well as answering questions.

Hearing Examiner Kolb: Let's proceed to the next question.

Mr. Kelaher: I think he should be entitled to finish his answer to the last one.

Mr. Correa: I submit he finished his answer.

Hearing Examiner Kolb: He has finished his answer.

Mr. Correa: He was making a completely unresponsive addendum.

Hearing Examiner Kolb: Let's go ahead.

By Mr. Correa:

Q. Do you know why John Zaloudex did leave his station?

A. I know he had trouble with his health.

Q. You knew he left because of ill health, didn't you?

A. I knew that.

1777 Q. But you didn't mention that on direct examination—since you are so fond of going back and repeating your direct examination—did you?

A. Would you ask that again?

Q. Did you mention on direct examination that Mr. Zaloudex left his station because of his health?

A. No, I didn't mention that.

Q. You were asked some rather general questions by Mr. Kelaher. I wonder if you meant to leave the impression that all Sherwood stations in your territory stocked only Goodyear tires?

A. Yes, I meant that.

Q. Is Randallstown in your territory?

A. Not in mine, No.

Q. Is it in the territory of your company?

A. Well, we can sell there, but I don't solicit any stations in Randallstown.

Q. Are you familiar with the Haight—H-a-i-g-h-t—station in Randallstown?

A. I am not.

Q. Do you know what kind of tires Mr. Haight stocks and sells?

A. No.

Mr. Kelaher: Objection. He said he is not familiar with it.

The Witness: I am not familiar with it. I don't
1778 even know where he is located except presumably in Randallstown.

By Mr. Correa:

Q. You have never seen it. You are not familiar with the ones that don't suit your case. How about Mr. Collins? Do you know of that service station?

A. Mr. Collins? No, I am not familiar with that station.

Q. That is at Belvedere Avenue and Pimlico Road. Is that your territory?

A. It is in my territory; that is right.

Q. So it is in your territory?

A. I don't call on him.

Q. That is a Sherwood, now Sinclair, station? Formerly Sherwood and now Sinclair station?

A. I am not familiar with it at all.

Q. You know nothing about that?

A. No.

Q. I suppose your ignorance is unconnected with the fact that he carries Lee tires?

A. I don't think you ought to call it ignorance—

Q. Your lack of knowledge.

A. Put it this way, I am only one human being and I find it is impossible to make more than 12 or 13 calls a day and there are several hundred stations that I could call on a day to have to cover all the stations in the
1779 city. You mentioned three stations because of sickness and—

Mr. Correa: Your Honor, do we have to have a speech each time the witness feels the cross-examination has made a point?

Mr. Kelaher: If we are going to have continued badgering of the witness, I think he is entitled to make speeches.

Mr. Correa: If the witness will answer questions, Counsel, we will have no difficulty with badgering.

By Mr. Correa:

Q. Did you mean by your responses to these somewhat general questions that were asked of you to indicate that all Sinclair stations in your territory which carried tire signs or identification carried only Goodyear?

A. That is right.

Q. Is York Road and Belvedere Avenue within your territory?

A. I do not call on that service station; no, sir.

Q. You know that station?

A. I am at liberty to call on—

Q. Do you know of the station?

A. Do I know of it?

Q. Yes.

A. I am not familiar with it at all.

Q. You know there is a station there?

A. I know there is a station there on that corner.
1780 I pass by on my travels.

Q. Do you happen to know whether or not it is a Sinclair station at the present time?

A. I really could not. I am not sure whether it is or not. I know that there is a big department store there and there is a service station on the corner. I don't know what station it is.

Q. Have you passed that station from time to time?

A. Yes, I have.

Q. Have you noticed the tire signs displayed in and about that station?

A. No. Not primarily, no.

Q. You say not primarily. Have you ever noticed it?

A. I have never noticed it.

1781 Q. Would you consider the display of Lee Tire signs at a Sinclair station as something rather remarkable and unusual?

A. I definitely would.

Q. And that is the sort of thing you would notice?

A. Yes. If there was primarily one or two in the whole city I think I would notice them.

Q. But you never noticed that in respect to the Sinclair station at the corner of—the northeast corner of York Road and Belvedere?

A. No, sir.

Q. Are you prepared to testify that that station is not marked with Lee signs?

A. I am not.

Q. You can't say it is not, can you? You just didn't happen to see what kind of signs it was marked with.

A. I haven't even—I don't even know what kind of station is there, just a vague rememberance of my mind of passing there several times that there is a service station on that corner. I don't think you could answer what was in front of my house.

Q. This station, sir, at the northeast corner of York Road and Belvedere Avenue is in your territory, I believe you said?

A. If it is in Baltimore I have the right to call on the station.

Mr. Kelaher: Your Honor, I know that counsel
1782 should not be restricted in cross, but I think he has exhausted York Road and Belvedere Avenue by this time.

Mr. Correa: I grant it is a sensitive point with you, with the firm.

Mr. Kelaher: Not with me it isn't.

Mr. Correa: I differ a little as to whether I have exhausted it.

By Mr. Correa:

Q. Let me ask you, sir—

Mr. Kelaher: I object to the question.

Hearing Examiner Kolb: What is the question?

Mr. Correa: The question was purely preliminary. I don't think it is a question, in fact.

Hearing Examiner Kolb: Read the question, whatever is on the record.

(The reporter read the question.)

By Mr. Correa:

Q. Is it in your territory, for sales purposes or not?

A. Yes, it is in my territory.

Q. Is there any other Burke-Savage tire salesman assigned to that particular area?

A. We had, to my recollection, we had a salesman, I believe, that did call on a location there. I am not sure it was on that corner or further up. But he is no longer with the firm.

Q. At the present time—

1783 A. We do not solicit any business, and I am not familiar with that location. I believe we did have a location calling on that account at one time, in that vicinity. There is a Sinclair station I am more familiar with that

I have stopped in myself, a man named Buckmaster, who could not buy tires from me, and I stopped calling on him; I understand he is not there any more, either.

Q. This is by way of getting away from the station at the northeast corner of York—

A. I am sincerely not familiar with that location.

Q. Is there any particular reason why you have not solicited that particular station?

A. The reason is that there are more stations—I couldn't possibly solicit every one. I have a routine of certain accounts that I have called on for years, and there are other stations further down on York Road, too. There must be a dozen stations, or I would say two dozen stations, from Belvedere down to Cold Spring Lane that I do not call on, either, of various different—

Q. Of various oil companies?

A. That's right.

Q. And those are stations that in the normal course of your activities you just don't have time to get to, is that it?

A. That's right. And that happens to be one of them.

Q. So that when it comes to the matter of solicit-
1784 ing service stations in general, there are within your territory a certain number of stations which you just can't get to because you just have so much time.

A. Well, yes. The prime reason for that right now is that I divert a lot of my attention to commercial and car dealers accounts because I found out it is very tough to sell these service stations.

Q. You referred to Buckmaster. Is that the same Buckmaster as the Buckmaster Shell Service at 2500 Washington Boulevard?

A. I couldn't answer that. I know that I did call on that service station. It is on York Road. I don't know

the exact number. Mr. Buckmaster told me that he could not buy tires from me, he has to stock Goodyear.

Q. Do you know that Buckmaster Shell Service at 2500 Washington Boulevard?

A. I don't call on him. This same salesman, a man named Johnny Wilkins, called on him. Mr. Wilkins is no longer with the firm.

Q. Do you know whether or not the Buckmaster Shell Service switched from Armstrong tires to Goodyear because of a disagreement with your firm?

A. To my knowledge, I know nothing of a disagreement.

Q. You don't know anything of that?

A. Not a disagreement.

Mr. Kelaher: What type station is Buckmaster's?

1785 Mr. Correa: Buckmaster Shell Service. I would assume that is Shell.

Mr. Kelaher: You mentioned two Buckmasters, as I recall it.

The Witness: Is that the same Buckmaster?

Mr. Correa: The station does business as Buckmaster Shell Service.

Mr. Kelaher: Located where?

Mr. Correa: 2500 Washington Boulevard.

The Witness: I don't believe that is the same Buckmaster in the Sinclair station.

Mr. Correa: The reference, I may say, to the other Buckmaster was brought in by the witness unresponsively on his own. I haven't moved to strike it because—

Mr. Kelaher: Due to the similarity of names I thought you were talking about the same one.

By Mr. Correa:

Q. How about D&L Shell, 6216 Washington Boulevard; do you know that station?

A. Again I don't call on him. This same salesman we had working for us, I believe, did call on that station.

Q. Isn't D&L Shell a customer of yours now?

A. No, he is not a customer of ours now. Neither is Buckmaster Shell.

Q. Where does D&L Shell get the Armstrong tires he sells?

1786 A. I believe he gets them through the Wilkins Tire Company.

Q. That is a competitor of yours?

A. Yes, I guess you can call him a competitor, even though he buys his tires from Burke-Savage, if you want to call him a competitor.

Q. Would you call him a dealer of yours?

A. He is a dealer of ours, yes. Wilkins is, not Buckmaster nor D&L.

Q. That's right. Wilkins sells Armstrong tires to D&L Shell, is that right?

A. Well, I can't answer that because I don't know who Wilkins sells. I don't have a list of his accounts.

Q. I never heard of Wilkins. You told me a moment ago that D&L Shell bought Armstrong tires from Wilkins.

A. He does. But he doesn't buy any more Armstrong tires from us.

Q. Do you know any other place where D&L—

A. He could be buying from Wilkins Tire Company.

Q. Have you ever been in the D&L Shell station?

A. No, I have never.

Q. Have you heard from any of your associates in your business what tires are displayed by D&L Shell?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

The Witness: Have I ever heard from any associates?

1787 By Mr. Correa:

Q. Yes.

A. No, I haven't.

Q. Any of your associates?

A. In our own firm?

Q. Or your dealers.

A. I already said, we did sell D&L Armstrong tires, previously sold him. But we do not today.

Q. Do you know whether or not D&L Shell displays Armstrong tires?

A. Do I actually know? No.

Q. What qualification is in your mind when you say "Do I actually know"?

A. I have never seen or been in the station myself. I am not even positive of the location. I believe it is somewhere in West Baltimore.

Q. How about Middlesex Shell Service, Eastern and Essex?

A. I do not call on that station myself. I do not call on the account. And to my knowledge, Burke-Savage—I see tickets written up—Burke-Savage sells mostly used tires to Middlesex. I have seen numerous tickets to Middlesex. They have all been used tires.

Q. Do you know what—

A. I don't even recollect seeing any new tires.

Q. Do you know what brand of tires Middlesex handles?

1788 A. No, I don't.

Q. Do you know that Middlesex handles, among others, General tires?

A. No, because I don't call on the station.

Q. That is another station you don't call on?

A. General just recently set up a company store within a few blocks of Middlesex. It is possible because of dealer convenience that he is dealing there.

Q. Do you mount truck tires for dealers who buy them?

A. Do we? Yes, we do.

Q. Are you in the recapping business, also?

A. Yes, we are.

1789 Q. Do you do recapping with service station dealers?

A. Yes, we do.

Q. Who is your principal competitor in the recapping business in Baltimore?

A. Well, now, recapping is a different basis than new tires. We have many more competitors in recapping than we do in new tires through service stations.

Q. Could you please now—

A. Who is my principal competitor?

Q. Let's get down to my question.

A. Is that plural? Competitors?

Mr. Correa: Read the question, please, Mr. Reporter, and see if the witness can answer.

(Question read.)

The Witness: Unless you can be more specific—is that in service stations, or commercial accounts? It is a pretty tough thing. In other words, there are several. Car dealers are you talking about or what?

By Mr. Correa:

Q. Let's say in service stations.

A. Who is my principal competitor?

Q. In recapping.

A. Suppose I have three competitors who are all selling the same amount. Who would be the principal one?

Q. Name the three if it is three and let's stop 1790 fencing if you please.

A. I am not trying to fence. If you would only have made it plural, I think I could have answered it.

Q. If it is three, name three, and if it is a dozen, name a dozen.

A. Brooks-Huff is a principal competitor of mine; C. D. Erdman is a principal competitor of mine and Frank Jacobs Tire Company is also a principal competitor of mine.

Q. How about Armor Tread?

A. Armor Tread is also a principal competitor. There are several. It is hard to name one.

Q. You spoke of handling accessories, Mr. Witness. Is that the U. S. line of accessories?

A. We handle quite a few U. S. line of accessories. We handle the U. S. fanbelt and we handle spark plugs that we purchase through United States Rubber Company, etc.

Q. Did U. S. Rubber Company cut down or eliminate its accessories lines in recent years?

A. Nationally? Are you talking of nationally or Baltimore?

Q. Nationally?

A. I have no real—I wouldn't be able to answer that. I don't know the United States Rubber Company's statistics or figures on accessories.

Q. You don't know whether they have cut down on their accessories line.

1791 A. I wouldn't know. I honestly couldn't answer that.

Q. You mentioned Steve's Shell Station?

A. That's right.

Q. Isn't it a fact, sir, that that is an owned station and not a leased station?

A. Is it owned today? Or was it owned at the time that Steve—

Q. Isn't it a fact that both are?

A. Was it ever leased?

Q. According to my information, no.

A. The only thing I can tell you is that the dealer there at that time left me under the impression that he had leased the station.

Q. You said that the operator of that station was removed within a few months after he stopped handling Goodyear tires?

A. He stopped buying tires from Burke-Savage and in a short while he left the station; that's right.

Q. As I understood your direct testimony—and I made a note of it—

A. Go ahead.

Q. —you said that Steve's Shell Station stopped handling Goodyear tires, and within a few months he was removed?

A. That's right.

Q. What was it? Did he stop buying from you or did he stop handling Goodyear tires?

1792 A. Well, when I first started calling on him, he had other brand tires there, and then he started buying tires from Burke-Savage. Then, within a few months he was removed from the station.

Mr. Correa: Please read the answer.

(Answer read.)

By Mr. Correa:

Q. When you say "other brand tires," what do you mean?

A. At that time I believe they were Goodyear tires. You have to remember that that station goes back pretty far.

Q. I am just trying to get your recollection.

A. In some of these instances I can remember extremely clearly what happened. It seems like these are the ones that you haven't brought out. Other ones, of course, are a little more vague.

Q. Having unburdened yourself of that, will you now tell me what your best recollection is as to what other tires Steve's Shell Station was handling?

A. I recollect they were Goodyear tires.

Q. That is your best recollection?

A. Yes, sir.

Q. I gathered from your previous answer you are not entirely certain about that?

A. Because of the time lapse, no.

Q. You say that you then began to sell him tires?

1793 A. That's right.

Q. And what tires did you sell him?

A. I sold him U. S. Royal tires.

Q. Then, you said within a few months, you next said he stopped handling Goodyear tires?

A. Well, he was buying all his tires from Burke-Savage. So, he stopped handling. He evidently did if he was giving us all his business. I don't see how he can continue.

Q. Are you finished?

A. Yes.

Q. Then, you said that within a few months he was removed.

A. That's right.

Q. Did you mean to imply by that that he had a lease and the lease was cancelled?

A. No, I didn't. I just said that he was removed. I didn't imply anything.

Q. Would that include his going away because he decided to go into some different business?

Mr. Kelaher: Objection, your Honor. He has answered the question.

Hearing Examiner Kolb: Overruled.

The Witness: You are asking for the personal life of these people.

By Mr. Correa:

Q. I want to know what you meant by the expres-

1794 sion that he was removed?

A. That's right; he was removed to my knowledge

because he called me up sort of frantically and told me that he has to get out of the station.

Q. You didn't tell us this on direct, did you?

A. That goes along with my testimony, that he was evidently removed from the station.

Q. You said on direct, Mr. Witness, that within a few months he was removed?

A. That's right.

Q. Then, you said the operator said he had jeopardized his lease by handling your products, in a conversation?

A. Did I say it on that particular account?

Q. Yes, you did.

Mr. Kelaher: I would like to have the record read back as to that particular account. I am not quite sure just who he said that with reference to.

Mr. Correa: I can rely on my notes. And my associate's note is the same. I see counsel for Mr. McMaster consulting his notes—

Mr. Kelaher: I object to that. And I ask that that remark be stricken from the record. I would like to make a statement right here and now.

We want no implications in this record that we are associating in any way, shape, or form for purposes
1795 of this case. I think we are perfectly competent to handle this case ourselves. If other individuals see fit to file law suits against these respondents, it is no concern of ours. And I don't want any implications in the record, and I am going to resent every time that counsel brings it up.

Mr. Correa: May I say, if your Honor please, quite seriously, that the facts in respect of the matter to which counsel has just addressed himself, are on the record, and they speak for themselves, and I will rest on them.

Hearing Examiner Kolb: We are not trying this case before a jury, so let's go ahead.

They might be good jury tactics but that is about all.

The Witness: May I say something?

Hearing Examiner Kolb: No, don't volunteer anything. Just answer the questions.

Mr. Correa: I have no further question at this time. And I say at this time because I may conceivably have one or two additional with respect to which I don't have the information at the moment. Presumably, it would be at the end of Mr. Thompson's cross-examination.

Mr. Thompson: If your Honor please; I shall not be able to finish in ten minutes. Do you want to adjourn now and start after lunch?

Hearing Examiner Kolb: How long would it take?
1796 I would like to get this witness out if we could.

Mr. Thompson: I have a number of questions to ask this witness.

Hearing Examiner Kolb: Let's go along and see how far we get.

Mr. Thompson: It might be quicker if I could organize my topics, but I will do as you like.

Hearing Examiner Kolb: We will adjourn until 1:30.

(Whereupon, at 12:22 p.m., the hearing was adjourned to reconvene at 1:30 p.m.)

1797 Afternoon Session.

(1:40 P. M.)

Hearing Examiner Kolb: You may proceed.

Thereupon, EUGENE SAVAGE resumed the stand as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Cross-Examination (Resumed) by Mr. Thompson.

Q. Mr. Savage, did I correctly understand you this morning to say that you had very few competitors in your sales territory?

A. Well, can you be more specific? Again I ask you, are you talking about service stations? And any particular type of service station?

Q. Let's confine the question primarily to service stations. Do you have very few competitors in your efforts to sell service stations?

A. That is right.

Q. Very few. Is the Norris Company one of your competitors?

A. Norris? Are you talking about tires, of course?

Q. I am not talking about tires, of course, at all.

A. As I stated before, we are out of the accessories business now.

1798 I would say that Norris is not a competitor of mine on tires.

Q. How about batteries?

A. In batteries, I would say they are a major competitor.

Q. When you were selling accessories for some years after you decided actively to drop the business but were

selling out of stock, was Norris one of your accessories competitors?

A. Yes, he was.

Q. You know the company, of course?

A. R. W. Norris, isn't it? Is that the one you are referring to?

Q. R. W. Norris.

A. Yes.

Q. Were you present yesterday when Mr. Norris testified?

A. No, I wasn't.

Mr. Kelaher: All witnesses had been excluded except one in response to Mr. Correa's request.

By Mr. Thompson:

Q. Would it refresh your recollection about the number of people engaged in the tire, battery, and accessories wholesale business in selling to service stations if I suggested to you that there are more than 60 such concerns based on the testimony of Mr. Norris?

A. Selling—

Q. Selling TBA to service stations.

1799 A. Are you talking primarily from any one service station, or are you getting into the category of Cities Service stations?

Q. I am talking about—

A. In other words, if I call on a Betholine service station, my only real competitor is Brooks-Huff. I don't see the Atlas supply house selling—

Q. If you call on an Atlas station, your only competitor is who?

A. Firestone. Not my only competitor but my major competitor. There are other tire companies that fringe into business but aren't large competitors.

* * * * *

Q. Do you regard the Loock Company as one of your competitors?

A. In tires; no, sir.

Q. They don't make any efforts to sell tires to service stations, is that correct?

A. I wouldn't say that they don't make any effort.

1800 I don't even know what kind of tires they handle.

There are several types of tires that I have seen around, that I call off-brand tires, that are handled through some of these jobbers. I am not sure which type of tire Norris handles. They aren't that much of a competitor.

Q. Your sales territory is what I think you referred to as the greater Baltimore area?

A. That is right.

Q. Would that be roughly Baltimore and say a radius of roughly 20 miles or something like that?

A. Approximately.

Q. In that area you offer U. S. Royal tires and Armstrong tires, am I correct?

A. That is right.

Q. Aren't the Dunlop tires also sold in that area?

A. To a small degree.

Q. How about Fisk?

A. I see some Fisk tires but I wouldn't consider them a major competitor in the service stations that I mentioned.

Q. How about Gillette?

A. I see some Gillette.

Q. And you of course see a lot of Goodrich?

A. Goodrich is a major competitor, yes.

Q. And of course Goodyear is a major competitor?

A. And Goodyear, and also Firestone.

1801 Q. And Hood?

A. Very—I don't even remember seeing any Hood tires in any service stations.

Q. Kelly-Springfield?

A. In these stations, I havn't seen any Kelly's, either. I see some Kelly-Springfield in some Sunoco stations. If you would be more specific, for instance, when I call on, say, a Texaco station, I would say that my major competitor is Firestone and Goodrich. And that would constitute possibly 80 to 90 percent of competition I receive in that particular service station.

Q. Aren't there a number of wholesalers in the Baltimore, Greater Baltimore area, selling Lee tires?

A. Selling Lee tires?

Q. Yes.

A. The only one that I know is the company store itself. I don't know of any other large Lee dealers that sell service stations.

Q. You never heard of the Hillen Tire Company?

A. I have heard of the Hillen Tire Company. I know Mr. Schnitzer and most of his business is commercial business, not service station business. Mr. Joseph Schnitzer I saw a couple of weeks ago and told me it is so small it isn't even worth talking about.

Q. So they don't try to sell service stations?

A. No, they don't—

1802 Q. Do any of these companies that you mentioned make any efforts to sell service stations, outside of Firestone and Goodyear?

A. I would say they make some effort, yes.

Q. How about Mansfield? Isn't that a rather well-known name in Baltimore?

A. Again, I say I can't even remember seeing a Mansfield tire in any one of these service stations that I call on.

Q. Perhaps at a later point I shall have occasion to try to refresh your recollection. In the meantime, is the McCreery tire sold in the Greater Baltimore area?

A. In service stations?

Q. Yes.

A. Not to my knowledge.

Q. Never see it there?

A. Not in service stations.

Q. How about Michelin?

A. I have never seen a Michelin tire in any service station at any time in the last twelve years.

Q. How about the Miller tire? Is that a local tire sold in Baltimore?

A. I don't know if it is local or not. I believe there are some Miller tires sold in Baltimore. I know of one retailer that handles Miller tires. Again I have never seen a Miller tire in any service stations.

1803 Q. They don't try to sell service stations?

A. Not to my knowledge.

Q. How about Schenuit, is that a Baltimore company?

A. Schenuit is a Baltimore company. Schenuit is probably a little more prominent than all these other off-brands that you mentioned in service stations.

Q. Do you regard Lee as one of your off-brand tires to which you referred?

A. Well, it is terminology. Anything which is not original equipment I sort of refer to as "off brand" tires.

Q. What are the original equipment tires to which you refer?

A. U. S. Royal, Goodyear, Firestone, Goodrich, and General are original equipment tires.

Q. What do you mean by original equipment?

A. Original equipment are tires that are equipped on new automobiles.

Q. And therefore more readily sold as replacement tires?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: I can answer that. Armstrong is not an original equipment tire, and yet we—

By Mr. Thompson:

Q. Are the original equipment tires more easily salable as replacement tires?

Mr. Kelaher: He is trying to answer the question,
1804 I think.

Hearing Examiner Kolb: Read the question.

(Question read.)

A. I would say yes.

By Mr. Thompson:

Q. How about Seiberling line, isn't that sold around Baltimore?

A. Yes, it is.

Q. And you are not by any means the only U. S. Royal distributor, are you?

A. No. There is one other distributor.

Q. Who is that?

A. C. E. Kimmel.

Q. Do you regard Kimmel as one of your competitors?

A. Not through service stations.

Q. Not through service stations?

A. Not through service stations.

Q. Perhaps we will have a chance to refresh your recollection at a later point.

Are there not many, many brands of batteries sold to service stations in the Greater Baltimore area?

A. Are there many brands of batteries?

Q. Yes.

A. Yes, there are.

Q. Would twenty be a pretty good guess?

1805 A. I would say so.

Q. Mr. Savage, when you come to accessories—and I understand, of course, that you are now out of the accessories business—I also understood you to testify that after 1951 you spent several years disposing of stock, is that correct?

A. That is right.

Q. Are there not just innumerable brands of accessories which are sold to service stations by a very large number of wholesalers?

A. Well—

Mr. Kelaher: Object unless the questioning is more specific, your Honor.

Hearing Examiner Kolb: Overruled.

A. I would say yes.

By Mr. Thompson:

Q. If I correctly understood you this morning, you said you had diverted your attention to commercial and car dealer accounts?

A. That is right.

Q. But you still solicit and sell service stations?

A. Well, I solicit more service stations that own their own property and are independent, do not lease their stations.

Q. So that by and large your service station activity is confined to service stations which are not leased stations?

1806 A. That is right.

Q. That interests me very much, and I will come back to that in a moment, if I may.

What percentage of your time do you spend on commercial accounts as against car dealers and service stations?

A. It is divided about in three parts.

Q. Divided in three parts?

A. I think that is fair.

Q. So that you spend about a third of your time on the service station accounts?

A. That is right.

Q. Are you familiar with the survey of service stations

which was published and widely circulated, made by the Baltimore News-Post?

A. No, I am not.

Q. How many service stations would you estimate there are in the Greater Baltimore area, and by that I mean Baltimore and within a radius of about twenty miles?

A. How many service stations?

Q. Yes. I am talking of service stations now. I don't mean just pumps, and I don't mean garages. I mean real service stations.

A. It would be a sort of a wild guess.

Q. May I suggest to you that the survey—and ask you whether this would refresh your recollection or aid
1807 you—that the survey says there are 1,180 in that area?

Mr. Kelaher: May I ask when the survey was made? We have no identification of the survey. The Baltimore News-Post has been in business for many years.

Mr. Thompson: I am not testifying. I would be glad to put it on the record if anybody is interested.

Mr. Kelaher: In fairness to the witness—

Hearing Examiner Kolb: The witness has answered it. Let's go ahead.

By Mr. Thompson:

Q. You said you would guess that is about right?

A. I will accept your figures.

Q. Of those roughly 1100 or 1200 stations, upon how many do you call? How many do you solicit?

A. Now?

Q. Yes.

A. About 130.

Q. I beg your pardon?

A. About 130; possibly 150.

Q. 130 to 150?

A. That is right.

1828 ROLLAND C. BEST was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kaplan.

Q. Would you state your name and home address, please?

A. I am Rolland C. Best. I live at 102 Shetland Hills Drive, Lutherville, Maryland.

Q. Mr. Best, are you associated with the Best Battery Company, Inc.?

A. I am president and treasurer.

Q. And how long have you been operating under the name Best Battery Company?

A. We were incorporated on November 1, 1953.

Q. And had you been operating under any other name prior to that time?

A. Yes. Prior to that time, for a period of about four months, we had a partnership going under the name of B&G Battery Company.

Q. And have you been known under any other name other than B&G and Best?

A. When we originally went into the battery busi-
1829 ness we were known as the Dev-i-Co Battery Company.

Q. What year did that begin, sir?

A. That was from May of 1951 until October of 1952. I believe that is right.

Q. Are you the sole stock owner of the Best Battery Company, Inc.?

A. The stock is owned jointly by my wife and myself.

Q. What product or products does your company sell?

A. We sell nothing but batteries. Lead-acid batteries.

Q. Does that include both wet and dry-charge?

A. Both.

Q. Do you manufacture these batteries?

A. No. These batteries are manufactured for me under contract, on an annual renewal basis.

Q. What company does that manufacturing for you?

A. At the present time they are manufactured by Scranton Battery Company, in Archbold, Pennsylvania.

Q. And prior to this company?

A. Price Battery Company, Hamburg, Pennsylvania.

Q. About how long have you been in business now, sir?

A. Since May 1951, in the battery business.

Q. And what territory does your company cover in its operations?

A. We have the entire United States, but we limit ourselves to an area within twenty miles from our shop.

1830-1839 Q. How many salesmen does your company employ?

A. One.

Q. Is that yourself or in addition?

A. In addition.

Q. How many trucks does your company operate?

A. Three, and a station wagon which I use.

Q. Mr. Best, are there any Atlantic service stations in your territory?

A. A considerable number.

Q. Could you approximate the number at all?

A. I have never gotten statistics on them, but I know that there are quite a few of all kinds. I wouldn't have any idea as to the number.

Q. Are there any Shell service stations in your territory?

A. Yes, there are.

Q. Could you approximate the number of those?

A. No, sir.

Q. And how about Sinclair service stations?

A. There are some of those, also.

Q. Are you able to offer any number of those?

A. No, sir.

Mr. Correa: What was the last question?

(The reporter read the question.)

Mr. Kaplan: Any approximate number of those.

1840 By Mr. Kaplan:

Q. Mr. Best, do you have any competitors in your territory as far as the sale of batteries is concerned?

A. Yes. We have Willard, Autolite, Exide, Bowers, Delco. Probably Bowers is the one most nearly like ourselves who sell direct, who compete on city and state contracts and things of that nature.

Q. These are all manufacture outlets?

A. Bowers is a manufacture. I think Bowers is the only manufacturers' branch in Baltimore. The rest of them are distributors or jobbers.

Q. Do you have any other jobbers as competitors in your product?

A. Other jobbers? Well, every auto supply house is a competitor. Every tire dealer is a competitor. That is, a tire distributor is a competitor because they all handle batteries as a sideline.

* * * * *

1842 Q. Mr. Best, let me rephrase the question. And confine your answer prior to January 1, 1956.

Were you in competition in the battery field with suppliers to Sinclair stations?

A. Yes.

Q. How does your price compare?

A. Naturally being on a lead basis, which I believe is the same basis on which most manufacturers buy their batteries, we are in position naturally with our limited advertising to offer a higher quality product at a lower price.

Q. It is a higher quality product?

A. I believe so.

Q. How does your service compare to these competitors?

A. We pride ourselves on the fact that you call us within an hour and we will have your battery. That is why we confine ourselves to an area within twenty miles of the shop.

1845 Q. Have you ever sold on a stocking basis up to January 1, 1956, Sherwood stations?

A. Yes, I have. Those were not company owned, like Roy's Auto. I stocked him up to the hilt. That is at 3023 Hamilton Avenue. He stocks my batteries and has for quite a period of time. But he sells gasoline and oil but he owns his own building although I understand Sinclair or Sherwood loaned him the money to buy it. But he is still not obligated to stock their products, so he stocks my batteries.

Q. Have you stocked any Sherwood lessee stations?

A. The only one I put a stock in was Russ Cow-
1848 ley's, and I kept it in there for about a month and Russ was so unhappy with it I took it out. That is Seven Mile Lane and Reisterstown Road.

Q. When did you put that stock in?

A. A couple of years ago this fall, I guess.

Q. You say you were only in for a month?

A. Possibly six weeks. It was a very short period of time.

Mr. Correa: May I have that last question and answer?

(The question and answer were read by the reporter.)

By Mr. Kaplan:

Q. You say you stocked him regularly for approximately six weeks?

A. Yes. We have stands, of course, with—I am laugh-

ing because that is a sore spot with me—I invested in some stands and had my name put on them, lithograph, and they were beautiful things.

I brought one out there, and I proceeded to put eight or ten batteries on it, and there they were, and of course next to them were competitive brand batteries. Frankly, I did pretty good for the time I was in there, but that is about the story.

Q. Did you remove these stands voluntarily?

A. I certainly did.

Q. You did?

1847 A. Yes, sir.

Q. Why?

A. Well, I don't know quite how to put this. Let's say that it was my better judgment to take them out.

Q. Can I go into that further, sir?

A. Yes, if you care to. I could see, by talking—of course, at that time I lived in the vicinity of this particular gas station, Mr. Cowley's gas station, and on my way home in the evening I would invariably stop in a couple or three times a week and buy gasoline from him.

Of course, I have a Sinclair credit card and do business with them all the time. And I could see that Russ, who was also a friend of mine, was very unhappy with the situation.

* * * * *

By Mr. Kaplan:

Q. Did you have any specific conversation with Mr. Cowley over this matter, over moving the stand?

A. You mean what he said to me and what I said
1848 to him and what not?

Q. That is correct.

A. Well, yes. Russ first claimed that a Sinclair representative or Sherwood man, I guess it was, came in there

and said, "What are you doing with those things there? Don't you know that those are nothing but rebuilt batteries in new cases?"

And I told him, "Why, Russ, anybody in their right mind, this is an insult to your intelligence." And I went on to do a reverse sales talk on the man and I told him how assinine it was for anybody to even make the statement in the first place, and secondly, he went ahead to say that the same man was in that day and of course when he stocked my batteries he naturally let his other stock of batteries get depleted, and his stand was sitting there, stock naked, so to speak, without a battery on it. And I guess it must have been very aggravating to a little TBA man coming in the station.

So the next thing I knew, Russ had a full stock of batteries.

Q. What type batteries?

A. Goodyear, dry-charge. And I proceeded to take my batteries out.

1849 Q. Mr. Best, you said that you had a salesman in your employ now, is that correct?

A. Yes, sir; since February 4, 1957.

Q. Had you had any salesman in your employ prior to that time?

A. Oh, yes. I once made an effort—I learned early in life in this business if I wanted to survive and feed my family I had to forget about gas stations and go out and make a living for myself, which I have done. I always had in mind that there is a tremendous amount of business out there, so why can't you get it. So I made a concentrated effort. I hired a fellow who worked for eight years for the Bowers Battery Company out in some little territory in back of where the old ferry used to cross to go to Atlantic City. He had that entire area back there—New Jersey, and part of Delaware—and he worked off a truck.

He came to me and said "Look, I have been out of this business for five years but I did do a wagon job for Bowers and I did a good job."

So I proceeded to call up the vice president of Bowers, whom I know very well, and asked him about the man and the man said, "Yes, he did a good job for us and I would like to hire him, if we could, if we had an opening for him or if he wanted to come back to work for us."

On that basis I took the man on and supplied him with a truck and said, "Look, dad, all you have to do is
1850 get out there, call on gasoline stations, automobile repair shops, used car dealers and boys of that nature." And I said, "With the experience that you say you had, and as good a man as you tell me you are, we shouldn't have any problem, with as good a battery as I am going to give you to sell." So he went out there—

Q. When was this?

A. This was in September 1955, that I put him on.

Q. What was the man's name?

A. His last name is Baughner. His first name I think is Frank. I don't even remember that. I have a record of it here. It is Bill.

Q. Go ahead.

A. I kept a record of what the man did. Of course this is—I wanted first of all to see what he did do because he came to me so highly recommended that I wanted to meet a good salesman for a change.

And secondly, I figured that if I was losing money on this bird I wanted to know it right quick, which is exactly what happened. Here is his volume of sales for September. I paid him an advance of $300 a month. My gross profit in the month of September was $231.33. So I had a loss of $68.07, on salary, plus my truck expense, plus maybe a few other things which we won't go into.

In October I have his entire record here. In Octo-
1851 ber I have his entire record here. In October his gross sales for the entire month were $1,457.30. His total sales for September and October then equalled $2,497.63. My gross profit in the month of October was $388.46. That was gross. I advanced him $300 again plus truck expense.

In the month of November he dropped back a little bit. No, he didn't, either. In the month of November he did $1,751.82, which is traditionally one of the best months in the battery business. He did $1,751.82. I advanced him $300 again. I don't think I even bothered to take a gross profit that month to see how I came out. I think I made up my mind to let him go.

In the month of December, which was his last month, his sales were $1,381.59, net. I advanced him $375 because of Christmas and I had a loss of $7.74 plus truck expense. So here is the whole result of a man who spent eight years in the business calling on TBA accounts.

* * * * *

1852 Q. Did your man call on Shell and Sherwood stations, Mr. Best?

A. I believe he did. I have here these pink copies of the salesman's copies of my autographic register. And in here you will find an assortment of Sinclair, Sunoco * * * Shell, gasolines, used car dealers. This is as they came out. These will probably tally with the ones on front. At least they should.

Q. Were these large purchases?

A. No.

Here is the record. These are all the sales he made. He made a good many sales but there isn't any money in it.

Mr. Kaplan: Your Honor, I would like to have these records marked for identification.

(The documents referred to were marked Commission Exhibits 342-A to Z-1, 343-A to Z-40, 344-A to Z-62, and 345-A to Z-55 for identification.)

By Mr. Kaplan:

Q. Mr. Best, did you receive any reports from your salesman as to why he was experiencing so much difficulty selling service stations, and in particular • • • Shell, and Sherwood?

Mr. Correa: I suggest that the answer to that question be Yes or No, because I apprehend there may be an objection to the next one.

1853 Hearing Examiner Kolb: Answer Yes or No.

A. Yes.

• • • • • •

By Mr. Kaplan:

Q. Mr. Best, how frequently did you see your salesman in the course of his employment?

A. You mean Mr. Baughner or Mr. Grace?

Q. Mr. Baughner.

A. Mr. Baughner I saw every night.

Q. Did you discuss the day's business with him at that time?

A. Very definitely.

• • • • • •

1854 By Mr. Kaplan:

Q. You presently have another man in your em-

1855 ploy, is that correct?

A. I do.

Q. What are his duties?

A. He is—I supply him with a Courier, a Ford Courier. He is a truck salesman. He doesn't like that, but that is what he is, a truck salesman.

Q. Does he call on • • • Shell or Sherwood stations?

A. In the course of his rounds as he is going around, if there is a station in the immediate area where he is, he will drop in.

Q. Has he had any success in selling these specific accounts, these specifically named stations?

A. No more than my other boy had.

Mr. Kaplan: No further questions, your Honor.

Cross-Examination by Mr. Correa.

Q. Mr. Best, in the year 1956 did the annual volume, dollar volume of your business, increase substantially over the preceding year?

A. In 1956? Not substantially; about 12 percent.

Q. It did increase?

A. 1957 increased again.

Mr. Kaplan: Your Honor, I object to the question. We did not go into the volume of business of Mr. Best's company.

1856 Hearing Examiner Kolb: I will overrule the objection.

By Mr. Correa:

Q. What was your annual volume in the year 1955?

A. 1955?

Q. Yes.

A. I wish I had my accountant. Say $125,000.

Q. And it increased?

A. 1956 it went up to $138,000 or $140,000. In 1957 it is around $180,000 to $200,000.

Q. Or at the rate of?

A. My fiscal year ended in October. Calendar year it will go over 200.

Q. By the way, at the time you put batteries in Russ Cowley's station, did you at that time have a dry-charge battery?

A. I don't believe I did.

Q. Something you said suggested that maybe you did.

A. They were available to me. Let me put it that way. But whether or not I put any in there I can't say. I probably had some in the shop. But whether I put in any with Russ I can't answer Yes or No. I will qualify that further by stating that they have been available to me since—at that time Price was my supplier, and I know they were making them for, say Firestone, for instance, or Atlas, 1857 and they also were available to me through the same channels.

Q. Do you mean from Price?

A. From Price, at additional cost.

Q. You ascribed the fact that you were able to sell your batteries at a lower price than some of the companies you mentioned as your competitors, as battery manufacturers you mentioned—because of your limited advertising, is that correct?

A. Well, limited advertising would be one factor. Perhaps lower mark-up would be another.

Q. When you speak of advertising, were you referring to the fact that such companies as Willard, Auto-Lite, and Exide have nationally advertised brand names?

A. And Delco.

Q. And Goodyear?

A. Goodyear. Goodyear you see very little advertising of batteries. I only see tires. But Delco is I believe the biggest advertiser of batteries at the present time.

Q. The name Goodyear is a nationally advertised name as a name?

A. As a name, oh, definitely; very definitely.

Mr. Correa: I have nothing further.

By Mr. Ballard:

1858 Q. You have one salesman, is that correct?

A. That is correct.

Q. I am speaking currently.

A. Currently, yes.

Q. I take it that salesman also does not call regularly on service stations?

A. He is getting educated.

Q. You say he doesn't call on Atlantic service stations?

A. I wouldn't say he doesn't call.

Q. Do you know who he does call on?

A. Oh, yes. He calls on Atlantic, Sinclair, Shell, Esso. He calls on everybody. One of the ways that you can best train a man in this business is to have him call on gasoline stations, because there he is really brushing up on his sales talk, because he will get all kinds of replies and he can really get to know the answers to them.

Q. He will get a lot of brush-offs?

A. He will get brush-offs.

1859 Mr. Ballard: No further questions.

Redirect Examination by Mr. Kaplan.

Q. Mr. Best, we missed one question about Mr. Baughner before. What was his sales territory?

A. Well, he left here and he traveled on Route 40 as far as Mountain Road—

Q. Would you say—

A. Metropolitan Baltimore. An area within Bel Air, possibly, and as far north as Aberdeen, and maybe out Washington Boulevard to Southwestern Boulevard and through Arbutus and throughout there, and up through Towson.

Q. And Mr. Correa asked you with reference to the volume of business you have done in the last three years,

and each year you indicated an increase in that volume. Would you say that any substantial amount of that increase has been due to an increase in service station business?

A. Definitely not.

Mr. Kaplan: Your Honor, at this time we do not choose to enter into evidence Exhibits 341 through 343, and would like to have the witness retain them and have them
1860 available for examination.

Mr. Correa: By both sides.

Hearing Examiner Kolb: Is that all that you have of this witness?

Mr. Kaplan: Yes, sir; that is correct.

(Witness excused.)

Hearing Examiner Kolb: The testimony of this witness with reference to oil companies other than Atlantic will be received, subject to a motion to strike by Atlantic.

Mr. Correa: May the testimony to the extent that it is with reference to Atlantic-Firestone relations be received subject to a motion to strike by Goodyear?

Hearing Examiner Kolb: It will be so received, but I don't think there was any.

We will take a short recess.

(A short recess was taken.)

1861 Hearing Examiner Kolb: The hearing will be in order.

Whereupon, ELMER LANG was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Elmer Lang, 500 East Fourteenth Street, Baltimore.

Q. Are you an employee of the R. J. Loock Company, Mr. Lang?

A. That is correct.

Q. And how long have you been employed by that company?

A. Sixteen years.

Q. What is your position with the R. J. Loock Company?

A. I am an outside salesman.

Q. How many years have you been an outside salesman?

A. Nine years.

Q. So, that would put you back to 1948 to date that you have been an outside salesman?

A. Yes.

Q. What class of products are sold by R. J. Loock Company?

A. Well, we handle the general TBA line, which would be tires, batteries, chemicals, accessories.

Q. Would you name the principal brand names?

A. We have Mansfield tires, Autolite batteries,
1862 DuPont chemicals, Gates fan belts and radiator hose, Fram oil filters, and recently added Purolators.

Q. When did you add Purolator oil filters?

A. Back in 1956.

1869 Q. Approximately how many Shell service stations are in your marketing area?

A. I would say probably in my particular area about ten or twelve.

Q. How many Shell service stations have you solicited during your years as a salesman, beginning in 1949, was it?

A. Well, it would be hard to arrive at an exact figure. I would say offhand over the period of eight or nine
1870 years I guess I have called on some 12 or 15 Shell stations.

Q. What has been your—

Mr. Correa: Did I misunderstand the previous answer? I thought you said there were ten or twelve in your area?

The Witness: That's right.

By Mr. Kelaher:

Q. What has been your experience in selling TBA to Shell service stations?

A. I have had no success whatsoever.

Q. Do you presently call on Shell accounts?

A. I have none whatsoever.

Q. What TBA items did you notice in Shell stations during this eight or nine year period?

A. What little contact I had, they seemed to be split up amongst Firestone and Goodyear.

Q. What type identification would you find on Shell service stations?

A. It would vary. It would be either Firestone or Goodyear.

Q. Approximately, how many Sinclair service stations are in your marketing area?

A. I would say roughly about 18 or 20.

Q. Of this number approximately how many have you solicited during the course of your eight or nine years?

Mr. Correa: I object if you are asking about solicitation of Sinclair stations prior to January 1, 1956.

1871 Mr. Kelaher: As a general statement, I think he can tell what his experience has been.

Hearing Examiner Kolb: Let's try calling it Sherwood instead of Sinclair. It might make a better record.

By Mr. Kelaher:

Q. When you first began as a salesman for R. J. Loock, approximately how many Sherwood service stations did you call on?

A. I suppose I would cover about a dozen, I would venture to say.

Q. How many do you presently call on?

A. I have about six now that I would say are really active accounts.

Q. What has been your experience in selling accessories to such stations?

A. Up until 1956 we did a very good job with Sherwood at that time, which is now Sinclair. Most of the fellows in our company considered Sinclair stations one of our best outlets. But in 1956 the picture changed and I would say at the present time we do very little.

Q. During the period 1948 or '49 until 1955, what was your experience in selling batteries to Sherwood stations?

A. We had never been too successful on our battery line with Sinclair or Sherwood.

Q. Who is the principal supplier of TBA to Sinclair service stations?

1872 A. Brooks-Huff.

Mr. Correa: Just a moment. On that last question, did you say principal supplier of TBA to Sinclair stations?

By Mr. Kelaher:

Q. Let's say of Sherwood stations until 1955, and from then on the Sinclair name?

A. It would be Sinclair.

Q. Who was the principal supplier to the Sherwood stations during the period 1949 through 1955?

A. Brooks-Huff to my knowledge.

Q. Who was the supplier of the Sinclair stations from January 1, 1956 to date?

Mr. Correa: Is this limited to accessories?

Mr. Kelaher: Yes.

The Witness: Brooks-Huff.

By Mr. Kelaher:

Q. And did you at one time solicit the accessory business of Ridgley's Sinclair, 5772 Falls Road, Baltimore?

A. Yes, I did.

Q. What has been your experience in selling to this account?

A. Well, we were very successful with Mr. Ridgley up until 1956.

1873 Q. What products were you selling him?

A. We were selling him mostly his chemical line, which he was dividing his purchases with Brooks-Huff and R. J. Loock and Company. It so happens that Brooks-Huff carries the same line of chemicals that we do.

Q. What brand is that?

A. DuPont, Simoniz, Johnson's.

Q. Were you selling oil filters at all, stocking him?

A. We were selling Mr. Ridgley Fram oil filters.

Q. On a stocking basis?

A. Stocking basis. Absolutely 100 percent.

Q. So he was a good account apparently?

A. We classed him as one, yes.

Q. Do you still sell to this account on a stocking basis?

A. We don't sell this account Fram any more.

Q. What is your reason for—did you have any conversations with the operator of Ridgley's Sinclair concerning Fram oil filters?

A. Well, in discussing the oil filter situation with Mr. Ridgley—

Q. About when did this conversation take place?

A. This occurred in the early part of 1956. Mr. Ridgley told me that he was going to stay with Fram. We had on one occasion had fan belts and radiator hose as stocking dealers in his place.

1874 In 1956 that line was changed over to Goodyear. And Mr. Ridgley at that time told me that he had

to make the change on account of his oil company's tie-in with Brooks-Huff. But he was going to stick with Fram oil filters as long as he could.

Q. And did he continue to buy Fram?

A. He continued to buy Fram from us because Brooks-Huff does not carry Fram oil filters.

Then, about the middle of 1956, I went in one day and all the Fram filters were gone and he had a complete stock of Purolator.

Q. Who supplied him with the Purolator filters?

A. Brooks-Huff.

Q. What happened to the Fram oil filters?

A. The Fram oil filters were picked up and taken back by Brooks-Huff.

Q. Did the operator tell you that?

A. He told me that. I questioned him as to where the stock went. He said they picked it up and took it back and shipped in Purolator.

Q. Did you at one time call on Adolph's Sinclair?

A. I did.

Q. Fifty-five hundred block of York Road, Baltimore?

A. Yes.

Mr. Thompson: Mr. Examiner, since this witness
1875 came on the stand, I don't believe I put on the record our customary understanding, that all testimony with respect to oil companies other than Atlantic is received subject to my objection and later motion to strike.

Hearing Examiner Kolb: Subject to your motion to strike.

Mr. Thompson: It will not be necessary for me to repeat that?

Hearing Examiner Kolb: No.

Mr. Correa: I take it the same is true as to the Atlantic-Firestone testimony?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Will you state your experience in selling to Adolph's Sinclair station?

A. Well, in Adolph's case he was a very good customer of ours, until around 1955.

We had the same situation with Mr. Adolph that we had with Mr. Ridgley. He was dividing his purchases between Brooks-Huff and R. J. Loock and Company.

About the middle of 1955 there was some work done on Mr. Adolph's station and Mr. Adolph came to me one week and told me that he would have to cut down on his purchases from Loock and submit the biggest percentage of his orders to Brooks-Huff.

1876 Due to the fact that at that time Sinclair or Sherwood, whichever it happened to be, were after him to build up his volume with Brooks-Huff.

Q. What items were you selling prior to that time to this Adolph's Sinclair station.

A. I sold Mr. Adolph Gates belts, Gates radiator hose, Fram oil filters, DuPont chemical line; practically the same thing I sold Mr. Ridgley.

Q. Were you selling some of these products on a stocking basis?

A. Stocking basis.

Q. Since that time have you sold such products, or any products, on a stocking basis to this station?

A. No, I have not.

Q. Did you at one time call on a Tony Glorioso service station, Old Harford Road and Taylor Avenue, Baltimore?

A. Yes, I did.

Q. Did you sell tires or batteries to this account?

A. No, I didn't sell Mr. Glorioso any tires or batteries. We had the chemicals and the oil filters, Gates fan belts and Gates radiator hose.

Q. During which period did you make such sales to Mr. Glorioso?

A. We made those prior to 1954.

Q. Did you make any such sales—were these sales 1877 on a stocking basis?

A. On a stocking basis.

Q. Did you sell on a stocking basis thereafter?

A. Well, Mr. Glorioso no longer has that station, but somewhere along the latter part of 1954 Mr. Glorioso received a new lease schedule on a month-to-month basis, and at that time he told me that he would no longer be able to purchase his usual items from us, his fan belts and Gates setups were changed over to Goodyear, and he was going to buy from Brooks-Huff for the same reasons that—

Q. Would you please state the substance of the conversation with Mr. Glorioso in some detail?

A. Well, it seems as if Mr. Glorioso had his station remodeled, and approximately a year after he had it remodeled and was back in business again he received a letter from Sherwood, I believe it was at that time, stating that his lease was cancelled as of such and such a date. I don't recall the dates on it. He had no reason to show it to me except he apparently was kind of teed-off about it and presented the letter to me and showed it to me.

He then proceeded to write to New York and there was a lot of discussion pro and con. I had no particular interest in it, but he told me these things. And of course I had to stand there and listen.

Q. What did he tell you?

1878 A. He told me that he had written to New York to find out why his lease was cancelled, and then they sent two men down from the home office and he was approached at his station, and they told him that they would look into it. And about four or five days later he received

a notice that he would be able to operate on a thirty-days lease, a month-to-month lease.

Q. Did he mention anything about TBA during these conversations?

A. After his month-to-month lease was set up then he told me that he was told that his TBA purchases must—his dollar volume must come up higher than it is at the present time. It must come from Brooks-Huff.

Q. Thereafter, did your sales volume decline with this account?

A. Yes. That's right.

Q. Thereafter, were you able to sell this account any products on a stocking basis?

A. We sold Mr. Glorioso nothing on a stocking basis. That may be due to the fact that the gentleman was only there on a thirty-days basis and a month-to-month basis and I don't think he was stocking too much of anything from Brooks-Huff or Loock.

* * * * *

1879 By Mr. Kelaher:

Q. What has been your experience in placing TBA signs in Shell and Sinclair or Sherwood stations?

A. We have been unable to place any type of any display whatsoever.

Q. Have you attempted to do so?

A. We have. We have advertising material in practically all of our major lines that we sell.

Q. Are your major lines nationally advertised lines?

A. That is correct.

Q. What line of batteries do you carry?

A. Autolite.

Q. Would you tell us something about the R. J.
1880 Loock Company? R. J. Loock Company is a large jobber, is it not?

A. We are considered as being one of the largest jobbing houses in the city, and also one of the largest firms on the East Coast in the automotive jobber business.

We have eight men out on the street. We have some seven or eight delivery trucks. Most of our lines are nationally advertised lines. They are lines that millions and millions of dollars have been spent on advertising, such as Autolite, Champion spark plugs, the DuPont line, Gates fan belts and radiator hose, and Fram oil filters.

We have nothing in an off-brand nature that the average car owner hasn't at one time or another seen advertised in some magazine, of some description. It is all nationally advertised merchandise.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examine.

Mr. Correa: We would like a moment, if your Honor please, off the record.

Hearing Examiner Kolb: Very well.

(A short recess was taken.)

1881 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

Q. Mr. Lang, you testified that you have no Shell accounts at the present time?

A. No, sir; I have none.

Q. Are you referring to yourself personally?

A. Yes, sir; that is right.

Q. Not to your company?

A. No. Not to the house; only my part.

Q. The house does have a number of Shell lessee accounts?

A. To my knowledge; yes.

Q. Incidentally, Stuart-Pressley is a customer of yours, is he not?

A. To our house?

Q. Yes.

A. Yes, sir.

Q. Isn't it a fact, sir, that your house has at least seven Shell lessee stations as accounts?

Mr. Kelaher: Objection. He only testified as to his marketing area with respect to Shell, Atlantic, and Sinclair stations.

Hearing Examiner Kolb: He can answer if he knows.

A. I really honestly don't know.

1882 By Mr. Correa:

Q. You don't know how many there are?

A. No, sir; I don't.

Mr. Correa: There is a certain technique involved, I suppose, in bringing along witnesses who just don't know about service station accounts that the employer has.

The Witness: I might clarify that a little bit. We have eight different territories. I am primarily interested in my own territory. I am not concerned about the other seven.

Mr. Correa: What I said was not intended to be critical of you, sir.

The Witness: I beg your pardon.

By Mr. Correa:

Q. Turning to Sherwood, and Sinclair accounts, how about an account known as E&R, a lessee, southeastern corner of Hoffett Road and Southern Avenue. Is that your territory?

A. It is in my territory but I don't call on them.

Q. Where do they buy accessories from, do you know?

A. I don't know. You see I might clarify something there, too. We don't have specific territories. In other

words, we overlap. We might call on—I may call on one station on one corner and another of our men on another on the opposite corner. We have no special territory whatsoever. We are free to go wherever we choose.

Q. But a lessee you don't call on?

1883 A. No, sir.

Q. You don't know where he gets his accessories from?

A. No, sir.

Q. How about Joseph H. Countess, southeast corner of Key Highway and Jackson Street?

A. No.

Q. You don't call on him?

A. No, sir.

Q. Do you know that station at all?

A. No, I don't.

Q. How about John Downes, northwest corner of Baltimore Street and Dondalk Avenue?

A. No, sir.

Q. You don't know him?

A. No, sir.

Q. Or that station?

A. No, sir.

Q. How about Charles R. Gross, northeast corner of Pulaski Highway and Golden Ring Road?

A. No, sir, I don't call on him.

Q. Do you happen to know that he is a customer of your house?

A. He is a customer of our house. Yes, I happen to know that.

Q. And he is a Sinclair lessee dealer, you know that, too?

1884 A. Yes, sir.

Q. Do you know what he buys from your house?

A. Indeed I don't; no, sir.

Q. How about F. Calivoda, doing business as Frank's Sinclair on the east side of U. S. 301 at Quarterfield Road, Glen Burnie?

A. No, sir.

Q. Do you know that station at all?

A. No, I don't.

Q. Do you know that he is a customer of your house?

A. I don't know.

Q. Is Mr. Glorioso a customer of yours now?

A. He is; yes, sir.

Q. How about his brother?

A. Joseph?

Q. Yes.

A. On Dondalk Avenue? Yes, he is.

Mr. Kelaher: What type dealer is he, or what brand?

The Witness: He is Sinclair.

By Mr. Correa:

Q. He is an account of yours?

A. Yes, sir.

Q. How about William F. King?

A. No, sir.

1885 Q. Southwest corner of Broadway and Lombard Street?

A. No, sir.

Q. Do you know that station at all?

A. No, I don't.

Q. Do you know whether or not he is an account of your house?

A. Not to my knowledge. I have never heard his name mentioned.

Q. Would it help your recollection if I suggested to you that the salesman's name was Snow who deals with this account?

A. Snowman. Bob Snowman.

Q. Is he one of your conferees?

A. Yes, sir.

Q. Who sells for your house?

A. That is right. Snowman is his name. Robert Snowman.

Q. Who is J. R. Hunt? Is that a competitor of yours?

A. Yes, that is correct. It is the same type house that we have.

Q. How about H. P. and F. N. Koenig, northwest corner of 25th Street and Kirk Avenue; do you know that station?

A. It is not my customer but I have heard his name mentioned at the store. Apparently he does buy something from Doock.

Q. Do you know of his buying 162 gallons of Prestone last month from your house?

Mr. Kelaher: Objection, your Honor. I am not 1886 certain that this product is under the over-ride program.

Mr. Correa It is under the sales commission plan, which I believe is what you are trying to describe.

Mr. Thompson: It is not under the Atlantic plan.

Mr. Correa: This is a Sinclair plan we are talking of.

Mr. Kelaher: I am glad to have that clarified.

A. I didn't know that; no, sir.

By Mr. Correa:

Q. By the way, you know that Mr. Koenig is a Sinclair lessee dealer?

A. Yes.

Q. Do you know a company called Quaker City Motor Parts?

A. Yes.

Q. Are they a competitor of yours?

A. They are.

Q. Do you sell something which has a trade name Casite?

A. Yes, we do.

Q. Do you know whether the Koenig Sinclair station buys Casite from Loock?

A. Indeed I couldn't tell you.

Q. Claude J. Marston, he operates a Sinclair station in Annapolis, 927 West Street?

A. No, sir, I don't know him. We go down into Annapolis. I don't know whether he is or not.

1887 Q. Do you know whether he is a customer of your house?

A. No, I don't.

Q. Morning Starr and Stephens, northeast side of Reisterstown Road and south of Walker Avenue, Pikesville; do you know that Sinclair lessee station?

A. No, I don't.

Q. Do you have any knowledge or information as to whether they are customers of your house?

A. No, I don't.

Q. How about Q. K. Porter, northeast corner of Patapsco Avenue and Ninth Street, Brooklyn?

A. I know of the account and he is a customer of ours.

Q. Of your house?

A. Yes.

Q. He is not, I take it, from your answer, your account?

A. No, sir, he is not. I think he is Mr. Snowman's.

Q. Do you know whether he is also a customer of Norris?

A. I don't know.

Q. Do you know whether he is also a customer of Baltimore Gas Light?

A. I don't know.

Q. I take it you do know, however, that he is a Sinclair lessee dealer?

A. Yes.

Q. How about T. W. Rennie, Ritchie Highway and
1888 Old Annapolis Road, Glen Burnie. Do you know that Sinclair station?

A. I think he is a customer of Loock's. I have heard his name mentioned occasionally. It rings a bell but I wouldn't say for sure.

Q. Would it help your recollection if I suggested that the salesman on his account is Jensen?

A. Yes, sir, Leslie Jensen.

Q. Is that—

Mr. Kelaher: I am not clear on his answers. Does he mean that is right, there is a salesman named Jensen, or Yes, Mr. Jensen calls on Mr. Rennie?

The Witness: Mr. Jensen is the salesman who calls on Mr. Rennie.

By Mr. Correa:

Q. J. W. Stephens, corner of Ritchie Highway and Jones Road?

A. I don't know.

Q. Do you know that station?

A. No, sir; I don't.

Q. And again I suggest to you that Mr. Jensen is the salesman on that account?

A. That could be. That is his territory.

Q. But you don't have any specific recollection?

A. No, I don't.

Q. How about Charles H. Walper, southeast corner of Lockraven Boulevard and Taylor Avenue?

1889 A. Yes, sir. He is a customer of Loock's.

Q. He is a Sinclair lessee station?

A. Yes, sir.

Q. And is the salesman on his account also Bob Snowman?

A. That is right.

Q. Maybe I asked this question. He is a Sinclair lessee service station?

A. Yes.

Mr. Kelaher: Your Honor, I object to any answer which isn't based on the witness' knowledge. I understand he doesn't call on some of these people, he doesn't know them, and I don't know how he can say whether they are a lessee or not.

Mr. Correa: I dislike interruption of my cross-examination. It is scarcely an objection.

Hearing Examiner Kolb: If you know he is a lessee you can say Yes. If you don't, you can say so.

By Mr. Correa:

Q. I don't think I will go further with this. Most of these service stations I gather are customers either of Jensen or Mr. Snowman?

A. Yes, so far they have been.

Q. There is no use going on with that list. We will wait until they come. I have another question or two.

Adolph's is operated by a man named Adolph?

1890 A. Yes, sir; that is right.

Q. He is quite a figure in the community, isn't he?

A. Yes, he is I would say quite a successful operator.

Q. A successful business man?

A. Absolutely.

Q. As a matter of fact, it is true, is it not, that just a few months ago, a couple of months ago, he was named oil man of the year?

A. Yes, that is right.

Q. In connection with oil progress week?

A. Yes.

Q. That is a designation, I believe, that is given for community or civic accomplishments and that sort of thing?

A. Yes.

Q. He is scarcely the kind of man to be pushed around, is he?

A. I would be inclined to think so, although at that

particular time when I had conversation with him he apparently was being pushed around.

Q. At least that is what he told you?

A. Right.

Q. Do you know whether that was by any chance a brush-off?

A. I hardly think so.

Q. You prefer not to think so, I am sure.

A. Well, I prefer not to think so, it is true. But
1891 under the circumstances that led up to it, I am inclined to believe not.

Q. As to Glorioso, you said that he was told, that he received a notice of cancellation, and that thereafter he was put on a month to month basis.

A. That is correct.

Q. And that he was told to get his dollar volume up?

A. That is right.

Q. Did you visit Glorioso's station pretty regularly around that time?

A. Referring to the time that he was put on a month to month lease?

Q. Yes.

A. Yes. I contacted Mr. Glorioso once a week.

Q. He had several competitors right nearby, did he not?

A. You mean jobbers like ourselves?

Q. No, I mean competitors, service stations?

A. Oh, yes.

Q. Did you note that Mr. Glorioso made a practice at least up to the time he received his notice of cancellation to close his station at eight o'clock in the evening?

A. No, sir; I did not.

Q. Sir?

A. No, sir; I did not.

Q. Were you in a position to observe or did you
1892 call at hours when you could observe?

A. Time I contacted Mr. Glorioso was usually between three or four o'clock in the afternoon, not in the evening.

Q. Did he ever tell you that he was having—

A. No, sir; he didn't.

Q. (Continuing.) —trouble because he was closing his station early and his competitors were staying open?

A. He never said anything to me.

Q. Were Mr. Glorioso's prices higher than his competitors' for comparable items?

A. I wouldn't be in a position to say. I don't know.

Q. You don't know what his prices were?

A. No, sir.

Q. He never spoke to you about that?

A. No, he didn't.

Q. Did Mr. Glorioso, in telling you about the visit of these men from New York to which you referred, tell you that they had pointed out to him that his gallonage was badly off?

A. No, he did not.

Q. You don't know what the position of his gallonage was?

A. I have no knowledge.

Mr. Correa: No further questions.

By Mr. Thompson:

Q. Mr. Lang, you have been in the automotive supply business as I recall your testimony, a total of about 16 years?

1893 A. That is correct.

Q. As an old timer I suppose they call you "auld Lang syne"? I am not clear on what your sales territory is. Would you be good enough to explain it to us?

A. It is pretty hard to explain. As I explained before, we in Loock and Company don't work on a specific terri-

tory. In that I mean we don't have any boundaries of any description. We are free to call in the city or in the county or anywhere that we choose to go. We are not limited to who we call on. We can call on anyone that we choose.

Q. Do the various salesmen for your house call upon the same service stations?

A. No. You mean the same account?

Q. Same accounts.

A. The same two people calling on the same account?

Q. Yes.

A. No, we do not.

Q. Do you have some method by which you divide the accounts among the salesmen?

A. No. The only way I can answer that for you is in respect of—in that some of us cover certain areas more often than others do. It so happens that the customer list falls that way. As far as the house is concerned, if they feel that they were having an account that they want us to call on, they would try to pick the area where
1894 we are the heaviest and the account is the easiest for us to get to.

Q. Generally speaking, then, do you roam the entire city of Baltimore and environs?

A. I would say so. Not in my particular case, but—

Q. Do you personally?

A. I am personally mostly city.

Q. Mostly in the city?

A. I would say 75 percent of my calls are in the city.

Q. Of course it is part of your job to know who your competitors are, am I correct?

A. That is right.

Q. Mr. Norris yesterday estimated there were about 60 jobbers selling TBA in this area. Would that ring a bell with you?

A. How many?

Q. About 60?

A. I hardly think it is that many.

Mr. Thompson: I would like to take a shortcut, if I may, sir. I will hand this witness, with your Honor's permission, a list, eight and a half pages long, with about eight names on each page, and ask him to take a pencil and just tick the names of these companies which he recognizes as TBA jobbers in the Baltimore area. I think that would be a lot quicker than calling off the list.

May I do that?

1895 Mr. Kelaher: That is agreeable.

Mr. Thompson: I need not have it marked for identification because when the list has been ticked I will ask the stenographer to copy it into the record as part of Mr. Lang's testimony.

Mr. Kelaher: May I ask what the total number of jobbers would be on that list?

Mr. Thompson: I haven't counted them. I would guess there are 60 to 70.

Mr. Kelaher: Did you ask him to tick off jobbers who sell in his territory? Is that the idea?

Mr. Thompson: I will ask the stenographer to read the question.

(Question read.)

1896 Mr. Kelaher: What is your definition of a TBA jobber? What does the list purport to be in the first place?

The Witness: I notice only some of those names you have what we call specialty houses who carry nothing but tires and batteries, and then you have one or two houses there such as Parks and Hull, who are strictly legal, which we term specialty houses. R. J. Loock of course covers a lot of actually TBA items. The houses I checked off there to my knowledge are ones that sell practically the same as we do.

Mr. Thompson: That is what I wanted.

Now I will ask on that basis to have the stenographer copy the list into the record.

Hearing Examiner Kolb: Very well.

(The checked list of TBA Wholesalers in Atlantic Refining Company's Baltimore District is as follows:)

Ancor-Salawitch, Inc., 3100 Washington Boulevard, Baltimore, Maryland.

B-B Auto Supply Co., 335 N. Gay Street, Baltimore, Maryland.

Baltimore Auto Supply, 3515 Dolefield Avenue, Baltimore, Maryland.

Baltimore Gas Light Co., 341 N. Calvert Street, Baltimore, Maryland.

Bearings Service Co., 11 Liberty Street, Westminster, Maryland.

H. R. Boyd, 1202 Maryland Avenue, Baltimore, Maryland.

1897 Brooks Huff Co., 4122 W. Belvedere Avenue, Baltimore, Maryland.

Capitol Auto Parts, 3635 S. Hanover Street, Baltimore, Maryland.

Cleaning Supply and Auto Equipment Co., 6104 Belair Road, Baltimore 6, Maryland.

Comis Auto Supply, 1351 S. Clinton Street, Baltimore, Maryland.

Ditch, Bowers & Taylor, Inc., North & Mt. Royal Avenue, Baltimore 17, Maryland.

F & L Auto Supply, 901 York Road, Towson, Maryland.

Federal Auto Parts, 1301 Light Street, Baltimore, Maryland.

General Machinery and Supply Co., 411 E. Lombard Street, Baltimore 2, Maryland.

Glenmore Motors Co., 6400 Harford Road, Baltimore, Maryland.

B. F. Goodrich Store, 1266 E. North Avenue, Baltimore, Maryland.

Goodyear Service Store, Mt. Royal Avenue & Oliver Street, Baltimore, Maryland.

Holly Auto Supply, Lock Raven Boulevard, Baltimore, Maryland.

J. R. Hunt, St. Paul and Calvert Streets, Baltimore, Maryland.

K & S Auto Supply, 3301 Clark Lane, Baltimore, Maryland.

H. E. Kilner Co., 2840 N. Calvert Street, Baltimore 18, Maryland.

Kitz Motor Co., 3237-39 E. Baltimore Street, Bal-
1898 timore 24, Maryland.

Kunkel Service Co., Bel-Air, Baltimore, Maryland.

Liberty Auto Supply (Tire Co.), 2346 E. Fayette Street, Baltimore, Maryland.

R. J. Loock Co., 346 N. Gay Street, Baltimore, Maryland.

Marsheck Auto Parts, Inc., 6226 Holabird Avenue, Dundalk, Maryland.

Martin Auto Supply, 1855 W. Pratt Street, Baltimore, Maryland.

Mazer Bros., Eastern Avenue, Essex, Maryland.

Mazer Bros. Auto Parts & Equipment Co., 915 York Road, Towson 4, Maryland.

Monarch Products, 5519 Reisterstown Road, Baltimore, Maryland.

R. W. Norris Co., 330 N. Gay Street, Baltimore, Maryland.

North Port Automotive, Inc., 2817 North Point Road, Dundalk, Maryland.

Parks and Hull Co., Cathedral Street, Baltimore, Maryland.

Stuart Pressley, U. S. #1, Elkridge, Maryland.

Quaker City, 2930 Remington Avenue, Baltimore, Maryland.

Replacement Parts Service, Inc., 41-45 W. Oliver Street, Baltimore 1, Maryland.

Roper & Neagley Co., 1515 N. Fulton Avenue, Baltimore, Maryland.

Salvo Auto Parts, 14 Back River Neck Road, Bal-
1899 timore, Maryland.

Service Parts Co., 2230 Reisterstown Road, Baltimore, Maryland.

1900 By Mr. Thompson:

Q. You have checked approximately how many houses, Mr. Lang? Would you mind making a rough count?

A. Thirty-nine.

Q. The Loock Company is by no means the only jobber in this area which distributes Mansfield tires, is it?

A. No, sir, they are not.

Q. There are others?

A. Yes, sir.

Q. If I remember your testimony correctly, you distribute Autolite batteries?

A. Yes.

Q. Are there not a large number of other Autolite battery distributors in the Baltimore area?

A. I wouldn't say a large number. There are actually three houses distributing Autolite batteries. There are two other than ourselves.

Q. And those are Boyd, International Harvester, and Service Parts?

A. That is correct. We don't include International Harvester: They service a different trade.

Q. I was interested in noting on the list that you checked that you omitted checking Best Battery Company. Have you ever heard of that company?

A. I have not, no, sir.

1901 Q. Gates fan belts and other Gates products are distributed, are they not, by a very large number of distributors?

A. Yes, I would say approximately seven.

Q. The same would be true with respect to Champion Spark Plugs?

A. Yes.

Q. And certainly Fram and Purolator have a number of distributors in this area, have they not?

A. Yes.

Q. Isn't that so, sir, with respect to substantially all of the accessories carried by your house?

A. Yes. We have nothing exclusive.

* * * * *

1913 EDGAR D. FREELAND, JR. was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your name?

A. Edgar D. Freeland, Jr., 10 Cedar Road, Catonsville 28, Maryland.

Q. Are you an employee of R. J. Loock Company?

A. I am.

Q. How long have you been with that company?

A. Since 1949.

Q. Are you an outside salesman with that company?

A. I am.

Q. Over what period have you been an outside salesman?

A. The entire period.

Q. Did you at one time call on a Sinclair or Sherwood station operated by J. J. Moran, 2108 Frederick Avenue, Baltimore?

A. Yes, I have.

Q. And what was your experience in selling TBA products to Mr. Moran?

A. I sold him pretty generally over the catalogue as his needs required.

1914 Q. Did you stock any items with Mr. Moran?

A. Gates fan belts and hose, Fram oil filters for a short time. I just changed them over from Walker.

Q. About what time did you sell Gates fan belts and oil filters on a stocking basis to Mr. Moran?

A. Up to about three years ago.

Q. Did Mr. Moran discontinue purchasing these items from you on a stocking basis?

A. He did.

Q. Was any reason given to you as to why he did discontinue making such purchases?

Mr. Correa: Just a moment. If we are going to have a conversation, let's ask for it in the proper way. When and where it took place and who was present.

Mr. Kelaher: That is what I was about to do.

By Mr. Kelaher:

Q. Did you have any conversation with Mr. Moran or anyone at his station concerning TBA?

A. His station manager stated to me that—

Hearing Examiner Kolb: Yes or No.

The Witness: Yes.

By Mr. Kelaher:

Q. Please state the name of the man with whom you conversed, the approximate date of the conversation, and the substance of the conversation.

1915 A. The date would have been—I would say approximately two to three years ago. It was Fritz who was the station manager.

Q. Who was the Goodyear supplier?

A. Brooks-Huff.

Q. And, thereafter, were you able to sell Gates fan belts, oil filters and other items that you had formerly been selling to Moran on a stocking basis on a stocking basis?

A. Not stocking basis. Just fill-ins.

Q. Did you at one time call on Dick Zito's Service Station, located at 2100 West Lexington Street, Baltimore, Maryland?

A. I did.

Mr. Correa: Brand?

Mr. Kelaher: This is a Sinclair station.

Hearing Examiner Kolb: Sherwood or Sinclair?

Mr. Kelaher: I believe it was during the Sherwood period. I will ask the witness.

By Mr. Kelaher:

Q. When did you call on this operator?

A. During the entire operation of both Sherwood and Sinclair.

Q. Did you at one time sell chemicals on a stocking basis to Mr. Zito?

A. Yes.

1916 Q. And did you sell antifreeze on a stocking basis?

A. Part of his requirements.

Q. And at any time did Mr. Zito or someone in his station discuss the matter of purchasing TBA with you? If so, just state Yes or No.

A. Yes,

Q. Would you please state the name of the party with whom you conversed, his position, the approximate time of the conversation, and the substance of the conversation?

A. It was Mr. Cavey, he was the manager of the station during Mr. Zito's absence. He was because of health

reason in Florida a great deal of the time. He was just at the station a couple of months of the year.

By Mr. Kelaher:

Q. Did your sales to Mr. Zito thereafter decline?

1917 A. They did.

Q. Did you at one time call on Joe Majchrcak?

A. That is correct.

Q. A Sinclair operator. What was Mr. Majchrcak's address?

A. Bank and Wolf Streets.

Q. In the city of Baltimore?

A. The city of Baltimore, yes.

Q. Did you stock any TBA items with Mr. Majchrcak, and if so, state approximately when?

A. The entire time I have been with Loock on the street.

Q. And Mr. Majchrcak has operated a station during that time?

A. That is correct.

Q. Did you at one time stock Gates belts with Mr. Majchrcak?

A. I did along with J. R. Hunt. First, one would get the re-fill and then I would.

Q. Do you still stock Gates belts with Mr. Hunt?

A. I do not. They were changed to Goodyear.

Q. When did this occur?

A. Approximately two years ago.

Q. Did you have a conversation with anyone at that station, and if so, please state—

A. Yes.

Q. Will you please state the name of the person with whom you conversed, the approximate time, and the substance of the conversation?

1918 A. The conversation was with Mr. Majchrcak

himself stating that he was asked by Sinclair to change over to Gates belts.

Q. From Gates belts?

A. From Gates belts to Goodyear.

Q. Thereafter, did your business decline with Majchreak?

Mr. Correa: I move to strike the answer unless the witness will identify with whom in Sinclair Mr. Majchreak allegedly spoke, because Sinclair is a corporation and obviously you must speak through someone.

Hearing Examiner Kolb: He stated what this man told him.

Mr. Correa: I move to strike the answer on the grounds of hearsay.

Hearing Examiner Kolb: Denied.

By Mr. Kelaher:

Q. Did your business with Mr. Majchreak thereafter decline on Gates belts?

A. It stopped on Gates belts.

Mr. Kelaher: No further questions.

Cross-Examination by Mr. Correa.

1921 Q. As to Mr. Zito, at the time you had this conversation with his station manager, Mr. Cavey, was it not the fact that Mr. Zito's station was carrying Firestone tires, Firstone batteries and Firestone car and home merchandise?

A. He was stocking from both Firestone and Goodyear. As to tires, there is a possibility. I have to take that entirely from memory. I wouldn't want to state positively. I know, yes, that he did stock some Firestone.

Q. Batteries?

A. I won't answer for batteries. I will say for tires.

1922 Q. How about car and home?

A. I don't believe so.

Q. That station actually was sold a little over two years ago, wasn't it?

A. Very shortly after that period, yes.

Q. Do you know that Cities Service bought the station out?

A. They bought it?

Q. And changed it over to Cities Service station?

A. That is correct.

Q. That was prior to January 1, 1956, was it not?

A. It was more than two years.

Q. As to Mr. Majchrcak, as I understand it—and correct me if my note is in error—he was selling Walker oil filters and you asked him to change over to Fram and he did?

A. No. That is confused. Moran was selling Walker and he changed over to Fram, and then subsequently had to change to A. C. because of Goodyear.

Q. Did he change to Fram at your request?

A. He had.

Q. Your solicitation?

A. My solicitation.

Q. Mr. Majchrcak was selling, I think you said, Gates belts?

A. That's right.

Q. And was asked by Sinclair to buy Goodyear belts?

A. Yes.

1923 Q. Is Mr. Majchrcak still a customer of yours?

A. Yes.

Q. What do you sell him?

A. Most any fill-in item that I happen to see he is in need of.

Q. Do you call on him regularly?

A. Every Monday.

Q. What does he do? What is his volume per month?

A. With me?

Q. Yes.

A. An estimate, I would say, $25 to $50 a month. That is his purchase, not my earnings. His purchase.

Q. I understand. Now, sir, we went over some 13, I think, probably 13 Sinclair service stations with the last witness who was your associate, Mr. Lang?

A. That's right.

Q. And it developed that a great many of those appear to be handled by a Mr. Snowman and a Mr. Jensen of your office?

A. That's right.

Q. Do they handle most of the Sinclair accounts that your office has; that your house has?

A. I think every man in the organization has some.

Q. How many Sinclair accounts do you have all together?

A. I, personally?

Q. No, the house.

1924 A. I have no way of knowing.

Q. How many men do you have in your organization?

A. Eight.

Q. How many Sinclair accounts do you have personally?

A. Six.

Q. Do you think that is pretty much par for the course?

A. No. Some of the boys would have more than that.

Q. Do you handle Shell accounts?

A. A few.

Q. Which Shell accounts do you handle?

A. Will's Shell, Pratt and Frederick.

Q. Pratt and Frederick?

A. Yes, in a triangle where the two come together.

Q. That is his address?

A. You may have it under another address.

Q. I have Pratt and Smallwood.

A. Smallwood crosses there. Then, I have the Arbutus. That would be Southwestern Boulevard and Selma.

Village Shell, in Catonsville, 601 Frederick Avenue.

And the Parkville Shell at Harford Avenue and Taylor Avenue.

Q. Are those all your Shell accounts?

A. They are my Shell accounts.

Q. I take it that the others of your colleagues have other Shell accounts?

1925 A. Yes. There is one other I didn't recall. It is a new one that has just been opened, at Edmondson Avenue and North Bend Shell. He trades. Joe Fetch. I think he trades as North Bend Shell.

Hearing Examiner Kolb: Are these all Goodyear accounts?

Mr. Correa: These are his customers.

Hearing Examiner Kolb: Are they Goodyear TBA?

The Witness: They are all Goodyear accounts.

Mr. Kelaher: The question is are they Goodyear or Firestone TBA?

Mr. Correa: I must be consistent. I will have to check that because I don't have that information. I am informed, let me state for the record, they are all Goodyear.

By Mr. Correa:

Q. How about Neal's Shell Service, at Hanover and Cromwell, in Baltimore?

A. I don't work that at all.

Q. You have given us the five accounts—

A. That I contact.

Q. How about H. Barbour Shell Service, 6435 Pulaski Highway?

A. I don't know that account.

Q. You know that is a customer of your house?

A. I know it is a customer of Loock. But some other salesman contacts them.

1926 Q. Incidentally, do you know whether Mr. Joe Manor or Mr. Jensen were interviewed by the Federal Trade Commission investigators in this matter?

Mr. Kelaher: Objection. I don't see the relevance of that remark.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Correa: I have no further questions.

Mr. Ballard: I have no questions, your Honor. I hope the usual objection will be noted on the record.

Hearing Examiner Kolb: Yes. It is received subject to a motion to strike as to matters involving other oil companies.

Mr. Kelaher: No questions, your Honor.

(The witness was excused.)

1928 LEWIS A. HUETHER was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kaplan.

Q. Would you please state your name and home address?

A. Lewis A. Huether, 400 North Lakewood Avenue, Baltimore 24.

Q. Mr. Huether, are you employed by R. W. Norris and Sons, Inc.?

A. Yes.

Q. In what capacity are you employed?

A. Representative.

Q. How long have you been a representative with that company?

A. Since 1920.

Q. Since 1920?

A. About 36 or 37 years. I have been employed with them longer than that.

Q. How long have you been employed by that company?

A. Since 1914.

Q. How long have you been an outside salesman
1929 with that company?

A. How long? Since 1920.

Q. What has been your territory?

A. Baltimore city and a portion of Baltimore County.

* * * * *

1930 By Mr. Kaplan:

Q. Mr. Huether, how many Sinclair stations would you say are in your territory?

A. Sinclair as of today, or Sherwood as before they took it over?

Q. That needs some clarification. Sinclair as of today.

A. Forty.

Q. Do you solicit any of those accounts, sir?

A. Yes.

Q. Approximately how many do you solicit?

A. Ten.

Q. Do you sell any of these that you solicit on a stocking basis?

A. Yes, some of them.

Q. Are these that you do stock lessee dealers or independent contract dealers?

A. Independent-contract dealers.

Q. You do not sell on a stocking basis any of the lessee dealers, is that correct?

Mr. Mason: I object to that question as leading. This can be gotten at in another way.

1931 By Mr. Kaplan:

Q. You sell your products to these lessee stations on a stocking basis?

A. Some few of the lessee stations. Very few of those on a stocking basis.

Q. Within your knowledge, who is the supplier to these Sinclair stations?

Mr. Mason: Supplier of what?

By Mr. Kelaher:

Q. Supplier of TBA.

A. I wouldn't know who exactly, but who has been told is Brooks-Huff and Kunkel service.

Q. Mr. Huether, have you ever done any business with a Mr. C. H. Mizzele?

A. Yes.

Q. Where is he located?

A. He is on Route 40, on Pulaski Highway and Ebenezer Road.

Mr. Ballard: Could we have an identification of Mr. Mizzele?

Mr. Kaplan: He is a Sinclair dealer.

By Mr. Kaplan:

Q. What type station does Mr. Mizzele operate?

A. Lessee.

Q. What company?

A. Now, with Sinclair.

1932 Q. Mr. Huether, what has been your experience with Mr. Mizzele, with reference to selling TBA?

A. I have been getting some little bit of merchandise from him.

Q. Have you ever sold him on a stocking basis?

A. I have sold him at times the DuPont line, but it seems as though I just can't get in there now with it. That is one of the lines that I used to stock him.

* * * * *

1933 By Mr. Kaplan:

Q. Do you recall when you had any particular conversation with reference to the chemicals that you attempted selling Mr. Mizzele?

A. I wouldn't remember exactly when.

Q. Was it within the last two years?

A. Oh, yes. I do get some DuPont now, but just an occasional. I never get the stocking amount, see. I get a pick-up of something that he runs short of down there.

Q. Did Mr. Mizzele ever give you any reasons for not stocking your chemical line?

1934 A. Well, from the way I understood, he had to buy this—

Mr. Mason: I am going to object to "the way I understood" because that is obviously leading into improper testimony.

Hearing Examiner Kolb: Just state your conversations or facts, but don't say what you surmised or understood.

The Witness: Well, I asked him about the DuPont line and he said No, that he had to buy that now from his supplier of the TBA lines.

By Mr. Kaplan:

Q. Mr. Huether, have you ever done any business with a Mr. B. H. Reitmeyer?

A. B. R.? Herbert Reitmeyer, yes.

Q. When Mr. Reitmeyer was in business, where was he located and what type of company station did he operate?

A. He was located at Pulaski Highway at Chesco Park Road.

Q. What type station did he operate?

A. Sinclair.

Q. Was he a lessee dealer or contract dealer?

A. Lessee.

Q. Did you ever sell Mr. Reitmeyer on a stocking basis?

A. No.

Q. Never did?

A. Once I sold him some DuPont. Once. That is all. I mean in a stocking quantity.

1935 Q. How long had you solicited Mr. Reitmeyer's business?

A. Since he was in business. That is, having that station.

Q. How long?

A. I don't know how many years. I guess it was ten years.

Q. When did he leave the station?

A. I think it was the first of November.

Q. Which year?

A. This year.

Q. Did you ever have any conversations with Mr. Reitmeyer as to why he would not buy your line of TBA?

A. Well, the only thing I know about Reitmeyer is that he was quite a bellyacher. Whether he was pushing me off or not—"I would like to buy it from you, but I can't."

Q. Did he ever give any reasons why he could not buy?

A. No.

Mr. Kaplan: No further questions.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Mason.

Q. Mr. Huether, was it possible Mr. Mizzele was just giving you the brush-off?

A. I always took him very sincerely. Whether it was or not, I don't know. But he always had been very frank with me. Very frank.

Mr. Mason: Nothing further.

1936 Mr. Ballard: I assume this testimony is received subject to Atlantic's motion to strike, so far as it refers to Sinclair and/or Sherwood stations.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Atlantic.

Mr. Kaplan: No further questions, your Honor.

Hearing Examiner Kolb: You may be excused.

(Witness excused.)

Mr. Kaplan: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1937 Hearing Examiner Kolb: The hearing will be in order.

JAMES HOOPER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. James Hooper, 2915 Louise Avenue, Baltimore 14.

Q. Mr. Hooper, were you at one time a Shell lessee service station operator?

A. Yes, sir, I was.

Q. Where was your service station located?

A. 4912 Harford Road.

Q. How long did you operate that station?

A. A year and nine months.

Q. How long a lease did you have?

A. One year.

Q. When did your lease commence?

A. It commenced on May 26.

Q. Which year?

A. 1952.

Q. When did it terminate?

A. May 26, 1953.

1938 Q. And then you stayed in thereafter for nine months? Is that correct?

A. That is correct.

Q. How much capital did you invest in the Shell station?

A. Approximately $4,000.

Mr. Thompson: If your Honor please, may it be understood that this testimony about Shell will be taken subject to Atlantic's objection and eventual motion to strike.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. Was any of this money borrowed from Shell?

A. No, sir.

Q. How did you raise such money?

A. Mortgaged my home.

Q. At the time you entered the station had a station been in operation there for some time?

A. Yes, sir.

Q. Was there an inventory of TBA in the station?

A. Yes, sir.

Q. Did you purchase that inventory?

A. I did.

Q. Why did you purchase that inventory?

A. Upon the request of Mr. Lump, Shell Oil Company.

Q. Were there Goodyear TBA products in that inventory?

1939 A. There were.

Q. And Firestone?

A. Yes, sir.

Mr. Thompson: I object to any testimony with respect to Firestone from this witness. Firestone and Shell are both non-respondents.

Mr. Correa: We join in the objection.

Hearing Examiner Kolb: Did he testify he handled Firestone and Goodyear?

Mr. Correa: He testified there was Firestone and Goodyear TBA.

Hearing Examiner Kolb: Then I will overrule the objection.

By Mr. Kelaher:

Q. At the time you took over this station or before you took over this station did Shell representatives talk to you about TBA?

A. Yes, sir; they did.

Q. Would you state the substance of the conversations?

Mr. Correa: May we have the representatives identified?

By Mr. Kelaher:

Q. Would you please state the names of the representatives and the substance of the conversation?

A. Of the Shell Oil Company you mean?

1940 Q. Yes.

A. Mr. Jerry Lump.

Q. Do you know what his position was with Shell at that time?

A. I think he was assistant manager—sales manager.

Q. Assistant sales manager?

A. I think. I am not positive.

Q. What was the substance of the conversation with Mr. Lump?

A. I had a conversation with him. He explained that they have an outlet with Firestone and Goodyear, and wanted me to purchase my products from—TBA—from them.

Q. Did they specify where your Goodyear TBA could be purchased?

A. Yes. From Stuart-Pressley.

Q. And when you entered the station from whom did you purchase your TBA?

A. Just what do you mean?

Q. As soon as you entered the station did you begin—

A. I started purchasing from Firestone and Goodyear.

Q. Did you continue to purchase from Firestone?

A. No, I did not. Some I did.

Q. From whom did you purchase TBA?

A. I bought my tires from the Schenuit Tire Company. I bought my batteries from Bowers Battery. And I bought quite a few other supplies from the Quaker City Motor Parts.

Q. From whom did you buy your Schenuit tires?

1941 A. From Plotkins Tire Company.

Q. When did you commence to purchase Schenuit tires, Bowers batteries, and accessories from Quaker City Motor Parts?

A. Well, it was about a month after I went into the station.

Q. And why did you purchase Schenuit tires?

A. Because I could get a better deal and make more money for myself.

Q. Was the price lower on Schenuit tires than on Firestone or Goodyear tires?

A. Yes, sir. I could make a better profit off of the Schenuit tires than I could off of Goodyear or Firestone.

Q. How did the service compare as between service with respect to Schenuit tires and the Firestone or Goodyear tires?

A. I could get service immediately.

Q. You could get service immediately from whom?

A. From both Bowers Battery or Plotkins Tire Company.

Q. And could you get similar service from Firestone or Goodyear?

A. No, sir.

Q. What terms did you receive from Plotkin and Bowers Battery?

A. Thirty days.

Q. What were your terms with respect to Firestone and Goodyear TBA?

A. COD.

Q. You mean cash on delivery?

A. Yes, sir.

1942 Q. Did Schenuit tires and Bowers batteries have good consumer acceptance in your trading area?

A. Yes, sir.

Q. After you started purchasing Schenuit tires, Bowers batteries, and accessories from Quaker City did you have any conversations with Shell representatives concerning the matter?

A. Well, they—

Q. Just answer Yes or No.

A. Yes, sir.

Q. Please state the names of the Shell representatives, the approximate date of the conversations, and the substance of the conversations.

A. It is going to be pretty hard to put the date in there, the exact date.

Q. Not the exact date.

A. I would say about a month or a month and a half

after I had the supplies information, Mr. Lump and Mr. Lowry both came into the station.

Q. Who is Mr. Lowry?

A. He is the sales manager for Shell Oil Company.

Q. They came to your station?

A. Yes, sir, and remarked the supplies I had in the station it wasn't according to what the conversation we had at the Shell Oil office. And I told them that I didn't express whose product I was going to handle at the time I signed that lease. They said they had an outlet from whom I could buy my supplies from. And I said I
1943 am opening this business with the expectation of making a living for myself, and why should I kick-back to Shell, let Firestone kick-back to Shell when I can make that profit myself.

Mr. Thompson: Your Honor, it is perfectly apparent this man is talking about two non-respondents. This is a wholly different type objection. I move that all this testimony be stricken.

Mr. Kelaher: Your Honor, may I ask one question?

Mr. Correa: I join in the motion.

* * * * * *

Hearing Examiner Kolb: He was handling both Goodyear and Firestone. And he testified that the official said they had an agreement that he should handle both of those.

Mr. Correa: I understand, your Honor.

Hearing Examiner Kolb: I am not going to try to separate out when you have two involved, to try to separate one from the other. I don't think it is proper.

Mr. Correa: I still submit the last question is leading and suggestive and improper under the circumstances.
1944 Hearing Examiner Kolb: I agree that the last question does.

Mr. Kelaher: I will withdraw the last question. I re-

gret asking it. I agree with counsel. I shouldn't have asked it.

Hearing Examiner Kolb: I will sustain the objection.

By Mr. Kelaher:

Q. Will you go ahead with your conversation?

A. Where did I leave off?

Hearing Examiner Kolb: Read the last answer.

(Read.)

Mr. Thompson: Nothing at all about Goodyear, sir.

By Mr. Kelaher:

Q. Would you state as specifically as possible what TBA Mr. Lump and Mr. Lowry were talking to you about?

A. Well, they were talking to me about—

Mr. Correa: Same objection, if your Honor please. Why don't you let him state the conversation?

Mr. Kelaher: That is what I am getting at. That is what I am asking him.

Mr. Correa: I don't think you should lead him. He said what TBA they were talking about.

By Mr. Kelaher:

Q. Go ahead.

A. This is getting me confused. Do you want me 1945 to state my case?

Mr. Kelaher: Can he answer the question.

Hearing Examiner Kolb: Read the last question.

(Question read.)

Hearing Examiner Kolb: Overruled.

A. They were talking about Goodyear and Firestone TBA.

By Mr. Kelaher:

Q. Now carry on with the conversation. What was the rest of the conversation? Did you take it from that point?

A. I told them that I didn't commit as to whose product I was going to use.

Q. What happened after that, if anything?

A. They told me I only had a year's contract and if I didn't like what was going on, to get the hell out of the station. That was a little over a month after I was in there.

Q. When was your lease terminated?

A. It was supposed to be terminated—

Q. At the end of that year?

A. At the end of that year.

Q. Thereafter did you continue to purchase Schenuit tires and Bowers batteries?

A. I did.

Q. Were any comments ever made to you by Shell representatives?

A. They kept on trying to push these other products on.

Q. By "they" you are referring to whom?

1946 A. Firestone and Goodyear.

Q. Which Shell representatives are you referring to?

A. Jerry Lamp.

Mr. Kelaher: I would like to have this clipping marked for identification, your Honor.

Hearing Examiner Kolb: That will be Commission Exhibit 346 for identification.

(The document referred to was marked Commission Exhibit 346 for identification.)

By Mr. Kelaher:

Q. Mr. Hooper, I show you Commission Exhibit 346 for identification and ask you to state what this is?

A. That is an advertisement of the Schenuit Tire people. They called me and asked me if I would permit them to put my name, picture, in the paper with their adver-

tisement of selling Schenuit tires, and I agreed. I said it would not only help me but it would also help the station.

Q. Did this advertisement appear in a Baltimore newspaper?

A. Yes, sir.

Q. And did this advertisement appear after the conversations you had with Mr. Lump and Mr. Lowry which you referred to?

A. Right around in that time. Whether it was before or after I wouldn't—I can't say.

Q. After this advertisement appeared, did you have any conversations with Shell representatives con-
1947 cerning it?

A. Oh, yes.

Q. With whom did you speak?

A. Well, they came around with a story—

Q. Who?

A. Jerry Lump. Mr. Lump.

Q. What did Mr. Lump say to you?

A. Just came around and sair, "What a nice looking picture you have in the paper."

* * * * * *

By Mr. Kelaher:

Q. Did you purchase a product known as Wynn's Friction Proofing Oil?

A. Yes, sir.

Q. What is it?

A. It is an oil additive.

Q. Is that in the Goodyear TBA line?

A. I am pretty sure it is. No, it isn't. Wynn's is not.

Q. Did you ever have—

Mr. Correa: I move to strike.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Kelaher:

Q. Did you ever have any conversations with
1948 the Shell representatives concerning your carrying Wynn's Friction Proofing oil?

A. Well, they just didn't like the idea of me carrying it and they said they had another additive to carry, why didn't I carry that.

Q. After your year's lease was up, was your lease renewed?

A. No, sir.

Q. When were you advised it would not be renewed?

A. They came around and told me that my lease was up.

Mr. Correa: Who is "they?"

The Witness: Mr. Lump. The Shell Oil representative.

Mr. Correa: You mean he, not they.

By Mr. Kelaher:

Q. Did you continue on the station after your lease terminated?

A. Yes, sir; I did.

Q. At whose request?

A. The Shell Oil Company; Mr. Lump.

Q. How long did you continue?

A. Nine months.

Q. What was your reason for continuing?

A. Well, it was either continue on and try to get some of my stock back, capital back, or else lose it all.

Q. At that time were you under any lease at all?

A. No, sir.

1949 Q. When you finally did leave the station, did you incur any financial loss?

A. I guess about $2,000 or more.

Mr. Kelaher: Your Honor, at this time I would like to offer CX-346 into evidence.

Mr. Correa: Except that it is irrelevant and immaterial and cluttering the record, I have no objection to it.

Mr. Thompson: Atlantic objects.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 346 for identification was received in evidence.)

Cross-Examination.

Mr. Correa: May I have a moment, if your Honor please?

Hearing Examiner Kolb: All right.

Mr. Correa: May we have a few minutes' recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Correa:

Q. Mr. Hooper, you have related in the course of your direct testimony a number of conversations which you say you had with Mr. Lump, and I guess with a Mr. Lowry, is that right?

A. Yes. I only had a conversation with Mr. Lowry about twice. Mr. Lump was a monthly visitor to the station.

Q. Have you told us all you can remember about those conversations?

A. Well, practically all.

Q. Let's dispense with the practically. If there is any remaining thing you can remember, tell us.

A. Well, every once in awhile he would come in and say what am I going to do? Why don't I put this supplies in, which my capital was limited. After I took over the station I figured on disposing of some of the equipment I had in here to replenish my capital so that I could go

ahead and restock the station like I wanted to. In other words, it was a pressure at all times.

Q. Would you be good enough, Mr. Hooper, to confine yourself to the conversations?

A. That is the conversation.

Q. Anything said by you or Mr. Lump or Mr. Lowry in any of these conversations.

A. It has been a couple of years since I have been in the service station now and I can't just come right out word for word.

Q. I understand. I just want to be sure we have 1951 exhausted your recollection on the subject.

A. Well, you have got it all, practically all of it. I won't say every word.

Q. But every word you can remember?

A. That is it.

Mr. Correa: I would like to have marked at this time for identification as Respondent Goodyear's Exhibit 5 this one-page document on the letterhead of Shell Oil Company and bearing date of May 26, 1952.

Hearing Examiner Kolb: That may be marked as Respondent's Exhibit G-5.

(The document referred to was marked Respondent's Exhibit G-5 for identification.)

Mr. Kelaher: Is that signature J. A. L-o-w-r-y?

Mr. Correa: I prefer not to discuss the document until I have finished examination, counsel, if it is all right with you.

Mr. Kelaher: I was just asking for information. I am not sure.

By Mr. Correa:

Q. I show you Respondent's Exhibit G-5 for identification, Mr. Hooper, and direct your attention to the signature appearing in the lower left-hand corner thereof under-

neath the legend "Acknowledged:" and ask you, can you identify that signature?

1952 A. Oh, yes.

Q. Whose signature is it.

A. That is mine.

Q. Did you read that document before you signed it?

A. Yes.

Q. Now, sir, in any of these conversations you had with Mr. Lump or Mr. Lowry, did you ever mention or refer to that document, Respondent's Exhibit G-5 for identification?

A. That doesn't state in there—

Q. Did you ever mention or refer to that document, Respondent's Exhibit G-5?

A. Yes, sir.

Q. Why didn't you tell us on direct that you did?

A. I told you that when I was over at the office that I didn't commit myself as to who I was going to buy my products from.

Q. You didn't tell us—

A. I did. I certainly did.

Q. You didn't tell us there was any document in writing signed by you and Mr. Lowry.

A. I did. I had a conversation with Mr. Jerry Lump. Before I even signed that I told him that I was going to take the station over, and after the document was signed I said there was nothing in there stating who I was to buy my products from, that they had an outlet for me that they could get the stuff for me, get the merchan-

1953 dise for me.

Q. Did you in these conversations with Mr. Lump recall to him that you had signed the document?

A. Yes, sure.

Q. Of this kind, and that Mr. Lowry's signature also appeared on the document?

A. I said at the time I signed this there was nothing in here stating who I was to buy my supplies from.

Q. Did you call to his attention—

A. Yes, sir.

Q. (Continuing)—that you signed a letter—

A. Yes, sir.

Q. (Continuing)—from Mr. Lowry—

A. Yes, sir.

Q. (Continuing)—stating that your choice of TBA was to be entirely voluntary?

A. Well,—

Q. Did you do that or didn't you?

A. No, I didn't tell him it was going to be entirely voluntary. No.

Q. Did you tell him that you had acknowledged receipt of a letter from Mr. Lowry in which—

A. Yes, sir.

Q. (Continuing)—in which Mr. Lowry stated—

A. Yes, sir.

1954 Q. You reminded him of that?

A. I reminded Mr. Lump. Not Mr. Lowry.

Q. Did you remind him several times?

A. Yes, sir.

Q. Was that frequently mentioned in your conversation?

A. Oh yes. I told him, I said there was nothing stating in there who I was to buy from.

Q. Was there any particular reason why you didn't refer to this document in your direct testimony?

A. Well, they came out and wanted to know why I wasn't buying from these other concerns.

Q. My question, sir, is, is there any particular reason why you did not refer to this document in your direct testimony?

A. No. I just didn't think if it, that is all, in this testimony here, if that is what you mean.

Q. You didn't think perhaps we had the original?

A. I know you have all the records in the world right here. That is all.

Q. What did Mr. Lump say when you called his attention to that document?

A. He just said, "You said you were going to buy from"—I said, "Wait a minute, I didn't say I was going to buy from Firestone or Goodyear." I bought as much as I could from both of them.

Q. Now, sir, you testified that the terms you were
1955 offered by Mr.—you said specifically that the terms you were offered on tires by Firestone and Goodyear were C.O.D.?

A. Yes, sir.

Q. From whom, with whom specifically did you have those dealings?

A. I believe you have the gentleman in the room here right now. I don't recall his name.

Q. You say Firestone. Did you deal with the company?

A. A Firestone salesman.

Q. Did you deal with company headquarters in Akron or a salesman here in Baltimore?

A. A salesman in Baltimore.

A. Yes.

Q. With Goodyear with whom did you deal?

A. A dealer here in Baltimore.

Q. What was his name?

A. Stu-Pressley.

Q. Is it the fact, sir—

A. I bought very little from him. I will say I won't buy any of his products. If I ever open another station I wouldn't buy from him.

Q. Isn't it the fact, sir, that you asked Mr. Pressley to sell you tires on a C.O.D. basis?

A. No, I didn't. He told me it was C.O.D. When
1956 he brought the merchandise out it was C.O.D.

Q. Did you ask—

A. Yes, I did.

Q. (Continuing)—Mr. Pressley for credit?

A. Yes, sir.

Q. On what terms?

A. On thirty days.

Q. On tires?

A. Yes, sir; on all accessories.

Q. Mr. Hooper, you operated your station for a year?

A. A year and nine months.

Q. A year under lease, is that correct?

A. A year under lease, that is correct.

Q. Is it correct that your gallonage was low?

A. It was going down all the time.

Q. You did about 8,000 gallons a month?

A. Yes.

Q. The preceding dealer had done about 10 to 15 hundred?

A. Yes, sir.

Q. And the fellow who followed you did about 14?

A. I don't know what he is doing now because I don't even take that much interest in it. The damper was put on me a month after I was in there.

Q. It is true, is it not, that the Shell representative, Mr. Lump, spoke to you from time to time about the low
1957 gallonage?

A. No, he didn't say nothing to me about low gallonage.

Q. Never did?

A. No, sir.

Q. The gallonage was going down and he never mentioned it?

A. No, sir.

Q. He never suggested that you ought to employ some helpers in the station?

A. I worked that station myself. I had help there.

Q. Did he suggest that you have help?

A. He knew I had help. He didn't suggest anything like that. He knew I had help.

Q. And you did have help?

A. Yes, I did.

Q. Whom did you employ?

A. A fellow by the name of—I can't even think of his name now His name was Dave—I can't think of the boy's last name. But I have his records home.

Q. How long did you employ this man?

A. I guess about six months.

Q. Which six months were they, sir?

A. Six months before I left there, or better.

Q. Did you employ this Dave that you refer to in response to a suggestion by Mr. Lump?

A. No, sir.

1958 Q. You are quite sure that Mr. Lump—

A. Yes, sir.

Q. (Continuing.) —did not suggest to you that you needed a helper in the station?

A. No, sir. He said I would need some help, I couldn't work it myself.

Q. How about the first six months you were in there, did you work it by yourself?

A. Well, the first two or three weeks, no. I had two extra helpers.

Q. Who were they?

A. The young boys who used to work with me when I worked in another company.

Q. What are their names?

A. Oh, man, I don't know their names. I can't figure their names. I have their records at home.

Q. They worked for you for two or three weeks?

A. A fellow by the name of Walberger, I believe, yes, and a fellow by the name of Peach.

Q. They worked for you for two or three weeks?

A. Yes, sir.

Q. And thereafter you worked the station alone, did you?

A. Well, one of them went to service. Yes.

Q. And you worked the station alone for about five months?

A. Yes, sir. No, I had another man come in 1959 eventually.

Q. What was his name?

A. Al—I can't think of his last name—he drove a Good Humor truck after he—he drove a Good Humor truck in the summer time.

Q. How long was he employed?

A. I guess a little over a month or more.

Q. So, the period in which you worked the station alone—

A. I had another man in there too.

Q. (Continuing.) —was about four months?

A. This is working in a period, now. I can't give you—I worked the station a year and nine months. And out of this nine months there was about five extra help. They wasn't all working at one time.

Q. Was there any period when you worked the station alone?

A. Oh, yes. All during the day.

Q. Any period of time when you had no employees?

A. I had the station open from seven o'clock in the morning until five or six o'clock at night, and when I would go home to get something to eat, I would have this man come in to take over.

Q. Did you ever have any day help?

A. Well, evening help.

Q. Did you ever have any help during the day?

A. No.

Q. Wasn't it suggested to you by Shell that you
1960 ought to have help during the day?

A. They said I should have help there.

Q. Who was that? Mr. Lowry?

A. No. I never saw Mr. Lowry.

Q. Excuse me. I meant Mr. Lump.

A. Lump?

Q. It was L. Lump made that suggestion?

A. Yes.

Q. And you never did get any day help, is that correct?

A. No. Just evening help.

Q. Is it the fact, sir, that you had a physical disability?

A. Oh, yes.

Q. And did that impede you to some degree in the performance of various service jobs?

A. No, sir.

Mr. Kelaher: Objection. I think that that is highly uncalled for.

Hearing Examiner Kolb: Objection overruled. Go ahead.

The Witness: You see plenty of lame men operating filling stations. You go out here to Lockraven Boulevard and Jopa Road and there is one with a club foot operating. There is no objection to him operating the station.

By Mr. Correa:

Q. Did Mr. Lump ever suggest to you that that
1961 was an additional reason why you ought to have help?

A. No, sir.

Q. He did suggest that you ought to have day help?

A. He come out and said I should have help.

Q. Did he suggest to you that your gallonage would probably improve if you did have help?

A. No, sir.

Q. In short, you want us to understand, Mr. Hooper, that Mr. Lump, despite your declining gallonage, never mentioned that subject to you?

A. To have help to pump that gas? No, sir.

Q. No. Let me be sure that you understand my question. Do you want us to believe that although you had, as you testified, a declining gallonage that you were pumping, the gallonage was going down, Mr. Lump never mentioned or referred—

A. He suggested I get help there, yes. He suggested that I get cards and mail out all around the neighborhood. He thought that I would put on a deal of giving a television away, or glasses. Well, Shell Oil Company ain't paying for that.

Q. Did Mr. Lump refer to your declining gallonage or did he not, in connection with these suggestions?

A. Yes, he referred to that, and he said, "Your gallonage is down, why don't you give a deal, or something like that. Why don't you put a big display on?"

Q. So, he suggested you improve your gallonage?

A. Oh, yes; that way.

1962 Q. Didn't you tell us a moment ago that Mr. Lump never mentioned your declining gallonage?

A. Did I say that?

Q. I am asking you, don't you remember saying it?

A. I think I did, yes.

Q. And that was wrong, wasn't it?

A. What do you mean, it was wrong.

Q. You just told us now that Mr. Lump did mention your declining gallonage?

A. He said I was losing on gallonage, yes.

Q. So, when you said a while ago that Mr. Lump never mentioned your declining gallonage you were wrong?

A. You are getting me confused around. He did mention that, yes. He didn't have to mention it. I could tell by the records.

Q. After your lease was cancelled you remained in the station for nine months?

A. I did.

Q. And that was enable Shell to find a replacement for you, was it not?

A. Yes, sir.

Q. That was a mutual agreement between you and Shell?

A. Oh, yes. Not with Shell. I mean by Jerry Lump. I don't know what it was with Shell.

Q. Mr. Lump represented the Shell Oil Company?

A. Yes, sir.

1963 Q. Your purpose in that was because you wanted to sell your inventory to your successors?

A. I wanted to get out of it as much as I could possibly get out of it, that is the reason I stayed at the station.

Q. You did sell your invetory of TBA to your successor, did you not?

A. Yes, I did.

Q. And your successor was a Shell lessee, was he not?

A. That's right.

Q. What did the inventory which you sold him consist of?

A. Tires, batteries.

Q. What kind of tires?

A. Schenuit tires.

Q. What kind of batteries?

A. Bowers batteries.

Q. And accessories, perhaps?

A. Well, everything.

Q. What others?

A. Wynn's Friction Proof oil, Macs-it products, Shell products.

Q. So, you sold your entire inventory of TBA to your successor?

A. Yes.

Q. And you were unable to sell him, however, some of your equipment?

A. That's right.

1964 I have a battery charger home. I have that now. And a lot of other stuff.

Q. You hold that against the Shell Oil Company, don't you?

A. Partly, yes.

Mr. Correa: I have no further questions, if your Honor please.

Mr. Kelaher: Mr. Examiner, I would have no objection to having Respondent's Exhibit G-5 for identification become a Commission Exhibit at this point.

Mr. Correa: Counsel has called attention to an oversight which I appreciate. I had meant to offer Respondent's Exhibit G-5.

Hearing Examiner Kolb: Counsel suggested it be offered as a Commission Exhibit.

Mr. Correa: That is fine.

Mr. Kelaher: I now offer Commission Exhibit 347 into evidence, formerly Respondent's G-5.

Hearing Examiner Kolb: Commission Exhibit 347 will be received in evidence, subject to a motion to strike by Atlantic.

(Whereupon, the document, heretofore marked Respondent's Exhibit G-5 for identification, was received in evidence as COMMISSION EXHIBIT 347.)

Mr. Thompson: I have no questions.

Mr. Kelaher: I have no further questions.

1965 (Hearing Examiner Kolb: You are excused.

(The witness was excused.)

Hearing Examiner Kolb: Let the record show that Respondent's Exhibit G-5 has been withdrawn.

(Whereupon, Respondent's Exhibit G-5 for identification was withdrawn.)

Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The heading will be in order.

JOSEPH SCHEINER was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Joseph Scheiner, 3605 Woodlea Avenue, Baltimore 14.

Q. And are you associated with the S&S Tire Company?

A. The S&S Tire Company is a corporation. I am the president of it.

Q. What is the business of the S&S Tire Company, and what is the present address of the S&S Tire Company?

A. We have a re-cap shop. We sell the re-caps to service stations as well as retail. Also handle new tires as distributors, and batteries. And we are presently

1966 located at Saratoga and Pearl Streets. Our shop is on Franklintown Road.

Q. What is the address of your shop?

A. Franklintown Road and Harlen Avenue.

Q. Are you an outside salesman for the firm, in addition to your other capacity?

A. I am the only outside salesman for the firm.

Q. What are generally the boundaries of your sales territory?

A. Baltimore and its environs, to Essex and Dondalk.

1969 By Mr. Kelaher:

Q. What brand of batteries do you currently handle—new batteries?

A. Bowers.

Mr. Thompson: Mr. Kelaher, unless you are going to proceed further and identify the Firestone salesman about whom you were talking, I move to strike that part of the testimony because it is not sufficiently specific to meet the standards set up in this proceeding.

Hearing Examiner Kolb: Can you identify the salesman?

1971 Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Scheiner, did you at one time solicit the business of a Shell service station known as Blackie D'Angelo, a Shell service station at Frederick Avenue and Hilton, in Baltimore?

Hearing Examiner Kolb: Selling what kind of tires?

The Witness: Blackie bought—

By Mr. Kelaher:

Q. Did you solicit his business?

A. Yes.

Mr. Correa: Could we have an answer to the question?

Hearing Examiner Kolb: What tires?

By Mr. Kelaher:

Q. At that time, state which brand of tires and which brand of batteries you were handling?

Mr. Correa: Not you. D'Angelo.

Mr. Kelaher: I think we have to establish first that this man was selling tires to this station.

Hearing Examiner Kolb: Let the witness answer.

The Witness: I sold Blackie Vanderbilt tires, Firestone tires, Lee, and Bowers batteries. Because I solicited him, if that is necessary.

By Mr. Kelaher:

Q. Were you selling any of the products you have mentioned to Mr. D'Angelo? Were you selling products to him?

A. Yes.

1972 Mr. Correa: He just said he was.

Mr. Kelaher: Thank you.

By Mr. Kelaher:

Q. Did you state the period during which these sales were being made? The approximate years?

A. I started, I was selling Blackie from about 1950 through 19..... to the time he sold out

Q. At any time—

Mr. Correa: When was that?

The Witness: I think it was about '55.

By Mr. Kelaher:

1974 Q. Let me ask you, Mr. Scheiner, whether Mr. D'Angelo when you called on him carried Goodyear TBA?

A. I am quite sure he did not.

Q. Did you at one time call on a Sherwood station known as Burt's Betholine, at North Avenue and Winchester, 2600 block—would that be Winchester?

A. That would be North Avenue. His location is North Avenue and Winchester.

Yes, I did business with Burt in Vanderbilt tires and Bowers batteries.

1975 Q. Were you able to sell Bowers batteries to this account on a stocking basis?

Mr. Thompson: Atlantic makes the customary objection, and I assume the testimony will be received over my objection, subject to my motion to strike.

Hearing Examiner Kolb: Sherwood was Sinclair? The testimony will be received subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. The question is, were you able to sell Bowers batteries to this account on a stocking basis?

A. Yes, I did sell him on a stocking basis.

Q. About what year did you sell this account on a stocking basis, or years?

A. I would say '53 or '54.

Q. Did you have any conversation with the operator of Burt's Service Station concerning his purchase of TBA from you?

A. He told me he wouldn't be able to stock them any more.

Q. Would you please answer Yes or No, and then I will fix that. Did you have a conversation with him concerning that?

A. Yes.

Q. Will you please state the approximate date and the place of the conversation and the substance of the conversation?

A. I would say it was about March, 1954. He told me that his Sinclair salesman objected to his stocking

1976 Bowers batteries; that he would have to stock Goodyear batteries instead. Do you want anymore?

Q. Whatever the conversation was.

A. So, he said he would continue buying the Bowers batteries as he needed them, and the tires, too.

Q. Did that mean—

A. But he wouldn't stock them.

Q. He would?

A. He would not stock them. I did notice that he didn't buy as many as he had before.

Q. Thereafter, did your sales of Bowers batteries and Vanderbilt tires—

A. Declined.

Q. —decline to this account?

A. Yes, sir.

Q. Did you at one time call on a Sherwood or Sinclair station in the 5600 block of Bel Air Road, operated by Amador Sariego?

A. Yes.

1977 Q. During which period did you solicit business from this station?

A. I would say off and on since about 1949 through 1953. I did some re-capping for him and vulcanizing. Also sold him some Lee tires.

Q. At any time did you have any conversations with Mr. Sariego concerning his purchases of TBA? Answer Yes or No.

A. Yes.

Q. Now please state the approximate time of the conversation, the place, and the substance of the conversation.

A. He said he couldn't stock the Lee tires. He could only order them if he had difinite orders from his customers for them; that he would have to continue stocking Goodyear tires. I asked him why, and he said his salesman got after him.

By Mr. Kelaher:

Q. Did you at one time call on a service station operated by a Mr. Ward, located in the Brookline area of Baltimore?

A. Yes, I did.

Q. And were you able to sell tires, batteries, or recapping to this account?

1978 A. I did some recapping for Ward.

Q. Did you continue to do recapping for him?

A. I haven't done any Ward recapping for maybe a year and a half.

Q. Did you solicit Mr. Ward's business for recapping up to a year and a half ago?

A. Yes, I did.

Q. Why did you stop soliciting his business since that time?

A. I would say—

Q. Let me ask you: Did you have any conversations with Mr. Ward concerning recapping? Answer Yes or No.

A. Yes, I did.

1981 By Mr. Kelaher:

Q. Did you at one time solicit tire and battery business from a Joe Fotia?

A. Yes.

Q. Where is Mr. Fotia located?

A. At Gray Manor.

Q. When did you begin soliciting business from Mr. Fotia, and continuing until when?

Mr. Thompson: May we have on the record, Mr. Kelaher, please, what kind of a dealer he was?

By Mr. Kelaher:

Q. What type of dealer is Mr. Fotia?

A. Sinclair.

Q. And during what period did you solicit Mr. Fotia's business?

A. Fotia started, I think, about three years ago. He wrote to Vanderbilt and asked for one of their soliciI982 tations. They turned over the letter to me to contact him. So I contacted him regarding Vanderbilt tires.

Q. At that time did you have a conversation with him concerning the tires?

Mr. Correa: At what time?

Mr. Kelaher: He has fixed the date. About three years ago.

The Witness: That was my first contact with him. I sold him a few.

By Mr. Kelaher:

Q. Just state the substance of your conversation with Mr. Fotia at that time.

A. When he decided not to stock them, I tried to sell hi—

Mr. Correa: I move to strike "when he decided not to stock them."

The Witness: I tried to sell him recapping.

By Mr. Kelaher:

Q. Did you have any conversations prior to 1956 with Mr. Fotia concerning his purchase of tires or batteries from you?

A. Yes.

Q. Would you please state the approximate time I983 and date of the conversation, or dates, if there were more than one?

A. We had conversations now and then. I would say that about the fall of 1956 he—

Q. Did you have any conversations prior to 1956 with Mr. Fotia?

A. Yes.

Q. When did you have conversations with him prior to 1956?

A. I would say in the last—

Q. Did you have conversations with him in 1955?

A. Yes, in 1955 I did.

Q. Will you please state the substance of the conversation or conversations that you had with him at that time?

A. I tried to get him to stock tires from me but he told me that he had already caught "H" from his Sinclair salesman because he had on hand some U. S. Royals and Armstrong tires that he bought from Burke-Savage, so he didn't want to stock any other brands. He told me that he was threatened with lease cancellation if he handled any brands other than Goodyear. I found out that he told me—

Q. Was that the end of your conversation with him?

A. That was the end of the conversation, yes.

* * * * *

1988 JOSEPH E. SCHEINER resumed the stand and, having been previously duly sworn, testified as follows:

Cross-Examination by Mr. Correa.

Q. Mr. Scheiner, you have told us you have a recapping business?

A. Yes, sir.

Q. And that you also distribute tires and batteries?

A. Yes.

Q. And do you also have a service station business?

A. Yes.

Q. What gasoline do you pump?

A. We formerly had Atlantic. Now we have Crown.

Q. How many employees do you have?

A. Right now there are four. There were five at that time.

Q. Which time?

A. During the period covered by this inquiry.

Q. What period do you have in mind?

A. Up until two and a half years ago.

1989 Q. Two and a half years ago. And in the last two and a half years you have had four employees, is that right?

A. That's right.

Q. Is that in your whole operation, station and recapping?

A. We don't do much station work.

Q. How many of your people are employed in the recapping work?

A. Two.

Q. How much recapping plant do you have?

A. We have four molds. Four recapping molds, two vulcanizing molds, two spotters.

Q. How many men do you have engaged in that work?

A. Two.

Q. Do you have a man to look after your pumps?

A. Yes. One man.

Q. What does your fourth man do?

A. I am he.

Q. And you do—

A. Outside.

Q. Outside work?

A. Yes.

Q. Do you solicit recapping business?

A. Yes.

Q. And you sell tires and you sell batteries?

A. Yes.

1990 Q. What part of your business, in terms of let's say your annual dollar volume, is in recapping?

A. About thirty to—around thirty thousand.

Q. I was thinking more of a percentage than I was of an absolute figure.

A. About—I guess it would run around 65 to 70 percent. It would be more than $30,000.

Q. What part of your business, percentage-wise, would be in your pumping operation, or service station operation, let's say?

A. Maybe ten percent.

Q. And the remaning twenty percent would be—

A. In new tires and batteries.

Q. —in new tires and batteries?

A. Yes.

Q. That activity is carried on principally by yourself?

A. Yes.

Q. Do you operate a truck?

A. Yes.

Q. One truck or more than one?

A. One. I handle one that I—it is a station wagon.

Q. And you drive that yourself?

A. I drive that. And I have a pickup truck in addition to that. One of the fellows in the shop uses that for quick deliveries and pickups.

1991 Q. You spoke of selling to service station dealers on a stocking basis?

A. Yes.

Q. Is it correct, sir, that nowadays at least—by "nowadays" I mean post-World War II, really—most service stations order TBA merchandise pretty much from week to week on a basis of keeping their inventory up to whatever size they have in mind as the proper inventory of the particular item involved?

A. Well, it varies according to the operator, I would say. Some of the smaller fellows won't stock any tires, new tires.

Q. They just don't stock at all?

A. Some won't.

Q. Those—

A. They don't have the money in lots of cases.

Q. Those fellows, I take it, pretty much buy tires on a spot basis as they have need for them?

A. Yes. Of course there are others who stock considerably.

Q. What would you say the average is?

A. It runs from nothing all the way up. There is no limit.

Q. What would you say the average is?

A. Esso dealers buy in lots of a hundred tires at a time, under their setup.

Q. Hasn't the—

A. Others less.

1992 Q. What I was getting at was this: Having the stocking habits, if we may call them that, of service stations, been affected by the introduction after World War II of these wagon peddlers, I believed they are called in the trade?

A. I see a number of them around. I wasn't in it before the war.

Q. As a matter of fact, they are a part of your competition, aren't they?

A. They handle mostly accessories, which I don't go into. None of them handle new tires that I know of. I don't know of any of them handling batteries. And recapping, none of them do.

Q. I wasn't including or thinking of recapping in this connection. You don't know of any wagon peddlers who deal in batteries?

A. I don't know of any.

Q. You spoke of a conversation—actually I have it in my notes that the conversation was with Burt's Betholine station. I assume that was some individual?

A. Yes.

Q. Who was it?

A. I don't know his last name. I never did know his last name.

Q. What do you know him as?

A. Burt. I only call him Burt.

Q. You said you sold him Vanderbilt tires and 1993 Bowers batteries on a stocking basis in 1953 and 1954. How did you bill—

A. Vanderbilt tires he didn't stock. Batteries he did.

Mr. Kelaher: I think his testimony will show that he testified as he has now stated.

By Mr. Correa:

Q. How did you bill him? That is my point.

A. COD.

Q. Did you extend credit terms to any of your customers for tires or batteries?

A. Some few. Not many.

Q. Generally—

A. COD almost to everybody.

Q Generally you deal on a COD basis?

A. Yes.

Q. Do you generally make the sale and delivery of the goods at the same time?

A. No. I will take the order and deliver later. Next day usually, if it is a stock item.

Q. Did you take any Bowers batteries back from Burt's Betholine station on the occasion in 1954, when you say—

A. I don't recall. I am quite sure I did not.

Q. He will be stocking them up to that time?

A. Yes.

Q. You say that Sariego—is that his name?

1994 A. Sariego is the way I pronounce it.

Q. —told you that he couldn't stock Lee tires? Had he been stocking them prior to the time he told you that?

A. No.

Q. So it was really—

A. Oh, he might have stocked two to four. Never more than four, maybe two at a time.

Q. You spoke of Joe Fotia. You said that you had a conversation with him in 1955. Was that after he had written Vanderbilt?

A. It was after he had written Vanderbilt.

Q. You went to see him because Vanderbilt put you in touch with him?

A. Yes, I did. But that was before 1955 on that call.

Q. In 1955 you say that Joe Fotia told you that he had on hand U. S. Royals and Armstrong?

A. I saw them.

Q. Was he stocking them, would you say?

A. Yes.

Q. And did you say—my note doesn't show—whether he told you where he purchased his U. S. Royals and Armstrong?

A. Did he say where he purchased them?

Q. Yes.

A. Yes. Burke-Savage.

Q. And he said he was threatened with a lease cancellation?

1995 A. Yes.

Q. You know he is still a lessee?

A. I know.

Q. You know he is still doing business with Burke-Savage?

A. I know it.

Mr. Correa: I have nothing further.

The Witness: And I sell him more now, too.

By Mr. Correa:

Q. What?

A. And I sell him more now, too. That has only been recently, though.

Hearing Examiner Kolb: Any questions, Mr. Thompson?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Proceed.

By Mr. Thompson:

Q. Mr. Scheiner, you have a number of business enterprises, haven't you, sir?

A. What are you referring to?

Q. Until 1955 didn't you own a bottling company?

A. Yes.

Q. Also, during the same period, weren't you a partner in a store enterprise? Grocery store?

A. Not during the same period.

Q. Not during the same period, but you are at the present time?

1996 A. No.

Mr. Kelaher: Your Honor, Mr. Thompson has asked me to fix dates throughout our examination. I think maybe we should have some dates fixed as to this bottling plant.

Mr. Thompson: The date was fixed, Mr. Kelaher. I will ask it more specifically.

By Mr. Thompson:

Q. You sold the bottling plant in 1955, about that time?

A. During 1955.

Q. Then didn't you go into the store business after that?

A. No, I was never in the store business.
Q. Never?
A. That is, after that.
Q. When were you in the store business?
A. One of my partners bought the store.
Q. So that you personally had no interest in it?
A. That's right.

2011 HOMER AUGUST SANDER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?
A. Homer August Sander, Bayside Beach, Pasadena, Maryland.

2012 Q. Are you associated with the Bowers Battery and Spark Plug Company?
A. I am the branch manager of the Baltimore division.
Q. How long have you been with the Bowers Battery Company?
A. Since 1949.
Q. Did you begin with Bowers Battery here in Baltimore?
A. In the City of Baltimore as a salesman on the street.
Q. How long did you continue as an outside salesman?
A. To 1952.
Q. In 1952 what duties did you assume?
A. Commercial sales.
Q. When did you become the branch manager?
A. 1954.
Q. When did you cease being an outside salesman altogether?

A. February, 1952.

Q. During the period 1949 to 1952 did you call on trade in the Baltimore metropolitan area?

A. Service stations and garages.

Q. What products does your company sell?

A. Storage batteries.

Q. Do you have a full line, short line, or what type of line?

A. We have a complete line of batteries, Wet and dry storage batteries.

Q. How do the prices on Bowers batteries com-
2013 pare with the prices of other sellers of batteries in the metropolitan Baltimore area?

A. Well, we are much lower than a majority of the brands that are on the market due to our operation.

Q. Is Bowers Battery and Spark Plug Company a manufacturer?

A. We are a manufacturer.

Q. And this is a factory branch?

A. This is a company-operated branch.

• • • • •

2015 By Mr. Kelaher:

Q. During the period 1949 to date, and with respect to the metropolitan Baltimore area only, has there been an increase, decrease, or has the sales volume remained the same with respect to the sale of Bowers batteries by your branch to Shell service stations?

Mr. Thompson: My usual objection, sir, on behalf of Atlantic.

Hearing Examiner Kolb: It will be received subject to a motion to strike by Atlantic.

Mr. Thompson: That will stand for this entire testimony with respect to other oil companies?

Hearing Examiner Kolb: The objection will be as to all other oil companies, subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. You may answer.

A. We don't have a Shell station on our books today.

Q. In 1949 did you have Shell stations on your books?

A. 1949 up to '53 we had some Shell stations. In fact—

2016 Q. I show you Commission Exhibit 346 and ask you to state if you sold Bowers batteries to the Shell service station operator listed therein?

A. Myself, personally?

Q. The Bowers branch?

A. Yes, our salesman Mr. Dale sold Hooper batteries.

Mr. Correa: Can the date be fixed?

The Witness: I am not in a position to give you the date. I can't recall all those dates.

M. Kelaher: I think the dates were fixed this morning.

Mr. Correa: I want the date to be fixed by this witness as to the matters that he is testifying about.

By Mr. Kelaher:

Q. Was this during the period—

Mr. Correa: And I would prefer it not by leading, either, or suggestion.

The Witness: May I ask a question?

By Mr. Kelaher:

Q. No, you just answer the questions.

A. We can have a lot of fun.

Q. Do you know approximately when sales were made to Mr. Hooper?

A. Up to '53 they were being made to Hooper.

Q. During the period 1949 through 1955, inclusive,

2017 did your sales of Bowers batteries with respect to

Sinclair stations in the Baltimore area increase, decrease, or remain the same?

A. Sinclair —

Q. Sherwood stations?

A. They decrease. Whether Sherwood or Sinclair, it is still the same. It is another paint job on the station. It is still the same.

Q. Getting back to Shell, what was the percent of decrease with respect to Shell stations?

A. One hundred percent.

Q. What has been the percent of decrease with respect to Sherwood station?

A. One hundred percent.

Mr. Kelaher: No further questions, your Honor.

Cross-Examination by Mr. Correa.

Q. How about your sales to people with red hair; did they increase, decrease or stay the same in the period 1949 through '56?

Mr. Kelaher: Objection, unless their eyes are identified, too.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Correa: I submit it is as relevant as anything else that has been introduced in the examination of this witness, if your Honor please.

2018 Hearing Examiner Kolb: I have ruled on the objection. Let's go ahead.

By Mr. Thompson:

Q. Mr. Sanders, there is one thing I don't understand about your method of distribution which I am sure was not brought out?

A. All right, sir.

Q. Back in 1949, '50 and '51, had your branch sold direct to service stations?

A. Yes, sir.

Q. Do you sell direct to service stations today?

A. We try to. But we are not having any luck.

Q. How many distributors do you have in the Baltimore area?

A. What do you classify as a distributor.

Q. Jobbers, wholesalers.

A. As far as I can recall, two.

Q. Who are they?

A. Baltimore battery and S&S tire.

2019 By Mr. Correa:

Q. Do you know how many Shell stations your distributors sell to?

A. No, sir, I do not.

Q. Do you know how many Sherwood stations they sold to during the period about which you testified—

A. No, I do not know what distributors sell.

May I finish my question please?

2020 A. May I answer—

Mr. Kelaher: No, just answer the questions.

The Witness: I would like to clarify one thing—

By Mr. Correa:

Q. Just a minute. You are on the witness stand and you are answering questions; you are not making speeches.

Please read the question interrupted by the witness.

(The reporter read the question.)

Q. (continuing)—1949 through 1955?

A. No, I don't.

Mr. Correa: Nothing further.

Mr. Kelaher: Nothing further.

Mr. Thompson: I move that all the testimony of this

witness with respect to Atlantic refining Company be stricken from this record.

Mr. Correa: And I make the same motion with respect to the respondent Goodyear.

Hearing Examiner Kolb: The motions will be denied.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: You may be excused.

(Witness excused.)

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: The hearing will be in order.

2021 RUSSELL H. EDRINGTON was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your full name and home address.

A. Russell H. Edrington, 3003 Linden Avenue, Towson, Maryland.

Q. Were you at one time an operator of a Sherwood service station?

A. Yes, sir.

Q. Where was the station located?

A. 41st and Falls Road.

Q. Baltimore?

A. Baltimore.

Q. When did you first enter the station?

A. May of 1951.

Q. Were you a lessee dealer?

A. Yes, sir.

Q. Were you on a one-year lease?

A. Yes, sir.

Q. Was your lease renewed automatically?

A. Automatically.

Q. When did you leave the station?

2022 A. May of 1954.

Q. Approximately how much money did you invest in the station?

A. $3,000.

Q. When you entered the station, did you have any conversations with Sherwood representatives regarding TBA?

A. No. The only time after I had taken the station over they mentioned that—

Q. Who is "they"?

A. Mr. Cottman and Mr. Wagner. They just mentioned that my Goodyear dealer was Brooks-Huff. That was all that was ever said.

Q. After you entered the station, from whom did you purchase your tires?

A. From Burke-Savage, Lee Tire and Rubber, Plotkins Tire Sales.

Q. What brand of tires did you purchase from Burke-Savage?

A. U. S. Royal and the Armstrong tire.

Q. What brand of tires did you purchase from Plotkins?

A. Schenuit tires.

Q. Of course you purchased Lee tires, did you say?

A. Yes, sir.

Q. From whom did you purchase Lee tires? Do they have a branch in Baltimore?

A. No. It was just called Lee tire and Rubber, over here at West Franklin Street.

2023 Q. From whom did you purchase batteries?

A. From the Lee Tire and Rubber people.

Q. Is that known as the Lee battery, Lee brand?

A. Yes, sir.

Q. Did you purchase Goodyear tires from Brooks-Huff Tire Company?

A. The only time I purchased them, if somebody just specified they wanted the Goodyear tire.

Q. Did you purchase Goodyear batteries from Brooks-Huff?

A. Only if someone specified it.

Q. What was your reason for buying tires from Burke-Savage, Plotkins, and Lee, instead of from Brooks-Huff Tire Company?

A. I could get a better discount from them.

Q. What discount did you receive from Brooks-Huff on tires and batteries?

A. Two percent.

Q. Approximately what discounts did you receive from other sellers of tires?

A. Two, seven, five and seven.

Q. You mean two plus seven?

A. Two, five, and seven.

Q. Just so I get this straight, it would be two plus five plus seven, is that correct?

A. Yes.

Q. From whom did you purchase your accessories?

2024 A. Different jobbers. Belvedere Sales, R. J. Loock, R. W. Norris, Replacement Parts.

Q. Did you purchase any Goodyear accessories?

A. I never purchased any Goodyear accessories. Sometimes I would take in and maybe buy different polishes from him, but not much.

Q. From whom did you purchase your fan belts?

A. Goodyear.

Q. Which supplier?

A. Brooks-Huff.

Q. When did your lease terminate? When did you leave the station?

A. May, 1954.

Q. What was your reason for leaving the station?

A. They just terminated my lease, that was all. Just cancelled my lease.

Q. When did you first learn that your lease—when was the first time you had an indication that your lease was going to be cancelled?

A. A few months before I saw a couple of fellows walking around the station, looking around. I inquired and asked them what they were doing. And they said they understood the station was going to be up for lease.

Q. Had anyone from Sherwood mentioned the matter to you?

A. No, sir.

2025 Q. Did you contact anyone from Sherwood after—

A. Yes, sir. I called down the Sherwood Brothers.

Q. With whom did you speak at the Sherwood Brothers?

A. I think it was either Mr. Weller or Mr. Cottman. I don't know which one it was.

Q. What was the substance of your conversation?

A. They just said that they didn't know anything about it.

Q. That is—

A. Mr. Cottman and Mr. Weller said they didn't know anything about the lease being terminated?

Q. Thereafter, did you receive a notice of termination of your lease?

A. I guess about the first week in May.

Q. What did you do after you received the lease-termination notice?

A. I called down on the Sherwood Brothers and asked them for an interview and they granted one.

Q. Who were present at the interview?

A. Mr. Weller, Mr. Cottman, and Ray Evans.

Q. Would you please state the substance of the conversation that took place during that interview?

A. They just told me the reasons—

Q. State who told you what.

A. Mr. Weller is the one who did most of the talking. He stated that the reason the lease was being terminated is that my gallonage was down and that the TBA sales were down.

2026

Q. What record of TBA sales would be in his possession?

A. The only thing that would be what they got from Brooks-Huff.

Q. Would they have any record of your sales of TBA products purchased from other suppliers than Brooks-Huff?

A. No, sir.

2027 By Mr. Kelaher:

Q. From the time you began the station operation in May of 1951, what was your gallonage at or about the time you began operation?

A. 12,000.

Q. Did you increase or did your gallonage decrease until May, 1954?

A. It kept increasing every month. It went up to 16,000 and a few months I would run 18,000.

Q. With respect to your TBA sales, beginning in May, 1951, when you first started operation, did your TBA sales volume of both sponsored and non-sponsored products increase, decrease, or remain the same?

A. They increased all the time.

Q. Had you developed customer good will in your area?

A. I think so.

Q. Was your operation a profitable operation?

A. Yes, sir.

Q. At the termination of your lease, what happened to your stock, if any, of Lee tires?

A. They picked them up. They took them back, the Lee tire and Rubber people, what I had left they took back.

Q. What happened to your stock of Schenuit tires?

A. The same. Plotkins took them back, and Burke-Savage.

Q. And U. S. and Armstrong—

2028 A. Was taken back by Burke-Savage.

Q. Who was the incoming dealer?

A. Donald Patterson.

Q. Did you request him to purchase your stock of Armstrong tires?

A. Well, I asked him did he want to take them and he said No, that he would rather not.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examination.

Mr. Correa: May we take a moment, your Honor, to check?

Hearing Examiner Kolb: Yes.

Mr. Correa: May we have a few minutes recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Correa.

Q. Mr. Edrington, you started in May—as a lessee, that is—1951?

A. Yes, sir.

Q. And your first lease was from May, 1951 to May, 1952, is that correct?

A. Yes, sir.

2029 Q. Did you have a partner at that time, Mr. N. G. Bassler?

A. Yes, sir.

Q. Then your partner left you, did he?

A. He had another station of his own.

Q. I meant the partnership dissolved?

A. Yes.

Q. In March, 1952?

A. I guess it was somewhere around there. I just couldn't tell you when it was.

Q. You did have a lease, didn't you, in your name alone, without Mr. Bassler?

A. The first lease was in Mr. Bassler's and my name.

Q. And then I note there is a short lease from March, 1952 to May, 1952, to B. H. Edrington alone.

A. Yes, sir.

Q. And then you obtained a new lease in May, 1952 which ran to May, 1953?

A. Yes, sir.

Q. Then a final lease from May, 1953 to May, 1954?

A. Yes, sir.

Q. Do you know how your gallonage figures compared with those of your successor in that station?

A. I think I was doing better than he was, as far as I know.

Q. You don't actually know the figures?

2030 A. No, I don't know the figures, no sir.

Q. Do you know how your gallonage figures for the first five months of your last year, which was 1954, compared with the first five months of 1951, when the station was operated by Mr. Hensly—is that correct?

A. Hensly—Albert Hensly.

Q. Is that H-i-n or Hen?

A. Hensly.

Q. Do you know how they compared?

A. No, I don't. I have never compared figures with nobody.

Q. Would it surprise you, sir, if I told you that according to our records Mr. Hensly's gallonage for the first five months of 1951 was 83,000, and yours for the first five months of 1954, 72,000?

A. I couldn't tell you. I don't know the figures.

Q. You never did know those figures?

A. No, sir.

Mr. Kelaher: Your Honor, I think the witness has testified that he didn't know the figures. I am going to object to any comparison of figures of which he has no knowledge.

Mr. Correa: I am asking questions, counsel.

Mr. Kelaher: He answered the question.

Mr. Correa: So? Where do we go from there?

Hearing Examiner Kolb: Proceed.

2031 By Mr. Correa:

Q. Would it surprise you to know, sir, have you ever heard, that Mr. Patterson—that was your successor?

A. Yes, sir.

Q. —Mr. Patterson's gallonage for the first five months of 1955 was 83,000, as against your 72,000 for the comparable period of 1954?

A. It could be. Like I say, I don't know any figures.

Mr. Correa: Thank you very much.

Mr. Ballard: Your Honor, I assume this is received subject to Atlantic's motion to strike?

Hearing Examiner Kolb: The testimony will be received, subject to a motion to strike by Atlantic.

Mr. Ballard: Thank you.

Hearing Examiner Kolb: No further questions?

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: You are excused.

(Witness excused.)

Mr. Kelaher: Your Honor. we have decided to terminate our witnesses as of now and don't propose to call the next witness in order to expedite proceedings.

Hearing Examiner Kolb: Let the record show that Charles E. Shutter is excused.

* * * * * *

2033 Room 332
Federal Trade Commission
Washington, D. C.
26 November, 1957

Met, pursuant to adjournment, at 11:05 a.m.

* * * * * *

2034 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Edwards.

Mr. Correa: Your Honor please, before this witness is sworn, I should like to put this, I hope brief statement, in the record. We have been put on notice of certain facts which indicate to us that if the present plans of counsel supporting the Complaint in this case and in another case are carried through, we will be deprived of a fair hearing within the significance of that term under the Administrative Procedure Act as well as the appropriate authorities defining our right to a fair hearing.

The facts to which I allude are substantially these: As I understand it, this witness and he may be only an example of this procedure, I don't know that, I can only speak of the facts of which I am now on notice officially; this witness, Edwards, is to be called to testify in this case and also this afternoon, I am told, in the Shell-Firestone Case, also being heard by your Honor as trial examiner on the identical issue in each case, the issue being an issue of

fact as to the nature and operation of the Shell-Goodyear Sales Commission Plan, which is that issue in each of these two cases.

Now it seems to us, if your Honor please, that is the situation which is, if one may call it that, pregnant with error because it seems to us that once this witness
2035 testifies on the identical factual issue in this other case where we are not present, where his testimony is as to us in every technical sense wholly ex parte, as much as if your Honor were to take his testimony in your Honor's Chambers, we have been seriously prejudiced and we feel indeed prejudiced to the point where we have been denied some of the essential prerequisites of a fair hearing as contemplated by Section 7 and 8 of the Administrative Procedures Act.

I have in mind, among other requirements, particularly Section 7, Sub-division C, which reads in part, "Every party shall have a right to present his case by defense of oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

Now obviously we can have no cross-examination of this witness as to what testimony he may give on the issue in our case, mind, your Honor, in this other hearing before your Honor this afternoon. And similarly, we have no opportunity—

Hearing Examiner Kolb: (Interposing.) Since you are not a party to the other case, it would not affect you.

Mr. Correa: If your Honor please, with great respect, that is not entirely true. I speak in this brief outline of argument because I am not going to argue the point extensively, as trial examiner, I'm not speaking of your Honor individually or personally, but simply of the general-
2036 ity of hearing officers or trial examiners and it seems to me it is completely unrealistic to suppose

that whatever consciousness, and I am sure your Honor and all the other examiners of this agency bring to their appointed task the highest possible degree of consciousness, but with whatever consciousness, I do not see how realistically a trail examiner can so compartmentalize his mind as to separate out in it the impressions he gains of the witness, of his testimony, of his credibility, all these things in one hearing, and apply that only in one case, and do similarly in another hearing where the witness testifies in each case on the identical issue, identical factual issue is involved in each case.

Now, if your Honor please, it seems to us this contemplated procedure, as I say, does deprive us of substantial rights and we feel it is our duty to note that fact on the record at this moment because it is precisely at this moment that we are for the first time on official notice that this procedure is being followed and accordingly, we do note it and will, of course, make such appropriate motions and objections as whatever ensues in these proceedings may warrant, but I think our duty is clear and plain to note what is happening before it happens and while there still exists opportunity to remedy it.

2037 WILLIAM E. EDWARDS was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. William E. Edwards, 1108 North Seventh Street, Terre Haute, Indiana.

Q. Mr. Edwards, were you at one time an employee of the Shell Oil Corporation?

A. Yes, sir.

Q. And during what period were you employed by the Shell Oil Company?

A. 1947 to 1954.

Q. What was your employment in 1947, when you first became an employee?

A. I started on a transport truck hauling gasoline and then I went to sales representative in 1950.

Q. 1950, and what was your marketing or your sales area?

A. The first sales area I had was in Green and Owen, about three counties down there, Bloomfield primarily was the home town, along with Bloomington, Bedford, Linton, Jasonville, and in that territory I had 15 stations. And I served that territory possibly six months.

2038 Mr. Correa: Could I have the latter part of that answer read back please; I missed one word about how many stations.

The Witness: Fifteen.

Mr. Ballard: Do I understand this entire territory is in the State of Indiana?

The Witness: All in the State of Indiana.

By Mr. Kelaher:

Q. Your territory was in the State of Indiana?

A. Yes.

Q. Of your 15 accounts, do you know approximately how many were so-called "L" stations?

A. Approximately there were seven "L's" and four "DL's" and four "OD's".

Q. How would you describe what an "L" station is in the Shell?

A. In the Shell organization, an "L" station is primarily the station that you do the most or put more efforts forth. It is a station that carries a lease and a sales agreement.

Q. Who owns the property?

A. Shell Oil Company, ordinarily.

Q. And is it a type of station which is used to lease to a lessee dealer?

A. It is leased to a lessee dealer, right.

Q. Would you please define a "DL" station?

2039 A. A "DL" station is what it says, a dealer lease. It is a station that you have a man in who is operating it as a dealer, leased to Shell and Shell leases back to the dealer, it is a three-party deal.

Q. And does the Shell enter into the same type of lease agreement with "L" dealers as with the "DL" dealers?

A. No, sir, I would say, no.

Q. What is the difference?

A. The difference?

Q. In the lease, if you know.

A. On the "DL's" you have what is called a ground lease, and it is for a longer period of time. A "DL" station is ordinarily ten years with a five year option. Where an "L" station has a lease that goes year to year, cancellable at the end of each year 30 days prior to the ending date.

Q. Aside from the terminal lease, is the same type of lease entered into?

A. You mean "DL"?

Q. "L" and "DL".

A. Primarily the same sales agreement and the basic lease.

Q. To what does the sales agreement refer?

A. The sales agreement is for product that is sold through the unit, like Shell gasoline and motor oil.

Q. Now, and you mentioned "OD" dealers, what is an "OD" dealer?

2040 A. An open dealer account is a small station out in a small town highway, you know, out on the high-

way. It could be any station where a man owns his property and Shell puts in the pumps and tanks, and they give him ordinarily a year lease from three to five years, depending on how it is set up, and it is also cancellable at the end of each year.

Q. When is the "L" lease cancellable?

A. "L" lease cancellable at the end of each year.

Q. May it be terminated any time prior thereto?

A. 30 days prior to the ending date of that year.

2041 Mr. Kelaher: Let me rephrase the question. For how long were you in your first territory?

The Witness: Approximately six months.

By Mr. Kelaher:

Q. At the end of that time—

A. (Interposing.) My territory was increased to about 13 counties or 46 accounts.

Q. And what was your capacity in your first territory and now in your second territory of Shell, what was your title?

A. Sales representative.

Q. And I will go into that a little later but approximately how many accounts were in your second territory?

A. This is included in the first group, total number, approximately 18 "L's", 14 "DL's" and 14 open dealer accounts.

Q. That is a total of 46 accounts?

A. Right.

Q. Now, that was just an explanation of your first territory?

A. Explanation of first territory, yes, sir.

2042 Q. Now, was there anytime thereafter when there was a change in your territory?

A. After about a period of a year, that territory was

taken over by another party, it was split and I was moved into a three county area around Terre Haute, which was Vigo, Clay, and Parke Counties. I had 20 stations up until the last six months before my resignation and then I had 21, and these included three "L's" and 4 open dealer accounts. That was the Terre Haute area.

Q. As I understand your testimony, you had 20 accounts until within six months of your—

A. (Interposing.) and then—

Q. (Interposing.) And then you had a—

A. (Interposing.) Then we got the first "C" station in that area.

Q. How long did you remain as an employee of Shell?

A. I remained then until May 16, 1954.

Q. What were your duties as a Shell sales representative in these three territories?

A. Well, my first duties primarily was the sale of gasoline and motor oil and Shell specialties, and I was sort of—I overlooked the territory, that is, the stations in the territory, examined them, examined their accounts and made adjustments where adjustments were needed. We would usually look around the stations for, oh, dirty 2043 stations, we would see what their oil ratio was, we would see how their Shell specialties were moving, check tires and batteries and accessory stock, see how they were moving, and establish Goodyear car and home accounts, where a man had enough capital to handle that, and we would collect rents for the Credit Department on occasions when the dealer didn't send his rent in, that is about the generalities of the job.

Q. And what line of TBA does Shell sponsor in your area?

A. Shell sponsors Goodyear tires and batteries.

Q. And in what district was your sales area located?

A. The last one?

Q. Yes.

A. That was round Terre Haute.

Q. I mean, well, let me ask you this, in what division?

A. Evansville district, Indianapolis division.

Q. Evansville district?

A. Indianapolis division.

Q. Do you know what territory the Indianapolis division comprises?

A. It comprises the State of Indiana and part of Kentucky.

Q. Do you know how many districts are in the Indianapolis division?

A. At that time, there were four districts.

Q. Would you name them please?

A. We had Evansville, Louisville, Indianapolis and Fort Wayne.

2044 Q. Do you know what TBA was sponsored by Shell in the Indianapolis division?

A. Goodyear tires and batteries.

Q. And accessories?

A. And accessories.

Q. Now, I wonder if you could describe the organizational set-up of the Indianapolis division and the Evansville district?

A. The organizational set-up? We had a division manager who was Mr. Mueller; we had a sales manager by the name of Mr. Barney Hynes, I believe, and working with those, we had a J. B. Jackson, who was a merchandising manager—

Q. (Interposing.) Were these men at the division office?

A. Division office, and then we also had a real estate department which I can't—oh, yes, Mr. Hamilton, he was over real estate, that was at the division office.

Then, at the district level, we had Mr. Pavey, who

worked directly under the sales manager and division manager.

Q. What was his name?

A. Pavey.

Q. Where was his office located?

A. Evansville. Under Mr. Pavey, in the last year and a half I was with them, we had a sales supervisor, Mr. Jessup, and we had two jobber salesmen and three district sales representatives.

2045 Q. Now, who was your immediate supervisor?

A. My immediate supervisor, I would say, was Mr. Pavey.

Q. Who was his immediate supervisor?

A. I would say Mr. Hynes and Mr. Muller. Along there, depending on what kind of problems came up, he would discuss with the real estate head and the merchandising head.

Q. What was Mr. Pavey's relationship with respect to Mr. Jackson at the division office?

A. Mr. Jackson was the merchandising head and discussed certain merchandising problems along TBA lines with the district manager who handed them down to me.

Q. Was Mr. Jackson—

Mr. Correa: (Interposing.) May I have that answer read please?

(The reporter read the record as requested.)

Mr. Correa: I object to him testifying to any discussions at which he was not present. Maybe he was present, if he was, let him say so.

Hearing Examiner Kolb: Read that answer again please.

(The reporter again read the record as requested.)

Hearing Examiner Kolb: Objection will be overruled.

By Mr. Kelaher:

Q. Then Mr. Jackson was the merchandising manager in charge of TBA, was that correct?

A. I would say that was one of his duties.

2046 Q. And Mr. Hynes was the—

A. (Interposing.) Sales manager.

Q. Division sales manager?

A. Yes, sir.

Q. Would that be in charge of all products including TBA?

A. Including TBA, he was in charge of all products.

Q. How often would you have contact with Mr. Pavey?

A. That depends on the problems that arise out of the territory. We always had a sales meeting once a month, and then Mr. Pavey visited the territory possibly every ten days to two weeks, and write and discuss the territory problems as the year progressed.

Q. Was Mr. Pavey the district manager during this entire period when you were district sales representative?

A. Yes, sir, he was.

Q. Did you ever have any discussions with Mr. Pavey concerning TBA?

A. Yes, sir, that came up quite often.

* * * * *

2048 By Mr. Kelaher:

Q. Now, do you recall any specific or any conversations relating to specific service stations which you had with Mr. Pavey concerning TBA? You can answer yes or no.

A. Yes.

Q. Now, would you please designate the stations, the approximate dates of the conversations and the substances of your conversations with Mr. Pavey?

Mr. Correa: If your Honor please, I must object first

to this form of interrogation; this business of asking for conversations, can't we have them one at a time so there is opportunity—

2049 Hearing Examiner Kolb: That is what he is asking for.

Mr. Kelaher: That is right.

Mr. Correa: I understood it would be conversations.

Mr. Kelaher: If there is more than one dealer involved.

Mr. Correa: If the witness is being asked to give one answer to a series of conversations, I object to that form of interrogation. I submit that is what the question calls for. I also object to the question as calling for hearsay.

Hearing Examiner Kolb: The objection is overruled.

Mr. Kelaher: You may answer.

The Witness: Well, we had several cases. One station at Brazil, Indiana. James Cagle, a dealer, Mr. Cagle would sell Kelly tires over there and I was constantly trying to get him to sell Goodyear's which I always had a problem there and never did get the job done, even though he would have competitive advertising in the station and I failed miserably in getting Goodyear's in there.

Mr. Correa: I move to strike all the answer.

Mr. Kelaher: I want the substance of your conversation with Mr. Pavey?

The Witness: These conversations, first of all, I want to say, they may have been in a sales meeting, in the 2050 car riding from town to town, but not at the station.

Mr. Pavey would say, "Bill, how about getting some Goodyear tires in? What are we going to do about this?" And I would say, "I don't know unless we change dealers." He would say, "If you can't get Goodyear tires in there, maybe you better start looking for another dealer."

* * * * * *

By Mr. Kelaher:

Q. Do you recall the approximate date of that conversation or dates?

A. That was the year of '53, we had several discussions on that dealer, three, four or five—I would say four.

Q. Now, I just want you to tell me what Mr. Pavey told you with respect to any other discussions you had concerning specific dealers, just the conversations?

Mr. Correa: I object to the form of the question, if your Honor please. I submit we should have these conversations one by one and not all jumbled up with the witness' guesses, speculations and problems and all the other things he has mentioned.

2051 Hearing Examiner Kolb: Objection will be overruled.

By Mr. Kelaher:

Q. Go ahead.

A. At another station which was Morlan Shell Station, we had Goodyear tires in that station, but he also carried a competitive line.

Q. Just tell us the conversation you had with Mr. Pavey, if any, concerning that situation.

A. The conversation.

Q. Your conversation with Mr. Pavey?

A. The instruction was to try to get Goodyear tire and batteries in there and no other competitive line.

Q. What do you mean by competitive line; you have used that several times?

A. Competitive line is another tire besides Goodyear.

Q. Would that apply also to batteries and accessories?

A. That would apply also to batteries and accessories.

Q. Now, approximately when did that conversation take place and where?

A. That was Brazil, Indiana, in 1953.

Q. Now, do you recall the names of any other specific dealers with whom you discussed with Mr. Pavey concerning TBA; just answer Yes or No.

A. Yes.

Q. Now, please just state the conversation with
2052 Mr. Pavey and state that first, and then we will get to the time?

A. On another location?

Q. If any, yes, sir.

A. We had a problem at Fortin, Shell, Brazil, he sold Armstrong tires. And Mr. Pavey said, "Do your utmost to get Goodyear tires in there," which I attempted to do.

Q. When was the approximate date of that conversation?

A. 1953.

By Mr. Kelaher:

Q. Did you receive instructions concerning TBA from your supervisors? You can answer Yes or No.

A. Yes.

Q. Were they given to you orally or in writing?

A. They were given to me orally.

Q. What were those instructions?

2053 A. "You are to sell Goodyear tires, batteries and accessories in all Shell units."

Mr. Correa: I move to strike the answer unless the time, place, and circumstances of these alleged oral instructions are stated.

Mr. Kelaher: Did these instructions apply during your employment as a sales representative for Shell?

A. The Witness: Yes, sir, in meetings between me and Mr. Pavey in his district office, not one time, but, oh, probably four times in the four years I was sales representative, has specifically designated that I put Goodyear tires in all accounts that had competitive lines in there.

By Mr. Kelaher:

Q. Now, did you ever have discussions with Mr. Hynes or Mr. Jackson concerning TBA at the division level?

A. At the division level, in one year-end meeting in 1953, we had a yearly meeting every year to discuss the problems of each service station, and in one meeting I remember I was up before the gentlemen discussing my stations—

Q. Which gentleman?

A. Mr. Hynes and Mr. Jackson, and the tire business at that station was down a certain percentage.

Q. Would you identify the station, please?

A. That was Cagle's Shell at Brazil, and Mr. Hynes and Mr. Jackson together, asked me one question at
2054 a time. Now, one of them would say, "What are you going to do with this fellow?" And I would say, "Looks like I am going to have to start looking for a dealer." And then the other one would say, "Why can't you get tires in there, Goodyear tires," and, in fact, then they would say, "Well if he won't sell our tires," he said, "Start looking for a dealer and replacement."

Q. And who made that statement, Mr. Hynes or Mr. Jackson, or both?

A. They were both asking me questions; I can't pin it down to which one said it, but I do know Mr. Hynes told me to get rid of the dealer.

Q. Now, in the course of your duties as district sales representative, did you have conversations with Mr. Cagle at Brazil, is that it?

A. Brazil.

Q. Brazil, concerning TBA? Just answer Yes or No.

A. Yes.

Mr. Correa: May I have that question read; I want to be sure I understand it.

(Question read.)

Mr. Correa: I don't know what the Brazil is in this context.

The Witness: A town in Indiana.

Mr. Correa: Well, I suppose the question has been asked, but I submit that counsel should not lead this
2055 witness on this phase of the testimony.

Hearing Examiner Kolb: He is simply getting down to specific cases.

Mr. Correa: I think the witness ought to think of specific cases, not counsel.

Mr. Kelaher: I just asked him to answer Yes or No.

By Mr. Kelaher:

Q. You said Yes?

A. Yes.

Q. Now, would you please give us the approximate date or dates of conversation and the substance of the conversation you had with Mr. Cagle?

A. June of '53, I went in and talked to Mr. Cagle about putting in a Goodyear tire stock which he told me that he couldn't see doing because of the gasoline business he was getting out of the Kelly dealer, and I thought that his gallonage and oil ratios were sufficient not to argue about Goodyear tires because at that time I couldn't find a dealer to replace him; so, I let it drop at that.

Q. Do you recall what you specifically said to Mr. Cagle concerning this matter?

A. I did tell Mr. Cagle he would have to remove competitive signs and competitive tires or I would have to effect cancellation of his lease.

Q. Now—

2056 Mr. Correa: Will you mark on the record the last question and answer and the preceding one; we may wish to refer to them at the close of the testimony.

By Mr. Kelaher:

Q. Did you at one time have a station in your territory opperated by a Mr. Bartl? Answer Yes or No.

A. B-a-r-t-l; yes sir, I had a dealer by that name.

Q. Where was the dealer located?

A. Ninth and LaFayette, Terre Haute, Indiana.

Q. Did you have any conversations with Mr. Bartl concerning TBA? Answer Yes or No.

A. Yes.

Q. Now, would you please state approximately when such conversation or conversations took place and the substance of the conversation?

A. That was June of '52.

Mr. Correa: I object to the substance of the conversation, if your Honor please; it is hearsay and not coming within any of the exceptions to the hearsay rule.

2057 Hearing Examiner Kolb: Objection to hearsay will be overruled. I think the witness should be asked to give the conversations without just the substance.

Mr. Kelaher: Try to give the conversations as accurately as possible that you had with Mr. Bartl?

The Witness: In his tire sales I would find out that he would be selling maybe a set of Firestone or a set of U. S. Royal tires, and I would tell Jim that he couldn't do that, that he should sell Goodyear tires. And he said that he was going to sell the tires the customer wanted and I said, "Well, it is my job to see that you do try to sell Goodyear's and carry a larger stock and if this isn't done, I will have to replace you eventually if you don't get some Goodyear tires in here."

Mr. Kelaher: When you refer to Jim, were you refering to Mr. Bartl?

The Witness: Right.

By Mr. Kelaher:

Q. Is Mr. Bartl still a Shell dealer, do you know?

A. No, sir.

Q. Was he, what class dealer was he?

A. He was an L dealer.

Q. Now, did you at one time call on a Mr. Garzolini? Answer Yes or No?

A. Yes, sir.

2058 Q. Where was Mr. Garzolini stationed?

A. Seventeen and Popular, Terre Haute, Indiana.

Q. And did you have any conversations with Mr. Garzolini concerning TBA, answer Yes or No?

A. Yes, sir.

Q. Now please state the approximate day of the conversation and as accurately as possible, describe the conversation?

A. August of '51, I found thermoid belts and hose in Mr. Garzolini's station, and I told Mr. Garzolini that we would have to put in Goodyear hose and belts, and he agreed with me, so we sold down his belt line except the bad numbers that we couldn't sell and returned those to a local jobber and we had the Goodyear salesman come out and put up new racks, and send him in hose and belts. He was already handling Goodyear tires and a few batteries, some Delco's, and I made him take those out, and handle strictly Goodyear all the way through the line.

Mr. Co[illegible]: I move to strike all of the answer except so much as refers to the conversation as unresponsive.

Hearing Examiner Kolb: Motion will be denied.

By Mr. Kelaher:

Q. Did you at one time call on a Shell service station dealer by the name of Godfrey; answer Yes or No?

A. Yes, sir.

Q. Would you please state where that station was located?

2059 A. Ninth and LaFayette, Terre Haute, Indiana.

Q. And did you have any conversations with Mr. Godfrey concerning TBA; answer Yes or No?

A. Yes, sir.

Q. And would you please state the approximate time, date or rates of conversations, that is, as accurately as possible, the substance of the conversation?

A. That was in March of '53, and I found U. S. Royal tires displayed out in front of the Shell unit and I told Mr. Godfrey to remove the tires and put in some Goodyears, which he flatly refused, and I told Mr. Godfrey that these things that he was doing was not Shell policy, and that at the end of the year, if he didn't put in some Goodyear tires and push Goodyear products, we would give give him a lease cancellation.

Q. You stated earlier that you had one "C" station in your territory for a period, is that correct?

A. Yes, sir.

Q. What was the name of that dealer or dealers and where was the station located?

A. That was Robinson and Short Shell Station at 22nd and Wabash, in Terre Haute.

Q. Would you state what a "C" station is in the Shell set up?

A. A "C" station means company operation primarily. A "C" station is a station where the dealer doesn't own the gasoline, the gasoline is consigned to him, but

2060 he owns all other products including oil, specialties, accessories, tires and batteries, equipment, lubrication equipment, hand tools, coke boxes; he owns all of that, but he doesn't own the gasoline; it is consigned.

Q. Now, you say he owns all that, does he also purchase the TBA stock in the station?

A. Right, he uses his own money to purchase everything except the gasoline.

Q. What were your instructions with respect to the brand of TBA to be carried in "C" stations?

Mr. Correa: I object, your Honor please, unless that is made somewhat more specific.

Hearing Examiner Kolb: Objection is overruled.

Mr. Kelaher: Answer.

The Witness: A "C" station is as I said, a company station, and it is a must that they carry Goodyear tires and batteries and accessories. In fact, you don't even have to ask the question, you just put them in or you don't accept the dealer as a Shell dealer.

Mr. Correa: If your Honor please, I move to strike the testimony and, indeed, all testimony relative to the so-called "C" stations as they are described by the witness. In this connection, I respectfully direct to your Honor's attention the wording in paragraph nine of the complaint herein, which says, speaking of the so-called other oil companies:

"Said oil companies exercise control over the serv-
2061 ice stations and distributors which purchase their petroleum products in the same manner and for the same reason as here and above alloged as to Atlantic."

I call your Honor's attention that the witness is now testifying about service stations that do not purchase petroleum products from any oil company, if I understand his testimony correctly.

Hearing Examiner Kolb: The motion to strike will be denied.

That is all right.

By Mr. Kelaher:

Q. Mr. Edwards, what type of service station identification appears in Shell stations in your territory? I am talking now about window valances and outdoor signs?

Mr. Correa: Will the territory be identified.

Mr. Kelaher: With respect to TBA.

Mr. Correa: Will the territory be identified. He has testified about a couple of territories.

Mr. Kelaher: During the period you were employed by Shell or based on your own knowledge, if you know today, what service station identification with respect to TBA appears in Shell service stations?

The Witness: I would say all Shell stations in all the territories identified, that includes all of them, all of the modern units.

2062 A modern station is a one bay or two bay with porcelain or built out of brick. They all have Goodyear window advertising.

* * * * * *

By Mr. Kelaher:

Q. Did you have any instructions concerning advertising of non-sponsored TBA in Shell service stations? Answer Yes or No.

A. Yes, sir.

Q. And what were your instructions?

A. Instructions were that if non-sponsored advertising was exhibited in these stations, it was to take them down.

Mr. Correa: If your Honor please—

Hearing Examiner Kolb: We don't know yet how those instructions were received.

Mr. Kelaher: From whom were those instructions received and how?

2063 The Witness: I was told by my sales supervisor, Mr. Jessup, or district manager, Mr. Paney, to re-

move all signs, to get a ladder, climb up and take them down.

By Mr. Kelaher:

Q. You referred earlier to a Mr. Cagle. Did Mr. Cagle have advertising other than Goodyear in his station?

A. Yes, sir.

Q. Did you have any conversations with him concerning such advertising? Answer the question Yes or No.

A. Yes, sir.

Q. Would you please state as accurately as possible the conversation you had with him concerning the matter and the approximate date of the conversation?

A. 1953, Mr. Cagle had Kelly tire stands with Kelly tires in front of the station. I told Mr. Cagle the same as I told prior, that he would have to get rid of those, or eventually, he would have a lease cancellation.

Q. Did you receive instructions concerning check-outs from Mr. Paney or Mr. Jessup?

A. I handled—

Q. Answer Yes or No?

A. Yes.

Q. And were those instructions given to you orally or in writing?

A. Those instructions were orally.

2064 Q. And what were those instructions with respect to TBA?

Mr. Correa: Now, if your Honor please, I object unless it is established which of these two gentlemen it was that gave the instructions. The witness was asked if he was given instruction by Mr. "A" or Mr. "B," and he said Yes. I still don't know which one it was.

By Mr. Kelaher:

Q. Would you specify whether Mr. Paney or Mr. Jessup or both gave you such instructions?

A. This is kind of confusing right here. If we were putting in a dealer, is this what you want?

Q. Just follow the questions.

Did Mr. Paney give you oral instructions concerning check-outs?

A. Dealer check-outs, No.

Q. Did Mr. Jessup give you oral instructions?

A. No.

Q. Did anyone in the Shell organization give you oral instructions concerning check-outs?

A. Our merchandising representative gave me oral instructions at one check-out.

Q. What was his name?

A. Bill Welde.

Q. And you say at one station, what was the station involved?

A. That was a station at Ninth and LaFayette, 2065 Terre Haute, Indiana.

Q. Who operated that?

A. Jim Bartl.

Q. What were your instructions?

A. My instructions were to obtain another dealer and place him in that unit.

Q. And what were your instructions with respect, if any, to the purchase of products in that station by the incoming dealer?

A. The incoming dealer had to purchase a supply of gasoline and motor oil, specialties, Goodyear tires and fan belts and accessories, which I seen to it that he had the proper product to sell gasoline, oil and tires.

Q. Were any newly built stations opened in your territory during your period of employment by Shell?

A. Yes, sir, there was two.

Q. And do you recall the names and addresses of those stations?

A. Yes, sir.

Q. What were they?

A. A. Earnest Laybold at Wabash and Oakland, Terre Haute, Indiana, a "DL" station was opened; boy, that is a tough one, June of '53. That is right, June of '53.

Q. You mentioned two; what was the name?

A. Then, the other station was the Shell station at 22nd and Wabash Avenue, Robinson and Short, which was opened October 1st, '53.

2066 Q. What brand of TBA was stocked by these newly built stations?

A. I placed the Goodyear line completely in both of them.

Q. Did you receive instructions from your superiors concerning the stock of TBA to be placed in newly built stations? Answer Yes or No.

A. Yes, sir.

Q. And who gave you such instructions? Just the name, if you recall.

A. Well, I can't say just exactly the name.

• • • • •

By Mr. Kelaher:

Q. What was your policy as a Shell district sales representative with respect to TBA to be placed in newly built Shell stations?

Mr. Correa: I object as calling for completely immaterial testimony. I don't think what the witness's policy was matters to us in this proceeding at all.

Mr. Kelaher: I asked him as a Shell representative, an employee.

Mr. Correa: Asking him for instructions is another matter. I submit this is an attempt to evade your Honor's ruling.

2067 Hearing Examiner Kolb: Objection will be overruled. Preliminary question.

By Mr. Kelaher:

Q. Go right ahead.

A. Which question.

Mr. Kelaher: Read the question back.

(Question read.)

The Witness: My policy was to place Goodyear tires and batteries in the stations and both the stations that were put in business that year, I placed Goodyear tire-battery-accessory racks for both stations and put Goodyear tires and batteries in.

Mr. Kelaher: And accessories?

The Witness: And accessories.

By Mr. Kelaher:

Q. Did you discuss the matter with these two dealers before you put the Goodyear and TBA stock in to these stations?

A. Yes, sir.

• • • • •

2068 By Mr. Kelaher:

Q. Did Shell have a policy concerning TBA with respect to newly built stations? Answer Yes or No?

A. Yes, sir.

• • • • •

2069 By Mr. Kelaher:

Q. Was Shell's policy established in writing or orally?

A. Orally.

Q. And who was the person who stated Shell's policy orally to you?

A. Oh, the tire business at this new station, Mr. Welde and I wrote up that order, and we wrote up the tire order for that station, which amounted to about $1,200.

Mr. Correa: I move to strike the answer as unresponsive to the question. The question called for a name, who?

The Witness: Mr. Welde.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. And I believe you referred to Mr. Welde previously; was he from the Indianapolis Division?

A. He was from the Evansville District.

Q. Evansville District?

A. Merchandising representative.

Q. Now, will you state as accurately as possible your conversation with Mr. Laybold, prior to his entering the station with respect to TBA?

A. I told Mr. Laybold that he was to put Goodyear tires and batteries in, as it was a company policy, and Mr. Laybold went along and he put them in.

Q. Now, will you please state your conversation
2070 with Mr. Robinson prior to the time he entered the station with respect to TBA?

A. Mr. Robinson, I done the same thing; I told him if he would buy a stock of Goodyear tire and battery and home accessories—which Mr. Robinson did.

Q. Did you state to Mr. Laybold who his Goodyear and TBA supplier would be?

A. Yes, sir, Mace Service, Indiana.

Q. Did you state to Mr. Robinson who his Goodyear TBA supplier would be?

2071 A. Yes, Mace Service, Terre Haute, Indiana, is the supplier.

Q. Now, do Shell Oil Companies issue credit cards?

A. Yes, sir, they have quite a number of credit cards.

Q. Did you receive any instructions concerning TBA to be honored on Shell credit cards? Answer yes or no.

A. Yes.

* * * * *

By Mr. Kelaher:

Q. When did this written instruction sheet come out, do you recall?

A. That policy had been a policy for all of the time that I was Sales Representative, but it was streamlined and made bigger where they could purchase on a card more money and a credit payment plan with no interest, I believe it was in about February of '53.

2072 Q. At any time, Mr. Edwards, did you receive oral instructions concerning use of Shell Credit cards?

A. No, sir.

Q. Shell Oil credit card instructions were embodied in written instructions?

A. This particular thing we are talking about that I discussed came out as a written statement.

Q. Did you have any instructions made orally prior to the time this written instruction came out.

A. We did, Jessup, Johnnie Jessup and I had a discussion orally about credit card time payment plan. It was a question back and forth between him and I how the plan would work in operation, and he explained as such that they could take as high as a year to pay for a set of tires on a credit card plan at no interest. That was the topic of the discussion.

Q. Did he indicate which brand or brands could be—

A. Yes, it had to be Goodyear tires.

Q. Did that apply also to batteries and accessories in—

A. That is right, and if you—

2073 By Mr. Kelaher:

Q. Do you know how many divisions Shell Company has?

A. I would say ten divisions.

Q. Do you recall the names of the different divisions?

A. Well, there is New York, Buffalo, Detroit, Chicago, Seattle, Los Angeles, Minneapolis, Indianapolis, Atlanta. I think that is ten, isn't it?

Q. Now, when did you leave your employment with Shell Oil Company? Do you remember the approximate date?

A. May 20, 1954.

Q. Did you leave voluntarily?

A. Yes, sir.

Q. Now, thereafter, did you operate a Shell service station?

A. Yes, sir.

Q. And what type of a service station did you operate?

A. I operated a C station.

Q. Where was the station located?

2074 A. Twenty-second and Wabash, Terre Haute, Indiana.

Mr. Kelaher: I'll ask the reporter to identify this document as Commission Exhibit 348A-B.

(The documents referred to were marked Commission Exhibit 348a and 348b for identification.)

By Mr. Kelaher:

Q. Mr. Edwards, I hand you Commission's Exhibit 348A-B for identification, and ask you to state what it is.

A. This is service station manager's agreement and describes the Consigned Products, other merchandise and services, Compensation, and commissions, Operation, Insurance-Indemnity Security, Termination, Entirety-Execution, and an Exhibit A of the equipment at the station such as type of station, the doors, the pumps and the numbers, the tanks and the numbers, your cabinets, your shelving, your tire rack, work bench, air compressors, your lifts, that Shell Oil Company owned.

Q. Is this a copy of your Service Station Manager's Agreement with Shell Oil Company?

A. Yes.

Hearing Examiner Kolb: Are you offering that in evidence?

Mr. Kelaher: I am going to. I now introduce Commission Exhibits 348a and 348b into evidence.

Mr. Ballard: Your Honor, I assume that if re-
2075 ceived, this evidence and all of Mr. Edward's testi-
mony will be received subject to motion to strike by Atlantic.

Hearing Examiner Kolb: Yes.

Mr. Correa: No objection.

Mr. Kelaher: If agreeable with counsel, we would like to substitute a photostatic copy at a later date.

Mr. Correa: I withdraw that, if Your Honor please, I do object on this same ground that I objected to earlier to any evidence at all concerning this particular type of station because it is outside the allegations in Paragraph 9 of the complaint.

Hearing Examiner Kolb: Objection will be overruled. The document will be received in evidence, Commission Exhibit 348a and b, subject to a motion to strike by Atlantic.

A photostatic copy may be substituted for the original.

(The documents heretofore marked COMMISSION EXHIBIT 348a and 348b for identification were received in evidence.)

By Mr. Kelaher:

Q. Now, Mr. Edwards, did you invest capital in this C Station?

A. Yes, sir.

Hearing Examiner Kolb: Approximately how much did you invest?

Mr. Correa: I object to it as immaterial, if Your
2076 Honor please.

Hearing Examiner Kolb: Overruled.

The Witness: $3,500.

By Mr. Kelaher:

Q. Now, when you entered the station, did you purchase a stock of TBA, answer yes or no.

A. Yes, sir.

Q. And what brand of TBA did you purchase?

A. I purchased Goodyear.

Q. And what was your reason for purchasing Goodyear?

A. Because it was Shell policy.

Q. Which policy was that?

A. The policy that was throughout the Shell organization in my area that every dealer handled Goodyear.

Q. And also batteries and accessories?

A. Batteries and accessories, car and home supplies which I handled.

Q. How long did you remain in the station?

A. I was in the station two years.

Q. And what was your reason for leaving the station?

A. Shell Oil Company put me out of the station.

Q. And how much notice did you have?

A. I didn't have any notice. They just came in on Wednesday and said, well, let's go back a little bit. The salesman came in on a Wednesday, and after other oil
2077 companies had called on me to get me to take other locations, I read between the lines, that I was done as a Shell operator, and I forced Mr. Murray to tell me on a Wednesday what he was going to do.

Q. Who was Mr. Murray?

A. He was the Shell sales representative that replaced me. So he took me out to a park close to the station, and we sit in the car and talked about it, and he told me I was through as of Saturday. He wanted me to check the

station out the next day, but I couldn't get ready for a check out that fast. So, in other words, they just set me on the street in three days.

* * * * *

By Mr. Kelaher:

Q. Did you have any conversations with Shell Representatives at the time you opened your C station concerning TBA? Just answer yes or no.

A. Yes.

Q. Now—

2078 Mr. Correa: I take it, I have, Your Honor, a continuing objection, so I don't have to take time to object to all of these questions relating to the so-called C stations which are outside the allegations in Paragraph nine of the complaint?

Hearing Examiner Kolb: Counsel may have continuing objection to C station questions.

By Mr. Kelaher:

Q. Would you please state the name of the gentleman with whom you discussed the TBA at the time you opened your station?

A. I discussed TBA with Mr. Jessup.

Q. And state as accurately as possible the conversation which took place.

A. Mr. Jessup was refreshing my memory that I was to handle tires and batteries and accessories for Shell, and I told Mr. Jessup that I knew that, as long as I had been with them, I knew I was supposed to handle Goodyear merchandise, and that I would give him an order. And that is about the way the conversation went.

Q. Did you have conversation with any other representatives of Shell concerning TBA while you were a C station operator?

A. Yes, sir.

Q. Would you please state the name of the Shell representative with whom you had such discussions?

2079 A. Robert Murray.

Q. What was Mr. Murray's position?

A. He was sales representative.

Q. And would you please state the approximate date of the conversations and the conversation or conversations, and as accurately as possible, describe the conversation.

A. In November of 1953, I was having a problem with Goodyear recaps at my station.

Q. Excuse me. You fixed the date of '53. You stated earlier you entered the station in '54, May 21, 1954.

A. I am mixed up. That is correct. It was November '55, I was having trouble with the Goodyear recaps staying on the carcass. So I switched over to U. S. Royal recaps, and Mr. Murray found it out, that I had done this. He give me strict orders that I was to get rid of those U. S. Royals and sell Goodyear retreads at my station.

Q. Now, during your period as a C station operator, did your gallonage increase, decrease, or remain the same?

A. My gallonage almost doubled.

Q. Would you please state the amount of gallonage when you first entered the station, and—

A. When I first entered the station—

Mr. Correa: Object to as immaterial.

Hearing Examiner Kolb: Overruled.

The Witness: The station at the time I took it

2080 over was averaging 21,000, that was for six months period. For the following year, my monthly average was 28,500, and the time following that, I raised it to about 32,000 for about the next, oh, seven months. In fact, one month, I had a peak gallonage of 59,200 gallons.

Q. How did your Shell station compare in gallonage with other stations in the area?

Mr. Correa: Objected to as immaterial to any issue in this matter.

Hearing Examiner Kolb: Objection overruled.

The Witness: My station, I feel, was the largest gallonage station in the area.

By Mr. Kelaher:

Q. Were any reasons given to you by Shell representatives as to why your lease was terminated at your C station?

A. No, sir, none whatsoever. They just walked in and said, "You are out of business as of Saturday, and that is the size of it." I asked for a reason, and he said, "I don't have one." The Shell representative said,—

Q. Who was the Shell representative?

A. Robert Murray.

Q. Now, during the period of your station operation, did your TBA volume increase or decrease? Or remain the same?

A. The first year I sold approximately $3,200 worth of TBA, and the following year it decreased down to about $2,200.

2081 Q. And what was the reason for the decrease?

A. The reason for the decrease was that, in my marketing territory there, I lost in selling tires due to the fact that I was in competition with the local Goodyear jobber. He would put on these sales quarterly, about every three months, and when I had to buy tires to compete against him, he would give me a dollar per tire off, and I didn't feel that I could compete against him, only making a dollar a tire.

Q. Was this competition, it was at retail, he sold at wholesale and retail?

A. He sold at wholesale and retail.

Q. These sales were at retail?

A. The sales were at sale price, competitive against all others, myself and all other Shell dealers.

Q. Did you incur any advertising expense during your C' station operation?

Mr. Correa: Objected to as immaterial.

Hearing Examiner Kolb: Overruled.

The Witness: Yes.

By Mr. Kelaher:

Q. And approximately how much did you incur?

Mr. Correa: Equally objected to as equally immaterial.

Hearing Examiner Kolb: Overruled.

The Witness: The first year I spent $2,700 on 2082 advertising between stamps and ten to fifteen, oh, twenty dollar give-away- items, on special promotions, and the second, the last six months that I was in business, I incurred a loss of $800.00 due to stamps and small give-a-way items on which I had no help on whatsoever. I stood the whole expense.

Q. You received no reimbursement from Shell whatsoever?

A. No.

Mr. Correa: Objected to as immaterial and patently designed to obtain general prejudice against the company who is being testified about derivatively, I take it, against the respondent.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. In your answer, you referred to stamps. What type of stamps did you handle?

A. Top Value Stamp Company.

Q. Why did you carry Top Value stamps?

A. I carried Top Value Stamps under contract and for reasons that Mr. Murray came to my station a week prior

to the time that I put them in and passed orders to me that from Division headquarters, Mr. Mueller advised that stamps were to be handled by all Shell dealers or lease cancellation would be effected.

2083 Mr. Kelaher: No further questions.

By Mr. Kelaher:

Q. One further. You mentioned Mr. Mueller. Mr. Mueller was what?

A. Mr. Mueller was Division Manager. I couldn't understand why Mr. Murray would say that, but that is what he said.

Mr. Kelaher: No further questions, Your Honor. May we have a short recess?

Mr. Correa: If Your Honor please, I might as well state right now, on the record, I propose, as I think comes as no surprise to my learned friends or to Your Honor, to request that Your Honor permit me to defer my cross examination of this particular witness until after he has testified in the companion case which is going forward according to my understanding at two o'clock this afternoon.

Now, I might state that this witness, as the testimony made clear, has been a Shell employee as well as Shell dealer, and during all of the time with respect to which he has testified. Quite obviously, the respondent, Shell, in the other case to which I alluded, to which we are not parties, ought to be in the best possible situation to cross examine this witness. They should know more about their own employee, I should assume, than we would ever be in a position to know. But Counsel for Shell in that other case had advised me that he feels, in the interest of

2084 his duty to his client, that he cannot make available to me any information by way of cross-examination material which he may have concerning this witness, and consequently, has not done so, declines to do so, and I must

say, I can't disagree with him, but whether I agree or disagree is quite immaterial because the decision obviously rests with him, and he has decided as I have indicated.

So, in view of that, I am very considerably hampered in effectively cross-examining this witness in this case unless I at least have the benefit of attending a public hearing in another trial, which, I understand, is to take place this afternoon, and which being public, I take it, I am entitled to attend and make such notes as I see fit.

Now, I realize that my learned friend here would like very much to take advantage of this dual trial of the same issue, procedure to whipsaw me in the position where he can cripple my cross-examination, even though this is not a question, a matter in which the old maxim of "sauce for the goose is sauce for the gander" prevails, because I note counsel supporting the complaint in that other case has the benefit of whatever my friends' examination of the witness, is but I submit, if Your Honor please, simple justice requires that this request, under all the circumstances be granted.

Mr. Kelaher: Mr. Examiner, we have had arrange-
2085 ment with counsel for respondents whereby we have furnished the names of witnesses to respondents as promptly as time would permit.

Now, we have done that in good faith, and on October 18, of this year, I called counsel for Atlantic, and I also called counsel for respondent Goodyear, and advised them that Mr. Edwards would be called to testify by counsel supporting the complaint on November 26. Now, under our agreement with counsel, I feel that they have had ample time to prepare for cross-examination, and I strenuously oppose any deferment of cross-examination. We have acted in good faith at all times with respect to the giving of witness's name to respondents' counsel, and in Baltimore, due to circumstances beyond anyone's control, of course,

but they had the names for four months of all the witnesses, who were being called to Baltimore, so no one can say that we haven't kept our part of the bargain insofar as the names are concerned. They have had the name of this witness for over a month, and under our arrangement, I think that we can insist on cross-examination at this point with Your Honor's permission.

Hearing Examiner Kolb: I think counsel's request is objectionable. I think that possibly the best procedure would be to let him cross-examine after the witness has finished in the other case, so we will defer cross-
2086 examination as requested.

Mr. Correa: Thank you, your Honor.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

* * * * *

2090 WILLIAM E. EDWARDS resumed the stand and testified further as follows:

Cross-Examination by Mr. Correa.

Q. Mr. Witness, you testified in your direct examination of this case yesterday about a dealer you had at Brazil or Brayzil, Indiana, and you said this particular dealer stocked Kelly tires and he told you that he sold Kelly gasoline, I take it?

Mr. Kelaher: Objection, you Honor, unless the name of the dealer is specified.

Hearing Examiner Kolb: The witness may recall the name.

The Witness: No, I didn't say he sold Kelly gasoline.

Mr. Correa: He sold Kelly—

The Witness: (Interposing) He sold Kelly tires along with Shell gasoline.

2091 Hearing Examiner Kolb: What is the dealer?

The Witness: Mr. Cagle, Brazil, Indiana.

By Mr. Correa:

Q. Was there more than one such dealer in Brazil?

A. Two, Morlan and he was a combination dealer. He had Goodyear and Kelly and Delco batteries.

Q. Did he also sell—

A. Shell gasoline; yes, sir.

Q. But I mean he also sold Kelly—

A: (Interposing.) That is right, sir.

Q. Well, did either or both of these dealers, that is, Mr. Cagel or Mr. Morlan also sell merchandise to Kelly, to the Kelly organization?

A. That is correct.

Q. Was it either or both?

A. Both of them; both.

Mr. Kelaher: Objection, your Honor, as I understood the question, he asked if sales were made to the Kelly organization. I can't understand the relevancy of that question.

Hearing Examiner Kolb: Are you talking about Kelly tires?

The Witness: I think he is talking about the distributor—

Mr. Kelaher: Let's get the question.

Mr. Correa: I'm just trying to get the testimony
2092 straight as of yesterday.

Hearing Examiner Kolb: You asked if he sold to the Kelly organization?

Mr. Correa: That is right.

Mr. Kelaher: There is no such testimony.

Mr. Correa: Kelly distributor, perhaps, is that right?

The Witness: Kelly distributor bought gasoline, that was in the conversation yesterday, I believe.

Mr. Kelaher: That is right, bought gasoline at the stations and that is why they were selling Kelly tires.

Mr. Correa: That is right and I wanted to be sure there were two such stations, one was Cagle and the other was Morlan.

The Witness: That is correct.

By Mr. Correa:

Q. Now, sir, you were subpoenaed by a subpoena which reads in this case, which is Docket No. 6486, and also in another case, which was carried under Docket 6487, is that correct?

A. That is correct.

Q. And since your appearance here yesterday in this case, 6486, have you had occasion pursuant to that subpoena, to testify in the other case, 6487?

A. Have I had—would you say that again, please?

Q. Have you testified in the other case, 6487?

2093 A. Yes, sir, I have.

Q. Is it the fact, sir, that you testified before a Congressional Committee known as the Roosevelt Committee in Chicago in the spring of this year?

A. Yes, sir, I was up there.

Q. Did you give that testimony under oath?

A. Yes, sir.

Q. Did you in the course of that testimony state that you had been the Shell District Sales Representative in Terre Haute from 1947 to 1954?

Mr. Kelaher: Your Honor, I wonder if the date of that testimony could be given.

Mr. Correa: Counsel may know it. I have identified it as the spring of 1957, which is what I recall about the date. If counsel wants to supplement that, it is all right with me.

Mr. Kelaher: I believe it was on April 30, 1957.

Mr. Correa: I will accept that.

The Witness: I stated that as such. I don't know whether the stenographer got that as I stated up there or not. I was a transport driver for approximately four years and a Shell salesman the rest of the time.

By Mr. Correa:

Q. So that statement was not correct?

A. That is correct.

2094 Q. Did you state in the course of your testimony before the Roosevelt Committee that during that period, referring to the period 1947 to 1954, you had handled eight Shell dealer checkouts?

A. I stated that and it was wrong.

Q. That is not correct?

A. That is not correct, that is right.

Q. Did you in the course of that testimony before the Roosevelt Committee state that one of the dealers you had checked out was Bruno Garzolini at 17th and Poplar, Terre Haute?

A. I stated that, sir, yes.

Q. That is not correct?

A. That is incorrect; yes, sir.

Q. Did you in the course of that testimony before the Roosevelt Committee stated that you had operated a Shell commission station from 1954 to 1956?

A. I did that, sir.

Q. And that was correct?

A. That was correct.

Q. Did you state that during that period the sales gain for gasoline at that station was from 18,000 gallons a month to an average of 40,000 gallons per month?

A. That is correct, sir.

Q. That is correct you so stated?

A. I stated that, sir, yes.

2095 Q. Is that testimony correct?

A. To the best of my knowledge, it is.

Q. Do you recall testifying in this case yesterday morning, sir?

A. Yes, sir.

Q. Do you recall in response to a question by counsel supporting the complaint and over objection, you made the following answer: "The station at the time I took it over was averaging 21,000, that was for a six months' period. The following year my monthly average was 28,500 and the time following that I raised it to about 32,000 for about the next, oh, seven months. In fact I had peak gallonage of 59,200.

Mr. Kelaher: May I have the transcript page?

Mr. Correa: The bottom of 2079. Do you recall giving that testimony, sir?

The Witness: I stated that yesterday morning.

By Mr. Correa:

Q. Was that correct?

A. Yes, sir.

Q. Was your average actually to which you raised it 32,000 or 42,000?

A. Well, that is one testimony and the other testimony, the Chicago testimony, one of them includes three periods, and the other one includes two periods. If you put that down on paper, it would probably come out right both ways.

2096 Q. Well, the testimony in Chicago included the period from 1954 to 1956, did it not?

A. That was the testimony up there which was, let's see, I think I stated it up there, two years, two complete years. The testimony yesterday was a six months' period and a year period and about a nine months' period or eight months.

Q. The testimony or the answer you gave yesterday referred to, "The station at the time I took it over was averaging 21,000, that was for six months period."

A. I said that; yes, sir.

Q. "For the following year, my monthly average was 28,500?

A. That was probably pretty close to right. I wouldn't know exactly without looking over the Shell books that I kept my records on. That has been quite a while ago. I have to make some kind of an answer but I can't make it exactly correct unless I look at records where I kept my books for Shell. That was in their black book.

Q. Is it your testimony you are not sure which of these figures is exactly right?

A. Well, you couldn't say either one of them was exactly right because I don't have the figures to prove it.

Q. Now I noted that before the Roosevelt Committee, you said "At the peak, I sold 62,000 gallons a month." Did you in fact reach a gallonage of 62,000 gallons a month for more than—

A. (Interposing.) One was sales and one was purchases.

2097 Q. Which was which?

A. The 62,000 at the Roosevelt Committee was sales and the 59,000 in this testimony yesterday was purchases.

Q. Do you recall whether you indicated in the testimony here that you were speaking in terms of purchases?

A. I didn't indicate it.

Q. Did you indicate in the testimony before the Roosevelt Committee that you were speaking in terms of sales?

A. That is right.

Q. Now, in testifying before the Roosevelt Committee, did you not say that when you were operating the Shell station during the period 1954 to 1956, you didn't handle

any other lines, well, that you went along with the Shell policy to the letter and you didn't handle any other lines?

Mr. Kelaher: If your Honor please, I object. If we are going to be citing from the Roosevelt Committee, I would like to have this testimony read and that is not what he said before the Roosevelt Committee.

Mr. Correa: You remember the testimony about that, Mr. Witness, don't you?

Mr. Kelaher: I think in fairness to the witness, if they are going into his Roosevelt Committee testimony, as they are, they should read the exact quote from the Roosevelt Committee because they are characterizing testimony.

Mr. Correa: I don't know why counsel is trying 2098 to hold the proceeding up. We are all trying to get out. If it will make counsel happy, he has a copy of the Roosevelt Committee, why doesn't he put it before the witness?

Mr. Kelaher: Why don't you give him yours?

Mr. Correa: Because I have only one copy to examine from. It is a matter of convenience.

Mr. Kelaher: You are trying to impeach him. If he said it one place—

Mr. Correa: (Interposing.) Your accusation is unprofessional and unwarranted.

Mr. Kelaher: I don't think it is unfair. How can he remember without exactly showing what he said over a year ago. It is ridiculous.

Mr. Correa: It is not over a year ago, the spring of 19—

Mr. Kelaher: (Interposing.) April 30, 1957.

Mr. Correa: Let's get these things straight.

Hearing Examiner Kolb: Objection will be overruled. If counsel is not properly paraphrasing, call my attention to it.

Q. It was not your real reason?

A. It was one of the reasons.

Q. Did you have some other reason?

A. I was very tired of the pressure that was
2112 exerted upon me to replace dealers and get Goodyear tires and batteries out to the stations. That was another reason I resigned from Shell.

Q. Any other reason?

A. Not at the moment—I can't think of any.

Q. Now, you were examined on this subject yesterday in the course of your cross-examination in this other case, were you not?

A. Yes, sir.

Q. You didn't mention this reason you assigned here, did you?

Mr. Kelaher: Your Honor, I would like to have a transcript of the exact colloquy that took place and what the question was.

Mr. Correa: Oh, I think the witness can say whether he mentioned it or not.

Hearing Examiner Kolb: Was the question asked of him what his reasons were?

Mr. Kelaher: I doubt whether they were, your Honor. Let's see it in the transcript.

Mr. Correa: Look at 585.

Mr. Kelaher: 585? All right.

Mr. Correa: Well, the witness was asked, had he decided he would like to be a dealer instead of a salesman and would like to run a station and he said, "That is right."

Mr. Kelaher: That certainly doesn't go into his
2113 reasons.

Hearing Examiner Kolb: He wasn't asked the reason why he was changed other than that. That doesn't seem to be proper to me, Mr. Correa.

Mr. Correa: I'm not going to argue, if your Honor please.

Hearing Examiner Kolb: That is your privilege.

By Mr. Correa:

Q. Now, were you not asked at the Roosevelt Committee what your reasons were for making the change?

Mr. Kelaher: Let's see the testimony before the Roosevelt Committee and full transcript. I'm not going to have any wild questions.

Hearing Examiner Kolb: The witness can say whether he remembers or doesn't remember if he did.

Mr. Kelaher: Let him answer yes or no.

Hearing Examiner Kolb: If he doesn't remember, then we can go into the record.

The Witness: I don't remember.

By Mr. Correa:

Q. As a matter of fact, did you not volunteer, sir, before the Roosevelt Committee, a statement as to your reason for making the change?

A. I don't remember.

Q. Then I direct your attention to page 57, I think
2114 —A it is. You have an answer beginning on the page there:

"Mr. Edwards: That is right and I will tell you something else."

Mr. Kelaher: What is the question?

Mr. Correa: (Continuing.) "However, is it fair to say you might have had some value or this wouldn't have happened? In other words, you are not one of these ineffective business men that were referred to in the testimony this morning?"

Mr. Kelaher: All right, read the answer in?

Mr. Correa: "That is right, and I will tell you something else. The reason that I quit Shell and took over

the station is because I got saddle sores from the district manager riding me all of the time. We were going on a tour of 15 or 20 stations and I couldn't say one word. He talked continually from the time we left home."

Was that the reason?

The Witness: That is one of the reasons and it is correct.

By Mr. Correa:

Q. Now, sir, you testified on your direct examination in this case concerning a dealer named Bartl, did you not?

A. Yes, sir.

Q. Did you not also testify before the Roosevelt Committee concerning Mr. Bartl?

2114 A. His name was mentioned, sir.

Q. Did you not in fact state before the Roosevelt Committee under oath that, and I quote—this was the beginning of your testimony, the very first—from the second paragraph:

"Bartl was asked to leave his station for not following Company policy on cleanliness and not making enough progress with his station. It is my opinion that the real reason was personal."

Mr. Kelaher: I wonder if he could finish the testimony?

Mr. Correa: Now, if your Honor please—

Mr. Kelaher: (Interposing.) He is just pulling sentences out of context. I don't think it is proper or fair. Why doesn't he put all his testimony in? He is testifying as to a witness up there named Bartl. Let him put all of it in.

Mr. Correa: If your Honor please, the proper place for this is on redirect. Counsel is absolutely wrong and I venture to say knows he is wrong and if he doesn't, I don't understand how he can be in the position he is in. He is simply trying to aid the witness in obstructing this examination and I object to those tactics.

Mr. Kelaher: I think it is perfectly clear that the witness doesn't need any aid but if he is referring to testimony concerning a specific dealer, we should have his testimony.

Mr. Correa: Do you mean he is beyond aid?

2115 Hearing Examiner Kolb: What is the pending question?

(The reporter read the record as requested.)

Mr. Kelaher: He didn't complete the rest of the paragraph, your Honor.

Hearing Examiner Kolb: I think the witness may answer that question as has been put to him.

Mr. Kelaher: I beg your pardon?

Hearing Examiner Kolb: The witness can answer and make any explanation.

The Witness: I stated that at the Roosevelt Committee and it was true.

By Mr. Correa:

Q. Now, sir, you were examined about Mr. Bartle in the course of your cross-examination in Docket No. 6487 yesterday, were you not, sir?

Mr. Kelaher: I object, your Honor, in going into Docket 6487 continually. He was examined on Mr. Bartle in direct examination on this case. Why shouldn't he be limited to direct examination in this case.

Hearing Examiner Kolb: Objection overruled.

The Witness: Would you read that back please?

(The reporter read the record as requested.)

The Witness: That is correct.

By Mr. Correa:

Q. And did you not on that occasion, page 590,

2116 testify under oath that you didn't know whether Mr. Bartle requested to leave the station and whether his

Mr. Kelaher: I beg pardon?

Hearing Examiner Kolb: If counsel is not properly paraphrasing that record, call it to my attention.

Mr. Kelaher: I will, think you.

Mr. Correa: I don't know where we stand. Well, let me put another question. Did you testify, sir, before the Roosevelt Committee in the spring of 1957 under oath and in words or in substance that while you were a "C" service station dealer for the Shell Oil Company, you handled the Goodyear line exclusively?

2099

Mr. Kelaher: Objection, your Honor, he is not paraphrasing his testimony correctly. I have the testimony right here and he has it right there. Let him state what he said. It is at page 54 of the transcript.

Hearing Examiner Kolb: I should think, Mr. Correa, if you are going to question the man about his testimony before the Committee, you ought to read it.

Mr. Correa: I think this is a perfectly fair question.

Hearing Examiner Kolb: You are asking a man whether or not he remembers saying certain things before the Committee.

Mr. Correa: That is right, asking him the substance.

Hearing Examiner Kolb: He will have a right to examine the record.

Mr. Correa: Let him examine it. Will you hand him your copy? Mine is marked up.

Hearing Examiner Kolb: It is going to delay the matter considerably.

Mr. Correa: I don't have the page numbers, all I have is a copy of this thing. Counsel has the original document. Why doesn't he put it before the witness.

2100

Mr. Kelaher: How can you describe what he testified to before the Roosevelt Committee if you don't have his testimony before you?

Mr. Correa: I do, but I don't have the pagination. If you would listen to what I said, you would understand.

Mr. Kelaher: The page is 54 of Part IV of Distribution Practices in the Petroleum Industries before Subcommittee Number 5.

Mr. Correa: May I have your copy? I will find it.

(Whereupon the document was handed to Mr. Correa.)

Mr. Correa: Fifty-six is what I'm talking about. Do you want the witness to see it?

Mr. Kelaher: You should show him all of it. You are not showing him all if you just show him page 56. In fairness, you should show him the whole thing.

Mr. Correa: I will withdraw the pending question. Mr. Witness, let me ask you this question, sir, if I may have your attention for a moment, did counsel supporting the complaint, in preparation of your testimony in this case, show you your testimony before the Roosevelt Committee?

The Witness: Showed me what?

Mr. Correa: Show you your testimony before the Roosevelt Committee. Did they do that?

The Witness: Did you do it?

Mr. Correa: Did they do it?

2101 Mr. Kelaher: Did I ever show you that book?

The Witness: Not before right now.

Mr. Correa: They didn't do that?

The Witness: No, sir.

Mr. Correa: All right, you may look at it.

Mr. Kelaher: I resent the attack on my integrity and I might further add I had ample opportunity to talk to this gentleman and I refrained from doing so.

The Witness: The first time I had seen this book in Washington.

By Mr. Correa:

Q. Will you find the paragraph where you are talking about, "I didn't handle any other lines."

A. It is on page 56.

Q. Yes.

A. I said that I didn't handle any other lines.

Q. All right, is that true?

A. That is true as far as the station goes. I didn't stock any other line in the station but when a customer wanted a set of Firestone—

Mr. Kelaher: (Interposing.) In addition to that testimony, I still submit that he hasn't shown him page 54.

Mr. Correa: Let him look at 54.

Mr. Kelaher: In fairness to the witness, he should show him page 54.

2102 The second and the third paragraph, I ask you to read that aloud.

The Witness: "The Shell Company forces dealers to handle Goodyear tires and batteries even though in my station, for example, I was not on a commission basis for TBA. Shell threatens lease cancellations if you handle any other line. They receive a ten percent commission from Goodyear on all sales of Goodyear products but the dealer pays local advertising from TBA."

Mr. Kelaher: Thank you.

Mr. Correa: Now that you have read that and made Mr. Kelaher happy—

Mr. Kelaher: I don't want any misparaphrasing of his testimony going into this.

Mr. Correa: Are you finished, counsel? Let me ask you this question, did you indicate to the Roosevelt Committee at any place in this testimony, and I invite you to look at the whole thing if you wish, that when you said, "didn't handle any other lines," you meant "I didn't stock any other lines"?

The Witness: That is what I meant to say, yes, sir.

By Mr. Correa:

Q. I said, did you indicate to the Committee that is what you meant to say?

A. That day there was places—

Q. (Interposing.) Can't you answer that one yes or no?

2103 A. Say it again.

Mr. Correa: Read it please?

(The reporter read the record as requested.)

The Witness: No, I didn't.

By Mr. Correa:

Q. Now, sir, when you testified on your direct examination here about an incident, and I refer to page 2079 of the transcript, which you say took place in November of 1955, you may recall you said that you had switched over to U.S. Royal recaps and that Mr. Murray found it out and he gave you strict orders that you were to get rid of those U.S. Royals and sell Goodyear retreads at your station?

A. That is the very thing he done.

Q. In that connection, did he threaten to cancel you out, sir?

A. Yes, sir.

Q. But you didn't say that in your direct testimony, but he did so threaten you?

A. Yes, sir.

Q. Did you intend to convey to the trier of the facts here an impression that was a fact of Shell Company forcing you to handle the Goodyear line?

A. That was an example of Mr. Murray enforcing Shell's policy.

Q. Now, reverting to the Roosevelt Committee, did you tell the Roosevelt Committee about that alleged incident?

2104 A. I can't remember.

Q. Don't you recall that you didn't, sir?

Mr. Kelaher: If he says he can't remember, that ends it.

The Witness: I don't remember exactly.

By Mr. Correa:

Q. Don't you recall, sir, that you told him the exact opposite?

A. What?

Q. The exact opposite of what you testified to here?

Mr. Kelaher: I object, your Honor. He is misparaphrasing his testimony again. He didn't tell them the direct opposite. I'm not going to sit idly by and have you just making things out of thin air about what this man said before the Roosevelt Committee. If you can specify what he said in the transcript, you can cross-examine him on it; otherwise, I don't think—

Hearing Examiner Kolb: (Interposing.) The witness can state whether he remembers or doesn't remember.

The Witness: I don't remember.

Mr. Correa: Do you have his testimony before him, counsel?

Mr. Kelaher: Beg pardon?

Mr. Correa: May he have his Roosevelt Committee testimony before him?

2105 (Whereupon the document was handed to the witness.)

By Mr. Correa:

Q. I refer you again to page 56 and ask you, did you not tell the Roosevelt Committee, referring to the Shell Company: "They didn't force me there because I didn't handle any other lines." Is that what you told the Roosevelt Committee?

A. Yes, sir.

Q. Is that testimony true, sir?

A. If I can clarify it, I can make it true.

Q. How is it as it stands?

A. What is that?

Q. How is it as it stands? Is it true as it stands in the record before the Committee?

Mr. Kelaher: He has a right to clarify his answer.

Mr. Correa: I really think counsel should be a little less protective. He is doing his best to impede this examination.

Mr. Kelaher: Why doesn't he read his entire testimony. He should have an opportunity to explain in context. He is pulling these things out of context and it is highly unfair, I think.

Hearing Examiner Kolb: The witness may answer.

The Witness: I handled Goodyear tires in my station. The line that you are talking about is the recaps which I handled—U.S. Royal recaps. That clarifies that question.

2106 By Mr. Correa:

Q. It doesn't clarify it for me, sir. Is it true that the Shell Company didn't force you?

A. You are talking about when I took the station over, no, they didn't force me to handle them. I had been a Shell representative and I knew I was going to handle them before I took the station.

Q. Did they force you to handle Goodyear recaps?

A. That is what they forced me to handle.

Q. So when you said to the Roosevelt Committee, "They didn't force me," you meant, except in the case of some—

A. Recaps.

Q. The recaps, but you didn't say that, did you, sir?

A. I don't believe it was worded just exactly like that, no.

Q. You know perfectly well that it wasn't?

A. I haven't even found it yet.

Q. Look at page 56 and see if you don't find it. Maybe Mr. Kelaher will assist you.

Mr. Kelaher: Your Honor, before the Roosevelt Committee, I think we should take into consideration the fact that he wasn't being asked these specific questions that are being asked here with respect to the breakdown of his TBA.

The Witness: That is right.

Mr. Correa: I think counsel might save these attempts to salvage his witness for his brief, really.

2107 Mr. Kelaher: There is no need for that comment.

Mr. Correa: What is the pending question?

(The reporter read the question as follows:

("Question: Look at page 56 and see if you don't find it. Maybe Mr. Kelaher will assist you.")

The Witness: We talked about one paragraph in 56 a moment ago. Is it down farther?

Mr. Correa: See the paragraph, "Mr. Edwards, let's get this straight."

The Witness: We have discussed this paragraph already.

Mr. Correa: That is not the paragraph in which you say, "They didn't force me."

Mr. Kelaher: Let him read the paragraph.

The Witness: I said they didn't force me there because I didn't handle any other lines. But as a representative, when I called on stations, if they had Delco batteries—

Mr. Correa: What is this, if your Honor, please?

Mr. Kelaher: Let him read the whole thing.

Mr. Correa: I'm going to get into the second part as a representative later. I'm interrogating him about his experience as a service station dealer.

Hearing Examiner Kolb: He has read sufficiently.

The Witness: I said this, just like it says in here.

By Mr. Correa:

Q. And you didn't put any qualifications on it?

2108 A. I didn't clarify.

Q. That being an exception in the case of recaps?

A. I didn't clarify it.

Q. Now, sir, you told us yesterday on your direct testimony in this case, as I recall it, you had discussions concerning TBA at the division level of Shell. Is that right? Do you remember that?

A. Yes, sir.

Q. And you referred to Mr. Hynes?

A. Yes, sir.

Q. What is his first name, sir?

A. We always called him Barney.

Q. Now, you said you had discussions with Mr. Hynes specifically concerning the dealer, Mr. Cagle?

A. Yes, sir; that is correct.

Q. And Mr. Hynes told you in substance, 2054, told you in substance that Mr. Cagle, or if you couldn't get Goodyear tires in Mr. Cagle's station that you should start looking for a replacement for Mr. Cagle?

A. That is correct.

Q. Before the Roosevelt Committee, you testified, did you not, and I refer to the same paragraph you were just on, Mr. Witness, that you had before you, that as a representative, when you called on stations, if they had Delco batteries or Armstrong tires or any other allied line

2109 like that, your orders were to get them out?

A. That is correct.

Q. You remember you were then asked by Mr. Roosevelt who gave you the orders and you answered, "The staff," right?

Mr. Kelaher: Answered what?

Mr. Correa: The staff and Mr. Roosevelt asked you, "Who in the staff?" And you stated, "Al Pavy, for one,

that was the District Manager. That is Shell I am talking about. Of course, at the time, he was supervised by Mr. Barney. Heinz." Is that the Barney Hynes you testified about yesterday?

A. Only the spelling is wrong, it should be H-y-n-e-s.

Q. "And Roy Muller, Division Manager in the Indianapolis Division, I mean it works down. They hand out orders just like in the Army, boom, boom, boom." And then Mr. Roosevelt said to you, "However, you can't testify beyond the fact that Mr. Pavy gave you orders."

You answered, "Correct." Is that right?

A. That is correct.

Q. That testimony is true?

A. That testimony is true for that time I was talking about. The testimony that I gave yesterday was about another time, the time I worked for them.

Q. As far as is indicated, both referred to the time you were sales representative for Shell, is that correct?

A. I was explaining further up the page here, the 2110 staff, and how the orders were handed down from top to me and I think that all this information here is correct. I say that it is. That is the way it was handed down. I had to issue the orders to the station.

Q. Is it correct that you can't testify here on the fact that Mr. Paney gave you orders?

A. Mr. Paney did give me orders.

Q. You can't testify beyond that, is that correct?

A. Mr. Hynes told me at division level meetings to get rid of the dealer if I couldn't get him to stock Goodyear tires.

Q. Now, sir, do you recall testifying yesterday under cross-examination in this other case, Docket No. 6487, about your asking Mr. Paney to give you the station, that you ultimately received and were installed as service operator?

ultimately received and were installed as service station operator?

Mr. Kelaher: Your Honor, before he answers that, I am going to object if they are going to begin to double team the two cases. Now, I think they should be restricted to the direct testimony in this case. I'm not going to have him rambling all over the universe with what he said in two cases and start cross-examining a witness to that extent. I think if they can show that it ties in with his direct testimony, that is fine, but I think it is highly improper for them to be expanding cross to include direct examination in the Firestne case. I think it is highly improper.

Mr. Correa: If your Honor please, this is on the 2111 issue of credibility, conflictng statements under oath.

Hearing Examiner Kolb: You have a right to refer to the records for conflicting statements, but I don't think you can go in and cross-examine from the other record without first showing that it has been brought out on direct examination.

Mr. Correa: Well, I was simply trying to shorten it up.

Mr. Kelaher: Let's do it the right way. They are always after me to do it the right way.

Mr. Correa: We will do it the long way rather than argue.

Now, sir, is it the fact that you decided at some point in the course of your employment by Shell as a salesman that you would like to be a dealer instead of a salesman and would like to run a particular service station?

The Witness: That is what I asked Mr. Paney for when I resigned.

By Mr. Correa:

Q. That was your real reason for making the change, wasn't it?

A. No, not altogether.

Doctor hadn't suggested that because of Mr. Bartl's stomach condition?

A. He didn't have any counsel with his doctor when he was my dealer. He might have been there one or two times when he had a cold or something, but as far as the condition they were talking about, which was his stomach, he didn't have any time off or anything. He worked every day, just like I do at my station, so I don't think that was any reason.

Mr. Correa: Now, would you read the question back, please? I move to strike the answer as unresponsive, if your Honor please.

Mr. Kelaher: I think it is perfectly responsive.

(The reporter read the record as requested.)

Hearing Examiner Kolb: I think the answer is responsive to the question.

Mr. Correa: I submit it isn't. He hasn't answered whether he testified or didn't testify yesterday.

Hearing Examiner Kolb: If you can testify to what he testified to about Mr. Bartl's stomach yesterday, I will hand it to you. We went over it for about a half hour or three-quarters of an hour.

Mr. Correa: But, that is correct, this is one question and answer which comes out perfectly clear.

Hearing Examiner Kolb: I don't think you can
2117 pick out one spot here and one spot there. We have to go into his testimony as to that.

Mr. Correa: Well, let me ask you the facts. Do you know whether Mr. Bartl requested to get out of his station or whether he was told to get out?

The Witness: He was told to get out.

Mr. Correa: That is your testimony now, is that right?

The Witness: I took a lease—

Mr. Correa: (Interposing.) That is your testimony now?

The Witness He doesn't understand the oil business, I can see.

Mr. Correa: Listen, if your Honor please, I will ask the the witness be instructed that we don't have to take any impertinences from him. He is here to answer questions.

The Witness: I'm trying to explain.

Mr. Correa: Please confine your answers to questions.

Hearing Examiner Kolb: I think the witness can explain.

The Witness: A lease cancellation—

Mr. Correa: (Interposing.) If you Honor please, I'm not entitled to an answer to my question? Is that your ruling?

Hearing Examiner Kolb: I think he is trying to 2118 give you an answer, isn't he?

Mr. Correa: I think that question can be answered yes or no.

Hearing Examiner Kolb: Read the question.

(The reporter read the record as follows.)

Mr. Correa: I will withdraw the question.

Mr. Kelaher: He should be permitted to finish that answer. He has been interrupted.

Hearing Examiner Kolb: The question has been withdrawn.

By Mr. Corea:

Q. Now, sir, you testified on your direct examination in this case at pages 2066 to 2069 concerning the Shell policy with respect to TBA to be placed in new Shell stations. Do you remember that?

A. Yes, sir.

Q. Do you remember testifying at 2069 that Shell's policy was established orally?

Mr. Kelaher: Your Honor, I object unless—we talked about many things yesterday and some of the instructions related to specific particular items. Now is this reference

with respect to new stations? I'm not clear? I haven't read it. If that is what counsel says, that is all right.

Mr. Correa It starts at 2066.

Hearing Examiner Kolb: There is a pending ques-
2119 tion before the witness. Let him answer.

The Witness: The orders were given to me orally. They weren't read out of a book.

By Mr. Correa:

Q. And you so testified?

A. I testified to that; yes, sir.

Q. You knew, did you not, sir, at the time you gave that testimony, that Shell did in fact have a written policy which they gave to new dealers?

A. I knew that, they sent a letter to all new dealers.

Q. You didn't have occasion to refer to that in the course of your testimony in this case yesterday?

A. That was brought up yesterday.

Q. In the course of your testimony in this case, sir?

A. In this case, no. I don't believe it was.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I would like to have marked as Goodyear's Exhibit 6, a one-page letter dated June 21, 1954, addressed to Mr. W. E. Edwards, 226 Wabash, Terre Haute, Indiana, Shell Oil Company and signed with an undecipherable signature and the legend underneath, "District Manager."

(The paper referred to was marked Respondent's Exhibit No. 6 for identification.)

2120 Hearing Examiner Kolb: Are you going to place this in evidence?

Mr. Correa: As soon as I have it properly identified. This has been marked in 6487 RX-4.

By Mr. Correa:

Q. I show you Exhibit 6 and ask you, is that (indicating) your signature appearing in the lower left-hand corner?

A. This is my signature.

Q. At the time of that letter, that is, 1954, was it the practice of the Shell Oil Company, to your knowledge, to send a letter of that type to every new dealer?

A. It has been a practice all of the time.

Q. All of the time—

A. (Interposing.) That I was connected with the company, yes.

Q. Was it the practice to obtain on a copy of such letter the acknowledgment of each new dealer?

A. The district manager sent letters to all new dealers.

Q. Was it a practice to ask the new dealer to acknowledge that he had received and read the letter?

A. Yes, he would sign it.

Q. Over his signature?

A. Return it to the district office.

Mr. Correa: Your Honor, I wonder if the witness can identify the signature of the district manager so it 2121 will be in the record?

Hearing Examiner Kolb: Yes.

Mr. Correa: Do you know the signature?

The Witness: That is the district manager's signature.

Mr. Correa: What is his name?

The Witness: A. C. Paney.

Mr. Correa: If your Honor please, I offer this exhibit in evidence.

Mr. Kelaher: May I see a copy of that.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I withdraw the offer in evidence at this time, if your Honor please. It is marked for identification.

Hearing Examiner Kolb: The record will show Respondent's Exhibit 6-B has been withdrawn.

By Mr. Correa:

Q. During the time that you were in the Shell service station, which I believe was approximately 25 months, was it not?

A. That is correct.

Q. What total dollars amount of TBA did you purchase from Goodyear?

A. It was stated yesterday, I believe, $5200.

2122 Q. It was stated variously, $5200, $5400?

A. One or the other, that was all tires and batteries only.

Q. Now, did you purchase a ynGoodyear accessories during that time?

A. I had two orders from Chicago Car and Home of accessories from Goodyear.

Q. What did they amount to, sir, dollarwise?

A. Approximately $400. That wasn't the testimony yesterday.

Mr. Correa: May I take a moment, if your Honor please.

Mr. Kelaher: May we have a short recess, your Honor? They said they would like a moment.

Hearing Examiner Kolb: All right, we will take a five-minute recess.

(A short recess was taken.)

2123 Hearing Examiner Kolb: The hearing will come to order.

By Mr. Correa:

Q. Now, sir, you say you bought during the entire 25 months you were a Shell dealer, $5,200 or $5,400 of Goodyear tires and batteries?

A. Yes, sir.

Q. And $400 additional accessories.

A. In car and home, yes, sir.

Q. Now, did you testify Yes, Sir, in 6487, at page 567, as follows:

"Q. Mr. Edwards, I am asking you for the total amount of merchandise you bought from Goodyear or the Goodyear dealer," and I inserted "from" because it is omitted from the transcript.

Mr. Kelaher: You have what?

Mr. Correa: Inserted the word "from".

Mr. Kelaher: Instead of "for", I see.

Mr. Correa: "A. I would say what I said previously, $5,200 from Goodyear only Goodyear only

"Q. Does that include the accessories?

"A. That includes what accessories I bought from Goodyear out of Chicago.

"Q. No, no matter where you bought them from, did you buy accessories from Mace?

"A. No."

2124 By Mr. Correa:

Q. Now, does that testimony refresh your recollection, sir, that your total purchases including accessories bought out of Chicago was $5,200?

A. That is correct.

Q. Now, sir, did you buy TBA from Adams Supply, formerly Adams Pontiac?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: State your reason.

Mr. Kelaher: Reason for the objection is that he is crossing him on direct testimony in the Firestone case, as I understand it.

Hearing Examiner Kolb: He is asking a question, which is proper. Objection is overruled.

Mr. Correa: I will confess, if your Honor please, some of my questions might have curiously happened to coincide with areas investigated into by Mr. Simon in this case, the name of which I don't recall for the moment.

By Mr. Correa:

Q. You bought some U.S. Royal tires there, did you, sir?

A. I think I stated I bought one set, yes, sir.

Q. I am not entitled to this moment to be interested in what you stated, as this is another case.

Now, sir, would you say your purchases from Adams over the 25 months period came to about $1,500 worth?

2125 A. Yes, sir.

Q. And that included new U.S. Royal tires and re-caps, is that correct?

A. That is correct.

Q. Did you purchase tires from L. S. Bank?

A. Yes, sir.

Q. And those were Firestone tires?

A. Yes, sir.

Q. And did you purchase this from Mr. Bank over the 25 month period average about $80 a month?

A. Yes, sir.

Q. Did you buy accessories from one John S. Cox?

Mr. Kelaher: Objection, unless there is a definition given of acessories.

Hearing Examiner Kolb: Objection overruled.

The Witness: I bought accessories from John S. Cox.

By Mr. Correa:

Q. And did your purchases from Cox average according to your recollection about $30 a month?

A. That is approximately, yes, sir.

Q. Now, did you buy accessories from Gibson?

A. Yes, sir.

Q. And you averaged about $50 a month from him?

A. Yes, sir.

Q. Did you buy accessories from Hoosier Auto Parts?

2126 A. Yes, sir.

Q. And what did your purchases from that company average a month?

A. From Gibson?

Q. From Hoosier Auto Parts?

A. Hoosier Auto Parts, I would say about $30 a month.

Q. And you said yesterday, $40 to $50 a month?

A. Well, if it is in the record, that is what it says, that is right.

Q. Did you buy accessories from Loesser and Son?

A. Yes, sir.

Q. Your average was $50 to $100 a month from them?

A. Yes, sir.

Q. From Smith and Decea?

A. Yes, sir.

Q. You averaged $30 to $50 a month from them?

A. That is right.

Q. Delco batteries, did you buy Delco batteries from Terre Haute Battery Company?

A. A few, sir.

Q. You bought accessories from that company too?

A. Yes, sir.

Q. And would your average purchases from that company be something over $60 a month?

A. That is lose, yes, sir.

2127 Q. Now, sir, have you named in your testimony here all the places of business from which you purchased new tires and tubes other than Goodyear tires and tubes?

A. I have named places, other places, yes.

Q. All of them?

A. Yes.

Q. And would the same be true of batteries, other than Goodyear batteries?

A. I bought Delco batteries from Terre Haute Batteries, I believe that is all the batteries I bought, sir, outside of Goodyear.

Q. And would the same be true of accessories?

A. Yes, sir.

Q. Now, sir, I show you this exhibit which consists of a number of pages which for identification purposes I shall simply describe as that which was marked as Respondent's Exhibit 2-A through 2-Z in the case which is Docket Number 6487. I put those before you, sir, and I will ask you, sir, are those reports certified to by you?

A. Yes ,sir.

Mr. Kelaher: Your Honor, I am going to object to the introduction of these documents. I don't have the slightest idea where they came from, no authentication; there is no—I haven't been given an opportunity to even look at the documents and I think it is improper cross.

2128 Mr. Correa: May I say for the record that counsel has had all the same opportunity that I have had to look at these documents, that is as a member of the public entitled to examine public record of proceedings before the Federal Trade Commission before its hearing examiners.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: They weren't in—May I ask a couple of questions on voir dire.

Mr. Correa: I think, perhaps, it would be more orderly if I would finish laying my foundation. I have no objection to counsel asking a few questions on voir dire.

Hearing Examiner Kolb: You may proceed.

Mr. Correa: Thank you.

By Mr. Correa:

Q. Is it a fact, sir, that these documents show your gross sales of TBA, among other things, of course?

A. It does, among other things, but they are separated.

Q. According to tires, batteries, and accessories, is that correct?

A. No, sir. Tires and tubes is separated; batteries is separated; but you would combine it to get tire and battery volume.

Q. And there is an item of accessories?

A. There is an item of accessories, more than accessories; it says accessories, car and home.

2129 Q. Supplies?

A. That even goes into refrigerators.

Q. And that shows gross sales of those?

A. That is gross sales, yes, sir.

Q. And it also shows the cost of sales in respect to each of those categories, does it not, sir?

A. Yes, sir.

Q. And by the way, sir, did you sell any refrigerators during the 25 months you were at the station?

A. No, I didn't happen to sell any, but I could have sold them. I sold fans and air conditioning units.

Q. Now, the amount shown as cost of sales, under these various categories, the actual cost to you of goods sold, that correct, sir?

A. Yes, sir.

Q. And where labor was involved, such as servicing your installation in connection with the sale of accessories, as I understand it, labor is shown separately?

A. Separately.

Q. On these sheets. And these sheets cover the entire period of your incumbency as a service station operator during these 25 months?

A. With Shell, yes, sir.

Q. Each one is certified to by you in writing?

A. Each one, by the month.

2130 Mr. Correa: I asked that they be marked for identification at this time, if your Honor please, in this case.

Mr. Kelaher: Your Honor, reference was made to—may I ask a question just to clarify the document.

Hearing Examiner Kolb: Yes.

Voir Dire by Mr. Kelaher.

Q. You stated that labor appeared under a separate heading, but I don't see any particular heading identified as labor. Where does that appear on the exhibit?

A. On the bottom, service and labor income.

Q. Where is that?

Mr. Correa: The witness pointed it out.

By Mr. Kelaher:

Q. Service and labor income, in the first section would indicate—

A. That is strictly labor.

Q. I see.

A. Like wash jobs, grease jobs, labor on tune up, and labor on brakes, labor on new joints, labor on all mechanical things that went into the car or on the car.

Hearing Examiner Kolb: That will be marked Respondent's Exhibit 7-A to 7-Z.

(Whereupon, the documents referred to were marked Respondent's Exhibit 7-A to 7-Z for identification.)

2131 Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I shall wish to offer them in evidence in this case.

Hearing Examiner Kolb: Do you want to offer them today?

Mr. Correa: Yes.

Hearing Examiner Kolb: Then, I can receive them in evidence. Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Your Honor, in spite of the fact that it is offered by co-respondent and not by counsel supporting the complaint, I assume it will still be taken subject to motion to strike by Atlantic in view of the fact that it relates to Shell.

Mr. Kelaher: Your Honor, these documents, as I understand it, are not the originals. We have no way of knowing whether they are from the files of Shell or where they are from. We have no authentication of the documents, and I think that an improper foundation has been laid for their admission.

Hearing Examiner Kolb: Are the documents 2132 signed by the witness and so testified to?

Mr. Correa: The witness has so testified.

Mr. Kelaher: This is a photostatic copy.

Hearing Examiner Kolb: He testified these are reports he signed and his signature is on them.

Mr. Kelaher: I notice on Respondent's Exhibit 28, for example, lines crossed out and figures on top of them. I don't know what they have done to these documents. I am not implying they have done anything, but I think figures crossed out and other figures put in, I don't know whether the witness did that or not.

Hearing Examiner Kolb: A good way to find out is to ask him.

Mr. Kelaher: I think they are objectionable. I think the originals—

Hearing Examiner Kolb: He has testified those are the reports which he sent in, and the corrections appear to be on the photostats, so it must have been on the original.

Mr. Kelaher: All he testified to was that is his name, that is his signature.

Mr. Correa: He testified they were authenticated by him over the signature each month.

Hearing Examiner Kolb: They show all the purchases he made during that period.

Mr. Kelaher: I would like to ask him some questions on voir dire.

2133 *Voire Dire Examination by Mr. Kelaher.*

Q. Actually, in Exhibit 2-A, you have stated that this is your signature, is that correct?

A. I stated it was my signature.

Q. Is it your testimony that all the figures appearing on this appeared thereon when you signed this statement?

A. Yes and no. I would have to clarify it. Mr. Murray, whose signature appears here, was my representative, and he made these out for me. I didn't make these documents out. There are times when he would leave the station and go to his home and make these out. This is the condition that they would come back to me in. There would be figures down, pencil lines through them, and corrected. Then I would—he would bring them to me and I would question him and he would say, "They are all right, I have been over them, why don't you sign them and let's get them off in the mail?"

Q. Then would these corrections appear on the statement before you signed them?

A. Yes.

Q. Do you know whether these are all the corrections that appeared on the statement before you signed them? Do you know whether any corrections were made after you signed them by Mr. Murray?

A. I would say that it might have happened once.

2134 Q. Do you recall any instances when it did happen?

A. I recall—you see my wife did my bookkeeping, and she would go over them, and if they was wrong then I would call Mr. Murray in and he would check it with me. Then he would make a cross out if he was wrong. Then there is cases where he would argue about it and say that he was right, that he was going to send it in that way.

Q. Even though you didn't subscribe to it?

A. Even though I didn't subscribe to it.

Mr. Kelaher: Your Honor, in the light of that testimony, we should have further authentication of the documents. He testified that his signature appears thereon, but he has also testified that some of the figures appearing thereon were entered thereon without his consent.

The Witness: There is more than one with cross-outs.

Mr. Correa: Perhaps a question or two additional would clarify the matter.

Cross-Examination by Mr. Correa (Resumed).

Q. Mr. Witness, these records, Exhibit 7-A through Z, are they records which were kept by you in the regular course of your business as a service station operator?

A. No, sir. These were the sales representatives' records of my station. When I posted, I had another sheet that I made out every day of my business, which I
2135 saved till the end of the month. And then he took those separate sheets and reposted them on to this sheet, totaling them up.

Q. Were these records kept regularly?

A. They was made out the last—the day prior to the end of the month, every month.

Q. Every month?

A. This paper here (indicating).

Q. Were they records required by the Shell Company?

A. Yes. That is how they based my taxes and figured my profit at the station.

Q. And they were required for the two purposes you have mentioned?

A. Yes.

Q. When you mentioned taxes in this connection you refer to federal income taxes?

A. Yes, sir.

Mr. Kelaher: I submit that a proper foundation hasn't been laid. These were prepared by Mr. Murray. Mr. Murray isn't here. And they were sometimes signed and figures placed thereon without the consent of the witness, even though he was asked to sign.

Hearing Examiner Kolb: The documents appear to bear the supervisor's statement, "The above report was prepared from the station manager's records which were available at the station," and also bear the certification by
2136 Mr. Edwards, "I certify the above to be a true report of my business activities, my current condition," and so forth.

It appears to me that we have here a document which has been prepared and certified to by Mr. Edwards as being a reflection of his books and records and the activities of his business during the months. Under those circumstances, they will be received in evidence and will be so received as Respondent's Exhibit 7-A to Z.

(Whereupon, the documents referred to, heretofore marked RESPONDENT'S EXHIBIT 7-A to Z for identification, were received in evidence.)

Mr. Ballard: Would your Honor add—

Hearing Examiner Kolb: Subject to a motion to strike by Atlantic.

By Mr. Correa:

Q. You have testified on direct that the policy of the Shell Company with respect to TBA, and with respect to your relations with dealers when you were a sales rep-

resentative of the company, was given to you orally; is that right?

A. That is correct.

Q. Would that be true of all of the policies on those subjects?

A. Would that be true of all of the policies? I got my orders orally from Mr. Pavey when I was in the territory, or at meetings, sales meetings. No instructions by
2137 the book until after about one year I had been a sales representative.

Q. So is your answer to that that it was not true as to all of the policies of the Shell Company which was given to you with respect to—

A. I think I said Yes, didn't I? I don't remember exactly. Yes, sir.

Q. What is the fact? Forgetting your prior testimony.

A. The first year as a sales representative was Yes. But after that, No, because then I got my other book to go by, the only book to go by, on "L" stations.

Q. So you were given written policy instructions?

A. After a time.

Q. Do you recall being asked yesterday in the course of your cross-examination in Docket No. 6487, at Page 568, the following questions, and making the following answers:

"Question: Now you testified earlier that all policy of the Shell Oil Company with respect to TBA with respect to your relations with dealers was given to you orally, is that right?

"Answer: That is right.

"Question: Were you ever given any written policy instructions?

"Answer: No, I don't believe so."

Do you recall being put those questions and making those answers?

2138 A. Yes, sir, I recall that.

Q. Are they correct or not?

A. They are correct, but I was a little confused with Mr. Simon yesterday. The policies I was talking about, where I said Yes, I thought that he was asking me of the typewritten papers and not the dealer station books. I got his question there wrong, do you know what I mean? So I answered him on the letters that came out of the division office, and not on the books that came with the briefcase that I got after about a year.

Q. Is it that these answers are incorrect?

A. No, they are—

Q. For the reasons you have mentioned?

Mr. Kelaher: Objection, your Honor. That wasn't his answer.

The Witness: No, they are not incorrect. They are correct as far as I just explained it.

By Mr. Correa:

Q. They are correct subject to the qualification you have just given?

A. Yes, sir.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

By Mr. Correa:

Q. Now, sir, I show you this booklet which has 2139 been marked Respondent's Exhibit 3 for identification in some other case, and I ask you, sir, during the period that you were a representative of the Shell Oil Company, why you were given any book similar to that?

Mr. Kelaher: May I examine it first?

The Witness: I was not given a book at the time of promotion to sales representative. It was about a year after that I obtained a book.

Mr. Kelaher: I note that the document identified as

Respondent's Exhibit 3 for identification in Docket 6487 has a date "revised edition, August 1955."

I would like to ask if there have been any changes, if this is the actual document which was handed to Mr. Edwards, or whether or not there were changes thereon. I don't think he was an employee of the company in August 1955, was he?

The Witness: That is correct.

Mr. Correa: Frankly, I don't know. Counsel knows as much about this document as I do. I offer to prove that the witness will concede that the document handed him contains certain statements.

Mr. Kelaher: How can he testify to it when he wasn't with the company, when the document was issued in August 1955?

Mr. Correa: I don't think counsel really understood the testimony.

2140 The testimony was not that the document was handed to him. The testimony was that a similar document was handed to him.

Mr. Kelaher: Let's see the document.

By Mr. Correa:

Q. Will you produce it, Mr. Witness?

A. I don't have it. I had to turn everything in when I resigned.

Mr. Correa: I am sure I don't have it. I don't represent the Shell Oil Company.

Mr. Kelaher: The burden is on counsel. He is conducting the cross-examination. If he wants to question him about a document—

Mr. Correa: Your Honor, there is no pending offer of anything. I don't know what counsel is fulminating about. I think I had best get on with my examination. I was trying to shorten it, but that is an idle pursuit. Coun-

sel is in his home city, I am not. He couldn't care less, I suppose.

Mr. Kelaher: I am going to object to any extracts from that document.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. The booklet which you received, which you
2141 have just mentioned, did contain certain policies, did it not?

A. Yes, sir.

Mr. Kelaher: Which booklet are we talking about now?

Mr. Correa: The one he just mentioned.

Mr. Kelaher: I think we should have some identification of it.

Mr. Correa: Is this a motion or objection?

Mr. Kelaher: I would just like to have some identification of the document he is alluding to.

Hearing Examiner Kolb: He is referring to the document which the witness said he received about a year after he became a sales representative, which he turned back to the company after he discontinued his service.

Mr. Kelaher: I object to any questions on that. I think the booklet is the best evidence. I think the best evidence rule clearly applies.

Hearing Examiner Kolb: We haven't reached that point yet.

Mr. Correa: All right. We will.

By Mr. Correa:

Q. Did the booklet that you received contain this statement, and I quote:

"Type L dealers are independent service station

operators in every sense of the word and are not
2142 obligated to adopt Shell's plans and programs any more than would any dealer. Of course, Shell representatives can and should describe plans and make suggestions from time to time to any dealer which are intended to make the operations of the station more profitable, and since a profitable operation depends to a great extent upon the application of certain sound and fundamental operating practices, a considerable portion of this booklet has been devoted to a review of these practices."

Did it contain that statement?

Mr. Kelaher: Objection, your Honor. The best evidence is the document itself. They have a copy of the document. Let them present it to the witness. He is asking him to remember what was said in a document which he received, I don't know, four or five years ago.

Hearing Examiner Kolb: He hasn't said whether he remembers or not.

The Witness: I can't rightly remember as to all of those phrases, how they is worded, so I had better not answer that.

By Mr. Correa:

Q. Isn't it the fact, sir, that you testified in Docket No.
6487 yesterday afternoon—and I refer to Page 571 of the testimony—and weren't you asked the precise
2143 question which I have just put you?

A. Yes, I was asked that question.

Q. And didn't you answer, and I quote your answer, "It did." Wasn't that your answer yesterday?

A. Yes. Can I clarify that?

Mr. Kelaher: Go right ahead and clarify.

Mr. Correa: I object, if your Honor please.

Hearing Examiner Kolb: I think the witness can clarify this if he wishes to.

Mr. Correa: I submit with great respect that I do object and I object on the ground that—

Hearing Examiner Kolb: Your objection will be overruled.

Mr. Correa: All right.

The Witness: I was answering that question but I didn't know that that wasn't the book that I didn't have. I didn't know that yesterday, that that was the book. I didn't know that it had been revised since I left the organization. So I think they got me there a little—

By Mr. Correa:

Q. So that your testimony yesterday when you gave the answer "It did" was not correct or accurate?

A. That's right, according to that document.

Mr. Kelaher: I might point out for the purpose of the record that the date was never given to the witness.

2144 The Witness: It wasn't.

Mr. Correa: Neither was the booklet. He was asked the identical question asked here, was he given a similar book.

Mr. Kelaher: If we are going into his testimony in Docket 6487, let's put it in its proper context.

Mr. Correa: I offered to stipulate, but you were the one who was sticking about that.

Mr. Kelaher: For a very good reason.

By Mr. Correa:

Q. Did the book which you received about a year or a year and a half after you were made sales representative, contain this statement, and I quote:

> "It should be emphasized that full discussion of the essentials of service station operation should be had with the prospective lessee prior to execution of said

lease. While it is recognized that no understanding can be made with the lessee as to the manner or method of operating the station, a full exchange of views as to proper operation should provide a fair guide to the proposed lessee's future success.

"After the leases have been signed, Shell's control has been relinquished and the future of the station depends upon the lessee voluntarily carrying out the merchandising policies recommended by Shell, not be-
2145 cause he is obligated to so operate his station but because he remains persuaded that such policies are for his own best interests."

A. I would say that a similar—

Mr. Kelaher: Let him finish.

Is that a question?

By Mr. Correa:

Q. The question is, did it contain that statement?

A. I would say that that is similar to the one that I had in my book.

Q. You attempted to perform according to that statement, did you not?

A. Yes, and I pursued the dealer to do certain things beyond that book, which was given to me orally.

Mr. Correa: Read the question and answer.

(The reporter read the question and answer.)

2146 By Mr. Correa:

Q. Isn't it true that yesterday in 6487 that self-same statement was put to you, with the question "Did the book you had contain that statement?" And is it not further true—and I refer to page 572 of the record—that in answer to that question you volunteered the answer "I attempted to perform that," without any qualification as to what you did other, different or further than that? Isn't that true?

A. That is true, talking about that book there, but not the other book.

Q. Isn't it further true that when you were further pressed with the question "Did the manual contain that statement," you answered, and I quote, "It must have contained it or I wouldn't have performed the duty." Isn't that true?

Mr. Kelaher: Objection, your Honor. It is very clear at this point that the witness was under a misconception yesterday because they were questioning him about a book which was revised in August 1955, which was after this man had left Shell employment, and he was under the misapprehension that they were referring to a booklet given to him. I think he has clarified that. I think the booklet itself is the best evidence. If they want to bring it in, let them do it.

Mr. Correa: If your Honor please, that speech, outside of holding us up, adds absolutely nothing. It is not an objection to the pending question, as I understand it.

2147 Mr. Kelaher: It is an objection to this line of questions.

Mr. Correa: The question is didn't he testify in a certain way yesterday? He has made his explanation. I want to get into this record the fact. I may say this is another function of the difficulty of this bizarre method of trial of these cases which has been forced upon all of us, I take it, including your Honor, that arises out of the very fact as to which I directed attention at the opening of this hearing yesterday.

I submit I have no other choice but to go on in this manner.

Hearing Examiner Kolb: The objection will be overruled.

(Question read.)

A. I will say it must have it in there.

By Mr. Correa:

Q. Did the booklet which you were given contain this statement, and I quote: "Dealer operation of service station either 'L' type or any other is a private and independent business enterprise in every sense of the word. The proprietor is entirely on his own. He employs his own help, directs and manages the business, and at all times must depend upon his own ability and initiative for the profitable conduct of the business."

2148 Mr. Kelaher: I understand that counsel is still reading from the revised edition, August 1955. That is understood on all the high-sounding speeches we are getting here. Right?

Mr. Correa: There you are in error, counsel. Counsel is reading from the notes prepared by the service represented by the reporter.

Mr. Kelaher: I think your Honor at this point, if we are going to go back in docket 6487 testimony, it should be clearly understood that the August 1955 edition was the one from which Mr. Simon quoted in docket 6487.

Hearing Examiner Kolb: I think the record shows that.

Mr. Correa: I don't believe the record shows anything of the sort, sir.

Mr. Kelaher: It should if it doesn't.

Mr. Correa: I don't know that it is the fact. The record certainly does not show it.

Hearing Examiner Kolb: Certainly Mr. Simon questioned the witness from the revised edition of the document which you have marked there as an exhibit and which is marked revised edition.

Mr. Correa: Your Honor has a better vantage point of what Mr. Simon said than I, sitting there—

Hearing Examiner Kolb: No, you have it before

2149 you, the blue book. Isn't that the document from which he questioned him?

Mr. Kelaher: The answer is Yes.

Mr. Correa: He showed the witness this exhibit—

Hearing Examiner Kolb: And he read from that exhibit to the witness.

The Witness: That is right.

Mr. Correa: He elicited the testimony that the witness had got a similar book. Then he read to the witness, or quoted to him, various statements and said did the witness' book contain these statements, to which the witness by and large said Yes, they did.

It does not appear in the record, and I understand I am bound by the record, that Mr. Simon was taking those statements out of this book.

Mr. Kelaher: That is right, he was.

Mr. Correa: You agree with me it doesn't appear in the record?

Mr. Kelaher: I am saying it should appear in this record that he was taking them out of that book in that record. That is my point. I don't care what is there.

Hearing Examiner Kolb: I think Mr. Kelaher is right to the extent to where your questions about the answers given to Mr. Simon in connection with the questions. If you want to ask him does the statement appear in
2150 the book he had, that is all right.

Mr. Correa: This is the form of my question.

Hearing Examiner Kolb: You are asking did he say something else.

Mr. Correa: Read the pending question. I submit with great respect the pending question is clear.

(Question read.)

Mr. Kelaher: The point I am making, I think it is perfectly clear and well taken, is that the quotations being given to the witness are from the revised August 1955 edition identified as Respondent's Exhibit 3-A, I believe, in Docket 6487.

Hearing Examiner Kolb: The question is purely as to whether or not that statement appeared in the book he had.

Mr. Correa: That is right.

Hearing Examiner Kolb: That is all.

The Witness: And I will say I think it did.

By Mr. Correa:

Q. Did the booklet which you received after you had been a Shell sales representative for a year or so, contain this statement, and I quote: "As heretofore explained, when Shell leases a station to a dealer, such dealer is in all respects an independent businessman and not a Shell employee, and Shell does not have any right nor does
2151 it undertake to control or direct his business activities. Conversely, such dealers have no right to represent themselves as Shell agents or employees or to conduct their business in the name of the Shell Oil Company." Did it contain that statement?

Mr. Kelaher: If he knows.

Mr. Correa: I assume the witness understands he is not to testify to anything he doesn't know.

A. I think it did.

By Mr. Correa:

Q. I ask you, sir, did it contain this statement, and I quote: "All existing and future Shell dealers are to be sent a letter stating the company's TBA policy. Each division will see that these letters are sent in accordance with current marketing practices." Did it contain that statement?

A. Yes, sir. You have that letter.

Q. And the letter referred to is the one that has been marked for identification herein as—

Hearing Examiner Kolb: That would be Commission's

Exhibit 349 now. Is that the one you want to introduce, Mr. Kelaher?

Mr. Kelaher: Yes, that is correct.

Hearing Examiner Kolb: Have the reporter mark that.

(The document referred to was marked Commission Exhibit 349 for identification.)

2152 By Mr. Correa:

Q. Now, sir, I think you testified that as sales representative you were responsible at one stage for some 17 dealers, is that right?

A. At one what?

Q. At one stage; one point.

A. I was responsible for how many dealers?

Q. Seventeen.

A. May I look at my station numbers on my paper that I had yesterday?

Q. Was it approximately that?

Mr. Kelaher: I wonder if his recollection could be refreshed by his testimony.

A. Fifteen.

By Mr. Correa:

Q. I have no objection to looking at a little paper or a little book.

Mr. Kelaher: He has no little book, I might add. He has a little paper.

Mr. Correa: He had a little book when he testified in our point. I made no point and I make none now, so why don't you do the same?

Mr. Kelaher: For your edification, it should be noted that that book was blank.

Mr. Correa: I am glad you know so much about it.

2153 I don't know.

By Mr. Correa:

Q. Is it not true that one method of measuring TBA sales which was used in your Shell district while you were a sales representative on at least one occasion is to measure it in terms of how much TBA a dealer is selling per thousand gallons of gasoline?

A. It happened once; yes, sir.

Q. Now, sir, one of the dealers you spoke about on your direct examination in this case I believe was named Laybold?

A. Yes, sir.

Q. L-a-y-b-o-l-d, is that the right spelling?

A. Yes.

Q. You didn't pressure Mr. Laybold, did you?

A. I didn't have to pressure Laybold. He went along, when I told him I wanted him to handle Goodyear tires; he went along.

Q. In point of fact you did not pressure him?

A. No, sir, not that particular dealer, no.

Q. And he was 100 percent a Goodyear dealer, was he not?

A. That is right.

Q. And his TBA sales were approximately—let's see, his TBA purchases I guess were $29 per thousand gallons of gas?

A. Yes, sir.

Mr. Kelaher: Objection, your Honor. I am going 2154 to object. Apparently we are going into some other testimony brought up by Mr. Simon. This witness has stated that they used a per thousand gallon method at one time. I would like to have that time identified, and I am going to object to any questions other than the period during which they used that ratio or that measuring yardstick. I don't think he had knowledge—

Mr. Correa: There is no pending question, if your Honor please.

Mr. Kelaher: Then I move that the answer be stricken.

Mr. Correa: I submit it is proper cross-examination.

Hearing Examiner Kolb: I will overrule the objection. The motion to strike will be denied.

By Mr. Correa:

Q. Is there a dealer in Terre Haute, Mr. Witness, named Kranche?

A. The name is Krauche.

Q. How would you spell it?

A. K-r-a-u-c-h-e.

Q. Did he purchase TBA on the basis of about $2 per thousand gallons?

A. Yes, sir.

Q. From Goodyear?

A. From Goodyear.

2155 Mr. Keller: I wonder if we could have some identification of the time period we are talking about. Does docket 6487 indicate the time period?

By Mr. Correa:

Q. Would you indicate what time period you are referring to in your answer, sir?

A. I am referring to the fall meeting of December 1953.

Q. Is there a dealer named Witsell?

A. W-h-e-t-s-e-l-l.

Q. Whetsell?

A. Yes.

Q. And you sold him about $6. per thousand?

A. Yes, sir.

Q. And a dealer Scott?

A. Yes, sir.

Mr. Kelaher: I object, your Honor, unless we fix a time.

Hearing Examiner Kolb: I take it the witness is testifying as to the ratio shown by the audit taken December 1953.

The Witness: December 1953.

Mr. Kelaher: That is the first that has appeared in the record. Do all these ratios—

Hearing Examiner Kolb: He just stated that a minute ago.

2156 Mr. Kelaher: Does that apply to all these ratios?

The Witness: That is correct. It applies to one reading over all the stations.

By Mr. Correa:

Q. Dealer Scott. you sold about $11 a thousand?

A. That is correct.

Q. And dealer Cole—C-o-l-e?

A. Yes.

Q. About $5 a thousand?

A. Yes, sir.

Q. And dealer Rader—R-a-d-e-r—about $12 a thousand?

A. Yes, sir.

Q. Conrad, about $7 a thousand?

A. Yes, sir.

Q. As a matter of fact, Rader and Conrad both stocked U. S. Royal tires, didn't they?

A. That is correct.

Q. Which they bought from Adams?

A. Yes, sir.

Q. And a dealer named Bartholome?

A. Bartholome—B-a-r-t-h-o-l-o-m-e.

Q. He purchased about $7 a thousand?

A. That is correct.

Q. And a dealer named Miller, about $5 a thousand?

A. Yes, sir.

2157 Q. Mickles—M-i-c-k-l-e-s?

A. M-i-k-e-l-s.

Q. About $8 a thousand?

A. Yes, sir.

Q. And he stocked, Mikels, I mean, Delco batteries?

A. Yes, sir; he did.

Q. Which he bought from Gibson?

A. Yes, sir.

Q. And a dealer Drake, about $2.50 a thousand?

A. That is correct.

Q. Dealer Morris, to whom you sold about $17 a thousand?

A. Correct.

Q. And Morris stocked Delco and Willard batteries, is that correct?

A. Yes, sir.

Q. There is a dealer named C-h-e-l-e?

A. C-h-e-l-e?

Q. Do you recall, would it be Cagle?

A. C-a-g-l-e, yes.

Q. Cagle stocked Kelly tires?

A. That would be Cagle. We talked about him previous.

Q. He bought TBA at the rate of $4 a thousand.

A. About $4.

Q. You talked in your direct testimony in this case about a dealer named Fortin?

2158 A. Yes, sir.

Q. And he bought about 50 cents a thousand?

A. About that, yes. That is correct.

Q. TBA. He is an Armstrong dealer?

A. That is correct.

Q. He stocked Armstrong, Royal, and Cooper tires?

A. That is right.

Q. Also stocked Delco batteries?

A. Right.

Q. Did you mention in your direct here a dealer named Garzolini, and would you spell that?

A. G-a-r-z-o-l-i-n-i. I mentioned him; yes, sir.

Q. He was buying about $26 a thousand?

A. Yes, sir.

Q. Now, sir, you have testified I believe in your direct examination here about leaving your station in May—am I right, it was May of 1954?

A. I went in business in May of 1954, when I left Shell.

Q. That is when you started the station?

A. Yes.

Q. When you left it was—

A. I left 6/16/56.

Q. That would be June of 1956?

A. June 16, 1956.

Q. Before you left your station, sir, you were
2159 solicited by two other oil companies?

A. Right, sir.

Q. As a service station manager for them?

A. Service station dealer.

Q. And that was Ohio?

A. Ohio and Texas.

Q. And is it also true, sir, that you left your station on a Saturday night and opened a new—opened in a new station on Monday morning?

A. Yes, sir; that is correct.

Q. The new station was Phillips?

A. Yes, sir.

Q. Phillips Petroleum station.

2160 Q. Is it true that when you were sales representative of the Shell Oil Company, you had instructions from the company to continually try to get the number two man in other service stations, and try to make him a Shell dealer?

A. That was policy, to get a dealer, a second dealer, a fellow who worked for a dealer, close to the place of business where you was going to replace or where you was going to let a man go or he was going to quit. That was policy of the company to move a man like that close so he could bring some business with him over to Shell from a competitive company.

Q. When you terminated your Shell service station tenure in June, 1956, did you turn over the tires you had on hand to the incoming dealer?

A. He bought them.

Q. He bought them. And did they include some re-treads?

A. They included, I think, four re-treads.

Q. Were those Goodyear re-treads?

A. No, sir. Those was Royal Winter Tires.

Q. You have testified, sir, that you were a salesman, a sales representative of the Shell Oil Company for approximately two and a half years, is that right?

A. Yes, sir.

Q. And during that period of time, did you ever install and erect promotional material in Shell stations?

A. Yes, sir.

2161 Q. That was one o fthe routine jobs of a salesman?

A. Yes, sir, to see that it went up.

Q. And during that two and a half year period, did you go into stations and work with dealers in connection with promotions on major holidays, especially the Fourth of July and Labor Day?

A. Yes, sir.

Q. The promotional work you did with dealers was designed to help them sell more TBA, was it not?

A. That is correct.

Q. And it did help them?

A. I would say so.

Q. Did you also in connection with your work as a sales representative on occasion put on a uniform and actually help the dealer pump gasoline?

A. Yes, sir.

Q. Now, in the case of this one dealer, Bartl, that you testified to on direct, didn't you actually go down to his station and physically show him by doing it how he should clean up his station?

A. Yes, sir, about a day every two weeks.

Mr. Kelaher: Your Honor, I object to this line of testimony, the last two questions and answers, unless the purpose is stated. Unless I know the purpose, I move to strike.

What is the purpose of the question?

2162 Mr. Correa: The purpose of the cross-examination, the witness has given direct testimony under the questioning of counsel which is carefully one-sided and deals with one alleged aspect of his activities as a salesman, and gives a distorted and perverted picture of those activities. I am seeking now to show what the true picture is by checking into these lacunae that have been carefully left in the direct testimony, the true facts which, of course, are unwelcome to counsel because they were with the inference that counsel seeks to draw.

Mr. Kelaher: Your Honor, I don't think counsel's brilliant oratory will change the facts one iota. I don't see the relevancy to my pending objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Correa:

Q. Now, sir, that kind of assistance to dealers was routine with Shell salesmen, was it not?

A. That's right.

Q. And at times was it required that you take at least one day a week to do that sort of work?

A. Yes, sir. At various spots.

Q. Did you also, as a normal part of your activities as a Shell salesman, from time to time assist the particular dealers to sell accounts?

Mr. Kelaher: Objection, your Honor, unless it is
2163 related to TBA.

Mr. Correa: I submit—

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You may answer.

The Witness: I went once with a dealer to solicit some gasoline business and motor oil.

By Mr. Correa:

Q. That was from a lumber company, was it?

A. Yes, sir.

Q. That was the normal procedure for a Shell salesman, wasn't it?

A. I done it. I wouldn't say it was normal because there are very few of them done it.

Q. But didn't you testify yesterday, in the case which we have been describing as Docket 6487, at page 613, about this incident?

A. Yes, I—

Mr. Kelaher: Objection, your Honor.

Mr. Correa: That is preliminary.

Mr. Kelaher: That is an objection. I think you should have the courtesy of letting the Examiner rule.

Hearing Examiner Kolb: Overruled.

By Mr. Correa:

Q. Were you not in connection with that testimony asked the following question, and did you not make the following answer:

2164 "Q. And that is normal procedure for a Shell salesman, isn't it?

"A. Ordinarily, yes."

Mr. Kelaher: Where is this?

Mr. Correa: Page 613, lines 8 through 10.

The Witness: That's right; I stated that.

By Mr. Correa:

Q. In August 1955 you were engaged in operating a Shell service station, were you not?

A. Yes, sir.

Q. And at that time you had a customer named Stelle, did you not?

A. Yes, sir, I had a customer by that name.

Q. And did you on or about August, 1955, on one occasion sign the name of Mrs. Stelle to a credit slip?

A. Yes, sir.

Q. And that credit slip bore the date of August 5, 1955, did it not?

Mr. Kelaher: Objection. The best evidence is the credit slip itself, if they have it.

Hearing Examiner Kolb: Do you have the credit slip?

Mr. Correa: I don't, if your Honor please. It was not marked in evidence yesterday.

Mr. Kelaher: I object to this question. That is the best evidence. Let them bring the evidence in.

2165 Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: I object unless the document is produced. It is the best evidence.

Mr. Correa: Counsel, we don't have the document, of course.

Mr. Kelaher: How do I know what you have or what you don't have.

Mr. Correa: You were here as counsel when this examination was conducted in the other case. Why should we play games about that?

Mr. Kelaher: We are not playing games. I don't have the slightest idea of what you have in your possession. I

never had any conferences with you about it. That clearly comes under the best evidence rule. If they don't have the document, I am going to object to this line of questioning.

Hearing Examiner Kolb: Mr. Correa, you were objecting to influences on other cases, so I would have to rule here that the document is the best evidence.

Mr. Correa: I suppose consistency between rulings in various cases is perhaps one thing that militates or acts in favor of my argument rather than against it.

Hearing Examiner Kolb: No, I know nothing about other cases. The document is the best evidence.

Mr. Correa: I may submit, if your Honor please, 2166 that while counsel would be quite right about the best evidence rule as applied to evidence being profferred in support of a party's case, a claim, that I had never understood the best evidence rule to apply in that manner to cross-examination obviously designed solely for impeaching purposes and addressed solely and simply to credibility.

Hearing Examiner Kolb: You are attempting, apparently, to show that the man has forged a person's name to a document.

Mr. Correa: No, I am not.

Hearing Examiner Kolb: You asked if he signed her name to it.

Mr. Kelaher: That is the clear purpose of the testimony.

Hearing Examiner Kolb: The minute you do that I think you are getting into something that is very, very serious.

Mr. Correa: If your Honor please, that is the trouble of these cases being mixed up, because as near as I could tell—

Mr. Kelaher: There is nothing mixed up.

Mr. Correa: Please, counsel, let me finish.

As near as I could tell, as a spectator at the other hear-

ing yesterday, that may have been the purpose of cross-examining counsel there. I won't speak for him because I don't know. But I will disavow that purpose for myself in this case. I wish merely to test the witness's credibility on the basis of what he had to say about this trans-
2167 action, and how that stacks up with what he might have said on some other occasion about the transaction, also, however, under oath. Other than that, I have no interest in the transaction.

Mr. Kelaher: Your Honor, I might state that I am somewhat astounded by counsel's re-writing of Wigmore so glibly with respect to the best evidence rule. The best evidence rule applies on direct as well as on cross-examination.

Hearing Examiner Kolb: Read the questions.

(Questions read.)

Mr. Kelaher: And I objected, because he is asking about a document which they do not have and which they cannot show the witness.

Mr. Correa: I will withdraw the question and get at it another way.

Mr. Kelaher: I will put you on notice that I will object to the line you are about to undertake.

Mr. Correa: You could have saved yourself the trouble. I sort of guessed that.

By Mr. Correa:

Q. When did you write Mrs. Stelle's name on this slip?

Mr. Kelaher: Objection, your Honor. He is just circumventing your Honor's ruling, that is obvious.

Hearing Examiner Kolb: I will let the witness answer.

Mr. Kelaher: I beg your pardon?

2168 Hearing Examiner Kolb: I will let the witness answer.

Mr. Kelaher: Let the witness answer? Here we are

talking about a document which no one has put in evidence in this case and we are attacking a man's credibility, I presume.

Mr. Correa: That is "testing", a much nicer word.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Read the question.

(Question read.)

The Witness: Before I answer this question, I would like about two or three minutes to explain Mr. and Mrs. Stelle's activities at my station.

By Mr. Correa:

Q. I think you will get that opportunity on redirect.

Mr. Kelaher: Let him answer now.

Hearing Examiner Kolb: I think as long as we are going at it without the document, we might let the witness explain what happened.

Mr. Correa: All right.

Hearing Examiner Kolb: Then, go on from there.

The Witness: Mr. and Mrs. Stelle and their two children trade with me at the Shell station, and my station was in a small shopping center. They was always in a hurry.

They would come in and drive their car up to the
2169 pumps and they would say, "Fill her with gas and service it, give it whatever it needs." We would make out the tickets and walk back in the station and Mr. Stelle would come and get in his car and pull off.

Then, he would come back, maybe in three days or four, I would hold the ticket for him, and I would say, "You didn't sign your last ticket," and he would say, "Why don't you sign it, it saves me time." Didn't even take his dupes.

Now, on this particular invoice that you are asking me

a question about, I can't say whether that was on their Cadillac or their Plymouth station-wagon, but they did get the service performed, and as a usual rule applied, after they didn't show up on their trip to Florida, I went ahead and signed their receipt at the station. Before that they had no objection to it, and I can clarify that by Mr. Stelle, if we had him here.

He was one of those customers who put his trust in me, but counsel seems to make an issue that I am a forger.

That is all I have to say.

Mr. Kelaher Very well said.

Mr. Correa Just for the record, I move to strike the last statement o fthe witness as being unresponsive to any question.

Mr. Kelaher: It couldn't be more responsive.

Hearing Examiner Kolb: I will let it stand.

2170 Mr. Correa: I also move to strike the comments of counsel as being designed to only obfuscate and prejudice a fair trial of this matter.

Hearing Examiner Kolb: Let's go ahead.

By Mr. Correa:

Q. When did you sign this slip?

A. I signed it on the day, the date it says.

Q. What date do you recall as being the date you signed it?

A. 8/5/55.

Q. August 5?

A. 8/5/55.

Q. When was the work done?

A. The work was done about—I can't say exactly but it was two or three weeks prior to that, which the original ticket was lost and I made that up from memorandum.

Q. And you made the one that was signed on August 5th up from what did you say?

A. The original ticket was lost. This ticket that you have here as an exhibit was made from memorandum. The original was lost.

Q. You have testified heretofore about this matter, have you not?

A. I have.

Mr. Kelaher: He hasn't testified in this case, your Honor.

2171 The Witness: I didn't get a chance to explain like I have today.

By Mr. Correa:

Q. You have testified on direct, have you not, that the work that was entered by this slip you signed was performed on August 5th?

Mr. Kelaher: Objection, unless he identifies the record he is referring to, and the page and citation.

Mr. Correa: I am referring to the record in 6487. I think you will find his testimony at page 624.

Mr. Kelaher: Your Honor, I think he has given a full explanation of it. I a ngoing to object to any further examination of the witness on this point.

Hearing Examiner Kolb: I think, Mr. Correa, that that testimony is so confusing that it would be better for you to bring it out on your own cross-examination.

Mr. Correa: If your Honor please, the only purpose of my cross-examination at this time was to show that this witness had successfully given different and conflicting explanations of this incident. And they were given under oath and in a proceeding very similar to the proceeding in which we now are. I raise this defect in his credibility. I am not interested in trying to establish that he was a forger or anything, or that he misappropriated $5.00 and whatever number of cents it was at all. But I am

2172 interested in the fact of his testimonial capacity and his testimonial qualifications.

Hearing Examiner Kolb: The difficulty that I see is the fact that we had conflicting testimony which you are going into; you are selecting a one part and not the other.

Mr. Correa: The conflict is all of the witness's own statements with each other. There is no other testimony.

Mr. Kelaher: I object to that line of testimony.

Hearing Examiner Kolb: He can read what he wants to and you can read what you want to, and we will go ahead on it.

Mr. Kelaher: I think it is obvious it is just time consuming.

Hearing Examiner Kolb: It is time for adjournment anyway. Let's adjourn until 1:30.

(Whereupon, at 12:22 p.m., the hearing was recessed to reconvene at 1:30 p.m.)

2173 Afternoon Session.

(1:30 P.M.)

Hearing Examiner Kolb: The hearing will be in order.

WILLIAM E. EDWARDS resumed the stand as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Cross-Examination Resumed by Mr. Correa.

Q. The question on this Stellar thing was, didn't you testify heretofore under oath that the services represented by the credit card slip were rendered on August 5, 1955?

A. We are still on the Stelle case?

Q. Yes.

Mr. Kelaher: I think counsel referred to it as the "Stellar" thing, which is an apt description.

A. The credit slip was made out on the 5th of August, yes, 1955.

By Mr. Correa:

Q. And you told us the services were rendered two weeks before that?

A. Yes, sir; approximately.

Q. But you have testified under oath that they 2174 were actually rendered on August 5?

A. I have testified that way, but it wasn't that way.

Q. When were you given permission by Mrs. Stelle to sign the credit card in her name, or her husband's name?

A. As I stated awhile ago, I had authority to sign those cards when they didn't come in to sign them.

Q. Very general authority?

A. General authority.

Q. But there was no specific permission given in this case?

A. No specific permission.

Q. You have testified heretofore under oath, did you not, that you were given specific permission to sign this card on August 5?

A. Heretofore I gave that testimony.

Q. That is not correct?

A. That is not correct.

Mr. Kelaher: Objection. He hasn't testified in this case to that effect. Let's keep the record straight. He has testified somewhere else. Let's find out where it was.

Mr. Correa: If he testified under oath, and the witness says he has, I think that is relevant on his credibility.

Mr. Kelaher: I think it should be designated.

2175 Mr. Correa: The record in 6487, page 624, you will find both points last covered, counsel.

By Mr. Correa:

Q. Is it true that the work was performed two weeks before August 5, 1955, and that you held the ticket for two weeks and then signed it?

A. No, that isn't true.

Q. Did you so testify, page 626?

A. The work was performed, and I so testified that the original ticket was lost.

Q. Did you testify that the work was performed two weeks before August 5, and that you held the ticket for two weeks and then signed it?

A. I will say Yes to the first sentence. The second sentence I remember saying that the ticket was lost.

Q. I direct your attention to page 626 of the testimony, in docket 6487, and ask you if you weren't asked the following questions and didn't you make the following answers with respect to this Stelle incident:

"Question: Did you ever tell Murray that the

work was performed about two weeks earlier before she left for Florida, and that you held the ticket for two weeks and then when she didn't show up you signed it?

"Answer: I believe that is correct.

"Qestion: Is that correct?

2176 "Answer: I believe that is correct.

"Question: Now is that your testimony now?

"Answer: That is my testimony."

Q. Were you asked those questions?

A. That is my testimony in that paragraph but if you go on down, where me and Simon had the little argument, that I did say that the ticket was lost.

Q. You think you changed your testimony subsequently?

A. In the same book, the testimony is changed.

Mr. Kelaher: I think he is right, too. I think it will appear.

Mr. Correa: Yes, and I think as a matter of fact I will stipulate and concede that he changed his testimony on that point, as well as other points relative to this incident at a later stage—

Mr. Kelaher: He corrected his testimony.

Mr. Correa: (Continuing.) —in the same examination.

Mr. Kelaher: He corrected his testimony.

Mr. Correa: I submit he changed it.

Mr. Kelaher: You can—

The Witness: I corrected it today.

By Mr. Correa:

Q. Is it the fact, sir, that you wrote out a ticket on this work at the time it was done, two weeks before

2177 August 5, and thereafter the ticket was misplaced and didn't turn up until two weeks later?

A. That is correct.

Mr. Kelaher: That is not what he testified to earlier.

He never has stated that the ticket turned up two weeks later. He hasn't said that yet. He said he made out a new one.

The Witness: That is correct. I said I made out another ticket and that is correct.

By Mr. Correa:

Q. What is the fact?

A. You are asking me so many questions that I can't give you correct answers because you are mixing me up with the questions.

Q. I just want the facts.

A. You are getting the facts eventually. It is like the equation when you put the equal sign back of it you get a correct answer, and that is what we are building up to.

Q. How about this question: Is it the fact that the ticket for the work was written up two weeks before August 5, and thereafter it was misplaced and turned up two weeks later? Is that the fact or not?

A. That is not correct.

Q. Did you so testify?

A. No.

2178 Q. I direct your attention to page 627 of your examination yesterday in docket 6487, and ask you if you were asked the following questions and did you make the following answers:

"Question: You made the ticket out and held it two weeks and she didn't show up and you signed it?

"Answer: Then she never did come back to the station.

"Question: Well, did you call her up the day you signed it?

"Answer: No, I recall now I didn't call her. It was verbal authority, when she—I was taking the car.

"Question: Why did you hold it for two weeks then, if you had had her verbal authority to sign it?

"Answer: It was misplaced in my desk, and I finally located it among my papers. That is the way it was."

A. It was either misplaced or we have located it. We have established that as a fact.

Q. Were you asked those questions and did you make those answers?

A. I was asked those questions and gave those answers.

Q. You are now telling us it is not correct?

Mr. Kelaher: His answer states what it is.

2179 By Mr. Correa:

Q. Are they correct or not?

A. I gave an answer.

Mr. Kelaher: May I have it read?

(Answer read.)

By Mr. Correa:

Q. Were those answers you gave at page 627 of the record, in docket No. 6487, true or not true, sir?

A. That was testimony as of yesterday.

Q. And I take it the testimony as of yesterday is not necessarily true?

Mr. Kelaher: Objection, your Honor. That is a very unfair remark.

Hearing Examiner Kolb: Overruled.

Mr. Correa: I have no further questions.

Redirect Examination.

Mr. Kelaher: Your Honor, may we have about five minutes before going on with our redirect? There was quite an extensive cross-examination. We got into the Roosevelt committee hearings, we got into docket 6487

hearings and I think there was some reference to docket 6486 along the line.

Mr. Correa: What is docket 6486?

Mr. Kelaher: The Goodyear case.

Hearing Examiner Kolb: Very well.

(A short recess was taken.)

2180 Hearing Examiner Kolb: The hearing will come to order.

Redirect Examination by Mr. Kelaher.

Q. Mr. Edwards, based on your experience as a district sales representative and as the operator of a Shell service station, what is the largest volume item insofar as TBA is concerned? By that I mean tires or batteries or accessories. Which is the largest of the three?

A. Tires.

Mr. Correa: Does this mean volume dollarwise?

By Mr. Kelaher:

Q. Dollarwise?

A. Either way.

Q. Unit-wise or dollar-wise?

A. Unit-wise or dollar-wise tires is the biggest deal.

Q. Do you have any approximation of what the percentage to total TBA would be of tire sales dollar-wise or unit-wise?

A. You mean average per unit per station?

Q. No, the percentage in relation to total TBA. In other words, if you take your tire sales and relate it to total tires, batteries and accessories, approximately what would be the percentage?

A. I would say, if you divide it 100 percent—I am speaking of tires, batteries, tubes—

2181 Q. Tires and tubes?

A. Tires, tubes, batteries, and the allied line that goes with it. That is car and home supplies, not accessories.

Q. I am talking now about accessories as spark plugs, oil filters, accessories which are in the Goodyear TBA line, and not mufflers or brake shoes or items which you may refer to as accessories but which are not involved in this proceeding.

A. Specifically, then, I would say that your tires would be about 33 percent, and that your tubes and batteries would be about 10 percent, and that the rest of the line, which falls under filters and spark plugs and things of that nature, would make up the rest of the hundred percent. That makes 55 percent, doesn't it, total, on all other lines except tires?

Q. Are you including in other lines—what accessories are you including in your total figures?

A. I am including in the 55 percent filters, spark plugs, battery cables, fanbelts, and hose.

Q. Was that the percentage at your particular station?

A. That was my percentage at my particular station.

Q. Would it vary at other stations? Would there be a higher percentage of tires or batteries at other stations?

A. Not unless he was doing more gallons of gasoline than I was. If he was doing less gallons, then the
2182 percentage wouldn't change but the volume would.

Q. Mr. Edwards, you were examined by counsel for respondent Goodyear with respect to your testimony before the Roosevelt Committee. I would like to read from page 54 of your testimony on April 30, 1957, and I quote:

"The Shell Company forces dealers to handle Goodyear tires and batteries, even though in my station,

for example, I was not on a commission basis for TBA. Shell threatens lease cancellation if you handle any other line."

I notice that you refer only to Goodyear tires and batteries, is that correct?

A. That is right.

Q. And you did not mention accessories in your testimony before the Roosevelt Subcommittee, did you?

A. No, I didn't.

Q. Is that statement a correct statement that you made before the Roosevelt Subcommittee with respect to Goodyear tires and batteries?

A. I would say that it was partly right. I think it is a fact that Shell gets 10 percent on even the allied lines with tires and batteries, which would include filters, fanbelts, and radiator hose.

Q. It would include accessories?

A. It would include accessories.

2183 Q. When you were talking at page 56, "At the station I handled I was a Shell man through and through, I mean, I sold, talked, and slept it and I went along with the policy to the letter. I didn't handle any other lines. They didn't force me there because I didn't handle any other lines." Were you referring to tires and batteries or tires, batteries and accessories?

A. I was referring to the tires and batteries and accessories that I stocked, not the tires that I went on the phone and called up for to get for customers that wouldn't take Goodyear.

Q. At your station you stocked what brand of tires?

A. Goodyear.

Q. And what brand of batteries?

A. Goodyear.

Q. On the accessories did you stock any Goodyear accessories?

A. Yes, sir.

Q. You did?

A. I stocked fanbelts and hoses and tubes and ply-bond glue. I stocked some of their polish. I believe once I even ordered some seat covers from Goodyear, and deflectors, and rear view mirrors and that sort of thing.

Q. And they were all part of the Goodyear TBA line?

A. Yes, sir.

* * * * *

2184 By Mr. Kelaher:

Q. Mr. Edwards, did you at any time have conversations with Shell representatives concerning non-sponsored TBA which you carried in your "C" station?

A. Yes, sir.

Q. Would you please state did you have such conversations with Mr. Murray?

A. Yes, sir.

Q. And do you recall any conversations that you had with Mr. Murray concerning the matter?

A. Yes, sir.

2185 Q. Would you please state what they were, and the approximate time of the conversation?

A. The date was approximately about July 1955. Murray made a sales call at the station, and that day I happened to be mounting some U.S. Royal recaps. And he wondered and questioned me why I was doing this and I hold him that the Goodyear camelback, on their recaps, wasn't holding tread and they wouldn't make their adjustments, so I had to go to buying U.S. Royal recaps. And he instructed me that I would go back on the Goodyear recaps in view of the fact that he was getting a commission and it helped his territory. So I told Mr. Murray that I would then go back to Goodyear recaps.

Q. Did you go back to Goodyear recaps?

A. I bought some after that, but they didn't hold up, so then I went back to U.S. Royal again.

Q. Did Mr. Murray in turn make any reports to your knowledge to the district manager or sales supervisor concerning this matter or any similar matter concerning non-sponsored TBA?

A. He wrote a letter in to Mr. Paney.

Q. Is this concerning this specific incident you are referring to?

A. Concerning this specific incident, he wrote a letter to Mr. Paney on it which later in a sales meeting was brought up.

2186 Q. Where was the sales meeting held?

A. It was held in Evansville.

Q. Were you present at the sales meeting?

A. No, sir, it was passed on to me by a sales supervisor.

Q. Who was the sales supervisor?

A. Mr. Jessup.

Q. When did you talk to Mr. Jessup concerning the matter?

A. This was about October of '55.

Q. What did Mr. Jessup say to you?

A. He told me to stick with the Goodyear line.

Q. Could you remember anything else he told you at the time concerning the matter? Was that the substance of his conversation?

A. That was the substance of his conversation.

Q. Could you state more accurately what he said to you?

A. He was with Mr. Murray and he told me that he was backing up Bob on the fact that I was selling a non-competitive item, and that he wanted me to stop it, so I told him that I would, which I did.

Q. Mr. Murray was with Mr. Jessup when you had this conversation?

A. Yes, sir.

* * * * * *

2188 By Mr. Kelaher:

Q. On cross-examination you were questioned about a station operator by the name of Mr. Bartl, a Shell service station operator who at one time was in your territory, is that correct?

A. That is correct.

Q. And do you know why he left the station?

A. Yes, I do.

Q. Would you please state what you know about the matter?

A. Jim's service station—Bartl—B-a-r-t-l—was taken under observation for approximately six months, and two different—one different man besides myself tried to upgrade Jim to get him to do a better job.

About two months prior to Jim's leaving the Shell station I had a consultation with him one afternoon and I handed him a lease cancellation paper which, when a dealer signs a lease cancellation paper, he gives up the rights to the service station.

At that time, I tell him that I am going to look for another man to replace him, which then you start looking. And ordinarily the "L" dealer will stay in that station until you get a dealer because he likes to get is investment out of that station.

So, in about two months before his ending date, I located a dealer by the name of Harry Scott, who came to Shell with $1500. He needed twenty-five to buy Bartl out,
2189 which he didn't have. Mr. Waelde, who was then the immediate merchandising representative told Mr. Bartl that he would have to take that thousand dollars

worth of equipment and accessories with him, which he done.

And that is the story on Mr. Bartl.

Q. What brand of TBA did the incoming dealer, Mr. Scott, stock?

A. Mr. Scott stocked Goodyear.

Mr. Kelaher: At this time, your Honor, I would like to introduce Commission's Exhibit 349 into evidence.

Mr. Correa: No objection.

Mr. Kelaher: This was formerly identified as RX-4 for identification.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's Exhibit 349.

Mr. Ballard: Subject to a motion to strike by Atlantic?

Hearing Examiner Kolb: Subject to a motion to strike by Atlantic.

(Whereupon, the document referred to, COMMISSION'S EXHIBIT 349, was received in evidence.)

Mr. Kelaher: If agreeable with counsel, we would like to furnish a photostatic copy for the record.

Hearing Examiner Kolb: A photostatic copy may 2190 be substituted.

By Mr. Kelaher:

Q. I show you Exhibit 349, a copy of a letter sent to you by Mr. Pavey, district manager, dated June 2, 1954, and ask you if Mr. Pavey, whose name appears on that letter, is the same Mr. Pavey who was your superior when you were a Shell employee?

A. That's right, sir.

Q. And were copies of this letter sent to other new Shell dealers in your territory?

A. Every Shell dealer got a copy of this letter, the same letter.

Hearing Examiner Kolb: Is it Exhibit 349 you are questioning the witness about?

Mr. Kelaher: I am showing the witness Exhibit 349.

By Mr. Kelaher:

Q. Mr. Edwards, I would like to read from the third paragraph, first sentence, of Commission's Exhibit 349:

> "We are also proud of the full line of gasolines, motor oils, grease, and specialties we are in a position to supply you, and of the quality tires, batteries and accessories readily available to you through our arrangements with Goodyear."

Were the dealers advised what arrangements Shell had with Goodyear concerning TBA?

2191 A. Yes, sir.

Q. Did they know whether or not a sales commission was being paid to Shell by Goodyear?

A. That wasn't mentioned to the dealers, that Shell received a commission. It might have been in a few cases, but nobody ever complained about it. No dealer that I ever had any contact with.

Q. But it wasn't made known in a letter that the commission was being paid to Shell?

A. No, it wasn't made known in writing.

Q. On cross-examination you were asked whether you had purchased certain products from a list of jobbers in your area when you were operating your "C" station. What products did you purchase from Hoosier Auto Parts?

A. I purchased all of my carburetors from them.

Q. Would they be referred to as so-called hard parts?

A. That would be a hard part, yes, sir.

Q. And would carburetors be included in the Goodyear TBA line? Or accessories?

A. They might have been in the line, but a Shell dealer couldn't stock them, because it would involve too much

money first of all, and secondly, you would have to have them shipped in from Chicago and you would have to carry such a tremendous stock it wouldn't be advisable to buy them from Goodyear.

2192 Mr. Kelaher: Your Honor, on this point I think the record will show that this item was not in the Goodyear TBA line, carburetor parts. So-called hard parts were not in the Goodyear TBA line. I don't think there is any—.

Mr. Correa: I don't know that, if your Honor please. Certainly I don't know about so-called hard parts. As to carburetors, specifically, I should have to look that up. That is assuming our records show anything on that. And I don't know whether it is our record that he is now talking about or the record in another case. Whatever the record shows, it shows; and I am sure that is what governs us all.

By Mr. Kelaher:

Q. Did you purchase items such as mufflers, brake shoes, and items of that type which are generally known in the trade as hard parts, from these various jobbers whom you were asked about this morning?

A. I purchased mufflers, brake shoes and tailpipes, clamps, gaskets, exhaust gaskets, and tailpipe hangers from, majorly, Gibson and Son, Hoosier Auto Parts, and Smith and Decker, and Terre Haute Battery. Those are the four companies that I purchased that kind of merchandise from.

Q. Wouldn't the bulk of your purchases be hard parts from those suppliers?

A. I would consider those all hard parts. If you buy a new car at a car dealer and you want accessories
2193 put on that car, you get floor mats, radio aerials, rear view mirrors, and tail pipe deflectors. And that

is what I have been trying to clear up here for two days, that that is accessories, and what we are talking about now is hard parts.

Q. And that is what you were purchasing primarily from these other jobbers?

A. That is correct.

Q. Mr. Edwards, this morning you were questioned about certain documents identified in the record as RX-7-A through 7-Z, entitled "Monthly earnings statement for commission stations," which reflect operations, or purportedly reflect operations in the 25 months operation of your service station.

On each of those forms there is an item entitled "Accessories and car and home supplies." I would like you to explain as well as you can what goes into that column.

A. At the Shell "C" station we had a form called a daily check-out. Included in that form was several divided columns with headings. On that form you would keep your pump readings from day to day, your motor oil sales day to day, your service and labor income day to day, your credit cards, your personal charge, your purchases of products, and also, which would be classified under "paid-outs." I have omitted one column, which that would be accessories, car and home. Under this accessories, car and home, column you had only one place

to put down what you did on a car or what you sold
2194 on that car. That is what went on the car. That

would be, let's say, a carburetor, a set of points, plugs, a condenser, maybe a U-joint, maybe a muffler, maybe a tailpipe, maybe a battery, maybe a set of tires. That all would be included under "accessories, car and home."

In other words, the Shell Oil Company daily check-out system was not up to date, so I can't be held under conviction of misrepresenting here. That is what I want to get through.

Q. We just wanted to clarify what was in your accessory column. I take from your answer that it includes items other than accessories items included in the Goodyear TBA line or comparable items?

A. It includes all sales that went on a car except service and labor. And that is where that $2,200 came in in the conversation in the hearing yesterday.

Q. It is a very broad category.

A. It is a broad category, yes, sir.

Q. I noticed in your answer you referred to a daily check-out sheet. Is that the terminology used in your marketing area?

A. The daily check-out sheet, they came in pads about that thick (indicating). That you used as a cash register. You wasn't allowed to have a cash register at a "C" station, so we used that pad for your own register. In other words, everything that you sold through the 2195 station except gasoline and motor oil was written down, just like you would write it on the tape of a cash register. But your motor oils and your gasoline was inventoried every day. And that was pulled in, when you made your daily check-out then you figured your gasoline and motor oil along with your daily check-out.

Q. On cross-examination a number of excerpts were read from a document entitled, "Booklet for marketing personnel in L-type stations, revised edition, August 1955," which was issued after you left your employment as a Shell district sales representative.

In the course of that testimony there were a number of statements read from that particular booklet. I am not going to go over each and every one. There are a few points I would like to question you about.

Mr. Correa: I would like to object to counsel's statement because in point of fact it is inaccurate. On cross-examination nothing was read from that booklet.

Mr. Kelaher: So there will be no misunderstanding, the statements were read from the transcript in Docket 6487, which in turn were read from that booklet by Mr. Simon.

Mr. Correa: Which in turn, I submit, does not appear of record, and I do not personally know it to be a fact.

Hearing Examiner Kolb. The questions asked at these proceedings are, do those statements appear in the booklet he had at the time he was operating.

2196 By Mr. Kelaher:

Q. During cross-examination reference was made to Pages 571 and 572 of Docket 6487, and one of the statements which you were asked about this morning by reference to Pages 572 and 571 includes this statement:

> "After the leases have been signed, Shell's control has been relinquished and the future of the station depends upon the lessee voluntarily carrying out the merchandising policies recommended by Shell, not because he is obligated to so operate his station but because he remains persuaded that such policies are for his own best interests."

Now, I ask you, after the lease has been signed, did you, as a district sales representative, have control over lessee stations?

Mr. Correa: That is objected to as calling for a conclusion.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Were the oral instructions you received from Mr. Payey, your district manager, and others in the Shell organization, including those of the division level, consistent with this statement or in conflict with it?

Do you understand the question?

2197 Mr. Correa: I think, if your Honor please, the question is objectionable, except perhaps it is a summary. Actually I take it his instructions speak for themselves, and the statements in the record speak for themselves, and it is really your Honor's function, not the witness'.

Hearing Examiner Kolb: Read the statement.

(The reporter read the question.)

Hearing Examiner Kolb: Consistent with which statement?

Mr. Kelaher: With the policy statement which was so elaborately gone into this morning.

Hearing Examiner Kolb: Objection overruled.

The Witness: This policy that is in the book looks mighty good on paper, but as far as oral orders in the field, when we was asked to put pressure on a dealer to get Goodyear tires in, that is what I had to do.

By Mr. Kelaher:

Q. Does that refer also to Goodyear batteries and accessories?

A. That also referred to Goodyear batteries and tires and tubes, and accessories where the man had money to stock them.

Q. This morning on cross-examination you were given a list of—given the names of fifteen former dealers whom you had in your territory, and you were asked certain questions concerning their TBA ratio per thousand gallons.

You stated, in answer to those questions, that those
2198 figures, to the best of your knowledge, referred to figures which came to your knowledge at a December
1953 meeting; is that correct?

A. That is correct.

2199 Q. Where was that meeting held, and would you explain something about that particular meeting?

A. That was a year-end meeting where the district met with the division level. Three days prior to your division meeting you would sit in an office and go through your, what we call, the black book, and post all of your totals for the year, gasoline, motor oil, specialties, greases, gear oil, tires and batteries and accessories was posted on a card as to how much dollar volume went through the station. Then, at a given night during that week, we would have a meeting with the division level and each product would be on a card which we would exhibit in front of the group, and we were asked questions as we progressed along these products, what we was going to do to improve our quotas for next year. They set our quotas for us. We would tell them what we thought we could sell and then they would tell us how much increase they wanted us to sell, and that is about the way it went.

Q. Did the figures which were read off to you this morning refer to sales of Goodyear TBA exclusively per thousand gallons?

A. That is corect.

Q. And you were asked at the meeting to increase the sales of Goodyear TBA by these dealers?

A. Only tires and batteries was majorly talked about, and fanbelts and radiator hose. Anything else under accessories was not pushed, or approached to me to sell.

2200 Q. Would you state the type of dealer these particular individuals were? I can give you the names, and just ask you to state whether they are an "L" dealer, "DL" dealer or what.

Krauche?

A. He was a "L" dealer.

Q. Whetsell?

A. Whetsell was a "DL".

Q. Scott?

A. Scott was a "L".

Q. Cole?

A. Cole is a "DL".

Q. Rader?

A. Rader was a "L".

Q. Conrad?

A. Conrad was a "L".

Q. Bartholome?

A. Bartholome was a "DL".

Q. Miller?

A. Miller was an open dealer.

Q. That means he owned his own station?

A. He operated the station for another party, but he had control of the lease.

Q. Mikels?

A. "DL".

Q. Drake?

2201 A. "DL".

Q. The next name, Morris?

A. Moris was a "DL".

Q. Cagle?

A. Cagle was a "L".

Q. Fortin?

A. Fortin was a "OD".

Q. Garzolini?

A. "L". And you missed Borden, who was a "L".

Q. You weren't asked about Mr. Borden but he was an "L".

A. Yes. He was the biggest TBA account we had.

Q. And what was his approximate TBA volume per thousand gallons, do you recall?

A. He did $25,000 worth of TBA a year, and you can divide that by $8,000 to get the dollar volume if you wish.

Q. Do you mean by 8,000 gallons or $8,000?

A. 8,000 gallons of gasoline, divide that into the $25,000

and that gives you the breakdown of dollars per month per gallon.

Q. 8,000 a month times 12. That would be 96,000 gallons into $25,000, would give you—

A. That's right. 96,000 gallons into $25,000.

Q. Mr. Edwards, during the period when you were a district sales representative—and I would like to ask you to state again how long a period that was. First
2202 I would ask you to state how long a period you were a district sales representative. There seems to be a little—

A. There is a litle difference on that.

Q. Did you begin in 1950 as a district sales representative?

A. 1950, I believe it was along about April or May.

Q. April or May, 1950. Then, you continued on until May 16, 1954, is that correct?

A. They said yesterday in the testimony that I was only a sales representative two and a half years.

Q. Is that correct or incorrect?

A. I would rather take their word for it. Their records, they would be right, rather than me.

Q. Then, when did you begin with Shell? Was it in 1950? When did you begin to call on stations?

A. That is when I thought I begin to call on stations, but they contradicted me yesterday on that.

Q. They didn't, as I understand it, present any records to you to contradict you. Your best recollection is 1950 through May, 1954?

A. Yes. I thought it was three and a half years, instead of two and a half years.

Q. During that time, how many service stations in your various territories—yesterday you described you had three territories at various times, or just an expansion and contraction of the same territory—how many service sta-

tions changed hands during your period as a district
2203 sales representative?

A. I had one in Spencer, which is Lewis Overpeck; then I had one in Terre Haute, Jim Barth; I had Bill Rader. That will have to be clarified. He has been a Shell dealer there for about six years. He formerly managed it for A. Grossback, who owned all the equipment in there, and then we kept putting pressure on the diversified operation whereby we finally got Mr. Rader to go borrow the money to buy out Grossback.

Q. So that would be another one?

A. That would be another one.

Q. Where is he located?

A. Terre Haute, Indiana; Bill Rader.

Now, we move on down. I had no changes in Sullivan; I had none in Linton; I had none in Bloomfield; I had none in Bedford; I had none in Vincennes and I believe that is the extent of those.

Q. On cross-examination by counsel for respondent, Goodyear, you stated that when you were a "C" station operator you were approached by representatives of other oil companies prior to the time you left your station. I believe you stated that representatives of the Ohio and Emblem Companies contacted you?

A. Texas.

Q. I beg your pardon.

A. The Ohio Company and the Texas Company.
2204 They told me, in other words—

Q. What was the conversations that you had with these gentlemen?

A. They told me that I was going to lose my station and that is why they was there, to try to get me to take one of their stations.

Q. Is that the first notice you had that you were going to lose your "C" station?

A. That is correct. I never did get any written notice. Finally, I think that was on a Monday, and on Wednesday I got ahold of Mr. Murray and told him that he was going to tell me what was going on or he and I wasn't going to get long.

So, after about 30 minutes of arguing with him, we went to the car and took a ride and he told me that Saturday would be my last day. He asked me if he could check me out on a Friday, and I told him No, and he wanted to know why, and I said because I can't check out that fast, and because I have nowhere to go.

And I said, "If you will give me until Saturday, which it has to be that way, we will check out Saturday." So, that is the way we set it up.

Q. So that you didn't attempt to find other employment until you had learned that you were losing your "C" station, is that correct?

A. That is correct. I never would have left there if they hadn't put me out.

* * * * *

2206 By Mr. Kelaher:

Q. Among other items, you were questioned on what counsel has aptly described as that "Stelle thing."

During the course of your testimony with respect to that "Stelle thing" you stated what you believe to be the correct facts of the situation?

A. That is correct.

Mr. Correa: At one point or another.

The Witness: No, it was at one point.

By Mr. Kelaher:

Q. During the course of your testimony with respect to that "Stelle thing", did you correct testimony previously given in Docket 6487?

A. I did correct it.

Q. Was the statement you gave today to your knowledge your most accurate recollection of that thing?

A. That's right, sir.

Q. During the course of your redirect examination, you referred to a check-out sheet, in connection with the basic data for these Exhibits 7-A through -Z?

A. Yes.

Q. What do they call it?

2207 A. A daily check-out sheet.

Mr. Correa: So stipulated.

2208 By Mr. Kelaher:

Q. When you used the term "check-out" in your industry terminology, did that mean that you could be looking at a check-out statement of a particular dealer or—

A. No. That service station daily record, what I call the check-out sheet, is what I mentioned a while ago. It was the same as a cash register to the dealer.

Q. Would you explain what is meant by a check-out?

Mr. Correa: Would you repeat the questions?

(Questions read.)

Mr. Kelaher: There seems to be some confusion about the daily check-out.

The Witness: I think you are talking about the daily service station form that the "C" station uses to check-out its business everyday.

You start with petty cash, which is so much money,—

By Mr. Kelaher:

Q. You used the term "check-out" in connection with your conversation with Mr. Murray, I believe. What would you mean by that? Did Mr. Murray check you out?

A. Mr. Murray—

Q. With respect to certain items?

A. You mean when they relieved me of my duties?

Q. I don't know. You used the word "check-out."

A. I can't get the time element here.

2209 Q. Did you use the word "check-out" at different times for different things?

A. A check-out can be at your business or a check-out can be on a dealer which you are checking.

Q. That is the point. Would you describe what it means in connection with your business, and what you mean in connection with a dealer?

A. A check-out, the daily check-out on a business is the reading of the pumps, the reading of the oil sales, the totalling up of the accessories columns, the service and labor columns, and that all multiplied and added together makes a total. Then, on the other side of the sheet you take your credit cards, your personal charges, your paid-outs and your cash-on-hand and that has to balance the other figures. So that is your daily check-out.

Checking-out a business is like Mr. Murray came and told me that he was going to check me out, so then in that instance, it is used in terms of taking the actual inventory at the station of merchandise and equipment, and motor oil, and totalling that all up, and that is what the incoming dealer would owe me when I was leaving.

Q. So, you have the daily check-out and the final check-out?

A. Yes, sir.

Q. Would that describe it?

A. That would describe it fully.

2210 Q. Mr. Edwards, in your testimony before the Roosevelt Committee, you stated—during that period, you stated, "From 1947 to 1954 I was the Shell district sales representative in Terre Haute," and you corrected that to read from 1950 to 1954.

Mr. Correa: If he means corrected it vis a vis the

Roosevelt Committee, I submit, your Honor, there is no such proof.

Mr. Kelaher: I didn't imply that. I said he corrected that at this hearing. You could conclude that.

Mr. Correa: You omitted it from your statement. I want to be sure what you meant.

By Mr. Kelaher:

Q. "During that period, I handled eight Shell dealer check-outs. In most cases the dealers took a great loss upon leaving. Often they were not given a fair price for their inventory. When a dealer signs the release he has no say about the price to be paid him for inventory and equipment. Usually the dealer does not understand that at the time of signing," and so on.

"One of the dealers I checked-out was Bruno Garzolini, at 17th and Poplar, Terre Haute; another was James Bartl, Ninth and LaFayette," and so on.

Would you explain that testimony?

Mr. Correa: I object to that question, your Honor. I submit it is nothing to explain. Counsel reads some
2211 testimony and says explain it. I don't know what that kind of question means.

Mr. Kelaher: I submit, your Honor, that the term—he said "one of the dealers I checked-out was Bruno Garzolini, 17th and Poplar, Terre Haute." He testified that there were daily check-outs and there are final check-outs. I would like to know which he is referring to.

Mr. Correa: If your Honor please, really—

Hearing Examiner Kolb: I think you are just confusing us a little more, Mr. Kelaher. The witness has already stated that that was an error, that he had not checked-out. He only checked-out one.

Mr. Kelaher: The transcript shows he did have a daily check-out on Garzolini at one time. I think he is entitled to explain what he meant.

Hearing Examiner Kolb: All right. An explanation probably won't help any.

The Witness: Garzolini was a misstatement. I didn't check him out. But Jim Bartl, I did check Jim Bartl out. By check-out I mean taking and selling his station to Harry Scott.

By Mr. Kelaher:

Q. You were referring to the final check-out?

A. The final check-out.

Mr. Kelaher: No further questions.

2212 *Recross Examination by Mr. Correa.*

Q. Isn't it the fact, Mr. Witness, that of your accessories line, regarding that as such and separate and apart from tires and batteries, spark plugs and oil filters accounted for about 70 percent?

A. We had quite a discussion about that yesterday. I know we had another one today. I set up a percentage over here where I discussed, where I didn't—did I include spark plugs and filters in this one hundred percent a while ago? I had batteries—

Q. You had a discussion with somebody about this today?

A. Yes.

Mr. Kelaher: He testified. He is talking about on redirect. I asked him about percentages. He is trying to—we can have it read back from the record if it is important.

The Witness: That is a question he is asking and it has been discussed.

By Mr. Correa:

Q. Is that the fact?

A. It is in the record.

Q. Would you tell me now, your present recollection, sir?

A. I would like to have it read back.

Q. I would like to have your present recollection.

A. I want it read back here.

2213 Q. I am entitled to test your recollection, because if it isn't good, that is important to the trier of the facts here, you see. And I want to see what your present recollection is right now, as you sit there, as to whether regarding your accessories line as such, spark plugs and oil filters accounted for about 70 percent.

A. I said that 55 percent of the accessories line was radiator or hose, fanbelts, spark plugs and filters.

Q. And—

A. And I said that 12 percent—I said that 10 percent—no, I said that 12 and a half percent, to be exact, was battery cables and tubes. And I said that 33 and a third percent was tires and batteries.

2214 Q. When you refer to 55 percent being accessories, you are taking—

A. Spark plugs and filters.

Q. (Continuing.) —a percentage of TBA?

A. That is right, TBA.

Q. My question was, regarding just the accessories part of the TBA, putting to one side tires and batteries, if you regard the accessories as 100 percent, would not spark plugs and oil filters account for 70 percent, approximately, of that 100 percent?

A. You are taking the accessories out of what I originally said?

Q. That is right.

A. And now you are asking me what is the percentage of the accessories line? Yes, that is correct, 70 percent if you leave the tires and batteries and fanbelts and all that out of it.

Mr. Correa: Thank you very much.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

* * * * *

2219 Mr. Kelaher: Mr. Examiner, at this time I would like to have certain documents marked for identification which were obtained from either the files of the Atlantic Refining Company or submitted by counsel for respondent in response to requests for such information.

Mr. Ballard: Mr. Kelaher, I don't suppose it makes any difference, but I think some of these were taken from somebody else's files and not ours.

Mr. Kelaher: That is correct.

Mr. Ballard: We are prepared to stipulate the authenticity of them and the fact that we received them and that they possibly are in our files. If you want to correct your statement, some were not taken from our files.

Mr. Kelaher: That is correct. Those that were not taken from respondent Atlantic's files are correspondence between Atlantic and another party, is that correct?

Mr. Ballard: I believe that is correct.

Mr. Kelaher: For identification as Commission Exhibit 350-A and B, Atlantic inter-office memo dated January 6, 1948 from "TBA SJH" to Mr. J. S. Parks, Room 1105, subject: "Tire and Tube Sales."

2220 (The document referred to was marked Commission Exhibit 350-A and B for identification.)

Mr. Kelaher: I offer 350-A and B in evidence.

Mr. Mason: Goodyear objects to the introduction of that document in evidence on the ground it is a wholly internal Atlantic document which on its face antedates any sales commission arrangement by several years.

Hearing Examiner Kolb: No objection by Atlantic?

Mr. Ballard: No objection, your Honor.

Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence as Commission Exhibit 350-A and B.

(The document heretofore marked COMMISSION EXHIBIT 350-A and B for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 351-A through L, a 3-page Atlantic inter-office memo dated June 22, 1948 from "TBA SJH" to Mr. D. T. Colley, Room 1702, subject: "Tires." There are nine pages attached to this memo.

(The document referred to was marked Commission Exhibit 351-A through L for identification.)

Mr. Mason: Goodyear has the same objection as it had with respect to Exhibit 350-A and B. I believe, how ever, the Goodyear objection is controlled by your Honor's last ruling.

2221 Hearing Examiner Kolb: The objection by Goodyear will be overruled.

The document will be received in evidence as Commission's Exhibit 351-A to L.

(The document heretofore marked COMMISSION EXHIBIT 351-A to L for identification was received in evidence.)

* * * * *

2226 Mr. Kelaher: For identification as Commission Exhibit 354, ARCO inter-office memorandum dated December 21, 1950 from Charles F. Bergh, Purchasing Department, to Mr. S. J. Heideman, Room 1210, subject: "File: Batteries."

(The document referred to was marked Commission Exhibit 354 for identification.)

Mr. Kelaher: We now offer Commission Exhibit 354 into evidence.

Mr. Mason: Goodyear objects to the introduction of this document into evidence as internal Atlantic correspondence and as unrelated to any sales commission arrangement between Atlantic and any major tire company or tire company.

2227 Hearing Examiner Kolb: The objection will be overruled.

The document will be received in evidence as Commission Exhibit 354.

(The document heretofore marked COMMISSION EXHIBIT 354 for identification was received in evidence.)

* * * * * * *

2243 Mr. Kelaher: For identification as Commission's Exhibit 377, ARCO tabulation prepared in response to request of counsel supporting the complaint, entitled "Atlantic, Goodyear TBA Sales, by Class of Trade," for the year 1955.

(Whereupon, the document referred to was marked Commission's Exhibit 377 for identification.)

Mr. Kelaher: We now offer Commission's Exhibit 377 into evidence.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's Exhibit 377.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 377 for identification, was received in evidence.)

* * * * * * *

2250 Mr. Kelaher: I would like the record to show also that this is an Atlantic document.

For identification as Commission's Exhibit 386, ARCO tabulation issued 11-16-51, entitled "Atlantic Refining Company, sales—Northeast Division by Goodyear Districts, March 1, 1951, through October 20, 1951," prepared by Statistics Division, Sales Accounting Department.

(Whereupon, the document referred to was marked Commission's Exhibit 386 for identification.)

Mr. Kelaher: We now offer Commission's Exhibit 386 into evidence.

Mr. Mason: Goodyear has no objection. I note 2251 this is Page 7 of some other tabulation.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's Exhibit 386.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 386 for identification, was received in evidence.)

Mr. Kelaher: For identification as Commission's Exhibit 387, ARCO intra-company letter dated August 15, 1952, from R. M. Taitt to Mr. L. K. Maisel, Syracuse, New York; subject: "Goodyear Program—Dealers and Supply Points."

(Whereupon, the document referred to was marked Commission's Exhibit 387 for identification.)

Mr. Kelaher: We now offer Commission's Exhibit 387 into evidence.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's Exhibit 387.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 387 for identification, was received in evidence.)

2253 Mr. Kelaher: Mr. Examiner, the following stipulation has been agreed upon by counsel for respondent Atlantic, and counsel supporting the complaint. Counsel for respondent, the Atlantic Refining Company, and counsel supporting the complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the complaint

in this proceeding and asked the following questions, such witnesses would testify as follows; and that the following may be accepted by the Examiner and the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony.

The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

Answers Submitted by the Atlantic Refining Company in Response to F. T. C. Request for Additional Information Concerning Certain Exhibits in the Matter of the Goodyear Tire & Rubber Company, The Atlantic Refining Company, Corporations Docket No. 6486

2254 CX 84-B (Initials JVP)

Q. "Identify Joseph VanPelt."

A. In August 1952, Joseph VanPelt was Assistant to the Manager of Gasoline, Naphtha and Solvent Section, Domestic Marketing Department, Atlantic.

CX 102 A-D

Q. "Identify T. E. Kelley and K. M. Ford."

A. In August 1949, T. E. Kelley was Director, Organization and Methods Department, Atlantic.

In August 1949, K. M. Ford was Sales Industrial Engineer, Industrial Engineering Division, Atlantic.

CX 110

Q. "Identify G. H. Milligan."

A. In March 1950, G. H. Milligan was Chief Accountant, Chief Accountant's Office, Atlantic.

CX 114 A-D

Q. "Identify G. H. Milligan."

A. In May 1950, G. H. Milligan was Chief Accountant, Chief Accountant's Office, Atlantic.

CX 138

Q. "Identify W. J. Butler."

A. In June 1951, W. J. Butler was Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

2255 CX 139 A-B

Q. "Identify W. J. Butler."

A. In January 1952, W. J. Butler was TBA Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

CX 154

Q. "Identify R. W. Reed."

A. In January 1951, R. W. Reed was Administrative Assistant, Office of the Vice-President and General Manager of Marketing, Atlantic.

CX 171 A

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 172 A

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 173

Q. "Identify W. C. Hoffman."

A. In July 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 179 I

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior
2256 Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 181

Q. "Identify W. C. Hoffman."

A. In May 1952, W. C. Hoffman was TBA Marketing Coordinator, TBA Section, Domestic Marketing Department, Atlantic.

CX 183

Q. "Identify W. J. Butler."

A. In May 1952, W. J. Butler was TBA Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

2257 Mr. Kelaher: Mr. Examiner, we have entered into another stipulation with counsel for respondent Atlantic whereby it is stipulated and agreed that supplemental data concerning the three market areas designated by counsel in support of the complaint, namely, Philadelphia-suburban district, Wilmington, Delaware district, and Baltimore, Maryland district, may be received in evidence, with notation of the fact that portions of this data apply only to Goodyear, and portions apply only to Firestone. Such data relate to the number of Atlantic dealers in each designated district covered by a form G-1209, broken down by Goodyear supply points with respect to the Philadelphia-suburban district, and the number of Atlantic dealers in Atlantic's Wilmington, Delaware and Baltimore, Maryland districts covered by form S-757, broken down by Firestone supply points, all data as of June 30, 1956.

(The stipulation follows:)

2258 Number of Atlantic dealers in Atlantic's Philadelphia-Suburban District who, as of June 30, 1956, were covered by a Form G-1209, broken down by Goodyear supply points:

Supply Point	Atlantic Dealers Covered by Form G-1209 Lessee Dealers*	Contract Dealers*
Goodyear Tire and Rubber Co., Philadelphia, Penn. (District Office)	2	6
Harvey W. George, Philadelphia	45	49
F. C. Glenn, Philadelphia	52	42
Ellwood E. Kieser, Philadelphia	40	116
E. F. Miller, Philadelphia	39	19
Goodyear Tire and Rubber Co., Jenkintown, Penn. (Goodyear Store)	2	4
Goodyear Tire and Rubber Co., Norristown, Pennsylvania (Goodyear Store)	8	1

* Includes 11 lessee dealers and 5 contract dealers classified by Goodyear as associate dealers, who had two alternate supply points, and 3 contract dealers who, having chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, dealt with the Goodyear District Office in the former capacity and with a different supply point in the latter capacity.

Does not include 61 customers of Edward Parris and 54 customers of Frank Hagan, both of whom are Atlantic supplying dealers.

* * * * *

2261 Mr. Kelaher: I offer for identification Exhibit 389-A and B, a document obtained from the Goodyear files on September 15, 1949 entitled "Products Eligible Under Shell Sales Commission Plan."

(The document referred to was marked Commission Exhibit 389-A and B for identification.)

Mr. Kelaher: We offer Commission Exhibit 389-A and B into evidence.

Mr. Ballard: Atlantic objects to this document on the ground it relates to the sales commission plan between Goodyear and Shell.

Mr. Mason: Goodyear objects to the document, preserving its original objection that evidence with respect to sales

commission plans between Goodyear and other oil companies should not be received in this proceeding; and also it has an objection which relates to the recent motion brought before your Honor that the issues with respect to Goodyear and Shell should be excluded from this proceeding because the same issues are involved in a parallel proceeding in which your Honor is the Hearing Examiner.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence as Commission Exhibit 389-A and B, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 389-A and B for identification was received in evidence.)

2262 Mr. Kelaher: The "parallel proceeding" to which you refer is Docket 6487.

Mr. Kelaher: For identification as Commission Exhibit 390-A through F, a document obtained from the files of Goodyear Tire and Rubber Company on September 15, 1949, entitled "Oil Company Distribution and Its Importance."

(The document referred to was marked Commission Exhibit 390-A through F for identification.)

Mr. Kelaher: I now offer Commission Exhibit 390-A through F in evidence.

Mr. Mason: Goodyear objects to the introduction of this document in evidence on the ground that it relates to Goodyear's relations to oil companies generally. It antedates the existence of any sales commission plan between Goodyear and Atlantic, and so is irrelevant to this proceeding.

Mr. Ballard: Atlantic objects for the same reason, and for the additional reason that there is no showing that this document was communicated to Atlantic. It is an internal

Goodyear document, and Atlantic is not bound by it and has no notice of it.

(Discussion off the record.)

Hearing Examiner Kolb: Objection sustained.

Mr. Kelaher: With reference to 390-A through F, I would like to re-offer it after certain other documents are admitted into evidence. I would like to reserve the
2263 right to re-offer it.

Hearing Examiner Kolb: You can always re-offer it.

Mr. Kelaher: For identification as Commission Exhibit 391-A through C, a document entitled "Shell Oil Company, Sales Commission," pages 1, 1-A, and 2, dated 10/21/55.

(The document referred to was marked Commission Exhibit 391-A through C for identification.)

Mr. Kelaher: We now offer Commission Exhibit 391-A through C in evidence.

Mr. Mason: Goodyear objects on the ground this relates to Shell Oil Company and therefore should not be in this proceeding both on the notion that evidence as to all oil companies other than Atlantic should be excluded, and also for the special reason set forth in our motion that the issues as to Shell and Goodyear should be excluded from this proceeding as being also involved in another proceeding where the same Examiner presides.

Mr. Ballard: Atlantic makes the same objection.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence as Commission Exhibit 391-A through C, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 391-A through C for identification was received in evidence.)

2264 Mr. Kelaher: For identification as Commission Exhibit 392-A and B, a letter dated June 3, 1948 from

R. C. Mueller, Division Sales Manager (Shell) to Mr. E. C. Flynn, District Manager, Goodyear Tire and Rubber Company, Peoria, Illinois, re "Hanselman Tire and Battery Company, Springfield, Illinois."

(The document referred to was marked Commission Exhibit 392-A and B for identification.)

Mr. Kelaher: We offer the document in evidence.

Mr. Mason: We have the same objection to this document as to the last exhibit admitted in evidence. Also, the objection that it is quite obviously ancient history.

Mr. Ballard: Atlantic has the same objection.

Hearing Examiner Kolb: The objections will be overruled, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 392-A and B for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 393, an intra-company memo dated 7/8/48, from S. A. Gaylord, Manager, Petroleum Sales Department, Goodyear, to E. C. Flinn, District Manager, Peoria, Illinois, subject: "Shell—re Hanselman Tire and Battery Company, Springfield, Illinois."

(The document referred to was marked Commission Exhibit 393 for identification.)

2265 Mr. Kelaher: We now offer Commission Exhibit 393 into evidence.

Mr. Mason: Same objection as to the last admitted exhibit.

Mr. Ballard: Same objection on the part of Atlantic.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence as Commission Exhibit 393, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 393 for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 393 is an intra-Goodyear document.

For identification as Commission Exhibit 394-A through C, "Goodyear (W) district instructions 1086A, Akron 16, Ohio, dated October 19, 1948, originated by A. L. Rhoads, wholesale field operating department, subject: Shell Oil Company, San Francisco/Sales Commission Plan," to managers districts Western Division, Division Operating Manager, Western Division.

(The document referred to was marked Commission Exhibit 394-A through C for identification.)

Mr. Kelaher: We now offer the document in evidence.

Mr. Mason: Goodyear has the same objection as that to the last admitted exhibit.

2266 Mr. Ballard: Atlantic has the same objection and I would like to note for the record that Atlantic does not market in San Francisco.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 394-A through C, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 394-A through C for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 395-A and B, a letter dated December 19, 1951, from Butler Doolittle, Goodyear District Manager (Baltimore, Maryland) to C. H. Mead, Jr., Shell Oil Company, Inc., 909 East 22nd Street, Baltimore 18, Maryland.

(The document referred to was marked 395-A and B for identification.)

Mr. Kelaher: We now offer Commission Exhibit 395-A and B in evidence.

Mr. Mason: Goodyear has the same objection as that to the last admitted exhibit.

Mr. Ballard: Atlantic also.

Hearing Examiner Kolb: The objections will be overruled. The document will be received in evidence as Commission Exhibit 395-A and B, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 395-A and B for identification was received in evidence.)

2267 Mr. Kelaher: For identification as Commission Exhibit 396-A through H, letter dated October 9, 1950, from R. E. Sewell, Goodyear Petroleum Sales Representative (Northeast Division, 292 Madison Avenue, New York 17, New York) to Mr. O. E. Scholz, Retail Department, Shell Oil Company, 50 West 50th Street, New York, New York, with attached sheet of "Complete instructions with reference to our program with your company."

(The document referred to was marked Commission Exhibit 396-A through H for identification.)

Mr. Kelaher: We now offer Commission Exhibit 396-A through H into evidence.

Mr. Mason: Goodyear has the same objection to that as to the last admitted exhibit.

Mr. Ballard: Atlantic, also.

Hearing Examiner Kolb: The objections are overruled. The document will be received in evidence as Commission Exhibit 396-A to H, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 396-A to H for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 397-A and B, a letter dated January 30, 1953, from J. W. Basista, Petroleum Sales Department, Goodyear, to Mr. George L. Switzer, Shell Oil Company, 50 West 50th

2268 Street, New York, New York.

(The document referred to was marked Commission Exhibit 397-A and B for identification.)

Mr. Kelaher: We now offer the document in evidence.

Mr. Mason: Goodyear has the same objection as that to the last admitted exhibit.

Mr. Ballard: Atlantic, also.

Hearing Examiner Kolb: The objections will be overruled. The document will be received, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 397-A and B for identification was received in evidence.)

Mr. Kelaher: For identification as Commission Exhibit 398-A and D, a letter dated August 24, 1948 from Manager, Petroleum Sales, Western Division (Goodyear) to Mr. D. C. Gibson, Shell Oil Company, Inc., 100 Bush Street, San Francisco 6, California, subject: "Sales Commission Plan."

(The document referred to was marked Commission Exhibit 398-A to D for identification.)

Mr. Kelaher: We offer the document in evidence.

Mr. Mason: Goodyear has the same objection as that to the last admitted exhibit.

Mr. Ballard: Atlantic, also.

Hearing Examiner Kolb: The objections will be
2269 overruled.

The document will be received in evidence as Commission Exhibit 398-A to D, subject to a motion to strike by Atlantic.

(The document heretofore marked COMMISSION EXHIBIT 398-A to D for identification was received in evidence.)

2270 Mr. Kelaher: For identification as Commission's Exhibit 68-C, a letter dated December 21, 1955, from John R. Sherwood, president, Sherwood Brothers, Inc., to Mr. S. A. Gaylord, requesting termination as of December 31, 1955, of sales commission plan agreement dated

March 1, 1944, with acceptance by Good year officials shown thereon.

(Whereupon, the document referred to was marked Commission's Exhibit 68-C for identification.)

Mr. Kelaher: We offer Commission's Exhibit 68-C into evidence.

Mr. Ballard: Atlantic objects on the ground that this relates to an oil company other than Atlantic.

Mr. Mason: Goodyear does not object to the introduction of this document in evidence because it relates to a contention which has heretofore been set out in an oral motion that there was no sales commission plan in effect between Sherwood and Goodyear at the time that this proceeding was initiated, so that evidence as to Sherwood has been improperly received in this proceeding and I believe that in the past your Honor has accepted the Sherwood Brothers evidence, subject to a motion to strike by Goodyear.

Hearing Examiner Kolb: Not as to Sherwood, did I?

Mr. Mason: I believe your Honor did. This contention was raised by an oral motion by Mr. Correa in the middle of our proceedings in Baltimore, and he stated his
2271 grounds, that the Sherwood Brothers agreement had in fact been cancelled, was not in existence at the time this proceeding was initiated. And as a consequence your Honor did accept that evidence, subject to a motion to strike. It is a motion which we intend to bring as soon as the Commission has completed its case with respect to this.

Hearing Examiner Kolb: Isn't it Sherwood had some connection with Atlantic?

Mr. Ballard: Not Atlantic.

Mr. Kelaher: Sherwood was a hundred-percent-owned subsidiary of Sinclair.

Hearing Examiner Kolb: I know the witnesses called the Sherwood stations the Sinclair stations.

Mr. Mason: There is considerable confusion in the record which has arisen from the fact that there were two quite different sales-commission plans. One between Sherwood and Goodyear, which expired as of December 31, 1955, as indicated in this letter, which sales-commission plan covered TBA, whereas there was a sales-commission plan in existence during the same period and later, with Sinclair, covering only the "A".

For the purpose of ultimately eliminating this confusion and evidencing that the evidence as to Sherwood is not pertinent to this proceeding, we asked your Honor to receive it, subject to a motion to strike, and I believe
2272 your Honor has so ruled in the prior proceeding.

Hearing Examiner Kolb: I don't recall receiving Sherwood subject to a motion to strike. I have here—the contract itself was received subject to a motion to strike by Atlantic only.

Mr. Kelaher: That is correct. You are referring to another matter, I think. You are referring to testimony.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Commission's Exhibit 68-C will be received in evidence, subject to a motion to strike by Atlantic.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 68-C for identification, was received in evidence.)

Mr. Kelaher: For identification as Commission's Exhibit 399-A through C, a tabulation entitled "Shell Oil Company, Schedule A, Part 2-3-4, three pages," listing by Shell divisions and districts the number of service stations by type or class and jobbers as of July 1, 1956.

(Whereupon, the document referred to was marked Commisson's Exhibt 399-A through C for identificaton.)

Mr. Kelaher: We offer the document in evidence.

Mr. Mason: Goodyear objects on the ground this
2273 relates to a non-respondent oil company and an issue which is being tried in another case in which your Honor is presiding.

Mr. Ballard: Atlantic objects on the same grounds, and I would like to point out to your Honor that this document shows on its face that it has already been received in evidence in the other matter, Docket Number 6487.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence, subject to a motion to strike by Atlantic.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 399-A through C for identification, was received in evidence.)

Mr. Kelaher: For identification as Commission's Exhibit 400-A through S, inclusive, certain statistical data submitted by counsel for respondent Goodyear in response to request of counsel supporting the complaint, relating to Goodyear sales-commission plans with respondent Atlantic and other oil companies.

(Whereupon, the document referred to was marked Commission's Exhibit 400-A through S for identification.)

Mr. Kelaher: We now offer Commission's Exhibit 400-A through S into evidence.

Mr. Mason: Goodyear has no objection to the intro-
duction of this in evidence, except that the statistical
2274 material referred to is regarded by Goodyear as confidential trade information, and therefore Goodyear requests that this information be given confidential treatment in accordance with the procedures available in Commission proceedings.

I might add, so as to make it possible for Atlantic to take a position with respect to the material, we have shown

it to Atlantic's counsel, who have also undertaken to treat it confidentially.

Mr. Ballard: Atlantic objects to so much of this document as relates to oil companies that are not respondents other than Atlantic.

Hearing Examiner Kolb: As long as the document covers both, I will overrule the objection.

Mr. Ballard: Your Honor, you have, I believe, consistently permitted Goodyear to register its objection to Atlantic statistics covering Firestone.

Hearing Examiner Kolb: No, I think where they were together in a document, where it applied to both, I have overruled the objection entirely.

Mr. Ballard: May I point out to your Honor—and I don't mean to press this point unduly—I would think it was squarely within the Commission's order in this proceeding for you to preserve our motion to strike, for instance, the information with respect to Anderson Prichard Oil Company and Ashland Oil Refining and a great
2275 many other companies that haven't even been mentioned in this proceeding.

Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence as Commission's Exhibit 400-A to S, inclusive. This exhibit will be placed in the Commission's confidential files for use by the Commission's attorneys, the examiner, the attorneys for the respondents, and by the Commission in the event of later appeal.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 400-A through S for identification, was received in evidence and ordered sealed.)

Mr. Mason: May it be understood that this document is received without prejudice to the pending motion to strike the issue as to the Goodyear-Shell Oil Company?

Hearing Examiner Kolb: Yes.

Mr. Kelaher: Your Honor, my understanding originally is that eventually there may be no objection to removing the confidentiality treatment of this material. Is that correct?

Mr. Mason: That is correct. And I would suppose that we could confer informally on that matter at some later time. I anticipate that there will occur times when briefs are to be written, or opinions written, where members of the Commission Staff or the Examiner may wish to refer to this information. In that event, I am sure we will 2276 waive our objection at that time.

Mr. Kelaher: That would be agreeable to counsel supporting the complaint, Mr. Examiner.

Mr. Mason: Counsel supporting the complaint has informally requested of Goodyear information as to the existance and dates of inception of certain sales-commission arrangements with oil companies other than Atlantic.

We have investigated, to the extent possible, in the period of time we had, what the facts were. Subject to the registration of our objection as to evidence with respect to other oil companies, Goodyear is prepared to stipulate that if appropriate officers of Goodyear were called to testify, that they would testify, as to the Shell Oil Company, that sometime about 1941, Goodyear had a sales-commission plan with Shell in some but not all of Shell's divisions; that there was no sales-commission plan in the Indianapolis and Cleveland divisions until April 1, 1946; also, that in the Western part of the country Shell had a purchase and resale plan until about January 1, 1949; also, that these arrangements with Shell Oil Company were not set out in a formal written agreement until January 1, 1950.

Goodyear is similarly prepared to stipulate that an appropriate Goodyear officer would testify as to the Shell-American Oil Company that Goodyear entered into a sales-

commission plan with Shell-American without a for-
2277 mal agreement about August 21, 1950.

As to the Ashland Oil Company, Goodyear is prepared to stipulate that an appropriate officer of Goodyear would testify that a sales-commission plan was started about July 21, 1950, and that again there was no formal written contract.

As to Valvoline, Goodyear is similarly prepared to testify through appropriate officials that a sales-commission arrangement was entered into about September 21, 1950, and that Goodyear believes this company to be a subsidiary of Ashland. Again there was no formal written agreement.

As to Richfield Oil and Rio Grande, Goodyear is again prepared to stipulate that if an appropriate officer of Goodyear were called, that he would testify that he believes but is not sure that a sales-commission arrangement was entered into around the mid-1940's, and that this was not the subject of a formal written agreement. Also, that this sales-commission plan covered car and home merchandise only.

As to Sherwood Brothers, Inc., Goodyear is prepared to stipulate that if an appropriate officer were called, he would testify that the unsigned contract dated July 14, 1937, identified as Commission's Exhibit 67-A and B, was never executed, and that the sales-commission arrangement with Sherwood Brothers was initiated by a contract identified in this record as Commission's Exhibit 68-A and
B, dated March 1, 1944, although there is some pos-
2278 sibility that there may have been an oral arrangement perceding the entry of the execution of this contract.

As to the marketing areas of oil companies, Goodyear is prepared to stipulate that if an appropriate officer were called, he would testify as to Richfield Oil and Rio Grande

that to the best of his information Richfield Oil Company has its headquarters in Los Angeles; that Rio Grande was formerly a division operating in the Los Angeles area; and that Richfield Oil Company referred to is not believed to be a subsidiary of any other oil company with whom Goodyear has a sales-commission plan.

He would further testify that Richfield's marketing area includes the states of Idaho, Arizona, Nevada, Washington, Oregon, and California.

As to Midcontinental Petroleum Corporation, an appropriate officer of Goodyear would testify that this is now DX-Sunray Oil Company with whom Goodyear has a sales-commission contract identified in this record as Commission's Exhibit 73-D through G, and that Goodyear believes that DX-Sunray's marketing area includes Indiana, Illinois, Wisconsin, Kentucky, Tennessee, Mississippi, Minnesota, Iowa, Missouri, South Dakota, Nebraska, Kansas, Arkansas, Oklahoma, and Texas.

As to Shell-American Petroleum Company, an oppropriate officer of Goodyear would testify that this company is now a part of Shell Oil Company and that Good-
2279 year believes that it operated only in the Indianapolis area.

As to Quaker State, an appropriate officer of Goodyear would testify that that company markets in the states of Pennsylvania, West Virginia, and Ohio.

As to Valvoline, an appropriate officer of Goodyear would testify that that company is a part of Ashland, with headquarters in Freedom, Pennsylvania, and that Goodyear believes its marketing area includes eastern Ohio and western Pennsylvania.

As to Anderson Pritchard Oil Company, an appropriate officer of Goodyear would testify that this company's marketing area includes Illinois, Wisconsin, Minnesota,

Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Arkansas, Oklahoma, and Texas.

As to Sinclair Refining Company, an appropriate officer of Goodyear would testify that this Company's marketing area includes approximately 37 states. It is believed that the company does not operate in New England or in the West Coast states.

As to subsidiaries of particular oil companies which are referred to in the statistical material contained in Commission's Exhibit 400-A through S, as to Ashland the subsidiaries are Kellog Petroleum Products Company, National Refining Company, Frontier Oil Refining Company, Valvoline Oil Company. As to Shell Oil, the sub-
2280 sidiary is Shell-American Oil Company. As to Sinclair, the subsidiary is Sherwood Brothers.

As indicated above, Goodyear is prepared, if agreeable to counsel supporting the complaint, to stipulate to the information above set forth.

Mr. Kelaher: Mr. Examiner, we are prepared to stipulate to the matters set forth by counsel for respondent Goodyear concerning the companies named.

Mr. Mason: So that the matter is now so stipulated between Goodyear and counsel supporting the complaint.

Mr. Ballard: Your Honor, I don't know what effect a stipulation of this kind between counsel has as evidence, but I assume that in as much as this stipulation relates entirely to oil companies other than Atlantic, that if my motion to strike testimony relating to such oil companies is granted, that this stipulation will be treated accordingly as far as Atlantic is concerned. I don't know whether it is a stipulation with me or not.

Hearing Examiner Kolb: We will receive the stipulation, subject to a motion to strike by Atlantic as applying to other oil companies.

Mr. Ballard: That is all right with me.

Mr. Kelaher: At this time I would like to reoffer Commission's Exhibit 390-A through F for the following reasons: Certain documents which have just been en-
2281 tered into evidence, and certain stipulations, show clearly that the Shell Oil Company plan with respect to its West Coast Division became operative on or about January 1, 1949.

Reference is made in this connection to Commission's Exhibit 394-A, which is a document referring to Shell Oil Company, San Francisco sales-commission plan, issued by Goodyear, stating "Effective January 1, 1949, Shell Oil Company, Inc., San Francisco, will be sold on a sales-commission basis superseding the present resale program."

Referring back to 390-B, under 2, merchandising- commission plan: "As indicated earlier in this section, two oil companies operate exclusively on a merchandising-commission plan—Shell Oil Company of New York and California and Sherwood Brothers, Baltimore."

I might add further that in paragraphs above it is stated: "The petroleum companies participating in this plan in distributing tires, tubes, and batteries are Shell Oil Company, New York; Shell Oil Company, California; Sherwood Brothers, Baltimore."

I submit to your Honor that in view of the fact that Goodyear's plan with Shell Oil Company of California did not go into effect until January 1, 1949, that the document Commissions's Exhibit 390-A through F, which was obtained from the files of Goodyear on September 15, 1949, must have been dated sometime between January 1,
2282 1949, and September 15, 1949. We ask reconsideration of the document.

Mr. Mason: The basic problem with respect to this document is that its authorship, its date of origin, its total accuracy, is not clear. To the extent that information contained in this document agrees with information

that appears in documents already introduced in evidence, this one is unnecessary. To the extent it differs or elaborates, it is subject to the very same fault it had before, that we don't really know how sound a piece of information it is. And as a consequence, we object to the reoffer on the same grounds mentioned earlier.

Mr. Kelaher: Does counsel now concede it must have been dated sometime between January 1, 1949, and September 15, 1949?

Mr. Mason: I can't concede that.

Mr. Kelaher: I note no objection on that ground.

Mr. Mason: It may agree with what is said in another document; doesn't mean the author was mistaken or not mistaken.

Hearing Examiner Kolb: Mr. Kelaher, you are assuming that the only objection to this is the absence of date. There is also the additional objection that we don't know what it is, what is was used for, who it was written by, or anything else. It just happens to be a document in the files, and if it was some notes on which a man wanted 2283 to write an article or what, we don't know.

Mr. Kelaher: We feel this is an important document because it shows the method of Goodyear in entering into the sales-commission plans as set forth on the first page. In addition to that, we asked counsel for respondent Goodyear sometime ago to obtain some information concerning this document. And up to this time we have learned nothing about it, although it was handed to an attorney-examiner of the Federal Trade Commission by Mr. Baker, who was at that time in the legal department of the Goodyear Tire and Rubber Company in Akron, Ohio.

I think the burden falls on respondent to explain, in view of the fact that we have asked for an explanation for many months, as they will attest, I am sure.

Mr. Mason: We have undertaken to find out what we could find out about it, and all we could find out is that it was a document turned over, and that it was a document from our files, and that is all we know about it, and that is all we can agree to. Unfortunately—

Mr. Kelaher: We are not concerned—Page 1 and Page 2 are the parts we are concerned with, and a part of Page 3. We know we have all this other information. That shows how the plan operates, and there is other evidence in the record concerning the operation of the plan.

Mr. Mason: We do not know who authored this
2284 document or to what end, or if the person who authored it actually was in possession of the knowledge that it purports to set out. There are other ways of going after this than this particular document.

Mr. Kelaher: It is quite apparent that whoever the author was he was very familiar with the sales-commission plan because he goes into great detail about the operation of the plan. So it presumably was authored by someone in a policy-making position.

Mr. Mason: It may have been a preliminary draft. That I just don't know. Or it may have been discarded.

Mr. Kelaher: It was obtained from the regular files of the company, so I don't think that argument—

Mr. Mason: It was unquestionably in the files of the company and it was unquestionably turned over to your people. We don't deny that. We just don't know what it is, or when it was written.

Mr. Kelaher: We know approximately when it was written, based on your—

Mr. Mason: I deduce when it was written.

2285 Hearing Examiner Kolb: Mr. Kelaher, in order to hold the Goodyear Company, you are going to have to show the nature of this document, how it was used, how it was prepared, and everything else. This is simply

a document which you have found in the files, which makes certain statements.

Mr. Kelaher: That is right.

Hearing Examiner Kolb: That is all. And whether or not the company acted upon them, whether they were submitted to the company for the purpose of being acted upon, whether the president or somebody, the sales manager, prepared this document for the purpose of directing sales or whether it was some suggestion made by an outsider or somebody else, there is nothing in here to show what it is. I can't accept it on that basis.

Mr. Kelaher: It states what it is, "Oil company distribution and its importance."

Hearing Examiner Kolb: What does that mean? Is that by the salesman, by the sales manager, production manager, or somebody outside making a suggestion?

Mr. Kelaher: I think it is quite obvious that it was a policy-making official because since that time, since 1949, there has been a constant expansion of the sales through oil companies.

Hearing Examiner Kolb: I don't think we can guess that or infer that from a document which we know
2286 nothing about. That is my idea on the objectionable nature of the document. I will sustain the objection.

Mr. Kelaher: Do I understand your ruling to be that this could be offered to show that it did come from the files of Goodyear to that extent? Or are you excluding it completely?

Hearing Examiner Kolb: If you offer it solely to show it came from the files of Goodyear, and if it is not offered for the proof of anything contained therein, it means nothing.

Mr. Kelaher: May we have a short recess? Then we will move to Sinclair and that will be the last business of the day. We have quite a number of documents.

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Mason: If your Honor please, I understand that counsel in support of the complaint now plans to turn to the subject of Sherwood and its sales commission arrangements with Goodyear. In that connection I should like to raise the fact that this matter has been the subject of colloquy between my partner, Mr. Correa, and your Honor at transcript 1661 in the record, and that at that time Mr. Correa indicated that it was our intention at some appropriate later date to move to strike testimony and evidence with respect to Sherwood, on the grounds that the
2287 Sherwood sales commission arrangement was terminated prior to the filing of the complaint and the amended complaint in this proceeding.

I would therefore request that your Honor, in receiving any evidence as to Sherwood in this proceeding, would do so without prejudice to our right to bring this motion on at an appropriate time.

Hearing Examiner Kolb: The testimony with reference to Sherwood will be received, without prejudice to the right of Goodyear to file a motion at a later date if it so desires.

Mr. Ballard: May I ask your Honor to add that it will be received subject to a motion to strike by Atlantic, as well?

Hearing Examiner Kolb: We will have to wait until the end because I don't know what it is.

Mr. Kelaher: I would like to have the following exhibits marked for identification:

Commission Exhibit 401: Distribution List for Sales Department Correspondence, No. 200-10/52, including the number of service stations serviced by Branch Managers, Commission Bailees, and Distributors listed thereon.

Commission Exhibit 402-A through N: Bulletin No. LL & CE 52-15A, December 31, 1952; and summary of L. O. Stations—Baltimore City, including Metropolitan Area.

Commission Exhibit 403-A to S: List of service 2288 station dealers in metropolitan Baltimore, Maryland, area, classified by L.O., D.D., and U.D. stations, marketing territories, and sales representatives, as of March 1953.

Commission Exhibit 404: Bailment Agreement Form SB-2833 500 9-51.

Commission Exhibit 405-A and B: Equipment Rental Agreement Form SB 118-3M-11-50.

Commission Exhibit 406-A and B: Dealer Permit Form S.B. 2072-A 500 10-51.

Commission Exhibit 407-A to D: Service Station Lease SB 1601-A 1M 8-51.

Commission Exhibit 408: Amendment of Service station Lease M-256 6-52.

Commission Exhibit 409: Termination of Service Station Lease M-142 -200 -2/53.

Commission Exhibit 410-A and B: Dealer Sales Agreement Form S.B. 106 3M 7-50.

Commission Exhibit 411: Letter dated March 10, 1953, from Fred D. McCauley to Mr. Henry I. Lipsky, Federal Trade Commission.

Commission 412-A to H: Documents entitled "Sherwood Bros., Inc., Baltimore, Md., Sales Commission," as follows:

	Page 1	1-1-50
	Page 1-A	1-1-50
	Page 2	1-1-50
2289	Page 2-A	1-1-50
	Page 3	1-1-50
	Page 3	12-10-51
	Page 1	4-18-52
	Page 1-A	4-18-52

Commission Exhibit 413: Form SB-2081-CS-(2500 6.46), relating to credit identification cards.

Commission Exhibit 414: Interoffice memorandum dated March 28, 1944, from Fred D. McCauley to Mr. DeHoff, carbon copy to Mr. John R. Sherwood, subject: Batteries.

Commission Exhibit 415-A and B. Interoffice memorandum dated March 29, 1944, from Fred D. McCauley to Mr. DeHoff, carbon copy to Mr. John R. Sherwood, subject: Goodyear Tire & Rubber Co.

Commission Exhibit 416: Interoffice memorandum dated March 29, 1944, from Fred D. McCauley to Mr. DeHoff, carbon copy to Mr. John R. Sherwood, subject: Goodyear.

Commission Exhibit 417: Interoffice memorandum dated March 31, 1944, from Fred D. McCauley to Mr. G. Roland DeHoff, carbon copy to Mr. John R. Sherwood, subject: Goodyear Commissions.

Commission Exhibit 418-A and B: Letter dated July 13, 1944, from Fred D. McCauley (Sherwood) to Mr. Ted Hardy, Manager, Battery Department, Goodyear Tire & Rubber Company, Akron, Ohio, carbon copy to Messrs.
2290 Doolittle (Goodyear), John R. Sherwood, DeHoff, Cottman, Sellers.

Commission Exhibit 419: Letter dated July 27, 1944, from JRS, Vice President (Sherwood) to Mr. Butler Doolittle (Goodyear-Baltimore); carbon copy to Messrs. S. A. Gaylord (Goodyear) and Fred McCauley (Sherwood).

Commission Exhibit 420-A and B: Letter dated July 29, 1944, from Fred D. McCauley (Sherwood) to Mr. John B. Mann, Goodyear Tire & Rubber Company (Baltimore), carbon copy to Mr. Butler Doolittle (Goodyear-Baltimore).

Commission Exhibit 421: Letter dated August 19, 1944, from F. D. McCauley (Sherwood) to Mr. Butler Doolittle, District Manager (Goodyear-Baltimore), carbon copy to Messrs. DeHoff, John R. Sherwood.

Commission Exhibit 422-A and B: Interoffice memorandum dated November 2, 1944, from John R. Sherwood to Mr. Fred McCauley, carbon copy to Mr. DeHoff.

Commission Exhibit 423-A to C: Letter dated May 29, 1945, from Butler Doolittle, District Manager (Goodyear-Baltimore) to Mr. Fred McCauley (Sherwood), carbon copy to L. H. Shepherd, Mgr. S. E. Div., Atlanta, Georgia, and S. A. Gaylord, Manager, Petroleum Sales, Akron, Ohio.

Commission Exhibit 424: Letter dated June 6, 1945, from Fred D. McCauley (Sherwood) to Mr. John D. Mann, Special Petroleum Sales Representative (Goodyear-Baltimore), carbon copy to Messrs. John R. Sherwood, Dehoff, Landon.

2291 Commission Exhibit 425-A and B: Letter dated December 31, 1945, from Fred D. McCauley (Sherwood) to Mr. John D. Mann, Special Petroleum Sales Representative (Goodyear-Baltimore), carbon copy to Mr. Joseph Keenan, Assistant District Manager, Goodyear Tire & Rubber Company, and Messrs. John R. Sherwood, G. R. DeHoff, R. K. Johnson (Sherwood).

Commission Exhibit 426: Letter dated January 15, 1946, from Fred D. McCauley (Sherwood) to Mr. J. A. Lewin, Manager-Dealer Department (Goodyear-Akron).

Commission Exhibit 427: Letter dated January 23, 1946, from Fred D. McCauley (Sherwood) to Mr. John B. Mann, Special Petroleum Representative (Goodyear-Baltimore), carbon copy to Messrs. DeHoff, Landon, Clarke (Sherwood).

Commission Exhibit 428: Letter dated March 6, 1946, from Fred D. McCauley (Sherwood) to Mr. Paul Spahr, Manager, Goodyear Tire & Rubber Company Warehouse, 910 Brown Street, Philadelphia 23, Pennsylvania, carbon copy to Mr. DeHoff.

Commission Exhibit 429: Letter dated March 11, 1946, from A. W. Littleton, Field Representative, to Miller Chevrolet Sales, Ellicott City, Maryland.

Commission Exhibit 430-A and B: Interoffice memorandum dated August 6, 1946, from John R. Sherwood to Mr. Lawson, carbon copy to Messrs. Jurgens, DeHoff, McCauley, subject: TBA Commissions to Commission
2292 Agents on Goodyear Merchandise; attaching memorandum dated December 7, 1945, from John R. Sherwood to Mr. DeHoff, carbon copy to Mr. Jurgens.

Commission Exhibit 431: Unaddressed form letter dated July 30, 1946, from Sherwood Brothers Incorporated, Vice President, with the following in the lower lefthand corner:

"Accepted:

.....

Agent"

Commission Exhibit 432: Letter dated August 20, 1946, from John R. Sherwood, Vice President (Sherwood) to Mr. H. G. Harper, Manager, Associated Merchandise (Goodyear-Akron), carbon copy to Mr. Fred McCauley.

Commission Exhibit 433: Letter dated June 3, 1947, from Fred D. McCauley (Sherwood) to Mr. John D. Mann (Goodyear-Baltimore).

Commission Exhibit 434-A and B: Interoffice memorandum dated July 17, 1947, from Fred D. McCauley to Mr. Howard Landon, carbon copy to Messrs. DeHoff, Van Horn, subject: John R. Brown, Cockeysville, Maryland.

Commission Exhibit 435: Interoffice memorandum dated February 19, 1948, from Fred D. McCauley to Mr. D. Lawson, carbon copy to Messrs. DeHoff, Landon, Lindsay, Weller, Van Horn, subject: Report of Goodyear TBA Commissions by Agency Territories, Total for Year 1947.

Commission Exhibit 436: Interoffice memorandum
2293 dated February 2, 1949, from Fred D. McCauley to Mr. B. Lawson, carbon copy to Messrs. DeHoff, Landon, Weller, Van Horn, subject: Report of Goodyear TBA Commissions by Agency Territories, Year 1948.

Commission Exhibit 437: Letter dated April 30, 1948, from H. W. Van Horn, Merchandising Department (Sherwood) to Jackson Manufacturing Company, 622 East 3rd Street, Kansas City 6, Missouri, with notations.

Commission Exhibit 438: Interoffice memorandum dated September 23, 1947, from Fred D. McCauley to Mr. John Sause, carbon copy to Mr. Weller.

Commission Exhibit 439: Form letter dated September 19, 1952, from G. R. DeHoff, Sales Manager, to All Betholine-Sinclair Dealers Authorized to Honor Credit Cards, with the name "Weller" and "cc All Sales Representatives and Others Concerned" noted thereon.

Commission Exhibit 440: Tabulation entitled C I C—Sales, 1952.

Commission Exhibit 441: Letter dated August 23, 1948, from Butler Doolittle, District Manager (Goodyear-Baltimore) to Mr. Fred D. McCauley (Sherwood).

Commission Exhibit 442: Letter dated September 21, 1948, from H. W. Van Horn, Merchandising Division (Sherwood) to Mr. Butler Doolittle (Goodyear-Baltimore), carbon copy to Messrs. McCauley (Sherwood), Mann 2294 (Goodyear), with notations thereon.

Commission Exhibit 443: Letter dated September 3, 1948, from H. W. Van Horn, Merchandising Department (Sherwood) to Mr. R. G. Crawford, Store Planning & Display Department (Goodyear-Akron), carbon copy to Messrs. DeHoff, McCauley, Clarke.

Commission Exhibit 444: Letter dated January 7, 1949, from H. W. Van Horn (Merchandising Division) to Mr. J. A. Nelson, Service & Equipment Department, Retail Stores Division (Goodyear-Akron), carbon copy to Messrs. McCauley, Hughes.

Commission Exhibit 445: Form letter dated August 9, 1949, from H. W. Van Horn, Merchandising Division (Sher-

wood) to all Betholine-Sinclair dealers, subject: A 1949 custom made plan to modernize your business.

Commission Exhibit 446: Interoffice memorandum dated June 23, 1950, from Fred D. McCauley to Mr. Van Horn, subject: Boss Anderson, Station #27, Keswick Road.

Commission Exhibit 447-A to E: Letter dated June 19, 1946, from Fred D. McCauley to Mrs. Mabel Harmon, General Manager (Goodyear-Baltimore), carbon copy to Messrs. John D. Mann (Goodyear), Van Horn (Sherwood), with attached "Complete, exact and up to the minute, list of Sherwood dealers located in the metropolitan area of Baltimore, who would like to have advertising serv-
2295 ices as outlined, when the Goodyear identification truck reaches Baltimore."

Commission Exhibit 448: Goodyear Form A98101L (1946) entitled "Request for (Goodyear Tires) Identification Truck Service"; item 1 lists Brooks-Huff as dealer; dated 3-29-49.

Commission Exhibit 449: Interoffice memorandum dated May 12, 1947, from Roland DeHoff to "Doc" Allen, carbon copy to Mr. F. D. McCauley.

Commission Exhibit 450-A and B: Letter dated August 25, 1952, from H. W. Van Horn, Manager, TBA (Sherwood) to Mr. Butler Doolittle (Goodyear-Baltimore), carbon copy to Messrs. DeHoff, McCauley.

Commission Exhibit 451-A and B: Letter dated January 6, 1950, from Fred D. McCauley (Sherwood) to Mr. W. S. Martel, Manager, Automotive Jobber Sales Division (Goodyear-Akron), carbon copy to Mr. E. A. Robinson, 14 Parsons Street, Harrison, New York (Goodyear), Mr. John Mann (Goodyear-Baltimore), and Mr. C. R. DeHoff (Sherwood).

Commission Exhibit 452-A and B: Interoffice memorandum dated January 2, 1948, from Fred D. McCauley to Mr. John Leimbach, carbon copy to Messrs. Cottman,

Weller, Van Horn, subject: Developing Store at Charles Hudgins, North Avenue and Charles Street, Baltimore, Maryland.

Commission Exhibit 453: Letter dated February 23, 1948, from Fred D. McCauley (Sherwood) to Mr. 2296 Charles H. Hudgins, Betholine-Sinclair Service Station, Charles Street and North Avenue, Baltimore, Maryland, carbon copy to Messrs. Leimbach, Cottman, Weller.

Commission Exhibit 454-A and B: Letter dated February 29, 1948, from Fred D. McCauley (Sherwood) to Mr. Charles H. Hudgins, Betholine-Sinclair Service Station (Baltimore).

Commission Exhibit 455: Interoffice memorandum dated March 5, 1948, from S. W. Holsinger to "Mac". with notation "File Hardingham".

Commission Exhibit 456-A and B: Interoffice communication dated March 20, 1948, from L. J. Balling to Mr. F. D. McCauley, carbon copy to Mr. Harry Weller, subject: Wm. F. King #50, Broadway and Lombard Streets.

Commission Exhibit 457: Document entitled "Dealer TBA Survey", dated December 14, 1951, from Elmore Evans, Sales Representative, with dealer name "Fayette Filling Inc., Fayette and Highland Avenue."

Commission Exhibit 458: Letter dated April 25, 1952, from H. W. Van Horn, Manager, TBA (Sherwood) to Mr. D. A. Hilleary, Special Representative, Mechanical Goods Division, 2750 North Broad Street; Philadelphia 32, Pennsylvania (Goodyear).

Commission Exhibit 459: Interoffice memorandum dated June 3, 1952, from Harry J. Weller to Mr. Jurgens, 2297 carbon copy to Messrs. Hall, DeHoff, subject: J. Norman Hobbs #47, 4607 Edmonson Avenue.

Commission Exhibit 460: Tabulation entitled "Sherwood Brothers Inc. Purchases, Commission, Resale and

Own Consumption, December and January 1 to December 31, 1944".

Commission Exhibit 461-A to C: Interoffice memorandum dated December 12, 1945, from Fred D. McCauley to Mr. John R. Sherwood, carbon copy to Messrs. DeHoff, Cottman, Johnson, attaching two tabulations showing "Sherwood Bros. Inc. Bonusable Volume & Commission Earned on Goodyear Products Sold to Dealers & Agents" for the years 1944 and 1945.

Commission Exhibit 462: Tabulation entitled "Sherwood Brothers Inc. Purchases, Commission, Resale and Own Consumption, December and January 1 to December 31, 1945".

Commission Exhibit 463-A and B: Letter dated March 13, 1946, from John R. Sherwood, Vice President (Sherwood) to Mr. T. J. Beddingfield, Sinclair Refining Company, New York, New York, subject: Sherwood TBA Program, carbon copy to Mr. Fred McCauley.

Commission Exhibit 464: Tabulation entitled "Sherwood Brothers Incorporated Purchases, Commission, Resale and Owen Consumption, December and January 1 to December 31, 1946".

Commission Exhibit 465-A and B: Letter dated January 7, 1947, from John R. Sherwood, Vice President 2298 (Sherwood) to Mr. R. S. Wilson, Vice President (Goodyear-Akron), carbon copy to Mr. Fred McCauley.

Commission Exhibit 466: Tabulation entitled "Sherwood Brothers Inc. Purchases, Commission, Resale and Own Consumption, December and January 1 through December 31, 1947".

Commission Exhibit 467: Interoffice memorandum dated October 16, 1947, from Fred D. McCauley to Mr. DeHoff, carbon copy to Messrs. Weller, Cottman, Van Horn, Landon.

Commission Exhibit 468: Tabulation dated January 26, 1951, from Fred D. McCauley to Mr. G. R. DeHoff, carbon copy to Messrs. J. R. Sherwood, Cottman, Weller, Landon, Van Horn, subject: TBA Progress Report for December 1950.

Commission Exhibit 469: Tabulation entitled "Total TBA Volume Sold to Betholine-Sinclair Dealers on Which We Received Commission" for the years 1951 and 1952, by months.

Commission Exhibit 470: Tabulation issued 2-13-53 by Statistics Division, Sales Accounting Department (Goodyear), entitled "Sherwood Brothers Inc. Sales by Goodyear Districts, January 1, 1952 through December 31, 1952".

Commission Exhibit 471: Map of Maryland, showing marketing area of Sherwood.

With respect to Commission Exhibit 401 for identification, it is stated thereon in ink: "Number of dealers in each terr.".

The figures written on the document opposite the 2299 names of branch managers and suppliers represent the number of dealers in each of such branch manager or supplier's territoy. Further, the persons named as suppliers were stated to be commission bailees, instead of suppliers at that time. They are now known as marketers.

With respect to Commission Exhibit 403-A through S, which is undated, this document should be dated "As of March 1953."

With respect to Commission Exhibits 430-A and B, and 431, in response to request for further information concerning the TBA commissions to commission agents on Goodyear merchandise referred to in such documents, it is understood that such commission plan was never put into effect by Sherwood Brothers, Inc.

Is that right?

Mr. Mason: Right.

Mr. Kelaher: At this time, your Honor, we offer Commission Exhibits 401 through 471, with subletters, in evidence.

Mr. Ballard: Your Honor, I understand—and I am sure Mr. Kelaher will correct me if I am wrong—that these documents relate entirely and in their entirety to Sinclair, and for that reason I object to them on the ground that it is a non-respondent oil company.

Hearing Examiner Kolb: Do you want to put in 2300 Sherwood, also?

Mr. Ballard: Your Honor, I can't understand the difference between them, Sinclair-Sherwood. They are both non-respondents as far as I am concerned.

Mr. Mason: If Your Honor please, Goodyear objects to all of these documents, first on the general ground that they relate entirely to an arrangement between Goodyear to the extent they involve Goodyear, and a non-respondent oil company.

Second, because the non-respondent oil company to which they relate is Sherwood Brothers, Inc., and there was at the time of the complaint no contract in effect between Goodyear and Sherwood, so that this deals with issues not within the literal scope of the complaint.

Third, as to those documents which show on their face that they are intra-Sherwood documents which did not come to the attention of Goodyear, that they are not binding against Goodyear because there is no conspiracy charge here and certainly no conspiracy shown that would make admissions of Sherwood binding upon Goodyear.

Hearing Examiner Kolb: The objections will be overruled. The documents will be received in evidence as Commission Exhibits 401 through 471, inclusive, with the subletters thereof, subject to a motion to strike by Atlantic,

and without prejudice to the right of Goodyear to
2301 make a motion at a later date to strike in connection with the previous statement made upon the record.

(The documents heretofore marked for identification were received in evidence as COMMISSION EXHIBITS 401, 402-A to N, 403-A to S, 404, 405-A and B, 406-A and B, 407-A to D, 408, 409, 410-A and B, 411, 412-A to H, 413, 414, 415-A and B, 416, 417, 418-A and B, 419, 420-A and B, 421, 422-A and B, 423-A to C, 424, 425-A and B, 426, 427, 428, 429, 430-A and B, 431, 432, 433, 434-A and B, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447-A to E, 448, 449, 450-A and B, 451-A and B, 452-A and B, 453, 454-A and B, 455, 456-A and B, 457, 458, 459, 460, 461-A to C, 462, 463-A and B, 464, 465-A and B, 466, 467, 468, 469, 470, and 471.)

Mr. Kelaher: I offer the following exhibits for identification:

As Commission Exhibit 472, Sinclair Marketer Agreement, Form 35 10 M 9-54..

As Commission Exhibit 473, Sinclair Rental Agreement, Form 1800 25 M 6-57.

As Commission Exhibit 474, Form 1601 B 25M 10-57.

As Commission Exhibit 475, Sinclair Refining Company, Refined Oil Sales Agreement—Dealer, Form 731-D 20-M 10-57.

As Commission Exhibit 476, Sinclair Refining Company, Refiners of Petroleum, Form 2081 25M 5-57, relating
2302 to credit identification cards.

As Commission Exhibit 477, enlarged photostatic copy of Sherwood Brothers, Inc. credit identification card, expiring December 31, 1954.

As Commission Exhibit 478, an enlarged photostatic copy of Sinclair Refining Company credit identification card, expiring December 31, 1957.

As Commission Exhibit 479, a certified agreement of

merger dated December 7, 1955, made by and between Sinclair Refining Company and Sherwood Brothers, Incorporated, with certificate attached.

(The documents referred to were marked Commission Exhibits for identification 472, 473, 474, 475, 476, 477, 478, and 479.)

Hearing Examiner Kolb: Let the record show that 472 through 479 were offered in evidence and that the same objections were made to the documents as were made to the previous documents 401 through 471.

The objections are overruled, and the documents are received in evidence, subject to a motion to strike by Atlantic, without prejudice to the right of Goodyear to raise a motion to strike at a later date.

(The documents heretofore marked COMMISSION EXHIBITS 472 through 479 for identification, were received in evidence.)

2303 Mr. Mason: If your Honor please, on the basis of information which Mr. Kelaher, the attorney supporting the complaint, and I obtained by consultation with the attorney for Sinclair, Goodyear is prepared to stipulate that, if called, an appropriate officer of Sinclair would testify to facts which I will set forth in a moment. We are prepared to enter into this stipulation, reserving an objection to Sinclair on the ground that it involves a nonrespondent oil company and on the ground that we do not believe the testimony as to Sinclair is within issues framed within the literal scope of the complaint.

But we are prepared to say that, if called, such an officer of Sinclair would testify first, in terms of identifying persons whose names appear in documents heretofore introduced in evidence, that the Mr. Sellers referred to on Commission's Exhibit 418-A and B is connected with Goodyear; that the Mr. Littleton, referred to in Commission's Exhibit 429, was not connected with Sherwood Brothers; that

the Mr. Lindsay referred to in Commission's Exhibit 435 was connected with Sherwood; that the John Sause referred to in Commission's Exhibit 438 was connected with Sherwood; that "Doc" Allen referred to in Commission's Exhibit 449 was connected with Sherwood; that S. W. Holsinger referred to in Commission's Exhibit 455 was connected with Sherwood; that L. J. Balling referred to in Commission's Exhibit 456-A and B was connected
2304 with Sherwood; that Elmore Evans referred to in Commission's Exhibit 457 was connected with Sherwood; and that these additional persons to whom certain copies of Commission's Exhibit were addressed—Jurgens, Landen, Clarke, Cottman, Leimback, Hall, and Johnson—were all connected with Sherwood. Also that F. Sinclair, referred to in Commission's Exhibit 432, was at the time president of Sinclair Oil Corporation.

We are also prepared to stipulate that Commission's Exhibit for identification 471, which is an official highway map of Maryland containing crayon markings delineating a geographical area, defines the marketing area of the Sherwood division of the Sinclair Refining Company.

We are also prepared to stipulate that an appropriate officer of Sinclair would testify that as of December 1, 1957, there were approximately 251 dealers in metropolitan Baltimore, retailing Sinclair petroleum products, and 180 of such dealers held service station leases from Sinclair; in the Sinclair division, excluding Baltimore, there were 492 dealers retailing Sinclair petroleum products, and 104 held service station leases from Sinclair; in metropolitan Baltimore there was one distributor. In the Sherwood division, excluding Baltimore, there were four distributors. In the Sherwood division there were six branches operated by salaried employees, and there were nine commission marketers.

We are also prepared to stipulate that, if called,
2305 an appropriate officer of Sinclair would testify that no substantial changes were made by Sherwood Brothers, Inc., subsequent to 1953 in the forms of agreement identified as Commission's Exhibits 404, 405-A and B, 407-A through D, 410-A and B, and 413. A number of said agreements may now be in effect under the terms of the merger agreement, Commission's Exhibit 479. All such agreements entered into after January 1, 1956, were on the printed forms of Sinclair, identified as Marketer Agreement, Commission's Exhibit 472; equipment rental agreement, Exhibit 473; station lease, Exhibit 474; refined oil sales agreement—dealer, Exhibit 475; and letter agreement with dealers relating to credit identification cards, Exhibit 476.

We are also prepared to stipulate that, if called, an appropriate officer of Sinclair would testify that Commission's Exhibit 477 is a copy of a credit identification card issued by Sherwood, expiring December 1954, and that Commission's Exhibit 478 is a copy of a credit identification card issued by Sinclair Refining Company, expiring December 31, 1957. The form of cards for the years 1953, 1954, and 1955 are substantially the same as Commission's Exhibit 477. For the years 1956 and 1957 the form used was substantially the same as the Sinclair form, Commission's Exhibit 478.

We are also prepared to stipulate that, if called, an
2306 appropriate officer of Sherwood would testify that during the years 1953 through 1956, there was no change in the corporate structure of Sherwood Brothers, Inc., except its merger with Sinclair Refining Company, effective December 31, 1955.

Mr. Kelaher: It is so stipulated.

Mr. Mason: We are also prepared to stipulate that, if called, an appropriate officer of Sinclair would testify

that as of May 19, 1953, there were approximately 422 retail outlets, of which approximately 233 were lessee dealers.

Mr. Kelaher: It is so stipulated.

Mr. Mason: We are also prepared to stipulate that, if called, an appropriate officer of Goodyear would testify that Albert W. Littleton was a Goodyear field representative in Baltimore in 1946, and left Goodyear's employ in 1947, Mr. Littleton being referred to in Commission's Exhibit 429.

Mr. Kelaher: It is so stipulated.

At this time, your Honor, we are prepared to rest, subject to some check of today's proceedings to see if there may be anything we may have overlooked.

Hearing Examiner Kolb: So you are closing your case for the Commission?

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: The matter will be recessed, subject to ten days notice pending disposition of the motion now pending, and will be reset at an early date.

2307 (Whereupon, at 4:55 p. m., the hearing in the above-entitled matter was adjourned, to be reconvened at ten-days notice.)

2308 400 Commerce Street
Baltimore, Maryland
Monday, 30 June 1958

Met, pursuant to notice, at 10:00 a. m.

2313 HOLLAND M. HATHAWAY was called as a witness for the Respondent and, having been first duly sworn, testified as follows.

Direct Examination by Mr. Thompson.

Q. Will you state your full name and address?

A. Holland M. Hathaway, 100 Croftley Road, Lutherville.

Q. Mr. Hathaway, you are the Atlantic Refining Company's district manager in the Baltimore district?

A. I am.

Q. I am going to ask you a very few questions about some men who were referred to in the testimony during the presentation by the government of its case.

Do you know a J. W. Varnadore?

A. Yes, sir.

Q. Mr. Varnadore was referred to by one Eugene Savage, a government witness, in the transcript of testimony beginning at Page 1756, and on cross-examination at Pages 1810 to 1812.

Is Mr. Varnadore presently an Atlantic lessee?

A. Yes, sir.

Q. Has Mr. Varnadore been subpoenaed to appear as a witness in this proceeding and to appear today?

A. Yes, sir.

2314 Q. Do you know a Mr. Charles G. McKaig who was referred to by government witness Elmer C.

Lang, transcript of testimony 1866 on direct examination, and 1905-1906 on cross-examination?

A. Yes, sir.

Q. Has he been subpoenaed to appear as a witness in this proceeding today?

A. Yes, sir.

Q. Do you know a Mr. William H. Leonard who was referred to by Eugene Savage, a government witness, at Pages 1754 and 1755 on Direct and on cross-examination at Pages 1820 and 1821?

A. Yes, sir.

Q. Has he been subpoenaed to be present today?

A. Yes, sir.

Q. Do you know a Mr. Gabriel Tydings, who was referred to by Joseph Scheiner, a government witness, at Pages 1948 to 1987 on direct examination, and 2004 to 2010 on cross-examination?

A. Yes, sir.

Q. Is he a former Atlantic lessee?

A. Yes, sir.

Q. Do you know what he is now doing?

A. He is a route salesman for Cloverland Dairies, Baltimore.

Q. Has he been subpoenaed to come here today?

A. Yes, sir.

Q. Do you know a Mr. Lester Lewis?

A. I know him.

Q. Was he a former one-time Atlantic lessee?

2315 A. Yes, sir.

Q. Mr. Lewis was referred to by one Elmer Lang at Pages 1868 and 1869 in the testimony. Have you been able to locate Mr. Lewis?

A. Yes, sir.

Q. He is no longer an Atlantic lessee?

A. No, sir.

Q. Has he been subpoenaed to come here today?

A. Yes, sir.

Q. Another man who was referred to in the testimony by Mr. Elmer Lang was a William T. Batchelor, Pages 1866 and 1867 on direct examination, and 1907 and 1908 on cross-examination: Is Mr. Batchelor presently an Atlantic lessee?

A. No, sir.

Q. Have you made an effort to locate him?

A. Yes, we have.

Q. Were you able to do so?

A. No, sir. We are unable to do so.

Q. You were not able to serve a subpoena upon him?

A. We were not able to locate him.

Q. You don't know where he is?

A. Have no idea.

Q. Have you ever heard of a man named Joseph Haekett, who was referred to by Eugene Savage on direct examination at Pages 1822-1824?

2316 A. Yes, sir. He is a former Atlantic dealer.

Q. Did you make an effort to locate him?

A. Yes, we did.

Q. Did you find out where he is?

A. To the best of our knowledge he is somewhere in Tennessee.

Q. You were unable to subpoena him to be present?

A. That's right.

Mr. Thompson: That is all. Mr. Kelaher, do you have any questions to ask on those subjects?

Mr. Kelaher: I have no questions.

Mr. Thompson: Thank you, Mr. Hathaway. You will be recalled at a later point in the hearing.

I have a few more questions, Mr. Hathaway.

By Mr. Thompson:

Q. When Lester Lewis was an Atlantic lessee, was his station known as the L&S Station?

A. Yes.

Q. Was that at 2607 Gwynne Falls Parkway?

A. That is correct.

Q. We referred a moment ago to a Joseph Hackett. Did he run a station called Joe's Atlantic, 829 Eastern Avenue, Baltimore?

A. That is correct.

Mr. Kelaher: May I have a question?

2317 *Cross-Examination by Mr. Kelaher.*

Q. Do you recall the name of Mr. Lewis' partner, if he had a partner?

A. I believe it was Strauss.

Q. Was it Howard A. Strauss, Jr.?

A. I can't testify as to the name, except Strauss.

Mr. Kelaher: That is all.

(Witness excused.)

* * * * *

2560 Room 532
Federal Trade Commission
Washington, D. C.
Wednesday, 2 July 1958

Met, pursuant to adjournment, at 10:18 a. m.

* * * * * * *

2618 HOLLAND M. HATHAWAY was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

* * * * * * *

Mr. Thompson: Mr. Hathaway has previously been sworn and is now recalled.

Direct Examination by Mr. Thompson.

Q. Mr. Hathaway, we established when you were
2619 called on Monday that you are Atlantic's district manager in the Baltimore district.

A. That is right, sir.

Q. What was your first employment with the Atlantic Refining Company?

A. I was first employed by Atlantic in the marine department as an able-bodied seaman.

Q. Was that just before or during the war?

A. It was in 1939.

Q. Did you stay in the Atlantic marine department during the war?

A. Yes, sir, until 1945.

Q. Did you serve on tankers?

A. Exclusively.

Q. What was your position when you left the tanker service?

A. I was a Master.

Q. Weren't you rather young to be a skipper?

A. I guess they were hard to find.

Q. As a matter of fact, you were the youngest in the Merchant Marine at the time, weren't you, Mr. Hathaway?

A. At one time I understand that, yes, sir.

Q. After the war did you continue your employment with Atlantic?

A. Yes, I did.

Q. What was your first post-war position?

2620 A. I went to Boston, Massachusetts, as a salesman trainee.

Q. When you finished your training, did you become a dealer-salesman in Boston?

A. Yes.

Q. How long did you have that position, approximately?

A. Approximately three or four years, I believe.

Q. In your job as a dealer-salesman in Boston, did you handle lessee dealers?

A. Yes, I think I handled only lessee dealers.

Mr. Kelaher: Mr. Thompson, I wonder if we could establish the years as we go along.

Mr. Thompson: May I finish the next question and then I will tie it together, Mr. Kelaher.

Mr. Kelaher: Go ahead.

By Mr. Thompson:

Q. Were you then promoted to sales supervisor in Boston?

A. Yes, sir.

Q. And continued in that position until sometime in 1950?

A. I believe it was 1950. Somewhere in 1950.

Mr. Thompson: Mr. Kelaher, if you want the dates accurately—

Mr. Kelaher: That is accurate enough.

Mr. Thompson: Mr. Hathaway gave me a memorandum which would simplify it. May I show it to him?

Mr. Kelaher: Yes.

2621 By Mr. Thompson:

Q. Using the data which you furnished me, Mr. Hathaway, to refresh your recollection, what year did you leave Boston and in what capacity were you serving when you left?

A. I left Boston in 1950, and at the time I was a sales supervisor in Boston.

Q. From Boston to what city were you transferred?

A. I was transferred to Providence, Rhode Island.

Q. How long did you stay there?

A. I was there approximately four years.

Q. And during that period, what was your position in the Atlantic organization?

A. I was the personnel supervisor for the New England region.

Q. In that position and during those four years, did you have any dir ·t connection with sales?

A. No, sir, I had no sales responsibility at all.

Q. Entirely personnel work?

A. Entirely personnel.

Q. Then at what time were you transferred from Providence to some other position and to what city?

A. I was transferred in 1954 to Charlotte, North Carolina, as the direct marketing supervisor for the Southern region.

Q. That was the early part of 1954?

A. April 1954.

2622 Q. Just in a couple of words, what were the responsibilities of the position of direct marketing supervisor?

A. Direct marketing supervisor is a staff assignment under the supervision of the sales manager of the Southern region, and he is the liason between the region and the different districts having to do with direct marketing activities through service stations, contract sales, any direct marketing accounts that we may have, all phases of gasoline sales, motor oil, TBA, sales promotion, training.

Q. When you were acting in the capacity of direct marketing manager in the Southern region, were there several people who worked under your supervision in charge of various aspects of the type of marketing to which you have referred?

A. There were three main categories under the direct marketing manager. They would be the TBA coordinator, the sales promotion coordinator, and the training coordinator.

Q. Do you recall how long you held that position, Mr. Hathaway, and when you were transferred to your present position? Was it in August 1954?

A. I was transferred to Baltimore in August of the same year.

Q. So that since August 1954 you have been the Atlantic district manager in the so-called Baltimore district?

A. That is correct.

Q. Just to refresh your recollection of a fact 2623 already stipulated, would you be kind enough in a very few words to indicate the geographical extent of the Baltimore district?

A. The Baltimore district includes Maryland, with the exception of the eastern shore, and with the exception of a small portion of Garrett County.

Q. That is the extreme northwestern part of the state; am I correct?

A. Yes. It also includes a portion of West Virginia.

Q. So that except for a very small section in north-

western Maryland, and the eastern shore, your district comprises the State of Maryland plus a small portion of west Virginia?

A. Yes, sir, that is right.

Q. Is it a part of your district manager's job to study and become aware of and know the competitive situation in your district?

A. Yes, it is a very big part of the district manager's job.

Q. Does Atlantic have competition from other oil companies in your district, Mr. Hathaway?

A. Yes, sir, we certainly do. We have a lot of competition.

Q. About how many large or major companies are competing with Atlantic for business in the district?

A. I believe there are eleven all together.

Q. Are there, in addition to the eleven major companies, independents?

2624 A. Yes, there are more and more independents every day.

Q. Becoming more and more aggressive?

A. Yes, sir, they are.

Q. Your headquarters are located in the city of Baltimore?

A. My district headquarters are, yes, sir.

Q. In the city of Baltimore?

A. Yes.

Q. Before I come to that, where are the headquarters of the region?

A. Charlotte, North Carolina.

Q. And just as briefly as you have described the geographical extent of the district, would you please describe the geographical extent of the region?

A. It extends from the Maryland-Pennsylvania line, ex-

cluding the eastern shore, down the eastern seaboard to Key West in Florida.

Q. You referred to the number of competing companies in the Baltimore district. Are there approximately the same number or the same actual companies which compete in the metropolitan Baltimore area?

A. In the—

Q. In the metropolitan Baltimore area.

A. In the metropolitan Baltimore area I would say exactly the same.

Q. The phrase "metropolitan Baltimore" I shall
2625 have occasion to use again. Would you be kind enough to indicate what you mean by it?

A. To me metropolitan Baltimore includes the city of Baltimore; it includes a good portion of Baltimore County from the east around the north of the city and to the west; it includes a good bit of Anne Arundel County which includes principally Glen Burnie; it would include a small portion of Howard County.

Q. Would I be correct in describing it as a kind of semi-circle with the Chesapeake Bay on the east, Baltimore in the center and which surrounds Baltimore?

A. Yes, sir.

Q. Approximately how many gasoline retailers are there in the district? And I am now referring to the entire district.

A. The Baltimore district?

Mr. Kelaher: May I have the question read?

(The reporter read the question.)

Mr. Kelaher: I object to the question unless it is rephrased. I am not too clear on the question myself.

Mr. Thomposn: May I continue for another question, and I will ask him to define what he means by "retailer." I am sure that is what you have in mind.

Mr. Kelaher: All right.

Mr. Thompson: I will rephrase the question to meet your point, which I think is a good one.

2626 By Mr. Thompson:

Q. When I asked you how many gasoline retailers there are in the Baltimore district, I was merely referring to outlets where gasoline is available for purchase by the consumer. I was not referring at this moment to a real service station.

A. Well, I would estimate about 2,200 to 2,300 retail outlets.

Hearing Examiner Kolb: Is that exclusive of service stations?

Mr. Thompson: I am coming to that next, sir.

By Mr. Thompson:

Q. Does that number of 2,200 or 2,300 include what we refer to as service stations?

A. Yes, sir.

Q. How would you define a real service station?

A. I would define a real service station as one that dispenses gasoline, can also do lubrication, possibly washing, can do tire repairs, minor repairs; sells TBA, handles the installation of TBA.

Q. Of the 2,200 or so gasoline retailers in your district, would most of them be service stations in the sense in which you have defined it?

A. No, I would say possibly 1,200 or 1,300 would be real service stations.

Q. May I now direct your attention to metropoli-
2627 tan Baltimore, as you have defined it, and I would like to ask you about how many retail outlets, including service stations, there are in metropolitan Baltimore.

Mr. Kelaher: Your Honor, I wonder if we can have some statement of the purpose of this type of testimony. I am not too clear of the relevancy of it at this point.

Mr. Thompson: It must be obvious to your Honor.

Hearing Examiner Kolb: I am rather confused about these outlets other than service stations.

Mr. Thompson: I don't understand the nature of your Honor's confusion. I should be happy to try to help.

Hearing Examiner Kolb: Are you taking in bulk plants and everything else in that?

Mr. Thompson: That was not within his definition, sir. His definition was retail outlets where gasoline is sold to the consumer.

Hearing Examiner Kolb: Bulk plants sell to fleets. They would be consumers.

By Mr. Thompson:

Q. In your estimate, Mr. Hathaway, were you including such places as bulk plants which serve large industrial accounts?

A. No, sir.

Q. This is just the place where you can buy gasoline for an automobile?

A. Yes, sir.

2628 Q. We are now coming to the question of gasoline outlets and real service stations in the metropolitan Baltimore area. Can you tell us from your long experience and knowledge about how many of each type there are?

A. I would say in metropolitan Baltimore there are probably 1,200 retail outlets, of which approximately 1,000 of them would be real service stations.

Q. Are new service stations being built every year in the Baltimore district?

A. Yes. Every year. It seems like every day.

Q. Have you statistical information available to you

which keeps you advised of the number of such stations which are being constructed?

A. Yes, we try to keep advised of that.

Q. Is it part of your job to know the answer to that question, what your new competition is?

A. I consider it part of my job, yes.

Q. About how many new stations have been built in your Baltimore district in the last year or so?

A. Well, in 19—

Mr. Kelaher: Your Honor, if he has to test this, it would probably be easier if he furnished the statistics.

Hearing Examiner Kolb: The witness may answer, if he knows.

2629 By Mr. Thompson:

Q. Answer the question.

A. Our last count showed that in 1957 and the first three months of 1958 there were 100 new service stations constructed.

Q. In Maryland?

A. In Maryland.

Q. And about how many of those would have been in the Baltimore district, your Baltimore district? I am not talking about metropolitan Baltimore; I am talking about your Baltimore district.

A. In all Baltimore it would, as I recall, be more than half.

Q. Are you now referring to the metropolitan Baltimore district? I think we have to distinguish between the two.

A. Metropolitan Baltimore would be approximately half.

Q. You mean Metropolitan Baltimore?

A. Yes.

Q. Then most of the rest of them would have also been built in your so-called Baltimore Atlantic district?

A. Yes.

Q. How many lessee stations does the Atlantic Refining Company have in the Baltimore district?

A. We have 93 lessee stations.

Q. About how many of the 93 are in the metropolitan Baltimore area?

2630 A. About 70.

Q. Could you just indicate briefly where the other 23 are located in your Baltimore district?

A. We have some in Cumberland; we have a couple in West Virginia; we have some in Hagerstown; we have some in southern Maryland; what we call southern Maryland which is down Route 301; we have a few around Washington suburban area.

Q. But you have none in the District of Columbia, have you?

A. No, sir.

Q. Does Atlantic also sell gasoline through so-called contract stations in your district?

A. Yes, sir.

Q. About how many contract retail outlets have you, including what you have defined as real service stations?

A. We have somewhere around 60.

Q. And of those, how many would you classify as real service stations?

A. No more than five or six.

Q. In addition to selling gasoline to your lessees and to your contract stations, do you also sell to distributors in the Baltimore district?

A. Yes, sir.

Q. How many distributors have you?

A. We have six.

Q. Do those distributors in turn sell to retail

2631 outlets and service stations?

A. Yes, sir.

Q. Could you tell us how many real service stations are supplied in your district by the distributors?

A. All together, about twelve.

Mr. Kelaher: How many?

The Witness: About twelve.

Mr. Kelaher: Did I understand the question correctly? Is it twelve service stations are supplied by the six distributors?

Mr. Thompson: Twelve real service stations supplied by the distributors.

Mr. Kelaher: Real service stations.

2632 By Mr. Thompson:

Q. Mr. Hathaway, would you describe in a general way some of your duties and responsibilities?

As a preliminary question: Are you in general charge for Atlantic of the Baltimore district?

A. I am.

Q. To whom do you report?

A. I report to the Regional Manager.

Q. Who makes the policy decisions for Atlantic in your district at the district level?

A. At the district level, I make decisions.

Q. What do you regard as your primary responsibility as District Manager?

A. My primary responsibility is to promote the sale of gasoline through our own service stations and other outlets.

Q. Are your other activities secondary to that primary objective?

A. As far as I am concerned, that is the objective in everything we do and I would even go on to say that that is the objective of everybody who works in this district.

Q. In your capacity as District Manager, do you direct the activities of the Atlantic personnel who are located in your district?

A. Yes, sir.

Q. Do you have an annual expense budget?

2633 A. Oh, yes.

Q. About how much does that budget run a year?

A. It runs somewhat over $500,000.

Q. Do you recall what it is for this year?

A. I believe it is $578,000 for 1958.

Q. You are referring to the expense budget, which is under the control of the District Manager?

A. Yes.

Q. What are the principal items of expense which are included in that budget?

A. Well, the principal item, of course, is payroll expense, service station maintenance, terminal up-keep and maintenance, administrative expenses, selling expense. That would be—.

Q. Truck maintenance? Is truck maintenance in your budget?

A. Maintenance, yes.

Q. Truck maintenance?

A. Yes.

Q. You referred to terminal expense. What is the terminal?

A. The terminal is the bulk plant where we store our oil and where we warehouse motor oils and that sort of thing.

Q. Are Atlantic's capital expenditures in the Baltimore district included in your District Manager's expense budget?

A. No, sir; no capital expense.

Q. The purchase of sites for service stations, would that not be included in that budget?

2634 A. No, sir. That is capital.

Q. Or the purchase of new trucks?

A. No, sir. That is capital.

Q. Or depreciation on stations or trucks?

A. No, sir. That is not in.

Q. The company trucks or new stations?

A. Has nothing to do with our expense budget.

Q. Or alterations or remodeling of stations which are not mere maintenance?

A. No. Alterations and remodeling would be under capital.

Q. How is your district organized under you? Have you got personnel which have direct contact with your various lessee and other dealers?

A. Yes, I have a sales group.

Q. By classification, who is in the sales group?

A. A sales supervisor, promotable dealer salesman, general salesmen, service salesmen, and I think that covers it.

Q. Do you have a credit supervisor?

A. I have an office manager.

Q. Going back over the people that you have mentioned that have contact with the dealers, there is one sales supervisor?

A. Yes. We have one sales supervisor in the district.

Q. And how many promotable dealer salesmen do you have?

A. I have four promotable dealer salesmen.

Q. How many service salesmen?

2635 A. Four service salesmen. And five general salesmen.

Mr. Thompson: Mr. Kelaher, I don't want to prolong Mr. Hathaway's testimony.

The stipulation, you will recall, describes in a general manner the duties of each of those classifications of salesmen. Would it be of any assistance to your Honor if he, in about four sentences, refreshed your recollection with respect to the jobs that these various people do, what their primary responsibilities are?

Hearing Examiner Kolb: It may be well to have that in the record.

By Mr. Thompson:

Q. Mr. Hathaway, just as briefly as you can describe it, what is the job of the sales supervisor?

A. The sales supervisor is directly concerned with the lessee dealers and contract dealers. It is his job to supervise the promotable dealer salesmen and the general salesmen and the service salesmen in their duties connected with principally the lessee dealers.

Q. Is he second in command in the district?

A. Yes.

Q. In your absence would he function for you? Would he assume your responsibilities? or some of them?

A. May I clarify that? I have also an operations supervisor who is on exactly the same level as the sales
2636 supervisor. One, I think, would be more apt to take command of his own group and the other would handle his people in my absence. If it came to choosing one, I believe I would choose the sales supervisor as the top man.

Q. Your four promotable dealer salesmen report first to the sales supervisor or directly to you?

A. No, sir, they report to the sales supervisor.

Q. What, again, as briefly again as you can describe it, are the duties and responsibilities, the principal ones, of the promotable dealer salesmen?

A. The promotable dealer salsman handles only lessee dealers. His job is to keep the stations operating with the best possible lessee dealer that he can have; to promote the sale of gasoline; and to help them increase their sales of gasoline.

Q. That is their primary responsibilities?

A. As far as I am concerned, yes, sir, that is it.

Q. How about your service salesmen, what do they do?

A. The service salesmen work more or less under the promotable dealer salesmen in training new dealers, training dealers' employees, helping dealers in solicitation or setting up promotions, or that sort of thing.

Q. What do your general salesmen do?

A. The general salesman handles some lessee dealers and also some contract dealers, and possibly some
2637 consumer accounts.

Q. In addition to those people whose functions and primary responsibilities you have described, you, of course, have other personnel in the district.

A. Oh Yes.

Q. And they report either directly or indirectly to you?

A. Yes.

Q. You mentioned, I think, your operations supervisor.

A. Yes. I have an operations supervisor who heads up the Operations Department. Under him would come people such as your chauffeurs, warehouse people, terminal people, dispatchers, pump and tank mechanics, automotive mechanics.

Q. Then you have, I think, a distributor salesman who handles the six distributor accounts?

A. I have a distributor salesman who handles our distributors, a wholesale salesman who handles wholesale fuel oil accounts, and we have—

Q. Do you have another classification called "industrial salesmen"?

A. Oh, yes. I have an industrial salesman who handles big or industrial firms, factories and that sort of thing.

Q. So-called commercial accounts?

A. We call them industrial accounts.

Q. Do you have a real estate representative, too?

A. Yes, sir, we have one real estate representative.

2638 Q. Who in your organization handles credit problems arising out of dealer—out of credits to dealers?

A. Of course we have a credit department based in Charlotte. The office manager of the Baltimore district does handle credit policy on a local level.

Q. What are your responsibilities generally and without going into detail, with respect to leases and supply contracts?

A. Well, I select, I am the final approver as far as the lessee is concerned—

Q. To keep the record straight, are you saying that you are the person in the district who makes the final selection of some prospective operator of a lessee station?

A. Yes, sir.

Q. Are you also the person in the district who makes the final decision whether a particular lease will or will not be renewed?

A. Yes, sir.

Q. In the event that you had occasion to terminate a lease for cause, would the notice of such termination be your responsibility? The decision whether to terminate, would that be your responsibility?

A. Would you clarify that just a bit? Do you mean during the term of a lease?

Q. Yes.

A. Yes, it would be my decision to terminate.

2639 Q. If you had to terminate a lease for cause during the—

A. If we had to during the term of the lease.

Q. Who, in the Atlantic organization, executes the supply contracts for your district?

A. I execute supply contracts.

Q. You have referred to your responsibility of keeping the 93 company-owned stations operating with lessees. Do you find it easy or difficult to find competent lessee operators in the Baltimore district?

A. I think that is probably the hardest job that we

have. By "we" I mean my sales supervisor and myself and my salesman—to find good, competent dealers who can operate our stations. It is extremely difficult to find them. It is difficult in some ways to hold them. Of course, every company is looking for the best dealer that they can get to run a particular station which in itself subjects all of us to raiding each other in trying to entice each other's dealers away from them in any way that we can.

Q. There is no stand-by arrangement among the major oil companies in your district not to ~~void~~ raid each other's dealers?

A. If there is, I have never seen it.

Q. Is there?

A. No, sir. I will take every dealer that I can get from any competitor at any time, if he is any good.

Q. Do you find that your competitors have the 2640 same attitude with respect to Atlantic?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

A. Yes. My competitors will take every good dealer I have got, if they can get away with it.

By Mr. Thompson:

Q. You referred to a "good dealer". How would you describe a good dealer?

A. To me, a good dealer is a dealer who is a good manager, and that means a good manager of money, a good manager of people, of people that are working for him, a good manager of his stocks and his records, and inventory, a man who isn't afraid to work hard, who has a good sales ability or a sales appeal to the public, somebody who can be out and solicit for business and make people like him enough to want to come in and do business with him; somebody who will keep a station clean and attractive, who is always interested in getting additional business.

I think that about covers it.

Q. Do you know, from your experience, what a good dealer, as you have described him, can net annually out of the operation of an Atlantic service station?

A. Yes. A good average dealer can net between $10,000 and $15,000 a year.

Q. Have you some that do considerably better than that?

2641 A. Yes, we have some who admit to doing considerably better.

Q. As high as what?

A. As high as $25,000 a year.

Q. Does Atlantic have an interest in its good dealers taking an active interest in civic and community affairs?

A. Yes. We would like very much to have all of our dealers become active in their community. It is very good business. They are doing business with the people in their community, and I think we like to have them looked up to as solid, substantial businessmen. And anything that they can do to help themselves get established in their community by joining various organizations, such as community clubs and businessmen organizations, chambers of commerce, and that sort of thing, we would certainly like to help them, and we do try to promote it.

Q. Are a number of them active in Rotary and similar organizations?

A. Yes, a number of them are.

Q. Have a number of them attained the community status which you try to get them to attain?

A. Yes. Surprisingly enough, a number of them are very well respected in their communities. They are in various organizations such as Rotary and Kiwanis and Lions. I have heard of a few dealers, not our own, who have even been—

Mr. Kelaher: Objection, unless he is talking about
2642 his own dealers.

The question pertains to his own dealers.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Thompson:

Q. Did you preface your remark with "surprisingly enough", Mr. Hathaway? Does this status of your dealers surprise you?

I wonder what you meant by "surprisingly enough".

A. Well, when you talk a long time to a dealer in trying to get him to join in the community affairs, sometimes it does surprise you just how far they go with it, and just how many organizations they do belong, and just how substantial they do become in their communities.

Q. Did you tell me one of them was the mayor of a town?

A. Mr. Kelaher objected to my talking about him.

Mr. Kelaher: He was with another station, I take it, another company.

By Mr. Thompson:

Q. Do you try to keep a good list of dealers in Atlantic?

A. Yes, sir; we will do every thing we can to keep our good lessee dealers with us just as long as we can keep them with us.

Q. Do you try to help them to be successful?

A. We will do anything we can to help them be successful.

Q. When you have to replace a lessee dealer, is 2643 there any expense involved?

A. Yes, there is considerable expense.

Q. Would you amplify that and tell us what it would involve?

A. Well, we like to send all of our new dealers through a training school, which is of five-week duration. Our training school in this region costs us $780 per trainee. To-

gether with that when we put a man in the station we put a service salesman in with him for two weeks which costs us approximately $250.

To estimate the time that a salesman spends in looking for a dealer would be very hard to do. The time that the sales supervisor spends in assisting the dealer, or the dealer salesman, excuse me, to find a dealer is something else I wouldn't know how to estimate. The number of ads we put in a paper, the running around that we do in our automobiles, the night work, and that sort of thing involved in looking for a dealer is something that I just wouldn't know how to measure.

Q. If a station shut down and you had no lessee, you would lose gallonage, too, wouldn't you?

A. I would lose gallonage, and a lot of sleep, and so would everyone else involved, I think.

Q. In your experience, have you found whether good dealers do or do not develop their personal following of customers?

2644 A. Yes. Any good dealer will develop a goodly portion of his business as a personal business. People come in to see the dealer. They don't come in to buy a particular brand. They come in because they like the man, they like the service they get, they like the way they are treated, and the work that is performed on their car. So each dealer, each good dealer, you can certainly point to a great portion of his business as being his own business.

Q. Does such a dealer have any difficulty in your district in finding another station to operate, other than Atlantic?

A. Any good dealer in Atlantic in our district, could find any number of good stations, if he wanted to.

Q. Are dealers of the type to which you refer economically dependent upon Atlantic?

A. No, they certainly aren't economically dependent

upon Atlantic. In fact, Atlantic is much more dependent upon its dealers than any dealer is dependent upon us.

Q. Mr. Hathaway, from time to time you do lose lessees, do you not?

A. Yes, we do.

Q. What are the primary reasons why you lose them?

A. I think there are several reasons. One of them is that the man might become ill. He may not like the hours, because the hours are long. He may not like the hard work, because the work is hard.

One of the things that is becoming increasingly
2645 difficult is the fact that his wife doesn't like the hours that he spends working at the station.

He may have financial problems, either he goes broke, he may over-extend himself on credit to his customers, and of course when they don't pay him immediately he is in trouble financially.

The neighborhood could change from a residential to commercial and he might lose a lot of business that way and just become discouraged and want to leave for that reason.

Q. What is the Atlantic policy in your district and what is your policy with respect to term of leases?

A. To term of leases?

Q. Yes. What duration?

A. Our leases—

Q. How many days, weeks, months, or years, in other words?

A. Our lease, we have a one-year lease which we give to a new operator for a two-year period. At the end of the second year we extend to him a three-year lease.

Q. Suppose one of your lessees had a three-year lease, and wants to quit at the end of six months or a year and a half, or some time before the end of the lease. What is your policy with respect to that lessee?

A. Our policy then is to immediately go out and look for a replacement for that particular dealer and as soon as we can get one we replace the man and allow him
2646 to cancel his lease by mutual consent.

Q. In other words, you don't hold him to the full term of his lease if he wants to leave?

A. No. There would be no sense in trying to hold him if he wanted to go. He certainly would not want to do much business while he was there, and we would have nothing to gain by trying to keep him.

Q. Do you recall any situations since you have become the District Manager in the Baltimore District where, during the term of a lease, you have cancelled the lease for cause?

A. No, sir. There has been none of that since I have been District Manager in Baltimore.

Q. What percentage of the lease terminations during the term of lease have been instigated by the dealer or with the dealer's full consent? All of them?

A. 100 percent.

Q. Do you know what this thing is that is called a "warning letter" to a lessee?

A. I know what it is, yes.

Q. Have you had occasion to write warning letters to lessee dealers since you have been District Manager in the Baltimore District?

A. I wrote one once. That was some while ago. I just don't use them myself. I think it is much better to go out and talk to the dealer and tell him what the problem
2647 is, discuss it with him, and in every case we have seen eye-to-eye and been able to straighten out our difficulties and gone on from there.

Q. What sort of difficulty would cause you to make that kind of visit to a dealer?

A. We think a dealer, in order to do business in our

station, has got to keep a clean-looking station, attractive to the motoring public. We want him to keep the rest rooms clean. And that can be quite an irritating problem in some cases.

We also, of course, want him to give good service as well as keep the place clean. And that would be the only problem that we would have, would be in housekeeping. And somewhat in service.

Mr. Thompson: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will take a recess for five minutes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Thompson:

Q. Mr. Hathaway, before the brief recess you referred generally to the fact that there were difficulties in
2648 finding lessee dealers in your district. Would you describe for us how the district goes about locating potential dealers? What do you do?

A. Well, we put ads, of course, in the newspaper.

Q. Before you go to another subject: Do you find that an effective means of producing potential dealers?

A. Newspaper ads?

Q. Yes. Does it work? Do you get response?

A. We get some response. It is not any more effective than any other way.

Q. What other means do you adopt besides newspaper advertising?

A. Of course we contact competitive dealers, we contact competitive dealer's employees, we contact our own

dealers in hopes that they would know of a customer or friend who might be interested; we contact our dealer's employees; we go to clubs, to the police department, the fire department, any organization that we can find. We even go to churches, we go to harber shops, we go door-to-door soliciting. I would guess we go just any place that we think we can possibly find anyone who would either know of anybody who would be interested in a service station or who themselves might be interested.

Q. When you say "we", do you refer to yourself as well as your salesmen? Do you personally participate
2649 on occasions in the search for lessees?

A. Mr. Thompson, I am always on the search for lessee dealers myself.

Q. How do your salesmen get to know competitive dealers and their employees?

A. I personally try to get my salesmen to contact every competitive dealer in their particular territory as they make their rounds, to look at them, to know them, so that in the event they find that he is a good dealer and can become friendly and get a chance to tell them how good Atlantic is and how good our stations are, that perhaps when the time comes that we need a dealer we can steal that particular man.

Q. Do you think, sir, that is a violation of Section 5 of the Federal Trade Commission Act?

A. Sir, I don't know Section 5.

Q. As a practical matter, if you can raid a competitor and get one of his lessees or the attendant of his lessees, does that save Atlantic expense?

A. It not only saves us expense because we have much less training to do, it also has the added inducement of having the man bring with him some of his customers who traded with him because they like him, and he can usually transfer them to the next station that he takes.

Q. Mr. Hathaway, I wish you would describe for us the procedure for screening potential dealers. Let us
2650 assume that one of your salesmen has located somebody that might be a prospect. What happens?

A. Our salesman in the very beginning would sit down with the applicant and discuss Atlantic, would discuss the station, would discuss the prospect's finances, his experience, try to determine in the station-man's mind the man's potential ability to run a station successfully, and once he has determined all of those facts then he would bring him into the office or ask the sales supervisor to meet with him in the field to interview the applicant a second time and give—

Q. Excuse me. You said he would do that. Is that in fact what happens?

A. Yes. Always.

Q. Go ahead.

A. The sales supervisor then has a chance to go over the same facts and arrive at his own decision as to how he personally feels about the man. If the salesman and sales supervisor both agree that this is a good prospect, one that they would like to see in an Atlantic station or in any particular Atlantic station, then they bring him in to me and sit down with me and I, too, discuss Atlantic, the station, the potential, and so forth, with the prospective dealer.

Q. Under the routine when the salesman brings a potential lessee to an interview with the sales supervisor, is there any discussion of TBA and, if so, what is it?

2651 A. They discuss TBA. They discuss the fact that we, in Atlantic, think a dealer should sell TBA because it is advantageous to him in the station, and it helps build the business and make customers, well, increase his customer business. They discuss with him the fact that we sponsor Firestone TBA in this district. They discuss

with him the fact that we do not in any way force or try to coerce the dealer to buy, that he has complete freedom of choice. However, that we would like him to carry TBA regardless of where he gets it.

Q. If the potential lessee passes the supervisor and he is brought to you as District Manager for your final decision, do you have a personal conversation with him?

A. Yes, I do.

Q. Would you indicate the nature of the discussion that you have? What do you talk about?

A. Yes. I talk about the station itself, the business potential that I think it has, what we expect of a dealer in the way of good appearance and good service, good operation. I discuss the fact that we are interested in gallons in that station, and helping him every way that we can to build up the volume of gallons in the station. The fact that we are interested in helping him become successful and become a sound, solid businessman. The possibility of him getting acquainted in the commu-
2652 nity in which he is going to do business.

We talk about—I talk to him about the fact that we do promote Firestone in the Baltimore district. However, I make clear to him and make sure that he understands that there is no forcing, no coercion, that he can buy whatever he wants wherever he wants it, and that he has a complete freedom of choice.

Q. Assuming that the man gets by the interview with you and that a lease is signed, is there any document delivered to him with his lease, and if so, what is it?

A. Yes. With his lease he has a 11-point letter and the "No Forcing" letter.

Q. By the "No Forcing" letter, you mean one of the letters in the form written by Mr. Colley stating Atlantic's TBA "No Forcing" policy?

A. That is correct.

Mr. Kelaher: Your Honor, there are a number of such letters in the file. I wonder if we could have a reference to a specific exhibit.

Mr. Thompson: Happily. I thought we had them in the record so many times we didn't need them any more.

Mr. Kelaher: I am just asking which one.

Hearing Examiner Kolb: It is already in the record.

Mr. Kelaher: Just refer to the exhibit number.

Mr. Thompson: Commission Exhibit 207.

2653 By Mr. Thompson:

Q. Is it your job as Atlantic's District Manager to implement and enforce that "No Forcing" TBA policy?

A. Yes, sir.

Q. What is your understanding of that policy, Mr. Hathaway?

A. My understanding of the policy is that we promote Firestone. However, a dealer is free to buy where he wants it, or where he wants, what he wants, when he wants, and that our salesmen in no way, shape or form will do anything to force or coerce the dealer.

Q. Have you any policy against non-Firestone TBA?

A. None whatsoever.

Q. How does your sales organization, the sales people who work under you, learn that that is Atlantic's policy?

A. Well, they see the letter when they deliver it with the lease, for one thing. They have gone to a training school where the dealer and the salesman-trainee hear the "No Forcing" policy explained. They hear me talk about it when I talk to prospective dealers. I am sure they would hear the sales supervisor talk about it when he talks to prospective dealers.

Q. Can you state, of your own knowledge, that your salesmen know that policy?

A. My salesmen know that policy.

Q. You referred, a few moments ago, to some
2654 statements which you made to prospective lessees about advantages to them in selling TBA at their station. I would like you to supplement those few remarks by explaining the reasons why Atlantic has a TBA program in your Baltimore district at all.

Is my question clear?

A. Yes, sir.

Mr. Kelaher: It isn't clear to me.

Would you read it?

Mr. Thompson: Then I would like to have it repeated because it is an important question, Mr. Kelaher. And if you don't understand it I am sure the witness won't understand it.

Mr. Kelaher: I am not saying I didn't understand it. You lost me about half way down.

Hearing Examiner Kolb: Read the question.

(Question read.)

The Witness: The advantages to a dealer are mainly that it will help him increase the business in his station. A dealer today won't make money selling simply gasoline.

A customer today wants to be able to buy just about anything for his automobile in the station in which he is going to trade.

We think that the advantages of having a program
2655 with a quality name such as Firestone is advantageous to the dealer because it is an item that is easy to sell; it is a nationally advertised brand; it is very well accepted in the Baltimore area; the price to our dealers is good; very competitive; the service is good; there is one service point that the dealer has to think about; there is one Firestone salesman that he would have to worry with instead of a bunch of different suppliers for very different items; our own people know something about the

quality and the methods and the ways to sell it. I am running out of—

Q. Without such a plan, would the inexperienced dealer, in your opinion, be at a disadvantage?

A. I think the inexperienced dealer could be at a great disadvantage because he wouldn't know what he should have. He would be visited by droves of jobber salesmen who would be trying to sell him just about anything and everything; he would have an inventory of items which may wind up as being unsalable, sitting on his shelves and tying up his money; he might not have an item which he could sell because it isn't nationally advertised and a good quality brand, so that his customers might object;—

Q. I don't mean to interrupt you, but might I ask you this question—

Mr. Kelaher: I think he was finished, wasn't he?

2656 By Mr. Thompson:

Q. Had you finished, Mr. Hathaway? I have a supplemental question.

A. Please go ahead, sir.

Q. Does Atlantic regard it as part of its function to advise dealers, regardless of brand, what types and items of TBA they will find salable?

A. Oh, yes. Yes, we like to do that because we want a dealer to be successful. That is our main object in life. If he can be successful he is going to sell more of our gasoline.

And that is all that we are really interested in, selling more gasoline and more Atlantic motor oil. And if we can help a dealer get his money in items that he can move, regardless of what they are, so that he can realize a good profit return on that merchandise, then he is going to be able to build himself up successfully as a good businessman and his station will sell more and more volume of gasoline.

2657 Q. Is it true, Mr. Hathaway, that from time to time new and improved items of TBA are introduced by one company or another?

A. Yes. I think—well, let's take a look at the dry-charge batteries. They came out not too long ago. They were introduced—I have heard it mentioned that Firestone was the first. It was a new item. A lot of people didn't know much about it. Our people were trained and explained the whole situation as far as the story on the new item. They in turn explained it to our dealers. Tubeless tires and other things, that was a relatively new ~~item~~ item. There were a lot of questions about it, how you change a tire, and how you put a tire on a wheel, a new tubeless tire on a wheel, what it does, how you repair them. All of those things are new to the trade, and somebody has to get out and explain to these dealers so that they know how to service them.

Q. Is that a part of the function of your sales force?

A. Yes, sir.

Q. You have explained why a TBA line is advantageous to the dealer. I think you mentioned in passing that you regard the sponsorship of a good brand as advantageous to Atlantic. Have you specific reasons for that statement?

If I haven't made that clear, I can simplify my question.

Why is it advantageous to Atlantic as a company to
2658 sponsor the Firestone line?

A. In my opinion it is advantageous to Atlantic because it does promote the sale of more Atlantic gasoline, and it makes our dealers more successful. And a successful dealer is a dealer who is selling more and more gasoline every single year.

Q. You have explained fully and clearly Atlantic's "no forcing" TBA policy. Why is that Atlantic's policy?

A. Well, it isn't good business to force a dealer to do

anything. He is only going to leave you. And if a good dealer leaves you then we lose business.

Q. Could you force your dealers to buy something they didn't want, if you tried to?

A. I have never seen one that you could—a dealer, that is, that you could force him to do something he didn't want to.

Q. Is a part of your job to handle dealers complaints?

A. It is part of my job, and it is also part of the sales supervisor's job.

Q. To the extent that you get complaints, what do they relate to primarily?

A. Dealer complaints relate primarily to the fact that they don't have enough facilities in their station, they want another bay or they want a bigger window, or remodel the whole station, or put more pumps on, widen the driveway.

2659 Q. Have you ever in all your experience as Atlantic's district manager ever received a complaint from any dealer that any Atlantic salesman was trying to force or pressure him to buy Firestone TBA?

A. No, I have never heard of such a complaint, either as district manager or before that.

Q. Atlantic inspects its stations, does it not?

A. Oh, yes.

Q. Would you briefly describe what types of inspection of stations are made?

A. Yes. We inspect their appearance and we inspect their service, because as far as we are concerned, as I think I probably said before, a good station is one that is attractive to the motoring public to get them into the station, and when they come in gives them good service in order to keep them coming back.

So therefore, we have what we call a shopper inspection in which we send people around to approach the station as

a customer would, and just record what they see as a customer as far as the outside appearance of the station. Either it is attractive to them or it is dirty; their rest rooms are either clean or they are dirty; and the service that you get at the pump island either is good service or bad service.

Q. Is the type inspection you are referring to made in the district under your supervision?

2660 A. Occasionally.

Q. Does the region inspect your stations? Does the regional headquarters inspect your stations?

A. Yes. The region has a definite plan set up to inspect our stations during the year.

Q. Does Atlantic's home office in Philadelphia occasionally send somebody out to inspect your stations?

A. Yes. They have a plan in which they inspect a percentage of the stations in the region during the year.

Q. Is my understanding correct, then, that there would be inspections that would emanate from three different levels: the district, the region, and the home office?

A. Yes. But primarily from the home office and the region.

Q. Do the results or reports of such inspections come to your attention?

A. Oh, yes.

Q. Is the brand of TBA carried by your dealers ever the subject matter of any comment in any of those reports?

A. No. TBA has absolutely nothing to do with it. We are interested, as I said, in the appearance of the station and in the service that the person gets at the pump island.

Q. Mr. Hathaway, is a part of your job to get out to the field and see your dealers yourself?

A. Oh, yes.

Q. Do you sometimes do it all by yourself?

2661 A. Yes, occasionally.

Q. More usually do you go with another one of your salesmen or the sales supervisor?

A. Yes, I like to ride with my salesman or with my sales supervisor.

Q. Do you know each and every one of your lessee dealers?

A. Yes, I know them all.

Q. Have you visited each and every service station at which Atlantic gasoline is sold in your district?

A. Oh, yes. I visit them frequently.

Q. In addition to your lessees, do you know your contract station operators?

A. Yes. I would see them not as frequently, probably, but I do know them and I do see them occasionally.

Q. Do you even visit from time to time the service stations which are supplied by Atlantic distributors?

A. Oh, yes. Yes, sir.

Q. When you visit these stations, do you observe the TBA which they are selling? Do you see it?

A. Yes, I try to observe everything that I can when I visit the station.

Q. If a dealer is handling non-Firestone TBA, from your own observation, is it openly displayed?

A. Oh, certainly.

Q. Do you see it in these stations?

2662 A. Yes, sir. It is open so everybody can see it.

Q. You of course know that your various dealers sell TBA on Atlantic credit cards. Does that make the slightest bit of difference in the world to you whether the TBA charged on Atlantic credit cards is sponsored or non-sponsored TBA?

A. It wouldn't make a bit of difference to me what it was.

Q. The TBA credit tickets are routed through your office to the credit department in Philadelphia, are they not?

A. They would be when they are used by the dealer as cash payment, or in lieu of cash.

Q. And that is a system by which the dealer is permitted to come to your office and cash credit tickets?

A. No—

Mr. Kelaher: Objection. I think on questions of this type, instead of a leading question, it would be better to ask just what the procedure is.

Mr. Thompson: Mr. Kelaher, I was trying to conclude this afternoon, but I see now it is going to be impossible. So I apologize for the leading question. I confess my error. I was merely trying to expedite the hearing. I will now ask it in the proper manner.

Mr. Kelaher: Very good. Very well said.

By Mr. Thompson:

Q. Would you be kind enough to explain, sir, how this credit deal works?

2663 A. Let me go back to the beginning.

A dealer writes up a credit ticket on a credit card sale, holds them in his station and has the prerogative of either sending them to Philadelphia to our credit department, which if he does has a check returned to him from the Philadelphia credit department, or he can use those credit tickets to pay in lieu of cash for gasoline or motor oil which we deliver to him.

In the event they are used as cash to pay for gasoline or motor oil, the chauffeur would bring them back and turn them in to the cashier in our district office.

Q. Will you be kind enough to state when the credit tickets—is that what you call them?

A. Yes. That is what I call them.

Q. —when the credit tickets are brought into your office, whether some one does or does not look at them to ascertain whether TBA is or is not a sponsored brand?

A. Some one adds up the money to see that the dealer got the right addition, and that is the end of it.

Q. Is it a matter of supreme indifference to you what brand of TBA is on the ticket?

Mr. Kelaher: Objection, your Honor.

Mr. Thompson: I withdraw the question.

Hearing Examiner Kolb: Overruled. Let him answer.

2664 A. I don't see the tickets, so it is obsolutely no concern of mine.

By Mr. Thompson:

Q. Seriously, Mr. Hathaway, is any point made by your organization with respect to the brand sold on credit cards?

A. No sir, no point whatsoever.

Q. From your observation in visiting your lessee stations, contract stations, and the stations supplied by your distributors, what TBA brands do the dealers carry?

A. What do they carry? What brands?

Q. Yes. What do they carry?

Mr. Kelaher: Objection, your Honor. Unless we attempt to get some foundation laid similar to the type we were required to lay every time we got into this question.

Mr. Thompson: I don't know what you are talking about.

Hearing Examiner Kolb: He is talking about the men in this man's district. He knows the dealers and visited them periodically. I think he should be able to answer that.

Mr. Kelaher: Would you read the question again, please?

(The reporter read the question.)

Mr. Kelaher: I think counsel intended to add "in your district."

Hearing Examiner Kolb: He mentioned, the ones 2665 which he visited, so I assume it would be limited to his district.

The Witness: The numbers of brands of varied items are so many I couldn't name all of the brands. All I can say is that the dealers buy what they want to buy from wherever they want to buy it, any kind of brand they want to buy, because they are all over, they all have every different kind of brand, it seems.

By Mr. Thompson:

Q. I will come back to that with a little more detail later.

Mr. Hathaway, in your district approximately what are your gross commissions from the Firestone Company per annum?

A. Approximately $20,000.

Q. That would be about $1,700 a month?

A. About.

Q. On your annual expense budget for your district, if my recollection serves me correctly, for non-capital items, payroll and maintenance, as you have described, it is in excess of a half million dollars a year?

A. That is correct.

Q. And this year it is running at the rate of $578,000?

A. That is correct.

Q. So that your TBA commissions would be about four percent of your out-of-pocket payroll and expense
2666 budget in your district; is that correct?

A. That is close, yes.

Mr. Kelaher: What did you say?

The Witness: It sounds close.

By Mr. Thompson:

Q. What are your gross sales of petroleum products in your district each year?

A. Our gross sales would be about $8,000,000.

Q. Are you a good enough mathematician to tell me without a calculating machine what percent of your gross

sales are represented by the gross commissions received from Firestone?

Mr. Kelaher: Your Honor, I am going to object to this line of questions unless we are a little more specific; unless we lay a foundation for the sales involved and other factors which he is casually talking around here.

Mr. Thompson: I will be glad to make it more specific.

Hearing Examiner Kolb: You were talking to the back of the room on the last part of the question. Will the reporter read it?

Mr. Thompson: I will withdraw the question and make it more specific.

Hearing Examiner Kolb: All right.

By Mr. Thompson:

Q. Do I understand that the gross commissions 2667 received in your district annually from the Firestone plan are in the order of one-quarter of one percent of your petroleum products revenues?

Mr. Kelaher: Objection. If there was ever a leading question, that is it.

Hearing Examiner Kolb: Has this witness testified to anything that would permit that question?

Mr. Thompson: This witness has testified, sir, that his gross sales of petroleum products in his district are $8,000,000 annually. He has also testified that his gross commissions from the Firestone plan are $20,000 annually. I pride myself, sir, on being an excellent mathematician, and I just computed the percentage and came out with one-quarter of one percent.

Mr. Kelaher: I think he should develop these figures in a proper way. We are getting a lot of leading testimony and I am not objecting to most of it. But I think we are going to have to call a halt pretty soon.

Hearing Examiner Kolb: You have the figures; the percentage is just a matter of computation.

Mr. Thompson: That is right.

Mr. Kelaher: I am not sure it is, not on that question. He referred to something about a quarter million dollars. I haven't heard him talk about that yet.

Mr. Thompson: A quarter million dollars? What 2668 is this?

Mr. Kelaher: What did he say before that?

Hearing Examiner Kolb: Gross sales were how much? $8,000,000?

Mr. Thompson: $8,000,000.

Hearing Examiner Kolb: And the TBA was $20,000?

Mr. Thompson: TBA gross, $20,000. One-quarter of one percent.

Hearing Examiner Kolb: All right.

Mr. Thompson: I will take another line, Mr. Kelaher, and you can indulge in mathematics on cross-examination if you want to.

By Mr. Thompson:

Q. Mr. Hathaway, as district manager of Atlantic in this Baltimore district, which is more important to you: gross dollars received as commissions from Firestone or the intangible advantage to Atlantic of having a Firestone TBA line?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

A. I think the fact that we drew $8,000,000 worth of petroleum business certainly is much more important to me than $20,000 in commissions.

By Mr. Thompson:

Q. That wasn't my question. Which is more im-
2669 portant: the dollar commissions you receive from Firestone, or the intangible advantage to Atlantic of having the Firestone plan for your dealers? That is my specific question.

A. The intangible advantage to having a Firestone program is much more important to me.

Q. Does Atlantic have direct expenses in promoting the Firestone TBA line in your district?

A. Oh, yes.

Q. The company has on its staff a full-time TBA coordinator?

A. They have on the regional staff a full-time coordinator of TBA. They also have one in the headquarters staff in Philadelphia. And I am sure he has a group working for him.

Q. Let's take the regional TBA coordinator first. Is my recollection correct that at one time he worked under your direct supervision?

A. Yes, that is correct.

Q. Does the regional TBA coordinator visit your district now that you are a district manager?

A. Yes, he would visit my district probably once a month.

Q. For how long on each trip on the average?

A. He would stay anywhere from two or three days to the whole week.

Q. Are there regional staff groups which concern themselves with Firestone TBA in your district?

A. I am sure that the regional manager is con-
2670 cerned with TBA, and the sales manager is con-
cerned with TBA, and the direct marketing manager is concerned with TBA. And of course the coordinator is very definitely concerned with TBA.

Q. Which of the Atlantic employees in your district paid out of your expense budget have as a part of their job the promotion of Firestone products, or the assistance of Firestone? Do you understand that question or shall I make it more specific?

A. I believe I understand the question. It is part of my

job to promote Firestone TBA. It is part of my sales supervisor's job; it is part of every promotable salesman's job; it is part of every general salesman's job; it is part of the distributor salesman's job.

Q. Reverting to your prior testimony when you said that you have in your district one district manager, one sales supervisor, four promotable dealer salesmen, four service salesmen, five general salesmen, and one distributor salesman, that would make 16 Atlantic employees compensated out of your half-million dollars annual expense budget—

A. Right.

Q. —who have direct responsibilities with respect to the promotion of Firestone TBA. Is that correct?

A. That is correct, yes, sir.

Q. Have you considered and are you able to estimate the percentage of time spent by your salesmen in the
2671 promotion of Firestone TBA?

A. Yes. Our figures indicate that the average salesman in our district spends between ten and twenty percent of his time in actually promoting Firestone TBA.

Q. I was referring a moment ago to expense incurred by Atlantic in assisting Firestone. Is extra compensation paid to your salesmen on Firestone orders from their accounts?

A. Extra compensation is paid an Atlantic promotable dealer salesman and general salesman for TBA that they sell over and above a certain quota.

Q. By the word "quota" what do you mean? What is a quota in the sense that you have used it?

A. It is how much they sold last year versus this year, actually. Last year's sales would be the base.

Q. In other words, it is a sales objective which you ask them to try to meet?

A. Yes.

Q. Would that be a correct interpretation of what you are talking about?

A. Yes.

Q. Do your service salesmen actually help dealers in the operation of their stations?

A. In that they train the dealers and train the dealer's employees in the operations, yes.

Q. Do you have what are sometimes called clinics for dealers?

2672 A. Yes, we have them all the time, for both dealers and employees.

Q. What is a clinic in the business of marketing petroleum products at retail through service stations? What does the word mean?

A. Well, a clinic is a short training course which may take place for a day in the service station of a dealer, or it might be that the dealers or the dealer's employees all go to one station in a given area, and there they spend a day in being taught and trained on various things, such as possibly driveway service, possibly selling tires or selling batteries or servicing them or putting on oil filters or something of that order.

Q. Do you also have dealer meetings occasionally in your district?

A. We have dealer meetings, oh, yes. Atlantic has them.

Q. About how many times a year would you have a dealer meeting in a given area?

A. Our salesmen can have dealer meetings, they can have them maybe half a dozen times a year. It depends on the salesmen and the amount of times he wants to get his dealers together to have a meeting.

Q. This in-station training provided by your service salesmen, your dealer clinics and your dealer meetings, involve expense to Atlantic, do they not?

2673 A. Oh, yes. It is a direct expense.

Q. To what if any expense do those three things to which I have referred—that is, the in-station training the dealer clinics, and the dealer meetings—aid the promotion of Firestone products?

A. In the in-station training we are trying to sell Firestone products if the dealer has Firestone products, or any other TBA products he might have.

When we are having a clinic we are trying to help him learn more about batteries and that sort of thing, or tires or how to sell them.

At dealer meetings we occasionally talk about subjects, the salesman does, that may be new to the business, new to TBA industry itself that a dealer should know about and should know something so that he can properly handle them when they come into his station.

Mr. Kelaher: I am not sure that is responsive to the question. I think the question was limited to how it aids Firestone TBA. I am not sure he understood it. I heard Firestone once in his answer. He is referring to other TBA; too.

Mr. Thompson: Is there a motion?

Hearing Examiner Kolb: Is there a motion to strike?

Mr. Kelaher: I will let the answer stand.

Mr. Thompson: Mr. Examiner, I see that the 2674 time is 4:25. I am not possibly going to be able to complete this examination tonight. I have, however, a suggestion I would like to make, very largely in the interest of assisting my friend, Mr. Kelaher. I could lead into it perhaps this way:

By Mr. Thompson:

Q. Mr. Hathaway, did you come to my office in Philadelphia several weeks ago?

A. Yes, I did.

Q. Did we have a discussion about what the Atlantic salesmen in your district do to promote Firestone TBA?

A. Yes.

Q. Did you give me a great deal of information on that subject?

A. Yes, sir.

Q. During the course of the conversation did I make notes and did we then jointly prepare an outline of the subject matter which we had discussed?

A. We did.

Mr. Thompson: If your Honor please, in the morning, when we resume, I think it would save you, sir, and all of us, a lot of time if I were permitted to ask Mr. Hathaway just one question on this subject, and that is this: What do the Atlantic salesmen do to promote Firestone TBA?

If he were permitted then to refresh his recollection by the use of the outline which he and I jointly prepared.

2675 I am bringing that subject up at this time because I would be charmed and delighted to give Mr. Kelaher a copy of it to study overnight, if he wants it.

Mr. Kelaher: I would be charmed to take a copy of it if it is understood that there is no commitment being made as to my decision in the morning as to whether or not I will object or not.

Mr. Thompson: Then you can't have it. That is easy.

We will proceed in a leisurely manner, Mr. Kelaher—

Mr. Kelaher: How can you expect me to accept something I have never seen?

Mr. Thompson: May we go off the record for a second?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Kelaher, I am not asking you to accept anything. I am simply suggesting that it would expedite this proceeding if this witness were permitted,

in answer to a question, to refresh his recollection by using notes which were in effect prepared by him. Have you any objection to that procedure?

Mr. Kelaher: I may have, because as I understand the rule of evidence—without making a check on it right
2676 now—you can use a document to refresh a witness' recollection with respect to the particular subject he is testifying to. Your question was, "What do Atlantic salesmen do to promote Firestone TBA?" What he said to you is of little or no importance, and whether or not you give him a memorandum to recollect what he told you seems to me to be carrying the rule of evidence pretty far.

I am not prepared to make any statement one way or the other at this time.

Mr. Thompson: Mr. Kelaher, you have just wholly missed the point. This man can testify from his memorandum, which includes a lot of topics which he wants to discuss, or I can ask him the questions. We will play it either way you like.

Mr. Kelaher: Let's ask the questions.

Mr. Thompson: That seems to me fine.

May we adjourn for the day, sir, and take it up at 10:00 o'clock in the morning?

• • • • •

2678 By Mr. Thompson:

Q. Mr. Hathaway, during your testimony yesterday you referred to some sixteen sales personnel in your district who did something or other with respect to the promotion by the Atlantic Refining Company of Firestone TBA. Do you recall that testimony?

A. Yes, sir, I do.

Q. Is it a part of their responsibility to point out to dealers what they deem to be the advantages of the Firestone TBA line?

A. Yes. It is a good part of their responsibility to point out the various advantages in Firestone, such as the fact that—

Q. May I interrupt you for a second? By "advantages" do you mean advantages to Atlantic or advantages to the dealers?

A. I am talking about advantages to the dealer.

Q. Thank you. I am sorry to have interrupted you.

2679 A. He may point out to the dealer the various advantages, such as the fact that Firestone is a nationally advertised brand, that it has a great consumer acceptance, that the consumer actually in many cases demands Firestone, making it very easy to sell. Firestone's quality is excellent, which means that there is very little complaint from a defect or inferior merchandise standpoint. The delivery points are kept to a minimum because they have supply points which are adequate to handle cities such as Baltimore. The prices are competitive.

Q. Is that in general the summary of the Firestone advantages to the dealers which your sales personnel are expected to suggest?

A. Yes. They are some of the advantages that our people would point out.

Q. In your district on what specific occasions are these matters pointed out to dealers or prospective dealers?

A. Well, they are pointed out in the very beginning at the interview that the salesman would have with a prospective dealer applicant. Then of course they are pointed out again when the sales supervisor and the salesman together interview the applicant, and when I interview the applicant with the supervisor and the salesman of course I will point out these advantages, too.

Q. I think you testified yesterday that in all three

2680 of those interviews with Atlantic "no forcing" policy was also explained.

A. Oh, yes, sir.

Q. Have your salesmen any responsibilities or duties, or do they make any effort with respect to the actual taking of orders from dealers for Firestone TBA?

A. Yes, our salesmen take a good many orders from their dealers. Of course, as they go into a station to call on a dealer they would check his stock. They use a minimum inventory stock list which they would check and use to make fill-in orders to see that the dealer had a minimum stock of the items that he wanted to carry.

Q. By "he" who do you mean?

A. The dealer. They would phone in orders that a dealer would give the salesman as he called on them.

Q. When you say "phone in", phone in to whom?

A. They would phone the order that the dealer would give our Atlantic salesman to the Firestone store for filling and delivery.

Q. Are there in the course of the year a substantial number of orders thus placed by telephone by your salesmen?

A. Yes. Our salesmen I think constantly make telephone orders to the Firestone stores.

Q. Are those telephone calls made frequently or usually on pay telephones?

2681 A. Yes. Almost all dealer stations have a pay phone in them, and of course that is the phone that our salesman would be using.

Q. Do the salesmen include the cost of such telephone calls on their expense accounts?

A. Yes, sir, they do.

Q. And do those expense accounts go across your desk for your approval?

A. Yes, sir, they do.

Q. So that you know from such expense accounts that such telephone calls are made in substantial number?

A. Yes. I have questioned some of them and found from the salesman that they do make a substantial number of calls for the dealer or on the dealer's behalf to the Firestone store in calling in orders.

Q. You referred a moment ago, Mr. Hathaway, to the ability of your salesmen to check the stock of a dealer. By "checking stock" do you mean observing from the TBA on display what is or what is not there?

A. Well, they would check his stock to see what items he had that he may be selling, and when they get down to a certain level the dealer has agreed that at that level he would like to have his stock replenished. The dealer-salesman or the promotable salesman then would take note of what was needed in the station, discuss it with the
2682 dealer, and then if the dealer wanted to order it he would either call the order to the Firestone store or take it to the Firestone store to get the order filled.

Q. That same opportunity or privilege is equally available to any salesman for any company who comes in and looks at the dealer's stock?

A. Yes, I believe many competitive salesmen do just about the same thing. It is good salesmanship.

Q. Do your salesmen ever call on Atlantic dealer accounts in company with Firestone salesmen?

A. Yes. That is a regular procedure. The Firestone salesman and our salesman double-team in calling on Atlantic accounts. It is good, I think, for our salesman as well as for our dealers. They get first-hand information of the different products that are available and learn how they are used and installed and learn of new products that may be available and just what makes them saleable, how you would promote them and sell them.

Q. Do your salesmen on their calls use their own automobiles?

A. Yes, they do.

Q. Does Atlantic give them some kind of a mileage allowance for the use of their cars on business?

A. Yes. They have a flat allowance, a monthly allowance. They are also paid 3½ cents a mile for mileage that they do on company business. We also pay them or
2683 provide for them a liability and property insurance policy.

Q. To what extent in the use of the automobiles to which you have referred do salesmen go to the Firestone stores for the dealers to actually pick up fill-in orders for them? Is that a common occurrence or does it rarely happen?

A. I would term it as a frequent occurrence.

2684 Q. What, if any, service do your Atlantic people render to Firestone in connection with their own service and deliveries to your dealers?

A. Of course our salesmen will discuss with Firestone a better delivery schedule to more adequately serve and give quicker service to the Atlantic stations. They try to eliminate dealer complaints which may occur because the dealers don't get service as quickly as they think they should. So that it becomes a part of our salesman's job to talk to the Firestone manager of the store if he is the one who is scheduling the deliveries, to try and speed up deliveries, make them more efficient, give better service, in other words, to our dealers.

Q. Mr. Hathaway, do you find that in the selection by your dealers of the items of TBA they carry that they require assistance or advice with respect to salability?

A. Yes. A lot of inexperienced dealers, in particular, are apt to buy things that they just aren't able to sell, or certainly are slow moving items, and they might have a good bit of their money tied up in such stock. So that our salesman would advise them on items that they know through their own experience are items that will move fast,

that the dealer will make money on and that they won't have tied up on their shelf until they become shop-worn or just plain unsalable.

Q. Have your dealers been trained in TBA salesmanship?

2685 A. Our dealers are trained a great part by our own people. Our salesmen, our service salesmen will train them and teach them to sell TBA, as we term it, on the drive-way or in the lube bay, how to approach a customer, how to point out what the customer needs, and then how to ask the customer to buy.

Q. What, if any, service do your salesmen render to Firestone in connection with promotions of TBA items? Do they suggest promotions to dealers to cooperate with Firestone in any manner when that company is desirous to run some sort of a promotion?

A. From time to time, Firestone has promotional materials and aids which are available to your dealers. Our salesmen would know of these and would present them to the dealer and suggest that he use them, help them set up a promotion in which he would use these materials; develop some sort of ideas and schemes of promoting various items with these promotional aids that are available.

Q. Does Firestone, from time to time, bring out new TBA products?

A. Oh, yes.

Q. What, if any, assistance do your Atlantic salesmen render to Firestone on such occasions?

A. Well, I think in particular to the recent dry-charge battery that was brought out, which was new to the industry and which took some explaining to the dealer,

2686 our salesmen got the first-hand information from Firestone and then went right into the station and explained the whole thing to our dealers, what it was made

up of, how it was made, how you added the electrolyte to charge it, installed it.

And the same thing on these tubeless tires, when they came out of course they were a new item. There were different methods used to install them on a wheel. You had to take them off the rim a little differently. All of that stuff had to be taught our dealers in order that they could handle and service these things properly.

Q. What, if any, advertising assistance does Atlantic render to Firestone in your district?

A. I am not sure I understand your question.

Q. Do you in your district, Mr. Hathaway, have any kind of cooperative advertising program or plan with the Firestone Company?

A. Our dealers have a cooperative advertising plan with Firestone.

Q. But Atlantic and Firestone do not?

A. We would cooperate with the dealer. As far as cooperating with Firestone, if that is your question, I am sorry I just don't know of it.

Q. Do the dealers, from time to time, make arrangements with Firestone for the advertising of Firestone products?

A. Yes. Firestone has a regular cooperative ad-
2687 vertising program which is available to dealers.

Q. And under that program do dealers perhaps push their own ads in newspapers and that kind of thing?

A. Yes. They will place their own ad in a newspaper or they might use a flyer handout, or they could use radio.

Q. Do you know whether your dealer salesmen do or do not help the service station operators in connection with such ads?

A. Yes, they do. They help them quite often, whenever the dealer feels the need of using Firestone's cooperative advertising, which is a good item and one that they should

use to help their own business; our salesmen will pitch right in and help the dealer set up the ad, suggest copy, line it up with the newspaper, go to the radio station either with the dealer or alone and set the thing up in any way that they can help the dealer.

Q. Does the Firestone Company, from time to time, have dealer meetings in your district?

A. Yes, they do. They have them quite often.

Mr. Kelaher: Did you ask about Firestone?

Mr. Thompson: Yes.

By Mr. Thompson:

Q. Do your salesmen sometimes themselves attend those meetings?

A. Yes. Every time they have a meeting, I would 2688 say, our salesmen almost always attend.

Q. Do they or do they not sometimes try to pick up dealers and take them along?

A. That is a regular practice. Our salesmen would pick up their dealers and drive them down to the meeting. Usually a bunch of the dealers in the salesman's territory will all go together and the salesman is normally the chauffeur.

Q. Do you have in your district what is sometimes called a service station clinic in which Firestone participates with Atlantic?

A. Yes. If there is a new item, or it might be a better explanation of old items, Firestone will join with our sales people in a service station and try and teach on the spot the difference in the new product or different ways of selling some of the older and established products.

Q. You have testified, Mr. Hathaway, that your annual commission under the Firestone sales plan runs around $20,000 a year. Is my recollection correct?

A. Approximately, yes, sir.

Q. Based upon your experience in preparing expense budgets for sales operations, if Atlantic did not perform the services to Firestone which you have described, in your opinion would it cost Firestone more or less than $20,000 a year to supply the same sales services to your dealers?

Mr. Kelaher: Objection, your Honor.

2689 Hearing Examiner Kolb: The objection will be overruled.

Mr. Kelaher: He is asking, as I understand it, what the cost would be to Firestone, not to Atlantic, you understand.

Mr. Thompson: That's right. I am asking his opinion as an expert in money.

Mr. Kelaher: He is asking his opinion as to what the cost would be to Firestone if the services weren't being performed. How would he be in a position to know that?

Hearing Examiner Kolb: I have ruled on the objection.

A. In my opinion it would cost Firestone more than $20,000 to perform the same services that our people, all of them, perform in promoting and selling.

2690 By Mr. Thompson:

Q. I want to shift to a different subject and ask you what factors are considered by you when a dealer lease comes up for renewal?

A. Well, the factors are the gallonage of the station; the appearance, in other words the housekeeping condition and the rest rooms; the service that the dealer performs to his customers; and of course his economic situation.

Q. By which you mean whether he does or doesn't pay his bills to Atlantic?

A. That is right, whether he does or doesn't pay his bills.

Mr. Kelaher: What was the first two that he gave?

(The reporter read the answer.)

By Mr. Thompson:

Q. Upon such occasions when leases come up for renewals, do you or do you not consider as a factor what brand of TBA the dealer is selling?

A. No, sir, it has nothing to do with lease renewal.

Mr. Thompson: May I have a moment to make a reference to the record? I have a specific question I want to ask Mr. Hathaway.

By Mr. Thompson:

Q. Mr. Hathaway, while my associate, Mr. Freed, is looking up a specific reference for me, I would like to ask you another question.

Have you, in your experience with Atlantic as a
2691 district manager, ever cancelled any dealer's lease because he didn't buy sponsored TBA?

A. No, sir.

Q. Have you ever refused to renew a lease for TBA reasons?

A. Never, sir.

Q. Mr. Hathaway, have you ever heard of a man named Eugene Savage, who is a salesman for the Burke-Savage Company in Baltimore?

A. Only in connection with these hearings.

Q. During the course of his testimony, and on cross-examination, at transcript reference 1822, Mr. Savage said, volunteering this information: "I just thought of another Atlantic station which I sold tires to."

And I said, "Good, good. Which one?"

And he replied, "It was Jerry's Atlantic. Then it turned into Joe's Atlantic. And then he got thrown out."

And I said, "For buying your tires?"

And Mr. Savage said, "He definitely told me he got thrown out for buying other people's products, besides the products coming from the oil companies."

Then that station was identified by Mr. Savage as Joe's Atlantic on Eastern Avenue.

Can you, from that information, identify that station and the former proprietor?

A. The only Joe's Atlantic on Eastern Avenue
2692 would have been Joe Hackett, at Eastern and Marlyn.

Q. Is that the station which at one time was operated by somebody called Jerry Brenner?

A. Yes, sir, that is it.

Q. Was Joe Hackett a former lessee of Atlantic Refining Company at the station to which you referred?

A. Yes, he was.

Q. Were you the district manager at the time he left that station?

A. Yes, sir.

Q. Do you know the circumstances of him leaving the station?

A. Yes, sir.

Mr. Kelaher: Mr. Examiner, I wonder if we can have some specificity with respect to dates?

By Mr. Thompson:

Q. Do you recall approximately—

Mr. Kelaher: I object unless we have more specific dates.

Mr. Thompson: You don't even let me finish a question, Mr. Kelaher.

Mr. Kelaher: I think I probably listened to your objections quite a while.

He has been a manager for a few years. I think we should have some dates.

Mr. Thompson: There was a question under way at
2693 the time when I was most recently interrupted by Mr. Kelaher. How did it start, Mr. Reporter?

(The reporter read the question.)

By Mr. Thompson:

Q. Do you recall approximately—Mr. Kelaher, my next words would have been—the date when Mr. Hackett departed from this station? I don't mean the specific day. I mean the year.

A. I believe it was 1956.

Q. Or thereabouts?

A. Or thereabouts.

Q. Do you recall the circumstances of Mr. Hcakett's departure?

A. Yes, I believe I do.

Q. Woud you state them, please?

A. Mr. Hackett, to put it very simply, went broke, asked to be replaced, which we did.

Q. Did he or you initiate the termination of his lease?

A. Mr. Hackett initiated.

Q. Do you know Mr. Varnadore, who testified in this proceeding last Monday in Baltimore?

A. I know him very well.

Q. During the course of Mr. Kelaher's cross-examination of Mr. Varnadore he asked him questions about a new form of lease signed by Mr. Varnadore quite recently.

2694 May I ask, first, whether you recall the approximate date of Mr. Varnadore's new lease?

A. Yes.

Q. When it became effective?

A. Yes, I know when it became effective.

Q. When?

A. June 1st, this year.

Q. What were the circumstances leading up to the change in form of the Varnadore lease?

A. Mr. Wyniger, who is Mr. Varnadore's partner, called me on the telephone and asked if he could come in and talk to me, which he did, and requested that we

cancel their present lease, which was a gallonage lease, and gave them a new percentage lease.

Q. Would you briefly explain the difference between the gallonage lease and the new percentage lease?

A. The gallonage lease was based on the gallons, a certain number of cent per gallon, the gallonage volume that a station did during a month, with a minimum, and in many cases with a maximum.

The percentage lease is based on the business that a station does in gross sales volume. We have certain percentages against the various—I hope I am saying this so that you understand it—we base our lease rental on percentages of the gross sales volume, with a decreasing
2695 percentage which runs from six percent decreasing to three percent.

Q. And starting with what?

A. It starts at the—the first five hundred dollars of gross sales has no rental.

2696 Q. I think it is not necessary for you to continue because this information has already been placed off record by stipulation, Mr. Hathaway.

Would you go on, please, sir, with what happened next about the Wyniger and Varnadore leases. Did Mr. Wyniger come to see you?

A. Mr. Wyniger came to see me and explained that they would like to have the new percentage lease, because their accountant, who also happened to be the accountant for several other Atlantic stations, had figures for them that they would save approximately $90 per month if they were put on the percentage lease.

We mutually concelled their present lease and put them on the percentage lease effective June 1.

Q. Has that percentage lease been accepted by a number of your other lessee dealers in the Baltimore area?

A. Yes. Of course it is accepted by every dealer whose

lease expires. In several cases, dealers like Mr. Wyniger and Mr. Varnadore have requested the new percentage lease and it has been given them.

Q. Have you made for your district your own personal survey of the impact or effect of the percentage lease against the prior form of gallonage lease and determined whether your lessee dealers are paying more or less rent to Atlantic under the new form of lease?

2697 A. All of our dealers, with the exception of one to date, are paying less rent under the new percentage lease than they paid on the gallonage lease.

Q. Have your dealers commented to you whether they like or dislike the new form of lease?

A. Our dealers, without—let's say, with one exception—have commented that they are very, very much in favor of our new percentage lease.

Q. Mr. Hathaway, I inadvertently omitted one question which I had intended to ask you yesterday.

When one of your leases is, for some reason or other, terminated and a new lessee dealer comes in to take his place, do you have what is sometimes referred to as a check-out?

A. Yes.

Q. What is Atalntic's policy with respect to the advice which you give the incoming dealer on his purchase or refusal to purchase the out-going dealer's TBA?

A. Our advice to the incoming dealer is that he purchase any TBA item which he considers salable from the out-going dealer.

Q. Is that true regardless of brand?

A. Regardless of brand; yes, sir.

Q. And whether or not the out-going dealer has or has not purchased the TBA items from Firestone?

2698 A. That has nothing to do with it. We like the change-over to be as nice and as friendly as possible,

so that the incoming dealer can retain some of the outgoing dealer's customers, if possible. And if we get into an argument during the change-over, it doesn't help either party.

Q. Do you know Tommy Eckhardt?

A. Yes, sir. Very well.

Q. Were you present in Baltimore, sitting at the council table with me, during his testimony late Tuesday afternoon, in Baltimore?

A. Yes, sir.

Q. Have you ever heard of Jack's Tire Store?

A. In Baltimore? Yes, sir.

Q. That store sells Firestone products, does it not?

A. Yes, sir.

Q. Do you recall Mr. Eckhardt's testimony that up until the time he left Atlantic in 1955 he purchased Firestone TBA from Jack's Tire Store?

A. Yes, sir.

Q. Jack's Tire Store, or whatever the correct name is—Mr. Ballard's recollection is that Mr. Eckhardt described it as "Jack's Tire Service."

Do you happen to have the testimony here, Mr. Kelaher?

Mr. Kelaher: I have it in my room.

I believe it is Jack's Tire Service.

2699 By Mr. Thompson:

Q. May I rephrase my question, Mr. Hathaway.

Mr. Kelaher's records and Mr. Ballard's memory indicate that the name used by Tommy Eckhardt was "Jack's Tire Service" and not "Jack's Tire Store", to which I referred awhile ago.

But whichever it was, during the time Mr. Eckhardt was a lessee, was that—Jack's establishment—one of the Firestone outlets, purchases from which entitled the Atlantic Refining Company to a commission under the Firestone plan?

A. No, sir; it was not.

Q. Does it therefore follow that the Atlantic Refining Company received no commission whatever upon any of the purchases by Tommy Eckhardt from Jack's Tire Service?

A. We received no commissions whatsoever.

Q. On Tommy Eckhardt's Firestone purchases?

A. On Tommy Eckhardt's Firestone purchases from Jack's Tire Service.

Mr. Thompson: Mr. Hathaway, thank you very much. These are all the questions that I have on direct. I would suppose Mr. Kelaher would want to take a little time before he starts cross-examination.

Or do you want to go right ahead?

Mr. Kelaher: I will go right ahead. I might say that I knew Mr. Hathaway was coming, but I didn't know
2700 the scope of his examination. So I would like to proceed for awhile and then have an opportunity to refresh myself on what he testified this morning, and then continue with the examination, if that is all right.

Hearing Examiner Kolb: We will recess now.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Hathaway, I believe you were present at the hearings in this matter, Docket 6486, that were held in Baltimore, isn't that correct; at the hearings held in 1957 and those held in 1958?

A. Yes.

Q. Did you attend any other hearings in this matter in other areas?

A. No, sir.

Q. And have you read the complaint in this matter, the complaint in Docket 6486 directed against the Atlantic Refining Company?

A. No, I haven't read it.

Q. When you became Baltimore District Manager in April, 1954, you knew that the Federal Trade Commission had attorneys in the Baltimore district in connection
2701 with Atlantic's sponsorship of Firestone TBA; isn't that correct?

A. No, it is not.

Q. Did you learn soon after that that the FTC attorneys were in the Baltimore area?

A. No. I didn't know anything about that until just before these hearings started.

Q. At the Baltimore hearings that were held this week, on Monday and Tuesday, signed statements were produced which were in the files of the Atlantic Refining Company taken from Atlantic dealers as far back as March, 1953.

Do you say now that you don't know that the Federal Trade Commission was conducting an investigation into the Firestone TBA at that time?

Mr. Thompson: He didn't say that.

That is a distortion. All he said was that he didn't know they were doing it in Baltimore. He didn't say he didn't know they were doing it elsewhere.

Mr. Kelaher: Let's have the question read.

(Question read.)

A. I did not know until a good while after I had come to Baltimore that there were any such statements taken.

By Mr. Kelaher:

Q. In view of your answers I am going to ask you this question: You have been with Atlantic since 1939 in one capacity or another, haven't you?

2702 A. That is correct.

Q. Didn't you know before you arrived in Baltimore that the Federal Trade Commission was investigating Atlantic's tie-up with both the Goodyear Tire and Rubber Company and with the Firestone Tire and Rubber Company on TBA?

A. I may have heard it, Mr. Kelaher, but I don't recall it, no.

Q. Isn't it a matter that would be discussed among Atlantic personnel?

A. No particularly.

Q. And were you aware that a complaint issued against Atlantic Refining Company in January, 1956, charging them with violations of Section 5 of the Federal Trade Commission Act because of their tie-ins with Goodyear and Firestone on TBA?

A. I imagine I heard it but certainly I cannot pinpoint the date or anything like that.

Q. You certainly have been aware of this. It is very difficult for me to sit here and believe that you haven't heard of this investigation or proceeding at some time during your career with Atlantic Refining Company.

A. I have been very much aware of it in the last year.

Q. And prior to that you knew about it, isn't that correct?

A. Possibly, but I didn't give it too much thought.

Q. Yesterday you testified with respect to the 2703 number of gasoline retailers in the Baltimore district, as you will recall.

A. Yes.

Q. I would like to ask you some questions about those figures, mainly for the purpose of clarification.

You stated that in the Baltimore district there were, as I understood your testimony, 2200 or 2300 gasoline retail outlets. Is that correct?

A. Yes, I said that.

Q. In the first place, would you define what you call a gasoline retail outlet?

A. It is a place that sells gasoline at retail.

Q. Could you give us any further description than that? What type of a place, for example?

A. It could be a service station, it could be a grocery store, it could be a garage, it could be a new car dealer.

Q. So it would include various types of retail outlets. Breaking that figure down, as I understood your testimony, there were approximately 1000—you testified there were approximately 1200 or 1300 service stations; is that correct, in the Baltimore district?

A. Approximately, yes.

Q. And of that number approximately 1000 were described by you as real service stations. What is your distinction between that 1000 and the remaining 200 2704 or 300 service stations?

Mr. Thompson: I don't recall that testimony, Mr. Kelaher. I think, sir, your note is in error.

By Mr. Kelaher:

Q. Didn't you refer to certain service stations as real service stations?

A. That's right.

Mr. Kelaher: He testified to that. He just stated it.

Mr. Thompson: My notes—may I tell what my notes recall?

Mr. Kelaher: I will bring it out from the witness.

Mr. Thompson: You are confused between the metropolitan Baltimore area and the Baltimore district, which are two different geographical locations.

Mr. Kelaher: I am aware of that.

Mr. Thompson: I tried to keep that clear on the record. Maybe I didn't.

Mr. Kelaher: I am aware of that.

By Mr. Kelaher:

Q. With respect to your 2200 or 2300 retail outlet figure, which did that relate to, the Baltimore district or the metropolitan area?

A. That would be the district.

Q. What did your 1200 or 1300 figure relate to? 2705 You stated there were 1200 or 1300 service stations, as I recall.

A. Didn't I say 1200 to 1300 retail outlets in metropolitan Baltimore?

Q. In the metropolitan Baltimore area.

Of that number you broke that down, as I understand your testimony, and stated that of that number there are approximately 1000 which you designated real service stations; is that correct?

A. In the metropolitan Baltimore area?

Q. Yes, in the metropolitan Baltimore area.

A. Yes.

Q. What is your definition of a "real" service station?

A. It is a service station that can dispense gasoline, has lubrication facilities, washing facilities, can handle TBA, installation of TBA, and do many of the services that an automobile customer expects or can have done to his automobile.

Q. And such a class of service station would be potential TBA outlets, would they not?

A. Yes, sir.

Q. That leaves, in that category, 200 or 300 stations which you did not define. But I would like to ask you to state a little more definitely what would be in that group.

A. That would be the retail outlet that was not a real service station, such as a grocery store, possibly a garage, a car dealer.

2706 Q. Would they be what are sometimes referred to as "filling stations" as distinguished from a service station?

A. No. I wouldn't refer to them as filling stations.

Q. Would these be potential TBA outlets?

A. No, I wouldn't think so.

Q. In the metropolitan Baltimore area, are the bulk of those stations, you have referred to, lessee stations?

A. I would assume they are lessee, for the most part.

Q. Referring again to the metropolitan Baltimore area, you stated that your Company, Atlantic, is in competition with a number of other major oil companies; is that correct?

A. That is correct.

Q. And you stated about 11. Does that apply to the metropolitan Baltimore area? Are there that many major competitors?

A. Yes, it would apply to metropolitan Baltimore.

Q. And who are your principal competitors in metropolitan Baltimore area?

A. Esso, Amaco, Sinclair, Sun, Texaco, Shell, Crown, Socony.

Q. Do you consider Crown a major or an independent?

A. I consider it a major in metropolitan Baltimore.

Q. But it is not a national company, is it, or do you know?

A. They certainly market in other places besides Baltimore.

Q. Go ahead.

2707 A. Tydol, Calso.

Q. And in addition, you have some independents, or did you name them all?

A. Oh, no; there are a number of independents.

Q. In view of your last answer, to the effect that you have these major competitors and independents, it would

appear that Atlantic shares as substantial a share of the market as any of the other companies; is that pretty much so?

A. I don't—I am not quite sure I understand what you mean by a "share".

Q. You say you have 1200 or 1300 stations in metropolitan Baltimore area. They are divided among Atlantic and these other companies apparently?

A. Yes.

Q. How would Atlantic rank insofar as the number of service stations is concerned?

A. Some companies would have more and others would have less.

Q. However, Atlantic is one of the principal companies in the metropolitan Baltimore area, is it not?

A. We don't have that big a share of the business.

Q. I am talking about with respect to numbers of outlet stations, service stations.

A. We don't have the least number by any means, nor do we have the most. I wouldn't know how else to answer you.

Q. That is sufficient.

2708 With respect to contract stations, you stated that there were around 60 Atlantic stations. Would that be in the Baltimore district or the metropolitan Baltimore area?

A. That is in the district.

Q. And in the metropolitan Baltimore area, how many contract stations does Atlantic have?

A. In what I defined as metropolitan Baltimore we would have no more than 15.

Q. No more than 15. And are any of those so-called real service stations?

A. I would class two of them as real service stations.

Q. They would be potential TBA outlets?

A. Yes.

Q. And the others would not; is that correct?

A. Yes.

Q. And when you stated on direct, that five or six in the Baltimore district of the 60 contract dealers were real service stations, that would indicate that the five or six were potential TBA outlets and the remainder were not; is that correct?

A. They are real service stations.

Q. And they are potential TBA outlets?

A. Yes, sir.

Q. And the remainder would not be potential TBA outlets; is that correct?

2709 A. That is correct.

Q. In connection with the figures which you have given, are they current figures or as of what period are you talking about? With reference to all these numbers that we have been discussing here.

A. They would be first quarter 1958 figures.

Q. First quarter of 1958?

A. Yes.

Q. And you have reviewed published sources to obtain this information; is that correct?

A. Yes, sir.

Q. You made a reference to the fact that there have been 100 new service stations which have opened in the metropolitan Baltimore area?

A. Yes.

Q. During a particular period. What period was that?

A. 1957 and 1958, up to June.

Q. That would be a period of a year and a half?

A. Approximately a year and a half.

Q. Of that number, how many were new Atlantic service stations?

A. Approximately six.

Q. Approximately six during that same period?

A. Yes.

Q. I am going to call your attention to some
2710 ratios that were developed yesterday, which I have studied with great interest. As District Manager for the Baltimore district, you of course have occasion to examine operating statements, do you not, to show profits and losses of one type or another?

A. No, I don't have any profit statements.

Q. Do you have any accounting background at all?

A. None whatsoever.

Q. Are you familiar with the difference between gross income and net income, or between profit and loss?

A. Without an accounting background I think I know the difference between profit and loss, yes.

Q. That is fine, because I would like to ask you about some of these ratios.

In the first place, you said that the gross commissions on Firestone TBA program in the Baltimore district was approximately $20,000; is that correct?

A. That is correct.

Q. That was for what period?

A. 1957.

Q. By some slight-of-hand that was related to a figure of $578,000—

Mr. Thompson: I object to the aspersions on my questioning of this witness. There was no slight-of-hand at all.

2711 By Mr. Kelaher:

Q. A figure of half a million dollars was described as the expense budget. I am going to ask you a few questions about that expense budget.

What does that include?

A. It includes payroll, service station maintenance,

terminal maintenance, administrative expenses. Those would be the major.

Q. And that expense item of half a million dollars relates to the operational expense with respect to Atlantic's entire business in the Baltimore district; isn't that correct?

A. Yes.

Q. I assumed it would be.

So the half million dollars was expended in producing income from all sources, was it not?

A. Yes.

Q. The figure of $20,000 we have established was the income from Firestone TBA in the Baltimore district; correct?

A. Yes.

Q. You have taken that as income, and from that you have deducted an expense figure of $578,000, or over a quarter of a million dollars.

A. That is mighty deep.

Q. I am asking you what this is intended to prove.

Mr. Thompson: I object to the form of the ques-
2712 tion. The witness has done no such thing.

Mr. Kelaher: I will put it another way.

By Mr. Kelaher:

Q. The question you were asked was this: What was the relationship of $20,000 to $578,000, and it turned out to be about four percent. Do you remember that figure?

A. Yes.

Q. What is the significance of the 4 percent?

A. The significance is that the TBA commissions—it merely points up that this is a definite side-line with the Atlantic Refining Company.

Q. How does it point up it is a definite side-line when you are taking an expense pertaining to your entire com-

pany operations and applying it to your income from TBA only? I don't get the significance of your statement. I am just trying to show that it is not a fair comparison. Do you still think it is?

A. I think it is a good comparison.

Q. All right, we will let it stand there.

Now, I would like to ask you about another ratio which was developed on your direct examination, which also intrigues me.

You referred to a gross sales figure of $8,000,000?

A. Yes, sir.

Q. What is included in that gross sales figure?

2713 A. That would include the gasoline, motor oil, burning oils, antifreeze, industrial lubricants, industrial chemicals, washes, anything that Atlantic sells in petroleum.

Q. That is from all sources that you could think of?

A. Yes.

Q. Mr. Thompson asked you some questions which related to $20,000 income from TBA, from Firestone TBA commissions, to the $8,000,000, and you came out with a very minor percent amounting to one-quarter of one percent: do you recall that figure?

A. Yes, I do.

Q. I don't know whether you realize what you have done, but I am going to take you through this a little bit.

Hearing Examiner Kolb: The quarter of one percent was Mr. Thompson's figure.

Mr. Thompson: Was I wrong?

Mr. Kelaher: His computation is accurate, but the procedure is quite intriguing.

2714 By Mr. Kelaher:

Q. What you have done here, as I understand your testimony; both on direct and now on cross, is to take a gross

sales figure of $8,000,000 from which you have made no deductions whatsoever—and I assume you pay something for your gasoline and your other products—

A. I am sure we do.

Q. Which would be quite a sizable figure running into the millions, would it not?

A. It should be.

Q. It should be is correct. And you have taken a gross income figure of $8,000,000, to which has been related an income figure of $20,000 from TBA, which does not have deductions other than some which have not been so far itemized, but in effect you have taken a gross sales figure and related it to what amounts to almost a net income figure. Do you think that is a proper comparison?

Mr. Thompson: I object to the form of the question. The $20,000 commission is not a net figure at all, and Mr. Kelaher knows it.

Mr. Kelaher: The $20,000 figure—

Mr. Thompson: I object to your characterization of the $20,000 as a net figure.

Hearing Examiner Kolb: I think the witness testified this morning that on that $20,000 figure you would
2715 have to take into consideration the sales expense on the part of the salesman in promoting the sale of the TBA.

Mr. Kelaher: I mentioned that in my question. I said it was subject to certain deductions which have not as yet been itemized.

But the $8,000,000 figure I say—I am asking if it is an unfair comparison to take a figure of $8,000,000 before deducting the cost of gasoline, petroleum products, and numerous other expenses—in other words, the cost of manufacture, sale and delivery—and comparing that with a figure of $20,000 which has no cost of manufacture, no cost of delivery, and just some minor selling expenses.

Mr. Thompson: That is objected to. There wasn't any testimony that these were minor selling expenses.

Mr. Kelaher: We will strike the word "minor" at this point, and we will develop that later.

By Mr. Kelaher:

Q. I am asking you, in your opinion, is that a fair comparison?

A. I think it is a fair comparison.

Q. Why?

A. Because I think again it points out the gross sales that we enjoy in Baltimore on our petroleum products versus the very small gross commission that we get from Firestone, and again simply points out the fact that
2716 we are so much more interested in the sales of our petroleum products, that our TBA is very much of a sideline.

Q. You keep saying about your gross sales of TBA being insignificant. Isn't it a fact that the sales of Firestone TBA in the Baltimore district aggregate in the neighborhood of a quarter of a million dollars a year?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. So when you keep referring to a $20,000 figure, it is actually your commission, it is not a sales figure?

A. But all I am interested in from Atlantic is the gross commission.

Q. But you still, as I understand your answer, figure that this was a valid comparison?

A. Yes, sir.

Q. I will let it stand at that.

In your testimony you also referred to the fact that you have a sales supervisor and various classes of salesmen. To bring the record up to date, would you give us the name of your current supervisor?

A. Mr. E. B. Munch.

Q. And your promotable dealer salesmen, you have four promotable dealer salesmen. Would you give us their names?

A. Mr. R. D. Thomas, R. R. Goudey, and W. C.
2717 McGee, and E. H. Williams.

Q. I will show you a list appearing in the transcript at Page 419 and ask you if the service salesmen and general salesmen's names have changed since June 1957.

Would you just state? Maybe it would be easier to give us the names of the current general salesmen and the current service salesmen.

A. Gilbert Moran, W. R. Simpson III, Arthur Hendley, and Donald Hactel.

Q. And they are what?

A. They are service salesmen.

Q. And you also have three general salesmen; is that correct?

A. We have five general salesmen.

Q. On direct examination you stated that promotable dealer salesmen call on lessee dealers only; is that correct?

A. Yes.

Q. Also, on direct examination you referred to the fact that you are interested in what you refer to as a good dealer to operate your service stations.

A. I certainly am.

Q. And you also stated that the income of a good average dealer would range from $10,000 to $15,000, in some instances a dealer would have an income of $25,000.

A. Yes.

Q. Isn't TBA included in that income?

2718 A. Oh, sure.

Q. And isn't it an important source of income to the dealer?

A. Yes.

Mr. Kelaher: Mr. Examiner, at this time I would like to have an opportunity to review the witness' examination earlier this morning. This may be a good time to adjourn until two o'clock.

Hearing Examiner Kolb: Do you have any other witnesses?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Then we can take the next witness until 12:30.

Mr. Kelaher: Adjourn until 12:30 for the next witness?

Hearing Examiner Kolb: Yes, unless there is objection.

Mr. Thompson: On that basis shall we go right ahead with the next witness now?

Hearing Examiner Kolb: Yes.

Mr. Ballard: May we have a recess before we take the next witness to figure out who it will be?

Hearing Examiner Kolb: Yes.

(Witness temporarily excused.)

(A short recess was taken.)

2719 Hearing Examiner Kolb: The hearing will come to order.

EDWARD B. MUNCH was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Munch, will you state your name for the reporter?

A. Edward B. Munch.

Q. And will you state your home address?

A. 202 Charmuth Road, Lutherville, Maryland.

Q. What is your present position with the Atlantic Refining Company?

A. Sales supervisor, Baltimore district.

Q. Could you briefly outline your previous positions? I believe you have a memo you made of the dates. You can use that to refresh your recollection and tell us the dates and positions that you have held.

A. I was employed on August 12, 1940, and until January 8, 1943, was tire salesman for the Atlantic Refining Company.

From January 8, 1943, to September 25, 1945, military service.

September 25, 1945, to October 20, 1947, tire salesman.

October 20, 1947, to April 20, 1950, TBA salesman.

2720 April 20, 1950, to June 4, 1951, Richmond sales supervisor.

June 4, 1951, to December 7, 1957, sales training coordinator, Southern region.

From December 7, 1957, until now on my present assignment.

Q. Mr. Munch, referring to your tour of duty as training coordinator for the Southern region, what were your duties and responsibilities in that position?

A. To coordinate all training in the Southern region, which included the training of company personnel just coming with the company, as well as prospective dealers for service stations.

Q. Where was that training done, sir?

A. In the last several years in Charlotte, North Carolina.

Q. Is there a permanent school there?

A. The school was given a permanent location with a class room and training stations in Charlotte, North Carolina.

Q. Do Atlantic dealers who are to be trained from the various districts in the Southern region all go to that school?

A. Did you say dealers?

Q. Dealers who are to be trained, yes.

A. From Baltimore to Miami, all go to that school.

Q. When a new man is taken into the sales depart-
2721 ment of Atlantic, does he go to that school?

A. The first day of employment with the company is the day that he enrolls in the school.

Q. And the dealers and the company's sales trainees go to the same school?

A. They take the first training program together.

Q. In the same classes?

A. Same classes.

Q. Is that school a five-week program?

A. That is a five-week school.

Q. Now, sir, in that school is Atlantic's "no forcing" TBA policy presented to the students?

A. On Wednesday of the first week of the school the trainees receive the orientation on TBA where they tell the dealers and the trainees the value of selling TBA, and then explain Atlantic's TBA policies and programs to them.

Q. Did you yourself give that course in that school occasionally?

A. On quite a few occasions.

Q. And when you did that did you explain the policy to the trainees under your charge?

A. Every instructor has a script to follow, and in that it is a must that we read a letter written by Mr. Colley to all the dealers in 1951 when we went on our present TBA program, stating the reasons behind it, and also point-
2722 ing out very vividly that it is theirs to accept or reject, that it is in no way compulsory.

Q. In your more recent experience in the Baltimore district, have you found that policy to be carried out in practice?

A. The policy is carried out in practice in the Baltimore district.

Q. You have salesmen under your charge in the Baltimore district, is that not a fact?

A. Yes.

Q. You are in charge of salesmen?

A. Yes.

Q. Do your salesmen explain that policy to the new Atlantic dealers as they are recruited?

A. They explain that to the prospect during the recruiting period. Then if he impresses the salesman he is brought in to my office, or I on occasions will visit the prospect at his home, where again I point out to him once the screening is complete and we have decided on the likely prospect, we take them in to Mr. Hathaway, and he again explains our program.

Q. Does his explanation include a statement of the "no forcing" policy?

A. We all use that same approach.

Q. I am not quite sure. I may have covered this point. When you discuss it with dealer recruits, do you ex-
2723 plain the policy to them?

A. Yes.

Q. And you see that your salesmen do?

A. Oh, definitely.

Mr. Ballard: I have no further questions of Mr. Munch. Doubtless Mr. Kelaher will have a few.

Cross-Examination by Mr. Kelaher.

Q. Mr. Munch, I listened to your direct examination and your direct testimony, and I haven't heard either counsel or you make reference to the brand of TBA which you sponsor in your region. I think the record probably should show that. You were the sales training supervisor, is that right?

A. Coordinator.

Q. Of the Southern region?

A. That is right.

Q. Now would you tell us what brand of TBA you were referring to during your testimony?

A. As I said, we first empressed the trainees with the value of selling TBA, and did try to sell them Firestone.

Q. You didn't assume your present assignment as sales supervisor in the Baltimore district until September 2, 1957, is that correct?

A. No. December 4, 1957.

Q. December 4, 1957?

2724 A. That is right.

Q. And your assignment began as sales supervisor in the Baltimore district at that time?

A. It is still the same thing.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until two o'clock.

(Thereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 2:00 p.m., this day.)

2725 **Afternoon Session.**

2:00 p.m.

Hearing Examiner Kolb: The hearing will come to order.

You may proceed.

Mr. Kelaher: May we recall Mr. Hathaway to the stand, please?

HOLLAND M. HATHAWAY resumed the stand and, having been previously duly sworn, testified as follows:

Cross-Examination (resumed) by Mr. Kelaher:

Q. Mr. Hathaway, how do your service salesmen promote Firestone TBA, if at all?

A. I don't think my service salesmen have much to do with promoting Firestone TBA except as they may work under the direction of a salesman in a particular location in which they happen to be working.

Q. Yesterday, and I think this may have been inadvertent, on your direct examination your attention was called to the fact that there were 16 employees who you stated had direct responsibility with respect to promoting Firestone TBA, and included in those 16 were four service salesmen.

Is that correct?

2726 A. Yes.

Q. You recall that statement?

A. Yes, sir.

Q. And you stated that the service salesmen, in fact all 16, as I understood your testimony, spent from ten to twenty percent of their time promoting Firestone TBA. Would that be true of service salesmen?

A. They would do a lot of the teaching and the training

and handling of Firestone TBA items, and teaching the dealer and the dealer's employees. Of course they are constantly teaching service, installation and that sort of thing of the Firestone TBA item. They don't take orders or that type of thing the way the salesman does. But in the installation, training, teaching and all, they would be spending a good bit of their time on that basis.

Q. However, that wouldn't be classed as promoting Firestone TBA. They are more in the nature of salesmen who teach them how to perform services of one type or another, and they may use Firestone TBA in doing that. But they are not really promoting Firestone TBA with their dealers, are they?

A. Well, they do assist the salesman in great measure, the salesman's job, in promoting the TBA. So I do think that they are in many ways promoting the sale.

Q. They are promoting the sale of TBA, but are you referring to all TBA or Firestone TBA?

2727 A. I would have to refer to both Firestone TBA and non-Firestone TBA.

Q. TBA in general?

A. TBA.

Q. So that your figure of ten to twenty percent of their time might be slightly high, or might be high, would you think, with respect to promoting Firestone TBA?

A. No, I don't think I would want to change that figure in their case.

Q. Does your same answer hold true with respect to the other twelve employees, including yourself, that you referred to yesterday with respect to that ten percent or twenty percent figure?

A. Yes, sir, I believe it would.

Q. I will come back to that in a little while. At this time I want to go into another subject.

You were asked on direct examination this morning to

state the advantages to Atlantic of an Atlantic dealer handling Firestone TBA. Do you recall that question?

A. I honestly don't quite recall it. I said so much up here.

Mr. Thompson: I think the question was asked yesterday, Mr. Kelaher. That may be the confusion.

Mr. Kelaher: No. I have it in my notes as of today.

2728 Mr. Thompson: It must be true then if you have it in your notes. A similar question was asked yesterday with respect to the training of Atlantic personnel which may have caused the confusion.

By Mr. Kelaher:

Q. One of the reasons you gave on direct examination as to why it is to Atlantic's advantage for a dealer to handle Firestone TBA is because Firestone is nationally advertised. Do you recall that?

A. Yes. I know that is an advantage.

Q. Do you recall saying that.

A. It seems to me that we were talking about what Atlantic salesmen do to promote Firestone TBA.

Q. This is another topic. We are talking about the advantages to Atlantic of Atlantic dealers handling Firestone TBA, and you gave what amounts to a five-point answer. I can refresh your recollection on it if you wish.

A. I wish you would.

Q. First, you said that Firestone is nationally advertised; second, you said that Firestone has consumer acceptance and, as I understood you, customers in some instances actually demand Firestone; Firestone quality is excellent—I am not using your exact words, but I have the substance of what you said—and the next one is that delivery points are kept to a minimum; and next, that prices are com-

2729 petitive on Firestone. Do you recall that testimony this morning?

A. Yes, but I don't recall it in response to the question that you are asking me.

Q. Do you think there are advantages to Atlantic of Atlantic dealers handling Firestone TBA?

A. I certainly think there are advantages to the dealer, and if there are advantages to the dealer then of course they would be advantages to Atlantic.

Q. In your opinion there are advantages to both?

A. Yes, sir.

Q. Let me ask you this: Why is it more advantageous to a dealer to handle a Firestone TBA than any other nationally advertised TBA, such as Goodyear, for example?

A. I couldn't very truthfully say that there wouldn't be advantages for a dealer handling Goodyear.

Q. Or/and other nationally advertised brand?

A. I am interested in Firestone. And because I am interested in Firestone I just think it is better.

Q. However, you stated it was an advantage to the dealer to handle Firestone—

A. I think.

Q. —TBA. Wouldn't it be just as advantageous for him to handle some other brand?

A. In our market in Baltimore Firestone seems to have the best acceptance and therefore in our opinion—

2730 in my opinion it has the best advantage to the dealer.

Q. Isn't it true that Goooyear, US, Goodrich, and many other national brands are nationally advertised and sold in Baltimore?

A. Oh, yes. Everything seems to be sold in Baltimore.

Q. Isn't it true that many dealers might think that it would be to their advantage to handle one of those other brands?

A. If they do, then they are free to handle them.

Q. You state that another advantage to the dealer—of course you say they are free to handle them but in your

opinion it would be to their disadvantage to handle them; is that correct?

A. No, I wouldn't say that at all.

Q. Fine. You also state that another advantage to the dealer is that Firestone has consumer acceptance and that there are requests for Firestone. Isn't it true that other brands of tires, including Goodyear, also have consumer acceptance?

A. It certainly is.

Q. Isn't it true that customers demand other brands of tires other than Firestone?

A. I am sure they do.

Q. Isn't it true also that at one time Atlantic thought that Lee tires were better for their dealers, and Exide
2731 batteries, than any other brands; isn't that correct?

A. We used to sell them.

Q. Isn't that correct? Wasn't that the reason that Atlantic sponsored Lee-Exide, because they thought it was better for their dealers?

Mr. Thompson: If you know, Mr. Hathaway.

Mr. Kelaher: He was with the organization at the time.

A. I can't state that they thought they were better.

By Mr. Kelaher:

Q. But they thought it would be more advantageous for their Atlantic dealers to handle those products, did they not, than other products?

A. I can't tell you that.

Q. You can't answer that question?

Let's see now. You also said that it was advantageous to Atlantic dealers to handle Firestone TBA because of the quality. Isn't it true that there are other brands of tires, batteries, and accessories which also are of like grade and quality as Firestone?

A. I know the Firestone quality because I see a lot of

them, and therefore that is why I can truthfully recommend them.

Q. But you are in no position to say that there aren't other tires, batteries, or accessories which are not of
2732 equal quality, are you?

A. No, I am in no position to say that.

Q. You also made the statement yesterday, which is one of the ones that Mr. Thompson had reference to, I believe, that you thought it was advantageous to an inexperienced dealer not to have "droves of jobber salesmen calling on him." Do you recall that?

A. Yes.

Q. So in your opinion you prefer—Atlantic, rather, thinks it is to a dealer's advantage not to have jobber salesmen calling on Atlantic stations; is that correct?

A. Not to have droves of jobber salesmen calling on them.

Q. How would you limit it then? Are you in favor of having some jobber salesmen and not others?

A. I think every dealer would have some jobber salesmen calling on him, certainly. Droves of jobber salesmen calling on them certainly in my opinion is not an advantage for a dealer.

Q. But you don't deny the right of a jobber salesman to call on any businessman that he cares to, do you?

A. Not in the least. No, sir, not in the least.

Q. Then you also stated that one of the advantages to Atlantic dealers—you say "as well as to Atlantic"—for handling Firestone TBA, is because their prices are competitive. Isn't it true that Atlantic dealers can ob-
2733 tain the same or better prices in other brands of TBA than Firestone?

A. Not to my knowledge, no, sir.

2734 Q. Are you familiar with the price structure in the tire industry?

A. Do you mean, can I quote tire prices, Mr. Kelaher?

Q. Do you know whether or not some brands in the tire industry are generally sold at lower prices than other brands?

A. Yes, some brands would be sold at lower price. I would know that.

Q. So that there are brands which could be obtained by Atlantic dealers at lower prices than Firestone?

A. Of lesser quality.

Q. That is debatable.

You are in no position, I take it, to pass on the quality of Firestone, are you?

Mr. Thompson: If your Honor please, Mr. Kelaher just very carefully qualified Mr. Hathaway as an expert on quality a little while ago.

Mr. Kelaher: Not on quality.

By Mr. Kelaher:

Q. This morning you will recall in connection with a question with reference to Mr. Varnadore you made reference to the new lease, the new Atlantic lease?

A. Yes, sir.

Q. That lease was—I think the printed date is July, 1956, so that Atlantic dealers who have executed leases since that time or have asked for a change have
2735 entered into that particular lease; is that correct?

A. That is correct.

Q. Under that lease Atlantic obtains a return as rental on gross receipts, exclusive of certain taxes, and so forth, from its Atlantic dealers, isn't that correct?

A. Yes, on gross sales.

Q. And that includes gross sales of TBA?

A. Yes.

Q. Isn't that true?

A. That is true.

Q. So that from a financial standpoint it doesn't make any difference whether an Atlantic dealer sells Firestone or non-Firestone TBA; Atlantic still obtains a percentage of the gross sales of that TBA; isn't that correct?

A. A percentage of the gross sales that the dealer does.

Q. So it makes no difference from the brand standpoint, as I understand your answer, what TBA is sold by the Atlantic dealer insofar as rentals are concerned?

A. It would be based on the total gross sales of the station regardless of what he sells.

Q. And in that connection do you audit the books of the dealer or review the books of the dealer in computing rentals?

A. The salesmen do.

Q. You also made reference to the fact, this morning, that your salesmen, Atlantic salesmen, use an inven-
2736 tory stock list in connection with inventory checks at Atlantic dealer stations; do you recall that?

A. Yes, sir.

Q. Isn't that the Firestone basic inventory guide that you are referring to which is used?

A. It could be, or it could be one that they devised themselves.

Q. It could be one that Firestone devised themselves?

A. Or the salesmen's own, yes.

Q. Or the salesmen's own?

A. Yes.

Q. In connection with new types of TBA products which come on to the market, you referred to the fact that Atlantic personnel, salesmen particularly, must train Atlantic dealers on new TBA products; is that correct?

A. Yes, sir.

Q. And in that connection you referred to dry-charge batteries—the Firestone dry-charge batteries and tubeless tires?

A. Yes, sir.

Q. Isn't it true that competitors of Firestone also have such products, and such training would be necessary in any event, not just because Firestone happens to have them?

A. I picked those two examples because they are new to the industry and I believe Firestone was the first
2737 with the dry-charge battery. We took the opportunity to train our dealers in handling them. The tubeless tire is something that I would image all tire companies have tubeless tires today.

Q. So, in any event, you would have to train your dealers whether it was a Firestone brand or some other brand, as I understand your answer; isn't that correct?

A. We make it a point to train our dealers on all new innovations in our industry.

Q. During the course of your testimony you have made it quite clear, I think, that TBA is an essential part of the complete service station operation. Isn't that correct?

A. I feel that way; yes, sir.

Q. Isn't it true that an Atlantic service station dealer must carry TBA to remain competitive with other service station dealers of other oil companies?

A. We believe that.

Q. And isn't it an essential part of Atlantic's program to keep its dealers competitive so that, of that fact itself, it must devote considerable time to TBA with respect to its service station dealers?

A. Yes.

Q. So it follows, then, that it is to the interests of Atlantic to train dealers, teach dealers, and so on, in connection with TBA to protect its own interests with
2738 respect to competitive oil stations: is that correct?

A. Yes, sir.

Q. And that is true regardless of the brand which is carried by any service station, isn't that true?

A. Yes, sir.

Q. So isn't it true, and based on your testimony now, that all the expenses incurred by Atlantic in connection with TBA, do not in and of themselves represent a saving to Firestone because they are expenses which would be normally incurred by Atlantic in the course of its normal business operations with service station dealers?

A. If I understand your question correctly, we would be doing a good bit of this training and teaching anyway.

Q. I have just one more group of questions.

I would like you to turn your attention to loans to dealers for a moment.

A. I beg your pardon?

Q. I would like to ask you some questions about loans to dealers.

In your experience as District Manager, have loans been made to new service station operators or to new operators of old service stations?

A. Yes, sir.

Q. And have those loans at times been in inventory instead of cash, or in lieu of cash?

2739 A. Not normally. It might be in gasoline, but that is a very—we don't like to do that.

Q. How is it in connection with TBA?

A. We would much rather do it on equipment.

Q. Do you recall any loans to dealers in stock rather than in cash?

A. We would make it in money unless we used gasoline. We don't like to use gasoline, so we keep away from that. Otherwise we would make loans based on a cash loan to a dealer with his equipment as collateral.

Mr. Kelaher: No further questions.

Mr. Thompson: No questions.

Hearing Examiner Kolb: That is all, Mr. Hathaway.

(Witness excused.)

Mr. Thompson: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

2740 Hearing Examiner Kolb: The hearing will come to order.

RICHARD D. THOMAS, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Freed.

Q. Mr. Thomas, will you give the reporter your full name and address?

A. Richard D. Thomas, 2803 Arlene Circle, Baltimore 7.

Q. Mr. Thomas, what is your present employment?

A. I am presently a promotable dealer salesman in the Baltimore district for the Atlantic Refining Company.

Q. What did you do before entering Atlantic's employ?

A. I went through normal schools, went to college, and upon graduation went into the United States Air Force, where I served as a personnel officer for two years.

Q. And how did you happen to communicate with the Atlantic Refining Company concerning employment?

A. When I came out of the service my brother was employed by Atlantic in Erie, Pennsylvania, as a promotable dealer salesman, and he told me the advantages of working with Atlantic and how well he liked it, and suggested that I try it.

2741 Q. By whom and when were you employed by Atlantic Refining Company?

A. I was employed in October of 1954 by Mr. Hathaway.

Q. What was your first assignment as an employee of Atlantic?

A. The first thing they did was send me to the Atlantic dealer training school in Miami, Florida, on November 1, 1954.

Q. Was that a regular dealer training school, a five-weeks course?

A. It was a regular dealer training course of five weeks, of which there were approximately sixteen Atlantic dealers, prospective dealers, and four of us company employees.

Q. That is four, including yourself?

A. Including myself.

Q. What was your assignment in the Atlantic Company thereafter when you finished school?

A. When I came back from school I was assigned as a service salesman to work with various promotable dealer salesmen throughout the entire Baltimore district.

Q. And how long did you serve as a service salesman in the Baltimore district?

A. From December, late December 1954 to January 14, 1957.

Q. In January 1957 was your position changed?

A. At that time I was promoted to promotable dealer salesman.

2742 Q. And have you had that same position in the same district since?

A. I have.

Q. How many customers of Atlantic Refining Company do you serve as a promotable dealer salesman?

A. I have nineteen customers.

Q. And are those customers lessee dealers or contract dealers?

A. They are all lessee dealers.

Q. Would you just describe generally the territory which you handle?

A. Yes. My territory roughly would include West Baltimore, Southwest Baltimore, City and County, and Anne Arundel County.

Q. In the course of serving your customers, do you have occasion to know them rather intimately?

A. Yes. In calling on your dealers you get to know them very well, by their first names, you develop a friendship with the dealer.

Q. How often do you cover your customers?

A. Well, I try to call on all my dealers at least once a week. Some dealers maybe twice a week.

Q. And in serving your customers of the Atlantic Refining Company, what is your major purpose?

A. My major purpose is to sell Atlantic gasoline and motor oil, the most of it I can.

2743 Q. Under whose immediate supervision do you work?

A. My immediate supervisor is Mr. Munch.

Q. And his position is?

A. Sales supervisor.

Q. Are you also supervised by Mr. Hathaway, the district manager?

A. From time to time Mr. Hathaway also supervises me.

Q. In carrying out your activities as a promotable dealer salesman, are you free to establish the policy under which you will operate?

A. No. I have to go by the policy as given to me by the Atlantic Refining Company.

Q. And what is your understanding of the consequences if you are ever to breach that policy?

A. I think I would lose my job.

Mr. Kelaher: Is that a speculative answer?

By Mr. Freed:

Q. Is that your understanding, that you would lose your job?

A. I think I would lose my job if I violated policy.

Q. In connection with the leasing of service stations to your customers, what is your responsibility as a promotable dealer salesman?

A. Well, the first responsibility is to keep these stations operated at all times.

2744 Q. What is your understanding about the availability of operation of service stations by Atlantic Refining Company itself?

A. As far as I am concerned, it just doesn't exist. I never had that experience.

Mr. Kelaher: May I have that question and answer?

(The reporter read the record.)

Mr. Kelaher: I have to admit I am confused on the question. You are talking about the availability of dealers?

Mr. Freed: I will clarify that.

By Mr. Freed:

Q. Is the alternative of operating stations under your supervision as an Atlantic promotable dealer salesman by Atlantic Refining Company itself available to you?

A. It is not.

Q. So far as you understand, all of the stations have to be operated by lessee dealers?

A. That is correct.

Q. And what would be the consequence to you, so far as you understand, if you were not able to provide lessee dealers to operate the stations under your jurisdiction?

Mr. Kelaher: Objection. I hesitate to object, but we are getting into some speculation here about the consequences of whether he does this or does that. I think we should stick to the facts.

2745 Mr. Freed: On the contrary, your Honor, I think that his understanding of his responsibilities is very important in this regard. Whether they are potential or are not is not important, so long as he understands that this is the situation and operates under that basis. I think it is germain to the issue.

Hearing Examiner: Kolb: The objection will be overruled.

The Witness: Again I would have to repeat, I think I would lose my job if I am not good enough to keep these stations operated.

By Mr. Freed:

Q. I want to go back to one point, and that is what do you do in connection with the leasing of service stations to dealers? What function do you perform in the decision to grant a lease?

A. I have no decision to grant a lease. What I do is primarily recommend to my sales supervisor, and Mr. Hathaway, respective lessees.

Q. Do your dealers know that that is your function, your sole function?

A. I think so, yes, sir.

Q. Whose decision is it to grant a lease on behalf of Atlantic Refining Company?

A. Mr. Hathaway, the district manager.

2746 Q. In the event that there would be a recommendation against renewing a lease, what would be your responsibility?

A. Well, in that case we would have discussed the lessee's shortcomings with the sales supervisor and he and I together would submit our recommendations to Mr. Hathaway in sufficient time to give the lessee plenty of notice.

Q. Would you have to make a detailed justification of any such recommendation?

A. In most cases it would have to be quite detailed. However, I have never had that experience.

Q. You have never made any such recommendation?

A. No.

Q. Have you, on the other hand, ever made recommendations that leases be renewed?

A. I have always made recommendations that leases be renewed.

Q. Have you had occasion to lose lessee operators of stations under your supervision?

A. Yes. This is one of the things that we are always faced with, losing dealers.

Q. What are the common reasons why you will lose a lessee dealer?

A. Well, they are varied, but perhaps the most common are family dislikes for service station operation, meaning extra hours that the husband isn't accustomed to; 2747 secondly, he just isn't able to make any money. In other words, he doesn't—he gets into financial difficulties. In some instances the dealer or the lessee feels that he can better himself in another business, and he will go into a competitive business or an entirely different business.

Q. And in these cases does the initiative for leaving the station come from the lessee dealer himself?

Mr. Kelaher: Your Honor, I think it might be better if we didn't have leading questions on questions of this type.

Mr. Freed: I am sorry.

Hearing Examiner Kolb: I will let him answer that question. It is obvious, anyway.

By Mr. Freed:

Q. You may answer the question. Do you want it read back?

A. Would you read it back?

(The reporter read the question.)

A. Yes. In all cases, with my experience, all cancellations have come from the lessee.

Q. From your experience is it easy or difficult to locate satisfactory dealers to take the place of dealers who have left?

A. It is one of the most difficult jobs, part of my job, is locating dealers. Satisfactory dealers are very hard to find. We search many ways to find them.

2748 Q. What are some of the search methods?

A. We use newspaper ads, which usually bring you quite a few bodies, but not too many good, sound businessmen. You waste a bit of time there. So the next thing we use, we call on competitive service station dealers. We find that quite profitable because these people are people who are already in the business, they like the business, and they are much easier to talk into maybe coming over to your station. We also talk to route salesment, dairy salesmen, postmen, farmers, and what have you.

Q. By any chance in your inquiries do you discuss this subject with your existing lessee dealers?

A. That is also another source, if you have lessees that are quite well known in their area, have been there for many years, they are many times able to offer you a lead as to a person who would like to go into the service station business.

Q. What is Atlantic's TBA policy?

A. As I understand Atlantic's TBA policy, we have sponsored TBA, but it is there for the dealer to accept it or reject it at his desire, his wishes.

Q. By "sponsored TBA" you mean the Firestone line of TBA?

A. I mean the Firestone line of TBA.

Q. Where did you learn of that policy?

A. I first heard of that policy when I attended
2749 the dealer training school in Miami, Florida. During that training course they brought out the fact that this was a good line of TBA, it had many advantages, but still it was up to the dealer to accept it or reject it. And I was subsequently informed of it at various sales meetings that we had while I was a service salesman, and again when I made promotable dealer salesman, Mr. Hathaway restated this policy to me.

Q. Do your dealers know about the "no forcing" policy?

A. Yes, they do.

Q. How do they know about it?

A. Well, I tell them of this policy when I first talk to them as a prospect in their homes. And they later learn about it, if they are successful in getting us interested in them, at an interview, and finally they learn about it again through a "no forcing" letter which they get from our regional manager after the signing of the lease.

Q. Do they also hear about it if they pass the first two steps and eventually get to Mr. Hathaway as a prospective lessee?

A. Well, yes. That was what I was referring to as the second step. In other words, when we take them in the office, if they are satisfactory to us, acceptable as a lessee, the sales supervisor and I take them in to Mr. Hathaway's office and he again goes over the TBA program with the dealer.

Q. And that TBA program includes a statement of the policy?

2750 A. "No forcing."

Q. Is that so?

A. That is true. That is correct.

Q. From your experience as a salesman, do you agree personally with the "no forcing" policy as a method of doing business?

A. I do.

Q. Why?

A. I think that is the only effective way to sell, is through salesmanship, getting the customer to like you so that he will buy from you. In the long run you will sell more TBA that way.

Q. In the granting of leases to new dealers is the handling of Firestone TBA ever made a condition or understanding of securing a lease?

A. It has never been, with my experience.

Q. Mr. Thomas, what kind of TBA do your dealers handle, anyhow?

A. They handle all kinds of TBA. I mean by that all brands. They buy anything they want.

Q. Do some of them buy very small quantities of Firestone TBA?

A. I have some that buy hardly any. I have others who buy a considerable amount.

Q. Can you give me some examples of those?

2751 A. Yes. Fred Koehler, a dealer of mine at North and Woodbrook, I can count on my fingers the dollars and cents figures that he has given as far as sponsored TBA.

Q. Has he been a lessee for very long?

A. Yes. Fred has been a lessee dealer for some seventeen years.

Q. More example, if you will.

A. With reference to Mr. Varnadore, who is in partnership with Joe Wyninger, they have been buying Exide batteries for years. Ever since I have known them, and I understand a considerable time before that.

The McNeill brothers at Glensfalls Parkway—

Q. Before you leave Varnadore—

Mr. Kelaher: I object to the latter part of his answer with respect to his understanding about the period before he arrived.

Hearing Examiner Kolb: Just limit the testimony to this man's time and that he has been with the company.

Mr. Freed: I beg your pardon.

Hearing Examiner Kolb: Let's limit his testimony to the time he has been with the company.

Mr. Kelaher: Is that part of the answer stricken, your Honor?

Hearing Examiner Kolbs: I doubt if that will be necessary. Let it stand.

2752 By Mr. Freed:

Q. Can you give us further examples with that limitation of their dealer buying practices since you have been a promotable dealer salesman in Baltimore?

A. The McNeill brothers at Glensfalls Parkway, I installed them in the station last summer and they initially stocked Autolite batteries.

Q. Have they carried them since?

A. They are still carrying Autolite batteries.

Then Gill Heiderman, who is a dealer with some twelve years with the Atlantic Refining Company, who buys practically no sponsored TBA.

Q. Do you have some further examples?

A. George Anderson, at 5640 Ritchie Highway, buys Fram filters exclusively, and has since I have been there, and handles Gates radiator hose and fan belts exclusively.

Willis McKeel, at Ritchie Highway and Jumper Hole Road, handles Best batteries and stocks them, and has done that since I have had him as one of my customers.

Q. Does he handle any other brand of batteries in addition?

A. No, he doesn't.

Virgil Tackett, Mountain Road and Rockpoint Road, handles Delco batteries exclusively.

Cake and Dorr, a partnership, at Hanover and Potee Streets, handle Fram filters exclusively, Bowers bat-
2753 teries, at least fifty percent.

I think that pretty well summarizes the—

Q. Can you think of anyone else? Can I refresh your recollection if I mention Amos Wells?

A. Oh, yes. Amos Wells, Clifton and Denison Streets, who has been I consider one of my finest dealers, buys US Royal and Kelly tires and stocks them. And he also purchases AC filters and spark plugs from an outside jobber.

2754 Q. Would it refresh your recollection if I mentioned Dick Gallagher?

A. Yes. Dick Gallagher, who is a past contract dealer of ours, we recently built a new station and he is now a lessee dealer and handles Dunlop tires and tubes. He did so as a contract dealer and he does now as a lessee dealer.

Q. Does he carry Dunlop batteries also?

A. I thought I said batteries. Yes, he does.

Q. From your experience, Mr. Thomas, does the purchase by a lessee dealer of TBA from sources other than Firestone play any part in Atlantic's decisions on granting promotions to better stations or improving existing stations?

A. No. My experience has been that the reverse is true, not that we penalize a dealer—

Q. Can you give us—

Mr. Kelaher: I don't believe he finished.

By Mr. Freed:

Q. Go ahead.

A. We actually have rewarded some of our dealers with newer type stations in spite of the fact that they buy outside or non-sponsored TBA.

Q. How about some examples?

A. An example is Amos Wells, who we are presently building a new three-bay service station for, to be ready in about two months. He will be the lessee.

2755 Q. Is that rebuilding of an existing station?

A. This is an entirely new location. He is moving from his present location to a new location. And Dick Gallagher, we completely remodeled his station at the present location.

The Gilbert Heiderman station is scheduled for remodeling within the next three months.

Q. Could you describe the extent of remodeling in that case?

A. A remodeling job, as I know it, is one where we completely tear down the old structure and build from the ground a modern service station.

Q. And that is what you are doing for Heiderman right now?

A. That's right.

Q. Is there any other example you can give us of similar action?

A. Well, I have an example, the McNeill brothers at Glensfalls Parkway. I am presently considering splitting the partnership up and giving Purcel McNeill, one of the acting partners, another one of my stations.

Q. And have you already discussed this with Mr. McNeill?

A. It has been discussed.

Q. Has this matter also been discussed with Mr. Hathaway?

A. It has.

Q. It has his approval?

A. He thinks it is a good move.

Q. In the course of calling on your customers, do
2756 you have occasion to see on display in the stations the TBA which is not bought from the Firestone store?

A. Yes. All the merchandise in the station is displayed openly, and I have an opportunity to see it at any time I like.

Q. Have you ever asked or told any of your customers not to display any of that TBA which was not bought from Firestone?

A. No.

Q. Were you present this morning, Mr. Thomas, when Mr. Hathaway was discussing and describing what Atlantic promotable dealer salesmen do to promote the sale of Firestone TBA?

A. Yes, I was.

Q. Do you, as a promotable dealer salesman, do the varions things which Mr. Hathaway described as being done by people of your category?

A. Yes. He described it very well.

Mr. Freed: I have no further questions, Mr. Kelaher.

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

2757 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Thomas, I would like to get a couple of dates clear. You became a promotable dealer salesman in the Baltimore area on January 14, 1957; is that correct?

A. That is correct.

Q. And at that time did you know that the Federal Trade Commission had issued a complaint against Atlantic

Refining Company and Goodyear with respect to TBA commissions paid to Atlantic by Goodyear and Firestone?

A. No, sir; I didn't learn of that until just about three weeks ago, maybe—four weeks ago.

Q. The complaint was issued in January, 1956. And you haven't heard about it until when?

A. About three or four weeks ago.

Q. About three or four weeks ago?

A. Yes, sir.

Q. Never was it ever mentioned at discussions of Atlantice personnel, Atlantic salesmen?

A. Not to my knowledge.

Q. You stated that your major purpose was to sell Atlantic gas and motor oil, and direct; is that correct?

A. That is correct.

Q. Do you attempt to sell Firestone TBA at all?

A. I do.

2758 Q. Is it to your financial advantage to have an Atlantic dealer purchase Firestone TBA?

A. Not at the present time; no, sir.

Q. I am asking you to answer Yes or No.

A. No.

Q. Whether it is to your financial advantage?

A. No.

Q. It has already been stipulated in the record and Mr. Hathaway testified that as a promotable dealer salesman you are on a quota system. Isn't that true?

A. There is no quota system whatsoever.

Q. Don't you receive extra compensation?

A. There is an extra compensation plan, which is available to the promotable dealer salesmen.

Q. Don't you operate under that plan?

A. It is available to me.

Q. What do you mean, "it is available"? You either operate on it or you don't.

A. I mean simply this: I have not received any compensation under it.

Q. But you have been operating under it at all times since you have been a promotable dealer salesman, haven't you?

A. It has been available to me.

Q. I would like to explore that a little.

Are you assigned a specific amount of Firestone 2759 TBA for a particular period?

A. No, sir; I am not.

Q. How is your extra compensation computed?

A. The extra compensation plan is computed based on the previous year's performance.

Q. Take it a little bit from there. In other words, this being 1958, if your 1958 sales of Firestone TBA exceeded your 1957 sales of Firestone TBA, you get extra compensation, don't you?

A. Providing you meet the minimum percentage increase.

Q. Providing you meet the quota, isn't it?

A. I don't have a quota, sir.

Q. You just said, now, that first you have a base figure. You say it is the previous year, so that would be 1957?

A. Yes, sir.

Q. Then you are assigned a quota which is a percentage increase over that base figure; isn't that correct?

A. I choose to call it "performance", performance factor.

Q. I don't think we have to engage in a battle of semantics. It seems to me that it is a very simple operation. You have a base figure which is your prior year's figure. That is number one, right?

A. Yes, sir.

Q. If you exceed a certain percentage, by a certain per-

centage, that amount, you get extra compensation, don't you?

2760 A. Yes, sir.

Q. So, getting back to my question, it is to your financial advantage to have an Atlantic dealer purchase Firestone TBA, is it not?

A. It hasn't been to date.

Q. That is not in response to the question. I think the response is obvious. It would have to be yes.

A. Put it this way; I have not ever received any extra compensation for the sale of Firestone TBA.

Q. Is that because you haven't tried to receive extra compensation?

A. It is not because I haven't tried.

Q. Then you have tried to receive extra compensation; is that correct?

A. I do try; yes, sir.

Q. And that is an incentive to you, to increase your sales of Firestone TBA, is it not?

A. I think it is an incentive; yes, sir.

Q. You think it is? It is, isn't it? Isn't the answer yes?

Hearing Examiner Kolb: He answered "Yes".

By Mr. Kelaher:

Q. You went down the list on ten Atlantic lessee dealers who are serviced by you and referred to the fact that they were buying non-sponsored Firestone TBA, Do you

2761 recall those names?

A. Yes, sir.

Q. The first one you mentioned, one of the first you mentioned was J. Varnadore. Do you recall that?

A. Yes.

Q. Isn't it true that Mr. Varnadore purchases Firestone tires?

A. It is.

Q. And stock them?

A. He does purchase Firestone tires.

Q. And isn't it true that Mr. Varnadore also purchases some Firestone accessories?

A. He purchases Firestone tubes, hardly any accessory items.

Q. But he does purchase some?

A. Very little.

Q. Is there an Exide battery sign on Mr. Varnadore's station?

A. There is an Exide battery rack in the inside of the sales room.

Q. I have asked you if there was an Exide sign on the station.

A. What do you mean "on the station"?

Q. On the outside of the station, is there an Exide sign?

A. No, sir.

Q. Is there a Firestone sign on the station? On the window?

2762 A. I think so, sir.

Q. Was your testimony to the effect that none of the dealers you mentioned purchased any Firestone TBA? Was that the substance of their testimony with respect to these ten dealers?

A. If I understand you right—

Q. You listed ten dealers. I want to know if none of the ten purchased Firestone TBA at all.

A. No, I don't think there is any that purchased none. There are some so close to it that they could be called None.

Q. Let me ask you about George Anderson, for example. Does he purchase any Firestone TBA?

A. He purchases some Firestone tires and tubes.

Q. Tires and tubes are an important part of the TBA program, are they not?

A. Yes, they are..

Q. I will pick some at random here. Let me ask you about Cake and Door. Do they purchase any Firestone TBA?

A. They purchase very, very little Firestone TBA. Practically none.

Q. What batteries do they handle?

A. Bowers.

Q. Do they handle any other batteries?

A. They handle one or two Firestone batteries.

Q. On direct examination, you said they handle 2763 50 percent Bowers and 50 percent of some other battery, which was unnamed. The other was Firestone, wasn't it?

A. That is correct, sir.

Q. So where does that leave us? Do you mean they only have two Bowers batteries in the—

A. At the last sales call they had two Bowers and two Motor Kings, which is a Firestone battery.

Q. And two Firestone batteries?

A. Yes, sir.

Q. So the 50 percent figure is slightly misleading, I would think.

Mr. Freed: Is that a question, Mr. Kelaher?

Mr. Kelaher: That is an observation.

Mr. Freed: I move that be stricken from the record.

Hearing Examiner Kolb: The observation may be stricken.

By Mr. Kelaher:

Q. I think you did state that some of the other dealers whom I have not mentioned also buy some Firestone TBA: is that correct?

A. Yes, sir.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Are there any further questions, Mr. Freed?

2764 Mr. Freed: That is all, your Honor.

Hearing Examiner Kolb: Thank you, Mr. Thomas.

(Witness excused.)

* * * * * *

2766 Mr. Thompson: I call Mr. Russell Cooley to the stand.

RUSSELL E. COOLEY was called as a witness for the Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Mr. Cooley, give your full name and residence address for the reporter?

A. Russell E. Cooley, 755 Chenango Street, Binghamton, New York.

Q. Mr. Cooley, are you presently the lessee of an Atlantic Station at Chenango and Nolan Streets in Binghamton, New York?

A. Yes.

Q. Is your station located in the City of Binghamton itself?

A. No, it is in the suburbs in Binghamton. It is called Hillcrest.

Q. The Binghamton area, I think, is sometimes referred to as the Tri-City or Triple City area?

2767 A. That is correct.

Q. What are those three cities?

A. Binghamton, Endicott and Johnson City.

Q. And they are all contiguous?

A. Yes.

Q. I believe, sir, that you first took this station with a partner in about 1947; is that correct?

A. January of 1947.

Q. Who at that time was your partner?

A. His name is Paul Purple.

Q. Then did he later withdraw from the station?

A. Yes, he did, because of health reasons.

Q. About when was that?

A. About 1950 or '51.

Q. Since that time, you have been the sole lessee of this station?

A. That is correct.

Q. You have, I believe, a three-year lease?

A. Yes.

Q. This is what, your second three-year lease?

A. Second one. I believe it terminates this coming January.

Q. Now, before you became an Atlantic lessee, what had been your experience?

A. I was with the Metropolitan Life Insurance Company as an agent for five years, counting three years
2768 in the Army. Before that time, I had worked and had leased a Socony Service Station.

Q. So that you had had three types of experience: One as a life insurance agent and second in the Army?

A. Yes.

Q. And third as a lessee of a Socony Station?

A. Right.

Q. As a matter of interest, sir, where did you serve in the Army?

A. I was in the European Theater in an armored division.

Q. Now going back, sir, to the operation of your station in Binghamton with Mr. Purple from 1947 until 1950 or '51, did you in those days handle TBA at that station?

A. Yes, we did.

Q. Do you recall whether at that time there was or was not a tire shortage where tires were still difficult to get?

A. I believe there was a tire shortage but the greater shortage was before we took the station over. In '47, I believe tires became more available.

Q. What kind of tires were you handling at that time at that station?

A. Lee, L-e-e tires.

Q. What kind of batteries?

A. Exide batteries.

Do you recall at about 1951, Atlantic Refining Com-
2769 pany commenced to sponsor Goodyear TBA in your area?

A. Yes, I do.

Q. Do you recall whether you did or did not attend a dealer meeting at which the Goodyear plan was explained by Atlantic?

A. Yes, that was held at the Arlington Hotel.

Mr. Kelaher: Which hotel?

The Witness: Arlington.

By Mr. Thompson:

Q. Do you recall generally, sir, what was said about it by the Atlantic people—can you tell us?

A. I believe they explained they were going to handle Goodyear TBA products although it wasn't necessary for us to buy strictly Goodyear products. It would be to our benefit to handle Goodyear tires because of the advertising and quality of the product.

Q. Was it made clear to you, sir, that you could accept or reject the plan?

A. Yes, it was. I think it was so stated in a letter that we received from the home office about that time.

Q. Now, sir, I am now going to show you three letters,

the first of which has been identified in this case as CX 150, which is dated March 1, 1951 and signed by Mr. Colley, Vice President of Atlantic Refining entitled "A Statement of Atlantic's TBA Policy" and ask you to look at that carefully and let me know whether you recall having
2770 received it at or about the time of its date?

A. Yes, I remember it.

Q. The second document I want to show you has been identified as CX-206, and is also a letter from Mr. Colley dated August 28, 1952 called "A Restatement of Atlantic's TBA Policy" and I ask you to look at that letter carefully and let me know whether at or about the time of its date, you recall receiving it?

A. Yes, sir, I remember that one also.

Q. I had showed you these letters immediately before you testified, had I not?

A. Yes.

Q. Then do you recall receiving still another letter in 1955 in the form which I now show you signed by some one other than J. D. Estlow, this document having been identified for this record as CX-207?

A. Yes, I remember this too.

Q. With respect to CX-207, the one that I have shown you is signed by Mr. J. O. Estlow, Manager of the Philadelphia and New Jersey Marketing Region, do you recall who the manager of the New York region for Atlantic was in 1955?

A. I don't believe I do. I think it was Ostrander, O-s-t-r-a-n-d-e-r.

Q. The letter you received would not have been signed by Mr. Estlow but by Mr. Ostrander or whoever was
2771 the Region Manager in New York at that time?

A. Yes. I'm not positive who it was at that time.

Q. Thank you, sir. Now, since Atlantic commenced promoting and sponsoring Goodyear TBA brand in 1951,

what tires have you actually handled or carried at your station, sir?

A. I have carried several brands. My main stock, of course, is Goodyear, but if a customer wants a Lee tire or Firestone tire or a Goodyear tire, I don't hestitate to buy it.

Q. Have you from time to time bought Lee tires from Mr. Boungiornk?

A. Yes, I have. He was my supplier.

Q. Is that spelled B-o-u-n-g-i-o-r-n-k?

A. Yes. He is an Atlantic dealer about half a mile from my station and he handles Lee tires.

Mr. Thompson: Now, would you mind repeating for me, please, his answer to the question about Lee tires.

(The reporter read the answer as requested.)

By Mr. Thompson:

Q. For a time after Atlantic commenced to promote and sponsor the Goodyear tires, where you handling Lee at your station?

A. Yes. Pardon me, at the time, we changed to Goodyear?

Q. Yes.

A. We were handling Lee tires.

Q. After the change, too?

2772 A. Yes, I continued to handle them for some time.

Q. About how long, sir, do you recall?

A. Probably a year.

Q. Why did you shift to Goodyear tires?

A. Well, I found that the name "Goodyear" is more acceptable to the public, quality of the brand, the advertising and the fact that they have a large stock available.

Mr. Kelaher: Could I have that answer again, please?

(The reporter read the answer as requested.)

By Mr. Thompson:

Q. Now, since 1951, Mr. Cooley, what brand of batteries or brands have you been carrying at your station?

A. Exide batteries and on occasion I have secured Willard or Delco batteries for a customer.

Q. Have you been handling Goodyear batteries at all since 1951?

A. I have sold a few Goodyear batteries also.

Q. Now, about your accessories, what sources of supply have you used since 1951?

A. I buy from several wholesalers, namely, Whipple's Automotive; Rose Unit Parts; United Auto Parts, Binghamton Auto Supply and several others besides those I mentioned.

Q. Do you buy accessories in any substantial quality from Goodyear?

A. No, not many accessories.

2773 Q. Are these non-Goodyear TBA items to which you have referred openly displayed at your station?

A. Yes, they are.

Q. Do you have an Exide sign at your station?

A. Yes, I believe there is.

Q. Do you carry Gates belts and hose?

A. Yes, I do.

Q. Are there signs or advertising pieces relating to those two Gates' items at your station?

A. Yes, there are.

Q. Do you have a Johnson's wax sign at your station?

A. I believe there is one.

Q. Do you have decals on your windows?

A. There were decals on the windows and they remodeled the station about two years ago as far as the windows were concerned and I believe there are no decals on the windows now, the new windows.

Q. Do you have Exide battery testers and chargers at the station?

A. Yes.

Q. Do they bear the Exide name?

A. Yes, they do.

Q. Do you have one of these Bowes thermometers on your station, do you recall?

A. I had a Bowes thermometer on the station. I
2774 believe it has been removed but I do have a Bowes sign saying "Tubeless repairs."

Q. Now, are all these non-Goodyear TBA items displayed so that they are visible to the Atlantic salesman and representatives who come to your station?

A. Yes, they are.

Q. Have they always been so displayed?

A. Yes, they have.

Q. Do you sell TBA on Atlantic credit cards?

A. Yes.

Q. Do you sell non-Goodyear TBA on Atlantic credit cards?

A. Yes.

Q. Have you ever been criticized for so doing by Atlantic?

A. Not at all.

Q. Do numerous TBA jobbers solicit your business?

A. Yes, they do.

Q. Do jobbers of tires other than Goodyear solicit your business ?

A. Yes, they have.

Q. Can you mention some of the brands which you have been solicited to buy in recent years?

A. Goodrich Tire Company; Firestone Tire Company and recently an Atlas representative. I believe Atlas is an Esso product

Q. Do you from time to time buy from any of these tire jobbers?

2775 A. Yes, I have.

Q. Mr. Cooley, have you ever been criticized by Atlantic for carrying non-Goodyear TBA?

A. No, I haven't ever.

Q. Have you ever been told to stop buying it?

A. No.

Q. Have you ever been told to get it out of your station?

A. No.

Q. Ever been told to hide it?

A. The way my station is constructed, it would be physically impossible to hide anything.

Q. Has Atlantic ever sought to force or pressure you to buy Goodyear TBA?

A. Not in the least.

Q. Have you at all times felt free to buy any brand of TBA that you wanted?

A. Yes.

Q. Have you in fact always done so?

A. Yes, I have.

Q. In the 21 years in which you have been an Atlantic lessee, has your lease been renewed many times?

A. Yes, I believe you made an error in the number of years there.

Mr. Kelaher: Yes, I think so.

Mr. Thompson: Excuse me, 11.

2776 The Witness: You said 21, it has been 11.

By Mr. Thompson:

Q. I mean 11?

A. Yes, that has been true.

Q. Upon the occasion of the renewal of your lease, has Atlantic ever brought forth the fact that you handle primarily non-Goodyear TBA?

A. No.

Q. Have you ever at any time felt that your lease was in jeopardy because of your handling of non-sponsored TBA?

A. Never.

Q. Are there a lot of oil companies actively in the Tri-City Binghamton area?

A. Yes, several.

Q. A number of service stations of competing companies?

A. Yes.

Q. In the years in which you have been at your station, have you built up a personal clientele who visit you and who rely upon you as a gasoline and TBA supplier?

A. Yes. My station is 90 percent neighborhood trade. I'm not on a through highway.

Q. Do you know many of your customers by name?

A. At least 95 percent of them I know by their first name.

Q. They know you by name?

A. Yes, sir.

2777 Q. Incidentally, sir, do you give personal credit to some of your customers?

A. Yes.

Q. So that they have charge accounts with you?

A. Yes.

Q. Have you from time to time been solicited by competitors of the Atlantic Refining Company to take a lease from one of them?

A. Yes.

Q. With all due modesty, would you care to mention a couple of names?

A. Yes, brand names—you mean of other companies?

Q. Yes. I mean what other companies have solicited you to take stations?

A. Well, as I said before, my station is on a neighborhood street and the reason it is—there is a short four-lane bypass which is about three-quarters of a mile long and on this three-quarters of a mile of a four-lane highway, I think there are six different companies represented by new stations. And at some time or other, I think I have been solicited at least twice by all of these companies. There is a Gulf station, a Socony station, a Sonoco station, two Esso stations, and American station and a Rotary station.

Q. Rotary is the name of an individual which does business in the Binghamton area?

2778 A. Yes, I think the company is known as the Southern Oil Company.

Q. Mr. Cooley, with all those opportunities, why have you stayed with Atlantic?

A. Because I am happy in my present situation.

Q. Is your station from time to time inspected by Atlantic representatives?

A. Yes, it is.

Q. Are the results of such inspection discussed with you by Atlantic?

A. Sometimes.

Q. On the occasions when they do discuss the inspection, is the point raised that you are dealing in non-Goodyear TBA?

A. No, it never is. I think the primary reason for those inspections is either appearance or service.

Q. Does the sales supervisor or the district manager sit down with you once a year or occasionally and have a review of your business?

A. Yes, they do.

Q. In the course of such discussions, do they make suggestions to you about how you might improve your earning capacity at the station?

A. Yes, I believe that is the object of those meetings, to produce a balanced selling job.

Q. Do you find such discussions helpful to you?

2779 A. Yes, they are.

Q. At such discussions, do they ever criticize you for not carrying Goodyear TBA?

A. No.

Q. Were you one of the Binghamton dealers who was honored by a visit from a Mr. Lipsky back in 1953?

A. Yes, I was.

Q. Did Mr. Lipsky identify himself as an investigator of the Federal Trade Commission?

A. Yes, he did.

Q. Did he seek to talk to you about your operations at the station?

A. Yes.

Q. Did you have such a discussion?

A. Yes, we did.

Q. Was it a fairly long discussion?

A. Yes, I believe it lasted about two hours.

Q. What was his objective and purpose in talking to you, if you can tell us briefly?

A. I believe the object of the discussion was that he was trying to discover if Atlantic were using any force on the Atlantic dealers to handle Goodyear TBA.

Q. At the time of his visit to you, did you have non-Goodyear TBA openly displayed at your station?

A. Yes, I did.

2780 Q. As he talked to you, did he write things down on a piece of paper?

A. Yes.

Q. Were the words he wrote down your words or his?

A. They were his words. I signed my name to the final sheet.

Q. Did he discuss the provisions of your lease with you?

A. Yes, he did and he asked to see a copy of my lease.

Q. Did he mention to you a provision in the lease which is sometimes called a 30-day cancellation clause—do you recall it at all?

A. Yes, I do.

Q. What was his objective and what did he say about it?

A. Why I gathered that he was trying to find out if Atlantic would ever use the 30-day clause as a whip in case they wanted us to handle an exclusive product. I believe I answered I didn't know and I didn't believe so.

Q. With respect to your own personal dealings and relationships with Atlantic, did you in your own words give him substantially the same information which you have given us here today?

A. Yes.

Q. That was back in 1953?

A. Yes.

Q. And since that time, you have in fact been carrying any brand of TBA you wanted to carry?

2781 A. Yes.

Q. Now, Mr. Cooley, the distinguished looking gentleman on my left here is counsel for the Goodyear Company and he may want to ask you some questions. The gentleman on my right, the particularly handsome gentleman, is Mr. Kelaher who represents the Federal Trade Commission and I'm sure he is going to have some questions for you.

Mr. Ingraham: I have no questions.

Hearing Examiner Kolb: You may cross-examine.

Cross-Examination by Mr. Kelaher.

Q. Mr. Cooley, I would like to review some of the answers you gave in response to questions by Mr. Thompson to see if we have them clear in our minds. Since Atlantic

began the Goodyear TBA program, which was in or about March 1951, you stated on direct examination that you carried Goodyear tires as your main stock, is that correct?

A. Yes, that is correct.

Q. You also stated that you carried other brands of tires, is that true?

A. Yes, I do. I don't carry them in stock necessarily but I do obtain them if the customer wants other brands.

Q. If the customer requests you obtain that particular tire?

A. Yes.

2782 Q. The only tire you stock is Goodyear?

A. That is right. I believe I still have a few Lee tires on my shelves left over from Lee stock.

Q. Now, with respect to batteries, you say that since Atlantic changed over to the Goodyear TBA program, you have carried Exide batteries as your principal stock?

A. That is correct.

Q. And also on occasion, you had purchased some batteries bearing the Willard or Delco brands, is that correct?

A. Yes, customer request.

Q. You also stated that since Atlantic changed over to Goodyear TBA program you have only carried a few Goodyear batteries, is that correct?

A. That is right.

Q. Now, with respect to the accessories, you stated that you make purchases from several wholesalers?

A. Yes.

Q. Is that true?

A. Yes.

Q. You also stated that you do not make many purchases of accessories from Goodyear?

A. That is right.

Q. Now, with respect to your service station identifi-

cation, prior to the time that Atlantic began to carry the Goodyear TBA line, you stated you stocked Lee tires
2783 and Exide batteries, is that correct?

A. Yes.

Q. Did you also—were they purchased from Atlantic?

A. Yes, I mentioned Frank Boungiorak as my lead supplier. The reason I mentioned that is because he is very close to me where I have to go across town to get to the Atlantic warehouse. At the same time I did get some Lee tires from the Atlantic warehouse as well as Exide batteries.

Q. That is when Atlantic was selling Lee tires and Exide?

A. They were in the TBA business.

Q. At that time did you also purchase some accessories from Atlantic?

A. Yes, I did.

Q. Now, at that time, did you have any window decals on your station or outdoor signs?

A. Yes.

Q. Before the changeover to Goodyear?

A. Yes, I did.

Q. What brands did you have out there?

A. I believe there was Exide batteries decal on the window and I believe a Lee tire decal.

Q. What happened after Atlantic changed over to Goodyear TBA with respect to those signs?

A. Well, they were removed by, I believe, a Goodyear salesman and a Goodyear decal was put up.

2784 Q. Did you request them to remove the Lee and Exide signs and put up the Goodyear signs?

A. No, I don't believe I requested it.

Q. Beg pardon?

A. No, I don't believe I did request it.

Q. You made no request. Did they just come around and take down the Lee-Exide and put up the Goodyear?

A. Yes. They do that quite frequently with promotions. Our Atlantic salesmen and Goodyear salesmen come around and put up different tire sales signs. In fact, they even come and take them down.

Q. You are talking now about Goodyear signs?

A. Yes.

Q. Now, I would like to go over with you the circumstances which led up to your discontinuing Lee tires and beginning to handle Goodyear tires and other Goodyear products. Do you recall specifically how you first learned about the fact that Atlantic was going to sponsor Goodyear TBA?

A. I believe we first received a letter from Atlantic explaining that they were going out of the TBA business and we would be able to get supplies and tires from Goodyear Tire and Rubber Company. I think that was followed by a meeting at the Arlington Hotel.

Q. What happened at the Arlington Hotel?

A. Well, there was a discussion and display of
2785 Goodyear products and it was explained to us how it would be to our benefit to handle Goodyear tires and TBA.

Q. Now, who were present at the Arlington Hotel meeting to which you refer?

A. We were Atlantic employees as well as Goodyear.

Q. Was the Atlantic district manager there?

A. Yes.

Q. Was the Goodyear district manager?

A. Yes.

Q. Were all the Atlantic dealers in the Binghamton area present to your knowledge?

A. I believe they were.

Q. Was it made clear to you at that time that Atlantic would like to have you carry Goodyear TBA?

A. Yes, it was.

Q. Was it made clear to you that Atlantic expected you to carry TBA?

A. No, I don't believe there was anything said that they expected us to but I think they explained that it would be to our benefit to handle Goodyear products.

Q. Did Atlantic make it clear to you that you were supposed to handle Goodyear TBA?

A. No.

Q. Now, I would like to discuss the signed statement you referred to in your direct examination. You
2786 stated that Mr. Lipsky spent about two hours with you?

A. Yes.

Q. So you recall that discussion very well?

A. Yes.

Q. And you also recall that you read the statement, do you not?

A. Yes, I did read it before I signed it.

Q. To your knowledge and belief, the statements appearing thereon were truthful, were they not?

A. Yes.

Mr. Kelaher: Mr. Examiner, I would like to have the reporter mark for identification the document which I hand her as CX-483, which I believe is the next number.

Hearing Examiner Kolb: Exhibit 438 is the next one.

(The document referred to was marked Commission's Exhibit 483 for identification.)

By Mr. Kelaher:

Q. Mr. Cooley, I am going to show you Commission's Exhibit 483 for identification and ask you to state what that is?

A. (After inspection.) I believe this is a statement that I gave Mr. Lipsky in 1951.

Q. 1953?

A. 1953, I'm sorry.

Mr. Kelaher: Your Honor, I now offer in evidence Commission's Exhibit 483, which is a statement of
2787 Russell E. Cooley dated December 8, 1953, bearing his signature and also the signature of Henry I. Lipsky, Attorney Examiner, Federal Trade Commission.

Mr. Thompson: May I have the purpose of the offer?

Mr. Kelaher: The purpose of the offer is to abide by the Hearing Examiner's ruling in our Baltimore hearings. As I recall it, if I were to interrogate the witness on the signed statement for any purpose, it should be offered in evidence. That is the reason I am doing it at this time.

Mr. Thompson. On that basis and for the reasons stated by Mr. Kelaher, I have no objection. May I ask the witness whether he can read this writing because I can't.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 483.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 483, was received in evidence.)

Mr. Thompson: This is in the nature of a voir dire question.

Hearing Examiner Kolb: You said no objection.

Mr. Thompson: I just wanted to ask one voir dire question. This stuff is not in your writing, is it?

The Witness: No, it isn't.

Mr. Thompson: Can you read it? Can you read the fellow's writing?

2788 There are parts of it that I can't quite make out.

By Mr. Kelaher:

Q. At the time Mr. Lipsky prepared this statement, he conferred with you for about two hours and he went over everything in the statement with you, did he not?

A. Yes, he did.

Q. At the time you knew everything that was in the statement and you could read the statement and if was discussed with you at length, isn't that true?

A. That is right.

Q. If there were any additions or corrections, you were asked to make them at that time, isn't that correct?

A. Yes.

Q. Now, Mr. Cooley, on direct examination today, you stated that you do not stock any batteries but Exide, is that correct?

A. That is correct. I believe there is one Goodyear battery in the station at the present time.

Q. Now, you also stated on cross-examination that has been the situation since Atlantic changed over to Goodyear TBA in 1951?

A. Yes and that was the situation before. Exide has been the only battery I have stocked.

Q. Now, in your signed statement, under two
2789 brands of TBA carried, you have batteries, "Goodyear and Exide (only stocks cheap battery, formerly Resolute, now All Weather.)" Now, both the Resolute brand name and the All Weather brand name are brands of the Goodyear Tire and Rubber Company, isn't that correct?

A. Right.

Q. So your statement on direct that you never stocked Goodyear batteries is wrong, isn't it?

A. There was a time when they first came out with dry charge batteries and Goodyear Tire and Rubber were the first ones to come out with a dry charge battery where the

acid is shipped separately and because of storage problems, I bought a few Goodyear batteries at that time. Exide at that time had not come out with dry storage batteries.

Q. However, you let this Court believe that at no time since the changeover to Goodyear TBA had you stocked Goodyear batteries and, as a matter of fact. you have stocked them.

Mr. Thompson: I object to the form of the question. I don't know whether he has led this Court to believe that or not. I would be happy to have the Court believe it but it doesn't seem to me that is the proper kind of question to ask Mr. Cooley.

Hearing Examiner Kolb: I will sustain the objection.

Mr. Thompson: May I also suggest, Mr. Kelaher, when you examine a witness with respect to a statement 2790 in Mr. Lipsky's handwriting, which he was induced to sign, that you show it to him.

Mr. Kelaher: I object. I don't understand your frivolous statement. I not only showed it to him, he has read it and there is nothing in this record to indicate he was induced to sign it. He has read the statement carefully. I gave him all the time he wanted to read.

Mr. Thompson: When you ask questions about this statement, I would appreciate it if you would show the witness the document to which you are referring and the part to which you have reference and are quoting. If you don't want to adopt the suggestion, I will just object when you follow some other practice.

Mr. Kelaher: You just keep objecting. I am not going to adopt it.

Mr. Thompson: I will start objecting when you get out of bounds like I always do.

Mr. Kelaher: I am just attempting to get the facts here and there is no attempt to embarrass the witness. If there

is a conflict in his testimony, I think we are entitled to show it.

By Mr. Kelaher:

Q. Now, you also stated on direct examination that you purchased from a number of suppliers and that you purchased very few accessories from Goodyear, is that correct?

2791 A. Yes, I do purchase a few however from Goodyear too.

Q. You do purchase a few. And what products have you purchased from Goodyear Service Store since March 1951?

A. Well, I have purchased Purolator oil filters.

Q. Do you stock Purolator oil filters?

A. Yes, I did. However, I don't purchase my oil filters from them at the present time. I believe they handle AC filters now. I do have Purolator filters in stock.

Q. But you have purchased from Goodyear on a stocking basis in the past?

A. Yes.

Q. Now, what other accessories have you purchased from Goodyear Service?

A. I believe Simonize products and DuPont products, polishes, DuPont chemicals.

Q. Have any of those been purchased on a stocking basis?

A. Yes, they have. Sometimes they come up with a spring deal.

Q. So your statement that you only make a few purchases of accessories from Goodyear Service Stores, I believe, is slightly understated, is that correct?

A. No, I would say just a few.

Q. Even though you purchase items on a stocking basis?

A. Have occasionally. Most of my TBA is purchased

from salesmen who come to the station and I don't
2792 particularly buy from any certain one. It is whatever I happen to need when a certain salesman comes along.

Q. Now, at the time of December 1953, when Mr. Lipsky called at your station, the only other TBA supply of accessories that you mentioned was Whipple's Auto Supply, is that correct?

A. That is possible.

Q. At that time you didn't mention this whole list of TBA jobbers you referred to in your direct testimony, is that correct?

A. It is possible I was buying only from Whipple's because Whipple is the nearest supply house to my station.

Q. So at that time, you were purchasing accessories from Goodyear Service Store and from Whipple's Auto Supply and from no one else?

A. I don't believe that is true. I think I had on occasion purchased from these other houses I mentioned.

Q. On occasion, but your purchases were very few from the other houses?

A. Very few.

Q. Now, I would like to discuss with you the events leading up to your changeover to Goodyear TBA. In your signed statement, reference is made to the fact, and I will show you this part of your statement, under 5, and ask you if that refers to the meeting at the Arlington Hotel to which you referred in your testimony. I quote:

2793. "In 1950, ARC District Manager introduced District Manager for Goodyear, explained that ARC going out of TBA business."

Was that the Arlington Hotel meeting?

A. Yes.

Q. Then the next sentence: "Mr. Russell, ARC salesman together with Goodyear representative would like to

see Goodyear TBA." Was that statement made at the meeting or was that made later individually with you, do you recall?

A. I would imagine that statement was made later as Mr. Russell was my salesman.

Q. He was your salesman?

A. Yes.

Q. He, together with a Goodyear representative, called on you, is that correct?

A. I believe it is.

Q. They discussed the situation with you?

A. Yes.

Q. And at that time Mr. Russell said that they would like to see you go Goodyear, is that right?

A. Correct.

Q. Did the Goodyear representative also say that, do you recall?

A. Yes, I would imagine he said he would like to see us handle Goodyear.

* * * * *

2794 By Mr. Kelaher:

Q. Let me put it this way. On direct examination, you gave a number of reasons why you changed from Lee-Exide, and so on to Goodyear TBA. Do you recall your answers on direct?

A. Yes.

Q. You referred to such things as quality, advertising, public acceptance and the fact that they had a large stock available and so on. Wasn't the real reason the fact that you knew that in order to remain in the good graces of Atlantic, it was to your advantage to carry Goodyear TBA?

A. No, I don't believe that was true at all. I think what I said, we were supposed to handle Goodyear. I think what I meant there by the word "supposed" is the fact that

all Atlantic stations were soon to be associated with
2795 Goodyear Tire and Rubber and in order to benefit by the advertising and the name "Goodyear," the public acceptance of the name "Goodyear," it would be to my benefit to handle Goodyear batteries.

Q. Now, as I understand your answer now, you knew that all of the Atlantic stations in the Binghamton area were going to switch over to Goodyear TBA?

A. I didn't know they were going to but I knew that they were going to be offered Goodyear products and tires and that the majority of them were going to handle Goodyear Tire and Rubber.

Q. That is exactly what happened?

A. Yes, that is what happened.

Q. Now, you also state in your signed statement that you make reference to a survey. Do you recall that at the time? The statement on this signed statement says: "Survey conducted ARC that Goodyears was more favorable." Do you recall any statements by Atlantic to you that Goodyear was more favorable to Atlantic dealers than other brands? Do you recall that statement?

A. I don't recall the exact statement. I think it was brought out in meetings.

Q. What did they say about the survey, do you recall that?

A. I believe they said they had a survey in the State of Pennsylvania—

2796 Q. (Interposing.) Which was Atlantic?

A. Yes, and that I think Firestone Rubber and Goodyear were considered in our area and they found that Goodyear had better acceptance than Firestone.

Q. Did they ever ask you which one you preferred?

A. Yes, I believe they have asked me my thoughts along the line and I have told them Goodyear.

Q. Was this prior to 1951?

A. I can't say for sure.

Mr. Kelaher: May I have a short recess, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

2797 Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. Mr. Cooley, prior to Atlantic's switch over to TBA, you carried Lee tires on a stocking basis, did you not?

A. Yes.

Q. And that means you carried them from about 1947 to sometime in '51, over four years, approximately?

A. That is right.

Q. Lee tires have a good consumer acceptance in your area, do they not?

A. Yes, very good.

Q. And did Lee tires have a road hazard guarantee, which is particularly acceptable, isn't that true?

A. It is very attractive. That was one of the things I felt bad about when we left Lee tires was the fact we were giving up the road hazard guarantee. Goodyear guaranteed against workmanship and material. Since that time, I have found in the past five years I have had three tire adjustments on Goodyear tires.

Q. Three what?

A. Tire adjustments. At the time we were handling Lee tires I found we had a tire adjustment everyday.

Q. You had no trouble getting adjustments on Lee?

A. No, the tire I replaced the chances were in a 2798 short time I would be adjusting that.

Q. But the fact is that Lee does have good consumer acceptance and Lee is also advertised in your market area, too, isn't it?

A. So.

Mr. Thompson: I object to the double questions, Mr. Kelaher. I don't know which one he is answering. You asked about advertising and you also asked about public acceptance in the same question. It is impossible to tell which question he is answering when you ask a double question.

Mr. Kelaher: I will rephrase it. I think the witness understood it, but I will rephrase it.

By Mr. Kelaher:

Q. Lee tires are advertised in your market area, too, are they not?

A. They are, but I will say since Atlantic has changed to Goodyear—

Q. (Interposing.) I am just asking you. Well, you go ahead, finish your sentence.

A. I wanted to say since Atlantic has changed to Goodyear, Lee tire has become almost extinct in my area.

Q. Thank you.

And, of course, prior to when Atlantic was carrying Lee tires, Lee tires were a big seller in your area?

A. They were as far as Atlantic was concerned.

2799 Q. Now, was it also true that you could get a lower price on Goodyear tires?

A. There may be some instances where the price is a little lower on Goodyear, but I think they are comparable.

Q. Now, you also stated one reason you preferred Goodyear versus Lee was due to quality. You don't profess to be an expert on the quality of the tires, do you?

A. No, I don't, but I believe that the Goodyear tire is a much better tire.

Q. In your own opinion.

A. In my own opinion after 10 years of experience in the tire business.

Q. But, Lee also puts out a tire which is comparable to Goodyear as to line, do they not?

A. Yes, they do.

Q. Now, weren't you able to purchase Lee tires from Mr. Buongiorne after Atlantic discontinued the Lee program?

A. Yes, I was, and did on occasion.

Q. So that you did have a stock available if you wanted them?

A. Yes, sir.

Q. So you did state on direct examination that one reason you preferred Goodyear was because they had a large stock available. But you also had a stock available of Lee, is that true?

A. Yes, but the Goodyear service stock was much 2800 larger and more varied than Frank Buongiorne's was.

Q. Of course, there was also a Lee factory branch in Syracuse, I believe, where you could have obtained them; is that true?

Mr. Thompson: Just a minute. Mr. Kelaher is—

Mr. Kelaher (interposing): I also believe there was a Lee factory branch in Syracuse, New York, where he could have obtained Lee tires.

The Witness: Yes, there was. I don't know whether it is still there or not.

By Mr. Kelaher:

Q. There was at the time, but there is a change over?

A. Yes.

Q. Now, have you had any difficulty since you changed to Goodyear tires competing with the Goodyear service store?

A. No, I have not.

Q. Well, I would like to refer you to this statement in your signed statement.

Mr. Thompson: Would you be kind enough to show it to him, Mr. Kelaher?

(The document was shown to the witness.)

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. I would like to read the statement that he can't match the competition of Goodyear service store. Recently Lee wanted to sell Links Aviation Company some 2801 truck tires, but Goodyear store quoted Links a better price than the dealer could offer. His list was $59.00; Store sold for $60.00, almost as cheap as he could buy tires from the Store: Do you recall that?

A. Yes. I think that is true on a fleet such as Links would have. The Goodyear store does give them a fleet price.

Q. So you do have difficulty competing with the Goodyear service stores in some instances or it is in many instances?

A. No, I would say that is an isolated case. Evidently, I did have trouble with that case.

Q. Do you think that was somewhat unfair that your purchase price was about the same as Goodyear's selling price?

A. Well, I think probably they are selling Links tires at a free price, the same price as they would sell them to me as far as that is concerned.

Q. The point is the Goodyear service store is in competition with you for business, is it not?

A. Yes, that is true.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Thompson.

Q. Did you object to the installation of a Goodyear decal on your station?

A. No.

Q. Did you consent to it?

A. Yes.

2802 Q. You were not requested or subpoenaed to appear in this proceeding as a witness for the Federal Trade Commission, were you, sir?

A. No.

Q. I can readily understand why, sir.

Mr. Thompson: That is all.

Recross Examination by Mr. Kelaher.

Q. With respect to the service station identification, I believe you did testify, and your statement so shows that they did not ask your permission, neither Atlantic nor Goodyear asked your permission to put up the Goodyear window decals, did they?

A. I don't know as they asked my permission. They told me that they were going to put them up. I think if I had objected that they wouldn't have put them up.

Q. However, according to your statement, they did not ask your permission and at least they went up; is that correct?

A. Yes, they went up. But I was present at the time, and if there had been any objection, I certainly would have told them.

Mr. Kelaher: No further questions.

Mr. Thompson: Thank you, very much, Mr. Cooley.

(The witness withdrew from the stand.)

Mr. Thompson: I will find Mr. Buongiorne. He is

2803 our next witness.

Hearing Examiner Kolb: We will take a few minutes recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, may I call Mr. Frank R. Buongiorne to the stand.

VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964

VOL. III, pp. 1611 to 2373

In the

United States Court of Appeals

For the Seventh Circuit

No. 13339

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner,* vs. FEDERAL TRADE COMMISSION, *Respondent.*	Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE BLAKEMORE-WARREN PRINTING COMPANY, CHICAGO

INDEX.

Summary of proceedings below 1
Amended Complaint 5
Answer of Goodyear Company 13
Answer of Goodyear Company, Inc. 19
Answer of Atlantic to Complaint as amended by order of May 21, 1956 26
Order sustaining Interlocutory Appeal 35
Motion of Goodyear Company and Goodyear Company, Inc., to withdraw issues and to strike evidence 38
Answer in opposition to motion, etc. 39
Order denying motion to withdraw issues and to strike evidence 45
Interlocutory Appeal of Respondents 46
Answer in opposition to Interlocutory Appeal 61
Order denying Interlocutory Appeal 88
Order on motion to strike evidence 90
Initial Decision 94
Final Order 114
Opinion of the Commission 118
Petition for Review 188

TRANSCRIPT OF PROCEEDINGS.

Admissions of Respondents 199
Documents marked for identification 203
Offer of exhibits 219, 237, 393, 441, 459, 482, 601
Colloquy 223, 248, 1432, 2369
Stipulation re testimony of Atlantic personnel 366
Stipulation re Atlantic testimony 415
Stipulation re Goodyear testimony 447, 512

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3679.

Data re three marketing areas 468
Stipulation re Warren and Hunterdone Counties in New Jersey 2342
Stipulation re Gay testimony 2343
Statement of Crawford Bryant 2347

WITNESSES FOR THE COMMISSION.

Testimony of:

Balloran, Francis J. 771
Best, Rolland C. 1208
Blumenthal, David B. 306
Booz, Elmer H., Jr. 757
Chambers, John 257
Colby, William 874
Connell, Conrad 709
Drennan, Robert B. 931
Duboff, Myer 533
Edrington, Russell H. 1298
Edwards, William E. 1308
Franks, William Lee 789
Ferguson, Richard 882
Freeland, Edgar D., Jr. 1244
Govoruhk, Nicholas 1051
Hayes, Sherman 869
Heald, Felix B. 802
Heller, Edward C. 499
Hill, George J., Jr. 488
Hinderscheid, W. F. 571, 687
Hoffman, Jack 291
Hooper, James 1257
Huether, Lewis A. 1252
Iacona, Aniello L. 637
Johnson, Tyler L. 743

Kernaghan, Thomas J. 669
Kevis, Douglas W. 312
Lang, Elmer 1220
Lanza, Michael Thomas 853
Marabella, Joseph 815
Matthews, James 554, 604
McCandless, Robert H. 695
McIntire, James L. 905
McMaster, Joseph B. 1109
Migan, John J. 1150
Myers, James M., Jr. 939
Norris, Oster 1145
Osborn, Samuel Kriete 962
Pollock, Isidore Jack 660
Roettger, E. Edmond G. 1036
Sander, Homer August 1293
Savage, Eugene 1160
Scheiner, Joseph 1279
Smith, William C. 1011
Vick, John J. 677
Walker, George Stanley Drew 896
Wetzel, Glenn L. 320

WITNESSES FOR RESPONDENT.

Testimony of:
Buongiorne, Frank R. 1611
Carlson, Robert O. 1888
Cary, Reuben 2188
Colley, Dwight T. 2348
Cooley, Russell E. 1583
Connelly, Joseph M. 2154
Detwiler, Charles K. 2083
Elko, Donald 1939

Gaestel, Wilbur D. 1815
Gloth, Israel 2027
Godino, Alfred 1925
Grossman, Sam 1740
Hathaway, Holland M. 1474, 1555
Hayes, Thomas A., Jr. 2114
Jones, Thomas E. 1970
Klein, Robert 2139
Lott, Charles Henry 1772
Luongo, Rudolph N. 1963
Mann, Isadore 1952
Mapes, August 1791
Marino, Joseph A. 1751
Maseyko, George Paul 1667
McCarthy, Harold F. 2043
Molinaro, Dominic, Jr. 2068
Mulholland, Richard G. 2300
Munch, Edward B. 1550
Provost, Robert C. 1932
Rhoades, O. Harris 2169
Ringenary, Edward 1909
Shafer, Albert H. 2208
Snow, Edward L. 2061
Thomas, Richard D. 1565
Vayda, Albert J. 2136
Walsh, Charles A., Jr. 2248
Wash, Joseph J. 1720
Way, William L. 2147
Wright, Harry W., Jr. 1686
Wyckoff, Charles P. 1705
Zarella, George 2046

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets.....2375
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks.....2378
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord.....2379
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks.....2380
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman.....2381
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al...2383
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord.....2385
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al.....2387
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman.....2388
9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the Company's preference for the Goodyear program:".....2389
Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan".....2393
11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental".....2395
12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors.....2397

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached 2398
14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2403
15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker 2404
16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr.....2406
17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman 2408
18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord.....2410
19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman.....2412
20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman.....2413
21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord 2415
22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman 2416
23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow"....2417
24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers 2419
25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting" 2429
26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting" 2430

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline" 2431

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2432

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic, Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2435

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2436

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers" 2437

32—Inter-Office Communication, February 28, 1951, from W. E. Blank, attention of L. A. Knight..2438

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers 2439

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2441

35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2445

36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2446

37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2447

38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2448

39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2449

40 A-B—Letter, February 9, 1951, from S. J. Heideman to J. E. Mayl, with enclosure.....2451

41 A-E—Goodyear Form G-1209, with descriptive note 2453

42 A-B—Goodyear Form G-1204, with descriptive note 2458

43 A—Goodyear Form G-1201, with descriptive note 2459

44 A-B—Goodyear Form G-1208, with descriptive note 2460

44 C—Goodyear Form G-1207 2461

44 D—Goodyear Form B-91.....2462

44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement 2463

44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2464

44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2465

45 A-B—Goodyear Form B-80, with descriptive note 2466

46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl.....2467

47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al.....2469

47 C-D—Goodyear Sales Department Instructions, May 31, 1951.....2472

47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2475

48 A-F—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951" 2477

49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord 2484

50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman 2485

51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman 2487

51 A—Goodyear Form A98101L, "Request for Identification Field Service" 2489

52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company" 2491

53—Summary of Sales and Commissions covered by the Sales Commission Plan 2492

54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953" 2493

55—Goodyear Tabulation of TBA Volume of Commissions to Various Oil Companies, 1951, 1952 and the First Six Months of 1953 2493

56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord 2494

56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr. 2495

57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman 2496

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord 2497
59 A-E—Letter Agreement, January 1, 1950, from Goodyear to Shell Oil Company, with Exhibit A attached 2498
59 F-I—Letter Agreement, January 8, 1953, from Goodyear to Shell American Petroleum Company, with Exhibit A attached 2503
60—Memorandum, November 6, 1951, from R. G. Miller to J. A. Bailey 2508
61—Unsigned document, "Outline of Discussion The Shamrock Oil & Gas Corporation, Amarillo, Texas, Tuesday—November 27, 1951" 2512
62 A-E—Letter Agreement, March 11, 1952, from Goodyear to The Shamrock Oil and Gas Corporation, with Exhibit A attached 2515
63—Letter, August 29, 1952, from Leo J. Wilmeth to R. G. Miller 2521
64 A-E—Letter Agreement, September 5, 1952, from Goodyear to Carter Oil Company, with Exhibit A attached 2522
65 A-C—Memorandum, September 5, 1952, from S. A. Gaylord to certain District Managers and Division Managers 2527
66 A-L—Copy of "The Carter Dealer", December 1952 2533
67 A-B—Unsigned letter, July 14, 1937, to Sherwood Brothers, Inc. 2545
68 A-B—Letter Agreement, March 1, 1944, from Goodyear to Sherwood Brothers Incorporated 2547
68 C—Letter Agreement, December 21, 1955, from Sherwood Brothers Incorporated to S. A. Gaylord 2550

69—Letter Agreement, September 25, 1944, from Goodyear to Sinclair Refining Company.....2551

70 A-C—Letter Agreement, October 1, 1947, from Goodyear to Sinclair Refining Company, with attachment 2554

71 A-D—Letter Agreement, May 1, 1952, from Goodyear to Mid-Continent Petroleum Corp., with Exhibit A attached 2558

72—Letter, January 15, 1952, from Victor Holt, Jr. to T. E. Fitzgerald.....2563

73 A-B—Letter, June 20, 1953, from C. R. Mitchell to W. J. Wixson.....2564

73 C—Letter Agreement, May 16, 1955, from Goodyear to Mid-Continent Petroleum Corporation 2568

73 D-G—Letter Agreement, May 16, 1955, from Goodyear to D-X Sunray Oil Company, with Exhibit A attached 2569

74 A-D—Letter Agreement, June 19, 1952, from Goodyear to The Frontier Refining Company, with Exhibit A attached.....2573

75—Memorandum, June 12, 1952, from J. W. Basista to C. W. Thorp 2579

76—Letter, March 5, 1953, from J. W. Basista to Claude A. Weber 2581

76 A—Letter, December 9, 1954, from H. E. Armitage to Goodyear 2582

77 A-D—Letter Agreement, January 1, 1953, from Goodyear to Quaker State Oil Refining Corporation, with Exhibit A attached 2583

78 A-B—Document, undated and unsigned, with heading "Carter Oil Company T. B. A. Sales Potential" 2588

79 A-F—Letter Agreement, January 26, 1955, from Goodyear to Anderson-Prichard Oil Corporation, with Exhibits A, B and C attached.....2590
79 G—Letter, February 18, 1955, from E. K. Ketcham to Goodyear 2597
79 H-J—Unexecuted Letter Agreement dated August 9, 1949 from Goodyear to Ashland Oil & Refining Company, with attachment.....2598
79 K—Letter, September 13, 1949, from Everett F. Wells to Sam Gaylord.....2602
79 L—Letter, September 28, 1949, from S. A. Gaylord to E. F. Wells.....2603
79 M—Letter, July 12, 1950, from W. E. Cameron to Don W. Detjen.....2604
79 N-O—Memorandum, March 24, 1950, from S. A. Gaylord to H. E. Hoerster.....2605
79 P-V—Document, unsigned, January 3, 1950, with heading "Special Account Instructions Ashland Oil & Refining Company. Inc., Ashland, Kentucky Sales Commission" 2608
79 W—Document, undated and unsigned, with heading "Goodyear Districts".....2621
80 A-T—Goodyear Organization Charts 2623
80 U—Map entitled "Goodyear Regions & Districts" 2643
81 A-F—Atlantic Organization Charts 2644
82 A-C—Outline Maps of Atlantic Marketing Regions—Philadelphia-New Jersey Region, New York Region, New England Region.....2650
83 A-C—Outline Maps of Atlantic Marketing Regions—W. Penna. Region, E. Penna. Region, Southern Region 2653

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952 2657
85 A-B—Atlantic Lease Form B/3191, 6/49.....2660
86 A-B—Atlantic Lease Form, B/3191, 4-52.....2664
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2669
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station".....2672
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2672
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191.....2678
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *" 2679
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station"..2680
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants..2681
88 E1-2—Atlantic Lease Form B-3191Y, 5/55.....2683
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement 2689
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement 2690
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement 2692
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2697
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants..2702
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants..2704
93—Atlantic Form of "Commission Agreement"....2708

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2711
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2715
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2721
96—Atlantic Form B-3119, 10/50, "Authorized Distributor's Agreement" 2727
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2730
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2733
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2735
98 A-G—Atlantic Form of Distributor Contract....2737
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2743
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider.....2749
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2754
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers".....2759
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2762
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al.....2764
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study" 2765
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2791
102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments.....2801

104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic.....2807
105 A-B—Letter Agreement, January 12, 1954, from Firestone to Atlantic.....2810
105 C—Letter Agreement, November 3, 1954, from Atlantic to Firestone.....2813
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone.....2814
121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachment..2816
122—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman.....2821
123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord.....2822
124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman.....2823
125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord.....2824
126 A-B—Letter Agreement, April 3, 1951, from Atlantic to Goodyear.....2825
126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear.....2827
126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear.....2828
127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company-Sales Commission".....2829
128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall.....2842
129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley.....2844
130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda.....2845

131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson.....2852
132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al.....2853
133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region 2854
134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for the marketing of Tires, * * *".....2857
136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment 2859
137 A-E—Document entitled "Duties of the Dealer Salesman" 2865
138—Unsigned memorandum, June 25, 1951, to F. M. Neall 2871
139 A—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger 2872
140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman 2873
140 A-C—Three Atlantic Forms B-139, 10/51, Dealers' Credit Card Sales Slips 2875
141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis 2879
142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman 2880
143—Letter, July 9, 1951, to William Stockton.....2881
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2882
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2883

145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2884
146 A-B—Document entitled "Staff meeting held 7/14/52" 2887
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13" 2889
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr. 2890
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program" 2891
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantic's T. B. A. Policy" 2892
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell 2893
152—Atlantic form letter, to Atlantic Dealers and Atlantic Petroleum Distributors, beginning "Here is the most important T. B. A. news * * *" 2894
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2895
155 A-H—Document entitled "1951 Sales Plan New York Region Basis" 2896
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C" 2902
155 J—Document entitled "1951 Sales Plan—Report of Progress—Appendix D" 2903
155 L—Document entitled "Appendix E" 2905
155 M—Document entitled "Summary of Results" 2906
156—Document dated January 5, 1951 entitled "Station Modelization Policy" 2907

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3679.

157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2908
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman.... 2909
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord 2911
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments..... 2912
160 Q-Y—Document entitled "Goodyear Associate Dealers—New Jersey" 2927
161—Unsigned letter, July 30, 1951, to W. J. Jackson 2936
161 A-B—Document bearing two colums headed "Location" and "Reason" 2937
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman.... 2939
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord 2940
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman 2942
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman 2943
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill 2944
166—Letter, October 11, 1951, from J. W. O'Neill to S. J. Heideman 2945
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman 2946
167 A-M—Handwritten document entitled "Refusals" 2947
168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel..... 2958
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis..... 2959

170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment 2960
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment 2968
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment 2973
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis 2975
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, *et al.*, June 1, 1951, with attachment .. 2975
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman 2982
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman 2983
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletin #17" 2984
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman 2985
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord 2986
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y." .. 2987
179 J—Form entitled "Atlantic-Goodyear Accounts". 3002
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)." 3002
180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman 3004
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill 3005

182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 3006
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 3007
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries"..3009
193—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951" 3011
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950" 3013
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949" 3015
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950" 3017
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949" 3019
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950" 3021
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949".....3023
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950" 3025
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs. 1949" 3027
202—Tabulation entitled "Final T. B. A. Sales—October 1950" 3029
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950" 3030
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949" 3031
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950" 3032

204 A—Tabulation entitled "Final T. B. A. Sales—December 1950" 3033
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949" 3035
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950" 3036
206—Letter, August 28, 1952, from D. T. Colley 3037
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers 3038
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951" 3040
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951" 3040
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951" 3041
211—Document entitled "Atlantic Progress Report", October 29, 1951 3042
212—Document entitled "Atlantic Progress Report", December 24, 1951 3043
215 A-B—Atlantic Credit Card—1950 3045
216 A-B—Atlantic Credit Card—1951 3046
217 A-B—Atlantic Credit Card—1952 3047
218 A-B—Atlantic Credit Card—1953 3048
219 A-B—Atlantic Credit Card—1954 3049
220 A-B—Atlantic Credit Card—1955 3050
221 A-B—Atlantic Credit Card—1956 3051
222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50) 3052
223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51) 3053
226 A-H—Letter, July 7, 1950, from Paul Castleberry, Jr. to Atlantic with attachments 3054

227 A-K—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear with attachments 3062
228 A-K—Goodyear Forms G-1204 (3-50) with covering Form G-703 (2-42) 3073
247 A—Document entitled "Goodyear T. B. A. is a natural for plus sales and profits".....3084
247 B—Booklet entitled "Goodyear T. B. A. Plan"..3098
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling 3127
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman 3128
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic 3129
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation" 3130
257 A—Letter, November 12, 1953, Atlantic to Aniello L. Iacona 3131
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic 3132
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania.....3133
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro 3134
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro 3136
259—Letter, July 5, 1956, from Atlantic to A. Bennett 3137
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson 3138
261—Letter, October 21, 1955, from Atlantic to Charles Davis 3139
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice 3140

263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio 3141
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly 3142
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel 3143
266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette 3144
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith 3145
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco 3146
269—Letter, January 5, 1955, from W. J. McCambridge, Jr. to Duane Olthof 3147
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski 3148
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski 3149
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw 3151
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco 3152
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers 3153
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman 3153
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al 3155
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3156

280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al.....3160

281 A-B—Document entitled "Sales Meeting February 19, 1951" 3162

282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card 3164

283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3167

284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al.....3171

285—Letter, March 5, 1951, from E. W. McCreary to E. M. Fiffick, et al.....3174

286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment 3175

287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al.....3178

288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3179

289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers 3184

290 A-I—Memorandum, August 6, 1951, with attachments.....185

291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3197

292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3200

294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews 3203
295—Document entitled "Branches as of January 1, 1950" 3205
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950" 3205
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive" 3206
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell 3208
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott 3209
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co. 3212
302—Letter, December 22, 1950, from C. Connell to J. S. Parks 3213
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville 3214
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell 3215
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst 3216
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst 3218
307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co. 3221
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3223
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell 3224

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3679.

310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell 3225
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville 3227
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher 3229
314 B—Document entitled "Exide Wholesale Distributors by States and Cities November 1, 1950" 3231
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951".....3239
314 D—Document entitled "Exide Wholesale Distributors by States and Cities May 1, 1957".....3247
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley.....3269
328—Letter, April 5, 1948, John R. Sherwood to S. K. Osborne 3273
329—Certified copy of complaint in Osborn v. Sinclair Refining Company 3275
330—Certified copy of answer in Osborn v. Sinclair Refining Company 3298
331—Goodyear Form B-304 (11-56), "Goodyear Batteries Suggested Retail Prices".....3303
332—Goodyear Form B-308 (11-56), "Goodyear Batteries 352 Dealer Prices".....3305
333—Goodyear Form B-166 (10-51), "Goodyear Battery Policy and Sales Program Effective October 31, 1951" 3307
334—Memorandum of conversation on stationery of Bowers Battery and Spark Plug Co. beginning "Conversation—Mr. Nicholas J. Govoruhk— * * *" 3311
335—Baltimore Battery Co. Invoice No. 2376.....3312
336—Baltimore Battery Co. Invoice No. 3201.....3313

337—Baltimore Battery Co. Invoice No. 2361.....3314
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column.....3315
339—Goodyear Service Stores Invoice dated 12-27-55..3316
340—Letter, October 22, 1954, from J. R. Sherwood to J. B. McMaster.....3317
346—Newspaper advertisement of Plotkin's Tire Sales.....3318
347—Letter, May 26, 1952, from Shell Oil Company to James W. Hooper.....3319
348 A-B—Shell Form SR 1771-1 (Rev. 1/53), "Service Station Manager's Agreement".....3320
349—Letter, June. 2, 1954, from Shell Oil Company to W. E. Edwards.....3327
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks.....3328
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments.....3330
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3343
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions".....3344
377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade".....3345
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951".....3347
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951".....3348
387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3349

389 A-B—Document entitled "Products Eligible Under Sales Commission Plan" 3350
391 A-C—Document dated 10-21-55 entitled "Shell Oil Co.—Sales Commission" 3353
392 A-B—Letter, June 3, 1948, from R. C. Mueller to E. C. Flinn 3360
393—Goodyear intra-company memorandum, 7-8-48, from S. A. Gaylord to E. C. Flinn.....3362
394 A-C—Goodyear document entitled "District Instruction No. 1086A", October 19, 1948.....3363
395 A-B—Letter, December 19, 1951, from Butler Doolittle to C. H. Mead, Jr.....3369
396 A-H—Letter, October 9, 1950, from R. E. Sewell to O. E. Scholz, with attachments.....3371
397 A-B—Letter, January 30, 1953, from J. W. Basista to George L. Switzer.....3385
398 A-D—Letter, August 24, 1948, unsigned to Gibson 3389
399 A-C—Document entitled "Shell Oil Company Schedule 'A'—Part 2-3-4" 3393
400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments 3397
401—Document entitled "Distribution List for Sales Department Correspondence" 3413
402 A-M—Memorandum, December 31, 1952, from B. L. Edmonston, with attachments 3414
403 A-S—Document entitled "Various Types of Dealers", with attachments 3426
404 A-C—Sherwood Form SB-2833 500 9-51, "Bailment Agreement" 3433
405 A-B—Sherwood Form SB 118—3M—11-50, "Equipment Rental Agreement" 3444

406 A-B—Sherwood Form SB 2072-R 500 10-51, "Dealer Permit" 3451
407 A-D—Sherwood Form SB 1601-A—1M—8-51, "Service Station Lease" 3458
408—Document entitled "Amendment of Service Station Lease" 3467
409—Document entitled "Termination of Service Station Lease" 3469
410 A-B—Sherwood Form SB 206—3M—7-50, "Dealer Sales Agreement" 3470
411—Memorandum, March 10, 1953, from Fred D. McCauley to George B. P. Ward 3476
412 A-H—Document dated on first page 1-1-50, entitled "Sherwood Bros., Inc., Baltimore, Md.—Sales Commission" 3476
413—Sherwood Form SB 2081-CS—(2500 6-46) 3490
414—Memorandum, March 28, 1944 to De Hoff 3493
415—Memorandum, March 29, 1944, McCauley to De Hoff 3494
416—Memorandum, March 29, 1944, McCauley to De Hoff 3497
417—Memorandum, March 21, 1944, McCauley to De Hoff 3498
418 A-B—Letter, July 13, 1944, from Fred D. McCauley to Ted Hardy 3500
419—Unsigned letter, July 27, 1944, to Butler Doolittle 3502
420 A-B—Letter, July 29, 1944, from Fred D. McCauley to John B. Mann 3503
421—Letter, August 19, 1944, from F. D. McCauley to Butler Doolittle 3506
422 A-B—Memorandum, November 2, 1944, from John R. Sherwood to Fred McCauley 3507

423 A-C—Letter, May 29, 1945, from Butler Doolittle to Fred McCauley 3510
424—Letter, June 6, 1945, from Fred D. McCauley to John D. Mann 3513
425 A-B—Letter, December 31, 1945, from Fred D. McCauley to John D. Mann 3515
426—Letter, January 15, 1946, from Fred D. McCauley to J. A. Lewin 3517
427—Letter, January 23, 1946, from Fred D. McCauley to John B. Mann 3519
428—Letter, March 6, 1946, from Fred D. McCauley to Paul Spahr 3520
429—Copy of letter, March 11, 1946, from A. W. Littleton to Miller Chevrolet Sales 3521
430 A-B—Memorandum, August 6, 1946, from John R. Sherwood to Mr. Lawson, with attachment 3522
431—Unsigned Sherwood letter agreement dated July 30, 1946 3525
432—Letter, August 20, 1946, from John R. Sherwood to H. G. Harper 3526
433—Letter, June 3, 1947, from Fred D. McCauley to John D. Mann 3528
434 A-B—Letter, July 17, 1947, from Fred D. McCauley to Howard Landon, et al 3529
435—Report of Goodyear TBA Commissions by Agency Territories—Year 1947 3532
436—Report of Goodyear TBA Commissions by Agency Territories 3533
437—Letter, April 30, 1948, from H. W. Van Horn to Jackson Manufacturing Company 3534
438—Memorandum, September 23, 1947, from Fred D. McCauley to John Sause 3535

439—Letter, September 19, 1952, from G. R. DeHoff to all Betholine Sinclair Dealers Authorized to Honor Credit Cards.....3536
440—Document entitled "CIC-Sales 1952".....3537
441—Letter, August 23, 1948, from Butler Doolittle to Fred D. McCauley 3537
442—Letter, September 21, 1948, from H. W. Van Horn to Butler Doolittle 3539
443—Letter, September 3, 1948, from H. W. Van Horn to R. G. Crawford 3541
444—Letter, January 7, 1949, from H. W. Van Horn to J. A. Nelsen 3542
445—Letter, August 9, 1949, from H. W. Van Horn to all Betholine-Sinclair Dealers 3543
446—Memorandum, June 23, 1950, from Fred D. McCauley to Mr. Van Horn 3545
447 A-E—Letter, June 19, 1946, from Fred D. McCauley to Mrs. Mabel Harmon, with attachments 3546
448—Goodyear Form A98101L, "Request for Goodyear Tires Identification Truck Service".....3553
449—Memorandum, May 12, 1947, from Roland DeHoff to "Doc" Allen 3555
450 A-B—Letter, August 25, 1952, from H. W. Van Horn to Butler Doolittle.....3555
451 A-B—Letter, January 6, 1950, from Fred D. McCauley to W. S. Martel.....3557
452 A-B—Memorandum, January 2, 1948, from Fred D. McCauley to John Leimbach.....3560
453—Letter, February 23, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562
454 A-B—Letter, February 29, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562

455—Handwritten Inter-Office Memorandum, March 5, 1948 from S. W. Holsinger to "Mac" 3565
456 A-B—Handwritten Inter-Office Communication, March 20, 1948, from L. J. Balling to F. D. McCauley 3566
457—Document, dated Dec. 14, '51, entitled "Dealer TBA Survey" 3568
458—Letter, April 25, 1952, from H. W. Van Horn to D. A. Hilleary 3569
459—Memorandum, June 3, 1952, from Harry J. Weller to Mr. Jurgens 3570
460—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commissions, Resale and Own Consumption December and January 1 to December 31, 1944" 3571
461 A-C—Memorandum, December 12, 1945, from Fred D. McCauley to John R. Sherwood, with attachments 3572
462—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1945" 3574
463 A-B—Letter, March 13, 1946, from John R. Sherwood to T. J. Beddingfield 3575
464—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1946" 3577
465 A-B—Letter, January 7, 1947, from John R. Sherwood to R. S. Wilson 3578
466—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1, to December 31, 1947" 3580

467—Memorandum, October 16, 1947, McCauley to DeHoff 3581

468—Memorandum, January 26, 1951, from Fred D. McCauley to G. R. DeHoff.....3582

469—Document entitled "Total T. B. A. Volume sold to Betholine-Sinclair Dealers on Which We Receive Commission" 3583

470—Document entitled "Sherwood Brothers, Inc. Sales by Goodyear Districts January 1, 1952 through December 31, 1952" 3584

472—Sinclair Form 35 10 9-54, "Marketer Agreement" 3585

473—Sinclair Form 1800—25M—6-57, "Equipment Rental Agreement" 3596

474—Sinclair Form 1601-B—25M—10-57, "Station Lease" 3604

475—Sinclair Form 731-D—20M—10-57, "Refined Oil Sales Agreement-Dealer" 3615

476—Sinclair Form 2081—25M—5-57.....3622

477—Sherwood Credit Identification Card 1954.....3625

478—Sinclair Credit Identification Card 1957.....3626

479—Document entitled "Agreement of Merger Between Sinclair Refining Company and Sherwood Brothers, Incorporated", dated as of December 7, 1955 3627

483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley 3639

484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne 3642

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow 3645
2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow 3651
3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company.....3652
4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow.....3653
20—Atlantic booklet entitled "TBA Program".....3654
31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments.....3672

FRANK R. BUONGIORNE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give your full name to the court reporter, please?

A. Frank R. Buongiorne.

Q. What is your residence address?

A. Three Watson Avenue, Binghamton, New York.

Q. Mr. Buongiorne, as you know, I was here representing the Atlantic Refining Company with Mr. Gordon, whom you have also met. On his left is Mr. Ingraham, who represents the Goodyear Company, and the distinguished gentleman on my right is Mr. Kelaher, who represents the Federal Trade Commission.

Now, you, sir, are an Atlantic lessee of the station 2804 in the Binghamton area?

A. Yes, sir. 638 Chenango Street.

Q. I believe, sir, that you have had that same station since about 1945?

A. Yes, sir. March, I believe, '45.

Q. And at first you were a lessee with a partner, Mr. Gay?

A. No, sir, I wasn't. At first I leased the station in my own name, because at that time Atlantic did not lease to a partnership. A little later on it was changed to a partnership lease, and we were partners for quite some time after that.

Q. What was the name of the partnership?

A. Buongiorne and Gay.

Q. G-A-Y?

A. Yes, sir.

Q. I think, sir, there are two Gay's in your area, are there not?

A. Yes, it gets confusing.

Q. Which Mr. Gay was your partner?

A. Frank Gay. Frank E.

Q. And that partnership continued until about 1957?

A. October 1st, sir; yes.

Q. And since that time he has withdrawn from the partnership and taken another Atlantic station?

A. No, sir.

Q. He is not in the business anymore?

2805 A. He is working for another Atlantic dealer. I bought him out in October.

Q. You bought him out?

A. Yes, sir.

Q. Since October of '57 you have again been the sole lessee of the station?

A. That is right, sir.

Q. Now, before you took the station in 1945 what had been your prior experience? Had you been a service station operator before?

A. Before I took this Atlantic station?

Q. Yes.

A. Yes, sir. I had at one time leased in a partnership agreement with Mr. Gay I spoke of before. I had previously leased at one time two Esso stations. Previous to that I had leased an Esso myself, and previous to that I had an Amoco station.

Q. Did you serve during the war in the armed forces?

A. Yes, sir. Eighth Air Force.

Q. And except for that interval during the war, have you been in the service station business since about 1934?

A. I would say with the exception of about six months when I had to go into another business to get even.

Q. That was when? Before the war?

A. Previous to the war I was sort of young, at 2806 least that is the excuse I make for myself, and I did

go broke and in order to get clear and be able to go back into business, I took other employment and straightened with Esso, and the facts bear themselves out because after that I re-leased from them.

Q. After that you went with Atlantic?

A. Well—

Q. (Interposing.) After the war?

A. Yes, sir. Right after the war, with Atlantic.

Q. And you say you have never gone broke working for Atlantic, have you?

A. No, sir.

Q. Now, in the operation of your present Atlantic station before 1951, did you carry TBA?

A. Certainly.

Q. What brands of tires did you carry before 1951?

A. Before '51 I believe I carried Lee tires exclusively.

Q. Did you carry Exide batteries at that time?

A. Yes.

Q. Do you recall the time about 1951 when Atlantic ceased to market Lee tires and Exide batteries and commenced to promote and sponsor the Goodyear TBA line?

A. Yes.

Q. Do you recall attending any dealer meetings about 1951 where the Atlantic change-over was explained?

2807 A. Yes, sir, very well.

Q. Do you recall generally what happened at that meeting and can you describe to us what was said to the dealers about the change-over?

A. Yes, I think I can. It was held in the Arlington Hotel in the Binghamton. It was a dinner meeting, as I remember it, and the entire program was presented, and we were briefed on the reason that Atlantic was going out of the TBA business—the thing that comes to my mind was transportation, etc., distribution—

Q. (Interposing.) I couldn't hear you.

A. I say we were briefed on the reasons Atlantic had gone out of the TBA business, and it comes to my mind that it was a transportation problem, distribution, and so on, and that the Goodyear program was made available to us, and I believe at that time one of the reasons that it was made available, stock, supplies, at that time, was a little tough to procure stock.

Q. Tires, particularly?

A. Yes, tires particularly, and in view of the fact that most of us; I say most of us, I should say myself, I was buying a good deal of my inventory from Atlantic—

Mr. Kelaher (Interposing): Your Honor, excuse me. I would just like to have an answer to the question, and he just asked him what transpired at the meeting, as
2808 I understand it.

Mr. Thompson: He is explaining the background.

By Mr. Thompson:

Q. Have you finished your explanation?

Mr. Kelaher: He is getting into what he did at his service station. I think we should stick to the meeting first and then go into this later.

By Mr. Thompson:

Q. Have you finished what went on at the dealer meeting, Mr. Buongiorne?

A. No, what I wanted to tell you, point out why it was made available to us, because I couldn't at that time go out on the market and buy exactly what I wanted. Without a supplier I think I would have been in tough shape at that particular time. That is all.

Q. Yes, sir.

Mr. Kelaher: I don't think that is responsive to the question.

Mr. Thompson: Totally responsive to the question that I asked him.

Mr. Kelaher: I thought you asked him what transpired at the meeting.

Hearing Examiner Kolb: Objection overruled. Let's go ahead.

2809 By Mr. Thompson:

Q. Mr. Buongiorne, was it made clear to you at that meeting that you could take the Goodyear program or leave it, that it was a voluntary program so far as all of you dealers were concerned?

A. Yes, the program was available to us.

Q. Now, following the Atlantic change-over to the promotion of Goodyear TBA, did you continue to handle Lee tires?

A. Yes, sir.

Q. Have you been a Lee tire distributor for a number of years, Mr. Buongiorne?

A. Since the date of the Atlantic change-over, I have been a distributor in that area, yes, sir.

Q. Did you procure a distributorship from Lee at the time of the change-over?

A. I did.

Q. And you are still a Lee tire distributor?

A. Yes, sir, both wholesale and retail.

Q. Before I ask any further questions about that, I should like to ask you whether you recall having received from the Atlantic Refining Company a document which has been identified on this record as CX-150, dated March 1, 1951, from Mr. Colley, the vice-president of the Company (handing document to the witness). Take a good look at that and let me know whether you recall receiving it, will you?

2810 A. Yes, sir. I believe it is in my files at home.

Q. And did you also receive a document identified

as CX-206, which is a letter from Mr. Colley, dated August 28, 1952 (handing document to the witness)?

A. Yes, sir; I remember this one specifically.

Q. And do you recall also receiving another document identified as CX-207, dated June 24, 1955, from the Atlantic Refining Company, in the form which I now show you that is signed by someone other than Mr. Estlow (handing document to the witness)?

A. I had this one, but it seems to me that it came from Mr. Ostrander.

Q. And he was the Atlantic region manager in New York?

A. Syracuse, sir.

Q. With headquarters at Syracuse?

A. Yes, sir.

Mr. Thompson: I ask that this document be marked for identification as Atlantic's Exhibit 12.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 12 for identification.)

Mr. Thompson: And also a second document to be identified as RX-A-13.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 13 for identification.)

2811 By Mr. Thompson:

Q. Mr. Buongiorne, have you from time to time sold TBA on credit at your station to your customers?

A. Yes, sir.

Q. And by on credit I mean your personal credit.

A. Yes, sir.

Q. I show you a document which has been identified as RX-A-12, headed "Buongiorne and Gay" and ask you whether during your partnership with Mr. Gay this was the form of bill used by you in rendering statements to your TBA customers (handing document to the witness)?

A. Yes, sir.

Q. Was that form of document in use by you for some years before 1957?

A. As long as Mr. Day and I were in business we had that form.

Q. And did your form of bill head always include the advertising for Lee tires and Exide batteries, which is shown on this paper?

A. Yes, sir.

Mr. Thompson: I offer in evidence RX-A-12.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: Let it be received in evidence as Respondent's Exhibit A-12.

2812 (Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 12 for identification, was received in evidence.)

By Mr. Thompson:

Q. After Mr. Gay withdrew from the firm and you continued yourself under the name of Frank R. Buongiorno, did you use RX-A-13 as the form of your own personal bill to your TBA customers (handing document to the witness)?

A. Yes, sir.

Q. And since October of '57 has your bill head always contained the advertisement for Lee tires and Exide batteries which appears on A-13?

A. That is right, sir.

Mr. Thompson: I offer in evidence RX-A-13.

Hearing Examiner Kolb: Any objection, Mr. Kelaher?

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-13.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 13 for identification, was received in evidence.)

By Mr. Thompson:

Q. Do you from time to time advertise Lee tires in other manners by so-called give-a-way pieces?

A. Yes, sir; we have a cooperative deal with Lee
2813 on advertising.

Q. Including a—

A. (Interposing.) That is a rain hat, I believe, sir.

Q. Including a rain hat, which is contained in a little colored envelope marked with your name?

A. Yes, sir.

Q. And also the Lee tire name?

A. That is right.

Q. Are you listed in the Binghamton classified telephone book as a Lee distributor?

A. Yes, sir.

Q. And have you been so listed, either you, yourself, or your partnership, Buongiorne and Gay, for many years?

A. I couldn't give you the dates, sir, but as long as I can remember, I would dare say ten years without exaggeration.

Q. Are you still handling Lee tires?

A. Absolutely.

Q. Have you continuously handled Lee tires since you opened this station as lessee back in '45?

A. Right from the beginning.

Q. Do you also handle some Goodyear tires?

A. Certainly.

Q. And any other brand that your customers want?

A. Yes, I have Goodrich, Royal.

Q. You stated that prior to 1951 you were handling
2814 Exide tires at your station.

A. Exide batteries, sir.

Q. Exide batteries at your station.

A. Previous to '51.

Q. Yes?

A. Yes.

Q. Did you continue to handle Exide batteries after 1951?

A. I handled them right up to date, yes, sir.

Q. Do you also handle some Goodyear batteries?

A. Probably handle more Goodyear than Exide right at the present time, yes, sir.

Q. Which has better acceptance in your area so far as batteries are concerned, Goodyear or Exide?

A. Are you talking in relation to price, sir?

Q. No, I am talking about customer acceptance, which do you have more demand for at your station?

A. Goodyear.

Q. Going back to tires for a moment, do you still have demand in your area for Lee tires, customer demand?

A. Yes.

Mr. Kelaher: Could I have that question. The truck made a noise.

(The reporter read the question and answer.)

By Mr. Thompson:

Q. What source do you use for accessories at your 2815 station, Mr. Buongiorne?

A. All local wholesalers in the Bonghamton area. Do you want the names of them, sir?

Q. Would you mention a few, please, sir?

A. I buy from Whipple's Auto Supply, Rose Unit Parts, United Auto Parts, Auto Supply Distributing, all car dealers' parts requirements in some cases, that would be Buick, Chevrolet, and so on. Actually, it is a case of the salesman that is there when you need something. I don't have any, you know, set deal with anyone, actually.

Q. Do you also from time to time buy accessories from Goodyear?

A. Oh, certainly. His chances are as good as the next fellow's if he is there at the right time.

Q. Is the non-sponsored TBA, that is to say, the non-Goodyear TBA, which you carry at your station, openly displayed?

A. I don't understand you.

Q. Do you keep it right out in the open, all these Lee tires and Exide batteries and non-Goodyear accessories so anybody can see them?

A. I couldn't sell them if they couldn't see them. Yes, sir.

Q. Have you got any Lee and Exide signs on your station?

A. I have, I believe, two Lee signs, one Exide. I am not much on signs at my station to be truthful with you. I try to keep it uncluttered because it is one of those things
2816 that will grow. But I do have, I believe, those three exterior signs.

Q. Do you have a Goodyear decal on the window?

A. Around the top, yes, sir.

Q. Do you sell non-Goodyear TBA to holders of Atlantic credit cards?

A. Do I sell other than Goodyear TBA to holders of Atlantic credit cards?

Q. Yes.

A. Yes.

Q. Have you always done that?

A. I never gave it a thought to be truthful with you, but I assume we have, yes.

Q. Well, nobody from Atlantic has ever criticized you for selling any kind of TBA on an Atlantic credit card, have they?

A. No.

Q. In addition to Goodyear, are you solicited by other tire manufacturers?

A. Yes, quite regularly.

Q. Can you name a few of them?

A. Oh, Cooper tires, Dunlop, some of the ones I mentioned previously that I do buy solicit regular with the idea of stocking their brand, you know, more or less be a stocking dealer because, naturally, the chances of the produet moving would be greater, but I don't actually
2817 stock anything but Lee and Goodyear.

Q. And buy anything else that any customer wants, I suppose?

A. Yes. If a person specifically wants a brand, why, we will buy them for them.

Q. Has Atlantic ever criticized you for being a Lee distributor?

A. To the best of my knowledge, no, sir.

Q. Have they ever told you to stop dealing in Lee tires or Exide batteries or any of these other non-sponsored TBA items?

A. No.

Q. Have they ever told you to hide them or get them out of your station?

A. As far as I know, no, sir.

Q. I mean, have they?

A. Why, no.

Q. Have they ever tried to put pressure on you or to force you to buy Goodyear TBA?

A. No way whatsoever, sir.

Q. Have you always felt free to handle any brands of TBA you liked?

A. I do. I still do. Yes, sir.

Q. And do you, in fact, handle any brand of TBA you like?

A. Whatever I can make a dollar on that is what I handle.

Q. And your lease has been renewed many times
2818 since you started as an Atlantic lessee?

A. Yes, sir.

Q. Upon the occasion of lease renewals has anybody ever tried to hold against you the fact that you deal in these non-sponsored TBA items?

A. No.

Q. The subject never mentioned?

A. No, sir.

Q. Your station is in a pretty competitive area, is it not, Mr. Buongiorne?

A. I can't answer with a Yes or No, sir.

Q. Well, really all I am interested in is this: have you from time to time had opportunities to take stations from competitors in the Atlantic Refining Company?

A. Yes, sir.

Q. A number of such chances over the years?

A. Quite a few of late, especially, yes.

Q. Why do you stick with Atlantic in view of the offers of competitors?

A. Why do I stick with them?

Q. Yes.

A. Well, I have always had what I considered a very nice relation with them. I have always made a very good living, and as far as I am concerned, I intend to stay with them until I cease doing anything, which I hope isn't
2819 too far in the future.

Q. I suppose the Atlantic representatives inspect your station from time to time?

A. Inspect the station?

Q. Yes.

A. Yes, sir.

Q. Then, do they later discuss with you the results of the inspection?

A. Yes, sir.

Q. On such occasions the fact that you carry large quantities of non-Goodyear TBA, has that ever been brought up in a critical sense?

A. Not with the inspection. It is cleanliness, orderliness, and so on.

Q. It has nothing to do with TBA brands?

A. No, sir.

Q. Once a year or so, does the Atlantic sales supervisor discuss with you ways of increasing your business and your profits in a kind of an annual review?

A. Yes, sir, in the annual review. That is right.

Q. Is there any emphasis in those reviews about the brand or kind of TBA that you are carrying at your station?

A. No, sir.

Q. They, of course, are interested in your selling TBA, are they not?

2820 A. In a balance selling sense.

Q. Yes, sir. Now, are you one of the gentlemen in your area who was honored by a visit from Mr. Lipsky?

A. Yes, sir.

Q. Was that back in 1952 or 1953?

A. I couldn't tell you sir, but I do remember that he was there.

Q. A number of years ago?

A. Yes, sir.

Q. Do you recall him as a person? Would you know him if you saw him?

A. I wouldn't, no.

Q. Did he ask you a lot of questions about TBA, do you remember?

A. Actually I am not clear on what the man asked me. I remember he was there, and I remember talking to him, and it runs in my mind that I did at the time show him the entire setup there, the stock, displays and so on, and so forth, but actually it is vague, really it is.

Q. Do you remember whether he wrote things down on a piece of paper while he was talking to you?

A. I believe he took notes all the time I was talking to him and it runs in my mind, and this I can't say for sure, I signed the thing when he finished.

Q. That you signed some kind of a paper which 2821 he had written up?

A. Yes, sir. I think I did.

Mr. Thompson: Thank you, very much, sir. That is all the questions I have at this time.

Mr. Ingraham, representing Goodyear may want to ask you some questions, or Mr. Kelaher may.

Have you any questions, Mr. Ingraham?

Mr. Ingraham: I have no questions.

Hearing Examiner Kolb: You may cross-examine.

Mr. Kelaher: May I have a minute, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Buorgiorne, I want to go over your direct examination to see that we have some of these matters clear. I don't think it has been established yet when your partnership began with Mr. Frank E. Gay. Do you recall the approximate time when you became a partner with Mr. Gay?

A. Could I ask Mr. Detweiler a question?

Q. You go right ahead. Who is Mr. Detweiler?

The Witness: Do you know when Atlantic's policy 2822 went into effect?

Mr. Detweiler: Frank, I think it was—I know it was after I came down there. I came down in '52, and I am guessing now, I think it was around '54, early '54, regarding partnerships you are referring to?

The Witness: It was a matter of form, sir, and I had no reason to—

By Mr. Kelaher:

Q. (Interposing.) I am just trying to get some facts clear. You said that at first you leased the station in your own name, but at that time was Mr. Gay your silent partner? I am trying to get the facts.

A. No, sir. I see where that is confusing. At the time I leased the service station originally from Atlantic Refining Company, Atlantic would not lease to a partnership. They would lease only to one person; so, I held the lease. My partner and I had a legal partnership, registered in Broome County as partners, but the lease was in my name.

Q. And that continued until Atlantic permitted partnership leases?

A. At that time when our new lease came up, which was periodically, we had it in both names.

Q. You say that is about 1954?

A. I would say that is what Mr. Detweiler says. I can't say for sure.

2823 Q. Now, going along on your direct examination, I would like to check some of these items with you. You said that before 1951, that is before Atlantic began to sponsor Goodyear TBA, you carried Lee tires exclusively, correct?

A. Yes, sir.

Q. And did you also carry Exide batteries exclusively?

A. Not exclusively on the Exide batteries, sir. I did carry them, and it was my major battery, yes, sir.

Q. And did you purchase accessories through the Atlantic program at that time?

A. Yes, sir.

Q. Now, do you recall on your direct examination that you were asked about the Atlantic dealer meeting at the Arlington Hotel?

A. Yes, sir.

Q. In Binghamton, I presume?

A. Yes, sir.

Q. And at that time in connection with that testimony you stated that it was made clear to you that you could take the Goodyear TBA program or leave it, in effect; is that right?

A. Yes, sir.

Q. You could take it or leave it?

A. Yes, sir.

Q. You were under no pressure whatsoever?

A. No, sir.

2824 Q. And I think along those lines you have testified that you have been as free as the air, so to speak, to handle whatever TBA you wish?

A. Yes, sir.

Q. You have been under no pressure whatsoever from Atlantic during any of this time that we are discussing, isn't that true?

A. That is true, sir.

Q. And specifically when Atlantic changed over to Goodyear TBA plan, you have been under no pressure whatsoever from Atlantic to handle Goodyear TBA?

A. No pressure, sir.

Q. No pressure, and they have committed no acts or made no statements or done anything which would lead you to believe that they wanted you to handle Goodyear TBA; is that correct?

A. Other than in a selling job that a salesman—any salesman would do, yes, sir.

Q. Yes, sir. Now, you also have sold any brand of TBA you desire on Atlantic credit cards; is that true?

A. Yes, sir.

Q. And you have never had any problem in connection with that?

A. Not a bit, sir.

Q. Now, you also testified that Atlantic never criticized you for being a Lee distributor, correct?

2825 A. That is right.

Q. And they never told you to hide Lee tires, and this applies also to the fact that you carry Exide batteries?

A. Yes, sir.

Q. They never asked you to hide Lee or Exide or get them out of the station; is that correct?

A. That is correct, sir.

Q. You also stated on direct examination that you have two Lee signs and one Exide sign on your station; is that correct?

A. I believe it is, sir. Yes, sir.

Q. And have those signs been there since Atlantic began to sponsor Goodyear TBA, were they placed there since Atlantic began to sponsor Goodyear TBA?

A. They have been there as long as I have been in that building which is a comparatively new building, I would say five years. They were also on the old building as far as that goes, but—

Q. Was there ever a time when Goodyear TBA signs were put up in your station?

A. Yes, I have one Goodyear sign and Goodyear decals around the top of the windows in the showroom, office.

Q. And did you at one time have Lee window decals or Exide window decals?

A. Never had, sir, that I can remember.

2826 Q. Did you ever have Lee or Exide sign, outdoor sign?

A. I have a Lee—an Exide outside sign now, and have always had—and I did have an Exide electric sign in my side window at one time. It was a clock afair, you know, that said Exide on it.

Q. Now, when Atlantic put up the Goodyear or when the Goodyear—what were the circumstances leading to the

placing of the Goodyear TBA signs in your station? Did you have any objection to Atlantic putting those signs up?

A. Atlantic didn't. Goodyear did. And I had no objection other than the first time they put them up. I wasn't quite ready for them yet, the building was new, we hadn't cleaned it and so on and so forth; so, they came back at another time and put them on.

Q. Now, Mr. Buongiorne, I would like to ask you a few questions about the time that a gentleman from the FTC called on you.

A. Yes, sir.

Q. We have Mr. Henry I. Lipsky in the room with us, and I would like to have him stand and ask you if that refreshes your recollection as to the gentleman who called on you.

(At this point Mr. Lipsky stood.)

A. I have been looking around the room trying to remember the man. I just didn't remember him. Maybe it is the glasses. I do now. Yes, sir.

2827 Q. You do now?

A. Yes, sir.

Q. That is fine. You also remember that he talked at length with you at the time of his visit, isn't that true?

A. It seems to me he was there quite a while, yes, sir.

Q. Quite a long time, and at the time he made notes which he showed to you, isn't that correct?

A. I believe so, yes, sir.

Q. You believe it is. And isn't it also true that he asked you to read the statement which he showed to you and thereafter asked you to sign it?

A. I would imagine so. I wouldn't have signed it if I hadn't—

Q. (Interposing.) You would not have signed it if you had not read it?

A. Right.

Mr. Kelaher: At this time, your Honor, I ask that the document I hand the reporter be marked as CX-484.

(Whereupon, the document referred to was marked Commission's Exhibit 484 for identification.)

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. Mr. Buongiorne, I am going to show you Com-
2828 mission's Exhibit 484 for identification and ask you to state whether or not that is the statement which was signed by you on December 8, 1953, at the time of Mr. Lipsky's interview.

A. May I read it sir?

Q. Sure, go right ahead.

(The document was handed to the witness.)

Mr. Thompson: Take your time, Mr. Buongiorne.

By Mr. Kelaher:

Q. Is that the statement that you signed?

A. I believe it is to the best of my knowledge, yes, sir.

Mr. Kelaher: Mr. Examiner, at this time I offer Commission's Exhibit 484 into evidence.

Mr. Thompson: This is going into the evidence on the same basis, for the purpose of assisting you in cross-examination and not as substantive evidence?

Mr. Kelaher: It is going into evidence for all purposes, including the truth of the statements made therein, period.

Mr. Thompson: I, of course, object to it on that basis, your Honor.

Mr. Ingraham: We also object, your Honor.

Hearing Examiner Kolb: The objection will be overruled, and the document will be received in evidence as Commission's Exhibit 484.

2829 (Whereupon, the document, heretofore marked COMMISSION'S EXHIBIT 484 for identification, was received in evidence.)

Mr. Kelaher: If I understand counsel, and so there will be no misunderstanding, my purpose in admitting CX-483, which was the statement of Mr. Cooley, was also for all purposes, including the truth of the statements made therein. I didn't know there was any question about that.

Mr. Thompson: That wasn't the purpose for which you offered it at the time.

Mr. Kelaher: That was my clear intention.

Mr. Thompson: You mean you are now trying to enlarge your offer?

Mr. Kelaher: I certainly am not. I was under the impression that was the offer I made. I don't think it is any time to quibble about technicalities on a matter of this type. I offered statement after statement in Baltimore, and they were all offered for the same purpose. I don't feel that I should be restricted to the objection made by counsel.

Mr. Thompson: Are you through?

Mr. Kelaher: I sure am.

Mr. Thompson: May I have the floor?

Mr. Kelaher: You may have it as long as you want.

Mr. Thompson: Thank you, very much.

Why, of course, I object to a statement pulled out
2830 of the files of the FTC if it is offered for the purpose of proof of the substantive statements made by the witness. Obviously a document signed by Mr. Buongiorne, if there be any slight inconsistencies between his present statement and something said to Mr. Lipsky in 1953 can be used for purpose of cross-examination, but not as substantive evidence in the case.

It would seem to me, sir, that that was pretty elementary.

Mr. Kelaher: I think counsel is in error on that. You

can introduce direct testimony to show self-contradictory statements of a witness once you have laid the foundation for it, which we have done here.

Mr. Thompson: You can do it for purposes of impeachment, but not as substantive evidence.

Hearing Examiner Kolb: I think the document is competent to show whether or not he made certain statements five years ago which did or did not conflict with what he has testified today, and once it goes in for that purpose, I think it is in for all purposes. I see no occasion for any further hazzle on it.

Mr. Thompson: My objection is on the record, and your Honor has ruled on it.

Hearing Examiner Kolb: Do I understand that that objection also applies to the previous exhibit?

2831 Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: I am overruling that objection also.

Mr. Kelaher: Thank you.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I would like to have it understood on the record that this witness is not to talk to counsel or to Atlantic representatives or to anyone else concerning the testimony he has given here today or the statement which was given to him.

Mr. Thompson: You mean you are asking—

Mr. Kelaher: (Continuing.) Otherwise, we will be compelled to go forward.

Mr. Thompson: I think you had better go forward, Mr. Kelaher, as I do not like the inference at all. You go right ahead and I will sit here.

Mr. Kelaher: It certainly wasn't intended to be occasion—

Mr. Thompson: (Interposing.) Go ahead. You just go ahead and cross-examine your witness.

By Mr. Kelaher:

Q. Mr. Buongiorne, I would like to establish one thing at the outset. You actually maintain two businesses, do you not?

2832 A. No, sir.

Q. Aren't you a Lee distributor as well as an operator of an Atlantic service station?

A. No, I wouldn't say two businesses, sir, no, one business, one income tax.

Q. Don't you have, or at the time of the interview, your station was located at 683 Chenango Street; is that correct?

A. That is right.

Q. And your warehouse for Lee tires was at 640 Chenango Street, right?

A. That is right.

Q. And wasn't that a garage behind your service station?

A. That is right, sir.

Q. And, as a matter of fact, you have sold Lee tires from a separate warehouse, have you not, and stocked them in a separate warehouse?

A. I have stocked them there, but I don't have room in my regular service station, yes, sir.

Q. I am going to take you over your direct testimony and compare with what you stated to Mr. Lipsky in 1953. At that time you stated—let me put it this way. You stated here today on direct examination that you have continued to stock Lee tires. Were you implying that you continued to stock Lee tires in your service station since Atlantic changed over to Goodyear TBA?

2833 A. That is right, sir.

Q. Now, your signed statement says that—

Mr. Thompson (interposing): Show it to him, please, Mr. Kelaher.

Mr. Kelaher: Beg pardon?

Mr. Thompson: Will you show it to him?

Mr. Kelaher: He has read it.

Hearing Examiner Kolb: He can read it to him and then show it to him. Go ahead.

By Mr. Kelaher:

Q. Your signed statement says Goodyear stored in service station located at above address, and it also says that Lee is stored at the garage behind the service station.

A. That is right.

Q. So, when you say that Lee was stocked in your service station since 1951, you were incorrect, were you not?

A. May I explain it, sir?

Q. You go right ahead.

A. Wholesale operation is much greater than service station operation. For wholesale purposes we stock two or three hundred tires. There is certainly no room for them in the service station.

Q. So, at one time, did you stock Lee tires in your service station since 1951?

A. I do right now, yes, sir.

Q. And at one time were you asked to get those 2834 Lee tires out of your service station by—

A. (Interposing.) Never.

Q. Let me read it to you.

A. I read it, sir, but that is not exactly what it was.

Q. You read that statement before you signed it, you understand?

A. Yes, but that was more of a—a salesman trying to sell merchandise, the same as a Purolator man would ask me to take Fram out; just in a selling manner.

Q. I would like to read this to you in connection with

your stocking of Lee tires. You have stated here today that you were under no pressure to handle Goodyear TBA at the time of the change over?

A. That is right.

Mr. Thompson: If you won't show the witness what you are using, may I watch it?

Mr. Kelaher: You certainly may.

By Mr. Kelaher:

Q. "Dealer stated that the Goodyear"—

Mr. Thompson (interposing): Why don't you begin at the beginning of the sentence. I thought you would do that.

Mr. Kelaher: I will begin not only at the beginning, I will go up a paragraph.

By Mr. Kelaher:

Q. "The things that hurts is this—the dealer states 2835 that he is being told how to run the business, hours open and TBA handled. It is not like running own business, as it is supposed to be, when you are told what to do."

Mr. Thompson: Now that you have read that, have you got a question?

Mr. Kelaher: I am reading this whole thing and then I will propound the question.

By Mr Kelaher:

Q. This is all in connection with the fact that you say you can handle any TBA you want.

"No pressure as such—

"Dealer stated that the Goodyear set-up at first made him mad. Thinks he should get five percent Arco is getting. He believes it is five percent. Salesmen don't sell."

There, were you referring to Arco salesmen, I presume?

A. I would imagine, yes, sir.

Q. You would imagine, sir.

Then: "Change came about two years ago. Arco discontinued Lee and Exide; dealer kept stalling change and went into Lee heavy and distributed Lee to service station dealers who were without source of supply. Finally, Goodyear truck came by—sales promotion truck—took down Lee signs and replaced with Goodyear."

Do you recall that now? Do you not?

2836 A. I recall decal deal, yes, sir.

Q. And—

A. (Interposing.) But I don't recall them taking down Lee signs, because I don't believe in my new building we have ever had any Lee signs, that is, on the windows.

Q. What is your present station location address?

A. 683 Chenango.

Q. And this interview took place at 683 Chenango; is that correct?

A. Yes, sir.

Q. And prior to that what was your station location?

A. That I would have to explain if I could have a minute.

Q. Just give us the address, the prior address.

A. It is an impossibility, sir.

Q. Can't you give us the address of your prior—

A. (Interposing.) 683 Chenango Street.

Q. Has it always been 683 Chenango Street?

A. That is what I would like to explain.

Q. Go ahead.

A. At 683 I had a service station, an old building, it was actually a house converted to a service station. Atlantic built me a new one on the same property and, after the new one was built we worked out of the old one until it was completed, and then we moved into the new one and demolished the old one. That is why we run into this

2837 discrepancy on the addresses.

Q. So you actually had an old station and a new station at the same address?

A. Yes, for a matter of the change-over period, yes, sir.

Q. All right. But the Goodyear, you stated that the Goodyear truck came by, took down your Lee signs and replaced them with Goodyear. That is correct, isn't it?

A. I can't tell you, honestly.

Q. Are you saying now that the statement you gave to Mr. Lipsky is not correct?

A. I am not saying it is not correct, but the thing is vague in my mind because of the change-over at that time. Whether the Lee signs were in the old building along the windows the same as the Goodyear signs are on the windows now, I don't know for sure. I don't intend to—by the way—I don't intend to say that Mr. Lipsky has it wrong. It is just not clear in my mind.

Q. But the Lee signs did come down, that you remember, and the Goodyear signs went up?

A. That is right, yes, sir.

Q. That is correct. And you have testified here today that you had Lee signs and have always had Lee signs on your property?

A. That is right.

Q. But there was a time when some Lee signs 2838 were taken down, isn't that correct?

A. Sir, we are talking about two different kinds of signs.

Q. Apparently, we are. What sind of sign are you talking about?

A. Around the top of the window in the Atlantic station today is a Goodyear decal that goes around the top, says, "Tires, Batteries, Accessories—" and so on. The signs I am referring to, or signs I have always had at the station, exterior signs, pole signs, a metal sign that will go on a roof. Do you understand?

Q. I understand what a pole sign is. Are you saying there is a Lee pole sign on your premises now?

A. There is a Lee roof sign on my premises now.

Q. Is there a Goodyear sign?

A. There is a Goodyear pole sign.

Q. And that is the sign that was put up when the Goodyear truck came around?

A. No, not the pole sign. The decals in the windows.

Q. All right. Then, we go on here. You stated that you "can't install own advertising on property." You recall that statement, I take it?

A. That is true.

Q. That made you very mad, didn't it?

A. At the time, yes.

Q. In other words, you had to advertise what 2839 Atlantic wanted you to advertise; isn't that correct?

A. No, sir; the policy was, no advertising on the building. We have a metal building, and I did try—in fact, I did put up either a Bowes or a Prestone sign on my building in metal and I found to my sorrow it made a mess of the place I put it.

Q. You stated, "Can't install own advertising on the building."

A. Not on a metal building.

Q. That was with reference to the Lee signs?

Mr. Thompson: Was that a statement or a question?

Mr. Kelaher: I am asking him a question.

Mr. Thompson: Let him answer it.

The Witness: The Lee signs have been at my place of business as long as I have been there are there and are still there and they have never came down. The decals are in the window are now Goodyear, where previous to Atlantic having a TBA program with Goodyear they were Lee.

By Mr. Kelaher:

Q. They were the ones that were taken down?

A. That is right, along the top of the window.

Q. Then you went on to state: "How long do you think we would be in business if we had signs up (Lee) out front or stored Lee tires in the service station."

Do you recall making that statement, I assume, to Mr. Lipsky?

2840 A. I must have if I signed that thing, yes.

Q. So, actually, to be truthful about it, you were not free to handle Lee tires or other TBA in your station, you had to handle Goodyear TBA?

A. No, sir.

Q. Well, that is in direct conflict with your statement.

Mr. Thompson: Stop arguing with the witness and ask him questions.

Mr. Kelaher: I have a right to answer questions and let me proceed.

The Witness: I think you misinterpret the thing, sir.

By Mr. Kelaher:

Q. Well, it is in plain English. I can't see where any person could interpret it—

Mr. Thompson (Interposing.): I object to this argument—

Hearing Examiner Kolb (Interposing.): The objection to arguing with the witness will be sustained.

By Mr. Kelaher:

Q. You further stated: "To be frank, because of volume of business, Arco takes a little more front us." Did you mean that they take a little more from you than they did from other Atlantic dealers?

A. What do you mean, "take a little more"? Dollars?

2841 Q. This is your statement: "To be frank, because the volume of business, Arco"—meaning Atlantic—"takes a little more from us."

A. We were on a percentage basis at the time.

Q. Did you mean they took more from you than they did from other Atlantic dealers in any respect?

A. Our rent was based on a six percent basis and for that reason they would take more. My rent would be more than a dealer that wasn't doing the tire volume that I was doing.

Q. Then, you further stated: "Now conducts Lee tire business—stores them in garage." So, your Lee tire business, your Lee tire stock has been in your garage for sometime, has it not?

A. Could I explain that, please?

Q. You go right ahead.

A. Back when we were on the percentage basis, which was six percent of our gross other than gasoline, I was wholesaling a lot of tires to dealers that had previously handled Lee before the Goodyear program came about. Atlantic dealers, by the way.

With the setup that I had at six percent and with a narrow margin in wholesale, it wouldn't be very profitable to sell them through my Atlantic service station because my wholesale markup, by the time I paid six percent on my rent out of my wholesale profit, it would have been

2842 pretty near a losing proposition. So, for that reason at that time I did not put my wholesale business through my service station business. I rented the garage at 640 Chenango Street to store tires in, but the main reason they were in there was because of the volume that we carried, th inventory at the time.

Q. But, isn't it a fact that you wanted to continue to carry Lee tires in your Atlantic service station at the time Atlantic changed over to Goodyear tires, Goodyear TBA?

A. That is absolutely true.

Q. That is true?

A. Yes, sir.

Q. And you resisted the change?

A. I did at the time, absolutely.

Q. And you finally gave in because you were forced to give in, isn't that true?

A. No, sir, it is not true. I was forced to give in, no, sir. Because, sir, I have never given in yet.

Q. Well, it seems to me you have.

A. Why don't you check my Lee invoices for the last ten years?

Q. Let me ask you—let me read this next statement: "Would not be here too long if went 100 percent Lee."

A. Well, that, in a sense, is true.

Q. That is true. Now, we are getting somewhere.

A. But not in the malicious way that you put it.

2843 Q. Believe me, I am just attempting to establish the facts.

A. The fact that I have been there 15 years kind of proves that there certainly hasn't been too big of an objection to my handling Lee tires and Exide batteries.

Q. But the fact is you were afraid of some retribution—

A. (Interposing.) I wanted to see what was going on before I stepped off, yes, sir.

Q. There was a possibility that your lease might be cancelled?

A. No, sir; the lease was never mentioned.

Q. Did you ever give thought to the fact that you were on a lease which could have been terminated on short term?

A. I used to be, yes, sir.

Q. And at that time you stated here that you were on a year to year 30 day clause?

A. That is right, sir.

Q. When it boils down to reasons stated there, it is 30 days. In other words—

A. (Interposing.) Either way.

Q. You felt that you were there from month to month, so to speak?

A. And by the same token I could leave month to month, yes, sir.

Q. Now, you also said that you also sold any brand of TBA on Atlantic credit cards. Do you recall that on 2844 your direct testimony?

A. Yes, and I remembered that, too.

Q. And you also stated on direct testimony that you have seldom given any thought to the matter?

A. That is right.

Q. Now, you state here, and I quote: "Believes credit card sales limited to Goodyear tires, batteries and accessories; when other sales made (Lee) delivery ticket identifies tire as Goodyear."

A. Yes.

Q. So, it was your practice when you were selling Lee tires through your service station to report it to Atlantic as Goodyear, isn't that true?

A. When this change-about came about—

Q. (Interposing.) Just answer that question Yes or No.

A. What is it, sir?

Mr. Thompson: You don't have to answer it Yes or No. Answer the question and then explain as much as you like and take your time in answering it.

By Mr. Kelaher:

Q. I ask you if it isn't true that when you sold Lee tires on Atlantic credit cards you reported it to Atlantic as a Goodyear tire?

A. At that time, yes, sir. Now, may I explain it?

Q. What was your reason for doing that?

2845 A. Well, as I told you previously—on another question you asked me—when we went into this change-over deal we didn't know from nothing. We didn't know just what we were getting into.

Q. What do you mean? Explain that in a little detail.

A. Well, I will tell you, we had had a very nice relation with Atlantic through the TBA program that they had and at the time of this change-over I think everyone felt the same way, they didn't go for it to start with. But as the thing shaped up and we realized the advantages of it, it changed our mind all the way along, and as far as the credit ticket was concerned, why, I believe my tickets could be checked back for a long, long period to this statement deal here, and that Goodyear thing at the time we may have used it, because we didn't know whether we could or whether we couldn't. It had never been brought out. So, rather than get into any deal at all over it, why, we probably did use Goodyear.

Q. And that was to—

A. (Interposing.) Not to hide the fact we sold Lee tires because my Lee tires were right there in sight and they have been. Mr. Lipsky knows they were in sight.

Q. Now, are you finished?

A. Yes, sir.

Q. Isn't it true that you wanted Atlantic to think that you were selling only Goodyear tires on Atlantic credit cards?

2846 A. No, sir.

Q. Wasn't that the reason you reported it as Goodyear?

A. Absolutely not.

Q. What reason would you have?

A. Because if there had been a policy that a Lee tire could not be charged on an Atlantic credit card, we would

lose sales through not being able to put them on Atlantic credit cards.

Q. That is exactly what I said or asked you in another way.

Now, credit card sales are an important part of service station operation, are they not?

A. Today, yes. At that time, no.

Q. Well, at that time you made this statement to Mr. Lipsky with respect to the fact that Atlantic credit cards were limited to Goodyear TBA:—

A. I thought—yes, sir.

Q. (Continuing.) —"What other reason is there for all Arco service stations handling Goodyear TBA?"

Now, my question is this: that credit card sales have been an important part of service station operation for sometime, including 1953, isn't that true?

A. The volume in '53 was nowhere near the volume that it is today, credit card sales by, I would dare say, four or five hundred percent.

Q. What did you mean by this statement: "What
2847 other reason is there for all Arco service stations handling Goodyear TBA?

Mr. Thompson: Why don't you show him the statement and let him see it in context instead of picking a stray statement out of the middle of a page?

(The document was handed to the witness.)

The Witness: Well, you know, Mr. Kelaher, a lot of the wording that is here, with due respect to Mr. Lipsky, I probably said, but I don't know if I said it in this exact manner, and this was a long time ago. It is not too clear to me.

I don't connect the two paragraphs, sir, really, I don't.

(The document was returned to counsel.)

By Mr. Kelaher:

Q. However, it does appear from your statement that all Atlantic stations in the Binghamton area swung over to Goodyear TBA; is that correct? That is, at the time of the changeover.

A. Yes, I would say that was correct, yes, sir. We had to have a source of supply at the time.

Q. In connection with your statement about a source of supply, isn't it true that you had a source of supply for Lee tires at the Lee factory branch in Syracuse, New York?

A. I did, yes, sir.

Q. And you were buying from that branch, were you not?

2848 A. Yes, sir. That is on tires only.

Q. Beg your pardon?

A. That is on tires only. I have never had any Lee batteries.

Q. I am referring to tires only, so that you did have a source of supply?

A. On tires, yes.

Q. And weren't there also other competitors of Goodyear in the Binghamton area selling tires at that time, or haven't there been tire salesmen in the Binghamton area for many, many years?

A. Absolutely, yes.

Q. And you have suppliers of all brands of tires?

A. I buy all brands of tires; that is right.

Q. Now, isn't it true that Lee tires have good consumer acceptance in the Binghamton area?

A. Yes.

Q. And isn't it true that the road hazard guarantee of Lee was a strong selling point on Lee tires?

A. That is true, sir.

Q. And isn't it true that Goodyear had no such road hazard guarantee?

A. That is right.

Q. Is that correct?

A. Absolutely.

Q. And isn't it true that you were able to get
2849 lower prices on Lee tires than Goodyear tires?

A. That is right.

Mr. Kelaher: Your Honor, I wonder if I may have about two minutes, and then I think I can finish up shortly.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Buongiorne, on direct examination you were shown Respondent's Exhibit A-12 and Respondent's Exhibit A-13. Referring first to Respondent's Exhibit A-12, what purpose is this used for—is this used in connection with your wholesale business?

A. Both, sir.

Q. Both wholesale and retail?

A. Yes, sir.

Q. Do you also have a separate Atlantic form for your retail business?

A. Are you referring to credit cards?

Q. Yes, sir.

A. Yes, sir.

Q. Is this for credit card?

A. No, sir.

Q. This is for any type of sale?

A. That is right.

Q. Do you also have a special Atlantic form for credit cards?

A. That is right.

2850 Q. And that does not carry Lee tires or Exide battery testing?

A. It is strictly a form, sir. It has nothing on it. We run it through a printing machine.

Q. This statement, RX-A-13, is that used in connection with your wholesale business?

A. Wholesale and retail, both.

Q. And retail, both?

A. Yes, sir.

Q. Now, in connection with the storing or stocking of Lee tires in your service station, you stated that no comments were made by Atlantic with respect to such tires. Do you recall that testimony?

A. Yes, sir.

Q. I would like to read your remarks concerning that matter: "Lee tires are stored in garage. When stored in service station, Arco salesman—general manager would ask, 'When are those tires going down?' "

Do you recall that?

A. Yes.

Q. Now, does that refresh your recollection?

A. Yes.

Q. And so, as a matter of fact, you were asked by Atlantic salesmen, the personnel, to get those Lee tires out of your service station, were you not?

2851 A. I don't think it says that there, sir.

Q. How do you interpret that?

A. That particular instance comes to my mind very well. Naturally, the Atlantic salesman was trying to sell me Goodyear a hundred percent, and in the course of conversation, from what it says here—and I assume that I must have said it at the time—he asked me, "When are those tires going down?"

Q. What did he mean by that?

A. Well, when can he—the Lee tires were in my service station—when will I take those down and start selling Goodyear. But not in a sense of, get those tires out of here, here comes some Goodyear. Because the tires are still there, I am still not selling Goodyear a hundred percent.

Q. With respect to batteries, I think you did state that you stock more Goodyear than Exide, is that rue?

A. Yes, sir.

Q. On your accessories you indicated that you purchase from a number of suppliers?

A. Yes, sir.

Q. Do you purchase from the Goodyear service store, any accessories from the Goodyear service store?

A. Yes, sir.

Q. What products do you purchase from it?

A. From Goodyear?

Q. From Goodyear.

2852 A. Some AC products, some Du Pont products—

Q. (Interposing.) Do you stock Goodyear fan belts?

A. Yes, sir. Goodyear fan belts.

Q. And, as a matter of fact, you stock a number of accessory products which are purchased from the Goodyear service store, isn't that correct?

A. Yes, that is right.

Q. So, when you state that you buy from everybody that comes around, you are not indicating that you stock from everyone who comes around?

A. I was kind of waiting for that one, sir. We carry a representative name brand line which is also carried by Goodyear. I am called on by salesmen at least one a day, most days, two or three, from our local wholesalers other than Goodyear. Goodyear calls on me one day a week, which is Wednesday. Okay. All the wholesalers in our area that carry the brands that I carry have as much access to sending me merchandise at the Goodyear man, and I believe that the Goodyear share would be comparatively small compared to the other wholesalers that supply me. I think my records would bear that out.

Q. However, fan belts, for example, you do stock Goodyear fan belts?

A. A hundred percent, yes, sir.

Q. And fan belts is a good seller in the service station business?

2853 A. It isn't a big seller, but it is a necessity.

Q. Right. And we have established that you also stock other accessories purchased from Goodyear service store. Would they be polishes and chemicals of various types?

A. I carry the Du Pont line which is also carried by Goodyear. I don't carry any of the Goodyear polishes and chemicals that are put up under the Goodyear name.

Q. But in the Goodyear line, of course, you have many national brands and you carry those?

A. Right; that is right, sir.

Q. Right. Now, you stated a moment ago, just to clarify this, that you do not maintain two separate businesses?

A. That is right, sir.

Q. And, of course, there, as I recall your answer, you stated you do not maintain two separate businesses for income tax purposes; is that correct?

A. That is true, sir.

Q. With respect to your rental paid Atlantic for your service station, isn't it true that that is based on the operation of your service station and is separate and distinct from your warehouse opertaion?

A. No, sir; not now.

Q. Now it isn't. Was it at one time?

A. Our leases are not the same as they were back at this period.

2854 Q. What type of lease are you on now?

A. It is an altogether different lease.

Q. Well, under the current lease, are you under the type of lease—

A. (Interposing.) I have a long term lease, sir.

Q. Let me ask you this to clarify this. At one time you paid a flat rental plus six percent of gross receipts exclusive of gasoline, right?

A. That is right.

Q. Now, that has been changed, apparently?

A. That is right.

Q. Now, under the new type of lease that Atlantic has, you pay in some areas at least, and apparently in your area, do you pay a percentage of gross sales of all products?

A. That is right, sir.

Q. Now, at this time are you telling us that if you sell Lee tires as a warehouse distributor for Lee, you pay a percentage of that to Atlantic as rental?

A. That is right, yes, sir. Could I say something else there.

Q. You go right ahead. I would like to have that clarified.

A. At the time you were referring to before, I would be paying six percent of the gross wholesale as rent, is that right, on my old lease?

Q. Yes.

2855 A. On the new lease that would be maybe two percent or two and a half percent. So there isn't quite the difference that there was.

Q. But the rental is paid on your wholesale operations?

A. That is right, sir.

Q. I just have one more series of questions, and then we will conclude cross-examination.

I would like to ask you if you recall attending a meeting of Atlantic dealers in 1951 concerning Lee tires, and this was after the Goodyear TBA plan was sponsored by Atlantic. Do you recall such a meeting?

A. No, sir.

Q. Do you recall a meeting with other Atlantic dealers who were dissatisfied with the Atlantic change to Goodyear tires from Lee tires? Do you recall such a meeting?

I can refresh your recollection by mentioning the names of the dealers who were present, if you wish me to.

A. If you would, sir.

Q. Mr. Herman Gay, Mr. Maseyko, Mr. Dunham, and Mr. Harder. Do you recall such a meeting?

A. I must certainly, but I can't, no. But I must have been there.

Q. And would it refresh your recollection if I told you that you expressed dissatisfaction with the fact that Atlantic was now sponsoring Goodyear TBA instead of Lee tires?

2856 A. That is absolutely true, as I told you before.

Q. So, there was such a meeting, and the matter was discussed?

A. Apparently, yes, sir.

Q. Wasn't it decided at that meeting that you and these other Atlantic dealers would attempt to go back to selling Lee tires in your Atlantic service stations?

A. I can't tell you, sir. You say "go back". I had never discontinued it.

Q. You recall nothing further about that meeting; is that correct?

A. No, I honestly don't. Other than—you keep going on Lee tires. It was the entire program at the time that we didn't go for it to begin with. We had a very excellent deal with Atlantic as far as TBA was concerned.

Q. And you were satisfied?

A. And we, let's say, didn't want to try something new. it has since proven to be an excellent deal for all concerned.

Q. But at the time there was general dissatisfaction among Atlantic dealers?

A. Right.

Q. Nevertheless, the program did go into effect at that time?

A. No, it didn't go into effect at that time. I think it was a gradual change-over, and it wasn't a cut-it-off here and start Goodyear tomorrow deal.

2857 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any questions?

Mr. Thompson: Yes, sir.

Do you wish to continue the torture? I am getting hungry.

Hearing Examiner Kolb: Do you want to adjourn?

Mr. Thompson: Mr. Kelaher might suspect me of leading the witness with answers to questions.

Mr. Kelaher: You would be the last person I would suspect, Mr. Thompson.

Mr. Thompson: From time to time, Mr. Kelaher, may I have the privilege of using Mr. Lipsky as an interpreter of his handwriting? There are words here which I can't read.

Mr. Kelaher: I don't see any particular need for that. If the need arises, we will meet it.

Mr. Thompson: I will consult you if that need arises.

Redirect-Examination by Mr. Thompson.

Q. Now, Mr. Buongiorne, except for the signature on one page of this four-page document is anything there contained in your handwriting (showing document to the witness)?

A. No, sir.

Q. Was this entire document written by Mr. Lipsky?

2858 A. Yes, sir.

Q. Were the words that he used your words or his?

A. That I couldn't tell you, sir. That was a long time ago. I would imagine that it was a condensation of what he interpreted me saying.

Q. Did he try to put words into your mouth during this conversation?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: I don't remember Mr. Lipsky, honestly I don't. I remember him being there, but not as a person or what he said. Could I take a moment and explain maybe how some of that came about?

By Mr. Thompson:

Q. Surely; go right ahead.

A. Maybe it has no bearing, but it does to me.

At the time of this statement we had amongst our dealers in the area—I may be cutting my throat—an unhealthy situation, not in relation to the Lee tires or Goodyear tires, but another deal, and at that time I think most of our dealers were a little antagonistic over another matter now, which has no bearing on this deal, and I think, as I said before, it has since been clarified and rectified, and it no longer exists, and I believe that if Mr. Lipsky, on the day he came, I was concentrating on that other matter

2859 which I probably was, I wasn't too happy at the time.

Q. Did Mr. Lipsky suggest to you that there was a 30-day cancellation clause in your lease?

A. I couldn't tell you, sir. I knew there was a 30-day cancellation clause in my lease, which could work both ways. I could cancel, too.

Q. By that you refer to a provision in your lease which permits either the Atlantic Refining Company or you as the dealer to cancel 30 days before the expiration of the term, is

that what you are talking about when you say 30-day cancellation clause?

A. Yes, sir; that is right. I have to give them 30 days notice previous to a new lease, and they would give me 30 days notice previous to a new lease. But it worked both ways, it was as fair for one as for the other.

Q. Mr. Kelaher pointed out to you that there is a printed phrase in this document of Mr. Lipsky's called "Terms of Lease" that it then says "year to year".

A. Yes.

Q. Since about 1953 have you not had a three-year lease?

A. That is right, sir.

Q. Then, he pointed out notation in Mr. Lipsky's handwriting which seems to read: "With 30-day clause."

A. You are referring to the old year-to-year lease.

Q. In the old year-to-year lease?

2860 A. That is right.

Q. Now, the 30-day clause to which you referred was the 30-day provision entitling Atlantic or you at the termination of the lease to cancel it on 30-days' notice; is that correct?

A. Thirty days previous to the expiration of my lease I could notify them that I wasn't going to renew it or they could me. That is the way I understood it.

Q. There has never been in any lease you have ever had from Atlantic Refining a provision entitling Atlantic to cancel on 30 days' notice?

A. I honestly, under oath, I have never read my lease. For 15 years I didn't have to question it, and I don't see why I should read it now.

Q. That was Mr. Lipsky that suggested it to you that there was a 30-day cancellation clause in your lease?

Mr. Kelaher: Objection, your Honor.

The Witness: I don't understand what they mean, sir. I know about the 30 days at the expiration. In other words,

If I were contemplating getting out of business, I would have to look at my lease, see when this expiration occurs, I would have to notify Atlantic 30 days previous to the expiration that I was not a renewer. I believe it worked the same way on the other one, because I believe my lease is the same except it is longer.

2861 Mr. Thompson: May I call upon an interpreter.

Mr. Kelaher: Maybe I can interpret it.

Mr. Thompson: Maybe you can do a better job. What does this say.

Mr. Kelaher: "When it boils down to reasons stated there, it is 30-day."

Over here, then starting a new sentence, "Renew each year."

By Mr. Thompson:

Q. Did Mr. Lipsky suggest to you that when it boils down you had a 30-day lease? Did he give you that impression?

A. No, because I think I would have contradicted him. I couldn't do business on a 30-day basis to begin with.

Q. Have you ever had any apprehension at all about Atlantic cancelling any one of your leases?

A. The proof is that I still have one.

Q. Have you ever had any apprehension about it?

A. No, never been mentioned as far as the lease is concerned.

Q. At all times since 1951 have you had Lee tires openly on display for sale at retail at your service station?

A. Yes, sir.

Q. At all times since 1951 have you had openly displayed at the station Lee tire advertising signs?

A. Yes, sir.

Q. When Mr. Lipsky came to your station, did
2862 you show him Lee tires actually in the station displayed for sale at retail?

A. That, Mr. Lipsky could answer better than I. I don't remember. But if he looked around, I think he saw them.

Q. At the time Mr. Lipsky came to your station was Exide your primary battery line?

A. At that time I believe I was pretty near a hundred percent Exide, yes, sir.

Q. Did you have Exide batteries in your station displayed for sale?

A. I not only had Exide batteries, I had a rack that had been moved from my old building over into the new building. It is still there, by the way.

Mr. Thompson: Mr. Interpreter, there is an illegible something or other here that is blotted. It looks as if somebody had spat upon it. What is this word?

Mr. Kelaher: "Lee tires are stored in garage. When stored in service station, Arco, salesman, general manager, would ask, 'When are those tires going down?' "

By Mr. Thompson:

Q. Did you understand what the interpreter read?

A. Yes, sir.

Q. Now, in addition to having Lee tires on display at your station, do I correctly understand that so far as your wholesale business was concerned you were stocking

2863 and storing Lee in an adjacent garage?

A. That is right.

Q. There is an interlineation here that says, apparently, "When stored in service station Arco, salesman, general manager would ask, 'When are those tires going down?' "

In the first place, do you know what the interlineation of general manager means after the word "salesman"?

A. No, I don't.

Mr. Kelaher: Could you speak up so we can all hear you?

The Witness: No, sir; I don't know what that is written in there for, but I do know this: it may or may not be the way the thing happened, but maybe Mr. Lipsky, in our conversation, which that must be, but just in part as near as I can figure. Certainly, he was there much longer. This was just what he picked out.

By Mr. Thompson:

Q. What you are saying is he only wrote down part of the things?

A. I would say that, yes. He may have asked me, was any pressure brought upon me, did the sales man ever say anything about the tires up? I could have said—apparently I did because he has it wrote down there—when are you going to take those tires down. I don't remember the conversation at all. I do know the tires are still there, 2864 and to the best of my knowledge have not been taken down.

Q. You own and run the station. Now, am I correct in my understanding that you have at all times stocked Lee since '51 right at the service station?

A. That is right, sir.

Q. So that if the Atlantic salesman tried to persuade you to shift to Goodyear tires, he was not successful, was he?

A. No, sir, he didn't sell me in the sense of getting rid of Lee to stock Goodyear, no. I stocked them both. I found it was to my advantage to stock them both the same as I have told you about Goodrich and Royal.

Mr. Kelaher: About what was that last?

The Witness: Other tires that I have stocked and sold. The same as other accessories.

By Mr. Thompson:

Q. Under other TBA Mr. Lipsky wrote into this statement: "Usual accessories—Fram oil filters". Is that what that says?

A. I have always sold Fram, nothing else.

Q. Is Fram in the Goodyear line?

A. No, sir; that is a holdover from Atlantic, they sold me on it years ago, and I have never changed.

Q. And you still have been stocking Fram over all these years?

A. One hundred percent. There is no other filters
2865 in my place, never have been, they are there today.

Q. Then, Mr. Lipsky wrote in this statement: "The thing that hurts is this—the dealer states that he is being told how to run the business, hours open"—

A. (Interposing.) Yes.

Q. (Continuing.) —"and TBA handled."

A. That is right.

Q. What did you mean by that statement?

A. That was the situation that I referred to a moment ago. We had a dealer in town that either was left his place of business and took another one due to the fact that he had been—tried to persuade him to keep different hours than what he was doing, and rather than do it, he moved and that is why when I came across that it kind of came into my mind while we were under this duress at the time. I don't think that situation exists anymore.

Q. Then, you were referring in this—

A. (Interposing.) Which burned me up at the time, let's face it.

(Laughter.)

Q. And you are no longer burned up, Mr. Buongiorne?

A. No, I mean at that time I was, yes. But—

Q. (Interposing.) What I was really trying to get at is this:—

Mr. Kelaher: Did you finish?

2866 Mr. Thompson: Go ahead.

By Mr. Thompson:

Q. When Mr. Lipsky wrote down the dealer states that he is being told how to run his business, was he referring to you or the other dealers to which you have referred?

A. I was referring to the other dealer at that time.

Q. And this statement was not a personal statement that it is hurting you because you were being told how to run your business? You were referring to some other dealer?

A. I wasn't at the time; from this other dealer, I thought I might, in fact, at the time I thought Mr. Lipsky was here on this other deal.

Mr. Kelaher: Will you speak up?

The Witness: I said I think that at the time Mr. Lipsky was questioning me more on a lease basis than he was the product that I sold.

By Mr. Thompson:

Q. In other words, the tenor of the conversation related to the provisions of your lease, hours of operation, things of that type, rather than TBA?

A. I think so. In fact, I believe he read or asked to read my lease.

Q. Then, under "Reason for choosing line of TBA carried" Mr. Lipsky wrote down "No pressure as such."

A. That is right.

2867 Q. What did you mean by that?

A. That there was no pressure at all on what accessory line I carried. I think it is obvious from that.

Q. Then, Mr. Lipsky next wrote down "Dealer stated that the Goodyear set-up at first made him mad. Thinks he should get five percent Arco is getting."

A. That is right.

Q. So the thing that made you mad was that you felt that whatever commission Atlantic was getting should be given to you, or was that the point?

A. In a sense, yes. Actually, when we had our own TBA program through Atlantic, the price structure was much different than the Goodyear price structure, and when we first went into the Goodyear program, we naturally, lost an extra percentage that we were getting with Atlantic, and, well, we just didn't like it, of course. Since, the thing has come around into shape and it is all right, but it was a new deal to all of us and when it was presented there were a lot of things that we didn't like about it, and that is the reason that a lot of us didn't accept it, and we continued on with the lines that we were selling or we went out on the open market and dickered and see where we could get a deal on different items.

Q. You are still doing that, aren't you?

A. We are still doing it. Heck, yes, we have to.

Q. When Mr. Lipsky wrote down "Salesmen don't
2868 sell", were you referring to Atlantic salesmen or to Goodyear salesmen? Would you mind looking at it in context and let me know (document handed to the witness)?

A. I don't connect the two.

Q. The answer is you don't connect the two?

A. Yes.

Q. You can't tell from this statement when Mr. Lipsky wrote down "Salesmen don't sell" he was referring to the Goodyear salesman or to Atlantic salesman?

A. No, I don't.

Q. Let me ask you this, then: over the course of the past seven years since Atlantic has been promoting Goodyear, have Atlantic salesmen endeavored to sell you on the Goodyear line?

A. Oh, yes. Yes, sir.

Q. Is that a continuous performance? I mean, do they always try to?

A. I think they have given up on me.

Q. You think they have given up on you?

A. Other than periodic deals they will sell me, like a spring dating, the tires stock for the summer, and the fall dating for my merchandise and so on, which, by the way, I would buy from Goodyear whether Atlantic was in the deal or not, because they have the most acceptable snow tires on the road today, and they have had for some time. I don't sell Lee snow tires.

2869 Q. There is a reference here which I find hard to read. Perhaps you can. It refers to S.S. dealers who were without source of supply. There is a reference here to your sales of Lee. The statement reads: "Dealer"—I suppose that means you—"kept stalling change and went into Lee heavy and distributed Lee to S.S. dealers who were without source of supply."

A. That is right. That is how I happened to get into the wholesale business of Lee to begin with.

Q. In other words, when Atlantic stopped selling Lee—

A. (Interposing.) It was a beautiful market, sir.

Q. (Continuing.) —you wired Lee and got a distributorship?

A. That is right.

Q. And picked up whatever business you could from the service station operators selling them Lee; is that correct?

A. That is right.

Q. When you say a Goodyear truck came by and took down Lee signs and replaced with Goodyear, has it been made clear on the record that the reference was not to signs, but to the decals in the windows?

A. I hope so, sir, because that is exactly what it was.

Mr. Thompson: Will you mark this Respondent's Exhibit A-14 for identification.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 14 for identification.)

2870 By Mr. Thompson:

Q. I show you a picture of a service station. This has been identified as R-A-14. Is that your service station in Binghamton?

A. Yes, sir.

Q. Is that an accurate picture of it?

A. Yes, sir.

Q Do you recall when this picture was taken, Mr. Buongiorne?

A. I don't know, sir.

Q. About two years ago, something of the kind?

A. It is long enough ago so that I have forgotten when the actual time. It wasn't taken recently. There might be some way I could tell by looking at it.

Q. Are the Lee signs which appear in the picture the signs to which you have been referring?

A. Yes, sir, you can see them, both of them.

Mr. Kelaher: I am going to object to the use of the photograph unless it is identified more clearly as to the date when the photograph was taken.

The Witness: I think I can—

By Mr. Thompson:

Q. (Interposing.) Mr. Buongiorne, Mr. Kelaher has objected to the use of this picture unless we can identify more clearly what it represents.

Mr. Kelaher: When it was taken.

2871 By Mr. Thompson:

Q. Does this picture accurately portray photographically your service station as it now appears in 1958?

A. I would say it would be exact with the exception of this Coca-Cola cooler which I have since painted to blend in with the building.

Q. Otherwise it is the same?

A. Yes, sir.

Q. Are the Lee signs which appear in this picture the same signs which have been there for many years?

A. Yes, sir.

Mr. Thompson: I offer in evdence R-A-14.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-14.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (Atlantic) 14 for identification, was received in evidence.)

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Thompson:

Q. Were those Lee signs on your station when Mr. Lipsky came there?

2872 A. I believe they were, weren't they?

Mr. Kelaher: He is asking.

The Witness: Yes, I would say so, yes, sir. They have been there.

By Mr. Thompson:

Q. Do you know why Lipsky wrote into your statement: "How long do you think we would be in business if we had signs up for Lee out front or stored Lee tires in the service station?"

A. No.

Q. At the time he was there the Lee signs were up and you were storing Lee tires in the service station, weren't you?

A. That is right. Yes, sir.

Mr. Kelaher: Does that picture show that Lee tires were stored in the service station?

The Witness: I don't—unless there would be one in the window.

Mr. Thompson: Is this redirect examination? I think I am competent to ask my questions.

Mr. Kelaher: I am just—

Hearing Examiner Kolb (interposing): Let's go ahead here. Let's go ahead.

By Mr. Thompson:

Q. There is a statement here Mr. Lipsky made which says: "Big volume done in Goodyear—could buy Lee tires cheaper."

2873 Do you understand that reference? What that means.

A. I have never done a big volume in Goodyear. That is in comparison to my Lee volume. But I don't quite get what that does mean.

Q. What is the comparative pricing situation on Goodyear and Lee, Mr. Buongiorne?

A. Are you talking about retail prices?

Q. Yes, sir.

A. It is identical. The retail prices.

Q. The retail price to the consumer is identical?

A. That is right, yes, sir.

Q. As a Lee wholesaler, am I correct in my assumption that you can buy Lee tires at a better discount than you [redacted] buy Goodyear tires?

A. Absolutely.

Q. That, of course, is why you are in the business of distributing Lee tires?

A. It is about as goodda reason as I have, sir, yes.

Q. In 1953 did you think that you might not be there long if you went a hundred percent to Lee?

A. That is a tough question to answer.

Q. Do you think today if you went a hundred percent Lee, Atlantic would bother your lease?

A. I don't think they would, no. I am practically as far as the tire business is concerned, I am about 80
2874 percent Lee anyway. It wouldn't be to my advantage to go a hundred percent Lee.

Q. But if you kept your volume and your gasoline gallonage up as such, do you think for a minute that Atlantic would bother you if you handled Lee exclusively?

A. It has always been my opinion as long as my gallonage was up and I kept a neat, orderly station and run a business as it should be that I had no lease worries. I have never bothered them as far as that goes.

Q. Isn't the pragmatic test of that the fact that you have been handling 80 percent Lee tires and Exide batteries for many years and nobody has ever mentioned it on a lease renewal?

A. That is about what I have said from the start.

Q. If I understand your responses to cross-examination by Mr. Kelaher, you thought in 1953 that there might be some doubt about whether you were permitted to charge Lee and Exide products on Atlantic credit cards.

A. I explained that, sir. All the time we were selling Lee tires and batteries and accessories, whatever Atlantic sold, we wrote two Lee tires, there was no reason not to. When we went over to the Goodyear program, I suppose we wrote two Goodyear tires even if they were Lee. Maybe there was a discrepancy there, maybe there wasn't, but why ask for it. I don't know. You are looking out for yourself. I do it everyday.

2875 Q. And you don't specify—

A. (Interposing.) We specify nothing on them, nothing at all. Usually tires, amount, tax, sales tax.

Q. And you have followed that practice for some years, haven't you?

A. That is right. I think my tickets will bear it out.

Q. I think you already testified that that practice on your part has never been criticized by Atlantic, has it?

A. No, sir.

Q. You did mention the fact, Mr. Buongiorne, that you handle a lot of the nationally advertised accessories, which are in the Goodyear line.

A. Yes, sir.

Q. Does that mean that you buy them from Goodyear necessarily, or from anybody who handles that particular brand?

A. I buy them wherever it is convenient. My invoices over the past, if they could be looked at, which would be much simpler than questioning me, would show where they were bought from. My sales would show where they went, and the invoices would show where they came from, whether Goodyear, United Auto Parts, Whipple's or whoever I bought from.

Q. Do some of those jobbers whom you have just mentioned handle, for example, the DuPont Chemical line?

A. I believe everyone but one I mentioned, and they happen to handle the Hollingshead line, which I don't handle.

2876 Q. And when you have DuPont chemicals on your shelf for display, does that mean that you bought them from Goodyear?

A. If you know our business, you would realize that that is a foolish question.

Q. Foolish as it may be, that is the inference that Mr. Kelaher tried to create and I am just trying to get the facts fairly on the record.

A. Let me give another example, please, sir.

Q. Would you mind answering the question? You could have bought that Du Pont Chemical from any one of a half dozen—

A. (Interposing.) United Auto Parts was giving a blanket about two months ago; so, I bought Du Pont from them. Maybe next month they will be giving a pop corn popper, I will buy it from them. I have no specific place that I buy my chemicals, Du Pont line.

Q. And does that same answer apply with respect to other nationally advertised brands of accessories which are in the Goodyear line and are also sold by other jobbers?

A. That is right, sir.

Mr. Thompson: Thank you, very much, sir.

Hearing Examiner Kolb: Do you have any questions, Mr. Kelaher?

Mr. Kelaher: I have just a couple.

2877 *Recross Examination by Mr. Kelaher.*

Q. Just a few minutes ago on redirect Mr. Thompson referred to the fact that you were selling 80 percent Exide battreies.

A. How many percent?

Q. Eight percent Exide batteries. I think you testified earlier that you sell more Goodyear than Exide.

A. That is right.

Q. Then, the 80 percent was not correct?

A. At the time that Mr. Thompson was asking me, that figure was correct. Now, it isn't. Now, I buy Goodyear in volume. Price-wise I come out much better than I did on Exide. However, I still stock Exide because I do a little wholesale business.

Mr. Kelaher: Your Honor, I have no further questions, but I would like the record to note that this witness' name is mentioned in CX-172-A, -B, and also in the transcript at page 341 in connection with his service station identification.

CX-172-A, -B, shows that as of October 24, 1951 this witness refused to permit Goodyear signs to be placed in

his station. The address was given as Chenango and Bromley, Binghamton, New York. A stipulation entered into with counsel for Atlantic shows that this witness did subsequently display Goodyear identification, transcript 341.

2878 Mr. Thompson: I think, sir, that the record further shows that Mr. Buongiorne refused to permit the Goodyear signs to be placed on his station because it was under construction and further testified that when the station had been modernized, it did permit the signs to be put up.

The Witness. That is absolutely correct.

Mr. Kelaher: That is in the testimony, not in the document. It just says, refused.

Hearing Examiner Kolb: We will adjourn until 3:00 p.m.

(Whereupon, at 1:50 o'clock p.m., the hearing in the above entitled matter was recessed to reconvene at 3:00 o'clock p.m., the same day.)

2879 Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Maseyko, would you take the stand, please?

GEORGE PAUL MASEYKO was thereupon called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you be kind enough to give your full name, please?

A. George Paul Maseyko.

Q. Where do you live?

A. 98 North Street, Johnson City, New York.

Q. Is Johnson City one of the so-called "triple cities" around Binghamton?

A. That's right.

Q. The other being Johnson city?

A. Endicot.

Q. The three are Endicot?

A. Endicot, Johnson City, and Binghamton.

Q. Thank you. Are you an Atlantic Refining Company lessee?

A. Yes, sir, I am.

Q. Where is your station, Mr. Maseyko?

A. 225 Front Street, Binghamton, New York.

Q. How long have you been at that station?

2880 A. Twenty-four to twenty-five years.

Q. Since about 1935?

A. That's right.

Q. For the first few years I believe you had somebody as a partner with you?

A. Yes, there were originally three of us, and then two, and finally myself.

Q. Since about 1938 you have been the sole operator of the station?

A. That's right.

Q. And sole lessee?

A. That's right.

Q. And before you became an Atlantic lessee operator of a service station, do I correctly understand that you served in the United States Navy?

A. That's right.

Q. Now, of course, you have a three-year lease for your station?

A. That's right.

Q. And this would be your second three-year lease?

A. I believe so. At the present time, I might clarify that, I have renewed this lease which went into effect this month. I have taken in a partner who is my brother.

Q. I understand, sir, that when you retire you plan to turn the station over to your brother?

2881 A. That's right.

Q. Before 1951, were you handling primarily Lee tires and Exide batteries at your station?

A. Yes, I believe so.

Q. Do you recall that in 1951 or about then, Atlantic dropped the direct marketing of TBA and began to sponsor the Goodyear plan?

A. Yes, I remember.

Q. Do you recall going to dealer meetings in 1951, about the time of the change over?

A. Yes.

Q. And again in 1952?

A. Yes.

Q. Could you tell us in your own way, generally, what happened at those meetings?

A. Well, Goodyear had sponsored a dinner in this particular instance at the Arlington Hotel and they were explaining their TBA deal to the dealers.

Q. Were Atlantic representatives present?

A. Yes, sir, they were.

Mr. Kelaher: Excuse me, is this the first meeting, counsel?

Mr. Thompson: I asked him about 1951.

Mr. Kelaher: Oh.

2882 By Mr. Thompson:

Q. Was the program explained to you not only by Goodyear but also by Atlantic?

A. Yes, sir, it was.

Q. Was it made clear to you this was a voluntary program so far as the dealers were concerned?

A. Yes, sir, the dealers could take it or leave it.

Q. Now, after Atlantic had explained the program, did you or did you not decide to try the Goodyear line of TBA?

A. Yes, sir, I did.

Q. Have you since 1951 used Goodyear tires as your primary tire line?

A. It is my primary tire line.

Q. And you purchase, I believe, anything else your customers want?

A. Anything they want, I will buy.

Q. Would you explain to us in your own words why you have continued to handle the Goodyear tires?

A. Well, I think probably the easiest is my mark-up is a little better. My discount on the Goodyear tire is a little better than I can get off competitors and it has a public acceptancy, that is, in my local area.

Q. Do you find the Goodyear tire easy to sell?

A. Yes, I do.

Q. How about batteries, Mr. Maseyko, what lines 2883 and brands of batteries have you been carrying since 1951?

A. Well, I handle Goodyear primarily, but I have sold also Auto-lite.

Q. Do you stock Auto-lite batteries?

A. Occasionally, yes.

Q. How about accessories, from whom do you buy accessories?

A. Well, that would cover just about every wholesaler in town.

Q. In other words, you buy from a large number of sources?

A. It depends on how my stock varies at that particular instant.

Q. Could you name some of your suppliers?

A. Well, Whipple's Automotive, Rose Units, United Auto, and Binghamton Auto Parts.

Q. Are these non-Goodyear accessories openly displayed at your station?

A. Yes, sir, they are.

Q. So they are visible to anyone?

A. That's right.

Q. Do you have a Bowes decal at your station?

A. Yes, sir, I do.

Q. Why do you have a Bowes decal, do you carry Bowes products?

A. It is more or less for tubeless tires. I have carried Bowes products, yes.

Q. What kind of battery charger do you use?

A. Exide.

Q. Does that have the Exide name on it?

2884 A. Yes, it does.

Q. And all these things are visible to the Atlantic salesmen when they come to your station?

A. They sure are.

Q. Do you sell TBA on the Atlantic credit cards?

A. Yes, I do.

Q. Do you sell TBA regardless of the brand, on the Atlantic credit cards?

A. Yes, yes, sir.

Q. That is, you sell non-Goodyear TBA on the Atlantic credit cards?

A. Oh, yes.

Q. When you turn your charge slips in to Atlantic, do you mention any brand on the charge slips?

A. It is just recently I have—I don't know, I have never have heard any brand on the tire, I just have named the size of the tire and price and let it go at that. I have never put any brand on.

Q. How about batteries?

A. Batteries the same way.

Q. Has that been, to the best of your recollection, your continuous practice?

A. That is more or less recently. I can't quite remember back whether I done it all the time or not.

Q. Has Atlantic ever criticized you or commented
2885 upon the fact that you charge non-sponsored TBA on credit cards?

A. No, they haven't.

Q. Are you solicited at your station by tire manufacturer's representatives or salesmen other than Goodyear?

A. Yes, I have been.

Q. Do you occasionally buy from them?

A. Yes.

Q. Has any representative of Atlantic ever criticized you for handling Auto-lite batteries or non-Goodyear accessories?

A. No, they haven't.

Q. Have they ever suggested to you that you should not buy them?

A. No, they haven't.

Q. Or told you to hide them?

A. No.

Q. Who makes the decision at your station about what you buy? What brand of TBA you carry?

A. I make my own decisions.

Q. Has Atlantic attempted to force you or press you to buy Goodyear?

A. No, they haven't.

Q. Do you feel free to buy any brand of TBA you desire?

A. Yes, I do.

Q. Do you feel that you could carry Goodrich or Lee or Exide 100 percent at your station without criticism by Atlantic?

2886 A. Yes, I think I could.

Q. Or without danger to your lease?

A. Yes, I believe I could.

Q. Now, your lease has, of course, been renewed many times, has it not?

A. That's right.

Q. Has your TBA purchase practices ever been commented upon on the occasion of a lease renewal?

A. No, it has not.

Q. Do you handle some of your accounts by extending personal credit to customers?

A. Yes, I do.

Q. Have you built up in your neighborhood a large number of customers who reside near your station?

A. Yes, I believe 95 percent of my business is neighborhood business.

Q. Do those people know you well, and do you know them?

A. Yes, I do.

Q. Have you from time to time received offers from competitors of Atlantic Refining Company to take stations of theirs?

A. Yes.

Q. Has any recent example occurred to you?

A. Yes, back there about, might be a year or two ago, Amoco contacted me.

Q. Why do you stick to Atlantic, Mr. Maseyko?

2887 A. Because I am heartily sold on them.

Q. Doesn't Atlantic inspect your station from time to time?

A. Yes, they do.

Q. Do you see the results or discuss the results of the inspection with them?

A. Yes, we do.

Q. Are the TBA brands carried by you ever the subject matter of discussion following inspection?

A. Oh, no, no. Inspection, all it does is more or less,

they discuss the cleanliness and the efficiency of the service station.

Q. Then do you have once a year or so, a discussion of your business with the sales supervisor or district manager?

A. Yes, I do.

Q. Is it the purpose of that to try to help you make money at your station?

A. Yes, and I am strongly for this particular type because when I first went in business, now had this thing been instructed to me the way it is today, why, I would be far better off because this shows the dealer where he is missing out on his day-to-day sales with the contact with the public.

It is a very good deal for the younger men today.

Q. Now are you one of the elect in the Binghamton area who was visited by Mr. Lipsky of the Federal Trade Commission?

A. Yes, yes I am.

2888 Q. Do you know why you were selected for that distinguished honor?

A. No, I don't.

Q. Do you recall the interview? Is it clear to your mind?

A. Well, I can recall the particular incident where I was down—I had the old-type service station where we had a grease pit, and I believe my man was sick and I was running the business all alone, and I had been pressured all day by salesmen and he walked in there, just about the time I am underneath the car, and he wanted to know who I was, and I looked up from underneath and asked him who the hell he was, and I think that is when he told me he was so and so from the Federal Trade Commission. And then I asked him for his credentials and he showed it to me and that is when I come up from underneath.

Q. When you said you were pressured all day from salesmen, were you referring to Atlantic salesmen?

A. No, no, no.

Q. Now, when you say you are pressured from salesmen, do you mean the large number of jobber salesmen who come to see you?

A. Yes, it is these wholesalers of course, have salesmen who call on dealers from time to time, and this particular day happened to be the day that maybe two or three of them had called on me, and one of those days I just wasn't in the mood to talk to them.

Q. You were not in a happy frame of mind?

2889 A. Very much.

Q. Do you remember whether Mr. Lipsky asked you whether Atlantic tried to force you to buy Goodyear products, or words to that effect?

A. Yes, I believe he did.

Q. Do you recall what answer you gave him?

A. Well, the answer that I would give right now, that we weren't pressured.

Q. Did you feel in 1953 you were being pressured?

A. No, I don't.

Q. During the course of the conversation with Mr. Lipsky, did he write down things on a piece of paper?

A. Yes, he did.

Q. When he was through writing things down, did he show it to you?

A. Yes, he did.

Q. Did he ask you to sign the statement?

A. Yes, which I did.

Q. Were the words in the statement his or yours?

A. No, I believe they were his to the best of my knowledge.

Q. Do you recall whether he read it carefully or hastily?

A. Well, after about two hours of Mr. Lipsky I was in a hurry to get rid of him, so it had to be hastily.

Mr. Thompson: Mr. Ingraham, any questions.

Mr. Ingraham: No question.

2890 Mr. Thompson: Mr. Kelaher?

Cross-Examination by Mr. Kelaher.

Q. Mr. Maseyko, I would just like to go over some of the answers you have just given to Mr. Thompson. Before 1951, before Atlantic began to sponeor Goodyear TBA, you stocked Lee tires, is that correct?

A. That is right.

Q. Did you stock them exculsively?

A. That's right.

Q. Did you stock Exide batteries exculsively?

A. Yes, I believe so.

Q. Now, you weren't asked—

A. (Interposing.) Excuse me, you are referring to stocked exclusively. There would be occasions where a customer would want a tire other than the Lee or a battery other than an Exide that I would go out and buy through a wholesaler. Exclusively my stock in service station was Lee and Exide.

Q. What other brands would you go out and buy?

A. Well, for instance, there would be the Willard battery or the Delco battery, or the Firestone tire, or the Goodrich tire, whatever the party would want.

Q. Then after Atlantic began to sponsor Goodyear TBA, what brand of tires and tubes did you carry?

A. After Atlantic sponsored Goodyear?

2891 Q. In 1951.

A. Goodyear.

Q. And you stocked Goodyear tires and tubes exclusively, right?

A. Well, yes.

Q. Now, with resepect to your batteries. After Atlantic entered into the Goodyear TBA program, what batteries did you begin to stock?

A. I handled Goodyear batteries and on occasion I handled Auto-lites.

Q. Did you stock Goodyear batteries exclusively?

A. Yes.

Q. So that your sales of Auto-lite were just sporadic, is that right?

A. Yes.

Q. Now, on your accessories—let me ask you this first: When Atlantic was sponsoring Lee-Exide, they also had a line of accessories in their program, as you will recall, and at that time, were you purchasing accessories through the Atlantic program prior to 1951?

A. Off and on, yes.

Q. Now, after Atlantic began to sponsor Goodyear TBA, about March 1951, from whom did you purchase your accessories?

A. Well, it could be from a number of them. It was from Goodyear, of course, and then there was Whipple's Rose Units, United Auto, and Binghamton Auto.

2892 Q. And what percentage of your accessories were purchased from Goodyear, that would be the Goodyear service stores, is that correct?

A. That is right.

Q. That is located in Binghamton?

A. Yes. Well, I am guessing roughly there, at the present time, I would say between 40 and 50 percent of the accessory line.

Q. And the balance is—

A. (Interposing.) From the other.

Q. (Continuing.) —is distributed among the other jobbers?

A. That's right.

Q. So, you were practically Goodyear right down the line in TBA?

A. Let me put it this way, you have to understand a little about this Goodyear deal before we get too far.

Q. I am not asking you that.

Mr. Thompson: Let him answer the question.

Mr. Kelaher: I just asked him if he were not, he has testified tires, batteries,—

The Witness: (Interposing.) I would like to state the reason that I am a Goodyear man.

By Mr. Kelaher:

Q. I haven't asked you that yet, but I will if you just give me time.

2893 A. At the present time, I do buy Goodyear products.

Q. Right. Now, what type of service station identification did your station have when you were carrying Lee, Exide products?

A. Just what do you mean by "what kind of identification"?

Q. I am referring to signs.

A. I had Lee Tire signs out and I had Exide Battery signs out.

Q. And what happened, if anything, after the Goodyear TBA program went into effect? Did those signs remain there?

A. No. In fact, I believe I took the signs down myself and used them as a carry-all in my grease pit, and I put up the Goodyear signs.

Q. You say that you yourself put up the Goodyear signs?

A. Well, with the help of the Goodyear salesman, and the Atlantic salesman. I think both was there.

Q. Was your permission asked to put up the Goodyear signs?

A. Oh, yes.

Q. Did the Goodyear driver or anyone make any comments to you at that time about the placing of the Goodyear signs in Atlantic service stations?

A. Well, what do you mean by "comments"?

Q. I am just asking you if there was any conversation that went on at that time between you and the Goodyear driver?

A. Well, I believe that in my particular case, I
2894 asked for a sign to be put on my pole to identify me as a Goodyear dealer.

Q. And at that time was the Goodyear truck going to Atlantic service stations in the area putting up Goodyear identification on Atlantic stations?

A. This might have been prior to that, but of course, the time, it could have happened at the time they were putting these decals in the window.

Q. They were putting them in the windows of all the Atlantic stations, is that what you mean?

A. That's right.

Mr. Thompson: Off the record, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Direct Examination (Resumed) by Mr. Thompson.

Q. I simply forgot to ask you a question, Mr. Maseyko. I show you three documents labeled CX 150, CX 206 and CX 207, being letters from Atlantic Refining Company to dealers.

Will you take a look at them and let me know whether you received all of those precise letters or letters substantially the same?

A. (After inspection.) Yes.

Q. Do you recall those letters, sir?

A. Yes, I do.

2895 Q. Did you receive those?

A. That's right.

Cross-Examination (Resumed) by Mr. Kelaher.

Q. Now you carried Lee tires and Exide batteries for quite a number of years, did you not, Mr. Maseyko?

A. That's right.

Q. And there was good consumer acceptance for Lee tires and Exide batteries in the Binghamton area, was there not?

A. Yes, but that was through the efforts of the dealers.

Q. Well, regardless of whose efforts they were, there was consumer acceptance there?

A. That's right.

Q. And the road hazard guarantee was a good selling point in Lee tires, was it not?

A. Sure.

Q. And at that time, going up to about 19—well, during the time you handled Lee, were you able to get a better price on Lee tires than you were on other brands of tires, such as Goodyear?

A. Well, I don't believe so. Let me put it this way, I didn't have the opportunity other than when I had the occasion to buy the tire, I could not do as good as I had done with Lee. I guess that would be right; Lee gave me the better deal.

Q. Lee gave you the better deal?

2896 A. At this particular time.

Q. And your mark-up was higher on Lee?

A. Well, it was at the time.

Q. In 1951?

A. Prior to the Goodyear deal.

Q. Yes. Well, even after the Goodyear deal, weren't

you still able to get Lee tires at a lower price than Goodyear tires?

A. Well, that was one of those deals I was a little shy of.

Q. I don't think I understood you.

A. Well, for one reason, there wasn't a distributor in the marketing area at the time, outside of Frank and I didn't know Frank was a distributor, but the tires were to be shipped in from Syracuse, and I didn't like the set-up, so that is the reason I didn't go into it.

Q. I am asking you—

A. (Interposing.) But the price was a little better, yes.

Q. Your answer is "yes" to my question?

A. Yes.

Q. Now, you stated on direct examination, you gave some reasons as to why you began to handle Goodyear TBA and why you continued to handle Goodyear, relating to tires right now. Do you recall that testimony? Do you recall the reasons you gave for wanting or for handling or carrying Goodyear?

A. When was that?

Q. Today, in the answer to a question by Mr. Thompson.

2897 A. Yes, public acceptance, for one.

Q. Yes.

A. And better price.

Q. Was that true? And you just testified that the mark-up on Lee tires about 1951 was better than on Goodyear tires?

A. Now, that again takes a little explanation. That was a one-shot deal, and only a one-shot deal.

Q. What was a one-shot deal?

A. You are getting ahead. Here is a market or here comes Lee's Tire Company that loses a marketing area,

and she is trying to come in and build herself back up, so she gives the dealer a one-shot deal, but yet, over the long period of tire buying, I wasn't better off. I was better off with the Goodyear set-up. I am not looking for a one-tire deal, I am not here today and gone tomorrow. I am in the business to stay. It is the only thing I know.

Q. Well, I gather from your answer that what you are referring to is the fact that when Goodyear and Atlantic began to sponsor Goodyear TBA, Lee lost the marketing area, is that correct? Lost the Atlantic marketing area?

A. Well, yes.

Q. And the same thing applied to Exide, did it not?

A. Well, the Exide had a marketing area there, but I just felt I wanted to go along with Goodyear.

Q. So, didn't the fact that Atlantic sponsored 2898 Goodyear TBA influence you to handle Goodyear TBA?

A. Well, I don't think it was the main factor. I think price, wholesale price, that is what I am mainly interested in, is making that extra dollar.

Q. You just testified that you could have obtained a larger mark-up on Lee tires than Goodyear tires?

A. I also said it was a one-shot deal.

Q. When was this one-shot deal given to you? In what year? Was this after Atlantic went over?

A. Right after I went into the Goodyear line.

Q. What happened then?

A. Nothing.

Q. Did Lee come around?

A. The salesman come in from Syracuse area and I just wasn't interested.

Q. He offered you a better price than you got from Goodyear?

A. Just on that particular one-shot to get the Lee tire in.

Q. Did he say it was just for a one-shot deal?

A. That was the deal.

Q. Was that for a stock of tires?

A. That is right, an introductory offer, so to speak.

Q. Now, let me ask you this question: How close are you to the Pennsylvania border? How close is Binghamton to the Pennsylvania border?

A. I would say in the neighborhood of 15, 18 miles.

2899 Q. 15, 18 miles. You are very close to the border up there, as I understand it?

A. Yes.

Q. Do you know that Atlantic sponsors Firestone TBA in that area of Pennsylvania?

A. Yes.

Q. In Atlantic Service Stations?

A. Yes.

Q. Now, if Atlantic had sponsored Firestone TBA in your station, would you have also adopted that program?

A. If their price was better than Goodyear, yes.

Q. Well, Goodyear would not have entered into it at that time.

A. Let's put it—if Firestone was as good as Lee or better, let's but it the other way.

Q. The chances are you would have gone along with the Firestone recommendation, isn't that right?

A. Well, that is possible, yes.

Q. Now, isn't it true that you at one time attended a meeting of Atlantic dealers who were dissatisfied with the fact that Goodyear tires were being sponsored by Atlantic?

A. Let me put it this way, you have been misinformed. This thing had nothing to do with Goodyear tires.

Q. You did have a meeting though?

A. But it had nothing to do with Goodyear prod-

2900 uct, it only had to do with Atlantic gasoline pricing,

Q. What was that about?

A. In this particular marketing area, which we sometimes refer to as "cut throat alley," Atlantic had lost a dealer. When I say it had lost a dealer, the dealer became dissatisfied, and let's say with Atlantic policy, whatever it was, I don't know, but he had taken his business with him down the street. So Atlantic had taken the station over, which she had done, and in order to meet the competitive price of that station, she had to post a sign, which was all right in that locality, because she was meeting price. But the price was two cents cheaper than it was in my area.

Q. That is, Atlantic was posting the price?

A. Yes. And that was the reason the dealers got together, but that had nothing to do with the Goodyear product.

Q. And as far as you know, you never attended a meeting where Atlantic dealers discussed the fact that they were getting a better mark-up on Lee tires and they had a better guarantee on Lee tires and were dissatisfied with Goodyear tires?

A. Never knew of one existing in the area.

Mr. Kelaher: May we have a minute, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

2901 By Mr. Kelaher:

Q. When did you first learn that Atlantic was going to sponsor Goodyear TBA?

A. I think it was directly through a letter that we received.

Q. And did that come before this dealer meeting at the Arlington Hotel which you have referred to in direct testimony?

A. I would think yes, but—

Q. (Interposing.) About that time, and was that dealer meeting attended by all of the Atlantic dealers in the Binghamton area?

A. Yes. That is, within the vicinity of Bingahmton. I think it covered a little more than Binghamton itself.

Q. Did it get over to the tri-city area

A. Yes, I believe so.

Q. Johnson City and Endicot?

A. Yes.

Q. And was that a meeting of the Binghamton district of Atlantic, would you remember?

A. So far as I recollect, yes.

Q. And therefore, were you paid a visit by your Atlantic salesman or other Atlantic personnel with a Goodyear representative?

A. Yes.

Q. And what happened at that time?

A. Well, they discussed the advantages of the Goodyear products, and they discussed the various price
2902 situations, and I think that is about what it was.

Q. Did the Atlantic salesman or the Goodyear salesman indicate that they would like to have you start to handle Goodyear TBA at that time?

A. Well, they left it to me whether I wanted it or not. I don't recall whether at that particular instant I bought them or not.

Q. And shortly after, if not then, you bought the program, is that right?

A. That's right.

Mr. Kelaher: No further questions.

Mr. Thompson: I thought you had one further question, Mr. Kelaher. You faithfully promised Mr. Maseyko you would ask him why he was a Goodyear dealer, and you never did.

Mr. Kelaher: I thought we went over that at length.

Redirect Examination by Mr. Thompson.

Q. May I ask, Mr. Maseyko, why you are a Goodyear dealer?

A. Because I am thoroughly sold on Goodyear products.

Q. And not only tires, but also batteries and accessories?

A. That's right.

Q. In the meeting of the dealers in which you discussed pricing in the Binghamton area of gasoline, was Mr. Buongiorne present?

A. I believe he was, yes.

Mr. Thompson: That is all, thank you, sir.

2903 Hearing Examiner Kolb: Thank you. You may be excused.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Gordon: Mr. Wright, will you take the witness stand.

HARRY W. WRIGHT, JR. was thereupon called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Gordon.

Q. Will you give your full name to the stenographer?

A. Harry W. Wright, Junior.

Q. What is your home address?

A. 1413 Arch Drive, Vestal, New York.

Q. Now before we begin, Mr. Wright, the gentleman sitting at the table—Mr. Thompson is saying a word to

him—is Mr. Kelaher. He is the attorney for the Federal Trade Commission. Mr. Kolb is the Examiner, and Mr. Ingraham down here is counsel for Goodyear.

When were you first with the Atlantic Refining Company?

A. I went to work for them as a stock clerk in 1947, I believe.

Q. Did you then go into another branch of the
2904 Atlantic Refining Company at a different type of work?

A. Yes, I was a service salesman, I think it was in 1951.

Q. 1951?

A. Yes.

Q. Do you remember when in 1951?

A. April, I believe it was.

Q. And you continued as a service salesman until when?

A. I think it was in January, January 31—no, January 20 of '53.

Q. Now what area did you work in as a service salesman?

A. I was all over.

Q. When you say "all over" do you mean all over Atlantic's entire marketing area?

A. I was in Liberty, Monticello, Binghamton, Ithaca.

Q. Was it in one district of Atlantic's marketing area?

A. Well, it was more than one district represented there, I believe.

Q. Were you in the Binghamton area to any extent?

A. Most of the time, except on special occasions when I was out of town.

Q. When did you become an Atlantic lessee?

A. In February of '53.

Q. And have you been one ever since then?

A. Yes.

Q. Where is your station located?

2905 A. 1610 East Main Street, Endicott.

Q. Endicott is one of the triple cities of which Binghamton is another?

A. That is right.

Q. What is the term of your lease?

A. At the present time, it is three years, sir.

Q. Now at the time you became a service salesman, do you know what kind of TBA Atlantic was selling?

A. They were handling Lee and Exide. I believe, at one time. Whether I was a stock clerk or salesman, I can't recall which.

Q. Did you attend any meetings as an Atlantic service salesman at which Atlantic TBA policy was discussed?

A. If I did, I don't rightly recall it.

Q. Were you ever in a meeting in Elmira?

A. Not to my knowledge, no.

Q. I show you this document which is marked CX 206, dated April 28, 1952, and headed, "A Restatement of Atlantic TBA Policy" and signed by Mr. Colby. Do you recall receiving that letter?

A. Yes, I do.

Q. Were you a service salesman at the time you received that letter?

A. Yes.

Mr. Kelaher: What was the date of that?

Mr. Gordon: August 28, 1952. CX 206.

2906 By Mr. Gordon:

Q. Do you also recall receiving this letter which is marked CX 207 and dated June 24, 1955? It would have been sent to you by Mr. Ostrander, the regional manager.

A. Yes.

Q. This leter is known as the non-forcing letter.

Mr. Kelaher: Just one question on that. These are

addressed to the Atlantic dealers. Wasn't the other addressed to Atlantic Dealers also?

Mr. Gordon: That was also stipulated, Mr. Kelaher, as having been sent to all personnel. This one was addressed to all Atlantic dealers and he has already testified that he became an Atlantic lessee-dealer prior to that date.

By Mr. Gordon:

Q. Prior to the time you became an Atlantic dealer then, you were familiar with Atlantic TBA policy?

A. Yes.

Q. Would you tell me what kind of tires you are now carrying in your station?

A. Goodrich.

Mr. Kelaher: Goodrich?

The Witness: Goodrich.

By Mr. Gordon:

Q. Entirely?

A. Entirely.

2907 Q. What kind of batteries are you carrying?

A. Delco.

Q. Entirely?

A. Entirely. Now I make the stipulation in the event a customer specifies a certain brand, I can get them, but I stock Delco and Goodrich.

Q. Now where do you buy your accessories?

A. Do you want the names of the houses?

Q. Yes.

A. Auto Supply, United Auto, Piersall K. N. W. Tire Service, Whipple's.

Q. Where do you purchase your recaps?

A. From K. N. W. Tire Service.

Q. Are these accessories—do you purchase any accessories from Goodyear?

A. Not in some time, no. I would say it has been over a year now.

Q. Are these tires, batteries, and accessories that you have described, openly displayed in your station?

A. Yes.

Q. What kind of a battery rack do you have in your station?

A. It is a big Delco rack.

Q. What kind of tire repair kit do you have?

A. Bowes.

Q. Are your TBA items on the shelves in your station?

2908 A. Oh, yes.

Q. And your Atlantic salesmen see them?

A. Definitely.

Q. Can anyone else see them?

A. I want to sell them.

Q. Do you sell the TBA you have just described on credit cards?

A. Yes.

Q. Do you indicate the brand name on the credit slip?

A. Sometimes, yes, sometimes, no. I mean, it makes no difference actually.

Q. Has Atlantic ever criticized you for charging non-Goodyear TBA on credit cards?

A. No.

Q. Are you also solicited by other tire suppliers?

A. From time to time, I have been solicited by General and Firestone and Lee.

Q. What is the main reason for your buying the TBA you do?

A. Well, the price is right for one thing, the service, in my thinking, has to be excellent because of my location, and I have to have a product that is well accepted by the public.

Q. How far are you from the Goodyear store?

A. Oh, approximately 10 or 12 miles.

Mr. Kelaher: From which store is that?

Mr. Gordon: Goodyear store.

2909 By Mr. Gordon:

Q. Have you ever been criticized by Atlantic for carrying non-Goodyear TBA?

A. No.

Q. Have you ever been told by Atlantic to stop buying TBA you are buying?

A. No.

Q. Has your Atlantic salesman ever told you to remove the non-Goodyear TBA you carry in your station?

A. No.

Q. Has your Atlantic salesman or anyone else from Atlantic ever told you to hide non-Goodyear TBA?

A. No.

Q. Who makes the decisions as to what you buy in the way of TBA products in your station?

A. I make my own decisions.

Q. Do you feel free to buy any TBA you want?

A. Definitely.

Q. Do you feel free to buy TBA from any source you want?

A. Yes.

Q. Do you think that your lease is in jeopardy because you buy non-Goodyear TBA?

A. No.

Q. While you were a service salesman, did you work in a number of Atlantic stations?

2910 A. Yes.

Q. Were those stations lessee stations?

A. Yes, most of them.

Q. Did you have the opportunity to observe on numerous occasions the Atlantic salesman talking to the lessee-dealer?

A. Many times, because we used to double team quite a bit and I was nearby so I could overhear the conversation if I wanted to.

Q. Did you ever observe while you were working in Atlantic stations as a service salesman, Atlantic salesmen or personnel trying to force an Atlantic dealer to buy Goodyear TBA?

Mr. Kelaher: Objection, your Honor, to that question. That calls for hearsay.

Mr. Gordon: That is the same sort of question, your Honor, that Mr. Kelaher has asked so often. I thought he would hardly object to it.

Hearing Examiner Kolb: Overruled.

Mr. Gordon: Would you answer the question?

The Witness: Would you repeat the question again, please?

Mr. Gordon: Would you read the question to him?

(Whereupon, the reporter read the pending question as requested.)

The Witness: No.

By Mr. Gordon:

Q. Mr. Wright, you have had several leases from 2911 Atlantic, have you not?

A. Yes.

Q. Your leases have been renewed two or three times?

A. Yes.

Q. At the time your lease was renewed, did Atlantic ever discuss with you the fact that you were buying non-sponsored TBA?

A. Yes, we discussed it and I explained my problem that I have had with Goodyear on service and deliveries and so on, and I asked the sales supervisor, I said, "Do you blame me?" and the answer is, "Definitely not."

Q. Do you know most of your customers pretty well by their first names?

A. I would say 75 percent of them.

Q. Do you do a substantial amount of business on personal credit?

A. Yes, I do.

Q. Are most of your customers rather regular, repeat customers?

A. Yes, they are all regular customers.

Q. Are there many other oil companies active in your area?

A. Yes, sir.

Q. Have you received offers from any of these companies to go with them?

A. I have been solicited by Amoco and Sunoco.

Q. Are qualified dealers in demand?

A. Very much so.

2912 Q. Could you take some of your customers with you if you went to one of these other stations?

Mr. Kelaher: Objection, your Honor. It is speculative.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Gordon:

Q. You are familiar with the fact that Atlantic inspects its stations, aren't you?

A. Yes.

Q. Your station has been inspected, in fact, has it not?

A. Yes, many times.

Q. After these inspections, does Atlantic discuss with you the results of the inspection?

A. They point out the weaknesses, if there are any, and corrective measures that we might take, and I think it is a good incentive for the men too; it keeps them on their toes, along with myself.

Q. When you say "the men" who are you referring to?

A. The men that work for me.

Q. Are TBA brands ever mentioned in these discussions?

A. No.

Q. Are you familiar with what is called the annual review?

A. Yes.

Q. What is that?

A. Well, to me it means that we sit down and we discuss the past year's business and we analyze the
2913 weak spots in my business, and then try to decide what we are going to do in the following year to correct those weaknesses.

Q. Are they helpful?

A. Very much so. I think we are all lazy at one time or another, and they get us over that hard spot.

Q. Is the fact that you carry non-Goodyear TBA mentioned?

A. Yes, it was mentioned, and we discussed it at length. I told them the reasons for my not buying from Goodyear, and I feel in my own mind that I could sell more tires with Goodyear and it is because of my past experience, well, I have been in business now five years, and I have sold more tires in the past with Goodyear, but I can't sell tires if they won't deliver them to me, and so, I have gone to another supplier for that reason.

Q. Were you visited by an investigator for the Federal Trade Commission?

A. Yes.

Q. Do you recall roughly when that was?

A. Oh, it was latter part of '53.

Q. Did he identify himself to you?

A. Yes, he showed me his credentials.

Q. Did you tell him substantially what you have testified to today?

A. Yes, I believe I did.

Q. Did you sign a paper for him?

A. Yes.

2914 Q. Did you get a copy of what you signed?

A. No, he didn't give me any copy.

Q. Who wrote the statement?

A. He wrote the statement.

Q. Whose words were used in the statement?

A. He used his own words.

Mr. Gordon: Mr. Ingraham?

Mr. Ingraham: No questions.

Mr. Gordon: Mr. Kelaher?

Mr. Kelaher: I have a few questions.

Cross-Examination by Mr. Kelaher.

Q. Mr. Wright, I would like to review your testimony you have just given here under oath on direct examination and see if we have it correct.

You began the operation of your service station in February 1953, is that correct?

A. That's right.

Q. And as a former Atlantic service salesman, you knew that the Goodyear TBA program had been in effect about two years by that time, did you not?

A. Yes.

Q. Now, you stated on direct examination that you stock Goodrich tires exclusively?

A. That's right.

2915 Were you implying that you have always stocked Goodrich tires exclusively?

A. No, I stocked Goodyear up until, oh, I would say a year ago and at that time, as I have stated before, I had to change because of the service that was made available to me.

Q. So, you stocked Goodyear exclusively, is that correct, up until sometime in 1957?

A. No, I stocked them, and if a person specified another tire, I was able to get those too.

Q. But I am talking about stocking, you do that also with Goodrich, as I understand it?

A. Yes.

Q. But you were stocking Goodyear tires exclusively up until 1957, is that right?

A. Yes.

Q. Now, on direct examination, you stated that you are stocking Delco batteries. Do you mean to imply that you have always stocked Delco batteries?

A. No, up until that time I was handling Goodyear batteries.

Q. So, you did stock Goodyear batteries exclusively until sometime in 1957, correct?

A. That is correct, yes, sir.

Q. Now, with respect to accessories, you implied or you stated rather on your direct examination, that you buy accessories from a number of suppliers. Did you mean to imply that you have never bought accessories from
2916 Goodyear during the entire period of your station operation?

A. No, I bought Goodyear also.

Q. And isn't it a fact that the majority of your accessories were purchased from Goodyear service store?

A. On the accessories, no, I don't believe so.

Q. Up until 1957?

A. No.

Q. What percent will you estimate that you carried up to '57 of Goodyear accessories?

A. 30, 40 percent, I would say.

Q. And the balance was distributed among these other products?

A. Yes.

Q. Isn't it a fact you carried Goodyear fan belts and

you also carried other accessories in the Goodyear line on a stocking basis for some time? Isn't that true?

A. Well, they may have been brands handled by Goodyear. Doesn't necessarily mean I bought them from Goodyear.

Q. You did buy some of them from Goodyear?

A. Some of them.

Q. Are you referring to products like DuPont polishes and so on?

A. Yes.

Q. Is it your testimony that since some time in 1957 you are not buying Goodyear accessories at all, or do you still buy some?

2917 A. I am not buying anything.

Q. Incidentally, as an Atlantic employee and an Atlantic dealer, were you familiar with the fact that the Federal Trade Commission issued a Complaint against Atlantic concerning its sponsorship of Goodyear TBA in January 1956?

A. At that time I wasn't an employee.

Q. You were a dealer at that time?

A. I was a dealer at that time. I may have heard it, but no one came to me and told me about it.

Q. As a matter of fact, you were carrying Goodyear TBA at the time the Complaint was issued in this matter?

A. Yes, I was. At that time, I might say, I had a high feeling and a high respect for Goodyear because they did have a good product. I still think they have a good product. Their service was excellent and they had, as I say, a good product, but since that time, why things have changed.

Q. What is the problem today, or what was your reason for changing?

A. My reason for changing was service. I would make a call to the store for a specified number of tires, and I had a sale for that tire probably in the afternoon or next day.

I was promised delivery, and that was never up-held. They might bring it two days later or three. I don't run my business on promises and I have to fulfill my end of it too, so I had to go to another supplier where I could get
2918 that service. Incidentally, K. N. W. and Goodyear are located practically in the same location in Binghamton. There is not too much difference.

Q. So, it was a problem of service?

A. That's right.

Q. Do you think they were taking your business for granted because you were an Atlantic dealer?

A. No, I don't think so.

Q. Now, what was your original reason for stocking Goodyear TBA?

A. I think I just stated that. I thought they had a good product, they gave me good service, and it was a well-known product, well accepted by the public.

Q. Let me ask you this: Didn't you one time when you started business obtain a loan from Atlantic?

A. Yes, I did.

Q. And what was the amount of the loan?

A. Twenty-seven, twenty-eight hundred, something like that.

Q. Approximately $2800?

A. Yes.

Q. And what was that loan used for?

A. I don't recall what it was exactly. I had a $1000 of my own and I needed $2800 more to start business, to go into business to function.

Q. Wasn't the total loan approximately $2800 though?

A. Yes.

2919 Q. Wasn't that the amount of the loan from Atlantic?

A. That's right.

Q. Wasn't that used to purchase the stock of the outgoing dealer, Paul Urban?

A. Yes.

Q. And was the check made by Atlantic payable to Paul Urban for his inventory at that time?

A. I never saw the check.

Q. You never saw the check, so it went directly to Mr. Urban?

A. Yes.

Q. You executed a promissory note in the amount of $2800?

A. Yes.

Q. And as part of that loan, was your station stocked with Goodyear TBA?

A. That is a long time ago. As I recall, he had a fairly well balanced stock and I don't think I had to replace too much at the time.

Q. And that stock was Goodyear, was it not?

A. There were some Exide batteries, there was some Goodyear batteries. There were Lee tires, and there were Goodyear tires.

Q. What type of service station identification was on the station when you went into the station?

A. It was a Goodyear decal on the front window.

Q. Was the Goodyear sign on the outside pole?

2920 A. Oh, yes.

Q. That was pretty much true of all Atlantic stations in that Binghamton area, wasn't it?

A. Yes.

Q. Now, did you pay interest on that loan?

A. Yes, the first six months the payment was a-half cent a gallon, and the next six months, it was half a cent a gallon plus interest, and then it was for the next two years, a cent a gallon plus interest.

Q. For the first six months no interest was charged?

A. That's right.

Q. And part of that loan was used to equip your station with Goodyear—was it primarily Goodyear TBA?

A. I don't recall. As I say, as I recall it, I think most of it was used for gasoline and motor oil.

Q. And in addition to the TBA which Mr. Urban had on hand, was any part of the loan used to purchase TBA?

A. There might have been some used to bring it up to par, as I say, I don't recall.

Q. Was that money used to purchase Goodyear TBA? I am talking about part of the loan money.

A. No.

Q. None of it was used to purchase TBA?

A. No, I don't believe so. That particular $2800 went for gas and oil inventory and equipment and I still
2921 had a thousand of my own, I used to spend.

Q. And you used part of your money to purchase TBA, is that right?

A. Yes.

Q. Did you purchase Goodyear TBA at that time?

A. As I say, I don't recall.

Q. Now, you stated on direct examination that you have a big Delco rack in your station. I assume that was not there until about 1957 when you began to handle Delco batteries, is that correct?

A. Yes.

Q. Now, you stated in answer to question on direct examination that there came a time when you were dissatisfied with the Goodyear service store's service to your station, is that right?

A. Yes.

Q. Now, didn't you at that time go to Atlantic and discuss the matter with Atlantic personnel?

A. I had discussed it with my salesman, and—

Q. (Interposing.) What was your salesman's name?

A. I have to think back—Ken Goodhart.

Q. Ken Goodhart?

A. Yes.

Q. And why did you think it was necessary to discuss the matter with Mr. Goodhart? Was he the first one you discussed it with from Atlantic?

2922 A. I wanted to get some action on the Goodyear, and I felt that maybe with my trying and maybe all getting together, we could get some action.

Q. And what happened after that?

A. The same thing, nothing.

Q. You had no action. So then did you discuss the matter again with Mr. Goodhart or anyone else in the united organization?

A. No, I don't believe so. I just made up my mind that I had been bit too many times and that was it. I had found a better supplier.

Q. And then at that time, you switched, you changed over from Goodyear to other products?

A. Yes.

Q. Now, thereafter, you had conferences with Atlantic personnel, as I understand your direct testimony, either in connection with the annual review or did you have also other conferences with Atlantic personnel?

A. That was the only one.

Q. That is the one you are talking about? That was the one you were talking about when you referred to discussions with Atlantic personnel concerning the handling of non-sponsored TBA, is that correct?

A. Yes.

Q. And did you give your reasons to Atlantic personnel why you did not want to handle Goodyear TBA?

2923 A. Yes.

Q. Did you bring up the subject?

A. Yes, I did.

Q. Why did you feel you had to justify your action in handling it?

Mr. Gordon: I object to that.

Mr. Kelaher: Why?

Mr. Gordon: Because you are characterizing the statement, not the witness.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You may answer.

The Witness: Will you repeat the question?

Hearing Examiner Kolb: Read the question.

(Thereupon, the reporter read the record as requested.)

The Witness: I still feel as I stated before, I think Goodyear sells itself through their advertising and public acceptance and if possible, I wanted to continue to buy Goodyear, but under the circumstances, It wasn't possible.

By Mr. Kelaher:

Q. Did you feel that as an Atlantic dealer and knowing that Atlantic was sponsoring Goodyear TBA, that you had to justify your reasons for switching to non-sponsored TBA?

A. No.

Q. Well, it must have been a matter of some concern for you to have discussed it with top brass in Atlantic, isn't that true?

2924 A. No, I don't believe so. They had been trying to sell me Goodyear merchandise, and I explained to them why.

Q. Just who was present at this meeting?

A. George Babikian.

Q. And what is his title?

A. Sales supervisor.

Q. In the Binghamton district?

A. Yes.

Q. Who else was present?

A. Trimay.

Q. How do you spell his name?

A. T-r-i-m-a-y.

Q. What is his title?

A. Salesman.

Q. In the Binghamton district?

A. Yes.

Q. He was your salesman?

A. Yes.

Q. Anyone else present from Atlantic?

A. No.

Mr. Kelaher: May I have a minute, your Honor?

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I am ready to go ahead, Mr. Examiner.

Hearing Examiner Kolb: Go ahead.

2925 By Mr. Kelaher:

Q. Mr. Wright, I believe you testified that you had a Goodyear window decal in your station, is that correct?

A. Yes.

Q. Has there been any change in that in your station?

A. No, I tried to take it off one day and I couldn't get it off, so I gave up.

Q. So, now even though you are selling Goodrich tires and Delco batteries, you still carry Goodyear advertising on your station, is that correct? Service station identification?

A. Yes, I do.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Gordon.

Q. Mr. Wright, did the fact that you were financed by Atlantic have anything to do with the brand of TBA you carried?

A. No.

Q. Prior to 1957 did you feel free to buy any TBA you wanted to?

A. Oh, yes, many times I did, I bought Lee tires or Goodrich tires, Firestone tires.

Q. To carry them and stock them?

A. Not to carry them; if a person specified they wanted them, I got them.

Q. Did you feel free to carry them if you wanted to though?

A. Yes.

2926 Q. And stock them?

A. Yes.

Mr. Gordon: That is all.

Recross Examination by Mr. Kelaher.

Q. I want to clear up one thing. Part of the time you were asked on redirect if you felt free to stock any brand of tires or any brand of TBA prior to 1957, and you said "yes." But the fact remains, does it not, that you only stocked Goodyear tires and Goodyear batteries prior to 1957?

A. Yes, that is true, but—

Mr. Kelaher: (Interposing.) That is all.

The Witness: Could I answer that question?

Mr. Kelaher: He can go ahead if he wants to, but he has answered the question.

The Witness: I felt free to do whatever I wanted to. There was no—

Mr. Kelaher: (Interposing.) No further questions.

Hearing Examiner Kolb: Is that all? You are excused.

(Witness excused.)

• • • • •

2928 CHARLES P. WYCKOFF was called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give your full name, sir, to the court reporter, please?

A. Charles P. Wyckoff.

Q. Where is your residence?

A. 176 Broad Street, Washington, New Jersey.

Q. Washington, New Jersey, not to be confused with the District of Columbia Washington.

Mr. Wyckoff, are you an Atlantic Refining Company lessee?

A. I am.

Q. You operate a service station in Washington, New Jersey, owned by Atlantic Refining Company?

A. I do.

Q. How long have you had that station, sir?

A. I went in November, 1942, that would be—

2929 Q. (Interposing.) That is about 17 years?

A. That's right.

Q. You had a three-year lease, sir?

A. Beg pardon?

Q. You have a three-year lease?

A. Yes.

Q. I believe that is your second three-year lease?

A. It is.

Q. Before you became an Atlantic lessee, did you at one time have an Esso station?

A. I did.

Q. So that you came to Atlantic with prior experience in the service station business?

A. Yes.

Q. What type of trade do you have at you station? Is it a community station?

A. Yes, very much. I am on a highway that isn't—well, it is the main highway, but not like some of these super highways. I have to depend mostly on local trade.

Q. Is a large percentage of your trade derived from inhabitants of Washington, New Jersey and the surrounding area?

A. That's right.

Q. Do you do any of your business, sir, on personal credit? Do you extend credit to some of your customers?

A. Yes, some personal, and mostly local business concerns.

2930 Q. Have you gotten to know your customers well and do they know you well?

A. Oh, yes.

Q. Do you recall that about 1950, Atlantic ceased selling Lee tires and Exide batteries and commenced to promote the Goodyear TBA line?

A. Yes.

Q. Do you recall whether you did or did not attend a meeting of dealers in 1950 at which the Goodyear program was to be explained?

A. I did not attend, I was sick at the time.

Mr. Thompson: If your Honor please, it is stipulated between Mr. Kelaher and myself that Mr. Wyckoff received and recalls receiving the so-called non-forcing letters, Exhibits 206, 207, and 150.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: I might say, Mr. Kelaher, I verified that information with this witness just before he went on the stand.

Mr. Kelaher: Right.

By Mr. Thompson:

Q. When Atlantic started to promote the Goodyear TBA line, did the Atlantic salesman try to sell you
2931 on the idea of switching from Lee and Exide?

A. He mentioned it, yes, said that they were going to handle Goodyear line, but I told him that inasmuch as my trade was local and I had previously built up a big trade on the product that I was handling, I didn't feel that I could change it at that particular time.

Q. So that you did not change to the Goodyear line?

A. Not wholly, no. I did take on a few tires, but never the complete line.

Q. Was there any effort on the part of Atlantic to force you to change to Goodyear?

A. No.

Q. By the way, sir, who is your present salesman, Atlantic salesman?

A. Robert Carlson.

Q. C-a-r-l-s-o-n?

A. Yes.

Q. Since 1951, what has been your primary tire line?

A. Tire line?

Q. Yes.

A. About 95 percent Lee.

Q. Do you also handle a few Goodyear tires?

A. I have a few, yes.

Q. What is your reason for carrying a few Goodyear tires?

A. Mainly if some transit trade should stop in
2932 and they insisted on Goodyear, well, I would have it. That is all, just to satisfy the transit trade.

Q. Do you find from the point of view of the transit trade, Goodyear is a better known brand than Lee?

Mr. Kelaher: Objection, your Honor. I have no objection to leading in the many instances, but if we are going

to get into consumer acceptance and things of that kind, I think it would be better to ask the witness.

Hearing Examiner Kolb: I will overrule the objection at this time.

Mr. Thompson: You may answer the question.

The Witness: Would you mind please repeating the question?

(The reporter read the record as requested.)

The Witness: It might possibly be a better known product for the transit trade, but on the other hand, I have sold plenty of Lee tires to transit as well.

By Mr. Thompson:

Q. What brand batteries have you been carrying since 1951, sir?

A. Exide.

Q. Exclusive Exide?

A. That is correct.

Q. And from whom do you purchase accessories?

A. Oh, I purchase them from different jobbers. Do you want to name the firms?

2933 Q. I would appreciate if you would name some of them.

A. Well, the batteries come from Allentown Wholesale; I deal with Way Brothers, that is in Allentown, and then I deal with Way Brothers in Easton; Washington Auto Parts in Washington, Sea Automotive in Washington, and I buy some from Whelan Brothers who are the Goodyear representatives, they are jobbers in that territory.

Q. Do you have a business reason for dealing with a number of accessory suppliers?

A. Yes, I do. In as much as I was a dealer through the War, I was really handicapped in getting supplies a lot of times, and I made a statement at that time that I wouldn't be caught again, not with all my eggs in one basket, so that is the one reason why that I deal with

different dealers because I can get various products from different jobbers.

Q. By the way, sir, what kind of hose do you carry?

A. Gates.

Q. Do you have a Lee tire rack at your station?

A. I do.

Q. Do you have any battery signs around your station?

A. I do, I have an Exide sign right on the fence.

Q. Now, of course, sir, these Lee tires and Exide batteries are openly displayed so that everybody who comes to the station sees them?

A. That is true.

2934 Q. Do you recall, sir, that I dropped in at your station with Mr. Gaestel and Mr. Carlson a few weeks ago and paid you a short visit?

A. That is true.

Q. And all of these tires and batteries and non-sponsored accessories were clearly and openly visible to everybody including me, were they not?

A. That is right.

Q. Do you sell these non-Goodyear tires and batteries and accessories on Atlantic credit cards?

A. I do.

Q. Have you always done so?

A. Yes.

Q. Has Atlantic ever criticized you for doing that?

A. No.

Q. Or suggested in any way that you shouldn't?

A. No.

Q. Approximately what percentage of your business at your station is done on Atlantic credit cards?

A. Oh, roughly, I would say 25 to 30 percent.

Q. During these years that you have been carrying Lee tires and Exide batteries and non-sponsored accessories, has Atlantic ever criticized you for so doing?

A. No.

Q. Have they ever told you to stop buying them?

2935 A. Never.

Q. Or to get them out of your station?

A. No.

Q. Have they ever tried to force or pressure you into buying Goodyear TBA?

A. No.

Q. Now of course, you know your salesman, Bob Carlson?

A. Beg pardon?

Q. Of course, you know your salesman, Bob Carlson?

A. Oh, yes.

Q. Do you know him well?

A. Yes.

Q. Does he come to see you frequently?

A. Yes.

Q. About how often?

A. Once a week, every two weeks at the most.

Q. How about Bill Gaestel, do you know him?

A. Yes.

Q. What is his position with Atlantic?

A. Assistant manager, I believe, or manager.

Q. I think actually sales supervisor, sir, in his official title, but you know him as Bob Carlson's boss?

A. That is correct.

Q. Does he come to see you?

A. Yes.

2936 Q. Do you know the Atlantic district manager in Northern New Jersey?

A. Yes.

Q. What is his name?

A. Geer Leshi.

Q. G-e-e-r, isn't it?

A. I believe so.

Q. Does he come to see you occasionally?

A. Possibly once or twice a year he drops in.

Q. Now in the 17 years that you have been an Atlantic lessee, you, of course, have had your lease renewed many times?

A. That is true.

Q. Have you ever had any problem at all about lease renewal?

A. No.

Q. On the occasion of lease renewal, has the fact that you do not handle Goodyear TBA been adversely commented upon?

A. No.

Q. Have you been criticized for it?

A. Not at all.

Q. Are there a lot of companies other than Atlantic which have service stations in your general marketing area?

A. Yes.

Q. Did Esso try to get you to leave Atlantic and go with them?

A. Well, being an Esso dealer in the beginning, and then there was an opportunity two or three years ago
2937 that the salesman approached me to take over that particular station, and I told him I wasn't interested whatsoever.

Q. Why did you stick with Atlantic, Mr. Wyckoff?

A. How was that?

Q. Why did you stay with Atlantic?

A. I don't know; I just like it, that's all. I like their products, I think I am sold on them; and that is the reason I stayed with them.

Mr. Thompson: Now, Mr. Wyckoff, the gentleman on my right, Mr. Kelaher, represents the Federal Trade Commission. He may have some questions he wants to ask you.

Cross-Examination by Mr. Kelaher.

Q. Mr. Wickoff, I think we ought to get some information about Washington, New Jersey into the record.

What is the population of Washington, New Jersey?

A. Well, at the present time, it is around 5200, I believe.

Q. And how far is that located from Newark, New Jersey?

A. Around 45 miles, I believe.

Q. It is quite a distance from the heavy populated metropolitan Newark area, is it not?

A. Yes.

Q. And how many other Atlantic service stations are in Washington, New Jersey?

A. One.

Q. One other station?

2938 A. One other station.

Q. Who is the operator of that station?

A. Dick Robowitz. Don't ask me to spell it.

Q. And where is his station located?

A. His station is on the circle on the junction of Route 24 and 69.

Q. That would be east of your station?

A. East, yes.

Q. And your whole area there is just you and one other Atlantic dealer?

A. Yes, we are about five blocks apart.

Q. About five blocks apart. Did the other Atlantic dealer go along with the Goodyear program?

A. I don't know.

Q. You don't know?

A. No.

Q. You are just five blocks apart and you don't know?

A. I stay on my end of town and he stays on his.

Q. You can't say whether he did or didn't?

A. I could not.

Q. How far are you from the town of Phillipsburg, New Jersey?

A. Twelve miles.

Q. Twelve miles. And there are Atlantic dealers in Phillipsburg, New Jersey, are there not?

A. Yes.

2939 Q. Approximately how many?

A. Two on the Memorial Parkway and one on South Main Street that I know of. There may be others, I don't know, but those are the three I know of.

Q. About three. Do you know whether they went over to Goodyear TBA program when Atlantic did?

A. I don't know.

Q. You were asked about a meeting of the Atlantic dealers in 1950. Where was that meeting held?

A. I believe it was in Newark.

Q. You believe it was in Newark?

A. Yes.

Q. That would have been quite a long trip for you. You say you were sick?

A. I was sick for about six months.

Q. Do you handle a large volume of tires, overall tire volume?

A. Do you want to know—

Q. (Interposing.) Just like your stock. What would your stock be?

A. I carry between 70 and 80 tires at all times.

Q. At all times, and including that stock are some Goodyear?

A. Some are Goodyear.

Q. Is it possible that you carry some Goodyear tires to stay on friendly relations with Atlantic to some extent? Is that the reason?

2940 A. Well, I don't know. Possibly I buy them—if they sold any other brand, I would possibly buy that, but—

Q. (Interposing.) In other words, if they were sponsoring Firestone in your area, you would probably stock Firestone, isn't that correct?

A. Well—

Q. (Interposing.) It is a means of maintaining good relations?

A. Well that, and possibly to satisfy any transit trade. If someone comes in and if they ask about Goodyear or Firestone or what have you, why I say, "Well, I carry Goodyear."

Q. And of course, you are not too far from Easton, Pennsylvania, are you? You are only about 14 miles from Easton?

A. That's right.

Q. And do you know that Atlantic sponsors Firestone TBA in that area?

A. Yes.

Q. You do; and you know it is the Atlantic service stations over in that area with Firestone identification all over them?

A. Yes.

Q. And the same is true of Allentown, Bethlehem, up through the whole Lehigh Valley, is that right?

A. Yes.

Q. On your side of the river you find Atlantic stations with Goodyear identifications on them, isn't that correct?

A. Yes.

2941 Q. That seems like something of an unusual situation, doesn't it?

A. Yes.

Q. You say it does.

Mr. Thompson: Is that a question or statement?

Mr. Kelaher: I asked him.

The Witness: I don't know why it is that way. I never asked any questions in regard to why Pennsylvania would be one brand and New Jersey another. I never asked questions.

By Mr. Kelaher:

Q. Right: You were asked a question about your salesman, Bob Carlson. How long has he been calling on you?

A. Oh, I would say four years, approximately, possibly five.

Q. Possibly five?

A. Four or five years. I don't know exactly.

Q. And has Mr. Gaestel been calling on you for a longer period or shorter period?

A. Well, I believe he—yes, he did call on me after the Newark territory took over: that is when I first met Mr. Gaestel.

Q. When did the Newark territory first take over in that area?

A. Along in '51, I guess.

Q. About '51? There are references in the record to a Newark district and a Newark, Jersey district. Are you in the Newark district or is it the same thing, or two different names for the district?

2942 A. I don't know, I have all my dealings with Newark.

Q. All your dealings with Newark and it wasn't until 1951 that was the situation, is that correct?

A. Around that time.

Q. Before that where did you have your dealings?

A. Allentown.

Q. You were so close to the Pennsylvania line that it was natural for you to deal with Allentown than with Newark?

A I guess so, there was just a small section in that corner of New Jersey that was under Allentown when this change over came. Newark took over that territory.

Q. Are you talking about the change over to Goodyear TBA?

A. Well, when the management changed, I would say.

Q. Right. Where is Whelan Brothers located?

A. In Hackettstown.

Q. Is that your designated Goodyear supply point?

A. Yes.

Q. For Goodyear TBA?

A. Yes, they handle for that territory.

Q. Do you have a window valance on your station, Mr. Wyckoff?

A. Yes.

Q. What type is that?

A. Goodyear.

Q. Is it Goodyear?

A. Yes.

2943 Q. Well, you say you handle Lee primarily?

A. That's true.

Q. But you have a Goodyear window valance, isn't that somewhat odd?

A. It may be.

Q. What is the reason for that? It just seems a little unusual.

A. Goodyear man comes along and puts them up, but other than that, I never questioned anything about it. I still handle what my trade desires.

Q. Of course, if you are selling Lee, it would be preferable if you could advertise Lee, wouldn't it? Is the answer yes to that?

A. I advertise them. I have them in Lee stands, that is the tire is in Lee stands. I advertise Lee tires as well as Goodyear as far as that goes.

Q. Do you have an outside sign on your station? Do you have a Goodyear sign pole?

A. Yes.

Q. You don't have a Lee sign out on your station, do you?

A. No.

Q. Did you at one time have a Lee sign outside the station?

A. At one time there was a metal sign on the fence.

Q. That was a Lee sign?

A. Lee sign, but then it got rusted out and I never—

Q. (Interposing.) Never put it back?

A. Never put it back up.

2944 Q. Now, how did the Goodyear sign get up there in your station? Will you tell us how you got the Goodyear sign?

A. They came there one day and put it up.

Q. Who is "they"?

A. The—

Q. (Interposing.) Was it Goodyear personnel or Atlantic personnel?

A. That, I don't know.

Q. But it was one or the other?

A. It was, outside contractor, or I don't know. I didn't pay any attention to it.

Q. Was this done about the time that Atlantic changed over to Goodyear TBA?

A. I believe so, yes.

Q. You believe so. Now, that big outdoor Goodyear sign is visible from the highway there, I would assume, is it not?

A. Yes.

Q. So when customers are approaching they are under the impression you handle Goodyear tires?

Mr. Thompson: I object. I don't think this witness is qualified to testify to the impressions of the motoring public as they approach the station.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Kelaher: Maybe that was an inadvertent use of the word "impression," but if you were driving along the highway the sign that would be seen would be 2945 the Goodyear sign, is that correct?

The Witness: That would be.

By Mr. Kelaher:

Q. And anyone driving along the highway would not know you carried Lee until they went into your station?

A. No.

Q. So that if they were looking for Lee tires, they would go right by your place?

A. Unless they pulled in.

Q. Unless they pulled in?

A. For gasoline and like that; I have them on display, that is all. There is no pronounced advertising as far as Lee is concerned.

Mr. Kelaher: Thank you. No further questions.

Redirect Examination by Mr. Thompson.

Q. You said in response to a very persuasive question by Mr. Kelaher that you had no Lee sign out of your station. Didn't I see one when I was there the other day, sir?

A. There isn't on the fence.

Q. There isn't any on the pole?

A. There isn't any on the pole, and I have these display racks, what the tire sets in, the Lee display racks.

Q. Is my recollection incorrect, sir, that you have a Lee sign on your fence?

2946 A. I did have at one time, but—

Q. (Interposing.) Isn't it still there, sir?

A. No, it isn't. It was rusted out and I never replaced it, or Lee never replaced it.

Q. If you wanted to put up a Lee sign, would you feel perfectly free to do it?

A. I would, yes.

Mr. Kelaher: Objection to that question and answer, because it is controlled by the lease, included in the lease, one of the provisions.

Mr. Thompson: Perfectly obvious question and perfectly obvious correct question.

Hearing Examiner Kolb: Objection overruled. The answer may stand.

By Mr. Thompson:

Q. Have you at all times since 1951 felt free to buy any kind of TBA that you wanted to buy?

A. That is right.

Mr. Thompson: That is all. Thank you very much.

Mr. Kelaher: I would like to ask another question.

Recross Examination by Mr. Kelaher.

Q. Don't you think that Atlantic dealer should feel free to purchase any TBA he wants to rather than to handle the brand that the company wants him to handle?

2947 Mr. Thompson: Is the question asked on the assumption that the witness is a psychiatrist or what? I have no objection, go ahead and ask it.

The Witness: No, I tried to give my customers what is in my mind a good product for their money.

By Mr. Kelaher:

Q. And you feel you can do that better by buying whatever you want to buy?

A. Yes.

Q. Rather than following the sponsored program of the Atlantic? Is that correct?

A. That is correct.

Mr. Thompson: Thank you very much.

Hearing Examiner Kolb: That is all, Mr. Wyckoff. You are excused.

(Witness excused.)

Mr. Thompson: May we have a couple of minutes recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

JOSEPH J. WASH was called as a witness by Respondent the Atlantic Refining Company and, having been duly sworn, was examined and testified as follows:

2948 By Mr. Thompson:

Q. Would you give your name please to the reporter?

A. Joseph J. Wash.

Q. Where do you live, Mr. Wash?

A. 168 East Washington Avenue, Atlantic Highland, New Jersey.

Q. Is that close to Newark?

A. Oh, that is about 40 miles away from Newark.

Q. About 40 miles away from Newark. Do you operate an Atlantic Refining Company service station?

A. I beg your pardon?

Q. Do you operate an Atlantic Refining Company service station?

A. Yes, sir.

Q. Do you lease the station?

A. Yes, sir.

Q. Where is it located?

A. 1399 Chestnut Avenue, Hillside, New Jersey.

Q. How long have you leased that station, Mr. Wash?

A. Five years.

Q. Since about 1952?

A. That's right.

Q. That is really about 6 years then, isn't it?

A. Well, five and one-half, something like that, not close to six.

Q. Now before you got that station, did you have 2949 another Atlantic station?

A. Yes, sir.

Q. Did you lease that one?

A. Yes, sir.

Q. Where was it located?

A. 254 South Street.

Q. Where?

A. Newark, New Jersey.

Q. Newark, New Jersey?

A. Yes.

Q. How long did you have that prior station, during about what years?

A. I would say about three years.

Q. Do you know Bill Gaestel?

A. Yes, sir.

Q. Was he your Atlantic salesman when you had your station at 254 South Street in Newark?

A. Yes, sir.

Q. Did you ask Mr. Gaestel whether you could get a better station?

A. Yes, sir.

Q. Did he get you one?

A. Yes, sir.

Q. And that is the station you now have?

A. That's right.

2950 Q. Do you carry TBA at your present station?

A. Yes, sir.

Q. Did you carry TBA at your prior station in Newark?

A. Yes, sir.

Q. Do you remember that somewhere around 1950 Atlantic started to sponsor the Goodyear TBA line?

A. Yes, sir.

Q. Do you remember whether you went to any dealer meetings about that change by Atlantic from selling Lee and Exide to promoting Goodyear?

A. No, I don't.

Mr. Kelaher: You say no?

The Witness: No.

By Mr. Thompson:

Q. You do remember getting certain letters from Atlantic about the program?

A. Oh, yes.

Mr. Thompson: Shall we stipulate, Mr. Kelaher?

Mr. Kelaher: Yes.

Mr. Thompson: It is stipulated that this witness received the three no-forcing letters, CX 206, CX 207, and CX 150.

By Mr. Thompson:

Q. After Atlantic changed to the promotion of Goodyear tires, did you try Goodyear tires?

2951 A. Yes, sir.

Q. Have you been dealing in Goodyear tires since about 1951?

A. Yes, sir.

Q. First at one station and then the other?

A. Yes, sir.

Q. Who is your so-called authorized supply point at your present station for Goodyear tires?

A. Frabel Brothers.

Mr. Thompson: What was the last question, please?

(The reporter read the pending question as requested.)

By Mr. Thompson:

Q. Do you buy some Goodyear tires from Frabel?

A. Yes, sir.

Q. Do you buy Goodyear tires from other wholesalers?

A. Yes, sir.

Q. Would you tell us who?

A. Summitt Tire Company.

Q. Is that a so-called authorized supplier so far as you are concerned, of Goodyear tires?

A. Yes, sir.

Q. I mean, is that the supplier which has been designated by Atlantic as your supplier?

A. No, sir.

Q. Do you buy Goodyear tires from McDonough?

A. Yes.

2952 Q. Is McDonough an authorized Goodyear supplier?

A. No, sir.

Q. Do you buy Goodyear tires from Bell and Wells?

A. Yes, sir, when I find it convenient.

Q. When you need it?

A. Yes.

Q. Is that wholesaler an authorized supplier to you?

A. No, sir.

Q. Do you shop for your Goodyear tires and buy them on price?

A. Yes, sir.

Q. I mean, why do you buy Goodyear tires at all?

A. Well, I think it is a good tire, well advertised tire.

Mr. Kelaher: Beg pardon?

The Witness: Well advertised tire, it is a name tire.

By Mr. Thompson:

Q. You find it easy to sell to your trade?

A. Pardon?

Q. Do you find Goodyear is easy to sell in your trade?

A. Yes, sir.

Q. What kind of batteries do you carry, Mr. Wash?

A. National batteries.

Q. Do you carry National exclusively?

A. Yes, sir.

Q. Before 1950 were you carrying Exide batteries?

Yes, sir.

2953 Q. After 1950 did you continue to carry Exide batteries?

A. After 1950?

Q. Yes. Let's put it this way. I will withdraw the question because I think we can ask you about your new station which you took in what, about '52?

A. Yes.

Q. Since you have been in your new station, have you been handling Exide batteries?

A. No, sir.

Q. Have you handled some Goodyear batteries?

A. Yes, sir.

Q. Did the Atlantic salesman persuade you to try the Goodyear batteries?

A. No, sir.

Q. How did you happen to handle the Goodyear battery?

A. Well, used the Frabel distributors of the Goodyear battery.

Mr. Kelaher: I didn't catch that answer.

(The reporter read the answer.)

By Mr. Thompson:

Q. You used Frabel?

A. He handled Goodyear batteries.

Q. Did you buy Goodyear batteries from other sources too?

A. Not that I recall.

Q. Then why did you switch to the National battery line?

A. Well, Frabel was handling the dry charge bat-
2954 tery and I preferred the wet charge battery, so I turned over to National.

Q. So you dropped Goodyear—

A. (Interposing.) That's right.

Q. I think you said you now handle National exclusively?

A. Yes, sir.

Q. And you also handled accessories?

A. Yes, sir.

Q. And of course, you handled accessories at the prior station in Newark which you had before 1952?

A. Yes.

Q. From whom have you been buying your accessories, Mr. Wash?

A. Well, from Frabel and from Vesney or Vesely, you can pronounce it either way.

Q. Is that V-e-s-n-e-y?

A. V-e-s-e-l-y.

Q. Is that William Vesely?

A. Yes.

Q. Headquarters in Garwood division?

A. Yes.

Q. From which of those two suppliers do you buy most of your accessories?

A. Vesely.

Q. And you buy from other jobbers?

A. Occasionally.

Q. Is that again a question of price with you on your accessories?

2955 A. Well, if you get a good buy, we buy it.

Q. Now these National batteries and accessories which are non-Goodyear products, are openly displayed at your station, are they not?

A. Yes, sir.

Q. And you have shelves in your station?

A. Yes, sir.

Q. Do you recall that I visited you for five or ten minutes a few weeks ago? Do you remember me coming in with Mr. Gaestel?

A. Yes.

Q. And at that time you had non-Goodyear accessories and National batteries?

A. That's right.

Q. Openly displayed at your station?

A. That's right.

Q. Now has that been your practice over the years?

A. Yes, sir.

Q. Now do you sell these non-Goodyear products on Atlantic credit cards to your trade?

A. Yes, sir.

Q. Anybody in Atlantic ever told you that you cannot or criticized you for doing it?

A. No, sir.

Q. So far as that goes, has Atlantic ever criticized you for handling these non-Goodyear TBA items?

2956 A. No, sir.

Q. Ever tell you to stop buying them?

A. No, sir.

Q. Or suggested that you hide them some place?

A. No, sir.

Q. Would you hide them if they told you to?

A. No, sir.

Q. Because you have them for sale?

A. Can't sell them if you hide them.

Q. Do you decide what kind of TBA you are going to buy?

A. Yes, sir.

Q. Or does Atlantic decide for you?

A. I decide.

Q. Has Atlantic ever tried to force you or pressure you into buying Goodyear?

A. No, sir.

Q. Do you feel free to buy anything you want in the way of TBA from anybody that you choose?

A. Yes, sir.

Q. Have you always done so?

A. Yes, sir.

Q. You were first promoted at your request to a better station by Atlantic, were you not?

A. Yes, sir.

Q. And since that time your lease has been renewed several times?

2957 A. Yes, sir.

Q. And you are now on a three-year lease?

A. Yes, sir.

Q. I think I perhaps asked you earlier whether this isn't your second three-year lease?

A. No, this is the first three year.

Q. First three year lease?

A. Yes, sir.

Q. On the occasion of lease renewals, has the question of the brand of TBA which you are carrying ever been discussed?

A. No, sir.

Q. Have you ever been criticized when your station has been inspected because you handle non-Goodyear TBA?

A. No, sir.

Q. Have you ever been told not to buy from Goodyear jobbers like McDonough and Summitt which are not authorized Goodyear supply points?

A. No, sir.

Q. Do you know a man named E. E. Stevenson, who is an Exide salesman?

A. No, sir.

Q. You don't remember him?

A. No, I don't.

Q. I am going to read you from the record in this case a memorandum from Mr. E. E. Stevenson of the
2958 Exide Company to his superior, Mr. DeMott, which is dated December 14, 1950, and has been identified in this record as CX 300-A.

The memorandum reads:

Mr. Kelaher: It is 300 A-B.

Mr. Thompson: All right. He says, referring to you, Mr. Wash, "This account carried six Goodyear batteries purchased from R. A. McDonough."

As I said, it was dated December 14, 1950. Do you recall by any chance whether by the end of 1950 you were buying Goodyear batteries from McDonough?

The Witness: I don't remember.

By Mr. Thompson:

Q. You don't remember?

A. I don't, no.

Q. Then it goes on. "One Willard and two Scranton." Do you know the Willard and Scranton battery brands?

A. Yes, I know the brands, but I don't—

Q. (Interposing.) Do you recall whether you did or didn't have them actually or not?

A. Yes.

Q. Then the memorandum goes on; this is Mr. Stevenson writing the memorandum: "When I called December

6 with Mr. Van Tuno, the proprietor advised us that he had to stock Goodyear since this is a leased station."

My first question is, do you know Mr. Van Tuno?

2959 A. No, sir.

Q. Do you recall whether you were or were not visited by Mr. Stevenson and Mr. Van Tuno?

A. I could have—I just don't remember.

Q. What?

A. I could have, but I don't recall.

Q. Do you recall any conversation with any Exide salesmen in which you advised them that you had to stock Goodyear since you have a leased station?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Read that question, please.

(The reporter read the pending question as requested.)

Mr. Thompson: Could I have the basis of the objection, Mr. Kelaher?

Mr. Kelaher: He has been questioning him about a Mr. Stevenson and a Mr. Van Tuno and the witness has testified that he doesn't remember either gentleman, and my objection goes to the fact that he hasn't laid a foundation for the question.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Thompson:

Q. Now may we have the question repeated, please?

(The reporter read the pending question as requested.)

The Witness: No, sir.

By Mr. Thompson:

Q. Do you get visited by salesmen all the time?

2960 A. All day long.

Q. Do you know what the brush-off treatment is?

A. Well, you try to get rid of them any way you can, so you can get about doing what you have to do. Some of them are pretty persistent.

Q. Have you ever felt that you have to stock Goodyear batteries since you have a leased station?

A. No, sir.

Q. Have you ever felt that you had to stock any part of the Goodyear TBA line because you have a leased station?

A. No, sir.

Q. To the best of your recollection, have you ever told anybody that you had to stock Goodyear TBA?

A. No, sir.

Mr. Thompson: Your witness, Mr. Kelaher: You may proceed or have a cigarette, whichever you choose.

Mr. Kelaher: I think we might just as well carry on.

Cross-Examination by Mr. Kelaher.

Q. Mr. Wash, just to get your facts straight, you began your operation of the Newark station about when? Was it in 1950 or 1949?

Mr. Thompson: If your Honor please, I don't like to interrupt my friend, but "to get the facts straight," I think all these facts were terribly clearly brought
2961 out, if I may say so, sir, by me and I don't see any point, as these witnesses come, of having perfectly indisputed facts rehearsed by Mr. Kelaher. It just seems to me to be a waste of time. I don't suppose I can object to the form of the question, but I do object to the delay caused by repetition of facts which Mr. Kelaher and I could readily stipulate.

Mr. Kelaher: We could have had the answer by the time he got finished with the observation.

Hearing Examiner Kolb: I don't suppose there is a legal ground for objection that I can see: it may not be the best way to ask a question.

Mr. Kelaher: Well, here is a man who had two sta-

tions, I am simply asking him when he started operating the first one. It is as simple as that.

When did you start operating the first station?

Mr. Thompson: The course of procedure, I am objecting to more than the particular question, Mr. Kelaher; it happens repetitiously.

Mr. Kelaher: I am not going to argue about the matter.

By Mr. Kelaher:

Q. When?

A. '49 or '50.

Q. Right. Now, you were at that time—Atlantic was selling Lee tires, Exide batteries, and a line of accessories, was it not?

2962 A. Yes, sir.

Q. And at that time, did you begin to purchase Exide batteries? Did you stock Exide batteries in your station?

A. I don't remember. I don't recall.

Q. Well—

A. (Interposing.) If Atlantic was handling them, we probably had them.

Q. I am sorry I can't hear that.

A. If Atlantic was distributing them, then I probably handled them, but I don't recall off-hand.

Q. If Atlantic was distributing them you probably handler them?

A. Yes.

Q. If Atlantic was distributing Lee tires, you probably handled those too?

A. Yes.

Q. In other words, you generally go along with Atlantic, as I understand your testimony?

A. Well, not necessarily. I go according to the way I think is best.

Q. Sure. Now, do you recall that sometime in 1950 Atlantic began to sponsor Goodyear TBA, you recall that, I presume?

A. Yes.

Q. Now at that time, was there an Atlantic dealer meeting in the Newark area?

A. I don't remember.

2963 Q. You don't remember?

A. They probably did. If they did, I didn't go to it.

Q. Now, at that time was a call made on you by an Atlantic representative and Goodyear representatives?

A. Yes, sir.

Q. And what did they say to you at that time? Do you remember?

A. I don't remember.

Q. You don't remember that?

A. You know, just changing over.

Q. They said Atlantic was discontinuing Exide and so on and was changing over to Goodyear, correct?

A. That's right.

Q. And did they indicate that they would like to have you purchase Goodyear TBA?

A. Well, no, they just told me they were going to change over.

Q. And they told you they were changing over and what else did they tell you?

A. Well, they told me which dealer was going to handle their TBA, the distributor.

Q. Who was that at the time?

A. I think it was Frabel.

Q. Frabel Brothers?

A. Yes.

Q. And they told you that Goodyear TBA could be purchased from Frabel Brothers, is that correct?

2964 A. That's right.

Q. And at that time, did you begin to purchase any Goodyear TBA?

A. No, not then.

Q. Not then. Shortly thereafter did you begin to purchase Goodyear?

A. I don't remember, but it took quite some time before we got rid of the merchandise we had then at that time.

Q. Beg pardon?

A. Well, we were still stocked with other merchandise.

Q. You were still stocked with Lee?

A. Yes.

Q. But as that stock went out, you bought from Goodyear?

A. Yes.

Q. You went along with Atlantic, in other words, right?

A. Well, if I bought from Goodyear—I mean, if you want to put it that way.

Q. Right. You began to purchase Goodyear TBA because Atlantic began to sponsor Goodyear TBA, is that correct?

A. Yes.

Q. Now, wasn't that generally true of other Atlantic dealers in the Newark area?

Mr. Thompson: That is objected to. In the context in which the question is asked, it is objected to. That question must be considered in the light of the last prior question.

2965 Hearing Examiner Kolb: In the light of the last question before. Let's hear the last question.

(The reporter read the record as follows:

"Question: Right. You began to purchase Goodyear TBA because Atlantic began to sponsor Goodyear TBA, is that correct?

Answer: Yes.

Question: Now, wasn't that generally true of other Atlantic dealers in the Newark area?")

Hearing Examiner Kolb: I don't know how this witness can testify as to what other Atlantic dealers bought.

Mr. Kelaher: I think it is a perfectly proper question.

The Witness: I cannot tell you about any other dealers anyway.

By Mr. Kelaher:

Q. I will ask you this question. At this time, you were located in Newark, New Jersey, is that correct?

A. Yes, sir.

Q. And there are a number of Atlantic service stations in Newark, New Jersey, isn't that true? Quite a number in that area?

A. Yes, sir.

Q. And did you notice that after Atlantic began to sponsor Goodyear TBA, that all of the Atlantic service stations began to carry Goodyear identification, Good-
2966 year window valances, and outdoor signs?

Mr. Thompson: I object to the form of that question because it assumes the conclusion; the question was "Did you notice," and then he stated what he thinks is a fact. The question is just clearly improper.

Mr. Kelaher: What is wrong with that?

Hearing Examiner Kolb: It is proper cross-examination.

Mr. Thompson: May I repeat his question and make my point because this happens a number of times. He said to this witness, did you notice that all of the other stations in Newark began to put Goodyear signs on their stations, or something to that effect.

Mr. Kelaher: I didn't ask him that.

Mr. Thompson: May we have the question repeated?

I would like to get procedural points straightened out. I am getting to know it by the way you ask questions.

Mr. Kelaher: I would imagine so.

(The reporter read the record as requested as follows:

"Question: And did you notice that after Atlantic began to sponsor Goodyear TBA, that all of the Atlantic service stations began to carry Goodyear identification, Goodyear window valances, and outdoor signs?")

Mr. Thompson: That assumes in the question a fact which has not been testified to by this or any other witness. It is simply the form of the question I am objecting to.

2967 Hearing Examiner Kolb: The witness can answer whether or not he knows. I think it is proper. The objection will be overruled.

The Witness: I didn't notice.

By Mr. Kelaher:

Q. You didn't notice after Atlantic began to sponsor Goodyear TBA there were other Atlantic stations with Goodyear signs on them in the area?

A. No, sir, I never paid any particular attention.

Q. Now, as I understand your testimony, you stock Goodyear tires exclusively, is that correct?

A. Yes, sir.

Q. And one of your suppliers is your authorized supply point, which I take it, was Frabel—has it always been Frabel Brothers?

A. Yes, sir.

Q. Even at your prior station?

A. Yes, sir.

Q. And do you purchase most of your Goodyear tires from Frabel Brothers?

A. I purchase some from Summitt tire and Frabel.

Q. Do you purchase from these other Goodyear dis-

tributors in equal quantities, or do you purchase most of your Goodyear tires from Frabel Brothers?

A. I would say from Frabel Brothers most of them.

Q. Most of them purchased from Frabel?

2968 A. Yes.

Q. Now with respect to your batteries, as I understand your testimony, you did carry Exide until Atlantic began to sponsor Goodyear. Sometime thereafter, you began to carry Goodyear batteries, is that correct?

A. That's right.

Q. Up until a certain period, which we have not yet established, when you switched to National batteries?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And when did this switch come over to National batteries?

A. About two years ago.

Q. About two years ago?

A. Yes, sir.

Q. Sometime in 1956?

A. That's about right.

Q. Now the accessories you handle, you purchased considerable amount of accessories from Frabel Brothers, is that correct?

A. I get more from Vesely than from Frabel.

Q. You get more from Vesely?

A. Yes, sir.

Q. But you stock some Goodyear accessories?

A. Yes, sir.

Q. Which items do you stock?

2969 A. That is hard to recall. Maybe polishes and—

Q. (Interposing.) Waxes and chemicals and things of that kind?

A. That's right.

Q. Now, does your service station have a window advertising valance, as they call it?

A. Yes, sir.

Q. And that is Goodyear, I presume?

A. Yes, sir.

Q. And you also have an outdoor pole sign on your premises?

A. Yes, sir.

Q. And I assume that is also Goodyear?

A. No, sir.

Q. Is there a sign out there?

A. Not at all.

Q. Beg pardon?

A. No sign at all.

Q. I am sorry, I thought you said you had a sign. Now let's get back to your first station before Atlantic began to sponsor Goodyear TBA, when you were buying Lee, Exide, and so on, did you have any signs in your station at that time?

A. I don't remember.

Q. Did you have a Lee sign up in the window?

A. I don't think so because the window wasn't big enough to stick a sign in it.

Q. How about an outdoor sign? Have a big outdoor sign?

2970 A. No sign, not that I remember.

Q. You didn't have any signs?

A. Not that I remember.

Q. After Atlantic began to sponsor Goodyear TBA, did they attempt to put signs in your station?

A. No, not that I remember.

Q. You didn't have room for the signs; is that your story?

A. That's right.

Q. But at your new station you do have a Goodyear sign?

A. Yes, sir.

Q. Now back in 1950, you did have Exide salesmen calling on you, did you not?

A. I don't recall.

Q. You were buying Exide batteries, weren't you?

A. I don't remember.

Q. Well, you have testified here today that you were buying Exide batteries, in that first station I am talking about, for a few months.

A. We were handling Exide batteries at the time I was buying Exide batteries.

Q. So you did have salesmen from Exide calling on you?

A. Well, they could have.

Q. They could have?

A. Yes.

Q. But you don't remember the names of the gentlemen?

2971 A. No, I don't.

Q. I take it that if you had any conversations with them you don't remember it?

A. No, you meet so many salesmen it is hard to remember all of them.

Q. Sure it is.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Thompson.

Q. Mr. Wash, when Atlantic started to promote Goodyear and the salesman came and talked to you, did he make it clear to you that you didn't have to take the Goodyear TBA line unless you wanted to?

A. Yes, sir.

Q. You switched from Goodyear, you testified, to National batteries?

A. Yes, sir.

Q. You testified, as I recall it, that your reason was that you preferred the wet charge to the dry charge battery?

A. That is right.

Q. You switched from the Goodyear to the National battery at whatever time Goodyear dropped the wet charge and came out with its dry charge battery? I mean, was that the time when you changed to National?

A. Well, we handle some Goodyear batteries, but 2972 we weren't satisfied with them.

Q. But we were trying to find out about when you made the change from Goodyear to—was that when Goodyear came out with dry charge?

A. About then, I would say.

Q. In the days before Atlantic began to sponsor Goodyear, did Atlantic salesmen sell Lee tires and Exide batteries to you, or did you deal with a Lee and Exide salesman?

A. I think Atlantic was handling them.

Mr. Thompson: Thank you, sir, that is all.

Mr. Kelaher: I just have another question I would like to ask.

Recross Examination by Mr. Kelaher.

Q. At the time the Atlantic and Goodyear people came out to see you in 1950, they explained the fact that Atlantic was going to sponsor Goodyear TBA, you remember that?

A. Yes.

Q. And did you feel that it would help your relations with Atlantic if you went along with the Goodyear TBA program?

A. No, I don't think it would.

Q. Did you feel that because Atlantic sponsored it it might be better for you to go along with Goodyear?

A. Well, I thought it would be.

Q. You thought it would be?

2973 A. Yes.

Mr. Kelaher: Sure. That is all.

Mr. Thompson: Thank you very much.

Hearing Examiner Kolb: That is all. You are excused.

(Witness excused.)

Mr. Thompson: May I have a short recess?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

SAM GROSSMAN was called as a witness by Respondent the Atlantic Refining Company and, having been duly sworn, was examined and testified as follows:

Mr. Thompson: If your Honor please, it is not 12:05 and I find this witness has a plane to catch at 1:00, so with your Honor's permission, Mr. Kelaher and I will try to complete this examination before the lunch recess.

Direct Examination by Mr. Thompson.

Q. Will you give your full name to the court reporter?

A. Sam Grossman.

Q. Grossman. Where do you live?

A. 786 Colonial Arms Road, Union, New Jersey.

Q. Is that near Newark?

2974 A. Exactly ten miles outside of Newark.

Q. You have an Atlantic service station in Newark?

A. I have.

Q. You are a lessee of that station?

A. Yes.

Q. It is located, I believe, at Raymond Boulevard and Foundry Street in Newark?

A. Right.

Q. You have had that station for about eight years?

A. Approximately eight years.

Q. Took it over in about 1950?

A. Right.

Q. Correct?

A. Correct.

Q. You have a three-year lease, I believe, sir?

A. I have.

Q. Do you recall from whom you—at your station, do you handle TBA?

A. I do.

Q. And you have handled it ever since you went into the station?

A. Right.

Q. Do you recall from whom you bought your first stocking order of TBA when you went into this station?

A. Everything was bought from Frabel Brothers, Irvington.

Q. That was the Goodyear authorized supply point 2975 for your area at the time?

A. Right.

Q. And I think it still is—

A. Right.

Q. (Continuing.) —the authorized supply point for the area?

A. Right.

Q. Now at the time you opened your station, Atlantic was promoting the Goodyear TBA line?

A. They were.

Q. Did Atlantic salesmen assist you in the selection of your initial TBA stock? Do you recall?

A. Yes, he did in a way, because I was new in the business and didn't know too much what to buy.

Q. He advised you what items?

A. What I needed for the type of station I was contemplating running.

Q. How long did you continue to deal with Frabel?

A. Approximately a year.

Q. Did you drop Frabel as your source of supply in or around 1951?

A. Approximately, yes.

Q. From whom have you been buying tires since that time?

A. Anyone that I possibly can buy them from, the one that gives me the best deal and the cheapest price.

Q. Do you recall, sir, that I visited your station 2976 for a very few moments a few weeks ago with Mr. Gaestel?

A. Right.

Q. Do you recall, sir, that you then had Hood and Silvertown tires on display? Am I correct?

A. Right.

Q. Is that something new or have you been carrying Hood and Silvertown for a number of years?

A. No, I have been handling them for a number of years, and I just had one left over that wasn't sold and I kept it outside.

Q. What other brands of tires have you been handling at the station since 1951?

A. I think every make.

Q. Have you bought anything from Frabel since 1951 that you recall?

A. No.

Q. What brand of batteries have you been carrying since 1951?

A. Exide and Delco.

Q. From whom have you been buying accessories since 1951?

A. Clinton Square, in Newark, Ring Brothers, and a few others where I can get the best and cheapest.

Q. Who handles your recapping business?

A. Alper Tire.

Q. Now all these tires and batteries and accessories are openly displayed since 1951?

A. Yes.

2977 Q. Did Atlantic ever criticize you for carrying these non-Goodyear brands?

A. No.

Q. Have they ever told you to stop buying them?

A. No.

Q. Ever tried to put pressure on you to switch back to the Goodyear line?

A. No.

Q. Have you at all times felt free to buy any TBA brand you wanted?

A. Anything I wanted.

Q. Have you, in fact, always bought any TBA brands that you wanted?

A. All the time except the initial order, which, I said, came from Frabel Brothers. That was Goodyear products.

Q. Did you at the time want to buy that stock or were you forced or compelled to buy?

A. No, bought it on my own free will at the time.

Q. Your lease has been renewed many times?

A. Every year up until last year when I was given a three-year lease.

Q. It has never been the subject matter of discussion at the time of lease renewal that you weren't handling Goodyear?

A. Oh, no. The lease was just brought down to me, signed and brought back, that was it.

2978 Q. Have you from time to time received offers to leave Atlantic and take leased stations of Atlantic's competitors?

A. I have.

Q. Isn't there an Esso station quite close to your station, sir?

A. An Esso station a block away which was offered to me only a short time ago, the dealer went out, they came down to me and wanted to know—same type of station, truck stop, wanted to know if I would take it over.

Q. Do you have a lot of trucker business which is personal to you?

A. Seventy-five percent of my business is truckers.

Q. Are they truckers who come back to you time and time again?

A. Yes, not transit, they are steady customers that are with me all the time.

Q. They are repeat customers, repeat business every day? Your own trade?

A. My own trade that I brought into the station, that I built up when I started the station.

Q. And you have known these people for a lot of years?

A. Since—I have some dealing with me since the day I went into business. Others have left, gone out of the territory, have gotten different work, still come back whenever they are in the territory to see me.

Q. If you had taken the Esso station down the 2979 street, would you have taken that trade with you?

Mr. Kelaher: Objection.

Mr. Thompson: Could you, in your opinion, have taken that trade with you?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Thompson: I don't see the basis for it, sir, but I, of course, defer.

Hearing Examiner Kolb: Whether he brought it to his station, I suppose you would end up with speculation of whether he could take it some place else.

Mr. Thompson: I simply offered to prove, sir, by this witness that his business is so personal to him he could take it with him if he moved to a competing station.

Thank you very much, sir, I think Mr. Kelaher probably has a couple of questions. We will both keep an eye on the clock and try to help you catch that plane.

The Witness: Thank you.

Cross-Examination by Mr. Kelaher.

Q. Mr. Grossman, did you have a loan from Atlantic?

A. No, never had a loan.

Q. Never had a loan?

A. No.

Q. Now, would you tell us the circumstances lead-
2980 ing up to your first stocking order when you became an Atlantic dealer. You stated your station was stocked completely with Goodyear TBA, is that correct?

A. No, not everything Goodyear. I had—

Q. (Interposing.) Your stocking order.

A. I had DuPont and so forth. DuPont products were in the station.

Q. Of course, that is in the Goodyear TBA line.

A. Then that was Goodyear then.

Q. Was that a sizeable order?

A. Yes.

Q. Approximately how much?

A. Off-hand, I really couldn't say.

Q. And was your station identified with the Goodyear window valances when you went into it?

A. Yes.

Q. Was this a new station or was this a station you took over from someone?

A. No, opened up brand new.

Q. Opened up brand new?

A. I was the first dealer in.

Q. First dealer and when you went in did it have Goodyear valances in it?

A. About a month, I would say, when they got around to it, a little after I was in it, by being a new station, they
2981 came down and put it in, put the Goodyear sign outside.

Q. Who came down and put it in? Was it Atlantic people or Goodyear people?

A. No, Goodyear representative.

Q. And did they put up the big outdoor pole sign for you?

A. They did.

Q. And who took that order for the first stocking order, was that taken by an Atlantic salesman?

A. An Atlantic salesman plus Mr. Frabel.

Q. Plus Mr. Frabel, who was the Goodyear distributor?

A. Goodyear distributor.

Q. And there were other Goodyear distributors in that area, were there not, distributors of Goodyear's tires, batteries, and accessories?

A. Tires and batteries and so forth, I don't know about accessories.

Q. Why was it that you placed your order with Frabel Brothers?

A. Well, I was new going into the business. That was my first venture. Of course I didn't know too much about it, what I would need and the salesman at the time, he gave me a hand, suggested this and that, and so forth.

Q. That was the Atlantic salesman that suggested this?

A. That is right.

Q. Did he tell you your authorized Goodyear supply point was Frabel Brothers?

2982 A. Yes, Frabel Brothers if I needed anything, get it from Frabel Brothers, he was able to supply me with everything I needed.

Q. Now, you continued to buy from Frabel Brothers for how long?

A. Approximately a year.

Q. Approximately a year?

A. Give or take a little; I couldn't say exactly to the day.

Q. Were you dissatisfied with Frabel Brothers' service, quality, or prices?

A. No, the service was all right. The service was, but after being in a business for a little, shopping around, I found out that I could save a little money for the same item by buying it elsewhere.

Q. For the same item, you mean like a Goodyear tire, you could buy elsewhere?

A. Yes, Goodyear tires included, I could have bought from McDonough, Goodyear dealer, maybe save a few cents on the tire.

Q. So you continued to purchase Goodyear tires after that, I take it?

A. Occasionally, if a customer insisted on Goodyear, I get them today for him to satisfy the customer, but I buy it from McDonough instead of Frabel.

Q. So your authorized supply point, you found, was charging higher prices than other Goodyear distributors?

2983 A. A little, yes. Where I could buy a half case or a quarter of a case for the same price, that I would have to buy a case, in case lots from Frabel Brothers.

Q. Did you find your service was as good or better from other jobbers as it was from Frabel?

A. I get good service from other jobbers. Being right in the city doesn't take too long to deliver and I get good service.

Q. Is your station on a busy thoroughfare location?

A. Main thoroughfare coming in from New York on Raymond Boulevard, coming off Pulaski Skyway ramp coming into Newark.

Q. Is that near Route 22?

A. It is, I would say, beginning of US 1, Route 1 coming from New York, coming off Pulaski Skyway. The Skyway ends and Route 1 begins.

Q. Now, what has been done about the Goodyear identification on your service station?

A. Not a thing; it is still there. They came down and put another one on once when the window broke.

Q. How recent was that?

A. I think about two or three years back.

Q. At that time, you were handling—

A. (Interposing.) Everything else but Goodyear.

Q. Everything else but Goodyear. Did you think it was unusual you should be advertising Goodyear when you were handling everything else but Goodyear?

2984 A. Well, no, I did handle Goodyear, as I said, if a customer insisted, to satisfy the customer. Few came in and wanted Goodyear, to satisfy them I would call up and have it down within a half-hour or 20 minutes.

Q. Wouldn't you have preferred to put up a Delco sign or Exide sign?

A. Personally, it didn't make any difference.

Q. Do you believe in advertising?

A. Advertising, yes, but people come in, they see the Goodyear sign, and if they want Goodyear, I get it for them. But if they came and just wanted a tire—

Q. (Interposing.) Isn't it true—

Mr. Thompson: (Interposing.) He hasn't finished his answer.

Mr. Kelaher: I think he finished his answer.

The Witness: If a customer come in and just wanted a tire, I would buy or make a call. If you wanted a set of tires for your car, I would call Firestone or call U. S. Royal, whichever, the same tire, both major brands, whichever I can get the better deal on, I would buy.

By Mr. Kelaher:

Q. Now you know, I would imagine, from reading newspapers and national magazines, that Delco and Exide and all the tire companies, spend a tremendous amount for advertising, isn't that true?

A. That is true.

2985 Q. And advertising, brand names, are quite important in the TBA business, are they not?

A. They are.

Q. Now if you are handling Delco batteries, for example, or if you are handling Goodyear tires or if you handle some other brand of tires, wouldn't it be to your advantage to make that known to the trade, transit trade going by so that if they wanted a Delco battery they could come in and buy it from you?

A. If I did that, I would have my window pasted up with all the different—I wouldn't see anything out of the window because I handle every kind.

Q. That is right, but when people go by your station, they don't know that you handle Delco batteries, for example.

A. No, not unless they stop in. They don't know what I handle unless they stop in: just saw Goodyear sign on the window.

Q. So if potential Delco battery customer came by,

you would undoubtedly lose him unless he stopped in your station?

A. That's right.

Q. The same is true of potential Goodrich tire customers or any of the other brands you have mentioned, which are not Goodyear, isn't that true?

A. That is true.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Do you have any other questions?

Mr. Thompson: No, sir. Mr. Kelaher, may we 2986 make the stipulation we have been making recently about receipt of the three no-forcing letters?

Mr. Kelaher: Yes.

Mr. Thompson: It is stipulated that the witness received CX-206, CX-207, and CX-150.

Hearing Examiner Kolb: That is all, Mr. Grossman, you are excused. Thank you very much.

The Witness: Thank you, sir.

(Witness excused.)

Hearing Examiner Kolb: The hearing will adjourn now until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock p.m., the hearing was adjourned until 2:00 o'clock p.m. of the same day.)

2987 Afternoon Session.

Hearing Examiner Kolb: The hearing will come to order.

JOSEPH A. MARINO was called as a witness by the Respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Francis Ballard.

Q. Give your name to the reporter.

A. Joseph A. Marino.

Q. Mr. Marino, where do you live?

A. Petty Avenue, North Haledon.

Q. What town is that in or city?

A. That is the town of North Haledon itself.

Q. In New Jersey?

A. In New Jersey.

Q. Mr. Marino, this is the first time you have had an opportunity to be here while any testimony is being taken. My name of course, is Ballard. That is the trial examiner on your right there, Judge Kolb, and Mr. Kelaher is the gentleman sitting at this table. He is the attorney for the Federal Trade Commission.

Now, sir, you are the operator of an Atlantic Refining service station?

2988 A. That's right.

Q. You are a lessee of that station?

A. That's correct.

Q. Could you tell us where that station is located?

A. The station is located on the corner of Hamburg Turnpike and Terhune Drive in Wayne Township.

Q. Terhune; could you spell that?

A. T-e-r-h-u-n-e.

Q. Now how long have you had that station?

A. It is going on three years. It will be three years in November or December.

Q. As I understand it, you had another Atlantic station before you took this station at Hamburg Turnpike?

A. Correct, at 35 and Market in Paterson, New Jersey.

Q. How long, sir, did you have the station at 35th and Market Streets at Paterson?

A. Approximately three years, I would say. Possibly even longer than that.

Q. Would it be fair to say that you were at the Paterson station from about 1949 or '50 to 1955?

A. Yes, that would be more correct.

Q. And then you moved over to your present station in 1955?

A. That's right.

Q. Why did you move from one station to another?

A. Well, I was looking for a nicer neighborhood
2989 than where I was actually located because of the neighborhood around me at 35th and Market in Paterson. I was kind of tired with that.

Q. Did you ask the Atlantic people to get you a new station?

A. I did.

Q. Or a different station?

A. I did.

Q. And they got it for you?

A. They certainly did.

Q. At that time, had your lease expired at Paterson in New Jersey? Or was it in the middle of the lease?

A. No, it was still in effect, as I recall.

Q. Now, going back a little bit further, I also understand at one time you were employed by the Atlantic Refining Company in another station?

A. That's right.

Q. But you were not the operator or the lessee of that station?

A. No, I was working directly for them.

Q. Prior to 1950 or 1951, is it your recollection that Atlantic was selling Lee tires and Exide batteries?

A. Yes, we were handling Lee and Exide.

Q. And what type of accessories were you handling then, sir?

A. Well, I personally handled all kind.

Q. Prior to 1951 did you handle other tires than Lee tires?

A. Occasionally when the occasion arrived. If a customer wanted a different brand, I would get it for him.

2990 Q. Now, do you recall the time when Atlantic changed from selling Lee and Exide tires and batteries to promoting Goodyear tires and batteries?

A. I would say that would be in the—oh, I would say in about the middle of '50 or early part of '50, I think is when they changed over.

Q. Did you attend any meetings where the change over was explained to Atlantic dealers?

A. Yes, and I think that was held either in Orange or Newark, I don't remember the town, but it was in a hotel. I believe it was Orange, New Jersey.

Q. And it was what, an evening meeting or day time meeting?

A. No, evening, if I recall, evening.

Q. Can you tell us, sir, generally what was the subject matter of that meeting?

A. Well, at that meeting Atlantic told all dealers that they were going to change over from Exide and so on, whatever we had, to Goodyear, and they wanted the opinions of the dealers to find out what they thought of it. We thought whether it would be a good idea or a bad one.

Q. Do you have any recollection of what the response was of the dealers who were at that meeting?

A. I would say the majority of them were very much in favor of it.

Q. Were you in favor of it?

2991 A. I was at the time, yes, sir.

Q. Did Atlantic—did you say you were? What was your answer?

A. I said I was.

Q. Did anybody at that meeting tell you or any other dealer that you heard that you had to buy the Goodyear TBA line?

A. No, no, definitely not.

Q. Now you have just stated in answer to my prior question that you were in favor of the Goodyear line. Can you tell me why?

A. Well, primarily in our area, the Goodyear line was much more known, more popular, and it would be a lot easier to handle Goodyear products and sell them than it would have been to handle a lesser known brand.

Q. Would it be unfair to use the word "pre-sold"?

Mr. Kelaher: Objection, your Honor.

Mr. Ballard: I withdraw the question.

By Mr. Ballard:

Q. Since 1955, in your present station, what tires have you been handling generally?

A. Well, the majority of the tires that I have been handling have been Goodyear, but I have handled others, such as Lee and Cooper, or any other brand. Lees, I bought a few times, Coopers upon customer demand, who wanted something other than the Goodyear.

Q. In your tire buying business, is price an important consideration?

A. Yes, definitely.

2992 Q. What kind of batteries have you been handling, Mr. Marino?

A. I have been handling Goodyear.

Q. Have you handled any other types of batteries, particularly?

A. Oh, occasionally.

Q. Are the tires and batteries, now I am talking about both of them, do you buy the Goodyear tires and batteries from your authorized supply point or do you buy them from another Goodyear outlet?

A. I buy most of them from my authorized supply point.

Q. Do you buy any substantial quantity from another Goodyear outlet?

A. Not a substantial quantity, no.

Q. Now, sir, I am going to ask you about accessories, about the TBA. In these proceedings accessories do not include motor parts, hard parts, things of that sort, but it does include waxes, polishes, fan belts, radios, things of that sort. Where do you buy your accessories?

A. Mostly from my supplier.

Q. Do you buy outside of your supplier?

A. Once in a while.

Q. Mr. Marino, do you know a gentleman named E. E. Stevenson?

A. I recall the name, but I don't know the man personally.

Q. Mr. Stevenson, sir, appears in the record of this case, to have been a salesman for the Exide Company. In December of 1950 Mr. Stevenson wrote a letter to a
2993 man named DeM tt. The letter has been identified as CX-300-A. In that letter there is a reference to you. I would like to read you the letter, as much of it as refers to you, and then ask you a few questions about it.

"I called on this account," meaning you, "December 13,

and found that they had five Goodyear and one Exide battery which was purchased from Clement DePope. They advised that the majority of the batteries they sell are still Exide, but do not stock any number because of constant pressure being exerted by the salesman for the Atlantic Refining Company.''

Now, sir, did you or did you not at any time in your career purchase Exide batteries from Clement DePope?

A. It is pretty hard to recall. If Clement DePope had Exide batteries and I purchased any, I probably did, but it is hard to recall whether I actually did or not.

Q. Do you recall any conversation of this sort with Mr. Stevenson on December 13, 1950 or at any other time?

A. Those apparently are Mr. Stevenson's words, not mine.

Q. You do not recall making this statement to Mr. Stevenson?

A. Not to him, I don't, no, or to anyone else as far as I am concerned.

Q. Has any Atlantic salesman ever exerted constant pressure on you to buy Goodyear TBA?

A. Not to me.

Q. Now, sir, there was a period of time when you 2994 did carry Exide batteries?

A. Yes, and when Atlantic changed over to Goodyear, I possibly did have maybe one or two left in stock, when I started to purchase my Goodyear batteries in order to fill my shelves up with the proper coverage.

Q. Did you have any trouble with the Exide batteries that you kept on in your station?

A. Well, the one reason I think I got rid of Exide was because I had trouble and they wouldn't stand behind it, and that was the one reason I just didn't bother handling them anymore.

Q. Had it not been for that trouble, would you be carrying Exide batteries today?

A. On and off.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You may answer.

Mr. Ballard: Did you get the answer?

Hearing Examiner Kolb: He did answer.

Mr. Kelaher: What was his answer?

Hearing Examiner Kolb: On and off.

Mr. Ballard: Would you read the question and the answer as you have it in your record, please?

(Whereupon, the reporter read the record as requested.)

Mr. Ballard: I am sorry we were going to fast, Mr. Kelaher. We should slow down; I apologize.

2995 By Mr. Ballard:

Q. Mr. Marino, do you do any portion of your business on Atlantic credit cards?

A. Greatest majority of it.

Q. More than 50 percent?

A. I would say yes.

Q. Your station is what, a neighborhood station or industrial or commercial?

A. I would say it is mostly neighborhood, partially highway.

Q. Have you ever charged non-Goodyear TBA on credit cards?

A. I always do.

Q. Have you ever been criticized by Atlantic for having done that?

A. Not to my knowledge, never.

Q. Have you ever been criticized by anyone from Atlantic for charging any non-Goodyear TBA?

A. Truthfully, no.

Q. Have you ever been told to stop buying on the outside?

A. No.

Q. Have you ever been told to remove any non-Goodyear TBA from your station?

A. Never.

Q. Ever been told to hide it?

A. No.

Q. You are presently on a three-year lease, did 2996 you so testify? Is that your first or second three-year lease?

A. Oh, I have had three-year leases since Atlantic came out with them. I don't know whether it would be the second or third, I imagine about the second, I would say.

Q. By any chance, did you come to Atlantic and ask for a three-year lease after they were announced?

A. No.

Q. In the course of your lease renewals, has anybody from Atlantic ever mentioned the fact that you buy non-Goodyear TBA?

A. No.

Q. Now, sir, are there within your neighborhood, which is—

A. (Interposing.) Wayne Township.

Q. Wayne Township, are there other gasoline service stations there from other oil companies?

A. Yes.

Q. Have any of them ever approached you to take a station with them?

A. Yes, I have had Tidewater, Tydol, Texaco, Gulf people have asked me, and also City Service.

Mr. Ballard: No further questions.

Cross-Examination by Mr. Kelaher.

Q. In what general area is your present location in respect to one of the larger cities in New Jersey?

A. I don't quite understand.

2997 Q. Are you in the Newark area or Paterson area?

A. I would call it more in the Paterson area.

Q. Are you in a well populated area?

A. No, we are around on the outskirts.

Q. On the outskirts of Paterson. How far—

A. (Interposing.) From the town of Paterson.

Q. How far away are you from the town of Paterson?

A. Approximately nine miles.

Q. Now you have been in that station since November or December of 1955, is that correct?

A. That is about correct.

Q. Then prior to that time you were at 35th and Market Streets in Paterson, New Jersey?

A. That is correct.

Q. And that would be in the city itself, I would think, downtown area? Or is that on the outskirts?

A. Not in the downtown area.

Q. Not in the downtown area. Is that on the outskirts?

A. Just exactly what do you mean by "downtown"? Some people by saying "downtown" they mean in the heart of the town. No, that is not—we are on the outside of town.

Q. But in a heavy populated area?

A. Yes, industrial area.

Q. And before that time you were also an Atlantic employee, is that correct?

2998 A. Yes.

Q. How long were you an Atlantic employee?

A. From '45, well, to the end of '49.

Q. And at that time were you operating a service station for them, or were you in other capacities?

A. Well, prior to going to 35th and Market Street, I was at 211 Central Avenue in Orange for the Atlantic Refining Company.

Prior to that—

Q. (Interposing.) Were you operating a station for them at that time?

A. I was assistant manager.

Q. Assistant manager of a station?

A. Yes.

Q. Go ahead.

A. And prior to that, I was in Philadelphia with them.

Q. Now, before Atlantic sponsored Goodyear TBA, you stocked, is this true, you stocked Lee tires, is that correct?

A. I stocked them. What do you mean by "stocking"? If you mean by stocking, carrying any great amount, no.

Q. In your direct testimony you stated you handled Lee tires.

A. We handled them.

Q. And occasionally you purchased other brands?

A. That is right.

Q. What do you mean by that?

A. What do you mean, what do I mean by that?

2999 Q. Does that indicate—that indicates to me that you were carrying Lee as your principal brand tire.

A. That was my principal leader, was the Lee, and upon customer request, I would get whatever they want, whether it be Firestone or U. S. Royal or Goodyear or Fisk or anything they wanted, I would get.

Q. At that time your principal battery that you sold was Exide, is that correct?

A. That is right.

Q. And did you carry a stock of Exide?

A. Well, the way you mean "stock" I guess you would say yes.

Q. You had them available for sale. You know what the word "stocking" means, I assume?

A. By "stocking" we mean a full amount of coverage for all cars. But at that time I didn't have a full amount of coverage for all cars.

Q. By stocking, I mean—

A. (Interposing.) Principally Exide, yes.

Q. A number of Exide, you carried a number of Exide batteries for sale.

And now I would like to ask you a few questions about this dealer meeting that took place about the middle of 1950. Did you say that was in Orange, New Jersey?

A. If I recall, I think it was in Orange, New Jersey.

Q. And who attended the meeting?

3000 A. Oh—

Q. (Interposing.) Were there Atlantic dealers from all over?

A. A lot of Atlantic dealers from area were there.

Q. Would that be from the Paterson-Newark area or just from the Paterson area?

A. I think it was from other areas beside Paterson. Of course, I didn't know some of them.

Q. Approximately how many Atlantic dealers were there, would you know?

A. About one-hundred, I would say, it looked like.

Q. Were there Atlantic representatives present?

A. Yes.

Q. Who were the Atlantic representatives?

Mr. Ballard: If the witness knows.

Mr. Kelaher: Any answer he gives will have to based on his knowledge, of course.

By Mr. Kelaher:

Q. Let me ask you, was the District Manager or Sales Supervisor—

A. (Interposing.) I think he was, I think Mr. Sandborn was District Manager at the time.

Q. And he was present?

A. Yes.

Q. And were any other so-called Atlantic "brass" present?

A. I think Mr. Romer was there. And a few Atlantic salesmen.

3001 Q. Was your salesman there at that time, do you recall?

A. No, I can't recall. He apparently was, I guess.

Q. Now in addition to Atlantic personnel, were any people there from Goodyear?

A. Yes.

Q. And was the so-called Goodyear "brass" in that area there, unless you know their titles?

A. I don't know who they were from Goodyear.

Q. At that time, did Atlantic announce that it was going to begin to sponsor Goodyear TBA in the Newark district?

A. Yes, if I recall.

Q. And at that time, did Atlantic announce that it was going to discontinue the sale of Lee tires and Exide batteries?

A. No, never mentioned it.

Q. They never mentioned them. But Atlantic did discontinue the sale of Lee tires and Exide batteries at or about that time, do you know?

Mr. Ballard: I don't know if that is within the witness' knowledge. So long as the question is limited to his station—

Hearing Examiner Kolb: (Interposing.) He knows whether he is buying them or not.

Mr. Ballard: Whether he is buying them.

Hearing Examiner Kolb: Or selling them. Objection will be overruled.

3002 Mr. Kelaher: You may answer.

The Witness: Would you repeat it again?

Hearing Examiner Kolb: Read the question.

(Whereupon, the reporter read the pending question as follows: "Question: They never mentioned them. But Atlantic did discontinue the sale of Lee tires and Exide batteries at or about that time, do you know?")

The Witness: From our own personal salesman, our salesman, Atlantic salesman.

By Mr. Kelaher:

Q. I am not clear about your answer. Are you saying at that time Atlantic through the salesmen that called on you stopped—

A. (Interposing.) If I wanted to order tire and batteries from my own salesman, Atlantic salesman, we couldn't get Exide or Lee, because they discontinued them, naturally.

Q. That is the point I am making. Now, getting back to this big meeting, do you recall the events at the meeting? What happened first, for example? Did Atlantic make a presentation, or did Atlantic introduce Goodyear personnel?

A. You have me there, I don't remember that.

Q. And did you say that Atlantic asked the dealers if they wanted to change to Goodyear TBA, is that correct?

A. More or less asked if we were in favor of it.

Q. Well, what do you mean by "more or less asked if you were in favor"?

3003 A. Well, they wanted our opinion, more or less, as to whether we would object if they were to handle Goodyear products, and whether we liked the idea or not, and I would say the majority of the dealers liked it.

Q. And when they asked for your opinion, did they ask you by secret ballot or did they ask you to voice your opinion on the floor, or what?

A. Well, it was more or less an open voiced opinion.

Q. Open voiced opinion. And were there some dealers who stated that they did not want Goodyear TBA?

A. Not in my immediate table, no.

Q. You used the word "majority" were in favor of Goodyear TBA, so I assumed there was a minority who were opposed to the idea, is that correct?

A. About one or two maybe.

Q. At your table or—

A. (Interposing.) No, not at my table, that was from talk later on.

Q. Later on, but at the meeting itself, was there any talk to that effect?

A. I didn't hear any open objections, no.

Q. And in your opinion, if the majority did want Goodyear TBA, did you think that should go into all Atlantic stations in the area?

Mr. Ballard: I object to the question, sir. I don't
3004 think that is a proper question as to what this witness' opinion should be as to whether or not Goodyear should go into all of the Atlantic stations in the area.

Hearing Examiner Kolb: Objection will be sustained.

Mr. Kelaher: Beg pardon?

Hearing Examiner Kolb: Sustained.

Mr. Kelaher: Objection sustained.

By Mr. Kelaher:

Q. Now, thereafter, you began to carry Goodyear tires, is that correct? That is what I understand your direct testimony.

A. Principally, yes.

Q. You began to stock Goodyear tires instead of Lee tires, is that right?

A. That's right.

Q. And your reason, one of your reasons you gave for that change was the fact that price was in consideration and I believe you also stated that Goodyear had good consumer acceptance in your area?

A. That's right.

Q. And did it have better consumer acceptance than Lee?

A. Yes.

Q. Now, if you were so sold on Goodyear tires, why didn't you carry them as your principal stock from the time you opened your station until Atlantic began to sponsor them?

A. Well, when I first opened the station there were 3005 Lee tires in there, and I purchased what was in there.

Q. And you never made any purchases of tires after that from any source?

A. Of Lees?

Q. Of anything.

A. Oh, yes, I bought what I wanted where I wanted to.

Q. Well, if you preferred Goodyear to Lee, why did you purchase the Lee tires in the station? If you wanted to handle Goodyear, why did you handle Lee; in other words?

A. It wasn't that I wanted to handle Goodyear. When I went into the service station and Lee tires were in there, I purchased them from the man going out.

Q. Was that considered as part of the deal when you went into the station that you would buy out the inventory of the dealer?

A. I could buy whatever I wanted to in the station, but for business purposes, or etiquette, or whatever you may want to call it, I just didn't feel it right to leave the tires there and say I didn't want them and have the man take them out. After all, he couldn't do anything with them. I had more of a chance of selling them than he did.

Q. Wasn't the fact that Atlantic was sponsoring Lee at that time—

A. (Interposing.) That had nothing to do with it.

Q. And the fact that you changed over to Goodyear had nothing at all to do with the fact that you began 3006 to handle Goodyear tires, is that what you are telling us today?

A. I don't quite get what you mean. I more or less buy what I want to when I want to, and from whom I want to. And I have never been told to do otherwise, and no one has ever told me and I don't ever intend to have them tell me.

Q. You still haven't answered the question.

A. Because I don't quite understand what you mean.

Q. I will make it very clear for you. Isn't it a fact that Atlantic sponsorship of Goodyear TBA influenced your decision to begin to purchase and sell Goodyear TBA?

A. No, not their sponsorship didn't influence me. I think the name Goodyear and their acceptance in our neighborhood more or less influenced me to try them out and see what could be done with them.

Q. If Atlantic had sponsored Firestone in your area, would you have still preferred Goodyear TBA?

Mr. Ballard: Objection. Don't answer the question. I object to it as being speculative or hypothetical, whichever phrase you prefer.

Hearing Examiner Kolb: Objection will be overruled.

The Witness: I forgot the question.

Mr. Kelaher: Read the question.

(Whereupon, the reporter read the record as requested.)

The Witness: I don't think so. Firestone is just as good a seller.

3007 By Mr. Kelaher:

Q. You would have begun to handle Firestone TBA?

A. Any big brand name that would sell would be all right with me.

Q. Now, with respect to your stock of batteries, you stock Goodyear batteries principally?

A. That's right.

Q. Incidentally, who is your authorized supply point? Would you give us the name of the authorized Goodyear supply point?

A. Our supply point is Klepper Auto Service in Hawthorne.

Q. How do you spell that?

A. In Glenrock—I am sorry.

Q. How do you spell that?

A. Klepper?

Q. Yes.

A. K-l-e-p-p-e-r.

Q. And that is in Glenrock?

A. Glenrock, New Jersey.

Q. And are there other suppliers of Goodyear TBA in your marketing area?

A. Yes.

Q. Do you purchase all of your Goodyear TBA from Klepper?

A. No.

Q. Do you purchase principally from Klepper?

A. Principally, yes.

3008 Q. Now on your accessories, I believe you stated that most of your accessories are purchased from your Goodyear supply point and once in a while you purchase from another jobber, is that correct?

A. That's right.

Q. Now, with respect to the questions concerning a

document identified as CX-300-A and 300-B, you did state that you recalled a Mr. Stevenson by name, is that correct? You recall the name?

A. I recall the name because it has been mentioned a few times.

Q. When your Atlantic salesman was selling Exide batteries you placed your orders with the Atlantic salesman, is that correct, for Exide batteries?

A. Yes, but not always.

Q. Would you also purchase Exide batteries from another source?

A. Yes, I did.

Q. What was the other source?

A. Reliable Magneto, I think was the name of the source.

Q. And does the name Mr. VanTuno mean anything to you?

A. No.

Q. After Atlantic stopped selling Exide batteries then you began to get calls from Exide salesmen, isn't that correct?

A. I still purchased Exide after Atlantic went
3009 over to Goodyear, yes, I purchased them from Reliable Magneto.

Q. Right. So you did have some men from Exide calling on you, someone selling Exide batteries?

A. Not steadily.

Q. And Mr. Stevenson may have been one of those gentlemen, but you don't recall whether he was or not?

A. No.

Q. And when you were asked if you made the statement that you do not stock any number of Exides because of constant pressure being exerted by the salesman from United Refining Company, you answered to the effect that

they were not your words, they were Mr. Stevenson's words.

Do you recall any conversation with any Exide salesman concerning that pressure?

A. No, it is too far back to recall accurately. In fact, I can't remember anything to that effect, but if there were an Exide salesman into my place at that time, if I did purchase Exide batteries, which I did once in a while, according to customer requests, I would purchase them from Reliable Magneto, and I don't more or less want to be bothered with other outside men.

Q. Isn't it true that when Atlantic swung over to Goodyear TBA that Atlantic salesmen were interested in having you purchase Goodyear batteries in preference to Exide or other brands?

A. Well, all salesmen are interested in selling their product.

3010 Q. Didn't they indicate that they expected you to carry Goodyear batteries?

A. I don't quite get what you mean "indicated."

Q. Well, did they state or imply or did they have any talks with you concerning the matter?

A. No.

Q. Did Atlantic salesmen have any talks with you concerning the matter?

A. No, they just stated that Atlantic was turning over to Goodyear, and if we would cooperate in any way, in order for that, naturally, for him to sell his products, but not necessarily that I had to carry them if I didn't want to.

Q. But they asked for your cooperation, and did they explain to all of the Atlantic service stations in the area who were going under Goodyear TBA plan at the time?

A. No, not that I recall.

* * * * *

3011 By Mr. Kelaher:

Q. At the time you were handling Lee tires and Exide batteries, did you in your service station at that time, have any window decals up on the station when you were handling Lee?

A. I don't remember.

Q. Did you have any Exide signs in your station?

A. I am trying to think now—I think I had an Exide charger, if that is what you mean, Exide display shelf.

Q. I am talking about signs, you know, the window valances, the window signs. Isn't it entirely possible that you had a Lee sign, Lee-Exide sign up there in your station window when you were selling Lee-Exide products?

A. Possibly a sign of Lee when Atlantic was sponsoring Lee.

Q. That is what I am talking about, when Atlantic was sponsoring Lee.

A. More or less one of those.

Q. Did you have one of those big Lee outdoor signs on your premises when Atlantic was sponsoring Lee tires?

A. What do you mean? Hanging signs?

Q. Hanging signs.

A. Not that I ever recall.

Q. You never had one of those?

3012 A. No.

Q. Now when Atlantic began to sponsor Goodyear TBA, was Goodyear identification put on your station, Goodyear window sign and a Goodyear outdoor sign placed on the premises?

A. Goodyear signs were put up in the window, but I never had an outside sign.

Q. You never had the outside sign?

A. No.

Q. But you did have Goodyear sign put in the window?

A. Yes.

Q. And if there had been a Lee sign there, that would have been removed?

Mr. Ballard: I object to the question, your Honor.

Hearing Examiner Kolb: The objection will be over ruled.

Mr. Ballard: He hasn't proved, sir, not definite, it is entirely speculatively; if the witness stated there were a Lee sign first, then he could ask him whether it was removed.

Mr. Kelaher: He stated there possibly was one, as I remember his testimony.

Hearing Examiner Kolb: Overruled. Proceed.

By Mr. Kelaher:

Q. Whatever sign was there was replaced by the Goodyear sign in your window?

A. I would say yes.

3013 Q. Now at your current station, do you also have a Goodyear window valance for the station?

A. Yes.

Q. At this station, do you have the outdoor sign too, Goodyear outdoor sign too?

A. No.

Q. Just the window signs?

A. Just the window signs.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Francis Ballard.

Q. Mr. Marino, I have just one further question. In your opinion, do you think you would lose your Atlantic lease if you stopped buying Goodyear TBA?

A. No.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled. The answer may stand.

Recross Examination by Mr. Kelaher.

Q. Let me ask you one question. In your opinion, does it lessen your chance of having your lease if you handle Goodyear TBA?

A. I don't think handling Goodyear TBA, whether I do or not would affect my chances for a lease with At-
3014 lantic one way or another.

Q. Isn't it a fact that by handling the sponsored brand, you eliminate any friction with the company with respect to TBA?

A. I have never had any occasion to have any friction with the company.

* * * * *

CHARLES HENRY LOTT was called as a witness by Respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

3015 *Direct Examination by Mr. Frederick Ballard.*

Q. Mr. Lott, will you give us your full name and residence address?

A. Charles Henry Lott, 300 Highland Avenue, Morristown, New Jersey.

Q. Mr. Lott, in case you haven't met all these gentlemen, to your right is Judge Kolb, he is the Hearing Examiner and presiding officer; and on your left is Mr. Kelaher, my opponent, he is the lawyer for the Federal Trade Commission.

If you will try to speak so I can hear you, then I am sure Judge Kolb can hear you and also the stenographer.

Mr. Kelaher: Let's include me too.

Mr. Ballard: I neglected to mention Mr. Kelaher, but

that was not intentional, I assure you. I would like Mr. Kelaher to hear every word you say.

By Mr. Ballard:

Q. Now, sir, what is the address of your Atlantic station?

A. Route 38 on Church Street, Morristown, New Jersey.

Q. How long have you been the lessee of that station?

A. May 2, 1945.

Q. Now, when you moved into that station, where did you buy your tires and batteries and accessories, when you first moved into that station?

A. Off of John Reader, Brooklawn, New Jersey.

3016 Q. At that time, I believe tires, at least, were in pretty short supply, weren't they?

A. I had a certificate to buy 25 tires and I couldn't get one.

Q. What kind of tire did Mr. Reader carry?

A. He handled Lee tires and United.

Q. And what kind of batteries did he carry?

A. I didn't buy batteries from him, he didn't have any batteries.

Q. When the wartime shortage was over, did he take on some batteries?

A. Yes, he did.

Q. Did you buy them from him?

A. Yes, sir.

Q. Do you remember what brand he happened to carry then?

A. Exide.

Q. Mr. Reader was, in fact, an Atlantic supply dealer, wasn't he?

A. Yes, sir.

Q. Not for your area, I believe, though?

A. No, sir.

Q. Was Mr. Reader a personal friend of yours?

A. Yes, sir.

Q. Give you good service?

A. Yes, sir.

* * * * * *

3017 Mr. Ballard: * * * Do you recall that in about 1951, Atlantic began to sponsor the Goodyear line of tires, batteries and accessories?

The Witness: Yes, sir.

By Mr. Ballard:

Q. And did Mr. Reader take on the Goodyear line at that time?

A. Yes, sir.

Q. And did you continue to buy from Mr. Reader?

A. Yes, sir.

Q. Of course, after he took on Goodyear, you were buying Goodyear?

A. Yes, sir.

Q. Have you been pleased with the Goodyear line?

A. Yes, sir.

Q. Now, do you remember about the time that Atlantic took on Goodyear, receiving a letter from Atlantic Refining Company on the subject of TBA?

A. Yes, sir.

Q. Do you remember what the letter said?

3018 A. I would have to—I couldn't be precise and tell you exact words, but I can tell you almost what the meaning of the letter was.

Q. Would you do that for me?

A. I am quite sure it was from the Vice-President.

Mr. Kelaher: Your Honor, I think we have the letter in evidence. I think under these circumstances he should

just refer to the letter, that is the best evidence and it speaks for itself.

Mr. Ballard: Your Honor, it seems to me while the letter may be the best evidence of what was said, what I am asking is this witness' understanding of Atlantic policy as explained in the letter, and I think Mr. Kelaher would be anxious to know that.

Mr. Kelaher: I still think the letter speaks for itself and he doesn't even know, he may not know which letter he is referring to. I don't know—which one are you referring to?

Hearing Examiner Kolb: I think Mr. Kelaher's objection is correct. I will sustain it.

Mr. Ballard: Do you want to stipulate the witness received these letters?

Mr. Kelaher: Let's ask him.

By Mr. Ballard:

Q. Mr. Lott, I show you a document marked 3019 CX-150, it is a form of a letter. It isn't addressed to anyone, signed by Mr. Colley, Vice President of Atlantic, and I ask you to look that letter over and see if you recall getting a letter in that form, which of course, would have been addressed to you?

A. (After inspection.) I remember the letter.

Q. Now, I show you a second letter. This also is a form letter signed by Mr. Colley, it is marked CX-206 and is dated August 28, 1952 and is entitled "A Restatement of Atlantic TBA Policy."

Perhaps you will let me know whether you do or do not recall receiving that letter?

A. (After inspection.) Yes, sir.

Q. Finally, sir, I show you a letter which is marked CX-207, and this letter is from the office of, and it is signed by, Mr. J. O. Estlow, the manager of the Philadelphia-New

Jersey marketing region. I believe that is your region, isn't it?

A. Yes, sir.

Q. And it is dated June 24, 1955, addressed to all Atlantic dealers. I wonder if you recall receiving such a letter as that?

A. (After inspection.) I remember this letter too, sir.

Q. Do you remember it?

A. Yes, sir.

Q. Mr. Lott, has anybody from the Atlantic Refining Company ever tried to force you to buy any TBA you didn't want to buy?

A. No, sir.

3020 Q. You have, of course, had your lease renewed many times?

A. Yes, sir.

Q. Do you think you would lose your lease if you stopped buying Goodyear TBA?

A. No, sir.

Q. Mr. Lott, do you remember a gentleman that used to be employed by the Atlantic Refining Company named Felix B. Heald?

A. Yes, sir.

Q. Do you remember that after he left Atlantic, Mr. Heald went in business under the name F & C Automotive Specialties, or some such name?

A. Yes, sir.

Mr. Ballard: Now, Mr. Heald appeared as a witness in this proceeding in June of 1957. Mr. Kelaher, the transcript page, I think, is 896, although I must say that doesn't look exactly right.

Mr. Kelaher: That's right.

By Mr. Ballard:

Q. Mr. Heald, as a witness, was examined by Mr. Kelaher here, and Mr. Heald mentioned your name, Charles Lott. So, Mr. Kelaher asked him this question: "What products did he", meaning you, Charles Lott, "purchase?" And Mr. Heald answered: "He purchased several different products, and he bought fan belts from me, and I had a man come down from Trenton to resleeve them."

Did you, in fact, buy products from Mr. Heald from 3021 time to time?

A. I couldn't really tell you what I bought from him. I did purchase from him, but I don't know what it was, it has been a long time ago, and I can't recollect just what it was.

Q. Well, the next question that was asked of Mr. Heald is: "What brand?" And Mr. Heald answered "Thermoid."

I take it you don't remember whether you bought Thermoid belts or not?

A. I really couldn't tell you unless I saw some evidence, sales slips or something of that nature.

Q. Then the next question is: "What happened after that?" And Mr. Heald said, "The next time I got there, they were all back to Goodyear again." And then Mr. Kelaher asked, "Did you have any conversation with Mr. Lott concerning Thermoid products?" And Mr. Heald said this: "He," meaning you, Mr. Lott,—

Mr. Kelaher: (Interposing.) Your Honor, I am going to object. The proper way would be to ask him, instead of leading him, what the conversation was.

Mr. Ballard: On the contrary, this is procedure we followed from the beginning.

Mr. Kelaher: This isn't cross-examination.

Hearing Examiner Kolb: This is all testimony in evidence, is it not?

Mr. Ballard: I am quoting from the record and this is in evidence. I am about to ask the witness' recollec-
3022 tion of this matter. If I go at it in any other way, Mr. Kelaher is going to say I am not correctly quoting the record.

Hearing Examiner Kolb: Overruled.

By Mr. Ballard:

Q. The answer Mr. Heald gave is this: "He asked me as a personal favor, he said it embarrassed him for me to come in there, and ask me as a personal favor, would I do this, and I said, 'Sure' ".

Now, sir, I ask you whether you recall any such conversation with Mr. Heald?

A. I recall no such conversation with Mr. Heald. The answer to that is no.

Q. Did you ever ask Mr. Heald, as a personal favor or otherwise, to stop calling on you?

A. No, sir.

Q. Now the final question that was asked of Mr. Heald was: "So, thereafter, he did not purchase any TBA from you?" And Mr. Heald said: "No."

Now, as a matter of fact, did you stop buying from Mr. Heald or did he stop selling to you?

A. Well, the way I recall it, Mr. Heald just stopped coming around. In fact, I considered him a friend; he used to work for Atlantic and I was always glad to see him, and he just stopped coming in. I don't remember ever doing anything to make it uncomfortable for him in any way,
3023 ever asking him to leave or not to come back.

Q. If he called around today, would you be glad to see him?

A. I would be very happy to see him.

Mr. Kelaher: That would be a little difficult because he is out of business.

Mr. Ballard: Do you want the remark to stand on the record?

Mr. Kelaher: I sure do.

Mr. Ballard: Mr. Lott, I don't have any further questions. I believe Mr. Kelaher does. He seems to have some on his pad.

Cross-Examination by Mr. Kelaher.

Q. Mr. Lott, what Atlantic district are you in? We have had a number of witnesses today and they are coming from various areas. Are you in the Southern jurisdiction of Atlantic?

A. I really couldn't tell you, sir. I am not sure.

Q. Who contacts you? Someone from the Philadelphia office?

A. We have a regular salesman who calls on me, yes, sir.

Q. And your contacts are with the Philadelphia office, not Newark, New Jersey, are they?

A. No, sir, my contacts are with an office in Belmar.

Q. In where?

A. Belmar.

Mr. Kelaher: Perhaps counsel can tell us. Is this 3024 dealer located in the South Jersey district?

Mr. Ballard: I believe he is, Jim. Incidentally, I would be more than glad to furnish you with a map of any Atlantic district or anything I can to prevent confusion.

Mr. Kelaher: I just wanted the record to be clear, Your Honor, at this point, I would like to make this observation. We had Mr. Wash, Mr. Marino, Mr. Wyckoff, and it is my understanding they are all from the North Jersey district.

Mr. Ballard: I believe that is correct.

Mr. Kelaher: And Morristown is south, it is near

Camden and so the chances are he is in the South Jersey district.

Mr. Ballard: He is indeed in the South Jersey district.

Mr. Kelaher: Good. Fine.

By Mr. Kelaher:

Q. You became a lessee dealer on May 2, 1945?

A. That is correct.

Q. And at that time you began to carry the Atlantic sponsored line, Lee-Exide, and so on, is that correct?

A. Name some of the products and I will tell you.

Q. Well, just going over your direct testimony, you testified that you carried Lee tires, Exide batteries, and I am not clear on what your accessory purchases were, but did you also buy those from John Reader?

A. Yes, sir.

3025 Q. So, included in those accessory purchases, were Thurmoid belts at the time, if you will recall.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. So, you purchased Thermoid fan belts from 1945 and you purchased all of the Atlantic sponsored products from 1945 until Atlantic changed over to Goodyear TBA, is that correct?

A. Yes, sir.

Q. And at that time you also swung over to Goodyear TBA?

A. Yes, sir.

Q. Now, I would like to ask you a little bit about this fellow John Reader. R-a-e-d-e-r?

A. R-e-a-d-e-r.

Q. He is located where?

A. Belmar, New Jersey. Excuse me, Brooklawn, it is Brooklawn.

Mr. Ballard: Perhaps you better spell it too. We don't all have New Jersey backgrounds.

The Witness: B-r-o-o-k-l-a-w-n.

By Mr. Kelaher:

Q. Now is Mr. Reader, did I understand you to say he ran an Atlantic service station?

A. Yes, sir.

Q. He operates an Atlantic service station?

A. Yes.

3026 Q. And he is an Atlantic supplying dealer for Goodyear TBA products at this time, is that correct?

Mr. Ballard: The witness hasn't answered the question. Did you understand the question? We can always have it read back.

By Mr. Kelaher:

Q. I will put it this way. On direct examination, you said Mr. Reader was Atlantic supplying dealer. I am just asking you if that is correct?

A. Yes, sir.

Q. And I take it that Mr. Reader discontinued handling Lee-Exide, Thurmoid, and so on, other products, when Atlantic swung over to Goodyear TBA, was that the setup? And then at that time commenced to handle Goodyear tires, batteries, and accessories?

A. Yes, sir.

Q. That is correct. Now, let me ask you a little bit about this change over in South Jersey. Was there a dealer meeting there at that time when Atlantic announced it was going to change to Goodyear TBA?

A. I think there was.

Q. And at that time, was Atlantic personnel present and Goodyear personnel present at the meeting?

Mr. Ballard: I object, your Honor, simply because the

witness hasn't testified that he was present. I hon-
3027 estly don't know, but I think you are being a little unfair to ask him who was present.

Mr. Kelaher: Maybe I misunderstood his answer. Maybe I didn't ask you if you attended the dealer meeting?

The Witness: I attended. I don't know what dealer meeting you are speaking of. I attended a lot of dealer meetings.

By Mr. Kelaher:

Q. I am talking about where Atlantic switched over to Goodyear TBA in 1951. Do you recall attending that meeting?

A. If you would give me a date, or let me know—

Q. (Interposing.) About March 1951.

A. Where was the meeting held?

Q. I am asking you; I don't know where it was held. I am asking you if a meeting was held at that time at which Atlantic announced it was going to sponsor Goodyear TBA?

A. I attended several meetings where they displayed Goodyear products and showed them to us.

Q. Were those meetings attended by a large number of Atlantic dealers?

A. Yes, sir.

Q. Now, after the meeting, was a call or visit paid to you by Mr. Sandborn or someone else in the Atlantic organization or—

A. (Interposing.) I don't know anybody by the name of Sandborn.

Q. Who was your district manager at that time, do you recall?

A. I couldn't recall.

3028 Q. Regardless of names, did anyone, did Atlantic personnel and Goodyear personnel visit you at the

time of the change over to Goodyear TBA to talk to you about it?

A. Yes, sir.

Q. They did. And was that when you agreed to carry the Goodyear TBA line?

A. Yes, sir.

Q. And prior to that time, you carried Lee tires and Exide batteries—

A. (Interposing.) I think I stated I carried United and Lee tires, and Exide batteries.

Q. United and Lee tires, right, but you did carry Lee tires, Exide batteries and other products in the Atlantic line from 1945 until 1951, about six years, we will say?

A. Yes.

Q. And did Lee tires have good consumer acceptance in your area?

A. Well, I sold more United tires, I had better luck and better service out of United tires than I did from Lee. In fact, I was very happy when they dropped the Lee line.

Q. Was your reason for handling it the fact that Atlantic had it in its line?

A. No, sir, I had Lee and United tires.

Q. You just said that you were happy when they dropped the Lee line. I was just wondering what you mean by that.

3029 A. I meant that public acceptance is much better on Goodyear tires because of their advertising program, and I personally like them myself.

Q. Did you purchase the Lee tires because they were part of the Atlantic program?

A. Yes.

Q. And you were happy when they dropped Lee and began to sponsor some other brand and it turned out to be Goodyear, and you were happy when they began to sponsor Goodyear and you went right along with the program?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, Exide batteries, do they have a good consumer acceptance in your area?

A. I believe they do, sir.

Q. Exide batteries are made by a Philadelphia firm, as you know.

A. That's right, sir.

Q. And you are in the general Philadelphia metropolitan area?

A. Would you like my own personal feelings about Exide batteries?

Q. I am just going to ask you about consumer, whether you have demand for Exide batteries there in the Philadelphia area.

A. I never saw the Exide salesman; in fact, nobody ever called and tried to sell me an Exide battery. 3030 I think after Atlantic dropped the franchise or dropped the—

* * * * *

By Mr. Kelaher:

Q. Well, I did ask you this, whether or not Exide had consumer acceptance in your marketing area. What is your answer to that?

A. I don't really think I am an authority to answer about consumer acceptance.

Q. Did you sell them?

A. I could tell you personally what I thought of Exide batteries.

Q. You go ahead and tell us.

A. Personally, we had a lot of trouble with them and I don't care for the Exide battery.

* * * * *

3031 By Mr. Kelaher:

Q. You stated that you personally didn't have any great preference for Exide batteries, is that correct?

A. That is purely personal.

Q. Purely personal, right. Now the record shows and you have testified, that for about six years you carried Exide batteries?

A. I didn't say that.

Mr. Ballard: I object to that characterization, sir. I think the witness was about to object as well. The witness did not say that.

Mr. Kelaher: Why don't you let the witness answer if you are sure?

3032 Mr. Ballard: Improper characterization you are throwing at him. If you ask him what he carried—

Mr. Kelaher: Talk about improper. He testified on direct he only handled Exide.

Mr. Ballard: He testified on direct examination, to the best of my recollection, he did not begin to handle Exide until sometime after he went into this station.

Mr. Kelaher: I am talking about prior to 1951. When did you begin to handle Exide batteries then, if that is the big stumbling block.

The Witness: I really didn't handle too many Exide batteries. I sold Weathervane batteries.

By Mr. Kelaher?

Q. Where is that made?

A. Philadelphia.

Q. Didn't you carry some Exide batteries because Mr. Reader began to be the supplier for Exide batteries?

A. Yes.

Q. And that was part of the Atlantic set-up, right?

A. Yes.

Q. And when Mr. Reader dropped Exide and began to

carry Goodyear batteries, you began to carry Goodyear batteries, is that the status?

A. Yes.

Q. At the time you were carrying the Exide, did
3033 you have any signs, Lee signs or Exide signs in your station?

A. No, sir, I don't think I did. I can't recall whether I did or not.

Q. And after you began to handle Goodyear TBA, were Goodyear signs put in your station?

A. Goodyear people came there and put up signs, yes, tires and batteries, Goodyear tires.

Q. Put up a window valance?

A. Yes, sir.

Q. Did they give you one of the big outdoor signs too, pole with the Goodyear sign?

A. No, sir.

Q. Now, based on your own knowledge and your observation of the area, Atlantic dealers all had Goodyear TBA signs put in their stations after Atlantic began to sponsor Goodyear TBA, isn't that correct?

A. Well, I couldn't speak for them all. Do you mean 100 percent?

Q. Within your knowledge; I am sure you can't speak for them all. It was pretty general, wasn't it?

A. Yes, sir.

Q. Now, let's talk about Mr. Heald awhile. Mr. Heald, at the time he worked for Atlantic called on you in his official capacity as an Atlantic representative, isn't that true?

A. Yes.

Q. When Atlantic discontinued handling Lee tires,
3034 Exide batteries, Thermoid fan belts, and so on, Mr. Heald, about that time, left Atlantic, if you will recall. Do you remember?

Mr. Ballard: The witness hasn't answered the question.

The Witness: He asks the questions and answers them himself.

Mr. Kelaher: You answer them yourself. I am trying to speed it up.

Hearing Examiner Kolb: Let the witness testify, Mr. Kelaher.

By Mr. Kelaher:

Q. You knew Mr. Heald very well, didn't you?

A. I knew him personally very well.

Q. And he is a very fine gentleman?

A. Very fine gentleman.

Q. And when did he first start calling on you to sell products?

A. I really couldn't tell you the dates.

Q. Was it after Atlantic began to sponsor Goodyear TBA?

A. I wouldn't want to say, sir. I don't know.

Q. What product was Mr. Heald selling?

A. I couldn't even tell you that, it has been so long ago.

Q. Would it refresh your recollection if I told you he was selling Lee tires, Exide batteries and Thermoid fan belts among others?

A. Probably.

Q. Probably?

3035 A. Yes, sir.

Q. Would it refresh your recollection if I told you that after the Atlantic discontinued selling Lee tires, Exide batteries, and Thermoid fan belts, and other products, Mr. Heald went into business for himself, and started to sell those products to Atlantic dealers whom he knew in that area. Does that ring a bell with you?

Mr. Ballard: I was lost, could we have that one read over again?

Hearing Examiner Kolb: Read the question.

Mr. Kelaher: He understands.

Mr. Ballard: I am sure he understands, but I don't. I am entitled to too.

(Whereupon, the reporter read the record as requested.)

The Witness: He called on me to sell me products. I don't recollect whether it was Exide batteries he was pushing or Lee tires, but he didn't call on me—but he did call on me and I made purchases.

Mr. Kelaher: And you did make purchases?

The Witness: Yes.

By Mr. Kelaher:

Q. Is it entirely possible that you purchased Thermoid fan belts from him?

A. It is possible that I purchased Thermoid—I couldn't recall.

3036 Q. It is possible, is it not, that the Thermoid brand, the Thermoid fan belts were later resleeved as Goodyear, is that possible?

A. It is possible and it is a fact that Goodyear did resleeve the belts.

Q. Now we are getting somewhere.

A. And—

Q. (Interposing.) They did receive the belts and did they resleeve the Thermoid fan belts?

A. They resleeved the Thermoid fan belts, but I had a stock—I would like to clarify this and tell you.

Q. Go right ahead.

A. The Goodyear people came in and resleeved the belts, and put—but not the belts Felix Heald—I don't know whether I purchased from Felix Heald or John Reader, but the belts were resleeved when we took over Goodyear franchise. The Goodyear people come around every year and they will take my dead stock. I still have some belts that I purchased, I don't know whether they

are Thermoid or just what belts they are, but Goodyear takes back the stock that isn't selling, that is why it is attractive.

Q. So that the fan belts were resleeved in any event. And it is also true, is it not, when Mr. Heald started to phone you to solicit your business that you had conversations with him of one type or another?

3037 A. About what?

Q. About TBA?

A. Certainly we talked about product, I don't know just what product it would be, but he came to me plenty of times as a customer, and other times as a gentleman selling something.

Q. I am talking about the occasions when he came to you when he had his own business. You certainly had conversations with him about TBA because he was trying to sell you TBA, isn't that true?

A. Well, if I knew what kind of TBA he was trying to sell me I could probably answer the question.

Q. I can tell you based on the testimony, he was trying to sell you Thermoid fan belts, among other things.

A. In all probability, he did try to sell me Thermoid fan belts, but—

Q. (Interposing.) In all probability you may have purchased some from him, isn't that true?

A. I couldn't tell you unless I saw the actual sales records and sales receipts. I wouldn't want to make a statement that I did or didn't.

Q. That is, you testified you did make some purchases from him of TBA?

A. I purchased from him but I don't know what it was. It has been so long ago I can't recall.

Q. It is also possible that a statement attributed

3038 to you by Mr. Heald may have been made by you and you may not recall?

A. It absolutely is not. I never made that statement to Mr. Heald because I considered him a friend, and I would never make a statement like that to him.

Mr. Kelaher: No further questions.

Mr. Ballard: May we have just a moment, your Honor?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

Redirect Examination by Mr. Frederick Ballard.

Q. Mr. Lott, during the time that you have been an Atlantic dealer, have you at all times felt free to buy whatever TBA you wanted?

Mr. Kelaher: Your Honor, I object.

Mr. Ballard: Your Honor, the man's state of mind is certainly in issue in this case.

Mr. Kelaher: I think he is picking up some questions he overlooked on his direct. He is going beyond the scope of the cross.

Hearing Examiner Kolb: I will overrule the objection.

Mr. Ballard: Would you read the question so the witness can answer?

(Whereupon, the reporter read the record as requested.)

3039 The Witness: I think I answered that before and, in fact, I stated that I purchased from a lot of other people.

Mr. Ballard: I don't think I have any other questions.

Mr. Kelaher: I have nothing further.

Mr. Ballard: Thank you very much indeed, sir.

Hearing Examiner Kolb: You are excused, sir.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Mapes.

AUGUST MAPES was called as a witness for respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name.
The Witness: August Mapes.

Direct Examination by Mr. Francis Ballard.

Q. Mr. Mapes, you have been sitting outside here; I don't think you have been in this room. Perhaps you have met some of these gentlemen. The gentleman on your right behind the bench, is Judge Kolb, who is the Federal Trade Commission Examiner here, and the gentleman here is Mr. Kelaher who is the attorney for the Government here. My name is Mr. Ballard.

3040 Mr. Mapes, where do you live?

A. I live in Somer's Point, New Jersey.

Q. And you operate an Atlantic service station at 9th and Bay Street in Ocean City?

A. Ninth and Bay Avenue, Ocean City.

Q. You have a lease on that station?

A. Yes.

Q. For how long have you been operating an Atlantic service station?

A. I have been in since 1929. I was about six years or more for the company and then I operated it all the rest as a dealer.

Q. Now I believe those dates are a little bit inaccurate. Would it refresh your recollection if I told you that you

took the station in Ocean City, where you now are, in September of 1939? Does that seem about right?

A. Somewhere—I just can't recall just how many years.

Q. It is a long way back.

A. A long way back. I know I have been in since '29 altogether.

Q. Now, sir, what is the term of your present lease?

A. Three years.

Q. And before you got the lease that you are now working under, did you have a series of leases for that station?

A. I have had three-quarters and a year.

Q. And then, renewals?

A. Renewals.

3041 Q. Through the years?

A. Yes.

Mr. Ballard: Will your Honor grant me just a moment's recess while I assist here for a moment at the counsel table?

By Mr. Ballard:

Q. Mr. Mapes, am I right in saying that until about 1951 Atlantic was selling Lee tires and Exide batteries to its dealers?

A. That's right.

Q. Well, before 1951, what tires, batteries, and accessories were you carrying in Ocean City?

A. Well, it was the same, Lee tires and Exide batteries, that is, before 1951?

Q. Yes.

A. Yes.

Q. Did you carry any other types of tires back in those days?

A. No.

Q. How about your accessories before 1951?

A. Accessories—when I first started operating the station for myself, I just got the accessories off of J. C. Miller from Atlantic City.

Q. Now when you were buying accessories from J. C. Miller, was Atlantic selling accessories to you?

A. Just tires and batteries when they first started in.

Q. Now then, in 1951, Atlantic changed over from Lee and Exide to Goodyear tires, batteries, and accessories?

3042 A. Yes.

Q. Is that right?

A. Yes.

Mr. Ballard: Mr. Kelaher, I have just recently checked with this witness, and may I enter into the same stipulation with respect to the three letters?

Mr. Kelaher: No objection.

Mr. Ballard: It is stipulated that this witness has received and read Exhibits number CX 150, CX 206, and CX 207.

By Mr. Ballard:

Q. Now, sir, at the time of the change over from Lee and Exide over to Goodyear, did you attend any meetings with reference to the change over?

A. Well, I attended a couple of meetings, some of them I missed.

Q. Do you remember generally who was at the meetings that you attended?

A. Well, let's see—I don't know off-hand. I think the sales manager, Mr. Estlow, I think he was at them, and Al Debenedetto.

Q. Who was Al Debenedetto?

A. Al Debenedetto was a salesman at the time.

Q. Without going into too much, who was there, what was the purpose of the meeting, what was said at the meeting?

A. They were explaining the product that we
3043 would have and telling us they were going to give us a good service on it with the accessories and stuff.

Q. Did anybody at that meeting say that the dealers had to buy Goodyear TBA?

A. No.

Q. Now since the change over in 1951, what has been your principal line of tires?

A. Since then?

Q. Yes.

A. Well, I have some Lee and the majority is Goodyear.

Q. Now as to the batteries, what has been your split-up in the batteries?

A. Exide and Goodyear.

Q. And your accessories, sir?

A. Accessories is from J. C. Miller and the Goodyear.

Q. About what portion of your accessories do you buy from J. C. Miller?

A. Well, at times it runs about 60 percent.

Q. What kind of hose do you carry?

A. Why, I have some Gates hose and some Goodyear.

Q. Do you have Fram and A C Filters?

A. Fram and A C Filters.

Q. You have Exide batteries?

A. Exide.

Q. And Lee tires?

3044 A. Lee tires.

Q. What kind of washers and waxes do you carry?

A. I have DuPont and Speedy Wash.

Q. Mr. Mapes, do you recall my visit to your station down there oh, a while back, when I was down?

A. Yes, sir.

Q. Is there a contraption in your Bay area that is marked "Fram"?

A. There is a Fram air clearner, is that what you mean? It looks like a cart.

Q. How big is that, approximately?

A. That runs, I would say, about four by five, stands about four feet high.

Q. And it is painted with the name "Fram" and in the Fram colors?

A. Fram colors and name on it.

Q. Are these accessories, the Exide batteries and the Lee tires openly displayed in your station?

A. Yes, sir, right on the rack, people can see them as they come in the station.

Q. Have you sold those items on Atlantic credit cards?

A. Yes, sir.

Q. Have you ever been criticized by anyone from Atlantic?

A. No, sir.

Q. You have not been criticized?

A. Nobody criticized.

3045 Q. Have you ever been criticized generally by Atlantic for carrying non-Goodyear TBA?

A. No, sir.

Q. Have you ever been told to stop buying it?

A. No, sir.

Q. Have you ever been told to get it out of the station?

A. No, sir.

Q. Or to hide it?

A. No, sir.

Q. Do you have free choice as to what TBA you buy?

A. I do.

Q. You touched a moment ago on the various lease renewals that you had in the course of your career. Has any Atlantic person ever mentioned the fact that you buy non-Goodyear TBA in the course of getting a lease renewal?

A. No.

Q. Have you got any other gas stations in Ocean City?

A. No.

Q. I mean, are there any other gas stations in Ocean City?

A. You mean that I can get?

Q. Yes.

Mr. Kelaher: He is ahead of the question, I think.

The Witness: Well, I could turn around at one time and get three-quarters of the stations along 9th Street, there about 15 stations, and all those companies asked
3046 me to take those stations over.

Mr. Kelaher: That isn't responsive to the question, but I won't object as that would have been the next question.

Mr. Ballard: And we all want to speed it up.

By Mr. Ballard:

Q. Mr. Mapes, do you recall a man named Felix Heald.

A. Felix Heald?

Q. Yes.

A. Yes.

Q. He testified in this proceeding at pages 897 and 898 of the record, and I am going to read you his testimony and ask you to comment on it as we go through it. It is fairly long so I will interrupt myself at occasions to ask you whether it is accurate.

He was being questioned by Mr. Kelaher, the gentleman at the other table. Mr. Kelaher asked Mr. Heald, "Did you at one time call on August Mapes?" To which the answer was, "Well, Gus Mapes, I used to go to Ocean City every Summer and I have known him for many, many years. And if he wanted to buy a few things, he would drop me a line and when I went to the Seashore I would take them to him."

Is that right?

A. That is right.

Q. Then the next question was, "Did he purchase Lee tires, Exide batteries—"

3047 Mr. Kelaher: That wasn't the next question. You are reading it from a different transcript.

Mr. Ballard: Off the record, please?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. The next question, Mr. Mapes, was "Did he purchase Lee tires?" To which the answer was, "Yes."

Is that correct?

A. Yes, I purchased a few off of him.

Q. The next question was, "Exide batteries?" To which the answer was, "Yes."

A. Yes, a few.

Q. The next question was, "Car wash?" And the answer was, "I sold him Speedy car wash which can be used as a car wash."

A. That's right.

Q. The next question was, "Did he continue to purchase these products from you?" And the answer was, "No, he stopped."

A. That's right, I still have stuff on hand.

Q. That you bought from him?

A. Yes.

Q. The next question was, "Did he" that is you, "give you a reason why he stopped?" To which the answer was, "He said that the supervisor there had really given him a hard time."

3048 A. No, that is wrong.

Q. Did you ever tell that to Felix Heald?

A. No.

Q. Now the subsequent question, sir, identifies the supervisor as being Mr. Cramer. Did Mr. Cramer ever given you "quite a hard time"?

A. No, sir.

Q. Now, you have stated, of course, that you did buy some of these items which we have gone through?

A. Yes.

Mr. Kelaher: I would like the record to show that he testified that he bought all that were mentioned in the testimony.

The Witness: I bought Lee tires, Exide batteries, and Speedy Wash; I bought all three items off of him.

By Mr. Ballard:

Q. All right, sir. Why did you stop buying from Mr. Heald?

A. Well, for one reason, I still have some of the stuff on hand. Another reason was I sent him an order through the mail and he had moved and the order was held up. In the meantime, the customer that ordered the [redacted] got tired of waiting and I turned around and sold him Goodyear tires in place of it, and when Mr. Heald come down with it, I took what I had ordered off of him, and still have them in stock, because the lady turned around afterwards, cancelled the order off altogether and got it off of 3049 some friend.

Mr. Ballard: I see. I have no further questions.

Cross-Examination by Mr. Kelaher.

Q. In answer to one question about your lease, I thought I heard you make reference to three-quarter—

A. (Interposing.) Nine month lease.

Q. Nine months?

A. Nine months lease.

Q. At one time was that?

A. At one time it was nine months.

Q. Nine months lease. Now, as I understand your testimony, when Atlantic first started to sell Lee tires and Exide batteries without the accessories, right?

A. Yes.

Q. And at that time you began to purchase Lee tires and Exide batteries from Atlantic?

A. Yes.

Q. Is that right?

A. Yes; when I first went in for myself?

Q. Yes.

A. You see, they didn't sell accessories right off the bat.

Q. When did they begin to sell accessories? Or, let me put it this way, when they did begin to sell accessories, did you start to purchase accessories from Atlantic?

3050 A. Well, it was several years later when they started to bring accessories down into Jersey, and I did buy them off of them. They used to have one of the men in Atlantic City operating a station, he was the dealer.

Q. Do you recall his name?

A. Why Jimmie Clark was the first man.

Q. Jimmie Clark?

A. Yes.

Q. And he was an Atlantic service station dealer?

A. He was an Atlantic service station dealer and he handled the accessories.

Q. And—

A. (Interposing.) Then after Jimmie Clark there was a fellow, by the name of Earnie Miller.

Q. Earnie Miller?

A. Yes.

Q. Where was Mr. Miller?

A. Mr. Miller, he had another station in Atlantic City —I got it, I think, sir, Clark was the first and Earnie Miller was the second, or whether it was vice versa, or anyhow, either one of them were Atlantic dealers. One was at Missouri and Pacific and the other one was at Morris and Atlantic where Mr. Clark had his stations, and Earnie Miller had his station at Missouri and Pacific.

Q. Now, when you were purchasing Lee tires, who
3051 did you purchase those from?

A. I purchased those right from them, they were the distributors for accessories and tires and batteries.

Q. Everything came from these men?

A. Yes.

Q. From Mr. Clark and Mr. Miller? And they were Atlantic service station operators who were also wholesaling?

A. Authorized dealers for Atlantic down here.

Q. And was that, at that time, did Atlantic advise you that you could get your TBA from those points?

A. Well, I said they were the distributors, yes.

Q. Now, I would like to ask you a few questions about the time when Atlantic began to sponsor Goodyear TBA.

A. Yes, sir.

Q. You stated that you attended several meetings. Do you recall that testimony?

A. Yes.

Q. To begin with, your station is located in what would be the South Jersey district of Atlantic?

A. Yes, South Jersey.

Q. And did other Atlantic dealers from your area attend the meetings you referred to?

A. As far as I can recall, the boys came up from Wildwood, up to Atlantic City to the meeting, and the boys in Atlantic City, and from Egg Harbor.

3052 Q. So you covered quite a wide territory?

A. That was all on my salesman's territory, yes, right through in there.

Q. Who was your salesman at that time?

A. Let's see, I had several of them—George Mullen was one, and—

Q. (Interposing.) Was there a Mr. Cramer who was your salesman at one time.

A. Mr. Cramer was the district salesman.

Q. He was the district salesman?

A. Yes.

Q. Well, getting back to the meeting, approximately how many Atlantic dealers were present at the meetings in Atlantic City at that time?

A. At the meeting?

Q. At the meeting when the Atlantic announced it was changing over to Goodyear TBA.

A. Well, I would say around 20 anyhow.

Q. Around 20?

A. Yes.

Q. And I believe you did state that Mr. Eastlow was present, who was Atlantic sales manager?

A. He was my first supervisor when I worked for the company, and then afterwards, after the company discontinued operating down there, then I think a George Mullen come in as salesman.

3053 Q. Just getting back to the meeting, I am trying to establish who the men were who were present at that meeting. Were there several men from Atlantic present and several from Goodyear?

A. Oh, yes.

Q. And then at that time, was a vote taken as to whether or not the Atlantic dealers wanted to change to Goodyear or not?

A. I was never at any meeting where we voted on anything.

Q. They just announced that Atlantic was going to change over to Goodyear TBA?

A. I got a letter on the fact that they after a certain time, that Goodyear would be our distributor for accessories.

Q. And also for tires and batteries?

A. And tires and batteries, yes.

Q. Just as simple as that. You say you were told who your Goodyear dealer would be?

Mr. Ballard: Excuse me, Mr. Mapes; I object to the form of the question, your Honor. It is about a three part question.

Mr. Kelaher: Three parts, tires, batteries, and accessories.

Mr. Ballard: No, three questions all in one. I think it ought to be rephrased.

Hearing Examiner Kolb: Read the question.

(The reporter read the record as requested.)

Hearing Examiner Kolb: Objection overruled.

3054 Mr. Kelaher: You may answer.

The Witness: I think that is the way it was. I myself, I don't think I had ever been where we voted on it. If it had been, I had missed that meeting altogether.

By Mr. Kelaher:

Q. Now, after that meeting, did an Atlantic representative and Goodyear representative call on you personally at your station and discuss the new program, the new Goodyear program?

A. I don't recall.

Q. When it was announced, was either Mr. Clark or Mr. Miller designated as your authorized supply point at that time or was there another Goodyear supply point?

A. Well, after the company done away with the accessories, the distributor down in Atlantic City was tires and appliances. Goodyear Tires and Appliances, it was called.

Q. Where were they located?

A. They were located on the—

Q. (Interposing.) In what city?

A. Atlantic City.

Q. That's good enough.

A. I just can't figure what street it was.

Q. That's all right. That's fine. And were you told you could purchase your Goodyear TBA at that specific point from Goodyear Tire and Appliance in Atlantic City?

A. What we wanted we could get over there.

3055 Q. That was what was known as your designated supply point?

A. Yes, supply point, yes. I was going to say it was a very bad place.

Q. You say it was a very bad place?

A. It wasn't such a good dealership.

Q. You didn't like the service?

A. No, sir, it was awful.

Q. Now, did you continue to purchase from Goodyear Tire and Appliance?

A. Yes. Now it is under a new name now. It is called G & H Tire and Retreading.

Q. G & H Tire and Retreading?

A. Yes.

Q. And why did you continue to purchase from Goodyear Tire and Appliance if the service was so poor?

A. Well, there was some material that my customers wanted and I got.

Q. Were they the only Goodyear distributors in the area?

A. Just around here, yes, otherwise I would have to go either to Wildwood or to Black Horse Pike.

Q. Now, since Atlantic changed over to Goodyear TBA, has the majority of your tire stock been Goodyear?

A. Most of my tire stock is, yes.

Q. And it has been that way since the changeover, is that correct, in March '51?

3056 A. Yes.

Q. Now, you stated that you also have carried Exide and Goodyear batteries since March '51, is that true?

A. Exide and Goodyear batteries.

Q. And which do you carry the most of? Which do you stock the most of?

A. Why, at the present time, I have about 50 percent of each.

Q. Fifty percent of each?

A. Yes.

Q. Prior to the time that Atlantic began to sponsor Goodyear TBA, did you just carry Exide batteries?

A. Yes.

Q. At that time, you did not carry Goodyear batteries, did you?

A. No.

Q. Did you take on the Goodyear batteries because Atlantic began to sponsor Goodyear batteries?

A. Well, I just brought in the articles, I mean, on account of the product, I figured, was a good brand, and had a good name reputation behind it.

Q. But up to that time you had never purchased or sold Goodyear batteries?

A. No.

Q. But the fact that Atlantic began sponsoring it influenced your decision to carry the Goodyear batteries, isn't that true?

A. Well, not altogether, no.

3057 Q. Not altogether, but it did to some extent?

A. To a little extent, yes.

Q. Now, in answer to a question on accessories, you stated that you carried accessories which are purchased from . C. Miller and also accessories from your Goodyear supply point. Is that correct?

A. Yes, sir.

Q. And you said that sometimes, you used the word "sometimes", 60 percent of your accessories were purchased from Miller.

A. That's right.

Q. Now, at other times has 60 percent been purchased from Goodyear? Does it vary from time to time?

A. No, most of it I get from J. C. Miller.

Q. But you do stock some Goodyear items?

A. Oh, yes.

Q. What ones, for example?

A. Well, they have the DuPont products which I can get from either one I have off of them. I have DuPont, the Simonize and the Johnsons, A. C. plugs, A. C. filters.

Q. All from Goodyear?

A. They are from Goodyear.

Q. So, you carry quite a considerable stock of Goodyear accessories?

A. Yes, and a considerable stock of Fram cartridges.

Q. They are purchased from Mr. Miller?

3058 A. And Champion spark plugs.

Q. Now Mr. Ballard said when he visited you he saw a Fram air cleaner. What is that used for?

A. Why, on these cars since 1957 they have what we call a dry air cleaner on them to filter air to the carburetor.

Q. Piece of equipment used for repairing automobiles?

A. Used for servicing the air cleaner.

Q. Has nothing to do with TBA?

A. Yes, because your air cleaner comes from the Fram people.

Q. Of course, the air cleaner does.

A. I mean the cartridges, the air cartridges.

Q. I should say the air cleaner has nothing to do with TBA.

A. The cartridge fits into the air cleaner, it is made by Fram.

Q. That is inserted in the air cleaner in servicing the car?

It purifies the air going into the carburetor, takes all the dirt and catches the dirt and stuff.

Q. Can you use any type of cartridge on that? Any brand?

A. Why the A. C. has finally come out with one too, now, but I have gotten my Frams first so I am using Frams.

Hearing Examiner Kolb: Is that cartridge used on the car or on the cleaner?

The Witness: The cartridge sits in the top of the air cleaner.

Hearing Examiner Kolb: Of the cleaner?

3059 The Witness: Yes.

By Mr. Kelaher:

Q. Now, Mr. Mapes, when you were carrying Lee tires and Exide batteries, and other products you purchased from Atlantic, did you have any signs in your service station advertising Lee tires and Exide batteries?

A. On the fence.

Q. On the fence?

A. Yes.

Q. And after you swung over to Goodyear TBA, were any signs, any Goodyear signs placed in your station?

A. Well, there were finally some put in, yes, on the windows.

Q. On the windows, put a window valance in?

A. Window valance in.

Q. When you say "finally," you mean they didn't get around to it?

A. At first I wasn't there when the man come around, you see, and then afterwards the man come around and asked me about it and I told him he could put it up there.

Q. Did they also put up an outdoor pole, a Goodyear pole?

A. Just put a sign on the little pole.

Q. On the little pole. Had there been a Lee sign up there?

A. Not on the little pole.

Q. Did they take the Lee sign down?

A. No, the signs were taken down by me because
3060 we had too many signs. They were all old and stull and—

Q. (Interposing.) Did you take the Lee sign down about the time you put the Goodyear signs up?

A. No, the Lee signs were down before.

Q. They were down before?

A. Before.

Q. Before the Goodyear signs went up?

A. Oh, yes.

Q. After the Goodyear TBA plan went into operation, is that right?

A. Yes, it was about, right afterwards.

Q. In other words, when you heard Atlantic was going to sponsor Goodyear TBA, you took down the Lee signs, is that what you said?

A. I took all signs down.

Q. Took all signs down?

A. Yes.

Q. What other signs?

A. Cigarette signs, soft drink.

Q. Did you have any Exide battery signs?

A. No, I didn't have no Exide signs. I never had an Exide battery sign.

Q. Now, did you observe in your marketing area, after Atlantic changed over to Goodyear TBA, other Atlantic dealers also had Goodyear identification placed in
3061 their stations, such as Goodyear window valances or Goodyear outdoor signs?

A. Well, to tell the truth, I didn't pay much attention to it because I didn't get around too much to the other

Atlantic stations. I generally always come to my own and go right back home.

Q. Hasn't it been your observation, even today in your area, that you see Goodyear identification?

Mr. Ballard: I object, your Honor, the witness has already answered the question. He said he does not observe other Atlantic stations.

Hearing Examiner Kolb: Cross-examination. Objection overruled.

Mr. Kelaher: You go ahead, Mr. Mapes.

The Witness: I noticed it in some of them in Atlantic City. I won't swear too much about the other dealers in Ocean City. I don't know whether he has it up there or not.

By Mr. Kelaher:

Q. In Atlantic City?

A. I have seen it in one dealer in Atlantic City.

Q. Goodyear identification?

A. Goodyear identification.

Q. Now you carried Lee tires for quite some time before Atlantic swung over to Goodyear TBA, I notice from your testimony?

A. Yes.

Q. You carried them from about September '39 3062 when you went in until about March '51?

A. I have had them for quite a while.

Q. That would be about 12 years. And were you satisfied with Lee tires?

A. Well, I never had any trouble with them.

Q. And Lee tires had a road hazard guarantee which was very good, wasn't it?

A. Lee has a road hazard.

Q. And Lee tires had good public acceptance in your area, did they not?

A. No, we didn't sell too many.

Q. Didn't sell too many?

A. No.

Q. Why at that time did you continue to handle Lee tires?

A. Well, I always had a few tires on hand.

Q. You always had Lee?

A. Yes.

Q. You said you always carried Lee.

A. Yes.

Q. Let me ask you this, was that because Atlantic was selling Lee? Was that the reason you were carrying them?

A. At the first start off when I went into business for myself, Atlantic—I was selling Lee tires and batteries and I turned around and purchased some tires and batteries from them, and I continued on with it.

3063 Q. And you just continued on as part of the Atlantic program?

A. At that time, that was the only thing that Atlantic sold in the beginning, to the dealers in South Jersey.

Q. And the reason that you were handling Lee was because that was all that Atlantic was selling at that time, isn't that right?

A. I just handled one brand. I didn't want to stock up too much because I wasn't very much in the finance field to turn around and overstock myself, which I am a little better today.

Q. The reason you were handling Lee tires instead of Goodyear at that time or some other brand, is because they were selling Lee tires?

A. Yes.

Q. Beg pardon?

A. Yes, I could get them on my credit, I mean at the time.

Q. And the reason you were handling Exide batteries

at the time was because Atlantic was selling Exide batteries?

A. They were selling them and J. C. Miller was selling them too.

Q. Yes.

A. I could get them off of J. C. Miller's the same as Atlantic.

Q. And at that time you were not stocking Goodyear tires and Goodyear batteries?

A. Yes.

Q. And at that time, you were purchasing quite a number of Atlantic accessories in the Atlantic program,
3064 and that was because Atlantic was selling those accessories, isn't that so?

A. Well, I wasn't buying too many when I first started off, though.

Q. We got that.

A. I bought some off of Atlantic because my other distributor didn't sell that brand. My part of it is—on the stock of inventory—I carried those to satisfy my customers. The customer comes in and asks for a brand, if they are a steady customer of me, I get what they ask me to get, and I carry those articles.

Q. Now at the time Atlantic began to sponsor Goodyear tires were you able to buy Lee tires at a lower price back in '51, or did you pay the same price?

A. Same price.

Q. Same price from the Atlantic distributor?

A. Yes, sir.

Q. So, there was no advantage to handling Goodyear from a price standpoint?

A. No, all the standard brands of tires, don't make any difference which brand you buy, they all sell at the same price.

Q. Now if Atlantic had started to sponsor Firestone

TBA in your area at that time, would you have changed over to Firestone TBA?

A. Well, I might have got some of it. I wouldn't have got too much of it, I don't care too much for Firestone products.

Q. Now, if Atlantic had sponsored—the fact that
3065 Atlantic sponsored Goodyear TBA was one of the reasons why you began to carry that; I believe you have testified to that, haven't you?

A. I bought some on that, yes, on account of Atlantic was having them.

Q. All right. Now I would like to ask you a few questions about Mr. Heald. Mr. Heald was with Atlantic for a long period of time, wasn't he?

A. I don't know, to tell the truth.

Q. Did he call on you for any length of time?

A. You see, how I come to know Mr. Heald, his two boys worked for me. That is how I come acquainted with Mr. Heald. Mr. Heald had two sons and they both worked in my service station after they had turned around and gave up their own stations.

Q. After they'd what?

A. You see, they used to have an Atlantic station themselves in Ocean City, and then after they got through there, they came and worked for me a couple of summers.

Q. Now, at the time Mr. Heald did call on you in his capacity as a representative of Atlantic, did he not?

A. No.

Q. He never did?

A. No.

Q. You were out of his area?

A. I was out of his area altogether.

Q. You met him through his sons?

3066 A. I met him through his sons.

Q. And you knew him for how long a period of time? Did you know him for many years?

A. Well, let's see. I have known Mr. Heald about two years before he started in the business for himself.

Q. You corroborated what Mr. Heald stated that you did purchase Lee tires, some Lee tires, Exide batteries, and Speedy car wash from him?

A. I bought about three Exide batteries off of him, and I don't believe I bought more than a half dozen Lee tires off of him altogether.

Q. These were just small purchases?

A. Just small purchases.

Q. And these purchases were made after Atlantic began to sponsor Goodyear TBA?

A. Yes, sir, because I had a customer that wanted Lee tires and the fellow on that sold Lee tires in Ocean City, he wanted me to pay just the same as what a customer come in and bought a tire off of him; so I turned around and wrote to Mr. Heald for the tires, he told me at the time when he was in that he had Lee tires, you see.

My first dealing with Mr. Heald was to buy Speedy car wash, that was soap that Atlantic manufactured and then they discontinued manufacturing, and he could get it through the jobbers in Philadelphia, but they came
3067 under a different name, came under Speedy wash.

Q. Now was your supervisor at that time a Mr. Cramer of Atlantic? You mentioned Mr. Cramer earlier. I am not sure just what his title was or what—

A. (Interposing.) Mr. Cramer was a supervisor. I think at the time, right at the end when I stopped buying off Mr. Heald, Mr. Cramer came down as supervisor, Mr. Cramer just about got into the territory.

Q. Was he the assistant to a Mr. Estrow, or could it have been Mr. Estback?

A. Mr. Estback was the manager for South Jersey and Mr. Cramer was Mr. Estback's assistant.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Francis Ballard.

Q. Mr. Mapes, I just have a couple of questions here. In the course of your direct and your cross-examination, you have mentioned the name Miller a couple of times and I want to make sure we don't get too confused.

A. J. C. Clark, he was one distributor that Atlantic had down here, then they started bringing accessories down. And James Clark, and then Earnie Miller was another one. Now I don't know—

Q. (Interposing.) Who was J. C. Miller?

A. Earnie Miller.

3068 Q. Who was J. C. Miller?

A. J. C. Miller, he was one of the boys that worked for Atlantic Refinery, I didn't mean J. C.

Q. I know that.

A. Oh, J. C. Miller, that is the distributor in Atlantic City, that is from Atlantic City and Hamilton. They have —they are not connected with Atlantic Refining whatsoever.

Q. Is it from J. C. Miller that you buy some accessories, sometimes up to 60 percent?

A. Yes.

Q. Did you buy Exide batteries from J. C. Miller? Do you buy Exide batteries from J. C. Miller?

A. Yes.

Q. Did you buy Exide batteries from J. C. Miller before 1951?

A. When I needed one in a hurry, yes.

Q. All right, sir. Now, there was another area of your cross-examination where you were talking about the early days when you first went into your station. Can you tell

me whether or not tires were easy to get in those days or difficult?

A. Well, at times, like when the War was on, I couldn't get no tires at all because, you see, I didn't have authorization to get tires. Most of your car dealers had the tires at that time in place of the service stations.

Q. That wartime shortage, did that continue after the war?

A. No, after the war was over, then we could get tires again.

3069 Q. I see. After the war could you get any kind of tires or was it only Lee that you could get plenty of?

Mr. Kelaher: Objection, your Honor. I think we have gone into that far enough, myself.

Hearing Examiner Kolb: Objection overruled.

The Witness: I could get any kind of tires. I mean, whatever kind of tire a customer wanted, I would go out and get.

Mr. Ballard: I have no further questions.

Mr. Kelaher: Nothing further.

Hearing Examiner Kolb: That is all, Mr. Mapes, you are excused.

(Witness excused.)

3071 WILBUR D. GAESTEL was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name to the reporter, please.

The Witness: Wilbur D. Gaestel.

Direct Examination by Mr. Thompson.

Q. Mr. Gaestel, where do you live?

A. I live in Caldwell, New Jersey.

Q. Are you an employee of The Atlantic Refining Company?

A. I am.

Q. When were you first employed by The Atlantic Refining Company?

A. September 1943.

Q. Did you refresh your recollection from the company's records to determine the dates in which you have served in various capacities?

A. I did, and I have a note in my pocket to it.

Mr. Thompson: Do you mind, Mr. Kelaher, if he uses that?

3072 Mr. Kelaher: Go right ahead.

By Mr. Thompson:

Q. Refreshing your recollection from that note, will you tell us in what capacities you have served for Atlantic and during what periods of time?

A. I will be glad to.

An office clerk from September '43 to June '45.

Q. Where were you then?

A. In Newark. All my service has been in Newark, in the Newark district.

I was a general salesman from June '45 to August '46; commercial salesman from August '46 to January '47; and, a promotable dealer salesman from January '47 to October '51.

Office supervisor from October '51 to October '54, and a sales supervisor from October '54 to date.

Q. You were then a promotable dealer salesman from 1950 when Atlantic tried the Goodyear TBA plan in the Newark district on an experimental basis?

A. That is true.

Q. Do you recall the events leading up to the first experimental use of the so-called Goodyear plan by Atlantic in your district?

A. Well, I recall the meeting at which the experiment was announced.

Q. And where was that meeting held?

3073 A. That was held in the Suburban Hotel, I believe, in East Orange, New Jersey.

Q. That was in 1950?

A. I believe it was 1950, yes, sir.

Q. Have you a recollection of what happened at the meeting?

A. Well, a reasonable recollection, yes, sir.

Q. Well, would you tell us in your own words what happened?

A. Well, the meeting was held for Atlantic sales personnel and all Atlantic dealers in the Newark district and proceeded with a dinner. After the dinner the Atlantic district manager introduced to the audience various brass of The Goodyear Tire and Rubber Company and gave a very brief idea of what Goodyear was going to do. Then, Goodyear took over the meeting because it was actually their meeting and announced the program to the Atlantic personnel and to our dealers, saying that it would be on

an experimental basis, that henceforth we would be handling the Goodyear TBA line in the Newark district.

Q. Who do you mean by "we"?

A. Atlantic Refining would have available for its dealers the Goodyear TBA line replacing the line of tires, Exide batteries—

Q. (Interposing.) About how many people were present at that meeting?

A. If my memory serves me, there were approximately 200 people at the meeting.

3074 Q. Did you attend as an Atlantic salesman?

A. I attended as a promotable dealer salesman.

Q. Did the other Atlantic sales people attend?

A. Yes, sir.

Q. Who was then the district manager for Atlantic in the Newark district?

A. Arthur Sanborn.

Q. Was he there?

A. He was there.

Q. What, if anything, was said to the dealers in the presence of your salesmen about whether this plan was compulsory or at their option?

A. To my recollection—and naturally I have done some thinking about this—it was very definitely stated that it was an optional plan for our dealers, that the Goodyear line would be available if they so chose.

Q. In your present job as sales supervisor in the Newark district, is it part of your responsibility to keep abreast of competition?

A. It certainly is.

Q. Speaking first of suppliers who compete with Atlantic, are there a number of them in your district?

A. Are you referring to TBA suppliers or petroleum?

Q. I am referring now to the major oil companies who market gasoline in the area.

3075 A. I believe there are 12 or 13 major suppliers in our area.

Q. About how many gasoline retailers are there in the area?

A. In the Newark district, the district in which I serve, I believe there are approximately 6,000 retail outlets.

Mr. Kelaher: Could we have a definition of that at this time?

Mr. Thompson: I am coming to it.

By Mr. Thompson:

Q. Is there a distinction in your mind between a retail outlet and a service station?

A. There is a large distinction, yes, sir.

Mr. Thompson: Before I go further with that, Mr. Kelaher, I think it might be helpful if we have a clearer concept of what the Newark district is.

I would like this map to be marked as an Atlantic exhibit, and that will be A-15.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 15 for identification.)

By Mr. Thompson:

Q. I show you a map of the state of New Jersey, which has been identified as RX-A-15, and ask you whether that map shows the Newark district of The Atlantic Refining Company, and also the Southern New Jersey district?

A. That is true.

3076 Q. Does the large blue line which crosses the map indicate the division line between the two districts?

A. Yes, it does.

Q. Have you, or has there under your supervision, been placed upon the portion of that map which shows the Newark district certain red circles?

A. Yes, sir.

Q. What do those red circles represent?

A. They represent service stations and retail outlets that fly the Atlantic flag in the North Jersey district.

Q. When you say "retail outlets and service stations" you said before that you drew a distinction between the two?

A. Yes, sir.

Q. Would you define for us, first, retail outlet, in the sense in which you have used it, and then service station?

A. I will try, yes, sir.

A retail outlet is any spot or location that has for sale to the motoring public gasoline. Now, this could include a grocery store, pumps at the curb of a garage; it could be a new car dealer, and it could be a service station, a regular modern service station.

Q. How would you define a service station?

A. Well, I define a service station as a spot that a motorist can pull in and reasonably expect to have the majority of needs outside of major repairs for his car 3077 taken care of, and a service station would have a lubrication bay, it would have a wash bay; the motorist could expect to buy his normal TBA needs in that service station and have minor work done on his car.

I exclude major repair work. I do not consider that part of the service station.

Q. When you hereafter in your testimony refer to service stations, will you be meaning service stations, the sense in which you have just defined it?

A. That is true, yes, sir.

Q. Do these red circles indicate Atlantic service stations in the northern district of New Jersey, sometimes call the Newark district?

A. They indicate both Atlantic service stations and retail outlets.

Q. Are there some retail outlets on this map which are not service stations?

A. There are.

Q. Are there also on that map indicated by red circles some contract stations which are not owned by Atlantic?

A. Yes, sir.

Q. You referred to approximately 6,000 retail outlets in your district?

A. That is right.

Q. Approximately how many of those outlets would
3078 be service stations in the sense in which you have defined it?

A. I am afraid I would be a little leery about venturing an opinion because it would have to be an opinion. I am sorry; I cannot—

Q. (Interposing.) It would just be a guess?

A. It would have to be a guess; I could not tell you.

Q. Before I come to that, was there a change made in the geographical area of the Northern New Jersey or Newark district some years back?

A. Yes, sir.

Q. What was the change? Can you indicate on this map?

A. There is a certain area in the western part of the state that was originally associated with the Eastern Pennsylvania region, the Allentown district, and it was decided to take that part of the country and make it all part of the Newark district.

Q. When did that change occur?

A. As near as my recollection, it would be in the area of 1950.

Q. Was it before or after or contemporaneous with the Atlantic experiment in your district under the Goodyear TBA plan?

A. To my memory, they both occurred pretty near the same time. It was almost coincidental.

Q. What was the reason for the change in the district? Did it have anything to do with the TBA experiment?

3079 A. To my knowledge it had nothing to do with the TBA experiment.

Q. How many stations does Atlantic own and lease in your district?

A. I am sorry, I missed the first word. "How may" did you say?

Q. How many service stations do you own and lease?

A. 133.

Q. So that you have 133 leases?

A. That is true.

Q. Can you, by use of that map, indicate in a general manner where the Atlantic leased stations are located?

A. Well, they would be in any part of our district. We have every part of the state, we do own stations and lease them, but there is no particular area confined to just Atlantic-owned stations.

Q. Is there a high concentration of leases in the area of the city of Newark?

A. Yes, sir.

Q. And in other large cities in Northeastern New Jersey?

A. Yes, but we do have the contract as well.

Q. Would you read me the answer, please.

(The reporter read the answer.)

By "the contract as well," you mean you do have contract outlets?

3080 A. Yes, sir, and in the area you mentioned.

Q. Do you know how many contract service stations you have in the district?

A. We have a total of 168 stations; 133 are leases.

Q. And the balance are contract?

A. Yes, sir.

Q. Now, are you distinguishing in stating the balance between retail outlets and service stations, or are they all service stations?

A. They are both, both retail outlets and service stations in that balance.

Q. But my question is: about how many real service stations are operated by contract operators as distinguished from leases?

A. Fifteen.

Q. So that confining your answer to service stations, you have 133 lessee outlets and 15 contract operators?

A. That would be it, yes, sir.

Q. That would make a total of 148 service stations?

A. Yes, sir.

Q. You have in your district, I believe, no service stations operated by wholesale distributors?

A. We have no wholesale distributor service stations.

Q. As sales supervisor, to whom do you report in the organization?

3081 A. I report to the district manager.

Q. What is his name?

A. His name is Leslie Geer.

Q. Are you in effect second man in the district?

A. Yes, sir.

Q. At the present time is Mr. Geer away from the office?

A. Mr. Geer is on vacation right now.

Q. And in his absence do you act as district manager?

A. I am acting district manager at the present.

Q. As sales supervisor, is it part of your function to know and to enforce Atlantic's policies in your district?

A. Yes, sir.

Q. What is the primary responsibility of the sales supervisor?

A. Well, my primary responsibility is to promote the sale of gasoline to our service stations and retail outlets.

Q. How many sales personnel report to you or act under your supervision in your district?

A. I have 11 sales personnel, 11 men that report to me.

Q. And what are they called? What are their titles?

A. Well, I have—

Q. (Interposing.) Are some of them promotable dealer salesmen?

A. I have seven promotable dealer salesmen; one dealer salesman; and, three service salesmen.

3082 Q. Does the so-called dealer salesman, of which I believe there is one, sell Atlantic products to service stations?

A. Not as we have defined service stations.

Q. His responsibility is primarily the contract retail outlet, which is not big enough to be a service station?

A. That is true.

Q. Turning now to your so-called promotable dealer salesmen, do they handle both lessee stations and contract stations?

A. Yes, sir.

Q. Is it part of your responsibility and function as sales supervisor to keep these lessee stations manned with operators?

A. Yes, sir.

Q. Is that a difficult or easy thing to do?

A. That is a rather difficult and time-consuming job.

Q. Do you find qualified lessees easy or difficult to get?

A. Very difficult.

Q. Do you find in your district that there are more service stations than there are qualified dealers?

A. Unfortunately, yes.

Q. Are you in competition with the other major oil companies for lessees?

A. Yes, sir, tense competition.

Q. Also, in competition with them for the right to supply the contract service stations?

A. Yes, sir.

3083 Mr. Kelaher: Beg pardon? What was that question?

(The reporter read the question and answer.)

By Mr. Thompson:

Q. You have referred to qualified lessee or qualified dealer. How would you define that kind of a person?

A. You mean our method of searching them out?

Q. No, I said how would you define a good dealer?

A. How would I define?

Q. What are the requisites of a good dealer?

A. Well, the requisites of a good dealer: Number 1, that he be intelligent, be a good manager—both of any employees he might have, his own finances—he must be sober, industrious, hard working; must be sales minded, able to meet people; in fact, must like people to be able to sell; must have the backing of his wife and family, the necessary finances to enter our business; must be willing and eager to make himself a part of his local community, to serve his community in any function that it might be necessary. Offhand, those are some of the immediate requisites that I think of.

Q. What do you find in your district that an Atlantic lessee dealer who meets those specifications can net a year out of the operation of one of your stations?

A. I would say an average from possibly nine or ten to fifteen thousand dollars.

Q. Are some of them higher than that?

3084 A. Yes, sir; there are dealers who make more than that.

Q. Do you find some who make over $20,000 a year?

A. Yes, sir.

Q. When you get a qualified dealer, is it your objective to keep him, or would you just as soon let him go away?

A. Pardon me for smiling. When I have a qualified dealer, I will do anything to keep from losing him.

Q. Why should that be so?

A. Well, I stated earlier they are extremely hard to find. The competition for good dealers is very intense in the Newark district. If we find one who is qualified, we certainly wish him to become an Atlantic dealer.

Q. Is there any expense involved in the replacement of a lessee?

A. Yes, sir.

Q. Have you made any analysis, yourself, of what that expense is? Do you know what it is in your district?

A. Actually, to dollars and cents, no, I haven't, but I know it is a very time-consuming job for both the salesman and myself and for our service salesmen. Would you like me to elaborate a little bit?

Q. Yes.

A. Well, we spend—

Q. (Interposing.) No, I am talking about expense now. What is the expense involved? You mentioned time
3085 of sales personnel and finding a lessee.

A. Yes, sir.

Q. When you get an inexperienced prospect, do you send him to training school?

A. Yes, sir. And that is a very expensive venture.

Q. If he passes the training school and starts a station, do you put a service salesman in to show him what to do for a couple of weeks?

A. In every case, yes, sir.

Q. When you lose a lessee, do you or do you not lose gallonage?

A. I would say yes in every case we lose gallonage with the loss of a lessee.

Q. Have you, from your own experience, as sales supervisor in Newark, had situations where a qualified lessee was taken away from you by a competing company?

A. Too often, yes, sir.

Q. In such case, do you or do you not find that he can take a substantial part of his gasoline gallonage to your competitor?

A. Depending on how far away his new location is. If it is reasonably near, of course, he can murder us by making such a move.

Q. When you say "murder" you, you mean take his local trade with him?

A. Yes, sir.

Q. Do you find in your area that your dealers 3086 develop their own personal and local business?

A. Yes, sir.

Q. Would you say that your lessee dealers are dependent upon Atlantic for their living in your district?

A. No, sir. Very definitely no. Any qualified dealer, if I may expand, certainly could not be dependent upon Atlantic because our competitors are constantly aware of our dealers. They know which of our dealers are good and which are mediocre, and there are always service stations available for a good, qualified dealer. So, he is not dependent upon Atlantic. We feel, and experience has proven to us, that people do not buy companies, they buy from individuals. They buy from a dealer, not the brand of gas, but they buy from Charley and Joe, or whoever might own or run the service station.

Q. I don't suppose you are inferring that Atlantic Imperial is not the best brand of gasoline?

A. Not at all. But not everybody knows that.

Q. Seriously, Mr. Gaestel, when you lose a lessee, what

are the principal reasons which cause the termination of the relationship?

A. Well, there could be many reasons. It could be a matter of dealer mismanaging his own service station and thereby getting himself in financial difficulties; it could be a matter of its being an ill choice for him to go into our type of business because it is a demanding and time-con-
3087 suming business; it could be a matter of family pressure, the wife not enjoying the idea of her husband being away from home pretty frequently.

There is a multitude of reasons for which we lose a man. Competition, of course, is constantly attempting to raid our dealer force and steal our dealers. Occasionally, illness or death strikes. There are many reasons.

Q. Is my recollection correct that you told me that you were presently looking for a replacement because of an unfortunate accident to one of your good lessees?

A. Well, I have been fortunate enough to get the replacement, in fact, it is taking place today.

Q. What happened to the man that you had to replace?

A. Well, the man that I had to replace struck a tree at a speed of about 70 miles an hour, and, of course, was killed. His car, lost control.

Q. Since you have been sales supervisor, have you had any occasion to terminate any lease during the term of the lease for cause?

A. You mean, have I forced a cancellation?

Q. Yes, has Atlantic forced a cancellation?

A. In one case that I can recall.

Q. What was the reason?

A. The man was running everybody but a service station. It was a welding shop, a steam cleaning shop; it was everybody but a service station, and we moved in and
3088 requested, and after a good deal of discussion, obtained a mutual cancellation of the lease.

Q. In other cases—I am generally speaking—has the termination been requested or instigated by the lessee?

A. I would say in over 99 percent of the cases. I happen to recall the one that we requested cancellation.

Q. Have you ever, in your district, since 1950 when you started on the Goodyear plan, cancelled or failed to renew a lease because your lessee did not handle sponsored TBA?

A. In no case, no, sir.

Q. Have you ever threatened to cancel or fail to renew a lease for TBA reasons?

A. No, sir.

Q. You said that new lessees were hard to find or difficult to get, or words to that effect, in your area. When you have to get a replacement at one of your service stations, what is your procedure? What steps do you take to try to find a prospect or a candidate for the station?

A. Well, newspaper advertising, of course, immediately.

Q. May I interrupt you for a second?

A. Yes, sir.

Q. You have been either a promotable dealer salesman or an office supervisor or sales supervisor in the Newark district since 1947, have you not?

A. Yes, sir.

3089 Q. Confining your answer to the period 1950 to date, has your office from time to time place advertisements in numerous papers looking for prospects to operate your service stations?

A. Almost constantly, yes, sir.

Q. Did you at my request procure from your office some samples of such advertisements which have been inserted in the New Jersey papers?

A. Yes, sir.

Mr. Thompson: Mr. Kelaher, I have a large number of them. I have just picked out two as illustrative. Let me have these marked, please, for identification.

(Whereupon, the documents referred to were marked Respondent's Exhibits (Atlantic) 16-A through -D, and 17 for identification.)

Mr. Kelaher: I wonder if we could have the years or dates established on some of these.

Mr. Thompson: I will. I haven't shown them to him yet.

Mr. Kelaher: All right.

By Mr. Thompson:

Q. Mr. Gaestel, I show you RX-A-16-A, -B, -C, and -D, and ask you whether those exhibits contain clippings from newspapers, as indicated on the exhibits, which are part of the files of the Atlantic Newark district office (handing documents to the witness)?

3090 A. Yes, sir.

Q. Now, these ads were inserted in the year of 1952, were they not?

A. I would say that, yes, sir. 1952.

Q. This is a 1952 ad file from the Newark office?

A. Well, every ad that we have cut out we have dated as well; so, if that says 1952, yes, they are from the 1952 file.

Q. I call your attention to the fact, sir, that RX-A-16-A is clipped to RX-A-16-B. 16-B is dated in May 1952 but no specific date appears upon 16-A. Do you know whether 16-A was also a 1952 advertisement?

A. Yes, it would be, because of the name Mr. Dunham here. He was an office assistant in 1952, sales supervisor, and consequently took telephone calls from the telephone inserted in the newspaper; so, he was there in 1952.

Mr. Thompson: I offer RX-A-16-A through -D in evidence.

Mr. Kelaher: May I ask a question?

Voir Dire Examination by Mr. Kelaher.

Q. Was Mr. Dunham sales supervisor for any period other than 1952?

A. Mr. Dunham has never been sales supervisor. He was an office assistant, sort of a male secretary.

Q. Was he an office assistant or male secretary for
3091 other a period of 1952?

A. It would have been a little bit of 1951. Yes, sir.

Mr. Kelaher: Your Honor, I have no objection to clippings which have specific dates, but there are some which are undated.

Mr. Thompson: There are two, here, sir, which are not dated.

Mr. Kelaher: I object to those.

Mr. Thompson: If Mr. Kelaher objects to the fact that they are not dated, and I am unable to specifically prove at this time that these ads appeared in the indicated papers in May of 1952, it will be necessary for me at some later date to call somebody from the Newark office to establish that fact. Do you persist in your objection, Mr. Kelaher?

Mr. Kelaher: I am not clear on that—

Hearing Examiner Kolb: (Interposing.) Is the purpose of this testimony to show the difficulty or what steps were taken to get dealers?

Mr. Kelaher: I am not clear what the purpose is.

Mr. Thompson: It has a double purpose. One purpose is to establish the difficulty of finding a lessee in the Newark district. The second purpose is to show that it is represented by Atlantic to the dealers in the ads in which we seek to get them to come to our office for an interview that
if they become an Atlantic lessee, they run their own
3092 business and they are their own boss.

Mr. Kelaher: I think dates have some significance.

Hearing Examiner Kolb: What difference does it make

whether it is 1951, '52, '53, or '54? I will overrule the objection. The document will be received in evidence, Respondent's Exhibit A-16-A through -D will be received.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 16-A through -D for identification, was received in evidence.)

Direct Examination (resumed) by Mr. Thompson.

Q. Mr. Gaestel, I show you RX-A-17 and ask you whether the nine clippings pasted on that page are part of the records of the district office in Newark?

A. Yes, sir.

Mr. Thompson: Now, Mr. Kelaher, on each of these ads the date is specifically indicated by the office; so, I think there would be no problem.

Mr. Kelaher: No problem with those.

Mr. Thompson: I offer in evidence RX-A-17.

By Mr. Thompson:

Q. Now, Mr. Gaestel, the first sample ads I showed you were dated in 1952. This group of ads are dated in part in 1957 and in part in 1958. My question is whether these ads are merely illustrative and samples and whether similar ads were placed in the papers by Atlantic during the entire period from 1950 to 1958?

A. They are illustrative, yes, sir. That form of 3093 advertising for dealers has not changed. The problem has been the same since '51-'52.

Mr. Thompson: Now, with Mr. Kelaher's permission—

Hearing Examiner Kolb: (Interposing.) Do you want that received in evidence?

Mr. Thompson: Which?

Hearing Examiner Kolb: That A-17?

Mr. Thompson: Certainly.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-17.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 17 for identification, was received in evidence.)

Mr. Thompson: May I, please, sir, substitute photostats for the originals, since these are part of our office records?

Hearing Examiner Kolb: Photostats may be substituted for the originals.

By Mr. Thompson:

Q. Sir, when we got into a discussion of the type of ad used by Atlantic in your district, you have testified that newspaper ads was one method used to locate prospective dealers. What other things do you do there to try to find dealers?

A. As I mentioned earlier, competition raids Atlantic stations. We, in turn, seek to entice competitive
3094 dealers to take our service stations. We look amongst our own service stations for good employees of dealers. We look amongst the competitive service stations for their best employees, their night man—they might have a good night man. Dependent upon how successful we are with the first steps, we contact local business people in the area in which our service stations are located. We will speak to high school principals, local police departments, ministers, priests, clergymen, to be brief.

Q. Clubs and organizations?

A. Clubs, the Lions is right there; we leave very little unturned.

Q. For Mr. Kelaher's benefit, do you solicit the Knights of Columbus?

A. Being a member of the Knights of Columbus, yes. That goes for the Elks as well.

Q. Now, assuming as a result of these efforts that you

did locate a prospect or two, what is the screening process used in your district to ascertain whether he will be a good service station operator, whether you can induce him to try the job? What happens? What is the procedure?

A. Well, the initial screening, of course, is done by the salesman, and he weeds out the immediate unlikely prospects, and it is up to him to ascertain which of his prospects would be most likely to make a good dealer. He then
3095 sets up an appointment with sales supervisor, myself, and I sit down with the prospect either in the field—but most often right in our own district office—and interview the prospect. Then, if both the salesman and myself are satisfied that a prospect would make a good dealer, the prospect is then presented to our district manager, Mr. Geer, for an interview and his approval. And if our district manager approves, why, then, of course, the prospect is notified and arrangements are made to select a date for a change-over.

Mr. Thompson: I now ask that this book be identified as RX-A-18.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 18 for identification.)

By Mr. Thompson:

Q. I show you a book identified as RX-A-18 with a little label on it saying "Number 2" on the inside cover and ask you whether this—I will ask you what book is (handing document to the witness).

A. Well, that is my interview bible.

Q. Is that your personal copy of that book?

A. This is my personal copy of that, sir.

Q. And you know that because of the "Number 2" which is on it?

A. Yes, sir.

Q. Mr. Geer, I assume, would have "Number 1"?

3096 A. That is right.

Q. And is that book—is a copy of that book identical in its context in the possession of each of your salesmen?

A. Yes, sir.

Q. How long has this particular book been in use in your district?

A. Sometime early in 1955, if my memory serves me.

Q. What use is made by you and your salesmen of its counterparts?

A. We use the book as a guide and a pattern in interviewing the prospect. The book is placed in a dealer prospects hands. The salesman, of course, goes over it with the prospect point by point. There are many questions in there that we want a dealer prospect to ask himself. I think in the front part of that book you will find that. Then, when the prospect is brought into the office again, the prospect sitting across my desk, we go over the book again. Many times before I sit down with a prospect, because of delays that I am forced to incur, I hand the book to the prospect to have him read and he can formulate any questions he might have. It helps us lay out a pretty clear pattern of the service station business and what it can mean to a prospect. And it keeps Atlantic personnel pretty well on the track to make sure they cover the points that this man should be advised of.

Q. On the occasions when you personally go over

3097 this book with a prospective lessee, about how long does it take you to do it?

A. Depending upon the individual and how thoroughly the salesman has gone over it, it can be anywhere from one to three or four hours that I can spend on an interview, and, of course, that book is a good part of it.

Q. Of course, I don't want you to spend either one or

four hours discussing the content of this book, but I would like you to take it and simply indicate in a general manner by reference to pages and the numbered questions contained in this book how you would go about your interview with a prospective lessee? What do you emphasize? What points are made?

A. Well, I have certain favorite questions, things that I want to get across, and I first off ask the prospect if he has gone through the book in its entirety. And, then, there are certain questions I want the—

Q. (Interposing.) Excuse me a moment, sir. I am going to give Mr. Kelaher a copy so he can follow your testimony. (The document was handed to counsel for the Commission.)

Go ahead, sir.

A. In my interview with the prospect, using the book and having the book for the prospect to see, there are certain questions I want his direct answers to. Of course, I would have to call it, I guess, page two.

The first question, "Do you like being your own 3098 boss?" And then, I want to know why the prospect wants to be his own boss, and I bring up the meeting people, which would be item number two, question number two on here, "Is your attitude right?" And, of course, we discuss attitude, and the vicissitudes of people that come into service stations, dispositions of people, and I want to be reasonably assured that our dealer prospect is a man that will not automatically be a grouch, because the customer is a grouch, be reasonably sure that his attitude is going to be pleasant.

And, of course, question number five is extremely important, that is, "Do you have backing at home?"—"Do your parents approve?" "Does your wife approve?" We have lost many dealers because of unhappy wives: so, it

is something I request that my prospect consider carefully, because going into our business—

Q. (Interposing.) Wives get unhappy because of the dealer's hours?

A. The hours, mostly, the fact that they miss meals constantly and they are dragged out of bed sometimes in the middle of the night because some customer is broke down within a reasonable distance, or very early in the morning because somebody's battery won't turn over. It is a hectic life at times.

Then, of course, question number six, "Are you financially sound? I want to be reasonably assured that
3099 my prospect can financially afford to take over the service station business.

Then, the following page I go over the things that the service station business can mean to the prospect, that he is independent, that he is his own boss, that he is responsible for the operation of his own business; he is going to have to do his own hiring, his own training, his own firing; the products he sells, the amount of money he makes in this business is entirely up to him; that he is an independent businessman and he is going to either make it or break it. The way he operates his business—although we are ready to stand by with whatever assistance and whatever counsel we can give—but in the final analysis, and I am talking now as I would talk, I am afraid, depends upon his own, whether he is a self-starter, his own initiative and his own drive, his own personality. He is the man that is going to decide the success or failure of his business.

Mr. Kelaher: Your Honor, with respect to this testimony which is getting a little long, is he supposed to be testifying to what he asks the interviewee or the applicant, or are we going off into his reasons for asking these ques-

tions? It seems that we are covering a much broader area than the question calls for.

Mr. Thompson: Is that an objection?

Mr. Kelaher: I am going to object to further
3100 answer. As I understand the question, you asked him what he goes over with the applicant.

Mr. Thompson: To eliminate the necessity for a ruling by his Honor, I will ask the witness to confine the balance of his answer to what points he goes over with the prospective lessee and what is the subject matter of the conversation between them.

The Witness: I am afraid I do not miss any part of the book. I cover the book pretty thoroughly in my interview. That is part of my responsibility, and, of course, it is a way that I have of determining—it helps me determine whether my prospect is someone I want as an Atlantic dealer.

By Mr. Thompson:

Q. In the course of your discussion, is TBA mentioned?

A. Well, in the latter part of the book we have our no forcing letter, yes. TBA is mentioned, number one, as to Atlantic's supply position, the fact that we in the Newark district handle Goodyear TBA. We explain that Goodyear has set up suppliers in different areas to cover different dealers and service stations. We discuss, of course, the Goodyear line, the quality, the fact that they are competitive and priced right. And on TBA there is in the latter part of this book, a copy of our no forcing on TBA letter that Mr. Estlow, our regional manager, has signed, and, of course, we discuss that in our conversation with our dealer prospect.

3101 Q. What is the discussion on that letter, Mr. Gaestel?

A. Well, I have all prospects that I am beginning to feel

favorable toward read the letter, any prospect that we decide on reads the letter while going through the interview. If half way through the interview I feel that the prospect would not make a good dealer, why, I, as nicely and tactfully as possible, bring the interview to a halt and stop, since it does involve time—a good interview involves a lot of time. But any dealer that I have any serious consideration for, any prospect rather, does read the no forcing letter.

Q. Now, the no forcing letter to which you refer is the Estlow letter of June 24, 1955, which has been introduced in this case previously as CX-207. Is a copy of that letter in the book of every salesman?

A. Yes, sir.

Q. In other words, this isn't your special copy. The salesman's books are identical with yours?

A. That is right.

Q. In the back of this book there are several mimeographed sheets marked for salesman's use. I will call your attention particularly to the page entitled "For Salesman's Use, Questions and Answers" and ask you whether in your interviews with prospective lessees you refer to questions and answers three, four and five?

A. Yes, sir.

3102 Q. Now, question number three is: "Will I be thrown out after I build up the business of my station?" What answer does Atlantic give the prospective lessee to that question?

A. Would you like it in my words or in the words of the book?

Q. I would like it not in the words of the book, which, of course, is obvious, but I would like to know what you say to the dealer and what you, as sales supervisor, have your salesmen say in answer to that question?

A. Of course, to us the answer is the very obvious. We

know how hard it is to get qualified dealers. We know how much it costs us to lose a successful dealer; so, we very definitely assure any prospect that the chances of his being thrown out of a service station after building a successful business are absolutely nil, that Atlantic wants and needs good dealers and very definitely would want to, at all times, keep any dealer who had been successful and, of course, we readily admit to any prospect that the dealer controls the business, not the Atlantic brand, not the flag, that it is his own personal business and we can not afford to lose any.

Q. What answer do you give to question number four: "Am I forced to handle your TBA line?" I am interested now in what you say and what you instruct your salesmen under you to say, not what the book says. That is printed: that is in the record.

3103 A. Well, the question, "Am I forced to handle your TBA line?", we instruct, of course, my salesmen have heard this pretty repeatedly; in fact, any time we have a push on any TBA item they are again reinstructed that they sell and not to try to force any dealer to buy. But we outline to any prospective dealer the fact that we handle the Goodyear line, that it is a quality line. We also advise them that they are independent businessmen and in no way are they forced to handle the Goodyear line. We try to point out the advantages of handling the line, but that in the final analysis the choice of whether they handle Goodyear or XYZ brand becomes solely theirs.

Q. Now, the next question to which I call your attention relates to whether the dealer must stay open on Sundays, and what hours he must be open. What do you tell him in answer to that question?

A. Well, I tell any dealer prospect that we, Atlantic Refining Company, do not and cannot set a specific rule on hours of operation for any group or any individual station: that the hours of operation of the service station are set

by two means: Number one, and most important, by the customers—when they want to buy their product—and, number two, by the competition. I am talking about the competitive service stations. They, and not Atlantic Refining Company, decide what are the proper hours of operation for any given service station.

3104 Q. I call your attention, Mr. Gaestel, to the fact that while you promote the Goodyear line in the Newark area, your own book contains a picture of a Firestone tire.

Mr. Kelaher: I was wondering how that slipped in there.

The Witness: I have seen that before.

By Mr. Thompson:

Q. Contrary to the inference just made by Mr. Kelaher, did you slip that in this book, that picture of the Firestone tire?

A. That has been in this book since the inception of this book; it has been in my book since I have had it.

Mr. Kelaher: I think counsel understands I wasn't making any inference.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: I offer in evidence RX-A-18 in its entirety.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received as Respondent's Exhibit A-18.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 18 for identification was received in evidence.)

3105 By Mr. Thompson:

Q. Now, you testified, sir, that this book commenced to be used by you and your salesmen in the early part of 1955. Prior to 1955, that is to say, from 1950 to 1954, how did you handle these interviews with prospective lessees without having the use of that book?

Mr. Kelaher: Your Honor, at this time I am going to make an objection, because I do not think he can talk from his personal knowledge. He was the office supervisor during most of that period from October '51 to October '54.

Mr. Thompson: If your Honor please, this gentleman was a promotable dealer salesman handling lessee accounts and contract accounts until October of 1951, and I now ask you Mr. Gaestel, whether you have personal knowledge of what was said to prospective lessees during the period 1950 and up until October 1951?

The Witness: Yes, sir.

By Mr. Thompson:

Q. As a promotable dealer salesman, was it part of your function to interview prospective lessees?

A. I interviewed them, of course, at the salesman's level.

Q. Right. And you took them to whoever was then your sales supervisor for another interview?

A. Yes, sir.

Q. During the period from October 1951 until
3106 October 1954 while you were serving as office supervisor, were you or were you not personally familiar with the method of interviewing prospective lessees, and what was or was not said to them during the interview?

A. I was very familiar with what the type of interview used while I served as office supervisor.

Q. What was the nature of the interview during the

period from 1950 until this book came into use in your district?

A. The nature of the interview is basically the same, without its fancy cover and without its very nice coloring pictures, but the context—we had a paper bound form of outline that we used in the Newark district. My predecessor, as a sales supervisor, was a good deal responsible for this fancy edition in his present job after he left the Newark district. The responsibility of this book, this came from your original interview book.

Q. More specifically, what were you salesmen instructed to say and what did you salesmen say with respect to TBA before this book came into existence?

A. There has been no change in our policy as far back as I can remember.

Q. Before this book came into existence, did you orally, and without pointing it out on a page of a written book, explain the Atlantic TBA policy to prospective lessees?

A. Very definitely, yes, sir.

3107 Q. Until the summer of 1955 there was no such thing as the Estlow letter because that was written in the summer of '55?

A. Yes, sir.

Q. Did you and all of your other salesmen have as a part of your permanent file a copy of Mr. Colley's 1951 no forcing letter, which has been offered in evidence in this case as CX-150 (handing document to the witness)?

A. Yes, sir, every Atlantic salesman or sales personnel are very familiar with that letter.

Q. Did you all also have the second Colley letter, called a restatement of Atlantic TBA policy, CX-206 (handing document to the witness)?

A. Yes, sir.

Mr. Thompson: May I go off the record for a second?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

We will recess at this time.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, I inadvertently omitted to offer in evidence RX-A-15, which is the New Jersey map referred to by Mr. Gaestel in his testimony, and I now offer it in evidence.

3108 Mr. Kelaher: May I ask him one question on this with respect to the meaning of the red dots?

Mr. Thompson: Surely.

Voir Dire Examination by Mr. Kelaher.

Q. Do the red dots indicate that—let me put it this way: is there one red dot on for each Atlantic service station, or does that just represent a town or location where there are Atlantic service stations?

A. There is a dot for each retail outlet.

Hearing Examiner Kolb: Any objection?

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-15.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 15 for identification, was received in evidence.)

Mr. Thompson: And if your Honor please, I should like to return, if I may with Mr. Kelaher's permission, to Mr. Gaestel's personal copy of the book entitled "What A Service Station Can Mean to You" and substitute a copy.

Hearing Examiner Kolb: It may be substituted.

Direct Examination (Resumed) by Mr. Thompson

Q. Mr. Gaestel, you have referred to and have de-
3109 scribed Atlantic's no forcing policy in your district.

Are you familiar with the manner in which TBA is dealt with and treated in the training schools to which the new lessees in your district are sent?

A. Yes, sir; I am reasonably familiar with it.

Q. Do your new employees who are going to be service salesmen attend training schools with new lessee dealers?

A. Yes, sir.

Q. And do they go to the same classes?

A. Yes, sir, they both take the five-week training course, both our dealer prospects and our service salesmen. That is part of their training, the exact five-week course.

Q. What is said at those training schools with respect to the freedom of the dealers or lack of freedom that they can buy whatever TBA they want?

A. Naturally, I cannot quote the person that gives the discourse on TBA, and our policy regarding TBA, but I know it goes on for several hours, and the fact that any dealer, any Atlantic dealer, has free choice in his designation or selection of a brand, whether it is "T", "B" or "A" is brought out very definitely. The statement is made that while we handle and sponsor a line of TBA, it does not mean in any way that the dealer must buy that sponsored brand of TBA, but he is free to make his own choice.

Q. So that is told to them at the training schools,
3110 then again by the salesman who interviews the lessee as a prospective dealer?

A. Well, the salesman, of course—

Q. (Interposing.) I beg your pardon. That would have happened first, would it not?

A. That would have happened first.

Q. Then, that is repeated by you when you interview them?

A. Yes, sir.

Q. Then, if the district manager also interviews the prospective lessee with you and the salesman, does he repeat the same information?

A. Yes, sir.

Q. Then, they receive it gain at the training school?

A. In the training school, yes, sir.

Q. When a lease is sent to the prospect, is the no forcing letter sent with the lease in your district?

A. That is part and package of every lease, yes, sir.

Q. Are there a number of jobbers offering TBA in your district?

A. Yes, sir; there are a good number. Are you talking about competitive jobbers?

Q. Yes, sir.

A. Yes, sir, a good number of competitive jobbers in the Newark district.

Q. By a good number, do you mean a large number?

3111 A. I mean a large number.

Q. Do you find that when you install or place a lessee that Atlantic and Goodyear have competition from other jobbers for the original stocking order of TBA?

A. Yes, sir.

Q. Does Atlantic always get the order?

A. No, sir.

Q. Who does get the order? I mean, how do you know who gets the order?

A. Well, naturally, we can tell if one of our Goodyear suppliers get the order because the salesman is on the scene and will take the order. And if our salesman does not get an order, naturally, the dealer buys outside merchandise itself on display, and, of course, the salesman sees it and knows that someone else has beaten him to the punch.

Q. Why do you have an Atlantic TBA program in the Newark district at all?

A. Why do they have the Atlantic TBA program?

Q. Yes.

A. TBA is an essential part of the service station business; it is a necessity for dealer survival in my opinion. Naturally, customers today want to make their automotive purchases pretty much on a one-stop basis. They want to be able to go to one place to buy their gasoline, have their oil changed, to buy their tires, their batteries, their
3112 fan belts. Of course, the list is endless. Consequently, the dealer who is able to offer these services has a far greater chance of building his business to a much more successful extent.

Q. Is there any advantage to Atlantic in promoting the Goodyear TBA line?

A. Yes, sir.

Q. What would you say the advantages were to Atlantic?

A. Well, of course, Atlantic Refining Company has always been proud of the quailty of its products. We have a policy, a sales policy that states, if I can remember it word for word, that no competitor will top the quality or performance of Atlantic products. We are definitely a quality company. Now, we are conscious of the quality, of course—I have to speak for the Newark district—of the Goodyear products, and we like to see quality products sold in our service stations. We know that our dealers can sell with more assurance a quality product and make their own selling job much easier.

Q. From your many years of sales experience have you formed an opinion whether a good brand of TBA helps the oil company's gasoline gallonage?

A. Well, yes, sir; the two go hand in hand. Naturally, the more customers a dealer is able to accrue to his sta-

tion, why, the more gasoline gallonage he will have and a man that is in the position of giving good one-stop service will have definitely a better share of his local market
3113 versus the man who possibly just sells gasoline or motor oil. So, consequently, more customers mean more gallonage, and more product for Atlantic, and that is our prime desire, to sell more gasoline and motor oil.

Q. If you were able to do so, would it not be good business for Atlantic to force its dealers to buy Goodyear TBA?

Mr. Kelaher: Objection—not objection—but I wonder if I could have that question read. I didn't catch the first part of it.

Hearing Examiner Kolb: Read the question.

(Question read.)

The Witness: Well, of course, we are not able to do so, and I have to venture an opinion. But I do not believe so. I have been salesman a long time, and I think selling is much easier and much more successful on a good, sound, selling basis, which certainly would leave any forcing out of it.

Does that answer your question, Mr. Thompson?

By Mr. Thompson:

Q. Yes, sir. Is it part of Atlantic's routine to make inspections of its leased stations?

A. Yes, sir. It is.

Q. Do reports of such inspections pass over your desk? Do you see them?

A. I see them all, yes, sir.

Q. Are the inspection reports concerned with the
3114 brand of TBA carried by the lessee dealer?

A. Never.

Q. What is the Atlantic policy in your district when a lessee checks out and is replaced by another dealer with

respect to the TBA stock of the outgoing dealer? Do you give any advice to the incoming dealer about whether he should or should not buy whatever stock is at the station?

A. Well, yes, sir. We recommend the incoming dealer buy all salable merchandise, all salable TBA merchandise. When I say salable, I mean that is in condition that a customer will buy it. It isn't beat up or abused or in reduced cans or anything else.

Q. You make that recommendation regardless of the brand of TBA which is in the stock?

A. Yes, sir, regardless of the brand.

Q. Can you tell us from your experience how the incoming and outgoing dealer determines the price of the TBA which is to be sold by the outgoing dealer and purchased by the incoming dealer?

Mr. Kelaher: I wonder if we can have that read again. It is a little complicated.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

The Witness: Well, by using up-to-date price sheets on the merchandise. That is the basis of the price.

3115 By Mr. Thompson:

Q. Do I understand, then, that the outgoing dealer gets the going price for the salable items which he has in his station?

A. Yes, sir; he gets the going price.

Q. Is it your practice in your district to finance the TBA stock of a new dealer?

A. No, sir; it is not.

Q. If you finance an incoming dealer or a new dealer, is your financing limited to equipment and Atlantic petroleum products?

A. It is limited to equipment.

Q. So that in your district you don't even finance gasoline or motor oil?

A. We do not finance product. We finance equipment in my district.

Q. I notice, Mr. Gaestel, in the book which is used with prospective dealers that under the topic "Independence" and after stating, "You are the boss and do the hiring and training," that there is a further reference to hours. The statement is, deleting unnecessary words "You set hours, figure out what to buy and sell." Would you comment upon the policy in your district with respect to hours of operation by lessee stations?

A. Would I comment upon it?

Q. Yes, would you comment on what is your policy with respect to hours of operation by lessees?

3116 A. That the competition sets the hours, that we request our dealers to be competitive in their hours of operation.

Mr. Kelaher: What was the answer, please.

(The reporter read the pending answer.)

By Mr. Thompson:

Q. In your capacity as sales supervisor, do you visit dealers in the field?

A. Yes, sir.

Q. Does that answer apply to lessees and your contract dealers who operate service stations alike? Do you visit all of them?

A. I visit all dealers whether they be lessee or contract, yes, sir.

Q. All dealers who operate service stations?

A. All dealers who operate service stations and retail outlets, yes, sir.

Q. Do you manage to get around to the small retail outlets also?

A. Infrequently, yes, sir.

Q. But you visit your lessee dealers and contract dealers who operate service stations regularly?

A. Yes, sir.

Q. How often do you get to see those dealers?

A. Well, a minimum of, I would say, probably a minimum of two to three times a year. Naturally, there
3117 are others that I do see more frequently. I buy gasoline like any other motorist, and there are certain dealers that I might see several times a week, merely as a customer.

Q. Do you know all your lessee dealers?

A. Do I know any lessee dealers?

Q. Do you know all lessee dealers?

A. Yes, sir, I know all of them.

Q. Everyone of them?

A. Yes, sir, everyone of them

Q. Do you know all your contract dealers who operate service stations?

A. I do, indeed. Yes, sir.

Q. When you visit the stations do you personally observe what TBA they are handling?

A. That would be part of my observation, yes, sir.

Q. Is whatever TBA they are handling openly displayed at their station and offered for sale as merchandise which is visible to any customer or anybody who comes in?

A. Yes, sir.

Q. Do you know of any instance in which any dealer has ever tried to hide some non-sponsored TBA?

A. No, sir; I don't.

Q. If he wanted to, could he?

A. Well, I think it would be a little difficult to hide it and still have it for sale. I can't think of any in-
3118 stance or any reason why a dealer would do that.

Q. What TBA do your lessee and contract dealers purchase and handle at their stations?

A. What TBA do they handle?

Q. What brands?

A. Oh, all brands.

Q. Is that true at both contract and lessee stations?

A. That would be true in one and the other, yes, sir.

Q. Is there any distinguishable difference in the TBA purchasing habits and practices of your lessee and contract dealers?

A. Not noticeable that I know of, no, sir.

Q. I suppose most of your stations have a Goodyear decal or a Goodyear sign on them, don't they?

A. Yes, sir.

Q. How about your contract stations, do they have Goodyear decals or metal signs on them?

A. Yes, sir.

Q. Does Atlantic make any effort to force its contract dealers to put Goodyear decals or signs on their stations?

A. No, sir, and I certainly wouldn't want to try in our district. Contract dealers are very independent.

Q. Is the placing of the Goodyear decal and sign on the contract stations the wholly voluntary act of those contract dealers unaffected by anything Atlantic does?

3119 A. I am not sure I understand your question, Mr. Thompson.

Q. Let me repeat it.

When your contract dealers put up Goodyear decals on their stations, or put up Goodyear metal signs, who makes the arrangements?

A. Well, the arrangements would come from Atlantic at the—the decals and signs are offered to the contract dealers and sometimes requested before they are offered. The arrangements then are made between the Atlantic Refining Company and the Goodyear Tire and Rubber Company.

Q. Do you know of any contract dealer who has a service station that has not either asked for or consented to the placing of a Goodyear decal or sign on his station?

A. No, sir, I don't.

Q. Of course, sir, you know all the salesmen who work under your supervision intimately, do you not?

A. Yes, sir.

Q. Reference was made by one or two of the dealers to a salesman named Carlson; does he work under you?

A. Yes, sir.

Mr. Kelaher: Is counsel referring to dealers who were called as witnesses in this case?

Mr. Thompson: Yes, sir. Thank you, Mr. Kelaher.

By Mr. Thompson:

Q. Is Carlson a typical salesman?

3120 A. Yes, sir.

Q. Does he handle typical dealers in your area?

A. Yes, sir.

Q. Now, Mr. Gaestel, I am going to ask you some questions about what you and your staff of sales people do to promote Goodyear TBA.

First, in your district you receive a commission from Goodyear on certain Goodyear TBA sales, do you not?

A. Yes, sir.

Q. Is it part of the duties of your salesmen to try to sell the dealer on the advantages of the Goodyear line?

A. Yes, sir.

Q. Do you and do they have a sales talk about the Goodyear TBA line?

A. Well, naturally, we have a talk, yes, sir.

Q. What do you tell your dealers about Goodyear? Do you try to describe the advantages to them of handling the Goodyear line?

A. I do, indeed, yes, sir.

Q. What do you tell them?

A. Well, this could go on for hours, Mr. Thompson, but I will try to be very brief.

Q. Summarize it; be very brief.

A. I try to point out the advantages, the quality product.

Q. Advantages to whom?

A. To the dealer. Things that will make the Good-
3121 year line—his line much easier for him to sell. The quality product which very definitely Goodyear has. They have consumer acceptance and, of course, in that public demand ties in as well.

Goodyear's line is completely competitive at all grades, both in quality and in price.

Q. May I interrupt you to ask what you mean by "at all grades"? Does Goodyear have more than one grade of tires?

A. Oh, yes, sir; Goodyear has several levels. I mean, in the tire business a tire is at a certain level. An 80 level, a hundred level, and I am not an expert, but the level of the tire sets the price of the tire.

Q. I interrupted you; go ahead, sir.

A. Well, back to the advantages of buying. Also, in the Goodyear line, as I say, we are sure that our dealers can buy at competitive prices and certainly receive quality products. They can take part in the Goodyear cooperative advertising which Atlantic gets into as well. The handling of any possible claims on material is much easier in most cases. There are possibly others, but right now that is all I can think of.

Q. You referred to price of Goodyear TBA price. Is it part of your function and part of your salesman's function to ascertain whether the Goodyear price in particular areas and at particular stations are fair and competitive?

A. Yes, sir.

Q. Do you from time to time receive complaints
3122 from your dealers with respect to prices charged by the Goodyear authorized supply point?

3133 Afternoon Session (2:00 p.m.).

Hearing Examiner Kolb: The hearing will come to order.

WILBUR D. GAESTEL resumed the stand as a witness and, having been previously properly and duly sworn, was further examined and testified as follows:

Cross-Examination by Mr. Kelaher.

Q. Mr. Gaestel, you were present at the hearings earlier this week, were you not, when witnesses from your district testified?

A. Yes, sir.

Q. And for the record, would you—we have heard references to Jersey district and the Newark district and North Jersey district; is that synonymous?

A. It is synonymous.

Q. When did you first learn that the Federal Trade Commission was investigating the TBA sales commission plan between Atlantic Refining Company and Goodyear?

A. Well, are you talking about a recent, or of any further information?

Q. No, how—well, it goes back quite a number of 3134 years, doesn't it?

A. Yes, I have had an inkling, possibly a few years ago, the Federal Trade people were in the district questioning dealers.

Q. Were you aware that as far back at 1952 the Federal Trade Commission investigators had called on Atlantic Refining Company concerning legality of this plan?

A. I can't recall I was, no, sir.

Q. Nor were you aware that a complaint was issued in January 1956 concerning the legality of the plan?

A. The actual date, no, I cannot.

Q. You are aware that a complaint is out I am sure?

A. I am now, sure.

Q. In giving us your background, most of these functions are pretty clear to us, but one you gave as office supervisor from October '51 to October '54, what were your duties in that capacity?

A. Well, in charge of the personnel working in the office who handle the normal clerical work for the district.

Q. That would have nothing to do with supervision of sales personnel at that time?

A. Not actual supervision as supervision is understood, but I have worked hand in hand with the salesmen pretty constantly. An office supervisor in our district does work with the salesman practically everyday of the week in one form or another; advises on credit, collections, pol-
3135 icies, rental, and office supervisor also worked somewhat in the form of an administrative assistant to the district manager. So, you become pretty thoroughly involved with the sales policies and programs.

Q. The entire operation?

A. Yes, sir.

Q. With respect to one statement you made in response to a question you referred to the fact that there were 12 or 13 major oil companies in your marketing area?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

Q. Atlantic is one of the majors, is it not?

A. We consider ourselves a major, yes, sir.

Q. Another question, just for purposes of clarification, at one time a section of Western New Jersey was part of the Eastern Pennsylvania region, as I understand your testimony?

A. That is right.

A. From time to time, yes, sir.

Q. Do you investigate such complaints?

A. Every complaint.

Q. What do you find?

A. Well, I would say in the probably 99 percent of the cases that it is a misunderstanding on the part of the dealer who has complained. Again, I have to go back into my levels. When I talk about different levels, you must understand that our stations are being constantly called upon by competitive salesmen and if I would take a, say a first line tire, and if I may pull a figure out of the air that our supplier is selling for $20.00, well, competitive salesmen come in and say, "What are you paying for a 715 by 15 tire?" and the dealer would say $20.00. And the competitive salesman being smart and trying to sell tires, say, "Well, I sell a 710 for $18.00." The average dealer at that point sees red. He is on the telephone either to myself or to the salesman involved saying, "I am being taken by my Goodyear suppliers." Well, investigation will generally show that the quotation he received of $18.00 was probably on a second-brand or different level, and a different level tire. We have to go through this and sit down with the supplier, check out on the offer made by a competitive salesman, and we can present the facts to
3123 the dealer, and, as I say, 99 percent of the cases, satisfaction comes out. The same thing holds true with batteries, different amp hours. On that, again, I am not a specialist, but I know enough about it too—naturally, I have had these complaints over the years and I automatically figure this is the way I am going to have to handle this and look for these things first. When I was first sales supervisor, I might get upset about these little problems, but most complaints end up in that direction.

Q. I suppose it is true that not only the authorized Goodyear supply point, but jobbers from time to time offer special deals to the dealers?

A. Yes, sir.

Q. And those deals would involve quantity discounts and that sort of thing?

A. That is true, yes, sir.

Q. Do your salesmen take orders from the dealers for Goodyear TBA?

A. That is part of the responsibility, yes, sir, to take orders for TBA and to place them with the supplying dealer.

Q. Do they from time to time phone in to the Goodyear supply point orders for deliveries to dealers?

A. Well, I would say that they phone in the majority of their orders to the Goodyear supply point, yes, sir.

Q. Now, how do you as a practical matter know that that is so?

3124 A. Well, part of my responsibility is the curtailing of expenses wherever possible, and part of that, of course, is surveying my sales peoples' expense accounts, and I have a reasonable idea of what telephone expense should be and different expenses and pretty frequently I ask for explanations of certain items and, of course, telephone items would be on that, and the salesman will come back to me and tell me he has called the supply dealer on a rush order—maybe it was a long list—and it took eight, ten, or fifteen minutes for the party on the other end to write the order down; so, there are ways, very definitely we have.

Q. Do the salesmen for Atlantic look over the TBA stock of the dealers when they visit his stations?

A. Yes, sir, that is part of the responsibility.

Q. Do salesmen for wholesalers selling TBA other than Goodyear do precisely the same thing?

A. Yes, sir.

Mr. Kelaher: What is this they do?

(The reporter read the record as requested.)

By Mr. Thompson:

Q. In other words, can any representative of any wholesaler visiting a service station check the service station operator's TBA stock?

A. Yes, sir, with dealer approval, unless the dealer should object to it.

3125 Q. Do your salesmen from time to time double team with Goodyear salesmen?

A. Yes, sir.

Q. What do you mean by double team?

A. Well, that is my salesman and a salesman from the Goodyear Tire and Rubber Company will spend possible a day, two or three days at different intervals, calling on Atlantic service stations, possibly on tires, batteries and other products.

Q. Is it part of the normal routine of your salesmen to pick up orders for Atlantic dealers at supply points by car? I mean, do they do that in your district?

A. Yes, sir.

Q. As a convenience, help and service to the dealer?

A. That is right.

Q. By the way, Mr. Gaestel, do the Atlantic dealers register whatever complaints they may have about their station or other subjects with you? Do they talk to you about their gripes and their grievances?

A. Well, generally they will discuss them with the salesman and wherever possible we like them settled at that level. If it can't be handled that way, why, then I am the next level.

Q. Has any Atlantic dealer ever complained to you that some salesmen try to push or force him or compell him to buy some TBA he didn't want to buy?

3126 A. Yes, sir.

Q. What was the occasion?

A. Well, that was several years ago one of our dealers

called to complain that the salesman was trying to force him to buy TBA.

Q. What did you do?

A. Well, the salesman and I went out and called on the account to find out the full details of the story. Would you like me to—

Mr. Kelaher (interposing): Your Honor, I wonder if we could have the dealer identified as we were doing in our part.

By Mr. Thompson:

Q. Do you remember who the dealer was?

A. Well, the dealer's name was Joseph Malazia.

Q. Who was the salesman?

A. The salesman was Joseph Fitzpatrick.

Q. What did you do? What happened?

A. Well, I would have to give you a little background if you don't mi[redacted]

Q. Go ahead.

A. Actually, the dealer was backed, had a financial sponsor in this business, a businessman from a factory right directly across the street from the station. I believe he was a personnel man and he wanted a good place for different employees to be able to leave their cars and 3127 have them serviced while working and he had backed this dealer. Then, after the complaint came in, of course, Mr. Fitzpatrick and myself went out to discuss the situation with Mr. Malazia and I tried to reason with Mr. Malazia, and it was a rather difficult assignment to talk to him; so, I, knowing of this connection, this financing, I asked Mr. Malazia if he would mind if we had his backer in on the discussion to ascertain whether we were using undue pressure or trying to force him to buy TBA; so, we made a date with the gentleman and sat down and we put our picture before him, and, of course, Mr. Malazia, the dealer put his. The result was Mr. Malazia agreed that he

would abide and we agreed that we would abide by whatever his backer said. And, of course, at the end of our interview, the backer told the dealer, Mr. Malazia, that he was entirely all wet on the situation, it was a normal sales effort on the part of the salesman, and requested him to be a little more sensible, and where he had cases, he could purchase from us because of price and one thing or another that he would recommend that he would do so.

Q. Now, in your long history in the sales department of Atlantic, is that the only complaint that ever came to your attention?

A. Yes, sir.

Q. Or about which you have any knowledge?

3128 A. Yes, sir.

Q. Where a dealer said that some Atlantic salesman was trying to put too much pressure on him to buy TBA?

A. Yes, sir.

Q. If Fitzpatrick did try to put pressure on this account, was his conduct wholly unauthorized?

A. If he had tried to put pressure, undue pressure?

Q. Yes, that is right.

A. That would be unauthorized, yes, sir.

Q. Did Fitzpatrick know what your policy was?

A. Fitzpatrick was fully conversant with the policy and in my opinion operated within our policy.

Q. In other words, in your opinion, having personally investigated the facts, you reached the conclusion that he had not tried to force the dealer to buy anything he didn't want to buy?

A. He absolutely did not try to force; it was a normal sales effort a salesman makes.

Q. Now, getting back to what you do for Goodyear, is it part of your function and of your salesmen's function to give advice to dealers on what items of TBA are salable?

A. Yes, sir.

Q. Is that just part of your normal functioning?

A. Well, of course, we have to have a good product knowledge; we are advised by experts from within our company and from within Goodyear as well. I hope
3129 I am on the right track in your question.

Q. You are answering my question.

A. Inventories for number one. I mean, there are fan belts and the amount of them, of course, is astronomical, but certain fan belts will sell faster and easier than others because of the number of automobiles that that size of fan belt takes. But we advise our dealers it is a stocking problem, so they do not have too much of one and not enough of another. That would hold true right through the line. We have a good idea of what is a fast moving item, and what is a slow moving item, and that is part of our service.

Q. Do a large number of your dealers need that kind of advice and assistance?

A. I think most dealers can use that type of assistance, yes, sir.

Q. Do you give them sales' hints and instruct them on sales' techniques with respect to Goodyear TBA?

A. Yes, sir.

Q. Do you help them on Goodyear sales promotions from time to time?

A. Yes, sir. We help them plan promotions. We help them dress their stations up for promotions. We have them write any ads they might want to write for any sales or promotions or special events as we commonly call them.

Actually, my service salesmen at times will work
3130 right in the station, help them go out and solicit customers for these promotions whether it be a tire promotion or polish promotion or whatever it is. We play a very definite part in our dealers' promotions, yes, sir.

Q. Is it part of your routine to keep abreast of new Goodyear products and explain such products to your dealers?

A. Yes, sir. Myself, my salesmen, my service salesmen are all kept abreast of new products and new ways and means of either using or selling or handling these products. That information is funneled on to our dealer force.

Q. Is tubeless tire an example?

A. Tubeless tires is a very definite example. We held dealer meetings where we actually mounted and dismounted tires for the dealers. We let them try it. We trained them. We have held clinics to teach them the easiest and fastest ways.

Q. What would be another illustration of something new that had to be explained to your dealers—the dry charged battery was one of them?

A. The dry charged battery would be the same thing. You would have to know how to handle, store, how to prepare them, the installation of the electrolight that will bring the battery to life, how long it would have to be on a charger before being put in use, the possible mistakes they could make in the installation of a dry charged battery.

3131 Q. Do you care in your district office or pay any attention to what brand of TBA is sold by your lessee or contract dealers on Atlantic credit cards?

A. No. sir; it is of no consequence to me.

Q. From your long experience in marketing, is a sign on a service station indicating that the dealer sells a particular brand of battery a significant factor in procuring sales of batteries?

A. I would say no, sir.

Q. Why?

A. The batteries, unlike tires, are sold in two ways. Number one, either the motorist steps into his garage

some morning and finds his battery has gone dead, at which point he will call the nearest service station to come out and get him started, which often means replacing the battery.

Number two, a battery that is due to fail is picked up by the service station attendant or manager who checks the battery out with the hydrometer and advises the customer that the battery is due to go and he is, therefore, able to sell a battery. The average customer does not ride along thinking he will buy himself a new battery and look for signs. That has been my experience. The answer would be no.

Mr. Thompson: Thank you, sir. Mr. Kelaher, you may start cross-examination if you are prepared, or anytime you are ready.

3132 Mr. Kelaher: Well, Mr. Examiner, I was advised that this witness would appear, but I didn't know the scope of his examination, which has been extremely lengthy, but I do think that if I could have until 2:00 o'clock that I can cross-examine him at that time.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

We will adjourn until 2:00 o'clock.

(Whereupon, at 12:20 p.m., the hearing was recessed to reconvene at 2:00 p.m., the same day.)

Q. And was that a particular county, was that Warren county, for example?

A. That would be Warren county, yes.

Q. And that was the only county involved, was it, or did it cover a wider range?

A. I am not very good at defining county lines. If you would like to bring the map out, I might be able to tell you better.

3136 Q. I would like to get that a little clearer in my mind, sir. I show you RX-A-15 and ask you to state that (showing map to the witness).

A. Yes, it would be Warren and Huntingdon counties.

Mr. Thompson: All of Warren or only part of it, Mr. Gaestel?

The Witness: I would say all of Warren.

Mr. Kelaher: Approximately.

The Witness: At the time of the change my scope was limited and I had no relations with anything out in that area, and I can't tell exactly where the defines were.

Mr. Thompson: Mr. Kelaher, if you would like, I will put another map on the record showing what the precise division was at some later date, or I will be glad to stipulate with you when we ascertain the facts.

Mr. Kelaher: I think this would probably be sufficient, but if there is any marked change in that, maybe we could have a little more precise one.

Mr. Thompson: Right.

By Mr. Kelaher:

Q. One of your principal functions is to keep dealers in Atlantic stations, isn't that correct?

A. Yes, sir.

Q. And isn't that necessary because of the large investment that Atlantic has in lessee stations?

3137 A. Yes, sir, unless the stations are open of course we can't sell gasoline.

Q. You don't get a return in your investment unless you have a lessee dealer operating it, right?

A. That is correct.

Q. And your investment in your lessee stations in your district would run to a figure that would be—the current replacement value would run fairly high, I would think, on your lessee stations?

A. I would like to have you define "high"—everything is relative.

Q. Yes. It would depend, of course, on your average cost of operating or building a station, and we do have one figure in the record that it would average around $50,000 to buy the land and build the station, and that probably has gone up over the past year.

A. I frankly am not sure of the figure, honestly, and rather than commit myself, I think the figure might be—

Q. (Interposing.) Based on a $50,000 figure you would have almost a $7,000,000 investment in your lessee stations alone is the point I am making. The current replacement value would be somewhere aroun $7,000,000, isn't that true, if your average investment is $50,000?

A. Well, if your mathematics are correct, and the average investment is $50,000, I guess that would be so.

3138 Q. All right.

Getting back to the fact that you are interested in getting a return on Atlantic's investment in a station, isn't it also a fact that the sale of Goodyear TBA or rather the purchase of Goodyear TBA by lessee dealers increases Atlantic's return on its investment?

A. To some small extent, yes.

Q. You have also stated that a good dealer nets from $9,000 or $10,000 a year and in some instances, he nets more. You will recall that testimony, I believe.

A. Yes, sir.

Q. Now, isn't part of the net return to the dealer in your figure based on his income from the sale of TBA?

A. Yes, it would be.

Q. That is an important part of service station operation, I believe you testified.

A. Extremely important, yes, sir.

Q. In addition to the successful dealers, there are some, I imagine, who go broke, so to speak, in their operation, aren't there?

A. It happens, yes, sir.

Q. And the figure of $9,000 or $10,000, is that an average? Are there some dealers who make less than that?

A. Yes, there are dealers who make less than $10,000.

Q. How much less, or what would be the minimum figure?

3139 A. Well, I am afried that would be a little difficult for me to answer, almost as much for me to pick someone out working on the street and telling you what they earn. I don't have access to—

Q. (Interposing.) It would be something less than $9,000 apparently?

A. Yes, there are some who do earn less than $9,000. of that I am reasonably sure.

Q. You also made the statement on direct examination, which I would like to call to your attention and then ask a few questions. I believe you stated that dealers—put it this way, that people do not buy from companies, they buy from dealers. Do you remember that statement or words to that effect?

A. Yes.

Q. Were you implying by that that a dealer is able to build up goodwill, personal goodwill in his station?

A. Yes.

Q. And I would like to ask you this question then: when such a dealer leaves the station and moves to a distant

location or goes out of the business, doesn't that goodwill inure to Atlantic's benefit?

A. No, sir. Using my word and then yours, personal goodwill—and that is what it amounts to, and I have to qualify that. There are possibilities it can, but in
3140 actual experience, actual practice, in every change-over of a service station, regardless of how far the dealer moves or goes out of business, there is business loss.

Q. It is certainly true that a good dealer can build up a trade, some of which will continue to come to that station after he leaves, isn't that so?

A. Yes, sir; that is so. If you have a good product.

Q. And that would be the result of his operation there?

A. And the product, yes, sir.

Q. Now, on your direct examination you made reference to the fact that since October '54 there was only one forced cancellation to your knowledge in your district. I don't think you told us who that was. Could we have the name of that dealer?

A. Frankly, I can't recall, the station is very vivid in my mind.

Q. Can you give us the station location?

A. Yes, the station was at North Bergen, 1502 Tonnelle Avenue.

Q. And was the 15-day warning letter in effect at that time?

A. The 11-point letter of service was in effect.

Q. Did you send him a 15-day warning letter?

A. Yes, we did.

Q. And I wonder if you could produce a copy of that for us or have it produced or sent to use?

A. I believe it it possible, yes, sir.

3141 Q. Was his lease cancelled at the termination of the 15 days?

A. It was. I cannot say definitely it was cancelled right at the 15 days. But it was within the period of time, and it was cancelled, yes.

Mr. Kelaher: I would like to have this witness or counsel—we asked for all warning letters which I think covered that period, and I don't think we have that one in our record—we would like to have that and all correlating to it.

Mr. Thompson: We will ask Mr. Gaestel to look up the facts in the district office, and we will place them on the record at some later date.

Mr. Kelaher: Thank you.

Mr. Thompson: I think, Mr. Kelaher, that Mr. Gaestel testified this morning—he will correct me if I am wrong—that there was a mutual cancellation executed in that case, am I correct?

The Witness: Yes.

Mr. Kelaher: I think he did say that, yes.

The Witness: Yes.

Mr. Thompson: But we will supply you with the facts, whatever they are, sir.

Mr. Kelaher: Thank you.

By Mr. Kelaher:

Q. Now, you also mentioned in passing this morn-
3142 ing that apparently your company raids other service stations for new Atlantic dealers, among other sources of supply.

A. Yes, sir. It is normal procedure.

Q. Do you consider that an ethical practice to raid the dealers of another oil company?

A. Well, it is survival, and I have never even considered the ethics of it. It has been a practice before I was in the business, and it will probably go on long after I am out of it by all companies.

Q. I would like for you to direct your attention to this

process of screening new dealers which was gone into at some length this morning. Would it be correct to say that that is a very selective process?

A. Yes, sir.

Q. As I understand it, first the salesman makes the initial screening, then, after that the sales supervisor, which would be you, would discuss the matter with the applicant, and then after that the district manager would be called in if the applicant reaches that point; is that a correct statement of the procedure?

A. Yes, sir; that is right.

Q. During the course of your talk with the applicant, you have stated that you discuss the fact with him that your district sponsors Goodyear TBA. That is correct, isn't it?

A. Yes, sir.

3143 Q. And does he ever express his viewpoint at that stage of the game as to whether or not he will carry the sponsored brand or not?

A. Yes, you are asking for every case or—

Q. (Interposing.) The general situation, you might say.

A. I have experienced cases where the man sitting across from my desk has told me that possibly he has been with another company, another oil company, and has a marked preference for some tire, at which point he will ask further, even going beyond my discussion, what will happen if he handles such a tire, and it does not conflict or have any bearing on our ultimate decision whether this man is the right man to run our service station or not. But there have been times, yes, sir.

Q. I don't know whether you have completely answered my question.

A. I will be glad to put in what I have left out, if you will let me know.

Q. Sure. My question is whether or not an applicant

ever states that he will purchase the Goodyear TBA at that stage when you are screening him through?

A. Well, that would hold true just as well as the answer I stated of the one who said he wouldn't. Yes, some applicants do say that they know the Goodyear line, they know how well-known the brand is, and would be glad to consider it. Again, many of them have handled
3144 Goodyear lines in other service stations and intend to continue doing so.

Q. Is it at that stage, or is it later when you designate the Goodyear supply point for your dealers?

A. It isn't for the dealer, it is actually for the location itself that the supply point is set up; so, on a prospect coming in that supply point for that particular service station we might be discussing has been designated long past. That is nothing that we decide on on considering the applicant himself, that is, the service station and his location.

Q. As I understand your answer, you have authorized a Goodyear supply point for each territorial area; is that correct?

A. Not necessarily each territorial area, but a given area. It could cross over. When you say territorial area, I think of salesmen's territory.

Q. No, I am thinking of geographical area.

A. Yes, that would be it.

Q. I am just trying to get your answer clear. Do you have a different supply point for each geographical area in your district?

A. That would be right, yes, sir.

Q. When a dealer gets a station location in a specific geographical area, the name of the Goodyear supplying dealer is given to him; is that correct?

A. That is right, yes, sir.

3145 Q. And if a new dealer indicates a preference for Goodyear TBA, are arrangements made with the

Goodyear supplying dealer to put the initial stock of Goodyear TBA into that new dealer's station?

A. Well, of course, that does not happen in every case, it happens in some cases—

Q. (Interposing.) I am asking you—well, you go ahead and answer in your own way.

A. It can happen and it cannot. Frequently, the salesman will bring the Goodyear supplier around and introduce him to the dealer after the dealer is installed. Possibly the salesman will contact the supplier and say, "I am having a change-over on such and such a date."

Q. By salesman, you mean Atlantic salesman?

A. I am talking about the Atlantic salesman, sure.

Q. So it can happen either way?

A. That is right. He can either bring him around in person or have him come around latter.

Q. Now, when you are discussing Goodyear TBA with applicants and later at the training school, I might add, do you point up the fact that you have uniform Goodyear TBA identification on most Atlantic service stations in your district? It that given as a selling point?

A. I don't think so. I can't recall making any point of that with any applicants and I cannot recollect that that is so in the training program.

Q. Do you make it known to them that most Atlantic dealers do purchase Goodyear TBA in accordance with the Atlantic recommendation?

A. I would let them know a large number of Atlantic dealers in our area handle the Goodyear line, yes.

Q. In your district?

A. That is right, in my district.

Q. You were asked some questions on direct examination about hours of operation. You were asked these questions at two different stages of your direct, but, as I recall your answer, you stated that these hours of operation are set by

competition and by customer demands, to summarize it. Is that accurate?

A. Yes, sir.

Q. You also stated that you request Atlantic dealers to operate certain hours; is that right?

A. I said I request them to be competitive with their competition.

Q. Isn't it a fact that under your 11-point lease letter that you make it clear that an Atlantic lessee dealer must meet Atlantic standards with respect to hours of operation, or it may be grounds for lease cancellation? I am referring to CX-88-B.

Mr. Thompson: I am objecting to the form of the question because he is asking the witness to construe a 3147 written document which is in evidence.

Hearing Examiner Kolb: This is cross-examination, and the witness has testified as to terms and so forth. The objection will be overruled.

Mr. Thompson: May I suggest, then, that Mr. Kelaher show the witness the exhibit? I am perfectly sure he never heard of that exhibit number.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I was about to do that. Also, I think he referred to the 11-point lease letter in his direct examination.

By Mr. Kelaher:

Q. Mr. Witness, I show you CX-88-B (handing document to the witness) and ask you if that is not the 11-point lease letter you were referring to in your direct testimony?

A. Yes, sir.

Q. I call your attention to item six, which reads: "Hours of Operation: Uniform daily operating schedule based on buying habits of potential trade in the area."

My question is this, and I will rephrase it in the light

of the objection: Isn't it a fact that Atlantic sets the standards for hours of operation and not the lessee dealer?

A. No, sir.

Q. I beg your pardon?

A. No, sir.

3148 Q. No, sir, you say. Are you familiar with a lessee dealer by the name of Policastro, I believe?

A. Yes, sir.

Q. I would like to show you Commission's Exhibit 258, which is a letter from Mr. Leslie Geer, whom you have identified as the Newark district manager, and which has a carbon copy going to you, and ask you to read 258-A (handing document to the witness).

Mr. Thompson: May counsel see it, too?

Mr. Kelaher: Certainly.

By Mr. Kelaher:

Q. I would like you to read—the particular point I am interested in is number two. I would like to have you read that into the record and also the last paragraph. You can read the whole letter in the record, if you want to, but it is already in there. Just read the—

A. (Interposing.) "From our observations we note irregular hours of operation of your station to the point that we believe your marketing area is not being properly served."

Q. Then, the last paragraph.

A. "You are further reminded that in accordance with the terms of your lease, you have 15 days from the day you receive this notice to remedy these defaults; otherwise, your lease will have been breached."

Q. Now, I call your attention to Commission's
3149 Exhibit 258-B, which is a letter from Leslie Geer to Mr. Policastro with a carbon copy to you and three other gentlemen.

A. Would you like me to read this?

Q. I would like you to read the entire letter.

A. Mr. Thomas J. Policastro, Hudson Boulevard and 88th Street, North Bergen, New Jersey. Mr. Policastro:

"It was extremely gratifying to both Mr. Gaestel and myself to find your spirit of cooperation manifested in your having done such an outstanding job in cleaning your station and to hear you say you were not yet satisfied and were going to continue to improve it.

"We are also pleased to receive your promise to operate your station under normal station hours.

"I am sure that with this cooperation and our working together that your gallons will rapidly increase and you can be sure that we will do all within our policies to help you achieve this goal."

Q. Thank you. Isn't it a fact that you have the power under your lease to terminate a lease agreement if the station dealer does not measure up to your standards as to what his hours of operation should be?

Mr. Thompson: Objected to as calling for a legal conclusion.

Hearing Examiner Kolb: Objection overruled.

The Witness: Would you repeat the question.

3150 Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

The Witness: I have to honestly say in—

By Mr. Kelaher:

Q. (Interposing.) Let's answer the question Yes or No, and then you can amplify.

A. I have to answer No.

Q. You answer No in the light of this evidence in the record?

A. Yes, sir.

Q. All right. I will go on to something else.

Mr. Thompson: You can explain your answer, if you want to.

The Witness: I would like to explain the answer.

By Mr. Kelaher:

Q. You go right ahead.

A. I do not believe that we could make that part of our lease enforceable under actuality.

Q. Well, that is very interesting. Why do you threaten a dealer with lease cancellation for not maintaining hours of operation, then?

A. Psychological persuader, possibly.

Q. Do you also use other measures of that type in threatening dealers with lease cancellation?

A. I know of no others, no, sir. That is purely my opinion on that.

3151 Q. That seems to be a common practice, does it not, on the part of Atlantic Refining Company with respect to hours of operation to advise dealers that they are to maintain certain hours of operation?

A. No, sir, not in the Newark district. That is the only district I can speak for.

Q. Well, all of your lessee dealers get the 11-point lease letter, do they not?

A. Yes, sir.

Q. All right. You also stated on direct examination that there are a large number of competitors of Goodyear in your Newark district?

A. Yes, sir.

Q. And does that include suppliers of all types of competitive brands of tires, batteries, and accessories?

A. Yes, sir.

Q. And does that include sellers of Lee tires and Exide batteries?

A. Yes, sir.

Q. And Thermoid products and Fram products?

A. Yes, sir.

Q. Now, going on to another subject, you were asked some questions about original stocking orders in connection with lessee dealers, the question pertained to whether or not Goodyear always gets the TBA original stocking
3152 order in a new Atlantic station; do you recall that testimony this morning?

A. Yes, sir.

Q. And you said they don't always get the original stocking order. Is it a fact that they do get the stocking order at times?

A. Yes, sir.

Q. Is it a fact that in most instances that Goodyear gets the original stocking order?

Mr. Thompson: Are we talking, Mr. Kelaher, about a new station or a replacement?

Mr. Kelaher: I think we would include not only new stations but new dealers replacing old dealers in the same station. Is that what the answer went to this morning?

The Witness: I can define it possibly for you. On new stations, Goodyear would have a reasonably good chance of getting the initial stocking order.

By Mr. Kelaher:

Q. On new stations?

A. On a brand new station, yes, sir.

Q. Why would that be?

A. Well, because of the pattern of our business. We would advise Goodyear that we were opening a brand new station, naturally, and arrange to have the dealer meet the Goodyear supplier and make a selection of the stock to open the station with. That would be done before the station would be opened.

3153 Q. You would give the Goodyear supplier advance notice of the new station opening; is that correct, sir?

A. We would arrange prior to opening of a new station, if the dealer was at all agreeable, to get together with the Goodyear supplier, and we would set up an initial stock order so when we opened the station it was ready to do business.

Q. And when you opened the station would you also have the Goodyear window valances and outdoor advertising installed, or would that take a little time?

A. It could take time, depending on where the crew was.

Q. Eventually that identification would be in the station?

A. We would request Goodyear put the identification in the station.

Q. Atlantic would request Goodyear to put that identification in the station, you say?

A. That would be the only way it would be put in.

Q. Do you give any competitors of Goodyear advance notice of new station openings.

A. No, sir; I sell Goodyear.

Q. You just stated you sell Goodyear which leads us to another subject. On direct examination this morning you were asked to state some of the advantages to Atlantic dealers for handling Goodyear TBA. Do you recall that testimony?

A. Yes, sir.

Q. And you went down the line and listed a num-
3154 ber of reasons. One was quality of product, and so on.

Do you think it is in the Atlantic dealer's interest to handle Goodyear TBA for all the reasons you listed in preference to other brands of TBA?

A. Would you be specific on other brands? I mean, there are certain brands, yes, very definitely Goodyear would be far more advantageous than certain brands, yes.

Q. For example, you stated that you recommended the

Goodyear line because (1) of the quality of the product. Well, it is true, is it not, that there are many brands of tires and batteries and accessories which are of like grade and quality to Goodyear's isn't that true?

A. I would assume it is, but I sell Goodyear, and I know it is a quality product. I don't have to make any assumption on Goodyear.

Q. Is it also true that there are other brands of TBA which have consumer acceptance in your marketing district?

A. I am sure there are, yes.

Q. And isn't it true that there are other brands, other suppliers of TBA, in your marketing district who have stocks of TBA sufficient to supply the needs of Atlantic dealers and other customers?

A. I would assume so, yes, sir.

Q. And isn't it true that there are other suppliers of TBA who are able to sell brands at competitive prices with Goodyear TBA?

3155 A. I would assume so, yes.

Q. Do you think the reasons you stated this morning as to why it was advantageous to Atlantic and to the dealer to handle Goodyear TBA are the real reasons why Atlantic is sponsoring Goodyear TBA in the Newark district?

A. Yes, sir.

Q. And you were in the Newark district prior to June 1950, as I understand your testimony?

A. I was.

Q. You were promotable dealer salesman from January 1947 to October '51; so, did you know from your experience in the Newark district that Atlantic originally intended to sponsor another brand of TBA in the Newark district?

A. No, sir; I didn't.

Q. Do you know—and the record herein shows—that

in January 1950 Atlantic decided to test Firestone TBA in the Newark district?

A. I didn't.

Q. Did you know that on March 17, 1950, Firestone advised Atlantic that it could not go into the Newark district?

A. No, sir; I didn't.

Q. And were you aware that it was not until May 1950 that Atlantic decided to sponsor Goodyear TBA in the Newark district?

A. I wouldn't remember the exact date we did decide to handle Goodyear.

* * * * * *

3157 By Mr. Kelaher:

Q. Isn't it a fact that if Atlantic were to sponsor any particular brand of TBA that you would think it was to the dealer's advantage to handle that brand?

A. I am sure that Atlantic would sponsor a quality product only.

Q. Is your answer Yes or No?

A. My answer would be Yes based on my opinion.

3158 Q. Thank you. In connection with certain questions this morning concerning complaints you received from Atlantic dealers with respect to Goodyear TBA, you stated—and you can correct me if I am wrong on this—that most of the complaints you received from dealers relate to prices; it that correct?

A. Yes sir.

Q. And as one example you referred to the fact that an Atlantic dealer might be buying a Goodyear tire, 710 by 15 at $20.00 and a competitive salesman might come and offer the same seized tire for $18.00. You stated as a matter of good salesmanship, you implied that as a matter

of good salesmanship, he might indicate that it was the same level tire as the Goodyear tire. Did you intend that implication in the record?

A. I don't know that he would intend to say it was the same tire, but I have seen it happen frequently where there is no differentiation made that it is a tire and it is the same sized tire.

Q. It wasn't your intention to imply, I assume, that every competitor of Goodyear misrepresents the level of its tires?

A. Absolutely not.

Q. Or batteries?

A. I was trying to illustrate a point, the problem.

Q. In answer to one other question—you were asked what brands of TBA your lessee and contract dealers handle at your stations, Atlantic stations—and the answer you said, all brands; do you recall that answer?

3159 A. Yes, sir.

Q. You did not mean to imply that Goodyear was not the principal TBA carrier by your lessee and contract dealers, did you?

A. No, I did not mean to imply Goodyear was not the principal, but every station has competitive brands of merchandise.

Q. However, some of the competitive brands are more on a fill-in basis, aren't they, or at particular customer request, or in response to a particular customer request?

A. It works both ways. Sometimes a Goodyear supplier sells as a fill-in on something that a competitor might be normally selling the dealer.

Mr. Kelaher: May I see a copy of that booklet that you had?

(The document was handed to counsel.)

By Mr. Kelaher:

Q. I might ask at this time, too, do you have any indication of the total amount of Goodyear TBA sold in the Newark district annually?

A. Yes, sir, do I know the figures?

Q. Approximately.

A. Yes, sir.

Q. What would that be?

A. 1957, approximately $380,000.

3160 Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. I just have a few more questions.

First, in connection with your statement that Atlantic salesmen take orders, you mentioned that they do—what was your testimony on that? Do Atlantic salesmen take Goodyear TBA orders from Atlantic dealers frequently or infrequently?

A. I would say frequently, yes, sir.

Q. Isn't it true that Atlantic lessess dealers also telephone orders in to their supply point?

A. Yes, sir, it works both ways.

Q. That is a normal procedure for them, is it not?

A. That happens with Atlantic products as well as—

Q. (Interposing.) Or with Atlantic product?

A. That is right.

Q. And that is done on a large scale, I would think, taking into sonsideration your entire district?

A. A reasonable scale. It works both ways. The sales-

man call once a week, and the dealer always thinks of something two hours later, and rather than wait until he sees the salesman again, he will call either Atlantic or possibly the local Goodyear supplier.

3161 Q. Does the Goodyear salesman also take orders?

A. The supplier?

Q. The Goodyear supplier dealer?

A. Will take orders, yes, sir. He also calls.

Q. With respect to your testimony concerning Joseph Malizia, I would like to ask you a few questions.

A. Yes, sir.

Q. What was Mr. Malizia's complaint or his gripe, so to speak?

A. In very few words, Mr. Malizia did not believe the Atlantic salesman had a right to try to sell him anything more than gasoline and motor oil.

Q. What TBA products was Mr. Malizia carrying at the time of the complaint?

A. What TBA—

Q. (Interposing.) What brand of TBA products?

A. He was carrying all sorts of brands. He was carrying Goodyear tires. Mr. Malizia bought, it seems to me, from anyone who came along when he happened to have a need. I can't recall that he had one specific supplier. It seemed to me he bought from a multitude of suppliers.

Q. And was it his specific complaint that the Atlantic salesman was attempting to pressure him into buying Goodyear TBA?

A. He seemed to be against the idea that the Atlantic salesman should sell him—

3162 Q. (Interposing.) Was this his specific complaint? That is what I am asking you.

Mr. Thompson: Mr. Gaestel is answering your question. You didn't let him finish the answer.

The Witness: Well, the complaint, it was given in the

form of a complaint, said that the Atlantic salesman was trying to force him to buy TBA, but in speaking to Mr. Malizia the only conclusion I could come to was that the Atlantic salesman was trying to sell him TBA.

By Mr. Kelaher:

Q. Goodyear TBA?

A. Goodyear TBA and at this point is when I requested that both Mr. Malizia and ourselves present the case to Mr. Malizia's backer and saying we would both abide by his decision, whether it was a matter of forcing him to buy TBA from Atlantic or whether the salesman was just trying to sell him TBA.

Q. Now, you also stated what this other gentleman's decision was. I wasn't too clear on your answer on that. Would you tell us again what that was?

A. Well, the gentleman concerned, after hearing both sides of the case, advised Mr. Malizia that the salesman certainly acted within his rights to try to sell him TBA.

Q. Goodyear TBA?

A. Goodyear TBA. That is right, my salesmen sell TBA and they are selling TBA—

3163 Q. (Interposing.) I think you added something to your answer with reference to Goodyear TBA, which I am not too clear on.

A. Well, his backer made a recommendation to him that he—if he needed some product when the salesman tried to sell it to him, there was no reason at all why he shouldn't buy it and recommended that he do buy some from our salesman.

Q. And did Mr. Malizia's purchases of Goodyear TBA increase after that meeting?

A. Yes, sir.

Q. What was the approximate time of this meeting?

A. The date?

Q. The year or the month, or whatever you have.

A. I think it would be approximately three years ago.

Q. Sometime in 1955?

A. I would say in the area of 1955, yes, sir.

Q. And do you have the name of Mr. Malizia's backer that you have reference to?

A. I can't recall it at the moment. I could get it for you, yes.

Q. Could you give us Mr. Malizia's station location and town where he is located?

A. He is located on Highway 10 in Livingston, New Jersey, the station.

Q. You also stated on direct examination that it was necessary for salesmen to keep Atlantic dealers posted
3164 on improvements in TBA products and as an illustration, you referred to tubeless tires and dry charged batteries. Do you recall that testimony?

A. Yes, sir.

Q. Were you implying that Goodyear was the first to come out with these products and, therefore, it was necessary to train your dealers in that respect?

A. I wasn't implying that Goodyear was the first to come out with the product, no.

Q. Isn't it true that regardless of whether or not Goodyear manufactured these items, it would be necessary for Atlantic dealers to receive some training from someplace in connection with the servicing of such products; is that true?

A. Yes, if I might add to that, air suspension just is becoming popular and we have trained our dealers on air suspension and we don't sell air suspension. We feel it is something our dealers should be conversant with; so, we have taken it upon ourselves to train them on air suspension and let them know the difficulties and hazards that can be encountered.

Q. I have a last series of questions here, and I must admit that I was somewhat surprised on your testimony on this score, and would like to have you explain it a little more.

In answer to a question as to the importance of advertising signs in the sale of batteries in service stations, you made the somewhat emphatic statement that you
3165 thought that they had no value. Do you recall that testimony in the sale of batteries?

A. I am not sure if I said no value or very little value.

Q. You were asked this question, in substance: from your long experience, is a sign on service stations a significant factor in the sales of batteries, and you said, "No, sir."

A. That is right, I do not believe it to be a significant factor.

Q. Do you think that it is a waste of money, so to speak, for Delco, Willard, Exide, and all other battery manufacturers to spend large sums of money in the advertising of their products?

A. Well, apparently they do not think so. They certainly must spend the money.

Mr. Thompson: May I ask you to clarify that question, Mr. Kelaher? Is that question directed to signs at service stations, which is the subject matter of his testimony, or national advertising?

Mr. Kelaher: I am referring to national advertising, including signs on service stations or in any other form.

Mr. Thompson: Did you so understand the question, Mr. Gaestel?

The Witness: I believe so.

By Mr. Kelaher:

Q. Is it your opinion that advertising signs, bat-
3166 tery brands, on service stations are of no significance

whatsoever in the sale of batteries of any particular brand?

A. They would have to be of a very minimum significance.

Q. How does that account for the fact that so many batteries are sold by such houses as Sears, Roebuck, for example, or other houses?

A. Newspaper advertising.

Q. And isn't it true that advertising does play an important part in the purchase of batteries?

A. That is a different type of advertising altogether.

Q. What were your reasons for saying that advertising is of no value in service stations with respect to batteries?

A. Because it is my opinion, and from observation, that people just aren't riding around looking to buy batteries for automobiles. It is a part of an automobile that the average motorist has no idea of or knowledge of whether it is in good condition or bad condition unless some service station attendant has told him his battery is getting weak and is liable to give up operating, or he has been unable to start his car.

Tires, conversely, people can see the tread wearing down on tires, but a battery is—

Q. Is it your opinion—are you finished?

A. I can be finished, yes, sir.

Q. Is it your opinion that there is no consumer demand for particular brands of batteries?

3167 A. No, that is not my opinion.

Q. How do you reconcile that with your statement that advertising signs are of no value in service stations?

A. Well, I can only say that people do not ride around looking for batteries when they go. Now, if you have ever had a battery go on you, through reading national advertising, you may have a preference, but if you break down in

front of XYZ service station, and he only handles something else—

Q. (Interposing.) Are you limiting your answer to situations where a motorist breaks down out on a distant highway in front of a service station and has to take a battery?

A. I think nine out of ten batteries are sold on an emergency basis.

Q. Isn't it a fact that many, many buyers have a particular preference and choose a particular brand for one reason or another?

A. Yes, sir, for national advertising, but I do not feel that a sign on a service station has any—helps influence their decision. I think the decision has been formed possibly from national advertising, and when they get around to buying a battery, if they buy in an Atlantic service station, they are liable to designate, I need a new battery and I want X brand, and any intelligent dealer certainly to satisfy his customer will arrange to get X brand.

Q. Isn't it a fact that that Goodyear sign up there 3168 indicates to a customer who wants a Goodyear battery that Atlantic is the place to get it?

A. I think it refers more to—I think the impression received by the customer is more on the Goodyear tire line.

Q. You are willing to concede that the signs have great value in advertising tires; is that correct?

A. I think a sign has some value in advertising tires, yes.

Q. Do you say it has some value or has great value?

A. Well, I stated that I thought battery signs were of little consequence, and I think tire signs are a definite asset.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any questions, Mr. Thompson?

Mr. Thompson: You, sir, have a plane at 3:40?

The Witness: Yes, sir.

Mr. Thompson: It is now 3:12. I will waive any further questions, and let this witness try to get his plane, provided Mr. Kelaher will answer a question for me.

(The witness was excused.)

ROBERT O. CARLSON was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Carlson, will you give your full name and 3169 address to the reporter?

A. Robert O. Carlson, 14 Banghart Place, Mount Tabor, New Jersey.

Q. Mr. Carlson, you work for the Atlantic Refining Company?

A. Yes, sir.

Q. What is your position?

A. I am a promotable dealer salesman.

Q. In the Newark district?

A. That is right.

Q. Your superior is Mr. Gaestel?

A. That is right.

Q. That is the man who just preceded you on the stand?

A. That is right. He is my sales supervisor.

Q. Above him who is the next superior?

A. Mr. Geer, the district manager.

Mr. Ballard: Mr. Kelaher, you have no objection to the witness refreshing his recollection from a memo?

Mr. Kelaher: No, sir.

By Mr. Ballard:

Q. I believe you have a memorandum there of the periods of your various jobs with Atlantic?

A. Yes, sir.

Q. You were hired by Atlantic in April of 1946?

A. That is right.

Q. And you have been with the Newark office ever since?

3170 A. That is right.

Q. Would you tell us what the year, the various jobs that you have had in that office and the years during which you had them?

A. Well, from May 1946 to August 1946 I served as service salesman in Newark; from August 1946 up until today I have been a promotable dealer salesman with the exception of a three-year period when I sold fuel oil.

Q. As I understand it, sir, that three-year period encompassed the time when Atlantic changed from Lee and Exide to Goodyear in the Newark area?

A. That is right.

Q. This is a map which has been introduced in evidence as RX-A-15; referring to that map would you give us a description of the geographical territory which you serve in the Atlantic Newark district?

A. Morris, Warren, Hunterdon, and a small part of Union county.

Q. Those are all counties that you designated, right?

A. That is right.

Q. And you cover those counties as a dealer salesman?

A. That is right.

Q. How many accounts do you handle in that area?

A. Eighteen.

Q. And the 18 are shown by red dots on that map?

3171 A. Yes, sir.

Q. Can you tell us a little bit about those 18 deal-

ers that you service, tell us a bit about how long they have been in the stations and their characteristics?

A. Well, some of the dealers have been in since 1946 and the most recent was installed in 1956.

Q. Do you know each one of those dealers?

A. Personally.

Q. Call them by their first name?

A. Oh, yes; very friendly.

Q. Do you know their wives and families?

A. Oh, yes.

Q. Generally speaking, Mr. Carlson, how often do you call on your 18 dealers?

A. At least once a week, but in an emergency, sometimes I have to go two weeks before I see them.

Q. And do you sometimes call more often than once a week on a particular dealer?

A. Oh, yes.

Q. What do you consider to be your principal duties as a promotable dealer salesman?

A. Well, first, to see that the stations are manned and also to see that they are the best possible outlet for Atlantic products.

Q. Now, in connection with your first statement, 3172 the question of keeping operators in the stations, is that a particularly difficult problem in your area?

A. That is a difficult problem in every area. Locating dealers is a hard part of our job, good dealers.

Q. How many turnovers of this sort have you had while you have had this territory?

A. In the last four years I have had six changeovers.

Q. You consider yourself fortunate?

A. Very fortunate.

Q. I don't want you to go into too much detail, but on those six turnovers, what were the reasons why the dealer who went out left his station?

A. One fellow just wanted out, his wife was pressuring him; another fellow had had a heart attack, and it was doctor's orders that he get out of that activity.

Q. Would it be safe to say that in each instance the dealer initiated the—

A. (Interposing.) He requested it, that is right.

Q. Now, in any of those instances, was the reason the dealer left the station, did it have anything to do with TBA?

A. None whatsoever.

Q. One other question. On those six instances did they occur at the end of the particular dealer's lease or in the middle?

A. I don't recall offhand, but some I know would 3173 be in the middle; they weren't near termination. They wanted out and we arranged it.

Q. That has been Atlantic's policy as far as you know it?

A. Oh, yes.

Q. Now, again trying to keep your testimony to a minimum, I believe you were in the hearing room this morning while Mr. Gaestel, your superior testified?

A. That is right.

Q. Did you hear his testimony concerning the difficulty in obtaining dealers and the methods by which he goes about obtaining new dealers?

A. Yes.

Q. Do you agree with the statements which he made here this morning on those subjects?

A. I certainly do.

Q. That has been your experience also?

A. Yes, I have used everyone of those efforts.

Q. I want to ask you one specific question. There is an Atlantic folder of record as RX-A-18, it is called "What a Service Station Can Mean to You." Mr. Gaestel's copy is actually of record. Do you have a book similar to this?

A. Yes, I do, carry it all the time.

Q. Is it identical with this?

A. Identical.

Q. And you use it?

3174 A. All the time.

Q. Does the copy that you use contain the Estlow letter of June 24, 1955?

A. Yes.

Q. Now, when you say you use it, sir, you use it in making your initial contact with a dealer applicant; is that right?

A. Yes, with a prospective dealer.

Q. And you go over it with him page by page?

A. Thoroughly.

Q. Sir, there was testimony this morning to the effect that that book was not in use, this particular book was not in use until 1955. What did you use in its stead before 1955?

A. Well, we used approximately everything that is said in there but one of the problems that came up was that quite frequently prospects would want to discuss things other than what we wanted to accomplish in the interview, and they would wander, and, of course, to be friendly and keep them talking, we would wander with them. This book gave us the opportunity to hold the conversation in line and try to show them what we were offering them if they wanted to be an Atlantic dealer. It gave us a good basis to keep the interview more in the order in which we would like to present it.

Q. Mr. Gaestel also spoke this morning about the efforts that were made in selecting a new dealer and in selling him on the Atlantic brand choice, the efforts that were

3175 made to explain and sell the Goodyear TBA line. I don't want to go into those again. I want to ask you one specific question.

Do you or do you not when you interview a dealer applicant specifically state Atlantic's no-forcing policy with respect to TBA?

A. Oh, yes, we go through that book from cover to cover, and we make them read that letter because a lot of times it is a question they request, "Am I forced to go with this Goodyear policy?" and we turn to that and show them, "Here is your answer," and we don't have to answer it. It is there for them, no forcing.

Q. There is in the back of this same exhibit a mimeographed set of questions and answers which are marked for salesman's use. There was reference to questions and answers marked 3, 4, and 5 this morning (showing document to the witness). Have those questions been asked of you by a dealer applicant, and, if so, have you given the answers that are set out there?

A. Yes, and I don't use this phraseology in giving an answer, but the same thought applies, that we never throw a dealer out if he builds up his business properly, and he is not forced to handle our TBA line. And "Must I be open on Sundays?" Competitive practice is what dictates that. And "Do you tell me what hours I must be open?" No, we don't tell him what hours he must be open.

I have frequently requested that if he has any idea
3176 but doesn't know just how long to operate a station
that starting at 7:00 in the morning and operating until 11:00 at night and explain that 7:00 o'clock in the morning, that is when most people are going to work and by 11:00 o'clock at night, that is when the entertainment is over and towns generally are closing down. And over a period of time he will see for himself what his competitive stations are doing who have been in business and know what the town will do and then it is up to him.

Q. To judge for himself?

A. That is right.

Q. Now, sir, the second duty that you mentioned with reference to your job was the question of making sure that each of your 18 stations sells as much Atlantic Refining Company petroleum products as possible?

A. Right.

Q. What do you think are the requisites that a station has to have in order to sell a maximum amount of Atlantic petroleum products?

A. Well, he should have a sufficient inventory of product on hand to be able to adequately serve the public at their demand.

Q. Right.

A. I think most times a car pulls in for service it is for gasoline; so, there should be a good supply of that on hand.

Next, I believe that most frequently a car is lubri-3177 cated; so, motor oil is a big item because also when they are buying gasoline their oil is checked on the drive-in for service.

Third, I think they should have an adequate supply of any TBA products that are necessary to require service to the customer. It should be adequately stocked.

Q. When you approach a station in your automobile, are there other criteria that you measure the station by?

A. Yes. The first thing I have grown in the habit of doing is looking at a station from its appearance angle as though I was the customer approaching it. Is this the type of station I want to pull in? What can I find that I should talk to the dealer about?

When I am in the station I will look his personnel or listen to the way they talks to customers, maybe talk to them about something I can help them with in making a sale, or suggesting that they wear a clean uniform as it will be more presentable for the station and the dealer.

Q. Are you interested at all in the internal operation or the management or the management of the station?

A. Very much so. So much so that a lot of the dealers ask me if they are doing a good job and we measure in the light of what other dealers are doing and try to compare and if it appears that there is a weakness in selling—let's take, for instance tires—we try to build that up so 3178 that he becomes a more successful dealer financially.

Q. Would it be fair, Mr. Carlson, to say that trying to summarize what you have just stated that the way you measure a station is the products, the service, appearance of the station, personnel, management?

A. Right.

Q. Now, in the light of those tests, do you care whether or not the TBA that is in the station is Goodyear or non-Goodyear?

A. No, it is not the most important whether it is Goodyear or another brand. The successful dealer will sell TBA as such because it is an integral part of the business, and he is in business to make money and it is my job to help him make money.

Q. But you do try to sell Goodyear TBA?

A. Oh, yes.

Q. And would you take a second, sir, and in your own words tell us what sales pitch you use with your dealers to get them to take on the Goodyear TBA line?

A. Well, a sales pitch would go along the lines of, have they tried any Goodyear TBA, trying to find out why they resist it, and then building up with a nationally advertised product is easier to sell, more people know about it, naturally. There is a quality there, it has to be there. They have to back their advertising, naturally. It is available at several sources. In my particular marketing area, whether through my own supply dealer or other supply 3179 dealers, they are Goodyear dealers.

There has been resistance, and in some cases solid,

and there is no sense in forcing that man to try to change him.

Q. You mean, you mean there is no sense in trying to sell that dealer—

A. (Interposing.) No, we will try to sell, but when you continually get No, No, No, and what he feels a qualifed reason, you realize that you have to wait then for an opportunity to introduce it. You won't get it through just open selling by continually hammering at it.

Q. Now, in promoting the sale of Goodyear products, aside from the pitch that you have just spoken to me about, do you devote some of your time, as Mr. Gaestel was speaking about this morning, to double-teaming in these various promotions?

A. Oh, yes.

Q. How often does one of these promotions on Goodyear T, B or A come up?

A. Well, those promotions break—I can't give you a calendrical example—maybe two or three times a year. With regard to accessories it might be more frequently. I have in mind this much, that tires, you have a winter type of tire and you have a normal type of tire. Naturally you sell a winter type of tire in the wintertime; so, we have a winter promotion. Likewise, in the spring, when
3180 they are converting over to the regular treads we have another promotion. But, then, you have polishes, you have spark plugs, filters, in which we double-team with other than our Goodyear salesmen, and those are considered promotions, too.

Q. In selling Goodyear TBA, have you, yourself, actually taken orders from the dealer and transferred them to the Goodyear supply point?

A. Frequently.

Q. Have you ever had occasion to pick up the actual merchandise and bring it out to the dealer?

A. Yes.

Q. Do you concern yourself much with a question of competitive prices asecertaining what they are and trying to relay them to Goodyear through Atlantic?

A. That is part of my job, yes.

Mr. Kelaher: May I have that question and answer.

(The reporter read the question and answer.)

By Mr. Ballard:

Q. Mr. Carlson, do you agree with the TBA policy of Atlantic as stated by Mr. Gaestel and as understood by Mr. Gaestel this morning?

A. Do you mean the use—I mean the no-forcing?

Q. Yes, I mean is that your understanding of Atlantic's policy?

A. Yes. A good salesman never forces, he sells.

Q. Well, I want to know just is that Atlantic's 3181 policy as far as you understand it?

A. Yes.

Q. And how did you yourself come to understand that to be Atlantic's policy?

A. Well, when I first became a promotable dealer salesman and we were handling our own TBA line, we were always told to sell it. We couldn't force a dealer then.

At the time I was a fuel oil salesman, I got a copy of Mr. Colley's original letter stating there would be no forcing.

Q. Is that his letter of March 1, 1951?

A. That is right.

Mr. Ballard: Will you stipulate, Mr. Kelaher, that he has reference to CX-150?

Mr. Kelaher: Yes.

Mr. Ballard: It is stipulated that the witness has just made reference to CX-150.

By Mr. Ballard:

Q. So, you received Mr. Colley's letter even though you were a fuel oil salesman at the time?

A. That is right.

Q. Has the policy been brought home to you in any other fashion since you have been with the company?

A. In the refresher course I took in training school, it was brought up there.

3182 Q. It is in that book?

A. It is in that book when that was presented to us, yes.

Q. And by that book I mean Exhibits RX-A-18. Is that correct?

A. Yes.

Q. Mr. Carlson, have you ever forced or attempted to force an Atlantic dealer to buy Goodyear TBA?

A. No, never.

Q. Have you ever pressured an Atlantic dealer to buy Goodyear TBA?

A. No, never.

Q. I just have one final series of questions.

You have, I think you said, 18 dealers in your district?

A. That is right.

Q. Do you visit those dealers, we will say, on the average of once a week?

A. That is right.

Q. Suppose you and I were to get in a car tomorrow morning and drive throughout your district and visit those 18 stations, would we see TBA openly displayed?

A. In every station.

Q. Now, would you tell us some of the brands of tires, batteries and accessories that we might see there stocked?

A. Tires, you would find Goodyear, Armstrong, a 3183 tire known as ATA, Gates, and Firestone.

Mr. Kelaher: Firestone, too?

The Witness: Yes, sir.

By Mr. Ballard:

Q. If we drove into Charley Wyckoff's station, what would we see—

Mr. Kelaher: (Interposing.) Objection, your Honor. Mr. Wyckoff testified in this case. I think that would be repetitious to go over that type of testimony.

Mr. Ballard: Strike the question.

Hearing Examiner Kolb: Are you asking him what he saw in Wyckoff's station?

Mr. Kelaher: That is what he asked him.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: He asked him what he saw in Wyckoff's station. Wasn't that it?

Hearing Examiner Kolb: Yes, that is what it has to mean. What he saw displayed. Isn't that what you are asking him?

Mr. Ballard: I am asking him what we would see displayed if we went into Mr. Wyckoff's station.

The Witness: Lee tires, and we would also find Exide batteries.

By Mr. Ballard:

Q. While we are on batteries, on this trip that I
3184 am proposing here, what type of batteries would we see displayed in your dealer's stations?

A. Willard, Delco, Rebat.

Q. Goodyear?

A. You would find Goodyear. I think that is most of them.

Q. How about accessories, sir?

A. Accessories, you could find—they are too numerous to mention. You find every kind of accessory necessary to operate a station under good dealer operation.

Q. Some of it Goodyear accessories or in the Goodyear line, some of it outside of the Goodyear line?

A. That is right.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Kelaher.

Q. Mr. Carlson, you stated you have 18 accounts in your sales territory. Are all of those accounts lessee dealers?

A. No, sir; 14 are lessee.

Q. Are the remaining four contract dealers?

A. Four contract dealers.

Q. Are all of the contract dealers what were referred to by Mr. Guestel as real service station outlets?

A. Oh, yes.

Q. They are all potential TBA outlets; is that correct?

3185 A. Yes.

Q. When you are interviewing prospective dealers for Atlantic stations, you do discuss TBA, I understand?

A. Yes.

Q. You are the gentleman who originally screens, makes the initial screening of applicants, as I understand your set up; is that correct?

A. That is right.

Q. At that time you discuss Goodyear TBA with them?

A. Yes.

Q. And then they go from you to the sales supervisor?

A. That is right.

Q. And either he alone or in your presence you go over the applicant's position or you ask him questions and you again discuss Goodyear TBA; is that correct?

A. That is right.

Q. And then from there you go to the district manager who again discusses Goodyear TBA with the gentleman, with the prospective applicant; is that correct?

A. Yes.

Q. And if he meets with the approval of all three of you gentlemen, then he goes to a training school, a five-week training school, and there again Goodyear TBA is discussed; is that correct?

A. That is right.

3186 Q. And then, after that at dealer meetings from time to time Goodyear TBA is discussed; is that correct?

A. No, it would depend on what the dealer meeting is about; if it is for TBA, yes.

Q. Then, you would discuss the Goodyear TBA?

A. Oh, yes.

Q. When you are discussing Goodyear TBA with prospective applicants, do you point up the fact that Atlantic service stations carry the Goodyear service station identification for the most part?

A. Yes.

Q. You point that up to them. Is that a selling point with you?

A. Well, as a field man advertising is a selling point with me.

Q. You recognize the value of advertising, do you not?

A. I have to say that, yes.

* * * * *

3187 By Mr. Kelaher:

Q. And do you tell the prospective applicant that in the consumer's mind Atlantic is identified with Goodyear and Goodyear is identified with Atlantic? Isn't that a selling point for an applicant for a potential Atlantic dealer to handle Goodyear TBA?

A. If this man is a man looking to me for advice, I would, because I am sold on it myself. But if it is a man who has been in business and has convictions, then he can probably do what he wanted to.

Q. But you do point up the fact that this advertising of Goodyear in Atlantic stations is of paramount importance as far as you are concerned?

A. No, I wouldn't say it is of paramount importance.

Q. Well, it is of importance?

A. It is a good way to sell.

Q. And it is a good way to sell a potential applicant for Atlantic station on the value of handling Goodyear TBA, isn't that correct?

A. Yes.

Q. You were present when Mr. Gaestel was testifying with respect to hours of operation, were you not?

A. Yes.

Q. And the dealers in your—I would like to ask you a couple of questions about that. Your dealers, the 3188 dealers in your territory receive the 11-point lease letter which has been identified as CX-88-B, and with which I think you are familiar; is that correct?

A. Yes, sir.

Q. As a promotable dealer salesman, you are on what has been referred to variously as a bonus or quota system in connection with the sale of Goodyear TBA; isn't that right?

A. Yes.

Q. And that, of course, is an incentive to you as a promotable dealer salesman to sell Goodyear TBA to Atlantic service stations; is it not?

A. Yes.

Q. At one time, as I understand your record, this chronological record with Atlantic, you were promoting the sale of Lee tires, Exide batteries, and the accessory products—

A. (Interposing.) That is right.

Q. (Continuing.) —sold by Atlantic at that time?

A. That is right.

Q. And at that time did you tell Atlantic dealers that

it was to their advantage to handle Lee tires, Exide batteries and so forth?

A. To their advantage. I don't understand what you mean. At that time I was selling Lee tires and tried to sell Lee tires, and I met resistance then with people who wanted to buy Goodyear, Firestone and something else.

Q. But you were attempting to promote the sale 3189 of Lee tires, Exide batteries and so forth?

A. Yes.

Q. Would it be fair to say that as a promotable dealer salesman that you would vigorously promote the sale of any brand of TBA which the Atlantic hierarchy sponsored? Would that be correct?

A. You say vigorously promote?

Q. You can strike the word "vigorously" if that is bothering you.

A. Yes, because I promote where I can.

Q. One question here about double-teaming with suppliers of products other than Goodyear. Are you referring to products like Du Pont?

A. Yes.

Q. And other name products?

A. Polishes.

Q. Which are in the Goodyear TBA line: is that correct?

A. Yes, sir.

Q. You gave some testimony with respect to Mr. Wyckoff and if my memory serves me correctly—and this may have been inadvertent on your part—but you did not describe all the products that you would see in his station. You said you would see Lee tires and Exide batteries.

A. Yes. I didn't go into accessories on anybody else.

Q. I am referring to tires.

3190 A. You may find a few Goodyear's.

Q. Well, he testified that he handles Goodyear tires.

A. He does.

Q. You didn't mention that on your direct. I just wanted to correct the record on that.

A. Yes. All right.

Q. And you weren't asked either if you went into Mr. Wyckoff's station, what identification you would see on his window and what sign you would see outdoors. Do you recall what you would see?

A. Yes, in the window you would find the current promotion.

Q. What brand? I am talking about the window valance.

A. You would find Goodyear.

Q. And the outdoor sign?

A. You would find a Goodyear sign on his light pole and you would find an Exide battery sign on his fence.

Q. On his fence?

A. Yes.

Q. But no Lee tires sign on his fence?

A. I believe he has a Lee tire sign on a tire rack right outside the bay door.

Q. Not on the fence, I think he testified.

A. Nothing on the fence, no, sir.

Q. You said, "Oh, yes, you would see a Goodyear window valance on his station." Are you implying that
3191 that would be on all of the Atlantic stations in your territory, where they have window valances?

A. Generally, yes.

Q. Do most of them have the big outdoor sign, the pole, Goodyear sign?

A. Yes.

Q. Isn't it true that the majority of your dealers stock Goodyear tires and stock Goodyear TBA?

Mr. Ballard: I would like to ask Mr. Kelaher to either

ask one question or ask them one at a time. That is two questions.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

Mr. Kelaher: If there is any question about it, I will just ask him if it isn't true—

Hearing Examiner Kolb (Interposing): Ask about the tires and then ask about the TBA.

The Witness: It is hard to answer it just that way.

Mr. Ballard: May I also request that Mr. Kelaher clarify the use of the word "stock". We have had this problem before.

Mr. Kelaher: Would you—

Mr. Ballard (Interposing): That you clarify the use of the word "stock". I believe your question is, do they stock Goodyear TBA—

3192 Hearing Examiner Kolb: (Interposing.) I think the witness knows what stocking is.

Mr. Kelaher: Counsel used the word "stock" in his question that I am going through here, and I think we know what he means.

The Witness: Well, when it comes to tires, to be honest with you, I have never figured whether the majority were Goodyear. I guess they would be.

By Mr. Kelaher:

Q. I beg your pardon?

A. I guess the majority of my dealers stock Goodyear tires. On batteries, it favors the other way. On accessories, they lose our identification on the shelf.

Q. On your accessories a lot are name-brands, like Du Pont, Johnson's and so on?

A. Jobbers sell; so, I can't identify them.

Q. Although you do have Goodyear fan belts and other products of that type with Goodyear on them?

A. Yes, sir, but the majority of my dealers stock Gates fan belts.

Q. But you do have some dealers who do stock Goodyear fan belts, I presume?

A. Yes.

Mr. Kelaher: No further questions.

Mr. Ballard: Will your Honor indulge me just a 3193 minute?

Redirect Examination by Mr. Ballard.

Q. This is just a question of straightening out the record, Mr. Carlson. On cross-examination, when Mr. Kelaher was discussing with you the process of interviewing a new applicant—

A. (Interposing.) Yes.

Q. (Continuing.) —I believe you stated that an experienced man or a man who had had some business in the service station before, in a service station before, can do what he wants. Did you mean by that to imply that an inexperienced man can't do what he wants?

A. No, what I meant to say was the inexperienced man generally looks to us for advice to get him started. As a salesman for Atlantic, I would naturally suggest the Goodyear line. He has a right to refuse that if he has a preference for something else. But the experienced dealer who has used some other TBA line and knows it is confident in it, maybe I can't sell him the Goodyear line right then.

Q. Mr. Carlson, let me give you a piece of paper, if I may, and a pencil. Would you figure out here, first, let me ask you one question. In 1957 did you receive incentive pay based on TBA sales to your stations?

A. Yes.

Q. Don't tell me how much it was.

3194 A. No.

Q. And in the year 1957 you were also paid a salary by the Atlantic Refining Company?

A. Oh, yes.

Q. Would you figure out here—keep the figures to yourself, if you would—the percentage that your TBA incentive pay bore to your salary in the year 1957?

Mr. Kelaher: Off the record a minute.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The Witness: It amounts to 2.3 percent.

Mr. Ballard: I have no further questions.

Mr. Kelaher: May I see it?

The Witness: Certainly.

(Document handed to counsel.)

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Did you in 1957 receive approximately $200 as your incentive pay for the sale of Goodyear tires, batteries, and accessories?

A. That is right.

3195 Mr. Kelaher: Is that all?

Mr. Ballard: That is all.

Recross Examination by Mr. Kelaher.

Q. Mr. Carlson, as I understand the incentive system, that means that you had an increase in your Goodyear TBA sales in your territory over the preceding year: is that correct?

A. That is correct.

Hearing Examiner Kolb: Is that all?

Mr. Kelaher: That is all.

Hearing Examiner Kolb: That is all, Mr. Carlson.

(The witness was excused.)

3197 Court Room No. 3
United States Court House
9th and Market Streets
Philadelphia, Pennsylvania

Met, pursuant to notice, at 10:00 o'clock a. m.

* * * * *

3198 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Before we begin our proceedings, I would like to express our regret at the passing of the distinguished counsel for respondent Atlantic, Mr. Thompson, since our last hearing.

Mr. Fred Ballard: I appreciate that very much indeed.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Fred Ballard: If your Honor please, before calling my first witness, I would like to explain, as I have to counsel supporting the complaint, that the witnesses we propose to call this morning are dealers and ex-dealers, from the Atlantic dealers and ex-dealers, from the Philadelphia area, who were mentioned in the testimony taken before your Honor in this city I guess in July of 1957.

I don't know whether any of the names will be familiar. It was June or July. But it may make it easier if you have that much background on them in any event.

Hearing Examiner Kolb: Was that July 7?

3199 Mr. Fred Ballard: They were during the hearing in June, 1957, at various places, and I think all the page references will be noted on the record as we get to them.

Hearing Examiner Kolb: All right.

EDWARD RINGENARY was called as a witness on behalf of the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Fred Ballard.

Q. Will you give the reporter your name and address?

A. Edward Ringenary, southeast corner of Board and Wallace is my business address.

Q. Mr. Ringenary, you are currently an Atlantic dealer, is that right?

A. Yes, sir.

Q. And I believe you lease the station at Broad and Wallace Streets in Philadelphia?

A. I do.

Q. How long approximately have you had that station?

A. It will be six years in February.

Q. In other words, you took that station in February—

A. February 17, 1953.

Q. Previously, did you have another Atlantic station under lease?

A. I had two others.

3200 Q. Where were they?

A. Glenwood and Cambria, I think, from 1939 to 1942, and after the war, from '45 to '52. I was at Fifth and Spring Garden.

Q. Mr. Ringenary, speaking of TBA, which, of course, means tires, batteries, and accessories, do you handle and sell tires, batteries, and accessories at your present station?

A. I certainly do.

Q. Where do you buy the greater part of those tires, batteries, and accessories?

A. From Elwood Kaiser.

Q. He, of course, is an Atlantic supply man, a Goodyear supply point?

A. Yes.

Q. What brand of tires and batteries does he carry?

A. Goodyear.

Q. Now, during—have you bought from him during the entire time you were at the Broad and Wallace Street station?

A. You mean was he a supplier then?

Q. Yes. Have you been buying during that period?

A. Yes.

Q. When you were at Fifth and Spring Garden Streets, did you buy from Elwood Kaiser?

A. Yes.

Q. During that time, what brand of tires was he carrying?

3201 A. Lee and Exide, and then they went Goodyear.

Q. Mr. Ringenary, do you also buy some TBA from other sources than Elwood Kaiser?

A. Sure.

Mr. Kelaher: Objection, your Honor, to the form of the question.

Hearing Examiner Kolb: The objection will be overruled. It is a preliminary question.

By Mr. Fred Ballard:

Q. You may answer.

A. Yes. I buy outside, from other suppliers.

Q. Could you name one or two?

A. Gaul-Derr & Shearer; Kit Auto Parts; Shankin Brothers; Broad Motors; Harry Crouse; Oldsmobile; Scott Smith Cadillac; any other automobile agency, too.

Q. Now, the things you buy from the automobile agencies, are they parts for the automobiles?

A. Yes, parts.

Q. We are interested primarily in tires, batteries, and accessories, and not so much parts.

A. Well, I buy other tires at J. P. Burke. That is U. S. Royal dealer. I get most of my recapping done there.

Q. Now, Mr. Ringenary, referring to the merchandise that you buy from these other suppliers, which you just testified about, do you display those in your station?

3202 A. Certainly.

Q. Are these visible there for the Atlantic salesman to see?

A. Right on the shelf.

Q. Has he ever told you to stop buying them?

A. No.

Q. Has he ever told you to remove them from your station?

A. No.

Q. Or to hide them?

A. No, sir.

Mr. Fred Ballard: Off the record.

(Discussion off the record.)

By Mr. Fred Ballard:

Q. Mr. Ringenary, do you know a salesman named Al Vick, from Philadelphia, a wholesale distributor?

A. Yes, sir.

Q. Excuse me, John J. Vick, from Philadelphia, a wholesale distributor.

A. I always knew him by Vick. I didn't know the first name.

Q. Now, June 25th of last year, Mr. Vick testified in these same proceedings, and he said, at page 711 of the transcript—the question was asked of Mr. Vick on page 710, the Hearing Examiner said that "there is pending a question as to instances. We have stopped him from going

ahead because he hasn't stated the definiteness of it, and he is now attempting to do that."

Mr. Vick then went ahead for a while and he finally
3203 testified in these words, and the words I am now about to use are Mr. Vick's. He said, "Another instance, I called on Mr. Ed Ringenary, Broad and Walnut Streets, and this was about two months ago"—that would have been in April 1957—"I called on him occasionally, and I asked him to buy Prestone, Exide, Kendall, and he says, 'Are you out of your mind? Why, they would cancel my lease immediately.' He says, 'They even have spooks in the territory.' I said, 'What do you mean by spooks?' He says, 'Why they have fellows coming in here and trying to offer merchandise at lower prices, just to see if you would buy from someone else.' He again stated he would even testify, if called, against the Atlantic Refining Company. He again wishes us a lot of luck and wished we would organize to fight against Atlantic, against the pressure of their purchases."

Mr. Ringenary, do you recall any such conversation as that?

A. Definitely not.

Q. Do you feel that Atlantic Refining would cancel your lease if you brought products from Mr. Vick?

A. I do buy outside and they don't cancel it.

Q. Is it your understanding that Atlantic has spooks in the territory?

A. Well, I never used that expression. I don't know where he got it.

3204 Q. Do you think Atlantic has people coming into your station, trying to offer merchandise at lower prices, to see if you would buy from them?

A. No.

Q. Did you ever tell Mr. Vick or anybody else that you wished he would organize to fight against Atlantic?

A. Absolutely not.

Mr. Fred Ballard: I have no further questions of Mr. Ringenary, but Mr. Kelaher, representing the Federal Trade Commission, will probably have some questions to ask you.

Cross-Examination by Mr. Kelaher.

Q. Mr. Ringenary, when you were at your first station, Glenwood and Cambria, was TBA an important factor in those days?

A. Well, I don't think Kaiser had the variety he has now. I don't know what you mean by "important". I think it was important with me.

Q. Was it as important then as it is, as it has been since World War II, insofar as income is concerned?

A. It was with me.

Q. You have always been—

A. (Interposing.) With me it was always important.

Q. Now, do I understand from the answer you gave
3205 me that beginning in 1939 you began to purchase from Mr. Kaiser, TBA?

A. Yes.

Q. And at that time was he handling Lee tires, Exide batteries, and a line of accessories?

A. I think he was. I wouldn't want to be—I believe it was Lee and Exide though.

Q. What caused you to purchase from Mr. Kaiser back at the outset of your career as an Atlantic dealer?

A. We always got service.

Q. Was that part of the Atlantic TBA set-up at that time?

A. I don't believe they had a set-up of TBA at that time. I would have to look back at my records. I don't think so.

Q. At that time was Mr. Kaiser also an Atlantic service station operator?

A. Yes.

Q. Was he recommended to you by Atlantic?

A. That I don't remember either.

Q. Now, going to your next station, Fifth and Spring Garden, was that station a larger station or more important station than the first one?

A. Yes, sir.

Q. Did that represent somewhat of a promotion for you in a sense?

A. Well, I came back after the war, in 1945, and I went to the company, and they offered me that spot, and I accepted it.

3206 Q. Now, in the beginning of 1945, at Fifth and Spring Garden, what TBA did you carry?

A. We had Lee and Exide.

Q. At that time did you also resume purchasing from Elwood Kaiser?

A. Yes, sir.

Q. At that time did he handle a line of accessories?

A. He had some items.

Q. He had expanded his line to some extent?

A. Yes.

Q. Did he handle Thermoid fanbelts and other products?

A. Well, I wouldn't want to name the products. I forget.

Q. Do you remember some of the brand names he handled?

A. I believe it was Thermoid.

Q. Now, how long did you continue to purchase Lee tires, Exide batteries, and accessories from Mr. Kaiser?

A. I continued until he switched to Goodyear.

Q. And that was, the record shows in this cases on or about March 1951; is that correct?

A. Yes.

Q. Now, in or about March 1951 did you attend a meeting of Atlantic dealers concerning the change-over to Goodyear TBA?

A. I believe they had a dinner—I believe they had a luncheon meeting at the Ben Franklin Hotel. I am not positive.

Q. At that meeting was it announced that Atlantic 3207 was going to sponsor Goodyear TBA?

A. I don't remember that.

Q. Do you recall any of the circumstances leading up to your change-over from Lee, Exide, etc., to Goodyear TBA line?

A. May I have that question again please?

(The reporter read the pending question.)

The Witness: I don't recall any, because that is all with Kaiser, whatever I would take from Kaiser.

By Mr. Kelaher:

Q. Isn't it true that you were asked to sign a Goodyear associate dealer contract at that time, do you recall that?

A. No, I don't.

Q. Do you know whether or not you did sign such a contract?

A. I couldn't swear if I did or not.

Q. Well, the record in this case shows you did, for your information.

A. Well, I certainly don't remember it.

Q. Now, I am referring to CX-160-A and -F, for the record.

At the time of the change-over to Goodyear TBA, was a call made on you by an Atlantic salesman and a Goodyear salesman to discuss the matter with you?

A. I don't recall that either. I mean that is so far back.

Q. This is only 1951 I am talking aout.

A. That is seven years.

Q. At that time, prior to the change-over, what
3208 service station identification did you have in your station? I am talking about window valances and outdoor signs.

A. I think the only thing I had was an Exide clock, if I remember correctly.

Q. Did you have a Lee sign of any kind?

A. I don't remember. I believe we had a Lee sign nailed on the fence down at the far corner. I think that is all I had.

Q. Now, after the change-over to Goodyear TBA, was your service station identification changed to Goodyear? Was a window valance put in the station?

A. I think so, yes.

Q. Was a Goodyear sign put up outside the station?

A. I don't think they put any Goodyear signs at my Fifth Street station.

Q. Didn't you change to Goodyear TBA because Atlantic began to sponsor Goodyear TBA in 1951?

A. I would sell anything Elwood Kaiser would sell.

Q. And he was definitely a part of the Atlantic set-up with respect to TBA, wasn't he?

Mr. Fred Ballard: I object to that question, your Honor.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

Hearing Examiner Kolb: Objection overruled.

3209 The Witness: I really don't know what his set-up was, Atlantic, or any sort of contract, or anything else.

By Mr. Kelaher:

Q. Isn't it a fact that Elwood Kaiser was a designated supply point in the Atlantic-Goodyear TBA program?

Mr. Fred Ballard: I object again, your Honor. There is no showing this witness knows what the designated supply point in the Goodyear program is.

Hearing Examiner Kolb: He can testify to what he knows.

The Witness: I don't know. I would buy anything he sold. I don't know who tells him what to sell, but I would buy it.

By Mr. Kelaher:

Q. Isn't it a fact that Atlantic told you in 1951 that Elwood Kaiser was your supply point for Goodyear TBA?

A. I never recall any time that Atlantic told me anything that anyone was my supplier.

Q. You have no recollection of that?

A. No, sir.

Q. Now, in 1953, yo umoved to your present location at Broad and Wallace?

A. Yes, yes.

Q. Is that a larger station than the Fifth and Spring Garden?

A. Yes, sir.

3210 Q. And the location is much better, is it not?

A. In some respects.

Q. Broad and Walnut is right in the heart of the downtown area.

A. Broad and Wallace, you mean?

Q. Yes.

A. Yes, Wallace, 600 North on Broad Street.

Q. But that was, or is a larger station than the previous station?

A. Yes, sir.

Q. And does that in a sense represent a promotion?

A. Well, I hope it does.

Q. Now, when you went into the Broad and Wallace station, were there Goodyear window signs up and a Goodyear sign outside?

A. No, the whole station was torn down and rebuilt, when I took it over.

Q. So it was a newly built station?

A. I worked out of a shack.

Q. And then when the station was built, what identification was on the station? Was it Goodyear window valances?

A. Oh, yes, Goodyear.

3211 Q. And Goodyear outdoor signs?

A. Yes, but I have taken them down.

Q. You have taken the outdoor sign down?

A. (Nodding yes.)

Q. Why was that?

A. I think I have better signs, I took them down several years ago. I use them for oil since, anything I run a special oil.

Q. But you have the Goodyear window valance?

A. Yes.

Q. Now, who became—maybe you already testified on this—Mr. Kaiser is still your Goodyear TBA supplier?

A. Yes, sir.

Q. So reviewing your testimony, your principal supplier through all of your years as an Atlantic dealer has been Elwood Kaiser?

A. Yes, sir.

Q. Now you stated on direct examination that you also purchased some TBA from other jobbers besides Kaiser. Do you recall that testimony?

A. Yes.

Q. What do you purchase from Broad Motors, for example, or was that included in your answer with respect to hard parts?

A. Well, I would purchase anything that we may
3212 be short of, because we can run across the street and buy it.

Q. Do you purchase tires from them?

A. No, sir.

Q. Batteries?

A. No, sir.

Q. What type of accessories do you purchase?

A. Anything that would be a genuine part for Ford cars, or well maybe a radiator hose, if I was out of it, we could run across and get it.

Q. Is it mostly what are known in the trade as hard parts?

A. Yes, genuine parts; yes.

Q. Now you also mentioned a firm whose first name is Shankin. I missed the last part of it. Do you purchase tires from Shankin?

A. No.

Q. Batteries?

A. No.

Q. Do you purchase hard parts from Shankin?

A. Well, the accessories part of it I purchase from him would be like when he would have a special on Rizlone or CD2 or something like that.

Q. What is Rizlone?

A. It is a motor oil additive.

Q. And CD2 is also?

A. The same, yes.

3213 Q. So your purchases are limited from Shankin?

A. And then I get just about all my janitorial supplies from him, cleaning supplies, and that is basically what he is interested in selling. And I also get my. I get my brake fluid off him, too.

Q. Now Kitt Auto Parts, do you buy tires from him?

A. No, he doesn't sell tires.

Q. Batteries?

A. No.

Q. What do you buy from Kitt?

A. Just parts.

Q. Hard parts again?

A. Yes.

Q. That gets us down with respect to TBA to Gaul, Derr & Shaerer. Do you buy tires from him?

A. No.

Q. Batteries?

A. The only time I would ever have an occasion, it would be a very odd battery, that Kaiser wouldn't have, some odd truck or maybe some motor boat or yacht battery or something.

Q. So it would be just sporadic purchases?

A. Yes, in that line. But I bought a lot of Prestone from him.

Q. Now, what else do you buy from that firm?

3214 A. I do the same thing with Gaul Derr & Shaerer, like I said about—if Kaiser don't have it, I will go there—when I run out of Prestone, I will go there, and I get all my—the same thing with mufflers and tail pipes, if Kaiser don't have it, I get it there.

Q. So you just purchase on a fill-in basis from Gaul Derr & Shaerer?

A. On some items.

Q. And otherwise you purchase nothing from him, is that right?

A. I wouldn't say several hundred dollars a month is nothing.

Q. Maybe we are not—I am not following your answer. Let's confine this to accessories. Now do you just purchase what are known in the trade as accessories, on a fill-in basis from Gaul Derr and Shaerer?

A. What are you going to class as accessories, motor oil additives or—

Q. Well, fanbelts, hose, chemicals, polishes.

A. We get fanbelts, hoses, motor oil additives, like Rizlone, when they have a good deal; Prestone, tail pipes and mufflers, which is an accessory.

Q. However, as I understood your testimony, your primary TBA supplier is Mr. Kaiser?

A. Yes, sir.

Q. Do you attend Atlantic dealers meetings from time to time?

3215 A. When it is an advantage to me, I go.

Q. Now at those meetings, have you heard Goodyear TBA discussed by Atlantic?

A. Well, when they would come out with a new item to promote or something along those lines.

Q. And are there Goodyear personnel present at such meetings from time to time?

A. It has been a long time since I attended one where there was. I don't recall.

Q. Now, with respect to the testimony of Mr. Vick, the Philadelphia wholesale distributors, Mr. Vick has called on you from time to time, hasn't he, over the years?

A. Well, up until the time this letter—when was that letter dated?

Q. Which letter are you referring to?

A. His testimony that was just read here, was that June '57 or something?

Q. June '57.

A. Yes, up to that time I used to see him about every week, and he didn't call on me to sell, he would leave his car to go across the street to eat.

Q. And isn't it true that he solicited your business for such items as Prestone and Exide batteries?

A. I don't ever recall.

Q. Did he call on you for a number of years and

3216 never asked you to buy anything?

A. I did buy Turtle wax from him one time.

Q. So he did solicit your business from time to time?

A. I guess you would say he did.

Q. When did you first learn that he had testified about you in this case?

A. Last winter.

Q. Well, the testimony was in June 1957, and you learned that winter he had testified about you?

A. I didn't know he testified. I heard he wrote a letter about me.

Q. And now after that—

A. And it was a surprise to me, because I had wondered why he stopped coming in to leave his car to go eat.

Q. Did you ever have any conversations with him after that time?

A. No, he has ignored me, avoided me, in fact, and avoided men of mine, and we wondered why.

Q. Was any—was this matter called to your attention by anyone, after his testimony in June '57?

A. Well, like I said, I was told he wrote a letter, I was told that last spring by our lawyers.

Q. By your lawyers, you mean lawyers for—

A. Mr. Ballard.

I didn't know he had testified.

3217 Q. Now, are you stating that you never had—let me ask you this: Have you ever had any conversations with Mr. Vick concerning your purchases of Goodyear TBA?

A. To my knowledge, I didn't. This thing here today is all new to me.

Q. This is the first time—you say that over the years—how many years have you known Mr. Vick?

A. Well, only since I think I went to Broad and Wallace.

Q. And you have been there since 19—

A. 1953.

Q. So he has been calling on you, at the time of his testimony, has been calling on you for approximately two years—or four years, is that right? And you say during

all that time you never discussed your purchases of Goodyear TBA with him?

A. Absolutely not.

Q. Did you ever give as a reason for not purchasing from him the fact that you were buying primarily from Mr. Kaiser?

A. As a dealer, as a business man, we may often say "I am satisfied where I am buying, I don't want to bother with anyone else."

Q. Isn't it true what you began to say in your answer, as an Atlantic dealer you were buying from Mr. Kaiser? Is that what you told him?

A. Not necessarily, No.

3218 Q. Not necessarily, but it is possible?

A. Well, I mean Atlantic is fresh in your mind here. As an independent business man, I feel I can buy anywhere, and I think I do.

Q. Well, was an independent business man, you say you can buy anywhere, but during—your testimony appears that during the 19 years as Atlantic dealer, you followed the Atlantic TBA program down the line?

A. Why should I change? If I am satisfied with the service, price, and I am making money?

Q. Did Mr. Vick ever call your attention to the fact that his prices on Prestone polishes were lower than Mr. Kaiser's price—on any polishes? I think his testimony was as to Johnson's polishes. Do you carry those?

A. Well, Goodyear carries it, but I don't like it, I don't carry it.

Q. Did Mr. Vick ever say, did he ever indicate his prices were lower than the prices of certain chemicals in the Goodyea line?

A. Well, he might have said so. I never asked him to prove it. I couldn't say if they were or not.

Q. But if he did, you would still have purchased from Mr. Kaiser, is that right?

A. Definitely.

Mr. Kelaher: No further questions.

3219 *Redirect Examination by Mr. Fred Ballard.*

Q. Have you found, Mr. Ringenary, over the years, Mr. Kaiser's prices to be competitive with those of other TBA suppliers?

A. He over-extends himself on being competitive. All we need to do is call him and tell him that we were offered something, and he will definitely look into it.

Q. Does he meet the price then, if he finds—

A. If it is a legitimate jobber, he will meet the price, if it is not just a peddler that bought something at a fire sale, he will meet the price.

Q. Do you find his delivery and service satisfactory?

A. There is none better.

Mr. Fred Ballard: I don't think I have any more questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

ALFRED GODINO was called as a witness for the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name to the reporter.

The Witness: Alfred Godino.

3220 *Direct Examination by Mr. Francis Ballard.*

Q. Will you give us your address?

A. 37 Madison Avenue, Philadelphia 27, Pennsylvania.

Q. Mr. Godwin, you presently operate a station for Sinclair, is that right?

A. Yes.

Q. Specifically, with reference to June 1952, through February 1955, did you have an Atlantic station?

A. Yes, I did.

Q. And were you a lessee in the Atlantic station?

A. Yes.

Q. Could you tell us where it was located?

A. Belmont and Jefferson Streets, Belmont Hills.

Q. That is what is also known as Manayunk?

A. West Manayunk.

Q. You left the Atlantic station in February, 1955?

A. Yes.

Q. When did you start with Sinclair?

A. June of 1957.

Q. And what did you do between February of 1955, and June of 1957?

A. I operated an Esso station at Levering Mill Road and Mill Road and Belmont Avenue. Bala-Cynwyd.

Q. Mr. Godino, those three stations that you have

3221 mentioned are all very close to one another?

A. Yes, they are.

Q. Within a question of blocks?

A. I would say so.

Q. Now I am going to ask you a series of questions which goes only to the time you were with Atlantic, has nothing to do with the Esso station or Sinclair station. While you were with Atlantic, in Belmont Hills there, what type of tires did you stock?

A. Goodyear tires, and Lee tires.

Q. Where did you buy the Lee tires?

A. From the Lee Company, in Bryn Mawr.

Q. The Goodyear tires you got from Ernie Miller?

A. Yes.

Q. And he was the Atlantic supply man?

A. Yes.

Q. Where did you get your batteries?

A. Well, I brought them from him, also.

Q. From Miller?

A. Yes, and some from another Goodyear distributor.

Q. What was the name of that other Goodyear distributor?

A. John Gabriel.

Q. How about the accessories, where did you get those?

A. Well, I bought accessories from Miller, and from Maxwell Auto Parts Company, and Aviation Auto Parts.

3222 Q. Pretty generally, from several houses?

A. Yes.

Q. Specifically, Mr. Godino, with reference to those Lee tires you mentioned, where did you store them?

A. On the shelf, with the rest of the tires.

Q. Were they openly displayed?

A. Yes.

Q. Did Atlantic ever criticize you about about carrying those Lee tires?

A. No.

Q. Did they ever tell you to stop buying them or to hide them?

A. No.

Q. Did they tell you to remove them from the station?

A. No.

Q. Mr. Godino, do you know an outfit called Suburban Auto Parts?

A. Yes, I know the name of the company.

Q. Do you know a fellow named George Stanley Drew Walker?

A. No, I don't, never met the man, I wouldn't know him if I saw him.

Q. You stated, sir, you do not know George Stanley Drew Walker?

A. No.

Q. He testified, in this proceeding, in June of 1957 3223 —that would be a little over 18 months ago—and he stated in his testimony that he was a salesman for this Suburban Auto Parts, and that is the concern you know?

A. (Nodding Yes.)

Q. Now, sir, I am going to read to you a question and answer from the record and this is, for the record, at page 1,034. These are questions which were put to Mr. Walker by the attorneys, and his answers.

"Question: I am asking you for a specific statement by a specific operator. Can you recall any other Atlantic operator that made this specific statement to you?"

To that question Mr. Walker answered:

"I can recall some years ago, when Al Godino was operating the station on Belmont Avenue, in Belmont Hills, saying he couldn't buy accessories from you, even if he could get them cheaper."

And then the attorney asked him this question:

"Question: And did he tell you why he couldn't buy them from you?"

And Mr. Walker answered:

"Because he said that is his contract with Atlantic, he would have to get these accessories through their approved source."

Now, Mr. Godino, you say you do not know Mr. George Stanley Drew Walker?

A. No, I don't know him.

Q. Do you know any other salesman for Suburban Auto Parts?

A. No.

Q. Did you ever make the statement which was attributed here to you to any salesman for Suburban Auto Parts?

A. No, I don't remember. It has been so long ago and so many salesmen has come in the place. I don't remember. I don't think I did. I am almost sure I didn't.

Q. Let's not worry about that as much as this question: Did you, in fact, have a contract with the Atlantic Refining Company that you would buy your accessories through the approved source?

A. Oh, no, I didn't.

Q. Were you, in fact, free to buy accessories wherever you chose?

A. Yes, I was.

Mr. Francis Ballard: That is all.

Cross-Examination by Mr. Kelaher.

Q. Mr. Godino, you went into the Atlantic station in June 1952 and remained there until February 1955 according to your testimony. Is that correct?

A. Yes, sir.

Q. When you went into the Atlantic station, why did you begin to purchase TBA from Ernie Miller?

A. Why did I begin?

3226 Q. Yes.

A. Well, he was our distributor.

Q. He was the Atlantic distributor?

A. That is right.

Q. And wasn't and didn't an Atlantic salesman or representative acquaint you with the fact that Mr. Miller was your supply point, that you would buy your TBA from him?

A. Well, he was our distributor and we were supposed to buy TBA off him, batteries, accessories, and things like that.

Q. And that is what you did?

A. Not all of it. I bought some outside.

Q. As I understand your testimony on direct examination, you bought tires, batteries, and accessories from Miller, is that right?

A. Yes, I did.

Q. And wasn't Mr. Miller your principal TBA supplier?

A. Yes, he was.

Q. When you went into your Atlantic station, were the Goodyear window valances already up and Goodyear outdoor signs already up in your station?

A. When I went where?

Q. Into the Atlantic station in '52.

A. Yes, they were.

Q. Now, I would like to direct your attention to Mr. Walker's testimony again. According to Mr. Walker's

3227 testimony, he called on you in the early part of 1953 when he first started on the job. Now, isn't it possible that he may have called on you at that time to solicit your business?

A. Yes, it is possible, but I don't remember.

Q. You just don't remember him. Now, isn't it true that there were many jobber salesmen who called on you while you were at the Atlantic station?

A. Yes.

Q. And you don't remember all those either, do you?

A. I remember the ones I purchased from, like Maxwell, and Aviation. I remember those people, those I did business with.

Q. But you don't remember the ones you didn't purchase from, do you?

A. They might have come there and wanted me to purchase from them, and I told them I wasn't interested or had a couple of suppliers to supply me.

Q. And the fact remains there were jobber salesmen in addition to Mr. Walker whom you don't remember?

A. There were salesmen coming in practically every day trying to sell you something.

Q. So it is entirely possible he did call on you?

A. Yes, but I don't remember.

3228 By Mr. Kelaher:

Q. Is it your testimony that you do not recall sign-
3229 ing a contract concerning the purchase of accessories with an approved, from an approved source?

Mr. Francis Ballard: I object to the question. Once again his testimony is that he did not sign a contract with Atlantic Refining Company, that he buy accessories through the approved source.

Hearing Examiner Kolb: You can ask him whether he remembers that or not. The objection will be overruled. It is cross-examination.

The Witness: I remember signing a lease for the building. That is all.

By Mr. Kelaher:

Q. Do you remember signing a Goodyear associate dealer contract?

A. No, I don't.

Q. Now, it is entirely possible you signed such a contract, is it?

A. That is too far ack for me to remember now. I don't know whether I did or not. I know I signed a lease for the service station.

Mr. Kelaher: May we have a minute until I check the record, your Honor?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Mr. Godino, I show you Commission's Exhibit 3230 44-E, which is a Goodyear associate dealer agreement, with a space for a dealer's signature, and ask you if you recall signing any such agreement?

A. No, I don't. I don't recall at all.

Q. It is possible, however, you may have signed an agreement of this type?

A. I might have, but I don't remember.

Mr. Kelaher: No further questions.

Mr. Francis Ballard: Thank you sir.

(Witness excused.)

Mr. Fred Ballard: Your Honor, could we have a short recess at this time?

Hearing Examiner Kolb: Yes.

(Short recess.)

Hearing Examiner Kolb: The hearing will be in order.

ROBERT C. PROVOST was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Robert C. Provost, 116 Apel Avenue, Oreland, Pennsylvania.

3231 *Direct Examination by Mr. Fred Ballard.*

Q. Mr. Provost, you are, I believe, an Atlantic lessee; is that right?

A. Yes, sir.

Q. What is the location of your service station?

A. Hunting Park and Whitaker, Philadelphia.

Q. How long have you been in that station, sir?

A. Five years, this July.

Before you went into that station, had you had any experience in operating a service station?

A. No, sir.

Q. Did you go to the Atlantic dealer training school before you went into that station?

A. Yes.

Q. In that school did they tell you that Atlantic sponsored the Goodyear brand of tires, batteries, and accessories?

A. Yes, sir.

Q. When you came out of training school, and went to this station, did your Atlantic salesman introduce you to a Goodyear supplier of TBA?

A. Yes, he did.

Q. What was his name?

A. Harvey George.

Q. Have you bought TBA from that supplier since?

3232 A. Ever since then.

Q. Do you find Mr. George's service is satisfactory?

A. Very Good.

Q. Prices?

A. Very fair.

Q. How about his credit terms?

A. Excellent.

Q. Have you on occasion bought TBA from other suppliers?

A. Yes, I have.

Q. Could you name one of them?

A. Target Auto Supply.

Q. Has Atlantic ever criticized you for buying TBA from other suppliers?

A. No, sir.

Q. Do you feel you can buy TBA wherever you want?

A. Yes, I do.

Q. Do you know a supplier named Philadelphia Wholesale Distributors?

A. I know of them.

Q. Has a salesman from that supplier ever called on you?

A. Yes, he did.

Q. Do you know whether the salesman's name was John J. Vick?

A. I do not know.

Q. Now, as I have previously told you, Mr. Vick, a salesman from that supply house, testified in these proceed-
3233 ings last summer. It was June 25 that he testified here. He was questioned by a lawyer representing the Federal Trade Commission, and the question was, "Do you recall any other instances?" And this is the answer Mr. Vick gave, and I am using Mr. Vick's words here: "Mr. Bob Provost, Sr., Whitaker and Hunting Park Avenue"—

that is you—he says, "I went in to offer him or solicit him DuPont anti-freeze business, and he says, 'What do you want, the roof to cave in on me. I would lose my lease immediately.'"

Now, sir, do you feel you would lost your lease if you bought DuPont anti-freeze from Philadelphia Wholesale Distributors?

A. I don't know whether I would lose my lease if I bought from Philadelphia Wholesale. However, I have been buying for about four years DuPont anti-freeze.

Q. Who have you been buying it from?

A. This year we bought it off of Auto Gear.

Q. Auto Gear and Parts; is that the full name?

A. Yes, sir.

Q. Now, Vick went on and says: "So, I asked him if he did any business with the jobbers, and he says, 'Very little'." Now, this is what Vick is quoting you as saying: "'The only time I give any business to a jobber is when I am out of a certain part that Atlantic doesn't carry and I will call on a jobber'."

3234 Is that substantially your business practice?

A. No.

Q. You do give—

A. (Interposing.) Not substantially, no. If I might say, we bought our anti-freeze off Gaul-Derr & Shearer last year. We didn't even buy any off Atlantic. Atlantic was selling Prestone last year.

Mr. Fred Ballard: Will you note for the record that the testimony to which I referred is on page 713 of the record.

I have no further questions, Mr. Provost.

Cross-Examination by Mr. Kelaher.

Q. Mr. Provost, you began your station operation as an Atlantic lessee dealer in July 53?

A. Yes, sir.

Q. I am not clear on whether you are still a lessee dealer or not.

A. I am still a dealer, yes, sir.

Q. Now, at the time you wanted to become an Atlantic dealer, were you contacted or did you contact someone in the Atlantic organization?

A. No, I went to Atlantic Refining Company themselves, 260 South Broad Street, and asked for the outline on getting a station.

3235 Q. And then were you screened along the line by various Atlantic personnel?

A. Well, all I know is they got me a job to wait, to cover the time when the next training class would start, and I worked at an Atlantic station for about four months and then I went to dealer school.

Q. Prior to that time, or about the time—let's take it up to the training school: You were advised that Atlantic was sponsoring the Goodyear TBA line, were you not?

A. Up until the time I went to training school?

Q. In the school.

A. In the training school, yes, I think at the end of the last week they told us they were sponsoring Goodyear TBA.

Q. Now, when you moved into your station, did you move into a new station or did you replace another dealer?

A. I moved into a new station.

Q. When you moved in, did they already have the Goodyear window signs up, do you recall, or did they come later?

A. Honestly, I don't remember.

Q. They are there now, are they not?

A. I know the window trim wasn't up, because I remember I had to take the window display out after I was in. I don't know about the sign outside. I don't think it was, but I can't say for sure.

Q. They are up there now?

3236 A. Yes.

Q. And they were placed in there shortly after you arrived, if they weren't there at the time?

A. Yes, sir.

Q. When you were told that you were going to be the dealer at your station location, weren't you also told that your Goodyear TBA supply point would be Harvey George; is that correct?

A. No, I wasn't told. I was introduced and they helped me with the credit out with Harvey George. I went to see him.

Q. You were introduced by an Atlantic salesman?

A. Yes, sir.

Q. Who was he?

A. Mr. Hoffman, John Hoffman.

Q. Is he still your Atlantic salesman?

A. No.

Q. Who is your present salesman?

A. Douglas MacDonald.

Q. Now, at the time you entered the station, did you have any, make any loans from Atlantic?

A. Just temporarily, and then I made—it is an equipment contract for merchandise that was a very short time —about two weeks.

Q. You borrowed some money—

A. (Interposing.) They lent me money for one year for equipment. That was the loan. But not for TBA.

3237 After Harvey George stocked the station, there was

about a two-week time of credit, straightened out after that.

Q. But your initial stock was from Harvey George of TBA?

A. Yes.

Q. And since that time you have purchased tires from Harvey George; is that correct? Goodyear tires?

A. Yes, sir.

Q. Are all of your tires purchased from Harvey George?

A. No, sir.

Q. Do you purchase on a fill-in basis from others?

A. We don't purchase any recap merchandise from Goodyear.

Q. Other than recap.

A. Strictly from Harvey George.

Q. Your new tires are from him stirctly?

A. Yes.

Q. And are your batteries strictly from Harvey George?

A. Yes, sir.

Q. And your principal accessories' supplier is Harvey George; is that correct?

A. Chemical-wise, I would say.

Q. Do you purchase Goodyear fanbelts?

A. Yes.

Q. And other items in addition to chemicals?

A. Hoses, tires, tubes, batteries.

Q. Now, with reference to Philadelphia Wholesale
3238 Distributors, you testified that you do recall a salesman from that company calling on you?

A. Yes, I do recall the salesman.

Q. And did he give you his card or mention his name?

A. He probably did, but I don't remember the man's name.

Q. Could you describe him?

A. No, sir.

Q. Isn't it a fact that the salesman from Philadelphia Wholesale Distributors solicited your DuPont anti-freeze business?

A. I don't really remember what we talked about at that time. I just don't remember. I do believe he was there, I remember some of the conversation, we discussed it with the attorney.

Q. And let's have the conversation. You say you discussed this—

A. (Interposing.) Something about blowing the roof off the place, because that is about all I remember, because that is pretty well a stock answer of mine.

Q. So you did make that statement to him?

A. I probably did say that to him.

Q. You probably did say to him, "What do you want, the roof to cave in on me?"

A. I probably did.

Q. And "I would lose my lease immediately"?

A. I don't know whether I said that.

3239 Q. But you could have?

A. I don't think I said that. I might have had a bad day and wanted to get rid of him, but I don't think I did.

Q. Apparently you have said it on occasions?

A. No, sir.

Q. Didn't he also offer you a Johnson's polish at a price $4.00 per case lower than the price of Harvey George? Do you recall that?

A. I don't remember.

Q. And isn't it also true, from your testimony, that your principal TBA supplier is Harvey George?

A. Absolutely.

Mr. Kelaher: No further questions.

Recross Examination by Mr. Fred Ballard.

Q. On occasion has Harvey George extended credit to you?

A. The first year I was in business I got in a little hot water, lost a lot of money, and he sure did, he helped me over the winter.

Q. Would you mind giving the amount he extended at that time?

A. It was roughly in the neighborhood of about $1200 at that time. It must have been the following January, after I started. I had chains, snow tires, and things like that I had not moved out, and he said, "Don't worry about
3240 them, keep them and try to move them, and if you do, okay, and if you don't, okay, too."

Mr. Fred Ballard: I have no further questions.

Mr. Kelaher: Nothing further.

Hearing Examiner Kolb: That is all.

(Witness excused.)

3241 DONALD ELKO was called as a witness on behalf of the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Will you give the reporter your name and address.

The Witness: Donald Elko, 1133 String Street, Sharon Hill.

Direct Examination by Mr. Francis Ballard.

Q. Mr. Elko, you are an Atlantic lessee?

A. Right.

Q. Could you tell the Examiner where your station is?

A. It is at Chester Pike and Clifton Avenue, Sharon Hill.

Q. When did you go into that station?

A. January 21, 1956.

Q. '56 or '57?

A. '57, I am sorry.

Q. Am I right in saying that is the only station that you have operated, as a lessee for Atlantic?

A. Yes, sir.

Q. You have worked in other stations before as an employee?

A. Yes, sir.

Q. Before you went into that station, or when you
3242 took it over, did you go up to a training school with Atlantic Refining?

A. Yes.

Q. How long was that school?

A. Five weeks.

Q. And actually I think it is true that when you were in the school, you were also in the station?

A. Yes.

Q. Now, did anybody from Atlantic suggest to you that Ed Paris was the Goodyear distributor in your area?

A. I already knew that before I took the station. He is a cousin of mine.

Q. And had you worked as an employee in this very same station you now have?

A. Yes, the fellow that had it just before I took over.

Q. Ed Paris is your source of TBA?

A. Yes, sir.

Q. How is he on price?

A. As good as the others.

Q. How about his credit?

A. Very good.

Q. Mr. Elko, can we stop there for a moment—don't

answer this question unless you choose to—but you have had a good deal of credit from Mr. Paris?

A. Very good, large sum.

3243 Q. It was quite a large sum?

A. Quite a few thousand dollars.

Q. How about Mr. Paris' service?

A. Very good.

Q. His delivery?

A. Very good.

Q. You are happy with him?

A. Yes, sir.

Mr. Kelaher: Your Honor, I am going to permit this cross-examination to go on, but I think when we get along a little further, I will start objecting.

Hearing Examiner Kolb: Try not to lead the witness too much.

Mr. Francis Ballard: All right, sir.

By Mr. Francis Ballard:

Q. Do you, or do you not, buy tires, batteries, and accessories, from persons other than Mr. Paris?

A. I have bought, yes.

Q. Could you name the companies from whom you have bought, or company, and the products which you bought from them?

A. I bought some batteries off V. J. Auto Parts. I bought tires off Albert Tire Company, Harrison Leonard, in Chester, Paris, in Chester Motor Parts, Prospect Park.

Q. Well, motor parts we are not keeping them in this.

A. You are speaking of tires and batteries?

3244 Q. Yes, tires, batteries and accessories. Are those purchases which you have just told us about of tires and batteries, are they for stock or just to supply a specific order from a customer?

A. Mostly orders.

Q. Do you or do you not buy Bardahl?

A. I buy Bardahl, yes.

Q. Who do you buy that from?

A. Off the Bardahl man himself.

Q. Do you or do you not buy Bars Leak?

A. Yes.

Q. I want to pause for a moment on that Bars Leak. Do you have any Bars Leak in your station now?

A. Yes, it is on the shelf.

Q. Has anybody from the Atlantic organization ever told you to take it off the shelf?

A. No, never.

Q. How about the Bardahl, where is that?

A. Right on the shelf and I have it on the stand out front.

Q. That is an outdoor rack, you mean?

A. Yes.

Mr. Kelaher: Mr. Examiner, I think at one of our earlier hearings, counsel for Atlantic raised objection to questions concerning Bardahl, stating it was not a TBA product. I would like to call that to counsel's attention.

3245 Mr. Fred Ballard: Your Honor, we have had this discussion a number of times, and as I understand it, the fact is that Bardahl is an oil additive, and I think there is no comparable item in the Goodyear sponsored line, I believe it would unhesitatingly be classified by any dealer as a TBA product.

Mr. Kelaher: All I know is I wasn't able to ask any questions about it.

Hearing Examiner Kolb: Well, there is no comparable product in the Goodyear line.

Mr. Fred Ballard: I believe that is true, your Honor. I will refer to any Goodyear colleagues on that point.

Mr. Ingraham: I believe that is true.

By Mr. Francis Ballard:

Q. Mr. Elko, leaving Bardahl, as a result of this interchange, completely out of the discussion, have you ever been criticized by anybody from Atlantic for carrying non-sponsored, non-Goodyear TBA?

A. No.

Q. Have you ever been told to stop buying?

A. No.

Q. Ever been told to get it out of the station, or to hide it?

A. Never.

3246 Q. I think you mentioned earlier in your testimony, Mr. Elko, the firm of Harris and Leonard. Is that right?

A. Yes.

Q. Have you ever made any purchases from Harris and Leonard?

A. Yes, I have.

Q. What of?

A. Mostly recapped tires.

Q. Do you still buy recap tires from Harris and Leonard?

A. Yes. I have some on stock now from them.

Q. Have you or have you not bought any batteries from Harris and Leonard?

A. No, I never have, they never approached me on it.

Q. You say they never approached you for batteries?

A. No.

Q. Have they ever approached you for the sale of new tires?

A. No.

Q. Do you know a gentleman named Joseph Marabella?

A. Yes.

Q. He is connected with V. J. Auto Parts, is that right?

A. Yes.

Q. Do you buy from V. J. Auto Parts?

A. Yes, I do.

Q. What do you buy from V. J.?

3247 A. I buy repair work, brakes, drums, wheel cylinders, volume tank regulators.

Q. Do you buy any Bars Leak from V. J. Auto?

A. Bars Leak, windshield wipers.

Q. Now you said you knew Mr. Marabella. Does he call on your station?

A. He has a salesman, he calls on me.

Q. Not Mr. Marabella?

A. No, he has called twice, when the salesman was on vacation.

Q. How often does the salesman call?

A. Once a week.

Q. You say Mr. Marabella called on you twice?

A. Yes.

Q. Mr. Elko, Mr. Marabella testified in this case at page 931 of the record, and what I am going to do now is read you what he said, and then ask you a couple of questions about it. In earlier questions and answers your name had come up, and at page 931 Mr. Marabella said:

> "Very frankly, on that particular account"—referring to you—"It is covered by our other salesman, but I myself had a personal contact, personal solicitation, on TBA items, namely Delco batteries, in January of 1957. That took place in Don Elko's station. I solicited
> 3248 along with the Delco battery man his battery business, and he just through up his hands, he said 'Joe, I would like to buy the batteries from you, but you know what I have been running into and what every other Atlantic man has been running into, I cannot put anything but a Goodyear battery in this place. If I don't have a battery, I would be more than glad to buy it from you, because I know you can give me the service and the price is right'."

Do you recall that conversation?

A. No.

Q. Have you had any conversations with Mr. Marabella concerning Delco batteries?

A. No, never.

Q. Has he come to your station in company with a representative of the Delco Company?

A. No, never.

Q. And you say Mr. Marabella has only been in your station twice?

A. Yes.

Q. Mr. Elko, do you feel free, if you choose to, to put Delco batteries in your station?

A. Yes.

Mr. Frances Ballard: No further questions.

3249 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Elko, you stated you worked as an employee in an Atlantic station, prior to becoming an Atlantic lessee dealer. Where did you work and for how long?

A. I worked in two stations. Firstly, I worked at Johnny Franca's station, on McDad Boulevard and Collingdale Avenue, in Collingdale. I worked part-time there for about a year, off and on, with Johnny.

Q. Beginning when?

A. Well—

Q. Was it just prior to the time—

A. No, when I first come out of the service, about 1954, to about 1955. Somewhere in April, I would say, I started with him. I had just come out of the service.

Q. Then after that did you work as an attendant at that station?

A. Yes.

Q. Then did you go to another Atlantic station?

A. I went to a Gulf station first, and then over to another Atlantic.

Q. What was the name of the second Atlantic station that you want to?

A. Jack Farragher.

Q. How long were you at that station?

3250 A. Eight months.

Q. Was that immediately prior to the time you became a dealer?

A. Yes.

Q. And you moved—your present station location is at Chester Pike and Clifton Avenue, Sharon Hill?

A. That is the station I worked at with Jack Farragher, that address.

Q. Did Mr. Farragher—you succeeded him as the lessee dealer there?

A. Yes.

Q. Prior to Mr. Farragher, weren't there several other Atlantic dealers who had had that station?

A. Yes.

Q. Would you name some of those?

A. Fred Crumb, Chambers, Powers.

Q. So there were four dealers in that station, including yourself, in a period of four or five years, would you say?

A. Yes.

Q. Now because of your relationship, as a cousin to Mr. Parris, and because of your employment by Atlantic, you were well aware that Mr. Parris was supplying all of the Atlantic stations with Goodyear TBA, in that area; isn't that right?

A. Yes.

3251 Q. So that when you became a lessee dealer, in Sharon Hill, you knew that you would automatically begin to purchase your TBA from Mr. Parris, didn't you?

A. Yes.

Q. When you went into your Atlantic station, were the Goodyear window valances up at that time?

A. Yes.

Q. Was the Goodyear outdoor pole sign up at that time?

A. Yes.

Q. And was your initial stocking order sent in by Mr. Parris? Did you contact Mr. Parris or did he contact you, or how did the Atlantic salesman arrange to have—

Mr. Francis Ballard: Your Honor, I think there are three questions that have just been asked.

Mr. Kelaher: I am attempting to clarify a question.

Mr. Francis Ballard: Question by question would help the witness, I think. Could we have a ruling on the form of that question?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: (Continuing.) —your initial stocking order get into the station?

Hearing Examiner Kolb: The objection will be overruled.

3252 By Mr. Kelaher:

Q. Or did you simply just—let me ask it this way: Was the station already stocked with TBA when you went in as a lessee dealer?

A. Yes, it was stocked.

Q. And it was stocked with Goodyear TBA, wasn't it?

A. Yes. There was other things, other than Goodyear TBA in there.

Q. But the principal stock was—

A. The principal stock, yes.

Q. When you went into the station, did you have a loan from Atlantic?

A. Yes.

Q. How much was that?

A. $3,000.

Q. Was part of that loan used for purchasing TBA, Goodyear TBA?

A. No.

Q. None of it?

A. (Nodding No.) I am sorry, I think I misunderstood you.

Q. Was any of the $3,000 used by you to purchase Goodyear TBA?

A. No, that was already, it was stock in the station.

Q. Would you clarify that?

A. It was used against the stock in the station.

Q. In other words, there was a certain amount, a
3253 certain dollars worth of stock in the station and this was applied against it?

A. Yes.

Q. Was the whole $3,000 applied against stock in the station?

A. Stock, yes.

Q. Goodyear TBA stock?

A. Gasoline, do you consider that stock?

Q. Yes.

A. Yes.

Q. As a result of that loan of $3,000, did you feel you had an obligation to purchase Goodyear TBA from Mr. Parris?

A. No, I had no obligation to Mr. Parris.

Q. Did you feel that as long as Atlantic had played ball with you, you would purchase Goodyear TBA from Mr. Parris?

A. Goodyear TBA is a top brand name and I would be a fool not to buy anything else but top brand.

Q. And the fact that Atlantic sponsors it, you say, does not influence your decision to handle Goodyear TBA?

A. I have other merchandise—

Q. I am asking this specific question about Goodyear TBA.

A. I don't believe it influenced me any.

Q. You dont' think it has any influence whatsoever?

A. No.

Q. Now, Mr. Marabella testified, and you have
3254 substantiated his testimony, to the effect that another salesman from his company calls on you principally?

A. Yes, sir.

Q. Now, Mr. Marabella did call on you, did he not?

A. He called on me twice.

Q. And on one of those occasions—did he call on you when you opened your station, in January 1957?

A. No.

Q. Beg your pardon?

A. No.

Q. Did he call on you shortly after that?

A. Well, it was in the summer, when the salesman was on vacation.

Q. Was that the first time?

A. Yes.

Q. Did he solicit Delco batteries or any other business at that time?

A. Not Delco. I might have given him an order for other things.

Q. I am asking you if he solicited your business on Delco batteries or any other products?

A. No.

Q. At that time was he—he was handling Delco batteries, was he not?

A. I believe so.

3255 Q. And you say he didn't ask you to purchase Delco batteries?

A. No.

Q. Has the other salesman for V. J. Auto Parts ever asked you to purchase Delco batteries?

A. He asked me when I needed any, to consider him and I have bought some batteries off him.

Q. Have those purchases been on a fill-in basis only?

A. Yes, sir.

Q. All of your batteries are purchased from Mr. Parris, are they not?

A. Yes.

Q. And that is the Goodyear battery?

A. Yes.

Q. Now let's talk about Bars Leak for a minute. You say you do purchase Bars Leak from V. J. Auto Parts?

A. Yes.

Q. And Mr. Marabella so testified you do. Who was your Atlantic salesman beginning in January 1957, when you went into the station?

A. Joe Snyder.

Q. Has he been your only Atlantic salesman?

A. Yes.

Q. And you recall no Atlantic salesman asking you to remove Bars Leak from your shelves, is that right?

A. No.

3256 Q. Is it possible they may have made a comment to that effect?

A. No.

Q. When did you first learn that Mr. Marabella had testified concerning this conversation with you, or purported conversation with you?

A. The first meeting.

Q. When?

A. The first hearing.

Q. Were you advised by counsel for Atlantic or did you learn from some other source?

A. Through Atlantic.

Q. Did you resent him naming you in his testimony?

A. No.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Francis Ballard.

Q. Mr. Elko, I want to straighten out one thing. On cross-examination Mr. Kelaher asked you some questions about TBA stock, when you took over your station in January 1957. Did I understand you to say that there was some non-Goodyear items in that stock?

A. Yes, there was.

Q. And the station was not newly erected, was it?

A. No.

3257 Q. Did you buy the TBA that was in the station?

A. Yes.

Q. And from whom did you buy it?

A. From Jack Farragher.

Q. That is the fellow, he was the dealer whom you succeeded?

A. Yes.

Q. You bought all of his TBA stock?

A. Yes.

Q. Which included non-Goodyear TBA?

A. Yes.

Mr. Francis Ballard: Thank you.

Recross Examination by Mr. Kelaher.

Q. When you say he had some non-Goodyear stock, are you referring to Bardahl, for example?

A. No, he didn't carry Bardahl.

Q. Are you referring to antifreeze, for example?

A. There was Bars Leak, some tubes, tire patch repair kits, that were not TBA. I know there was a lot of stock that was other—

Q. Wasn't the principal stock Goodyear TBA, tires batteries and accessories, right?

A. Yes.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

3258 Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

ISADORE MANN was called as a witness on behalf of Respondent Atlantic, and having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Isadore Mann. My home address is 1305 Kimberly, Philadelphia, 31.

Direct Examination by Mr. Fred Ballard.

Q. Mr. Mann, you are a lessee of an Atlantic service station, is that right?

A. I am.

Q. What is the address of your station?

A. Haverford Avenue and Brookhaven Road.

Q. Do you remember when you first leased that station?

A. When I first leased it?

Q. Yes.

A. Two days before Christmas I knew I was getting it. I opened it up March 17, 1949 that was.

Q. 1949 or 1950, sir?

A. 1949 is when I knew I was getting it and in 3259 1950, March 17, I opened it up.

Q. Now when you opened that station, was that a new station, sir?

A. Yes, sir.

Q. Who did you buy your—such tires, batteries and accessories as you did buy, who did you buy them from?

A. Frank Hagen.

Q. Had you previously known Mr. Hagen?

A. I knew Hagen, I used to work for an employer at 55th and Buist Avenue, and Frank was a short distance away, and I stopped there several times and I knew him as a friend.

Q. Did your Atlantic salesman also tell you that Hagen was a supplier for Atlantic stations?

A. That is right.

Q. Now at that time I believe Hagen was carrying Lee tires and Exide batteries, is that right?

A. Yes.

Q. Did Hagen subsequently change to another brand?

A. Hagen switched to Goodyear and we naturally went to Goodyear.

Q. Have you found that Goodyear tires are easier to sell than Lee tires?

A. Goodyear is the leader in the field, yes, it is a lot easier to sell.

Q. Do you still carry some Lee tires?

3260 A. Yes.

Q. Where do you buy those?

A. 22nd and Race, Lee Tire Company.

Q. That is a store, apparently, a factory branch?

A. Yes.

Q. Do you buy your batteries from Hagen?

A. I buy batteries from Hagen and I also buy Delco batteries from Genuine Auto Parts.

Q. Your accessories, do you buy those from Hagen?

A. I buy accessories from Hagen; also from the outside.

Q. Are your Lee tires visible in your station today?

A. Yes, sir.

Q. Does your Atlantic salesman know you have them?

A. Yes.

Q. Has he ever told you to remove them from the station?

A. At no time was I ever told to remove anything from the station.

Q. Has he ever told you to stop buying them?

A. No, sir. In fact, I have had three salesmen since I opened, and none ever told me.

Q. At any time have you hidden your Lee tires from your Atlantic salesman?

A. No.

Q. Do you know a supplier called Lancaster Auto Supply?

A. I do. I used to buy from them.

3261 Q. Are you acquainted with a salesman for that supplier named Meyer Duboff?

A. I am.

Q. I believe you also know that on June 24, 1957, Mr. Duboff testified in these same proceedings. His testimony is reported, as far as I am reading, beginning on page 507 of the record. In these proceedings Mr. Duboff was asked whether at any time he had been able to sell any of the Atlantic stations and he, after answering that question, was then asked: "When was the last time you were able to sell them?"

His answer was: "It is getting tougher and tougher to sell them to tell the truth. I would say within the last couple of years it is getting worse.

"Question: Do you continue to solicit their business?

"Answer: I try to, but it is like barking up a tree. You can't do anything with these fellows. They must buy the company and that is the answers I get."

Then the next question was: "Can you state specifically the name of the Atlantic dealer that told you that?"

And Mr. Duboff then said: "I. Mann, at Brookhaven and Haverford Road."

That would be you?

A. That is right.

Q. Do you recall ever saying to Mr. Duboff that you must buy from the company?

3262 A. I did not.

Q. Now beginning at page 515 of the record, Mr. Duboff was asked this question:

"You mentioned one person, Mr. I. Mann, Haverford and Brookhaven Road?"

And his answer was: "That is right."

Then the question was: "As having said something to you about inability to buy from you. I am not clear as to what he said."

And Mr. Duboff answered, "Do you want me to state what he said to me? He said to me 'I can't buy from you'."

Did you ever say that to him?

A. I did not. I bought from Mike—I call him Mike—I bought quite a few things from Mike. I bought equipment, I bought Prestone, I bought a lot of things off him. But then I got to doing business with Genuine Auto Parts, who is closer, and the thing is, after all, you can't just give everybody business, so I stopped doing business with Lancaster, which is his company.

3263 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Mann, your station was a new station when you opened, as I understand your testimony?

A. That is right.

Q. Now at that time that you began to purchase Lee

tires, Exide batteries, and a line of accessories from Mr. Frank Hagan, is that correct?

A. That is right, sir.

Q. And at that time Atlantic was sponsoring those brands, isn't that right?

A. That is right.

Q. And Mr. Hagan was the supply point for Atlantic dealers in your area?

A. That is right.

Q. And that was why you purchased from Mr. Hagan, wasn't it?

A. Yes, sir.

Q. Now the switch, or change-over to Goodyear, according to this record, came in or about March 1951. Now at that time, according to your testimony, Mr. Hagan began to carry Goodyear TBA instead of Lee tires, Exide batteries, and accessories, is that correct?

A. That is right, sir.

Q. And at that time you began to purchase Goodyear TBA from Mr. Hagan, is that right?

3264 A. That is right.

Q. Now at that time, or prior to that time, was your service station identified with Lee signs and Exide signs?

A. Yes.

Q. And shortly after the change-over or in or about the time of the change-over, were those signs changed to Goodyear signs?

A. Right after that they were changed to Goodyear signs. Well, in buying Goodyear tires, naturally we use more Goodyear tires—rather, the Goodyear tire sells faster than Lee tires, and naturally I think the dealers were tickled to death to go along with it, because I know from that time to this time the amount of tires I sell has increased because of that, but I still sell Lee tires.

Q. Now you stated just now and earlier in your direct examination that Goodyear tires are easier to sell than Lee tires, right?

A. That is right.

Q. If that was the case, why did you carry Lee tires as your principal stock of tires from 1950, when you opened the station, until 1951?

A. I didn't just carry Lee tires.

Q. You stocked Lee tires, did you not?

A. We started with Lee, the company, through Frank Hagan, and we naturally purchased Lee tires and accessories, but I still sell all kinds of tires. I don't limit
3265 myself to two tires. I sell whatever the customer wants. I can get them, and do stock them.

Q. But you testified up to this point that when you opened your station in 1950, you stocked Lee tires, primarily?

A. That is right.

Q. Right?

A. Not all Lee tires, no. You misunderstood. Not complete. I stocked Lee tires, but I still bought other tires also.

Q. Well, you bought other tires on a fill-in basis or when a customer wanted them?

A. Fair enough. Right.

Q. Well, if Lee tires were more difficult to sell than Goodyear tires, why did you continue to stock Lee tires for two years?

A. Well, it is like anything else. You don't always do things right away. As a new dealer in the business, just one of the things. I guess you need a push once in a while to go ahead.

Q. Isn't it a fact that the reason you carried and stocked Lee tires was because Atlantic sponsored Lee tires during that period?

A. I sold Lee tires because the company sponsored them, yes.

Q. And that is the reason you didn't stock Goodyear at that time?

A. When I stocked Goodyear, it was just a few of them, I will say that.

3266 Q. When Atlantic changed over to Goodyear, you changed to Goodyear, right?

A. Yes, sir. I still say this, that I kept a good stock, I keep a good stock of Lee tires, when I changed to Goodyear, too.

Q. But your principal stock is Goodyear?

A. I would say right now if you went to my place between where I stock them and in the place and all, I would say about 60-40.

Q. In favor of Goodyear?

A. Yes. Well, they are the largest selling tire, Goodyear.

3267 Q. Now, you mentioned you have had three salesmen in your territory. What were their names?

A. Thomas Jenner—no, I am wrong. Actually I should say, well, I started—it is four salesmen, but the first one was only with me about two weeks, but if you want his name, I can pass on. Bill, William Way, Thomas Jenner, Joseph Snyder, and Stephen—

Q. (Interposing.) Petrison?

A. Yes.

Q. Is he your present salesman?

A. Yes. See, they changed salesmen at the beginning of the year. As I told you, two days before Christmas is when I found I was getting the station, and at New Year's Mr. Way went out, went to another territory, and Mr. Jenner took over.

Q. Now, Mr. Duboff of Lancaster Auto Supply Company has called on you for some years, has he not?

A. From the beginning, yes.

Q. From the time you opened the station in 1950?

A. I went in there and bought equipment off him, like jacks, vacuum cleaner, all different kinds of equipment.

Q. Primarily equipment?

A. Yes.

Q. And at one time didn't you buy Exide batteries from him?

A. I never bought Exide batteries from Mike.

3268 Q. Did you buy an Exide battery on a fill-in basis from him?

A. You are right, one fill-in, one I couldn't get, a Group Three, which is a big truck battery.

Q. And you have purchased no Exide batteries from him since that time?

A. No, I actually don't do any business with him anymore.

Q. Did you ever have any conversations with Mr. Duboff concerning your purchases of Goodyear TBA from Mr. Hagan?

A. No, I did not.

Q. Are you—have you ever had conversations with any jobber salesman who has come into your station concerning the fact that you purchased Goodyear TBA from Mr. Hagan?

A. No, I bought some of—if you want to call it Goodyear TBA, I bought it from other sources besides Mr. Hagan

Q. I am not asking you that. I asked you if you ever had any conversations with Mr. Duboff or any other jobber salesman concerning your reasons why you would not purchase their TBA?

A. No.

Q. Have you ever given a reason to a jobber salesman as to why you would not purchase the TBA they were selling?

A. No. I am a very busy man. I try to give a salesman a little time, courtesy, but I don't have much time to talk about anything that doesn't pertain to my business, or for my business.

3269 Q. Do you just say, "I don't want to buy from you," or don't you give any reason at all as to why you won't buy some TBA?

A. No, my main reason, and I think I said it before, is that you just can't go giving everybody business; the first thing, nobody gets nothing, and your account isn't worth anything. Make checks out at the end of the month for $10.00 here or $15.00 here—that isn't worth while to break it up like that.

Q. Did you at the time you opened your station receive a loan from Atlantic Refining Company?

A. No, sir.

Q. Did you make a substantial investment in your station?

A. I certainly did.

Q. Do you feel it is to your advantage to go along with Atlantic as to the TBA line they sponsor?

A. I personally have nothing against Atlantic in buying from them. I am treated right. I have no trouble.

Q. And isn't it a fact that there is less friction when you do buy the sponsored TBA than the non-sponsored TBA?

A. I never had any friction. I don't know about anybody else. I never had any.

Q. That is because you have been buying the sponsored TBA line since you went in?

A. No, I have a lot of things on my shelf that
3270 doesn't come through Atlantic. If you went there, you would see right now at least eight different items on my shelf that doesn't come through Atlantic TBA and it is items that could be bought from Atlantic, in a different name and different brand, like Wynne products, Stuart products.

Q. What is Wynne's?

A. That is oil. Different kinds of oil—tune-up oils, carburetor additives, valve oil. DuPont, which is Atlantic TBA, has MQA, and Wynne has their own. There is at least six or seven I am sure.

Q. But your principal accessories and batteries and tires you purchase from Mr. Hagan; is that correct?

A. I would say about 60 percent.

Q. It is more than that on batteries, is it not?

A. On batteries, it is more, you are right. I would say about 90 percent.

Q. And on accessories, it is more than 60 percent?

A. Well, about 75 percent.

Q. Now, do you recall signing a Goodyear associate dealer contract at the time of the change-over to Goodyear TBA?

A. To be truthful, I don't remember.

* * * * * *

3271 By Mr. Kelaher:

Q. Mr. Mann, I show you Commission's Exhibit 44-E, and ask you if you recall signing this type of a document, associate dealer agreement.

A. I don't recall, sir. I definitely don't recall. That is quite a few years ago.

3272 Q. And you don't maintain your records or files back to 1951?

A. No, I definitely don't recall that.

* * * * * *

Mr. Fred Ballard: Before we call the next witness, I don't know if I am going to shed any light on this additive business or not, but I am advised that the word "additive" is a word of many meanings, that according to Commission's Exhibit 246, the Goodyear Catalog does include something called Pyroil, which is considered to be an additive. I am also informed that it includes an item named Casite, which is described as an additive. I think it is

3273 fair to say that—I don't know whether Bardahl is competitive with those items or not. I do know that Atlantic Refining Company feels that Bardahl is not necessary for use with Atlantic motor oils.

I can get more information on this, if your Honor please, but I am confused on it myself.

Mr. Kelaher: The point I was making was that we were foreclosed from going into something on Bardahl. If they have no objection to reinstating any testimony concerning the matter, which we put in in our direct testimony, if that is the situation—

Hearing Examiner Kolb: You couldn't very well reinstate without recalling the witness.

Mr. Kelaher: I think there was certain testimony concerning Bardahl oil, and there was much objection, and as a result of very vigorous objections, we were forced to discontinue any further examination concerning that product. It would seem a little irregular to me to permit them to come in now with evidence as to a particular product, as to which they raised such vigorous objections during the course of our direct testimony.

Mr. Mason: Do you have the transcript reference?

Mr. Fred Ballard: Sir, it is not our intention to press evidence with regard to Bardahl. The Atlantic dealers recognize that Bardahl is not an Atlantic-sponsored or recommended product, and when asked about non-

3274 recommended and sponsored products, they are apt to mention Bardahl, and were not trying to press the point, I can assure you. I don't know whether it is in the case or out of the case. I am sure I don't know whether my predecessor had a better idea than I do.

Mr. Kelaher: I was asked to find a reference to it in the testimony. I don't think I should take time now, but I will be glad to do so during the lunch hour.

Hearing Examiner Kolb: Let's proceed.

RUDOLPH N. LUONGO, was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Rudolph N. Luongo; 931 North Avenue, Springfield, Pennsylvania.

Direct Examination by Mr. Francis Ballard.

Q. Mr. Luongo, you are an Atlantic lessee dealer?

A. Yes, sir.

Q. Where is your station?

A. City Line and Golf Road.

Q. That is out in what area?

3275 A. Wynnefield.

Q. When did you move into that station, Mr. Luongo?

A. December 19 or 21, something like that, last year.

Q. 1957?

A. Yes.

Q. Am I right that you had a station at 55th and Walnut Streets, prior to that time?

A. Yes, sir.

Q. And do you recall the month and year you moved into 55th and Walnut?

A. August 17, '53 or '52.

Q. '53 is the figure I have.

A. Somewhere around there.

Q. And those are the two stations that you have operated for Atlantic as a lessee?

A. Yes, sir.

Q. When you went into that station at 55th and Walnut, did you notice Mr. Hagan, the Goodyear supplier?

A. Personally, did I notice him personally?

Q. Either personally, or any other way.

A. I knew he had a station somewhere, and he was a distributor; that is all.

Q. Did you go to any training school of Atlantic before you went into that station at 55th and Walnut?

A. No, sir.

3276 Q. Did an Atlantic representative identify Hagan as a Goodyear distributor in your area?

A. Yes, sir.

Q. Now, on TBA, Mr. Luongo, who do you buy most of your TBA from now?

A. Frank Hagan.

Q. Why?

A. Well, I get a fair deal with Frank, he extends me credit, gives me good service. I don't know any reason why I shouldn't.

Q. Is he a good friend of yours now?

A. Yes.

Q. Does he have an employee named Duffy?

A. Yes, sir.

Q. What does Duffy do for you?

A. He comes in and checks my stock and anything I need he fills me in with. He doesn't bother to take up my time to tell him what I need. We have arrangements where he fills my stock up to what I should have and it has been working out very well.

Q. You like that arrangement?

A. Yes, sir.

Q. Mr. Luongo, do you buy any other tires, batteries, and accessories from sources other than Mr. Hagan?

A. On occasion, yes.

3277 Q. What companies?

A. Albert Tire, I have purchased tires from.

Q. Do you buy anything from Rotzell Company?

A. Yes, I do, things like anti-freeze, points, mufflers, tail pipes, I can't think of anything else. Quite a line of stuff.

Q. Do you or do you not carry Bars Leak?

A. Yes, sir.

3278 Q. Who do you get that from?

A. Usually from Rotzell.

Q. Bars Leak, for instance, is that openly displayed in your station?

A. Yes, sir, it is on the shelves in the show room.

Q. Is it readily visible to anybody who walks in?

A. Yes, sir.

Q. Have you ever had any criticism from Atlantic for carrying Bars Leak or any other non-Goodyear TBA?

A. No, sir.

Q. Did they ever tell you to stop buying it?

A. No, sir.

Q. Ever tell you to get it out of the station?

A. No, sir.

Q. Or to hide it?

A. No, sir.

Q. Mr. Luongo, in the spring of 1956, where was your station?

A. 55th and Walnut.

Q. Do you know a man named Edward C. Heller?

A. Yes, sir.

Q. Mr. Heller testified—who does Heller work for?

A. Rotzell.

Q. Mr. Heller testified in these proceedings that he was unable to identify the dealer that he spoke about, but he was able to say it was the dealer who was at 55th and

3279 Walnut, in the spring of 1956 and he was also able to say that Mr. Joseph Snyder was the Atlantic salesman for that dealer. Now, sir, again, you were the dealer at 55th and Walnut in the spring of 1956?

A. Yes, sir.

Q. Was Mr. Snyder your salesman at that time?

A. Yes, sir.

Q. I am going to read from page 463 of the record. This is testimony by Mr. Heller. He said:

"Well, a year or so ago we had the DuPont Chemical represenative with us, and we were the first ones to have him in the City of Philadelphia. I sold a couple of the Atlantic dealers, fellows I had known, and I ran into an Atlantic salesman later on, and after that, I had no more sales of the DuPont chemicals. As one dealer told me"— and he subsequently identifies this dealer as the fellow at 55th and Walnut in the spring of 1956—

Mr. Kelaher: I wonder if we could have—this has been going on all morning. When they read from the record, there are a lot of interpolations.

Hearing Examiner Kolb: You have the record there. Do you question the statement?

Mr. Kelaher: I question the interpolation at that stage.

Mr. Francis Ballard: Mr. Kelaher, would you 3280 stipulate with me that Mr. Luongo—

Mr. Kelaher: Why don't you finish the sentence and then explain it.

Mr. Francis Ballard: I will have to start all over again.

Mr. Kelaher: Go ahead. I withdraw all objections.

By Mr. Francis Ballard:

Q. I am reading the testimony: "As one dealer told me, he was to save it for the Atlantic salesman the next time he came around". You were the Atlantic dealer at 55th and Walnut in the spring of 1956. Do you know Mr. Heller?

A. Yes.

Q. Did you tell Mr. Heller that you had to save a DuPont chemical deal for the Atlantic salesman the next time he came around?

A. No, sir.

Q. Have you ever given an order to Mr. Heller?

A. Yes.

Q. Does he call on you to this day?

A. Yes, sir.

Q. Have you ever purchased any Motor Zoom from Mr. Heller?

A. Yes, sir.

Q. This is a new product, Mr. Luongo. Would you tell us what Motor Zoom is?

A. It is a product added to the oil to prevent smok-
3281 ing and burning, excessive oil burning.

Mr. Kelaher: Is that what is known as an oil additive?

Mr. Francis Ballard: You will have to ask the witness.

The Witness: I think it would be classed as one.

By Mr. Francis Ballard:

Q. Now, as a matter of fact, Mr. Luongo, when DuPont, for instance, has a promotion, who do you buy it from?

A. Frank Hagan, usually.

Q. You do save it for Hagan?

A. I don't know I save it for him. I generally do buy from Hagan.

Q. Has anybody in the Atlantic organization told you you had to have these deals for Hagan?

A. No, sir.

Mr. Francis Ballard: That is all.

Cross-Examination by Mr. Kelaher.

Q. As I understand your testimony, you became an Atlantic dealer in August 1953, correct?

A. Yes, sir.

Q. Who was your Atlantic salesman at that time?

A. Joe Snyder.

Q. Is he still your Atlantic salesman?

3282 A. No, sir.

Q. Who is your present salesman?

A. Harry Fisher.

Q. Isn't it a fact that—I believe you so testified—that Mr. Snyder identified Mr. Hagan as the Atlantic supply point for your Goodyear TBA, when you took the station over? Isn't that right?

A. I guess it was Joe Snyder. I can't recall that far back.

Q. Whoever the Atlantic salesman was, would have told you that?

A. I would assume so, yes.

Q. And was your station a new station or did you replace a dealer?

A. I replaced a dealer.

Mr. Francis Ballard: Could you identify which station you are talking about?

Mr. Kelaher: I was talking about the station you started operating first, August 1953.

The Witness: That is 55th and Walnut. I replaced a dealer there; yes, sir.

By Mr. Kelaher:

Q. Then at your present station, did you also replace a dealer?

A. No, sir, that is a new station.

3283 Q. And you started in this new station in December 1957, to get this chronology correct?

A. Yes, sir.

Q. Now when you replaced the dealer at 55th and Walnut Street station, were the Goodyear signs up, the Goodyear window valance and outdoor sign?

A. Yes, sir.

Q. And you automatically began to purchase Goodyear TBA from Mr. Hagan, is that right?

A. Yes, sir.

Q. Now when you went out to your present station, in December 1957, were the Goodyear window valances and outdoor sign up when you went into the station?

A. Yes, sir.

Q. And did Mr. Hagan remain as your supply point at that location?

A. Yes, sir.

Q. I believe you testified that you occasionally buy from Albert Tire Company, is that right?

A. Yes, sir.

Q. And what brand would that be, what do they handle?

A. They handle all of them, Goodyear, Firestone.

Q. Which brand do you buy from them?

A. It varies, it all depends on the situation. I could buy Goodyear or Dunlap, it all depends on what I am selling.

3284 Q. Depends on what the customer asks for?

A. Yes, whatever the customer wants.

Q. Now you have known Mr. Heller for sometime, is that correct?

A. Ever since I went into the station at 55th Street. That is where I first became acquainted with him.

Q. And Mr. Heller still calls on you, right?

A. Yes, sir.

Q. Isn't it a fact that Mr. Heller solicited your business on DuPont from time to time?

A. He probably has, yes.

Q. I am referring now to the DuPont chemical line.

A. Yes, sir.

Q. And isn't it a fact that you might have stated to him that you were saving the PuPont chemical business for Mr. Hagan?

A. No, sir.

Q. But in fact you have testified that your principal supplier of DuPont chemicals is Mr. Hagan, is that right?

A. Yes, sir.

Mr. Kelaher: No further questions.

Mr. Fred Ballard: No questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn at this 3285 time until 2:15 p.m.

(Thereupon, at 12:55 o'clock p.m., the hearing was recessed, to reconvene at 2:15 o'clock p.m., this same date.)

3286 Afternoon Session.

(2:15 P.M.)

Hearing Examiner Kolb: The hearing will be in order.

THOMAS E. JONES was called as a witness on behalf of the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Thomas E. Jones, 219 Florence Avenue, McDaniel—Wilmington, Delaware.

Direct Examination by Mr. Fred Ballard.

Q. You are presently employed by Atlantic Refining Company?

A. Yes, sir.

Q. And what is your present occupation or position with Atlantic?

A. I am the promotable dealer, sales supervisor in the Wilmington district.

Q. When did you join Atlantic?

A. In January 1952.

Q. What was your capacity then?

A. I started out with a job classification called 3287 service salesman.

Q. What was your next job with Atlantic?

A. I was promoted to a job of promotable dealer salesman.

Q. Were you then promoted to your present position?

A. Yes, sir.

Q. What was the date of promotion to the present position?

A. December 1956.

Q. What was the date of promotion to promotable dealer salesman?

A. That was in August 1953.

Q. Have all these jobs been in the Atlantic Wilmington district?

A. Yes, they have.

Q. Before coming to Atlantic, what was your occupation?

A. I was in business for myself, service station business, operating service stations in the State of West Virginia.

Q. Now returning to Atlantic's Wilmington district, can you give us a general description of the area that that district covers?

Mr. Kelaher: I think that is already in the record in the form of a map.

Mr. Fred Ballard: I think so, yes, Jim, but I would like to get fresh in the Examiner's mind the rather broad scope of this.

Will you answer that question?

3288 A. The Wilmington district is comprised of what is commonly known as the Delmarva Peninsula. It includes two counties in Pennsylvania, Chester and Lancaster Counties, all of the State of Delaware, and the eastern shore sections of Maryland and Virginia.

Q. And of course it includes metropolitan Wilmington?

A. Yes.

Q. Now, are there other oil companies besides Atlantic operating in that district?

A. Yes, there are.

Q. Could you give the names of some of them?

A. Of course we have Esso, Gulf, Sun, Mobil, Sinclair, Cities Service, Shell, Texas, Tidewater.

Q. American?

A. Calso.

Q. Does American operate in that area?

A. Yes, Amoco, American.

Q. Does Pure operate in your district?

A. Yes, Pure Oil operates in the district.

Q. Save-way?

A. The ones I listed were the majors. In addition to those we have three independent oil companies that operate in the district, Save-way, Spur, and Save.

Q. Is there active competition among those oil companies?

A. Very keen competition between the companies, yes.

3289 Q. On occasion are there what is known as price wars in the district?

Mr. Kelaher: Objection, your Honor. I would like to know the relevance of this line of questioning. What do price wars lead us to?

Mr. Fred Ballard: Your Honor, a number of the witnesses in this proceeding have testified to the existence

of price wars. We feel the existence of price wars has a bearing on the witness' state of mind, and that will be brought out in later testimony, sir. I think it is relevant, to show here that this is a keenly competitive area, where there is competition of that kind.

Hearing Examiner Kolb: I overrule the objection.

The Witness: Yes, there is a keen competition in the area, primarily because of these independent operators, that I mentioned, who oftentimes lower the price of their gasoline to get the market and of course the majors, to survive, must go along with it.

By Mr. Fred Ballard:

Q. Now, Mr. Jones, we have used the phrase "service station" in this proceeding, and I think we have generally defined it as a station which has facilities for lubrication, washing, and the selling and installing of TBA. Using that definition, how many service stations are there in the Wilmington metropolitan area approximately?

3290 A. In what I would call the metropolitan area of Wilmington, there is between 250 to 275 service stations.

Q. If we include the entire Wilmington district, Atlantic's entire Wilmington district, how many service stations are there?

A. Nearly 800.

3291 Q. Are new service stations being built in the district?

A. Yes, in 1957 there were 23 just in the metropolitan area of Wilmington alone.

Mr. Kelaher: Excuse me. Do these figures relate specifically to Atlantic stations.

Mr. Fred Ballard: The questions I have asked— have you understood the questions I asked as relating to service stations of all kinds?

The Witness: Yes, you spoke of service stations, and I assumed that was everyone's.

By Mr. Fred Ballard:

Q. Now, speaking of Atlantic service stations, how many service stations does Atlantic own in the district for lessee operation?

A. There are 94 at the present time.

Q. Of those, how many would be in metropolitan Wilmington?

A. Fifty.

Q. There are also, I believe, some contract stations in Atlantic's Wilmington district?

A. Yes, our present count of contract dealers in the Wilmington district is 117.

Q. About how many of those are operating a real service station?

A. Of those, 18 are classified as promotable or the real service station.

3292 Q. There are also some distributors in the district, are there not, Atlantic distributors?

A. We have nine active Atlantic distributors in the district.

Q. They have about how many outlets?

A. Between 90 and 95.

Q. Would you have any idea what proportion those outlets would be service stations?

A. Around 30 to 34.

Q. Your particular concern, however, as promotable sales supervisor, is lessee stations; is that right?

A. That is true.

Q. Do you have also a few contract stations?

A. Promotable contracts, yes, sir.

Q. By that you mean a station that has full service station facilities?

A. Full facilities, as we describe a service station to be.

Q. How many personnel are under your charge?

A. Eight.

Q. Could you give us the numbers and classifications?

A. I have five men who are classified as promotable dealer salesmen, two men that are classified as retail specialists, and one man that is classified as a merchandiser.

Q. Are the classifications retail specialist and merchandiser a break down of what was formerly known
3293 as service salesmen?

A. Yes, there has been a name change, formerly known as service salesmen.

Q. What is the job of a promotable dealer salesman?

A. His primary responsibility is to keep tenanted the stations assigned to his territory, with the best possible dealers he can find, and to promote the sale of Atlantic petroleum products.

Q. Does he also promote the sale of Firestone products to those dealers?

A. I would say all products that a dealer would be selling or retailing.

Q. Now, promotable dealer salesmen are paid on what basis, sir?

A. Well, they, of course, are on a salary, and then we have an extra compensation bonus plan.

Q. When did that extra compensation bonus plan go into effect?

A. April, 1956.

Q. Can you give us the general basis of the extra compensation plan?

A. Well, in extra compensation, the compensation earned is based on sales through stations that were open, this present year, and the prior year. You are paid on gains through outlets open both years.

3294 Q. How are the gains divided, roughly?

A. Gasoline is one section entirely by itself; motor oil is a second; and we have one for TBA and anti-freeze; and then there is a jack-pot bonus that an overall gain will give him for the compensation.

Q. Now, in 1957, how many of your five salesmen received a bonus?

A. Three out of the five earned compensation in 1957.

Q. What is the highest bonus that any of your salesmen ever had?

A. The highest bonus paid was a promotable salesman in 1956, who earned $797.00 for the year.

Q. Do you recall what the highest amount paid to a salesman on account of TBA and anti-freeze was?

A. That was the same salesman, who received for 1956 TBA compensation of $148.00.

Q. How many accounts does that salesman service?

A. During 1956 he handled 20 accounts.

Q. As sales supervisor, are you eligible for extra compensation under this plan?

A. No, sir, salesmen only.

Q. Are your promotable dealer salesmen allowed to take premiums or extra compensation from TBA suppliers whom they represent?

A. They are not.

3295 Q. Who is the person in your organization who is initially responsible for selecting dealers to man Atlantic stations?

A. Well, the initial recommendation, of course, is made by the salesman. He will interview a prospect, and then come to me, discuss what he has found with this man, and recommend that I then interview him, and together we make the recommendation on whether to accept him.

Q. Does that recommendation go to the district manager?

A. That recommendation is made to the district manager and oftentimes, if the district manager is in the office, he, too, will interview the prospect along with me.

Q. When the lease of an Atlantic dealer expires, what is the procedure with regard to renewing or not renewing that lease?

A. Well, the procedure that we follow is that 90 days prior to a dealer's lease expiring, the regional office where all the lease information is kept notifies us that the lease will expire on a certain date. The salesman calling on that dealer and I will sit down and discuss the man's past history, and study his finances and so forth, and then make our recommendation to the district manager that we renew the lease at the end of the period, and extend the lease for the dealer.

Q. Do you occasionally recommend that the lease be not renewed?

A. In my experience with Atlantic since 1952, as
3296 a salesman and supervisor, I have never made the recommendation to the district manager that we do not renew a dealer's lease.

Q. In deciding on your recommendations, do you discuss with your salesmen the brands of TBA that the dealers are handling?

A. No, it is not discussed, on what brands he handles.

Q. Now, is Atlantic's three-year lease policy in operation in your district?

A. Yes, it is.

Q. Are most of your dealers on the three-year lease?

A. We have in the district at the present time approximately 18 or 19 dealers on three-year leases.

Q. Under that policy—would you state your understanding of the three-year lease policy in general?

A. Well, for a dealer to become eligible for a three-year lease, he must first have successfully operated the

station for two one-year lease periods. At the renewal of his third lease, he is offered a lease for a period of three years. It is up to the dealer to accept or reject.

Q. Is that offering automatic in all cases or on recommendation?

A. That is right, in fact, the regional office, at the expiration of the second one-year lease, will write us a letter and state this man is eligible for a three-year lease.

Q. If you do not agree with him, can you recommend to the contrary?

3297 A. If we don't recommend a three-year lease, we have to specify the reasons why, in writing, and return that to the regional office.

Q. Have you ever made such a non-recommendation?

A. Since 1953 I have made two recommendations, as a salesman and supervisor, not to give the dealer a three-year lease, but in both cases we offered and he accepted a one-year lease.

Q. In either case was that recommendation for reasons of the brand of TBA that the dealer was handling?

A. No, the recommendation was strictly made in both cases for poor appearance of the service stations. We were having trouble getting the dealer to keep the station clean.

Q. Now, under Atlantic's three-year lease policy, or long-term lease policy, is there a provision for sending warning letters to dealers on three-year leases?

A. Yes, we can send warning letters to any dealer, either if they operate a one-year or three-year lease.

Q. Those warning letters, they would be ~~considered~~ concerned with what?

A. Primarily appearance. That is the biggest thing, the biggest problem we have when we send a warning letter.

Q. Have warning letters been sent to dealers in your experience?

A. Yes.

Q. Have any of those warning letters finally resulted in the termination of a dealer?

3298 A. Not a one. In all cases where the warning was given for appearance, at the end of the 15-day time that we ask them to get cleaned up in, when going to the location with the salesman we always found what we wanted has been complied with, the station is clean and there has been no reason to cancel leases at the end of the warning letter period.

Q. I take it, however, that some dealers' leases have terminated in one way or another; is that right?

A. Yes, what we call mutually terminated.

Q. Who initiates most of these mutual terminations?

A. Most of those are always initiated by the dealer.

Q. What are the most usual reasons that the dealer, that would compel a dealer to initiate a termination?

A. One reason that comes up quite often is they have been offered a better location by a competing oil company. Hours, the hours it is necessary to put in at the station, the wife is unhappy because he is away from home so many hours. Finances, in some cases. Or a desire of some dealers to get out of that business and into some other type of business with shorter hours.

Q. Is it Atlantic's practice to honor these requests for termination of the lease?

A. Yes. When we receive a notice from a dealer that he desires to leave the location, we want him to leave as quickly as we can find a replacement.

3299 Q. Now, are the leases that are being signed in your district now the percentage leases, so called?

A. Yes. Since September 1956.

Q. Have you found that lease to be popular with the dealers?

A. Very popular.

Q. On an overall basis are the dealers paying less rent

or more rent under these leases than they were under the previous leases?

A. Less.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

Mr. Kelaher: I think we ought to have a little more specificity with respect to some of these broad statements we are getting.

Hearing Examiner Kolb: You will have an opportunity on cross-examination to bring it out, if you wish.

By Mr. Fred Ballard:

Q. You may answer the question.

Mr. Kelaher: He did answer.

The Witness: We, as a district, are receiving less rent than we received on the old-type lease.

By Mr. Fred Ballard:

Q. Now, Mr. Jones, does Atlantic have a business interest in the success of its lessees?

A. Yes, very definitely. The successful lessee de-
3300 termines the success of our own company. We are selling our petroleum products through lessee locations and if they are successful, of course, we will sell more products.

Q. Is it expensive to Atlantic to replace a dealer who terminates his lease?

A. Yes, these are actual figures. In 1957, the Eastern Pennsylvania region, it cost $1,541 per trainee to train a man for the five-week training school. So, everytime we have a replacement, we are immediately faced with that experience, to train a man to replace a dealer.

Q. Do you also suffer a loss in gallonage when a dealer leaves his station?

A. Yes, we do, for many reasons. Personal credit, perhaps, the outgoing dealer has some he takes. If he moves to

a competitive location in or around the neighborhood, he certainly takes some of his customers with him. Goodwill, which a man builds up over a period of time, is not transferable from one dealer to another; so, anytime we have a dealer changeover, we are faced with the possibility of a loss of gallonage.

Q. When a dealer does leave an Atlantic station, does he have a choice as to the disposition of his TBA and equipment that he owns?

A. Yes, he can either take it with him, if he is moving to a competitive location, or he can sell it to the incoming dealer.

3301 Q. Does Atlantic take any attitude with regard to the brand of TBA he has?

A. No.

Q. Is the incoming dealer free to buy any TBA from the outgoing dealer he wishes?

A. Yes, he is.

Q. Who determines the price as between the two dealers?

A. Well, of course, the outgoing dealer knows the price he paid for the product or item he is selling, and when we are making a change-over, we use the wholesale price as our guide, to sell it to the incoming dealer.

Q. Does that mean that the outgoing dealer generally recovers what he paid for the item?

A. Yes, he will have his full price back for it.

Q. Have you personally taken part in a number of these turn-over transactions?

A. Yes, I have.

Q. And in your experience, do they include substantial amounts of non-sponsored merchandise?

A. Yes.

Q. By that I mean non-sponsored TBA items.

A. Yes.

Q. Now, sir, do you find it easy or difficult to replace lessees when they leave your stations?

A. It is a very difficult job. You have 12 or 13
3302 major oil companies, competing in an area, and they are all looking for good dealers; so, finding a good dealer, when one decides to leave, is a very difficult job.

Q. Do you ever succeed in getting a dealer who is operating another company's station to come with you?

A. Yes, competitive stations is one of our main sources of new Atlantic dealers.

3303 Q. What other principal sources do you have?

A. Well, we have our own present dealers, where we will discuss with their No. 1 men or their employees, garages, car agencies, milk truck drivers, delivery men, that are used to meeting the public and perhaps you let it out in the neighborhood that you are looking for a dealer; friends of the salesman or friends and acquaintances of my own I might have, organizations they belong to and meet people, newspaper ads of course, is a source we use constantly. We have an ad running almost daily in papers within the district. It is actually looking all the time and everywhere is what we are doing, constantly.

Q. When you are looking for a good dealer, what are the principal qualities you are looking for in a man?

A. Well, we are looking for a man who has the ability to meet and talk to people, he is going to after all be a salesman. We are looking for a man who can handle money, handle employees, can hire and train people. He has to be energetic, this in particular, and has to have a desire to make money and get ahead; all those characteristics a good dealer must have.

Q. Does he also need a minimum capital?

A. Yes, he must have some capital to invest, the minimum which at the present time is $1,000.

And to obtain the other capital he would have to
3304 have, he has to have a good credit rating, too.

Q. When you are, I will say, selling the Atlantic

franchise to a candidate of this kind, what do you stress with him, as the advantages of becoming an Atlantic dealer?

A. Well, the big things that we stress and it is a caption we carry in our newspaper ads, is "Be in business for yourself, be your own boss." You are an independent business man, not tied down to any whims of an employer as to when you will or won't work and the small investment versus the payoff, if the guy is a good and successful dealer, what it can be, free choice of doing just about what you want to do and in business for yourself.

Mr. Kelaher: Is that last responsive to the question?

Mr. Fred Ballard: I think it is.

Hearing Examiner Kolb: I believe so.

By Mr. Fred Ballard:

Q. How much do you think a successful dealer can make in a year?

A. We have many, many dealers that make over $10,000 a year. We have quite a few that make over $15,000 a year.

Q. Now when you are talking with a dealer candidate, do you tell him about Atlantic's TBA program?

A. Yes, we do, that is part of the franchise story.

Q. Mr. Jones, I show you a copy of Atlantic's Ex-3305 hibit 18, which is a booklet entitled "What a service station can mean to you". This is a booklet that was used in Atlantic's Newark region. I ask you to look this over and let me know whether you use this kind of booklet in your discussions with dealer candidates, recognizing of course that the references in your booklet would probably be to Firestone and not to Goodyear and would be to local places and not to Newark.

Would you look that over and see if you use a booklet like that (handing to the witness)?

A. Yes, we use this book.

Q. Now in the course of discussing this booklet with

the dealer, what do you say to him about Atlantic's TBA program?

A. Well, we explain what Atlantic's TBA program is, that we promote and try to promote with him, the Firestone brand of TBA. We tell him that from time to time part of the salesman's job is to promote the TBA line, the program that is being offered, the current promotions, and the stress with the salesman and particularly on the interview with either myself or the district manager, that the whole program is his to accept or reject.

Hearing Examiner Kolb: Was that Respondent's Exhibit 18-A?

Mr. Fred Ballard: A-18, yes, sir, this booklet.

3306 By Mr. Fred Ballard:

Q. Is it the policies and practice in your district for new dealers to be sent to the Atlantic training school?

A. Yes, we send all new dealers that we can get to attend the Atlantic dealer training school.

Q. Is it the practice also to send new members of the sales organization to that school?

A. Yes, that is the first step in the training of a new man, is to attend the five-week course.

Q. I show you, sir, a copy of Commission Exhibit 207, which as you can see is a form of letter from a regional manager to Atlantic dealers, dated June 24, 1955, and it is entitled "No Forcing". Is that letter given to each dealer each time he renews or signs a lease?

A. It is. It is part of the procedure to give him that prior to his signing a first lease with the company and at every renewal date.

Q. Do you personally make sure that is done?

A. Yes, I do.

Q. Mr. Jones, in your observation of the business of Atlantic dealers in your area, do you think it is in Atlantic's interest to have a TBA program?

A. Yes, I feel it for several reasons. In today's service station business, TBA is absolutely a necessary sideline.

A fellow must have it to be successful. He must have
3307 the things that the TBA line affords, that customers are coming into his place of business want to buy. I think that definitely the company has to have an interest in it because of so many people that are in the TBA business that owe no loyalty or have no interest in this dealer, other than selling his merchandise. And that the dealer needs coaching and counseling by someone who has experience, to guide him in just what he can afford to buy and how much he can afford to have, because without that interest, on his part, he would soon be TBA-poor.

It would be possible he would have many things in his station which would be very slow movers and he would have too much money tied up to remain in business and have the necessary capital he would need to work with.

Q. Does Atlantic have an interest in the quality of the TBA that its dealers handle?

A. Yes, very definitely, because we have to have an interest in the quality; otherwise, customers buying an inferior product would of course look to Atlantic as being partly responsible, that he was able to get that. That would be true particularly with credit card customers and has happened on occasion, where the credit card customer writes the home office, making a complaint about merchandise he bought in an Atlantic station.

Q. There are, however, other concerns that do
3308 offer TBA to the Atlantic dealers in your district, is that correct?

A. Yes.

Q. About how many offering TBA or any combination of TB and A?

A. Oh, a combination of all?

Q. Well, take them either way that is easiest for you to analyze it.

A. We have two major concerns in Wilmington that handle a complete line of tires, batteries and a very complete line of accessories. They of course would be able to offer any or all to a dealer they were calling on.

Q. Are those two in addition to Firestone?

A. Yes, in addition to Firestone. Then we have another five tire marketers, that are very active in the service station tire market, three or four of which would handle batteries, but no accessories, nothing more than tires or batteries. Then we have about six or seven major source houses or parts houses, that are very active in the accessory business, but they don't handle a line of tires or batteries.

In addition to those, we have an untold number of suppliers who work out of their truck, stop at a station, make the sale on some accessories item and sell it right out of the truck and collect for it and go on their way.

Q. Do you personally visit the stations of the Atlantic dealers, promotable dealers in the Wilmington district?

3309 A. Oh, yes, yes, every day.

Q. Do you see there the TBA they have on display?

A. Yes, it is very visible, setting on the shelf, displayed in the station.

Q. Do you observe on their shelves TBA items not carried by the Firestone store?

A. Yes, in all stations there are some items not handled by Firestone.

Mr. Kelaher: Your Honor, at this stage I am going to object to any further leading questions.

Mr. Fred Ballard: I don't think I am leading the witness. I am directing his attention to the items.

Mr. Kelaher: The last question was leading.

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Fred Ballard: Your Honor, I submit that is simply suggesting to the witness the line of testimony.

Hearing Examiner Kolb: All right, proceed.

By Mr. Fred Ballard:

Q. Mr. Jones, does Atlantic have any policies with regard to the use of credit cards in connection with the non-Firestone TBA?

A. No, it is a practice that the dealers can sell anything on the credit card as long as the amount does not exceed $150 and it can be of any brand.

3310 Q. As a matter of practice is any check made to see what brands the dealer is selling on the credit card?

A. No, none to my knowledge at all.

Q. As a matter of practice does Atlantic conduct inspections of the Atlantic stations in your district?

A. Yes, we have two inspection programs. We have one that is called the customer shopping inspection by the home office, which is directly out of Philadelphia, and we have that same inspection program set up on an original basis, where we have a regional customer shopper.

Q. Are those inspections concerned with the brands of TBA that are carried by the dealers?

A. No, those, they are unannounced inspections where a person will drive into the service station and make a purchase of gasoline and there rate the service he received on the driveway, the appearance of the service stations, and the appearance of the rest rooms. There is no mention of TBA at all.

Q. Are those reports of those inspections shown to the dealers?

A. Oh, yes.

Q. Are they discussed with the dealers?

A. Yes, they are.

Q. Do the dealers express themselves as pleased with the program?

3311 A. Yes, because it helps a dealer to get occasionally a rating through the eyes of someone that actually came in and checked the station as a customer, and the dealer is then aware of how his station looks through the eyes of a customer and he also occasionally finds out what kind of service is being given by an employee when he is not there.

Q. In your capacity as sales supervisor, do you occasionally receive complaints from dealers about one thing or another?

A. Yes, I do.

Q. What do the majority of those complaints concern themselves with?

A. They are mostly all about facilities. They need an extra bay to enlarge their repair business, they need more lights, they need more modern pumps, they need something fixed up around the station and facilities they are working with.

Q. Have any of them ever complained to them about forcing by an Atlantic salesman?

A. No, I have never received a complaint on forcing by one of my salesmen.

Q. Mr. Jones, is it part of your salesmen's duty and was it part of your duty when you were a salesman, to promote Firestone TBA?

A. Yes.

Q. Where a dealer is not carrying the Firestone
3312 brand, what effort do you make to promote Firestone to him?

A. Well, where I had a dealer who didn't carry the

Firestone line, I would talk to him about the public acceptance of the line, the quality of the merchandise that they handled, I was in a position in many cases to offer some sort of a special, that was a promotion, in effect for a period of time, that gave them a price advantage. We were always able to compare prices and offer him more profits, in most cases, than where he was buying.

Of course national advertising, you always could pick up a current magazine and show the guy where the Firestone Company was promoting and advertising a line we would like for him to carry. The locale of the district is fortunate in having supply points that are centrally located, and we were always able to talk to him about the closeness of a supply point, and the good service the supply point could provide.

Those are some of the features that, as a salesman, I was able to talk to a dealer that didn't handle the Firestone line.

Q. Suppose in the case of a dealer who was already handling the Firestone line, what would you do to promote Firestone to and through him?

A. Well, on every sales call, I would check his stock, and determine if he needed a replacement order. Once
3313 again, we had the current TBA promotions that we could discuss with him, the deals or promotions that were in effect. If he was handling Firestone, he was eligible for budget-buying or dating, buying and paying for it at a later date. If he had any complaints of service or not getting service from the supply point, or some complaints on billing, I was always in a position to work between the supply point and dealer and get those settled.

Q. From time to time, are there new developments in the Firestone line?

A. Well, there are new developments in the whole TBA line, that we, of course would receive service tips on, or

information from Firestone, that we were able to pass on to the dealer's organization.

Q. On occasion did you go in team, that is, call in company with a representative of the Firestone supply point?

A. Yes, on a regular basis.

Q. Did you occasionally team with representatives of the manufacturers of Firestone accessories?

A. Yes, we did.

Q. Do your salesmen do that today?

A. Yes, we do.

Q. About how many days a month do they spend double-teaming on the average?

A. Well, they are scheduled one day per month, 3314 excluding dealer change-overs, where you have a dealer change-over, and that is excluding that sale of TBA at the time, they are to spend one other day a working month, the double team, with the Firestone representative.

Q. Do they spend other parts of other days on TBA problems?

A. Oh, yes, you have TBA problems sometimes every day, minor problems you would work on and work out.

Q. How many major Firestone supply points — how many Firestone supply points are there in your district for Atlantic stations?

A. There are five major supply points.

Q. How many of those are company stores?

A. Two of those are company stores, the other three are Firestone distributor outlets.

Q. Is it part of your job, first as an Atlantic salesman and then as an Atlantic supervisor, to know the prices that those Firestone stores are charging your dealers?

A. Yes.

Q. Is there ever an occasion where you—well, are those

prices in general competitive with the prices charged by competitive stores?

A. Yes.

Q. Are there ever cases where the dealer is dissatisfied with the prices Firestone stores are offering?

A. Yes.

3315 I can think of one. As a salesman, where a rethreader of retread tires out of New Jersey came into Wilmington and was opening a market and came in offering a larger discount than either Firestone or any other retread shop in the area was offering, and he was doing it of course to get started in the market, and Firestone, upon our recommendation and their investigation, found the prices to be right, and lowered their discount on retreads to the dealers this guy was calling on, the competitor.

Q. Is it possible for a dealer, on occasion, to buy other brands cheaper than Firestone?

A. Not counting the quality of the two grades.

Mr. Kelaher: I move to strike the latter part of the answer.

Mr. Fred Ballard: Your Honor—

Mr. Kelaher: He hasn't been qualified as an expert on quality. He answered the question.

Hearing Examiner Kolb: The objection will be overruled. The answer will stand.

By Mr. Fred Ballard:

Q. Leaving aside the question of quality of brand, is it possible for the dealer on occasion to buy tires, some tires, cheaper than Firestone?

A. Some tires, yes.

Q. Are those, in your experience, lesser known

3316 brands than Firestone?

A. Yes, they are.

Q. In your experience, can a dealer make as much profit selling those brands as he can with Firestone?

Mr. Kelaher: Objection. I don't think he is qualified to testify as to the profit margin of a dealer with respect to other tire brands.

Mr. Fred Ballard: Your Honor, the question is not about a dealer. This man sells.

Mr. Kelaher: That is what the question called for.

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: As I understand the question, it calls for the dealer's profit margins on tires other than Firestone.

Mr. Fred Ballard: I will hold the question then, and ask it this way:

By Mr. Fred Ballard:

Q. Mr. Jones, what determines the amount of profit a dealer makes on the tires he sells?

A. Well, I don't understand the question, what determines the profit.

Q. Mr. Jones, in promoting the Firestone brand to dealers do you tell them that it will bring greater 3317 profits for them or do you not?

A. I tell them it will.

Q. What reasons do you give to them for so saying?

A. Well, when selling the Firestone tire, they are selling a quality tire, that has a suggested list price; they can sell it for what they want to, but the suggested list price versus their buying price, the margin of profit is very good, versus—and I am thinking of another tire a dealer can buy and have had experience with—a Vanderbilt tire, where a tire is cheaper. But at the same time to be sold and to be purchased by a customer, it has to be sold at

a much lower price, so the profit the dealer would be getting actually is not as large.

Q. Does Atlantic, in your district, organize dealer meetings?

A. Yes, on a regularly scheduled basis.

Q. And dealer clinics?

A. Yes.

3318 Q. Do those meetings and clinics on occasion relate or are they concerned with Firestone TBA?

A. Yes.

Q. Does Atlantic run them?

A. Yes.

Q. Atlantic personnel runs them?

A. Yes, they [redacted]

Q. Atlantic, of course, has a TBA coordinator for the Eastern Pennsylvania region?

A. Yes, we do.

Q. Does he visit your district?

A. Yes, quite often.

Q. And he is concerned entirely with TBA?

A. Entirely with promoting of TBA, yes.

Mr. Kelaher: Could we have the gentleman's name.

The Witness: George Fearn. F-E-A-R-N.

By Mr. Fred Ballard:

Q. The man's name we are looking for is the TBA coordinator.

A. He is regional TBA coordinator.

Q. I am told your spelling was wrong.

A. F-E-A-R-N.

Q. Excuse me; that is right.

No. Mr. Jones, you were present, I believe, at the hearings that were held in the Wilmington district in this proceedings, in July of 1957, were you not?

3319 A. Yes.

Q. Do you recall the testimony—you may recall that one Richard Brown testified.

A. Yes, I do.

Q. Richard Brown was a former Atlantic dealer?

A. Yes.

Q. Referring to page 1290 of the record, Mr. Brown was asked this question: "Were any comments ever made by Mr. Klein with respect to non-sponsored TBA you purchased?" The answer was, "Yes, he said he didn't like it, it affected his salary."

Then, on page 1291, Mr. Brown was—I think I had better read the whole thing: "Q. He said it affected his salary?" "A. Yes. "Q. Do you recall the approximate time of the conversation?" "A. I think it was about may 1955." "Q. Do you mean '56?" "A. Yes, 1956." "Q. Do you recall his language, substantially?" "A. He just—they told me only I was cutting their throats, cutting their salary by not buying from Firestone." "Q. Did any one in addition to salesman Klein from Atlantic make such comments?" "A. Mr. Jones made one time or several times, and Mr. Gus Conway made it once."

Mr. Jones, did you ever say to Mr. Brown, in words or to the effect, that he was cutting your throat by not buying from Firestone or that he was cutting your salary by not buying from Firestone?

3320 A. Definitely not. I never called on Mr. Brown as a salesman. It was only in the capacity of a supervisor, and, as such, I was not on the extra compensation; so TBA, one way or another, made any difference to me.

Q. In fact, was Mr. Brown at that time in a position to buy more from Firestone?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: The objection will be overruled.

The Witness: No, he wasn't, because Mr. Brown's credit with Firestone was such that Firestone would only make him deliveries on a cash basis. He owed them money for quite sometime; his checks bounced whenever he gave one. And to the contrary, the salesman and I were willing for him to buy TBA wherever he could get it, because we definitely knew he couldn't get it from the Firestone supplier.

By Mr. Fred Ballard:

Q. Now, sir, at page 1292 of the record, Mr. Brown was asked this question by Mr. Kelaher: "You left the station in April 1957. Will you give us the circumstances leading up to your leaving the station?" The answer: "Mr. Jones came in one night and we were standing there talking, and he just up and told me he had somebody else for the station, if I wanted to get out, that they would put him in. So, I thought it over. It made me kind of mad. I wasn't 3321 mad to start with. I thought that was a heck of a thing for a man in his position to be saying, that I had never said anything about it. The next day I called the salesman and told him if he felt that way, I was getting out."

Do you recall any conversation to which Mr. Brown may have been referring in that testimony?

A. Yes, I do. Sometime during the first week of March, Mr. Klein, my salesman, came to me, told me that Mr. Brown wished to leave the location and that he was going to look for a replacement and replace him as quickly as possible. About three weeks later Brown called me on the telephone in the office and told me that he had given Mr. Klein such a notice, and that evidently Mr. Klein wasn't doing anything to replace him. I knew better than that, because I had talked to Bob several times in the intervening three weeks about what he was trying to do to get a

new dealer. Living near that station, or in that neighborhood, I told Mr. Brown that I would stop that evening after work and talk to him.

So, that evening I stopped at the station, and at that time told Brown that I knew that Bob was working trying to find a replacement, and that we had a dealer in the school being trained at that time, that if Brown would stay another two weeks until this dealer graduated, that we would put the graduate dealer in his station, which Brown agreed to do, and everything was satisfactory.

3322 Q. Did you finally put that graduate in the station?

A. Yes, we made the change-over with that graduate after he got out of school.

Q. You will also recall or were you also present when an ex-dealer named John Galla testified at the Wilmington hearing?

A. Yes, I was.

Q. At page 1251 of the record, Mr. Kelaher asked Mr. Galla this question: "Was there a time when you attempted to buy other brands at cheaper prices?" Mr. Galla's answer was: "I wouldn't say I attempted to buy cheaper brands. I looked into it rather thoroughly to see what situation existed in the market, and I found out I could buy competitive brands at a better price than offered by Firestone." "Q. Does that apply to both tires and batteries?" "A. Yes." "Q. Could you designate the brand on which you could get better prices?" "A. Well, at one time one of these supply houses, at that time, one of the supply houses offered me Auto-lite battery at a better price, and a salesman from Keil's came around and offered me tires at a better price." "Q. What kind of tires?" "A. I think it was Goodyear, I believe it is Goodyear." "Q. Who offered you the better price on Auto-lite batteries, what jobber?" "A. Adams Parts." "Q. Do you recall the name of the salesman?" "A. Herb Dash-

per." "Q. After you made this study of prices, did you discuss the matter with an Atlantic representative?"
3323 "A. Yes, I did." "Q. Who was the Atlantic representative?" "A. At that time it was Tom Jones." "Q. Would you state the conversation that you had with Mr. Jones?" "A. Well, at that time I took it up with Tom, I thought it might be better as far as I was concerned personally in the business if I could buy cheaper from another source of supply, other than Firestone, and Tom had said that I had signed an agreement to purchase from him, that is, TBA—tires and batteries—from Firestone, and that more or less you shouldn't go against the agreement, plus the fact that Atlantic didn't like to see competitive brands to Firestone in the station."

Then, after a discussion, there was another question: "Did Mr. Jones make any further statements at that time?"

"A. Other than they didn't like to see competitive tires and batteries in the station. If I took them in, I would probably have a visit from men above Tom in the Atlantic office."

Mr. Jones, do you recollect some such conversation as that between yourself and Mr. Galla?

A. I recall a conversation with Mr. Galla on tire prices. There was nothing discussed about batteries, and I recall nothing ever being said about batteries. I do recall a conversation on tires. It was brought about because on a regular sales call, when I stopped at the station, I saw spread out on the desk several price sheets of Goodyear tires. I asked Galla at the time was he considering
3324 handling Goodyear tires, and he said Yes, because I can make a better buy. What had happened—

Mr. Kelaher (interposing): Objection, your Honor, unless we get the conversation.

Mr. Fred Ballard: Confine yourself, Mr. Jones, to what

Galla said to you and what you said to him, to the best of your recollection.

The Witness: I am sorry. Mr. Galla told me he felt he could buy Goodyear tires cheaper. We sat down together, taking his Goodyear sheets, and my Firestone catalog, and by comparing the same quality tires, he was presently buying Firestone at 20 cents cheaper on the tire. Then, he asked me what should he do, because he had a customer who was talking about Goodyear tires, could he stock them for that customer. And I pointed out or asked him what, or why he would want a complete stock for one sale. And I told him at that time by all means if the customer could not be sold Firestone that he had in stock to buy the Goodyears and make the sale and make the profit. I remember the conversation very distinctly.

By Mr. Fred Ballard:

Q. Mr. Jones, as far as you know, did Mr. Galla have any agreement to purchase tires from Firestone?

A. No, no agreement was signed at all to that effect.

3325 Q. Have you ever been instructed as an Atlantic salesman or sales supervisor to get competitive brands out of Atlantic stations?

A. No, sir.

Q. Actually, do you see competitive brands in Atlantic stations everyday?

A. Everyday, and practically every station.

Q. Now, sir, you may recollect that another dealer who testified in Wilmington was a, I guess he was an ex-dealer, Harry N. Hawes, and on page 1280—

Hearing Examiner Kolb (interposing) What was the name of that man?

Mr. Fred Ballard: Hawes, sir.

By Mr. Fred Ballard:

Q. He was asked this question: "When you left that third station, did you have any TBA on hand?" "A. I did, yes." "Q. Can you tell us what TBA you had on hand, what brand of tires, for example?" "A. I had quite a few tires and tubes." "Q. What brand?" A. Lee."

I am now skipping some questions. On page 1281, "Q. Did the new dealer come into that station when you left it, the third station?" "A. Yes, he did." "Q. Did he buy your Lee tires, tubes, and batteries?" "A. No, he didn't." "Q. Did you attempt to sell them to him?" "A. Yes, I did." "Q. Did he refuse?" "A. Here again he didn't refuse, so much."

3326 "Q. Who did?" "A. The same friend over there, sitting. They wouldn't be bought. I can't recall his name." "Q. Mr. Arnaud?" "A. Mr. Arnaud."

And then, Mr. Thompson said: "The same friend said what?" And Mr. Hawes said "that the dealer was not buying those tires. He answered for him."

Now, Mr. Jones, is Mr. Arnaud one of the salesman who is responsible to you?

A. No, not at the present time. He has been promoted to another job.

Q. Was he at the time in question, when Mr. Hawes checked out of his station?

A. At the time in question, he had been transferred, too; he had been promoted at that time.

Q. I think we had better find out which time we are talking about. Is it your understanding that Mr. Arnaud did or did not take part in Mr. Hawes' check-out?

A. Yes, he did.

Q. At my request, and in your capacity as sales supervisor, have you checked this testimony with Mr. Arnaud?

Mr. Kelaher: Objection, your Honor. I think we are

getting into a rare form of hearsay here. If he is going to testify as to conversation between Mr. Arnaud, the Atlantic dealer, and Mr. Hawes.

Hearing Examiner Kolb: Off the record.

3327 (Discussion off the record.)

Hearing Examiner Kolb: On the record.

That last question is not objectionable. He can answer Yes or No to that.

The Witness: Yes, I did.

Hearing Examiner Kolb: All right, proceed.

By Mr. Fred Ballard:

Q. Will you tell us what Mr. Arnaud told you about the conversation he had, or the check-out of Mr. Hawes?

Mr. Kelaher: This I object to unless it is specifically understood this is based on a check made after the testimony in question.

By Mr. Fred Ballard:

Q. Was your check with Mr. Arnaud made after Mr. Hawes testified in this proceedings?

A. Yes, they were.

Q. Was it made at my request?

A. Yes, sir.

Q. What did Mr. Arnaud say to you about this transaction?

A. The Lee tires and tubes at Mr. Hawes' third station were placed there on consignment, and as such, were not Mr. Hawes' property to sell. Mr. Arnaud knew that, because of being his salesman, and so advised Mr. Hawes that he could not permit the incoming dealer to buy consigned stock.

Mr. Kelaher: I object. As I understood the ques-

3328 tion, he was going to testify as to what he told Mr. Hawes. Is that not correct, not as to all the reasons.

By Mr. Fred Ballard:

Q. Mr. Jones, is that what Mr. Arnaud told you?

A. That was what Mr. Arnaud told me he had told Mr. Hawes.

Mr. Kelaher: I think he should be limited on a question of this importance as to what he did specifically tell him.

By Mr. Fred Ballard:

Q. Would you state to the best of your knowledge what Arnaud said to Mr. Hawes?

A. Mr. Arnaud told Mr. Hawes that he was aware that the merchandise was consigned, and, as such, was not Mr. Hawes' to sell.

Q. Now, there was also a dealer who testified named Mr. James Parag. The question was asked him, at record page 1334, "Q. Would you mind reciting some of the statements by Mr. Jones?" A. Well, he told me that if I didn't handle according to what Atlantic handled, he said I would lose by lease, which I knew from before this that I wouldn't stay in there longer than August anyway, because it started from the time I went to school. I was supposed to be going to the Atlantic school."

Now, Mr. Jones, did you ever tell Mr. Parag that if he didn't handle what Atlantic handled, he would lose 3329 his lease?

A. I did not.

Q. Did you ever tell him that if he didn't handle Firestone TBA he would lose his lease?

A. No, sir.

Q. In fact, what TBA did he handle mostly?

A. Well, he handled mostly Goodyear, because he couldn't get Firestone.

Q. Why was that?

A. Well, prior to Mr. Parag's becoming an Atlantic

dealer, he was in the trucking business. I didn't know this at the time, but he had purchased Firestone tires in this trucking business, and they, in turn, had brought suit and garnisheed his truck and tied the thing up and did everything they could to collect for the tires and finally, as a last resort, were forced to remove the tires from the truck to get their money.

Q. Under those circumstances, they were not willing to sell to him on credit?

A. They were not willing to sell him unless it was cash on the day the order was received.

Q. Now, at page 1347 of the record—

Mr. Kelaher (interposing): Your Honor, with respect to that last long answer about the relationship between Parag and Firestone, I object if that is being offered for the truth of the relationship which existed between him and Firestone.

3330 Hearing Examiner Kolb: Read that answer to me, please.

(The reporter read the answer commencing at line 10 of page 3329 of the record.)

Hearing Examiner Kolb: It is hardly within the witness' knowledge to testify to that, is it?

Mr. Fred Ballard: I believe most of it is within his knowledge. I will be glad to test it.

Mr. Kelaher: I move to strike the answer.

Hearing Examiner Kolb: It will be stricken.

By Mr. Fred Ballard:

Q. Do you know of your own knowledge whether or not Mr. Parag was engaged in financial difficulties with Firestone stores?

A. Yes, he was.

Q. Do you know of your own knowledge whether Firestone store would or would not sell to him on credit?

A. They would not.

Q. Do you know of your own knowledge the reason that the Firestone store, the grounds that the Firestone store asserted for not selling Mr. Parag on credit.

Mr. Kelaher: Objection.

Mr. Fred Ballard: That is a part of this man's job, and he so testified when dealers have difficulty with the Firestone store, he goes down and finds out what it is
3331 about and tries to get a satisfactory adjustment for his customer. I think he is allowed to testify why the Firestone store—

Hearing Examiner Kolb (interposing): I think you covered the point by showing he could not buy Firestone because his credit was no good. There is no use going into what Firestone told him as to why it wasn't.

Mr. Fred Ballard: I think you are right, sir.

By Mr. Fred Ballard:

Q. Now, page 1347 of the record, the question was asked of Mr. Parag, "Did you advertise your Goodyear products?" "A. No, sir." "Q. By signs?" "A. We were not permitted." "Q. By whom were you not permitted?" "A. Mr. Jones."

Mr. Jones, do you recall any conversation between yourself and Mr. Parag having to do with Goodyear signs?

A. The only conversation I recall regarding Goodyear signs is that Parag requested me to get him Goodyear signs for his service truck, and I had no way of getting Goodyear identification signs. At that time he wanted to know if he could put them on his truck, and he was told it was his truck, he could put any kind on that he wanted to.
3332 Q. Did you tell him that?

A. I told him that, yes.

Q. Did he then put Goodyear signs on his truck?

A. No, he never did get around to doing it.

Q. Now, sir, do you recall an ex-dealer, Mr. Norris Stein, on the bottom of page 1167 Mr. Stein was asked this question:

"After you started handling other than Firestone, did you receive any complaints?

"Answer: Yes, I did.

"Question: What type of complaints did you receive then?

"Answer: The one that stands out in my mind is that my Atlantic salesman made a remark to me one day that if I didn't handle Firestone products, I wouldn't long be an Atlantic operator-dealer."

Now then, after that question and answer it was established, at least Mr. Stein said that the incident occurred in December 1954 and that the salesman's name was Jones. I assume you are the Jones who was Mr. Stein's salesman in December, 1954?

A. Yes.

Q. Do you recall any conversation with Mr. Stein to the effect that he might not long be an Atlantic operator or dealer?

A. I am not certain of the date. I do remember a 3333 conversation I had with Mr. Stein where several things that he wasn't doing were contributing to the decrease in his business to such an extent that for what he was getting out of the business, he would soon lose interest and wouldn't desire to be a dealer. At this time the station appearance had become very bad, he had shortened his hours up considerably, he had decreased his help to such a place that he was a one-man operation, and all these things were contributing factors to a decline in the gallonage at this location and knowing Mr. Stein and the standard of living that he was accustomed to, I felt sure that if these things were not remedied, that he wouldn't

be satisfied with the income the station would provide for him.

Q. And do you recall an ex-dealer who testified in Wilmington named Thomas Sullivan?

A. Yes.

Q. At page 1221 of the record he was asked this question:

"Thereafter did you purchase any other brand of battery?

"Answer: Yes, I did. I purchased some Bowers batteries from a direct salesman.

"Question: Direct salesman from Bowers Company?

"Answer: Yes, and I purchased—well, I can't say I purchased them, I ordered some Exide batteries, 3334 the jobber's name now slips me. Anyhow, they delivered the batteries, but I actually had not made the purchase because usually when a dealer buys a list of items from a jobber, he is billed for them and pays for them at the end of that month. Within that period I was approached by Mr. Jones, and told that I should not sell those batteries, they weren't as good as the Firestone batteries, and that he didn't want me to display them in the station. So I removed the batteries from display in the display room of the station, to the back of the bay in the station and the Exide battery returned to the jobber."

Now, sir, do you recall any conversations between yourself and Mr. Sullivan relating to Bowers or Exide batteries?

A. Yes.

Q. Would you tell us the substance of that conversation?

A. Well, the Bowers batteries are the only batteries that he had at the station, the only ones I recall talking to Sul-

livan about. He bought the Bowers batteries because he felt he needed a cheaper battery.

Q. When you say he bought them because he felt, is that what he told you?

A. Yes, he told me that he felt he had to have a cheaper battery to offer to his customers. I sat down with
3335 him, and at the time, as part of our Firestone catalogue, we had comparison charts, Firestone brand versus the other major brands. The Bowers battery was a battery of less plates than the Firestone Motor King and when the quality of the items were concerned, the $1.50 difference from the price was not enough of an offer that Sullivan should try to sell them to his customers.

We discussed the qualities of the two lines of batteries, and Mr. Sullivan at that time agreed that the Motor King was the best battery and he could sell them for the additional $1.50. Now the moving to the back room, at that time they were sitting on the bottom shelf in the sales room. The Bowers was a wet battery, it was the acid and water was in the battery at the time you bought it and as such, if not placed on a trickle charger, would soon run down, and would have to have been recharged before it could have been sold.

I pointed out to Mr. Sullivan that if he was going to keep the Bowers batteries, he should put them on the trickle charger and keep them charged. They were moved to the back of the bay, because that is where the trickle charger was sitting and located in the station. He put them there and connected them up.

Q. Now, Mr. Jones, at my request, did you investigate the whereabouts of a former Atlantic dealer named—
3336 two former Atlantic dealers, Edgar Cornman and Robert Miller?

A. Yes, I tried to locate them.

Q. Have you been able to locate either of them?

A. Neither one. Mr. Cornman's last known residence, the contact I was able to make, he had moved to Indiana.

Mr. Miller and his wife had separated and no one seems to know his present whereabouts.

Q. Did you look at the files, Atlantic's files, regarding the termination of these two gentlemen's leases?

A. Yes.

Q. According to Atlantic's files, did those terminations have anything to do with the TBA buying practices of them?

A. None whatsoever.

Mr. Kelaher: Objection, your Honor. If there is any evidence of that type, if there is a document, I think it should be offered.

Hearing Examiner Kolb: I think the document is the best evidence. The objection will be sustained and the answer stricken.

Mr. Fred Ballard: I have no further questions.

Mr. Kelaher: Your Honor, on direct examination there were quite a number of matters gone into. I think I will have to ask for a little time to review this record before I begin my cross-examination. I mean by that, I am talking in terms of 15 or 20 minutes, or a half hour. It will
3337 take a little time to review the testimony of these witnesses. I think almost every—well, he mentioned for example the testimony of a number of the dealer, or ex-dealer witnesses in Wilmington who testified concerning Mr. Jones. And I would like to have—not a deferred cross, but I would like to have a little time to review his direct examination, or if you care to handle it another way, if they want to call the next witness, and maybe we could do it that way and put this gentleman over until morning.

Hearing Examiner Kolb: Any objection to deferring cross-examination to tomorrow morning?

Mr. Fred Ballard: I have no real objection. If Mr. Kelaher is planning a short cross-examination, I think the

witness and everybody else would like to get through. He has been here most of the day and I have witnesses coming from New England tomorrow, who have to be put on in the morning because they have reservations back.

Hearing Examiner Kolb: We could start at nine o'clock tomorrow morning, if you prefer.

Mr. Fred Ballard: That is kind of rough.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will recess for five minutes.

3338 (A short recess was taken.)

Hearing Examiner Kolb: Come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Jones, at the outset I would like to get the Wilmington district straight. I am oging to ask you to look at Commission Exhibit 249 and ask you if that still constitutes the map of the Wilmington district (handing to the witness)?

A. Yes, that is the division line of the district.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. Now the Wilmington district extends up into part of Pennsylvania, does it not?

A. Yes, two counties in Pennsylvania.

Q. Two counties in Pennsylvania. And would you repeat those?

A. Chester County and Lancaster County.

Q. That would be just a section of Lancaster County, I presume?

A. Yes.

Q. Now on the other side of the Wilmington district line, going north toward Chester, you get into the
3339 Philadelphia suburban district, is that correct?

A. Right.

Q. And in that district, they sponsor Goodyear, Atlantic sponsors Goodyear TBA?

A. Yes, I believe they do, yes.

Q. How far does the Wilmington district line come to Chester, Pennsylvania?

A. What? Come to Chester, Pennsylvania?

Q. Is it a matter of five or six miles?

A. Our district line stops at that point at the Delaware-Pennsylvania line, at the border.

Q. How far would that be from Chester, ten miles or so?

A. Ten or eleven miles.

Q. Now you were a service salesman with Atlantic beginning in January 1952, and until August 1953, is that correct?

A. Yes.

Q. Then you were promoted to promotable dealer salesman. And you remained a promotable dealer salesman until December 1956?

A. Yes.

Q. What is your correct title now?

A. Dealer Sales Supervisor.

Q. For the Wilmington district?

A. Yes.

Q. You testified in connection with the TBA in-
3340 centive plan or I should say in connection with the bonus plan, which includes TBA, that a particular salesman received the highest amount paid. Was that in recent years, 1956?

A. That was for the year 1956.

Q. What was his name?

A. Robert Klein.

Q. Is that the Bob Klein you have been referring to in your testimony today?

A. Yes.

Q. It is a fact, is it not, that the bonus system is an incentive system, designed to increase the sales of the particular products involved, in the Atlantic program, including TBA?

A. Yes, it is an incentive based on the sales over and above last year, through the same number of outlets.

Q. As I understood your testimony, the dealer, promotable dealer salesman does not receive a bonus unless he shows an increase over the prior year's sales?

A. That is true.

Q. On your direct examination you made reference to certain warning letters. I am going to show you Commission Exhibit 251 and 252, which are three warning letters relating to dealers in the Wilmington district, and ask you if you were the promotable dealers salesman or sales supervisor at the time these letters were sent (handing to 3341 the witness)? Commission Exhibit 250 is a letter addressed to Mr. Norris A. Stein, Lancaster and Ford Avenue, Wilmington, Delaware, 1955.

A. That is right. I was a salesman at the time.

Q. Exhibit 251 is a letter dated February 7, 1956, to Mr. Alfred Trivits at the address given in Laurel, Delaware.

A. I was not his salesman or the supervisor at that time.

Q. Commission Exhibit 252 is a letter dated December 21, 1956, addressed to Mr. William White, Sr., at the address given in Wilmington, Delaware.

A. I was a supervisor at the time.

Q. December 1956, you had just started on your duties as—

A. Twenty-one days previous, yes, the first of December.

Q. As a sales supervisor.

It is Atlantic's policy, is it not, and yours as sales supervisor, to supervise the hours of operation of Atlantic stations?

A. Only to this extent: We don't supervise the hours by establishing set hours. We supervise the hours he should be open in relation to the competition in his area.

Q. And isn't it a fact, as shown by Comission Exhibit 252 that you do threaten lessee dealers with lease cancellation, if they do not remain open the hours you deem sufficiently long for that particular station?

Mr. Fred Ballard: Your Honor, I object to the 3342 characterization of Commission Exhibit 252. He says as shown by it. He is not showing it to the man.

Mr. Kelaher: I just showed it to him. I think he is qualified to answer the question.

Mr. Fred Ballard: I object to the characterization.

Hearing Examiner Kolb: He just saw it, didn't he?

Mr. Fred Ballard: He looked at three of them. I don't know if the word "threatened" appears in there or not. The exhibit speaks for itself. Mr. Kelaher is simply characterizing that as some kind of threat.

Hearing Examiner Kolb: Show it to the witness.

By Mr. Kelaher:

Q. I show you Commission Exhibit 252 and ask you to examine that an read it.

A. All right.

Q. Now will you answer the question, please?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Fred Ballard: I object to the question again. If he wants to ask whether they send these warning letters it is all right. I don't see how he can add anything to the letter itself.

Hearing Examiner Kolb: This is cross-examination. The objection is overruled.

The Witness: I don't agree with your word
3343 "threat". We do send warning letters when dealers are operating a business, contrary to good business standards. This particular letter I remember. I know that the dealer was closing at six o'clock in the evening, which is much too early to close a service station in the area that it was located and with the hours of competition in that area. That was the reason for the letter, that and housekeeping.

Q. And the letter specifically states unless he remedy the situation, through proper procedures, his lease would be terminated; is that correct?

A. The letter relates to a lease violation of purpose and use of the premises, that he was doing things that for the purpose of use of a service station were contrary to good business principles and practice.

Q. They were contrary to what Atlantic considered good business practice?

A. What the dealers themselves think, too.

Q. Did Mr. White increase his hours of operation?

A. Yes, he did.

Q. And his lease was not terminated?

A. No, corrections were made within the 15 days.

Q. You were also asked some questions concerning new percentage lease. Isn't it true that under that new lease, Atlantic also gets a return on gross sales of TBA by the dealer under a specific schedule?

3344 A. Yes.

Q. You also testified on direct with respect to

many of the reasons why there is a drop in gallonage when a lessee dealer leaves a station. Among other things, you said that a dealer builds up good will. Do you recall that testimony?

A. Yes.

Q. And then when he does so, it is not transferrable, and that was one of the reasons for the drop in gallonage. Does Atlantic reimburse the dealer for good will under any circumstances?

A. No, good will is something you can't guage, as to the value of dollars it may have for the outgoing dealer.

Q. On direct examination you also referred to the capital investment by an Atlantic dealer and you stated that $1,000 was the minimum. Now isn't it also a fact that Atlantic's investment of course is substantially greater in all of its lessee stations?

A. Yes, it would in the case where we had a prospect with a minimum, absolute minimum of $1,000, our investment would be more.

Q. In other words, you would have the cost of building the station and cost of the property, and other expenses of that type?

A. Oh, yes, sure.

Q. So that your investment in 94 stations would 3345 run into the millions of dollars, would it not?

A. I imagine it would.

Q. And isn't part of your responsibility as district sales supervisor to see Atlantic gets a return on that investment?

A. Well, by promoting the sales of petroleum products, through good lessee operation, naturally the return on the investment will be more.

Q. And isn't it a fact the more Firestone TBA you sell through those stations, the more return Atlantic gets on the investment?

A. Yes, that is true.

Q. On direct examination you stated that jobbers or TBA sellers other than Firestone, have no interest or no loyalty, to an Atlantic dealer, and you gave that as one of the reasons why you felt that the dealer should handle Firestone TBA. Is that correct?

A. Well, when I say no loyalty, I mean that they have no loss involved, directly with them or the companies they represent.

Q. In what respect?

A. Well, in my own experience, I have seen it happen, where jobbers will come in and over-stock a dealer, in some item, that although it is attractive in price, it has a short span of interest to the customers, and they will
3346 over-stock him to the place where he has much too much money invested in those things.

Q. You are not implying that all competing sellers of TBA in your district attempt to over-stock Atlantic dealers?

A. No, I am not implying that.

Q. Isn't it a fact that there are many sellers of TBA who have just as much interest in the success of their customers as Atlantic might have or Firestone might have?

A. No, because if they lose a customer, or a dealer, Atlantic has the responsibility of first finding that man, which is expensive. They have a responsibility of training him, which is expensive. He has been put into a station and they, upon no cost to them, have assumed another customer, if they can begin to sell him.

Q. For that reason you feel Atlantic dealers have an obligation to purchase Firestone TBA?

A. No, no obligation.

Q. For that reason do you feel that Atlantic has a right to expect its dealers to purchase Firestone TBA?

A. Not unless we can offer them quality lines at com-

petitive prices, I wouldn't expect a dealer to buy from us.

3347 Q. Isn't it a fact that Atlantic dealers can buy products which are competitive as to price and quality from jobbers who give comparable service to that of Firestone?

A. Will you phrase that again?

(The reporter read the pending question.)

The Witness: Well, in practice, if they find they can, they will and do buy from other jobbers.

By Mr. Kelaher:

Q. Isn't it a fact that Atlantic dealers have complained to you about the poor service of Firestone stores in the Wilmington area?

A. We have gotten complaints and sometimes on occasion from outlying areas where the routing isn't what the dealer thinks he should get, or the truck doesn't get there as often during the day.

Q. And haven't you had complaints from Atlantic dealers closer in than that with respect to the poor delivery of Firestone stores?

A. No, I have not.

3348 By Mr. Kelaher:

Q. You also made the statement on direct examination that credit card customers have made complaints as to merchandise bought in Atlantic stations. You are not implying, are you, that complaints come in from credit card customers with respect to all competing TBA, other than Firestone, that is purchased from Atlantic stations?

A. No, I made the statement that credit card customers do complain about merchandise they have bought in Atlantic stations.

Q. But is that—you are not saying that—

Mr. Fred Ballard (interposing): Your Honor—

Mr. Kelaher (interposing): I have a right to cross-examine.

Mr. Fred Ballard: You have no right to interrupt him.

Mr. Kelaher: I thought he had finished.

The Witness: I have specific cases in mind that I have been aware of and have been associated with as a salesman and supervisor, where we have gotten letters from the Philadelphia office outlining complaints on merchandise purchased on credit card sales.

3349 By Mr. Kelaher:

Q. How often does that happen?

A. Perhaps two or three times a year.

Q. On your direct examination you said it happens very often. So that would be what you are referring to?

A. That would be very often.

Mr. Fred Ballard: I am sorry to keep objecting. I don't think he said that.

Hearing Examiner Kolb: The witness can take care of himself.

The Witness: Three or four times a year would be very often for a salesman in one territory handling only 20 accounts.

By Mr. Kelaher:

Q. I might add my notes show you did say very often. You also referred to other competitors of Firestone in the Wilmington area. You named two, or mentioned two major concerns. Would you name those again?

A. Wilco Supply Company is a concern that handles both tires, batteries, and accessories.

The other is Lee Tire and Rubber Company.

Q. You also mentioned five tire companies.

A. Then, you have the tire companies, where tires are

primarily their one item. You have Central Tire Company, Delaware Tire Center, Kiels General Tire, and Coopers.

3350 Q. And Kiels is the Goodyear distributor in the area, is he not?

A. Yes.

Q. And it is an extremely large distributor, is it not, of Goodyear tires?

A. I think he is. I am not that acquainted with him.

Q. Now, you also made some reference to suppliers who sell out of trucks. You said there was an untold number, which comes as somewhat of a surprise, because that is the first we have heard of that type of seller in that area. What did you mean by an untold number?

A. Well, we have a nick-name for them, for lack of anything better, they are called bobtailers. They have an automobile, or a panel truck, and usually they sell one, two, or perhaps three fast moving items, something that is popular at the moment. They will come into a station, sell it, out of the back of the car, take the dealer's money, and they are on their way. It is very popular among people in that business, or in my conversations about meeting them in that business, that they just work up and down the East Coast. They have no one central area.

Q. How many did you mean by an untold number?

A. Twenty-five or thirty. I have no way of counting them.

Q. Are you basically opposed to that type of jobber, selling to Atlantic dealers?

3351 A. Yes, I am.

Q. And don't you think that type of seller has a right to peddle his wares, wherever he can?

A. Yes, he does. May I elaborate on why I have an objection?

Q. You go ahead and elaborate.

A. We recently had one within the past couple of years of key machines, where a guy came through with a panel truck selling a machine to make keys.

Mr. Kelaher: I will object to any further discussion of keys. That is getting afar afield.

The Witness: All right.

By Mr. Kelaher:

Q. I judge from your answer, when you talk about this 25 or 30, you are talking about various types of these bobtailers who sell various kinds of products, including key machines and various things?

A. It is mostly something that is tied in with the accessories' line of the business.

Q. Do you have the deferred credit card payment plan in effect in your area with respect to TBA?

A. Yes, we do.

Q. Is that limited to Firestone TBA only?

A. No, that is any brand of TBA that the dealer is selling.

Q. At one time was it limited to Firestone TBA only?

3352 A. Not to my knowledge.

Q. Not in your area, at least?

A. Not in my area nor to my knowledge since I have been with the company.

Q. You also testified on direct as to two types of inspections, which are conducted by Atlantic, one from the main headquarters in Philadelphia and the other from the regional headquarters. You referred to them as customers shopping inspections; is that correct?

A. I think they have been referred to also in this case as phantom inspections.

Q. That was the question I was about to ask.

On direct examination you got into a discussion with

counsel concerning the price of Firestone tires in comparison with other tires. You implied, if you did not state directly, that lesser known brands could be purchased at lower prices than Firestone.

A. That is true.

Q. And correct me if I am wrong, but I believe you stated that these lower priced tires were not as popular as Firestone. Is that correct?

A. That is true, they are not as popular.

Q. Are you familiar with the prices on Lee tries?

A. Not without checking or cross-checking price lists I couldn't tell you within the dollars what the prices are.

3353 Q. I don't mean within the dollars. Isn't it a fact that the price of Lee tires is lower than Firestone tires and has been for some time?

A. Without checking price lists I couldn't say.

Q. Then, how could you answer that the prices of some tires were higher than others?

A. I am thinking of two brands that are popular, Vanderbilts and Coopers, that are two very low-priced tires.

Q. And was your answer limited to Vanderbilt and Cooper tires?

A. When I spoke of the low-priced tire, I was thinking of that type of tire, yes.

Q. And you were not implying that other tires could not be purchased at lower prices, which were like grade, quality with Firestone, were you?

A. No.

Q. Isn't it a fact that Atlantic dealers handled Lee tires for many years prior to the change-over to Firestone in your area?

A. Yes, they handled Lee, and still do.

Q. Isn't it true Lee has a road hazard guarantee, which Goodyear does not and for that reason is popular with consumers in that area?

A. You said Goodyear. You mean Firestone.

Q. Yes.

3354 A. Firestone has a guarantee that is interpreted as the same thing.

Q. When did that come into effect?

A. They have a guarantee that the tires are guaranteed against workmanship or material for the life of the tire and for most occasions, the guarantee is just as good.

Q. For most occasions, but it is not the road hazard guarantee of the Lee tire, is it?

A. No, it doesn't have the road hazard guarantee of hitting a rock or curb.

Q. Now, I would like to have you turn your attention to the testimony concerning these various dealers, or ex-dealers of Atlantic, who testified in Wilmington. As stated by counsel, you were present during all those hearings, as I recall?

A. Yes.

Q. Now, when Mr. Brown testified as to May 1956 you stated you were a promotable dealer salesman; is that right?

A. Mr. Brown went out in May of 1957.

Q. Yes, but you were asked a question about May 1956 and at that time the record shows you were a promotable dealers salesman, without getting to the next step.

A. I was asked about Brown's conversation, which was May of 1957.

Mr. Kelaher: I withdraw the question then.

3355 By Mr. Kelaher:

Q. Mr. Brown went out in April 1957, according to the record. Now, were you aware of arguments between Mr. Brown and Firestone stores concerning prices, prior to that time?

A. Not arguments on prices, no.

Q. Were you aware of the fact that the Firestone store would at times quote him one price and charge him a higher price upon delivery? Did he make complaints of that type?

A. He made no complaints to me whatsoever of that type.

Q. However, you did not become the sales supervisor until a few months prior to the time—

A. (Interposing.) December of 1956.

Q. Were you aware of the fact that Mr. Brown had complained of poor service of Firestone?

A. Not to me.

Q. Were you aware of the fact that Mr. Brown had complained of the competition he was getting from Firestone stores as to price?

A. I received no complaints from Mr. Brown on TBA whatsoever.

Q. You stated on direct examination, as I recall, and you can correct me if I am wrong, that Mr. Brown was on a COD basis, so to speak, with Firestone, and you implied that was the reason why he was not buying Firestone. Was that the intent or import of your testimony?

3356 A. Well, they had had such poor credit relations with him in his two years as an Atlantic dealer that they just wouldn't sell him anything unless he agreed to pay when delivered.

Q. Isn't it a fact that Mr. Brown was completely dissatisfied with his purchasing from Firestone, TBA from Firestone stores, and that was the reason he wanted to purchase elsewhere?

A. He made no such statements to me whatsoever.

3357 Q. You stated you do recall the conversation with Mr. Brown sometime in or about April, 1957, concerning the termination of his lease?

A. At the end of March, yes.

Q. Do you recall where that conversation took place?

A. In the service station.

Q. Do you recall that after that conversation you again called Mr. Brown? Do you recall that?

A. I do not, no.

Q. Do you recall on that next conversation you told him you were just kidding? Does that refresh your recollection?

A. No, I wasn't kidding. There was no calls after that saying that I was kidding.

Q. And you deny you made that statement to him, as I understand your testimony now?

A. Yes, I do.

Q. Now getting of John Galle. You stated on direct examination he could buy Firestone tires at 20 cents cheaper per tire than Goodyear tires. Is that correct?

A. With the volume discount he had at the time he could.

Q. And on direct examination I don't believe you mentioned volume discount, but I wanted to ask you about that. Isn't it a fact he would have to purchase in volume to get that cheaper price?

A. Not always.

3358 Q. But isn't it a fact that in most instances he would have to buy in volume to get a cheaper price than he would have then been able to get from Goodyear?

A. No, because Mr. Galle was enjoying the best volume price he could get as a lessee dealer at the time we were comparing price.

Q. Mr. Galle stated if he bought one or ten tires from Goodyear, he would get a certain price, but he had to buy ten, fifteen, twenty, or whatever, to get the lower price from Firestone. Is that a fact?

A. No, that is not a fact.

Q. What is your statement with respect to price now? Do you state that if he bought one tire or ten to fifteen or twenty tires, he would get the same price from Firestone?

A. Yes, sir, he would.

Q. A few minutes ago you said if he took advantage of his volume discount he would get a lower price.

A. Volume discount is not volume on a certain number of units, but the volume that the station would fall into in a classification over a period of a year. In other words, from zero up to a certain number of dollars they had a certain volume discount and over that they went into another volume discount.

Q. But the price you are talking about as being cheaper than the Goodyear price is the volume price, isn't it?

3359 A. I don't recall now what Mr. Galle's volume price was, but the price that he was being invoiced at the time we had our conversation compared to the price list he had in his possession, was what we were using to base the fact that he could buy Firestone 20 cents cheaper per unit.

Q. My question is: Your answer is accurate if he did purchase a specific volume of tires, isn't that right?

A. No, he was already in the classification; whether he bought one tire or 50 or none, he still had the classification assigned to him.

Q. What classification was he in, do you recall?

A. Most of our dealers, in fact all of them, were in the B classification, which is the best you can get for a service station.

Q. And your statement is that that is a better price than the similar C classification for Goodyear tires?

A. At the time it was 20 cents on the unit cheaper.

Q. In any event, as a result of your conversation with Mr. Galle, he did not purchase the Goodyear tires, did he?

A. He purchased them for the one particular customer.

Q. But he did not stock them?

A. No, he didn't.

Q. Now getting down to Mr. Parag; on direct examination you stated that he couldn't get Firestone TBA, is that right?

A. He couldn't get it on credit.

3360 Q. He couldn't get it on credit?

A. Yes, sir.

Q. Were you his promotable dealer salesman at that time?

A. Yes.

Q. And are you aware of the fact that he carried Firestone TBA from August 1955 to December 1955?

A. If he did, he paid cash for it when he bought it.

Q. I am not asking you how he paid for it. He did carry Firestone TBA at that time, didn't he?

A. Well, he carried Firestone TBA up until the time he left.

Q. You made the broad statement that the reason he wasn't carrying Firestone was because he couldn't get it. So that was inaccurate, was it?

Mr. Ballard: Now, your Honor, I don't mind him characterizing, but I am not sure that is what he said. Could we find out what the record said on that?

Hearing Examiner Kolb: They wouldn't give him credit is the reason he couldn't buy it.

By Mr. Kelaher:

Q. As a matter of fact, he was buying Firestone TBA, you say, during all the time he was there?

A. He was also buying Goodyear.

Q. But he didn't start buying Goodyear until about December 1955?

A. He bought Goodyear the third day he was in the station.

3361 Q. Did he stock Goodyear?

A. Yes.

Q. And do you know or don't you know that he had no credit problems with Kiels, with respect to Goodyear TBA, did he?

A. I don't know what basis he was buying from Kiels, whatsoever.

Q. With respect to Mr. Thomas J. Sullivan, Mr. Sullivan testified that when he became an Atlantic lessee dealer he received a $3,000 loan from Atlantic. If you know, would you state whether any part of that was used to stock his station with Firestone TBA?

A. I don't know how that was spent. It could have been for gasoline and equipment, and he could have bought his own TBA out of the money he started with. I wouldn't have any way of knowing how the break-down on the money was used.

Q. It is possible it may have been used in part at least for the purchase of Firestone TBA, is that correct?

A. For his station, it would take more than that to buy the gasoline, motor oil, and equipment, so I assume the TBA he bought himself.

Q. Did you ever make loans to Atlantic lessee dealers in the form of TBA stock?

A. Petroleum products we make loans for.

Q. How about with respect to Firestone TBA?

A. Do you mean that we pay the TBA—

3362 Q. In other words, you would advance a certain amount of TBA, Firestone TBA, to a new dealer. Do you make loans of that type?

A. Well, we make a loan to cover the cost of going into business. The gasoline is purchased, the motor oil is purchased, and TBA, the dealer purchases, the equipment he purchases, and the total of everything that he has purchased is added up, and the amount of our loan is deducted

and he gives us a check for the balance. That is the procedure.

Q. So in some instances you may loan him the entire amount and in others, part of the amount. Is that what you mean?

A. Except we don't violate the thousand dollars minimum. He must have that.

Q. He always has to have the thousand dollars minimum?

A. That is right.

Q. How high do your loans go to dealers?

A. Well, we have a policy, it is 80 percent for a trained dealer. So if he has one, we can give him a maximum of four.

Q. If the total amount of investment, capital, was five thousand dollars, you would give him four thousand dollars? (sic.)

A. We could loan him four, if it was warranted.

Q. Is that a normal practice?

A. Not to go that high.

Q. Is it normal to give loans of that type to incoming dealers?

A. Oh, yes, yes, sir.

3363 Q. And are any of such loans interest-free?

A. No, they are not.

Q. What interest do you charge?

A. Five percent.

Q. Now with respect to Mr. Edgar Cornman, were you his promotable dealer salesman when he was in his station?

A. When he left I was, yes.

Q. Would you explain that a little more? I mean as the time period when you were his promotable dealer salesman.

A. When I was a promotable dealer—

Q. Salesman, for him.

A. Oh. Well, he left, let's see—I am trying to think. The fellow that replaced him went to school with Norris Stein, they graduated at the same time. It would be late 1954.

Q. And were you the promotable dealer salesman for Mr. Miller? Was that Robert Miller?

A. Robert Miller. Yes. He was replaced by Mr. Stein.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no questions.

Hearing Examiner Kolb: That is all, thank you.

(Witness excused.)

3365 ISRAEL GLOTH, was called as a witness for the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Israel Gloth. My home address, 19 Shknollwood Street, Springfield, Massachusetts.

Mr. Ballard: Your Honor, before proceeding with this witness, I thought I might do the same as I did yesterday and explain the witnesses that will be appearing this morning are dealers from the New England region of Atlantic. They are not dealers whose names I think have previously appeared in the record.

Hearing Examiner Kolb: All right.

By Mr. Ballard:

Q. Now, Mr. Gloth, in answering my questions, the primary purpose is that the Examiner may hear you, and

also Mr. Kelaher, representing the Federal Trade Commission, and the reporter must hear you, so try to keep your voice up.

3366 You are, I believe, the lessee of an Atlantic station?

A. Yes.

Q. And what is the address, location of your service station, sir?

A. 1032 Dwight Street, Springfield, Massachusetts.

Q. Is that known sometimes as Dwight and Careu Streets?

A. Yes.

Q. And how long have you leased that station from Atlantic, sir?

A. Since 1934.

Q. Do you presently have a three-year lease?

A. Yes.

Q. Now in addition to gasoline and other service station services, do you also sell tires at your station?

A. I do.

Q. Would you say that tires was an important part of your business?

A. Yes, it is.

Q. What brands of tires do you sell?

A. I sell Firestone, Goodyear, and I sell Lee tires.

Q. Could you give us an indication of the percentage of each that you sell, about?

A. Well, I sell about one-third of each brand: It is about evenly divided.

3367 Q. Now, where do you buy your Goodyead tires, sir?

A. I get those from two sources. One of them is the Goodyear store in Springfield, and the other—that is run by Goodyear—and the other is Rucki's, of Chicopee. They are a distributor of Goodyear tires. Chicopee is about three miles from Springfield.

Q. Are those both supply points for Atlantic stations?

A. Yes, as far as I know.

Q. Where do you buy your Firestone tires, sir?

A. I get most of those from the Firestone Tire Center in Springfield.

Q. And Lee tires?

A. From the Lee Rubber & Tire Corporation, factory branch, in East Hartford, Connecticut.

Q. Do you also sell batteries at your station?

A. Yes.

Q. And what brand are you selling today?

A. Goodyear.

Q. And how long, approximately, have you been selling Goodyear?

A. Well, I think it must be at least about two years.

Q. What brand were you selling before then, sir?

A. Well, previous to that I was selling Perrine batteries.

Q. That is a battery made in the Boston area?

A. It is made in Waltham, Massachusetts, yes.

3368 Q. What was your reason for switching from Perrine batteries to Goodyear batteries?

A. Well, the local distributor in Springfield, of Perrine batteries, left his connection with the company, and he was not immediately replaced. It was during the fall of the year, I think, and the battery business was fairly good and I had to get another source of supply, so I had to drop the Perrine line. There was no representative at that time.

Q. Did Goodyear offer you the best other line, proposition?

A. At the time, yes, they did.

Q. Where do you buy the accessories you sell at your station?

A. I buy most of them from the Albert Antomotive Supply in Springfield, and I buy some from the Tarbell-Waters Company in Springfield.

Q. Mr. Gloth, do you recall that a number of years ago Atlantic was selling Lee tires?

A. Yes, they were.

Q. At that time, did you buy Lee tires from them?

A. I did.

Q. Where were those tires delivered to you from?

A. From the Atlantic warehouse, in Springfield.

Q. That was run by Atlantic?

A. Yes.

Q. And do you recall that Atlantic stopped selling
3369 Lee tires and began to sponsor Goodyear tires?

A. I remember that, too.

Q. Sir, I show you a copy of Commission Exhibit 150, which is a form letter dated March 1, 1951, entitled "A statement of Atlantic's TBA policies" and it is on the letterhead of Mr. Colley, the vice president of Atlantic. Do you recall receiving a letter in that form?

A. Yes, I remember getting a letter.

Q. In that form?

A. Yes.

Q. I show you also a letter marked Commission Exhibit 206, also on Mr. Colley's letterhead, dated August 28, 1952, a restatement of Atlantic's TBA policies and ask you if you recall receiving that letter? A letter in that form?

A. I remember receiving that, the same letter.

3370 Q. Finally, I show you a letter, dated June 24, 1955, that is marked Commission's Exhibit 207, and this letter was on the letterhead of the manager of the Philadelphia-New Jersey region. If you had received one, it would be on the letterhead of the New England region.

Will you tell me if you received a letter in that form from the manager of the New England region?

A. I remember receiving a letter like that.

Q. Do you happen to remember the name of the manager of the New England region?

A. It was Harrold W. Jollie.

Q. Now, Mr. Gloth, do you, on occasion, advertise the tires that you have for sale at your station?

A. Yes.

Q. Where do you generally run those advertisements?

A. Well, in the two Springfield newspapers, The Springfield Union, and The Springfield Daily News.

Q. Do you run both of your advertisements in both papers?

A. It is automatically run in both. They are run by the same company.

Q. Have you ever advertised on television or radio?

A. Yes.

Q. Which one, sir?

A. I have used both, on different occasions.

Mr. Ballard: Would you mark these documents for
3371 me for identification.

Hearing Examiner Kolb: They may be marked Respondent Atlantic Exhibit 19-A through -F for identification.

(Whereupon, the documents referred to were marked Respondent Atlantic Exhibit 19-A through -F for identification.)

By Mr. Ballard:

Q. Mr. Gloth, I show you documents which have been marked A-19-A, -B, -C, -D, -E, and -F for identification. They are photostatic copies. Could you tell me whether those are copies of advertisements that you have run in the papers you described?

Mr. Kelaher: Off the record, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Will you answer the question, please?

A. These are the advertisements I ran in those papers.

Q. Have you also run other advertisements in addition to these?

A. Yes, I have.

Q. Look, if you will, sir, at the first sheet, A-19-A. Can you tell me approximately the year in which that advertisement was run?

3372 A. I think it was in 1952 or it may have been in 1953.

Q. A-19-B, has on it the date 4/22/54. Is that about the time that advertisement appeared?

A. Well, I have an exhibit marked -B and another one marked -C. They are identical ads, and one is dated 4/15/54 and one is dated 4/22/54.

Q. Which one is marked 4/15/54?

A. They are both exactly the same ad. One is dated the 15th and one the 22nd.

Mr. Ballard: As far as I am concerned, I will withdraw -C.

Hearing Examiner Kolb: Let the record show Exhibit A-19-C is withdrawn.

By Mr. Ballard:

Q. Now, let's look at Exhibit A-19-D, which is an exhibit of Lee tires, and it is dated 4/27/54. Is that the approximate date that was run?

A. Yes. Here is the date up here, to verify it.

Q. Right. A-19-E is an advertisement with a picture

of a monkey on the top. I hope that isn't suggestive of anything to anybody here. Can you give us about the date that was run?

A. That was run in 1952, or it might have been 1953.

Q. And finally, A-19-F is an undated advertisement of a carload tire sale, and a picture of your station at
3373 the top. Can you give us about the date that was run?

A. That was run at about the same time as the others, 1952 or '53.

Q. Now, in addition to advertising those, running those advertisements, do you also display the Firestone and Lee tires in your station?

A. Yes.

Q. And do you also have a sign or have you on occasion had a sign on your station advertising the Firestone and Lee tires?

A. Yes, I have.

Q. Has your Atlantic salesman ever told you to stop buying the Firestone and Lee tires?

Mr. Kelaher: Objection, your Honor. I am going to object to the form of the question. I think it is leading. I haven't objected strenuously heretofore, but I think we can frome the questions a little better in this hearing.

Mr. Ballard: Your Honor, I don't think that is an unduly leading question under the circumstances, and I may say it has been used in these proceedings without objection many, many times. It seems to me a late date for Mr. Kelaher to get on his high horse on that particular question.

Hearing Examiner Kolb: The objection will be overruled.

3374 By Mr. Ballard:

Q. Have you ever been told to stop buying Firestone and Lee tires?

A. No, never.

Q. Have you ever been told to remove them from the station?

A. No.

Q. Have you ever been told to hide them?

A. No.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Are you going to offer the advertisements in evidence?

Mr. Ballard: Yes, sir. I offer Atlantic Exhibit A-19-A, -B, -D, -E, and -F in evidence.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibit A-19-A, -B, -D, -E, and -F.

(Whereupon, the documents, heretofore marked ATLANTIC EXHIBIT 19-A -B, -D, -E, and -F for identification, were received in evidence.)

Cross-Examination by Mr. Kelaher.

Q. Mr. Gloth, just to get the record straight, Springfield, Massachusetts, is in the Springfield district of the New England Region under Atlantic's set-up, is it not?

3375 A. Yes.

Q. There are quite a number of Atlantic stations in that area, are there not?

A. Yes, there are.

Q. Now, you began operating as an Atlantic lessee in 1934, is that correct?

A. That is right.

Q. And have you been at the same location all these years?

A. Yes, I have.

Q. And when you first began operating in 1934, was TBA considered an important part of service station operation?

A. I don't think so.

Q. Isn't it true that it assumed larger proportions after World War II than before World War II as an important part of service station operations?

A. Well, I can't honestly answer that question. I don't know enough about it.

Q. I am talking about in your business.

A. Well, I have done more after World War II with it than I did before, but I don't know whether that is representative of the other stations.

Q. I am just asking about your station.

A. Yes, I have done more.

Q. Now, when did you first begin to handle Lee tires?

A. I began to handle Lee tires when the Atlantic 3376 Refining Company became a distributor of Lee tires.

Q. And you continued to handle Lee tires from that time or at that time, rather, you began to purchase them from the Atlantic warehouse in Springfield; is that correct?

A. Yes.

Q. And then do you recall attending the dealer meeting in the New England, or in the Springfield district concerning Atlantic's change-over to the Goodyear TBA line?

A. Yes, I remember that.

Q. Where was that dealer meeting held, and who was present?

A. I am trying to remember the place where it was held. I think it was one of the hotels.

Q. The city would be fine.

A. In Springfield.

Q. Were Atlantic dealers present?

A. Yes, we had a big turn out.

Q. Big turn out of Atlantic dealers from the Springfield district?

A. Yes.

Q. Were Goodyear and Atlantic personnel present?

A. Yes.

Q. And what transpired at the meeting?

A. Well, they explained to us that the Atlantic Refining Company would, in the future, sell Goodyear tires and batteries to us instead of Lee tires, and they also 3377 explained that instead of warehousing the tires at the Atlantic warehouse, the local Goodyear distributor would warehouse the tires and deliver them to us. And they said that the Atlantic salesman would call on us or sometimes it would be a Goodyear man, but they were going to discontinue the Lee tire franchise.

Q. At that time did they discontinue the sale of Exide batteries, also, and the line of accessories they were handling?

A. I think they did.

Q. Did you handle Exide batteries back at that time?

A. Yes, I handled Exide batteries.

Q. Did you purchase some accessories from Atlantic, such as Thermoid fanbelts and other items?

A. Yes, I did buy some from them.

Q. And Fram filters?

A. Yes.

Q. Now shortly after that meeting was a call made on you by an Atlantic salesman along with a Goodyear representative?

A. I don't remember that.

Q. Do you remember whether an Atlantic salesman came in later and talked to you about the matter?

A. Oh, yes.

Q. What was his name?

A. If I remember correctly, at that time the salesman

who called on me was Charles Parker, but I am not absolutely sure of that.

Q. That is all right. At least the Atlantic salesman
3378 came in, and at that time did a Goodyear man later come in, or someone from the Goodyear store in Springfield come in to see you?

A. Oh, yes, I have seen Goodyear representatives from time to time.

Q. I am talking about this time of the change-over. Of course, you had calls on you by the Springfield store, Goodyear store then, did you not?

A. I might have had calls from the Goodyear representative, but I don't remember definitely that I did.

Q. At that time, after the change-over, did you begin to purchase from the Goodyear service store in Springfield?

A. No, I didn't.

Q. You didn't at that time?

A. No.

Q. Did you purchase Goodyear tires shortly after that time?

A. From any stores, you mean?

Q. From any stores?

A. Yes, I did.

Q. Who did you puchase the Goodyear tires from?

A. I purchased Goodyear tires from the Interstate Tire Stores in Springfield.

Q. At that time, after the change-over from Lee to Goodyear—let me ask you this first: Prior to the change-over was your principal stock of tires Lee tires?

3379 A. Yes.

Q. And at that time were you carrying any stock of Goodyear or Firestone?

A. Yes, I did.

Q. Were they in smaller quantities than your Lee stock?

A. I think at that time they were.

Q. Now, after the change-over, did your purchases of Goodyear tires increase, after the change-over by Atlantic to the Goodyear TBA line?

A. Not immediately, no.

Q. Did they shortly after the change-over? How soon after the change-over did your purchases of Goodyear tires increase?

A. It was a few years after the change-over.

Q. And was that when you started to purchase from the Springfield Goodyear service store?

A. No, I started to purchase from the Goodyear service store this year, for the first time.

Q. And prior to that, were your purchases from Interstate Tire Company?

A. They were very minor, because I didn't sell very many Goodyear tires at all at that time.

Q. I see.

A. I sold a few. I featured Lee tires.

Q. Did you have a window valance with Lee on it at that time, or an outdoor pole sign with Lee on it?

3380 A. I don't think I did.

Q. Did you have any service station identification in your station as to tires?

A. You mean before the change-over?

Q. Yes, before the change-over.

A. I don't think I had any. I might have had some Lee signs, but I don't think I had any permanent Lee signs.

3381 Q. Do you have any window valances now?

A. No.

Q. Do you have any Goodyear signs on your premises?

A. Yes, I do.

Q. A Goodyear outdoor pole sign?

A. I have one Goodyear sign attached to a floodlight pole.

Q. Yes, that is the so-called Goodyear pole sign. When was that placed on your premises?

A. I don't remember.

Q. Was that sometime ago?

A. It was more than a year, I know.

Q. It was after Atlantic changed over to the Goodyear TBA line, was it not?

A. Yes.

Q. Are you familiar with, from your observation, have you seen the other Atlantic stations in your area or district?

A. Yes, I have seen them.

Mr. Ballard: I will let that answer stand, but before you answer the next question, I might want to object to it.

By Mr. Kelaher:

Q. Based on your observation of Atlantic stations in that area, isn't it true that the Goodyear window valances and outdoor signs predominate in Atlantic stations?

Mr. Ballard: Now, sir, I object to that question on the ground it goes beyond the scope of direct examination. 3382 This man was not put on the stand to testify about what other Atlantic stations do in the area. If Mr. Kelaher wants to call him for that purpose, it is a different matter.

Mr. Kelaher: They are calling this witness as a typical dealer from the New England region. I think I have a right to go into the question of how typical he is, and develop facts concerning the area in which he sells. I don't see where that is irrelevant or immaterial.

Hearing Examiner Kolb: Is he offered as a typical witness?

Mr. Ballard: Your Honor, he is offered as an Atlantic

witness who carries—to demonstrate his own state of mind, not as a typical witness.

Hearing Examiner Kolb: It seems to me your attempt to show the course of conduct among the stations, and I assume this man would be presented as typical of how the stations are operated and what they do.

Mr. Ballard: Your Honor, I don't think I can choose or find a typical Atlantic witness. I can find witnesses of which this man is an example—

Hearing Examiner Kolb: But you expect me to find from the witnesses you produce that the others are probably about the same thing.

Mr. Ballard: Your Honor, on that basis, I would be delighted to have him answer the question.

3383 By Mr. Kelaher:

Q. You may answer.

A. Would you repeat the question, please.

Hearing Examiner Kolb: Read the question.

(The reporter read the question as follows: "Based on your observation of Atlantic stations in that area, isn't it true that the Goodyear window valances and outdoor signs predominate in Atlantic stations?")

A. I don't think they predominate.

By Mr. Kelaher:

Q. You say you don't think they predominate?

A. No.

Q. Isn't it true that Atlantic service stations in that area have the Goodyear window valance on the windows?

A. Some of them have, yes.

Q. Isn't it a fact that the majority of them have?

A. I can't answer that question.

Q. And isn't it a fact that the Atlantic service stations in that area have signs similar to yours, on the premises, the outdoor, Goodyear outdoor pole sign?

A. I think a good many of them have the outdoor pole sign. That is the only Goodyear sign I have, is that outdoor pole sign.

Q. That is the only one you have. But isn't it a fact that the majority of Atlantic service stations in your
3384 area have a Goodyear outdoor pole sign, or they don't have any sign; is that right?

A. I haven't observed that closely. I can't say that; I can't answer that.

Q. You have seen Goodyear outdoor pole signs in Atlantic service stations?

A. Yes.

Q. You haven't seen Lee outdoor pole signs in your area, have you?

A. No.

Q. And you haven't seen outdoor Firestone pole signs in your area, in Atlantic stations, have you?

A. No, I don't remember seeing them.

Q. And you haven't seen outdoor pole signs of any other brand on Atlantic stations in your area, have you?

A. I can't remember, I spend so much time in my own station, I don't have too much chance to see the other ones.

Q. You have been in business for 24 years, so I assume you have seen some Atlantic stations?

A. That is right, but I have been in business mostly because I stay in my own station.

Q. I am not too clear on your testimony about the signs, Respondent's Exhibit A-19-A through F, in some respects.

A. As I understand your testimony, these exhibits,
3385 19-A for example, was run in 1952 or 1953. Is that right? (Handing document to the witness.)

A. Yes.

Q. Now, with respect to Respondent's Exhibit 19-A, B,

and D, E, and F, the last one of these was run in 1954, I believe you testified. Was that right?

A. One of them was.

Q. Now, is it your testimony that you have continued to run these ads to date?

A. No, I am not running ads now as frequently as I used to.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Ballard.

Q. Mr. Gloth, returning to the dealer's meeting, at the time Atlantic began to sponsor the Goodyear brand, in the course of that meeting did the Atlantic representatives state to you that the program was a voluntary one?

A. Yes.

Q. Mr. Gloth, I show you these two pictures and ask you if these are pictures of your station?

A. Yes, they are.

Q. Now when were these pictures taken, sir?

A. Probably about three weeks ago.

Q. Were they taken on the occasion of the visit of one of my associates to your station?

3386 A. Yes.

Q. At that time did you have displayed along the wall of your station a sign reading "See Gloth for Goodyear or Firestone tires, batteries, wholesale discounts"?

A. Yes, I had that sign.

Q. Did you at that time have a display of eight Firestone tires in front of your station?

A. Well, I had eight tires there. I don't know if they were all Firestone tires, but some of them were.

Q. Were two of them in a Firestone stand?

A. Yes.

Mr. Ballard: No further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess at this time.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

HAROLD F. McCARTHY was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

3387 Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Harold F. McCarthy.

Direct Examination by Mr. Ballard.

Q. Mr. McCarthy, you are the lessee of an Atlantic service station, are you not?

A. Now, yes.

Q. Where is that station located, sir?

A. Belgrade Avenue, Roslyndale, Massachusetts.

Q. That is near Boston?

A. Just the other side, about seven miles or so.

Q. Now you have occupied that Atlantic station in two separate stretches, is that corect?

A. Yes, sir.

Q. What were the years you occupied that station?

A. I was there eight years, then I left and came back after five years, came back here, and I am back now four years.

Q. In other words, you have been there since 1952?

A. Yes.

Q. During that five years between times, what were you doing?

A. I was with the Texaco company.

Q. Were you operating a service station?

A. Yes.

3388 Q. Did you lease that service station from Texas?

A. Yes, I did.

Q. That would be five years, 1947 to 1952?

A. Let's see, four years I am back.

Q. That would be 1954, you have been back since about 1954?

A. Around there, yes.

Q. And you were with Texas about five years previous to that. And you were with Atlantic eight years previous to that?

A. Yes.

Q. Was your Texas station near your present Atlantic station?

A. About a block away from it.

Q. When you moved from your Texas station to your Atlantic station, did your customers come with you?

A. Right back with me, yes.

Q. Now, sir, what kind of tires do you sell?

A. Firestone, Goodyear, Kelly-Springfield, anything that the man wants, we get for him.

Q. If the man doesn't ask for a particular brand, what brand do you offer him?

A. Firestone.

Q. What brand did you sell at your Texas station?

A. Firestone.

Q. Where did you first become acquainted with 3389 the Firestone brand?

A. I worked for them for about fifteen years.

Q. Now, sir, are the Firestone tires visible in your station?

A. Yes, sir.

Q. Does your Atlantic salesman know they are there?

A. Oh, yes.

Q. Did he ever tell you to take them out of the station?

A. No, sir.

Q. Or to hide them?

A. No, he did not.

Mr. Ballard: I don't think I have any further questions.

Cross-Examination by Mr. Kelaher.

Q. I just have a few questions, Mr. McCarthy. Roslyndale, as you stated, is in metropolitan Boston, is it not?

A. Yes.

Q. And there are a lot of Atlantic serice stations up there, aren't there, in that area?

A. One, two, three—

Q. I mean in the metropolitan Boston area?

A. Yes, quite a few.

Q. Isn't it a fact that the Atlantic service stations have the Goodyear window valance and Goodyear outdoor
3390 pole sign on them?

A. I have two.

Q. You have two?

A. Yes.

Q. And do you stock Goodyear tires?

A. No, I don't stock them, but I can get them any time I want them. They are very handy to me.

Q. It would be to your advantage to have the Firestone sign up there, wouldn't it?

A. Well, it doesn't make too much difference, if I can't

sell a man a Firestone, I will sell him a Goodyear, or a Kelly-Springfield or a Fisk, anything he wants.

Q. But if a motorist were coming along, he wouldn't know you handle Firestone from your outdoor sign, would he?

A. No, from my window, you have to pass me before you can see it on the window.

Mr. Kelaher: I have no further questions.

Mr. Ballard: Thank you very much, Mr. McCarthy.

(Witness excused.)

3391 GEORGE ZARELLA was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter, please.

The Witness: George Zarella, 7 Headland Way, Bedford, Massachusetts.

Direct Examination by Mr. Gordon.

Q. Mr. Zarella, Mr. Kelaher is counsel for the Federal Trade Commission, and he is sitting at this other table. Mr. Kolb is the Examiner in the case. And I will question you.

What is your home address?

A. 7 Headland Way, Bedford, Massachusetts.

Q. And the address of your station?

A. 206 Salem Street, Malden, Massachusetts.

Q. Malden is in Greater Boston, is it not?

A. Yes, it is considered the Greater Boston area.

Q. You lease an Atlantic station, do you not?

A. Yes, I do.

Q. How long have you leased one?

A. Thirteen years.

3392 Q. Since 1945?

A. Right.

Q. What is the term of your present lease?

A. The present term is a three-year lease.

Q. When did you get that?

A. Well, if I recall, it was probably say six or seven years ago. I was one of the first ones in Massachusetts to have this three-year lease.

Q. Would you tell me what kind of tires you now have in your station, what kind you stock in your station?

A. Well, I stock Pharris tires.

Q. Any other kind?

A. Well, I have some Goodrich tires.

Q. How long have you stocked Pharris tires?

A. I would say in the last two years.

3393 Q. Prior to that, what kind of tire did you have in your station?

A. Well, I had a consignment deal with a Pennsylvania tire company that I purchased through a local agency there. I think I purchased something like $800 worth of tires from him at the time on a consignment deal.

Q. Did you carry Pennsylvania tires for any length of time?

A. I would say roughly two years.

Q. Have you carried batteries in your station?

A. Yes.

Q. What kind?

A. Right at the present time I am carrying Surrette batteries. I have had those the last eight or nine years.

Q. How long have you carried Surrette?

A. I would say roughly eight or nine years.

Q. What portion of your battery sales would you say are Surrette batteries?

A. I would say most of the sales are Surrette batteries.

Q. Where do you purchase your accessories?

A. Well, I have several local dealers in the area. I have two fellows that come in to the station, with one of these trucks loaded with merchandise, and they come in, say, once a week, and I purchase from them:

Q. Do you know their names?

3394 A. Eastern Auto Parts in Malden, Colburn Auto Parts in Malden, Schrager Auto Parts in Malden, and Ross Motor Parts in Medford is also another one.

Q. Could you estimate for me about how much you bought from the Goodyear store in the last year or so?

A. According to the records I get from one of my dealers, I think it was roughly $200 I purchased last year.

Q. During that same period—

A. (Interposing.) I mean I wouldn't want you to quote me, but I think that is what it was.

Q. During that same period, about how much TBA have you bought from all stores?

A. On a yearly basis?

Q. Yes.

A. I would say between four or five thousand dollars.

Q. Has this been your general TBA purchasing pattern for some time, what you have just described?

A. Yes, it has.

Q. Does it go back to practically when you began as an Atlantic dealer?

A. Yes.

Q. Do you display TBA?

A. Yes, I do.

Q. Do you display Surrette batteries?

A. I have a Surrette stand right in my office.

3395 Q. What kind of fanbelts do you carry?

A. Gates.

Q. Do you have a rack?

A. Yes, I have a rack with the Gates name on the rack.

Q. Do you ever place the TBA you carry on display in your window?

A. Yes, I do.

Q. The accessories you purchase, are they on display on the shelves in your station?

A. Yes, I have several shelves in my office.

Q. Are these visible to your Atlantic salesman?

A. Yes, they are.

Q. Is the TBA you carry visible to anyone?

A. It is.

Q. Do you sell TBA you carry on Atlantic credit cards?

A. Yes, I do, the purchase of tires and so forth, I put that on the Atlantic credit card.

Q. Have you ever been criticized for doing that?

A. No, not to my knowledge.

Q. Has anyone from Atlantic ever criticized you for carrying the TBA and selling the TBA you do?

A. Never.

Q. Has anyone from Atlantic ever told you to stop buying TBA that you have been buying?

A. Not to my knowledge.

3396 Q. Has anyone from Atlantic ever told you to remove that TBA from your station or hide it?

A. No.

Q. Who makes the decisions in your station as to what TBA you buy?

A. I do.

Q. Do you feel free to buy any TBA you want?

A. I do.

Q. Do you feel free to buy TBA from any source you want?

A. Yes.

Q. Have you ever been forced or pressured into buying Goodyear TBA?

A. No, never was.

Q. Now, Mr. Zarella, I would like to show you this letter marked Commission's Exhibit 150. It is a letter, dated March 1, 1951, on the stationery of Mr. Culley. Would you examine that letter and tell me whether you have ever received it?

A. I think I do recall receiving a letter through the mail like this.

Q. Thank you.

Now, I show you this letter marked Commission's Exhibit 206. It is entitled "A Restatement of Atlantic's TBA Policy", again on Mr. Culley's stationery.

A. I do recall this, yes.

Q. Now, I show you this letter which is marked
3397 Commission's Exhibit 207. It is called "No Forcing", dated June 24, 1955.

A. Yes, I remember this distinctly.

Q. Do you know who the regional manager is in your particular region?

A. Gee, I don't recall who he is right now. There is a Mr. Wilson.

Q. Mr. Wilson?

A. Yes, I think that was he.

Q. Do you know a Mr. Jollie?

A. Yes.

Q. Did he send you that?

A. I think his signature was on the bottom of those letters, Mr. Jollie's.

Q. Mr. Zarella, your lease has been renewed many times, has it not?

A. Yes, it has been renewed.

Q. In connection with your lease renewals, has Atlantic ever discussed the brand of TBA you carry and sell in your station?

A. No.

Q. Are there many stations of other oil companies in your area that compete with your station?

A. Yes, several of them.

Q. Could you name a few of those?

A. Well, Socony, Gulf, Jenny, Omoco. I think
3398 Jenny is more of a local New England gas.

Q. Have you received offers from any other oil companies to take stations for them?

A. Yes.

Mr. Kelaher: Your Honor, I am going to object to this line of questioning.

Mr. Gordon: This is certainly admissible. We have followed this line of questioning many times before.

Mr. Kelaher: I have objected before, too. I can't see the relevancy of this type of testimony in this case at this time.

Mr. Gordon: I can give you many reasons for this line of questioning, your Honor, and I would like to do so, if you are thinking of sustaining the objection.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Gordon:

Q. You have received offers from—

A. (Interposing.) Yes, I received several offers from other stations, one very close by, the next corner to me. I was offered that station.

Q. Are qualified good dealers in demand?

A. Very much so.

Q. Do you feel that you could get another company's station if you wanted to?

3399 Mr. Kelaher: Objection, that is speculative.

Mr. Gordon: That again is still admissible.

Hearing Examiner Kolb: I assume if he received offers from other stations, he would probably get one.

Mr. Gordon: Then, he can answer the question.

Hearing Examiner Kolb: No, the objection will be sustained.

By Mr. Gordon:

Q. Do you have many personal credit customers?

A. My own personal, yes, I have several.

Q. Do you know Atlantic has a program by which it inspects its stations?

A. They do.

Q. Do they, shortly after those inspections, discuss the results with you?

A. Well, they have, for housekeeping, what they call a mark they give you and usually after two or three weeks when the dealer salesman comes in, we usually ask him what the mark was we got for housekeeping and so forth, and drive-way inspection.

Q. They discuss it with you?

A. Yes, they do.

Q. Do they ever mention in connection with those discussions the brand of TBA you carry?

A. No.

3400 Mr. Gordon: I have no further questions.

Cross-Examination by Mr. Kelaher.

Q. Mr. Zarella, where is Malden, Massachusetts located in relation to Boston, Greater Boston?

A. Well, I would say—

Q. (Interposing.) How many miles?

A. I would say roughly between six and seven.

Q. You referred to a Goodyear service store, is that correct, in your testimony? Where is it located?

A. I think the nearest one to me, I think there is one in Lynne, that is the nearest one. Lynne, Massachusetts.

Q. How far away is Lynne from Malden?

A. I would say it is around five or six miles from Malden.

Q. There are no Goodyear supply points in Malden; is that right?

A. There is an independent Goodyear supplier in Malden and he operates the store himself.

Q. What is his name?

A. I think it is Kaufman.

Q. I take it he is not a designated supply point under the Atlantic set-up, is he?

A. Not that I know of. I think that Lynne is the nearest one.

Q. The nearest designated supply point?

3401 A. I think, to Malden, yes.

Q. Now, you have been an Atlantic lessee dealer since 1945?

A. That is right.

Q. Now, beginning in 1945, at that time did you make any purchases from Atlantic Refining Company, itself? Did you purchase Lee tires?

A. I was purchasing Lee tires from Atlantic at the time, but not too many. It was mostly—I would say some were Lees and mostly Firestones that I was purchasing from the Firestone dealer.

Q. Did you purchase Exide batteries from Atlantic?

A. I had some Exide, yes, and I also had the Surrette with Exide.

Q. Did you purchase Exide batteries from Atlantic?

A. Yes, I did.

Q. Where was the Atlantic warehouse?

A. I think at that time they were located in Cambridge, Massachusetts, or Brighton, I should say.

Q. Where?

A. I think it was Brighton. I am sorry, I take that back. That is Allston, Massachusetts.

Q. Is that in the Cambridge area, Allston?

A. Yes.

Q. That is way on the other end of Boston?

A. Right.

3402 Q. How many miles would you say that is from your place?

A. I would say probably 12 miles from my station.

Q. Now, at that time when you went into the station, was it a new station or did you replace another dealer?

A. When I went into the station, it was closed, it was closed during the war years. I was the first one—

Q. (Interposing.) You were the first one in it?

A. Yes, it was an old station and they fixed it up.

Q. At that time dealers were more difficult to find than they are today, is that true, in 1945?

A. If I recall, I think they were hard to find at the time.

Q. What?

A. I think the dealers were hard to find at that time, if I recall. A lot of them had defense jobs, and I, myself, was on a defense job, and I was doubting if I should leave it or not, and then I finally decided I had to go into the gas business.

Q. Now, at the time you opened your station, did you have a Lee sign outside the station, on the premises, or a Lee identification, window valance, in your station?

A. Gee, I don't recall. I know I bought Lee tires.

Q. You stocked Lee tires?

A. Yes.

Q. You don't recall whether you had a Lee or Exide sign in your station?

3403 A. I think I put a Lee up myself, one of those over hanging signs, or a decal.

Q. Are you talking about a window valance?

A. Yes, I did have one of those.

Q. Now, at the time Atlantic changed over to Goodyear, which was in or about March 1951, did you attend a dealer meeting in your area concerning the matter?

A. Well, I don't know. I have attended several dealers' meetings.

Q. Would it refresh your recollections to state that at that time Atlantic was holding dealer meetings, at which it announced the change-over to the Goodyear TBA line? Do you recall that at all?

A. I do recall it. I got a letter on that, that they were going to change over to Goodyear.

Q. That was the letter shown to you on direct examination?

A. Yes.

Q. At that time isn't it true there was a meeting of Atlantic dealers in your area?

A. Yes, they have had several meetings.

Q. I am talking about the 1951 period.

A. I don't recall. I think maybe I was. I don't remember that far back.

Q. Now, is Malden, Massachusetts—in what district of the New England region of Atlantic is Malden 3404 located? Is that in the Boston district?

A. It is what they call a suburb of Boston. I will put it that way. Like I live in the next town, which is Medford, and we call it a suburb of Boston, too. The counties may be different. Boston goes under Suffolk and we go under Middlesex County.

Q. I am referring to the Atlantic set-up. I understand from counsel that it is in the Boston district.

A. Yes

Q. Now, at that time do you recall any meetings in or about March '51 or after the change-over to Atlantic?

A. I think I did recall after 1951 they had dealers' meetings. I attended several.

Q. Was Goodyear TBA discussed at that time?

A. Yes, they had Goodyear TBA at the meetings.

Q. Did they have a Goodyear representative at the meetings sometimes?

A. I think they did have a Goodyear representative.

Q. Now, getting back to the change-over to Goodyear TBA, was your station identification changed to Goodyear identification?

A. Yes.

Q. And isn't that true of all the Atlantic dealers in your area?

A. No.

3405 Q. Aren't the majority of them identified with Goodyear window valances and outdoor pole signs?

A. My own station has. I don't know about the others. I never noticed too much the other Atlantic stations. I know some that carry other different brands.

Q. I am talking about an outdoor pole sign. Isn't it true that every station in your area either has a Goodyear outdoor pole sign or has not an outdoor pole sign?

A. Some do and some don't.

Q. But the ones that do, it is a Goodyear sign?

A. Right.

3406 Q. And isn't that true of the Goodyear valance in the window, also?

A. I never noticed.

Q. Do you have a Goodyear sign?

A. Just the overhead pole sign. But the decal I took out.

Q. You are advertising Goodyear tires in your station and you testified you don't carry Goodyear tires?

A. That is right. For one reason, I don't sell them, because I think there I am in a price area and I have to compete with competition and that is one reason I can't sell Goodyear tires.

Q. If you don't sell them, why do you advertise them?

A. Well, I just have the sign there. Some people occasionally ask for a Goodyear tire and I pick one up.

Q. Isn't it a fact you have a sign there because Atlantic put it there?

A. Well, I have other signs besides Atlantic. I have also a Penn sign in the window.

Q. I am talking about the Goodyear outdoor pole sign.

A. That was put up there and don't mean nothing to me.

Q. It wasn't put up at your request, was it?

A. Not that I recall.

Q. You wouldn't request it if you weren't selling Goodyear, would you?

A. No, but the—

3407 Q. Just answer the questions.

When was that sign put up there?

A. Probably five or six years back.

Q. Right after Atlantic changed over to Goodyear TBA, wasn't it?

A. Right.

Q. And since that time you haven't stocked Goodyear tires?

A. No.

Q. Have you sold Goodyear tires on a fill-in basis since that time?

A. I sell Goodyear tires on request only.

Q. You don't like to sell Goodyear tires, do you?

A. No, I am not a Goodyear man, definitely not.

Q. Who manufactures Pharris tires, do you know?

A. Well, the reason why I carry those tires, they give you a road hazard guarantee, which Goodyear doesn't give and I think it means a lot to protect the customers I sell a tire to, if somebody goes up the street and has a blowout and comes back and I make the adjustment myself.

I am well satisfied with the tires I sell. Goodyear doesn't do that.

Q. And you get a better price on Pharris tires?

A. I certainly do. I get them on a consignment basis.

Q. It is to your advantage as an Atlantic dealer to handle Pharris tires, isn't it, to your financial advantage to handle them, instead of Goodyear tires; is that right?

3408 A. Right.

Q. Now, getting down to batteries. You handle a Surette battery?

A. Yes.

Q. Is that a local battery?

A. That battery is made in Lynn, Massachusetts.

Q. That has consumer acceptance in your area, a local type?

A. It is a local outfit battery, that is right.

Q. Do you purchase any Goodyear batteries?

A. No. I have bought some, but I never had any luck with them.

Q. You don't like Goodyear batteries, either?

A. No, I sent two back for adjustment and I never got my credit on them yet.

* * * * *

3409 By Mr. Kelaher:

Q. Have you had any conversation with your Atlantic salesman concerning your purchases of Goodyear TBA, your lack of purchases, I mean?

A. They have approached me on it, that they were going to sell Goodyear products, that Goodyear was taking over their products, if that is what you mean.

Q. I am talking about this year, or last year, or the previous year. Have you ever had any conversations with your Atlantic salesman, concerning your lack of purchases of Goodyear TBA?

A. They did mention to me why I didn't buy Goodyear products and I told them I didn't care too much for them.

Q. And you said you learned, through your Atlantic dealer, that you purchased approximately $200 worth of Goodyear TBA, last year, is that right?

A. I think through my salesman, if I recall, I don't know whether it was last year or the year before, I mentioned to him, I think it was $200 or $250 worth of tires I bought.

Q. Did he have a record of that? You mentioned on your direct examination, he had a record.

A. I could get a record of that. I think my sales supervisor can give me a record on that, from Atlantic.

Q. They keep a record of your purchases of Goodyear TBA?

A. I think they do.

Mr. Kelaher: No further questions.

3410 *Redirect Examination by Mr. Gordon.*

Q. Mr. Zarella, at the time of the change-over in 1951, to the Goodyear program, when Atlantic started to promote the sale of Goodyear TBA, did Atlantic make it clear to you that the purchase of TBA by you from Goodyear was voluntary?

A. They did.

Q. Isn't it true also that your Pharris salesman knows how much Pharris tires you buy from him?

A. Yes.

Recross Examination by Mr. Kelaher.

Q. Isn't it also true that your Atlantic salesman doesn't know how much tires you buy from Pharris?

A. He sees them when he comes in the station, he knows I sell them.

Q. I am talking about the dollar value, unless you tell him. Under your new lease, you pay a percentage to Atlantic on your gross sales.

A. I think they have a setup like that.

Q. Do you itemize it by brands?

A. No.

Q. So your Atlantic salesman does not know what your volume of purchases of Pharris tires or any other non-Goodyear TBA product is, does he?

3411 A. That is right.

Q. But he does know what your purchases of Goodyear TBA are?

A. I believe he does.

Q. Your answer is yes to that last one?

A. Yes.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you.

(Witness excused.)

Mr. Ballard: Could we have a brief recess, sir?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

EDWARD L. SNOW, was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Edward L. Snow, home address: No. 8, Moreland Street, Worcester.

Direct Examination by Mr. Ballard.

Q. What is the address of your Atlantic station?
3412 A. 1119 Pleasant Street, Worcester.
Q. How long have you been at that station?
A. Well, close to 20 years.
Q. You lease that station from Atlantic?
A. Yes, sir.
Q. What is the term of your present lease?
A. I can't get you.
Q. How long a term is your present lease, sir?
A. Three years.
Q. Do you carry any stock of tires in your station, sir?
A. No, sir.
Mr. Kelaher: No tires?
The Witness: No.

By Mr. Ballard:

Q. How about batteries?
A. Delco batteries.
Q. How long have you been carrying Delco batteries?
A. Oh, six or seven years.
Q. Do you have a Delco sign on your station?
A. Yes, sir, on the fence.
Q. Do you do any promotional activity to promote sales of your station?

A. Well, I used to but I don't now, because I am pretty well established.

Q. What kind of things did you used to do?

3413 A. Well, like lubrications and oil and stuff like that.

Q. Do you ever give calendars or Christmas cards or things?

A. Calendars.

Q. Do you still do that?

A. Nope, I switched to pencils.

Q. You give pencils now?

A. Yes.

Q. Did the Atlantic Refining Company publish an article about your station in their dealer news?

A. Yes, sir.

Q. They showed a picture of you in that article?

A. What?

Q. Did they show a picture of you in that article?

A. Yes, sir.

Q. Was that picture taken in your station?

A. Yes, sir.

Q. Did it show the Delco sign on your fence?

A. I think it did.

Q. Has any other oil company ever asked you to be a lessee for it?

A. Oh, yes, half a dozen of them.

Mr. Ballard: Cross-examination, Mr. Kelaher.

Cross-Examination by Mr. Kelaher.

Q. How long did I understand you to say you had
3414 been an Atlantic dealer, Mr. Snow?

A. About 20 years.

Q. Have you been at the same location for those 20 years?

A. Yes, sir.

Q. And that is in Worcester, Massachusetts, which is about—

A. Worcester, Massachusetts.

Q. How many miles west of Boston is that?

A. Forty-four.

Q. What is the population of Worcester?

A. I don't know, there are so many of them moving out now with high taxes, I don't know.

Q. It is a relatively small town, isn't it?

A. I think it is about 180,000, something like that.

Hearing Examiner Kolb: Did you say 180,000 or 200,000?

The Witness: About 180,000.

By Mr. Kelaher:

Q. Are there many other Atlantic stations in that area?

A. Not for a mile and a half.

Q. Which one of Atlantic's districts is Worcester located in, do you know?

A. Which what?

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3415 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, it is stipulated between counsel that Worcester, Massachusetts is in the Boston district of Atlantic's New England region.

By Mr. Kelaher:

Q. Is it your testimony that you carry no tires in stock today?

A. No.

Hearing Examiner Kolb: That is very confusing on the record. Does that mean you do carry or don't?

The Witness: I don't carry them; all on orders.

By Mr. Kelaher:

Q. You don't carry a stock of tires?

A. No, sir.

Q. Do you remember when Atlantic was selling Lee tires and Exide batteries and Thermoid fanbelts and Fram oil filters?

A. Yes, I do.

Q. Did Atlantic have a supply point up in your area, where you could buy them from?

A. Yes.

Q. Did you buy them?

A. No, sir.

Q. Where was there a supply point located, in Worcester?

A. No, a truck came by, out of Providence.

3416 Q. Providence, Rhode Island?

A. Yes.

Q. That is a long distance away, isn't it?

A. Yes.

Q. So you would have a delivery problem there, wouldn't you, a service problem?

A. Yes.

Q. Is that the reason—

A. Yes, I do, I never bought any, the only thing I ever bought off Atlantic is Lee tires.

Q. You did buy Lee tires at one time?

A. Yes, I bought them, because I liked the tires.

Q. Did you stock the tires?

A. No.

Q. But you did buy the Lee tires?

A. Yes.

Q. Did you like the road hazard guarantee with them?

A. They were all right, yes.

Q. Was the price good?

A. It was all right.

Q. Was the price lower on those than on Goodyear tires?

A. Well, today, there are so many cut-throats on tires, you can't figure that. That was 10 or 12 years ago.

Q. I mean your purchase price.

A. Well, the purchase price today is a little bit
3417 higher than it was then.

Q. Now you stated that you have been in the same station through these years. Did you ever have a Lee sign up on your station, a Lee window valance?

A. Yes.

Q. Did you have a Lee or Exide sign outside on your premises?

A. Yes, but I wasn't buying Exide batteries from Atlantic.

Q. But you had Lee and Exide signs up?

A. Yes.

Q. Why did you have them up? Was that because Atlantic put them there?

A. No, I put them there.

Q. But you weren't selling Lee tires?

A. No, after I got the Lee tire sign, I just had it in the window, it wasn't plastered to the window, it was off.

Q. You just had the Lee sign in the window?

A. That is all.

Q. You never had the outdoor pole sign in your station?

A. No.

Q. Does your station have a large frontage to it?

A. Mine?

Q. Yes.

A. I think I have the smallest frontage of any station Atlantic owns.

Q. So you don't have room for outdoor signs?

3418 A. It was built when they had model T cars.

Q. So you don't have room. Do you have an outdoor sign there now?

A. No, sir.

Q. There is no room for one, is there?

A. No, I used to have a sidewalk sign and I had to take it off, because we backed into it and either scratched the side of the car or busted the sign, so I had them take it out.

Q. You had who take it out?

A. Atlantic.

Q. Was that a Goodyear outdoor sign?

A. No, not a Goodyear. It was just a lubrication and stuff like that.

Q. Now, do you have any window valance—do you know what that is, a window decal?

A. Yes.

Q. Do you have the Goodyear one up there, I guess; don't you?

A. Yes.

Q. Was that put up after Atlantic changed over to the Goodyear TBA program?

A. I have forgot now whether it was or not.

Q. And all of the Atlantic stations that you know of around there have that Goodyear decal up, don't they?

3419 A. I couldn't tell you that, either.

Q. Do some of them have it up?

A. Some of them do and some don't.

Q. They either have that up or have nothing up?

A. That is it.

Q. And the same goes for the Goodyear pole outside, they either have a Goodyear sign up or nothing up?

A. They haven't got a Goodyear pole.

Q. I mean in the other stations?

A. I never saw a Goodyear pole.

Q. Around that area?

A. No.

Q. You don't do a very big business in TBA, do you?

A. No, I don't, because if I want anything, I have got a lot of stock, but I haven't got no stock just like Gates

fanbelts, I have got them, but I buy them from Worchester Wheel and Rim, or City Auto Parts.

Q. But you don't carry—you carry no stock of tires, right?

A. No, no stock of tires at all.

Q. You carry very few batteries?

A. Delco batteries, and that is all.

Q. Very few?

A. Four or five.

Q. And do you purchase Goodyear batteries when
3420 a customer asks for Goodyear?

A. No.

Q. You don't like Goodyear?

A. Huh?

Q. Do you like Goodyear batteries?

A. I didn't say I didn't like them, I have nothing against them, but I sell Delco. I get a better deal on Delco than I can on them.

Q. It is to your advantage to handle Delco batteries in preference to Goodyear batteries, isn't it?

A. Delco is the best to me.

Q. From a financial standpoint?

A. Yes.

Q. Now you say you carry no stock of accessories. Do you carry DuPont polishes, for example, or Johnston's?

A. I carry a few DuPonts. I get that from City Auto Parts.

Q. Do you carry some Johnson—you carry very little stock of accessories, is that correct?

A. Yes. I get that either from Worcester Whell and Rim or City Auto Parts, or Christian Thompson.

Mr. Kelaher: No further questions.

Mr. Ballard: No further questions, your Honor.

Hearing Examiner Kolb: That is all. Thank you very much.

3421 (Witness excused.)

DOMINIC MOLINARO, JR. was called as a witness for The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Dominic Molinaro, Jr., Crowley Street, Burlington, Massachusetts.

By Mr. Gordon:

Q. The address you just gave, Mr. Molinaro, was that the address of your home or your station?

A. My home.

Q. What is the address of your station?

A. Cambridge Road, Burlington, Massachusetts.

Q. You lease an Atlantic station, do you not, Mr. Molinaro?

A. I do.

Q. When did you begin to lease it?

A. 1949.

Q. Have you been in that same station up at the present time?

A. Yes.

Q. What is the term of your present lease?

A. Three years.

3422 **Q. What kind of tires are you now purchasing and stocking?**

A. Goodyear.

Q. Where do you purchase those tires?

A. The Goodyear store, in Lowell, Massachusetts.

Q. What kind of batteries do you stock?

A. Bowers.

Q. Entirely?

A. Yes.

Q. How long have you been purchasing Bowers?

A. Six or seven years, around that.

Q. What kind of accessories—do you purchase your accessories from Goodyear?

A. No, very, very little.

Q. Where do you purchase your accessories?

A. You want the names in—

Q. (Interposing.) Your main suppliers.

A. Well, we have Suppliers Automotive Company, that is in Woburn; and, Cataldo Auto Parts, and they are in Medford.

Q. What portion of your accessories do you buy from Goodyear, would you say?

A. I would say less than ten percent.

Q. Now, before 1951, Atlantic was selling Lee and Exide, you know that?

A. Yes.

Q. What kind of tires did you stock then?

3423 A. I think I was stocking Lee and Goodrich.

Q. About what portion of each?

A. About 50/50.

Q. Where did you get your accessories?

A. I think I was still getting them from the peddlers and parts companies at that time, peddlers and the same companies I mentioned before.

Q. What kind of batteries did you then buy?

A. I think I had Exide, and Goodyear for a short time, at that time.

Q. Why do you buy Goodyear tires?

A. Well, I am the only Goodyear dealer in Burlington. Goodyear is not represented in any other store, and well, they are a good tire, and I get a good price on them.

Q. Does your Atlantic salesman sell Goodyear tires to you?

A. Yes, I guess so, indirectly.

Q. Does he help you in purchasing Goodyear tires?

A. He does.

Q. How does he do that?

A. Well, whenever I run into a price situation, I always contact him, and usually he does a little better.

Q. He gets a better price for you?

A. Yes.

Q. Now, do you openly display Bowers batteries?

A. Oh, yes.

3424 Q. How do you do that?

A. Well, I have a rack in my office.

Q. Is the name "Bowers" visible?

A. Oh, yes, the name is on the rack and on each battery.

Q. What kind of battery cables do you sell?

A. Bowes.

Q. How do you display those?

A. In a rack.

Q. The name of the company is visible on that rack?

A. Yes.

Q. What kind of fanbelts do you carry?

A. Dayton.

Q. Are they displayed?

A. Yes.

Q. How?

A. On a rack right on the side of the bey.

Q. Are the accessories that you purchase openly displayed in your station?

A. Yes.

Q. Are they on the shelves?

A. Yes.

Q. Are they visible to your Atlantic salesman?

A. Anyone else—who are you going to sell them?

Q. Do you sell these accessories and Bowers batteries on Atlantic credit cards?

3425 A. Yes.

Q. Did Atlantic ever criticize you for doing that?

A. No.

Q. Had Atlantic ever criticized you for carrying the batteries and accessories you do?

A. No.

Q. Did they ever tell you to stop buying those batteries and accessories?

A. Never, they had better not.

Q. Did they ever tell you to remove them from your station or hide them?

A. Never.

Q. Who makes the decisions in your station as to what to buy?

A. I think I do.

Q. You feel free to buy whatever TBA you want?

A. I certainly do.

Q. Have you ever been forced or pressured into buying Goodyear TBA?

A. Never.

Q. I show you now, Mr. Molinaro, Commission's Exhibit 150, which is a letter, dated March 1, 1951, on Mr. Colley's letterhead, and ask you to examine that letter, and tell me whether you recall receiving such a letter.

A. Yes, I think I did. Yes, I did.

Q. Now, I show you Commission's Exhibit 206, 3426 which is entitled "A Restatement of Atlantic's TBA Policy", a letter dated August 28, 1952, also on Mr. Colley's letterhead, and ask you to examine that and tell me whether you remember receiving it?

A. Yes.

Q. Now, I show you Commission's Exhibit 207, which is a letter entitled "No Forcing", and it is dated June 1955. That is on a regional manager's letterhead. Could you tell me whether you recall receiving that letter?

A. Yes, I think I recall this one, too. Yes.

Q. Has your lease been renewed many times, Mr. Molinaro?

A. Oh, yes, nine years.

Q. Tell me, in connection with the renewal of your lease, has Atlantic ever discussed your brand, the brand of TBA, that you carry?

A. Never.

Q. Are there many oil companies active in your area?

A. Oh, yes.

Q. Stations that compete with you?

A. Very much, for the size of the town, very many.

Q. Have you received offers from other companies to take stations?

A. Yes.

Q. How many companies?

A. Well, three or four of them.

3427 Q. Are good dealers in demand?

A. I think so.

Q. Do you feel that you could, if you wanted to, get a station for another company?

A. I know I could.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Gordon:

Q. If you took one of these stations, do you feel you could take a substantial portion of your business with you?

Mr. Kelaher: Objection, speculative.

Mr. Gordon: That goes to the state of mind of the dealer and I believe is perfectly admissible.

Hearing Examiner Kolb: I don't know that state of mind has anything to do with taking the customers with him.

Mr. Gordon: If he feels he can, he certainly has a freer state of mind than if he felt he couldn't.

Mr. Kelaher: That sounds very ingenious, but state of mind testimony isn't what you are getting out of this particular witness.

Mr. Gordon: It certainly is.

Mr. Kelaher: It isn't proper state of mind testimony.

Hearing Examiner Kolb: Well, let the witness answer. The objection will be overruled.

3428 Hearing Examiner Kolb: Read the question.

(The reporter read the question as follows: "If you took one of these stations, do you feel you could take a substantial portion of your business with you?")

The Witness: Yes, I believe I could.

By Mr. Gordon:

Q. Are you familiar with the fact Atlantic has a station inspection program?

A. Yes.

Q. Do they discuss the results of those inspections with you after they have the inspection? Does the salesman talk to you about it?

A. Sometimes, yes, most of the times.

Q. Did they ever mention the brand of TBA you are carrying in connection with those discussions?

A. No, never.

Mr. Gordon: I have no further questions.

Cross-Examination by Mr. Kelaher:

Q. Would you tell us where Burlington, Massachusetts is located?

A. Between Lowell and Boston, about the midway point, 12 miles from each city.

Q. Is that part of the Greater Boston area?

A. Yes, just on the outskirts.

3429 Q. Is that north of Boston?

A. Yes.

Q. You began station operations in 1949?

A. That is right.

Q. And at that time Atlantic was selling Lee tires, Exide batteries, Thermoid fanbelts, Fram filters, and other accessories; is that right?

A. If you say so, yes. I think so.

Q. I am asking you is that right.

A. I think so.

Q. Well, you purchased Lee tires from Atlantic, right?

A. I did.

Q. And you purchased Exide batteries from Atlantic?

A. I did.

Q. Did you purchase any accessories from Atlantic?

A. I don't recall, really.

Q. Now, at that time were there other service stations in your area also selling Lee tires?

A. No.

Q. There were no other Lee tire distributors in your area?

A. No.

Q. Were you satisfied with Lee tires?

A. Yes, and no. They were a good tire, but they weren't a name tire.

Q. Why did you handle them if you weren't en-3430 tirely satisfied with them?

A. Well, I was buying Lee at a better price than Goodrich.

Q. You were buying Lee at a better price than you could have purchased Goodyear?

A. That is right.

Q. Weren't you handling Lee tires because Atlantic was selling them?

A. Well, sure, but still, if Atlantic didn't give me the price, I wouldn't have handled them. I am a price man, if you know me.

Q. I don't know, but I am glad to hear it.

Now, you gave us, you stated that after the change-over to Goodyear in 1951, you changed to Goodyear, because you were, one reason was price and you were the only Goodyear distributor in the area. Was that your reason?

A. That is right, and it was a big name.

Q. Why didn't you change over before that?

A. Because I had Goodrich.

Q. You had Lee, didn't you?

A. I had Lee and Goodrich. I had Goodrich for the big name and then Atlantic went along with Goodyear and I was buying Goodyear cheaper than I was buying Goodrich; so, I switched the major brand to Goodyear.

Q. Isn't it a fact that you could have continued purchasing Lee at a lower price than you began to purchase Goodyear?

3431 A. I was paying the same price for both Lee and Goodyear.

Q. Beg your pardon?

A. I was paying the same price for Lee and Goodyear, if I remember correctly.

Q. And if you remember correctly, you could have purchased Goodyear then, prior to 1951, at the same price you bought Lee; is that right? Is that what you are saying?

A. Well, no, before Atlantic went into Goodyear, I couldn't buy Goodyear as cheap as I could Lee. That is one of the reasons why I didn't handle it.

Q. Are you stating that you got a lower price because you were an Atlantic dealer, after the Atlantic sponsorship of Goodyear?

A. That is right.

Q. Now, isn't it also true that Lee had good consumer acceptance in your area?

A. No, not too good.

Q. It had the road hazard guarantee, did it not?

A. Yes, it did.

Q. Was that a guarantee that was, had consumer acceptance in preference to workmanship and defect guarantees of Goodyear and other tires?

A. How am I supposed to answer that one? Yes, that road hazard guarantee was a selling point. But still, I think that the average consumer that wants to buy
3432 a good product, he is going to pay just a little more and give a little bit up, to get that good product, name product, I should say.

Q. Isn't it a fact you were selling Lee because Atlantic was selling Lee?

A. Yes.

Q. The answer is Yes?

A. Yes.

Q. And now—

A. (Interposing.) Price-wise.

Q. Beg your pardon?

A. Price-wise.

Q. I would like to have you direct your attention to the change-over by Atlantic to Goodyear TBA. Do you recall attending a dealer meeting in 1951 concerning the change-over?

A. I don't remember if I did or not.

Q. Do you remember having a call made to your station by an Atlantic representative or by a Goodyear representative concerning the new program?

A. Yes.

Q. And at that time were you told where the designated supply point would be for Goodyear.

A. Yes, I believe so.

Q. You have testified that your Goodyear supply point is the Goodyear store in Lowell, Massachusetts.

A. That is right.

3433 Q. Now, was that when you began to purchase Goodyear tires?

A. I think close to that time. Shortly afterwards, put it that way.

Q. And since that time you have stocked Goodyear tires only?

A. A hundred percent.

By Mr. Kelaher:

Q. There are other Atlantic stations in your area, are there not?

A. Not in Burlington.

Q. In the Greater Boston area?

A. Oh, yes.

Q. You have lived in that area for some years apparently?

A. Yes.

Q. And in your travels in and about the area, you 3434 have noticed other Atlantic stations, I presume?

A. That is right.

Q. And isn't it a fact that after Atlantic changed to Goodyear TBA line in 1951, you noticed Goodyear window valances and Goodyear outdoor pole signs appearing in that area?

A. Well, I imagine so; I mean I never really looked that closely.

Q. The answer is Yes?

A. Well, I honestly can't say. Honestly, I can't say. I don't look at other people's stations as close as I watch my own.

Q. Aren't their any other Atlantic stations in your town?

A. No.

Q. No others in your town?

A. No.

Q. Do you ever go into Boston?

A. Yes.

Q. And you mean to tell me you never noticed what identification appears in Atlantic stations?

A. Well, I don't look in the window and see if they have a valance or not.

Q. Do you ever look at the outside and see whether there is a pole up with a Goodyear sign on it?

A. Usually they have one on there, some of them.

Q. The answer is Yes, then?

3435 A. Oh, yes.

Q. You stated you purchased some accessories from Automotive Parts. Are you including in that accessories category, so-called hard parts?

A. I don't—

Q. (Interposing.) Hard parts as distinguished from chemicals and waxes, ignition parts, and things of that type?

A. Oh, yes.

Q. Do you do repair work at your station?

Mr. Gordon: I am not quite sure Mr. Kelaher defined it as we have all along in this case. Accessories include hard parts. I think accessories are distinguished from repair parts.

Hearing Examiner Kolb: Hard parts usually refers to repair parts, particularly fenders and things of that sort, in addition to parts of the motor.

Mr. Kelaher: I think that is pretty well established in this record.

Mr. Gordon: Spark plugs, for example, are definitely accessories.

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Well, let me—I am trying to find out what he buys anyway from these people. What do you buy from Automotive Parts?

3436 A. What?

Q. Did you say you bought from a company named Automotive Parts? I may have the name incorrectly. Located in Woburn?

A. Oh, yes, Suppliers Automotive.

Q. I beg your pardon?

A. Suppliers Automotive. Suppliers Automotive Parts Company.

Q. Do you buy so-called hard parts from that supplier?

A. I still don't get that hard parts.

Q. Do you do repair work in your station?

A. Yes.

Q. And you have to buy the parts with which you repair automobiles from somebody?

A. Yes, from him, yes.

Q. I am referring to that type of product.

A. You mean like clutches and stuff like that?

Q. That is right.

A. Yes, definitely.

Q. Do you buy those from Suppliers Automotive Parts?

A. That is right.

Q. And you mentioned several other suppliers. Do you also buy hard parts from those other suppliers?

A. Sometimes.

Q. When you purchase from the Goodyear service store in Lowell, Massachusetts, what do you purchase?

3437 A. Goodyear tires.

Q. And you stated you purchased some accessories from them?

A. Very, very little.

Q. What do you buy when you purchase?

A. Well, I have bought some sealed beams from them at one time and another, a few things when I am stuck short. Very little.

Q. What is the gallonage of your station per month?

A. Oh, I think we average about 28,000 to 30,000.

3438 Q. Would you say you were a medium-sized station—are you a fairly large station?

A. I am a big station.

Q. At least you are the biggest Atlantic station in that area, aren't you?

A. The biggest.

Q. You are the only one?

A. The only one.

Q. You stated you handled Exide batteries, prior to Atlantic's changeover to Goodyear TBA?

A. Right.

Q. Were the Exide batteries purchased from Atlantic?

A. Yes.

Q. And were you satisfied with the Exide batteries at the time?

A. I think I was, at the time, yes.

Q. Didn't you purchase Exide batteries because Atlantic was selling Exide batteries?

A. Price.

Q. Answer Yes or No, then expand, if you want to.

A. Well, Yes, because I got a good price on them.

Q. Is that true, was that the reason you were buying Goodyear batteries?

A. That is right.

Q. And you now, you stated, you haven't bought

3439 Goodyear batteries since the changeover to Goodyear TBA?

A. That is right.

Q. Do I understand you to mean you could get a better price from local suppliers, prior to the changeover than

you can get, or could get from Goodyear after the change-over?

A. No, right now I am paying more for a battery than I would if I had been buying Goodyear, believe that or not.

Q. I don't know whether you answered my question. You stated that you were a price man, that seems to be your main theme?

A. That is right.

Q. Who were you buying the Goodyear batteries from, before 1951?

A. Oh, I don't know. I think it was Roy Johnson's, in Waltham.

Q. Roy Johnson, from where?

A. Waltham.

Q. And what was the reason you were buying Goodyear batteries at that time?

A. I don't know, just the salesman talked me into it, I guess.

Q. It wasn't because of price?

A. Well, the price was there, yes.

Q. Since the Atlantic began to sponsor Goodyear TBA, you stopped buying Goodyear batteries?

3440 A. That is right.

Q. You never bought a Goodyear battery since Atlantic began to sponsor Goodyear TBA?

A. That is right, five, six, seven years, whatever it is.

Q. Now is that because of price?

A. No.

Q. And now you are buying Bowers and paying a higher price for Bowers batteries than you would for Goodyear?

A. That is right, my loyalty got the best of me just once.

Q. You mean the loyalty to Goodyear?

A. No, to Bowers, this fellow that sells Bowers batteries is a very good friend of mine and that is why I buy Bowers batteries. . .

Q. You have testified that you were a price man. Now it develops that is not entirely true with all your TBA, is it?

A. With a few exceptions, of course. You can't be price all the way through. On the Bowers battery, a very good friend of mine, I have been buying from him six or seven years and I will continue to do so.

Q. You like the Bowers battery?

A. I like it very much.

Q. It is a good battery?

A. Yes, and good service with them.

Mr. Kelaher: No further questions.

3441 Mr. Gordon: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

Mr. Gordon: Can we recess for lunch at this time?

Hearing Examiner Kolb: All right. We will recess until 2:00 o'clock.

(Thereupon, at 12:32 o'clock p. m., the hearing was recessed, to reconvene at 2:00 o'clock p. m., this same date.)

3442 Afternoon Session.

(2:00 P. M.)

Hearing Examiner Kolb: The hearing will be in order.

CHARLES K. DETWILER was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address?

The Witness: Charles K. Detwiler, 225 Dogwood Lane, Berwyn, Pennsylvania.

By Mr. Ballard:

Q. Are you presently an employee of Atlantic Refining Company?

A. Yes, sir.

Q. When did you join the employment of that company?

A. In July 1939.

Q. And what was your capacity at that time?

A. I was a service station attendant in a company-operated station in Philadelphia.

Q. Did you thereafter go to the Binghamton district, in New York?

A. That is correct, sir. I went up there in the 3443 spring of 1940.

Q. In what capacity was that?

A. As a service salesman.

Q. Did you later become a general salesman there?

A. No, sir, about a year later I was transferred to Hamburg, which is in the Buffalo district, as a general salesman.

Q. And you were I believe a lieutenant senior grade in the Navy during the war?

A. That is correct. I went into the Navy in 1942, December, and came out three years later as Lieutenant, Senior Grade.

Q. When you came out of the Navy, did you resume your service with Atlantic?

A. Yes, in the Rochester district. That would be December 1945.

Q. What was your next assignment with Atlantic?

A. At that time, I was a general salesman in the Batavia district, the Batavia area, which was the Rochester district.

Q. What was your next assignment after that?

A. In 1949 I went on a special assignment in the City of Rochester, which consisted of a study or survey of competitive stations. I also attempted to acquire competitive stations for Atlantic during that one-year assignment.

Q. Were those contract dealers or lessee dealers?

A. Contract, sir.

3444 Q. Do I understand that you were trying to get them to switch to the Atlantic brand of gasoline?

A. That is correct.

Q. How long did that assignment last?

A. That was approximately a year. Then in 1950 I went on an assignment in real estate, to acquire sites for service station construction.

Q. What area was that?

A. Both Rochester and Buffalo districts.

Q. Do I understand that you were looking at potential sites for service stations?

A. That is correct.

Q. In that work, what were the factors you kept in mind?

A. Development in an area, both residential and commercial, highway changes, traffic potential.

Q. Would those sites have been for lessee operation?

A. That is right, they were undeveloped sites, Mr. Ballard.

Q. Now then, how long were you a site representative?

A. Two years.

Q. That would bring you to 1952?

A. In March, 1952 I was assigned to the Binghamton district, as a sales supervisor.

Q. Is that sometimes also called the Southeastern District?

A. That is correct.

Q. Which is the correct name?

3445 A. Southeastern Tier.

Q. Speaking generally, what is the area covered by the Southeastern Tier District?

A. If you can picture a half moon, with a diameter on the New York Pennsylvania state line, approximately in the center of the state, with Binghamton as the center and your radius being about a hundred miles, you have got that picture.

Q. Does it include Binghamton?

A. That is right.

Q. Does it include other metropolitan centers?

A. Yes, it goes over to Cooperstown, on the east, which is approximately a hundred miles east of Binghamton, and to Corning and Bath on the west, which is an equivalent distance to the west and then this arc, as I described it, would touch the Finger Lakes, including places like Penn Yan, Ithica, which are north of Binghamton.

Q. Does it include Johnson City and Endicott?

A. Yes, sir.

Q. The headquarters for the district is Binghamton, I believe?

A. That is right.

Q. Atlantic, of course, encounters competition with other oil companies there?

A. Very much so.

3446 Q. Would you name a few of them for us?

A. There are approximately 12 major suppliers, Amoco, Esso, Socony, Sun, Tidal, Richfield.

Q. Does Gulf market there?

A. Yes, sir; Gulf is there.

Q. Texas?

A. Texas.

Q. Shell?

A. Shell to a very limited degree, only in the eastern part of the southeastern tier district.

Q. Sinclair?

A. Yes, sir.

Q. Cities Service?

A. Yes.

Q. Mobil?

A. Mobil, that is correct.

Q. And Calso?

A. Yes.

Q. Are these companies and Atlantic building new stations all the time?

A That is correct.

Q. About how many Atlantic lessee stations are there in the Southeastern Tier district?

A. Approximately 65 in the Southeastern Tier District.

Q. How many contract stations, about?

3447 A. Approximately 35.

Q. I think you have been in these hearings and know what we mean by a service station, basically one with full service station facilities. How many of these contract stations would you say were service stations?

A. Only about 12.

Q. Now starting with the year 1956, I believe that is the first year you were a sales supervisor in the Southeastern Tier District, is that correct?

A. No, I was a sales supervisor in March of 1952.

Q. At that time were you the only sales supervisor?

A. That is correct. In 1956 there was another sales supervisor assignment set up in the Southeastern Tier District, and as of that time I supervised strictly lessee dealer operations.

Q. Previous to that you had supervised lessee and contract operations both?

A. That is right.

Q. How many salesmen did you have reporting to you when you were the only sales supervisor?

A. I had three dealer/salesmen, two general salesmen, and anywhere from two to five service salesmen, that figure varied through that span of years.

Q. I take it when another supervisor was added that the general salesmen were no longer under your 3448 charge, is that correct?

A. That is correct.

Q. But I assume some of the service salesmen were moved to the other man's charge?

A. No, the service salesmen were still my responsibility.

Q. Briefly, what is the responsibility of the sale supervisor, at the time you were one?

A. To supervise the performance and activity of the dealer/salesmen, and the service salesmen, so that our stations can develop and increase their sales of petroleum products.

Q. Incidentally, I don't know whether I asked this question or not: You are no longer a sales supervisor with the Southeastern Tier District, is that right?

A. That is right. Approximately a year ago, October of 1957, I was assigned to headquarters office here in Philadelphia, as dealer training coordinator.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Was it the responsibility, primary responsibility of the salesmen in your district, to keep their stations manned with qualified dealers?

3449 A. That is right.

Q. Were dealer candidates scarce in your district?

A. They certainly were.

Q. Could you give us briefly the methods employed in locating potential dealers?

A. We would run newspaper ads, we would check our own dealers and competitive dealers, we would check among our own employees, we would also contact business men, preachers, priests, business organizations; in fact, door to door solicitation.

Q. Did you on occasion attract competitive dealers?

A. Yes.

Q. Did they on occasion attract some of your dealers?

A. That is right.

Q. Now when a salesman brought a dealer candidate to you, did you discuss with that dealer candidate the advantages and disadvantages of a dealers' business?

A. We did, we tried to spell out both advantages and disadvantages, so that he would have as complete an understanding as possible of the service station business.

Q. Was the book entitled "What a service station can mean to you" used in your district?

A. Yes, sir; it was.

Q. I show you a copy of Atlantic's Exhibit A-18, which is the booklet that was used in the Newark district,
3450 and allowing for changes in some of these letters between Newark and Binghamton, is this booklet the same as the booklet that was used in your district?

A. Yes, sir; it is the same.

Q. When you were talking to the dealer candidate, what disadvantages, if any, of a lessee service station business, would you mention to him?

A. Well, we pointed out to him that contrary to what he might have been used to, if he was working for industry, he, in the service station business, would have to work long hours. It would be hard work, it would involve working outside. He would also find out he would have to condition himself to minimum income, during the first year or first several years, depending on the situation.

Q. Would you also mention advantages of the business?

A. Absolutely.

Q. What advantages would you mention?

A. Briefly we discussed the fact that this would give him a chance to be independent, to make his own decisions, be his own boss. We would point out there was a good living to be made in the service station business if he applied himself and had the basic qualifications. We also pointed out there was job security in this particular work.

Q. By good living, what do you consider that a successful dealer, in your district, could make in a year?

3451 A. We have several dealers who are in the $12,000 to $15,000 category.

Q. Did you ever suggest that a dealer candidate visit Atlantic dealers in the area?

A. Yes, sir; that was part of my routine in my interview with the dealer prospect. I felt that the prospect would feel free to talk to one of our dealers, and ask him questions as well as make observations.

Q. Did you give him a list of the dealers in the area, or let him pick his own?

A. I usually suggested certain stations specifically because they were somewhat near each other. For example, Bouongirne-Gay.

Q. Was the name of that station Bouongirne or was it Bouongirne-Gay?

A. And Gay, G-a-y, yes.

Q. Did you ever suggest Cooley's station?

A. Another one was Cooley's, because that was on the same street. Another was George Mascayko. The reason for that, if I may mention it, Mascayko was a dealer who had been with us, I guess at that time, 19 or 20 years. Bouongirne-Gay had previously been an Esso dealer. Mr. Cooley before he took over the Atlantic station had previously been a successful insurance salesman. I felt that would give the prospect a chance to talk to individuals who had had different starts in business.

3452 Q. Was TBA discussed in your interview with the dealer candidates?

A Yes, it was.

Q. What did you tell them about it?

A. We told them we had a TBA program in the Southeastern tier specifically with Goodyear Tire and Rubber. We felt it was a good program, we wanted the prospect to understand it; however, he was free to accept or reject it.

Q. I show you Commission's Exhibit 207. This is a letter over the regional manager's signature, and addressed to "All Atlantic Dealers," entitled "No Forcing." I ask you whether that letter, whether it was the practice in your district to deliver that letter to dealers when they signed a lease.

A. Absolutely. This one is signed by the Philadelphia regional manager, but ours, of course, was signed by New York, and that was attached to the lease papers.

Q. And who was the New York regional manager at that time?

A. Mr. G. V. Ostrander.

Q. Now, Mr. Detwiler, does Atlantic have an interest in the business success of its leases?

A. Very much so.

Q. What is that interest?

A. Our dealers have to be successful, have to grow, and increase their sales of products, before we are successful.

Q. When Atlantic loses a dealer, does it cost 3453 Atlantic money?

A. It certainly does. We run into different problems when that occurs. If the outgoing dealer goes down the street to a competitive station and has a good personal following, he takes that along with him. We then have to start searching for a replacement, we have to train him, and then install him, all of which costs money, and there is a loss of gallons in that change-over.

Q. What does it cost on the average to train a replacement?

A. A minimum of seven to eight hundred dollars, and I am basing that on the actual out-of-pocket expenses we have in connection with training the dealer prospect.

Q. Dealers do, however, occasionally, leave Atlantic; is that not right?

A. That is right.

Q. What are the principal reasons for which they do that?

A. One of the main reasons is that they find they don't dislike—they don't like the business, or their wife doesn't like them to be in the business because of the hours away from home that are required. The dealer may find out that he just can't manage men, can't manage his finances. A major problem in dealer operation is for the dealer to

extend too much personal credit, which can bring about failure, probably quicker than anything else.

Then, you have the normal amount of illness, death,
3454 incidents, which also cause the end of a dealership.

Q. In such cases, is it Atlantic's policy to permit the lessee to leave in the middle of his term?

A. Yes, because if he has made that decision, we want to replace him as soon as we can. His hundred percent interest and his heart is not in the business. In those instances, we would accomplish that by mutual consent cancellation.

Q. In such cases, when a dealer goes out and a new dealer comes in, in your experience does the new dealer generally buy the old dealer's stock?

A. Generally, he does, providing it is salable, in good condition.

Q. Does he generally buy regardless of brand?

A. Yes, sir.

Q. What price does he generally pay for it?

A. He generally pays the same price the outgoing dealer paid for it. Again, providing it is in salable condition.

Q. In your experience do you know of any instances in which Atlantic itself refused to renew a lease or cancelled a lease when the dealer wished to stay on?

A. No, not when he wished to stay on. I can recall one instance where we did not want to renew, specifically. It involved a dealer by the name of George Shannon, Watkins Glen.

Q. What was the reason for that?

A. Mr. Shannon ran an absentee operation. He
3455 was a very likable, affable, individual. He was very active in community affairs in Watkins Glen, but he also ran a taxi business out of the service station, and he had an interest in an undertaking business in town, so

that he just wasn't around the station very much, and what brought that problem to a head was that he would not hire capable employees to run the station while he was gone.

Q. Was TBA a factor in his, in your disagreement with Mr. Shannon?

A. No, sir; in fact, as I recall, he bought certain items from the Goodyear supply store.

Q. Was Atlantic's three-year lease policy in operation, in effect, in your district?

A. That is right, and that, as you recall, is extended to a dealer after he has been in business for two years, a two-year period.

Q. Now, under that policy, if Atlantic wishes to cancel a lease, is it required to send a written warning letter?

A. Yes, sir; it is.

Q. Do you recall any such warning letters being sent while you were in your district?

A. I recall only one, Mr. Ballard. I think it was in 1955, and involved a dealer by the name of Duane Olthof, in Elmira.

Q. Did Mr. Olthof correct the deficiencies then?

A. As I recall, he did. The specific deficiency 3456 spelled out in the letter was that of housekeeping and Olthof left us, at the end of the lease expiration period, and went down the street and opened an Esso station.

Q. Is it a practice in the southeastern tier district for new Atlantic sales personnel to attend the dealer training course?

A. Yes, sir.

Q. And does Atlantic also attempt to try to have new dealers, lessee dealers, attend that course?

A. We attempt to have not only new lessee dealers at-

tend it, but we also try to get competitive dealers, and our existing dealers to attend an abbreviated version of it.

Q. When you say "competitive dealers," you mean men who have had previous experience with other companies?

A. In competitive stations; that is correct.

Q. But they, when they attend this course, are going to be Atlantic dealers?

A. That is right.

Q. You don't invite—

A. (Interposing.) We are not training competitive dealers. I didn't mean to give that impression.

Q. Mr. Detwiler, when you were explaining the Atlantic-Goodyear TBA program to a dealer candidate, what were the advantages of that program that you would point out to the dealer candidate?

3457 A. We felt the advantages to the dealer candidate were many. It was a high quality product, manufactured by a reputable company. It was a nationally advertised product. It had excellent acceptance on the part of the public, and, incidentally, very good acceptance in the southeastern tier area. Goodyear products cover the complete line. They are competitively priced. The Goodyear store was handy as a source of supply for the dealer. They had excellent sales promotion, advertising helps. We just sincerely felt that it was a good program, and one which the dealer prospect should certainly consider.

Q. In your experience, is some sort of TBA essential to some sort of operation in the modern station?

A. Absolutely, just as is the service the dealer must render or have available for his customers, as experienced by the lubrications, washes, service work in the beys.

Q. Do the other oil companies that are competitive with Atlantic in the southeastern tier district offer TBA programs?

A. Yes.

Mr. Kelaher: Objection, your Honor. We are getting into the TBA programs of other oil companies. What is the purpose of that?

Hearing Examiner Kolb: Objection overruled. That is what he has been doing all the time in this case.

Mr. Kelaher: This is the first time they have gone 3458 into this phase of the case, the other oil companies.

Mr. Mason: Will you stipulate that is out of the case?

Hearing Examiner Kolb: I have overruled the objection.

Mr. Ballard: Would you read the question.

(The reporter read as follows: "Do the other oil companies that are competitive with Atlantic in the southeastern tier district offer TBA programs?")

The Witness: Yes, they do.

By Mr. Ballard:

Q. Would Atlantic attract dealers to its franchise if it didn't offer a TBA program?

A. I don't think so, certainly not the most desirable dealer prospects.

Q. Are there other TBA suppliers, and by that I mean TBA suppliers, other than Goodyear, calling on Atlantic dealers in the southeastern tier district?

A. Yes, sir, there are. There are approximately seven or eight who sell specifically tires. There are four who handle batteries. And then there are approximately eight who handle accessories and, incidentally, four of those handling accessories are the same four that handle the batteries.

Q. In other words, it is divided between the people who handle batteries and those who handle the accessories?

3459 A. That is correct.

Q. The tire suppliers you mentioned, do they handle batteries, to your knowledge?

A. Not to the best of my knowledge.

Q. What about accessories, do they handle that?

A. I don't recall so, Mr. Ballard. They were mainly tire suppliers.

Q. In your capacity as a sales supervisor, and previous to that as a salesman, you, of course, visited Atlantic dealers at their stations?

A. That is right.

Q. Did you see at the stations any non-sponsored TBA on display?

A. Yes, sir.

Q. Would you see it in many stations?

A. You would see it in all stations. I don't recall seeing any station where only sponsored TBA was displayed.

Q. Did you also—you also, of course, on occasion saw Goodyear on display?

A. That is right.

Q. Some stations, did you see some stations handling a good deal of Goodyear?

A. Yes, it would vary.

Q. Would there be any difference in the pattern between lessee stations and contract stations of the full 3460 facility type?

A. No, basically no, because both were being called on by our salesmen, and Goodyear.

Q. Now, I think you have told us that at the end of your stay in the southeastern tier, there were two sales supervisors, three promotable dealer salesmen, between two and five service salesmen, and two general salesmen?

A. That is right.

Q. About what percent of their time would they spend assisting the sale of Goodyear TBA?

A. I would say ten to fifteen percent, minimum.

Q. There also was a regional TBA coordinator in that region?

A. That is correct. He operated out of regional headquarters, which was Syracuse.

Q. What was his name?

A. L. K. Maisel.

Q. And he spent full time on TBA?

A. Yes, and he spent a lot of time visiting the various districts and, in turn, we had him a fair share of the time in the southeastern tier.

Q. Did Atlantic open dealer clinics in that region?

A. Yes, we did.

Q. Did it conduct dealer meetings?

A. Yes.

3461 Q. Did those clinics and meetings, on occasion, deal with Goodyear TBA?

A. Yes, Goodyear products would be used as props in carring out the particular message that was to be given to the dealer and their employees at that particular meeting.

Q. In your experience, is it helpful to the sale of Goodyear tires and batteries and accessories to have them used as props in those meetings?

A. I think it is certainly logical to use them. Certainly training is necessary, product information, changes, construction of items, and in using props to do that, it would certainly seem logical to me we would use Goodyear.

Q. Does it help the sale of Goodyear products to use Goodyear in that capacity?

A. Yes, because a man has to understand the features of his product, in order to be able to sell it.

Q. Where an Atlantic salesman, under your supervision, was calling on an Atlantic dealer who was handling Goodyear, what services would that salesman perform for the dealer in respect of Goodyear?

A. He would undoubtedly check stock when he got

into the station to determine whether the dealer had a balanced stock of items. He would write orders. He would pass along product information, assist in promotions, assist the dealer, if requested, on solicitation,
3462 and working out his advertising. Perhaps the dealer had new employees and the salesman would attempt to help the dealer train his employees in that specific endeavor.

Q. By that you mean in respect of Goodyear?

A. That is right.

* * * * * * *

3465 By Mr. Ballard:

Q. Now your present position is dealer training coordinator?

A. That is correct.

Q. What are your responsibilities in that job?

A. To coordinate the dealer training activities in our six marketing regions.

Q. I think you have already stated Atlantic's policies as to new sales employees, but perhaps you better—I will ask you, what is Atlantic's policies as to all its regions toward the training of new sales employees?

A. Exery new sales employee must attend the dealer training school as part of his basic training.

Q. And I think you have also stated that—well, what is the policy with regard to new dealers, and now I am speaking company-wide, not simply this district?

A. We attempt to get all of our new dealers to attend the dealer training school. We also attempt to get our experienced dealers to attend an abbreviated version of that dealer training school.

Q. Is the school open to contract dealers as well?

A. Yes, sir.

Q. Have you, yourself, observed these schools in operation?

A. Yes, I have.

Q. Have you ever taught in them?

A. I taught financial management in the regional
3466 school in Syracuse, while I was a sales supervisor in the Southeastern Tier.

Q. Are the schools substantially the same in the various regions?

A. Yes, they are, they all follow similar agendas, and use similar material. I guess the main difference would be in this field that we are discussing today, TBA, where three of the regions, New England, New York, Philadelphia-New Jersey, sponsor the Goodyear line and the other three regions sponsor Firestone.

Q. Is the TBA program explained in the training course?

A. Yes, it is; there is a script which spells that out specifically.

Mr. Ballard: Will you mark this exhibit for identification for me as Atlantic's Exhibit 20?

Hearing Examiner Kolb: It may be marked Respondent Atlantic's Exhibit 20 for identification.

(The document referred to was marked Respondent Atlantic's Exhibit 20 for identification.)

By Mr. Ballard:

Q. I am showing you this booklet entitled "TBA Program" which has been marked A-20 and ask you if that is the script that is used in the training schools at this time?

A. Yes, sir; it is.

Q. I notice that this particular script was revised
3467 in 1957. Are there any substantial differences between this and the previous script?

A. No, sir. I have checked this revision and except for

changes of a word here and there, it follows the same basic procedure.

Q. Has there been any change in the description of the TBA policies of Atlantic?

A. No, sir.

Q. Now, through this script there are blanks with the word "Name" in them. I take it that in the New York, New England, and Philadelphia-New Jersey regions the word "Goodyear" would be put in where the word "Name" appears?

A. That is right, and "Firestone" in the other three regions.

Q. This is the script that the instructors use in talking to the trainees, is that correct?

A. That is correct.

Q. Did Atlantic prepare this script?

A. Yes, sir.

Incidentally, trying to find the page, the TBA policies is specifically spelled out as to acception or rejection, on page 7.

Mr. Kelaher: I think that answer is a little premature.

3468 By Mr. Ballard:

Q. Does the curriculum in those training schools also include a study of the sponsored TBA line items?

A. Yes, there is another script on TBA or tires and tubes orientation, which goes into more details about product construction, sales features, et cetera.

Mr. Ballard: May I have this marked Respondent A-21 for identification?

Hearing Examiner Kolb: It may be so marked.

(The document referred to was marked Respondent Atlantic's Exhibit 21 for identification.)

By Mr. Ballard:

Q. I show you a script or a document marked Respondent's Exhibit A-21 and ask you if that is the script on tires and tubes to which you just referred?

A. Yes, it is.

Q. And this script is used in the regions where Atlantic sponsored Goodyear, is that right?

A. That is correct.

Q. Was this script prepared by Atlantic?

A. Yes, sir.

Q. Is this script—it is followed by the instructors, just as the other one is?

A. That is correct.

Q. What do the instructors use for a battery script?

3469 A. In the battery script we have a manual which is put out by the Association of American Battery Manufacturers and that is the basis for instruction on batteries.

Q. Does the training department, you and your staff, also work on dealer training clinics?

A. Yes, sir; they do. It is our responsibility to make up those clinic packages and make them available to the field.

Q. Do those clinics relate—do some or any of those clinics relate to Goodyear TBA?

A. Some do; yes, sir.

Q. Could you give us an example, for instance?

A. Well, specifically, the clinic on tires, clinic on batteries, clinic on motor oil.

Q. Motor oil would not be TBA?

A. I beg your pardon. I was thinking of accessories items like air filters, motor oil cartridges.

Q. Who does the instruction? Whose employees do the instruction work in those clinics?

A. Atlantic's employees, and there may be Goodyear

personnel there, if it involves products requiring specific explanation or a technical man to answer questions. It might be the supplier of the particular product.

Q. Would that be say DuPont or someone like that?

A. That is right.

3470 Q. I think you may have covered this. Who writes the scripts for those clinics?

A. We write them, we get the basic information, of course, from the particular manufacturer or supplier. But we prepare the scripts.

Q. Do you and your assistants ever make follow-up calls to trainees in their stations?

A. Yes, sir. The regional training coordinator, one to each region, and his assistants, make regular follow-up calls on graduated dealers, to note their progress.

Q. What is the primary purpose of that call?

A. To find out how the dealer is progressing, how he felt about the dealer training program, what criticism he might have had as to how we should have emphasized one subject more than the other, to improve it.

Q. You do sometimes get criticisms of your training program from your dealers?

A. Yes, sir, we feel that is healthy.

Q. Has any dealer ever complained that the TBA policies told to him in the school was not being followed in the field?

A. Not to my knowledge, Mr. Ballard.

Mr. Ballard: I have no further questions and I would like to offer in evidence Atlantic's Exhibits 20 and 21.

Mr. Kelaher: No objection.

3471 Hearing Examiner Kolb: The documents will be received in evidence, Respondent's Exhibits A-20 and A-21.

(The documents heretofore marked RESPONDENT ATLANTIC'S EXHIBITS A-20 and A-21 for identification were received in evidence.)

Mr. Ballard: Your Honor, may I suggest the witness has been on the stand for the best part of an hour and he may have a break before cross-examination?

Hearing Examiner Kolb: All right.

We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Detwiler, you have been with Atlantic since July 1939, excepting for your service in the Navy?

A. That is correct.

Q. Were you familiar with the fact that the Federal Trade Commission was investigating TBA commission plans of Goodyear and Firestone, respectively, in or about 1952 or 1953?

A. Yes, sir.

Q. And you have been aware of that since that time?

A. That is right.

Q. In response to a question on direct examina-
3472 tion, you referred to the fact that you have three dealer salesmen. Were you referring to those three as promotable dealer salesmen?

A. That is right.

Q. At the time you were sales supervisor in Binghamton?

A. That is correct.

Q. And two general salesmen, originally?

A. Yes.

Q. And two to five service salesmen?

A. That is right.

Q. Then the two general salesmen came under the supervision of the new sales supervisor, or the additional sales supervisor in 1956?

A. That is right.

Q. Now when you were asked what your responsibilities were as sales supervisor—you can correct me if I am incorrect—I understood you to say that primarily you are interested in a station dealer developing and selling petroleum products. Is that right?

A. I didn't use those words, but basically that is correct.

Q. And you made no reference to TBA?

A. No, nor did I to services, as such.

Q. And do you feel that it was part of your responsibility to assist station dealers in selling and developing TBA?

3473 A. Very definitely. I believe I qualified it at another point, Mr. Kelaher, that the sale of TBA was just as necessary as was the sale of other services as compared, let's say, to the fellow who just has a pump and pumps gas. You can't live on gas sales alone. Balance is what I was referring to.

Q. And isn't it a fact that in the New York region, Atlantic's leases were different for many years?

A. That is true.

Q. And under that lease that was in effect in New York region, Atlantic did get a percentage return on gross sales of Atlantic lessee dealers, including their sales of TBA?

A. That is correct, sales of everything, excluding gasoline, taxes excepted.

Q. Do you recall whether that type of lease was in effect when you went into that area or how long prior thereto it was in effect?

A. Mr. Kelaher, to the best of my knowledge it was in effect when I first went to the New York region, back in 1940.

Q. Now you were also asked some questions concerning the availability of lessee dealers and you testified they are now scarce. Isn't it also true that during the post-

war two years, sort of thereafter, it was just the opposite? At least there wasn't a scarcity of dealers at that time.

3474 A. Well, the only year period that I can account for, Mr. Kelaher, I mentioned that I got out of the Navy in December 1945, so I assume you are referring to—

Q. Starting with that period.

A. '46, '47, '48.

Q. Yes.

A. Well, as I recall, we had our problems then. True, there were men returning from the Services but to find a top notch dealer has always been a difficult thing to do.

Q. But you didn't have the problem then you have today, did you, with respect to dealer availability?

A. It is a matter of degree, Mr. Kelaher. I think it has always been an A-No. 1 problem for any salesman.

Q. Now you also testified that several of your dealers were in the $12,000 and $15,000 category. Are you referring to net income?

A. That is right.

Q. Per year, I assume. Your answer indicates that probably is high for that area. Is that correct?

A. Well, I mentioned that merely to show that there are specific instances of a couple of dealers who netted between $12,000 and $15,000 and I think that is recognized as a good income.

Q. It is also true there are numerous dealers who average less than that, isn't it?

3475 A. Absolutely.

Q. In fact, the average is less than that?

A. That is right. To be specific, I would say the average up there was probably in the neighborhood of $6,000, $6,500.

Q. You stated on direct that Atlantic has an interest in the business success of the lessees. Isn't your primary

concern as an Atlantic representative to obtain a return on Atlantic's investment in its lessee stations?

A. No, I wouldn't say that is my prime return as a salesman or a sales supervisor. My prime interest, I beg your pardon. My prime interest is to see that sales are developed and we are not in the real estate business. We are in it only to have facilities available for dealers.

Q. Isn't it a fact that with 65 lessee stations, Atlantic's investment in those stations would run in excess of $3,000,000, approximately?

A. Well, it would be a considerable amount of money.

Q. And isn't it a fact that Atlantic's interest is to maintain dealers in these stations and to achieve maximum income from these stations in order to get a return on that investment in the stations?

Mr. Ballard: I will object to that question, your Honor. That question went for a half hour and there were a great many questions involved in it.

3476 Mr. Kelaher: I think he understands the question.

Hearing Examiner Kolb: Do you understand the question?

Mr. Ballard: Which part of the question do you think he understands?

The Witness: I think there were three specifics there, weren't there?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Ballard: I submit, your Honor, there are a great many questions involved there.

3477 Hearing Examiner Kolb: I think the witness can answer. The objection is overruled.

The Witness: Our Maximum interest is to have successfull dealers in those stations who are growing so that Atlantic's income, if you will, both from the sales of products and return on the investment, increases.

By Mr. Kelaher:

Q. You also testified with respect to Mr. George Shannon, of Watkins Glenn, one of your lessee dealers.

A. That is right.

Q. Was a warning letter sent to Mr. Shannon?

A. I don't recall one being sent to him, Mr. Kelaher.

Q. Was his lease cancelled? Do you recall the length of time he was given under his lease cancellation notice to get out of the station?

A. It wasn't cancelled. It was the end of a lease period, Mr. Kelaher. It was not renewed.

Q. I see.

A. And he had been in that station for many years.

Q. In your direct testimony—I may have misunderstood you—but I understood you to say it was cancelled. But it was terminated?

A. It was not renewed. That is right. It was not renewed at the end of the lease period.

Q. What TBA did Mr. Shannon carry?

3478 A. He carried some Goodyear, Mr. Kelaher, and other non-sponsored products.

Q. Was anything ever said to him about the non-sponsored TBA?

A. No, sir.

Q. That had nothing to do with the termination of the lease?

A. No, I tried to explain it was diversified interest on his part, and absentee operation, and what brought it to a point was the fact that while he was away from the station as much as he was, he did not have capable employees there to serve the public.

Q. He always had employees at the station, though, didn't he, when he was away?

A. Yes, sir.

Q. You also testified with respect to a warning letter sent to Mr. Olthop; for purposes of the record, I ask you to look at Commission's Exhibit 269 and ask you if that isn't the letter to which you referred (handing document to the witness).

A. Yes, sir, that looks like the letter.

Q. I am also going to ask you about several other warning letters in the record to ascertain whether they were in your district—the town of Irondequiot.

A. No, that is north of Rochester, and that is up on Lake Ontario, specifically in the Rochester district.

Q. Saranac Lake, New York.

3479 A. That is either Albany or Syracuse. It is in the Adirondack section.

Q. Utica, New York.

A. That is in the Syracuse district.

Q. Would that be in the southeastern tier?

A. No.

Q. The southeastern tier would be otherwise known as the Binghamton district, is that correct?

A. That is right.

Q. Mr. Detwiler, on direct examination you were asked a question concerning the Goodyear TBA program and the advantages to Atlantic dealers in the southeastern tier.

A. Yes.

Q. Among other things you stated that it was a high quality product. It was nationally advertised, had excellent acceptance, especially in the southeastern tier, covers the complete line, was competitively priced. Goodyear stores were handy and there was excellent advertising material. Do you recall that?

A. Yes, sir.

Q. Now, isn't it true that the same thing applies to other brands, such as Firestone, for one example?

A. Yes, I would say so.

Q. Isn't it true that the same thing applies to Goodrich or U. S., for example?

3480 A. Goodrich, Mr. Kelaher. I don't believe U. S. was active up there.

Q. But they both have high quality products, are nationally advertised, and so on; isn't that true?

A. That is true about the product; however, in the Binghamton area Goodyear was the only one that had a service store, as such, in Binghamton. The other nationally advertised brands that you mentioned were represented, but not by the supplier company direct. Do you follow me?

Q. But there were distributors of Firestone products in Binghamton?

A. That is correct.

Q. Do you remember the names of any of the Firestone distributors in Binghamton or that area?

A. I think T. J. Byrne, Fitzsimmons—I believe they were the only two.

Q. When you describe the Binghamton district, you use the Pennsylvania-New York state line as the diagonal under the half-moon you described; is that correct?

A. That is right.

Q. Now, you were not implying that this high acceptance of Goodyear stopped at that state line, were you?

A. I wasn't implying that. I said the acceptance was good in the Binghamton district.

Q. Wouldn't it be just as good on the other side of

3481 the Pennsylvania border as on the New York side?

I am not familiar with the other side, Mr. Kelaher. You have got a distance, geographically, of about 60 miles down to the next city of any size, which is Scranton, and I had no occasion to get down there or—

Q. (Interposing.) Isn't it a fact that all the towns on the south side of that state line are in the Atlantic eastern

region and that Firestone is the sponsored TBA program there?

A. That is correct.

Q. And I believe it is also a fact that Mr. Fitzsimmons' company is a Firestone supply point for Atlantic stations across the line?

A. That could be, I didn't realize it.

Q. Now, in your postion now as dealer training coordinator, when you are talking to dealers, Atlantic dealers, south of the New York-Pennsylvania state line, you tell them the same thing about Firestone as you tell them about Goodyear on the north side of the line; is that correct?

A. That is correct.

Q. Now, no questions were asked about this on direct examination, but I would like to ask you a question or two.

Mr. Ballard: Your Honor, I object to the question, because he has already disqualified it. It is bound to be outside the scope of the direct.

Mr. Kelaher: I will ask the question and then you 3482 can object.

By Mr. Kelaher:

Q. Aren't Atlantic service stations in the southeastern tier identified with Goodyear window valances, primarily, on the stations, and with the Goodyear outdoor pole sign on the premises?

Mr. Ballard: I don't think that question is objectionable.

Mr. Kelaher: I don't think so either.

Mr. Ballard: It was just your introduction that made it seem so.

The Witness: Most of them are, Mr. Kelaher. However, there is other advertising.

3483 By Mr. Kelaher:

Q. I am talking about window valances, and outdoor pole signs.

A. I am coming back to you on that. You referred specifically to window valances. There is a station over in Elmira, a lessee station, that has Firestone valances and Firestone pole sign.

Q. Is that the only one in the whole tier?

A. That is the most striking one, because it is solidly Firestone.

Q. Is that the only Atlantic station in the whole southern tier that you know of with that identification?

A. We are referring strictly to window valances and pole signs?

Q. I am referring to the one you just mentioned, the Firestone window valances and outdoor sign.

A. That is the only one that has both of those specific means of identification.

Q. In the whole southern tier?

A. Through the whole southern tier.

Q. Isn't it a fact that south of the New York-Pennsylvania line, that Atlantic stations have the Firestone window valances and Firestone outdoor sign primarily?

A. I believe so, those that I have passed, I think I have seen that, but they are few in number.

3484 Q. Now in connection with some questions concerning the type of TBA you see in Atlantic stations in the southern tier, I understood you to say that on occasions you would see Goodyear. Isn't it a fact that Goodyear TBA is the principal TBA handled in the southern tier by Atlantic stations?

A. Mr. Kelaher, I don't know how it would split down, percentage-wise, because it varies by station, by product.

Q. You didn't mean to imply—when you stated "on occasion," wasn't that somewhat of an understatement?

You find Goodyear TBA in Atlantic service stations in the southern tier, don't you?

A. You find both Goodyear TBA and non-sponsored TBA.

Q. I am asking about Goodyear TBA first.

A. In most of the stations.

Q. Now with respect to the time spent by servicemen, you estimated that 10 to 15 percent of the time of a salesman, rather, was spent by the salesman assisting dealers on TBA?

A. I stated that as a minimum, I believe.

Q. As a minimum, I am sorry.

A. That is correct.

Q. Are you grouping all classes of salesmen in that average? Or, let's put it this way: Does that average apply to service salesmen?

A. Yes, sir, it does.

Q. Does it apply to promotable dealer salesmen?

3485 A. Yes, sir.

Q. And to general salesmen?

A. Yes, sir.

Q. Now, isn't some of that time spent explaining to dealers the changes such as at the time the tubeless tire came out, or dry charged batteries came out?

A. Product information?

Q. Yes.

A. Yes, sir.

Q. Wouldn't that time be spent—that time is spent regardless of the brand of TBA involved, isn't that true?

A. Yes, that is true. However, certain suppliers make those changes at certain times, Mr. Kelaher. The only point I was trying to make was that when you said how much time, I said a minimum of 10 to 15 percent was spent on a combination of things that they do for the dealer, including product information.

Q. And you didn't mean that to indicate that the 10 to 15 percent minimum applied to promoting or assisting in the sale of Goodyear TBA only, did you?

A. Yes, I would say on the promotion of Goodyear TBA.

Q. Isn't it necessary for your service station dealers to know certain things about TBA, regardless of brand?

A. Sure it is; they should know it.

Q. Wouldn't these services have to be rendered by 3486 Atlantic anyway, with respect to many of them, regardless of brand?

A. To a certain degree, yes.

Q. Isn't it true that in your region as in others, certain of your salesmen up there are on a bonus system with respect to TBA?

A. Yes, sir. I believe that came into effect shortly before I left.

Q. Does that include—it does include promotable dealer salesmen, does it not?

A. I believe that is all it includes, or was, as of that time. As I say, that was shortly before I left there.

Q. Without going into Respondent's exhibit A-20, which is the TBA Program-Dealer Training Program, you stated that this was checked with a previous script, if I recall?

A. Yes, sir.

Q. This exhibit A-20 was revised in 1957. What was the date of the previous script?

A. I believe it was 1953, which I think coincides with the date on the other script there.

Q. Did you check it with any script prior to 1953?

A. No, I don't know whether—no, I did not.

Q. I show you also Respondent's exhibit A-21, which is the orientation script on tires and tubes in the Goodyear regions.

A. Yes.

Q. Do you have a similar script for orientation on
3487 tires and tubes in the Firestone regions?

A. Yes, sir.

Q. Is that basically the same as the one in the Goodyear regions with a change in names only, or primarily?

A. It is basically the same in outline or construction, unlike the other one which can be adapted to either region, because in this we go into more detail as to levels, lines, et cetera. There is a separate script.

Mr. Kelaher: Would it be possible to have that introduced into the record?

Mr. Ballard: I will be glad to furnish it to you, Mr. Kelaher, but it is not part of my case.

Mr. Kelaher: I ask counsel to furnish me with a copy of Firestone's script.

Mr. Ballard: I will be glad to do so.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions, your Honor.

Hearing Examiner Kolb: Thank you, that is all.

(Witness excused.)

* * * * *

3489 Mr. Francis Ballard: Mr Hayes?

THOMAS A. HAYES, JR. was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Thomas A. Hayes, Jr., 542 Clairmont Road, Springfield, Pennsylvania.

By Mr. Francis Ballard:

Q. You are presently a salesman for the Atlantic Refining Company?

A. Yes.

Q. What is your territory?

A. It is in Delaware County.

Q. How long have you been in the Delaware County area?

A. Since 1952.

Q. During that period you were a salesman in that area, for them?

A. Yes.

3490 Q. As a salesman, sir, am I not right in saying that it is part of your duties to sell Goodyear TBA?

A. That is right.

Q. Would you state, please, what you understand to be Atlantic's policies with respect to the purchases of Goodyear TBA by its dealers?

A. Well, it is our policy to offer Goodyear TBA to our dealers, for their purchase. It is also our policy to offer them the option of accepting or rejecting the Goodyear program.

Q. How long have you known this to be Atlantic's policy?

A. Well, since I have been a salesman.

Mr. Francis Ballard: Mr. Kelaher, to save time would you stipulate with me that this man has received and read the three exhibits, the numbers of which I can give for the record, the letters?

Mr. Kelaher: I have no objection.

Mr. Francis Ballard: It is stipulated that Mr. Hayes has received and read Exhibits 150, 206, and 207.

By Mr. Francis Ballard:

Q. Those exhibits, Mr. Hayes, are the letters from Mr. Colley to Atlantic dealers, stating Atlantic's policy. Have you heard that policy stated in any other fashion?

A. Yes.

Q. Could you tell us how?

3491 A. Well, it has been stated at dealer meetings, that we have held, at sales meetings that we have held, and it has been stated to me individually several times.

Q. I want you to go back to July of 1952, Mr. Hayes, when you started as a salesman and tell me whether or not you yourself have ever violated that policy?

A. No, I haven't.

Q. Mr. Hayes, do you know a gentleman named Francis J. Ballaron?

A. Yes.

Q. He was at one time an Atlantic lessee?

A. That is right.

Q. Were you ever his salesman?

A. Yes.

Q. Can you tell us for how long a period of time?

A. Well, I selected Mr. Ballaron for a service station in 1953.

Q. September 1953?

A. That is right. And we put him into the station. I was his salesman for about two and a half years.

Q. Let me interrupt again. Just tell us where the station was.

A. The station was in Newton Square.

Q. He was in that station you say for about two and a half years?

A. That is right.

3492-3494 Q. Did you at any time make a recommendation that Mr. Ballaron's lease not be renewed?

A. Yes, I did.

Q. Would you tell us the basis for that recommendation?

A. Well, from the beginning Mr. Ballaron proved a rather unsatisfactory dealer. He was a poor business man in a number of respects. The station did not meet our standards for cleanliness. We received many complaints about the location from customers, concerning poor service, attendance, and the dealer workout uniforms. We received several complaints about abusive language used on the station premises. Mr. Ballaron several times got into financial difficulty, gave us a number of bad checks.

Q. When you say "us", you mean Atlantic Refining?

A. Atlantic, yes. And generally speaking, his performance as a dealer was not satisfactory, and for those reasons I recommended that we not renew his lease.

Q. Mr. Hayes, during that two and a half year period, did Mr. Ballaron restrict his purchases of TBA to the Goodyear sponsored line?

A. No, he didn't.

Q. Did you know he was buying outside Goodyear TBA?

A. Yes, I did.

Q. Sir, I want you to go back to this recommendation that you made that his lease not be renewed.

3495 A. Yes.

Q. Did the fact that Mr. Ballaron bought some TBA on the outside have any bearing on your recommendation?

A. No, it didn't.

Q. To whom did you communicate this recommendation that the lease not be renewed?

A. To my supervisor, who was Mr. George Arnholt.

Q. If you know, would you tell us how Mr. Ballaron found out that the recommendation had been made?

A. Mr. Arnholt and I visited Mr. Ballaron at his station and discussed it with him.

Q. In what detail did you discuss it, how long did the conversation last?

A. It was a very lengthy conversation, which lasted, to the best of my knowledge, from between two and three hours. We discussed Mr. Ballaron's performance with him, and told him at the end of that discussion that we were recommending that his lease not be renewed.

Q. Was this the first occasion, Mr. Hayes, that you had had to observe the relationship between Mr. Arnholt and Mr. Ballaron?

A. No.

Q. You had had prior occasions?

A. Yes.

Q. Would you just take a moment now and tell us 3496 what your observation of that relationship was?

Mr. Kelaher: Your Honor, I am going to object to testimony of this character as to his observation as to the relationship between two other men.

Hearing Examiner Kolb: Well, he can testify as to what he knows, but I don't think he can give any conversations or statements made by either party.

Mr. Francis Ballard: I was not seeking any conversation or statement, sir.

Hearing Examiner Kolb: All right. Objection overruled.

The Witness: I would say that there seemed to be a personality clash between Mr. Arnholt and Mr. Ballaron.

Q. Now, I believe your testimony to date, Mr. Hayes, brings us up to the fall of 1955?

A. That is right.

Q. At which time you made this recommendation?

A. Yes.

Q. Did Ballaron stay in that station?

A. Yes, he did.

Q. Did he continue to be one of the salesmen on whom you called?

A. Yes, he was.

Q. I mean dealers, excuse me.

How long did Mr. Ballaron stay in the station 3497 after the fall of 1955?

A. I believe about a year and a half.

Q. Was his lease cancelled?

A. No, it wasn't.

Q. Would you tell—were you still his salesman?

A. Yes, I was.

Q. Would you tell the Examiner the circumstances under which he left the station?

A. Mr. Ballaron left the station under what we term a mutual consent of cancellation. This is a form that we use when the dealer wishes to be relieved of his station. It was Mr. Ballaron's wish that we release him of this service station, which of course we did.

Q. Now did he, Mr. Ballaron, tell you why he wanted to be released from that station?

A. Yes, he did.

Q. Would you tell us what he told you?

A. His reasons, as he told me, were that, No. 1, he was having difficulty with his sons, who worked there with him, there was some family disagreement about the operation of the station. No. 2, Mr. Ballaron said he had been advised by his doctor that he had best get out of the service station business. And No. 3, financial problems, which were still taking place.

Q. Can you tell us the reasons why Atlantic was 3498 willing to enter into a mutual cancellation?

A. Yes, because as far as we were concerned, he was still an unsatisfactory dealer for the same reasons I mentioned earlier.

Q. Mr. Hayes, as you know, Mr. Ballaron testified in

this proceeding back in June 1957. I am going to read you a question and answer from his testimony, at page 867 of the record. And I will ask you some questions about this. The question was:

"Did anyone tell you what to buy or sell at the last station?

"Answer: Yes, they did. You couldn't sell anything in that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that is represented are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station. I know that, anybody knows that, the salesman knew it. That is why I left the station."

Mr. Hayes, is that testimony true?

A. No.

3499 Q. Was it against the rules of that station that he buy Firestone or Goodrich tires?

A. No.

Q. Did he, in fact, buy those tires?

A. Yes, he did.

Q. Was it because of those purchases of non-Goodyear TBA that he left the station?

A. No, it wasn't.

Q. Now, sir, another gentleman, Mr. Iacono, do you know that gentleman?

A. Yes, I do.

Q. Could you help me in pronouncing the name?

A. It is Iacono.

Q. Well, you know him?

A. Yes.

Q. And you were his salesman for a time?

A. That is right.

Q. He was an Atlantic lessee?

A. Yes.

Q. Can you tell us for how long a period of time you were his salesman?

A. I was his salesman for about a year and a half.

Q. Directing your attention, sir, to the fall of 1954, did you or did you not make any recommendation as to whether Mr. Iacono's lease should be renewed?

3500 A. Yes, I did.

Q. What was your recommendation?

A. I recommended that we not renew Mr. Iacono's lease, Atlantic.

Q. Would you take a moment now and tell us the basis for that recommendation?

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Francis Ballard:

Q. All right, proceed.

A. We had had a number of problems with Mr. Iacono. To begin with, the station again did not meet our standards for cleanliness and appearance. We had had several complaints from the authorities in the area—this station was in Secane, Pennsylvania—and the Board of Health had contacted us regarding refuse and dirt around the service station through complaints of people living in the neighborhood.

Mr. Iacono had another business. He owned a stable and spent quite a bit of time at the other business, and in my opinion, didn't devote enough of his time to the service station business. He constantly worked without proper uniforms, employed what I thought were unquailfied people to work in his station, youngsters who didn't know much about the service station business. He kept poor, in-

adequate records to reflect what was going on at his
3501 station, and, generally, was an unsatisfactory dealer in my eyes.

Q. While he was a dealer with Atlantic, did he buy non-Goodyear TBA?

A. Yes, he did.

Q. Were you aware of this fact?

A. Yes, I was.

Q. Once again I ask you: Go back to the fall of 1954 when you made the recommendation which you have told us about, and tell us whether or not that fact had anything to do with your recommendation.

A. No, it didn't.

Q. Is this the only lessee station that Iacono had had with Atlantic?

A. Yes, it is.

Q. Had the lease which you recommended not be re, newed, had it been renewed at an earlier time?

A. Yes.

Q. And were you his salesman at the time of that earlier renewal?

A. Yes, I was.

Q. And at the time of the earlier renewal had Iacono been buying non-Goodyear TBA?

A. Yes, he did.

Q. Now, sir, we move on to another fellow, James 3502 Matthews. Do you recall that?

A. Yes.

Q. He was an Atlantic lessee?

A. Yes.

Q. You were his salesman for a period of time?

A. That is right.

Q. Do you remember how long a time that was?

A. To the best of my knowledge, about two or two and a half years.

Q. At that time where was his station located?

A. He was in Media, on the Baltimore Pike.

Q. During the two years he was your, one of your

dealers, in the sense that you called on him, how were his operations at that station?

A. Very good.

Q. Could you tell us a little bit about that station? Is it unusual in any respect?

A. Yes, we had a very unusual case there, in that the former dealer at that station, whose name was Charles McCaffety, let our station and moved directly across the street into a brand new Esso service station. As a result, of course, Mr. McCaffety took some of the customers with him him and it was necessary that our dealer, Matthews, keep on his toes at all times in order to hold the business at our Atlantic station. Mr. McCaffety was an ex-
3503 cellent dealer also and gave Matthews very stiff competition.

Q. Would you have any idea, generally, of the inventory Mr. Matthews got?

A. Yes, he kept an inventory of approximately twelve or thirteen thousand dollars.

Q. In your experience, is that higher than usual?

A. Yes, it is higher than usual.

Q. That is a TBA inventory you are speaking of—excuse me, higher than usual, does that figure of twelve to thirteen thousand dollars, is that exclusively TBA or a portion of it only?

A. That is right, a portion.

Q. Was his TBA higher than ordinary?

A. Yes, a great deal higher.

Mr. Kelaher: What was the last question and answer.

(The reporter read the question and answer appearing on lines 13 and 14 of this page.)

By Mr. Francis Ballard:

Q. When Mr. McCaffety left to go across the street to take the Esso station, was it your job to fill the Atlantic station which he left?

A. Yes, it was.

Q. Was Mr. Matthews the first person you tried to get to take that station?

A. No.

3504 Q. How many others had you offered it to?

A. Two or three.

Q. Would you tell us why they said they would not take the station?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Francis Ballard:

Q. Mr. Hayes, I believe you also know that Mr. Matthews testified in this proceeding, and at page 542 he stated as follows:

> "In the fall of 1954 I purchased ten Auto-lite batteries, and I was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease."

Then, he was put this question:

> "Who told you that?
>
> "A. Mr. Hayes."

In the fall of 1954 you were Mr. Matthews' salesman?

A. Yes.

Q. Did you ever make this statement to Mr. Matthews?

A. No.

Q. Do you recall the fact that in the fall of 1954 he did purchase ten Auto-lite batteries, do you know that.

A. Yes.

3505 Q. Did you have a conversation with him about them?

A. Yes, I did.

Q. Did you say that if he did not—that if he bought any more, you would find somebody to take his station?

A. No.

Mr. Francis Ballard: Cross-examine, Mr. Kelaher.

Mr. Kelaher: Your Honor, may I have a few minutes to review the testimony of the dealers about whom this gentleman is testifying?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Hayes, how long have you been with Atlantic Refining Company?

A. Since July 1950.

Q. What was your first position with Atlantic?

A. I was a retail instructor.

Q. What does that mean, what were your duties there?

A. Well, the duties of a retail instructor were to work with a salesman in a given territory, in uniform, working in service stations, training dealers and dealers' employees in selling and performing the services related to the 3506 service station.

Q. In what area did you perform those duties?

A. In southeastern New Jersey.

Q. How long did you remain on that job?

A. One year.

Q. Then, what job did you assume?

A. Well, I then was given a job in our home office in Philadelphia as assistant to our regional marketing supervisor.

Q. Who was that at the time?

A. His name was Edwin Stanton.

Q. Was that—after that did you go on your job as a salesman.

A. Yes.

Q. About when did you start your duties as a salesman?

A. In July of 1952.

Q. And you were a promotable dealer salesman; is that right?

A. That is right.

Q. Have you been in the same territory since that time?

A. Well, I have been in the same general area. I haven't had the same group of dealers all that time.

Q. Did you state that was Delaware County, that was your area?

A. That is right.

Q. That includes Chester, and other—Chester on the south and goes north to some other—

3507 A. (Interposing.) Upper Darby.

Q. When you were a promotable dealer salesman—my questions are going to concern your period as a promotable dealer salesman—was your immediate supervisor Mr. Arnholt during all that time. Has he been your immediate supervisor during all that time?

A. Yes, he was until about three months ago. He is no longer.

Q. He is no longer your supervisor?

A. No, he is retired.

Q. Mr. Arnholt retired three months ago; is that right?

A. Yes.

Q. Now, you were asked some questions with respect to Mr. Ballaron, and you said he was telling untruths when he testified here; is that correct?

A. That is right.

Q. Were you familiar with Mr. Ballaron's background when he became an Atlantic service station dealer?

A. Yes, I was.

Q. Did you know he had been in the Newton Square area for approximately 41 years?

A. Yes.

Q. Did you know he was very prominent in civic affairs in this community?

A. Yes.

3508 Q. Did you know he had been a scout master, fire chief, fire president, and had had other civic honors bestowed on him?

A. Yes.

Q. Did you know he served in World War I and World War II?

A. I know about War I, not World War II.

Q. Did you know certain members of his family served in World War II?

A. Yes.

By Mr. Kelaher:

Q. Now, you stated that you made a recommendation that his lease not be renewed, right?

A. Yes.

Q. That recommendation was made when?

A. I believe that was in September of 1955.

Q. And this is a fact, that you didn't give him any reason for making that recommendation? Isn't it a fact that you didn't tell him at that time that his lease would not be renewed?

Mr. Mason: Which question are you asking?

Mr. Kelaher: I was clarifying my original question.

3509 Hearing Examiner Kolb: You had better start again.

By Mr. Kelaher:

Q. At the time you made your recommendation to Atlantic that Mr. Ballaron's lease not be renewed, did you so advise him?

A. Yes.

Q. Did you give him the reasons why you were terminating his lease?

A. Yes.

Q. You have stated those reasons in your direct testimony. Is that correct?

A. That is right.

Q. Now, isn't it a fact that after your recommendation Atlantic offered Mr. Ballaron a three-year lease?

A. That is right.

Q. And he accepted the three-year lease?

A. That is right.

Q. So, your recommendation was overruled, apparently, wasn't it?

A. Yes, it was.

Q. You have litsed a number of reasons as to why you thought he was an unsatisfactory dealer, haven't you?

A. Yes.

Q. And isn't it a fact that he is still an Atlantic dealer?

A. To the best of my knowledge he is, yes.

3510 Q. So, what you have said is that he, among other things, was having financial difficulties, passing bad checks; his performance was not satisfactory; he was using abusive and foul language; and, you threw everything in the book at him, didn't you? You said he was a very unsatisfactory dealer?

A. Yes.

Q. As soon as his lease was terminated he opened another Atlantic station. How do you square that with your testimony?

A. He didn't lease the second Atlantic station.

3511 Q. What difference does it make? Atlantic signed a contract with him, didn't they?

A. To the best of my knowledge they did.

Q. What you are saying here is purely your own personal opinion and not the opinion of Atlantic Refining Company, is it?

A. Well, I represent the Atlantic Refining Company and it is my job to make decisions such as that concerning the dealers I call.

Q. You have been consistently overruled with respect to Mr. Ballaron. Everything you said here today has been repudiated and refuted by Atlantic's relationships with Mr. Ballaron. Isn't that a fact?

Mr. Francis Ballard: I object, your Honor. I think this is argumentative.

Mr. Kelaher: This is cross-examination. I want to cross-examine.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You can answer the question now.

3512 Mr. Francis Ballard: Can we have the question read?

(Question read.)

Mr. Mason: I submit that isn't a question, but an invitation to an argument.

Hearing Examiner Kolb: Overruled.

The Witness: I would say No.

By Mr. Kelaher:

Q. The answer is Yes, isn't it?

Mr. Francis Ballard: The witness just stated the answer is No.

Mr. Kelaher: Listen, you have a rare idea of cross-examination, my friend. I am stating to you that Atlantic

has continued to negate contracts with Mr. Ballaron since the time of your recommendation; isn't that true?

The Witness: I am not sure of that.

By Mr. Kelaher:

Q. Don't you know he is still an Atlantic dealer, in Zieglerville, Pennsylvania?

A. I don't know that.

Q. The record here so states and you have made no inquiry, you don't know what happened to Mr. Ballaron after he left the other station?

A. Yes, I do.

Q. What happened?

3513 A. Mr. Ballaron then took an Atlantic contract location, but as to whether or not he still has it, I don't know.

Q. Now you are equivocating. But it is a fact, isn't it, that he did enter into a contract with Atlantic almost immediately after he discontinued being a lessee dealer in your area?

A. Yes.

Q. Now, isn't it also a fact that his sons, or at least one of his sons, went to that station with him?

A. Yes.

By Mr. Kelaher:

Q. On direct examination you were read an excerpt from Mr. Ballaron's testimony at page 867, I believe.

When you said that—do you recall that statement that was read to you by counsel?

3514 I will reread it to you. Beginning at line 11, page 767:

"Did anyone tell you what to buy or sell at the last station?

"Answer: Yes, they did. You couldn't sell any-

thing to that station except what you bought from Goodyear or DuPont or an Atlanite dealer can't sell anything but Atlantic products and the one that is represented are still supplying them. When I went to buy Firestone or Goodrich tires or anything like that, that was against the rules of that station. I know that, anybody knows that, the salesman knew it. That is why I left the station."

You said that whole statement was untrue, didn't you?

A. Yes.

Q. What you are saying is that in your opinion it is untrue?

A. No, I am saying that to the best of my knowledge that statement is untrue, because it is against the policy of our company as it has been explained to me and as I explain it to our dealers.

3516 By Mr. Kelaher:

Q. Now, let's turn to Mr. Iacono. He was also one of your Atlantic dealer salesmen, is that right, one of your Atlantic dealers, I should say?

A. Yes.

Q. Now, you made certain recommendations with respect to Mr. Iacono. Were you his dealer salesman in the fall of 1953 or December 1953?

A. Yes.

Q. And at that time did you also recommend that or did you recommend at that time that his lease be terminated if he didn't make certain adjustments in the service station operation?

A. Yes.

Q. Now, at that time a letter was sent to Mr. Iacono. I will show you the letter. It is Commission's Exhibit 257-A, and ask you if this is the result of your recommendation to your superiors?

A. Yes.

Q. And have you also been apprised of Mr. Iacono's attorney's reply to Atlantic Refining Company in connection with that letter, Exhibit 257-B in this record. Have you ever seen this letter before?

A. Yes, I have.

Q. Isn't it a fact that after that letter was sent,
3517 Mr. Iacono remained in that station for some time?

A. Yes, he did.

Q. So, all the complaints you have itemized and categorized—strike that. So your recommendation at that time was also overruled, wasn't it?

A. Not exactly, no.

Q. What do you mean by that "not exactly"?

A. Well, we have these letters that you mentioned there, which we send to the dealer, which gives him 15 days to correct these deficiencies that we call to his attention, or else he is breaching his lease. In Mr. Iacono's case he corrected those deficiencies to our satisfaction within the period of time and, therefore, we determined that he had not breached his lease.

Q. Now, you have testified, as I understand your testimony, that—now, you say he corrected the deficiencies and then on direct examination you stated that was the reason you didn't recommend renewal of his lease at a later date. Is that the substance of your testimony?

A. Yes. They were corrected only temporarily.

Q. Was he sent another warning letter concerning these so-called deficiencies?

A. No.

Q. However, he remained in the station about one year after this warning letter was sent, did he not?

3518 A. I am not exactly sure of that.

Q. You have also testified concerning Mr. James Matthews. Do you recall that testimony?

A. Yes.

Q. Isn't it a fact that Mr. Matthews was an Atlantic lessee dealer for ten years, approximately?

A. Yes, I think so.

Q. Isn't it a fact that he was a very good dealer, and I think you have so stated?

A. Yes, I thought highly of him.

Q. Well, you made some remark about his inventory being high. You referred to a figure of approximately twelve or thirteen thousand dollars. As I understand your answer, that included gasoline, oil, everything in the station, twelve or thirteen thousand dollars. Is that right?

A. That would include gasoline, motor oil, tires, batteries, and accessories.

Q. Yes. And then you said his TBA inventory was higher than something, higher than ordinary?

A. Yes.

Q. Wasn't his station a fairly large station at that particular location he was in Media?

A. Yes.

Q. And isn't it a fact that that TBA inventory was almost 100 percent Goodyear?

3519 A. I am sorry, I didn't hear you.

Q. Isn't it a fact that that TBA inventory was almost one hundred percent Goodyear?

A. Yes, it is.

Q. And isn't at a fact you got a bonus on that Goodyear TBA inventory at the time on his purchase of Goodyear TBA?

A. No.

Q. Was there no promotable dealer bonus at that time?

A. No.

Q. When did that bonus begin to go into effect?

A. I believe it was January of 1957.

Q. And he was in the station until sometime in 1957,

you will recall. To refresh your recollection, Mr. Matthews testified that he was an Atlantic lessee dealer until May 7, 1957. So, from January 1957 to May 1957 you were getting a bonus or you were getting an incentive award, you were under an incentive award program based on Goodyear TBA; is that right?

A. Well, I wouldn't want to say that was right without looking at my records. I am not sure.

Q. If my dates are correct, that would be so.

A. Except that I am not sure when the bonus plan started. I believe it was January 1957.

Q. And it was to your advantage when the bonus plan started to increase the purchases of TBA by Atlantic dealers because it inured to your financial benefit, 3520 did, it not?

A. Yes.

Q. You stated you had a conversation with Mr. Matthews concerning his purchase of ten Auto-lite batteries. Do you recall that testimony?

A. Yes.

Q. Why was it necessary for you to comment about Auto-lite batteries to Mr. Matthews?

A. Well, Mr. Matthews had been purchasing Goodyear batteries up until that time. I went into his station one day and observed Auto-lite batteries in his office. I think it was natural that I ask him why had he discontinued buying our Goodyear batteries, and decided to buy Auto-lites.

Q. Was that—do you recall the conversation you had with him. Would you state it?

A. Yes, I asked him why he had chosen to purchase Auto-lite batteries, and asked if there was something wrong with our batteries and asked him why he chose to buy the Auto-lites. The explanation he gave me was that an automotive jobber with whom he had been doing busi-

ness owed him some money. He had a credit on their books. They asked him if he would take these batteries in lieu of a refund in cash, and he agreed to do so.

Q. Otherwise, he was purchasing Goodyear batteries exclusively, is that correct?

3521 A. Well, no, I wouldn't say that.

Q. He was stocking Goodyear batteries, shall we say?

A. Yes.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Francis Ballard.

Q. Mr. Hayes, going back to your early experience with Atlantic, when you were hired did you attend a dealer training school?

A. Yes, I did.

Q. For how long?

A. It was ten weeks.

Q. And I believe you also stated to Mr. Kelaher that you were a retail instructor thereafter?

A. That is right.

Q. Is that retail instructor's position the same as a service salesman is today?

A. Yes, it is.

Q. Now, on Mr. Matthews, Mr. Kelaher asked you a question which indicated that Mr. Matthews left his station in 1957. Were you Mr. Matthews' salesman at that time?

A. No, I wasn't.

Q. Were you Mr. Matthews' salesman at any time in 1957?

A. I don't believe so.

Q. Now, as to Mr. Matthews' inventory, in your

3522 experience would it be easy to find a replacement for a dealer who has an inventory of $12,000 to $13,000?

Mr. Kelaher: Objection, unless the question is limited to TBA.

Hearing Examiner Kolb: The objection is overruled.

The Witness: I would say Yes, it would be.

By Mr. Francis Ballard:

Q. It would be easy or difficult?

A. It would be difficult.

Mr. Francis Ballard: That is all.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

Mr. Kelaher: May we have a short recess.

Hearing Examiner Kolb: All right.

(A short recess was taken.)

3523 Hearing Examiner Kolb: The hearing will come to order.

ALBERT J. VAYDA, was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Albert J. Vayda.

By Mr. Francis Ballard:

Q. Mr. Vayda, who do you work for now?

A. Ford Division of the Ford Motor Company, sir.

Q. What is your position with them?

A. I am the fleet sales manager for the Philadelphia district.

Q. You were at one time employed by Atlantic?

A. Yes, sir.

Q. When did you go with the Atlantic Company?

A. I believe I started with Atlantic Refining Company in May 1946.

Q. Were you at any time a dealer salesman with Atlantic Refining?

A. Yes, sir.

3524 Q. Can you recall the period of time, approximately?

A. To the best of my recollection it was 1948 through around August of 1952.

Q. Was it in August of '52 you left Atlantic to go with Ford?

A. Yes, sir.

Q. During that period when you were a salesman for Atlantic Refining, did you have as one of your dealers a man named Pollock?

A. Yes, sir.

Q. Do you recall how long you were Pollock's salesman?

A. Approximately four years.

Q. Did you develop any personal relationship with Pollock at all over that time?

A. Oh, yes, sir, I visited his home and he had been to my home.

Q. Mr. Vayda, Mr. Pollock testified in these proceedings about a year and a half ago and I would like to read you some of his testimony and ask you a few questions about it. I am reading now from the record at page 690, starting at line 14. He asked this series of questions and gave these answers:

"Did you purchase any brands of batteries other than Goodyear brand after March 1951?

"Answer: Yes, Bowers batteries.

3525 "Question: Was anything ever said to you by an Atlantic representative in respect to your purchases of Bowers batteries?

"Answer: Yes, I had a large sign outside with batteries on display and they asked me to take them in, to remove them.

"Question: Was the large sign, did the large sign advertise Bowers batteries?

"Answer: That is right.

"Question: Can you fix the approximate time when this occurred?

"Answer: It was approximately, I would say the spring of 1952.

"Question: Do you recall the name of the Atlantic representative who made the statement to you?

"Answer: Mr. Vayda.

"Question: Did Mr. Vayda ever make any other comments to you with respect to the purchase of Goodyear TBA by you?

"Answer: In what respect?

"Question: Did he ever threaten you with cancellation?

"Answer: Well, with this battery deal through the heat of the argument I told him to get off the premises and he told me he was going to have the lease cancelled and
3526 that is the way it remained."

Now, Mr. Vayda, do you recall whether or not Mr. Pollock purchased Bowers batteries?

A. I remember that he had purchased Bowers batteries.

Q. Did you see them at his station?

A. Yes, I did.

Q. Where were they displayed?

A. Right in the office, in a prominent position.

Q. Do you know or remember whether or not Mr. Pollock had a large outdoor Bowers sign?

A. A large outdoor—

Q. Bowers sign, yes.

A. You know, a lot of gasoline has gone through the pumps since then. Vaguely, I would say Yes, I remember the sign.

Q. Now I ask you this question: Did you have an argument with Mr. Pollock concerning either Bowers batteries, or the sign, in the course of which argument you told him you were going to have his lease cancelled?

A. Again, to the best of my recollection, I vaguely remember it, but I honestly don't remember getting into any serious argument over it.

Q. Do you remember making a threat to cancel his lease?

A. I can't remember, honestly. I don't remember telling him that I would cancel his lease.

Q. Did you, have you ever threatened to cancel 3527 any dealer's lease in your experience with Atlantic?

A. No, sir.

Mr. Francis Ballard: Cross-examination.

Mr. Kelaher: No questions.

Hearing Examiner Kolb: Thank you very much.

(Witness excused.)

ROBERT KLEIN was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address?

The Witness: Robert Klein, 611 Jackson Avenue, Wooderest, Wilmington 4, Delaware.

By Mr. Ballard:

Q. Mr. Klein, you are an employee of Atlantic Refining, are you?

A. Yes, I am.

Q. What is your present position with Atlantic?

A. Promotable dealer salesman.

Q. What district?

A. Wilmington, Delaware.

Q. Mr. Klein, when did you become promotable 3528 dealer salesman in the Wilmington district?

A. March 1956.

Q. At that time did you become a salesman or was one of the dealers on whom you called, a gentleman named Richard Brown?

A. Yes, it was.

Q. Now at that time had the extra compensation plan for promotable dealer salesmen just gone into effect?

A. It went into effect the first of April 1956.

Mr. Ballard: Off the record?

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Fred Ballard: It is stipulated that the extracompensation plan for promotable dealer salesmen became effective April 1, 1956.

The Witness: That is in the eastern Pennsylvaina region. It may have been different for other regions.

Mr. Fred Ballard: I think it was in all regions at the same time.

By Mr. Fred Ballard:

Q. Do you recall a discussion between yourself and Mr. Brown with respect to that extra compensation plan?

A. Yes, at some time after the first of April, Mr. Brown asked me, nonchalantly one day if I was paid a commis-

sion on products I sold. I said Yes, and he said,
3529 "Does that include TBA?" and I said "It certainly does."

Q. Is that the extent of your conversation with him?

A. Yes.

Q. At that time was Mr. Brown buying Firestone TBA?

A. Yes, to a certain extent.

Q. Now moving to December of 1956, do you recall an incident involving Mr. Brown and a recap Goodrich tire sold on an Atlantic credit card?

A. Yes, I do.

Q. Would you describe that incident for us, please?

A. Certainly. The tire was sold to a credit card customer by the name of Mr. White. I don't know his first name. The tire was evidently defective, something was wrong with it and the customer brought it back about a month or two late and wanted an adjustment. He mentioned to Atlantic it was sold by the way on terms on the credit card. I think he had made one or maybe two payments on the tire. He wrote us and told us he would refuse to pay for the remainder of the tire unless an adjustment was made.

Well, I went out and talked it over with Mr. Brown and he informed me that it was a Goodrich tire. I said it was perfectly legitimate for him to put a Goodrich tire on an Atlantic credit card, however, I felt in that case he, or Goodrich, should certainly back up the sale in case of an adjustment or something of that order.

3530 Q. Now, sir, Mr. Brown left his station at what date, do you recall?

A. He left his station on the 5th day of April 1957.

Q. When did he first tell you that he wanted to leave his station?

A. He told me on numerous occasions, I would say from

the first of July 1956, at intervals of about six weeks; at one time he would say he wanted to leave and then he didn't want to leave and then he wanted to leave again and it went back and forth, and finally about the 5th of March he told me that he definitely was going to leave this time. And I said I will go to work and try to find a replacement for you.

Q. Did you go to work and find a replacement for him?

A. Yes, I did. I had been working with a Gulf dealer, trying to get him to take the station and he was debating whether he wanted to take it or not. However, I also had a man in the dealer training school who would graduate in time to get into Brown's station by the 5th of April, thirty days later. In the end I put the man from our dealer training school into the station, on the 5th of April.

Q. Was his name Bruton?

A. Johnny Bruton.

Q. Now when Mr. Bruton took over the station from Mr. Brown, did Mr. Bruton buy Mr. Brown's TBA inventory?

A. Yes, he did.

3531 Q. Did that include some non-Firestone items?

A. Quite a bit of them.

Q. Did he also buy Mr. Brown's equipment?

A. He bought all of Mr. Brown's equipment except a battery charger. The reason he wouldn't buy the battery charger, was because he felt the price was exorbitant and he could get a comparable charger for a considerably lesser price.

Mr. Fred Ballard: No further questions.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

3532 Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Klein, was your first association with Atlantic as a promotable dealer salesman March 1956?

A. No.

Q. When did you begin with Atlantic?

A. I began with Atlantic in October 1951.

Q. What was your—would you just state what your jobs and experience has been with Atlantic?

A. I started as an employee in a company-operated station in 1951 and in 1953, and to July of 1954 I worked as a tax accountant in both Philadelphia and the Reading offices, and in July 1954 I attended the dealer training school in Allentown, Pennsylvania, after which I became a service salesman. I worked as a service salesman in Seaford, Delaware, until March 1956.

Q. At that time you assumed the present job?

A. Yes, sir.

Q. In the Wilmington district. Has your supervisor in the Wilmington district been Mr. Jones during your employment there?

A. Not entirely.

Q. Who was your supervisor?

A. Mr. J. M. Connelly had been supervisor prior
3533 to Mr. Jones.

Q. I believe you were present at these hearings two days ago when Mr. Jones testified, were you not?

A. Yes, I was.

Q. He referred to Mr. Robert Klein as having been the top Firestone TBA salesman in the Wilmington district during either 1956 or '57. He wasn't certain. You are that Mr. Klein, are you not?

A. Yes.

Q. What year was he referring to?

A. 1956.

Q. And are you still consistently one of the top Firestone TBA salesmen in the Wilmington district?

A. Yes, I would say so.

Q. And you receive a bonus, do you not, on the purchase of Firestone TBA by Atlantic dealers?

A. I work on an extra compensation plan and incentive program, yes.

Q. Yes. And have you consistently received a bonus under that plan, due to sales of Firestone TBA?

A. No, sir.

Q. 1956 you did?

A. Yes, and 1957 I didn't. 1958, up to this point, I haven't.

Q. How long have you been aware of the Federal 3534 Trade Commission investigation into the Firestone-Atlantic sales commission plan?

A. Since March 1956 when I became a salesman.

Q. You learned of it when you went to the Wilmington district, is that right?

A. Yes. I could elaborate on that a little bit. I knew of Federal Trade Commission activities, the investigator being in Wilmington in March '56. However, I knew prior to that time that an investigation had been going on.

Q. You knew prior to the time you went to the Wilmington district that such an investigation was underway?

A. Oh, yes, sir.

Q. You are always attempting to increase Atlantic dealers' purchases of Firestone TBA, are you not?

A. Yes, sir.

Q. Isn't it true that you, on your trips to stations, Atlantic dealer stations, you can spot non-Firestone TBA; isn't that true, with respect to tires and batteries and—

A. (Interposing.) Oh, yes, certainly, but accessories I can't.

Q. You can't where they are brands carried in the Firestone TBA line; is that what you mean?

A. Yes, sir.

Q. Were you implying in your direct examination that you never at any time made any comments to Mr. 3535 Brown concerning non-sponsored TBA?

A. I was.

Q. You never at any time during your calls on Mr. Brown, made any comment to him concerning the fact that a particular product was not in the Firestone TBA line?

A. The only comment I ever made to Mr. Brown regarding TBA was that I asked him to get TBA other than Firestone if he couldn't make the purchases from Firestone.

Q. However, if he could make the purchases from Firestone, he was to make them there, is that what you mean?

A. No, sir. He objected to me that Firestone didn't want to sell to him on several occasions because of his very poor credit record, and the fact that they run a truck across town with maybe three fanbelts and when the truck got there, he would throw up his arms about everytime and say he wanted it on credit or didn't have the money, and on one occasion he gave them 530- some pennies to pay for it.

Q. Isn't it a fact he was dissatisfied with the Firestone service store delivery, and with their service, and with their prices? Did he tell you about that?

A. May I take those items one at a time, please?

Q. I am asking you if—you may—but I want you to answer the question Yes or No first.

A. Yes, he was.

Q. Now, as to each item, if you like.

A. He was dissatisfied with their service because
3536 they became a little antagonized with Mr. Brown and for what I felt was very good reason. The item I just referred to a moment ago, running a truck from one end of Wilmington to the other with one or two items, maybe totaling—maybe three or four oil filter cartridges and when the truck got there he knew he couldn't buy from them on credit, and he would insist that the truck driver give it to him on credit.

One time the driver told him you are either going to pay me money or I won't leave them. Those are my instructions from the store manager.

Q. Were you present during these conversations, at that particular one?

A. Yes, sir, and others.

Q. Isn't it true that he complained about the fact that the Firestone service store was underselling him?

A. I think he did, on one occasion, in my presence, yes.

Q. And that was a fact, wasn't it?

A. No, it wasn't.

Q. Isn't it true that the Firestone service store at times sells Firestone tires at a lower price than Atlantic dealers can afford to sell them?

A. No, sir.

Q. You were aware, in any event, of a friction between Brown and the Firestone service store?

A. Indeed I was.

3537 Q. Now, with respect to credit card adjustments, does Atlantic handle the credit card adjustments on Firestone tires?

A. No, sir, not directly. I, as a sales representative, oftentimes discuss it with the Firestone store manager, or the Firestone representative, for a dealer or with a dealer. But we don't make the adjustments.

Q. If the sale of Firestone tires is made on Atlantic

credit cards by an Atlantic dealer, don't you repay, don't you, under your credit card set-up, immediately or shortly thereafter, repay the Atlantic dealer?

A. Yes.

Q. For that sale?

A. Yes, sir.

Q. And that is the end of his association with the matter, isn't it?

A. Yes. Insofar as Atlantic is concerned.

Mr. Kelaher: No further questions.

Mr. Fred Ballard: I have no further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

3538 Whereupon, WILLIAM L. WAY was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: William L. Way; 110 Brookside Road, Newton Square, Pennsylvania.

Direct Examination by Mr. Francis Ballard.

Q. You are presently an Atlantic lessee, is that correct?

A. Yes, sir.

Q. Could you tell us where your station is?

A. State Road and township line, Drexel Hill.

Q. When did you move into that station?

A. December, 1953.

Q. What had been your work before that time?

A. I was a salesman for Atlantic Refining Company.

Q. In the Philadelphia area?

A. Yes, sir.

Q. When did you start with Atlantic?

A. In December of 1946.

Q. When did you become a salesman for Atlantic?

A. A dealer salesman?

3539 Q. Yes.

A. In 1948 or 1949.

Q. And then you were a dealer salesman until 1953 when you left?

A. Yes.

Q. While you were a salesman, did you have a dealer named James Matthews?

A. I did.

Q. And you were his salesman?

A. Yes, sir.

Q. Do you remember how long, for how long a period of time he was one of the dealers you called on?

A. Approximately ten months, eleven months.

Q. Can you tell us what year that would have been?

A. 1953.

Q. Where was his station at that time?

A. In Yeadon.

Q. Would you tell us now, Mr. Way, something about Mr. Matthews' operations at that station when you first came to his territory in early 1953?

A. Yes. When I took over in that particular territory, Jim Matthews was having some kind of difficulty in operating his business. He was at that time operating two businesses, one a trucking concern and also a service station.

His figures were not good, and it was my opinion
3540 that Matthews should stick with one of the two businesses, that he was doing no good to either one of the businesses.

Q. What was the nature of the trucking business you mentioned?

A. He had several tractors, no trailers. He had contracts with several concerns, and he hauled these trailers to different parts of the country.

Q. Now, you stated what you—that it was your opinion that he ought to either go into the trucking business entirely or the service station business; is that right?

A. Yes, sir.

Q. Did you ever mention that to Mr. Matthews?

A. I did.

Q. Could you tell us about that conversation?

A. Yes, I mentioned the fact that he should pick one of the two; if he wanted to stay in the service station business, I felt that if he wanted to do justice to it, that he should give up the trucking business or vice versa. And he more or less agreed that he had had trouble just prior to that. I believe one of his trucks was in a rather serious accident down South with a possible suit pending as a result of the accident, and he had trouble on different occasions with drivers not showing up, and just apparently wasn't working out too satisfactorily.

Q. In the course of this conversation, did you sug-
3541 gest the possibility of a mutual cancellation of his Atlantic lease?

A. At that time?

Q. Yes.

A. Yes.

Q. Or shortly thereafter?

A. Yes.

Q. What was—

Mr. Kelaher (Interposing): Which is the answer now?

By Mr. Francis Ballard:

Q. Was it at the time of the conversation that you have just told us about, or was it later on you mentioned a mutual cancellation deal?

A. I think it was a little bit later.

Q. Did Mr. Matthews sign the mutual cancellation?

A. No, he did not.

Q. What was the nature of your conversation with him at that time?

A. Well, we discussed this for probably an hour or so, and we hashed it back and forth, and I told him I felt he could do better in the service station if he devoted a hundred percent of his time to the station. I also submitted a mutual to him, told him he didn't have to sign it, it wasn't mandatory, and I felt that if he could devote one hundred percent of his time to the station, that he could develop the location, which would also increase
3542 his net profit.

Q. And he stayed on in the station?

A. Yes, he did.

3543 Q. What were the results of his operations after that conversation?

A. Well, due to a hundred percent attendance at the station, his over-all picture improved, the station appearance picked up. Well, the proof is that he was selected for another location, a better location, several months later.

Q. I think you said that he was devoting a hundred percent of his time to the station?

A. Yes.

Q. What happened to the trucking business?

A. He divorced himself completely from the trucking business.

Q. Did you also, while you were a salesman with Atlantic, a dealer salesman, have a dealer named James M. Meyers, Jr.?

A. I did.

Q. Do you recall how long a period of time he was a dealer you called on?

A. Approximately two years, I guess. I am not sure about that.

Q. Mr. Meyers testified in these proceedings in June 1957, At page 1,112 he was asked whether or not he received a letter from Atlantic Refining Company which said he had freedom of choice as to his TBA purchases. His answer was:

"Yes, I did receive a letter later than that, stating that I had freedom of choice.

"Question: Did you ever discuss that letter with 3544 Salesman Way?

"Answer: Yes, I did.

"Question: What did you state to Salesman Way?

"Answer: I said 'Bill, does that letter mean what it says?' and he said 'You try it and you will find out.' That was the answer I received."

Now do you recall the letter which is mentioned?

A. I recall the letter, yes.

Q. Do you recall by whom it was signed?

A. Mr. Colley.

Q. Did you have conversations with your dealers about that letter generally?

A. Yes, as we discussed many pieces of correspondence coming from the office.

Q. Did you have any conversation with Mr. Meyers of the nature that he testified about?

A. I believe the subject came up, yes.

Q. Did you ever tell him: "Try it and you will find out"?

A. No, sir.

Q. Did you ever tell either Mr. Meyers or any other dealer that the policy of the company was other than as stated in the letter?

A. No, sir.

Mr. Francis Ballard: Cross-examine.

3545 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Way, you were still an Atlantic lessee dealer at Drexel Hill, is that correct?

A. Yes, sir.

Q. And you have been in that station since December 1953?

A. Yes, sir.

Q. So you have been with Atlantic from December 1946, until the present time?

A. December 1945.

Q. You gave one date in your direct testimony concerning December 1946, as I recall. What did you start with Atlantic as?

A. I started as a service salesman.

Q. That was in December 1945?

A. Yes, sir.

Q. When did you become a dealer salesman—were you a service salesman until you became a dealer salesman?

A. No, I was a commercial salesman, calling on fleet accounts.

Q. In any event you became a dealer salesman in 1948 or 1949?

A. Yes, sir.

Q. I want to ask you a question or two about Mr. Meyers. Do you recall the time when Mr. Meyers' 3546 station was used as a model station?

A. Yes, sir; I do.

Q. Do you recall the time when that happened?

A. No, I don't.

Q. Was that before or after the change-over to Goodyear TBA line?

A. Honestly, I don't know; I don't remember. I would say the model station program was probably around 1950 or '51.

Q. And the change-over to Goodyear TBA was in March 1951, if you recall?

A. Yes; I am not sure.

Q. It could have been after March 1951?

A. It could have been. I don't remember.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Way. Thank you.

(Witness excused.)

Mr. Fred Ballard: Sir, I have another witness who will take about, oh, half or three-quarters of an hour. I would be glad to put him on now or after lunch, whichever you prefer.

Hearing Examiner Kolb: Let's put him on now.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3547 Hearing Examiner Kolb: On the record.

We will adjourn at this time until 1:30.

(Thereupon, at 11:57 a.m., the hearing was recessed, to reconvene at 1:30 p.m., this same date.)

3548 Afternoon session. (1:30 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

JOSEPH M. CONNELLY was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Joseph M. Connelly, 2512 Prospect Street, Pennside, Reading, Pennsylvania.

By Mr. Fred Ballard:

Q. Mr. Connelly, you are an employee of Atlantic Refining Company?

A. Yes, I am.

Q. Will you tell the Examiner when you first joined that company?

A. May I refer to a note I have on my history with the company?

Q. Is that a list of your jobs?

A. Yes, of my jobs and when I was hired, from my personnel record.

3549 Mr. Kelaher: All right.

The Witness: I was hired as a retail merchandiser in February, 1946. I was made a retail instructor in April 1946, a commercial salesman in December 1946, and I held that job until October 1950. I was a dealer salesman from October 1950, until July 1952. I then became a promotable dealer salesman.

In February 1954 I became a site representative. I again was a promotable dealer salesman from February 1955 to

August 1955. I then became a sales supervisor in Wilmington and I stayed in that job until November 1956. I then became contract dealer accounts coordinator in the eastern Pennsylvania region and I held that job until September of this year, when I became direct marketing manager.

By Mr. Fred Ballard:

Q. Now Mr. Connelly, do I understand correctly that until you became sales supervisor in the Wilmington district in August 1955, previous to that time all your service had been in the Philadelphia suburban district of Atlantic?

A. Yes, it had.

Q. You mentioned that you were a site representative. What is the duty of a site representative?

A. It is a, well, liaison job between sales and our real estate department in the selection of service station properties.

3550 Q. Did you yourself make the decision as to whether a particular property should be purchased for a service station?

A. No, sir, I didn't, that decision was actually made by several people.

Q. About how many?

A. Oh, I would say possibly eight or nine. Very briefly, I would recommend or investigate a piece of property and it would then go to the district manager, who would take it to what we called then a DLC, a sort of real estate manager for a region and then the regional manager, if it was approved at that point, then it would go to top company management for their inspection and approval.

Q. You also said you were contract dealer coordinator in the eastern Pennsylvania region?

A. Yes, sir.

Q. What was the nature of your duties there?

A. Well, it is a specialist for a class of trade, working in

conjunction with everything concerning contract dealer business.

Q. About how many contract dealers were in that region?

A. I would say approximately 950 or a thousand.

Q. What proportion of them operated service stations with full station facilities?

A. I would say in the neighborhood of 550 to 600.

3551 Q. Does that region include Zieglerville, Pennsylvania?

A. Yes, sir; it does.

Q. Did you have any personal contacts with Francis Ballaron as a contract dealer in Zieglerville?

A. I did not.

Q. Have you at my request ascertained whether Mr. Ballaron is still a contract dealer there?

A. I have ascertained that.

Q. Is he?

A. He is not.

Q. According to Atlantic's records, why is he no longer a contract dealer there?

Mr. Kelaher: Objection your Honor.

Mr. Fred Ballard: You Honor, I didn't bring Mr. Ballaron into this thing as to his present whereabouts. Mr. Kelaher brought it in this morning and left a clear impression with your Honor that Mr. Ballaron is a fine, successful Atlantic contract dealer in Zieglerville today, I am entitled to explain that, I think, sir.

Mr. Kelaher: I think you are entitled to explain it, but not in this manner.

Hearing Examiner: I think the record would be the best evidence of that.

Mr. Fred Ballard: May I ask a few more questions?

Mr. Kelaher: I object to any further questions.

3552 Mr. Fred Ballard: I don't see how you can object to a question until it has been asked.

Mr. Kelaher: All right, go ahead and ask them.

By Mr. Fred Ballard:

Q. Mr. Connelly, what reason did Mr. Ballaron give to Atlantic Refining Company when he left the station?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: The objection will be sustained. That is based upon the record, and he said he is not familiar with Mr. Ballaron. At your request he looked over the records and the records, upon Mr. Kelaher's objection, are the best evidence.

Mr. Fred Ballard: Your Honor, this is the situation: As I say, I didn't bring Mr. Ballaron's present status into this case. Mr. Ballaron when he left his station, had an understanding with Atlantic, told Atlantic why he was leaving. This man has a responsible position, the direct marketing position in that region. He has at my request asked the Atlantic people what Mr. Ballaron told them. I submit under the contention of this case, not to be permitted to answer that seems to me to be highly technical, sir, but I of course bow to your Honor's ruling. I appreciate it is hearsay but it is in the scope of this man's job and is certainly relevant to this case.

Hearing Examiner Kolb: It is certainly not the 3553 best evidence and if Mr. Kelaher objects, I have to sustain it.

Mr. Fred Ballard: Very well.

By Mr. Fred Ballard:

Q. Now, Mr. Connelly, when you were a promotable dealer salesman, and I believe the period was July 1952 through February 1954, what area did you cover?

A. I covered from Darby, south through the Chester

area, and the majority of my stations were on the McDade Boulevard-Chester Pike route.

Q. Is that area what is called in the trade a price war areas?

A. Yes, sir; it is.

Q. Is the area affected by those price wars localized or does it include the entire Philadelphia subnrban district?

A. It was certainly localized during the time I was there.

Q. I believe you were present at the hearings in June and July of 1957, and do you recall a number of ex-Atlantic dealers testifying in those hearings?

A. Yes, sir; I do.

Q. Do you remember which of those were in the area affected by these price wars?

A. I believe so. Jack Pollock, John Chambers, and Iacono, George Hill, Elmer Booz.

Q. Now, sir, what was Atlantic's practice when 3554 price wars would strike an area?

A. Before we gave support to the dealer we had to make certain that support was given by other companies, which meant that we had to examine through a competitive dealer's cooperation, a tank wagon ticket or on occasion would have our dealers go to a competitive dealer with us, that they knew, to get information as to what type of support he was getting.

After getting that information we had to relay it to our supervisor who in turn took it to his district manager who then petitioned the regional manager for some sort of equal support.

Q. As a result of that Atlantic was sometimes slower to reduce its price to dealers than other companies?

A. Yes, sir.

Q. Did the Atlantic dealers occasionally resent this practice?

A. Yes, sir.

Q. Now, I believe you have heard the testimony of various witnesses in this case regarding the difficulties experienced in locating qualified dealers and dealer candidates. Have you heard such testimony?

A. Would you mind repeating that?

(Question read.)

The Witness: Yes, sir, I have.

3555 By Mr. Fred Ballard:

Q. During your tour of duty in the Philadelphia suburban district, and the Wilmington district and eastern Pennsylvania region, has Atlantic experienced similar difficulties in those areas?

A. Yes, sir; they have.

If I may, that is the biggest difficulty we have, is finding good qualified prospects for service stations.

Q. Now, approximately how many retail petroleum outlets are there in the Philadelphia suburban district?

A. All companies, sir?

Q. Yes, sir.

A. Approximately 2600.

Q. Would you know what percentage of those had full service station facilities?

A. I believe about 2,000 of them have full facilities.

Mr. Kelaher: Is this answer, does this answer—let me ask it this way. What type of dealer are you referring to?

Mr. Fred Ballard: I asked him the number—would you read the question, please?

Mr. Kelaher: Strike that. Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3556 Hearing Examiner Kolb: On the record.

By Mr. Fred Ballard:

Q. Now, Mr. Connelly, when you first became a salesman for Atlantic, Atlantic was selling Lee tires and Exide batteries to its dealers?

A. Yes, sir.

Q. And some accessories?

A. Yes, sir.

Q. And then, in March 1951 Atlantic sponsored, or began to sponsor the Goodyear line in the Philadelphia suburban district; is that correct?

A. That is correct.

Q. Did you find the Goodyear brand easier to sell than the Lee and Exide brands?

A. Yes, I did.

* * * * *

By Mr. Fred Ballard:

Q. What was the reaction of your dealers to the change?

A. The majority of my dealers liked the change.

Q. Now, Mr. Connelly, as you understand Atlantic's TBA policy, if a dealer can make more profit for himself handling some TBA other than the Atlantic recom-
3557 mended brand, what is Atlantic's attitude?

A. That he should certainly take advantage of the extra profits.

Q. Do you know any—can you give an example of where that might apply?

A. Well, I am not thinking of a particularly profitable angle, but for example, in Wilmington, and I am thinking of an acceptance standpoint here, where his volume is greater because of it—Wilmington is the home of the DuPont Company, as you are probably aware, and most all the Wilmington dealers handle, for example, Zerone and Zerex, DuPont products, because DuPont employees

wish to buy them and in my opinion it would be foolish not to.

Q. Throughout the various areas where you have worked, the Philadelphia sub-district, Wilmington district, and Eastern Pennsylcania region, do the supply points for Goodyear or Firestone, depending on which is sponsored, encounter competition from other TBA suppliers in selling to Atlantic dealers?

A. Yes, they do.

Q. Does the success of the supply point in making sales to Atlantic dealers vary from one supply point to another?

A. Yes, sir.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

3558 By Mr. Fred Ballard:

Q. Did you answer?

A. It certainly does.

Q. What in your observation are the factors that influence the degree of success of the supply point?

Mr. Kelaher: Your Honor, he is testifying now, as I understand it, as to supply point in various regions which includes Eastern Pennsylvania region, Philadelphia sub-district, Wilmington district, and he is going into reasons as to why a supply point will sell more sponsored brand than another. It seems to me that is a form of hearsay which is objectionable.

Mr. Fred Ballard: Your Honor, this man has served as the sales representative for these various supply points. Atlantic sponsors their products. He observes everyday how successful these points are. If he doesn't know if one is more successful than another and what makes that success, I don't know who does.

Mr. Kelaher: I might add, your Honor, that he would have to have access to the books and records of all the

supply points and in all the areas he is testifying to and it seems to me this is strictly hearsay type of testimony he is talking about.

Hearing Examiner Kolb: Well, he would know what was being sold in his territory, where he is located.

3559 Mr. Kelaher: He is talking about the success of various supply points, as I understand it.

Mr. Fred Ballard: That is correct. He has seen a great many.

Mr. Kelaher: I say it is hearsay. I object.

Hearing Examiner Kolb: I overrule the objection.

Mr. Fred Ballard: Will you read the question?

(The reporter read the question as follows: "What in your observation are the factors that influence the degree of success of the supply point?")

Hearing Examiner Kolb: You are speaking of selling to Atlantic dealers?

Mr. Fred Ballard: Yes, sir.

The Witness: I think first and foremost would be delivery and service. Credit terms, proximity of the supply point to the Atlantic stations in that area, credit terms, the amount of stock, how well stocked the supply point is, whether it is completely and well stocked enough to take care of all their needs promptly. Those are some of the major factors.

By Mr. Fred Ballard:

Q. On that basis, which of the various areas you have worked in has the most outstanding supply points?

A. Philadelphia.

Mr. Kelaher: I beg your pardon; your Honor, before he answers, I object to that question unless it is stated

3560 with more specificity.

Mr. Fred Ballard: Your Honor, if Mr. Kelaher wants to be more specific, he has cross-examination.

Hearing Examiner Kolb: I overrule the objection.

By Mr. Fred Ballard:

Q. By your answer, you mean the Philadelphia suburb and region?

A. Yes, sir.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Fred Ballard:

Q. Now, Mr. Connelly, in your experience covering these various regions, districts and regions, does Atlantic comment in its investigation reports on dealers as to the brands of TBA they handle?

A. It most emphatically does not.

Q. Does it prevent the sale of non-sponsored TBA on credit cards?

A. It does not, sir.

Q. Does it penalyze its dealers in any way for handling non-sponsored TBA?

A. It does not.

Q. Are such dealers equally eligible for station improvements?

A. They certainly are.

3561 Q. For other benefits of the Atlantic dealer program?

A. Yes, they are.

Q. When you were in the Philadelphia suburb and district, was John Chambers' one of your dealers?

A. Yes, he was.

Q. Did he at one time request a promotion to a—from his station at 2d and Lloyd Streets to a new and different station in Sharon Hill?

A. Yes.

Q. What was your recommendation on that?

A. My recommendation was that we give John Chambers the Sharon Hill station he wanted.

Q. What was your supervisor's recommendation?

A. Mr. Arnholt was my supervisor at that time. He felt that John Chambers' record, as far as appearance goes, of his station in Chester, did not qualify for the Sharon Hill station.

Q. Was Chambers finally given the Sharon Hill station?

A. Yes, sir.

Q. Did he know that Mr. Arnholt opposed his being given that station?

A. Yes, he did. I had a very—

Mr. Kelaher: (Interposing.) Just a minute. Your Honor—

Mr. Fred Ballard: (Interposing.) I withdraw the 3562 question, Mr. Kelaher.

By Mr. Fred Ballard:

Q. Did you tell Mr. Chambers that Mr. Arnholt opposed his taking the new station?

A. Yes, I did. In fairness to John Chambers and myself—

Mr. Kelaher: (Interposing.) Objection. I think he just asked what he told Mr. Chambers.

By Mr. Fred Ballard:

Q. Would you tell us what you told Mr. Chambers?

A. I told Mr. Chambers Mr. Arnholt felt the transfer should be made, because Mr. Chambers had kept a location that was shabby, as far as appearance goes. I also told Mr. Chambers that through my insistence, Mr. Arnholt had granted him the station and that I had told Mr. Arnholt that Mr. Chambers would keep a clean, orderly station.

Q. On one occasion or another, did you ever talk to Mr. Chambers about a product known as Bars Leak?

A. Yes, I did.

Q. Would you tell us approximately—would you tell us to the best of your recollection the substance of the conversations you had with Mr. Chambers on that subject?

A. Yes, I will. Bars Leak, to describe the product, if I may—

Mr. Kelaher: (Interposing.) You may not. Just tell him—just report the conversation.

3563 By Mr. Fred Ballard:

Q. Mr. Connelly, are you familiar with the product Bars Leak?

A. Yes, I am.

Q. Will you describe it to us as far as you know about it?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: It is a heavy, brownish-black liquid packaged in a glass container with a screw top, or was af that time.

By Mr. Fred Ballard:

Q. What did you say to Mr. Chambers about it?

A. I said I thought it had little resale value, that neither of us had any real knowledge of the quality of the product, that we had no idea as to how successfully it would do a sealing job in a radiator, and I thought he was very foolish when he was well stocked with DuPont sealer, which was packaged in a sealed container—and, of course, had public acceptance and had been well advertised—to stock both products, and I suggested to him that he was foolish to stock Bars Leak.

Q. Did you have on occasion substantially the same conversation with Elmer Booz?

A. Frankly, I could have, very easily. But I can't tell you specifically that I did or did not. But it could
3564 very well have been exactly the same one.

Q. Were you in the hearing room when Mr. Chambers described an incident involving himself and Mr. Arnhold and a red hat?

A. Yes, I was.

Q. Did you observe that incident?

A. Yes.

Q. Would you tell us what happened?

A. Yes, sir. Mr. Arnhold was a firm believer in uniforms and uniformity, of both dealers and their employees. He was particularly concerned with hats and particularly didn't like red hats. He, jokingly, tried to remove Chambers' hat, and pretended he was going to throw it away, hoping John would laugh and say "All right." And John became offended.

Q. Now, sir, at my request, you tried to locate a dealer named Denny Denshaw, who was at one time the Atlantic dealer at Decatur and Frankfort Avenues, in Philadelphia?

A. Yes, sir.

Q. Were you able to ascertain his whereabouts?

A. No, sir, I wasn't.

Q. Now, I submitted to you a list of dealers, telling you that they were mentioned in the testimony here and the record did not clearly indicate whether they were contract dealers or lessee dealers. Did you at my request ascertain whether they were contract or lessee dealers?

A. Yes. They are contract dealers.

3565 Q. In all cases.

Mr. Fred Ballard: Mr. Kelaher, I suggest we ask the reporter to copy this list into the record, so that we will have the status of these dealers accurately.

Hearing Examiner Kolb: The reporter may copy the list in the record.

Mr. Kelaher: No objection.

(The list referred to above is as follows:)

3566 (The list referred to is as follows:

Dealers Mentioned in Philadelphia Testimony Whose Status Was Not Clearly Indicated

Name—Address

Clarence Nelson, 4th & Main, Darby, Pa.
Ed Stowe, Woodland & Primos, Folcroft, Pa.
Green's Atlantic, 214 E. 5th Street, Chester, Pa.
Mahlon Craig, Rising Sun & Lardner, Phila., Pa.
Minka Brothers, 6th & Morton Avenue, Chester, Pa.
J. S. Patchell, Morton Avenue, Morton, Pa.
Sharon Hill Garage, Hook Road & Chester Pike, Sharon Hill, Pa.
J. Gill, 2142 Darby Road, Oakmont, Pa.
Laughead Serv. Station, Chichester & Huddle, Chester, Pa.

Mr. Kelaher: May I have a minute before cross, your Honor?

Hearing Examiner Kolb: Yes, we will take a short recess.

(Whereupon, a short recess was taken.)

3567 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. You became a dealer salesman in October 1950, is that correct?

A. May I refer to my notes again?

Q. Yes, go ahead. My question is whether or not you were a dealer salesman in the same area in which you later became a promotable dealer salesman?

A. No, sir, I was not.

Q. That wasn't clear from the questioning. Would you tell us where you were a dealer salesman beginning in October, 1950?

A. Yes, sir. From the Navy Yard, roughly, the most southern point in the central Philadelphia, north to approximately Gerard Avenue, on both sides of Broad Street as a boundary.

Q. In other words, in the City of Philadelphia?

A. Yes, sir, in the southeastern central Philadelphia, substantially.

Q. Then in July 1952 through February 1954 you became a promotable dealer salesman in Delaware County?

A. Right, sir.

Q. Does Atlantic sell antifreeze to its stations?

A. Yes, it does.

Q. Is that true in all regions?

A. It is true in the two I have had experience with.

3568 Q. As an Atlantic salesman, with respect to antifreeze, you would promote the sale of the antifreeze handled by Atlantic instead of other brands, isn't that true?

A. No, sir, that wouldn't be true.

Q. Let me ask you this: As an Atlantic salesman—what was the brand handled by Atlantic?

A. As I recall it when I was a salesman, it was Prestone and Super Pyro.

Q. You don't know of your own knowledge whether a commission is paid on purchases of antifreeze in the Firestone TBA line or Goodyear TBA line to Atlantic, do you?

A. No, sir, I don't.

Mr. Kelaher: No further questions.

Mr. Ballard: No questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

* * * * *

3570 O. HARRIS RHOADES was called as a witness for the Respondent and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Would you give the reporter your full name and home address, please, Mr. Rhoades?

A. My name is O. Harris Rhoades; I live at 902 Nottingham Road, Jamesville, New York.

Q. And you are a lessee of an Atlantic station, I believe?

A. That is right.

Q. And what is the address of that station?

A. 309 Nottingham Road.

Q. Also Jamesville?

A. Dewitt.

Q. And how long have you been a lessee of that station?

A. Since November 1952.

Q. What kind of a station is that? Where is it located?

A. It is in the middle of a shopping center, Nottingham Shopping Center.

Q. Do you happen to know the term of your cur-
3571 rent lease, how long the lease goes for?

A. Three years.

Q. Now, before you took that station did you go to Atlantic dealer training school?

A. Yes, I did; I was one of the first dealers.

Q. When you got out of the school did your Atlantic salesman introduce you to the Goodyear supply point in your district?

A. I think so.

Q. Did you buy your initial stock of TBA from the Goodyear supply point?

A. I did, I bought my original stock.

Q. Did you continue to buy from the Goodyear supply point?

A. No, I shopped around more or less for my TBA. I had four or five different people used to call on me, and one of them was a very good friend of mine from Onondaga Supply.

Q. Do you buy from Onondaga Supply today?

A. Yes.

Q. What do you buy from them?

A. Oh, about half of my TBA, I would say; the major portion of it.

Q. Would that be tires, batteries or accessories?

A. I don't buy any tires from them. I buy mostly accessories.

Q. Most accessories?

A. That is right.

3572 Q. Where do you buy your batteries?

A. I buy my batteries from J. P. Byrnes. They handle Auto-Lite.

Q. Where do you buy your tires from?

A. From J. P. Byrnes who handles Firestone.

Q. Do you buy some Goodyear tires?

A. I buy some.

Q. What is your reason for buying Firestone tires?

A. I get better service from Firestone than I do Goodyear.

Q. What about price?

A. I actually have a better buying price with Goodyear than I do Firestone, but it is just a service problem more or less; I can get tires from Firestone in 20 minutes and I sometimes have to wait two or three days from Goodyear.

Q. Now, do you display your Firestone tires at your station?

A. Yes, I do. I have a pile of tires all the time in front of my station.

Q. And do you display your—those are Firestone tires?

A. Firestone tires.

Q. And I think you said that you bought Auto-Lite batteries?

A. That is right.

Q. And do you display those at your station?

A. Inside my show room, yes.

Q. And do you advertise your Firestone tires?

A. Yes, very much.

3573 Mr. Ballard: Would you mark this RA Exhibit No. 22 for identification?

(The document referred to was marked Respondent Atlantic's Exhibit No. 22 for identification.)

By Mr. Ballard:

Q. I show you a document marked RA 22 and ask you whether that is a copy of a mailing piece—or it is a mailing piece that you have sent out to your customers (handing documents to the witness).

A. Yes, it is.

Q. Is that typical of mailing pieces that you generally send out? Is that a typical mailing piece?

A. That is a typical mailing piece, yes.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Do you know approximately how many of these go out in a mailing, Mr. Rhoades?

A. About 6500.

Q. Now, in addition to these mailing pieces do you also advertise in any local newspapers?

A. Yes, sir, I do.

Mr. Ballard: Will you mark that Exhibit 23, 24
3574 and 25 for identification.

(The documents referred to were marked Respondent Atlantic's Exhibits 23, 24, and 25 for identification.)

3575 By Mr. Ballard:

Q. Now, Mr. Rhoades, I show you a paper marked R-A-23 and ask you if you will tell me what that is (handing document to the witness).

A. That is an ad I ran in my little local paper.

Q. What is the name of that paper?

A. That is The Shopping Time.

Q. And this one is marked R-A-24 (handing document to the witness). Can you tell me what that is?

A. That is an ad from the same paper.

Q. And finally R-A-25 appears to be the front page of the paper.

A. That is the same paper.

Q. With one of your advertisements in it?

A. Yes.

Hearing Examiner Kolb: Do those show the dates on which they were run?

Mr. Ballard: "25" shows the date—

By Mr. Ballard:

Q. Could you give us the approximate date on R-A-24?

A. That would be in November or December of 1956 that was in.

Q. And could you give us the approximate date?

A. That should be dated, election day special, November 6.

Q. 1956. That is R-A-23, sir.

3576 And are these typical of advertisements that you ran from time to time?

A. That is right.

Q. Does Mr. Byrnes—he is your Firestone supplier?

A. That is right.

Q. Does Mr. Byrnes help you in promotions in your Goodyear station?

A. He helped me with my Labor Day promotion tire sale.

Q. What did his help consist of?

A. He decorated my whole station with penants, banners, tire stands, sent a man up to help me with the tire sale.

Mr. Kelaher: You mentioned Labor Day. Will you give us the year?

The Witness: Labor Day of this year, 1958.

By Mr. Ballard:

Q. Mr. Rhoades, have you ever participated in the National Brand Names Contest?

A. Yes, I have, for two years.

Q. And could you tell us a little bit of what that contest is about?

A. Well, the Brand Names Foundation has this contest every year for the promotion and sale of brand name items. About 1500 different companies belong to this Brand Names Foundation, and they run this contest every year for about 25 different categories, one of which is gasoline 3577 service stations. Your promotion and sale of brand names is taken into consideration, your community activities, any help you give schools or children is all taken into consideration for qualifying you for a finalist in this Brand Names Contest each year.

Q. How do you make your entry in that contest?

A. You save every bit of advertising and promotional material that you have had for a year and make a big portfolio or scrapbook which you send to the Brand Names Foundation in New York for judging.

Q. And in doing that did you include your Firestone advertisements and promotions?

A. Yes, I did.

Q. How did you make out, just as a matter of interest?

A. I was one of the finalists, there are about 15.

Q. Did anybody from Atlantic make any recognition of the fact that you were working in that contest?

A. Well, after it was all over with I had several phone calls from the Atlantic Refining people—Mr. Gilliam, Mr. Ostrander, who are district and regional manager; several people, just clerks in the office called up because they know me and congratulated me.

Q. Mr. Ostrander also congratulated you. Was it Mr. Gilliam?

A. He is district manager.

Q. Will you spell that?

A. G-i-l-l-i-a-m.

3578 Q. Did he congratulate you?

A. That is right.

Q. Has Atlantic ever asked you to speak at dinners for new dealers?

A. Several times I have.

Q. Do you recall receiving a letter from Atlantic, dated 1955, with regard to Atlantic's no-forcing policy?

A. I can remember it, yes.

Q. Do you ever recall any discussions of that policy by Atlantic personnel?

A. At a meeting somewhere Mr. Ostrander—I don't remember where or what the meeting was about or anything else—but Mr. Ostrander was one of the speakers and he told us that if any time anybody from Atlantic ever pressured an Atlantic dealer into buying from one outlet or another, he wanted to know about it, that we were independent businessmen and were to be treated as such.

Q. And he was the regional manager, I think you said?

A. That is right.

Mr. Kelaher: Your Honor, I am going to move to strike unless some time or date is given.

Hearing Examiner Kolb: Can you give the date of this meeting?

The Witness: I can't. I can't remember what it was or what the situation was.

3579 By Mr. Ballard:

Q. Could you give us the approximate year?

A. It would be within the last three years, probably in '55.

Mr. Kelaher: I move to strike, your Honor.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Ballard:

Q. Mr. Rhoades, are there other oil companies active in and around your locality?

A. There are three other gasoline outlets.

Q. Have any of those companies ever asked you to take a lease from them?

A. Quite a few.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. What companies are they?

A. There is Socony and Gulf and Esso.

Q. Are those the companies that asked you to take a lease with them?

A. They have, yes, and other companies.

Mr. Ballard: I have no further questions.

Mr. Kelaher, representing the Federal Trade Commission, will probably have some.

3580 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Rhoades, did you say your station was located in DeWitt, New York?

A. That is right.

Q. Where is DeWitt located?

A. It is a suburb of Syracuse.

Q. How close is it to Syracuse?

A. Well, the city line runs up the middle of the road in front of my station.

Q. Right at the city line?

A. That is right. I actually get my mail at Syracuse.

Q. Are there other Atlantic stations in DeWitt?

A. Yes, there is one in the town. There may be more than that, but there is one right at the crossroads in DeWitt at the main artery.

Q. How about in Syracuse, are there other Atlantic stations in Syracuse?

A. That is right.

Q. Quite a number of them?

A. Quite a number.

Q. Does DeWitt come in Atlantic's southern tier district, do you know?

A. No.

Q. What district would it be in in Atlantic's division?

3581 A. I think it is called the central New York district; I am not sure.

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. I understand that DeWitt is in the Syracuse district of Atlantic.

A. That is right.

Q. How many miles are you north of Binghamton, approximately?

A. I haven't any idea.

Q. About 80 or 90?

A. I would guess 80 or 90.

Q. Now, you became an Atlantic dealer in November '52, is that correct?

A. That is right.

Q. Had you been employed by Atlantic before that time?

A. No, only in dealer training school, that is all.

Q. You applied for a lessee station and then went to an Atlantic dealer training school before you were given your station?

A. That is right.

Q. Was the station you operated a new station?

A. That is right, I was the first dealer.

Q. You were the first dealer. And when you went 3582 in I suppose they had the Goodyear window valances up and the Goodyear outdoor sign?

A. Yes.

Q. And I suppose it was also stocked with Goodyear TBA when you moved in?

A. No, they were brought in after I opened. I was actually opened four or five days before any stock was brought in.

Q. What were the circumstances leading up to the original stock you bought?

A. I think the stock—it is pretty much of a package they buy, more or less. So that you get coverage of items necessary to open your business.

Q. And who was your Atlantic salesman at that time?

A. John Roberts.

Q. And did Mr. Roberts introduce you to the Goodyear supply point at that time?

A. I had contact with them before through dealer training school and I worked in several stations waiting for my station to be opened and in this training course.

Q. Who is the Goodyear supply point?

A. Goodyear service store.

Q. Where is it located?

A. Townsend and Water Street.

Q. Is that in Syracuse?

A. That is right.

3583 Q. How many miles is that from your station?

A. I would guess three to four miles.

Q. You say you had some contact with the supply point when you were in the dealer training school. How did that come about?

A. Well, we were—it was so long waiting for my station to open, from February until November, that naturally the stations I was in, the Goodyear man came around, the TBA man, and we talked to him—

Q. (Interposing.) Was he supplying those stations that you were in?

A. Yes, he was.

Q. What were those stations? Do you remember the name of them?

A. I was in Warren Sloss'es station on Salina Street. I was in Harrold Barclay's station on West Onondaga Street, in Syracuse.. And I was in Arthur Cost's station.

Q. Where was it located?

A. That was on South Salina Street.

Q. Now, when you went to your station, did you yourself get in touch with your Goodyear supply point?

A. When I was ready to open my doors and get into business, I was, I contacted Goodyear and they brought up my opening inventory.

Q. And did that amount to a considerable amount?

3584 A. About $800.

Q. About $800?

A. Yes.

Q. With respect to Goodyear tires, how long did you continue to carry Goodyear tires?

A. I still carry them.

Q. You still carry them?

A. That is right.

Q. Do you still stock them?

A. Not too many.

Q. You do carry some tires, though?

A. That is right.

Q. How long did you carry Goodyear tires as your principal stock? Did you at one time carry Goodyear tires as your principal stock?

A. Yes, I did, when I first opened up.

Q. And how long did you continue—when did you begin to stock Firestone?

A. I started a little over two years ago with Firestone.

Q. So it wasn't until sometime in 1956 that you began to stock Firestone?

A. I had some Lee tires in between Goodyear and Firestone.

Q. You started with Goodyear—your principal stock of tires—beginning in 1952, that was Goodyear; is that right?

A. That is right.

3585 Q. And you have carried some Goodyear or you have carried Goodyear since that time; is that right?

A. That is right.

Q. Then, after '52 you began to—did you begin to stock Lee tires primarily?

A. Not primarily. I kept the two of them, mainly it is a service problem again. I could get delivery fast on

the Lee tires, and it was a credit problem, too. I had a credit limit with Goodyear, and it meant running down with a check and when the other people would bring them without any problems, we bought 50 or 60 tires from Lee.

Q. You say you had a credit problem?

A. They put a credit limit on you when you are a new dealer.

Q. That was the reason you didn't buy more Goodyear tires from Goodyear, is that right, because of the credit limit?

A. No. It was just the idea that the man in the store wanted me to drop everything there and run down to the Goodyear store with a check and I told him to send up the tires and I would give the driver a check for them. He didn't want to do that. I had to come down there and pay for me. I dialed the Lee man and he dropped me off 50 tires without asking me.

Q. Were the Lee tires dropped on consignment?

A. They were billed 30 days.

Q. And the Goodyear tires, there was a COD problem?

A. After you reach a certain credit.

3586 Q. When did you start to carry Lee tires, do you recall?

A. Sometime in '53. I can't remember when I had the problem with Goodyear. In the spring I am sure it was, because we were piling them outdoors again for a big tire display.

Q. In '53 you began to carry some Lee, but you were also carrying Goodyear at that time?

A. That is right.

Q. And you continued to purchase from the Goodyear service store. Whatever Goodyear you have purchased has been from the Goodyear service store: is that right?

A. That is correct.

Q. Then, moving along, it wasn't until, did you say, sometime in '56 when you began to purchase Firestone?

A. That is right.

Q. Does Firestone send the tires in on consignment?

A. No, they are billed to me.

Q. How many days do you have to pay for those?

A. Thirty days.

Q. But you have no credit—

A. Once in a while we have a spring dating or fall dating with your snow tires, but Goodyear has the same thing. I think most tire companies do.

Q. But you have no credit limit with the Firestone?

A. I have no credit limit with them, no.

Q. Now, with respect to your batteries, you origi-
3587 nally stocked Goodyear batteries; is that correct?

A. That is right.

Q. And how long did you continue to stock Goodyear batteries?

A. Up until about two years ago.

Q. Do you still carry some Goodyear batteries?

A. No, none at all.

Q. So, again in about 1956 you discontinued stocking Goodyear; is that right?

A. That is right.

Q. And at that time did you take on Auto-lite batteries?

A. That is right.

Q. From Mr. Byrnes?

A. That is right.

Q. Where is Mr. Byrnes located?

A. He is in downtown Syracuse. He is a little farther away, not too much, four or five blocks, than the Goodyear outfit.

Q. Now, with respect to accessories, do you purchase accessories from the Goodyear service store?

A. Not too many anymore, very few.

Q. Is that the result of the friction you had with the Goodyear?

A. That is right.

Q. Do you carry many accessories?

A. Quite a few.

Q. Are some of those purchased from Mr. Brynes, too?

3588 A. I purchase some from him. I get the majority of them from Onondaga Supply.

Q. Do you have a mechanic at your station?

A. Yes, we do some tune-up work.

Q. Do you purchase hard parts from Onondaga Supply?

A. Yes, sir.

Q. Do they constitute the bulk of your purchases from Onondaga Supply?

A. No. I think plugs, points, mostly—you are talking about hard parts; you mean gears and clutches?

Q. That is right.

A. We don't do any major overhaul in that form. It would be just tune-ups, points, and condensers, and spark plugs, and so forth. It would be classed more than TBA probably than hard parts.

Q. You were shown some advertising matter, advertisements identified as R-A-22, 23, 24, and 25 for identification. I haven't examined these carefully, but do most of them include ads relating to Firestone tires?

A. Most of them do, within the last two years.

Q. Now, since 1956, have you stocked Firestone batteries, Auto-lite batteries, rather, only?

A. That is right.

Q. Would you look at RA-22 for identification, and tell me if this ad on the first page is an ad of your service

3589 station (handing document to the witness)?

A. It is.

Q. I call your attention to the fact that you are advertising Firestone batteries; is that right?

A. That is right.

Q. You were selling Auto-lite batteries?

A. I can sell either Auto-lite or Firestone. I can sell anything I want to actually, even Goodyear batteries.

Q. What is the purpose of advertising Firestone if you are selling Auto-lite?

A. I want the ad in there. This mailing piece is more or less set up the way you want it, and I can sell Firestone batteries. There isn't anything that says I can't.

Q. Well, I understood you to say that you didn't carry Firestone, but do you carry that on a fill-in basis

A. If somebody came in and asks for a Firestone battery, I could get it.

Q. Was this ad paid in part by Firestone?

A. That is right.

3590 Q. Did they pay for the whole thing?

A. No, they didn't, I paid for part of it. The mailing cost more or less is my expense on the thing. They furnish the flyers and print them the way you want them printed and put in it what you want in it.

Q. The reason you put in Firestone batteries instead of Auto-Lite is because Firestone was sponsoring the ad in part, isn't that correct?

A. Probably.

Q. Well, that is a fact, isn't it?

A. Not necessarily, no.

Q. Now, the ad of the type identified as RA-22 is referred to as a mailing piece; is that correct, sir?

A. That is right.

Q. You have issued these just since 1956, is that right?

A. That is right.

Q. And how many have you issued?

A. I think a mailing consists of about 6500 of these.

Q. How many times have you issued this particular one?

A. This particular one just once.

Q. Now, let's take RA-23. Would you state what that is again?

A. That is an ad from the little local paper that we have in our section.

Q. As I understand your testimony this type of 3591 ad has only been placed since 1956, is that right?

A. That is right.

Q. And how many times have you placed an ad of that type?

A. I get one every fall along with the snow tire season.

Q. So you would have placed that—

A. Twice probably, not the same particular type of ad, not the identical ad, but an ad similar to that.

Q. An ad similar to that you would have placed how many times, once a year?

A. Yes, with snow tires, a big one. We run a little one, like the other one you have there, usually weekly.

Q. RA-24?

A. Something of this type or that type we run weekly just to keep our name in there.

Q. And RA-24 has only been run since 1956, is that right?

A. Yes, sir. Actually, this paper has only been in existence since 1956.

Q. And actually, you only handled Firestone since 1956?

A. That is right.

Q. And in RA-24 I notice that you also advertise Goodyear?

A. That is true.

Q. And isn't it true that in shopping time you also run ads advertising Goodyear tires from time to time?

A. I haven't lately. I am going to put a Goodyear snow tire ad but I haven't run an exclusive Goodyear
3592 ad. I usually mix the two like you see there.

Q. You usually mix Goodyear and Firestone?

A. That is right.

Q. You testified concerning the national brand names contest. We didn't have the year when that contest ran.

A. That was 1956 and 1957, I believe.

Q. Which was the year when you were the finalist?

A. Last year, I was finalist both years but I was quite a ways back the first year.

Q. You were also asked if you were called upon to speak at diners for new dealers; do you recall that?

A. That is right.

Q. What type of a speech would you give? What subjects would you discuss?

A. I usually talked about pitfalls that they can get into and about selling brand names mostly, to keep from explaining why the thing is as good as a brand name.

Q. I didn't get your last answer. To keep—

A. To try to impress a new dealer in selling a brand name article instead of trying to sell an off-brand that is supposed to be just as good. It doesn't move as readily.

Q. Do you talk to them about advertising brand names?

A. Yes, I do.

Q. Do you believe in advertising brand names in your station?

A. Very much so.

3593 Q. In your station?

A. Yes, sir.

Q. Do you still have the Goodyear outdoor sign on your station?

A. I don't have a Goodyear pole sign or an outdoor sign.

Q. Do you have the Goodyear window valance?

A. Yes.

Q. Why is it you have Goodyear up there if you are selling Firestone tires?

A. I want it up there because I sell both kinds of tires.

Q. I understood you to say that you were stocking Firestone tires principally; is that correct or incorrect?

A. Principally, yes, but I still handle the Goodyears.

Q. When you say "principally" what do you mean? What in terms of percentages—

A. I still carry some Goodyear tires as I told you before.

Q. Well, what is the ratio of Firestone to Goodyear?

A. I would say about 90 percent Firestone.

Q. And you still prefer to advertise Goodyear?

A. Sure, because I sell both of them.

Q. How do you account for that?

A. Because everybody doesn't like Firestone tires.

Q. If you were selling them you would try to advertise them?

A. I take the lesser of two evils and if they don't
3594 like Firestone I will sell them Goodyear.

Q. Did you every try to put a Firestone sign up there?

A. No, I haven't had occasion to. I have got Firestone batteries outside.

Q. Isn't it a fact that you can't put the Firestone valance in your station?

A. I haven't been told I couldn't.

Mr. Ballard: I object to that.

Hearing Examiner Kolb: Objection will be overruled.

By Mr. Kelaher:

Q. I haven't asked you that you haven't been told that you can't. You know that you can't.

A. I don't know I can't put a Firestone tire.

Q. You haven't tried?

A. If I wanted a Firestone sign I would put it there.

Q. The fact remains that you have been selling Firestone for several years and you haven't tried to put it there?

A. No, I haven't had occasion to.

Q. You, of course, know that Atlantic is sponsoring Goodyear in that area?

A. It doesn't make any difference to me.

Q. Just answer the question Yes or No.

A. Yes, I know they sponsor Goodyear.

Q. And isn't it true that the Goodyear window valances appeared in the three stations at which you
3595 worked and the outdoor pole signs were up at those stations, Goodyear signs?

A. I would say Yes.

Q. Isn't that generally true of the Atlantic stations in the whole Syracuse areas?

A. I think that is one of the things they put in when they open the station doors and they remain there.

Mr. Kelaher: No further questions.

Mr. Ballard: I would like to offer in evidence Atlantic Exhibits 22, 23, 24, and 25.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-22 through A-25.

(The documents heretofore marked for identification RESPONDENT'S EXHIBITS Atlantic 22 through 25 were received in evidence.)

Mr. Ballard: Thank you very much, Mr. Rhoades. I have no further questions.

(Witness excused.)

Mr. Gordon: Mr. Cary.

3596 REUBEN CARY was called as a witness for the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gordon.

Q. What is your name?

A. Reuben Cary.

Q. What is your home address?

A. 801 First North Street, Syracuse, New York.

Q. What is your station address?

A. 1100 North Salina Street, Syracuse, New York.

Q. Now, Mr. Cary, when did you become associated with Atlantic?

A. June 1946.

Q. And in what capacity was that?

A. As an employee.

Q. Of what?

A. Service station.

Q. Service station employee?

A. Yes.

Q. You then became a lessee, when did you become a lessee?

A. Two years later, approximately a year and a half would be correct.

3597 Q. What year would that be?

A. That would be about 1948, during the year of '48.

Q. Where were you a lessee?

A. Originally at 3111 West Tennessee Street.

Q. Syracuse?

A. Syracuse.

Q. And how long were you a lessee there?

A. Nine months.

Q. Then did you move to another station?

A. That is right.

Q. As a lessee?

A. Right.

Q. Where did you move to?

A. To 1100 North Salina Street.

Q. That is your present station?

A. Present address.

Q. And you have been there ever since?

A. That is right.

Q. What is the term of your present lease?

A. Three years.

Q. What kind of tires are you now carrying in your station?

A. I have Goodyear and I have Pennsylvania and I have Coopers.

Q. Restricting yourself now to the past six to twelve months what percentage of your tire purchases have
3598 been Cooper and what Pennsylvania, and what Goodyear? Roughly?

A. Pennsylvania I haven't bought any recently in that period of time; Goodyears would be roughly five percent; the rest is all Coopers.

Q. What kind of batteries have you purchased in the last year or so?

A. Goodyear and Lee.

Q. About what portion of each?

A. About fifty-fifty.

Q. Now, where have you gotten your accessories and when I speak of accessories I am talking about spark plugs, fan belts, waxes, polishes, and the like. I am excluding hard parts or repair parts. Where have you purchased your accessories, let's say, since 1951?

A. Some Goodyear, Onondaga Auto Supply, Niles Auto

Supply; Unit Parts, Group Parts, those are two different outfits; Empire Auto Supply.

Q. Now, again restricting yourself just to accessories and I have defined them, what portion of your accessory purchases have come from the Goodyear service store signs, oh, roughly 1951?

A. Not over 10 or 15 percent.

Q. You became a lessee in about 1948. What kind of tires did you carry between '48 and '51?

A. Lee. I had Lees in there then.

3599 Q. Mainly Lee?

A. Yes.

Q. What kind of batteries did you carry during that period?

A. Exide.

Q. Then in 1951 when Atlantic took on the Goodyear program what kind of tires did you then purchase?

A. Then I started to buy Goodyear.

Q. Why did you buy Lees up to '51?

A. Well, I am a short distance from the bulk plant. I am the closest to it probably. It is just a matter of probably ten blocks, and they warehoused them there. So, Atlantic was affiliated with Lee tires and the plant was close by so I just went along with them and I compared them, it was easy to go in and pick them up day or night, there is always somebody in the bulk plant.

Q. In 1951 when you took on Goodyear why did you buy Goodyear tires?

A. Well, of course, mainly because I thought Goodyear was going to be a better deal in the Atlantic station, to tell you the truth.

Q. Then, did you continue to purchase Goodyear for any length of time?

A. '52, I believe is when I switched.

Q. What did you switch to?

A. Pennsylvania.

3600 Q. And how long did you carry Pennsylvania tires?

A. Up until last year and I still have some.

Q. What portion of your purchases from '52 until last year were Pennsylvania tires?

A. Pretty exclusive there for awhile.

Q. Why did you buy Pennsylvania tires?

A. Well, first of all I liked the people and I liked the deal. I thought I was getting a better deal with Pennsylvania than I was with Goodyear, and the service was another problem. Of course, that changed as time went on, but at that particular time that is what I was happy with.

Q. Why did you switch from Pennsylvania to Cooper?

A. Almost for the same reason. Because Cooper now has a bulk plant in Syracuse. Of course, price is always an item. And I also didn't want my name advertised in a Goodyear ad for $1.25 a week. I don't like to do business that way. So, therefore, I didn't go with the ad anymore and they just took it out, period.

Q. Now, did you have a tire rack on which you displayed tires?

A. Yes.

Q. What kind of a tire rack is that?

A. Cooper.

Q. Is it identified with Cooper?

A. Cooper is right on the top of it.

3601 Q. Large sign on top?

A. Large letters, that is right.

Q. Do you have a valance in your station?

A. Yes.

Q. Window valance?

A. Yes.

Q. What kind is that?

A. Pennsylvania

Of course, the current literature that is out on snow tires is posted around the station.

3618 Q. You were shown a number of ads relating to Pennsylvania tires, and you say one that relates to Pennsylvania batteries. I am referring to RX-A 27, 28, and 29. Do you recall those? They all deal with Pennsylvania tires, and one refers to Pennsylvania batteries?

A. That is right.

Q. You don't use those anymore, do you?

A. Pennsylvania tires?

Q. Did you not say you stopped handling Pennsylvania tires?

A. No, I still have some, yes. I still have some in the station.

Q. Beg pardon?

A. I still have some in stock.

Q. You are just selling the inventory you have on hand before you switch completely over to Cooper?

A. That is right.

Q. Do you still advertise Pennsylvania tires?

A. Like this, no.

Q. Mr. Cary, you continued to purchase accessories from Goodyear service store, isn't that right?

A. Do I now?

Q. Do you now, yes.

A. Yes, some thing, yes.

Q. You have continuously since Atlantic began to sponsor Goodyear TBA, haven't you?

3619 A. There is probably months when I haven't, but I usually do get some now and then.

Q. And you estimated ten to fifteen percent were from Goodyear stores?

A. Not anymore than that.

Q. I am going to show you the ad, identified as RX-A-29, and did I understand you to say that that ad was just run one other time?

A. One before, yes.

Q. One before that?

A. Yes.

Mr. Kelaher: No further questions.

Mr. Gordon: First, I would like to offer RX-A-26, 27, 28, and 29.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-26, 27, 28, and 29.

(Whereupon, the documents, heretofore marked RESPONDENT (ATLANTIC) EXHIBITS 26, 27, 28, and 29 for identification, were received in evidence.)

Redirect Examination by Mr. Gordon.

Q. Now, Mr. Cary, I would like to show you this picture and ask you to identify it.

3620 A. Well, that is my station.

Q. When did your station look that way?

A. It looks like—that must be last fall or early spring—no, it must have been in the fall.

Q. In the fall of 1958 or '57?

A. That would have to be '57.

Q. Fall of 1957?

A. That is right, because of the merchandise there, it had to be.

Q. That is an accurate representation of your station in 1957?

A. That is right.

Mr. Kelaher: On a given day in 1957.

Hearing Examiner Kolb: Do your want this marked as an exhibit?

Q. Do you have tire stands on which to display tires?

A. Yes.

Q. What kind are they?

A. Lee, Cooper, Goodyear, Pennsylvania.

Q. Now, the accessories and TBA items are displayed openly then, aren't they?

A. Oh, yes.

Q. Anybody can see them?

A. Yes.

Q. I show you this document and ask you to identify it (handing document to the witness)?

A. Well, that is some billheads I had printed up by Pennsylvania. They supposedly had a good price on them so I bought them from them. It was the proper thing at the time.

Q. When was that?

A. About '53, I think it was I acquired them.

3602 Q. Have you used those since that time?

A. Oh, yes.

Hearing Examiner Kolb: Do you want an exhibit number on this?

Mr. Gordon: Yes, I think we had better mark that RA-26 for identification.

(The document referred to was marked RESPONDENT'S EXHIBIT 26 for identification.)

By Mr. Gordon:

Q. This is on the top of RA-26 the symbol for the Pennsylvania tire company.

A. The Pennsylvania Keystone, that is right.

Q. Now, let me show you this document and ask you to identify that (handing document to the witness)?

A. That is a mailing card for a follow-up system that I mailed out to customers, to my regular customers.

Q. And it is to advertise what tire?

A. Pennsylvania tires.

Q. And you purchased these yourself?

A. Yes.

Q. And mailed them out yourself?

A. That is right.

Mr. Gordon: Will you mark this RA-27?

(The document referred to was marked Respondent's Exhibit 27 for identification.)

3603 By Mr. Gordon:

Q. Now, let me show you this document and ask you to identify this (handing document to the witness).

A. This is a printed up handout that you hand out in the station to customers as they come in. It is not mailed.

Q. Did you purchase that yourself?

A. Yes, I did, with the printing, you had to pay for the printing; that is right.

Q. And you distributed that yourself?

A. That is right.

Q. And it identifies itself with what tire?

A. Pennsylvania tires.

Mr. Gordon: Will you mark this RA-28 for identification.

(The document referred to was marked RA-28 for identification.)

By Mr. Gordon:

Q. Now, I ask you to examine this paper and identify it, please (handing document to the witness).

A. That is an ad I ran in a northside magazine called the Scotsman, neighborhood newspaper.

Q. And when was that ad run?

A. December 15, 1954.

Q. Was it run at any other time?

A. The one previously to this was nearly the same

3604 ad, the week before.

Q. And what does it advertise, what product?

A. Pennsylvania tires and batteries.

Mr. Gordon: Will you mark this RA-29?

(The document referred to was marked RA-29 for identification.)

Mr. Kelaher: For the record I don't think—I think inadvertently it advertised Pennsylvania tires and batteries, actually that is not correct. It advertises Pennsylvania tires but not Pennsylvania batteries.

Mr. Gordon: Well, we will let the document identify itself.

By Mr. Gordon:

Q. Now, did Atlantic ever tell you to stop distributing these documents or not to advertise as you have?

A. No, never have.

Q. Did Atlantic ever tell you to stop buying Pennsylvania or Cooper tires?

A. No.

Q. Did they ever tell you to take them out of your station or hide them?

A. No.

Q. Now, I show you this document identified as CX-150, which is a letter dated March 1, 1951, on the stationery of Mr. Colley and ask you to examine that letter and tell
3605 me whether you recall receiving it (handing document to the witness)?

A. Yes, I remember receiving it.

Q. Now I show you this document which is marked CX-206 and it is dated August 1952 on Mr. Colley's stationery, entitled "A restatement of Atlantic's TBA policy" and ask you whether you remember receiving that (handing document to the witness)?

A. Yes.

Q. I show you this document which is marked CX-207 and is identified as a no forcing letter, and it is dated

June 1955. In your case I believe you would have gotten that from your regional manager. Do you recall receiving such a letter as that (handing document to the witness)?

A. I remember the letter very well. I was probably one of the first dealers in that district to switch to other than Goodyear tires. So I would get the letter probably first.

Q. Do you have a sign in the window of your station indicating you are a member of the National Federation of Independent Business, Inc.?

A. Yes, there is.

Mr. Gordon: I have no other questions, but Mr. Kelaher may have some.

3606 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Cary, in what type of an area is your station located? Are you in the business section of Syracuse or residential section?

A. I am on Maine Route 11, that is north-south route, but on all other sides of me are strictly residential.

Q. Is that a low-cost residential area or high-cost?

A. It is medium, I would say.

Q. Now, you became an Atlantic lessee dealer in 1948, correct?

A. Right.

Q. And at that time you began to carry Lee tires and Exide batteries, is that correct?

A. That is correct.

Q. And that was the Atlantic TBA arrangement at that time, was it not?

A. There was a quantity of them in the station at that time and when I took the station, I mean, I bought the merchandise that was in it.

Q. Did you take over the station from another dealer?

A. Yes.

Q. It wasn't a new station?

A. No, I took it from the company, it was a company-operated station.

3607 Q. It was a company-operated station and you went in as the lessee of that station?

A. That is right.

Q. And it was stocked with Lee tires and Exide batteries?

A. Yes.

Q. And did it also have the accessories in the Atlantic program, Fram oil filters?

A. As I remember it had quite a few of them, yes.

Q. Now, you continued to carry Lee, Exide, and Atlantic accessories during the nine months you operated that first station as I understand your testimony, is that correct?

A. Yes.

Q. Then you moved to your present station. Was that a new station or did you take over from another dealer?

A. No, that is the company-operated station.

Q. Beg pardon?

A. That used to be the company-operated station, the one at 1100 North Salina Street. Not the one before that.

Q. Is that the one you have been talking about?

A. That is the one I was referring to; I am sorry.

Q. Let's go back to your first station. When you first became a lessee Atlantic dealer at 3111 West Tennesse Street?

A. Yes, I did.

Q. There, did you handle Lee tires, Exide batteries?

A. There weren't any in that one.

3608 Q. You mean there weren't any in stock?

A. That is right.

Q. Did you handle TBA in that station?

A. Yes, I grew into it.

Q. And it was Lee tires and Exide batteries?

A. That is right.

Q. And the Atlantic accessories?

A. Pretty much, that is true.

Q. Now, coming back to your present station, you stated that the reason you bought Lee—let me ask you this: Would you state again why you handled Lee tires?

A. At the 1100 North Salina Street address?

Q. Yes.

A. Of course, originally there were Lee tires and batteries in there.

Q. Exide batteries?

A. Exide batteries, that is right, they were buying Exide batteries.

Q. You testified the Lee warehouse and plant was near your station?

A. That is right.

Q. And is the Lee warehouse still there?

A. No, Atlantic was the distributor for Lee tires at that time.

Q. Is a bulk plant?

3609 A. The Atlantic bulk plant.

Q. An Atlantic bulk plant?

A. That is right.

Q. Isn't there a Lee warehouse in Syracuse?

A. There is now, yes.

Q. And it has been there for sometime, hasn't it?

A. Well, since the separation from Atlantic, yes.

Q. So, it goes back to 1951 approximately?

A. Approximately, I don't know the exact date, but somewhere in there.

Q. So you would have been able to get Lee tires?

A. Yes, I did, that is right. I could and did.

Q. You could and did after Atlantic swung over to the Goodyear TBA program?

A. That is right.

Q. At that time prior to the time when Atlantic began to sponsor TBA did you have a Lee tires window valance or an Exide standard in your station?

A. That is right. They were in the window.

Q. What happened after the changeover to Goodyear TBA?

A. They came down, of course; Goodyear went up. It didn't make any difference to me, so, of course, they put them up.

Q. You didn't ask for them?

A. As far as the conversation was concerned I couldn't say. But I know the Lee signs came down and the Goodyear went up.

3610 Q. And did the Exide go down?

A. All that said is batteries. My windows are too small. I have an older station I can't get all the things in it these new stations can.

Q. I was going to ask you what kind of a station. Was it one of the older Atlantic stations?

A. You have got one down here, about the same age I saw coming in; 1933 or '34 it was built.

3611 Q. Is that the type—

A. (Interposing.) Small front, I think that is what they called it. It is that type of structure.

Q. And it has the small frontage?

A. Small door in the front, and 2 small windows on the front, that is all.

Q. You don't have much room for displaying anything?

A. Not inside, except on the shelves which I have now which we didn't have then.

Q. Now, when Atlantic began to sponsor Goodyear

TBA, was that when you began to purchase Goodyear tires, batteries, and accessories?

A. That is right.

Q. Who was your supply point for Goodyear?

A. Goodyear service store.

Q. In Syracuse?

A. That is correct.

Q. Well, the reason you began to purchase Goodyear was because Atlantic began to sponsor Goodyear; isn't that correct?

A. I think indirectly that is probably true. I mean, I don't, there was no pressure on it, if there was I would have remembered it.

Q. But you thought it was the thing to do?

A. Yes, that is right. It was along with the company, so you naturally go along with it until something 3612 arises whereby you decide not to do it.

Q. I would like to clarify this point. You testified on direct examination that you didn't want to pay $1.25 a week for some Goodyear advertising. Will you explain that in a little more detail?

A. Well, a good many of the dealers, and they are still doing it, fellows who carry Goodyear tires exclusively, there usually is an ad run in the local newspaper, not small ones like these, and usually the dealers are listed in there who carry Goodyear tires, and there is probably a special of one nature or another. The dealers are listed in there and each one of them participates, I think a couple dollars, I believe in that. I am not sure of the exact amount. And it usually states that it is $1.25 down—now it is less than that, and $1.25 a week.

Q. This would be the selling price of the tire?

A. That is right. Exclusive of the price that it is listed at, and I didn't feel that I wanted to go along for $1.00 or $1.25 a week; so, I decided not to do it anymore.

Q. And if you had continued it—is your name put in that ad more or less automatically if you carry Goodyear at Atlantic stations?

A. Not unless you pay for it.

Q. And is the bill sent to you in a package-type of dealer from Goodyear or from Atlantic?

3613 A. I think it was included on the monthly statement. I couldn't be positive, but I think that is the way that was handled.

Q. But if you did want to put your name in the ad, you had to meet those terms; is that correct? If you wanted your name to appear in the ad?

A. If I put that advertising in, I have to go along with the advertising. I would have had to have done it there. I wanted my name taken out of that type of advertising because I didn't want to do it.

Q. And you say the only way you could do it was to stop buying Goodyear tires?

A. I would say that was the beginning of not buying Goodyear tires.

Q. And what happened after that?

A. Well, I didn't like the prices that they were being sold at. I couldn't make any money on it, at my buying price.

Q. And could you purchase Pennsylvania tires at a lower price?

A. That is right.

Q. And can you purchase Cooper at a lower price?

A. That is right.

Q. And can you sell them at a lower price?

A. I can, yes.

Q. So, it was to your financial advantage to handle some tire other than Goodyear?

3614 A. That is one reason, that is correct.

Q. Now, give us some other reasons. You say that is one reason. What are your other reasons?

A. Let's go back to the service problem again.

Q. All right. What was the service problem?

A. It is better today, but back in those days you might wait two days for a tire if you ordered it.

Q. That is from the Goodyear service store?

A. That is right.

Q. Did the same thing apply to batteries and accessories?

A. Pretty much the same across the line.

Q. So, the supply point supplying all the Atlantic dealers in your area, is that correct?

A. That is right.

Q. So that had a pretty stable market there, didn't it?

A. That is right. As far as I know you had to buy them from there. Of course, there is another dealer now, Kearney. You can buy from him now.

Q. You can buy from him instead of from the Goodyear service store?

A. That is right.

Q. Is Kearney a designated supply point under the Atlantic set-up, too, do you know?

A. I don't know how to answer that. I don't know for sure.

Mr. Gordon: I don't think the witness knows.

3615 By Mr. Kelaher:

Q. Now, you stated that you have somewhat of a small station. Do you have much space for stocking tires in there?

A. No, I have more now than I had. I have two racks in the back, iron type racks inside the building.

Q. When you stated that you, starting in 1952, you began to purchase Pennsylvania tires; is that correct?

A. That is correct.

Q. And did you continue to purchase some Goodyear tires?

A. Only as the customers demanded them.

Q. Now, what was your stock of Pennsylvania tires at that time?

A. In number of tires?

Q. Units, yes. Number. Approximately.

A. I would say about 250 or 300 tires.

Q. And you carry a fairly large stock?

A. Not at the time I am not now, no.

Q. What is your stock now?

A. It is down now to about a hundred.

Q. And they are mainly Coopers?

A. Yes.

Q. Five percent Goodyear?

A. That is right.

Q. So, you are carrying, you only have five Goodyear tires in stock?

3616 A. There might be seven. It has got to be an even number, it would have to be eight.

Q. All right, eight percent.

A. All right, eight percent, that was an approximate figure.

Q. How about your batteries? Do you carry a substantial stock of batteries?

A. Not too many, no, because I don't have the space again.

Q. How many batteries do you carry in stock?

A. There is about 12 there right now.

Q. So, when you say 50 percent Lee, you are referring to six batteries?

A. That is right.

Q. And the other 50 percent are Goodyear; that is, six batteries?

A. That is right.

Q. Now, how about your stock of accessories? Do you carry a large stock of accessories?

A. As much as the shelves will hold. A fair supply.

Q. You said among your suppliers, you mentioned that a couple of parts suppliers, Unit Parts was one, I believe?

A. That is right.

Q. What do you buy from Unit Parts? Are you referring to ignition parts and things of that type?

A. Things that they carry that the other places don't have. Nothing in hard parts, no, I don't deal in those.

3617 Q. You don't do any mechanics—do you have a mechanic at the station?

A. Only in ignition work of that nature, nothing in clutch work or brake work.

Q. So your purchases from these parts suppliers would be for work in the repair of automobiles, would it not?

A. They would be mufflers or something of that nature.

Q. Do you purchase your Cooper tires on consignment or outright?

A. Outright, 30 day billing.

Q. Do you have an outdoor poll sign on your station, or don't you have room for an outdoor pole sign?

A. Are you speaking of a Goodyear sign or any—

Q. (Interposing.) Do you have an outdoor pole sign?

A. There is no outdoor pole sign except the Atlantic sign. That is all there is right now.

Q. In other words, you never had a—you don't have a Cooper outdoor pole sign?

A. No, I don't.

Q. Do you have a Cooper sign in your station, on the windows?

A. It is right on that tire rack which is movable inside or outside. I can take it in or out as the weather permits. It is on the top of that.

Mr. Gordon: Yes, I would like to have that marked.

Hearing Examiner Kolb: A-30.

(Whereupon, the document referred to was marked Respondent (Atalntic) Exhibit 30 for identification.)

Hearing Examiner Kolb: Do you offer that in evidence?

Mr. Gordon: Yes, I would like to offer this in evidence.

Hearing Examiner Kolb: Any objection, Mr. Kelaher?

Mr. Kelaher: No objection.

3621 Hearing Examiner Kolb: Received in evidence as Respondent's A-30.

(Whereupon, the document, heretofore marked RESPONDENT (ATLANTIC) EXHIBIT 30 for identification, was received in evidence.)

Mr. Gordon: I have one other question.

By Mr. Gordon:

Q. The bills for the cooperative advertising that were discussed before, those bills were from Goodyear, were they not, Goodyear cooperative advertising?

A. Yes.

Q. And the Cooper tire rack that we discussed before, isn't that a large rack, about six feet high?

A. Yes, two tier rack, with ten tires to a rack. It is on wheels. It can be moved inside.

Q. Do you place that out on the driveway of your station?

A. That is right. It is rolled out and put out in front.

Mr. Gordon: I have no further questions.

Recross Examination by Mr. Kelaher.

Q. What time of day was RX-A-30 taken? What time of day was this taken?

A. Are you asking me my opinion? I wasn't there when that was taken.

Q. I notice the Cooper tire rack isn't out there. If
3622 it is there, I would like to have you show it to us.

A. No, it isn't. I didn't have the rack in '57, sir.

Q. All right. Show me a Pennsylvania tire rack then.

A. There isn't any in here.

Q. There isn't any on the picture, is it?

A. The Pennsylvania—

Q. (Interposing.) I am asking you now if there is a Pennsylvania rack out there?

A. No, it is not, sir.

Mr. Kelaher: No further questions.

Further Redirect Examination by Mr. Gordon.

Q. You weren't selling Cooper tires then, were you?

A. Yes, I was, but I didn't have a rack. He offered me the rack so I took it. When you get it for free, you take it.

Mr. Gordon: I don't have any further questions.

Hearing Examiner Kolb: That is all, Mr. Cary.

(Witness excused.)

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

3623 ALBERT H. SHAFER, was called as a witness on behalf of The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Shafer, have you given your name and address to the reporter?

A. No, I haven't. Albert H. Shafer; Present home address, 44 Cleveland Avenue, Colonial, New Jersey.

Q. Are you today, Mr. Shafer, a Goodyear employee?

A. Yes, sir.

Q. When did you first join Goodyear?

A. 1950.

Q. In what capacity?

A. I was a general line sales trainee.

Q. And what were you doing before that?

A. I worked with my father in a Shell service station.

Q. Your sales training lasted until when, sir?

A. July 27, 1950, to approximately January 1 of 1951.

Q. And what position did you then take?

A. As a general line salesman in the Goodyear Pittsburgh district.

Q. What were your duties as a general line salesman there?

3624 A. As a general line salesman, you are responsible for the development of the dealers in your territory in a given territory.

Q. Did that include service stations?

A. Yes, you contacted service stations in the interest of the direct accounts.

Q. By the direct accounts you would mean Goodyear stores or Goodyear direct dealers?

A. Yes.

Q. And how long did your tour of duty as a field representative last?

A. Until approximately May of 1952.

Q. And then what did you become then?

A. I became the petroleum representative for Goodyear in the Philadelphia district.

Q. And what is the duty of a petroleum representative?

A. Well, I contacted or was liaison between the Goodyear district management in Philadelphia and Newark and the Atlantic district management in those two areas.

Q. And would those two areas be what Atlantic calls its Philadelphia-New Jeresy region?

A. Yes, sir.

Q. Was your contact limited to Atlantic or did you also contact other oil companies?

A. No, I contacted Atlantic only.

3625 Q. And how long did that job last?

A. From May of 1952 until approximately December of '53.

Q. And what then transpired?

A. I was transferred to the Syracuse Goodyear district.

Q. In the same capacity?

A. In the same capacity, covering the New York region of Atlantic.

Q. And again counseling or service as liaison between Atlantic and Goodyear supply points?

A. Yes, sir.

Q. Was that your function? I don't mean to put words into your mouth.

A. That is right. In other words, in addition to keeping the Atlantic district management, the Atlantic salesmen aware of all the Goodyear promotions, we are responsible to the district to better service the Atlantic dealer through our supplying dealers.

Q. When you say "we are responsible to the district," are you now speaking of the Goodyear district?

A. The Goodyear district.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Mr. Kelaher: On the record.

3626 By Mr. Ballard:

Q. Now, then, how long did your job as petroleum representative in the New York region last?

A. Exactly one year.

Q. That would bring you to December of 1954.

A. That is correct, sir.

Q. And what job did you get then?

A. I was promoted to the division petroleum representative.

Q. And in terms of Atlantic, would that include Atlantic's three regions, Philadelphia-New Jersey, New York, and New England?

A. That is correct, sir.

Q. And what was the job of a divisional petroleum representative consist of?

A. Of course, in each region of Atlantic, we had a gentleman that performed the way I did in my previous two assignments, and then we had one man that headed up the entire program.

Q. That is you?

A. And that was myself.

Q. And who was your liaison in Atlantic?

A. Mr. Mulholland.

Q. The head of Atlantic—

A. (Interposing.) TBA sales department.

Q. And how long were you divisional petroleum representative?

A. Until I left in July of 1957.

3627 Q. And what job did you take then?

A. I became the store manager trainee.

Q. Trainee for management of a Goodyear store?

A. Good year service store.

Q. Now, going back to the time when you were petroleum representative to Atlantic region, either the Philadelphia-New Jersay region of the New York region, would you describe in a little more detail your functions in that capacity?

A. Well, number one, your responsibility was to make sure that the Atlantic district and region people were aware of all the current Goodyear TBA promotions. You assisted in the training of Atlantic salesmen by spending time with them either in the field or at their respective training schools and you developed a supplying dealer program to the point that it became more effective and more acceptable to the Atlantic dealers from the standpoint of service, price, delivery, and the things that the normal service station requires to do a good TBA job.

Q. Your duties then, I take it, would include riding in the field with Atlantic salesmen?

A. Definitely, as I said, you would spend time with them, considerable time with them, calling on their dealers.

Q. And what would your function be when they were calling on their dealers, what would you do?

A. Well, most of the time you would, as the At-
3628 lantic salesman made his TBA presentation, of course, you were there to help him. It was a form of training while you were working with them.

Q. Did you also take any part in the conduct of training meetings for Atlantic personnel?

A. Yes, sir, I did.

Q. And also for dealers?

A. Yes, sir, I did.

Q. Now, when you became a divisional petroleum representative, I take it your duties changed somewhat?

A. Somewhat. You were contacting, of course, Atlantic's TBA manager, the sales department; your basic assignment, of course, was to keep him well informed of any changes in sales programs or product, announcements of new products, to assist in the development of local TBA promotions. And, of course, to continue to work in the field with the Goodyear petroleum representatives and the Atlantic salesmen.

Q. You are, I take it, familiar with Atlantic's TBA policy?

A. Yes, sir.

Q. Do you recall a series of so-called football meetings in the fall of 1952?

A. Yes, sir.

Q. Was that policy discussed at those meetings?

A. Yes, sir.

Q. Would you tell us what you remember about those meetings?

3629 A. Well, I attended three or four. And in each instance the Atlantic dealers were invited to attend, and Mr. Mulholland, who was conducting the meetings at that time, very strenuously reiterated Mr. Colley's policy letter and tried to find out from the dealer group whether at any time they had been subjected to any type of pressure, either from Atlantic and/or Goodyear.

Q. Did he elicit any comments whatsoever from the dealer?

Mr. Kelaher: Objection, unless we get more specificity on this subject. We are getting a lot of high sounding testimony here that is very, very general. I am going to move to strike the last answer. He didn't testify as to what went on at the meeting specifically. He was giving his characterization of the meeting.

Mr. Ballard: Your Honor, it seems to me he did testify as to exactly what went on at the meeting, but I will ask to have it read back.

Hearing Examiner Kolb: I think possibly in view of the objection he should state what Mr. Mulholland stated and not the conclusion.

Mr. Kelaher: I move to strike the last answer.

Hearing Examiner Kolb: The answer may be stricken.

By Mr. Ballard:

Q. Mr. Shafer, will you state to the best of your recollection what Mr. Mulholland said at the meetings?

A. To the best of my recollection, Mr. Mulholland 3630 operated the meeting by covering or re-reading the original letter that Mr. Colley had written to the Atlantic dealers and again stating that they had sponsored the TBA program, the Goodyear TBA program, on the basis that Atlantic Refining felt that it best offered the best sales and profit opportunity to the dealer, but again it was at the dealer's own election as to what he wanted to buy.

Q. Is that what Mr. Mulholland said?

A. That is right. And then, he just kind of opened the meeting very broadly and asked for dealer comments or dealer objections.

Q. And did the dealers make comments or objections?

A. They certainly did.

Q. And what was the nature of their comments or objections?

A. Well, all the comments and all the complaints that we had were in regard to service, delivery, stocking, etc. The items that are involved in the distribution of the TBA program.

Q. Did you hear any comments or complaints about coercion?

Mr. Kelaher: Objection, your Honor. That is a leading question if I ever heard one.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. You may answer.

A. No, sir, I did not.

3631 Q. Now, Mr. Shafer, I think you have testified that you have participated in dealer training schools.

A. Yes, sir.

Q. Atlantic dealer training schools, I mean.

A. Yes, sir.

Q. Did you hear the Atlantic's TBA policy discussed in those schools?

A. Yes, sir.

Q. And was it discussed in approximately the same terms as you have described it in Mr. Mulholland's statement?

A. Yes, sir.

Mr. Kelaher: I object to that—would you read the last question and answer.

(The reporter read the question and answer commencing at line 10 of this page.)

Mr. Kelaher: No objection.

By Mr. Ballard:

Q. Now, Mr. Shafer, in the course of your duties, have you talked to Atlantic dealers about the Atlantic-Goodyear TBA program?

A. Oh, yes, sir.

Q. On occasion, have they made comments and complaints to you about the program?

A. Oh, sure.

3632 Q. Have they ever made comments and complaints about coercion and forcing them—

A. (Interposing.) No, sir.

Mr. Kelaher: Your Honor, I am going to move to strike that answer.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Ballard:

Q. Do you observe what TBA Atlantic dealers stock and display in their station?

Mr. Kelaher: Objection, unless this man has been all over the three Atlantic regions. Unless we have more specificity, I am going to object.

Mr. Ballard: The question, so far, your Honor, is a perfectly simple one. It can be answered Yes or No. I simply asked him, Does he observe whether they stock them.

Mr. Kelaher: We haven't limited to any geographical area, not only his own area.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. Would you answer the question?

A. Would you ask it again, sir.

Mr. Ballard: Would you read the question.

(The reporter read the question commencing at line 8 of this page.)

The Witness: Yes, I do.

3633 By Mr. Ballard:

Q. Well, what kinds of TBA—strike the question.

Do you observe non-sponsored TBA on display in Atlantic stations?

Mr. Kelaher: Objection, your Honor. I think he is leading him. I am going to ask that he phrase his questions so as not to lead him.

Mr. Ballard: It seemed to be a perfectly simple question, your Honor. Again, it could be answered Yes or No. He knows the subject that we are talking about here. It is not a jury case.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. Do you?

A. Yes, I do.

Q. Now, in your experience, as you have described it, do Atlantic dealers on occasion buy Goodyear TBA from stores other than their designated supply points?

A. Yes, on occasion.

Q. Do—and again in your experience—do Atlantic dealers who are nominated to Goodyear, included on the list nominated to Goodyear, on occasion not purchase at all or very little from their supply point?

A. Oh, yes. There is a good many dealers in areas 3634 that are inactive in the TBA business.

Q. Would that include dealers who were nominated to Goodyear?

A. Oh, yes.

Q. Going back to the time when you were a petroleum representative in the Philadelphia-New Jersey region, did you observe the salesmen from other TBA suppliers calling on Atlantic dealers in the metropolitan Philadelphia area?

Mr. Kelaher: I am going to object to that question.

Hearing Examiner Kolb: On what grounds?

Mr. Kelaher: Unless he states the reason for the question, in this line of questioning.

Mr. Ballard: The reason seems to be a perfectly obvious question of competition.

Hearing Examiner Kolb: He said district. The objection will be overruled.

Mr. Ballard: Would you read the question.

(The reporter read the question commencing at line 5 of this page.)

The Witness: Yes, sir.

By Mr. Ballard:

Q. About how many TBA suppliers other than Goodyear are there in the Philadelphia metropolitan region?

A. I would estimate that there are approximately 150.

Q. Could you describe them by classification?

3635 A. Well, I think you could break them down very simply by saying that the majority of them are in the automotive parts, accessories, and battery business. Very few, if any, handle a major brand line of tire, some of a limited line.

Q. And you are speaking now of the people who are in the parts, batteries, and accessories business?

A. That is correct, sir.

Q. Now, that form—did you say that that formed the majority of the group?

A. I would say so, yes, sir, from my experiences.

Q. And what would the remainder of the group be?

A. There would be tire dealers, tire re-treaders, people who handled the tire and battery line but a limited or no line of accessories.

Q. Would that same general pattern apply to all three regions that you are familiar with?

A. Yes. sir.

Q. Going back to your experience as a representative for all three Atlantic regions, approximately how many Goodyear supply points were serving Atlantic dealers in the whole three regions together?

Mr. Kelaher: Your Honor, I think we have stipulated testimony on this point.

Mr. Ballard: If you will find it for me—

Mr. Kelaher: (Interposing.) With the statistics.

3636 Mr. Ballard: I don't think the number of supply points is stipulated.

Mr. Kelaher: Yes. I don't have the documents with me because they were the in-camera exhibits, if I recall.

Mr. Ballard: Do you have an objection to this man giving the approximate number so we can get on with it?

Mr. Kelaher: It seems to me if we have the number stipulated—off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Mr. Shafer, let me try this and see if we can get Mr. Kelaher satisfied on this. Mr. Shafer, the stipulation in this case indicates that there were about 160 Goodyear stores and dealers supplying Atlantic accounts in June of 1956. Would that check with your recollection, sir?

A. That would be very, very close.

Q. It is not stipulated, I believe, how many supply points there were in the New England region. What would your recollection be as to how many there were in the New England region?

A. I would estimate in the New England region there would be close to 90 to 100.

Q. Now, sir, do those supply points encounter competition from the other TBA suppliers that you have described to us?

A. Yes, sir.

• • • • •

3638 By Mr. Ballard:

Q. Do these various supply points differ from one another in their success in selling to Atlantic dealers?

A. Yes, sir; they do.

Q. What are the factors that influence their success in selling to Atlantic dealers?

A. The competitiveness of the market, their capacity and ability to service and sell and deliver the merchandise that the Atlantic dealer needs when he needs it.

Q. Now, in your experience which supply points have the greatest success in selling to Atlantic dealers?

Mr. Kelaher: Objection, unless a time is specified.

By Mr. Ballard:

Q. During the time when you were—well, let's say during the time when you were operating in all three regions?

Mr. Kelaher: When is that time?

Mr. Ballard: That is 1954 to 1957. During that period which group of supply points were the most successful in your estimation?

A. I would say that from my experience that the supply dealers in the Philadelphia area-South Jersey area of Atlantic were the most successful.

By Mr. Ballard:

Q. That would include Mr. Kaiser, Elwood Kaiser?

A. Yes, sir.

3639 Q. Mr. Parris?

A. Yes, sir.

Q. Now, is the price charged by the supply point a factor in its ability to sell Atlantic dealers?

A. Very definitely.

Q. Is it true that on occasion the dealer is offered other brands of tires at a lower price than a Goodyear price?

Mr. Kelaher: Objection. I don't know how he would be in a position to testify as to what a dealer was offered.

Hearing Examiner Kolb: I believe you are talking about a general competitive situation. I will overrule the objection.

A. Yes, sir, they are.

By Mr. Ballard:

Q. How are the Goodyear supply points able to compete in that situation?

A. Well, generally speaking we are equipped—the supplying dealer is equipped to offer a competitive price to the Atlantic dealer, but we all recognize that some of these lesser known brands do offer, let's say an extra 5 percent discount to the dealer. But we, in the sales organization and realistically so, try and impress the dealer with the fact that because of Goodyear's acceptance to the motoring public that by handling Goodyear he is going to sell
3640 more with a higher gross profit return; therefore, more money in the bank.

Mr. Kelaher: I don't think the last part of the answer is responsive to the question but I will let it stand.

Hearing Examiner Kolb: I think so, I will let it stand.

By Mr. Ballard:

Q. Now, Mr. Shafer, does Goodyear offer a guarantee on its tires?

A. Yes, sir; we do.

Q. Would you describe the guarantee that goes with the Goodyear tire?

A. Goodyear guarantee, a Goodyear tire bearing our serial number is guaranteed for the life of the tire to be free from defects and workmanship or material, if found to be defective under these conditions we will either replace it or repair it based on pro rata use and mileage.

Q. Is that the only guarantee you have or is there another guarantee?

A. No, we have a guarantee which covers road hazard injuries which occur in the first 25 percent of the tire's life.

Q. Is that guarantee covering road hazard type injuries made known to dealers handling Goodyear?

A. Yes, sir.

Q. Is it published in your service policy and ad-
3641 justment program?

A. Yes, sir.

Q. Is that guarantee in your experience as beneficial to

the dealer as the so-called road hazard guarantee offered by the other companies?

A. In my experience I have found it to be as good or more adequate in the protection to the dealer and the consumer.

Q. "Offered by" I am speaking now in comparison with the so-called road hazard guarantee.

A. Yes, sir, we feel that our guarantee is comparable or better.

Q. And specifically do you feel it is comparable or better to the Lee road hazard guarantee?

A. Oh, yes.

Q. Mr. Shafer, is the prestige of the Atlantic name a factor in the sales success of Goodyear supply points?

A. Would you repeat that?

Q. I say is the prestige of the Atlantic name, of the name Atlantic, a factor in their success?

A. In the Philadelphia market I would say it was definitely true.

Q. Would it be less true as you get further from Philadelphia?

A. Yes.

Q. About how many tires are there in the Goodyear line?

A. You refer to the complete line or the passenger line?

3642 Q. Let's take a representative passenger tire, take the most popular passenger tire. How many models or grades does Goodyear offer?

A. Well, in our complete passenger line, just taking the six or seven most popular 15 inch and 14 inch sizes which are now up for replacement sale, there is approximately 130 sizes and types.

Q. Is there development and change in that line from year to year?

A. Yes, sir; there is.

Q. Does Atlantic train its dealers in the knowledge of those changes?

A. Very definitely.

Q. Does it also train its salesmen?

A. Yes, sir. Many of those training meetings, of course, the Goodyear people participate in because of our first-hand knowledge of a new product.

Q. Would you describe for us what other things Atlantic salesmen do to promote the sale of Goodyear tires, batteries and accessories as you have observed them?

A. Well, in their normal routine call on the dealers, of course, they check his TBA stock, confer with him on his needs in those particular lines, discuss with him the current promotions, any additions, local advertising, assist the dealer to answer possibly a competitive ad that
3643 he might have seen in the newspaper, phone in orders to the supplying dealer.

I would say that those are the most important things that he does.

Q. On occasion does the Atlantic salesman adjust dealer complaints with the Goodyear store, Goodyear supply point?

A. If the dealer has a complaint at that time the Atlantic salesman is there it usually is brought back either to the dealer or the store, the supplying dealer or the store, either by the salesman himself or is called in over the phone and discussed with the store manager, whoever is responsible for the handling of that account.

Q. Returning for a moment to your capacity as divisional representative, did you find Atlantic helpful to the Goodyear TBA program in that capacity?

A. Yes, sir, they were, because in my time with them, working with them, they were able to supply us with many good ideas that were beneficial to the dealer either through the standard point of practical displays on the outside of

a service station, the fact that the dealers through their inquiries had shown a preference for a particular type product that we did not have in our line, the fact that we sometimes ran into problems with credit limitations, things like that that they brought to our attention that were passed on to Akron where our management pass on them.

3644 Q. I believe you mentioned the development in tires from time to time. Could you go into a little more detail on how tire types and models have developed over the course of your experience with Goodyear?

A. Well, of course, probably the biggest development we have had is the announcement and the use of nylon cord in the passenger tires. In addition to that, we announced the captive air type tire.

Q. What is that?

A. That is the two chamber tire that gives the consumer positive blow-out and puncture protection to the effect that he does not have to stop immediately and have the tire repaired because the air is retained on an inside chamber and allows him to go on his way until he can stop at a safe place and have it repaired.

Q. Is that unique to the Goodyear line?

A. Yes, sir, it is. Then we had the announcement of tubeless in 1955. That is when Goodyear announced the tubeless in 1955. In the tire line I would say that that is about it. Of course, your tread designs are constantly changing to meet the demand of the motoring public, to give more safety and traction and so forth.

Q. Are there also changes in order items from time to time in the TBA line?

A. Yes, the big change, of course, in batteries
3645 occurred in about 19—I think it was around that same time, '55, when Goodyear announced the production of the dry-charged battery.

Q. Do filters change from time to time?

A. Yes, they have gone from cotton ways to this new type paper filter. They have new type of air cleaner filters for cars, new type of spark plugs from the standpoint of resistor. Polishes change.

Q. And does Atlantic assist Goodyear in bringing that product know-how to the Atlantic dealer?

A. Yes, sir.

Q. Are there also from time to time changes or new products in chemicals and waxes?

A. Yes, there are, and let's say that DuPont annuonces a new formula polish or Johnson announces a new formula polish.

Q. And Atlantic, of course, assists in disseminating that information?

A. Yes, sir.

Q. During your tenure as a petroleum representative were you generally familiar with the prices that Goodyear supply points were charging Atlantic dealers for Goodyear TBA?

A. Generally, yes.

Q. During that period was there a change in the level of prices?

Mr. Kelaher: What period are we in now?

3646 Mr. Ballard: Let's take the period 1952 through 1957. Was there a change in the price level during that period?

A. Well, there were price increases.

By Mr. Ballard:

Q. Over the span of the five-year period what would be the price increases on tires?

Mr. Kelaher: Your Honor, wouldn't the increases themselves be the best evidence in this? We are getting in a rather complicated subject if we get into price increases on tires over a five-year period.

Mr. Ballard: Your Honor, I don't want to get into a complicated subject if I can avoid it. I want a statement as to the increase in prices over the period. As your Honor knows, there are a great many dollar figures in the record and I think they should be read against some indication of the price increases.

Mr. Kelaher: I don't think this is quite the way to do that.

Mr. Ballard: If Mr. Kelaher wants to have a full-scale cost study introduced, it will take me sometime to prepare it and introduce it. This man knows how much tires have gone up over the five-year period.

Hearing Examiner Kolb: What has that to do with the issues in this case?

3647 Mr. Ballard: Sir, it is simply this: Your Honor is going to have presented to him figures showing dollar sales and dollar commissions in '52, '53, '54 and '55, and so forth, and I assume some argument is going to be made based on those figures. Now, built into those figures is a price increase, and I simply would like to show the magnitude of price increase that is built into those figures.

Mr. Kelaher: I think to such general type of testimony I am going to object

Mr. Ballard: Off the record just a minute?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Would you read the question?

(Question read.)

Mr. Ballard: Percentage.

The Witness: Twenty-five percent on tires.

By Mr. Ballard:

Q. On batteries?

A. Nothing.

Q. Accessories?

A. About 15 percent.

Mr. Ballard: Cross-examine.

Mr. Correa: I might have a question or two. I assume Mr. Kelaher would rather have my cross-examination
3648 preceding his than follow it.

Cross-Examination by Mr. Correa.

Q. Now, sir, you testified that there were certain lesser known brands of tires which Atlantic dealers and presumably others in the market could purchase at a deeper discount than they would receive on the Goodyear brand?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And you said as I recall your testimony, that in attempting to combat the competitive effect of these greater discounts given on lesser known brands of tires, one of the factors you stressed was the public acceptance which the Goodyear tire has opposed to lesser known brands; is that correct?

A. Yes, sir.

Q. And you made the argument that the dealer could sell more tires even though his discount or his profit on each tire might be a little less, his gross profit from selling some more tires would be accordingly greater?

A. Yes, sir.

Q. Now, is there also with respect to some of these lesser known brands of tires a quality difference?

Mr. Kelaher: I object to that.

Mr. Correa: Goodyear tire.

3649 Mr. Kelaher: This is cross-examination. This man is an employee of respondent.

Mr. Correa: May the record be clear, if the Court please.

that this witness has been tendered by the Respondent Atlantic. The Respondent Goodyear has tendered no testimony, no evidence of any kind or character in this case to this moment and I wish the record to be clear to that effect. This is cross-examination whether my learned friend likes it or not. We must observe the form of proper procedure.

Mr. Kelaher: We are conforming to the form of proper procedure but I think with the Respondent Goodyear a respondent in the case, and if we have an employee of Goodyear here counsel for Goodyear should not be permitted to cross-examine this witness.

Mr. Correa: Without yielding to the first point, great respect and all, this particular question is a good question of anyone, so I don't see why we have all the arguing about it.

Mr. Kelaher: Even if he were with another tire company I would object because I don't think he has been qualified as an expert on quality.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Correa:

Q. Do you have the question in mind?

3650 A. I think so.

Q. All right.

A. There is a difference in the quality; yes, sir.

Q. Now, is there any—let me withdraw that. Let me ask this question: Is weight a measure of quality at all in tires? Comparative weights?

A. Yes, sir.

Q. For example, does Goodyear put out more than one line of tires?

A. Yes, sir.

Q. They put out a first line, simetimes called the 100 line?

A. Yes, sir, super cushion.

Q. Are there cheaper lines below that?

A. Yes, sir, there are two, the deluxe line and the super cushion.

Q. Would they sometimes in the trade be called second and third lines, respectively? Is there a weight difference between the Goodyear 100 level or first line tire and Goodyear, let's say third line tire?

A. Yes, sir.

Q. For the same size of tire, what is the popular size today?

A. Well, 670x15.

Q. What would that weight difference run, if you 3651 know, approximately?

A. I am going to estimate that it would run in the neighborhood of four to five pounds.

Q. Would you find that same weight difference or a similar weight difference between Goodyear first line tires and the first line of some of these lesser well-known brands?

Mr. Kelaher: Your Honor, I am going to object. His answer with respect to Goodyear tires, now we are getting into tires of many companies, apparently, and he is going to attempt to answer for all of them.

Hearing Examiner Kolb: I doubt if this man would be competent to testify as to the weight of tires.

Mr. Correa: I don't know why he shouldn't be, he has handled them every day of his life.

Hearing Examiner Kolb: You are talking about ply now or weight?

Mr. Correa: This is weight.

Hearing Examiner Kolb: Isn't that the same thing?

Mr. Correa: No, it is not.

Let me ask the witness. Ply is not the same as weight?

The Witness: No, sir.

Mr. Kelaher: Ply affects weight?

The Witness: Ply affects weight?

3652 Mr. Kelaher: Yes.

The Witness: Not generally.

By Mr. Correa:

Q. What is the significance of weight, tell us the—

A. Well, in a tire, in any given tire there is three component parts. There is your beads which is made up of high tensile steel wire; there is your body which is made up of cord; and the tread, under-tread and sidewalls are made of rubber. Those are the three parts.

Mr. Kelaher: I still have an objection to him testifying as to weight of non-Goodyear tires because I understand from his testimony—

Hearing Examiner Kolb: There is no question before him on that. He just answered the question about the—read the last question.

Mr. Kelaher: The other one is withdrawn then, all right.

Mr. Correa: The other was withdrawn and the last question was answered.

Hearing Examiner Kolb: All right.

By Mr. Correa:

Q. Is it true, sir, that the principal weight difference between a let's say 100 level tires and a third line tire is accounted for by the relatively thicker tread?

A. There is more rubber in the 100 level tire than 3653 there is in the let's say third line.

Q. And most of that more rubber will be on the tread, will it not?

A. It is in two places, the tread and the under-tread.

Q. So it adds up to the heavier tire being a longer-wearing tire, is that not so?

Mr. Kelaher: Objection, your Honor. I don't think

he is qualified to get into this subject. They have tests and they have scientists and what have you in their laboratories going into this type of thing every day. This gentleman is a layman, he is not qualified to talk about the endurance tests of tires, whether or not one tire is better or longer lasting because it has more rubber than another, I think we get into all kinds of complications when you are on this subject. I am going to object.

Mr. Correa: It may come as a surprise to Mr. Kelaher, but the Goodyear Company, curiously enough, has a policy of keeping its salesmen knowledgeable of these points, because they want these salesmen to know what they are attempting to sell. He is more than a layman, he has been a salesman and I may say a very competent one, for years.

Mr. Kelaher: I have no doubt, but it is hearsay in so far as this hearing is concerned.

Hearing Examiner Kolb: Objection overruled.

3654 A. I would say the two component parts of the rubber, the tread and the under-tread, give you a longer-wearing tire without any doubt.

Mr. Correa: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. Now, sir, could you tell us whether or not there is any weight difference between Goodyear 100 level tires and the tire line, let's say Vanderbilt tire? There is such a tire, is there not?

Mr. Kelaher: Objection.

A. Vanderbilt?

Mr. Correa: Yes.

Mr. Kelaher: I am going to object to any comparisons.

Hearing Examiner Kolb: Do you know anything about Vanderbilt?

The Witness: The comparative weight we have with it.

Mr. Correa: The question was, is there a difference? That was the first question.

Mr. Kelaher: I am going to object to the question because it is distinctly—

Hearing Examiner Kolb: I don't see what this has to do with this case anyway.

3655 Mr. Correa: I will say this, since your Honor asks, that it seems to me we have been going along throughout these hearings on the basis that all tires are completely fungible and that if a dealer buys a Goodyear tire instead of a "Firecracker" tire then that must mean he can get it $5 cheaper, that must mean he is doing that because Atlantic is beating him over the head. The fact is, the XYZ tire, whatever you want to call it, is not quality-wise as good a tire as the Goodyear tire and this is known to the dealers who are, after all, businessmen engaged among other things in the tire business.

Mr. Kelaher: I don't think that is so.

Hearing Examiner Kolb: That depends on your point of view.

Mr. Correa: I think the basic assumption underlying all of this testimony is false, in fact, and I think that ought to be brought out. That is all his testimony is designed to do.

Hearing Examiner Kolb: In other words, you are attempting to prove that Goodyear puts out the best tire on the market?

Mr. Correa: No, I am saying that you can't fairly compare a Goodyear tire to a Pharis or a Vanderbilt or some of these other weird brands that have been featured highly in this testimony. That is what I am saying, I think
3656 this is the fact as anybody who knows beans about the tire business, I am sure, will attest.

Hearing Examiner Kolb: Well, so far we havent' got into the quality of tires as I recall.

Mr. Correa: Well, that is—.

Hearing Examiner Kolb: The proposition is this, the man has testified he can get a certain tire cheaper than he could get the Goodyear. He bought the tire cheaper because he could get it on price. He didn't say it was a better tire. It was a cheaper tire and he could sell that to his customers. In some places they have a greater acceptance for one tire than they have for another. Some buy on price, some buy on acceptance. I don't know why we have to get into the question as to the actual difference in construction of these various tires and so forth and so on.

Mr. Correa: Well, I can only repeat—

Hearing Examiner Kolb: I have a hard time figuring out what is your first line tire in the first place.

Mr. Correa: No difficulty by consulting price.

Hearing Examiner Kolb: All right, let's go ahead.

A. There is a difference.

Mr. Kelaher: There is a difference. What was the question now?

(Question read.)

3657 By Mr. Correa:

Q. What is the difference?

A. In weight?

Q. Yes, sir.

A. Two and a half to three pounds.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. Which is the lighter tire? You say there is a 2½ to 3 pound difference between them?

A. The Vanderbuilt, in relation to your custom super cushion line.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I think the pending question, was that answered?

Hearing Examiner Kolb: The pending question was answered.

Mr. Correa: All right.

3658 By Mr. Corea:

Q. Well, in your expgrience, Mr. Shafer, as you have described it, do service station dealers ever take quality into consideration in purchasing tires?

A. Oh, I think that by and large they do.

Q. Is that what they have indicated to you in these seven years or more that you have spent going around seeing service station dealers as your exclusive activity?

Mr. Kelaher: I object. In fact, your Honor, I think it is highly irregular for counsel for Goodyear to be cross-examining a Goodyear employee. I don't know whether this was prearranged, but I certainly don't appreciate it, I can tell you that.

Mr. Corea: If counsel cares to cite me some authority for his extraordinary statement, I would be delighted to receive it. In the absence of that, I suggest his remark is improper and out of order.

Have you any authority, counsel?

Mr. Kelaher: Do you admit it was prearranged?

Mr. Corea: Well, I trust you give us credit—

Mr. Ballard .(Interposing.) Now, look, I think it is about time for me to get into the act.

Mr. Corea: Making some preparation of our case. Yes, everything we have presented here was prearranged in that case, counsel.

Mr. Ballard: I don't go along with that.

3659 Hearing Examiner Kolb: I think probably you are raising this question of cross-examination without any distinction, because Mr. Corea can use this witness as his own witness and ask as many questions as he wants to.

Mr. Kelaher: I have no objection to his using him as his own witness. He is cross-examining him.

Hearing Examiner Kolb: If he is cross-examining is improper, make the objection beyond the scope of the direct examination. That is all you have to do.

Mr. Kelaher: I made that objection before. If not, I will make it again. I did say he is going beyond the scope of the direct.

Hearing Examiner Kolb: I think he should be called as your witness, Mr. Corea. This is beyond the scope of the direct examination.

Mr. Corea: I say with great respect the pending question is not. He was questioned intensively as to the factors which went into the competition to sell these service station dealers. Now, I am asking him on that very topic and in exploration of that same topic and amplification thereof, whether or not quality wasn't one of those factors which he failed to mention on direct. This is, indeed, a proper cross-examination, if your Honor please.

Mr. Kelaher: Before he answers that, I am going to move to strike all of his testimony on weights on the

3660 ground it was beyond the scope of the direct.

Mr. Corea: I resist the motion on the ground that it is untimely, among other grounds.

Hearing Examiner Kolb: I don't think it is proper cross-examination anyway. I think you should take this witness as your own witness as co-respondent in this case.

Mr. Corea: Well, I must respectfully—

Hearing Examiner Kolb (Interposing): You can follow the same line of examination. I don't see why we have to get into this hassle about cross-examination.

Mr. Corea: Let me state that because I am not doing it aggressively to be captious. I have up to this moment, at least, offered no evidence on behalf of Goodyear in this proceeding, and it is quite likely that I shall persist in the decision not to offer any evidence on the ground that we have certain objections to the procedure which we made heretofore, and which there is no need to burden the record with again.

I do not understand it to be the law, however, that a defendant, if you wish to call it that, or respondent, who does not wish to offer any testimony or any evidence on his or its own behalf, is thereby deprived of the right of cross-examination of any witness called on behalf of any other respondent or on behalf of the attorneys supporting the complaint, and if that is the law I must confess
3661 I am not familiar with that. I think I am entitled to insist on my right of cross-examination, which I do insist on for the reason I have indicated.

Mr. Kelaher: I think the law, as I recall it—

Hearing Examiner Kolb: (Interposing.) What difference does it make? Let him go ahead and cross-examine. The objection is overruled. Go ahead. I don't think it is proper, but we will let you do it. You can't accuse me of denying the right of cross-examination even though you are not entitled to it.

Go ahead.

Mr. Corea: Is there a question pending?

Hearing Examiner Kolb: I don't think there is.

(The reporter read the record as requested.)

By Mr. Corea:

Q. In your principal activity instead of your exclusive activity?

Hearing Examiner Kolb: That is with regard to quality?

Mr. Kelaher: That is confusing.

Mr. Corea: The antecedent question contains the quality.

Hearing Examiner Kolb: All right; go ahead.

The Witness: Yes, sir, they have.

Mr. Kelaher: Let's have the question and answer.

3662 I don't know what they have. What is the last—I am. getting lost.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Corea:

Q. Is it common knowledge in the trade and by the trade I include people who are engaged in the occupation you were engaged in during these seven years and also service station dealers, is it common knowledge in the trade thus defined that these differences in quality exist between and among various brands of tires?

Mr. Kelaher: I object, your Honor. Now, we are getting into the whole United States instead of just Atlantic Refining Company, and this area, now he is going to what is common knowledge in the trade. I think that is —I object for a number of reasons. First, it is beyond the scope of the direct. Second, he shouldn't be cross-examining in the first place. And third, I don't think he is qualified to answer it.

Hearing Examiner Kolb: The objection is overruled. Let him answer.

The Witness: I believe that the tire dealers and the service station dealers accept the fact that Goodyear's quality and acceptance in the public's mind exceed the so-called lesser known brands.

3663 By Mr. Corea:

Q. You listed a number of—you were asked to list new developments in the tire line, and you listed captive air and a few others.

A. Yes.

Q. It is true, is it not, that captive air is designed for use on these thru-ways and express-ways where if a tire fails, you may have to go several miles before there will be a place where you can safely change them?

A. That was the basic thinking on which the principle was built.

Q. And I don't believe you mentioned Suburbanite, was the bringing out of Suburbanite tires one of the developments during the course of your seven years or not?

A. We brought on the Suburbanite during my time, and we had a tire called the Stud Sure-Grip tire.

Mr. Corea: You may examine.

Mr. Kelaher: I may cross-examine the testimony adduced through the cross-examination by respondent's counsel, I assume?

Hearing Examiner Kolb: You can cross-examine on everything that you see fit on.

We will take a recess before you do.

(A short recess was taken.)

3664 Hearing Examiner Kolb: The hearing will be in order.

By Mr. Kelaher:

Q. Mr. Shafer, you were a general line salesman beginning March 1, '51, is that correct, to about May '52?

A. January of '51.

Q. January 1 of '51?

A. Fifty-one, yes.

Q. Yes.

A. To approximately May of 1952.

Q. And during all of that time were you in the Pittsburgh Goodyear District?

A. Yes, sir.

Q. And at that time did you call on service stations?

A. Yes, sir.

Q. And beginning—during that time you were on a bonus, too, were you not? You were on a bonus with respect to sales of tires? Weren't you on a bonus system?

A. At one time.

Q. As a general line salesman?

A. Yes, sir.

Q. Now, as a petroleum representative were you also on a bonus with respect to the sale of TBA?

A. No, sir.

Q. Do Goodyear tires have good acceptance in the
3665 Pittsburgh area? Did they at the time you were there?

A. Yes, sir.

Q. You have said a lot of nice things about them. Do those things apply to the Pittsburgh area?

A. Yes, sir.

Q. How successful were you in selling Goodyear tires to Atlantic Service stations in the Pittsburgh area after March 1951?

A. In my territory which was in—my headquarters now were Greensburgh, I only had three active Atlantic dealers—

Q. I'm talking about the—

Mr. Mason: Let him finish his answer.

Mr. Kelaher: You go ahead.

The Witness: I only had three Atlantic dealers in my territory.

By Mr. Kelaher:

Q. You were—

Mr. Mason: Let him finish his answer.

Mr. Kelaher: I'm just defining—

Mr. Mason: Let him finish his answer.

The Witness: In my territory I had three active Atlantic dealers we were selling and I continued to sell after March of 1951.

By Mr. Kelaher:

Q. Now, in other words, you were in—I didn't
3666 understand this from your direct testimony because you didn't get into it, but—

Mr. Ballard: Then, your Honor, I move to strike the question and the answer because it's obviously beyond the scope of the direct.

Mr. Kelaher: I'm asking him about his territory as a general line salesman in the Pittsburgh Goodyear district. Let's put it that way. Where were your headquarters?

The Witness: Greensburgh, Pennsylvania.

By Mr. Kelaher:

Q. And how wide an area did you cover?

A. My southernmost town was Monessen and my northernmost town was Indiana. It covered about three counties.

Q. And you didn't get into the metropolitan Pittsburgh area at all?

A. No, sir; I was not in the metropolitan area.

Q. As you know in March '51 Atlantic began to sponsor Firestone TBA in that area. Isn't that right?

A. Yes, sir.

Q. Are you familiar or were you familiar with conditions in the Pittsburgh metropolitan area during your term as a general line salesman?

A. No, sir; my major task was in my own territory.

Q. But you did get into Pittsburgh, didn't you?

A. Did I get into Pittsburgh?

3667 Q. Yes.

A. I got into Pittsburgh for conferences, possibly to go shopping.

Q. Did you call on Atlantic stations or were you familiar

at all with the Atlantic stations in the Pittsburgh area?

A. In the City of Pittsburgh, no, sir.

Q. And in your whole territory or area you only had three Atlantic stations?

A. The only three dealers that I had that I was selling—

Q. How many Atlantic stations were there?

Mr. Mason: Let him finish his answer. I don't think he completed his answer.

The Witness: There were three Atlantic dealers that I can remember that I was selling when I was on the general line territory. How many more there were I couldn't tell you.

By Mr. Kelaher:

Q. That is the point I'm getting at.

Obviously there were more than three Atlantic dealers in your whole territory, weren't there?

A. At this point I couldn't say that there were more in any great quantity. There might have been some more, but in my territory Atlantic's activity at that time to my recollection was limited.

Q. And wasn't that due to the fact that Atlantic 3668 was sponsoring Firestone TBA in that territory after March '51?

A. No, sir.

Q. Isn't it a fact that Firestone predominated in Atlantic stations in your territory after March '51?

A. No, sir.

Q. You are only familiar with three stations out there, is that right?

A. That is what I am referring to.

Q. You didn't see the other stations in your territory at all?

A. Atlantic stations?

Q. I'm talking about Atlantic stations.

Mr. Mason: I object to the question because it misstates

the prior or it proceeds on a misconception of the prior testimony of the witness. As I understand his testimony he said that he knew of three Atlantic stations in his territory and didn't know whether or not there were any more stations. Now to question him on some unknown quantity of stations that the witness hasn't identified I submit isn't proper.

Hearing Examiner Kolb: He said he sold three Atlantic stations.

Mr. Mason: And he said also that he didn't know how many other stations there were in his territory or whether there were any other stations in his territory.

3669 Mr. Kelaher: I don't mind saying to show you the irregularity of procedure we are following, a few minutes ago counsel for Goodyear were cross-examining this witness. Now they are objecting to my cross-examination.

Mr. Mason: Any party to a proceeding may object to an answer which may be prejudicial in a record. I don't know why my objection can't be heard.

Mr. Kelaher: You are playing both sides.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. We'll leave it. You were calling on three and there were more Atlantic stations in your area.

Mr. Mason: I submit that is a misstatement of his testimony.

Mr. Kelaher: I can ask him.

Mr. Mason: Ask him. Don't state.

Hearing Examiner Kolb: He can answer the question.

The Witness: I was calling on three Atlantic stations and how many more Atlantic stations were in my territory, there wasn't any great quantity. There might have been three more or six more, but there were not thirty-five more.

By Mr. Kelaher:

Q. But there were more, that's the point.

Now, on direct examination you estimated that 3670 there were about 160 supply points in the New England Region, the Pennsylvania-New Jersey Region and the New York Regions of Atlantic. Do you recall that testimony?

A. I think I—

Mr. Ballard: As a matter of fact, what happened was that you—

The Witness: My estimation.

By Mr. Kelaher:

Q. Possibly 160, which was the stipulated figure, that's all I'm saying.

Now, of that number you testified that there were close to 90 to 100 in the New England Region. Do you recall that testimony?

A. Yes, sir; I think that is what I said.

Q. Do you know how many there were in the Pennsylvania-New Jersey Region and in the New York Region?

A. Well, to my best recollection the Philadelphia-New Jersey Region which comprised our Philadelphia and Newark Districts—may I ask this, what year are we talking about?

Q. I'm talking about the figures you were quoting, you were quoting a figure from 90 to 100 in the New England Region, what year were you talking about?

A. I would say that in the Philadelphia-New Jersey Region there were approximately 25 and in the New York Region there would have been the balance or I would 3671 estimate that around 45 to 50.

Q. And what period are we talking about here?

A. That is 1953 and '54.

Q. 1953 and what?

A. '53 and '54.

Q. I may have misunderstood your testimony but I was under the impression that this constituted the current number of supplying dealers, was that your testimony?

A. I don't know what the current number is.

Mr. Ballard: Mr. Kelaher, it wasn't intended to be, that wasn't the question asked. The man hasn't been there since 1957.

Hearing Examiner Kolb: He's giving you the time, he's giving you 1953 to '54, the number of stations.

The Witness: Fifty-three, '54 and '55, it never changed much.

Mr. Kelaher: All right.

By Mr. Kelaher:

Q. You got into a discussion in your testimony concerning developments by Goodyear in tires if you will recall. Isn't it a fact that other tire companies at or about the same time also came out with similar developments; for example, you referred to the use of nylon as one of the Goodyear firsts, is that right?

3672 Mr. Mason: I object to the form of this question. It is at least two questions, and I would like to have it directly clear what question counsel intends the witness to address his answer to. The very last statement he made or the whole question.

Mr. Kelaher: I think he understands.

Mr. Mason: I would like to have the question reread.

(The reporter read the pending question.)

Hearing Examiner Kolb: The objection is overruled.

The Witness: Nylon in the industry to my information is attributed, the first commercial use of nylon in tires was a Goodyear.

By Mr. Kelaher:

Q. Now, isn't it true that shortly after that other tire companies came out with nylon tires?

A. Yes, it is true the leading brands, Firestone, Goodrich, U. S., and General.

Q. And possibly others?

A. The time difference would be longer when we get out of that category. There would be a greater length of time.

Q. And isn't the same thing true of any other development or improvement in tires by Goodyear?

A. Well, there are certain things, of course, such as the captive air principle which nobody has to this date,
3673 and we have had it on the market now two years. Nobody has duplicated that same principle to date.

Q. Well, do other companies have something similar but on a different principle? Is that what you mean?

A. No, as to my knowledge there is only one other concern that makes a tire that has a two chamber concept, and that is Firestone. It is called the Firestone Supreme.

Q. Isn't it true, as a general proposition, that any changes in the tire industry are generally industry-wide over a short period of time?

A. Could you just give me a little closer definition as to changes?

Q. Well, improvements. You mentioned nylon. You mentioned captive air tires. You say there is only one other in that. But a sa general proposition, aren't most changes in the tire industry, whether innovated by Goodyear or Firestone or U. S. or Goodrich, don't they become a matter of industry technique?

A. On some occasions, but generally speaking, some of the things that Goodyear does or Firestone, or any of the other leading manufacturers, sometimes are not followed immediately by anybody else, such as our tread design.

I mean, people don't copy our tread design. We don't copy anybody elses. I mean, they are our own concept of traction.

Q. Now, you also stated that Goodyear was the first to announce the dry charge battery. Did you make that statement?

3674 A. No, sir, I did not.

Q. Well, then, would you state what you did say in connection with dry charge battery?

Mr. Mason: I submit the record shows what he did say, if counsel has a question. This is not suppose to be a memory test.

By Mr. Kelaher:

Q. All right. On direct examination, according to my notes, you testified that Goodyear announced the try charge battery. Was that your testimony?

A. That is right. I said that Goodyear announced the dry charge battery.

Q. What did you mean by announced the dry charge battery?

A. That the Goodyear Tire and Rubber Company announced to its dealer trade that we were going to make available the Goodyear dry charge.

Q. You didn't mean to imply that it was the first to announce the dry charge battery?

A. No, sir, Firestone made the first announcement.

Q. As a matter of fact, Goodyear doesn't manufacture batteries?

A. No, sir, we do not; in our own factories, no.

Q. Just to keep the record straight, Goodyear purchases batteries under the Goodyear name, is that what you mean, under the Goodyear brand name from independent manufacturers?

A. Yes, sir.

3675 Q. I am just going to ask you one or two questions on the subject brought up by counsel for respondent Goodyear, but on this question of quality, isn't it a fact that there are many tire manufacturers other than Goodyear who manufacture tires of comparable grade and quality?

A. There are many?

Q. Yes.

A. Mr. Ballard: Would you like to have the answer to the question read? You can always have that privilege.

Mr. Kelaher: Let's say there are other manufacturers.

The Witness: There are other manufacturers of tires that are comparable in quality.

3676 Q. Grade and quality.

Mr. Mason: Let the record show the witness is restating the question.

Mr. Kelaher: I am not having any trouble. I don't know what the problem is.

Mr. Mason: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

A. That there are other companies that have comparable quality.

Hearing Examiner Kolb: That is the question. What is your answer?

The Witness: I would say in my opinion there are some that do approach Goodyear's quality; yes, sir.

By Mr. Kelaher:

Q. You say there are some that do approach Goodyear's quality. Does that apply to Firestone?

A. Yes, sir; it does.

Q. And you say they are not comparable in grade and quality but they just approach Goodyear's quality?

A. From my personal standpoint I would say they approach or equal Goodyear's quality, yes.

Q. Would you say the same thing about U. S., Goodrich, General, and others?

3677 A. Personally, no.

Q. You think that none of those equal Goodyear's grade and quality, is that right?

A. No, sir, I mean that is my personal opinion.

Q. That is strictly your personal opinion?

A. Yes, sir.

Q. Isn't it a fact that other tires also have good public acceptance in certain areas?

A. Good public acceptance?

Q. Yes.

A. Yes, they do.

Q. For example, Lee which is manufactured in the Philadelphia area has good consumer acceptance in Philadelphia, hasn't it, in the Philadelphia area?

A. I don't believe I have ever seen any figures on Lee's acceptance in the Philadelphia area.

Q. It is well known in this area, isn't it?

A. I mean the Lee Tire and Rubber Company is well known here; yes, sir.

Mr. Kelaher: I have nothing further.

Redirect Examination by Mr. Ballard.

Q. May I ask a couple of questions?

I think that this is clear on the record, but the three At-

lantic service stations you were selling to in the Pitts-

3678 burgh area outside Pittsburgh, did you continue to sell them after March of 1951?

A. Yes, sir; I did.

Mr. Ballard: May I have one moment's recess?

I have no further questions.

Hearing Examiner Kolb: Off the record.

3680 CHARLES A. WALSH, JR. was called as a witness for the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Would you give the reporter your name and home address?

A. Charles A. Walsh, Jr., 305 Forest Hills Circle, Devon, Pennsylvania.

Q. You are, as I understand it, an employee of the Atlantic Refining Company?

A. That is right.

Q. When did you first join Atlantic?

A. In March of 1939.

Q. And could you give us briefly your history with Atlantic?

A. Yes, I started in the New England area, Providence, Rhode Island, as a service station attendant in 1939. In the latter part of the year I went to Boston as a service station manager, stayed in the Boston area approximately a year and a half, operating as service station manager, dealer trainer, a promotable dealer salesman on the

3681 North Shore area of Boston. I had been returned to Providence as supervisor of training stations and then moved in to the regional office in Providence as a sales promotion clerk. Went into the service in '42, in the Army, was in until '46. When I came out went back to Providence area and operated as a field assistant to the sales promotion manager. From there went to sales supervisor in the Providence district.

Q. What year was that, sir? 1947?

A. That would be '47, that is correct. Then from sales

supervisor in Providence went to direct marketing manager which was a staff job for the New England region.

After the sales supervisor's assignment in Providence I was put on the job of direct marketing manager for the New England region with headquarters in—

Q. That would be in 1949?

A. That would be in '49, sir. I stayed on that assignment until January of 1953 when I was assigned to the Springfield district as district manager. I was there for two years and in January of 1955 went to the New Haven district as district manager. I left New Haven in April of 1957 to come here to Philadelphia in my present position which is retail marketing manager for the Atlantic Refining Company.

Q. Now, sir, going back to 1947 when you were sales supervisor in the Providence district did you also at that time work on the model station committee?

3682 A. Yes, sir, I did. There was a committee formed at that time with Mr. Jack Eastlow, Philadelphia regional manager as chairman, to study the type of stations that we were operating, how they were operated, both from the point of view of design, station operation, station bookkeeping methods and so forth, to develop a more modern or more efficient method of doing it.

Q. There have been references in this record to the model AR-50 station. Is that the station that your committee designed?

A. A lot of our work went toward the design of that particular service station.

Q. Has that design been changed since the committee worked on it?

A. Yes, it has been modified from time to time.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. During the period 1949 to 1953 I believe you said that you were direct marketing manager for New England region?

A. That is correct, sir.

Q. Is that a line position or staff position?

A. That is a staff position.

Q. What is the basic function of a direct marketing
3683 manager?

A. Primarily the basic function is the development of the retail phase of the business, the service station phase of Atlantic's operation through promotional activity, sales development programs, and to some extent dealer training. Dealer-employee training in the basic services.

Q. I call to your attention that during that tour of duty Atlantic changed from the direct sale of Lee tires and Exide batteries and so forth to the sponsoring of Goodyear tires, batteries and accessories. As a staff man were you particularly concerned with the mechanics of that change-over?

A. No, I was not, sir.

Q. I believe you stated that in January of 1953 you became manager of the Springfield district?

A. That is correct.

Q. What is the approximate territory covered by that district?

A. Geographically?

Q. Yes.

A. From the Vermont border, the New York border and the Connecticut border on the western end of the State of Massachusetts to about Athol or Barre which is really about the western half of the state, not quite a half of the state.

3684 Q. Athol would be A-t-h-o-l?

A. That is right.

Q. And Barre?

A. B-a-r-r-e.

Q. Basically, it covers the western half of Massachusetts?

A. That is correct, sir.

Q. Do you recall about how many Atlantic dealers there were in that district?

A. At that time there were in the neighborhood of 90, 95 dealers.

Q. And about how many of them were lessee dealers?

A. Between 55 and 60 I would say, sir.

Q. Do you recall a dealer named Israel Gloth?

A. Yes, sir.

Q. Do you remember Mr. Gloth's advertising of his non-sponsored TBA products?

A. Yes, I do. Israel Gloth is a long-time Atlantic dealer in the Springfield district whom I knew quite well. There were occasions when I made calls on Gloth's station when he showed me both Pennsylvania's advertising and proposed advertising that he planned to run in the papers to get my opinion of whether I thought it had appeal.

Q. That would include non-Goodyear items?

A. Yes, sir.

Q. Now, in your experience have other Atlantic
3685 lessee dealers used the cooperative advertising of non-sponsored TBA products?

A. Yes, sir, they have, sir.

Mr. Kelaher: I object unless we get some definition of what is meant by cooperative advertising.

By Mr. Ballard:

Q. Would you explain to Mr. Kelaher what cooperative advertising is?

A. Well, cooperative advertising is generally, sir, where

the dealer would pay part of it and the supplier would pay part of the cost, bear the cost of, say, a newspaper ad.

Q. But the supplier would, for instance, Firestone would be a typical supplier?

A. Yes, Firestone would be.

Q. Now, again it is my recollection that in January of 1955 you became manager of the New Haven district?

A. That is correct, sir.

Q. Could you give us the approximate location or territory of the New Haven district?

A. Well, it would be approximately the southeastern third—the southwestern third of the State of Connecticut going from the coastline, running from the New York line to New London and then it goes north into the interior around Danbury on the west and then comes down fairly narrow down through Old Lyme, Wallingford, Yalesville, section.

3686 Q. About how many Atlantic dealers were there in that district?

A. There were about 135, approximately, at that time.

Q. How many would be lessee dealers?

A. Approximately a hundred.

Q. Now, your present post is manager of the retail marketing division?

A. That is correct, sir.

Q. What is your responsibility in this position?

A. Well, it is once again a staff assignment and my responsibility is, broadly speaking, the development of our retail marketing business which is primarily concerned with the development of service station business.

Q. Considering the New England region as a whole there are, of course, other oil companies besides Atlantic marketing in that region?

A. Yes, sir.

Q. Could you name the principal ones for us?

A. Well, Socony, Esso, Gulf, Sun, Tidewater, Texas, Richfield, American.

Q. Does Shell operate there?

A. Shell operates in New England.

Q. How about Cities Service?

A. Cities Service also.

Q. Calso?

3687 A. Calso is in New England.

Q. Are there also some lesser known or local brands?

A. Yes, there are some. An example of a lesser known national brand would be Crown Central that operates in a small part of New England. Then there are many private brand operators in the New England area, such as Quincy Oil in the Boston market, Merritt, Save Way. There are many, many others that operate just two or three stations, independents.

Q. In general, do these companies operate largely through lessee dealers?

A. Yes, particularly the greater number of the majors that I talked about originally.

Q. Is there competition between the companies in attracting qualified dealers?

A. Very definitely, sir.

3688 Q. In your experience, can a successful dealer get a lease from almost anyone of these companies?

A. Yes, successful good dealers are very definitely in demand in the industry today, and there is no question in my mind but what a well-qualified, proven dealer not only can get a lease from any supplier but is quite often solicited to change from his present brand to some other supplier.

Mr. Kelaher: I object to this testimony concerning the solicitation by other companies of any dealers unless he has more specific information.

Hearing Examiner Kolb: I think he testified as to the general fact. I will overrule the objection.

By Mr. Ballard:

Q. Mr. Walsh, can a successful contract dealer also change his supplier?

A. Yes, he can, sir.

Q. Speaking now, confining yourself to the New England region, is Atlantic able to compete on even terms with the other oil companies in attracting dealers?

Mr. Kelaher: Objection to that question. That is speculative.

Mr. Ballard: That is what the man does all the time. He has just testified to it, that there is constant competition, and I am now asking him what his competitive situation is with respect to other oil companies.

3689 Mr. Kelaher: You asked him if they compete on even terms. I say it is speculative.

Hearing Examiner Kolb: I think he can testify what he does to compete with the other companies. I will sustain the objection as far as the question in its present form.

By Mr. Kelaher:

Q. Mr. Walsh, are other oil companies better known to the public in New England than Atlantic?

Mr. Kelaher: Objection, your Honor. I don't think he can speak for the general public.

Mr. Ballard: Your Honor—

Hearing Examiner Kolb (interposing): Objection overruled.

By Mr. Ballard:

Q. You may answer the question, Mr. Walsh.

A. In my opinion, sir, there are other oil companies in the New England area that have greater acceptance and are better known to the public than Atlantic.

Q. Does the fact that they are better known and have greater acceptance make it easier for them to attract lessee dealers?

Mr. Kelaher: I object to that question, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: In my opinion, sir, it does make it easier for them to secure quality dealers.

3690 By Mr. Ballard:

Q. What does Atlantic do to counteract that competitive advantage?

A. Well, we attempt to counteract any competitive advantage through acceptance by, first of all, providing a complete program for any prospective dealers which would involve such things as modern stations, training programs, and complete stock and supply program.

Q. Does that include TBA?

A. Yes, it would, sir.

Q. Now, sir, turning for a minute to Atlantic as a whole, its over-all operations, do you know how many stations Atlantic has—that is, lessee stations—has built since World War II, approximately?

A. I can give you a figure for the last—from '48 to the present '58.

Q. For the last ten years.

A. In the last ten years we have contracted approximately 1300 service stations in our whole market.

Q. And have you in addition reconstructed or remodeled some?

A. Yes, we have, sir, approximately 285 have been remodeled.

Q. And I assume that some stations have been decommissioned?

A. That is correct, approximately 500.

Q. I believe it is stipulated that the approximate cost,

investment per service station is $50,000. Is that 3691 in accordance with your recollcetion?

A. Yes, it is.

Q. Now, Mr. Walsh, for the record, although I am sure it is not news to anybody here, where is Atlantic's principal office?

A. In Philadelphia, Pennsylvania.

Q. And where is its largest refinery?

A. In Philadelphia, Pennsylvania.

Q. Do you know about how many employees it has in this city?

A. In the metropolitan area of Philadelphia it is my understanding that there are approximately 7500 employees, Atlantic employees.

Q. Do you know approximately how many dollars of service station products and services they buy in your Philadelphia suburban district?

A. I know that for the year of 1957, and it was $1,250,000, about, round numbers.

Mr. Kelaher: Your Honor, I would like to have a clarification of that question and answer. Prior to that he asked how many employees were in the metropolitan area. Atlantic employees, 7500.

Mr. Ballard: That is right. The question was how much products and services they buy in the suburban district.

Mr. Kelaher: I would like to have a clarification of employees.

Hearing Examiner Kolb: Are you asking what the 3692 employees buy?

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: I believe that this testimony is relevant

because we had testimony here some years ago about the competition and effect on competition in the Philadelphia area. It seems to me that Atlantic is entitled to show that in the Philadelphia area it has 7500 employees who are presumably pre-sold customers, that they do buy a very substantial amount of goods here, and presumably it affects the marketing conditions in this area.

Mr. Kelaher: Are you finished?

Mr. Ballard: Yes, I am.

Mr. Kelaher: I don't recall any evidence which went to competition through the business of Atlantic employees. If there is, it is news to me.

Mr. Ballard: Now, your Honor, may I suggest this example to you. There is, I believe, an Atlantic service station outside the gates of the Atlantic Refining Company. I dare say that that service station makes a point to follow the Atlantic programs and the Goodyear programs as they are announced, and I dare say that if some of the witnesses that Mr. Kelaher called had that station in
3693 mind when they said they can't sell generally to Atlantic station that there would be a perfectly legitimate reason that they can't, that those stations have an unusual loyalty to Atlantic. It seems to me that is self-evident.

Hearing Examiner Kolb: You are talking now about a station outside the gate.

Mr. Ballard: Your Honor will be surprised at how many of the stations that were testified about in this proceeding are within a very few miles of Atlantic Refinery's gate, sir.

Mr. Kelaher: What has that got to do with 7500 Atlantic employees? You still haven't found the connection there.

Mr. Ballard: I think I have made my point. I will ask his honor to rule.

Hearing Examiner Kolb: I will sustain the objection

and I will sustain the motion to strike the amount of TBA and other products which Atlantic employees purchase. That is presumed from the Atlantic Company.

Mr. Ballard: No, sir, they purchased those from Atlantice service stations—

Hearing Examiner Kolb: (Interposing.) Atlantic service station, yes.

Mr. Ballard: Yes, sir.

Hearing Examiner Kolb: You have no figures of 3694 what they bought from Shell or Firestone someplace else.

Mr. Ballard: No, sir.

Do I understand that the number of employees in the city, however, remains in the record?

Hearing Examiner Kolb: That is right, yes.

By Mr. Ballard:

Q. Now, Mr. Walsh, do some Atlantic employees leave Atlantic's employ and take up the operation of Atlantic service stations?

A. Yes, sir, there have been a number of them.

Q. Do you know what percentage of the lessees in the Philadelphia suburban district are former Atlantic employees?

A. Yes, sir, approximately 25 percent.

Mr. Kelaher: Is that the Philadelphia suburban district?

Mr. Ballard: Yes, sir. I have been trying to make that very definite, Mr. Kelaher.

By Mr. Ballard:

Q. I take it that a substantial number of Atlantic's directors live in Philadelphia?

A. Yes, sir.

Q. And its officers?

A. Yes, sir.

Q. Now, Mr. Walsh, returning to the New England region, and specifically to the districts where you were district manager, was it a part of the procedure for
3695 the Atlantic franchise to be explained to new dealers and dealer prospects by the Atlantic salesmen and sales supervisor?

A. Yes, very definitely. The Atlantic franchise was provided for the purpose of giving an overall picture to any prospect by the salesman, first of all, as to what the company had to offer as well as what the particular location that he was interested in had to offer. The salesman, after coming to his conclusion that the man was worthwhile talking to or considering seriously as a prospect, would bring him to the sales supervisor and at that time the whole program would be once again reviewed.

Q. When you were district manager, did you try to see dealer prospects as well?

A. Yes, sir, as many as possible.

Q. Did the discussions with these dealer prospects include an outline of the TBA program?

A. Yes.

Q. And did they include a statement of Atlantic's TBA policy?

A. Yes, it did. I would like to say that in reference to that that it would usually be handled by the salesman and the sales supervisor. In my own particular instance, I would not always go into the TBA program in detail other than to ask in my interview with the prospect, whether it happened, whether he was aware of what was available.

Q. As district manager, were you satisfied that your salesmen and sales supervisors were properly ex-
3696 plaining it?

A. Yes, I was.

Q. Mr. Walsh, does Atlantic have an interest in the business success of its dealers?

A. Very definitely.

Q. Would you elaborate that a little bit?

A. Well, first of all, as I stated earlier good dealers are difficult to find. When a company has a good dealer, it is of vital interest to them that that man be successful for fairly obvious reasons. First of all, because the success of the dealer and his growth affects very definitely Atlantic's growth. The second thing is the replacement of dealers in service stations is an extremely expensive proposition. Our new dealers are trained and to send them through a training program will cost anywhere from $750 to $800 per man. In addition to that, when they are put in their service station, we assign what we call a retail specialist to work with them for a period of up to two weeks. That man is there to help him get set up, to help train his employees in proper drive-way service, and so forth, and that involves an expense of somewhere, oh, between $200 and $300.

And then, of course, in the case of losing a dealer, there is a tremendous amount of time and obvious expense on the salesman's part looking for a good replacement.

Those two factors, the growth of our sales volume that we, as sales people, are particularly interested in, plus the cost of replacement are two real important rea-
3697 sons why we are very much interested in the success of the dealer.

Q. When a dealer is replaced, is there a loss of gallonage at the station as a result of that?

A. In most instances, yes, because a well-established dealer has his own personality, he has developed his own following, people would like to do business with him. If he goes out of the service station, the new man has to establish that liaison all over again. Particularly if the first dealer goes out and takes another station somewhere in the neighborhood, that makes it just that much more difficult.

Q. I take it; however, that regardless of your efforts, some dealers do become dissatisfied and want to leave their station?

A. That is correct, sir.

Q. Is it Atlantic's policy to hold the dealers to the term of his lease in such cases?

A. No, sir, what we hope will happen is that the dealer will stay there long enough for us to find a replacement for him, frankly, but if he doesn't want to we sign a mutual cancellation with him and he vacates the station prior to the expiration of his lease, in all instances that I know of.

Q. In your experience, are these terminations generally on a mutual basis?

A. Yes.

Q. Do you recall any case in which Atlantic terminated a dealer's lease when the dealer did not wish to leave
3698 the station?

A. Yes. I had one instance, talking of a personal instance, where a dealer did not particularly want to leave the station in Springfield and he did leave because his housekeeping and maintenance of his station didn't come anywhere near our standards. He had been talked to and he made no improvement and he went out of the station as a result of that.

Q. Is that the only experience of that kind?

A. That is the only experience of personal knowledge that I have.

Q. Did TBA have any part in that incident?

A. Definitely not.

Q. When a dealer leaves a station, what generally happens to his inventory of TBA?

A. Depending on its condition. If his TBA inventory is in saleable condition, generally speaking, the incoming

dealer will buy those articles, items from the outgoing dealer at the price that the outgoing dealer paid for them.

Q. Is that true regardless of the brand of the items?

A. Yes.

Q. Now, Atlantic has a so-called long-term dealer lease policy, is that not correct?

A. That is correct, sir.

Q. Has that been reduced to writing?

3699 A. Yes, sir, it has.

Mr. Ballard: Will you mark this R-A-31-A through -F.

(Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 31-A through 31-F for identification.)

By Mr. Ballard:

Q. Now, Mr. Walsh, I show you this document marked R-A-31-A through -F, and ask you is that Atlantic's long-term dealer lease policy (handing document to the witness)?

A. Yes, sir, it is.

Q. Now, is this policy in effect today?

A. Yes, it is.

Q. Do you recall the date when it was first adopted?

A. Not the exact date, but it was in 1953.

Q. I call your attention to the fact that it skips from Attachment 1 to Attachment 3. As I understand it—we will lead the witness now with your permission, Mr. Kelaher—Attachment No. 2 was the B3191 lease form. Is that correct, according to your recollection?

A. Yes, it is.

Mr. Kelaher: If you don't know, that is already in evidence, is it not?

Mr. Ballard: Yes, it is the form of B3191.

By Mr. Ballard:

Q. Now, referring for a moment to page B of this 3700 exhibit, which is Attachment No. 1, that appears to be a form of letter to be sent to Atlantic dealers. Is my understanding correct?

A. That is what its purpose is.

Q. Was that letter, in fact, sent to dealers by Atlantic or its regions?

A. Yes, I know specifically of two instances where it was sent to dealers at the regional level.

Q. In other words, two regions?

A. Yes.

Q. Attachment No. 3 is the so-called 11-point lease letter. Is it Atlantic's practice to give the letter containing those 11 points to each lessee?

A. Yes, it is.

Q. Attachment No. 4 is a proposed reporting procedure to be used—well, it is a proposed reporting procedure. Is that procedure being followed and carried out in Atlantic today?

A. Yes, it is.

Q. And has it been at all times since the policy was adopted?

A. To the best of my knowledge, it has.

Q. Now, Mr. Walsh, turning to the subject of station inspection programs. Would you describe briefly the various kinds of inspections that are made of Atlantic service stations?

A. Yes. There are formal inspections, to use that word, made at the regional level and at headquarters level by what we call a shopper program. The shopper would 3701 be an employee that is not known to the dealer, drives in to the service station in a regular automobile, receives service at the pump island, looks the station over from an appearance point of view, and checks the rest-

rooms for maintenance of supplies and standards of cleanliness. He then, still without identifying himself, if possible, to the dealer leaves the station and scores the results of that inspection on a form that he is provided.

The results of those inspections are forwarded to the region office, thence to the district, and then to the salesman to discuss with the dealer.

Q. Do those inspection forms contain a place to show the brand of TBA that the dealer happens to be handling?

A. They do not, sir.

Q. In your experience, do the reports, regardless of whether there is a place on the form, do the reports themselves show that information?

A. No, sir.

Q. Mr. Walsh, is the Atlantic credit card available for use by a dealer regardless of the TBA brand he handles?

A. Yes, it is.

Q. Are loans and station improvements also available regardless of the TBA brand he handles?

A. That is correct.

Q. Is it an object of your dealer program to develop a friendly relationship between your dealers and their Atlantic salesmen?

3702 A. Very definitely.

Q. Do you think you have been successful in obtaining that object?

A. Largely I believe we have.

Q. Mr. Walsh, do you recall the approximate number of Goodyear supply points who were serving Atlantic dealers in the Springfield district and the New Haven district when you were there?

A. The approximate number of Goodyear supply points?

Q. Yes.

A. Well, I will have to guess now.

Q. Would it refresh your recollection if I suggested that it was about a dozen in each district?

A. I was going to say something a little less than that.
Q. What were you going to say?
A. I was going to say around seven or eight.
Q. In each district?
A. Yes.
Mr. Kelaher: Is this at the time he was in those areas?
Mr. Ballard: Yes. Off the record.
Hearing Examiner Kolb: Off the record.
(Discussion off the record.)
Hearing Examiner Kolb: On the record.

3703 By Mr. Ballard:

Q. In addition to those supply points, were there other TBA suppliers calling on your dealers?
A. Yes, there were.
Q. You recall the approximate number of other TBA suppliers in the Springfield district?
A. It would be somewhere in the neighborhood of eight or nine, maybe ten.
Q. In the New Haven district?
A. More than that, around 15, 13 to 15.
Q. And from your knowledge of the New England region, are there other TBA suppliers than Goodyear calling on Atlantic dealers?
A. That is right.
Q. That would be true throughout the region?
A. Yes, sir.
Q. Could you give us a description of the kinds of businesses that these suppliers are engaged in, general classification?
A. Oh, as a general classification, most of these people are automotive supply points that have carried the business beyond the supply of just automotive parts and have gone into accessories, some of them to carry batteries, and some of them have a short line of tires.

Q. By a short line you mean—

A. (Interposing.) Not a full stock and not cover-
3704 age all the way across the board.

Q. In your experience and observation, do Atlantic dealers make purchases from these other suppliers?

A. Yes, sir, they do.

Q. And do they display outwardly the things they purchase from them?

A. That is right.

Mr. Kelaher: I object. He is talking about his personal knowledge. I think it should be qualified to that extent.

By Mr. Ballard:

Q. Do the answers you have just given apply to the New England region?

A. Yes, sir, they do.

Q. Do you know of any Atlantic dealer why buys TBA exclusively through his Goodyear supply point?

Mr. Kelaher: Objection, your Honor. There is no qualification to this question either.

Hearing Examiner Kolb: If he knows any dealer that does buy, I think it is all right.

Mr. Ballard: I think you can guess the answer.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Ballard:

Q. You may answer, Mr. Walsh.

A. To my knowledge, I don't know of any Atlantic
3705 dealer that buys everything through the Goodyear supply point, TBA.

Q. Now, in your experience, and needless to say that includes the New England region—I will limit my question to the New England region—does the success of the Goodyear supply points in selling to Atlantic dealers vary from one supply point to another?

A. Very definitely. In fact, that is one of the key reasons why some are eminently successful and others are not. The dealer will buy, our dealers, any dealer will buy from a supply point that can give him quick service that carries an adequate stock of all the things that he can resell through his station so they don't have to back order, that is competitive on pricing, and that very definitely will give him this quick service that he is looking for.

Another thing, another factor that enters into it is a question of credit, of the credit limits that are offered to a dealer and the credit payment arrangements. If a supply point can satisfy the dealers on all of those things that I have just mentioned, they will do very well. I personally know of some that have done extremely well because of that.

Q. If they fail to measure up in those terms, do they not do so well?

A. In my opinion, they don't do as well as they could because the dealer just will try them once or twice and if they can't satisfy the needs, he goes elsewhere.

3706 Mr. Kelaher: I object, and move to strike unless he specifies the dealers.

Hearing Examiner Kolb: The objection will be overruled.

3707 By Mr. Ballard:

Q. Mr. Walsh, in your view is it necessary for Atlantic to supply a TBA program for its dealers?

A. Yes, I feel very strongly that we must provide a TBA program for our dealers.

Q. Would you expand a little on the reasons for that?

A. I would be happy to.

First of all, a man that is going into a service station business, it is not just a business now of selling gasoline and motor oil and lubricating a car. The customers are

getting more and more used to getting one-stop service. That includes having your TBA items available at the location. The good dealers know this. The better dealers capitalize on this to try to keep their customer close to them at all times. People that are going into the business who are going to take over a service station would expect a supplier to have a complete program, that is the training, the modern facilities and your supply that I mentioned earlier, that there be a complete package for him. We must have that in order to have a dealer successful and have ourselves successful.

Q. Do you feel that you cannot rely on local distributors to supply these needs to your dealers?

A. In my opinion I don't believe we can rely on the local distributors because some of them do not carry
3708 a full line, some of them are not aware of the dealer's finances, the pattern of operation; they don't know him well enough to be able to advise him on proper stock levels to keep, and so forth. They might get him a little heavy on one thing and it is going to take him a long while to move. And a dealer today works on turnover, that is how the successful businessman operates. It is not how much he has got in stock, it is how rapidly he turns it over and the guidance and the proper balanced TBA program will determine how rapidly his turnover is and how much profit he makes.

Q. Now, sir, Atlantic has a so-called extra compensation plan, does it not, for promotable dealer salesmen?

A. It does.

Q. I believe that went into effect April 1, 1956?

A. Yes, sir.

Q. I recognize I am leading the witness, Mr. Kelaher. I will stop when I get past these introductory questions. Do you know taking the year of 1957 how many pro-

motable dealer salesmen were eligible to participate in that plan?

Mr. Kelaher: In what region?

By Mr. Ballard:

Q. In Atlantic; in the company?

Mr. Kelaher: In the company as a whole?

Mr. Ballard: Yes, sir.

Mr. Kelaher: Are you talking about the six mar-
3709 keting regions?

Mr. Ballard: Yes, Atlantic.

Mr. Kelaher: Just so we get the areas specified. Go ahead.

Mr. Ballard: Yes, sir.

The Witness: In the entire company as a whole, 138 promotable dealer men participated.

By Mr. Ballard:

Q. And do you know what the total compensation paid to them for all services and products was?

A. Total dollar volume?

Q. Yes.

A. It was in excess of $23,000.

Q. Do you know what the payments on account of TBA gains were?

A. Forty-eight hundred-odd—forty-eight hundred ninety or ninety-nine dollars, somewhere in that neighborhood.

Q. That is company-wide?

A. Yes, sir, this is company-wide.

Q. Mr. Walsh, in setting the percentages under its new percentage leases and in setting the per gallon charges under the older leases, what was Atlantic's aim and policy in fixing those amounts?

A. Well, on setting the method or rate of paying rent we were primarily interested in two things, first of
3710 all keeping it fair so that it would not be an excessive

rental from a dealer's point of view, and at the same time be at a level where we could attempt to recover our cost of investment in the—

Q. Over the years have your rents equalled or exceeded or fallen short of your costs in operating the program?

Mr. Kelaher: Your Honor, I am going to object to this line of inquiry. I think the records are the best evidence as to whether or not the rate of their return has exceeded, been the same or been lower than their investments in their stations.

Mr. Ballard: This man is a policy-making man of Atlantic, your Honor. He knows the answer.

Mr. Kelaher: He asked a very general question which isn't limited to any specific year or month, any specific region, and I think it is not the best evidence.

Hearing Examiner Kolb: Read the question, please.

(Question read.)

Mr. Ballard: I am not asking for figures, your Honor, I am simply asking whether the relationship—

Hearing Examiner Kolb: I will overrule the objection. The witness may answer.

A. In general our rental return has fallen somewhat short of our rent paid out.

3711 By Mr. Ballard:

Q. By your rent paid out you mean what?

A. That is, rent paid out would mean that amount of money paid to lessors in the instance where we lease properties, it covers taxes, and it would cover depreciation, also maintenance and what improvements might be made on the property.

Q. And we are speaking now of the stations that Atlantic leases to lessee dealers?

A. That is correct, sir.

Q. Now, in operating its TBA program does Atlantic

aim for any particular portion of the total TBA purchases of its dealers?

A. No, sir, they do not.

Q. Does Atlantic keep statistics showing the portion of the total TBA purchases of its dealers represented by sponsored TBA?

A. No, they do not.

Q. Does Atlantic—you do, I assume—attempt to increase your sales of sponsored TBA to your dealers each year?

A. Very definitely, that is one of the reasons that I exist and a number of other people in the company exist, like any sales force we are trying to increase our sales to and through our dealers in all products which would include TBA.

3712 Q. In operating the program do you aim to recover the cost of operation of the TBA program from your TBA commissions?

A. We hope for that, yes.

Q. Do you keep a running account of the cost and the commissions?

A. No, sir, we don't.

Q. Over the years what do you think the relationship has been between them?

Mr. Kelaher: Objection. He said they keep no records.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Ballard:

Q. Now, Mr. Walsh, comparing the year 1952 with the year 1957 has there been an increase in the number of Atlantic lessee dealers? I am speaking company-wide now?

A. Yes, there has been; approximately 24 percent increasse.

Mr. Kelaher: Your Honor, we have stipulated figures

showing specific numbers of lessee dealers from 1951 through 1956, I think.

Mr. Ballard: I am asking him '52-'57, Mr. Kelaher. You will find that the figures will go along with this. I am certainly entitled to ask these questions of the witness.

Do you have a motion?

3713 Mr. Kelaher: I am trying to save you some time. We already stipulated what the figures are.

Mr. Ballard: You have already consumed more time than my next three questions.

Mr. Kelaher: You go ahead.

By Mr. Ballard:

Q. During the same five-year period have gasoline sales per lessee dealer increased?

A. Yes, sir, approximately 20 percent.

Q. Now, making adjustment for price increases during that period amounting to 25 percent on tires, zero percent on batteries, and 15 percent on accessories—

Mr. Kelaher: I—you go ahead and ask the question, I am going to object.

By Mr. Ballard:

Q. (Continuing.) —after making those adjustments has a calculation been made to show the increase in sponsored TBA purchases per lessee dealer?

Mr. Kelaher: I object.

Mr. Ballard: He can answer.

Mr. Kelaher: I object because he—I have a right to object before he answers.

Mr. Ballard: I asked him if a calculation has been made.

Mr. Kelaher: I have a right to object before he
3714 answers. He is premising his answer on a proposed or purported set of figures which this witness has not testified to. He didn't ask this witness what the ratios

were of increases. No foundation has been laid for the question.

Mr. Mason: The foundation is already in the record.

Mr. Ballard: It was laid yesterday, Mr. Kelaher, I don't know whether you recall it or not, but Mr. Shafer testified those were the amounts.

Mr. Kelaher: He said some off the cuff increases.

Mr. Mason: I would like to speak to counsel's remark about they were off the cuff observations in the record. This particular question that came up in Mr. Shafer's question was the subject of argument, objection, and your Honor permitted the answer. I think the term "off the cuff answer" is a thoroughly improper statement of counsel in this record.

Mr. Kelaher: I would like to remind counsel yesterday you were cross-examining Mr. Shafer. Now today you are defending Mr. Shafer. I don't know where you stand with respect to Mr. Shafer.

Mr. Mason: All of Mr. Shafer's testimony will be throughly grounded.

Hearing Examiner Kolb: Objection overruled.

3715 Mr. Ballard: Has such a calculation been made, sir?

The Witness: To my knowledge it has been.

By Mr. Ballard:

Q. What did it show?

A. It showed that sponsored TBA sales have increased from '52 to '57 of approximately 12 percent.

Q. That is after making allowances for the price changes?

Mr. Kelaher: I move to strike his testimony. I don't think a proper basis has been laid for any such computation.

Mr. Ballard: Before your Honor rules may I say this: Mr. Shafer of course, did give us these figures yesterday.

I am prepared if your Honor wishes to have the witness testify as to what efforts he has made or have been made to check these figures, if your Honor feels that that would assist in his ruling.

Mr. Kelaher: Your Honor, there are many, many studies made by the government, by private individuals, showing instances in prices and there are variations between those prices and those price differentials. You have various types of indices to show these things. Now, we are entitled to know the basis for the computation being made by counsel. This is a very unique way of attempting 3716 to show this particular type of problem.

Mr. Ballard: Your Honor, may I suggest that if Mr. Kelaher feels that these are not the right figures he has the opportunity on rebuttal. He has the opportunity on cross-examination. His arguments, it seems to me, go to the weight and not admissibility. I should think your Honor would be interested in how much these sales have gone up.

Hearing Examiner Kolb: General information, that is one thing. If it means you are going to place a certain argument on the fact that the figure was 12 percent and not 13 percent or something of that sort then I say you haven't laid a basis for it.

Mr. Ballard: No, I will state to your Honor that the purpose of this testimony is to show that the increase in purchases of sponsored TBA over this five-year period has been in line with and not exceeded the increase in gallonage per dealer. It seems to me that those two are interesting and important information in the case and that your Honor is entitled to have them.

Hearing Examiner Kolb: I will let the answer stand.

Mr. Kelaher: Your Honor, I would like it to be—I want to hear no arguments at the conclusion of this case based on cost of living increases other than as stated by counsel.

3717 Mr. Ballard: Now, Your Honor, I hope you are not going to foreclose me from any argument at this time. I may have foreclosed myself.

Mr. Kelaher: Unless it is specifically limited.

Hearing Examiner Kolb: I know what this testimony is worth on the basis of how it is given, so we will go on from there.

Mr. Ballard: Cross-examine.

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Mr. Ballard: Your Honor, before cross-examination begins I would like to offer Exhibit RA-31-A through F in evidence.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A31-A through F.

(The document heretofore marked RESPONDENT ATLANTIC'S EXHIBIT 31-A through F for identification was received in evidence.)

Cross-Examination by Mr. Kelaher.

Q. Mr. Walsh, you gave some testimony concern-
3718 ing your work on a model station committee. Do you recall that testimony?

A. Yes, sir, I did.

Q. And at that time you were sales supervisor in the Providence district, is that correct?

A. That is correct, sir, that was the title.

Q. And what was the objective of the model station program?

A. Well, primarily, sir, to develop more complete and efficient methods of marketing through service stations by looking at our station design, that is the physical layout,

the physical equipment, to determine a simple and efficient method for the dealer to take care of his accounting records so that he would know where he stood, to investigate such things as lighting, display techniques, display cabinets, display shelving and things like that within the station.

Q. Did the appearance of the station enter into your work?

A. Yes, I would say it would.

Q. By that would you explain that?

A. Well, by the appearance it would be. We were looking for some simple means of making the housekeeping chores easier for the dealer such as design and placement of drains and things like that. Over-all appearance, of course, we had already adopted the porcelain enamel front for our stations but there was some more de-
3719 velopment along those lines.

Q. Did your color scheme enter into your work, too, or had that been pretty well set?

A. No, sir, that had been fairly well established.

Q. Would it be fair to say that you were striving for a degree of uniformity among your outlets with respect to the appearance?

A. Not so far as this particular committee was concerned, because that had been somewhat established beforehand with the adoption of the red, white, and blue porcelain enamel.

Q. So, from Atlantic's standpoint it is to its advantage to have uniformity among its stations, is it not, insofar as appearance is concerned?

A. From the point of view of customer recognition, I would say Yes.

Q. And that is an important part of service station operations, is it not, among all service stations, among all companies?

A. The idea of uniformity.

Q. The idea of being easily recognizable from the color standpoint as the customer approaches it?

A. Well, I am not so sure it would be color as much as it would be insignia, frankly.

Q. For example, Shell has yellow and red, for example; Atlantic has the red and the white and the blue?

3720 A. Yes.

Q. And other stations have other designs?

A. Yes, just to expand for a moment on it sir, there are a number of major companies, of course, that have not duplicating but similar color schemes, so that the thing you work on would be the insignia.

Q. But the thing from the Atlantic standpoint is to fix in the consumer's mind what an Atlantic station looks like so that when he approaches it he will know it is an Atlantic station and if he wants Atlantic it will be easily recognizable?

A. That is correct.

Q. And that has advertising value, does it not?

A. To a limited degree I would say it does.

Q. Persons interested in Atlantic products would certainly be attracted by the insignia?

A. Yes.

Q. At that time in your work on the model station committee, did you get into service station identification?

A. No, I don't believe we did, sir.

Q. At that time—excuse me, were you finished?

A. I am trying to think to give you a complete answer. No. I am quite sure we didn't get into that.

Q. Was that pretty well established at that time, too?

A. Yes, I think it was. We had already established

3721 the what we call the 56 sign, the Atlantic sign at the curb, the red, white and blue porcelain.

Q. With respect to TBA was that pretty well established, with respect to Lee, Exide, at that time?

A. I would say that from the point of view of the material being in the station, the point of sale material, yes, that was pretty well established.

Q. I am talking about window valances and outdoor signs, too?

A. Yes.

Q. That was well established at that time?

A. Yes.

Q. Isn't it true that after that time, after 1951, when Atlantic began to sponsor the Goodyear TBA program that the service station identification program of Atlantic was changed to include the Goodyear TBA window valances and Goodyear outdoor pole signs in Atlantic stations?

A. That is right.

Q. That is correct, isn't it?

A. Yes.

Q. And that would be true also of the Firestone TBA program in the three marketing regions in which Atlantic sponsored Firestone TBA, isn't that correct?

A. At the time that you are talking about I had no contact with the Firestone region, sir; I presume that
3722 that would be true.

Q. It is true today, is it not?

A. Yes, it is.

Q. During your direct testimony you gave us an estimate of the number of lessee stations in the Springfield district when you were district manager. The remainder, of course, were contract stations?

A. Yes.

Q. Now, just to refresh on the figures, was 95 Atlantic dealers, of this number 55 to 60 were lessee dealers; that would leave approximately 35 as contract dealers?

A. About, yes, I believe.

Q. Of that number how many were so-called real service stations? That is service stations handling TBA?

A. I would say about, oh, 24 to 27, in that neighborhood.

Q. They were complete service stations?

A. They would be what we refer to as stations with facilities.

Q. They were promotable dealers, would you call them?

A. Not necessarily what you would call a promotable dealer. They would have service facilities so that they could lubricate, wash, do other service work. I know the actual differentiation, sir, the ones that we haven't accounted for at this point would be the grocery store operations where they just have a pump out in front.

3723 Q. With respect to the New Haven district the contract dealers there approximated 35 according to your figures. Of that number how many would be real or complete service stations similar to a lessee dealer station?

A. I would say about the same number. I am guessing at this point, but we have very few in New Haven that didn't have facilities.

Q. Do you mean that the number you referred to, 24 or 27 in each district carried TBA, sold TBA, or were they garages and things of that type?

A. Well, some would be garages, most of them, however, I would say, I am going back now, dredging a little, would be what you would call a service station outlet.

3724 Q. You testified on direct examination that there were other oil companies in the New England region having greater acceptance than Atlantic. Do you recall that testimony?

A. Yes, sir, I do.

Q. Isn't it true that there were also other oil companies with lesser acceptance than Atlantic?

A. Yes, sir.

Q. Actually, Atlantic is one of the majors in the New England region, is it not?

A. Yes, it would be classified as a major.

Q. So, it is easier for Atlantic to secure dealers than some of the oil companies with lesser acceptance in New England region, is it not?

A. Yes, I would agree to that. It is a question of relativity there.

Q. Now, you outlined the procedure for interviewing dealer prospects. As I recall your testimony, you stated that your TBA policy was explained at various levels, is that correct, in interviewing a dealer prospect?

A. Yes, it is explained at various levels, not necessarily according to a formal procedure; in other words, it doesn't necessarily mean that the salesman explains it, then the supervisor explains it, and then the district manager explains it in every instance. But during this interviewing process, the TBA program is explained.

3725 Q. The salesman makes it known initially to the dealer prospect that Atlantic in that region is sponsoring the Goodyear TBA program; is that correct?

A. Yes, he would.

Q. And that is repeated by the sales supervisor and then by the district manager at times?

A. In some instances.

Q. And then, when the dealer prospect goes to a training school, do you have a dealer training school in the New England region?

A. Yes, sir, we do.

Q. And at that time Atlantic's sponsorship of Goodyear TBA is again called to the dealer applicant's attention, isn't it?

A. That is correct.

Q. As I understand your testimony, you personally have interviewed dealer applicants and discussed TBA with them?

A. Yes, sir, I have.

Q. Have you called their attention to the fact that Goodyear TBA or that other Atlantic dealers sell Goodyear TBA in the region?

A. I could well have. I don't remember having done it either omitted it or not. Ordinarily, sir, let me explain my answer to you a little bit.

3726 Ordinarily, when we are talking to a prospect we talk about the need to have a balanced program in his station and usually the question of where, how does he get it, where does it come from what does he need, comes up in the course of these interviews and discussions. In many instances, the conversation would revolve around the supply point that he could talk to that would be closest to his particular service station.

Q. Are you referring to the Goodyear supply point?

A. That would be a Goodyear supply point.

Q. And you, as a selling point, make it known to him that other Atlantic stations in the region carry the Goodyear service station identification?

A. I think—no, I can't think of an instance where I did do that. I have talked, I am sure, however, of the Goodyear program as such, that is, indirectly.

Q. And haven't you talked of the Atlantic-Goodyear program as such?

A. Yes, I am sure I must have. I can't remember a specific instance but I am sure I must have in covering the whole program.

Q. In other words, haven't you told the dealer in one form or another, directly or indirectly, that Atlantic and Goodyear are identified together in the New England region?

A. Yes.

3727 Q. Now, with respect to the initial stock you just mentioned, how do you normally handle that? Do you normally have the Goodyear salesman call on

the dealer at the time he opens the station, or do you have the Goodyear TBA stock in the station when he opens, if it is a new station?

A. We are talking about a new station?

Q. Yes.

A. In the case of a new station, ordinarily our Atlantic salesman goes over the stock requirements of everything, going from gasoline through motor oil, TBA, equipment, supplies, everything else, and it depends, obviously, on the amount of finances that are available as to the stock level. The stock itself ordinarily when the dealer goes into a new service station he will have been to the supply point—

Q. (Interposing.) The Goodyear supply point?

A. Most likely the Goodyear supply point, yes, with the salesman. He would have been through our warehouse, of course, where our particular gear is, and then at the time that he moves in to the service station, there would be on that day, but not necessarily the day of opening, but the day when he actually goes in the materials according to what he has decided, he and the salesman have worked up this basic inventory list, that material would start being delivered during that day.

Q. Are you including in your answer Goodyear TBA?

A. Yes, sir, I am.

3728 Q. Now, do you require the dealer to invest any money in his station? Isn't a minimum investment required for a new Atlantic dealer?

A. Yes, the dealer has to make something.

Q. What is it in the New England region?

A. The minimum investment in the New England region is a thousand dollars.

Q. Isn't that the minimum in all of Atlantic's regions at this time?

A. Yes, it is.

Q. And at times do you loan money to new dealers, incoming dealers?

A. Yes, we do.

Q. And can that loan be in the form of stock of various types, gasoline, petroleum, Goodyear TBA, etc.? How does that operate?

A. Well, we finance the dealer through a regular financing program approved by our credit department for "X" number of dollars, and that money would be utilized to purchase stock.

Q. That would include Goodyear TBA?

A. It could very well include Goodyear TBA.

Q. Isn't Atlantic's primary concern with its lessee dealers to obtain a reasonable return on its investment in its lessee stations? Isn't that Atlantic's primary
3729 interest in the operation of its lessee stations?

A. I would like, if I may—

Q. (Interposing.) You can answer Yes or No, and then amplify if you want.

A. The answer is Yes. Now, if I may, I would like to amplify that.

Q. Sure, go right ahead.

A. We obviously, like any corporation, are in business to make a profit; however, the way that we are attempting, one of the jobs that I am trying to do is get the return on that investment through the increase in business that goes through those stations.

Q. So, from Atlantic's standpoint it is to your advantage to weed out the unprofitable dealers, is it not?

A. Yes.

Q. Yes?

A. Yes. What happens, sir, is that usually the unprofitable dealers weed out themselves. It is not necessarily a policing action through Atlantic.

Q. But if the need arises it becomes a policing action, does it not?

A. It could become a policing action, yes.

Q. I am going to refer you to RX-A-31-B and call your attention to the second paragraph of this long-term dealer lessee letter, as I understand it, which goes to each
3730 lessee dealer; is that right?

A. Yes, sir.

Q. "You know without being told that each Atlantic station which is well run helps all your fellow dealers operating Atlantic stations, and we also know what the 'dogs' do for us."

Now, by "dogs" are you referring to these unprofitable dealers?

A. No, sir. By "dogs", and I am going to have to give you a liberal interpretation of this because the phrase is not my own, we are talking, sir, about dealers who operate stations, whether profitable or unprofitable who hurt Atlantic's reputation, who hurt their own reputation, and make it distasteful for someone that trades with them to try another well-operated service station, and that, sir, has really nothing to do with whether it is profitable or unprofitable.

Q. Are you referring by the use of the term "dogs" to Atlantic dealers who do not conform to Atlantic's policies?

A. Definitely not, sir. What we are talking about—it is not a question I don't believe here of policy, Mr. Kelaher; it is a question of treatment of customers.

Q. When you become aware, in your opinion or in Atlantic's opinion, of the so-called "dog", don't you attempt to weed it out from your organization?

A. First of all—

Q. (Interposing.) You can answer Yes or No,
3731 and then you may amplify if you care to.

A. Yes, I would say we would. And the amplification that I would like to put on that, without going into too much detail, is the first thing that we are trying to do obviously with many of these stations is to correct them for the reason that I gave in direct testimony of the tremendous amount of money that is involved every time you make a change-over. If correction is impossible, they are alienating customers, they are alienating the public, and they are hurting both their own reputation and our own.

Q. That, of course, is represented by the investment of the dealer in his own particular station, is it not?

A. Yes.

Q. Now, you also referred to the fact that dealers build up a good business and then leave Atlantic. Do you recall that testimony?

A. Yes.

Q. Is it fair to say what you are referring to is goodwill built up by the service station operator, personal goodwill?

A. Yes.

Q. You also referred to one instance of the termination of a dealer's lease, and you referred to a Springfield dealer. What was the name of the Springfield dealer?

A. The name of the Springfield dealer was Fennessey Brothers, and I don't think, I can't remember and
3732 I didn't go into it in too great a depth, I don't believe it was a lease cancellation, I believe it was a mutual cancellation in that particular instance.

Q. Isn't it true that the Fennessey Brothers built up the gallonage in their station tremendously?

A. No, sir, they did not

Q. Isn't it true that they increased the gallonage in their station from the time they took it over until the time they left?

A. As I remember, sir, the Fennessey Brothers, the two brothers were doing about 11,000 gallons at the time they left. I am drawing strictly on my memory.

Q. Do you have any records available?

A. Not with me, sir, no. And they could have increased it from, say, somewhere around 7,000 or something like that, but I wouldn't call it a tremendous increase in gallonage.

Q. Well, it is a fact, is it not, that they increased it from the gallonage of the former dealer at that station?

A. I truthfully can't tell you that until I check it.

Q. Were you in that region at that time? You were in the Springfield region at that time?

A. I was in the Springfield region at that time.

Q. Isn't it true that the prior dealer's gallonage was low and the station wasn't being operated profitably?

A. Right at this point I can't tell you who the 3733 prior dealer was.

Q. Isn't it true that from time to time that Atlantic attempted to sell the Fennessey Brothers more stock then they required at their station?

A. Not to my knowledge.

Q. Do you have any—who was your salesman at that time?

A. His name was Parker.

Q. Now, with respect to your inspection program, you are referring to the phantom customer inspection program; is that right?

A. Yes.

Q. Now, I would like you to run your attention to the number of TBA suppliers other than Goodyear supply points in the Springfield district. I understood you to say, and my notes may be incorrect, but I understood you to say there were only eight or nine or ten that were suppliers of TBA in that district; is that right?

A. That I know were calling on our particular accounts.

Q. Are you referring to the metropolitan Springfield alone or are you referring—

A. (Interposing.) I am not talking of the whole district. I am talking primarily of the metropolitan Springfield area.

Q. I assume that you weren't referring to the wholesale district because I think there were many more suppliers than that in the Springfield district, aren't there?

3734 A. There could well be.

Q. Then, when you were referring to about 15 in New Haven, were you just referring to the New Haven metropolitan area?

A. That is right.

Q. And there are many more TBA suppliers of one form or another in the New Haven district, are there not?

A. I would imagine that there would certainly be more than 15.

Q. And both in the Springfield district and the New Haven district, all these suppliers may call on Atlantic stations?

A. It could well be, yes.

Q. Isn't it a fact that Atlantic dealers in the New England Region buy substantial quantities of TBA from Goodyear supply points?

A. The words "substantial" is the only thing that throws me off.

Q. You can answer Yes or No unless you have difficulty with the word.

Mr. Ballard: He is trying to understand your question, Mr. Kelaher.

The Witness: What do you mean by "substantial," sir?

By Mr. Kelaher:

Q. You stated on direct examination that no Atlantic dealer buys all of its TBA from Goodyear. Now, I am asking you isn't it a fact—

3735 Mr. Ballard (Interposing.) I hate to object. That isn't exactly a correct characterization of his statement, Mr. Kelaher.

Mr. Kelaher: Mr. Examiner, my notes may be incorrect, but I have it down here in black and white that he said no Atlantic dealer buys all of his TBA from Goodyear.

Mr. Ballard: I think it was confined to the dealers that he knew, as I think you may have omitted in your notes.

By Mr. Kelaher:

Q. Well, isn't it a fact that Atlantic dealers in the New England region purchase, buy substantial, I mean, relatively large quantities of Goodyear TBA from from Goodyear supply points?

A. I would say Yes.

• • • • •

3736 By Mr. Kelaher:

Q. Didn't you say on direct examination that among other things local distributors might tend to over-stock Atlantic dealers?

A. No, sir, I don't believe I said that. I said on direct examination that local distributors may not be in a position to know, first, the finances of the dealer, second, of all the needs for the particular location, and, third, be acquainted with balance that is required in order to get rapid turn-over of stock, and that as a result it was possible, not necessarily deliberate, but it would be possible for them to have the dealer invest moneys in some articles that did not have a rapid turn-over.

• • • • •

By Mr. Kelaher:

Q. Now, were you implying that all of the local
3737 TBA distributors in all of Atlantic marketing regions might not properly be equipped to conduct profitable business relationships with Atlantic dealers?

Mr. Mason: May I have the question reread?

(The reporter read the pending question.)

The Witness: The answer to that one is No. I make no such implication.

By Mr. Kelaher:

Q. In other words, you are not saying that there are not TBA distributors who have the interest of the Atlantic dealers just as much at heart as Goodyear in that group?

A. I am saying that there are TBA distributors who do have the—who could well have the dealer's interest at heart. I am not saying that they don't.

Q. On that same point do you think that it is necessary for all Atlantic dealers to have the Atlantic Refining Company tell them how to run their TBA business?

A. I can answer that one Yes or No?

Q. Yes or No.

Mr. Mason: I submit there is no rule of order to require the witness to give a Yes or No answer.

Mr. Ballard: I think we had better have that question reread. Could I have the question read again?

Hearing Examiner Kolb: Read the question.

(The reporter read the question commencing at line 15 of this page.)

3738 The Witness: The answer is No. It is not necessary for all Atlantic dealers to have the Atlantic Refining Company tell them how to run their TBA business. May I expand a little on that?

Mr. Kelaher: You have expanded enough on that.

Mr. Mason: He is entitled to finish his answer.

Hearing Examiner Kolb: He is entitled to finish his answer.

The Witness: I would like to say, it is only fair to say, with a new dealer, inexperienced in the business, I don't know why he should look beyond the Atlantic salesman whom he knows the best.

The other thing I would like to say, the longer a dealer is in business and the more successful that he is in that business, the better he does on it, the less he has to look to Atlantic for his guidance because he has the use of his own good judgment.

By Mr. Kelaher:

Q. Your answer then on this point, in response to direct testimony, was limited to new dealers; do I understand you to mean that now?

Mr. Kelaher: I am not having any trouble with the witness. I don't see why I have to be interrupted every two minutes.

Mr. Ballard: Well, Mr. Kelaher—

3739 Mr. Kelaher: (Interposing) If that is not the case, he can say so, can't he?

Mr. Ballard: Mr. Kelaher, I don't think it is fair for you to misquote the witness and rely on his memory to correct you. He assumes you are trying to quote him correctly and so do I.

Mr. Kelaher: I made it very clear I am trying to interpret from the past notes what he said. If anything I say is not correct, he can correct it.

Mr. Ballard: There is a verbatim reporter, if you want to quote back to him, that is what she is here for.

Mr. Mason: Counsel proceeds by characterizing the testimony, and in many instances it is wholly unnecessary to proceed with the facts without trying to go back to the record or give his truncated characterization of the record

Mr. Kelaher: I would like to say I am working under great pressure. I could have asked for deferred cross a week from now. I am attempting to expedite these proceedings instead of delaying them.

Mr. Mason: That doesn't excuse improper questions.

Mr. Ballard: If there isn't an objection to the question, I now make one, your Honor.

Hearing Examiner Kolb: What is the question?

Mr. Ballard: I don't know what the question is, your Honor, but I do recall it was objectionable.

3740 Hearing Examiner Kolb: Read the question.

(The reporter read the question commencing at line 19 on page 3738 of the record.)

Mr. Ballard: I object on the ground this question improperly characterizes the prior testimony when it says "Your answer then on this point," in that I do not recall any point or any such answer to which he can be referred.

Hearing Examiner Kolb: Well, I think it really amounts to arguing with the witness with what he said before without going into the facts we are trying to get to here, and I think on that ground this line of examination is improper. It may not be improper, but it certainly doesn't elicit any information.

Mr. Kelaher: As I understand the witness, you have testified that you think it is better for Atlantic dealers to deal with the Goodyear supply point than with local distributors. Am I right or wrong? Was that what you said? Is that your position?

The Witness: No, I don't think it was my position.

By Mr. Kelaher:

Q. What is your position, that is what I would like to know?

A. Let me try to reclarify it. I don't need to go back to the previous testimony. I don't believe I answered this one.

There are three classes of dealers really, or three types of dealers at stations: the new dealer who is looking
3741 for guidance and we think that it is Atlantic's responsibility and obligation to guide him as he goes into this station within the limits that he will accept that guidance; the second one is the dealer who is well established, knows his business, is doing an excellent job, and we also think that we should keep him aware of what our sponsored TBA program is and he accepts and rejects that part of it that he wants.

I don't think that I made any statement, sir, that it should be restricted solely to new dealers or that it should be forced testimony that it would be just on old dealers.

Q. In your direct examination you specifically said that dealers can't rely on local dealers. I can go back to the record and show it to you. We can stay here the rest of the day.

Mr. Ballard: Go ahead and find it for us, please.

Hearing Examiner Kolb: The record is gone.

Mr. Ballard: Off the record I will tell you what he did say.

Mr. Kelaher: No, you won't. I will tell you what he did say. I have it right here.

Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3742 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Let me ask it this way, then:

By Mr. Kelaher:

Q. Do you think Atlantic dealers can rely on local distributors of TBA for their supplies?

A. In practically all instances I guess I would say yes, they could rely on them. I am talking about the Atlantic dealers now.

Q. Do you think that Atlantic dealers can rely on local distributors to give them advice as to proper stock levels?

A. I would like to—I can answer that one Yes. I would like to qualify it, however, and say under certain circumstances they can. I don't think that—

Q. What do you mean by under certain circumstances?

A. All right, I think that a local supplier who is aware of the type of business that is done through the outlet, the volumes that have been done historically through the outlet, the type of neighborhood and so forth that this fellow was servicing, with that knowledge and with a competent man that he has on his payroll, would be in a position to give him proper advice as to stock levels and kinds of stock. That is why I say in certain instances.

Q. Do you think that all local distributors would tend to offer stock to Atlantic dealers?

A. No, sir.

3743 Mr. Ballard: I submit this is repetitious, your Honor.

By Mr. Kelaher:

Q. In fact, isn't it to Atlantic's financial advantage to have dealers sell TBA regardless of brand under its present leasing arrangement?

A. Well, I will say Yes, and then say what do you mean, sir, by financial advantage?

Q. Well, it is included in rental computation, is it not, the sales of all TBA by Atlantic lessee dealers, regardless of brand, are included in the computation of the rent he pays Atlantic, is that correct?

A. For those stations that are on a percentage lease, yes.

Q. Yes.

Let me ask you this: Does rental return fall short of rental paid out with respect to Atlantic lessee stations?

A. May I just explore that. I am not trying to be difficult, sir, I just want to make sure that we understand on rental paid out.

Q. That is what I am getting at. You testified to rental paid out on direct, but inasmuch as I can't mention it I am going at it this way. What do you mean by rental paid out?

Hearing Examiner Kolb: I think the witness did explain what he meant by rental paid out. Everything including amortization of the property.

3744 Mr. Ballard: Mr. Kelaher wants him to say it again, I believe.

Mr. Kelaher: Yes.

The Witness: I will be happy to. Rental paid out in my interpretation of it includes that rent that is paid to a lessor, individual or corporation from whom we rent premises, plus taxes, plus depreciation on buildings that we own or properties that we own, plus maintenance and improvements. That is rent paid out. Rental return, of course, is rent collected from those.

By Mr. Kelaher:

Q. Now, with respect to rental paid out, are you referring to a lease, rental lease type of situation?

A. Well, partially. yes. A rental paid out we have two classifications of stations where we are putting them in, those that we own and those we lease. I am talking about where an individual owns a service station, a completed service station, we lease it from him at a monthly figure which we have to pay in the form of rent. That is rent paid out in that part of it.

Q. Now, is your answer limited to that type of station, that is what I am getting at?

A. No, sir; it isn't. The over-all rental incorporates both those stations we own and those stations that we lease and did in my original answer.

3745 Q. Well, included in rent paid out what stations you own? Where you own land and you own the station, what do you mean when you talk about rent paid out?

A. Well, that would be our cost.

Q. Cost of what?

A. The monthly cost for having that particular piece of property.

Q. What is in the cost?

A. Well, taxes, depreciation, maintenance on the owned properties.

Q. There is no rent involved at all, is there?

A. Not as rent payable to ourselves, No.

Q. Nor as rent paid to another party?

A. No, not on owned property.

Q. Are you saying and correct me if I misundersand your testimony, but is it fair to say that the rental income from Atlantic lessee stations does not compensate Atlantic for the operation of the stations?

A. This is all types of stations, owned and leased?

Q. The type we are talking about, lessee stations?

A. Yes, that is correct.

Q. In other words, are you testifying that Atlantic operates these stations at a loss?

A. From a rent paid out or from a cost versus rent return is concerned, yes.

3746 Q. Is there any income from the operation of lessee stations by Atlantic? Any gross income or net income?

A. I am afraid I don't understand exactly what you are talking about.

Q. As I understand your testimony you are saying that Atlantic operates all the lessee stations at a loss?

Hearing Examiner Kolb: Mr. Kelaher, you are dragging into this question now the question of profitable sale of gasoline, aren't you?

Mr. Ballard: I think he is trying to confuse the witness.

Hearing Examiner Kolb: I think the witness has very definitely testified he is talking about the rent that the dealer pays and the expense which the company is put to in operating or owning that station.

Mr. Kelaher: I am simply trying to show that there is a profit in the operation of a station, I don't know why he can't just say that.

Hearing Examiner Kolb: He is talking about the income from the rent and the outgo on the expense of owning the station.

Mr. Kelaher: I know what he is talking about.

Hearing Examiner Kolb: You put in there the question on the profit on the sale of gasoline which wasn't in the picture at all until this moment.

3747 Mr. Kelaher: I have a right to do that.

Hearing Examiner Kolb: Do it so the witness knows what you are doing.

Mr. Kelaher: I was attempting to be fair with the whole situation. From an over-all standpoint doesn't Atlantic operate its lessee stations at a profit?

A. I would say so, yes; over the long pull.

By Mr. Kelaher:

Q. Now, you were asked if Atlantic keeps a record of the sales of non-sponsored TBA by Atlantic lessee dealers. Do you recall that?

Mr. Ballard: I don't believe I asked exactly that question, Mr. Kelaher. Can't you do it without characterizing it?

By Mr. Kelaher:

Q. Yet me ask you this: Do you keep a record of the sale of non-sponsored TBA by Atlantic lessee dealers?

A. No, sir.

Q. Or contract dealers as far as that goes?

A. No, sir.

Q. You say "No, sir"?

A. Yes.

Q. Now, with respect to lessee dealers who are operating under the percentage arrangement you do know the total amount of TBA sold by each lessee dealer, do you not?

3748 A. If they report it on their rental statement then we know what they report on their rental statement.

Q. You know what their total amount of TBA sales are for that particular rental period, isn't that true?

A. Right.

Q. And isn't it also true that Atlantic knows the specific amount of Goodyear TBA sold by each lessee station?

A. Not necessarily because the dealer that buys Goodyear products may buy them through certain convenient supply points in his particular area. He may buy them someplace else.

Q. I am talking about the sales through the supply points.

A. Through the supply points, yes.

Q. He knows specifically how much he buys under the commission plan program?

A. That is right.

Q. So you can tell by subtracting one from the other, if these, what the approximate amount of non-sponsored TBA is?

A. I think it could be determined. It would be extremely difficult. It is possible to be determined.

3749 Mr. Kelaher: I said just tell me why it is so difficult.

A. It depends on whether we are talking about an an-

nual or monthly basis, in many instances a dealer would buy something and not sell it, he might buy sponsored or non-sponsored items in the month of November, that may not sell during the month of November, it might not show up on the rent statement for a period of two or three months.

By Mr. Kelaher:

Q. You certainly would have a fair approximation of his sponsored TBA sales?

A. It could be determined; yes, sir. We could get a fair approximation.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Ballard.

Q. Mr. Walsh, turning to this line of questioning that we have just gone through: When Atlantic receives re-
3750 ports from Goodyear of sales of sponsored TBA through Goodyear supply points to Atlantic dealers do those reports speak in terms of the dealer's buying price? The actual price paid by the dealer?

A. I am sorry to say that I can't answer that one. I am afraid that Mr. Mulholland would be more familiar with that than I am.

Q. When Atlantic receives rental reports from its dealers do they speak in terms of the dealer's actual sales, selling price received by the dealer?

A. It is retail sales value in total, yes.

Q. Now I ask you again, reconsidering your previous answer, does the report from the Goodyear supply point speak of the retail sales value or the wholesale sales value?

A. To my knowledge it is the wholesale sales value.

Q. So they are different values?

A. So they are different levels; that is correct, sir.

Q. Now, sir, I believe you said that a comparison

could be made between them, it would be difficult but it could be made; is that a correct characterization of your statement?

A. In my opinion I think it could be made.

Q. Now I ask you does Atlantic routinely make such comparisons?

A. No, sir, they do not.

3751 Q. Referring to the matter of dealer's good will: In your experience is it possible to transfer the good will, personal good will of the dealer from the outgoing dealer to the incoming dealer?

A. I have never seen it done successfully.

Mr. Ballard: I don't think I have any further questions. In fact, I have no further questions.

Hearing Examiner Kolb: That is all, Mr. Walsh.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:00 p.m.

(Thereupon, at 12:40 o'clock p.m., the hearing was recessed, to reconvene at 2:00 o'clock p.m., this same date.)

3752 Afternoon Session.

(2:00 p. m.)

Hearing Examiner Kolb: The hearing will be in order.

RICHARD G. MULHOLLAND was called as a witness on behalf of The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Mulholland, have you given your name and address to the reporter?

A. Richard G. Mulholland, 45 Server Lane, Springfield, Pennsylvania.

Q. When did you join the Atlantic Refining Company, Mr. Mulholland?

A. I joined Atlantic in 1938, February.

Q. And what was your occupation previous to that time?

A. After graduating from Warton School, I went immediately with Procter and Gamble Distributing Company in a training program where we were all supposed to be executives in ten years, and they started me in the advertising department with advertising crews, ringing door bells, and distributing coupons, and I graduated to dealer selling work, which quickly enfolded into handling the very large stores in Philadelphia and on through 3753 until I became office head salesman.

Q. Now, sir, I gather that after eight years of this ten year stint, you joined Atlantic; is that correct?

A. That is right. I resigned and joined Atlantic.

Q. In what capacity did you join Atlantic, sir?

A. As a dealer-salesman in York, Pennsylvania.

Q. That was 1938?

A. Yes, sir.

Q. And then, can you give us briefly your history with Atlantic since that time?

A. I moved to Allentown, Pennsylvania, as dealer-salesman, but with the understanding I would be the assistance district manager when that job cleared in 1942, and then in 1945, I was actually appointed assistant district manager. That, by the way, was the first district in Atlantic where they used this assistant district manager, outgrew this sales supervisor program.

Then, in 1949, I went in to the regional sales staff as direct marketing manager.

Q. That would be the eastern Pennsylvania region?

A. The eastern Pennsylvania region, which is the biggest region of the company in size and volume.

Q. And after being direct marketing supervisor for the eastern Pennsylvania region, what was your next assignment?

A. Then, I was made temporary sales manager of 3754 the region. It was to have been a year's basis where the incumbent sales manager was involved in this big company training program as training director, and I no more than got well started in that work than I was quickly brought into the Atlantic training program as a member of the top faculty with the job of developing a means of training Atlantic salesmen to sell at the wholesale level.

Q. In other words, to sell the Atlantic dealers?

A. To dealers.

Mr. Kelaher: I wonder if I could have the date when you became temporary sales manager as we go along.

By Mr. Ballard:

Q. Was that 1951; is that correct?

A. It was early in '51. On March 15, 1951, I pretty well was pulled away from that work and went into Phila-

delphia at the Barclay Hotel where we spent the better part of a year in this big training program.

Q. What was your next job after that?

A. After that, in 1952, August, I was appointed in the present job as TBA section manager, they called it at that time, and now it is called, I believe, TBA—

Q. (Interposing.) Wasn't it previously TBA supervisor?

A. Supervisor. Now it is called TBA section manager.

Q. Now, as TBA section manager, who do you report to?

A. I now report to C. A. Walsh, Jr.

3755 Q. That is the gentleman that testified here this morning?

A. Yes, sir.

Q. Just so we get his position, who does he report to? I didn't ask him that.

A. He is manager of the retail marketing division, and he reports to Mr. H. H. Ingersoll, who is assistant sales manager of the domestic marketing department.

Q. And then, does Mr. Ingersoll report to Mr. Colley?

A. He reports to Mr. Colley.

Q. Now, there are, are there not, regional TBA coordinators?

A. Yes, there are six regional TBA coordinators, one in each region.

Q. Do they report to you or to the region?

A. They liaison with me, but they report and are directly responsible to the sales manager of the region, or in some cases report to the direct marketing manager of the region.

Q. They keep you informed of what they are doing?

A. Very much so. We work together and they are my entree to the region basically in furthering the dissemination of TBA information and all the things that I do from my office, although we do, of course, use the facility of discussing TBA with regional managers, sales manager, and other personnel in the regions, too.

They are the staff men in the region who do nothing but work on TBA.

3756 Q. Is your job also a staff job?

A. Yes, it is.

Q. Now, in your job, what is your primary duty?

A. Well, primarily my job is to disseminate, after editing, all TBA information to the region. The tire company programs that come to me, and we disseminate the information to the coordinators in the regions with this benediction, so to speak: the coordinators spread it in the regional sales group. Also, my job is to be original and creative in developing TBA slants and touches on this program and big contributions, too, that we want to engage in in our own way aside from the tire company developed program.

Q. Now, in the course of your duties, do you have contact with the TBA suppliers?

A. That is another important function. My job is to maintain close personal contact with the upper level management people of Firestone and Goodyear with their field district managers and division managers, and just know the people, not only in the tire companies that we deal with, but within the whole fraternity of the TBA industry.

Q. By that, who do you include in this fraternity?

A. Well, we have TBA managers from all the other oil companies who we all cultivate acquaintance with each other. We meet together on councils in the TBA group and know what is going on by our contacts with each other.

3757 Then, there is another group that I have carefully cultivated as a responsibility, that is, the management people of the sub-suppliers, such as DuPont, AC, Johnson's Wax, Simonize, and all the other people who supply important automotive accessories to the tire companies who, in turn, supply our set-up.

Q. Do your activities include field trips?

A. Very definitely. I am charged with getting off the office seat and being out in the regions with the people. One great responsibility is to know of the problems and to work at them and assist the coordinators and other people in improving all situations, such as supply and delivery, competitiveness of wholesale pricing, and the myriad things that come up.

Q. As part of your duties, do you check on the implementation of Atlantic's no-forcing policy?

A. I don't directly go out to seek any information, but I have my ear to the ground, and in my contacts with dealers who I stop in to see occasionally at meetings and what not, and with the coordinators contact and other sales people, I surely would hear about it if there were any dealer unhappiness in that direction.

Q. Have you ever received complaints from dealers about forcing—being forced or coerced in the course of these trips?

A. No, sir, I have not.

Q. Is it part of your job to know what programs
3758 are being offered by TBA suppliers other than Goodyear and Firestone?

A. Yes, my office function is to receive visitors calling on Atlantic because of their TBA interest, which would include a lot of people. People I can recall—the vice-president of the Cooper Tire Company came in to solicit our interest in their tire; Mansfield Tire and Rubber Company call every six months to keep contact on the possibility we might want to have an Atlantic private label tire; Auto-lite, Electric Auto-lite people call regularly. Oh, there are others.

3759 Q. Armstrong tires?

A. Armstrong's general manager called once. Gould-National batteries, some were solicited in a mild way by interested manufacturers of TBA products, we

already are in intimate contact with a lot of the people like the AC group, DuPont and others, that have known us for many years.

Q. Now, sir, you mentioned the TBA officials of other oil companies. To your knowledge do the other oil companies competing with Atlantic offer TBA programs to their dealers?

A. They most certainly do. I understand there is no oil company, major oil company in the United States, that doesn't have a TBA program today.

Q. Now, going back to 1950 at which time as I recall it you were direct marketing supervisor for the Eastern Pennsylvania region, is that correct, in 1950 now?

A. That is right.

Q. Does that region include Wilmington?

A. It does.

Q. Do you recall that in 1950 the Wilmington district was chosen for a test of the Firestone TBA program?

A. Very definitely, although I had othing to do, as Mr. Walsh testified, consumer job in New England with the mechanics of setting up such a program in my position, I was well aware of the management's decision to test Firestone TBA distribution in our Wilmington district.

3760 Q. Did you attend the initial meeting down there?

A. I remember that very vividly because—

Q. Would you describe that kickoff meeting briefly to us?

A. The reason I remember it so vividly it was so impressive. Firestone didn't come with a handful of field people around the corner, they came with all the power they had, that was in the person of Mr. Earl Hathaway who is now vice president and general sales manager of the company, Mr. Sharkey who has passed away but was then a tremendous person as a sales manager out of New York,

and they brought with them a guy named Clyde Gischel who was probably the spell-binder of Firestone from dealer talking standpoint or sales meeting talking standpoint, and they put a show on there for our district sales group and I went there to hear it.

They also had their district manager, Mr. Frank Campbell, and the store manager, and the other people who would be involved in the personal mechanics of that local program but what they were there for was to tell us the glories of Firestone and show us the product, the promotional material, and it was a tremendous meeting with people like that that you don't forget.

Q. Would you say it was a sales meeting?

A. It was.

Q. Now, as I understand your testimony at the time that Atlantic went on to sales commission plan company-
3761 wide you were no longer in the line organization, is that right?

A. I can recall attending a few of the kickoff dealer meetings. I can recall going to one in Wilkes-Barre, one in Reading, then I just was pulled right out of the picture as it just got under way in the general spreading of the program throughout the region and was pulled in to this training program in Philadelphia where my sole job was to work on this bridge to sale.

Q. Mr. Mulholland, for Mr. Kelaher's benefit let's elucidate.

Mr. Kelaher: I got it, it is b-r-i-d-g-e.

Mr. Ballard: You asked for this.

By Mr. Ballard:

Q. Would you briefly, Mr. Mulholland, describe the bridge to sales program just so we do have it on the record?

A. I am right proud of this. This is 20-some years of my life in this (laughter) and I can honestly say I wrote every word of it.

Mr. Kelaher: You are not holding up the bridge?

The Witness: I am talking about concept here. I developed this over this many years of sales experience.

Mr. Kelaher: He has just asked you to describe the—

The Witness: All right, it is a mechanical device used in lecture and training school form to show a salesman and teach a salesman the mechanics of selling, of
3762 good selling. It admonishes him to be careful to use the supporting things to a good sale which are his personality, enthusiasm, and what not, the mechanical aids to selling such as his use of pencil and pad and talk over pieces and what not, and how to approach the various types of dealers, dealer personalities that exist.

This isn't just applicable to Atlantic, it is applicable to any wholesale selling and I think one of the—it is recognized as one of the fine, unique methods of making young salesmen see how to sell rather than have a lost philosophy that they flounder around in for twenty years until some finally learn.

Mr. Kelaher: I know you are anxious to talk about it, but in the future I am going to ask that your answer be confined to the question.

Mr. Ballard: Could we go off the record for a minute?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Would you mark this as RA Exhibit 32.

(The document referred to was marked Respondent Atlantic's exhibit for identification 32.)

3763 By Mr. Ballard:

Q. Now, Mr. Mulholland, turning to August of 1952 which month I believe, I understand you were appointed as TBA section manager or section supervisor as it was then called: is that the correct time on that?

A. Yes, sir.

Q. After your appointment as TBA section supervisor what was your first step in your new position?

A. Well, before I could take a step Mr. Colley had me come to a top staff meeting attended by his whole group and some of the regional managers and there, unbeknown to me they began to discuss the fact that Federal Trade Commission investigators had been reported to be talking to Atlantic dealers in some areas, and the discussion quickly led to a resolution on the management's part, particularly Mr. Colley, that he wanted Mulholland to go out to the dealers and talk to the dealers about this thing. It happened that it was an opportune time because we had these football meetings scheduled which covered all of the dealers of the company, or most of them, as part of a petroleum promotion.

So he said, we will have him go following this channel or avenue to the dealers, take part in these meetings and then they drilled into me the things he wanted me to cover, most honestly the big one was right in the beginning to find out if his policy of non-forcing was actually being
3764 followed out in the field.

Mr. Kelaher: Your Honor, I think if we are going to go into a conference that he should be limited to the conversation by Mr. Colley and by the others present.

Mr. Ballard: Mr. Kelaher, if you are not moving to strike the previous answer I intend to move on. Did I take that as a motion to strike or simply an admonition?

Mr. Kelaher: I interrupted him, he hasn't finished, I am sure.

Mr. Ballard: Do you move to strike or is it all right to have it stand?

Mr. Kelaher: I move to strike that portion of the discussion relating to what transpired at the staff meeting.

Hearing Examiner Kolb: I understood the witness was receiving his instructions that he received from Mr. Colley.

Mr. Ballard: That is what I understood he was giving, your Honor.

Mr. Kelaher: He didn't give the—

Mr. Ballard: Can I clarify that point, Your Honor?

Hearing Examiner Kolb: He did say he was instructed by Colley. Read the answer.

(Answer read.)

Mr. Ballard: I might, your Honor. That is a statement of his instructions, what was said to him.

3765 Mr. Kelaher: If it was a meeting, there were minutes taken; if there was a resolution I submit that would be the best evidence of the meeting.

Mr. Ballard: Your Honor, I submit the man should be able to state what his instructions were that he received from his superior.

Hearing Examiner Kolb: Is this a resolution or an agreement between the parties what you should do?

The Witness: This was an instruction directly by Mr. Colley which resulted from their discussion at the meeting.

Mr. Kelaher Was it in writing?

The Witness: No, it was my boss telling me what to do.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Mr. Mulholland, can you tell me approximately how many of these football meetings were held all told throughout the company?

A. Well, there were around forty-five or forty-six.

Q. And how many dealers all told attended those meetings?

A. About 1400.

Q. How many of the meetings did you personally attend?

A. Twenty.

I didn't just attend them, I took a part in them.

3766 Q. At the meetings that you personally attended and took part in could you tell us briefly what you said and did at those meetings and what happened at them?

A. Well, I first introduced myself as the new TBA manager to the dealers and the sales people, and then I explained the purpose of the meeting was to talk openly and directly about the Federal Trade Commission interest in Atlantic's TBA activity. I told everyone and I followed a careful card index so I hit every point in each meeting in the same fashion that if the Federal Commission people came to them for goodness sakes our management wanted it known without obviously, to be totally cooperative, and tell them anything and everything because we had nothing to hid.

Secondly, I reiterated the policy that Mr. Colley had sent out in his non-forcing letters of 1951 and then asked the dealers if anyone among them had found this policy was something we had in the home office and it didn't work that way in the field.

I didn't just ask, I walked in the aisles with these people, these were lively meetings, there was tremendous interest in this thing.

Then thirdly I dwelt heavily on the fact that let's say it all over again that the management won't stand for forcing, so therewith the dealer group and all sales people present they were told once again that our manage-

3767 ment wanted the policy to be activated in the field to the letter of the law, no forcing.

Q. Did you get comments from your dealers on the TBA program?

A. I got a lot of comment but it wasn't on the forcing angle. I can only recall one dealer who really rose up and said he had been coerced, and that was in Wilmington, Delaware, and he stood right up and said "Yes, I am the

guy, I have had my arm twisted." And he even pointed out the salesman, the Atlantic salesman that had done it, he was right there.

Q. For Mr. Kelaher's benefit will you give us the name of the dealer and the name of the Atlantic salesman?

A. I can remember him well because I used to stop there with the sales supervisor, the name was G-r-e-g-g-o.

Q. And could you give us the name of the salesman?

A. The salesman as I recall it was Jim Robinson who is now district manager at Harrisburg.

Q. Was Mr. Greggo the only dealer of those who attended the meetings you were at who made this kind of complaint?

A. Yes, as I said I had a lot of comment because we delve into whether they liked the program or not and whether they were satisfied with the supply and delivery situation, and that really brought the house down because in those early days they weren't satisfied with supply and delivery in many places, it was a new program, the 3768 gears were just beginning to mesh, and we had problems. So, they told us of these problems. It was very helpful.

Q. Now, sir, who gave this presentation at the meetings that you did not attend?

A. Well, it became obvious I couldn't physically keep up with this thing, it was unfolding so fast. I worked day and night at it, so we called in our TBA coordinators to Philadelphia and I told them what I had been doing. I gave them this format of probing these—

Mr. Kelaher: Mr. Examiner, the only question he asked him was who conducted the other meetings. I don't think he has gotten into this question.

By Mr. Ballard:

Q. Mr. Mulholland, did the TBA coordinators follow the same procedure you followed?

A. Yes, sir.

Mr. Kelaher: I move to strike on the ground he wasn't present at the other meetings and his testimony is hearsay.

Mr. Ballard: He has testified his relationship to these men, sir.

Hearing Examiner Kolb: Read that answer, please.

(Answer read.)

Hearing Examiner Kolb: I will sustain the objection to the last question.

3769 By Mr. Ballard:

Q. Mr. Mulholland, did you ascertain to your satisfaction that the instructions you gave to the TBA coordinators with regard to the conducting of these meetings were carried out?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: He can answer Yes or No.

A. Yes.

By Mr. Ballard:

Q. And were you satisfied that your instructions were carried out?

A. I was.

Q. Now, as a result of this program did you reach an over-all conclusion as to whether Atlantic dealers did, in fact, feel free to exercise freedom of choice?

Mr. Kelaher: Objection, your Honor, that is certainly a leading question. I don't think that is entirely objectionable.

Mr. Ballard: Now, your Honor, this man has testified he was sent out into the field.

Mr. Kelaher: You didn't ask him what his general conclusion was, you told him the answer.

Hearing Examiner Kolb: Objection overruled. Let's go ahead.

Mr. Ballard: Would you answer the question?

A. Yes, my total impression was that there was no dealer complaint about forcing except in this one instance?

3770

By Mr. Ballard:

Q. And did you report this conclusion to your superiors?

A. Yes, sir.

Q. Specifically who did you tell it to?

A. To Dr. Hirschberger to whom I then reported, product manager of the company. He took me to Mr. Colley and Mr. Colley talked with me for a half hour about the full happening at these meetings which I reported what he wanted to know, that the policy was being carried out—

Mr. Kelaher: Objection. He is going beyond the scope of the question again. I think we are going to have to have some kind of an understanding.

Hearing Examiner Kolb: It just means a couple more questions to get the same thing. Let's let it go at that. Objection overruled.

Mr. Kelaher: We are going to be here forever.

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Now, Mr. Mulholland, when you took over your responsibilities, I am returning again to this time when you first took over your responsibilities as TBA section supervisor, what were you instructed that your responsibilities were as manager of that section?

3771

A. Specifically Mr. Colley in starting me off after these football meetings discussed two great areas he wanted me to work in primarily in developing this new program. The first to unceasingly work at bettering the supply and de-

livery situation so all Atlantic dealers could get material when they wanted it.

And secondly, to do everything possible to see that our dealer bought this material at competitive prices.

Q. Have those been your principal aims since that time?

A. Well, on the one being new, I thought the first thing to do was take a survey of what our people thought about supply points in the field.

Mr. Kelaher: Your Honor, it is obvious that this answer isn't responsive to the question.

Mr. Ballard: All right, I will ask another question, Mr. Kelaher. I will withdraw my previous question and say did you make a survey of the supply points in the field?

A. We did.

By Mr. Ballard:

Q. And—

A. The survey included four categories, the inventory the supply point carried, their attitude or policy on credit extension to the dealer, whether they offered sales
3772 assistance with our salesmen in the form of supply point salesmen, and what our people thought of their ability to deliver on time.

Q. And did you find that some supply points did not measure up in these respects?

A. Many, many of them.

Q. What did you do about it when you found that?

A. Then that gave us a target for working at this problem and the coordinators in the regional level worked unceasingly with the petroleum representatives of the tire companies in contacting supply points and our people and following through trying to solve these problems.

I participated when the need developed for a higher level discussion with managers of the tire companies or even Akron. So from the beginning we worked at this; we are still working at it.

Q. Could you describe your activities with respect to prices charged to Atlantic dealers by supply points?

A. Our objective was to have our dealer, be sure our dealer was buying tires basically and first of all at a price where he could retail competitively with bigger tire specialists, or other service station dealers. In our study of this we find that this is true in general, our average dealer buys at 22½ percent off the code price on tires, which is a discount allowed by the tire company if a dealer
3773 bought direct from them necessitating the dealer doing an annual tire volume of from five to ten thousand dollars a year. So, in most places we found that our dealer is enjoying this level of discount which he really, in many cases, doesn't earn because he in his tire business does less than $5,000 a year in many, many cases.

Q. On that basis are the prices being charged to your dealers competitive, by the supply points competitive with those being offered by competing suppliers?

A. We think very much so in general, but we find spots where a supply point will only allow a discount of 20 percent and if it is not a matter of very distant delivery cost the tire company people let our people counsel with this fellow and plead the case of our dealer and that work has gone on continually until today I say our Atlantic dealer has a very competitive price and we can pretty well prove to him or to our salesman that he can compete at the retail level with almost anyone, even the big, huge buyers of Goodyear.

Q. Now, sir, does Atlantic train its own salesmen in the selling of TBA, how to sell TBA?

A. Yes, sir.

Q. Where do they get that training? Now I am speaking of an Atlantic salesman, where does he get his training?

A. Formally he goes into the dealer training
3774 schools not as a trainee but as an observer, all salesmen get that—

Q. Then does he go along to an additional school?

A. Then he goes into Philadelphia after he has been in the field six months or a year, to a product school which I personally teach with the assistance of tire company personnel. And we teach TBA product promotional angles and what they need to know to better sell and service our dealer.

Then this man goes back into the field and he picks up more training as he attends district sales meetings where our TBA coordinator and/or a tire company or outside manufacturer personality will tell them about product and information. He goes to these wonderful tire company meetings, Goodyear put on a tremendous spring meeting, and our people are all invited and they all go and they get this tire company training on the theme of those individual meetings.

3775 Q. Now, there are, I believe you said, dealer clinics and dealer meetings involving sponsored TBA?

A. Clinics?

Q. Clinics and meetings. I am speaking now of the dealer clinics and meetings, are there such things?

A. Yes. We have originated this clinic thing in our company. We feel one of the unending needs is for training dealers, and the first place to train them is on the most important part of the TBA program, tires, so we developed a tire clinic, sell-up-to-profit tire clinic.

Q. How long does that sell-up-to-profit clinic take to put on the full program?

A. Well, it takes two hours. You are lucky if you finish it in two hours.

Q. Was that program developed by Atlantic?

A. Yes, sir.

Q. This script was written by Atlantic?

A. The script was very carefully developed by drawing what our coordinators could give us from a meeting. We

had staff men from Akron there, we got everything, we milked every idea we could get from everybody, and we finally got it down and I talked it into records to give it a sales flavor, dealer talk instead of stilted language, and then this thing was written up in the form of a script.

Q. Is this the script? I show you this document.
3776 Is this the script for that sell-up-to-profit?

A. Yes, sir.

Mr. Ballard: May we have that marked A-33 for identification.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 33 for identification.)

By Mr. Ballard:

Q. I ask you, for the record, is R-A-33 a copy of the script that is used in this sell-up-to-profit tire clinic? Is that what that is?

A. Yes, sir.

Q. Approximately, how often has that clinic been given by Atlantic?

A. The givers were the TBA coordinators teaming up with tire company personnel in their field. My job was to originate this, and having the ball, they gave this thing to dealer groups.

Q. Has it reached a large number of dealers?

A. A large number, yes, sir.

Q. Now, in the course of that TBA clinic, tire clinic, do you also give the dealer a booklet to carry away with him?

A. Yes, sir, a take home book.

Mr. Ballard: Will you mark this RX-A-34 for identification.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 34 for identification.)

3777 By Mr. Ballard:

Q. I show you a document that has been marked RX-A-34, and ask you if that is a copy of the booklet that is given to the dealer to carry home with him?

A. Yes, sir, it is.

Q. What does this booklet contain?

A. Well, it contains the slap-on development of the talk to the dealer.

Q. In other words, this first sheet is a picture of the chart that you use in talking to the dealer?

A. Of the flannel board after it had all be laid on there.

Then, we gave them some homely down to earth ways that this guy could comfortably talk tires to a customer. Instead of being tongue-tied, we said just tell him what you found or you saw when you looked at their tires. This hesitancy to talk is a dealer problem, new dealers, or ask him questions about his tires in the form of your desire to give service to him to start these tire selling conversations.

Then, we on the next page gave him something to think about which we had talked about in the clinic concerning other things besides the talking of tires that he must do. To look like a tire headquarters place through good display and use of promotional material, for goodness sakes subscribe to this tire company display package that gave him this wealth of material for less than the postage,

3778 sometimes. Set up a tire selling department to maintain a balanced stock and give decent tire service.

Then, to help him with display we had worked these out —this is new in the industry. We deplored the idea of everytime a dealer had to display tires on the driveway, he should own a $50.00 piece of display equipment; so, we began to work out—and Firestone sales staff worked with us on this. We actually went out in our stations ourselves and piled tires in various interesting arrange-

ments which are placed against the window with only the use of a small tire standard as equipment.

So that the dealer could make his place like a merchant lived here instead of just setting them around along the wall and there are various pictures here which are new thinking, in fact, the tire companies are using this material in their national literature today. We originated that idea.

Then, we put in the book the product story of the Goodyear tire, and that was how you talked tires, they gave the dealers a real feel of how you go about selling tires at profit, sell up.

Q. Now, sir—

Mr. Kelaher: (Interposing.) I don't think he has finished yet.

Mr. Ballard: Would you like to have some more testimony?

3779 Mr. Kelaher: I am enjoying this.

The Witness: I went out in two regions because there were some guys that were a little bashful about this job and I talked to a thousand dealers myself with 12 big dealer meetings where we paid the bill and we didn't meet in cellars. We met in hotel ballrooms and we had groups there up to a hundred or more dealers, and all our sales people, and we talked intimately with those people about how to sell tires.

By Mr. Ballard:

Q. Now, Mulholland, if Mr. Kelaher will permit me a question, you have spoken of tires, and I think you stated that they were most important. Do you mean to imply by that that accessories and batteries are not also of importance to the dealer? I wanted to get your meaning straight on that.

A. No, sir, that was just the initial start.

Mr. Ballard: Will you mark this R-A-35 for identification?

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 35 for identification.)

By Mr. Ballard:

Q. Mr. Mulholland, I show you a folder, marked RX-A-35, which I take it from the title is a group of some so-called talk-over pieces; is that correct?

A. Yes, sir. A finally devised talk-over pieces.

Q. Would you explain briefly to Judge how a talk-
3780 over piece is used? You could perhaps use one of these as an example.

A. Well, this first one: in our "bridge to sales" for any good salesman he uses mechanical aids to sell to hold the attention of his dealer and to particularly make a good factual presentation. The two greatest mechanical aids to selling ever devised is a lead pencil and a talk-over piece, and something to scribble on.

So, this first one here is the talk-over piece, as all of these are, devised by Atlantic at our expense and distributed to our salesmen who have been trained in the "bridge to sales" to use a talk-over piece, and they would use it this way:

They go into the dealer and instead of some careless remark, they know why they are there and they say, "Joe, I have something interesting to show you. Let's go in the back room here where we can talk a minute. You are going to make money out of this."

He guides the salesman with his pencil to catching the dealer's interest by following this talk-over piece here that the tire companies are going to have these tremendous bursts of advertising for the Fourth of July sale. Other dealers are in this thing, other good, smart, aggressive dealers.

Here we appeal to the motivation, to imitate others.

Then we appeal to the profit motive. "Now Joe, you
3781 can cash in, if you will just avoid these possibilities

of shortages, what I am here for is to sell you the tires you will need to engage in this profitable sale. Don't lay down here and fizzle like this." Then, we ask you to do these things to make a success of this promotion, and it guides the salesman to the many things they can talk about and look over and get a feeling for it.

Then, comes the time of not going on incessantly but we want to build an order. We want our salesman to write an order for tires. So, we put in here a shape up, and this "bridge to sales" you will find shape up, you can't go on forever; so, it helps him with the knowledge here of popularity of sizes to actually write with the pencil and figure with the dealer. He would say, "Joe, those 670 by 15s, what can you use, 20 or 10?" In a minute, Joe makes a mark or indicates an agreement. He's had it. He's buying it.

So, you build your assortment, transpose it to an order form for the tire company supply point to deliver, and the talk-over piece and the pencil have done a job.

On the back of all these talk-over pieces we put a planning guide. In our "bridge to sales" we say pre-plan. So, here the salesman plans what dealers he will call on, what he will suggest in the way of stock acquisition, and what they actually did. It gives him a chart to follow so he doesn't miss anyone and keeps a record so his sales
3782 supervisor can follow him up.

He can use this, too, to show a faltering dealer. "Well, gee, all the other guys are going in on this. Why not you?"

So, it is a wonderfully helpful thing to a salesman and we have devised a whole number of these.

Q. Mr. Mulholland, on that point, is this—

Mr. Kelaher: (Interposing.) I really don't think he is finishing explaining yet.

Mr. Ballard: Do you want more explanation?

Mr. Kelaher: I think he was getting to the next page.

Mr. Ballard: I will be glad to have him if you want him to explain all of them.

Mr. Kelaher: You go ahead.

By Mr. Ballard:

Q. Mr. Mulholland, do I understand correctly that these are sample talk-over pieces? Do they represent the only ones that are in your files or are these simply samples?

A. There are others. These are Atlantic devised and produced, and we have others.

Mr. Ballard: Will you mark this RX-A-36?

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 36 for identification.)

3783 By Mr. Ballard:

Q. I show you a document marked RX-A-36, and I will ask you what that is so that we can get it identified for the record.

A. Well, we call this a stock check and order form.

Q. That is a stock check and order form?

A. Yes. This has a little different purpose. An oil company salesman until he knows the number and nomenclatures of accessory items such as spark plugs, filter cartridges, fanbelts, and can look at the shelf stock in the service station and tell the dealer his needs on a number basis, he isn't giving him the sales service he should. This both trains the salesman and helps him write an order. So, we list here the plugs and filter cartridges, fanbelts, and radiator hose. We took those four items. We asked our salesmen to carefully check inventory and develop orders and here are the numbers and the order of popularity which we felt helped train our man and get business.

We attached to it some other information he had that was in the tire company catalog but it took a Goodyear man and 20 years of knowledge to find it. We brought it

all out and tacked it altogether so that our salesman had a full specification chart of what these fanbelts and radiator hose fit, so that in his hand he had everything he needed to do a thorough job of spot-checking and order servicing with his dealer on these items.

3784 Q. Do I understand this was developed by Atlantic?

A. Totally by Atlantic.

Q. Now, sir, we have had references in this record to double-teaming. Would you explain what double-teaming means to you?

A. Another means of helping our salesmen learn and become a better salesman and sell more is to use the wonderful opportunity for him to double team with specialists. Firestone and Goodyear have specialists in their supply points and sales organizations on tires and batteries. The AC people have a tremendous selling force of skilled people. DuPont and others. So, these people habitually work with automotive jobber salesmen; they rarely go alone. They go with either the automotive jobber sales force, or the oil company sales force, and their aim is to go to the service station dealer and sell and further their product.

We seek their help. In fact, I can remember at one period when we had practically our whole sales force working with DuPont from Maine to Florida on the spring deal, and we like it because it trains our man. It is interesting to the dealer because there are two personalities in the act and in my own experience in TBA, as a salesman, I learned my TBA nomenclature and lingo on each of these special items through a lot of double-teaming with the people I supplied.

Mr. Ballard: Will you mark this RX-A-37-A and -B for identification.

3785 (Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 37-A and -B for identification.)

By Mr. Ballard:

Q. Now, I show you some papers marked RX-A-37-A and -B, and I ask you if you will tell us what those are, please.

A. Well, these are relatively new, within the last year we got very real about our recommended TBA inventory suggestions to dealers. We arm our salesmen and our whole organization with this philosophy that Atlantic doesn't expect a new dealer who has this very limited working capital to buy all the TBA he could possibly have calls for at the start. For instance, if a dealer put in stock all the tires that Goodyear makes in all sizes, shapes, and forms, passenger, he would have 104. He couldn't hardly keep them in the station or pay for them. So, we got—this recommendation, the first one, the thousand dollar level suggests to our people and our new dealers—this is for new starting dealers—to do without some of this upper level merchandise, to carry only at the most, say, 25 tires, in the lines he most usually will have calls for or can sell.

So, we go through in this thousand dollar level only the very necessary automotive items, such as tires, a few batteries, a coverage of spark plugs, a coverage of filter cartridges, fanbelts, radiator hose. When we get to polishes and chemicals, we get real humble, we get down to
3786 three cans instead of cases.

And even going without, so to speak, we consume a thousand dollars this quickly and he hasn't even got flash-lights or flash-light batteries or many other things.

Then, our philosophy is after the dealer has got a start and felt his way along and can afford to raise his inventory level, we recommend that he shoot to get to this $2,000 level which broadens the line but still doesn't have everything.

And then, we regard this fellow as pretty much on his own. He becomes a deal buyer or a tire specialist, but the

whole philosophy of this is to be helpful and not load up our dealer or get him out of balance.

I went in a new station in Baltimore a year or [redacted] ago and saw 20 cases of Turtle Wax, but he didn't have much of anything else. He met a good Turtle Wax salesman.

Mr. Kelaher: I move to strike the last remarks. They have no application to RX-A-37-A or 37-B.

The Witness: Well, the purpose of this is to guard against that.

Mr. Ballard: Just a minute. Let Judge Kolb rule on the motion.

Hearing Examiner Kolb: I will let it stand.

Mr. Ballard Will you mark this RX-A-38.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 38 for identification.)

3787 By Mr. Ballard:

Q. I show you a folder marked RX-A-38, entitled "Atlantic Sales Promotion Material." Would you tell us what these items are?

A. These are some pieces of promotional material involving TBA which Atlantic produced, originated, and delivered to dealers. We don't go into great volume on this, but we do some of it. The tire companies have tremendous amounts of promotional material available.

Mr. Ballard: Will you mark this RX-A-39 for identification.

By Mr. Ballard:

Q. I show you an additional folder, marked RX-A-39 and ask you is that the kind of tire company promotional material that you were just referring to that Atlantic mails out?

A. Yes, this is one piece of thousands of promotional pieces that come through the tire company program.

Q. As I understand it now, I am referring again to

RX-A-39, that is put out by Goodyear and distributed by Atlantic; is that correct?

A. Yes, sir.

Q. Now, Mr. Mulholland, I think you mentioned tire events. Could you briefly describe what you mean by tire events?

3788 A. We in Atlantic take claim to almost originating conception of teaching a dealer to sell tires as I can remember them 15 years ago. The factors are to get to the dealer a sufficient stock of tires to make a tire display that makes him look like tire headquarters is here, to give him tire atmosphere. To help the dealer that doesn't have capital, we in the old days used to consign tires for two weeks to use during the sale, and the tire company system we have introduced and many, many times the supply point has thus consigned or open billed tires to the dealers so they can make this display.

Another part of it is long effort by the dealer surrounded by this the atmosphere the use of promotional materials, the timing, and our salesman is heavily involved because you can't operate a tire event by just telling a dealer about it or asking him to run one. The salesman must participate in assisting and building displays in energizing this thing and keeping it going as hard as he can for a two or three-week period, and we found that when a dealer becomes involved without any financial pressure on himself, becomes involved with new tires, he suddenly begins to sell tires. Many times the tire event is the beginning of a new confidence and a step forward.

Q. I noted in the back of the room. Do you want to move it up so we can see it. Is this little model an example of a tire event, this model called "Swing to Safety"?

3789 A. Yes, sir. That is—we have had tire events for years—

Mr. Kelaher: (Interposing.) Does this have a number?

Mr. Ballard: Yes.

Will you mark this paper RX-A-40 for identification?

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 40 for identification.)

By Mr. Ballard:

Q. I show you, Mr. Mulholland, RX-A-40, which I see on the front is a picture of this little model that we have here entitled, "Swing to Safety." Is this a recent tire event sponsored by Atlantic?

A. That is the daddy of Atlantic tire events. We decided that we had had big sections of dealers go into this thing but early in 1958 we wanted 3500 dealers in the tire event, so we published this brochure—

Q. (Interposing.) That is this A-40?

A. This brochure, we coenceived this idea entirely ourselves and I took that model to Akron, Goodyear and Firestone top management, and I pleaded our case that we were giving every Atlantic dealer, that is 3500 Atlantic dealers, this fixture on a no-charge basis, delivering it to them. These fixtures cost us just short of $6.00 delivered into our warehouses. And the request from tire company management was to—on their side of the cost of this tire event, provide us with a special package, built around this "Swing to Safety" theme that was also our develop-
3790 ment, which they did; so, they provided these ex-
pensive Day Glo banners and the inserts that fit in the three tires. We put our whole show together and on May 15, 1958, we delivered 3500 of these to these dealers and our salesmen followed quickly to help them erect them after having attended meetings where the fixtures were shown.

I traveled six regions in four days to carry the first fixture. It was like Paul Revere, almost, to get this thing unfolding on time. So that before Memorial Day we had

this tire atmosphere in our station, and we had a theme song that our TV weather shows and our big TV baseball shows and our radio could pick up: Atlantic's Swing to Safety Tire Promotion. Which they did.

Q. Mr. Mulholland, what is the advantage of a—

Mr. Kelaher: (Interposing.) I don't think he has finished his answer.

The Witness: Well, the advantage of this was that we got a big show with a few tires. The dealer could leave the fixture out at night, but he could even use old tires if he didn't have enough new tires. He could make a big atmosphere and an unusual atmosphere with a minimum amount of merchandise.

By Mr. Ballard:

Q. Has this promotion proved successful, sir?

A. Very definitely. Dr. Hirschberger, who con-
3791 trols the product budget, told me he was more happy with the money he spent on this promotion where he could see visible sales results than most any in the company for a year.

We had a gain in the two key months when this was in operation. It was in operation from May 15 through July 4. And in the month of May and June, we had 19 percent tire sale increases across the board in Atlantic. Something happened.

Q. You attributed that to this promotion?

A. I do, and we are going to do it again in '59, bigger and better.

And the dealer didn't spend a nickel on it.

Mr. Ballard: Will you mark this RX-A-41-A through -E for identification?

(Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 41-A through -E for identification.)

By Mr. Ballard:

Q. I show you a group of papers which are marked RX-A-41-A through -E. Mr. Mulholland, without going into great detail, do I understand correctly that this exhibit RX-A-41-A through -E, is the papers in connection with a battery event prepared by Atlantic, or battery events?

A. There is really three pieces here. This is a battery event, your battery checking account that we ran in 1952.

3792 Q. By this, you are speaking of "B"? Is that right? Does that have a "B" on the front of it?

A. Yes, sir.

Q. What is "A"?

A. "A" is a piece we mailed out to all Atlantic dealers in about 1951, before I came into the program, showing the various qualities of batteries of Goodyear versus competition. Produced by Atlantic.

Q. Can you briefly tell us—

Hearing Examiner Kolb (Interposing.): Is that the correct date on that?

Mr. Ballard: He says it is 1951, before he came, and it is a Goodyear item, so it must be after March of '51.

The Witness: It might be early '51.

Mr. Ballard: It says Goodyear.

Hearing Examiner Kolb: It is after the change-over?

Mr. Ballard: Yes.

The Witness: Yes.

By Mr. Ballard:

Q. Let's take "C" next.

A. This is all part, "C" and "D", are parts of a concept we had to develop a battery event by display which had never been done. So we got Firestone and Goodyear to ship our dealers large quantities of their lithographed dry charge battery carton and we developed a stapler

that would put these things together without a battery
3793 in them, and we erected displays, provided window posters, and this gimmick, this battery checking and savings account, and a card to go on the top of the display to help the dealer sell the idea if checking batteries to his customer and having interest in battery service and inspection.

Mr. Kelaher: Was a date fixed on this event?

The Witness: The bigger event—

Mr. Kelaher: (Interposing.) On the event you were speaking of?

The Witness: This one I would say was around 1956.

3794 By Mr. Ballard:

Q. You are speaking now of the displays—

A. Of this special display.

Q. Special display event?

A. We lost this because tire companies got tired of supplying these cartons at 21 cents apiece cost. They do go on, though, with Firestone, they often use this idea.

By Mr. Ballard:

Q. Now, Mr. Mulholland, does Atlantic also promote the sale of the home lawn and garden items that are classified as accessories under the plan?

A. We worked hard at that about three years ago. Mr. Colley again prompted me to explore the opportunity of using other than automotive TBA to help our dealers make profit.

Mr. Ballard: Will you mark this RX A-42?

(The document referred to was marked Respondent's Exhibit Atlantic 42 for identification.)

By Mr. Ballard:

Q. I show you an item marked RX A-42 and ask you if that is the literature you developed with respect to the promotion of these things?

A. Yes, sir.

Q. Although these are housewares and appliances and outdoor living needs, are they covered by the sales commission plan as you understand it?

3795 A. Most of the items that—they are all available to the dealer, we get a commission on most of them. Our aim here was to teach the dealer how to display these materials, give him recommendations from actual tests of what items could be safely tried out, and admonish him in several things he did to be careful of such as closing out at season's end and we didn't say everybody should get in it. We said many Atlantic dealers, well established dealers, could make extra profit and some of the newer ones in beach areas and what not, through this Atlantic approved thing.

Now, this is interesting because most oil companies, and our own years ago—

Q. Mr. Mulholland—

Mr. Kelaher: I don't think he is finished.

Mr. Ballard: I don't think so, but I think that the practices of the other oil companies—

Hearing Examiner Kolb: What has this got to do—I thought we got away from the bug bombs and the brushes and the brooms and the lawn mowers; back at it again?

Mr. Ballard: I don't know whether it is back in it or not, your Honor. I will tell you what this is offered for. It is offered to show the activities that Atlantic engages in in earning its commission. These are commissionable items. They are included in the gross figures that Mr. Kelaher has put into the record. I don't want to make

3796 an exaggerated big thing out of them, but there is a tendency, I think, to imply that Atlantic doesn't do anything to earn this commission and I think Mr. Mulholland is amply demonstrating that they do. We have no breakdown, I think, of the amount of items covered by this.

Mr. Kelaher: May I ask if these are products of which company, Goodyear or Firestone or both?

The Witness: Both.

Mr. Kelaher: This particular exhibit is what?

The Witness: That was company-wide and articles of that nature were available in both programs.

Mr. Kelaher: Both programs.

Hearing Examiner Kolb: You have got skillets here and you have radios and you have got flour bins.

Mr. Ballard: It is doubtless apparent to your Honor that accessories encompasses a wide—

Mr. Mason: That is the way you will find it in the pleadings.

Mr. Ballard: The pleadings covered and the complaint has covered.

Mr. Ballard: Now, will you mark this RX A-43?

(The document referred to was marked Respondent's Exhibit A-43 for identification.)

By Mr. Ballard:

Q. RX A-43 I show you, Mr. Mulholland, and ask 3797 you if you will tell us what that is (handing document to the witness)?

A. Well, out of this experimentation and effort on other items we knew we needed a new piece of driveway display equipment. Surveys showed that the automobile customers don't get out of the car in many cases when he comes in for gasoline service so our management's philosophy was that we must wheel our show out to the customer.

We had eight or ten manufacturers bid and show their ideas of how this could be done after we roughed out a suggestion of what we wanted, and we finalized on this piece of equipment which we call our Atlantic driveway merchandiser. And it gives the dealer a means of displaying a myriad of things, tires. He can use it for all TBA items, motor oil, anti-freeze or anything.

Q. Do you change these suggested displays from time to time?

A. Yes. We have sold 500 of these units to our dealers on a no-profit to Atlantic basis where the dealer pays $5 a month until he has paid the $60, approximately.

Q. I intended to ask you, sir, whether this is a September 1958 suggested display? I asked you do you change the suggested displays from time to time?

A. Yes, we change these regularly and acquire this promotional material from various people, DuPont or AC or others, so that the dealer can follow this display
3798 suggestion on his driveway merchandiser the same way he follows it in his window display.

Mr. Ballard: Will you mark this RX-A-44-A and -B?

(The document referred to was marked Respondent Exhibit A-44 and B for identification.)

By Mr. Ballard:

Q. Now, I show you a document marked RX A-44-A which is a single sheet and RX A-44-B which is a series of several sheets clipped together. This is headed "Dealer Sales Calendar." Would you tell us what this dealer sales calendar is and how it is used?

A. Well, after these years of developing selling and promotional programs and tying in with tire company like programs or similar programs, our enlightened management agreed in 1958 to a complete integration of TBA selling and promotional activity right in with our major petroleum product, and I was given the job of putting this together in some form that would have real meaning. So we devised a Masonite wall calendar which is about 3x5, a beautiful thing, that we distributed to every district manager, regional manager, and headquarters product manager in the company. It hangs on his wall, and each month after it has been thoroughly pre-planned, we send him the slides that activate the calendar for the month,

giving the people in the district and the region 45 days—

3799 Q. Just a minute, sir, the slide that you send him is in the form of RX A-44-A, right?

A. Yes.

Q. This is the one for August of 1958? This particular slide?

A. Yes, this is the salesman piece, but the slides had the same information.

Q. Yes.

A. There are two parts to this calendar. On the left is the selling program to the dealer, you can't sell from an empty wagon, we want to sell our sponsored TBA and petroleum products to our dealers. On the right is the promotional activity by the dealer timed to move this material to the consumer. The upper section tells what's to be done both selling and promotion nationally that month, and the bottom section describes the coming programs for sale to dealers and promotion by dealers the next month.

Mr. Kelaher: Sort of like Playhouse 90?

The Witness: Yes, sir.

The responsibilities are spelled out, boost of the double team is pointed out on the selling side. The responsibility flows all through the company. On TBA my first job is when this is agreed to by management for the year I work with the tire company people and the other suppliers to send to the regions the selling materials in the

3800 form of mechanical aids for their selling programs, forty days in advance, and that the flow of this promotional material be in the regions at the right time.

So everybody has the stuff and the know-how and can go to district meetings.

Now, this little chart is the salesman's. All our work in Atlantic is aimed at this salesman doing this job and

here we have him at a district meeting with a planned, organized program from the top down, and he gets it in the form of complete information and energization at the district meeting as he gets this calendar. And he puts this little binder calendar in his book. The book he keeps his record of all sales to dealers in, so that he has a record of what he is supposed to be doing, and this is done.

Do you know, this is gospel. They do—we do business as usual, but these things are done well throughout the company.

By Mr. Ballard:

Q. Mr. Mulholland, turning for a moment to the longer one here, RX A-44-B, do I gather that this is in typed form the calendar inserts month by month for the entire year of 1958, is that right?

A. That is correct.

Q. And it shows for each activity for that month and the pre-planning for the next month?

3801 A. Yes, sir, and these were originated at the beginning of 1958. In other words, the whole year's tentative planning is laid out and then we go to work on it.

We now have our 1959 calendar laid out.

Mr. Ballard: Cross-examine, Mr. Kelaher.

Hearing Examiner Kolb: Do you want to offer these in evidence before the cross-examination?

Mr. Ballard: All right, your Honor, I offer in evidence the exhibits RX-A-32 through 44-B.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-32 through A-44-A and B.

(The documents heretofore marked for identification RESPONDENT'S EXHIBITS A-32, 33, 34, 35, 36, 37-A & B, 38, 39, 40, 41-A through E, 42, 43, and 44-A and B, were received in evidence.)

Hearing Examiner Kolb: We will now take a recess.

(A short recess was taken.)

3802 Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Kelaher.

Q. Mr Mulholland, in August '52 you were the TBA Section Manager or Section Supervisor, is that correct?

A. Yes, sir.

Q. And as such were you in charge of Atlantic's TBA program—let me ask you this. Did your duties involve Atlantic's entire TBA program in all six marketing regions at that time?

A. From a staff standpoint, yes, sir.

Q. About that time you have testified that you or Atlantic became aware of an FTC investigation concerning the sales commission plan and that meetings were held with Atlantic dealers. Do you recall that testimony?

A. Yes, sir.

Q. Did you say anything to—you personally—Atlantic dealers attending the so-called Football meetings concerning the FTC investigation other than what you have testified to?

A. Nothing that I can recall; no, sir.

Q. Did you ask Atlantic dealers to report to Atlantic any contact made by FTC investigators?

A. No, sir.

Q. Did Atlantic at that time adopt a plan or policy of following up FTC investigators to determine what

3803 the Atlantic dealers had told the FTC investigators?

A. Not through any organization of mine or contact of mine.

Q. Were you aware of such a follow-up policy?

A. I was aware that some of the legal people talked

with dealers who reported they had been interviewed by FTC examiners in the field.

Q. Did you, were you ever shown any of the reports that came in?

A. No, sir; I had no part of that.

Q. During the course of your direct examination you referred to a survey of supply points made during your period as TBA Section manager. When was that survey made, approximately?

A. I think early 1953.

Q. Do you have a copy of the survey available?

A. I believe—I don't have one, no, sir.

Mr. Kelaher: I would like to ask counsel to furnish the survey.

Mr. Ballard: We have a copy of it. It's up in our office, Mr. Kelaher.

Mr. Kelaher: Do you have an extra copy?

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Could we have a copy tomorrow?

3804 Mr. Ballard: We'll bring it down.

By Mr. Kelaher:

Q. You also testified concerning prices, the general subject of prices on Goodyear and Firestone tires. I am somewhat unclear as to the testimony at that point and I would like to ask you, at what discount off list price do Atlantic dealers generally buy Firestone and Goodyear tires?

A. Offlist. In answering your question we have to stick to let's say the original equipment level of tire. On that tire they buy at—that is the average dealer in any metropolitan market—they buy at the 11½ percent off list plus 22½ percent on the average.

Q. You referred in your direct testimony to the figure of 22½ percent. What was your reference to that figure, do you know?

A. As a discount off code, and code is 11½ percent off list on the upper levels of tires. It drops down in percentage as you get into the lower levels of tires.

Q. And is that the dealer classification which necessitates the purchase of the $5,000 to $10,000 a year?

A. Yes, sir. The 22½ percent off code, if the dealer were buying direct from the tire company, necessitates an annual purchase of from $5,000 to $10,000 in tires.

Q. Well, do you mean that this discount off of code, the 22½ percent off code, is given to Atlantic dealers on
3805 their purchases of Goodyear or Firestone tires from supply points?

A. From most supply points.

Q. From most supply points?

A. In metropolitan areas. And even more in some cases.

Q. Yes.

Is that given regardless of whether they purchase $5,000 worth of tires annually?

A. The usual situation is the supply point treats all dealers in that bracket, associate dealers. He may have a very large dealer in his group who he may give 25 percent off or even 27½ who buy in pressure on him as supply point. But our average Atlantic dealer in these metropolitan areas from a good supply point tries to keep competitive, lumps the thing and gives them about—gives them this 22½ off code.

Q. So there would be, as I understand your answer, Atlantic dealers purchasing less than $5,000 a year who would get that discount?

A. Many, many of them. The smaller dealers don't do that tire volume right off the bat.

Q. In those instances where a supply point is only giving 20 percent, for example, do you go to Goodyear or Firestone and attempt to get the discount increased?

Mr. Mason: May I have the question read?

(The reporter read the pending question.)

3806 The Witness: If it is a company-owned store we go to the tire company people who control the store and ask for this more competitive price. If it is an independent tire company supply point it's just a matter of counseling and suggestion, he can do as he pleases. But, we urge and push the idea of all our dealers to join this 22½ percent situation as an average situation. I want to qualify that. If a dealer is way up in the country and he has to run 30 miles for delivery, many supply points are certainly entitled to a longer profit on the wholesale end.

Q. Well, are your urgings or counselings or pleadings sometimes successful in getting a larger discount for your dealers?

A. Oh, very often.

Q. Now, just to ask you a general question with respect to RXA-33 through 44-B—

Mr. Ballard: Does that include all the exhibits he put in, that he identified?

Mr. Kelaher: Yes, I am including all the exhibits that went in during your testimony. My question only relates to this.

By Mr. Kelaher:

Q. Many of these are dealing with Goodyear TBA. Now, I would like to know if you have counterparts for Firestone TBA where applicable?

3807 A. Yes, sir.

Q. One exhibit I would like to ask you about, RXA-41-C which is a facsimile of a check pay to the order of Mr. Atlantic Customer, $7, dealing with purchases of

Goodyear batteries or $4 on any Goodyear Delux all-weather battery (handing documents to the witness). Let me ask you this, was that a discount given to a customer by Atlantic or Goodyear? What was the purpose of that?

A. This was merely a suggested or offered piece as part of a battery event. If a dealer wanted to allow the customer $7 for his old battery as he purchased Goodyear's top level battery or $4 if the customer only wished the original equipment level, we had this for his use to eulogize the thing with the customer, but there was no requirement that the dealer use it at all. A lot of dealers liked it, a lot didn't. It was at a time when old batteries were a very high exchange battery.

Q. This was not subsidized by Atlantic or Goodyear?

A. No, sir; it was purely a dealer—

Q. Arrangement?

A. Promotional piece if he wished to use it. Some did, some didn't.

Q. Now, with respect to your tire events. Do you or does Goodyear or Firestone consign tires to Atlantic dealers in connection with these tire events you testified about?

3808 A. Yes, sir; in many, many cases.

Q. And in other instances do the Atlantic dealers purchase the Goodyear or Firestone tires for the events, for the tire events?

A. Many dealers who have plenty of working capital don't want consignment, they want to use their own inventory or want to buy specially for the sale.

Q. As I understand your testimony there is a cost to the dealer in connection with these tire events, either initially when he purchases the tires or ultimate when the consigned tires are sold. Is that correct?

A. In the case of the consignment or open billing the

dealer can return the tires if he doesn't sell them during the course of the event. In case the dealer uses his own tires it's up to him what he wants to buy to support his promotional effort.

Q. During the course of these tire events do you call on your Atlantic dealers to increase their purchases or consignments of Goodyear or Firestone tires in keeping with the particular event that is being sponsored by Atlantic?

A. Yes, these are timed to fit in with the big tire company holiday sales so the dealer wants tire stock and he either has it with his own capital investment or we try to help him through inducing tire company supply points or independent supply points to give this open billing
3809 credit for the period of the event. But the whole purpose of the event is to sell tires to the retail customer.

Q. Now, with respect to these many promotions that you have been referring to during your testimony, do Atlantic salesmen go in to Atlantic stations and assist in the preparation of the displays for particular events?

A. Yes, they do. That is a prime part of the event to take part in it, our service salesmen also take part in the event.

Q. And you, yourself, have taken part in such events?

A. I have been out there with a hammer and saw putting up displays to test events in service stations.

Q. And you have also put Goodyear or Firestone tires in front of Atlantic stations, is that right, in connection with events?

A. In assisting in events, yes, in a few instances on test experimental basis I have personally handled tires and displayed tires in stations.

Q. And your salesmen do that as a regular thing?

A. Yes, sir.

Mr. Kelaher: May I have a minute, your Honor, I don't think I have anything else.

I have no further questions.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Thank you, Mr. Mulholland.

3810 (Witness excused.)

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Your Honor, Mr. Kelaher and I have provided three stipulations. With your Honor's permission I will ask the reporter to write into the record these three stipulations.

The first is a stipulation regarding the status of Warren County and Hunterdone County in the State of New Jersey.

(The stipulation is as follows:

It is stipulated between counsel for the Federal Trade Commission and counsel for the Respondent The Atlantic Refining Company that Warren County and Hunterdone County in the State of New Jersey were transferred from the Respondent's Eastern Pennsylvania Region to the Respondent's Philadelphia-New Jersey Region on January 1, 1955, and that the 15-day warning letter referred to in the testimony of Wilbur D. Gaestel at page 3140 of the record is of record in these proceedings as Exhibit 256-A through C:

Mr. Ballard: The next is a stipulation regarding the testimony of one Herman Gay, an Atlantic dealer, who could not be present at the hearings and I will ask the

3811 reporter if she will write into the record at this point beginning where I have made this mark over to the next mark.

(The stipulation is as follows:

Counsel for respondent, The Atlantic Refining Company

(Atlantic), and counsel supporting the complaint agree and stipulate that if Herman R. Gay, 26 Hudson Street, Johnson City, New York, were called as a witness by counsel for respondent Atlantic in this proceeding, such witness would testify as follows on (1) Direct examination and (2) Cross-examination, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witness had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

I. *Direct Examination.*

1. I operate the Atlantic service station at 401 Main Street in Johnson City under a three-year lease with The Atlantic Refining Company. I have been the lessee of this station since 1937 and understand that I am one of the oldest Atlantic dealers in New York State. From 1930 to 1937, before becoming an Atlantic lessee, I worked in Atlantic service stations as a company employee.

2. Before 1951, when Atlantic sold Lee tires, Exide batteries and various accessories, I bought most of
3812 my TBA from Atlantic. During that time, however, I also purchased TBA from other sources, if I could get a better price. Sometimes I bought directly from the Lee factory.

3. When Atlantic stopped selling Lee tires, Exide batteries and accessories and started to sell Goodyear TBA, I began to buy some Goodyear TBA. I continued to buy substantial quantities of non-Goodyear TBA, however, and now buy Exide batteries exclusively and practically all of my accessories from various supply houses other than the Goodyear store. I buy my batteries and accessories mainly from Auto Supply Distributing Company, United Auto Parts Inc., and Whipple's Automotive Equipment Inc.

4. In all my years as an Atlantic dealer I have never been forced to buy any particular kind of TBA and have never felt that I was under any pressure to buy the kind of TBA sold or sponsored by Atlantic. I buy whatever TBA my customers want and will purchase and carry any TBA products I believe I can most easily and profitably resell. I buy Goodyear tires and Exide batteries because I want to and because of their quality, price and public acceptance and because of the service I get from their suppliers. I have never hesitated to advertise or display any of the TBA I buy even though I didn't buy it from either Atlantic or Goodyear. Similarly, I have never hidden any TBA I have purchased.

5. Although I have been an Atlantic lessee since 3813 1937, I have never heard any Atlantic dealer say he was afraid that his lease would be cancelled if he didn't buy the TBA then sold by Atlantic.

6. I do about 10 percent to 12 percent of my business on Atlantic credit cards and have often sold Exide batteries and other non-Goodyear TBA items this way. It never occurred to me that it might be improper to do this.

7. A few companies other than Goodyear solicit my tire business, but I don't buy from them because I can't tell what I am getting. I bought some recaps once from a salesman who solicited me and they were so bad I had to give them away.

8. I still have Lee advertising signs on the back of the doors of my tire racks. These signs are visible and prominent when the doors are open. Atlantic has never said anything at all to me about these signs.

9. My Atlantic salesman and I are good friends. He helps me with any probloms that I may have with the operation of my station which sometimes includes TBA. He also encourages me to run and assists me in running TBA events and displays.

10. I am familiar with the terms of my lease and know it does not require me to buy any Goodyear TBA.

11. I know I could leave my station at any time and get another station with some other oil company. 3814 Having been with Atlantic for more than 28 years, however, I am obviously satisfied with it and want to stay with it.

12. After as many years of successful operations and friendly relations with The Atlantic Refining Company as I have had, I imagine I am in good standing with the company and have nothing to fear with respect to the cancellation or non-renewal of my lease. I believe lease renewals are based primarily on adequate gasoline gallonage, cleanliness, service to customers and all around efficient operation. I have never thought the brand of TBA carried had anything to do with the renewal of my lease or with the cancellation or non-renewal of any other dealer's lease.

13. I consider myself and have always considered myself my own boss and an independent businessman who runs his own station. I know that whatever I earn from my station is based on my efforts and skill as an operator.

14. I remember talking to an agent of the FTC back in 1953. I don't now remember what I said to him, but I do recall that I told him some of the things stated above.

II. *Cross-Examination.*

1. I operated under a one-year lease (CX 88 E1-2) from 1944 to 1954. On June 1, 1954 I entered into a three-year lease, the form of which is identified in the record as CX 88 E1-2. On June 1, 1957 I entered a further three-year lease, the form of which is identified in the record as CX 3815 88 A-1-2.

2. Prior to 1944, my rental was computed on a cents per gallon basis. Between 1944 and 1957, my rental

was computed on a flat rate per month plus 6 percent of gross receipts from all sources, except gasoline, in the manner set forth in CX 88 E-1-2 referred to above. Since June of 1957, my rental has been computed as a percentage of gross receipts from all sources, in the manner set forth in CX 88 A-1-2 referred to above.

3. Each year I confer with the Sales Supervisor and my salesman at the Atlantic District Office, Binghamton, New York, at their request. We review the past year's sales of gasoline, oil, TBA, etc. The Sales Supervisor and my salesman stress among other things the importance of a balanced sales program for gasoline, oil and TBA, and review statistics concerning this matter. Prior to June of 1954, this conference was held each year about two months prior to the time my lease expired. Since I have been on a three-year lease this conference has been held each year about two months prior to the anniversary date of my lease.

4. For many years I purchased Lee tires from Atlantic and carried them in my station primarily. On or about March 1, 1951, Atlantic discontinued the sale of Lee tires. At that time I changed from Lee tires to Goodyear tires and tubes and have been carrying Goodyear tires and 3816 tubes primarily since that time. I purchase Goodyear tires and tubes from the Goodyear service store in Binghamton, New York, which is my designated "supply point."

5. My estimated annual volume of tire and battery sales in 1953 was $4,000 and $1,000 respectively. Currently, my estimated annual volume of tire and battery sales if $4,500 and $900 respectively.

6. My station is identified with Goodyear window valances and outdoor sign, and has been so identified since about March 1951. Goodyear personnel put up such signs.

III. *Redirect Examination.*

1. In connection with the annual reviews, the Atlantic personnel have never objected to my handling Exide batteries and non sponsored accessories and have never tried to make me buy more Goodyear TBA.

2. The Goodyear signs were put up in my station with my consent and approval.

Mr. Ballard: And the third is a statement of Crawford Bryant, an Atlantic service station operator mentioned in the testimony, and I'll ask her to copy into the record beginning at the mark and ending at this mark and disregarding the material that I have drawn a line through.

(The document is as follows:)

My name is Crawford Bryant. During the period from November 1, 1952 to September 30, 1958 I operated
3817 a service station at McDade Boulevard and Fairview Street, Woodlyn, Pennsylvania, under lease from The Atlantic Refining Company. I am presently operating a service station at Prospect Road and First Terrace, Fort Lauderdale, Florida under lease from The Atlantic Refining Company.

While I was operating the McDade Boulevard Atlantic station, I bought almost all my tires, batteries and accessories from Ed Parris, my Goodyear supply point, because I thought his prices were fair and I liked his credit terms. Credit was important to me because I was often short of cash at the end of a month as a result of gasoline price wars in the neighborhood.

I am informed that on January 26, 1957, William Lee Franks, a salesman for Auto Parts and Radiator Company, testified in the Federal Trade Commission proceeding involving Atlantic and Goodyear that in July 1956 I refused to buy batteries from him and stated, "I have to buy from Parris or I will be put out of my station." I remember Mr. Franks and remember buying from him now and then. I

don't remember making the exact remarks he mentioned; however, it is quite possible I gave him the impression I was obligated to buy from Parris. I was plagued by salesmen to the point of interfering with the operation of my station, and I used to use such statements as a brush-off.

As a matter of fact, I felt free to buy any TBA I
3818 wanted.

Mr. Ballard: I have nothing further.

Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: If your Honor please, Mr. Kelaher and I have agreed that although I'm planning to close my case tomorrow I may have leave to introduce into the record by stipulation within a reasonable time thereafter Goodyear price information for the year 1952.

That is all I have, sir, for today.

* * * * *

3820 DWIGHT T. COLLEY was called as a witness on behalf of The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Would you give the reporter your name and address?

A. Dwight T. Colley. My home address is 225 South Van Pelt Street, Philadelphia.

Q. And, now, sir, could you give us a resume of your history with Atlantic Refining Company?

A. Yes, sir. I came home from the First War in 1919 and went to work in the spring of 1919 as a salesman and the New England territory was opened the following winter.

I was sent up there as a salesman in the Providence territory. I have been from then on district manager in Rhode Island, regional manager in New England, and in about 1948 was transferred down to Philadelphia as assistant sales manager of the company.

A couple years later I became the sales manager, and shortly thereafter, the vice-president of marketing 3821 for both domestic and foreign market.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. And I think it was in 1949 that you became general manager of domestic sales?

A. Like I said, I became a sales manager.

Q. Then, I believe it was in 1951 that you assumed your present position?

A. That is right, sir.

Q. Now, sir, turning to the history of The Atlantic Refining Company, it was organized, as I understand it, in 1870; is that correct?

A. That is right.

Q. And what happened briefly thereafter?

A. Well, the organization was put together in 1870, and was picked up by the Standard Oil Company in 1911 as a—

Q. (Interposing.) Now, sir, I don't want to interrupt you. I suggest it was 1874 that it was picked up by Standard.

A. That's he time we were disorganized, 1911. In 1874 we were picked up by the Standard Oil Company and became a refining branch and handled the Pennsylvania business for a number of years.

3822 Q. Was that both refining and marketing in Pennsylvania?

A. Well, we started in as a refiner with some business abroad. As the years went on, we became the sole representative, both marketing and refining, for the parent company.

Q. And that was in Pennsylvania?

A. In Pennsylvania. And in Delaware.

Q. Then, I think you told us that the Standard group was dissolved in 1911?

A. I am ahead of my story. That is right. In 1911, at the time of the dissolution, we were cut free as a separate company and went about establishing our production and marketing and balance.

Q. Now, at that time, I mean by that 1911, was the domestic marketing organization of Atlantic confined to Pennsylvania and Delaware

A. Yes, at that time in 1911 it was confined to Pennsylvania and Delaware, with a little marketing abroad.

Q. And then, the growth to its present territory has been gradual thereafter, I assume?

A. That is right. You see, we were primarily a refiner with just business within these two states. We had to buy all of our crude oil, and we started to grow in all directions, getting crude and spreading our marketing as our business increased.

Q. About when did Atlantic open its own first

3823 service station?

A. 1915 Atlantic opened what we believe was the first full-fledge drive-in service station in the Pittsburgh area. Before then, of course, the business had been through garages and grocery stores. This was a business devoted entirely to marketing gasoline in a service station designed for that purpose.

Q. Now, moving forward to 1919 and the nineteen twen-

ties, which would be the date of your joining the company, by that time did Atlantic have substantial service station coverage?

A. Well, in 1919, or about that time, we had been building service stations throughout Pennsylvania and Delaware, and, of course, taking on additional garages and business of that kind.

As I said, I went to Rhode Island in that fall, and at that time, in 1919 and '20, we began to build service stations and take on business in the New England area and at the same time in the Southern area.

Mr. Kelaher: Mr. Examiner, I don't know how far we are going to pursue this history of Atlantic. I don't see the relevancy of it to this case. That is going back to the early period of Atlantic.

Mr. Ballard: I think the relevancy will become evident. We are entitled to show the history and what part the service stations played in our business.

3824 Hearing Examiner Kolb: All right; proceed.

By Mr. Ballard:

Q. Now, sir, during the nineteen-twenties, who operated these service stations that Atlantic was building?

A. Well, the service stations that we built, we operated on payroll, operated ourselves entirely for several years.

Q. Did you then change to the lessee method of operation?

A. At the beginning of the thirties, of course, the idea of service stations had caught on throughout the trade; that is, competitors were building them. We began to find we got more interest, more enthusiasm from dealer operation than from payroll.

Q. By dealer operations you mean lessee operations?

A. Yes, sir.

We found if we leased these stations to another individual—in many cases they were payroll operators of these

stations—they took these stations and when they had a stake in it, the business improved rapidly. So, gradually over a period of years, they were all turned from company operation to dealer operation.

Q. And does the company today believe that less operation—and I take it when you say dealer operation, you are referring to lessee operation; we have been speaking here of lessee operations—is it the company's opinion that that is a better form of operation?

3825 A. I believe and the company believes and apparently the industry believes that the most satisfactory operation of a service station is by lessee dealer.

Q. Do you know, sir, what percent of your domestic gasoline sales are accounted for by lessee dealers today?

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The Witness: About 40 percent.

By Mr. Ballard:

Q. Mr. Colley, at various times in the course of these proceedings, the following companies have been named as competing with Atlantic—I will list them off: Esso, Gulf, Amoco, Texas, Tidewater Oil, Sinclair, Cities Service, Mobile, Sun, Shell, Pure, Calso, and perhaps some others.

I ask if that list includes Atlantic's principal competitors?

A. That includes Atlantic's principal branded competitors.

Q. We have had reference to lesser known brands and unbranded companies. Do they also compete in Atlantic's territory?

A. Everybody competes in Atlantic's territory, sir.

Q. And do I understand from your previous testimony

that the majority of these companies that I have named operate with lessee dealers?

3826 A. Practically all the branded companies operate principally with lessee dealers.

Q. Is there a competition to attract and hold the qualified lessee?

A. I would say that competition is the most serious competition in the industry, to hold good dealers.

Q. Can a qualified dealer get a lease from any of these companies?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

The Witness: Yes, we have lost a lot of our qualified dealers to other companies.

By Mr. Ballard:

Q. Now, in seeking to attract and hold dealers in competition with these other companies, is Atlantic as well known as some of these that I have mentioned to you?

A. Well, you would have to qualify that. In much of our area, of course, they are not as well-known. We refer to it as public acceptance. Here in Pennsylvania, we have good public acceptance. As we go away to New England and to the South, many of the companies are much better known than Atlantic.

Q. And what steps does Atlantic take to offset its relative lack of public acceptance in areas such as the South?

A. Well, we have constantly produced a quality
3827 product. As a matter of fact, at many times ahead of the rest. But we must depend principally on the way the stations are run, on the service in those stations. We have found from lots of research that the public wants to buy a good brand at a convenient location from a good dealer. We measure the dealers as 70 percent of the influence. Therefore, we put our effort, as one of the

smaller companies, on getting good trained dealers in these stations.

Q. And your dealer program, of course, includes the training program that has been described here and the building of attractive stations which has also been described. We have heard described your long-term dealer lease policy. Would you state for us the purpose of Atlantic in adopting that policy?

A. Yes, sir. Of course, the dealer that takes the service station today has a choice of service stations in a given town. As our representatives talk to him, he wants to know why he should take our station against a competitor's. Well, if we have a good location and he is satisfied with our advertising program, he wants to be sure he will not have that station on a temporary basis.

We were the first company to give long leases. We felt it was a strong point in selling the station; it gave assurance of continuity. If a man made a success of
3828 the station, he got a long lease and could feel he could enjoy that success. This is one of the things I am very sincere about and one of the things we led in. Many of the companies have followed. I am quite proud of it.

Q. We have also heard described, and there is introduced in the record, your percentage lease, percentage rental program. Is that also part of the program of making the franchise attractive to dealers?

A. Yes, sir; it's hard to make rent attractive to anybody that has to pay it, sir. We have tried all methods. We finally adopted the percentage rental based on the business the dealer does, because we think it is the fairest way of collecting rent. We feel the real measure of a place is what it does and, therefore, percentage lease is again something that I think few have; few of our competitors have that. I think that is a good form of lease.

Q. Now, Mr. Colley, I would like to turn to the develop-

ment of Atlantic's TBA program and go back again to the year 1919 and ask if any of the things we now think of as constituting TBA were being sold in Atlantic stations at that time?

A. No, sir. When we first opened the stations, and I had the responsibility of opening them in Providence, we built them that winter and opened them, we sold almost nothing in those stations that you would call TBA today.

As a matter of fact, the expression "TBA" I didn't
3829 hear until a good many years later.

Q. As a matter of interest, when do you recall the expression coming into the trade?

A. Well, it was pretty close to the Second War before it was glibly said around by our people.

Q. You did, however, before the Second War begin to sell, let us say, tires, batteries and some accessories at your stations, did you not?

A. This was trial and error as far as I am concerned. We opened these stations. Previously, gasoline had been sold at garages. A man went to the garage to get his car repaired, and usually went to a tire store in town for his tires, somewhere else for something else.

Well, we started out with gasoline alone and gave excellent service. But we soon found that the motorist wanted to get other things in connection with that. We had air compressors and an elaborate set-up for people, and so, trying piece at a time, tires and various things to sell, we began to buy and put those in the company-operated stations to sell. That was the beginning of TBA, I suppose.

Q. Now, then, when Atlantic began to lease those stations to the dealers instead of operating them, themselves, did they continue to buy these items that you have been describing and resell them?

A. We did it rather badly. You see, many of these
3830 original dealers were formerly company employees,

and they wanted the station to run, and we leased it to them.

They wanted to get tires and batteries and goggles and dusters—those are the kinds of things that were sold originally. They didn't know where to turn for them. So, we set up mostly under local management, that is, we managers in the field found places to buy them and resell them to our dealers. That was the beginning.

I didn't know anything about buying them; so, we learned how to do it as we went along.

Q. At that time, and I am speaking now of the early thirties—was that the time you started in it?

A. Right.

The goggles and dusters I will tell you sold surprisingly well. Off the main roads, the roads got dusty in those days, sir.

Q. Nevertheless, referring to the early 1930's, at that time were the tire companies selling to oil company outlets and particularly to Atlantic outlets?

A. No, sir. I can remember very well those early days. The tire companies would take garage dealers usually, take them into their home offices and teach them how to repair tires. The first effort was to how to repair tires, and they would set them up in tire stores. And you, the motorist, went to those stores to buy your tires and get repairs.

3831 In the service station there was no organization set up by the tire companies in those days to either sell or supply the service station.

Q. Now, there were, I assume, in existence suppliers of parts and equipment in those days?

A. Yes, there were part suppliers.

Q. Again, in the early thirties, did these parts distributors carry tires and batteries as a general rule?

A. No, you would have to go—you went to a tire place for your tires, and a parts place for your parts, and to a garage to get them assembled for your car.

Q. And it was against that background that Atlantic began to buy and resell to its dealers?

A. You see, all of us had pieces, sir, and the problem was who was going to put the pieces together into a central service.

Q. Our record here shows, and I think I am correct in this, that Atlantic's first contract with Lee was at some time in 1932; that its first contract with Exide—

A. (Interposing.) '37, wasn't it?

Q. Yes, sir. I believe that covered the Philadelphia region only, and the record shows that the Exide contract was expanded to the entire marketing area in 1945. Does that meet with your recollection?

A. That is what the records read as I read them 3832 through. From my own experience, all these things get to be the Lee deal and the Exide deal was excellent here in Philadelphia.

Mr. Kelaher: Objection, your Honor. I think he should be just responsive.

By Mr. Ballard:

Q. Would you describe for us the Lee and Exide deal in Philadelphia and elsewhere, sir?

Mr. Kelaher: Your Honor, I think the contracts speak for themselves.

By Mr. Ballard:

Q. By my previous question I had not meant for you to describe the terms of the contract, but how the deal worked out.

A. Well, the deal worked out—I was about to say as you got away from the home office—. Well, I came to the Philadelphia region prejudiced against these deals because in New England and New York state, I found that the supply of Lee tires was very scanty as you got out of Pennsylvania and the acceptance of Lee was very much

less than it was here. An excellent tire but nobody knew about it as you got away from home.

Exide had an excellent name everywhere. But for us to buy the batteries as the Atlantic Refining Company, try to store them in our warehouses, and then resell them to the dealer, didn't work out well at all because we didn't have the facilities; we didn't have the charging battery, tables; we were just unable to give good delivery and
3833 good service on it as we got away from home. That's the way it worked out.

Q. What about your accessories in this program? Will you describe how that part of the program worked?

A. Again, Lee didn't have accessories at that time. This whole thing came about trying to get customers attracted in the station and the dealer to make money; therefore, we tried to find out what the customer wanted in accessories.

The first big accessory, as some of you will remember—

Mr. Kelaher: I am going to ask that the witness confine himself to the question being put.

Mr. Ballard: The question is a perfectly simple question and the answer is perfectly responsive.

Mr. Kelaher: It pertains to matters that are not being asked. I don't care to interrupt this gentleman. But I don't think the answers are responsive.

Mr. Ballard: I want a ruling on this matter.

Hearing Examiner Kolb: Will you read the question?

(The reporter read the question commencing at line 3 of this page.)

Hearing Examiner Kolb: All right; proceed.

By Mr. Ballard:

Q. If you had finished your answer, which I do not think you had, would you describe for us the kind of
3834 problems involved in the selling of accessories through service stations?

A. Yes, sir. I hadn't finished my answer. But the problem was that we would go to supply houses and buy light bulbs. Those were the days that light bulbs failed all the time in automobiles. They were all sizes. We would try to buy a range of sizes of light bulbs and try to have them in a central spot and to see that the dealers had a range of light bulbs in their hands when they needed them.

That was the thing I wanted to bring out. It was a very complicated problem. Spark plugs, the same way. We started with things we felt were in demand and we could handle. We found that spark plugs changed so rapidly that a dealer in Worcester would want spark plugs of a different size than he had.

The reason I am glad to testify to this is we were doing a very unsatisfactory job of supplying dealers under this method.

Q. Now, as a matter of fact, sir, taking the New England region—your own region—how many warehouses did Atlantic have for the distribution of accessories?

A. We started in—well, we had six main warehouses in New England roughly when we started in in which we handled our gasoline and lubricating oil. Well, of course, they were not at all fitted for handling accessories. We finally got down to about three, and finally to one warehouse from which we attempted to ship by mail 3835 accessories throughout the southern New England area.

Q. And do I understand that the other five warehouses then did handle tires and batteries?

A. They handled tires and batteries, but they gave up the accessory end of it.

Q. And did you in addition have a few supplying dealers who handled these items for your other dealers?

A. That's the next stage. We found that was the beginning, I suppose, of local supply points. We had in

some states, some areas, some dealers who would stock enough of these accessories so that they could supply dealers locally. Very spotily in New England.

Mr. Kelaher: I wonder if we could have some dates with respect to this type of testimony.

Hearing Examiner Kolb: I don't think you need dates, Mr. Kelaher. It is general information. I don't think you need to pinpoint it down any further.

Mr. Ballard: Mr. Kelaher, you have full rights of cross-examination if you feel dates are important.

By Mr. Ballard:

Q. To sum it up, sir, I gather you were not satisfied with Atlantic's TBA program?

A. There wasn't anybody satisfied, sir. Neither the dealers, the company, or me.

Q. Now, again, to avoid a repetition of what's in 3836 the record, it is shown in the record that in 1948 Atlantic directed an inquiry to certain tire manufacturers with regard to a possible change in the program. I believe it was about that time that you came to Philadelphia. Is that right, sir?

A. Yes, sir. I came down between '47 and '48.

Q. Were you in charge, in overall change of the investigation of other programs and the decision as to which program should be made?

A. Yes, I came down as assistant manager of domestic marketing with full responsibility for the regional field market, and immediately set about improving services, because I wanted to eliminate the problems in the field for other people that I had as a regional manager. So I made it my business.

Q. You will recall again the record shows that in 1950 the Firestone program was tested in the Wilmington and Erie districts, and the Goodyear program in the Newark

district. Could I ask you what Atlantic's attitude was toward those tests?

A. Well, I was going to have the responsibility of improving a program that was unsatisfactory. I wanted to make up my mind before I made the move and committed a lot of sales people and affected the welfare of the dealers that it was thoroughly researched; so, following the request to the various big, large tire companies for information, we said the best way to do this is to field test it.

3837 It looks as though it would be better, but let's take two companies and test their program, one in one field and one in the other. And I felt that a good many people though, our own sales people thought that shifting from this long experience of working with Lee, for example, and Exide, might be damaging and the dealers wouldn't like it as they were used to this brand.

It didn't seem as much of a chance to me because I knew they weren't happy. We put on the actual test and in certain districts put the program on for tests, and, of course, the results were overwhelmingly in favor, the dealers were very much in favor of the way it worked out.

Q. Now, sir, it shows in the record, and you have mentioned, that Atlantic has these programs with two companies, Goodyear and Firestone. I ask you what is Atlantic's reason for having a program with the two different companies?

A. Yes, when I started out I suppose that I figured we would have one company and see which did the best. But I found many advantages in having two companies. For example, we had two very strong companies with excellent reputations, and they were competing for our acceptance. I told them I was interested in a program for our dealers that would help our dealers make more money and sell more product, and I was anxious to see how well—what their coverage was, what were their supply points.

As it grew and we spread the program, we found
3838 that in some territories, for example, Firestone had greater acceptance; in other territories, Goodyear did. In the process of the trials we came to the conclusion we would be very much better off with two companies and segregated so we could determine which one was doing the best job.

Q. There has been considerable testimony in the record about a number of TBA suppliers other than Goodyear and Firestone who are calling on Atlantic dealers in various parts of the country. I would like to ask, in view of that, those sources of supply, why is it necessary in your view for Atlantic to offer a TBA program, a sponsored TBA program for its dealers?

A. It was absolutely necessary. Everybody, of course, has their own axe to grind. We have found that the dealer to be successful must do what we call a balanced sales job. If he gets to doing an overwhelming repair business, he hurts the rest of his business and drives nice trade away. We find if he becomes obsessed with tires, he neglects something else. So, our job is to see that he doesn't over-buy and he buys the kinds of things he can sell readily.

We have picked up a lot of know-how since 1919 when I began fumbling with it. We now have some experts, and I am sure that our ability to guide it and coach it is absolutely necessary.

Q. Now, sir, under Atlantic's—

Mr. Kelaher: (Interposing.) That last part of that
3839 last answer, could I have that, sir?

(The reporter read the record as follows: "We now have some experts; and I am sure that our ability to guide it and coach it is absolutely necessary.")

By Mr. Ballard:

Q. Under Atlantic's TBA policy—and I may say the March 1, 1951 letter outlining that policy is in the record—under that policy if a particular dealer can make a deal that is better for him under his particular circumstances, what is Atlantic's policy in that case?

A. By all means to urge him to do it, to make it.

Q. And by that, even if it involves non-sponsored TBA?

A. Oh, yes. That was true at the beginning. It began that way. I wasn't sure that here, for example, in Philadelphia, in the neighborhood of Conshohocken, that in many cases the dealer would want to change from what he had, as probably in cases could sell some other brand better. What I was anxious was that he have a good brand and that we provide a program and not shut him out from a better program.

You can see it was the problem. That was what I was most afraid of when I started. Therefore, we, from the very beginning, said that the dealer must have a chance in all cases to buy what he could do the best with.

Q. Does Atlantic extend the benefits of its dealer program to all dealers, regardless of their TBA purchasing practices?

3840 A. Yes, sir.

Q. Yesterday afternoon, Mr. Mulholland described to us some of the things that Atlantic does in the operation of its TBA program. I won't attempt to summarize Mr. Mulholland's testimony. In any event, he did describe that, and we have had other descriptions of the program in action. I ask you whether the operation of that program costs Atlantic substantial sums of money?

A. Yes, sir, it certainly does.

Q. In your view and in your position with the company, how does the cost of operating the program compare with the commission's received thereunder?

A. My accountants tell me that it almost balances. That is not the objective. The objective of it is to help the dealer. But if I can tell my associates that the program is paid for by our commissions, then, it is very nice. And my accountants tell me that is about so.

Q. So, the commissions just about equal the cost?

A. That is right.

Mr. Ballard: I have no further questions. Cross-examine.

Mr. Kelaher: May I have a few minutes, your Honor?

Hearing Examiner Kolb: All right. Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

3841 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Colley, I would just like to ask you a few questions to straighten, in my mind, at least, some matters.

Your attention was called to Esso, Gulf, Amoco, Tidewater Oil, and other oil companies, if you recall, and questions were asked concerning your competition with them for dealers. I believe you stated that you lost a lot of dealers to these other companies. Isn't the reverse also true that Atlantic has gained dealers from these other companies?

A. I may be prejudiced, but I don't think we get our share, sir, but we try.

Q. Then, you do get some dealers?

A. Yes, sir.

Q. And it is not uncommon to raid one another's outlets for dealers, as I understand?

A. No, sir.

Q. Now, I would like to direct your attention to the field tests that were made when Atlantic decided to test the TBA programs. What is your recollection of the cir-

cumstances surrounding the companies selected for those tests in Wilmington, Erie, and Newark?

A. Well, this is from memory, but the purchasing department of our company had been asked to contact five or six of the major tire companies to see if they
3842 were interested before I got into it. Then, as we discussed it with my staff of what companies to use, we set up a criterion. We said we wanted companies that had good public acceptance in our territory. We wanted companies that had supply points. The big problem that had been eating me had been the storage and supply of batteries and accessories and tires, and we wanted tire companies, if we could, that also handled accessories, batteries. Of course, it was simpler for the dealer, simpler for us, if you could do business with one supplier. And the dealer who has very little cash to spend likes to keep it to buy from as few places as possible. This was shortly after the war when we had so many shortages. As a matter of fact, I remember—

Q. (Interposing.) My question, not to interrupt; you can elaborate—

A. (Interposing.) I don't want to elaborate. I thought you asked how we arrived at the ones.

Q. Yes.

A. As I say, when we applied those tests, there were very few that could comply that had the acceptance, that had the supply points, and that handled accessories as well. And we came down to the two main ones, two of the very few that did, which were Firestone and Goodyear.

So, we sent for them, or asked them to come in and discuss it with our people, my TBA specialists, whether
3843 or not they were interested in such a program. That's how we went about it.

Q. Isn't it a fact that you did not originally select Goodyear to test the TBA program in the Newark area?

A. I don't remember, sir.

Q. Isn't it a fact that Firestone was originally selected to test the TBA program in the Newark area, as well as the other two?

A. We can find that out.

Q. I am asking what your recollection is.

A. I don't recollect. I would like to help you. We asked the district managers—you see, we called for volunteers from district managers who would be willing to conduct these tests. And to my TBA man, I said I wanted a fair test. I wanted it done in territories where we would get fair results, where the district managers were interested. I know what the final selection was, but I didn't know, I had forgotten there had been a previous selection.

Q. You are willing—I will withdraw that.

You don't recall that on March 17, 1950 Atlantic was advised by Firestone, almost, by Firestone, that it would not go into the Newark area on a test basis?

A. I don't know that.

Q. You don't recall that at all?

A. No.

3844 Q. Was there dissatisfaction among your staff, all of your staff, concerning the change from Lee-Exide to the Goodyear and Firestone TBA programs?

Mr. Ballard: Before you answer that, could I ask do you mean to say "your staff" or "all of your staff"?

Mr. Kelaher: Your immediate staff.

Mr. Ballard: You said all.

Mr. Kelaher: I am limiting it to the immediate staff.

The Witness: You couldn't say all the staff was in favor of changing or not changing. You are asking me before?

By Mr. Kelaher:

Q. I am talking about the period before you changed to—

A. (Interposing.) The staff was divided as to how wise it was.

Q. And there were those who were satisfied with the Lee-Exide arrangement and wanted to continue it, weren't there?

A. Yes, the TBA manager himself.

Q. Who was that?

A. That was Heidman at that time. I think he felt it would be an awful lot of work to change. Of course, he didn't have to run the stations.

Q. Are you familiar with the TBA survey that was made in 1948 and '49 concerning Atlantic's program 3845 then in existence? I am referring now to the time they carried Lee tires, and Exide batteries, and a line of accessories?

A. Yes, I am.

Q. Are you familiar with the fact that that survey shows that 67 percent of Atlantic dealers preferred Lee tires?

A. Yes, I am.

Q. And that 79 percent of Atlantic dealers preferred Exide batteries?

A. Yes, I am. I am also familiar with who made the survey and how limited the survey was. As we went into it, we felt it was not a very thorough or expert job done by a very nice man who had never been a research man before. And it just didn't stand up as we dug into it.

Q. So, you place no reliance on the survey?

A. No, and experience has shown that I was right in not placing reliance on it.

Q. Isn't it a fact that Lee and Exide did have consumer

acceptance in areas other than the immediate Philadelphia area?

A. Well, they had—when we talk about consumer acceptance, it's like gasoline, sir. They had varied acceptance. I would say as you went out from the perimeter of Philadelphia, it got less and less.

Q. Was that true of Exide batteries, too?

A. Exide had very much better national accept-
3846 ance. We didn't drop Exide because it didn't have good acceptance.

Q. What was your reason?

A. As I said, in the direct testimony, before the days of dry charges, when you would ship them from Maine to Florida and try to store them and resell them, you were in trouble, no matter how good the battery was.

Q. Isn't it a fact that one of the principal reasons you changed from Lee-Exide to Goodyear-Firestone TBA programs was financial in nature?

A. One of the principal reasons?

Q. One of the reasons that Atlantic changed.

A. The principal reason for changing was my anxiety to see that our dealers had a profitable program to handle. I would say it was a corollary. It would be a good deal because it was one of the deals that was good because if it was good for the dealers, it would be good for Atlantic; if it was good for Atlantic, it would be good for the tire companies.

Q. Did you believe at the time you switched over to Goodyear and Firestone TBA that most of your lessee dealers would go along?

A. At the time we made the switch, I felt they would. The tests indicated they would.

Q. And didn't you feel that a good number of your contract dealers and distributors would also go along with the programs?

A. Yes, I felt it was so much better—everything
3847 is relative, sir—I felt it was so much better than what we had it would probably gain acceptance rapidly.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: You are through, Mr. Colley. Thank you.

(Witness excused.)

Mr. Ballard: Your Honor, it has been called to my attention that in yesterday's testimony at page 3713 I asked Mr. Walsh a question as to the percentage increase in "gasoline sales per lessee dealer". Mr. Kelaher and I have stipulated that that question was intended to refer to gallonage sales, sales of gallons, and not dollar sales, and that Mr. Walsh's answer likewise referred to gallonage and not to dollars.

Now, sir, I find that we have a number of exhibits which have been identified but not offered in evidence. They are Atlantic Exhibits 1 through 4 and 6 through 9. Number 5, I believe was withdrawn. But I think you will find that 1 through 4 and 6 through 9 were never formally offered in evidence.

Hearing Examiner Kolb: You are offering A-1 through -4 and -6 through -9.

Mr. Ballard: Yes, sir.

Hearing Examiner Kolb: Any objection?

3848 Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibit A-1 through A-4 and A-6 through A-9.

(Whereupon, the documents, heretofore marked RESPONDENT'S EXHIBIT A-1 through A-4 and A-6 through A-9 for identification, were received in evidence.)

Mr. Ballard: Mr. Kelaher asked yesterday for a survey (handing to counsel).

Now, except for the 1952 Goodyear price data that was referred to yesterday, I have nothing further to go into the record, sir.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Mason and Mr. Correa, I have G-2 through -4 and G-6 which have not been offered. They are the lease Sherwood MacMasters. Sherwood Oil Company.

Mr. Correa: As I recall it, those exhibits have not been offered. They were marked for identification in connection with cross-examination. We are not offering them.

Hearing Examiner Kolb: Not offering them? Then, let the record show that Respondent's Exhibits G-2 through G-4 and G-6 have been withdrawn.

3849 Mr. Correa: They are marked for identification in connection with cross-examination.

Hearing Examiner Kolb: They have been withdrawn as exhibits. They are either offered or withdrawn.

Mr. Correa: We don't withdraw them. They are marked for identification.

Hearing Examiner Kolb: They are marked for identification regardless of whether you withdraw them or not. The record will show that they are withdrawn as far as the record is concerned.

Mr. Correa: I object to that.

Hearing Examiner Kolb: Now, at this point I suppose Mr. Correa's statement will be incorporated in the record, Mr. Ballard's moving speech will be incorporated in the record, and my ruling, and the record now shows that the case has been closed as to the Respondents.

Mr. Correa: If your Honor please, on behalf of Goodyear, as your Honor will observe, we have offered no evidence, no affirmative case, and our present disposition is

not to offer any such case. We do this on the basis that the procedure which has been followed in respect of this case, that is, the case against Goodyear, and particularly in respect of the Shell-Goodyear contracts involved in this case and in another case pending before your Honor concurrently to which Goodyear is not a party, has had the
3850 effect of depriving Goodyear of procedural due process, and has hence been fatally defective, and while we do not believe the defect would be cured by any participation by us affirmatively in these proceedings, we feel that nevertheless we should not engage in any such participation.

Now, having said all that, there are two points, and only two points, which would interfere with our resting at this moment. The first point is that we would like, in the words Mr. Kelaher used when he closed his case, to see if there may be anything we have overlooked on a review of the record. This was Mr. Kelaher's request made at the hearing of December 12, 1957, and it was granted, and he advised counsel and the Examiner on January 10, 1958, that he had made his review of the record, and your Honor will recall that thereafter on January 14, 1958, there was filed an order entitled "Order Closing Case for the Taking of Testimony in Support of the Complaint and Fixing Time Within Which to File Motions."

We ask similar treatment to that in any event. I say "in any event" because we further ask that the cases of Goodyear be held open until the conclusion of the Shell-Firestone case because although we do not think this defect which we have alluded to, procedural defect, can be remedied, there, of course, always exists the possibility that there will something occur in the further proceeding of that case that we can not now foresee which would
3851 make it possible to offer evidence in this case, particularly respecting that particular contract.

Mr. Ballard: Are you through?

Mr. Correa: Yes.

Mr. Ballard: May it please your Honor, I would like to join in that motion on behalf of Atlantic except, of course, where Mr. Correa asks that the case be held open as to Goodyear I would, of course, ask that it be held open as to Atlantic as well.

Mr. Kelaher: Are you finished?

Mr. Ballard: Yes, sir.

Mr. Kelaher: For the record I would like to object to any attempt to keep the record open, and I would like to state that my remarks on December 12, 1957 were in connection with the evidence which was introduced into the record on that date, a great deal of which, or some of which at least, was admitted subject to check because of the nature of the documents introduced, and it was not intended to refer to all of the evidence in all of the other hearings that preceded that particular hearing.

I would also like to point out that counsel for respondents have had since January 10, 1958 to prepare their defenses, and that would appear to be ample time, and any continuance would unduly and unnecessarily delay the closing of this case.

3852 Hearing Examiner Kolb: I think all counsel undoubtedly know what is in this record. You have been getting daily copy, split copy, and everything else, and I see no occasion for holding the case open on the proposition that maybe something may happen in one of the other cases which might reflect on this case. Should that occur, you would always have an opportunity to come in on a motion to reopen if you can show and give a basis for it if that is correct.

I will be frank with you. I do not intend to immediately issue the decision in this case, but I do want to get the case closed and out of the way and proceed with the other

cases and get them closed. I don't want to have them all hanging open. My position here is expedience in getting these matters closed and not carrying them on indefinitely, and I think with the right to make a motion to reopen, if such occasion should occur, would fully protect the respondents in this case under any circumstances. Don't you agree with me on that, Mr. Correa?

Mr. Correa: With great respect, I do not, if your Honor please.

Hearing Examiner Kolb: Then, I will have to overrule your motion.

I understand Mr. Kelaher wishes to put on some rebuttal testimony, and before that is put on I think that the case should be definitely closed, and for that additional
3853 reason I am insisting that the case be closed at this time and that Mr. Kelaher proceed with the rebuttal testimony.

* * * * *

3887 Hearing Examiner Kolb: The case is closed for the taking of testimony.

* * * * *

VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 296

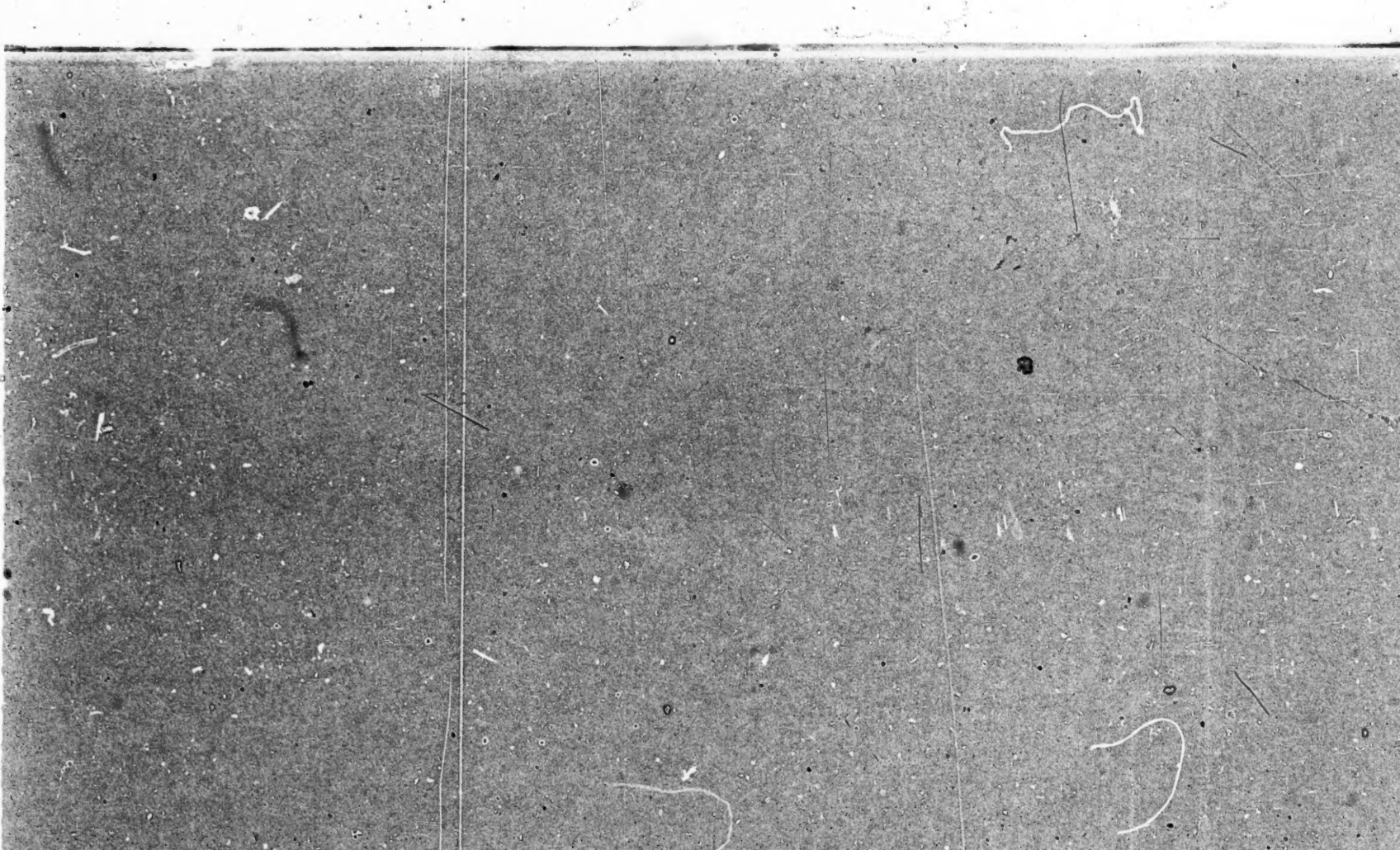
THE GOODYEAR TIRE & RUBBER COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964



VOL. IV, pp. 2375 to 3126

In the

United States Court of Appeals

For the Seventh Circuit

No. 13339

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner,* vs. FEDERAL TRADE COMMISSION, *Respondent.*	Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

Summary of proceedings below 1
Amended Complaint 5
Answer of Goodyear Company 13
Answer of Goodyear Company, Inc. 19
Answer of Atlantic to Complaint as amended by order of May 21, 1956 26
Order sustaining Interlocutory Appeal 35
Motion of Goodyear Company and Goodyear Company, Inc., to withdraw issues and to strike evidence 38
Answer in opposition to motion, etc. 39
Order denying motion to withdraw issues and to strike evidence 45
Interlocutory Appeal of Respondents 46
Answer in opposition to Interlocutory Appeal 61
Order denying Interlocutory Appeal 88
Order on motion to strike evidence 90
Initial Decision 94
Final Order 114
Opinion of the Commission 118
Petition for Review 188

TRANSCRIPT OF PROCEEDINGS.

Admissions of Respondents 199
Documents marked for identification 203
Offer of exhibits 219, 237, 393, 441, 459, 482, 601
Colloquy 223, 248, 1432, 2369
Stipulation re testimony of Atlantic personnel 366
Stipulation re Atlantic testimony 415
Stipulation re Goodyear testimony 447, 512

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3679.

Data re three marketing areas..... 468
Stipulation re Warren and Hunterdone Counties in New Jersey 2342
Stipulation re Gay testimony.....2343
Statement of Crawford Bryant.....2347

WITNESSES FOR THE COMMISSION.

Testimony of:

Balloran, Francis J..... 771
Best, Rolland C.....1208
Blumenthal, David B..... 306
Booz, Elmer H., Jr..... 757
Chambers, John 257
Colby, William 874
Connell, Conrad 709
Drennan, Robert B..... 931
Duboff, Myer 533
Edrington, Russell H.....1298
Edwards, William E.....1308
Franks, William Lee 789
Ferguson, Richard 882
Freeland, Edgar D., Jr.....1244
Govoruhk, Nicholas 1051
Hayes, Sherman 869
Heald, Felix B..... 802
Heller, Edward C..... 499
Hill, George J., Jr..... 488
Hinderscheid, W. F.....571, 687
Hoffman, Jack 291
Hooper, James 1257
Huether, Lewis A.....1252
Iacona, Aniello L..... 637
Johnson, Tyler L..... 743

Kernaghan, Thomas J. 669
Kevis, Douglas W. 312
Lang, Elmer 1220
Lanza, Michael Thomas 853
Marabella, Joseph 815
Matthews, James 554, 604
McCandless, Robert H. 695
McIntire, James L. 905
McMaster, Joseph B. 1109
Migan, John J. 1150
Myers, James M., Jr. 939
Norris, Oster 1145
Osborn, Samuel Kriete 962
Pollock, Isidore Jack 660
Roettger, E. Edmond G. 1036
Sander, Homer August 1293
Savage, Eugene 1160
Scheiner, Joseph 1279
Smith, William C. 1011
Vick, John J. 677
Walker, George Stanley Drew 896
Wetzel, Glenn L. 320

WITNESSES FOR RESPONDENT.

Testimony of:
Buongiorne, Frank R. 1611
Carlson, Robert O. 1888
Cary, Reuben 2188
Colley, Dwight T. 2348
Cooley, Russell E. 1583
Connelly, Joseph M. 2154
Detwiler, Charles K. 2083
Elko, Donald 1939

Gaestel, Wilbur D. 1815
Gloth, Israel 2027
Godino, Alfred 1925
Grossman, Sam 1740
Hathaway, Holland M. 1474, 1555
Hayes, Thomas A., Jr. 2114
Jones, Thomas E. 1970
Klein, Robert 2139
Lott, Charles Henry 1772
Luongo, Rudolph N. 1963
Mann, Isadore 1952
Mapes, August 1791
Marino, Joseph A. 1751
Maseyko, George Paul 1667
McCarthy, Harold F. 2043
Molinaro, Dominic, Jr. 2068
Mulholland, Richard G. 2300
Munch, Edward B. 1550
Provost, Robert C. 1932
Rhoades, O. Harris 2169
Ringenary, Edward 1909
Shafer, Albert H. 2208
Snow, Edward L. 2061
Thomas, Richard D. 1565
Vayda, Albert J. 2136
Walsh, Charles A., Jr. 2248
Wash, Joseph J. 1720
Way, William L. 2147
Wright, Harry W., Jr. 1686
Wyckoff, Charles P. 1705
Zarella, George 2046

Vol. I, pages 1 to 857; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3679.

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets.....2375
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks.....2378
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord.....2379
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks.....2380
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman.....2381
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al...2383
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord.....2385
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al.....2387
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman.....2388
9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the company's preference for the Goodyear program:".....2389
Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan".....2393
11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental".....2395
12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors.....2397

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached.....2398
14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman.....2403
15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker 2404
16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr.....2406
17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman 2408
18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord.....2410
19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman.....2412
20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman.....2413
21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord 2415
22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman 2416
23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow"....2417
24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers 2419
25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting" 2429
26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting" 2430

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline" 2431

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2432

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic, Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2435

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2436

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers" 2437

32—Inter-Office Communication, February 28, 1951, from W. E. Blank, attention of L. A. Knight..2438

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers 2439

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2441

35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2445

36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2446

37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2447

38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2448

39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2449

40 A-B—Letter, February 9, 1951, from S. J. Heideman to J. E. Mayl, with enclosure 2451

41 A-E—Goodyear Form G-1209, with descriptive note 2453

42 A-B—Goodyear Form G-1204, with descriptive note 2458

43 A—Goodyear Form G-1201, with descriptive note 2459

44 A-B—Goodyear Form G-1208, with descriptive note 2460

44 C—Goodyear Form G-1207 2461

44 D—Goodyear Form B-91 2462

44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement 2463

44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2464

44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2465

45 A-B—Goodyear Form B-80, with descriptive note 2466

46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl 2467

47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al 2469

47 C-D—Goodyear Sales Department Instructions, May 31, 1951 2472

47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2475

48 A-F—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951" 2477
49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord 2484
50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman 2485
51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman 2487
51 A—Goodyear Form A98101L, "Request for Identification Field Service" 2489
52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company" 2491
53—Summary of Sales and Commissions covered by the Sales Commission Plan 2492
54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953" 2493
55—Goodyear Tabulation of TBA Volume of Commissions to Various Oil Companies, 1951, 1952 and the First Six Months of 1953.....2493
56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord.....2494
56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr.....2495
57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman.....2496

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord 2497
59 A-E—Letter Agreement, January 1, 1950, from Goodyear to Shell Oil Company, with Exhibit A attached 2498
59 F-I—Letter Agreement, January 8, 1953, from Goodyear to Shell American Petroleum Company, with Exhibit A attached.....2503
60—Memorandum, November 6, 1951, from R. G. Miller to J. A. Bailey.....2508
61—Unsigned document, "Outline of Discussion The Shamrock Oil & Gas Corporation, Amarillo, Texas, Tuesday—November 27, 1951".....2512
62 A-E—Letter Agreement, March 11, 1952, from Goodyear to The Shamrock Oil and Gas Corporation, with Exhibit A attached.....2515
63—Letter, August 29, 1952, from Leo J. Wilmeth to R. G. Miller.....2521
64 A-E—Letter Agreement, September 5, 1952, from Goodyear to Carter Oil Company, with Exhibit A attached 2522
65 A-C—Memorandum, September 5, 1952, from S. A. Gaylord to certain District Managers and Division Managers.....2527
66 A-L—Copy of "The Carter Dealer", December 1952 2533
67 A-B—Unsigned letter, July 14, 1937, to Sherwood Brothers, Inc.....2545
68 A-B—Letter Agreement, March 1, 1944, from Goodyear to Sherwood Brothers Incorporated 2547
68 C—Letter Agreement, December 21, 1955, from Sherwood Brothers Incorporated to S. A. Gaylord 2550

69—Letter Agreement, September 25, 1944, from Goodyear to Sinclair Refining Company.....2551
70 A-C—Letter Agreement, October 1, 1947, from Goodyear to Sinclair Refining Company, with attachment 2554
71 A-D—Letter Agreement, May 1, 1952, from Goodyear to Mid-Continent Petroleum Corp., with Exhibit A attached 2558
72—Letter, January 15, 1952, from Victor Holt, Jr. to T. E. Fitzgerald.....2563
73 A-B—Letter, June 20, 1953, from C. R. Mitchell to W. J. Wixson.....2564
73 C—Letter Agreement, May 16, 1955, from Goodyear to Mid-Continent Petroleum Corporation 2568
73 D-G—Letter Agreement, May 16, 1955, from Goodyear to D-X Sunray Oil Company, with Exhibit A attached 2569
74 A-D—Letter Agreement, June 19, 1952, from Goodyear to The Frontier Refining Company, with Exhibit A attached.....2573
75—Memorandum, June 12, 1952, from J. W. Basista to C. W. Thorp 2579
76—Letter, March 5, 1953, from J. W. Basista to Claude A. Weber 2581
76 A—Letter, December 9, 1954, from H. E. Armitage to Goodyear 2582
77 A-D—Letter Agreement, January 1, 1953, from Goodyear to Quaker State Oil Refining Corporation, with Exhibit A attached 2583
78 A-B—Document, undated and unsigned, with heading "Carter Oil Company T. B. A. Sales Potential" 2588

79 A-F—Letter Agreement, January 26, 1955, from Goodyear to Anderson-Prichard Oil Corporation, with Exhibits A, B and C attached.....2590

79 G—Letter, February 18, 1955, from E. K. Ketcham to Goodyear 2597

79 H-J—Unexecuted Letter Agreement dated August 9, 1949 from Goodyear to Ashland Oil & Refining Company, with attachment.....2598

79 K—Letter, September 13, 1949, from Everett F. Wells to Sam Gaylord.....2602

79 L—Letter, September 28, 1949, from S. A. Gaylord to E. F. Wells.....2603

79 M—Letter, July 12, 1950, from W. E. Cameron to Don W. Detjen.....2604

79 N-O—Memorandum, March 24, 1950, from S. A. Gaylord to H. E. Ho rster.....2605

79 P-V—Document, unsigned, January 3, 1950, with heading "Special Account Instructions Ashland Oil & Refining Company, Inc., Ashland, Kentucky Sales Commission" 2608

79 W—Document, undated and unsigned, with heading "Goodyear Districts".....2621

80 A-T—Goodyear Organization Charts 2623

80 U—Map entitled "Goodyear Regions & Districts" 2643

81 A-F—Atlantic Organization Charts 2644

82 A-C—Outline Maps of Atlantic Marketing Regions—Philadelphia-New Jersey Region, New York Region, New England Region.....2650

83 A-C—Outline Maps of Atlantic Marketing Regions—W. Penna. Region, E. Penna. Region, Southern Region 2653

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952 2657
85 A-B—Atlantic Lease Form B/3191, 6/49 2660
86 A-B—Atlantic Lease Form, B/3191, 4-52 2664
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2669
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station" 2672
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2672
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191 2678
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *" 2679
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station" .. 2680
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants .. 2681
88 E1-2—Atlantic Lease Form B-3191Y, 5/55 2683
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement 2689
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement 2690
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement 2692
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2697
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants .. 2702
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants .. 2704
93—Atlantic Form of "Commission Agreement" 2708

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2711
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2715
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2721
96—Atlantic Form B-3119, 10/50, "Authorized Distributor's Agreement" 2727
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2730
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2733
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2735
98 A-G—Atlantic Form of Distributor Contract.... 2737
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2743
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider..... 2749
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2754
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers"..... 2759
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2762
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al..... 2764
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study" 2765
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2791
102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments..... 2801

104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic.....2807
105 A-B—Letter Agreement, January 12, 1954, from Firestone to Atlantic 2810
105 C—Letter Agreement, November 3, 1954, from Atlantic to Firestone.....2813
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone 2814
121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachment..2816
122—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2821
123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord 2822
124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman 2823
125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord 2824
126 A-B—Letter Agreement, April 3, 1951, from Atlantic to Goodyear 2825
126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear 2827
126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear 2828
127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company-Sales Commission" 2829
128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall 2842
129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley.....2844
130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda 2845

131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson.....2852
132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al.....2853
133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region.....2854
134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for the marketing of Tires, * * *".....2857
136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment.....2859
137 A-E—Document entitled "Duties of the Dealer Salesman".....2865
138—Unsigned memorandum, June 25, 1951, to F. M. Neall.....2871
139 A—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger.....2872
140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman.....2873
140 A-C—Three Atlantic Forms B-139, 10/51, Dealers' Credit Card Sales Slips.....2875
141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis.....2879
142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman.....2880
143—Letter, July 9, 1951, to William Stockton.....2881
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2882
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2883

145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2884
146 A-B—Document entitled "Staff meeting held 7/14/52" 2887
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13" 2889
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr. 2890
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program" 2891
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantic's T. B. A. Policy" 2892
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell 2893
152—Atlantic form letter, to Atlantic Dealers and Atlantic Petroleum Distributors, beginning "Here is the most important T. B. A. news * * *" 2894
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2895
155 A-H—Document entitled "1951 Sales Plan New York Region Basis" 2896
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C" 2902
155 J—Document entitled "1951 Sales Plan—Report of Progress—Appendix D" 2903
155 L—Document entitled "Appendix E" 2905
155 M—Document entitled "Summary of Results" 2906
156—Document dated January 5, 1951 entitled "Station Modelization Policy" 2907

157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2908
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman.... 2909
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord 2911
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments..... 2912
160 Q-Y—Document entitled "Goodyear Associate Dealers—New Jersey" 2927
161—Unsigned letter, July 30, 1951, to W. J. Jackson 2936
161 A-B—Document bearing two colums headed "Location" and "Reason" 2937
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman.... 2939
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord 2940
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman 2942
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman 2943
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill 2944
166—Letter, October 11, 1951, from J. W. O'Neill to S. J. Heideman 2945
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman 2946
167 A-M—Handwritten document entitled "Refusals" 2947
168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel..... 2958
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis..... 2959

170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment 2960
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment 2968
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment 2973
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis 2975
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, *et al.*, June 1, 1951, with attachment 2975
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman 2982
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman 2983
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletin #17" 2984
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman 2985
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord 2986
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y." 2987
179 J—Form entitled "Atlantic-Goodyear Accounts" 3002
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)." 3002
180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman 3004
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill 3005

182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 3006
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 3007
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries" 3009
193—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951" 3011
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950" 3013
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949" 3015
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950" 3017
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949" 3019
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950" 3021
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949" 3023
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950" 3025
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs. 1949" 3027
202—Tabulation entitled "Final T. B. A. Sales—October 1950" 3029
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950" 3030
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949" 3031
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950" 3032

204 A—Tabulation entitled "Final T. B. A. Sales—December 1950" 3033
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949" 3035
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950" 3036
206—Letter, August 28, 1952, from D. T. Colley 3037
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers 3038
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951"....3040
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951" 3040
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951"....3041
211—Document entitled "Atlantic Progress Report", October 29, 19[illegible].....3042
212—Document entitled "Atlantic Progress Report", December 24, 1951 3043
215 A-B—Atlantic Credit Card—1950 3045
216 A-B—Atlantic Credit Card—1951 3046
217 A-B—Atlantic Credit Card—1952 3047
218 A-B—Atlantic Credit Card—1953 3048
219 A-B—Atlantic Credit Card—1954 3049
220 A-B—Atlantic Credit Card—1955 3050
221 A-B—Atlantic Credit Card—1956 3051
222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50) 3052
223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51) 3053
226 A-H—Letter, July 7, 1950, from Paul Castleberry, Jr. to Atlantic with attachments 3054

227 A-K—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear with attachments 3062
228 A-K—Goodyear Forms G-1204 (3-50) with covering Form G-703 (2-42) 3073
247 A—Document entitled "Goodyear T. B. A. is a natural for plus sales and profits" 3084
247 B—Booklet entitled "Goodyear T. B. A. Plan" .. 3098
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling 3127
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman 3128
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic 3129
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation" 3130
257 A—Letter, November 12, 1953, Atlantic to Aniello L. Iacona 3131
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic 3132
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania 3133
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro 3134
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro 3136
259—Letter, July 5, 1956, from Atlantic to A. Bennett 3137
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson 3138
261—Letter, October 21, 1955, from Atlantic to Charles Davis 3139
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice 3140

263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio 3141
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly 3142
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel 3143
266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette 3144
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith 3145
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco 3146
269—Letter, January 5, 1955, from W. J. McCambridge, Jr. to Duane Olthof 3147
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski 3148
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski 3149
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw 3151
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco 3152
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers 3153
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman 3153
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al 3155
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3156

280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al.....3160

281 A-B—Document entitled "Sales Meeting February 19, 1951".....3162

282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card.....3164

283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3167

284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al.....3171

285—Letter, March 5, 1951, from E. W. McCreary to E. M. Fiffick, et al.....3174

286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment 3175

287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al.....3178

288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3179

289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers 3184

290 A-I—Memorandum, August 6, 1951, with attachments 3185

291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3197

292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3200

294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews 3203
295—Document entitled "Branches as of January 1, 1950" 3205
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950" 3205
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive" 3206
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell 3208
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott 3209
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co.....3212
302—Letter, December 22, 1950, from C. Connell to J. S. Parks 3213
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville 3214
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell 3215
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst 3216
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst 3218
307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co.....3221
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3223
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell 3224

310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell 3225
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville 3227
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher 3229
314 B—Document entitled "Exide Wholesale Distributors by States and Cities November 1, 1950" 3231
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951".....3239
314 D—Document entitled "Exide Wholesale Distributors by States and Cities May 1, 1957".....3247
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley.....3269
328—Letter, April 5, 1948, John R. Sherwood to S. K. Osborne 3273
329—Certified copy of complaint in Osborn v. Sinclair Refining Company 3275
330—Certified copy of answer in Osborn v. Sinclair Refining Company 3298
331—Goodyear Form B-304 (11-56), "Goodyear Batteries Suggested Retail Prices".....3303
332—Goodyear Form B-308 (11-56), "Goodyear Batteries 352 Dealer Prices".....3305
333—Goodyear Form B-166 (10-51), "Goodyear Battery Policy and Sales Program Effective October 31, 1951" 3307
334—Memorandum of conversation on stationery of Bowers Battery and Spark Plug Co. beginning "Conversation—Mr. Nicholas J. Govoruhk— * * *".....3311
335—Baltimore Battery Co. Invoice No. 2376.....3312
336—Baltimore Battery Co. Invoice No. 3201.....3313

337—Baltimore Battery Co. Invoice No. 2361.....3314
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column.....3315
339—Goodyear Service Stores Invoice dated 12-27-55..3316
340—Letter, October 22, 1954, from J. R. Sherwood to J. B. McMaster.....3317
346—Newspaper advertisement of Plotkin's Tire Sales 3318
347—Letter, May 26, 1952, from Shell Oil Company to James W. Hooper 3319
348 A-B—Shell Form SR 1771-1 (Rev. 1/53), "Service Station Manager's Agreement".....3320
349—Letter, June 2, 1954, from Shell Oil Company to W. E. Edwards 3327
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks 3328
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments 3330
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3343
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions" 3344
377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade".....3345
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951" 3347
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951" 3348
387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3349

389 A-B—Document entitled "Products Eligible Under Sales Commission Plan" 3350
391 A-C—Document dated 10-21-55 entitled "Shell Oil Co.—Sales Commission" 3353
392 A-B—Letter, June 3, 1948, from R. C. Mueller to E. C. Flinn 3360
393—Goodyear intra-company memorandum, 7-8-48, from S. A. Gaylord to E. C. Flinn.....3362
394 A-C—Goodyear document entitled "District Instruction No. 1086A", October 19, 1948.....3363
395 A-B—Letter, December 19, 1951, from Butler Doolittle to C. H. Mead, Jr. 3369
396 A-H—Letter, October 9, 1950, from R. E. Sewell to O. E. Scholz, with attachments.....3371
397 A-B—Letter, January 30, 1953, from J. W. Basista to George L. Switzer.....3385
398 A-D—Letter, August 24, 1948, unsigned to Gibson 3389
399 A-C—Document entitled "Shell Oil Company Schedule 'A'—Part 2-3-4" 3393
400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments 3397
401—Document entitled "Distribution List for Sales Department Correspondence" 3413
402 A-M—Memorandum, December 31, 1952, from B. L. Edmonston, with attachments 3414
403 A-S—Document entitled "Various Types of Dealers", with attachments 3426
404 A-C—Sherwood Form SB-2833 500 9-51, "Bailment Agreement" 3433
405 A-B—Sherwood Form SB 118—3M—11-50, "Equipment Rental Agreement" 3444

406 A-B—Sherwood Form SB 2072-R 500 10-51, "Dealer Permit" 3451
407 A-D—Sherwood Form SB 1601-A—1M—8-51, "Service Station Lease" 3458
408—Document entitled "Amendment of Service Station Lease" 3467
409—Document entitled "Termination of Service Station Lease" 3469
410 A-B—Sherwood Form SB 106—3M—7-50, "Dealer Sales Agreement" 3470
411—Memorandum, March 10, 1953, from Fred D. McCauley to George B. P. Ward.....3476
412 A-H—Document dated on first page 1-1-50, entitled "Sherwood Bros., Inc., Baltimore, Md.—Sales Commission" 3476
413—Sherwood Form SB 2081-CS—(2500 6-46).....3490
414—Memorandum, March 28, 1944 to De Hoff.....3493
415—Memorandum, March 29, 1944, McCauley to De Hoff 3494
416—Memorandum, March 29, 1944, McCauley to De Hoff 3497
417—Memorandum, March 21, 1944, McCauley to De Hoff.....3498
418 A-B—Letter, July 13, 1944, from Fred D. McCauley to Ted Hardy 3500
419—Unsigned letter, July 27, 1944, to Butler Doolittle 3502
420 A-B—Letter, July 29, 1944, from Fred D. McCauley to John B. Mann 3503
421—Letter, August 19, 1944, from F. D. McCauley to Butler Doolittle 3506
422 A-B—Memorandum, November 2, 1944, from John R. Sherwood to Fred McCauley.....3507

423 A-C—Letter, May 29, 1945, from Butler Doolittle to Fred McCauley 3510
424—Letter, June 6, 1945, from Fred D. McCauley to John D. Mann.....3513
425 A-B—Letter, December 31, 1945, from Fred D. McCauley to John D. Mann.....3515
426—Letter, January 15, 1946, from Fred D. McCauley to J. A. Lewin.....3517
427—Letter, January 23, 1946, from Fred D. McCauley to John B. Mann.....3519
428—Letter, March 6, 1946, from Fred D. McCauley to Paul Spahr 3520
429—Copy of letter, March 11, 1946, from A. W. Littleton to Miller Chevrolet Sales 3521
430 A-B—Memorandum, August 6, 1946, from John R. Sherwood to Mr. Lawson, with attachment....3522
431—Unsigned Sherwood letter agreement dated July 30, 1946 3525
432—Letter, August 20, 1946, from John R. Sherwood to H. G. Harper.....3526
433—Letter, June 3, 1947, from Fred D. McCauley to John D. Mann 3528
434 A-B—Letter, July 17, 1947, from Fred D. McCauley to Howard Landon, et al.....3529
435—Report of Goodyear TBA Commissions by Agency Territories—Year 1947 3532
436—Report of Goodyear TBA Commissions by Agency Territories 3533
437—Letter, April 30, 1948, from H. W. Van Horn to Jackson Manufacturing Company.....3534
438—Memorandum, September 23, 1947, from Fred D. McCauley to John Sause 3535

439—Letter, September 19, 1952, from G. R. DeHoff to all Betholine Sinclair Dealers Authorized to Honor Credit Cards.....3536
440—Document entitled "CIC-Sales 1952".....3537
441—Letter, August 23, 1948, from Butler Doolittle to Fred D. McCauley.....3537
442—Letter, September 21, 1948, from H. W. Van Horn to Butler Doolittle.....3539
443—Letter, September 3, 1948, from H. W. Van Horn to R. G. Crawford.....3541
444—Letter, January 7, 1949, from H. W. Van Horn to J. A. Nelsen.....3542
445—Letter, August 9, 1949, from H. W. Van Horn to all Betholine-Sinclair Dealers.....3543
446—Memorandum, June 23, 1950, from Fred D. McCauley to Mr. Van Horn.....3545
447 A-E—Letter, June 19, 1946, from Fred D. McCauley to Mrs. Mabel Harmon, with attachments.....3546
448—Goodyear Form A98101L, "Request for Goodyear Tires Identification Truck Service".....3553
449—Memorandum, May 12, 1947, from Roland DeHoff to "Doc" Allen.....3555
450 A-B—Letter, August 25, 1952, from H. W. Van Horn to Butler Doolittle.....3555
451 A-B—Letter, January 6, 1950, from Fred D. McCauley to W. S. Martel.....3557
452 A-B—Memorandum, January 2, 1948, from Fred D. McCauley to John Leimbach.....3560
453—Letter, February 23, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562
454 A-B—Letter, February 29, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562

455—Handwritten Inter-Office Memorandum, March 5, 1948 from S. W. Holsinger to "Mac".....3565
456 A-B—Handwritten Inter-Office Communication, March 20, 1948, from L. J. Balling to F. D. McCauley 3566
457—Document, dated Dec. 14, '51, entitled "Dealer TBA Survey" 3568
458—Letter, April 25, 1952, from H. W. Van Horn to D. A. Hilleary 3569
459—Memorandum, June 3, 1952, from Harry J. Weller to Mr. Jurgens 3570
460—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commissions, Resale and Own Consumption December and January 1 to December 31, 1944" 3571
461 A-C—Memorandum, December 12, 1945, from Fred D. McCauley to John R. Sherwood, with attachments 3572
462—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1945" 3574
463 A-B—Letter, March 13, 1946, from John R. Sherwood to T. J. Beddingfield 3575
464—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1946".....3577
465 A-B—Letter, January 7, 1947, from John R. Sherwood to R. S. Wilson.....3578
466—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1, to December 31, 1947" 3580

467—Memorandum, October 16, 1947, McCauley to DeHoff 3581

468—Memorandum, January 26, 1951, from Fred D. McCauley to G. R. DeHoff.....3582

469—Document entitled "Total T. B. A. Volume sold to Betholine-Sinclair Dealers on Which We Receive Commission" 3583

470—Document entitled "Sherwood Brothers, Inc. Sales by Goodyear Districts January 1, 1952 through December 31, 1952" 3584

472—Sinclair Form 35 10 9-54, "Marketer Agreement" 3585

473—Sinclair Form 1800—25M—6-57, "Equipment Rental Agreement" 3596

474—Sinclair Form 1601-B—25M—10-57, "Station Lease" 3604

475—Sinclair Form 731-D—20M—10-57, "Refined Oil Sales Agreement-Dealer" 3615

476—Sinclair Form 2081—25M—5-57.....3622

477—Sherwood Credit Identification Card 1954.....3625

478—Sinclair Credit Identification Card 1957.....3626

479—Document entitled "Agreement of Merger Between Sinclair Refining Company and Sherwood Brothers, Incorporated", dated as of December 7, 1955 3627

483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley 3639

484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne 3642

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow 3645
2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow 3651
3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company.....3652
4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow.....3653
20—Atlantic booklet entitled "TBA Program".....3654
31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments.....3672

1523 COMMISSION EXHIBIT NO. 1A.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

January 19, 1948.
File: JSP-Tires

Goodyear Tire & Rubber Co.,
Akron, Ohio.

Attention: Mr. S. Gaylord.

Gentlemen:

Our Sales Department Management has requested of us a complete exploration of the tire manufacturers to determine at this time what interest you may have in the sale of your tires and tubes through Atlantic outlets. In our study to determine whether any change in present arrangements may be desirable, we wish to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise.

To assist you in preparing your quotations, we give you on sheet #1 information we believe may be helpful. All of this data pertains to what we have to offer.

On sheet #2 attached we detail information we believe is needed to properly evaluate any deal you may propose. Some of our questions may be considered by you as confidential information. We assure you your answers will be held in strict confidence. You may wish to augment your story with further information as to why you believe your deal would best suit Atlantic's needs. The more complete your preparation of your proposition the better it will be considered.

Should our account be of interest to you, please forward in writing, in duplicate, your best proposition. Quotations should reach us at your earliest possible convenience. After we have an opportunity to digest your offering it is likely we shall wish to discuss details in a conference to be later arranged.

Thank you very much for your attention to the above.

Yours very truly,

J. S. Parks
Purchasing Agent.

JSP:R

1525 COMMISSION EXHIBIT NO. 1B.

Sheet No. 1.

Estimated Annual Requirements

Passenger Tires	300,000
Truck Tires	40,000
Tubes	70% of above figures

Approximate Number of Retailers Served 6500

Approximate Number of Wholesalers Served 200

Approximate Number of Warehouses Served 45

Approximate Number of Warehouses Taking Carload Deliveries 3

Percentage of Volume on Carload Delivery 30%

Number of Salesmen 350

Number of T.B.A. Specialists 24

Number of Divisions 6

Number of Districts 34

Marketing Area Massachusetts to Florida, including parts of Ohio and West Virginia

1527 COMMISSION EXHIBIT NO. 1C.

Sheet No. 2.

Industry Position

a. Original equipment. Percentage of this type of business handled by you.
b. Scope of advertising. Furnish as much detail as possible as to types and results. Our principal interest is in consumer advertising as it applies to our marketing territory.
c. Established distribution. Percentage in our marketing territory. Number of outlets.

Production

a. Number of plants and locations of same. Can stocks be drawn from warehouses? If so, where?
b. Research and development facilities. Extent, accomplishments, and other pertinent details.
c. Quality of product.
d. Completeness or simplicity of lines. Percentage of total represented by special lines.

Merchandising: Is it an aggressive program?

a. Point of sale equipment—(display & service)
b. Point of sale helps—(selling program, etc.)
c. Training (visual helps on all line?)—(physical assistance at what level?)
d. Field assistance—selling—complaints.
e. Any flexibility to suit our needs?

Profit Margins

a. To dealer (list to cost).
b. Company margin excluding cash discount.
c. Bonus arrangements.
d. All other allowances.

Adjustment Program
Shipping Terms
Consignment or Sales Terms
Returned Goods Privilege
Exclusive Privileges
Price Protection—at what levels?

1529 COMMISSION EXHIBIT NO. 2.

February 27, 1948

Mr J S Parks
Purchasing Agent
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Parks:

Confirming our conversation of yesterday. It has been my desire to express the interest of my company in your consideration of the question of determining what is the best Tire and Tube marketing arrangement for your company.

We recognize the importance and value of your account and we wish to thank you for the opportunity which you have given us in discussing the matter more in detail.

In keeping with our conversation, it is my intention to contact you again about April 1. In the meantime, if we can be of any service, please advise.

Yours very truly,

Manager—Petroleum Sales Dept.

S A Gaylord
lfm

1531 COMMISSION EXHIBIT NO. 3.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

March 29, 1948
File: JSP-Tires

Mr. S. A. Gaylord,
Manager—Petroleum Sales Dept.,
The Goodyear Tire & Rubber Company, Inc.,
Akron 16, Ohio.

Dear Mr. Gaylord:

Reference is made to our letter of January 19th regarding a proposition from Goodyear on tires and tubes for resale. In your letter of February 27th you advised of your interest, and of your intention to contact us again about April 1st.

Our Sales Department is anxious to proceed with their study of the various marketing arrangements being offered, and accordingly we are very anxious to receive your offering at the earliest possible date. Efforts on your part to expedite required data will be appreciated.

Yours very truly,

J. S. Parks
Purchasing Agent.

JSP:R

(Hand written note:) Ans by phone 4/6 SAG.

1533 COMMISSION EXHIBIT NO. 3-A.

April 6, 1948

Mr J S Parks—Purchasing Agent
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Dear Mr Parks:

This is a further confirmation of our phone conversation today in reply to your favor of March 29.

In view of your leaving the city next week on an extended trip, making it impossible to see you and personally explain our position as I had hoped to do, the next best course, in all fairness, seemed to advise you that in the opinion of our management we are not in position at this time to offer your company a marketing proposal.

At the first opportune time after your return I am looking forward to personally explaining our position to you in more detail.

Thanking you for your consideration in the matter.

With kind regards.

Sincerely,

Signed: S. A. Gaylord
Manager—Petroleum Sales Dept

S A Gaylord
lfm

1535 COMMISSION EXHIBIT NO. 4.

May 4, 1949

Mr S J Heideman
c/o Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Heideman:

First, would like to express my appreciation for the opportunity of discussing with you the subject which is so close to both of us, that of marketing Tires, Batteries and Accessories through Oil Company Service Stations.

You will probably remember that back in 1941 you consulted with us on the question of marketing Tires and we made a sales presentation to your company at Philadelphia on April 21 of that year. During the past week I have read a copy of that document with considerable interest and that is one reason why it is repeated here, because it was an impressive demonstration to me of the progress Goodyear has made since then to keep ahead of the parade.

The statements we made regarding Tires and Tubes then were sound and hold true today. Goodyear was the first company to market its brand through an Oil Company and it was true then as it is today that more Goodyear Tires are marketed through Oil Companies than any other standard brand. It is also noteworthy to mention that in 1948, when replacement sales in the industry were approximately 20% less than in 1947 and Oil Company sales in total were less by a similar percentage, Goodyear sales through Oil Companies showed an increase of more than 20% over 1947, which year, until 1948, was an all-time high.

Going back to our Atlantic Presentation and what was missing then; mainly our present-day Complete Franchise

T.B.A. Program, plus the refining and improvements in our Sales Commission Plan and our Purchase and Resale Plan.

Summarizing my reaction to the foregoing, plus the importance of any decision you and your company may make,

which, aside from the monetary consideration over a
1537 long period, would also directly involve the welfare

of thousands of your Dealers, I reached the conclusion that before going further in our discussions it would be mutually important if you and whomever you may elect would visit us at Akron to determine what we have to offer, get better acquainted and decide if we are the kind of folks you would like to be associated with, and I say this selfishly, because it would greatly assist us in our thinking if we can get closer acquainted with you and your problem.

As a matter of information I am submitting herewith a copy of our latest financial statement.

Also a copy of our current Car and Home Catalogue. You and your Dealers would be interested mainly as to its completeness—is it competitively priced with local Jobbers, Wagon Jobbers, and the immediate availability of stocking points.

You would be interested in our management of this part of our business, the large corps of buyers, each a specialist in his line, and the special large field warehouses set up to service these lines, as well as the profit available to your company.

Much of the same thinking applies to the Goodyear Battery line—and last, but not least, our "main line", Goodyear Tires.

We also have set up here at Akron our Store Planning and Display Laboratories, which I have previously spoken to you about, and we can assure you that a visit to Akron to see this department alone will pay plenty of dividends.

If my suggestion does not meet with your full endorse-

ment, then it will be our desire to work with you in any way you may suggest.

Please be assured of our continued interest.

Thanking you,

Most sincerely,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1539 COMMISSION EXHIBIT NO. 5.

August 29, 1949

ss J E Mayl
Victor Holt Jr
C C Osmun
C L Metzger
H G Harper
W E Cameron
L R Narrab
S A Gaylord

Subject: Atlantic Refining

At our meeting August 10 several points were brought up and should be more completely discussed and answered at our next meeting.

Mr Colley, Vice President In Charge of Sales, commented in general (A) he stated they are definitely interested as prospects—(B) we should continue to work with Heideman—(C) he (Colley) would approve recommendations of Heideman and Neall—(General Sales Manager—Director of Advertising, etc.

Specific points raised and not completely answered follow:

(1) Estimated allocation of expenses as shown in presentation for Purchase-Resale Plan and for Commission Plan.

Question—Would like a more detailed explanation as to how we arrive at estimates shown. Do these estimates reflect Goodyear Experience? Oil Company Experience?

Actually estimates used are a combination of all known factors and we can give a more detailed explanation, however, recognizing they are still estimates and probably no two companies will agree on proper allocation of expenses.

(2) Mr Neall raised the question as to how many salesmen they could save under the Commission Plan versus Purchase-Resale Plan.

There is no inference in the presentation that a saving in salesmen can be made under the Commission Plan. The Commission Plan does reduce functional expense and the profit to the Oil Company is proportionately less. The Commission Plan eliminates sales detail and sales reports—thus allowing more time for sales work on major assignments.

(3) Mr Heideman is looking for more detail on the question—What, in terms of value, does completeness of line mean to an Oil Company?

A. Complete lines of tires—competitively priced

B. Batteries

C. Car and Home Merchandise

1541 I felt that our presentation handled the above question fairly well. Mr. Neall raised these points—

If Goodyear undertakes the job with them

(A) What would be the procedure?

(B) What would be done and how? (Mechanics)

(C) What extra man-power would be furnished?

He mentioned some 300 stations in Greater Philadelphia as an example.

I covered the above in a general way with no commitment.

Mr Heideman wants more detail relating to our experience in successfully servicing the average Dealer C & H M from Field Warehouses. What coverage? What area? etc.

He also wants more detail as to how we arrived at estimated Battery exposure and how we arrived at estimated Battery gross profit.

We will prepare information requested as far as we can go—would like your thinking to assist.

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1543 COMMISSION EXHIBIT NO. 6.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

May 23, 1950
TBA SJH

Mr. Sam Gaylord, Manager,
Petroleum Sales Department,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Sam:

Attached is copy of letter that has been addressed to members of the several departments in the company who will have an interest in the negotiations preceding the introduction of the Goodyear T.B.A. program into our Newark District. In addition to the people whose names ap-

pear on this letter, it is expected that the following will attend:

Mr. J. O. Estlow, Manager of the Philadelphia-New Jersey Region
Mr. E. D. Walter, Manager, Sales Group, Philadelphia-New Jersey Region
Mr. T. E. Breslin, Operations Manager, Philadelphia-New Jersey Region
Mr. W. J. Jackson, T.B.A. Coordinator, Philadelphia-New Jersey Region
Mr. A. R. Sanborn, Manager, Newark District

There may be some change in this list, but if so, I will be in position to acquaint you with it before the meeting on Friday. I, of course, will also attend.

It will be appreciated if you will send me by return mail a list of the Goodyear personnel whom you expect to have present at this meeting, together with their respective titles or positions. It will be helpful if you can also provide me with an outline of the presentation that will be made by Goodyear so that I can properly fit it into the Agenda for the afternoon.

Cordially yours,

S. J. Heideman

h

Enc.

1545 COMMISSION EXHIBIT NO. 7.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

May 23, 1950
TBA SJH

Messrs. E. R. Cox, Jr., Room 810
G. H. Milligan, Room 1500
Leon Serven, Room 1000
W. F. Statz, Room 1313

Dear Sir:

A meeting will be held in Mr. J. O. Estlow's office, Room 1201, Friday, May 26th at 2:30 P.M. In this meeting, arrangements will be discussed concerning the introduction of Goodyear's T.B.A. program into our Newark District territory. Representatives of Goodyear's Akron Management, Eastern Division Management, and Newark District Management will be on hand to meet with Atlantic Management and to tell about their methods of operating under the commission plan. At that time they will also attempt to answer the various questions that may occur to representatives of Atlantic's Management. It is expected that plans will also be completed for a district sales meeting, and perhaps a series of dealer meetings so that the program can be quickly introduced to the whole Newark District territory.

It is hoped that you will be able to attend this meeting or, if this is inconvenient, that you will appoint an alternate. Please advise me promptly of your plans.

Cordially yours,
S. J. Heideman.

h

1547 COMMISSION EXHIBIT NO. 8.

May 25, 1950

Mr S J Heideman
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Syd:

Have just received your favor of the 23rd regarding our meeting on Friday, and wish to thank you for the information.

Arrangements have been made for the following Goodyear personnel to attend:

Mr J E Mayl—Vice President Akron
Mr F W McConky Jr—Mgr. Northeast Div. New York
Mr Henry G Harper—Mgr. Associated Mdse Akron
Mr I D Love—Newark District Mgr Newark, N J

In addition to the above I am planning to attend.

While at this moment I do not have an agenda worked out in detail, I think it would be a good idea to start off with a review, possibly by yourself, of what has led up to your decision to make this test. This, in turn, will bring up the Presentation which we prepared and submitted to you, which pretty well indicates the complete line offered by Goodyear—Tires—Batteries and Accessories and other important sales factors such as consumer acceptance, original equipment, distribution facilities, advertising, sales promotion, dealer training, sales assistance, etc.

Then I think we will want to discuss the mechanics of the sales commission plan and the form of agreement both companies should enter into. Also, we should discuss and agree if possible on a uniform type of identification for each Atlantic outlet handling Goodyear products.

With the foregoing details handled and as a background we can then proceed to mutually agree on a plan of action which will get the program underway quickly.

1549 It is my understanding that we will meet in your office at 2 P.M. and that the meeting will get underway about 2:30.

If you should desire to reach us by phone Friday morning, I will be at our Philadelphia District Office, care of Mr Sorn.

Sincerely yours,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1551 COMMISSION EXHIBIT NO. 9.

Here, then, are the important reasons for the company's preference for the Goodyear program:

1. They are the most popular line.
2. They are the largest supplier of original equipment.
3. They have a very complete line of tires, batteries, accessories, and home supplies and services.
4. They have considerable experience in the "commission plan" of operation with oil companies.
5. They have the least amount of oil company activity on their brand in our main market.
6. They have an excellent training program.
7. They are strong and aggressive merchandisers and have available a bountiful supply of very excellent sales promotional material.
8. They have an experienced staff of buyers for procuring the products they don't manufacture and fine facilities for quality and sales testing such products.

9. They were one of the major companies to adopt a liberalized adjustment policy which to some extent minimizes the loss of the road hazard guaranty.

Advantages in the Goodyear Commission Plan for Atlantic's Dealers and petroleum distributors as well as for the company:

1. Complete line on tires and tubes. Complete battery, accessories and home supply program.
2. A tire brand which is either first or second in public acceptance.
3. National advertising: newspapers, radio, television and magazines.
4. Largest or second largest supplier of original tire equipment.
5. Up-to-date and competitive tire and tube lines.
6. Excellent sales promotion and "point of sale" assistance.
7. Excellent training program.
8. Good delivery from conveniently located distribution points.

1553 Then, from a company standpoint, are these advantages:

1. No T.B.A. investment except stocks for salaried stations.
2. A portion of selling costs assumed by supplier.
3. All warehousing, delivery, credit extension and billing by supplier.
4. Reduced ARCo. accounting expense.
5. Fixed rate of gross profit.
6. Profit would apply on much broader lines and services: blow-out proof tubes, farm tires, tire recapping service, home supplies.
7. A profit on some dealer T.B.A. business presently enjoyed by Goodyear.

8. Practically all sales promotional expense assumed by supplier.
9. Major part of training expense assumed by supplier.
10. No purchasing function (except for salaried stations or for consumption).

Some complications or problems that we don't have under our present program from the dealer and distributor standpoint:

1. Without the road hazard guaranty, the dealer will not have the latitude that he presently enjoys. The Goodyear tire is guaranteed for life against defects in material and workmanship, but adjustments are also made on a pro-rata basis when bruise breaks are experienced within the first 25% of tread wear. Such adjustment, however, is only made on approval of a Goodyear adjuster. In the event the dealer wishes to satisfy a customer on the spot, he has to take his chances of getting proper support from Goodyear.
2. There will be a maximum amount of competition from established dealers and company stores, because it is reported that every county, marketing town and shopping center now has a Goodyear store or distributor.
3. Atlantic's petroleum promotions will not be so closely coordinated with Goodyear's promotions as they are with our present program.
4. Goodyear brand batteries and accessories will not have as good public acceptance as their tire brand nor as the nationally known brands of batteries and accessories that we are presently marketing.

1555 5. There is the possibility that the Goodyear plan cannot be utilized by all Atlantic dealers and distributors because of closely situated competitive

petroleum outlets who are already established with the Goodyear program, or even because of a highly competitive Goodyear outlet that may be in close proximity.

From the company's angle:

1. There will be a sharing with another manufacturer of the direct influence that we now enjoy with our dealers for the promotion of balanced sales.
2. Goodyear is a successful and aggressive tire marketer and tires must be recognized as that company's principal business.
3. Adjustments being limited as aforementioned could result in greater customer dissatisfaction with its resulting adverse effect on Atlantic's petroleum products.
4. Any policy adjustment deemed advisable because of this possibility would be entirely for the account of The Atlantic Refining Company.
5. We will not engage in direct sales to commercial accounts. This market would be eliminated with the Goodyear program and also any gross profits that may accrue from it.
6. Atlantic's gross income will, of course, be reduced under this plan and so-called "fixed charges" attributed to T.B.A. must either be reduced, eliminated or absorbed by petroleum products.
7. Goodyear has complete control over the establishment and changes in commission rates, but since it is a competitive business and their historical experience has been highly favorable, it is more probable that they will cultivate and encourage its further growth rather than take any steps to make the program less attractive.
8. There is, of course, the very real possibility that an Atlantic dealer or distributor is already on the

Goodyear plan, and that we will not be given any commission for such business. Such situations are to be negotiated between Atlantic and Goodyear in order to reach a fair agreement.

9. District supervisory personnel and salesmen must still be familiar with the T.B.A. program, its details and its principal promotions. Full cooperation with Goodyear in the conduct of the T.B.A. program is expected. Salesmen must accept dealers' orders and should be given a quota responsibility.

1557 Conference of Atlantic and Goodyear Personnel in Connection With the Introduction of the Goodyear Commission Plan

Introductions

No Sales Presentation

The representatives of the Goodyear Tire and Rubber Company are not going to make any formal sales presentation this afternoon. This has not been deemed necessary as our purpose is to acquire a better understanding of how to inaugurate and implement a program that has already been sold. I have had plenty of evidence of Goodyear's ability to make very excellent sales presentations, and have no doubt that the situation is the same with many of you. Of course, sales presentations are going to be made as and when they are needed, especially for the District Sales organization and if it is mutually agreed upon also for the Dealer organization.

Interests of Other Departments

In addition to Regional and District Management, Atlantic is represented by the Controller's office, the Legal Department and the Sales Promotion Section, and there are specific matters that each of these representatives are in-

terested in and which may either be explored to a conclusion in this session or for which definite lines of communication will at least be established.

Questions and Answers

There are undoubtedly many questions about the plan that could only properly be answered by Goodyear's representatives. Some of these questions will undoubtedly be answered as the Goodyear method of operation is unfolded. Those questions that are not answered as well as others which may occur to you will be covered in a question and answer period immediately following Goodyear's presentation.

1559 District Reports

Atlantic representation has brought to this conference some detailed information regarding the district in which the Goodyear Commission Plan is to be introduced. Additional information that may be desirable for Goodyear can either be brought out in questions or prepared and presented at a later date.

Opening Dates

Serious consideration has been given to the time that the Goodyear program should be introduced into the Newark District, and we are prepared this afternoon to complete arrangements for additional conferences or meetings at District level in order to get the plan under way.

Review of Goodyear's Operation

In deciding the best approach to our present problem, it was considered wise to draw upon Goodyear's past experience in introducing their Commission Plan into the operations of other oil companies. It is believed that by tracing the various steps that have been employed in the

other operations, we will all get a better idea of how to co-ordinate and handle our respective parts in the job that lies immediately ahead.

Mr Gaylord

For this purpose and at this time, I am going to turn the meeting over to Mr S Gaylord, Manager of Petroleum Sales Department, Goodyear Tire and Rubber Company.

1561 COMMISSION EXHIBIT NO. 11.

Goodyear-Atlantic Program

Experimental

Atlantic District lying within our Newark District territory.

Sales Commission Plan

Announcement of plan to Goodyear and Atlantic personnel involved by meeting in Newark of Goodyear and Atlantic local personnel and head office representation from both companies.

The announcement to cover the plan and operating procedure, also working arrangement for Goodyear and Atlantic local field sales force.

Goodyear Field Representatives and Atlantic salesmen together to make initial call on Atlantic Resellers.

A simple story should be given to these men to introduce the object of their visit and approach to the subject to be discussed with the Reseller. This same story to be used by all Goodyear and Atlantic representatives on this initial call.

Later calls to be made by the two company representatives together when possible and each representative to make individual calls on a definite program as used in their regular work with customers and prospects.

A Goodyear Representative should be placed in charge of the program to guide and assist the field man in keeping the solicitation on a sound basis and moving forward at a productive pace.

1563 Detail of Meeting

Atlantic home office representative opening the meeting introducing the subject of the meeting and outlining the plan. (Perhaps introducing the members of his organization present.)

Goodyear home office representative (Introducing his organization present) describing the operating procedure of the plan.

Goodyear District Manager giving his thought as to how the two field organizations should work together to accomplish the purpose of the plan. Propose an outline of the approach the field men will use with the Reseller, etc., etc.

Atlantic local manager to give his opinion of the program upon this point and follow with his further thought and suggestions.

1564 COMMISSION EXHIBIT NO. 12.

The Atlantic Refining Company
Petroleum Products
Newark 5, N. J.

A. R. Sanborn

June 12, 1950

To Atlantic Dealers:

To Atlantic Petroleum Distributors:

Atlantic wishes to inform you that on June 13, 1950 the complete Goodyear program will be available through your Atlantic salesman. Atlantic's fine petroleum products and the nationally accepted Goodyear lines can provide you with a very unusual opportunity for profit possibilities. The completeness of the Goodyear franchise offers an excellent merchandising program; products which Atlantic has not had available, such as tractor tires, home supplies and extended lines of automotive accessories should give you the opportunity to sell more products to more people. Complete details of this new and, in our opinion, very desirable Goodyear plan will be brought to you very shortly by your Atlantic salesman and the local Goodyear representative. We urge you to give the Goodyear franchise every consideration.

Atlantic will discontinue merchandising and distributing its present T. B. A. line in your territory. Of course we will continue to honor any T. B. A. contracts between us as long as they remain in effect.

A. R. Sanborn
District Manager

1566 COMMISSION EXHIBIT NO. 13.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

June 1, 1950

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pa

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until canceled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at
1568 our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to ~~render~~ the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a commission of ten percent (10%) on all sales to your dealer outlets and seven and one-half percent (7½%) on all sales to your franchise petroleum distributors as covered by such statement, computed on the net amount

of invoices, excluding tax, after deducting. whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half percent (7½%) on all such sales whether to your dealer outlets or to your distributors.

We understand that you will retain for your own exclusive benefit all commission received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

1570 Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc
By Victor Holt, Jr.

Vice President

Attest: W. M. ~~Merlin~~

Assistant Secretary

Accepted:
The Atlantic Refining Company
By R. H. Colley

Mettler

1572 Exhibit A—Page 1.

Products Eligible under the Commission Plan

Sales of the following products to approved Atlantic accounts are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x.

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealer
All New Goodyear Tires & Tubes	x	*	x	x
All Second Goodyear Tires & Tubes	x	*	x	x
Goodyear Produced Recaps & Repairs	x	*	x	
Goodyear Automotive Batteries	x	*	x	x
Resolute Automotive Batteries	x	*	x	x
Goodyear Farmlight Batteries	x	*	x	x
Battery Cables	x	*	x	x
Car & Home Merchandise	*	x(1)	x(2)	x
Anti-freeze	*	x(1)	x(2)	x
Tire Chains	*	x(1)	x(2)	x
Goodyear Brake Lining-Rivets-Weights	*	x	*	*
Dill & Schrader Valve Products	x	*	x	x
Sea-Bee Outboard Motors	x	*(1)	x(2)	x
Goodyear Repair Material—Shelf or Resale Items—Car & Home Line, as listed in C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x(1)	x(2)	x
Rubber Bonding Cement	x	x(1)	x(2)	x
Emergency Self-Sealing Patches	x	x(1)	x(2)	x
Small Containers Cold Patch Cement	x	x(1)	x(2)	x
Gasket Compound	x	x(1)	x(2)	x
Bicycle Rim Cement	x	x(1)	x(2)	x
Motorists Vulc-Patch Kits	x	x(1)	x(2)	x

* Not stocked at these locations.

(1) Goodyear District Manager may appoint Goodyear Store as supply point after securing approval by Akron as a Car & Home Merchandise supply point. G-1209 to be issued and signed by Atlantic.

(2) Goodyear Dealer may be appointed by Goodyear District Manager as a Car and Home Merchandise supply point, also G-1209 to be issued and signed by Atlantic.

1574 **Exhibit A—Page 2**

Products not Eligible under Commission Plan

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits.

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc to The Atlantic Refining Company dated June 1, 1950.

The Goodyear Tire & Rubber Company, Inc
By Victor Holt, Jr.
Vice President

The Atlantic Refining Company
By R. H. Colley

1576 COMMISSION EXHIBIT NO. 14.

July 5, 1950

Mr S. J Heideman
Atlantic Refining Company
260 South Broad St
Philadelphia, Pa

Dear Mr Heideman:

Wish to acknowledge your favor of June 29th, together with outline of agreement, with changes suggested by Mr Stotz of your Legal Department.

I am passing this on to Mr L W Baker of our Legal Department and will advise you further as promptly as possible.

Confirming my phone conversation of 27th (June) relative to your letter of June 22nd. It is our intent to pay commissions earned by you on various products listed under Exhibit "A" in accordance with the supply point designated on our form G-1209, which form is jointly executed by both companies and the supply point is agreed upon and acceptable to the Atlantic Dealer.

The agreed supply point may be a Goodyear Dealer, a Goodyear Store, a Goodyear Field Warehouse, or a Goodyear District.

We will make changes in our agreement to conform with the above.

Kind regards.

Sincerly,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1578 COMMISSION EXHIBIT NO. 15.

August 2, 1950

Subject: Atlantic Refining Co.

cc H G Harper

We have had considerable discussion with Mr Heideman and Mr Stotz of subject company relative to letter of agreement covering proposed arrangement as between our companies.

We went over the revised draft in considerable detail and we are pretty much in agreement now if the following changes are acceptable to you.

With reference to the fourth paragraph on Page I—Mr Stotz would not accept reinstatement of the paragraph as it was written as he felt that it might be interpreted as meaning exercise of control over certain customers. He did, however, agree that the paragraph should not be eliminated entirely as it did add something to the agreement. As a compromise the following is suggested:

> "We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto."

Mr. Stotz did not fully agree with our wording of the second full paragraph on Page II. However, he has agreed to the re-wording that we worked out with him, as follows:

> "With respect to the outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month a statement reflecting sales made by us through our retail stores, factory shipments, direct warehouses or other owned

outlets, and sales made at our dealer-operated supply points and reported to us by such dealers; such statements shall reflect sales of all material other than that listed in Exhibit A as exceptions to the commission plan."

Regarding Exhibit "A." This was a form we used originally when we were not paying any commission
1580 earned unless delivery was made by us to the Oil Company accounts in accordance with the exceptions noted in Exhibit "A." Inasmuch as we are now delivering this merchandise through supply points appointed by us—either Goodyear Stores or Goodyear Dealers, in addition to sources shown in Exhibit "A," they would recommend that paragraphs #1-2-3-4-5 be eliminated from Exhibit "A."

Keep in mind that our Form G-1209, which is signed by both the Oil Company and Goodyear, shows the supply point which we establish for deliveries of all merchandise and we agree to pay commission on all merchandise which is delivered through such appointed supply points.

If you agree on this change, then the only items that should appear on Exhibit "A" will be those not subject to commission.

We are sending a copy of this note and a copy of the agreement to Mr Harper for his agreement and also that items not subject to commission can be re-checked.

Will be glad to discuss.

Manager—Petroleum Sales Department

S A Gaylord
lfm

1582 COMMISSION EXHIBIT NO. 16.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

April 3, 1951

Mr. Victor Holt, Jr., Vice President
Goodyear Tire and Rubber Company
Akron 16, Ohio

Dear Mr. Holt:

By letter agreement of June 1, 1950 between Goodyear and Atlantic we agreed to perform certain services to promote the sale of certain Goodyear merchandise.

At that time we began a test of the Goodyear TBA commission plan in one of our sales districts. We have decided and you have agreed to extend this plan to our Philadelphia and New Jersey, our New York, and our New England sales regions on the same basis as is outlined in the letter of June 1, 1950.

It is understood that this extension will be effective as of March 1, 1951, at which time Goodyear will begin supplying the various products and services outlined in the letter of June 1, 1950 to such of our retail outlets and distributors as desire to purchase them from Goodyear. At the same time Atlantic, through its field representatives, will begin assisting Goodyear in the extended territory in the sale of the products and services outlined in said letter with the understanding that, as has been the practice in the test area, our resale outlets shall be free to choose whether, and to what extent, they shall avail themselves of the opportunity to purchase Goodyear products and

services and that any resale outlet which chooses to carry products other than Goodyear shall not be prejudiced in any manner. Of course, we both understand that our organization cannot and will not use any methods other than salesmanship to encourage our resale outlets to purchase your products and services.

In determining to extend the Goodyear commission plan to those sales regions we have done so upon your assurance that you will provide tires, batteries, and accessories in sufficient amounts to take care of the normal needs of those Atlantic resale outlets which desire to avail themselves of your products. We realize that such assurance from you is subject to conditions beyond your control, whether now or hereafter existing, including government restrictions on the manufacture or distribution of the products involved.

1584 We understand that whenever the products supply situation is such that you are unable to furnish all the needs of all your customers you will make available to Atlantic resale outlets as large a share of their needs as are available to your other like customers.

If the above correctly sets forth your understanding of the arrangement between us, please so indicate by signing and returning for our files the enclosed copy of this letter.

Very truly yours,

D. T. Colley

Accepted:

The Goodyear Tire & Rubber Company, Inc.

By: J. E. Mayl
Vice President

Attest: W. M. Menter
Assistant Secretary

1586 COMMISSION EXHIBIT NO. 17.

June 16, 1950

Mr S J Heideman
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Heideman:

Confirming our conversation of last Wednesday, wish to advise that Mr Fritsch, Manager of our Identification Division, Advertising Department, advises that an identification program has been agreed upon along the following lines with Mr Paxton and Mr Butler at a meeting held at Philadelphia, Monday, June 5.

1. The standard Goodyear window valance will be used in its regular form with these reservations.
   a. We will not use dealer names or any other special copy except Batteries Auto Accessories. Dealer's name is not desired because of the turn over in station operators which would necessitate changing of windows.
   b. Where space is available and dealer is agreeable, the additional copy Easy Pay Plan, or some similar phrase pertaining to time payment selling, may be employed.

2. A Goodyear diamond metal sign fastened either to a fence or to a post at the edge of the court. This may be either our 4′ or 5′ single face diamond sign—or, the 30″x52″ sign we have been experimenting with on Shell and Sinclair stations, especially those on main highways. Certain reservations are made in this program.
   a. Mr Burler does not want us to use two sign positions—as, for example, a single face sign on each

side of the court in order to catch traffic both ways. He wants us to use one single face sign, or a double face, but keep it in one location.

3. We agreed that the above program would be considered a beginning point and that changes could be made based on our experience in the Newark District.

1588 We do not like "fence" locations because they are so easily blocked. This is happening now on Texaco stations where Firestone and Goodrich use a rectangular sign fastened to a fence. Most of the time, cars are parked along the fence, which obliterates the identification. In metropolitan areas, signs on posts are sometimes difficult to handle because it means digging into a concrete court. But these are problems which we will know more about after we do some of the stations in the Newark group.

4. Since the Atlantic stations in the Newark area will not come to us as one lump group and will have to be identified as they are signed up individually, we will employ local services to handle the window valance installation and the signs.

We will wait until there are at least 8 stations signed up—then we will size them up and determine the exact identification and proceed with it.

After we have these 8, or possibly a few more, identified—then Mr Butler has agreed to go with me to the Newark area and look them over to see if we are getting along all right and if there are changes which should be considered.

We can provide a set up whereby the window valances are installed within two or three days after a station is signed up and we would use this arrangement if it would take any great length of time to sign up the first dozen,

so as to avoid having the first one wait for identification two or three weeks that might be taken to get other lined up.

Yours very truly,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1590 COMMISSION EXHIBIT NO. 18.

July 25, 1950

Mr S A Gaylord—Manager
Petroleum Sales Dept

Subject: Atlantic Refining Company Newark District

cc Victor Holt Jr
F W McConky Jr—New York
Harry Ryan—New York
I D Love—Newark

The first phase of the Atlantic conversion to Goodyear in the Newark-Atlantic District has been completed.

All but a few of the small #3 stations, namely, grocery stores and other miscellaneous units not primarily in the gas and oil business, have been contacted and our program installed.

The reception from Atlantic outlets of all types has been, generally, one of enthusiasm for the change-over to Goodyear.

This attitude plus the training and drive of the Atlantic District sales personnel should result in sizable sales performance of T.B.A. from this group.

During the last three weeks the supply position became the number one problem. On my departure, Friday, July 21, Mr Sanborn, Atlantic District Manager, was concerned only with our intention to cope with this problem.

Due to a change in Atlantic personnel, solicitation of the

only jobber handling T.B.A. in our New York District was deferred until last week.

Mr Sanborn of Atlantic, Charles Knight, Assistant District Manager, Goodyear-New York and I called on Boyce Esser, President of Suburban Oil Company at Mt Vernon, New York.

Suburban Oil has been a Firestone account for the past year, having pulled away from Lee because he could not get a competitive deal through Atlantic.

Their purchases from Firestone since the first of this year have been at the rate of $45,000 a year. In addition, however, they are taking over another jobber territory on Long Island and expect to increase their T.B.A. volume to $75,000. At present they have 42 stations, all in Westchester County.

This is a 100% Petroleum Jobber outlet with excellent stocking facilities, good capital structure and an aggressive outlook with respect to T.B.A. as part of their program.

1592 Our program was outlined in detail and our discount and resale structure submitted. In effect it is the same as Firestone's.

At the time Mr Esser did not have a firm commitment from Firestone as to supply, although he felt he would get his fair share of merchandise.

Atlantic Refining is very interested in getting this account handling Goodyear as it represents a sizable volume of T.B.A. on which Atlantic at present get no commission.

At the conclusion of our meeting Mr Esser indicated that he would take on Goodyear, but we made no commitment, as Charles Knight informed me that Harry Ryan had several problems to work out and wanted all the details.

This account is ready to go Goodyear and Atlantic is anxious that we take them on, so, if we elect to take on this account, we should move fast.

It would be my suggestion that Mr Sanborn accompany

our personnel for the signing up of this account, if it is so decided.

By taking on Suburban Oil we will strengthen our hand with Atlantic, help keep their morale high in this test area and eliminate the possibility of their making a claim for commission from Firestone, which could be done and would probably be paid just to keep us out.

J W B
Petroleum Sales Department

J W Basista
lfm

1594 COMMISSION EXHIBIT NO. 19.

cc L A Barnes
J W Basista

November 2, 1950

Mr S J Heideman
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Heideman:

With regard to the adjusted Lee Tires, wish to confirm that our understanding of the arrangement is that we will settle with your company on a 50-50 basis of the net loss.

I am suggesting to our Field Operating Department that a statement for the first quarter be submitted to you and a request for payment of your share on the above basis.

Yours very truly,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

L A Barnes—Will thank you to proceed accordingly indicating where the check should be sent, etc.

S A G

1596 COMMISSION EXHIBIT NO. 20.

cc J W Basista—Newark
Victor Holt Jr
J E Mayl
I D Love—Newark
F W McConky Jr—New York

June 29, 1950

Mr S J Heideman
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Heideman:

Confirming our phone conversation.

We have a progress report from Mr Basista and Mr Love, covering the first ten days solicitation of Atlantic accounts.

A recapitulation of results:

Atlantic Dealers signed as Goodyear Associate Dealers as agreed supply points, either Goodyear Stores or Dealers	87
Atlantic Dealers signed as direct District Goodyear Dealers	4
Atlantic Distributors signed as direct Petroleum Jobbers	2
Total	93

Total special display packages sold 77

Orders reported for merchandise sold on direct basis:

Tires	193 units
Tubes	113 "
Batteries	36 "
Accessories C & H M	$655

Actual inventories of competitive merchandise of accounts signed:

Tires	3,176 units
Tubes	2,098 "
Batteries	610 "

General Comments

Good progress has been made during the first ten days. We can reasonbly expect some real tangible evidence of merchandise movement within the next thirty days.

Initial contacts and presentations have been made 1598 with the majority of all accounts assigned and in every case supply points have been established and all details worked out to the mutual satisfaction of all concerned.

The general reaction of all types of Atlantic accounts has been very favorable and there has not been one single instance where the Goodyear program was not acceptable.

Competitive merchandise inventories were extremely heavy, which has affected our immediate sales during initial contacts.

Excellent cooperation is being received from the Atlantic-Newark organization.

As suggested by you, we will send you a weekly progress report and at the end of each month will get the sales figures to you at the earliest possible time which will be in advance of our official figures.

Sincerely,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1600 COMMISSION EXHIBIT NO. 21.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

July 10, 1950
TBA SJH
T.B.A. Goodyear Commission Plan

Mr. S. A. Gaylord, Manager,
Petroleum Sales Department,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Mr. Gaylord:

Thank you for your letter of July 5th and the reassurance that it contained about the several types of deliveries on which commissions are paid on the various products that comprise the T.B.A. line.

Another question comes up about chains. The instructions issued by your accounting people indicate that commissions will not be paid on chains except on direct factory shipment. Our service stations do quite a bit of chain business when we have ice and snow, but the majority of them are not in a position to order their requirements on a direct factory shipment basis. We expect, therefore, that our dealers' chain business will develop principally on a local delivery basis, and certainly think that some method should be devised whereby we can be properly credited for commissions on all such transactions.

Cordially yours,

S. J. Heideman

1602 COMMISSION EXHIBIT NO. 22.

January 23, 1951

Mr S J Heideman
Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Dear Syd:

We were pleased to receive your letter of January 19th and your comments with respect to our 1951 Advertising Book.

You certainly have proved that you looked it over pretty carefully as noted by your remarks concerning the absence of a T.B.A. Display Package.

This is the first year since shortly after the war that we have taken out the T.B.A. Display Package. The reason is quite obvious since our sales of this specific package did not justify its continuance in our advertising line.

As a substitute, however, we have decided on a small package Display Service, which is listed on Page 30 of our Dealer Advertising Book.

The reason that have been given us by our Field Organization and which largely influenced us in eliminating the regular T.B.A. package was the fact that there was too much material for the Service Station to use and the cost of $8.50 per year for the service.

The small Display Package mentioned above will give each Service Station some special display material at the three peak periods during the year which will adequately tie in with our national promotions. At the pitiful price of $1.50 delivered we hope that a substantial number of these packages will be sold.

The display package such as used during your changeover in the Newark District was supplied especially for this

occasion and we are advised by our Advertising Department that any future requirements for similar purposes will be taken care of.

In our phone conversation Saturday you mentioned that the identification problem was not yet settled. I have talked with Paul Fritsch and find that he will be in
1604 New York on February 6th and 7th and I would like to suggest that if convenient that we have Mr Fritsch drop by Philadelphia and discuss this phase of our activity with whomever is necessary in order to finalize this problem.

We will appreciate it if you will advise if this date is satisfactory.

I have discussed the rest of our conversation with Mr Holt and you undoubtedly have or will be contacted.

Kindest personal regards.

Yours very truly,

Petroleum Sales Department

J W Basista
lfm

1606 COMMISSION EXHIBIT NO. 23.

Oil Company Sales Material 1950

Advance Information—Details to Follow

We have in production three colored motion pictures, which will be ready with prints complete and ready to go no later than March 1st. These are designed primarily as Service Station Dealer Training Material.

We believe these three pictures will be the most effective that we have ever produced from the standpoint of more satisfactory sales results.

Our Oil Company material is designed primarily for

Dealer Meetings. We have planned this year to get our Oil Company accounts to conduct these meetings themselves as a part of their regular Sales Program and will furnish them with a reasonable number of prints for that purpose.

All three of the pictures can be run at the same meeting, or can be used separately for individual meetings.

Details, as follows:

Tire picture—title "Closing Time" 25 minutes
Battery picture—title "We, the Customer" 15 minutes.
Accessory picture—title "Just Between Us" 15 minutes
"Point of sale" material and Tire Buyer's Guide book as announced in our letter of January 10th.

Material of this type is the most effective ever used with Service Station accounts. The new book will sell to Dealers at $1.50, which does not cover the cost of the 3-ring binder used.

We are developing a colored slide film featuring the Tire Buyer's Guide, which can be used in connection with the above motion pictures or separately.

At the conclusion of Dealer Service meetings we intend to furnish attending Dealers copies of meeting material covered, also order blanks for Tire Buyer's Guide with the suggestion that Dealers attending may place their orders immediately for same.

We have a special Service Station Edition of the Goodyear 1950 Advertising Book outlining program, which will be furnished our Oil Company accounts in fair quantities. We want to feature Multiplex Display fixtures and poster service for Oil Company accounts again in 1950. This material is featured in the 1950 Advertising Program.

We also plan to furnish Oil Company accounts the 1608 Goodyear Merchandiser. There will be ten issues as in 1950. The first issue will be released during the

coming ten days, covering the main points of the 1950 Advertising Program in advance of Advertising Conferences.

There will be nine other issues featuring sales promotions, sales promotion recommendations, dealer meeting guides, etc.

S A Gaylord
Manager—Petroleum Sales Dept

1724 COMMISSION EXHIBIT NO. 24.

Confidential

District Managers
Philadelphia
Newark (Operation June 1950)
Albany
Hartford
Syracuse
Boston
Buffalo

Subject: Atlantic Refining Company

This outline supplements information given you by Mr McConky relative to additional territory assigned to us in the sale of Goodyear Tires, Batteries and Accessories under the Sales Commission Plan.

Due to urgency of getting this information to you as soon as possible Mr McConky has suggested it be sent you direct rather than through his office, which would be normal procedure.

Naturally, there will be a question in the minds of many as to why we are taking on this new distribution now. Since truth is always better than fiction we will give you the background which led up to the decision by our Management.

As you know, we have recognized the desirability of Atlantic distribution for many years and the need for more oil company distribution in the new territory now assigned to us, which represents more than 50% of the Atlantic T.B.A. sales and potential.

Early last year when supplies were plentiful and signs for the future pointed to over-production and increased competition, we mutually agreed on the marketing experiment with Atlantic in our respective Newark District territories with a commitment for expanded territory if the Goodyear Commission Plan proved successful—which it did.

It is true that even at a late date we could have withdrawn from our commitment to Atlantic, however, we would have been out of the account for keeps and our competition, which placed no restrictions on moving in, would have the account 100%.

While at the present time we have no assurance of any immediate improvement in the critical supply situation we all must fully recognize that the present shortage is an artificial one which, barring an all-out war, will end very suddenly when the government stops its stock piling program.

In the meantime we have a definite commitment with Atlantic and plan to live up to it to the best of our ability. The decision of our Management was made after consideration of all factors and particularly because it gave Goodyear the opportunity of entering into a long-term relationship with Atlantic providing our performance is satisfactory. Naturally, Atlantic Management expects improved sales results as an important factor or would not consider making a change to Goodyear at this time.

Mr McConky will be talking with you during the coming week in regard to supplies and you will secure full cooperation from your Atlantic District Manager as to the 1950

sales results for Tires, Batteries and accessories in your territory in order to determine sales volume expectancy in your territory.

1726 We are working with Mr Harper and his staff toward augmenting our warehouse stocks of Batteries and C & H M to accommodate taking on Atlantic volume.

The Marketing Regions assigned to Goodyear are, as follows:

(1) Philadelphia and New Jersey
(2) New York
(3) New England

Attached you will find a listing of Atlantic Personnel showing break-down of each region by Districts, which you are already familiar with.

You have been advised of the Sales Organization Meetings to be held in each of these regions, as follows:

Feb. 27 Philadelphia—Ben Franklin Hotel
Feb. 28 Providence—Narragansett Hotel
Mch. 1 Syracuse—Onondaga Hotel

These meetings will be attended by Sales Personnel of both companies, commencing at 1 P.M. each day and followed by a Cocktail Hour and Dinner.

Program for these meetings is herewith attached.

You will attend this meeting so lengthy comment regarding it are unnecessary.

The meeting will be opened by an Atlantic Official who will make the announcement of the change to Goodyear and the reasons for it.

He will probably indicate plans of making announcement to Atlantic Dealers by letter and by joint Atlantic-Goodyear meetings for Atlantic Dealers, to be followed by solicitation and presentation of the Goodyear franchise.

Mr McConky will key-note for his Division. He will welcome the opportunity and pledge strong support and co-

operation. No doubt he will stress the importance of Atlantic and Goodyear personnel getting acquainted and teaming up together when presenting the Goodyear franchise to Atlantic Dealers. Because the Atlantic Sales Representative has the "in", but cannot be expected to know the Goodyear story at the start, so by team work the Goodyear Sales Representative will make the presentation and also assist in training the Atlantic Representatives.

Mr McConky will also introduce you—you in turn can speak for your District organization—seconding Mr McConky.

At those meetings attended by more than one District Manager Mr McConky will probably introduce each of you and also speak for you.

Balance of program is Goodyear presentation by Department Managers as shown.

Mr Mayl, speaking for Goodyear, will give full Management endorsement to the new Atlantic Marketing arrangement. Atlantic Head Office Management will do the same when closing the meeting.

1728 Three special displays for these three opening Organization Meetings at Philadelphia, Providence and Syracuse have been shipped for these meeting as you have been advised by Mr Jones.

Mr Jones will provide one or two of his men one day in advance of each of these meetings to supervise proper installation, stocking, displays, etc. In connection with this it will be advisable to secure from the hotels flood lights, spot lights for these displays as we have not provided any special lighting.

After these meetings the Districts are to hold these displays to be used in connection with Atlantic Dealer Meetings that follow.

Since Jones' men will not be available to assist in setting up these displays for the Atlantic Dealer Meetings we

suggest that the personnel that you assign to assist Mr Jones' Representative in setting up for the first meeting should then be given the responsibility of setting up the display for your Atlantic Dealer Meetings.

It will probably be necessary in most cases at least to hire a truck to transport this equipment from one town to another. The cost of this should be charged to Budget S-94A—Department 706.

Mr Jones is also shipping three additional and identical displays for the following Districts:

Albany—Buffalo—Hartford

These to be used for Atlantic Dealer Meetings.

Due to the limited space in some of the hotels it may not be practical to use the entire display at all meetings. There is also a possibility of duplication of meeting dates, in which case it will be necessary for the District to develop another display for the smaller meetings which may occur at the same time.

We understand the Newark District will only have one Dealer Meeting at Newburg, N Y. For that meeting we will suggest that the same display which was used at the Phillipsburg Meeting this week be set up.

Temporarily at least we are not charging the Districts for the cost of these displays. At the conclusion of your Dealer Meetings we will expect each District to sell the material. A separate letter is being written on this subject giving you the full detail and District Managers will be expected to follow this detail.

In connection with the meetings at Philadelphia, Providence and Syracuse it will be the responsibility of the District to furnish a 16 mm motion picture machine and slide film projector, also a large screen and experienced operator.

Equipment from the District should be inspected and put in first class condition, otherwise first class equipment

should be rented. The cost of this, plus the cost of a union operator, if necessary due to restrictions should be charged against Budget S-94A—Department 706.

In connection with the properties necessary for
1730 conducting the Sales Organization Meetings at these three points. We are showing motion picture "House of Goodyear". This film will be brought in from Akron to Philadelphia and from there to the other meetings by Mr Basista, also the slide film which will be used by Mr Harper.

We are also shipping to the attention of District Managers material shown on the attached list to be used by Mr Zonsius and Mr Harper.

We are also shipping, marked for your attention, 100 Goodyear pens which are to be used as favors at the dinner.

With reference to the Cocktail Hour, which will be announced by Mr Mayl, our suggestion would be that we have open bar service for a period of about an hour with proper facilities, help, etc to handle number attending.

General Information Regarding Atlantic-Goodyear Marketing Arrangement

Our agreement with Atlantic covering Goodyear Tires, Goodyear Batteries and Goodyear Car and Home Supplies will be the Sales Commission Plan.

Complete Operating Instructions will be issued to all Districts within the new marketing area assigned to Goodyear.

After your Dealer Meetings and when solicitation of Atlantic Dealers starts will suggest that you consult with your Operating Manager, also with the Atlantic local Management, your Representatives and the Petroleum Representative assigned to the account to coordinate and work plans so that the G-1209 forms will be promptly issued and signed at the time each account is sold. Then set up

proper mechanics so that the G-1204's will be issued monthly in accordance with our instructions.

We also used a special introductory advertising and display package at Newark which was sold Atlantic dealers at a cost of $2.50. A list of the material in this package is shown on the attached sheet. We are making up stock and will ship quantities to your District within a few days, advising you as to quantities, etc.

This package was sold Atlantic Dealers at Newark practically 100%, mainly because it is an outstanding value, and the same procedure should be followed when signing up Atlantic Dealers in your territory.

At Newark we also worked out an arrangement with Atlantic whereby we adjusted Lee Tires with Goodyear replacements. Atlantic are obligated with a Road Hazard Warranty. The general procedure has been to have the Lee Tires sent in to our Districts for adjustment under the Road Hazard Warranty, also under the Defective Workmanship and Material Guarantee.

Complete instructions as to handling this will be issued by our Field Operating Department, also our Service Department.

We are also planning for additional Goodyear personnel to handle and coordinate the Atlantic account.

One man headquartering at Philadelphia responsible for Atlantic Head Office contacts and also responsible for contacts with all Atlantic Districts assigned to Goodyear and proper coordination of the program as between Atlantic and Goodyear organizations.

1732 One man headquartering at Philadelphia working with Atlantic Philadelphia and Suburban District, Sodth Jersey and Newark Districts.

One man headquartering at Providence working with Atlantic Districts in New England Regions—

Providence	Hartford	New Haven
Worcester	Fall River	Bridgeport
Springfield	Boston	

One man headquartering at Syracuse—New York Region contacting

Syracuse	Binghamton	Watertown
Buffalo	Rochester	Albany

Mr. McConky is working on these new assignments and we are hopeful that the men will be available at least to attend the three opening meetings.

In addition to the above personnel, Joe Basista and myself will be available to assist and we will probably have some extra personnel assigned particularly in the Philadelphia and South Jersey Regions to assist temporarily in the solicitation of Atlantic Dealer accounts.

Our Advertising Department are working on an identification program which will be submitted to Atlantic Head Office for approval shortly.

Handling Costs in Connection with all Atlantic Meetings

Please write this department a letter giving us confirmation of the estimated cost of all meetings which you have in most cases given us by long distance phone.

This should include all meetings and dates as soon as they are scheduled.

Charges for meetings are to be paid by Districts and journaled against Dept. 706-Akron, Budget #S-94A.

Goodyear will pay the cost of introductory Sales Meetings at Philadelphia, Providence, Syracuse, also Atlantic Dealer Meetings to follow.

Bulletin boards at hotels should indicate meetings, as follows:

"Atlantic-Goodyear Meeting"
Time and Location

The suggested outline for the Atlantic Dealer Meetings is herewith attached.

It need not be handled exactly as it is a program which you should work out with your Atlantic District Manager and agree on.

Based on experience, the meeting should not run later than 10:00 P M, though the Dealers should be invited to inspect the display and meet the Goodyear personnel, if they desire to do so.

1734 We understand Atlantic will issue invitations for the Dealer Meetings. We also understand it will announce the change to Goodyear by letter, similar to the one attached, so it will not be necessary to have the Goodyear display covered as is indicated in the meeting outline.

Immediately following the three introductory meetings at Philadelphia, Providence and Syracuse and after you have coordinated the entire program with your Atlantic District Manager, it will probably be advisable for you to have a meeting with your sales personnel and brief them on the entire Atlantic program in detail as to what will be done at the Dealer Meetings and the plan for soliciting the Atlantic Dealer immediately thereafter.

Based on our experience it will be necessary to have the Atlantic sales people and the Goodyear Representatives team up together and start solicitation immediately following the Dealer Meetings.

The Atlantic Representative will have the "in" with the account and the Goodyear Representative can then present the Goodyear Franchise. Each Goodyear Representative should have his copy of the Goodyear Franchise Presentation for this assignment.

Two purposes will be accomplished by this teaming activity—first—the Atlantic Salesman will learn the basic details of our Franchise Presentation and, secondly—our Goodyear Salesmen will be vary favorably introduced to

the account through the sales influence of the Atlantic Representative, also bring up this point with your men.

Head Office Management of Atlantic will make it clear to their organization that the Goodyear T.B.A. Franchise has been selected because by testing they have determined it is the best proposition for Atlantic Dealers. It will be presented to them on a straight sales basis. In other words, no unorthodox methods will be tolerated and our sales people should be governed accordingly.

Atlantic Dealer Meetings

In discussing this with Atlantic District Manager we believe that he will desire to open the meeting, as we have indicated on the program, placing special emphasis to his Dealers "Why Goodyear". In other words, Atlantic have for several years studies what is the best long-term arrangement for Atlantic Dealers and after several tests and experiments selected Goodyear.

The Atlantic District Manager will then tell his Dealers that the Atlantic Salesmen and his Goodyear counter-part will call on them and present the Goodyear proposition asking that it be given careful consideration.

From that point you will take over the program and it actually becomes a straight Dealer Meeting, which you are very familiar with. Suggested outline and some of the points you may want to cover is herewith attached.

The three pictures "House of Goodyear"—"Closing Time"—and "We the Customer" shown on the program will be furnished by us from Akron providing with have a complete schedule and dates far enough in advance of your meetings.

One of the most necessary things in all of these
1736 meetings is to be sure that the Goodyear and Atlantic personnel become well acquainted as quickly as possible and a close relationship be maintained.

As previously stated, the Petroleum Sales Department stands ready to assist you in every way possible in coordinating this entire program and, of course, we will see you at the three introductory meetings this week and discuss more in detail any questions or plans which you care to bring up.

S A Gaylord

1738 COMMISSION EXHIBIT NO. 25.

Proposed Outline of Meeting

Atlantic-Goodyear

Sales Organization Meeting

1:00	Atlantic Regional Manager announces program: also introduces Goodyear Division Manager	20 min.
1:20	F [redacted] McConky, Jr.—N E Division Mgr. Goodyear T & R Co	10 "
1:30	Goodyear District Mgr.	5 "
1:35	"House of Goodyear"—Motion Picture	35 "
2:10	Recess	10 "
2:20	Selling the Goodyear Franchise—J A Lewin	20 "
2:40	Goodyear Tire & Tube Sales—K C Zonsius	60 "
3:40	Recess	10 "
3:50	Goodyear Battery Sales—H G Harper—Mgr Associated Mdse. Goodyear C & H M (Accessories)—H G Harper	60 "
4:50	Goodyear Service Station—Dealer Training & Promotional Material—J A Lewin	20 "
5:10	Stretch	5 "
5:15	Goodyear—Akron Mr J E Mayl, Vice President	10 "
5:25	Atlantic Refining Company Close—District Mgr. or Head Office Meeting to close at 5:35 P M	10 "

Mr Mayl to issue invitation to Goodyear Cocktail Hour and Dinner starting at 6:30 P M

1740 COMMISSION EXHIBIT NO. 26.

Suggested Atlantic-Goodyear Introductory Dealer Meeting

7—8:30 Dinner

8:30 Atlantic District Manager

Introduce ARCO Visitors

Announcement—"Atlantic is Going Goodyear"

Unveil Displays

9:00 Goodyear District Manager

Introduce Key, Liaison, Sales Personnel, etc.

"House of Goodyear"

"Closing Time"

"We The Customer"

9:45 Atlantic District Manager

Introduce TBA Manager—

A Natural for Plus Sales and Profits

10:00 Close Meeting

Meet Goodyear Representatives and Invite Questions and Answers and Inspection of Displays

1742 COMMISSION EXHIBIT NO. 27.

Goodyear District Manager Presentation

(Atlantic Dealer Meeting)

Outline

Introduction of Goodyear Personnel.

After years of courtship Atlantic and Goodyear have wed, and, believe us fellows, it wasn't a shot gun wedding. We are sure it will be a long and successful relationship.

Atlantic thoroughly studied and actually tested the Goodyear program in the Atlantic-Newark District.

It's unquestioned success is one of the main reasons for the decision to go Goodyear.

We welcome wholeheartedly this merger. Evidence of our sincerity—tying up with Atlantic at this crucial time.

Building for the future. We have recognized Atlantic is one of the largest and most aggressive companies in the Oil business.

As leaders in the rubber industry we are confident this can and will be a winning combination.

What we have to offer—

Best quality
Complete T.B.A. lines
Greatest Acceptance
Most advertising support and sales help
Convenience of supply
Competitive prices

Active, adequate sales training and cooperation

Atlantic and Goodyear will combine efforts to make your business bigger and more profitable.

Goodyear and your Atlantic salesman will call on you together to outline our franchise.

Your cooperation and patience in these days of shortages will be appreciated.

We pledge you we will do all in our power to make you Atlantic Dealers the envy of the Petroleum Industry.

1744 COMMISSION EXHIBIT NO. 28.

The Atlantic Refining Company

Sales Personnel

Territory Assigned to Goodyear

President

R H Colley 260 South Broad St., Philadelphia, Pa

Executive Vice President

H Supplee, Jr "

Domestic Sales Department

D T Colley, Vice President & General Manager "

Product Sales & Sales Development Division

F M Neall, Manager "

Sales Promotion Section

E R Cox, Jr., Manager "

T.B.A. Section

S J Heideman, Manager "

H K Paxson, Assistant Manager "

Sales Operations Division

William Keen, Manager "

Credit & Collection Division

William Stockton, Manager "

Marketing Regions

Philadelphia & New Jersey

J O Estlow, Regional Manager "

E D Walter, Manager, Sales Group "

E D Stanton, Direct Marketing Supervisor "

W J Jackson, T.B.A. Co-ordinator "

Philadelphia & Suburban District
F C Bowman, District Manager "

South Jersey District
C W Feld, District Manager "

Newark District—85 Boremus Avenue, Newark, New Jersey
A R Sanborn, District Manager

New York—Syracuse Savings Bank Building, Syracuse, New York
G V Ostrander, Regional Manager
W S Shockley, Manager, Sales Group
W T Bell, Direct Marketing Supervisor
L K Maisel, T.B.A. Co-ordinator

Syracuse District—540 Solar Street, Syracuse, N Y
R H Gillum, District Manager

1746 Buffalo District—P O Box 11, Station B, River Road, Buffalo, N Y
H J Van Nortwick, District Manager

Binghamton District—227 Front St, Binghamton, N Y
D F McSparran, District Manager

Rochester District—1840 Lyell Avenue, Rochester, N.Y
W W Hamilton, District Manager

Watertown District—58 Public Square, Watertown, N Y
A C Walker, District Manager

Albany District—P O Box 71, Rensselaer, N Y
N A Butterfield, District Manager

New England—430 Hospital Trust Building, Providence, R I
H W Jollie, Regional Manager
M G Davis, Manager, Sales Group
C A Walsh, Jr., Direct Marketing Supervisor
T L Walsh, T.B.A. Co-ordinator

Providence District—Barrington Parkway, Kettle Point, R I.
L E Wilson, District Manager

Worcester District—North Prescott & Byron Sts., Worcester, Mass
R A Batchelder, District Manager

Springfield District—1075 Page Boulevard, Springfield, Mass
O K Schmid, District Manager

Hartford District—1351 Main Street, East Hartford, Conn
L E Card, District Manager

Fall River District—51 Purchase Street, Fall River, Mass
A E Lofquist, District Manger

Boston District—Park Square Building, Boston, Mass
C F Favorite, District Manager

New Haven District—Alabama Avenue & Waterfront, New Haven, Conn.
W F van Haagen, District Manager

Bridgeport District—3 East Avenue, Bridgeport, Conn
B H Lasseter, District Manager

Purchasing Department

J S Parks, Purchasing Agent, 260 South Board St., Philadelphia, Pa
M S Charlton, Assistant Purchasing Agent
C F Bergh, Buyer—T.B.A.

Note: Goodyear District Managers to contact at District Manager level, also Regional Marketing Supervisors and T.B.A. Co-ordinators.

Goodyear Petroleum Representatives work closely with Co-ordinators, District Managers and Sales Personnel.

1748 COMMISSION EXHIBIT NO. 29.

(Sample of Atlantic Letter to Dealers, Etc.)

To Atlantic Dealers
To Atlantic Petroleum Distributors

Here is the most important T.B.A. news ever sent you by Atlantic. Very shortly the complete Goodyear line will be available through your Atlantic salesman. You will be notified as to the exact date the new program will become effective. In the meantime, we will continue to supply you to the best of our ability with our present T.B.A. line.

The decision to make this change in the T.B.A. program to that of Goodyear was made only after thorough testing to determine the advantages for Atlantic dealers. The results of these tests showed that the Goodyear program offered very real benefits.

The Goodyear plan includes new sales possibilities. A complete line of tires, batteries, and Car and Home Merchandise is available. This change in policy opens a door to new profits. The reason for offering this new line of T.B.A. products is to present to dealers and distributors

a program which, in our opinion, can provide the maximum in sales potential as well as better support for overall petroleum Marketing.

With the announcement of the effective date of the new program, the merchandising and distributing of the present T.B.A. line will be continued only to the extent of remaining inventories.

1750 COMMISSION EXHIBIT NO. 30.

Atlantic-Goodyear Sales Organization Meeting
Props and Meeting Materials

(1) Display Equipment shipped Air Express to Hotel Display Merchandise—to be furnished by District and Suppliers.

(2) Chrome Pens—Shipped Air Express to Districts—Attention District Mgrs. Animated Pencils—Shipped Attention District Mgr. for Dealer Meetings

(3) Product Data Book (2) shipped P P to District—attention District Mgr.

(4) Car and Home Catalogues with Dealer & Distributor Price Lists shipped to District—Attention District Manager

(5) Introductory Advertising & Display Package shipped to District Mgr. for Dealer Meetings.

(6) B-256—Ready Reference Chart
(7) B-198—Price Lists—Auto Tires & Tubes
(8) B-224—Price Lists—Truck Tires & Tubes
(9) B-304—Consumer Prices Goodyear Battery
(10) B-166—Battery Policy and Sales Program
(11) B-309—Zone Wholesaler Price—Goodyear Batteries
(12) B-318—Consumer Prices—Resolute Batteries
(13) B-322—Service Distributor Prices—Resolute Batteries

Shipped Parcel Post to Districts—Attention District Manager

(14) Fil "Houre of "Goodyear" (Short Version)
(15) Film "We the People" } For Dealer
(16) Film "Closing Time" } Meetings } Akron to
(17) Film "Goodyear Battery Franchise Presentation" } supply
(18) 16 MM Motion Picture Projector—District to supply. Be sure it is in good working order. Also supply extra projector bulb.
(19) Slide Projector—District to supply. Be sure it is in good working condition.
(20) Large Motion Picture Screen. District to supply.
(21) Motion Picture Operator. Disrtict to supply. Can arrange through Bell and Howell.
(22) Speaker's stand with light. Ask the hotel to supply. If advisable public address system.

1752 COMMISSION EXHIBIT NO. 31.

Goodyear Introductory Package for Atlantic Dealers

(Contents)

1 Tire Buyer's Guide
1 Temporary Goodyear Sign 24x43 (Water Resistant Heavy Paper)
2 Metal Tire Stands
5 Tire Centers (Marathon out)
5-6 x 26 Streamers (paper)
4-14 x 42 Banners (paper)
2 Stack Signs "Let's Trade Tires" etc.
1 LifeGuard Demonstrator (S-2202)
1 Puncture Seal Demonstrator (S-1309)
Special introductory price to Atlantic Dealers $2.50 ($6.50 Value)
Packages shipped to all Districts from Akron—to be sold when signing Atlantic Dealers.
(Also sell Price Book and Service)

1754 COMMISSION EXHIBIT NO. 32.

Inter-Office Communication from W. E. Blank—
Battery Sales

Date 2/28/51

Attention of: L. A. Knight

Copies to: J. C. Goodyear, Akron
Goodyear, Akron

Subject:

Goodyear have been successful in obtaining the business of the Atlantic Refining Company, which was formerly served by Exide.

This account is very important to Goodyear and they have requested our full cooperation in giving Atlantic orders top service. Goodyear have told us to give top priority to all Atlantic orders until further notice.

Releases from Goodyear for Atlantic stations will be marked "Atlantic Order" and we are to mark invoices to Goodyear "Atlantic Dealer" so that they may recognize deliveries to this account.

Please alert all of the people handling orders at the Niagara Falls factory to do their very best job to help Goodyear build this business.

Yours very truly,
W. E. Blank

W. E. Blank
mjn

1756 COMMISSION EXHIBIT NO. 33.

Akron

March 12, 1951

District Operating Managers
CC: District Managers

Atlantic-Lee Adjustments

Goodyear and Atlantic have entered into an agreement whereby we will adjust Lee Tires for Atlantic Dealers. Further, that the adjustment loss incurred by this agreement will be divided equally between both companies.

Report

In view of the above and to insure proper handling, districts will prepare the following report at the end of each quarter.

1	2	3	4	5	6	7	8	9
Inv #	Dealer's Name	Item & Serial #	B-19A #	Defective Condition	Amt of Wear	Adjusted Price	Dealer's Normal Buying Price	Net Loss (Col 8 Less Col 7)

Note: In some instances the dealer's normal buying price (Column 8) will be unknown as the Atlantic Dealer may be buying Goodyear merchandise through a Supplying Dealer. In these cases, Districts are to contact the Supplying Dealer for the account's normal buying price. District Manager's assistance should be requested if needed.

Report will be prepared in triplicate and will be distributed as follows:

1—S J Heideman, Atlantic Refining Company Home Office
2—Applicable Atlantic Regional Office
3—District File Copy

Tires Scrapped at the District

All Lee adjusted tires will be scrapped locally at the District by cutting the beads and selling for scrap. The amount of revenue derived from the sale of these tires will be credited to Net Loss (Column 9) above.

Those Lee Tires, which are adjusted on the Time Guarantee Certificate, require attachment of this certificate to that copy of the above quarterly report forwarded to S J Heideman.

District Accounts Receivable

Immediately after preparation of the above report, districts will issue journal ticket debiting Atlantic for their share of adjustment loss. Journal ticket posted to the Sundries Account will debit 207 Accounts Receivable and credit account 007 Adjustment Loss. Acknowledge check from Atlantic covering their portion of this loss on G-1053C cash receipt. Send two extra copies of this journal ticket to Wholesale Field Operating.

G L Wright—Manager
Wholesale Field Operating

1758 COMMISSION EXHIBIT NO. 34.

March 12, 1951

H F Aul—District Service Rep—Philadelphia
R S Colton—District Service Rep—Albany
W O Reid—District Service Rep—Hartford
W W Evans—District Service Rep—Syracuse
J T Miller—District Service Rep—Boston
J W Silk—District Service Rep—Buffalo
cc—District Managers
F W McConky, Jr

Subject: Atlantic Refining Company

Early last year Goodyear entered into an experimental arrangement with the Atlantic Refining Company regarding the sale of Goodyear tires and tubes by a certain group of Atlantic outlets in the Newark District. The arrangement proved so successful that the plan is now being extended to Atlantic Refining Company outlets in the above Districts.

Atlantic outlets have heretofore sold Lee tires. Lee passenger Car Tires were covered by a Lee Time Guarantee. Lee Commercial Truck Tires in the 15" and 16" were also covered by the Lee Time Guarantee. Lee Truck Tires in other sizes were covered only by the regular Industry Warranty against defects in workmanship and material.

Until such time as the supply of Lee tires in Atlantic Refining Company outlets is exhausted, it will be necessary for the District Service Department at above Districts to handle adjustments on Lee tires by replacing Lee tires with Goodyear tires in accordance with the following instructions. Please read these instructions carefully, familiarize yourself with every detail.

H E Ammerman
Manager—Service Department

mh

1760 COMMISSION EXHIBIT NO. 34B.

Instructions for Acting for the Atlantic Refining Company in Negotiating Adjustments on Lee Tires

Lee Tires Shipped to the District

1. Atlantic Refining dealer handles a claim with a customer at the time it is presented to him. He will replace a Lee tire with a Goodyear tire providing the customer presents an authorized Lee certificate covering the Lee tire.
2. The Atlantic Refining dealer will refer the replaced Lee tire direct to the Goodyear District.
3. The Lee Guarantee Certificate must be presented with the Lee tire. No claim form is needed for the Lee tire, the certificate is sufficient.
4. If the transaction appears to be in order, the District Service Department will replace the Lee tire with a Goodyear tire after the used Lee tire has been received at the District Office and the B-19 form completed.
5. The new Goodyear tire will be shipped to the proper dealers. Lee tires in each case will be replaced with the comparable type of Goodyear tire. (For example—Double Eagle, Super-Cushion, DeLuxe, Marathon.)
6. Set aside a separate block of B-19 and B-19A numbers for Lee tires. Write "Atlantic" on the B-19 form in the space at top of form towards the right corner. Otherwise, make up the B-19 in the regular manner. Do not place any B-19A or B-19C stubs on any Lee tires. Mark the B-19A number with yellow crayon on the tire.
7. Use Goodyear tire condition code for Lee tires on B-19s marked "Atlantic."
8. Allow the 10% handling allowance to dealers on adjustment transactions completed on Lee tires.

1762 COMMISSION EXHIBIT NO. 34C.

Lee Tires Adjusted in the Field at Atlantic Refining Jobbers or Distributors Who Now Will Sell Goodyear Tires

1. There may be one or two Atlantic Jobbers in your territory on whom you will want to call regularly. When such calls are made, take along some of the Atlantic B-19s you have set aside for this purpose. Also notify Akron Service Department so that the call can be added to your Field Service Schedule.
2. Show B-19A number in yellow crayon on each tire.
3. Give dealer fourth copy of B-19 Form.
4. Use Goodyear tire condition code for Lee tires on B-19s marked "Atlantic."
5. All Lee tires will be returned to Goodyear District in the regular manner.
6. Process the B-19 Form at the District in the usual manner. Replacements will be made with Goodyear tires as explained for shipped-in tires.

Supplementary Information

In making any and all adjustments on Lee tires, Goodyear is acting for the Atlantic Refining Company.

No Lee Guarantee Cerificates covering Goodyear tires will be honored.

The Industry Standard Warranty applies to any Lee tubes which may be presented for adjustment. If defective, they will be replaced with Goodyear tubes. No claim forms are required for Lee tubes.

Any Goodyear tires or tubes which may be presented for adjustment consideration by Atlantic Refining dealers will be handling accordance with our regular Service Department Policy and in same manner as for any other Goodyear dealer.

1764 COMMISSION EXHIBIT NO. 34D.

A standard claim form is required for each Goodyear tire and tube. Do not use B-19 Forms marked "Atlantic" for replacing Goodyear tires or tubes.

Since the adjustment loss for the Replacement of Lee tires will not be shown on Reference #58, Replacement and Loss Report, it will be necessary to keep B-19s for Lee tires separate and apart from B-19s for Goodyear products. White copies of "Atlantic" B-19s should be stapled together and mailed to Akron with copies of B-19s covering Goodyear items. Operating Department should file in regular sequence in B-19 file when they are returned from Akron.

Staple together the canary copies of "Atlantic" B-19s in the same manner and send to the Attention of L Kohnz, Sales Accounting Department, Akron. Please be certain these copies are marked for L Kohnz' attention, otherwise adjustment loss records will be incorrect and loss on Lee tires may be included in your Reference #58 report.

File pink copies of Atlantic B-19s in claim form file under name "Atlantic." There will be no claim form. Certificate will be turned over to Operating Manager for attachment to quarterly report that must go to Atlantic.

Include "Atlantic" B-19 replacements and transactions in the statistical section of your B-66 monthly report.

Do not include Lee tire adjustment losses on Dealer & Store Loss Report, the B-19s coming to Akron covering Lee tires will provide this information

Batteries

Atlantic Refining Company outlets now handle Exide Batteries. Since Atlantic Refining will receive the 1% allowance on Goodyear Batteries only defective Exide Batteries with less than 90 days of service will be submitted to Service Department for replacement. No other batteries are to be received for consideration.

1766 COMMISSION EXHIBIT NO. 35.

cc C C Ross
H G Harper
J W Basista
J W O'Neill—Philadelphia

May 1, 1951

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Subject: Schrader Inventory

Dear Syd:

You will recall that we stated to you verbally that Schrader agreed to accept your inventory and issue credit on basis of your acquisition cost less 10%. After consideration you stated the arrangement would be satisfactory.

Under the above plan Atlantic would ship to Schrader and a credit memo. would be issued which Atlantic would transfer to Goodyear and receive payment from us, which would be somewhat cumberson and expensive as it would require double handling of the stock in question.

Mr C C Ross, Manager of our Retread and Repair Material Sales, after due consideration and desiring to be fully cooperative with you, will go through with the original proposal on a direct basis. Specifically, he will issue Goodyear purchase order, which will be forwarded to you personally, covering your inventory at your acquisition prices less 10% (Jobber Prices). This offer is based on your acceptance and the quantities listed from inventory you previously submitted, with the understanding the material is new and unused and properly packaged. Shipments to be prepaid to Goodyear Warehouse specified on purchase order, which will probably be Philadelphia.

Under this arrangement the loss to Atlantic and Goodyear will be about equal.

Please advise.

Sincerely,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1768 COMMISSION EXHIBIT NO. 36.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street

May 7, 1951

TBA WCH
Schrader Inventory

Mr. S. A. Gaylord, Manager
Petroleum Sales Dept.
The Goodyear Tire & Rubber Co., Inc.
Akron 16, Ohio

Dear Mr. Gaylord:

We will accept your offer for our inventory of Schrader merchandise, as set forth in your letter of May 1.

Will you please issue the Goodyear purchase order to cover the purchase of this material.

Cordially yours,

W. C. Hoffman

m

1770 COMMISSION EXHIBIT NO. 37.

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pa.

May 28, 1951
TBA SJH
Goodyear Program
Exide Battery Adjustments

Mr. S. A. Gaylord, Manager,
Petroleum Company Sales,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Mr. Gaylord:

It was agreed last week that we would reconsider the basis on which Goodyear would handle adjustments of Exide batteries that had been sold by Atlantic and the claim handling for which, therefore, remained an Atlantic responsibility that must be handled to the satisfaction of both customer and dealer. Since we have the same problem in the other half of our territory which is being served by a different supplier, I am sure it will be of interest to you to review the satisfactory arrangement that has been employed to solve this problem.

We shall appreciate it if you will favor us with your comments or suggestions for a revision of the present battery adjustment program as soon as possible, so that further delays and complications in the field can be averted.

h Cordially yours,

Enc. S. J. Heideman

P.S. Atlantic shares with the supplier on a 50-50 basis in losses occurred under this arrangement. In other words, the same basis is used as pertains to tires.

(Written in margin:) Sam: Hulshizer would like to discuss this with Mr. Armerman today if posible. Jack.

1772 COMMISSION EXHIBIT NO. 38.

cc H W Hulshizer

June 1, 1951

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Dear Syd:

Replying to your favor of the 28th on the subject of "Exide Battery Adjustments".

I am enclosing, herewith, a copy of our instructions to the field covering this subject, which will go forward either today or tomorrow.

Under this arrangement it is understood that Atlantic will pay 100% of the loss up to 90 days' service and Goodyear and Atlantic will share the loss on a 50-50 basis on batteries replaced beyond the 90 day service.

With reference to the sixth paragraph in the instruction letter, which will be understood by our people in the field, would like to clarify—for your information Goodyear Dealers will receive 10% of the adjusted price and Goodyear Battery Distributors will receive 20% of the adjusted price, provided they do not get the 1% battery allowance off the face of the battery invoices.

We trust that this arrangement will handle the situation to your entire satisfaction.

Yours very truly,

Manager—Petroleum Sales Dept.

S A Gaylord
lfm

1774 COMMISSION EXHIBIT NO. 39.

Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries To Be Replaced With Firestone Batteries

1. All batteries will be adjusted at retail list price on basis of the Exide guarantee.
   The number of service guarantee units or months on Exide batteries is exactly the same as on similar types of Firestone batteries.
2. There will be no reimbursement or handling commission allowed Dealer where replacement price to the customer is equal to or exceeds Dealer's buying price, on a Firestone battery of the same service guarantee.
3. Atlantic Dealer may adjust an Exide battery on the basis of the Exide guarantee by replacing with a comparable Firestone battery having the same service guarantee and charging customer for pro-rata service received on the Exide battery.
4. Firestone will replace Exide battery with a Firestone battery to Dealer on same basis Dealer replaced to customer less 50 cents handling commission where replacement price is less than the Dealer's cost.
5. On all such transactions customer's copy of guarantee certificate must be furnished Firestone together with the adjusted battery. All battery shipments to District Office for adjustment must be prepaid by Atlantic Dealer.
6. If the Exide battery becomes unserviceable within the 90 day service guarantee period, Firestone will honor any replacement the Atlantic Dealer makes. (Dealer will pay transportation costs.)
7. On all such transactions Firestone will deduct adjustment sales or credits in computing sales (monthly S468 reports) for sales commission to Atlantic.

8. Should there be any cases where a supply point replaces an Exide battery with a Firestone battery at a price below their buying cost, Firestone will reimburse supply point for the difference between replacement price less handling commission and the supply point's buying price. On all such transactions the supply point will be charged 1% to offset the adjustment allowance by Firestone (if supply point operating on allowance basis).

   Supply points will adjust batteries by replacing with Firestone batteries as outlined above and may obtain credit from District by shipping battery together with customer's certificate to District. However, supply point should handle all possible adjustments of batteries where replacement and handling commission are above their buying price and retain scrap batteries.

9. Where any adjustment is made and the replacement including the 50 cent handling commission is below Dealer's buying price on the Firestone battery—Firestone District Office will furnish monthly as a separate attachment to the monthly S468 reports, a tabulation of each service department credit memo showing the following information and totals:

Credit Memo	Type Battery	Replacement Price to Customer	Dealer Cost	Amount Credit

1776 COMMISSION EXHIBIT NO. 40A.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

February 9, 1951
TBA SJH

Mr. J. E. Mayl, Vice-President,
Goodyear Tire and Rubber Co.,
Akron 16, Ohio.

Dear Joe:

Our various marketing regions have asked for information concerning the number and locations of supply points that you have in the territory covered by Atlantic. In order to assist you in supplying us with this information by marketing region, we list on the attached page the states that comprise each of the several regions. It will be helpful, too, in supplying this information. if you will distinguish between individual wholesalers and your own controlled supply points.

It is hoped that you have such information assembled and that there will be no objection to supplying it promptly, as it will be one of many factors involved in the consideration of the Goodyear Commission Plan.

Cordially yours,

Syd
S. J. Heideman

h
Enc.

P.S. The maps forwarded Mr. Gaylord the latter part of December should be an aid in establishing these boundaries.

1778 COMMISSION EXHIBIT NO. 40B.

Atlantic Marketing Regions

Region	Territory
New England	Vermont New Hampshire Massachusetts Rhode Island Connecticut
New York	New York State
Philadelphia-New Jersey	New Jersey Pennsylvania as follows: All Philadelphia County Portions of Bucks, Delaware, Montgomery, Chester Counties
Eastern Pennsylvania	Eastern Half of Pennsylvania Delaware Eastern Shore of Maryland and Virginia
Western Pennsylvania	Western Half of Pennsylvania Panhandle of West Virginia Ohio Northern portion of Maryland
South	Maryland West Virginia Virginia North Carolina South Carolina Georgia Florida

COMMISSION EXHIBIT NO. 41A.

G-1209

This is the form used to evidence approval by the oil company and Goodyear of an account with respect to our sales to which commission will be paid to the oil company.

COMMISSION EXHIBIT NO. 41B. 2454

CHECK ONE

GOODYEAR DISTRICT	DATE ISSUED	DATE EFFECTIVE	SUCCESSOR	NEW ACCT.	REMOVE	CHANGE

OIL COMPANY | DIV. OR DIST. OFFICE | STREET & CITY ADDRESS | OIL COMPANY SALES AREA

LIST SUPPLY POINTS BELOW:

DEALER REPLACED

SPECIAL INSTRUCTIONS—

IS THIS ACCOUNT AN APPROVED GOODYEAR CAR & HOME WHOLESALER? CHECK ONE YES ☐ NO ☐

TYPE OF OIL ACCOUNT: CROSS OUT ONE

OIL COMPANY FRANCHISE JOBBER OR DISTRIBUTORS

OIL COMPANY DEALER (NOT JOBBER OR DISTRIBUTOR)

APPROVED _____ GOODYEAR DISTRICT MANAGER

APPROVED _____ OIL CO. REPRESENTATIVE

PARTICIPATING OIL COMPANY ACCOUNT:

PROPRIETOR'S NAME | ST. ADDRESS | COUNTY | CITY | STATE

1783

TRADE NAME OR STYLE (IF ANY)

GOODYEAR FIELD REPRESENTATIVE

NAME _____ TERR. NO. _____

COMMISSION EXHIBIT NO. 410.

2455

GOODYEAR DISTRICT	DATE ISSUED	DATE EFFECTIVE	SUCCESSOR	CHECK ONE: NEW ACCT.	REMOVE	CHANGE

OIL COMPANY	DIV. OR DIST. OFFICE	STREET & CITY ADDRESS	OIL COMPANY SALES AREA

LIST SUPPLY POINTS BELOW:

DEALER REPLACED

SPECIAL INSTRUCTIONS—

IS THIS ACCOUNT AN APPROVED GOODYEAR CAR & HOME WHOLESALER? CHECK ONE YES ☐ NO ☐

TYPE OF OIL ACCOUNT: CROSS OUT ONE

OIL COMPANY FRANCHISE JOBBER OR DISTRIBUTORS

OIL COMPANY DEALER (NOT JOBBER OR DISTRIBUTOR)

APPROVED _____ GOODYEAR DISTRICT MANAGER

APPROVED _____ OIL CO. REPRESENTATIVE

PARTICIPATING OIL COMPANY ACCOUNT:

PROPRIETOR'S NAME	ST. ADDRESS	COUNTY	CITY	STATE

TRADE NAME OR STYLE (IF ANY)

GOODYEAR FIELD REPRESENTATIVE

NAME 1784 TERR. NO.

GOODYEAR DISTRICT	DATE ISSUED	DATE EFFECTIVE	CHECK ONE: SUCCESSOR	NEW ACCT.	REMOVE	CHANGE

OIL COMPANY	DIV. OR DIST. OFFICE	STREET & CITY ADDRESS	OIL COMPANY SALES AREA

LIST SUPPLY POINTS BELOW:

DEALER REPLACED

SPECIAL INSTRUCTIONS—

IS THIS ACCOUNT AN APPROVED GOODYEAR CAR & HOME WHOLESALER? CHECK ONE YES ☐ NO ☐

TYPE OF OIL ACCOUNT. CROSS OUT ONE

OIL COMPANY FRANCHISE JOBBER OR DISTRIBUTORS

OIL COMPANY DEALER (NOT JOBBER OR DISTRIBUTOR)

APPROVED _____ GOODYEAR DISTRICT MANAGER

APPROVED _____ OIL CO. REPRESENTATIVE

PARTICIPATING OIL COMPANY ACCOUNT:

PROPRIETOR'S NAME	ST. ADDRESS	COUNTY	CITY	STATE

TRADE NAME OR STYLE (IF ANY)

GOODYEAR FIELD REPRESENTATIVE

NAME 1786 TERR. NO.

COMMISSION EXHIBIT NO. 41D. 2456

COMMISSION EXHIBIT NO. 41E.

2457

GOODYEAR DISTRICT	DATE ISSUED	DATE EFFECTIVE	SUCCESSOR	CHECK ONE: NEW ACCT.	REMOVE	CHANGE

OIL COMPANY | DIV. OR DIST. OFFICE | STREET & CITY ADDRESS | OIL COMPANY SALES AREA

LIST SUPPLY POINTS BELOW:

DEALER REPLACED

SPECIAL INSTRUCTIONS—

IS THIS ACCOUNT AN APPROVED GOODYEAR CAR & HOME WHOLESALER? CHECK ONE YES ☐ NO ☐

TYPE OF OIL ACCOUNT: CROSS OUT ONE

OIL COMPANY FRANCHISE JOBBER OR DISTRIBUTORS

OIL COMPANY DEALER (NOT JOBBER OR DISTRIBUTOR)

APPROVED _____ GOODYEAR DISTRICT MANAGER

APPROVED _____ OIL CO. REPRESENTATIVE

PARTICIPATING OIL COMPANY ACCOUNT:

PROPRIETOR'S NAME | ST. ADDRESS | COUNTY | CITY | STATE

1788

TRADE NAME OR STYLE (IF ANY)

GOODYEAR FIELD REPRESENTATIVE

NAME | TERR. NO.

G-1204 (7-51)

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company _____ Goodyear District _____

Oil Company Division or District Office _____ Report of Purchases for Period of _____ to _____ 195__

Goodyear Field Repr. Name _____ Terr. # _____ Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS Type Acct. Oil Co.	Approved Goodyear Wholesaler	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	Goodyear Batteries and Cables	Recalate Batteries	C. & M. Accessories and Other Miss.		YEAR TO DATE: New Tires and Tubes	Goodyear Batteries and Cables	Recalate Batteries	C. & M. Accessories and Other Miss.		

warrant any merchandise purchased hereunder, except as set forth in the standard warranty thereon in effect on the date of resale by the Dealer.

8. The Dealer agrees not to exhibit products purchased from Goodyear at any show or exhibition without the consent of Goodyear.

9. It is understood that Goodyear retains the right to sell to other customers in the Dealer's city above mentioned and elsewhere.

10. The Dealer will not use Goodyear's trade names or trade-marks except in the normal course of distributing such products under this agreement, and then only those trade names or trade-marks referring to products purchased hereunder.

11. Upon any termination of this agreement, the Dealer agrees to remove permanently all signs on windows or on inside or outside walls or attached thereto referring to Goodyear products or identifying the Dealer with Goodyear, and, at Goodyear's request, to return to Goodyear all signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays a substantial part). Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance, use, or removal of any of said signs.

12. The entire agreement regarding the subject matter is set forth herein. Any change in the printed terms, other than a change in the terms of settlement making all invoices payable C. O. D., shall make this agreement void. No modification or amendment shall be effective unless in writing signed by an authorized representative of the Dealer and by an executive officer of Goodyear either manually or with facsimile signature countersigned by an authorized District Manager.

13. This agreement shall become effective when countersigned by an authorized District Manager of Goodyear and shall expire five (5) years from date of execution unless otherwise previously terminated as hereinafter provided. It cancels and supersedes any other Service Station Agreement and any other sales agreement now in effect between the parties covering the sale by Goodyear to the Dealer of any product included hereunder.

14. This agreement may be cancelled upon thirty (30) days' written notice by the Dealer to Goodyear, or by Goodyear through its local manager to the Dealer. At the expiration of said thirty (30) days, Goodyear shall have the right to cancel all unfilled orders, and during such time may refuse any orders in excess of the average thirty-day requirements of the Dealer based on orders actually given hereunder during the term hereof.

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

Dated ..... , 19.....

Per R.O. Wilson
Vice President

Accepted .....
Dealer

Per .....
(Title)

Countersigned .....
District Manager

.....
City State

Printed in U. S. A.

For information only—not a part of Service Station Agreement

Check one—
New Account ☐
Renewal ☐

Date Dealer Started with Goodyear .....

Date Friendly Relations Plaque Due .....

SERVICE STATION AGREEMENT STUB

District ..... Dist. Terr. No. ..... Date of Contract .....

Firm Name .....
(Print same as on Contract)

Owner's or Official's Name .....
(Print same as on Contract)

Street Address .....
(Print same as on Contract)

Town ..... (Print) ☐ County P. O. Unit

State ..... (Print) Akron P. P. Zone ☐

Principal Business .....

Make of Car, Truck or Tractor Handled .....

Estimated Annual B-94 Volume $ .....

Appliance Line Featured .....

Radio Line Featured .....

Brand of Gasoline Featured .....

Check following boxes to show which prices initially should be sent to Dealer—*First* set of prices is supplied by Salesman or District—Price *changes* are mailed by Akron to Dealer.

Products checked should be same as specified in agreement.

Auto & Truck Tires & Tubes ☐	Brake Lining ☐
Industrial Tires & Tubes ☐	Car & Home Merchandise Use G-964 Form to get Dealer on mailing list
Farm Tires & Tubes ☐	
Batteries & Battery Cables	Camelback & Repair Material ☐
Check one	
Contract Dealer ☐	
Distributor ☐	
Service Distributor ☐	
Preferred Distributor ☐	
Wholesaler ☐	
Zone Wholesaler ☐	

Field Repr.—Fill out completely in duplicate—Send both copies of contract with stubs to District Office.
District —Send original copy of Contract with stub to Wholesale Field Operating Dept., Akron. Retain other stub for District file and mail other copy of contract to Dealer. Remove stub as Contract is cancelled.

1805

COMMISSION EXHIBIT NO. 44F.

2464

G-1201 (1-60)

REPORT OF SALES TO DESIGNATED OIL COMPANY ACCOUNTS BY _____ DEALER

TO THE GOODYEAR TIRE & RUBBER COMPANY, INC., FOR MONTH ENDING _____

PROPRIETOR	TRADE NAME	ADDRESS	GOODYEAR TIRES-TUBES	GDYR BATTERIES EXC. RESOLUTE	GOODYEAR CAN HOSE	RESOLUTE BATTERIES

COMMISSION EXHIBIT NO. 43A.

G-1201

This form is used by supplying dealers for reporting sales in total to accounts of the oil company on the approved list in lieu of submitting copies of invoices.

1794

THIS REPORT INCLUDES ONLY NET SALES OF GOODYEAR PRODUCTS AFTER DEDUCTING QUANTITY DISCOUNT, BONUSES, PRICE REBATES, BILLING CORRECTIONS, CREDITS FOR RETURNED GOODS, EXCISE TAX AND SALES TAX IF ANY.

RECORDS TO SUPPORT ABOVE REPORT WILL BE MADE AVAILABLE UPON REQUEST.

CERTIFIED CORRECT _____

1796

COMMISSION EXHIBIT NO. 43B.

2459

G 1208 (1-51)

COPY OF SUPPLYING DEALER'S INVOICE TO OIL COMPANY DEALER

(TO BE USED WHEN COPY OF DEALER'S INVOICE IS NOT AVAILABLE)

Supplying Dealer Name_____

City _____

Oil Company Dealer Name_____

Street_____

City _____

Oil Company Name_____

INVOICE NO. OR DATE	QUANTITY	DESCRIPTION	UNIT PRICE OF MDSE. Excluding Excise Tax	TOTAL EXTENSION Excluding Excise Tax
		COMMISSION EXHIBIT NO. 44A.		
		G-1208		
		This form is used by supplying dealers in lieu of submitting copies of invoices to the oil company accounts on the approved list.		
		1798		

This is a Copy of supplying dealer invoice (or invoices) at the date or dates and reference number or numbers shown.

1800

Signed (Dealer or Dealer Representative)

COMMISSION EXHIBIT NO. 44B.

2460

does not confer on the Dealer any authority to make adjustments in behalf of Goodyear, nor any authority to warrant any merchandise purchased hereunder, except as set forth in the standard warranty thereon in effect on the date of resale by the Dealer.

8. The Dealer agrees not to exhibit products purchased from Goodyear at any show or exhibition without the consent of Goodyear.

9. It is understood that Goodyear retains the right to sell to other customers in the Dealer's city above mentioned and elsewhere.

10. The Dealer will not use Goodyear's trade names or trade-marks except in the normal course of distributing such products under this agreement, and then only those trade names or trade-marks referring to products purchased hereunder.

11. Upon any termination of this agreement, the Dealer agrees to remove permanently all signs on windows or on inside or outside walls or attached thereto referring to Goodyear products or identifying the Dealer with Goodyear, and, at Goodyear's request, to return to Goodyear all signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays a substantial part). Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance, use, or removal of any of said signs.

12. The entire agreement regarding the subject matter is set forth herein. Any change in the printed terms, other than a change in the terms of settlement making all invoices payable C. O. D., shall make this agreement void. No modification or amendment shall be effective unless in writing signed by an authorized representative of the Dealer and by an executive officer of Goodyear either manually or with facsimile signature countersigned by an authorized District Manager.

13. This agreement shall become effective when countersigned by an authorized District Manager of Goodyear and shall expire five (5) years from date of execution unless otherwise previously terminated as hereinafter provided. It cancels and supersedes any other Service Station Agreement and any other sales agreement now in effect between the parties covering the sale by Goodyear to the Dealer of any product included hereunder.

14. This agreement may be cancelled upon thirty (30) days' written notice by the Dealer to Goodyear, or by Goodyear through its local manager to the Dealer. At the expiration of said thirty (30) days, Goodyear shall have the right to cancel all unfilled orders, and during such time may refuse any orders in excess of the average thirty-day requirements of the Dealer based on orders actually given hereunder during the term hereof.

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

Dated ..... , 19 .....

Per ..... Vice President

Accepted .....
Dealer

Countersigned .....
District Manager

Per .....
(Title)

..... City ..... State

Printed in U. S. A.

For information only—not a part of Service Station Agreement

Check one—
New Account ☐
Renewal ☐

Date Dealer Started with Goodyear .....

Date Friendly Relations Plaque Due .....

SERVICE STATION AGREEMENT STUB

District ..... Dist. Terr. No. ..... Date of Contract .....

Firm Name .....
(Print same as on Contract)

Owner's or Official's Name .....
(Print same as on Contract)

Street Address .....
(Print same as on Contract)

Town ..... (Print) County ..... P. O. Unit

State ..... (Print) Akron P. P. Zone ....

Principal Business .....
Make of Car, Truck or Tractor Handled .....
Estimated Annual B-94 Volume $.....
Appliance Line Featured .....
Radio Line Featured .....
Brand of Gasoline Featured .....

Check following boxes to show which prices initially should be sent to Dealer—*First* set of prices is supplied by Salesman or District—Price *changes* are mailed by Akron to Dealer.

Products checked should be same as specified in agreement.

Auto & Truck Tires & Tubes ☐
Industrial Tires & Tubes ☐
Farm Tires & Tubes ☐
Batteries & Battery Cables ☐
Check one
Dealer No. 287 ☐
Dealer No. 352 ☐
Jobber "B" ☐
Jobber "A" ☐

Car & Home Merchandise Use G-964 Form to get Dealer on mailing list ☐

Tread Rubber & Repair Material ☐

1807

General Line Salesman—Fill out completely in duplicate—Send both copies of contract with stubs to District Office.

District —Send original copy of Contract with stub to Wholesale Field Operating Dept., Akron. Retain other stub for District file and mail other copy of contract to Dealer. Remove stub as Contract is cancelled.

COMMISSION EXHIBIT NO. 44G.

G-1207 (1-56)
ORIGINAL - DISTRICT OPERATING MANAGER
DUPLICATE - DISTRICT PETROLEUM REPRESENTATIVE
TRIPLICATE - STORE FILE

STORE _____

TERR. NO. _____

Par. 3C

RECORD OF SALES TO OIL CO. ASSOCIATE DEALERS

For Month Of _____ 19__

ACCOUNT NAME (Per G-1209)	LOCATION	1. TOTAL TIRES AND TUBES	2. TRUCK TIRES AND TUBES	* 3. BATTERIES		* 4.	5.
				REGULAR	"X" TYPE	CAR & HOME	REPAIR MATERIALS

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 EXHIBIT NO. 446

* ONLY STORES APPROVED BY DISTRICT MANAGER AS OIL COMPANY SUPPLYING DEALERS ARE TO REPORT C & H MDSE. OR BATTERIES.
DO NOT INCLUDE EXCISE TAX

1802

STORE MANAGER

COMMISSION EXHIBIT NO. 446. 2461

GENERAL LINE SALES BY CUSTOMER

CX 44. 1

B-91 LINE NUMBER	B-91 LINE NUMBER	TYPE OF MERCHANDISE	YEAR TO DATE UNIT SALES	YEAR TO DATE TOTAL DOLLAR SALES	YEAR TO DATE BONUSABLE DOLLAR SALES	YEAR TO DATE DOLLAR DELIVERIES TO NAT'L AND GOVT ACCOUNTS
01		DOUBLE EAGLE, BLUE STREAK AND CAPTIVE AIR				
02		OTHER PASSENGER TIRES EXCEPT SUPER CUSHION				
03		SUPER CUSHION PASSENGER TIRES				
04		MOTORCYCLE TIRES				
05		RIB HI-MILER TRUCK TIRES – UNDER 9.00-20				
06		OTHER TRUCK TIRES – UNDER 9.00-20				
07		RIB HI-MILER TRUCK TIRES – 9.00-20 AND OVER				
08		OTHER TRUCK TIRES – 9.00-20 AND OVER				
09		FRONT FARM TIRES – 21" AND UNDER				
10		REAR FARM TIRES – OVER 21"				
11		PASSENGER TUBES				
12		MOTORCYCLE TUBES				
13		TRUCK TUBES – UNDER 8.25				
14		TRUCK TUBES – 8.25 AND OVER				
15		FARM TUBES				
16		BLOWOUT SHIELDS				
17		SOLIDS AND ALL INDUSTRIAL TIRES, TUBES AND WHEELS	[redacted]			
18		BICYCLE TIRES AND TUBES				
19		BATTERIES – "K" TYPE				
20		BATTERIES – OTHER				
21		CAR AND HOME MERCHANDISE – RADIO	[redacted]			
22		CAR AND HOME MERCHANDISE – OTHER				
23		REPAIR MATERIAL – SUBJECT TO COMMISSION				
24		REPAIR MATERIAL – NOT SUBJECT TO COMMISSION				
25		DILL AND SCHRADER MERCHANDISE				
26		TREAD RUBBER				
27		RECAPS, RETREADS AND CAMCASSES				
28		BATTERY CABLES				
29		BATTERY DRY ACCESSORIES				
30		ALL OTHER MERCHANDISE NOT INCLUDED ABOVE				
31		SEASONAL PROMOTIONAL DISCOUNT			[redacted]	
32		TRUCK TIRE SERVICE ALLOWANCE				[redacted]
33		VOLUME BONUS EXCEPT ANNUAL TIRE AND TUBE BONUS				
34		ANNUAL TIRE AND TUBE BONUS				
35						
36						
37						
38						
39						
40		GRAND TOTAL SALES (EXCEPT NATIONAL FRANCHISE MDSE.)	[redacted]		[redacted]	[redacted]
41		NATIONAL FRANCHISE MERCHANDISE				
42		TRANSPORTATION TAX AND EXPENSE ITEMS ON BILLING				

FEDERAL TRADE COMMISSION
DOCKET NO. 6926 EXHIBIT NO. 44D

COMMISSION EXHIBIT NO. 44D. 2462

A[illegible]OCIA[illegible] DEALER AGREEMENT

FEDERAL TRADE COMMISSION DOCKET NO. 6174 CX 44E

THIS MEMORANDUM OF AGREEMENT entered into this _____ day of _____, 19__, between _____ (Dealer), having its principal place of business at _____ (Address), hereinafter called the "Dealer," and _____ (Associate Dealer) of _____ (City) (State No.) (State), hereinafter called "Associate Dealer."

WITNESSETH, that:

1. The Dealer hereby agrees to sell to the Associate Dealer, and the Associate Dealer agrees to buy from the Dealer [illegible] acts handled by The Goodyear Tire & Rubber Company, Inc., of Akron, Ohio (hereinafter called "Goodyear"), in the [illegible] lines agreed upon between the parties from time to time, at the Dealer's prices and terms to its associate dealers [illegible] subject to change from time to time by the Dealer without notice to the Associate Dealer.

2. Upon failure by the Associate Dealer to make any payments as due, the Dealer may, at its option, cancel this agreement or defer additional shipments hereunder until overdue accounts have been paid. The Dealer may decline to make [illegible] except for cash whenever it is not satisfied with the Associate Dealer's financial responsibility. Neither the Dealer nor [illegible] year shall be liable for any delay in delivery or failure to deliver caused by fire, flood, strike, interruption of transportation [illegible] facilities, restrictions imposed by any governmental agency, inability to obtain merchandise, or other cause, whether or [illegible] wise, beyond its control. During any such contingency Dealer will endeavor in good faith to allocate deliveries fairly [illegible] its customers, but expressly reserves in its discretion, without liability to the Associate Dealer, the final determination [illegible] liveries to be made.

3. The Associate Dealer agrees to refer all claims for adjustment to the Dealer and not to warrant any [illegible] chased hereunder except as set forth in the manufacturer's warranty in effect thereon at the time of resale by the [illegible] Dealer.

4. The Associate Dealer agrees not to use Goodyear's trade name or names or trade marks except in the normal [illegible] distributing such products under this agreement, and then only those trade names or trademarks referring to products [illegible] chased hereunder.

5. Upon termination of this agreement by cancellation, or otherwise, the Associate Dealer agrees, on demand, to remove and return to the Dealer all signs furnished by Goodyear referring to Goodyear products or identifying the Associate Dealer as a Goodyear Associate Dealer (the Associate Dealer agreeing that all such signs are the property of Goodyear) and to remove all similar painted signs on windows or on inside or outside walls or attached thereto. The Associate Dealer [illegible] hold Goodyear and the Dealer harmless from any liability arising out of or connected with the erection, maintenance or removal of any of said signs.

6. This agreement shall expire five (5) years from date of execution unless otherwise previously terminated as herein provided. It shall automatically terminate if at any time the Dealer shall cease to be an authorized dealer in Goodyear products. It may be cancelled at any time upon five (5) days' written notice of intention to discontinue given by either party to the other. At the expiration of said five (5) days, Dealer shall have the right to cancel all unfilled orders, and during such time may refuse any orders in excess of the average five-day requirements of the Associate Dealer based upon orders actually given hereunder during the term hereof.

7. This agreement shall cancel and supersede any and all existing agreements in effect between the parties hereto with respect to the same subject matter or covering the purchase of Goodyear merchandise by the Associate Dealer from the Dealer. This agreement is personal in character and not subject to assignment by the Associate Dealer. It does not constitute the Associate Dealer an agent for the Dealer.

8. The conditions of this agreement are fully and clearly explained herein. The terms and conditions hereof are not subject to change by any verbal agreement or custom.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly signed the day and year first above written.

Witness: _____ (Dealer)

_____ By _____

Witness: _____ (Associate Dealer)

_____ By _____

Original for Dealer — Duplicate for Associate Dealer

FOR INFORMATION ONLY — NOT A PART OF AGREEMENT

CHECK ONE— Renewal ☐ New Assoc. Dlr. ☐

ASSOCIATE DEALER AGREEMENT STUB

District _____

Replacing _____

PRINT OR TYPE ALL INFORMATION REQUIRED

Dist. Terr. No. _____

SUPPLYING DEALER		ASSOCIATE DEALER	
Firm Name		Firm Name	
Street Address	County	Street Address	County
City	State	City	☐ State

Check Goodyear Products Stocked By Supplying Dealer		Check Goodyear Products Associate Dealer Will Stock	
Auto and Truck Tires and Tubes	☐	Auto and Truck Tires and Tubes	☐
Farm Tires and Tubes	☐	Farm Tires and Tubes	☐
Car and Home Merchandise	☐	Car and Home Merchandise	☐
Camelback and Repair Materials	☐	Camelback and Repair Materials	☐
Batteries	☐	Batteries	☐
Brake Lining	☐	Brake Lining	☐

Do not check products by Supplying Dealer that you are supplied for Associate Dealer or Dropped Customer.

Initial price list on products you are authorized to sell to Associate Dealer.

Price changes on all products you are authorized to sell to Associate Dealer.

Car and Home Cotaheres to be supplied only for accounts importantly in Goodyear C & H Business.

4 Rep.—Fill out Agreement and Stub completely in Duplicate—Mail White only to District Office—Original Agreement to Dealer—Duplicate to Supplying Dealer.

District —File one Stub—send other to Office Service Dept., Akron. To cancel, check Dealer title box ☐ and mail [illegible]

G-119 (1-51)

GOODYEAR

SERVICE STATION AGREEMENT

BETWEEN THE GOODYEAR TIRE & RUBBER COMPANY, INC., having a place of business at Akron 16, Ohio, hereinafter called Goodyear, and .....

.....

located at .....
Number Street Town Zone No. County State

hereinafter called Dealer.

1. The Dealer agrees to engage actively in the sale and distribution of the items of Goodyear merchandise listed below which are checked in the space opposite thereto, and to carry such merchandise in stock in sufficient quantities to insure prompt service, and to render Goodyear service to the consumer:

- ☐ Automobile Casings and Tubes
- ☐ Pneumatic Truck and Bus Casings and Tubes
- ☐ Industrial Tires and Tubes
- ☐ Farm Tractor and Implement Tires and Tubes
- ☐ Batteries and Battery Cables
- ☐ Brake Lining
- ☐ Car and Home Merchandise
- ☐ Camelback and Repair Material

Any item above listed not initially included may be added, and any item may be removed at the written request of the Dealer, approved by the Goodyear District Manager. The Dealer will not substitute or attempt to substitute other products when the consumer requests Goodyear products.

2. The Dealer is hereby designated a Goodyear Service Station Dealer. Goodyear will give the Dealer such assistance in advertising, instructions in Goodyear service, and such aid generally as Goodyear gives to such Service Station Dealers in carrying out its policy of distribution. The Dealer shall be entitled to purchase each such product at the prices specified in the list applicable thereto called "Goodyear Prices," or, with respect to any product to which such list does not apply, then at the prices in such other list as is applicable, less such discounts and allowances as Goodyear may from time to time allow to its Service Station Dealers in such products and subject to the conditions set forth in such list. It is understood that such prices, discounts, allowances, and conditions are subject to change by Goodyear from time to time without notice to the Dealer, and all shipments will be billed at prices (including amount of any Federal excise tax) in effect on date of shipment.

3. In case of a concurrent decline in "Goodyear Prices" or, with respect to any product to which such list does not apply, then in the prices in such other list as is applicable, and in Goodyear's net prices to its Service Station Dealers on casings and tubes, Goodyear will rebate to the Dealer by merchandise credit in accordance with Goodyear's regular policy then in effect on all new first class Goodyear casings and tubes invoiced by Goodyear to the Dealer hereunder within thirty (30) days prior to the date of such concurrent reduction, provided, however, that such rebates will not be granted with respect to casings or tubes sold pursuant to special announcement that rebates will not be made with respect thereto.

4. Delivery of goods sold hereunder shall be f. o. b. point of shipment. Otherwise, terms of shipment shall be governed by Goodyear's policy in effect at the time of shipment. Goodyear shall not be liable for any delay in delivery or failure to deliver caused by fire, flood, strike, war, interruption of transportation facilities, inability to obtain merchandise, restriction by any governmental authority, or other cause, similar or otherwise, beyond Goodyear's control. During any such contingency Goodyear will endeavor in good faith to allocate deliveries fairly among its customers, but expressly reserves in its discretion, without liability to the Dealer, the final determination of deliveries to be made.

5. Terms of settlement shall be: all invoices due 10th proximo, with cash discount as applicable from time to time under Goodyear's established policy.

6. Upon failure of the Dealer to make any payments when due, Goodyear may, at its option, cancel this agreement or defer additional shipments until overdue accounts have been paid. Goodyear may decline to make deliveries except for cash whenever it is not satisfied with Dealer's financial responsibility.

7. The Dealer agrees to refer all claims for adjustment to Goodyear, it being understood that this agreement does not confer on the Dealer any authority to make adjustments in behalf of Goodyear, nor any authority to warrant any merchandise purchased hereunder, except as set forth in the standard warranty thereon in effect on the date of resale by the Dealer.

8. The Dealer agrees not to exhibit products purchased from Goodyear at any show or exhibition without the consent of Goodyear.

9. It is understood that Goodyear retains the right to sell to other customers in the Dealer's city above mentioned and elsewhere.

10. The Dealer will not use Goodyear's trade names or trade-marks except in the normal course of distributing such products under this agreement, and then only those trade names or trade-marks referring to products purchased hereunder.

11. Upon any termination of this agreement, the Dealer agrees to remove permanently all signs on windows or on inside or outside walls or attached thereto referring to Goodyear products or identifying the Dealer with Goodyear, and, at Goodyear's request, to return to Goodyear all signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays a substantial part). Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance, use, or removal of any of said signs.

12. The entire agreement regarding the subject matter is set forth herein. Any change in the printed terms, other than a change in the terms of settlement making all invoices payable C. O. D., shall make this agreement void. No modification or amendment shall be effective unless in writing signed by an authorized representative of the Dealer and by an executive officer of Goodyear either manually or with facsimile signature countersigned by an authorized District Manager.

13. This agreement shall become effective when countersigned by an authorized District Manager of Goodyear and shall remain for (5) years from date of execution unless otherwise terminated or hereinafter

G-110 (5-56)

GOODYEAR

SERVICE STATION AGREEMENT

BETWEEN THE GOODYEAR TIRE & RUBBER COMPANY, INC., having a place of business at Akron 16, Ohio, hereinafter called Goodyear, and

.....,

.....,

located at

Number Street Town Zone No. County State

hereinafter called Dealer.

1. The Dealer agrees to engage actively in the sale and distribution of the items of Goodyear merchandise listed below which are checked in the space opposite thereto, and to carry such merchandise in stock in sufficient quantities to insure prompt service, and to render Goodyear service to the consumer:

- [ ] Automobile Casings and Tubes
- [ ] Batteries and Battery Cables
- [ ] Pneumatic Truck and Bus Casings and Tubes
- [ ] Car and Home Merchandise
- [ ] Industrial Tires and Tubes
- [ ] Tread Rubber and Repair Material
- [ ] Farm Tractor and Implement Tires and Tubes

Any item above listed not initially included may be added, and any item may be removed at the written request of the Dealer, approved by the Goodyear District Manager. The Dealer will not substitute or attempt to substitute other products when the consumer requests Goodyear products.

2. The Dealer is hereby designated a Goodyear Service Station Dealer. Goodyear will give the Dealer such assistance in advertising, instructions in Goodyear service, and such aid generally as Goodyear gives to such Service Station Dealers in carrying out its policy of distribution. The Dealer shall be entitled to purchase each such product at the prices specified in the list applicable thereto called "Goodyear Prices," or, with respect to any product to which such list does not apply, then at the prices in such other list as is applicable, less such discounts and allowances as Goodyear may from time to time allow to its Service Station Dealers in such products and subject to the conditions set forth in such list. It is understood that such prices, discounts, allowances, and conditions are subject to change by Goodyear from time to time without notice to the Dealer, and all shipments will be billed at prices (including amount of any Federal excise tax) in effect on date of shipment.

3. In case of a concurrent decline in "Goodyear Prices" or, with respect to any product to which such list does not apply, then in the prices in such other list as is applicable, and in Goodyear's net prices to its Service Station Dealers on casings and tubes, Goodyear will rebate to the Dealer by merchandise credit in accordance with Goodyear's regular policy then in effect on all new first class Goodyear casings and tubes invoiced by Goodyear to the Dealer hereunder within thirty (30) days prior to the date of such concurrent reduction, provided, however, that such rebates will not be granted with respect to casings or tubes sold pursuant to special announcement that rebates will not be made with respect thereto.

4. Delivery of goods sold hereunder shall be f. o. b. point of shipment. Otherwise, terms of shipment shall be governed by Goodyear's policy in effect at the time of shipment. Goodyear shall not be liable for any delay in delivery or failure to deliver caused by fire, flood, strike, war, interruption of transportation facilities, inability to obtain merchandise, restriction by any governmental authority, or other cause, similar or otherwise, beyond Goodyear's control. During any such contingency Goodyear will endeavor in good faith to allocate deliveries fairly among its customers, but expressly reserves in its discretion, without liability to the Dealer, the final determination of deliveries to be made.

5. Terms of settlement shall be: all invoices due 10th proximo, with cash discount as applicable from time to time under Goodyear's established policy.

6. Upon failure of the Dealer to make any payments when due, Goodyear may, at its option, cancel this agreement or defer additional shipments until overdue accounts have been paid. Goodyear may decline to make deliveries except for cash whenever it is not satisfied with Dealer's financial responsibility.

7. The Dealer agrees to refer all claims for adjustment to Goodyear, it being understood that this agreement does not confer on the Dealer any authority to make adjustments in behalf of Goodyear, nor any authority to warrant any merchandise purchased hereunder, except as set forth in the standard warranty thereon in effect on the date of resale by the Dealer.

8. The Dealer agrees not to exhibit products purchased from Goodyear at any show or exhibition without the consent of Goodyear.

9. It is understood that Goodyear retains the right to sell to other customers in the Dealer's city above mentioned and elsewhere.

10. The Dealer will not use Goodyear's trade names or trade-marks except in the normal course of distributing such products under this agreement, and then only those trade names or trade-marks referring to products purchased hereunder.

11. Upon any termination of this agreement, the Dealer agrees to remove permanently all signs on windows or on inside or outside walls or attached thereto referring to Goodyear products or identifying the Dealer with Goodyear, and, at Goodyear's request, to return to Goodyear all signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays a substantial part). Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance, use, or removal of any of said signs.

12. **The entire agreement regarding the subject matter is set forth herein. Any change in the printed terms, other than a change in the terms of settlement making all invoices payable C. O. D., shall make this agreement void. No modification or amendment shall be effective unless in writing signed by an authorized representative of the Dealer and by an executive officer of Goodyear either manually or with facsimile signature countersigned by an authorized District Manager.**

13. This agreement shall become effective when countersigned by an authorized District Manager of Goodyear and shall expire five (5) years from date of execution unless otherwise previously terminated as hereinafter provided. It cancels and supersedes any other Service Station Agreement and any other sales agreement now in effect between the parties.

STATEMENT

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

207 Hamilton Blvd.
PEORIA 2, ILL.

Unless Paid by End of month, amount due will be $_____

If Paid on or before 10th of month, Discount will be $_____

If Paid on or before 20th of month, Amount carried to be $_____

FEDERAL TRADE COMMISSION
Docket No. 6468
Commission Exhibit No. 45B

_____ Date

REGULAR TERMS APPLY ON ALL CHARGES UNLESS OTHERWISE SHOWN
CASH DISCOUNT DOES NOT APPLY TO TAX BILLED

CAR & HOME BONDABLE	CAR & HOME NON-BONDABLE	BATT. & CABLES EXCLUDING ABSOLUTE	ABSOLUTE BATTERIES			
YR. TO DATE PYD						
TOTAL YR. TO DATE						

PASSENGER TIRES & TUBES EXCLUDING MCY. T & T	TRUCK TIRES AND TUBES EXCLUDING MARA. & IND.	MARATHON TRUCK TIRES	SOLID & IND. TIRES AND TUBES	FARM TIRES AND TUBES		
YR. TO DATE PYD						

STATEMENT - THE GOODYEAR TIRE & RUBBER COMPANY, INC.

DATE	INVOICE OR C. M. NUMBER	DESCRIPTION OR DUE DATE	CHARGES	CREDITS	BALANCE	DISCOUNTABLE VOLUME CURRENT MATURITIES	DISCOUNTABLE VOLUME FUTURE MATURITIES

COMMISSION EXHIBIT NO. 45A

R-80

Sales to oil company accounts on the approved list by Districts, Stores, and Dealers are accumulated on this form by District offices.

1809

OUR STATEMENTS ARE RENDERED AS OF THE 25TH OF EACH MONTH COVERING THE PERIOD FROM 26TH THROUGH 25TH

1814

COMMISSION EXHIBIT NO. 45B

6468

1813 COMMISSION EXHIBIT NO. 46-A.

March 7, 1951

Mr J E Mayl
Vice President
cc Victor Holt
D T Buchanan
H F Cook
Paul Fritsch
H G Harper
Mr O'Neil
S A Gaylord

Subject: Atlantic Refining Co Philadelphia

Confirming our long distance conversation, Atlantic have set up a meeting at Philadelphia for 2 P. M., Wednesday, March 14, at which time Mr Heideman would like to have us present our Advertising, Sales Promotion and Identification programs to Atlantic head office personnel.

The meeting to start in Mr Heideman's Office, 12th Floor, Atlantic Bldg., 260 S Broad Street, Philadelphia.

Attending for Atlantic—

Mr Heideman and Mr Paxson—Mgr. and Ass't. Mgr. TBA Sales

Mr Cox—Sales Promotion Mgr.
Mr Butler—TBA Promotion Mgr.
Mr Raymond—Service Station Equipment

Mr Richard Borden—Advertising Mgr. & Station Identification, etc.

From conversation here today, my suggestions are, as follows:

1. We should present an outline of our plans for Magazine, Newspaper, Radio and Television advertising—with some of our current ads. etc.

Also, Dealer cooperative plan, plus special deals for station openings, etc. Also, review of Dealer 1951 Advertising Book. Dave Buchanan has a fine story on this.

2. Atlantic are in a rush to agree on identification program and get started quickly. Paul Fritsch should be in position to make our recommendations at this meeting.

Note: Firestone are changing color scheme and test stations are being identified and photographed in color this week.

1815 3. Atlantic are anxious to get entire outline of our Promotional program. They also want an advance calendar of our promotions so they can coordinate with Atlantic Service Bulletins, which they issue regularly. Hank Cook has been advised regarding this and has previously called on Atlantic, so if everyone is agreeable believe he should handle this part of the program.

4. Balance of meeting refers to changing over Exide Battery Merchandisers (now in the hands of Atlantic Dealers) to Goodyear identification. Henry Harper has been working on this. Atlantic want to see what we plan—approve it and get into action quickly.

Note: This come under Atlantic Sales Promotion Dept. Atlantic Sales Promotion Dept. have in stock 57 Exide DeLuxe Merchandisers consisting of trickle charger with 9 battery rack and 28 of Standard type—trickle charger and 6 battery capacity. These will be set up for this meeting. We have considered buying these for conversion account shortage of our material.

Atlantic cost is. DeLuxe $24.95—Standard $19.95

Mr Harper or Mr Thomas should attend so these angles can be finalized.

Probably I will plan to attend this meeting. In any event will be in Akron next Monday to discuss in detail with interested departments.

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1817 COMMISSION EXHIBIT NO. 47A-B.

The Atlantic Refining Company
Philadelphia, Pa.

April 26, 1951

SS:JMA

Tire Adjustments
Atlantic-Lee Road Hazard Guaranty

Messrs. R. S. Zinn, Wilmington, Del.
H. N. Bentz, Allentown, Pa.
A. N. Hare, Scranton, Pa.
G. L. Weer, Wilkes-Barre, Pa.
R. W. Engle, Harrisburg, Pa.
L. W. Slaughter, Reading, Pa.
R. M. Outland, Williamsport, Pa.
T. E. Hillyer, York, Pa.

This letter outlines the procedure under which Atlantic dealers and distributors may effect adjustments of Lee Tires under the new T.B.A. Programs we have established with the tire company.

Adjustments on Atlantic/Lee Guaranty Forms Issued Prior to May 1, 1951

Atlantic Dealers and Distributors who have elected to adopt our new Tire Company program may continue to honor all bona fide adjustment claims on Lee Tires which were sold prior to May 1, 1951 with the Atlantic/Lee Road Hazard Guaranty. Dealers will follow the same adjustment policy as heretofore by adhering to the terms stated on the guaranty form. Tires adjusted in this manner will be referred to the new tire supply point for adjustment with the tire companies' brand of tire, in accordance with the tire companies' policy.

Adjustments on Atlantic/Lee Guaranty Forms Dated on and After May 1, 1951

Atlantic Dealers and Distributors may continue to issue the Atlantic/Lee Road Hazard Guaranty to cover sales of Lee Tires (subject to Road Hazard Warranty) which were purchased from The Atlantic Refining Company. The "Company Copy" of each Atlantic/Lee Guaranty Form issued on and after May 1, 1951 must be mailed by the dealer to the local Atlantic District Office. District Offices are to forward these guaranty forms to their Region Office.

Dealers may accept these guaranty forms and satisfy bona fide adjustment claims in accordance with the terms of the Atlantic/Lee Guaranty provided the "Company Copy" of the guaranty form is in the possession of Region Office.

Due to the rapid movement of stocks, and the short supply position, there should be relatively few adjustments claimed on tires sold on and after May 1, 1951. However, Regional Offices will be required to maintain files of the "Company Copy" of these guaranty forms for an extended period of time, since there are a quantity of Winter/Sum-

mer tires and of slow-moving sizes of tires in conventional tread deisng in dealer's stocks.

1819 Dealers requested to make adjustments on guaranty forms dated May 1, 1951 and later, must determine that the "Company Copy" of the guaranty is on file with Atlantic prior to satisfying the adjustment claim.

Dealers who receive bona fide adjustment claims on tires sold by them May 1, 1951 and later, may with confidence make immediate adjustment, provided they had mailed the "Company Copy" of the guaranty form to the District Office.

Atlantic/Lee Guaranty Forms now in the possession of Atlantic Dealers should be picked up by Atlantic salesmen and forwarded to the District Office where they should be destroyed. The salesmen should leave with the dealers, however, a quantity of Atlantic/Lee Guaranty Forms exactly equal to the number of Lee Tires purchased from the Atlantic Refining Company which the dealer has on inventory.

Class I Service Stations—Atlantic/Lee Guaranty Forms

Service station personnel at Class I stations may make adjustments for Lee Tires in accordance with the procedure outlined for dealers and distributors except that approval must first be obtained from District Offices prior to making adjustments for tires covered by guaranty forms dated May 1, 1951 or later.

J. P. Miller

1821 COMMISSION EXHIBIT NO. 47C.

("A" Series)

Sales Department Instructions
Akron 16, Ohio

Date 5-31-51

Subject Handling Exide Battery Adjustments for Atlantic Dealers

Deliver To District Manager. No.

cc District Service Reps
Following Districts—Philadelphia Hartford
Boston Newark Albany Syracuse Buffalo

Original instructions covering replacement of Defective Exide Batteries for Atlantic Refining Company dealers limited replacements to Defective Exide Batteries that failed within 90 days of service. This policy has now been broadened so that all Exide Batteries originally sold by Atlantic Refining Company Dealers will be adjusted if they fail prematurely.

Hereafter, a Defective Exide Battery will be replaced in the same manner as a Defective Goodyear Battery. Atlantic Refining Company dealers may present a Defective Exide Battery together with the proper Exide Warranty Certificate to the dealer who supplies them with Goodyear Batteries, or to the District Service Department for adjustment.

If the Exide Battery was originally sold by an Atlantic Refining Company dealer and fails within 90 days service it will be replaced with the corresponding size and type of Goodyear Battery free of charge.

If the Exide Battery has given more than 90 days service, but failed in normal service because of some defective

condition it will be adjusted by supplying a Goodyear Battery, of corresponding size and type, at a pro rata price based on current Goodyear List Price and miles or months of service as indicated on the Exide Battery Certificate accompanying the battery.

If the pro rata adjustment price plus scrap value of the battery amounts to as much or more than the Atlantic dealer's buying price of the battery, the Atlantic dealer will be expected to handle the adjustment without referring it to the supplying dealer or the District.

When the Exide adjustment is handled for the Atlantic dealer either by a Goodyear supplying dealer or the District the regular handling allowance will apply.

Exide Batteries will be replaced on a B-46 form. Write the word "Atlantic" at the top of the form in large letters. Staple Akron copies together and forward to Akron in the regular manner. Do not include both Goodyear Batteries and Exide Batteries on any one B-46 form.

All batteries adjusted by the District Service Department must be forwarded to the District, freight prepaid, where they will be disposed of in the regular manner. Operating instructions relative to the proper accounting and recovery will be received by the District shortly.

Approvals (Illegible)

Originated By (Illegible)
Department Manager—Service Department

1823 COMMISSION EXHIBIT NO. 47D.

Include Exide Battery replacements in your Monthly Report of Atlantic-Lee tire and tube replacements.

FEDERAL TRADE COMMISSION
DOCKET NO. 6091 COMMISSION EXHIBIT NO. 47E

THIS GUARANTY WILL BE HONORED BY ANY OF THE 8,000 LEE DEALERS FROM COAST TO COAST, EXCEPT WHEN IT COVERS 15" AND 16" COMMERCIAL TRUCK TIRES, IN WHICH CASE IT WILL BE HONORED ONLY BY ATLANTIC-LEE DEALERS.

Passenger Service ☐ Commercial Service ☐ — 4 TYPE TIRE — Super De Luxe ☐ De Luxe ☐ Commercial Truck sizes 15" and 16" only. — Staghound ☑ Winter-Summer ☐ — No. 124921

DATE 7/30/50

TO DAVID KECK
ADDRESS Union N.J.

Purchaser of LEE of Conshohocken Tire — SERIAL No. 1523866 23 — SIZE 600-640 X 16

LEE of Conshohocken Tires

GUARANTEED UNDER THE TERMS STIPULATED ON THE BACK HEREOF.

Elm Grocery (Dealer's Name or Station)
The Atlantic Refining Company
Union (City) N.J. (State)
1950

CUSTOMER'S COPY

THIS GUARANTY DOES NOT COVER MUD & SNOW OR TRUCK AND BUS TIRES EXCEPT 15" AND 16" COMMERCIAL TRUCK TIRES.

LEE of Conshohocken Tires GUARANTY AGAINST ROAD HAZARDS AND DEFECTIVE WORKMANSHIP AND MATERIAL

The LEE of Conshohocken Tire identified on the reverse side is guaranteed for its life against defective workmanship and material and guaranteed from date of purchase in passenger car service or passenger car in commercial service or commercial light truck for the appropriate period indicated below, against any condition that may render the tire unfit for further service, where such condition is due to ordinary wear and tear, or damage thereto caused by blow-outs, cuts, bruises, rim cuts, under-inflation, wheels out of alignment, faulty brakes, or any road hazard.

The liability under this guaranty is limited strictly, at the option of the LEE or ATLANTIC-LEE dealer, either to repairing the tire without charge or to replacing it with a new LEE of Conshohocken Tire of the same type and size. If so replaced Purchaser shall pay for the replacement tire at the applicable replacement rate shown below for each month or fraction thereof which has elapsed since the date of purchase. Such replacement charge shall be computed from the LEE or ATLANTIC-LEE dealer's then current retail price for the replacement tire. If service is made under this guaranty on any day within the last month of the guaranty period, one month's allowance at the above replacement rate shall be credited to Purchaser against said replacement charge: PROVIDED, however, that if a tread appears in any of the following bases:

Faulty Brakes ☐ Improperly Mounted ☐ Wheels out of Alignment ☐ Overloaded ☐,

such cross indicates that the LEE Tire identified on the reverse side has been sold as a replacement tire under a previous guaranty, and this guaranty will not cover any damage to such tire resulting directly or indirectly from the cause or causes checked above. This guaranty does not cover repair or replacement of tubes under any circumstances; replacement of the tire if repair or replacement of the tire is damaged by fire, repair of tire punctures done by or any unauthorized person, or any tire on which the serial number has been removed. THIS GUARANTY AND THE TIRE DESCRIBED ON THE REVERSE SIDE SHALL BE DELIVERED TO THE LEE or ATLANTIC-LEE DEALER WHEN MAKING A CLAIM HEREUNDER.

PERIOD OF ROAD HAZARD GUARANTY

A	PASSENGER CAR SERVICE	REPLACEMENT RATE	COMMERCIAL SERVICE	REPLACEMENT RATE
Super De Luxe	18 months	1/18 per month	7 months	1/7 per month
De Luxe	12 months	1/12 per month	6 months	1/6 per month
Winter-Summer	12 months	1/12 per month	6 months	1/6 per month
Staghound	9 months	1/9 per month		
15" and 16" Commercial Truck only			6 months	1/6 per month

THIS GUARANTY MUST BE PRESENTED WITH [illegible] FOR ADJUSTMENT, AT A [illegible] THIS GUARANTY IS FOR ATLANTIC-LEE TIRES ONLY [illegible] 15" AND 16" COMMERCIAL TRUCK TIRES IN WHICH CASE IT WILL BE HONORED ONLY BY ATLANTIC-LEE DEALERS.

1826 COMMISSION EXHIBIT NO. 48A.

Phone 662 Room 210

From
S. J. Heideman

Mr. S. A. Gaylord:

Enclosed is Bulletin released 6/29 fore your perusal.

W. C. Hoffman

1827 Federal Trade Commission.

Docket No. 6486. Commission Exhibit 48-A.

In the Matter of Goodyear, et al.

Date 30 Oct. 1956. Witness .....

Acc Reporting Co., Official Reporter.

By Anderson

1828 COMMISSION EXHIBIT NO. 48B.

Goodyear T.B.A. Bulletin #22 June 29, 1951

Goodyear Program.

Goodyear has released on indicated date the following information:

T.B.A.

Goodyear Program for Station Identification: Goodyear now expects to begin their Identification Program in the New England and New York Regions the week of July 15th instead of the week of July 2nd, as mentioned in Goodyear T.B.A. Bulletin #21.

Progress Report. Attached is a Progress Report received from Goodyear which presents the results of activities through June 25, 1951 by Goodyear District. May we

please have the report requested in Goodyear T.B.A. Bulletin #17 dated June 1, 1951.

Price Books. 6/5/51. A letter was mailed to Goodyear Dealer Price Book subscribers attaching a recap list of price schedules. These schedules should be in the Price Book so that the Price Book will be up to date. Any obsolete price schedules found in the book should be removed. If any of the current price schedules listed in the recap are not in the book, the Goodyear Field Representative who carries a limited supply of list prices should be contacted.

Tires & Tubes

Direct Mail Advertising. 6/18/51. The #3 issue of "Motorist's Guide" in your dealer's Auto Tire Direct Mail Campaign has been mailed to those names on the mailing list or dealers who subscribe to this service.

Federal Excise Tax. 6/26/51. Price lists covering all tire and tube lines excepting bicycle tires and tubes are revised as of July 2, 1951, to show the new excise tax amounts. These price lists have been mailed to Price Book holders.

Batteries

Clarite Battery. 6/8/51. Goodyear has received numerous inquiries from the field regarding the real value of the so-called Clarite Battery. Laboratory tests have been made on these batteries and advertising claims also have been investigated. The results of the tests and investigations are listed on the attached release which is for your T.B.A. Coordinator.

Farm Tractor Batteries. 6/12/51. Since some competitors have a special "Tractor Battery," Goodyear has had several requests for the addition of such a battery in their line. Their YKL HD Dry-Proof is such a battery. It is built for extra or severe service, and is ideal for farm tractor use. They will make available "Tractor Type

(Code G-618) and "Commercial Type" (Code G-617) identifying stickers for those dealers who feel that a battery recommended for tractor, truck or taxicab use must be so identified. A copy of this release is attached for your T.B.A. Coordinator.

Accessories

Fan Belts, Radiator Hose and Car Mats. Goodyear has set up a program for handling sales of Fan Belts, Radiator Hose and Car Mats and Miscellaneous Products
1830 to Atlantic Refining Company outlets, as follows:

(1) The names of Atlantic Distributors and Dealers acting as Supplying Dealers, and Goodyear Dealers and Goodyear Stores acting as Supplying Dealers will be submitted to the Automotive Jobber Sales District Representative.

(2) Automotive Jobber Sales District Representative will contact each of the qualified Atlantic accounts referred to in (1) above, for the purpose of signing them on an "A" Jobber Agreement (Form 719-9 (3-50)), and, at the same time, securing information requested on Application for Approval (Form 719-14 (3-51)), forwarding same to Akron, Department 719, along with the signed "A" Jobber Agreement. It will not be necessary to forward Application for Approval (Form 719-14 (3-51)) in advance of "A" Jobber Agreement as both forms will be processed simultaneously.

(3) Atlantic accounts, when signed as "A" Jobbers and countersigned by Akron, will be extended Automotive Jobber Sales current Price Schedule 500A. The current Price Schedule 500A is Form 719-22, dated December 11, 1950. Shipments will be made from Goodyear Newark Automotive Jobber stocking warehouse to those accounts in the

Goodyear Newark, New York, and Philadelphia District, and from the Goodyear Boston Automotive Jobber stocking warehouse to those accounts in the Goodyear Albany, Boston, and Hartford Districts, and from the Massilon, Ohio Automotive Jobber stocking warehouse to those accounts in the Goodyear Syracuse and Buffalo Districts, until such a time as a satisfactory "AA" Automotive Jobber is appointed to render local service. Local service from "AA" Jobber will not change the price quoted the Atlantic accounts.

Goodyear will begin signing the eligible Atlantic accounts on the "A" Jobber program in the Philadelphia-New Jersey Region before introducing the program in the New England and New York Regions. It is estimated it will take them 30 to 45 days to complete this work in the Philadelphia-New Jersey Region.

(4) When Atlantic accounts have been duly signed, it shall be the duty of Automotive District Salesmen and/or Automotive Missionary Men to:

(a) Resleeve all belts on hand with Goodyear conversion sleeves properly marked with corresponding Goodyear belt number.

(b) Install fan belt racks as directed by the dealer.

(c) Hang the belts in consecutive number order.

(d) Properly instruct the dealer in the use of Goodyear catalog and price schedules, and also his cost and suggested resale price schedules.

(e) The proper amount of catalogs and price schedules will be sent from Akron, as per request on reverse side of Application for Approval (Form 719-14). At least one copy of

catalog and price schedules will be left with the dealer pending arrival of above.

1832 (f) Suggested Trade Resale schedules to be used by Atlantic "A" Jobber when selling the Atlantic accounts he serves are Schedules 502, 503, and 504.

It should be clearly explained to the Atlantic account signed as an "A" Jobber that these schedules are competitive with the industry and that he (the Atlantic "A" Jobber) is to determine which one of these schedules he desires to use when selling the dealer he serves.

(5) Atlantic dealers served by Atlantic accounts ("A" Jobbers):

(a) The Automotive Jobber District Man will secure from the Atlantic accounts ("A" Jobbers) a list of Atlantic dealers being served.

(b) He will then proceed with his Missionary Men to contact such dealers and change them over to Goodyear, the same as he changed over the Atlantic account ("A" Jobber).

(6) "A" Jobber profit:

When the above buys at Schedule 500A and sells at:

Schedule 502, the Gross profit on the sale is 30%
Schedule 503, the Gross profit on the sale is 37%
Schedule 504, the Gross profit on the sale is 43%

(7) Atlantic dealer being served by an "A" Jobber:

When the above buys at schedule shown below and sells at list Schedule 506:

Schedule 502, the Gross profit on the sale is 48%
Schedule 503, the Gross profit on the sale is 43%
Schedule 504, the Gross profit on the sale is 37%

(8) Schedule 504 is not generally used in selling dealers. It is primarily intended for the dealer who does not carry a stock and picks up a belt when needed.

Schedule 503 is mostly used for dealers who carry a small stock.

Schedule 504 is used for the large stocking dealer who carries a substantial stock of several sizes and is classed as a Service Stock Dealer.

(9) Summary:

With the "A" Jobber price extended to Atlantic accounts acting as Supplying Dealers showing an especially adequate profit when selling the dealer he serves, and a similar profit to the dealer when selling at list, plus the availability provided and the missionary work extended by Goodyear as well as placing the Atlantic Supplying Dealer competitive with the industry, the results should be gratifying to all concerned.

1834 We are mailing to your T.B.A. Coordinator, under separate cover, an Automotive Products Jobber Catalog #250.

Accessories

Ted Williams Car Nu/Car-Plate Deal. 6/15/51. A Sales Brochure, an ad reprint and dealer catalog page covering S. C. Johnson & Sons' Ted Williams Car Nu/Car-Plate Deal has been mailed to all names on the Car and Home Catalog mailing list.

S. J. Heideman

p

COMMISSION EXHIBIT NO. 48F.

The Atlantic Refining Company
Progress through June 25, 1951

	N. Y.	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points.	13	552	203	144	32	184	288	210	4625
2. Total number of Atlantic Supplying Dealers signed direct.	0	16	8	12	4	5	21	6	72
3. Total number of Goodyear Dealers & Stores acting as supply points.	2	0	19	15	12	13	22	22	105
4. Lee Tires Adjusted	0	302	32	83	29	107	149	64	766
5. Batteries Adjusted to Date	0	4	0	1	0	0	3	1	9
6. Introductory Display Packages Sold	13	439	7	143	33	99	230	125	1089

1838 COMMISSION EXHIBIT NO. 49.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, PA.

July 31, 1951

TBA SJH
Goodyear Program

Mr. S. A. Gaylord, Manager,
Petroleum Sales Department,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Mr. Gaylord:

We do not know whether sales of major home appliances represent any substantial sales volume; in fact we are inclined to think they do not. It is a fact, however, that Firestone's sales of these products to Atlantic dealers are reported and credited to The Atlantic Refining Co. This is another item that may have a bearing on the over-all sales performance and the disparity that exists in the results secured in the two divisions of our marketing area.

I realize that the contract that we have jointly executed excludes these products from commission consideration, but believe at the present time it would be worthwhile to reconsider this point. It was my understanding that commissions could not be paid on these products because of the very narrow distributor margin that Goodyear enjoys. I don't know what the margin is, but the inference is there is some margin. This, you will admit, is far better than the situation that exists on Super Pyro anti-freeze, where you are willing to sell the product to our dealers at your cost and to pay us a full commission besides.

I don't quite see why you should refuse to pay commis-

sions on big ticket merchandise, where the possibility of some net profit exists, while you continue to commit yourself to payment of commissions on an anti-freeze deal that must of necessity involve a net loss.

Will you kindly advise me the results of your reconsideration of this question?

Cordially yours,

/s/ S. J. Heideman

S. J. Heideman

1840 COMMISSION EXHIBIT NO. 50.

August 6, 1951

H G Harper
J W Basista
J W O'Neill—Philadelphia
Mr. S. J. Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Subject: Major Home Appliances

Dear Mr. Heideman:

We have your favor of July 31 in which you ask that we reconsider the question of paying Atlantic sales commission on sales of Major Home Appliances.

Apparently there is some misunderstanding because Major Home Appliances are not carried in the Goodyear C & H M Line. By that I mean, we do not stock such merchandise in our warehouses or carry listings in our catalogue or price lists.

We do have a working arrangement with G-E, Motorola, Admiral, etc. in connection with our Retail Stores and Dealers to assist such accounts that may qualify in securing franchises from these companies for them if such an arrangement can be worked out.

It is true that Firestone does market these products under its own brand as a part of its regular line. However, outside of accommodation purchases we have no evidence of Service Stations selling or stocking the line.

In our various discussions with you Mr. Harper and myself have outlined our policy and the lines which we carry. While we do not carry Major Home Appliances we do offer a complete line of electrical traffic appliances, which no doubt you are familiar with.

Our Fall and Winter Car and Home Catalogue will be off the press and in the mail this week and I am attaching an advance copy to you herewith.

The question you raised in your letter regarding Super Pyro is not to our liking. It is simply a case of being competitive at the carload price which is offered by the manufacturer on a direct basis to any jobber or purchaser that qualifies.

We also quote Super Pyro in lesser quantities on a competitive basis and realize a profit on such sales. 1842 Car-load shipments are shipped direct by the manufacturer, therefore, do not require handling or warehousing on our part.

If you desire to discuss this question further we, of course, will be glad to do so.

Yours very truly,

Manager—Petroleum Sales Department.

S A Gaylord
lfm

1844 COMMISSION EXHIBIT NO. 51.

cc: Mr. S. A. Gaylord, Manager Petroleum Sales, Akron

August 7, 1951

Mr. S. J. Heideman, Manager
Tires, Batteries and Accessories Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pa.

Dear Mr. Heideman:

Having reviewed your letter of July 30th, I am pleased to outline below for your consideration steps that I suggest to be followed in the handling of a new Atlantic Dealer on the Goodyear T. B. A. Programs:

1. Arrange for double team contact by the Goodyear and Atlantic salesman.
2. Complete Form 1209 (Providing dealer is being signed direct through Goodyear District, Goodyear Service Store, Goodyear Independent Dealer.)
3. Complete contract (Associate or Direct Dealer.)
4. Prepare Goodyear financial statement for credit (Form G-39).
5. Take stock order (Tires, Batteries and Accessories).
6. Furnish initial price lists, tires, batteries and accessories. Claim forms, tires and battery warranty.
7. Take order for Atlantic Introductory Display Package.
8. Take order for Price Books, Specification literature, etc.
9. Complete identification (Form A-98101L for the installation of valances and signs).

10. Take equipment order (tire stands, battery display stands (PowR-SavR, Sr. and Jr.) battery chargers, used tire racks, etc.).

If I can be of any further assistance to you on this matter do not hesitate to contact me.

Yours very truly,

Joe O'Neill
Division Petroleum Representative

J. W. O'Neill
mmc

COMMISSION EXHIBIT NO. 51A.

REQUEST FOR IDENTIFICATION FIELD SERVICE (A98101L)

CX 51 A

Petroleum Stations listed below as requiring identification, are serviced by—

SUPPLYING DEALER

ADDRESS PHONE

CITY STATE CONTACT MR.

Use this form to list calls which Supplying Dealer requests be made for new or improved identification.

Goodyear Identification Representatives will work with TBA Supplying Dealers and Goodyear field personnel; to demonstrate the use of valances and signs available for quick, permanent identification.

Thus, Supplying Dealers, in making their regular calls on petroleum stations, will be able to keep the identification right up to the minute using signs, valances and hardware supplied by Goodyear without charge.

	TOWN & STATE	DEALER NAME	ADDRESS	PETROL. SIGNS	NEED SIGNS	NEED VAL.	COMMENTS
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

FEDERAL TRADE COMMISSION
DOCKET NO. 4478 COMMISSION EXHIBIT NO. 51A
IN THE MATTER OF ATLANTIC REFINING CO.
DATE 6-4-51 FOR REPORTING CO. Official Reporter
BY

District

General Line Salesman

Address Phone

1846

1847 COMMISSION EXHIBIT 52A.

Goodyear

Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company.

Year and Month	Sales Volume
May 21, 1950 thru June 20, 1950	$ 271
June 21, 1950 thru July 20, 1950	13,344
July 21, 1950 thru Aug. 20, 1950	35,118
Aug. 21, 1950 thru Sept. 20, 1950	27,188
Sept. 21, 1950 thru Oct. 20, 1950	25,864
Oct. 21, 1950 thru Nov. 20, 1950	21,366
Nov. 21, 1950 thru Dec. 31, 1950	42,427
Jan. 1, 1951 thru Jan. 20, 1951	7,924
Jan. 21, 1951 thru Feb. 20, 1951	19,614
Feb. 21, 1951 thru Mar. 20, 1951	22,024
Mar. 21, 1951 thru Apr. 20, 1951	217,865
Apr. 21, 1951 thru May 20, 1951	281,982
May 21, 1951 thru June 20, 1951	306,475

	Commissions
May 21, 1950 thru June 20, 1950	$ 27.10
June 21, 1950 thru July 20, 1950	1,334.40
July 21, 1950 thru Aug. 20, 1950	3,492.63
Aug. 21, 1950 thru Sept. 20, 1950	2,195.93
Sept. 21, 1950 thru Oct. 20, 1950	2,424.95
1848 Oct. 21, 1950 thru Nov. 20, 1950	1,881.88
Nov. 21, 1950 thru Dec. 31, 1950	4,090.03
Jan. 1, 1951 thru Jan. 20, 1951	658.65
Jan. 21, 1951 thru Feb. 20, 1951	1,858.35
Feb. 21, 1951 thru Mar. 20, 1951	2,086.85
Mar. 21, 1951 thru Apr. 20, 1951	21,296.99
Apr. 21, 1951 thru May 20, 1951	27,792.79
May 21, 1951 thru June 20, 1951	29,972.53

COMMISSION EXHIBIT NO. 53.

SUMMARY OF SALES AND COMMISSIONS COVERED BY THE SALES COMMISSION PLAN

Year and Month	Shell American	Shell Oil Company	Sherwood Brothers	Atlantic Refining	Ashland Oil	Freedom-Valvoline	Car & Home Merchandise Only: Richfield Oil Corp.	Car & Home Merchandise Only: Sinclair
Sales Volume								
Jan 1, 1950 thru Jan 20, 1950	$	$ 364,398	$18,685	$	$	$	$11,010	$
Jan 21, 1950 thru Feb 20, 1950		611,885	27,180				18,248	26,937
Feb 21, 1950 thru Mar 20, 1950		647,751	31,535				27,451	
Mar 21, 1950 thru Apr 20, 1950		919,282	46,404				30,813	46,570
Apr 21, 1950 thru May 20, 1950		937,230	41,970				36,166	
May 21, 1950 thru June 20, 1950		1,265,673	56,422	271			31,504	86,821
June 21, 1950 thru July 20, 1950		1,779,465	93,573	13,344			36,376	
July 21, 1950 thru Aug 20, 1950		1,876,457	85,431	35,118	6,451		61,600	105,534
Aug 21, 1950 thru Sept 20, 1950	1,031	1,469,008	52,778	27,188	19,070		47,831	
Sept 21, 1950 thru Oct 20, 1950	1,864	1,039,588	51,165	25,864	60,816	20,753	54,125	109,284
Oct 21, 1950 thru Nov 20, 1950	1,782	1,109,908	53,360	21,366	107,244	13,768	32,177	
Nov 21, 1950 thru Dec 31, 1950	1,000	1,278,738	56,860	42,427	24,418	4,076	42,712	131,754
Jan 1, 1951 thru Jan 20, 1951	618	681,161	52,493	7,924	6,759	3,785	37,383	
Jan 21, 1951 thru Feb 20, 1951	443	841,187	44,962	19,614	12,467	9,847	54,761	55,753
Feb 21, 1951 thru Mar 20, 1951	340	793,674	50,736	22,024	12,706	13,212	38,261	
Mar 21, 1951 thru Apr 20, 1951	686	703,209	39,439	217,865	13,567	7,196	37,302	101,903
Apr 21, 1951 thru May 20, 1951	1,558	1,016,646	65,653	281,982	19,899	10,493	50,613	
May 21, 1951 thru June 20, 1951	344	1,174,353	52,621	306,475	21,131	12,107	47,005	119,449
Commissions								
Jan 1, 1950 thru Jan 20, 1950	$	$ 34,771.08	$ 1,844.46	$	$	$	$ 1,101.00	$
Jan 21, 1950 thru Feb 20, 1950		57,897.13	2,679.38				1,824.80	2,569.20
Feb 21, 1950 thru Mar 20, 1950		61,186.06	3,133.87				2,745.10	
Mar 21, 1950 thru Apr 20, 1950		86,107.09	4,635.83				3,022.63	4,646.85
Apr 21, 1950 thru May 20, 1950		87,969.03	4,174.68				3,595.10	
May 21, 1950 thru June 20, 1950		119,281.33	5,625.55	27.10			3,120.68	8,202.98
June 21, 1950 thru July 20, 1950		167,353.29	9,319.98	1,334.40			3,630.88	
July 21, 1950 thru Aug 20, 1950		177,370.77	8,473.98	3,492.63	483.83		6,096.78	9,941.88
Aug 21, 1950 thru Sept 20, 1950	103.10	138,010.09	5,256.13	2,195.93	1,405.53		4,772.40	
Sept 21, 1950 thru Oct 20, 1950	186.28	98,038.20	5,076.65	2,424.95	4,548.98	2,075.30	5,351.83	10,274.32
Oct 21, 1950 thru Nov 20, 1950	178.20	103,646.52	5,298.65	1,881.88	8,043.31	1,376.80	3,213.28	
Nov 21, 1950 thru Dec 31, 1950	100.00	117,785.74	5,572.58	4,090.03	1,811.88	407.60	4,254.35	12,462.43
Jan 1, 1951 thru Jan 20, 1951	61.80	64,363.76	5,235.08	658.65	506.63	378.50	3,588.13	
Jan 21, 1951 thru Feb 20, 1951	44.30	78,029.35	4,496.80	1,858.35	908.45	984.70	5,283.03	5,177.28
Feb 21, 1951 thru Mar 20, 1951	34.00	73,385.08	5,071.70	2,086.85	931.91	1,320.03	3,780.93	
Mar 21, 1951 thru Apr 20, 1951	68.60	64,871.05	3,939.28	21,296.99	982.31	719.60	3,717.23	9,496,73
Apr 21, 1951 thru May 20, 1951	155.15	94,163.48	6,549.83	27,792.79	1,492.43	1,049.30	5,061.30	
May 21, 1951 thru June 20, 1951	34.40	108,186.75	5,259.83	29,972.53	1,584.28	1,210.70	4,699.18	11,940.82

1851 COMMISSION EXHIBIT 54.

Goodyear.

Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953.

	1951		1952		6 Mo. 1953	
	T.B.A. Volume	Commission	T.B.A. Volume	Commission	T.B.A. Volume	Commission
Atlantic	2,445,808	239,250.36	4,175,890	411,743.05	2,239,174	221,329.29

1852 COMMISSION EXHIBIT NO. 55.

Goodyear.

Federal Trade Commission

Auto Accessory Investigation

Information requested, page 3, "Petroleum Company distribution—sub-division 1" reading as follows: Schedule showing the name of each petroleum company with which Goodyear has "Commission" arrangements; the dollar volume of sales to petroleum company accounts upon which commissions are paid; and the amounts of such commissions; annually, for the years 1951, 1952, and the first six months of 1953.

	1951		1952		6 Mo. 1953	
	T.B.A. Volume	Commission	T.B.A. Volume	Commission	T.B.A. Volume	Commission
Shell	$11,857,287	$1,091,385.56	$16,595,761	$1,523,122.72	$8,518,831	$776,150.42
Ashland	289,405	21,797.42	441,444	35,658.73	292,291	23,466.08
Carter			136,289	10,771.00	511,132	41,626.62
Atlantic	2,445,808	239,250.36	4,175,890	411,743.05	2,239,174	221,329.29
Frontier			107,982	9,005.68	98,299	7,969.75
Mid-Continent			500,203	46,088.98	598,526	54,842.92
Valvoline	129,755	12,970.48	388,697	38,861.61	239,706	23,963.23
Richfield	565,786	56,159.46	529,198	52,866.47	248,828	24,878.86
Shamrock			268,394	25,077.89	217,851	19,613.46
Shell American	7,238	723.15	9,909	989.63	81,535	8,141.17
Sherwood Bros.	673,117	66,883.48	784,632	77,830.75	359,396	35,862.44
Quaker State					27,714	2,755.08
Sinclair	730,792	66,711.53	820,477	71,538.63	426,801	36,753.48
	$16,690,148	$1,555,881.44	$24,758,876	$2,303,555.14	$13,869,084	$1,277,352.80

1854 COMMISSION EXHIBIT NO. 56.

Goodyear

To S A Gaylord, Manager
Dept. Petroleum Sales
At Akron
Terr. #
Copy to E C Sauter
From

Store..... Ter. #.....
District or Deport New York Terr. #.....
General Office.....

Date August 3, 1951
Answering Letter Dated .....

Subject Republic Oil Co.

The attached from Eddie Sauter regarding Republic Oil and the possibility of their handling our products is a matter, in my opinion, for Akron decision, inasmuch as they are distributors of Atlantic products.

I don't want to spend any time lining up with these people if for example, Atlantic—Philadelphia would prefer that they handle Firestone; since this is the tire being handled by Atlantic in that area.

Of course, I am not acquainted with the influence Atlantic might be able to bring to bear in forcing these people to a decision as to the line of tires that they—Atlantic—would like them to handle.

At any rate, will you explore this from a management standpoint and advise so that we can proceed according to Atlantic's desires.

(Illegible)
Manager—Northeast Division.

F W McConky Jr.
A

1856 COMMISSION EXHIBIT NO. 56A.

F W McConky, Jr-Mgr
Northeast Division
New York N Y

Pittsburgh-13 1000
8-2-51

Republic Oil Co

This is a Pittsburgh concern who are acting as distributor of Atlantic products in parts of Pennsylvania and Northern West Virginia.

The retail division of this company operates about seventy-five (75) service stations. They have never gone into a TBA program and at present have no tire hook-ups. They are in the process, however, of trying to get a deal with one of the major tire companies and would like to entertain a proposition from Goodyear whereby we would sell their stations direct or through supplying dealers at a price which would be in line with each outlet's volume with an override to the oil company.

Possibly we could use this additional distribution in the Pittsburgh area, particularly on passenger tires and tubes, so if you are interested, possibly we should take the matter up with Petroleum Sales for their comments.

District Manager.

E C Sauter
mtm

P.S.—We are attaching latest Dun report on this concern.

1857 COMMISSION EXHIBIT N. 57.

cc F W McConky Jr—New York
E A Sauter—Pittsburgh

August 9, 1951

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Subject: Republic Oil Company

Dear Syd:

Mr. Sauter, our District manager at Pittsburgh, and Mr. McConky, advises that subject account is considering marketing T.B.A. products and have invited us to submit a proposal.

Before taking any action in the matter we felt that we should take the matter up with you for further guidance and your good counsel in the matter.

Will appreciate hearing from you on this as soon as possible.

Thanking you, with kind regards.

Sincerely,

Manager—Petroleum Sales Dept.

S A Gaylord
lfm

1859 COMMISSION EXHIBIT NO. 58.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

August 14, 1951
TBA SJH
Republic Oil Company

Mr. S. A. Gaylord, Manager
Petroleum Sales Department
Goodyear Tire & Rubber Company
Akron 16, Ohio

Dear Sam:

Your note of August 9th has been received. Any overtures on your company's part to the subject could upset negotiations that we have underway at present. It was thoughtful of you to consult us and needless to say we appreciate it as we will also appreciate your rejection of the invitation.

Cordially yours,
Syd
S. J. Heideman

1861 COMMISSION EXHIBIT NO. 59A-C.

Goodyear

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

January 1, 1950

Shell Oil Company
50 West 50th Street
New York 20, N Y

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise to customers who are otherwise engaged in or propose to engage in the sale of your products and who are agreed upon in writing with you from time to time on our form G-1209.

During the year 1950 and thereafter from month to month until cancelled by either party on thirty (30) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps and repaired tires), batteries, and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will make available the benefit of their sales experience to these cus-

tomers by offering suggestions to them regarding the best methods of display, identification, and advertising of merchandise purchased from us, the maintenance of adequate stocks, accounting and operating procedures, and other details of their businesses.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously the marketing of our products. To assist in the proper
1863 coordination of sales programs, you will at our request from time to time have your representatives call upon these customers in company with our salesmen. You will at all times cooperate and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

With respect to customers on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will

pay you a merchandise commission of ten per cent (10%) on all sales to your retail dealers and seven and one-half per cent (7½%) on all sales to your franchise petroleum jobbers and distributors as covered by such statement, computed on the net amount of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your retail dealers or to your jobbers and distributors.

We understand that you will retain for your own exclusive benefit all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such com-
1865 mission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.

By Victor Haeth

Vice President.

Attest: W. O. Shilts

Secretary.

Accepted:

Shell Oil Company

By J. T. Jordan

TSP

1867 COMMISSION EXHIBIT No. 59D-E.

Exhibit A—Page 1

Products Eligible under the Merchandising Commission Plan

Sales of the following products to approved Shell accounts are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x.

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealer
All New Goodyear Tires & Tubes	x	•	x	x
All Second Goodyear Tires & Tubes	x	•	x	x
Goodyear Produced Recaps & Repairs	x	•	x	
Goodyear Automotive Batteries	x	•	x	x
Resolute Automotive Batteries	x	•	x	x
Goodyear Farmlight Batteries	x	•	x	x
Battery Cables	x	•	x	x
Car & Home Merchandise	•	x(1)	x(2)	x
Anti-freeze	•	x(1)	x(2)	x
Tire Chains	•	x(1)	x(2)	x
Goodyear Brake Lining-Rivets-Weights	•	x	•	•
Dill & Schrader Valve Products	x	•	x	x
Sea-Bee Outboard Motors	•	x(1)	x(2)	x
Goodyear Repair Material—Shelf or Resale Items—Car & Home Line, as listed in C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x(1)	x(2)	x
Rubber Bonding Cement	x	x(1)	x(2)	x
Emergency Self-Sealing Patches	x	x(1)	x(2)	x
Small Containers Cold Patch Cement	x	x(1)	x(2)	x
Gasket Compound	x	x(1)	x(2)	x
Bicycle Rim Cement	x	x(1)	x(2)	x
Motorists Vulc-Patch Kits	x	x(1)	x(2)	x

* Not stocked at these locations.

(1) Goodyear District Manager may appoint Goodyear Store as supply point after securing approval by Akron as a Car & Home Merchandise supply point, G-1209 to be issued and signed by Shell.

(2) Goodyear Dealer may be appointed by Goodyear District Manager as a Car and Home Merchandise supply point, also G-1209 to be issued and signed by Shell.

1869 Exhibit A—Page 2

Products not Eligible under Sales Commission Plan

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits.

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc to Shell Oil Company dated January 1, 1950.

The Goodyear Tire & Rubber Company, Inc
By Victor Haeth
Vice President

Shell Oil Company
By J. T. Jordan
TSP

1871 COMMISSION EXHIBIT NO. 59F-G.

January 8, 1953

Shell American Petroleum Company
Kokoso, Indiana

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires, (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires) batteries and certain car and home merchandise and related merchandise listed as "Products Eligible under the Merchandising Commission Plan" in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field officers work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and
1872 accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we asure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%) on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your franchise petroleum jobbers and distributors as covered by such statement,

computed on the net amount of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your jobbers or distributors.

We understand that you will retain for your own exclusive benefits all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding in this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.
By Victor Molt
Vice President

Attest: W M Martin
Assistant Secretary

Accepted: _____

Shell American Petroleum Company
By D T Buchanan
Vice President

1873 COMMISSION EXHIBIT NO. 59H.-I.

A. Products Eligible under the Merchandising Commission Plan

Sales of the following products to approved Shell American Petroleum Company accounts are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x.

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealers
All new Goodyear Tires & Tubes (Except Airplane)	x	*	x	x
All Second Goodyear Tires & Tubes	x	*	x	x
Goodyear produced Recaps & Repairs	x	*	x	x
Goodyear Automotive Batteries	x	*	x	x
Resolute Automobile Batteries	x	*	x	x
Goodyear Farmlight Batteries	x	*	x	x
Battery Cables	*	x	x	x
Car & Home Merchandise except that listed in paragraph B of this Exhibit	*	x	x	x
Anti-Freeze	*	x	x	x
Tire Chains	*	x	x	x
Goodyear Brake Lining-Rivets-Weights	*	x	*	*
Dill & Schrader Valve Products	x	*	x	x
Sea-Bee Outboard Motors	x	*	x	x
Goodyear Repair Material—Shelf or Resale items—Car & Home Line, as listed in C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x	x	x
Rubber Bonding Cement	x	x	x	x
Emergency self-sealing Patches	x	x	x	x
Small Containers Cold Patch Cement	x	x	x	x
Gasket Compound	x	x	x	x
Bicycle Rim Cement	x	x	x	x
Motorists Vulc-Patch Kits	x	x	x	x

* Not stocked at these locations.

1874 B. Products not Eligible under Sales Commission Plan

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories

Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits.

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to the Shell American Petroleum Company, dated January 8, 1953.

The Goodyear Tire & Rubber Company, Inc.
By Victor Molt
Vice President

Attest: W M Martin
Assistant Secretary

Shell American Petroleum Company
By D T Buchanan
Vice President

1875 COMMISSION EXHIBIT NO. 60A.

Good Year

To J. A. Bailey
Dept. Division Manager
At Dallas
Terr. #
Copy To

From Store { Terr. # / District or Depot Oklahoma City / Terr # 4400 / General Office

Date November 6, 1951

Answering Letter Dated .....

Subject The Shamrock Oil & Gas Corporation
Amarillo, Texas

The above is an independent producer, refiner, and marketer of petroleum products, with headquarters in Amarillo, Texas.

The company was started in 1929, reorganized in 1935, and in 1939 Mr. James H. Dunn became president. Since that time the company has had continued growth and is currently on an expansion program which I will comment on in greater detail later in this letter.

I am not certain but would not be greatly surprised if the Gulf Refining Company might not be indirectly interested in Shamrock. I make this statement due to the fact that a large share of their bank loans are made by the Mellon National Bank & Trust Company of Pittsburgh, and due to the fact that Mr. Frank R. Denton, a director, is vice-chairman of the Board of the foregoing bank.

It has only been in the last few years that Shamrock has

been selling petroleum products under their own name and have taken definite steps to expand their position from a marketing standpoint. They are now on a program of leasing and building new stations. The front of the attached annual report (No. 1) illustrates the type building which they are erecting.

At the present time they are marketing in parts of Texas, Kansas, Colorado, and New Mexico.

Expansion calls for their going into Arizona, Western Nebraska, and Southern Wyoming.

Shamrock is joint owner of a pipe line running from the vicinity of their refinery to Denver, Colorado, in which city they have taken on new distribution and are building stations until they have a total of 40 outlets.

Their method of distribution is through jobbers only. The breakdown of the towns in which they are located by states is as follows:

State	No. Towns Jobbers & Service Stations	No. Towns Service Stations Only	No. Towns Shamrock Controls Leases	No. Towns Shamrock has Company-Owned Stations
Texas	28	13	5	7
Colorado	28	24	2	4
N. Mexico	12	26		
Oklahoma	4	2		1
Kansas	4	5		
Total	76	70	8	12

1877 List of towns by state is attached (No. IV).

From the above it will be noted that there are 76 towns in which they have both jobber and service station outlets, and 70 towns with service station outlets only.

This does not represent number of outlets but towns only. Mr. Dunn advised me that they now serve through their jobbers approximately 300 stations.

You have noted that at present Shamrock controls only 20 stations, 8 through leases and 12 which have been or are in the process of being constructed.

Here again Mr. Dunn advises that they have just started on this plan as it was decided that if they were to continue to grow they would have to follow the pattern of the major companies by owning or controlling a much higher percentage of their outlets.

Building restrictions may of course currently hold up this activity although they are presently erecting a station in Borger, Texas, for Gunn Brothers, which, including the property, will represent an outlay of at least $85,000.

Shamrock has seven salesmen on refined products.

In the area in which this company operates they are very highly regarded and under present management it is felt that they will continue to grow and become a real factor. They had planned a pipe line from their refinery to Lubbock until restrictions prevented doing so. This would have enabled them to immediately go further south into Texas from a distribution standpoint.

While the company at present on a comparative basis cannot be considered large, based on future potential, it is my thought that our company should give consideration to establishing a TBA program with them—this regardless of the fact that the larger share of their total outlets is located in districts other than Oklahoma City.

It is my thinking that our Sales Commission Plan is the only one that would work with Shamrock to both their and our advantage.

I of course have not offered this to them, explaining that I had to submit a proposal to management for consideration before this could be done. I did specifically state that I knew one of Shamrocks requirements would be that they put on a full-time TBA representative.

There may be further information that management may want, or Mr. Gaylord might even be interested in making a trip with me to see Mr. Dunn, the president, and Mr. Wilmeth, the sales manager.

I would appreciate hearing on this subject as soon as practical, in view of the fact that I have had several contacts with Mr. Dunn and it is his desire that the sub-
1879 ject be cotninued until a decision is reached.

Frankly, I have not made any thorough attempt to sell them on the advantages of Goodyear over competition, as I felt the first step was to determine whether or not our company would approve them for the Sales Commission Plan.

R. G. Miller
District Manager

R. G. Miller
crg

Attachments:

I—Annual Report for 1950
II—Annual Report, 9 Months 1951
III—Map (Red outlines the general area in which this company now operates—green dots indicate location of the majority of their jobbers and some of the S. S. towns; no attempt was made to spot all of them.)
IV—List showing location of jobbers and stations by state
V—Publication put out by Shamrock, called "The Shamrock"
VI—Sample of Shamrock Road Map

1881 COMMISSION EXHIBIT NO. 61.

Outline of Discussion

The Shamrock Oil & Gas Corporation

Amatillo, Texas

Tuesday—November 27, 1951

1882 FEDERAL TRADE COMMISSION.

Docket No. 6486. Commission Exhibit No. 61A.

In the Matter of Goodyear Tire & Rubber Co. & Atlantic Refining Co.

Date 3/7/57 Witness .....

Ace Reporting Service. Official Reporter.
By Machado.

1883 Express appreciation for the opportunity of discussing the subject of marketing Tires—Batteries and Accessories.

The Selling and Servicing of Transportation is the primary interest of both Shamrock and Goodyear.

We both prosper to the degree we serve the public—dependent on many important factors, such as—

Quality of Products
Completeness of Lines
Consumer Acceptance
Competitive Franchise
Distributive Facilities—Availability
Sales Organization
Complete Sales Assistance
Advertising, etc.

However, all of these factors would be of minor value without strong and adequate dealership representation to the consuming public.

In recognition of this we might add Goodyear success is founded on the principle of "only one" boss—the public and one partner—"our dealers"—putting it another way, we know that—

What will best serve the Public and our Dealers will be the best for our company.

1884 FEDERAL TRADE COMMISSION.

Docket No. 6486. Commission Exhibit No. 61B.

1885 A sound policy for any company serving the public —and this logic is fundamental when applied to marketing Tires, Batteries and Accessories through Oil Company Service Stations.

Retrace growth of T.B.A. Sales through Petroleum Service Stations from the beginning up to date.

Dilution of gasoline market per station 1922 (1) gasoline outlet for every 1186 passenger cars—ten years later (1) for every 72 passenger cars.

(Today (1) drive-in Service Station for every 151 passenger cars)

Sale of Tires were experimented with in 1928

and

Goodyear was first.

(show chart)

Batteries added—

Now a requirement of every Service Station.

Accessories came later—implemented during last war—especially automotive lines

1886 FEDERAL TRADE COMMISSION.

Docket No. 6486. Commission Exhibit No. 61C.

1887 The T.B.A. Market

The Hearst Survey of 1947 indicated consumer buying habits of T.B.A. Merchandise, as follows:

Tires and Tubes	36.7% buy at a Service Station
Batteries	44.4% buy at a Service Station
Accessories	19.9% buy at a Service Station

These percentages translated to dollar potential—purchases are estimated, as follows:

Tires & Tubes 192 Million dollars
Batteries 108 Million dollars
Accessories 102 Million dollars

And more important is—

1888 FEDERAL TRADE COMMISSION.

Docket No. 6486. Commission Exhibit No. 61D.

1889 Today the public expects and demands these service and trades regularly where they are available.

Oil Company recognition.

Consumer buying habits
(Hearst Survey)

Important profits to Dealers and Oil Companies
T. B. A. Dealer profit.
(Show charts)

Increasing competition is making car owners more exacting in demands, more critical of incomplete, poor service.

Proof of T. B. A. Selling through Petroleum Service Stations. (U. S. 1948 Census)

1891 Discuss Commission Plan. Outline mechanics in detail G-1209—G-1204.

Go over suggested form of agreement.

1893 Summarizing Way Oil Companies Have T. B. A. Programs.

To offer the public more satisfactory service-thoroughly competitive with service offered by others.

To provide extra profit for Dealers. To complement and increase the sale of petroleum products.

To secure extra volume and profits and improve rental returns on Service Station investments.

1895 COMMISSION EXHIBIT NO. 62A-C.

March 11, 1952

The Shamrock Oil and Gas Corporation
First National Bank Building
Amarillo, Texas

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and

home merchandise and related merchandise listed as "Products Eligible under the Merchandising Commission Plan" in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

1897 With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement re-

flecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay a merchandise commission of ten per cent (10%) on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your wholesale petroleum distributors and jobbers as covered by such statement, computed on the net amount of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your distributors.

We understand that you will retain for your own exclusive benefits all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

Anything hereinabove to the contrary notwithstanding, it is understood that you will not be obligated to advance

credit to any such customers or guarantee and such credit; that you will not be obligated to do business under this contract in any state in which you do not have a permit to do business; and that you will not be obligated to solicit your customers to come under this plan or sell TBA under this plan where, in your opinion, such customers do not desire to avail themselves hereunder, and in each such case such prospective customer will be removed from coverage hereunder and any form G-1209 applicable to such customer shall be cancelled.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.
By Victor Haeth
Vice President

Attest:
? ? ? ? ? ? ? ?
Assistant Secretary

Accepted:

The Shamrock Oil and Gas Corporation
By Harry ?? ? ? ?
Vice President

(Seal)
Attest:
F. V. Wallaie
Secretary

COMMISSION EXHIBIT NO. 62-D.

Exhibit A—Page 1

A. Products Eligible under the Merchandising Commission Plan.

Sales of the following products to approved accounts of The Shamrock Oil and Gas Corporation are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol (X).

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealers
All new Goodyear Tires & Tubes (Except Airplane)	x	*	x	x
All Second Goodyear Tires & Tubes	x	*	x	x
Goodyear produced Recaps & Repairs	x	*	x	
Goodyear Automotive Batteries	x	*	x	x
Resolute Automotive Batteries	x	*	x	x
Goodyear Farmlight Batteries	*	x	x	x
Battery Cables	x	*	x	x
Car & Home Merchandise except that listed in paragraph B of this exhibit	*	x	x	x
Anti-Freeze	*	x	x	x
Tire Chains	*	x	x	x
Goodyear Brake Lining-Rivets-Weights	*	x	*	*
Dill & Schrader Valve Products	x	*	x	x
Sea-Bee OutBoard Motors	x	*	x	x
Goodyear Repair Material—Shelf or Resale Items—Car & Home Line, as listed in C & H M Catalogues, as follows:				
Small & Bicycle Tube Repair Kits	x	x	x	x
Rubber Bonding Cement	x	x	x	x
Emergency Self-Sealing Patches	x	x	x	x
Small Containers Cold Patch Cement	x	x	x	x
Gasket Compound	x	x	x	x
Bicycle Rim Cement	x	x	x	x
Motorists Vulc-Patch Kits	x	x	x	x

* Not stocked at these locations.

1903 COMMISSION EXHIBIT NO. 62-E.

Exhibit A—Page 2

B. Products not eligible under Sales Commission Plan

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to The Shamrock Oil and Gas Corporation, dated March 11, 1952.

The Goodyear Tire & Rubber Company, Inc.
By (Illegible)
Vice President.

The Shamrock Oil and Gas Corporation
By Harry Wheeldon EHS
Vice President.

1905 COMMISSION EXHIBIT NO. 63.

The Shamrock Oil and Gas Corporation
First National Bank Building
Box 631 Amarillo, Texas

August 29, 1952

Mr. R. G. Miller
The Goodyear Tire and Rubber Co., Inc.
913 North Broadway
Oklahoma City, Oklahoma

Dear Dick:

You know, of course, that we have for some time, in connection with Gunn Brothers, been negotiating for a certain piece of property located at 10th and Johnson St., Amarillo, Texas.

Shamrock has now secured this property and it is our plan to begin erection immediately after November 1st, this year of suitable facilities for service station location to serve trucks and heavy equipment. These facilities will be leased to Gunn Brothers; Shamrock will be the owner.

I am giving you this information now so that you will know we are looking ahead in all our expansion, which most definitely includes Goodyear TBA.

At the proper time when these facilities are ready for operation, we will so certify them to Goodyear as a dealer.

Best regards,

Leo J. Wilmeth.

LJW/ek
cc: Mr. J. W. Basista
The Goodyear Tire and Rubber Co., Inc.
1144 East Market Street
Akron 16, Ohio

1907 COMMISSION EXHIBIT NO. 64A-C.

Goodyear

The Goodyear Tire & Rubber Company, Inc.

Akron 16, Ohio

September 5, 1952

Carter Oil Company
Denver, Colorado

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed as "Products Eligible under the Merchandising Commission Plan" in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks

of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

1909 It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%)

on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your franchise petroleum jobbers and distributors as covered by such statement, computed on the net amount of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your jobbers or distributors.

We understand that you will retain for your own exclusive benefits all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding 1911 in this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.
By (Illegible)
Vice President.
Attest: (Illegible)
Secretary.

Accepted:
Carter Oil Company
By J. M. Williams,
Vice President.

1913 COMMISSION EXHIBIT NO. 64D.

Exhibit A—page 1

A. Products Eligible under the Merchandising Commission Plan

Sales of the following products to approved Carter Oil Company accounts are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x.

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealers
All new Goodyear Tires & Tubes (Except Airplane)	x	*	x	x
All Second Goodyear Tires & Tubes	x	*	x	x
Goodyear produced Recaps & Repairs	x	*	x	
Goodyear Automotive Batteries	x	*	x	x
Resolute Automotive Batteries	x	*	x	x
Goodyear Farmlight Batteries	x	*	x	x
Battery Cables	*	x	x	x
Car & Home Merchandise except that listed in paragraph B of this Exhibit	*	x	x	x
Anti-Freeze	*	x	x	x
Tire Chains	*	x	x	x
Goodyear Brake Lining-Rivets-Weights	*	x	*	*
Dill & Schrader Valve Products	x	*	x	x
Sea-Bee Outboard Motors	x	*	x	x
Goodyear Repair Material—Shelf or Resale items—Car & Home Line, as listed in C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x	x	x
Rubber Bonding Cement	x	x	x	x
Emergency self-sealing Patches	x	x	x	x
Small Containers Cold Patch Cement	x	x	x	x
Gasket Compound	x	x	x	x
Bicycle Rim Cement	x	x	x	x
Motorists Vulc-Patch Kits	x	x	x	x

* Not stocked at these locations.

1915 COMMISSION EXHIBIT NO. 64E.

Exhibit A—page 2.

B. Products Not Eligible Under Sales Commission Plan.

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits.

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to the Carter Oil Company, dated September 5, 1952.

The Goodyear Tire & Rubber Company, Inc.,
By Victor Holt, Jr.,
Vice President,

Attest:
W. D. Shilts,
Secretary.

Carter Oil Company,
By J. M. Williams,
President.

1917 COMMISSION EXHIBIT NO. 65-A.

9-5-52

District Managers
Denver
Fargo
Omaha
Spokane
Salt Lake

Division Managers
R. W. Fitzgerald—Chicago
C. W. Thorp—Los Angeles

Subject: The Carter Oil Company, Denver, Colorado.

We are pleased to announce that we have just made a marketing arrangement with subject account on a 100% basis, marketing tires, batteries and accessories under our Sales Commission Plan. It will be effective just as soon as we, by mutual efforts with the Carter sales organization, can get the plan into action.

Carter is a 100% owned subsidiary of The Standard Oil Company of New Jersey. Its products are marketed on a direct basis in the states of Colorado, Wyoming, Utah, Montana, North Dakota, South Dakota, Idaho, Western Nebraska and Eastern Washington.

The company enjoys leadership in a large part of its marketing territory and maintains excellent representation, having well over 600 salaried, leased and Dealer Service Stations in operation or under construction.

The company has developed a sizable volume of TBA sales handling Miller-Hood under Purchase-Resale arrangements with deliveries of TBA from its own warehouse stocks maintained in the territory.

Two Sales Division Offices are maintained—one at Denver and one at Billings.

Executive Sales Personnel—

E. R. Smith—General Sales Manager—Denver
Col. Hill—Ass't General Sales Manager—Denver
Ed McCabe—TBA Manager—Denver
J. R. Owen—Division Manager—Denver
George Phips—Division Manager—Billings

Two joint Sales Personnel Meetings have been arranged at which time the Management of Carter will announce marketing arrangement with Goodyear and give us an opportunity of making a Goodyear Presentation.

Both of these meetings will start after lunch. A cocktail party and dinner will follow.

The cost of these meetings to be at our expense and should be charged to Budget #S1229.

Your Division Manager will advise you regarding attendance of yourself and other Goodyear personnel.

Travel and other expense incidental to going out of your territory should be charged to District "Uncontrollable Expense".

1919 The time and place of meetings—

Denver, Colorado—Thursday, Sept 11—1 P M
Cosmopolitan Hotel—Paddock Room
Billings, Montana—Thursday, Sept 16—2 P M
Northern Hotel—Ballroom

Following the two opening or kick-off organization meetings the following tentative schedule of dealer meetings has been set up, subject to further confirmation:

	Billings Division			Goodyear District				Carter Dirs Employ
9/18	Spokane, Wash	Dealer	Eve	Spokane	Davenport	Complete	Carter	20
9/20	Idaho Falls, Ida	"	"	Salt Lake	**	*Local Props	"	20
10/6	Rapid City, S D	"	"	Denver	**	Complete	"	60
10/6	Sheridan, Wyo	"	"	Spokane	**	*Local Props	"	25
10/6	Great Falls, Mont	"	"	Spokane	**	*Local Props	"	65
10/7	Miles City, Mont	"	"	Fargo	**	*Local Props	"	20
10/7	Worland, Wyo	"	"	Denver	**	*Local Props	"	25
10/7	Kalispell, Mont	"	"	Spokane	**	*Local Props	"	20
10/8	Dickinson, N D	"	"	Fargo	**	*Local Props	"	15
10/8	Billings, Mont	"	"	Spokane	**	Complete	"	100
10/8	Butte, Mont	"	"	Spokane	**	*Local Props	"	30
10/9	Williston, N D	"	"	Fargo	**	*Local Props	"	15
10/9	Bozeman, Mont	"	"	Spokane	**	*Local Props	"	20
	Denver Division							
10/20	Pueblo, Colo	"	"	Denver	**	*Local Props	"	25
10/21	Denver, Colo	"	"	Denver	**	Complete	"	100
10/22	Ft Collins, Colo	"	"	Denver	**	*Local Props	"	18
10/23	Brush, Colo	"	"	Denver	**	*Local Props	"	18
10/24	Scottsbluff, Neb	"	"	Denver	**	*Local Props	"	25
10/27	Casper, Wyo	"	"	Denver	**	*Local Props	"	20
10/29	Grand Junction, Colo	"	"	Denver	**	*Local Props	"	20

* Props to be borrowed by Field Representatives from local dealers.

** Hotel names will be confirmed later.

It is of the utmost importance that these Dealer Meetings be highly successful. Within the next few days you will receive the complete detailed program of Goodyear's portion of the program, also information regarding the Goodyear personnel, aside from your District personnel, that will participate in holding these meetings.

The fact that several of these meetings are held at different points on the same day presents somewhat of a problem from the standpoint of proper Goodyear merchandise displays.

We have shipped one complete display from Akron which will be available for the Denver and Billings opening meetings and this display will also be scheduled for as many other points as possible.

To assist District Managers in making proper dis-
1921 plays at other meeting points we are shipping from Akron to Spokane, Fargo, Denver the following material marked "Carter Oil—Dealer Meetings".

2 Battery Carts complete
2 Sr PowR SavR's
2 Tire Marketeers
Tire Stands
Tire Centers
Goodyear House Flags
Complete supply of dummy batteries for PowR SavR's
2 36" blown-up photographs of complete TBA merchandise units
Carter Trade-mark
12 Empty tube boxes to be used in the cabinet of the Tire Marketeer
The following tires to be supplied by Districts for use in each Marketeer:

1 Double Eagle
1 Super-Cushion Rib Reversible
1 DeLuxe AWT
1 Marathon Super-Cushion
1 Studded Sure Grip
1 Suburbanite

Also plastic demonstrator should be displayed on top of Tire Marketeers.
Additional merchandise and tires should be used when possible.

In addition the District should have available a 16 mm motion picture projector and screen in good working order. We plan to furnish from Akron the motion picture prints to be used as part of the program.

The Dealer Meetings' expense will be for the account of The Carter Oil Company.

The cost of transporting display equipment and expense incidental to that should be charged against Budget #S-1229.

Goodyear District travel and incidental expense in connection with these meetings should be charged to regular District Expense Budget.

General

Complete Operating Instructions are being prepared and will be sent out during the coming week.

Identification

We are working with our Identification Department on a plan whereby a special truck will be assigned to quickly identify Service Station accounts as they are signed up following dealer meetings.

S A Gaylord
Manager, Petroleum Sales Department

cc Victor Holt
C L Metzger
J A Lewin
K C Zonsius
L A Barnes
Paul Fritsch
J C Thomas
D C Roads
Fred LaBoyteaux
Ed Bohmer
J W Basista
R E Sewell
J L Warren
S A Gaylord

COMMISSION EXHIBIT NO. 66A-L. 2533

The Carter Dealer

Special Goodyear Edition

Vol. 3, Special — Published by The Carter Oil Company, P.O. Box 120, Denver, Colo — December, 1952

Two Great Teams

COMBINED

Carter

GOODYEAR TIRES

To

Bring Carter Dealers

Increased

PROFITS!!

Carter To Sell Goodyear T. B. A.

New Set-up Can Mean Increased Profit In Handling Name Brand

Arrangement Places Carter Dealers In Favorable Competitive Position; Goodyear Tire Line Ranks As Nation's Sales Leader

More T.B.A. profit is in the offing for Carter dealers as a result of the new arrangement for supplying and merchandising tires, batteries and accessories.

With the completion of arrangements with the Goodyear Tire & Rubber Company, a step has been taken which can be the turning point, profitwise, for dealers.

Effective immediately, all Goodyear T.B.A. items will be available to Carter dealers, including the most widely accepted tire line in the United States.

This places Carter dealers in a most favorable competitive position with regard to sales. By handling what surveys have shown to be the most used tire products in the country, Carter dealers will have "the greatest name in rubber" helping them in making sales of high-profit T.B.A. merchandise.

With extensive Goodyear facilities supplying them, dealers will experience faster turnover, less inventory and many other advantages which add up to more profit, less investment and increased business.

General Outline

Here's what the deal consists of:

All supplying will be handled by Goodyear warehouses, stores and supplying dealers. A complete T.B.A. line will be available through Goodyear distribution outlets.

To augment this distribution, a number of Carter distributors will be appointed Goodyear supplying dealers, and will distribute the Goodyear line to Carter dealers in their areas.

In addition, both the Carter salesmen and Goodyear salesmen will call upon Carter dealers, to help them with T.B.A. problems, assist them in merchandising, help them maintain a balance inventory of T.B.A. and provide advice which will help them increase sales and profits.

As fast as current stocks of tires and other merchandise now in Carter warehouses and distribution points are disposed of, Goodyear merchandise will replace them, and your orders will be filled with Goodyear products.

This entire issue of The Carter Dealer is devoted to Carter's new association with Goodyear and the advantages it brings for one main reason—to acquaint you as much as possible with the arrangement and what it can mean to all of you as Carter dealers.

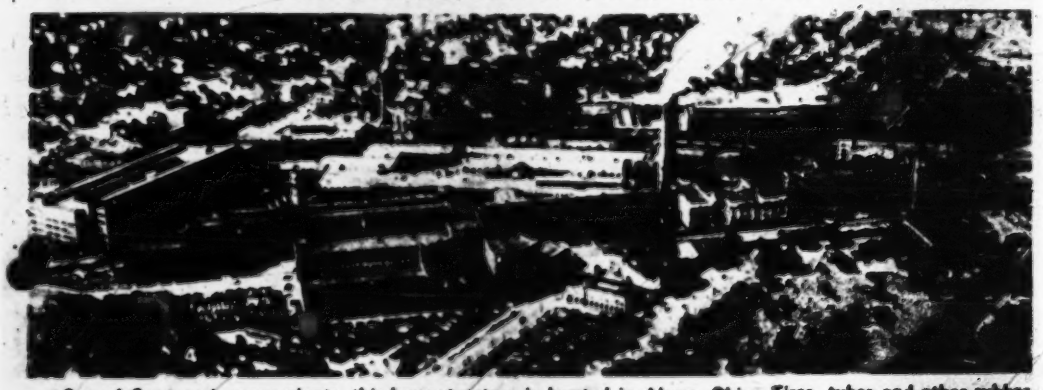
Strong Advertising Help To Goodyear

One of the big reasons Carter's arrangement with Goodyear will be valuable to Carter dealers is because of the wide advertising done by Goodyear on a national basis. This is an important reason Goodyear rates so highly with the American public.

A recent survey conducted by the Institute of Industrial Research at Syracuse University studied the question of which tire company's advertising had the greatest public confidence. Goodyear rated highest, with 28.8 per cent among the readers queried. The second-place tire company rated 21.1 per cent, while the third place company had a percentage of 18.8. The others weren't even close.

The survey was taken among readers of ten top magazines in which Goodyear regularly advertises. These were Saturday Evening Post, Colliers, Life, Look, Time, Newsweek, Pathfinder, Country Gentlemen, Farm Journal, and Successful Farming.

GOODYEAR'S MAIN PLANT IN AKRON, OHIO IS ONE OF COMPANY'S MANY FACTORIES



One of Goodyear's many plants, this huge structure is located in Akron, Ohio. Tires, tubes and other rubber products are manufactured here.

2535

The Carter Dealer

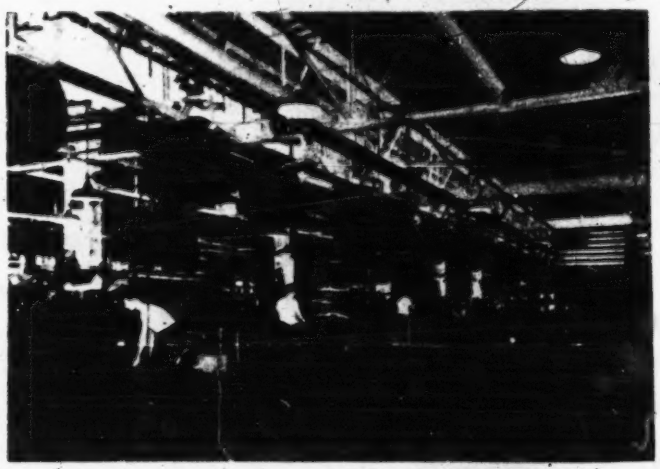
Published monthly by The Carter Oil Company, in the interest of its dealers and others concerned with the sale and distribution of Carter products.

Goodyear Boasts Many Firsts In Rubber Industry's History

Extensive Research and Testing Laboratories Responsible For Much Of Company's Progress; Developed Low Pressure and Nylon Cord Tires

Headlines and history in the tire business are standard with the Goodyear Tire & Rubber Company.

Recent headline developments — "firsts" in the tire industry — include the following: In 1952 Goodyear brought out the first complete safety tube. This is the "Lifeguard" tube, which provides puncture seal and blowout protection.



Mass production techniques are applied in Goodyear's tire plants.

In 1950 Goodyear scientists developed an oil "extender" which increased synthetic rubber capacity and quality. This was turned over to the U. S. government.

In 1947 two important firsts came out. The first extra low pressure tires successfully designed to run on 24 pounds of air were placed on the market. Goodyear also developed the first nylon cord tires and has built more nylon tires than any one else.

Other Firsts

History is dotted with other Goodyear firsts. Here are a few of them:

1906 — Straight side tire, the first dependable automobile tire.

1918 — Multiple cord tire, a basic construction principle of today's tire.

1917 — Pneumatic truck tire, making possible the modern high speed truck and bus.

1928 — Low pressure airplane tire, revolutionizing airplane operations, pointing the way to balloon tires and today's auto and truck tire.

1931 — First pneumatic tractor tire, foundation of today's efficient farming and modern farm machinery.

1935 — First successful safety inner tube, the Lifeguard, bringing complete blowout protection.

1947 — First American all-synthetic tire, first of the tires that made this country independent of natural rubber.

Research Staff

Behind all these firsts, the reason Goodyear is a leader in new rubber industry developments, is an extensive research and development staff, largest in the industry.

This department constantly searches for new processes, develops new products and brings them to Goodyear dealers first. Its efforts, combined with those of Goodyear's fleet of test cars and trucks, assure Carter dealers handling Goodyear products the best in rubber products.

From a beginning on $13,900 of borrowed money, out of a depression, came the Goodyear Tire & Rubber Company to claim and hold title to "The Greatest Name In Rubber."

Borrowed Money Founds World's Largest Tire & Rubber Company

Rags To Riches Story Shown By Growth, Expansion Of Goodyear; Organization Operates in 17 Countries, Has Varied Activities

Although the Goodyear Tire & Rubber Company enjoys the first position among tire manufacturers in the world today, things were not always that way. The business has had its share of ups and downs.

The story began back in the depression days of the 1890's, when Frank Seiberling, founder of Goodyear, was searching for a business with which to recoup his fortunes. In 1898 he entered the young rubber industry on $13,900 of borrowed capital, making chiefly bicycle and carriage tires.

The first years were not easy, and the company fought patent controls, competition and bankruptcy for long, hard years. The critical years were finally put behind them by the 1920's, under the expert guidance of P. W. Litchfield, who served as chairman of the board.

Today's Story

And today, Goodyear operates 23 rubber plants, textile mills, chemical works and aircraft factories in the United States, with manufacturing plants in 16 foreign countries. The company grows part of its own cotton, manufactures synthetic rubber and generally enters into almost every phase of the rubber industry.

Goodyear Deal Brings Carter America's Outstanding Tires

Company Leads In Replacements, Original Equipment Tire Sales

One Quarter Of Tires Bought By American Public In 1951 Were Goodyears; Means Potential Increased Sales By Carter Dealers

"The Greatest Name In Rubber!" That's the slogan of the Goodyear Tire & Rubber Company—and with good reason.

What is the make of tire most purchased as replacements?

What tire is most likely to be bought as replacements?

What make of tire is used most as original equipment?

What tires were purchased most in the last 12 months?

GOODYEAR! That is the answer to all of these questions. For 37 years Goodyear has held this commanding position among tire manufacturers and marketers. These are the reasons Carter entered into an agreement with Goodyear to handle their T.B.A. line.

The basis of these statements is contained in the results of the Crowell Collier Sixth Annual Tire Survey, conducted by the publishers of three major national magazines—American Magazine, Colliers and Woman's Home Companion.

This survey established the following facts: Goodyear tires bought as replacements amounted to 24 per cent of the total replacement tire market in 1951. The second place tire was six percentage points behind, with 17 per cent of the market. The third place figure was 10 per cent.

Also shown by the survey was that 28 per cent of car owners plan to buy Goodyear tires when they need replacements.

Important Figures

These are the figures that mean most to Carter dealers handling tires and other T.B.A. items. For the leading replacement tire is the one most accepted by the American public. And it's the one your customers are most likely to buy.

Thirty per cent of all tires on the U. S. highways today are Goodyear tires. Of cars bought new, 35 per cent have Goodyear tires as original equipment. Of cars bought used, 24 per cent of them roll on Goodyear rubber.

These are the figures which emphasize Goodyear's position in the tire market. They emphasize your potential position in the tire selling market.

A large portion of replacement tires, 80 per cent to be exact, are sold through service stations. This means a total of 13,500,000 tires a year. By handling the most popular brand, you'll make more tire sales.

Other Items

Right along with the good name Goodyear has in tires, goes its reputation for batteries and accessories.

Public acceptance is the main advantage in selling. It means you have less selling to do. If the quality of your merchandise is accepted, your sales problem becomes that of convincing your customer he should and needs to buy.

In the past, Carter has handled excellent merchandise. But, because it was not well known, your first objective was to sell your customer on the quality. Then sell him on the need. With Goodyear, where its quality is well known and accepted, half your selling job, the most difficult half, is over.

This is part of what the Goodyear-Carter arrangement means to you.

Extensive Research Facilities Keep Goodyear Ahead of Field

Two members of Goodyear's Research and Development staff, largest in the rubber industry, perform tests, using a complicated maze of tubes, flasks and wiring.

Largest, Best Accepted Tire Line Is Available To Dealers

Goodyear Manufactures 633 Different Tires, Widest Assortment In Industry; Five Major Passenger Car Tire Styles Offered

Biggest single items included in the Goodyear T.B.A. line, of course, are tires and tubes. This issue of The Carter Dealer explains the standing Goodyear merchandise enjoys in the marketing field. Let's review the main selling points and see what Goodyear has to offer Carter dealers in tires and tubes.

The widest assortment of tires in the field, a grand total of 633 different kinds, is manufactured by Goodyear. Of these, 97 are passenger car tires, 297 are trucks and 239 are for farm use. Their nearest competitor makes almost 100 fewer varieties (539).

Of course, a good many of these will not be of any interest or importance to your operations, so let's take a look at the main line of passenger car tires—the ones you'll be selling.

Five top-quality passenger car tires, in complete selection of sizes, are made by Goodyear. These are designed to satisfy all your customers, whether their wants be highest quality or whether they buy strictly on price considerations.

Another issue of The Carter Dealer will discuss in full detail the major selling qualities of each of these tires. Right now, we'll check each tire and comment briefly on their qualities.

Double Eagle

The best tire on the market today is the superlative new Double Eagle, with its all-Nylon cord body for extra strength and flexibility. This big selling point gives 210 per cent greater body strength than tires made with cotton cord and 135 per cent greater than tires made with rayon cord.

Its new Resist-A-Skid tread combines maximum traction with maximum smoothness. Grooves are 26 per cent deeper, giving up to 42 per cent more safe mileage than standard tires without re-cutting.

A new black Scuff-rib protects the gleaming beauty of the new Double Eagle's sidewalls and cushions the cord body—helps prevent damage or injury from curb-scuffing.

Super-Cushion

Goodyear's outstanding low pressure tire, the Super-Cushion, is a newly developed tire whose quality is attested to by the fact that car manufacturers adopted it as original equipment even before it had the stamp of public acceptance.

In the conventional tire market, Goodyear offers the Goodyear DeLuxe, the longest wearing conventional tire on the market, as proven by millions of road-test miles. Four new improvements on the Goodyear tire it replaces are 34 per cent more non-skid mileage, a stronger cord body, wider and flatter tread and a stronger tire shoulder.

In the price field, Goodyear's Marathon tire offers long wear, non-skid safety and quality. Its diamond-block tread design means greater driving safety.

R. S. Wilson
Goodyear Vice President
In Charge of Sales

For snow and mud driving, two types of tread are available—the Studded Sure-Grip and the Suburbanite tire with the tractor-traction tread.

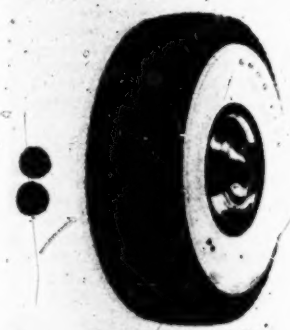
Goodyear Tubes

In tubes, Goodyear offers its famous Lifeguard tube with a double air-chamber. Its famous blowout protection has never failed in 17 years of widespread service.

Goodyear also manufactures a puncture-seal tube, which has a double seal action. First, a compression squeeze because of its oversized construction closes punctures. Second, a butyl Sealant seals the puncture for the life of the tube.

Among conventional tubes, Goodyear's DeLuxe heavy duty tubes are the sales leaders.

This is what Goodyear has to offer in tires and tubes—a well-rounded passenger car selection which will mean added sales for you.



Super-Cushion White Sidewall

Studded Sure-Grip

Super-Cushion Suburbanite

1931

New Goodyear T.B.A. Arrangement Is Announced . . .

E. R. Smith

Dear Carter Dealers:

It's always a pleasure to see an aggressive, prosperous sales organization in action, and I have been particularly impressed during the past three years in watching your month by month growth in T.B.A. sales. During that short period you have more than quadrupled your sales without the assistance of national advertising and the wide public acceptance of established brand names. You have demonstrated unusual ability to merchandise T.B.A. items through your stations, and we recommend the switch to Goodyear—"The Greatest Name in Rubber"—with confidence that the public's preference for Goodyear will assist you in increasing your sales and profits.

Brands of merchandise which have given satisfactory performance and which are backed by an aggressive advertising program—constantly creating increased public recognition and acceptance—are a prerequisite to rendering the best service to our customers, thereby assuring ourselves better, more prosperous business.

With the Goodyear line you have all that could be desired for a balanced merchandising program—

1. Leadership and public acceptance.
2. Proven product quality.
3. Greatest variety of products.
4. A most complete advertising program doing a tremendous pre-selling job for you.
5. Point-of-sale merchandising and assistance in employee training.

Let's ride to greater profits on Goodyear!

E. R. Smith
General Sales Manager
The Carter Oil Company

TO ALL CARTER DEALERS

Gentlemen:

I wish to take this opportunity to state how happy and proud we in Goodyear are to be affiliated and working with the Carter organization. We feel like we have lined up with one of the leading T.B.A. marketers in the United States.

The importance of petroleum outlets in the distribution of T.B.A. is increasing from year to year. In 1931 only around 11% of the T.B.A. business went through petroleum outlets. In 1951 it had grown to 30%, and it is estimated that in 1952 this will jump to above 35%.

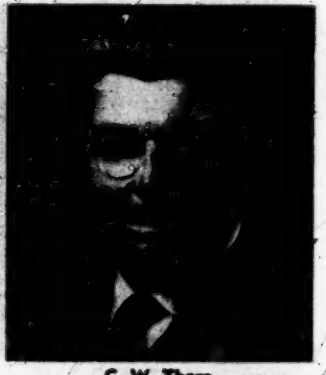
The buying habits of car owners has changed rapidly in the last two decades. It has followed the pattern of decentralization of shopping. People are buying their T.B.A. requirements in their own neighborhoods, and the service station dealer is becoming more and more important in the marketing of the T.B.A. line. The future certainly looks rosy for the service station operator on T.B.A.

I am sure from our past experience that the acceptance of Goodyear T.B.A. products will have the effect of increasing the volume and profits of all Carter dealers.

With this arrangement, you can be assured that you will have the help of a trained organization in furthering the merchandising of T.B.A. We have taken on this responsibility and I am sure the future will prove that this was a good move for the Carter organization, as well as Goodyear, and that the results will be mutually profitable for all concerned.

Best wishes for more profits and volume on Goodyear T.B.A.

C. W. Thorp
Western Division Manager
THE GOODYEAR TIRE & RUBBER CO., INC.

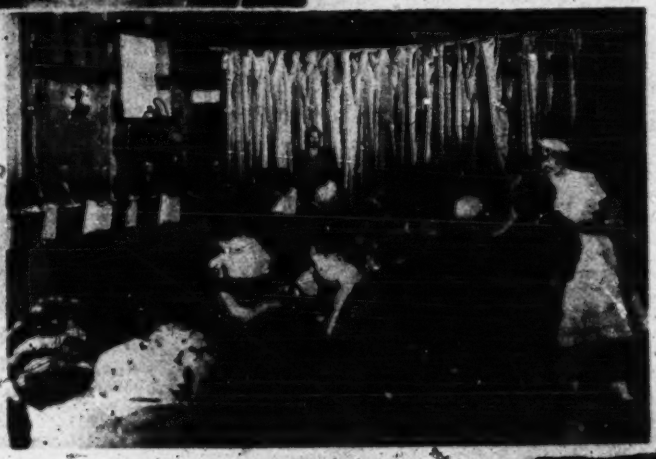


C. W. Thorp

...Throughout Carterland In Dealer Meeting Series

In Denver, Colorado

In Billings, Montana



In Rapid City, South Dakota

Goodyear Battery Line Covers Entire Market With Four Types

Three Major Points—Better Construction, Longer Life, Bright Appearance—Make All Batteries Easier To Sell

Four types of batteries, covering this important part of the T.B.A. market, are available through Goodyear. These are the Double Eagle premium battery, the DeLuxe All-Weather, the Resolute "price" battery and the truck and bus Heavy Duty battery.

This line completely serves the market. Its three major points—improved contraction, stronger life and bright appearance—mark it as a good product that is not difficult to sell.

Double Eagle

In the premium category, Goodyear's Double Eagle is among the best. Its construction offers "dry-proof" features, which means plates are covered longer and the battery needs water only three times a year in normal car driving. Its lower specific gravity of 1.260 (compared with 1.280 in regular batteries) means longer life through reduced wear on the plates. Felted Fiberglas insulation prevents shedding of power-producing materials from the plates.

DeLuxe All-Weather

Goodyear's usual fine construction goes into these leading batteries, with a newly enlarged choice of capacities to better serve the market.

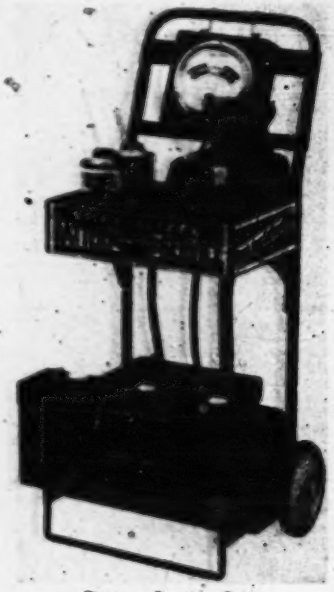
Resolute

Although priced to compete, the Resolute battery is definitely not a "cheap" battery. Quality construction makes it a good buy. It is not made in the extremely low capacities customarily used in low-priced batteries.

Heavy Duty

Only Goodyear gives a choice of both the heavy plate type and the multiple plate type truck and bus batteries. Two kinds of insulation are offered—wood for fast action and Dublglas for greater durability. The heavy duty battery has proven itself for dependability and durability in the severest service.

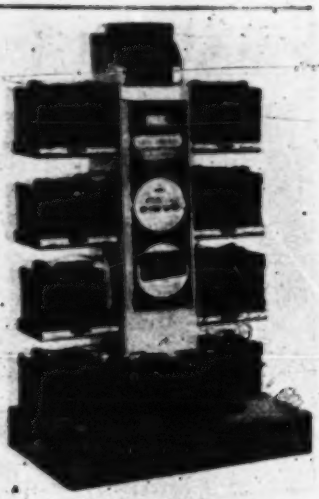
Double-Eagle Battery



Battery Service Cart

Sales Tools

To assist in the merchandising of Goodyear batteries, a number of sales aids are available. Battery displays, testers, battery inspection report cards and the Goodyear battery service cart are among these. This latter item is worthy of further mention, for it is a complete portable battery service department, that marks you as headquarters for quality professional battery service.



Battery Display Stand

TIPS Carter Car Care

By Oliver

In many cases, a distress call is caused by burned ignition points on the stalled car. In the event you don't have a point file with you, the striking strip from a book of matches works as a temporary measure to get the engine started. Another device is an emery board.

• • • •

In addition to marking the location of valve stem on a tire that is dismounted for repair, you can help prevent the wheel and tire assembly from getting out of balance by marking the locations of any balancing weights you may have to remove.

• • • •

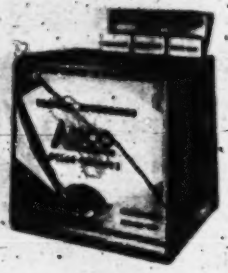
For about 50 cents, you can improve the facilities of your rest room. Set a nicely painted wooden box in one corner with an inexpensive shoe brush on top. The brush will have to be replaced occasionally, but it's cheap public relations.

• • • •

As an aid in giving directions, take a map of your local area or state, frame it and hang it in your station. You will find this method mighty convenient and, if neatly done, will add to the appearance of your station interior.

How To Solve Stock Problems

Accessories Breakdown Aids Inventory Planning

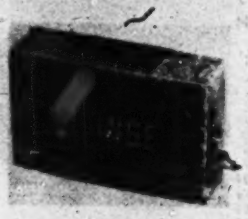


Every dealer knows, for balanced selling and added profit, he should stock a good line of accessories. The problem arises in determining what items he should carry and how much of each.

If you handled everything available, your station would look like a department store. However, here is the answer which will serve as a guide in determining what and how much merchandise to stock.

Out of the many thousands of accessories available, a basic list of 22 fills the essential requirements your customers demand. These items give you a balanced supply without creating an undue storage problem.

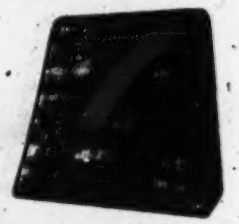
Following is the list of basic items, the brands Goodyear handles and the percentage of your total inventory which should be allotted to each item.

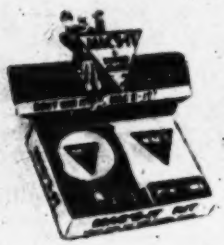


No.	Item	Goodyear Handles	% of Total
1.	Battery Cables	Goodyear brand	3.8
2.	Auto Lamps, Bulbs	Westinghouse	5.2
3.	Auto Fuses	Buss	0.6
4.	Filters, Elements	AC	13.1
5.	Spark Plugs	AC	10.6
6.	Wiper Accessories	Anco	6.8
7.	Radiator, Gas Caps	Everpool (lock, regular)	3.3
8.	Fan Belts	Goodyear	6.5
9.	Radiator Hose	Goodyear (curved, straight)	7.2
10.	Radiator Chemicals	Warner, Mac's, DuPont, Goodyear	6.6
11.	Polishes, Waxes	Mac's, Johnson, Simonix, DuPont	8.4
12.	Cleaner Supplies	Cloths, mitts, sponges, etc.	1.8
13.	Schrader Valve Hardware	Caps & Cores	1.7
14.	Mirrors	Sideview, rearview	3.3
15.	Seat Cushions	Wedge, shredded rubber, etc.	2.0
16.	Seat Covers	Plastic, Vinyl, fiber, quilted	7.2
17.	Flashlights	Ray-O-Vac, Stylemaster	2.9
18.	Flashlight Batteries	Ray-O-Vac	1.8
19.	Friction Tape	Goodyear	0.9
20.	Hydraulic Brake Fluid	Goodyear	2.3
21.	Tire Chains	Relon, Weed	1.0
22.	Tube Repair Equipment	Dilectric	0.8

This basic list will help you make the most profit on a minimum investment, yet have the merchandise the customers want when they want it.

As further assistance in your accessory stocking problems, Goodyear has three T.B.A. package arrangements, based on the estimated business stations of various sizes do. These are outlined in this issue of The Carter Dealer. For further information, see your Goodyear or Carter salesman.





Lou Hendricks, one of the operators of the new station, looks pleased at business as he pumps gas into one of the 500 cars which drove into his new station opening day.

First Service Station Opened Using Goodyear Identification

Colorado Springs Servicenter Sets Second-Highest Gallonage Mark; Sells 4,668 Gallons During Grand Opening Ceremonies

Two distinctions were attained by the recent grand opening of the Golf Acres Servicenter in Colorado Springs. First, it was the first station opened with Goodyear T.B.A. identification. It also set the second highest gallonage and sales record which has been established by a Carter station.

Located in a new shopping center in Colorado Springs, the Golf Acres Servicenter serves an area of 14,000 persons exclusively. An estimated 1,500 persons visited the station on opening day.

Leo and Earl Hendricks, operators of the station, tried hard to beat the record of 5,300 gallons sold opening day at the Three Eagles Servicenter in Colorado Springs a few weeks earlier. They ended up with a total of 4,668 gallons of gasoline sold, 21 gallons of motor oil along with 10 lube jobs and five wash jobs, barely short of the record.

Extensive advance promotion contributed to the volume of business. Handbills were distributed throughout the area and radio and newspaper advertisements publicized the opening.

Valuable help was provided at the opening by a local Philip Morris cigarette salesman who distributed cigarettes as he helped on the driveway. Others lending a hand were Carter Salesman Jess Brantley, Distributor Lou Thurman, Bob Shaw and Adam Mollendor from the Carter office and Jack McCabe, operator of the Three Eagles Servicenter in Colorado Springs, holder of the opening day sales record.

Bob Shaw, Carter sales trainee, arranges some Goodyear T.B.A. merchandise on the shelves in preparation for the opening.

Earl Hendricks, operator of the new Golf Acres station, services a car during the grand opening.

A group of future customers blow up their balloons at the opening in the shadow of the Goodyear sign.

Identification Teams Changing Over Carter Stations

One of the biggest chores connected with the new Carter-Goodyear T.B.A. arrangement is that of identifying service stations with Goodyear signs and window valences.

Within the next few weeks your station will be visited by one of Goodyear's identification trucks, two of which are changing Carter stations over to the new T.B.A. identification.

The identification trucks will be at your station about a half day, if it has not arrived already, and when they leave, your station will have much the same appearance as the one pictured above, with the Goodyear sign hanging prominently and Goodyear valences in the window.

The station shown here is the first to blossom out with Goodyear identification. It is one of our newest outlets, located in Denver, and was the first stop for the Goodyear identification truck.

You can help the changeover by preparing for the visit of the Goodyear truck. Scrape off the old Miller valence in your window and wash the windows thoroughly. Then when the Goodyear man arrives, he'll be in position to place Goodyear material in your windows in a minimum of time.

Man At Work

Bob Bussell, Goodyear identification man, installs the window valance in the Aladdin service station in Denver. Bob has charge of changing over stations in the Denver division. Another truck is working in the Billings division.

2544

Take the Guess Out of Stocking Tires, Batteries, Accessories

Goodyear Offers Three Proven Package Plans For Stations Based Upon Monthly Gasoline Volumes; Keeps Inventory Costs Low

The Sign of Happy Motoring! Carter

If you want to eliminate the guesswork in selecting your stock of tires, batteries and accessories, Carter's new arrangement with Goodyear places three types of packages of T.B.A. merchandise at your disposal.

These packages are calculated to fit the needs of service stations, based on the amount of business they average a month. They represent the minimum of investment. Goodyear's convenient warehouse facilities assure rapid replacement and lessen the need for large inventory.

These packages contain an assortment based on surveys showing popularity of T.B.A. items as shown elsewhere in this issue. Your Carter and Goodyear salesmen will explain these in greater detail and help you select the assortment which will mean the greatest potential profit to you.

And with an average 30% mark-up, there's plenty of profit to be made.

Package No. 1

For the station pumping less than 10,000 gallons monthly.

Tires and Tubes	$ 339.00
Batteries	126.00
Accessories	324.00
Total Investment	$ 989.00

Package No. 2

For the station pumping 10,000 to 15,000 gallons monthly.

Tires and Tubes	$1,031.00
Batteries	224.00
Accessories	507.00
Total Investment	$1,762.00

Package No. 3

For the station pumping over 15,000 gallons monthly.

Tires and Tubes	$1,602.00
Batteries	462.00
Accessories	795.00
Total Investment	$2,859.00

What Does This Actually Mean To Carter Dealers' Operations?

This issue of The Carter Dealer contains a lot of information which is designed to tell you of the great advantages of Carter's association with Goodyear in T.B.A. marketing.

You may be still asking, "What does all this mean, briefly? What does it mean to the operation of my business?"

Well, to make the story shorter, you gain three basic advantages from this arrangement:

1. Name and public acceptance
2. Necessity for less investment
3. Expert assistance

Let's look at these three things in the order listed. First, "Name and public acceptance." We've shown figures that Goodyear tires lead the country in sales. More people ride on Goodyear rubber than any other. That should prove that the consumer wants and will buy Goodyear products from you.

Second, "Necessity for less investment." Through Goodyear's package plans and convenient supply points, you have to put less money into inventory.

Third, "Expert assistance." You'll have two salesmen helping you — your Carter salesman and the Goodyear man. This means two kinds of expert assistance. In the first place, your Carter salesman, through his previous association with you, will know your problems first-hand, and be equipped to help you. The Goodyear man, as a T.B.A. expert, will be able to counsel you on proven merchandising methods which will increase your T.B.A. sales.

In addition, Goodyear has one man assigned full time to Carter, and he will be working for your benefit all the time. So you have three-fold assistance.

There, in a nutshell, is what this new program means to you.

Pass This Issue On To Your Employees

Bill ✓

Write the names of your employees in the spaces provided. When they have read this issue, they can check off their names.

THE CARTER OIL COMPANY
Box 120, Denver, Colo.

Sec. 34.66, P. L. & R.
U. S. POSTAGE PAID
DENVER, COLO.
PERMIT No. 144

RETURN POSTAGE GUARANTEED

E. A. GAYLORD, MGR. PET. SALES
GOODYEAR TIRE & RUBBER CO. DEPT.
1144 E. MARKET ST.
AKRON 6, OHIO

1947 COMMISSION EXHIBIT NO. 67.

July 14, 1937

Sherwood Brothers, Inc
Baltimore, Maryland

Gentlemen:

We confirm discussions with you as a marketer of tires and tubes as defined in our established practices relative to services being rendered by you in promoting the sale of our products through your independent resale outlets which are equipped to serve the public promptly and efficiently and relative to our sale to you of your requirements of tires and tubes during the ensuing year.

During the period mentioned, we understand that you will assist us to the extent we shall outline in promoting the sale of tires and tubes handled by us to your customers selling your products exclusive of other similar products, and that at our request from time to time you will have your field representatives call upon such customers accompanied with our salesmen and otherwise, and will cooperate and assist us in our efforts to promote and encourage the sale of our merchandise by your customers, it being understood that the selection of customers to whom sales shall be made by us and the right to accept or reject any order received from any customer shall at all times rest with us. You will see that your field offices are instructed to work energetically with us with the view of assisting us to the fullest possible extent in perfecting arrangements with all such selected customers under which those customers shall be established as regular service station dealers for us.

In consideration of these services, we will quarterly pay to you a commission (computed after deducting all applicable trade discounts whether shown on invoices or subse-

quently allowed) in the amount of 7½% of net billing amount of all invoices covering tires and tubes issued by us during the preceding quarter to independent service stations handling your products to the exclusion of other similar products, and a commission similarly computed in the amount of 5% of the net billing amount of all invoices covering tires and tubes issued by us during the preceding quarter to independent jobbers or other customers wholesaling your products to the exclusion of other similar products, it being understood that this commission with respect to sales to independent service stations shall be restricted to sales to resale outlets properly equipped to serve the requirements of the motoring public in the sale and servicing of tires and shall include only customers purchasing and maintaining a stock of tires and tubes and shall not include garages, car dealers, general stores, owners of curb pumps, and establishments where the sale of your products is wholly incidental to other activities on the part of the customer.

1949 We understand that you will retain for your own exclusive benefit all commission earnings hereunder and that you will not directly or indirectly pay, credit or in any other manner transfer any part of such commission to any service station jobber or customer of yours. Any violation of this understanding shall entitle us to discontinue forthwith payment of any further commissions approved or otherwise.

During this same period of one year we will sell you your requirements of tires and tubes at the prices and upon the terms and conditions in effect from time to time with respect to our sales to dealers holding service station contracts.

Very truly yours,

RSWilson *Vice President.*
LWB:AO

1951 COMMISSION EXHIBIT NO. 68A-B.

Good Year

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

March 1, 1944

Sherwood Brothers Incorporated
Baltimore Trust Building
Baltimore, Maryland

Gentlemen:

We now confirm discussions with you relative to services to be rendered by you during the balance of the year 1944, and thereafter from month to month unless cancelled by either party on thirty (30) days' written notice to the other, in promoting the sale of Goodyear tires (casings and tubes), batteries and merchandise listed in Sections I, II and III of our Car and Home Supply Catalog as supplemented from time to time (referred to herein as car and home merchandise), through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time.

During the period mentioned it is understood that you will actively assist us in selling and in promoting the sale of the above merchandise to such customers, and at our request from time to time you will have your field representatives call upon these customers in company with our salesmen and otherwise, and will cooperate and assist us in our efforts to promote and encourage the sale of such merchandise by the customers to whom such sales shall be made by us. The right to accept or reject any order received from any customer shall at all times rest with us.

You will see that your field offices work energetically with

us with the view to assisting us to the fullest practicable extent in perfecting arrangements with all such customers. You will at all times maintain adequate, qualified personnel to render the services called for hereunder regularly and efficiently.

As soon as practicable after the end of each month, we will furnish you with a statement of all sales to outlets on the approved list agreed upon with you made during the month reflecting deliveries of car and home merchandise from our field warehouses, and in the case of tires and batteries reflecting sales made by us or sales made by our dealer supply points and reported to us by our dealers. While we can not guarantee that all such sales by dealer supply points will be reported to us, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales. We shall not be held responsible for the inclusion of all cash and c.o.d. transactions. It is understood and agreed that pur-
1953 chases by you for resale to your company owned and operated outlets shall not be included in any such statement.

At the time each such statement is submitted, we will pay you a merchandising commission (computed on the net amount of invoices, excluding tax and so-called "add-on" shown separately thereon, after deducting all applicable discounts and allowances, other than cash discount and quantity bonus, whether shown on the invoice or subsequently allowed, and without any duplication through the inclusion of sales between outlets on the agreed list) on all sales covered by such statement.

In the case of tires and batteries, the merchandising commission will be 10% with respect to sales made to your dealer outlets, and 7½% with respect to sales made to your distributors, i.e., your resellers who distribute your prod-

ucts to other resellers for their own account in certain areas.

In the case of car and home merchandise sold to your dealers, the merchandising commission will be 10% with respect to sales made at our dealer or distributor prices, and 5% with respect to such sales made at our jobber prices. In the case of car and home merchandise sold to your distributors as above defined, the merchandising commission will be 7½% with respect to sales made at our dealer or distributor prices, and 5% with respect to such sales made at our jobber prices. We understand that you will retain for your own exclusive benefit all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber
Company, Inc
By Illegible

Vice President

Attest: W M Mettler
Assistant Secretary

Accepted:

Sherwood Brothers Incorporated
By Wm. A. Sherwood
Vice Pres.

1955 COMMISSION EXHIBIT NO. 68C.

Sherwood Brothers Incorporated
Mathieson Building
10 Light Street
Baltimore 3, Maryland

December 21, 1955

Mr. S. A. Gaylord
The Goodyear Tire & Rubber Co., Inc.
Akron 16, Ohio

Dear Mr. Gaylord:

In view of the forthcoming merger of Sherwood Brothers Incorporated into its parent corporation, Sinclair Refining Company, it will be necessary that the agreement entered into between your company and this corporation by letter dated March 1, 1944 relative to sales promotion services to be furnished by this corporation to your company and compensation therefor be terminated as of the close of business as of December 31, 1955.

As the agreement requires thirty days' notice to cancel and insufficient time remains before the termination date for such notice to be effective, we request that you agree to termination as of December 31, 1955 by acceptance of a copy of this letter. Any checks for commissions earned under the above agreement payable to this corporation and paid after January 1, 1956 should be paid to Sinclair Refining Company Sherwood Division.

Yours very truly,
Sherwood Brothers Incorporated
By John R. Sherwood *President*

Accepted
The Goodyear Tire & Rubber Co., Inc.
By Illegible
Vice President
Attest: G. A. Clayton
Assistant Secretary

1957 COMMISSION EXHIBIT NO. 69.

Goodyear

The Goodyear Tire & Rubber Company, Inc.

Akron 16, Ohio

September 25, 1944

Sinclair Refining Company
630 Fifth Avenue
New York, N Y

Gentlemen:

We now confirm discussions with you relative to services to be rendered by you during the balance of the year 1944 and from year to year thereafter, subject to cancellation by either of us at any time on thirty (30) days' written notice to the other, in promoting the sale of merchandise listed in Sections I, II and III (excepting batteries) of our Car & Home Supply Catalog as supplemented from time to itme (referred to herein as Goodyear car and home merchandise) through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time.

During the period mentioned it is understood that you will actively assist us in selling and in promoting the sale of the above merchandise to such customers, and at our request from time to time you will have your field representatives call upon these customers in company with our salesmen and otherwise, and will cooperate and assist us in our efforts to promote and encourage the sale of such merchandise by the customers to whom such sales shall be made by us. The right to accept or reject any order received from any customer shall at all times rest with us.

You will see that your field offices work energetically with us with the view to assisting us to the fullest practicable extent in perfecting arrangements with all such customers. You will at all times maintain adequate qualified personnel to render the services called for hereunder regularly and efficiently.

As soon as practicable after the end of each second month, we will furnish you with a statement of all sales of Goodyear car and home merchandise covered by deliveries from our field warehouses (or from district warehouses in the case of included Section III items) to such customers on the list approved by both of us, it being understood and agreed that with respect to customers otherwise covered by this agreement we will limit our disapproval to customers who are then purchasing tires or batteries from us and who prior to this date, and without sales assistance from you contributing materially in the establishment of the relationship, have purchased tires or batteries from us and have thereafter purchased car and home merchandise from us in lines not substantially broadened after this date through your efforts with the particular account; provided, however, that any request for the addition of an account based upon such broadening of lines through your efforts must be accompanied by an order giving evidence thereof on the order form designated as "SINC No 1"; and provided further than we may omit from the statements any cash or c.o.d. sales not covered by orders placed on the "SINC No 1" order form. It is understood and agreed that purchases by you for resale at your company-owned and operated outlets shall not be included in any such statement. The statements in each case will show the name, state, town, and address of the outlets involved, the amount of purchases during the period covered and for the year to date by outlet and the applicable commission rate.

1960

At the end of each calendar year in consideration of your services hereunder, we will pay you a commission (computed on the net amount of invoices, excluding tax shown separately thereon, after deducting all applicable discounts and allowances, other than cash discount and quantity bonus, whether shown on invoice or subsequently allowed, and without any duplication through the inclusion of sales between outlets on the agreed list) on all sales covered by the statements for such year. The commission will be payable at the rate of 10% with respect to all such sales made to your petroleum dealer resellers at our dealer or distributor prices, and at the rate of 7½% with respect to all such sales made to distributors buying petroleum under your contract form 2367, and at the rate of 5% with respect to all such sales made to your petroleum dealer or distributor resellers at our jobber prices.

We understand that you will retain for your own exclusive benefit all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

If we have outlined correctly your understanding
1961 of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,
The Goodyear Tire & Rubber Company, Inc.
By R S Carlson
Vice President

Attest:
W M Mettler
Assistant Secretary

Accepted:
Sinclair Refining Company
By (Illegible)
Vice President.

1963 COMMISSION EXHIBIT NO. 70A.-B.

Good Year

The Goodyear Tire & Rubber Company, Inc.,
Akron 16, Ohio.

October 1, 1947

Sinclair Refining Company
630 Fifth Avenue
New York, N. Y.

Gentlemen:

We now propose that the arrangement relating to your assistance in promoting the sale of car and home merchandise and related merchandise as set forth in our letter to you dated September 25, 1944 be amended in the following respects effective on and after October 1, 1947:

1. The following language as contained in the first sentence of the first paragraph of our letter of September 25, 1944 is hereby deleted:

   "in promoting the sale of merchandise listed in Sections I, II and III (excepting batteries) of our Car & Home Supply Catalog as supplemented from time to time (referred to herein as Goodyear car and home merchandise)"

   and the following is substituted in place thereof:

   "in promoting the sale of car and home merchandise and related merchandise listed in Exhibit A, attached to this letter and made a part hereof,"

2. The following language as contained at the beginning of the first sentence of the fourth paragraph of our letter of September 25, 1944 is hereby deleted:

   "As soon as practicable after the end of each second month, we will furinsh you with a statement of all sales of Goodyear car and home merchandise covered

by deliveries from our field warehouses (or from district warehouses in the case of included Section III items) to such customers on the list approved by both of us,"

and the following is substituted in place thereof:

"As soon as practicable after the end of each second
1965 month, we will furnish you with a statement of all sales of all merchandise covered by deliveries included under Exhibit A to such customers on the list approved by both of us,"

3. The following language as contained at the end of the first sentence of the fourth paragraph of our letter of September 25, 1944 is hereby deleted:

"on the order form designated as 'SINC No 1'; and provided further that we may omit from the statements any cash or c.o.d. sales not covered by orders placed on the SINC No 1' order form."

If the foregoing meets with your approval, please so indicate by signing and returning to us the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.,
By (Illegible),
Vice President,

Attest: (Illegible),
Assistant Secretary.

Accepted:
Sinclair Refining Company,
By (Illegible).

1967 COMMISSION EXHIBIT NO. 70C.

Included items, subject to exceptions noted below:

1. Goodyear Battery Cables (when billed direct and delivered to the Sinclair reseller by the Goodyear District or from the manufacturer's factory).
2. The following items (commonly called shelf items) of Goodyear Repair Material when delivered and billed either by the Goodyear District or factory or field warehouse:

   Small & Bicycle Tube Repair Kits
   Steptread Cement—Qts
   Small Containers Cold Patch Cement
   Emergency Self-Sealing Patches
   Gasket Compound
   Bicycle Rim Cement
   Shaler M-50 Repair Kits
   Motorist Vulc-Patch Kit.

3. The following items (designated in accordance with Goodyear's regular classification of such merchandise) of Goodyear Car and Home Merchandise when delivered from the manufacturer's factory or from the Goodyear field warehouse:

   All radios, radio aerials, and radio accessories, except such items manufactured by General Electric and Motorola
   Automotive Supplies
   Hardware and Tools
   Wheel Goods
   Sporting Goods
   Small Electrical Appliances
   Housewares
   Toys and Games.

4. Goodyear Brake Lining and Goodyear Brake Lining Rivets when delivered from the manufacturer's factory or from the Goodyear field warehouse.
5. Goodyear wheel Weights when delivered from the manufacturer's factory or from the Goodyear field warehouse.
6. All Dill and Schrader Merchandise when delivered from the manufacturer's factory or from the Goodyear District.

Exceptions:

1. General Electric and Hot Point Major Appliances which are obtained by the dealers from the manufacturers' distributors.
2. Motorola Car Heaters.
3. Batteries.
4. Battery Charging Equipment.
5. Brake Lining Equipment.

Exhibit A, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to Sinclair Refining Company dated October 1, 1947.

The Goodyear Tire & Rubber
Company, Inc.,
By (Illegible),
Vice President.

Sinclair Refining Company,
By (Illegible).

1969 COMMISSION EXHIBIT NO. 71-A-B.

The Goodyear Tire & Rubber Company, Inc.,
Akron 16, Ohio.

May 1, 1952

Mid-Continent Petroleum Corp.
Tulsa 2, Okla.

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sales of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

1971 With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%) on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your franchise petroleum distributors as covered by such statement, computed on the

net amount of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discounts provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your distributors.

We understand that you will retain for your own exclusive benefit all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.,
By Victor (Illegible),
Vice President.

Attest: (Illegible),
Assistant Secretary.

Accepted:

Mid-Continent Petroleum Corp.
By (Illegible).

1973 COMMISSION EXHIBIT 71-C.

Exhibit A—Page 1

Products eligible under the Merchandising Commission Plan

Sales of the following products to approved Mid-Continent accounts are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol (x).

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealers
All new Goodyear Tires & Tubes (Except Airplane)	x	•	x	x
All Second Goodyear Tires & Tubes	x	•	x	x
Goodyear produced Recaps & Repairs	x	•	x	
Goodyear Automotive Batteries	x	•	x	x
Resolute Automotive Batteries	x	•	x	x
Goodyear Farmlight Batteries	x	•	x	x
Battery Cables	•	x	x	x
Car & Home Merchandise	•	x	x	x
Anti-Freeze	•	x	x	x
Tire Chains	•	x	x	x
Goodyear Brake Lining-Rivets-Weights	•	x	•	•
Dill & Schrader Valve Products	x	•	x	x
Sea-Bee Outboard Motors	x	•	x	x
Goodyear Repair Material—Shelf or Resale Items—C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x	x	x
Rubber Bonding Cement	x	x	x	x
Emergency Self-Sealing Patches	x	x	x	x
Small Containers Cold Patch Cement	x	x	x	x
Gasket Compound	x	x	x	x
Bicycle Rim Cement	x	x	x	x
Motorists Vulc-Patch Kits	x	x	x	x

• Not stocked at these locations.

1975 Exhibit A—Page 2

Products not eligible under Sales Commission Plan

All products not listed above as eligible products included but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets.
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to Mid-Continent Petroleum Corp. Dated May 1, 1952.

The Goodyear Tire & Rubber Company, Inc
By Victor Holt,
Vice President.

By
Vice President

1977 COMMISSION EXHIBIT 72.

S A Gaylord
Mr T E Fitzgerald January 15, 1952
Vice President in Charge of Sales
Mid-Continent Petroleum Corporation
Box 381
Tulsa 2, Oklahoma

Dear Mr Fitzgerald:

Sam Gaylord has just given us a complete report of his discussions with you last week in Tulsa and of the many courtesies that you extended to him at that time.

Naturally, we are pleased to have an opportunity to talk seriously with you about the matter of your purchasing Goodyear under the Sales Commission Plan.

The purpose of this letter is to enthusiastically second Mr Gaylord's invitation to you to visit us here in Akron.

As we understand it, you hope to be able to come to Akron sometime late in February and we would appreciate it very much just as soon as you know the exact dates if you would let us know so that we can all plan to be on hand.

We understand from Sam that you have some concern about doing business with two TBA suppliers.

We would refer you to Shell as to whether we can work with Firestone on a satisfactory dual basis.

In this connection, you may be assured that we live up to any mutual understanding we will arrive at covering method of procedure, etc.

We are looking forward with a great amount of pleasure to meeting you and your associates here in Akron.

Very truly yours,

Victor Holt Jr *Vice President*
k
cc—D C Wixson, General Sales Manager
W J Wixson, Mgr T B A Department

1979 COMMISSION EXHIBIT NO. 73A.-B.

Tulsa, Okla.

Mr. W. J. Wixson
Manager-Specialty Mdse. Dept.
Mid-Continent Petroleum Corp.

Tulsa, Okla. June 20, 1953
Mr. J C Arnold
Mr. S A Gaylord
Mr. R G Miller

Mid-Continent—Goodyear TBA Program

Dear Joe:

You were not present at the discussion last Monday in which some side lights came up that could retard the program unless they are clarified.

It was reported that Goodyear salesmen have sold or offered to sell D-X dealers on an "A" bracket basis, regardless of their qualifications. Specific towns of Okemah, Henryetta, Oklahoma City and Tulsa were mentioned. The Goodyear man informed me that the D-X dealers in the first two towns have not been sold Goodyear as it was reported. He also stated he had no intention of requesting an "A" deal unless they qualified with an adequate opening order, advertising program and etc. The Mid-Continent Territory Manager worked with the Goodyear man and I believe he will confirm that no unethical tactics were used. Mr. Caldwell was quite emphatic that the D-X dealer on Western Ave. in Oklahoma City changed to Goodyear only because he was sold on the "A" dealer basis. This is also in error. Bill Harris was in Oklahoma City when the change was made and can verify the dealer was not extended the "A" price. The same charge was made regarding the Patterson station in Tulsa. Goodyear Dis-

tributor McElroy sold Patterson on the "A" dealer basis because he qualifies for this discount. Anyone of the 30 tire manufacturers would be glad to extend the "A" deal bracket to any dealer that is merchandising and selling tires in the same volume as the Patterson station.

You have heard the Goodyear Franchise presented enough times to know that we stress the following points: Quality products, Complete line of TBA Mdse., Dominance in original equipment, in Advertising and Public Preference. We emphasize convenient stocks, merchandising assistance, budget selling and most important, More Profits because a dealer can make more sales. We would be whipped before we started if we attempted to quote prices that we could not get approved.

I can furnish you with specific instances where we discovered D-X stations that were not receiving the discounts that they were entitled. These were reported to Mid-Continent men in confidence but with the net results of corrected discounts and accelerated sales by our competitor thru these stations.

It was insinuated that Goodyear's largest dealer in Oklahoma, McElroy Tire Company, was not a proper supply point for D-X dealers. The 748 forms indicate he had done an excellent job with a group of D-X dealers, all plus business for Mid-Continent. McElroy, following our suggestions recently employed an experienced outside salesman.

Mr. McElroy qualified as an oil company supplying distributor by stocking the proper account of accessories and batteries. He is quite disturbed over the recent development and feels that he has been double-crossed. It is his belief that a Mid-Continent representative should have checked with him on his ability to supply associate dealers with tires, batteries and accessories before recommending that a D-X dealer quit him.

1981 The old complaint about Malchi Auto Supply Co. delivering to a D-X dealer in Oklanoma City came up again. Malchi rents a building from Sinclair that has a small retail station connected which they operate. Malchi also operates from a building in Tulsa that they rent from Sinclair. This building does not have gasoline pumps. Incidently they are an aggressive organization that carry a complete line of Goodyear TBA mdse. They would make an excellent supply point for D-X stations if we could just get their true status established with your people.

We have evidently failed to made our Car & Home policy and position clear to every one in the Mid-Continent sales organization. Please let me restate briefly our policy that would effect our program with D-X. Mid-Continent dealers have access to the best and most complete line of competitively priced, nationally known Car & Home mdse., conveniently stocked by Goodyear warehouse points and Goodyear dealer and store supply points.

Goodyear Management has stated many times that Car & Home mdse. would be made available in adequate quantity in any designated supply point recommended by Mid-Continent representatives, providing, of course, there is potential business available thru D-X stations.

We invite you to make a through investigation of the Car & Home situation. If we do not measure up to the standards expected by your company, we will be more than glad to follow your recommendations. If you know of any specific D-X dealers that we have had the opportunity of serving who has shown any dissatisfaction with our Car & Home department, will you please advise me.

For your information, the much discussed Patterson station averaged but $149.75 per month purchases of Home, Auto Supplies and Batteries from our competitor for the first four months of 1953.

I have been contacting and working with a large number

of Goodyear and D-X salesmen since the revised instructions were issued. Goodyear salesmen are enthusiastic over the revised working plan and in fact several new accounts have been sold.

I have traveled some 2100 miles by auto the past three weeks and there is certainly a need for aggressiveness by both Goodyear and Mid-Continent to get more D-X dealers signed up that are now handling an unsponsored line of TBA. We in Goodyear have not been aggressive enough on this program and therefore we want to accept the major portion of the blame for this program not getting started. This problem is being corrected.

In this lengthy report I have tried to defend our position on some contraversial subjects. I have in no manner forgotten that the Mid-Continent Petroleum Corp. is the customer and Goodyear the seller.

I predict that both companies will prosper and work harmoniously together, if Goodyear adopts a more aggressive solicitation plan and if the Mid-Continent men appreciate the advantages and understand the real meaning of a Dual Program.

Sincerely,

C. R. Mitchell

CRM/rw

1983 COMMISSION EXHIBIT NO. 73C.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

May 16 1955

Mid-Continent Petroleum Corporation
Tulsa 2
Oklahoma

Gentlemen

We submit herewith letter agreement dated May 16 1955, embodying a new sales commission arrangement between this company and D-X Sunray Oil Company.

It is proposed that, subject to execution of the new agreement, our existing agreement with Mid-Continent Petroleum Corporation, dated May 1, 1952, be terminated by mutual consent, effective as of May 16 1955, the date of such new agreement.

Please indicate your acceptance by signing and returning the enclosed copy hereof, together with an executed copy of the new agreement.

Very truly yours

The Goodyear Tire & Rubber Company, Inc
By Illegible
Vice President
Attest R M Miner
Assistant Secretary

Accepted:
Mid-Continent Petroleum Corporation
By W J Wixson

1984 COMMISSION EXHIBIT NO. 73D-E.

Goodyear

The Goodyear Tire & Rubber Company, Inc.

Akron 16, Ohio

May 16 1955

D-X Sunray Oil Company
Tulsa 2
Oklahoma

Gentlemen

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks

of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The
1985 right to accept or reject any order received from any customer shall at all times rest with us.

With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%)

on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your franchise petroleum distributors as covered by such statement, computed on the net amount of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances other than cash discount.

We understand that you will retain for your own exclusive benefit all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours

The Goodyear Tire & Rubber Company, Inc.

By (Illegible)

Vice President

Attest R. H. Miner

Assistant Secretary

Accepted:

D-X Sunray Oil Company

By D. C. Wixson

1986 COMMISSION EXHIBIT NO. 73F-G.

A. Products Eligible under the Merchandising Commission Plan

Sales of the following products are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x.

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealers
All new Goodyear Tires & Tubes (Except Airplane)	x	•	x	x
All Second Goodyear Tires & Tubes	x	•	x	x
Goodyear produced Recaps & Repairs	x	•	x	x
Goodyear Automotive Batteries	x	•	x	x
Goodyear Farmlight Batteries	x	•	x	x
Battery Cables	•	x	x	x
Car & Home Merchandise except that listed in Paragraph B of this Exhibit	•	x	x	x
Anti-Freeze	•	x	x	x
Tire Chains	•	x	x	x
Goodyear Brake Lining-Rivets-Weights	•	x	•	•
Dill & Schrader Valve Products	x	•	x	x
Sea-Bee Outboard Motors	x	•	x	x
Goodyear Repair Material—Shelf or Resale items—Car & Home Line, as listed in C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x	x	x
Rubber Bonding Cement	x	x	x	x
Emergency self sealing patches	x	x	x	x
Small Containers Cold Patch-Cement	x	x	x	x
Gasket Compound	x	x	x	x
Bicycle Rim Cement	x	x	x	x
Motorists Vulc-Patch Kits	x	x	x	x

• Not stocked at these locations.

1987 B. Products not Eligible under Sales Commission Plan

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges

Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc to the D-X Sunray Oil Company, dated May 16 1955.

The Goodyear Tire & Rubber Company, Inc.
By (Illegible)
Vice President

Attest R. H. Miner
Assistant Secretary

D-X Sunray Oil Company
By D. C. Wixson

1988 COMMISSION EXHIBIT NO. 74A.

Goodyear

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

June 19, 1952

The Frontier Refining Company
Denver, Colorado

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon

in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed as "Products Eligible under the Merchandising Commission Plan" in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and ac-

cessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

1990 With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%) on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your franchise petroleum jobbers and *distributors as covered by* such statement, computed on the net amount of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your distributors.

We understand that you will retain for your own exclusive benefits all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding in this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc

By (Illegible)

Vice President

Attest: (Illegible)

Assistant Secretary

Accepted:

The Frontier Refining Company

By (Illegible)

President

1992 COMMISSION EXHIBIT NO. 74C-D.

Exhibit A.

A. Products Eligible under the Merchandising Commission Plan

Sales of the following products to approved Frontier Refining Company accounts are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x.

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealers
All new Goodyear Tires & Tubes (Except Airplane)	x	*	x	x
All Second Goodyear Tires & Tubes	x	*	x	x
Goodyear produced Recaps & Repairs	x	*	x	
Goodyear Automotive Batteries	x	*	x	x
Resolute Automotive Batteries	x	*	x	x
Goodyear Farmlight Batteries	x	*	x	x
Battery Cables	*	x	x	x
Car & Home Merchandise except that listed in Paragraph B of this Exhibit	*	x	x	x
Anti-Freeze	*	x	x	x
Tire Chains	*	x	x	x
Goodyear Brake Lining-Rivets-Weights	*	x	*	*
Dill & Schrader Valve Products	x	*	x	x
Sea-Bee Outboard Motors	x	*	x	x
Goodyear Repair Material—Shelf or Resale items—Car & Home Line, as listed in C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x	x	x
Rubber Bonding Cement	x	x	x	x
Emergency self-sealing patches	x	x	x	x
Small Containers Cold-Patch Cement	x	x	x	x
Gasket Compound	x	x	x	x
Bicycle Rim Cement	x	x	x	x
Motorists Vulc-Patch Kits	x	x	x	x

* Not stocked at these locations.

1994 B. Products not Eligible under Sales Commission Plan.

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances

General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits.

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc to The Frontier Refining Company, dated June 19, 1952.

The Goodyear Tire & Rubber Company, Inc
By (Illegible)

Vice President

Attest:
(Illegible)
Assistant Secretary

The Frontier Refining Company
By (Illegible)

1996 COMMISSION EXHIBIT NO. 75.

C W Thorp
Division Manager
Los Angeles, Calif

Akron, Ohio
6-12-52

J E Mayl
Victor Holt Jr
S A Gaylord

The Frontier Refining Company—Denver, Colo

We have signed a marketing agreement with the subject Petroleum Company on a 100% Goodyear basis.

This progressive company operates mostly in the Rocky Mountain Area and projection based on their retail gallonage indicates that they have a $2,000,000 TBA potential. In addition they operate a fleet of 32 tractor-trailer units and their tire purchases during the last year for own consumption was around $100,000.

Attached is a list of Dealers and Jobbers by Goodyear Districts in your Division.

A series of meetings have been scheduled starting with a combined Goodyear-Frontier Personnel meeting at the Albany Hotel, Denver, Colo., Tuesday evening, June 24, at 6 P. M. Dinner will be served and the meeting follows.

District Managers and the Field Representatives involved in the Frontier marketing territory should attend this meeting to get acquainted and set up dual working schedules. District Managers and the Petroleum Sales Department will make a complete TBA Franchise Presentation and cover all the details of the Sales Commission Plan at this meeting.

This will be followed by evening meetings with their Dealers and Jobbers, as scheduled below.

In the interest of conserving District Managers' time the Petroleum Sales Department will handle these meeting presentations. Arrangements have been made for an Akron Store Planning man and a complete TBA Display to make a swing of all meetings.

The Goodyear Field Representatives covering the territory involved should attend these Dealer-Jobber meetings where scheduled. Breakdown of the towns for each Field Representative can be made from the attached District list. If convenient the District Manager should attend at least one of the meetings.

Frontier Meeting Schedule

Combined Personnel Meeting

Tuesday, June 24, Albany Hotel—Denver

1998 Dealer-Jobber Meetings

Wednesday, June 25—Albany Hotel—Denver, Colo
Thursday, June 26—Hotel announced later—Cheyenne, Wyo
Friday, June 27—Hotel announced later—Casper, Wyo
Monday, June 30—Hotel announced later—Scottsbluff, Neb
Tuesday, July 1—Hotel announced later—North Platte, Neb
Wednesday, July 2—Hotel announced later—Pueblo, Colo or Salt Lake City

General

This account has a marketing agreement with Mansfield, but have done very little with TBA. With the limited help received from Mansfield their experience has not been too satisfactory.

With our well-rounded program we can cash in on their progressive attitude and willingness to give the program

complete support. How well we cash in will be determined by our interest and cooperation in developing their Dealers and Jobbers.

Petroleum Sales Department

J W Basista
lfm

2000 COMMISSION EXHIBIT NO. 76.

cc Joe Tracy
Chester Guthrie

March 5, 1953

Mr Claude A Weber
The Frontier Refining Company
Denver, Colorado

Dear Claude:

Well, we have finally received the final figures for 1952, and while you have been on the Goodyear TBA Program actually only five months, we want to congratulate you on the $110,250 worth of Goodyear business sold through your outlets.

We are assuming that the program is now on the "main line" and we are confident that you have your sights raised to at least three times as much in 1953. We believe this is a conservative estimate because in the Rubber Industry Goodyear is looking forward to a normal increase of 25 to 30% in tire sales.

Frontier, with the Dealer and Jobber Organization that I have seen, plus the expansion and development, as noted in the February issue of your House Organ, should have little difficulty in reaching such a figure

It is with extreme interest that we note your plans for a new Office Building, as well as the Super-Duper truck stop planned for Cheyenne.

We are looking forward to visiting with you sometime during the present year and discussing these new plans, particularly in relation with their effect on TBA sales.

We also note that Joe Tracy is doing a nice job of plugging the TBA Program in "Rarin'-To-Go" and we plan to keep feeding him interesting material for continued publicity.

Our best regards and a cheerful "hello" to Mr Armitage and the rest of your organization.

Very truly yours,

Petroleum Sales Department

J W Basista
lfm

2002 COMMISSION EXHIBIT NO. 76A.

The Frontier Refining Co.

Denver, Colorado Cheyenne, Wyoming
410 Boston Building
Denver 2, Colorado

December 9, 1954

Goodyear Tire & Rubber Co., Inc.
Akron 16, Ohio

Gentlemen:

Reference is made to a certain letter agreement dated June 19, 1952, between yourself and this company. This is to notify you that we hereby cancel this agreement effective as of today, in accordance with the proposed provisions under paragraph 2 of the agreement.

Yours very truly,

H. E. Armitage
Vice President

HEA:pmz

2004 COMMISSION EXHIBIT NO. 77A-B.

January 1, 1953

Quaker State Oil Refining Corporation
Sterling Oil Division
St. Marys, West Virginia

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed as "Products Eligible under the Merchandising Commission Plan" in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them

as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

2006 It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%) on all sales to your dealer outlets and seven and one-half

per cent (7½%) on all sales to your franchise petroleum jobbers and distributors as covered by such statement, computed on the net amount of invoices, excluding tax, after deducting, whether shown on invoices or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your jobbers or distributors.

We understand that you will retain for your own exclusive benefits all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding in this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.,
By Victor (Illegible),
Vice President.

Attest W. M. Mettler,
Assistant Secretary.

Accepted:
Quaker State Oil Refining Company—Sterling Oil Division,
By (Illegible)
President.

2008 COMMISSION EXHIBIT NO. 77C-D.

Exhibit A.

A. Products Eligible under the Merchandising Commission Plan

Sales of the following products to approved Quaker State Oil Refining Corp. Sterling Oil Division accounts are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x.

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealers
All new Goodyear Tires & Tubes (Except Airplane)	x	•	x	x
All Second Goodyear Tires & Tubes	x	•	x	x
Goodyear produced Recaps & Repairs	x	•	x	
Goodyear Automotive Batteries	x	•	x	x
Resolute Automotive Batteries	x	•	x	x
Goodyear Farmlight Batteries	x	•	x	x
Battery Cables	•	x	x	x
Car & Home Merchandise except that listed in Paragraph B of this Exhibit	•	x	x	x
Anti-Freeze	•	x	x	x
Tire Chains	•	x	x	x
Goodyear Brake Lining-Rivets-Weights	•	x	•	•
Dill & Schrader Valve Products	x	•	x	x
Sea-Bee Outboard Motors	x	•	x	x
Goodyear Repair Material—Shelf or Resale items—Car & Home Line, as listed in C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x	x	x
Rubber Bonding Cement	x	x	x	x
Emergency self-sealing patches	x	x	x	x
Small Containers Cold Patch Cement	x	x	x	x
Gasket Compound	x	x	x	x
Bicycle Rim Cement	x	x	x	x
Motorists Vulc-Patch Kits	x	x	x	x

• Not stocked at these locations.

2010 B. Products not Eligible under Sales Commission Plan

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to the Quaker State Oil Refining Corporation—Sterling Oil Division, dated January 1, 1953.

The Goodyear Tire & Rubber Company, Inc.,
By Victor (Illegible)
Vice President.

Attest W. M. Mettler,
Assistant Secretary.

Quaker State Oil Refining Corporation
Sterling Oil Division
By (Illegible),
President.

2012 COMMISSION EXHIBIT NO. 78A-B.

Carter Oil Company

T.B.A. Sales Potential

The most reliable statistics available in T.B.A. potential are those compiled from the 1948 Census of Business by the United States Government.

In this Census 196,000 stations were interviewed and submitted a complete report of their sales. Of this 196,000 —114,000 stations were handling Tires, Batteries and Accessories.

Our Sales Research Department have broken these figures down and adjusted them to reflect fluctuation in price occurring since 1948 and have come up with a T.B.A. potential for the average station of—

$6,690

This average retail dollar sales volume was broken down, as follows:

Items	$	%
Tires and Tubes	$3,438	51%
Batteries	1,195	18%
Accessories	2,057	31%
Total	$6,690	100%

The Carter Oil Company has 613 salaried, leased and dealer service stations in operation or under construction.

On the basis of the average station doing $6,690, it would appear that the potential for all Carter Oil Company station outlets would, therefore, be $4,100,970, broken down, as follows:

Tires and Tubes	$2,107,494
Batteries	732,535
Accessories	1,260,941
Total	$4,100,970

We prefer, however, to be more realistic in submitting T.B.A. potential for Carter Oil Company. On the assumption that all salaried and leased stations whether they are selling T.B.A. today or not, should and could be put into the T.B.A. business and only 75% of the independent dealers be brought into the program,—based on the average station figure Carter Oil Company's T.B.A. volume would be—

$3,529,010

2014 This, frankly, is considered a conservative estimate based on average sales. Broken down this chart shows how we arrived at the above figure.

	100% of 278 Salaried or Leased Stations	75% of 335 Dealers	Total
Tires & Tubes	$ 955,764	$ 862,938	$1,818,702
Batteries	322,210	299,945	622,155
Accessories	571,846	516,307	1,088,153
Total	$1,849,820	$1,679,190	$3,529,010

As pointed out, these estimates are based on average performance. We submit it on this basis knowing well, through actual experience, that the Goodyear T. B. A. can and will do a better than average job.

2016 COMMISSION EXHIBIT NO. 79 A-B.

Goodyear.

The Goodyear Tire & Rubber Company, Inc.
3415-21 N. Lincoln Blvd.
Oklahoma City, Okla.

January 26, 1955

Anderson-Prichard Oil Corporation
Liberty Bank Building
Oklahoma City 2, Oklahoma

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will sug-

gest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and
2017 accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and ~~tories, district warehouses, or other owned outlets) and~~ sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us properly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%) on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your franchise petroleum distributors as covered by such statement, computed on the net amount of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your distributors.

We understand that you will retain for your own exclusive benefits all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.,

By (Illegible)

Vice President,

Attest:

(Illegible)

Assistant Secretary,

Accepted:

Anderson-Prichard Oil Corporation,

By ,?,?,?,?,?,

President.

2018 COMMISSION EXHIBIT NO. 79C-D.

Exhibit A.

A. Products Eligible under the Merchandising Commission Plan.

Sales of the following products are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x.

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealers
All new Goodyear Tires & Tubes (Except Airplane)	x	*	x	x
All Second Goodyear Tires & Tubes	x	*	x	x
Goodyear produced Recaps & Repairs	x	*	x	x
Goodyear Automotive Batteries	x	*	x	x
Resolute Automotive Batteries	*	*	*	*
Goodyear Farmlight Batteries	x	*	x	x
Battery Cables	*	x	x	x
Car & Home Merchandise except that listed in Paragraph B of this Exhibit	*	x	x	x
Anti-Freeze	*	x	x	x
Tire Chains	*	x	x	x
Goodyear Brake Lining-Rivets-Weights	*	x	*	*
Dill & Schrader Valve Products	x	*	x	x
Sea-Bee Outboard Motors	x	*	x	x
Goodyear Repair Material—Shelf or Resale Items—Car & Home Line, as listed in C & H M' Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x	x	x
Rubber Bonding Cement	x	x	x	x
Emergency self-sealing patches	x	x	x	x
Small Containers Cold Patch Cement	x	x	x	x
Gasket Compound	x	x	x	x
Bicycle Rim Cement	x	x	x	x
Motorists Vulc-Patch Kits	x	x	x	x

* Not stocked at these locations.

2019 B. Products not Eligible under Sales Commission Plan.

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to the Anderson-Prichard Oil Corporation, dated January 26, 1955.

The Goodyear Tire & Rubber Company, Inc.,
By (Illegible)
Vice President,

Attest:
(Illegible)
Assistant Secretary,

Anderson-Prichard Oil Corporation,
By (Illegible)
President.

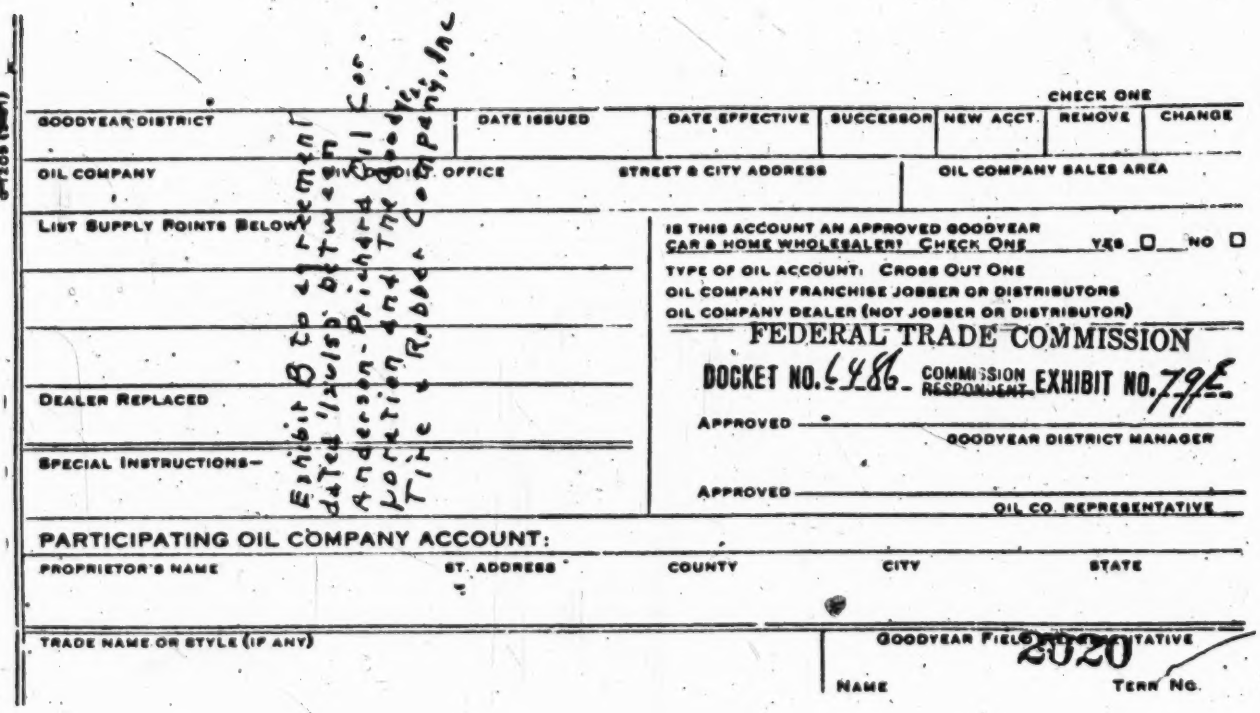


Exhibit B to Agreement dated 12/21/59 between Anderson-Prichard Oil Corp. and The Goodyear Tire & Rubber Company, Inc.

CHECK ONE

GOODYEAR DISTRICT	DATE ISSUED	DATE EFFECTIVE	SUCCESSOR	NEW ACCT.	REMOVE	CHANGE

OIL COMPANY — DIVISION OR SUBSIDIARY OFFICE — STREET & CITY ADDRESS — OIL COMPANY SALES AREA

LIST SUPPLY POINTS BELOW

DEALER REPLACED

SPECIAL INSTRUCTIONS—

IS THIS ACCOUNT AN APPROVED GOODYEAR CAR & HOME WHOLESALER? CHECK ONE YES ☐ NO ☐

TYPE OF OIL ACCOUNT: CROSS OUT ONE
OIL COMPANY FRANCHISE JOBBER OR DISTRIBUTORS
OIL COMPANY DEALER (NOT JOBBER OR DISTRIBUTOR)

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION RESPONDENT EXHIBIT NO. 79E

APPROVED _____ GOODYEAR DISTRICT MANAGER

APPROVED _____ OIL CO. REPRESENTATIVE

PARTICIPATING OIL COMPANY ACCOUNT:

PROPRIETOR'S NAME — ST. ADDRESS — COUNTY — CITY — STATE

TRADE NAME OR STYLE (IF ANY)

GOODYEAR FIELD REPRESENTATIVE
2020
NAME — TERR NO.

COMMISSION EXHIBIT NO. 79E.

01204 (1-52)

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company _____ Goodyear District _____

Oil Company Division or District Office _____ Report of Purchases for Period of _____ to _____ 195__

Goodyear Field Repr. Name _____ Terr. # _____ Oil Co. Sales Area _____

NAME OF PROPRIETORS	TRADE NAME	ADDRESS	Type of Oil Co. Acct.	Acct. Class Approved Goodyear Dealer	AMOUNT OF PURCHASES (SET TO NEAREST DOLLAR) CURRENT MONTH: Total Tires and Tubes	Truck Tires and Tubes	Goodyear Batteries and Cables	Absolute Batteries	C & B Access. & Other Merc.	YEAR TO DATE: Total Tires and Tubes	Truck Tires and Tubes	Goodyear Batteries and Cables	Absolute Batteries	C & B Access. & Other Merc.

2022 COMMISSION EXHIBIT NO. 79G.

Anderson-Prichard Oil Corporation.
Liberty Bank Building
Oklahoma City 2, Oklahoma

February 18, 1955

The Goodyear Tire & Rubber Company, Inc.
3415-21 North Lincoln Boulevard
Oklahoma City, Oklahoma

Gentlemen:

We are returning to you your letter agreement dated January 26, 1955, both copies of which have been executed by this company.

We have approved the agreement subject to the acceptance of the following amendments: We feel that Form G-1209 should be identified as Exhibit B and attached to and made a part of the agreement. Form G-1204 should be identified as Exhibit C and attached to and made a part of the agreement. In this connection we assume that Form G-1204 will be used in furnishing the reports referred to in paragraph 2 on page 2 of the agreement.

If you approve the above amendments, will you please indicate your approval in the space provided below.

Yours very truly,

/s/ E. K. Ketcham,
E. K. Ketcham.

The above amendments accepted and agreed to this 25th day of February, 1955.

The Goodyear Tire & Rubber Company, Inc.
By (Illegible)
Vice-President

Attest: (Illegible)
Assistant Secretary.

2023 COMMISSION EXHIBIT NO. 79H-I.

The Goodyear Tire & Rubber Company, Inc

August 9, 1949

Ashland Oil & Refining Company
Ashland, Ky

Gentlemen:

We now confirm discussions with you relative to services to be rendered by you during the balance of the year 1949 and from year to year thereafter, subject to cancellation by either of us at any time on thirty (30) days' written notice to the other, in promoting the sale of Goodyear tires (casings and tubes), batteries, and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof, through such franchise jobbers as are otherwise engaged in, or propose to engage in, the sale of your products as are agreed in writing with you from time to time.

During the period mentioned it is understood that you will actively assist us in selling and in promoting the sale of the above merchandise to such customers, and, at our request from time to time, you will have your field representatives call upon these customers in company with our salesmen and otherwise, and will cooperate and assist us in our efforts to promote and encourage the sale of such merchandise by the customers to whom such sales shall be made by us. The right to accept or reject any order received from any customer shall at all times rest with us.

You will see that your field offices work energetically with us with the view to assisting us to the fullest practicable extent in perfecting arrangements with all such customers. You will at all times maintain adequate qualified personnel to render the services called for hereunder regularly and efficiently.

As soon as practicable after the end of each month we will furnish you with a statement of all sales made by us to outlets on the approved list agreed upon with you made during the month. We shall not be held responsible for the inclusion of all cash and c.o.d. transactions. It is understood and agreed that purchases by you for resale to any outlets owned and operated by you shall not be included in any such statement.

At the time each such statement is submitted, we will pay you a merchandise commission of 7½% on all sales covered by such statement computed on the net amount of invoices, excluding tax, after deducting all applicable discounts and allowances other than cash discount and quantity bonus.

2025 We understand that you will retain for your own exclusive benefit all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc

By .....

Vice President

Attest: .....

Secretary

Accepted:

Ashland Oil & Refining Company

By .....

2027 COMMISSION EXHIBIT NO. 79J.

Included items, subject to exceptions noted below:

1. Goodyear Battery Cables (when billed direct and delivered to the Ashland franchise jobber by the Goodyear District or from the manufacturer's factory).
2. The following items (commonly called shelf items) of Goodyear Repair Material when delivered and billed either by the Goodyear District or factory or field warehouse:

   Small & Bicycle Tube Repair Kits
   Steptread Cement—Qts
   Small Containers Cold Patch Cement
   Emergency Self-Sealing Patches
   Gasket Compound
   Bicycle Rim Cement
   Shaler M-50 Repair Kits
   Motorist Vulc-Patch Kit.

3. The following items (designated in accordance with Goodyear's regular classification of such merchandise) of Goodyear Car and Home Merchandise when delivered from the manufacturer's factory or from the Goodyear field warehouse:

   All radios, radio aerials, and radio accessories, except such items manufactured by General Electric, Motorola, and Admiral Corporation
   Automotive Supplies
   Hardware and Tools
   Wheel Goods
   Sporting Goods
   Small Electrical Appliances
   Housewares
   Toys and Games.

4. Goodyear Brake Lining and Goodyear Brake Lining Rivets when delivered from the manufacturer's factory or from the Goodyear field warehouse.
5. Goodyear Wheel Weights when delivered from the manufacturer's factory or from the Goodyear field warehouse.
6. All Dill and Schrader Merchandise when delivered from the manufacturer's factory or from the Goodyear District.

Exceptions:

1. General Electric, Hot Point, and Admiral Major Appliances which are obtained by the dealers from the manufacturer's distributors.
2. Motorola Car Heaters.
3. Batteries.
4. Battery Charging Equipment.
5. Brake Lining Equipment.

Exhibit A, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc to Ashland Oil & Refining Company dated August 9, 1949.

The Goodyear Tire & Rubber Company, Inc

By .....

Vice President

Ashland Oil & Refining Company

By .....

2029 COMMISSION EXHIBIT NO: 79K.

September 13, 1949

Mr. Sam Gaylord
Goodyear Tire & Rubber Company
Akron, Ohio

Dear Mr. Gaylord:

Referring to the agreement of August 9, 1949 which you left with us recently, we have gone over this carefully and it seems to be entirely satisfactory. If you will submit copies for signatures, we will be glad to execute them.

I am asking our people to make up a list of all of our jobber accounts for submission to you promptly. This list will indicate whether the jobber is selling Ashland products, I Q S products or his own brand. Also, the list will indicate which of these jobbers now have satisfactory tire supply arrangements which we do not wish to change.

We are glad to be able to work out this arrangement with your good company and feel it should develop into an increasingly satisfactory arrangement for both of us.

Cordially yours,

EFW:mc (Signed Everett F. Wells)

cc: Messrs. Moffitt, Stone, Bolton

2031 COMMISSION EXHIBIT NO 79L.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

September 28, 1949

Mr E F Wells—Vice President
Ashland Oil & Refining Company
Ashland, Kentucky

Dear Mr Wells:

Thanks for your favor of the 13 advising that the proposed agreement meets with your approval. Therefore, in accordance with your suggestion, we are drafting copies for signature here, after which they will be forwarded for execution by you.

It is my opinion that we can save considerable time in getting the plan underway if you will nominate a list of your jobber accounts which you recommend for qualification on the agreement at the outset. This action will enable us to submit such accounts to our District Managers and Division Managers for approval at the same time that we send out our Operating Instructions covering the arrangement.

Would like to express our appreciation for the opportunity of working with your good company and can assure you that our people will do their full share to make the arrangement mutually profitable to both companies.

With kindest personal regards.

Sincerely,

S. A. Gaylord
Manager—Petroleum Sales Dept

S A Gaylord
lfm

2033 COMMISSION EXHIBIT NO. 79M.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

July 12, 1950

Mr Don W Detjen
Ashland Oil & Refining Company
Ashland, Kentucky

Dear Mr Detjen:

In reply to your letter of July 10, I am enclosing a copy of our Operating Instructions that were furnished to our Districts, covering the Ashland Oil & Refining Company program with Goodyear.

You will find in these instructions the handling of the 1209 forms mentioned in your letter.

Also, attached to these instructions you will find all of your franchise dealers with their addresses listed under the Goodyear District in whose territory they are located and an additional sheet giving the location of our Districts involved, together with the name of the District Manager as your contact point.

He, perhaps, will refer you to someone else in the organization, but your first contact should be with him.

This, I believe, will handle all of the subject matter of your letter.

Yours very truly,

Wilfore E Cameron
Petroleum Sales Department

W E Cameron
ffm

2035 COMMISSION EXHIBIT NO. 79N.-O.

H E Hoerster
District Manager
Cincinnati, O

Akron, Ohio
3-24-50

cc J E Stone—Ashland Oil & Ref. Co
Field Operating
W E Cameron
L R Harrah
L H Shepherd—Atlanta

Ashland Oil & Refining Co., Askland, Ky.

On January 3 we sent you Special Account Instructions covering Sales Commission arrangement with subject account on sales made by Goodyear to its approved franchise petroleum jobbers.

Ashland furnished the names of jobbers it desired to nominate under the arrangement. These were broken down by Goodyear Districts and made a part of the Special Account Instructions sent you January 3.

It should be noted that the list does not include all Ashland Jobbers because a similar sales arrangement is effective with Firestone.

Also, certain accounts listed are not franchise jobbers (handling Ashland Brand only). Our arrangement covers franchise jobbers only, however, it may be mutually desirable to make exceptions if Ashland is instrumental in assisting us to secure such accounts.

The accounts were submitted to enable you to check and determine whether they would be subject to your approval or disapproval under the arrangement if sold and when sold by us. Please write us your analysis so we can advise Ashland. There is not much point in issuing G-1209's

unless such accounts are being sold. On all accounts we are selling under the arrangement it is important that Districts issue initial G-1209's according to instructions, which should be forwarded to Ashland Oil & Refining Company, Inc., attention J E Stone, Ashland, Ky.

General Sales Information

Ashland is one of the largest independent oil companies and under aggressive, capable management is growing rapidly.

Ashland is a very important Goodyear customer for resale in territory operated by the company, which is segregated from franchise jobber territory covered by the Sales Commission arrangement.

Oil Companies taken over by Ashland lately are—

Allied Oil Company	Cleveland
Aetna Oil Company	Louisville
Virgie Oil Company	Virgie, Ky
Freedom Oil Company	Rochester, Pa
Frontier Oil Company	Buffalo

2036 Purchase for Resale

Billing by Goodyear Districts at Petroleum Jobber prices. (100% Wholesale)

Own Consumption

Ashland will issue purchase orders for Own Consumption and in some cases for delivery to their subsidiary accounts. Billing should be at "A" dealer prices. (Operating Instructions to cover)

Total net purchases by Ashland and subsidiaries from all Districts will be combined for bonus purposes.

Sales Report

Ashland purchases and sales by Goodyear to Ashland Commission (Jobber) accounts will be shown on Reference 36 reports.

Summarizing

(A) Let us have your comments regarding accounts submitted to you.

(B) See that G-1209's are issued for all accounts being sold under the arrangement, with proper effective dates, submit these to Ashland, Ky., etc. according to instructions.

(C) Ask your organization to get acquainted with the local Ashland representative to work with and assist in furthering the plan.

If you have any questions, or we can help, please write us.

Manager—Petroleum Sales Dept

S A Gaylord
lfm

Same letter sent to following:

Birmingham District
Atlanta
Cleveland
Columbus
Harrisburg
Indianapolis
Pittsburgh
St Louis
With copy to Buffalo District

2037 COMMISSION EXHIBIT NO. 79P.

Special Account Instructions

Ashland Oil & Refining Company Inc

Ashland, Kentucky Sales Commission

1-3-50

Sales Commission Plan

The Ashland Oil and Refining Company Inc., will be paid a sales commission on net sales by authorized supply points of certain Goodyear products to Ashland Petroleum jobbers (hereinafter referred to as Ashland Accounts) as recommended by Ashland and approved by Goodyear District Manager.

All sales under this plan are sales by an authorized supply point to the Independent Ashland Account. Billing issued to Ashland Oil and Refining Co Inc covering purchases either for "Own Consumption" purposes or by Ashland Company-operated stations are not subject to sales commission.

Payment of commission will be made to Ashland by Akron and will be based on sales reported to Akron by District Offices on monthly G-1204 reports.

Establishment of Authorized Supply Points

District Manager will determine supply point for each Ashland Account approved.

Goodyear Districts, Field and Factory Warehouses, and Goodyear Service Stores may serve as authorized supply points for these accounts. See Page 1-A for products each class of supply point may deliver.

The supply point will make delivery of the merchandise, issue billing and carry the Accounts of the Ashland Accounts they serve.

Master Record G-1209

Ashland Oil & Refining Company Inc will prepare G-1209 on each Ashland account which is to participate under the plan. All copies of the form should be approved and forwarded by Ashland to the Goodyear District Manager for approval and completion.

The G-1209 must be filled in completely as provided on the form.

After G-1209 is completed and approved by both Ashland and Goodyear District Manager.

District Office will distribute copies as follows—

Original (white)—District Office File

Duplicate (Canary)—Ashland Division Office

Triplicate (pink)—Goodyear Field Representative

Quadruplicate (blue)—Supply Point where a Goodyear Store (other supply points handled by list—see below)

Districts will prepare initial 1209 file from list of accounts attached. This is a starting point and 1209's for supplementary accounts will be initiated by Ashland.

If more than one Store will act as a supply point, the additional Store (stores other than the regular supply point) should be notified of the approved Ashland account by letter.

Credit Policy

All Ashland Accounts participating under this plan will establish credit with the Goodyear District or Store which has been designated to serve them. Purchases may, of course, be made on a cash or COD basis also. District or store must maintain separate Accounts receivable ledger page on each COD or cash account.

2038 **COMMISSION EXHIBIT NO. 79Q.**

Special Account Instructions
Ashland Oil & Refining Company Inc
Ashland, Ky

Sales Commission

Sales Commission Plan

Price Policy

Approved Ashland Accounts under this plan will purchase their requirements on the same basis as any independent dealer at the prices and discounts for which they can qualify in accordance with our regular sales program for tires, tubes, batteries, C&H Mdse, etc.

Products Eligible Under Sales

Sales of the following listed products to approved Ashland accounts are to be reported on the G-1204 reports when delivery is taken from authorized supply point as indicated below:

(A) When delivery is taken from and/or billing issued by District

All Goodyear Tires and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries

Goodyear produced Recaps & Repairs

All Dill and Schrader Valve Merchandise

Sea-Bee Outboard Motors

Goodyear Repair Materials as follows — Small and Bicycle Tube Repair Kits, Quart size Steptread Cement, Emergency Self-Sealing Patches, Small

Containers Cold Patch Cement, Gasket Compound, Bicycle Rim Cement, Shaler M-50 Repair Kits and Motorists Vulc-Patch Kits.

(B) When delivery is taken from and billing issued by Goodyear Stores

All Goodyear Tires and Tubes (Except Airplane) including Seconds.

Goodyear Automotive and Farmlight Batteries and Battery cables.

Resolute Batteries.

Goodyear Produced Recaps & Repairs.

(C) When delivery is taken from a Field or Factory Field Warehouse

Goodyear Car and Home Merchandise.

Goodyear Brake Lining, Rivets and Wheel Weights.

Goodyear Repair Materials—The same and only those items listed above under (A).

Includes merchandise shipped direct to dealer by manufacturer.

Products Not Eligible Under Sales Commission Plan

Billing covering products listed hereunder, regardless of delivery point is not subject to commission and is not to be recorded by Stores nor included in G 1204 volume on which commission is to be paid. Adjustment billing of any of the eligible products listed above. All products not listed above as eligible products including but not limited to General Electric, Hotpoint, Admiral and Coleman Major Appliances

General Electric Radios.

Admiral Radios

Motorola Radios, Aerials and Accessories

Motorola Car Heaters

Anti Freeze

Tire Chains unless delivered by Field Warehouse

All types of Equipment—Battery Chargers, Display, Service Station, etc.
Advertising and Sales Promotion items.

2039 COMMISSION EXHIBIT NO. 79R.

Special Account Instructions
Ashland Oil and Refining Company, Inc
Ashland, Ky

Sales Commission Plan
Goodyear Store Supply Points

District Manager will provide stores that are to function as supply point with G-1209 of specified Ashland Accounts for whom the store is the designated supply point. As any changes occur in the G-1209, District Manager will notify store of change by copy of G-1209. Upon receipt, Stores must immediately revise their records.

It is suggested that stores file the visible G-1209 form in their stock ledger binder for ready reference. Stores receiving lists of accounts from their District Manager should order supplies of blank G-1209 forms with which to establish their visible system.

Important—An Accounts Receivable ledger page (G-953) must be set up for each approved Ashland Associate Dealer even though the account may be C.O.D. or on a cash basis. All sales to these accounts must be posted to the ledger and those sales, eligible for commission (See National Account Instructions page 1A) should be coded so that after closing the account receivable each month the following report should be submitted to your District Office before end of month. Form G-1207 is available for this report.

Sales to Approved Oil Co. Associate Dealers

Account Name	New Tires and Tubes	Recaps	Batteries Except Resolute	Resolute Batteries

(Signed) .....

Store Manager

Payment of Commission

Akron will pay all commission to Ashland in connection with this plan. All Ashland Oil Co accounts nominated to operate under this program are franchise Petroleum jobbers.

Rate of Commission follows

(A) Approved Petroleum Jobber or Petroleum Distributor
All Merchandise 7½%
Identified on G-1204 and G-1209 as Oil Company Franchise Jobber or Distributor.

List of Ashland Jobbers Follows.

2040 COMMISSION EXHIBIT NO. 79S TO V.

Special Account Innstructions

Ashland Jobbers

Atlanta District

Account and Address

A E Poston—Norton, Virginia

Birmingham District

C W Cone, dba Cone Oil Co—802 Fourteenth Ave N, Nashville, Tenn

B C Clouse, dba Petroleum Transport Co—1612 Church St, Nashville, Tenn

Cincinnati District

American Refined Oil Co—204 Fincastle Bldg, Louisville 2, Ky
Barnes Bradley—133 N Fifth St, Louisville, Ky
Central Petroleum Co—Richmond, Ky
Champion Service Company—990 S Erie Blvd, Hamilton, Ohio
Cincinnati Oil Works Co—535 Egglestone Ave, Cincinnati, Ohio
Community Oil Company—West Union, Ohio
Edgewood Service Station—4 Edgewood Ave, Hamilton, Ohio
Equity Feed & Oil Co—Sardinia, Ohio
Feck Oil Company—1600 Dana Ave, Cincinnati, Ohio
Hargo Oil Company—1601 N Main St, New Albany, Ind
Hoosier State Service Station—1160 Starks Bldg, Louisville, Ky
Leonard Henderson, dba Henderson Fuel Oil Company —1705 Woodlawn Ave, Middleton, Ohio
Imperial Petroleum Co.—330 Hampton Court, Lexington, Ky
Independent Oil Service Inc—1001 W Jefferson St, Louisville, Ky
Kennady Motor Co—Box 231, Hodgensville, Ky
Kentucky Consumers Oil Co Inc—400 N 37th St, Louisville, Ky
L C Martin, dba Martin Super Service—Third & Limestone, Maysville, Ky
McLean Oil Company—Glenway & Woodlawn, Cincinnati, Ohio
Perrin Oil Company—RR #2, Scottsburg, Indiana
F E Schuerman Company—3364 Southside Ave, Cincinnati, Ohio

Tank Service Station—Beattyville, Ky
Taylor Tire Co—Lexington, Ky
Tresler Oil Co—4015 River Road, Cincinnati, Ohio
Twin Cities Dist Co Inc—105 E 4th St, Covington, Ky
United Sales & Equipment Co—12th and Broadway, Louisville, Ky
Wholesale Petroleum Co—N & W R R & Wooster, Cincinnati, O

Cleveland District

Billings Garage—Clyde, Ohio
R E Brinker, dba Brinker's Economy Service Station —Sandusky, Ohio
Campbell Oil Company—Euclid Ave, Cleveland, O
L C Carran, Jr—20501 Euclid Ave, Cleveland, O
W B Chapman & Company—Medina, Ohio
The Freeman Company, Inc—1152 E Broadway Box 67 Sta A, Toledo, O
Hill's Fair Price Station—339 Columbus Ave, Fostoria, Ohio
Kennedy Oil Company—Cleveland, Ohio
Patrick McGurk—3579 Fulton Road, Cleveland, O
New Deal Oil Company—1441 W Tuscarawas Ave, Canton, O
Pennsylvania Gas & Oil Company of Youngstown & New Phila—512 Fourth St, New Philadelphia, O
Red Head Oil Company—Wooster Division, Wooster, Ohio
Red Head Oil Company (W. Va.)—Wooster, Ohio
Schmidt & Radar Oil Company—198 E Fourth St, Mansfield, Ohio
Spencer Gas & Oil (C R Aldrich dba)—Spencer, Ohio

2041 Columbus District

Aller Oil Company—Findlay, Ohio
Atta-Boy Oil Company, Inc—3643 Xenia Pike, Dayton, Ohio

Big Sandy Petroleum Company—Paintsville, Kentucky
Irvin Arrowood, dba Big Sandy Petroleum Company —Paintsville, Kentucky
Bonded Oil Company—501 West High St, Springfield, O
Community Oil & Gas Co—Dunkirk, Ohio
Crawford Transport Company—1804 N Second St, Ironton, Ohio
Diederich, John—Coal Grove, Ohio
Direct Oil Sales—Box 1766, Huntington, W Va
Dupont Service Company—Dupont, Ohio
Gampp, George—Sciotoville, Ohio
Greenwade, William—Prestonsburg, Kentucky
Jake Householder—P O Box 270, Big Chimney, W Va
Hygold Oil Co, Atten: C M Baker—256 Rhoads Ave, Columbus, Ohio
Jackson Motor Co—Jackson, Ohio
Jeffersonville Auto Co—Jeffersonville, Ohio
W W Williams, Jeffersonville Auto Co—Jeffersonville, Ohio
Lanning Auto Supply Co—244 West Main St, Lancaster, Ohio
Lecky Brothers, dba Fair Price Station—306 North Limestone, Springfield, Ohio
Little Sandy Gas & Oil—Greenup, Kentucky
Mack's Service Station—Second & Railroad, Ironton, Ohio
Mays Oil & Supply Company—Dayton, Ohio
Mr V F Means, dba Means Oil Co—Rushsylvania, Ohio
Nagel, K N—Sciotville, Ohio
Niday Oil Co—Gallipolis, Ohio
Oak Hill Garage—Oak Hill, Ohio
Olentangy Oil Co—744 W Fifth Ave, Columbus, Ohio
H H O'Neal, dba O'Neal Oil Company—Oak Hill, West Virginia

Pop & Cliffs Truck Stop—Wheelersburg, O
Raile & Morrison—Greenville, Ohio
Red Cap Service—2418 Gallia St, Portsmouth, Ohio
Reese, C M—McArthur, Ohio
Richardson Oil Company—36th & Winchester, Ashland, Ky
Rish, Herbert—302 S Detroit, Kenton, Ohio
Saftl-Serve Oil Co—909 Pike St, Goal Grove, Ohio
J O Monroe, Scioto Bonded Oil Co—5347 Gallia St, Sciotoville, Ohio
Henry Stanley Service Station—Ironton, Ohio
Stark Oil Sales—Huntington, West Va
Stout Oil Company—Stoutsville, Ohio
Bill Thomas Service Station—414 N Second St, Ironton, Ohio
Trick, S C—905 Sweitzer St, Greenville, Ohio
Mrs Margaret Trick, S C Trick Co—905 Sweitzer St, Greenville, Ohio
Unrue Oil Company—Ironton, Ohio
Piqua Milling Company—113 North Main St, Piqua, Ohio
Power Oil Company—1163 W Broad St, Columbus, Ohio
E R Wallace Oil Co—Gallipolis, Ohio
Wholesale Gasoline Corp—294 W Gay Street, Columbus, Ohio
Wood, Newell—Jackson, Ohio
Wurts Bros, Inc—Ashland, Kentucky

2042 Harrisburg District

Pennsylvania Farm Bureau Coop Assoc—P O Box 23, Harrisburg, Pa

Indianapolis District

Morris Bright Oil Company—13th & L Streets, Bedford, Indiana

C & C Oil Company, Inc—44 East Washington St, Huntington, Ind

Colonial Oil Co of Indiana, Inc—1402 S Clinton St, Ft Wayne, Ind

A A Curry & Company, Inc—600 E Votaw St, Portland, Ind

Guarantee Oil & Coal Co—136 S State Ave, Indianapolis, Ind

Hoosier Petroleum Co—2037 E Washington St, Indianapolis, Ind

Hudson Oil Co—2037 E Washington St, Indianapolis, Ind

Kantnok Gasoline Co—14 S Tenth St, Richmond, Ind

Kocolene Co, Inc—P O Box 125, Seymour, Ind.

Muff Grain & Coal Co—S 7th & L Sts, Richmond, Ind

Muff Oil Co, c/o Muff Grain & Coal Co—Richmond, Ind

Mr J Willis Scholl, dba Scholl Oil Co—R F D #1, Connersville, Ind

Smith Oil Co—3414 Lee Rd, Ft Wayne, Ind

Surety Gas & Oil System Inc—915 Daly St, Indianapolis, Ind

Triangle Oil Co—1150 Fairfield Ave, Indianapolis, Ind

Pittsburgh District

Alto Penn Oil Company—Box 206, Duncansville, Pa

Baehr Brothers—Walnut St & Penn Ave., McKeesport, Pa

W R Barclay & Son—540 High Street, Monongahela, Penn

The Best Oil Company—2929 Saw Mill Run Blvd., Pittsburgh 27, Pa

Brilliant Oil Company—Brilliant, Ohio

Consumers Oil Company—1016 Constance St, Pittsburgh, Pa

Ben Davis—Box 586, Imperial, Pa
Davis, Warren A—104 Randolph Ave, Elkins, W Va
Dawson, Theodore A—1501 Jerome Blvd, McKeesport, Pa
Dempe, John P—503 E Lincoln Ave, McDonald, Pa
DiBernardo, Dominic—Route 80, Universal, Pa
Duquesne Gasoline & Supply Co, Inc—6428 Hamilton Ave, Pittsburgh 6, Pa
Ellis Bros Oil Company—1441 South Ave, Youngstown, Ohio
Fenton, C R—RFD #1 Mt Pleasant, Pa
R J Fournier—16 Wabash Avenue, Pittsburgh, Pa
Flowers Independent Oil Co—Waynesburg, Penn
Gravity Fill Service Stations, Inc—45 Braddock Avenue, Braddock, Penn
A Lucas, Jr—622 Vermont Street, Glassport, Pa
Magee, J B—Coraopolis, Penn
Morris Fuel & Auto Accessory Co—Uniontown, Pa
Parmelee Motor Fuel—118 S First Street, Pittsburgh, Pa
Parmelee Motor Fuel—118 South First St, Pittsburgh, Pa
I C Patsch & Sons Company—Houston, Penn
Pitt Petroleum Products—1001 Warrington Ave, Pittsburgh, Pa
Pittsburgh Pen Oil Co—3200 Carson St S.S., Pittsburgh, Pa
Red Head Oil Co, Brilliant Division—Brilliant, Ohio
Speir, A B—McKees Rocks, Pa
2043 J L Collins, dba Tri-State Oil Co—167 Holland Ave, Morgantown, W Va
Universal Oil Company—Bridgeville, Pa
Mr Sidney J Watts, Jr—4219 Greensburg Pike, Pitts 21, Pa
C R Fenton—RFD #1, Mt Pleasant, Penn

Valley Service Company—542 Ferndale Avenue, Johnstown, Pa

Valley Service Company—542 Ferndale Avenue, Johnstown, Pa

St Louis

American Gasoline Company, Inc—201 E Louisiana St, Evansville, Ind

Liberty Service, Inc—936 Market St, Mt Carmel, Ill

Owensboro Oil & Grease—1600 Mosley St, Owensboro, Ky

Southern Independent Oil & Refining Co—1820 W Franklin St, Evansville, Ind

Superior Oils, Inc—112½ E Third St, Owensboro, Ky

Wayne Davis—301 W Main St, Fairfield, Ill

2044 COMMISSION EXHIBIT NO. 79W.

Goodyear Districts

Atlanta, Ga—560-566 Peachtree Street
E E Pound—District Manager

Birmingham, Ala—700 S 21st Street
J W Tulloss—District Manager

Cincinnati, O—814 Melbourne St
R W Fairchild—District Manager

Cleveland, O—13th & Chester St
H E Hoerster—District Manager

Columbus, O—309 S 4th Street
C F Stroud—District Manager

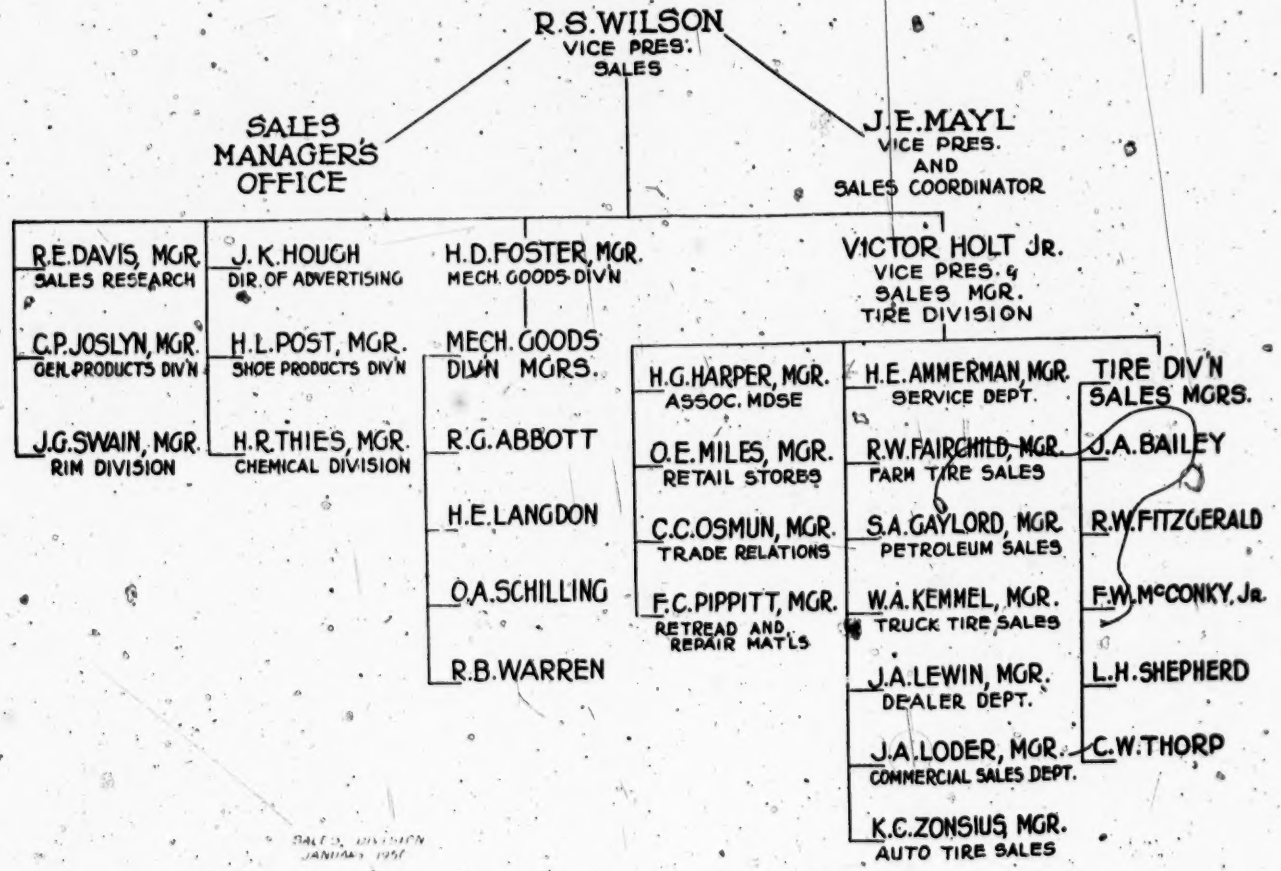
Harrisburg, Pa—728 S Cameron Street
H C Jones—District Manager

Indianapolis, Ind—1375 W 16th Street
J C Arnold—District Manager

Pittsburgh, Pa—4760 Center Street
D E Randall—District Manager

St Louis, Mo—4210 Forest Park Blvd
G W Dempsey—District Manager

Detroit, Michigan—6500 Mt. Elliott Avenue
C. C. Anderson—District Manager



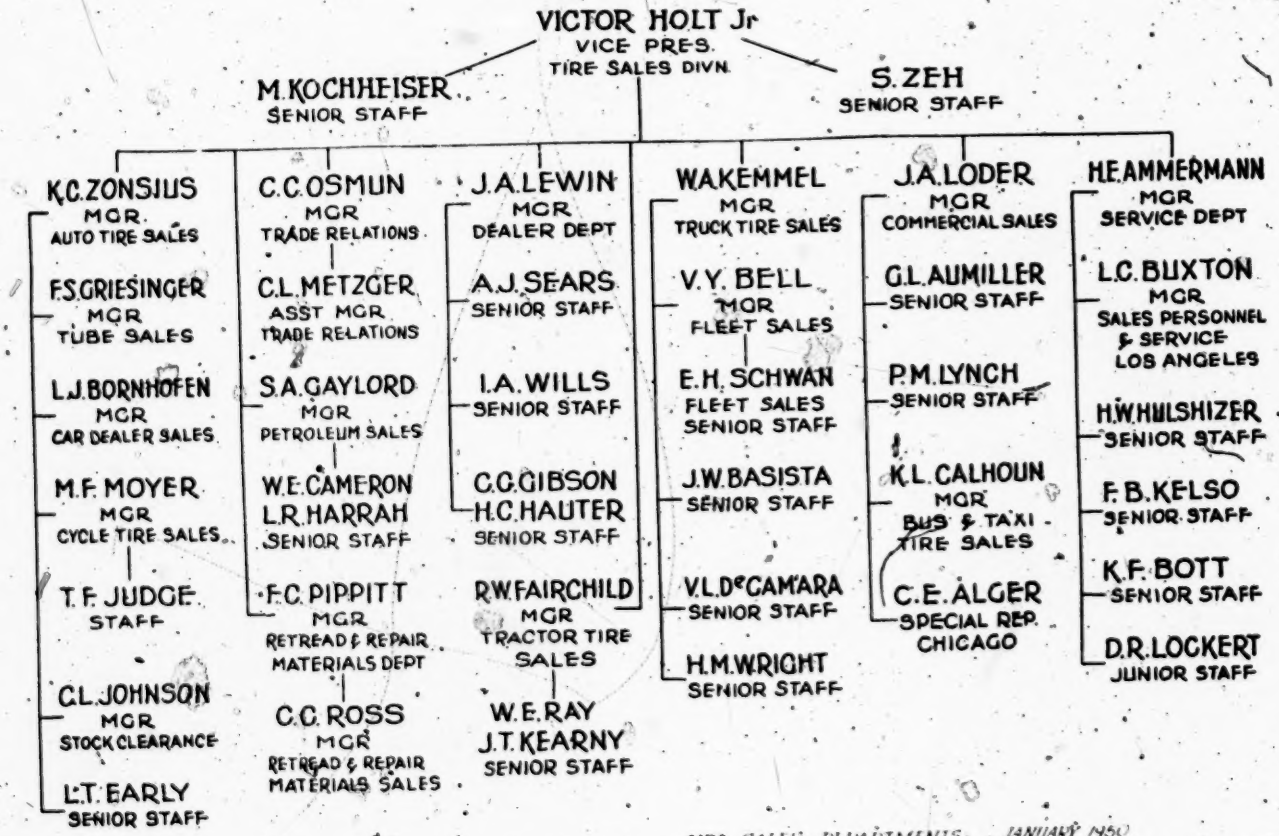
SALES DIVISION
JANUARY 1950

457-50G

COMMISSION EXHIBIT NO. 80A.

2623

2013

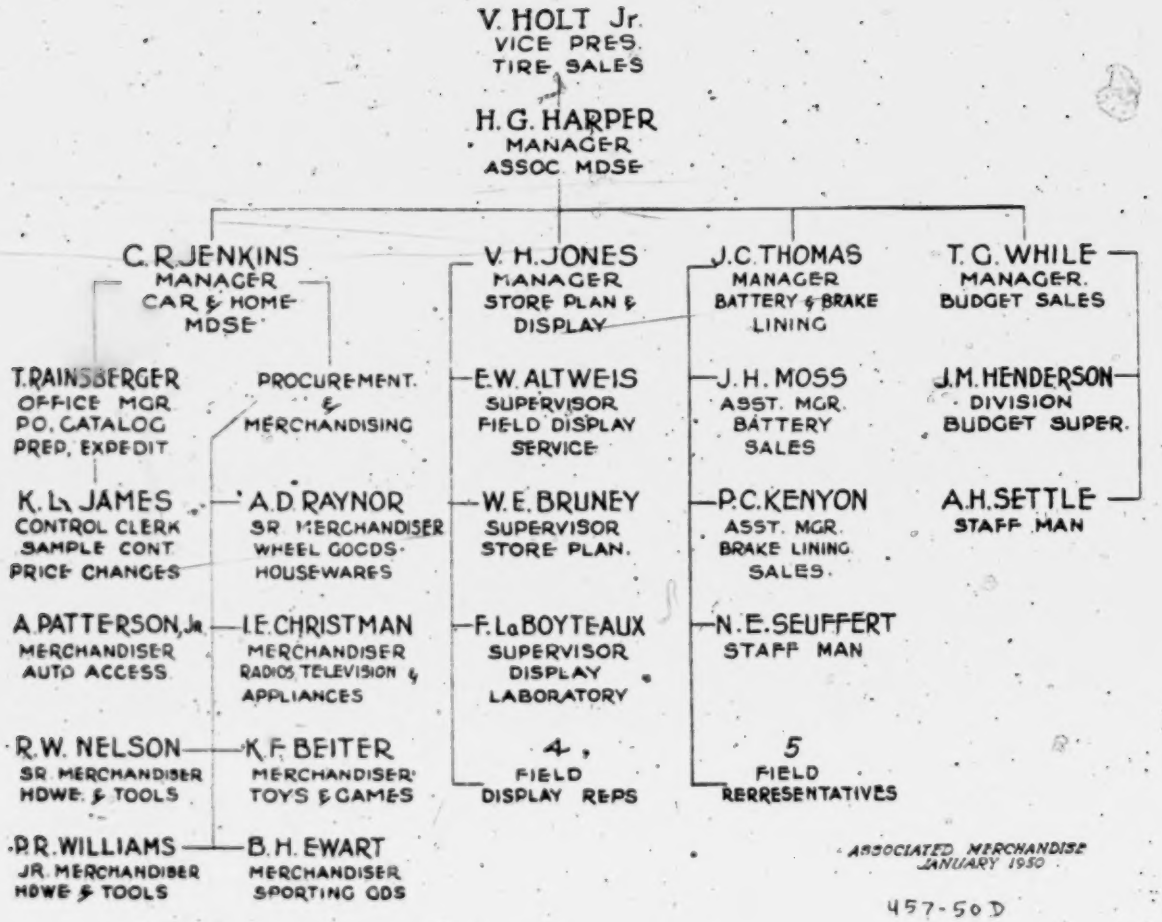


TIRE SALES DEPARTMENTS JANUARY 1950

457-50H

2017

COMMISSION EXHIBIT NO. 80B. 2624

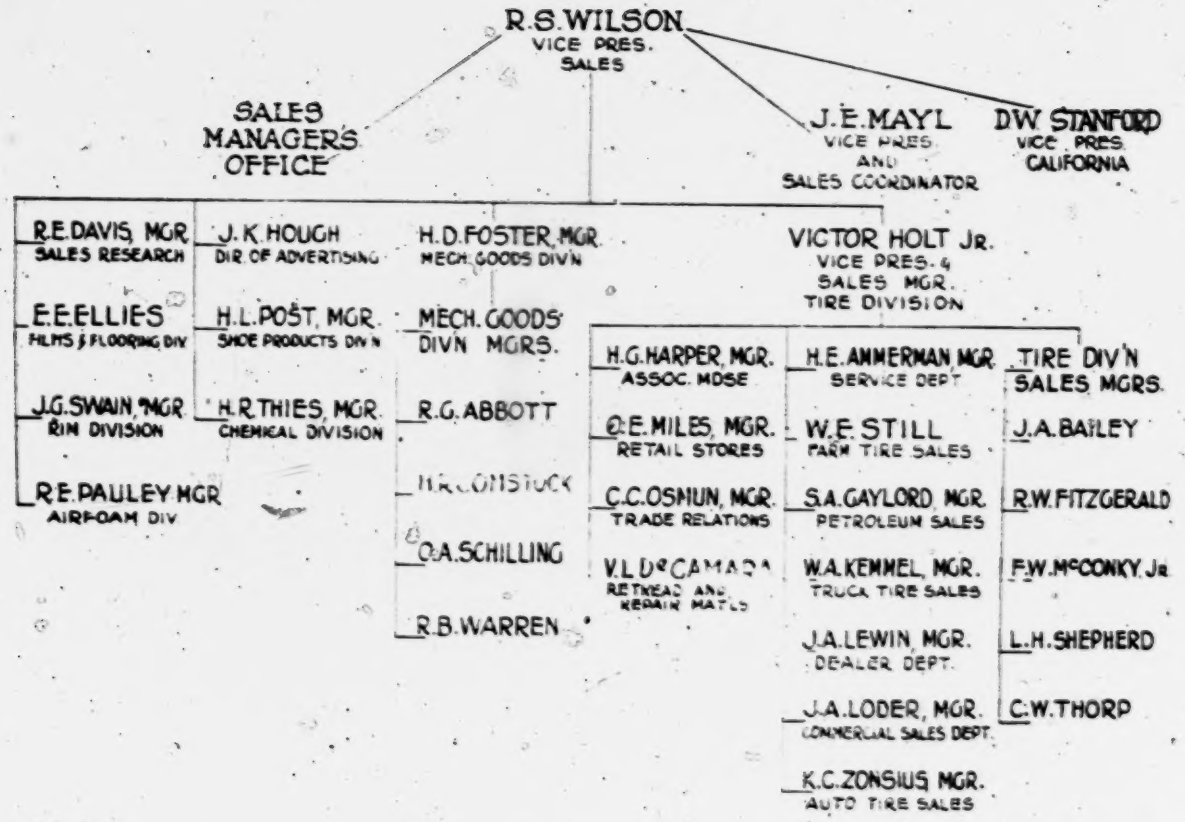


ASSOCIATED MERCHANDISE
JANUARY 1950

457-50 D

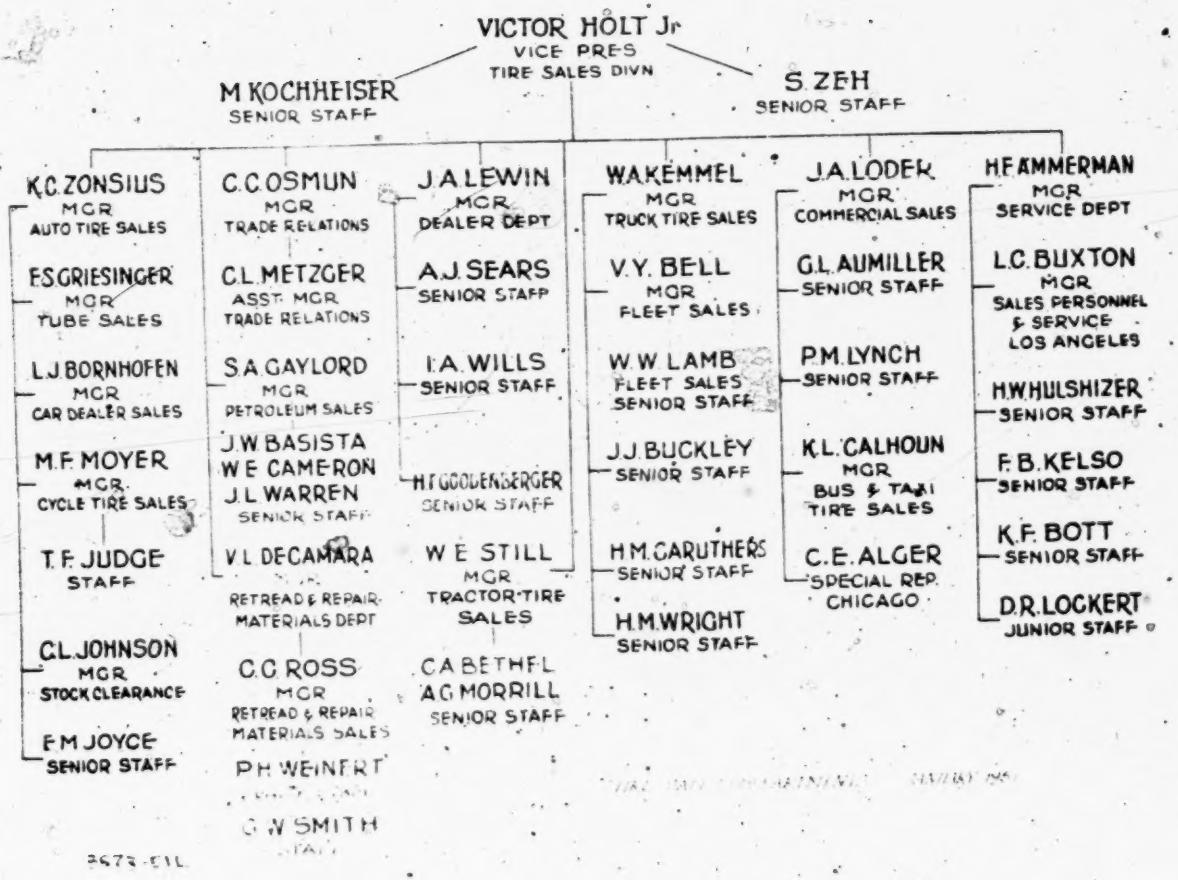
20-18

COMMISSION EXHIBIT NO. 80C. 2625



COMMISSION EXHIBIT NO. 80D.

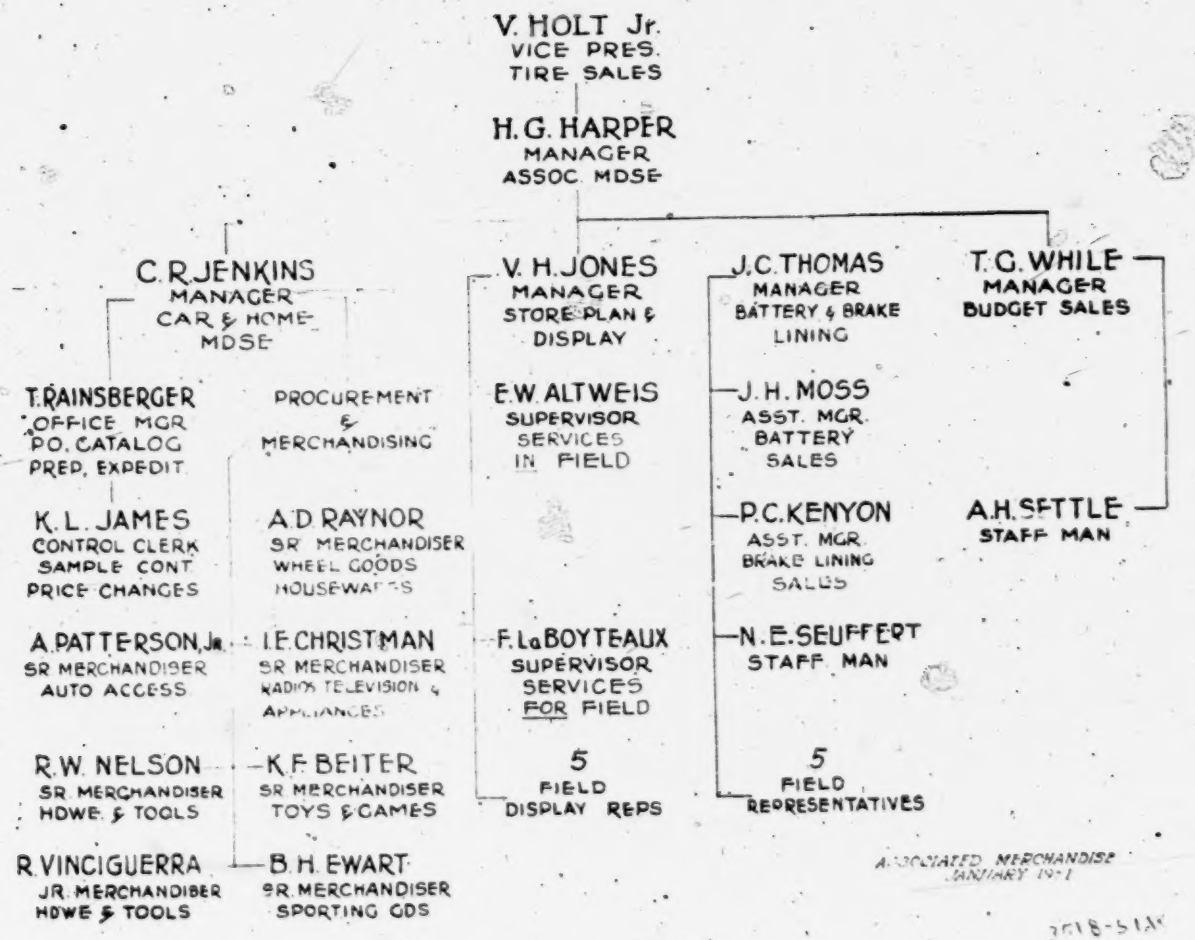
2049



2050

COMMISSION EXHIBIT NO. 80E.

26227



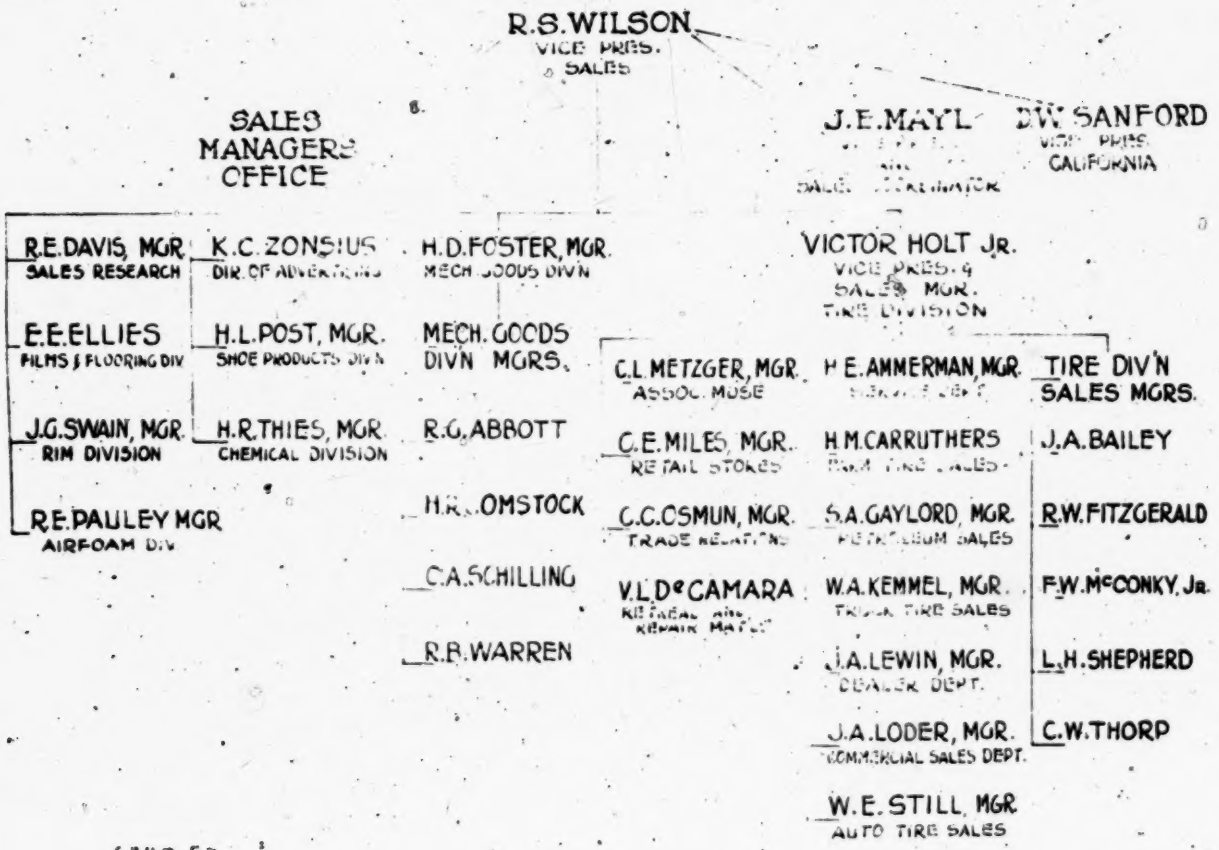
ASSOCIATED MERCHANDISE
JANUARY 19-1

3618-51X

2054

COMMISSION EXHIBIT NO. 80F.

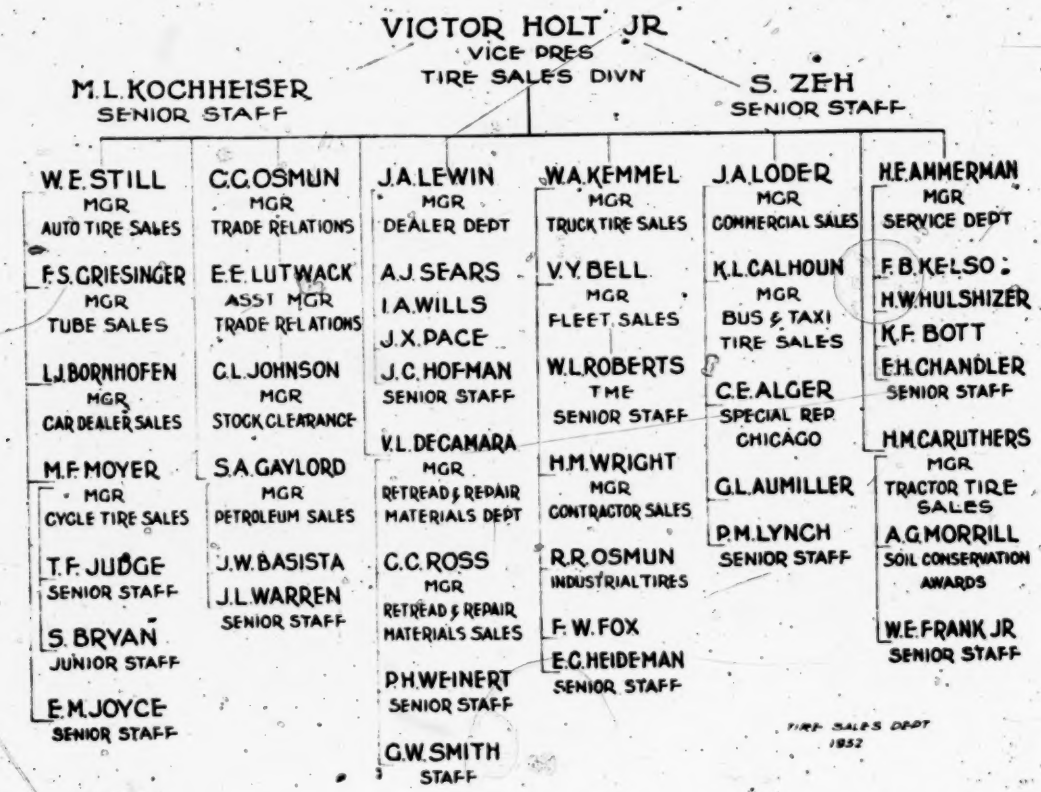
2628



6947-52

2052

COMMISSION EXHIBIT NO. 806. 2629

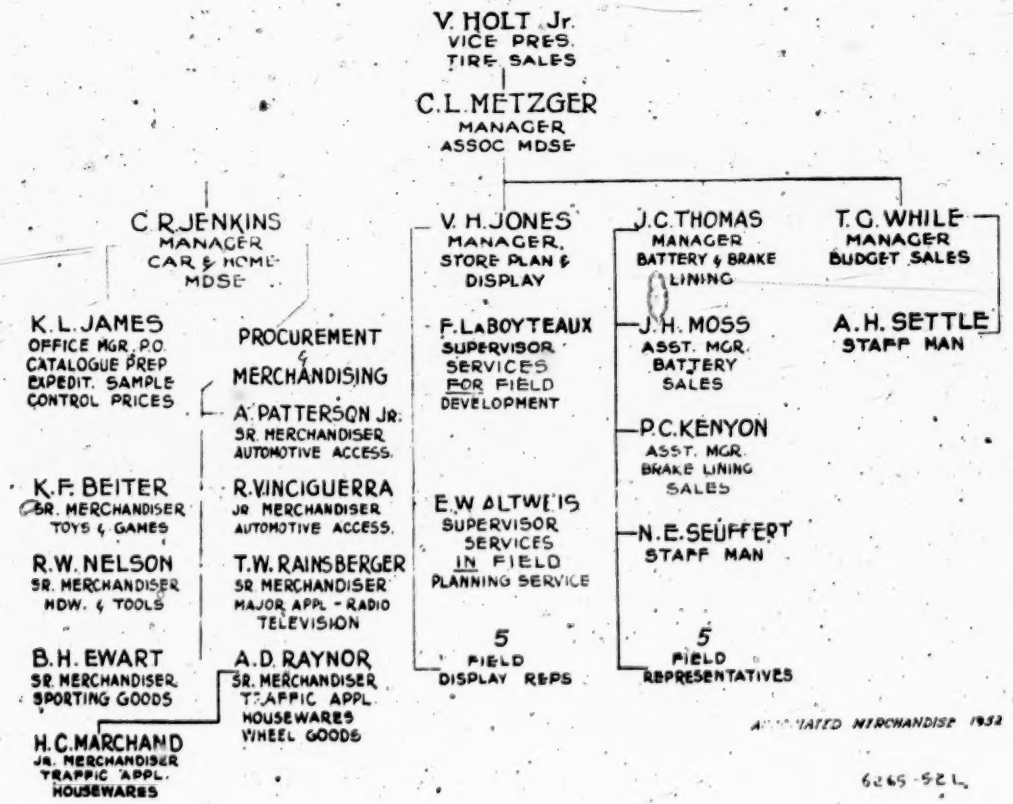


6265-52 M

2053

COMMISSION EXHIBIT NO. 80H.

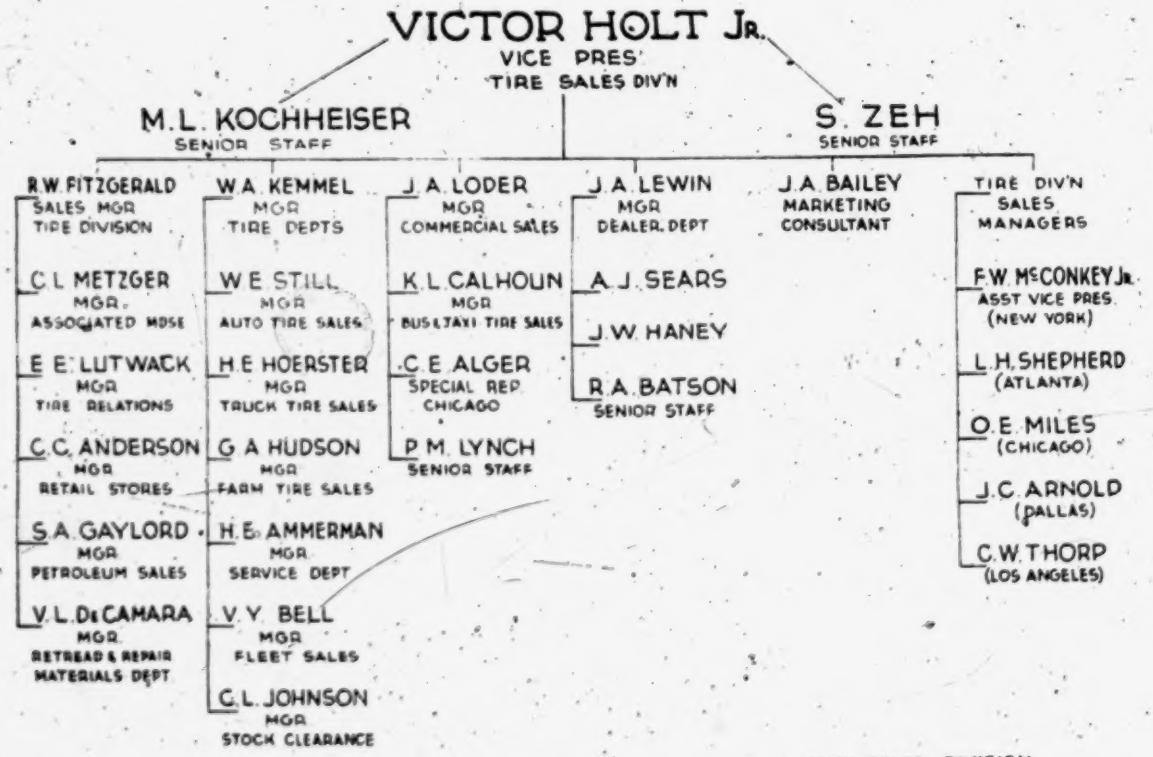
26330



COMMISSION EXHIBIT NO. 801

2631

2054



TIRE SALES DIVISION
1953

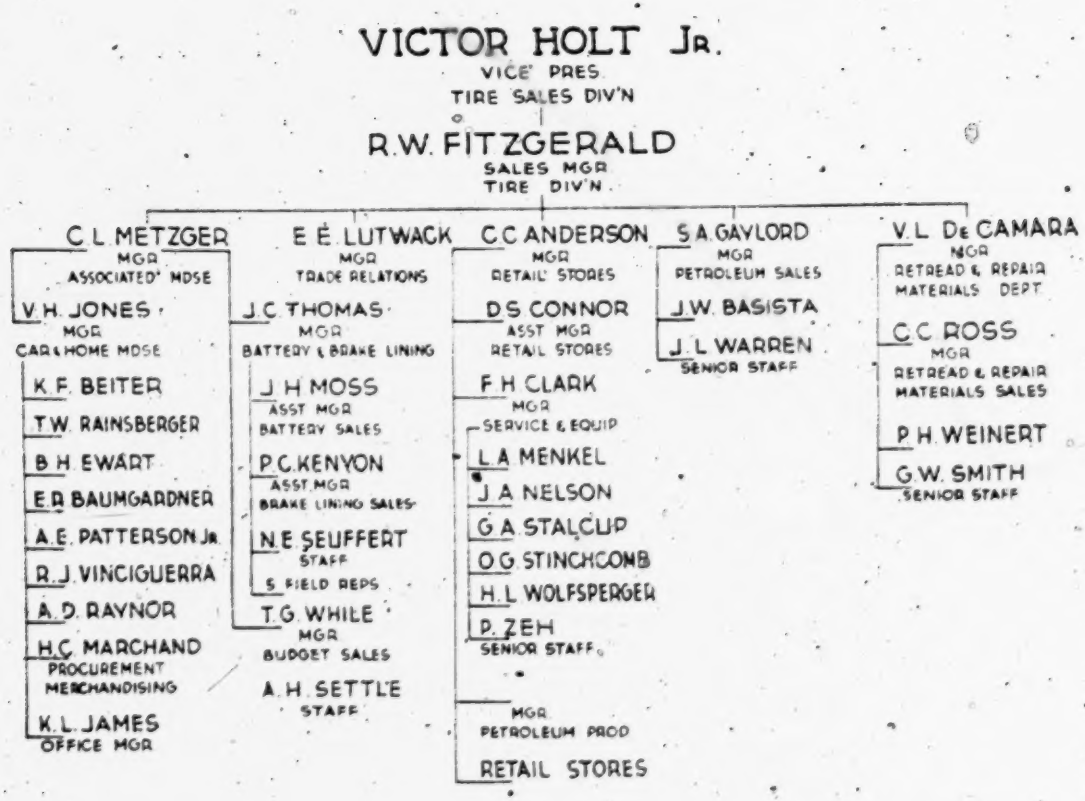
9539-53 G

COMMISSION EXHIBIT NO. 80J.

26,32

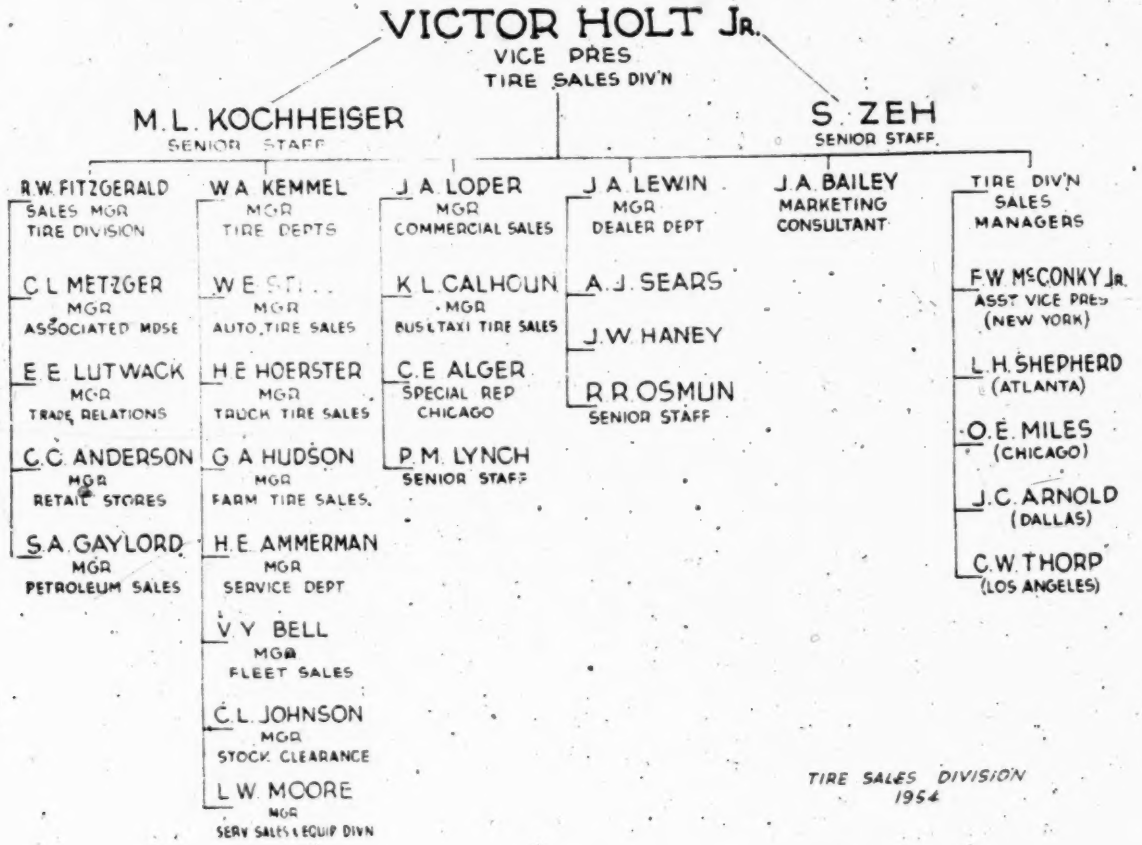
2032

COMMISSION EXHIBIT NO. 80K
26-53



1953-53K

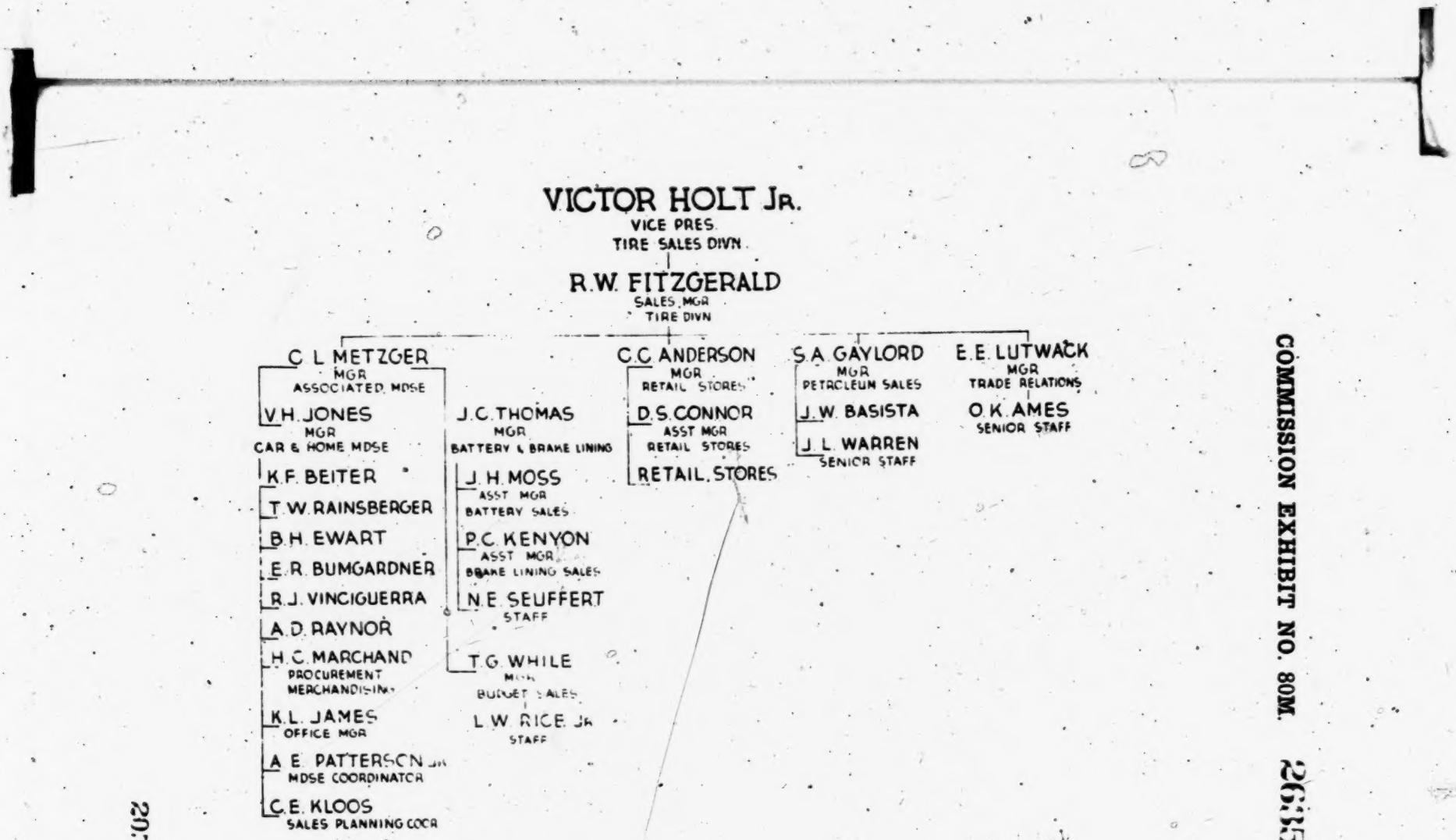
TIRE DIVISIONS 1953



TIRE SALES DIVISION
1954

COMMISSION EXHIBIT NO. 801

26534



2058

COMMISSION EXHIBIT NO. 80M

26,35

VICTOR HOLT JR.
VICE PRES.
TIRE SALES DIV'N

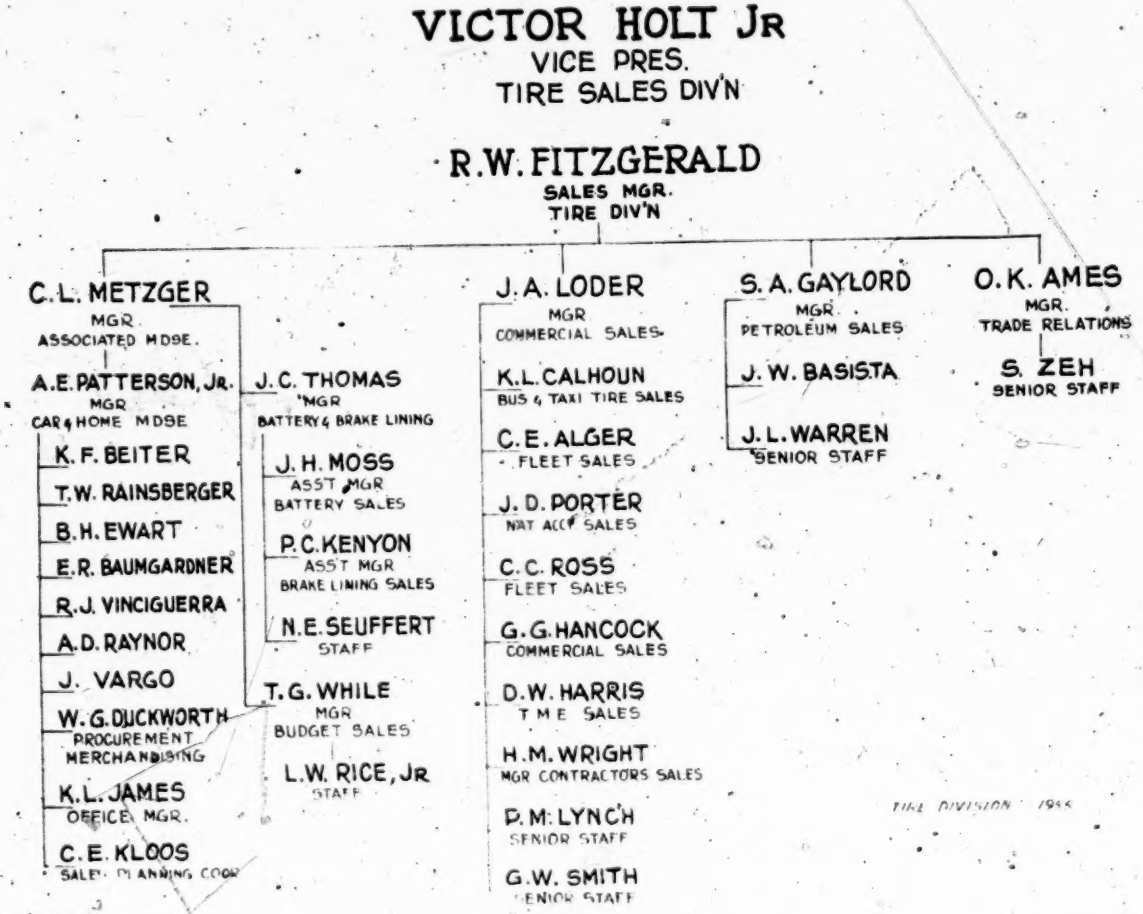
- R.W. FITZGERALD — SALES MGR. TIRE DIVISION
- C.L. METZGER — MGR. ASSOCIATED MDSE
- O.K. AMES — MGR. TRADE RELATIONS
- J.A. LODGER — MGR. COMMERCIAL SALES
- S.A. GAYLORD — MGR. PETROLEUM SALES
- W.A. KEMMEL — MGR. TIRE DEPT.
- W.E. STILL — MGR. AUTO TIRE SALES
- G.A. HUDSON — MGR. TRUCK TIRE SALES
- J.R. JOLLEY — MGR. FARM TIRE SALES
- H.E. AMMERMAN — MGR. SERVICE DEPT.
- C.L. JOHNSON — MGR. STOCK CLEARANCE
- L.W. MOORE — MGR. SERVICE SALES & EQUIP DIV'N
- O.E. MILES — GEN'L MGR. RETAIL STORES
- D.S. CONNOR — OPERATIONS MGR. RETAIL STORES
- MERCHANDISE MGR.
- L.E. GERVAIS — ASST. MDSE. MGR.
- G.P. WHITE — MGR. SERVICE SALES
- V.H. JONES — MGR. PLANNING & ADV'TG.
- R.F. HANNER — SPECIAL REPR.
- J.A. LEWIN — MGR. DEALER DEPT.
- A. J. SEARS
- J.W. HANEY
- R.R. OSMUN — SENIOR STAFF
- TIRE DIV'N — SALES MGRS.
- F.W. McCONKY, Jr. — ASST. VICE PRES. (NEW YORK)
- L.H. SHEPHERD (ATLANTA)
- L.W.C. DYE (CHICAGO)
- J.C. ARNOLD (DALLAS)
- C.W. THORP (LOS ANGELES)
- J.G. HUNTER — OPER. MGR.

TIRE SALES DIVISION - 1955 (AKRON)

COMMISSION EXHIBIT NO. 80N

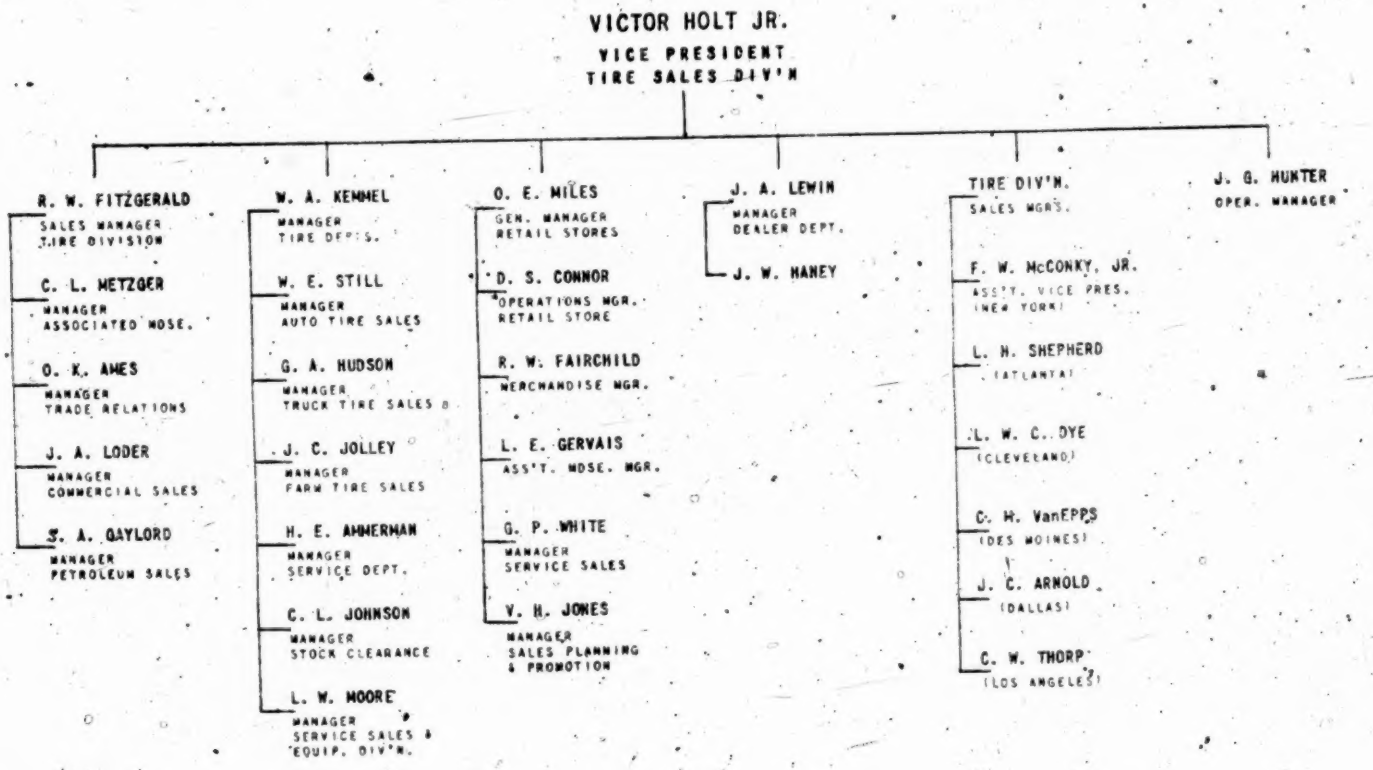
26956

2753



COMMISSION EXHIBIT NO. 800

26,357



TIRE SALES DIVISION - 1956
(AKRON)

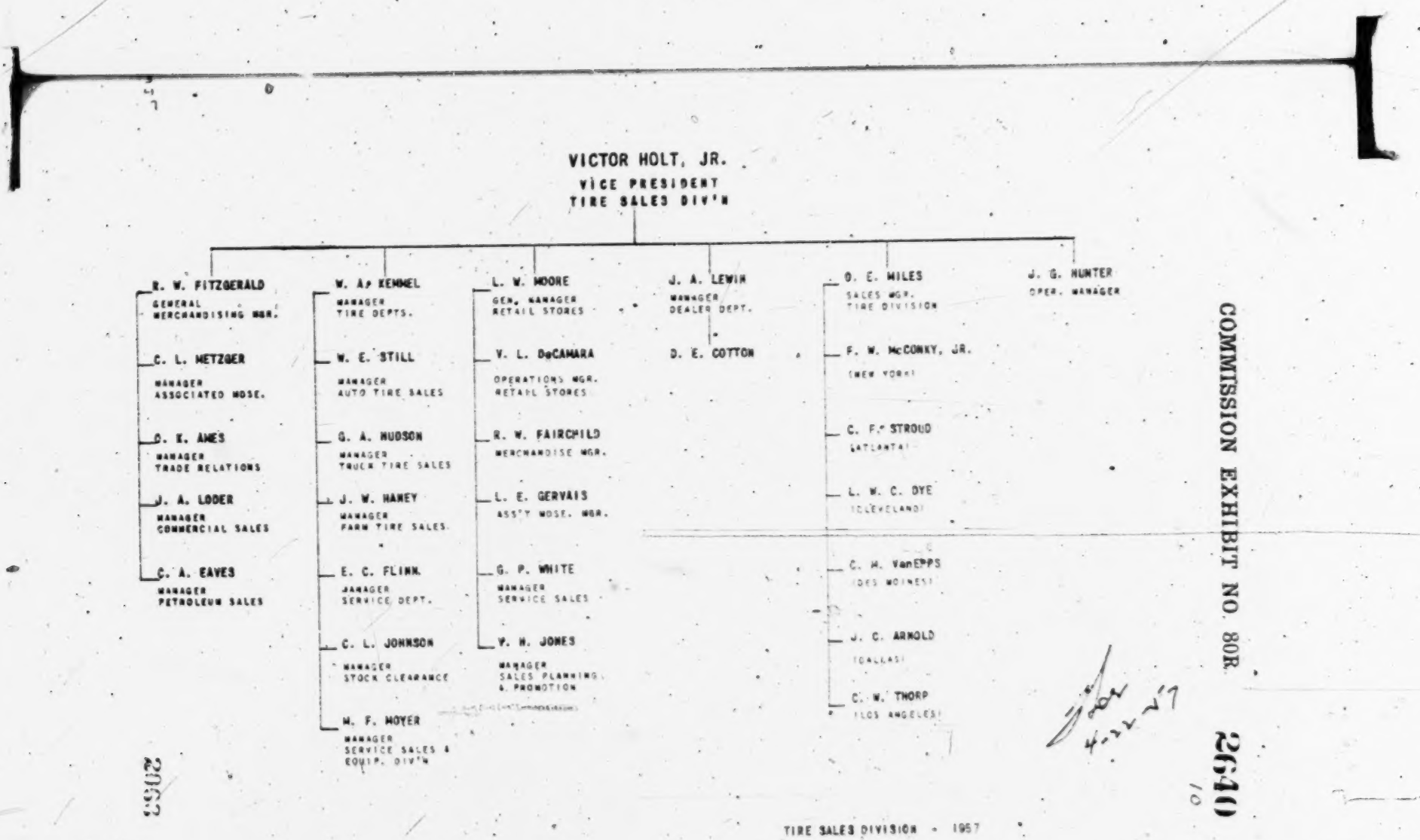
COMMISSION EXHIBIT NO. 808

2963

1962

COMMISSION EXHIBIT NO. 2659

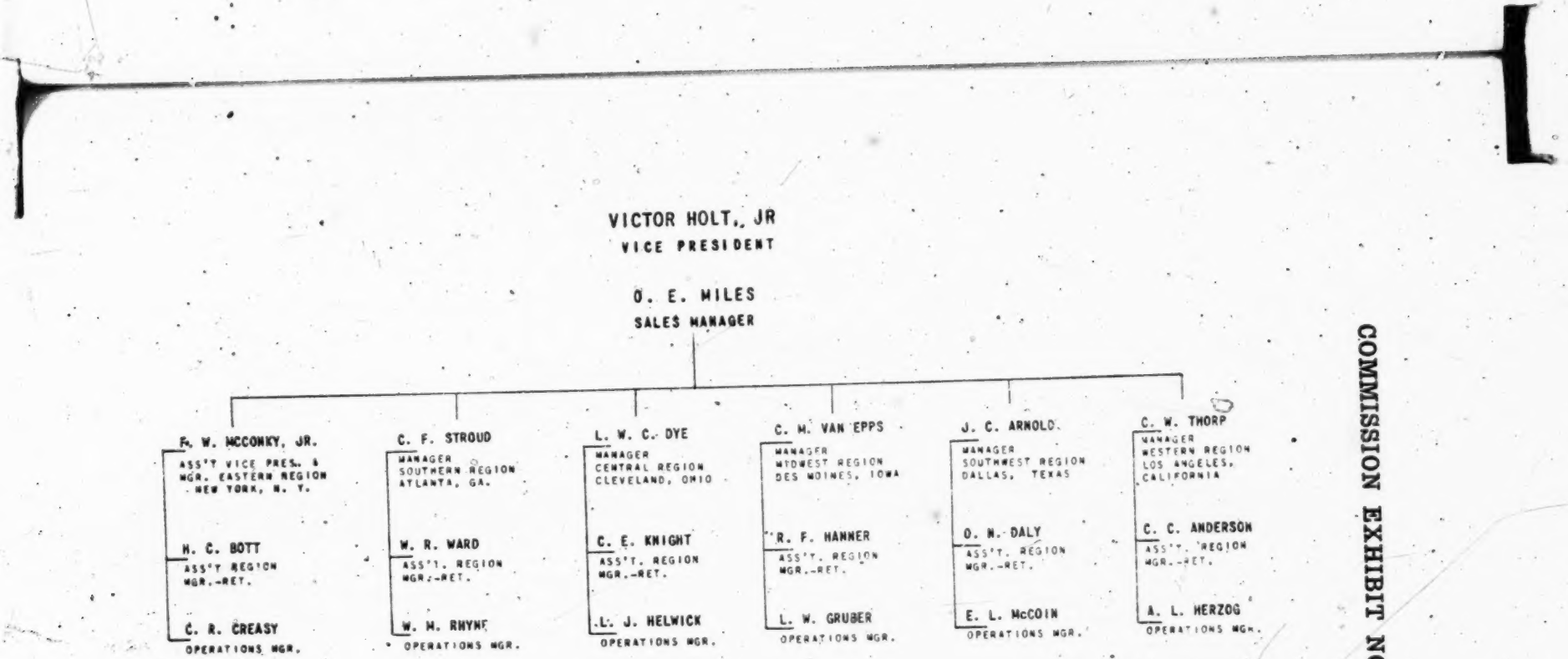
2659



TIRE SALES DIVISION - 1957
(AKRON)

COMMISSION EXHIBIT NO. 808

26540

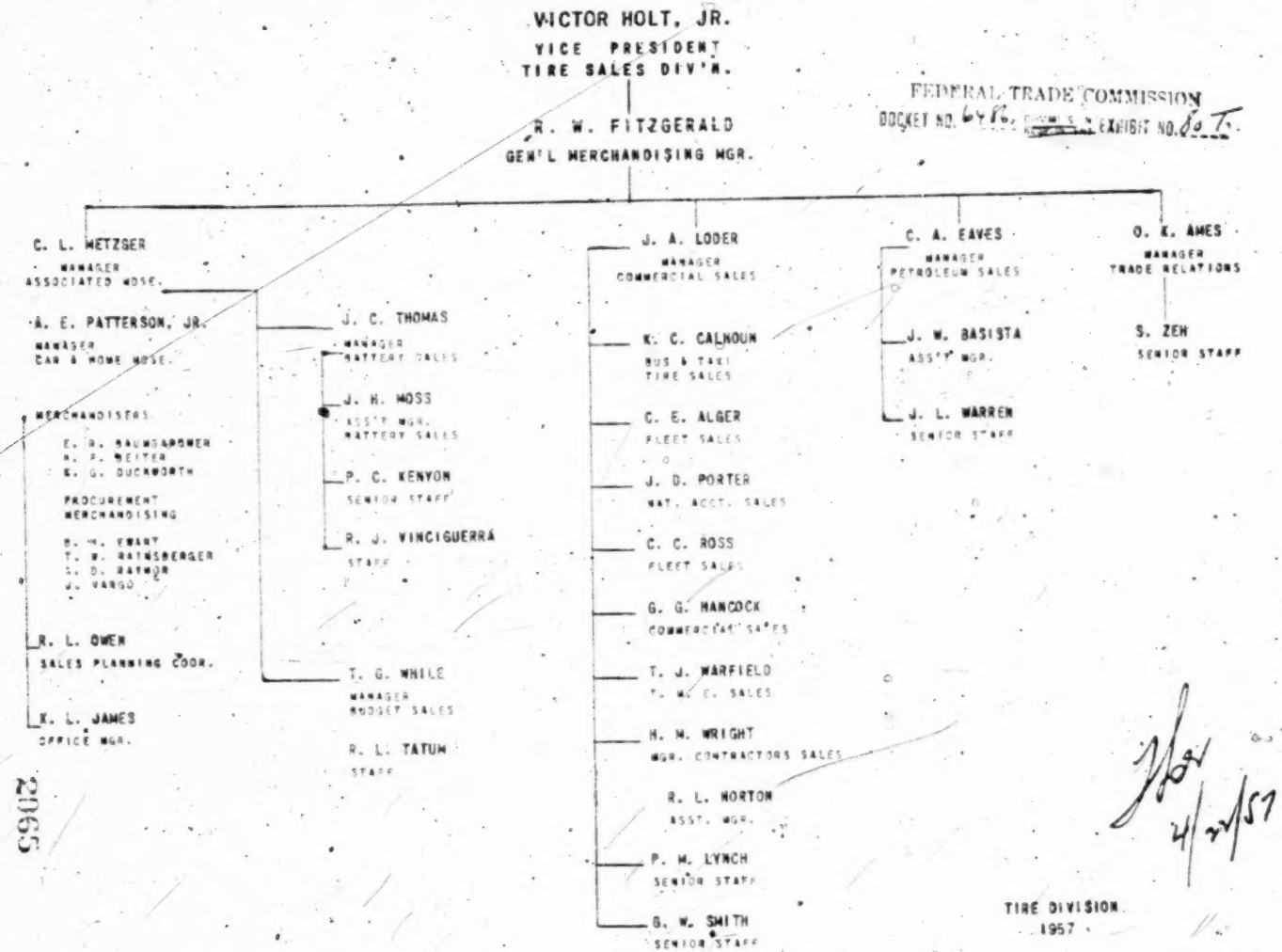


TIRE SALES DIVISION - 1957
(FIELD)

4-22-57

2063

COMMISSION EXHIBIT NO. 808 2641



FEDERAL TRADE COMMISSION
DOCKET NO. 6486 EXHIBIT NO. 80 T.

COMMISSION EXHIBIT NO. 80T. 26442

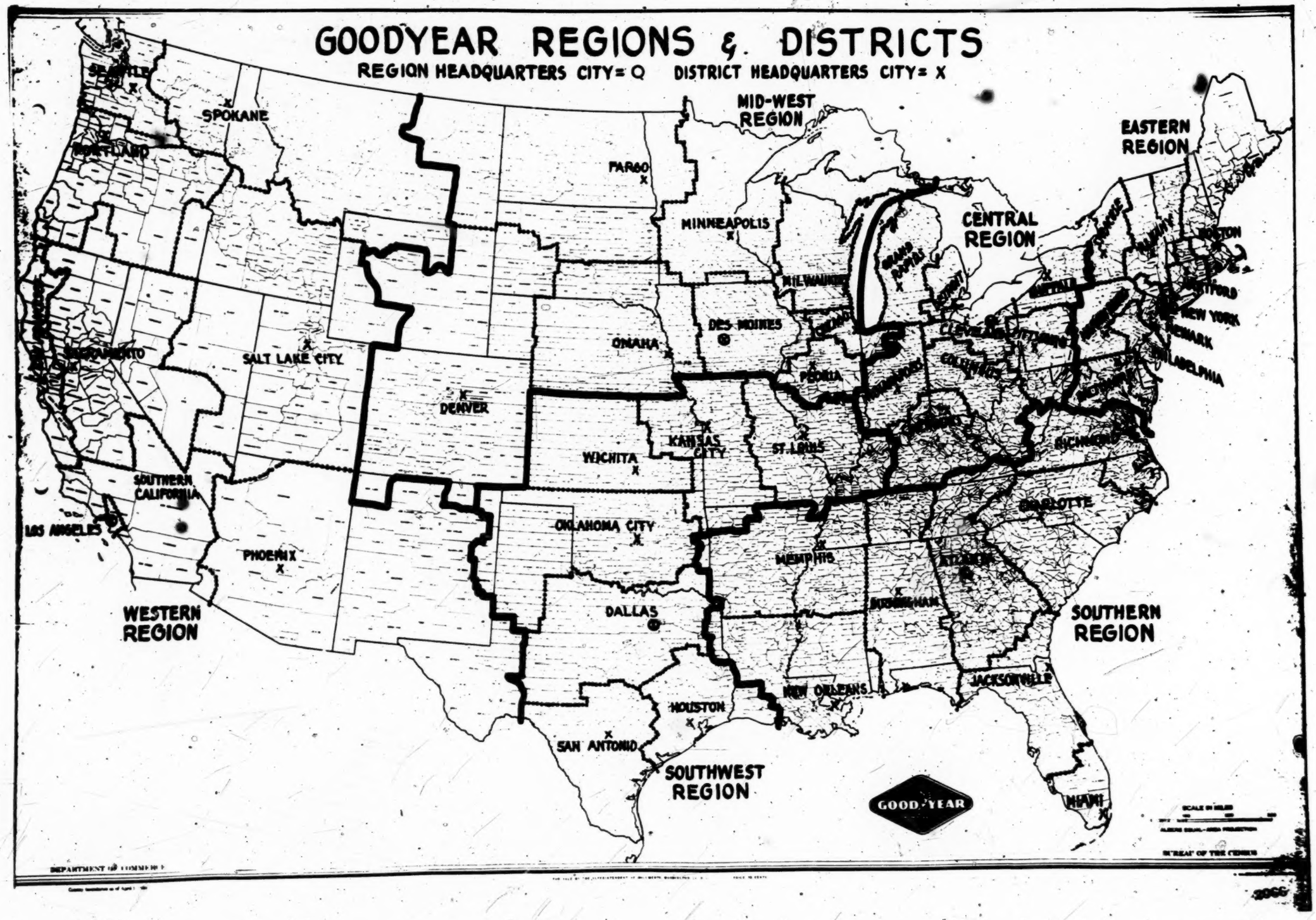
2965

4/22/57

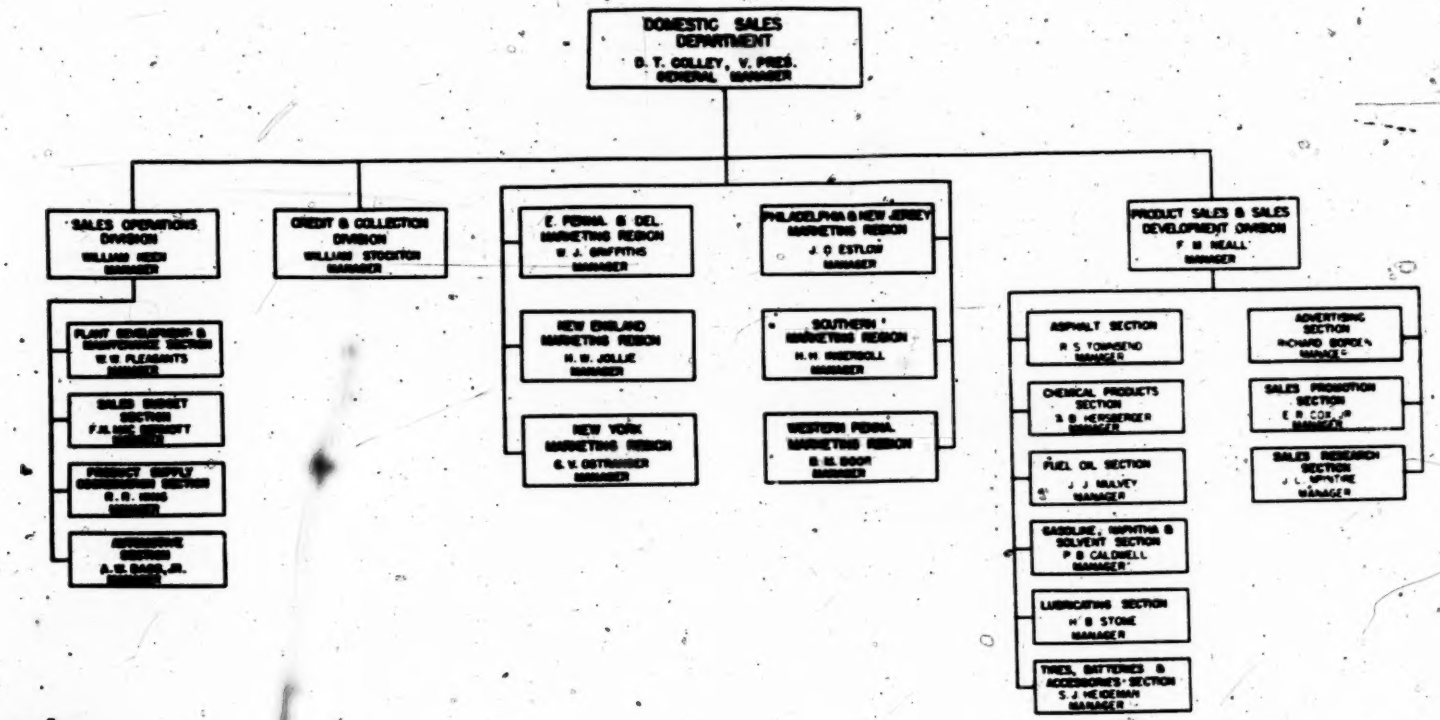
12

TIRE DIVISION
1957

COMMISSION EXHIBIT NO. 80U.



THE ATLANTIC REFINING COMPANY
DOMESTIC SALES DEPARTMENT

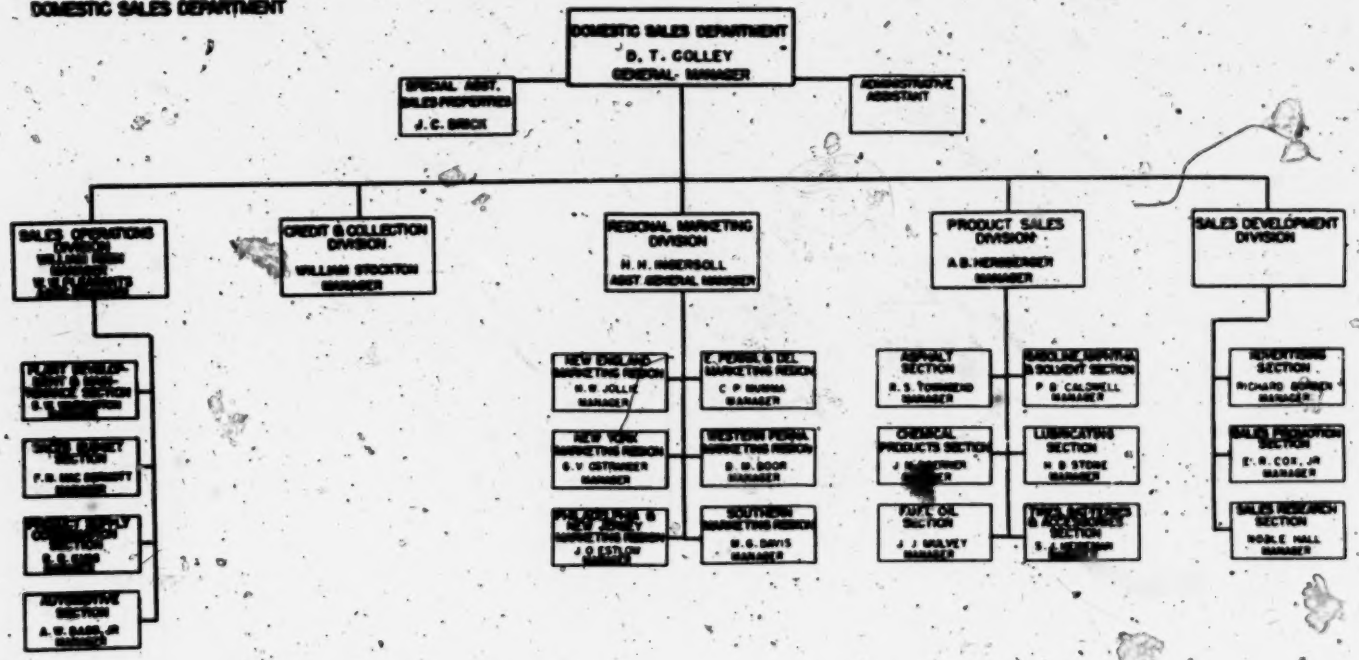


COMMISSION EXHIBIT NO. 81A.

2644

2068

THE ATLANTIC REFINING COMPANY
DOMESTIC SALES DEPARTMENT



APPROVED D T Golley
DATE 6-27-52

2070

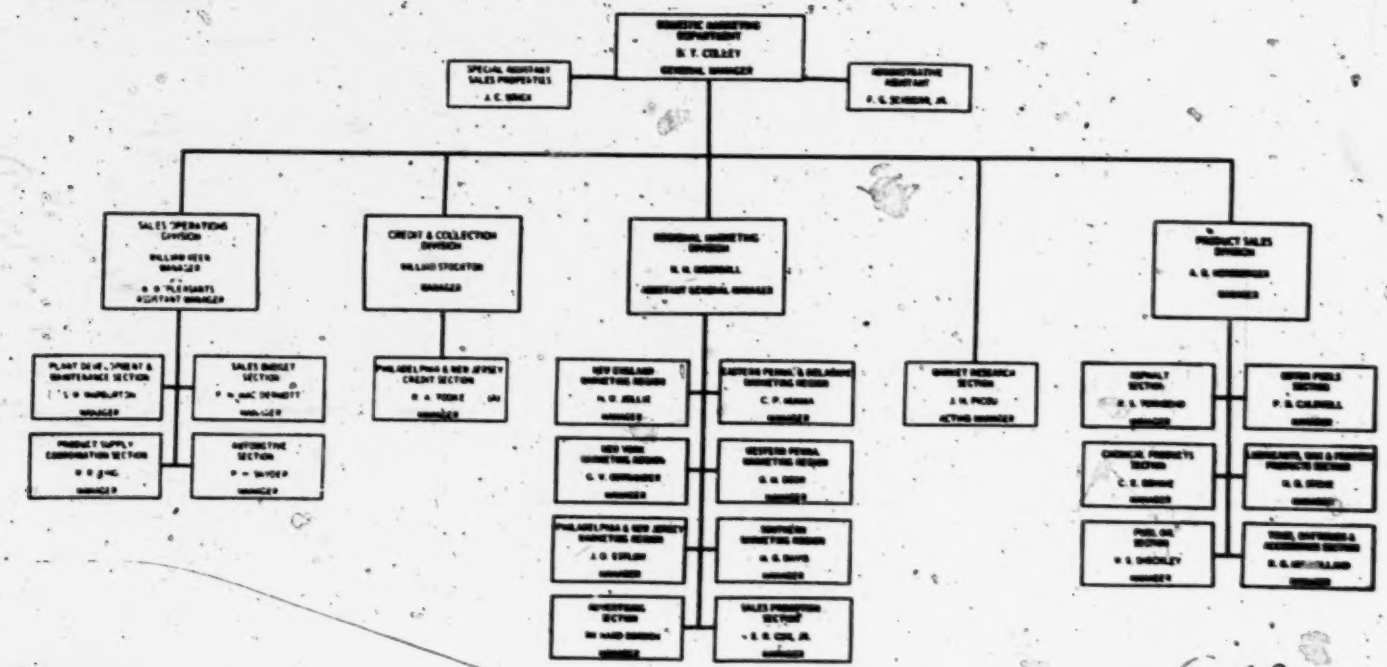
COMMISSION EXHIBIT NO. 818.

26445

THE ATLANTIC REFINING COMPANY

MARKETING

DOMESTIC MARKETING DEPARTMENT

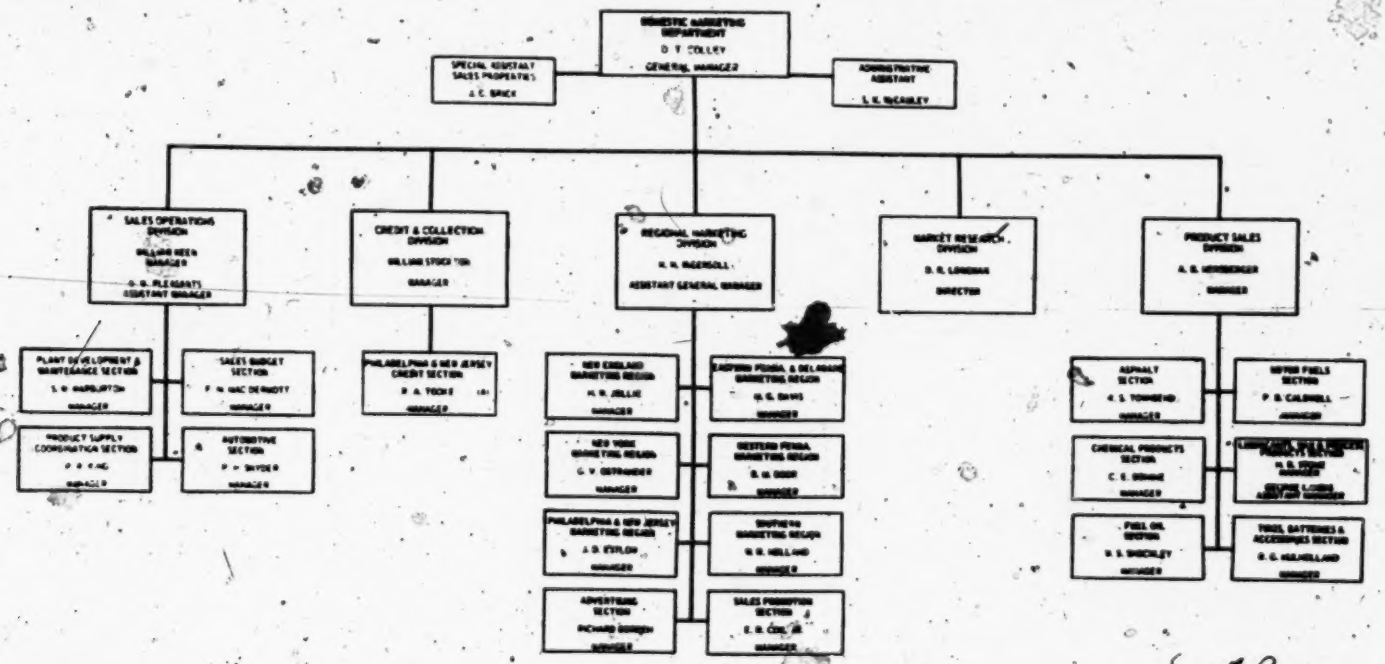


COMMISSION EXHIBIT NO. 810.

2646

2072

THE ATLANTIC REFINING COMPANY
MARKETING
DOMESTIC MARKETING DEPARTMENT



G- INDICATES ALTERNATE FOR [redacted] SUPERVISOR

[redacted]

APPROVED 19 Colley
DATE 12-26-51

COMMISSION EXHIBIT NO. 818

26,427

2074

THE ATLANTIC REFINING COMPANY

MARKETING

DOMESTIC MARKETING DEPARTMENT

(A) INDICATES ALTERNATE FOR IMMEDIATE SUPERVISOR

APPROVED D. F. Colley

DATE 11-4-58

COMMISSION EXHIBIT NO. 81E.

COMMISSION EXHIBIT NO. 814

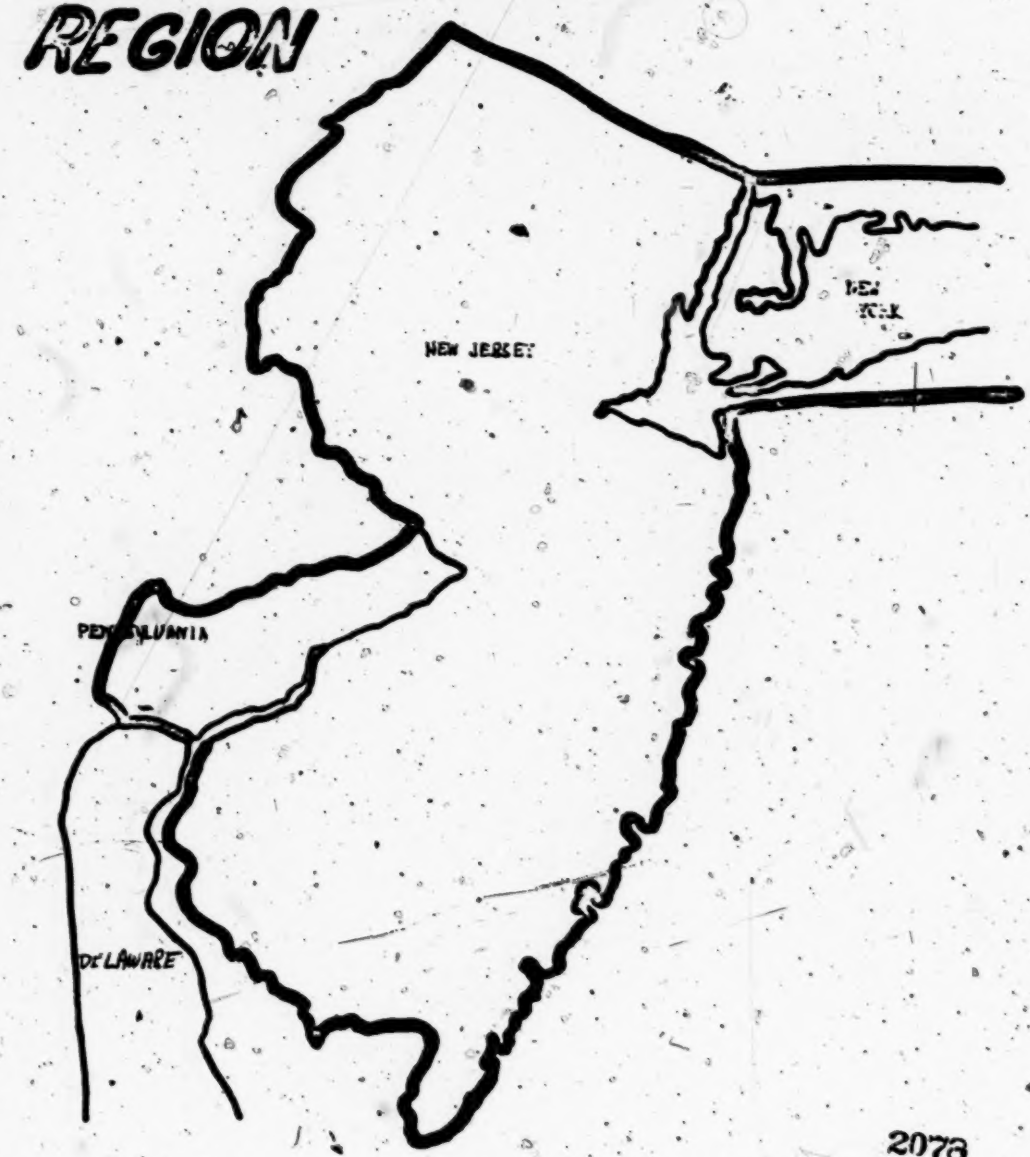
2649

2077

2077

COMMISSION EXHIBIT NO. 82A. 2650

PHILA-NEW JERSEY REGION



2073

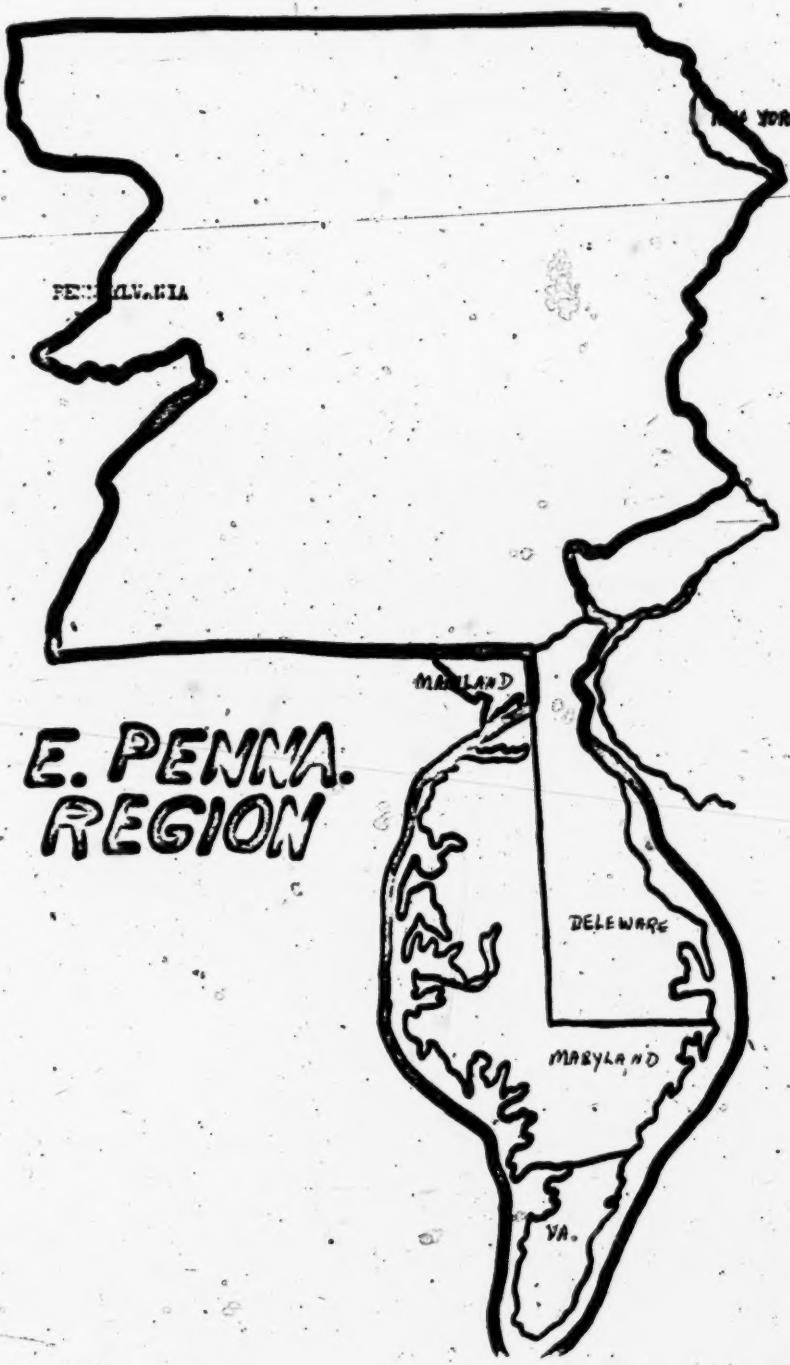
COMMISSION EXHIBIT NO. 82B. 2651

COMMISSION EXHIBIT NO. 820. 2652

NEW ENGLAND REGION

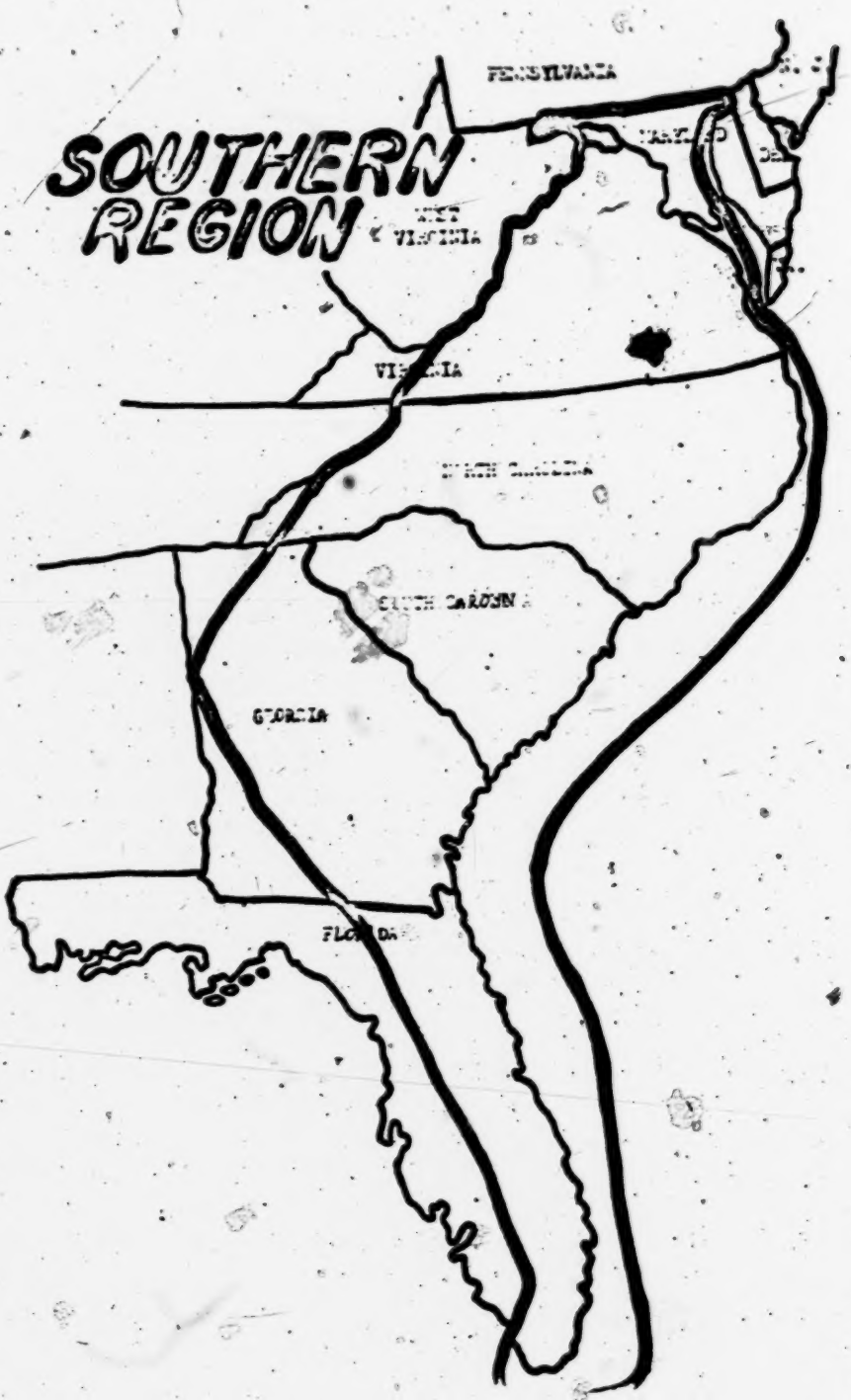
COMMISSION EXHIBIT NO. 83A. 2653

COMMISSION EXHIBIT NO. 83B. 2654



2084

COMMISSION EXHIBIT NO. 830 2655



2088 COMMISSION EXHIBIT NO. 84A-B.

The Atlantic Refining Company's domestic marketing program covering automotive petroleum products is conducted by six Marketing Regions, consisting of—

1. New England Region, comprising the states of Rhode Island, Connecticut, Massachusetts, and portions of New Hampshire and Vermont. Headquarters are in Providence, R. I.
2. New York Region, comprising the state of New York. Headquarters are in Syracuse, N. Y.
3. Philadelphia-New Jersey Region, comprising the city of Philadelphia and the suburban area contiguous thereto, as well as the entire state of New Jersey. Headquarters are in Philadelphia, Pa.
4. Eastern Pennsylvania Region, comprising the eastern half of Pennsylvania except the Philadelphia and Suburban area; also comprising the entire state of Delaware and portions of Maryland and Virginia. Headquarters are in Reading, Pa.
5. Western Pennsylvania Region, comprising the western half of Pennsylvania and portions of Ohio, West Virginia and Maryland. Headquarters are in Pittsburgh, Pa.
6. Southern Region, comprising portions of Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia and Florida. Headquarters are in Charlotte, N. C.

Maps showing the approximate area covered by each Marketing Region are attached.

Method of Distribution of Automotive Petroleum Products

Automotive petroleum products (gasoline, motor oils & greases) are marketed through the following classes of trade—

Class I—Retail service station outlets operated by employees of the Company. In 1951, gasoline sales through this channel amounted to 1% of total regional gasoline sales.

Class II—Retail service station outlets operated by a dealer, where the Company owns or leases land and/or building. 1951 gasoline sales through such outlets amounted to 32% of total regional gasoline sales.

2090 Class III—Retail outlets operated by a dealer not included under Class II, i.e., who owns or leases the outlet himself. 1951 gasoline sales through such outlets amounted to 23% of total regional gasoline sales.

Class IV—Customers who purchase products for their own consumption and not for resale. 1951 gasoline sales to such customers amounted to 15% of total regional gasoline sales.

The foregoing four classes of trade constitute the direct marketing phase of the regional sales program and accounted for 71% of total regional gasoline sales in 1951.

Class V—Wholesale dealers, not under contract, who load at Company plants in their own trucks. Such sales are known as yard sales and accounted for 3% of total regional gasoline sales in 1951.

Class VI—Distributors who purchase automotive products for resale under Atlantic brand names and who maintain bulk plant storage capable of receiving truck transport deliveries of gasoline, who maintain and operate their own delivery equipment and who receive transport deliveries into their bulk plant storage tanks. These customers represented 24% of total regional gasoline sales in 1951.

Class VII—Customers who purchase products for resale and who do not resell under Atlantic's brand name. These customers represented 2% of total regional gasoline sales in 1951.

The foregoing three classes of trade represent the indirect marketing segment of regional sales activity and accounted for 29% of total regional gasoline sales in 1951.

Special Sales—In addition to regional sales, there are occasional special sales of automotive petroleum products which are administered by Division Headquarters in Philadelphia. Such sales in 1951 amounted to ½ of 1% of total Company domestic gasoline sales.

JVP:TMM
8/21/52

2092 COMMISSION EXHIBIT NO. 84C.

Addition to Description of
Atlantic's Domestic Marketing Program

Commission distributors who receive automotive products on consignment and upon sale of the product receive a commission from Atlantic as compensation for their activities. Sales percentage is small and included in Distributors—Class VI.

2094 COMMISSION EXHIBIT NO. 85A-B.

This Lease made as of the ..... day of ....., A. D. 19...., by and between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called "Atlantic," and .....

of ....., County of ....., State of ....., hereinafter called "Lessee":

Witnesseth:

1—Atlantic hereby leases unto Lessee for a term of .....year beginning on the..... day of....., 19...., and ending on the .....day of....., 19...., a parcel of land at.....in....., County of.....State of....., more particularly described as follows:

Together with all the buildings, improvements and appurtenances, all hereinafter called "leased premises," and together with all Atlantic's equipment and apparatus installed or to be installed thereon and used in connection with the gasoline service station business conducted on said leased premises.

2—Lessee shall pay to Atlantic rental at the rate of .....Dollars ($.....) per month. The first payment shall be made on or before the first day of said term and thereafter payments shall be made on or before the first day of each calendar month during the continuance of this lease. In addition thereto, on or before the fifteenth day of each calendar month, Lessee shall pay to Atlantic the sum of.....cent (c) per gallon on each gallon of gasoline and motor fuel delivered to said leased premises

during the preceding calendar month over and above .....gallons.

2096 3—Lessee shall pay all charges for telephone, sewerage, water, gas, and electricity consumed or used by Lessee, and all expense of heating, and also shall pay all privilege, license and other municipal charges levied against Lessee, the said equipment and apparatus or against the leased premises by reason of the conduct of Lessee's business thereon.

4—Atlantic shall pay all other taxes, assessments and governmental or municipal charges levied or assessed upon the leased premises.

5—Lessee shall maintain and make all repairs and replacements needed to the leased premises and the said equipment and apparatus and shall keep the same in an orderly, safe and operating condition. In case any of said equipment or apparatus is damaged, or is lost or stolen, Lessee shall replace or repair the same at Lessee's own cost and expense.

6—Lessee shall keep said leased premises clean and sanitary and shall keep free from snow, ice and all obstructions the sidewalks thereof and shall remove promptly all refuse of any kind therefrom.

7—Lessee shall not install or permit installation on the leased premises of electrical appliances of any kind, including radios, vulcanizers and similar apparatus, without complying with the rules and regulations of the National Board of Fire Underwriters.

8—Lessee shall not install or permit installation of any gambling devices or conduct or permit the conduct of any business or the sale of any products on the leased premises in violation of any local, state or federal laws.

9—Lessee shall be responsible for full and exclusive control of the leased premises and of the equipment and apparatus thereon, and shall indemnify and save harmless

Atlantic from and against any and all claims, suits, actions, damages and causes of action for any personal injury, loss of life and property damage sustained in or about the leased premises or upon the adjacent sidewalks and streets during the continuance of this lease, and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claims, the investigation thereof, or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and decrees that may be entered therein. Lessee shall procure, at Lessee's own cost and expense and from companies satisfactory to Atlantic such insurance as Atlantic may deem necessary for Atlantic's protection under the provisions of this paragraph.

10—Lessee, at Lessee's own expense, promptly shall observe and comply with all the laws, orders, regulations, rules, ordinances and requirements of the federal, state, county and municipal authorities affecting the said equipment and apparatus, the leased premises or the business conducted thereon. Lessee shall not use or permit the use of the leased premises or the equipment and apparatus in any manner which would or could cause an increase in any insurance rates affecting the said premises.

11—If, during the continuance of this lease, Lessee shall die, shall become involved in any insolvency or bankruptcy proceedings, shall abandon or remove from the leased premises or shall fail to market petroleum products regularly therefrom, Atlantic, at Atlantic's option, may terminate this lease.

12—Lessee shall not assign this lease or sublet the whole or any part of the leased premises or make any alterations or improvements thereon without written permission from Atlantic.

13—At the termination of this lease, Lessee shall deliver to Atlantic the leased premises, together with the equip-

ment and apparatus in the condition in which Lessee is obliged to keep the same.

14—This lease is subject to the terms and conditions of any existing lease or contract governing Atlantic's rights to the leased premises. Lessee hereunder, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms, or beyond the period of Atlantic's right thereto, anything in this lease, or any extension thereof, to the contrary notwithstanding.

15—If Lessee shall fail to make any payment of rent hereunder for ten (10) days after the same shall fall due, or shall fail to perform any of Lessee's obligations hereunder, or shall violate any condition herein contained, Atlantic, at Atlantic's option, may terminate this lease and at any time thereafter re-enter the leased premises and expel Lessee therefrom, without prejudice to other remedies. Whenever this lease shall terminate, either by lapse of time or by virtue of any of the provisions herein contained, Lessee hereby waives all right to any notice to quit possession as prescribed by any statute then in force relating to summary process.

16—As of the beginning of the term hereof any prior lease between the parties hereto affecting the lased premises shall be terminated.

17—Either party hereto may terminate this lease at the end of the original term hereof by giving to the other written notice of termination at least.....( ) days prior thereto, but in default of such notice, this lease shall continue upon the same terms and conditions as herein contained for another term of.....( ) year and so on for like terms until terminated by either party giving to the other at least..... ( ) days notice of termination prior to the expiration of any term. Any notice by either party to the other may

be given by registered mail, postage prepaid, addressed to Atlantic at ....., and to Lessee at the leased premises, subject to the right of either party to designate in writing a new address to which such notice may be sent.

In Witness Whereof, the parties hereto have duly executed this lease as of the day and year first above written.

The Atlantic Refining Company

By .....

Regional Manager of Marketing

Lessee

.....

.....

Witnesses:

.....

.....

.....

2098 COMMISSION EXHIBIT NO. 86A.-B.

Atlantic

This Lease made as of the ..... day of ....., A. D. 19...., by and between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called "Atlantic" and ..... of ....., County of ....., State of ....., hereinafter called "Lessee":

Witnesseth:

1—Atlantic hereby leases unto Lessee for a term of ..... year beginning on the ..... day of ....., 19....; and ending on the ..... day of ....., 19....., a parcel of land at ..... in ....., County of ..... State of .....; more particularly described as follows:

Together with all the buildings, improvements and appurtenances and all Atlantic's equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises."

2—Lessee shall occupy the leased premises for the sole purpose of operating a gasoline service station thereon and regularly shall engage in the sale of petroleum products therefrom.

3—Lessee shall pay to Atlantic rental at the rate of ..... cents (¢) per gallon on each gallon of gasoline and motor fuel delivered to said leased premises during the continuance of this lease,

Provided, However, that the minimum rental payable during each calendar month shall be ..... Dollars ($), such minimum rental to be payable on a pro rata basis for any portion of any calendar month during which this lease is in effect; And Provided Further, that the maximum rental payable for each complete calendar quarter during which this lease remains in effect and ending on the last days of March, June, September and December shall be, respectively, $....., $....., $..... and $..... Rental shall be payable at the time and times such gasoline and motor fuel is delivered to the leased premises and the minimum monthly rental shall be payable on or before the last day of each calendar month.

2099 4—Lessee shall pay all charges for telephone, sewerage, water, gas, and electricity consumed or used by Lessee, and all heating and cesspool cleaning expense, and also shall pay all privilege, license and other municipal charges levied against Lessee or against the leased premises by reason of the conduct of Lessee's business thereon.

5—Atlantic shall pay all other taxes, assessments and governmental or municipal charges levied or assessed upon the leased premises.

6—Lessee shall maintain and make all repairs and replacements to the leased premises and shall keep the same in an orderly and safe operating condition, provided, however, that if Lessee gives notice to Atlantic of the need thereof, Atlantic shall make necessary repairs or replacements to the leased premises. Where repairs or replacements are necessitated by Lessee's negligence, or that of his employees, the cost thereof to Atlantic shall be considered as additional rent and payable as such on the first day of the calendar month next succeeding the month in which such repairs are made.

7—Lessee shall keep the leased premises clean and sanitary and shall keep the adjacent sidewalks free from snow, ice, and obstructions, and shall remove promptly all refuse of any kind therefrom. If the service station building is faced with porcelain enamel, Lessee shall comply with such cleaning procedures and techniques as Atlantic may establish from time to time.

8—Lessee shall not install or permit installation on the leased premises of electrical appliances of any kind, including radios, vulcanizers and similar apparatus, without complying with the rules and regulations of the National Board of Fire Underwriters.

9—Lessee shall not install or permit installation of any gambling devices or conduct or permit the conduct of any business or the sale of any products on the leased premises in violation of any local, state or federal laws.

10—Lessee shall be responsible for full and exclusive control of the leased premises and shall indemnify and save harmless Atlantic from and against any and all claims, suits, actions, damages and causes of action for any personal injury, loss of life and property damage sustained in or about the leased premises or upon the adjacent sidewalks and streets during the continuance of this lease, and from and against all costs, counsel fees, expenses and lia-

bilities incurred in and about any such claims, the investigation thereof, or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and decrees that may be entered therein. Lessee shall procure, at Lessee's own cost and expense and from companies satisfactory to Atlantic such insurance as Atlantic may deem necessary for Atlantic's protection under the provision of this paragraph.

11—Lessee, at Lessee's own expense, promptly shall observe and comply with all the laws, orders, regulations, rules, ordinances and requirements of the federal, state, county and municipal authorities affecting the leased premises or the business conducted thereon. Lessee shall not use or permit the use of the leased premises in any manner which would or could cause an increase in any insurance rates affecting the said premises.

12—If Lessee dies during the continuance of this lease, this lease shall terminate automatically without notice from Atlantic to Lessee. If during the continuance of this lease, Lessee abandons or removes from the leased premises, or becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Atlantic, at Atlantic's option, may terminate this lease forthwith by giving Lessee written notice of termination.

13—This lease shall not be assigned by Lessee, either voluntarily or by operation of law and Lessee shall not sublet the whole or any part of the leased premises. Without Atlantic's prior written consent, which shall not be unreasonably withheld, Lessee shall not make any alterations or improvements to the leased premises or alter, remove, deface or obliterate any signs, trademarks or color arrangements appearing on the leased premises, or add to the leased premises, including fences, any permanent signs which are nailed, screwed, bolted or otherwise attached thereto.

14—At the termination of this lease, Lessee shall deliver to Atlantic the leased premises in the condition in which Lessee is obligated to keep the same hereunder, reasonable wear and tear excepted.

15—This lease is subject to the terms and conditions of any existing lease or contract governing Atlantic's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms, or beyond the period of Atlantic's right thereto, anything in this lease, or any extension thereof, to the contrary notwithstanding.

16—If any rental shall be due and unpaid for 20 days or if Lessee shall default in any agreement hereunder, Atlantic, at Atlantic's option may terminate this lease forthwith by giving Lessee written notice of termination and at any time thereafter re-enter the leased premises and expel Lessee therefrom, without prejudice to other remedies. Whenever this lease shall terminate, either by lapse of time or by virtue of any of the provisions herein contained, Lessee hereby waives all right to any notice to quit possession as prescribed by any statute then in force relating to summary process.

17—As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

18—Either party hereto may terminate this lease at the end of the original term hereof by giving to the other written notice of termination at least ..... ( ) days prior thereto, but in default of such notice, this lease shall continue upon the same terms and conditions as herein contained for another term of ..... ( ) year and so on for like terms until terminated by either party giving to the other at least ..... ( ) days notice of termination prior to the expiration of any term.

19—Any notice from one party to the other shall be in

writing and shall be deemed to have been given if sent by registered mail addressed to Atlantic at ..... and to Lessee at the leased premises, subject to the right of either party to designate in writing a new address to which such notice may be sent.

20—Atlantic shall have the right to inspect the leased premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements contained herein.

In Witness Whereof, the parties hereto have duly executed this lease as of the day and year first above written.

The Atlantic Refining Company

By .....

Regional Manager of Marketing

Witnesses: .....

.....

.....

B-3191 4-52

2100 COMMISSION EXHIBIT NO. 87.

Atlantic Franchise Agreement.

Effective Date ..... 19....

The Atlantic Refining Company, ... a Pennsylvania corporation, hereinafter call "Atlantic", and ..... of ....., hereinafter caller "Dealer" lessee from Atlantic of a service station located at ....., under lease dated ....., agree as follows:

I. Atlantic shall sell and Dealer shall buy motor fuels and automotive lubricants (hereinafter referred to as petro-

leum products) in such quantities during the term hereof as Dealer may desire to buy and Atlantic may desire to sell, from time to time, provided that Atlantic shall not be obligated to make any delivery of petroleum products hereunder in quantities which do not conform to Atlantic's customary practice at the time and place of delivery.

II. Delivery of petroleum products purchased hereunder shall be at the Service Station at the above address. The prices Dealer shall pay Atlantic for petroleum products purchased hereunder shall be Atlantic's established Dealer prices therefor in effect at the time and for the place of delivery, together with all taxes which Atlantic may be required to pay or collect in respect to the manufacture, sale, delivery or use of such products. Payment shall be in cash at time of delivery.

III. Dealer shall sell all petroleum products purchased hereunder under the trade marks and designations indicated for such products by Atlantic. Dealer shall not adulterate any petroleum products purchased hereunder and shall not mix such products with any other product or grade of product.

IV. At all reasonable times Atlantic shall have the right to inspect any equipment used for storing or dispensing petroleum products purchased hereunder, and shall have the right to take samples and to test any petroleum products offered for sale by Dealer under the trade marks and designations indicated for such products by Atlantic.

V. Dealer shall have the right to avail himself of the following:

A. Such training in sales methods and procedures as Atlantic may provide from time to time.

B. The assistance of such trained personnel as Atlantic may make available from time to time to help Dealer in attractively displaying petroleum products and merchandise.

C. Such sales promotion programs as Atlantic may make available from time to time.

VI. The waiver by Atlantic or Dealer of a breach of a provision hereof shall not constitute a waiver by such party of any succeeding breach of the same provision, or any other provision.

VII. Dealer is an independent contractor in the performance of this agreement and accepts exclusive liability for the payment of all social security, unemployment compensation and other like taxes or payments, for himself and his employees. Except as expressly set forth in this agreement nothing herein contained shall be construed as granting Atlantic any right to control Dealer, or his employees, nor shall Atlantic at any time exercise such control.

VIII. This agreement cancels and supersedes all prior agreements between the parties with respect to the subject matter hereof. This agreement shall in no way affect any contract between the parties covering the purchase and sale of equipment. This agreement shall not be assigned by Dealer without Atlantic's prior written consent.

IX. This agreement shall become effective on the date first appearing and shall continue in effect for a period of one year therefrom, and from year to year thereafter, provided that this agreement shall terminate automatically upon termination of the aforementioned lease to Dealer.

In Witness Whereof, the parties have executed this agreement as of the day first mentioned above.

The Atlantic Refining Company

By .....

Regional Manager of Marketing

.....

.....

2102 COMMISSION EXHIBIT NO. 88.

B 3191—A 12/48

Equipment and Apparatus
Inventory—Class 2 Station

Received in good condition from The Atlantic Refining Company, this ..... day of ....., 19..., the following equipment and apparatus to be used by the undersigned in the gasoline service station business being conducted at ....., ...
Street or Number Town or City
....., under terms and conditions of a
State
current lease for said premises.

Dealer-Lessee

.....

Receipt in good condition of the following substitutions or additions is acknowledged for use as above noted.

Date	Items Substituted or Added	Items Removed from Inventory	Approval of Dealer

B 3191-A 12/48 Class 2 Station

2104 COMMISSION EXHIBIT NO. 88A1-2.

Atlantic Dealer Lease

This Lease, entered into as of the ..... day of ....., 19..., by and between The Atlantic Refining Company, a corporation of Pennsylvania, hereinafter called "Lessor" and .....
.....hereinafter called "Lessee":

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor hereby leases to Lessee that certain parcel of land at ..... in .....,
County of ....., State of .....,
more particularly described as follows:

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises".

2—The term of this lease shall begin on the ..... day of ....., 19..., and end on the ..... day of ....., 19..., subject, however, in the event such term is longer than one year, to termination by Lessee at any annual annivesary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay to Lessor as rental for the leased premises a sum equivalent to the applicable percentages specified in Schedule A, attached hereto and made a part hereof, of Lessee's gross sales from all sources during such month from the operation of said service station, excluding therefrom, however, sales of tires, batteries, and

accessories at wholesale to service station resellers, state and federal taxes on gasoline, Diesel fuels, motor oils, tires and tubes, any taxes which are stated separately and which are not included as part of the selling price of goods sold and gross receipts from the "special facilities" listed below, if any.

Rental shall be paid to Lessor at Lessor's office at ....., or to Lessor's authorized representative, as follows:

The sum of ..... Dollars ($.....) on the first day of the term hereof; and thereafter, on the 10th day of each succeeding calendar month and on the last day that this lease is effective, the rental as determined by Schedule A; provided, however, that Lessee may take credit for an amount equivalent to the initial rental payment in settlement for the last rental payment due hereunder.

For the "special facilities," namely..... Lessee shall pay additional rental as follows ..... on .....

On or before the 10th day of each month, Lessee shall submit on forms supplied by Lessor a certified, detailed, itemized statement showing all information necessary for the proper calculation of the rental as above provided. Lessee shall keep a complete set of books and records of all business transacted at the leased premises. Such books and records shall be subject to inspection and audit by Lessor at any reasonable time or times. Lessor shall have the right at all times to set off any amounts owed to Lessee against rental due hereunder.

5—Lessee shall pay, when due, all charges for telephone, water, gas electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charges levied against Lessee or

against the leased premises by reason of the conduct of Lessee's business thereon. Lessor shall pay all other taxes, assessments, and governmental charges levied or assessed upon the leased premises.

2105 6—Should Lessee abandon the leased premises, or should the leased premises be closed for business for a period of seventy-two (72) successive hours Lessor shall have the right to terminate this lease herewith.

7—Lessee shall use the leased premises with due and reasonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable thereto as Lessor may establish from time to time.

Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs trade marks or color arrangements appearing thereon.

8—Maintenance. Lessee shall maintain and keep in good order and repair the leased premises; provided however, that if Lessee gives prompt written notice to Lessor of the need thereof, the responsibility for maintenance and repair shall then pass to Lessor with respect to the particular part of the leased premises specified in such notice; and provided further, that if Lessor is obliged to assume responsibility for any maintenance or repair which is nces-

sitated by the wilful misconduct or negligence of Lessee, Lessee's agents or employees, the cost thereof shall be paid to Lessor by Lessee upon demand as additional rental.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee, his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to any claim for damages it might have, shall have the right to terminate this lease without liability; provided, however, that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowledge of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to terminate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to summary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or

bankruptcy proceeding, or executes an assignment for the benefit of creditors, Lessor shall have the right to terminate this lease.

13—This lease is personal, does not permit absentee operation, shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

14—Subject to the terms and conditions of Lessor's credit card program, outlined by Lessor from time to time. Lessor will (1) accept from Lessee assignment of accounts which result from retail credit sales made by Lessee to holders of valid Atlantic credit cards or those of other companies coming under Atlantic's credit privilege program and (2) pay or credit Lessee the amount thereof. Either party may terminate this credit card arrangement by giving to the other not less than 48 hours' advance written notice without termination or cancellation of any other provisions of this lease.

15—A waiver of any breach hereunder shall not be deemed a continuing waiver, or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

16—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

17—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

18—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by certified mail addressed to Lessor at.....
and to Lessee at the leased premises.

19—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

The Atlantic Refining Company,

By.....

Regional Manager of Marketing.

.....

Witnesses:

.....

.....

2106 COMMISSION EXHIBIT NO. 88A-3.

Atlantic

The Atlantic Refining Company

Incorporated—1870

Schedule A

(Attachment to B-3191 Lease)

Rent—Percentage of Lessee's Gross Sales

0%—First $500 Monthly
6%—Next $2000 Monthly
5%—Next $2000 Monthly
4%—Next $2000 Monthly
3%—Over $6500 Monthly

Effective August 15, 1956

2107 COMMISSION EXHIBIT NO. 88B.

When you lease an Atlantic service station you agree to undertake the lawful, diligent, and business-like operation of a first-class service station. Let us emphasize to you that this is your business. We, of course, are interested in your success, and will advise and counsel with you, but we cannot do your thinking nor work for you. Your success will depend on your own business judgment, skill, imagination, and initiative.

There are certain well-established standards which have proven by experience to be necessary for the business-like operation of a first-class station. They are:

1. Housekeeping—Clean, sanitary premises, inside and out.
2. Use and Upkeep—Careful use and upkeep of building and equipment in safe, good operating condition.
3. Display—Neat, orderly arrangement of merchandise and advertising in a manner reasonably calculated to attract and solicit the attention of the motoring public.
4. Illumination—Safe and adequate to attract customers during night operation.
5. Personnel—Sufficient manpower to give prompt service and allocated to handle peak operating hours. Clean uniforms, courteous, trained to sell, adequate knowledge of services to be rendered.
6. Hours of Operation—Uniform daily operating schedule based on buying habits of potential trade in the area.
7. Services—At least on a par with competition as to kinds of services rendered and efficiency of performance.
8. Adequate Inventory—Quality products and merchandise on hand to serve normal customer needs without delay.

9. Sales Promotion—Regular program for expanding sales, involving direct mail campaigns, personal solicitation, and advertising.
10. Prices—Competitive, quality and service considered.
11. Accounting—Maintenance on current basis of records adequate to reflect financial status and return from various phases of your business.

Every well-run Atlantic service station helps all dealers operating Atlantic Service Stations.

The Atlantic Refining Company

.....

Dealer's Signature

.....Date

2108 COMMISSION EXHIBIT NO. 88C.

Atlantic

Equipment and Apparatus

Inventory—Class 2 Station Number.....

Received in good condition from The Atlantic Refining Company, this.....day of....., 19....., the following equipment and apparatus to be used by the undersigned in the gasoline service station business being conducted at .....,

Street and number

.....

Town or City State

under terms and conditions of a current lease for said premises.

Dealer-Lessee

.....

Supplement No.....

Date of Original B13191-A.....

2109 COMMISSION EXHIBIT NO. 88D.

Atlantic

Agreement made this ..... day of ..... 195..., between The Atlantic Refining Company, ..., a Pennsylvania Corporation, hereinafter called Atlantic, and ..... hereinafter called Buyer, Witnesseth:

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at ..... barrels, during the period between ....., 195..., and ....., 195...

Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (⅛) of the estimated 12-month purchases mentioned above.

Duration: Upon the expiration of the original term, this Agreement shall continue in effect from year to year, unless terminated at the end of the original or any subsequent term by either party giving to the other, at least thirty (30) days prior written notice, Except that if Buyer makes no purchases hereunder during twelve (12) consecutive months, this Agreement thereupon shall terminate without notice by either party.

Prices: Buyer shall pay for products purchased hereunder Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Price Schedule." A copy of the current schedule is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices and discounts specified in the "Atlantic Automotive Lubricants Price Schedule." Prices referred to, or pro-

vided for in this Agreement, do not apply to purchases by Buyer at service stations.

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this Agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this Agreement are to be made at par.

Force Majeure: Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery of any product due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This Agreement cannot be amended except by written instrument duly executed by both parties.

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the original term set forth above, all former Agreements now in effect between the parties relating to the purchase and sale of Atlantic Automotive Lubricants.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

Buyer .....

By .....

The Atlantic Refining Company

By .....

2110A COMMISSION EXHIBIT NO. 88E1-2.

Atlantic

This Lease, entered into as of the .....day of ....., 19....., by and between The Atlantic Refining Company, Incorporated, a Pennsylvania corporation, hereinafter called "Lessor" and ..... hereinafter called "Lessee":

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor hereby

leases to Lessee that certain parcel of land at.....
in....., County of....., State
of....., more particularly described as follows:

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises."

2—The term of this lease shall begin on the.....day of
....., 19....., and end on the.....day of
....., 19....., subject, however, in the event such term is longer than one year, to termination by Lessee at any annual anniversary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay to Lessor rental for the leased premises in advance at the rate of.....Dollars
($.....) per month and shall pay as additional rental, by the tenth day of each month, a sum equivalent to 6% of Lessee's gross receipts at the leased premises from all sources during the calendar month immediately preceding such payment, excluding therefrom, however, receipts from the sale of gasoline and Diesel fuel and any taxes which are stated separately and which are not included as part of the selling price of goods sold.

Rental shall be payable at Lessor's Office at 120 West

Genesee Street, Syracuse, New York, and on or before each payment date Lessee shall submit on forms supplied by Lessor a certified, detailed, itemized statement showing all information necessary for the proper calculation of the rental as above provided. Lessee shall keep a complete set of books and records of all business transacted on the leased premises. Such books and records shall be subject to inspection and audit by Lessor at any reasonable time or times.

5—Lessee shall pay, when due, all charges for telephone, water, gas, electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charges levied against Lessee or against the leased premises by reason of the conduct of Lessee's business thereon. Lessor shall pay all other taxes, assessments, and governmental charges levied or assessed upon the leased premises.

6—Should Lessee abandon the leased premises, Lessor shall have the right to terminate this lease. Closing of the leased premises for business for a period of seventy-two (72) successive hours shall be considered as abandonment.

7—Lessee shall use the leased premises with due and reasonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease, Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable thereto as Lessor may establish from time to time.

2110 B

Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs, trade marks or color arrangements appearing thereon.

8—Lessee shall make all repairs and replacements to the leased premises; provided however, that if Lessee gives prompt notice to Lessor of the need thereof, the responsibility shall then pass to the Lessor to make such necessary repairs and replacements as are specified, and provided further, that if in such event the specified repairs and replacements are necessitated by the wilful misconduct or negligence of Lessee, his agents or employees, the cost thereof shall be considered as additional rent payable on the last day of the calendar month next succeeding the month during which such cost is incurred.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee, his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to a claim for damages it might have, shall have the right to terminate this lease without liability; provided, however, that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowledge of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to termi-

nate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to summary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—Lessee agrees that, if this lease is cancelled by Lessor because of breach thereof by Lessee, Lessee for a period of six (6) months thereafter will not engage, directly nor indirectly, in the service station business within two (2) miles of the leased premises.

13—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Lessor shall have the right to terminate this lease.

14—This lease is personal, does not permit absentee operation, shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

15—Subject to the terms and conditions of Lessor's credit card program, outlined by Lessor from time to time, Lessor will (1) accept from Lessee assignment of accounts which result from retail credit sales made by Lessee to holders of valid Atlantic credit cards or those of other companies coming under Atlantic's credit privilege program and (2) pay or credit Lessee the amount thereof. Either party may terminate this credit card arrangement by giving to the other not less than 48 hours' advance written notice without termination or cancellation of any other provisions of this lease.

16—A waiver of any breach hereunder shall not be deemed a continuing waiver, or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

17—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

18—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

19—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Lessor at ..... and to Lessee at the leased premises.

20—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

The Atlantic Refining Company
Incorporated

By .....
Regional Manager of Marketing

.....

Witnesses: .....

.....

.....

2111 COMMISSION EXHIBIT NO. 89.

Atlantic

This Agreement, made this ..... day of ....., 19..... between The Atlantic Refining Company, ... hereinafter called Atlantic, and ..... of ....., County of ....., State of ....., hereinafter called Dealer.

Whereas, Atlantic has established a credit privilege which may be used by dealers permitting the assignment to Atlantic of accounts resulting from the sale of specified merchandise and services to customers whose credit has been approved by Atlantic, and

Whereas, Dealer desires to avail himself of said privilege.

Now, Therefore, This Agreement Witnesseth:

Atlantic will accept assignment of accounts which result from sales made by Dealer at Dealer's discretion on credit and will pay or credit Dealer the amount thereof, subject to the following terms and conditions:

1. Credit to be extended only for merchandise or service specified by Atlantic as coming under the credit privilege.

2. Customer to present to Dealer a valid Atlantic credit card or to be otherwise authorized in writing by Atlantic to receive credit. Customer to sign the delivery ticket.

3. Such credit sales to be made at prices set by Dealer and recorded on forms supplied by Atlantic.

4. Dealer to assign to Atlantic the accounts for such sales at such times and under such procedure as Atlantic may establish from time to time.

Dealer agrees to the terms and conditions hereof, and, as to any account assigned by Dealer to Atlantic, authorizes Atlantic to refuse payment or charge back to Dealer for any of the following reasons:

1. Sale of merchandise or service not specified by Atlantic for credit card sale.

2. Sale made to person not authorized by Atlantic to receive credit or to person whose credit has been suspended.

3. Sale not assigned to Atlantic promptly or in accordance with procedure established by Atlantic from time to time.

This Agreement shall continue so long as Dealer continues as a dealer of products of Atlantic unless terminated prior thereto by either party hereto giving to the other 48 hours' notice in writing of such intention to terminate.

The Atlantic Refining Company

By .....,

..... (Seal)

..... (Seal)

2113 COMMISSION EXHIBIT NO. 89A.

Atlantic

This Agreement, made as of this ..... day of ....., 19..... between The Atlantic Refining Company, ... hereinafter called Atlantic, and ..... of ....., County of ....., State of ....., hereinafter called Dealer.

Whereas, Atlantic has established a credit privilege program, which may be used by dealers, permitting the assignment to Atlantic of accounts resulting from the sale of authorized types of merchandise and services to customers whose credit has been approved by Atlantic, or such other companies as Atlantic shall specify, and

Whereas, Dealer desires to avail himself of said privilege.

Now, Therefore, This Agreement Witnesseth:

Atlantic will accept assignment of accounts which result from sales made by Dealer at Dealer's discretion on credit

and will pay or credit Dealer the amount thereof, subject to the following terms and conditions:

1. Credit to be extended only for merchandise and services authorized under the credit privilege program referred to above.

2. Customer to present to Dealer a valid credit card of Atlantic or other companies coming under Atlantic's credit privilege program, or to be otherwise authorized in writing by Atlantic to receive credit. Customer to sign the delivery ticket or other evidence of sale authorized by Atlantic.

3. Such credit sales to be made at prices set by Dealer and recorded on forms supplied or authorized by Atlantic.

4. Dealer to assign to Atlantic the accounts for such sales at such times and under such procedure as Atlantic may establish from time to time.

Dealer agrees to the terms and conditions hereof, and, as to any account assigned by Dealer to Atlantic, authorizes Atlantic to refuse payment or charge back to Dealer for any of the following reasons:

A. Sale of merchandise or service not authorized under the credit privilege program.

B. Sale made to person not authorized at time of sale to receive credit under the Atlantic credit privilege program.

C. Sale not assigned to Atlantic promptly or in accordance with procedure established by Atlantic from time to time.

D. Delivery tickets not prepared in accordance with instructions issued from time to time by Atlantic.

This Agreement shall continue so long as Dealer continues as a dealer of products of Atlantic, unless terminated by either party giving to the other not less than 48 hours' advance written notice of termination.

The Atlantic Refining Company

By .....

.....

.....

2114 COMMISSION EXHIBIT NO. 90A-B.

Atlantic

This Agreement, made as of ..... 195...., betweeu The Atlantic Refining Company, ... a Pennsylvania corporation, hereinafter called Atlantic, and ....., hereinafter called Buyer, of ..... County of ..... State of ....., who represents that he is the ..... of certain premises at: ..... County of ..... State of .....

Witnesseth, That in consideration of the mutual promises and undertakings of the parties hereto, it is agreed as follows:

1. Equipment Loan. Atlantic, reserving the right of addition, change, substitution, and maintenance, lends to Buyer for the purpose of storage and sale of motor fuel purchased solely from Atlantic and for no other purpose, equipment that has been installed or which Atlantic may install, which shall remain personalty and the property of Atlantic, and which Buyer shall not remove, but shall repair and maintain, as follows:

2. Sale and Delivery. Buyer shall buy from Atlantic and Atlantic shall deliver to Buyer for sale from said equipment ..... gallons of motor fuel annually. Atlantic shall not be required to deliver and Buyer shall not be obliged to accept more than one-eighth of such annual gallonage in any calendar month. Atlantic shall deliver on Buyer's order and Buyer shall order and accept not less than one-twentieth of such annual gallonage in any calendar month. The times, manner and quantities of deliveries shall be in accordance with Atlantic's current practice in effect from time to time. Buyer is not and shall

not hold himself out as the agent of Atlantic. Buyer shall take such steps as may be necessary to so inform the public, and shall conduct all business in such motor fuel in Buyer's name, conspicuously displaying his name on the premises.

3. Price and Terms. Buyer shall pay for all products delivered hereunder the price established from time to time by Atlantic for buyers in the same classification as Buyer in effect at the time and place of delivery to Buyer, together with all taxes which Atlantic may be required to pay or collect with respect to the manufacture, sale, delivery or use of such products. Payment shall be in cash at the time of delivery unless credit has been extended; Atlantic, in its sole discretion, may modify or terminate the extension of credit terms.

4. Delivery Tolerance. Buyer shall not be obligated to accept deliveries if unable to operate his business upon said premises by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

2115 5. Indemnity. Buyer shall indemnify and save harmless Atlantic, its successors and assigns, agents or employees, from any and all liability or claims for loss, damage or injury to any person or property, including the person or property of Buyer, his agents, employees and all other persons and property, resulting directly or indirectly from any leakage, fire or explosion of any products stored or contained in, passing through or removed from equipment lent under this agreement, or resulting from the installation, maintenance, repair, use or condition of such equipment, and any attachments or appliances used, connected, installed or furnished therewith.

6. Quality. All products delivered to the premises by Atlantic shall be sold by Buyer under their respective trademarks and brands and shall not be adulterated, mixed or blended with any other substance. Atlantic, at any reasonable time, may enter upon the premises, inspect equipment used for storing or dispensing products purchased from Atlantic, test and take samples of such products.

7. Time. This Agreement shall be in effect from ...., 19..... to ..... 19..... or until ..... gallons of motor fuel are delivered to Buyer for sale from said equipment, whichever shall last occur, and from year to year thereafter unless cancelled as hereinafter provided.

8. Termination and Cancellation. This agreement may be terminated by either party, effective at the end of the original term or of any subsequent year, by sixty (60) days' prior written notice to the other party. At any time upon breach by either party the other party may cancel this agreement effective upon written notice to the other party. Issuance or entry against Buyer or the premises of any judgment, execution, distress for rent or other process, or financial embarrassment or insolvency or involvement in bankruptcy of Buyer, shall constitute a breach of this

agreement by Buyer. Any notice by Atlantic to Buyer shall be deemed to be sufficiently given if either delivered to Buyer or mailed by registered mail, postage prepaid, and addressed to Buyer at the above identified premises, whether or not received.

Upon termination or cancellation for any cause Atlantic shall have the right to enter upon the premises with or without legal process and remove the equipment or any part thereof without liability for injury or damage. Upon cancellation by Atlantic for any breach and exercise by Atlantic of its right to remove equipment Buyer shall pay to Atlantic the sum of ..... Dollars ($.....) as reinbursement for the agreed upon cost of installation and removal of the equipment and improvements, or, at its option, Atlantic may leave the equipment in place and upon demand Buyer shall pay the sum of ..... Dollars ($.....) the agreed upon value of the equipment and improvements and upon payment title thereto shall pass to Buyer.

At its election Atlantic may keep the equipment in place for a reasonable time to negotiate for its sale or other disposition. In no event shall Atlantic be obligated to remove any underground equipment.

9. General Provisions. Buyer shall secure all necessary licenses and permits, and all renewals thereof, now or hereafter necessary in connection with the possession or use of the equipment or conducting business on the premises, and shall pay all taxes, imposts or charges imposed by any governmental authority incident thereto or arising therefrom. Buyer shall promptly provide Atlantic with the written consents to this agreement of the owner and of all holders of liens secured by said premises, confirming Atlantic's title to and right of removal of the equipment and shall, in the event of any subsequent sale of the premises, or subsequent attachment of lien, provide Atlantic

with similar consents from such subsequent owners or lien holders. This agreement is not assignable, constitutes the entire understanding of the parties and may not be changed except by a written agreement executed by both parties.

In Witness Whereof, the parties have executed this agreement as of the day first mentioned.

The Atlantic Refining Company

By.....

.....(Seal)

.....(Seal)

.....(Seal)

Witnesses:

.....

.....

.....

.....

Consent and Confirmation

Each of the undersigned as owner, part owner, mortgagee, or lien holder, for himself, his legal representatives, successors and assigns, in consideration of the installation or continuance in place of equipment covered by the foregoing agreement, hereby consents thereto and agrees to be bound by the terms and conditions thereof with respect to installation, removal, substitution, maintenance or disposition, and hereby waives all right to hold, distrain, mortgage, claim or levy upon any of such equipment or any part thereof, and hereby agrees to accept title to any underground equipment not removed by Atlantic upon notice by Atlantic of its intention not to remove same.

.....(Seal)

.....(Seal)

Witness:

.....

.....

2116 COMMISSION EXHIBIT No. 90C-D.

Bailment Agreement.

Atlantic

The Atlantic Refining Company, ... a Pennsylvania corporation, hereinafter called Atlantic, and ..... hereinafted called Buyer, of ..... County of ..... State of ....., who represents that he is the ..... of certain premises at:

.....

County of ....., State of .....

Witnesseth, that in consideration of the mutual promises and undertakings of the parties hereto, it is agreed as follows:

1. Equipment Loan. Atlantic, reserving the right of addition, change, substitution, and maintenance, lends to Buyer for the purpose of storage and sale of motor fuel purchased solely from Atlantic and for no other purpose, equipment that has been installed or which Atlantic may install, which shall remain personalty and the property of Atlantic, and which Buyer shall not remove, but shall repair and maintain, as follows:

2. Sale and Delivery. Buyer shall buy from Atlantic and Atlantic shall deliver to Buyer for sale from said equipment.....gallons of motor fuel annually. Atlantic shall not be required to deliver and Buyer shall not be obliged to accept more than one-eighth of such annual gallonage in any calendar month. Atlantic shall deliver on Buyer's order and Buyer shall order and accept not less than one-twentieth of such annual gallonage in any calendar month. The times, manner and quantities of deliveries shall be in accordance with Atlantic's current

practice in effect from time to time. Buyer is not and shall not hold himself out as the agent of Atlantic. Buyer shall take such steps as may be necessary to so inform the public, and shall conduct all business in such motor fuel in Buyer's name, conspicuously displaying his name on the premises.

3. Price and Terms. Buyer shall pay for all products delivered hereunder the price established from time to time by Atlantic for buyers in the same classification as Buyer in effect at the time and place of delivery to Buyer, together with all taxes which Atlantic may be required to pay or collect with respect to the manufacture, sale, delivery or use of such products. Payment shall be in cash at the time of delivery unless credit has been extended; Atlantic, in its sole discretion, may modify or terminate the extension of credit terms.

4. Delivery Tolerance. Buyer shall not be obligated to accept deliveries if unable to operate his business upon said premises by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right

in its sole discretion to restrict or cease deliveries hereunder.

2117 5. Indemnity. Buyer shall indemnify and save harmless Atlantic, its successors and assigns, agents or employees, from any and all liability or claims for loss, damage or injury to any person or property, including the person or property of Buyer, his agents, employees and all other persons and property, resulting directly or indirectly from any leakage, fire or explosion of any products stored or contained in, passing through or removed from equipment lent under this agreement, or resulting from the installation, maintenance, repair, use or condition of such equipment, and any attachments or appliances used, connected, installed or furnished therewith.

6. Quality. All products delivered to the premises by Atlantic shall be sold by Buyer under their respective trademarks and brands and shall not be adulterated, mixed or blended with any other substance. Atlantic, at any reasonable time, may enter upon the premises, inspect equipment used for storing or dispensing products purchased from Atlantic, test and take samples of such products.

7. Time. This Agreement shall be in effect from ....., 19..... to ....., 19..... or until.....gallons of motor fuel are delivered to Buyer for sale from said equipment, whichever shall last occur, and from year to year thereafter unless cancelled as hereinafter provided.

8. Termination and Cancellation. This agreement may be terminated by either party, effective at the end of the original term or of any subsequent year, by sixty (60) days' prior written notice to the other party. At any time upon breach by either party the other party may cancel this agreement effective upon written notice to the other party. Issuance or entry against Buyer or the

premises of any judgment, execution, distress for rent or other process, or financial embarrassment or insolvency or involvement in bankruptcy of Buyer, shall constitute a breach of this agreement by Buyer. Any notice by Atlantic to Buyer shall be deemed to be sufficiently given if either delivered to Buyer or mailed by registered mail, postage prepaid, and addressed to Buyer at the above identified premises, whether or not received.

Upon termination or cancellation for any cause Atlantic shall have the right to enter upon the premises with or without legal process and remove the equipment or any part thereof without liability for injury or damage. Upon cancellation by Atlantic for any breach and exercise by Atlantic of its right to remove equipment Buyer shall pay to Atlantic the sum of.....Dollars ($.....) as reimbursement for the agreed upon cost of installation and removal of the equipment and improvements, or, at its option, Atlantic may leave the equipment in place and upon demand Buyer shall pay the sum of ..... Dollars ($.....) the agreed upon value of the equipment and improvements and upon payment title thereto shall pass to Buyer.

At its election Atlantic may keep the equipment in place for a reasonable time to negotiate for its sale or other disposition. In no event shall Atlantic be obligated to remove any underground equipment.

9. General Provisions. Buyer shall secure all necessary licenses and permits, and all renewals thereof, now or hereafter necessary in connection with the possession or use of the equipment or conducting business on the premises, and shall pay all taxes, imposts or charges imposed by any governmental authority incident thereto or arising therefrom. Buyer shall promptly provide Atlantic with the written consents to this agreement of the owner and of all holders of liens secured by said premises, confirm-

ing Atlantic's title to and right of removal of the equipment and shall, in the event of any subsequent sale of the premises, or subsequent attachment of lien, provide Atlantic with similar consents from such subsequent owners or lien holders. This agreement is not assignable, constitutes the entire understanding of the parties and may not be changed except by a written agreement executed by both parties.

In Witness Whereof, the parties have executed this agreement as of the day first mentioned.

By.....

..... (Seal)

..... (Seal)

Witness: ..... (Seal)

.....

.....

.....

.....

Consent and Confirmation.

Each of the undersigned as owner, part owner, mortgagee, or lien holder, for himself, his legal representatives, successors and assigns, in consideration of the installation or continuance in place of equipment covered by the foregoing agreement hereby consents thereto and agrees to be bound by the terms and conditions thereof with respect to installation removal substitution maintenance or disposition and hereby waives all right to hold, distrain, mortgage, claim or levy upon any of such equipment or any part thereof, and hereby agrees to accept title to any underground equipment not removed by Atlantic upon notice by Atlantic of its intention not to remove same.

..... (Seal)

Witness: ..... (Seal)

.....

.....

2118 COMMISSION EXHIBIT No. 91.

Atlantic

Agreement made this.....day of.....19....., between The Atlantic Refining Company,....., a Pennsylvania Corporation, hereinafter called Atlantic, and.....hereinafter called Buyer, Witnesseth:

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at.....barrels, during the period between....., 19....., and....., 19.....

Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (⅛) of the estimated 12-month purchases mentioned above.

Duration: Upon the expiration of the original term, this Agreement shall continue in effect from year to year, unless terminated at the end of the original or any subsequent term by either party giving to the other, at least thirty (30) days prior written notice, Except that if Buyer makes no purchases hereunder during twelve (12) consecutive months, this Agreement hereupon shall terminate without notice by either party.

Prices: Buyer shall pay for products purchased hereunder at Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Price Schedule." A copy of the current schedule effective.....is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices and discounts specified in the "Atlantic Automotive Lubricants Price Schedule." Prices referred to, or provided

for in this Agreement, do not apply to purchases by Buyer at service stations.

Terms: Cash, unless credit is established with Atlantic Credit Department. If credit is established, and during the continuance of this Agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this contract are to be made at par.

Force Majeure: Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery of any product due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement constitutes the full understanding between the parties hereto with reference to the

Atlantic's compliance therewit
or by governmental proratio
regulation or priority; or
from any other

subject matter hereof. Neither party shall claim any amendment, modification, extension or release from any provision hereof by mutual agreement, acknowledgment, acceptance of purchase-order forms, or otherwise, unless the same is in writing, signed by the other party, and specifically stating it is an amendment or extension of this Agreement.

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the 12-month period set forth above, all former Atlantic Automotive Lubricant Agreements now in effect between the parties.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company

Buyer .....

By .....

2120 COMMISSION EXHIBIT NO. 92A-B.

Agreement made this ..... day of ....., 19...., between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called Atlantic, and ....., hereinafter called Buyer, Witnesseth:

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at ..... barrels, during the period between ....., 19...., and ....., 19....

Upon the expiration of the original term, this Agreement

shall continue in effect from year to year, unless terminated at the end of the original or any subsequent term by either party giving to the other, at least thirty (30) days prior written notice, except that if Buyer makes no purchases hereunder during twelve (12) consecutive months, this Agreement hereupon shall terminate without notice by either party.

Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (1/8) of the estimated 12-month purchases mentioned above.

	Price Per Gallon					
		Drums*		5-Gal. Util.	2½ 1-Qt. Cans Per	4 5-Qt. Cans Per
	Bulk.	55 Gal.	13 Gal.	Bkt.	Case	Case
Motor Oils						
Atlantic Motor Oil						
Atlantic Aviation Motor Oil						
Atlantic Ultramo Motor Oil						
Kearsarge Motor Oil						
Gear Lubricants						
Atlantic Gear Oil						
Atlantic Ultragear Oil						
Atlantic A. T. Fluid						
Automotive Specialties						
Atlantic Motor Valve Oil						
Atlantic Penetrating Oil						
Atlantic Zerol						
Atlantic Motor Flushing Oil						

Above prices do not include 6¢ per gallon Federal tax.

	Price Per Lb.		Price Per Pkg.	
	400-lb. Drums*	100-lb. Drums*	35-lb. Bkt.	5-lb. Tin
Automotive Greases				
Atlantic Chassis Lubricant				
Atlantic Lubricant "A"				
Atlantic Universal Joint Grease				
Atlantic Wheel Bearing Grease				
Atlantic Water Pump Lubricant				
Atlantic Motor Grease No. 1				
Atlantic Motor Grease No. 3				
Atlantic Lubricant "D"				
Atlantic Rust Preventive				

Other size cans and packages at prices established by Atlantic.

* Prices for shipment of products in steel barrels and drums are for the contents only. Atlantic reserves the right, at its option, to make deliveries

(Continuation of this Agreement on other side hereof.)

2121 Atlantic shall have the right to increase or decrease any price under this Agreement without notice at any time during the term of this Agreement. Prices provided for in this Agreement do not apply to purchases by Buyer at service stations. Prices shown herein are F.O.B. destination Atlantic's Distributing Territory. Prices for motor oils are for minimum shipments of 25 gallons in packages or 25 gallons in bulk.

Delivery Discount: A special discount of 3¢ per gallon on Atlantic Automotive Oils and 3¢ per pound on Atlantic Automotive Greases will be allowed on minimum deliveries of 300 gallons and over. (8 pounds of grease equals one gallon) at one time to one destination. This discount does not apply to bulk deliveries.

Taxes: Any tax or other charge now or hereafter imposed by law, domestic or foreign, upon any product herein sold or on the production, manufacture, sale, transportation or delivery thereof, or on this Agreement, which Atlantic is required to pay or collect, shall be added to the price herein stated and paid by Buyer.

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this Agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this contract are to be made at par.

Force Majeure: Buyer shall not be obligated to accept

in drums or in steel barrels. Such barrels and drums remain the property of Atlantic, are for transportation purposes only and are to be returned promptly. A charge will be made for each steel barrel and for each drum at the rate established by Atlantic in effect at time of shipment. Upon return of such containers in good condition within 90 days of shipment an amount equal to the charge will be refunded. These charges are not subject to cash discount.

deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery of any product due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement constitutes the full understanding between the parties hereto with reference to the subject matter hereof. Neither party shall claim any amendment, modification, extension or release from any provision hereof by mutual agreement, acknowledgment, acceptance of purchase-order forms, or otherwise, unless the same is in writing, signed by the other party, and specifically stating it is an amendment or extension of this Agreement.

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the 12-month period set forth above, all former Atlantic Automotive Lubricant Agreements now in effect between the parties.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company

By.....

Buyer.....

By.....

2122 COMMISSION EXHIBIT NO. 93.

COMMISSION AGREEMENT

This Agreement made this day of 1951 between The Atlantic Refining Company, a Pennsylvania corporation, herein called "Atlantic" and of herein called "Dealer",

Witnesseth

That in consideration of the promises of the parties hereto it is mutually covenanted and agreed as follows:

1. The Atlantic agrees to deliver to the Dealer at the Atlantic service station leased to Dealer at within days after the date of this Agreement, upon consignment, for sale by the Dealer, gallons of gasoline. During each week thereafter the Atlantic will deliver to the Dealer at said service station that number of gallons of gasoline which when added to the number of gallons then in the Dealer's tanks shall equal gallons, thus replacing the gasoline sold by the Dealer since the preceding delivery.

2. At the time of each weekly delivery the Dealer will pay to the Atlantic an amount of money equal to the number of gallons then delivered, multiplied by the price per gallon then posted at the Dealer's service station, less a commission of on the number of gallons delivered, plus rent equal to for each gallon delivered. (The number of gallons delivered will equal the number of gallons sold since the preceding delivery.)

2124 3. At the end of each month the Atlantic will determine the number of gallons, exclusive of the first delivery, delivered by the Atlantic to the Dealer during that month. That number shall be multiplied by 3¢. If the result is less than $216.00, the Atlantic shall forthwith pay to the Dealer the difference between $216.00 and the result.

4. The Atlantic will fix the service station price which the Dealer will post and at which the Dealer will sell the gasoline consigned by the Atlantic to the Dealer hereunder.

5. The Atlantic shall have a right to enter upon the Dealer's premises at any time for the purpose of determining the number of gallons of Atlantic's gasoline then on hand.

6. If at the time of any weekly delivery when a weekly payment is due from the Dealer to the Atlantic the Dealer fails to pay the amount then due the Atlantic hereunder, the Atlantic may forthwith terminate this Agreement and may take possession of and title to a sufficient amount of personal property belonging to the Dealer, located on said premises, which at the invoice price thereof to the Dealer will equal the amount then due from the Dealer to the Atlantic, and the Atlantic shall apply said invoice price of said personal property in reduction of the indebtedness of the Dealer to the Atlantic.

7. The term of this Agreement is one year from the date hereof; provided, however, that either party may terminate this Agreement on thirty days' written notice delivered to the other party, and this Agreement shall terminate on the 30th day following the delivery of such written notice. Written notice may be delivered by depositing the same in the United States registered mail, postage prepaid, addressed to the Atlantic at
and to the Dealer at said service station.

8. This Agreement will terminate prior to the expiration of the term hereof if that certain lease of said service station from the Atlantic to the Dealer terminates prior to the expiration of the term of this Agreement.

2126 9. Except as herein specified, the Atlantic shall have no control whatsoever over the operation of said service station by the Dealer, the purchase and sale of other commodities by the Dealer, the number or nature of employees employed by the Dealer, or otherwise.

Executed the day and year first above written.

The Atlantic Refining Company.

By.....

.....

2128 COMMISSION EXHIBIT NO. 94A to D.

COMMISSION DEALER AGREEMENT

This Agreement made as of the day of , 195 , between The Atlantic Refining Company, a Pennsylvania corporation, herein called "Atlantic" and of herein called "Dealer",

Witnesseth:

That in consideration of the obligations of the parties hereto it is mutually agreed as follows:

1. Within ten (10) days after the date of this Agreement Atlantic shall furnish upon consignment to Dealer in tanks at the service station located at gallons of Atlantic gasoline (hereinafter referred to as "Consignment Inventory"), for sale by Dealer.

2. From time to time thereafter Atlantic shall deliver to Dealer into said tanks at said service station a quantity of gasoline which, when added to that then in the tanks, shall equal said Consignment Inventory. At the time of each delivery under this Paragraph 2 Dealer shall pay to Atlantic an amount of money equal to the number of gallons of gasoline then delivered multiplied by the price per gallon in effect at the time and place of delivery, as established by Atlantic under Paragraph 4 hereof, less a commission based upon the difference between the service station price and the Dealer Tank Wagon price in effect at the time and for the place of delivery, to be determined and applied in accordance with the following schedule:

Difference Between Service Station Price and Dealer Tank Wagon Price	Commission Allowed at Time of Delivery	Credited to Rent Account Provided Dealer Is Lessee From Atlantic
4.5 or more.	3.0	1.5
4.4	2.9	1.5
4.3	2.8	1.5
4.2	2.7	1.5
4.1	2.6	1.5
4.0	2.5	1.5
3.9	2.4	1.5
3.8	2.3	1.5
3.7	2.2	1.5
3.6	2.1	1.5
3.5	2.0	1.5
3.4	1.9	1.5
3.3	1.8	1.5
3.2	1.7	1.5
3.1	1.6	1.5
3.0	1.5	1.5
2.9	1.4	1.5
2.8	1.3	1.5
2.7	1.2	1.5
2.6	1.1	1.5
2.5	1.0	1.5
2.4	.9	1.5
2.3	.8	1.5
2.2	.7	1.5
2.1	.6	1.5
2.0	.5	1.5
1.9	.4	1.5
1.8	.3	1.5
1.7	.2	1.5
1.6	.1	1.5
1.5 or less	.0	1.5

3. If, in any calendar month, Dealer's commission hereunder, based on the above schedule in Paragraph 2, is

less than Two Hundred and Sixteen Dollars ($216.00) excluding commission credited to the Dealer's rent account, Atlantic, by the twentieth day of the following month, shall pay to Dealer the difference between said amount and the commission already received for that month by Dealer. If this Agreement is in effect for a portion of any calendar month the amount of Two Hundred and Sixteen Dollars ($216.00) shall be adjusted ratably for such month to reflect the number of days that this Agreement is in effect during such month.

4. Atlantic shall establish the service station price which Dealer shall post and at which Dealer shall sell the gasoline consigned by Atlantic to Dealer hereunder.

5. Atlantic shall have the right to enter upon the premises at the above location at any time for the purpose
2132 of determining the number of gallons of Atlantic gasoline consigned hereunder then on hand.

6. Title to gasoline delivered from time to time to Dealer to replenish or augment the original Consignment Inventory shall not pass to Dealer, but it shall be considered as though said gasoline had been part of the original Consignment Inventory.

7. If Dealer is lessee from Atlantic of the above service station under a lease on Atlantic's B-3191 form, during the continuance of this Agreement, Atlantic shall reimburse Dealer for Dealer's expenditures covering charges for sewerage, water, gas and electricity consumed or used by Dealer at said service station and all expense of heating same. Atlantic shall also reimburse Dealer for expenditures covering any municipal licenses or charges based on the number of gasoline dispensing pumps on said service station and the storage of gasoline therein. In addition, during the continuance of this Agreement, paragraph 2 of said B-3191 lease and any amendment or modification thereof now in effect shall be suspended and in lieu thereof the following provision shall be in effect:

"2—Lessee shall pay to Atlantic rental at the rate of one and one-half cents (1½¢) per gallon on each gallon of gasoline delivered to said leased premises required to replenish the Consignment Inventory under lessee's then current Commission Dealer Agreement."

Upon termination of this Agreement the rental as provided for in said suspended paragraph 2 shall become reinstated, subject to any amendment or modification of said paragraph 2 which was in effect on the date hereof.

8. This Agreement may be terminated by either party upon giving thirty days' notice to the other party. Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Atlantic at 260 South Broad St., Philadelphia 1, Pennsylvania and to Dealer at the leased premises, subject to the right of either party to designate in writing a new address to which notices may be sent.

9. Notwithstanding the provisions of Paragraph 8 hereof, if the service station to which deliveries are made is leased by Dealer from Atlantic and if such lease is terminated, this Agreement shall terminate concurrently with said lease.

2134 10. Upon termination of this Agreement, Dealer shall account to Atlantic for the consigned gasoline as follows:

(a) Gasoline on hand shall be returned to Atlantic; or Dealer, at Dealer's option, shall purchase such gasoline at Atlantic's prevailing Dealer-Tank Wagon price applicable at that location on date of termination.

(b) The difference between Dealer's "Consignment Inventory" and the quantity of gasoline on hand on date of termination shall be settled for as provided in Paragraph 2 hereof on the basis of the service station price established by Atlantic and effective on date of termination.

11. Except as herein specified, Atlantic shall have no control whatsoever over the operation of said service station by Dealer, the purchase and sale of other commodities by Dealer, the number or nature of employees employed by Dealer, or otherwise.

Executed as of the day and year first above written.

The Atlantic Refining Company

By .....

Regional Manager of Marketing

Dealer

.....

2136 COMMISSION EXHIBIT NO. 95A-C.

Authorized Distributor's Agreement.

This Agreement made this ..... day of ....., 195..., between The Atlantic Refining Company, ..., a corporation of the Commonwealth of Pennsylvania, hereinafter called Atlantic, and ..... of ....., County of ..... State of ....., hereinafter called Buyer,

Whereas Atlantic is a marketer of Atlantic branded petroleum products, and

Whereas Buyer is desirous of obtaining the privilege of acting as an authorized distributor for Atlantic of such petroleum products,

Wittnesseth:

Product and Quantity. Atlantic agrees to sell and Buyer agrees to purchase, ... gallons of Atlantic White Flash and ..... gallons of Atlantic Hi-Arc and such additional quantities of each product as Buyer shall order from time to time, provided that Atlantic shall not be required to deliver in any one year more than ..... gallons of Atlantic White Flash or more than ..... gallons of Atlantic Hi-Arc.

Deliveries Deliveries hereunder shall be made in tank car or truck transport in approximate equal monthly quantities to the following bulk plant or plants of Buyer:

Resale In Authorized Territory In consideration of Atlantic's granting to Buyer the privilege of acting as an authorized distributor for Atlantic in and about the territory described below, Buyer's purchases under this agreement shall be only for resale to consumers and to regularly established dealers by tank truck delivery. Buyer shall diligently further the sale of Atlantic's products during the period this agreement is effective.

Period Of Time This agreement shall extend from ..... and from year to year thereafter unless terminated by either party at the end of the original term or at the end of any subsequent contract year by giving at least ninety (90) days prior written notice to the other party.

Price The price shall be determined as follows:

2137 Freight Charges When shipments are made "freight collect", allowance for freight will be made on the face of the invoice.

Terms of Payment

If credit is established, and during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this agreement are to be made at par.

Shipments Buyer shall give Atlantic shipping instructions at least ten (10) days prior to the time shipments are desired, and when possible inform Atlantic the quantity desired for any one month thirty (30) days before the first day thereof.

Tank cars or truck transports shipped hereunder are not to be diverted or reconsigned without written permission of Atlantic first obtained.

Taxes Any tax or other charge now or hereafter imposed by law, domestic or foreign, on any product herein sold, or on the production, manufacture, sale, transportation or delivery thereof, or on this agreement, which Atlantic is required to pay or collect, shall be added to the price herein provided for and paid by Buyer.

2138 Unloading Buyer promptly shall receive shipments or unload the transportation facilities employed, return empty cars as instructed and pay demurrage, tank car rental and all other charges or damages for delay in receipt or unloading.

Tetraethyl Lead Regulations Buyer shall distribute and sell any tetraethyl lead treated gasoline purchased under this agreement in accordance with the rules and regulations now or hereafter issued by Atlantic's suppliers of tetraethyl lead, United States Public Health Service or any governmental agency having jurisdiction thereof, and Buyer at all times shall keep any purchaser for resale of said gasoline informed of all said rules and regulations, and shall require that said purchaser for resale comply with said rules and regulations and that he inform all who purchase from him for resale of said rules and regulations. Buyer shall afford medical and mechanical representatives of such suppliers every reasonable facility to inspect any apparatus, equipment or other property used by Buyer in connection with the distribution and sale of said treated gasoline; and Buyer shall require that each purchaser for resale afford similar facilities for medical and mechanical inspection by such suppliers.

Force Majeure Buyer shall not be obligated to accept deliveries if unable to operate Buyer's business by reason of fire, flood, war, civil commotion, strikes, blockade or causes beyond Buyer's control. Atlantic shall not be re-

sponsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or any other difference with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in Atlantic's sole discretion to restrict or cease deliveries hereunder.

Claims No claim of Buyer on account of shortage in quantity or defect in quality of the products delivered hereunder or for any other cause shall be allowed unless Buyer immediately upon receipt of the shipment and at least twenty-four (24) hours before the unloading thereof notifies Atlantic in writing or by telegram addressed to Atlantic at 260 South Broad Street, Philadelphia 1, Pa., of such claim and extends to Atlantic the opportunity of making an investigation.

Advertising Atlantic shall loan to Buyer, under separate bailment agreement, the globes or lenses required for gasoline dispensing equipment used by Buyer or Buyer's customers in the distribution of such products purchased from Atlantic. Atlantic, at Atlantic's option, may also loan to Buyer, under separate bailment agreement, Atlantic's approved advertising signs. Buyer shall supply all other dispensing equipment and advertising signs.

Trade Marks Atlantic grants to Buyer during the period of this agreement the right to use and display Atlantic's trade mark or marks, covering the products purchased

from Atlantic, but such right or privilege shall cease at the termination of this agreement.

Conflicting Laws Or Regulations This agreement contemplates full compliance with all laws, ordinances, and regulations, from whatever authority the same may emanate, having application to the parties hereto or subject matter hereof; and in the event this agreement, or any procedure or action therein imposed upon either party hereto, shall at any time appear to be determined to be in conflict with any legal requirements imposed by any such authority, then this agreement shall immediately become inoperative and ineffective with respect thereto; and in any such event either party hereto shall have the right to cancel this agreement, subject to the obligation of Buyer to settle any unpaid balances due hereunder; and any obligation of Atlantic to make further deliveries hereunder shall terminate on the date of such cancellation.

Default Except for causes referred to above under the title "Force Majeure" a default under this agreement shall occur upon the happening of any of the following events: (a) failure of Atlantic to make deliveries to Buyer as herein stated; (b) failure of Buyer to order, accept or pay promptly for material in accordance with the provisions hereof; and (c) any adulteration or misrepresentation by Buyer of the product or products of Atlantic.

Liquidated Damages In the event of any default, the party not in default may terminate this agreement by written notice to the other party given at any time within ten (10) days after knowledge of the existence of such default. If this agreement is so terminated Buyer shall be obligated to settle any unpaid balances due hereunder and the party in default shall be obligated to pay to the party so terminating the sum of one cent (1¢) for each gallon of product which for any reason is not delivered, or accepted, as provided herein up to the minimum quantities specified. Such sum shall be deemed full liquidated

damages for all losses resulting from such default. Waiver of any one or more defaults hereunder shall not preclude either party from exercising the right to terminate this agreement by reason of any subsequent default.

Sale of Business Should Buyer at any time during the period of this agreement desire to sell, lease or otherwise dispose of Buyer's petroleum business, or any substantial part thereof, Buyer shall give written notice to Atlantic of the price and terms of any offer to purchase, lease or otherwise acquire said business or part thereof, and Atlantic shall have the first option to purchase, lease or otherwise acquire such business or part thereof at the price and upon the terms of each such offer. Such option shall extend for a period of sixty (60) days following receipt of such notice by Atlantic, and if not exercised within said period it shall thereupon lapse. Any such sale, lease or other disposition by Buyer or failure of Atlantic to exercise any option hereunder shall not prejudice Atlantic's rights hereunder, and this agreement shall be and remain in full force and effect until its termination date.

Assignability This agreement shall not be assigned by either party without the written consent of the other party.

Constitutes Whole Agreement This instrument embodies the whole agreement between the parties and there are no oral promises or other understandings or conditions inducing its execution or qualifying its terms.

In Witness Whereof, the parties have caused these presents to be duly executed in duplicate the day and year above written.

The Atlantic Refining Company

By .....

.....

Buyer

Witness: By .....

.....

.....

2140 COMMISSION EXHIBIT NO. 95D-F.

Atlantic Authorized Distributor's Agreement

This Agreement made this day of , 195 , between The Atlantic Refining Company, , a corporation of the Commonwealth of Pennsylvania, hereinafter called Atlantic, and of , County of State of , hereinafter called Buyer,

Witnesseth:

Whereas Atlantic is a marketer of Atlantic branded petroleum products, and

Whereas Buyer is desirous of obtaining the privilege of acting as an authorized distributor for Atlantic of such petroleum products,

Product and Quantity Atlantic agrees to sell and Buyer agrees to purchase,

gallons of Atlantic Gasoline and

gallons of Atlantic Premium Gasoline and such additional quantities of each product as Buyer shall order from time to time, provided that Atlantic shall not be required to deliver in any one year more than

gallons of Atlantic Gasoline or more than

gallons of Atlantic Premium Gasoline.

Deliveries—Deliveries hereunder shall be made in tank car or truck transport in approximately equal monthly quantities to the following bulk plant or plants of Buyer:

Resale In Authorized Territory—In consideration of Atlantic's granting to Buyer the privilege of acting as an authorized distributor for Atlantic in and about the territory described below, Buyer's purchases under this agreement shall be only for resale to consumers and to regularly established dealers by tank truck delivery. Buyer shall diligently further the sale of Atlantic's products during the period this agreement is effective.

Period of Time—This agreement shall extend from and from year to year thereafter unless terminated by either party at the end of the original term or at the end of any subsequent contract year by giving at least ninety (90) days prior written notice to the other party.

Price—The price shall be determined as follows:

Credit Card Privilege—Atlantic will accept from Buyer assignment of accounts which result from retail credit sales made by Buyer at its own service station retail outlets or by service station Dealers purchasing Atlantic petroleum products from Buyer and will pay or credit Buyer the amount thereof, subject to the terms and conditions outlined by Atlantic from time to time. This arrangement will continue so long as Buyer continues to handle Atlantic petroleum products, unless terminated by either party giving to the other not less than forty-eight (48) hours advance written notice of termination.

Freight Charges—When shipments are made "freight collect", allowance for freight will be made on the face of the invoice.

Terms of Payment

If credit is established, and during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this agreement are to be made at par.

Shipments—Buyer shall give Atlantic shipping instructions at least ten (10) days prior to the time shipments are desired, and when possible inform Atlantic the quantity desired for any one month thirty (30) days before the first day thereof.

Tank cars or truck transports shipped hereunder are not to be diverted or reconsigned without written permission of Atlantic first obtained.

Taxes—Any tax or other charge now or hereafter imposed by law, domestic or foreign, on any product herein sold, or on the production, manufacture, sale, transportation or delivery thereof, or on this agreement, which Atlantic is required to pay or collect, shall be added to the price herein provided for and paid by Buyer.

2141 Unloading—Buyer promptly shall receive shipments or unload the transportation facilities employed, return empty cars as instructed and pay demurrage, tank car rental and all other charges or damages for delay in receipt or unloading.

Tetraethyl Lead Regulations—Buyer shall distribute and sell any tetraethyl lead treated gasoline purchased under this agreement in accordance with the rules and regulations now or hereafter issued by Atlantic's supplies of tetraethyl lead, United States Public Health Service or any governmental agency having jurisdiction thereof, and Buyer at all times shall keep any purchaser for resale of said gasoline informed of all said rules and regulations, and shall require that said purchaser for resale comply with said rules and regulations and that he inform all who purchase from him for resale of said rules and regulations. Buyer shall afford medical and mechanical representatives of such suppliers every reasonable facility to inspect any apparatus, equipment or other property used by Buyer in connection with the distribution and sale of said treated gasoline; and Buyer shall require that each purchaser for resale afford similar facilities for medical and mechanical inspection by such suppliers.

Force Majeure—Buyer shall not be obligated to accept deliveries if unable to operate Buyer's business by reason of fire, flood, war, civil commotion, strikes, blockade or

causes beyond Buyer's control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or any other difference with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in Atlantic's sole discretion to restrict or cease deliveries hereunder.

Claims—No claim of Buyer on account of shortage of quantity or defect in quality of the products delivered hereunder or for any other causea shall be allowed unless Buyer immediately upon receipt of the shipment notifies Atlantic of such claim, with subsequent confirmation in writing, and extends to Atlantic the opportunity of making an investigation.

Advertising—Atlantic shall loan to Buyer, under separate bailment agreement, the globes or lenses required for gasoline dispensing equipment used by Buyer or Buyer's customers in the distribution of such products purchased from Atlantic. Atlantic, at Atlantic's option, may also loan to Buyer, under separate bailment agreement, Atlantic's approved advertising signs. Buyer shall supply all other dispensing equipment and advertising signs.

Trade Marks—Atlantic grants to Buyer during the term of this agreement the right to use and display Atlantic's

trade mark or trade marks, covering the products purchased from Atlantic, but such right and privilege shall cease at the termination of this agreement and Buyer shall discontinue the use and display of Atlantic's trade mark or trade marks.

Conflicting Laws or Regulations—This agreement contemplates full compliance with all laws, ordinances, and regulations, from whatever authority the same may emanate, having application to the parties hereto or subject matter hereof; and in the event this agreement, or any procedure or action therein imposed upon either party hereto, shall at any time appear or be determined to be in conflict with any legal requirements imposed by any such authority, then this agreement shall immediately become inoperative and ineffective with respect thereto; and in any such event either party hereto shall have the right to cancel this agreement, subject to the obligation of Buyer to settle any unpaid balances due hereunder; and any obligation of Atlantic to make further deliveries hereunder shall terminate on the date of such cancellation.

Default—Except for causes referred to above under the title "Force Majeure" a default under this agreement shall occur upon the happening of any of the following events: (a) failure of Atlantic to make deliveries to Buyer as herein stated; (b) failure of Buyer to order, accept or pay promptly for material in accordance with the provisions hereof; and (c) any adulteration or misrepresentation by Buyer of the product or products of Atlantic.

Liquidated Damages—In the event of any default, the party not in default may terminate this agreement by written notice to the other party given at any time within ten (10) days after knowledge of the existence of such default. If this agreement is so terminated Buyer shall be

obligated to settle any unpaid balances due here under and the party in default shall be obligated to pay to the party so terminating the sum of one cent (1c) for each gallon of product which for any reason is not delivered, or accepted, as provided herein up to the minimum quantities specified. Such sum shall be deemed full liquidated damages for all losses resulting from such default. Waiver of any one or more defaults hereunder shall not preclude either party from exercising the right to terminate this agreement by reason of any subsequent default.

Sale of Business—Should Buyer at any time during the period of this agreement desire to sell, lease or otherwise dispose of Buyer's petroleum business, or any substantial part thereof, Buyer shall give written notice to Atlantic of the price and terms of any offer to purchase, lease or otherwise acquire said business or part thereof, and Atlantic shall have the first option to purchase, lease or otherwise acquire such business or part thereof at the price and upon the terms of each such offer. Such option shall extend for a period of sixty (60) days following receipt of such notice by Atlantic, and if not exercised within said period it shall thereupon lapse. Any such sale, lease or other disposition by Buyer or failure of Atlantic to exercise any option hereunder shall not prejudice Atlantic's rights hereunder, and this agreement shall be and remain in full force and effect until its termination date.

Assignability—This agreement shall not be assigned by either party without the written consent of the other party.

Constitutes Whole Agreement—This instrument embodies the whole agreement between the parties and there are no oral promises or other understandings or conditions inducing its execution or qualifying its terms.

In Witness Whereof, the parties have caused these presents to be duly executed in duplicate the day and year above written.

The Atlantic Refining Company

By .....

.....

Buyer

By .....

Witness:

.....

.....

2142 COMMISSION EXHIBIT NO. 96.

AUTHORIZED DISTRIBUTORS AGREEMENT

Atlantic

Agreement made as of this ..... day of .....; 19....., between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called "Atlantic," and ..... of ....., County of ..... State of ....., hereinafter called "Buyer."

Duration: This Agreement shall extend from ....., 19....., to ....., 19....., and from year to year thereafter unless terminated by either party at the end of the original term or at the end of any subsequent contract year by giving at least ninety (90) days prior written notice to the other party.

Products: Atlantic Motor Oils and Atlantic Automotive Lubricants.

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at ..... barrels, during the period between

....., 19....., and ....., 19....., but in no event shall Atlantic be required to deliver more than ..... barrels in any 12-month period. Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (1/8) of the estimated 12-month purchases mentioned above. Fifty (50) gallons of Atlantic Motor Oils or 400 pounds of Atlantic Automotive Greases shall be considered one (1) barrel.

Prices: Buyer shall pay for products purchased hereunder Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Authorized Distributor Price Schedule." A copy of the current schedule effective ..... is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices specified in the "Atlantic Automotive Lubricants Authorized Distributor Price Schedule."

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this contract are to be made at par. Cash discount 1% for payment in 10 days, net 30 days. No discount on tax and freight.

Shipment: Buyer shall give Atlantic shipping instructions at least 10 days in advance of the time shipments are desired, and if possible shall notify Atlantic of the quantity desired for any one month thirty days in advance. Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil

commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation, or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Delivery: F. O. B.

.....

.....

Shipments are to be made transportation charges collect with the understanding that Atlantic shall deduct from the invoices the carload or truckload freight (not including transportation tax) depending upon carrier used. Any increase in freight rates over those in effect on the date hereof may be added to the prices stated above, in Atlantic's discretion.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: Atlantic shall not be responsible under any circumstances for any consequential damages or injury.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the 12-month period set forth above, all former Atlantic Authorized Distributors Agreements for Atlantic Motor Oils and Atlantic Automotive Lubricants now in effect between the parties.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company

By.....

Buyer.....

By.....

2144 COMMISSION EXHIBIT NO. 96A.

AUTHORIZED DISTRIBUTORS AGREEMENT

Atlantic

Agreement made as of this.....day of....., 19....., between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called "Atlantic", and ..... of ..... County of.....State of....., hereinafter called "Buyer".

Sale: Atlantic agrees to sell and Buyer agrees to purchase during the period between..... 19....., and ....., 19....., Atlantic Automotive Lubricants as ordered by Buyer, estimated for each successive 12-month period at.....barrels;

Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (⅛) of the estimated 12-month purchases mentioned above.

Duration: Upon the expiration of the original term,

this Agreement shall continue in effect from year to year, unless terminated at the end of the original or any subsequent term by either party giving to the other, at least ninety (90) days prior written notice.

Prices: Buyer shall pay for products purchased hereunder Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Authorized Distributor Price Schedule." A copy of the current schedule is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices specified in the "Atlantic Automotive Lubricants Authorized Distributor Price Schedule."

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this contract are to be made at par. Cash discount 1% for payment in 10 days, net 30 days. No discount on tax and freight.

Shipment: Buyer shall give Atlantic shipping instructions at least 10 days in advance of the time shipments are desired, and if possible shall notify Atlantic of the quantity desired for any one month thirty days before the first day of such month.

Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery

due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation, or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Delivery: F. O. B. .....

.....

Shipments are to be made transportation charges collect with the understanding that Atlantic shall deduct from the invoices the carload or truckload freight depending upon carrier used. Any increase in freight rates over those in effect on the date hereof may be added to the prices stated above, in Atlanic's discretion.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This Agreement cannot be amended by written instrument duly executed by both parties.

except

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the original term, all former agreements now in effect between the parties relating to the purchase and sale of Atlantic Automotive Lubricants.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company

By .....

Buyer .....

By .....

2145 COMMISSION EXHIBIT NO. 97.

Loaned Equipment Contract

The Atlantic Refining Company, , hereinafter called "Atlantic", reserving the right of addition, change, substitution and maintenance, lends to ..... hereinafter called "Customer" to enable "Customer" to store and dispense petroleum products purchased from Atlantic pursuant to the terms of sundry contracts with Atlantic and for no other purpose, equipment now or hereafter to be installed at Street and Number ..... City ....., State ....., which shall remain personalty and the property of Atlantic, and which "Customer" shall not remove, but shall repair and maintain, as follows:

In consideration of Atlantic's lending said equipment to "Customer", "Customer" will maintain and keep in

good repair and assumes and agrees to be responsible for full and exclusive control of said equipment and any additions to or substitutions therefor and agrees to indemnify and save harmless Atlantic from and against any and all liability for personal injury and property damage, or either, resulting in any manner by reason of the condition or use of such equipment and any additions to or substitutions therefor. Upon termination or cancellation, for any cause, of any agreement between "Customer" and Atlantic affecting the above location, said equipment and any additions to or substitutions therefor will be returned to Atlantic. At Atlantic's option, Atlantic may keep said equipment in place for a reasonable time to negotiate for its sale or other disposition, but, Atlantic, in any event, shall not be obliged to remove any underground equipment.

Witness "Customer's" signature and seal this ..... day of ....., 19.....

.....(Seal)

.....(Seal)

Witness:

Consent and Confirmation

Each of the following signers as owner, part owner, mortgagee, or lien holder of the above noted premises, for himself, his legal representatives, successors and assigns, in consideration of the installation or continuance in place of the equipment covered by the above agreement, hereby consents and agrees to be bound by the terms and conditions thereof with respect to installation, removal, substitution, maintenance and disposition, and hereby waives all right to hold, distrain, mortgage, claim or levy upon any of such equipment or any part thereof, and hereby agrees to accept title to any underground equipment not removed by Atlantic upon written notice of Atlantic's intention not to remove the same.

Witness my and our signatures and seals this ..... day of ....., 19.....

.....(Seal)

.....(Seal)

Witness:

2147 COMMISSION EXHIBIT NO. 97A.

Atlantic

Loaned Equipment Contract

The Atlantic Refining Company, , hereinafter called "Atlantic", reserving the right of addition, change, substitution and maintenance, lends to ..... hereinafter called "Customer" to enable Customer to store and dispense petroleum products purchased from Atlantic pursuant to the terms of sundry contracts with Atlantic and for no other purpose, equipment now or hereafter to be installed at Street and Number ..... City ..... State ....., which shall remain personalty and the property of Atlantic, and which Customer shall not remove, but shall repair and maintain, as follows:

In consideration of Atlantic's lending said equipment to Customer, Customer will maintain and keep in good repair and assumes and agrees to be responsible for full and exclusive control of said equipment and any additions to or substitutions therefor and agrees to indemnify and save harmless Atlantic from and against any and all liability for personal injury and property damage, or either, resulting in any manner by reason of the condition or use of such equipment and any additions to or substitutions therefor. Upon termination or cancellation, for any cause, of any agreement between Customer and Atlantic affecting

the above location, said equipment and any additions to or substitutions therefor will be returned to Atlantic. At Atlantic's option, Atlantic may keep said equipment in place for a reasonable time to negotiate for its sale or other disposition, but, Atlantic, in any event, shall not be obliged to remove any underground equipment.

Witness Customer's signature and seal this ..... day of ....., 19.....

Witness:

.....(Seal)

.....(Seal)

Consent and Confirmation

Each of the following signers as owner, part owner, mortgagee, or lien holder of the above noted premises, for himself, his legal representatives, successors and assigns, in consideration of the installation or continuance in place of the equipment covered by the above agreement, hereby consents and agrees to be bound by the terms and conditions thereof with respect to installation, removal, substitution, maintenance and disposition, and hereby waives all right to hold, distrain, mortgage, claim or levy upon any of such equipment or any part thereof, and hereby agrees to accept title to any underground equipment not removed by Atlantic upon written notice of Atlantic's intention not to remove the same.

Witness my and our signatures and seals this ..... day of ....., 19

Witness:

.....(Seal)

.....(Seal)

2148 COMMISSION EXHIBIT NO. 98A-G.

This Agreement made as of this ..... day of ..... 19....., by and between The Atlantic Refining Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called "Atlantic", and ..... of ....., hereinafter called "Distributor".

Witnesseth:

1. Atlantic hereby constitutes Distributor a representative solely for the purpose of the sale, distribution and marketing of petroleum products, namely, gasoline, furnace oil, kerosene, motor oil and greases, of Atlantic upon the terms and conditions and within the territory hereinafter designated.

2. Distributor shall offer for sale and make sales of said products only in the vicinity of Lakewood, New Jersey.

3. Atlantic will ship to Distributor on consignment petroleum products, including gasoline, furnace oil, kerosene, motor oil and greases, which shall hereinafter be referred to as "consigned merchandise" for sale by Distributor in the territory covered by this agreement. All such consigned merchandise shall be received by Distributor and stored at the bulk plant which has been provided by Atlantic at Lakewood, New Jersey, and shall at all times remain the property of Atlantic until sold by Distributor. All tanks, drums or containers at said bulk and used for the storage of said consigned merchandise, shall always be marked so as to show that the contents thereof are the sole property of Atlantic. Distributor shall provide and pay for the necessary employees to properly handle, protect and safeguard the property of Atlantic and shall be liable for all losses, shortages or thefts of said property from said bulk plant.

2150 4. With respect to all persons at any time employed by, or on the payroll of Distributor, or performing any work for or on behalf of Distributor, or in connection with or arising out of the business thereof, Distributor agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for unemployment insurance or old age retirement benefits, pensions, or annuities, now or hereafter imposed by the government of the United States, or any State or political sub-divisions thereof, whether the same be measured by the wages, salaries or other remuneration paid to such persons, or the number of such persons, or otherwise; it being understood that no such persons shall be deemed the employees of Atlantic.

5. Distributor shall sell Atlantic's products at Atlantic's regular marketing prices as the same shall be announced from time to time by Atlantic to the Distributor and posted at the aforesaid bulk plant. Distributor shall be governed in all respects by the general marketing policy of Atlantic in respect to ~~whole~~ wholesale prices, discounts and other matters pertaining to price structure of Atlantic's products marketed by Atlantic.

6. Upon the sale by Distributor of any of the consigned merchandise, deliveries thereof shall be made by Distributor from the supply stored at said bulk plant.

7. Distributor, at all times, shall provide and maintain an adequate number of salesmen and other employees to carry on properly the business herein provided for and shall apply himself energetically to the management and direction of the sales organization employed by him hereunder and to the sale of Atlantic's products and building up of Atlantic's business in said territory, and, at all times, shall maintain the prestige of Atlantic for fair dealings and honorable business methods.

2151 8. Distributor shall pay all salaries and wages of

employees necessary to carry on said business and shall pay all other costs and expenses of said business, except those herein specifically required to be paid by Atlantic. Distributor shall provide and maintain suitable motor trucks for delivery of the aforesaid consigned merchandise.

9. Atlantic shall supply Distributor with equipment for dispensing gasoline and motor oils. Said equipment may be loaned to Distributor's customers only with the approval of Atlantic and under Atlantic's standard forms of agreement. Atlantic shall be the sole judge of the amount, kind or character of equipment to be furnished to Distributor.

10. Distributor shall be governed in granting credit to Distributor's customers by the credit policy of Atlantic and shall collect daily all money due for goods sold to Distributor's customers and make deposits daily of the money collected for Atlantic's account in a depository designated by Atlantic. The account of said depository shall be carried in Atlantic's name and subject to withdrawal only by Atlantic.

11. Distributor shall collect with due diligence all accounts from customers whose credit has been approved by Atlantic. If said accounts are not collected by Distributor and remitted to Atlantic within 90 days from the date of the sale of the products covered by such account, Distributor shall refund to Atlantic any commission or commissions paid Distributor on said accounts. The account of any customer to whom credit has been given by Distributor beyond the line of credit established for said customer by Atlantic, and the account of any customer to whom Atlantic has refused to extend any credit are to be charged to Distributor and the amounts thereof shall be deducted from any commissions due Distributor by Atlantic.

2153 12. Atlantic will allow and pay to Distributor com-

mission on the sale and delivery of the products herein mentioned as follows:

Atlantic Hi-Arc Gasoline—1¼¢ per gallon
Atlantic White Flash Gasoline—1¼¢ per gallon
Atlantic Rayolight Oil (Kerosene)—1¼¢ per gallon
Atlantic Furnace Oil—1¼¢ per gallon
Atlantic Motor Oils—20% of the selling price thereof (exclusive of taxes) as established under the provisions of Paragraph 5.
Atlantic Package Goods—20% of the selling price thereof (exclusive of taxes) as established under the provisions of Paragraph 5.

These commissions are payable only upon the consigned merchandise sold by Distributor through the aforesaid bulk plant, and no commissions shall be payable upon any sales of gasoline, furnace oil, kerosene, motor oil and greases that may be made by Atlantic in tank car quantities or otherwise. All commissions due hereunder shall be paid on or before the 15th day of each month for business done during the preceding month, less any charges against same herein authorized.

13. With respect to any service or filling stations operated by Distributor within the territory covered by this agreement for the purpose of selling at retail products of Atlantic, Distributor shall make such withdrawals from the supply or stock of consigned merchandise as may be necessary for Distributor's said retail service station business, and shall pay for the consigned merchandise so withdrawn in cash at time of delivery at Atlantic's published wholesale price. Distributor shall be allowed and paid the same commission on all such consigned merchandise so withdrawn as Atlantic allows Distributor on like consigned merchandise sold to Distributor's customers.

14. Atlantic shall pay all Federal, State or other taxes based on ownership of property and levied or assessed

against the property of Atlantic used by Distributor
2155 and any license fees required by Federal, State or other laws or ordinances for carrying on the wholesale business contemplated by this agreement. Distributor shall pay all taxes or license fees imposed upon the use and operation of Atlantic's property in Distributor's retail business, as well as for such taxes and license fees or others imposed upon Distributor for carrying on Distributor's retail business and upon property owned or furnished by Distributor for either the wholesale or retail business.

15. Distributor shall not sell, offer for sale or handle within the territory herein provided for, in any manner, petroleum products, derivatives therefrom, or substitutes therefor, except those manufactured or offered for sale by Atlantic.

16. Distributor shall keep proper and adequate records of all receipts of consigned merchandise, of all sales made by Distributor and of all consigned merchandise withdrawn from said bulk plant, which said records shall be at all times open to the inspection of Atlantic.

17. Atlantic shall supply and furnish Distributor with the products necessary to carry on the business herein provided for, unless prevented by any cause or causes beyond the reasonable control of Atlantic.

18. If remittances are not made promptly for all consigned merchandise withdrawn by Distributor, or if, in the sole judgment of Atlantic, Distributor's financial responsibility is unsatisfactory or Distributor displays lack of business energy in carrying on the business herein provided for or Distributor violates or fails to comply with any of the terms and conditions of this agreement, Atlantic, at Atlantic's sole option, forthwith may cancel and terminate this agreement at any time, and Atlantic at once shall be entitled to receive back, and Distributor shall deliver

to Atlantic free of any liens, cost or expense at said
2157 bulk plant, all of Atlantic's property, including all said consigned merchandise.

19. This agreement or any interests therein may not be assigned or in any wise transferred by Distributor without written consent of Atlantic.

20. Failure of Atlantic to enforce any of the provisions hereof or to exercise any option or to require any performance by Distributor of such provisions herein contained shall in no wise be construed as a waiver of such provisions or in any way affect the validity of this agreement or any part thereof or Atlantic's right to enforce thereafter each and every provision.

21. Distributor shall not incur any indebtedness or assume any liability in the name of Atlantic or for Atlantic's account without first having received the written consent of Atlantic to incur such indebtedness, or liability.

22. Distributor hereby agrees to provide at Distributor's own expense Workmen's Compensation Insurance for Distributor's employees. Distributor shall indemnify and save harmless Atlantic in and from all suits, losses, claims, liability or damage which may arise out of any injuries to Distributor, Distributor's employees, and any persons or property for or by reason of the violation of any ordinances, laws or regulations or by reason of or resulting from or in any incident to the negligent acts or omissions of Distributor, Distributor's employees or servants in connection with the operation of the business herein contemplated, or in connection with the trucks and equipment used or to be used in connection herewith or arising in any manner in connection with the sale, distribution or marketing of consigned merchandise under this agreement.

2159 23. Distributor shall furnish Atlantic, at Distributor's expense, with bond or bonds acceptable to At-

lantic, and for such an amount as Atlantic from time to time may consider necessary and adequate for the faithful performance by Distributor of the terms and conditions of this contract.

24. This agreement, unless sooner terminated as provided in Paragraph 18 hereof, shall continue in full force and effect from ....., 19..... until terminated by either party giving to the other party sixty (60) days' written notice of intention to terminate the agreement. Immediately upon such termination, Distributor shall deliver to Atlantic, at Atlantic's bulk plant aforesaid, all of Atlantic's property, including all said consigned merchandise free of any lien, cost or expense to Atlantic.

In Witness Whereof, the parties hereto have duly executed this agreement as of the day and year first above written.

The Atlantic Refining Company
By .....
Regional Manager of Marketing

.....

Witness:

.....

2161 COMMISSION EXHIBIT No. 98H-K

Atlantic

Commission Distributor Consignment Agreement

First: The Atlantic refining Company, hereinafter called "Consignor", and .....of....., hereinafter called "Consignee", desiring to arrange for the sale and distribution of petroleum products at ..... and vicinity, agree as follows:

Second: Consignor shall deliver on consignment to Consignee stocks of gasoline at the bulk station operated

by Consignee at above address and will establish the prices at which said products are to be sold by Consignee.

Third: Consignee shall have charge of said stocks, take inventories of same as required by Consignor, and be responsible for all stocks and containers delivered to him by consignor.

Fourth: Consigned stocks shall remain the property of Consignor until sold in the regular course of business, but Consignee shall be responsible for all shortages of bulk stock in excess of one half of one per cent (½%) of the monthly throughput.

Fifth: Authorized representatives of Consignor may inventory and inspect Consignor's property, stocks, goods and merchandise of whatever kind at any time during business hours.

Sixth: Consignee shall sell and deliver in a diligent efficient and business like manner the aforementioned products, in accordance with Consignor's Direct Marketing policies, now in effect and as changed from time to time to the accounts designated by Consignor in the geographical territory described in the attached map. Consignee shall be responsible for all said products delivered, and settle with Consignor each day of said products delivered by him that day.

Seventh: All of said products shall be sold by Consignee in strict accordance with Consignor's established prices in effect at time and place of delivery for dealers and consumers in the territory covered by this Agreement. Consignee shall remit to Consignor cash for all deliveries of consigned products made by him except in the case of deliveries to customers whose credit has been previously approved in writing by Consignor; credit deliveries
2162 shall be at prices and upon terms specified in writing by Consignor.

Eighth: Consignee shall transmit daily to Consignor's office at ....., on such forms as required by Consignor, written statements, showing in detail all sales and deliveries of said products made by him and shall remit daily to Consignor all moneys received by him from the sale of said products, together with signed receipts for both cash and credit sales.

Ninth: As soon as practical after the first day of each month, Consignor shall render a written statement to Consignee showing sales and deliveries during the preceding month, as reported by Consignee, and shall premit to Consignee after deducting any amounts due the Consignor hereunder the commissions earned on such sales and deliveries at the following rates:

Atlantic Gasoline —One & Six-tenths cents (1.6¢) per gallon

Atlantic Premium Gasoline—One & Six-tenths cents (1.6¢) per gallon

When deliveries of Gasoline are made to dealers in an area in which the price to dealers established by Consignor is below Consignor's posted zone tank wagon price for that area, or when deliveries of Gasoline are made to consumers under contract with Consignor, at prices below Consignor's posted commercial tank wagon price for the products involved at time and place of delivery, the commission payable will be as follows:

Up to and including 1.00¢ below Consignor's posted zone tank wagon price at time and place of delivery .....1.60¢ per gallon

When such prices go below this level, Consignor will share this decline half and half with Consignee to the minimum commission of 1.10¢.

In no event shall Consignee receive less than $2.00 per delivery to consumers.

Consignor in consideration for use of Consignee's stor-

age facilities will pay the Consignee an additional commission of one quarter of a cent (.25¢) over and above the commission stated herein on each gallon of gasoline delivered by the Consignee from said storage facilities.

Tenth: Consignee shall have entire charge of the management and operation of his business; shall furnish and maintain all necessary buildings, improvements, storage and handling equipment and tools; shall furnish, 2163 maintain and operate his delivery equipment; shall have such equipment painted in conformance with Consignor's policy; and shall supply Consignor with gauge sheets properly calibrated for each truck loading at Atlantic Plants or Terminals that do not have printing meters at loading racks.

Eleventh: Consignee shall furnish all his own helpers and employees, and shall pay all expenses, labor, contributions, assessments, taxes, fees, licenses and other costs of like nature arising out of Consignee's business and upon his property, and Consignor shall in no event have any liability for the negligence of Consignee, or his employees, in conducting said business.

Twelfth: Consignor will buy from Consignee at prices agreed upon by the parties any and all Gasoline dispensing equipment that he may have installed at his own expense at locations of accounts to whom Consignee delivers gasoline hereunder, and will supply, maintain, and replace as needed all equipment for dispensing gasoline required by said accounts in accordance with Consignor's existing equipment program for Commission Distributors.

Thirteenth: Consignee may loan equipment to customers only with approval of Consignor and under Consignor's standard form of agreement.

Fourteenth: Consignee shall collect from customers and return to Consignor as directed all returnable containers without additional compensation, which service shall be included in the commissions specified in this agreement.

Fifteenth: Consignee agrees that he will procure and maintain workmen's compensation insurance and public liability insurance covering all equipment used by him in the operation of said business. Said public liability insurance shall carry liability of not less than $25,000.00 for one (1) person and $50,000.00 for one (1) accident, and a minimum of $5,000.00 property damage.

Satisfactory evidence of the existence of such insurance shall be furnished Consignor.

Sixteenth: It is expressly agreed and stipulated that neither Consignee nor the employees of Consignee shall be deemed or construed to be employees of Consignor.

Seventeenth: It is expressly agreed that Consignor shall have the right through salesmen, agents, drivers, or representatives to solicit business and make deliveries and 2164 sales of its products in any territory, and that Consignee shall not be entitled to any commission on sales and deliveries of Gasolines made by other than himself or his employees.

Eighteenth: This Agreement shall extend from..... to..... However, should Consignee fail to settle for any Gasolines delivered to him by Consignor as provided for in this Agreement, Consignor may immediately cancel this Agreement or suspend deliveries until settlement is made. Upon termination of this Agreement for any reason, Consignee shall delivery to Consignor all property, books and records in his possession or under his control by reason of this Agreement.

Nineteenth: If Consignee dies, the Agreement shall terminate automatically. If Consignee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Consignor shall have the right to terminate this agreement.

Twentieth: This written contract contains the entire agreement between the parties and its execution has not

been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This contract is personal and cannot be assigned without Consignor's prior consent nor can it be amended except by written instrument duly executed by both parties.

Executed in duplicate this ..... day of ....., 195....

The Atlantic Refining Company

.....

Consignee

By .....

2165 COMMISSION EXHIBIT No. 98L.

Rider to Commission Distributor Consignment Agreement

Effective this date, the following will supplement and be made the second paragraph of the ninth provision in the attached Commission Distributor Consignment Agreement executed between The Atlantic Refining Company and the Consignee on the ..... day of ..... 195....

"When deliveries of Gasoline are made to Lessee Dealers, the commission payable by Consignor on such deliveries shall be at the rate of One and One-tenths cents (1.1¢) per gallon for both Atlantic Gasoline and Atlantic Premium Gasoline."

With the addition of the above paragraph as a part of the attached Agreement, it is further agreed by Consignor and Consignee that the term "dealers" used in the paragraph it immediately precedes, refers to and applies to Contract Dealers only.

The Atlantic Refining Company

By .....

Consignee .....

.....

2166 COMMISSION EXHIBIT No. 98M-P.

Atlantic

Commission Agent Consignment Agreement

This Agreement made and entered into this ..... day of ....., 195...., by and between The Atlantic Refining Company, a corporation, having its principal office in Philadelphia, Pennsylvania hereinafter referred to as "Consignor" and ..... of ....., hereinafter referred to as "Consignee",

Witnesseth:

Consignee shall sell and deliver to accounts specified by Consignor Atlantic Gasolines, Motor Oils and Lubricants delivered by Consignor on consignment into Consignee's delivery equipment at Consignor's bulk plant.

First: Consignee shall sell and deliver in a diligent, efficient and bussinesslike manner, the aforementioned products in accordance with Consignor's Direct Marketing policies, now in effect and as changed from time to time to accounts designated by Consignor in the geographical territory described in the attached map. Consignee shall be responsible for all said products delivered by him that day.

Second: Consigned stocks shall remain the property of Consignor until sold in the regular course of business, but Consignee shall be responsible therefore until sold.

Third: All of said products shall be sold by Consignee in strict accordance with Consignor's established prices in effect at time and place of delivery for dealers and consumers in the territory covered by this agreement. Consignee shall remit to Consignor cash for all deliveries of consigned products made by him, except in the case of deliveries to customers whose credit has been previously

approved in writing by Consignor; credit deliveries shall be at prices and upon terms specified in writing by Consignor.

Fourth: Consignee shall transmit daily to Consignor's office at ....., on such
2167 forms as required by Consignor, written statements, showing in detail all sales and deliveries of said products made by him and shall remit daily to Consignor all moneys received by him from the sale of said products, together with signed receipts for both cash and credit sales.

Fifth: As soon as practical after the first day of each month, Consignor shall render a written statement to Consignee showing sales and deliveries during the preceding month as reported by Consignee, and shall remit to Consignee after deducting any amount due the Consignor hereunder commissions earned on such sales and deliveries at the following rates:

Atlantic Gasoline	—One & Six-tenths cents (1.6¢) per gallon
Atlantic Premium Gasoline	—One & Six-tenths cents (1.6¢) per gallon
Atlantic Motor Oils and Lubricants	—Fifteen percent (15%) of invoice price excluding tax

When deliveries of Gasoline are made to dealers in an area in which the price to dealers established by Consignor is below Consignor's posted zone tank wagon price for that area or when deliveries of gasoline are made to consumers under contract with Consignor at prices below Consignor's posted Commercial Tank Wagon price for product involved at time and place of delivery, the commission payable will be as follows:

Up to and including 1.00¢ below Consignor's posted zone tank wagon price at time and place of delivery.....	1.60¢ per gallon

When such prices go below this level, Consignor will share this decline half and half with Consignee to the minimum commission of 1.10¢.

In no event shall Consignee receive less than $2.00 per delivery to consumers.

Sixth: Consignee shall have entire charge of the management and operation of his business; shall furnish, maintain and operate his delivery equipment; shall have such equipment painted in conformance with Consignor's policy; and shall supply Consignor with gauge sheets, properly calibrated, for each truck loading at Atlantic Plants or Terminals that do not have printing meters at loading racks.

Seventh: Consignee shall furnish all his own helpers and employees and shall pay all expenses, labor, contributions, assessments, taxes, fees, licenses and other costs
2168 of like nature arising out of Consignee's business and upon his property, and Consignor shall in no event have any liability for the negligence of Consignee, or his employees in conducting the business.

Eighth: Neither Consignee nor his employees shall be deemed or construed to be employees of Consignor.

Ninth: Consignor will buy from Consignee at prices agreed upon by the parties any and all gasoline dispensing equipment that he may have installed at his own expense, at locations of accounts to whom Consignee delivers gasoline hereunder, and will supply, install, maintain, and replace as needed all equipment for dispensing gasoline required by said accounts in accordance with Consignor's existing equipment program for Commission Agents.

Tenth: Consignee may loan equipment to customers only with approval of Consignor and under Consignor's standard form of agreement.

Eleventh: Consignee shall collect from customers and return to Consignor as directed all returnable containers

without additional compensation, which service shall be included in the commissions specified in this agreement.

Twelfth: Consignee agrees that he will procure and maintain workmen's compensation insurance and public liability insurance covering all equipment used by him in the operation of said business. Said public liability insurance shall carry liability of not less than $25,000.00 for one (1) person and $50,000.00 for one (1) accident, and a minimum of $5,000.00 property damage.

Satisfactory evidence of the existence of such insurance shall be furnished Consignor.

Thirteenth: It is expressly agreed that Consignor shall have the right through salesman, agents, drivers, or representatives to solicit business and made deliveries and sales of its products in any territory, and that Consignee shall not be entitled to any commission on sales and deliveries of Gasoline, Motor Oils and Lubricants made by other than himself or his employees.

Fourteenth: This Agreement shall extend from ..... to ..... However, should Consignee fail to settle for any Casolines, Motor Oils and Lu-
2169 bricants delivered to him by Consignor as provided for in this Agreement, Consignor may immediately cancel this Agreement or suspend deliveries until settlement is made. Upon termination of this Agreement for any reason, Consignee shall deliver to Consignor all property, books and records in his possession or under his control by reason of this Agreement.

Fifteenth: If Consignee dies, the agreement shall terminate automatically. If Consignee becomes involved in any insolvency, or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Consignor shall have the right to terminate this agreement.

Sixteenth: This written contract contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or

agreement of any kind other than those herein expressed. This contract is personal and cannot be assigned without Consignor's prior consent nor can it be amended except by written instrument duly executed by both parties.

Executed in duplicate this ..... day of ..... 195....

The Atlantic Refining Company

By .....

.....

Consignee.

2170 COMMISSION EXHIBIT NO. 98Q.

Rider to

Commission Agent

Consignment Agreement

Effective this date, the following will supplement and be made the second paragraph of the fifth provision in the attached Commission Agent Consignment Agreement executed between The Atlantic Refining Company and the Consignee on the .....day of..... 195....

"When deliveries of Gasoline are made to Lessee Dealers, the commission payable by Consignor on such deliveries shall be at the rate of One and One-tenths cents (1.1¢) per gallon for both Atlantic Gasoline and Atlantic Premium Gasoline."

With the addition of the above paragraph as a part of the attached Agreement, it is further agreed by Consignor and Consignee that the term "dealers" used in the paragraph it immediately precedes, refers to and applies to Contract Dealers only.

The Atlantic Refining Company

By .....

Consignee.....

.....

2171 COMMISSION EXHIBIT NO. 98R-T.

Bulk Sales Agreement

This Agreement made this day of 194 , by and between The Atlantic Refining Company, , a corporation of the Commonwealth of Pennsylvania, hereinafter called Atlantic, and of , County of , State of , hereinafter called Buyer,

Witnesseth:

Quantity and Product — Atlantic agrees to sell and Buyer agrees to purchase , during the

Period of Time — period commencing and ending with

the understanding that Atlantic shall not be required to deliver and Buyer shall not be required to accept more than one-eighth (1/8) of the estimated maximum quantity specified in this agreement in any calendar month.

Price — The price shall be determined as follows:

2172-A Freight Charges

Terms of Payment

If during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory, cash payments or satisfactory security may be required by Atlantic as a condition precedent to the shipment of orders under this agreement.

Taxes — Any tax or other charge now or hereafter imposed by law, domestic or foreign, on any product herein

sold, or on the production, manufacture, sale, transportation or delivery thereof, or on this agreement, which Atlantic is required to pay or collect, shall be added to the price herein provided for and paid by Buyer.

2172B Tetraethyl Lead Regulation Buyer shall distribute and sell any tetraethyl lead treated gasoline purchased under this agreement in accordance with the rules and regulations now or hereafter issued by Ethyl Corporation or United States Public Health Service or any governmental agency having jurisdiction thereof, and Buyer at all times shall keep any purchaser for resale of said gasoline informed of all said rules and regulations, and shall require that said purchaser for resale comply with said rules and regulations and that he inform all who purchase from him for resale of said rules and regulations. Buyer shall afford medical and mechanical representatives of Ethyl Corporation every reasonable facility to inspect any apparatus, equipment or other property used by Buyer in connection with the distribution and sale of said treated gasoline; and Buyer shall require that each purchaser for resale afford similar facilities for medical and mechanical inspection by Ethyl Corporation.

Shipments Buyer shall give Atlantic shipping instructions at least ten (10) days prior to the time shipments are desired, and when possible inform Atlantic the quantity desired for any one month thirty (30) days before the first day thereof.

Shipments hereunder shall be made in tank cars or truck transports from to the distributing station of Buyer at the following location or locations:

Tank cars or truck transports shipped hereunder are not to be diverted or reconsigned without written permission of Atlantic first obtained.

Force Majeure Buyer shall not be obligated to accept

deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or any other difference with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Claims No claim of Buyer on account of shortages in quantity or defect in quality of the products delivered hereunder or for any other cause shall be allowed unless Buyer immediately upon receipt of the shipment and at least twenty-four (24) hours before the unloading thereof notifies Atlantic in writing or by telegram addressed to Atlantic at 260 South Broad Street, Philadelphia 1, Pa., of such claim and extends to Atlantic the opportunity of making an investigation.

Tank Car Rental Buyer shall pay Atlantic rental for use of tank cars on the basis of $2.00 per day, with free time allowance of the first two calendar days following the day of actual or constructive placement of the tank car. Rental shall be paid for Sundays and holidays except when such days fall within the two days' free time. Buyer shall also pay any railroad demurrage charges. Buyer

shall report to Atlantic the date of placement and release of tank cars on forms supplied by Atlantic.

Conflicting Laws or Regulations This agreement contemplates full compliance with all laws, ordinances and regulations, from whatever authority the same may emanate, having application to the parties hereto or subject matter hereof; and in the event this agreement, or any procedure or action therein imposed upon either party hereto, shall at any time appear or be determined to be in conflict with any legal requirements imposed by any such authority, then this agreement shall immediately become inoperative and ineffective with respect thereto; and in any such event either party hereto shall have the right to cancel this agreement, subject to the obligation of Buyer to settle any unpaid balances due hereunder; and any obligation of Atlantic to make further deliveries hereunder shall terminate on the date of such cancellation.

Default Except for causes referred to above under the title "Force Majeure" a default under this agreement shall occur upon the happening of any of the following events: (a) failure of Atlantic to make deliveries to Buyer as herein stated; (b) failure of Buyer to order, accept or pay promptly for material in accordance with the provisions hereof; (c) any adulteration or misrepresentation by Buyer of the product or products of Atlantic.

Liquidated Damages In the event of any default, the party not in default may terminate this agreement by written notice to the other party given at any time within ten (10) days after knowledge of the existence of such default. If this agreement is so terminated the party in default shall be obligated to pay to the party so terminating the sum of one cent (1¢) for each gallon of product which for any reason is not delivered, or accepted, as provided herein. Such sum shall be deemed full liquidated damages for all losses resulting from such default. Waiver of any one

or more defaults hereunder shall not preclude either party from exercising the right to terminate this agreement by reason of any subsequent default.

Sale of Business Should Buyer at any time during the period of this agreement desire to sell or in any manner to dispose of Buyer's business assets or capital stock, or any part thereof or interest therein, Buyer shall give written notice to Atlantic of the terms of any offer of sale or other disposition thereof, and Atlantic shall have the first option of acquiring the same, upon terms identical with said offer. Such option shall extend for a period of thirty (30) days following receipt of such notice by Atlantic, and if not exercised within said period it shall thereupon lapse. Any such sale or disposition by Buyer shall not prejudice Atlantic's rights hereunder, and this agreement shall be and remain in full force and effect until its termination date.

Assignability This agreement shall not be assignable without the written consent of both parties.

Constitutes Whole Agreement This instrument embodies the whole agreement between the parties and there are no oral promises or other understandings or conditions inducing its execution or qualifying its terms.

In Witness Whereof, the parties have caused these presents to be duly executed in duplicate the day and year above written.

The Atlantic Refining Company,

By .....

.....

(Buyer)

By .....

Witness:

.....

.....

2173 COMMISSION EXHIBIT NO. 98U-V.

Atlantic

Contract Sales Agreement Trained Dealers

This Agreement made this ..... day of ....., 195...., between The Atlantic Refining Company, a corporation of Pennsylvania, herein called Atlantic, and ....., herein called Dealer.

In consideration of the promises hereinafter set forth, Atlantic and Dealer agree as follows:

1. Subject to prior Credit Department approval, Atlantic will deliver on consignment to Dealer in tanks at the service station, located at .... gallons of gasoline, hereinafter referred to as Consignment Inventory, for retail sale by Dealer at posted service station prices designated by Atlantic from time to time. Thereafter, Atlantic will deliver to Dealer into such tanks a number of gallons of gasoline, hereinafter called Replenishment Delivery, which when added to the quantity in the tanks shall equal the Consignment Inventory. All proceeds from the retail sale of Atlantic's gasoline shall be the property of Atlantic, and Dealer is hereby made a trustee of such proceeds for Atlantic's sole benefit. Dealer shall have no authority to disburse such trust funds except as follows: At the time of each Replenishment Delivery, Dealer will settle in cash with Atlantic for the number of gallons equal to such Replenishment Delivery on the basis of Atlantic's posted service station price at which the gasoline has been sold, less a commission equal to the Replenishment Delivery multiplied by 3.25¢ for Atlantic Gasoline and 3.75¢ for Atlantic Premium Gasoline when the difference between Atlantic's posted dealer price for Atlantic Gasoline and the posted service station price is 4.00¢ per

gallon or less, or multiplied by 3.75¢ for Atlantic Gasoline and 4.25¢ for Atlantic Premium Gasoline when the above-noted difference is more than 4.00¢ per gallon. If dealer leases his service station from Atlantic, Dealer shall pay as rent a sum equal to 6% of the gross sales at the service station from all sources, excluding therefrom sales of gasoline, sales of tires, batteries and accessories at wholesale to service station resellers, Federal taxes on motor oils, tires and tubes and any taxes which are stated separately and are not included as part of the selling price of the goods sold; such rent for any month or portion thereof shall be paid not later than the 10th day of the month immediately following, provided, however, that upon termination of the lease of the service station from Atlantic to Dealer, any rent accrued hereunder shall become due and payable upon the date of such termination.

If in any calendar month of operation under this Agreement the total commission received by Dealer under the provisions of the immediately preceding paragraph is less than $400.00, Atlantic, by the 20th day of the following month, shall pay to Dealer the amount of such deficiency. Any rent due Atlantic from Dealer at the time such deficiency is due shall be deducted therefrom before payment thereof. If this Agreement is in effect for a portion of any calendar month, the amount of $400.00 shall be adjusted ratably for such month to reflect the number of days that this Agreement shall have been in effect during such month.

2. Title to gasoline delivered from time to time to Dealer to replenish or augment the original Consignment Inventory shall not pass to Dealer, but it shall be considered as though said gasoline had been part of the original Consignment Inventory.

3. Upon termination of this Agreement, Dealer shall account to Atlantic for the consigned gasoline as follows:

(a) Gasoline on hand shall be returned to Atlantic; or Dealer, at Dealer's option, shall purchase such gasoline at Atlantic's prevailing Dealer price applicable at that location on date of termination.

(b) The difference between Dealer's "Consignment Inventory" and the quantity of gasoline on hand on date of termination shall be settled for as provided in Paragraph 1 hereof.

4. Dealer shall continue to be fully responsible for the operation of the above service station, the purchase and sale of all other commodities, and the persons he employs.

5. Any provisions of the existing Bailment Agreement (Form B-3107-A) or Lease Agreement (Form B-3191) between Dealer and Atlantic, wherein Dealer appears as Buyer or Lessee, as the case may be, at variance with this Agreement are suspended during the term of this Agreement. The term of this Agreement shall be nine (9) months provided, however, that either party may cancel at the end of six (6) months upon giving at least (10) days' notice to the other party. Notice from one party to the other shall be in writing and shall be deemed to have been given if sent by certified mail addressed to Atlantic at and to Dealer at his above-described location.

2174 6. Notwithstanding the provisions of Article 5 hereof, this Agreement shall terminate concurrently with the termination of the Bailment Agreement (B-3107-A) or Lease Agreement (B-3191), as the case may be.

7. When two copies of this Agreement have been duly executed by the parties hereto, the Agreement shall become effective and shall automatically cancel any outstanding Commission Dealer Agreements or Contract Sales Agreements between Atlantic and Dealer.

In Witness Whereof, the undersigned execute this Agreement.

Dealer,

By .....

The Atlantic Refining Company,

By .....

2175 COMMISSION EXHIBIT NO. 98W.

Contract Sales Agreement

This Agreement made this ..... day of ..... 195....., between The Atlantic Refining Company, a Pennsylvania corporation, herein called Atlantic, and ..... herein called Dealer.

In consideration of the promises hereinafter set forth, Atlantic and Dealer agree as follows:

1. Subject to prior Credit Department approval, Atlantic will deliver on consignment to Dealer in tanks at the service station, located at ....., ... gallons of gasoline, hereinafter referred to as Consignment Inventory, for retail sales by Dealer at posted service station prices designated by Atlantic from time to time. Thereafter, Atlantic will deliver to Dealer into such tanks a number of gallons of gasoline, hereinafter called Replenishment Delivery, which when added to the quantity in the tanks shall equal the Consignment Inventory. All proceeds from the retail sale of Atlantic's gasoline shall be the property of Atlantic and Dealer is hereby made a trustee of such proceeds for Atlantic's sole benefit. Dealer shall have no authority to disburse such trust funds except as follows: At the time of each Replenishment Delivery, Dealer will settle in cash with Atlantic for the number of gallons equal to such Replenishment Delivery on the basis of Atlantic's posted service station price at which the gaso-

line has been sold, less a commission equal to the Replenishment Delivery multiplied by 3.25¢ for Atlantic Gasoline and 3.75¢ for Atlantic Premium Gasoline. If Dealer leases his service station from Atlantic, Dealer shall pay as rent a sum equal to 6% of the gross receipts at the service station from all sources, excluding therefrom receipts from the sale of gasoline and any taxes which are stated separately and are not included as part of the selling price of the goods sold; such rent for any month or portion thereof shall be paid not later than the 15th day of the month immediately following, provided, however, that upon termination of the lease of the service station from Atlantic to Dealer, any rent accrued hereunder shall become due and payable upon the date of such termination.

If Dealer's average monthly gasoline gallonage for the preceding nine calendar months exceeds 5,999 gallons, then if in any calendar month of operation under this agreement the total commission received by Dealer under the provisions of the immediately preceding paragraph is less than $400.00 Atlantic, by the 20th day of the following month, shall pay to Dealer the amount of such deficiency. Any rent due Atlantic from Dealer at the time such deficiency is due shall be deducted therefrom before payment thereof. If this Agreement is in effect for a portion of any calendar month, the amount of $400.00 shall be adjusted ratably for such month to reflect the number of days that this Agreement shall have been in effect during such month.

2. Title to gasoline delivered from time to time to Dealer to replenish or augment the original Consignment Inventory shall not pass to Dealer, but it shall be considered as though said gasoline had been part of the original Consignment Inventory.

3. Upon termination of this Agreement, Dealer shall account to Atlantic for the consigned gasoline as follows:

(a) Gasoline on hand shall be returned to Atlantic; or Dealer, at Dealer's option, shall purchase such gasoline at Atlantic's prevailing Dealer price applicable at that location on date of termination.

(b) The difference between Dealer's "Consignment Inventory" and the quantity of gasoline on hand on date of termination shall be settled for as provided in Paragraph 1 hereof.

2177 COMMISSION EXHIBIT NO. 99.

January 19, 1948.

File: JSP—Tires

Goodyear Tire & Rubber Co., Akron, O.	Mr. S. Gaylord
U. S. Rubber Company, New York.	Mr. S. R. Milburn.
B. F. Goodrich Company, Akron	Mr. J. J. Hoban
Firestone Tire & Rubber Co., Akron.	Mr. J. Addison.
General Tire & Rubber Co., Akron.	Mr. L. A. McQueen.

Gentlemen:

Our Sales Department Management has requested of us a complete exploration of the tire manufacturers to determine at this time what interest you may have in the sale of your tires and tubes through Atlantic outlets. In our study to determine whether any change in present arrangements may be desirable, we wish to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise.

To asist you in preparing your quotations, we give you on sheet #1 information we believe may be helpful. All of this data pertains to what we have to offer.

On sheet #2 attached we detail information we believe is needed to properly evaluate any deal you may propose. Some of our questions may be considered by you as confi-

dential information. We assure you your answers will be held in strict confidence. You may wish to augment your story with further information as to why you believe your deal would best suit Atlantic's needs. The more complete your preparation of your proposition the better it will be considered.

Should our account be of interest to you, please forward in writing, in duplicate, your best proposition. Quotations should reach us at your earliest possible convenience. After we have an opportunity to digest your offering it is likely we shall wish to discuss details in a conference to be later arranged.

Thank you very much for your attention to the above.

Yours very truly,

(Signed) J. S. Parks

Purchasing Agent.

JSP:R

CC to—Mr. S. J. Heideman.

2185 COMMISSION EXHIBIT 101A-101Z20.

TBA Study

Sales Research Section

May 1949 The Atlantic Refining Company

2187 This study represents the opinions and attitudes of 1071 dealers in 47 cities from Massachusetts to Florida. These dealers were chosen on a random basis within the following limits:

1. A quota for each brand, based on that brand's acceptance in the city.
2. Satisfy the definition of a promotable dealer.

In general, the study shows:

—A preference among Atlantic's dealers for Lee tires and E ide batteries that is very satisfactory.

—A supplier-dealer relationship on these two items that could be improved.

—Due to the multiplicity of brand names involved, no reliable deductions of a comparable nature can be made for accessory preferences.

—A definitely unsatisfactory supplier-dealer relationship on accessories.

—A superior supplier-dealer relationship on the part of Esso.

In 1948, Atlantic's gross sales of the items involved were as follows:

Tires	$5,226,675
Batteries	$1,354,330
Accessories	$1,640,275

2189 Question 1:

Do you think you would prefer to buy all your major TBA items from one or several sources?

Answer:

Prefer one source for TBA:

Gulf	44%
Sun	43%
Esso	41%
Socony	34%
Atlantic	33%
Amoco	24%
Texas	19%

Answer:

Prefer several sources for TBA:

Gulf	52%
Sun	53%
Esso	58%
Socony	63%
Atlantic	67%
Amoco	74%
Texas	77%

N.B. Not shown are those who did not know.

2191 Question 2a:

Why do you prefer one source for your TBA? (asked only of those making this preference in question on page 1)

Answers: (requiring Petroleum Supplier action)

1. Service		2. Price		3. Guarantee	
Texas	38%	Sun	50%	Esso	11%
Atlantic	35%	Texas	47%	Socony	8%
Socony	32%	Gulf	43%	Atlantic)	
Amoco	28%	Atlantic	32%	Sun)	Less
Gulf	20%	Esso	29%	Gulf)	Than
Sun	19%	Amoco	28%	Texas)	4%
Esso	19%	Socony	19%	Amoco)	

4. Quality		5. Acceptance		6. Complete Line	
Esso	8%	Esso	8%	Gulf	11%
Socony)		Socony	6%	Esso)	
Atlantic)		Atlantic)		Atlantic)	
Sun)	Less	Sun)	Less	Socony)	Less
Gulf)	Than	Gulf)	Than	Sun)	Than
Texas)	4%	Texas)	4%	Texas)	4%
Amoco)		Amoco)		Amoco)	

~~N.B. Not shown are those who did not know.~~ Strike

2193 Question 2a:

Why do you prefer one source for your TBA? (asked only of those making this preference in question on page 1)

Answer: (Requiring no Petroleum Supplier action)

Cooperating with Supplier		Prefers one source	
Esso	12%	Atlantic	12%
Sun	9%	Socony	8%
Amoco	9%	Esso)	
Socony	6%	Texas)	
Gulf	4%	Amoco)	Less than
Atlantic)	Less than	Sun)	4%
Texas)	4%	Gulf)	

2195 Question 2B:

Why do you prefer several sources for your TBA (asked only of those making this preference in 1 above)
Answers: (requiring Petroleum Supplier action)

Price		Variety of Brand	
Gulf	38%	Atlantic	18%
Socony	36%	Sun	18%
Atlantic	35%	Gulf	18%
Sun	30%	Texas	17%
Texas	30%	Amoco	17%
Esso	29%	Esso	16%
Amoco	22%	Socony	13%
Supply		Complete Line	
Esso	10%	Esso	5%
Texas	9%	Gulf	4%
Atlantic	8%	Sun)	
Socony	6%	Atlantic)	
Amoco) Less than		Amoco) Less than	
Gulf) 4%		Texas) 4%	
Sun)		Socony)	

2197 Question 2B:

Why do you prefer several sources for your TBA? (asked only of those making this preference in 1 above)

Answers: (requiring no petroleum supplier action)

Customer's Demand		Dealer's Preference	
Amoco	23%	Gulf	14%
Esso	17%	Amoco	14%
Sun	15%	Sun	13%
Texas	15%	Socony	12%
Atlantic	14%	Esso	11%
Socony	13%	Atlantic	10%
Gulf — Less than 4%		Texas	9%

2199 Question 3:

What do you consider the most important point in selecting the source of your TBA?

Answers:

High Quality		Price	
Atlantic	34%	Socony	27%
Esso	32%	Amoco	26%
Socony	29%	Sun	25%
Sun	27%	Gulf	24%
Gulf	26%	Texas	23%
Amoco	24%	Esso	23%
Texas	23%	Atlantic	21%

Public Acceptance		Guarantee	
Sun	27%	Texas	23%
Texas	21%	Gulf	21%
Socony	17%	Amoco	18%
Amoco	17%	Esso	16%
Esso	15%	Atlantic	13%
Gulf	14%	Socony	10%
Atlantic	13%	Sun	9%

2201 Question 4:

What brand of tires would you prefer to sell?

	Atlantic	Esso	Texas	Sun	Socony	Gulf	Amoco
Lee	67					4	
Atlas		64					
Firestone	4	6	62	4	7	8	10
Kelly				57			
Mobil					42		
Gulf						38	
Amoco							23
Goodyear	11	10	10	10	13	7	18
Goodrich			11		5	12	5
U. S.		8	4	8	8	5	19
More than 1	10	5		13		13	10

N. B. Preferences below 4% omitted.

2203 Question 5:

Why do you prefer this brand?

(Answers requiring Petroleum Supplier's action)

Quality		Guarantee	
Sun	46%	Esso	30%
Socony	41%	Atlantic	28%
Amoco	39%	Gulf	15%
Atlantic	39%	Texas	14%
Texas	37%	Sun	13%
Esso	36%	Socony	13%
Gulf	35%	Amoco	6%

Acceptance		Advertising	
Amoco	20%	Texas	11%
Socony	19%	Esso	10%
Texas	19%	Sun	7%
Gulf	13%	Socony	7%
Sun	13%	Amoco	5%
Atlantic	12%	Gulf	5%
Esso	11%	Atlantic—Less than 4%	

2206 Question 6:

What brand of tires do you carry now?

Answer: (Single mentions only).

	Sun	Atlantic	Esso	Gulf	Socony	Amoco	Texas
Kelly	80						
Lee		78					
Atlas			74				
Gulf				69			
Mobil					69		
Amoco						64	
Firestone							51
Goodrich				4			13
Goodyear							6

Choices of less than 4% omitted.

2207 Question 6a:

What brand of tires do you carry now?

Answer: (More than 1).

	Esso	Gulf	Amoco	Texas	Atlantic	Sun	Socony
Atlas Plus	18						
Gulf Plus		18					
Amoco Plus			18				
Firestone Plus				17			
Lee Plus					15		
Kelly Plus						11	
Mobil Plus							6

Choices of less than 4% omitted.

2209 Question 7:

Why don't you carry your preferred brand?

Answers:

I do		Obligation to Pet. Sup.	
Texas	71%	Amoco	46%
Atlantic	60%	Gulf	36%
Esso	59%	Socony	30%
Sun	58%	Sun	26%
Socony	48%	Atlantic	21%
Gulf	35%	Esso	18%
Amoco	30%	Texas	4%

Customer Demand	
Texas	12%
Amoco	12%
Esso	10%
Atlantic	9%
Gulf	9%
Socony	9%
Sun	6%

2211 Question 8:

From what particular type of supplier would you prefer to buy your tires?

Answers:

a Petroleum Supplier		b Ind. Distributor		c Tire Manufacturer	
Esso	58%	Texas	36%	Texas	33%
Sun	49%	Amoco	32%	Amoco	23%
Gulf	48%	Gulf	21%	Socony	17%
Atlantic	44%	Sun	19%	Gulf	14%
Socony	43%	Atlantic	18%	Atlantic	13%
Amoco	23%	Socony	18%	Esso	12%
Texas	11%*	Esso	10%	Sun	11%

*Not significant.

d No Preference		e Jobber	
Atlantic	19%	Socony	8%
Sun	13%	Atlantic	6%
Gulf	12%	Esso	6%
Texas	12%	Texas	6%
Socony	11%	Amoco	6%
Esso	11%	Gulf	5%
Amoco	10%	Sun	4%

No conclusions should be drawn from the jobber figure because of the small numbers of dealers involved.

2213 Question 9:

Why do you prefer—

A. The Petroleum Supplier (asked only of those who preferred the Petroleum Supplier)

Answers:

Service		Price		Guarantee	
Amoco	32%	Sun	36%	Texas	22%
Atlantic	27%	Atlantic	24%	Gulf	19%
Socony	25%	Amoco	18%	Esso	19%
Texas	22%*	Gulf	15%	Socony	15%
Gulf	21%	Esso	13%	Atlantic	12%
Esso	21%	Socony	11%	Amoco	11%
Sun	18%	Texas— Below	4%	Sun— Below	4%

*Not significant.

Quality		Good Relations w/Supplier	
Amoco	11%	Texas	33%
Socony	9%	Amoco	18%
Esso	8%	Socony	17%
Gulf	6%	Atlantic	16%
Atlantic, Sun, Texas	Below 4%	Sun	15%
		Gulf	14%
		Esso	8%

2215 COMMISSION EXHIBIT NO. 101P.

Question 10:

Why do you prefer—

B. The Tire Distributor? (asked only of those who preferred the Tire Distributor)

Answers:

Service		Price	
Atlantic	41%	Amoco	33%
Gulf	39%	Esso	26%
Sun	38%	Sun	23%
Socony	37%	Atlantic	23%
Esso	34%	Gulf	22%
Texas	33%	Socony	21%
Amoco	30%	Texas	10%

2217 COMMISSION EXHIBIT NO. 101Q.

Question 11:

Why do you prefer—

C. The Tire Manufacturer? (asked only of those who preferred the Tire Manufacturer)

Answers:

	Price
Sun	79%
Esso	73%
Gulf	63%
Texas	63%
Atlantic	61%
Socony	61%
Amoco	50%

2219 COMMISSION EXHIBIT NO. 101R.

Question 12:

From what type of supplier do you buy your tires now?

Answers:

Petroleum Supplier	
Sun	79%
Esso	78%
Atlantic	74%
Gulf	73%
Socony	73%
Amoco	67%
Texas	19%

Ind. Distributor	
Texas	45%
Amoco	9%
Gulf	6%
Atlantic	5%
Socony	4%
Sun, Esso	Below 4%

More Than 1 Tire	
Amoco	18%
Gulf	18%
Esso	17%
Socony	15%
Atlantic	14%
Sun	13%
Texas	9%

Texas	17%
Amoco	5%
Atlantic, Sun, Esso, Socony, Gulf	Below 4%

2221 Question 13:

Why don't you buy tires from your preferred source?

Answers:

I Do		Obligation to Pet. Sup.		Only Source Available	
Esso	59%	Amoco	51%	Esso	5%
Sun	57%	Gulf	37%	Socony	5%
Atlantic	54%	Socony	34%	Amoco	4%
Socony	53%	Atlantic	32%	Texas	4%
Texas	50%	Sun	26%	Atlantic)	
Gulf	47%	Texas	21%	Sun) Below	4%
Amoco	35%	Esso	18%	Gulf)	

Customer Demand		Price	
Esso	5%	Sun	6%
Gulf	5%	Atlantic)	
Amoco)		Esso)	
Atlantic)		Gulf)	
Texas) Below	4%	Socony) Below	4%
Sun)		Texas)	
Socony)		Amoco)	

Reasons given by less than 4% omitted.

1223 Question 14:

What can a supplier do to better your tire business?

Answers:

Nothing Not Already Being Done		Price		Advertising & Promotion	
Atlantic	44%	Texas	32%	Sun	31%
Esso	44%	Amoco	27%	Amoco	26%
Socony	43%	Esso	26%	Atlantic	23%
Gulf	40%	Socony	24%	Gulf	20%
Texas	40%	Sun	24%	Socony	20%
Sun	36%	Gulf	20%	Texas	19%
Amoco	30%	Atlantic	17%	Esso	15%

2225 Question 15:

What brand of batteries would you prefer to sell?

Answers:

	Atlantic	Esso	Gulf	Sun	Socony	Amoco	Texas
Exide	79		14	17	14	17	14
Atlas		64					
Gulf			48				
Sun				43			
Mobil					43		
Amoco						22	
Firestone							17
Willard	5	9	10	14	19	28	21
Auto-Lite		4				5	5
Delco					5		11
Prestolite							4
More than 1	5	12	6	7	7	9	17
No Answer			8	9	9	9	10

N. B. Preferences below 4% omitted.

2227 Question 16:

Why would you prefer this brand of battery?

Answers:

Quality		Acceptance		Guarantee	
Atlantic	44%	Amoco	24%	Esso	30%
Gulf	35%	Socony	24%	Socony	16%
Socony	35%	Texas	23%	Gulf	15%
Amoco	35%	Sun	23%	Amoco	11%
Texas	32%	Atlantic	21%	Texas	10%
Esso	31%	Esso	15%	Sun	10%
Sun	31%	Gulf	10%	Atlantic	9%

Advertising		Price		Service	
Atlantic	9%	Gulf	8%	Texas	8%
Sun	9%	Sun	7%	Gulf	6%
Texas	6%	Socony	5%	Atlantic)	
Amoco	5%	Texas	4%	Esso)	
Socony	4%	Esso	4%	Sun)	Below
Esso	4%	Atlantic)	Below	Amoco)	4%
Gulf	Below 4%	Amoco)	4%	Socony)	

2229 Question 17:

What brand of battery do you carry now?

Answers: (1 Mention Only)

	Atlantic	Esso	Sun	Socony	Gulf	Amoco	Texas
Exide	76		5				7
Atlas		72					
Sun			71				
Mobil				69			
Gulf					67		
Amoco						60	
Firestone							21
Willard							7
Goodrich							6
No Answer		4		7			6

Mentions less than 4% omitted.

2231 Question:

What brand of battery do you carry now?

Answers: (More than 1 mention)

	Gulf	Amoco	Esso	Atlantic	Sun	Socony	Texas
Gulf Plus	19						
Amoco Plus		18					
Atlas Plus			16				
Exide Plus				15			
Sun Plus					15		
Mobil Plus						12	
Firestone Plus							8

Mentions less than 4% omitted.

2233 Question 18:

Why don't you carry your preferred band?

Answers:

I Do		Obligation to Pet. Supplier	
Atlantic	77%	Amoco	43%
Esso	64%	Socony	32%
Gulf	61%	Gulf	30%
Sun	52%	Sun	27%
Socony	51%	Texas	19%
Texas	50%	Esso	16%
Amoco	39%	Atlantic	9%

Customer Demand		Price	
Socony	9%	Sun	6%
Texas	8%	Atlantic	5%
Amoco	7%	Esso)	
Atlantic	7%	Texas)	
Esso	6%	Gulf)	Below 4%
Sun	6%	Amoco)	
Gulf	6%	Socony)	

Reasons less than 4% omitted.

2235 Question 19:

From what particular type of supplier would you perfer to buy your batteries?

Answers:

Petroleum Supplier		Ind. Distributor		Battery Manufacturer	
Esso	62%	Texas	49%	Amoco	19%
Sun	54%	Amoco	35%	Texas	19%
Socony	53%	Gulf	19%	Socony	13%
Gulf	51%	Sun	18%	Gulf	10%
Atlantic	49%	Atlantic	15%	Esso	10%
Amoco	23%	Socony	13%	Sun	9%
Texas	8%	Esso	12%	Atlantic	5%

No Preference		Jobber	
~~Gulf~~ Atlantic	16%	Atlantic	13%
Gulf	14%	Texas	13%
Sun	10%	Amoco	9%*
Amoco	10%	Socony	8%*
Socony	9%	Gulf	6%*
Texas	7%	Sun	5%*
Esso	4%	Esso	5%*

* Not Significant due to small base.

2237 Question 20:

Why do you prefer—

A. Petroleum Supplier? (asked only of those who preferred Petroleum Supplier)

Answers:

Service		Guarantee		Price	
Texas	57%*	Esso	20%	Sun	26%
Atlantic	25%	Socony	14%	Atlantic	21%
Amoco	25%	Atlantic	12%	Gulf	13%
Gulf	24%	Sun	12%	Esso	12%
Esso	19%	Gulf	10%	Amoco	11%
Sun	19%	Amoco	7%	Socony	8%
Socony	11%	Texas—Below	4%	Texas—Below	4%

Obligation		Quality		Good Relations With Supplier	
Socony	14%	Esso	11%	Gulf	18%
Amoco	9%	Sun	9%	Amoco	18%
Gulf	9%	Atlantic	8%	Socony	14%
Atlantic	6%	Gulf	7%	Sun	14%
Esso)		Socony	7%	Atlantic	13%
Texas)Below	4%	Amoco	7%	Esso	13%
Sun)		Texas-Below	4%	Texas—Below	4%

* Not Significant due to small base.

2239 Question 21:

Why do you prefer—

B. Independent Distributor? (asked only of those who preferred the Independent Distributor)

Answers:

Service		Price	
Texas	44%	Atlantic	25%
Gulf	43%	Esso	20%
Sun	39%	Amoco	20%
Atlantic	35%	Texas	17%
Esso	23%	Sun	17%
Socony	21%	Socony	14%
Amoco	15%	Gulf	10%

Guarantee		Supply	
Socony	21%	Atlantic	9%
Atlantic	6%	Gulf	8%
Texas	6%	Socony)	
Gulf	5%	Sun)	
Esso)		Esso)	Below 4%
Sun)	Below 4%	Texas)	
Amoco)		Amoco)	

Socony—mentioned (14%) cooperation with this type supplier and (14%) only source available.

Amoco—mentioned (9%) variety of brand and (9%) no answer.

Gulf—mentioned (10%) acceptance.

Sun—mentioned (13%) preference for more than 1 supplier.

Esso—mentioned (11%) credit.

2241 Question 22:

Why do you prefer—

C. Battery Manufacturer? (asked only of those who preferred the Battery Manufacturer)

Answers:

	Price
Esso	92%
Socony	79%
Gulf	64%*
Amoco	61%
Atlantic	55%
Texas	53%
Sun	45%*

* Not Significant due to small base.

Other reasons not significant also due to small base.

The Jobber is not significant for the same reason.

2243 Question 23:

From what type of supplier do you buy your batteries now?

Answers:

Petroleum Supplier		Ind. Distributor		More Than 1	
Sun	76%	Texas	52%	Esso	20%
Atlantic	73%	Amoco	8%*	Amoco	20%
Esso	72%	Socony	7%*	Gulf	18%
Gulf	72%	Atlantic	7%	Sun	15%
Socony	72%	Gulf	6%*	Socony	12%
Amoco	62%	Esso	4%*	Atlantic	9%
Texas	18%	Sun—Below	4%	Texas	5%*

* Not Significant.

Jobber and Battery Manufacturer are not significant due to small base.

2245 Question 24:

Why don't you buy batteries from your preferred source?

Answers:

I Do		Obligation to Pet. Supplier	
Texas	67%	Amoco	47%
Socony	66%	Atlantic	27%
Atlantic	64%	Socony	25%
Esso	63%	Sun	23%
Sun	61%	Gulf	23%
Gulf	59%	Texas	19%
Amoco	38%	Esso	12%

Esso mentioned (6%) "only source available" and (4%) "supply."

Gulf mentioned (6%) customer demand.

2247 Question 25:

What can a supplier do to better your battery business?

Answers:

Nothing Not Already Being Done		Advertising & Promotion		Price	
Socony	57%	Gulf	20%	Esso	25%
Texas	55%	Socony	20%	Atlantic	23%
Sun	53%	Amoco	20%	Sun	23%
Atlantic	51%	Atlantic	17%	Gulf	19%
Esso	51%	Sun	17%	Texas	19%
Amoco	49%	Esso	15%	Soconoy	19%
Gulf	48%	Texas	13%	Amoco	18%

2249 Question 26:

What accessories do you think your station should stock?

Answers:

	Only Items Connected With the Car
Socony	47%
Gulf	44%
Atlantic	43%
Sun	42%
Amoco	40%
Esso	36%
Texas	35%

Why Is That:

More Than This Not Applicable		Lack of Demand		Lack of Room		Requires Specialized Sales Effort	
Sun	39%	Texas	23%	Esso	17%	Amoco	14%
Amoco	37%	Sun	20%	Atlantic	16%	Esso	13%
Texas	33%	Gulf	19%	Amoco	14%	Texas	13%
Esso	29%	Atlantic	18%	Texas	13%	Socony	12%
Gulf	28%	Socony	16%	Socony	11%	Atlantic	11%
Socony	26%	Esso	11%	Sun	9%	Sun	9%
Atlantic	24%	Amoco	10%	Gulf	5%*	Gulf— Less than	4%

* Not Significant

2251 Question 27:

What accessories do you think your station should stock?

Answers:

Items With the Car Plus Related Items	
Esso	55%
Amoco	51%
Atlantic	49%
Texas	46%
Sun	46%
Gulf	39%
Socony	37%

Why Is That?

Customer Demand		More Than This Not Applicable		Extra Profits		Complete Line	
Sun	33%	Amoco	27%	Amoco	27%	Texas	13%
Gulf	29%	Gulf	24%	Atlantic	23%	Sun	12%
Texas	28%	Socony	22%	Texas	21%	Atlantic	10%
Socony	25%	Sun	21%	Socony	20%	Esso	7%*
Atlantic	23%	Texas	21%	Esso	18%	Socony	5%*
Esso	23%	Esso	20%	Sun	14%	Gulf) Less	
Amoco	23%	Atlantic	18%	Gulf	12%	) than	
						Amoco)	4%

* Not Significant.

2253 Question 28:

What accessories do you think your station should stock?

Answers:

Items Connected With the Car Plus related items Plus nonrelated items (Tools, House Furnishings, etc.)	
Gulf	17%
Texas	17%
Socony	16%
Sun	12%
Esso	9%
Atlantic	8%
Amoco	7%*

Why Is That?

	Extra Profits
Amoco	86%*
Socony	83%
Atlantic	71%
Gulf	67%*
Texas	64%
Esso	53%
Sun	47%*

* Not Significant due to small base

2255 Question 29:

What types of items do you sell now?

	Items Connected With Car
Socony	57%
Gulf	57%
Sun	54%
Amoco	53%
Atlantic	50%
Esso	43%
Texas	38%

Why aren't you selling what you prefer?

Answers:

	I Am		Lack of Room
Texas	84%	Gulf	16%
Atlantic	83%	Amoco	16%
Esso	82%	Socony	13%
Socony	80%	Atlantic	10%
Sun	76%	Esso	10%
Gulf	75%	Sun	10%
Amoco	73%	Texas—	
		less than	4%

2257 Question 30:

What types of items do you sell now?

Answers:

Items With the Car Plus Related Items	
Esso	53%
Texas	51%
Atlantic	47%
Sun	44%
Amoco	44%
Gulf	33%
Socony	32%

Why aren't you selling what you prefer?

Answers:

I Am	
Gulf	95%
Atlantic	93%
Amoco	90%
Esso	89%
Socony	88%
Sun	86%
Texas	75%

N. B. The number of dealers for all companies selling home appliances along with accessories is not significant because of the small number involved.

2259 Question 31:

Would you prefer manufacturer's or your oil company's brands?

Answers:

Manufacturer's Brands	
Texas	67%
Atlantic	59%
Amoco	55%
Sun	39%
Socony	38%
Gulf	37%
Esso	28%

Why?

Acceptance		Advertising		Variety of Brand	
Sun	59%	Sun	23%	Atlantic	8%
Gulf	57%	Esso	18%	Esso	8%
Socony	55%	Socony	16%	Amoco	8%
Amoco	50%	Atlantic	15%	Texas	7%
Atlantic	48%	Amoco	15%	Socony	5%
Texas	45%	Texas	12%	Sun)	
Esso	33%	Gulf	11%	) Below	4%
				Gulf)	

2261 Question 31a:

Would you prefer manufacturer's or your oil company's brands?

Answers:

Oil Company's Brands	
Esso	59%
Sun	48%
Gulf	47%
Socony	38%
Amoco	30%
Atlantic	27%
Texas	19%

Why?

Quality		Acceptance		Cooperation With Petroleum Supplier	
Texas	25%	Sun	16%	Sun	16%
Esso	22%	Amoco	16%	Socony	15%
Atlantic	19%	Texas	12%	Amoco	14%
Gulf	19%	Esso	11%	Texas	12%
Amoco	14%	Gulf	11%	Atlantic	11%
Socony	9%	Socony	11%	Esso	6%
Sun	8%	Atlantic	10%	Gulf—Below	4%

• Not Significant

2263 Question 31a: (Cont'd)

Complete Line		Price		Service	
Texas	19%	Atlantic	17%	Atlantic	14%
Sun	16%	Amoco	13%	Socony	12%
Amoco	14%	Gulf	10%	Gulf	10%
Gulf	14%	Esso	9%	Sun	9%
Esso	12%	Sun	5%	Amoco	9%
Socony	12%	Texas)		Esso	8%
		) Below			
Atlantic	5%	Socony)	4%	Texas–Below	4%

Guarantee		Advertising	
Socony	15%	Socony	9%
Esso	14%	Gulf	7%
Gulf	8%	Sun	7%
Atlantic	7%	Esso	6%
Sun	7%	Atlantic)	
Texas)		Texas) Below	4%
) Below	4%	Amoco)	
Amoco)			

2265 Question 32:

From what particular type of supplier would you prefer to buy your accessories?

Answers:

a. Petroleum Supplier		b. Ind. Distributor	
Esso	54%	Texas	38%
Sun	49%	Amoco	30%
Gulf	45%	Sun	19%
Atlantic	33%	Atlantic	18%
Socony	30%	Gulf	18%
Amoco	23%	Socony	15%
Texas	10%	Esso	11%

c. No Preference		d. Jobber	
Socony	26%	Socony	23%
Atlantic	23%	Atlantic	20%
Gulf	17%	Texas	17%
Texas	17%	Amoco	15%
Amoco	16%	Esso	14%
Sun	15%	Gulf	10%
Esso	9%	Sun	9%

* Not Significant

2267 Question 33:

Why do you prefer—

A. The Petroleum Supplier? (asked only of those who preferred the Petroleum Supplier.)

Answers:

Price		Service	
Sun	31%	Atlantic	22%
Atlantic	28%	Esso	22%
Gulf	22%	Gulf	21%
Esso	20%	Amoco	21%
Amoco	20%	Socony	20%
Texas	19%	Sun	6%
Socony—below 4%		Texas—Below 4%	

Complete Line		Good Relations With Supplier	
Texas	37%	Socony	22%
Gulf	10%	Atlantic	19%
Sun	10%	Amoco	18%
Socony	9%	Esso	13%
Esso	4%	Sun	10%
Atlantic)		Gulf	10%
)	Below 4%		
Amoco)		Texas—Below 4%	

2269 Question 34:

Why do you prefer—

B. The Independent Distributor? (asked only of those who preferred the Independent Distributor.)

Answers:

Service		Price		Variety of Brand	
Texas	30%	Sun	33%	Gulf	32%
Atlantic	29%	Amoco	30%	Atlantic	22%
Amoco	20%	Socony	22%	Socony	19%
Sun	19%	Gulf	21%	Amoco	14%
Esso	15%	Esso	20%	Texas	12%
Socony	12%	Texas	19%	Sun	12%
Gulf	10%	Atlantic	15%	Esso — Below 4%	

2271 Question 35:

From what type of supplier do you buy your accessories now?

Answers:

Petroleum Supplier		More than 1	
Gulf	55%	Sun	37%
Sun	49%	Esso	31%
Esso	45%	Atlantic	29%
Atlantic	41%	Socony	28%
Amoco	39%	Amoco	26%
Socony	38%	Gulf	20%
Texas	14%	Texas	18%

Ind. Distributor		Jobber	
Texas	33%	Texas	20%
Amoco	13%	Socony	11%
Socony	11%	Atlantic	10%
Atlantic	7%	Amoco	9%
Sun	7%	Gulf	6%
Gulf	7%	Sun	5%
Esso	5%	Esso	5%

2273 Question 43:

Why don't you buy accessories from your preferred source?

Answers:

"I Do"		Obligation to Pet. Supplier	
Texas	60%	Amoco	44%
Socony	58%	Atlantic	33%
Esso	56%	Gulf	27%
Sun	56%	Socony	27%
Gulf	54%	Sun	20%
Atlantic	50%	Texas	19%
Amoco	33%	Esso	14%

Oil Co. does not carry full line	
Esso	13%
Sun	11%
Socony	8%
Atlantic	7%
Gulf	7%
Texas	4%

2275 Question 37:

What can a supplier do to better your accessory business?

Answers:

Nothing that is not already being done		Advertising and Promotion		Price	
Texas	63%	Amoco	27%	Sun	16%
Gulf	58%	Atlantic	23%	Socony	16%
Socony	56%	Sun	22%	Esso	12%
Sun	53%	Esso	20%	Amoco	12%
Atlantic	51%	Gulf	18%	Atlantic	10%
Esso	51%	Socony	18%	Texas	10%
Amoco	48%	Texas	16%	Gulf	9%

2277 COMMISSION EXHIBIT NO. 101Z21-27.

Stewart, Dougall & Associates
30 Rockefeller Plaza
New York 20, New York

Gasoline Dealer Survey
Classification Data

Brand of Gasoline:.....

Status of Station: Owned.....
Leased.....

If Leased: Directly from Oil Company.....
From Distributor .....
From other Landlord .....

Type of Location: Heavy Traffic Artery .....
Average Traffic Street .....
Low Traffic (Local) Street .....

Division of Gasoline Volume: Mainly— Neighborhood.....
Transient .....
Commercial .....

Lubrication Facilities: Yes..... No.....

If Yes: Number of Bays.....

Special Facilities: Sells Tires: Yes..... No.....
Sells Batteries: Yes..... No.....
Sells Accessories: Yes..... No.....

Purchase of Gasoline Directly from Oil Company who owns the Brand Name .....
Through a Distributor .....
From an Agent .....
From Wholesale Dealer .....
Other: (Describe Fully) .....

Yearly Gasoline Volume (Gallons):

Under 10,000	75,000- 99,999
10,000-24,999	100,000-149,999
25,000-49,999	150,000-199,999
50,000-74,999	200,000 or Over

Name of Station.....

Address..... City.....

Interviewer's Name..... Date.....

2278

General

Assume for the moment that you did not carry a line of tires, batteries and accessories and that you were just about to put in a line of such merchandise.

1. a. Under such circumstances, do you think you would prefer to buy all your major TBA items from one source or from several sources?

One Source.....

Several Sources.....

Don't Know.....

b. Why is this? (Probe).....

.....

.....

2. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, we would like to have you look through these cards and select the four (4) which you as a dealer would consider the four most important in selecting the source of your TBA merchandise. (Hand Dealer the Fourteen (14) Cards)

(Write in four (4) letters corresponding to letters on cards dealer selects.)

1..... 2..... 3..... 4.....

b. Now, would you tell me which one (1) of those four you would rate first in importance?

(Write in one (1) letter corresponding to letter on card dealer selects.)

1.....

Tires

3. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, which of the following named brands of tires (these represent about 4 out of every 5 tires sold) would you prefer to sell?

Firestone.....	Goodrich.....	Seiberling .....
Goodyear	U. S.	Your oil company's brand.....
Lee	General	
	Kelly	

Other (Specify).....

b. Why would you prefer this brand?.....

.....

.....

4. What brand(s) of tires do you carry now?

1..... 2.....

If one or more brands are not the same as "Preferred Brand" (in question #3a), ask:

5. a. Why don't you carry your preferred brand (exclusively)? .....

.....

2279 5. b. If you were to carry your preferred brand (exclusively), do you think your tire sales would increase, decrease or remain about the same?

Increase..... Decrease..... Remain the same.....

Don't know.....

If "Increase" or "Decrease" in Question #5b, Ask:

c. Would you say that your sales would (increase) (decrease) slightly, moderately or quite a bit?

Slightly..... Moderately..... Quite a bit.....
Don't know.....

6. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your tires? For example, to name a few types, there are:

a. Your petroleum supplier .....
b. Tire manufacturer .....
c. Independent distributor of tires .....
d. Another dealer acting as a supplier .....
e. Automotive Jobber .....
f. Wagon peddler .....
g. Other (Describe) .....
.....
.....
h. No preference .....

b. Why is that? (Probe).....
.....
.....

7. From what type(s) of supplier(s) do you buy your tires now?

Supplier for Brand 1 (Question 4).....
Supplier for Brand 2 (Question 4).....

If One or More Suppliers Are Not the Same as "Preferred Source" (In Question #6a), Ask:

8. Why don't you buy tires from your preferred source (exclusively)? (Probe) .....

.....

.....

.....

9. In the light of your experience and knowledge is there anything that a supplier could do to help you make your tire business a better part of your total business?

.....

.....

.....

.....

2280 Batteries

10. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, which of the following brands of batteries (these represent about 4 out of every 5 batteries sold) would you prefer to sell?

Exide.....	Autolite.....	Your tire supplier's
Willard.....	Prestolite.....	brand.....
Delco.....	Gould.....	Your oil company's
		brand.....

Other (Specify) .....

b. Why would you prefer this brand? .....

.....

.....

11. What brand(s) of batteries do you sell now?

1..... 2.....

If One or More Brands Are Not the Same as "Preferred Brand" (In Question #10a), Ask:

12. a. Why don't you carry your preferred brand (exclusively)? .....

.....

b. If you were to carry your preferred brand (exclusively), do you think your battery sales would increase, decrease or remain about the same?

Increase..... Decrease..... Remain the same.....
Don't know.....

If "Increase" or "Decrease" in Question #12b, Ask:

c. Would you say that your sales would (increase) (decrease) slightly, moderately or a little bit?

Slightly..... Moderately..... Quite a bit.....
Don't know.....

13. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your batteries? For example, to name a few types, there are:

a. Your petroleum supplier.....
b. Battery manufacturer.....
c. Independent distributor of batteries.....
d. Another dealer acting as a supplier.....
e. Automotive jobber.....
f. Wagon peddler.....
g. Other (Describe).....
.....
.....
.....
h. No preference.....

b. Why is that? (Probe).....
.....

2281 14. From what type(s) of supplier(s) do you buy your batteries now?

Supplier for Brand 1 (Question 11).....
Supplier for Brand 2 (Question 11).....

If One or More Suppliers Are Not the Same as "Preferred Source" (In Question #13a). Ask:

15. Why don't you buy batteries from your preferred source (exclusively)? (Probe) .....

.....

.....

16. In the light of your experience and knowledge is there anything that a supplier could do to help you make your battery business a better part of your total business?

.....

.....

Accessories

17. a. Some dealers feel that service stations should limit their line of accessory items to those having only a direct connection to the running of a car. Such items would be spark plugs, fan belts, chains, lights, etc. Other dealers feel that related items should also be carried. Such items would be seat covers, car radios, heaters, sun glasses, etc. Still others feel that they should carry other items such as home and garden tools, electrical appliances, home radios and the like. What is your opinion as to the type of accessories you feel your own station should stock?

(Check One)

Items only connected with running a car (plugs, fan belts, chains, lights, etc.) .....

Items connected with running a car Plus related items (seat covers, car radios, heaters, sun glasses, etc.) .....

Items connected with running a car Plus related items Plus non-related items (tools, appliances, home radios, etc.) .....

b. Why do you feel this way?.....

.....

.....

.....

18. a. What type of items do you sell now?

(Check One)

Items only connected with running a car (plugs, fan belts, lights, chains, etc.).....

Items connected with running a car Plus related items (seat covers, car radios, heaters, sun glasses, etc.).....

Items connected with running a car Plus related items Plus non-related items (tools, appliances, home radios, etc.).....

If Answer In Question #18a Is Not the Same Answer As That In Question #17a, Ask:

b. Why aren't you selling those accessories you feel you should carry? (Probe).....

.....

.....

.....

2282 19. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, would you prefer to sell manufacturer's house brands or your oil company's brands?

Manufacturer's brands.....

Oil Company's brands.....

Other answer (Verbatim).....

.....

.....

b. Why would you prefer to sell these brands over the other brands?

If "Manufacturer's Brands":

Prefer manufacturer's over oil company's brands because: .....

.....

.....

If "Oil Company's Brands":

Prefer oil company's over manufacturer's brands because: .....

.....

.....

20. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your accessories? For example, to name a few types, there are:

a. Your petroleum supplier .....
b. Direct from manufacturer .....
c. Independent distributor of accessories .....
d. Another dealer acting as a supplier .....
e. Automotive jobber .....
f. Wagon peddler .....
g. Other (Drescribe) .....
.....
.....
h. No preference .....

b. Why is that? (Probe) .....

.....

21. From what type(s) of supplier(s) do you buy your accessories now?

.....

If One Or More Suppliers Are Not the Same As "Preferred Source" (In Question #20a), Ask:

22. Why don't you buy accessories from your preferred source (exclusively)? (Probe) .....

.....

23. In the light of your experience and knowledge is there anything that a supplier could do to help you make your accessory business a better part of your total business?

.....

.....

2283

F. Speed Of Delivery After Ordering	G. Merchandising Assistant and Training
H. A Rebate From Your Supplier	I. Guarantee
J. Price Protection	K. Exclusive Territory
L. Low Prices	M. High Quality
N. Advertising Support By the Supplier	O. Completeness Of Line
P. Established Public Acceptance	Q. Obligation To Your Petroleum Supplier
R. Long Margin Of Profit	S. Extended Purchase Terms

2284 COMMISSION EXHIBIT NO. 102A-D.

August 22, 1949

Memorandum for
Mr. T. E. Kelly

As you suggested, I am outlining the additional considerations brought out in the TBA program meeting of August 12 in your office.

My supposition is that Mr. D. T. Colley wants dealers to have TBA but not of necessity through Atlantic, questions the results from system changes unless shown, but withal wants action. A reported loss of $162,791 on TBA in the January, 1949, P & L cannot be ignored

Additional information, not available during the major survey, could focus attention at once not only on the soundness of the P & L as an influence in deciding what marketing method to follow but as well on estimating the effect of the major changes proposed in the TBA report and what could be expected if other marketing methods were adopted.

To obtain this information, I suggest these steps be given immediate consideration:

1. a) Examination of Company T.B.A. P & L expense accounts to find the extent of the elements entering into each account as to soundness of allocation, accuracy of time distribution, and essentiality of the activity costed. For example, just what does "District Office Accounting & Marketing" include and what are the possibilities of reductions in these activities and costs? (I understand, far as "time" is concerned, it is the consensus of the Sales Development Committee that the proportionate time spent on T.B.A. at an outlet should not be the basis for charging sales expense.)

b) Examination of the latest turnover ratios and inventory investment for possible hidden costs therein that could be corrected by better ordering.

2. Securing of industry expense ratios for comparative and corrective purposes. For example, if we are way out of line on some expense account, what can be done immediately, if anything, to bring it into line.

3. Securing of more knowledge than prospectuses offer on other marketing methods as the Goodyear Wholesale or Commission Plans, embracing the possibilities and pitfalls therein, for comparative purposes.

I believe this information would be of great value in arriving at any decision on just what line to pursue in the whole T.B.A. matter. At any rate it is my belief that the studies and proposals in the T.B.A. Report are essential no matter what final marketing method is accepted with the possible exception of a Commission Plan.

For your consideration, a primary analysis of the apparent marketing alternatives is appended.

K. M. Ford
Sales Industrial Engineers

KMF: gr
cc: Mr. J. M. McIlvain
Noble Hall

2286 Marketing Alternatives.

The marketing alternatives appear to be:

1. Dealers are supplied entirely by local jobbers.
2. A Wholsale Plan similar to Goodyear is adopted.
3. A Commission Plan similar to Goodyear is adopted.
4. The present Company method is retained.

Primary analysis of these alternatives promotes certain reflections:

Local Jobber

A question may well be—is uniformity of products handled, service given, reliability of product and like considerations of more purport than?

a. Faster deliveries to dealer of perhaps wider lines?
b. A desire of the Company to withdraw from the activity:

It would seem that at least for the Class 1 and 2 stations, representing the Company to the public, the answer would negate the use of local jobbers as main suppliers other than on incidentals.

Wholesale Plan (Goodyear)

1. It may well be that the gross profit allowed is not equal to what the Company should obtain—that Goodyear is taking out too much for its warehousing and delivery operations.

2. Removing the present Company physical distribution charges but retaining other expenses, as would seem necessary under the Wholesale Plan, would still leave a deficit. For example, on tires in the Company, January, 1949, P & L, Company operated Bulk Station expense was 3.2% of net sales; total expense was 28% of net sales. Taking 3.2% from 28% leaves 24.8% which is 8.7% above the proposed margin (16.13%) allowed by Goodyear on composite tire classes.

3. The proposed expense ratios developed by Goodyear are probably far too small.

4. If the Goodyear terms are not too attractive, does it point to a possibility Goodyear is emphasizing the Commission Plan and if so, why?

Commission Plan

1. The Company would still retain a significant sales expense, in all probability.

2. Would turning over Company outlets to Goodyear be detrimental to petroleum sales? There is not only the credit angle of possible tying up the dealers' ready money for Goodyear volume, if high pressured, but also possible emphasis of T.B.A. over petroleum by Goodyear for volume. There is also the counter possibility that Goodyear might not try to absorb all the volume the Company feels should pass through outlets.

2288 3. If Goodyear can allow a composite T.B.A. gross of 9.4% on net sales, is their expense allocation so much better than the Company's that their gross profit less 9.4% less their expenses still affords a net profit? It must be if, under their Wholesale Plan, they estimate Atlantic total expenses on tires and batteries should run 5.5% to net sales excluding physical distribution. If true, the position of the Company on expense is way out of line.

4. Once Goodyear is in the outlets what is the practicability of getting them out if the occasion warrants? The possibility of our return to operation depends upon their effort and maintenance of profit, not on ours.

5. Would not Lee struggle hard to keep its market (4 million or so volume) even to possible rough competition? As well, the recent Sales Research poll indicates a dealer satisfaction with Lee.

6. Will Goodyear give better delivery and general service than Atlantic?

7. Will dealers cooperate as well with Goodyear with the "obligation to petroleum supplier' 'status removed?

8. Just what expenses would the Company have to retain and what would be the final profit figure? Surely, much lower than 9.4%.

9. Will Goodyear satisfactorily maintain a productive volume to be allocated to Atlantic outlets?

10. Would Company outlets suffer severe competition from other Goodyear outlets?

11. The only secure chance of greater dealer volume is through our sales effort—not in relying on Goodyear sales effort.

Present Company Method

If this is retained, I believe it to be essential to carry through the recommendations of the T.B.A. report. One question to answer—is it to be just a dollars and cents proposition (that is, no loss or the greatest Company profit) or are there other factors to be considered?

One certainty is that sales must be increased and also the turnover rate without an accompanying increase in costs. Also, unessential activities and extreme expenses must be weeded out.

The aim of the T.B.A. report is to slash the inequities and cut the costs to the practical and workable.

K. M. Ford
SalesIndustrial Engineers

2290 August 24, 1949
T.B.A. Marketing

Memorandum to
Mr. D. T. Colley

Following the transmittal to you on June 29, 1949, of Mr. Ford's "Report on T.B.A. Operations", we have given additional thought to the manner in which this problem might best be approached. Discussion between Messrs. McIlvain, Hall, Ford and myself resulted in the preparation of the attached memorandum of August 22 from Mr. Ford. Most of these same views were expressed by Mr.

Ford during our discussion, and this preliminary approach now suggested was prompted by his review of figures only recently available on T.B.A. costs and profits and his discussion with you. What is now being proposed as a preliminary step would seem to be in keeping with your desire to do something quickly about the large indicated loss.

Until such time as it may be desirable to engage in the broader study as proposed in my letter of June 29, 1949, please feel free to call directly upon Messrs. Hall and Ford for any service you or Mr. Neall may desire.

T. E. Kelly

Enc.
TEK: mj
cc: Messrs. K. M.Ford
Noble Hall
J. M. McIlvain
F. M Neall

2294 COMMISSION EXHIBIT 104A-C.

The Firestone
Tire & Rubber Company
Harvey Firestone
Founder

March 30, 1950

Mr. D. T. Colley
Vice-President and General Manager
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pennsylvania

Dear Mr. Colley:

In consideration of the assistance and cooperation to be given to The Firestone Tire & Rubber Company by your sales organization in promoting the sale of Firestone products to and by Atlantic Lessees, Dealers, Commission Distributors and Distributors handling Atlantic gasoline, The Firestone Tire & Rubber Company will pay The Atlantic Refining Company a sales commission on all net sales of Firestone Tires, Tubes and Home and Auto Supplies, including Batteries, sold by Firestone to such accounts, who by mutual agreement are nominated by you and approved by us, according to the understanding and classifications set forth in this letter.

Firestone will report sales monthly on lists of such approved accounts furnished by Atlantic. Sales Commission rates currently in effect and which will continue until further notice are as follows:

Classification of Account	Rate of Commission
Lessees—"C"	10%
Dealers—"D"	10%

(1) Atlantic Lessees and Dealers

Sales Commission will be paid on all net sales to the above of products subject to sales commission except where sales commission rate will be as shown below in (3).

Lessees ("C") are dealers operating stations where entire property is owned or leased by Atlantic. Dealers ("D") represent Atlantic's other Contract Dealers handling Atlantic's gasoline.

Also included are Atlantic's Lessees ("CE") and such other Atlantic Dealers ("DE") served by Atlantic Distributors on petroleum products, where the Distributor is not qualified or active under the Sales Commission arrangement, where these accounts are approved.

2296

Classifcation of Account.	Rate of Commission
Commission Distributors "B"	7½%
Distributors "E"	7½%

(2) Atlantic Commission Distributors and Distributors

Sales Commission paid on all net sales subject to sales commission to approved qualified Commission Distributors ("B") and Distributors ("E") operating bulk plants and distributing Atlantic's gasoline therefrom who wholesale such products to dealers, except where sales commission rate will be as shown below in (3).

These classifications also apply to any retail business engaged in by these accounts in retail locations, in addition to wholesale activity.

(3) Home and Auto Supplies

Where net sales of Home and Auto Supplies to any of the above accounts were $25,000 or more in the previous calendar year, or reach $25,000 in current calendar year, (beginning in month this volume reached), sales commission will be paid on these products at the rate of (for each such account):—5%.

Sales will be reported and commissions paid on net sales of:

(1) Tires, Tubes and Retreads (Firestone produced retreads—and on "retreaded" casings when furnished by Firestone.)

(2) Home and Auto Supplies including Batteries and Anti-freeze, and Repair Materials.

Sales Commissions are computed from net sales arrived at after deduction of quantity discounts, bonuses, price rebates, billing corrections, returned goods, adjustment credits, and wholesale commissions.

Net Sales for Sales Commissions do not include: used tires and tubes, camelback, adjustment sales, wheels, rims and weights, mechanical goods, Home and Auto Supplies not purchased from Firestone, equipment and supplies, advertising material and supplies, delivery commissions, Federal Excise Taxes, and State and City Sales Taxes.

Where sales are made by one oil company's qualified outlet to a qualified outlet of another oil company, such sales are only reported for latter oil company so that there will be no duplication of the sales commission payments.

2298 All accounts in the above classifications who are desirable for sale of Firestone products, may be nominated and qualified except: accounts who were Firestone Dealers before becoming Atlantic's Dealers or Distributors or who have been substantial Firestone Dealers for a period of years, Firestone Dealer Warehouses, Firestone Aircraft Distributors or Dealers, Commercial Accounts, taxicab and bus companies.

Store front locations operated by Lessees and Dealers ("C"—"D"—"CE" or "DE") accounts will be included only when they are directly a part of the service station location. Store front locations operated by Commission Distributors ("B") or Distributors ("E") may be included where approved by Firestone.

Records pertaining to our business with your outlets covered herein will be made available to you in our Districts for reasonable inspection during ordinary business hours.

This agreement will continue in effect until terminated by either party on one hundred and twenty (120) days written notice to the other.

Very truly yours,
The Firestone Tire & Rubber Company
By: (Illegible),
Vice President

Accepted:
The Atlantic Refining Company
By: D. T. Colley

2300 COMMISSION EXHIBIT 105A-C.

The Firestone Tire & Rubber Company
Harvey S. Firestone, Founder
Akron 17, Ohio

January 12, 1954

Mr. D. T. Colley,
Vice President and General Manager
The Atlantic Refining Company,
260 Broad Street,
Philadelphia 1, Pennsylvania.

Dear Mr. Colley:

The Sales Commission Agreement between our respective companies, evidenced by letter agreements of March 30, 1950 and April 20, 1951, contains certain provisions as to products included for sales commission purposes and the establishment of sales commission rates.

Effective January 1, 1954 the above-referred to Sales

Commission Agreement is amended in the following particulars, all other provisions of our Agreement to remain in full force and effect.

1. Net sales of Home and Auto Supplies for sales commission will not include the sales of Home Supplies listed in our Wholesale Catalog in Department #5 (Major Appliances) and Department #13 (Television).

2. The present sales commission rate on Home and Auto Supplies, as set forth in clause 3 on page 2 of the March 30, 1950 letter agreement is cancelled and replaced by the following:

> "However, where net sales of Home and Auto Supplies to any of the above accounts were $25,000 or more in the previous calendar year, or reach $25,000 in the current calendar year, or where the account is extended the current #325 or #440 price list on Home and Auto Supplies (beginning in month of current calendar year when $25,000 volume is reached or above prices are extended), sales commission will be paid on these products for such account at the rate of 5%
>
> If in any subsequent calendar year thereafter, (A) net sales of Home and Auto Supplies to any such account who is not extended the current #325 and #440 price list is less than $25,000, or (B) if the current #325 or #440 price list is withdrawn from such account to whom net sales in such subsequent calendar year are less than $25,000, then the commission on sales to (A) shall be adjusted for such calendar year to provide for the 10% or 7½% rate, as the case may be, in lieu of the 5% rate, and in the case of (B), shall be increased on the first day of the calendar month immediately following the withdrawal. We will provide you prompt written notice of any change in status of such accounts."

2302

As evidence of your understanding and agreement to the changes listed above, please sign in the space provided below for signature and return one copy to this office.

Very truly yours,
The Firestone Tire & Rubber Company
By: (Illegible).

Accepted:
The Atlantic Refining Company
By D. T. Colley

2304 The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

November 3, 1954

Mr. H. D. Tompkins, Vice President
The Firestone Tire and Rubber Company
Akron 17, Ohio

Dear Mr. Tompkins:

The contract between our respective companies evidenced by letter agreements dated March 30, 1950, April 20, 1951 and January 12, 1954, and your letter of May 19, 1954 relating to the promotion and sale of TBA is hereby amended in one and only one particular, namely, from the date hereof until cancelled by either of our respective companies upon 365 days' written notice to the other, such contract shall continue in full force and effect.

As evidence of your understanding and agreement to the above, please execute the attached duplicate copy of this letter in the space provided for signature and return the same to this office.

Very truly yours,
The Atlantic Refining Company,
D. T. Colley.

Accepted and agreed to:
The Firestone Tire and Rubber Company,
By H. D. Tompkins.

2305 COMMISSION EXHIBIT NO. 106A-B.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

April 20, 1951

Mr. H. D. Tompkins, Vice President
Firestone Tire and Rubber Company
Akron 17, Ohio

Dear Mr. Tompkins:

By letter agreement of March 30, 1950 between Firestone and Atlantic we agreed to assist and cooperate in promoting the sale of Firestone products to Atlantic dealers and distributors and embarked on a test of the Firestone T.B.A. program in two of our sales districts. We have decided, and you have agreed, to extend this arrangement to include our Eastern Pennsylvania, our Western Pennsylvania, and our Southern Sales Regions on the same basis as outlined in the letter of March 30, 1950.

It is understood that this expansion to the areas mentioned will be effective as of March 1, 1951, at which time Firestone will begin supplying the various products and services, outlined in the letter of March 30, 1950, to such of our resale outlets, either dealers or distributors, as desire to purchase them. At the same time, Atlantic will begin, through its field representatives, to assist Firestone in the additional territory mentioned, in the sale of the products and services outlined to Atlantic outlets, as has been done in the test districts.

This means that Atlantic salesmen will call upon retail dealer outlets and distributors, either alone or in company

with your representatives, to promote the sale of such products and assist these resale outlets in reselling them. It is understood that all such Atlantic retail outlets or distributors are free to choose whether, and to what extent, they shall purchase Firestone products and services, and that Atlantic representatives cannot and will not use any methods other than salesmanship to encourage such dealer retail outlets or distributors to purchase Firestone products and services.

In determining to expand the Firestone sales commission plan to the larger areas mentioned, we have done so upon your assurance that you will provide tires, batteries, and accessories in quantities to take care of the reasonable needs of those Atlantic resale outlets who desire to purchase your products for resale. We realize that such an assurance from you is subject to conditions beyond your control, to the fair and equitable treatment of all customers, and any government restrictions on the manufacture or distribution of the products involved.

2307 If the above correctly sets forth your understanding of the arrangement between us, please so indicate by signing and returning for our files the enclosed copy of this letter.

Yours very truly,

D. T. Colley.

Accepted:

The Firestone Tire & Rubber Company,

By: H. D. Tompkins.

2383 COMMISSION EXHIBIT NO. 121A-D.

The Goodyear Tire & Rubber Company, Inc.
Okron 16, Ohio

July 10, 1950

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pa.

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that in counseling with these customers with respect to the general management of their businesses, including accounting and operating practices, your

field representatives will give appropriate consideration to the maintenance of adequate stocks and to the distribution by such customers of merchandise purchased from us, and to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time
2385 at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

As soon as practicable after the end of each month, we will furnish you with a statement reflecting sales made by us through our retail stores, factory shipment, district warehouses or other owned outlets, and sales made by our dealer supply points and reported to us by our dealers, and in the case of car and home and related merchandise involving deliveries as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%) on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your franchise petroleum distributors as covered by such statement, computed on the net amount of invoices, excluding tax, after deducting all applicable discounts, allowances and bonuses, other than cash discount, whether shown on invoice or subsequently allowed, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your distributors.

We understand that you will retain for your own exclusive benefit all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

2387 Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding of this matter will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.,

By .....

Vice President.

Attest: .....

Assistant Secretary.

Accepted:

The Atlantic Refining Company.

By .....

2389 Included items, subject to exceptions noted below:

1. Goodyear Battery Cables (when billed direct and delivered to the Atlantic dealer or distributor by the Goodyear District or from the manufacturer's factory or from the supply-point agreed upon on Form G-1209).

2. The following items (commonly called shelf items) of Goodyear Repair Material when delivered and billed either by the Goodyear District or factory or field warehouse:

Small & Bicycle Tube Repair Kits
Steptread Cement—Qts
Small Containers Cold Patch Cement
Emergency Self-Sealing Patches
Gasket Compound
Bicycle Rim Cement
Shaler M-50 Repair Kits
Motorist Vule-Patch Kit.

3. The following items (designated in accordance with Goodyear's regular classification of such merchandise) of Goodyear Car and Home Merchandise when delivered from the manufacturer's factory or from the Goodyear field warehouse:

All radios, radio aerials, and radio accessories, except such items manufactured by General Electric, Motorola, and Admiral Corporation
Automotive Supplies
Hardware and Tools
Wheel Goods
Sporting Goods
Small Electrical Appliances
Housewares
Toys and Games.

4. Goodyear Brake Lining, Goodyear Wheel Weights, and Goodyear Brake Lining Rivets when delivered from the manufacturer's factory or from the Goodyear field warehouse.

5. All Dill and Schrader Merchandise when delivered from the manufacturer's factory or from the Goodyear District.

Exceptions—Items not subject to commission:

1. General Electric, Hot Point, and Major Appliances which are obtained by the dealers from the manufacturer's distributors.
2. Motorola Car Heaters
3. Battery Charging Equipment.
4. Brake Lining Equipment.
5. Camelback and recapping material.

Exhibit A, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to The Atlantic Refining Company dated July 10, 1950

The Atlantic Refining Company
By.....

The Goodyear Tire & Rubber Company
By .....
Vice President

2391 COMMISSION EXHIBIT NO. 122.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

July 5, 1950

Mr S J Heideman
Atlantic Refining Company
260 South Broad St
Philadelphia, Pa

Dear Mr Heideman:

Wish to acknowledge your favor of June 29th, together with outline of agreement, with changes suggested by Mr Stotz of Your Legal Department.

I am passing this on to Mr L W Baker of our Legal Department and will advise you further as promptly as possible.

Confirming my phone conversation of 27th (June) relative to your letter of June 22nd. It is our intent to pay commissions earned by you on various products listed under Exhibit "A" in accordance with the supply point designated on our Form G-1209, which form is jointly executed by both companies and the supply point is agreed upon and acceptable to the Atlantic Dealer.

The agreed supply point may be a Goodyear Dealer, a Goodyear Store, a Goodyear Field Warehouse, or a Goodyear District.

We will make changes in our agreement to conform with the above.

Kind regards.

Sincerely,
S. A. Gaylord
Manager—Petroleum Sales Dept

S A Gaylord
lfm

2393 COMMISSION EXHIBIT NO. 123.

November 8, 1950
TBA SJH

T.B.A. Goodyear Commission Plan

Mr. S. A. Gaylord, Manager,
Petroleum Sales,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Sam:

I just had an opportunity to review with Mr. Stotz of our Legal Department the agreement which you submitted for the consideration of The Atlantic Refining Company.

In substance, this proposal describes our understanding of the responsibilities that we each have to discharge under the commission plan of operation. However, there are several places where a change or the elimination of a word would further clarify the subject matter.

I am returning herewith both the original and duplicate copy of the agreement and have indicated on the original the changes that we are recommending. Since these changes are very minor, I do not anticipate any objection to them on the part of your Legal Department, and hope that you will be able to send us a revised agreement, in duplicate, promptly.

Cordially yours,

S. J. Heideman

h
Enc.

2395 COMMISSION EXHIBIT NO. 124.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

November 29, 1950

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Dear Syd:

As per your letter of the 8th I am pleased to send you, herewith, a revision of the agreement incorporating all of the changes suggested by you, which are entirely agreeable to us.

If you find it to be in order will thank you to have it signed, retaining the original and returning to us the duplicate signed copy. Am also attaching an extra unsigned copy which you may wish to retain for your files.

Looking forward to seeing you in Chicago, with kind regards.

Sincerely,
S. A. Gaylord
Manager—Petroleum Sales Dept

S A Gaylord
lfm

2397 COMMISSION EXHIBIT NO. 125.

CC: Mr. Stotz
Room 1313

Note: Mr. Stotz also received third copy of agreement

December 14, 1950
TBA SJH
T.B.A. Goodyear
Commission Plan

Mr. S. A. Gaylord, Manager,
Petroleum Sales,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio

Dear Sam:

In reply to your letter of November 29th, I am happy to inform you that the agreement which you submitted has now been accepted and signed by Mr. Colley, and I am now returning the duplicate copy as you have requested.

Cordially yours,

S. J. Heideman

h

2399 COMMISSION EXHIBIT 126A-D

THE ATLANTIC REFINING COMPANY

Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

April 3, 1951

Mr. Victor Holt, Jr., Vice President
Goodyear Tire and Rubber Company
Akron 16, Ohio

Dear Mr. Holt:

By letter agreement of June 1, 1950 between Goodyear and Atlantic we agreed to perform certain services to promote the sale of certain Goodyear merchandise.

At that time we began a test of the Goodyear TBA commission plan in one of our sales districts. We have decided and you have agreed to extend this plan to our Philadelphia and New Jersey, our New York, and our New England sales regions on the same basis as is outlined in the letter of June 1, 1950.

It is understood that this extension will be effective as of March 1, 1951, at which time Goodyear will begin supplying the various products and services outlined in the letter of June 1, 1950 to such of our retail outlets and distributors as desire to purchase them from Goodyear. At the same time Atlantic, through its field representatives, will begin assisting Goodyear in the extended territory in the sale of the products and services outlined in said letter with the understanding that, has has been the practice in the test area, our resale outlets shall be free to choose whether, and to what extent, they shall avail themselves of the opportunity to purchase Goodyear products and

services and that any resale outlet which chooses to carry products other than Goodyear shall not be prejudiced in any manner. Of course, we both understand that our organization cannot and will not use any methods other than salesmanship to encourage our resale outlets to purchase your products and services.

In determining to extend the Goodyear commission plan to those sales regions we have done so upon your assurance that you will provide tires, batteries, and accessories in sufficient amounts to take care of the normal needs of those Atlantic resale outlets which desire to avail themselves of your products. We realize that such assurance from you is subject to conditions beyond your control, whether now or hereafter existing, including government restrictions on the manufacture or distribution of the products involved.

2401 We understand that whenever the product supply situation is such that you are unable to furnish all the needs of all your customers you will make available to Atlantic resale outlets as large a share of their needs as are available to your other like customers.

If the above correctly sets forth your understanding of the arrangement between us, please so indicate by signing and returning for our files the enclosed copy of this letter.

Very truly yours,
(Illegible)

Accepted:

The Goodyear Tire & Rubber Company, Inc.
By: (Illegible)
Vice President

Attest: (Illegible)
Assistant Secretary

2403 THE ATLANTIC REFINING COMPANY

Incorporated—1870
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

July 7, 1954

Mr. Victor Holt, Jr., Vice-President
The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

Dear Mr. Holt:

The contract between our respective companies, evidenced by letter agreements dated June 1, 1950 and April 3, 1951, relating to the promotion and sale of TBA, is hereby amended in one single particular, as follows:

Goodyear will not exercise its cancellation right in a manner that would cause the termination of the above referred to contract prior to December 31, 1954.

As evidence of your understanding and agreement to the above, please indicate your approval of the duplicate copy of this letter in the space provided for signature and return the same to this office.

Yours very truly,
The Atlantic Refining Company
By (Illegible)

Accepted and agreed to:
The Goodyear Tire and Rubber Company, Inc.
By: (Illegible)
Vice President

Attest (Illegible)
Assistant Secretary

DTC/h

2828 *Commission Exhibit No. 125D.*

2404 The Atlantic Refining Company

Incorporated 1870
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

September 15, 1954

Mr. Victor Holt, Ja., Vice-President
The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

Dear Mr. Holt:

The Contract between our respective companies evidenced by letter agreements dated June 1, 1950, April 3, 1951, and July 7, 1954, relating to the promotion and sale of TBA is hereby amended in one and only one particular, namely, from the date hereof until cancelled by either of our respective companies upon 365 days written notice to the other, such contract shall continue in full force and effect.

As evidence of your understanding and agreement to the above, please execute the attached duplicate copy of this letter in the space provided for signature and return the same to this office.

Yours very truly,
The Atlantic Refining Company
By (Illegible)

Accepted and Agreed to
The Goodyear Tire & Rubber Company, Inc.
By R. S. Wilson, *Vice President*
Attest: W. M. Menter, *Assistant Secretary*

2405 COMMISSION EXHIBIT NO. 127A-H.

May 31, 1950

Atlantic Refining Company—Sales Commission

Sales Commission Plan

The Atlantic Refining Co will be paid a sales commission on net sales by authorized supply points of certain Goodyear products to Atlantic Refining Co Independent Dealers, (hereinafter referred to as Atlantic Accounts) as recommended by Atlantic and approved by Goodyear District Manager.

All sales under this plan are sales by an authorized supply point to the Independent Atlantic Account. Billing issued to Atlantic Refining Co covering purchases for "Own Consumption" purposes are not subject to sales commission.

Payment of commission will be made to Atlantic by Akron and will be based on sales reported to Akron by Districts on monthly G-1204 reports.

Establishment of Authorized Supply Points

District Manager will determine supply point for each Atlantic account approved.

Goodyear Districts, Field and Factory Warehouses, Goodyear Service Stores and Goodyear Independent Dealers may serve as authorized supply points for thes accounts. See Page 1-A for products each class of supply point may deliver.

The supply point will make delivery of the merchandise, issue billing and carry the Accounts of the Atlantic Accounts they serve.

Master Record G-1209

Atlantic Refining Co will prepare G-1209 on each Atlantic account which is to participate under the plan.

All copies of the form should be approved and forwarded by Atlantic to the Goodyear District Manager for approval and completion.

The G-1209 must be filled in completely as provided on the form.

After G-1209 is completed and approved by both Atlantic and Goodyear District Manager Goodyear District Office will distribute copies as follows—

Original (white)—District Office File
Duplicate (canary)—Atlantic Refining Company District Office
Triplicate (pink)—Goodyear Field Representative
Quadruplicate (blue)—Supply Point where a Goodyear Store (other supply points handled by list—see below)

G-1209 provided to Stores which are not supply points for merchandise other than Car and Home Merchandise must be clearly marked "applies only to Car and Home Merchandise."

No more than one Store will act as a supply point, the additional Store (stores other than the regular supply point) should be notified of the approved Atlantic account by letter.

Independent dealer supply points should be furnished a list of the Atlantic accounts who will buy from them and on whom we ask them to report.

2407 Credit Policy

All Atlantic Accounts participating under this plan will establish credit with the Goodyear District, Store or Independent Dealer, which has been designated to serve them. Purchases may, of course be made on a cash or COD basis also. Districts must maintain separate B-80 on each COD or cash account.

Price Policy

Approved Atlantic Accounts under this plan will purchase their requirements on the same basis as any independent dealer at the prices and discounts for which they can qualify in accordance with our regular sales program for tires, tubes, batteries, C&H Mdse, etc.

Products Eligible Under Sales Commission Plan

Sales of the following listed products to approved Atlantic acounts are to be reported on the G-1204 reports when delivery is taken from authorized supply point as indicated below:

(A) When delivery is taken from and or billing issued by District

All Goodyear Tire and Tubes (Except Airplane) including seconds.
Goodyear Automotive and Farlight Batteries and Battery Cables.
Resolute Batteries.
Goodyear produced Recaps & Repairs.
All Dill and Schrader Valve Merchandise
Sea-Bee Outboard Motors.
Goodyear Repair Materials as follows—Small and Bicycle Tube Repair Kits. Quart size. Steptread Cement, Emergency Self-Sealing Patches. Small Containers Cold Patch Cement. Gasket Compound. Bicycle Rim Cement. Shaler M-50 Repair Kits and Motorists Vulc-Patch Kits.

(B) When delivery is taken from and billing issued by Goodyear Stores

All Goodyear Tires and Tubes (Except Airplane) including Seconds.
Goodyear Automotive and Farlight Batteries and Battery Cables.
Resolute Batteries.
Goodyear Produced Recaps & Repairs.
All Dill and Schrader Valve Merchandise.

Sea-Bee Outboard Motors.
Goodyear Car & Home Mdse stocked at Goodyear Field Warehouse.

(C) When delivery is taken from a Field or Factory Warehouse.

Goodyear Car & Home Merchandise.
Goodyear Brake Lining, Rivets and Wheel Weights.
Goodyear Repair Materials—The same and only those items listed above under (A).
Includes merchandise shipped direct to dealer by manufacturer.

(D) When delivery is taken from and billing issued by an Independent Dealer

All Goodyear Tire and Tubes (Except Airplane) including seconds.
Goodyear Automotive and Farmlight Batteries and Cables.
Resolute Batteries.
Sea-Bee Outboard Motors.
Goodyead Car & Home Mdse stocked at Goodyear Field Warehouse.

2409 Products Not Eligible Under Sales Commission Plan

Billing covering products listed hereunder, regardless of delivery point is not subject to commission and is not to be recorded by Stores nor included in G-1204 volume on which commission is to be paid.

Adjustment billing of any of the eligible products listed above.

All products not listed above as eligible products including but not limited to

General Electric and Hotpoint Major Appliances
General Electric Radios
Motorola Radios, Aerials and Accessories
Motorola Car Heaters

Anti Freeze
Tire Chains unless delivered by Field Warehouse
All types of Equipment—Battery Chargers, Display Service Station, etc.
Advertising and Sales Promotion items.

Sales Commission Plan

General

All Goodyear shipments will be to the supplying dealer—we will not drop ship to the Atlantic dealer for account of the supplying dealer.

Important—Careful attention under the Independent Dealer Supply Point handling is required to avoid payment to Atlantic of duplicated commissions under the following circumstances.

When an Atlantic account is authorized under this plan, commissions are to be paid only on this Atlantic account's purchases from his supply point. If this authorized account is the supply point for other Atlantic accounts, then sales to such other accounts are not eligible for commission as such would result in our paying commission to Atlantic on the original sale and then paying a second commission on the same merchandise when it was resold to the other Atlantic account.

The instructions outlined above under "Independent Dealer Supply Point", therefore, are applicable only if the dealer supply point is not an oil company approved commission account.

Goodyear Store Supply Points

District Manager will provide stores that are to function as supply point with G-1209 of specified Atlantic Accounts for whom the store is the designated supply point. As any changes occur in the G-1209, District Manager will notify

store of change by copy of G-1209. Upon receipt, stores must immediately revise their records.

It is suggested that stores file the visible G-1209 form in their stock ledger binder for ready reference. Stores receiving lists of accounts from their District Manager should order supplies of blank G-1209 forms with which to establish their visible system.

Special Instructions Covering Store Car & Home Supply Points

Only those stores specifically approved by District Manager, (after approval by Akron) may operate as Car & Home Supply Points.

2411 When so approved, supply point stores may sell and bill to specified Atlantic accounts any Goodyear Car and Home merchandise stocked at our Field Warehouse and Sea-Bee outboard motors. Brake lining and related merchandise, General Electric and Hotpoint Major appliances, GE Radios and Motorola Radios and Heaters are not involved under this arrangement.

The Atlantic Accounts' buying prices should be either dealer or distributor price net except for cash discount. Quantity shipping allowance will not apply. Annual Bonus will be paid if earned.

Payment of Commission

Akron will pay all commission to Atlantic in connection with this plan. Rates of commission varies by types of Atlantic account, and type of product, therefore it is of the utmost importance that all Atlantic accounts be correctly classified on G-1209 records and also when reported on G-1204 so that the correct amount of commission will be computed by Akron.

Rates of Commission Follow—

(A) Approved Petroleum Jobber or Petroleum Distributor

All Merchandise 7½%

(B) Approved Oil Company Dealer (not Jobber or Distributor)

All Merchandise (except Resolute Battery Volume) 10%

Resolute Battery Volume 7½%

Identified on G-1204 and G-1209 as Oil Company Dealer

Car and Home Merchandise—If account is approved

Car & Home Merchandise Wholesaler 7½%

G-1204—Reports

Volume subject to sales commission must be segregated under the following classifications:

(A) All new tires and tubes including seconds, recaps and repairs, special priced stock, motorcycle, bicycle, truck farm, industrial and wheelbarrow tires and tubes but excluding airplane tires and tubes.

(B) Goodyear batteries including farmlight, battery cables.

(C) Resolute batteries.

(D) Car & Home and other products subject to commission not detailed above.

Commission is payable on the above merchandise only if delivery is made in accordance with schedule in Special Account instructions. Credit memos should be deducted from respective commission volume accumulations.

Recording of Volume for Accounts on District Ledgers

Tire and Tube Volume

Post bonusable items including credits for experimental Truck Bonus to the B-80D statistical sheet as usual.

Non Bonusable Tire and Tube items such as Motorcycle, Bicycle Tires and Tubes, etc., which are eligible under the sales commission plan are to be posted in miscellaneous column of the B-80D at the time postings are made to the B-80. Post at merchandise net invoice level.

2413 Goodyear Automotive Batteries Including Farmlight

Post Bonusable items to B-80D statistical section in usual manner. On guaranteed accounts postings should be made to the B-80D at the level prior to deduction of guaranteed annual bonus. Show annual bonus allowed as a separate item in a miscellaneous column at top of B-80D. Enter net battery volume on G1204 (Battery Bonus Volume less Annual Bonus).

Resolute Batteries

Resolute volume should be entered on B-80D in appropriate column. This volume must be kept entirely separate from Goodyear Battery volume accumulations.

Car & Home Merchandise & Miscellaneous

Post to B-80D such volume which is subject to sales commission. Enter on B-80D at net invoice price after deduction of all allowances. Include only items specifically designated as applicable for sales commission.

Recording of Volume for Accounts Sold by Stores and Supplying Dealers

Sales of merchandise subject to commission by dealer and store supply points to approved G-1209 accounts is to be entered to B-80D statistical ledger sheet as outlined in Wholesale Field Operating Manual page C-308.

Distribution of G-1204

Copy #1 and #2—Oil Company District Office
#3—Statistical Division Sales—Accounting Dept Akron
#4—District Manager
#5—District File
#6—Petroleum Representative

2415 G-1204 Report of Sales—General Instructions

Districts will prepare G-1204 reports monthly covering sales to all accounts under the Oil Company Commission Plan for each Oil Company buying under this plan. Reports are to be mailed no later than 5th of month. Distribution of copies is outlined under Special Account Instructions Pertaining to each Oil Company.

All Oil Companies operating under the commission plan will prepare and submit to Districts G-1204 reports listing thereon accounts within the respective Goodyear District which have been approved to participate under the commission plan.

Where the Oil Company fails to list approved accounts on the G-1204, Districts should list such accounts thereon. Before transferring totals from B-80D to G-1204 verify account class indicated on G-1204 to classification shown on B-80D.

Once a sale has been made to any account include the accounts sales on each month's G-1204 (even though no sales are made in the current month—in this instance transfer to the G-1204 only year to date totals) until the close of the calendar year provided the account is not deleted by a G-1209 or a change in account classification in the meanwhile.

Delete from detailed G-1204's the account cancelled by

G-1209 removal notices in the month following the month in which cancellation occurs. (This means that the year to date total on the G-1204 for the month following date of deletion of any accounts will exclude all volume for such deleted accounts.)

When a change in account classification occurs indicate on the G-1204 the date of change immediately after the account class in the period the change takes place and show account on another line on G-1204 under new account classification with purchases on the new basis being reported on the new listing. On the following periods G-1204 delete from year to date totals volume reported under the former classification.

After posting B-80D totals to the G-1204, total the latter report according to classification of accounts and enter current and year to date on the respective lines at the bottom of each page of the G-1204.

After all G-1204's have been totaled make up a separate summary G-1204 for each Oil Company Division or District. Identify each as a summary report.

Prepare the summary reports by sorting G-1204's by Oil Company Division or District Office and run totals thereon of each total block (current and year to date) appearing at the bottom of the G-1204. Transfer respective totals to the body of the summary G-1204. Use separate line for each account classification and identify in account class column as "CHJ", "J" or "D". Show current month or year to date totals.

The summary G-1204 prepared at the end of each current period must include not only active account's volume but also the volume which has been dropped in the current year due to removal of accounts from participation in the Sales Commission Plan or due to change in account classification.

After determining and entering the current periods to-

tals shown on the summary G-1204 a separate listing in the year to date column only the individual accounts
2417 removed that month. Enter removed accounts accumulated volume in the proper product column. Enter on separate lines volume by each account classification and identify in account class column as "CHJ", "J", or "D". On the following month's summary G-1204 shows as a separate listing by proper product and account classification the grand totals of removed accounts per previous month's summary G-1204 and then list thereunder by name and volume the individual accounts removed during the current month. Total summary sheets and carry totals to respective blocks at the bottom of the sheets.

The total of the current months year to date figures and the "Removed Accounts" figures should reflect a grand total of all volume reported year to date for payment of sales commission.

Check all G-1204 figures by adding the summary G-1204 current month's totals to the previous month's summary G-1204 year to date totals.

District Operating Managers will sign summary sheets only. Many instances occur where figures on copies are illegible due to poor figures, worn out carbon paper and off register of forms. The District Operating Manager's signature on summary sheets will be construed to mean that he has inspected each copy of all G-1204 forms for imperfections.

General

(1) Oil Companies finding it necessary to question the accuracy of G-1204 reports contact the District.

All complaints should be checked out at once and reported back to Oil Company.

If errors are revealed on our part, show the correction on the B-80D and include with volume on the next month's G-1204 in the current month's column even

though the corrections may involve a period of several months. This treatment applies to any year to date adjustment regardless of the source of correction.

Complaints registered by the Oil Company where store is the supply point should be forwarded to the store for check of store reports. If check by store does not reveal any errors, District should advise Oil Company by store invoice number and amount the volume included on G-1204 and request that they advise the invoice numbers covering any volume not included. Upon receipt of this information from the Oil Company, request the store to verify the claim, advising the District whether or not the additional volume is to be included in the next G-1204 report. District should advise the Oil Company definitely regarding the disposition of all claims.

(2) Where commission accounts are approved for retroactive handling, a report of sales from the effective date forward should be secured from the approved supply point and all volume so reported is to be shown under current month on B-80D and G-1204.

(3) It is preferred that G-1204 be typed, however, this is not a hard and fast rule—in the event the report is handwritten be sure all copies of the report are legible and in neat readable handwriting or hand printing.

G-1209 General Instructions

G-1209 must be prepared on each independent Petroleum Reseller Account participating under an Oil Company Sales Commission Plan.

2419 Instructions peculiar to each Oil Company with respect to the G-1209 and its preparation, distribution and approvals required and other details will be found in Special Account Folder Instructions for the respective Oil Companies.

The G-1209 must be filled in completely as provided on the form. Under "Supply Points" list the supply point or points from which the account will secure its requirements. In spaces opposite caption "Type of Oil Company Ac-

count" check appropriate block. In space opposite caption "Is this Account an Approved Goodyear Car and Home Wholesaler", check "Yes" or "No" whichever is appropriate.

Effective Date for Additions of New Accounts

The Goodyear District Manager will be entirely responsible for the effective date of any new accounts which are to participate in the Commission Plan.

In certain cases retroactive effective dates of the G-1209 may be approved by The Goodyear District Manager. Retroactive approval will become effective the first day of the month designated in such approval.

The number of retroactive approvals should be very limited because there is no reason why a Petroleum Company Account who is eligible to participate in the Commission Plan cannot be signed up by the Petroleum Company Representative at the time and date the account is eligible for participation in the Commission Plan.

Cancellation of or Changes in Approved Accounts

When the change or cancellation is to be made in status of an established account G-1209 will be prepared either by Goodyear or the Oil Company in the same manner as for a new account. Proper spaces on the form should be checked and the effective date shown.

District Manager should approve and submit all copies to Oil Company Office, requesting Oil Company to retain their copy for file and returning remaining approved copies to the District. Where Oil Company institutes changes Oil Company will forward all copies to Goodyear District Manager for completion and approval. Goodyear will distribute in usual manner.

Changes or cancellations must show proper reasons in "Remarks" space.

2421 COMMISSION EXHIBIT NO. 128A-B.

May 10, 1950
TBA SJH
T.B.A. Commission Plan

Mr. F. M. Neall,
Room 1706.

Dear Sir:

With further reference to my letters of April 12th and May 2nd, I have to report that the question of brand selection between Goodyear and U. S. has been discussed with both Mr. Estlow and Mr. Sanborn. Both of these gentlemen welcome the opportunity to test the commission plan in the Newark, New Jersey District, and they have expressed an overwhelming preference for the Goodyear brand. This preference is based on acceptance of Goodyear brand in the Newark District. They even prefer Goodyear over Firestone.

Last week I had an opportunity to discuss Goodyear and Firestone with George Switzer of Shell, and he expressed himself as being definitely in favor of relationship with Goodyear for best results over the long pull.

In considering the relative advantages of Goodyear versus U. S., it is recognized that U. S. has no company stores. However, this apparent advantage is more than offset by their extensive use of distributors inasmuch as their distributors have just as much latitude in the use of price in securing business as is enjoyed by company stores. U. S. favors nationally branded accessories and so does Goodyear. U. S. is following a policy of selective appointment of oil company representation. This is the type of policy that might be expected from those who do not have the business. Nevertheless, U. S. has aggressively solicited oil jobber business and with some reasonable degree of success.

Therefore, whether or not there is any immediate neighborhood competition with our stations in the selling of the same brand of T.B.A. depends on their past, present and future successes in establishing jobber distribution. U. S. is reputed to be the largest tire manufacturer in the world, but a considerable portion of their production is private brand. They are the largest manufacturer of private brand tires. While there is a definite advantage in size

from the standpoint of flexibility there is also the 2423 disadvantage of the larger, and perhaps more important, obligations that this manufacturer will have with private brand contractors. In times of emergency, these may very likely take precedence over the requirements of smaller marketers. This did happen during the recent war and the post war period. U. S. does not have as extensive an accessory line as Goodyear or Firestone. This does not appear to have any important advantage as in reality only those of our dealers who are able, and these will be relatively few, will attempt to merchandise other than automotive items. U. S. is making a considerable effort to sell premium quality merchandise. Goodyear and Firestone have premium lines for sale also. In my opinion, the latter are being a little more realistic about service station merchandising possibilities. It takes the exceptional type of merchant to handle a volume of business on high priced merchandise, and in the service station business we are essentially limited to the everyday-garden-variety type of service station operator.

The information that I have listed in this letter, and also my letters of April 12th and May 2nd, prompts me to recommend that Newark be selected for the third test district of the commission plan and that the Goodyear program be used for this purpose.

Very truly yours,

h

2425 COMMISSION EXHIBIT NO. 129.

May 17, 1950

T.B.A. Commission Plan

Mr. D. T. Colley
17 Floor

Mr. Heideman and I again sat down with the Goodyear and U. S. Tire people on the above subject.

After weighing and measuring the offers made by these people and discussing the matter with Messrs. Estlow and Sanborn, we have arrived at the conclusion that Newark would be an excellent place to try out the commission plan with a supplier other than Firestone, and because of the high acceptance of Goodyear in that area, they appear to give us more opportunity to get a better evaluation of the Commission Plan than U. S. All figures we have definitely give Goodyear the advantage over U. S. throughout our entire sales territory.

It is, therefore, our recommendation that we promptly make arrangements with Goodyear to take over the Newark area on a commission basis.

F. M. Neall.

m

cc: Mr. S. J. Heideman

2427 COMMISSION EXHIBIT NO. 130A-G.

June 16, 1950

Goodyear T.B.A. Bulletin #G-1

Accounting

Mr. G. H. Milligan's letter dated June 6, 1950 subject: "Accounting Procedure in Connection with Goodyear Plan For Sale of T.B.A. Products in the Newark, N. J. District" has been mailed to the personnel concerned.

S. J. Heideman

w

2429 Philadelphia, Pa.

June 6, 1950

SA:FOW

Accounting Procedure in Connection With Goodyear Plan for Sale of TBA Products in the Newark, N. J. District

With the adoption of the Goodyear Plan in Newark which has to do with the Company's receiving a commission for sales made by Goodyear to Atlantic Dealers and Distributors, following is the accounting procedure:

A list of all Dealer and Distributor accounts in the Newark territory, including the New York Harbor accounts, has been prepared and it is planned that each of these accounts will be solicited in an effort to have them participate in this plan. As the accounts' acceptance are obtained, the Sales Statistical Section in Philadelphia will be informed by the Newark Office. This information should be communicated by letter or memorandum, stating the following:

1. Name of Proprietor

2. Trade Name
3. Address
4. Type of account—by type of account, we mean either a regular Dealer who purchases for resale on a retail basis or a Distributor who purchases for resale on a wholesale and/or retail basis.
5. Effective Date—this should be the date that the account agrees to participate in the plan.

Goodyear Form G-1204, Report of Purchases from Goodyear by Oil Company Accounts

The Sales Statistical Section in Philadelphia will prepare the above report monthly. This report consists of a listing of the accounts who are to participate in the plan. This form acts as a claim against Goodyear for the purpose of payments of commissions to The Atlantic Refining Company on sales made to Atlantic Account. Detailed procedure covering the use of this form is attached.

Goodyear Form G-1209

After the initial drive has been made, there will be instances where additional Accounts are to be established, removed or changed. When these changes occur, Form G-1209 is to be issued by the Newark District Office. For details pertaining to the use of this form, see attached procedure.

2431

Philadelphia, Pa.
June 6, 1950
Goodyear Form G-1204
Report Of Purchases From Goodyear
By Oil Company Accounts
SA:FOW

Effective
Immediately.

Purpose

To report to the Goodyear Tire and Rubber Company, a list of Dealer and Distributor Accounts who purchase T.B.A. under the Goodyear Plan and for Goodyear to report to Atlantic the sales value of these purchases for statistical purposes and computing amount of commission.

Description

8½" x 13", white, 100 to pad.

Issued By

Philadelphia Region Office, Statistical Section.

Issued When

So that it will be in the Goodyear District Office not later than the 20th of the calendar month.

Number Of Copies

Seven (7).

Distribution Of Copies

First six (6) to Goodyear District Office.
Seventh retained by the Region Office, Statistical Section.

The Goodyear District Office, after the close of the month's business, will complete purchase information on the form and return the original and duplicate copies to Controller's Office Domestic, in Philadelphia, by the fifth

working day of the following month. The duplicate copy will be relayed from Controller's Office Domestic, to the Region Office, Statistical Section.

Retention Period

Two (2) years.

Procedure

A separate set of forms is to be prepared according to each Goodyear District Office.

Name of Oil Company—Show "The Atlantic Refining Company"

2433 Oil Company Division or District Office—Show "Newark"

All other spaces on the upper portion of the form leave blank.

#—Leave blank

Name of Proprietors—Show the proprietor's name

Trade Name—If the Account has a trade name, show it.

Address—Show the billing address of the Account.

Accounts are to be segregated according to classification; that is, all Dealers who resell at retail are to be placed in one group and all of those who are classified as Distributors in a separate group.

Balance of the form is to be left blank at the time it is issued.

Goodyear will report purchases as follows:

1. Goodyear District Warehouses—20th of the month to the 19th of the following month.
2. Goodyear Service Stores—25th of the month to the 24th of the following month.
3. Purchases from Goodyear Dealers—calendar month basis.

The forms, when returned by Goodyear, will indicate in the appropriate columns purchases made by each account. This information will be separated as follows:

a. New Tires and Tubes
b. Goodyear Batteries and Cables
c. Resolute Batteries
d. C & H Accessories and other Merchandise

This information will be shown for the current and/or fiscal month and cumulative for the year to date.

Upon receipt of the completed report, the G-1204 is to be used for posting to the B-503 statistical card. For this purpose, items b and c may be combined into one total.

After the posting is completed and the G-1204 has served its purpose, it should be sent to the District Manager in the Newark Office.

2435

Philadelphia, Pa.
June 6, 1950
SA:FOW
Goodyear Form G-1209

Effective

Immediately.

Purpose

To report to the Goodyear Tire and Rubber Company, Dealers and Distributors who have agreed to participate in the plan; also, to report Accounts to be removed from the plan and changes in proprietors.

Description

3¾" x 7", 4 copies to set—original, white; duplicate, yellow; triplicate, pink; quadruplicate, blue.

Issued By

Atlantic's Newark District Office or Goodyear's District Office.

Issued When

As new Accounts agree to participate or when changes in proprietors occur and when Accounts are to be removed.

Number Of Copies

Four (4).

Distribution Of Copies

When issued by Atlantic District Office, all 4 copies to be forwarded to the Goodyear District Office having jurisdiction over the Account. The yellow copy will be returned to the Atlantic Newark District Office by Goodyear as an indication that they have accepted the Account or have acknowledged the change in proprietors.

When issued by Goodyear, all 4 copies will be forwarded to Atlantic Newark District Office. After approval by Atlantic District Manager, retain the yellow copy and return the other three copies to the Goodyear District Office from which received.

Retention Period

Two (2) years.

Procedure

Goodyear District—Show name of the Goodyear District to which the form is to be sent.

Date Issued—Indicate the date on which the form was issued.

2437 Date Effective—Indicate the effective date of the Account's participation in the plan if a new Account or if the report is one covering change or removal of proprietors, indicate effective date.

Check One

New Acct. Remove Change—Three blocks are provided for the purpose of indicating whether the form covers:

1. New Account

2. An account to be removed from the plan.
3. A change in proprietors.

The appropriate block should be checked. In the event of a change of proprietors, the block headed "Change" should be checked and the form issued to show the name of the new proprietor. In the block headed "Special Instructions" a notation is to be made showing the name of the preceding proprietor.

Oil Company—Show "The Atlantic Refining Company"

Division or Dist. Office—Street & City Address—Show Atlantic's Newark Address.

Oil Company Sales Area—Show the code number of the Salesman's territory to which the Account is assigned.

List Supply Points Below—This is to be left blank at the time the form is issued, but it will be completed by the Goodyear District Office. They will indicate in this portion of the form the supply point or points from which the Account will receive his supplies. After this information is received, the Account should be so informed.

Is this Account an approved Goodyear Car & Home Jobber?—Leave blank.

Type of Oil Account—Indicate class of account by crossing out classification which does not apply.

Approved ..... (Goodyear District Manager)—The form, if accepted, will be approved by the Goodyear District Manager, whose signature will appear on the acknowledgment copy when returned to Atlantic's Newark District Office.

Approved ..... (Oil Co. Representative)—This space should be signed by Atlantic's Newark District Manager, or other person to whom he has delegated the authority, before the forms are sent to the Goodyear District Office.

2439 Participating Oil Company Account:—In the space immediately below this caption show the proprietor's name, street address, county, city and state.

Trade Name or Style (If any)—If the Account has a trade style or trade name, show this information in this space.

Goodyear Field Representative—Leave blank.

General

When the acknowledgment copy is received in Atlantic's Newark District Office, a record should be made for the benefit of the Order Clerk so that, in the event he receives orders for Goodyear products from the Account, he will be in a position to relay the infromation to the appropriate Goodyear supply point. The form should then be forwarded to the Region Office, Statistical Section, so that it may be included on the current G-1204 Claim Form.

2441 COMMISSION EXHIBIT NO. 131.

July 26, 1950

TBA RMT

Battery Charging Equipment

Newark, N. J.

Mr. W. J. Jackson
Room 1218

Dear Sir:

Mr. Fred Romer has inquired as to the policy to be followed in the Newark District in suggesting to dealers the equipment to be purchased by them.

Atlantic's recommendation to dealers in the Newark District will be that they purchase all T. B. A., including T. B. A. tools and equipment, from the Goodyear Tire & Rubber Company.

Very truly yours,

T. B. A. Section.

2443 COMMISSION EXHIBIT NO. 132.

August 2, 1950
GN-RB

Messrs. B. M. Boor, Pittsburgh
J. O. Estlow, 12th floor
W. J. Griffiths, Reading
H. H. Ingersoll, Charlotte
H. W. Jollie, Providence
G. V. Ostrander, Syracuse.

cc: Messrs. E. R. Cox, Jr., Room 810
S. J. Heideman, 12th floor
C. P. Mumma, Reading
W. W. Pleasants, 17th floor
E. Stanton, 12th floor

Dear Sir:

It has been brought to our attention that there is some departure from policy taking place in the erection of signs in those stations being tested under the Firestone and Goodyear Plans. This policy as written to you on July 19, 1949, is as follows:

"No signs other than Atlantic signs, and this includes decalcomanias and small tack-up signs, may be placed on the buildings, poster boards, fences, supports, or poles, at our Company-owned and operated stations, with the exception of one Lee and one Exide decalcomania on the upper portion of our service station show windows, and one metal Lee sign outside.

With respect to leased stations, this same policy should be brought to the attention of the station manager and he should be shown that if this policy is adhered to, his station will not only be in line with other Atlantic stations, but, in addition, present a more acceptable appearance.

I think it might be well to explain to those who lease our stations that if representatives of any companies tell them that The Atlantic Refining Company has approved their placing their advertising signs at our service stations, it is a completely false statement, and if any changes in the sign policy are made by The Atlantic Refining Company our dealers will be so advised through our salesmen."

I am informed that the Service Station Committee have not recommended any changes to this policy. It seems, therefore, indicate that we should review the activities of Firestone and Goodyear in this connection to bring their signs in line with the above, substituting, of course, their names for the Lee and Exide names. Any desired change should be set forth in recommendation for exception to or alternation in existing policy.

We will be happy to work with you in any way possible in this matter,

Cordially yours,

md /s/ R. Borden

2445 COMMISSION EXHIBIT NO. 133.

Mr. S. J. Heideman
12th Floor

June 12, 1950
PNJ:EDW
TBA

To all Sales Personnel
Philadelphia & New Jersey Region

There appears to be some misunderstanding in certain territories regarding the Company's policy on T.B.A. sales. Complications of dual marketing with the Firestone Commission Program apparently have brought about this condition.

That there may be no misunderstandings, let it be clearly stated that your Company's interest in T.B.A. was never

higher. Atlantic intends to serve the best interest of the dealer to provide him with the best possible profit. To do this we must always be looking for better methods. The commission plan is an experiment to determine if it is of greater value to dealers than our present method.

It should be noted here that a third district is to be placed on the commission program—Newark, on June 12, with Goodyear as the supplier. This is not an expansion, but part of the original planning of the sales test. The delay in setting up this district was due to the necessary negotiations and preparations.

Our present suppliers are very much part of this sales test. They are fully informed on what we are doing and without exception they have indicated their willingness to increase their cooperation with our Company.

There should be no confusion—the T.B.A. program available in any territory is the one Atlantic recommends for dealer consideration. Future changes, if any, will be made only if they are proven to be to the dealer's advantage.

W E. D. Walter.

COMMISSION EXHIBIT NO. 134. 2857

Figures encircled — No preference

Recently you have been introduced to a new plan for the marketing of Tires, Batteries, and Accessories. We know that you are in the best position to judge the advantages of the new and the old plans. Your opinion will be one of the most important factors in the future development of our T.B.A. program.

So that we may get a cross section of dealer opinion, we are asking your cooperation in the completion of the following questionnaire. The response is intentionally anonymous. We want to know your feeling about our program, not your name. Will you therefore please complete the information and without signing this sheet return it in the attached self-addressed stamped envelope. In return for the confidential treatment we would like to make this the unbiased opinions of yourself and your customers.

1. Which complete program do you personally prefer (Check one)

New Plan 56 Old Plan 49 (18)

2. Which plan do you think—

	TIRES		BATTERIES		ACCESSORIES	
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
a. will give you more sales of	(9) 49	68	(10) 65	48	(19) 48	56
b. gives you better delivery of	(11) 53	56	(12) 52	49	(29) 46	53
c. gives you the more useful promotional assistance at your station for	(13) 51	57	(17) 54	50	(30) 50	53
d. gives you the better general advertising support for your sales of	(14) 32	77	(18) 48	51	(31) 37	65
e. will give you the easiest way to satisfy customers when complaints arise on	(22) 72	39	(20) 62	40	(34) 53	44
f. has the greater customer acceptance at your station for	(15) 43	65	(21) 62	40	(40) 47	50

3. How do you prefer to buy your T.B.A. needs? (Check each column)

	T	B	A
a. From Atlantic direct	40	[illegible]	33
b. From the Tire Company (Store or Distributor)	42	38	26
c. From the Automotive Jobber	7	24	39
d. Other (List) _____	2	2	2
	(9)	(14)	(14)

4. Under the new plan to whom do you look for advise in developing your T.B.A. program? (Check each column)

	T	B	A
a. Atlantic Salesman	52	56	59
b. Tire Company Salesman	40	22	19
c. Other (List) _____	5	12	11
	(18)	(35)	(24)

To help us complete this kindly return before _____

THANK YOU FOR YOUR COOPERATION. From time to time the Sales Research Section may call for your assistance. In return, we solicit your comments or suggestions on TBA or any other phase of ATLANTIC'S marketing. Just drop a line with pertinent comments to—

THE ATLANTIC REFINING COMPANY
Sales Research Section
P.O. Box 7258, Philadelphia 1, Pa.

[redacted]

2455 COMMISSION EXHIBIT NO. 136A-E.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

S. J. Heideman
Manager

March 21, 1951
TBA SJH

Tires, Batteries and
Accessories Sales

T.B.A. Conversion to
Firestone & Goodyear Programs.

Mr. D. T. Colley,
Room 1700.

Dear Sir:

On February 14th, the decision was made to swing over to the Commission Plan of T.B.A. marketing effective March 1st. It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania and the South) were to market the program of the Firestone Tire and Rubber Company. The split was largely a matter of regional selection, decided upon by local advantages enjoyed by the respective rubber companies but influenced by Staff determination to have the two rubber companies competing in different localities for an equal share in the development of the Atlantic dealer's T.B.A. business. Although this move was sudden, events leading up to it were developed in an orderly fashion over a period of several years.

The original step consisted of a comparison of our

T.B.A. program with those of other oil marketers. This revealed that there were only two plans in extensive use. These were:

A. The so-called "private brand" method where the oil company markets tires, batteries and accessories under their own house brand or under a brand name that they own. Secony-Vacuum Oil Company, with their Mobil tire and Mobil battery, is a good example of this plan. Or,

B. The major rubber companies' complete T.B.A. programs available under the so-called "Commission Plan". An example of this operation is evident with the Texas Company and the Shell Oil Company.

The first plan, although employed by large and successful oil marketers, has its drawbacks. A company that doesn't have national distribution cannot economically and efficiently popularize its T.B.A. products. More important, however, is the increased burdens that must be as-
2457 sumed in sales operations, the increased investment required for molds and for inventories, and the real hazard of commitments made in the fact of fluctuating markets. In addition, there is a heavy load on the dealer in creating public aceptance for a new line in a highly competitive field. There is the real threat of reduced sales and profits for the dealer at least during the early stages of such a program.

The second plan employing the major rubber company's brand name on a complete T.B.A. program appeared quite popular among the oil companies, and what is more important, especially popular with oil company dealers. We had access to confidential information from one large oil marketer (Shell) which indicated tremendous success with this type program over a period of several years.

Having established the fact that our T.B.A. program was somewhat unique among oil companies, we then em-

ployed an outside agency to sample opinions of both Atlantic dealers and competitive dealers in our area. The important finding from this survey was that our present program was far from flawless and that there was a great deal of dissatisfaction with it among our dealers. The dealers of other marketers appeared more content with the T.B.A. programs that were available to them.

Last Spring we decided upon a test, and for reasons now obvious, tried the Commission Plan. In arranging for this test, three districts were carefully selected so as to afford a good cross section of our marketing area. The districts selected were Newark, New Jersey; Wilmington, Delaware; and Erie, Pennsylvania. The first district was established on the Goodyear program and the other two on the Firestone program. These test districts were studied carefully from the inception of the new program. Dealers were contacted and asked about their preference and from the outset very favorable reports were received. A secret ballot was circularized by our Sales Research Section in all of the test districts, and again the replies showed a very strong preference for the new major rubber company program. Last, but very important, the sales figures in the test districts month after month showed gains over the previous year that outstripped the gains made in the remainder of the respective regions and also those made in the Marketing Department as a whole.

Last January, upon assurance from the Firestone Tire and Rubber Company that they could provide for our normal requirements, it was decided to broaden the test to at least one entire region in order to secure even more conclusive information. A volunteer was sought among the regions. Four regions indicated that they wanted the new program. Further negotiations were undertaken with both rubber companies so as to insure our supply position for the four regions as well as their complete and full sup-

port for the other two regions in the event that Lee decided that rather than continue to serve only two regions they would prefer to cancel their contract. On February 14th, Lee elected to cancel their contract effective March 1st.

2459 It will take several months to complete the conversion to the new program. Every effort will be made to sell the dealer on the advantages of the new program so that his ultimate decision will be in favor of it. During the conversion period we will have to dispose of approximately $425,000 of inventory. Inventory close-outs are always costly, but we feel because of the present market situation that the disposal program will yield us a return closely approximating our acquisition costs.

It will be interesting to review some of the advantages that we enjoy under the Commission Plan. We are relieved of the purchasing function except for our twelve Class I Stations and our own fleet requirements. We do not warehouse or deliver any merchandise; we are not involved in the handling of accounts, such as invoicing or credit and collection work; we do not issue catalogs or price books nor do we have to provide point-of-sale promotional helps. All of these responsibilities as well as sales training help are assumed by the rubber manufacturers. We assist in the selling job as well as in the dealer training and merchandising task, and for this effort receive a commission which varies according to class of account and type of merchandise, but which has been averaging well over 9%.

With Goodyear and Firestone we have the two best known manufacturers of tires; also, the two manufacturers having the greatest public acceptance not only in the United States but all over the world. They are leaders in research and development—in supplying original equipment and in the replacement market. Surveys reveal that between them they enjoy 50% of the renewal tire market. They both have extensive tire lines complete in every detail. They have

recapping service which is an increasingly important service in tire retailing. Their battery lines are good and competitively priced, and their accessory and home supply lines are far more extensive than is necessary to meet the requirements of our average present-day dealer. These broad lines, however, provide a safeguard for our dealer should the supply situation become tighter, and they also provide a growth and development opportunity that is so vital to the improvement of our overall program. These T.B.A. programs are complete, they are exceedingly well merchandised and they are backed up with exceptional dealer training and unparalleled national advertising. We are indeed fortunate in having these two companies competing against one another for a more secure or favorable position with Atlantic. We stand to gain from this arrangement whether we are in a buyer's or seller's market.

We have tried to estimate how our 1950 actual experience on T. B. A. would have compared with the same volume of performance if it were accomplished under the Commission Plan. Our T. B. A. volume excluding the three test districts amounted to seven and a half million dollars. Our gross profit ranging from 20 to 30% on the different products amounted to approximately $1,664,000. Estimated expenses chargeable to this operation total $2,071,000. This would indicate a loss of about $407,000. 2461 Under the new program based on our experience in the test districts, we would have received a commission of approximately $675,000 to apply against sales expense.

In addition to this favorable comparison, we would have secured much needed warehouse space and delivery facilities that could be used to advantage for our petroleum products. Some of our personnel could have been eliminated but much of it could have been assigned to other jobs where help is urgently needed. Our operational people

would have been free to effect greater improvements and efficiencies in the handling of petroleum where worthwhile savings can still be effected.

It is expected, however, that the ~~greater~~ benefits from the new T. B. A. program will come about through improved services and supply to our dealers, and as a result of their increased sales and profits we will enjoy direct benefits from increased commissions and indirect benefits in better dealer stability.

Very truly yours,

S. J. Heidenreich

P.S. Attached is report showing development of estimates referred to in body of letter.

2463

1950 Sales Estimate

Based on best information obtainable through C O Domestic

	Tires	Batteries	Accessories	Total
	$5,360,697	$1,056,464	$1,132,168	$7,489,329
	@20%	@25%	@30%	
Estimated Gr. Profit	$1,060,139	264,111	339,630	1,663,880
Total Expense	876,153	427,327	767,941	2,071,421
Deficit	+183,986	—163,216	—428,311	—407,541

Under The Commission Plan

Estimated Expenses that Probably can be Eliminated				
100% Del. to Whse.	$ 2,092	$ 464	$ 3,200	$ 5,756
100% Del. to Trade	65,685	15,017	25,368	106,070
100% Whse.	93,240	69,957	105,467	268,664
90% Dist. Acctg.	81,000	40,000	81,000	202,000
50% Direct Expense	8,077	3,273	5,896	17,246
90% Reg. Acct.	140,000	49,000	165,000	354,000
90% Misc. Labor	10,904	5,918	11,389	28,211
100% Credit-Coll.	6,568	1,357	1,456	9,381
50% Selling	91,921	54,644	81,275	227,840
33⅓% Dist. Adminis.	10,577	5,963	9,315	25,855
33⅓% Reg. Adminis.	19,722	8,798	15,376	43,896
50% Adv.	12,301	2,608	2,911	17,820
25% Dir. Hdqtrs.	12,128	2,452	2,747	17,327
75% Indirect Hdqtrs.	34,323	16,905	30,397	81,625
Total	$ 588,538	$ 276,356	$ 540,797	$1,405,691
Est. Commission	$ 477,063	$ 95,082	$ 101,895	$ 675,000
Est. Chges. to TBA				665,000
Est. Net Profit				$ 10,000

2465 COMMISSION EXHIBIT NO. 137A-E.

Duties of the Dealer Salesman.

I. General Responsibility to the Company

1. Act to the best interest of the Company at all times.
2. Insure proper use and care of Company property, including Company cars.
   a. Responsible for removal of excess equipment at dealer locations.
   b. See that dealer performs necessary maintenance functions for which he is responsible.
   c. Report necessary maintenance and repair work to be done by the Company.
   d. Make up list of equipment to be painted when required.
   e. Follow Atlantic operations procedures.
3. Recommend modernization of Company property.
4. Make up "New Construction Report" monthly.
5. Insure insofar as possible the operation of the Company's business in his territory on the most profitable and economical basis.
6. Keep Company Accounts Receivable at minimum, in line with announced credit terms.
   a. Recommend proper credit limits for dealers.
   b. Collect delinquent accounts.
7. Responsible for collection of dealer rents, or variations; reporting same on B-540.
8. Make periodic collection of B-30 tickets.
9. Keep himself thoroughly familiar with Company policy insofar as it relates to his assignments.
   a. Acquaint dealers immediately of any change in Company policy affecting them.

10. Plan daily activity to achieve maximum results.
    a. Route calls for minimum of driving.
11. Analyze territory to determine where distribution is needed.
    a. Report to manager recommendations for development.
2467 b. Work out plan to secure this development, concentrating upon large gallonage accounts.
    c. Report to Sales Supervisor or Manager all opportunities to acquire new desirable accounts and any new business opportunities which were rejected.
12. Keep all stations open and operating according to the best possible standards of housekeeping and service to the public.
    a. Make monthly check in evening and early morning on hours of station's operation and lighting.
    b. Recommend action to assist in maintaining maximum results at any outlet.
13. Not less than once a year, meet with Manager, Sales Supervisor, and Class II dealer to analyze dealer's success or failure.
    a. "Annual Review with Dealers" carried out in all details.
14. Keep dealer adequately stocked with motor oil, T.B.A., and other products sold by Company. Correct over-stock problems by special sales programs, campaigns, etc.
    a. "Unit Control", where used.
    b. Maintain inventory in accordance with minimum stock standards.
    c. Keep stock in salable condition.
15. Sell necessary equipment items handled by the Company to insure proper operation of his stations.

16. Be prepared personally to pass tests in all service station procedures, including dealer accounting to the extent determined by management.
17. Keep any employees working under him in harmony.
    a. Supervise any Class I stations in his territory, where feasible.
18. Keep Price Book, Sales Promotion Catalog, T.B.A. Price Book and Catalog, and equipment catalogs posted currently. Know what the Company is selling and its price.
19. Make all routine and special reports promptly and accurately.
    a. Maintain record of performance daily to insure he is getting the maximum amount of results.
    b. Take monthly inventories of any stock on consignment.
    c. Make "Competitive Activities" report as required and report any changes in it as they are noted.

2469 20. Have necessary leases, contracts, and other agreements signed and forwarded promptly.
21. Investigate complaints to Company and follow up as necessary to insure that a fair disposition of the matter has been made.
22. Pass along at Sales meetings knowledge gained from experience that would be helpful to other salesmen, and send to Advertising, Sales Promotion, or other staff activities any observations that may be of value to them.
23. Maintain good relations with the dealer in order to retain present outlets.
24. Make application for State or local permits where applicable.
25. Be familiar with Company safety regulations and

precautions, and see that they are enforced at stations in his territory.

26. Conduct service or other special assignments requested by proper authority.
    a. Assist Commercial Salesman on truck lubrication work.
27. Take part in Company—approved industry meetings.

II. Responsibility for Selection of Dealers and other Personnel.

1. Keep the best possible men as dealers in his station and be prepared to recommend any change which would improve the operation of a station.
2. Maintain a constant search for qualified men interested in becoming Atlantic dealers, whose names will be contributd to District Dealer Bank.
3. With the District Manager and/or Sales Supervisor, make dealer selection from available candidates.
4. Keep all stations adequately manned.
    a. Assist dealer in selecting personnel.

III. Responsibility for Indoctrination and Installation of Dealers

1. Handle details incident to indoctrinating and installing new dealers in accordance with Dealer Indoctrination Guide, using check list provided in this Guide.

IV. Responsibility for Dealers' Record Keeping

1. Maintain constant check on dealer's accounting practices, accounts receivable, and inventory.

2471 2. Analyze dealer's operations from profit and loss standpoint periodically, pointing out existing weaknesses.

a. See that dealer maintains minimum cash balance.

b. See that dealer is properly insured.

3. Review dealer's books monthly, especially quota book and sales ratios.
4. Assist dealer in building a mailing list for lubrication follow-up and other promotions.
5. Assist dealer in setting up bonus plan for employees when desirable.

V. Responsibility for Constant Training of Dealers

1. Inject enthusiasm and personality in to station personnel necessary for success.
   a. Work constantly to build character into Service Station.
2. Urge dealer to train new employees properly.
3. Suggest that dealer take advantage of Service Station School for self and employees.
4. Request assignment of Retail Instructor in all phases of Atlantic Service Station operation. Make sure assignment is productive and objective is reached.
   a. Use Retail Instructor, where needed, to train and retrain dealer and employees.
   b. Make certain dealer understands function of instruction and his (dealer's) responsibilities.
5. With approval of Manager, plan and attend small dealer meetings designed to improve the dealer and his business.
6. Educate dealer so that he knows what he is selling and how to sell it.
   a. Keep dealer informed regarding products, prices, and their application.
7. School new employees and dealers in driveway service, housekeeping, lubrication, and all other

procedures, with the assistance of the Retail Instructor.

a. Aim to have all dealer personnel able to pass at any time tests in driveway service, lubrication, and housekeeping.

8. Instruct new employees and dealers on the proper use of displays, signs, local advertising and other merchandising and sales promotion helps.

2473 a. Keep dealer supplied with current Company advertising and promotional material.

9. Conduct various product and other demonstrations, such as rust corrosion and detergency motor oil tests.

10. Keep dealer abreast of competitive activities and prices—suggest to dealer intelligent course of action.

11. Establish sales objectives and quotas for individual dealers on all products not included and projected in "Annual Review".

a. Arrange monthly goals, special sales, solicitations, campaigns, etc.

12. Inspect each station weekly and list cleaning jobs to be done. Follow up to see that they are done.

a. Assist dealer to set up daily, weekly, and monthly housekeeping schedules.

13. Endeavor to keep physical operation at all of his stations conducted in accordance with Atlantic standards, in regard to hours or operation, illumination, housekeeping, lubrication and rest room equipment, uniforms, merchandising, sales promotion policies, painting, and accounting systems.

14. Insure that Atlantic dealers in his territory maintain the good will of the public at all times.

2475 COMMISSION EXHIBIT NO. 138.

June 25, 1951
TBA SJH
Staff Meeting Report

cc: W. J. Bulter, Room 809

Mr. F. M. Neall
Room 1706

Dear Sir:

General

Both the Firestone and Goodyear Station Identification Programs are under way. Goodyear Decals are being applied by an outside agency however their own trucks are erecting signs. Goodyear has begun Station Identification in the Philadelphia-New Jersey Region and plan to start Station Identification in the New York and New England Regions both beginning July 2nd.

Firestone sign trucks are applying decals and erecting the signs in Eastern and Western Pennsylvania. Firestone Identification at Atlantic Stations will not begin in the South until late summer.

Tires

We continue to look for increased supply of tires in the replacement market although to date we have not been given tire allocations for the month of July.

Batteries, Accessories, Anti Freeze, Miscellaneous Refinery Products.

Nothing to report.

Very truly yours,

2477 COMMISSION EXHIBIT NO. 139A.

CC: W. J. Butler
Room 809

January 15, 1952
TBA SJH
File: L-4
Staff Meeting Report

Dr. A. B. Hersberger,
Room 1706.

Dear Sir:

General

We have secured agreement from five of the marketing regions to discontinue, effective March 31st, the supporting arrangements that we have with both Goodyear and Firestone on the adjustments of Lee tires and Exide batteries. We had an obligation incurred as a result of product sales effected under the old T. B. A. program to support Atlantic dealers in their adjustments of Lee tires and Exide batteries. An arrangement was worked out with Goodyear and Firestone whereby we shared the cost of this adjustment responsibility. Our cost during the first 9 months of 1951 totalled $11,000. It is believed that as of March 1st we will have effectively discharged with few exceptions our obligation in this direction. It is intended that special cases, of course, will be given the consideration they deserve.

2481 COMMISSION EXHIBIT NO. 140.

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R. I.

M. G. Davis
Sales Manager
New England Marketing Region

May 3, 1951
GM:D:TLW

Lee Tires.

Mr. S. J. Heideman
Philadelphia, Pa.

Dear Sir:

The Providence Manager for the Lee Tire & Rubber Company, a Mr. Earle, told me today that he understood, effective June 1st, we were not going to accept from our dealers B-139s covering sales of Lee tires and tubes.

This is news to me. Is it true?

Yours very truly,

M. G. Davis

TLW/sc

COMMISSION EXHIBIT NO. 140A.

16148-20

ATLANTIC

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 EXHIBIT NO. 140A

IN THE MATTER OF Goodyear Atlantic

DATE 6/14/57 WITNESS

ACE REPORTING CO., Official Reporter

By

STREET

TOWN State

Received Items Described Below

ITEMS	Quantity	Price Incl. Tax	AMOUNT
ATLANTIC White Flash	Gals.		
ATLANTIC Hi-Arc	Gals.		
ATLANTIC Avia. Motor Oil	Qts.		
ATLANTIC Motor Oil	Qts.		
Transmission-Differential Service	Pts.		
Lubrication			
		TOTAL	

Liability for the State Tax has been assumed and will be paid as required by law.

State Tax of _____ and Federal Tax of _____ a gallon on Liquid Fuels included in price.

2483 10/51

COMMISSION EXHIBIT NO. 140B.

16148-20

ATLANTIC

LICENSE	
State	Number

NAME FEDERAL TRADE COMMISSION

DOCKET NO. 6488 COMMISSION EXHIBIT NO. 140B

STREET

TOWN State

Received Items Described Below

ITEMS	Quantity	Price Incl. Tax	AMOUNT	
ATLANTIC White Flash	Gals.			
ATLANTIC Hi-Arc	Gals.			
ATLANTIC Avia. Motor Oil	Qts.			
ATLANTIC Motor Oil	Qts.			
Transmission-Differential Service	Pts.			
Lubrication				
		TOTAL		

Liability for the State Tax has been assumed and will be paid as required by law.

State Tax of _____ and Federal Tax of _____ a gallon on Liquid Fuels included in price.

2484 - 139 10/51

COMMISSION EXHIBIT NO. 140C.

16148-20

ATLANTIC

		LICENSE	
		State	Number

195

NAME

STREET

TOWN State

FEDERAL TRADE COMMISSION
DOCKET NO. 6788 COMMISSION EXHIBIT NO. 140C

Received Items Described Below

ITEMS	Quantity	Price Inc'l. Tax	AMOUNT	
ATLANTIC White Flash	Gals.			
ATLANTIC Hi-Arc	Gals.			
ATLANTIC Avia. Motor Oil	Qts.			
ATLANTIC Motor Oil	Qts.			
Transmission-Differential Service	Pts.			
Lubrication				
		TOTAL		

Liability for the State Tax has been assumed and will be paid as required by law.

State Tax of _____ and Federal Tax of _____ a gallon on ~~Liquid~~ fuels included in price.

2485 10/61

2487 COMMISSION EXHIBIT NO. 141.

May 10, 1951
TBA:WCH
Lee Tires

Mr. M. G. Davis,
Providence, R. I.

Att: Mr. T. L. Walsh

Dear Sir:

Your letter of May 3rd stated you had information that effective June 1st we are not going to accept from our dealers B-139s covering sales of Lee tires and tubes.

This information is not entirely correct. We suggest that the next time you are talking to us on the phone the subject be discussed further.

Very truly yours,

W. C. Hoffman

E

2489 COMMISSION EXHIBIT NO. 142.

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R. I.

M. G. Davis
Sales Manager
New England Marketing Region

June 20, 1951
GM:D:TLW

Lee Tires

Mr. W. C. Hoffman
Philadelphia, Pa.

Dear Sir:

Your letter of May 10.

This was discussed with you on the telephone and we appreciate the reasoning behind the ruling. However, tires are becoming very plentiful now, and we think that it is time to consider limiting the use of B-139s to Goodyear tires.

Yours very truly,

M. G. Davis

TLW/sc

2491 COMMISSION EXHIBIT NO. 143.

CC: Mr. F. M. Neall
Room 1706

July 9, 1951
TBA SJH

Goodyear & Firestone Programs

Mr. William Stockton,
Room 1605.

Dear Sir:

The time is fast approaching when tires will be in good supply and when we will want every possible effort and attention of the Atlantic dealer focused on the subject programs. I believe, therefore, some consideration should be given to limiting the use of B-139's to the subject's tires. Reasonable time has been allowed for Atlantic dealers to dispose of the stocks of Lee tires which were sold to them by Atlantic.

Will you kindly advise a course of action at your convenience?

Very truly yours,

2493 COMMISSION EXHIBIT NO. 144.

The Atlantic Refining Company
Philadelphia, Pa.
SC-WS

November 13, 1951

Goodyear and Firestone Programs

Mr. S. J. Heideman
Room 1210

Dear Mr. Heideman:

The Staff has investigated the proposal which you made to limit the use of Atlantic credit cards to TBA sponsored by Atlantic.

The regions were about evenly divided on the question of adopting this suggestion.

At a meeting of the Staff held on November 12, it was decided to take no action at the present time but to reconsider the question July 1, 1952.

Will you let me have your thoughts about it prior to that date?

Cordially yours,

Wm. Stockton

WS:MRH

2495 COMMISSION EXHIBIT NO. 145.

June 18, 1952

TBA SJH

Credit Card Sales

Mr. William Stockton,
Room 1605.

Dear Sir:

Attached to Mr. Taitt's letter of February 11th were two copies of a list of T. B. A. products and services which we suggested be approved for credit card purchases. On that list, in addition to tires, batteries, anti-freeze, and services, was a lengthy list of items under the heading of "accessories".

In order to cover all of these accessory items without distributing a special list and to express them in terms that dealers and salesmen can readily identify, we feel that our purpose can best be served in the area served by Goodyear through use of the following descriptive terms:

Department 022, Auto Accessories
Department 71, Goodyear Fan Belts
Department 58, Goodyear Molded Hose
Department 55, Goodyear Radiator Hose
Department 61, Car Mats
Department 42, Repair Materials

and in the area served by Firestone, with the following terms:

Department 3, Auto Supplies
Department 16, Seat Covers
Department 50, Spark Plugs & Batteries

While these groupings will include a few more products than appear on the present list, we think that in the inter-

est of simplicity it will be just as economical as trying to exclude them.

May we please have your comments on this recommendation?

Very truly yours,

S. J. Heideman

h

2497 COMMISSION EXHIBIT NO. 145A-D.

The Atlantic Refining Company
Philadelphia, Pa.

February 11, 1952
TBA RMT
Credit Card Sales

Mr. William Stockton,
Room 1605.

Dear Sir:

Attached are two copies of a list of T.B.A. products and services which should be approved for credit card purchases.

Very truly yours,

R. M. Taitt

h
Enc.

2498 Credit card holders may charge the following T.B.A. Products and Services obtained at those stations authorized to honor Atlantic Credit Cards:

New and Used Tires and Tubes
Recapped Tires and Recapping Service
Automotive Storage Batteries
Anti-Freeze

Automotive Accessories:

Auto Finish Chemicals:

(a) Liquid Polish
(b) Liquid and Paste Wax
(c) Liquid and Paste Cleaner
(d) Tar Remover
(e) White Wall Cleaner
(f) Tire Paint
(g) Chrome Cleaner
(h) Convertible Top Dressing

Auto Compass
Auto Thermometer
Auto Top Carriers
Battery Cables
Battery Trays
Battery Holddowns
Chamois
Cooling System Chemicals

(a) Cleaner
(b) Sealer
(c) Acid and Rust Inhibitor

2499 Curb Finders
Cushions
Defrosting Fans
Exhaust Extensions
Fan Belts
Fender Flaps
Fender Guides
First Aid Kits
Flashlights
Flashlight Lamps and Cells
Floor Mats
Fuses
Gasoline and Radiator Caps

Heater Hose
Horns
Hose Clamps
Household Lubricant
Jacks (Bumper and Axle)
License Plate Frames
Miniature and Sealed Beam Lamps
Miscellaneous Chemicals
(a) Gasoline Anti-Freeze
(b) Brake Fluid
Oil Filter Cartridges
Pedal Pads
Polish Cloths
Pop-Out Lighter Units and Elements
2500 Radiator Hose
Rear Vision Mirrors
Seat Covers
Shock Absorbers
Spark Plugs
Sponges
Sun Visors
Thermostats
Tire Chains
Tire Repair Kits
Tow Chains
Trouble Lights
Vanity Visor Mirrors
Wash Mitts
Wind Deflectors
Windshield Wiper Blades and Arms

Services:

Complete Tire and Battery Service
Accessory (Illegible) Service
(Illegible) Service
Car Polishing Service

2501 COMMISSION EXHIBIT NO. 146A-B.

Staff Meeting Held 7/14/52

4. Credit Card Policy—1953

a. (1). Issue 1953 Credit Cards to all holders of 1952 cards who purchased in 1952 and have a good credit standing.

(2). Each region should set up a system so that this plan may be followed annually and where the time period may be shortened to six months if conditions warrant.

(3). Each region should inquire of government agencies who have not used their 1952 Credit Cards recently of their requirements for 1953 Credit Cards.

b. (1). Use "perforated" type credit card.

(2). Mail First Class mail in window envelope.

(3). Acetate container to be separately enclosed.

c. (1). All regions to assign permanent Credit Card numbers based on the alpha-numeric system.

(2). Addressograph Credit Card for annual reissuance and those issued currently during the year.

(3). Since c. (1) will change the sorting system, it is advisable that the use of 1953 cards be started early. 1953 Credit Cards should be mailed November 20, 1952.

(4). Regions should encourage customers and dealers to start using their 1953 Credit Cards when received. Salesmen should be informed of the effect of this change and asked to encourage dealers to follow the suggestions.

(5). 1953 Credit Cards should be issued to current applicants starting November 1, 1952.

(6). 1952 Credit Cards will cease to be valid after December 31, 1952.

d. (1). The regions are urged to build up their Credit Card business. The healthy growth in the number of good Credit Card customers is necessary for the development of our Class 2 program.

(2). Promotion of Credit Cards by use of "lists" has been found to be expensive and non-productive. This method is not to be used. However, where a former competitive dealer takes over an Atlantic Station, Credit Cards may be issued to his former customers subject to credit approval.

2503

e. (1). Form.

Revise the regular Credit Card as follows: Under 4 after "Atlantic Petroleum Products" add "delivered into car to the capacity of the fuel tank or crank case only."

The next sentence reads, "Tires, tubes, recapping, batteries and automotive accessories recommended by Atlantic. (Mounting of tires and tubes and installation of batteries and mountable accessories required." Remove the words "Recommended by Atlantic."

No changes are recommended in the Credit Cards issued to government agencies.

2505 COMMISSION EXHIBIT NO. 147.

The Atlantic Refining Company
Annual Report for the year
ending December 31, 1951, dated
March 12, 1952, pp. 12-13.

"Marketing

• • • • • •

"Continuing our program to modernize the retail outlets through which Atlantic products are supplied to the motorist, the 250 new or renovated outlets put in service in 1951 permitted the elimination of a number of non-representative locations. This program will be continued in 1952 to the extent that government regulations and material supplies permit.

"A major change in the method of marketing tires, batteries, and accessories was effected during the year. The former system of purchasing, warehousing and reselling items from numerous suppliers was replaced with arrangements with Firestone and Goodyear, whereby their products may be sold and delivered directly to our dealers. Each company services approximately half of our marketing territory, and their extensive distribution facilities permit more rapid delivery to our customers and substantial reductions in our expenses. Furthermore, our dealers and distributors are able to market products backed by national advertising and extensive sales promotion.

• • • • • •

"

2506 COMMISSION EXHIBIT NO. 148.

February 27, 1951
TBA HKP

Mr. E. R. Cox, Jr.,
Room 810.

Dear Sir:

We attach two letters which are to be prepared and issued as follows:

Letter dated March 1, 1951, subject: "A Statement of Atlantic's T.B.A. Policy", is to be prepared on Mr. D. T. Colley's letterhead and sent to all Atlantic dealers and distributors.

Letter dated March 1, 1951, subject: "T.B.A. Program" is also to be prepared on Mr. D. T. Colley's letterhead and sent to Regional Managers, Sales Group Managers, Indirect Marketing Supervisors, Wholesale Marketing Supervisors, T.B.A. Coordinators, District Managers, Gasoline Salesmen and T.B.A. Salesmen. To this letter should be attached the letter, entitled, "A Statement of Atlantic's T.B.A. Policy".

Both letters will carry Mr. D. T. Colley's signature and should be of the same date.

It is important that these letters be prepared promptly and mailed as soon as possible.

Very truly yours,

h

Enc.

P.S. Please forward to this office 12 copies of each of the attached letters.

Note: Distribution to Staff Members

2508 COMMISSION EXHIBIT NO. 149.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

Dwight T. Colley
Vice President
General Manager
Domestic Sales

March 1, 1951
T.B.A. Program

Dear Mr.

The attached letter is being mailed to every Atlantic dealer and distributor. The expressed policy must be clearly understood by everyone in the Sales Department and then practiced.

I am sure that the new T.B.A. program which we have carefully selected has so many advantages that it will not be difficult to convince Atlantic dealers and distributors of its superior merit. This job is to be done with the use of all the sales equipment and knowledge that we, or our suppliers, have at our respective commands. I expect the results of our salesmanship to be highly successful.

You can appreciate the fact that under no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers. The sales you make must be made on the merits of the program and your ability to sell the dealer on its advantages to him. Any evidence that coercion or misrepresentation were used in securing acceptance would be most embarrassing to the Company. This program is a challenge to your sales ability. I am confident that you will do a fine selling job.

In conclusion, it is my personal belief that the new T.B.A. program, with all its breadth and strength, is the answer to a long felt need of the Sales Department. It is a program which I completely endorse and that everyone in the department can and should firmly support.

Very truly yours,

2510 COMMISSION EXHIBIT NO. 150.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

Dwight T. Colley
Vice President
General Manager
Domestic Sales

March 1, 1951

A Statement Of
Atlantic's T.B.A. Policy

Dear Sir:

The Atlantic Refining Company recognizes the trend of the motoring public to depend more and more upon the modern service station as a source of supply for tires, batteries, and accessories. Therefore, we are interested in making available that TBA line which will meet fully the needs of the public and our dealers, since we feel it will mean increased sales of our petroleum products.

The new TBA plan was adopted after a long and thorough study which had the sole purpose of finding out what sales program would mean the greatest sales and profits to the dealer. We found that the dealer could best serve the interests of the public when he was supplied

through the extensive distribution system of a major tire company.

Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. However, your acceptance or rejection of the program is a matter of your own choice.

Atlantic's growth is dependent upon your opportunity and ambition to expand and succeed. We offer this new TBA plan to you because we sincerely believe it will make your sales and profits grow through better TBA service to your customers.

Cordially,

2512 COMMISSION EXHIBIT NO. 151.

March 26, 1951
TBA RMT
A Statement of
Atlantic's T.B.A. Policy

Mr. C. Connell, Manager
Automotive Replacement Sales
Electric Storage Battery Company
19th Street & Allegheny Avenue
Philadelphia 32, Pa.

Dear Mr. Connell:

The attached letter over Mr. D. T. Colley's signature was sent to all Atlantic dealers on March 1st. The typed letter attached was the initial announcement made on our Regional Officers' letterheads. The latter letter was to have been mailed on or about February 20th.

Cordially yours,

R. M. Taitt

2514 COMMISSION EXHIBIT NO. 152.

To Atlantic Dealers

To Atlantic Petroleum Distributors

Here is the most important T.B.A. news ever sent you by Atlantic. Very shortly the complete ..... line will be available through your Atlantic salesman. You will be notified as to the exact date the new program will become effective. In the meantime, we will continue to supply you to the best of our ability with our present T.B.A. line.

The decision to make this change in the T.B.A. program to that of ..... was made only after thorough testing to determine the advantages for Atlantic dealers. The results of these tests showed that the ..... program offered very real benefits.

The ..... plan includes new sales possibilities. A complete line of tires, batteries, and auto and home supplies are available as well as new services such as recapping. This change in policy opens a door to new profits. The reason for offering this new line of T.B.A. products is to present to dealers and distributors a program which, in our opinion, can provide the maximum in sales potential as well as better support for overall petroleum marketing.

With the announcement of the effective date of the new program, the merchandising and distributing of the present T.B.A. line will be continued only to the extent of remaining inventories.

2520 COMMISSION EXHIBIT NO. 154.

January 18, 1951
1951 New York Region
Sales Plan

Messrs. F. M. Neall
P. B. Caldwell
S. J. Heideman
J. J. Mulvey
H. B. Stone

Gentlemen:

The attached booklet sets forth in considerable detail the 1951 sales plan of the New York Region. A copy is being forwarded to you in accordance with Mr. Ostrander's request.

Very truly yours,
R. W. Reed

RWR da

Commission Exhibit No. 155 A-H

2522 1951 Sales Plan
New York Region
Basis

Regional Objectives

1—To sell our products in the manner and place to bring the most credit and profit to the Company.

2—To strive toward lower sales and operating costs while improving service to our customers.

3—To make sure our employees are properly trained.

4—To make sure the job and the employee are a good investment on the part of the Company and the Employee.

2524 ~~COMMISSION EXHIBIT NO. 155A-H.~~

1951 Sales Plan
New York Region
"The Job to Do"

	1950 Sales	1951 Expected Net Gain	Expected Sales, 1951 Total
I Gasoline			
a) Present Class 2 Outlets	29,032,000	1,589,000	30,621,000
b) Class 2 Outlets, Completed 1950	1,019,000	1,870,000	2,889,000
c) Lessor-Built, Completed 1951*		1,118,000	1,118,000
d) ARCO Owned-incl. Metro-1951**		5,222,000	5,222,000
e) Class 3 Dealers	12,943,000	395,000	13,338,000
f) New Class 3 Dealers	—	1,611,000	1,611,000
g) Commercial Accounts	10,882,000	803,000	11,685,000
h) New Commercial Accounts	—	1,675,000	1,675,000
i) C.R.S. Farm Gallonage	2,674,000	580,000	3,254,000
j) Present Distributors	27,916,000	1,335,000	29,251,000
k) New Distributors	—	900,000	900,000
l) Commission Distributors	1,687,000	107,000	1,794,000
m) Wholesale Dealers	440,000	(—50,000)	390,000
Total	86,593,000	17,155,000	103,748,000

* 25 new service stations— 3,066,000 justification gallons

** 70 new service stations—10,063,000 justification gallons

2526

VI Tires, Units, Wholesale	
a) Class 2 Business—1 Unit per 1000 gallons	39,850
b) Class 3 Business—1 Unit per 2000 gallons	7,475
c) Class 4 Business—1 Unit per 4000 gallons	3,340
d) Class 6 Business—1 Unit per 6000 gallons	6,388*
Total	57,053

* For quota purposes Commission Distributors are included in Class 6.

2528

1951 Sales Plan
New York Region

	Total Expected Sales, 1951
VII Batteries, Units, Wholesale	
a) Class 2 Business—1 Unit per 3000 gallons	13,283
b) Class 3 Business—1 Unit per 6000 gallons	2,491
c) Class 4 Business—1 Unit per 9000 gallons	1,483
d) Class 6 Business—1 Unit per 12000 gallons	2,663*
Total	19,920
VIII Accessories, Dollars, Wholesale	
a) Class 2 Business—$9.00 per 1000 gallons	$358,650
b) Class 3 Business—$6.00 per 1000 gallons	89,694
c) Class 4 Business—$2.00 per 1000 gallons	26,720
d) Class 6 Business—$5.00 per 1000 gallons	159,730*
Total	$634,794

* For quota purposes Commission Distributors are included in Class 6.

2530 The plan represents an agreed upon attainable objective. Certain things, as set forth below, must be enthusiastically planned in detail and carefully coordinated between Regional and District Management.

I. Salesmen

A. Keep assignment free of complication. Spell out and mutually agree on his work plan and objectives. Work the plan.

B. Determine training he needs and work with the Regional and Headquarters' Departments to see that training needs are realized.

C. Semi-annual review of results between salesman and Manager followed by confirming letter copy to Regional Manager.

D. Issuance of current Commercial Sales Bulletins.

E. Sales Expansion in each territory is essential to our plan. Normal growth, no losses, is our 1951 aim.

II. Retail Instructors

A. Expand training beyond mechanics of Red, White & Blue course to include Product, Merchandising, Display.

B. Special Retail Instructor meetings as scheduled by Regional Office to discuss common problems.

C. Complete agreement on overall objective before assignment to location. Salesman to be with Instructor at least at start of assignment.

D. Use Four Step Method of Instruction.

E. Implement the DPA Case Plan.

III. Class 2 Dealers

A. Event openings to be a part of each new station going on stream, modelization, modernization and changeover as well as stimulation events to lift the level at "sick" stations.

B. Continue and accelerate Service Station Modelization until stations conform with "Standard of Operation" so far as physical conditions permit. Attached is current policy governing program.

C. Maintain Dealer Bank. Alert personnel for desirable dealers and dealer employees in every day pursuits. Conduct dealer selection and indoctrination as agreed upon.

2532 D. Continue to improve Dealer Annual Review. Search for better ways to improve our dealer relationship and increase receptivity to our ideas.

E. Provide and maintain training facilities for dealers and their employees.

F. Report dealer progress on quarterly report form provided.

G. Full participation in 1951 Shopping Program.

H. Carry out Approved Lubrication Program including every dealer employee.

I. Replace dealers keeping us from attainment of objectives.

J. Develop more intensive use of our merchandising aids.

IV. Class 3 Dealers

A. Continue agreed upon program for elimination of unprofitable and non-promotable dealers not a credit to Atlantic. Continue Manager supervision of prospect list and solicitation technique to acquire the kind of dealers fitting our program.

B. No change in present formula for acquiring dealers.

C. Promote use of term "Atlantic Dealer Franchise" and its value.

V. Commercial Accounts

A. Factual reports from field will be basis for our competitive sales policy.

VI. Farm Program

A. Activate 5 new routes to supplement present 16 established routes.

B. Minimum of 3 C.R.S. meetings in each district.

C. Annual C.R.S. review with letter of confirmation.

D. Expand training.

E. C.R.S. furnish semi-monthly explanatory report listing accounts gained and lost.

VII. Distributors

A. Continue present policy of interesting ourselves in any distributor with whom we can do business

at a profit and of whom we need not be ashamed, providing no confliction with direct marketing exists or results.'

2534 B. Intensified field direction of wholesale salesmen, scheduled meetings for planning and activity review.

VIII. Heating Oils

A. Concentrate on direct marketing development with use of burner service exploration, Heat Insurance Plan, tank cleaning.

B. Define areas for wholesale dealer development in Metropolitan areas for Range Oil.

C. Promote and expand through C.R.S. with well defined training program.

D. Define potential and supervise solicitation of Bulk Consumer and Industrial business.

E. Obtain desirable distributors who will creditably promote our product.

IX. Technical Products

A. Solictation at present concentrated on truck and carload buyers for direct shipment.

B. Supervisor to work with and through managers to afford salesmen opportunity to develop selected territory accounts. Double-team with salesmen.

X. T. B. A. Program

A. Established goals are attainable, being based on actual experience with consideration for reasonable gain and proposed new construction.

B. Follow new accepted formula covering all classes of trade to determine that salesmen are developing this market in all departments.

C. Promote coordinator's plan for effective Field Assistance.

XI. Sales Meetings for 1951

A. Managers Meetings as necessary.

B. District Meetings monthly per agreed schedule—2nd full week of each month.

C. Regional plan for small group dealer meetings as programmed for specific problems and objectives.

2536 XII. Training

Training will have an important share of staff and District Management time.

XIII. Credit Policy

Our credit policy will aid not hinder in the acquisition of desirable business if necessary field cooperation is insisted upon.

Conclusion

Our goals are ambitious but realistic and attainable, and all of us have had a part in setting them.

Our results will reflect how well we follow the pattern of our own making.

2538 COMMISSION EXHIBIT NO. 155I-M.

Appendix C

1951 Sales Plan
New York Region
T.B.A. Quotas

Balanced Selling Formula (Class 2 Outlets)

Retail—

Tires	$22.00 per 1000 gallons or 1 unit*
Batteries	$ 7.75 per 1000 gallons or $\frac{1}{3}$ unit*
Accessories	$13.50 per 1000 gallons

Wholesale—

Tires	$16.00 per 1000 gallons or 1 unit*
Batteries	$ 5.00 per 1000 gallons or $\frac{1}{3}$ unit*
Accessories	$ 9.00 per 1000 gallons

*Truck Tires regardless of size are vadued at 3 units each.

T.B.A. Quotas per Class of Salesman

Dealer Salesmen—

Balanced selling formula for Class 2 Outlets at wholesale level as indicated above.

General Salesmen—

Based on gasoline sales by Class of Trade as indicated on Page 4.

Commercial Salesmen—

Tires	1 unit per 4000 gallons
Batteries	1 unit per 9000 gallons
Accessories	$2.00 per 1000 gallons

Wholesale Salesmen—

Tires	1 unit per 5000 gallons
Batteries	1 unit per 12000 gallons
Asseccories	$5.00 per 1000 gallons

2539 Appendix D

1951 Sales Plan—Report of Progress

I. Gasoline	1951 Plan	Current Month	Cumulative	% of Plan
a) Present Class 2 Outlets				
b) Class 2 Outlets, Comp. 1950				
c) Lessor-Built, Comp. 1951				
d) ARCO Owned-incl. Metro. 1951				
e) Class 3 Dealers				
f) New Class 3 Dealers				
g) Commercial Accounts				
h) New Commercial Accounts				
i) C.R.S. Farm Gallonage				
j) Present Distributors				
k) New Distributor Gallonage				
l) Commission Distributors				
m) Wholesale Dealers				
Total				
II. Motor Oil				
a) All Direct Marketing—ratio 1-50				
1) Class 2 Outlets Only (supplemental)				
b) All Wholesale Marketing—ratio 1-75				
Total				
III. Kerosene				
a) Direct Marketing				
b) Wholesale Dealer				
c) Distributor				
d) Bulk Consumer				
Total				

2540 Appendix D (Cont'd)

1951 Sales Plan—Report of Progress

	1951 Plan	Current Month	Cumulative	% of Plan
IV. Furnace Oil				
a) Direct Marketing				
b) Wholesale Dealer				
c) Distributor				
d) Bulk Consumer				
Total				
V. Residual Oils				
a) #5				
b) #6				
Total				
VI. Tires, Units, Wholesale				
a) Class 2 Business				
b) Class 3 Business				
c) Class 4 Business				
d) Class 6 Business				
Total				
VII. Batteries, Units Wholesale				
a) Class 2 Business				
b) Class 3 Business				
c) Class 4 Business				
d) Class 6 Business				
Total				
VIII. Accessories, Dollars, Wholesale				
a) Class 2 Business				
b) Class 3 Business				
c) Class 4 Business				
d) Class 6 Business				
Total				
IX. (Illegible.)				

2541 **Appendix E**

Salesman .....

Date .....

Salesman's Quarterly Report on .....

	Location		
	Driveway	Service	Lubrication
Dealer	.....%		.....%
Employee	.....%		.....%
Employee	.....%		.....%
Employee	.....%		.....%
Employee	.....%		.....%
Employee	.....%		.....%

Station Housekeeping .....% **Hours of Operation** ..... AM to .....PM

Restrooms .....% **Last Quarter** .....AM to .....PM
(if less than 85%, why?
(use remarks)

Atlantic Dealer Uniforms Yes—No—Other

Does Dealer Have Mailing List Yes—No—Uses it effectively? Yes—No

Does Dealer Have Follow-up System? Yes—No—Uses it effectively? Yes—No

Does Dealer Use Atlantic Window Displays Yes—No

How Do You Rate Dealer's Displays? Driveway .....% Inside .....%

Does Dealer Actually Solicit in His Neighborhood? Yes—No

By What Method(s) .....

Does Dealer Advertise in any Way? Yes—No

What Kind? .....

Is Dealer in Good Financial Position to Carry on the Business? Yes—No

Do We Enjoy a Complete Return of Rent Due? Yes—No

Is Dealer Approved for Lubrication? Yes—No Date.....

Considering a "Model" Service Station and Dealer as 100%, how do you rate 1) this service station .....%
2) this dealer .....%

What is posted pump price (incl. taxes)?.....

What are nearest competitors prices same date (at least 3)
Brand.....
.....
.....

2542 COMMISSION EXHIBIT NO. 155-M.

Summary of Results

Share of the Market Objective for 1951 ..... gals.

Gasoline Sales—Previous Quarter by Months

.... Gallons
.... Gallons
.... Gallons
Total ..... Gallons

S. O. M. Objective
Same Quarter ..... Gallons

Percent of
Accomplishment ..... %

Remarks: .....

.....

.....

.....

(Attach rating sheets to district office copy)

(To be completed in District Office from B-540)

Motor Oil Ratio (par 20-1000) .....
Lubrication Ratio (par 10-1000) .....
Tires (Par $22.00/1000) .....
Batteries (Par $7.75/1000) .....
Accessories ($13.50/1000) .....
Washing ($8.00/1000) .....
Service & Labor ($10.00/1000) .....

2543 COMMISSION EXHIBIT NO. 156.

Station Modelization Policy

It has become necessary to firm up our policy covering the Modelization Program so that all Districts will operate on a uniform basis. The following policy becomes effective immediately:

(1) The program must have the combined efforts of the Sales and Operations Groups, with the former determining, after the survey of the station is made, what is needed to modelize the station within the limits of its physical appointments.

Operations will supply the estimated cost and, if approved, make the necessary physical changes at the same time the station is being modelized. Modelization is to include a study of the dealer's lubrication equipment, restroom facilities, and both interior and exterior lighting.

No physical changes are to be made without the sanction of the Operations Department, and in any event, changes of a structural nature are to be avoided in unusual cases.

The Modelization Program must have the approval of all interested departments; therefore, salesmen should be cautioned to make no firm commitments until these approvals have been secured.

(2) Shelving—Dealers will purchase, and Atlantic will install any, of the currently recommended Murlin display shelving anywhere within the station.

(3) Lubrication Equipment—The dealer can buy under our current financing policy, any of the approved lubrication or Allied equipment through Atlantic, and we will install and maintain for the period of the manufacturer's guarantee. The Dealer may buy equipment from outside sources, but he will arrange for its installation and main-

tenance, only after the approval of our Operations Department.

(4) Washing Facilities—We will furnish and install the pipe for our currently recommended drop-hose installation, which is to be considered a part of the modelization package. The Dealer will pay for the hoses and nozzles and replace them as needed.

(5) Lighting—The Operations Department will inspect the lighting facilities, both inside and out, and make their recommendations in line with our present approved Lighting Installation Program, the cost both inside and out to be borne by Atlantic.

January 5, 1951

2345 COMMISSION EXHIBIT NO. 157.

February 21, 1951
TBA HKP

Goodyear Commission Plan 1951 Sales Plan

Mr. G. V. Ostrander,
Syracuse, New York.

Dear Sir:

With the change in T. B. A. program in the New York Region to that of Goodyear, we would like to point out certain changes which appear necessary in your 1951 Sales Plan as far as T. B. A. is concerned:

On page 3, tire quotas have been established in units. Such information will not be available from Goodyear as your sales report will be in dollars.

On page 4, a unit objective has been established. Information on this line will also be in dollars and will not be provided in units.

Page 7—there are probably some changes which should be made in the points established under the T. B. A. Program.

In appendices 1a, 2a and 2c, district quotas would have to be changed in line with the above information. Appendix D, the report and review form, would also require some change in treatment.

These suggestions are offered for your information and with the thought that this change to the Goodyear program need not necessarily cause any interruption in your entire 1951 Sales Plan.

Very truly yours,

h

2547 COMMISSION EXHIBIT NO. 158.

January 26, 1951
PNJ:JOE

Proposed T. B. A. Program

Mr. S. J. Heideman
12th Floor

This is to confirm to you our desire to inaugurate the Goodyear program for T. B. A. in the Philadelphia-New Jersey Region, which we discussed following our meeting with Mr. Colley today.

The following points have been considered in arriving at our final position. We look favorably upon the Goodyear program for these reasons:

(1) Higher volume
(2) Better profit
(3) Lower operating cost (warehouse, delivery, etc.)
(4) Completed Key Dealer Study shows better financial return to A. R. Co. but, we assume, lower volume.

(5) Better dealer and consumer product acceptance. With this program we could retain key dealers—thus maintaining volume on T. B. A. and petroleum products.

(6) Successful record on Goodyear in the Newark District

(7) Relationship with Goodyear is good; fine support in field and full supervisory cooperation.

(8) More selling time for salesmen on petroleum products and merchandising

It is also our belief that sufficient expression of opinion has been reported to make any brand preference survey with the dealers unnecessary. We further, feel that with the Goodyear program in its embryonic state of development, we might be unwisely stirring up our dealer and sales organization were we to attempt a brand preference survey at this time.

CC: Mr. E. D. Walter

2549 COMMISSION EXHIBIT NO. 159.

CC: Messrs. J. O. Estlow, Chairman, Service Station Committee
Richard Borden
E. R. Cox, Jr.

March 28, 1951
TBA SJH

Goodyear Program Service Station Identification

Mr. S. A. Gaylord, Manager,
Petroleum Company Sales,
Goodyear Tire & Rubber Company,
Akron 16, Ohio.

Dear Mr. Gaylord:

You will be pleased to learn that the Service Station Committee has approved the use of the Goodyear transparancies that were presented by Mr. Fritsch, and also approved the use of the hanging sign at such locations where the installation would be practical. I am passing this information along to you promptly so that you can order the transparancies which will require some time to produce. For your guidance in ordering the transparancies, we list the following information:

Region	Active T.B.A. Dealers	Class 2* Dealers
New England	690	415
New York	400	194
Philadelphia	1300	353

The horizontal wall sign has been approved as an alternate for the hanging sign when the preferred type of installation cannot be employed. Will you arrange to reserve sufficient quantities of both types of signs so that

when the identification program finally gets under way it will not be delayed for lack of them.

It would also be appreciated if you will recommend and submit to us a format complete with detailed directions that Goodyear and Atlantic can mutually agree upon as the identification program.

Cordially yours,

S. J. Heideman

h

*Totals under Active T. B. A. Dealers include Class 2 Dealers.

2551 COMMISSION EXHIBIT NO. 160A-Y.

The Atlantic Refining Company
Philadelphia, Pa.

June 5, 1951
PNJ:WJJ

Goodyear Program Station Identification

Mr. W. C. Hoffman
12th

In answer to your letter of May 29 under the captioned subject:

Attached please find a list of the dealers in the Philadelphia-Suburban-South Jersey Districts who have signed Associate Dealer Contracts and whose stations are to be identified as Atlantic-Goodyear stations.

/s/ W. J. Jackson
W. J. Jackson

6/7 Original list given to J. O'Neill.
I

att: 3 copies

2553 Phila & Suburban

Territory	7-G	10
	22-G	23
	20-D	20
	11-CD	2
	6-CD	2
	21-D	23
	3-D	23
	5-D	24
	1-G	21
	10-D	19
	4-D	19
	9-G	36
	23-D	23
	25-D	20
	26-CD	5
	24-D	20
	2-G	57
	8-D	14
		361 Total
		208
		569
New Jersey		
	50-D	28
	55-6-55-D	64
	52-D	27
	54-D	20
	57-CD	1
	53-D	21
	51-D	21
	56-56-D	26
		208 Total

2555 Goodyear Associate Dealers
Phila.-& Suburban Dists.

Territory 7-G

Charles Schultz, York & Street Road, Warminster, Pa.
J. W. Stevens, 108 S. Keswick Ave., Glenside, Pa.
W. H. Weiss, Keswick & Paxson Ave., Glenside, Pa.
M. Serdikoff, 149 W. Chew Ave., Phila.
Epp's, 8th & Wyoming Ave., Phila.
H. E. Neger, 200 W. Rosemar St., Phila.
Butler & Flacco, 209 Leedom St., Jenkintown, Pa.
G. I. Service Station, Maple Glen (near Ambler on Limekiln Pike)
W. & J. Lewis, Doylestown & Gilpin, Willow Grove, Pa.
L. C. Finney, Buck Road, Holland, Pa.

Territory 22-D

L. Curcio, S. W. Cor. Belmont & Levering Mill Rd., Bala Cynwyd, Pa.
Al DeCurtis, City Line & Conshohocken State Road, Bala, Pa.
E. Donley, Swede & Markley Sts., Norristown, Pa.
J. Eby, 925 Montgomery Ave., Narberth, Pa.
A. Fachiano, Belmont & Jefferson Sts., Phila.
K. Fink, 2nd & DeKalb Sts., Bridgeport, Pa.
A. Fritsch, Woodside & Montgomery Aves., Ardmore, Pa.
J. Nemetz, City Line & Oakland Terrace, Bala, Pa.
N. O'Brien, Fayette & North Lane, Conshohocken, Pa.
C. C. Ross, Montgomery & Old Lancaster Pike, Merion, Pa.
C. C. Ross, Montgomery Pike & Levering Mill Road, Cynwyd, Pa.
M. Surderski, 17 E. Lafayette St., Norristown, Pa.

R. Wood, Main & Haws Sts., Norristown, Pa.
W. Bean, Main & Forrest Sts., Jeffersonville, Pa.
2557 A. Cummins, Montgomery & DeKalb Sts., King of Prussia, Pa.
C. Danella, 700 Main St., Norristown, Pa.
C. Gambone, Main & Green Sts., Norristown, Pa.
J. Harrington, U. S. Route #23, Valley Forge, Pa.
W. Moosland, Germantown & DeKalb Pike, Norristown, Pa.
T. McGuigan, Ridge & Butler, Harmonville, Pa.
J. Muskovic, Arch Street, Trooper, Pa. (Rt. 422)
Shaw & Heavner, Jeffersonville, Pa.
Dan's Service, Germantown Ave. & Plymouth, Norristown, Pa.

Territory 20-D

D. A. Carney, Oxford & Pine Road, Fox Chase, Pa.
R. Earnhart, Penn & 2nd Street Pike, Rockledge, Pa.
Leedom's S. S., Street Road & 2nd Street Pike, Southamption, Pa.
Joseph Groner, Super Highway & Highland, Parkland, Pa.
Harvey Furness, 150 South Main St., Yardley, Pa.
Louis Huber, York & Moreland, Hatboro, Pa.
John Black, 2nd Street Pike, Bethayres, Pa. (NEC Huntingdon Pike & Bethayres Road)
Frank Norman, Easton & Laurel Aves., Horsham, Pa.
Thomas Campion (York Rd. S. S.) 481 York Road, Jenkintown, Pa.
Robert Fallows, Moreland & York, Willow Grove, Pa.
Richard Keyser, York & Guernsey, Abington, Pa.
Joseph Malee, Bethlehem Pike & Wissahickon Ave., Flourtown, Pa.
Wm. Ward, Bethlehem Pike & Valley Green Road, Flourtown, Pa.

Robert Kelly, Bethlehem Pike & Township Road, Fort Washington, Pa.
Russell Tompkins, Butler & Lindenwold, Ambler, Pa.
Frank McDougall, 242 S. Easton Road, Glenside, Pa.
David White, Jenkintown & Easton Road, Glenside, Pa.
John Dieterly, Mt. Carmel Ave., North Hills, Pa.
Frank Moran, Limekiln Pike, North Hills, Pa.
Mile Smith, Easton & Bradfield, Roslyn, Pa.

2559 Territory 11-CD

Guy Hayden Motors, 912 Broad St., Phila.
Frankford Sales, 4800 Frankford Ave., Phila.

Territory 6-CD

A. Allen, 13 W. Highland Ave., Chestnut Hill, Pa.
O'Connell Motors, 6715 Ridge Ave., Roxboro, Pa.

Territory 21-D

Thomas Beale, 8101 Ridge Ave., Phila.
John Bean, Lincoln Drive & Mt. Pleasant Ave., Phila.
Wm. Bean, Cheltenham Ave. & Pittville, Phila.
Tom Connolly, Ogontz & Wyncote Ave., Phila.
Roy Craven, Germantown Pike & Church Road, Barren Hill, Pa.
M. Craig, Rising Sun & Lardner Sts., Phila.
W. Crowley, Germantown & Evergreen Aves., Phila.
Harry Doak, 5th & Godfrey Ave., Phila.
Bill Driskill, Germantown Ave. & Roumfort Road, Phila.
F. C. Glenn, McCallum & Ellet Sts., Phila.
C. P. Gravelle, Cheltenham Ave. & Easton Road, Phila.
J. Wayne Johnson, Washington Lane & Ogontz Ave., Phila.
George Kreider, Township Line & Cadwallader, Elkins Park, Pa.

Howard Laessig, Chelten, Stenton & Gratz, Phila.
Wm. Milsop, Haines St. & Stenton Ave., Phila.
Roy Morton, Rising Sun & Godfrey Ave., Phila.
John McElderry, York Road & City Line, Melrose Park, Pa.
I. E. Richman, Cheltenham Ave. & Oak Lane Road, Melrose Park, Pa.
George Schofield, 6201 Ridge Ave., Phila.
George Stevenson, Beechwood St. & Wyncote Ave., Phila.
Jos. Sullivan, 6101 Ridge Ave., Phila.
Joe Sullivan, Ridge Ave. & Shawmont Ave., Phila.
Max Weiner, 68th Ave. & York Road, Phila.

2561 Territory 3-D . . All in Philadelphia
Bob Senior, Belgrade & Aramingo Sts., Phila.
Tom Hanna, Front & Coral Sts.
John Hansen, Germantown & Girard Aves.
Sam Mullineaux, Glenwood Ave. & Cambria St.
M. J. McIntyre, Belgrade & Frankford Ave.
Charles Heinach, 9th & Germantown Ave.
Ed O'Brien, 2nd & Huntingdon Sts.
Norris Warren, 12th & Diamond Sts.
John Marsh, 21st & Ridge Avenue
Ed Ringenary, 5th & Spring Garden Sts.
Stan Goesswein, 10th & Ridge Ave.
Rip's Service Station, Delaware & Beach
Ben Lerner, 2034 Market Street
Russ Miller, 12th & Vine Sts.
Stan Shumoski, 2nd & Christian Sts.
P. & R. Service, 18th & Dickinson Sts.
Paul DiCicco, 26th & Snyder Avenue
Angelo Costello, Passyunk & Tasker
Louis Halod, 22nd & Bainbridge
Bob Moreland, Passyunk & Christian
Ed Jones, 23rd & South

Atlantic Auto, 12th & Porter Sts.
Bob Ritchie, 5th & Germantown Ave.
2563 Territory 5-D All in Philadelphia
Frank Bradfield, Frankford & Tyson
Carroll Brothers, 3001 N. 2nd St.
George's S. S., 3301 Princeton Avenue
Syd Gros, Frankford & Robbins
J. Guning, Oxford Pike & Penn St.
Pat Healy, Frankford & Devereaux
J. G. Hinderer, Torresdale & Levick
T. A. Kennedy, Roosevelt & Cottman
R. B. Lloyd, Kensington Ave. & Sedgley
Marianni Auto Service, Tulip & Ontario Sts.
A. Morongo, Frankford Ave. & Tyson St. (S. W. Cor.)
J. Nowell, Fishers & Mascher Sts.
Wm. & Geo. Pinkerton, "D" & Erie Ave.
Randy's S. S., Unity & Wingohocking Sts.
Reardon, Roosevelt Blvd. & Levick St.
Rubin, B., Oxford Pike & Foulkrod St.
F. Schlupp, Front & Louden Sts.
Tioga Service Center, "B" & Tioga Sts.
Tom's Service Station, Griscom & Orthodox Sts.
Joe Walls, Frankford & Torresdale Aves.
Al Weiner, Roosevelt Blvd. & Adams Ave.
F. Zabielski, Torresdale & Kennedy
A. Zabielski, Bridge & Thompson Sts.
A. Zabielski, 2nd & Erie Avenue
2565 Territory 1-G (All in Philadelphia)
Alger's Service Station, 857 N. Corinthian Ave.
Al's Garage, 1939 S. 17th St.
Apex Garage, 212 N. Juniper St.
Atlantic Motors, 2435 Passyunk Ave.
Bernie's Service, Randolph & Oregon Ave.
Brown's Garage, 1011 Race St.
John Calhoun, 2525 Moore St.

Center City Garage, 2031 Lombard St.
Frank's Service Station, 22nd & Ritner St.
Max Goldstein, 732 South Street
J. & H. Auto, 132 N. 3rd St.
John Keglee, Front & Moore Sts.
Loveler's Tire Shop, 2023 Christian St.
Leo's Service Station, 2325 Pennsylvania Blvd.
Howard Miller, 3321 Frankford Ave.
Morrone's Service Station, 1722 Ridge Avenue
Quaker City Garage, 939 Race St.
Harry Rambo, 2842 Dickinson St.
Segal & Son, 21st & Fitzwater St.
Walter Smith, 24th & Reed
Sylvania Auto, 1946 McKean Street

Territory 10-D

A. J. Breslin, Markoe & Chestnut Sts.
Casco Auto Service, 70th & Kingsessing Ave.
Harry Croker, 3842 Lancaster Ave.
V. D'Ascenso, 49th & Lancaster Ave.
J. Dreger, 68th & Woodland Ave.
Roy Duster, 5317 Warren St.
L. Fenner, 34th & Brandywine
J. Hart, 39th & Market Sts.
2567 J. Hudson, 49th & Market Sts.
H. Kennedy, 40th & Walnut Sts.
I. Mann, Haverford Ave. & Brookhaven Road
W. J. McDermott, Haverford & Vine Sts.
A. Piccoli, 66th & Haverford Ave.
Paul Rafferty, Baltimore & Woodland Ave.
C. K. Robertson, 55th & Walnut Sts.
Chas. B. Robinson, 63rd & Ludlow Sts
Harry Straub, 62nd & Lancaster Ave.
Leo Wells, 52nd & Baltimore Ave.
Edward Wheaton, 63rd & Dicks Avenue

Territory 4-D

James C. Amos, Queen Lane & Greene
Sam Berman, 29th & Somerset
Tom Britt, Broad & Lycoming
Dan Carr, 26th & Huntingdon
Wilmer Cassel, Hunting Park Ave. & Pacific
Clock Service Station, Hunting Park Ave. & 30th
John Deegan, Belfield & Ogontz Ave.
Gerald Dougherty, 33rd & York Sts.
Anthony Fortunato, 29th & Hunting Park Ave.
Dave Furman, Jr., Midvale Ave. & River Drive
Fred Gohen, Germantown Ave. & Washington Lane
Dave Hamilton, 9th & Venango Sts.
Joe Hartnett, 5th & Bristol Sts.
Joe Hartnett, 5th & Somerville Sts.
Harold Mette, Germantown Ave. & Ashmead Sts.
Bob O'Donnell, Rittenhouse & Wissahickon Ave.
Fred Phillips, Midvale Ave. & Stanton St.
Sports Parking, 21st & Lehigh Ave.
Uncle Sam's Motors, York Road & Rising Sun Ave.

2569 Territory 9-G: Philadelphia & Suburban District

L. Anzalone, 74th & Buist Avenue
A. DeNarde, 78th & Island Road & Suffolk St.
John Lee, 52nd & Woodland Ave.
A. Plotnick, 60th & Springfield Ave.
N. Kitts, Cobbs Creek Blvd. & Upland St.
Dakota Garage, 246 S. 59th Street
H. Konkle, Marshall & Wycombe, Lansdowne, Pa.
H. S. Hoffman, Wildwood & Long Lane, E. Lansdowne, Pa.
E. Shank, McDade Blvd. & Ridley Ave., Folsom, Pa.
J. Stowe, Woodland & Primos Ave., Folcroft, Pa.
Marcus Hook Auto, 10th & Green Sts., Marcus Hook, Pa.
Mayover's Garage, 61st & Media Sts., Phila.

Bala Service, City Line & Golf Road, Phila.
Joseph Hudson, Lancaster & Girard Ave., Phila.
Wolf Brothers, 143 N. 56th Street, Phila.
Young and Wilson, 112 N. 63rd St., Phila.
T. Irvin, 60th & Warrington Avenue, Phila.
Dave and Sol, 6055 Hazel Avenue, Phila.
Sheer's Super Service, 2095 N. 63rd St., Phila.
Don Keyser, Pennell & Lemni Roads, Lima, Pa.
A. Caccia, 1206 Lancaster Avenue, Rosemont, Pa.
H. & G. Service, Lancaster Pike, Berwyn, Pa.
J. Buffington, 218 E. King St., Malvern, Pa.
J. DiNenno, Route 202, Dilworthtown, Pa.
Cloverleaf Service, Baltimore Pike & Middletown Rd., Black Horse, Pa.
Doherty's Service, Baltimore Pike, Lima, Pa.
P. Del Collo, 60th & Baltimore Ave., Phila.
S. Bostwick, Market & Ridge Rds., Linwood, Pa.
Wynnefield Service, 54th & Montgomery Ave., Phila.
Worrall's Super Service, 52nd & Poplar Sts.
A. Tate, 1402 N. 51st St., Phila.
C. Nelson, Main & Water Sts., Colwyn, Pa.
Sharon Hill Garage, Hook Road & Chester Pike, Sharon Hill, Pa.
Ray Gaynor, 71st & Elmwood Ave., Phila.
John Rice, Kedron & Waverly Terrace, Morton, Pa.
G. & A. Service Station, Prospect Ave. & Chester Pike, Prospect Park, Pa.

2571 Territory 23-D (Phila. & Suburban Dist.)
Porter Brothers, 6215 Baltimore Ave., Yeadon, Pa.
Chappie's Auto Service, Garrett & Wambley, Upper Darby, Pa.
James Bradley, West Chester Pike & Keystone, Upper Darby, Pa.
J. Turney, Burmont Ave. & Jones, Drexel Hill, Pa.
L. Young, Burmont & Mary, Drexel Hill, Pa.

L. Gaukel, Marshall Road & Owens Avenue, Lansdowne, Pa.
W. Kyle, West Chester Pike & Naylors Run Road, Llanerch, Pa.
H. Kiefer, 3448 Garrett Road, Drexel Hill, Pa.
H. Rossi, City Line & Lynn Blvd., Highland Park, Pa.
M. Hawk, Darby & Manoa Road, Brookline, Pa.
E. Scott, Lancaster Ave. & Wynnewood Road, Wynnewood, Pa.
W. Crissman, 500 S. 69th St., Upper Darby, Pa.
T. Riter, Garrett & Huntley Rds., Upper Darby, Pa.
V. Carrow, Long Lane & Alderbrook Ave., Stonehurst, Pa.
J. Snively, Baltimore Pike & Penn Blvd., E. Lansdowne, Pa.
J. Nedelka, Lansdowne & Strafford, Lansdowne, Pa.
V. Heeren, Township Line & Wilson Drive, Llanerch, Pa.
H. Barnes, Manor Road & Darby Road, Upper Darby, Pa.
D. Fowler, Hampden & Marshall Rds., Upper Darby, Pa.
Brookline S. S., Darby Road & Brookline Road, Brookline, Pa.
W. T. MacDonald, Marlborough Road & West Chester Pike, Stonehurst, Pa.
W. White, 2142 Darby Road, Oakmont, Pa.
H. Cook, 61 E. Lancaster Ave., Ardmore, Pa.

2573 Territory 25-D (Phila. & Suburban Dist.)
Lloyd Ammon, State & Baltimore, Media, Pa.
Edw. Bartlett, State & Township Line, Drexel Hill, Pa.
Chris Boeker, Lancaster Pike & Aberdeen, Wayne, Pa.
G. Coveney, Mill Road & Lancaster Ave., Villanova, Pa.
C. Cooksey, E. Lancaster Avenue, Paoli, Pa.

Wm. Clark, Gay & Adams, West Chester, Pa.
R. J. Conner, High & Chestnut, West Chester, Pa.
J. K. Wilson, Baltimore & Oak Avenue, Clifton Heights, Pa.
N. Salmonsen, Saxer & Powell, Springfield, Pa.
Stanley H. Dalton, Baltimore Pike & Riverview Rd., Springfield, Pa.
B. N. LeBoutillier, Lancaster Ave., Devon, Pa.
I. K. Little, Baltimore Pike, Chester Heights, Pa.
Thomas Montgomery, Lincoln Highway, Exton, Pa.
James Moore, Baltimore & South Avenue, Media, Pa.
Art Mostardi, McDade Blvd. & Ashland, Glenolden, Pa.
Charles McCafferty, Baltimore & Providence, Media, Pa.
Parkes & Dawn, West Chester Pike, Broomall, Pa.
Edward Sprague, Chester & Fairview Road, Swarthmore, Pa.
Fred Powell, Bradford & Sharpless, West Chester, Pa.
A. Van Brunt, Burmont Rd. & Woodland Ave., Drexel Hill, Pa.

Territory 26-CD

Mac & Sam, Inc., 138 S. Springfield Road, Clifton Heights, Pa.
Sentman Motors, 56th & Chestnut Sts., Phila., Pa.
Callahan Motors, Clifton Ave., Collingdale, Pa.
M & H. Motors, Lancaster Pike, Ardmore, Pa.
Charles T. Leary, Lancaster Pike, Wayne, Pa.

2575 Territory 24-D: (Phila. & Suburban Dist.)
Joe Abel, Chester Pike & Fairview Road, Leiperville, Pa.
Joe Boice, Chester Pike & Oak Lane, Glenolden, Pa.
J. Chambers, 2nd & Lloyd Sts., Chester, Pa.
J. Dooley, MacDade & Fairview, Woodlyn, Pa.
C. Drozdowski, Chester Pike & Eddystone Ave., Eddystone, Pa.

L. Finnegan, MacDade & Wycombe, Darby, Pa.
Henry's Atlantic Service, Chester Pike & McKinley Ave., Norwood, Pa.
G. Hill, MacDade Below 12th, Darby, Pa.
Al Kahler, 22nd & Edgemont, Chester, Pa.
Laughead's Service, Chichester & Huddell, Linwood, Pa.
Matthews, James, Bailey Road & Church Lane, Yeadon, Pa.
F. E. Mohney, Springfield & Providence, Aldan, Pa
Burt Rehill, 9th & Flower, Chester, Pa.
Jack Rehill, 4th & Highland, Chester, Pa.
J. Wittig, Industrial Highway, Lester, Pa.
S. K. Watson, Chichester Road, Boothwyn, Pa.
Highland Service Center, Chichester & Highland, Feltonville, Pa.
J. Pollock, 9th & Concord, Chester, Pa.
Sam Dugross, Main & Ridge Sts., Darby, Pa.
Green's Atlantic Service, 214 E. 5th St., Chester, Pa.

2577 Territory 2-G All in Philadelphia (except designated otherwise)

Arnold Garage, 1616 Master Street
Priestly Burwell, 1919 N. 21st Street
Harry's Hardware, 7 W. Girard Avenue
Hyman Heller, 334 W. Girard Avenue
John & George-Atlantic Station, 2658 Frankford Avenue
W. E. Mager, Main & Trenton Aves., Hulmsville, Pa.
William Ruckrein, Front & Wingohocking Sts.
James Wasser, 4331 Roosevelt Blvd.
R. Spiegelman, Boudinot & Ruscomb Sts.
Albert C. Ruch, 6 01 Torresdale Avenue
William Kiner, Longshore & Gillespie Sts.
James F. Trojan, 7243 Torresdale Avenue
Frank's S. S., 9th & Erie Avenue

Katz Garage, 1509 Germantown Avenue
Walsh Auto Repair, 999 Anchor Street
R. S. Rodgers, 5565 Miriam Road
Wm. A. Dettmer, Rt. 113 & Lewisville Avenue, Newportville, Pa.
Tullytown Garage, Tullytown, Pa. (Main Street)
J. Barton, A75 Pond Street, Bristol, Pa.
Naylor Brothers, Howard & Allegheny Avenue
George's Auto Supply, "G" & Allegheny Ave.
Ben's Auto Repair, "I" and Atlantic Sts.
Wm. J. O'Driscoll, Crystal & Tioga Sts.
Airlight Garage, 851 E. Tioga Street
Juniata Service Station, Erie Ave. & Bennington St.
Zimmerman's Auto Repair, 847 E. Luzerne St.
Lehigh Service Station, 341 E. Lehigh Avenue
Joseph Rose, 1940 E. Tioga Street
Len's S. S., Thompson & Westmoreland Streets
2579 Penn Service Station, Penn St. & Cheltenham Avenue
Sabath Garage, 1735 Wakeling Street
Bridesburg Garage, 4547 E. Thompson St.
Akron Service Station, Akron & Pratt Sts.
Pat's Service Station, 1201 Bridge Street
Lennox Auto Supply, 3121 Emerald St.
Samuel H. Roseman, 2901 N. Front St.
James P. Kelly, 3121 Memphis St.
George Salomskas, 3401 Richmond St.
Louis J. Zandel, Whitaker Ave. & Luray St.
A. Parone, 6th & Sedgley Avenue
Jan's Service Station, 975 Frankford Avenue
Cumberland Garage, 8th & Cumberland Sts.
R. Foehl, 2235 N. 10th St.
Richard Glanzman, 2nd & Diamond Sts.
Frank Carango, Bristol Pike, Edgely, Pa.
Stanley Budney, Bristol Pike & Park Ave., Eddington, Pa.

W. Becker, 1201 Cottman St.
Adam's Auto Service, Comly & Walker Sts.
Nick DiBello, Welsh Road & Frankford Avenue
A. K. Margerum, Route 13, Edgely, Pa.
Frank Conti, Bloomdale Road opposite M. & M. M. Plant, Bristol, Pa.
Philip Karponski, 2835 Tulip Street
John's Auto Service, 2318 E. Susquehanna Avenue.
Carl Dolente, 2330 Frankford Avenue
Len's Auto Service, 9337 Torresdale Avenue
A. L. Keely, Bristol Pike, Edgely, Pa.
W. H. Stearn, Bristol Pike, Andalusia, Pa.
2581 Wm. Johnson, Croyden S. S. (State Road & Cedar Ave.), RFD 2, Croyden, Pa.
M. Denshaw, Frankford Ave. & Decatur, Phila.
A. B. Fehrenbach, Castor & Unruh, Phila.
Wm. Foster, 8759 Frankford Avenue, Phila.
George Hinds, Durham & Emily Roads, Newportville, Pa.
H. Humphreys, Roosevelt Blvd. & Comly, Phila.
J. Livesey, Roosevelt Blvd. & Rhawn St., Phila.
C. Miller, Bustleton Ave. & Welsh Road, Phila.
M. Phillips, Bustleton Ave. & Philmont Rd., Phila.
A. Raupp, Lincoln Highway, Penndel, Pa.
A. Salmonsen, Torresdale & Shelmire St., Phila.
H. Sooby, Eddington, Pa. (Bristol Pike & Street Road)
H. Vandegrift, Farragut & Bloomdale Ave., Bristol, Pa.
Lou Wehn, Bustleton & Byberry Rd., Somerton, Pa.

2583 Goodyear Associate Dealers

New Jersey

Territory 50-D

Don Allen, Pennington, N. J. (Rt. #30 & Washington's Crossing)

Harold Bechtel, Chambers & Liberty Sts., Trenton, N. J.

B. K. Motors, Trenton, N. J. (N. Clinton Avenue)

Norman Brown, Greenwood & Nottingham Way, Trenton, N. J.

Andrew Hazard, Broad & Park, Trenton, N. J.

T. Harrison, Trenton, N. J. (Forrest & Reeves Avenue)

Glenn R. Jamieson, Greenwood & Chambers, Trenton, N. J.

Voorhees Johnson, Olden & White Horse Aves., Trenton, N. J.

Charles Lutz, 2769 S. Broad St., Trenton, N. J.

Jasper Lucas, Rt. #33 & Crest Avenue, Hamilton Square, N. J.

Charles Mantel, Cedar Lane & Williams St., Trenton, N. J.

John Matuza, Bellevue & Calhoun Sts. Trenton, N. J.

George Mellevold, Route #25, Windsor, N. J.

H. Mohr, State Street & Whitehead, Trenton, N. J.

George MacKissic, River Rd. & Yardley Bridge, Trenton, N. J.

Ed McLoughlin, Robbinsville & Allentown Rd., Allentown, N. J.

H. Oliveri, 520 Brunswick Avenue, Trenton, N. J.

Jos. M. Quinn, 628-36 Perry St., Trenton, N. J.

William Riegel, Rose & Calhoun Sts., Trenton, N. J.

Lloyd W. Ruch, Pennington & Parkway, Trenton, N. J.

Deklyn Smith, Princeton Ave., east of Spruce, Trenton, N. J.

J. R. Sutphin, Rt. 26 & Washington Road, Penns Neck, N. J.
Ralph Weer, West End & Edgewood, Trenton, N. J.
William Worthington, Parkside & Homan, Trenton, N. J.
Young Brothers, Liberty & Olden Avenue, Trenton, N. J.

2584 Matthew Pasawicz, 1720 Brunswick Avenue, Slackwood, N. J.
C. Leming, Allentown, N. J.
B. Peart, Mercersville, N. J.

Territory 55-G 55-D

Robert Williams, Broadway & Silver Lake Ave., Westville, N. J.
James H. LaFlamm, Black Horse Pike & Evesham, Glendora, N. J.
Joseph Pennisi, Hilltop, N. J. (Black Horse Pk. & Landing Road)
William Anderson, White Horse Pike & Harker Lane, Berlin, N. J.
Frank Eastlack, Broad & Commerce Sts., Paulsboro, N. J.
Harry Young, Verga, N. J.
Albert R. Clifford, Glassboro & Evergreen, Woodbury Heights, N. J.
C. W. Tarrach, Broad & Dickinson St., Woodbury, N. J.
Bert Nicholls, Broad & West Sts., Woodbury, N. J.
Suburban Motors, Camden, N. J. (Fairview)
Joseph Polinero, Brooklawn, N. J. (Crescent & Haakon)
Joseph Delangowski, Gloucester, N. J. (SWC Broadway & Hunter)
Pat's Super Service, 1621 Broadway & Webster, Camden, N. J.

William De Filippo, 5th & Berkley, Camden, N. J.
Prospero Borreggine, 800 S. 2nd St., Camden, N. J.
Charles Graziosa, 1000 Ferry Ave., Camden, N. J.
Bart's Atlantic Service, 1714 Mt. Ephraim Ave., Camden, N. J.
Edward Zawacki, 900 Kaighn Ave., Camden, N. J.
Nick's Garage, 210 Mickle St., Camden, N. J.
Alex Laskawitch, 542-44 Main St., Camden, N. J.
Rauh & Clark, 817 Federal St., Camden, N. J.
C. C. Miller, 1153 Penn St., Camden, N. J.
Parkside Auto Service, NEC Princess Ave. & Walnut St., Camden, N. J.
Theodore Kauffman, State St. & Cooper River Bridge, Camden N. J.
Henry J. Lemmon, 18th & River Road, Camden, N. J.
Ward & Kehoe, 3144 Westfield Ave., Camden, N. J.
Michael Kozakewich, Jr., S. 3rd Avenue, Merchantville, N. J.
Adolph Schmidt, Rt. 38, 34th Ave. & S. Harvard, South Merchantville, N. J.
Samuel DePasquale, Marlton Pike & Delaware Township Line, S. Merchantville, N. J.
Edgar Lincoln, Cove Road & Westfield Ave., Pennsauken, N. J.
Alex George, 7725 Maple Ave., Pennsauken, N. J.
Dominic Sacca, Rt. 40, Deer Park, R. D. Haddonfield, N. J.
Joseph V. Neale, 221 S. Black Horse Pike, Mt. Ephraim, N. J.
Ben Smith, White Horse Pike & California, Clementon, N. J.
Clementon Atlantic Service, Park Blvd. & Gibbsboro Road, Clementon, N. J.
Jas. R. Woodbury, Rt. S-41 & O'Donnell's Lane, Palmyra, N. J.

L. R. Hammel, 206 Pavillion Av., Riverside, N. J.
Tieman's Atlantic Service, Burlington & Union Sts. Delanco, N. J.
Jenkins Atlantic Station, Burlington & West Aves., Delanco Gardens, N. J.
Adams Brothers, Federal & Locust Sts., Burlington, N. J.
Dares Service Station, 182 Hanover St., Pemberton, N. J.
Thomas Lattiere, Rt. 40 & State Highway, Medford. N. J.
Sexton's Restaurant, Rt. 40, R. D. Medford, N. J.
William C. Matlack, Hessian & Red Bank Aves., Thorofare (National Park) N. J.
James A. Gould, Salem Road, Mt. Royal, N. J.
R. R. Borden, Woodbury & Swedesford Road, Mickleton, N. J.
Earl Chamberlin, Woodbury & Mantua Rds., Mantua, N. J.
Roger Della Matta, Mantua-Pitman Road, Barnesboro, N. J.
Frank Monzo, Hurfville & County House Rds., Blackwood Terrace, N. J.
Wilmer Pleasanton, 11 Morris Avenue, Blackwood, N. J.
2586 Fanelli Atlantic Station, Black Horse Pike, Blackwood, N. J.
Moe's Atlantic Service, Black Horse Pike & Lakeland Road, Blackwood, N. J.
Mayer Wetherell, Black Horse Pike & Woodbury Road, Turnersville, N. J.
Barclay E. Zane, 16 W. Broad Street, Gibbstown, N. J.
Crown Service, Route 44, Gibbstown, N. J.
Thomas J. Slusor, Rts. 322 & 100, Swedesboro, N. J.
Edward Taylor, Rt. 100, Swedesboro, N. J.

Jay Vee Service, Virginia Avenue & Harmony, Penns Grove, N. J.
William Mesogianes, Rt. 40 & Plant St., Deepwater, N. J.
Joseph Swider, Salem, N. J. (Salem-Pennsville Road)
Harry Richie, 18 Front Street, Salem, N. J.
Sandy's Atlantic Service (Laren Saunderlin) 90 West Ave., Woodstown, N. J.
Florus Smith, 26 N. Main Street, Woodstown, N. J.
Mrs. E. Hubschmitt, State Highway, Rt. 46, Mullica Hill, N. J.

2587 Territory 52-D

Batlis, Nick, Broad & Morgan Sts., Palmyra, N. J.
Borocz, Julius, Rts. 25 & 39, Bordentown, N. J.
Eckman, Horace—Mill and Pine, Mt. Holly, N. J.
Fortnum Motors Co., Rt. 25, Bridgeboro, N. J.
Frank's Auto Service (Frank Giovanetti) Rt. S-41 & 5th St., Palmyra, N. J.
Fred's Atlantic Service, (Merritt Haines) Mt. Holly Rd. & Brimstone, Medford, N. J.
Garro, Nick—Main & Lippincott, Maple Shade, N. J.
Hoover, John—Rt. S-41 & Vanderveer, Palmyra, N. J.
Hutchinson, L.—Rt. 25 & W. High St., Burlington, N. J.
Kotula, Antoni—Fairview, R. D. Medford, N. J.
Lawson, William—Rt. 25 & Browning Road, Pennsauken, N. J.
Lipinsky, Walter—Rt. 25 & Fairview, Riverside, N. J.
Lott, Charles—Rt. 38 & Church St., Moorestown, N. J.
Melrose Service Station (E. & A. Bisignano), Rt. S-41, Medford, N. J.
Montgomery, Robert C.—N. W. Side Rt. S-41, Maple Shade Township, N. J.
Pettit, M. O.—Rt. S-41 & S-40, Marlton, N. J.
Ruggiano, Joseph—Camden & Cottage Avenue, Lenola, N. J.

Seward, George—Maple & Chapel Ave., Merchantville, N. J.

Schlatter, Paul H.—Rt. 25 & Hilton Rd., Pennsauken, N. J.

Stohner, George—W. Main & Union Sts., Moorestown, N. J.

Strohlein, Jacob—Rt. 25 & Burlington Pike, Riverton, N. J.

Watson, Jos.—Park and Cove Road, Merchantville, N. J.

Consolidated Sales—29th & Lafayette St., Riverside, N. J.

Quicksall, Wallace—Rt. 38, Mt. Holly, N. J.

Sekerske, Harry—Browns Mills, N. J.

Thompson's Atlantic Service, Rt. 25 & Myrtle Ave., Pennsauken, N. J.

Markwith's Atlantic Service, Rt. S-41, Kresson, N. J.

2588 Territory 54-D

Atwood, M. S., 96th St. & 3rd Ave., Stone Harbor, N. J.

Brestle, Daniel, Absecon Blvd. & Seymour, Atlantic City, N. J.

Correll, Charles, Bay Shore Road, Villas, N. J.

Cole, John Robert, Pacific & Missouri, Atlantic City, N. J.

Driver, Dewey, Delaware & Spruce, N. Wildwood, N. J.

Glass, James, Pacific & Colorado, Longport, N. J.

Heston, I. J., Maple & Atlantic, Wildwood, N. J.

Hostler, D. E., Curb City & Wildwood Road, Corbon City, N. J.

Kellmyer, Carl G., West End Ave. & Albany Blvd., Atlantic City, N. J.

Larish, C. V., Delsea Drive & Rt. 4, Rio Grande, N. J.

Mapes, A. E., 9th & Bay, Ocean City, N. J.

Miller, Jos. A., Haddon & Atlantic Blvd., Atlantic City, N. J.

Pessolano, Jos., 41st & Landis, Sea Isle City, N. J.
Ruane, Jos., Verona & Lyons Court, Pleasantville, N. J.
Stansell, H. J., 627 Washington St., Cape May, N. J.
Stanley, A. D., Ventnor & Delevan, Margate City, N. J.
Taylor, B. D., 3800 Atlantic Ave., Atlantic City, N. J.
Van Sant, Sam, Townsends Inlet, New Jersey
Wells, Leroy, 34th & Asbury, Ocean City, N. J.
Harold Smith, Rio Grande, Wildwood, N. J. (509 Rio Grande Ave.)

Territory ~~57-CD~~

John Stratton, Pitman, N. J. (Broadway)

2589 Territory 53-D

Birdsall, H. K., Laurel & Irving, Bridgeton, N. J.
Wm. J. Hadsell, East & Landis, Vineland, N. J.
Mark's Atlantic Station, 6th & Chestnut Sts., Vineland, N. J.
John Federanko, Main Street, Pennsgrove, N. J.
M. R. Hitchner, Holly & Woodbury Road, Pitman, N. J.
Joe's Atlantic Ser. (Jos. Federici) Virginia Ave., Pennsgrove, N. J.
Samuel Kelty, Quinton, N. J.
John W. Kennedy, Pearl & Washington, Bridgeton, N. J.
Kugler, Wm., 5th & Broadway, Salem, N. J.
Link, Arthur, Broad & Atlantic, Bridgeton, N. J.
Morris, Norman, Central Ave. & Center St., Clayton, N. J.
Pearson, Wilmer F., Elmer, N. J.
Shipley, Richard E., Delsea Drive & Pomona, Glassboro, N. J.
Smith, Clarence G., Grant & Market, Salem, N. J.
Somers, F. Edward, NEC 2nd & Vine Sts., Millville, N. J.

Suiter, J. W., Main St., Pennsville, N. J.
Van Schoick, Paul, 3rd & Landis, Vineland, N. J.
Vito's Service Station, Route 46, Seabrook, N. J.
Wright, R. H., 34th N. Broadway, Pitman, N. J.
King, Russell, High and Oak; Millville, N. J.
Foster, Charles, Main Street, Woodstown, N. J.

2590 Territory 51-D

Bartleson, E. T., Euclid & Tanner Sts., Haddonfield, N. J.
Bauer, Newlin L., Rt. 38 & Browning Rd., Pennsauken, N. J.
Brzuska, Chester, Kings Highway & Edgewood, Audubon, N. J.
Capozzi, S. J., White Horse Pike & Clinton Ave., Oaklyn, N. J.
Cliff's Atlantic (Clifford Partridge) Crescent Blvd. & Nicholson Road, Gloucester, N. J.
Conover, Wm., Marlton Pike & Baird Blvd., Camden, N. J.
DelSordo, Michael A., Crescent Blvd. & Taylor, Collingswood, N. J.
Fothergill, Samuel, Marlton Pike & Grove St., Merchantville, N. J.
Gibson, Wharton, Federal & Terrace, Camden, N. J.
Gregson, George, Admiral Wilson Blvd. & Thorndyke, Camden, N. J.
Harold's Atlantic Service, 879 Haddon Ave., Collingswood, N. J.
Harwood, K., 7th & Cooper St., Camden, N. J.
Jones, Harry, Crescent Blvd. & Park, Collingswood, N. J.
Little, Douglas,—Haddon, Maple & Locust, Westmont, N. J.
Long, William—White Horse Pike & Taylor, Audubon, N. J.

Parkview Garage, White Horse Pike & Collings Ave., Collingswood, N. J.
Santacapito, E. G., Haddon & Atlantic, Camden, N. J.
Stanton, John, Crescent Blvd. & Maple, Collingswood, N. J.
Stow, M.—Kings Highway & Linden, Haddonfield, N. J.
Tramutola, Jos.—Broadway & Woodland, Camden, N. J.
Whitaker, Wilbur—Haddon Heights (White Horse Pike & Clements Bridge Road) N. J.

2531 Territory 56-G and 56-D

A. DeMarco, White Horse Pike & Bellevue, Hammonton, N. J.
Jos. P. Zuba, White Horse Pike & London Ave., Egg Harbor, N. J.
Wittkamp's Service, Willard Road & Commonwealth Ave., Strathmara, N. J.
J. Wright, 21st Avenue, Avalon, N. J.
R. McPherson, W. Perry Street, Cape May, N. J.
Yearick Motors, Wildwood, N. J.
A. Forbes, Delsea Drive, Clayton, N. J.
R. H. Vassalle, Malaga, N. J.
Seafide Brothers, Cor. South Ave. & Willow St., Bridgeton, N. J.
Sam's Super, Railroad Ave. & Pleasant St., Hammonton, N. J.
D. A. Priestley, White Horse Pike, Elm, N. J.
P. Lyburn, N. Carolina & Baltic Aves., Atlantic City, N. J.
E. Moeller, 6th & Bay Avenue, Beach Haven, N. J.
H. Allatt, Harding Highway, Mays Landing, N. J.
F. Charlesworth, 164 S. 2nd Street, Millville, N. J.
S. Drozo, Harding Highway, Landisville, N. J.
Prestis & Sons, E. Blvd. & Catawba Avenue, Newfield, N. J.

Fingers Filling—Delsea Drive, Franklinville, N. J.
F. N. Giordani, Black Horse Pike, Folsom, N. J.
Frank Perri, 517 Shore Road, Northfield, N. J.
Wm. Gaskill, Shore Road & Johnson Ave., Somers Point, N. J.
R. Dills, SEC Ocean Hts. Ave., Route 4, Linwood, N. J.
A. Barrett, Maysland Road, Scullville, N. J.
J. Hall, Wildwood Villa, N. J.
Carl Roy, Wedwood, N. J.
Atlantic Auto Supply, Lincoln & Pacific Aves., Wildwood, N. J.

2592 COMMISSION EXHIBIT NO. 161A-B.

July 30, 1951

TBA SJH

Goodyear Program

Atlantic Dealer Identification

Mr. W. J. Jackson,
Room 1218.

Dear sir:

I asked Mr. O'Neill of the Goodyear Tire & Rubber Company to supply me with a list of the Atlantic dealers in the Philadelphia Region who refused to be identified on the Goodyear program. Attached is a list of 46 dealers who, for reasons indicated, have refused this service.

You will probably wish to review the respective portions of this list with the District Managers concerned. Undoubtedly, facilities for identification are not the best at some of these locations, but with others it is apparent that the proprietors have not been sold on the Goodyear program. In such instances, I believe that additional sales

effort is called for. In any event, will you be kind enough to advise me at your convenience what action you have taken with regard to this list.

Very truly yours,

h
Enc.

2594 Location and Reason

P. DiCicco, 26th & Snyder, Philadelphia—Alarm wire in way
C. Dolente, 2330 Frankford Ave., Phila.—Has own sign
H. Mohr, State & Whitehead Sts., Trenton, N. J.—Goodrich dealer
J. Dreger, 68th & Woodland Ave., Phila.—Neon sign in way
H. Bean, Main & Forrest, Jeffersonville, Pa.—Does not want
Sheer's, 2095 North 63rd St., Phila.—Won't handle Goodyear
R. Glanzman, "L" & Diamond Sts., Phila.—Has own sign
Neil O'Brien, North Lane & Fayette, Conshohocken, Pa.—Refused
V. D'Ascenz, 49th & Lancaster Ave., Phila.—Shelves in way
Frankford Sales, 4800 Frankford Ave., Phila.—Refused
Walsh, 999 Anchor, Phila.—Neon in way
B. Rubin, Oxford & Foulkrod, Phila.—Refused
Wm. J. O'Driscoll, Crystal & Tioga, Phila.—Does not want
John Callhoun, 2525 Moore St., Phila.—Wants on bottom
Ebby's, 8th & Wyoming St., Phila.—Wants on bottom
Sentman Motors, 5630 Chestnut St., Phila.—Auto Agency
Dakota Garage, 246 S. 59th St., Phila.—Has own sign
A. E. Mapee, 9th & Bay, Ocean City, N. J.—Will still sell Lee
L. Wells, 34th & Asbury, Ocean City, N. J.—Lee distributor
T. Campion, York Rd. & Washington, Jenkintown, Pa.—Does not want

T. Campion, 481 York Rd., Jenkintown, Pa.—Does not want

D. White, Easton & Jenkintown, Glenside, Pa.—Want in transom

M. Craig, Rising Sun & Lardner, Phila.—Wants nothing on window

S. Van Sant, Townsend Inlet, N. J.—Does not sell

P. Burnwell, 1919 N. 21st St., Phila.—Doesn't handle tires

Marianni Auto, Tulip & Ontario, Phila.—Does not want

A. Van Brunt, Burmont & Woodland, Drexel Hill, Pa.—Refused

2595 Quaker City Garage, 929 Race St., Phila.—Does not want

A. K. Margerum, Edgely, Pa.—Has Coca Cola—Doesn't want change

Johnson, State Road & Cedar, Croyden, Pa.—Doesn't want to block view

Callahan Motors, Clifton Ave., Collingdale, Pa—No need for it

Green's, 214 E. 5th St., Chester, Pa.—Does not handle

Marcus Hook Auto, 10th & Green, Marcus Hook, Pa.—Does not handle

Sylvania Auto, 1946 McKean St., Phila.—Has own sign

Bernie's, Randolph & Oregon, Phila.—Lee distributor

Ben's Auto, I & Atlantic, Phila.—Does not own property

Guy Haden Motors, 912 North Broad, Phila.—Auto Agency—Does not want

S. DePasquale, Marlton & Delaware, S. Merchantville, N. J.—Not a Goodyear dealer

A. C. Caccia, 1206 Lancaster, Rosemont, Pa.—Refused

E. Shank, McDade & Ridley, Folsom, Pa.—Not Goodyear dealer

Chappie's, Garret & Wembley, Upper Darby, Pa.—Not Goodyear dealer

H & G Service, Lancaster Pike, Berwyn, Pa.—Refused

Leidon S. S., Street Road & 2nd St., Southampton, Pa.—Refused

Henry's, Chester & McKinley, Norwood, Pa.—Refused

Brookline, S. S., Darby Rd. & Brookline Blvd., Brookline, Pa.—Refused

J. Moore, Baltimore & South, Media, Pa.—Does not want

2596 COMMISSION EXHIBIT NO. 162.

August 20, 1951

PNJ:WJJ

Goodyear Identification—Dealer Locations.

Please refer to our letter of July 24th on the captioned subject.

Management is very definitely concerned about the refusal of dealers to permit Goodyear identification at their stations.

Kindly inform this office of the progress being made in correcting the situation—according to listing of locations forwarded to you with our letter of July 24th.

W. J. Jackson

r

cc: Mr. E. D. Walter
Mr. S. J. Heideman—Room 1210

2598 COMMISSION EXHIBIT NO. 163.

August 21, 1951
TBA SJH

Goodyear Program
Atlantic Station Identification

Mr. S. A. Gaylord, Manager,
Petroleum Sales Department,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Mr. Gaylord:

I wonder if you can furnish me promptly with a report on the progress of the subject program. I should like to have this information broken down by our regional territories. As I understand it, the signs are being erected by Goodyear crews, but the decals are being erected by outside agencies. Furthermore, at the present time when we locate an Atlantic dealer who is without any Goodyear identification or without one or the other signs or decals, we do not know whether an unsuccessful attempt has been made to complete the assignment or whether all or part of the job, whatever the case may be, is scheduled for attention.

We should like to interest ourselves in the cases where an unsuccessful attempt has been made to provide the Goodyear identification. Perhaps, this information could be made available to us in simplest form by stating the Atlantic District areas that have been covered by either sign crews or agencies that are applying the decals, and by supplying us a list of the dealers where attempts to erect decals or signs were unsuccessful.

I have already received a list of this type for the Philadelphia and South Jersey areas, and this has been referred

to our District Managers for further attention. However, I do not know if this is a partial or complete list of the dealers in that territory who could not be identified with Goodyear signs.

Your cooperation in this respect will be greatly appreciated.

Cordially yours,

S. J. Heideman

i

2600 **COMMISSION EXHIBIT NO. 164.**

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

August 24, 1951

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Subject: Atlantic-Goodyear
Identification

Dear Syd:

Your recent request for information on stations that our Identification Crews are unable to identify has been passed along to Joe O'Neill.

This information is obtainable from our District Offices because the Identification Crews work from a formal request made up for each station to be identified. In turn they report back advising our District Managers whether the work has been done or not.

We believe that Mr O'Neill can set up a program with our Districts through Petroleum Representatives to obtain this information for you on a specific time basis.

We are asking Mr O'Neill to report to you on this as soon as possible.

Yours very truly,
J W Basista
Petroleum Sales Department

J W Basista
lfm

2602 COMMISSION EXHIBIT NO. 165.

The Goodyear Tire & Rubber Company, Inc.
2750 North Broad Street
Philadelphia 32, Penna.

August 29, 1951

Mr. S. J. Heideman, Manager T.B.A. Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pa.

Subject: Goodyear Program—
Atlantic Station Identification

Dear Syd:

Per your request, I am attaching a list showing the Atlantic locations in the New England Region wherein the DeWolf Valance Company were unable to install Goodyear window valances.

In the event that you are successful in obtaining permission to install valances in these locations please inform the writer so that I can have DeWolf take care of the installations.

Yours very truly,

J W O'Neill
Division Petroleum Representative

J. W. O'Neill
mmc

2604 COMMISSION EXHIBIT NO. 165A.

August 28, 1951

The Goodyear Tire & Rubber Co.
2750 N. Broad Street
Phila., Pa.
Att: Mr. J. O'Neil

Gentlemen:

Enclosed you will find two lists showing those locations wherein we were unable to install Goodyear window valances.

I am inclined to think that those locations marked "windows too small" etc., can not be installed. However, something might be done about the other list.

Cordially yours,

A. P. DeWolf

APDW/meh

2607 COMMISSION EXHIBIT NO. 166.

The Goodyear Tire & Rubber Company, Inc.
2750 North Broad Street
Philadelphia 32, Penna.

Mr. S. J. Heideman, Manager — October 11, 1951
T.B.A. Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pa.

Dear Mr. Heideman:

Per your request, we are listing below Atlantic accounts in our Albany District who refused to permit our Sign Crew to identify the station with Goodyear Signs and decals.

	Comments by Identification Field Representative
William Wilde Fort Johnson, N. Y.	Does not want Goodyear identification—dud.
Burks Garage Albany, N. Y.	Going Esso
Stalders Service Station Scotia, N. Y.	Dud
E. R. Dickinson Hudson Falls, N. Y.	After identifying several of Mr. Dickinson's stations, I find that he is not sure he is going Goodyear. He is trying to play both ends against the middle between Lee and Goodyear.
Stevens Motors Lebanon, Vt.	Refused Goodyear Identification.

Yours very truly,

J W O'Neill

J. W. O'Neill — *Division Petroleum Representative*
mmc

2609 COMMISSION EXHIBIT NO. 167.

The Goodyear Tire & Rubber Company, Inc.
2750 North Broad Street
Philadelphia 32, Penna.

October 15, 1951

Mr. S. J. Heideman, Manager
T.B.A. Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pa.

Dear Mr. Heideman:

Attached are lists of Atlantic dealers in the Philadelphia, South Jersey, Hartford, Boston, Syracuse and Newark Districts where either valances or diamond signs have not been installed for various reasons as listed.

As further reports come to my attention, I will advise you.

Yours very truly,
J W O'Neill
Division Petroleum Representative

J. W. O'Neill
mmc

2611 COMMISSION EXHIBIT NO. 167A-M.

Refusals Phila.

Akron Service Station—Akron & Pratt St.—Phila. Pa.
Ben's Auto Repair—I and Atlantic St.—Phila., Pa.
W J O'Driscoll—Crystal & Tioga—Phila., Pa.
Guy Haden Motors—912 N. Broad St.—Phila. Pa.
H. Allatt—Harding Highway—Mays Landing, N. J.
Callahan Motors—Clifton—Collingdale, Pa.
M & H Motors—Lancaster Pike—Ardmore, Pa.
W. Bean—Main & Forrest Sts.—Jeffersonville, Pa.
W. E. Mager—Main & Trenton Ave—Hulmeville, Pa.
A. K. Margerum—Rte #13—Edgely, Pa.
Johnson S S—State Rd & Cedar Ave—Croyden, Pa.
Sheer's Super Service—2095 N. 63rd St.—Phila., Pa.
Wynnefield Service—54th & Montgomery—Phila., Pa.
Seutman Motors—56th & Chestnut—Phila., Pa.
M. Craig—Rising Sun & Lardner—Phila., Pa.
Frankford Sales—4800 Frankford Ave—Phila., Pa.
Segal & Son—21st & Fitzwater—Phila., Pa.
Sylvania Auto—1946 McKean St.—Phila., Pa.
Quaker City Garage—929 Locust St.—Phila., Pa.
Rubin B.—Oxford Pk. & Foulkrad—Phila., Pa.
Marianni Auto Service—Tulip & Ontario—Phila., Pa.
Thomas Campion—Old York Rd & Washington Lane—Jenkintown, Pa.
Thomas Campion—481 York Road—Jenkintown, Pa.
Abram Van Brunt—Burmont Rd & Woodland Ave—Drexel Hill, Pa.
Neil O'Brien—North Lane & Fayette St.—Conshocken, Pa.
W C Mallard—Hessian & Red Bank—Thorofare, N. J.
Fred Regal—Black Horse Pike—W. Collingswood, N. J.
Wallace Bros—9th St.—Ocean City, N. J.
Charles T. Leary—Lancaster Pike—Wayne, Pa.

Acaccia—1206 Lancaster Ave—Rosemont, Pa.
2612 Leedon's S S—Street Rd & 2nd St.—Southampton, Pa.
James Moore—Baltimore & South Ave—Media, Pa.
J Turney—Burmont & Jones—Drexel Hill, Pa.
Parkes & Dawn—Westchester Pike—Broomal, Pa.
Brookline S S—Darby Rd & Brookline Blvd—Brookline, Pa.
H & G Service—Lancaster Pike—Berwyn, Pa.

Other Types of Refusals

S. De Pasquale—Marlton Pike & Delaware—South Merchantville, N. J.—(Not going Goodyear)
E. Shauk—McDade Blvd & Ridley—Folsom, Pa (Non Goodyear)
Chappies—Garrett & Hembley—Upper Darby, Pa (Non Goodyear).
P. Burwell—1919 N. 21st St.—Phila, Pa (Not handling tires or batteries)
Bernies Service—Randolph & Oregon—Phila., Pa (Lee Distributor)
Marcus Hook—10th & Green—Marcus Hook, Pa (Not handling line)
Green's—214 E 5th St.—Chester, Pa (Has not signed)
W. White—2142 Darby Rd—Oakmont, Pa. (Not handling line)
F. E. Somers—2nd & Vine Sts.—Millville, N. J. (Seiberling Distributor)
H. Mohr—State & Whitehead Sts.—Trenton, N. J. (Goodrich Dealer)
Jas Woodbury—O'Donnell Lane, Palmyra, N. J. (Impl. to Adv.)
J. Harrington—Route #23—Valley Forge, Pa. (Impl. to Adv.)
G. I. Service—Maple Glen—Maple Glen, Pa. (Impl. to Adv.)
Ed McLaughlin—Cobbinville & Allentown Rd.—Allentown, N. J. (out of business)

J K Wilson—69th & Buist Ave—Phila., Pa. (out of business.)

2613 Valance-Structural Difficulties Phila

Wm Long—White Horse Pike & Taylor—Audubon, N. J.
Frank Monzo—Hafville & County House Rd.—Blackwood Terrace, N. J.
F G Santacapeto—Haddon & Atlantic—Camden, N. J.
Harry Jones—Crescent Blvd & Park—Collingwood, N. J.
J. V. Neale—221 S. Black Horse Pike—Mt. Ephriam, N. J.
Mrs E. Hubschmidt—Rte #46—Mullica Hill, N. J.
Harry Richie—18 Front St.—Salem, N. J.
Ed Taylor—Sweedsboro, N. J.
James A Gould—Salem Rd.—Mt. Royal, N. J.
Thomas Lattiere—Rte #40—Medford, N. J.
F. Pervi—517 Shore Road—Northfield, N. J.
R. H. Vassallo—Malaga, N. J.
Russell King—High Road—Millville, N, J.
Paul Van Schoick—3rd & Landis—Vineland, N. J.
J. W. Suiter—Main St.—Pennsville, N. J.
C. G. Smith—Grant & Market—Salem, N, J.
W. F. Pearson—Elmer, N. J.
A. Link—Broad & Atlantic—Bridgeton, N. J.
James Glass—Pacific & Colorado—Longport, N. J.
J. A. Miller—Haddon & Atlantic Blvd.—Atlantic City, N. J.
J. Ruane—Verona & Lyons Court—Pleasantville, N. J.
Joseph Groner—Super Highway & Highland—Parkland, N. J.
Harvey Furness—150 S. Main St.—Yardley, Pa.
L. C. Finney—Buck Rd.—Holland, Pa.
J. Barton—Pond St.—Bristol, Pa.
W. H. Stearn—Bristol Pike—Andalusia, Pa.
A. Raupp—Lincoln Hwy—Penndal, Pa.
A. Tate—1402 N. 51st St.—Phila., Pa.
2614 Sam Berman—29th & Somerset—Phila, Pa.

Wilmer Cassel—Hunting Park & Pacific—Phila., Pa.
Gerald Dougherty—33rd & York St.—Phila., Pa.
Dave Furman—Midvale & River Drive—Phila., Pa.
Dave Hamilton—9th & Venango—Phila., Pa.
Uncle Sam's Motors—York Rd & Rising Sun Ave—Phila., Pa.
Dakota Garage—246 S. 59th St.—Phila., Pa.
J. Sullivan—6101 Ridge Ave.—Phila., Pa.
George Stevenson—Beechwood St. & Wyncote—Phila., Pa.
O'Connell Motors—6715 Ridge Ave.—Phila., Pa.
H. E. Neger—200 W. Rosemar St.—Phila., Pa.
Eppy's—8th and Wyoming—Phila., Pa.
Len's S. S.—Thompson & Westmoreland—Phila., Pa.
Juanita Service—Erie Ave & Bennington St.—Phila., Pa.
Walsh Auto—999 Anchor St.—Phila., Pa.
R. S. Piegelman—Boudinot & Ruscomb St.—Phila., Pa.
Wm. Ruckrein—Front & Wingohocking St.—Phila., Pa.
R. B. Lloyd—Kensington & Sedgley—Phila., Pa.
Frank Braidfield—Frankford & Tyson—Phila., Pa.
Atlantic Auto—12th & Porter—Phila., Pa.
Rip's Service—Delaware & Beach—Phila., Pa.
E. O'Brien—2nd & Huntington—Phila., Pa.
Ray Duster—5317 Warren St.—Phila., Pa.
J. Dreger—68th & Woodland—Phila., Pa.
V. D. Ascenz—49th and Lancaster—Phila., Pa.
Harry. Corker—3842 Lancaster Ave.—Phila., Pa.
Howard Miller—3321 Frankford—Phila., Pa.
John Keglee—Front and Moore—Phila., Pa.
J & H Auto—132 N. 3rd St.—Phila., Pa.
Frank's Service—22nd and Ritner—Phila., Pa.
2615 John Calhoun—2525 Moore St.—Phila., Pa.
Apex Garage—212 N. Juniper St.—Phila., Pa.
Tom's Service—Griscom & Orthodox—Phila., Pa.
Randy's S S—Unity & Wingohocking—Phila., Pa.
John & George Atlantic—2658 Frankford Ave.—Phila., Pa.

Len's Auto Service—9337 Torresdale Ave—Phila., Pa.
Carl Dolerte—2330 Frankford—Phila., Pa.
P. Karpouski—2835 Tulip St.—Phila., Pa.
W. Becker—1201 Cottman St.—Phila., Pa.
R. Glanzman—2nd & Diamond—Phila., Pa.
R. Foehl—2235 N. 10th St.—Phila., Pa.
Jon's S S—975 Frankford Ave—Phila., Pa.
A. Parone—6th & Sedgley—Phila., Pa.
George Salomskas—3401 Richmond St.—Phila., Pa.
Pat's Service Station—1201 Bridge St.—Phila., Pa.
Harry Straub—62nd & Lancaster Ave—Phila., Pa.
John W Marsh—21st & Ridge Ave—Phila., Pa.
Ed Jones—23rd & South Sts.—Phila., Pa.
Paul J. Rafferty—39th & Woodland Ave—Phila., Pa.
M G Smith—Easton & Bradfield Roads, Roslyn, Pa.
J. P. Lee—52nd & Woodland—Phila., Pa.
E S Sprague—Chester & Fairview—Swarthmore, Pa.
T. Riter—Garrett & Huntley Rds—Upper Darby, Pa.
D. J. Fowler—Hampden & Marshall Rds.—Upper Darby, Pa.
W B Clark—Gay & Adams Sts.—West Chester, Pa.
D. W. White—Easton & Jenkintown—Glenside, Pa.
S. Dugross—Main & Ridge Aves.—Phila., Pa.
G. Hinds—Durham & Hulmeville Rds.—Newportsville, Pa.
Pinkerton's—Erie & "D" Streets—Phila., Pa.
E. T. Bartleson — Euclid & Tanner Sts. — Haddonfield, N. J.
2616 M. Stow—Kings Highway & Linden—Haddonfield, N. J.
M. Kozakewich, Jr.—S. 3rd Ave—Merchantville, N. J.
Sharon Hill Garage—Hook Rd & Chester Pike—Sharon Hill, Pa.
Dan's Service — Germantown Ave & Plymouth — Morristown, Pa.
John Rice—Kedson & Waverly—Morton, Pa.

Don Keyser—Pennel & Lenni Rds—Lima, Pa.
Doherty's Service—Baltimore Pike—Lima, Pa.
H Konkle—Marshall & Wycombe—Lansdowne, Pa.
J W Stevens—108 S. Keswick Ave—Glenside, Pa.
J Stowe—Woodland & Primus Ave—Folcroft, Pa.
Wm Ward—Bethlehem Pike & Valley Green Rd.—Flourtown, Pa.
Stanley Budney—Bristol Pike & Park Ave—Eddington, Pa.
J. Snively—Baltimore Pike—E. Lansdown, Pa.
Young & Wilson—112 N. 63rd St.—Phila., Pa.
James Wasser—4331 Roosevelt Blvd—Phila., Pa.
H. Humphries—Roosevelt Blvd—Phila., Pa.
M. Phillips—Bustleton Ave. & Philmont Rd—Phila., Pa.
Edgar Lincoln—Cove Rd & Westfield—Pennsauken, N. J.
Paul H Schlatter—Rte 25 & Hilton Rd.—Pennsauken, N. J.
George Seward — Maple & Chapel Ave. — Merchantville, N. J.
Zimmerman's Auto Repair—847 E. Luzione St.—Phila., Pa.

2617 Refusals Hartford

Gaynor-Taylor Inc—1345 Barnum Ave.—Stratford, Conn.
Frank's Sales—47 Railroad Ave.—South Norwalk, Conn.
Duke's Service—163 West St.—Seymour, Conn.
Jennings Atlantic—12 North St.—Danbury, Conn.
T. Mancini—Putnam Pike Rd.—Bethel, Conn.
Lines' Atlantic—New London & Pike & School—Glastonbury, Conn.

Other Types of Refusals

Cove Road S S—314 Cove Rd.—Stamford, Conn (Now a Calso Sta.)
Jack's S S—26 Richmond Hill Ave.—Stamford, Conn. (Not Goodyear)
C Nelson—RFD #2—River Rd.—Seymour, Conn. (Not Goodyear)

Fountain Garage—240 Putnam St.—New Haven, Conn. (Not Goodyear)
Junction Filling Sta.—Congress & Davenport—New Haven, Conn. (Not Goodyear)
Morrin's Auto Parts — Bridgeport Ave. — Milford Conn. (Not Goodyear)
Sherman's Service Center—1250 Kossuth St.—Bridgeport, Conn. (Not Goodyear)
Whitie's S S—129 Pine St.—Forestville, Conn. (Sells Lee)
J. Nathan—Mill Plain Rd.—Danbury, Conn. (Not operating)
G. Haddy—Hayestown Rd.—Danbury, Conn. (Not operating)
G Gross—564 Delwell Ave.—New Haven, Conn.—Refused
W. Bureau—Main St. Hampden, Mass.—Refused
Barlow Motors, Ward St. Rockville, Conn.—Refused
Padelford's Atl. Serv.—428 E. Main St.—Torrington, Conn.
Tac's Serv. Sta.—878 Dirivell Ave, Hampden, Conn.—Calso Station
N. Beaudsy—Main & Noble St., Springfield, Mass., Does not want valances
2618 Roberts. Service—No. Sommers, Ct.
Vernon's Service—Vernon Center, Conn.
W. Grosseboom—67 E. Main & Neal Court—Plainville, Conn.
Carpenter's Auto—590 Noble Ave—Bridgeport, Conn.
Crain's Service—177 Post Road—Darien, Conn.
H. Pozzuoli—Campwell & Brown—West Haven, Conn.
F. H. Stolle—Main & Mill—Broodbrook, Conn.
Ed's Service—North Road—Broadbrook, Conn.
Midway Garage—1123 Main St.—S. Glastonbury, Conn.
Sceery's S S—47 Main St.—Winsted, Conn.
E. Warner—Boston Rd & Parker St.—Springfield, Mass.
Post & Facey—282 Locust St. Springfield, Mass.
Mayo Bros—250 Belmont Ave—Springfield, Mass.

Florence Motors—Depot St.—Florence, Mass.
M. J. Griffin, 65-69 Memorial Ave.—W. Springfield, Mass.
Petsch Bros.—Post Rd.—Warehouse Point, Conn.
Gregel Bros.—1429 Palsido Ave.—Windsor, Conn.
Litchfield Fuel Co.—Russell St.—Litchfield, Conn.
Geo. L. Parker—Boston Post Rd.—Old Saybrook, Conn.

2619 Refusal Boston

Edwards Motors — Wilbur & Macomber Sts. — Swansea, Mass.
Suspiro Bros—Rte #6 & Brayton—Somerset, Mass.
Kane's Atlantic—837 Allens & Carolina Ave.—Providence, R. I.
Trinity Battery—Broad & Somerset—Providence, R. I.
Janelle Bros—N. Westport, Mass.
Falmouth Auto Sales—Main St.—Falmouth, Mass.
Huntting Motors—850 Main St.—Falmouth, Mass.
A. Dias—Stafford Rd. & Pelham St.—Fall River, Mass.
W. Tower—Putnam Pike—Chepacket, R. I.
Plymouth County Motors—Church & Montello St.—Brockton, Mass.
St. Angelo Motors—244 County Rd.—Barrington, R. I.
A. Lenechal—49 E. Elm St.—Amesbury, Mass.

Other types of Refusals

Mills Radiator Service—585 Park Ave.—Worcester, Mass. (Does not sell gas or acces.)
A. Jussourne—Quaker Lane & Centerville Rd.—Warwick, R. I. (Non-Goodyear)
W. Stedman—Main St.—Wakefield, R. I. (Non-Goodyear)
Veterans Service—990 Eddy & Reeder Sts.—Providence, R. I. (Non-Goodyear)
Viti Bros.—Croom St.—Providence, R. I. (Atlantic Oil Dlr only)
M. Esposito—Home & Chalkstone Ave.—Providence, R. I. (Mobile Dealer)

J. Vitali—210 High St.—Peacedale, R. I. (Non-Goodyear)
W. Dumas—281 Pulaski Blvd.—So. Bellingham, Mass. (Out of business)

2620 Valance Structure Difficulties Boston

Triple Elm Station—Rte #138—West Kingston, R. I.
Ernest Waite—Russell Mills—S. Dartmouth, Mass.
H. Hamlin—Sandwich, Mass.
S. Ferrara—700 Douglas Ave.—Providence, R. I.
A. Caraccia—392 Broadway—Providence, R. I.
Sully Anton—Dean-Balbo-W. Exchange—Providence, R. I.
E. Licciardi—144 Laurel Hill Ave.—Providence, R. I.
Glenbridge Filling Sta.—Glenbridge & Manton Ave.—Providence, R. I.
Tom's Atlantic Sta.—Dean & Carpenter Sts.—Providence, R. I.
J. Pate—536 Branch Ave.—Providence, R. I.
C. Marianetti—470 Valley St.—Providence, R. I.
A. E. Grenier—Highland & Pleasant Sts.—Phenix, R. I.
J. Walsh—Main St.—Osterville, Mass.
J. MacCowan—East Main St.—Northboro, Mass.
Old State House Filling Station—Spring & Mills—Newport, R. I.
A. Bibbins—484 Broadway—Methuen, Mass.
C. Greenwood—Cape Road—Mallapoisett, Mass.
A. Snell—573 Walnut St.—W. Lynn, Mass.
N. Lapuppo—Nunzio Auto Serv.—21 Orchard St.—Lawrence, Mass.
Louis P. Ouellette—Eastern & Downing Sts.—Fall River, Mass.
R and T SS—977 Washington St.—E. Weymouth, Mass.
E. Whitney—Main St.—Barnstable, Mass.
Baker Chevrolet—33 Washington St.—Taunton, Mass.

2621 Refusals Syracuse

Hoag, Stanley—Genesee & Burdick—Fayetteville, N. Y.
Oscar Parrish—Main & Badger Sts.—Endicott, N. Y.
Frank Funk—75 N. Main St.—Cortland, N. Y.
F. H. Buongiorne—Chenango & Bromley Ave.—Binghamton, N. Y.

Other Refusals

Ken Alt—Rte US 11—Mattydale (Imp. to Adv.)
Atlantic SS—189 Madison Ave.—Oneida, N. Y. (Imp. to. Adv.)
L. J. Glass—Rte US 11—Adam Center, N. Y. (Imp. to. Adv.)
Ray Cochran—Rte 96 & Mill St.—Condor, N. Y. (Going out of bus.)
B. B. Johnson—Rte 17—Chester, N. Y. (Out of bus.)

2622 Valance Structure Difficulties Syracuse

Hugh Killam—Sandy Creek, N. Y.
Battle-Anthony—Court St. Ext.—E. Syracuse, N. Y.
J. A. Massey—Wellesley Island—Alexandria Bay, N. Y.
F. Churchill—Rte 9W—Marlboro, N. Y.
John Cawlin—Rte 208—Burnside, N. Y.
Ira H. Hosmer—Adams, N. Y.

2623 Valance Structure Difficulties Newark

Lally's—8th & Central—Ships Bottom, N. J.
Kardos Bros. — Hawk & New Brunswick — Phillipsburg, N. J.
Rufus Cramer—Route S-40—Manahawken, N. J.
Joe's SS—Main & Union St.—Lodi, N. J.
Ray's Auto Service—339 South Ave.—Fanwood, N. J.
Arthur Kenney—North Park & Springdale Ave.—E. Orange, N. J.
A. & V. Apicella—Route 22—Clinton, N. J.
R. Wright—Main & Bond Sts.—Chatham, N. J.

F. Gennell—Belleville & Union Ave.—Belleville, N. J.
Franklin Clark—Route 21—Stewartsville, N. J.
Lewis Richards—21 Vandemar Ave.—Somerville, N. J.
Melvin Perrine—123-39 E. Fifth—Plainfield, N. J.
Lincoln Garden Garage—298 Jersey Ave.—New Brunswick, N. J.
Mrs. Clarence Fox—Frenchtown Rd.—Milford, N. J.
John Gelger—Campbell Juct.—Belford, N. J.
Robert Voorhees—Main St.—Holmdel, N. J.
Paul Mercante, 318 Sip Ave.—Jersey City, N. J.

2624 COMMISSION EXHIBIT NO. 168.

October 17, 1951
TBA WCH
Goodyear Program
Atlantic Station Identification

Mr. L. K. Maisel
Syracuse, N. Y.

Dear Sir:

We are listing below Atlantic accounts in Goodyear's Albany district who refused to permit their sign crew to identify the stations with Goodyear signs and decals, for your appropriate action:

	Comments by Identification Field Representative
William Wilde Fort Johnson, N. Y.	Does not want Goodyear identification—dud.
Burks Garage Albany, N. Y.	Going Esso
Stalders Service Station Scotia, N. Y.	Dud
E. R. Dickinson Hudson Falls, N. Y.	After identifying several, of Mr. Dickinson's stations, I find that he is not sure he is going Goodyear. He is trying to play both ends against the middle between Lee and Goodyear.

Very truly yours,
W. C. Hoffman

RI

2626 COMMISSION EXHIBIT NO. 169.

October 17, 1951
TBA WCH
Goodyear Program
Atlantic Station Identification

Mr. M. G. Davis
Att: Mr. T. L. Walsh
Providence, R. I.

Dear Sir:

Goodyear has reported that the Stevens Motors, Lebanon, Vt. had refused to permit their sign crew to identify the station with Goodyear signs and decals.

We are passing this information along for your appropriate action.

Very truly yours,

W. C. Hoffman

RI

2628 COMMISSION EXHIBIT NO. 170A.

October 24, 1951

TBA WCH

Goodyear Program

Atlantic Station Identification

Mr. W. J. Jackson
Room 1218

Dear Sir:

Attached is a report from Goodyear of Atlantic stations in the Philadelphia, South Jersey and Newark Districts to which they were unable to erect Goodyear signs either because dealers refused identification, or the stations could not be identified due to structural reasons.

We are passing this information along for your appropriate action.

Very truly yours,

W. C. Hoffman

H

Attachment

2630 COMMISSION'S EXHIBIT NO. 170B-F.

Refusal Philadelphia

Akron Service Station—Akron and Pratt St.—Philadelphia, Pa.
Ben's Auto Repair—I and Atlantic St.—Philadelphia, Pa.
W. J. O'Driscoll—Crystal and Tioga—Philadelphia, Pa.
Guy Haden Motors—912 North Broad St.—Philadelphia, Pa.
Hallatt—Harding Highway—Mays Landing, N. J.
Callahan Motors—Clifton—Collingdale, Pa.
M and H Motors—Lancaster Pike—Ardmore, Pa.
W. Bean—Main and Forrest Sts.—Jeffersonville, Pa.
W. E. Mager—Main and Trenton Ave.—Hulmeville, Pa.
A. K. Margerum—Route #13—Edgely, Pa.
Johnson Service Station—State Rd. and Cedar Ave.—Croyden, Pa.
Sheer's Super Service—2095 North 63rd St.—Philadelphia, Pa.
Wynnefield Service—54th and Montgomery Ave.—Philadelphia, Pa.
Sentman Motors—56th and Chestnut Sts.—Philadelphia, Pa.
M. Craig—Rising Sun and Lardner—Philadelphia, Pa.
Frankford Sales—4800 Frankford Ave.—Philadelphia, Pa.
Segal and Son—21st and Fitzwater—Philadelphia, Pa.
Sylvania Auto—1946 McKean St.—Philadelphia, Pa.
Quaker City Garage—929 Lace St.—Philadelphia, Pa.
Rubin Brothers—Oxford Pk. and Foulkrod—Philadelphia, Pa.
Marianni Auto Service—Tulip and Ontario—Philadelphia, Pa.
Thomas Campion—Old York Rd. and Washington Lane—Jenkintown, Pa.

Thomas Campion—481 York Road—Jenkintown, Pa.
Abrain Van Brunt—Burmont Road and Woodland Ave.—Drexel Hill, Pa.
Neil O'Brien—North Lane and Fayette St.—Conshocken, Pa.
W. C. Matlack—Hessian and Red Bank—Thorofare, N. J.
Fred Regal—Black Horse Pike—W. Collingswood, N. J.
Wallace Brothers—9th Street—Ocean City, N. J.
Charles and Leary—Lancaster Pike—Wayne, Pa.
A. Caccia—1206 Lancaster Ave.—Rosemont, Pa.
Leedon's Service Station—Street Road and 2nd St.—Southhampton, Pa.
James Moore—Baltimore and South Ave.—Media, Pa.
J. Turney—Burmont and Jones—Drexel Hill, Pa.
Parkes and Dawn—Westchester Pike—Broomall, Pa.
Brookline Service Station—Darby Road and Brookline Blvd. —Brookline, Pa.
H and G Service—Lancaster Pike—Berwyn, Pa.

Other Types of Refusals.

S. DePasquale—Marlton Pike and Delaware—South—Merchantville, N. J. (Not going Goodyear)
E. Shank—McDede Blvd. and Ridley—Folsom, Pa. (Non Goodyear)
Chappies—Garrett and Wembley—Upper Darby, Pa. (Non Goodyear)
P. Burwell—1919 North 21st Street—Philadelphia, Pa. (Not handling tires or batt.)
Bede's Service—Randolph and Oregon—Philadelphia, Pa. (Lee Distributor)
Marcus Hook—10th and Green—Marcus Hook, Pa. (Not handling line)
Green's—214 East 5th Street—Chester, Pa. (Has not signed)
W. White—2142 Darby Road—Oakmont, Pa. (Not handling line)

2632 F. E. Somers—2nd and Vine Streets—Milville, N. J. (Seiberling Distributor)

H. Mohr—State and Whitehead Sts.—Trenton, N. J. (Goodrich Dealer)

Jas. Woodbury—O'Donnell Lane—Palmyra, N. J. (Impl. to Adv.)

J. Harrington—Route #23—Valley Forge, Pa. (Impl. to Adv.)

G. I. Service—Maple Glen—Maple Glen, Pa. (Impl. to Adv.)

Ed. McLaugalin—Cobbinville and Allentown Rd.—Allentown, N. J. (Out of business)

J. K. Wilson—69th and Buist Ave.—Philadelphia, Pa. (Out of business)

Valance Structural Difficulties

Wm. Long—White Horse Pike and Taylor—Audubon, N. J.

Frank Monzo—Hafville and County House Rd.—Blackwood Terrace, N. J.

F. G. Santacapeto—Haddon and Atlantic—Camden, N. J.

Harry Jones—Crescent Blvd. and Park—Collingswood, N. J.

J. V. Neale—221 S. Black Horse Pike—Mt. Epariam, N. J.

Mrs. E. Hubschmidt—Route #46—Mullica Hill, N. J.

Harry Richie—18 Front Street—Salem, N. J.

Ed Taylor—Sweedsboro, N. J.

James A. Gould—Salem Road—Mt. Royal, N. J.

Thomas Lattiere—Route #40—Medford, N. J.

F. Pervi—517 Shore Road—Northfield, N. J.

R. H. Vassallo—Malaga, N. J.

Russell King—High and Oak—Millville, N. J.

Paul Van S. Choick—3rd and Landis—Vineland, N. J.

J. W. Suiter—Main Street—Pennsville, N. J.

C. G. Smith—Grant and Market—Salem, N. J.

W. F. Pearson—Elmer, N. J.

A. Link—Broad and Atlantic—Bridgeton, N. J.

James Glass—Pacific and Colorado—Longport, N. J.
J. A. Miller—Haddon and Atlantic Blvd.—Atlantic City, N. J.
J. Ruane—Verona and Lyons Court—Pleasantville, N. J.
Joseph Groner—Superhighway and Highland—Parkland, N. J.
Harvey Furness—150 South Main St.—Yardley, Pa.
L. C. Finney—Buck Road—Holland, Pa.
J. Barton—Pond Street—Bristol, Pa.
W. H. Stearn—Bristol Pike—Andalusia, Pa
A. Raupp—Lincoln Highway—Penndel, Pa.
A. Tate—1402 North 51st Street—Philadelphia, Pa.
S. Berman—29th and Somerset—Philadelphia, Pa.
Wilmer Cassel—Hunting Park and Pacific—Philadelphia, Pa.
Gerald Dougherty—33rd and York Street—Philadelphia, Pa.
Dave Furman—Midvale and River Drive—Philadelphia, Pa.
Dave Hamilton—9th and Venango—Philadelphia, Pa.
Uncle Sam's Motors—York Road and Rising Sun Ave.—Philadelphia, Pa.
Dakota Garage—246 South 59th Street—Philadelphia, Pa.
2634 J. Sullivan—6101 Ridge Ave—Philadelphia, Pa.
George Stevenson—Beechwood Street and Wyncote—Philadelphia, Pa.
O'Connell Motors—6715 Ridge Ave—Philadelphia, Pa.
H. E. Neger—200 W. Rosemar Street—Philadelphia, Pa.
Eppy's—8th and Wyoming—Philadelphia, Pa.
——'s Service Station—Thompson and Westmoreland—Philadelphia, Pa.
Juanita Service—Erie Ave and Bennington St.—Philadelphia, Pa.
Walsh Auto—999 Anchor Street—Philadelphia, Pa.

R. Spiegelman—Boudinot and Ruscomb St.—Philadelphia, Pa.

Wm. Ruckrein—Front and Wingohocking St.—Philadelphia, Pa.

R. B. Lloyd—Kensington and Sedgley—Philadelphia, Pa.

Frank Braidfield—Frankford and Tyson—Philadelphia, Pa.

Atlantic Auto—12th and Porter—Philadelphia, Pa.

Rip's Service—Delaware and Beach—Philadelphia, Pa.

E. O'Brien—2nd and Huntington—Philadelphia, Pa.

Ray Duster—5317 Warren St.—Philadelphia, Pa.

J. Drager—68th and Woodland—Philadelphia, Pa.

V. C. Ascenz—49th and Lancaster—Philadelphia, Pa.

Harry Cooker—3842 Lancaster Ave.—Philadelphia, Pa.

Howard Miller—3321 Frankford—Philadelphia, Pa.

John Keglee—Front and Moore—Philadelphia, Pa.

J. and H. Auto—132 North 3rd St.—Philadelphia, Pa.

Frank's Service—22nd and Ritner—Philadelphia, Pa.

John Calhoun—2525 Moore St.—Philadelphia, Pa.

Apex Garage—212 North Juniper St.—Philadelphia, Pa.

Tom's Service—Griscom and Orthodox—Philadelphia, Pa.

Randy's Service Station—Unity and Wingohocking—Philadelphia, Pa.

John and George Atlantic—2658 Frankford Ave.—Philadelphia, Pa.

Lew's Auto Service—9337 Torresdale Ave.—Philadelphia, Pa.

Carl Dolente—2330 Frankford—Philadelphia, Pa.

P. Karpouski—2835 Tulip St.—Philadelphia, Pa.

W. Becher—1201 Cottman St.—Philadelphia, Pa.

R. Glanzmann—2nd and Diamond—Philadelphia, Pa.

R. Foehl—2235 North 10th Street—Philadelphia, Pa.

Jon's Service Station—975 Frankford Ave.—Philadelphia, Pa.

A. Parone—6th and Sedgley—Philadelphia, Pa.

George Salomskas—3401 Richmond St.—Philadelphia, Pa.
Pat's Service Station—1201 Bridge St.—Philadelphia, Pa.
Harry Straub—62nd and Lancaster Ave.—Philadelphia, Pa.
John W. Marsh—21st and Ridge Ave.—Philadelphia, Pa.
Ed Jones—23rd and South Sts.—Philadelphia, Pa.
Paul J. Rafferty—39th and Woodland Ave.—Philadelphia, Pa.
M. G. Smith—Easton and Bradfield Roads—Roslyn, Pa.
J. P. Lee—52nd and Woodland—Philadelphia, Pa.
E. S. Sprague—Chester and Fairview—Swarthmore, Pa.
T. Riter—Garrett and Huntley Roads—Upper Darby, Pa.
—. —. Fowler—Hampden and Marshall Roads—Upper Darby, Pa.
W. B. Clark—Gay and Adams Sts.—West Chester, Pa.
D. W. White—Easton and Jenkintown—Glenside Pa.
S. Dugross—Main and Ridge Aves.—Philadelphia, Pa.
G. Hinds—Durham and Hulmeville Rds.—Newportsville, Pa.
Pinkerton's—Erie and "D" Streets—Philadelphia, Pa.
2636 E. T. Bartelson—Euclid and Tanner Sts.—Haddonfield, N. J.
M. Stow—Kings Highway and Linden—Haddonfield, N. J.
M. Kozakewich, Jr.—South 3rd Ave.—Merchantville, N. J.
Sharon Hill Garage—Hook Rds. and Chester Pike—Sharon Hill, Pa.
Dan's Service—Germantown Ave. and Plymouth—Norristown, Pa.
John Rice—Kedron and Waverly—Morton, Pa.
Don Keyser—Pennel and Lenni Rds—Lima, Pa.
Doherty's Service—Baltimore Pike—Lima, Pa.
H. Konkle—Marshall and Wycombe—Lansdowne, Pa.
J. W. Stevens—108 South Keswick Ave.—Glenside, Pa.
J. Stowe—Woodland and Primus Ave.—Folcroft, Pa.

Wm. Ward—Bethlehem Pike and Valley Green Rd.—Flourtown, Pa.

Stanley Budney—Bristol Pike and Park Ave.—Eddington, Pa.

J. Snively—Baltimore Pike—E. Lansdowne, Pa.

Young and Wilson—112 North 63rd St.—Philadelphia, Pa.

James Wasser—4331 Roosevelt Blvd.—Philadelphia, Pa.

H. Humphries—Roosevelt Blvd.—Philadelphia, Pa.

M. Phillips—Bustleton Ave. and Philmont Rd.—Philadelphia, Pa.

Edgar Lincoln—Cove Road and Westfield—Pennsauken, N. J.

Paul H. Schlatter—Route #25 and Hilton Road—Pennsauken, N. J.

George Seward—Maple and Chapel Ave.—Merchantville, N. J.

Zimmerman's Auto Repair—847 East Luzerne St.—Philadelphia, Pa.

2638 Valance Structure Difficulties Newark.

Lally's—8th and Central—Shipsbottom, N. J.

Kardos Brothers—Hawk and New Brunswick—Phillipsburg, N. J.

Rufus Cramer—Route #S-40—Manhawken, N. J.

—'s Service Station—Main and Union St.—Lodi, N. J.

Ray's Auto Service—339 South Ave.—Fanwood, N. J.

Arthur Kenney—North Park and Springdale Ave.—East Orange, N. J.

A. and V. Apicella—Route #22—Clinton, N. J.

R. Wright—Main and Bond Sts.—Chatham, N. J.

F. Gennell—Belleville and Union Ave.—Belleville, N. J.

Franklin Clark—Route # 24—Stewartsville, N. J.

Lewis Richards—21 Vandeveer Ave.—Somerville, N. J.

Melvin Perrine—12? 39 East Fifth—Plainfield, N. J.

Lincoln Garden Garage—298 Jersey Ave.—New Brunswick, N. J.

Mrs. Clarence Fox—Frenchtown Road—Milford, N. J.
John Gelger—Campbell Junction—Belford, N. J.
Robert Voohees—Main Street—Holmdel, N. J.
Paul Mercante—318 Sip Ave.—Jersey City, N. J.

2640 COMMISSION EXHIBIT NO. 171A.

October 24, 1951
TBA WCH
Goodyear Program
Atlantic Station Identification

Mr. M. G. Davis
Providence, R. I.

Attention: Mr. T. L. Walsh

Dear Sir:

Attached is a report from Goodyear of Atlantic stations in the Hartford and Boston Districts to which they were unable to erect Goodyear signs either because dealers refused identification, or the stations could not be identified due to structural reasons.

We are passing this information along for your appropriate action.

Very truly yours,

W. C. Hoffman.

H

Attachment

2642 COMMISSION EXHIBIT NO. 171B-D.

Refusals . Hartford.

Gayner—Taylor Inc.—1345 Bamum Ave.—Stratford, Conn.
Frank's Sales—47 Railroad Ave.—South Norwalk, Conn.
Duke's Service—163 West Street—Seymour, Conn.
(Illegible) Atlantic—12 North Street—Danbury, Conn.
(Illegible) Mancini—Putnam Pike Road—Bethel, Conn.
Lines' Atlantic—New London Turnpike and School—Glastonbury, Conn.

Other Types of Refusals.

Cove Road Service Station—314 Cove Road—Stamford, Conn. (Now a Calso Station)
Jack's Service Station—26 Richmond Hill Ave.—Stamford, Conn. (Not Goodyear)
C. Nelson—RFD #2 River Road—Seymour, Conn. (Not Goodyear)
Fountain Garage—240 Putnam Street—New Haven, Conn. (Not Goodyear)
Junction Filling Station—Congress and Davenport—New Haven, Conn. (Not Goodyear)
Morrius' Auto Parts—Bridgeport Ave.—Milford, Conn. (Not Goodyear)
Sherman's Servicenter—1250 Kossuth Street—Bridgeport, Conn. (Not Goodyear)
Whitie's Service Station—129 Pine Street—Forestville, Conn. (Sells Lee)
J. Nathan—Mill Plain Road—Danbury, Conn. (Not Operating)
G. Haddy—Hayestown Road—Danbury, Conn. (Not Operating)
G. Gross—564 Dexwell Ave.—New Haven, Conn. (Refused)
W. Bureau—Main Street—Hampden, Mass. (Refused)

Barlow Motors—Ward Street—Rockville, Conn. (Refused)
Padelford's Atlantic Service—428 East Main Street—Torrington, Conn. (Refused)
Tac's Service Station—878 Driwell Ave.—Hampden, Conn. (Calso Station)
N. Beaudry—Main and Noble Street—Springfield, Mass. (Does not want valances)

2644 Valance Structure Difficulties Hartford.

Roberts Service—North Sommers, Conn.
Vernon's Service—Veron Center, Conn.
W. Grosseboom—67 East Main and Neal Court—Plainville, Conn.
Carpenter's Auto—590 Noble Ave.—Bridgeport, Conn.
(Illegible) Service—177 Post Road—Darien, Conn.
(Illegible) Pozzuoli—Campwell and Brown—West Haven, Conn.
F. H. Stolle—Main and Mill—Broadbrook, Conn.
Ed's Service—North Road—Broadbrook, Conn.
Midway Garage—1123 Main Street—S. Glastonbury, Conn.
Scelry's Service Station—47 Main Street—Winsted, Conn.
E. Warner—Boston Road and Parker Street—Springfield, Mass.
Post and Facey—282 Locust Street—Springfield, Mass.
Mayo Brothers—252 Belmont Ave.—Springfield, Mass.
Florence Motors—Depot Street—Florence, Mass.
M. J. Griffin—65-69 Memorial Ave.—W. Springfield, Mass.
Petsch Brothers—Post Road—Warehouse Point, Conn.
Gregel Brothers—1429 Palsido Ave.—Windsor, Conn.
Litchfield Fuel Co.—Russel Street—Litchfield, Conn.
George L. Parker—Boston Post Road—Old Saybrook, Conn.

Refusal Boston.

Edwards Motors—Wilbur and Macomber Sts.—Swansea, Mass.

Suspiro Brothers—Route #6 and Brayton—Somerset, Mass.

Kane's Atlantic—837 Allens and Carolina Ave.—Providence, R. I.

Trinity Battery—Broad and Somerset—Providence, R. I.

Janelle Brothers—North Westport—North Westport, Mass.

Falmouth Auto Sales—Main Street—Falmouth, Mass.

Hunting Motors—850 Main Street—Falmouth, Mass.

A. Dias—Stafford Road and Pelham Street—Fall River, Mass.

W. Tower—Putnam Pike—Chepachet, R. I.

Plymouth County Motors—Church and Montello St.—Brockton, Mass.

St. Angelo Motors—244 County Road—Barrington, R. I.

A. Lenechal—49 Elm Street—Amesbury, Mass.

Other Types of Refusals

Mills Radiator Service—585 Park Ave.—Worcester, Mass. (Does not sell gas or acces.)

A. Jussourne—Quaker Lane and Centerville Rd.—Warwick, R. I. (Non Goodyear)

(Illegible)—Main Street—Wakefield, R. I. (Non Goodyear)

Veterans Service—990 Eddy and Reeder Sts.—Providence, R. I. (Non Goodyear)

Viti Brothers—Croom Street—Providence, R. I. (Atlantic Oil Dealer only)

2646 M. Esposito—Home and Chalkstone Ave.—Providence, R. I. (Mobile Dealer)

J. Vitali—210 High Street—Peacedale, R. I. (Non Goodyear)

W. Dumas—281 Pulaski Blvd.—South Bellingham, Mass. (Out of business)

Valance Structure Difficulties

Triple Elm Station—Route #138—West Kingston, R. I.
Ernest Waite—Russel Mills—S. Dartmouth, Mass.
H. Hamlin—Sandwich, Mass.
S. Ferrara—700 Douglas Ave.—Providence, R. I.
A. Caraccia—392 Broadway—Providence, R. I.
Sully Anton—Dean-Balbo-W. Exchange—Providence, R. I. R. I.
E. Licciardi—144 Laurel Hill Ave.—Providence, R. I.
Glenbridge Filling Station—Glenbridge and Manton Ave. —Providence, R. I.
Tom's Atlantic Station—Dean and Carpenter Streets—Providence, R. I.
J. Pate—536 Branch Ave.—Providence, R. I.
C. Marianetti—470 Valley Street—Providence, R. I.
A. E. Grenier—Highland and Pleasant Streets—Phenix, R. I.
J. Walsh—Main Street—Osterville, Mass.
J. MacCowan—East Main Street—Northboro, Mass.
Old State House Filling Station—Spring and Mills Roads —Newport, R. I.
A. Bibbins—484 Broadway—Methven, Mass.
C. Greenwood—Cape Road—Mattapoisett, Mass.
A. Snell—573 Walnut Street—W. Lynn, Mass.
N. Lapuppo-Nunzio Auto Service—21 Orchard Street—Lawrence, Mass.
Louis P. Oullette—Easter and Downing Streets—Fall River, Mass.
R and T Service Station—977 Washington Street—E. Weymouth, Mass.
E. Whitney—Main Street—Barnstable, Mass.
Baker Chevrolet—33 Washington Street—Taunton, Mass.

2648 COMMISSION EXHIBIT NO. 172A.

October 24, 1951
TBA WCH
Goodyear Program
Atlantic Station Identification

Mr. L. K. Maisel
Syracuse, N. Y.

Dear Sir:

Attached is a report from Goodyear of Atlantic stations in the Syracuse and Buffalo Districts to which they were unable to erect Goodyear signs either because dealers refused identification, or the stations could not be identified due to structural reasons.

We are passing this information along for your appropriate action.

Very truly yours,

W. C. Hoffman.

H

Attachment

2650 COMMISSION EXHIBIT NO. 172B.

Refusals. Syracuse.

Hoag, Stanley—Genesee and Burdick—Fayetteville, N. Y.
Illegible Parrish—Main and Badger Streets—Endicott, N. Y.
Frank Funk—75 North Main Street—Cortland, N. Y.
F. H. Buongiorne—Chenaugo and Bromley Ave—Binghamton, N. Y.

Other Types of Refusals.

Atlantic Service Station—189 Madison Ave—Oneida, N. Y. (Impl to Adv.)
L. J. Glass—Route U. S. #11—Adam Center, N. Y. (Impl. to Adv.)
Ray Cochran—Route # 96 and Mill Street—Condor, N. Y. (Going out of business)
B. B. Johnson—Route # 17—Chester, N. Y. (Out of business)
Ken Alt—Route U. S. #11—Mattydale, N. Y. (Impl. to Adv.)

Valance Structure Difficulties.

Hugh Killam—Sandy Creek, N. Y.
Battle-Anthony—Court Street Extension—East Syracuse, N. Y.
J. A. Massey—Wellesley Island—Alexandria Bay, N. Y.
F. Churchill—Route # 9 West—Marlboro, N. Y.
John Cawein—Route # 208—Burnside, N. Y.
Ira H. Hosmer—Adams, N. Y.

2652 COMMISSION EXHIBIT NO. 173.

July 17, 1951
TBA WCH
Goodyear Program
Progress Report

Messrs. M. G. Davis

Atten: T. L. Walsh—Providence, R. I.
L. K. Maisel—Syracuse, N. Y.

Dear Sir:

With further reference to T.B.A. Bulletin # 17 of June 1st the information that we now need is the number of Dealers by Atlantic District that were turned over to Goodyear at the inception of the Program for 1209 approval.

Very truly yours,
W. C. Hoffman

P

2654 COMMISSION EXHIBIT NO. 173A.

Goodyear T.B.A. Bulletin # 17
June 1, 1951

Messrs. J. O. Estlow
H. W. Jollie
G. V. Ostrander

Atlantic Marketing Program

T.B.A.

Fair Trade Agreements. The Wall Street Journal for May 22 contained the following article.

"The Supreme Court ruled yesterday in a 6 to 3 decision, that retailers who do not sign 'Fair Trade' agreements may ignore manufacturers' suggested retail prices. The decision jeopardized enforcement of

'fair trade' laws in 45 states because it invalidates the non-signer clause which provides that the signature of one retailer to a minimum price agreement makes all other retailers in the state subject to the agreement. Fair Trade laws written without a non-signer clause have proved ineffective.

Yesterday's decision was concerned with a New Orleans supermarket which refused to follow minimum prices set by two national distillers. The distillers based their action on the Miller-Tydings Act, which exempts businesses from anti-trust prosecutions in states permitting resale price maintenance, and which they said was intended to permit the use of non-signer clauses.

The Supreme Court ruled that since the Miller-Tydings Act does not mention the non-signer clause, it could not assume such a provision was meant to be allowed. The Court said, 'Certainly the words used connote a voluntary scheme. Contracts or agreements convey the idea of a cooperative arrangement, not a program whereby recalcitrants are dragged in by the heels and compelled to submit to price fixing'. The majority opinion went on to say that the Miller-Tydings Act specifically continues prohibition of the Sherman Act against 'horizontal' price fixing agreements between retailers or between wholesalers or among other competitors at the same level. 'Therefore', said the Court, 'when a state compels retailers to follow a parallel price policy, it demands private conduct which the Sherman Act forbids'.

Fair Trade laws are of particular importance to the liquor and drug industries, but also cover a wide range of products from soap and shortening to consumer durable goods such as vacuum cleaners and electric clocks. The Justice Department and the Federal Trade Commission have always considered Fair Trade laws as running counter to anti-trust and anti-inflation programs."

Fair traded products in the Goodyear line are identified by an asterisk (*) on the Catalog Page.

2655 COMMISSION EXHIBIT NO. 173B-C.

Goodyear T.B.A. Bulletin # 17 June 1, 1951

Goodyear Program

Bulletins. We are attaching an extra copy of this T.B.A. Bulletin, which we suggest be referred to the Goodyear Petroleum Representative in your Region, by your T.B.A. Coordinator.

We also suggest that information be deleted which would be of no interest to him.

Car & Home 1951 Spring and Summer Supplement No. 1 —5/25/51. Copies of Dealer and Distributor 1951 Spring and Summer Supplement No. 1 was mailed to all names on the Car & Home catalog mailing list.

Car & Home Merchandise Price Book Holders should make the necessary changes in the 1951 Spring and Summer Catalog and the Dealer and Distributors Price Lists.

Progress Report. We attach Progress Reports received from Goodyear which represent the results of activities through May 21, 1951 and through May 28, 1951, by Goodyear District.

Will you please arrange to forward to this office the net number of Atlantic Dealers, by Goodyear District, that have been nominated in your Region on the Goodyear G-1209 Form to date. Also, please notify us weekly of any changes that may be made thereafter, so that this report may be kept current.

Sales Promotion. The subscriptions to the Goodyear Small Display Package Service which was sold to dealers at $1.50, far outdistanced Goodyear's most optimistic expectations. Therefore, the # 1 Package will not be sent to Atlantic Dealers and the prorated cost for the two remaining kits in the small Display Package Service will be only $1.00.

If additional copies of the # 1 Package were run they would not be available much before the # 2 Package. However, Goodyear will mail miscellaneous point-of-sale promotional material to their Goodyear districts, which can be picked up by Atlantic Salesmen for distribution to their dealers, at no charge, and which can be used until the # 2 Package is available.

Station Equipment. Will you please supply this office, as promptly as possible, a list of service station locations in your Region that you expect to open in the following 90-day period, and also a list of equipment which can be ordered from Goodyear, that will be needed at each location.

Thereafter, it will be necessary to give us this information monthly, since it takes 60 to 90 days to obtain certain equipment from Goodyear for use in new stations that may be opened in your Region.

Tires & Tubes

June Tire Allocation. We have just received notice from Goodyear of the quantities of tires to be assigned to the Goodyear supply points for their distribution to Atlantic-Goodyear outlets during the month of June 1951. The quantity assigned for your Region is ..... Passenger Car Tires and ..... Truck Tires.

2656 Accessories

AC Oil Filters—5/21/51. A release was made to Price Book Holders in the Goodyear Boston, Hartford, Albany and Syracuse Districts only, except Oil Companies. This release was mailed direct to your T.B.A. Coordinator, by Akron.

The release listed a representative line of AC Oil Filters which has been placed in the Boston Car & Home Ware-

house, primarily for Atlantic Refining Company outlets, and also for other Car & Home accounts.

The AC basic requirements for eligibility as an AC Oil Filter Jobber are the same as those required for AC Spark Plug Jobber eligibility.

In the near future, a representative of the AC Spark Plug Company will call at each Goodyear District Office, for the purpose of investigating prospective AC Oil Filter Jobbers, and to make application for jobber compensation where eligibility is established.

Car & Home Merchandise Bulletin # 16—5/23/51. A copy of the Car & Home Merchandise Bulletin # 16 has been mailed to your T.B.A. Coordinator. We wish to call their attention to two items which will be of interest to your dealers.

Seat Cover Swatch Books. A shipment of the Goodyear 1951 Seat Cover Swatch Book 022-6995 has been sent to each Goodyear district office. These swatch books should be picked up by Atlantic Salesmen and passed out to their most likely seat cover account prospects, at no charge.

Johnson Heavy Duty Cleaner. The S. C. Johnson Company has just announced the immediate availability of their new product, Johnson Heavy Duty Cleaner—pints. This product will be nationally advertised and will be recommended for use preparatory to the application of Car Plate. We suggest that caution be used in promoting the sale of this product, since it is only necessary to use a Heavy Duty Cleaner on the older model cars.

Miscellaneous

Steam Bags—5/22/51. The addition of three Sectional Steam Bags for use in repairing large off-the-road truck tires was mailed to Price Book Subscribers and Recappers. This should be given only passing interest, and may be discarded by Atlantic Salesmen.

Toys and Sporting Goods—4/25/51. We attach a copy of Goodyear's 1951 Holiday toys, bicycles, juvenile wheel goods and sporting goods wholesale catalog which was mailed to all Price Book Holders except oil companies. This is for your T.B.A. Coordinator's information.

A letter is also attached outlining the program and including the terms.

We suggest that distribution of this information be limited and given only to those of your accounts that may be interested in these lines, and that can handle such a program.

S. J. Heideman

2657

COMMISSION EXHIBIT NO. 173D.

The Atlantic Refining Company.
Progress through May 21, 1951

	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	473	192	128	35	180	281	202	1491
2. Total number of Atlantic dealers and distributors signed to date as direct dealers	16	1	26	5	9	19	6	82
3. Total number of supplying dealers	0	6	2	5	8	33	27	81
4. Lee Tires adjusted	240	8	45	4	72	79	32	480
5. Batteries adjusted to date	0	0	0	0	0	0	0	0
6. Introductory Display Packages Sold	408	1	130	33	85	175	125	957

2658

COMMISSION EXHIBIT NO. 173E.

The Atlantic Refining Company
Progress through May 28, 1951

	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	517	302	136	29	180	281	202	1647
2. Total number of Atlantic Supplying Dealers signed direct	16	7	26	7	9	19	21	105
3. Total number of Goodyear dealers and stores acting as supply points	0	25	2	4	8	14	6	59
4. Lee Tires adjusted	270	6	50	2	74	116	51	569
5. Batteries adjusted to date	0	0	0	0	0	0	0	0
6. Introductory Display Packages Sold	427	1	131	33	85	225	125	1027

2659 **COMMISSION EXHIBIT NO. 174.**

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R. I.

Sept. 7, 1951

GM:D:TLW.

Goodyear Program

Mr. S. J. Heideman
Philadelphia, Pa.

Dear Sir:

In accordance with telephone conversation, following is the number of accounts we have turned over to Goodyear, by district:

Providence—	108
Worcester—	57
Springfield—	98
Hartford—	74
Boston—	138
Fall River—	49
New Haven—	79
Bridgeport—	56

Yours very truly,
M. G. Davis

TLW/sc

2661 **COMMISSION EXHIBIT NO. 175.**

The Atlantic Refining Company
Incorporated
Petroleum Products
N. Salina & W. Genesee Sts.
Syracuse 2, N. Y.

July 19, 1951
S:D:JBW.
Goodyear Program
Progress Report

Mr. S. J. Heideman
TBA:WCH
Philadelphia, Pa.

Dear Sir:

As requested by your letter of July 17, we are advising you of the number of Atlantic Accounts turned over to Goodyear at the inception of the program.

These figures include distributors as well as dealers as we assume you are interested in all resellers rather than dealers alone.

We are listing the accounts by Goodyear and Atlantic Districts.

	Atlantic District						
Goodyear District	Alb.	Buff.	Roch.	S.T.	Syr.	Wtrn.	Total
Albany, N. Y.	25			3		27	55
Syracuse, N. Y.			1	99	108	68	276
Buffalo, N. Y.		82	100	33			215
Newark, N. J.	22						22
Totals	47	82	101	135	108	95	568

L. K. Maisel

rc

2663 **COMMISSION EXHIBIT NO. 176.**

Goodyear T.B.A. Bulletin #17

April 25, 1952

Goodyear Program

T.B.A.

Station Openings. We ask that you instruct your Districts to establish, as a regular practice, automatic and advance notice to the Goodyear District Office, of the openings of any new stations, or of change in proprietorship at any dealer location. Such notice will be mutually beneficial to both Goodyear and ourselves. It will enable Goodyear to complete any unfinished business with the outgoing dealer and, further, will enable them to anticipate and to move promptly in handling the new dealer's requirements.

This subject was initially mentioned in T.B.A. Bulletin #4 of February 1. The repetition merely adds "new stations", and will clarify the action desired.

S. J. Heideman

2665 **COMMISSION EXHIBIT NO. 177.**

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

August 20, 1951

Mr. S. J. Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa.

Subject: Jennings Bros.
Cranston, R. I.

Dear Syd:

Van Akin, our Boston District Manager, recommends subject Atlantic account be approved as a C & H M Wholesaler. The account is set up with a wholesale route truck, travels a full time wholesale salesman, contacting a minimum of 60 service station accounts, which qualifies the account for the arrangement if it is willing to place an initial order in accordance with our policy.

A-C, Purolator and Westinghouse have already approved on that basis.

Before taking action, which seems for the best interest of all concerned, I am clearing with you before advising Mr. Harper, as if the account is an Atlantic Dealer it will reduce the rate of commission earned on C & H M.

Will you please advise as promptly as possible.

Sincerely,

S. A. Gaylord
Manager—Petroleum Sales Dept.

S A Gaylord
lfm

2667 COMMISSION EXHIBIT NO. 178.

August 24, 1951

TBA WCH

Goodyear Program
Jennings Bros.
Cranston, R. I.

Mr. S. A. Gaylord, Manager
Petroleum Company Sales
Goodyear Tire & Rubber Company
Akron 16, Ohio

Dear Mr. Gaylord:

The New England Region Office does not wish to set the subject Atlantic account up as a C & H M Wholesaler. They would like to set this account up as an Oil Company Supplying Dealer.

We suggest that if there are any further questions concerning this, that Mr. Van Akin should contact Mr. T. L. Walsh.

Cordially yours,

W. C. Hoffman

2669 COMMISSION EXHIBIT NO. 179A-I.

Goodyear Program

Minutes Goodyear T.B.A. Coordinators' Meeting

October 12, 1951

Syracuse, N. Y.

The following were in attendance:

Messrs. S. J. Heideman, Chairman, T.B.A. Sales
L. K. Maisel, T.B.A. Coordinator, New York Region
T. L. Walsh, T.B.A. Coordinator, New England Region
W. C. Hoffman, Acting Secretary, T.B.A. Section

Mr. W. J. Jackson was absent due to illiness but was polled on several of the questions prior to the meeting.

Guests: Mr. G. V. Ostrander, Regional Manager, New York Region
Mr. W. S. Shockley, Manager, Sales Group, New York Region

The meeting convened at 9:15 A M

I. Next Meeting Date

December 14, 1951, Room 1210, Atlantic Building, Phila., Pa.

II. Report on September Sales

The chairman reported that two regions showed a decrease in tire sales, three regions showed a decrease in battery sales and two regions showed a decrease in accessories sales for September, 1951 from sales in September, 1950. Members commented as follows:

A. Tires—Mr. W. J. Jackson (Phila.-N.J.) reported that sales were off, due primarily, to reduction in purchasing capacity of associate dealers due to gas price war and lack of consumer demand.

Mr. Maisel (N.Y.) reported the following:

1. Lack of consumer demand.
2. Lee Competition.
3. Goodyear has not followed through on seeing that dealers are properly stocked.
4. Not as much effort put in, selling Goodyear, as under the old program.
5. Dealer credit difficulties.
6. Some sizes of tires still hard to get.

Mr. Walsh (New England) reported

1. Decline in consumer demand.
2. Sale of recaps has affected the new tire market.
3. Dealers bought ahead on certain sizes during the recent tire shortage.
4. Dealers are not "selling" tires.
5. Dealer credit difficulties.

Both New England and New York agreed that (a) Atlantic salesmen are putting in more time as a rule on the Goodyear T.B.A. Program than they did before; 2671 (b) some salesmen are getting a free ride where there is an aggressive Goodyear supplying dealer or store; (c) some areas are getting good support from ~~year~~; (d) personnel are still enthusiastic.

Action:

a. Mr. Maisel is to advise T.B.A. Section of specific cases of shortages in tire sizes.
b. The Regions are to advise the T.B.A. Section of specific dealer credit difficulties which will be referred to Goodyear, Akron, for their handling.

New England reported that approximately 98% of their accounts have been signed on a Goodyear Program and that they are getting about 75% of the tire business they previously enjoyed from these accounts. New York reported that they had about 96% of their accounts signed on a Goodyear Program and that they were getting about 65% of their former tire business. Both Regions agreed that there were two main difficulties in selling Goodyear tires:

1. The lack of road hazard guarantee is a stumbling block for the small dealer.
2. Lee prices and discounts appeal to the larger Atlantic accounts.

The Chairman then asked the Committee members what they felt was needed to get the program operating properly. The New York Region felt that they had reached the turning point and that they were now looking for improvement. Both Regions agreed that a Goodyear tire story similar to the story of Goodyear battery advantage being prepared by Sales Promotion would be helpful.

There was some discussion as to whether Goodyear had an adjustment policy on bruise breaks on tires with less than 25% wear.

Action:

a. T.B.A. Section to investigate Goodyear's bruise break policy and then to develop with Goodyear a program for training dealers in handling tire adjustments.

b. T.B.A. Section will develop with Goodyear a method for proving that dealers can sell many more Goodyear tires than they can Lee's in order to offset extra discount offerings.

c. T.B.A. Section to request Sales Promotion Section up a tire selling program similar to the battery story now being prepared by Sales Promotion.

B. Batteries—New England and New York Regions agreed that the following factors had affected battery sales:

1. Dealers were overstocked.
2. Battery life is being extended.
3. Competition's sales were also off.
4. Replacement shipments were off.

2673 The Chairman announced that the Sales Promotion Section is preparing a battery story which will point out the advantages of Goodyear batteries. This information will be given to salesmen and dealers in order to improve battery sales.

C. Accessories—Mr. Walsh reported that the situation is improving but that there are still problems to be corrected. The supply problem, insofar as warehouse and stores are concerned, is generally satisfactory, although the Boston warehouse at the present time has no stock of DuPont Sealer. Goodyear supplying dealers are still a problem in some areas. For example, in New England one Goodyear supplying dealer refuses to deliver accessories and the Atlantic salesman solicits dealer orders and delivers them in his own car. Mr. Walsh recommended that Goodyear, Akron, set up their supplying dealers so that they can offer distributor prices to associate dealers. Mr. Maisel reported that New York still had a problem in setting up satisfactory supplying dealer service and that the poor service from the Massillon, Ohio warehouse had not yet been corrected.

Action:

a. The three Regions are to give the T. B. A. Section a detailed report of problems on accessories in their Regions.

b. T. B. A. Section to recommend to Goodyear the

need for encouraging Oil Company supplying dealers to offer distributor prices to associate dealers.

c. T. B. A. Section will again follow up (third time) with Akron concerning service from Massillon, Ohio warehouse.

D. General—New York Region is using a form which lists the type of each account and also the purchase levels for all products. This information is supplied by Goodyear. A check on the progress of each account is made by comparing the activity reported on the G1204 form. If an account is not buying commensurate with the purchase level to which he is listed, this is quickly revealed in this comparison.

Action: The T. B. A. Section will request Goodyear's cooperation in furnishing this information for the other two Regions.

III. Fall Promotion—T. B. A. Flyers.

A report had previously been made to the Coordinators on the number of deals sold in their regions of the "bucket" promotion. Both New England and New York felt that the order blanks were late when received by salesmen, and apparently salesmen had not received sufficient information concerning the promotion. Both Regions received order blanks with Richfield Oil Company on them. New York Region suggested that a cover letter be mailed with future releases. New England reported that poor timing and bad mechanics were responsible for their poor showing.

Action: Goodyear is to be informed by T. B. A. Section about suggestions and complaints.

IV. Report on Warehouse Inventories:

The Chairman reported the company cost value of warehouse inventories on hand as of September 30, 1951.

2675 1. Tires—New York Region has most of the tire inventory which is made up of Lee tubes. Special price been given to sell out this inventory.

2. Batteries—The Chairman pointed out that it was imperative to dispose of our remaining battery inventory at once.

3. Battery Equipment—EX201 Chargers represents the major portion of this dollar inventory. Special prices on other battery equipment items appear to be satisfactory for quick movement at the present time.

4. Accessories—The major portion of this dollar inventory consists of tire chains. The New York Region was given special prices on certain accessory items.

Action:

a. Mr. Maisel is to advise the T. B. A. Section the tire inventory that he is unable to sell and also furnish T. B. A. Section with the special prices that were quoted on certain accessory items.

b. All three Regions are to advise the T. B. A. Section promptly what additional help, if any, is needed in selling the battery stocks.

V. Claimed Advantages for Goodyear Tires.

The Chairman exhibited a folder "Why Should I Buy Goodyear Tires" which was received in answer to our request for information as to the claimed advantages which are superior to other make tires. It was felt that more technical reasons should be obtained that these should be

used in the tire selling story referred to earlier in the meeting.

Action: The T. B. A. Section is to request these technical reasons and advantages from Goodyear.

VI. Batteries—Competitive Information.

The Chairman reported to the Committee members the information received from Goodyear in response to our request for information on combatting competition from Lee batteries. Some of this information will be incorporated in the sales story being prepared by the Sales Promotion Section referred to earlier in the meeting.

VII. Lee Tires and Batteries—Company Equipment.

A further discussion was held on this subject and it was agreed that since this factor is not a problem in the New York Region and since New England is making limited purchases of Goodyear tires for company equipment, no further action was needed at this time.

VIII. Lee and Exide Adjustments—Cutoff Date.

After considerable discussion it was recommended that March 31, 1952 be established as the cutoff date on Lee and Exide adjustments.

2677 Action: If no objections are apparent to this course of action after development with other regions and management, it will be adopted as policy.

IX. Tires—Special Promotion or Deal.

The T. B. A. Section had requested from Goodyear information as to whether a promotion or deal could be arranged. Goodyear referred to the tire selling theme in the October Merchandiser which could be used. This infor-

mation will be incorporated in the tire sales story referred to earlier in the meeting. It was recognized in the discussion that there were certain difficulties in staging "tire events" under the tire company program.

Action: The T. B. A. Section will investigate the possibilities of "tire events".

X. Training Program.

The Chairman asked the Committee members when their training programs would be completed and what provisions, if any, were being made to pass this information on to dealers and also to keep salesmen informed.

1. New England reported that their training program would be completed in November and they plan to have the Goodyear petroleum representative double-team with each Atlantic salesman one-half day every two months.
2. New York Region has completed their training program and have held small dealer meetings and plan to continue these dealer meetings.
3. Phila.-N. J. Region reported that their training program would be completed in November.

It was agreed that a coordinated program should be inaugurated which would require participation by both Atlantic and Goodyear personnel.

Action:

a. Mr. Walsh will check with New England management on feasibility of holding dealer meetings.
b. Mr. Maisel will work out with New York Management the feasibility of the Goodyear petroleum representative double-teaming with Atlantic salesmen.
c. The T. B. A. Section will recommend to the Phila.-N. J. Region that the plans being used by New England and New York be used in continuing the training program.

XI. Budget Plan at Service Stations.

New England has nominated a station but it is not yet in operation. New York has a station now operating on the budget plan in Buffalo, N. Y. Phila.-N. J. Region has not as yet set up a model station.

2679 Action: T.B.A. Coordinators will maintain a check of progress advising the T. B. A. Section of the success of these model stations by means of a questionnaire to be provided by the T. B. A. Section.

XII. Truck Tire Sales at Service Stations.

New England has picked two candidates to operate as a model truck tire station. The New York Region has one model truck tire station in operation. Phila.-N. J. has not as yet set up a model station.

Action: T. B. A. Coordinators will advise T. B. A. Section on the progress of these stations by means of a questionnaire to be provided by the T. B. A. Section.

XIII. Used and Recapped Tire Sales at Service Stations.

The three Regions have not set up model stations for used and recapped tire sales. The Chairman pointed out the advantages of having a good used and recapped tire business. Sale of used and recapped tires represents additional income and if these sales are ignored, it is the same as "throwing" money away. If used and recapped tires are not properly cleaned and displayed, they give an unsightly appearance to the station. The Chairman stressed the importance of getting at least one station established in order to convince other dealers to follow the same program.

Action: Coordinators are to set up the model stations as soon as possible and keep the T. B. A. Section posted

on their progress by means of a questionnaire to be provided by the T. B. A. Section.

XIV. Budget Sales by Goodyear—Dealer Commissions.

Goodyear has a plan whereby they pay commissions to gasoline dealers of 10% or $10.00, whichever is less, on budget or deferred payment business sold to accounts sent into Goodyear stores by these dealers. The commissions apply only on original sales to new accounts. After considerable discussion it was agreed that this plan should not be publicized since only the dealer and not Atlantic would receive the benefit of this commission. Also there is always the possibility of the dealer losing the future business of this customer whenever he is referred to another source of supply.

XV. New York Region Manager's Comments on Goodyear Program Operations.

The Chairman invited Mr. Ostrander to give the Committee the benefit of his opinions for the improvement of the commission plan operation. Mr. Ostrander expressed dissatisfaction with the progress made in his region and suggested that if Goodyear had sent additional personnel to assist in the initial phases of the changeover, many of the problems could have been resolved and better performance would be evident. He also suggested that

1. Even now additional Goodyear personnel could be sent into the territory to spread the Goodyear story and secure a better understanding of the advantages by dealers and by salesmen in a manner similar to that which was employed by the New York Region last year when all of the personnel in the region assisted the Buffalo district with the work of opening eight new stations at one time.

2681 2. Mr. Ostrander stated that since T. B. A. sales were off, rentals were also off because the anticipated volume had not been enjoyed.

3. Mr. Ostrander recommended that the same $500.00 credit limit established on the service station commission operation be made available for dealers on Class 2 station operation.

4. Mr. Ostrander also recommended that the statement "only Goodyear tires will be honored" should not be included on the B139 credit card until such time as we were more firmly established on the Goodyear program. In the discussion that followed it was brought out that since the commission plan was being investigated by the Federal Trade Commission, this was another reason why we should delay recommending that only Goodyear tires be listed on the B139.

XVI. Anti-Freeze.

The Chairman gave the following report on the anti-freeze supply situation. U. S. I. can accept no additional orders for Super Pyro this season due to a government order which requires large quantities of Methanol which is the base of this material for jet fuel and other military needs. DuPont and Commercial Solvents have also been affected by this order. U. S. I. reported, however, that unfilled orders on hand will be shipped in three to four weeks.

National Carbon has stated that Trek is still available and orders will be shipped in three to four weeks. National Carbon has not guaranteed price protection this season. However, we have recommended to management that we continue our present protection policy since it would be rather difficult to administer two policies. Management agreed to this recommendation. The Chairman recom-

mended that if Trek anti-freeze was needed to fulfill additional requirements this season, it should be ordered immediately.

Thermo is available at a new higher price. We now have the option of buying our present inventory at the old price. This will be decided at a later meeting with Publicker officials. The Chairman also mentioned the fact that we may have to depend on Thermo entirely if Methanol is not available next season. There is a possibility that this may be the situation.

XVII. Petroleum Representative.

The recommendations made in the August 17th meeting concerning the duties and functions of the Goodyear petroleum representative were presented to Goodyear for their study. Goodyear has advised that they can see no reason why our suggestions cannot be incorporated in the program. The Coordinators reported that they were proceeding with these recommendations and that they were being carried out satisfactorily.

XVIII. Radiator Hose—Redi-Curv.

The Chairman reported that although there has been some instances of Redi-Curv hose failure, they have been so small considered in the light of the total number of pieces sold, that these failures would not represent a serious problem. Since all Regions were in agreement with this reasoning, T. B. A. Section recommended to Goodyear that a similar type hose be added to the Goodyear line.

2683 Goodyear has reported that their Development Department has had Thermoid Redi-Curv under study and in several tests it has proven unsatisfactory. However, they recognized the market for this Redi-Curv hose

and are presently experimenting on some ideas of their own.

Action: T.B.A. Section will follow up Goodyear on the progress made in adding this item to their line mentioning the fact that both Gulf and Snn can afford to feature this type hose which wouldn't be the case if the product wasn't satisfactory.

XIX. Defective Home Merchandis Policy.

Goodyear's policy on defective Small Home Appliances states that it is the dealer's problem and that he is to take the matter up directly with the manufacturer. Since there was an instance reported of a defective radio and the fact that it was inconvenient and expensive for our dealer to handle, this matter was referred to Goodyear.

Goodyear reported that their various suppliers had authoried repair stations listed in the Car Home Catalogue. These repair stations are conveniently set up in the principal cities and render efficient service. The Committee members felt that this program was not satisfactory on a new purchase because operation or test is not performed before delivery. This is similar to the outdated principle "let the buyer beware". However, there was some question as to whether the unit was tested or operated before it was delivered.

Action: T.B.A. Section will review the situations encountered to date, and if justified will reopen the matter with Goodyear for further consideration.

XX. Selling Petroleum Products to Goodyear Stores.

Mr. W. S. Shockley, New York Region Sales Group Manager, recommended that a standard program should be set up to be followed in obtaining petroleum business from Goodyear. The recommendations were that this should

be handled by the T. B. A. Coordinators and that the District Managers should make careful selections of locations that were to be approached, considering the nature of the store's facilities, possible volume and obtain information on the length of existing lease. After the locations have been carefully selected this information should be channelled through the T. B. A. Coordinator who would then request the T. B. A. Section to find out from Goodyear the necessary steps to obtain this type business.

Action: T.B.A. Section will recommend this program to other regions for soliciting this type of business.

XXI. Securing Associate Battery Dealer Business.

The Chairman stressed the importance of securing the associate dealers' battery business which can best be accomplished by the supplying dealer making regular calls keeping him well stocked and avoid the need for "fire engine" service.

2685 XXII. Comparable Products in the Goodyear Line.

The Chairman distributed a list of multiple products in the Goodyear line and asked that the Coordinators indicate the items they wished to concentrate on in order that an exerted effort might be applied for promotional purposes.

Action: T.B.A. Coordinators are to forward completed lists to T. B. A. Section.

XXIII. Analyze Accounts Active on the Goodyear Program.

The Chairman recommended that the accounts that are active on the Goodyear program should be analyzed and compared with those that were active on the former program. Those accounts that had $500.00 or more volume

last year and have not been signed to date should be pinpointed and special effort should be exerted in order to bring about their conversion to the new program.

XXIV. Analyze Job to be Done on a Special Product.

The Chairman recommended that specific products should be analyzed by comparing areas where results are good with areas were results are poor and determine whether it is supplying dealer or just what does account for the difference.

XXV. Support of Policies at all Selling Levels.

The Chairman suggested that some of the problems that confront us require local selling at salesman and dealer levels. It is necessary that they understand policies and prices and that poor sales results should not be due to the lack of knowledge of these prices and policies.

The meeting adjourned at 4:50 P.M.

W. C. Hoffman
Acting Secretary

2687 COMMISSION EXHIBIT NO. 179J.

Atlantic-Goodyear Accounts
(Signed on G-1209)

Atlantic District..... Date.....
Goodyear District.....

Atlantic Use	Name and address	Supply Point	Account Class "D" or "J"	Account Class Apprvd. C&H Whlsr.	Tires	Purchasing Level Batteries and Cables	Purchasing Level Resolute Batteries	C&H and Other Mdse.

2688 COMMISSION EXHIBIT NO. 179K.

Petroleum Representative—(Review and Recommendation.) The Chairman reviewed the duties and functions of a Goodyear Petroleum Representative as outlined by Goodyear and asked the members for their comments concerning their activities and how they could best be utilized to the mutual advantage of both Atlantic and Goodyear. After much discussion it was decided that the following recommendations be made to Goodyear Management:

1. It was the consensus of opinion that better coordination between Atlantic and Goodyear could be brought about if the following steps were taken:

a. The Atlantic T. B. A. Coordinator would channel any problems in the field through the Goodyear District Managers concerned since it would ultimately be the Goodyear's District Managers problem to correct, and by this action avoid the use of Petroleum Representatives as an "errand boy".

b. Coordinator would contact the Goodyear District Manager, if necessary, to have any Goodyear supply point carry additional stocks.

c. It was established that regular contacts with associated dealers at least once a week were being

made by Goodyear salesmen or supply points in some areas while in other areas contacts were as infrequent as a whole month. The practice of at least weekly contact should be expanded to include all areas.

2. It was felt that the Petroleum Representative could work best to the interests of both Atlantic and Goodyear by the following:

a. The Petroleum Representative should be impressed with the importance of follow through on any particular assignment.

b. Petroleum Representatives should train Goodyear territory men in their battery and accessory product lines so that they will be more familiar with these products and also with the different price schedules.

c. Petroleum Representatives should be acquainted with Goodyear's selling equipment such as price schedules, product data, advertising helps of all kinds that are available to the dealers, both on charge and no-charge basis, and see that the Districts maintain and distribute adequate stocks of this material for our dealers.

d. Petroleum Representative should be available for field work on a co-ordinated basis with Atlantic Coordinator, and preferably by the Atlantic T. B. A. Coordinator's direction.

Action: The T.B.A. Section is to make these recommendations known to Goodyear Management for their approval.

2689 COMMISSION EXHIBIT NO. 180.

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R. I.

May 13, 1952
GM:C:TLW
Purolator

Mr. S. J. Heideman
Philadelphia, Pa.

Dear Sir:

Many of our dealers are objecting to the switch from Fram to Purolator because they feel that the re-education of their help on the Purolator numbers is too big a job.

We suggested to the Petroleum Representative of Purolator that they supply us with stickers showing simply the Purolator number which could be placed on the outside of the Fram pieces and that this would help us in effecting a change-over. The Purolator Representative didn't seem too optimistic about being able to accomplish this through his Company and, therefore, we think it ought to be pushed from your office.

We could really do a job on eliminating Fram if we could identify their merchandise with Purolator numbers.

Yours very truly,

L. E. Card

TLW/sc

2691 COMMISSION EXHIBIT NO. 181.

May 19, 1952
TBA WCH
Purolator Products

Mr. J. W. O'Neill,
Division Petroleum Representative,
Goodyear Tire and Rubber Company,
2750 North Broad Street,
Philadelphia 32, Pennsylvania.

Dear Mr. O'Neill:

Many of our dealers in the New England Region are objecting to the switch from Fram to Purolator because they feel that the re-education of their employees on the Purolator numbers is too big a job.

New England suggested to the Petroleum Representative of Purolator that they supply them with stickers showing the Purolator number which could be placed on the outside of the Fram pieces and that that would help them in effecting a changeover. The Purolator representative was not too optimistic about being able to accomplish this through his company.

We believe that this idea has considerable merit and would appreciate anything that Goodyear can do to make this possible.

Cordially yours,

W. C. Hoffman

h

2693 COMMISSION EXHIBIT NO. 182.

Goodyear

The Goodyear Tire & Rubber Company, Inc.
2750 North Broad Street
Philadelphia 32, Penna.

May 29, 1952

Mr. W. C. Hoffman
T. B. A. Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia, Pa.

Subject: Purolator Products

Dear Bill:

With further reference to your letter of May 19th, I am forwarding to you a sample roll of stickers which Mr. Walsh has requested.

The Purolator people indicated their willingness to make these available to any of your accounts. You will note that the numbers on these rolls are all the popular ones and should be of assistance in overcoming the problem Mr. Walsh mentioned.

I would appreciate hearing from you in order that I can pass on your requirements to Purolator.

Yours very truly,

J. W. O'Neill
Division Petroleum Representative

J.W.O'Neill
mmh

2695 COMMISSION EXHIBIT NO. 183.

Internal Correspondence

To: Mr. S. J. Heideman—Rm 1210
Subject: Goodyear Tire Display
From: W. J. Butler
Date: May 1, 1952

We have discussed the matter of fitting the Goodyear Tire Marketier into our service station display set-up with our people.

They felt that the Marketier could not readily be accommodated in an AR 50 design station without eliminating part of the present shelving. As you know, this is now being furnished by Operations Department automatically in Class 2 service stations. It was pointed out that the present shelving provides more space for tire stocks than the Marketier. The Marketier could be used if the station were not equipped with standard shelving and in a Class 3 station this would be up to the dealer. The Marketier could also be used in any Class 2 special design station which might have three or more service bays.

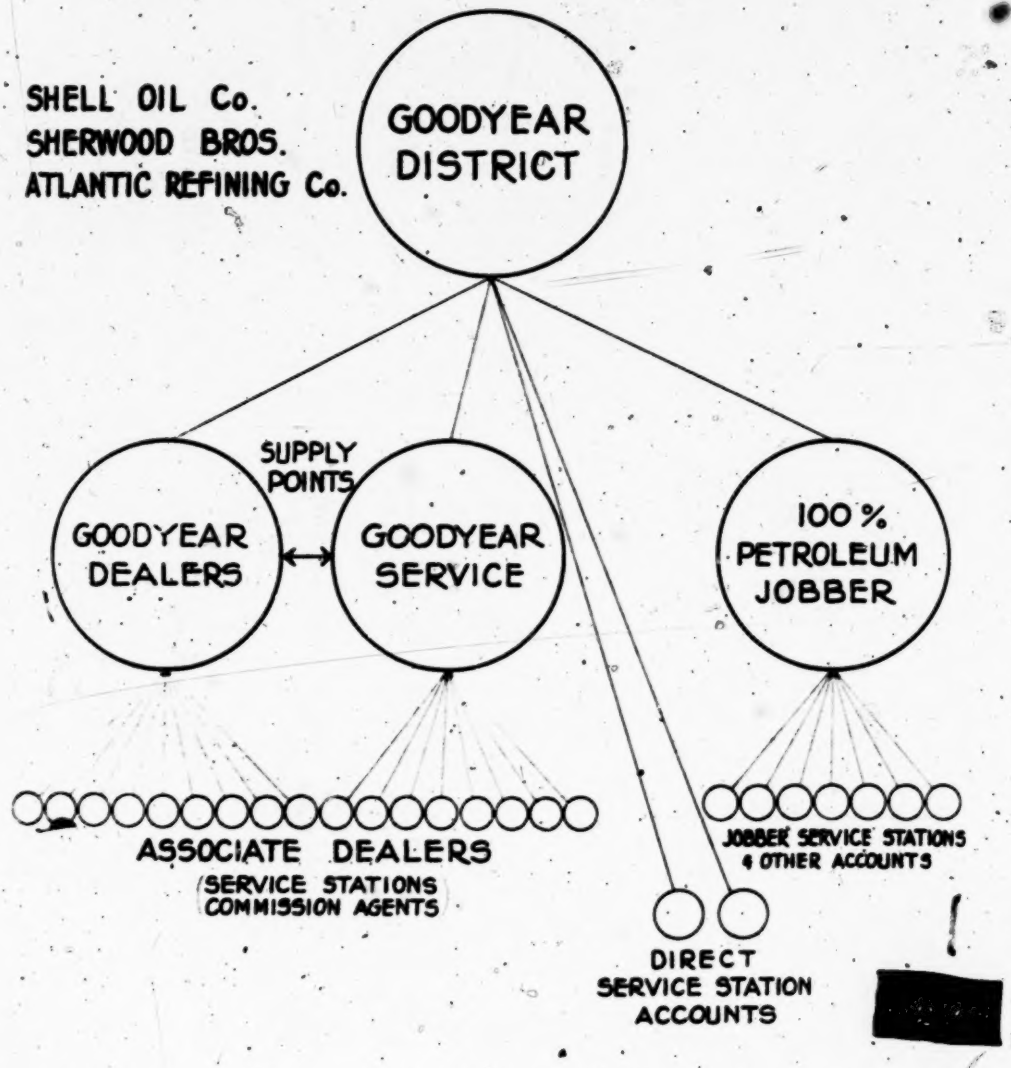
If it is your feeling that the sacrifice of existing accessory shelf space in the display room for the sales chart frames with no other advantage gained in tire storage space has merit, a case might be worked up to present to the Sales Development Committee for consideration since this is a course that would be necessary to revise the present Operations Department program. Please advise if you want us to try this.

W. J. Butler

WJB:avg

(Written in margin) I think selling space is more important than storage space. The sales room doesn't provide adequate treatment for product having 50-70% of TBA volume.

DISTRIBUTION FLOW CHART ON COMMISSION PLAN TIRES, TUBES & BATTERIES



COMMISSION EXHIBIT NO. 193.

Atlantic T.B.A. Marketing
1949 Through 1951

In Dollars	Direct Marketing Class #1, 2 & 3 Dealers				Indirect Marketing Class #6 Distributors				All Classes Total Marketing			
	T/T	Batt.	Access.	Total	T/T	Batt.	Access.	Total	T/T	Batt.	Access.	Total
New England												
1949	589,092	176,644	192,212	~~957,948~~	36,168	3,185	1,843	41,196	625,260	179,829	194,055	999,144
1950	775,237	195,330	192,663	1,163,230	69,908	4,386	3,696	77,990	845,145	199,716	196,359	1,241,220
1951	—	—	—	—	—	—	—	—	296,019	54,943	93,846	354,808
New York												
1949	483,758	113,761	142,833	740,352	68,719	17,504	3,387	89,610	552,477	131,265	146,220	829,962
1950	621,853	121,610	146,150	889,613	106,235	22,422	6,850	135,507	728,088	144,032	153,000	1,025,120
1951	—	—	—	—	—	—	—	—	198,767	54,479	61,400	314,646
Phila.-N. J.												
1949	889,476	267,946	335,195	1,492,617	13,607	4,320	1,112	19,039	903,683	272,266	336,307	1,511,656
1950	994,065	271,133	297,496	1,562,694	10,900	605	295	11,800	1,004,965	271,738	297,791	1,574,494
1951	—	—	—	—	—	—	—	—	184,395	67,729	144,927	397,051
Eastern Pa.												
1949	905,161	233,979	286,879	1,426,019	56,200	14,741	11,950	82,891	961,361	248,720	298,829	1,508,910
1950	1,058,647	221,200	265,800	1,545,707	91,825	22,471	10,929	125,225	1,150,472	243,731	276,729	1,670,932
1951	—	—	—	—	—	—	—	—	254,740	79,501	122,302	456,543
Western Pa.												
1949	567,531	130,052	132,942	830,525	54,496	~~21,684~~	5,999	81,534	622,027	151,091	138,041	912,059
1950	649,837	119,930	116,827	886,594	56,756	14,591	7,037	78,384	706,593	134,521	123,864	964,978
1951	—	—	—	—	—	—	—	—	161,303	49,981	52,725	264,009
Southern												
1949	374,362	~~54,566~~	101,187	533,055	366,205	17,670	18,810	402,685	740,567	75,176	119,997	935,740
1950	444,145	53,213	76,113	573,471	486,226	22,398	22,941	531,545	930,371	75,591	99,054	1,105,016
1951	—	—	—	—	—	—	—	—	171,801	12,913	30,819	215,533
Total Company												
1949	3,809,315	979,888	1,101,248	5,080,516	595,395	78,459	43,101	716,955	4,404,775	1,058,347	1,234,349	6,697,471
1950	4,543,784	982,476	1,005,049	6,621,309	841,850	86,853	51,748	980,451	5,365,634	1,069,329	1,146,797	7,581,760
1951	—	—	—	—	—	—	—	—	1,177,025	319,546	506,019	2,002,590
DMA-JOB												

57,506

21,039

Commission Exhibit No. 193.

2773

COMMISSION EXHIBIT NO. 198A.

Final T.B.A. Sales June, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$ 74,905	+ 8.06	$ 10,535	+14.42	$ 18,719	— 1.51	$ 324	+51.98	$ 1,752	—16.84	$106,235	+ 6.82
New York	72,438	+13.94	6,758	+35.57	11,636	— 9.70	1,131	+50.14	1,282	+ 2.50	93,245	+12.52
*Phila. & N. J.	117,297	—10.35	20,935	+20.95	27,494	—17.54	3,657#	+103.55	5,589#	— 6.90	174,972	— 7.71
*Eastern Pa.	142,297	+16.95	15,166	+21.90	25,732	—11.87	6,057#	+104.51	3,946#	+ 2.58	193,198	+12.51
*Western Pa.	89,752	+19.97	6,519	+14.87	10,916	—31.16	5,671#	+407.60	1,156#	—22.32	114,034	+16.00
South	101,367	— 1.60	4,678	—16.10	11,478	—30.96	22,641	+938.96	964	—13.08	141,128	— 2.35
*Company Total	$598,056	+ 5.96	$ 64,591	+16.81	$105,975	—15.98	39,501	+174.68	$ 14,689	— 7.34	$822,812	+ 4.74
*Company Total Same Month Last Year	$415,055		$ 52,191		$ 84,761		$ 1,757		$ 15,772		$569,536	

\# Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†Eastern Pa.	$ 18,149	+50.42	$ 6,677	—10.12	$ 24,826	+30.13
†Western Pa.	23,428	+12.26	7,108	— 5.49	30,536	+ 8.10
†Phila. & N. J.	208	—96.60	63	—98.45	271	—96.57
Company Total including Commission Plan					$878,445	+ 4.57

† Comparison to 1949—Cumulative from inception.

2775 COMMISSION EXHIBIT NO. 198B.

Sales Comparison—Month of June

1950 vs. 1949

Includes:—Tires, Batteries, Accessories
Home Supplies, Anti-Freeze and
Miscellaneous Refinery Products

Wilmington, Del. District	1949	1950	Percentage Gain
		Dir. $ 518 Com. 24,826	
Total	$21,714	$25,344	+ 16.7%

Erie, Pa. District	1949	1950	Percentage Gain
		Dir. $ 602 Com. 30,536	
Total	$21,535	$31,138	+ 44.6%

Newark, N. J. District*	1949	1950	Percentage Gain
		Dir. $14,420 Com. 271	
Total	$19,247	$14,691	— 23.6%

OBSERVATIONS

	Wilmington	Erie	Newark*
Dealers Signed to Rubber Company	161	164	93
Dealers Active on Rubber Company	107	118	2
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	73.1%	76.7%	76.7%

* Rubber Company's reported sales incomplete

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2777

COMMISSION EXHIBIT NO. 199A.

Final T. B. A. Sales—July, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$149,282	+30.08	$ 27,468	+34.20	$ 16,442	+ 1.18	$ 22,408	+345.52	$ 1,298	—18.74	$216,898	+27.97
New York	116,328	+36.28	10,489	+26.79	9,208	— 9.30	16,323	+200.64	1,057	+ 3.15	153,405	+31.02
*Phila.-New Jersey	129,886	+ 3.59	27,713	+23.43	23,094	—13.96	17,753#	+109.47	4,009#	— 5.57	202,455	+ 3.45
*Eastern Pa.	157,463	+29.44	15,373	+10.05	19,568	—10.07	30,260#	+388.02	3,621#	+ 2.95	226,285	+23.51
*Western Pa.	92,082	+32.98	9,125	+12.55	7,513	—26.85	17,499#	+681.75	1,515#	—16.63	127,734	+29.35
South	109,493	+ 9.23	5,305	—18.03	9,329	—25.46	5,746	+1210.67	1,280	— 5.65	131,153	+ 7.32
*Company Total	$754,534	+21.34	$ 95,473	+16.74	$ 85,154	—12.85	109,989	+332.81	$12,780	— 5.69	$1,057,930	+18.37
*Company Total Same Month Last Year	$367,142		$ 81,974		$ 76,793		$ 10,193		$12,268		$ 548,370	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†E. Pa.	$ 27,479	+76.62	$ 6,955	— 4.27	$ 34,434	+48.82
†W. Pa.	28,515	+29.04	5,094	—10.03	33,609	+19.37
†Phila.-New Jersey	12,138	—52.53	1,226	—84.25	13,364	—60.13
Company Total including Commission Plan					$1,139,337	+18.21

†Comparison to 1949—Cumulative from inception

2779 **COMMISSION EXHIBIT NO. 199B.**

Sales Comparison—Month of July

1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Wilmington, Del. District	1949	1950	Percentage Gain
		Dir. $ 1,102 Com. 34,434	
Total	$17,576	$35,536	+102.2%

Erie, Pa. District	1949	1950	Percentage Gain
		Dir. $ 622 Com. 33,609	
Total	$22,662	$34,231	+ 51.1%

Newark, New Jersey District	1949	1950	Percentage Gain
		Dir. $ 7,784 Com. 13,364	
Total	$15,912	$21,148	+ 33.0%

OBSERVATIONS

	Wilmington	Erie	Newark
Dealers Signed to Rubber Company	161	164	93
Dealers Active on Rubber Company	115	81	56
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	79.9%	84.9%	90.7%

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2781

COMMISSION EXHIBIT NO. 200A.

Final T. B. A. Sales—August, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$121,201	+38.76	$ 15,186	+17.01	$ 15,148	+ .63	$ 24,821	+559.63	$ 2,458	−11.94	$178,814	+34.60
New York	109,595	+44.79	10,668	+11.06	19,141	− 2.84	23,500	+269.11	1,863	+ 7.67	164,767	+38.88
*Phila.-New Jersey	117,776	+ 8.85	38,269	+16.48	36,110	− 5.19	20,560#	+106.02	5,997#	− .25	218,712	+ 9.07
*Eastern Pa.	145,861	+35.39	26,292	+10.12	32,736	− 5.12	74,586#	+460.42	5,093#	+ 9.39	284,568	+34.07
*Western Pa.	81,817	+34.79	14,799	+13.17	9,728	−22.38	21,401#	+728.97	1,378#	−15.66	129,123	+33.96
South	172,160	+26.13	7,243	−22.42	8,061	−32.21	7,450	+1538.24	962	−11.37	195,896	+18.93
*Company Total	$748,410	+29.48	$112,457	+10.13	$120,944	− 9.04	$172,318	+382.71	$17,751	− 1.35	$7,171,880	+26.38
*Company Total Same Month Last Year	$428,473		$124,351		$105,100		$ 30,338		$14,227		$ 702,498	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†E. Pa.	$ 20,555	+89.13	$ 7,060	− 2.56	$ 27,615	+54.06
†W. Pa.	28,473	+59.19	7,377	+ 4.98	35,850	+44.14
†Phila.-N. J.	27,212	+56.32	7,886	− 3.80	35,098	+38.94
Company Total including Commission Plan					$1,270,443	+27.41

†Comparison to 1949—Cumulative from inception (includes some Direct Sales in the changeover period)

2783 **COMMISSION EXHIBIT NO. 200B.**

Sales Comparison—Month of August

1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Wilmington, Del. District	1949*	1950	Percentage Gain
		Dir. $10,611	
		Com. 27,615	
Total	$20,941	$38,226	+ 83.0%

Erie, Pa. District	1949*	1950	Percentage Gain
		Dir. $ 3,738	
		Com. 35,850	
Total	$25,206	$39,588	+ 57.0%

Newark, New Jersey, District	1949*	1950	Percentage Gain
		Dir. $ 7,186	
		Com. 35,098	
Total	$16,024	$42,284	+163.9%

* Fed. Excise Tax of 8.3% deducted from tire $ Sales

OBSERVATIONS

	Wilmington	Erie	Newark
Dealers Signed to Rubber Company	161	164	93
Dealers Active on Rubber Company	128	115	73
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	74.2%	79.5%	77.9%

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2785

COMMISSION EXHIBIT NO. 201A.

Final T. B. A. Sales—September, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$ 49,152	+32.43	$ 27,197	+15.03	$ 21,734	+ 1.44	$ 20,367	+171.83	$ 1,555	—16.38	$120,005	+28.39
New York	52,074	+37.22	24,483	+16.29	18,546	+ 1.38	19,546	+132.12	1,431	— .39	116,080	+33.07
*Phila.-New Jersey	103,750	+12.17	32,412	+ 9.80	31,233	— 6.44	35,054#	+ 90.05	2,942#	—12.90	205,391	+10.10
*Eastern Pa.	108,287	+37.77	23,471	+ 4.00	27,785	— 2.80	36,302#	+141.44	2,824#	+ 1.48	198,669	+31.18
*Western Pa.	74,685	+40.07	18,057	+ 9.26	11,067	—17.13	17,236#	+ 93.50	1,617#	—14.50	122,662	+30.81
South	62,699	+24.85	5,453	—22.27	12,009	—25.11	6,146	+592.02	644	—15.15	86,951	+18.67
*Company Total	$450,647	+29.30	$131,073	+ 7.18	$122,374	— 6.63	$134,651	+135.80	$11,013	— 9.01	$849,758	+24.09
*Company Total Same Month Last Year	$352,525		$135,938		$111,273		$143,162		$20,513		$763,411	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†E. Pa.	$18,080	+100.02	$9,578	— 3.88	$ 27,658	+56.87
†W. Pa.	14,638	+ 58.21	4,661	— 4.23	19,299	+39.40
†Phila.-N. J.	20,567	+ 57.82	6,621	—20.04	27,188	+30.33
Company Total including Commission Plan					$923,903	+25.13

†Comparison to 1949—Cumulative from inception (includes some Direct Sales in the changeover period)

2787 **COMMISSION EXHIBIT NO. 201B.**

Sales Comparison—Month of September 1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Wilmington, Del. District	1949*	1950	Percentage Gain
		Dir. $ 3,855 Com. 27,658	
Total	$19,021	$31,513	+ 65.7%

Erie, Pa. District	1949*	1950	Percentage Gain
		Dir. $ 7,737 Com. 19,299	
Total	$27,576	$27,036	— 2.0%

Newark, New Jersey District	1949*	1950	Percentage Gain
		Dir. $ 3,935 Com. 27,188	
Total	$23,388	$31,123	+ 33.1%

* Fed. Excise Tax of 8.3% deducted from tire $ Sales

OBSERVATIONS

	Wilmington	Erie	Newark
Dealers reported by Atlantic	196	209	180
Dealers Active with Rubber Company			
Tires & Tubes	121	82	67
Batteries & Accessories	121	71	46
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	65.3%	75.9%	75.6%

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2789

COMMISSION EXHIBIT NO. 202.

Final T. B. A. Sales—October, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
1. New England	$ 78,456	+36.44	$ 22,107	+ 9.70	$ 18,213	— .14	$ 34,138	+126.42	$ 1,401	—16.86	$154,315	+29.62
2. New York	72,767	+40.25	15,498	+14.03	17,564	+ 8.26	47,562	+103.65	1,154	— 4.58	154,545	+36.51
3. *Phila.-New Jersey	80,865	+17.70	20,825	+ 4.77	21,396	— 8.49	47,261#	+ 42.44	3,613#	—13.92	173,460	+11.02
4. *Eastern Pa.	108,490	+39.76	39,793	+10.09	27,636	— 1.28	57,136#	+104.49	3,593#	+ 2.25	236,648	+32.80
5. *Western Pa.	65,269	+44.28	15,201	+ 5.82	7,970	—15.27	38,379#	+ 93.25	1,389#	—22.53	128,208	+33.98
6. South	91,078	+27.52	9,761	—15.73	9,247	—21.97	6,174	+465.15	1,051	—13.50	117,311	+21.69
7. *Company Total	$496,425	+33.02	$123,185	+ 6.35	$102,026	— 5.68	$230,650	+ 97.98	$12,201	—10.51	$964,467	+26.21
8. *Company Total Same Month Last Year	$284,807		$120,779		$ 99,342		$159,551		$15,649		$680,178	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
9. †Phila.-N. J.	$ 18,261	+ 64.18	$ 7,603	—19.40	$ 25,864	+32.33
10. †E. Penna.	17,613	+104.26	8,245	— 2.12	25,858	+58.79
11. †W. Penna.	19,312	+ 63.42	10,596	+ .39	29,908	+43.01
†Comparison to 1949—Cumulative from inception (includes Direct Sales in the changeover period)					$1,046,117	+26.81

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

12. Company Total Including Commission Plan

2791

COMMISSION EXHIBIT NO. 203A.

Final T. B. A. Sales—November 1950.

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
1. New England	$ 46,487	+32.03	$ 22,618	+ 7.21	$ 20,333	— .45	$ 17,185	+ 86.22	$ 916	—17.39	$107,539	+25.02
2. New York	52,399	+38.39	22,790	+15.79	16,491	+ 7.68	24,464	+ 93.56	649	— 7.94	116,793	+34.92
3. *Phila.-New Jersey	57,699	+12.91	30,454	+ 4.38	24,810	— .91	37,530#	+ 44.95	4,873#	—11.20	155,366	+ 8.92
4. *Eastern Pa.	64,332	+33.70	26,690	+ 9.93	23,559	+ .71	66,713#	+118.63	2,941#	+ 2.28	186,235	+31.65
5. *Western Pa.	40,375	+40.61	18,301	+ 7.86	18,656	— 3.42	22,182#	+ 57.39	2,148#	—20.77	101,662	+30.91
6. South	64,879	+25.82	13,781	— 1.14	7,481	—18.42	12,190	+498.77	938	—14.32	99,269	+23.05
7. *Company Total	326,171	+29.06	134,634	+ 7.56	113,330	— 3.76.	180,264	+ 88.93	12,465	— 9.86	766,864	+24.38
8. *Company Total Same Month Last Year	$358,443		$116,640		$ 98,240		$113,851		$12,849		$700,032	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
9. †Phila.-N. J.	$ 12,900	+ 56.30	$ 8,466	—19.43	$ 21,366	+25.83
10. †E. Penna.	9,743	+ 97.82	8,118	— .55	17,861	+54.88
11. †W. Penna.	14,765	+ 60.24	11,375	+ 3.41	26,140	+40.78
12. Company Total Including Commission Plan.					$832,231	+25.37

†Comparison to 1949—Cumulative from inception (includes Direct Sales in the changeover period)

2793 COMMISSION EXHIBIT NO. 203B.

Sales Comparison—Month of November

1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Newark, New Jersey District	1949*	1950	Percentage Gain
		Dir. 3,029	
		Com. 21,366	
Total	$27,175	$24,395	— 10.2%

Wilmington, Del. District	1949*	1950	Percentage Gain
		Dir. 2,910	
		Com. 17,861	
Total	$18,270	$20,771	+ 13.7%

Erie, Pa. District	1949*	1950	Percentage Gain
		Dir. 5,380	
		Com. 26,140	
Total	$26,514	$31,520	+ 18.9%

* Fed. Excise Tax of 8.3% deducted from tire & Sales.

Observations

	Newark	Wilmington	Erie
Dealers reported by Atlantic	146	194	193
Dealers Active with Rubber Company			
Tires & Tubes	52	100	91
Batteries & Accessories	48	85	91
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	60.5%	54.5%	56.6%

2795

COMMISSION EXHIBIT NO. 203C.

Dollars per Thousand Gallons of Gasoline
Class 2 Dealers
Cumulative July through November 1950

	Region	No. of Class 2 Dealers	Tires	Batteries	Accessories & Misc. Ref. Prod.	Sub-Total T.B.A. & M.R.P.	Anti-Freeze	Tot
1.	New England	414	$12.34	$ 3.65	$ 3.25	$19.24	$ 3.96	$23.
2.	New York	188	14.36	3.51	5.07	22.94	5.03	27.
3.	Phila.-N. J.*	265	10.63	3.51	3.64	17.78	3.41	21.
4.	Eastern Pa.*	363	12.40	3.25	4.17	19.82	4.59	24.
5.	Western Pa.*	182	14.18	3.37	3.50	21.05	3.40	24.
6.	South	251	16.66	2.13	2.78	21.57	.73	22.
7.	Total Company*	1663	12.84	3.33	3.73	19.90	3.69	23.

* Corrected for Commission Districts.

Dollars per Thousand Gallons of Gasoline
Class 2 Dealers in Commission Plan Districts
(Not Included Above)

	District	No. of Class 2 Dealers	Tires	Batteries & Accessories	Total
8.	Goodyear Newark	82	$ 9.27	$ 3.40	$12.67
9.	Firestone Wilmington	102	15.42	6.43	21.85
10.	Erie	55	14.17	8.02	22.19
11.	Total Comm. Districts	239	12.85	5.78	18.63

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2797

COMMISSION EXHIBIT NO. 204A.

Final T.B.A. Sales—December 1950

Strike underline

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$ 78,842	+35.17	$ 28,621	+11.06	$ 16,771	+ 1.19	$ 10,943	+91.48	$ 828	—15.98	$136,005	+27.94
New York	71,000	+41.49	18,173	+16.07	16,247	+11.97	8,299	+91.41	749	— 8.90	114,468	+37.07
*Phila.-New Jersey	99,484	+17.51	32,827	+ 7.90	20,925	— 7.74	7,353#	+43.59	1,603#	—13.60	162,192	+11.93
*Eastern Pa.	85,867	+31.66	28,352	+12.66	25,563	+ 4.00	21,705#	+125.35	2,262#	+ 2.28	163,749	+31.81
*Western Pa.	58,366	+42.19	19,817	+12.93	23,802	+13.42	14,045#	+63.94	973#	—20.54	117,003	+35.42
South	66,947	+25.63	7,273	+ .55	8,214	—17.45	840	+496.18	625	—16.40	83,899	+22.78
*Company Total	$460,506	+30.67	$135,063	+10.65	$111,522	— .17	$ 63,185	+110.67	$ 7,040	—10.71	$777,316	+26.42
*Company Total Same Month Last Year	$305,691		$ 97,820		$ 73,046		$ 25,991		$ 9,305		$511,853	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†Phila.-N. J.	$ 27,[illegible]	+ 64.26	$ 14,628	— .79	$ 42,427	+38.91
†E. Penna.	17,[illegible]54	+103.54	7,620	+ 1.03	25,374	+58.81
†W. Penna.	19,918	+ 62.94	8,397	+ 4.75	28,315	+42.61
Company Total Including Commission Plan					$873,432	+27.66

† Comparison to 1949—Cumulative from inception (includes Direct Sales in the changeover period).

2799 **COMMISSION EXHIBIT NO. 204B.**

Sales Comparison—Month of December

1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Newark, New Jersey District	1949*	1950	Percentage Gain
		Dir. $ 5,963	
		Com. 42,427	
Total	$21,494	$43,490	+102.8%

Wilmington, Del. District	1949*	1950	Percentage Gain
		Dir. $ 7,714	
		Com. 25,374	
Total	$13,530	$33,088	+144.9%

Erie, Pa. District	1949*	1950	Percentage Gain
		Dir. $ 3,929	
		Com. 28,315	
Total	$19,331	$32,244	+ 66.8%

* Federal Excise Tax of 8.3% deducted from Tire Dollar Sales.

Observations

	Newark	Wilmington	Erie
Dealers reported by Atlantic	146	202	209
Dealers Active with Rubber Company			
Tires & Tubes	80	100	94
Batteries & Accessories	60	105	94
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	65.6%	70.2%	70.3%

1/24/50

2801

COMMISSION EXHIBIT NO. 204C.

Dollars per Thousand Gallons of Gasoline

Class 2 Dealers

Cumulative July through December 1950

	Region Dealers	No. of Class 2 Dealers	Tires	Batteries	Accessories & Misc. Ref. Prod.	Sub-Total T.B.A. & M.R.F.	Anti-Freeze	Tot
1.	New England	415	$12.06	$ 3.86	$ 3.20	$19.40	$ 3.59	$22.
2.	New York	194	14.40	3.67	4.98	23.05	4.62	27.
3.	Phila.-N. J.*	266	10.64	3.51	3.52	17.67	2.94	20.
4.	Eastern Pa.*	368	11.95	3.37	4.11	18.33	4.53	22.
5.	Western Pa.*	184	13.77	3.71	3.92	21.40	3.29	24.
6.	South	253	15.76	1.98	2.62	20.36	.62	20.
7.	Total Company*	1680	$12.55	$ 3.44	$ 3.69	$19.68	$ 3.40	$23.

* Corrected for Commission Districts.

Dollars per Thousand Gallons of Gasoline

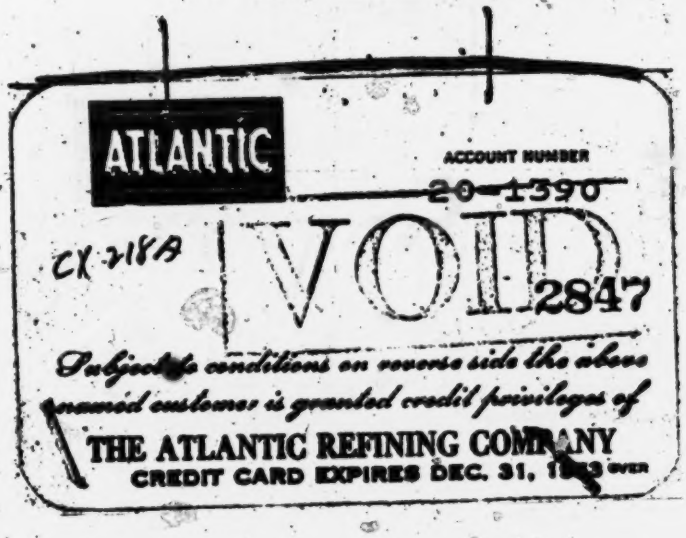
Class 2 Dealers in Commission Plan Districts (Not included Above)

	Districts	No. of Class 2 Dealers	Tires	Batteries & Accessories	Total
8.	Goodyear Newark	87	$12.10	$ 5.35	$17.45
9.	Firestone Wilmington	100	14.34	6.54	20.88
10.	Erie	55	14.15	8.84	22.99
11.	Total Comm. Districts	242	$13.47	$ 6.74	$20.21

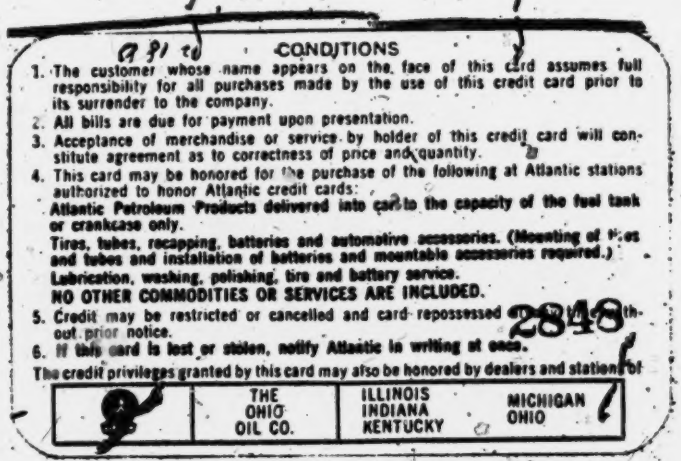
(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

COMMISSION EXHIBIT NO. 218A-B. 3048

FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION RESPONDENT EXHIBIT NO. 218A
IN THE MATTER OF Goodyear - Atlantic
DATE 4/24/62 WITNESS
ACE REPORTING CO., Official Reporter
By Monick



FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION RESPONDENT EXHIBIT NO. 218B



2805 COMMISSION EXHIBIT NO. 206.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

August 28, 1952

A Re-Statement of Atlantic's TBA Policy

Dear Sir:

The Federal Government is investigating all TBA relationships between certain tire companies, oil companies and their dealers.

Do you have a good TBA deal with The Atlantic Refining Company? Or are you forced against your will to carry a particular line of TBA? This seems to be the question involved.

In the Spring of 1951, The Atlantic Refining Company presented to you for your free acceptance or rejection a TBA sales program which long and intensive research had indicated would yield the greatest profit to you and would best serve the interest of the motoring public.

For the sales assistance which it renders, The Atlantic Refining Company receives in return a commission ranging from 5% to 10% from the tire company. Up to now, this barely covers the expenses involved.

We consider this arrangement with you businesslike and entirely proper and it is to our mutual interest that we so inform the public.

I consider it our duty to recommend to you, those services and products which experience and honest research have proven best for you and your customers.

However, when we originally adopted this program, I

wrote to you and to our sales force stating that this was an elective program. I now reiterate—that this is Your program, instituted for Your benefit—Yours to accept or reject.

Yours very truly,

D. T. Colley.

2806 COMMISSION EXHIBIT NO. 207.

Atlantic

The Atlantic Refining Company

Petroleum Products

June 24, 1955

To All Atlantic Dealers

No Forcing

The Roosevelt Small Business Committee recently completed its nationwide investgation of Supplier-Dealer relations.

As we understand it, two main points concern the Committee, namely (1) Short-Term Dealer Leases; and (2) considerable doubt that Suppliers' home office policy of not forcing Dealers to buy certain items was actually being followed by the Suppliers' field organizations.

Over two years ago—voluntarily, without pressure of any kind, and months before any other Supplier in the Industry—your Company adopted a Long-Term Dealer Lease Policy. Substantial expenditures of money, time and effort have been made to assure that the policy was fully understood. The same course of action has been followed with respect to our long-standing policy of not forcing Dealers to buy certain items.

If any of our people at any time insist on your buying any certain products or merchandise against what you feel

CONDITIONS

1 Acceptance of merchandise or service by use of this credit card will constitute agreement as to correctness of price and quantity.
2 All bills are due for payment upon presentation.
3 Credit may be restricted or cancelled and card repossessed at any time without prior notice.
4 If this card is lost or stolen, notify Atlantic in writing at once. The customer whose name appears on the face of this card assumes full responsibility for all purchases made by the use of this credit card prior to its surrender to the company.
5 This card will be honored for the purchase of the following at Atlantic stations displaying the Atlantic sign:
Atlantic Petroleum Products delivered into car to the capacity of the fuel tank or crankcase only.
Tires, tubes, recapping, batteries and automotive accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
Lubrication, washing, polishing, tire and battery service.
NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.

★ TIRES—BATTERIES—ACCESSORIES
(Minimum Sales $20.00)

With your Atlantic credit card, you may pay for your tires, batteries and accessories (minimum sales $20.00) one-third in 30, 60 and 90 days each. There is no charge for this service. Ask your Atlantic Dealer.

2850

Your Atlantic Credit Card will be honored at service stations displaying this sign.

ATLANTIC

Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio (Eastern), Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia.

It may also be honored for similar products and services by service stations and dealers of the following companies:

THE OHIO OIL COMPANY
Illinois, Indiana, Kentucky, Michigan, Ohio

SUPERTEST PETROLEUM CORPORATION, LTD.
in the Provinces of Ontario and Quebec in Canada.

ATLANTIC

EXPIRES DEC. 31, 1954

CREDIT CARD

ACCOUNT NUMBER

CX 219 A

2849

THE ATLANTIC REFINING COMPANY
INCORPORATED-1870

COMMISSION EXHIBIT NO. 219A-B. 3049

is to your best interest, I want you to call the matter directly to my attention.

All Atlantic Dealer Programs are based on our sincere belief that they will make your sales and profits grow through better service to the motoring public. We in Atlantic think it is our duty to continue to recommend to you those services and products which experience and scientific researeh have proven best for you and your customers.

Atlantic Dealer Programs are instituted for Your benefit—Yours to accept or reject.

Yours very truly,

J. O. Estlow.

2807 **COMMISSION EXHIBIT NO. 208.**

The Atlantic Refining Company

Progress through May 21, 1951

	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	473	192	128	35	180	281	202	1491
2. Total number of Atlantic dealers and distributors signed to date as direct dealers	16	1	26	5	9	19	6	82
3. Total number of supplying dealers	0	6	2	5	8	33	27	81
4. Lee Tires adjusted	240	8	45	4	72	79	32	480
5. Batteries adjusted to date	0	0	0	0	0	0	0	0
6. Introductory Display Packages Sold	408	1	130	33	85	173	125	957

2809 **COMMISSION EXHIBIT NO. 209.**

The Atlantic Refining Company

Progress through May 28, 1951

	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	517	302	136	29	180	281	202	1647
2. Total number of Atlantic Supplying Dealers signed direct	16	7	26	7	9	19	21	105
3. Total number of Goodyear dealers and stores acting as supply points	0	25	2	4	8	14	6	59
4. Lee Tires Adjusted	270	6	50	2	74	116	31	549
5. Batteries Adjusted to date	0	0	0	0	0	0	0	0
6. Introductory Display Packages sold.	427	1	131	33	85	225	125	1027

CONDITIONS

1. Acceptance of merchandise or service by use of this credit card will constitute agreement as to correctness of price and quantity.
2. All bills are due for payment upon presentation.
3. Credit may be restricted or cancelled and card repossessed at any time without prior notice.
4. If this card is lost or stolen, notify Atlantic in writing at once. The customer whose name appears on the face of this card assumes full responsibility for all purchases made by the use of this credit card prior to its surrender to the company.
5. This card will be honored for the purchase of the following at Atlantic stations displaying the Atlantic sign:
   Atlantic Petroleum Products delivered into car to the capacity of the fuel tank or crankcase only. Tires, tubes, recapping, batteries and automotive accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Lubrication, washing, polishing, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
6. Keep this card in your possession at all times. Do not risk loss of it in the glove compartment.

★ EXTENDED CREDIT TERMS ON TIRES, BATTERIES, ACCESSORIES

With your Atlantic credit card, you may pay for your tires, batteries and accessories (minimum sales $20.00) one third in 30, 60 and 90 days each. There is no charge for this service. Ask your Atlantic Dealer.

Your Atlantic Credit Card will be honored at service stations displaying this sign.

Connecticut · New Hampshire · Rhode Island
Delaware · New Jersey · South Carolina
Florida · New York · Vermont
Georgia · North Carolina · Virginia
Maryland · Ohio (Eastern) · West Virginia
Massachusetts · Pennsylvania

ATLANTIC

It may also be honored for similar products and services by service stations and dealers of the following companies:

THE OHIO OIL COMPANY

Illinois · Kentucky
Indiana · Michigan

2851

MARATHON

SUPERTEST PETROLEUM CORPORATION, LTD.
In the Provinces of Ontario and Quebec in Canada

ATLANTIC

EXPIRES DEC. 31, 1955

CREDIT CARD

ACCOUNT NUMBER

VOID

THE ATLANTIC REFINING COMPANY
INCORPORATED 1870

COMMISSION EXHIBIT NO. 220A-B. 3050

COMMISSION EXHIBIT NO. 210.

The Atlantic Refining Company

Progress Through August 20, 1951

	N. Y.	Phila.	X Newark	Buffalo	X Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	13	571	203	146	[37]	186	296	228	[1680]
2. Total number of Atlantic dealers and distributors signed direct and acting as supplying dealers	2	14	6	12	2	5	11	5	57
3. Total number of Atlantic dealers signed direct not acting as supplying dealers	0	2	1	21	3	20	9	2	58
4. Total number of Goodyear dealers and stores acting as supply points	0	0	17	18	16	13	33	26	123
5. Lee Tires Adjusted to date	0	465	93	103	[40]	[181]	170	92	[1144]
6. Batteries Adjusted to date	0	11	8	2	0	1	7	1	30
7. Introductory Display Packages Sold	13	440	7	154	34	101	230	125	1104

Commission Exhibit No. 210.

COMMISSION EXHIBIT NO. 211.

Atlantic Progress Report

Date October 29, 1951

Distribution:

S. J. Heideman, Atlantic
F. W. McConky, Jr., NE Div. Mgr., N. Y.
S. A. Gaylord, Mgr., Petroleum Sales, Akron
J. W. O'Neill, Div. Petrol., Rep., Phila.

	N. Y.	Phila.	(X) Newark	Buffalo	(X) Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	13	[637]	203	[155]	42	220	[326]	[253]	[1849]
2. Total number of Atlantic dealers and distributors signed direct and acting as supplying dealers	2	14	6	12	4	5	11	4	58
3. Total number of Atlantic dealers signed direct not acting as supplying dealers	0	2	1	21	1	20	9	3	57
4. Total number of Goodyear dealers and stores acting as supply points	0	0	17	18	16	13	[35]	[30]	[129]
5. Lee Tires adjusted to date	6	[590]	100	[139]	66	[223]	[247]	[137]	[1502]
6. Batteries adjusted to date	0	[31]	8	[14]	1	13	[55]	[10]	[132]
7. Introductory Display Packages Sold	13	442	7	154	34	101	[267]	134	[1152]

Figures in [ ] indicate change since report of last week.

CONDITIONS

1. Acceptance of merchandise or service by use of this credit card will constitute agreement as to correctness of price and quantity.
2. All bills are due for payment upon presentation.
3. Credit may be restricted or cancelled and card repossessed at any time without prior notice.
4. If this card is lost or stolen, notify Atlantic in writing at once. The customer whose name appears on the face of this card assumes full responsibility for all purchases made by the use of this credit card prior to its surrender to the company.
5. This card will be honored for the purchase of the following at Atlantic stations displaying the Atlantic sign:
   Atlantic Petroleum Products delivered into car to the capacity of the fuel tank or crankcase only. Tires, tubes, recapping, batteries and automotive accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Lubrication, washing, polishing, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
6. Keep this card in your possession at all times. Do not risk loss of it in the glove compartment.

★ EXTENDED CREDIT TERMS

No down payment . . . No carrying charge

With your Atlantic Credit Card, you may pay for your tires, batteries and accessories of $20.00 up to $50.00, one third in 30, 60 and 90 days each. On sales of $50.00 or more, you may pay one-sixth each month for 6 months.
Ask your Atlantic Dealer.

2854

Your Atlantic Credit Card will be honored at service stations displaying this sign.

ATLANTIC

Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio (Eastern), Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia

MARYLAND

THE OHIO OIL COMPANY
Illinois, Indiana, Kentucky, Michigan, Ohio

SUPERTEST PETROLEUM CORPORATION, LTD.
In the Provinces of Ontario and Quebec in Canada.

ATLANTIC CREDIT CARD

EXPIRES DEC. 31, 1956 ACCOUNT NUMBER

CX 22.1A

THE ATLANTIC REFINING COMPANY
INCORPORATED 1870

2853
2853

COMMISSION EXHIBIT NO. 221A-B. 3051

COMMISSION EXHIBIT NO. 212.

Atlantic Progress Report

Date December 24, 1951

Distribution:
S. J. Heideman, Atlantic
F. W. McConky, Jr., NE Div. Mgr., N. Y.
S. A. Gaylord, Mgr., Petroleum Sales, Akron
J. W. O'Neill, Div. Petrol, Rep., Phila.

	N. Y.	Phila.	(X) Newark	Buffalo	(X) Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	13	[638]	203	[157]	[44]	[224]	326	[260]	[1865]
2. Total number of Atlantic dealers and distributors signed direct and acting as supplying dealers	2	14	6	12	4	6	11	4	59
3. Total number of Atlantic dealers signed direct not acting as supplying dealers	0	2	1	21	1	19	9	3	56
4. Total number of Goodyear dealers and stores acting as supply points	0	0	17	18	16	13	34	30	128
5. Lee Tires adjusted to date	0	[648]	100	[159]	[73]	[254]	[260]	[165]	[1659]
6. Batteries adjusted to date	0	[89]	8	[29]	1	[23]	[69]	[25]	[194]
7. Introductory Display Packages Sold	13	442	7	155	34	101	[268]	134	[1154]

Commission Exhibit No. 212.

COMMISSION EXHIBIT NO. 215A-B. 3045

FEDERAL TRADE COMMISSION
DOCKET NO. 6186 COMMISSION EXHIBIT NO. 215A
IN THE MATTER OF Goodyear - Atlantic
DATE 6-16-67 WITNESS
ACE REPORTING CO., Official Reporter
By Ronald

ATLANTIC

LED- 85251

CREDIT CARD 1950
EXPIRES DEC. 31

& 215-A

VOID 2841

Subject to conditions on reverse side the above named customer is granted credit privileges of
THE ATLANTIC REFINING COMPANY

FEDERAL TRADE COMMISSION
DOCKET NO. 6186 COMMISSION EXHIBIT NO. 215B

215B

CONDITIONS

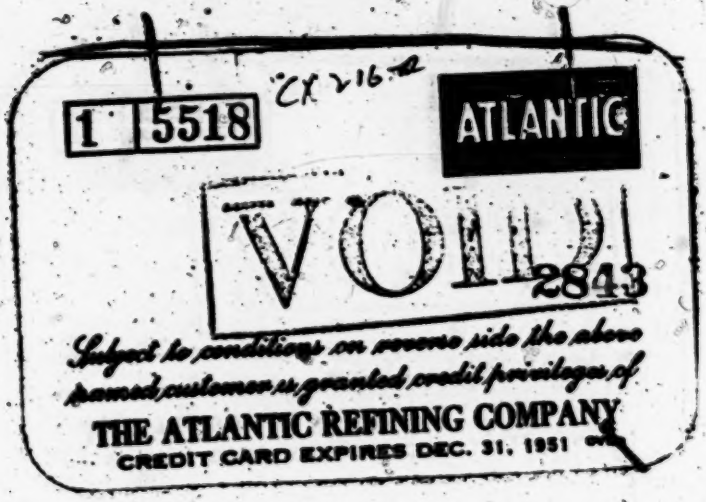
1. All purchases made upon presentation of this card shall be paid for by customer named on the face hereof.
2. Payment is due upon presentation of bill.
3. Acceptance of merchandise or service by holder of this credit card will constitute agreement as to correctness of price and quantity.
4. This card may be honored for purchase of the following at Service Stations displaying the sign, "Atlantic Credit Cards Honored Here":
   Atlantic Petroleum Products.
   Tires, tubes, batteries and accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Washing, lubrication, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
5. Credit may be cancelled or restricted at any time without notice.
6. If card is lost or stolen notify ATLANTIC in writing at once.

2842

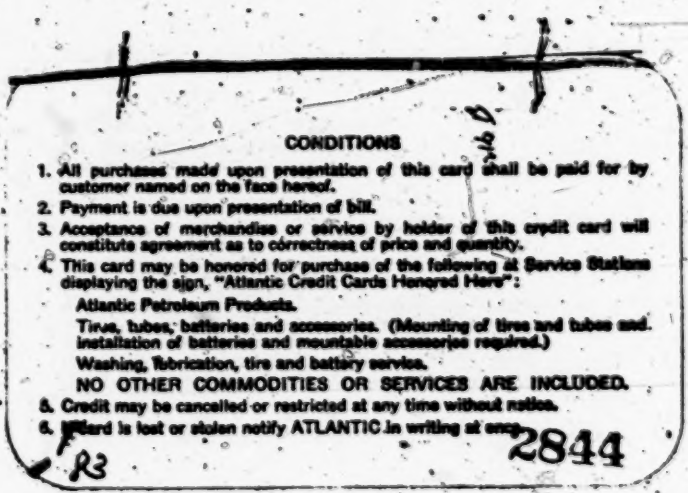
92

COMMISSION EXHIBIT NO. 216A-B. 3046

FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION RESPONDENT EXHIBIT NO. 216A
IN THE MATTER OF Goodyear - Atlantic
DATE 9-15-52 WITNESS
ACE REPORTING CO., Official Reporter
By



FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION RESPONDENT EXHIBIT NO. 216B



COMMISSION EXHIBIT NO. 217A-B. 3047

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 217A
IN THE MATTER OF Goodyear - Atlantic
DATE 9-4-57 WITNESS
ACE REPORTING CO., Official Reporter
By Mauck

ATLANTIC

ACCOUNT NUMBER
20 1604

CX 217A

VOID

2845

Subject to conditions on reverse side the above named customer is granted credit privileges of
THE ATLANTIC REFINING COMPANY
CREDIT CARD EXPIRES DEC. 31, 1952 even

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION RESPONDENT EXHIBIT NO. 217B

CONDITIONS

1. The customer whose name appears on the face of this card assumes full responsibility for all purchases made by the use of this credit card prior to its surrender to the company.
2. All bills are due for payment upon presentation.
3. Acceptance of merchandise or service by holder of this credit card will constitute agreement as to correctness of price and quantity.
4. This card may be honored for the purchase of the following at Atlantic stations authorized to honor Atlantic credit cards:
   Atlantic Petroleum Products.
   Tires, tubes, recapping, batteries and automotive accessories recommended by Atlantic. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Lubrication, washing, polishing, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
5. Credit may be restricted or cancelled and card repossessed at any time without prior notice.
6. If this card is lost or stolen, notify Atlantic in writing at once.

2846

CREDIT CARD GUIDE

VERIFY THIS CARD

ATLANTIC 1 LED 4 90000 CREDIT CARD EXPIRES DEC 31 1950

John J. Doe
Main St.,
Youngtown, Pa.

Subject to conditions on reverse side of the above named customer is permitted to purchase of
THE ATLANTIC REFINING COMPANY

ATLANTIC

Presentation of a currently valid Atlantic Credit Card is necessary for credit. Products sold on other identification are sold at your own risk.

WHAT YOU MAY SELL ON AN ATLANTIC CREDIT CARD

ATLANTIC PETROLEUM PRODUCTS

Atlantic Motor Oil— 10-Arc, White Flash—Tank Capacity; Crankcase Capacity; 12-qal. case goods

and all Atlantic Petroleum Products

SERVICE

Atlantic Lubrication, Tire & Battery Service, Washing and Polishing.

TIRES, BATTERIES & ACCESSORIES

NEW LEE TIRES & TUBES — Up to $50. Above $50, secure Credit Department approval. Tires must be mounted. Batteries must be installed. Accessories must be installed. Copy of Lee Tire Guaranty must be attached to invoice (B-439).

EXIDE BATTERIES

ACCESSORIES supplied by Atlantic.

ANTI-FREEZE—Vehicle Requirements

No other commodities or services to be included.

Such items as car repairs, radios, garage rent and parking charges, are not acceptable.

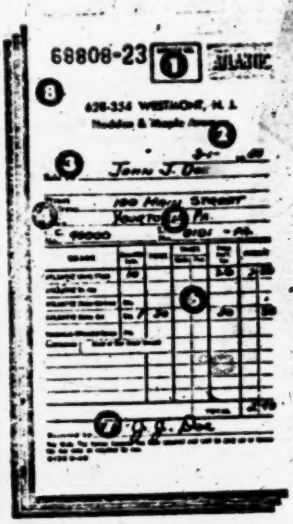
Send summary of Credit Card sales (Form B-268) to Atlantic weekly with an EXTRA one to reach company before the 25th of each month.

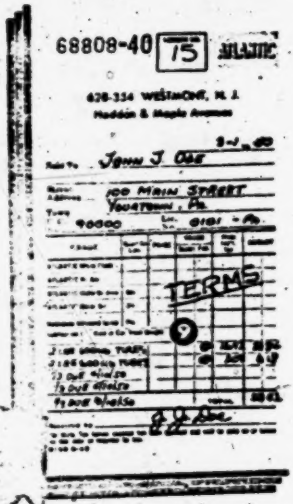
Sales made contrary to these instructions will be charged back to you.

1. Fill in ledger number.
2. Show date of sale.
3. Print name and address as shown on Credit Card.
4. Secure number from top of Credit Card.
5. Copy license number of vehicle and state.
6. Show products, quantity, price including tax and amount of sale.
7. Have customer sign.
8. Stamp dealer's station code number on four copies.

Check expiration date of Credit Card.

Four copies should be legible.





EXTENDED TERMS — Minimum sales — $15.00

These will help you make sales which would be lost if it were necessary to sell on regular terms.

Extended terms apply to new Lee tires & tubes, Exide batteries and accessories supplied by Atlantic.

Subject to instructions in above.

Prepare separate B-139

Maximum terms:
½ 10th 1st following mo.
½ 10th 2nd following mo.
½ 10th 3rd following mo.

Mark "TERMS" clearly on the ledger when the regular terms will apply.

Attach copy of Lee Tire Guaranty.

2555

COMMISSION EXHIBIT NO. 223. 3053

CREDIT CARD GUIDE

VERIFY THIS CARD

1 66 7471 ATLANTIC

John J. Doe 3
300 Main Street
Tourtown, Pa.

Subject to conditions on reverse side hereof and customer is granted credit privileges of
THE ATLANTIC REFINING COMPANY

Presentation of a currently valid Atlantic Credit Card is necessary for credit. Products sold on other identification are sold at your own risk.

WHAT YOU MAY SELL ON AN ATLANTIC CREDIT CARD

ATLANTIC PETROLEUM PRODUCTS

Hi-Arc, White Flash—Tank Capacity
Atlantic Motor Oils— Crankcase Capacity
12-qal. case goods
and other Atlantic Petroleum Products

SERVICE

Atlantic Lubrication, Tire & Battery Service, Washing and Polishing.

TIRES, BATTERIES AND AUTOMOTIVE ACCESSORIES

TIRES & TUBES —Up to $100. Above $100, secure Credit Department approval. Tires must be mounted. Batteries must be installed. Accessories must be installed.
RECAPPING
BATTERIES
AUTOMOTIVE ACCESSORIES recommended by Atlantic.

ANTI-FREEZE—Vehicle Requirements.

No other commodities or services to be included. Such items as car repairs, radios, heaters, garage rent, parking charges, etc. are not acceptable.

Sales made contrary to these instructions will be charged back to you.

1. Fill in credit card number
2. Show date of sale.
3. Print name and address as shown on Credit Card.
4. Show products, quantity, price, and amount of sale.
5. Copy license number of vehicle and state. Must be license number of car receiving merchandise
6. Have customer sign.
7. If customer requests, write tax rates in blanks at bottom of ticket.
8. Four copies should be legible

NOTICE

4992-30 ATLANTIC
638-334 WESTMONT, N. J.
Haddon & Maple Avenues

1 66 7471 5 PA 0101
3 John J. Doe
100 Main St.
Yourtown, Pa.
4 99 Doe

4992-30 ATLANTIC
638-334 WESTMONT, N. J.
Haddon & Maple Avenues

1 66 7471 PA 0101
3 John J. Doe
100 Main St.
Yourtown, Pa.
4 99 Doe
TERMS
7

7 EXTENDED TERMS—Minimum sales—$20.00

These will help you make sales which would be lost if it were necessary to sell on regular terms.

Extended terms apply to tires & tubes, batteries and automotive accessories recommended by Atlantic.

Subject to instructions above.

Purchase requires $139

Maximum terms:
1/3 bills 3rd following mth.
1/3 bills 2nd following mth.
1/3 bills 3rd following mth.

Mark "TERMS" clearly on invoice otherwise regular terms will apply.

2857

1888-748-1-61

COMMISSION EXHIBIT NO. 226A. 3054

GOODYEAR

The Goodyear Tire & Rubber Company, Inc.

1144 BROAD ST.
NEWARK 3, N. J.

July 7, 1950

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Attention: Mr Leon Serven
Assistant Comptroller

Gentlemen:

A brief explanation is deemed necessary in connection with the attached G-1204.

Because the sales program did not get fully under way until the middle of June, and the necessary details in setting-up supply points, establishing credit limits, etc, plus the fact that our District books close on the 20th, sales credited for the month of June represent only a small fraction of the total actually made to Atlantic accounts.

These sales will, however, be picked up in due and reported, and we are confident that a satisfactory volume of business will be shown.

Very truly yours,

[illegible] THE GOODYEAR TIRE & RUBBER COMPANY, INC.

[signature]
District Operating Manager

Paul Cobleigh Jr

FEDERAL TRADE COMMISSION
DOCKET NO. 4486 EXHIBIT NO. 226A
IN THE MATTER OF Goodyear, et al
DATE 4/4/57 WITNESS
FAIR REPORTING CO., Official Reporters
By Merrick

2871

COMMISSION EXHIBIT NO. 226B. 3055

[redacted]

JUNE [redacted], 1950

	Volume	Commission Rate	Commission Amount
COMMISSION			
New Tires & Tubes	268	10%	[redacted]30
Batteries (Excl. Resolute) & Cables	0	10	
Resolute Batteries	0	7½	0
Car & Home Supplies, Etc.	69	10	6.90
Total	271		$ [redacted]37.20

[redacted]

Issued July 14, 1950

FEDERAL TRADE COMMISSION
DOCKET NO. 6131 EXHIBIT NO. 226B

THE GOODYEAR TIRE & RUBBER COMPANY INC. DISCOUNT 54822

THE ACCOMPANYING CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS STATED HEREON

ABOVE AMOUNT COVERS COMMISSION OF PURCHASES OF GOODYEAR PRODUCTS BY YOUR DEALERS PERIOD JUNE 12, 1950 THROUGH JUNE 20, 1950. 27.10

PLEASE DETACH THIS STATEMENT BEFORE DEPOSITING

FEDERAL TRADE COMMISSION
DOCKET NO. 5471 COMMISSION EXHIBIT NO. 226-C
2873

COMMISSION EXHIBIT NO. 226-C 3056

Form G-49

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company: The Atlantic Refining Co
Oil Company Division or District Office: Newark Dist
Goodyear Field Repr. Name: _____ Terr. #: _____

Goodyear District: Newark
Report of Purchases for Period of: January 1 to _____ 1942
Oil Co. Sales Area: Newark

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS Type of Acct.	ACCT. CLASS Approved Acct. No.	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: Tire Tube and Tread	Camelback and Tread Rubber	Batteries	G. & R. Accessories and Other Sales	[1]	YEAR TO DATE: Tire Tube and Tread	Camelback and Tread Rubber	Batteries	G. & R. Accessories and Other Sales	
				A		208			63		208			63	

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY

Oil Company Division or District Office Newark, N. J.

Goodyear Field Repr. Name _____ Terr. _____

Goodyear District _____

Report of Purchases for Period of _____ to _____

Oil Co. Sales Area _____

NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT CLASS: Tire Acct	ACCT CLASS: Approved C & H Jobber	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	CURRENT MONTH: Goodyear Batteries and Cells	CURRENT MONTH: Dealer's Batteries	CURRENT MONTH: C & H Accessories	YEAR TO DATE: New Tires and Tubes	YEAR TO DATE: Goodyear Batteries and Cells	YEAR TO DATE: Dealer's Batteries	YEAR TO DATE: C & H Accessories
Wm. A. Schulz		So.End Spring St. Westfield, N.J.										
Clarence M. Van Deursen		Hwy. 29 Mountainside										
Ed. Bucker		Main & Linent Richfield Park, N.J.										
Chas. C. Smith		155 Front St. Nemarly, N.J.										
James Hendrie		Jefferson Ave. Westwood, N.J.										
Ed. E. Flinn		Blvd.& Washington Pl. Hasbrouck Hts, N.J.										
Wallace Lenahan		12th & Grove St. Jersey City, N.J.										
C. McCaig		14th & Erie Jersey City, N.J.										
	S. Whitcover Atlantic Service	57 & Park Ave. New York, N.J.										
James Millard	Jim's Atlantic Service Station	Hudson Blvd. & Leonard St. Jersey City, N.J.										
P. Anderson		Main & Bond Sts. Chatham, N.J.										
Jos. T. Barbato		Main & Alexander Madison, N.J.										
J.C.Cole		Rt.6. Little Hill, N.J.										
Leonard Leone		Blackwell & Mercer Dover, N.J.										
J. Seale		Market & McCullough Morristown, N.J.										

* This column provided for Oil Company use in case they desire further sales break-down.

	(Tire Acct)	(Approved C & H Jobber)
APPROVED GOODYEAR C. & H. JOBBER		(X)
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR	J	J
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)	D	D

FEDERAL TRADE COMMISSION
FILED MAY 19 1941

COMMISSION EXHIBIT NO. 226Z.

3058

2875

C-1256 (2-52)

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District 71

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of 1 to 1 195-

Goodyear Field Repr. Name — Terr. # — Oil Co. Sales Area

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS: Type of Acct.	ACCT. CLASS: Status	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	CURRENT MONTH: Goodyear Batteries and Cables	CURRENT MONTH: Recoilate Batteries	CURRENT MONTH: C. & H. Accessories and Other Misc.	YEAR TO DATE: New Tires and Tubes	YEAR TO DATE: Goodyear Batteries and Cables	YEAR TO DATE: Recoilate Batteries	YEAR TO DATE: C. & H. Accessories and Other Misc.
	Mike Dombrowski		Central & Passaic Ave E. Newark, N.J.										
	E. L. Bryant		Main & High Orange, N.J.										
	Anthony Galasso		Bloomfield & Roseville Newark, N.J.										
	W. LaPointe		Halstead & McKinley E. Orange, N.J.										
	J.H.Plumstead & E.L.Overton		211 Central Orange, N.J.										
	Art. Keeney		NJPark & Springdale E.Orange, N.J.										
	R. W. Tyler		Central & Steuben E.Orange, N.J.										
	Leo Elvin		16th & Straight St. Paterson, N.J.										
	John Mitchell		5th & River Paterson, N.J.										
	Bartholemew Bros.		Albany & Peace New Brunswick, N.J.	X		139			12	189			1
	David Eckert		Rt. 26 So. Brunswick, N.J.										
	S[illegible]ckiewicz		Rt.25 & Amboy Ave. Metuchen, N.J.										
	J. [illegible]ozai	Parkway Service Sta.	Woodbridge & Carney Highland Park, N.J.										
	Chuseler & Carranza		Hwy. 25 Woodbridge, N.J.										
		J & J Service Sta.	Katzner & Half Acre Jamesburg			47				111			
	Ed. Schubert		Broad & Main Matawan, N.J.										
		APPROVED GOODYEAR C. & H. JOBBER			CHJ				X X X				X X X
		OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR		J	J				X X X				X X X
		OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)		D	D	12			X X X				X X X

* This column provided for Oil Company use in case they desire further sales breakdown.

COMMISSION EXHIBIT NO. 226F. 3059

2876

C Line G-20

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of 12 to 195

Goodyear Field Repr. Name — Terr. # — Oil Co. Sales Area

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	Type of Acct.	Approved Acct. Jobber Code	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	Goodyear Batteries and Cables	Penolite Batteries	C. & H. Accessories and Other Mdse.	YEAR TO DATE: New Tires and Tubes	Goodyear Batteries and Cables	Penolite Batteries	C. & H. Accessories and Other Mdse.
	Richard Smith		Oakland Rd., Cerbune Dr. & Hamburg Pike Pompton Falls, N.J.										
	S. Tracy		Main & Broad Sts. Butler, N.J.										
	Ed. Denman		Wright & McCarter Hwy Newark, N.J.										
	Robert Spurr		Ridgewood & Millburn Millburn, N.J.										
	J. Tomaskieski		River & Cherry Newark, N.J.										
	Jos. A. Nash		254 South St. Newark, N.J.										
	J. Dukin		384 Morris Ave. Springfield, N.J.										
	Robert Burns		W.Main & Elizabeth Railway, N.J.										
	John Cural		Spring & Garden St. Elizabeth, N.J.										
	Thomas DeFeo		610 Spring St., Elizabeth, N.J.										
		Laidlaw Auto Repairs	169 Laidlaw Ave. Jersey City, N.J.										
	Paul Meronnte	Paul's Auto Service	318 Sip Ave. Jersey City, N.J.										
	H.J.Heinel		Main & Lain Sts. Toms River, N.J.										
	Risk Bros.		Rt. 4 & Rt. 9 Toms River, N.J.										

* This column provided for Oil Company use in case they desire further sales break-down.

	Type of Acct.	Approved Acct. Jobber Code								
APPROVED GOODYEAR C. & H. JOBBER		CHJ				X X X				X X X
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR	J	J				X X X				X X X
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)	D	D				X X X				X X X

2877

FEDERAL TRADE COMMISSION
DOCKET NO. 6126
FILED

COMMISSION EXHIBIT NO. 226G. 3060

G-128 (2-52)

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of ____ to ____ 195__

Goodyear Field Repr. Name ____ Terr. # ____ — Oil Co. Sales Area ____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS. (Type of Acct.)	ACCT. CLASS. (Approved Jobber Acct. Number)	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	CURRENT MONTH: Goodyear Batteries and Cables	CURRENT MONTH: Recobate Batteries	CURRENT MONTH: C. & H. Accessories and Other Misc.	YEAR TO DATE: New Tires and Tubes	YEAR TO DATE: Goodyear Batteries and Cables	YEAR TO DATE: Recobate Batteries	YEAR TO DATE: C. & H. Accessories and Other Misc.	
	Gerard Woortman		359 Lafayette St. Hawthorne, N. J.											
	Lawrence Yetter		RD #1 Box #3 Newton, N. J.			33.1								
				CHJ					X X X				X X X	
				J	J				X X X				X X X	
				D	D				X X X				X X X	

* This column provided for Oil Company use in case they desire further sales break-down.

APPROVED GOODYEAR C. & H. JOBBER
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)

FEDERAL TRADE COMMISSION
DOCKET NO. 6476 EXHIBIT NO. 3061-H

COMMISSION EXHIBIT NO. 226H. 3061

2878

COMMISSION EXHIBIT NO. 227A.

THE ATLANTIC REFINING COMPANY
PETROLEUM PRODUCTS
260 SOUTH BROAD STREET
PHILADELPHIA 1, PA.
August 15, 1950

ELLIOTT
CONTROLLER

C D:MCE

Good Year Tire & Rubber Co.
1144 East Market St.
Akron 16, Ohio

Gentlemen:

We thank you for your check [illegible] in the amount of $1,334.40 covering commission on purchases of Good Year products by our dealers for the period from June 21 through July 20.

We note however that while the 7 1/2% commission due on sales of Ranchero batteries was not included in your remittance. Regulate but my sales were $20 wide' work/[illegible] up to a commission of $1.50.

[illegible] find this to be in error, please include the $1.50 commission with your next remittance.

Very truly yours,

Assistant Controller

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 227A
IN THE MATTER OF Goodyear - Atlantic
DATE 6/4/57 WITNESS
ACE REPORTING CO., Official Reporters
By Marcelle

FEDERAL TRADE COMMISSION

DOCKET NO. 6486 COMMISSION EXHIBIT NO. 227B

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

CASH DISCOUNT

THE ACCOMPANYING CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS STATED HEREIN

..83698

ABOVE AMOUNT COVERS COMMISSION OF PURCHASES OF GOODYEAR PRODUCTS BY YOUR DEALERS. PERIOD JUNE 21, 1950 THROUGH JULY 20, 1950.

1334.40

G 703 (7-49) PLEASE DETACH THIS STATEMENT BEFORE DEPOSITING

2830

COMMISSION EXHIBIT NO. 227B.

3063

G-1204 (5-49)

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company The Atlantic Refining Co

Company Division or District Office [illegible]

Goodyear Field Repr. Name _____ Terr. # _____

Goodyear District [illegible]

Report of Purchases for Period of [illegible] 19[illegible] to [illegible] 19[illegible]

Oil Co. Sales Area [illegible]

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS Type of Oil Co. Acct.	ACCT. CLASS Approved Goodyear C. & H. Jobber Co.	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	Recap and Used Tires	Batteries	C. & H. Accessories and Other Miscellaneous Items		YEAR TO DATE: New Tires and Tubes	Recap and Used Tires	Batteries	C. & H. Accessories and Other Miscellaneous Items	
				A		1213		515	715		1234		508	718	
					CBJ					X X X					X X X
				J	J					X X X					X X X
				D	D	1213		515	715	X X X	1234		508	718	X X X

(Line 20)

* This column provided for Oil Company use in case they desire further sales break-down.

APPROVED GOODYEAR C. & H. JOBBER
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)

FEDERAL TRADE COMMISSION
DOCKET NO. 5318
EXHIBIT NO. 227-C

COMMISSION EXHIBIT NO. 227-C.

3064

2881

G-1256 (2-52)

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY

Oil Company Division or District Office Newark, N. J.

Goodyear Field Repr. Name _____ Terr. # _____

Goodyear District Newark, N J

Report of Purchases for Period of January 1 to January 31, 1952

Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	APPL. CLASS Type of Acct.	APPL. CLASS Approved for Listing	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH New Tires and Tubes	Goodyear Batteries and Cables	Recruits Batteries	C. & R. Accessories and Other Misc.		YEAR TO DATE New Tires and Tubes	Goodyear Batteries and Cables	Recruits Batteries	C. & R. Accessories and Other Misc.	
	A. Pressing		58 Godwin Ave. Midland Park, N. J.												
	George Price		W. Union Ave & Highland Round Brook, N. J.												
		Raymond Motors	St. Georges Ave. Linden, N. J.												
		Ray's Auto Ser.	539 South Ave. Fanwood, N. J.												
	Lewis M. Richards		81 Vanderveer Ave. Somerville, N. J.			78					78				
	Risk Bros.		Rt. #4 & #9 Toms River, N. J.			10					10				
	John K. Roessner		Rt. #29 Union, N. J.			158			18		158			18	
		Rudzik's Atl. Ser.	Canal Rd. S. Bound Brook, N. J.												
		Sander's Super Ser.	886 Grove Ave. Verona, N. J.			22					22				
	James E. Sayne		Main St. & Allen Ave. Allenhurst, N. J.												
	Ed Schubert		Broad & Main Sts. Matawan, N. J.												
	Wm. E. Schulz		S. End Spring St. Westfield, N. J.												
	J. Seals		Market & McCullough Morristown, N. J.												
	Matthew H. Skove		1205 W. Front St. Plainfield, N. J.			23			40		23			40	
	Chas. C. Smith		156 Front St. Tenafly, N. J.			271					271				
	Richard Smith		Oakland, Cerhune & Hamburg Pike, Pompton			669					669				
			APPROVED GOODYEAR C. & R. JOBBER	AT	CRJ					X X X					X X X
			OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR	J	J					X X X					X X X
			OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)	D	D	1234			58	X X X	1234			58	X X X

* This column provided for Oil Company use in case they desire further sales breakdown.

FEDERAL TRADE COMMISSION FILED MAR 6 1952

COMMISSION EXHIBIT NO. 227-D. 3065

2882

G-1204 G-1205

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY

Goodyear District Akron, O.

Company Division or District Office Newark, N. J.

Report of Purchases for Period of July 31st to Sept. 1, 195

Goodyear Field Repr. Name Terr. #

Oil Co. Sales Area

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	OCCT. CLASS		AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR)									
				Type of Oil Co. Acct.	Approved Jobber Acct. No.	CURRENT MONTH					YEAR TO DATE				
						Tires and Tubes	Goodyear Batteries and Cables	Exclusive Batteries	C. & E. Accessories and Other Miss.		Tires and Tubes	Goodyear Batteries and Cables	Exclusive Batteries	C. & E. Accessories and Other Miss.	
	Art Keeney		N. Park & Springdale E. Orange, N. J.			674	119	[illegible]			674	119			
	R. Kirchner	K & K Atl. Ser.	Clifton & Colfax Ave. Clifton, N. J.												
		Knights Atl. Ser.	455 Franklin Ave. Nutley, N. J.			13					13				
		Laibow Bros.	W. Broadway & River St Paterson, N. J.			32					32				
		Laidlaw Auto Repair	169 Laidlaw Ave. Jersey City, N. J.												
	Fred Lanting		14 Haledon Ave. Paterson, N. J.			43					43				
	W. LaPointe		Hallstead & McKinley E. Orange, N. J.						16					16	
	D. Lee	Glen wood Atl. Ser.	Glenwood & Lackawanna Bloomfield, N. J.			6	14		14		6	14		14	
	Wallace Lenahan		18th & Grove Sts. Jersey City, N. J.												
	Peter Lepick		Rt. #36 Keansburg, N. J.												
		Lincoln Garden Garage	298 Jersey Ave. New Brunswick, N. J.												
	S. Lipowitz		Chancellor & Mt. Vernon Irvington, N. J.						12					12	
		Maple Crest Auto Con.	South Ave & Crossway Westfield, N. J.												
	S. Mackiewich		Rt. #257 Amboy Ave. Metuchen, N. J.												
	J. Marino	Joe's Atl. Ser.	35th & Market Paterson, N. J.												
	Ray McIlwaine	Mack's Atl. Sta.	Rt. # 9 & # 4 Freehold, N. J.												
			APPROVED GOODYEAR C. & E. JOBBER		CEJ					XXX					XXX
			OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR	J	J					XXX					XXX
			OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)	D	D	768	133		42	XXX	768	133		42	XXX

§ This column provided for Oil Company use in case they desire further sales break-down.

COMMISSION EXHIBIT NO. 227E. 3066

FEDERAL TRADE COMMISSION EXHIBIT NO. 227 E

2883

G-1201 (2-52)

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District Newark

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of [illegible] to [illegible] 195

Goodyear Field Repr. Name — Terr. # — Oil Co. Sales Area

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS: Tire Oil Co. Acct.	ACCT. CLASS: Approved Goodyear C. & R. Jobber	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: Tires and Tubes	CURRENT MONTH: Goodyear Batteries and Cables	CURRENT MONTH: Recharge Batteries	CURRENT MONTH: C. & R. Accessories and Other Items	CURRENT MONTH:	YEAR TO DATE: Tires and Tubes	YEAR TO DATE: Goodyear Batteries and Cables	YEAR TO DATE: Recharge Batteries	YEAR TO DATE: C. & R. Accessories and Other Items	YEAR TO DATE:	
	Arlie Bussard		120 Hamilton Ave. Seaside Heights, N. J.			85					85					
	J. H. Canegallo		1000 Communipaw Ave. Jersey City, N. J.													
		Chatham Auto Repair	Passaic Ave & Central Chatham, N. J.			10					10					
	Chussler & Carranza		Hwy. 25 Woodbridge, N. J.			88					88					
	A. B. Clayton		Laurelton Traffic Cir. Laurelton, N. J.			9					9					
	Clifford Carpenter		Kain & Valentine Hackettstown, N. J.													
	J. C. Cole		Rt. 6, Limehill, N. J.			308					308					
	Wm. F. Cooper		Rt. 6, Dover, N. J.													
	A. Cordeiro		160 Main St. Millburn, N. J.			10	11		9		10	11		9		
	C. Cotanzero	Ridgewood Atl. Ser.	133 Franklin Ridgewood, N. J.													
	M. DeFarrari	Dee's Atl. Ser.	263 Park Ave. Rutherford, N. J.													
	Thomas DeFeo		610 Spring St. Elizabeth, N. J.													
	Philip Dellapietro		Shrewsbury & Herbert Red Bank, N. J.													
	Ed Denman		Wright & McCarter Hy Newark, N. J.						25					25		
		DePope's Atl. Ser.	33rd & Mclean Blvd. Paterson, N. J.			44					44					
			APPROVED GOODYEAR C. & R. JOBBER		CRJ					X X X					X X X	
			OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR	J	J					X X X					X X X	
			OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)	D	D	554	11		34	X X X	554	11		34	X X X	

2 This column provided for Oil Company use in case they desire further sales break-down.

FEDERAL TRADE COMMISSION EXHIBIT NO. 227-F

COMMISSION EXHIBIT NO. 227-F 30662

2834

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company: The Atlantic Refining Company — Goodyear District: Newark 41 N. J.

Oil Company Division or District Office: Newark, N. J. — Report of Purchases for Period of: June 21 to July 20 1950

Goodyear Field Repr. Name: _____ Terr. #: _____ — Oil Co. Sales Area: _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) — CURRENT MONTH					YEAR TO DATE				
					New Tires and Tubes	Goodyear Retreads and Cables	Recolute Retreads	C. & M. Accessories and Other Merch.		New Tires and Tubes	Goodyear Retreads and Cables	Recolute Retreads	C. & M. Accessories and Other Merch.	
	G. McKaig		14th & Erie Jersey City, N. J.			29		16			29		16	
	Paul Mercante	Paul's Ser. Sta.	316 Sip Ave. Jersey City, N. J.											
	James Millard	Jim's Atl. Ser. Sta.	Hudson Blvd. & Leonard Jersey City, N. J.		381					381				
	John Mitchell		5th & River Sts. Paterson, N. J.											
		Mitchell Atl. Ser.	108 Union Ave. Belleville, N. J.											
	J. Morgni	Parkway Ser. Sta.	Woodbridge & Carsey Highland Park, N. J.											
		Mulberry Garage	308 Mulberry St. Newark, N. J.											
	M. B. Murray Co.		Main Street Madison, N. J.											
	Robert A. Nash		114 East 2nd St. Plainfield, N. J.											
		North Broad Auto Sale	St. George Ave. Linden, N. J.											
		Oak Tree Garage	Pleasant Ave. Caldwell Twp., N. J.											
	A. P. Parasugo		400 Bloomfield Ave. Caldwell, N. J.					26					26	
	G. Pearce		W. Broad & Hollywood Hillside, N. J.		65	28		19		65	28		19	
	Melvin Perrine		123-39 E. 5th St. Plainfield, N. J.		75					75				
	Ploski & Falandy's		Stuyvesant & Luisa St. Union, N. J.											
	J. H. Plumstead & E. Overton		211 Central Orange, N. J.		92			83		92			83	
				CBJ					X X X					X X X
			APPROVED GOODYEAR C. & M. JOBBER	J					X X X					X X X
			OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR	J					X X X					X X X
			OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)	D	1293	57		144	X X X	1293	57		144	X X X

* This column provided for Oil Company use in case they desire further sales breakdown.

FEDERAL TRADE COMMISSION FILED JUL 28 1950

COMMISSION EXHIBIT NO. 2276

3068

2885

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY

Oil Company Division or District Office Newark, N. J.

Goodyear Field Repr. Name _____ Terr. # _____

Goodyear District Philadelphia, Pa.

Report of Purchases for Period of June 21st to July 20th 1940

Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS		AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH					YEAR TO DATE					
				Tires & Tubes	Accessories & Other Items	New Tires and Tubes	Goodyear Batteries and Cables	Recondo Batteries	G. & E. Accessories and Other Items		New Tires and Tubes	Goodyear Batteries and Cables	Recondo Batteries	G. & E. Accessories and Other Items		
			Valley Rd. Fl													
		Springdale Ser. Sta.	Bound Brook, N. J.													
	Robert Smith		Ridgewood & Millburn Millburn, N. J.			186	110				186	110				
		Stabile's Atl. S. S.	1218 E. Main St. Somerville, N. J.			476	14				476	14				
		Star Service Station	Oak Street Bridgewater Twsp. N. J.													
	Stevens & Smith		Lafayette & Englewood Englewood, N. J.			17					17					
		Superior Auto Service	121 Sanford St. E. Orange, N. J.													
	J. Tanaskieski		River & Cherry Newark, N. J.						20					20		
		Tom's Auto Repair	10 Frelinghuysen Ave. Newark, N. J.													
	S. Tracy		Main & Brook Sts. Butler, N. J.			25					25					
	Turro & Culino		105 State St. Hackensack, N. J.			405					405					
	R. W. Tyler		Central & Steuben E. Orange, N. J.													
	L. Ulmer	Lew's Atl. Ser. Sta.	819 Bound Brook Rd. Dunellen, N. J.													
	Clarence M. VanDeursen		Hwy. #29 Mountainside, N. J.													
	Walter M. Wasewski		800 North Ave. Cranford, N. J.			159	86		21		159	86		21		
	Joseph A. Nash		254 South St. Newark, N. J.													
	S. Witcover		57 & Park Ave. N. New York, N. J.			36					36					
		APPROVED GOODYEAR G. & E. JOBBER			CBJ					XXX					XXX	
		OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR		J	J					XXX					XXX	
		OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)		D	D	1364	210		41	XXX	1364	210		41	XXX	

* This column provided for Oil Company use in case they desire further sales break-down.

2886

FEDERAL TRADE COMMISSION EXHIBIT NO. 227H.

3069

...F PURCHASES FROM GOODYEAR BY OIL COMPA... ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Gdc... District ...

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of June 5th to July 1st 1952

Goodyear Field Repr. Name ... Terr. # ... — Oil Co. Sales Area ...

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	APPL. CLASS Type of Acct.	APPL. CLASS Approved as Jobber	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH New Tires and Tubes	CURRENT MONTH Goodyear Batteries and Cables	CURRENT MONTH Recaps Retreads	CURRENT MONTH C. & M. Accessories and Other Misc.	CURRENT MONTH *	YEAR TO DATE New Tires and Tubes	YEAR TO DATE Goodyear Batteries and Cables	YEAR TO DATE Recaps Retreads	YEAR TO DATE C. & M. Accessories and Other Misc.	YEAR TO DATE *
	D. Aiello	Route 29, Hillside,	N. J.						4					4	
	F. Anderson		Main & Bond St. Chatham, N. J.			35					35				
	F. Autenreith		Morris & Salem Sts. Union, N. J.			13	11		35		13	11		35	
		B & J Service Center	Springfield Ave. Maplewood, N. J.												
	Jos. T. Barbato		Main & Alexander Madison, N. J.			2			28					28	
	Harold Barney		166 Union Blvd. Totowa Boro, N. J.			15					15				
	Bartholomew Bros.		Albany & Peace New Brunswick, N. J.								159			63	
	Bf Baumeister	Joe's Atl. Ser. Sta.	Hall & Passaic St. Passaic, N. J.												
		Benny's Atl. Ser.	River & Belmont N. Arlington, N. J.												
		Bevilaqua Garage	181 McBride Ave. Paterson, N. J.												
		Borick Ser. Sta.	Hwy. 29, Rt. #4 Somerville, N. J.												
	Jos. J. Boruch	Sunset Atl. Truck Terminal	Hwy. #1 Green Brook Twp., N. J.												
		Bound Brook Chevrolet Co.	24 W. Main St. Bound Brook, N. J.												
	E. L. Bryant		Main & High Orange, N. J.						3					3	
	Robert Burns		N. Main & Elizabeth Rahway, N. J.						30					30	
		APPROVED GOODYEAR C. & M. JOBBER			CMJ					X X X					X X X
		OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR		I	I					X X X					X X X
		OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)		D	D	63	11		100	X X X	222	11		163	X X X

* This column provided for Oil Company use in case they desire further sales breakdown.

FEDERAL TRADE COMMISSION
FILED
JUL 14 1952
2887

COMMISSION EXHIBIT NO. 2271. 3020

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District Newark, N. J.

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of June 6 to July 5, 1941

Goodyear Field Repr. Name — Terr. # — Oil Co. Sales Area

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCTS. Jobber	ACCTS. Dealer	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: Tires and Tubes	CURRENT MONTH: Sundries and Cables	CURRENT MONTH: Recaps	CURRENT MONTH: G.A.R. Accessories and Other Misc.	YEAR TO DATE: Tires and Tubes	YEAR TO DATE: Sundries and Cables	YEAR TO DATE: Recaps	YEAR TO DATE: G.A.R. Accessories and Other Misc.	
		Gaskil Auto Supply	Rt. 40 & Cooper Ave. Lauralton, N. J.			1615	21		26	1615	21		26	
	John H. Guimer		Campbell Junction Belford, N. J.											
	Wm. Grossman	Willie's Ser. Center	118 Water St. Paterson, N. J.											
	John Gural		Spring & Garden Sts. Elizabeth, N. J.			37	26		38	37	26		38	
	H. J. Heinel		Main & Lois Sts. Toms River, N. J.						3				3	
	James Hendrie		Jefferson Ave. West wood, N. J.			12	0			12				
	H. J. Herter		201 Rock Rd. Glen Rock, N. J.			68				68				
	E. Hollander	Ed's Atl. Ser.	Rt. 29, Roosevelt Ave N. Plainfield, N. J.											
		Hopla Motors Inc.	390 Broad St. Newark, N. J.											
	Ippr. & Romano	Deluxe Ser. Sta.	Rt. 29? Gilford Park, N. J.											
		J & J Ser. Sta.	Kinkar & Mill Lane Jamesburg, N. J.			237			212	288			212	
	Joseph Jablowski		200 River St. Paterson, N. J.											
		Jack's Garage	731 Garden St. Hoboken, N. J.											
	K. Jensen		Jackson & Gordon [illegible]											
	John B. Jurka		[illegible]			11								
	[illegible]		[illegible]											
				1	1									
				0		11				11				

FEDERAL TRADE COMMISSION EXHIBIT No. 2274

2888

COMMISSION EXHIBIT NO. 2271 3071

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY

Oil Company Division or District Office Newark, N. J.

Goodyear Field Repr. Name _____ Terr. # _____

Goodyear District _____

Report of Purchases for Period of _____ 19__ 195_

Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS: Type of Acct. (See Key Below)	ACCT. CLASS: Approved Jobber or Distributor	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) — CURRENT MONTH: Tires and Tubes	CURRENT MONTH: Goodyear Batteries and Cables	CURRENT MONTH: Exchange Batteries	CURRENT MONTH: C. & H. Accessories and Other Misc.		YEAR TO DATE: Tires and Tubes	YEAR TO DATE: Goodyear Batteries and Cables	YEAR TO DATE: Exchange Batteries	YEAR TO DATE: C. & H. Accessories and Other Misc.		
	Mike Dombrowski		Central & Passaic Ave. E. Newark, N. J.			210					210					
	J. Dukin		384 Morris Ave. Springfield, N. J.			45					45					
	David Eckert		Rt. #35 S. Brunswick, N. J.													
	Leo Elvin	Economy Oil & Supply	Freehold - Lakewood Rd. Freehold, N. J. 16th & Straight St. Paterson, N. J.			804	39				804	39				
	Ed Ecker	Enock's Atl. Ser. Sta.	S. Main St. Manville, N. J. Main & Winent Highfield Park, N. J.			383					383					
	Otto Fentzloff	Farley Service Otto's Garage	504 Valley Rd. Upper Montclair, N. J. 210 Ridge St. Newark, N. J.													
	Ed E. Flinn		Blvd. & Washington Pl. Hasbrouck Hts. N. J.			19					19					
	E. C. Fliteroft	Four Corners Ser. Sta.	Central Ave. Seaside Park, N. J. Boonton, N. J.			174					174					
	George L. Francisco		Somerset & Rt. 29 N. Plainfield, N. J.					20					20			
	J. Warren Fulton		Main Street Ocean Grove, N. J.													
	Anthony Galasso		Bloomfield & Roseville Newark, N. J.													2883
		APPROVED GOODYEAR C. & H. JOBBER			CHJ					X X X					X X X	
		OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR		J	J					X X X					X X X	
		OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)		D	D	1635	39	20		X X X	1635	39	20		X X X	

* This column provided for Oil Company use in case they desire further sales break-down.

FEDERAL TRADE COMMISSION
DOCKET No. 6123
OFFICIAL EXHIBIT No. 227-K

COMMISSION EXHIBIT NO. 227-K. 3072

COMMISSION EXHIBIT NO. 228A. 3073

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

THE ACCOMPANYING CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS STATED HEREON

CASH

DISCOUNT

84849

ABOVE ACCOUNT COVERS COMMISSION OF PURCHASES OF GOODYEAR PRODUCTS BY YOUR DEALERS.

PERIOD JULY 21, 1950 THROUGH AUGUST 20, 1950. $ 3492.63

PLEASE DETACH THIS STATEMENT BEFORE DEPOSITING

4890

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company: T[illegible] Refining Company — Goodyear District: [illegible] Jersey

Oil Company Division or District Office: [illegible] Jersey — Report of Purchases for Period of: July 1st to [illegible] 19[illegible]

Goodyear Field Repr. Name: _____ Terr. #: _____ — Oil Co. Sales Area: _____

NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CLASS: Type of Oil Co. Acct.	ACCT. CLASS: Approved Goodyear C & H Jobber	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) — CURRENT MONTH: Tires and Tubes	CURRENT MONTH: Recaps and Camelback	CURRENT MONTH: Batteries	CURRENT MONTH: C. & H. Accessories and Other Misc.	CURRENT MONTH: [blank]	YEAR TO DATE: Tires and Tubes	YEAR TO DATE: Recaps and Camelback	YEAR TO DATE: Batteries	YEAR TO DATE: C. & H. Accessories and Other Misc.	YEAR TO DATE: [blank]	[blank]

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

No. 8 of Oil Company THE ATLANTIC REFINING COMPANY

Oil Company Division or District Office Newark, N. J.

Goodyear Field Repr. Name _____ Terr. # _____

Goodyear District Newark No. 710

Report of Purchases for Period of July 31st to Aug 30th 1940

Oil Co. Sales Area _____

NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. Type of Acct.	ACCT. Approved Jobber Acct. No.	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: Tires and Tubes	Camelback and Cable	Recaps Retreads	G.A.S. Accessories and Other Rubber		YEAR TO DATE: Tires and Tubes	Camelback and Cable	Recaps Retreads	G.A.S. Accessories and Other Rubber	
Walter M. Wasewski		800 N. Ave Cranford, N. J.			39	34		72		209	120		93		
Joseph A. Fagh		804 South St. Newark, N. J.						34					34		
	W. 18th St. Garage	W. 18th St. Bayonne, N. J.													
S. Witcover		57th & Park Ave. N. New York, N. J.			139	63				175					
Gerard Woortman		589 Lafayette St. Hawthorne, N. J.													
Lawrence Yetter		220 St. 75 Newton, N. J.			3810	420	391	286		7118	420	391	286		
John Gural	Spring Garage	Elizabeth N.J.			209			14		246	26		532		
Al Mathew	536 Broadway	Long Branch N.J.			82					82					
Emma Allen	S.S. Somerset	St Raritan N.J.			448	38				448	38				
				CHJ					XXX					XXX	
			J	J					XXX					XXX	
			D	D	4738	492	391	466	XXX	8278	604	391	765	XXX	2893

Items provided for Oil Company use in case they desire further sales breakdown.

APPROVED GOODYEAR C. & R. JOBBER
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)

FEDERAL TRADE COMMISSION
FILED AUG 22 1940
DEPT. OF JUSTICE

COMMISSION EXHIBIT NO. 2890

3025

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company: THE ATLANTIC REFINING COMPANY

Goodyear District: [illegible]

Oil Company Division or District Office: Newark, N. J.

Report of Purchases for Period of: July 1 to July 31, 19[illegible]

Goodyear Field Repr. Name: _____ Terr. #: _____

Oil Co. Sales Area: _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	Type of Account	Approved Account	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: Tires and Tubes	Batteries and Other Items	Recaps	G. & M. Accessories and Other Misc.		YEAR TO DATE: Tires and Tubes	Batteries and Other Items	Recaps	G. & M. Accessories and Other Misc.	
	Chas. C. Smith		153 Front St. Passaic, N. J.			2413					2684				
	Richard Smith		Oakland & Hamburg Pike Pompton Falls, N. J.								669				
	Smith & Stevens		Lafayette & Englewood Englewood, N. J.								17				
		Springdale Ser. Center	Valley Rd., Rt. Bound Brook, N. J.												
	Robert Spurr		Ridgewood & Millburn Millburn, N. J.			661	85				847	195			
		Stabile's Atl. S. S.	1218 E. Main St. Somerville, N. J.								470	14			
		Star Service Station	241 Street Bridgewater Twp. N. J.												
		Superior Auto Service	284 Sanford St. E. Orange, N. J.			50					50				
	J. Tomaskiewski		River & Cherry Newark, N. J.			495					495			20	
		Tom's Auto Repair	110 Frelinghuysen Ave. Newark, N. J.						11					11	
	S. Trady		Main & Manning Sts. Butler, N. J.								25				
	Tyrre & Colino		105 State St. Hackensack, N.J.			345			66		970			66	
	N. W. Tyler		Central & Steuben E. Orange, N. J.			40					40				
	L. Ulmer	Lew's Atl. Ser. Sta.	219 Bound Brook Rd. Dunellen, N. J.						40					40	
	Clarence VanDeusen		Hwy. #23 Mountainside, N. J.			26	11		10		26	11		10	
	E. W. VanZandt	Van's Atl. Ser.Sta.	Route 303 Tenafly, N. J.												
										XXX					XXX
1	1		APPROVED GOODYEAR C. & E. JOBBER OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR							XXX					XXX
D	D		OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)			4250	96		127	XXX	6249	220		147	XXX

Use columns provided for Oil Company use in case they desire further sales break-down.

FEDERAL TRADE COMMISSION EXHIBIT No. 2215

COMMISSION EXHIBIT NO. 2220.

30276

2894

G-1201 (5-52)

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District Newark NJ

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of July 1st to August 31st 1950

Goodyear Field Repr. Name _____ Terr. # _____ — Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	Type of Acct. (See Code)	Approved C. & H. Jobber (See Code)	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: Tire and Tube Sales	Tire and Tube Sales and Other	Gasoline Accessories	C. & H. Accessories and Other Misc.		YEAR TO DATE: Tire and Tube Sales	Tire and Tube Sales and Other	Gasoline Accessories	C. & H. Accessories and Other Misc.			
	Ploski & Falandy's		Stuyvesant & Luisa St. Union, N. J.			57					57						
	J. H. Plumstead & A. Presing	M. Overton	211 Central Orange, N. J. 58 Godwin Ave. Midland Park, N. J.			973	24		44		1065	24		127			
	George Price		S. Union Ave. & Highland Round Brook, N. J.			106	23				106	23					
		Raymond Motors	St. George Ave. Linden, N. J.				0										
	Lewis M. Richards		21 Vanderveer Ave. Somerville, N. J.			801			6		879			6			
	Risk Bros.		Rt. #4 & #9 Toms River, N. J.			224					234						
	John Roessner		Rey. #29 Union, N. J.			531					689			18			
		Rudzik's Atl. Ser.	Canal St. S. Bound Brook, N. J.								221						
		Sander's Super Ser.	806 Grove Ave. Verona, N. J.														
	James R. Sayne		Main St. & Allen Ave. Allendhurst, N. J.														
	Ed Schubert		Broad & Main Sts. Matawan, N. J.														
	Wm. E. Schuls		South Ave. & Spring Westfield, N. J.			156					156						
	J. Seels		Market & McCullough Morristown, N. J.			12					12						
	Matthew H. Skove		1405 W. Front St. Plainfield, N. J.			197	12		5		220	12		45			
			APPROVED GOODYEAR C. & H. JOBBER		CHJ					X X X					X X X		
			OIL CO. FRANCHISED JOBBER OR DISTRIBUTOR	J	J					X X X					X X X		
			OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)	D	D	3057	59		55	X X X	3440	59		196	X X X		

Columns provided for Oil Company use in case they desire further sales break-down.

FEDERAL TRADE COMMISSION EXHIBIT No. 22[illegible]

COMMISSION EXHIBIT NO. 2982 30242

2895

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District Philadelphia, Pa.

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of August, 1945

Goodyear Field Repr. Name _____ Terr. # _____ — Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	Type of Account	Approved Account	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	Goodyear Batteries and Cables	Exclusive Batteries	C. & H. Accessories and Other Merch.		YEAR TO DATE: New Tires and Tubes	Goodyear Batteries and Cables	Exclusive Batteries	C. & H. Accessories and Other Merch.	
	B. Mackiewicz		Rt. #257 Amboy Ave. Metuchen, N. J.												
	J. Marino	Joe's Atl. Sta.	35th & Market Paterson, N. J.												
	Ray McElvaine	Mack's Atl. Sta.	Rt. 9 & 4 Freehold, N. J.												
	Paul Mercante	Paul's Ser. Sta.	318 Sip Ave. Jersey City, N. J.												
	James Millard	Jim's Atl. Ser. Sta.	Hudson Blvd. & Leonard Jersey City, N. J.			257	24		7		638	24		7	
	John Mitchell		5th & River St. Paterson, N. J.												
		Mitchell Atl. Ser.	105 Union Ave. Belleville, N. J.			2					2				
	J. Morgai	Parkway Ser. Sta.	Woodbridge & Carney Highland Park, N. J.			38					38				
		Mulberry Garage	308 Mulberry St. Newark, N. J.												
	M. B. Murray Co.		Main St. Madison, N. J.												
	Robert A. Nash		114 E. 2nd St. Plainfield, N. J.			58					58				
	Of	North Broad Auto Sales	St. George Ave. Linden, N. J.												
		Oak Tree Garage	Pleasant Ave. Caldwell Twsp., N. J.			86					86				
	A. P. Paresugo		400 Bloomfield Ave. Caldwell, N. J.			135			7		135			33	
	O. Pearce		N. Broad & Hollywood Hillside, N. J.			245	69		9		310	97		28	
	Melvin Perrine		123 S. 5th St. Plainfield, N. J.			1251					2006				
					CBJ					XXX					XXX
			APPROVED GOODYEAR C. & H. JOBBER	1	1					XXX					XXX
			OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR												
			OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)	D	D	2072	93		23	XXX	3273	121		68	XXX

Use columns provided for Oil Company use in case they desire further sales break-down.

FEDERAL TRADE COMMISSION
DOCKET NO. 4[illegible]

COMMISSION EXHIBIT NO. 2697. 3078

2896

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

For Oil Company THE ATLANTIC REFINING COMPANY

Oil Company Division or District Office Newark, N. J.

Goodyear Field Repr. Name _____ Terr. # _____

Goodyear District Newark

Report of Purchases for Period of July 15 to July 31, 1940

Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. STATUS Type of Acct.	ACCT. STATUS Approved Jobber or Dealer	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH New Tires and Tubes	Goodyear Batteries and Cables	Recaps Batteries	C. & M. Accessories and Other Misc.		YEAR TO DATE New Tires and Tubes	Goodyear Batteries and Cables	Recaps Batteries	C. & M. Accessories and Other Misc.		
	Joseph B. Juska		1150 South Ave. Plainfield, N. J.			32			12		43			12		
	Leonard Keene		Blackwell & Mercer Dover, N. J.			25					25					
	Art Keeney		W. Park & Springdale E. Orange, N. J.			448	34				1122	423				
	E. Kirchner	K & K Atl. Ser.	Clifton & Colfer Ave. Clifton, N. J.													
		Knights Atl. Ser.	455 Franklin Ave. Butler, N. J.			222					235					
	Laibow Bros.		W. Broadway & River St. Paterson, N. J.			37					69					
		Laidlaw Auto Repair	169 Laidlaw Ave. Jersey City, N. J.													
	Fred Lanting		14 Madison Ave. Paterson, N. J.								43					
	W. LaPointe		Hallstead & McKinley E. Orange, N. J.			321	18		9		321	18		25		
	D. Lee	Glenwood Atl. Ser.	Glenwood & Lackawanna Bloomfield, N. J.			490			37		496	14		51		
	Lenahan & McKaig		14th & Erie Sts. Jersey City, N. J.				25		16			54		32		
	Wallace Lenahan		13th & Grove Sts. Jersey City, N. J.													
	Peter Lepick		Mt. Pisgah Keansburg, N. J.													
		Lincoln Carline Garage	298 Jersey Ave. New Brunswick, N. J.			208					208					
	Samuel Lipowitz		Chancellor Ave. Irvington, N. J.				24		21			24		33		
		Lollecrest Auto Center	535 Lower St. Westfield, N. J.			190			8		190			8		
					CSJ					X X X					X X X	
				J	J					X X X					X X X	
				D	D	1973	311		103	X X X	2752	533		161	X X X	2897

The columns provided for Oil Company use may be used in any case they desire further sales breakdown.

APPROVED GOODYEAR C. & M. JOBBER
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)

FEDERAL TRADE COMMISSION EXHIBIT NO. 2879

3079

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District Newark

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of July 1 to October 1 1950

Goodyear Field Repr. Name — Terr. #: — Oil Co. Sales Area

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	Type of Acct.	Approved as to Credit	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	Goodyear Retreads and Cables	Recaps Retreads	C. & M. Accessories and Other Items		YEAR TO DATE: New Tires and Tubes	Goodyear Retreads and Cables	Recaps Retreads	C. & M. Accessories and Other Items		
	T. Warren Fulton		Main St. Ocean Grove, N. J.													
	Anthony Calasso		Bloomfield & Roseville Newark, N. J.			1623	56				1623	56				
		Haskill Auto Supply	Rt. 40 & Cooper Ave. Lawrence, N. J.	1		1231	733	186	826		2846	754	186	852		
	John H. Geiger		Campbell Junction Belford, N. J.													
	Wm. Grunaman	Willie's Ser. Center	113 Water St. Paterson, N. J.											6		
	Howard J. Heinel		Main & Lion Sts. Toms River, N. J.											3		
	James Hendrie		Jefferson Ave. Westwood, N. J.			256			71		268			71		
	H. J. Herter		201 Hook Rd. Glen Rock, N. J.			99					167					
	E. Hollander	Ed's Atl. Ser.	Rt. #29 E. Plainfield, N. J.			27					27					
		Hopla Motors Inc.	870 Broad St. Kearney, N. J.													
	Ludwig Romano	Deluxe Ser. Sta.	Rt. #29 Milford Park, N. J.													
	—	J & J Ser. Sta.	Jamesburg, N. J.			24	186	86	101		312	186	86	313		
		Jack's Garage	731 Garden St. Hoboken, N. J.													
	Joseph Jablowski		150 River St. Paterson, N. J.													
	Wm. Janowski	Mountain Garage	670 Belmont Ave. N. Haledon, N. J.													
	E. Jensen		Jackson & Cedar South River, N. J.													
					CKJ					X X X					X X X	
				1	1					X X X					X X X	
				D	D	3256	975	272	998	X X X	5743	996	272	1239	X X X	

(*) columns provided for Oil Company use in case they desire further sales breakdown.

APPROVED GOODYEAR C. & M. JOBBER
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)

FEDERAL TRADE COMMISSION
FILED MAY 17 1951

COMMISSION EXHIBIT NO. 2288.

3080

2898

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District [illegible]

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of [illegible] 19[illegible]

Goodyear Field Repr. Name _____ Terr. # _____ — Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	Tire Size	Tube Size	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: Tires Tubes and Tubes	Goodyear Batteries and Cables	Goodrich Batteries	C.O.D. Accessories and Other Merch.		YEAR TO DATE: Tires Tubes and Tubes	Goodyear Batteries and Cables	Goodrich Batteries	C.O.D. Accessories and Other Merch.		
			30th & Nelson Blvd. Paterson, N. J.			734		54	160		938			541		
		DePope's Atl. Ser.	Central & Jersey E. Newark, N. J.			298	38		8		508	38		8		
	Mike Dombrowski		304 Morris Ave. Springfield, N. J.			271	59		2		316	59	1	82		
	J. Dukin		Rt. #28 S. Brunswick, N. J.													
	David Eckert		Freehold - Lakewood Rd Freehold, N. J.			153	170	24	344		2346	509	84	344		
		Economy Oil & Supply	16th & Straight St. Paterson, N. J.			224					224					
	Leo Klein		S. Main St. Manville, N. J.													
		Kosek's Atl. Ser.Sta.	Main & Wilmot Richfield Park, N. J.			191			17		574			17		
	Ed Backer		Paterson & Hamburg Bloomingdale, N. J.													
	Otto Rutenauer		504 Valley Rd. Upper Montclair, N. J.			153			3		153			3		
		Farley Service	210 Ridge St. Newark, N. J.													
	Otto Fentzloff	Otto's Garage	Blvd. & Washington Pl. Hasbrouck Hts., N. J.			303			6		322			6		
	W. E. Flinn		Central Ave. Lyndside Park, N. J.			129					603					
	E. C. Flitcroft														2833	
		Four Corners Ser. Sta.	Boonton, N. J. Somerset & Rt. 28 N. Plainfield, N. J.			31		8	4		31		20	4		
	George Francisco		Carteret & Garfield Kearney N. J.													
	Carl Fredrick									XXX					XXX	
					CHJ					XXX					XXX	
				1	1					XXX					XXX	
				D	D	4170	867	84	925	XXX	5849	606	104	925	XXX	

* This column provided for Oil Company use in case they desire further sales break-down.

APPROVED GOODYEAR G. & R. JOBBER .
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)

FEDERAL TRADE COMMISSION
RECEIVED [illegible]

COMMISSION EXHIBIT NO. 2381

3081

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY — Goodyear District Newark N.J.

Oil Company Division or District Office Newark, N. J. — Report of Purchases for Period of July 1st to July 2nd 1950

Goodyear Field Repr. Name — Terr. # — Oil Co. Sales Area

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. CODE: Type of Acct.	ACCT. CODE: Approved G. & R. Jobber	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	Goodyear Batteries and Cables	Recapable Batteries	C. & R. Accessories and Other Misc.		YEAR TO DATE: New Tires and Tubes	Goodyear Batteries and Cables	Recapable Batteries	C. & R. Accessories and Other Misc.		
	Arlie Bussard		110 Hamilton Ave. Seaside Heights, N. J.			299					384					
	J. J. Canegallo		1000 Communipaw Ave. Hudson Co., Jersey City													228
	Clifford Carpenter		Main & Valentine Sts. Hackettstown, N. J.													
	A. Cavalier		Broadway & Verona Newark, N. J.													
		Chatham Auto Repair	Passaic & Central Chatham, N. J.			169					119					
	Chuseler & Carenza		Hwy # 35 Woodbridge, N. J.								88					
	A. B. Clarton		Laurelton Traffic Cir. Laurelton, N. J.								9					
	J. C. Cole		Rt. 6, Kimball, N. J. Stirling, N. J.			141			1087		349			1087		
		Community Ser. Center	Rt. #6, Dover, N. J.			45					45					
	W. F. Cooper		150 Main St. Millburn, N. J.													
	Anthony Cordiero		153 Franklin Ridgewood, N. J.			57	54		23		67	65		32		
	C. Cotenzero	Ridgewood Atl. Ser.	283 Park Ave. Rutherford, N. J.													
	M. DeFerreri	Dee's Atl. Ser.	610 Spring St. Elizabeth, N. J.													
	Thomas DeFeo		Shrewsbury & Herbert Red Bank, N. J.			208	23		34		208	23		34		
	Philip Dellapietro		Wright & McCarter Hwy. Newark, N. J.			628	84		37		628	84		62		
	Ed Denman															
					CBJ					XXX					XXX	
				J	J					XXX					XXX	
				D	D	1387	161		1181	XXX	1867	172		1215	XXX	

One column provided for Oil Company in case they desire further sales break-down.

APPROVED GOODYEAR C. & R. JOBBER
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)

FEDERAL TRADE COMMISSION EXHIBIT No. 228 DOCKET NO. 6586

COMMISSION EXHIBIT NO. 228J. 3082

2900

REPORT OF PURCHASES FROM GOODYEAR BY OIL COMPANY ACCOUNTS

Name of Oil Company THE ATLANTIC REFINING COMPANY

Oil Company Division or District Office Newark, N. J.

Goodyear Field Repr. Name _____ Terr. # _____

Goodyear District Newark, N.J.

Report of Purchases for Period of June 21st to August 20th 19[illegible]

Oil Co. Sales Area _____

#	NAME OF PROPRIETORS	TRADE NAME	ADDRESS	ACCT. Type of Acct.	ACCT. Approved Jobber Code	AMOUNT OF PURCHASES (NET TO NEAREST DOLLAR) CURRENT MONTH: New Tires and Tubes	CURRENT MONTH: Goodyear Batteries and Cables	CURRENT MONTH: Recondo Batteries	CURRENT MONTH: G. & H. Accessories and Other Merch.	CURRENT MONTH:	YEAR TO DATE: New Tires and Tubes	YEAR TO DATE: Goodyear Batteries and Cables	YEAR TO DATE: Recondo Batteries	YEAR TO DATE: G. & H. Accessories and Other Merch.	YEAR TO DATE:	
	D. Aiello		Rt. #29, Hillside, N. J.											41		
	W. Anderson		Main & Bond St. Chatham, N. J.			153	46		85		188	46		85		
	F. Autenreith		Morris & Salem Sts. Union, N. J.			312	25		69		325	36		104		
		B & J Service Center	Springfield Ave. Maplewood, N. J.													
	J. Barbato		Main & Alexander Madison, N. J.				22		10			22		38		
	Harold Barney		166 Union Blvd. Totowa Boro, N. J.			166					181					
	Bartholomew Bros.		Albany & Peace New Brunswick, N. J.			787			3		948			64		
	B. Baumeister	Joe's Atl. Ser.Sta.	Wall & Passaic St. Passaic, N. J.													
		Benny's Atl. Ser.	Silver & Belmont N. Arlington, N. J.													
		Bevilaqua Garage	181 Lehigh Ave. Passaic, N. J.													
	C. C. Beyer	Dan' Auto Service	Morris Ave. & Rt. #29 Union, N. J.													
		Borick Ser. Sta.	Hwy. #7, Rt. #4 Somerville, N. J.													
	Jos. J. Borush	Sunset At. Truck Terminal	Hwy. #9 Green Brook Twp., N. J.			61					61					
		Brook Chevrolet Co.	24 W. Main St. Round Brook, N. J.													
	D. L. Bryant		Main & High Sts. Orange, N. J.			148			8		148			11		
	Robert Burns		W. Main & Elizabeth Railway, N. J.			678	189		50		678	189		80		
				CHJ						X X X					X X X	
				J	J					X X X					X X X	
				D	D	2205	282		225	X X X	2527	293		388	X X X	

ST. Columns provided for Oil Company use in case they desire further sales break-down.

APPROVED GOODYEAR C. & H. JOBBER
OIL CO. FRANCHISE JOBBER OR DISTRIBUTOR
OIL CO. DEALER (NOT JOBBER OR DISTRIBUTOR)

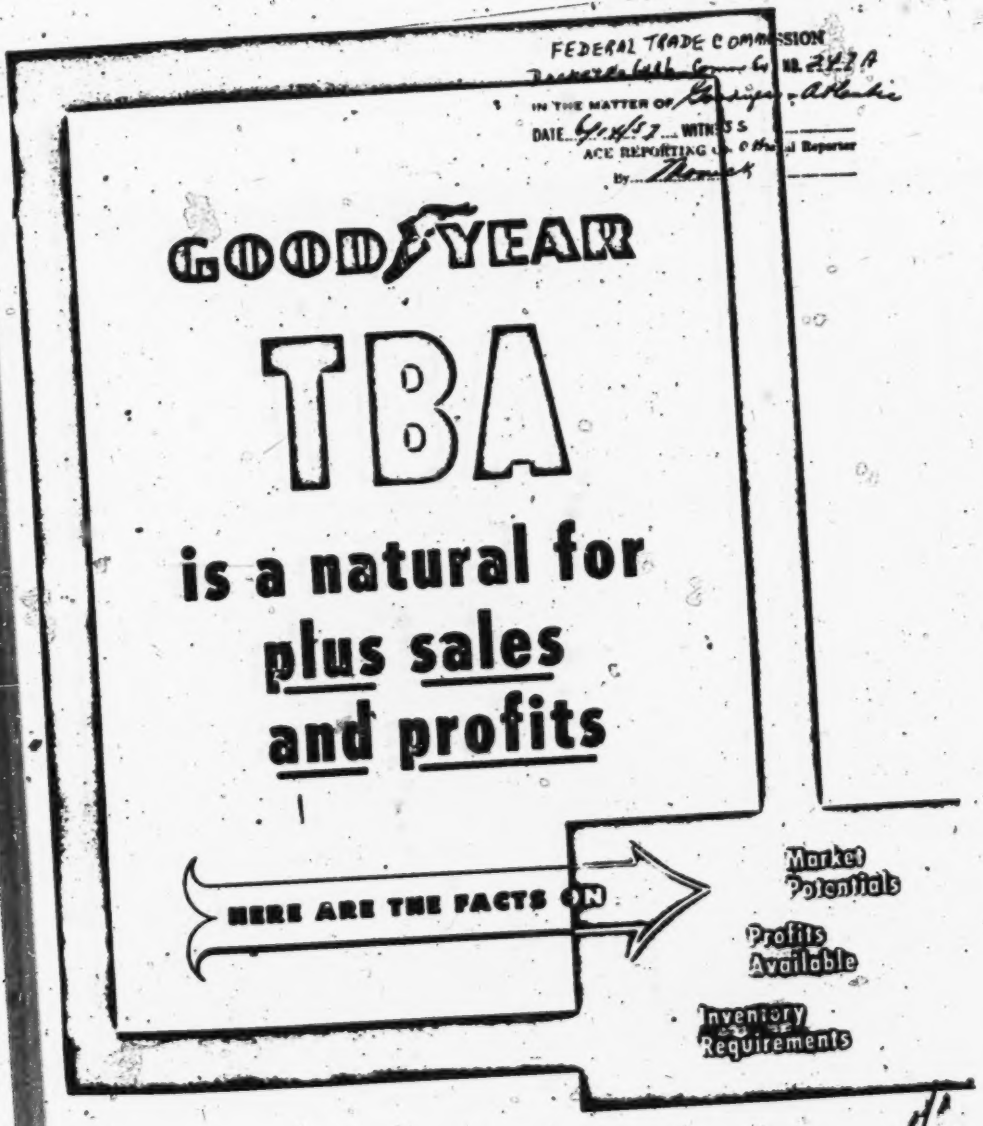
FEDERAL TRADE COMMISSION
DOCKET NO. 6486
COMM'R'S EXHIBIT NO. 228K

COMMISSION EXHIBIT NO. 228K. 30833

COMMISSION EXHIBIT NO. 247A.

247-A

FEDERAL TRADE COMMISSION
Docket/Exh. No. 247A
IN THE MATTER OF
DATE ... WITNESS
ACE REPORTING ... Official Reporter
By



3274

GOODYEAR

Gives you real facts on the Profits Available

HERE'S A WORTH WHILE OPPORTUNITY

Are you selling your share?

A recent study of the motoring public proves that you should be selling a good percentage of your regular customers their entire needs for TBA merchandise.

This program will show you your potential sales — let you know if you're getting your share. This means profits which you can figure very closely.

TBA IS VITAL TO YOUR GASOLINE BUSINESS.

Most important to you — you must offer TBA merchandise to your customers, if you hope to retain and increase your gasoline business.

T B A IS A NATURAL FOR SERVICE STATIONS

Service stations are important factors in the distribution of tires, batteries and accessories. It's a natural — every time a tankful of gasoline is consumed by the customer, his car is using up its tires, battery and accessories . . . the need for T B A is created in direct proportion to gasoline consumed. Your regular customers visit you frequently while using up these products; you are first to know about the need for replacements . . . and you have the first chance to make the sale.

Merchandisers who are slow to recognize this trend — already accepted by leading dealers — will find it difficult to keep their regular gasoline customers. Motorists will buy where they can get complete service: petroleum products, plus tires, batteries and accessories. The business is yours for the asking!

BUT, SERVICE STATION OPERATORS ARE FED UP WITH FLASHY STATISTICS

"Super" inventory controls . . . Potentials . . . so called "Simple" merchandising schemes with over-optimistic graphs and figures that would take a platoon of accountants to interpret . . . sales projections from some "Mahogany Desk" are seldom welcome news to the service station operator. SO, LET'S THROW-OUT THE COMPLICATED STATISTICS AND GET DOWN TO EARTH WITH A CLEAN PLAN THAT ANSWERS ALL THE QUESTIONS.

GOODYEAR HAS A PLAN BASED ON ACTUAL SALES EXPERIENCE OF THOUSANDS OF SERVICE STATION OPERATORS

A profitable business in tires, batteries and accessories is built on giving the customer what he wants when he wants it. Goodyear has evolved a merchandising policy which offers to Service Station Dealers a line of the fastest moving tires, batteries and accessories providing plus profits . . . with PROMPT REPLENISHMENT of out-of-stock merchandise.

THE PLAN IS SHORT, SIMPLE, AND EASY TO FOLLOW. According to sales records available to us, the needs for service stations can be fitted into three common gallonage brackets. For each bracket, a group of popular tires, batteries and accessories has been determined to best suit their needs. Thus, the service station carries a streamlined stock . . . prompt replenishment is made. Warehousing is simplified for both the supplier and the service station. The need for replacements is automatically forecasted . . . the danger of uncertain turnover is eliminated.

MERCHANDISE CARRIED IN STOCK IS BASED ON GALLONAGE

This step by step plan will answer all the questions!
What is the market for Tires, Batteries and Accessories?
What does the consumer want?
Where does he buy?
What opportunities does this offer the service station dealer?
How much investment is needed?
How much profit?
How much inventory?

CRAFTS-FARMISS CO. 25
EXHIBIT
RETAINED 5/20-26/28 TSY
BY
ATTORNEY EXAMINER

3275

125 52-703 62812-1 2 FILE No. 7-21589

PLANNING

in Tires, Batteries and Accessories

HERE IS WHAT ALL MOTORISTS WILL BUY THIS YEAR

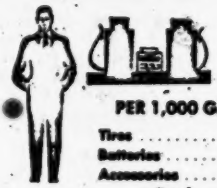
TIRES
$860,200,000

BATTERIES
$329,875,000

ACCESSORIES
$680,041,000

What will be your share of this market?

Take a look at what each motorist will probably buy this year



PER 1,000 GALLONS GASOLINE

Tires	$37.08
Batteries	14.22
Accessories	29.25
Total	$80.55

The average motorist will drive his car 9600 miles and will buy 640 gallons of gasoline. The sale of gasoline automatically creates a demand for T B A merchandise. That business is yours if you go after it.

PER CAR PER YEAR

Tires	$23.73
Batteries	9.10
Accessories	18.82
Total	$51.65

The potential for each motorist stresses the importance of regular customers. Your total annual potential is easy to figure . . . just multiply your total customers by the per car average given above.

3276

2

Commodity Code 3
1-31-84 3 of 11

3087

What are the opportunities for the Service Station Dealer this year?

Studies of *actual performance* show that service station TBA sales break down as follows:

TIRES - TUBES	46.0%
BATTERIES	14.4%
ACCESSORIES	39.6%

Accessories break down as follows:

Seat Covers	28.5%	Battery Cables	3.3%
Mufflers	12.2%	Wiper Arms	2.5%
Spark Plugs	11.8%	Wiper Blades	4.0%
Lamp Bulbs	4.2%	Mirrors	1.7%
Oil Filters	5.8%	Fan Belts	2.5%
Polishes—Waxes	3.4%	Radiator Hose	4.2%
Radiator Chem.	3.4%	Miscellaneous	6.3%

Past experience with thousands of service stations shows that they are *actually* buying from us and selling for every 1,000 gallons of gasoline pumped an average of . . .

TIRES AND TUBES	$23.65
BATTERIES	7.25
ACCESSORIES	10.40
TOTAL	$41.30

Exceptionally sales-minded stations, with the same gallonage, are exceeding these figures month after month.

Here are the facts taken from most recent sales records of thousands of service stations selling TBA merchandise

AVERAGE ANNUAL SALES PER STATION SELLING 10,000 GALLONS OF GASOLINE PER MONTH

TIRES	$2838.00
BATTERIES	870.00
ACCESSORIES	1248.00
TOTAL	$4956.00

Service stations selling T B A products, with an average of about 10,000 gallons per month, have been selling in accordance with the above figures. It is conservative to estimate on the above basis because many dealers can, and do, exceed these figures. High pressure sales efforts are not essential. To do the job requires only friendly suggestive selling and an inventory that satisfies the motorists needs promptly.

WHAT IS THE PROFIT?

LET'S FIGURE YOUR PROFIT IF YOU DO ONLY AN AVERAGE JOB

1. Determine the annual gallonage of your station — let's say it is 120,000 gallons.
2. Your average sales based upon actual past performance should be —

TIRES	$2,838.00
BATTERIES	870.00
ACCESSORIES	1,248.00
	$4,956.00

3. Average margin 28% Est. (Based on proper merchandising of used tires, accessories and batteries)
4. 28% X $4,956.00 = $1,387.68 profit
5. Consider — the average service station is doing this today. You can easily surpass it by proper stocking and sales effort.

3277

HOW MUCH INVESTMENT NEEDED?

To do an average job you must carry an adequate well balanced stock

See Page 5 for three different Dealer Suggested Stocks and inventory check lists. The selection of items and quantities is based upon actual experience on the movement of this merchandise through service stations.

They are selected to give you the maximum return on the lowest possible investment. The recommended stock has been held down to a very conservative level. Experience proves that many inventories much higher have proven profitable.

Select the assortment corresponding to your gallonage and most suitable to your facilities. Keep the inventory in balance and you are well on your way to this additional profit. Of course, you can always improve upon the average by adding the many optional plus profit items which are shown in the Goodyear Car & Home Catalog.

These selections eliminate the guess in what you should carry in stock. The quantities indicated are in direct proportion to actual sales performance. Supplement your present inventory with the items needed to balance your stock.

IT'S EASY TO SELECT A BALANCED STOCK

1 Assortment is for the average service station pumping less than 10,000 gallons of gasoline per month. Every service station should have these automotive necessities.

2 Assortment is for the larger gallonage service station pumping from 10,000 to 15,000 gallons of gasoline per month.

3 Assortment is for the larger gallonage service station pumping over 15,000 gallons of gasoline per month.

Your costs on these inventories are surprisingly low. Observe the following close estimate:

Tires and Tubes	$435.00	Tires and Tubes	$803.00	Tires and Tubes	$1,450.00
Batteries	131.00	Batteries	205.00	Batteries	375.00
Accessories	250.00	Accessories	525.00	Accessories	850.00
Total	$816.00	Total	$1,533.00	Total	$2,675.00

3089

You can't miss with these proven best sellers

GOODYEAR

TIRE, TUBE, BATTERY AND ACCESSORY INVENTORIES FOR SERVICE STATION DEALERS

Size	Description	Dealer Suggested Stock No. 1	No. 2	No. 3	Quantity On Hand	To Order
PASSENGER TIRES						
6.00-16	Deluxe	8	12	18		
	Marathon	4	4	6		
6.25/6.50-16	Deluxe	4	4	6		
	Marathon	2	2	2		
6.70-16	Super-Cushion	2	4	4		
7.60-16	Super-Cushion	1	2	4		
7.60-15	Super-Cushion	1	2	4		
6.25/6.50-15	Deluxe	1	2	4		
	Marathon					
7.10-15	Super-Cushion	1	2	2		
7.00-15	Deluxe	1	2	2		
5.25/5.50-17	Deluxe	2	2	2		
	Marathon					
6.70-15	Super-Cushion		2	2		
8.20-15	Super-Cushion		2	2		
7.00-16	Deluxe		1	2		
PASSENGER TUBES						
6.00-16	Deluxe H.D. Black	12	18	24		
6.25/6.50/6.70-16	Deluxe H.D. Black	6	6	12		
7.00/7.60-15	Deluxe H.D. Black	4	4	6		
6.50/6.70-15	Deluxe H.D. Black	2	3	4		
5.25/5.50-17	Deluxe H.D. Black	2	2	3		
7.00/7.60-16	Deluxe H.D. Black	2	2	3		
7.50/8.20-15	Deluxe H.D. Black	2	2	3		
7.10-15	Deluxe H.D. Black		1	2		
LIFEGUARDS						
6.00-16	LifeGuards			2		
6.25/6.50/6.70-16	LifeGuards			2		

3279

TIRE, TUBE, BATTERY AND ACCESSORY INVENTORIES FOR SERVICE STATION DEALERS

Size	Description	Dealer Suggested Stock No. 1	No. 2	No. 3	Quantity On Hand	To Order
TRUCK TIRES						
6.00-16	Heavy Duty Truck Airwheel		2	4		
6.50-16	Heavy Duty Truck Airwheel		2	4		
7.00-15	Heavy Duty Truck Airwheel		2	2		
7.00-20	Hi-Miler			2		
7.50-20	Hi-Miler			2		
8.25-20	Hi-Miler			2		
TRUCK TUBES						
6.00-16	Heavy Duty Black		2	4		
6.50-16	Heavy Duty Black		2	4		
7.00-15	Heavy Duty Black		2	2		
7.00-20	Heavy Duty Black			2		
7.50-20	Heavy Duty Black			2		
8.25-20	Heavy Duty Black			2		
GOODYEAR BATTERIES						
A-115	All-Weather	1	2	4		
S-113	Economy	1	1	2		
Y-117	HD YKL		1	2		
P-115	Utility		1	2		
A-217	All-Weather		1	1		
Y-219	HD YKL			1		
A-217-F	All-Weather	1	1	2		
P-215-F	Utility		1	1		
Y-219-F	HD YKL		1	1		
A-217-HF	All-Weather	1	1	1		
P-215-HF	Utility		1	1		
Y-219-HF	HD YKL		1	1		
A-217-E	All-Weather		1	1		
Y-219-E	HD YKL		1	1		
RESOLUTE BATTERIES						
R-113	Resolute	1	1	1		
R-115	Resolute	1	2	2		
R-215	Resolute			1		
R-215-F	Resolute		1	1		
R-215-HF	Resolute			1		
R-215-E	Resolute					
BATTERY PARTS & EQUIPMENT						
Goodyear Junior Battery Pow'R Savr		1		1		
Goodyear Passenger Battery Pow'R Savr			1	1		
Service Kit Complete		1	1			
Goodyear Battery Service Cart with Kit				1		
Goodyear All-Purpose Battery Tester		1	1	1		
Night 'N Day Charger				1		
Goodyear Battery Dating Ring				1		

Chevrolet Sales Pg. 25 (1-1-48)

AUTO ACCESSORIES EVERY SERVICE STATION SHOULD HANDLE

Description	Stock No.	Dealer Suggested Stock No. 1	No. 2	No. 3	Quantity On Hand	To Order
SEAT COVERS						
Universal Fibre — Coach — Maroon	022— 7001	2	2	2		
Universal Fibre — Coach — Blue	7002					
Universal Fibre — Coach — Maroon	7005	1	1	1		
Universal Fibre — Coach — Blue	7006					
Universal Fibre — Coach — Maroon	7013	1	2	2		
Universal Fibre — Coach — Blue	7014					
Universal Fibre — Coupe — Maroon	7015	1	2	2		
Universal Fibre — Coupe — Blue	7016					
Universal Fibre — Coupe — Maroon	7029	1	2	2		
Universal Fibre — Coupe — Blue	7030					
Universal Fibre — Sedan — Maroon	7017	2	2	2		
Universal Fibre — Sedan — Blue	7018					
Universal Fibre — Sedan — Maroon	7019	2	2	2		
Universal Fibre — Sedan — Blue	7020					
Universal Fibre — Sedan — Maroon	7023		1	1		
Universal Fibre — Sedan — Blue	7024					
Universal Fibre — Sedan — Maroon	7031	1	2	2		
Universal Fibre — Sedan — Blue	7032					
Universal Fibre — Sedan — Maroon	7033	1	2	2		
Universal Fibre — Sedan — Blue	7034					
Universal Plastic — Coupe — Maroon	7301	1	1	2		
Universal Plastic — Coupe — Blue	7302					
Universal Plastic — Coupe — Green	7303					
Universal Plastic — Coupe — Maroon	7310	1	1	2		
Universal Plastic — Coupe — Blue	7311					
Universal Plastic — Coupe — Green	7312					
Universal Plastic — Coupe — Maroon	7313	1	1	2		
Universal Plastic — Coupe — Blue	7314					
Universal Plastic — Coupe — Green	7315					
Universal Plastic — Coach — Maroon	7316	1	1	2		
Universal Plastic — Coach — Blue	7317					
Universal Plastic — Coach — Green	7318					
Universal Plastic — Sedan — Maroon	7325	1	1	2		
Universal Plastic — Sedan — Blue	7326					
Universal Plastic — Sedan — Green	7327					
Universal Plastic — Sedan — Maroon	7334	1	1	2		
Universal Plastic — Sedan — Blue	7335					
Universal Plastic — Sedan — Green	7336					
Universal Plastic — Sedan — Maroon	7337	1	1	2		
Universal Plastic — Sedan — Blue	7338					
Universal Plastic — Sedan — Green	7339					
MIRRORS						
Door Mirror — Oblong	022— 0814	2	4	6		
Door Mirror — 4" Round	0815	2	2	4		
Visor Vanity	0810	2	2	4		
SPARK PLUGS						
AC 104 10 MM	022— 2533	10	10	10		
AC 45L 14 MM	1265	10	20	30		
AC M8 10 MM	2536	10	20	30		
AC 47 14 MM	2539	10	10	10		
AC 46 14 MM	2524	10	10	20		
AC 45 14 MM	2523	10	10	20		
AC 44 14 MM	2522	10	20	30		

AUTO ACCESSORIES EVERY SERVICE STATION SHOULD HANDLE

Description	Stock No.	Dealer Suggested Stock No. 1	No. 2	No. 3	Quantity On Hand	To Order
SPARK PLUGS (Cont'd)						
AC 86 18 MM	022– 2532	10	10	10		
AC 84 18 MM	2530	10	10	10		
AC 78S ⅞ MM	2528	10	10	10		
LAMPS & BULBS						
No. 63 Tail (Box of 10)	022– 0154	10	10	20		
No. 55 Parking (Box of 10)	0153	10	10	20		
2330 Head (Box of 10)	0135	10	10	20		
1000 Head (Box of 10)	0157	10	10	10		
2331 Head (Box of 10)	0136	10	10	20		
51 Indicator (Box of 10)	0152	10	10	10		
1158 Stop and Tail (Box of 10)	0161	10	10	20		
1154 Stop (Box of 10)	0160	10	10	20		
87 Interior (Box of 10)	0156	10	10	10		
64 Instrument (Box of 10)	0155	10	10	10		
1133 Spot and Fog (Box of 10)	0159	10	10	10		
1323 Spot and Fog (Box of 10)	0163	10	10	10		
1209 S Spot (Box of 10)	0162	10	10	10		
1129 Signal (Box of 10)	0158	10	10	10		
4030 S B Headlamp Unit	0145	4	6	8		
FUSES						
S F E 20 (Box of 5)	022– 1407	4	6	12		
S F E 30 (Box of 5)	1408	2	3	6		
A G C 30 (Box of 5)	1412	2	3	6		
S F E 14 (Box of 5)	1406	1	2	3		
S F E 9 (Box of 5)	1405	1	1	2		
A G C 15 (Box of 5)	1411	1	1	2		
S F E 4 (Box of 5)	1403	1	1	1		
A G A Z (Box of 5)	1409	1	1	1		
S F E 6 (Box of 5)	1404	1	1	1		
A G A 6 (Box of 5)	1410	1	1	1		
BATTERY CABLES						
G 417 9% Pos.		2	3	4		
G 451 4% Pos.		1	1	1		
G 452 7% Pos.		1	2	3		
G 452 A 8% Pos.		2	3	3		
G 453 8% Pos.		2	3	3		
G 453 A 9% Pos.		2	3	4		
G 454 10% Pos.		2	3	4		
G 455 8% Pos.		2	3	3		
G 459 12% Pos.		2	3	4		
G 465 5% Pos.		1	2	2		
G 466 2% Pos.		1	1	1		
FLASHLIGHTS, ETC.						
Chrome 3-cell Standard	023– 0221			2		
Chrome 2-cell Standard	0229	2	3	3		
Chrome 3-cell Junior	0220			2		
Shockproof 2-cell	0216	2	3	3		
Delta Powerlite Lantern	0257		2	2		
Delta Buddy Lantern	0256		2	2		
Penlight (Min. 12)	0223	12	12	12		

3282

8

AUTO ACCESSORIES EVERY SERVICE STATION SHOULD HANDLE

Description	Stock No.	Dealer Suggested Stock No. 1	No. 2	No. 3	Quantity On Hand	To Order
FLASHLIGHT BATTERIES						
Bay-O-Vac Standard	023– 0107	25	25	50		
Bay-O-Vac Junior	0108			12		
Bay-O-Vac Lantern	0109		2	4		
Bay-O-Vac Penlight	0110	12	24	24		
MUFFLERS						
Motortone	022– 6119			1		
Motortone	6120			2		
Motortone	6121			1		
Motortone	6123			1		
Motortone	6124			1		
Motortone	6125			1		
Motortone	6126			1		
Motortone	6133			2		
Motortone	6128			1		
Motortone	6130			2		
MUFFLER CLAMPS						
Clamp 1¾"	022– 6142			2		
Clamp 1¾"	6143			2		
Clamp 2"	6144			2		
Clamp U Bolt	6147			2		
Clamp U Bolt	6148			2		
TAIL PIPES						
Motortone	022– 6152			1		
Motortone	6157			1		
Motortone	6160			1		
Motortone	6162			1		
Motortone	6163			1		
Motortone	6164			1		
Motortone	6166			1		
Motortone	6167			1		
Motortone	6188			1		
	6304			1		
OIL FILTERS & CARTRIDGES						
Purolator Cartridge PER ½	022– 3303	3	3	5		
Purolator Cartridge PC 70 FR	3308	*1	1	2		
Purolator Cartridge P 34	3305	6	8	10		
Purolator Cartridge P 34 S	3319	1	1	2		
Purolator Cartridge P 51	3317	1	2	2		
Purolator Cartridge P 37	3306	2	2	4		
Purolator Cartridge T 1	3309	1	1	2		
Purolator Cartridge T 2	3310	1	1	2		
Purolator Cartridge PN 15	3304	2	3	4		
Purolator Cartridge PN 16	3307	1	1	2		
Purolator Cartridge P 70	3315	1	1	2		
Purolator Filter P 409	3301	1	1	2		
WINDSHIELD WIPER ACCESSORIES						
Arm—Trico 5¾" to 8¼"	022– 2818	3	3	6		
Arm—Trico 8¾" to 10¾"	2819	3	3	6		
Arm—Trico 8¾" to 10¾" (Elec.)	2820	2	2	4		

3283

9
129

AUTO ACCESSORIES EVERY SERVICE STATION SHOULD HANDLE

Description	Stock No.	Dealer Suggested Stock No. 1	No. 2	No. 3	Quantity On Hand	No. Order
WINDSHIELD WIPER ACCESSORIES (Cont'd)						
Blade—Trico 7¼"	022—2802	6	6	6		
Blade—Trico 8¼"	2805	12	12	12		
Blade—Trico 9"	2808	12	12	12		
Blade—Trico 10"	2811	12	12	12		
Blade—Trico 9" Wrist Action	2829	6	6	10		
Blade—Trico 11" Wrist Action	2831	6	6	10		
Tubing ¼" x 7½"	2825	3	3	3		
Anco All Car Service Cabinet	2865			1		
FAN BELTS						
No. 18 21 % Pop.		3	3	5		
No. 60 11 %		3	3	4		
No. 58 9 %		2	2	3		
No. 65 7 %		2	2	3		
No. 96 6 %		2	2	3		
No. 67 3 %		2	2	3		
No. 254 3 %		2	2	2		
No. 92 2½%		1	1	2		
No. 19 2½%		1	1	1		
No. 76 2 %		1	1	1		
No. 17 1½%		1	1	1		
No. 115 1½%		1	1	1		
No. 416 ½% (less than)		1	1	1		
No. 106 ½% (less than)				1		
No. 64 ½% (less than)				1		
No. 101 ½% (less than)				1		
No. 99 ½% (less than)				1		
No. 97 ½% (less than)				1		
RADIATOR HOSE & CLAMPS						
3 Ft. Length 1¾" 32% Pop.		1	2	3		
3 Ft. Length 1½" 23%		1	2	3		
3 Ft. Length 1¼" 20%		1	2	3		
3 Ft. Length 2" 9%		1	1	1		
3 Ft. Length 1" 3%		1	1	1		
Molded Hose						
Upper—Ford, Merc. '39-'41 28% Pop.	MH14	2	2	4		
Lower—Ford, Merc. '39-'41 21%	MH15	2	2	4		
Upper—Ford '37-'39 7%	MH 1	2	2	2		
Upper—Pontiac '39-'50 3%	MH19	2	2	2		
Upper—Buick '39-'40 3%	MH16	2	2	2		
Upper—Kaiser-Frazer '47-'48 } Lower—Pontiac '39-'48 } 3%	MH53	2	2	2		
Lower—Pontiac '39-'40 2%	MH20	2	2	2		
Clamps						
1¼"	55-203	10	10	10		
1½"	55-204	10	10	10		
1¾"	55-205	10	10	10		
2"	55-206	10	10	10		
GASOLINE & RADIATOR CAPS						
Underhood—Radiator	022—1624	6	6	6		
Underhood—Radiator	1625	6	6	6		
Underhood—Radiator	1626	6	6	6		

AUTO ACCESSORIES EVERY SERVICE STATION SHOULD HANDLE

Description	Stock No.	Dealer Suggested Stock No. 1	No. 2	No. 3	Quantity On Hand	To Order
GASOLINE & RADIATOR CAPS (Cont'd)						
Adjustable—Gas	022—1640	10	10	10		
Locking Cap—Gas 1¼" Filler	1608	2	2	4		
Locking Cap—Gas 1⅜" Filler	1609	2	2	4		
FRICTION TAPE						
No. 1	022—0341	6	6	6		
No. 2	0342	6	6	12		
No. 3	0343	12	12	24		
No. 4	0344	12	12	24		
CLEANERS, POLISHERS & SUPPLIES*						
Pre-Wax—Paste—Simoniz	022—2216	4	6	8		
Pre-Wax—Liquid—Simoniz	2217	4	6	8		
Wax—Paste—Simoniz	2215	6	6	12		
Polish & Cleaner—Liquid—AW	2233	6	6	10		
Polish—Liquid—Johnson Car Nu	2258	6	6	12		
Chrome Cleaner—AW	2234	2	4	6		
Tire Paint—Black	2268	3	4	6		
Tire Paint—White	2106	3	4	6		
White Side Cleaner—Simoniz	2218	3	4	6		
Spot Remover—AW	2208	3	3	6		
Glass Cleaner—AW	2220	3	3	6		
Touch-Up Enamel—AW	2101	3	6	6		
Chamois 13 x 17	4011	3	3	3		
Chamois 20 x 25	4005	3	3	4		
Polish Mitt	2226	3	3	4		
Car Washer	2203	3	3	4		
Sponge—Rubber	2028	3	3	6		
Sponge—Wool	2012	3	3	6		
Wiping Cloth	2228	6	6	10		
Polish Cloth	2225	4	6	8		
Auto Shampoo	2251	4	6	8		
Tar Remover—AW	2115	3	4	6		
Sport Top Dressing—AW	2109	3	3	4		
Top Dressing—Black	2103	3	3	4		
RADIATOR CHEMICALS						
Cleaner—Warner	022—2382	3	3	6		
Liquid Solder—Warner	2381	6	6	12		
Protector—Warner	2380	3	3	6		
Rust Inhibitor—AW	2230	3	3	6		
FLOOR MATS						
Universal—Ford '35-'36, Ply., Chrys. '37-'38, Dodge, De Soto	61-801		1	1		
Universal—Chev. '35-'36	61-805		1	1		
Universal—Ply., Dodge, De Soto, Chrys. '35-'36	61-803		1	1		
Ply., Dodge, De Soto, Chrys. '39	61-818	1	1	1		
Ply., Dodge, De Soto, Chrys. '40, Ply. '41	61-819	1	1	1		
Ply., De Soto '42-'47	61-821		1	1		
Dodge '41-'47	61-822		1	1		
Ford '37-'40	61-814	1	1	2		
Ford '41-'47	61-813	1	1	2		
Chev. '37-'39	61-811	1	1	2		

*Select brands of cleaners and polishes most popular in your trading area.

3285

AUTO ACCESSORIES EVERY SERVICE STATION SHOULD HANDLE

Description	Stock No.	Dealer Suggested Stock No. 1	No. 2	No. 3	Quantity On Hand	To Order
FLOORMATS (Cont'd)						
Chev. '40-'47	61-810	1	1	2		
Mat Shield	1547	2	2	3		
Protect-O-Mat Rainbow Ass't	1546	1	1	1		
PROFITABLE ITEMS — NOT INCLUDED ABOVE						
Whitewall Wheel Rings 16"	022-2422		1	1		
Whitewall Wheel Rings 16"	2423		1	1		
Whitewall Wheel Rings 13"	2417			1		
Whitewall Wheel Rings 16"	2418			1		
Whitewall Wheel Rings 16"	2419			1		
Skyshield Visor	2846			1		
Grille Guard	1719		1	2		
South Wind Gas Heater	2920	1	1	2		
South Wind Defroster Kit	2940	1	1	2		
Tropic Aire Senior Heater	2928	1	1	2		
Tropic Aire Defroster Kit	3042	1	1	1		
Tropic Aire Defroster Kit	3048	1	1	1		
Clear Vue-Frost Shield	3041	6	6	12		
Big Boy Scissor Jack	1912	2	2	3		
Big Boy Tire Pump	3606	2	2	3		
Back-Up Light	0648	2	2	2		
Driving Light	0446	2	2	2		
Spotlight	0670	1	1	2		
Horn—Single Trumpet	1815			1		
Horn—Twin Trumpet	1816			1		
Horn—Twin Air Shell	1817			1		
License Plate Frame	0521		4	4		
License Plate Bracket	1721		4	4		
License Plate Fastener (pair)	0518		12	12		
Cigar Lighter	4824		6	6		
Cigar Lighter Element	4823		12	12		
Sun Glasses	1306		6	6		
Exhaust Extension—Jeweled	0305	2	2	3		
Exhaust Extension—Jetex	0306	2	2	3		
Curb Feelers	1713	4	6	6		
Steering Wheel Spinner	2613	3	3	4		
Steering Wheel Cover	2603	3	3	6		
Auto Compass	4601			2		
Emergency Gas Can	1649	3	6	6		
General Use Oil—AW	4303	3	6	6		
Penetrating Oil	4304	3	6	6		
Emergency Flare	1401		3	6		
Warning Flag	3903		3	6		
Pyroil A—3 oz.	4311	6	12	24		
Pyroil A—Pint	4312	3	3	6		
Pyroil B—12 oz.	4314	3	3	4		
Pyroil B—Pint	4315	3	3	4		
Wood Handle Screw Driver	023-1437	3	6	6		
Phillip Screw Driver	1461	3	6	6		
Combination Pliers	1106	3	6	6		
4-Way Rim Wrench	1329	2	3	4		
8" Adjustable Wrench	1142		2	4		
Wire Brush	0909	2	4	4		
1½ HP Outboard Motor	025-3562			1		
3 HP Outboard Motor	3566			1		
5 HP Outboard Motor	3564			1		
12 HP Outboard Motor	3565			1		

C+N notes Sch Ech 25 1-21-1889

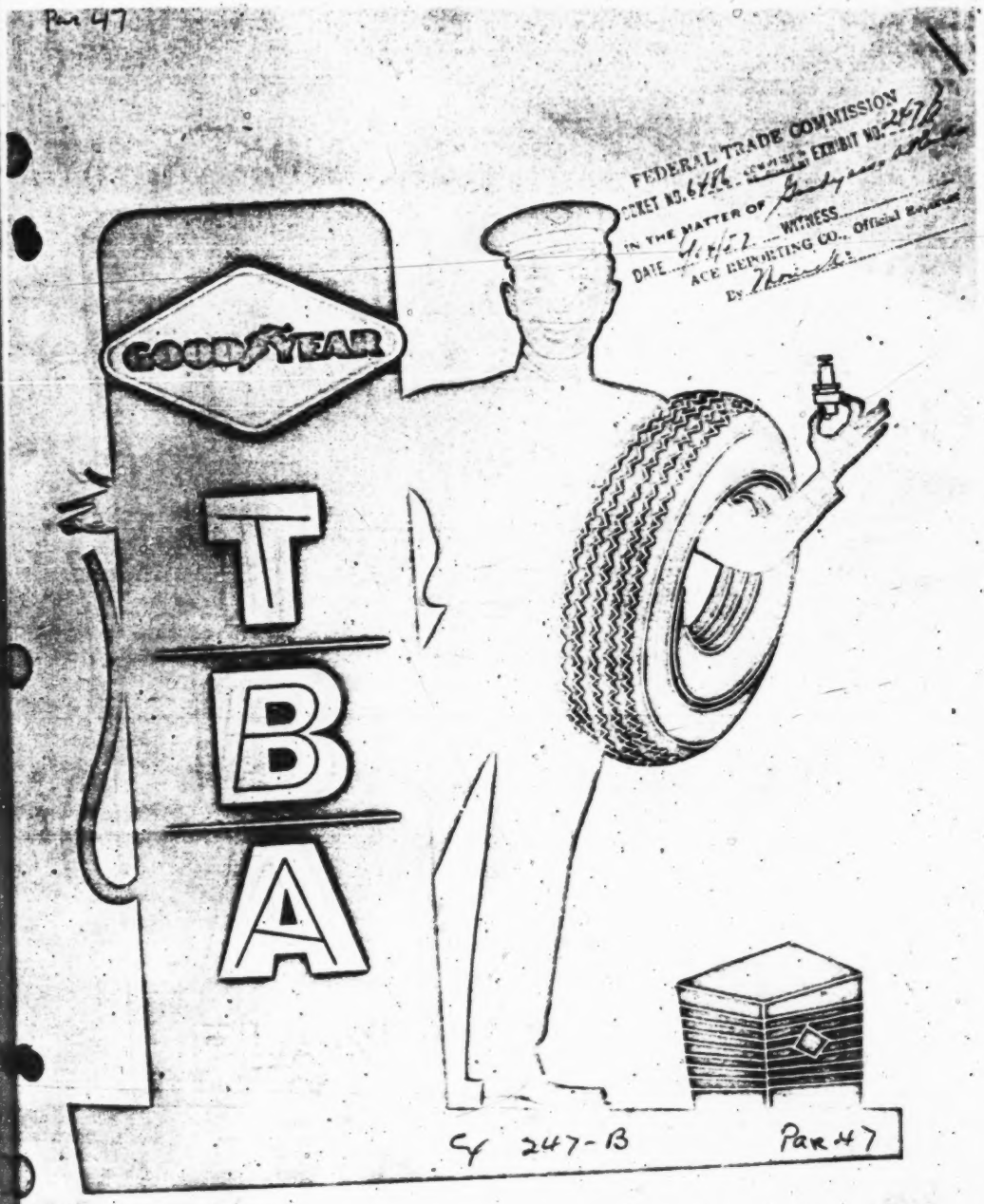
3097

3-50
S 9903 3288

ASA

COMMISSION EXHIBIT NO. 247B. 3098

Par 47



FEDERAL TRADE COMMISSION
DOCKET NO. 6411 COMMISSION EXHIBIT NO. 247B
IN THE MATTER OF Goodyear et al
DATE 4/4/62 WITNESS
ACE REPORTING CO., Official Reporters
By

3289

DO YOU OPERATE A SERVICE STATION OR JUST A "GAS" STATION?

The difference is the

profit you make!

Goodyear's T B A Plan has made Service Stations out of thousands of "Gas" Stations from coast to coast. Here's why...

GOODYEAR has:

1 An organized T B A Plan

2 The world's most acceptable T B A Products

3 The widest distribution of T B A Merchandise

4 The most experience with oil company marketing

3291 /1

THE GOODYEAR TBA PLAN

1 Is tailored to fit YOUR individual requirements.

No need to guess at what items to order. Only the **best selling items** are on your shelves. There's no guesswork involved.

2 Simplifies your inventory problems— provides the "right" items at the "right" time.

You do only the **selling.** Goodyear provides you with a STOCK GUIDE that enables you to keep salable merchandise, in the right quantities, in stock **at all times.**

3 Can increase your profits 30 to 50%

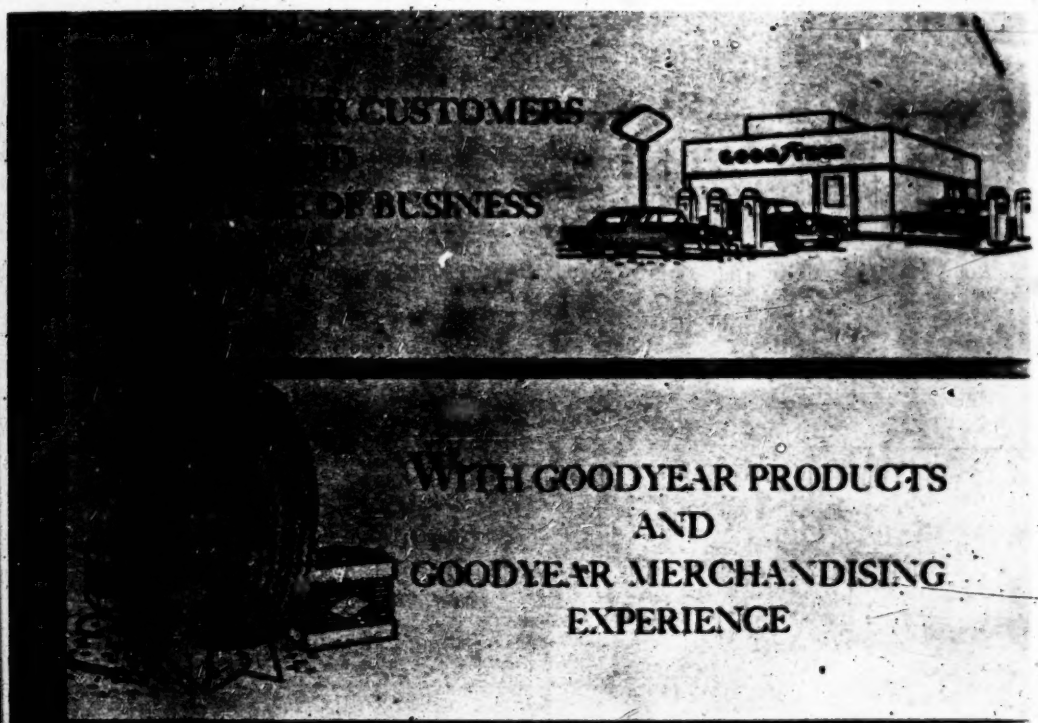
4 It is short, simple and easy to follow

IN A NUTSHELL . . .

Goodyear offers Service Station Operators the world's first-choice line of tires and tubes. These are the tires that are preferred most and bought by more people than any other kind. Goodyear Batteries, both wet and dry charge, give the dependable service that makes and keeps your customers yours. Goodyear Car and Home Merchandise is the best and most acceptable of all national brands available.

With all the advantages of proven, customer accepted T B A products, Goodyear provides merchandising assistance based on many years of sound experience . . . **plus** prompt replenishment of out-of-stock merchandise.

3102



BA offers you a great opportunity

Today, more tires, batteries, and accessories are sold by Service Stations than any other type of retailers. You can get your share, and more sales and more profits, if you—

1 OBSERVE your customers' needs and ASK for their business.

2 STOCK enough and stock the RIGHT kind of merchandise.

3 Keep your merchandise well DISPLAYED and COMPETITIVELY priced.

4 SERVICE the products you sell, properly.

3293

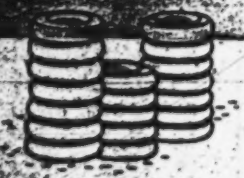
THE Market FOR TBA THIS YEAR

$4,000,000,000

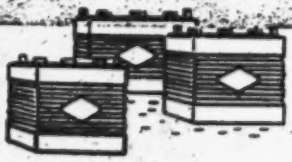
FOUR BILLION dollars

About $24.00 for every living man, woman, and child in the United States, today!

RVICE TATION TBA sales



TIRES
$930,000,000



BATTERIES
$180,000,000

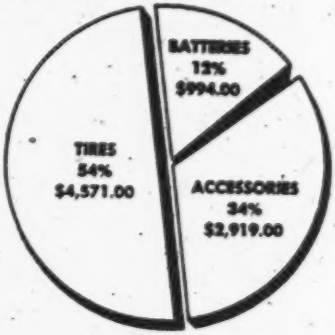
ACCESSORIES
$530,000,000

Based on U.S. Government census of the Service Station Business, this is what should be sold by Oil Company Outlets handling TBA.

The national average of T B A retail sales per station handling T B A merchandise will be—

$8,484.00 PER STATION

The average of $8,484.00 total T B A retail sales per station is divided among T B A products like this—



AVERAGE SERVICE STATION
(10,000 to 20,000 gallons per month)
TBA SALES PER 1000 GALLONS

Tires and Tubes	$32.44
Batteries	7.05
Accessories	20.72
Total Sales per 1000 gal.	$60.21

HIGH GALLONAGE SERVICE STATION
(25,000 and more gallons per month)
TBA SALES PER 1000 GALLONS

Tires and Tubes	$27.88
Batteries	5.33
Accessories	15.66
Total Sales per 1000 gal.	$48.87

High gallonage stations sell less TBA per 1,000 gallons but more in total dollars.

3105

What and When

DO YOUR CUSTOMERS BUY?

3296

Here are the two basic guides to help you make the most profit on a minimum investment, yet have the merchandise the customers want when they want it.

POPULARITY OF T B A MERCHANDISE

TIRES

Passenger	% of Total
6.70-15	42.0
6.00-16	12.0
7.10-15	20.0
7.00-15	14.0
6.50-16	2.0
8.00-15	5.0
8.20-15	2.0
6.40-15	1.5
Misc.	1.5
	100%
Truck	
6.00-16	7.8
6.50-16	12.2
7.00-15	6.5
7.00-16	3.5
7.50-16	2.4
All others	68.7
	100%

BATTERIES

Group	% of Total Goodyear Wet and Dry Charge
1	45.5%
2	11.8
2E	15.3
2F	3.2
2K	11.2
2N	2.0
12Y	5.2
Misc.	5.8
	100%

ACCESSORIES*

Items	% of Total	Items	% of Total
Battery Cables	3.2	Cleaner Supplies	2.3
Auto Lamps—Bulbs	5.3	Exhaust Extensions	0.3
Auto Fuses	0.4	Mirrors	2.3
Filters—Elements	15.2	Seat Cushions	2.3
Spark Plugs	18.3	Seat Covers	2.8
Wiper Blades & Accessories	4.5	Flashlights & Flashlight Batteries	2.4
Fan Belts	4.4	Friction Tape	0.5
Radiator Hose	2.2	Floor Mats	1.5
Radiator Caps	1.3	Thermostats	2.2
Radiator Chemicals	6.4	Miscellaneous	11.6
Polishes & Waxes	9.4		100.0%

*Popularity of auto accessories based on national sales reported by Oil Company system.

SEASONAL BUYING HABITS

	TIRES	BATTERIES	ACCESSORIES
Jan. Feb. March	18.9%	18%	Feature anti-freeze, chains, defrosters, thermostats, heater hose, ice scrapers, license plate accessories, fog lights, etc.
April May June	28.3%	16.5%	Promote sales of cleaners, polishes and supplies, cooling system cleansers and inhibitors, dress up items, seat covers, grill guards, colored floor mats, etc.
July Aug. Sept.	31.1%	33.7%	Emphasis on travel items, sun glasses, mirrors, cigarette lighters, horns, spot remover, garment carriers, jacks, fishing tackle, picnic and outdoor items.
Oct. Nov. Dec.	21.7%	31.8%	Check every car's battery, spark plugs, oil filter and element, wiper arms, auto bulbs and lamps, antifreeze, fan belt, radiator hose.
	100.0%	100.0%	

How much investment needed?

Conveniently located Goodyear warehouse and Supplying Dealer stocks minimize the need for large inventories in your station.

Here is an accurate formula of dollar investment required, determined by YOUR gasoline sales.

One of these two classifications will eliminate guessing how much you should invest and what quantities of T B A you should stock.

For the AVERAGE Service Station

The investment for stations selling under 20,000 gallons of gas per month should be based on these AVERAGE station cost figures.

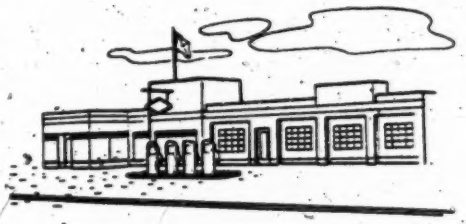
Per 1000 gallons of gas YOU sell	Cost
Tires and Tubes	$24.01
Batteries	4.93
Accessories	13.47
Investment per 1000 gallons	$42.41

EXAMPLE: Station pumping 11,700 gallons per month.

Tires and Tubes	— 11,700 gals. x $24.01 =	$280.92
Batteries	— 11,700 gals. x $ 4.93 =	57.68
Accessories	— 11,700 gals. x $13.47 =	157.60
Total Monthly Investment		$496.20

For the HIGH GALLONAGE Station

High gallonage stations (20,000 gallons or more per month) can follow the same formula with these average cost figures.

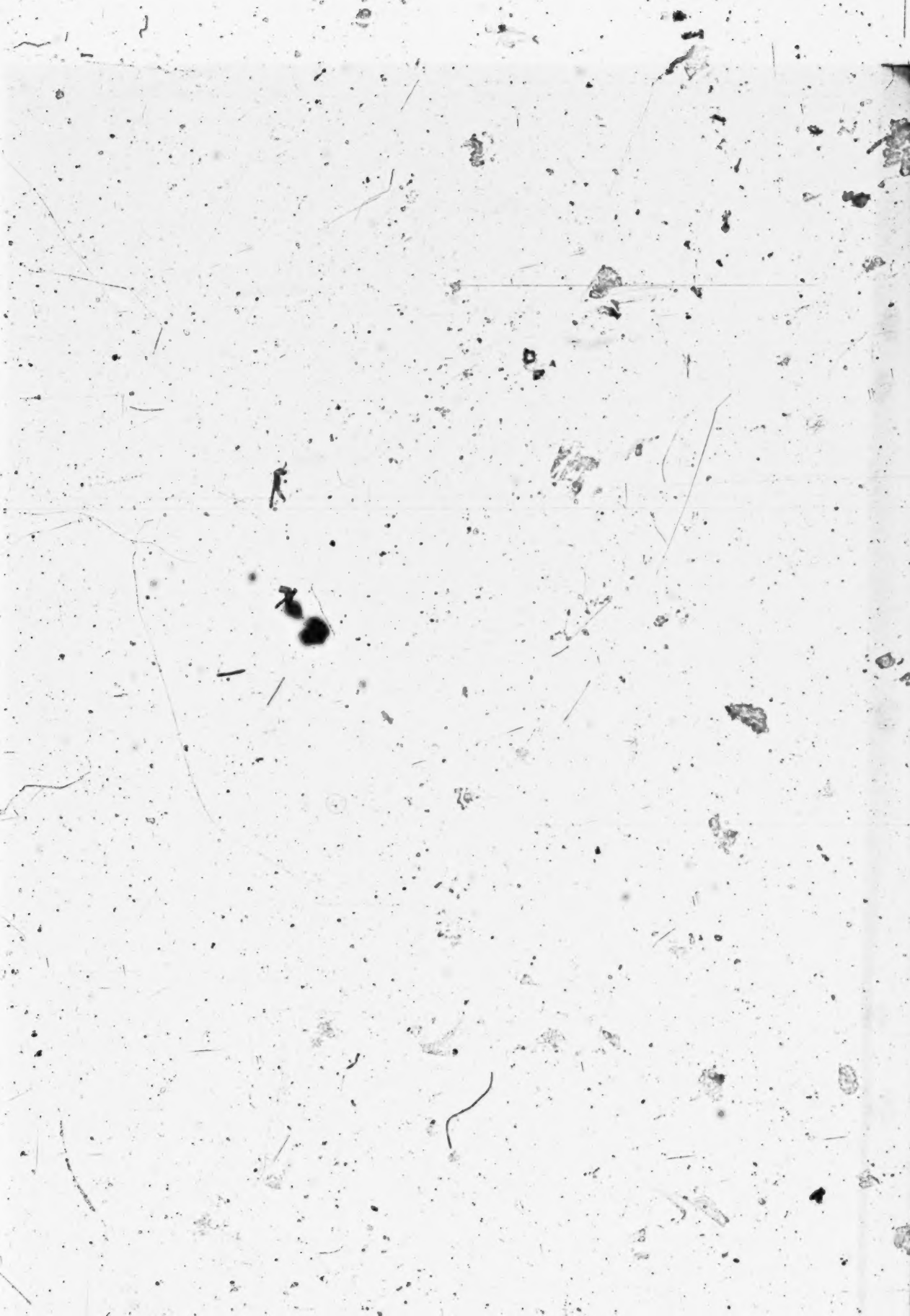


Per 1000 gallons gasoline	Cost
Tires and Tubes	$19.52
Batteries	3.57
Accessories	10.18
Total investment per 1000 gals.	$33.27

EXAMPLE: Station pumping 31,000 gallons per month.

Tires and Tubes	— 31,000 gals. x $19.52 =	$605.12
Batteries	— 31,000 gals. x $ 3.57 =	110.67
Accessories	— 31,000 gals. x $10.18 =	315.58
Total Monthly Investment		$1,031.37

Experience, based on industry turnover, shows that the opening inventories for new stations starting a T B A program should be approximately twice the monthly averages shown.

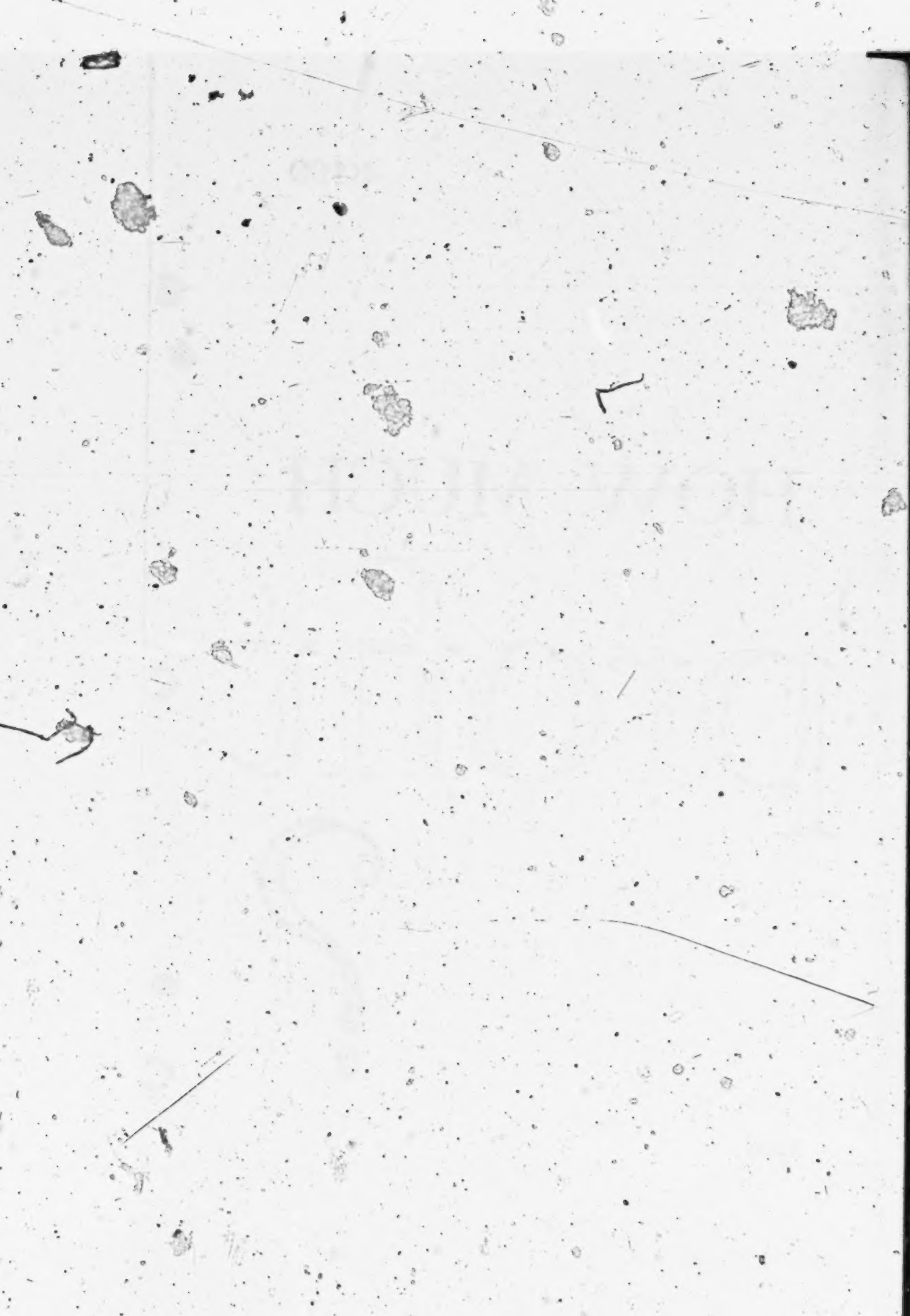


3109

HOW MUCH

profit ?

3330



3110

The amount of profit you make is entirely up to YOU.

The answer is to SELL and SERVICE.

T B A profit
"per 1000 gallons of gasoline"
sold, by the AVERAGE station,

	COST	RETAIL
Tires and Tubes	$24.01	$32.44
Batteries	4.93	7.05
Accessories	13.47	20.72
	$42.41	$60.21

$60.21 — $42.41 = $17.80 Profit per 1000 gals.

12,000 gallons per month — $213.60 PROFIT
144,000 gallons per year — $2,563.00 PROFIT

The profit for HIGH GALLONAGE stations

	COST	RETAIL
Tires and Tubes	$19.52	$27.88
Batteries	3.57	5.33
Accessories	10.18	15.66
	$33.27	$48.87

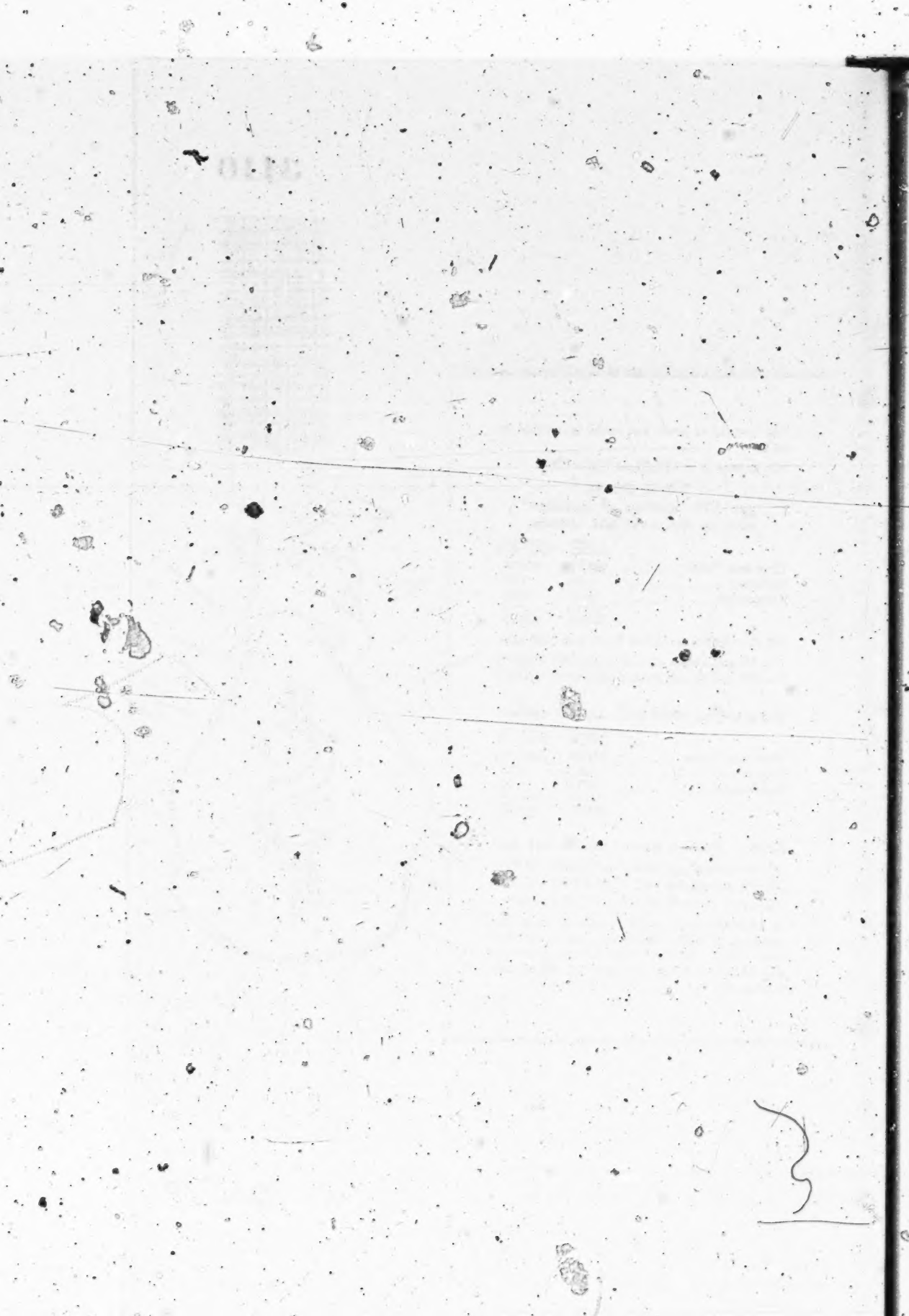
$48.87 — $33.27 = $15.60 Profit per 1000 gals.

31,000 gallons per month — $483.60 PROFIT
372,000 gallons per year — $5,803.20 PROFIT

This profit is purely from merchandise sales.

In addition, extra profit is earned from the servicing of these products — such as tire and tube repair, tire switching, battery charging and rentals, seat cover installation, wheel balancing, etc.

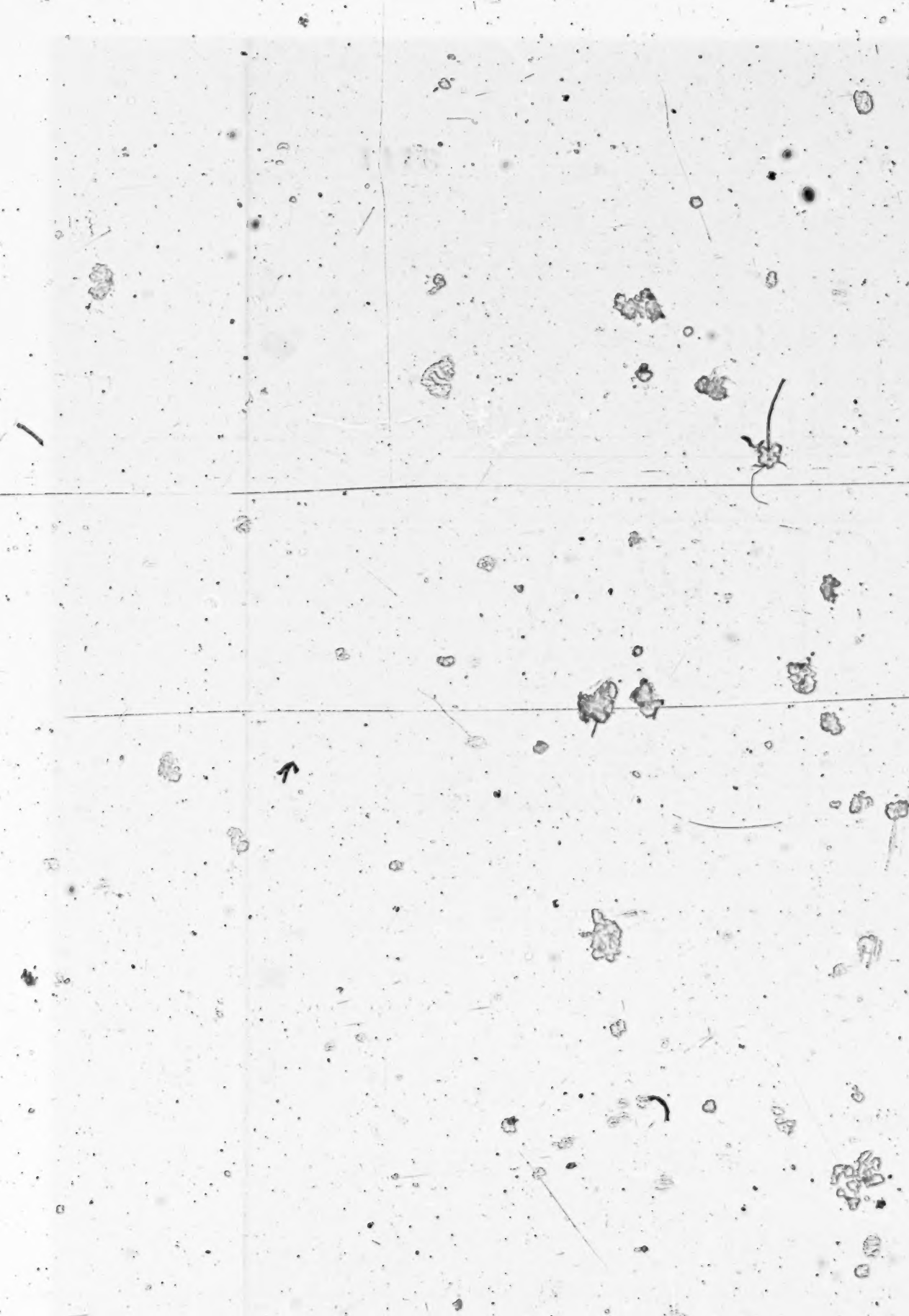
3301



3111

Here's the TBA SUCCESS PATTERN

3302



modern merchandising
modern equipment
Plus good service

CREATE SALES.

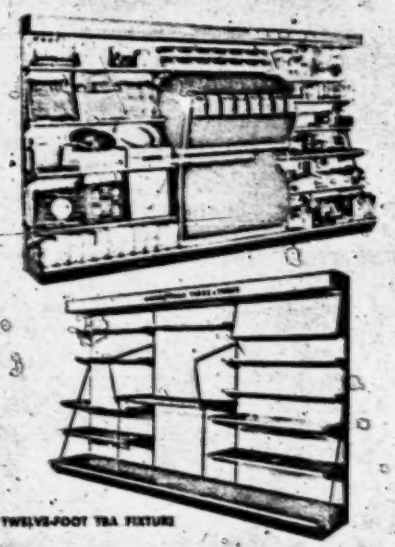
Make the most of your available display space with these sales-building, space-saving T B A fixtures.

They are compact . . . they are versatile . . . they display your merchandise front and center . . . they increase sales.

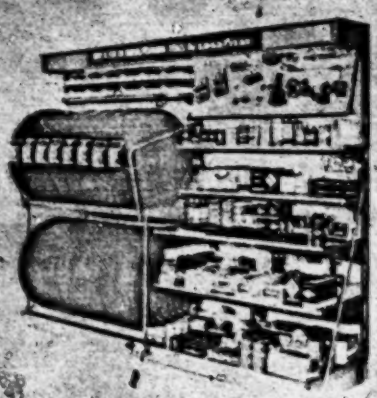
Tires are set at eye-level . . . all the other merchandise is in easy reach . . . the fixture puts the products in sight and in your customers' minds.

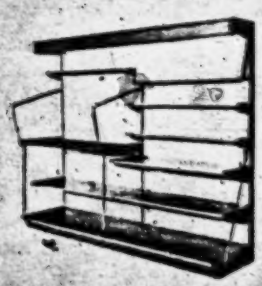
These fixtures can be used free-standing or attached to the wall. They are modern and attractive; of rugged steel construction; shelves and tire cradle are adjustable; they are flexible for almost any group of merchandise; the baked-on, enamel finish is easy to clean and wears through long, rugged service.

These display units are available in Eight-foot and Twelve-foot sizes. These are display and selling units expertly planned and created by Goodyear technicians to do a specific job of selling T B A products better. You can order these units through your regular Goodyear source.



TWELVE-FOOT TBA FIXTURE





EIGHT-FOOT TBA FIXTURE

3113

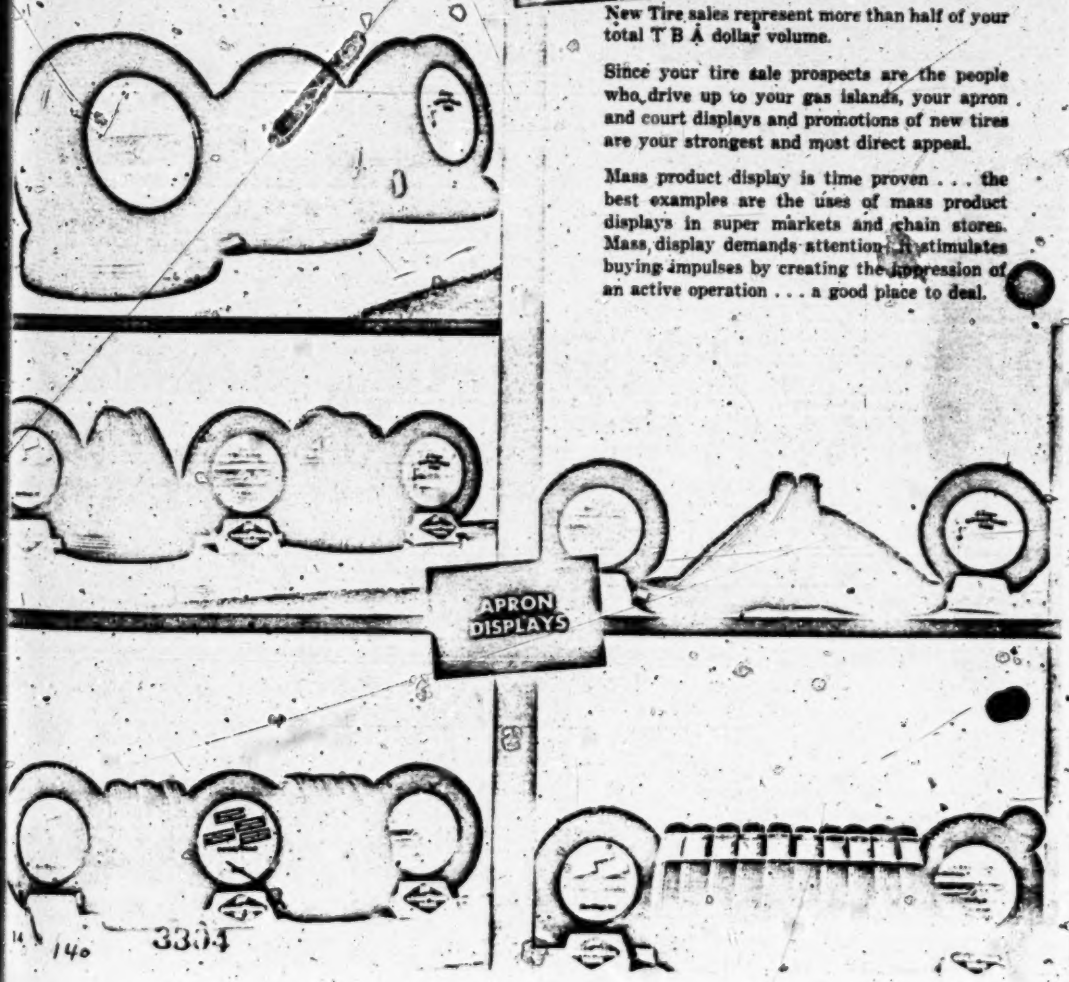
New Tire

MERCHANDISI

New Tire sales represent more than half of your total T B A dollar volume.

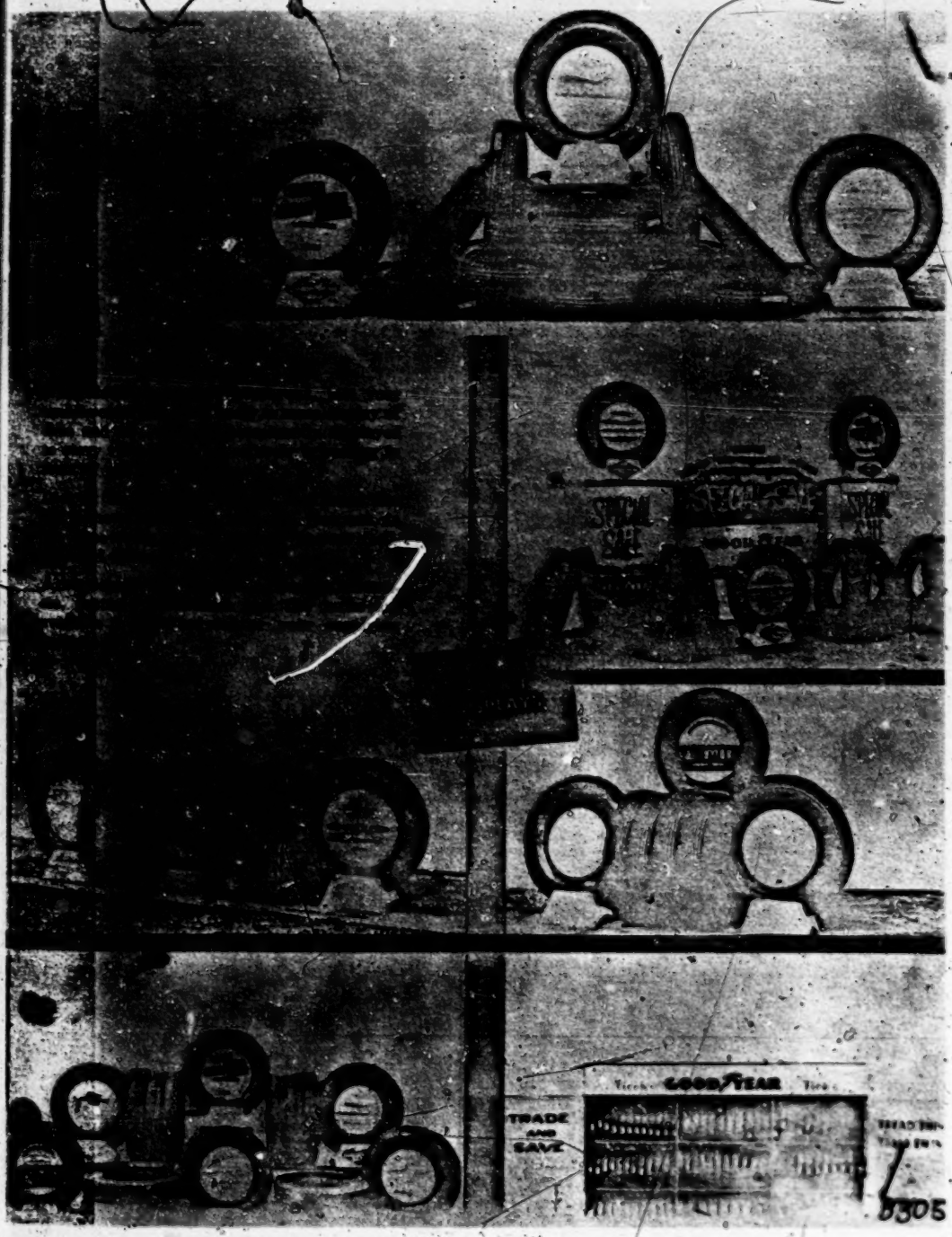
Since your tire sale prospects are the people who drive up to your gas islands, your apron and court displays and promotions of new tires are your strongest and most direct appeal.

Mass product display is time proven . . . the best examples are the uses of mass product displays in super markets and chain stores. Mass display demands attention . . . it stimulates buying impulses by creating the impression of an active operation . . . a good place to deal.



140 3304

3114



3115

USED TIRE MERCHANDISING

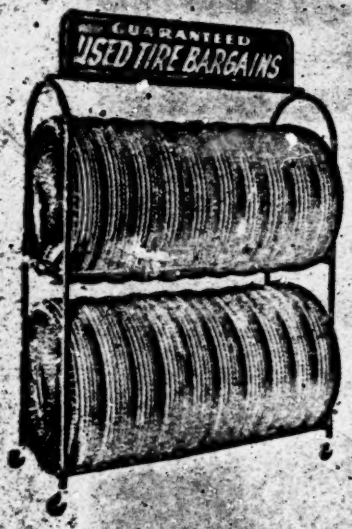
Almost every new tire sale involves the trade-in of a used tire. A good part of your profit is tied up in the used tire until you sell it. The used tire can be sold, in many cases at a price greater than the trade-in allowance . . . if you merchandise it right.

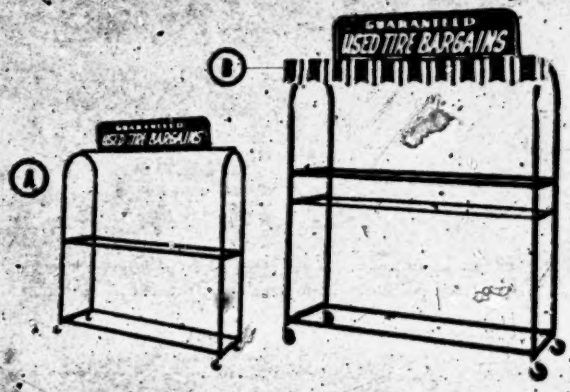
DRESS UP USED TIRES

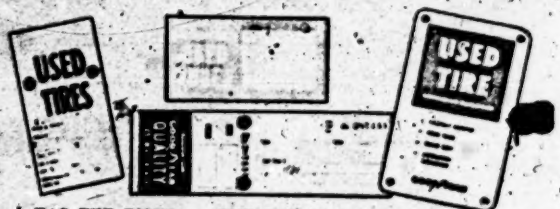
For profitable used tire turnover, follow this tested program:

1. Buy trade-in tires at the right price.
2. Re-condition all used tires that are still serviceable. Clean and dress them. Re-groove or recap those with sound bodies that are smooth. Scrap all others.
3. Set a price on used tires that matches or beats your competition.
4. Guarantee your used tires to give satisfactory service . . . and back it up!
5. Display clean, dressed used tires on your service court. Tag each tire with the price, size, and brand clearly shown. Group tires by sizes and price for easy comparison.
6. SELL . . . sell aggressively. Identify your used tires with a large sign or banner reading "GUARANTEED USED TIRES $1.00 and up". Spot the display prominently. Use the classified ads in your local newspaper . . . ASK FOR THE BUSINESS.

DRESS UP USED TIRE DISPLAYS THEY WILL SELL BETTER







A Only 22" wide, 37" long and 69" high with a large 12" by 48", double-faced metal sign . . . mounted on easy rolling casters . . . holds twenty tires . . . equipped with lock chains.

B Holds 24 tires and 14 tube boxes . . . stands 75" high, 22" wide, and 56" long . . . 12" by 48" double-faced metal sign . . . mounted on easy rolling casters . . . colorful awning . . . lock chain.

These Used Tire Display Merchandisers are available from Goodyear or your Goodyear supply point.

TAG THE TIRES . . . PUT THE FACTS ON THE TIRES — Goodyear offers you these tags to help you do a full selling job. Order them from Goodyear or your Goodyear supply point.

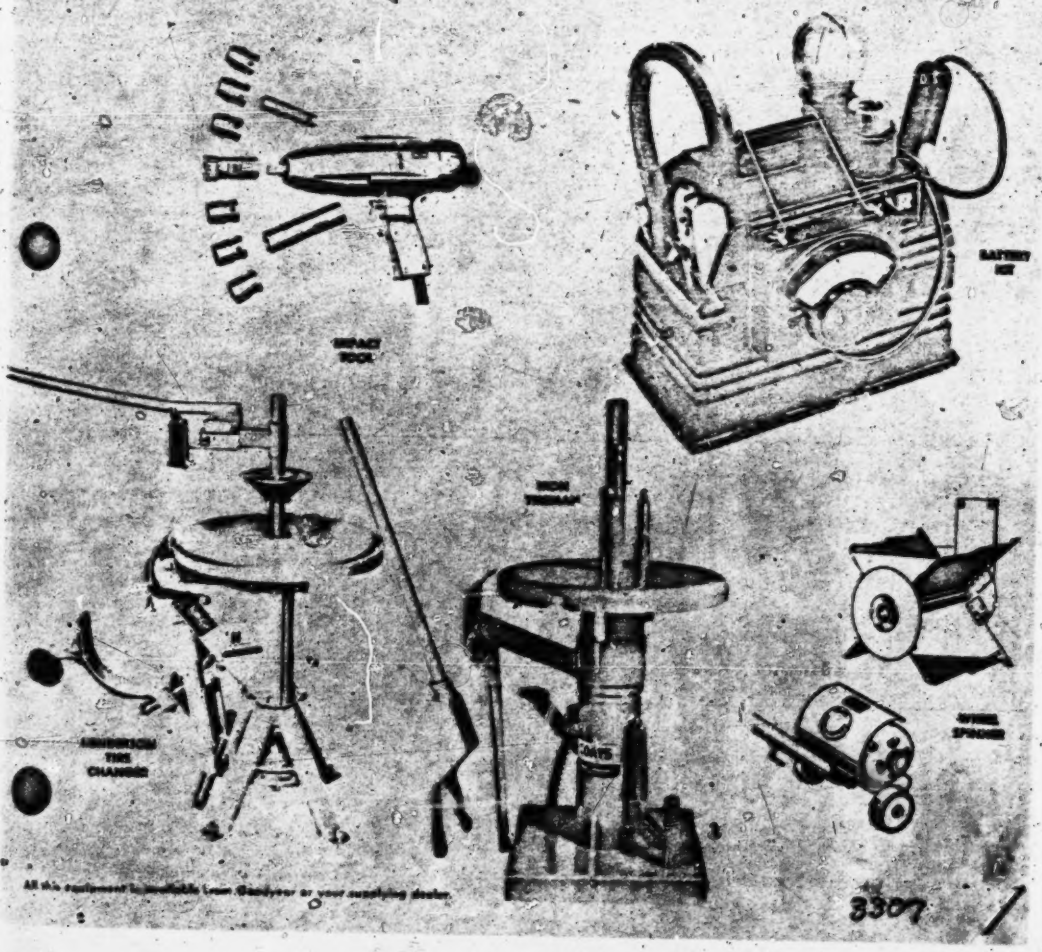
3116

SERVICE IS A MAJOR REQUISITE OF MUCH TBA SELLING

Tires and tubes must be mounted . . . batteries installed or charged . . . spark plugs, oil filters, fan belts, wiper blades, auto lamps, fuses, and a long list of other accessories must be serviced.

Modern, labor-saving, time-saving equipment allows you to do these services quickly and efficiently.

With the right equipment you can—
Reduce actual labor
Do a neater job
Protect the customers' property
Impress the customer favorably with fast, efficient service
Saves time . . . lets you do more jobs . . . make more profit



All this equipment is available from Gardner or your supplying dealer.

3307

3117

here are the merchandising aids
To help you SELL

NATIONAL ADVERTISING . . . Goodyear's national advertising program is by far the largest in the industry. Every one of your customers is barraged and pre-sold by thousands of Goodyear sales messages every day, every week, every month through magazines, newspapers, radio, and television. These are the messages that help you sell more Goodyear products.

PROFIT TIPS . . . 5 times a year these publications are issued. Profit Tips provide you with a recommended sales and merchandising program for each peak sales period. It previews new selling aids, merchandising ideas and best-selling items to be featured during these peak seasons. Profit Tips are supplied at no charge.

T B A MANUAL and GOODYEAR CAR & HOME MERCHANDISING CATALOG . . . The T B A Manual is issued once a year. It provides complete, accurate specifications and code numbers of all major T B A lines. It is a quick cross-reference between other manufacturers' part numbers and the Goodyear code number for each part. The Goodyear Catalog covers a wide selection of auto accessories and Car and Home merchandise and is available in time for it every year.

FREE TRAINING MATERIAL . . . Product folders, brochures, product data sheets describe the selling features of the Goodyear tire line. You can increase TBA sales by using these use-proven selling and service methods both in training employees and selling the customer.

In addition, Goodyear has a library of sales training films and meeting guides available upon request.

TIRE BUYER'S GUIDE . . . This is your counter sales manual that is jam-packed with important, dramatic sales clinchers on Goodyear's complete line of Tires, Tubes, and Batteries. Every employee can use it effectively to guide a sales presentation to your customers. It makes sure the right sales points are said every time. Cost — $1.40 complete — including the handsome, loose-leaf binder.

SMALL PACKAGE DISPLAY SERVICE . . . Your point-of-purchase "sell" — a continuous service that keeps your displays current and tied-in with Goodyear Major-Nation-Wide tire sale events. It is mailed to you 4 times a year . . . May, July 4th, Labor Day, and October. The complete service for the full year at less than a dollar each, delivered.

3308

...to wrap up the package deal

YOUR TBA INVENTORY

- can be selected from the following list of high turnover T B A products supplied by Goodyear.

With Goodyear as the one, single source of T B A stock, you have one ordering procedure, one billing procedure, and one reliable re-order point.

Goodyear, the world's largest tire company, backs up its years of successful marketing through Oil Company outlets with assistance and counsel that pays off in profits for you.

Check the suggested T B A stock carefully; you can choose your stock with confidence.

HIGH GALLONAGE STATION

PASSENGER TIRES	DOUBLE EAGLE		NYLON CUSTOM				RAYON DELUXE				SUPER-CUSHION				MARATHON
	Tube-Type	Tubeless	Tube-Type		Tubeless		Tube-Type		Tubeless		Tube-Type		Tubeless		Tube-Type
	Rev.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Black
6.70-15	—	—	—	—	—	2	4	2	2	2	2	2	1	1	2
6.00-16	—	—	—	—	—	—	—	—	—	—	4	—	—	—	4
7.10-15	—	—	—	—	—	2	2	2	1	1	1	1	1	1	—
7.60-15	—	2	—	—	—	2	2	2	1	1	1	—	—	—	—
8.00-15	—	—	—	—	—	1	1	1	1	1	—	—	—	—	—
8.20-15	—	—	—	—	—	1	1	—	—	—	—	—	—	—	—
8.40-15	—	—	—	—	—	—	1	—	—	1	—	—	—	—	—

PASSENGER TUBES	Deluxe H. D. Black	LifeGuard Blowout Shields	TRUCK TIRES		Traction Hi-Miler Tubeless	Rib Hi-Miler	Grip Tread	Hi-Miler Commercial Tubeless	TRUCK TUBES	H. D. Black
6.00-16	6	—							6.00-16	2
6.25/6.50/6.70-16	2	—	6.00-16	6 Ply	—	2	—		6.50-16	4
6.00/6.40-15	2	—	6.50-16	6 Ply	1	2	2		7.00-15	2
6.50/6.70-15	6	2	6.70-15	6 Ply	—	—	—	2	7.50-16	1
7.10-15	6	2	7.00-15	6 Ply	1	2	—		7.00-20	1
7.00/7.60-15	6	2	7.50-16	6 Ply	—	1	—		7.50-20	1
8.00-15	4	2	7.50-20	10 Ply	—	1	—			
7.50/8.20-15	6	—								

AVERAGE GALLONAGE STATION

PASSENGER TIRES	NYLON CUSTOM				RAYON DELUXE				SUPER-CUSHION			
	Tube-Type		Tubeless		Tube-Type		Tubeless		Tube-Type		Tubeless	
	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.
6.70-15	—	—	—	2	2	2	1	2	1	1	1	1
6.00-16	—	—	—	—	—	—	—	—	2	—	—	—
7.10-15	—	—	—	2	2	2	1	1	1	—	1	1
7.60-15	—	—	—	2	2	2	1	1	—	—	—	—
8.00-15	—	—	—	—	—	1	—	1	—	—	—	—

PASSENGER TUBES	Deluxe H. D. Black	LifeGuard Blowout Shields	TRUCK TIRES		Traction Hi-Miler Tubeless	Hi-Miler Rib	Hi-Miler Commercial Tubeless	TRUCK TUBES	H. D. Black
6.00-16	6	—						6.00-16	2
6.25/6.50/6.70-16	2	—	6.00-16	6 Ply	—	2		6.50-16	4
6.00/6.40-15	2	—	6.50-16	6 Ply	—	2		7.00-15	2
6.50/6.70-15	6	—	6.70-15	6 Ply	—	—	2	7.00-16	1
7.10-15	4	—	7.00-15	6 Ply	2	—		7.50-16	1
7.00/7.60-15	4	2						7.00-20	1
8.00-15	2	—						7.50-20	1

AVERAGE GALLONAGE STATION

BATTERIES	Double Eagle	DeLuxe All Weather	All Weather	Special
Group 1	1	1	1	1
Group 2	1	1	—	—
Group 2L	—	1	—	—
Group 2F	—	—	1	—
Group 2E	—	—	1	—
Group 2N	—	1	—	—
Group 3EE	—	1	—	—
Group 24S	—	1	—	—
Group 60K	—	1	—	—

BATTERY CABLES	Insulated Cable	Ground Strap		
G-12C	2			
G-14C	2			
G-19C	1			
G-23C	1			
G-27C	1			
G-31C	1			
G-38C	1			
G-7S		1		
G-9S		1		
G-13S		3		
G-16S		1		
G-23S		1		

HIGH GALLONAGE STATION

BATTERIES	Double Eagle	DeLuxe All Weather	All Weather	Special
Group 1	2	4	1	1
Group 2	1	1	1	—
Group 2L	—	1	1	1
Group 2F	—	—	1	—
Group 2E	—	—	1	1
Group 2N	—	1	—	—
Group 3EE	—	2	—	—
Group 24S	—	1	—	—
Group 60K	—	1	—	—

BATTERY CABLES	Insulated Cable	Ground Strap		
G-12C	4			
G-14C	4			
G-19C	2			
G-23C	2			
G-27C	2			
G-31C	2			
G-38C	2			
G-7S		2		
G-9S		2		
G-13S		6		
G-16S		2		
G-23S		2		

WESTINGHOUSE AUTOMOTIVE LAMPS

		Asst.	Mi-Cel.
Indicator #51	223-0102	10	20
Indicator, Instrument #53*	0165	10	10
Parking, Instrument #55	0103	20	20
Indicator, Marker, Instrument #57*	0108	10	10
License, Parking, Instrument #63	0104	20	30
Indicator, Marker, Instrument #67*	0128	10	20
Interior, Parking, Instrument #81	0129	10	10
Interior #82	0130	10	10
Interior, Signal #87	0106	10	10
Interior, #88	0105	10	10
Tail, Stop #1034*	0171	10	20
Turn Signal, Back Up #1073*	0168	10	10
Interior, Signal #1129	0110	10	10
Interior, Signal #1141*	0169	..	10
Stop, Tail #1154	0120	20	30
Stop, Tail #1156	0121	10	10
Dome, Step or Courtesy #1004	0173	10	10
Stock & Bus Replacement Chart	0150	1	1

FLASHLIGHT BULBS

Flashlight 2D Cells RR 2	23-0167	10	20
Flashlight 3D Cells PR 3	0168	10	10
Flashlight 3D Cells 13	0151	10	10
Flashlight 2D Cells 14	0152	10	10
Pen Light Bulb 222	0162	10	10

SEALED BEAM LAMPS

Headlamp #5040	222-0142	16	24
Headlamp #5400*	0143	8	16
*12 Volt Lamps Westinghouse			
Wall Chart Passenger Cars	0149	1	1

BUSS AUTO FUSES

Contains the following:

Fuse 1 bag (5 Fuses) AGA 3	222-1409		
Fuse 1 box (5 Fuses) AGC 10	1414		
Fuse 4 box (20 Fuses) AGC 30	1412		
Fuse 1 box (5 Fuses) AGC 15	1411	1	1
Fuse 1 box (5 Fuses) SFE 7½	1418	1	1
Fuse 1 box (5 Fuses) SFE 4	1403		
Fuse 1 box (5 Fuses) SFE 6	1404		
Fuse 3 box (15 Fuses) SFE 9	1405		
Fuse 12 box (60 Fuses) SFE 14	1406		
Fuse 10 box (50 Fuses) SFE 20	1407		
Fuse 7 box (35 Fuses) SFE 30	1408		
Buss Fuse Asst.	-1421		

FLEXIBLE RADIATOR HOSE — GOODYEAR

Assortment	543-9002	1	1

Consists of the following:

FH-2007	543-1001	3
FH-2015	-1005	2
FH-2407	-1011	1
FH-2410	-1012	2
FH-2413	-1012	2
FH-2416	-1014	2
FH-2806	-1021	2
FH-2811	-1023	1
FH-2813	-1024	1
FH-2816	-1025	1
FH-2818	-1026	1
FH-2823	-1027	2

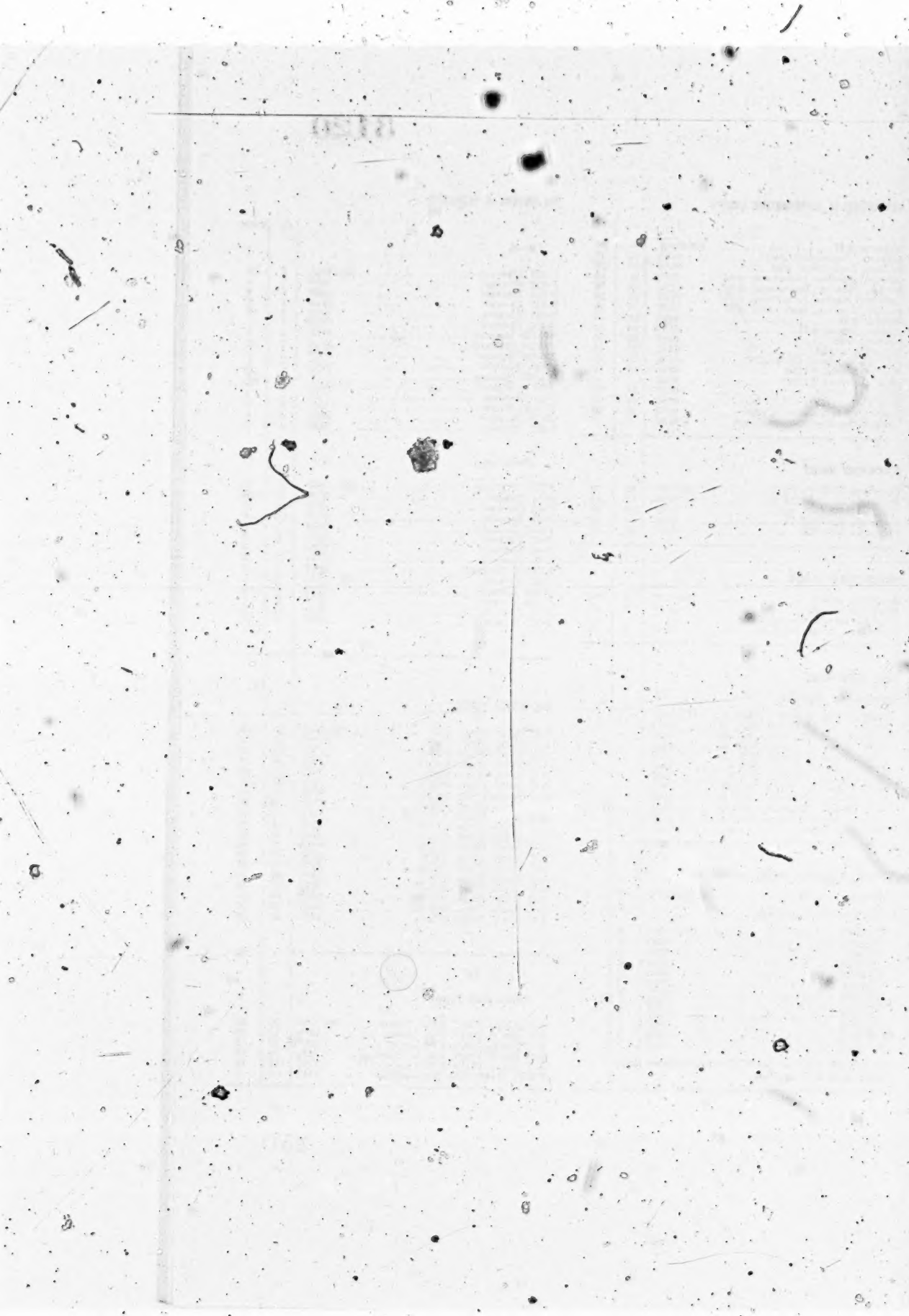
Also includes a Chart, Set of Flexible Radiator Hose Rack Nos & 20 Hose Clips.

OIL FILTERS & ELEMENTS

		Ast.	Mi-Cel.
A-C			
P-209 Element	222-3422	6	12
P-112 Element	3436	1	2
P-115 Element	3429	5	9
P-117 Element	3441	1	2
P-301 Element	3421	1	3
P-320 Element	3452	1	3
PF-210 Element	3455	4	8
PF-131 Element	3462	6	12
PF-326 Element	3463	2	4
P-316 Element	3427	4	8
P-203X Element	7139	1	3
PF-319 Element	3428	2	4
P-21 Element	3420	2	4
PF-122 Element	3431	5	9
P-127 Element	3432	3	6
C-251 Element	3425	1	2
Purolator			
PER 1/2 Filter	229-3303	1	2
P-34 Element	3305	5	10
P-37 Element	3306	1	2
P-51 Element	3317	3	4
PN-15 Element	3304	1	2
P-40 Element	3318	2	3
P-48 Element	3324	3	4
P-70 Element	3315	4	6
P-70FR Element	3308	1	2
P-82 Element	3316	1	2
P-124 Element	3320	3	4
P-125 Element	3321	2	3
P-76 Element	3323	2	4
P-131 Element	3332	6	12

A-C SPARK PLUGS

A-C Spark Plugs #48	222-2540	10	20
A-C Spark Plugs #48X	1297	10	20
A-C Spark Plugs #46-5	1263	30	40
A-C Spark Plugs #46-X	1296	20	30
A-C Spark Plugs #46	2524	10	20
A-C Spark Plugs #45-L	1265	20	30
A-C Spark Plugs #45	2523	30	40
A-C Spark Plugs #45-R	2502	10	20
A-C Spark Plugs #45-XLR	2503	10	10
A-C Spark Plugs #44-5	2525	30	40
A-C Spark Plugs #44	2522	10	20
A-C Spark Plugs #M-8	2536	10	20
A-C Spark Plugs #104	2533	10	10
A-C Spark Plugs #47-L	2545	10	10
A-C Spark Plugs #43-5	1262	10	10
A-C Spark Plugs #85-T	1277	10	20
A-C Spark Plugs #R-36	2506	10	10
A-C Spark Plugs #45-XL	2544	10	10
A-C Spark Plugs #43-L	1292	10	10
Commercial Types			
A-C Spark Plugs #44-5 Comm.	222-1264	10	10
A-C Spark Plugs #45 Comm.	1266	10	10
A-C Spark Plugs #44 Comm.	1267	10	10
A-C Spark Plugs #43-L Comm.	1292	10	10
A-C Spark Plugs #43-5 Comm.	1294	10	10
FM-24 Spark Plug Merchandiser	1246	1	1



STANT CLOSURE CAPS

		Av.	Bl-Cd.
Stant Gas Caps, Radiator Caps — Display Merchandiser and Stock Assortment	222-1692	1	1
Consists of the following:			
Stant R-1 Under Hood Radiator Cap	222-1620	2	
Stant R-3 Under Hood Radiator Cap	1622	3	
Stant R-4 Under Hood Radiator Cap	1623	2	
Stant R-5 Under Hood Pressure Cap	1650	2	
Stant R-6 Under Hood Pressure Cap	1651	2	
Stant R-7 Under Hood Pressure Cap	1652	1	
Stant R-8 Under Hood Pressure Cap	1653	2	
Stant R-9 Under Hood Pressure Cap	1654	2	
Stant R-12 Under Hood Pressure Cap	1656	1	
Stant R-13 Under Hood Pressure Cap	1657	1	
Stant R-14 Under Hood Pressure Cap	1658	2	
Stant R-15 Under Hood Pressure Cap	1659	2	
Stant G70A Locking Gas Cap	1690	2	
Stant G-82 Locking Gas Cap	1684	1	
Stant G-75 Locking Gas Cap	1685	2	
Stant G20A Gas Cap	1663	6	
Stant G25B Gas Cap	1664	2	
Stant G-22 Gas Cap	1687	2	
Stant G-30 Fenderwell Gas Cap	1666	3	
Stant G-31 Fenderwell Gas Cap	1688	2	
Stant G35B Fenderwell Gas Cap	1667	2	
Stant G75B Locking Gas Cap	1691	1	
Stant Oil Filler Cap Assortment in Display Carton	222-1674	1	1
Consists of the following:			
Stant SO-61 Oil Filler Cap	222-1675	3	
Stant SO-62 Oil Filler Cap	1676	3	
Stant SO-63 Oil Filler Cap	1677	2	
Stant SO-64 Oil Filler Cap	1678	2	
Stant SO-65 Oil Filler Cap	1679	4	
Stant SO-66 Oil Filler Cap	1680	4	
Stant SO-67 Oil Filler Cap	1681	1	

Comparable Closure Cap Types also Available in AC.

FAN BELTS — GOODYEAR

#18 Fan Belt	520-1018	2	3
#60 Fan Belt	1060	2	3
#96 Fan Belt	1096	1	2
#450H Fan Belt	2450	2	2
#101 Fan Belt	1101	2	2
#76 Fan Belt	1076	2	2
#254 Fan Belt	1254	2	2
#32 Fan Belt	1032	2	2
#19 Fan Belt	1019	1	2
#467H Fan Belt	2467	1	2
#263 Fan Belt	1263	1	1
#402H Fan Belt	2402	1	1
#407H Fan Belt	2407	1	1
#258 Fan Belt	1258	1	1
#408H Fan Belt	2408	1	1
#404H Fan Belt	2404	1	1
#370 Fan Belt	1370	..	1
#406H Fan Belt	2406	..	1
#452H Fan Belt	2452	..	1
#460H Fan Belt	2460	..	1
#442H Fan Belt	1442	..	1
#403H Fan Belt	2403	..	1
#466H Fan Belt	2466	..	1
#3011H Fan Belt	3011	..	1
#3001H Fan Belt	3001	..	1

MIRRORS

		Av.	Bl-Cd.
4½" Round Rear View Mirror	222-0234	2	3
Oblong Rear View Mirror	0214	2	3
Body Mount Mirror	0230	2	2
Rear View Mirror Display	0212	1	1
Body Mount Mirror	0236	2	3
Visor Vanity Mirror	0230	4	4

RADIATOR HOSE CLAMPS

Hose Clamp Assortment	222-4207	1	1
Consists of the following:			
⅝" to ¾" Hose Clamp	222-4201	20	
1" to 1¼" Hose Clamp	4202	20	
1½" to 1⅝" Hose Clamp	4203	40	
2" to 2¼" Hose Clamp	4204	20	

HEATER HOSE

Heater Hose (50' roll)	546-3001	1	1

RADIATOR CHEMICALS

Warner Cooling System Protector	222-2280	6	12
Warner Liquid Solder	2281	6	12
Warner Radiator Dry Cleaner	2283	6	12
Warner Radiator Cleaner	2282	6	12
DuPont Cooling System Cleanser	2285	12	24
DuPont Fast Flush	2287		
DuPont Anti-Rust & Pump Lubricant	2286	12	24
DuPont Acid-Rust Inhibitor	2289	12	24
DuPont Cooling System Sealer	2284	12	24
DuPont Heavy Duty Sealer	2273	6	12
Mac's Cooling System Cleanser	2288	6	12
Mac's Stop Leak	2292	6	12
Mac's No. "12" Rust Preventive	2294	6	12

*Select Brand Popular in Your Trading Area.

CLEANERS, POLISHES & SUPPLIES

Simoniz Vista	222-2271	6	12
Simoniz Bodysheen	2122	6	12
Simoniz Paste Wax	2215	6	12
Simoniz Liquid Kleener	2217	6	12
Simoniz EZ-2 Chrome Cleaner	2213	6	12
Simoniz Liquid Bodygard	2223	6	12
Johnson "J" Wax	2265	6	12
Johnson Deep Gloss Carna	2263	6	12
Johnson Car Plate Cleaner	2270	6	12
Johnson Car Plate Wax	2262	6	12
Johnson H D Cleaner	2250	4	6
Johnson Chrome Cleaner	2257	6	12
DuPont "7" Polish & Cleaner	2282	6	12
DuPont New Car Wax	2290	6	12
DuPont Dissolvo	2118	4	6
DuPont Cellulose Sponge	2014	6	12
DuPont Cellulose Sponge	2015	6	12
DuPont Car Wash	2202	4	6
Mac's Mild Blend Cleaner	2291	6	12
Mac's Special Cleaner	2250	6	12
Mac's "Resin Coat" Polish	2125	6	12
Mac's Super Gloss Car Wash	2290	6	12
Mac's Super Glaze Car Polish	2295	6	12
Goodyear Spot Remover	2208	6	6
Goodyear Tar Remover	2115	6	6

CLEANERS, POLISHES & SUPPLIES (Cont.)

			Av.	Bl-Cel.
Goodyear Chrome Cleaner	222-	2234	6	6
Goodyear Car Wash 6 oz.		2233	6	12
Goodyear White Side Wall Cleaner		2127	6	6
Tyrapplecloth		2228	12	24
All Purpose Polish Cloth		2148	6	12
Lus Stik Polish Cloth		2225	6	12
Lus Stik Polish Mitt		2227	6	12
Chamois 13" x 17"		4011	3	3
Chamois 20" x 26"		4006	3	3
Chamois 27" x 29"		4013	2	4

Select the brands most popular in your trading area.

EXHAUST EXTENSIONS

Jeweled Super Exhaust Deflector	222-0305	2	4
Tubular Exhaust Extension	0309	4	8
Turbo Jet Exhaust Deflector	0312	2	4
Downdraft Tubular Exhaust Extension	0313	2	4
Caprice Extension	0314	2	4

SEAT CUSHIONS

Fibre Cushion	222-3503	2	4
DeLuxe Wedge Cushion	3504	2	4
Shredded Foam Cushion	3510	2	4
Air Cool Seat Cushion	3509	3	6
Large Air Cooled Seat Cushion	3512	2	3
Air Cooled Cushion Display Rack	3513	1	1

ANCO WINDSHIELD WIPER ACCESSORIES

Windshield Wiper Blades			
Anco Super Service Clear Flex Blades — 9"	222-2882		
Anco Super Service Clear Flex Blades 10"	2883		
Anco Super Service Clear Flex Blades 11"	2884		
Anco Super Service Clear Flex Blades 12"	2885		
Anco Super Service Rainmaster Blades 8¼"	2887		
Anco Super Service Rainmaster Blades 9"	2888		
Anco Super Service Rainmaster Blades 10"	2889		
Anco Super Service Rainmaster Blades 11"	2890		
Anco Super Service Rainmaster Blades 12"	2891		
Anco Turtleback Blade — 12"	2895		
Anco Turtleback Blade Refills — 12"	2896		
Anco Clear Flex Blade Refills — 9"	2867		
Anco Clear Flex Blade Refills — 10"	2868		
Anco Clear Flex Blade Refills — 11"	2869		
Anco Clear Flex Blade Refills — 12"	2870		
Anco Washer Fluid (Ctn 12)	2875	1	1
Anco ¼" Wiper Hose — 90"	2897	1	1
Anco ¼" Wiper Hose — 50"	2898	1	1
Anco Servisolia Portable Service Cabinet	2850	1	1
Wiper Arms			
Super-Service 6" — 10"	2903	4	6
Super-Service 10" — 14"	2904	6	8
Anco "Service Seller" Stand	2850	1	1
Without Stock	2939	1	1
Anco Big-Shot Windshield Washer		1	2

DOLE THERMOSTATS

Dole Sale Maker Assortment	222-31117	1 1
Consists of the following:		
DVI	222-3101	Quantity 1
DVIH	3102	Quantity 3
DVF	3103	Quantity 2
DVFH	3104	Quantity 2
DV 2	3105	Quantity 1
DV 2 H	3106	Quantity 1
DV 3	3107	Quantity 1
DV 3H	3108	Quantity 1
DV 20	3129	Quantity 1
DV 20H	3130	Quantity 3

FLASHLIGHT BATTERIES

		Av.	Bl-Cel.
Size D Standard (Box 48)	23-0107	48	48
Size C Junior	0108	12	12
AA Penlite	0110	24	24

FRICTION & PLASTIC TAPE

#1 Friction Tape (Display — 32 rolls)	222-0341	1	1
#2 Friction Tape (Display — 16 rolls)	0342	1	1
#4 Friction Tape (Rolls only)	0343	6	12
#8 Friction Tape (Rolls only)	0344	2	4
Goodyear Plastic Tape ½" x 10' (Display — 18)	0345	1	1

FLOOR MATS

Protecto Mat 18" x 16" Blue	222-1532	2	2
Protector Mat 18" x 16" Green	1533	2	2
Protector Mat 18" x 16" Coral	1534	2	2
Protecto Mat 18" x 16" Black	1535	2	4
Twin Mats — Ebony Black	1536	1 pr.	2 pr.
Twin Mats — Sky Blue	1537	1 pr.	3 pr.
Twin Mats — Emerald Green	1538	1 pr.	3 pr.
Twin Mats — Coral	1539	1 pr.	2 pr.
Twin Mats — Blue Gray	1540	1 pr.	2 pr.
Twin Mats — Desert Tan	1541	1 pr.	2 pr.
Twin Mats — White	1542	1 pr.	2 pr.

BRAKE FLUID

Goodyear Moderate Duty Brake Fluid — 12 oz.	222-2220	12	24
Goodyear Moderate Duty Brake Fluid — Gal.	2237	1	1
Goodyear Heavy Duty Brake Fluid — 12 oz.	2131	12	24
Goodyear Heavy Duty Brake Fluid — Gal.	2134	1	1
Goodyear Heavy Duty Brake Fluid — 5 Gal.	2238		

FLASHLIGHTS

Flashlight & Battery Display Deal	23-0217	1	1
Consists of the following:			
2 LP Flashlight Batteries Size D	23-0107	48	
Jet Beam 2 Cell Junior Flashlights	0210	3	
Jet Beam 2 Cell Flashlights	0211	6	
Jet Beam 3 Cell Flashlights	0242	3	
Jet Beam Penlight (Display Card of 12)	0209	1	1
Flashlight Holders	0553	3	3

MISCELLANEOUS AUTOMOTIVE CHEMICALS

DuPont Multi Service Cleaner	222-2210	1	1
DuPont Gas Guard	4324	3	6
DuPont Clear Windshield Sealer	2110	3	6
Rugkyde Rubber Lubricant	4331	1	1
Lus Stik Leather Cleaner	2140	3	6
Lock Ease Lock Fluid	4302	3	6
Door Ease Stick Lubricant (Box of 6)	4301	1	1
Quickee Hand Cleaner	4308	1	1
Goodyear General Use Oil	2261	2	4
	4305	6	6

3123

GOOD SERVICE
combined with the
Goodyear TBA Plan
gives you the key
to full

PROFITS

and now

3714

145

3124

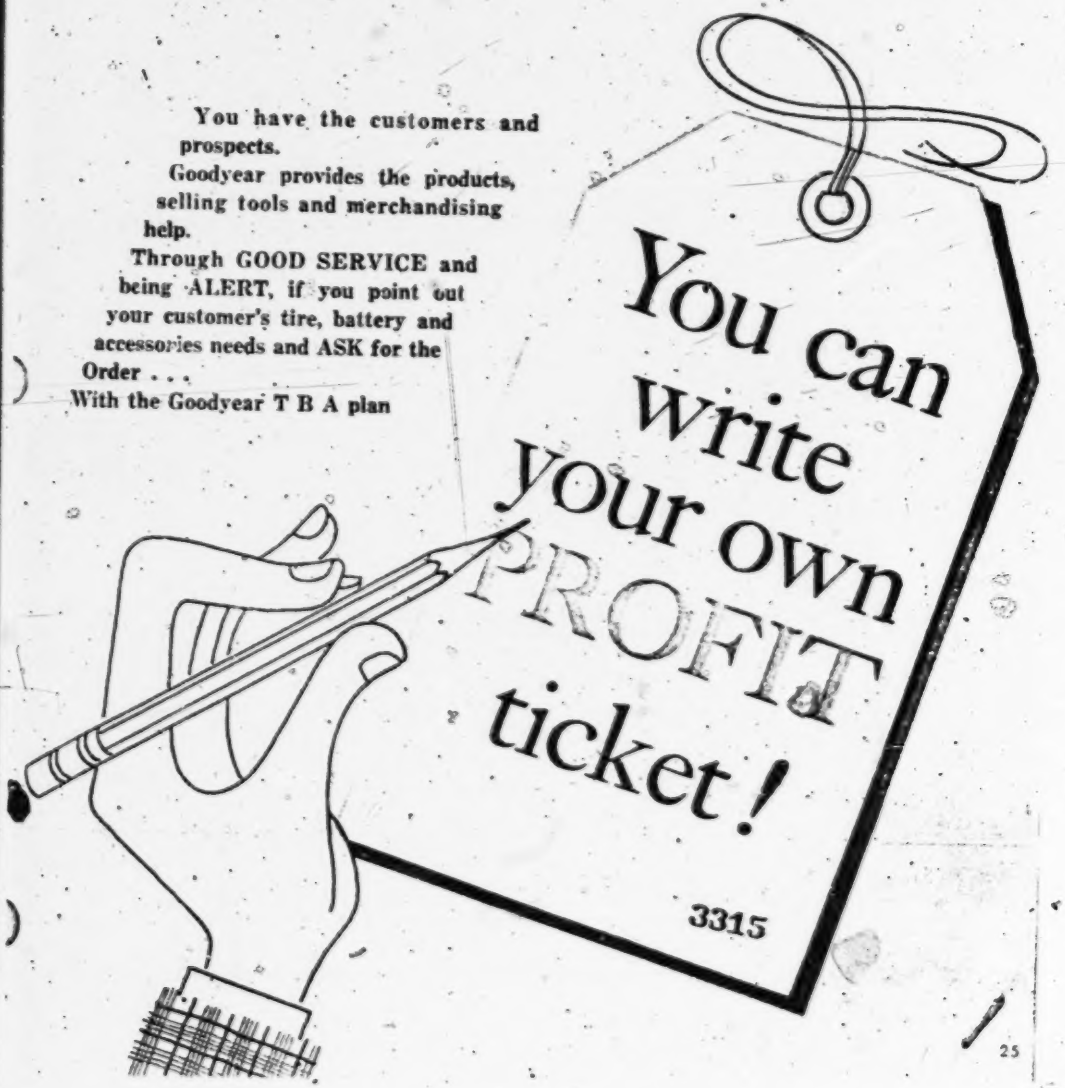
TO SUM UP . . .

You have the customers and prospects.

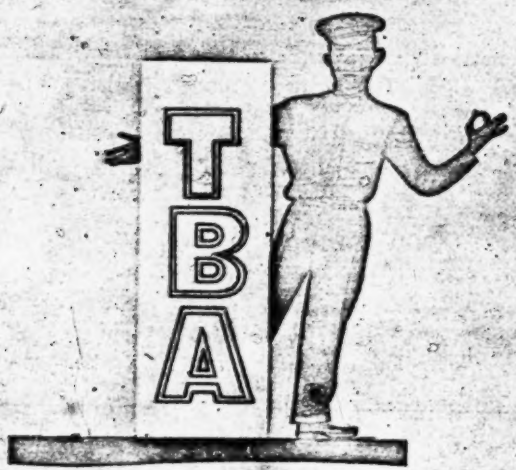
Goodyear provides the products, selling tools and merchandising help.

Through GOOD SERVICE and being ALERT, if you point out your customer's tire, battery and accessories needs and ASK for the Order . . .

With the Goodyear T B A plan



3125



THE GOODYEAR TIRE & RUBBER COMPANY, INC.
AKRON 16, OHIO

3316

VOLUME V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 296

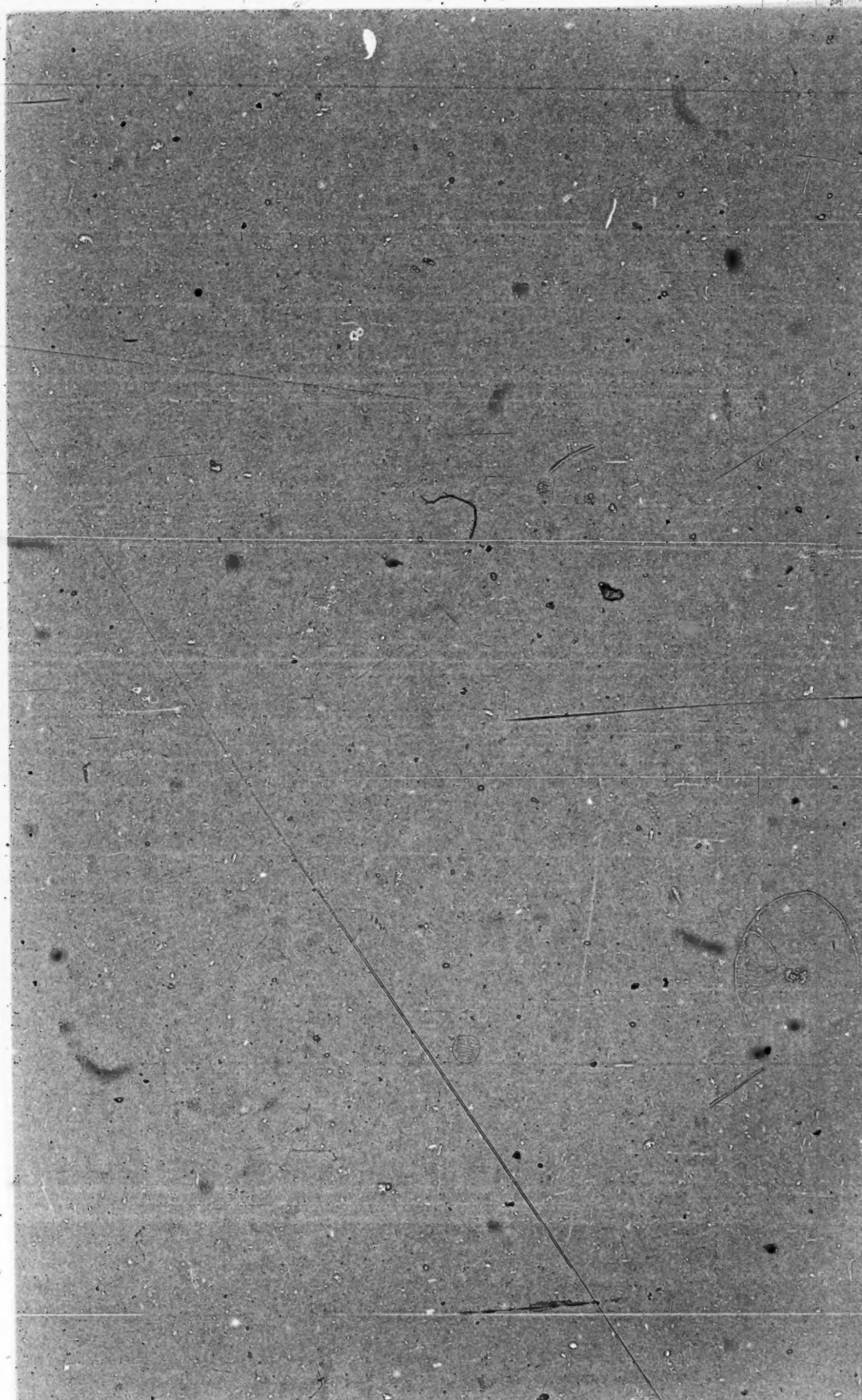
THE GOODYEAR TIRE & RUBBER COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964



No. 296

VOL. V, pp. 3127 to 3679

Office-Supreme Court, U.S
FILED
JUL 17 1964
JOHN F. DAVIS, CLERK

In the

United States Court of Appeals

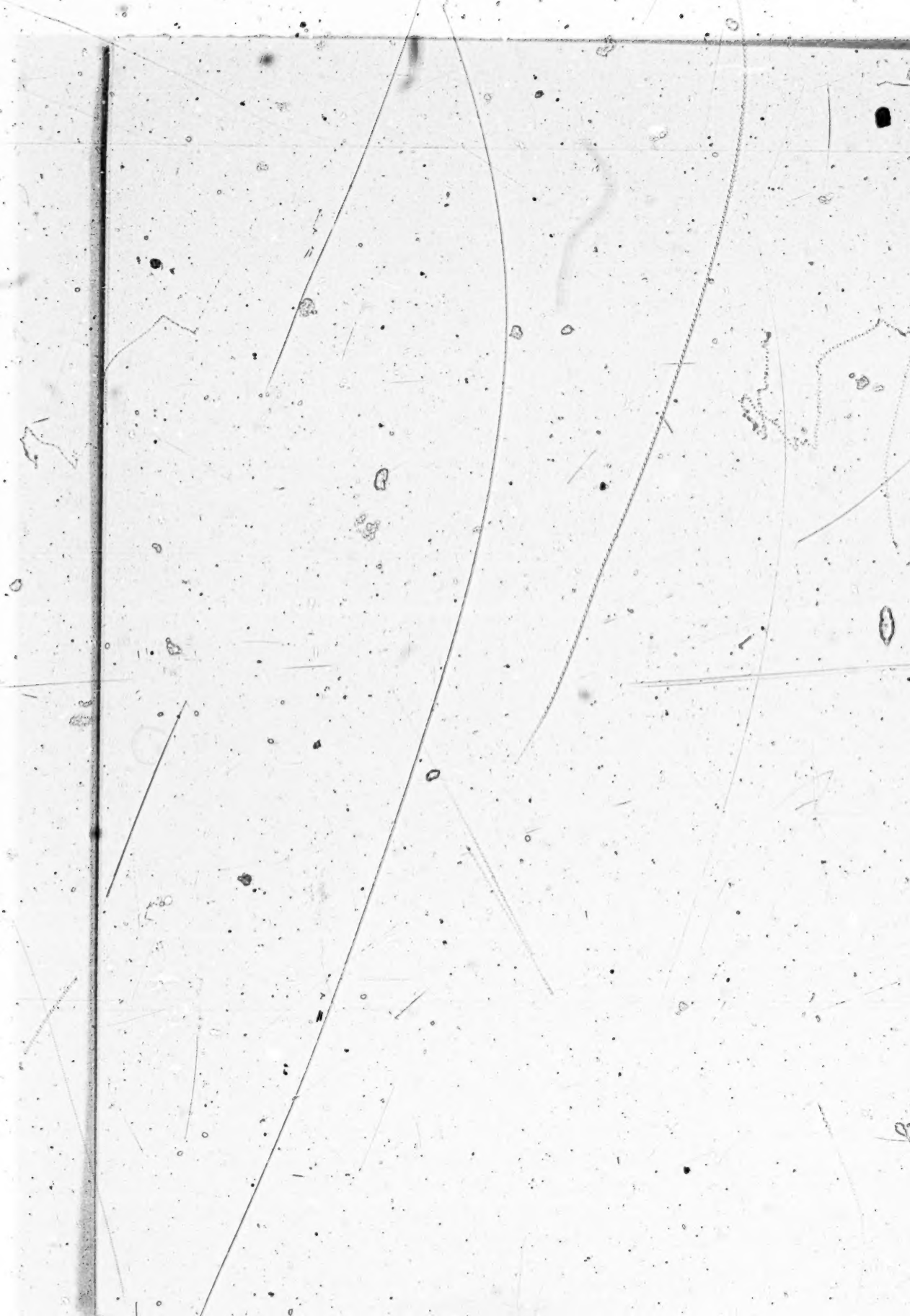
For the Seventh Circuit

No. 13339

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner,* vs. FEDERAL TRADE COMMISSION, *Respondent.*	Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO



INDEX

Summary of proceedings below 1
Amended Complaint 5
Answer of Goodyear Company 13
Answer of Goodyear Company, Inc. 19
Answer of Atlantic to Complaint as amended by order of May 21, 1956 26
Order sustaining Interlocutory Appeal 35
Motion of Goodyear Company and Goodyear Company, Inc., to withdraw issues and to strike evidence 38
Answer in opposition to motion, etc. 39
Order denying motion to withdraw issues and to strike evidence 45
Interlocutory Appeal of Respondents 46
Answer in opposition to Interlocutory Appeal 61
Order denying Interlocutory Appeal 88
Order on motion to strike evidence 90
Initial Decision 94
Final Order 114
Opinion of the Commission 118
Petition for Review 188

TRANSCRIPT OF PROCEEDINGS

Admissions of Respondents 199
Documents marked for identification 203
Offer of exhibits 219, 237, 393, 441, 459, 482, 601
Colloquy 223, 248, 1432, 2369
Stipulation re testimony of Atlantic personnel 366
Stipulation re Atlantic testimony 415
Stipulation re Goodyear testimony 447, 512

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3678.

Data re three marketing areas 468
Stipulation re Warren and Hunterdone Counties in New Jersey 2342
Stipulation re Gay testimony 2343
Statement of Crawford Bryant 2347

WITNESSES FOR THE COMMISSION.

Testimony of:

Balloran, Francis J. 771
Best, Rolland C. 1208
Blumenthal, David B. 306
Booz, Elmer H., Jr. 757
Chambers, John 257
Colby, William 874
Connell, Conrad 709
Drennan, Robert B. 931
Duboff, Myer 533
Edrington, Russell H. 1298
Edwards, William E. 1308
Franks, William Lee 789
Ferguson, Richard 882
Freeland, Edgar D., Jr. 1244
Govoruhk, Nicholas 1051
Hayes, Sherman 869
Heald, Felix B. 802
Heller, Edward C. 499
Hill, George J., Jr. 488
Hinderscheid, W. F. 571, 687
Hoffman, Jack 291
Hooper, Jar[illegible] 1257
Huether, Lewis A. 1252
Iacona, Aniello L. 637
Johnson, Tyler L. 743

Kernaghan, Thomas J. 669
Kevis, Douglas W. 312
Lang, Elmer 1220
Lanza, Michael Thomas 853
Marabella, Joseph 815
Matthews, James 554, 604
McCandless, Robert H. 695
McIntire, James L. 805
McMaster, Joseph B. 1109
Migan, John J. 1150
Myers, James M., Jr. 939
Norris, Oster 1145
Osborn, Samuel Kriete 962
Pollock, Isidore Jack 660
Roettger, E. Edmond G. 1036
Sander, Homer August 1293
Savage, Eugene 1160
Scheiner, Joseph 1279
Smith, William C. 1011
Vick, John J. 677
Walker, George Stanley Drew 896
Wetzel, Glenn L. 320

WITNESSES FOR RESPONDENT.

Testimony of:

Buongiorne, Frank R. 1611
Carlson, Robert O. 1888
Cary, Reuben 2188
Colley, Dwight T. 2348
Cooley, Russell E. 1583
Connelly, Joseph M. 2154
Detwiler, Charles K. 2083
Elko, Donald 1939

Gaestel, Wilbur D. 1815
Gloth, Israel 2027
Godino, Alfred 1925
Grossman, Sam 1740
Hathaway, Holland M. 1474, 1555
Hayes, Thomas A., Jr. 2114
Jones, Thomas E. 1970
Klein, Robert 2139
Lott, Charles Henry 1772
Luongo, Rudolph N. 1963
Mann, Isadore 1952
Mapes, August 1791
Marino, Joseph A. 1751
Maseyko, George Paul 1667
McCarthy, Harold F. 2043
Molinaro, Dominic, Jr. 2068
Mulholland, Richard G. 2300
Munch, Edward B. 1550
Provost, Robert C. 1932
Rhoades, O. Harris ..... 2169.
Ringenary, Edward 1909
Shafer, Albert H. 2208
Snow, Edward L. 2061
Thomas, Richard D. 1565
Vayda, Albert J. 2136
Walsh, Charles A., Jr. 2248
Wash, Joseph J. 1720
Way, William L. 2147
Wright, Harry W., Jr. 1686
Wyckoff, Charles P. 1705
Zarella, George 2046

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets.....2375
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks.....2378
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord.....2379
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks.....2380
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman.....2381
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al...2383
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord.....2385
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al.....2387
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman.....2388
9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the company's preference for the Goodyear program:".....2389
Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan".....2393
11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental".....2395
12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors.....2397

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached.....2398
14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman.....2403
15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker.....2404
16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr.....2406
17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman.....2408
18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord.....2410
19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman.....2412
20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman.....2413
21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord.....2415
22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman.....2416
23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow".....2417
24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers.....2419
25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting".....2429
26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting".....2430

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline" 2431

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2432

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic, Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2435

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2436

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers" 2437

32—Inter-Office Communication, February 28, 1951, from W. E. Blank, attention of L. A. Knight..2438

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers 2439

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2441

35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2445

36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2446

37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2447

38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2448

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3879.

39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2449

40 A-B—Letter, February 9, 1951, from S. J. Heideman to J. E. Mayl, with enclosure 2451

41 A-E—Goodyear Form G-1209, with descriptive note 2453

42 A-B—Goodyear Form G-1204, with descriptive note 2458

43 A—Goodyear Form G-1201, with descriptive note 2459

44 A-B—Goodyear Form G-1208, with descriptive note 2460

44 C—Goodyear Form G-1207 2461

44 D—Goodyear Form B-91 2462

44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement 2463

44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2464

44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2465

45 A-B—Goodyear Form B-80, with descriptive note 2466

46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl 2467

47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al 2469

47 C-D—Goodyear Sales Department Instructions, May 31, 1951 2472

47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2475

48 A-F—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951" 2477

49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord 2484

50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman 2485

51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman 2487

51 A—Goodyear Form A98101L, "Request for Identification Field Service" 2489

52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company" 2491

53—Summary of Sales and Commissions covered by the Sales Commission Plan 2492

54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953" 2493

55—Goodyear Tabulation of TBA Volume of Commissions to Various Oil Companies, 1951, 1952 and the First Six Months of 1953 2493

56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord 2494

56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr. 2495

57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman 2496

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord 2497
59 A-E—Letter Agreement, January 1, 1950, from Goodyear to Shell Oil Company, with Exhibit A attached 2498
59 F-I—Letter Agreement, January 8, 1953, from Goodyear to Shell American Petroleum Company, with Exhibit A attached.....2503
60—Memorandum, November 6, 1951, from R. G. Miller to J. A. Bailey.....2508
61—Unsigned document, "Outline of Discussion The Shamrock Oil & Gas Corporation, Amarillo, Texas, Tuesday—November 27, 1951".....2512
62 A-E—Letter Agreement, March 11, 1952, from Goodyear to The Shamrock Oil and Gas Corporation, with Exhibit A attached.....2515
63—Letter, August 29, 1952, from Leo J. Wilmeth to R. G. Miller.....2521
64 A-E—Letter Agreement, September 5, 1952, from Goodyear to Carter Oil Company, with Exhibit A attached 2522
65 A-C—Memorandum, September 5, 1952, from S. A. Gaylord to certain District Managers and Division Managers 2527
66 A-L—Copy of "The Carter Dealer", December 1952 2533
67 A-B—Unsigned letter, July 14, 1937, to Sherwood Brothers, Inc.....2545
68 A-B—Letter Agreement, March 1, 1944, from Goodyear to Sherwood Brothers Incorporated 2547
68 C—Letter Agreement, December 21, 1955, from Sherwood Brothers Incorporated to S. A. Gaylord 2550

69—Letter Agreement, September 25, 1944, from Goodyear to Sinclair Refining Company.....2551

70 A-C—Letter Agreement, October 1, 1947, from Goodyear to Sinclair Refining Company, with attachment 2554

71 A-D—Letter Agreement, May 1, 1952 from Goodyear to Mid-Continent Petroleum Corp., with Exhibit A attached 2558

72—Letter, January 15, 1952, from Victor Holt, Jr. to T. E. Fitzgerald.....2563

73 A-B—Letter, June 20, 1953, from C. R. Mitchell to W. J. Wixson.....2564

73 C—Letter Agreement, May 16, 1955, from Goodyear to Mid-Continent Petroleum Corporation 2568

73 D-G—Letter Agreement, May 16, 1955, from Goodyear to D-X Sunray Oil Company, with Exhibit A attached 2569

74 A-D—Letter Agreement, June 19, 1952, from Goodyear to The Frontier Refining Company, with Exhibit A attached.....2573

75—Memorandum, June 12, 1952, from J. W. Basista to C. W. Thorp 2579

76—Letter, March 5, 1953, from J. W. Basista to Claude A. Weber 2581

76 A—Letter, December 9, 1954, from H. E. Armitage to Goodyear 2582

77 A-D—Letter Agreement, January 1, 1953, from Goodyear to Quaker State Oil Refining Corporation, with Exhibit A attached 2583

78 A-B—Document, undated and unsigned, with heading "Carter Oil Company T. B. A. Sales Potential".....2588

79 A-F—Letter Agreement, January 26, 1955, from Goodyear to Anderson-Prichard Oil Corporation, with Exhibits A, B and C attached.....2590

79 G—Letter, February 18, 1955, from E. K. Ketcham to Goodyear 2597

79 H-J—Unexecuted Letter Agreement dated August 9, 1949 from Goodyear to Ashland Oil & Refining Company, with attachment.....2598

79 K—Letter, September 13, 1949, from Everett F. Wells to Sam Gaylord.....2602

79 L—Letter, September 28, 1949, from S. A. Gaylord to E. F. Wells.....2603

79 M—Letter, July 12, 1950, from W. E. Cameron to Don W. Detjen.....2604

79 N-O—Memorandum, March 24, 1950, from S. A. Gaylord to H. E. Hoerster.....2605

79 P-V—Document, unsigned, January 3, 1950, with heading "Special Account Instructions Ashland Oil & Refining Company, Inc., Ashland, Kentucky Sales Commission" 2608

79 W—Document, undated and unsigned, with heading "Goodyear Districts".....2621

80 A-T—Goodyear Organization Charts 2623

80 U—Map entitled "Goodyear Regions & Districts" 2643

81 A-F—Atlantic Organization Charts 2644

82 A-C—Outline Maps of Atlantic Marketing Regions—Philadelphia-New Jersey Region, New York Region, New England Region.....2650

83 A-C—Outline Maps of Atlantic Marketing Regions—W. Penna. Region, E. Penna. Region, Southern Region 2653

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952 2657
85 A-B—Atlantic Lease Form B/3191, 6/49....2660
86 A-B—Atlantic Lease Form, B/3191, 4-52....2664
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2669
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station"....2672
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2672
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191....2678
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *" 2679
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station"..2680
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants..2681
88 E1-2—Atlantic Lease Form B-3191Y, 5/55....2683
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement 2689
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement 2690
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement 2692
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2697
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants..2702
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants..2704
93—Atlantic Form of "Commission Agreement"....2708

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2711
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2715
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2721
96—Atlantic Form B-3119, 10/50, "Authorized Distributor's Agreement" 2727
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2730
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2733
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2735
98 A-G—Atlantic Form of Distributor Contract.... 2737
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2743
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider..... 2749
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2754
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers"..... 2759
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2762
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al..... 2764
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study" 2765
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2791
102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments..... 2801

104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic 2807
105 A-B—Letter Agreement, January 12, 1954, from Firestone to Atlantic 2810
105 C—Letter Agreement, November 3, 1954, from Atlantic to Firestone 2813
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone 2814
121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachment .2816
122—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2821
123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord 2822
124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman 2823
125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord 2824
126 A-B—Letter Agreement, April 3, 1951, from Atlantic to Goodyear 2825
126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear 2827
126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear 2828
127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company-Sales Commission" 2829
128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall 2842
129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley 2844
130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda 2845

131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson.....2852
132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al.....2853
133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region 2854
134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for the marketing of Tires, * * *".....2857
136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment 2859
137 A-E—Document entitled "Duties of the Dealer Salesman" 2865
138—Unsigned memorandum, June 25, 1951, to F. M. Neall 2871
139 A—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger 2872
140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman 2873
140 A-C—Three Atlantic Forms B-139, 10/51, Dealers' Credit Card Sales Slips 2875
141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis 2879
142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman 2880
143—Letter, July 9, 1951, to William Stockton.....2881
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2882
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2883

145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2884
146 A-B—Document entitled "Staff meeting held 7/14/52" 2887
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13" 2889
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr. 2890
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program" 2891
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantic's T. B. A. Policy" 2892
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell 2893
152—Atlantic form letter, to Atlantic Dealers and Atlantic Petroleum Distributors, beginning "Here is the most important T. B. A. news * * *" 2894
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2895
155 A-H—Document entitled "1951 Sales Plan New York Region Basis" 2896
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C" 2902
155 J—Document entitled "1951 Sales Plan—Report of Progress—Appendix D" 2903
155 L—Document entitled "Appendix E" 2905
155 M—Document entitled "Summary of Results" .. 2906
156—Document dated January 5, 1951 entitled "Station Modelization Policy" 2907

157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2908
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman 2909
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord 2911
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments 2912
160 Q-Y—Document entitled "Goodyear Associate Dealers—New Jersey" 2927
161—Unsigned letter, July 30, 1951, to W. J. Jackson 2936
161 A-B—Document bearing two colums headed "Location" and "Reason" 2937
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman 2939
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord 2940
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman 2942
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman 2943
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill 2944
166—Letter, October 11, 1951, from J. W. O'Neill to S. Heideman 2945
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman 2946
167 A-M—Handwritten document entitled "Refusals" 2947
168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel 2958
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis 2959

170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment 2960
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment 2968
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment 2973
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis 2975
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, *et al.*, June 1, 1951, with attachment .. 2975
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman 2982
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman 2983
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletin #17" 2984
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman 2985
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord 2986
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y." .. 2987
179 J—Form entitled "Atlantic-Goodyear Accounts" . 3002
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)." 3002
180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman 3004
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill 3005

182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 3006
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 3007
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries" ..3009
193—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951" 3011
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950" 3013
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949" 3015
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950" 3017
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949" 3019
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950" 3021
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949" 3023
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950" 3025
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs. 1949" 3027
202—Tabulation entitled "Final T. B. A. Sales—October 1950" 3029
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950" 3030
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949" 3031
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950" 3032

204 A—Tabulation entitled "Final T. B. A. Sales—December 1950" 3033
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949" 3035
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950" 3036
206—Letter, August 28, 1952, from D. T. Colley 3037
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers 3038
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951" 3040
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951" 3040
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951" 3041
211—Document entitled "Atlantic Progress Report", October 29, 1951 3042
212—Document entitled "Atlantic Progress Report", December 24, 1951 3043
215 A-B—Atlantic Credit Card—1950 3045
216 A-B—Atlantic Credit Card—1951 3046
217 A-B—Atlantic Credit Card—1952 3047
218 A-B—Atlantic Credit Card—1953 3048
219 A-B—Atlantic Credit Card—1954 3049
220 A-B—Atlantic Credit Card—1955 3050
221 A-B—Atlantic Credit Card—1956 3051
222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50) 3052
223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51) 3053
226 A-H—Letter, July 7, 1950, from Paul Castleberry, Jr. to Atlantic with attachments 3054

Vol. I, pages 1 to 852; Vol. II, pages 853 to 1610; Vol III, pages 1611 to 2373; Vol. IV, pages 2375 to 3126; Vol. V, pages 3127 to 3679.

227 A-K—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear with attachments 3062
228 A-K—Goodyear Forms G-1204 (3-50) with covering Form G-703 (2-42) 3073
247 A—Document entitled "Goodyear T. B. A. is a natural for plus sales and profits".....3084
247 B—Booklet entitled "Goodyear T. B. A. Plan"..3098
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling 3127
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman 3128
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic 3129
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation" 3130
257 A—Letter, November 12, 1953, Atlantic to Aniello L. Iacona 3131
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic 3132
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania.....3133
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro 3134
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro 3136
259—Letter, July 5, 1956, from Atlantic to A. Bennett 3137
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson 3138
261—Letter, October 21, 1955, from Atlantic to Charles Davis 3139
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice 3140

263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio 3141
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly 3142
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel 3143
266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette 3144
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith 3145
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco 3146
269—Letter, January 5, 1955, from W. J. McCambridge, Jr. to Duane Olthof 3147
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski 3148
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski 3149
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw 3151
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco 3152
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers 3153
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman 3153
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al 3155
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3156

280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al.....3160
281 A-B—Document entitled "Sales Meeting February 19, 1951".....3162
282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card.....3164
283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3167
284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al.....3171
285—Letter, March 5, 1951, from E. W. McCreary to E. M. Fiffick, et al.....3174
286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment.....3175
287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al.....3178
288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3179
289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers.....3184
290 A-I—Memorandum, August 6, 1951, with attachments.....3185
291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments.....3197
292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments.....3200

294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews 3203
295—Document entitled "Branches as of January 1, 1950" 3205
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950" 3205
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive" 3206
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell 3208
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott.....3209
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co.....3212
302—Letter, December 22, 1950, from C. Connell to J. S. Parks 3213
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville 3214
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell 3215
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst 3216
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst 3218
307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co.....3221
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3223
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell 3224

310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell 3225
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville 3227
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher 3229
314 B—Document entitled "Exide Wholesale Distributors by States and Cities November 1, 1950" 3231
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951" 3239
314 D—Document entitled "Exide Wholesale Distributors by States and Cities May 1, 1957" 3247
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley 3269
328—Letter, April 5, 1948, John R. Sherwood to S. K. Osborne 3273
329—Certified copy of complaint in Osborn v. Sinclair Refining Company 3275
330—Certified copy of answer in Osborn v. Sinclair Refining Company 3298
331—Goodyear Form B-304 (11-56), "Goodyear Batteries Suggested Retail Prices" 3303
332—Goodyear Form B-308 (11-56), "Goodyear Batteries 352 Dealer Prices" 3305
333—Goodyear Form B-166 (10-51), "Goodyear Battery Policy and Sales Program Effective October 31, 1951" 3307
334—Memorandum of conversation on stationery of Bowers Battery and Spark Plug Co. beginning "Conversation—Mr. Nicholas J. Govoruhk—* * *" 3311
335—Baltimore Battery Co. Invoice No. 2376 3312
336—Baltimore Battery Co. Invoice No. 3201 3313

337—Baltimore Battery Co. Invoice No. 2361.....3314
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column....3315
339—Goodyear Service Stores Invoice dated 12-27-55..3316
340—Letter, October 22, 1954, from J. R. Sherwood to J. B. McMaster.....3317
346—Newspaper advertisement of Plotkin's Tire Sales 3318
347—Letter, May 26, 1952, from Shell Oil Company to James W. Hooper 3319
348 A-B—Shell Form SR 1771-1 (Rev. 1/53), "Service Station Manager's Agreement".....3320
349—Letter, June 2, 1954, from Shell Oil Company to W. E. Edwards 3327
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks 3328
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments 3330
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3343
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions" 3344
377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade".....3345
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951" 3347
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951" 3348
387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3349

389 A-B—Document entitled "Products Eligible Under Sales Commission Plan" 3350
391 A-C—Document dated 10-21-55 entitled "Shell Oil Co.—Sales Commission" 3353
392 A-B—Letter, June 3, 1948, from R. C. Mueller to E. C. Flinn 3360
393—Goodyear intra-company memorandum, 7-8-48, from S. A. Gaylord to E. C. Flinn 3362
394 A-C—Goodyear document entitled "District Instruction No. 1086A", October 19, 1948 3363
395 A-B—Letter, December 19, 1951, from Butler Doolittle to C. H. Mead, Jr. 3369
396 A-H—Letter, October 9, 1950, from R. E. Sewell to O. E. Scholz, with attachments 3371
397 A-B—Letter, January 30, 1953, from J. W. Basista to George L. Switzer 3385
398 A-D—Letter, August 24, 1948, unsigned to Gibson 3389
399 A-C—Document entitled "Shell Oil Company Schedule 'A'—Part 2-3-4" 3393
400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments 3397
401—Document entitled "Distribution List for Sales Department Correspondence" 3413
402 A-M—Memorandum, December 31, 1952, from B. L. Edmonston, with attachments 3414
403 A-S—Document entitled "Various Types of Dealers", with attachments 3426
404 A-C—Sherwood Form SB-2833 500 9-51, "Bailment Agreement" 3433
405 A-B—Sherwood Form SB 118—3M—11-50, "Equipment Rental Agreement" 3444

406 A-B—Sherwood Form SB 2072-R 500 10-51, "Dealer Permit" 3451
407 A-D—Sherwood Form SB 1601-A—1M—8-51, "Service Station Lease" 3458
408—Document entitled "Amendment of Service Station Lease" 3467
409—Document entitled "Termination of Service Station Lease" 3469
410 A-B—Sherwood Form SB 106—3M—7-50, "Dealer Sales Agreement" 3470
411—Memorandum, March 10, 1953, from Fred D. McCauley to George B. P. Ward 3476
412 A-H—Document dated on first page 1-1-50, entitled "Sherwood Bros., Inc., Baltimore, Md.—Sales Commission" 3476
413—Sherwood Form SB 2081-CS—(2500 6-46).....3490
414—Memorandum, March 28, 1944 to De Hoff.....3493
415—Memorandum, March 29, 1944, McCauley to De Hoff 3494
416—Memorandum, March 29, 1944, McCauley to De Hoff 3497
417—Memorandum, March 21, 1944, McCauley to De Hoff 3498
418 A-B—Letter, July 13, 1944, from Fred D. McCauley to Ted Hardy 3500
419—Unsigned letter, July 27, 1944, to Butler Doolittle 3502
420 A-B—Letter, July 29, 1944, from Fred D. McCauley to John B. Mann 3503
421—Letter, August 19, 1944, from F. D. McCauley to Butler Doolittle 3506
422 A-B—Memorandum, November 2, 1944, from John R. Sherwood to Fred McCauley.....3507

423 A-C—Letter, May 29, 1945, from Butler Doolittle to Fred McCauley 3510
424—Letter, June 6, 1945, from Fred D. McCauley to John D. Mann 3513
425 A-B—Letter, December 31, 1945, from Fred D. McCauley to John D. Mann 3515
426—Letter, January 15, 1946, from Fred D. McCauley to J. A. Lewin 3517
427—Letter, January 23, 1946, from Fred D. McCauley to John B. Mann 3519
428—Letter, March 6, 1946, from Fred D. McCauley to Paul Spahr 3520
429—Copy of letter, March 11, 1946, from A. W. Littleton to Miller Chevrolet Sales 3521
430 A-B—Memorandum, August 6, 1946, from John R. Sherwood to Mr. Lawson, with attachment 3522
431—Unsigned Sherwood letter agreement dated July 30, 1946 3525
432—Letter, August 20, 1946, from John R. Sherwood to H. G. Harper 3526
433—Letter, June 3, 1947, from Fred D. McCauley to John D. Mann 3528
434 A-B—Letter, July 17, 1947, from Fred D. McCauley to Howard Landon, et al 3529
435—Report of Goodyear TBA Commissions by Agency Territories—Year 1947 3532
436—Report of Goodyear TBA Commissions by Agency Territories 3533
437—Letter, April 30, 1948, from H. W. Van Horn to Jackson Manufacturing Company 3534
438—Memorandum, September 23, 1947, from Fred D. McCauley to John Sause 3535

439—Letter, September 19, 1952, from G. R. DeHoff to all Betholine Sinclair Dealers Authorized to Honor Credit Cards.....3536
440—Document entitled "CIC-Sales 1952".....3537
441—Letter, August 23, 1948, from Butler Doolittle to Fred D. McCauley.....3537
442—Letter, September 21, 1948, from H. W. Van Horn to Butler Doolittle.....3539
443—Letter, September 3, 1948, from H. W. Van Horn to R. G. Crawford.....3541
444—Letter, January 7, 1949, from H. W. Van Horn to J. A. Nelsen.....3542
445—Letter, August 9, 1949, from H. W. Van Horn to all Betholine-Sinclair Dealers.....3543
446—Memorandum, June 23, 1950, from Fred D. McCauley to Mr. Van Horn.....3545
447 A-E—Letter, June 19, 1946, from Fred D. McCauley to Mrs. Mabel Harmon, with attachments.....3546
448—Goodyear Form A98101L, "Request for Goodyear Tires Identification Truck Service".....3553
449—Memorandum, May 12, 1947, from Roland DeHoff to "Doc" Allen.....3555
450 A-B—Letter, August 25, 1952, from H. W. Van Horn to Butler Doolittle.....3555
451 A-B—Letter, January 6, 1950, from Fred D. McCauley to W. S. Martel.....3557
452 A-B—Memorandum, January 2, 1948, from Fred D. McCauley to John Leimbach.....3560
453—Letter, February 23, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562
454 A-B—Letter, February 29, 1948, from Fred D. McCauley to Charles H. Hudgins.....3562

455—Handwritten Inter-Office Memorandum, March 5, 1948 from S. W. Holsinger to "Mac" 3565
456 A-B—Handwritten Inter-Office Communication, March 20, 1948, from L. J. Balling to F. D. McCauley 3566
457—Document, dated Dec. 14, '51, entitled "Dealer TBA Survey" 3568
458—Letter, April 25, 1952, from H. W. Van Horn to D. A. Hilleary 3569
459—Memorandum, June 3, 1952, from Harry J. Weller to Mr. Jurgens 3570
460—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commissions, Resale and Own Consumption December and January 1 to December 31, 1944" 3571
461 A-C—Memorandum, December 12, 1945, from Fred D. McCauley to John R. Sherwood, with attachments 3572
462—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1945" 3574
463 A-B—Letter, March 13, 1946, from John R. Sherwood to T. J. Beddingfield 3575
464—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1 to December 31, 1946" 3577
465 A-B—Letter, January 7, 1947, from John R. Sherwood to R. S. Wilson 3578
466—Tabulation entitled "Sherwood Brothers, Inc. Purchases Commission, Resale and Own Consumption December and January 1, to December 31, 1947" 3580

467—Memorandum, October 16, 1947, McCauley to DeHoff 3581

468—Memorandum, January 26, 1951, from Fred D. McCauley to G. R. DeHoff 3582

469—Document entitled "Total T. B. A. Volume sold to Betholine-Sinclair Dealers on Which We Receive Commission" 3583

470—Document entitled "Sherwood Brothers, Inc. Sales by Goodyear Districts January 1, 1952 through December 31, 1952" 3584

472—Sinclair Form 35 10 9-54, "Marketer Agreement" 3585

473—Sinclair Form 1800—25M—6-57, "Equipment Rental Agreement" 3596

474—Sinclair Form 1601-B—25M—10-57, "Station Lease" 3604

475—Sinclair Form 731-D—20M—10-57, "Refined Oil Sales Agreement-Dealer" 3615

476—Sinclair Form 2081—25M—5-57 3622

477—Sherwood Credit Identification Card 1954 3625

478—Sinclair Credit Identification Card 1957 3626

479—Document entitled "Agreement of Merger Between Sinclair Refining Company and Sherwood Brothers, Incorporated", dated as of December 7, 1955 3627

483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley 3639

484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne 3642

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-52, signed by John Chambers and J. O. Estlow 3645
2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow 3651
3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company 3652
4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow 3653
20—Atlantic booklet entitled "TBA Program" 3654
31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments 3672

3327 COMMISSION EXHIBIT NO. 255.

October 13, 1954

Mr. G. B. Gason-Niebling
Carlisle St. & Hunting Park Ave.
Phila. Pa.

Dear Mr. Gason-Niebling:

In accordance with the terms of your lease with The Atlantic Refining Company dated June 30, 1954, this is to inform you of the faults in compliance with the obligations imposed by that lease.

1. The standard of housekeeping maintained by you is deficient.

2. You do not maintain records adequate enough to reflect financial status and return from various phases of your business.

3. Your hours of operation are not consistent and are not in line with your neighborhood competition.

You are further reminded that, in accordance with the terms of your lease, you have 15 days from the day you receive this notice to remedy these faults; otherwise your lease will have been breached.

Cordially yours,

A. R. Sanporn
District Manager

E McC-mb
Registered Letter.

3328 COMMISSION EXHIBIT NO. 256A.

September 20, 1954

Registered Mail
Return Receipt
Mr. Albert J. Hoffman
1502 Tonnelle Avenue
North Bergen, N. J.

Dear Mr. Hoffman:

In accordance with the terms of your lease with The Atlantic Refining Company, dated April 1, 1954, this is to inform you of defaults in compliance with Clause 3 (Purpose and Use Clause) of that lease.

1. The standard of housekeeping established by Atlantic has not been maintained satisfactorily by you.
2. From our observations, we note irregular hours of operation of your station to the point that we believe your market area is not being properly served.
3. You are conducting a repair garage rather than a service station.
4. As a result of this repair work, there are numerous wrecks parked on the property.
5. You are using the premises for the sale of used cars.

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice to remedy these defaults, otherwise your lease will have been breached.

Yours truly,

The Atlantic Refining Company
/s/ Leslie Geer
Leslie Geer

LG:el

3329 COMMISSION EXHIBIT NO. 256B.

Copy

Law Offices
Bradley and Heck
77 Hillside Avenue
Tenafly, New Jersey

September 30, 1954

Atlantic Refining Company
1111 Delancy Street
Newark 5, N. J.

Attn: Mr. Leslie Geer

Dear Sir:

Your letter of September 20th, 1954 addressed to Mr. Albert J. Hoffman of North Bergen has been referred to me. After an investigation and inspection of the premises, we have come to the conclusion that there is no reasonable basis for your allegations of defaults under Mr. Hoffman's lease.

The standard of housekeeping appears to be good, and I understand that you have made no effort to take care of any maintenance work or painting of the premises, in spite of requests by the lessee to that effect. The allegation that he is conducting a repair garage is frivolous, as is the assertion that the premises are being used for the sale of used cars. The only used cars on the premises are those belonging to the lessee, and licensed in his name, and being used by him in connection with his business. It is possibly true that a customer's car may be parked here from time to time awaiting service, but I would hardly construe that as a breach.

I would suggest that a little cooperation from your

field representative would do a great deal to improve your company's relationships with this dealer. That angle might bear some looking into.

Very truly yours,

/s/ Stanley W. Bradley

B:B

3330 COMMISSION EXHIBIT NO. 256C.

Atlantic

Copy
B-765 11/53

Mutual Consent of Cancellation

For and in consideration of the sum of One Dollar ($1.00) in hand paid by each of the parties to the other, The Atlantic Refining Company, and Albert J. Hoffman of North Bergen, State of New Jersey hereby agree that their certain Lease Agreement dated March 11, 1954 affecting premises situated at 1502 Tonnelle Avenue in North Bergen County of Hudson State of New Jersey A. J. H. (Initialed in ink) shall by mutual consent expire as of November 15, E.J. 1954, because _____

In Witness Whereof the parties hereto have duly executed this agreement as of the 15th day of November 1954.

The Atlantic Refining Company

Witnesses:
H. A. Millerick
E. J. Keierleber

By: J. O. Estlow
Regional Manager of Marketing

Albert J. Hoffman

3331 COMMISSION EXHIBIT NO. 257A.

The Atlantic Refining Company

November 12, 1953

Registered Mail PNJ:EMcC
(Return Receipt Requested)
Mr. Aniello L. Iacona
Providence Road and South Avenue
Secane, Pennsylvania

Dear Mr. Iacona:

In accordance with the terms of your lease with The Atlantic Refining Company, dated September 28, 1953, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. The standard of housekeeping maintained by you is deficient.
2. The efficiency of services performed at your station is not on a par with competition.
3. You have not met the minimum requirements for display.
4. Personnel are poorly trained.
5. You do not have a regular program for expanding sales, involving direct mail campaigns, personal solicitation, etc.
6. You do not maintain records adequate to reflect financial status and return from various phases of your business.

You are further reminded that, in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice, to remedy these defaults; otherwise, your lease will have been breached.

Very truly yours,

rmc

3332 COMMISSION EXHIBIT NO. 257B.

Copy

Law Offices
Catania & Gorbey
106 East Fifth Street
Chester Del. Co. Penna.
Phone Chester 4-4391

Francis J. Catania
James H. Gorbey

November 19, 1953

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Attention: A. R. Sanborn

Dear Sir:

Please be advised that I represent Mr. Aniello L. Iacona who operates the station at Providence Road and South Avenue, Secane, Pennsylvania.

Your tenant has handed me your letter of November 12, 1953 outlining six alleged deficiencies under his lease dated September 28, 1953.

I have investigated the facts set forth in your letter, and I have determined that the charges contained therein are without foundation. In fact, it appears that the real reason for the charges in your letter are based on my client's refusal to purchase T. B. A. supplies from Mr. Parris who appears to have a local monopoly on T. B. A. supplies and equipment.

If you persist in the conditions set forth in your letter of November 12, 1953, I shall be obliged to contact the federal authorities dealing with this type of monopolistic practices.

If you have anything further in reference to this case, will you kindly contact me and have your salesman refrain from annoying my client at his place of business.

Very truly yours,

/s/ Francis J. Catania
Francis J. Catania

FJC/c

3333 COMMISSION EXHIBIT NO. 257C.

November 25, 1953

Francis J. Catania, Esquire
106 East Fifth Street
Chester, Pennsylvania

Dear Sir:

The accusation that Atlantic is threatening lease cancellation to coerce your client into purchasing TBA from a designated source is rejected because

1. It has no basis in suit.
2. Atlantic has not, cannot, and will not coerce Dealers to do, or not to do, anything, at any time.

Perhaps the clearest proof that your client has mislead you lies in the fact that if he remedies, within the period of time designated in the lease, the specified deficiencies in his business performance existing at the time our September 28, 1953 warning letter was issued, the lease will not be cancelled. In fact, I am certain that if he even evidenced an honest intention to improve his business performance, Atlantic would gladly give him both opportunity and assistance.

Atlantic's position is simply this: Atlantic Dealers will lawfully and diligently carry on a first-class competitive service station operation or they will not be Atlantic

Dealers. We are confident that our policy and practice are one and the same—and entirely legal. It follows that our concern about informers, as well as threats from potential informers, is nil, as evidenced by the copies of this letter and your correspondence which have been sent directly to the Federal Trade Commission.

Very truly yours,

Legal Department

RDJ:lh

cc: Bartley T. Garvey, Esq.
Federal Trade Commission
Washington 25, D. C.

3334 COMMISSION EXHIBIT NO. 258A.

cc—Mr. R. D. Jackson
Mr. T. J. Breslin
Mr. W. D. Gaestel
Mr. W. B. Knapp

Registered Mail
Return Receipt
Mr. Thomas J. Policastro
Hudson Blvd. and 88th St.
North Bergen, N. J.

Dear Mr. Policastro:

In accordance with the terms of your lease with The Atlantic Refining Company, dated April 1, 1956, this is to inform you of defaults in compliance with Clause 3 (Purpose and Use Clause) of that lease.

1. The standard of housekeeping established by Atlantic has not been maintained satisfactorily by you.

2. From our observations, we note irregular hours of operation of your station to the point that we believe your market area is not being properly served.
3. You are conducting a repair garage rather than a service station.
4. As a result of this repair work, there are numerous discarded parts scattered over the station premises.
5. You have multilated Company property. Specifically, you cut two holes through the overhead door in the wash bay side of the station where we are informed you ran exhaust tubes from cars you were running inside the station.

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice to remedy these defaults, otherwise your lease will have been breached.

Yours truly,

The Atlantic Refining Company

Leslie Geer.

3335 COMMISSION EXHIBIT NO. 258B.

June 4, 1956

Mr. Thomas J. Policastro
Hudson Blvd. and 88th St.
North Bergen, N. J.

Dear Mr. Policastro:

It was extremely gratifying to both Mr. Gaestel and myself to find your spirit of cooperation manifested in your having done such an outstanding job in cleaning your station and to hear you say you were not yet satisfied and were going to continue to improve it.

We were also pleased to receive your promise to operate your station under normal station hours.

I am sure that with this cooperation and our working together that your gallons will rapidly increase and you can be sure that we will do all within our policies to help you achieve this goal.

Sincerely,

Leslie Geer

LG:el

cc-Mr. R. D. Jackson
Mr. T. J. Breslin
Mr. W. D. Gaestel
Mr. W. B. Knaap

3336 COMMISSION EXHIBIT NO. 259.

July 5, 1956

Mr. A. Bennett
Pawtucket and Ferris
Rumford 16, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated October 1, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not kept an adequate inventory on tires, batteries, and accessories to serve normal customer needs without delay.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company
District Manager

LEC:MEM

CC Messrs. T. A. Wagner
O. K. Schmid

3337 COMMISSION EXHIBIT NO. 260.

July 13, 1956

Mr. R. L. Bisson
469 Benefit Street
Pawtucket, R. I.

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated December 18, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have failed to maintain on a current basis records adequate to reflect financial status and return from various phases of your business.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company
District Manager.

LEC:MEM

CC Messrs. T. A. Wagner
O. K. Schmid

3338 COMMISSION EXHIBIT NO. 261.

October 21, 1955

Mr. Charles Davis
West Shore Road & Carpenter St.
Warwick, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated January 1, 1954, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company
By .....
District Manager.

LEC/mw

Copy:—
T. S. Davis
O. K. Schmid

3339 COMMISSION EXHIBIT NO. 262.

April 1st, 1954

Mr. Herman DeFelice
c/o Herm's Atlantic Serv. Sta.
Willow & Nicoll Streets
New Haven, Connecticut

Dear Mr. DeFelice:

In accordance with the terms of your lease with The Atlantic Refining Company dated July 1, 1953, this is to inform you of defaults in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping in the rest room as revealed by the customer inspection report of March 23, 1954 wherein you scored 42%.

You have not maintained a satisfactory level of service on the driveway as revealed by the customer inspection report of March 23, 1954 wherein you scored 60%.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Very truly yours,

The Atlantic Refining Company
W. F. van Haagen,
District Sales Manager.

WFvH:vk

CC: H. W. Jollie
C. H. Pence

3340 COMMISSION EXHIBIT NO. 263.

February 21, 1956

Mr. Leo F. DiMaio
392 Broadway & Courtland Street
Providence, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated July 7, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained clean, sanitary premises inside and out.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company,
District Manager.

LEC:MEM

CC Messrs. A. G. Lyle
O. K. Schmid

3341 COMMISSION EXHIBIT NO. 264.

January 12, 1956

Mr. Howard F. Hambly
Atlantic Super Service
205 Meeting Street
Providence, Rhode Island

Dear Sir:

In accordance with the terms of your lease with the Atlantic Refining Company dated January 25, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Very truly yours,

The Atlantic Refining Company,
District Manager.

LEC:MEM

CC Messrs. A. G. Lyle
O. K. Schmid

3342 COMMISSION EXHIBIT NO. 265.

April 1st, 1954

Mr. Lawrence E. Noel
c/o Larry's Atlantic Serv. Sta.
Watertown & Bunker Hill Aves.
Waterbury, Connecticut

Dear Mr. Noel:

In accordance with the terms of your lease with The Atlantic Refining Company dated January 16, 1953, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping and station appearance as revealed by the customer inspection report of March 15, 1954 wherein you attained a station appearance score of 60.

You are further reminded that you have, in accordance with the terms of your lease, fifteen (15) days from the time you receive this notice in which to remedy the default specified above.

Very truly yours,

The Atlantic Refining Company,
W. F. van Haagen,
District Sales Manager.

WFvH/vk

CC: H. W. Jollie
C. H. Pence

3343 COMMISSION EXHIBIT NO. 266.

Registered Letter
Return Receipt Requested

July 27, 1956

Mr. J. D. Ouelette
Main & Bancroft Sts.
Springfield, Mass.

Dear Sir:

In accordance with the terms of your lease with the Atlantic Refining Company dated November 21, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

An inspection of the station on June 25th revealed the fact that the appearance of your service station was not in accordance with the standards of the Atlantic Refining Company.

You are further reminded that in accordance with the terms of your lease you will have fifteen (15) days from the time of receipt of this notice to remedy the default specified above.

Very truly yours,

The Atlantic Refining Company
R. P. Eldridge

RPE:eah

cc: Mr. Euart

3344 COMMISSION EXHIBIT NO. 267.

February 21, 1956

Mr. Joseph S. Smith
Hartford Avenue & Killingly Street
Providence, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated March 22, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained uniform daily operating schedule based on buying habits of potential trade in the area.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company

District Manager

LEC:MEM

CC: Messrs. A. G. Lyle
O. K. Schmid

3345 COMMISSION EXHIBIT NO. 268A.

5 November 1954
A:K:LMB

Registered Mail
Return Receipt Requested

Mr. Joseph D. Greco
Culver Parkway and Shelford Road
Irondequoit, New York

Dear Mr. Greco:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated July 17, 1953, this is to inform you of a default in compliance with the obligations imposed by that lease. You have violated Clause 13 of said lease which does not permit absentee operation.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the default specified above.

Yours very truly,

Regional Manager of Marketing

jap

bcc: J. C. Funck
A. C. Walker
J. S. Wall
R. E. Glendening

3347 COMMISSION EXHIBIT NO. 269.

January 5, 1955

Mr. Duane Olthof
Atlantic Service Station
502 Broadway
Elmira, New York

Dear Mr. Olthof:

In accordance with the terms of your lease with The Atlantic Refining Company dated June 1, 1954, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping.

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the time you receive this notice in which to remedy the default specified above.

Very truly yours,

The Atlantic Refining Company,
incorporated
W. J. McCambridge, Jr.
District Manager

WJM/ak

bc: Messrs. G. V. Ostrander
J. C. Funck

3348 COMMISSION EXHIBIT NO. 270A-B.

bcc: J. C. Funck
H. J. Van Nortwick
J. S. Wall
R. E. Glendening

11 January 1955

Registered Mail
Return Receipt Requested

Mr. Walter F. Pawloski & Mr. Matthew W. Kowalski
d/b/a Walt & Matt's Service
Bailey Avenue and Genesee Street
Buffalo, New York

Gentlemen:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated June 3, 1954, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. From our observation, the hours of operation at your station are limited to the point where we believe your market is not being properly served. This was previously brought to your attention in our warning letter of November 19, 1954.
2. You are not rendering the services required for the businesslike operation of a first-class service station.
3. You have no regular program for expanding sales, which involves direct mail campaigns, personal solicitation and advertising, to secure the market potential in your area.

4. You have not maintained adequate and competent manpower to properly serve your trade.
5. You have not maintained a satisfactory standard of housekeeping.

You are further reminded that in accordance with the terms of your lease, you are fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,

/s/ G. V. Ostrander
Manager of Marketing

jap

3349

19 November 1954

A:K:LMB

Registered Mail
Return Receipt Requested

Mr. Walter F. Pawloski & Mr. Matthew W. Kowalski
d/b/a Walt & Matt's Service
Bailey Avenue and Genesee Street
Buffalo, New York

Gentlemen:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated June 3, 1954, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. From our observations, the hours of operation at your station are limited to the point where we believe your market is not being properly served.

2. You are not using the leased premises with reasonable care, and are not keeping the premises in an orderly condition.
3. You are not rendering the services required for the businesslike operation of a first-class service station.
4. You have no regular program for expanding sales, which involves direct mail compaigns, personal solicitation and advertising, to secure the market potential in your area.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,

/s/ John S. Wall
Acting Manager of Marketing

jap

bcc: J. C. Funck
H. J. Van Nortwick
J. S. Wall
R. E. Glendening

3350 COMMISSION EXHIBIT NO. 271.

30 June 1954

A:K:LMB

92-98 Broadway
Saranac Lake, New York

Registered Mail

Mr. Kenneth S. Shaw
92-98 Broadway
Saranac Lake, New York

Dear Mr. Shaw:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated April 23, 1954, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. You have not maintained the premises in a clean and orderly condition.
2. You have not maintained adequate ~~booking~~ bookkeeping records.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,

/s/ J. S. Wall
Acting Manager of Marketing

jap

bc: J. C. Funck
G. L. Weber
J. S. Wall
W. J. McCambridge

3351 COMMISSION EXHIBIT NO. 272.

30 August 1954

A:K:LMB

230 Elizabeth Street
Utica, New York

Registered Mail

Mr. Joseph A. Stocco
230 Elizabeth Street
Utica, New York

Dear Mr. Stocco:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated January 28, 1954, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. You have not maintained the premises in a clean and orderly condition.
2. You have not maintained a safe station.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,

/s/ G. V. Ostrander
Manager of Marketing

jap

bcc: J. C. Funck
R. H. Gillum
J. S. Wall
W. J. McCambridge

3352 COMMISSION EXHIBIT NO. 274.

(Letterhead of The Atlantic Refining Company, Philadelphia 1, Pa.)

October 14, 1954

Mr. John Chambers
Chester Pk. & Clifton Ave.
Sharon Hill, Pa.

Dear John:

Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

This is the kind of job which makes us all very happy and certainly is an important factor in running a profitable service station.

Keep up the good work!

Cordially yours,

(Illegible)

3354 COMMISSION EXHIBIT NO. 277.

June 16, 1950

Mr. S. J. Heideman
Manager, T. B. A. Sales
The Atlantic Refining Company
Philadelphia, Pennsylvania

Dear Mr. Heideman:

It was my understanding when you inaugurated the test on tires and other T. B. A. Products that it was to be conducted on an equitable basis. In the beginning of the test, we had a little difficulty in determining the buying price of some of your dealers and on a few, I will admit,

we extended longer discounts than they should have received. However, this has been corrected.

I find now that Firestone in Erie has reclassified some of the dealers there into a larger volume bracket than originally was set up by you. We have been maintaining your program and now find ourselves in a position where our prices are not in line with those being offered by Firestone.

I was of the impression, also, where dealers wanted to continue to handle Lee Tires through us it would be allright for them to do so and we could still have our identification on those locations, however, I find that even though the dealers continue to handle our tires their stations are identified with competitive signs. For instance, in the Newark District our identification is being taken down and Goodyear will be erected even though the dealer still wants to handle Lee Tires.

I personally do not think these are instructions put out by you or your General Office and am of the opinion there may be a misunderstanding as far as your District Offices are concerned.

I am calling this to your attention only with the thought in mind that you have mentioned to me on several occasions that this test would be conducted on an equitable basis.

Very truly yours,

W. F. Hinderscheid

wfh:a

3356 COMMISSION EXHIBIT NO. 278.

Messrs. Hinderscheid
Pettingell
Segur

Monthly Sales to Atlantic Refining Accounts In Newark District

	$ Sales Month	$ Sales Acc.	Pass. Tires Month	Pass. Tires Acc.	Truck Tires Month	Truck Tires Acc.	Pass. Tubes Month	Pass. Tubes Acc.	Truck Tubes Month	Truck Tubes Acc.
Charles W. Krieg Company										
June										
July	7,378.74		676		8		178		—	
Aug.	7,064.60		467		4		253		4	
Sept.	5,632.08		391		8		66		—	
Oct.	2,917.47		152		20		6		—	
Nov.	5,272.61		194		7		20			
Dec.	2,809.67	31,675.17	178	2,058	3	50	68	591	5	18
New York Branch										
June	123.91		6		—		38		—	
July	224.09		14		1		—		—	
August	268.27		12		—		18		—	
Sept.	470.36		23		—		24		—	
Oct.	142.76		10		—		—		—	
Nov.	103.66		5		—		—		—	
Dec.	58.78	1,391.83	4	74	—	1	—	78	—	—
Floral Park Branch										
June	43.65		1		—		2		—	
July	101.63		8		—		4		—	
August	215.06		2		—		35		—	
Sept.	183.43		11		—		3		—	
Oct.	——		—		—		—		—	
Nov.	——	543.77	—	22	—		—		—	
Dec.	——		—		—	—	—	44	—	—
Total Lee Sales to A. R. Co. Accounts Newark District										
June	167.56		7		—		38		—	
July	7,704.46		698		9		182		—	
Aug.	7,547.93		481		4		306		4	
Sept.	6,285.87		425		8		93		—	
Oct.	3,060.23		162		26		6		—	
Nov.	5,376.27		199		7		20		9	
Dec.	2,868.45	33,010.77	182	2,154	3	51	68	713	5	18
1949 A. R. Co. Sales Based On 13.7% Regional Sales (Last 6 Mos. 1949)										
June	11,336.85		989		41		935		30	
July	8,419.71		778		37		780		32	
Aug.	10,686.00		1,020		43		850		29	
Sept.	9,999.56		892		45		697		31	
Oct.	5,385.19		427		30		342		20	
Nov.	9,820.39		929		33		697		15	
Dec.	7,173.83	62,821.53	592	5,627	27	256	536	4,857	22	179

D. R. McAvoy
3/7/51

3358 COMMISSION EXHIBIT NO. 279A.

To: Messrs. Hinderscheid
McCreery
Segur

This will complete the record for Atlantic's test districts up to the date of the cancellation of their contract with the whole company; therefore, this will be the final issue.

H. K. Paxson

3360 COMMISSION EXHIBIT NO. 279B.

Messrs. Hinderscheid
McCreery
Segur

Month by Month Sales to Atlantic Refining Co. Acct's In Erie District

	Sales to A. R. Co. Accounts	
	No. of Accounts Sold in Month	$ Sales
Erie Branch		
April	6	211.16
May	33	4,806.91
June	42	6,400.34
July	54	9,738.89
August	55	14,258.39
September	49	8,183.06
October	47	9,455.76
November	37	4,122.06
December	37	5,592.21
January	40	5,512.52
February	32	3,897.36
To Date Erie	75	72,179.56
Youngstown Branch		
April	1	172.62
May	2	700.23
June	4	2,841.36
July	5	5,198.13
August	2	2,702.23
September	3	497.28
October	4	1,011.30
November	5	3,372.98
December	5	5,194.92
January	3	982.58
February	—	—
To Date Youngstown	5	22,673.73

Combined Total Erie and Youngstown Branches Sales to A. R. Co. Accounts In Erie District			* 1949-50 A. R. Co. Sales in Erie District
~~February~~	~~32~~	~~3,897.36~~	~~6,349.60**~~
April	7	383.78	9,017.02
May	35	5,507.24	12,215.11**
June	46	9,241.70	13,260.80**
July	59	14,937.02	11,747.14**
August	57	16,960.62	13,108.27**
September	52	8,680.34	9,868.95**
October	51	10,467.06	8,211.04**
November	42	7,495.94	10,043.30**
December	42	10,787.13	7,913.49**
January	43	6,495.10	6,881.79**
February	32	3,897.36	6,349.60**
To Date Both Branches	80	94,853.29	1949-50 Total
			**10 Mos. 99,599.39
			11 Mos. 108,616.44

*Based on 26.66% sales Western Penna. Region first 6 Months 1949.

H. K. Paxson
3/16/51

3362 COMMISSION EXHIBIT NO. 279C.

Lee Tire & Rubber Company
of New York, Inc.,
Conshohocken, Pa.

Final Report.

Month by Month Sales to Atlantic Accounts in Wilmington District.

	Wilmington Branch Sales		1949 Atlantic Refining Sales
	No. of Accts. Sold	$ Sales	Based on 12% Region Sales (first 6 Months 1949)
March	17	$ 1,541.78	
April	46	3,708.10	$ 7,317.26
May	48	8,306,46	9,033.84
June	47	4,461.88	9,078.78
July	38	5,480.65	8,423.90
August	43	9,732.47	8,908.63
September	41	7,302.92	7,058.21
October	31	5,960.41	6,683.14
November	21	2,808.42	7,921.76
December	28	4,270.23	7,526.75
January	30	3,017.71	4,627.87
February	27	2,903.91	3,542.23
Total	92	$59,694.94	$80,120.37

Messrs. Hinderscheid
Segur
Niedringhaus

H. K. Paxson
4/2/51

3364 **COMMISSION EXHIBIT NO. 279D.**

Messrs. Hinderscheid
Pettingell
Segur

Monthly Sales to Atlantic Refining Accounts in Newark District.

	$ Sales Month	$ Sales Acc.	Pass. Tires Month	Pass. Tires Acc.	Truck Tires Month	Truck Tires Acc.	Pass. Tubes Month	Pass. Tubes Acc.	Truck Tubes Month	Truck Tubes Acc.
Charles W. Krieg Company										
June										
July	7,378.74		676		8		178		—	
Aug.	7,064.60		467		4		253		4	
Sept.	5,632.08		391		8		66		—	
Oct.	2,917.47		152		20		6		—	
Nov.	5,272.61		194		7		20		—	
Dec.	2,809.67		178		3		68		5	
Jan.	5,101.96		133		30		196		—	
Feb.	2,475.03	38,852.16	76	2,267	14	94	151	938	12	30
New York Branch										
June	123.91		6		—		36		—	
July	224.09		14		1		—		—	
August	268.27		12		—		18		—	
Sept.	470.36		23		—		24		—	
Oct.	142.76		10		—		—		—	
Nov.	103.66		5		—		—		—	
Dec.	58.78		4		—		—		—	
Jan.	139.04		2		—		24		—	
Feb.	274.66	1,805.53	15	91	—	1	—	102	—	—
Floral Park Branch										
June	43.65		1		—		2		—	
July	101.63		8		—		4		—	
August	215.06		2		—		35		—	
Sept.	183.43		11		—		3		—	
Oct.	—		—		—		—		—	
Nov.	—		—		—		—		—	
Dec.	—		—		—		—		—	
Jan.	—		—		—		—		—	
Feb.	—	543.77	—	22	—	—	—	44	—	—
Total Lee Sales to A. R. Co. Accounts Newark District										
June	167.56		7		—		38		—	
July	7,704.46		698		9		182		—	
Aug.	7,547.93		481		4		306		4	
Sept.	6,285.87		425		8		93		—	
Oct.	3,060.23		162		20		6		—	
Nov.	5,376.27		199		7		20		9	
Dec.	2,868.45		182		3		68		5	
Jan.	5,241.00		135		30		220		—	
Feb.	2,749.69	41,001.46	91	2,380	14	95	151	1,084	12	30
1949 A. R. Co. Sales Based on 13.7% Regional Sales (Last 6 Mos. 1949)										
June thru Dec.		62,821.53		5,627		256		4,857		179
Jan.	4,975.11		442		21		201		25	
Feb.	4,274.89	72,071.53	316	6,385	23	300	369	5,427	16	220

3366 COMMISSION EXHIBIT NO. 280.

Lee Rubber & Tire Corporation
Conshohocken, Pa.

February 16, 1951

Memorandum For
Lee Operating Staff
Messrs. Brasaemle
Garthwaite, Jr.
Hinderscheid
Leach
Nellen
Pouchot

The Atlantic Refining Company, for a number of years, has operated a Tire, Battery and Accessory Sales Department which has marketed Lee Tires, Exide Batteries and other accessories to Atlantic dealers and jobbers.

Under this arrangement Lee Branches and Sales Organization refrained from selling any Atlantic dealers or jobbers and also refrained from oliciting other oil outlets in the Atlantic area, which covered somewhat spottedly the entire Eastern Seaboard from Maine to Florida.

Atlantic has their marketing area divided into six regions. They have been experimenting in one district each in three regions on a program of eliminating their own T.B.A. Sales Department and made arrangements with two major tire companies to directly solicit by the tire company salesmen and sell, ship and bill the Atlantic Company stations, dealers and distributors. The two major tire companies carried the accounts with the dealers and distributors, serviced the accounts out of their branches or warehouses and paid a commission to Atlantic for the

business done. This is a program that two or three of the major rubber companies have had in force for several years with certain oil companies.

In a meeting with the Atlantic management this week they advised us that some of their regional managers preferred this commission or override deal to direct marketing and some preferred the direct marketing method. Atlantic management advised us of this and asked whether we would be willing to modify our contract so that the regions which preferred the commission or override deal could put it in force and the regions that preferred the direct marketing method on Lee could continue the same as heretofore.

Careful study of this proposal was considered by me and in view of our friendly relations with Atlantic and the current tire situation prevailing it was mutually agreed to terminate our contract arrangements now, which frees our branches and sales organization to solicit direct not only Atlantic dealers and jobbers, but also other oil chains, dealers and jobbers in the above mentioned area.

A. A. Garthwaite
President

cc: Conway
Dollison
Ikirt
Ingersoll

3368 COMMISSION EXHIBIT NO. 281A-B.

Sales Meeting

February 19, 1951

1. Atlantic Refining Co. contract cancelled effective March 1, 1951. Atlantic will handle Goodyear and Firestone tires, batteries and accessories on override commission:

10%—Sales to dealers
7½%—Sales to distributors
5%—On certain accessories

Goodyear

Philadelphia & Suburban Region
New York Region
New England Region

Firestone

Eastern Pennsylvania Region
Western Pennsylvania Region
Southern Region

We will start to solicit Atlantic accounts immediately.

2. Letter to all Atlantic Dealers on John Anthony's list of those receiving [illegible]op shipments:

Suggestions:

a. Atlantic has discontinued direct sale of TBA merchandise

b. We understand that they have made a deal with Goodyear and Firestone by which they will receive commission on all sales to their dealers and distributors

c. Atlantic dealers and distributors are free to handle Lee Tires and other accessories once bought through Atlantic

d. We can handle dealers and distributors direct

e. Post card enclosed

3. Letter to Branch Managers.

Suggestions:

a. Hold salesmen's meeting

b. Concentrate on Atlantic accounts

c. Talk about override commission

4. Regional Sales Managers hold Branch Managers meetings immediately

5. Additional business will be handled as follows:

a. Through branches already established in the Atlantic marketing area.

1. Allocations will be increased but additional tires must go to Atlantic Refining Co. accounts

3370 2. Atlantic accounts to be keyed "AR" on purchase report

3. Regional Sales Managers will supervise closely

b. Through new branches, tentatively, as follows:

Region #1 Providence
Hartford
Rochester
Syracuse
(Schenectady through Albany)

Region #2 Wilkes-Barre

Region #3 Charlotte

Region #4 Altoona
West Virginia

Region #5 Jacksonville

c. Messrs. Harbaugh and Thompson will "bird dog" locations for Mr. Pettingell in Region #1

d. Factory will be prepared to organize branches as soon as located (Harbaugh, Thompson and Anderson available)

e. Regional Sales Managers will contact Atlantic Personnel in their regions regarding jobs

f. Regional Sales Managers and/or Branch Managers should contact all large Atlantic accounts immediately. Mr. Anthony can supply names

6. Available list of accounts being prepared for Regional Sales Managers, Branch Managers and Salesmen.

7. Check on all accounts once sold by Lee transferred to Atlantic

8. Push Batteries and all accessories to Atlantic dealers

9. Strengthen sales organization

3372 COMMISSION EXHIBIT NO. 282A.

Lee Tire & Rubber Company
of New York, Inc.
Conshohocken, Pennsylvania

February 20, 1951

To All Atlantic Dealers:

The Atlantic Refining Company has discontinued the direct sales of tires, batteries and accessories from their home office and divisions, to Atlantic dealers. This means that we can now fill your requirements for Lee Tires, Tubes and other products, such as Lee Batteries, directly from our Factory Branches located in your area.

This move will be of great help to you and to your customers. It will mean prompt service and deliveries, and

real assistance from our men who are trained in tire sales and in helping dealers sell tires to their customers.

We know that you have been satisfied Lee Tire customers in the past and we know that your customers have also been satisfied—not only because of the superiority of our products, but also by virtue of the Lee Tire Road Hazard Guaranty, which enables you to make any necessary adjustments on the spot.

Our company wants to serve you in every way possible and we believe that under this new set-up both you and your customers will be more pleased with Lee Products and Service.

We would also like to remind you that you are free to handle any products of your choosing. If anyone insists that you discontinue Lee products in preference to some other make, we suggest you contact us.

It will be appreciated if you will fill out the attached post card and send it to us today so that we can have one of our representatives call on you without delay.

Very truly yours,

W. F. Hinderscheid
Vice President in Charge of Sales

3374 COMMISSION EXHIBIT NO. 282B.

First Class
Permit No. 3
Sec. 34.9, P. L. & R.
Conshohocken, Pa.

Business Reply Card
No Postage Stamp Necessary If Mailed in United States

2c — Postage Will Be Paid By —

W. F. Hinderscheid
Vice President
Lee Tire & Rubber Company
of New York, Inc.
Conshohocken, Pennsylvania

Dear Mr. Hinderscheid:

Yes, I want to continue selling Lee Tires and would like to have your representative call on me as soon as possible.

.....
Name

☐ Dealer .....
Street Address

☐ Distributor .....
City State

3376 COMMISSION EXHIBIT NO. 283A.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pa.

February 21, 1951

Cincinnati Branch	Dallas Branch
Columbus Branch	Ft. Worth Branch
Louisville Branch	New Orleans Branch
Memphis Branch	

We attach hereto copy of a letter being mailed today to all branches in the Lee-Atlantic dual marketing area.

We feel that you should be familiar with this situation even though you are not directly concerned by it.

We see no reason for discussing the contents of the letter with people in your organization or with people outside of the organization, except, of course, to answer any direct questions.

A. G. P. Segur

AGPS:rk

cc: Messrs. Hinderscheid
Anthony
Pettingell
Niedringhaus
Foraker
McCreery
Riddick

3378 COMMISSION EXHIBIT NO. 283B-C.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pa.

February 21, 1951

To All Branch Managers:

Effective March 1, 1951 our tire marketing agreement with the Atlantic Refining Company has been cancelled by mutual consent.

Over the past several years Atlantic has been reducing their TBA sales expense and concentrating virtually all of their sales efforts on the various petroleum products which they manufacture. Last April they tested the Goodyear and Firestone Petroleum Sales Program with their dealers and distributors in three Districts. Under this program the Atlantic Refining Co. received a commission on sales to dealers and distributors in these Districts, and all of the sales effort, billing, deliveries, etc. of TBA merchandise was handled by the tire company servicing the particular district.

In the past few days they decided to extend this program to other districts and our Company felt that in view of the lack of aggressive sales effort behind their tire and tube program, we did not care to modify their contract beyond the three preliminary test districts, and accordingly it was mutually agreed that the contract would be cancelled.

This action means that it will be necessary for us to sell, through our branch and distributor sales organization, the tires which, over the past seventeen years, have been sold both by our organization and the Atlantic Refining Co. This is a real opportunity and a challenge, and we

have complete confidence that our sales organization is able to take full advantage of the opportunity offered, and to meet the challenge directly.

The Regional Sales Managers have already made arrangements for meetings with their branch organizations, but there are some points which we feel must be emphasized to our Managers and Salesmen. The additional tires which will be made available to our branches must go to new business, and most, if not all, of this new business, will be accounts formerly serviced by the Atlantic Refining Co.

We must take over our share of these accounts if we are going to hold our position in the branch and distributing marketing area. We know that you can take all the tires we can ship you and give them to accounts which you are already selling, but if this is done we will lose the expansion of our branch sales which must take place.

Accordingly, we must insist that each one of our branches in the former Atlantic-Lee dual marketing area, take on enough former Atlantic service accounts to offset the loss of direct Atlantic business.

For your information, the deal Atlantic has made with Goodyear and Firestone will be broken down as follows:

Goodyear	Atlantic Phil. & Suburban Region
	Atlantic New York Region
	Atlantic New England Region
Firestone	Atlantic Eastern Pennsylvania Region
	Atlantic Western Pennsylvania Region
	Atlantic Southern Region

Under this deal Atlantic will receive from Goodyear and Firestone a commission of 7½% on sales to Atlantic jobbers and distributors and 10% on sales to Atlantic
3380 dealers. You and your salesmen must understand this arrangement, since it unquestionably will be discussed with the Atlantic accounts that you are contact-

ing. We think that these accounts will be interested to know that Atlantic receives this substantial commission for what, on the surface, appears to be no effort on their part.

It is quite obvious that Atlantic is expected to put pressure on their dealer and distributor organization, to handle either Goodyear or Firestone Tires in return for this commission. It must be made clear to Atlantic dealers and distributors that they cannot be forced to handle any merchandise, aside from Atlantic petroleum products, which they do not care to handle. There are numerous Court decisions on this subject, and while we fully appreciate the fact that there will be pressure brought to bear on them by Atlantic, the dealer can and should resist this pressure where he wants to handle Lee Tires, Tubes, Batteries, etc.

While the cancellation of the Atlantic agreement was made effective March 1, we will start to solicit Atlantic dealers and distributors immediately upon receipt of this letter. You probably already know the more important Atlantic accounts in your territory and, of course, these should be contacted first. Any information which you may require from time to time can be obtained from your Regional Sales Manager or from the factory Sales Department, and any information which you feel we should have should be forwarded without delay. Speed is of the essence, and you must get your entire sales organization hitting the ball without any delay whatsoever.

Until further notice we want a close record kept of all shipments to Atlantic accounts. This means a record of unit tire and tube shipments and the dollar volume, exclusive of Federal Excise Tax. Identify Atlantic dealers on the monthly purchase reports by the symbol "AR".

We have a partial list of Atlantic accounts which has been made up from the names sent to us on drop shipment orders, and these are being prepared for each branch, and

will be forwarded just as quickly as possible. However, you don't have to wait for the list, to start your efforts. We are mailing a letter to this list today, copy of which is attached. Check the classified section of your local telephone directory for the names of additional Atlantic accounts.

Mr. Anthony is working on allocations for this business, and this information will be given to you as soon as available.

We suggest that any orders you accept from Atlantic accounts be for delivery after March 1.

/s/ A. G. P. Segur
A. G. P. Segur

AGPS:rk

cc: Messrs. Hinderscheid, Pettingell, Niedringhaus, Foraker, McCreary, Riddick, Anthony, Lee, Touey, Niles, Warring

3382 COMMISSION EXHIBIT NO. 284A-B

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Penn.

February 26, 1951

Mr. F. C. Iringer, New York
Mr. R. P. Polson, Boston
Mr. S. A. Copeland, Buffalo
Mr. G. S. Thompson, Albany

1. By now you all have the Atlantic Program.
2. We feel that it is best to judge what an Atlantic Account has been getting to dove-tail it into ours.
3. For example their—

1 to 84 tire units would be our Pick-up Dealer at Franchise.

85 to 149 tire units would be our #1 Franchise less 5%.
150 to 399 tire units would be our #2 Franchise less 5-2½%.
400 to 749 tire units would be our #3 Franchise less 10%.
750 or more tire units would be our #4 Franchise less 10-2½%.

They have, as you have seen in their program, a 5% for direct factory shipment on orders for 10 or more tires (or 200 lbs. min.). Purchases limited to two orders a month. It should be noted that where it is practical, this 5% could be eliminated, if it could be done cheaper from a Branch, and with the scarcity of tires, long delays might become necessary as partial shipments might be necessary from a Branch, rather than from the factory.

Please Note: They use the words "Confidential Dealer Cost". This actually is our Franchise—printed on white paper with black ink.

On their program 1% to 5% on "Wholesale", we must check this carefully, for it could have been abused in the past.

Actually what we want to do is to get on the Lee Program and dove-tail their dealers into it. For example, a large account, say $10 to $15 thousand could qualify for our #3 deal of . . .

2½—10% from Franchise on Passenger Tires
5 —10%, and Special 5% on Truck Tires

We want to eliminate all of the direct factory shipments possible, as the factory shortage will cause delays, and will also confuse the special allotment for Atlantic Dealers.

Smaller accounts qualifying for less than our #3 deal should fall into the proper place.

They have had an extra 7½% to some Truck Tire Dealers, as against our Special 5% Truck Tire discount. I feel that 5%, with the market as it is, is sufficient.

Messrs. Garthwaite and Hinderscheid feel that a real test of loyalty of an Atlantic Dealer who is going along with us is that he put up at least one Decal and one Lee Sign, and by all means take on our Battery, and give you an order for a supply of Batteries.

3384 Allocations for Atlantic business, I assume are on the way, and we have a job to do—and do well—by keeping all records accurately that have been requested by the factory. This is serious business, boys, and I am depending on you to do a job.

We will, as I told you, open branches as soon as possible in Syracuse, Hartford and Providence, and they will be opened in this order. In the meantime, your sales force, regardless of their regular duties, must get on this Atlantic solicitation aggressively. When cards are sent to you (showing interest on the part of Atlantic Dealers) get on the job quickly.

I will be "all over the lot" for a while, but don't fail to contact me on anything that you are not clear on.

Very truly yours,

/s/ H. L. Pettingell
H. L. Pettingell

HLP:H

cc: Mr. Hinderscheid
Mr. Segur
Mr. Anthony

3386 COMMISSION EXHIBIT NO. 285.

March 5, 1951.

Mr. E. N. Fiffick
Mr. H. J. McGinn, Jr.
Mr. J. F. Bartley
Mr. J. A. Simpson

In analysing salesmen's reports on their calls on Atlantic accounts and with other information that we have, we are doubtful that any of the #2 type stations will stay on Lee tires. Because these stations are leased from Atlantic, some on a month-to-month basis, others on 90 days or longer basis, they are not in a position to take an independent stand and as a result will probably find it expedient to handle Firestone tires.

In the meantime, they will probably not be able to get Firestone tires and get set up with the stock for several weeks. They will be inclined to kid you along in order to get tires from us. It looks to me as though there are going to be plenty of Atlantic distributors and independent dealers who are in a position to go along with us and we cannot afford to take chances with any doubtful #2 stations.

I would caution your salesmen to be very careful before giving tires to those types of stations. We already insist that any Atlantic station continuing with our line must put up and leave up, our identification signs.

This, however, is not the answer to the problem. Many of these stations are already identified by Lee signs and it will probably be several weeks before an effort is made to replace them with Firestone signs so the assurance that our signs will be left up should not be accepted as a criterion but the salesman should carefully analyse the account and make up his own mind as to its possibilities of becoming a permanent Lee account.

Some of these dealers have drop shipment orders in with us now and of course, are anxious to get these tires. Where there is any doubt as to their permanency, have the salesman notify us as we will cancel the drop shipment and cancel the order on hand.

Sincerely,

E. W. McCreary

EWK:McC

cc: Messrs. Hinderscheid, Segur

3388 COMMISSION EXHIBIT NO. 286A.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pa.

March 5, 1951

Regional Sales Managers
& Branch Managers

We attach hereto copy of Atlantic Refining Company's letter of March 1, 1951, which is, in effect, a statement of Atlantic's TBA policy. We particularly call your attention to the last sentence of paragraph 3, which states, "However, your acceptance or rejection of the program is a matter of your own choice."

This should make it clear that Atlantic will permit those dealers and distributors who wish to do so, to continue to handle Lee Tires and other accessories independent of the Firestone or Goodyear program.

In this connection we should point out that this attitude on the part of Atlantic reflects recent Court decisions on the subject of oil company domination of their dealers and distributors, including leased outlets. However, we should also point out that there may be some effort on the part

of Atlantic's individual salesmen and District Managers to apply pressure on their organization to follow Atlantic's sponsored program. The dealer or distributor who states that he wishes to continue to handle our products certainly is allowed to do so under this letter, and should be willing to resist any local pressure to do otherwise.

We want to again remind you of the necessity for carefully screening former Atlantic accounts before diverting tires to them during this period of shortages. We believe that there may be considerable delay in getting Atlantic's new TBA program going, and that in the interim period Atlantic accounts will be desperate in their efforts to secure our tires, or for that matter, anybody elses tires. This screening must be done at the local branch level, and will require extreme discretion on the part of you and your salesmen. We think that one of the best yardsticks to determine an Atlantic account's sincerity in his expressed desire to handle Lee Tires and Tubes, is his willingness to be identified as a Lee Tire outlet. Naturally there can be no iron-bound set of rules established to gauge a dealer's sincerity, but we think this is one which merits very careful consideration.

A. G. P. Segur

AGPS:rk

cc: Messrs. Hinderscheid, Garthwaite, Lee, Anthony, Rooney, Leach, Limbert, Pouchot, Warring, Tauey, Niles

3390 COMMISSION EXHIBIT NO. 286B.

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pa.

March 1, 1951

A Statement Of
Atlantic's T.B.A. Policy

Dear Sir:

The Atlantic Refining Company recognizes the trend of the motoring public to depend more and more upon the modern service station as a source of supply for tires, batteries, and accessories. Therefore, we are interested in making available that TBA line which will meet fully the needs of the public and our dealers, since we feel it will mean increased sales of our petroleum products.

The new TBA plan was adopted after a long and thorough study which had the sole purpose of finding out what sales program would mean the greatest sales and profits to the dealer. We found that the dealer could best serve the interests of the public when he was supplied through the extensive distribution system of a major tire company.

Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. However, your acceptance or rejection of the program is a matter of your own choice.

Atlantic's growth is dependent upon your opportunity and ambition to expand and succeed. We offer this new TBA plan to you because we sincerely believe it will make your sales and profits grow through better. TBA service to your customers.

Cordially,

D. T. Colley

3392 COMMISSION EXHIBIT NO. 287.

Lee Tire & Rubber Company
of New York, Inc.
Conshohocken, Pennsylvania

National Accounts

E. W. McCreery
Vice President

March 16, 1951.

Mr. J. A. Simpson	Mr. H. R. Stephens
Mr. H. J. McGinn, Jr.	Mr. R. L. Druien
Mr. S. D. McPeak	Mr. J. F. Bartley
Mr. A. H. Allen	Mr. E. N. Fiffick

As a general thing, we are receiving very few Dealer Contracts on either tires or batteries. It makes me wonder whether we are bothering to sign up a contract with the dealers or not.

In those territories where Atlantic operated, we should be signing a lot of new contracts as we decide to do business with these Atlantic dealers and distributors.

I wrote you previously that we must, in all cases, have a contract, especially on these Atlantic accounts, as well as other new accounts so that the dealer feels that he has a contract or obligation that may prevent him, morally, from signing a contract later with Firestone or some other competitor.

A contract also provides for identification which we also insist upon, especially with Atlantic dealers. Why is it that we do not get more Dealer Contracts if we are making progress in developing new accounts for the future on both batteries and tires.

Wish each of you would drop me a line and let me know just what you are doing about it.

Sincerely,

E. W. McCreery

EWM:McC

cc: Messrs. Hinderscheid
Segur

3394 COMMISSION EXHIBIT NO. 288A-B.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pennsylvania

Confidential August 3, 1951

Regional Managers
And Branch Managers

I am attaching hereto copy of letter I wrote to Mr. D. T. Colley, Vice-President in Charge of Sales of The Atlantic Refining Company and also his reply. I want you to keep these letters for your personal guidance. I do not want copies made of them for circulation.

The most important part of the letter received from Mr. Colley is that portion in the third paragraph which reads "it is, of course, proper for those dealers that choose to handle Lee to identify this with signs appropriately placed at the point of display" and also that part in the last paragraph which reads "bring these dealers' names directly to the Regional Manager in whose territory the situation develops, he will see that one of our sales representatives calls on the dealer with one of your representatives and explains our position thoroughly".

Our course of action should be as follows: wherever you anxious to do business with us but is having trouble in

find a good dealer handling Atlantic products that is keeping his location identified with Lee decals or Lee signs, you should then refer such name of dealer with address to your Regional Manager. He in turn will take the matter up with the Regional Manager of The Atlantic Refining Co. who will appoint a representative to visit such dealer with you. That is, we do not want to leave this up to our salesmen. We want the Branch Manager to personally visit the dealer with the Atlantic representative. We want to keep this on a Regional Manager level up to the point where a representative of Atlantic is appointed to visit the dealer with our Branch Manager.

In identifying dealers handling Atlantic products, we should place our signs or decals in similar position to where such stations are identified with either Goodyear or Firestone signs.

We have received some complaints from our Branch Managers where Atlantic dealers were identified with Lee identification and this identification was removed by either Goodyear, Firestone or Atlantic representatives. This was the reason we took the matter up directly with the Vice-President in Charge of Sales of The Atlantic Refining Company and the result is the answer attached hereto.

Therefore, it is entirely up to our Branch Managers to see to it that any dealers handling Atlantic products who are anxious to continue handling Lee products are properly identified and where there is trouble in getting the identification up due to our competitors or representatives of The Atlantic Refining Company, these stations should be called to the attention by writing to your Regional Manager.

3396 It is absolutely necessary that these particular leases are screened and we are sure that the dealer wants to handle our products and wants his place of business to be properly identified with Lee identification. I am

sure if the dealer handling Atlantic products tells his story to our Branch Manager and the Atlantic representative that the entire matter can be handled very satisfactorily.

If there is anything in this letter that is not absolutely clear to you, get in touch with your Regional Manager immediately.

For the information of the Branches and Regional Managers, I am giving you below the names of the Regional Managers of The Atlantic Refining Company and their addresses:

Regions #3 and #5

Mr. H. H. Ingersoll, The Atlantic Refining Co.
1112 South Boulevard, Charlotte, N. C.

Region #4

Mr. B. M. Boor, The Atlantic Refining Co.
Chamber of Commerce Bldg., Pittsburgh, Pa.

Region #2

Mr. W. J. Griffiths, The Atlantic Refining Co.
1st & Penn Sts., W. Reading, Pa.
(Eastern Pennsylvania)

Mr. J. O. Estlow, The Atlantic Refining Co.
260 S. Broad Street, Philadelphia, Pa.
(Phila. & Suburban and New Jersey)

Region #1

Mr. G. V. Ostrander, The Atlantic Refining Co.
411 Savings Bank Bldg., Syracuse, N. Y.

Mr. H. W. Jollie, The Atlantic Refining Co.
430 Hospital Trust Bldg., Providence, R. I.

W. F. Hinderscheid

WFH:A

c Messrs. Garthwaite
Lee
Paxson
Segur

3398 COMMISSION EXHIBIT NO. 288C.

July 31, 1951

Mr. Dwight Colley
Vice President In Charge of Sales
The Atlantic Refining Company
Philadelphia, Pennsylvania

Dear Mr. Colley:

I regret it is necessary to write to you in order to bring to your attention the pressure being exerted on some dealers handling Atlantic Gasoline to discontinue the sale of Lee Tires and Tubes.

This is brought out very vividly by the tactics used by some people in your sales organization. We have received numerous complaints from dealers that have been handling Lee products along with Atlantic Gasoline and Motor Oil for quite a number of years. They have built up a very sizeable volume of business on Lee tires and tubes; they have many satisfied customers whom they have been serving for quite a number of years and from information I personally get from some of them, they have made a very nice profit on the sale of Lee Tires and Tubes.

Although we have had a large number of complaints about the practices used by your sales organization and also some of our competitors, which we are told have been brought about by the sanction of some of your District Managers, we did not feel inclined to say anything to you about it because it was more or less general. However, I have some specific instances here which I think you should definitely know about as I am sure from what you, Mr. Neall and Mr. Heideman told Mr. Garthwaite and I last February, it was not the intention of the Management of The Atlantic Refining Company to force dealers handling Atlantic products to use a particular brand of tire to which the dealer objected.

I am attaching a copy of a memorandum I received from one of the Executives in our sales organization which definitely mentions several locations and which I am sure you will be pleased to know about.

After you have had an opportunity of checking into the above, I would appreciate hearing from you as to whether or not you have issued definite instructions to your sales organization or to some of our competitors to remove Lee identification from dealer locations.

Very truly yours,

W. F. Hinderscheid

WFH:A

3400 . COMMISSION EXHIBIT NO. 288D.

August 2, 1951

Mr. W. F. Hinderscheid
Vice-President in Charge of Sales
Lee Tire & Rubber Company
Conshohocken, Penna.

Dear Mr. Hinderscheid:

Thank you for your letter of July 31. I am certainly glad you wrote to me so frankly.

I am sure that our organization understands fully just what our position is on TBA. We want the dealers to choose the TBA that they want to sell, but we are using all proper sales steps to put before our dealers the advantages of handling either the Goodyear or Firestone line.

You have worked with The Atlantic Refining Company long enough to know our rules regarding the display of unauthorized signs at our service stations. We only permit certain signs displayed in approved manner on the service

stations which we own. It is, of course, proper for those dealers that choose to handle Lee to identify this with signs appropriately placed at the point of display.

I know of no way to settle this problem to your satisfaction except that as you find dealers who make the statement that we will not permit them to handle Lee tires if you will bring these dealers' names directly to the Regional Manager in whose territory the situation develops, he will see that one of our sales representatives calls on the dealer with one of your representatives and explains our position thoroughly.

Very truly yours,

/s/ D. T. Colley

DTC da

3404 COMMISSION EXHIBIT NO. 289.

Lee Tire & Rubber Company of New York
Conshohocken, Pennsylvania

August 6, 1951

Regional Managers
& Branch Managers

Since writing the attached letter on Friday, I found that Atlantic dealers operating stations controlled by Atlantic can be identified only by one brand of tire and one brand of battery.

In other words, an Atlantic leased station can either be identified by Goodyear or Firestone or Lee or some other brand, but not more than one.

The same applies to batteries. If the stations are identified with Exide batteries, they cannot be identified with Goodyear or Firestone batteries.

I found, also, that their leased stations are not identified by Firestone unless there is an identification order signed by the dealer. In the case of Goodyear, when they sign up for a Goodyear Franchise, Goodyear is automatically permitted to identify that location.

It is very important to keep this in mind as we certainly do not want to make accusations in regard to identification unless they can be definitely backed up.

W. F. Hinderscheid

WFH:A

c Messrs. Garthwaite
Lee
Paxson
Segur

3406 COMMISSION EXHIBIT NO. 290A.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pennsylvania

August 6, 1951

Mr. M. G. Foraker
Mr. E. W. McCreery
Mr. P. E. Niedringhaus
Mr. H. L. Pettingell
Mr. J. L. Riddick

Attached is information relative to sales made to AR and DAR accounts for the months of March, April, May and June by branches in your Region, showing the number of accounts, volume of business we received, percentage of dollar business each branch did compared with the total dollar volume for the entire branch and the number of

tires allocated to the AR and DAR accounts out of the total individual branch allocation.

You can readily see what progress has been made, the number of accounts sold by months and also where the spots are weak and where aggressive work should be done.

I think this is an opportune time to again advise your Branch Managers that they and their Salesmen should again make a complete solicitation of dealers handling Atlantic products. These dealers have now had sufficient time to determine the advantages or disadvantages of handling either Goodyear or Firestone tires. They have had sufficient time to make a comparison of the treatment and service they have received from these companies. By this I mean attention for new sales channels, adjustments, acceptance, etc.

I am sure that some of these accounts that went along with Goodyear or Firestone did so upon the advice from Atlantic and also upon information they received from meetings held by Atlantic, Firestone or Goodyear and it is our opinion that the majority of these accounts that did give Firestone and Goodyear a trial have found they were considerably better off when they were handling Lee products.

With the market beginning to loosen up and more tires being available, we should again put on an extensive drive to sign up dealers handling Atlantic products. I think, also, that the Branch Manager should get out with his salesmen more and call on Atlantic accounts, especially the good ones, as I am sure that in our haste to solicit these accounts last February and March we were skeptical about some and over-looked others. I know a few accounts in particular we had an opportunity to take on but did not because our salesmen felt the Atlantic account would interfere with an account we had already set up. We were also

skeptical as to whether or not some of these Atlantic dealers would continue to do business with us when the tire shortage is over. I feel that by a complete solicitation at this time, any account we would sign up now would be serious about handling Lee tires and tubes and will go along with us in the future.

[illegible] 1951 - [illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	1	[illegible]	[illegible]	1	[illegible]	[illegible]	3,469	3,469
[illegible]	16	[illegible]	[illegible]	17	6,667	7,214	12,001	13,807
[illegible]	11	[illegible]	[illegible]	1	2,378	2,378	4,427	4,427
[illegible]	2	[illegible]	[illegible]	2	[illegible]	[illegible]	770	770
[illegible]	-	[illegible]	[illegible]	5	1,864	1,864	2,130	2,706
[illegible]	-	[illegible]	[illegible]	-	-	-	-	-
[illegible]	2	676	676	9	1,450	1,450	2,126	2,126
[illegible]			15,659					15,699
[illegible]	55	[illegible]	[illegible]	35	13,685	14,232	24,923	42,964
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	6.6%	[illegible]	12.1%	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	43.3%	[illegible]

[illegible] 1951 - [illegible] ACCOUNTS

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	7	691	3,726	1	759	1,653	1,420	4,889
[illegible]	8	[illegible]	[illegible]	27	10,895	12,109	15,411	29,218
[illegible]	5	[illegible]	[illegible]	3	[illegible]	[illegible]	4,212	4,659
[illegible]	11	9,786	[illegible]	12	6,027	[illegible]	15,875	16,595
[illegible]	1	[illegible]	[illegible]	6	4,594	[illegible]	[illegible]	7,690
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	10,721	10,721	23,535	23,535
[illegible]	10	[illegible]	[illegible]	33	14,757	16,207	21,361	23,687
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1,231	16,898
[illegible]	[illegible]	[illegible]	[illegible]	111	48,932	[illegible]	84,139	131,183
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	18.5	[illegible]	33.4	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	45.2	[illegible]

MAY 1951 - [illegible]

	No. Accts. Sold	[illegible]	[illegible]	No. accts. Sold	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	2	1,408	4,044	2	837	[illegible]	[illegible]	7,134
[illegible]	6	7,213	15,221	22	1,600	[illegible]	[illegible]	[illegible]
[illegible]	26	3,575	6,575	[illegible]	3,151	6,[illegible]	[illegible]	15,[illegible]
[illegible]	11	6,476	16,[illegible]	9	4,[illegible]	11,175	[illegible]	27,837
[illegible]	2	279	2,451	2	3,537	10,605	[illegible]	17,[illegible]
[illegible]	20	7,[illegible]	2[illegible],217	19	9,662	40,[illegible]	[illegible]	[illegible]
[illegible]	26	8,242	15,722	43	16,[illegible]	72,[illegible]	[illegible]	[illegible]
Erie (April)	10	979	17,389	-	-	-	[illegible]	[illegible]
TOTAL 7%	113	36,374	120,633	107	57,[illegible]	186,0[illegible]	[illegible]	[illegible]
% of Total Tire Sales		13.6			[illegible].6		[illegible].6	
% Unit Sales, Rep. Accts.							[illegible].3	

[illegible] 1951 - [illegible]

Albany	2	716	[illegible],360	3	1,464	3,[illegible]	[illegible],[illegible]0	[illegible],[illegible]
Boston	7	2,784	21,[illegible]	17	1,657	[illegible],[illegible]72	[illegible],[illegible]1	55,377
Buffalo	26	4,682	13,609	6	[illegible],985	9,[illegible]	[illegible],[illegible]7	22,[illegible]
Hartford	30	5,412	20,[illegible]74	24	[illegible],[illegible]53	17,[illegible]	1[illegible],[illegible]45	37,[illegible]
New York	1	30	1,483	7	1,618	11,[illegible]23	1,[illegible]59	13,[illegible]
Providence	19	3,725	23,742	15	[illegible],716	29,[illegible]	21,[illegible]	52,[illegible]
Syracuse,	37	8,323	24,045	59	15,518	48,[illegible]	4[illegible],[illegible]1	72,[illegible]
Erie (May & June)	15	1,940	19,849	-	-	-	[illegible],940	19,[illegible]
TOTAL 7%	135	27,124	127,147	171	38,211	134,[illegible]	[illegible]5,[illegible]35	[illegible],[illegible]
% of Total Tire Sales							26.5	
% Unit Sales, Rep. Accts.							[illegible].[illegible]	

COMMISSION EXHIBIT NO. 290E. 3192

#2 ?

MAY 1951 - AB & 24B ACCOUNTS

	$ SALES - AB			$ SALES - BAB			$ SALES - TOTAL AB & 24B	
DIVISION #2	No. Accts. Sold	Month	Cum.	No. Accts. Sold	Month	Cum.	Month	1951 Cumul. (5 Mos.)
Allentown	33	3,673	13,665	4	724	3,991	4,397	16,485
Bryn Mawr	24	3,603	14,28[illegible]	-	-	1,362	1,603	15,648
Camden	15	4,682	15,880	10	2,334	4,971	7,016	20,851
Harrisburg	19	6,278	27,832	1	1,744	3,998	4,122	31,830
Norristown	32	5,007	18,752	-	-	1,683	5,007	20,435
Philadelphia	37	4,424	22,110	27	4,457	15,464	10,881	37,574
Reading	34	12,[illegible]1	37,969	2	328	765	12,941	38,734
Wilkes-Barre	15	4,775	13,660	15	5,834	16,195	10,609	29,861
Wilmington	26	4,[illegible]32	24,[illegible]29	6	6,129	13,041	10,961	37,870
York	15	1,098	5,625	3	3,678	8,334	4,774	13,959
TOTAL #2	253	51,085	192,788	68	27,266	69,226	78,331	269,013
% of Total $ Tire Sales		16.3			8.7		25.0	
% Unit Alloc. Raw Accts.							44.4	

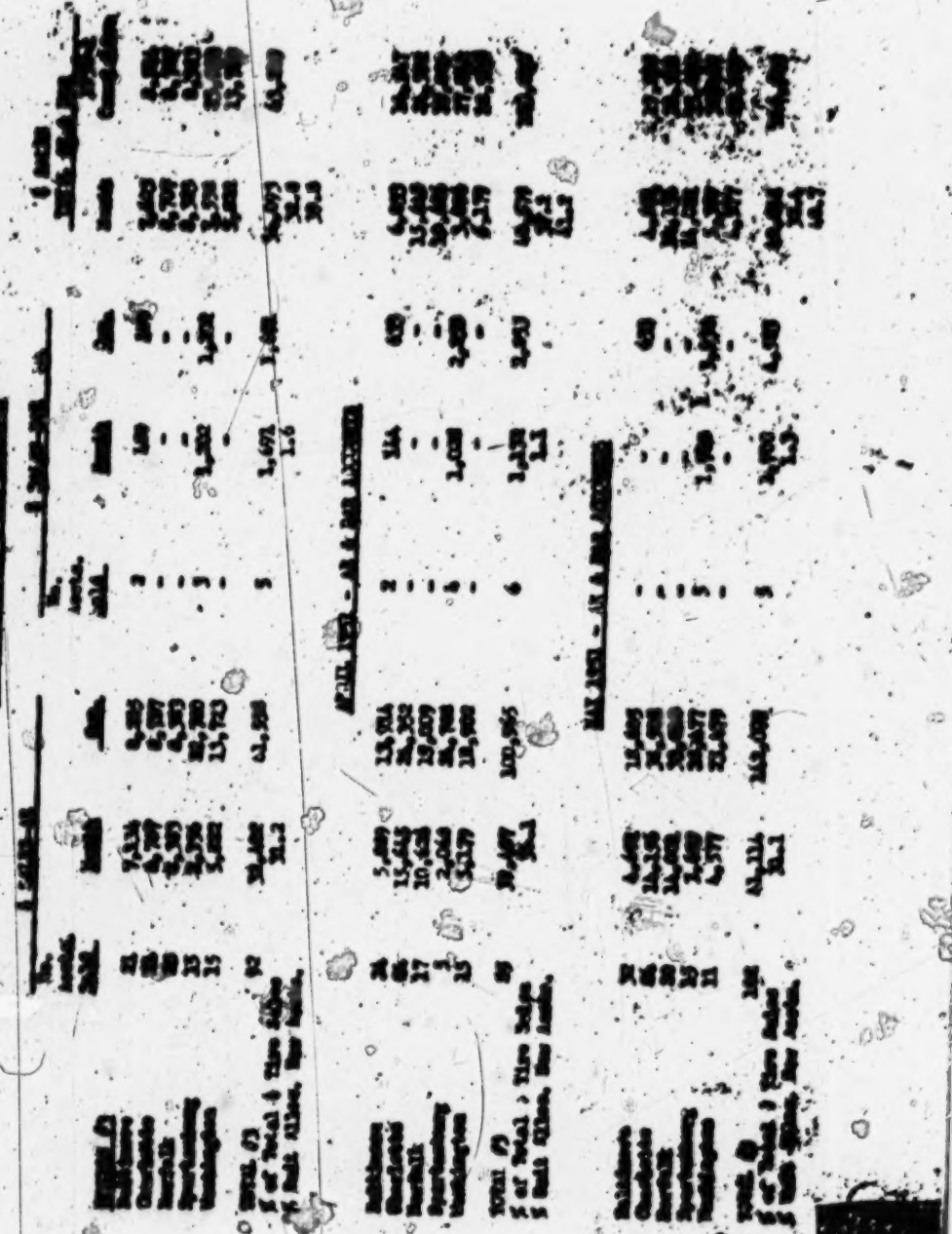
JUNE 1951 - AB & 24B ACCOUNTS

Allentown	27	4,917	17,582	5	1,321	5,302	6,238	22,884
Bryn Mawr	34	3,515	17,795	-	-	1,382	3,515	19,177
Camden	16	4,985	20,035	10	1,603	6,654	6,608	26,689
Harrisburg	24	7,183	35,015	1	1,074	4,474	8,259	39,489
Norristown	24	3,650	22,402	-	-	1,683	3,650	26,085
Philadelphia	36	5,282	27,292	37	6,752	22,216	11,934	49,508
Reading	36	13,860	51,799	3	190	955	14,050	52,754
Wilkes-Barre	11	2,933	16,599	21	7,303	23,498	10,236	40,097
Wilmington	34	5,356	30,184	-	-	13,041	5,356	43,225
York*	19	1,904	9,129	1	1,197	9,531	8,781	25,660
TOTAL #2	261	53,005	245,792	78	19,512	88,726	72,582	334,528
% of Total $ Tire Sales							22.6	
% Unit Alloc. Raw Accts.							45.2	

*Rel. to #4 by distr. 67 tires

19

COMMISSION EXHIBIT NO. 290F. 3193



COMMISSION EXHIBIT NO. 2906

3194

	No. Accts. Sold	Month	Cum.	No. Accts. Sold	Month	Cum.	1950-1	Cumulative (4 Mos.)
[illegible] (5)								
Baltimore	21	4,297	22,897	3	917	1,050	4,764	23,947
Charlotte	27	22,456	50,744	1	1,823	1,823	16,279	52,567
Norfolk	24	13,303	40,313	-	-	-	13,313	40,313
Spartanburg	11	2,991	31,066	2	600	4,600	3,191	35,578
Washington	13	6,632	30,111	-	-	-	6,632	30,111
TOTAL (5)	96	39,274	181,253	6	2,640	7,213	43,914	184,556
% of Total : Five Sales							No.	
# Unit Sales, Five Accts.							[illegible].1	

	No. Accts. Sold	Month	Cumula.	No. Accts. Sold	Month	Cumula.	Tires & Bar Accounts 1950-1 Month	Cumulative
	-	-	-	-				
	34	5,413	24,610	-				
Pittsburgh	14	5,013	8,145	-	-	-	5,413	24,610
Youngstown	2	646	10,297	2	111	111	757	10,308
TOTAL #4	70	24,072	48,942	2	121	111	14,183	45,053
% of Total) Tire Sales		9.9					912	
% Unit Alloc. Acct.							7.1	
			APRIL 1951 - AR & BR ACCOUNTS					
Altoona	45	17,283	17,283	1	762	762		18,045
Erie	40	5,221	29,402	-	-	-		29,402
Pittsburgh	33	10,001	18,146	-	-	-	10,001	28,146	
Youngstown	2	493	10,293	1	83	193	911	10,869
TOTAL #4	120	33,033	76,025	2	845	956		76,971
% of Total) Tire Sales		16.9					17..	
% Unit Alloc. Acct.							27.9	
			MAY 1951 - AR & BR ACCOUNTS					
Altoona	50	13,174	30,477	7	3,248	4,010		34,487
Erie	38	4,083	34,585	-	-	-		34,585
Pittsburgh	48	11,056	29,202	2	1,447	1,447		30,649
Youngstown	2	599	11,494	1	-	1..		11,..
TOTAL #4	138	29,..	105,758	9	4,6..	5,..		111, ..
% of Total) Tire Sales		14.8			2..			
% Unit Alloc. Acct.					-			
			JUNE 1951 - AR & BR ACCOUNTS					
Altoona	51	14,..	.,997	11	4,..	4,..		51,..
Erie	39	6,..	41,997	-	-	-		.,997
Pittsburgh	47	17,..	42,..	-	-	1,..		43,..
Youngstown	2	..	11,..	-	-	19..		12,..
TOTAL #6	139	36,..	140,222	11	.,..	9,..	.,..	149,..
% of Total) Tire Sales							13..	
% Unit Alloc. Acct.							..	

	No. Accts. Sold	Month	Mths.	No. Accts. Sold	Month	Cum.	Month	Cum.
APRIL 1951 - AR & DAR AGREEMENTS								
REGION #5								
Atlanta	2	1,832	1,832	-	-	-	1,832	1,832
Jacksonville	12	6,113	6,113	1	3,787	3,787	9,900	9,900
Miami	4	5,019	5,019	-	-	-	5,019	5,019
TOTAL #5	18	12,964	12,964	1	3,787	3,787	16,751	16,751
% of Total 8 Tire Sales		9.3			2.7		12.0	
% Unit Alloc. Dav Accts.							30.2	
MAY 1951 - AR & DAR AGREEMENTS								
Atlanta	4	2,223	4,055	-	-	-	2,223	4,055
Jacksonville	11	5,643	11,756	8	10,750	14,537	16,393	26,293
Miami	11	9,379	14,398	9	7,127	7,127	16,506	21,525
TOTAL #5	26	17,245	30,209	17	17,865	21,664	35,110	51,873
% of Total 8 Tire Sales		10.7			11.1		21.8	
% Unit Alloc. Dav Accts.							32.4	
MAY 1951 - AR & DAR AGREEMENTS								
Atlanta	3	1,653	5,708	-	-	-	1,653	5,708
Jacksonville	12	9,491	21,247	17	14,383	29,048	23,874	50,295
Miami	17	9,970	24,368	15	8,598	15,725	18,568	40,093
TOTAL #5	32	21,114	51,323	32	22,981	44,549	44,095	95,872
% of Total 8 Tire Sales		12.8			13.9		26.9	
% Unit Alloc. Dav Accts.							39.6	
JUNE 1951 - AR & DAR AGREEMENTS								
Atlanta	1	322	6,030	-	-	-	322	6,030
Jacksonville	11	6,919	28,166	33	15,991	45,039	22,910	73,205
Miami	11	3,520	27,888	13	6,391	21,916	13,911	49,804
TOTAL #5	23	10,761	62,084	46	22,382	66,955	37,143	129,039
% of Total 8 Tire Sales							22.5	
% Unit Alloc. Dav Accts.							38.4	

COMMISSION EXHIBIT NO. 2901

3496

COMMISSION EXHIBIT NO. 291A. 3197

[illegible] RUBBER COMPANY

INTER OFFICE COMMUNICATION

October 23, 1951.

Messrs. Hinderscheid
Segur
Anthony

Re: AR and DAR Accounts.

Attached you will find the AR and DAR report for the month of August. A fairly steady pattern is beginning to reveal itself in these reports. Apparently, about 550 AR accounts are being sold on a regular basis. Correspondingly in the DAR classification between 300 and 325 accounts are included. Although there are variations each month in the individual regions, they appear to balance out over a period of months. Total sales are also leveling out to $225,000 per month. This may be worthy of attention since it is only approximately 50% of the dollar volume which had been secured from the Atlantic Refining Company.

H.K. PIERCE

PrG
Attn.

Messrs. Hindsrenchel, Segur, Anthony

AUGUST 1951 AR & DAR ACCOUNTS

	No. Accts. Sold	$ Sales - AR Month	$ Sales - AR Cum.	No. Accts. Sold	$ Sales - DAR Month	$ Sales - DAR Cum.	$ SALES TOTAL AR & DAR ACCOUNTS 1950-1 Month	$ SALES TOTAL AR & DAR ACCOUNTS 1950-1 Cum. (6 Mos.)
Albany	2	917	7,341	2	104	4,122	1,021	12,063
Boston	8	1,137	23,347	10	2,264	40,565	3,401	63,912
Buffalo	24	2,557	19,748	5	1,990	17,181	4,547	36,929
Hartford	28	5,053	31,439	30	6,307	31,872	11,360	63,311
New York	-	-	1,505	5	1,658	15,908	1,658	17,413
Providence	18	5,157	33,753	37	7,632	48,792	12,789	82,545
Syracuse	37	7,764	38,586	49	8,877	70,129	16,641	108,715
Erieg	6	650	22,677	-	-	-	650	22,677
TOTAL #1	118	23,735	178,996	138	28,932	228,569	52,067	407,565
% Total $ Tire Sales							26.1%	
% Unit Alloc. New Accts.							50.1%	
Allentown	28	1,927	21,980	5	1,295	9,487	3,222	31,467
Bryn Mawr	21	1,300	20,865	5	756	2,138	2,056	23,003
Camden	12	2,349	28,745	7	2,031	9,888	4,380	38,633
Harrisburg	24	8,277	50,652	-	-	4,474	8,277	55,126
Norristown	23	2,377	26,978	-	-	1,683	2,377	28,661
Philadelphia	22	5,382	40,340	22	2,910	32,266	8,292	72,607
Reading	29	7,290	68,251	1	344	1,422	7,634	69,673
Wilkes-Barre	10	1,988	20,263	14	9,747	39,564	11,735	59,827
Wilmington	31	6,118	40,666	2	59	13,250	6,177	53,916
York	19	2,328	12,370	-	-	10,241	2,328	22,611.
TOTAL #2	211	39,336	331,110	56	17,142	124,413	56,478	455,523
% Total $ Tire Sales							19.4%	
% Unit Alloc. New Accts.							46.4%	
Baltimore	21	1,985	27,157	-	-	1,225	1,985	28,382
Charlotte	21	8,899	71,898	25	15,591	18,504	24,480	90,402
Norfolk	20	11,718	73,968	-	-	-	11,718	73,968
Spartanburg	11	3,974	37,341	4	1,540	7,298	5,514	44,671
Washington	13	6,253	43,623	-	-	-	6,253	43,623
TOTAL #3	86	32,829	254,027	29	17,131	27,019	49,950	281,046
% Total $ Tire Sales							32.1%	
% Unit Alloc. New Accts.							52.3%	

67 13

3198

COMMISSION EXHIBIT NO. 291B

AUGUST 1951 - AR & DAR ACCOUNTS

	No.	$ Sales - AR		No. Accts.	$ Sales - DAR		$ Sales Total AR & DAR Accounts	
		Month	Acc.	Sold	Month	Acc.	Month	Acc. (6 Mos.)
		[illegible]	60,958	23	10,545	22,759	18,[illegible]2	83,717
	27	3,395	49,948	-	-	-	3,395	49,948
	48	10,826	62,034	-	-	1,447	10,826	62,481
	5	2,009	14,232	-	-	-	2,009	14,232
	114	24,629	186,172	23	10,545	24,206	35,162	210,378
% of Total $ Tire Sales							17.0%	
% Unit Allocation New Accts.							49.2%	
	1	124	9,766	4	3,680	9,628	3,804	19,394
	10	3,755	36,881	37	10,010	66,651	13,765	103,532
	12	256	30,409	27	5,803	35,070	6,059	65,479
	23	4,135	77,056	68	19,493	111,349	23,628	188,405
% of Total $ Tire Sales							14.0%	
% Unit Allocation New Accts.							43.6%	
TOTAL [illegible]	345	124,142	1027,361	314	93,143	515,556	217,285	1542,917
% of Total $ Tire Sales							21.3%	
% Unit Allocation New Accts.							48.2%	

H.K. Faxon
10/19/51 G

41 87

COMMISSION EXHIBIT NO. 2910

3199

COMMISSION EXHIBIT NO. 292A. 3200

[redacted] & BUTCHER COMPANY

INTER-OFFICE COMMUNICATION

November 28, 1951.

Messrs. Hilderscheid
Segur
Anthony

Re: AR and D.R Accounts.

Attached you will find the A.R and D.R report for the month of September.

While there are a few less accounts sold as previous months, the sales pattern remains fairly steady.

It begins to be apparent that approximately 25% of the Atlantic Refining business on a dollar basis will be salvaged this year. With the addition of the A&R Accounts approximately 40% should be realized. This would appear to be a good performance since it is known that Electric Storage Battery originally set their goal to hold 25% of Atlantic's business which it now appears we will secure for this year.

H. L. Pearson

[redacted]

Messrs. Hinderscheid, Segur, Anthony

	No. Accts. Sold	Sales - 19 Month	Sales - 19 Cum.	No. Accts. Sold	Sales - 19 Month	Sales - 19 Cum.	19 Month	19 Cum. (7 mos.)
	3	796	8,737	1	26	4,148	822	13,885
	12	1,640	24,987	54	18,185	58,734	19,825	83,721
	22	2,842	24,590	7	4,283	22,764	7,125	46,354
	33	3,569	35,048	6	1,018	34,290	4,587	69,493
	-	-	1,905	-	-	14,908	-	17,813
	15	2,911	30,604	37	9,523	36,315	12,434	94,979
	24	3,605	42,191	46	14,243	84,272	17,748	126,463
	-	-	22,677	-	-	-	-	22,677
	109	15,363	191,359	151	47,478	276,047	62,341	470,406
	Five Sales						21,113	
	Addtl. New Accts.						50.14	
	23	2,793	24,773	6	1,837	11,124	4,630	36,867
	9	636	21,501	-	-	2,138	636	23,639
	10	4,526	31,471	7	1,032	10,[illegible]	5,558	42,171
	21	4,975	35,627	-	-	4,474	4,975	40,101
	22	1,837	21,215	-	-	1,683	1,837	22,898
	17	5,750	46,070	20	3,111	33,277	8,240	81,447
	29	4,776	74,627	1	30	2,472	4,626	74,099
	12	2,214	21,777	15	1,473	54,937	1,[illegible]9	78,716
	36	6,135	46,821	2	41	13,291	6,176	60,112
	19	2,364	19,774	-	-	10,811	2,364	30,775
	188	33,906	369,016	51	19,144	183,557	53,021	520,545
	Sales						11[illegible]	
	Accts.						44.46	
	18	4,825	31,382	2	199	1,424	4,424	32,806
	13,009	84,907	8[illegible],539	38	14,975	33,479	27,934	118,386
	12,571	8[illegible],539	-	-	-	-	12,571	8[illegible],539
	2,824	40,205	2	1,391	6,881	4,215	47,086	
	5,544	49,167	-	-	-	9,544	47,167	
	36,173	294,200	42	1[illegible],165	42,[illegible]72	54,338	335,984	
						51.73		
	Accts.					34.36		

COMMISSION EXHIBIT NO. 392B

32201

	No. Accts. Sold	$ Sales - AB Month	$ Sales - AB Cume	No. Accts. Sold	$ Sales - D&S Month	$ Sales - D&S Cume	$ SALES TOTAL A-1 & D-1 ACCOUNTS 1950 Month	$ SALES TOTAL A-1 & D-1 ACCOUNTS 1950 Cume (7 Mos.)
	19	11,286	7[illegible],244	4	1,128	23,887	12,414	90,131
	33	6,217	5[illegible],165	-	-	-	6,217	56,165
	48	12,004	72,033	-	-	1,447	12,004	7[illegible],485
	2	962	15,[illegible]00	1	1,046	1,840	2,614	1[illegible],146
	104	30,475	215,647	5	[illegible],774	[illegible]7,174	33,249	243,627
							10.2%	
							43.2%	
	4	2,057	11,[illegible]23	2	2,321	12,349	4,678	24,072
[illegible]ville	10	[illegible],490	3[illegible],[illegible]71	50	13,9[illegible]5	6[illegible],570	16,[illegible]15	119,947
	10	1,350	31,759	47	10,436	45,506	11,786	77,265
[illegible] 85	24	5,897	84,753	77	20,952	1[illegible],331	3[illegible],[illegible]79	221,284
[illegible]tal $ Tire Sales							[illegible]0.6%	
[illegible]t Alloc. New Accts.							43.6[illegible]	
[illegible] BRANCHES	508	123,414	1,150,175	328	11,[illegible]43	6[illegible],[illegible]93	236,928	1,779,846
[illegible]tal $ Tire Sales							2[illegible].5%	
[illegible]t Alloc. New Accts.							43[illegible].4	

[illegible] [illegible] Paxson
11/23/51

COMMISSION EXHIBIT NO. 2820

7 17 17

3202

3442 COMMISSION EXHIBIT NO. 294A-B.

Federal Trade Commission
Washington, D. C.

Statement of James B. Matthews
Trading as James B. Matthews Atlantic Service
Located at Church Lane & Bailey Rd., Yeadon, Pa.

1. Type of outlet Lease 1½¢ min $251 max fluctuates quarterly

   Terms of Lease Lease was year to year, expires June 30, 1953. Threatened to cancel 2 or 3 weeks ago because refused to sign mutual cancellation agreement.

   Here since August '49. Formerly at Darby from 47 to 49 for Atlantic.

   Credit Cards Yes. Can buy T.B.A. on them.

2. Brands of TBA carried Goodyear
   Tires and tubes Goodyear

   Batteries Goodyear & Auto light (hidden behind GY)
   Other TBA told to get rid of Autolite & not buy any more.

   Remarks:

3. Estimated monthly volume: Gasoline 17-18,000 gals.
   TBA $700 dollars

4. TBA suppliers Parris, Ashland Ave & McDade
   Tires Blvd., Glen Alden, Pa. Can buy 10% cheaper at
   Auto—Gear for accessories.

   Price information Sore spot (10% which Atlantic gets)

   Batteries Parris—only

   Price Information Dealers prices

3443 Other TBA Auto-lite from Auto-Gear. If handled solely his quantity would put him in price class as a distributor but can't handle Auto-lite alone without serious trouble.

Price Information

5. Reason for choosing line of TBA carried: For every $100 month of shelving rent increased $1 per month. Spend 4-5 building up Fram and then Atlantic changes sponsorship and expects its dealers to follow suit.

Has a few Lee tires & catches it for handling them and is asked to get them out of the way.

Had meeting last summer in which dealers were told what to say if the dealers were investigated—at 69th & Marshall morning and afternoon sessions. Place called Kastiks.

When Atlantic switched to GYT it just didn't go over, and meetings were held to sell program. Dealers told to tell investigators that Atlantic was only asking them to buy. That they were not forced into it. Told in so many words that he had to go along with TBA program or else.

If switched over to Goodrich is certain that lease would be cancelled. Not even diplomatic.

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

James B. Matthews 3-3-1953

L. E. Janson
Attorney Examiner
Federal Trade Commission

3444 / COMMISSION EXHIBIT NO. 295.

Branches as of January 1, 1950

Albany	Harrisburg
Allentown	Louisville
Atlanta	Memphis
Baltimore	New Orleans
Boston	New York
Brooklyn	Norfolk
Bryn Mawr	Norristown
Buffalo	Philadelphia
Bronx	Pittsburgh
Camden	Reading
Cincinnati	Spartanburg
Columbus	Washington
Dallas	Wilmington
Floral Park	York
Fort Worth	Youngstown

3446 COMMISSION EXHIBIT NO. 296.

Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950

Branch	Month and Year Opened
Erie, Penna.	March 1950
Altoona, Pa	March 1951
Charlotte, N. C.	April 1951
Hartford, Conn.	April 1951
Jacksonville, Fla.	April 1951
Miami, Fla.	April 1951
Providence, R. I.	March 1951
Syracuse, N. Y.	April 1951
Wilkes-Barre, Pa.	April 1951

3448 COMMISSION EXHIBIT NO. 297A-B.

Names and Positions of Lee Personnel Referred to in Items 1 to 19 Inclusive

P. E. Niedringhaus—Regional Sales Manager—Region #2
Lewis F. Jarrell—Branch Manager, Wilmington, Del. Branch
E. W. McCreery—Vice President & Regional Sales Manager—Region #4
J. A. Murphy—Branch Manager, Harrisburg, Pa. Branch
H. L. Pettingell—Vice President & Regional Sales Manager—Region #1
A. G. P. Segur—Assistant to Vice President in Charge of Sales
D. R. McAvoy—Manager Market Research
H. K. Paxson—Manager Market Research
R. M. Brasaemle—Vice President in Charge of Production
A. A. Garthwaite, Jr.—Asst. Vice President in Charge of Plants
E. E. Leach—Vice President in Charge of Plants
A. H. Nellen—Vice President in Charge of Development & Research
A. S. Pouchot—Treasurer and Comptroller
J. H. Anthony—Manager—Stock Distribution
M. G. Foraker—Regional Sales Manager—Region #3
J. L. Riddick—Regional Sales Manager—Region #5
F. C. Iringer—Branch Manager, New York, N. Y. Branch
R. P. Polson—Branch Manager, Boston, Mass. Branch
S. A. Copeland—Branch Manager, Buffalo, N. Y. Branch
G. S. Thompson—Branch Manager, Albany, N. Y. Branch
E. N. Fiffick—Branch Manager, Youngstown, Ohio Branch
H. J. McGinn, Jr.—Branch Manager, Charleston, W. Va. Branch

J. P. Bartley—Branch Manager, Pittsburgh, Pa. Branch
J. A. Simpson—Branch Manager, Altoona, Pa. Branch
A. A. Garthwaite—President
H. B. Lee—Advertising Manager
3450 J. J. Rooney—General Credit Manager
R. J. Limbert—Manager Accessory Sales
J. C. Warring—Special Representative—South Carolina
J. B. Touey—Special Representative—Wilkes-Barre, Pa.
G. D. Niles—Special Representative—Boston, Mass.
S. D. McPeak—Branch Manager, Cincinnati, Ohio Branch
A. H. Allen—Branch Manager, Columbus, Ohio Branch
H. R. Stephens—Branch Manager, Erie, Pa. Branch
R. L. Druien—Branch Manager, Louisville, Ky. Branch
W. F. Hinderscheid—Vice President in Charge of Sales

3452 COMMISSION EXHIBIT NO. 298.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

June 15, 1950

TBA SJH

Mr. C. Connell, Manager,
Automotive Replacement Sales,
Electric Storage Battery Co.,
19th St. & Allegheny Avenue,
Philadelphia 32, Penna.

Dear Mr. Connell:

The third district has been chosen for our experiment on the commission resale program. This is not an expansion of this plan as, if you will recall, our original discussion indicated there would be three districts on the program. It will be of interest to you to know that the Goodyear Tire and Rubber Company has been selected for this experiment in our Newark, New Jersey District. As Atlantic will no longer offer your products in this area, we are attaching a map indicating the boundaries of the Newark territory.

Cordially yours,

S. J. Heideman

h
Enc.

3455 COMMISSION EXHIBIT NO. 300A-B.

The Electric Storage Battery Co.

12-14-50 Atlantic Refining Co.

A R Sales
A. D. DeMott

The following is a result of a survey of ten Atlantic stations which I have covered recently:

Lenahan & McKaig
12th & Grove Streets
Jersey City, N. J.

I called on this account December 6 with Mr. Van Tuno to secure their battery business. I was advised that they stock no batteries at this station.

Lenahan & McKaig
14th & Erie Sts.
Jersey City, N. J.

This station carried a stock of 5 batteries, 4 of which were Goodyear and 1 Exide. They advised that they do very little battery business but we endeavored to impress upon them the desire for stocking Exides. This account will be served by Electric Battery Co.

DeFerrari Bros.
Washington Terr. & Grandview Blvd.
Hasbrouck Heights, N. J.

This account had 9 batteries in stock of the following types: 3 Edison, 3 Ajax, 2 Delco, 1 Presto-o-Lite, 1 Exide. They advised that the Edison and Presto-Lite are bought locally from Miller Auto Gear and Parts in Rutherford, N. J. I will have reliable Magneto call on this account.

Randolph Jensen
Jackson & Gordon Sts.
South River, N. J.

This account carried no batteries in stock but picks up the Exides they use from Hardy Tire Supply.

Joseph Wash
254 South Street
Newark 5, N. J.

This account carried 6 Goodyear batteries purchased from R. A. McDonough. 1 Willard and 2 Scranton batteries. When I called December 6 with Mr. Van Tuno, the proprietor advised us that he has to stock Goodyears since this is a leased station.

Rudzik Bros.
Canal Road
South Bound Brook, N. J.

This account had 5 Rebat, 1 Delco, 1 Goodyear, and 1 Lee Battery in stock. They advised that they are primarily interested in only cheaper grades of batteries but I requested Bound Brook Auto Supply to call on this account and endeavor to sell them on Exides.

3457 Brook Chevrolet Co.
Main St.
Bound Brook, N. J.

I called on this account on Nov. 30. They are no longer affiliated with Atl. Refining and buy Delco batteries through United Motor Service.

Mr. Joseph Kilsby
c/o Bakelite Corp.
River Road
Bound Brook, N. J.

This account buys batteries on a quotation basis as needed.

Joseph Marino
35th & Market St.
Paterson 3, N. J.

I called on this account December 13 and found that they had 5 Goodyears and 1 Exide battery which was purchased from Clement DePope. They advised that the majority of the batteries they sell are still Exides but do not stock any number because of constant pressure being exerted by the salesman for the Atlantic Refining Co.

Clement P. DePope
E. 33rd Street & McLean Blvd.
Paterson 4, N. J.

This is an Exide W account, through Reliable Magneto. They had the following batteries in stock: 20 Exides, 13 Goodyears (purchased from Farley Glass Co., Paterson) 3 Lee, 1 Willard. This account supplies majority of the Atlantic stations in the Paterson vicinity with Exide batteries.

Charles C. Smith
155 Front St. & E. Clinton Ave.
Tenafly, N. J.

I called on this account on December 13 with Mr. Orville Melchior and found that they had 14 Auto Lite and 1 Goodrich battery in stock. The 14 Auto Lite are purchased on a preferred distributor basis from Fleet Tire Co. We do not believe that this station's volume is sufficient to meet this price.

E. E. S.
E. E. Stevenson

3459 COMMISSION EXHIBIT NO. 301.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

December 15, 1950

File: Batteries

The Electric Storage Battery Co.
Allegheny Ave. and 19th St.
Philadelphia 32, Pa.

Attention: Mr. C. A. Connell, Manager
Automotive Replacement
Sales Div.

Gentlemen:

We are most anxious to know if you have at present a direct dealer selling organization, or contemplating in the near future the inclusion of such a group in your marketing plans. In short, have you given any consideration to a battery program for direct dealer merchandising by you similar to the commission plan offered to national oil accounts by certain tire manufacturers?

If at all possible we would appreciate a reply by Wednesday, December 20.

Very truly yours,

J. S. Parks
Purchasing Agent

By: Chas. F. Bergh

CFBergh/eme

3461 COMMISSION EXHIBIT NO. 302.

December 22, 1950

Mr. J. S. Parks, Purchasing Agent
The Atlantic Refining Co.
260 S. Broad St.
Philadelphia 1, Pa.

Dear Mr. Parks:

Currently all Exide automotive replacement battery sales to dealers are made through our Wholesale Distributors, thus affording prompt delivery through many warehouses.

Your letter of December 15 inquires as to our plans for a commission arrangement to be offered national oil accounts on direct sales to dealers. We believe our experience with this type of operation in past years should be of great value to you. Therefore, I suggest that immediately after the first of January you arrange for a meeting with interested members of your organization for a complete discussion of the many phases of this subject.

With kindest personal regards and best wishes for the holidays, I am

Sincerely yours,
C. Connell, Manager
Automotive Replacement Sales Div.

CC:CR

3464 COMMISSION EXHIBIT NO. 303.

1-4-51

The Atlantic Refining Company
AR Sales

Asst. Gen. Sales Mgr.
R. L. Sommerville

Arrangements have been completed to meet with Messrs. Heideman and Bergh of the Atlantic Refining Company at 10:00 a.m. Monday, January 15, in Mr. Heideman's office.

As per my conversation with you, the meeting is for the purpose of discussing the possibility and advisability of our making some arrangements for the Atlantic Refining Company covering the sale of Exide batteries direct to Atlantic dealers and providing a commission arrangement to the Atlantic Refining Company. Your past experience with a somewhat similar arrangement with the Texaco Company I am sure will prove very valuable at the meeting.

C. Connell

CC:CR

3467 COMMISSION EXHIBIT NO. 304.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

February 5, 1951

TBA SJH
T.B.A. Exide Batteries

Mr. C. Connell, Manager,
Automotive Replacement Sales,
Electric Storage Battery Co.
19th St. & Allegheny Avenue,
Philadelphia 32, Pennsylvania.

Dear Mr. Connell:

I am confirming our phone conversation of February 2nd to the effect that in the month of February the Firestone Commission Plan of marketing T.B.A. is thereafter to be employed by Atlantic in the State of Ohio and in the Panhandle section of the State of West Virginia.

Although in effect, this action is an extension of the Commission Plan, it is being undertaken as a practical solution to several aggravating problems and not as a direct result of the tests currently being conducted by us.

Cordially yours,

S. J. Heideman

h

3470 COMMISSION EXHIBIT NO. 305A-B.

Date 2-14-51

Subject Atlantic Refining Company
From AR Sales

To Vice President
Mr. R. Whitehurst

Mr. S. J. Heideman, T.B.A. manager of the Atlantic Refining Company called today to give me advance confidential information regarding a decision made this morning by top management of the Atlantic Refining Company regarding future handling of T.B.A. sales to Atlantic dealers.

Effective as quickly as the changeover can be made, all T.B.A. sales to Atlantic dealers will be handled on a commission arrangement. It is planned that four of the six regions will operate under the Firestone arrangement and the remaining two under the Goodyear commission plan. Under both plans, the Atlantic Refining Company will be paid approximately 10% commission on all sales to Atlantic dealers and 8% on all sales to Atlantic distributors on the items handled by Firestone and Goodyear; tires, batteries, accessories, refrigerators, electrical appliances, toys, garden supplies, sporting goods, etc. Orders will be written either by Firestone or Goodyear who will handle the entire transaction, including delivery, credit, billing, etc., leaving the Atlantic Refining Company with only the problem of promoting sales.

The Atlantic Refining Company first sold Exide batteries under a Wholesale Distributor contract in 1937 and then only in their Philadelphia Division. Their T.B.A. program was greatly enlarged both as to the items sold and territory covered until in 1950 the total T.B.A. sales amounted to between nine and ten million dollars.

The accounting procedure set up by the Atlantic Refining Company was such that expenses charged against T.B.A. sales appeared to make this operation unprofitable. As a result of this and because the top management of the Atlantic Refining Company believed that their own men should participate only in the sales of petroleum products, it was decided early in 1950 to try out the Firestone and Goodyear commission plan in three Atlantic Refining Company districts. Firestone in the Erie, Pennsylvania and Wilmington, Delaware districts and Goodyear in the Newark, New Jersey district. We were advised of this move and accordingly made plans to retain the Exide business in these districts. We actually materially increased our business in the Erie district during 1950 and were reasonably successful in the Wilmington and Newark districts. Atlantic Refining Company's own records for the year show a greater increase in the sale of batteries in the district continuing to sell Exides than in the district changed over to Firestone and Goodyear. I have been told that a complete report was submitted to management indicating that the plan was not successful; however, since management desires to get out of active participation in T.B.A. sales, the recommendation was made that the commission 3472 plan be tried in one of their six regions.

Tires being the largest dollar item of T.B.A. sales, the plan was discussed yesterday afternoon with Lee Tire and Rubber Company, whose product they have handled in all territories except the three districts on the commission plan. Lee apparently made it clear that if Atlantic were planning further expansion of the commission plan, they had no further interest in the Atlantic Refining Company's business. Both Firestone and Goodyear had previously been approached regarding a plan whereby they would sell tires only to the Atlantic Refining Company accounts on a commission arrangement and had flatly refused such a

plan insisting that either the complete program or none be sold by them. Naturally the immediate need for a tire program as a result of Lee's decision precipitated Atlantic Refining Company's move. As a result, they have decided, as outlined above, to go 100% on the commission plan.

Mr. Heidman has informed me that we will receive Atlantic Refining Company's formal notification of the change in their program.

C. Connell

CC:rll

3474 COMMISSION EXHIBIT NO. 306A-B.

Date 2-22-51

Subject Atlantic Refining Company

From AR Sales

To Vice President
Mr. R. Whitehurst
cc: R. L. Sommerville

My letter of February 14 advised you of the Atlantic Refining Company's change in policy for the handling of TBA sales to their dealers. Additional information has been received from the Atlantic Refining Company and steps have been taken with our branches to insure our retaining the maximum possible share of this business.

All Field branches concerned—Atlanta Boston, Cleveland, New York, Philadelphia, Pittsburgh, and Washington—were notified of the change and instructed to immediately adjust their sales schedules so that their number one job would be complete coverage of the Atlantic Refining Company dealers and distributors. All Atlantic Refining distributors of TBA products are to be personally contacted

by our men in an effort to sign them up either direct as wholesale distributors or as wholesalers, depending upon their operation and the volume of business involved. Letters will go out from all branches to wholesale distributor management and salesmen advising of this change and recommending that they immediately contact all Atlantic dealers in their territory and aggressively solicit their Exide battery business. The branches will make up a list of Atlantic Refining Company dealers through the Advertising Department and have them placed on our prospect dealer list to be included in the eight mailings already planned.

Mr. D. T. Colley, Vice-President and General Manager of the Atlantic Refining Company, has already requested their Purchasing Department to formally notify us of the cancellation of our Warehouse Distributor contract with them. All other TBA suppliers will be similarly notified. There has been a change in the original plan to have Firestone handle the commission arrangement in four districts and Goodyear in two. The current plans call for three regions each—Firestone in Eastern Pennsylvania, Western Pennsylvania and the Southern Regions and Goodyear in Philadelphia and New Jersey, New York and New England Regions.

Mr. Heideman is now preparing two letters to go out over Mr. Colley's signature, one to all of their dealers and the second to their salesmen, district managers, and regional managers, with which will be enclosed a copy of the dealer letter. I am told that the dealer letter will introduce the Firestone or Goodyear program and explain the Atlantic Refining Company's confidence in the wisdom of their decision. It will, however, state that there is no obligation on the part of the dealer to go along with the program. The final decision as to which TBA items he sells rests with him. The letter to the salesmen and managers will stress

the need for good salesmanship and complete confi-
3476 dence in the Firestone or Goodyear program but, at
the same time, prohibit the use of pressure in influencing the dealer's decision at the risk of the Atlantic Refining Company salesman's losing his position. Atlantic Refining has not agreed to give me copies of these letters, but every effort will be made to pick up copies for our information.

Mr. Colley has clearly indicated to Mr. Heideman that the one TBA item he would prefer to retain is Exide batteries. He likes our company, he likes our way of doing business, and believes our product is one of the best.

C. Connell

CC:CR

~~All Exide branches concerned—Atlantic Boston Cleveland, New York, Philadelphia, Pittsburgh, and Washington~~

3478 COMMISSION EXHIBIT NO. 307.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

J. S. Parks
Purchasing Agent

M. S. Charlton
Ass't Purchasing Agent

February 23, 1951

File: 5A-ES

The Electric Storage Battery Co.
Allegheny Ave. & 19th St.
Philadelphia 32, Pa.

Attention: Mr. C. Connell, Manager Automotive Replacement Sales Division.

Gentlemen:

After very careful study, over an extended period, the management of our Domestic Sales Department has decided to accept Firestone and Goodyear marketing deals to supply our dealers with tires, batteries and accessories. To the extent possible we plan to make his new operation effective March 1, 1951.

Our Exide Battery Warehouse Distributor Contract with you dated November 1, 1949, covering Exide Automotive Replacement Batteries, Parts, and Battery Service Equipment, extends to either party the option of cancelling the contract upon 90 days' written notice.

In accordance with the terms of our agreement, we hereby notify you of our desire to cancel same. Because the

change, as it affects other products, is being made immediately, we should like you to consider waiving the 90 day period of notice and agree to cancellation as of February 28, 1951.

Our regional sales offices have been instructed to forward to you request for cancellation of all their unshipped orders.

At this time we should like to express our appreciation for the finest kind of cooperation received from your organization over these many years.

To complete the record, may we have your acknowledgment of this letter.

Very truly yours,

J. S. Parks,
Purchasing Agent,.

CFBergh/eme

By: Chas F. Bergh.

3480 COMMISSION EXHIBIT NO. 308.

The Electric Storage Battery Co.

March 7, 1951

Mr. J. S. Parks, Purchasing Agent
The Atlantic Refining Co.
260 S. Broad St.
Philadelphia 1, Pa.

Attention: Mr. C. F. Bergh

Gentlemen:

We regret to learn that your Domestic Sales Department has decided to use Firestone and Goodyear to supply your dealers with tires, batteries, and accessories. However, as requested in your letter of February 23, 1951, we agree to accept cancellation of your Exide Warehouse Distributor contract as of February 28, 1951 and waive the 90 day cancellation clause.

Our business association since 1937 has been both pleasant and profitable and we hope the many inter-company friendships formed during this period will continue.

Your past performance in the sale of Exide batteries speaks for itself. In the event, at some future date, you contemplate a change from the current arrangements for the sale of batteries, we will welcome the opportunity to discuss a program with you.

Very truly yours,

C. Connell,
Manager Automotive Replacement Sales Division

CC:CR

3482 COMMISSION EXHIBIT NO. 309.

Inter-Office Letter

The Electric Storage Battery Co.

Date 3-13-51

Subject The Atlantic Refining Company

From AR Sales

Atlanta Branch, J. A. Cronk
Boston Branch, T. G. Tynan
Cleveland Branch, W. P. Roche
New York Branch, J. W. Weigt
Philadelphia Branch, W. C. Hooven
Pittsburgh Branch, C. H. Leet
Washington Branch, J. A. Klingensmith

cc: Credit Div., J. A. Kennedy
Sales Order Div., J. W. Damon
Vice-Pres. & Compt., D. N. Smith
Customers' Accounting Div., D. J. Hendrickson
Advertising Div., A. N. Dingee

Our Warehouse Distributor contract with the Atlantic Refining Company, effective November 1, 1949, has been cancelled in its entirety effective February 28, 1951.

All complete or balance orders still unshipped should be cancelled. We should no longer accept batteries for inspection under the 90 day warranty provision of our SGA Policy.

To clear our records, we will require Cancellation-Replacement Sales Agreement, Forms 4072, for every Atlantic Company listing shown on Form 3265, List of Distributors by States and Cities, effective November 1, 1950. Therefore, each individual branch should forward to us cancellation notices for Atlantic Refining Company listings

in their territories by return mail. All addressograph plates in branch offices should be immediately destroyed.

A complete list of Atlantic Refining Company accounts will be forwarded to each branch as soon as it is possible to process the list. The complete list of Atlantic accounts will be put on our prospect list and will receive our eight prospect mailings. Therefore, it will not be necessary for you to include the names of Atlantic accounts in the list of dealer prospects you are mailing to the Advertising Division.

C. C.
C. Connell

CC:CR

3485 COMMISSION EXHIBIT NO. 310.

The Electric Storage Battery Co.

8/16/51 Atlantic Refining Co.

Replacement Sales Asst. Genl. Sales Manager
C. Connell
cc: Mr. R. Whitehurst

Whereas your reports on the retention of the Atlantic Refining Co. accounts show that we are continuing to make numerical progress in signing them up, I cannot get any indication as to the sales strength of the accounts that we are closing. In other words, are we signing the "seventy percenters" who do 30% of the business or are we signing the "thirty percenters" who do 70% of the business? Is there not some way that we can appraise the work we are doing in changing over Atlantic accounts so that we have a definite measure of what success we are obtaining in getting business of Atlantic outlets.

Take one small example: I called on Glenn in Mt. Airy two or three weeks ago and found that he had gone 100% down the line with Atlantic on Goodyear. He naturally would be listed as one Atlantic account but from the volume standpoint he has always been far above average; therefore, we have undoubtedly failed in this single instance to retain a good battery outlet. If your figures could be revamped in some way so that we could know what the battery potentials are of these accounts that we are changing, it would certainly give us some important and factual information.

R. L. Sommerville

RLS:IMB

3487 COMMISSION EXHIBIT NO. 311.

Inter-Office Letter

The Electric Storage Battery Co.

Date 10-3-51

Subject The Atlantic Refining Company

To Asst. Gen. Sales Mgr. From AR Sales Dept.
Mr. R. L. Sommerville Answering Letter 8-16-51

Supp. Letter 8-7-51

By R. L. S.
C. C.

cc. R. Whitehurst

With further reference to our reports of progress to you of June 18 and 29 and August 7 on our retention of the Atlantic Refining Company accounts, we now submit to you the following definite report of the number of accounts retained by classification as of October 1, 1951:

Branch	No. of Accounts Referred to Branches Original AR List	No. of Accts. Signed—WD	No. of Accts. Signed—W	No. of Accts. Signed—AD	Composite Total
Atlanta	548	—	3	32	35
Boston	526	—	18	292	310
Cleveland	266	3	3	68	74
New York	1094	2	22	418	442
Philadelphia	2696	4	9	567	580
Pittsburgh	1141	—	5	170	175
Washington	525	—	6	57	63
Total	6796	9	66	1604	1679

Comparing this with our previous report, you will note an increase of three additional Wholesalers and 97 Authorized Dealers, making a total gain of 100 acounts, thus we have retained all or part of the business of 24.7% of this customer's accounts.

To evaluate the type of Atlantic account we have been able to retain and in reply to your letter of August 16, 1951, we have had a check made of the key Atlantic accounts, i. e., those who were of sufficient size to receive direct shipment of Lee tires from the Lee factory. This survey indicates that we have retained all or part of the business of 238 of the 1,060 accounts that were considered to be the best Atlantic outlets. This means we have retained 22.5% of the better accounts.

It is evident from the above, therefore, that we have retained approximately the same percentage of the accounts of Atlantic across-the-board as we have their key accounts.

C. Connell

RJL:CR

3489 COMMISSION EXHIBIT NO. 314A.

The Electric Storage Battery Company
Philadelphia 2, Pennsylvania

Executive Offices 42 S. Fifteenth Street
LOcust 4-4030

June 26, 1957

James S. Kelaher, Esquire,
Trial Attorney
Federal Trade Commission
c/o Benjamin Franklin Hotel
Ninth & Chestnut Sts.
Philadelphia 6, Penna.

Re: The Goodyear Tire & Rubber Co., et al
Docket 6486

Dear Mr. Kelaher:

Pursuant to Specification II of your subpoena issued in connection with the above proceedings, please be advised that as of May 31, 1957, we had 1,163 Wholesale Distributors who operated through 1,398 Wholesale Distributor Branches.

You will understand, of course, that all sales of Exide automotive replacement batteries made by The Electric Storage Battery Company are to wholesale distributors. These distributors are independent business organizations in no way owned by or related to or affiliated with The Electric Storage Battery Company other than merchandisers of our products. These distributors in turn resell to some jobbers, or wholesalers and to dealers.

Very truly yours,

William P. Cairo, MS
Assistant Secretary.

WPC:MS

COMMISSION EXHIBIT NO. 314B. 3231

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 EXHIBIT NO. 314-B

Exide

Wholesale Distributors

by

STATES and CITIES

November 1, 1950

▼

THE ELECTRIC STORAGE BATTERY COMPANY

Allegheny Avenue and Nineteenth Street
PHILADELPHIA 32, PA.

Branches

ATLANTA	1246 Allene Ave., S. W.
BOSTON 34	100 Ashford St.
CHICAGO 9	5335 S. Western Blvd.
CINCINNATI 2	718-1, Temple Bar Bldg.
CLEVELAND 14	Room 1012 Engineers Bldg.
DALLAS 1	1511 Mercantile Bank Bldg.
DENVER 2	810 - 14th Street
DETROIT 4	8051 W. Chicago Blvd.
KANSAS CITY 1	129 Belmont Boulevard
LOS ANGELES 15	1043 S. Grand Ave.
MINNEAPOLIS 3	1750 Hennepin Ave.
NEW ORLEANS 12,	406 Industries Bldg., 238 S. Saratoga St.
NEW YORK 18	23-31 West 43d St.
PHILADELPHIA 32 . . .	17th St. & Indiana Ave.
PITTSBURGH 22 . . .	701 First National Bank Bldg.
ST. LOUIS 3	1218 Olive St.
SAN FRANCISCO 24	6136 Third St.
SEATTLE 4	1919 Smith Tower Bldg.
WASHINGTON 6	1819 L St., N. W.

In Canada: Exide Batteries of Canada, Ltd., 153 Dufferin Street, Toronto, Canada.

EXIDE WHOLESALE DISTRIBUTORS

Numbers following address denote Postal Zone.

ALABAMA

Bessemer
Long-Lewis Hardware Co.
2114 Second Ave., N.

Birmingham
Long-Lewis Hardware Co.
420 N. 9th St.
P. O. Box 2633 (2)

Decatur
Motor Supply Co.
Lee[illegible] & Davis Streets

Mobile
McGowin-Lyons Hdwe. & Sup. Co.
113 N. Water St.
P. O. Box 1269 (7)

Montgomery
Teague Hdwe. Co.
122 Commerce St. (1)

Tuscaloosa
The Battery Shop
7th St. & 22nd Ave.

ARIZONA

Douglas
Devere Auto Supply Co.
1122 G Ave.

Phoenix
Denish's Tire Co.
[illegible] Seventh Ave.

Tucson
Stern's Auto Accessories
425 East Broadway

ARKANSAS

Benton
Quality Auto Parts Co.
210 E. Sevier

Camden
Winchester Auto Stores, Inc.
216 East Washington St.

Eldorado
Rex & Bob's Tire Service
1515 E. Hillsboro

Fayetteville
Fayetteville Auto Supply Co.

Little Rock
Winchester Auto Stores, Inc.
412 15 W. 7th St.

North Little Rock
Quality Auto Parts Co.
[illegible] 2nd St.

Pine Bluff
Winchester Auto Stores, Inc.
[illegible] Main St.

CALIFORNIA

Anaheim
R. E. & H. Motor Parts
[illegible] W. Los Angeles St.

Bakersfield
Bakersfield Bearing & Motor Supply
[illegible] H St.

Bishop
Boyd's Auto Parts
[illegible] Line St.
H. M. Parker & Son
145 N. Main St.

Brawley
Imperial Valley Auto Electricians
[illegible] North Plaza

Burney
Burney Auto Parts
Main St.

Calexico
Implementos De Mexicali Sa
Box 837

Chico
Chico Auto Parts
130 Main St.

El Centro
Auto Gear & Supply Co.
127 S. 6th St.
Central Motor Parts
660 Broadway

Eureka
Ogden's
[illegible] & "G" Sts.

Exeter
Green Motor Parts
203 W. Pine St.

Fresno
Electric Laboratories, Inc.
1432 Van Ness Ave.

Garden Grove
B. B. & H. Motor Parts
13011 Century Blvd.

Garvey
Anderson's Automotive Supply
416 W. Garvey Blvd.

Glendale
H. M. Parker & Son
230 S. Central Ave.

Gonzales
Johnson Motor Co.
2nd & Alta Sts.

Hanford
Green Motor Parts
[illegible] W. 7th St.

Hayward
Kent Snyder
[illegible] Castro St.

La Crescenta
Arthur Milner
7245 Washington Place

Lancaster
Monte's Auto Parts Co.
[illegible] Sierra Highway
H. M. Parker & Son
[illegible] Sierra Highway

Lindsay
Green Motor Parts
185 Elmwood

Long Beach
M. P. Forman Company
1637 Burnett St.
Speedometer Specialties Co.
524 East Pacific Coast Highway

Los Angeles
*The Electric Storage Battery Co.
1947 S. Grand Ave. (11)
Barr Wire Co.
1900 S. Central Ave. (11)
Al Farley Service
1132 West 25th Place
Leland Irish, Inc.
801 East 9th St. (21)
Jiuli's Auto Parts
701 W. Imperial Highway (44)
Charles Morgan & Son
1951 E. Olympic Blvd. (21)
Pathfinder Petroleum Co.
3970 Medford St. (33)
South Auto Supply Co.
4420 Whittier Blvd. (22)
Smith & Thies
1049 W. Manchester Ave.
Standard Auto Parts
1220 So. Flower St.

Manteca
Manteca Auto Parts Co.
[illegible] Main St.

Marysville
Hamon Bros.
[illegible] & G Sts.

Maywood
Bill's Super Service
[illegible] East Slauson Ave.

Modesto
Benson & Zimmerman
[illegible] & H Sts.

Monterey
Ete-Hokin & Galvan
[illegible]

Mount Shasta
Shasta Auto Supply Co.
[illegible] Main St., Hiway 99

Napa
P. M. Owen
[illegible] Main St.

Newport Beach
The Boatswain's Locker
[illegible] Coast Highway

North Hollywood
Cross Bros. Auto Parts
11[illegible] Magnolia Blvd.
Huffaker Auto Parts
5[illegible] Lankershim Blvd.
H. M. Parker & Son
4[illegible] Lankershim Blvd.

Oakdale
Benson & Zimmerman
[illegible] W. Third Ave.

Oakland
Compton's
1[illegible] Webster St.
Ete-Hokin & Galvan
4730 E. 14th St.
H. G. Mahalm Magneto Repair Co.
2[illegible] Valdez St.
Unruh Auto Service
2300 Webster St.

Ontario
Drew Carriage Co.
[illegible] E. B St.

Oroville
Oroville Auto Parts, Inc.
1369 Huntoon St.

Pasadena
Hibbard & Rodgers
[illegible] W. Union St.
Powerhouse Battery Co.
960 E. Washington St.

Patterson
Benson & Zimmerman
[illegible] S. Third & E Sts.

Placerville
C & H Motor Parts
Main & Colloma Sts.

Porterville
Green Motor Parts
[illegible] N. Main St.

Redding
Automobile Accessories Co.
1420 Butte St.

Richmond
Harrich Brothers
1427 MacDonald Ave.

Ridgecrest
Boyd's Auto Parts

Riverside
Riverside Motor Supply Co.
3501 Eighth St.
Service Supply Co.
3254 8th St.

Sacramento
Schwab Tire Co.
17th & J Sts.

Salinas
Deane Tire Service
Monterey & Gabilan Sts.

San Bernardino
San Bernardino Motor Parts, Inc.
196 F St.

San Diego
Auto Gear & Supply Co.
1269 State St.
Dunbar's
8th & B Sts. (1)
41st & El Cajon
32nd & Island
Ete-Hokin & Galvan
Foot of Seaforth St.
Filter Equipment & Supply Co.
1527 Market St.

San Fernando
Monte's Auto Parts Co.
[illegible] San Fernando Rd.
H. M. Parker & Son
[illegible] Crenshaw Dr.

San Francisco
*The Electric Storage Battery Co.
[illegible]
Larry Barrett Tire Co.
[illegible] & Howard Sts. (3)
Bosquet Service Station
[illegible] & Taylor
Dunham, Carrigan & Hayden
[illegible] & Howard Sts.
Ete-Hokin & Galvan
[illegible] Pine St.
H. G. Mahalm Magneto Repair Co.
[illegible] Howard St.
Mara Morris Tire Co.
[illegible] Van Ness Ave.
Pine Auto Parts Inc.
[illegible] Pine St.
Charles P. Wakefield
[illegible] New St.

San Jose
Cook's Automotive Service
[illegible] & E. Santa Clara St.

San Luis Obispo
Universal Auto Parts Co.
959 Monterey St.

San Pedro
McConnell Mtr. Parts Co.
[illegible] S. Pacific Ave.

San Rafael
Park's Auto Electric
2nd & Lincoln Sts.

San Ysidro
Auto Gear & Supply Co.
180 San Ysidro Blvd.

Santa Barbara
Cox Petroleum Company
1307 San Andres St.

Santa Cruz
Santa Cruz Auto Parts, Inc.
702 Front St.

Santa Rosa
Harry B. Trombley
Third & B Sts.

Signal Hill
King's Parts & Service
2801 Cherry Ave.

Sonora
Opera Hall Garage
236 Washington St.

South San Francisco
Howard-Martin Automotive Distributors
305 Bayshore Blvd.

Stockton
Automotive Parts Co.
244 North Hunter St.
Ete-Hokin & Galvan
[illegible] N. San Joaquin St.
Kraft Service
Eldorado & Park St.

Taft
Taft Bearing & Motor Supply
136 Center St.

Tulare
Allman Motor Parts
145 N. "K" St.

Ukiah
Ukiah Auto Parts
209 S. State St.

Vallejo
Al Young's Automotive Service
1401 Sonoma Blvd.

Van Nuys
H. M. Parker & Son
14511 Delano St.

Ventura
Anderson Auto Electric
Oak & Santa Clara Sts.

Visalia
Automotive Parts Co.
400 E. Main St.
P. O. Box 575

Watsonville
Townsend's Auto Electric Service
205 Van Ness Ave.

West Los Angeles
Boggs & McBurney
11650 Santa Monica Blvd. (25)

Whittier
Greenleaf Auto Parts Co.
437 S. Greenleaf Ave.

Willits
Auto Parts Service
312 Main St.

Wilmington
Ete-Hokin & Galvan
218 Avalon Blvd.

COLORADO

Alamosa
Clark & Davidson
[illegible] 4th St. P. O. Box 117

Colorado Springs
The Auto Equipment Co.
[illegible] E. Colorado Ave.

Denver
The Auto Equipment Co.
1401 & Lawrence
P. O. Box 5220
Terminal Station (17)
1318 Lincoln St. (3)
Colorado Jobbers Supply Co.
873 Broadway

Durango
The Auto Equipment Co.
1149 Main St.

Fort Collins
Auto Equipment Co.
159 Linden Ave.

Grand Junction
Mountain Supply Co.
238 S. Seventh St.

Greeley
The Auto Equipment Co.
924 8th Ave.

Pueblo
The Zook Tire Co.
Fifth at Grand.

3491 161 2

List of Exide Wholesale Distributors (Continued)

CONNECTICUT

Bridgeport
Bridgeport Auto Parts Inc.
577-581 Fairfield Ave. (3)
Colton & Leary Inc.
1026 North Ave.

Canaan
Voight's Battery & Radio Service
Railroad Ave.

Danbury
Murray's Auto Parts
307 Main St.

East Hartford
Atlantic Refining Co.
1451 Main St. (8)

Hartford
Auto Tire Co., Inc.
1548 High St. (5)
Grimold Auto Parts, Inc.
334-72 Hudson St. (5)

Meriden
Frank's Auto Parts, Inc.
27 Cooper St.

Middletown
Grimold Auto Parts, Inc.
650 Main St.

Milldale
Paul Schwank Automotive Supplies
56 Norton St.

New Britain
Grimold Auto Parts, Inc
123 Arch St.

New Haven
Atlantic Refining Co.
Water Front St.
The Elm City Auto Electric, Inc.
617 State St. (11)
The Horton-Gallo-Creamer Co., Inc.
96 State St.

New London
Grimold Auto Parts, Inc
256 Bank St.

South Norwalk
Knudsen & Beth, Inc.
67 Connecticut Ave.

Stamford
The Horton-Gallo-Creamer Co., Inc.
843 Main St.

Torrington
Grimold Auto Parts, Inc.
35 S. Main St.

Waterbury
Shore's Auto Parts, Inc.
427 W. Main St.

DELAWARE

Dover
Motorcar Service Co.
S. Governor's Ave. Blvd.

Wilmington
Atlantic Refining Co.
501 S. Market St.
Motorcar Service Co.
910 French St.

DISTRICT OF COLUMBIA

Washington
E. J. Payne
1418-1 St., N. W. (6)

FLORIDA

Jacksonville
Atlantic Refining Co.
P. O. Box 1629, Station Y
Joseph H. Walsh Co
931 Park St.

Live Oak
Lo Files Auto Service
211-5 Ohio Ave.

Miami
Atlantic Refining Co.
2121 N. W. Second Ave.
Penton-Shepard Tire Co.
629 S. W. 6th St. (8)

Tampa
Floyd Wholesale Tire & Supply Co.
1403 5th Ave.

GEORGIA

Alma
Butler Supply Co.

Atlanta
The Electric Storage Battery Co.
1246 Allene Ave., S. W.
Prior Tire Co., Inc.
418 Peachtree St., N. E. (3)

Augusta
Skinner Auto Supply Co.
864 Broad St.

Baxley
Butler Supply Co.

Columbus
C. & B. Parts Service Co.
1315 First Ave.

Macon
Butler Supply Co.
Geo. Strickland
Chapman's Garage, Inc.
419 Mulberry St.

Rome
Wie's Goodyear Tire Store
416 Broad St.

Savannah
The Frank Corporation
222 Broughton St., W.

Valdosta
Lo Files Automotive Service
209 N. Ashley St.

Waycross
Motor Parts Co.
Plant Quarry Ave

Waynesboro
Skinner Auto Supply Co.

IDAHO

Boise
Interstate Motor Supply Co.
614 Jefferson

Lewiston
Erb Hardware Co.
401 D St. P. O. Box 910

ILLINOIS

Alton
Wells Tire Co., Inc
823 E. Broadway

Aurora
Phillips Auto Parts Co.
225 Holbrook Sq.

Belleville
H. B. Pfeninger Distributors
Smithboro Rd.

Bloomington
Auto Hosel, Inc.
East & Jefferson Sts.

Champaign
E. E. Collins Co.
9 E. Logan St.

Chicago
The Electric Storage Battery Co.
1613 S. Western Blvd. (9)
Allied Tire & Battery Co.
4136 W. 15th St. (24)
Grimm-Hansen-Treland, Inc.
2630 S. Michigan Ave. (16)
1014 W. Madison St. (07)
Al B. Maier & Co.
6019 Broadway (40)
Triangle Machine Works, Inc.
1650 N. Ashland Ave.
Universal Automotive Supply Co.
4011 Washington Blvd. (24)

Cicero
Universal Automotive Supply Co.
1441 W. Cermack Road

Collinsville
Wells Tire & Battery Co
218 W. Main St.

Danville
E. B. Colton Co.
219 W. Main St.

Decatur
Anderson Tire Co.
1454 E. Eldorado St.

Dixon
Smith Goodyear Service

East Moline
Stevenson Auto Supply
615 15th Ave.

East St. Louis
Collins-Schreiber Tire & Gasoline Co.
1 & A Broadway

ILLINOIS—Cont'd

Edwardsville
Wells Tire Sales, Inc.
125 W. Vandalia St.

Effingham
Sinclair Oil Co.
Judith Hanker St.

Elgin
Phillips Auto Parts Co.
279 Brook St.

Elmhurst
DuPage Automotive Supply Co., Inc.
111 S. First St.

Evanston
Evanston Battery & Tire Service
1461 Elmwood Ave.
Grimm-Hansen-Treland, Inc.
1627½ Davis St.

Galesburg
Sherwood & Walsh
219 N. Prairie

Granite City
Wells-Schell Tire Sales, Inc.
2101 A Nameoghame

Hillsboro
Hill Tire & Supply Co., Inc.
329 S. Main St.

Jacksonville
Kluepp Tire Company
602 N. Main St.

Jerseyville
Wells-Norris, Inc.
1108 S. State St.

Joliet
Alden Auto Supply Co.
314 Henderson Ave.
Grimm-Hansen-Treland, Inc.
1 P. Joliet St.

Kankakee
Christiansen Auto Parts
141 E. Station St.
Grimm-Hansen-Treland, Inc.
276 E. East Ave.

Kewanee
Kewanee Auto Supply
113 E. 2nd St.

La Grange
La Grange Motor Parts Co.
12 N. Brainard Ave.

La Salle
La Salle Automotive Supply Co.
605 Bucklin St.

Lincoln
Shaw's Auto Supply Co.
216 Broadway

Marion
Freeman & Johnson Auto Supply
1913 Broadway

Maywood
West Suburban Auto Parts, Inc.
121 W. Lake St.

Mollne
Parrin W. Shermak
2312 5th Ave

Pekin
Automotive Parts & Machine Co.
329 Court St.

Peoria
Peoria Machine & Parts Co.
605 Franklin St.
Sunny Gasoline & Oil Co.
301 S. Adams St.

Pontiac
Fred's Service
425 W. Madison St.

Quincy
Crown's Auto Parts
1-24-26 Maine St.

Rockford
The Ridge-Rockford Co.
231 S. Winnebago St.
Swift Oil & Refining Co.
502 Kilbourne Ave.

Rock Island
Mideer Oil Co.
4201 1st Ave.

Springfield
Thomas Auto Supply
935 E. Jackson St.

Streator
Auto Parts Co.
120 S. Bloomington St.

Waukegan
Washington Tire & Battery Service
142 Washington Ave.

Wheaton
Wheaton Auto Parts
212 N. Wheaton Ave.

Woodriver
Wells-Schmidt Tire Sales
141 E. Ferguson Ave.

INDIANA

Columbia City
H. J. Schrader Co.

Crown Point
Dod Pounds 111 W. Joliet St.

Elwood
H. J. Schrader Co. 1316 Main St.

Evansville
Bartlett Parts Service
902 S. Fares Ave.

Fort Wayne
R. M. Keough Co.
229 W. Main St. (2)

Gary
Monarch Oil & Supply Co.
10th & Virginia Sts.

Goshen
The Wahs Co., Inc.
206-10 N. Main St.

Hammond
Calumet-Wabash Auto Supply, Inc.
658 State St.
Grimm-Hansen-Treland
5503 Hohman Ave.

Indianapolis
The Central Rubber & Supply Co.
Riddell Building
30 E. Georgia St. (9)

Kokomo
H. J. Schrader Co.
125 E. Walnut St.

Lafayette
Lafayette Auto Supply Co.
404 S. 4th St.

La Porte
The Ridge Co., Inc. 687 Michigan

Logansport
H. J. Schrader Co.
116-118 S. 4th St.

Madison
Tire Automotive Supply Co.
225 E. Main St.

Marion
G. C. Baker Motor Supply
117 W. 4th St.

Michigancity
The Ridge Co., Inc.
118 S. Main St.

Peru
G. C. Baker Motor Supply
29-34 E. 5th St.

Richmond
Brown Motor Co. 12 N. 8th St.

South Bend
The Ridge Co., Inc.
315 W. Jefferson St. (2)
H. J. Schrader Co.
315 W. Jefferson Blvd.

Terre Haute
Sumner & Son 11th & Ohio

Wabash
G. C. Baker Motor Supply
20-26 E. Canal St.

Warsaw
H. J. Schrader Co.

IOWA

Burlington
Sinerla Parts Service Co.
512 N. Main St.

Cedar Rapids
Allen Motor Co.
2nd Ave. & 11th St.
Fleet Equipment Co.
811 2nd Ave., S. E.

Cherokee
United Wholesalers
423 W. Main St.

Clinton
Lehman & Co. 712 S. Second St.

Des Moines
Wagners Carburetor & Electric Co.
1308 Grand Ave. (9)

Dubuque
Bolsby Motor Co.
4th & Iowa Sts.

Fort Dodge
Hall's Automotive Parts
19 N. 12th St.

Fort Madison
Cushman Foundry & Machine Co.
1632 Avenue "H"

La Mars
United Wholesalers
35 Plymouth St., N. W.

3492

List of Exide Wholesale Distributors (Continued)

IOWA—Cont'd

Marshalltown
Edson Motor Parts
8 W. Church St.

Mason City
Jacoby Battery & Electric Co., Inc.
101 First St., S.E.

Ottumwa
Friday's
117-21 S. Washington St.

Sioux City
United Wholesalers
7th & Water Sts. (15)

Spencer
Arnold Motor Supply
45 First Ave., W.

Waterloo
Lewis Motor Supply, Inc.
512 W. Park Ave.

KANSAS

Arkansas City
Arkansas City Motor Parts Co.
122 N. Summit St.

Belleville
L. J. Mosier Co.
1801 18th St.

Bucklin
Birney Motor Supply Co.
229 Main St.

Coffeyville
Dudley Supply Co.
316 E. Eighth

Colby
Birney Motor Supply Co.

El Dorado
Lane Supply, Inc.
119 S. Main St.

Emporia
Sunflower Supply Co., Inc.
127 Commercial

Ft. Scott
Bryden Auto Supply Co.
115 Market St.

Great Bend
Automotive Parts Co., Inc.
1109 Main St.

Hutchinson
Kingsley-Wagner Motor Supply, Inc.
1501 E. Sherman

Independence
The Motor Equipment Co.
318 East Main

Kansas City
Heartwood Oil Co.
2501 N. 10th (2)

Kinsley
Automotive Parts Co., Inc.

McPherson
Automotive Parts Co., Inc.
Harry Lane Supply Co.
112 N. Main St.

Newton
Browning Supply Co.

Norton
L. J. Mosier Co.
105 South 2nd

Oakley
Automotive Parts Co., Inc.

Pratt
The Motor Equipment Co.
[illegible] Main St.

Salina
Motor Service Co.
[illegible] 5th

Scott City
Automotive Parts Co., Inc.

Topeka
W. A. L. Thompson Hardware Co.
[illegible] & Kansas Ave.

Wichita
The Motor Equipment Co.
216 W. Douglas
Tay Whitlock Company, Inc.
[illegible] N. Commerce (2)

KENTUCKY

Ashland
Ashland Auto Parts Co., Inc.
[illegible] Jefferson Ave.

Elizabethtown
Marion Motors

Glasgow
Nunn Auto Supply
[illegible] E. Main St.

KENTUCKY—Cont'd

Lexington
Jack Parker
123 E. Short St.
Tire Sales Co., Inc.
Spring & Vine Sts. (11)

Louisville
General Rubber & Supply Co.
1149 S. Seventh St.

Maysville
Tinsley Auto Parts
402 E. Second St.

Owensboro
Gme Motor Supply Co.
[illegible] W. Fourth St.

Paducah
The Torgerson Co., Inc.
[illegible] & Broadway

Shelbyville
Tire Sales Co.
[illegible] E. Main St.

LOUISIANA

Alexandria
Farr Auto Supply
529 10th St.

Algiers
West Side Auto Supply Co.
[illegible] Opelousas Ave.

Bunkie
Farr Auto Supply

De Ridder
Farr Auto Supply Co., Inc.

Eunice
Farr Auto Supply
220 West Vine Avenue

Harvey
West Side Auto Supply Store
Box 454

Lafayette
Morgan Supply House, Inc.
[illegible] St. John St.

Lake Charles
Lake Auto Parts Co.
1107 Ryan St.

Marksville
Farr Auto Supply

Monroe
Monroe Automobile & Supply Co., Inc.

Morgan City
Morgan City Motor Supply, Inc.
[illegible] Everett St.

New Orleans
Byrne & Rice Supply Co.
1112 Jeanette
W. J. Westerfeld Co., Inc.
[illegible] North Peters
The New Orleans Auto Supply Co.
[illegible] Peters
Owsley & Co., Inc.
[illegible] Charters St.
Harry Stevens
[illegible] St. Charles
Wasker's, Inc.
[illegible] Baronne St.
1419 St. Bernard

Oakdale
Farr Auto Supply
113 S. 10th St.

Shreveport
Interstate Electrical Co. of Shreveport, Inc.
[illegible] Spring St.

Sulphur
Lake Auto Parts Co.

Winnsboro
Motor Parts & Supply Co.

Winnfield
Farr Auto Supply

MAINE

Bangor
H. H. Bragg & Sons
[illegible] Broad St.
Rice & Miller Co.
[illegible] Rice St.

Lewiston
Palmer King Motor Co., Inc.
167-173 Middle St.

Portland
Community Oil Co., Inc.
224 Kennebec St. (3)
Dyer-Knight Co., Inc.
82 Preble St. (3)
Emery-Waterhouse Co.
145 Middle St. (6)

MAINE—Cont'd

Rumford
The Frost Motor Supply Co.
[illegible] Prospect Ave.

MARYLAND

Baltimore
Atlantic Refining Co.
Key Highway & Lawrence St.
J. R. Hust & Co., Inc.
Calvert & Saratoga Sts.
B. R. Smith
1100 Cathedral St. (1)

Cambridge
Cambridge Automotive Branch of Salisbury Automotive, Inc.

Chestertown
The Watkins Auto Supply Co., Inc.
Washington Ave. Extended

Easton
The Watkins Auto Supply Co., Inc.
Washington & Goldsboro Sts.

Hagerstown
L. H. Corderman & Son, Inc.
[illegible] W. Washington St.

Salisbury
Atlantic Refining Co.
Mill Street
Salisbury Automotive, Inc.
Salisbury Blvd. & Ext. E. Ave.

MASSACHUSETTS

Allston
Atlantic Refining Co.
52 Cambridge St. (34)
Giant Battery Service Co.
[illegible] Brighton Ave. (34)
Hunt-Marquardt, Inc.
244 Brighton Ave.

Boston
*The Electric Storage Battery Co.
Ashford St. (34)
Mercantile Distributors, Inc.
[illegible] Boylston St. (15)
*Sherman Tire & Supply Co., Inc.
1279 Columbus Ave.

Brockton
A. F. German Company, Inc.
1159 Main St. (30)
Hunt-Marquardt, Inc.
[illegible] Warren Ave. (30)

Fall River
W. W. Leach & Co.
[illegible]-202 Bedford St.

Haverhill
Kassel Auto Parts Co.
[illegible] Water St.

Holyoke
J. Russell & Co., Inc.
[illegible] Dwight St. (1)

Hyannis
A. F. German Company, Inc.
Barnstable Rd.

Lawrence
Hunt-Marquardt, Inc.
[illegible] E. Broadway

Lowell
Boston Auto Supply Co.
[illegible] Lee St.

Lynn
Liberty Battery & Radio Co.
[illegible] Liberty St.
Hunt-Marquardt, Inc.
[illegible] Mt. Vernon St.

Malden
Malden Motor Parts Co.
[illegible] Exchange St. (24)

Milford
Milford Auto Parts, Inc.
[illegible] Main St.

New Bedford
W. W. Leach & Co.
[illegible] County St.

Newtonville
Bram Battery & Tire Service
[illegible] Walnut St. (60)

Pittsfield
May's Auto Parts, Inc.
[illegible] Adams St.

Quincy
Hunt-Marquardt, Inc.
[illegible] Washington St. (69)

Springfield
Atlantic Refining Co.
1073 Page Blvd. (9)
Charles Bread Tire Co.
72 Dwight St. (3)
Parmenter Auto Parts Co., Inc.
611 Main St. (3)

MASSACHUSETTS—Cont'd

Taunton
W. W. Leach & Co.
32 Cohannet St.

Worcester
Atlantic Refining Co.
North & Prescott Sts. (5)
George F. Blake, Inc.
121 Commercial St. (8)
The Worcester Rim & Wheel Co.
138 Southbridge St. (3)

MICHIGAN

Alpena
Neumanns Tire & Battery Shop
261 N. Second Ave.

Battle Creek
The Motor Shop & Print Tool & Mfg. Co.
160 South Ave.

Bay City
The Lewis Co.
705-7 Saginaw St.

Benton Harbor
Ridge & Kramer Motor Supply, Inc.
221 W. Main St.

Big Rapids
Birney Auto Parts Co.
114 N. Michigan Ave.

Charlotte
Charlotte Auto Parts
[illegible] N. Washington Ave.

Cheboygan
Cheboygan Auto Supply Co.
211 S. Main St.

Coldwater
Treat Auto Parts Co.
[illegible] S. Hudson

Dearborn
Parts & Equipment Corp.
5540 Schaefer Rd.

Detroit
*The Electric Storage Battery Co.
8051 W. Chicago Blvd. (4)
Citron Koib Oil Co.
14445 Linwood Ave. (6)
L. N. Decker
450 Dickerson
Deluxe Motor Service, Inc.
41 Harper Ave. (2)
Detroit Cylinder Grinding Co.
4433 Cass Ave. (1)
264 N. Morrell St. (9)
Henderson Tire Co.
45 Selden Ave.
Harry Melkerson Rubber Co.
2245 Grand River (4)
Motor Parts & Machine Co.
6716 W. Fort St.
Taylor Automotive Supply Co.
10210 E. Warren Ave. (13)
Victor Oil Co.
11511 E. Warren Ave. (13)

Dowagiac
The Ridge Co., Inc.
[illegible] S. Front St.

Durand
Durand Auto Parts
810 N. Oak St.

Escanaba
Chatfield Machine & Foundry Co.
[illegible] Stephenson St.

Farmington
Sohio Fleetwing, Inc
Special Delivery

Ferndale
Johnson Auto Parts Co.
[illegible] W. Woodward Ave.

Flat Rock
Sohio Fleetwing, Inc.
28032 Arsenal Rd.

Flint
Cumings Brothers
[illegible] S. Saginaw St.

Grand Rapids
Grand Rapids Warehousing Co.
[illegible] Jefferson Ave., S. E. (3)
The Ridge Grand Rapids Co., Inc.
[illegible] S. Division
Ver Wys & Co.
1234 Crescent St., N. W. (2)

Hamtramck
Sohio Fleetwing, Inc.
11441 Grand Haven Ave. (12)

Hancock
Scatori Brothers
811 Ethel Ave.

Holland
Automotive Replacement Parts
[illegible] E. 6th St.

162 3493

List of Exide Wholesale Distributors (Continued)

MICHIGAN—Cont'd

Iron Mountain
Holme & Auto Supply
411 Stephenson St.
Iron Mountain Auto Supply Co.
200 Ludington St.

Ironwood
Bahna Tire Shop
205 W. Aurora St.

Jackson
C. E. Hamlin Co.
225-27 N. Jackson St.

Kalamazoo
Midway Auto Supply
413 W. Kalamazoo Ave.

Lansing
Capital Automotive Supply Corp.
1004 E. Michigan Ave. (29)

Muskegon
Automotive Products Co.
613 Sheridan Rd.

Monroe
Elliott, Inc.
28 S. Macomb St.

Mt. Pleasant
Ben Tramm Auto Parts
202 E. Main St.

Muskegon
Motor Service & Supply Co.
1169 Third St.

Newberry
Newberry Automotive Parts
213 Harris St.

Niles
The Ridge Co., Inc.
220 N. Front St.

Owosso
Shapiro Automotive Parts
209 S. Washington

Petoskey
Northern Auto Parts Co.
426 W. Mitchell

Plymouth
Sohio Flooring, Inc.
285 N. Main St.

Pontiac
Eastern State Supply Co.
172 So. Saginaw St.
Oakland Automotive Supply Corp.
233 S. Saginaw St.
Sohio Flooring, Inc.
2501 S. Telegraph Rd.

River Rouge
Parts & Equipment Corp.
1255 W. Jefferson Ave. (18)

Sault St. Marie
Cheboygan Auto Supply Co.

Traverse City
Northern Auto Parts Co.
324 E. Front St.

Wyandotte
Parts & Equipment Corp.
204 Eureka Rd.

MINNESOTA

Albert Lea
Motor Supply Inc.
112 N. Newton

Alexandria
Oman Supply Co., Inc.
616 Hawthorne St.

Bemidji
Bemidji Auto Parts Co.
302 Third St.

Duluth
Mac Donald Motor Co.
126 Second Ave., W.

Fairmont
D. S. Milne Co.

International Falls
Northern Parts & Equipment Co.

Marshall
D. S. Milne Co.

*Factory Branch

MINNESOTA—Cont'd

Minneapolis
Auto Gear Co.
1610 Harmon Place
The Automotive Supply Co.
122 Washington Ave., So.
Factory Sales Co., Inc.
1124 Harmon Place
Harold Auto Supply Co.
104 East Lake St.
The Lang Co.
127-139 E. Hennepin Ave.
Motor Parts Service
1260 Harmon Place (3)
4247 Nicollet Ave. (9)
1411 W. Broadway (11)
Ellison Sr. Gunon Tire Co.
205 S. 15th St.
Rite Fit Auto Supply
1220 Harmon Place
Seashore Bros. Electric Co.
1971 Riverside Ave.

Owatonna
Motor Supply Inc.

Red Wing
Hultquist's Battery Service Co.
218 Main St.

Rochester
Scharf Auto Supply
620 1st Ave., S.W.

St. Paul
Park Machine, Inc.
1961 West 6th St.

Sauk Center
Oman Supply Co., Inc.
111 Maine St.

Wausau
Motor Supply Inc.

Willmar
Oman Supply Co., Inc.
332 Third St.

MISSISSIPPI

Batesville
Dunlap & Kyle Co.
Highway 51

Columbia
Marion Battery Co.
P. O. Box 302

Gulfport
Kramer Motor Co.
22nd Ave. & 15th St.

Indianola
W. W. Gresham, Distributor

Isola
W. W. Gresham, Distributor

Jackson
Central Auto Parts Co.
225 S. Roach St.

Natchez
Motor Parts & Supply Co.

Tupelo
Bryson Auto Parts

MISSOURI

Cape Girardeau
Kelso Auto Supply
315 S. Main St.

Charleston
Simpson Oil Co.
[illegible] E. Commercial St.

Chillicothe
Motor Supply Co.
[illegible] Locust St.

Ferguson
Moline Storage Battery Co.
[illegible] Carson Rd.

Jefferson City
City Tire & Battery Co.
1629 W. Main St.

Joplin
Joplin Auto Supply Co.
3rd & Joplin
Murdock Tire & Appliance Co.
3rd & Virginia

Kansas City
*The Electric Storage Battery Co.
129 Belmont Blvd. (1)
Kansas City Auto Supply Co.
1818 McGee St. (6)

Lebanon
Acme Auto Supply
214 W. Commercial St.

Maplewood
Genuine Motor Parts, Inc.
7560 Manchester Ave.

MISSOURI—Cont'd

Maryville
Motor Parts & Equipment Co.
118 West 3rd

St. Charles
H. C. Ossik & Co.
1147 Clay St.

St. Joseph
Motor Parts & Equipment Co.
1221 Frederick Ave.

St. Louis
Community Tire Co., Inc.
6120 Delmar Blvd. (12)
Fuel Oil Co. of St. Louis
4429 Hemont Ave.
St. Louis Auto Parts Co.
3400 Gravois Ave. (18)
South Broadway Auto Parts Co.
7410 S. Broadway

Sedalia
Sedalia Supply Co.
212-214 S. Osage St.

Springfield
Thompson Sales Co.
[illegible] S. Kimbrough

MONTANA

Billings
Hines Motor Supply Co.
17 N. 31st St.

Bozeman
Montana Motor Supply Inc.
[illegible] W. Main St.

Dillon
Montana Motor Supply Inc.

Great Falls
Hines Motor Supply Co.

Hamilton
Missoula Motor Parts
Hamilton Branch

Helena
Montana Motor Supply Inc.
[illegible] N. Main St.

Kalispell
Kalispell Motor Supply Co.
Montana Hotel Bldg.

Lewistown
Hines Motor Supply Co.
119-121 W. Main St.

Libby
Kalispell Motor Supply Co.

Livingston
Montana Motor Supply Inc.
222 S. Main St.

Miles City
Hines Motor Supply Co.
604 Bridge St.

Missoula
Missoula Motor Supply Co.
129 W. Front St.

NEBRASKA

Beatrice
L. J. Messer Co.
[illegible] North 6th

Chadron
Gibbs-Chambers Co.
[illegible] Chadron Ave.

Fairbury
L. J. Messer Co.
[illegible]

Fremont
Bracker Motor Supply
[illegible] E. 6th St.

Grand Island
Ketels, Inc.
[illegible] W. Pine St.

Hastings
L. J. Messer Co.
[illegible] N. Lexington St.

Holdrege
L. J. Messer Co.
[illegible] East Ave.

Lincoln
L. J. Messer Co.
[illegible] O St.

McCook
L. J. Messer Co.
[illegible]-12 W. Third St.

Norfolk
O. L. Schaw Co.
306 South 6th

North Platte
Ronan Service Co.
502 N. Jeffers

NEBRASKA —Cont'd

Omaha
Color Supply Co.
6416 Military (4)
Cornhusker Oil Co.
Peters Bldg.
36th & Leavenworth (3)

Scottsbluff
Gibbs-Chambers Co.

Valentine
Gibbs-Chambers Co.

NEVADA

Las Vegas
George Bondley Marine Service
1405 South 2nd St.
Clark County Wholesale Mercantile Co., Inc.
512 S. Main St.

Reno
Nevada Auto Supply Co.
301 N. Virginia St.

NEW HAMPSHIRE

Gorham
Community Oil Co., Inc., Station A

Manchester
Bailey Distributing Corp.
229 Elm St.
The Emery-Waterhouse Co.
Turner & Douglas Sts.

Nashua
Nashua Battery Shop
2 Otterson St.

Portsmouth
Community Oil Company, Inc.
640 Islington Street

Rochester
Community Oil Company, Inc.
36 Autumn Street

NEW JERSEY

Asbury Park
All Auto Parts Co., Inc.
[illegible] Main St.

Atlantic City
J. C. Mc[illegible] Co.
[illegible] Ave.

Bridgeton
Motorcar Service Co.
21 E. Commerce St.

Camden
Jersey Supply Co.
932 Haddon Ave.

Collingswood
Hagner, Inc.
[illegible] Blvd. at Haddon Ave.

Hackensack
Carburetor & Ignition Repair Co.
Passaic & Pearl Sts.

Hammonton
J. C. Miller Co.
[illegible] Bellevue Ave.

Morristown
W. H. Durton Co.
117 Speedwell Ave.

New Brunswick
Hardy Tire Supply, Inc.
[illegible] Albany St.

Newark
Atlantic Refining Co.
[illegible] Bergenpoint Ave.
Electric Battery Co.
[illegible] Central Ave. (4)
National Oil & Supply Co., Inc.
[illegible] Frelinghuysen Ave.

Newton
J. B. Beel
61 Main St.

Orange
Richard G. Pfeifer, Inc.
18 Park St.

Paterson
Reliable Magneto Repair Co.
20-22 Prince St. (1)

Plainfield
Thul Auto Parts, Inc.
[illegible] Third St.

South Amboy
South Amboy Auto Parts Co.
125 N. Broadway

Trenton
Tex Wholesale Distributors
10 E. Front St.

3494

List of Exide Wholesale Distributors (Continued)

3236

NEW MEXICO

Albuquerque
Conservancy Oil Co.
212-20 S. Second St., P. O. Box 965
Harry Cornelius Co., Inc.
1530 N. Second St.
Hill Auto Electric Service
415 W. Marquette Ave
Motor Equipment Co.
Box 120 E. Marquette St.
Clovis
General Parts & Equipment Co.
305 Pile St.
Gallup
Motor Equipment Co.
1 Mi. West Highway 66
Roswell
Ned Revelle Co.
Main at Walnut Sts.
Santa Fe
Ancient City Oil Corp.
1215 Cerrillos Rd.
Santa Rosa
Santa Rosa Automotive Parts
P. O. Box 54
Tucumcari
Tucumcari Automotive Parts
P. O. Box 746

NEW YORK

Albany
Peerless Auto Parts Co.
261 Central Ave. (6)
Auburn
Auburn Unit Parts
21 Dill St.
Binghamton
Atlantic Refining Co.
P. O. Box No. 846
Auto Supply Distributing Co.
2 Hawley St.
Brooklyn
D & H Auto Parts
196 Empire Blvd.
A. Jacoby & Sons, Inc.
86-30 15th Ave. (14)
820 Fourth Ave. (32)
6718 Fourth Ave. (20)
A. Jungkind
226 St. Marks Ave. (17)
K & G Auto Parts, Inc.
600 Bushwick Ave. (6)
Madison Magneto Co., Inc.
1147 Bedford Ave. (16)
Buffalo
Atlantic Refining Co.
Div. H. P. O. Box No. 11
Balco-Pedrick Parts Corp.
1454 Main St. (9)
Quality Oil Co.
115 Manitoba St.
Unit Parts Corp.
1239 Main St. (9)
Catskill
Pitcher Accessories, Inc.
48 Bridge St.
Cortland
Kellogg Auto Supply Co.
155 Main St.
Elmira
Atlantic Refining Co.
P. O. Box No. 324
Glens Falls
Air-Land Motor Parts, Inc.
23-25 Bay St.
Harnell
Frank B. Peck Co.
211 Seneca
Hudson
Pitcher Accessories, Inc.
226 Columbia St.
Ithaca
Tioga Auto Parts
424 W. State St.
Jamestown
J. S. Auto Supply Co.
1482 E. Second St.
Long Island City
Max Finkelstein, Inc.
30-56 Newtown Ave.
Rapoport Corp.
30-01 Northern Blvd
Lawrence Steel & Co., Inc.
19-48 43rd Rd.
Malone
Platt-Clough Motor Service, Inc.
21 Mill St.

NEW YORK—Cont'd

Middletown
Electric Auto Systems Service
11 Centre St.
New Hyde Park
C. Nevile
Jericho Turnpike & Denton Ave.
New Rochelle
County Motor Products, Inc.
444 Huguenot St.
New York
The Electric Storage Battery Co.
260-3 W. 64th St. (23)
Lite Salen Corporation
1416 Boston Rd. (59)
Newburgh
National Oil & Supply Co., Inc.
179 S. Robinson Ave.
Town Automotive Distributors, Inc.
242 Ann St.
Niagara Falls
Niagara Automotive Supplies
3105 Pine St.
Olean
Olean Unit Parts, Inc.
123-125 W. State St.
Oneonta
W. I. Cross
23-34 Broad St.
Patchogue
George Waldbauer & Son
21-25 Hawkes Ave
Plattsburg
Plattsburg Motor Service
52 Bridge St.
Port Jervis
N. B. Mulley Auto Parts
19 Powers St.
Port Richmond
Chris Tire Stores
464 Richmond Ave. (2)
Poughkeepsie
Pitcher Accessories, Inc.
39-51 Mill St.
Queen City Oil Co.
276 Main St.
Richmond Hill
Bruce Battery & Equipment Corp.
89-20 Van Wyck Blvd.
Rochester
Atlantic Refining Co.
1840 Lyell Ave.
Hann Tire & Accessory Co., Inc.
[illegible] Main St. (14)
Rockville Centre
Schmitt Service Center, Inc.
151 Sunrise Highway
Roslyn
Jordan Tire Co., Inc.
1 Tiffany Ave.
Saranac Lake
Standard Tire & Supply
126 Broadway
Schenectady
Doane F. Beekman
12 S. Church St. (5)
Syracuse
Atlantic Refining Co.
[illegible] Solar St. (4)
Niles Auto Supply, Inc.
[illegible] W. Genesee St. (4)
Ticonderoga
Air-Land Motor Parts, Inc.
128 Montcalm St.
Troy
Clark D. Perry
2017 5th Ave.
Utica
Cahill Auto Supply Co., Inc.
221-233 Rhinebeck St. (2)
Watertown
Atlantic Refining Co.
461 Poplar St.
Garland City Parts Corp.
409 Mill St.
Yonkers
John J. Lynch Automotive Supplies
61 Vredenburgh Ave. (3)

NORTH CAROLINA

Asheville
Bruce Automotive Supply, Inc.
62 Biltmore Ave.
White & Roberts, Inc.
49 S. Lexington Ave
Charlotte
Atlantic Refining Co.
1312 South Boulevard
Carolina Auto Supply House, Inc.
225 S. College St. (11)

NORTH CAROLINA—Cont'd

Elkin
Auto Parts Co.
Main St.
Gastonia
Moore & Stewart, Inc.
121-127 E. Franklin St.
Goldsboro
Standard Automotive Parts Co.
East Center St., N.
Greensboro
Motor Supply Co., Inc.
222 Commerce Place
P. O. Drawer 2486
Henderson
Standard Motor Parts Co.
423 S. Garnett St., P. O. Box 162
Hickory
The Flowers Co.
1121 South Ave.
High Point
Collins Auto Supply Co., Inc.
133 S. Wrenn St.
Kinston
S. & A. Parts Co.
127 W. Gordon St.
Lenoir
The Flowers Co.
Lexington
Motor Parts Co.
207 N. Main St.
Morganton
The Flowers Co.
211 E. Union
New Bern
Craven Foundry & Machine Co.
Craven St.
Raleigh
Carolina Auto Parts Co., Inc.
[illegible] South Salisbury St.
Reidsville
Standard Motor Parts Co.
Harrison & Scales
Shelby
Dickson Auto Supply, Inc.
116 W. Marion St.
Thomasville
Collins Auto Supply Co., Inc.
[illegible] E. Winston St.
Wilmington
Jewell & Strickland Auto Parts Co.
[illegible] North 3rd St.
Winston-Salem
Motor Parts Co.
[illegible] N. Trade St. (1)

NORTH DAKOTA

Bismarck
Hedahl Motor Supply
201 W. Main St.
Fargo
Berg Supply Co.
402 Northern Pacific Ave.
Grand Forks
Economy Wholesale Supply
[illegible] 3rd St.
Jamestown
Jamestown Motor Supply Co.
121 West First St.
Minot
Minot Parts & Service Co.
[illegible] First Ave. S.W.
Westlie Motor Co.
113-119 Central Ave. W.

OHIO

Akron
The Hardware & Supply Co.
42-48 S. High St.
Thrash Oil Co.
1230 Newton St.
Alliance
The Ohio Battery & Ignition Co.
225 Hevner St.
Ashland
Mel's Auto Supply
88 E. Main St.
Ashtabula
Battery Sales & Service
[illegible] Main St.
Bowling Green
Gem Electric Co.
228 S. Main St.
Bryan
Bryan Automotive Parts Co.
136 N. Lynn St.

OHIO—Cont'd

Cambridge
The Peoples Oil Co.
230 Woodlawn Ave.
213 Dewey Ave.
Canton
Bowlus Service Co.
469 Third St., S. W. (11)
Celina
Cron Tire & Supply Co.
215 S. Main St.
Cincinnati
Auto Rad Supply Company
Central Parkway & Race St.
Brinaman-Gelhot Parts Co.
6624 Montgomery Rd. (13)
Dorman Automotive Parts Co.
1005 Walnut St. (2)
Sproen Automotive Parts Co.
4122 Hamilton Ave.
Cleveland
The Electric Storage Battery Co.
Room 1052
Engineers Bldg. (14)
Cleveland Ignition Co.
1341 Superior Ave. (14)
Parkwood Tire & Supply Co.
11021 Superior Ave.
The Steele Rubber & Supply Co.
2401 Chester Ave. (14)
Stephens Tire, Battery & Home Supply Co.
6200 Broadway
The Sunset Rubber & Supply Co.
2052 E. 65th St. (3)
Tyrex Tire & Battery Service
6555 Broadway
The Yale Auto Parts Co.
6819 St. Clair Ave. (3)
Columbus
Don E. Morris
1409 Grand View Ave. (12)
Dayton
Mayt Oil & Supply Co.
215 Kirkham St.
Standard Parts Co.
28 Washington St.
Dover
Dover Auto Parts, Inc.
121 Wooster Ave.
East Liverpool
Hays Oil Co.
Fifth & Broadway
Findlay
Allison Parts & Equipment Co.
211 N. Main St.
Frazeysburg
Layman's Tire Service
Fremont
The Fremont Oil Co.
1649 W. State St.
Grafton
Roland Hendrix
902 Main St.
Greenville
Cedar Point Auto Supply
RR. 2, U. S. Route 36
Kenton
Dixie Auto Parts Co.
210 W. Columbus St.
Lakewood
Lakewood Batt. & Ignition Co.
16213 Madison Ave. (7)
Lima
Gearhart Automotive
211 S. Union St.
Lorain
Hareman Supply Co.
1756 Broadway
Mansfield
Mel's Auto Supply
64 N. Walnut St.
Marietta
D. A. Kuhn
147 Front St.
Massillon
The Hardware & Supply Co.
S. Erie St.
Norwood
Dorman Auto Parts Co.
1814 Montgomery Rd.
Painesville
Hach Auto Service, Inc.
259 E. Jackson St.
Piqua
Mayt Oil & Supply Co.
111 College St.
Salem
Hoppes Tire Service
116-124 W. State St.
Sandusky
Automotive & Marine Supply Co.
730 Hancock Ave.

3995

163

OHIO—Cont'd

Sidney
Dixie Auto Parts Co.
N. Dixie Highway

Springfield
Springfield Tire & Battery Co.
236-38-40 W. Main St.

Steubenville
Standard Welding & Spring Co.
244 N. South St.

Sugar Tree Ridge
R. W. Marconette

Toledo
Hathey Sales Co.
1310-312 14th St. (2)
Huebner Supply Co.
21 Erie St.
Miller Oil, Inc.
1033 South Ave. (3)

Troy
Standard Parts Co.
119 S. Market St.

Warren
Long & Rockey, Inc.
225 Niles Rd.
Parker Automotive Supply, Inc.
322 E. Market St.

Wellington
Wellington Auto Parts, Inc.
119 Herrick Ave.

Youngstown
J. A. Barber & Son
1119 E. Woodland Ave.
The Valley-Marsh-Woods Co.
1026 W. Rayen Ave.

Zanesville
Layman's Tire Service
130 Main St.
Earl Miller Factory Distributor
931 Merrick Ave.

OKLAHOMA

Ada
Ada Auto Supply
216 E. Main

Altus
Badger Oil Co.
621 S. Main

Alva
Hackett Auto Supply
220 College

Ardmore
Lyndon Lindley
304 W. Main St.

Bartlesville
The Motor Equipment Co.
[illegible] George

Chickasha
The Motor Equipment Co.
[illegible] Chickasha

Clinton
Bill Sullins Auto Supply
[illegible]

Enid
Chappell Oil Co.
[illegible] Main
P. O. Box [illegible]
Hackett Auto Supply
[illegible] Rail

Guthrie
T. S. Wood Supply Co.
[illegible] W. Warner

Lawton
The Motor Equipment Co.
of Wichita, Kansas
[illegible] 105 Ave. "B"

Miami
Turner Supply Co.

Oklahoma City
Dryer Clark & Dryer Oil Co.
[illegible] W. Sheridan

Tulsa
Tom P. McDermott, Inc.
1800 S. Boston

Woodward
Hackett Auto Supply
510 Main St.
The Motor Equipment Co.
717 E. Main

OREGON

Albany
Kenneman's
429 W. Second Ave.

Astoria
Sorenson Auto Parts
550 Bond St.

Corvallis
Corvallis Auto Parts
112 N. Second St.

Eugene
Wyatt's
[illegible] W. Broadway

La Grande
Roy Farnam Supply Co.
1414 Adam

Medford
Sam Jennings Tire Co.
229 N. Riverside Ave.

Portland
Wiggins Company, Inc.
S. W. Park & Couch Sts.

PENNSYLVANIA

Allentown
Atlantic Refining Co.
[illegible] Hamilton St.
Bee Incorporated
[illegible] Allen St.
Philadelphia Wholesale
Distributors, Inc.
[illegible] Penn & Gregg Sts.

Altoona
Atlantic Refining Co.
Sugar Run Rd., Eldorado
Lyons Battery & Electric Co.
2501 Union Ave.

Beaver Falls
Superior Auto Accessories Co.
1620 Seventh Ave.

Bethlehem
Bee Incorporated
640 5th Ave.

Bradford
Beatty Auto Parts Co.
19 Chestnut St.

Brownsville
Superior Auto Accessories Co.
103 Market St.

Butler
Superior Auto Accessories Co.
125 W. Wayne St.

Canonsburg
Canon Auto Parts Co.
[illegible] S. Jefferson St.

Carnegie
Tri-State Mfg. & Supply Co., Inc.
251 E. Main St.

Chambersburg
Atlantic Refining Co.
Grant St.

Charleroi
Superior Auto Accessories
Mcllvean Ave.

Chester
Motor Car Service Co.
[illegible]

Clearfield
C. H. Miller Hardware Co.
[illegible]

Clairton
Kee Auto Parts Co.
[illegible] Court Ave.

Coatesville
Motorcar Service Co.
[illegible]

Donora
Kee Auto Parts Co.
Meldrum Ave.

Doylestown
Doylestown Auto Parts Co.
[illegible] Main St.

Ephrata
Earl R. Sandoe, Inc.
[illegible] W. Main St.

Erie
Atlantic Refining Co.
[illegible] French St.
G. J. Miller Auto Supply
[illegible] State St.

Greensburg
Atlantic Refining Co.
Ursula Ave. near Main St.
Superior Auto Accessories Co.
104 E. Pittsburgh St.

Harrisburg
Atlantic Refining Co.
5th & Camp Sts.
V. D. Lessure Co.
20th & Derry Sts.

Hazleton
Samuel Goldenberg
39 W. Diamond Ave.

Huntingdon
C. H. Miller Hardware Co.
[illegible] Washington St.

Johnstown
Cambria Equipment Co.
[illegible] Julian St.

Kingston
Pennmoore Oil & Supply Co.
Market & Wright Sts.

Lancaster
Atlantic Refining Co.
Woolworth Bldg.
Jacobs H. Brooks
[illegible] N. Prince St.
Sandoe Automotive, Inc.
[illegible] Harrisburg Pike, [illegible]

Lebanon
Atlantic Refining Co.
[illegible]
K[illegible] & Ignition Co.
[illegible] Grand Sts.

Lock Haven
Ec[illegible] Tire & Auto Parts Co.
[illegible] Church St.

Mc[illegible]
Mc[illegible]ort Auto Parts Co.
[illegible] Front St.

Meadville
Sandberg Bros.
[illegible]-[illegible]19 Park Ave.

Mount Carmel
Big Boys Auto Parts Co., Inc.
43 Oak St.

New Castle
Storage Battery & Electric
Service Co.
112 N. Mercer St.

Philadelphia
The Electric Storage Battery Co.
General Office
Allegheny Ave. & 19th St. (32)
Philadelphia Branch Office
12th St. & Indiana Ave. (32)
Philadelphia Service Station
Rising Sun & Adams Ave. (29)
The Atlantic Refining Co.
260 S. Broad St. (2)
Berretson Auto Supply Co.
[illegible] N. Broad St. (23)
Ger[illegible]ntown Battery Service
[illegible] Greene St. (44)
Lancaster Auto Supply Co.
[illegible] Lancaster Ave. (31)
Motor Ignition Co.
[illegible] Fairmount Ave.
Philadelphia Wholesale
Distributors, Inc.
Grand Ave. & 46th St. (31)
Supple-Biddle-Hardt Company, Inc.
5th & Bristol Sts. (37)
Tri-State Distributors
Lehigh Ave. & 17th St. (32)

Phoenixville
Phoenix Auto Parts
[illegible] Bridge

Pittsburgh
The Atlantic Refining Co.
[illegible] Commerce Pl.
Superior Auto Accessories Co.
[illegible] Liberty Ave.
[illegible] W. 6th
Tri-State Mfg. & Supply Co., Inc.
[illegible] Washington Ave.

Pottstown
Nottle Auto Parts
[illegible] Main St.

Pottsville
Battery Service Co.
[illegible] & Arch Sts.

Reading
Arlington Hoffert
[illegible]

Scranton
The Atlantic Refining Co.
[illegible] & Penn Aves.
Charles B. Scott Co.
[illegible] Penn Ave.

Smethport
Smethport Auto Parts
[illegible] Main St.

Somerset
Cambria Equipment Co.
277 E. Main St.

Stroudsburg
Russ Barbight
[illegible] Main St.

Sunbury
Big Boys Auto Parts Co., Inc.
[illegible] N. Second St.

Towanda
A. C. Smith 112 William St.

Uniontown
Superior Auto Accessories Co.
[illegible] Dunbar St.

Warren
Parish Battery & Electric Service
6 Market St.

PENNSYLVANIA—Cont'd

Washington
Superior Auto Accessories Co.
[illegible] N. Main St.

Waynesburg
Seaton's Automotive Replacements
[illegible] W. High St.

West Reading
Atlantic Refining Co.
[illegible] & Penn Sts.

Wilkes-Barre
Atlantic Refining Co.
[illegible] S. Pennsylvania Ave.

Williamsport
Atlantic Refining Co.
[illegible] Grant St.
Cash & Hoag Tire Sales, Inc.
[illegible] Market St. (E)

Windber
Cambria Equipment Co.
[illegible] Graham Ave.

York
Atlantic Refining Co.
[illegible] E. Princess & M & P R R
Lee Williams Auto Supply
[illegible] N. Belmont St.

RHODE ISLAND

Newport
J. T. O'Connell, Inc.
Long Wharf

Pawtucket
W. E. Davis Co.
[illegible] Montgomery St.

Providence
Atlantic Refining Co.
[illegible] Elmwood Ave. (7)
W. E. Davis Co.
[illegible] Broad St. (7)

Woonsocket
W. E. Davis Co. 172 Front St.

SOUTH CAROLINA

Charleston
Cameron & Barkley Co.
[illegible] Meeting St. (H) P. O. Box [illegible]

Columbia
Cate-McLaurin, Inc.
1232 Hampton St. (C)

Florence
Carolinas Auto Supply House
129 N. Irby St.

Spartanburg
Lee Tire & Rubber Co. of
[illegible] Inc.
[illegible] E. Main St.

SOUTH DAKOTA

Aberdeen
Arno Supply Co. [illegible] Main

Huron
Automotive Supply Co.

Mitchell
Automotive Supply Co.
[illegible] Main St.

Rapid City
Putnam Oil Co., Inc.

Sioux Falls
Sioux Falls Machine Works
[illegible] N. Phillips Ave.

Watertown
Automotive Supply Co.
W. Kemp Ave.

TENNESSEE

Bristol
Southern Auto Supply Co. of Bristol
[illegible] 21st St.

Chattanooga
Barker Oil Company
[illegible] E. 11th St.

Dyersburg
J. M. Collins Auto Parts Co.
[illegible] E. Court St.

Johnson City
Southern Auto Supply Co.
[illegible] W. Market St. P. O. Box [illegible]

Knoxville
Service Auto Parts Co., Inc.
Emory Park & Cumb. Ave. (1)

List of Exide Wholesale Distributors (Continued)

TENNESSEE—Cont'd

McKenzie
Standard Auto Supply
Huntington Rd.

Memphis
Stapleton General Tire Co.
246 Monroe Ave.

Nashville
Wholesale Supply Co., Inc.
110 Broadway (3)
Wilson Coile Tire & Battery Co.
1514 Church St. (3)

Paris
Major Parts Co. of Tenn., Inc.
P. O. Box 142

Union City
Automotive Parts Service

TEXAS

Abilene
Barrett's Automotive
933 S. Third St.

Amarillo
Dalton Auto Supply Co.
Lot Polk St.

Athens
E. & T. Auto Supply Co.
116 S. Prairieville St.

Austin
O. C. Otis Distributing Co.
1306 W. 6th St. (21)

Beaumont
Garner Supply Co. 197 College St.

Brownsville
Barrera's Supply Co.
1257 E. Levee St.
Burton Auto Supply
1001 S. E. Adams

Dallas
English Equipment Co.
[illegible] Lawton Ave.
The Mayes Co.
2000 Main St.
South Dallas Battery Service
1200 S. Ervay St.

El Paso
The Yale Co., Inc.
2800 E. Yandell Blvd.
P. O. Box 3117 Sta. A
Yearwood Distributing Co.
1109 E. Overland

Fabens
Yearwood Distributing Co.
Hwy. 665

Fort Worth
Clarence Mathis Battery Service
2 W. 22nd St. & Grapid

Galveston
Republic Parts Co., Inc.
2101 Broadway

Houston
Allen-Cooper Battery & Electric Co.
1906 Caroline St.
James P. Meyer Co.
802 Franklin St. Box 218 (1)
Miller's Battery Service
1201 Smith St.
Mountjoy Parts Co. of Houston
1420 Dallas Ave.
7240 Harrisburg Blvd.

Lamesa
Winslow Battery & Electric Service
[illegible] N. Dallas

Livingston
Automotive Parts & Service Co.
P. O. Box [illegible]

Levelland
Levelland Auto Supply
602 Houston St.

Lubbock
Barrett's Automotive
1312-14 Texas Ave.
Raben Battery & Electric
1816 Texas Ave.

Lufkin
Automotive Parts Depot
110 E. Shepherd St.

McAllen
Barrera's Supply Co.
1109 Austin St.

Marfa
Hicks Auto Supply Box 159

Mission
Barrera's Supply Co.
500 Conway Blvd.

Nacogdoches
Corbett Bentley Auto Supply
Rt. No. 3, Lufkin Highway

Odessa
Barrett's Automotive
111 N. Hancock

TEXAS—Cont'd

Orange
McGill Supply Co.
216 Front St. P. O. Box 1784

Pecos
Motor Inn Auto Supply
416 W. Foster St.

Raymondville
Burton Auto Supply
N. 7th St. & Hi-Way

San Angelo
Walter E. Dollison Co.
P. O. Box 942

San Antonio
Sanantex Oil Co.
433 Ruiz St.
Station A, P. O. Box 4136

Tyler
The Mayes Co. of Tyler
1906 W. Erwin St. P. O. Box 294

Waco
Equipment Sales & Supply Co.
925 Franklin St.

Weslaco
Burton Auto Supply
3rd & Kansas

Wharton
T. S. Clements Co. P. O. Box 669

Wichita Falls
Chap Smith Equipment Co.
[illegible] Scott St.

Woodville
Automotive Parts & Service Co.

UTAH

Murray
Motor Mercantile Co.
[illegible] South State St.

Salt Lake City
Motor Mercantile Co.
324 S. W. Temple St.
[illegible] W. 7th South St.

VERMONT

Burlington
Hagar Hardware & Paint Co.
304 St. Paul Std

St. Johnsbury
Hagar Hardware & Paint Co.
13 Portland St.

VIR[illegible]

Emporia
Chesapeake Auto Supply Co.
of Emporia, Inc. North Main St.

Franklin
Chesapeake Auto Supply Co., Inc.
214 Mechanic St.

Harrisonburg
Bear Auto Parts Company
14 N. Liberty St.

Newport News
Chesapeake Auto Supply Co.
[illegible]14 26th St.

Norfolk
Chesapeake Auto Supply Co., Inc.
200-210 W. 21st St.

Onley
H. C. Watson

Portsmouth
Chesapeake Auto Supply Co.
[illegible]23 High St.

Richmond
Atlantic Refining Co.
Old Osborne Turnpike (30)
Tire Kline Co.
[illegible] W. Broad St. (20)

Roanoke
Engleby Auto Supply Co., Inc.
[illegible]35 Luck Ave., S. W.

Staunton
Simmons Parts Co.
119-123 S. Augusta St.

Suffolk
Chesapeake Auto Supply Co.
[illegible]6 E. Washington St.

Winchester
Truck Suppliers, Inc.
44 W. Cerrigan St.

WASHINGTON

Anacortes
Skagit Auto Parts

Bellingham
Automotive Parts Service
1322 State St.

Ellensburg
Holbach Auto Supply
408 N. Main St.

Mt. Vernon
Skagit Auto Parts
[illegible]6 2nd Ave.

Richland
Auto Battery & Hardware, Inc.
[illegible]443 Stevens Drive

Seattle
Lubmak & Clark
[illegible]3241 Bothell Way
Motor Car Supply Co.
1621 12th Ave.

Spokane
Bearing & Rim Supply Co.
[illegible]2[illegible]4 W. Second Ave.
Truck Oil Co.
[illegible]712 S. Hamilton (11)

Tacoma
Frank Fox Tire Co.
[illegible]314 Puyallup Ave.
Mayberry Motor Parts, Inc.
1902 Market Street (2)

Walla Walla
Johnson Auto Electric Co.
[illegible]45 S. Spokane Ave.

Wenatchee
Jennings Tire Service
[illegible]416 N. Wenatchee Ave.

Yakima
Yakima Grinding Co.
[illegible]24 S. Second St.

WEST VIRGINIA

Beckley
Auto Parts Service, Inc.
832 Neville St.

Charleston
Southern Hardware Co.
[illegible]12-14-16 McFarland St. (25)

Clarksburg
Clarksburg Tire Co.
[illegible]420 W. Pike St.

East Bainville
Cooper Parts Co.

Elkins
S & A Supply Co.
Center St. & Randolph Ave.

Hundred
Kennedy Distributing Co.

Parkersburg
Couch Tire Co.
[illegible]614 Juliana St.

Princeton
Chambers Automotive Supply
[illegible]22 S. Sixth St.

Summersville
Carper Parts Co.

Weirton
Tri-State Mfg. & Supply Co., Inc.
[illegible] Main St.

Wheeling
Wheeling Auto Supply Co.
[illegible]3 S. 16th St.

WISCONSIN

Appleton
Kramer Ridge Co.
116 E. Wisconsin Ave.

Ashland
Northland Auto Supply

Beloit
Kuhn Motor Parts
416 Broad St.

Eau Claire
Automotive Distributing Co.
217 Barstow St.

Fond du Lac
Behrens Machine & Supply Co.
[illegible]-15 W. Second St.

Green Bay
L. Schuette & Sons, Inc.
428 N. Jefferson St.

Janesville
Ridge-Janesville Co.
[illegible]-[illegible] S. Main St.

Kenosha
Harris Goodyear Service
215 Milwaukee St.

WISCONSIN—Cont'd

La Crosse
George Tire & Battery Depot
218-220 S. Third St.

Madison
Holmes Tire & Supply
431 W. Main St. (3)
Ridge-Madison Co.
826 E. Washington St.

Manitowoc
Ridge Motor Supply
Cor. 16th & Jay Sts.
Tronnes Tire & Battery Service
720 Commercial St.

Marinette
Ridge Motor Supply Co.
2118 Hall Ave.

Milwaukee
Storage Battery Service Co.
1118 N. Jefferson St. (2)

Monroe
Crandall Oil Co., Inc.
1705 16th Ave.

New London
Kramer Ridge Co.

Oconto
Automotive Products Co.
906 Main St.

Oshkosh
The Cook & Brown Lime Co.
[illegible]70 Main St.

Racine
Pro Auto Parts, Inc.
954 Washington Ave.

Rice Lake
Oliver Chevrolet Co.
9-11 E. Eau Claire St.

Sheboygan
Auto Electric Co.
817 Indiana Ave.

Superior
Holden's Tire & Battery Service
1703 N. 12th St.

Tomah
Kennedy Auto Supply Co.
906 Superior

Waukesha
Ridge Motor Parts, Inc.
137-139 W. Broadway

Waupaca
Gray Cushion Oil Co.

Wausau
James Supply Co.
417-419 Jackson St.

WYOMING

Casper
Wyoming Automotive Co.
300 E. Yellowstone

Cheyenne
Wyoming Automotive Co.
1712 Pioneer Ave.

Powell
Wyoming Automotive Co.
Bent & 1st Sts.

Rawlins
Wyoming Automotive Co.
413 W. Buffalo St.

Riverton
Wyoming Automotive Co.

Rock Springs
Wyoming [illegible]tive Co.
602 4th St.

Sheridan
Wyoming Automotive Co.
[illegible]16 N. Main St.

Torrington
Wyoming Automotive Co.

Worland
Wyoming Automotive Co.
840 Big Horn Ave.

ALASKA

Anchorage
Automotive Parts & Equipment Co.
P. O. Box 840

Fairbanks
Automotive Parts & Equipment Co.

TERRITORY OF HAWAII

Honolulu
The Schuman Carriage Co., Ltd.
P. O. Box 2420

164 3497

COMMISSION EXHIBIT NO. 3140 3239

FEDERAL TRADE COMMISSION
6486 EXHIBIT NO. 3140

Exide

Wholesale Distributors

by

STATES and CITIES

July 15, 1951

▼

THE ELECTRIC STORAGE BATTERY COMPANY

42 South 15th Street
PHILADELPHIA 2, PA.

Branches

ATLANTA	1246 Allene Ave., S. W.
BOSTON 34	100 Ashford St.
CHICAGO 9	5335 S. Western Blvd.
CINCINNATI 6	2212 Victory Parkway
CLEVELAND 14	Room 1012 Engineers Bldg.
DALLAS 1	2133 McKinney Ave.
DENVER 2	810 - 14th Street
DETROIT 4	8051 W. Chicago Blvd.
KANSAS CITY 3-E	129 Belmont Boulevard
LOS ANGELES 13	1043 S. Grand Ave.
MINNEAPOLIS 3	1750 Hennepin Ave.
NEW ORLEANS 12	406 Industries Bldg., 238 S. Saratoga St.
NEW YORK 18	23-31 West 43d St.
PHILADELPHIA 32	17th St. & Indiana Ave.
PITTSBURGH 22	701 First National Bank Bldg.
ST. LOUIS 3	1218 Olive St.
SAN FRANCISCO 24	6150 Third St.
SEATTLE 4	1919 Smith Tower Bldg.
WASHINGTON 6	1819 L St., N. W.

In Canada: Exide Batteries of Canada, Ltd., 153 Dufferin Street, Toronto, Canada.

3498

EXIDE WHOLESALE DISTRIBUTORS

Numbers following address denote Postal Zone.

ALABAMA

Bessemer
Long-Lewis Hardware Co.
2014 Second Ave., N.

Birmingham
Long-Lewis Hardware Co.
420 N. 9th St.
P. O. Box 2053 (2)

Decatur
Motor Supply Co.
Perry & Davis Streets

Mobile
McGowin-Lyons Hdwe. & Sup. Co.
P. O. Box 1209 (7)

Montgomery
Teague Hdwe. Co.
132 Commerce St. (1)

Tuscaloosa
The Battery Shop
2231-8th St., Box 652

ARIZONA

Douglas
Devore Auto Supply Co.
1122 G Ave.

Phoenix
Dennis's Tire Co.
232 N. Seventh Ave.

Tucson
Stern's Auto Accessories
211 East Broadway

ARKANSAS

Benton
Quality Auto Parts Co.
110 E. Sevier

Camden
Winchester Auto Stores, Inc.
216 East Washington St.

Eldorado
Ray & Bob's Tire Service
1511 E. Hillsboro

Fayetteville
Fayetteville Auto Supply Co.

Little Rock
Winchester Auto Stores, Inc.
411-15 W. 7th St.

North Little Rock
Quality Auto Parts Co.
110 W. 2nd St.

Pine Bluff
Winchester Auto Stores, Inc.
905 Main St.

CALIFORNIA

Bakersfield
Bakersfield Bearing & Motor Supply
2000 "H" St.

Bishop
Boyd's Auto Parts
215 West Line St.

Brawley
Imperial Valley Auto Electricians
156 North Plaza

Burney
Burney Auto Parts
Main St.

Calexico
Implements By Marshall Sa.
Box 827

Chico
Chico Auto Parts
530 Main St.

El Centro
Auto Gear & Supply Co.
120 S. 6th St.

Eureka
Ogden's
Sixth & "G" Sts.

Exeter
Green Motor Parts
[illegible] W. Pine St.

CALIFORNIA—Cont'd

Fresno
Electric Laboratories, Inc.
1422 Van Ness Ave.

Garden Grove
R. B. & H. Motor Parts
13011 Century Blvd.

Garvey
Anderson's Automotive Supply
416 W. Garvey Blvd.

Gonzales
Johnson Motor Co.
2nd & Alta Sts.

Hanford
Green Motor Parts
214 E. 7th St.

Hayward
Kent Snyder
385 Castro St.

La Crescenta
Arthur Milner
2550 Kemper Ave.

Lancaster
Monte's Auto Parts Co.
715 Sierra Highway

Lindsay
Green Motor Parts
185 Elmwood

Los Angeles
*The Electric Storage Battery Co.
1043 S. Grand Ave. (15)
Barr Wynne Co.
1900 S. Central Ave. (11)
Al Farley Service
11757 West 25th Place
Leland Irish, Inc.
903 East 8th St. (21)
Juell's Auto Parts
2501 W. Imperial Highway (44)
Charles Morgan & Son
1038 E. Olympic Blvd. (21)
Pathfinder Petroleum Co.
3970 Medford St. (33)
Smith Auto Supply Co.
4436 Whittier Blvd. (22)
Smith & Thies
1348 W. Manchester Ave.
Standard Auto Parts
1225 So. Flower St.

Manteca
Manteca Auto Parts Co.
134 Maple St.

Marysville
Hanson Bros.
4th & G Sts.

Maywood
Bill's Super Service
3737 East Slauson Ave.

Modesto
Beeson & Zimmerman
11th & H Sts.

Monterey
Ete-Hokin & Galvan
404 Washington St.

Mount Shasta
Shasta Auto Supply Co.
Walnut St., Howe Bldg.

Newport Beach
The Boatswain's Locker
1903 Coast Highway

North Hollywood
Cragg Bros. Auto Parts
11056 Magnolia Blvd.
Hollaher Auto Parts
5456 Lankershim Blvd.

Oakdale
Beeson & Zimmerman
227 W. Third Ave.

Oakland
Cameron's
1418 Webster St.
Ete-Hokin & Galvan
4730 E. 14th St.
United Auto Service
2300 Webster St.

Ontario
Drew Carriage Co.
115 E. B St.

Pasadena
Pasadena Battery Co.
960 E. Washington St. (6)

Patterson
Beeson & Zimmerman
S. Third & E Sts.

CALIFORNIA—Cont'd

Placerville
C & H Motor Parts
Main & Coloma Sts.

Porterville
Green Motor Parts
112 N. Main St.

Redding
Automobile Accessories Co.
1420 Butte St.

Richmond
Herrick Brothers
1427 MacDonald Ave.

Ridgecrest
Boyd's Auto Parts

Riverside
Service Supply Co.
12254 8th St.

Sacramento
Schaap-Brenner Tire Co.
Jay at 17th St.

Salinas
Deane Tire Service
Monterey & Gabilan Sts.

San Bernardino
San Bernardino Motor Parts, Inc.
196 F St.

San Diego
Auto Gear & Supply Co.
1368 State St. (1)
Dorman's, Inc.
9th & B Sts. (1)
12th & Island
Ete-Hokin & Galvan
Foot of Sampson St.

San Fernando
Monte's Auto Parts Co.
1230 San Fernando Rd.

San Francisco
*The Electric Storage Battery Co.
6150 Third St. (24)
Larry Barrett Tire Co.
9th & Howard Sts. (3)
Bosqui Service Station
6199 Third St. (24)
Dunham, Carrigan & Hayden
Kansas & Division Sts.
Ete-Hokin & Galvan
351 Mission St.
H. O. Mahaffey Magneto Repair Co.
1583 Howard St. (3)
Pine Auto Parts Inc.
534 Pine St.
Charles P. Wiltefeldt
1001 Noe St. (14)

San Jose
Cook's Automotive Service
6th & E. Santa Clara St.

San Luis Obispo
Universal Auto Parts Co.
949 Monterey St.

San Pedro
McConnell Mtr. Parts Co.
203 S. Pacific Ave.

San Rafael
Park's Auto Electric
2nd & Lincoln Sts.

San Ysidro
Auto Gear & Supply Co.
150 San Ysidro Blvd.

Santa Barbara
Cox Petroleum Company
1302 San Andres St.

Santa Cruz
Santa Cruz Auto Parts, Inc.
703 Front St.

Santa Rosa
Harry B. Trumbley
Third & B Sts.

Sonora
Opera Hall Garage
238 Washington St.

South San Francisco
Howard-Martin Automotive Distributors
305 Bayshore Blvd.

Stockton
Automotive Parts Co.
246 North Hunter St.
Ete-Hokin & Galvan
253 N. San Joaquin St.
Kraft Service
Eldorado & Park St.

Taft
Taft Bearing & Motor Supply
136 Center St.

CALIFORNIA—Cont'd

Tulare
Green Motor Parts
148 N. "K" St.

Ukiah
Porter's Tire Service
502 S. State St.

Vallejo
Al Young's Automotive Service
1401 Sonoma Blvd.

Ventura
Anderson Auto Electric
Oak & Santa Clara Sts.

Visalia
Automotive Parts Co.
214 E. Main St.
P. O. Box 575

Watsonville
Townsend's Auto Electric Service
209 Van Ness Ave.

West Los Angeles
Beggs & McBurney
11650 Santa Monica Blvd. (25)

Wilmington
Ete-Hokin & Galvan
218 Avalon Blvd.

COLORADO

Alamosa
Clark & Davidson
620 4th St. P. O. Box 117

Colorado Springs
The Auto Equipment Co.
212 E. Colorado Ave.

Denver
The Auto Equipment Co.
14th & Lawrence
P. O. Box 3250
Terminal Station (17)
1338 Lincoln St. (3)
Colorado Jobbers Supply Co.
973 Broadway

Durango
The Auto Equipment Co.
1149 Main St.

Fort Collins
Auto Equipment Co.
159 Linden Ave.

Grand Junction
Mesnik Supply Co.
228 S. Seventh St.

Greeley
The Auto Equipment Co.
924 8th Ave.

Pueblo
The Zook Tire Co.
Fifth at Grand

CONNECTICUT

Bridgeport
Bridgeport Auto Parts Inc.
127-131 Fairfield Ave. (3)
Collins & Lacey Inc.
1036 North Ave.

Canaan
Knight's Battery & Radio Service
Railroad Ave.

Danbury
Morse's Auto Parts
164 White St.

Hartford
Auto Tire Co., Inc.
168 High St. (3)
Grinold Auto Parts, Inc.
254-72 Hudson St. (1)

Meriden
Frank's Auto Parts, Inc.
77 Grove St.

Middletown
Grinold Auto Parts, Inc.
650 Main St.

Milldale
Paul Schwenk Automotive Supplies
50 Norton St.

*Factory Branch Depot.

List of Exide Wholesale Distributors (Continued)

CONNECTICUT—Cont'd

New Britain
Colonial Auto Parts, Inc.
153 Arch St.

New Haven
The Elm City Auto Electric, Inc.
837 State St. (11)
The Hanson-Dale-Cramer Co., Inc.
96 State St.

New London
Colonial Auto Parts, Inc.
701 Bank St.

South Norwalk
Lawson & Noble, Inc.
37 Connecticut Ave.

Stamford
The Hanson-Dale-Cramer Co., Inc.
833 Main St.

Torrington
Colonial Auto Parts, Inc.
55 E. Main St.

Waterbury
Shore's Auto Parts, Inc.
477 W. Main St. (33)

DELAWARE

Dover
Manager Service Co.
S. Governor's Ave. Blvd.

Wilmington
Shearer Service Co.
900 French St.

DISTRICT OF COLUMBIA

Washington
E. J. Ford
3319 14th St., N. W. (10)

FLORIDA

Jacksonville
Joseph H. Wade Co.
501 Park St.

Miami
Pierce-Pepperell Tire Co.
429 N. W. 6th St. (36)

Tampa
Floyd Wholesale Tire & Supply Co.
1403 5th Ave.

GEORGIA

Albany
Butler Supply Co.

Atlanta
The Electric Storage Battery Co.
1246 Allene Ave., S. W.
Prior Tire Co., Inc.
458 Peachtree St., N. E. (3)

Augusta
Skinner Auto Supply Co.
564 Broad St.

Bamberg
Butler Supply Co.

Columbus
C & D Parts Service Co.
1315 First Ave.

Macon
Butler Supply Co.
460 Broadway
Chief's Garage, Inc.
439 Mulberry St.

Rome
Vic's Goodyear Tire Store
416 Broad St.

Savannah
The Frank Corporation
322 Broughton St., W.

Valdosta
La Fon Automotive Service
300 N. Ashley St.

Waycross
Motor Parts Co.
200 Albany Ave.

Williamsburg
Skinner Auto Supply Co.

IDAHO

Boise
Bartlett Motor Supply Co.
814 Jefferson

Lewiston
Zeh Hardware Co.
411 D St., P. O. Box 616

ILLINOIS

Alton
Wade Tire Co., Inc.
833 E. Broadway

Aurora
Phillips Auto Parts Co.
225 Hollbrook St.
Robinson's Auto Supply Co.
128 E. Broadway

Belleville
H. B. Fritzinger Distributor
Smithton Rd.

Bloomington
Auto Metal, Inc.
East & Jefferson Sts.

Carbondale
Kelley's Automotive Supply Co.
515 N. Oakland Ave.

Champaign
E. E. Colbath Co.
9 E. Logan St.

Chicago
The Electric Storage Battery Co.
5233 S. Western Blvd. (9)
Allied Tire & Battery Co.
610 W. 35th St. (16)
Grimm-Hansen-Trulsrud, Inc.
3610 S. Michigan Ave. (16)
4654 W. Madison St. (44)
Al S. Maier & Co.
4019 Broadway (40)
Triangle Machine Works, Inc.
2450 N. Ashland Ave.
Universal Automotive Supply Co.
4011 Washington Blvd. (24)

Chicago Heights
Lang's Auto Parts
2401 Chicago Rd.

Cicero
Universal Automotive Supply Co.
5401 W. Cermak Road

Collinsville
Wolfe Tire & Battery Co.
319 W. Main St.

Danville
E. B. Collins Co.
214 W. Main St.

Decatur
Anderson Tire Co.
1434 E. Eldorado St.

Dixon
Smith Goodyear Service

East Moline
Stevenson Auto Supply
613 15th Ave.

East St. Louis
Colby-Schreiber Tire & Gasoline Co.
1005 A Broadway

Edwardsville
Wolfe Tire Sales, Inc.
125 W. Vandalia St.

Effingham
Keller Oil Co.
South Banker St.

Elgin
Phillips Auto Parts Co.
225 Brown St.
Robinson's Auto Supply Co.
Cor. State & Chicago Sts.

Elmhurst
DuPage Automotive Supply Co., Inc.
211 E. First St.

Evanston
Evanston Battery & Tire Service
1461 Elmwood Ave.
Grimm-Hansen-Trulsrud, Inc.
922 Davis St.

Granite City
Wolfe-Schell Tire Sales, Inc.
2105 S. Niedringhaus

Jacksonville
Kinney Tire Company
602 N. Main St.

ILLINOIS—Cont'd

Jerseyville
Wolfe-Morris, Inc.
300 S. State St.

Joliet
Aldon Auto Supply Co.
314 Henderson Ave.
Grimm-Hansen-Trulsrud, Inc.
1 E. Jolliet St.

Kankakee
Christensen Auto Parts
151 E. Station St.
Grimm-Hansen-Trulsrud, Inc.
276 E. East Ave.

Kewanee
Kewanee Auto Supply
113 E. 2nd St.

La Grange
La Grange Motor Parts Co.
17 N. Brainard Ave.

La Salle
La Salle Automotive Supply Co.
160 Bucklin St.

Lincoln
Shaw's Auto Supply Co.
716 Broadway

Macomb
Macomb Tire & Battery Distributors
317 E. Washington St.

Mattoon
Freeman & Johnson Auto Supply
1913 Broadway

Maywood
West Suburban Auto Parts, Inc.
511 W. Lake St.

Moline
Perrin W. Shattuck
2312 5th Ave.

Pekin
Automotive Parts & Machine Co.
229 Court St.

Peoria
Peoria Machine & Parts Co.
605 Franklin St.
Bennett Gasoline & Oil Co.
301 S. Adams St.

Pontiac
Ford's Service
423 W. Madison St.

Quincy
Owen's Auto Parts
1024-26 Maine St.

Rockford
The Ridge-Rockford Co.
211 S. Winnebago St.
Smith Oil & Refining Co.
1102 Kilbourn Ave.

Rock Island
Midway Oil Co.
4301 1st Ave.

Springfield
Thomas Auto Supply
927 E. Jackson St.

Streator
Auto Parts Co.
120 S. Bloomington St.

Waukegan
Washington-Tire & Battery Service
542 Washington Ave.

Wheaton
Wheaton Auto Parts
212 N. Wheaton Ave.

Wood River
Wolfe-Schmidt Tire Sales
101 E. Ferguson Ave.

INDIANA

Columbia City
H. J. Schreiber Co.

Crown Point
Dad Pounds 111 W. Joliet St.

Elwood
H. J Schreiber Co. 1316 Main St.

Evansville
Bartlett Parts Service
900 N. Fares Ave.

Fort Wayne
R. M. Keough Co.
224 W. Main St. (2)

INDIANA—Cont'd

Gary
Monarch Oil & Supply Co.
10th & Virginia Sts.

Goshen
Gunning Motor Parts Supply
240 N. Main St.

Hammond
Calumet-Welsh Auto Supply, Inc.
658 State St.
Grimm-Hansen-Trulsrud
5303 Hohman Ave.

Indianapolis
The Central Rubber & Supply Co.
Randall Building
30 E. Georgia St. (9)

Kokomo
H. J. Schreiber Co.
125 E. Walnut St.

La Porte
The Ridge Co., Inc. 407 Michigan

Logansport
H. J. Schreiber Co.
116-118 E. 9th St.

Madison
The Automotive Supply Co.
325 E. Main St.

Marion
G. C. Baker Motor Supply
117 W. 4th St.

Mishawaka
The Ridge Co., Inc.
710 S. Main St.

Peru
G. C. Baker-Meyer Supply
20-24 E. 5th St.

Richmond
Brown Motor Co. 12 N. 9th St.

South Bend
The Ridge Co., Inc.
315 W. Jefferson St. (2)
H. J. Schreiber Co.
703 W. Jefferson Blvd.

Terre Haute
Lesser & Son 21th & Ohio

Wabash
G. C. Baker Motor Supply
20-24 N. Canal St.

Warsaw
H. J. Schreiber Co.

IOWA

Burlington
Shorb Parts Service Co.
512 N. Main St.

Cedar Rapids
Allen Motor Co.
2nd Ave. & 10th St.
Fleet Equipment Co.
811 2nd Ave., S. E.

Cherokee
United Wholesalers
423 W. Main St.

Clinton
Lehman & Co. 712 S. Second St.

Des Moines
Magneto Carburetor & Electric Co.
1368 Grand Ave. (9)

Dubuque
Baisley Motor Co.
9th & Iowa Sts.

Fort Dodge
Hall's Automotive Parts
19 N. 12th St.

Fort Madison
Coulson Foundry & Machine Co.
1032 Avenue "H"

La Mars
United Wholesalers
33 Plymouth St., N. W.

Marshalltown
Arnold Motor Supply Co.
4 W. Church St.

Mason City
Jacoby Battery & Electric Co., Inc.
101 First St., S.E.

3500

List of Exide Wholesale Distributors (Continued)

IOWA—Cont'd

Ottumwa
Consumer Supply Co.
Log. of Council Service Co.
602 E. Second St.
Fisher's Inc.
115-21 S. Washington St.
South Sioux
United Wholesalers Inc.
Storm Lake
United Wholesalers
709 & Water Sts. (115)
Spencer
Arnold Motor Supply
420 First Ave., W.
Waterloo
Lewis Motor Supply, Inc.
312 W. Park Ave.

KANSAS

Arkansas City
Arkansas City Motor Parts Co.
122 N. Summit St.
Belleville
L. J. Mueller Co.
1304 18th St.
Beloit
Beloit Motor Supply Co.
229 Main St.
Coffeyville
Dunlap Supply Co.
116 E. Eighth
Colby
Colby Motor Supply Co.
Emporia
Emporia Supply Co., Inc.
317 Commercial
Ft. Scott
Fenton Auto Supply Co.
117 Market St.
Great Bend
Barton Auto Parts Co., Inc.
1300 Main St.
Hutchinson
Hutchinson Wagner Motor Supply, Inc.
113 E. Sherman
Independence
The Motor Equipment Co.
318 East Main
Hiawatha
Automotive Parts Co., Inc.
McPherson
Automotive Parts Co., Inc.
Marion
Marion Supply Co.
Marysville
L. J. Mueller Co.
1312 South 2nd.
Oakley
Automotive Parts Co., Inc.
Ottawa
The Motor Equipment Co.
213 S. Main St.
Salina
Motor Service Co.
215 E. Prather Sts.
South Hutchinson
Automotive Parts Co., Inc.
Topeka
W. A. L. Townsend Hardware Co.
S. 3rd & Kansas Ave.
Wichita
The Motor Equipment Co.
216 W. Douglas
The Whitsell Company, Inc.
320 S. Commerce (2)

KENTUCKY

Ashland
Ashland Auto Parts Co., Inc.
2600 Glenmore Ave.
Bowling Green
Motor Motor Service, Inc.
1218 Broadway
Elizabethtown
Hudson Motors
Glasgow
Motor Motor Supply
S. Main St.
Lexington
Lexington Automotive Supply Corp.
375 E. Main St.
Paris
Motor Motor
125 E. Short St.

KENTUCKY—Cont'd

Louisville
Automotive Service Co., Inc.
917 W. Main St.
General Jobbing & Supply Co.
1149 S. Seventh St.
Maysville
Tommy Auto Parts
402 E. Second St.
Newport
Northern Kentucky Auto Parts Co.
409 W. Fifth St.
Owensboro
Glas Motor Supply Co.
310 W. Fourth St.
Paducah
The Progress Co., Inc.
10th & Broadway
Pikeville
Mountain Parts-Service Co.
Pineville
Pineville Auto & Tire Co., Inc.
Shelbyville
Tire Mfg. Corporation
Main St.
Shelbyville
Automotive Service Company, Inc.

LOUISIANA

Alexandria
Parr Auto Supply
329 10th St.
Algiers
West Bank Auto Supply Co.
418 Opelousas Ave.
Baton Rouge
Capital Welding Supply Co.
2307 N. Third St.
Bunkie
Parr Auto Supply
Crowley
Southern Wholesale Co.
123 Front St. at Ave. G
De Ridder
Parr Auto Supply Co., Inc.
Eunice
Parr Auto Supply
220 West Vine Avenue
Harvey
West Side Auto Supply Store
Box 236
Lafayette
Morgan Supply House, Inc.
601 St. John St.
Lake Charles
Lake Auto Parts Co.
1105 Ryan St.
Marksville
Parr Auto Supply
Monroe
Monroe Automobile & Supply Co., Inc.
Morgan City
Morgan City Motor Supply, Inc.
703 Everett St.
New Orleans
Byrne & Rita Supply Co.
3122 Gaiennie
W. J. Westerfield Co., Inc.
2-5 North Peters
The New Orleans Auto Supply Co.
1529-41 Tchoupitoulas St. (3)
Owens & Co., Inc.
Ch. 255 Chartres St.
Wm. Spencer
817 St. Charles
Wunder's, Inc.
821 Baronne St.
1419 St. Bernard
Opelousas
Parr Auto Supply
113 S. 10th St.
Shreveport
Interstate Electrical Co. of Shreveport, Inc.
616 Spring St.
Sulphur
Lake Auto Parts Co.
Thibodaux
Parr Auto Supply

MAINE

Bangor
H. H. Bragg & Sons
74-84 Broad St.
Rice & Miller Co.
78 Hose St.

MAINE—Cont'd

Lewiston
Motor Mfg Motor Co., Inc.
167-173 Middle St.
Portland
Casco Oil Co., Inc.
294 Commercial St. (3)
Dyer-Kimball Co., Inc.
42 Preble St. (3)
Rice-Williams Co.
145 Middle St. (6)
Rumford
The Frost Motor Supply Co.
262 Prospect Ave.
Waterville
Bailey Auto Parts, Inc.
117 College Ave.

MARYLAND

Baltimore
J. R. Hunt & Co., Inc.
Calvert & Saratoga Sts.
R. E. Smith
1100 Cathedral St. (1)
Cambridge
Cambridge Automotive Branch of Salisbury Automotive, Inc.
Chestertown
The Watkins Auto Supply Co., Inc.
Washington Ave. Extended
Easton
The Watkins Auto Supply Co., Inc.
Washington & Goldsboro Sts.
Hagerstown
L. H. Gochenour & Son, Inc.
218 W. Washington St.
Salisbury
Salisbury Automotive, Inc.
Salisbury Blvd. & Carroll Ave.

MASSACHUSETTS

Allston
Giant Battery Service Co.
185 Brighton Ave. (34)
Hunt-Marquardt, Inc.
244 Brighton Ave.
Boston
*The Electric Storage Battery Co.
100 Ashford St. (34)
Morehouse Distributors, Inc.
1210 Boylston St. (15)
Sheehan Tire & Supply Co., Inc.
1256 Columbus Ave.
Brockton
A. P. Gorman Company, Inc.
1759 Main St. (30)
Hunt-Marquardt, Inc.
303 Warren Ave. (39)
Fall River
W. W. Leach & Co.
196-202 Bedford St.
Haverhill
Kamel Auto Parts Co.
189 Water St.
Holyoke
J. Russell & Co., Inc.
361 Dwight St. (1)
Hyannis
W. P. Gorman Company, Inc.
Bartostable Rd.
Lawrence
Hunt-Marquardt, Inc.
210 S. Broadway
Lowell
Brown Auto Supply Co.
10-30 First St.
Lynn
Liberty Battery & Bat'o Co.
140 Liberty St.
Hunt-Marquardt, Inc.
20 Mt. Vernon St.
Malden
Malden Motor Parts Co.
145 Exchange St. (48)
Milford
Milford Auto Parts, Inc.
0311 Main St.
New Bedford
W. W. Leach & Co.
501 County St.
Newtonville
Brass Battery & Tire Service
252 Walnut St. (60)

MASSACHUSETTS—Cont'd

Pittsfield
Hoy's Auto Parts, Inc.
12 Adam St.
Quincy
Hunt-Marquardt, Inc.
88 Washington St. (69)
Springfield
Charles Brand Tire Co.
77 Dwight St. (3)
Premier Auto Parts Co., Inc.
931 Main St. (1)
Taunton
W. W. Leach & Co.
32 Cohasset St.
Worcester
George F. Blake, Inc.
128 Commercial St. (2)
The Worcester Rim & Wheel Co.
138 Southbridge St. (2)

MICHIGAN

Alma
Ray C. Jones, Inc.
319-21 E. Superior St.
Alpena
Nameless Tire & Battery Shop
703 N. Second Ave.
Battle Creek
The Motor Shop & Printing & Mfg. Co.
103 South Ave.
Bay City
The Larry Co.
705-7 Saginaw St.
Benton Harbor
Ridge & Kramer Motor Supply, Inc.
221 W. Main St.
Big Rapids
Bussey Auto Parts Co.
114 N. Michigan Ave.
Carsonville
Harold J. Fix Company
4030 E. Chandler St.
Charlotte
Charlotte Auto Parts
416 N. Washington Ave.
Cheboygan
Cheboygan Auto Supply Co.
215 S. Main St.
Coldwater
Trost Auto Parts Co.
24-28 E. Hudson
Dearborn
Parts & Equipment Corp.
15-0 Schaefer Rd.
Detroit
*The Electric Storage Battery Co.
8051 W. Chicago Blvd. (4)
Citizen Kelb Oil Co.
14445 Linwood Ave. (6)
J. H. Dozier
450 Dickerson
Delroit Motor Service, Inc.
41 Harper Ave. (2)
Detroit Cylinder Grinding Co.
4433 Cass Ave. (1)
264 N. Morrell St. (9)
Hatcherson Tire Co.
45 Selden Ave.
Harry Melkerson Rubber Co.
7745 Grand River (4)
Motor Parts & Machine Co.
6118 W. Fort St.
Taylor Automotive Supply Co.
10200 E. Warren Ave. (13)
Victor Oil Co.
11501 E. Warren Ave. (13)
Dowagiac
The Ridge Co., Inc.
107 S. Front St.
Durand
Durand Auto Parts
810 N. Oak St.
Escanaba
Chatfield Machine & Foundry Co.
718 Stephenson St.
Ferndale
Johnson Auto Parts Co.
23127-9 Woodward Ave.
Grand Rapids
Bussey Auto Supply
317 Leonard St., N.W. (4)
Grand Rapids Warehousing Co.
502 Jefferson Ave., S. E. (3)
Ver Wys & Co.
124-34 Commerce St., N. W. (2)

*Trade Name Reg. U.S. Pat. Off.

List of Exide Wholesale Distributors (Continued)

MICHIGAN—Cont'd

Hancock
Sanford Brothers
811 Ethel Ave.

Holland
Automotive Replacement Parts
107 E. 6th St.

Iron Mountain
Motor & Auto Supply
411 Stephenson St.
Iron Mountain Auto Supply Co.
206 Hughes St.

Ironwood
Dahle Tire Shop
203 W. Aspen St.

Jackson
C. S. Steele Co.
225-27 S. Jackson St.

Kalamazoo
Midway Auto Supply
413 W. Kalamazoo Ave.

Lansing
Capital Automotive Supply Corp.
304 E. Michigan Ave. (29)

Manistee
Northern Auto Parts Co.
426 River St.

Menominee
Automotive Products Co.
612 Sheridan Rd.

Monroe
Ellen's, Inc.
28 S. Macomb St.

Mt. Pleasant
Ray Travers Auto Parts
802 N. Main St.

Muskegon
Motor Service & Supply Co.
1169 Third St. (4)

Newberry
Newberry Automotive Parts
201 East Helen

Niles
The Ridge Co., Inc.
220 N. Front St.

Ontonagon
Shapiro Automotive Parts
260 S. Washington

Petoskey
Northern Auto Parts Co.
476 W. Mitchell

Pontiac
Eastern Auto Supply Co.
282 So. Saginaw St.

Sturgis Garage
Parts & Equipment Corp.
10,295 W. Jefferson Ave. (18)

Sault St. Marie
Chippewa Auto Supply Co.

Traverse City
Northern Auto Parts Co.
324 E. Front St.

Wyandotte
Parts & Equipment Corp.
304 Eureka Rd.

MINNESOTA

Albert Lea
Motor Supply Inc.
111 S. Newton

Alexandria
Osmo Supply Co., Inc.
616 Hawthorne St.

Brainerd
Brainerd Auto Parts Co.
307 Third St.

Duluth
Mac Donald Motor Co.
120 Second Ave., W.

Fairmont
D. S. Mine Co.

Hibbing
Deere Equipment
20th Ave. East Ave.

International Falls
Northern Parts & Equipment Co.
906 Third Ave.

Marshall
D. S. Mine Co.

MINNESOTA—Cont'd

Minneapolis
Auto Gear Co.
1610 Harmon Place
The Automotive Supply Co.
122 Washington Ave., No.
Pomeroy Sales Co., Inc.
1121 Harmon Place
Randall Auto Supply Co.
314 East Lake St.
The Lang Co.
127-129 S. Hennepin Ave.
Elmer R. Mines Tire Co.
309 S. 19th St.
Rice Fit Auto Supply
1229 Harmon Place
Southern Sales Exports Co.
1011 Riverside Ave.

Owatonna
Motor Supply Inc.

Red Wing
Hufnagel's Battery Service Co.
218 Main St.

Rochester
Schaaf Auto Supply
620 1st Ave., S.W.

St. Paul
Park Machine, Inc.
195 West 6th St.

Sauk Center
Osmo Supply Co., Inc.
333 Main St.

Waseca
Motor Supply Inc.

Willmar
Osmo Supply Co., Inc.
337 Third St.

MISSISSIPPI

Belzoni
Dunlap & Kyle Co.
Highway 11

Gulfport
Kramer Motor Co.
22nd Ave. & 15th St.

Indianola
W. W. Graham, Distributor

Isola
W. W. Graham, Distributor

Jackson
Central Auto Parts Co.
232 S. Roach St.

Meridian
Meridia Serv. Station & Battery Co.
901-24th Ave.

Pascagoula
Hall Auto Parts
735 Telephone Rd.

Tupelo
Bynum Auto Parts

MISSOURI

Cape Girardeau
Kelso Auto Supply
715 N. Main St.

Charleston
Kramer Oil Co.
— 3-6 E. Commercial St.

Chillicothe
Motor Supply Co.
716 Locust St.

Ferguson
Midtec Storage Battery Co.
230 Carson Rd.

Jefferson City
City Tire & Battery Co.
1529 W. Main St.

Joplin
Kelso Auto Supply Co.
304 S. Joplin

Kansas City
*The Electric Storage Battery Co.
129 Belmont Blvd. (3-E)
B. S. & S. Company
2005 Olympic Trafficway
Kansas City Auto Supply Co.
1818 McGee St. (5)
Leslie Brothers, Inc.
3516 Broadway

Kennett
Allen Oil Co.
P. O. Box 19

MISSOURI—Cont'd

Maplewood
Gruber Motor Sales, Inc.
7560 Manchester Ave.

Maryville
Motor Parts & Equipment Co.
110 West 2nd

St. Charles
H. C. Gehle & Co.
1147 Clay St.

St. Joseph
Motor Parts & Equipment Co.
1221 Frederick Ave.

St. Louis
Commercial Tire Co., Inc.
4139-51 Delmar Blvd. (12)
Paul Oil Co. of St. Louis
4479 Duncan Ave.
St. Louis Auto Parts Co.
3400 Gravois Ave. (18)
South Broadway Auto Parts Co.
7810 S. Broadway

Sedalia
Sedalia Supply Co.
212-214 E. Osage St.

Springfield
Thomas Sales Co.
P. O. Box 1613

MONTANA

Billings
Hinde Motor Supply Co.
19 N. 23rd St.

Bozeman
Montana Motor Supply Inc.
20 W. Main St.

Butte
Montana Motor Supply Inc.

Great Falls
Hinde Motor Supply Co.

Hamilton
Missoula Motor Parts
Hamilton Branch

Helena
Montana Motor Supply Inc.
430 N. Main St.

Kalispell
Kalispell Motor Supply Co.
27 Second St. East

Lewistown
Home Motor Supply Co.
119-121 W. Main St.

Libby
Kalispell Motor Supply Co.

Livingston
Montana Motor Supply Inc.
223 S. Main St.

Miles City
Home Motor Supply Co.
601 Bridge St.

Missoula
Missoula Motor Supply Co.
128 W. Main St.

NEBRASKA

Beatrice
L. J. Mesner Co.
116 North 7th

Chadron
Elder-Chambers Co.
200 Chadron Ave.

Fairbury
L. J. Mesner Co.
130-34 Fourth St.

Fremont
Bender Motor Supply
211 E. 6th St.

Grand Island
Bud Bonner Sales Co.
120 E. Third St.

Hastings
L. J. Mesner Co.
307 N. Lexington St.

Holdrege
L. J. Mesner Co.
330 East Ave.

Kearney
Kearney Auto Parts

Lincoln
L. J. Mesner Co.
1041 O St.

McCook
L. J. Mesner Co.
110-12 W. Third St.

NEBRASKA—Cont'd

Norfolk
S. A. Schaer Co.
120 South 4th

Omaha
Auto Electric Service
7207 Farnam
Consolidated Oil Co.
Address Info.
36th & Leavenworth (2)

Scottsbluff
Elder-Chambers Co.

Valentine
Elder-Chambers Co.

NEVADA

Reno
Lincoln Auto Supply Co.
301 S. Virginia St.

NEW HAMPSHIRE

Durham
Community Oil Co., Inc., Durham A

Manchester
Motor Supply Corp.
125-27 Elm St.
The Sawyer-Goodwin Co.
Turner & Douglas Sts.

Nashua
Nashua Battery Shop
2 Crescent St.

Portsmouth
Community Oil Company, Inc.
610 Islington Street

Seabrook
Community Oil Company, Inc.
34 Amesbury Street

NEW JERSEY

Asbury Park
All Auto Parts Co., Inc.
706-707 Main St.

Atlantic City
J. C. Miller Co.
2701 Arctic Ave.

Bridgeton
Wagner Service Co.
21 E. Commerce St.

Camden
Jersey Supply Co.
524 Haddon Ave.

Collingswood
Motor, Inc.
Haddon Blvd. at Haddon Ave.

Elizabeth
Ring Garage
Elmora Highway No. 25

Hackensack
Carpenter & Jackson Supply Co.
Prospect & First Sts.

Hammonton
J. C. Miller Co.
12th St. at Bellevue Ave.

Morristown
W. H. Brown Co.
117 Speedwell Ave.

New Brunswick
Hardy Tire Supply, Inc.
44 Albany St.

Newark
Motor Battery Co.
371 Central Ave. (4)
Mutual Oil & Supply Co., Inc.
173-189 Frelinghuysen Ave.

Newton
J. R. Deal
41 Main St.

Orange
Richard G. Pfeiffer, Inc.
10 Park St.

Paterson
Exhibit Battery Supply Co.
30-32 Ellison St. (1)

Plainfield
Thal Auto Parts, Inc.
235 E. Third St.

South Amboy
South Amboy Auto Parts Co.
125 N. Broadway

Trenton
The Wheels Distributors
16 E. Front St.

*Factory Branch Indicates

3502

NEW MEXICO

Albuquerque
Conservancy Oil Co.
2120 S. Second St., P. O. Box 965
Hill Auto Electric Service
415 W. Marquette Ave.
Motor Equipment Co.
109-120 E. Marquette St.
Clovis
General Parts & Equipment Co.
305 Pile St.
Gallup
Motor Equipment Co.
106 West Highway 66
Roswell
Ned Reveles Co.
Main at Walnut Sts.
Santa Fe
Ancient City Oil Corp.
1515 Cerrillos Rd.
Santa Rosa
Santa Rosa Automotive Parts
P. O. Box 54
Tucumcari
Tucumcari Automotive Parts
P. O. Box 746

NEW YORK

Albany
Pourbaix Auto Parts Co.
261 Central Ave. (6)
Auburn
Auburn Unit Parts
21 Drill St.
Binghamton
Auto Supply Distributing Co.
2 Hawley St.
Brooklyn
Benson Auto Electrical & Carburetor Service
9406-16th Ave.
D & H Auto Parts
397 Empire Blvd.
A. Jungfleisch
356 St. Marks Ave. (17)
K & G Auto Parts, Inc.
600 Bushwick Ave. (6)
Madison Magneto Co., Inc.
1147 Bedford Ave. (16)
Buffalo
Baker-Pedrick Parts Corp.
1454 Main St. (9)
Unit Parts Corp.
1239 Main St. (8)
Catskill
Pitcher Accessories, Inc.
48 Bridge St.
Cortland
Kellogg Auto Supply Co.
155 Main St.
Glens Falls
Air-Land Motor Parts, Inc.
23-25 Bay St.
Gouverneur
Jess L. Skinner
202 W. Main St.
Hornell
Frank B. Peck Co.
7-11 Seneca
Hudson
Pitcher Accessories, Inc.
736 Columbia St.
Ithaca
Tioga Auto Parts
424 W. State St.
Jamestown
J. S. Auto Supply Co.
1082 E. Second St.
Kingston
Shield Petroleum Products
P. O. Box 291
Whse.—130 Cedar St.
Long Island City
Max Finkelstein, Inc.
30-20 Newtown Ave.
Regulator Corp.
30-01 Northern Blvd.
Lawrence Stahl & Co., Inc.
19-37 43rd Rd.
Malone
Plattsburgh Motor Service, Inc.
21 Mill St.
Middletown
Electric Auto Systems Service
1 Centre St.
New Hyde Park
C. Wright & Co.
Jericho Turnpike & Denton Ave.
New Rochelle
County Motor Products, Inc.
144 Huguenot St.
New York
Broadway Ignition Co., Inc.
366 Tenth Ave.
The Electric Storage Battery Co.
291-303 W. 64th St. (23)
Land Sales Corporation
1416 Boston Rd. (56)
Newburgh
National Oil & Supply Co., Inc.
178 S. Robinson Ave.
Town Automotive Distributors, Inc.
242 Ann St.
Niagara Falls
Niagara Auto Supply
3105 Pine St.
Olean
Olean Unit Parts, Ind.
323-325 W. State St.
Oneonta
W. I. Crust
32-34 Broad St.
Oswego
Oswego Petroleum Co., Inc.
99 W. First St.
Patchogue
George Waldhauer & Son
21-25 Havens Ave.
Plattsburg
Plattsburg Motor Service
95 Bridge St.
Port Jervis
N. R. Mulley Auto Parts
18 Fowler St.
Port Richmond
Chris Tire Stores
464 Richmond Ave. (2)
Poughkeepsie
Pitcher Accessories, Inc.
393 Mill St.
Queen City Oil Co.
239 Mill St.
Richmond Hill
Shore Battery & Equipment Corp.
89-20 Van Wyck Blvd.
Rochester
Hahn Tire & Accessory Co., Inc.
418 St. Paul St. (3)
Rockville Centre
Schmitt Service Center, Inc.
111 Sunrise Highway
Rosiyn
Jordan Tire Co., Inc.
3 Bryant Ave.
Saranac Lake
Plattsburgh Motor Service
Saranac Lake Corp.
37 Woodruff St.
Standard Tire & Supply
120 Broadway
Schenectady
Dunn F. Bodmer
17 S. Church St. (5)
Syracuse
Niles Auto Supply, Inc.
766 W. Genesee St. (4)
Ticonderoga
Air-Land Motor Parts, Inc.
118 Montcalm St.
Tonawanda
D & M Motive Parts Co.
290 Bay St.
Troy
Clark D. Perry
2817 6th Ave.
Utica
Cahill Auto Supply Co., Inc.
211-213 Elizabeth St. (2)
Watertown
Garland City Parts Corp.
460 Mill St.
Yonkers
John J. Lynch Automotive Supplies
61 Vineyard Ave. (3)

NORTH CAROLINA

Asheville
Seaver Automotive Supply, Inc.
67 Biltmore Ave.
Charlotte
Carolina Auto Supply House
221 N. College St. (1)
Durham
Southern Parts & Electric, Inc.
302 Morgan St.
Elizabeth City
Albemarle Auto Supply Co., Inc.
305-305 N. Water St.
Greensboro
Moore & Stewart, Inc.
121-127 E. Franklin St.
Goldsboro
Standard Automotive Parts Co.
East Chestnut St., N.
Greensboro
Motor Supply Co., Inc.
222 Commerce Place
P. O. Drawer 1899
Henderson
Standard Motor Parts Co.
423 S. Garnett St., P. O. Box 162
Hickory
The Flowers Co.
1121 Ninth Ave.
High Point
Collins Auto Supply Co. Inc.,
151 S. Wrenn St.
Kinston
S. & A. Parts Co.
127 W. Gordon St.
Lenoir
The Flowers Co.
Morganton
The Flowers Co.
211 E. Union
New Bern
Craven Foundry & Machine Co.
206 Craven St.
Raleigh
Carolina Auto Parts Co., Inc.
420 South Salisbury St.
Reidsville
Standard Motor Parts Co.
Harrison & Scales
Shelby
Dickson Auto Supply, Inc.
116 W. Marion St.
Statesville
The Flowers Company
213 S. Meeting St.
Thomasville
Collins Auto Supply Co., Inc.
10 E. Winston St.
Wilmington
Jewell & Strickland Auto Parts Co.
5 Dock 3rd St.

NORTH DAKOTA

Bismarck
Hedahl Motor Supply
207 W. Main St.
Fargo
Berg Supply Co.
402 Northern Pacific Ave.
Grand Forks
Economy Wholesale Supply
124 S. 3rd St.
RCA Auto & Welding Supply
313 10th Ave., No.
Jamestown
Jamestown Motor Supply Co.
121 West First St.
Minot
Minot Parts & Service Co.
302 First Ave. S.W.
Westie Motor Co.
117-119 Central Ave., W.

OHIO

Akron
The Hardware & Supply Co.,
475 S. High St.
Thrush Oil Co.
1230 Newton St.
Alliance
The Ohio Battery & Ignition Co.
225 Hester St.
Ashland
Mer's Auto Supply
58 E. Main St.
Ashtabula
Battery Sales & Service
5103 Main St.
Bowling Green
Gem Electric Co.
328 S. Main St.
Bryan
Isaac Miller Sons
418 N. Lynn St.
Cambridge
The Peoples Oil Co.
730 Woodlawn Ave.
213 Dewey Ave.
Canton
Buckeye Service Co.
469 Third St., S. W. (H)
Celina
Conn Tire & Supply Co.
213 S. Main St.
Cincinnati
Auto Red Supply Company
Central Parkway & Race St.
Brubaker-Gellner Parts Co.
6024 Montgomery Rd. (13)
Dorman Automotive Parts Co.
1995 Walnut St. (2)
Spicer Automotive Parts Co.
4132 Mannifee Ave.
Cleveland
The Electric Storage Battery Co.
Room 1612
Engineers Bldg. (14)
Broadway Petroleum Corp.
9109 Miles Ave.
Cleveland Ignition Co.
1301 Superior Ave. (14)
The Perper Motoring Co.
2945 E. 83rd St.
Parkwood Gas & Supply Co.
11011 Superior Ave.
The Buckle Rubber & Supply Co.
2401 Chester Ave. (14)
The Thomas Rubber & Supply Co.
2017 E. 65th St. (3)
Tyson Tire & Battery Service
2275 Broadway (4)
The Yale Auto Parts Co.
8819 St. Clair Ave. (8)
Columbus
Don S. Martin
1409 Grand View Ave. (12)
Dayton
Mayo Oil & Supply Co.
312 Kirkham St.
Standard Parts Co.
28 Washington St.
Dover
Dover Auto Parts, Inc.
121 Wooster Ave.
East Liverpool
Mayo Oil Co.
Fifth & Broadway
Findlay
Allison Parts & Equipment Co.
211 N. Main St.
Frazeysburg
Layman's Tire Service
Fremont
The Fremont Oil Co.
1649 W. State St.
Grafton
Roland Hendrix
902 Main St.
Greenville
Cedar Point Auto Supply
R.R. 2, U. S. Route 36
Keaton
Dixie Auto Parts Co.
210 W. Columbus St.
Lakewood
Lakewood Batt. & Ignition Co.
16215 Madison Ave. (7)
Lima
Gauthier Automotive
219 S. Union St.
Lorain
Hagman Supply Co.
1750 Broadway
Mansfield
Clark Distributing Co.
145 E. Fifth St.
Mer's Auto Supply
44 S. Walnut St.
Marietta
D. A. Kuhn
167 Front St.
Massillon
The Hardware & Supply Co.
S. Erie St.
Norwalk
Price & Sons Inc.
59 E. Monroe St.
Norwood
Dorman Auto Parts Co.
3816 Montgomery Rd.
Painesville
Nash Auto Service, Inc.
259 E. Jackson St.
Piqua
Mayo Oil & Supply Co.
111 College St.
Salem
Hagman Tire Service
116-134 W. State St.
Sandusky
Automotive & Marine Supply Co.
230 Hancock Ave.

List of Exide Wholesale Distributors (Concluded)

OHIO—Cont'd

Sidney
Dixie Auto Parts Co.
S. Dixie Highway

Springfield
Springfield Tire & Battery Co.
236-38-40 W. Main St.

Steubenville
Shaffer's General Tires, Inc.
Cor. N. Fourth & North Sts.
Standard Welding & Spring Co.
244 N. Main St.

Sugar Tree Ridge
R. W. Marconette

Toledo
Hankey Sales Co.
110-112 14th St. (2)
Huebner Supply Co
20 Erie St.
Miller Oil, Inc.
1033 South Ave. (5)

Warren
Lang & Rafkey, Inc.
815 Niles Rd.
Pixler Automotive Supply, Inc.
522 E. Market St.

Wellington
Wellington Auto Parts, Inc.
119 Herrick Ave.

Youngstown
J. A. Barber & Son
13-19 E. Woodland Ave.
The Vahey-Marsh-Woods Co.
1028 W. Rayen Ave.

Zanesville
Layman's Tire Service
130 Main St.
Earl Miller Factory Distributor
931 Merrick Ave.

OKLAHOMA

Ada
Ada Auto Supply
216 E. Main

Altus
Badger Oil Co.
621 S. Main

Alva
Hackett Auto Supply
220 College

Ardmore
Lyndon Lindley
304 W. Main St.

Bartlesville
The Motor Equipment Co.
213-15 Osage

Chickasha
The Motor Equipment Co.
324 Chickasha

Enid
Chappell Oil Co.
259 West Maine
P. O. Box 1069
Hackett Auto Supply
218 W. Randolph

Guthrie
T. S. Wood Supply Co.
114 N. Wentz

Lawton
The Motor Equipment Co.
of Wichita, Kansas
402-405 Ave. "E"

Oklahoma City
Dwyer Clark & Dwyer Oil Co.
701 W. Noble

Ponca City
Mann Tire Co.
122 N. First St.

Tulsa
Tom P. McDermott, Inc.
1490 S. Boston

Woodward
Hackett Auto Supply
516 Main St.
The Motor Equipment Co.
917 E. Main

OREGON

Albany
Kenneiman's
420 W. Second Ave.

Corvallis
Corvallis Auto Parts
112 N. Second St.

Eugene
Wyatt's
101 W. Broadway

La Grande
Roy Farnam Supply Co.
1414 Adams

OREGON—Cont'd

Medford
Sam Jennings Tire Co.
229 N. Riverside Ave.

Portland
Wiggins Company, Inc.
N. W. Park & Couch Sts.

PENNSYLVANIA

Allentown
Bee Incorporated
718 Allen St.
Philadelphia Wholesale
Distributors, Inc.
Penn & Green Sts.

Altoona
Logan Battery & Electric Co.
2301 Union Ave.

Beaver Falls
Superior Auto Accessories Co.
1820 Seventh Ave.

Bradford
Cantwell-Johnson, Inc.
59 Marilla St.

Brownsville
Superior Auto Accessories Co.
705 Market St.

Butler
Superior Auto Accessories Co.
125 W. Wayne St.

Connellsburg
Connellsburg Auto Parts Co.
1 S. Jefferson St.

Carnegie
Tri-State Mfg. & Supply Co., Inc.
231 E. Main St.

Charleroi
Superior Auto Accessories
328 McKean Ave.

Chester
Motor Car Service Co.
805 Sproul St.

Clairton
Kee Auto Parts Co.
104 St. Clair Ave.

Clearfield
Keller & Wolfel, Distributors
C. H. Miller Hardware Co.
23 N. 2nd St.

Coatesville
Motorcar Service Co.
719 E. Chestnut St.

Danora
Kee Auto Parts Co.
763 McKean Ave.

Doylestown
Doylestown Auto Parts Co.
North Main St.

Ephrata
Earl R. Sandoe, Inc.
107 W. Main St.

Erie
O. J. Miller Auto Supply
1911 State St.

Everett
Service Electric Co.
Ridge Ave. & Main St.

Greensburg
Superior Auto Accessories Co.
314 E. Pittsburgh St.

Harrisburg
V. D. Leisure Co.
20th & Derry Sts.

Hazleton
Samuel Gildenberg
39 W. Diamond Ave.

Huntingdon
C. H. Miller Hardware Co.
200 Washington St.

Jeanestown
F & C Automotive Specialties, Inc.
167 Jericho Manor

Johnstown
Cambria Equipment Co.
17-27 Johns St.

Kingston
Paramount Oil & Supply Co
Market & Wright Sts.

Lancaster
Herr Thompson Oil Co., Inc.
453 S. Prince St.
Jerome H. Rhoads
213 N. Prince St.
Sandoe Automotive, Inc.
Lincoln Highway East, RD #4

Lebanon
Krall Battery & Ignition Co.
9th & Cumberland Sts.

PENNSYLVANIA—Cont'd

Lock Haven
Economy Tire & Auto Parts Co.
16 W. Church St.

McKeesport
McKeesport Auto Parts Co.
529 Market St.

Meadville
Sandberg Bros.
813-819 Park Ave.

Mount Carmel
Big Boys Auto Parts Co., Inc.
45 Oak St.

New Castle
Storage Battery & Electric
Service Co.
113 N. Mercer St.

New Oxford
Aero Oil Company, Inc.
Lincoln Way, East

Philadelphia
The Electric Storage Battery Co.
General Office:
42 S. 15th St. (2)
Philadelphia Branch Office:
47th St. & Indiana Ave. (32)
Philadelphia Service Station:
Rising Sun & Adams Ave. (20)
Berrodin Auto Supply Co.
713 N. Broad St. (23)
Germantown Battery Service
5336 Greene St. (44)
Lancaster Auto Supply Co.
4200 Lancaster Ave. (31)
Motor Ignition Co.
1526 Fairmount Ave.
Philadelphia Wholesale
Distributors, Inc.
Girard Ave. & 46th St. (31)
Supple-Biddle-Stultz Company, Inc.
5th & Bristol Sts. (5)
Tri-State Distributors
Lehigh Ave. & 12th St. (22)

Phoenixville
Phoenix Auto Parts
Nutt Road

Pittsburgh
Superior Auto Accessories Co.
5117-5121 Baum Blvd.
129 W. Ohio St.
Tri-State Mfg. & Supply Co., Inc.
434 Wabash Ave.

Pottstown
Nettle Auto Parts
416 Chestnut St.

Pottsville
Battery Service Co
5th & Arch Sts.

Reading
Arlington Hoffert
3030 Buttonwood St.

St. Thomas
E. C. Barnes & Son
P. O. Box 195

Scranton
Charles B. Scott Co.
119-123 Franklin St.

Smethport
Smethport Auto Parts
242 Main St.

Somerset
Cambria Equipment Co.
325 E. Main St.

Stroudsburg
Pocono Distributing Co.
525 Main St.

Sunbury
Big Boys Auto Parts Co., Inc.
123-127 S. Second St.

Towanda
A. C. Smith
112 William St.

Uniontown
Superior Auto Accessories Co.
25 Dunbar St.

Warren
Parish Battery & Electric Service
6 Market St.

Washington
Superior Auto Accessories Co.
148 N. Main St.

Waynesburg
Sexton's Automotive Replacements
167 W. High St.

Williamsport
Clark & Hoag Tire Sales, Inc.
505 Market St. (8)

Windber
Cambria Equipment Co.
1105 Graham Ave.

York
Lee Williams Auto Supply
58 N. Belmont St.

RHODE ISLAND

Newport
J. T. O'Connell, Inc.
89 Long Wharf

Pawtucket
W. E. Davis Co.
84 Montgomery St.

Providence
W. E. Davis Co.
343 Broad St. (7)

Woonsocket
W. E. Davis Co.
172 Front St.

SOUTH CAROLINA

Anderson
Moorhead Oil Co.
506 Murphy Ave.

Charleston
Cameron & Barkley Co.
169 Meeting St. (H) P. O. Box 906

Columbia
Cole-McLaurin, Inc.
1523 Hampton St. (C)

Florence
Carolinas Auto Supply House
129 N. Irby St.

Spartanburg
Lee Tire & Rubber Co. of
N. Y., Inc.
120 Bobo St.

SOUTH DAKOTA

Aberdeen
Arno Supply Co.
1017 S. Main.

Huron
Automotive Supply Co.

Mitchell
Automotive Supply Co.
303 N. Main St.

Rapid City
Furtan Oil Co., Inc.

Sioux Falls
Sioux Falls Machine Works
214 N. Dakota Ave.

Watertown
Automotive Supply Co.
W. Kemp Ave.

TENNESSEE

Bristol
Southern Auto Supply Co. of Bristol
19 5th St.

Chattanooga
Barker Oil Company
244 E. 11th St.

Dyersburg
J. M. Collins Auto Parts Co.
211 E. Court St.

Johnson City
Southern Auto Supply Co.
247 W. Market St. P. O. Box 269

Knoxville
Service Auto Parts Co., Inc.
Emory Park & Central Ave. (17)

McKenzie
Standard Auto Supply
Huntington Rd.

Memphis
Steepleton General Tire Co.
246 Monroe Ave

Nashville
Wholesale Supply Co., Inc.
910 Broadway (3)
Wilson Cole Tire & Battery Co.
1214 Church St. (3)

Paris
Motor Parts Co. of Tenn., Inc.
P. O. Box 147

Union City
Automotive Parts Service

TEXAS

Abilene
Berry's Automotive
933 S. Third St.

Amarillo
Dalton Auto Supply Co.
108 Polk St.

3504

TEXAS—Cont'd

Athens
E. & T. Auto Supply Co.
316 S. Prairieville St.

Austin
O. C. Olle Distributing Co.
1206 W. 6th St. (21)

Beaumont
Dormer Supply Co.
597 College St.

Borger
Motor Inn Auto Supply
800 N. Weatherly

Brownsville
Barrera's Supply Co.
1257 E. Levee St.
Burton Auto Supply
1001 S. E. Adams

Dallas
English Equipment Co.
3016 Gaston Ave.
Greater Dallas Automotive
4155 McKinney Ave.
South Dallas Battery Service
1809 S. Ervay (1)

El Paso
R. B. Wicker Co.
314-322 Mills St.
2700 N. Mesa
Virginia & Paisano

Fort Worth
Clarence Mathis Battery Service
N.W. 25th St. & Gould

Houston
Allen-Cooper Battery & Electric Co.
1079 Caroline St.
Miller's Battery Service
1205 Smith St.
Mountjoy Parts Co. of Houston
1420 Dallas Ave.
7243 Harrisburg Blvd.

Lamesa
Whitlow Battery & Electric Service
103 N. Dallas

Levelland
Levelland Auto Supply
602 Houston St.

Livingston
Automotive Parts & Service Co.
P. O. Box 49

Lubbock
Barrett's Automotive
1012-17th St.
P. O. Box 958
Ruben Battery & Electric
1816 Texas Ave.

Lufkin
Automotive Parts Depot
118 E. Shepherd St.

Marbal
Hicks Auto Supply Box 151

Mission
Barrera's Supply Co.
•900 Conway Blvd.

Nacogdoches
Corbett Spradley Auto Supply
Rt. No. 3, Lufkin Highway

Odessa
Barrett's Automotive
111 N. Hancock

Orange
McGill Supply Co.
210 Front St. P. O. Box 1784

Pampa
Motor Inn Auto Supply
416 W. Foster St.

Raymondville
Burton Auto Supply
N. 7th St., & Hi-Way

San Angelo
Walter E. DeShazo Co.
P. O. Box 942

San Antonio
Sanantex Oil Co.
422 Ruiz St.
Station A, P. O. Box 4156

Waco
Equipment Sales & Supply Co.
927 Franklin St.

Weslaco
Burton Auto Supply
3rd & Kansas

Wharton
T. E. Clemmons Co. P. O. Box 669

Wichita Falls
Clay Smith Equipment Co.
701 Scott St.

Woodville
Automotive Parts & Service Co.

UTAH

Murray
Motor Mercantile Co.
4778 South State St.

Salt Lake City
Motor Mercantile Co.
124 S. W. Temple St.
84 W. 7th South St. (10)

VERMONT

Burlington
Hagar Hardware & Paint Co.
164 St. Paul St.

St. Johnsbury
Hagar Hardware & Paint Co.
33 Portland St.

VIRGINIA

Danville
Auto Bearing & Parts Co.
549 Loyal St.

Emporia
Chesapeake Auto Supply Co.
of Emporia, Inc. North Main St.

Franklin
Chesapeake Auto Supply Co., Inc.
214 Mechanic St.

Harrisonburg
Bear Auto Parts Company
14 N. Liberty St.

Newport News
Chesapeake Auto Supply Co.
314 28th St.

Norfolk
Chesapeake Auto Supply Co., Inc.
200-210 W. 21st St.

Onley
H. C. Watson

Portsmouth
Chesapeake Auto Supply Co.
821 High St.

Richmond
The Kline Co.
2725 W. Broad St. (20)

Roanoke
Quigley Auto Supply Co., Inc.
339 Luck Ave., S. W.

Staunton
Simmons Parts Co.
119-123 S. Augusta St.

Suffolk
Chesapeake Auto Supply Co.
200 E. Washington St.

Winchester
Truck Suppliers, Inc.
24 W. Germain St.

WASHINGTON

Aberdeen
Caldwell Bearing & Parts Co.
305 W. Market St.

Anacortes
Skagit Auto Parts

Bellingham
Automotive Parts Service
1322 State St.

Ellensburg
Heinrich Auto Electric
403 N. Main St.

Mt. Vernon
Skagit Auto Parts
607 2nd Ave.

Richland
Auto Supply & Machine, Inc.
843 Stevens Drive

WASHINGTON—Cont'd

Seattle
Lohman & Clark
13743 Bothell Way
Motor Car Supply Co.
1621 12th Ave.

Spokane
Bearing & Rim Supply Co.
1204 W. Second Ave.
True's Oil Co.
717 N. Hamilton (11)

Tacoma
Reynolds-Hunt Tire Co.
314 Puyallup Ave.
Mayberry Motor Parts, Inc.
1938 Market Street (2)

Walla Walla
Johnson Auto Electric Co.
35 S. Spokane Ave.

Wenatchee
Jensen's Tire Service
318 S. Wenatchee Ave.

Yakima
Yakima Grinding Co.
120 S. Second St.

WEST VIRGINIA

Beckley
Auto Parts Service, Inc.
832 Neville St.

Bluefield
Superior-Sterling Co.
200 Bluefield Ave.

Charleston
Southern Hardware Co.
1214-16 McFarland St. (25)

Clarksburg
Clarksburg Tire Co.
431 W. Pike St.

East Rainelle
Carper Parts Co.

Elkins
S & A Supply Co.
Center St. & Randolph Ave.

Franklin
Glover's Auto Supply Co.
Main St.

Huntington
Veterans Auto Supply
1122 Fourth Ave.

Parkersburg
Couch Tire Co.
614 Juliana St.

Princeton
Chambers Automotive Supply
102 S. Sixth St.

Summersville
Carper Parts Co.

Weirton
Tri-State Mfg. & Supply Co., Inc.
4000 Main St.

Welch
McDowell Auto Parts, Inc.
116 McDowell St.

Wheeling
Wheeling Auto Supply Co.
1-3 South St.

WISCONSIN

Appleton
Kramer Ridge Co.
316 N. Appleton St.

Ashland
Northland Auto Supply

Beloit
Kuehn Motor Parts
416 Broad St.

Eau Claire
Automotive Distributing Co.
317 Barstow St.

Fond du Lac
Schroeder Machine & Supply Co.
32-35 W. Second St.

Green Bay
L. Schuster & Sons, Inc.
420-22 Jefferson St.

Janesville
Ridge-Janesville Co.
15 N. Bluff St.
Smith Goodyear Service
215 Milwaukee St.

La Crosse
George Tire & Battery Depot
219-220 S. Third St.

WISCONSIN—Cont'd

Madison
Holmen Tire & Supply
433 W. Main St. (3)
Ridge-Madison Co.
826 E. Washington St.

Manitowoc
Ridge Motor Supply
Cor. 10th & Jay Sts.
Timm's Tire & Battery Service
720 Commercial St.

Marinette
Automotive Products Co.
2118 Hall Ave.

Milwaukee
Storage Battery Service Co.
1138 N. Jefferson St. (2)

Monroe
Crandall Oil Co., Inc.
1705 16th Ave.

New London
Kramer Ridge Co.

Oconto
Automotive Products Co.
906 Main St.

Oshkosh
The Cook & Brown Lime Co.
70 Marion St.

Racine
Pro Auto Parts, Inc.
934 Washington Ave.

Rice Lake
Oliver Chevrolet Co.
9-11 E. Eau Claire St.

Sheboygan
Auto Electric Co.
817 Indiana Ave.

Superior
Holden's Tire & Battery Service
1702 N. 12th St.

Tomah
Kennedy Auto Supply Co.
906 Superior

Waukesha
Ridge Motor Parts, Inc.
127-139 W. Broadway

Waupaca
Gray Cook Lake Oil Co.

Wausau
Juneau Supply Co.
417-419 Jackson St.

WYOMING

Casper
Wyoming Automotive Co.
620 W. Yellowstone Ave.
P. O. Box 1171

Cheyenne
Wyoming Automotive Co.
1712 Pioneer Ave.

Powell
Wyoming Automotive Co.
Bent & 1st Sts.

Rawlins
Wyoming Automotive Co.
413 W. Buffalo St.

Riverton
Wyoming Automotive Co.

Rock Springs
Wyoming Automotive Co.
602 4th St.

Sheridan
Wyoming Automotive Co.
216 N. Main St.

Torrington
Wyoming Automotive Co.

Worland
Wyoming Automotive Co.
846 Big Horn Ave.

ALASKA

Anchorage
Automotive Parts & Equipment Co.
P. O. Box 840

Fairbanks
Automotive Parts & Equipment Co.

TERRITORY OF HAWAII

Honolulu
The Schuman Carriage Co., Ltd.
P. O. Box 2420

168

3505

COMMISSION EXHIBIT NO. 314D. 3247

CX 314-D

314-E

Exide

Wholesale Distributors

by

STATES and CITIES

May 1, 1957

Exide AUTOMOTIVE DIVISION
THE ELECTRIC STORAGE BATTERY COMPANY
246-286 E. 131st St., Cleveland, Ohio

REGION SALES OFFICES

NORTHEAST
CAMDEN 2, N. J.
518 Market St.
Phone WOodlawn 4-7300

SOUTHEAST
ATLANTA, GA.
P. O. Box 208 Station A
Phone PLaza 8-2621

CENTRAL
CLEVELAND 7, OHIO
14237 Detroit Ave.
Phone LAkewood 1-3795

WESTERN
CHICAGO 9, ILL.
5335 S. Western Blvd.
Phone WAlbrook 5-9800

SOUTHWEST
DALLAS 1, TEXAS
2133 McKinney Ave.
Phone RIverside 1-9977

PACIFIC
LOS ANGELES 22, CALIF.
5700 E. Olympic Blvd.
Phone RAymond 3-7972

In Canada: The Electric Storage Battery Co. (Canada) Ltd., 153 Dufferin Street, Toronto, Canada

3506

ALABAMA

ATHENS
Draper Tire & Battery Co., Inc., 210 N. Marion St.
BESSEMER
Long-Lewis Hardware Co., Corner 20th St. & Second Ave.
BIRMINGHAM
Harry J. Allen, Distributor, Route #3, Box 572
Allied Battery Manufacturing Co., 3500 Lomb Ave., W.
Auto Specialties Co., 1928 Fifth Ave., So.
East Lake Auto Parts, 8000 First Ave. North
Long-Lewis Hardware Co., Fifth Ave. N. at 9th St.
P. O. Box 2663 (2)
BLOCKTONVILLE
Blocktonville Parts Company
CLANTON
Clanton Home & Auto Supply Co., 7th Street
CULLMAN
Cullman Distributing Co., P. O. Box 16
EUFAULA
Eufaula Auto Parts, 107 Strawberry Street
DOTHAN
Dothan Auto Parts Co., 204 S. Oates St.
FLORENCE
Wood River Service Station, Mail Route #5
GADSDEN
Dawson Oil & Battery Co., 421 E. Broad St.
(Mail Address: 410 Riley St.)
GUIN
D. F. Buckley, P. O. Box #127
HUNTSVILLE
Automotive Parts Co., 610 Meridian St.
MOBILE
McGowin-Lyons Hdwe. & Supply Co., P. O. Box 1709,
113 N. Water St. (7)
MONTGOMERY
Tubbs Distributing Co., 135 N. Lawrence St.
PRICHARD
Davis Auto Parts Company, 102 South Wilson Ave.
RUSSELLVILLE
Robinson Auto Parts, 173 E. Franklin St.
SCOTTSBORO
Dixie Auto Parts, 306 Caldwell St.
SELMA
Lost Auto Parts Co., 1125-26 Union St.
SHEFFIELD
Hays Service Center, 3519 Jackson Highway
TUSCALOOSA
Automotive Parts Co., 2201 Sixth St., P. O. Box 490
A. A. Elliott, Mail Route #1 - Greensboro Highway

ARIZONA

DOUGLAS
Jovoro Auto Supply Co., 1211 "G" Avenue
PHOENIX
Pioneer Distributing Co., 1860 West Fillmore St.
TUCSON
Stern's Auto Accessories, 311 East Broadway

ARKANSAS

BATESVILLE
Pete Phillips Battery Service, 302 Main
BENTON
Easy Way Tire & Supply Company

ARKANSAS (Cont'd)

BLYTHEVILLE
Gl Implement & Motor Co., P. O. Box 799
BRINKLEY
Ott Auto Parts
CAMDEN
Ecore Oil Co., P. O. Box 323
E. R. Packard Co., 1322 Washington St., N. W.
CARLISLE
Layne Arkansas Co.
DE WITT
Layne Arkansas Co.
EL DORADO
Stover Auto Supply, 520 E. Hillsboro Avenue
FAIR OAKS
Layne Arkansas Co.
FAYETTEVILLE
Fayetteville Auto Supply Co., 19 E. Mountain
FT. SMITH
McCartney Oil Co., 2212 Towson Ave.
HELENA
Motor Parts Co., 327 Walnut St.
HOLLY GROVE
Ott Auto Parts #2
HOT SPRINGS
Wheatley Bros. Auto Supply, 809 Central Ave.
JONESBORO
Gibson's Radiator & Battery Shop, 714 Crowth St.
Layne Arkansas Co., P. O. Box 905
LAKE VILLAGE
Layne Arkansas Co.
LITTLE ROCK
Easy Way Tire & Supply Company, 4500 Asher Ave.
MC GEE
Layne Arkansas Co.
MENA
Motorite Company, 508 DeQueen
NEWPORT
Jowers Tire Service, Hiway 67E
PARAGOULD
Stinson Auto Parts, 312 S. Pruett St.
PINE BLUFF
Joe's Auto Electric Company, 3301 West 6th St. (P. O. Box 409)
Layne Arkansas Co.
ROGERS
Sargent's Auto Parts & Service, 390 S. 1st St.
STUTTGART
Layne Arkansas Co., 130 W. Second St.
TEXARKANA
H & N Distributors, 512 E. 7th St.
WEST MEMPHIS
Arkansas Tire & Oil Co., P. O. Box 68

CALIFORNIA

ARROYO GRANDE
Van's Auto Parts, 107 Halcom St.
BAKERSFIELD
Bakersfield Bearing & Motor Supply, P. O. Box 340
BISHOP
Boyd's Auto Parts, 275 S. Main St.
BURNEY
Burney Auto Parts, Main St.

3507 12

CALIFORNIA (Cont'd)

CHULA VISTA
Dorman's, Inc.
DALY CITY
Beste, Inc., 1955 Junipero Serra Blvd.
EL CAJON
Dorman's, 321 N. Magnolia Ave.
EL CENTRO
Auto Gear & Supply Co., 127 S. 4th St.
ESMERA
Ogden's, 1737 Fifth St.
FRESNO
Electric Laboratories, Inc., 1422 Van Ness Ave.
GLENDALE
Automotive Ignition & Battery Co., 3451 Verdugo Road
GONZALES
Johnson Motor Co., 2nd & Alta Sts.
HANFORD
Hanford Auto Supply, 116 E. 6th St.
HARBOR CITY
Harbor Motor Supply, 1421 Pacific Coast Hwy.
HAYWARD
Kent Snyder, 385 Castro St.
HOLLYWOOD
Wellington Auto Parts, 6422 Selma Avenue (28)
HUNTINGTON BEACH
Stevens Oil Co., P. O. Box 479, 19021 Huntington Beach Blvd.
JACKSON
Automotive Parts Co., 15 Broadway
KING CITY
Tavernetti Motors, 401 Broadway
LANCASTER
Frontier Supply Co., 44932 Yucca Ave.
LAWNDALE
Action Battery Co., 4702 W. Rosecrans
LOS ANGELES
A. J. R. Motor Supply Co., 1650 E. Washington Blvd. (22)
A & M Service Station, 1053 S. Grand
Atwater Tire & Supply Co., 3010 Los Feliz Blvd. (27)
Barr Wynne Co., 1900 S. Central Ave. (11)
Capital Auto Supply, 3700 Brooklyn Ave. (63)
Exide Battery Warehouse, 5700 W. Olympic Blvd. (36)
General Auto Essentials, 1130 S. LaBrea (19)
Charles Norman & Son, 1038 E. Olympic Blvd. (21)
Shaw Sales & Service Co., 5100 Triggs St. (22)
Jack Spence Service, 635 S. Fairfax Ave. (36)
Texaco Market Service, 1320 E. Olympic Blvd. (22)
Transmission Exchange Co., 3434 S. Grand Ave. (7)
MARYSVILLE
Mason Bros., 4th & G Sts.
J. R. Klatt Co., 726 Fifth St.
Middleton Implement Company, 3rd & "F" Sts.
MERCED
Merced Bearing Supply, 847 W. 17th St.
MODESTO
Benson & Zimmerman, 11th & H Sts., P. O. Box 443
MONTEBELLO
Mar-Mel Oil Co., 1105 W. Olympic Blvd.
MOUNT SHASTA
Shasta Auto Supply Co., 510 Walnut St., Howe Bldg.
NEWPORT BEACH
The Boatswain's Locker, 3431 Coast Highway
South Coast Co., 23rd & Newport Blvd.
NORTH HOLLYWOOD
Jackson & Martin Automotive, 5400 Lankershim Blvd.
OAKDALE
Benson & Zimmerman, 227 N. Third Ave., P. O. Box 1172
OAKLAND
Cameron's, Inc., 1418 Webster St.
United Auto Service Co., 326 23rd St. (12)

CALIFORNIA (Cont'd)

ONTARIO
Drew Carriage Co., 135 E. B St.
OROVILLE
Huntington's Auto Electric, 2330 Bird St.
PASADENA
Paul's Auto Service, 1955 Lincoln Ave.
PATTERSON
Benson & Zimmerman, S. Third & F Sts., P. O. Box 696
PETALUMA
M. Lerer & Sons, 19 E. Washington St.
PORTERVILLE
H. D. Nicholson, Route 3, Box 826
REDDING
Automobile Accessories Co., 1430 Butte St.
RESEDA
Fox Auto Supply, 18662 Sherman Way
RICHCREST
Boyd's Auto Parts
SACRAMENTO
Barney Distributing Co., Route 2 - Box 3860
Schaap-Brenner Tire Co., Jay at 17th St.
2545 Marconi Avenue (21)
SALINAS
Deane Tire Service, Monterey & Gabilan Sts.
SAN ANSELMO
Dorsett's Depot Garage, 30 Drake Blvd.
SAN BERNARDINO
Arrowhead Tire & Battery Company, 385 South "I" St.
SAN DIEGO
Auto Gear & Supply Co., 1369 State St. (1)
Dorman's, Inc., 9th & B Sts. (1)
Shaw Sales & Service Co., 2175 Newton
SAN FRANCISCO
Auto Electric Carburetor Co., 131 Fell Street (2)
Beaumont Service Station, 6199 Third St. (24)
California Tire Co., 697 Golden Gate Ave. (2)
Dahl-Beck Electric Company, 550-586 Howard Street
H. C. Makelim Magneto Repair Co., 655 Bryant St.
Hollister Buick, Inc., 1200-1250 Van Ness Ave. (9)
Miller Battery Company, 19 Gladeview Way (27)
National Auto Supply, 2525A Post Street
Parkside Auto Supply Co., 1227 Taraval St.
Richmond Auto Parts & Motor Service, 3727 Geary Blvd.
Scott-Meehan Company, 439 Bryant Street
Charles P. Wakefield, 2027 Chestnut St. (23)
SAN JOSE
Cook's Automotive Service, 6th & E. Santa Clara St.
SAN LORENZO
Schuster Battery Co., 15850 Court Angelo
SAN LUIS OBISPO
Universal Auto Parts Co., 949 Monterey St.
SAN PEDRO
Harbor Motor Supply, 436 S. Pacific Ave.
McConnell Elec. Parts Co., 203 S. Pacific Ave.
SAN RAFAEL
Torchi Bros., 1012 Lincoln Ave.
SAN YSIDRO
Auto Gear & Supply Co., 180 San Ysidro Blvd.
SANTA BARBARA
E. C. Johnson, 514 State Street
SANTA CRUZ
Santa Cruz Auto Parts, Inc., 703 Front St.
SANTA MONICA
Autty Motors, 1431 Santa Monica Blvd.
Nite & Day Garage, 1429 2nd St.

CALIFORNIA (Cont'd)

SANTA ROSA
Crown Parts & Machine Works, 435 Henderson Ave.
1068 Santa Rosa Ave.
Ivor Ragnon Service, Third & A Streets
SONORA
Opera Hall Garage, 238 Washington St.
SOUTH SAN FRANCISCO
Howard-Martin Automotive Distrs., 305 Airport Blvd.
SOUTH SAN GABRIEL
Anderson's Automotive Supply, 7508 East Garvey Blvd.
STOCKTON
Automotive Parts Co., 24 North Hunter St.
Ingalls Service, Eldorado & Park St.
SUISUN
C & B Service, 8510 Foothill Blvd.
TIBURON
Rock's Auto Supply, 4750 Automatic Drive at Paradise Cove
TURLOCK
Hanson & Zimmerman, 124 North First St.
UKIAH
Porter's Tire Service, 902 N. State St.
VENTURA
Anderson Auto Electric, Oak & Santa Clara Sts.
WILMINGTON
Paul W. Miller, 315 North Avalon Blvd.
WOODLAND
Middleton Implement Co., Knight's Landing Highway
YREKA
Shasta Auto Supply, 329 W. Miner St.

COLORADO

COLORADO SPRINGS
The Auto Equipment Co., 212 E. Colorado Ave.
DENVER
The Auto Equipment Co., 16th & Lawrence, P. O. Box 5230.
Terminal Station
Central Auto Electric Co., 1171 Lincoln Avenue
Denver Brake Co., 335 S. Colorado Blvd.
Red Dot Division of Ray Petroleum Corp., 2510 Huron Street
DURANGO
The Auto Equipment Co., 1149 Main St., P. O. Box 220
FORT COLLINS
Harten Auto Service
GRAND JUNCTION
The Auto Equipment Co., 519 Pitkin Ave.
Mountain Supply Co., 258 Colorado Ave.
PUEBLO
The Zook Tire Co., Fifth at Grand
STERLING
Corts Carburetor & Ignition Service, 517 North 3rd St.

CONNECTICUT

ANSONIA
Service Auto Parts & Plumbing Supplies, 523-531 Main St.
BRIDGEPORT
Apex Motor Products, Inc., 311 Knowlton St. (8)
Bridgeport Auto Parts, Inc., 577-583 Fairfield Ave. (3)
Collins & Leary, Inc., 1036 North Ave.
CANAAN
Knight's Battery & Radio Service, Railroad Ave.

CONNECTICUT (Cont'd)

CHESHIRE
A. Levine, 5 Stevens St.
Pearson's Tire Service, 25 Main St.
DARIEN
Ward's Service Station, 313 Post Road
EAST HARTFORD
Lincoln Auto Supply Co., 676 Connecticut Blvd. (8)
EAST NORWALK
Noo Auto Supply, Inc., 207 Liberty Square
GREENWICH
Greenwich Auto Supply & Machine Shop, 124 Greenwich Ave.
Redman's Tire Service, 268 West Putnam Ave.
HARTFORD
Cutler's Auto Parts, 1057 Park St.
Grinold Auto Parts, Inc., 351-72 Ruteod St. (5)
Kettledon's Battery Service, 1514 Park Street
Pat's Tire Shop, 860 Wethersfield Ave.
MANCHESTER
Schiebel Brothers, 8 Proctor Rd.
MERIDEN
Frank's Auto Parts, Inc., 77 Grove St.
MIDDLETOWN
Grinold Auto Parts, Inc., Main Street Extension
MILFORD
Collins & Leary of Milford, Inc., 1051 Bridgeport Ave.
MILLDALE
Paul Schwenk Automotive Supplies, 58 Norton St.
NEW BRITAIN
Grinold Auto Parts, Inc., 153 Arch Street
NEW HAVEN
The Elm City Auto Electric, Inc., 617 State St. (11)
The Norton-Gallo-Creamer Co., Inc., 96 State St.
NEW LONDON
Grinold Auto Parts, Inc., 786 Bank St.
NORWALK
James V. Worth & Sons, Inc., 9 High Street
NORWICH
Stolzman Auto Parts, Inc., 185 North Main Street
STAMFORD
The Norton-Gallo-Creamer Co., Inc., 835 Main St.
Redman's Tire Service, West Main at Mill River St.
The Stamford Auto Parts Co., 112 Stillwater Avenue
Charles L. Woundy, Inc., 334-338 Hope St.
TORRINGTON
Grinold Auto Parts, Inc., 55 S. Main St.
WATERBURY
Shore's Auto Parts, Inc., 477 W. Main St. (2)
WEST HARTFORD
The Auto Tire Co., Inc., 931 Farmington Ave.

DELAWARE

DOVER
Motorcar Service Co., S. Governor's Ave. Blvd.
MILFORD
J. L. Wright, Inc., N. W. Front Street
SEAFORD
Walter E. Lister, Front Street Extended
WILMINGTON
Motorcar Service Co., 900 French St.

3509

DISTRICT OF COLUMBIA

WASHINGTON
E. J. Fuqua, 1819 L St., N.W. (6)

FLORIDA

BRADENTON
Terry Supply Co., 612 12th Street, West
CLEARWATER
Bryan's, 2365 Largo Road
DELRAY BEACH
Vaughn & Wright of West Palm Beach, Inc., 305 N.E. Second St.
FORT LAUDERDALE
Vaughn & Wright of Fort Lauderdale, Inc., 16 N.E. Fourth St.
FORT MYERS
Dilen Auto Supply, 2232 Anderson St.
GAINESVILLE
Gainesville Auto Supply, 521 W. University Ave.
JACKSONVILLE
Ellis Auto Parts, 1411 Buffalo Ave. (6)
Tire & Tube, Inc., 700 W. Adams St.
1161 Kings Road
LAKE WALES
Lake Wales Motor Parts, 138 E. Park Avenue
LAKE WORTH
Vaughn & Wright of West Palm Beach, Inc., 220 North Dixie Hwy.
LAKELAND
Lakeland Motor Parts, 113-117 W. Lemon St.
MIAMI
Imperial Battery Co., 1745 N. W. 36th St. (47)
Posten-Shepard Tire Co., 429 N. W. 6th St. (36), P.O. Box 1270
ORLANDO
Central Florida Battery Distributors, P. O. Box 2265
PANAMA CITY
Wiggins Auto Parts, 410 Jenks Ave.
PENSACOLA
Barrow Tire & Recapping Co., 6011 Navy Blvd.
PLANT CITY
Plant City Motor Parts, 317 N. Reynolds St.
POMPANO BEACH
Vaughn & Wright of Fort Lauderdale, Inc., 401 N.W. Third Ave.
ST. PETERSBURG
Service Auto Supply, Inc., 2300 - 1st Avenue, North
TAMPA
Smith & Parten, Inc., Lafayette & Florida Ave.
WARRINGTON
Southern Battery & Oil Co., 417 Creary St.
WEST PALM BEACH
Frank's Auto Supply, 3715 S. Dixie Highway
Vaughn & Wright of West Palm Beach, Inc., 524 First Street

GEORGIA

ADDISON
Hunt Oil Co., Lamar & Hampton Streets
ATLANTA
Prior Tire Co., 458 Peachtree St., N. E. (3)
AUGUSTA
Skinner Auto Supply Co., 1337 Reynolds St.
BLACKSHEAR
Hobbs Auto Supply, P. O. Box 143
BRUNSWICK
Tracy's Auto Parts, Inc., 1336 Albany St.
COLUMBUS
Carter Hosiery Auto Supply, 1131 13th St.

GEORGIA (Cont'd)

GAINESVILLE
W. B. Brice & Son Auto Parts, 305 W. Spring St.
MACON
Chapman's Garage, Inc., 419 Mulberry St.
MOULTRIE
Carmichael Parts Service, 309 North Main St.
STATESBORO
Harrison Oil Co., East Seriven St.
ROME
Rome Tire Recapping Co., 100 Anderson St., P. O. Box 1863
HOUSTON
Royston Auto Supply Company
SAVANNAH
Bill Kehoe Tire Co., Inc., 410-414 Montgomery St.
Paul & Andy Battery & Electric Co., 309 W. Oglethorpe Ave.
THOMASVILLE
Lewis Clark Company, P. O. Box 855, 817 N. Madison St.
VALDOSTA
Carmichael Motor Supply Co., Inc., 419-S. Patterson St.
WARNER ROBINS
Skinner Auto Supply Co., 4th Street

IDAHO

ATOLL
Potlatch Forests, Inc.
BOISE
Motor Mercantile Co.
COEUR D'ALENE
Potlatch Forests, Inc.
HEADQUARTERS
Potlatch Forests, Inc.
JEROME
Motor Mercantile Co.
KAMIAH
Twin Feather Mills, Inc.
LEWISTON
Erb Hardware Co., 411 D St., P. O. Box 616
Potlatch Forests, Inc., P. O. Box 600
POTLATCH
Potlatch Forests, Inc.
PRESTON
Motor Mercantile Co., 17 South State St.
TWIN FALLS
Motor Mercantile Co., 434 Main Ave.

ILLINOIS

ALTON
Wolfe Tire Co., Inc., 833 E. Broadway
AURORA
Geo. C. Peterson Co., 334 Garfield Ave.
Phillips Auto Parts Co., 225 Holbrook St.
Robinson's Auto Supply Co., 126-130 S. Broadway
BELLEVILLE
H. B. Pritzlaff, Distributor, 1501 S. Illinois St.
BENTON
Benton Auto Supply, 121 E. Main St.
BLOOMINGTON
Auto Hotel, Inc., East & Jefferson Sts.
CHAMPAIGN
E. R. Collins Co., 9 E. Logan St.
CHICAGO
A & A Auto Parts Co., 708 S. Ashland Ave. (22)
All American Distributing Co., 3530 W. Ogden Ave. (23)
Allied Tire & Battery Co., 610 W. 35th St. (16)
American Tire Distributors, 2136 N. Cicero Ave.
5101 W. Irving Park Rd.

21

ILLINOIS (Cont'd)

CHICAGO (Cont'd)
Chameson Tire & Supply Co., 1851 East 95th St. (17)
Grimm-Hansen-Treland, Inc., 1654 W. Madison St. (14)
Al B. Meier & Co., 6019 Broadway (40)
Midwest Tire Co., 4715 W. Chicago Ave.
Geo. C. Peterson Co., 3606 Elston Ave.
Portage Auto Parts, Inc., 3918-20 N. Milwaukee Ave. (41)
Roseland Outboard Motor Sales Service, 105 East 115th St. (28)
Southwest Petroleum Co., 3617 W. 63rd St.
Thornton Oil Company, 6758 Belmont Ave.
Triangle Machine Works, Inc., 3650 N. Ashland Ave. (13)
Triangle Tire & Battery Co., Inc., 4709 So. Ashland Ave.

CHICAGO HEIGHTS
Geo. C. Peterson Co., 16th East End Ave.

CICERO
Best Tire Company, Inc., 5018 W. Cermak Road

COLLINSVILLE
Wells Tire & Battery Co., 319 W. Main St.

DANVILLE
E. B. Collins Co., 214 W. Main St.

DECATUR
Auto Accessory Supply Co., 2077 E. Main St.
Hart's Tire & Treading Service, 2525 N. Water St.

DOWNERS GROVE
Downers Grove Auto Parts, 901 Ogden Ave.

DWIGHT
Geo. C. Peterson Co.

EAST PEORIA
Midwest Oil Co., 1126 W. Washington St.

EDWARDSVILLE
Wells Tire Sales, Inc., 125 W. Vandalia St.

EFFINGHAM
Keller Oil Co., South Banker St.

ELGIN
Phillips Auto Parts Co., 370 Brook St.
Robinson's Auto Supply Co., 2 N. State St.

EVANSTON
Central Motors of Evanston, 1000 Central St.
Evanston Battery & Tire Service, 1461 Elmwood Ave.
Grimm-Hansen-Treland, Inc., 922 Davis St.

FOX LAKE
Geo. C. Peterson Co., Rt. 12 & Eagle Point Road

GALESBURG
Harvey Brothers Electric Motor Service, 732 W. Main St.

GLENVIEW
Grimm-Hansen-Treland, Inc., 1734 Waukegan Road

GRANITE CITY
Wells Tri-City Tire Company, 2218 Madison Ave.

GREENVILLE
Wells-Judd Tire Sales, 217 W. 2nd St.

HUNTSVILLE
Wells-Norris, Inc., 300 S. State St.

JOLIET
Locanta Tire Supply, 2 N. Joliet St.
Geo. C. Peterson Co., 1 Columbia St.

KANKAKEE
Electrical Equipment Co., 231 North Dearborn Ave.

KEWANEE
Kewanee Auto Supply, 113 E. 2nd St.

LA GRANGE
Renfro Tire Company, 5345 La Grange Rd.

LA SALLE
La Salle Automotive Supply Corp., 160 Bucklin St.

LINCOLN
Sheer's Auto Supply Co., 716 Broadway

LOMBARD
S. & K. Supply, 311 South Main St.

ILLINOIS (Cont'd)

MARWOOD
West Suburban Auto Parts, Inc., 511 W. Lake St.

MENDOTA
Geo. C. Peterson Co., 6th & Main Sts.

MOLINE
F. W. Shattuck Co., 2112 5th Ave.

MOUNT CARMEL
Deroch Oil Co., Box 161

NILES
Northwest Tire Service & Supply, 8119 Milwaukee Avenue

OAK PARK
Red E Oil Co., Inc., 25 W. Lake St.

OTTAWA
D & K Tire Co., 1301 N. LaSalle St.

PEORIA
Sweny Gasoline & Oil Co., 619 Spring St.

PLAINFIELD
Zimmerman's Store, 503 Lockport St.

PLANO
Coffman Bros., Route 34

PONTIAC
Fred's Service, 425 W. Madison St.

QUINCY
Canton-Quincy Auto Supply, 1706 Broadway
Green's Auto Parts, 1024-26 Maine St.

ROCKFORD
Smith Oil & Refining Co., 1102 Kilbourn Ave.

ROCK ISLAND
Midway Oil Co., 4301 1st Ave.

SPRINGFIELD
S.N.W. Auto Supply Co., 108 W. Jefferson St.

WAUKEGAN
Geo. C. Peterson Co., U.S. Rt. 41 & Washington St., Box 375
Washington Tire & Battery Service, 512 Washington Ave.

WILMETTE
Wilmette Tire & Battery Co., 710 Twelfth St.

WILMINGTON
Geo. C. Peterson Co.

WOOD RIVER
Wells-Schmidt Tire Sales, 101 E. Ferguson Ave.

INDIANA

ANDERSON
Carmack's, Inc., 2223 Main Street

BELFORD
Bedford Auto Supplies, 1407 "I" St.

BLOOMINGTON
Motor Service Parts Co., 106 N. Rogers St.

BRAZIL
Bedsell Tire & Battery Service, 717 East National

CAMDEN
Meyer's Distributing Co., 125 Armstrong St.

COLUMBIA CITY
H. J. Schrader Co., 301 W. Van Buren St.

COLUMBUS
Nugent Auto Supply Co., 312 S. Mapleton St.

CONNERSVILLE
Connersville Auto Supply, Inc., 1018 Central Ave.

CONVERSE
Bill's Auto Parts, South Capitol Ave.

ELKHART
Barnettes, Inc., 358-372 S. Elkhart

3511 24

INDIANA (Cont'd)

ELWOOD
H. J. Schrader Co., 1516 Main St.
EVANSVILLE
Bartlett Parts Service, 900 N. Fares Ave.
Rosedale Auto Parts Co., Inc., 1211-1213 Division St. (Rear)
Van Winkle-Clagg, Inc., 416 Sycamore St.
FORT WAYNE
H. M. Keough Co., 224 W. Main St. (2)
FRANKFORT
Lenex & Anderson, 303 North Main St.
GARNETT
Kott's Auto Parts, 121 N. Calhoun St.
GARY
All State Auto Parts, 1917 Broadway
Monarch Supply Co., 10th & Virginia Sts.
Triple H Auto Parts, Inc., 926 W. Fifth Avenue
HAMMOND
Coleman-Hilah Auto Supply, Inc., 731 S. State St.
HUNTINGTON
Hoppe Oil Co., 1370 Etna St.
INDIANAPOLIS
Speedway Auto Parts, Inc., 3436 W. 16th St.
JEFFERSONVILLE
Huber Tire & Supply Co., Route #31
KOKOMO
Murray & Davis, 928 South Union St.
H. J. Schrader Co., 207 E. Walnut St.
LA PORTE
The Ridge Co., Inc., 607 Michigan
LAFAYETTE
Unit Parts Co., Inc., 415 N. Earl Ave.
LOGANSPORT
H. J. Schrader Co., 116-118 S. 6th St.
MADISON
The Automotive Supply Co., 325 E. Main St.
MARION
Ballard Brake & Equipment Co., Inc., 1116 W. Eighth St.
MICHIGAN CITY
Waterford Rubber & Lead Co., R.F.D. #3, Box 365
MISHAWAKA
The Ridge Co., Inc., 223 Lincolnway East
PERU
Peru Automotive Supply, 171 North Miami St.
PLYMOUTH
The Ridge Co., Inc., R. R. #3
RICHMOND
Davies Electric Co., 925 North "G" St.
Richmond Auto Parts Co., 111 Main St.
SALEM
Mutes Auto Supply, 710 South Main St.
SCOTTSBURG
Jones Tire Co., Highway 31
SEYMOUR
Williams Auto Supply Co., Third & Ewing Sts.
SOUTH BEND
The Ridge Co., Inc., 315 W. Jefferson Blvd. (2)
R. R. #2 - Box 248
H. J. Schrader Co., 315 W. Jefferson Blvd. (2)
SULLIVAN
John Mohr & Son Auto. Parts Co., 15 North Main St.
TERRE HAUTE
Terre Haute Automotive Supply Corp., 1509 E. Wabash Ave.
Wabash Distributing Co., 130 North Sixth St.
TIPTON
Bob's Automotive Parts Co., Inc., 226 E. Jefferson St.
VALPARAISO
Bud Pound's, 7 Lincolnway
WARREN
Cole Automotive Supply, Inc., 40 East Mill St.

INDIANA (Cont'd).

WARSAW
Schrader-Warsaw Co., 909 E. Center St.
WASHINGTON
Hayes Motor Supply, Inc., 16 S. E. Third St.
WORTHINGTON
Stahl Super Service

IOWA

ALGONA
Greenberg Auto Supply
AMES
Doughton Auto Supply
BURLINGTON
S & S Oil Co., 625 So. Main St.
CEDAR RAPIDS
Allen Motor Co., 2nd Ave. & 10th St.
Motor Equipment Co., 811 Second Ave. S.E.
CHARITON
Charlton Auto Supply, 915 Braden
CLINTON
Lehman & Company, 315 South Second St.
DAVENPORT
Strun Auto Supply, 413 W. Third St.
DES MOINES
All Iowa Sales Co., 3822 Easton Blvd.
Eddy's Auto Supply, 2513 40th St.
Frank's Auto Parts, 3819 Marianna
Iles, McKinney & Wolf, 1115 Grand Avenue
Spillman's Supply, 1550 Dean
Tester Auto Parts, 3828 Amherst
DEWITT
Dohler Battery & Electric Co., 730 6th Ave.
DUBUQUE
Iowa Oil Company, Lowen Front
FORT DODGE
Hall's Automotive Parts, 19 N. 12th St.
FORT MADISON
Cushman Foundry & Machine Co., 2032 Avenue "E"
HENDERSON
McCombs Auto Supply
LAMONI
Silver & Roberts, 130 W. Main St.
MARSHALLTOWN
Beard Supply Co., 104 S. Center
MASON CITY
Chasen Auto Parts, 1721 N. Federal
NEW HAMPTON
Blue Line Oil Co., Walnut & Spring St.
OTTUMWA
Pangborn's, 827 E. Main Street
SIOUX CITY
O'Keefe General Tire Co. O'Keefe Tire Sales, 7th & Water Sts.
SPENCER
Arnold Motor Supply, 470 First Ave., W.
WATERLOO
Midwest Motor Bearing Co., 308 E. 7th St.
WEBSTER
H. M. Keeting & Son, 29 W. Main St.
WEBSTER
Dahm Implement Co.

KANSAS

ATCHISON
P. L. Kouts Auto Supply, 810 Commercial St.
BELLEVILLE
L. J. Mosser Co., 1206 18th St.

172

23

KANSAS (Cont'd)

BUCKLIN
Birney Motor Supply Co., 279 Main St.
CLAY CENTER
Champagne Auto Supply, 540 Lincoln
COLBY
Birney Motor Supply Co., 305 Franklin
FORT SCOTT
Johnson Electric Service, 9 Market St.
JUNCTION CITY
Stueve Battery & Electric Co., 503½ South Washington
LAWRENCE
Fritz Company, Eighth at New Hampshire
LENEXA
Lenexa Auto Parts, 13085 Santa Fe
MISSION
M & M Auto Parts, Inc., 6017 Johnson Drive
NORTON
L. J. Messer Co., 102 South 2nd
OTTAWA
Weidmann Tire & Battery Service, 209 East Second
PITTSBURG
Postal's One Stop Service, 302 N. Locust
SALINA
Motor Service Co., 8th & Pacific Sts.
Wingrove Auto Electric, 150-156 S. Fifth
SCOTT CITY
Hamilton Motor Co., 108 W. Fourth St.
TOPEKA
W.A.L. Thompson Hardware Co., 235 Kansas Ave.
WICHITA
Kansas Rabbitting Co., Inc., 318 South Wichita
1202 E. Douglas

KENTUCKY

ASHLAND
The Barney Williams Co., Inc., 213 - 14th St.
BOWLING GREEN
Kentucky Tire Exchange, 130 E. Main St.
CARROLLTON
Carrollton Auto Supply, Fourth & Sycamore Ave.
DANVILLE
Clore Oil Co., Inc., Box 382, Perryville St.
ELIZABETHTOWN
The Marion Company, 117 North Main St.
FALMOUTH
Coleman & Roth, Shelby & Mount Joy Sts.
GLASGOW
Munn Auto Supply Co., E. Main St.
HARLAN
Southeastern Sales Co., Inc., 309 Central Ave.
HOPKINSVILLE
Monarch Oil Co., South Virginia St.
LEXINGTON
Lexington Automotive Supply Corp., 375 E. Main St.
Tire Sales Corp., 363 E. Main St.
LOUISA
G. W. Merritt, 807 Perry St.
LOUISVILLE
Ellingsworth Auto Electric, 1009 East Broadway
General Rubber & Supply Co., 3118 Preston Highway (13)
Huber Gillette Sales, Inc., 1007 E. Jefferson Ave. (6)
Ray's Tire Service, 161½ West Market St. (3)
Munn's Auto Parts, 1910 South Seventh St. (8)
MADISONVILLE
General Tire of Madisonville, Inc., 18 N. Franklin St.

KENTUCKY (Cont'd)

PAINTSVILLE
McHugh Bros. Auto Supply, 124 W. Third St.
OWENSBORO
General Tire of Owensboro, Inc., Third & Daviess Sts.
Gipe Motor Supply Co., 510 W. Fourth St.
PADUCAH
Automotive Parts Inc., Third & Clark
RICHMOND
Auto Parts Supply Co., 619 E. Main St.
RUSSELL
Rasberis Garage, 424 Belfast St.
SOMERSET
Ben S. Mattingly, 304 E. Mt. Vernon Ave.
VINE GROVE
New Dixie Auto Parts, Route #2

LOUISIANA

ALEXANDRIA
Roland Auto Supply, Inc., 1503 Hollands St.
BASTROP
The Tire Service Company, 319 West Madison
BATON ROUGE
Roberts Equipment Co., 8255 Dooba Drive
Servway Motor Parts, 3210 Plank Road
BOGALUSA
V & M Battery Service, 500 Austin Street
BOSSIER
Auto Parts Service, 302 East First St.
LAFAYETTE
Nat's Battery Station, 405 E. Vermillion
LAKE CHARLES
Lake Auto Parts Co., 1205 Ryan St.
MONROE
Monroe Automobile Supply Co., Inc., 300 Walnut St.
NEW ORLEANS
Regal Tire Service, 731 North Carrollton Avenue
Harry Stevens, 811 St. Charles
SHREVEPORT
Automotive & Industrial Supply Co., Inc., 722 N. Market
Creger & Marks Auto Supply Inc., 726 N. Market St.
WINNFIELD
Parr Auto Supply, 129 W. Main St.

MAINE

AUBURN
L & M Oil Co., 134 Minot Ave.
BANGOR
H. H. Bragg & Sons, 74-86 Broad St.
Community Oil Co. of Bangor, Lower Main St.
Rice & Miller Co., 78 Rice St.

MAINE (Cont'd)

LEWISTON
R. L. Patry, 966 Lisbon Street
PORTLAND
F. S. Chick & Son, 34 Portland St. (3)
Community Oil Co., Inc., 301 Kennebec St. (3)
Emery-Waterhouse Co., 145 Middle St. (6)
ROCKLAND
Community Oil Co., Inc., 14 South St.
SANFORD
Sanford Oil Co., 1 Congress St.
SKOWHEGAN
Graffam's, Madison Ave.
WATERVILLE
Pineland Oil Co., 95 College Ave.

MARYLAND

BALTIMORE
Federal Auto Parts Co., 1301 Light St. (38)
Martin Auto Supply Co., 1865 West Pratt St. (23)
Maser Bros., 126 Eastern Ave. (31)
R. R. Smith, 1100 Cathedral St. (1)
CHESTERTOWN
The Watkins Auto Supply Co., Inc., Washington Ave. Extended
CUMBERLAND
Dunlop Tire & Battery Service, 6 William Street
EASTON
The Watkins Auto Supply Co., Inc., 8 Washington St.
HAGERSTOWN
L. N. Cordeyman & Son, Inc., 715 W. Washington St.
HAVRE DE GRACE
City Auto Supply, Route 40 & Ohio St.
SALISBURY
Salisbury Auto Parts, Route 13 Boulevard, P. O. Box 708

MASSACHUSETTS

ALLSTON
Giant Battery Service Co., 185 Brighton Ave. (34)
Hunt-Marquardt, Inc., 344 Brighton Ave. (34)
ATHOL
Batchelder's Automotive Jobbers, 158 North Street
ATTLEBORO
Pelletier's Automotive Service, 193 Pine Street

MASSACHUSETTS (Cont'd)

BEVERLY
W. W. Britton, Inc., 465 Rantoul St.
BOSTON
Merchants Distributors, Inc., 1312 Boylston St. (15)
BRIGHTON
A. F. Gorman Company, Inc., 1159 Main St. (35)
Hunt-Marquardt, Inc., 303 Warren Ave. (34)
BUZZARDS BAY
C. W. Douglas, 275 Main Street
CHARLTON
Prospect Carb. & Auto Electric Service, Inc., 360 Prospect St.
DORCHESTER
Dorchester Auto Parts Co., Inc., 157 Stoughton St. (25)
Spurgeon Sales Company, Inc., 301 Columbia Road (25)
EAST FALMOUTH
Earl L. Holden Wholesale Auto Supplies, 10 Reservation Road
FALL RIVER
W. W. Leach & Co. of Fall River, Inc., 196-202 Bedford St.
GARDNER
Red's Auto Electric Service, Inc., 311 West Street
HAVERHILL
Kessel Auto Parts Co., 192 Water St.
Haviland Tire & Supply Co., 136 Water St.
HOLYOKE
J. Russell & Co., Inc., 361 Dwight St. (1)
HYANNIS
A. F. Gorman Company, Inc., Barnstable Rd.
LAWRENCE
Fischer & Brainard, Inc., 218 South Broadway
LOWELL
Boston Auto Supply Co., 18-30 First St.
Freddie's Auto Supply, 294 Thorndike St.
LYNN
Hunt-Marquardt, Inc., 20 Mt. Vernon St.
MALDEN
Malden Motor Parts, Inc., 145 Exchange St. (48)
MIDDLEBORO
Richmond Automotive Service, 190 Center St.
MILFORD
Milford Auto Parts, Inc., 331 Main St.
NEW BEDFORD
W. W. Leach & Co. of New Bedford, Inc., Mill & Emerson Sts.
NEWTONVILLE
Bros Battery & Tire Service, 252 Walnut St. (60)
NORTH ADAMS
Auto Replacement Parts, Inc., 90 Marshall St.
PITTSFIELD
Irv's Auto Supply, 287 Elm St.
Ray's Auto Parts, Inc., 17 Adam St.
QUINCY
Hunt-Marquardt, Inc., 128 Washington St. (69)
ROSLINDALE
Belgrade Motor Supply, 790 Belgrade Ave. (31)
SALEM
Liberty Battery Co., 96 Winter St.
SPRINGFIELD
Parmenter Auto Parts Co., Inc., 611 Main St. (5)
TAUNTON
Harold's Automotive Supply, Washington Court
W. W. Leach & Co. of Taunton, Inc., 37 Cohannet St.
WORCESTER
Billings Auto Supply Co., Inc., 117 Central St. (8)
George F. Blake, Inc., 121 Commercial St. (8)
Joseph Leavitt, 22 Commercial St. (8)
The Worcester Rim & Wheel Co., 138 South Bridge St. (3)

25

3514

173

MICHIGAN

ALPENA
Bensmans Tire & Battery Shop, 703 N. Second St.
BATTLE LINE
Wayne Tire & Rubber Co., 9685 E. Eight Mile Road
BATTLE CREEK
Ralph G. Willey, Route #5, Box 76
BENTLEY
Henderson Tire Company, 1991 W. Woodward Ave.
BAY CITY
The Lowery Co., 705-7 Saginaw St.
1250 S. Wenona
BENTON HARBOR
Chet Nichols Auto Service, 300 Territorial
CADILLAC
N. L. Williams & Sons, 414 S. Mitchell St.
CARSONVILLE
Harold J. Fix Company, 4090 E. Chandler St.
CHEBOYGAN
Cheboygan Auto Supply Co., 215 S. Main St.
COLDWATER
Trost Auto Parts Co., 24-26 S. Hudson
DEARBORN
Parts & Equipment Corp., 5510 Schaefer Rd.
DETROIT
Bob's Nash, Inc., 20001 Livernois Ave. (21)
Bray Auto Parts, 5966 Chene (11)
Capital Automotive Supply, 9332 Oakland Ave. (11)
A. J. Champion Tire & Battery Service, 15931 Hamilton Ave. (Highland Park) (3)
L. H. Decker, 450 Stephenson Ave.
Deluxe Motor Service, Inc., 41 Harper Ave. (2)
Hartman Distributing Co., 20719 Evergreen Road (19)
Henderson Tire Co., 35 Selden Ave. (1)
12106 Gratiot Ave. (5)
26151 Grand River Ave. (19)
Harry Holmerson Rubber Co., 16553 Fielding Ave.
Paul's Auto Parts, 12225 Gratiot Ave. (5)
Riteway Auto Parts & Rebuilders, 9335 Oakland Ave. (11)
H. E. Robertson, 5913 Harding Avenue
Shorty's Auto Parts, 8401 W. Eight Mile Road (21)
Tracey's Super Service, 20000 West McNichols
Veranick Brothers Co., 2531 E. Davison Ave. (12)
Wayne Tire & Rubber Co., 13118 Gratiot Ave. (5)
8240 Harper Ave. (13)
DOWAGIAC
The Ridge Co., Inc., 107 S. Front St.
DURAND
Durand Auto Parts, 810 N. Oak St.
ESCANABA
Chatfield Machine & Foundry Co., 718 Stephenson Ave.
FARMINGTON
Farmington Piston Service, 29240 Grand River Ave.
FLINT
State Automotive Supply, Inc., 6113 N. Saginaw St. (5)
GLADWIN
Shull Supply Co., P. O. Box 56
GRAND RAPIDS
Bergman Auto Supply, 512 Leonard St. N.W. (4)
Earl's Auto Supply, 1027 Fulton St. E. (3)
Ronda Tire Store, 330 Bond St., N. W.
HANCOCK
Santori Brothers, 811 Ethel Ave.
IRONWOOD
Dukka Tire Shop, 905 W. Aurora St.
ISHPEMING
Jim's Tire Shop, 306 E. Division St.

MICHIGAN (Cont'd)

JACKSON
C. T. Hamlin Co., 225-27 N. Jackson St.
KALAMAZOO
Midway Auto Supply, 415 W. Kalamazoo Ave. (11)
LANSING
Capital Automotive Supply Corp., 501 E. Michigan Ave. (19)
Hordon Oil Company, Inc., 1918 North Grand River Ave.
LAPEER
South Side Auto Parts, 491 S. Main St.
LINCOLN PARK
Lincoln Park Parts & Equipment Corp., 1169 Fort St.
MANISTEE
Northern Auto Parts Co., 424 River St.
MARQUETTE
Burr's Garage, 149 Baraga Avenue
MENOMINEE
C & H Auto Supply, 705 1st St.
MONROE
Elliott's, Inc., 28 S. Macomb St.
Monroe Parts & Equipment Corp., 1113 S. Monroe St.
MT. PLEASANT
Ben Trainor & Son, 802 W. Main St.
MUSKEGON
Motor Service & Supply Co., 1169 Third St. (4)
NILES
The Ridge Co., Inc., 230 N. Front St.
OGDEN
Reeves Wheel Alignment, 171-173 Cranbrook St.
PETOSKEY
Northern Auto Parts Co., 476 W. Mitchell
PONTIAC
General Auto Parts, 543 S. Saginaw St.
RIVER ROUGE
Parts & Equipment Corp., 10988 W. Jefferson Ave. (18)
SAGINAW
General Distributing Corp., 205 S. Second St.
Kurtz-Hillman Sales Co., 619 Gratiot St.
SAULT ST. MARIE
Cheboygan Auto Supply Co., 219 W. Portage Avenue
TRAVERSE CITY
Northern Auto Parts Co., 324 E. Front St.
WALLED LAKE
Stone Front Auto Parts, 6510 Orchard Lake Road
WATERLIET
Nelson Bros. Auto Parts, 455 E. Main St.
WYANDOTTE
Parts & Equipment Corp., 219 Sycamore

MINNESOTA

ALBERT LEA
Motor Supply Co., 113 South Newton
ALEXANDRIA
Van's Motor Parts Co., Sixth & Irving Sts.
BRAINERD
General Supply Co., Riverview Addn.
DETROIT LAKES
A & B Supply Co., 709 Wash Ave.
DULUTH
Economy Supplies, 721 E. Superior St.
MacDonald Motor Co., 130 Second Ave., W.

MINNESOTA (Cont'd)

[illegible]
D. S. Milne Co., 1115 West First St.
[illegible] FALLS
Genuine Parts Co., 310 South Court St.
MINEOLA
Genuine Parts Company, 2137 First Avenue
Woodin Service & Supply Co., Highway 169 & 13th St.
RAMSEY
Rohrer Auto Supply, 1408 Range St.
D. S. Brown, Inc., 813 N. Front St.
REDWOOD
D. S. Milne Co.
REDWOOD FALLS
Automotive Supply Co., 122 Washington Ave., N. (1)
Factory Sales Co., Inc., 1128 Kerman Plaza
Herald Auto Supply, 311 E. Lake St.
Westgate Motor Sales, 1500 Prospect Ave. North
ROCHESTER
Wagon Auto Electric Co.
RED WING
McCleary Auto Parts, 5 S. Hamm's
ROSEMOUNT
Motor Supply Company
ROSEVILLE
Scherf Auto Supply, 650 1st Ave., S.W.
ST. CLOUD
Lutgen Auto Electric, 5th 1st St. So.
ST. PAUL
Hann's Tire Sales, 41 W. Fillmore
Port Hudson, Inc., 199 West 6th St.
SHAKOPEE
Motor Parts Service Co.
SO. ST. PAUL
Motor Parts Service Co., 237 North Concord
THIEF
McCleary Auto Parts
WABASA
Motor Supply Company
WILLMAR
John Petersen Implement Co., Litchfield & Eastern Ave.
WINONA
Auto Electric Service Company, Cor. 2nd & Johnson

MISSISSIPPI

BILOXI
Ellis Battery Shop, 605 Crawford St.
CLARKSDALE
Moore Repair Shop, 1021 4th St.
GREENVILLE
Thompson Battery & Electric Company, 221 Main Street
GULFPORT
Kramer Motor Co., 1120 [illegible] Ave.
HATTIESBURG
Central Battery Co., 30[illegible] E. Pine
INDIANOLA
W. W. Crenshaw, Distributor, Box 370

MISSISSIPPI (Cont'd)

INDIA
Crenshaw Service Station #2
JACKSON
Union Depot Service Station, 135 North Hill Street
LAUREL
Frank A. Beard Battery Service, 220-222 Ellisville Blvd.
MCCOMB
Mikell Battery & Supply Co., P. O. Box 308
MERIDIAN
Meridian Service Station & Battery Co., 917 26th Ave.
PHILADELPHIA
The Cole Bros. Company, 5th Beaman Street
QUITMAN
Reliable Welding & Radiator Co., 102 South Railroad Ave.
SARDIS
Ledon's Service & Parts
TUPELO
Bryson Auto Parts, 203 Glenview Ave.
VICKSBURG
Genuine Parts Service, Inc., 801 South Madison St.

MISSOURI

ARMED
Baker Truck & Implement Co.
BARNHART
Rose Service Oil Company
BOONVILLE
Don Harrison Service, 909 Shamrock Terrace
BOWLING GREEN
Moon Wise Shell
CANTON
Canton Auto Supply, 140 Clark
CAPE GIRARDEAU
Cape Tire Trading Co., 2222 Kingsway Drive
CHILLICOTHE
Motor Supply Co., 1120 Elm St.
CRYSTAL CITY
Crystal City Auto Parts Co., P. O. Box 75
FERGUSON
Kaline Storage Battery Co., 720 Carson Rd. (21)
FREDERICKTOWN
Friendly Service Oil Company
HAYTI
Curley's Service Station
JEFFERSON CITY
City Tire & Battery Co., 1639 W. Main St.
Arthur W. Ellis, Inc., 109-13 W. Dunklin St.
JOPLIN
Hardick Tire & Appliance Co., Third & Virginia
KANSAS CITY
Lobbe Bros., Inc., 3756 Broadway
Charles Noll Co., 1717 Oak St. (8)
Northeast Auto Supply, 3105 Independence Ave.
KENNETT
Baker Implement Company, Box 308
LAMAR
King Tractor & Feed Company
LOUISIANA
Abel Oil Co., 500 Georgia St.
MARYVILLE
Motor Parts & Equipment Co., 118 West 3rd
NORTH KANSAS CITY
Barclay Automotive Supply, Inc., 1139 Swift
ST. CHARLES
H. C. Cobb & Co., Inc., 1127 Clay St.

174

MISSOURI (Cont'd)

ST. JOSEPH
Criswell Oil Co., 916 So. Sixth St.
Motor Parts & Equipment Co., 1221 Frederick Ave. (58)
Norman Tire & Supply Co., 910 S. Sixth St.
ST. LOUIS
Hilbert's Shell Station, 5843 Natural Bridge
St. Louis Auto Parts Co., 3600 Gravois Ave. (18)
Siegel Auto Supply, 6411 Raymond Ave. (5)
South Broadway Auto Parts Co., 7610 S. Broadway
C. Carl Stanfield Supply Co., 6101 Delmar Blvd. (12)
SENATH
Storey Auto Parts
SPRINGFIELD
Thompson Sales Co., 727 St. Louis Ave., P. O. Box 1007 S.S.
STANBERRY
Jerry's Station Supply, Box 209
WASHINGTON
Purcell-Ellis Tire Co., 427 Elm St.

MONTANA

BILLINGS
Montana Motor Supply Co., 3005 First Ave., North
BOZEMAN
Montana Motor Supply Co., 20 West Main St.
CONRAD
K-T Auto Parts, Fourth & Dakota St.
DILLON
Montana Motor Supply, Inc., 35 North Idaho St.
GLENDIVE
Glendive Auto Parts Co.
GREAT FALLS
General Truck & Tractor Co., P. O. Box 1952
HAMILTON
Motor Parts Co., 337 W. Main St.
HELENA
Montana Motor Supply Co., 430 North Main
KALISPELL
Kalispell Motor Supply Co., P. O. Box 558
LEWISTOWN
Merry Motor Co., 312 Jamison
LIBBY
Kalispell Motor Supply
LIVINGSTON
Montana Motor Supply Co., 213 S. Main St.
MISSOULA
Missoula Motor Parts, 126 W. Main St.

NEBRASKA

BEATRICE
L. J. Mesner Co., 110 North 7th St.
CALHOUN
Hutson Auto Supply, 135 Main St.
FAIRBURY
L. J. Mesner Co., 520-24 Fourth St.
HASTINGS
L. J. Mesner Co., 207 N. Lexington St.
HOLDREGE
L. J. Mesner Co., 320 East Ave.
LINCOLN
L. J. Mesner Co., 1941 O St.
MC COOK
L. J. Mesner Co., 110-12 W. Third St.
OMAHA
Al's Auto Supply Co., 924 North 24th
2402 L St.
Cornhusker Oil Co., 1617 Leavenworth St. (2)
Neal Tire Store, 2606 St. Mary's
Weimer Auto & Home Supply Co., Inc., 209-19 North 13th St.

NEBRASKA (Cont'd)

TOBE
L. J. Mesner Co., 807 Main St.

NEVADA

LAS VEGAS
Western States Distributors, 1531 South Main St.
RENO
Nevada Auto Supply Co., 1595 E. Second St., P.O. Box 128

NEW HAMPSHIRE

GORHAM
Community Oil Co., Inc., Station 4
MANCHESTER
Bailey Distributing Corp., 30 Granite St.
NASHUA
Nashua Battery Shop, 2 Otterson St.
PINKHOUTH
Community Oil Co., Inc., 610 Arlington St.
WOLFEBORO
Carroll County Tire Company, Factory Street

NEW JERSEY

ASBURY PARK
All Auto Parts Co., Inc., 705-707 Main St.
ATLANTIC CITY
J. C. Miller Co., 2701 Artic Ave.
BENGENFIELD
B & C Auto Supply, 92 S. Washington Ave.
BRIDGETON
Motorcar Service Co., 21 E. Commerce St.
CAMDEN
Jersey Supply Co., 1251-53 Sycamore St. (3)
Weinberg's Auto Supply, 3025 Broadway
COLLINGSWOOD
Wagner, Inc., Crescent Blvd. at Haddon Ave.
DOVER
Dover Auto Replacement Parts, Elsworth & Prospect Streets
EAST ORANGE
C.K. Battery Distributors, 314 Sanford St.
EDISON
Kilmer Distributors, Plainfield Ave. opposite Conn Kilmer
ELIZABETH
Siegel Tire & Auto Supply, 1089 Elizabeth Ave.
FREEHOLD
Monmouth Auto Parts Co., 47 South St.
HACKENSACK
B & C Auto Supply, 609 Main St.
Carburetor & Ignition Repair Co., Passaic & First Sts.
HAWTHORNE
J. C. Miller Co., 17th St. at Bellevue Ave.
JERSEY CITY
Commercial Exchange Co., 667 Communipaw Ave. (4)
LODI
Lodi Tire Exchange, 79 South Main Street
MORRISTOWN
W. H. Dutton Co., 117 Speedwell Ave.
NEWARK
Electric Battery Co., 375 Central Ave. (4)
NEWTON
J. H. Roof, 41 Main St.
OAKLYN
Toots Lee Automotive Supplies, 1018 White Horse Pike (4)
ORANGE
Richard G. Pfeiffer, Inc., 18 Park Pl.

NEW JERSEY (Cont'd)

PATERSON
Reliable Magneto Repair Co., 20-22 Prince St. (1)
PERTH AMBOY
C & D Auto Parts, 307 Smith St.
PORT PLEASANT
[illegible] Tire Company, 2115 Oak St. (Off River Ave.)
SOMERVILLE
J. Dubinowitz, 78 Franklin St.
SOUTH AMBOY
South Amboy Auto Parts Co., 125 N. Broadway
TRENTON
Tex Wholesale Distributors, 354 South Warren St.
VINELAND
Albert J. Troxell, 1189 Sharp Road
WESTVILLE GROVE
Southwood Wholesale Distributors, Delsea Drive & Tyne St.
WOODBURY
Woodbury Auto Supply, 116 S. Broad St.

NEW MEXICO

ALBUQUERQUE
Gatewood Bros. Supply, Inc., 921 Fourth St., N. W.
ARTESIA
Midwest Auto Supply Co., 330 Main St.
CARLSBAD
Auto Parts Co., 310 S. Canyon
CLOVIS
Central Auto Electric, 221 West Seventh
GRANTS
Grants Auto Supply, Marthem Corner
LOVINGTON
Woodward Auto Supply, P. O. Box 335
PORTALES
Dean's Automotive Service, 105 S. Abilene Ave.
ROSWELL
Izard Tire Co., Main at Walnut Sts., Box 935
SAN JON
San Jon Auto Parts, Box 77
SANTA FE
Closson & Hanna Co., P. O. Box 1652 (330 Hanosok St.)
SANTA ROSA
Santa Rosa Automotive Parts, Box 47
SILVER CITY
Parrish Distributing Co., 1002 Pope Street
TUCUMCARI
Tucumcari Automotive Parts, P. O. Box 697

NEW YORK

ALBANY
Pearlese Auto Parts Co., 251 Central Ave. (6)
AUBURN
Auburn Unit Parts, 21 Dill St.
BATAVIA
Auto Supply Co., 115 West Main St.
Roberts Radiator Service, 349 W. Main St.
BATH
Bath Auto Parts, 6 South Avenue
BINGHAMTON
Auto Supply Distributing Co., 35 South Washington St.
BOONVILLE
Flint Auto Supply Co., 175 Main St.
BROOKLYN
D & N Auto Parts, Inc., 490 Montgomery St. (25)
A. Jungkind, 336 St. Marks Ave. (38)
Madison Magneto Co., Inc., 1147 Bedford Ave. (16)
BUFFALO
Higelow's Kendall Service, 3007 Abbott Road (28)
Unit Parts Corp., 1339 Main St. (9)

NEW YORK (Cont'd)

CATSKILL
Pitcher Accessories, Inc., 446 Main St.
CORTLAND
Kellogg Auto Supply Co., 155 Main St.
DANSVILLE
Dansville Auto Parts, Inc., 188 Main St.
EAST AURORA
Logan & Youngers Automotive Supplies, Inc., 731 Main St.
ELMIRA
James Stephen, 322 Broadway
FLUSHING
North Shore Auto Parts Co. of Flushing, Inc., 137-40 Northern Boulevard (54)
FREDONIA
Fen's Parts Service, 75-77 West Main St.
GLEN FALLS
Air-Land Motor Parts, Inc., 23-25 Bay St.
GRANVILLE
Air-Land Motor Parts, Inc., 15 Main Street
GREAT NECK, L. I.
Instrument Associates, 351 Great Neck Road
HEWLETT
Schmidt Distributors, Inc., 1717 Broadway
HIGHLAND
D & D Auto Supply, Route 9-W
HORNELL
Griffin General Tire Service, Inc., 46 Broadway
The Frank B. Peck Co., 7-11 Seneca
HUDSON
Pitcher Accessories, Inc., 736 Columbia St.
HUDSON FALLS
Air-Land Motor Parts, Inc., 250 Main St.
HUNTINGTON
Howard M. Munson, 197 New York Avenue
HUNTINGTON STATION, L. I.
C. Neville & Co., 139 W. Jericho Turnpike
ITHACA
Tioga Auto Parts, 424 W. State St.
JAMAICA, L. I.
Sun-Rock Auto Parts, 154-16 Rockaway Blvd. (34)
JAMESTOWN
J. S. Auto Supply Co., 1082 E. Second St.
KINGSTON
Royal Tire Service, 15 Railroad Avenue
LOCKPORT
Lockport Automotive Supply Co., Inc., 10 Lock St.
LONG BEACH, L. I.
Stanley Auto Parts, 452 Long Beach Blvd.
LONG ISLAND CITY
Max Finkelstein, Inc., 30-20 Newtown Ave.
Rappaport Corp., 30-01 Northern Blvd.
Laurence Stahl & Co., Inc., 10-17 43rd Rd.
MALONE
Plattsburg Motor Service, Inc., 21 Mill St.
MASPETH
Maspeth Auto Parts & Service, 66-18 Grand Avenue (78)
MASSENA
Plattsburg Motor Service, Massena Corp., E. Orvis St.
MEDINA
Medina Parts Co., Inc., 345 Main St.
MIDDLE VILLAGE
Glen Auto Parts, Inc., 61-61 Metropolitan Avenue (79)
MIDDLETOWN
Electric Auto Systems Service, 11 Centre St.
MINEOLA
Community Filling Stations Corp. of Long Island, 734 Herricks Rd.
Walters Distributing Co., Inc., 344 Herricks Road
MONAVK
Sentling Petroleums, Inc., Port Herriner Road

3518

125

29

NEW YORK (Cont'd)

MT. KISCO
Mt. Kisco Auto Parts & Machine Shop Service, 96-98 Lexington Ave.
NEWARK
Unit Parts Newark Corp., 193 East Union St.
NEW HYDE PARK
C. Neville & Co., Jericho Turnpike & Denton Ave., P.O.Box 177
NEW ROCHELLE
County Motor Products, Inc., 144 Huguenot St.
NEW YORK
Arrow Ignition Service, 8 Rose St. (12)
Ben's Auto Parts Co., 3687 White Plains Ave. (67)
Clover Auto Parts, Inc., 318 East 167th St. (56)
Cybert Tire Corporation, 726 - 11th Ave. (19)
Excel Auto Parts Distributors Co., 2088 Amsterdam Ave. (32)
Exide Battery Warehouse, 208-3 W. 46th St. (19)
Lite Sales Corporation, 1436 Boston Rd. (56)
Magneto Repair Corporation, 197 Franklin St. (13)
Olinville Auto Supply Co., 3633 White Plains Ave. (67)
William's Battery & Supply, 3955 Bronxwood Ave. (66)
NEWBURGH
Schwartz Tire Co., Inc., 243 Broadway
NIAGARA FALLS
Niagara Auto Supply, 3105 Pine Ave.
NORWICH
Tansey's Auto Supply, 13 Birdsall St.
OLEAN
Olean Unit Parts, Inc., 422 West Street
ONEONTA
W. I. Cross, 32-34 Broad St.
Ferguson Auto Supply, 160 River Street
PATCHOGUE, L. I.
George Waldbauer & Son, Inc., 21 Havens Ave.
PEEKSKILL
E. W. Peterson, 612 South Street
PENN YAN
Napales Auto Parts, Delano Place
PLATTSBURG
G & G Garage, 13-15 Charlotte St.
Plattsburg Motor Service, 95 Bridge St.
PORT JERVIS
N. R. Hulley Auto Parts, 18 Fowler St.
PORT WASHINGTON, L. I.
Al Skinner Auto Electric, 28 Willowdale Ave.
PUTNAM
Scanlon Auto Parts, 18-20 Water Street
POUGHKEEPSIE
Queen City Distributors, Inc., 239 Mill St.
ROCHESTER
Auto Supply & Parts, Inc., 955 North St.
Main Tire & Accessory Co., Inc., 119 St. Paul St. (5)
Meinrich Motors, Inc., 214 Lake Avenue (6)
Shield Supply Co., Inc., 375 Gregory St.
Unit Parts Rochester Corp., 1[illegible] Main Street (9)
[illegible] Ridge Road, West
[illegible] Ames Avenue
Veteran's Auto Parts, 1060 Lee Road (13)
ROME
Long's Auto Electric, 278 E. Dominick St.
ROSLYN
Gordan Tire Co., Inc., 1077 Northern Blvd.
SARANAC LAKE
Plattsburg Motor Service, 37 Woodruff St.
Standard Tire & Supply, 120 Broadway
SCHENECTADY
Goow F. Beekman, Inc., 17 South Church St. (5)

NEW YORK (Cont'd)

SILVER CREEK
N. Schenk Auto Parts, Lincoln & Montgomery Sts.
SPRINGFIELD GARDENS
Davis Tire Service, Inc., 221-18 Merrick Blvd. (13)
SYRACUSE
Niles Auto Supply, Inc., 766 W. Genesee St. (4)
TOMPKINSVILLE, STATEN ISLAND
D & H Motive Parts Co., 290 Bay St. (1)
TOWN LINE
Gardenville Auto Parts, 6511 Broadway
TROY
Bruno Bros. Sales Corp., 333 Second Ave.
Clark D. Perry, 2817 6th Ave.
UTICA
Cahill Auto Supply Co., Inc., 211-213 Elizabeth St. (2)
Rack's Tire & Battery Service, 110 Broadway (2)
WATERTOWN
Garland City Parts Corp., 400 Mill St.
WILLISVILLE
Arroyo & Lye, 26 Jefferson St.
WOODSIDE, L. I.
Schaffer's Garage Equipment Corp., 69-02 Woodside Avenue (77)
YONKERS
John J. Lynch Automotive Supplies, 71 Yonkers Ave.

NORTH CAROLINA

ASHEVILLE
Hayes & Hensen, Inc., 20 South Spruce St.
Sprouse Automotive Supply, Inc., 67 Biltmore Ave.
BURLINGTON
Sumner Auto Supply, Cor. Front & Church Sts.
CHAPEL HILL
Southern Parts & Electric
CHARLOTTE
Battery & Ignition Distributors, 3901 Commonwealth Ave.
Carolina Auto Supply House, Inc., 2122 Freedom Dr., P.O. Box 2135
Joint & Clutch Service, Inc., 909 South 21st St.
DURHAM
Southern Parts & Electric, Inc., 302 Morgan St.
ELIZABETH CITY
Albemarle Automotive Supply Co., Inc., 303-305 N. Water St.
FAYETTEVILLE
Fayetteville Supply Co., Inc., 112 Gillespie St.
GASTONIA
Moore & Stewart, Inc., 121-127 E. Franklin St., Box 591
GREENSBORO
Master Service Station, 101 S. Greene St.
Motor Supply Co., Inc., 222 Commerce Place, P.O. Drawer 1890
HENDERSON
Standard Motor Parts Co., Inc., 403 S. Garnett St., P.O. Box 161
HICKORY
The Flowers Co., 16 First Ave., S.E.
HIGH POINT
Collins Auto Supply Co., Inc., 153 S. Wrenn St.
Hiatt Tire Company, 295 West Green St.
KINSTON
S. & A. Parts Co., 127 W. Gordon St.
LEAKSVILLE
Murphy Distributing Co., 407 West Street
LENOIR
The Flowers Co.
LEXINGTON
Auto Specialty Company, 518 N. Main St.
LUMBERTON
Prevatte Auto Supply, 108 Elm St.
MORGANTON
The Flowers Co., 211 E. Union

NORTH CAROLINA (Cont'd)

NEW BERN
Iwes Oil Co., 926 Cypress St.
RALEIGH
Quality Sales Co., 726 W. West Street
REIDSVILLE
Eggleston Bros., 412 N. Scales St.
STATESVILLE
The Figures Company, 213 S. Meetins St.
THOMASVILLE
Collins Auto Supply Co., Inc., 5 National Highway
WILMINGTON
Jewell & Strickland Auto Parts Co., 5 North 3rd St.
WILSON
Raymond H. Jones, Distributor, 1301 So. Goldsboro St.
WINSTON-SALEM
Burk's Auto Supply, 1625 Marne St.
Parker Auto Parts Co., 530 Waughtown St.

NORTH DAKOTA

FARGO
Barg Fargo Motor Supply, Inc., 32h Northern Pacific Ave.
GRAND FORKS
RCA Auto & Welding Supply, 513 10th Ave., So.
MINOT
Minot Parts & Service Co., Inc., 302 First Ave., S.W.
Westlie Motor Co., 113-119 Central Ave., W.
WAHPETON
Auto Parts Company, 1002 Dakota Avenue
WILLISTON
Northern Auto Parts, Inc., 123 West 1st Ave.

OHIO

AKRON
The Hardware & Supply Co., 475 S. High St. (11)
Thrush Wholesale Supply, 1750 Newton St. (5)
ALLIANCE
Bassett Battery & Ignition Service, 549 S. Seneca Ave.
ASHTABULA
Ashtabula Appliance Center, Inc., 1401 Main Ave.
BARBERTON
Richards Auto Service, 1158 Wooster Rd., West
BEDFORD
Gust & Adolf Auto Parts, Inc., 27750 Broadway
BELLEVUE
Bellevue Home & Auto Supply, Inc., 214 West Main St.
BOWLING GREEN
Gen Electric Co., 326 S. Main St.
BRYAN
Dick's Auto Electric, 213 South Walnut St.
BUCYRUS
Ed Colcott Sales Warehouse, 137 S. Broadway
CANTON
Bowlus Service Co., 409 Third St., S. W. (11)
Cain's Generator & Armature Co., 219 Navarre Road
CELINA
Cron Tire & Supply Co., 215 S. Main St.
CINCINNATI
Auto Rad Supply Company, Central Parkway & Race St. (10)
Center Battery Co., 1719 East St. (3)
Commercial Fleet Tire Sales, 1705 Harrison Ave. (14)
Queen City Rubber Co., 3018 Robertson Ave. (9)
Rapid Tire Service Co., 401 Plum St. (2)
Riedy Tire & Battery Service, 2934 Vine St. (19)
CLEVELAND
Barry Cleveland Corp., 2183 West 26th St. (13)
Brenner Auto Supply, Inc., 4472 Pearl Road (9)
Broadway Petroleum Corp., 2108 Miles Ave. (5)
Broadway Petroleum Tbk Div., Inc., 595 East 185th St.

OHIO (Cont'd)

CLEVELAND (Cont'd)
Cleveland Ignition Co., 1084 Lower Ave. (8)
Continental Cleveland Corp., 1300 E. 40th St. (14)
Fulton Auto Wrecking Co., 7300 Fulton Road (13)
General Industrial & Auto Supply Co., 7530 Carnegie Ave. (15)
H & H Auto Supply, 8030 St. Clair Ave. (8)
Henry's Auto Parts, 6807 Lorain Avenue (2)
Ignant's Town Tire Co., 5775 Broadway (27)
Matt's Auto Parts, 11433 Buckeye Road (4)
Monterey Auto Parts, 11915 Miles Ave.
Walter J. Mueller, Inc., 1336 Superior Ave., N.E. (14)
The Parker Refining Co., 265 Jefferson Ave. (13)
Parkwood Tire & Supply Co., Inc., 11681 Superior Ave. (6)
Service Parts Co., 1452 W. 25th St. (13)
Still's Auto Supply, 5859 Ridge Road (29)
Superior Auto Parts of Cleveland, Inc., 7711 Superior Ave. (3)
The Sussen Rubber & Supply Co., 3017 E. 65th St. (3)
Trask Auto Parts, 9313 Wade Park Ave. (6)
COLUMBUS
Don S. Harris, 1409 Grandview Ave. (12)
DAYTON
Mayo Oil & Supply Co., 315 Kirtham St. (8)
Mayo-Shedd Sales Co., 315 Kirtham St. (8)
Standard Parts Co., 26 Washington St. (2)
DOVER
Dover Auto Parts, Inc., 121 Wooster Ave.
EAST LIVERPOOL
Mayo Oil Co., Fifth & Broadway
Parts Service Company, 311 West Fourth St.
EAST PALESTINE
Rockenberger Motor Parts Service, 136 E. Market St.
FAIRVIEW PARK, CLEVELAND
Clatterbuck Auto Parts, 22017 Lorain Ave. (26)
FINDLAY
Allison Parts & Equipment Co., 205-207 N. Main St.
FRANKLINTON
Layman's, 643 Third St.
FREMONT
The Fremont Oil Co., 1449 W. State St.
GREENVILLE
Cedar Point Auto Supply, R.R. 2, U.S. Route 36
Iddings Auto Parts, Route #36
HAMILTON
R. W. Marcenette, 908-910 S. Erie Blvd.
HARRISON
Harrison Auto Parts, State St. (Next to theatre)
IRONTON
Carl Morits Service Station, 3030 S. Third St.
LAKEWOOD
Lakewood Battery & Ignition Co., 16215 Madison Ave. (7)
LANCASTER
White Motor Sales, 342 Lincoln Ave.
LIMA
Gearhart Automotive, 211 S. Union St.
LORAIN
Hagenan Supply Co., 1750 Broadway
MAPLE HEIGHTS
Campbell Oil & Supply Co., 5145 Dunham Road,(P. O. Bedford)
MARIETTA
Knabe Brothers, 113 Front St.
MASSILLON
The Hardware & Supply Co., 4135 Lincoln Way East
MEDINA
Stanley E. Herwig Co., 111 West Smith Road
NEWARK
Superior Auto Parts & Machine Co., Inc., 201-205 W. Main St.
NEWCOMERSTOWN
N. E. Leading Tire Co., 223 W. Main St.

176

OHIO (Cont'd)

NORWOOD
Dorman Automotive Parts Co., 3816 Montgomery Road (12)
OXFORD
Oxford Auto Parts, 12 South Beach St.
PAINESVILLE
Heath Auto Service, Inc., 249 E. Jackson St.
PIQUA
Kaye Oil & Supply Co., 111 College St.
PORTSMOUTH
Ed Lockner Auto Supply, 818 Chillicothe St.
RITTMAN
B & W Oil Co., 17 North Main St.
SALEM
Lippert Battery Co., 736 East Pershing St.
SANDUSKY
Automotive & Marine Supply Co., Inc., 230 Hancock Ave.
SPRINGFIELD
Springfield Tire & Battery Co., 236-38-40 W. Main St.
STEUBENVILLE
Standard Spring & Axle Supply Co., Inc., 214 North Sixth St.
STILLWATER
Laurel Valley Oil Company
SUGAR TREE RIDGE
R. W. Marcomette
TIFFIN
John Mallett Division, The Fremont Oil Co., 52 Fairfield Ave.
TOLEDO
The Huebner Supply Co., 20 Erie St. (12)
Miller Oil, Inc., 1033 South Ave. (9)
UHRICHSVILLE
Rainsberger Electric Service, 411 East 4th St.
WARREN
Ward's Auto Parts, 502 E. Market St.
WICKLIFFE
Northern Ohio Auto Parts, Inc., 29017 Euclid Avenue
XENIA
The Xenia Standard Parts Co., 25-27 East Second St.
YOUNGSTOWN
J. A. Barber & Son, 13-19 E. Woodland Ave. (2)
The Baker-Marsh-Woods Co., 2508 N. Raven Ave. (1)
ZANESVILLE
Linscott's Texaco Service, 401 Putnam Ave.
Earl Miller, Inc., 931 Merrick Ave.

OKLAHOMA

ALTUS
Badger Oil Co., 621 S. Main, Box 112
ARDMORE
Lyndon Lindley, 11 First St., S.W.
BOWLEGS
Frank Brothers Oil Company, P. O. Box 187
CLINTON
Robinson Auto Supply, 123 South 4th Street
DUNCAN
Duncan Battery & Electric Shop, 15 S. 11th St.
ENID
Chappell Oil Co., 230 West Maine, P. O. Box 1069
GUTHRIE
T. S. Wood Supply Co., 114 N. Manta
LAWTON
Homer's Tire Service, 532 E St.
MC ALESTER
McCoy's Auto Parts, 1106 N. Main
MUSKOGEE
Eager Tire & Battery Service, 618 West Broadway, P.O.Box 258
NORMAN
Van Pick Oil Co., 302 E. Comanche

OKLAHOMA (Cont'd)

OKLAHOMA CITY
Capitol Tire & Supply Co., 1200 W. Reno
Dryer, Clark & Dryer Oil Co., 701 S. W. Third
1119 Classen Drive
3101 N. Walnut
Ray's Supply Company, 820 W. Main
PURCELL
Jack's Oil Company, 401 South 6th St.
TULSA
Tom F. McDermott, Inc., 1400 S. Boston Ave.

OREGON

BAKER
McDell Auto Parts, 1719 Main St.
BEAVERTON
Beaverton Auto Parts, 538 E. Broadway
BEND
Cascade Auto Parts, 299 Greenwood Ave.
EUGENE
George Myrne & Sons, 1937 Franklin Blvd.
Wyatt's, 390 W. 11th St.
LA GRANDE
Ray Farman Supply Co., 1114 Adams Ave.
MEDFORD
Ken Jennings Tire Co., 229 N. Riverside Ave.
OAK GROVE
A. C. Distributing, P. O. Box 435
PENDLETON
C & J Motor Supply, 135 S. E. First St.
PORTLAND
Wiggins Company, Inc., N. W. Park & Couch Sts. (9)
SALEM
Salem Auto Parts Co., 356 N. Liberty St.
WASCO
Interstate Wholesale Distributors, P. O. Box 398

PENNSYLVANIA

ALLENTOWN
Allentown Wholesale Distributing Co., Penn & Crown Streets
Rex, Incorporated, 718 Aller St.
ALTOONA
Lyons Battery & Electric Co., 2501 Union Ave.
ASHLAND
Ashland Auto Parts, 1005 Centre St.
BARNESTOWN
Clinton Built Battery Co., Box 135, Rt. 8
BELLEFONTE
Keystone Tire Service, 121 S. Potter St.
BETHLEHEM
Rex, Incorporated, 640 Fifth Ave.
BLOOMSBURG
Shoemaker Auto Supply Co., 327 Scott Avenue
BRISTOL
Standard Auto Parts, 513-15 Bath St.
BROWNSVILLE
Benjamin Automotive, National Pike, East
BATH MAWR
Aviation Automotive Parts of Wyn Mawr, Inc., 600 Lancaster Ave.
CANONSBURG
Canon Auto Parts Co., 1 S. Jefferson St.
CARNEGIE
Tri-State Mfg. & Supply Co., Inc., 251 E. Main St.
CHESTER
Motorcar Service Co., 805 Sproul St.
CLEARFIELD
Keller & Wolfel, Distributors

Page 15 >

PENNSYLVANIA (Cont'd)

COATESVILLE
Motorcar Service Co., 719 E. Chestnut St.
DOYLESTOWN
Doylestown Auto Parts Co., North Main St.
EAST PITTSBURGH
Self Service Auto Parts, Electric & Wood Streets
EASTON
Abe, Incorporated, 16th & Northampton Sts.
Way Bros., 119-121 S. Third St. (3)
EDGINGTON
Auto Equipment & Parts, 7815 Bristol Pike
EPHRATA
Earl H. Gordon, Inc., 509 W. Main St.
ERIE
G. J. Miller Auto Supply, 1911 State St.
EVANS CITY
Ed. Spithaler Automobile & Electric Supplies, 236 E. Main St.
EVERETT
Bedford Valley Petroleum Corp., Rt. #1
Service Electric Co., Ridge Ave. & Main St.
FORD CITY
Edward A. Kirkwood, 611 Third Ave.
GREENSBURG
Peerless Gasoline Co., 731 S. Main St., P. O. Box 145
GREENVILLE
Burns Auto Parts, Inc., 136-138 Main St.
HARRISBURG
R & H Distributors, 2327 Walnut St. (Penbrook)
Schneider & Young, Inc., 1015 South 29th St.
HAZLETON
Automobile Supply Co., 210-16 E. Green St. (1)
Samuel Gildenberg, 39 W. Diamond Ave.
JEANNETTE
Lincoln Motive Parts, Inc., 20 Lincoln Way East
JOHNSTOWN
County Auto Equipment, Inc., 66 Valley Pike
KANE
Kane Auto Parts Co., 127 Fraley St.
KINGSTON
S. MacGeorge Parts & Equipment, 393 Ridge Ave.
LA JOSE
C. F. Dotra Automotive Service
LANCASTER
Herr Thompson Oil Co., Inc., 653 S. Prince St.
Jack's Auto Parts, 214 West Orange Street
Robert L. Myers, 515 New Holland Ave.
Jerome H. Rhoads, 213 N. Prince St.
Zercher Automotive, Inc., Lincoln Highway East, R.D. #4
LATROBE
Rose D. Staub, 700 Chestnut St., P. O. Box 41
LEXINGTON
Lacah Motor Parts, 131 North Second Street
LEWISTOWN
Schneider & Young, Inc., 1009 Market St.
LEWISTOWN
Smith Tire Sales, 59? West Fifth Street
LOCK HAVEN
Economy Tire & Auto Parts Co., 16 W. Church St.
MC KEESPORT
McKeesport Tire Center, 639 Atlantic Ave.
MEADVILLE
Sandberg Bros., 813-819 Park Ave.
MONONGAHELA
Key Auto Supply, 111 Main St.
MOUNT CARMEL
Big Boys Auto Parts Co., Inc., 45 N. Oak St.
MT. JOY
Jack's Auto Parts, 61 West Main St.

PENNSYLVANIA (Cont'd)

NEW CASTLE
Storage Battery & Electric Service Co., 111 N. Mercer St.
NORRISTOWN
Aviation Automotive Parts of Norristown, Inc., 352 West Main St
PHILADELPHIA
Baker & Yoder, Inc., 109 N. 22nd St. (3)
Battery Sales & Service of Phila., 5031 Cottage Street (36)
Braunstein Auto-Tire & Supply Co., 6905 Torresdale Ave. (35)
Germantown Battery Service, 315 E. Chelten Avenue (44)
Holmestern Battery & Supply, 5311 Cottage St. (36)
Integrity Automotive Parts, 1030 Ellsworth St. (47)
Jack's Battery Service, 618 Wolf St. (48)
K. M. Auto Supply Co., 1333 North Broad St. (22)
Lancaster Auto Supply Co., 4500 Lancaster Ave. (31)
7225 Woodland Ave. (42)
Lamia's Tire Service, 595 Armstrong St. (44)
Maryner Auto Supply, Inc., 3943 Lancaster Ave. (4)
Motor Ignition Co., 1526 Fairmount Ave. (30)
Philadelphia Wholesale Distributors, Inc.,
5913-25 Ridge Ave. (28)
John J. Rapotto, 8313 Childs Ave. (18)
Southwest Auto Parts, 4800 Woodland Ave. (43)
Tri-State Distributors, Lehigh Ave. & 17th St. (32)
U. S. Motor Service Company, 6126 Market Street (39)
Walsh Tire Supply, F & Luzerne Sts. (24)
PHOENIXVILLE
Phoenix Auto Parts, Nutt Road
PITTSBURGH
Acme Tire Service, 10th & Sarah Sts. (3)
East End Battery & Ignition Co., 6320 Penn Ave.
Genuine Motor Parts of Pennsylvania, Inc., 4927 Penn Blvd.(13)
Edwin L. Goodwin, Agent, 10518 Lindberg (35)
Key Auto Supply, 802 N. Homewood Ave. (8)
W. J. Opperman, 4151 Library Road (34)
POTTSTOWN
Bottle Auto Parts, Inc., 416 Chestnut St.
POTTSVILLE
Quality Auto Parts Co., 500 W. Arch St.
PROSPECT PARK
Motor Parts Service, 601 Chester Pike
QUARRYVILLE
Jack's Auto Parts
Jerome H. Rhoads, R. D. #3
READING
Arlington Heffert, 1050 Buttonwood St.
RIDGWAY
E & O Auto Parts & Supply, 109 N. Broad St.
ST. MARYS
Keller & Wolfel, Distributors, Washington St. E.
ST. THOMAS
H. C. Barnes & Son, P. O. Box 195
SCRANTON
Penn Auto Service & Supply Co., 466 South Washington Ave.
Charles D. Scott Co., 119-123 Franklin St. (3)
SLIPPERY ROCK
Marsden's Esso Service, 119 Franklin St.
SOMERSET
County Auto Equipment, Inc., 373 E. Main St.
STATE COLLEGE
Clark Auto Equipment Co., 938 W. College Ave.
STROUDSBURG
Penn Auto Service & Supply Co., 1713 W. Main St.
SUNBURY
Big Boys Auto Parts Co., Inc., 173-177 S. Second St.
TAMENTUM
G B S Auto Parts, 114-116 W. Seventh St.
TOWANDA
The Charles D. Scott Co., 617 Main St.

177

PENNSYLVANIA (Cont'd)

UPPER DARBY
Aviation Automotive Parts, Inc. of Upper Darby, 7300 West Chester Pike

WAYNESBURG
Townhouse Auto Parts, 151 Columbia Ave.

WEBSTER
Calumet Motor Supply, 751-753 E. Railroad Ave.

WARREN
Parish Battery & Electric Service, 6 Market St.

WASHINGTON
Andy Bros. Tire Shop, 332 West Chestnut St.
Burds Auto Electric, 251 N. Franklin St.

WAYNESBURG
Saxton's Automotive Replacements, 143 W. High St.

WESTFIELD
Westfield Auto Parts Co., Main St.

WILKES-BARRE
Kilcoe Auto Store, 60-62 N. Main St.

WILLIAMSPORT
Clark & Haag Tire Sales, Inc., 505 Market St. (8)

WINDBER
County Auto Equipment, Inc., 1105 Graham Ave.

YORK
Wm. H. Miller, Distributor, 318 Overbrook Drive
Lee Williams Auto Supply, 635 W. Market St.

RHODE ISLAND

CRANSTON
Burnee Rubber Co., Inc., 750 Reservoir Ave. (10)

NEWPORT
Newport Tire Corp., 307 Thames St.

PAWTUCKET
W. E. Davis Co., 34 Montgomery St.
Mazzolini's Auto Supply, New Port & Columbus Ave.
Standard Auto Supply, 467 Central Avenue

PROVIDENCE
City Tire Company, 210 Allens Avenue
W. E. Davis Co., 401 Broad St. (7)

SOUTH CAROLINA

ANDERSON
Motor Parts Co., 212 S. McDuffie St.

CHARLESTON
Gibson Tire Service, 511-513 Meeting St.

COLUMBIA
Cato-McLaurin Co., 1720 Taylor St., Box 5268

FLORENCE
Carolinas Auto Supply House, Inc., 129 N. Irby St.

GREENWOOD
Cecil R. Hindsley, Dist., 1117 Main St.

ORANGEBURG
Superior Battery Co., 749 Russell St. - S.C.

SOUTH DAKOTA

ABERDEEN
Arne Supply Co., 1017 S. Main

HURON
Automotive Supply Co.

MITCHELL
Automotive Supply Co., 500 N. Main St.

RAPID CITY
Puritan Supply Co., Third & Main, P. O. Box 1193

SIOUX FALLS
Dakota Auto Parts Co., 311 North Phillips Ave.

WATERTOWN
Burd & Vika, Inc., 102 W. Kemp

TENNESSEE

ALAMO
J. N. Collins Auto Parts Co., Inc.

BRISTOL
Blevins Tire Co., 11 - 7th Street

CHATTANOOGA
Tire Service Co., 341 Chestnut St.

COVINGTON
B & W Auto Parts, 118 S. Maple Avenue
Sanford Auto Supply

DYERSBURG
J. N. Collins Auto Parts Co., 201 E. Court St.

GREENVILLE
Hegyles Rubber Oil Co., 100-110 South Irish St.

JACKSON
Paley's Auto Electric Service, 93 State St.
333 Tire Company, Baltimore & Church Streets

JOHNSON CITY
Holston Tire Co., Div. of Holston Oil Co., 101 Broadway
Southern Auto Supply Co. of Johnson City, 247 W. Market St., P. O. Box 209

KINGSPORT
Jaffer-Taylor Tire Service, Inc., 300 West Center St.

KNOXVILLE
B & L Brake & Supply, Inc., 317 W. Central Ave.
Sumter Bros. Battery & Equipment Co., 317 King Street

LEBANON
Chilton Co., Inc., 218 E. Main St.

MEMPHIS
Brooks Oil Co., 2906 Lamar Ave.
Delta Tire & Supply Co., Inc., P. O. Box 5973, Crosstown Sta.
Majestic Battery & Equipment Co., Inc., 750 Union Ave.
Sanford Home & Auto Supply, 1227 Thomas St.
Lee K. Smith, Distributor, 3160 Kinchan Ferry Road
Talley Auto & Home Supply Co., 2212 S. Third St.

MILFORD
Mumford Auto Supply

NASHVILLE
Wilson Cole Tire & Battery Co., 1117 Church St. (3)
Reed-Downing, Inc., 916 Third Ave., South

PULASKI
Tennessee Recappers, 435 N. First St., P. O. Box 116

RIPLEY
J. N. Collins Auto Parts Co., Inc.
Ripley Auto Supply Co.

SHELBYVILLE
Parsons Motors, 111 E. Main St.

SOMERVILLE
Somerville Auto Store

SWEETWATER
Southside Battery Co., E. F. D. #4

TIPTONVILLE
J. N. Collins Auto Parts Co., Inc.

TRENTON
J. N. Collins Auto Parts Co., Inc.

UNION CITY
Union City Tire Co., Inc., 221 S. Second St.

TEXAS

ABERNATHY
Pope's Parts Place, 405 West 11th (P. O. Box 115)

ABILENE
Barrett's Automotive, 933 S. Third St.

3523

TEXAS (Cont'd)

AMARILLO
Automotive Supply Co., 409 Tyler St. (P. O. Box 1719)
Dalton Auto Supply Co., 318 Harrison St.
Porter-Hanson Supply, 610 West 6th St.
ATHENS
E & T Auto Supply, 110 South Prairieville
BAYTOWN
Ted's Auto Parts, 1200 N. Main St., P. O. Box 638
BEAUMONT
Garner Supply Co., Milam & Neches Sts., P. O. Box 4095
BELTON
Frank Sefcik Auto Supply, 106 E. Central, P. O. Box 574
BONHAM
Gouge Battery & Electric, 1122 Star
BORGER
Lowry Auto Supply, 231 Main
BROWNFIELD
Lawson-Payne Machine & Supply, 313 West Main St.
BROWNSVILLE
Burton Auto Supply, Inc., 11th & S. T. Adams
CAMPBIO SPRINGS
John Stahl Machinery, P. O. Box 836
CHILDRESS
Childress Auto Supply, 411 Avenue "F", N. W.
CORPUS CHRISTI
Center Tire Service, 1501 South Staples Street
DALLAS
English Equipment Co., 3016 Gaston Ave.
South Dallas Battery Service, 1800 S. Ervay (1)
EDINBURG
Ray's Auto Supply, 923 E. Harrison St.
EL CAMPO
Engine Parts & Machine Shop, Inc., 119 E. Jackson St.
EL PASO
R. E. Wicker Co., 314-322 Mills St.
FARWELL
Hughes Auto Parts, 500 Fourth St.
FORT STOCKTON
West Texas Equipment Co., P. O. Box 627, 1300 N. Main
FORT WORTH
Battery Service Co., 4312 E. Belknap
Wiggins Tire & Supply Co., 1112 East Vickery
FRIONA
Welch Auto Supply, Inc., 508 Main St.
HARLINGEN
Burton Auto Supply, Inc., 602 West Van Buren
HOUSTON
Chinn Tire & Battery Co., 6820 Lyons Ave.
Dodson Battery & Electric Co., 2110 Fannin St. (2)
Marine & Petroleum Supply Company, 9126 Katy Road
Miller-Wahlberg Co., Inc., 1205 Smith St. (2)
Pete's Auto Supply, 2309 Jensen Drive
River Oaks Service Station, 3602 Westheimer
Sawyrac Battery Service, 1623 Harrisburg Blvd.
Southern Battery & Generator Service, 1933 Mc Carty Road
Southwest Tire Co., Inc., 5450 Navigation Blvd.
United Tire Service, 318 Austin Ave. (2)
KENEDY
Horn Auto Supply, 113 South Pine St.
LAMESA
Whitlow Battery & Electric Service, 105 N. Dallas St.
LAREDO
Santos Oil Company, 1302 San Bernardo Ave.
LEVELLAND
Levelland Auto Supply, 602 Houston St.
LITTLEFIELD
Hook & Forgrave Home and Auto Supply, 411 Phelps

TEXAS (Cont'd)

LUBBOCK
Barrett's Automotive, 1019-17th St., P. O. Box 958
LUFKIN
Curry McElroy Tire Co., 408 Atkinson Dr., P. O. Box 699
MATADOR
Matador Motor & Implement Company
MC ALLEN
Burton Auto Electric Co., 901 East Hiway
MC CAMEY
McCamey Electric & Appliance Co., 321 East Fifth Street (P. O. Box 743)
MERCEDES
Mercedes Oil Company, P. O. Box 366
MERKEL
Hicks Auto Supply, Box 368
MIDLAND
Driller's Petroleum Products, Inc., 1901 W. North Front
MISSION
Barrera's Supply Co., 500 Conway Blvd.
NACOGDOCHES
Corbett Spradley Auto Supply, 101 W. Main St.
ODESSA
Barrett's Automotive, 111 N. Hancock St.
ORANGE
Marine & Petroleum Supply Company, 87 E. Main St., P.O. Box 481
PALESTINE
Tom Willison Tire & Battery, 613 Avenue A
PAMPA
Motor Supply of Texas, Inc., 114 South Frost St.
PARIS
Morris Battery Co., 218 Second S.W.
PECOS
Navarro Supply Co., 1696 W. Third St.
PETROLEUM
McDaniel Auto Supply, South Main Street
PLAINVIEW
Barrett's Automotive, 116 E. 5th
POST
Kirkpatrick Auto Electric, P. O. Box 221
RAYMONDVILLE
Burton Auto Supply, Inc., E. 7th St. & Hi-Way
ROARING SPRINGS
Thacker Supply Company, P. O. Box 138
SAN ANGELO
Allen Ingrum, 424 N. Main
SAN ANTONIO
Sanantex Oil Co., 422 Main St., Station A, P. O. Box 4156
SHAMROCK
Mayfield Auto Supply, 111 W. Hwy. 66
SHERMAN
Kirk Battery Co., 502 East Lamar
STANTON
Hicks Auto Supply, Ltd.
TYLER
Pete Parking Center, 117 East Elm
VICTORIA
Victoria Auto Supply & Machine Shop, 105 W. Santa Rosa
WACO
Kaner Battery Supply, 906 Jefferson St.
WESLACO
Burton Auto Supply, Inc., 525 Highway
WICHITA FALLS
Cruse Tire Company, 200 East Scott Street

UTAH

MURRAY
Motor Mercantile Co.
OGDEN
Motor Mercantile Co., 2589 Grant Ave.
PROVO
Motor Mercantile Co., 247 West Center St.
SALT LAKE CITY
Motor Mercantile Co., P. O. Box 1618 - 126 S. W. Temple St.(10)
51 W. 7th, So.

VERMONT

BRATTLEBORO
Thomas Auto Supply, Inc., 733 Elliott St.
BURLINGTON
Hagar Hardware & Paint Co., 14h St. Paul St.
Maynard Auto Supply, 39 Covered Court
ST. JOHNSBURY
Hagar Hardware & Paint Co., 13 Portland St.

VIRGINIA

DANVILLE
Auto Bearing & Parts Co., 509 Loyal St.
EMPORIA
Chesapeake Auto Supply Co. of Emporia, Inc., North Main St.
FRANKLIN
Chesapeake Auto Supply Co., Inc., 714 N. Mechanic St.
FRONT ROYAL
Front Royal Auto Service, 501 E. Main St., P. O. Box 643
HARRISONBURG
Green Auto Parts Corp., 14 N. Liberty St.
LURAY
Front Royal Auto Service, 9 Campbell St.
NEWPORT NEWS
Chesapeake Auto Supply Co., 3112 Virginia Ave.
Curtis Oil Co., 301 Jefferson Ave.
NORFOLK
Atlantic Tire Co., 25th St. at Monticello Ave. (10)
Chesapeake Auto Supply Co., Inc., 200-210 W. 21st St. (10)
Five Point Auto Supply, Inc., 112 Norview Ave. (13)
OKLEY
H. C. Watson
PORTSMOUTH
Chesapeake Auto Supply Co., 915-917 High St.
RICHLANDS
White Front Parts Co., 1151 East Front St.
RICHMOND
The Kline Co., 2725 W. Broad St. (20)
ROANOKE
Shepherd's Auto Supply, Inc., 120 Luck Ave. S. W. (1 HP.O.Box 39
STAUNTON
Simons Parts Co., Inc., 119-123 S. Augusta St., P.O.Box 365
SUFFOLK
Chesapeake Auto Supply Co., 200 E. Washington St.
Southern Oil Co., Inc., 617 Factory St., P. O. Box 767
WINCHESTER
Carver Tire Co., 720 S. Braddock St.

WASHINGTON

ABERDEEN
Caldwell Bearing & Parts Co., 303 W. Market
310 W. 2nd St.
BELLINGHAM
Automotive Parts Service, Inc., 1322 State St.

WASHINGTON (Cont'd)

BREMERTON
Saindon's Tire Service, Route 2, Box 15
CENTRALIA
R & R Champion Fleet Service, P. O. Box 40
EDMONDS
Carl S. Harris Sales, P. O. Box 87
ELLENSBURG
Heinrich Auto Electric, 405 N. Main St.
EVERETT
Bayview Service & Supply, Cor. Hewitt & Rond Sts.
FORKS
Lyman H. Johnson
KENNEWICK
Tri-City T.B.A., 816 Clearwater
OLYMPIA
Hillman Auto Electric, 116 E. State St.
PROSSER
Valley Auto Parts, 1212 Dudley St.
RAINIER
Cowlitz Tire Company
SEATTLE
Automotive Parts & Equipment Co., Inc. of Seattle,
1516 11th Ave.
Blanchard Auto Electric, 2535 Airport Way
Motor Car Supply Co., 1421 12th Ave. (22)
Rogers Battery Shop, Salmon Bay Terminal
Seattle Marine & Fishing Supply Co., Pier 59 (1)
SHELTON
Les Fields Auto Parts, 229 S. First St.
SPOKANE
Bearing & Rim Supply Co., 730 W. Hamilton St. (2)
SUNNYSIDE
Valley Auto Parts, 414 7th Street
TACOMA
Doherty & Berkman, Inc., 4030 S. Tacoma Way (9)
Haymarry Motor Parts, Inc., 1938 Market Street (2)
The Sam Thornhill Co., Inc., 1106 St. Paul Ave. (2)
WALLA WALLA
Johnson Auto Electric Co., 35 S. Spokane Ave.
Tri-City T.B.A., 309 S. Fourth Ave.
WAPATO
Valley Auto Parts, 313 S. Wapato
YAKIMA
Gaffney's Auto Parts, 15 South Sixth Ave.
Tire Sales & Equipment, 1740 S. First St.

WEST VIRGINIA

BECKLEY
Auto Parts Service, Inc., 832 Neville St.
BLUEFIELD
Superior-Sterling Co., 200 Bluefield Ave.
CHARLESTON
Southern Hardware Co., 12-14-16 McFarland St. (25)
CLARKSBURG
Clarksburg Tire Co., 431 W. Pike St.
Ross Tire Exchange, Inc., 1270 W. Pike St.
COMO
Wilson Supply Company
DUNBAR
Brown Auto Parts Co., 350 Sixteenth St.
FRANKLIN
Glover's Auto Supply, Inc., Main St.
HUNTINGTON
Miller Battery & Electric Service, 2202 Third Ave.

WEST VIRGINIA (Cont'd)

MARTINSBURG
S & S Motor Parts, Inc., 774 Winchester Ave.
MORGANTOWN
Andy Bros. Tire Shop, 116 Walnut St.
MOUNDSVILLE
Valley Auto Parts, 701 - 7th St.
PARKERSBURG
Motor Service, Inc., 1313 Oakhurst Ave.
PARSONS
Swarts Auto Parts Supply Co., 210 First St.
PRINCETON
Chambers Automotive Supply, 102 S. Sixth St.
SALT ROCK
Merritts Creek Service Station, State Route #10
SOUTH CHARLESTON
Sharp & Shepard Supply Co., Inc., 1414 McCorkle Ave.
WESTON
Tri-State Mfg. & Supply Co., Inc., 407 Main St., P.O.Box 629
WELCH
McDowell Auto Parts, Inc., 156 McDowell St.
WHEELING
Wheeling Auto Supply Co., 1-3 South St.

WISCONSIN

ANTIGO
Antigo Auto Parts, 1025 Fifth Ave.
APPLETON
Appleton Battery & Ignition, 210 N. Washington
Matthew's Tire Co., 122 W. Wisconsin Ave.
ASHLAND
Northland Auto Supply, 827 Second St. W.
BEAVER DAM
K-D Wholesale Supply, Inc., 311 S. Spring St.
BELOIT
Kades Motor Parts, 430 Broad St.
BIRCHWOOD
Bob's Tire Shop, Highway 63
EAU CLAIRE
Genuine Parts Company, 1515 S. Hastings Way
Peoples Tire Company, 217 Hobart St.
FOND DU LAC
Schroeder Machine & Supply Co., 13-15 W. Second St.
GREEN BAY
L. Schuster & Sons, Inc., 428 N. Jefferson St.
JANESVILLE
Ridge-Janesville Co., 11 N. Bluff St.
KENOSHA
Rosenfort Genuine Service, 2831 Roosevelt Road
LA CROSSE
City Iron & Auto Wrecking Co., 214 Vine St.
MADISON
Holmes Tire & Supply Co., Box 1146, 431 W. Main St.
Ridge-Madison Co., 826 E. Washington Ave.
MARINETTE
C & N Auto Supply, 1340 Main St.
MAUSTON
A & L Auto Supply, 247 East State St.
MILWAUKEE
Electro Tire Recapping, 3530 W. Pierce
Meyer Stores, Inc., 1234 N. 12th St.
Storage Battery Service Co., 1118 N. Jefferson St. (2)
MONROE
Crandall Oil Co., Inc., 1705 16th Ave.
OSHKOSH
The Cook & Brown Lime Co., 70 Marion St.

WISCONSIN (Cont'd)

RACINE
Pro Auto Parts, Inc., 954 Washington Ave.
RICE LAKE
Rice Lake Automotive Supply Co., 13 East Eau Claire
SCHOFIELD
Universal Automotive Distributing Co., 1007 Spring St.
SHEBOYGAN
Auto Electric Co., 817 Indiana Ave.
H. H. Berg & Son, 1217 South Eighth St.
SUPERIOR
Holden's Tire & Battery Service, 1702 N. 12th St.
TOMAH
Kennedy Auto Supply Co., 906 Superior Ave.
TWO RIVERS
Two Rivers Automotive Supply, 1615 16th St.
WAUKESHA
Ridge Motor Parts, Inc., 137-139 W. Broadway
WAUPACA
Gray Cadillac Oil Co., 315 Mill St.
WAUSAU
L. H. Hall Motor Co., Inc., 530 Washington St.

WYOMING

CASPER
Wyoming Automotive Co., 638 W. Yellowstone Ave., P.O.Box 1171
CHEYENNE
Wyoming Automotive Co., 1712 Pioneer Ave., P. O. Box 1077
EVANSTON
Motor Mercantile Co., 908 Main St.
LARAMIE
Wyoming Automotive Co., P. O. Box 24
NEWCASTLE
Wyoming Automotive Co., Box 833
POWELL
Wyoming Automotive Co., West 4 1st Sts., Box 750
RAWLINS
Wyoming Automotive Co., 315 W. Buffalo St., Box 366
RIVERTON
Wyoming Automotive Co., Box 513
ROCK SPRINGS
Wyoming Automotive Co., 402 4th St., Box 955
SHERIDAN
Wyoming Automotive Co., 316 N. Main St., Box 815
TORRINGTON
Wyoming Automotive Co., P. O. Box 191
WORLAND
Wyoming Automotive Co., 816 Big Horn Ave., P. O. Box 580

ALASKA

ANCHORAGE
Automotive Parts & Equipment Co., Inc., P. O. Box 840
FAIRBANKS
Automotive Parts & Equipment Co., Inc., P. O. Box 301
KETCHIKAN
Automotive Parts & Equipment Co., P. O. Box 595

TERRITORY OF HAWAII

HONOLULU
The Schuman Carriage Co., Ltd., 313 S. Beretania St.
P. O. Box 2170

3527 COMMISSION EXHIBIT NO. 315A.

4312 Florida Avenue
Newtown Square, Penna.

December 14, 1955

Mr. Dwight T. Colley
Vice President of Marketing
260 South Broad Street
Phila., Penna.

Dear Sir:

I have received your letter on "Lets talk about gas prices," and I am taking this opportunity to let you know that we have followed your letter to a "T" for the past two years.

The only time that we cheapened our product was back in 1953 when a Company supervisor and salesman told us to drop our price to meet Sunoco's drop. We made a mistake by doing so at that time, but to this day with three other Atlantic stations along with other competitors, we have kept our price where it belonged—at the top. They are all, at this time, selling below our price.

I have lived in this township for almost forty years, and all of my family was raised here. I am a service man, and I am asking no quarter. I have served in both the Army and Navy and in two wars. My sons and I took over the station from its very beginning in 1953 and have worked hard to build up a good community business, first with a product that we are proud of and a service that would be hard to beat.

On November 28, I was notified that my lease with the Atlantic would not be renewed as of December 31, 1955. When a fellow like myself is condemned and told I am on

the way out without a letter of explanation of what was wrong, it just doesn't seem fair. I wonder why a large Company is run by such "little" men, who call themselves salesmen and supervisors.

For the past eight months we have had to pump our gas with just one pump, because of a road construction which caused one of our pumps to be removed, and because of this construction we had only one entrance. When the going was tough with the one pump and with the road under construction we worked all the harder to keep our gas and oil sales up around 50,000 gallons a month, which you can see by the company records.

If I have slipped on certain small things as the supervisors told me was the reason for not getting my lease renewed, it was not done to hurt the Company policy or the service that goes with it.

Mr. Colley, selling today is a lot different than back a few years ago. The service man or salesman that
3528 knows where he is going and has good common sense, with his feet on the ground is important, for we to this day have not found a substitute that can replace him.

On my station, we have done more than just sell gas and oil and automobile service, we also have sold the Company that produced our product and this you can verify by a few of our business men and women whose names I am sending you.

I have a list of approximately 470 customers which I am personally sending each a letter stating the facts as I found them in dealing with company supervisors and salesmen.

The following is a list of doctors, brokers, and a lot of other prominent people in our community who are our customers that you can call on to verify the statements in this letter.

Along with my attorney we are asking for a hearing before the NCPR through William D. Snow, General Counselor at Washington, D. C.

Joseph T. Mullray, Atty.
John Gable, Township President & Warden
W. L. Butler, Vice President of Phila. & Western R. R.
Paul Harron, owner WHIP
Sen. Geo. W. Pepper
Gibson & McIlvian
Dr. John B. Carson
W. W. Battles
W. P. Battles
John B. Carter, Atty.
Victor C. Barry

Sincerely,

Francis J. Ballaron

FJB:hom

COMMISSION EXHIBIT NO. 328.

3273

CX-328

SHERWOOD BROTHERS INCORPORATED

[illegible]

[illegible]

April 5, 1948

Mr. S. Kriete Osborne
Hanover & Westminster Pikes
Reisterstown, Md.

Dear Mr. Osborne:

The purpose of this letter is to notify you of our intention to cancel your Service Station Lease & Dealer Sales Agreement covering the service station property located at Hanover & Westminster Pikes, Reisterstown, Md. at the [illegible] expiration date which will be May 31, 1948, thereby giving you the required thirty days notice of cancellation as outlined in the [illegible] paragraph of the

Yours very truly

SHERWOOD BROTHERS INCORPORATED

John R. Sherwood
President

RKJ:mt

REGISTERED MAIL
RETURN RECEIPT REQUESTED

FEDERAL TRADE COMMISSION
DOCKET NO. 6586
IN THE MATTER OF Goodyear
DATE 11/9/51 WITNESS Osborne
ACE REPORTING CO., Official Reporters
By

3564

3565 COMMISSION EXHIBIT NO. 329.

IN THE DISTRICT COURT OF MARYLAND.

Kriete Osborn, Sykesville, Maryland,
Plaintiff
vs.
Sinclair Refining Company, 600 Fifth Avenue, New York, New York, 10 Light Street, Baltimore, Maryland c/o Corporation Trust Company, Resident Agent, 10 Light Street, Baltimore, Maryland,
Defendant.
No. 9769.

To the Honorable, the Judges of Said Court:

The Plaintiff, Kriete Osborn, by his Attorneys, Cable and McDaniel, for his complaint against the Defendant, Sinclair Refining Company, alleges as follows:

Description of Plaintiff.

1. That at all times hereinafter mentioned the Plaintiff, Kriete Osborn, was and still is an individual residing at Route 3, Sykesville, Maryland.

Description of Defendant.

2. That at all times hereinafter mentioned the Defendant, Sinclair Refining Company, was and still is a corporation organized and existing by virtue of the laws of the State of Maine and that it maintains its principal office for the conduct of its business in the City of New York, State of New York, and a division office at 10 Light Street, Baltimore 2, Maryland.

Nature of the Business Involved.

3. That at all times hereinafter mentioned the Defendant, Sinclair Refining Company, was a refiner and distributor of petroleum products engaged in inter-state commerce.

3566 4. That from 1936 until May 31, 1956 the Plaintiff operated a drive-in filling and service station at Reisterstown, Maryland, and sold petroleum products of the Defendant in accordance with the contracts to be hereinafter specified.

Article Under Which Action Brought.

5. This action is brought under Sections 4 and 14 of the Act of Congress of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," as amended and supplemented (15, U. S. C. A. 14, 15) commonly known as the Clayton Act and Section 1 of the Act of Congress of July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (15, U. S. C. A. 1), said Act being commonly known as the Sherman Anti-Trust Act.

Agreements With Defendant.

6. That on or about the 5th day of May, 1948, the Plaintiff and the Defendant entered into a Lease, whereby the Plaintiff leased a service station located at Reisterstown, Maryland, from the Defendant, and into a Dealer's Sales Agreement providing for the sale of petroleum products with Sherwood Bros., Inc., a Maryland corporation. That on or about the 30th day of December, 1955, the Defendant and Sherwood Bros., Inc. merged, and the Defendant assumed all the rights and obligations of Sherwood Bros., Inc. in the aforesaid Lease and Agreement. The

aforesaid service station Lease is attached hereto and made a part hereof marked Plaintiff's Exhibit I; the Agreement is attached hereto and made a part hereof and marked Plaintiff's Exhibit II.

Specific Acts Alleged.

7. That the Plaintiff, in addition to selling gasoline and other petroleum products at said drive-in filling and service station, also sold thereat tires, batteries and other
3567 automobile accessories and parts. Such tires, batteries and other automobile accessories and parts are manufactured by many different manufacturers and are regularly sold and shipped in interstate commerce by such manufacturers to wholesalers and distributors who in turn resell such products to service stations and other retail outlets.

8. That on or prior to 1956, the Defendant entered into agreements with manufacturers of tires, batteries and other automobile parts and accessories pursuant to which such manufacturers purported to sell to the Defendant tires, batteries and other automobile parts and accessories destined for ultimate sale at retail through service stations selling gasoline manufactured by the Defendant. Such agreements were part of an overall plan by the Defendant to compel service station dealers who were selling petroleum products manufactured by it, and particularly those service station dealers who, like the Plaintiff, leased service stations from the Defendant, to sell tires, batteries and other automobile parts and accessories manufactured by such manufacturers with whom the Defendant had so entered into agreements and to restrain such dealers from dealing in competing products manufactured by other manufacturers. The Defendant intended to effect such compulsion by refusing to lease service stations or to sell petroleum products to persons who would not buy such

products so manufactured by manufacturers with whom the Defendant had such agreements. Such agreements, together with other agreements accessory thereto, provided that the manufacturers of such products would purportedly sell the same to the Defendant and the Defendant would purportedly resell the same to distributors and wholesalers who would in turn resell such products to the service station dealers, but that in fact manufacturers would ship such products directly to such distributors and wholesalers.

9. That in pursuant of such plan of the Defendant, representatives of the Defendant regularly called
3568 upon the Plaintiff and urged and requested him to purchase tires, batteries and other automobile parts and accessories which had been manufactured by manufacturers with whom the Defendant had such agreements, and particularly those manufactured or sold by the Goodyear Tire and Rubber Company, 114 East Market Street, Akron 16, Ohio, and Purolator Products, Inc., Rahway, New Jersey, and to refrain from purchasing competing products manufactured by other manufacturers. The Plaintiff was unwilling to accede fully to these requests and so informed the representatives of the Defendant; however, the Plaintiff did stock tires of the Goodyear Tire and Rubber Company in addition to those tires which he normally stocked and also stocked only Goodyear batteries. Thereafter the Defendant cancelled said Lease and Dealer's Sales Agreement effective as of May 31, 1956. The notice of cancellation is attached hereto and made a part hereof and marked Plaintiff's Exhibit III.

10 That such cancellation of said Agreements was in furtherance of the Defendant's aforesaid plan to compel service station dealers who were selling petroleum products manufactured by it to sell tires, batteries and other automobile parts and accessories manufactured by manufacturers who had entered into the above mentioned agree-

ments with the Defendant and to restrain such dealers from dealing in competing products.

11. That at no time did any representative of the Defendant make any complaint to the Plaintiff concerning the operation of the aforesaid service station; the volume of gallonage of petroleum products being sold by the Plaintiff having been consistently increasing at the time of cancellation.

12. That as a result of the aforesaid cancellation, the business of the Plaintiff was destroyed; and said cancellation resulted in restraint of interstate commerce, a substantial lessening of competition and a tendency to create a monopoly.

3569 Damages

13. That as a result of the above described wrongful acts and conduct of Defendant, Plaintiff has suffered loss and damages in the amount of $50,000.00.

14. That the Plaintiff has been damaged in his business and property by reason of the unlawful conduct and acts of the Defendant, and that, under the provisions of an Act of Congress of the United States, approved October 15, 1914, 38 Statute 731 (U. S. C. A. Title 15, Section 15) he is entitled to recovery from the Defendant 3-fold damage by him sustained and the costs of this suit, including a reasonable attorney's fee.

Prayer

Wherefore, Plaintiff demands judgment against Defendant in the sum of $150,000.00 together with costs and disbursements of this action and a reasonable attorney's fee.

Cable & McDaniel
341 N. Calvert Street
Baltimore 2, Maryland
By Calhoun Bond.

3570 Exhibit "I"

Service Station Lease

This Indenture of Lease, Made and entered into in duplicate this 4th day of May, A. D. 1948, by and between Sherwood Brothers Incorporated, a Maryland corporation, authorized to transact business in the State of Maryland, having its principal office at 10 Light Street, Baltimore, Maryland, party of the first part (hereinafter referred to as "Lessor"), and S. K. Osborne SS #40 of Reisterstown, Maryland, party of the second part (hereinafter referred to as "Lessee," whether one or more, and when referred to by pronoun the masculine gender will be used);

Witnesseth:

1. Whereas, Lessee desires to lease from Lessor the filling and service station, including other structures and facilities, if any, for the servicing of motor vehicles, hereinafter referred to as "station", and the premises upon which the same is located, as hereinafter described, for the purpose of marketing through said station petroleum products and other merchandise; and,

2. Whereas, Lessor is willing to lease said station on the terms and conditions hereinafter set forth;

3. Now, Therefore, in consideration of the premises, the rents herein reserved, and the covenants, conditions, and agreements herein set forth, on the part of the Lessee to be paid, maintained, kept, and performed, Lessor does hereby demise and lease unto Lessee that part and only that part of the following described premises used for and constituting an oil and gasoline service station, and excluding all other parts or portions of said premises, located at Hanover & Westminster Roads and situate in the City

of Reisterstown, County of Baltimore, and State of Maryland, to wit:

> North Corner Westminster Road and Hanover Road, Reisterstown, Md. as described in lease dated April 24, 1937 to Lessor.

together with the buildings, structures, improvements, pumps, tanks, appliances, furniture, tools, and other personal property located thereon, as set forth in an inventory taken and signed by the parties hereto, marked "Exhibit A." and attached to and made a part of this lease to the same effect as though written out in full herein, including any additions thereto or substitutions thereof which may be made by Lessor from time to time; receipt of any substituted or added equipment shall be evidenced by Lessor's Receipt Form SB-46 "Equipment and Materials Receipt," and said receipt when signed by Lessee shall become a part of this lease with the same force and effect as though embodied herein; provided, however, that any equipment heretofore or hereafter delivered by Lessor to Lessee, whether or not evidenced by said receipt, shall be subject to the terms and conditions of this lease. It is understood and agreed that Lessee's act of accepting such equipment and signing said receipt shall be construed to be an acknowledgment by Lessee that the equipment described in said receipt was in good and serviceable condition at the time of its delivery to Lessee.

4. To Have And To Hold the above demised and leased premises, and all rights, privileges and appurtenances thereunto belonging, unto Lessee for and during a term beginning on the 1st day of June, 1948, and ending on the 31st day of May, 1949, and thereafter for successive terms of one year each, provided, however, that either party may terminate this lease at the end of the original term or any successive yearly term, on Thirty (30) Days' written notice

given prior to the end of any such term. If the above premises are held by Lessor under lease, this lease shall in no event continue in effect for any longer period than the balance of the term specified in any such underlying lease, regardless of the term herein provided. No previous notice or refund of rentals shall be required in the event of termination or cancellation of this lease for breach or default as hereinafter provided.

3571 5. Lessee shall yield and pay to Lessor as rental for said premises for and during said term the following sums:

"Amount equal to 1½ cents per gallon for each gallon of gasoline and motor fuels delivered to said premises for resale during the term; provided, that the minimum monthly rental for each month shall be $400.00 Dollars. All rental shall be payable on demand of the Lessor."

All rentals shall be payable in lawful money of the United States at 10 Light Street, Baltimore 3, Maryland, or at such other place as Lessor may from time to time designate.

6. Lessee covenants and agrees that he will use and occupy said premises and station in a careful, safe and proper manner; that he will not permit or suffer any waste thereon or thereof, or any nuisance thereon or thereabout; that he will keep the sidewalks adjacent to said premises free from snow and ice; and that he will maintain said premises in a clean, neat, orderly and sightly condition. Lessee further covenants and agrees that he will, at his own cost, maintain in good condition and repair any and all buildings, structures, equipment, appliances, and other personal property hereby leased to Lessee; and that he will not encumber or remove the same, or do or suffer to be done anything whereby the same or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the right of Lessor therein or the

title thereto may in any way be altered, impaired or prejudiced; it being expressly agreed that Lessee acquires hereunder no interest in any buildings, structures, equipment, appliances, or other property now on said premises or which may hereafter be placed thereon by Lessor, except the right to use the same as in this lease provided.

7. Lessee shall be liable for and agrees to pay when due all license, permit, and inspection fees, occupation and license taxes, all compensation fees, rents, and charges, assessed and imposed by municipalities for the installation, use or maintenance of approaches or driveways serving said premises; also all water, gas, telephone, and electric light and power charges assessed or charged on or against said premises and station or Lessee's use or occupancy thereof, including all taxes levied and assessed on Lessee's property located thereon during the term hereof.

8. Lessee shall comply with and obey all laws, ordinances, rules, regulations and requirements of the State, City, Village, or other governmental subdivision in which said premises are located, so far as same affect Lessee's use and occupancy of said premises and the operation of said station.

9. Lessee, for himself, his heirs, executors, administrators and assigns, hereby releases, relinquishes, discharges, and agrees to indemnify, protect and save harmless, Lessor, its successors and assigns, of and from any and all claims, demands and liability for any loss, damage, injury or other casualty to property (whether it be that of either of the parties hereto or of third persons) and to persons (whether they be third persons, Lessee, or employees of either of the parties hereto), caused by, growing out of, or happening in connection with, Lessee's use and occupancy of said premises or any buildings, structures, equipment or appliances located or to be located thereon, or by

reason of any other casualty, whether due to negligence of Lessor or otherwise.

10. Lessee, for himself, his heirs, executors, administrators and assigns, hereby releases, relinquishes and discharges, and agrees to indemnify, protect and save harmless, Lessor, its successors and assigns, of and from any and all claims, demands and liability for any loss, damage, injury or other casualty to property (whether it be that of either of the parties hereto or of third persons), and to persons (whether they be third persons, Lessee or employees of either of the parties hereto), by reason of any leakage, fire or explosion of or from any such equipment or any part thereof, or of any gasoline, oils, or other petroleum products in or about or contained in the same, or by reason of any defects in the construction or installation of such equipment, or by reason of the use or operation of such equipment, or by reason of the placing, erection, falling, or dislocation of such equipment or any part thereof, or by reason of any casualty, whether due to the negligence of Lessor or otherwise.

11. Lessee agrees to display continuously on said premises a sign to be furnished by Lessor showing that Lessee is occupying said premises under a lease.

12. If Lessee shall default in the performance of any covenant contained in this lease, or if Lessee shall violate any agreements, covenants, conditions and obligations of this lease upon him imposed, or if Lessee shall become bankrupt or become insolvent in the opinion of Lessor, or shall make an assignment for the benefit of creditors, Lessor in any such event shall have the right to declare this lease terminated, and shall have the further right, without notice and without recourse to any legal proceeding, to enter upon the premises and repossess the same, including all property embraced within this lease, and Lessor shall have a first lien upon all merchandise and

other property of Lessee located upon the leased premises to secure the payment of rent and all charges hereunder and the full performance by Lessee of all obligations to Lessor; and Lessor shall further have all the rights and remedies provided by law for the recovery of rent and possession. It is understood that the acceptance of rent by Lessor after default or the happening of any above contingency shall not be construed as a waiver of the rights of Lessor herein specified. If Lessee is an individual and if he shall die during the term of this lease or any extension thereof, this lease shall automatically terminate.

3572 13. Upon the termination of this lease by lapse of time or otherwise, Lessee agrees to return to Lessor the said premises and station, together with all other property embraced within this lease, and any other property of Lessor located on said premises, in their condition when received by Lessee, reasonable wear and tear incident to proper use thereof excepted. In the event Lessee shall for any reason be unable to return any of said property, he agrees to replace the same with similar property of like value, or to pay Lessor the market price therefor.

14. If there is a safe or chest included in the equipment leased hereunder, Lessee agrees to maintain said safe or chest in good and usable condition throughout the term hereof, and to bear the expense of any repairs thereon or replacement thereof; it being understood and agreed that Lessee shall assume any losses from robbery, burglary or larceny of the contents thereof, and of any property embraced within the lease.

15. Lessor reserves the right of entry of its representatives, agents, and employees for the purpose of examination and inspection of said premises and any property of Lessor located thereon.

16. Lessee shall make no alterations or changes in or

additions to any buildings, structures, or improvements on said premises without first procuring the written consent of Lessor so to do. Any work so authorized by Lessor shall be at the sole cost and expense of Lessee, and any such alterations, changes or additions so made by Lessee shall forthwith become the property of Lessor, and Lessee shall have no claim of any kind or character therefor.

17. This lease is personal to Lessee and shall not be assigned in whole or in part, and said premises or any part thereof shall not be sublet, nor shall any rights or privileges herein granted Lessee be sold, transferred or assigned without the written consent of Lessor first obtained.

18. If during the terms of this lease proceedings are instituted for the condemnation of said premises or any part thereof, or if Lessor shall dispose of said premises or any part thereof or its interest therein, either voluntarily or involuntarily, in order that the premises may be devoted wholly or partially to any public use, this lease shall, at the option of Lessor and upon written notice to Lessee, forthwith finally cease and terminate, and Lessee shall not be entitled to any damage award or purchase price, or any part of either, which may be paid on account of such condemnation or sale.

19. Any prior agreement under which the Lessor leased the above described premises and equipment to the Lessee is hereby terminated on and as of the day preceding the commencement of the term hereof, except as to any liability which may or shall have accrued under and by virtue of any said agreement prior to such effective cancellation date.

20. If the above described premises are held by Lessor under lease, and if such underlying lease shall expire in accordance with its terms or be terminated for any cause at any time prior to the expiration of the term herein pro-

vided, this lease, at the same time, shall expire and terminate without previous notice to Lessee, and Lessor shall not be liable to Lessee in damages or otherwise on account of such prior termination. This lease shall be subject to all conditions and restrictions affecting the premises, including those which may be of record or in the underlying lease, if any, and also including building, building line, and zoning restrictions. If Lessee shall abandon, desert or vacate the premises during the term of this lease, or during any extension or renewal period, for a period of more than two (2) calendar days, Lessor may terminate this lease and repossess the premises. If the operation of a service station on said premises shall be prohibited or restricted during the term hereof by statute, ordinance, order of court or other governmental authority, and not because of any fault or neglect of Lessee, this lease shall be subject to termination at the option of either party.

21. All notices given under this instrument shall be in writing, and may be given either in the statutory method, if any, in the State where the premises are located or by depositing the notice in the United States registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified at such party's address as shown in this instrument or at any other known address of Lessee, and the date upon which such notice is so mailed shall be treated as the date of service. If there be more than one Lessee, notice to one shall constitute notice to all. In addition, any notice given by Lessor to Lessee shall be valid if served upon Lessee in person or delivered to or left upon the premises.

22. This lease shall not be binding upon Lessor until signed on its behalf by its President or Vice-President, notwithstanding the delivery of possession to or the acceptance of any rent from Lessee. All proposals, negotiations, representations and agreements with reference to matters

covered by this lease are merged herein, and no amendment or modification hereof shall be binding upon Lessor unless the same shall be in writing and signed by its President or Vice-President.

Witness the hands and seals of the parties respectively attested or witnessed, the day and the year first above written.

Sherwood Brothers Incorporated
By S. Sherwood
President.

Attest:
(Signature illegible)
Secretary.

S. K. Osborn (Seal)
Lessee.

Signed, sealed and delivered in the presence of:
W. S. Allen
As to Lessee.

3573 Exhibit A

Inventory of buildings, improvements, appliances, and equipment embraced within the foregoing lease, and received in good order by the undersigned Lessee, from Sherwood Brothers Incorporated.

Buildings and Yard Improvements: .....

Pumps and Tanks: 1—1000 Gal. U. G. Tank; 7—550 Gal. U. G. Tank; 1—270 Gal. U. G. Tank; 2—#34 Tek. Comp. Pumps 712105—712112; 4—#646-B Benn. Comp. Pump 2921—2975—2922—2977;

Air Equipment: 1—Roll-On Auto Hoist 36322-C; 1—Auto Hoist 4-K-4217; 1 Champ. 3 HP Air Compressor 45907; 2—Eco Wall Towers 4348—2553;

Signs: 1—Border Type Neon Sign 4′ x 8′

Furniture: .....

Tools: .....

Miscellaneous Equipment: 10—30 Gal. Space Savers; 3—160 Gal. Kero. Outfit; 2—5752 Benn. Floodlights; 2—3930 Revere Island Lights; 1—Special Lubrication Board; 1—#10 Arc Pneumatic Lubricator; 1—#525 Perfection Kero. Burner; 1—Duo Therm Oil Heater #407; 2—25# Grease Outfits; 2—100# Grease Outfits; 1—36″ x 24″ Flat Oak Desk; 1—#122 Oak Swivel Chair; 4—#3004 Rev. Pit Lights; 2—1½ Qt. Pyrene Fire Extinguisher 82347—82125; 1—#15 Oil Racks; 1—Pole for Sign.

Certified As Correct.

Sherwood Brothers Incorporated,
Lessor

By W. S. Allen

S. K. Osborn
Lessee.

3574 Exhibit "II"

Sherwood Brothers Incorporated

Dealer Sales Agreement

This Agreement, made and entered into this 4th day of May, 1948, by and between Sherwood Brothers Incorporated, a Maryland corporation, having its principal office at 10 Light Street, Baltimore 3, Maryland, as Seller, and S. K. Osborne of Hanover & Westminster Rds.—Reisterstown, Maryland, as Dealer.

Witnesseth, That for the considerations herein contained, Seller hereby agrees to and hereby does, sell to Dealer, and Dealer hereby agrees to, and hereby does, buy from

Seller, during the period this agreement is in effect. Dealer's requirements for resale of the following petroleum products:

Betholine
Sinclair H-C Gasoline
Sinclair Pennsylvania Motor Oil
Opaline Motor Oil
Emerald Motor Oil
Laclede Motor Oil
Sinclair Lubricants and Greases
Richsol Cleaning Fluid
Sinclair Superflame Kerosene
Sinclair Specialties

And such other products marketed by Seller as the parties hereto may agree upon from time to time.

Prices: For each delivery of any of the above products Dealer shall pay Seller's official established price per gallon (or other applicable unit) for the quantity delivered to Dealer prevailing at the time and for the place of each such delivery (without any discount or deduction therefrom) as posted at Seller's bulk plant from which delivery is made. Dealer agrees that Seller shall have the right to change said price from time to time without notice to Dealer except as posted at Seller's bulk plant or as shown on Seller's invoices.

If at any time Seller may establish different prices applicable to different classes of dealers, Dealer agrees that Seller shall have the right to determine the classification (or classifications as to different products) in which Dealer belongs and the prices hereunder applicable to Dealer, and Seller's determination in that respect shall be conclusive as to Dealer.

Place of Delivery: Products purchased hereunder shall be delivered in quantities and at times established by Seller's delivery schedules to Dealer's place of business

above listed and to any other points agreed upon between the parties.

Duration of Agreement: This agreement shall continue in effect for one year (beginning the 1st day of June, 1948. Unless terminated, as hereinafter provided, before or at the expiration of such original period, this agreement shall continue in full force and effect as to all its terms, provisions and conditions from year to year, subject to cancellation by either party as herein specified.

Terms: Net cash on delivery. If Seller shall extend credit to Dealer, the right to withdraw credit at any time is reserved by the Seller. Payments shall be made by Dealer in lawful money of the United States, or its equivalent, and shall be made to Seller's agent through whom delivery is made or to Seller's principal office. Checks, if accepted, shall be subject to final collection.

Additional Provisions: The additional provisions printed on the reverse side hereof constitute a part of this agreement.

In Witness Whereof, Seller and Dealer have executed this agreement.

Sherwood Brothers Incorporated
By: (Illegible)
Sales Manager
..... (Seal)
S. K. Osborne (Seal)
Dealer

Witness to Signature of Dealer:
W. S. Allen

3575 Additional Provisions

1. In addition to the prices herein provided, Dealer shall pay Seller amounts equivalent to any and all taxes, duties, charges and inspection fees, and any and all increases therein, which are now or may hereafter be imposed, directly or indirectly, by any domestic or foreign governmental authority or agency on, against, in respect of or measured by the products covered by this agreement, or any material contained in such products, or the importation, exportation, production, manufacture, sale, transportation, delivery or other handling of such products or material or any feature thereof or of this agreement. The amounts of any such taxes, duties, charges or inspection fees shall be added to the prices herein provided when Seller either pays or becomes liable for the payment of any such taxes, duties, charges or inspection fees.

2. In the event that Seller should at any time during the life of this agreement discontinue the marketing of any product covered hereunder in dealer's territory and market some other similar product as a replacement thereof Seller shall have the right and privilege to deliver such other product instead of the product discontinued.

3. This Agreement may be cancelled and terminated by either party at the expiration of the original period herein specified, or at the end of any yearly period thereafter, upon thirty (30) days' previous written notice to the other parties. Dealer agrees that Seller shall also have the right to terminate and cancel this agreement at any time upon thirty (30) days' previous written notice by Seller to Dealer.

4. Dealer shall not change or alter by any means whatsoever the nature, quality, or appearance of any of the products purchased and sold hereunder. Any violation of this provision by Dealer shall give Seller the right to sus-

pend immediately further deliveries hereunder of such products or to terminate this agreement. Seller shall have the right from time to time during the like of this agreement to change, alter or amend any of the trade names or brands under which products covered by this agreement are now or may hereafter be marketed. Seller agrees that the commodity sold hereunder shall be uniform in quality and at all times up to its standards.

5. It is mutually agreed that Seller shall not be obliged to furnish any products hereunder nor be liable for loss or damage for failure so to do or for failure or delay in making deliveries of such products when such failure or delay arises from (a) any cause beyond Seller's control; or (b) by reason of reduction in or failure of Seller's supply of each products or containers therefor at any point from which Seller customarily makes or would make deliveries to Dealer or shipment to Dealer's destinations, or of Seller's supply at the point of manufacture, of raw or other materials from which such products are manufactured or which constitute components thereof; or (c) from discontinuance or interruption of any means or method of transportation customarily used by Seller in making deliveries to Dealer's destinations or to the vicinity thereof; or (d) from or through acts of God, strikes, lockouts, differences among or with its workmen, fires, explosions, sabotage, accidents, riots, civil commotion, acts of war, results of warfare, or war conditions in this or any foreign country; or (e) mechanical breakdowns in its manufactories, or breaks in or total or partial destruction of its supplying pipe lines; or (f) the restriction or prohibition or prevention of the importation of necessary finished or raw materials; or (g) acts of foreign or domestic Governmental authority, or requests, orders or requisitions of constituted authorities, civil or military, or the exercise of eminent domain, or any seizure or appropriation of any

of Seller's property or of the management or operation thereof, whether regarded as lawful or unlawful; or (h) any increase in Seller's cost of materials or of manufacture or of delivery, or any decrease in Seller's prices for such products, imposed by Governmental actions or orders; or (i) any other cause beyond Seller's control, not enumerated herein, whether or not such cause shall be similar to any of the specifications of excuse hereinbefore stated. Seller shall not be liable for loss or damage to the premises where deliveries are made or to Dealer's property unless such loss or damage is caused solely by Seller's negligence. Seller reserves the right to limit quantities delivered hereunder when in Seller's opinion the current or prospective supply of such product or products makes such limitation ~~available.~~ *advisable.*

6. This agreement cannot be assigned in whole or in part by Dealer without the consent of Seller in writing first obtained.

7. The sale of any motor fuel which may contain either an "Ethyl" or any other anti-knock compound under the agreement is subject to (a) all the provisions contained in the agreements under which Seller is licensed to manufacture and sell motor fuel containing said compounds and (b) compliance by Dealer with all such provisions, rules, regulations and orders now in existence or which may hereafter be issued by the licensor or any governmental authority having jurisdiction insofar as the same apply to motor fuel purchased by Dealer from Seller. If Dealer shall fail or refuse to comply therewith, Seller may either suspend deliveries of such motor fuel or terminate this agreement in respect to such motor fuel. It is expressly agreed that such gasoline containing an "Ethyl" or other anti-knock compound is sold for use as a motor fuel only ~~and is not to be~~ used or resold for cleaning purposes under any circumstances.

8. Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended at the address of such party herein specified, or when delivered personally to such party at such address.

9. Any Sales Contract or agreement covering petroleum products for resale heretofore entered into between the parties hereto is hereby cancelled and terminated on and as of the effective date hereof except as to any liability or obligations which may or shall have accrued under and by virtue of any said contract prior to such effective cancellation date.

10. In the event Seller shall cease to market any of the products listed herein in the territory where Dealer is located, this agreement shall cease to cover such products but shall remain in full force and effect as to other products covered.

3576 Exhibit "III"

(Letterhead of Sinclair Refining Company, Baltimore 3, Md.)

April 30, 1956

Mr. S. K. Osborn
Betholine Sinclair Service Station #40
Hanover & Westminster Pikes
Reisterstown, Maryland

Dear Sir:

The purpose of this letter is to notify you of our intention to cancel your Service Station Lease and Dealer Sales Agreement covering the service station property located Hanover & Westminster Pikes, Reisterstown, Maryland at the first expiration date, which will be May 31, 1956; thereby giving you the required notice of cancellation as outlined in the fourth paragraph of the Service Station Lease, and you are required to vacate the premises at that time.

Yours very sincerely,

H. J. Weller
Manager—Baltimore Metropolitan Area.

HJW:mam

3577 United States of America
District of Maryland } ss:

I Wilfred W. Butschky, Clerk of the United States District Court for the District of Maryland, do hereby certify that the annexed and foregoing is a true and full copy of the original Complaint and Exhibits, which were entered and filed on the 26th day of June, 1957 in the therein entitled cas of *Kriete Osborn* v. *Sinclair Refining Company,* No. 9769 Civil Docket, in said District Court, now remaining among the records of the said Court in my office.

In testimonw Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Baltimore, Maryland this 13th day of August, A.D. 1957.

Wilfred W. Butchky,
Clerk.

By Francis A. Figiel
Deputy Clerk.

3578 COMMISSION EXHIBIT NO. 330.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND.

Kriete Osborn,
Plaintiff,
vs.
Sinclair Refining Company,
Defendant.
} Civil Action No. 9769

Answer to Complaint.

Answering the Complaint filed against it herein, Defendant alleges as follows:

1. The Complaint fails to state a claim against Defendant upon which relief can be granted.

2. Defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Complaint.

3. (a) Answering paragraph 8 of the Complaint, Defendant alleges that for some time prior to January 1, 1956, when Sherwood Brothers, Inc. (hereinafter called "Sherwood") was merged into Defendant, Sherwood had an agreement with Goodyear Tire & Rubber Company (hereinafter called "Goodyear") whereby Goodyear paid Sherwood a commission on products sold by Goodyear to dealers selling products marketed by Sherwood. Said agreement was terminated upon the date of the said merger. Since prior to 1956 Defendant has had an agreement with Goodyear whereby Defendant purchases tires, tubes, batteries and battery cables from Goodyear and resells them to distributors. Such transactions constitute actual and not merely "purported" sales, as alleged in the Complaint. The distributors in turn sell the merchandise to dealers,

including those who handle Defendant's petroleum products. Goodyear ships the merchandise direct to the distributor. Invoices, however, are sent to and paid by Defendant, which in turn bills the distributor. With respect to so-called "car and home merchandise", including fan belts, filters, spark plugs, polishes, radios, bicyles, and many items manu-
3579 factured by Goodyear and others, Goodyear sells direct to the distributor but pays Defendant a commission on such sales.

(b) Except as hereinabove admitted, the allegations of paragraph 8 of the Complaint are denied. In particular Defendant denies that there is or ever has been any plan or intention by Defendant to compel its dealers to sell the products of Goodyear or any other company or to restrain such dealers from selling competing products as alleged in the Complaint. Defendant likewise denies that it has at any time refused to lease service stations or to sell petroleum products to persons who would not buy products sold by Goodyear. Defendant avers that, on the contrary, it has not in any way attempted to coerce its dealers, including Plaintiff, into purchasing products sold by Goodyear. In fact, Plaintiff for many years has been and still is a distributor of products manufactured by Firestone Tire & Rubber Company and sold such products as well as many other products purchased from other manufacturers and distributors, including Goodyear products, at the premises leased from Defendant. Plaintiff's choice of products to be sold and/or distributed by him was entirely voluntary.

4. Answering paragraph 9 of the Complaint, Defendant admits that its representatives regularly called upon Plaintiff and urged and requested him to purchase products sold by Goodyear, but denies that such solicitations were in pursuance of any plan such as is alleged in the Complaint, or that its representatives urged and requested him to refrain from purchasing competing products. Defendant

admits the remaining allegations of paragraph 9, except that it has no knowledge as to whether Plaintiff stocked only Goodyear batteries. Defendant avers that Plaintiff's decision to stock Goodyear tires and batteries was made without any coercion whatever by Defendant.

5. Answering paragraph 10 of the Complaint, Defendant denies the allegations thereof, and in particular denies the existence of the alleged plan therein referred to.

6. Answering paragraph 11 of the Complaint, Defendant denies the allegation that no representative of
3580 Defendant made any complaint to Plaintiff concerning the operation of his service station. Defendant admits that the volume of gallonage being sold by Plaintiff had been increasing slightly prior to the time of cancellation but avers that it had not been increasing as much as Defendant considered reasonable, particularly in view of the fact that in 1953 and 1954 Defendant had at its own expense completely rebuilt and modernized Defendant's service station. Defendant avers that the only reason for the cancellation of the said lease was its dissatisfaction with the operation of the said station by Plaintiff resulting in a failure to realize anticipated profits on the sale of petroleum products through the station as well as an actual net rental loss to Defendant.

7. Answering paragraph 12 of the Complaint Defendant denies the allegations thereof except that it admits that Plaintiff's business at these premises was necessarily terminated by the cancellation of the lease which cancellation was strictly in accordance with the provision in paragraph 4 thereof that "either party may terminate this lease at the end of the original term or any successive yearly term, on Thirty (30) Days written notice given prior to the end of any such term."

8. Answering paragraphs 13 and 14 of the Complaint, Defendant denies the allegations thereof.

Wherefore, having fully answered, Defendant demands that the Complaint be dismissed.

William D. Macmillan
David R. Owen
Semmes, Bowen & Semmes
Attorneys for Defendant
10 Light Street, Baltimore, Md.

Copy mailed to Messrs. Cable & McDaniel, attorneys for Plaintiff, July 31, 1957.

David R. Owen
William D. Macmillan
Semmes, Bowen & Semmes
Attorneys for Defendant

3581 United States of America
District of Maryland } ss:

I, Wilfred W. Butschky, Clerk of the United States District Court for the District of Maryland, do hereby certify that the annexed and foregoing is a true and full copy of the original Answer of Defendant to Complaint, which was entered and filed on the 31st day of July 1957 in the herein entitled case of Kriete Osborn *vs.* Sinclair Refining Company, No. 9769 Civil Docket in said District Court, now remaining among the records of the said Court in my office.

In testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Baltimore, Maryland this 15th day of August, A.D. 1957.

Wilfred W. Butschky
Clerk.

By Francis A. Figiel
Deputy Clerk.

COMMISSION EXHIBIT NO. 331.

3303

D-324 (11-49)

GOODYEAR BATTERIES

SUGGESTED RETAIL PRICES
WET CHARGED OR DRY CHARGED

PASSENGER CAR AND LIGHT COMMERCIAL TYPES — **EFFECTIVE NOVEMBER 12, 1951**

GROUP SIZE	NAME & 6 VOLT	*TYPE	SUGG. RETAIL	20 CORE NUMBERS WC	20 CORE NUMBERS DC	ADJ. UNITS	INSUL.	OVERALL DIMENSIONS L	W	H
1	Double Eagle - Dry Proof	Y117	$39.95	Y12241	Y12100	48	DG	9	7⅛	8⅜
	DeLuxe All Weather	A118	29.95	A11636	A11317	36	P			
	All Weather	G115	25.75	G11315	G11295	24	P			
	Special	X41	21.95	X11042	X11004	15	P			
2	Double Eagle - Dry Proof	Y219	32.95	Y22481	Y22320	48	DG	10⅛	7⅛	8⅜
	DeLuxe All Weather	A217	26.95	A22023	A21906	36	P			
	All Weather	G215	23.95	G21315	G21295	24	P			
	Special	X43	21.95	X21042	X21004	15	P			
2L	Double Eagle - Dry Proof	Y219L	39.95	Y2L2241	Y2L2100	48	DG	10⅛	7⅛	7⅜
	DeLuxe All Weather	A217L	29.95	A2L1818	A2L1713	36	P			
	All Weather	G215L	25.95	G2L1315	G2L1295	24	P			
	Special	X42L	21.95	X2L1042	X2L1004	15	P			
2F	All Weather	G215HF	25.95	G2F1315	G2F1295	24	P	10⅛	7⅛	9⅛
2E	DeLuxe All Weather	A217E	27.95	A2E2122	A2E1999	36	P	10⅛	6⅛	8⅜
	All Weather	G215E	25.95	G2E1315	G2E1295	24	P			
	Special	X44E	21.95	X2E1042	X2E1004	15	P			
2N	DeLuxe All Weather	A219N	25.85	A2N1947	A2N1834	36	P	10	5⅛	8⅜
	DeLuxe All Weather	A217N	19.95	A2N1315	A2N1427	24	P			
	All Weather	G215N	15.95	G2N1315	G2N1295	24	P			
3N	DeLuxe All Weather	A321N	27.95	A3N2122	A3N1999	36	P	11⅛	5⅛	9⅜
	12 VOLT									
27S	DeLuxe All Weather	A1207	37.65	A27S2473	A27S2334	36	P	11⅛	7⅛	9⅛
3EE	DeLuxe All Weather	A1209	29.95	A3EE2275	A3EE2142	36	P	10⅛	6⅛	8⅜
	All Weather	G1209	19.95	G3EE1734	G3EE1646	24	P			
60K	Double Eagle - Dry Proof	Y1209KM	38.35	Y60K2883	Y60K2714	48	DG	13⅛	6⅛	8⅜
	DeLuxe All Weather	A1209KM	29.95	A60K2275	A60K2142	36	P			
	All Weather	G1209KM	19.95	G60K1734	G60K1646	24	P			
24S	Double Eagle - Dry Proof	Y1209CP	34.85	Y24S3607	Y24S3453	48	DG	10⅛	6⅛	8⅛
	DeLuxe All Weather	A1209CP	29.95	A24S2275	A24S2142	36	P			
	All Weather	G1209CP	19.95	G24S1734	G24S1646	24	P			
28S	DeLuxe All Weather	A1213	36.75	A28S2941	A28S2771	36	P	12⅝	7⅛	9⅛
	DeLuxe All Weather	A1213NI	35.70	A28S2709	A28S2553	36	P	11⅛	6⅛	9⅛
28N	Double Eagle - Dry Proof	Y1211FM	38.85	Y28N2787	Y28N2584	48	DG	12⅛	5⅛	8⅜
	DeLuxe All Weather	A1211FM	29.95	A28N2275	A28N2142	36	P			
32N	Double Eagle - Dry Proof	Y1213LC	41.75	Y32N3123	Y32N2999	48	DG	14⅛	5⅛	8⅜
	DeLuxe All Weather	A1213LC	35.95	A32N2729	A32N2571	36	P			

Add DC to type symbol when dry charged constr. is wanted.

Double headed Insulfloth ("Insul.") P indicates plastic separators, DG indicates plastic and fiberglass, (Delsglas).

For higher voltage Diesel Engine types, use two or more batteries connected in series by heavy cables.

Prices on H. D., T. & B. and Diesel batteries are without special terminals. Special assemblies or terminals are wanted make selections from chart above in S-7000 T. & B. Repl. Spec. book. Extra prices for such selections are shown on dealer lists. Drop type steel handles will be furnished no charge unless requested that they be left off.

Prices include Federal Excise Tax and necessary domestic polishing. State Sales Tax, if any, is to be added. All prices are subject to change without notice. All shipments will be billed at prices in effect on date of shipment. Dry charged battery prices include electrolyte.

Beginning or fully charged specific gravities on wet charged Goodyear Batteries are 1.270 or 1.280 and are shown on strap or vent cap. In testing batteries for state of charge, readings should be proportioned to these levels beginning sp. gr. shown on top of batteries if hydrometer is used. See Chart in Dealer Guide S-7004.

GUARANTEE AND ADJUSTMENT POLICY

Any Goodyear Battery which fails to give satisfactory service because of defective material or workmanship within a period of 90 days from date of sale to the original user will be either repaired or replaced at our option at any service station handling Goodyear Batteries without charge to the user, except transportation.

After expiration of the 90 days, any battery which fails in normal service because of defective material or workmanship will be adjusted to the original user with a new battery at a pro rata price based on miles or months of service (whichever occurs first) as indicated in the Adjustment Units column on current Goodyear price sheet. Normal passenger car service is considered not to exceed 1,500 miles per month. Where actual mileage figures cannot be determined, the mileage driven shall, for the purpose of adjustment, be assumed to have been 1,500 miles per month in passenger car service (ordinary family use); 1,000 miles per month in commercial service (trucks, taxis, light delivery and salesman's cars).

Adjustment units shown for Passenger Car Batteries apply to normal passenger car service. When Passenger Car Batteries are used in commercial service as defined above or in farm tractors, the adjustment period in months will be one half of the units shown.

Dry charged batteries must be kept sealed and protected from moisture until activated.

Dry Charged Batteries must be date coded by dealers at time of retail sale for adjustment consideration by Goodyear. Goodyear Dry Charged Batteries submitted for adjustment must have been activated with electrolyte of approved grade and specific gravity (1.260 to 1.300 S.G. and in accordance with instructions on battery tag.

If any additions (other than approved distilled water or battery grade sulphuric acid) are made to the electrolyte of a Goodyear battery, the above guarantee and adjustment policy will be nullified.

On all customer claims for adjustments dealers should first carefully examine the battery for damage or abuse (damaged or misused batteries are not adjustable) and the battery should be given a slow charge before testing. Then test all cells (by Thermo-Hydrometer or All Purpose Voltage Tester) to determine state of charge or condition of battery. If battery "comes up" and if all cell readings are reasonably uniform (within 30 specific gravity points), replace in customers car.

THE GOODYEAR TIRE & RUBBER COMPANY, INC., Akron 16, Ohio

16

3582

FARM TRACTOR TYPES

GROUP SIZE	NAME 12 VOLT	*TYPE	SUGG. RETAIL	2W CODE NUMBERS WC	2W CODE NUMBERS DC	ADJ. UNITS	INSUL.	OVERALL DIMENSIONS L	W	H
1	Heavy Duty - Dry Proof	FT 1-85	25.35	FTY 1696	FTY 1784	24	DG	8½ x 7 x 8¾		
	Standard	FT 1-65	16.90	FT 1469	FT 1395	18	P	9 x 7⅛ x 8¾		

HEAVY DUTY COMMERCIAL

	TYPE	SUGG. RETAIL PRICE	2W CODE NUMBERS WC	2W CODE NUMBERS DC	ADJ. UNITS 1000 Miles	ADJ. UNITS Months	INSUL.	Cap. Rating A. H. (20 Hr. Rate)	OVERALL DIMENSIONS L	W	H
1	H. D. Commercial	C115	28.35	C12152	C12027	24	24	DG	115	9⅛ x 6¼ x 8¼		
2	H. D. Commercial	C217	31.80	C22413	C22274	24	24	DG	130	10⅛ x 6¼ x 8¼		
3	H. D. Commercial	C321	35.95	C32729	C32571	27	24	DG	146	11⅛ x 7⅛ x 9⅛		
4(1T)	H. D. Commercial	C423	39.95	C43033	C42857	27	24	DG	162	12⅞ x 7⅛ x 9⅛		

*HEAVY DUTY COMMERCIAL

Truck and Bus Batteries listed in each group are interchangeable within that group only. Selection should be made on the basis of capacity and dimension (group size) and not on number of plates.

GROUP SIZE	TYPE	SUGG. RETAIL PRICE	2W CODE NUMBERS WC	2W CODE NUMBERS DC	ADJ. UNITS 1000 Miles	ADJ. UNITS Months	Volts	Insul.	CAPACITY RATINGS Amp. Hrs. 20 Hr. Rate	Amp. Hrs. 4 Hr. Rate	Amps. 30 Min. Rate	Min. 300 Amps. at 0° F	OVERALL DIMENSIONS L	W	H
7T	G631T	79.20	G7T6011	G7T5663	40	16	6	DG	240	178	270	8.2	22⅛	7½	9⅛
1B	T1213ST	66.50	T1B5048	T1B4755	48	16	12	DG	100	77	110	1.0	17⅛	7½	9¼
	G1213T	76.10	G1B5776	G1B5442					100	74	110	2.0	20⅛	7½	9⅛
4B	T1217J	97.50	T4B7401	T4B6972	48	16	12	DG	160	117	176	3.5	20⅛	10⅛	9⅛
5D(2T)	D621	49.50	D5D3758	D5D3540	30	15	6	DG	170	130	204	7.5	13½	7⅛	9⅛
	G621D	49.50	G5D3758	G5D3540					172	131	204	5.5	13½	7⅛	10⅛
7D(3T)	D625	55.95	D7D4247	D7D4001	30	15	6	DG	200	155	250	9.6	16⅛	7⅛	9⅛
	G625D	55.95	G7D4247	G7D4001					204	157	250	10.5	16⅛	7⅛	10⅛
4D(2B)	D1219H	89.90	D4D6823	D4D6428	30	15	12	DG	155	117	190	6.	20⅛	8⅛	9⅛
	G1219D	89.90	G4D6823	G4D6428					155	118	190	6.3	20⅛	8⅛	10⅛
6D(3B)	D1221H	94.50	D6D7173	D6D6757	30	15	12	DG	168	130	210	7.5	20⅛	9⅛	9⅛
	G1221D	94.50	G6D7173	G6D6757					172	131	210	8.5	20⅛	9⅛	10⅛
8D(4B)	D1225H	105.00	D8D7970	D8D7508	30	15	12	DG	200	156	250	9.5	20⅛	10⅛	9⅛
	G1225D	105.00	G8D7970	G8D7508					204	157	250	10.5	20⅛	10⅛	10⅛

*MARINE TYPES

NOTE: These types are assembled in 4-cell rubber cases. Four units are required for 12 volts. 14 units for 110 volt installations. For higher ampere capacities use twice the number of batteries connected in parallel. In addition to the special Marine types shown, many Automotive types, especially Truck and Bus and Diesel types are used in Marine service. Marine batteries are frequently used for lighting plants.

Type (Wet Charged Only)	SUGGESTED RETAIL PRICES Complete 12-Volt Set (Four 6-Volt Units)	2W Code No. WC	Service Warranty Months	Number Plates Per Cell	Insul.	Amp. Hrs. 20 Hr. Rate	Amp. Hrs. 72 Hr. Rate	Amp. Hrs. 6 Hr. Rate	4 Cell Hard Rubber Case Size L	W	H	Gross Weight Packed in Lbs.
MG315	$151.40	MG11492	16	15	DG	109	115	91	13⅛	7	9⅛	280
MA815	159.85	MA12877	16	15	DG	100	126	90	13	7	9¼	272
MA821	269.35	MA20443	16	21	DG	136	179	128	19⅛	7¼	10⅛	414
MA815HD	282.90	MA21472	16	15	DG	140	168	120	19⅛	7¼	10⅛	509
MG831HD	477.55	MG36356	16	31	DG	240	289	206	26⅛	8¼	10⅛	636

* Factory shipment only in any quantity. Not stocked at districts.

GOODYEAR BATTERY REPLACEMENT CHART — PASSENGER CARS

(See H. D. Truck, Bus and Tractor Replacement Chart (S-7900 and S-7900A) for replacement data for Trucks, Buses, Tractors, Farm Tractors and Off-the-Road vehicles, for H. D. Battery assembly data and for type equivalent charts)

This list shows Goodyear Batteries to fit all recent makes and models of passenger cars. Group Number indicates battery size (case dimensions only, electrical capacity not considered) on original equipment basis only.

No recommendations are shown: DeLuxe All-Weather types of standard capacity equivalent to or greater than the original equipment battery, and Double Eagle types are of higher capacity with special features recommended to car or truck owners who have more severe driving conditions or who want a more dependable, longer lived battery.

Year	Make and Model	Group No. (Cradle Size)
	BUICK	
1938-52	All	2E
1953	40	2E
	50, 70	3EE
1954	All	3EE
1955-56	All	6EK
	CADILLAC	
1912-30	V-8 Series, 10-20, 70, 75	3
1932-41	V-16, Series 90	5
1932-37	V-12	4
1936-40	60, 60A, 61, 62, 63, 65, 67	2
1941-52	All	2
1953-56	60s, 62, 75	3EE
	CHEVROLET	
1937-39	All	2 L
1940-5-	All	1
1955-56	All	24 S
	CHRYSLER	
1937-38	Royal 6, Imperial 8	2
1939-55	All Except Cr. Imp.	2
1951-53	Cr. Imperial	24 S
1953	C-300	24 S
1954	C-FI	2
1954	All Others	24 S
		24 S
	CONTINENTAL	
1956	All	32 N
	CROSLEY	
1939-52	All	4
		4
	DE-SOTO	
1935-55	All	2
1956	All	24 S
	DODGE	
1932-36	12 Volt Systems	27 S
1936-53	DR-6, Radio Equipped DS-6	2
1936-53	All Except Above	1
1953	8 Cyl.	2
1954-55	All	1
1956	All	24 S

Year	Make and Model	Group No. (Cradle Size)
1933-39	**FORD**	
1940-46	All	2 L
1947-53	All	2 F
1954-55	All	2 L
	6 Cyl.	2 N
1956	8 Cyl.	2 N
	All	2B N
	FRAZER	
1946-51	All	1
	FREEPY J	
1951-54	All	1
	HUDSON	
1934-47	All 6 Cyl.	2 L
1948-49	8 Cyl.	2 L
1950-51	All	2 F
1954	All	2 L
	Jets	1
	Wasps & Hornets	2 L
1955	All	1
1956	All	24 S
	KAISER	
1946-55	All	1
	LINCOLN	
1931-38	All	1
1940-51	All	2 F
1952-55	All	1N
1956	All	32 N
	LINCOLN-ZEPHYR	
1936-39	All	2 L
1940-42	All	2 F
	MERCURY	
1939	All	2 L
1940-46	All	2 F
1947-51	All	2 L
1952-55	All	1N
1956	All	2B N
	METROPOLITAN	
1954-56	All	27S

Year	Make and Model	Group No. (Cradle Size)
1931-49	**NASH**	
1931-49	All 6 Cyl.	1
1950-55	All 8 Cyl.	2
1956	All	1
	All	24 S
	OLDSMOBILE	
1938-48	All	2 E
1949-50	6 Cyl.	1
1949-52	8 Cyl.	2
1951	Del. 88, 98	2EE
1954-56	All	6EK
	PACKARD	
1935-40	8-120 Series, 8-1700 Series	2
1937-42	115C, 110	1
1937-38	8 (1500-2) 12 (1506-8)	4
1939-40	12 Cyl., 1706, 1707, 1708, Cus. 12 Cyl.	4
1941-42	All 8 Cyl. Regular	2
1941-49	Clipper 6, Clipper 8	2
1950	All	2E
1951-54	200, 300	2E
1951-54	400, Patrician	2L
1955-56	All	2F
		6EK
	PLYMOUTH	
1928-55	All	1
1956	All	24 S
	PONTIAC	
1935-37	All 6	1
1935-37	All 8	2
1938-54	All	2E
	All	24S
	RAMBLER	
1955	All	1
1956	All	24S
	STUDEBAKER	
1937-38	All	2
1939-55	All	1
1956	All	24S
	WILLYS-OVERLAND	
1933-42	All	1
1945-56	CJ2A (Domestic Jeep), Willys	1

Most foreign 12V. cars take A1209CP, A12or or A1211 depending on whether carrier is 10+, 11+ or 12+ inches in length. See E-308 list for chart.

COMMISSION EXHIBIT NO. 332.

3305

B-300 (11-58)

GOODYEAR BATTERIES

EFFECTIVE NOVEMBER 12, 1959

352 DEALER PRICES

FOR WET CHARGED OR DRY CHARGED

PASSENGER AND LIGHT COMMERCIAL TYPES

GROUP NO.	6 VOLT • TYPE	SUGGESTED RETAIL DC & WC	DEALER 352 WC	DEALER 352 DC	Approx. Weight, Lbs. Pounds
1	Y117	$29.95	$20.37	$18.17	44
	A115	20.95	14.69	13.97	41
	G115	15.95	11.95	11.41	40
	X41	11.95	8.92	9.56	39
2	Y219	32.95	22.41	21.89	51
	A217	28.65	18.39	17.22	48.5
	G215	15.95	11.95	11.41	43.5
	X43	11.95	8.92	9.56	32
2L	Y219L	29.95	20.37	18.17	44
	A217L	23.85	16.53	15.37	42.5
	G215L	15.95	11.95	11.41	40.5
	X43L	11.95	8.92	9.56	39
2F	G215HF	15.95	11.95	11.41	47.5
2E	A217E	27.95	18.39	18.17	50
	G215E	15.95	11.95	11.41	47
	X44E	11.95	8.92	9.56	34
2N	A219N	25.65	17.70	16.57	37
	A217N	19.95	13.77	12.77	35.5
	G215N	15.95	11.95	11.41	32
3N	A321N	27.95	19.29	18.17	40.5
	12 VOLT				
27S	A1207	32.65	22.53	21.22	50
3EE	A1209	26.95	20.68	13.47	52
	G1209	19.95	15.76	14.96	47
60K	Y1209KM	38.55	26.21	24.87	53.5
	A1209KM	29.95	20.68	19.47	51.5
	G1209KM	19.95	15.76	14.96	47.5
24S	Y1209CP	34.85	23.72	22.30	43
	A1209CP	29.95	20.68	19.47	41
	G1209CP	19.95	15.76	14.96	38
28S	A1213	38.75	26.74	25.19	80
	A1213MT	35.70	24.65	23.21	81
28N	Y1211FM	36.85	25.06	23.58	44
	A1211FM	29.95	20.68	19.47	42
32N	Y1313LC	41.75	28.30	26.72	80
	A1213LC	35.25	24.81	23.37	58
FARM TRACTOR TYPES					
1	FTY 1-45	25.35	17.24	16.22	30
	FT 1-45	18.90	13.35	12.60	35
HEAVY DUTY COMMERCIAL					
1	C115	28.35	19.56	18.43	43
2	C217	31.80	21.84	20.67	50
3	C321	33.95	24.81	23.37	56
4 (1T)	C423	39.85	27.37	25.97	62
** HEAVY DUTY COMMERCIAL					
7T	G631T	79.20	54.65	51.48	122
1B	T1213ST	68.50	45.89	43.23	115
	G1213T	76.10	52.51	49.47	112
4B	T1317J	97.50	67.28	63.38	185
5D (2T)	D621	49.50	34.16	32.18	70
	G621D	49.50	34.16	32.18	79
7D (3T)	D625	55.95	38.61	36.37	86
	G625D	55.95	38.61	36.37	93
4D (2B)	D1219H	89.90	62.03	58.44	133
	G1219D	89.90	62.03	58.44	140
6D (3B)	D1221H	94.50	65.21	61.43	149
	G1221D	94.50	65.21	61.43	156
8D (4B)	D1225H	105.00	72.45	68.25	195
	G1225D	105.00	72.45	68.25	179
** MARINE TYPES					
MG815	32-Volt Set	$151.45	$104.47		280
MA815	32-Volt Set	169.85	117.06		272
MA821	32-Volt Set	288.35	185.85		414
MA815HD	32-Volt Set	282.90	195.20		280
MG831HD	32-Volt Set	477.55	330.51		536

•Add DC to type symbol when dry charged construction is wanted.

**Specified for factory shipment only in any quantity. All other dry charged batteries shipped in any quantity from district warehouse or wet or dry charged in minimum lots of 10 from factory.

Weights of dry charged batteries are approximately 20% less than wet charged weights shown. Dry charged battery dealer prices do not include electrolyte. Refer to Suggested Retail Price List (B-304) for Capacity Ratings, Guarantee and Adjustment Policy and Passenger Car Replacement Chart. Foreign car replacement chart reverse side of B-304 list. See Special HD Truck and Bus Battery replacement chart (B-7900) for replacement data for trucks, buses and tractors, terminal assembly chart and type comparison charts. H. D. T. & B. & Diesel Types weights include crates.

Battery shipments are F.O.B. Goodyear Factory, District, Depot or Warehouse point with freight prepaid on orders of 200 lbs. or more to one destination except on Marine Types. All prices subject to change without notice. All shipments will be billed at prices in effect on date of shipment. Federal Excise Tax included. State Sales Tax, if any, extra.

SPECIAL TERMINALS AND ASSEMBLIES FOR H. D. TRUCK AND BUS AND DIESEL BATTERIES

Special Terminals and Special Assemblies for H. D. Truck and Bus and Diesel Types—Net Additional Per Battery $3.50

See B-7900 for identification of Battery Assemblies. Drop type Steel Handles will be furnished at no extra charge.

THE GOODYEAR TIRE & RUBBER COMPANY, INC. AKRON 16, OHIO

3534

77 4

3306

FOREIGN CAR REPLACEMENT CHART

Make	Model	Battery Group
Alvis	2 Litre	27S
	3 Litre	28S
Austin	Sheerline	Group 1 (2)
	A30, A40, Sports	27S
Bentley	All	28S
Bristol	400, 401	27S
Citroen	English 15C9	27S
Fiat	All	24S
Ford	Consul, Zephyr	28S
	Anglia, Prefect	Group 1
Hillman	1940-49 Minx	27S
	1950—Minx	24S
Humber	Hawk, Pullman	27S
Jaguar	All	28S
Jowett-Javelin	All	27S
Morris	Oxford, 6-cyl.	27S
	Minor	24S
M-G	All	27S
Renault	All	Group 1
Riley	All	28S
Rolls Royce	2½ Litre	28S
Rover	All	27S
Singer	SM-1500	27S
Sunbeam Talbot	All	27S
Triumph	Renown	27S
	Mayflower	24S
Vauxhall	Velox 18 PH	27S
	1952—Velox and Wyvern	24S
Volkswagon	All	Group 1

3585

22

804

COMMISSION EXHIBIT NO. 333. 3307

B-166 (10-51)

GOODYEAR BATTERY POLICY AND SALES PROGRAM

Effective October 31, 1951

For Use of Goodyear Organization Only

GOODYEAR BATTERY PRICE STRUCTURE AND DEALER CLASSIFICATION

(Applies to the Goodyear Branded Line of Batteries Only — Does Not Apply to Resolute Batteries)

CONSUMER PRICES

Goodyear prints a list entitled "Suggested Consumer Prices," B-304. On this price list, in addition to Suggested Consumer Prices, there is an additional column "Suggested Consumer Exchange Prices." This reflects values of traded-in batteries, and the use of these prices is urged to meet current and competitive merchandising practices. In addition to prices, this list carries complete specification data and passenger car replacement chart. Because this price list is the only one with complete data, it should be furnished in all cases with various dealer price lists.

PICK-UP DEALER

This dealer who does not carry an inventory and whose service facilities consist chiefly of installing a battery in a customer's car after he has secured it from some nearby battery stocking point, is classed as a pick-up dealer. Goodyear recommends that such a dealer be sold at B-304 list less 20%.

CONTRACT DEALER

This is a retail dealer who carries a stock of batteries, furnishes service to his customers, and in most instances has recharging facilities. The Contract Dealer sells to the Pick-Up Dealer, the Commercial Fleet Operator and to consumers. He buys at "Contract Dealer Prices," List B-307.

DISTRIBUTOR

This type of dealer, in most instances, does a retail business, some wholesale business, carries a fair stock of batteries, has adequate service facilities to care for the requirements of his trade, and is usually located in a metropolitan area or a county seat town. This type of dealer is sold at "Goodyear Distributor Prices," List B-310.

SERVICE DISTRIBUTOR—PREFERRED DISTRIBUTOR WHOLESALER—ZONE WHOLESALER

These categories are large merchandisers and distributors of storage batteries—both retail, commercial and wholesale.

This type of dealer carries an adequate stock of storage batteries at all times, takes most deliveries in quantity lots on a direct factory basis, solicits the dealer trade in a metropolitan area or in an area where he normally distributes merchandise.

They also serve Fleet Accounts and sell National Accounts, and under a plan arranged and recommended by Goodyear, the Service Distributor has a substantial investment in stock, equipment and sales solicitation. They are compensated for all services rendered by enjoying Goodyear's Prices as established in accordance with their annual volume.

These distributor's buying prices permit them to sell to the Distributor, the Contract Dealer, the Pick-Up Dealer, Commercial Fleet Operator and to consumers.

CONTRACTS

New Goodyear Battery dealers should be signed on contract G-110. The G-110 Goodyear Service Station Agreement provides identification of battery dealer category for billing and mailing. If dealer is already signed on a G-110, form B-215 should be filled out when Goodyear Batteries are added to his line or when his category is changed. B-61 associate dealer contracts should be executed for all associate battery dealers who should be on Akron battery mailing list.

QUALIFICATIONS FOR ABOVE DESCRIBED DEALER CATEGORIES

Annual purchase requirements for the establishment of above described categories are listed below. The meeting of these qualifications must be on a basis of (a) dealer's actual purchase volume from us, (b) if new dealer, actual annual purchases from previous supplier, or (c) on a careful analysis of probable unit sales. Qualifications of all dealers will be reviewed semi-annually and revisions made in dealer category and price qualification in accordance with his battery purchase volume. Increases in qualified prices are not retroactive. Decreases in qualified prices are retroactive to the first of the calendar year affected.

Classification	List	Qualifications	
Consumer	B-304		
Commercial Fleet (local)	B-304 less 20%	5 - 25 Trucks	
Commercial Fleet (Large or National Acct.)	B-307 or B-310	25 Trucks or More	
Pick-Up Dealer	B-304 less 20%	Bona Fide Automotive Dealer	
Contract Dealer	B-307	Battery Stock—Recharging Equipment	$ 250- 750
Distributor	B-310	Battery Stock—Recharging Equipment	750- 1500
Service Distributor	B-312	Battery Stock—Comm. & Whlse. Business	1500- 3000
Preferred Distributor	B-308	Battery Stock—Comm. & Whlse. Business	3000- 6000
Wholesaler	B-311	Battery Stock—Comm. & Whlse. Business	6000-12000
Zone Wholesaler	B-309	Battery Stock—Comm. & Whlse. Business	12000-up

DIRECT FACTORY SHIPPING ALLOWANCES ON GOODYEAR BATTERIES

(Does not apply to Resolute Batteries but Resolute may be included to make up the quantities).

Goodyear effects a saving in warehousing costs and freight when shipments are made direct to the dealer from the factory and this saving is passed on to the dealer whenever the dealer wishes to take advantage of it and is willing to anticipate his needs and places a direct factory shipment order with the understanding that it will take longer time for delivery than shipment from the district warehouse. There is no minimum factory shipment on HD Truck and Bus, Diesel or Marine Batteries. When these types are included with a direct factory shipment of passenger batteries, one 12-volt HD Truck and Bus or Diesel type battery will be considered as two battery units.

DIRECT FACTORY SHIPPING ALLOWANCE

Quantity	Extra Allowance
10 Batteries	2%
25 Batteries	3%
50 Batteries	4%
100 Batteries	5%
500 Batteries (Truck Load)	8%

Crating allowance of $2.50 per battery will be allowed on HD Truck and Bus or Diesel type batteries when shipment is made within a factory city or when made in truck load lots in which shipments the batteries can be shipped uncrated.

RESOLUTE BATTERY POLICY AND SALES PROGRAM

The Resolute Battery is offered in six types of five sizes with suggested consumer and exchange prices designed to meet mail-order, chain and other low price competition. Price lists are B-318, B-319, B-320 and B-322. Dealer prices will apply to the corresponding Goodyear Battery dealer categories. B-322 prices apply to Preferred Distributors, Wholesalers and Zone Wholesalers in addition to Service Distributors.

This "price" line will be welcomed by many dealers and stores which have felt the need of lower selling prices on a quality product. In most cases, the Resolute Battery will and should be used as a "leader" or for "plus" sales when a "price" buyer is sold.

Resolute Batteries are not identified as a Goodyear product. They are good quality batteries. They are available for order of ten units with shipments from factory only, freight paid. Resolute Batteries may be combined with Goodyear Batteries in making up direct factory orders but direct factory allowance will not apply to Resolute Batteries.

Resolute Batteries are not subject to the shipping allowances offered Goodyear dealers on Goodyear Batteries, but are to be combined with Goodyear Batteries in determining Goodyear Battery dealer category (Contract Dealer, Distributor, Service Distributor, etc.).

An extra 5% will be allowed on Resolute Batteries for minimum shipment from factory of 50 units of Resolute Batteries only.

PRICE PROTECTION

In the event of a concurrent price reduction on both suggested consumer and dealer prices, dealers will be rebated the difference between their new buying price and that at which they were billed on all Goodyear and Resolute Batteries purchased during the thirty-day period preceding such reduction. This does not apply to Goodyear Battery Cables.

TERMS

Regular 2% discount for payment on or before the 10th Prox is offered on Goodyear and Resolute Batteries, Goodyear Battery Cables and on all Goodyear battery tools and equipment. Where desired and applicable and upon approval of District Credit Manager, dealer may have special payment terms as follows:

10 Goodyear or Resolute Batteries or mixed Goodyear and Resolute—2% on 1/3 of amount for payment 1st 10th Prox, 2% on 1/3 of amount for payment on the 10th of the second month and 2% on final 1/3 for payment on the 10th of the third month.

Fast Chargers or other major battery equipment items selling at $100.00 or more may be purchased on deferred payment terms over several months as approved and set up by District Credit Manager.

GENERAL PRICE POLICIES

As stipulated on the B-304 price list, all prices as shown on price lists above described are for lead acid, wet charge, storage batteries and prepayment of freight for 200 lb. shipments from either factory or district is in accordance with current policy in that regard. If such shipments originate at district warehouse points, tires or other merchandise stocked at districts may be included with batteries for such freight allowances. Prices include federal excise tax and necessary domestic packing.

State sales taxes, if any, are to be added to prices as listed. All prices are subject to change without notice. All shipments will be billed at prices in effect at date of shipment. Whenever quotations are to be made to state or federal government accounts, send requests for bid to Government Sales Department, Akron.

ADJUSTMENT ALLOWANCE

(Applies to Goodyear and Resolute Batteries)

Guarantee and adjustment policy is detailed on B-304 and B-318 lists and adjustment units are given for each battery.

(A) Contract Dealers—All claims for adjustment consideration will be handled by the Contract Dealer with the customers, computing the adjustment price based on Suggested Consumer price in accordance with the terms and adjustment units as covered in the Goodyear Battery Warranty detailed on price list B-304.

Adjusted batteries are referred by the dealer to the District Service Representative for replacement consideration with freight paid by dealer. Price charged to dealer is computed price less 10%.

(B) Other Dealers—A 1% adjustment allowance is offered to all direct dealers other than Contract Dealers to compensate them for handling their own adjustments other than 90-day free replacements. The 1% allowance is applied on billing price after deduction of extra discounts or shipping allowances.

Ninety-day replacements are handled by dealers referred to under B who will refer all claims for replacement consideration to the District Service Representative, freight prepaid. When such ninety-day replacements are approved, replacement will be made by Goodyear on a no-charge basis.

When a dealer (B) elects to forego the 1% adjustment allowance and have Goodyear District adjust each battery as submitted, freight paid, the adjustment (except the ninety-day service free replacements) is computed at consumer price level and the dealer (B) is billed at that price less 20% discount.

Batteries shipped to the dealer more than four months previous to the sale to the customer are not subject to adjustment at the District. Batteries shipped to Zone Wholesalers are code dated two months ahead of actual shipping date which gives them six months shelf life.

GOODYEAR BATTERY CABLES

Battery cables are to batteries what tubes are to tires and should always be considered a natural part of a battery dealer's purchases. Cable prices are established in accordance with the dealer's battery classification. The Contract Dealer is sold at Contract Dealer cable prices which, with Suggested Consumer Prices, are printed on reverse side of battery list B-307. Battery Distributors are sold at net Distributor prices which are listed on reverse side of battery price list B-310. Cable lists for all other battery categories are printed on reverse side of each battery list.

Goodyear Battery Cables are stocked at Car and Home Field Warehouses and all shipments will be freight prepaid regardless of weight. As cable factories are not at the same points as battery factories, there is no direct factory shipping allowance available on cables.

Ignition and spark plug cables and wire, together with accessories for this merchandise and other battery accessories, shown on pages 8, 9, 10 and 11 of Goodyear Cable Catalog, are not stocked in field warehouses as all battery cables are, and all orders for this merchandise will be filled only by direct factory shipment or from Massillon warehouse and all such shipments will be prepaid.

BATTERY DATING RINGS

To enable Dealers, Stores and Distributors to identify date of sale to the customer, Dating Rings are made available. It is recommended that they be used to stamp date code on connector of each battery sold whether to a consumer or to dealer. This procedure is also to be followed by District Warehouses and stores as well as by all classes of Dealers.

Goodyear has two types of Dating Rings, one for Company Districts, Warehouses and Stores use, called the Goodyear Universal Code Dating Ring, and the Dealer Battery Dating Ring for use of Dealers on either retail or wholesale sales. Batteries shipped to dealers and stores from factories are code dated with the Universal Code Dating Ring.

BATTERY EQUIPMENT POLICY

All Battery Service and Sales Equipment and Tools are sold on a net basis to all classifications of dealers at the prices established on the Battery Equipment Price List B-262, with quantity allowances to any classification of dealer as shown, subject to 2% cash discount only. To help our plan for loaning PowR SavRs to Associate Dealers, we give a 20% discount to Zone Wholesalers on all PowR SavRs applied to either the single lot price or the quantity price.

Quantity purchase discount applies to all purchases made within the calendar year. If 12 items are ordered at any one time, quantity lot price will be allowed on the invoice. If such items are bought one at a time or in groups throughout the year, the dealer may obtain rebate at the end of the year on all such purchases to reduce the net price to the lowest quantity price earned when dealer makes such claim.

No record of such purchases will be maintained in the district. It will be the dealer's responsibility to submit his claim for such rebates at the end of the year substantiating his claim with invoice numbers covering.

Pages 50A and 50D in section VIII of Field Representative's manual cover policy on repairs and claims on battery equipment.

BATTERY PARTS

Battery parts for use on batteries from different sources of manufacture are not interchangeable and this must be kept in mind when ordering. Battery type and part number must be specified on order. Districts should order parts on G-905 and send to nearest manufacturing point of battery or batteries to be repaired.

There is a suggested Retail Price on Battery parts (B-376). The price to all dealers is List less 35%.

All parts sold f.o.b. factory. Items cannot be included with other merchandise to make prepaid shipment. Stocks of battery parts are not to be carried by District or Field Warehouses.

DEALER BINDERS

When a new Battery Dealer is signed, it will be the responsibility of the District Management to see that he is provided with such price lists, selection charts, manuals, etc. as are currently available. To facilitate this, we have selected the contents of a Dealer Binder, S-7935, which will be made up and sent from the Sales Promotion Department at Akron upon receipt of G-1133 order from the District specifying "one Battery Dealer Binder, S-7935, no charge." Contract Dealer price lists only are included in this package and therefore price lists to Battery and Cable Distributors and other categories are to be furnished from District.

At time of price change Akron will notify all contracted battery dealers and distributors of record. Dealer Price Book Subscribers among them will be sent the quantities subscribed for. Price lists required beyond this by stores, dealers or distributors are to be furnished by district or ordered separately from Akron.

Any special requirements of binders or other printed material can be ordered from Akron for direct shipment to store or Dealer. Price cards or display cards for PowR SavRs at the time of price or other changes will be sent to all owners of PowR SavRs including stores. Special needs for display cards or price cards and Double Eagle Demonstrators will be filled on District order for shipment direct to Dealer or store.

BATTERY RETURNS

Because of the perishable nature of batteries, there is established a program limiting Goodyear's responsibility on the return of batteries.

Except in exceptional credit situations, (and then only on personal approval of District Manager, and when batteries under consideration have not been in dealer's hands more than 60 days) batteries are not to be accepted for return for credit. See Wholesale Field Operating Manual for details.

3310

SCRAP BATTERIES

It is desirable that all scrap batteries be promptly turned into lead refining channels. Wherever possible, scrap batteries should be taken in on all sales and sold to approved reputable firms which guarantee such handling.

NATIONAL ACCOUNTS

Goodyear Batteries are on the approved list of many National Accounts. Dealers and stores should be encouraged to solicit local branches of these firms for battery and cable business.

BATTERY INVENTORY MAINTENANCE

Batteries are perishable merchandise. The Goodyear organization must assume the responsibility of "Protecting Our Good Name" by strictly following prescribed procedures for battery care and maintenance in district warehouses and stores and by showing all Goodyear Battery Dealers the importance of keeping all stock batteries fully charged at all times. Oldest batteries in stock should always be sold first. Failure to follow these rules will cause trouble when the batteries are sold with resulting unfair adjustment claims.

FACTORY CONTACT CAMPAIGNS

To assist Field Representatives in signing up direct or associate battery dealers, we offer letter series campaigns which will be mailed to prospects when lists are sent to Sales Promotion Department, Akron, by District Office. List of associate dealer prospects should show name of supplying dealer or store. Associate Dealer Campaigns are offered to supplying dealers at no charge.

Identify these mail campaigns as follows:

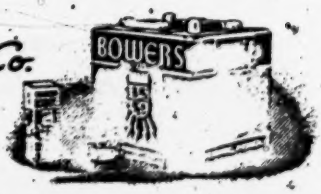
No. 6—Direct Battery Dealer
No. 18—Associate Battery Dealer

3589

COMMISSION EXHIBIT NO. 334.

BOWERS
Battery and Spark Plug Co.

READING, PENNA.



Conversation -- Mr. Nicholas J. Govoruhk - Baltimore Battery Company -- Mr. Jones, District Manager - Goodyear Tire & Rubber Company - Mt. Royal & Oliver Sts.

Time 10:25 A.M. Wednesday, April 4th.

Mr. Govoruhk asked Mr. Jones why he could not sell Betholine Sinclair Stations Goodyear Batteries. Mr. Allen, Goodyear Service Manager, agreed at the time Mr. Govoruhk was granted distributorship that he could not sell to the Betholine Sinclair Stations.

Mr. Jones replied that Brooks Huff was their largest distributor in the T. B. A. line and they have to protect their established distributors and must confine additional outlets.

Conversation with Nicholas J. Govoruhk
Especially with Mr. Jones District
Manager Goodyear Tire & Rubber Co
April 4th, 1956
Nicholas J. Govoruhk

FACTORIES
READING PA.
BOSTON, MASS.
PATERSON N. J.
NEW PHILADELPHIA, OHIO
MACON GA.
MIAMI FLA.
MONTERREY, MEXICO
BRANCHES
ATLANTA, GA.
BALTIMORE, MD.
BUFFALO N. Y.
CHARLOTTE N. C.
COLUMBUS, OHIO
PHILADELPHIA, PA.
PITTSBURGH, PA.
WAREHOUSES
ALBANY, N. Y.
ALTOONA, PA.
CALUMET CITY, IND.
ERIE, PA.
HARRISBURG, PA.
LANCASTER, PA.
NEW HAVEN, CONN.
RALEIGH N. C.
ROCHESTER, N. Y.
SHENANDOAH, PA.
SPRINGFIELD, MASS.
SYRACUSE N. Y.
TAMPA, FLA.
WORCESTER, MASS.
YORK, PENNA.
YOUNGSTOWN, OHIO
EXPORT DIVISION
READING, PA.

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 334
IN THE MATTER OF Goodyear Allen
DATE 11/29/57 WITNESS Govoruhk
ACE Reporting Co., Official Reporter
By Grant

27

66

COMMISSION EXHIBIT NO. 335. 3312

DISTRIBUTORS:
GOODYEAR BATTERIES

REBUILT
BATTERIES

PEabody 6336 or PLaza 3844

BALTIMORE BATTERY CO.

Complete Sales and Service

126 S. MADEIRA ST. BALTIMORE 31, MD.

No. 2376 CUST. ORDER NO. DATE 7-4 19 56

SOLD TO

ADDRESS Gay St. Parking Corp Co

SALE		MDSE. RET'D		REC'D ON ACCOUNT-NOTE	PAID OUT
CASH	CHARGE	CASH	CREDIT		

QTY.	PART NO.	ARTICLES	PRICE	AMOUNT
1	A-17L	Goodyear WC 25-35		17 12

FEDERAL TRADE COMMISSION
DOCKET NO. 6488
IN THE MATTER OF Goodyear
DATE 4/19/57
ACE REPORTING COMPANY, INC.
BY [illegible]
EXHIBIT NO. 335
PARTIES Goodyear
Official Reporter

TAX

TOTAL 3591

SALESMAN

REC'D BY 28

FORM PART 0 3-1-50 PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

COMMISSION EXHIBIT NO. 336. 3313

DISTRIBUTORS:
GOODYEAR BATTERIES

REBUILT
BATTERIES

PEabody 6336 or PLaza 3844

BALTIMORE BATTERY CO.

Complete Sales and Service

126 S. MADEIRA ST. BALTIMORE 31, MD.

No. 3201 CUST. ORDER NO. DATE 7-6 19 56

SOLD TO Lucky Ben Stein

ADDRESS Portland.

SALE		MDSE. RET'D		REC'D ON ACCOUNT-NOTE	PAID OUT
CASH	CHARGE	CASH	CREDIT		

QTY.	PART NO.	ARTICLES	PRICE	AMOUNT
1	gl	Tri Black		1 50
1	gl	Brake Fluid		2 —
100	ft	#66		9 —
2	670X15	Tires		6 —
			TAX	
			TOTAL	18.50

SALESMAN

REC'D BY 29 3592

FORM PART D 5-1-56 PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

FEDERAL TRADE COMMISSION
DOCKET NO. 3325
IN THE MATTER OF
DATE 11/9/57
WITNESS
ACE REPORTING CO.
BY Official Reporter

COMMISSION EXHIBIT NO. 337. 3314

DISTRIBUTORS:
GOODYEAR BATTERIES

REBUILT
BATTERIES

PEabody 6336 or PLaza 3844

BALTIMORE BATTERY CO.

Complete Sales and Service

126 S. MADEIRA ST. BALTIMORE 31, MD.

7-30 56

NO. 2361 CUST. ORDER NO. DATE July 19

SOLD TO

ADDRESS

SALE		MDSE. RET'D		REC'D ON ACCOUNT-NOTE	PAID OUT
CASH	CHARGE	CASH	CREDIT		

QTY.	PART NO.	ARTICLES	PRICE	AMOUNT
1	[illegible]	E-DC		18 61
1	H 219	N-DC		17 11
1	H 1209 CP	DC		18 40
		Out Duty		2 3
				57.08
				2 13
				54 83
				5 70
		TAX		2 71
		TOTAL		54 83

FEDERAL TRADE COMMISSION
DOCKET NO. 6496 COMM. EXHIBIT NO. 337
IN THE MATTER OF Goodyear-Atlantic
DATE 4-20-57 WITNESS Germaine
ACE REPORTING CO. Official Reporters
BY [illegible]

SALESMAN

REC'D BY 30 3593

FORM PART 6 2-1-50 PRINTED BY THE STANDARD REGISTER CO., DAYTON 1, OHIO, U. S. A.

COMMISSION EXHIBIT NO. 338.

DATE	INV. OR CM	DUE DATE	CHARGES	CREDITS	BALANCE
			BALANCE FORWARD CX-338		
12/21	41114	1/10/56	53 24	- Paid 1/9/56 ck # 780	
27	41376	"	777 31		
	41498	1/25-2/10-2/25	53 24		
	41481	" "	644 70		15 999
		53.24 10 6 18	1.06		
		1.06	32		

FEDERAL TRADE COMMISSION
COMMISSION EXHIBIT NO. 338
IN THE MATTER OF Goodyear Atlantic
WITNESS
DATE 11/27/57
ACE REPORTING CO., Official Reporter
By

PURCHASES AFTER 24TH OF MONTH WILL APPEAR ON NEXT STATEMENT. GOODYEAR SERVICE STORES.

31

COMMISSION EXHIBIT NO. 339. 3316

GOODYEAR SERVICE STORES

A DIVISION OF THE GOODYEAR TIRE & RUBBER COMPANY, INC.

GOODYEAR TIRES

MT. ROYAL & OLIVER STS.
PH. SA 7-7711 BALTIMORE 17, MD.
TERR. NO. 0220

DATE 1-17-55

SOLD TO
Baltimore Battery Co
25th & Harford
Baltimore, Md

PHONE

CASH ☐ CHARGE ☑

DUE DATE 1/3 2-10 3-10

SALES CODE 1 (CIRCLE) 2 2X 4-10

Time Promised | Order No. | Salesman

License No. | Mileage | Make of Car

S 41326

BY	QUAN.	SIZE	ARTICLE	FLY	UNIT PRICE	EXTENSION
✓	5		Y117 Batteries		16 30	81 50
✓	5		A115 "		11 64	58 20
✓	15		G-V15 "		10 75	161 25
✓	5		A-V17L "		11 64	58 20
✓	10		G-V15L "		10 75	107 50
✓	3		A-V17E "		13 97	41 91
✓	25		G115 "		10 75	268 75
					TOTAL	XX XX

FEDERAL TRADE COMMISSION
COMMISSION EXHIBIT NO. 339
DOCKET NO. 6486

IN THE MATTER OF
DATE 4/11/57 WITNESS
ACE REPORTING CO., OFFICIAL REPORTER
By

SERVICE DEPARTMENTS—INSERT PROPER SUB ACCT. LISTED BELOW

100— TAG NO.
100— WORK ORDER NO.
100— WORK ORDER NO.
100— WORK ORDER NO.

3595

061 — VULC., REPAIR 042 — BRAKE 043 — ALIGN. 044 — BALANCING 045 — LUB. 046 — BATTERY 047 — TUNE UP TV & RAD. APPL. 048 — GENV. & INST. 049 — SOL. 100 050 — MISC.

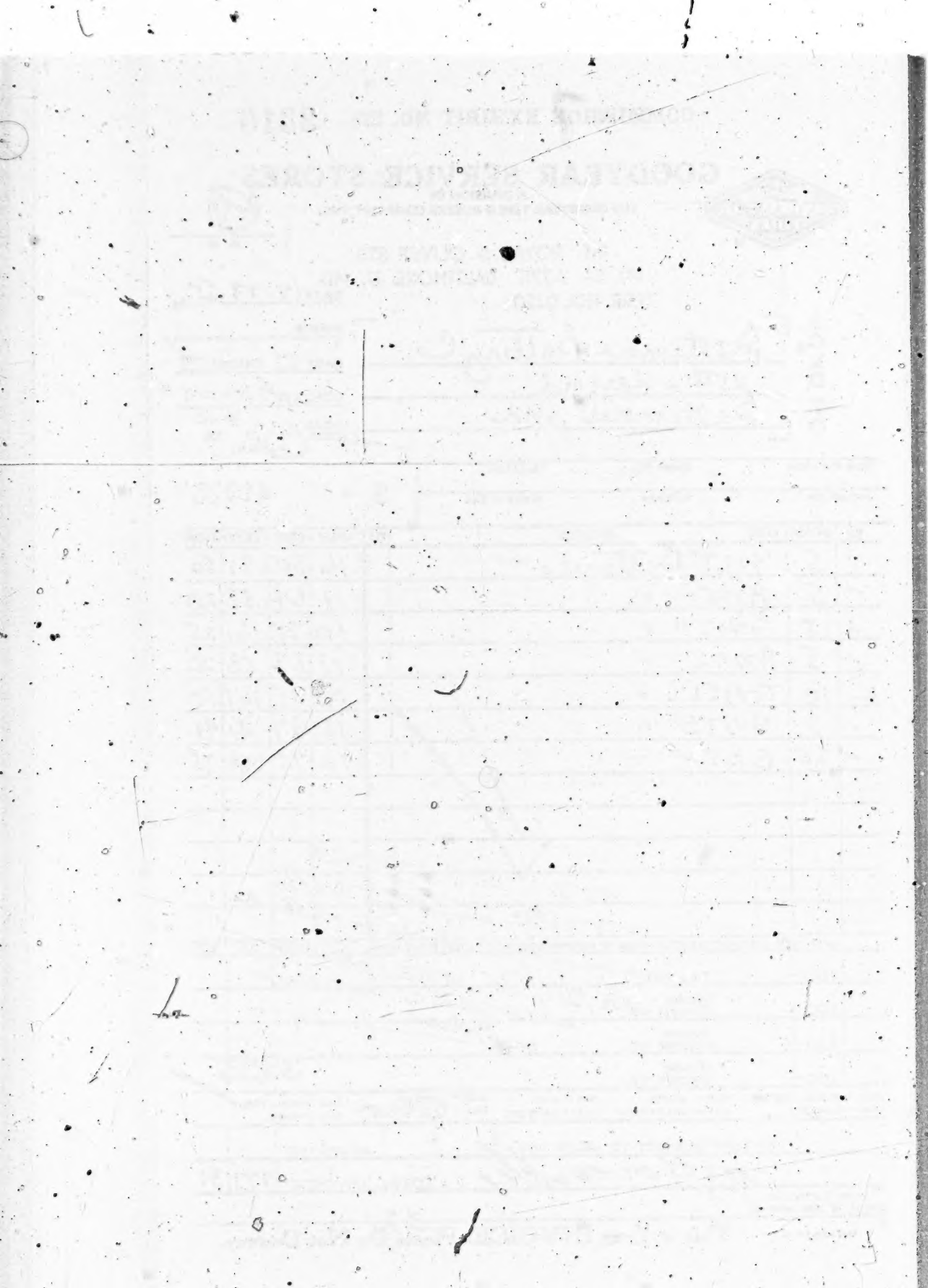
AMOUNT SUBJECT TO SALES TAX | SALES TAX

TOTAL INVOICE 777 31

Above Merchandise received in good order by

at

G-1188 (6-55) This is Your INVOICE. Please Do Not Destroy.



COMMISSION EXHIBIT NO. 340.

October 22, 1954

J. R. Ballestop #208
York Road & Wimwood Avenue
Baltimore 12, Maryland

Dear Sir:

The purpose of this letter is to notify you of our intention to cancel your Service Station Lease, as amended, and Dealer Sales Agreement, covering the service station property located at York Road and Wimwood Avenue at the first expiration date, which will be November 30, 1954; thereby giving you the required notice of cancellation as outlined in the fourth paragraph of the Service Station Lease.

Yours very sincerely,

SHERWOOD BROTHERS INCORPORATED

JOHN R. SHERWOOD
President.

RWT:sb

REGISTERED MAIL
RETURN RECEIPT REQUESTED

CC: Mr. Lawson
Mr. Waller
Mr. Seaman
Mr. Stambaugh

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 EXHIBIT NO. 340
IN THE MATTER OF Goodyear - Atlantic
DATE 11/19/57 ACE REPORTING CO., Official Reporters
BY

34

COMMISSION EXHIBIT NO. 346. 3318

CX 346

JAMES HOOPER RECOMMENDS SCHENUITS!

James W. Hooper, owner of Hooper's Service Station at 4912 Harford Road, knows the tire business inside and out. Here's what he has to say about Schenuit Tires.

"The first thing a customer buying a tire asks me is . . . How is this tire for wear? That's when I'm glad it's a Schenuit Tire he's asking about, because I know I can tell him sincerely that he'll get more safe miles out of a Schenuit Tire than any other first line tire. It's a good feeling to know your selling the best . . . and that's a Schenuit Tire!"

Insist on Schenuit, the custom-built, unconditionally guaranteed tire.

BUY YOUR TIRES ON CONVENIENT TERMS

Distributed by

Plotkin's Tire Sales

630 S. Hanover Street

Arcadia 4200

35-1

3598

3600 COMMISSION EXHIBIT NO. 347.

Shell Oil Company
909 East 22nd Street
Baltimore 18, Maryland

May 26, 1952

Location:
4912 Harford Road
Baltimore, Maryland

Mr. James W. Hooper
4711 Charlton Avenue
Baltimore 14, Maryland

Dear Sir:

We in Shell are proud of our dealer representation. It is a pleasure for me to welcome you as a newcomer to this group. We are confident that this relationship will prove to be both profitable and pleasant.

Attached are fully executed copies of your lease and Gasoline Sales Agreement with us. As your acknowledgment of the receipt of these contracts, we would appreciate your acknowledging and returning to us a copy of this letter.

We are also pround of the full line of products which we are in a position to offer you, tires, batteries and accessories, as well as gasolines, motor oils, greases and specialties. We believe that merchandise must be sold on its quality, reasonableness of its price and its public acceptance; rather than by contractual provisions. These are the factors which guide us in the distribution of petroleum products under the Shell brand and in the selection of the lines of tires, batteries and accessories which we represent. Consequently, if you again refer to your contracts

with us you will not find a single provision obligating you to buy your requirements of these items from or through us.

We will solicit your business for each of these items because this is a business in which we are engaged and because we feel that they will contribute to your overall success as a service station dealer. The extent to which we will enjoy your patronage must depend upon your voluntary acceptance of our product lines and the service that we are able to render. Your business, which we at all times will solicit, will be very much appreciated.

Yours truly,

Acknowledged:
James W. Hooper.

J. A. Lowry,
District Manager.

3601 COMMISSION EXHIBIT NO. 348A.

Service Station Manager's Agreement

This Agreement, dated May 21, 1954, between Shell Oil Company (herein called "Shell"), and W. E. Edwards of Terre Haute, Indiana (herein called "Manager").

Witnesseth:

1. Employment. Shell hereby employs Manager, and Manager hereby accepts employment by Shell to operate Shell's service station located at 22nd and Wabash in Terre Haute, Vigo County, Indiana.

2. Consigned Products. Shell shall stock the station with "Shell" gasolines and such other products as Shell may elect to consign to Manager. Inventories of such consigned stocks shall be maintained in such quantities as Shell considers adequate for the proper operation of the station. Title to all products consigned to Manager shall remain in Shell until sold, and Manager shall sell such products at prices fixed by Shell. Manager shall account to Shell for consigned products sold, in the following man-

ner: At the time of each replacement delivery, Manager shall pay Shell in cash, on partial account for consigned products theretofore sold, an amount equal to Shell's retail prices for the quantities of gasolines so delivered (less the commissions specified below), and Shell's dealer prices for the quantities of other consigned products so delivered, as such prices are in effect for each product or grade thereof and for the station at the time of such delivery. At the time the price of any consigned product is changed or Manager's account as to any consigned product is closed out by termination of this Agreement or otherwise, an inventory of each such consigned product shall be taken, and the difference between the quantity consigned and the quantity in stock shall be determined. If the price is increased, a credit memorandum shall be issued by Shell to Manager in an amount equal to such difference in quantities multiplied by the per-unit price increase. If the price is reduced, Manager shall pay Shell in cash an amount equal to such difference in quantities multiplied by the per-unit price decrease. If Manager's account as to the consigned product is being closed out, Manager shall pay Shell in cash Shell's retail prices for such difference in quantities of gasolines (less the commission specified below), and Shell's dealer prices for such difference in quantities of other consigned products. Such prices shall be those in effect for the respective products or grades thereof and for the station at the time of the inventory.

3. Other Merchandise and Services. Manager shall have the right, for his own account: (a) to purchase from Shell or such other suppliers as Manager may choose, and sell at the station, such other items of merchandise as Shell may approve, and (b) to perform such services at the station as Shell may approve, provided that Manager shall pay for such items of merchandise purchased from Shell, in cash at the time of delivery, Shell's dealer prices there-

for then in effect for the station; and provided that Manager shall not engage in automotive body work or major engine repairs at the station without Shell's prior written approval. Manager shall obtain all licenses and permits which may be required, and shall pay all fees, taxes and other charges which may be assessed or incurred, by reason of the transaction of such business by Manager for his own account.

4. Compensation. As full compensation, subject to the payment of all sums payable by Manager hereunder: (a) Manager shall retain the following commissions per gallon for the sale of consigned gasolines:

Grade of Gasoline	Commission	Minimum Commission
"Shell Premium"	3.0¢	1.5¢
"Shell"	3.0¢	1.5¢

provided, that at any time when Shell's retail price for any grade of gasoline at the station is considered by Shell to be sub-normal, the above-specified commission for such grade may be reduced, but never below the minimum commission above-specified for such grade; and (b) Manager shall retain all profits made on the sale of other consigned products (after paying to Shell the amounts specified in Article 2), all profits made from the sale of other merchandise purchased by Manager, and all receipts from approved services performed by Manager.

5. Operation. Manager shall: (a) devote his full business time to the operation of the station and use his best efforts to promote the sale of "Shell" products; (b) comply strictly and fully with all of Shell's instructions, rules and regulations, and all Federal, state and local laws, ordinances and regulations, applicable to the operation of the station; (c) keep such records and make such reports as Shell may require; (d) employ, and pay all wages and salaries of, such assistants at the station as Shell may

require and approve, and discharge any such assistant at Shell's request; (e) pay for all supplies and small items of equipment required in connection with the operation of the station; (f) collect and pay, as directed, such taxes, fees or charges as Shell may desire or be required to collect from or pass on to customers, either as a separate item or as part of the retail selling price, and which are not included in the prices specified in article 2; (g) withhold and pay over to Shell such employee taxes and contributions as Shell is or may be required by law to withhold on the compensation of Manager and his assistants; and (h) be solely responsible for all cash collected, shortages in consigned products, and loss or damage of property owned by Manager or his assistants. Manager shall have no authority to make any commitments whatsoever in the name or behalf of Shell; and any unauthorized credit extended by Manager shall be for the account and at the risk of Manager alone.

6. Insurance—Indemnity. Manager shall carry at all times automotive bodily injury and property damage liability insurance covering such automotive equipment as he may utilize in the operation of the station, with minimum bodily injury limits of $10,000 per person and $20,000 per accident and a property damage limit of $10,000 per accident, and furnish Shell on request satisfactory evidence of such coverage. Manager shall indemnify Shell against all claims, suits, loss and liability arising out of the operation of any such automotive equipment, or out of the performance at the station of any automotive body work or major engine repairs.

3603 7. Security. At Shell's request, Manager shall furnish Shell satisfactory security for the performance of Manager's obligations under this Agreement, which may include surety bonds covering Manager and any or all of his assistants. Shell shall have a lien on all equipment, merchandise and other property owned by Manager at the

station, to secure the performance of Manager's obligations hereunder; and in the event of any default by Manager in such performance, Shell shall have the right to enforce said lien in the same manner as permitted or provided by law for the enforcement of chattel mortgage liens.

8. Termination. This Agreement and Manager's employment hereunder shall continue until terminated by either Shell or Manager by giving twenty-four (24) hours' notice to the other at any time. Upon any termination of this Agreement, Manager shall immediately account to Shell for all consigned products not previously accounted for, as provided in article 2 hereof, and for all of Shell's equipment and other property used by Manager at the station during the continuance of this Agreement, including the equipment listed in attached Exhibit A, and shall pay Shell at current depreciated prices for any of such equipment or property which is not on hand at such time.

9. Entirety—Execution. This Agreement is the entire contract, and merges or supersedes all other promises, representations and understandings, with reference to or in consideration of the subject matter hereof. Neither this Agreement nor any amendment or supplement thereto shall be binding on Shell unless and until it is signed in Shell's behalf by a representative duly authorized by its Board of Directors, and a copy thereof so signed is delivered to Manager.

In Witness Whereof, this Agreement is executed as of the date first herein written.

Recommended by:

Shell Oil Company
By A. C. Pavey,
"Shell" District Manager.

G. W. Kelsch,
Shell's Salesman.

Witness to execution by Manager:
G. W. Kelsch

Wm. E. Edwards,
"Manager".

COMMISSION EXHIBIT NO. 348B.

3325

SB-1771-1 (Rev. 1/93)
Printed in U.S.A.

2

EXHIBIT "A"

Part of Service Station Manager's Agreement Dated May 21

[illegible], for Service Station located at 22nd and Wabash Street(s),

City of Terre Haute, State of Indiana.

BUILDING	
Size	2 Bay
Construction	Porcelain
Canopy (Yes or No)	Yes
Rest Rooms (Number)	2
LUBRITORIUM	
Number of Stalls	2
Size	
Type of Doors	Overhead

PUMPS			
MAKE	TYPE	MODEL	SERIAL
Tokheim	Comp.	39	1019567
"	"	"	1019215
"	"	"	1 [illegible] 7
"	"	"	1 19564

UNDERGROUND TANKS	
QUANTITY	CAPACITY
1	2000
3	4000
1 Fuel Oil	1000
1 Drain Oil	550

LUBRITORIUM		
QUANTITY	MAKE	CAPACITY
6		30 Gal.

HOIST	
Make	
Serial No.	
Key No.	

LIFTS			
MAKE	TYPE	MODEL NO.	SERIAL NO.
Globe	Contact	P1 [illegible] 5	74 9 [illegible]
	[illegible]		

AIR COMPRESSOR		
MAKE	HORSEPOWER	SERIAL NO.
Thompson	1.5	2 6

HEATING SYSTEM OR STOVES
Describe Briefly: Vertical

SIGNS	
QUANTITY	
1	

MISCELLANEOUS	
	QUANTITY
Air and Water Stands	
Air, Light and Water Stands	4
Air Stands	
Alcohol Tank (Size)	
Chairs	1
Desk	1
Dispenser-Hypoid Gear Lubricant	
Extinguisher-Fire Foamite	
Extinguisher-Fire - 1-1/2 Qt.	
Flag Pole	
Floodlights (No.)	
Floodlights (No.)	
Floodlight Poles	3
Floodlight Reflectors	6
Flusher-Gear	
Island Display Cabinets	
Kerosene Tank (Size) 120	1
Lamp Posts	
Lubrication Pit	
Lubrication Rack	
Pump Globes	
Pump Island Light Standards	
Sign Standards Combo.	2
Stool	
Tire Rack	
Wall Brackets (for Pump Globes)	
10# Ansul Fire Extinguishers	1
Horizontal Island Cooler 25'	1
3 [illegible]-3 Cabinets	
1 3-6 Shelving	
2 [illegible]-1 Cabinet	
1 1-3 Cabinet	
1 [illegible] Shelving	
1 [illegible] Shelving	
1 [illegible] Tire Rack	
1 [illegible] 2 Shelving	
1 [illegible] 3 "	
1 [illegible] Work Bench	
2 [illegible] Shelving	

Executed: T. W. Kelsch

[redacted]

3606 COMMISSION EXHIBIT NO. 349.

I-953 (Rev. 6/52)

Shell Oil Company
2219 W. Michigan Street
Indianapolis 22, Indiana

June 2, 1954
Mr. W. E. Edwards
22nd & Wabash
Terre Haute, Indiana

Dear Sir:

We in Shell are proud of our dealer representation. It is a pleasure for me to welcome you as a newcomer to this group. We are confident that this relationship will prove to be both profitable and pleasant.

Attached are fully executed copies of your Lease and Gasoline Sales Agreement with us. As your receipt for these contracts, we would appreciate your acknowledging and returning to us a copy of this letter.

We are also proud of the full line of gasolines, motor oils, greases and specialties we are in a position to supply you and of the quantity tires, batteries and accessories readily available to you through our arrangements with Goodyear. We believe that merchandise must be sold on its quality, reasonableness of its price and its public acceptance, rather than by contractual provisions. These are the factors which guide us in the distribution of petroleum products under the Shell brand and in the selection of the lines of tires batteries and accessories which we promote. Consequently, if you again refer to your contracts with us you will not find a single provision obligating you to buy your requirements of these items from or through us.

We will solicit your business for each of these items because this is a business in which we are engaged and because we feel that they will contribute to your over-all success as a service station dealer. The extent to which we will enjoy your patronage must depend upon your voluntary acceptance of our products line and the service that we are able to render.

Your business, which we at all times will solicit, will be very much appreciated.

Very truly yours,

(Illegible)

District Manager

Receipt Acknowledged:
[illegible]n. E. Edwards
Date 6-30-54
Attachments

3608 COMMISSION EXHIBIT NO. 350A-B.

January 6, 1948

TBA SJH

Tire & Tube Sales

Mr. J. S. Parks
Room 1105

Dear Sir:

Some time ago I informed you that Mr. Supplee had requested a thorough exploration of tire propositions of various tire companies in order that the Sales Department would have an opportunity to determine whether or not there were more desirable programs than those that we are presently operating under. At the time, you suggested that the matter be deferred until the new year. Since this assignment is quite a considerable task, I should

like to have it started at once and, if possible, completed before the end of February. I think we should invite all of the majors; i.e., Goodyear, Firestone, U. S., Goodrich, and General, to present their propositions on their name brands. In addition to that, I think we should also have propositions submitted, if possible, on certain of the desirable brands that are controlled by these majors, such as Kelly-Springfield, Fisk, Federal, Miller, and Hood.

We should also explore thoroughly the possibility of marketing our private brand and in this connection, should get proposals or refusals from the five majors, as well as from the Mansfield Tire & Rubber Company and the Lee Tire & Rubber Company. I do not believe that there are any other brands on which we would be interested in entertaining proposals.

I already have contacts with Mr. S. Gaylord of the Goodyear Tire & Rubber Company, Akron, Ohio; Mr. S. R. Milburn, U. S. Rubber Company, New York, New York; Mr. M. G. Huntington of the Allied Lines Division of the B. F. Goodrich Company, Akron, Ohio; Mr. G. W. Stephens, President of the Mansfield Tire & Rubber Company, Mansfield, Ohio; and Mr. J. Addison, Firestone Tire & Rubber Company, Akron, Ohio. Mr. Charleston already has Mr. Stephens' proposal on the United brand, as well as on a private brand. If you wish me to do so I can make the necessary arrangements through these contacts that 3610 I have, for definite appointments.

I am attaching hereto a list of the principal points that must be explored in each proposal and also a list of the pertinent facts regarding our operation that you will probably have to have for discussion with representatives of the various manufacturers.

Very truly yours,

Enc.

3612 COMMISSION EXHIBIT NO. 351 A-C.

June 22, 1948

TBA SJH

Tires

Mr. D. T. Colley
Room 1702

Dear Sir:

There are several broad choices that should be considered by an oil company that wishes to market a line of tires. These are:

1. Major brands—Otherwise known as the original equipment lines—represented by Goodyear, Firestone, United States, and Goodrich.
   A. The manufacturers in this group with the exception of Firestone also offer allied brands. Goodrich has Kelly-Springfield. United States has Fisk, Federal, Gillette, G & J, and others. Goodrich Hood, Miller, Brunswick, and Diamond. Some of these brands have been offered to all companies for their exclusive use during a contract period.
2. Minor brands—These include General, Seiberling, Lee, Mansfield, Dunlop, Cooper, Pharis, Dayton, Armstrong, and a number of other lines that are not nearly so well known.
   A. Some of these manufacturers also have allied brands. For example: Mansfield Tire & Rubber Company manufacture, in addition to the Mansfield tire, Century, Richland, and United. The allied lines of this group of manufacturers have in some cases been offered to oil companies on an exclusive basis.
3. Private brands—a name that is owned by the oil company or other mass marketer and used on a product that is made for the company by some tire manufacturer.

Following is a listing of some of the major oil companies and an indication of the type of tire marketing that they are employing:

PRIVATE BRAND		MINOR & ALLIED BRANDS		MAJOR BRAND	
Oil Company	Brand	Oil Company	Brand	Oil Company	Brand
Standard Oil (Ohio)	Atlas	Phillips Petrol.	Lee	Shell Oil (E. Coast)	Firestone & Goodyear
Standard Oil (N.J. & Subsidiaries	Atlas	Atlantic Ref.	Lee	Texas Co.	Firestone & Goodrich
Standard Oil (Ind.)	Atlas	Signal Oil	Lee	Mid-Continent	Firestone
Standard Oil (Cal.)	Atlas	Sun Oil	Kelly-Springfield	Union Oil Co.	Firestone
Standard Oil (Kty.)	Atlas	*Shell Oil (West Coast)	India (General)	Sinclair	Goodyear
Socony-Vacuum	Mobil	*Tide-Water Associated Oil	Federal (US)		
Cities Service	Actue				
Gulf Oil Corp.	Gulf				
Pure Oil Co.	Yale				
American Oil Co.	Amoco				

*Companies have exclusive use of allied brands.

Commission Exhibit No. 3514-C.

3613

Acceptance

The big four have far more public acceptance by virtue of their original equipment policy, national advertising programs and their dominant position in the industry than any of the other brands. Majors, including their production of allied and private brands, supply approximately eighty per cent of the replacement passenger tires. Among the well-known allied brands are Kelly-Springfield, Fisk, Miller, and Hood. The outstanding minor brands are General, Seiberling, and Lee. The better established private brands include All-State, Riverside, Atlas, and Yale. Atlas is an oil company brand that has been on the market for twenty years. During this time, it has been nationally advertised and nationally distributed. Yale originated by an old New England Tire Company and subsequently pushed by General as an allied line, was finally purchased by Pure Oil Company after a period of exclusive marketing.

Completeness of Line

Only the major brands offer a complete line. Even their allied lines are not complete in the strictest sense of the word. Under the "Cons" of the Lee analysis is shown the number of sizes and types not available in their line, which gives a picture of the significance of a complete program. As is indicated, it would require unreasonable inventories to obtain 100% coverage with a considerable portion of this inventory provided for only a relatively small percentage of the total national tire business.

Availability

All of the majors were invited to submit proposals to The Atlantic Refining Company. Only one has been advanced on a house brand and that by the Firestone Tire

& Rubber Company. They are aggressively soliciting our business. All of the majors were also invited to submit proposals on their allied brands. The B. F. Goodrich Company is the only company that presented such a proposal and this was restricted to one brand; namely, Diamond.

We did not canvass all of the minor brand manufacturers for the obvious reason that the majority of them afforded us no improvement over our present supply arrangements. We did contact General but they indicated that they would prefer to see us complete negotiations with The Mansfield Tire & Rubber Company, in which company General holds a substantial interest. Seiberling was not approached because of their publicly proclaimed policy to do business only with the independent dealer. A proposition was submitted by the Cooper Tire & Rubber Company.

All manufacturers that were contacted, including our present suppliers, were invited to submit private brand proposals. Only one manufacturer; i.e., the Mansfield Tire & Rubber Company, was interested.

Attached to this presentation is a price comparison of passenger and truck tires which shows Atlantic's profit margins with the resale schedules that could be used for each of the several companies that have submitted proposals. This includes a price comparison using our present Lee price structure as the one hundred per cent base.

3614 The "Pros" and "Cons" of our opportunities in doing business with each of these manufacturers are also included. Cooper's proposition is not submitted in this presentation as it has no apparent advantages for Atlantic which are not better handled by the other companies.

This presentation and Atlantic's benefits with the sev-

eral companies has been discussed at length with the members of the T. B. A. Products Committee. It was their unanimous opinion that Lee appeared to be the best choice for our company. To their approval, I would like to add my own since it is also my opinion after careful analysis that the Lee franchise is the best available at the present time for Atlantic.

Very truly yours,

Enc.

3615 COMMISSION EXHIBIT NO. 351D.

June 14, 1948

Passenger Tires
6.00 x 16 (100 Level)
Exclusive of Tax

Net Dealer		
Atlantic-Lee	(List less 25–2½)	Dealer can make up to 26.8% profit on Retail Sales
Atlantic-United	(List less 25–5)	Dealer can make up to 28.8% profit on Retail Sales
Diamond	(List less 25–8½)	Dealer can make up to 26.8% profit on Retail Sales
Firestone	(List less 25–2½)	Dealer can make up to 26.8% profit on Retail Sales
Volume Dealer		
Atlantic-Lee	(List less 25–2½–5)	Dealer can make up to 30.6% profit on Retail Sales
Atlantic-United	(List less 25–5 –5)	Dealer can make up to 32.3% profit on Retail Sales
Diamond	(List less 25–6)	Dealer can make up to 29.5% profit on Retail Sales
Firestone	(List less 25–6)	Dealer can make up to 29.5% profit on Retail Sales
Wholesale Dealer		
Atlantic-Lee	(List less 25–2½–10)	Dealer can make up to 34.2% profit on Retail Sales
Atlantic-United	(List less 25–5–10)	Dealer can make up to 35.8% profit on Retail Sales
Diamond	(List less 25–9½)	Dealer can make up to 31.7% profit on Retail Sales
Firestone	(List less 25–9)	Dealer can make up to 31.7% profit on Retail Sales
Distributor		
Atlantic-Lee	(List less 25–2½–15)	Distributor can make either 5–10–15% on Sales to above three types of dealers and upto 37.8% on Retail Sales
Atlantic-United	(List less 25–5 –15)	Distributor can make either 5–10–15% on Sales to above three types of dealers and up to 39.4% on Retail Sales
Diamond	(List less 25–11)	Distributor can make either 4.1, 7.2, 10.4% on Sales to 9% Dealer, 6% Dealer and Dealer and up to 33.2% on Retail Sales
Firestone	(List less 25–11)	Distributor can make either 4.1, 7.2, 10.4% on Sales to 9% Dealer, 6% Dealer and Dealer and up to 33.2% on Retail Sales
Distributor—C/L		
Atlantic-Lee	(2% additional)	Distributor can make either 6.9, 11.8, 16.8% on Sales to above three types of dealers and up to 38.5% on Retail Sales
Atlantic-United	(2% additional)	Distributor can make either 6.9, 11.8, 16.8% on Sales to above three types of dealers and up to 40.6% on Retail Sales
Diamond	(Associate Dealer & enjoying 3½% Volume Bonus)	Distributor can make either 7.5, 10.5, 13.6% on Sales to above three types of dealers and up to 36.9% on Retail Sales
Firestone	(Associate Dealer & enjoying 3½% Volume Bonus)	Distributor can make either 7.5, 10.5, 13.6% on Sales to above three types of dealers and up to 36.9% on Retail Sales

3616 COMMISSION EXHIBIT NO. 351E.

June 14, 1948

Truck Tires
8.25 x 20—10 Ply
Exclusive of Tax

Net Dealer		
Atlantic-Lee	(List less 20-5)	Dealer can make up to 24.0% profit on Retail Sales
Atlantic-United	(List less 20-5-5)	Dealer can make up to 27.8% profit on Retail Sales
Diamond	(List less 20-5)	Dealer can make up to 24.0% profit on Retail Sales
Firestone	(List less 20-5)	Dealer can make up to 24.0% profit on Retail Sales
Volume Dealer		
Atlantic-Lee	(List less 20-5-5)	Dealer can make up to 27.8% profit on Retail Sales
Atlantic-United	(List less 20-5-5-5)	Dealer can make up to 31.4% profit on Retail Sales
Diamond	(List less 20-6-2)	Dealer can make up to 26.4% profit on Retail Sales
Firestone	(List less 20-6-2)	Dealer can make up to 26.4% profit on Retail Sales
Wholesale Dealer		
Atlantic-Lee	(List less 20-5-10)	Dealer can make up to 31.7% profit on Retail Sales
Atlantic-United	(List less 20-5-5-10)	Dealer can make up to 35.0% profit on Retail Sales
Diamond Includes Associate Dealer Commission	(List less 20-9-3)	Dealer can make up to 30.6% profit on Retail Sales
Firestone Includes Associate Dealer Commission	(List less 20-9-3)	Dealer can make up to 30.6% profit on Retail Sales
Distributor—Truck Tire		
Atlantic-Lee	(List less 20-5-15)	Distributor can make either 5-10-15% on Sales to above three types of dealers and up to 35.4% on Retail Sales
Atlantic-United	(List less 20-5-5-15)	Distributor can make either 5-10-15% on Sales to above three types of dealers and up to 38.7% on Retail Sales
Diamond Includes Associate Dealer Commission	(List less 20-11-5)	Distributor can make either 7.2, 12.5, 15.2% on Sales to above three types of dealers and up to 34.2% on Retail Sales
Firestone Includes Associate Dealer Commission	(List less 20-11-5)	Distributor can make either 7.2, 12.5, 15.2% on Sales to above three types of dealers and up to 34.2% on Retail Sales.
Distributor—C/L		
Atlantic-Lee	(List less 20-5-15-2)	Distributor can make either 6.9, 11.8, 16.8% on Sales to above three types of dealers and up to 36.7% on Retail Sales
Atlantic-United	(List less 20-5-5-15-2)	Distributor can make either 6.9, 11.8, 16.8% on Sales to above three types of dealers and up to 39.8% on Retail Sales
Diamond Includes 3½% Volume Bonus & Associate Dealer Commission	(List less 20-11-5)	Distributor can make either 9.6, 14.8, 17.5% on Sales to above three types of dealers and up to 37.2% on Retail Sales
Firestone Includes 3½% Volume Bonus & Associate Dealer Commission	(List less 20-11-5)	Distributor can make either 9.6, 14.8, 17.5% on Sales to above three types of dealers and up to 37.2% on Retail Sales

3617 COMMISSION EXHIBIT NO. 351F.

June 14, 1948

Comparison Company Tire Costs
(Using Lee as 100 level)

Lee Cost

Pass. (100%)

Truck (100%)

includes consignment, advertising assistance, training, adjustment allowance, cash discount allowance and prepaid shipments.

United Cost

Pass. (101.0%)

Truck (96.5%)

We have added 5.2% for average freight charge plus 1½% the estimated value of consignment, plus 1% for equivalent advertising assistance.

Diamond Cost

Pass. (99.4%)

Truck (97.2%)

We have deducted 1% for C/L shipments (2% is allowance but only about 50% of our deliveries would be C/L).

The following have also been deducted from Atlantic Confidential Cost:

2% Adjustment Allowance
1% Advertising Allowance
½ of 1% Anticipation Allowance
2% Cash Discount

We have added 1½% which is the estimated value of consignment.

3618 COMMISSION EXHIBIT NO. 351G.

June 14, 1948

6.00 x 16 (100 Passenger Tires Level)

Exclusive of Tax

Regular (Net) Dealer

Atlantic makes 30.0% on sales of Lee tires.
Atlantic makes 26.7% on sales of United tires.
(29.0% on sales of Diamond tires ($250. order).
(27.2% on sales of Diamond tires ($500. order).
Atlantic would make 10.0% on sales of Firestone tires.

Volume Dealer

Atlantic makes 26.2% on sales of Lee tires.
Atlantic makes 22.8% on sales of United tires.
Atlantic would make 26.4% on sales of Diamond tires.
Atlantic would make 10.0% on sales of Firestone tires.

Wholesale Dealer

Atlantic makes 22.2% on sales of Lee tires.
Atlantic makes 18.5% on sales of United tires.
Atlantic would make 23.0% on sales of Diamond tires.
Atlantic would make 10.0% on sales of Firestone tires.

Distributor (Maximum)

Atlantic makes 16.7% on sales of Lee tires. (Note)
Atlantic makes 12.1% on sales of United tires.
Atlantic would make 17.6% on sales of Diamond tires.
Atlantic would make 7.5% on sales of Firestone tires.

Note: On sales to Authorized Petroleum Distributors Atlantic enjoys an additional 5% of Wholesale Dealer's price.

3619 COMMISSION EXHIBIT NO. 351H.

June 14, 1948

Truck Tires
8.25 x 20—10 Ply
Exclusive of Tax

Regular (Net) Dealer
Atlantic makes 27.6% on sales of Lee tires.
Atlantic makes 26.6% on sales of United tires.
Atlantic would make
(31.5% on sales of Diamond tires ($250. order).
(29.8% on sales of Diamond tires ($500. order).
Atlantic would make 10.0% on sales of Firestone tires.

Volume Dealer
Atlantic makes 24.0% on sales of Lee tires.
Atlantic makes 22.8% on sales of United tires.
Atlantic would make 29.0% on sales of Diamond tires.
Atlantic would make 10.0% on sales of Firestone tires.

Wholesale Dealer
Atlantic makes 19.6% on sales of Lee tires.
Atlantic makes 18.5% on sales of United tires.
Atlantic would make 24.3% on sales of Diamond tires.
Atlantic would make 10.0% on sales of Firestone tires.

Distributor (Maximum)
Atlantic makes 13.2% on sales of Lee tires. (See Note)
Atlantic makes 12.0% on sales of United tires.
Atlantic would make 14.9% on sales of Diamond tires.
Atlantic would make 7.5% on sales of Firestone tires.

Note: On sales to Authorized Petroleum Distributors Atlantic enjoys an additional 5% of Wholesale Dealer's price.

3620 COMMISSION EXHIBIT NO. 351I.

Lee

PRO	CON
1. Presently established and accepted by dealer and consumer.	1. Limited line—missing sizes and designs represent approx. 4% of National output in units but probably 10 to 15% in dollar volume. (Diamond estimates Tractor Tires dollar potential in our area as 20% of Truck.) Full line would include about 35 additional on and off highway truck tires and tube and 150 tractor and implement tire and tube sizes.
2. Good purchase costs.	2. Branch competition and friction in certain areas. This may be reduced as a plan is being developed to give the branches some credit for our business.
3. Profitable selling structure.	3. Minimum sales promotion assistance. A new Sales Promotion dept. at Lee may improve this situation.
4. Competitive quality.	4. Minimum field assistance.
5. Adjustment allowance to assist if handling "Road Hazard" guarantee.	5. Not as progressive a company as some competing manufacturers.
6. Limited competition with some control from other Lee channels.	6. Smaller company with limited manufacturing facilities, affecting their promptness in shipping certain size and design tires.
7. Local company, giving quick handling on most problems.	7. Reluctance to admit defects in workmanship and material has created field problems.
8. Fourteen years of business relationship.	8. Not allowed by contract to cover the full Atlantic Marketing territory. Ohio is not included. This matter is under further consideration now.
9. Assurance of continuing present total volume at a rate dependent upon our own salesmanship.	
10. No inventory investment.	
11. Unusually good public acceptance in E. Pa. and Phila.	
12. Eliminate investment in present company-owned inventory. C.O.D. estimate is $470,000.	

3621 COMMISSION EXHIBIT NO. 351J.

United

PRO	CON
1. Presently established and in inventory throughout most of our territory.	1. Limited line. Approximately equal to Lee although we are told tractor tires will be added to their program.
2. Purchase price on a cost plus basis without authorization of mold cost.	2. No assistance in advertising or promotional expense. Estimated necessary expenditure: approximately 5% of sales value.
3. Excellent product performance record.	3. Loss in sales volume if it were the sole tire marketed by Atlantic estimated at 20% the first year.
4. Exclusive distribution in our territory.	4. The probability of needing five more years to establish the brand with dealers and consumers before volume equaled the present total sales level.
5. Moderate amount of consumer acceptance already established.	5. Inventory investment — estimated: $1,000,000.
6. Some obligation by Atlantic because of this company's assistance during the tire shortage.	6. Lowered profits due to increased merchandising expenditure.
7. Maximum control of profit margins and resale prices.	7. Assumption of all adjustment costs or approximately 2½% of the sales value.
8. Full benefit of advertising and sales promotion expenditures.	8. Considerably less public acceptance than Lee after 3 years sale by our company.
9. Assistance in training costs.	
10. Continuation of present road hazard guarantee.	
11. Less expense to company to establish in place of Lee than other preferred lines.	

3622 COMMSSION EXHIBIT NO. 351K-L.

Private Brand

PRO	CON
1. Purchase on cost plus basis should give the lowest cost price over a long period.	1. Mold costs estimated 11/26/47 at $63,000—includes 70 Passenger molds covering 9 sizes and 20 Truck molds covering 17 sizes. Not included are white walls, second line, cushion types or special purpose truck.
2. Maximum control of profit margins and resale prices.	2. Present passenger tire prices on cost plus basis—not as favorable as maximum distributor deals.
3. Full merchandising flexibility.	3. All advertising and promotion costs at company expense—estimated at 5% of sales value.
4. Complete control of adjustment policies.	4. Continuous and intensive publicity required before Atlantic and private brand are associated in the consumer's mind.
5. Full benefit of advertising and sales promotion expenditures.	5. Lowered profits due to increased merchandising expenditures.
6. Sole source for inventory replacement.	6. Limited line of sizes and styles. Would not be as complete as present Lee line.
7. Increased company prestige as private brand is a current trend among Cll Companies.	7. Direct reflection on the company with consumer product dissatisfaction.
8. Ability to change supplier without disturbing Marketing program.	8. Assumption of all adjustment costs or approx. 2½% of sales value.
9. Possible increased salesmen's interest and activity because of company label.	9. No field assistance by manufacturer.
	10. All training costs at company expense. Estimated present cost to suppliers is $7500 per year.
	11. Lower volume for period necessary to build dealer and consumer acceptance—estimated at 15% below present volume in first year.
	12. Inventory investment — estimated at $1,000,000.
	13. Reduced truck tire volume even after establishing brand name. It is estimated that this would be at least a 25% reduction from our present level.
	14. Deviation from established policy of marketing only manufacturers' branded products.

3627 COMMISSION EXHIBIT NO. 354.

December 21, 1950

File: Batteries

Mr. S. J. Heideman
Room 1210

Dear Sir:

As per your request we contacted the following storage battery companies in an attempt to discover whether they had at present or contemplated in the future a battery program for direct dealer merchandising similar to the commission plan offered by certain tire manufacturers.

Prest-O-Lite Battery Company Inc.
Globe-Union Inc.
Delco-Remy Division General Motors Corp.
Electric Auto-Lite Company
Willard Storage Battery Co.
Electric Storage Battery Co.
See under "OK 11 A.M." Jan 10th Gould-National Batteries, Inc.

Replies to our inquiry were received by phone or letter from everyone with the exception of Exide and Auto-Lite. We understand Mr. Connell of Exide talked to Mr. Paxson and believe Auto-Lite prefers that any consideration of a national oil account be handled by Prest-O-Lite.

Prest-O-Lite, Willard and Gould-National believe that they could offer us something through their distributor organization, and would like to discuss the matter further. We attach their replies to our inquiry. The Delco people believe that their distributors would be willing to negotiate with us individually but they would not care to act for the individual distributors, or to play any part in the program.

The other concerns which replied have no acceptable program nor have they given consideration to any.

When the attachments have served your purpose will you please return same for our files.

Very truly yours,

Purchasing Department

By: Chas. F. Bergh

CFBergh/eme
Atchmts

3665 COMMISSION EXHIBIT NO. 374.

Number Of Lessee & Contract Dealers on Dates Indicated By Regions

Lessee Dealers

		N. E.	N. Y.	E. Pa.	W. Pa.	S.	Phila.	Total
March	1950	397	179	451	234	249	332	1,842
Dec.	1950	415	194	468	239	253	353	1,922
Apr.	1951	425	202	468	244	263	363	1,965
Dec.	1951	443	215	469	258	261	383	2,029
Dec.	1952	469	232	484	270	268	409	2,132
Dec.	1953	481	252	478	284	301	429	2,225
Dec.	1954	492	278	487	298	362	456	2,373
Dec.	1955	495	316	496	312	392	475	2,486
June	1956	495	321	480	317	399	481	2,493

Contract Dealers

		N. E.	N. Y.	E. Pa.	W. Pa.	S.	Phila.	Total
March	1950	244	428	1854	1341	548	1100	5,515
Dec.	1950	240	400	1776	1305	476	1046	5,243
Apr.	1951	233	382	1770	1246	465	1009	5,105
Dec.	1951	219	336	1739	1113	429	925	4,761
Dec.	1952	213	289	1617	1059	366	821	4,365
Dec.	1953	222	272	1179	929	318	713	3,633
Dec.	1954	223	265	1054	853	191	690	3,276
Dec.	1955	219	259	1096	749	134	667	3,124
June	1956	220	263	1075	725	121	640	3,044

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

ATLANTIC

GOODYEAR TBA SALES

BY CLASS OF TRADE *(SEE NOTE)

IN DOLLARS

1955 ATLANTIC REGION	LESSEE DEALERS T/T	LESSEE DEALERS BATT.	LESSEE DEALERS ACCESS.	LESSEE DEALERS TOTAL	CONTRACT DEALERS T/T	CONTRACT DEALERS BATT.	CONTRACT DEALERS ACCESS.	CONTRACT DEALERS TOTAL	DISTRIBUTORS T/T	DISTRIBUTORS BATT.	DISTRIBUTORS ACCESS.	DISTRIBUTORS TOTAL
NEW ENGLAND	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NEW YORK	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PHILA.-NEW JERSEY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL GOODYEAR	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

DEALERS (RECAPITULATE BETWEEN LESSEE AND CONTRACT DEALERS IF APPLICABLE)

TOTAL TBA SALES

	T/T	BATT.	ACCESS.	TOTAL	T/T	BATT.	ACCESS.	TOTAL
NEW ENGLAND					[illegible]	[illegible]	[illegible]	[illegible]
NEW YORK					[illegible]	[illegible]	[illegible]	[illegible]
PHILA.-NEW JERSEY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL GOODYEAR	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

NOTE: SALES TO CUSTOMERS OF OIL COMPANY SUPPLIERS ARE INCLUDED AT THE PRICE TO THE CUSTOMER AND NOT AT THE PRICE TO THE SUPPLYING DEALER WITH THE RESULT THAT THE SALES FIGURES SHOWN ARE DIFFERENT FROM THOSE ON WHICH COMMISSION WAS PAID.

3670

COMMISSION EXHIBIT NO. 3345

3692 COMMISSION EXHIBIT NO. 385.

February 18, 1952

TBA RMT

Report of Commissions
March through November 1951

Memo To: Staff Meeting File:

Goodyear Sales	$ 2,097,291.00
Commission Paid	205,515.91
Average Commission Rate	9.80%
Firestone Sales	2,936,577.00
Commission Paid	266,832.83
Average Commission Rate	9.09%
Totals	5,033,868.00
Commission Paid	472,348.74
Average Commission Rate	9.38%

3694 COMMISSION EXHIBIT NO. 386.

The Atlantic Refining Company
Sales—Northeast Division by Goodyear Districts
March 1, 1951 Thru October 20, 1951

Commission Sales

Goodyear Districts	New Tires and Tubes Excl. Marathon Truck	Pneu. Truck T&T[1]	Batteries (Excl Res) & Cables	Resol. Batt.	C & H Supp. Etc.	Total
New England Region						
Albany	19,850		3,613	411	2,453	26,327
Boston	181,648		24,119	3,389	46,144	255,300
Hartford	149,048		16,827	5,003	42,474	213,352
New York	4,324		1,318	0	2,042	7,684
Total	354,870		45,877	8,803	93,113	502,663
New York Region						
Albany	23,907		1,369	69	6,132	31,477
Buffalo	124,898		8,097	3,335	31,948	168,278
Newark	24,848		733	0	4,814	30,395
Syracuse	212,398		13,199	1,838	28,375	255,810
Total	386,051		23,398	5,242	71,269	485,960
Philadelphia & N. J. Region						
Philadelphia	460,434		73,943	6,701	144,005	685,083
Newark[2]	144,499		22,461	2,661	37,481	207,102
Total	604,933		96,404	9,362	181,486	892,185
Total Commission	1,345,854		165,679	23,407	345,868	1,880,808

OWN CONSUMPTION AND COMPANY OPERATED STATIONS

Boston	1,327	8	219	27	828	2,401
Buffalo	830	39	158	0	658	1,646
Hartford	3,567	89	0	0	0	3,567
Newark	39	18	0	0	0	39
Philadelphia	23,753	138	4,731	0	17,565	46,049
Syracuse	2,676	680	547	0	1,969	5,192
Total	32,192	972	5,655	27	21,020	58,894
Grand Total	1,378,046	972	171,334	23,434	366,888	1939,702

1. Included in New Tires & Tubes — Statistics Division
2. January 1, 1951 Thru October 20, 1951 — Sales Accounting Dept.

Issued: 11-16-1951

3696 COMMISSION EXHIBIT NO. 387.

August 15, 1952

TBA WCH

Goodyear Program—
Dealers and Supply Points

Mr. L. K. Maisel
Syracuse, N. Y.

Dear Sir:

With reference to our telephone conversation of August 14, listed below is as much information as was available on your request:

	New England	New York	Phila.
#1—Number of dealers on Goodyear Program	654	588	842
#2—Number of Goodyear stores and Goodyear dealers supplying Atlantic	66	41	2
#3—Number of Atlantic dealers acting as Supplying Dealers	13	20	18
#4—Number of supply points by Region	79	61	20

R. M. Taitt

3706 COMMISSION EXHIBIT NO. 389A-B.

Products Eligible Under Shell Sales Commission Plan.

Sales of the following listed products to approved Shell accounts are to be reported on the G-1204 reports when delivery is taken from authorized supply point as indicated below:

(A) When delivery is taken from and/or billing issued by District.

All Goodyear Tires and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries.

Goodyear produced Recaps & Repairs.

All Dill and Schrader Valve Merchandise.

Sea-Bee Outboard Motors.

Goodyear Repair Materials as follows—Small and Bicycle Tube Repair Kits, Quart size Steptread Cement, Emergency Self-Sealing Patches, Small Containers Cold Patch Cement, Gasket Compound, Bicycle Rim Cement, Shaler M-50 Repair Kits and Motorists Vulc-Patch Kits.

(B) When delivery is taken from and billing issued by Goodyear Stores.

All Goodyear Tires and Tubes (Except Airplane) including Seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Goodyear Produced Recaps & Repairs.

All Dill and Schrader Valve Merchandise.

Sea-Bee Outboard Motors (only if Akron has approved the Store as a supply point for Car & Home Mdse.)

Goodyear Car & Home Mdse. stocked at Goodyear Field Warehouses (Only if Akron has approved the store as supply point).

(C) When delivery is taken from a Field or Factory Field Warehouse.

Goodyear Car and Home Merchandise.

Goodyear Brake Lining, Rivets and Wheel Weights.

Goodyear Repair Materials—The same and only those items listed above under (A).

Includes merchandise shipped direct to dealer by manufacturer.

(D) When delivery is taken from and billing issued by an Independent Dealer

All Goodyear Tires and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Sea-Bee Outboard Motors (Only if Akron has approved the dealer as supply point for Car & Home Mdse.)

Goodyear Car & Home Mdse. stocked at Goodyear Field Warehouse (Only if Akron has approved dealer as supply point).

3707 Products Not Eligible Under Sales Commission Plan

Billing covering products listed hereunder, regardless of delivery point is not subject to commission and is not to be recorded by Stores nor included in G 1204 volume on which commission is to be paid.

Adjustment billing of any of the eligible products listed above.

All products not listed above as eligible products including but not limited to

General Electric and Hotpoint Major Appliances

General Electric Radios

Motorola Radios, Aerials and Accessories
Motorola Car Heaters
Anti Freeze
Tire Chains unless delivered by Field Warehouse
All types of Equipment—Battery Chargers, Display, Service Station, etc.
Advertising and Sales Promotion items.

Payment of Commission

Akron will pay all commission to Shell in connection with this plan. Rates of commission vary by type of Shell account, and type of product. Therefore it is of the utmost importance that all Shell accounts be correctly classified on G-1209 records and also when reported on G-1204 so that the correct amount of commission will be computed by Akron.

Rates of Commission follow—

(A) Approved Petroleum Jobber or Petroleum Distributor
All Merchandise (except Resolute Battery Volume) 7½%
Resolute Battery Volume 7½%
(See exceptions under C below)
Identified on G-1204 and G-1209 as Oil Company Franchise Jobber or Distributor.

(B) Approved Oil Company Dealer (not Jobber or Distributor)
All Merchandise (except Resolute Battery Volume) 10 %
Resolute Battery Volume 7½%
(See exceptions under C below)
Identified on G-1204 and G-1209 as Oil Company Dealer

(C) Any approved account buying Car and Home Merchandise at Goodyear Jobber Prices
On Car and Home Merchandise, Brake Lining, Rivets and Wheelweights and Miscellaneous Mdse. 5%
Identified on G-1204 and G-1209 as Approved Goodyear Car & Home Jobber.
Merchandise other than as listed above is subject to 7½% or 10% as determined under "A" or "B".

3708 COMMISSION EXHIBIT NO. 391A-C.

Shell Oil Co.

Sales Commission Plan.

The Shell Oil Co., will be paid a sales commission on net sales (by authorized supply points) of certain Goodyear products to Shell Franchise Jobbers and Shell Independent Dealers, (hereinafter referred to as Shell Accounts) as recommended by Shell and approved by Goodyear District Manager.

All sales under this plan are sales by an authorized supply point to the Independent Shell Account. Billing issued to Shell Oil Co. covering purchases either for Shell "Own Consumption" purposes or by Shell Company-operated stations are not subject to sales commission.

Payment of commission will be made to Shell by Akron and will be based on sales reported to Akron by Districts on monthly G-1204 reports.

Establishment of Authorized Supply Points.

District Manager will determine supply point for each Shell Account approved.

Goodyear Districts, Field and Factory Field Warehouses, Goodyear Service Stores and Goodyear Independent Deal-

ers may serve as authorized supply points for these accounts. See Page 1-A for products each class of supply point may deliver.

The supply point will make delivery of the merchandise, issue billing and carry the Accounts of the Shell Accounts they serve.

Master Record G-1209

Shell Oil Company will prepare G-1209 on each Shell account which is to participate under the plan. All copies of the form should be approved and forwarded by Shell to the Goodyear District Manager for approval and completion.

The G-1209 must be filled in completely as provided on the form.

After G-1209 is completed and approved by both Shell and Goodyear District Manager, District Office will distribute copies as follows—

Original (white)	—District Office file
Duplicate (canary)	—Shell Oil Company Division Office
Triplicate (pink)	—Goodyear Field Representative
Quadruplicate (blue)	—Supply Point where a Goodyear Store (other supply points handled by list—see below)

G-1209 provided to Stores which are not supply points for merchandise other than Car and Home Merchandise must be clearly marked "applies only to Car and Home Merchandise".

If more than one Store will act as a supply point, the additional Store (stores other than the regular supply

point) should be notified of the approved Shell account by letter.

Independent dealer supply points should be furnished a list of the Shell accounts who will buy from them and on whom we ask them to report.

Credit Policy

All Shell Accounts participating under this plan will establish credit with the Goodyear District, Store or Independent Dealer, which has been designated to serve them. Purchase, may, of course, be made on a cash or COD basis also. Districts must maintain separate B-80 on each COD or cash discount.

No Change Replace Sheet Dated 3-3-55.

3710 Price Policy

Approved Shell Accounts under this plan will purchase their requirements on the same basis as any independent dealer at the prices and discounts for which they can qualify in accordance with our regular sales program for tires, tubes, batteries, C&H Mdse, etc.

Products Eligible Under Sales Commission Plan

Sales of the following listed products to approved Shell accounts are to be reported on the G-1204 reports when delivery is taken from authorized supply point as indicated below:

(A) When delivery is taken from and/or billing issued by District

All Goodyear Tire and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

* Goodyear Camelback
Goodyear produced Recaps & Repairs
All Dill and Schrader Valve Merchandise.
Goodyear Car & Home Mdse except Dept. 221 items (When delivered by Mfr. with DA billing through District.)
Goodyear Repair Materials as follows—Small and Bicycle Tube Repair Kits, Quart size Steptread Cement, Emergency Self-Sealing Patches, Small Containers Cold Patch Cement, Gasket Compound, Bicycle Rim Cement, Shaler M-50 Repair Kits, Motorists Vulc-Patch Kits, and Simplug Repair Kits.

(B) When delivery is taken from and billing issued by Goodyear Stores
All Goodyear Tires and Tubes (Except Airplane) including Seconds.
Goodyear Automotive and Farmlight Batteries and Battery Cables.
Goodyear Produced Recaps & Repairs
All Dill and Schrader Valve Merchandise.
Goodyear Car & Home Mdse stocked at Goodyear Field Warehouses except Dept. 221 items.

(C) When delivery is taken from a Field or Factory Field Warehouse
Goodyear Car and Home Merchandise except Dept. 221 items.
Goodyear Brake Lining, Rivets and Wheel Weights.
Goodyear Repair Materials—The same and only those items listed above under (A).
Includes merchandise shipped direct to dealer by manufacturer.
Goodyear Battery Cables
* Goodyear Camelback

---

* Addition

(D) When delivery is taken from and billing issued by an Independent Dealer

All Goodyear Tire and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Goodyear Camelback

Goodyear Car & Home Mdse stocked at Goodyear Field Warehouse except Dept. 221 items.

Dealer produced Recaps and Repairs when Goodyear Camelback and Repair materials are used.

Products Not Eligible Under Sales Commission Plan

Billing covering products listed hereunder, regardless of delivery point is not subject to commission and is not to be recorded by Stores nor included in G-1204 volume on which commission is to be paid.

Replaces Sheet Dated 3-3-55

3712 ~~Shell Oil~~ Shell Oil Co.

Adjustment billing of any of the eligible products listed above.

All products not listed above as eligible products including but not limited to.

General Electric and Hotpoint Major Appliances

General Electric Radios

Motorola Radios, Aerials and Accessories

Motorola Car Heaters

Arvin Television

Dry Charged Battery Acid Accessories

Dept. 221 Car & Home Mdse.

Magic Chef Ranges

Coleman—Major Appliances as supplied by distributors

Admiral—Radios, Television and Major Appliances
*Repair Material (Except those items listed under paragraph A.)
All types of Equipment—Battery Chargers, Display, Service Station, etc.
Advertising and Sales Promotion items.

Sales Commission Plan—General

All Goodyear shipments will be to the supplying dealer —we will not drop ship to the Shell dealer for account of the dealer.

Important — Careful attention under the Independent Dealer Supply Point handling is required to avoid payment to Shell of duplicated commissions under the following circumstances.

When a Shell account is authorized under this plan, commissions are to be paid only on this Shell account's purchases from his supply point. If this authorized account is the supply point for other Shell accounts, then sales to such other accounts are not eligible for commission as would result in our paying commission to Shell on the original sale and then paying a second commission on the same merchandise when it was resold to the other Shell Account.

The instructions outlined above under "Independent Dealer Supply Points", therefore, are applicable only if the dealer supply point is not an oil company approved commission account.

Goodyear Store Supply Points

District Manager will provide stores that are to function as supply point with G-1209 of specified Shell Accounts for whom the store is the designated supply point. As any changes occur in the G-1209, District Manager will

*Change

notify store of change by copy of G-1209. Upon receipt, Stores must immediately revise their records.

It is suggested that stores file the visible G-1209 form in their stock ledger binder for ready reference, Stores receiving lists of accounts from their District Manager should order supplies of blank G-1209 forms with which to establish their visible system.

Special Instructions Covering Store Car & Home Points

Only those stores specifically approved by District Manager may operate as Car & Home Supply Points.

When so approved supply point stores may sell and bill to specified Shell accounts any Goodyear Car and Home merchandise stocked at our Field Warehouse. Brake Lining and related merchandise, General Electric and Hotpoint Major Appliances, GE Radios and Motorola Radios and Heaters are not involved under this arrangement.

The Shell Accounts' buying price should be either dealer or "75" price net except for cash discount. Quantity shipping allowance will not apply. Annual Bonus will be paid if earned.

Replaces Page Dated 3-3-55

3714 COMMISSION EXHIBIT NO. 392 B.

June 3, 1948

Re: Hanselman Tire & Battery Company
Springfield, Illinois

Mr. E. C. Flynn
District Manager
Goodyear Tire & Rubber Company
Peoria, Illinois.

Dear Mr. Flynn:

I have been hopeful that I would have an opportunity to meet you sometime at Springfield where we could discuss the Hanselman Tire and Battery account. This subject has been raised with you by Mr. Charles Mead, Manager of our Division Retail Department and Mr. Paul Houser, District Manager, Decatur-Springfield. It is my understanding that you have consistently refused to recommend that Shell receive credit for T. B. A. sales being made by Goodyear to the Hanselman account and the purpose of this letter is to request that you reconsider your decision.

We recognize the fact that Hanselman was a former Goodyear employee; however, we wish to point out that we were directly involved with John at the time he started his business venture and a lease-contract was signed with him for Shell Petroleum Products from the very beginning. Our people have consistently worked with this account for furthering of the T. B. A. volume; however, your predecessor, as well as yourself, have denied us the credit for this account which we know we are rightfully entitled to receive. During 1946-47 Mr. Hanselman swung his purchases over very heavily to General Tire. Prior

to January, 1948, at which time he returned to Goodyear 100%, we had several discussions with him regarding his future source of tire supply and definitely did assist in influencing his decision to go along with the Goodyear program. In fact, Hanselman asked our opinion and advice as to whether or not he should select Goodyear or another supplier. We recommended your company because we felt at that time that due to his background of experience he might be benefited to a greater extent, and further, we had no doubt in our minds as to your company's concurrence in our request for credit on the account.

For your information, there has never been any question about our contract being direct with John Hanselman on the sale of gasoline, and also it is important to 3716 recognize that we have loaned a considerable amount of equipment, such as pumps, tanks, lift and air compressor, in addition to other monies expended in the development of the service facilities and appearance of this unit. There is also no question as to the fact that Mr. Hanselman operates his tire business out of the location which we have under lease-contract and frankly, we just cannot reconcile ourselves to your line of thinking in connection with the part we play in this account.

Our associations with your company in the past have been most pleasant and we propose to continue to do everything we can to cooperate with you and your people; however, this particular case has reached the point where we feel our rights are being ignored and I wish to go on record with you at this time that unless favorable action is taken by you and your Company to assure Shell receiving credit on this account retroactive to January 1, 1948, we will have no alternative other than to encourage Mr. Hanselman to find a new source of T. B. A. supply at the expiration of his present annual contract.

We ask that you review this situation, after which we would appreciate receiving your comments and favorable decision to comply with our request.

Yours very truly,

Original signed by
R. C. Mueller
Division Sales Manager

Cc Mr. S. Gaylord, Akron, Ohio
Mr. G. L. Switzer, H. O.-New York
Mr. C. H. Mead, St. Louis
Mr. P. A. Houser, Decatur

3718 COMMISSION EXHIBIT NO. 393.

Akron, Ohio
7/8/48

K C Flinn
District Manager
Peoria, Illinois

cc R W Fitzgerald—Chicago
Victor Holt
R E Clarkson
L R Harrah
C R Mitchell—St Louis

Shell—Re: Hanselman Tire & Battery Company
Springfield, Illinois

In the matter of qualifying subject account under our Shell Sales Agreement, as a result of your further investigation and our discussions with our Akron management, it has been mutually agreed to qualify the account, effective June 1, 1948.

In view of this decision, will you please issue a G-1209 for the account covering tires, batteries and C & H M, effective June 1, 1948, with sales credit to Shell accruing from that date.

Mr. Pegg, Mr. Mueller and Mr. Meade of the Shell Division Office—St Louis, are thoroughly in accord with this arrangement and assure us complete cooperation in the further development of the account.

If we can be of any further assistance in the matter, please advise.

Manager—Petroleum Sales Dept

S A Gaylord
lfm

3720 COMMISSION EXHIBIT NO. 394A-C.

Akron 16, Ohio

Date October 19, 1948

(W) District Instruction No. 1086A

L R Harrah
Petroleum Sales

Deliver to

Managers—Districts Western Division
Division Operating Manager—Western Div

Subject—Shell Oil Co, San Francisco—Sales Commission Plan

Effective January 1, 1949 Shell Oil Company, Inc., San Francisco will be sold on a sales commission basis, superseding the present Resale Program. It has been mutually agreed also, that this changeover will begin at once on a limited scale and will be completed between now and the first of the year. All changes prior to January 1st should

be effective as of the close of our accounts receivable either October 25th or November 25th.

The following preparatory steps are necessary to insure the change of program with a minimum of confusion. (It will be necessary to expedite action for setting up the special accounts mentioned above.)

List of Shell Accounts to Participate

Shell will submit a list of all their dealers who will be eligible in its opinion to participate under this program.

It is the responsibility of the District Manager to discuss this list of accounts with the proper Shell representative and mutually agree on the specific accounts to participate under the commission program and as direct Goodyear dealers or as Associate Dealers under supplying dealers and stores.

The District Manager will then assign the approved list of accounts to field representatives (or Store Managers where the account will be sold as a Store Associate Dealer) so immediate contact can be made with the Shell accounts to explain and sell the new program. These contacts should be made before the changeover date so that the Shell Account is not left without a source of supply.

The District Manager will classify each approved account to be sold as a district account for dealer discount, battery classification, and any guarantees just as is done for independent dealers. He will arrange, too, for a source of supply (District, Store, or Dealer) for each Shell outlet. Whenever practical, the District should be the designated supply point.

District should notify by letter these Dealers who are appointed Supplying Dealers. (Field Representatives should make verbal arrangements with the dealers prior to this letter.)

Stores should be notified by letter those dealers for whom they will act as supply point. (This letter will be replaced as soon as possible by approved G-1209 forms.)

Approvals

Vice Pres. Finance—
Treasurer—
Secretary—
Comptroller—
Asst. Compt.—Caldwell
Wholesale Oper.—Rhoads
Retail Oper.—
Credit Dept.—Webster
Merchandise Depts.—
Sales Accts.—Mock
Treas. Depts.—
Misc. Depts.—Gaylord
Bryan—
Metzger—
Wright—
Vice Pres. Sales—
Vice Pres. Tire Depts.—
Mgr. Tire Depts.—Holt
Mgr. Trade-Relations—
Mgr. Retail Stores—
Law Dept.—
Mgr. Asst. Mdse.—
Personnel—
Standard Practice—Gould

Originated by A L Rhoads
Department Wholesale Field Operating

3722 Stores so designated must secure immediately X-606 Shell Commission stamp to identify all invoices and credit memoranda on eligible products as subject to commission. Stores order this stamp from Akron on G1051C.

A list of the approved accounts with proper dealer classification and supply point noted will be submitted to the District Operating Manager for his use.

G-1209

Districts and Store will accept the approved list of accounts as authority to pass invoices for sales commission until G-1209's are issued.

The Operating Manager will use this list to prepare G-1209 forms for all accounts. Distribute in the established manner. This should be done, if possible, before January 1st. (Destroy as of changeover date present B-96 records of accounts operating on approved Shell credit limits.)

Goodyear Dealer Supply Point

Where a Goodyear Dealer is appointed as a Supply Point for approved Shell Dealers, he will carry the accounts on his own books. It will be the responsibility of the Goodyear Field Representative to arrange for and if necessary to secure each month a copy of the Goodyear Dealers' invoices and credit memos to the eligible Shell account covering eligible Goodyear Products. Form G-1208 can be used if the dealer's billing system does not provide for extra copy of invoices.

These documents will then be handled by the district as explained in special account instructions (Shell Oil Co., New York).

Price Policy

Approved Shell Accounts under this plan will purchase their requirements on the same basis as any independent dealer at the prices and discounts for which they can qualify in accordance with our regular sales program for tires, tubes, batteries, C & H Mdse, etc.

Credit Policy

The Shell accounts must establish credit with the Goodyear Supply Point which is to serve them. Shell Oil Company is no longer involved, but will be glad to furnish credit information based on its past experience.

Districts will withdraw all B-96 credit limits being sure to notify dealer and store supply points that no deliveries after the changeover date for the account of Shell are permitted. (Final billing under Shell Resale Program by dealer and store supply points must be cleared immediately after the commission plan is put into effect for the individual dealers.)

The necessary credit information should be secured and appropriate credit limits established as quickly as possible for accounts carried in district accounts receivable.

Shell Dealers may, of course, purchase on a cash or COD basis.

Disposition of Back Orders

Present back orders as of the effective date of the change should be referred to the Shell Account to determine if the merchandise is still desired. If merchandise is desired, reinstate the order under the dealer's name. Back orders for those Shell accounts assigned to supplying dealers or stores should be referred to the supplying dealers or stores for further handling with the Shell account.

3724 Sales to Company-Owned and Operated Stations

Sales to such accounts will be handled under a Marketing Resale Agreement which is explained in the special account instructions (Shell Oil Co., N. Y.).

Billing will be made on B-16 form upon receipt of proper purchase order signed by station manager. Invoices must be rendered to Shell in quadruplicate. All discounts are to be shown on the face of the invoice.

Sales to these Stations are not subject to commission and are not to be included, therefore, on the reports of sales which is the basis for payment of commission.

Purchases for Own Consumption

There is no change in instructions pertaining to purchase for own consumption—standard Shell purchase orders will be issued and the regular own consumption discounts are to be extended on the face of the invoice.

Sales for own consumption are not subject to sales commission.

General

1. The new plan accepted by Shell Oil Co, San Francisco, is identical with the present program used by Shell, New York. Therefore, use as basis of this program the instructions as outlined in the Special Accounts Folder under Shell Oil Co., New York. All Goodyear personnel should review these instructions carefully.
2. District Information Letter #1052A announced that Goodyear Dealers, with Akron approval, might be established as supply points for Shell Independent Dealers on Car & Home merchandise. This plan will still be in effect.
3. Review instructions in Wholesale Field Operating Manual, pages C-30 through C-30P, to insure correct handling of forms and reports—G-1203, G-1204, G-1205, G-1206, G-1208, G-1209. (Particularly, see C-30K—C-30M on Shell Oil Co, New York.)
4. Shell Oil Co Division Offices will furnish each district the G-1204 forms filled out except for the figures to be transferred from the G-1205's. Each district will, of course, make a summary sheet for each Shell Division per manual instructions.
5. For an excellent general discussion of this program, read the section in the new Field Representatives

Manual under "Oil Company Distribution and Its Importance" (Section VIII, pages 93-105).

6. Goodyear will not be involved in Shell's bonus problem with the accounts in each of its divisions which are transferred to the commission plan before the first of the year. Our regular plan for payment of annual bonus—bonusable purchases projected to an annual basis—will apply.

3726 COMMISSION EXHIBIT NO. 395A.-B.

The Goodyear Tire & Rubber Company, Inc.
Mt. Royal & Oliver Sts.
Baltimore 17, Md.

December 19th, 1951.

Mr C H Mead, Jr
Shell Oil Company, Inc.
909 E 22nd Street
Baltimore, 18, Md.

Dear Charlie:

I am returning to you, unsigned, two G-1209's which request that G D Armstrong Co. Inc., of Laytonsville, Md., be approved as a supplying dealer for Laurel Park Servicenter at Laurel Park, Md., and Bowie Shell Service at Bowie, Md.

Approved supply points for both of these dealers are the Goodyear Service Store in Washington and Alfred Stidham Tire Company in Washington, also the Goodyear Tire & Rubber Company District at Baltimore, Md.

Either of these two accounts can certainly be amply supplied by one of the three approved supply points and I suggest that you encourage your stations to please permit themselves to be supplied by one of those three points.

I cannot imagine what advantage they would find in wanting to buy from Armstrong, even tho' I must agree that Armstrong is a very fine organization and one of our most valued dealers.

My reason for taking this attitude is the fact that we very definitely discourage our dealers from selling Goodyear tires outside of their authorized territory, and in servicing either Laurel or Bowie, the Armstrong Company are out of their territory.

A situation of this kind, of course, presents us with a serious problem for, naturally, we are certainly not in a position to dictate to any good dealer exactly where he may sell the merchandise which he purchases from us—all we can do is ask that they remain within the boundaries which we establish. However, in the case of Oil Company stations where we have already authorized and established an ample number of supply points, all with good service, we cannot pay the Oil Company in question a commission on merchandise delivered by a dealer who is operating outside of his territorial boundaries.

I believe that you will sympathize with our position in this matter and that your Field Representatives will courteously request the operators of these stations to buy their Goodyear merchandise from approved supply points. If, however, they refuse to do so I suppose there is very little you and I can do about it.

3728 Kindest personal regards.

Very truly yours,

Butler
District Manager
M

Butler Doolittle
mh
CC—G D Armstrong Co Inc
RD Gaithersburg, Md

3730 COMMISSION EXHIBIT NO. 396A.

The Goodyear Tire & Rubber Company, Inc.

Office of
Division Manager
Northeast Division
292 Madison Ave.
New York 17, N. Y.

October 9th, 1950

Mr O E Scholz
Retail Department
Shell Oil Company
50 West 50 Street
New York, NY

Dear Mr Scholz:

I am attaching, for your files, two new sets of complete instructions with reference to our program with your company.

These instructions cover purchases for your own consumption, instructions covering company operated stations, and also instructions on the sales commission plan with reference to your dealers.

Very truly yours,

Petroleum Sales Representative

R E Sewell
lwh
Attachments—2

3732 COMMISSION EXHIBIT NO. 396B.

—3—

Resale

9-20-50

Shell Oil Company

New York, New York & San Francisco, Calif

Marketing Resale Agreement—Company Operated Stations (Commission Basis)

In addition to those operated by Shell salaried employee, Shell also has in operation throughout the country a number of Company Owned Stations which are operated on a commission basis.

Where these stations are involved, the Shell District Manager or Salesman will issue Form D-258 to Goodyear for the stations' initial order of tires, tubes, batteries and car and home merchandise.

Shipment and billing of the initial order covered by the D-258 will be handled strictly in accord with instructions on Salary Operated Station purchases.

Only the initial order will be ordered on D-258 and charged to Shell. All subsequent orders from the station will be billed to the individual managing the station on commission.

Districts will, therefore, establish credit limit on the operator as an individual and handle the account the same as any other District account. District Manager will establish levels at which the account will be billed.

In some instances a dealer or store may be established as a supply point for these stations, in which case the dealer or store will handle and bill the account direct.

Sales to these stations, after the initial order (and all back orders thereof) has been shipped, will be included in volume on which Shell will receive commission. Therefore, Shell should submit G-1209 on these stations in accordance with Shell. "Sales Commission" instruction and all billing to the operator as an individual should be stamped "Shell Commission".

Change in Trade Style Only

Replaces Undated Sheet

Remove All instructions for Shell Oil Co., San Francisco

3734 COMMISSION EXHIBIT NO. 396C-H.

Shell Oil Co.

9-20-50

Sales Commission Plan

* The Shell Oil Co., will be paid a sales commission on net sales by authorized supply points) of certain Goodyear products to Shell Franchise Jobbers and Shell Independent Dealers (hereinafter referred to as Shell Accounts), as recommended by Shell and approved by Goodyear District Manager.

* All sales under this plan are sales by an authorized supply point to the Independent Shell Account. Billing issued to Shell Oil Co. covering purchases either for Shell "Own Consumption" purposes or by Shell Company-operated stations are not subject to sales commission.

Payment of commission will be made to Shell by Akron and will be based on sales reported to Akron by Districts on monthly G-1204 reports.

Establishment of Authorized Supply Points

* Change in Trade Style Only.

District Manager will determine supply point for each Shell Account approved.

Goodyear Districts, Field and Factory Field Warehouses, Goodyear Service Stores and Goodyear Independent Dealers may serve as authorized supply points for these accounts. See Page 1-A for products each class of supply point may deliver.

Establishment of Goodyear Stores and Independent Dealers as supply points for Car and Home merchandise requires prior approval by Akron.

The supply point will make delivery of the merchandise, issue billing and carry the Accounts of the Shell Accounts they serve.

Master Record G-1209

Shell Oil Company will prepare G-1209 on each Shell account which is to participate under the plan. All copies of the form should be approved and forwarded by Shell to the Goodyear District Manager for approval and completion.

The G-1209 must be filled in completely as provided on the form.

After G-1209 is completed and approved by both Shell and Goodyear District Manager

District Office will distribute copies as follows—

Original (white)—District Office file

Duplicate (canary)—Shell Oil Company Division Office

Triplicate (pink)—Goodyear Field Representative

Quadruplicate (blue)—Supply Point where a Goodyear Store (other supply points handled by list—see below)

G-1209 provided to Stores which are not supply points for merchandise other than Car and Home Merchandise must be clearly marked "applies only to Car and Home Merchandise".

If more than one Store will act as a supply point, the additional Store (stores other than the regular supply point) should be notified of the approved Shell Account by letter.

Independent dealer supply points should be furnished a list of the Shell accounts who will buy from them and on whom we ask them to report.

Credit Policy

All Shell Accounts participating under this plan will establish credit with the Goodyear District, Store or Independent Dealer, which has been designated to serve them. Purchases, may, of course, be made on a cash or COD basis also. Districts must maintain separate B-80 on each COD or cash account.

Replaces Sheet Dated 1-1-50

3736 Price Policy

Approved Shell Accounts under this plan will purchase their requirements on the same basis as any independent dealer at the prices and discounts for which they can qualify in accordance with our regular sales program for tires, tubes, batteries, C&H Mdse, etc.

Products Eligible Under Sales Commission Plan

Sales of the following listed products to approved Shell accounts are to be reported on the G-1204 reports when delivery is taken from authorized supply point as indicated below:

(A) When delivery is taken from and/or billing issued by District

All Goodyear Tire and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries
Goodyear produced Recaps & Repairs
All Dill and Schrader Valve Merchandise
Sea-Bee Outboard Motors

Goodyear Repair Materials as follows—Small and Bicycle Tube Repair Kits, Quart size Steptread Cement, Emergency Self-Sealing Patches, Small Containers Cold Patch Cement, Gasket Compound, Bicycle Rim Cement, Shaler M-50 Repair Kits and Motorists Vulc-Patch Kits.

(B) When delivery is taken from and billing issued by Goodyear Stores

All Goodyear Tires and Tubes (Except Airplane) including Seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries
Goodyear Produced Recaps & Repairs
All Dill and Schrader Valve Merchandise.

Sea-Bee Outboard Motors (only if Akron has approved the Store as a supply point for Car & Home Mdse.)

Goodyear Car & Home Mdse stocked at Goodyear Field Warehouses (Only if Akron has approved the store as supply point). Including Tire Chains & Anti-Freeze

(C) When delivery is taken from a Field or Factory Field Warehouse

Goodyear Car and Home Merchandise.

Goodyear Brake Lining, Rivets and Wheel Weights.

Goodyear Repair Materials — The same and only those items listed above under (A).

Includes merchandise shipped direct to dealer by manufacturer.

---

* Revision

(D) When delivery is taken from and billing issued by an Independent Dealer

All Goodyear Tire and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries

Sea-Bee Outboard Motors (Only if Akron has approved the dealer as supply point for Car & Home Mdse.)

Goodyear Car & Home Mdse stocked at Goodyear Field Warehouse (Only if Akron has approved dealer as supply point). Including Tire Chains and anti-freeze.

Products Not Eligible Under Sales Commission Plan

Billing covering products listed hereunder, regardless of delivery point is not subject to commission and is not to be recorded by Stores nor included in G 1204 volume on which commission is to be paid.

3738 Adjustment billing of any of the eligible products listed above.

All products not listed above as eligible products including but not limited to

General Electric and Hotpoint Major Appliances

General Electric Radios

Motorola Radios, Aerials and Accessories

Motorola Car Heaters

**

**

*Magic Chef Ranges

*Coleman—Major Appliances as supplied by distributors

** Deletion

*Admiral—Radios, Television and Major Appliances
*Repair Material & Camelback
All types of Equipment—Battery Chargers, Display, Service Station, etc. Advertising and Sales Promotion items.

Sales Commission Plan

General

All Goodyear shipments will be to the supplying dealer—we will not drop ship to the Shell dealer for account of the dealer.

Important — Careful attention under the Independent Dealer Supply Point handling is required to avoid payment to Shell of duplicated commissions under the following circumstances.

When a Shell account is authorized under this plan, commissions are to be paid only on this Shell account's purchases from his supply point. If this authorized account is the supply point for other Shell accounts, then sales to such other accounts are not eligible for commission as such would result in our paying commission to Shell on the original sale and then paying a second commission on the same merchandise when it was resold to the other Shell Account.

The instructions outlined above under "Independent Dealer Supply Points", therefore, are applicable only if the dealer supply point is not an oil company approved commission account.

Goodyear Store Supply Points

District Manager will provide stores that are to function as supply point with G-1209 of specified Shell Accounts for whom the store is the designated supply point. As any changes occur in the G-1209, District Manager will notify store of change by copy of G-1209. Upon receipt, Stores must immediately revise their records.

It is suggested that stores file the visible G-1209 form in their stock ledger binder for ready reference. Stores receiving lists of accounts from their District Manager should order supplies of blank G-1209 forms with which to establish their visible system:

Special Instructions Covering Store Car & Home Supply Points.

Only those stores specifically approved by District Manager, (after approval by Okron) may operate as Car & Home Supply Points.

When so approved supply point stores may sell and bill to specified Shell accounts any Goodyear Car and Home merchandise stocked at our Field Warehouse and Sea-Bee Outboard motors. Brake Lining and related merchandise, General Electric and Hotpoint Major Appliances, GE Radios and Motorola Radios and Heaters are not involved under this arrangement.

The Shell Accounts' buying price should be either dealer or distributor price net except for cash discount. Quantity shipping allowance will not apply. Annual Bonus will be paid if earned.

3740 Payment of Commission .

Akron will pay all commission to Shell in connection with this plan. Rates of commission varies by type of Shell account, and type of product, therefore it is of the utmost importance that all Shell accounts be correctly classified on G-1209 records and also when reported on G-1204 so that the correct amount of commission will be computed by Akron.

Rates of Commission follow—

(A) Approved Petroleum Jobber or Petroleum Distributor

All Merchandise (except Resolute Battery Volume) 7½%

Resolute Battery Volume 7½%

Identified on G-1204 and G-1209 as Oil Company Franchise Jobber or Distributor.

Car and Home Merchandise—If account is approved Car & Home Merchandise Wholesaler 7½%

Identified on G1204 and G1209 as approved Car & Home Jobber

(B) Approved Oil Company Dealer (not Jobber or Distributor)

All Merchandise (except Resolute Battery Volume) 10%

Resolute Battery Volume 7½%

Identified on G-1204 and G-1209 as Oil Company Dealer

Car and Home Merchandise—If account is approved Car & Home Merchandise Wholesaler 7½%

Identified on G1204 and G1209 as approved Car and Home Jobber.

Change in Trade Style Only

3742 G-1204—Reports

Volume subject to sales commission must be segregated under the following classifications:

(A) All new tires and tubes including seconds, recaps and repairs, special priced stock, motorcycle, bicycle, truck farm, industrial and wheelbarrow tires and tubes but excluding airplane tires and tubes.

(B) Goodyear batteries including farmlight, battery cables

(C) Resolute batteries

(D) Car & Home and other products subject to commission not detailed above.

(See Page 1A—Shell Special Account Instructions).

Commission is payable on the above merchandise only if delivery is made in accordance with schedule on page 1A of Shell Special Account instructions. Credit memos should be deducted from respective commission volume accumulations.

Recording of Volume for Accounts on District Ledgers

* Tire and Tube Volume

Post bonusable items including credits for experimental Truck Bonus to the B-80 statistical section as usual.

* Non Bonusable Tire and Tube items such as Motorcycle, Bicycle Tires and Tubes, etc., which are eligible under the sales commission plan are to be posted in the blank column of the B-80 at the time postings are made to the B-80. Post at merchandise net invoice level.

** Goodyear Automotive Batteries Including Farmlight

Post Bonusable items to B-80 statistical section in usual manner. Enter net battery volume on G1204

* Resolute Batteries

Resolute volume should be entered on B-80 in the appropriate column of the statistical section. This volume must be kept entirely separate from Goodyear Battery volume accumulations.

Car & Home Merchandise & Miscellaneous

Post to Statistical Section of B-80 such volume which is subject to sales commission. Enter on B-80 at net invoice price after deduction of all allowances. Include only items specifically designated as applicable for sales commission.

---

* Revision
** Deletion

Recording of Volume for Accounts Sold by Stores and Supplying Dealers

Sales of merchandise subject to commission by dealer and store supply points to approved G-1209 accounts is to be entered to B-80 statistical section of ledger sheet as outlined in Wholesale Field Operating Manual page C-30B.

Distribution of G-1204

Copy # 1 and # 2—Oil Company District Office
3—Statistical Division Sales—Accounting Dept, Akron
4—District Manager
5—District File
6—Petroleum Representative

3744 Delivery of tires and tubes to Shell Oil Co., Jobbers by supplying dealers

Upon approval by Akron and the Division Manager, Goodyear dealers may be established as supply points for tires and tubes sold to Shell Jobbers. The supplying dealer will receive 7½% commission based on contract dealer prices for all tire and tubes delivered to Shell Jobbers. Under this arrangement, supplying dealer will bill Goodyear District for all tires and tubes delivered to Jobbers for the account of Goodyear.

Products

Only Goodyear tires and tubes are to be handled under this plan, other Goodyear products may be purchased by the Jobber from his usual source of supply.

Credit Approval

District will provide supplying dealer with a monthly credit limit on each approved Shell Jobber. Credit limit will cover deliveries during the statement month and will

be considered as renewed with the close of each statement. Limit should be based on contract dealer price with deliveries recorded at the same level. Any deliveries beyond the approved credit limit become the supplying dealer's responsibility. Cash or COD deliveries may not be made by supplying dealer under this arrangement.

Purchase Orders

Jobbers will present purchase order for tires and tubes directly to the supplying dealer made out to the Goodyear Tire & Rubber Co., Inc. Telephone or verbal orders may be accepted, however, supplying dealer will be responsible for determining that delivery is made only to authorized representative of the Jobber. Supplying dealer will obtain signature of Jobber or common carrier on each delivery and must be in a position to prove delivery in the event of dispute. Supplying dealer will bill the District daily for all deliveries made under this plan attaching to such billing the Jobber's purchase order if available.

Billing

District will issue "R" invoice billing to Jobber daily as billing from the supplying dealer is received. "R" credit memo should then be issued to the supplying dealer for the merchandise delivered, plus 7½% commission. Credit memo will be priced at dealer's buying level and will be deducted from bonusable volume.

Transportation

All deliveries or shipments to the Jobber's bulk plant will be made by supplying dealer, transportation charges collect. Drop shipments to the Jobber's associate dealers are not permitted.

Commission to Shell Oil Co.

* Shell Oil Co. will receive 5% commission on deliveries under the above plan instead of 7½%. Districts must arrange to keep such billing to the Jobber segregated on B-80 from volume covering deliveries by the District or other approved supply points under the regular commission program. This can be accomplished by earmarking volume under the regular plan as entries are made to the Statistical Section of the B-80.

G-1204 Reports

Tire and tube purchases by Jobbers under this plan will be broken down between 5% and 7½% on G-1204 reports, but in the current month column only. Show total for 7½% volume and separate total for 5% volume, earmarking the latter by the suffix "5%". When totaling G-1204 pages include the Jobber's volume subject to 7½% on line "J" in usual manner. At bottom of G-1204 write in volume subject to 5% as follows, "tire and tube deliveries this month by Goodyear dealer for account of Goodyear $ (Show total of all 5% volume on page)"

* In preparing summary G-1204 sheets, show the following separate totals on tires and tubes at the bottom of the page (current month tire and tube column only).

1. Show total of 7½% purchases on line "J"
2. Show total of 5% at bottom of G-1204 as outlined above. (Must agree with total of amounts written in at bottom of individual G-1204 sheets).

In completing year to date section of G-1204 (both individual and summary) show only one figure for total of 5% and 7½% purchases and in totaling this section include 5% purchases in same figure with 7½% volume and insert on line "J".

Replaces Page Dated 1-1-50

* Revision

3746 COMMISSION EXHIBIT NO. 397A.-B.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

January 30, 1953

Mr George L Switzer
Shell Oil Company
50 West 50th Street
New York, New York

Dear George:

We all recognize that in your T.B.A. sales tires and tubes represent the preponderance of dollar volume—somewhere between 70 to 80% as a matter of fact.

On this premise, therefore, our combined efforts should be directed to explore every opportunity to increase the sales of tires and tubes.

What are the ingredients to successful tire merchandising through service stations?

In our book they line up in importance about this way:

1. Service
2. Stock of merchandise
3. Display of merchandise
4. Point of sale advertising
5. Enthusiastic solicitation

Our purpose in writing concerns points three and four.

Realizing that service station operators generally have space and financial limitations, we suggest this idea which we know will increase tire sales yet circumvent these limitations.

Tire selling, like car selling, is a "horse trading" business, therefore, any successful tire operation is, or should be, in the used tire business.

And used tire merchandising alone can be profitable, but more important it can help increase new tire sales.

We all know the value of mass display—the used car lot with two or three hundred cars—chain groceries with tables loaded high with one product, etc.

3747 That is display and advertising in one package and is very effective in selling merchandise.

Here is a plan being used successfully and we suggest it be tried in some of your more aggressive stations.

Build a two tier tire rack 15 to 20 feet long, at rear and joined to the station building, facing the court.

Such a tire rack can be used two ways.

All used tires even "junkers", after being cleaned up, segregated by size and amount of serviceable wear remaining and prices, can be displayed most effectively.

Used tires are bought—not sold, and used tire buyers certainly will "shop" such a display. Here is a "live" new tire prospect either on the spot or in the future.

A chain or cable run through the tires with a lock arrangement, eliminates the need for removal at night.

The other plan is to accumulate 50 or so junkers and have these wrapped and displayed along with the salable used tires.

In most large cities a dealer or retreader has a tire wrapping machine and this service can be obtained. Dealers in areas where there are tire factories can arrange this service through them.

In the interest of increasing your dealers' profits, your commissions and our sales, we would like to have your approval for promoting this merchandising idea.

If you agree we will supply our sales organization with the necessary information and data, who in turn will promote the program with your field people and dealers.

There will be some expense involved—iron pipe or ordinary 2" x 4" lumber, a long chain, lock and labor.

You, of course, will decide whether this should be considered part of the station equipment, or whether your dealer bear the expense. We would be guided by your decision.

Repeating, tires and tubes make up ¾ of your total T.B.A. sales. Here's a program that will substantially increase your dealer sales and profits. We know it has real merit and recommend that it be used.

We will appreciate your views and if agreeable we will start on it immediately to be ready for the heavy tire buying season ahead.

Yours very truly,

J W Basista

Petroleum Sales Department

J W Basista
lfm

COMMISSION EXHIBIT NO. 398A-D.

[illegible] Harrah
Petroleum Sales
Akron

August 2, 1940

[illegible] C Gibson
SHELL OIL CO INC
100 Bush Street
San Francisco 6, Calif

Subject: [illegible]

Dear Mr Gibson

This will confirm with you in a general manner the fundamental principles of our merchandising Commission Plan under which the Shell-Tex Tank Company are operating as of above date.

Allowance must be made for rounding an understanding on any provisions that might develop as we gain experience in working under this plan with you and on any points we may, through oversight, omit herein.

Under the merchandising Commission Plan we would compensate you on a basis outlined later in this letter, for actively assisting us in selling and promoting the sale of our merchandise through such independent resale outlets as are otherwise in or propose to engage in the sale of your products and as agreed upon in writing with you from time to time.

It is understood that you would acknowledge certain responsibilities in that your field representatives would call upon such customer in company with our salesmen or otherwise and cooperate and assist us in our efforts to promote and encourage the sale of our merchandise by the customers to whom such sales shall be made by us. You would see that your field offices work cooperatively with us with the view to assisting us to the fullest practicable extent to conduct the arrangements with all such customers and you would maintain adequate qualified personnel to render efficient services incidental to the plan on your part.

Under the plan Shell and Goodyear would agree upon the list of Dealers on whose purchases a commission would be earned by Shell. It is implied to assume that all Dealers now purchasing our products through you would be approved to operate under the Commission Plan. Any future additions or deletions of Dealers would be by mutual agreement.

We would sell these Dealers on a direct basis for the account of Goodyear or on an Associate Dealer basis through our Stores or Independent Dealers. This, at the election of Goodyear.

3748

11

- 2 -

Establishment of Discount & Delivery

Goodyear District Manager will determine the delivery point for each small account approved. Goodyear Distributor, Goodyear Factory Sold customer, Goodyear Service Store, or Goodyear Independent Dealer, may serve as intermediate delivery point for same accounts that are approved by Goodyear District Manager. The delivery point will make delivery of the merchandise, issue billing, and carry the accounts of the small accounts they serve.

Credit Policy

All small accounts participating under this plan will establish credit with the Goodyear District, Store or Independent Dealer, which has been designated to serve them. Investigation will, of course, be made on a case by case basis also, and termination statement rendered accordingly.

Price Policy

Approved small accounts under this plan will purchase their requirements on the same basis as any Independent Dealer at the prices and discounts for which they can qualify in accordance with Goodyear regular sales program for Tires, Tubes, Batteries, Car and Home Accessories, etc., in effect at time of shipment.

Commission Basis

Commissions are payable on the net purchase price of Goodyear merchandise. Normally this would be invoice level, however, it is necessary to periodically adjust the volume to allow for earned discounts not reflected on our invoices.

Invoices Distributed under Sales Commission Plan

A. Item delivery is taken from and/or billing issued by Goodyear District Office -

All Goodyear Tires & Tubes (except Airplane) Incl. Accords.
Goodyear Automotive Specialties Batteries Factory Cables, Complete Batteries.
Goodyear Packaged Lubes & Specials.
All Mill & Chamber Valve Hardware.
Sea-Lee Outboard Motors.
Goodyear Hardware Materials as Follows:- Small & Bicycle Tube Repair Kits, Insert Mats, Engineered Cements, Emergency Self-Sealing Stems, Small Combination Cold Patch Cements, Sealer Compound, Bicycle Tire Cements, Rubber U-20 Repair Kits, and Motorists Velo-Patch Kits.

B. When delivery is taken from and billing issued by Goodyear Stores -

All Goodyear Tires & Tubes (except Airplane) Auto. Accessories.
Goodyear Automotive & Truck Batteries - Battery Cables.
Manufactured Batteries.
Goodyear Vulcanizing Materials.
All Mill & Garage Valve Hardware.
Non-Tire Sundries (if approved as a supply point on C ...).
Goodyear Car ... may also be stocked at Goodyear Field warehouses (if ... is approved as supply point for ... also as outlined in paragraph ( ) herein below).

C. When delivery is taken from a Field or Factory Field warehouse -

Goodyear Car ... may also.
Goodyear Farm Tires, Tubes ... Tool edges.
Goodyear Repair Materials (the same as listed under "...").

D. When delivery is taken from and billing issued by Independent Dealer -

All Goodyear Tires ... Tubes (except Airplane) Auto. Accessories.
Goodyear Automotive ... Truck Batteries - Battery Cables.
Manufactured Batteries.
Non-Tire Sundries (only if approved as supply point for C ... Inc.).
Goodyear Car ... may also be stocked at Goodyear ... Field warehouses only if approved as supply point for ... Inc).

... the recommendation of our District ..., we will establish a Goodyear Store or a Goodyear Dealer as supply point on all Old Tire Car ... warehouses. Commission will be paid to Mill ... on such deliveries on the same basis as for deliveries made from a Goodyear District or warehouse.

... Eligible Under Commission Plan

1. All ... billed on any of the eligible ... listed above.

2. All ... not listed above as eligible ... including, but not limited to -

... Metric ... for ... Tires.
... Metric Tubes.
... Tubes, Grade ... Accessories.
... Tubes ... Tubes.
... Tires.
... - ... delivered by ... warehouse.
... - ... - ... Tires, ... Tubes, ... Accessories, etc.
... ... herein ... items.

[redacted]

All Goodyear shipments will be to the applying dealer. We will not drop ship to the Shell dealer for the account of Goodyear's dealer.

Goodyear have District Offices currently in Los Angeles, Sacramento, San Francisco, Portland, Seattle, Fresno, Salt Lake, Denver and El Paso.

Near the end of this year three Goodyear delivery points will be increased by the addition of a Goodyear District. The Fresno stock transfer will be handled through Goodyear's depot at that point.

We have two Shell warehouses on our Coast - one in Los Angeles and one in Portland.

We have 10 stores in Arizona, California, Oregon and Washington. In all major cities we have either Goodyear Company owned and supplied Independent dealers. In other words, we will provide for adequate delivery service for all types of Shell accounts.

I feel the proposed change in plan will not cause any major dislocation of supply since which have satisfactorily served Shell-California for many years. Furthermore, our experience working with Shell in the past has been satisfactory and will act as a guide in our future operation.

Under the Combined Plan of operation Shell cannot earn commission on its own purchases, either for export, Service Stations, or own Consumption.

Billing to Shell on this type of purchase is on the same basis as now in use.

Should this not be the case, please [illegible] let me know if I can be of further help.

Very truly yours,

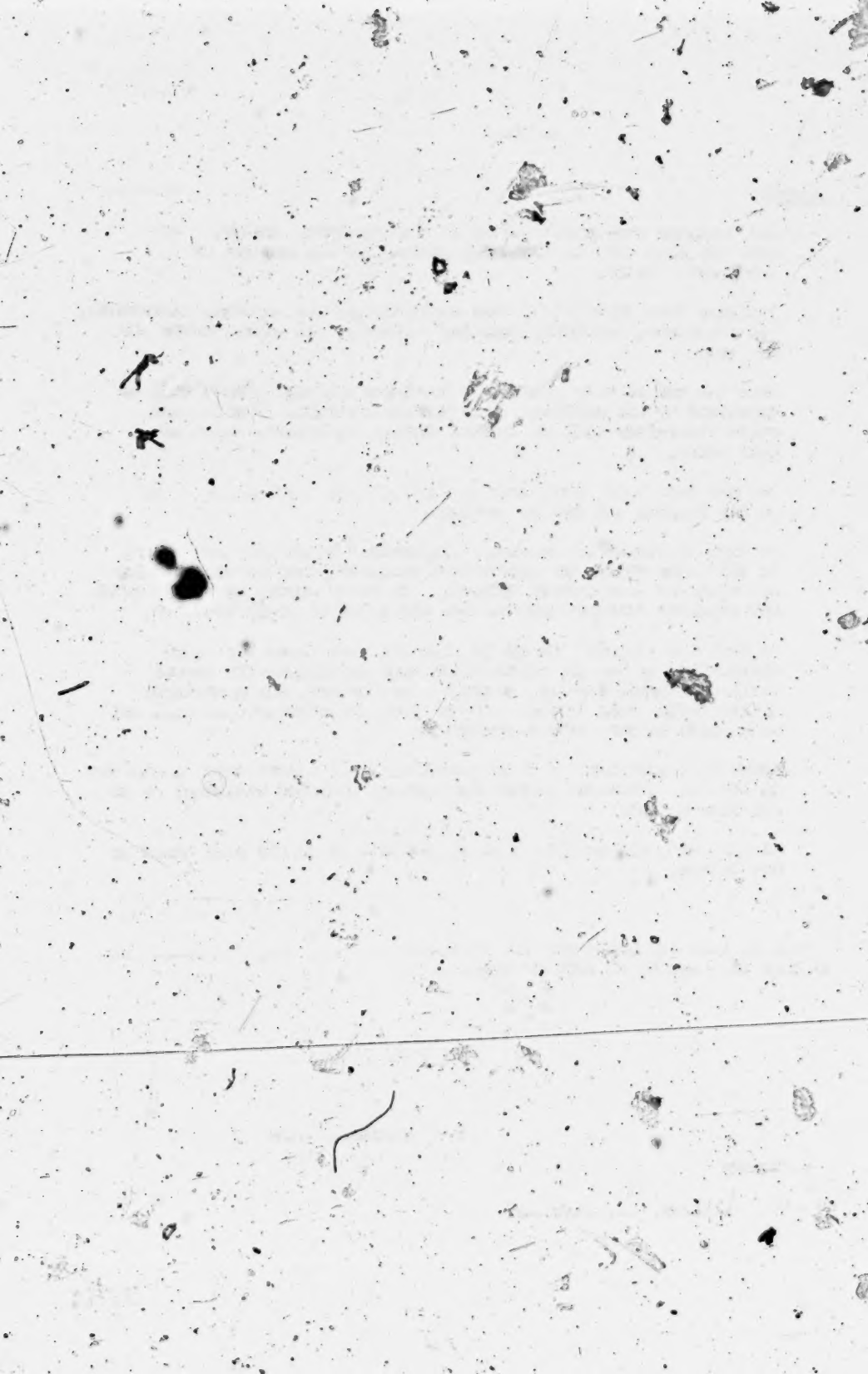
[redacted]

[redacted]

cc - J [illegible], San Francisco

3754

14



3756 COMMISSION EXHIBIT NO. 399A.-C.

Shell Oil Company

Schedule "A"—Part 2-3-4

	Service Stations "C"	"L"	"DL"	"OD"	Total	Jobbers
Albany						
Burlington	5	13	8	13	39	10
Rensselaer	32	53	33	37	155	8
Syracuse	20	13	13	11	57	6
Utica	10	16	17	23	66	9
Total	67	95	71	84	317	33
Atlanta						
Atlanta	14	55	24	25	118	28
Chattanooga	22	43	17	12	94	19
Columbia	19	43	10	33	105	31
Jacksonville	33	23	10	18	84	19
Miami	23	41	15	5	84	—
Tampa	32	27	25	14	98	12
Total	143	232	101	107	583	109
Baltimore						
Baltimore	15	59	8	16	98	15
Charlotte	15	30	8	42	95	16
Raleigh	13	31	5	24	73	23
Richmond	22	36	4	12	74	28
Washington	11	46	2	10	69	—
Total	76	202	27	104	409	82
Boston						
Boston	10	78	72	31	191	—
Connecticut	10	65	37	64	176	2
Maine	8	30	48	20	106	13
Rhode Island	4	56	33	59	152	5
Worcester	4	27	58	42	131	9
Total	36	256	248	216	756	29

New Orleans						
Birmingham	30	24	6	33	93	38
Houston	44	64	2	7	117	8
Jackson	10	5	3	2	20	33
Memphis	6	31	6	9	52	18
New Orleans	10	37	10	35	92	20
Total	100	161	27	86	374	117

3757

New York						
Brooklyn	—	19	58	64	141	—
Long Island	39	51	69	59	218	1
Mt. Vernon	5	51	55	39	150	1
Newark	21	95	59	41	216	3
Queens/ Manhattan	4	14	86	83	187	—
Trenton	2	62	37	24	125	—
Total	71	292	364	310	1,037	5
Chicago						
Chicago-North	28	59	99	4	190	—
Chicago-Central	17	56	89	16	178	—
Chicago-South	23	43	104	9	179	—
Green Bay	22	35	5	5	67	30
Milwaukee	26	72	27	10	135	11
Peoria	12	45	34	6	97	13
Rockford	20	39	13	6	78	13
Total	148	349	371	56	924	67
Cleveland						
Akron	17	49	13	14	93	6
Cincinnati	13	48	18	17	96	3
Cleveland	14	75	19	17	125	3
Columbus	10	44	16	20	90	5
Dayton	6	41	5	8	60	5
Toledo	15	63	20	15	113	11
Total	75	320	91	91	577	33

Detroit						
Dearborn	18	57	52	34	161	1
Detroit	30	75	70	29	204	—
Grand Rapids	3	50	20	16	89	8
Saginaw	—	20	15	22	57	19
Total	51	202	157	101	511	28
Indianapolis						
Evansville	6	27	15	10	58	14
Fort Wayne	13	42	13	34	102	10
Indianapolis	17	56	19	16	108	7
Louisville	13	29	7	6	55	25
Total	49	154	54	66	323	56
Minneapolis						
Des Moines	14	17	5	3	39	20
Duluth	4	8	2	2	16	33
Tri Cities	17	34	14	13	78	12
Twin Cities	29	44	16	4	93	33
Winona	5	21	21	4	51	15
Total	69	124	58	26	277	113
3758						
St. Louis						
Cape Girardeau	3	19	20	13	55	22
Columbia	3	6	7	7	23	18
Decatur	14	21	21	2	58	17
St. Louis	36	64	61	27	188	1
Wood River	19	28	24	13	84	13
Total	75	138	133	62	408	71
Shell American	—	99	78	50	227	—
Honolulu	—	28	23	105	156	—
Los Angeles						
Los Angeles	—	91	5	41	137	—
Pasadena	—	121	10	68	199	2
Phoenix	—	54	6	111	171	17
San Bernardino	2	38	4	61	105	5
San Diego	—	57	11	37	105	4
Santa Monica	—	111	4	88	203	—
Wilmington	—	110	4	44	158	—
Total	2	582	44	450	1,078	28

Portland						
Boise	—	21	4	32	57	10
Eugene	9	55	12	129	205	6
Portland	29	87	26	205	347	7
Total	38	163	42	366	609	23
Sacramento						
Fresno	8	64	6	111	189	3
Reno	1	5	1	12	19	20
Sacramento	11	87	2	144	244	5
Stockton	4	37	4	58	103	9
Total	24	193	13	325	555	37
San Francisco						
Oakland	1	85	7	56	149	—
San Francisco	2	98	3	50	153	—
San Jose	2	64	5	55	126	—
Santa Rosa	2	56	6	84	148	—
Total	7	303	21	245	576	—
Seattle						
Seattle	25	60	23	117	225	1
Spokane	16	35	9	115	175	7
Tacoma	8	40	11	93	152	8
Total	49	135	43	325	552	16
Total Company	1,080	4,028	1,966	3,175	10,249	847

Shell Oil Company's records do not generally disclose whether a reseller outlet is or is not a service station; these figures therefore include sales to restaurants, grocery stores, garages, parking lots, etc., which resell gasoline either at retail or to retailers.

3759 COMMISSION EXHIBIT NO. 400A-B.

March 7, 1957

Memorandum

Re: Docket No. 6486—List C—Goodyear

Set forth below are comments with respect to the various items included in the Commission's typewritten request for material and data, undated, entitled "List C—Goodyear."

Item No.	Comments
5A.	Note: Goodyear has no knowledge or information whereby it can classify oil company retail outlets as "lessee, contract, etc." or oil company distributors as "consignees, etc."
5C(c).	Note: Column headed "Number of Retail Accounts" includes Goodyear dealers and associate dealers which are served by Goodyear stores.
5D.	Note: There is some duplication of associate dealers and dealers which cannot be avoided. Dealer figures do not include distributors or associate dealers served by Goodyear stores.
7A.	Note: There is a possibility of duplication in the number of stores acting as "O. C. S. D.'s" due to the fact that the same store may be acting as "O. C. S. D." for both the parent oil company and its subsidiaries or affiliates.
3760 7B.	Note: There is a possibility of duplication in the number of dealers acting as "O. C. S. D.'s" due to the fact that the same dealer may be acting as "O. C. S. D." for both the parent oil company and its subsidiaries or affiliates.

8A. Note: There is some duplication in items 2 (warehouses) and 4 (Goodyear dealers) which cannot be avoided.

8B. Note: Due to the fact that Goodyear districts overlap Atlantic Refining Company marketing regions and both companies' districts overlap state boundaries there are a number of states serviced by more than one warehouse.

8C. Note: Column headed "Total Number Dealers Signed" includes both Atlantic retailers and distributors.

Cahill, Gordon, Reindel & Ohl

3761

COMMISSION EXHIBIT NO. 400C.

The Goodyear Tire & Rubber Company, Inc.

Domestic Sales Data

Contract Sales and Commissions to Oil Company Customers Under the Sales Commission Plan
Tires, Tubes, Batteries & Equipment and Other TBA Products

	1953		1954		1955		January 1, 1956 Thru June 20, 1956	
	Volume	Commission Paid	Volume	Commission Paid	Volume	Commission Paid	Volume	Commission Paid
Anderson-Prichard Oil Corp					$ 356,815	$ 29,817.38	$ 420,099	$ 34,065.24
Ashland Oil and Refining Company and Subsidiaries	$ 1,000,549	$ 89,747.66	$ 979,491	$ 90,442.94	1,524,068	134,069.55	850,452	75,745.61
Atlantic Refining Company	5,067,565	500,436.61	5,284,743	523,047.71	5,700,121	557,598.75	3,133,905	296,988.15
The Carter Oil Company	1,209,079	101,974.46	1,304,769	112,276.47	1,646,224	143,237.02	801,552	68,091.18
The Frontier Refining Company	225,269	18,877.02	164,659	13,695.38	30,293	2,487.77	—	—
Mid-Continent Petroleum Corp*	1,362,259	125,579.13	1,730,233	158,606.06	2,131,277	197,683.91	1,172,946	108,013.74
Quaker State Refining Co—Sterling Oil Div	67,095	6,672.39	47,459	4,745.90	210,095	20,873.23	114,931	11,474.44
Richfield Oil Company and Rio Grande	~~530,681~~ 523,681	52,308.57	482,469	47,853.48	549,740	54,248.51	256,072	25,150.33
The Shamrock Oil and Gas Corporation	461,647	42,250.52	556,965	49,792.15	605,061	52,421.77	323,031	26,631.50
Shell Oil Company and Subsidiaries	17,984,085	1,644,916.52	18,444,530	1,684,368.08	21,298,612	1,929,209.93	11,212,306	1,007,977.92
Sinclair Refining Co and Subsidiaries	1,699,655	156,664.39	1,649,932	153,236.85	2,052,435	187,212.94	576,304	47,864.10**
Total	$20,600,884	$2,739,427.27	$30,645,250	$2,838,065.02	$36,104,741	$3,308,860.76	$18,861,598	$1,702,002.21

* Effective May 16, 1955, this corporation became D-X Sunray Oil Company.

** Commission Earned Thru 6-20-56, Payment to be made at the end of the year.

1-7-57

3762 COMMISSION EXHIBIT NO. 400~~E-F~~ D-E

Confidential List C

Item 4

The Goodyear Tire & Rubber Company, Inc.

Summary of Sales and Commissions Covered by the Sales Commission Plan With Atlantic Refining Company

Year and Month	Sales Volume	Commissions
June 21, 1951 thru July 20, 1951	$303,319	$29,616.51
July 21, 1951 thru August 20, 1951	237,297	23,534.90
August 21, 1951 thru September 20, 1951	239,745	23,410.93
September 21, 1951 thru October 20, 1951	244,563	23,942.50
October 21, 1951 thru November 20, 1951	267,658	26,095.83
November 21, 1951 thru December 31, 1951	297,342	28,983.53
January 1, 1952 thru January 20, 1952	235,148	23,557.54
January 21, 1952 thru February 20, 1952	264,675	25,899.71
February 21, 1952 thru March 20, 1952	206,193	20,259.45
March 21, 1952 thru April 20, 1952	264,709	26,063.68
April 21, 1952 thru May 20, 1952	325,333	32,240.81
May 21, 1952 thru June 20, 1952	366,398	36,227.26
June 21, 1952 thru July 20, 1952	451,616	44,723.73
July 21, 1952 thru August 20, 1952	466,773	45,935.58
August 21, 1952 thru September 20, 1952	444,167	43,701.60
September 21, 1952 thru October 20, 1952	391,857	38,715.83
October 21, 1952 thru November 20, 1952	370,975	36,284.98
November 21, 1952 thru December 31, 1952	388,046	38,132.88
January 1, 1953 thru January 20, 1953	359,563	35,578.73
January 21, 1953 thru February 20, 1953	363,740	35,932.35
February 21, 1953 thru March 20, 1953	282,375	27,994.15
March 21, 1953 thru April 20, 1953	311,233	30,549.25
April 21, 1953 thru May 20, 1953	461,429	45,556.33
May 21, 1953 thru June 20, 1953	460,834	45,718.48
June 21, 1953 thru July 20, 1953	491,075	48,258.25
July 21, 1953 thru August 20, 1953	530,202	52,224.83
August 21, 1953 thru September 20, 1953	569,430	56,593.23
September 21, 1953 thru October 20, 1953	435,578	43,182.95
October 21, 1953 thru November 20, 1953	441,971	43,675.38
November 21, 1953 thru December 31, 1953	360,135	35,472.68
January 1, 1954 thru January 20, 1954	409,801	40,727.33
January 21, 1954 thru February 20, 1954	466,977	46,146.23
February 21, 1954 thru March 20, 1954	355,699	35,070.58
March 21, 1954 thru April 20, 1954	354,330	35,126.80
April 21, 1954 thru May 20, 1954	354,904	37,072.78
May 21, 1954 thru June 20, 1954	481,401	47,751.98
June 21, 1954 thru July 20, 1954	562,388	55,524.45
July 21, 1954 thru August 20, 1954	463,372	45,834.58
August 21, 1954 thru September 20, 1954	412,389	40,859.30
September 21, 1954 thru October 20, 1954	480,761	47,478.98
October 21, 1954 thru November 20, 1954	478,928	47,554.00
November 21, 1954 thru December 31, 1954	463,793	45,900.70

3763

Year and Month	Sales Volume	Commissions
January 1, 1955 thru January 20, 1955	$432,423	$43,080.65
January 21, 1955 thru February 20, 1955	473,637	47,002.68
February 21, 1955 thru March 20, 1955	331,458	32,696.30
March 21, 1955 thru April 20, 1955	440,182	43,002.75
April 21, 1955 thru May 20, 1955	403,770	40,001.03
May 21, 1955 thru June 20, 1955	480,106	47,470.65
June 21, 1955 thru July 20, 1955	482,369	47,883.90
July 21, 1955 thru August 20, 1955	522,087	51,397.00
August 21, 1955 thru September 20, 1955	577,018	57,115.58
September 21, 1955 thru October 20, 1955	517,134	51,328.70
October 21, 1955 thru November 20, 1955	522,469	48,356.81
November 21, 1955 thru December 31, 1955	517,468	48,262.70
January 1, 1956 thru January 20, 1956	540,522	52,326.43
January 21, 1956 thru February 20, 1956	571,176	55,577.40
February 21, 1956 thru March 20, 1956	378,765	37,115.08
March 21, 1956 thru April 20, 1956	519,834	42,924.66
April 21, 1956 thru May 20, 1956	544,576	52,390.13
May 21, 1956 thru June 20, 1956	579,032	56,655.05

3764 COMMISSION EXHIBIT NO. 400F-G.

Confidential

List C
Item 5A

Number of Oil Company Accounts to Whom Sales Were Made Subdivided by Retail Outlets and Distributors With Dollar Volume of Sales to Each Class

Year	Number of Retail Outlets	Sales Volume (Dollar)	Number of Distributor Outlets	Sales Volume (Dollar)
1950				
Ashland Oil Company	26	$ 38,597	15	$ 217,999
Atlantic Refining Company	104	121,142	3	44,436
Richfield Oil & Rio Grande	251	419,981	---	10,032
Shell Oil Co & Subsidiaries	4,813	10,299,946	399	3,005,114
Sinclair Refining Company & Subsidiaries	945	997,186	67	127,077
Total	6,139	$11,876,852	484	$ 3,404,658
1951				
Ashland Oil Company	36	$ 138,470	22	$ 280,670
Atlantic Refining Company	1,003	2,232,588	23	213,220
Richfield Oil & Rio Grande	167	548,763	1	17,003
Shell Oil Co. & Subsidiaries	4,233	8,327,627	335	3,536,898
Sinclair Refining Company & Subsidiaries	963	1,137,544	104	264,541
Total	6,402	$12,384,992	485	$ 4,312,332

Year	Number of Retail Outlets	Sales Volume (Dollar)	Number of Distributor Outlets	Sales Volume (Dollar)
1952				
Ashland Oil Company	78	$ 526,668	35	$ 411,455
Atlantic Refining Company	1,093	3,928,399	21	247,491
Carter Oil Company	52	25,389	83	110,900
Mid-Continent Petroleum Corp	218	343,403	55	156,800
Richfield Oil & Rio Grande	203	529,198	1	—
Shamrock Oil & Gas Corp	50	200,000	8	68,394
Shell Oil Co & Subsidiaries	4,074	11,522,537	340	5,083,133
Sinclair Refining Company & Subsidiaries	820	1,149,045	122	456,064
Total	6,588	$18,224,639	665	$ 6,534,237
1953				
Ashland Oil Company	125	$ 675,505	47	$ 559,313
Atlantic Refining Company	1,254	4,814,768	21	252,797
Carter Oil Company	160	451,739	119	757,340
Mid-Continent Petroleum Corp	458	945,994	72	416,265
Quaker State Oil Refining Co	24	65,610	—	1,485
Richfield Oil & Rio Grande	194	521,299	1	2,382
Shamrock Oil & Gas Co	67	311,512	14	150,135
Shell Oil Co	4,913	12,483,882	368	5,500,203
Sinclair	923	1,167,610	155	532,045
Total	8,118	$21,437,919	797	$ 8,162,965

3765

1954				
Ashland Oil Company	166	$ 637,953	45	$ 506,197
Atlantic Refining Co	1,420	5,067,678	20	217,065
Carter Oil Company	188	614,961	98	689,808
Mid-Continent Petroleum Corp	595	1,182,755	81	547,378
Quaker State Oil Refining Co	23	47,459	—	—
Richfield Oil & Rio Grande	175	466,731	1	15,738
Shamrock Oil & Gas Co	67	326,383	26	230,582
Shell	4,845	12,568,831	392	5,875,699
Sinclair	799	1,179,678	133	470,254
Total	8,278	$22,092,429	796	$ 8,552,821
1955				
Anderson-Prichard	79	$ 122,274	37	$ 234,541
Ashland Oil Co & Subsidiaries	260	965,904	50	588,457
Atlantic Refining Co.	1,790	5,385,834	22	314,287
Carter Oil Company	326	837,505	98	808,719
Mid-Continent Petroleum Corp	797	1,569,304	80	561,973
Quaker State Oil Refining Co	30	208,278	—	1,817
Richfield Oil & Rio Grande	251	532,575	2	17,165
Shamrock Oil & Gas Co	68	309,175	48	295,886
Shell	5,931	14,202,735	401	7,005,877
Sinclair Refining Company & Subsidiaries	993	1,366,656	158	685,779
Total	10,525	$25,590,240	905	$10,514,501

1956 (First Six Months)				
Anderson-Prichard	83	$ 125,743	51	$ 294,356
Ashland Oil Company	237	913,843	41	302,953
Atlantic Refining Co	1,419	2,982,272	21	151,633
Carter Oil Company	213	354,467	81	447,085
Quaker State Oil Refining Co	17	114,892	—	39
Richfield	212	246,194	—	9,878
Shamrock Oil & Gas Co	51	129,124	39	193,547
Shell	3,757	7,563,949	449	3,649,540
Sinclair	532	425,320	115	303,765
D-X Sunray	797	842,279	83	330,712
Total	9,318	$13,698,083	882	$ 5,783,238

* Effective May 16, 1955, this corporation became D-X Sunray.

3766 COMMISSION EXHIBIT NO. 400H-K.

Confidential — List C

Item 5C(c)

Number of Retail Accounts and Distributors Signed to SCP Agreements for the Period June 1950 Thru June 1956

Name of Oil Company	Date (Year)	Accounts Signed: Number of Retail Accounts	Accounts Signed: Number of Distributors
Ashland Oil & Refining Company	1950	38	74
Atlantic Refining Company			
Philadelphia & New Jersey Region	1950	152	3
Richfield Oil Corporation	1950	310	—
Shell Oil Company	1950	7,599	499
Sinclair Refining Company	1950	1,307	77
Ashland Oil & Refining Company	1951	51	105
Atlantic Refining Company			
New England Region	1951	604	3
New York Region	1951	423	19
Philadelphia & New Jersey Region	1951	310	1
Total Atlantic—All 3 Regions		1,337	23
Richfield Oil Corporation	1951	204	1
Shell Oil Company	1951	6,763	407
Sinclair Refining Company	1951	1,348	108
Ashland Oil & Refining Company	1952	118	138
Atlantic Refining Company			
New England Region	1952	644	3
New York Region	1952	431	17
Philadelphia & New Jersey Region	1952	261	1
Total Atlantic—All 3 Regions		1,336	21
The Carter Oil Company	1952	96	123
Mid-Continent Petroleum Corp	1952	541	68
Richfield Oil Corporation	1952	241	1

3767

Name of Oil Company	Date (Year)	Accounts Signed: Number of Retail Accounts	Accounts Signed: Number of Distributors
The Shamrock Oil & Gas Corp	1952	69	9
Shell Oil Company	1952	7,581	441
Sinclair Refining Company	1952	1,154	165
Ashland Oil & Refining Company	1953	221	162
Atlantic Refining Company			
New England Region	1953	658	3
New York Region	1953	479	18
Philadelphia & New Jersey Region	1953	383	—
Total Atlantic—All 3 Regions		1,520	21
The Carter Oil Company	1953	221	119
Mid-Continent Petroleum Corp	1953	718	81
Quaker State Oil Refining Company	1953	75	—
Richfield Oil Corporation	1953	237	1
The Shamrock Oil & Gas Corporation	1953	86	17
Shell Oil Company	1953	7,426	454
Sinclair Refining Company	1953	1,334	184
Ashland Oil & Refining Company	1954	345	173
Atlantic Refining Company			
New England Region	1954	742	2
New York Region	1954	487	17
Philadelphia & New Jersey Region	1954	554	1
Total Atlantic—All 3 Regions		1,783	20
The Carter Oil Company	1954	270	117
Mid-Continent Petroleum Corp	1954	866	100
Quaker State Oil Refining Co	1954	87	—
Richfield Oil Corporation	1954	241	1

3768

The Shamrock Oil & Gas Corp	1954	80	31
Shell Oil Company	1954	7,074	466
Sinclair Refining Company	1954	1,115	186
Anderson-Prichard Oil Corp	1955	104	39
Ashland Oil & Refining Company	1955	465	155
Atlantic Refining Company			
New England Region	1955	1,005	4
New York Region	1955	558	19
Philadelphia & New Jersey Region	1955	620	2
Total Atlantic—All 3 Regions		2,183	25
The Carter Oil Company	1955	398	125
D-X Sunray Oil Company	1955	1,150	113
Quaker State Oil Refining Company	1955	89	—
Richfield Oil Corp	1955	325	2
The Shamrock Oil & Gas Corp	1955	84	49
Shell Oil Company	1955	8,361	519
Sinclair Refining Company	1955	1,419	198

Name of Oil Company	Date (Year)	Accounts Signed: Number of Retail Accounts	Accounts Signed: Number of Distributors
Anderson-Prichard Oil Corp	Jan-June 1956	130	55
Ashland Oil & Refining Co	1956	517	162
Atlantic Refining Co.			
New England Region	1956	710	3
New York Region	1956	547	21
Philadelphia & New Jersey Region	1956	679	—
Total Atlantic—All 3 Regions		1,936	24
The Carter Oil Company	1956	335	119
D-X Sunray Oil Company	1956	1,357	143

3769

Name of Oil Company	Date (Year)	Accounts Signed: Number of Retail Accounts	Accounts Signed: Number of Distributors
Quaker State Oil Refining Co	1956	82	—
Richfield Oil Corporation	1956	300	—
The Shamrock Oil & Gas Corp	1956	70	41
Shell Oil Company	1956	9,248	556
Sinclair Refining Co	1956	805	169

3770 COMMISSION EXHIBIT NO. 400L.

Confidential

List C
Item 5D

Number of Associate Dealers and Dealers Signed Under Each SCP Agreement as of June 1956

Oil Company	Number of Associate Dealers	Number of Dealers
Anderson-Prichard	87	79
Ashland & Subsidiaries	467	400
Carter	311	260
D-X Sunray	1,059	915
Quaker State	78	82
Richfield	3	300
Shamrock	53	64
Shell	9,467	6,510
Sinclair	190	672
Atlantic	2,500	1,272

3771 COMMISSION EXHIBIT NO. 400M.

Confidential

List C
Items 7A & 7B

Total Number of Goodyear Service Stores and Goodyear Independent Dealers in Oil Company Marketing Area and Total Number Thereof Acting as O.C.S.D.'s

Oil Companies	Number of Stores	Number Acting as O.C.S.D.'s	Number of Dealers	Number Acting as O.C.S.D.'s
Anderson-Prichard	116	19	3,825	28
Ashland & Subsidiaries	120	34	2,387	87
Carter	18	5	1,509	73
D-X Sunray	240	95	6,772	162
Quaker State	20	1	482	14
Richfield	56	—	1,691	3
Shamrock	70	1	1,717	25
Shell	446	264	10,756	679
Sinclair	452	15	10,963	10
Atlantic	49	34	1,155	128

3772 COMMISSION EXHIBIT NO. 400N.

Confidential

List C
Item 8A

Number of Atlantic Refining Company Retail Outlets and Distributors to Whom Shipments of TBA Products Are Made as of June 30, 1956

	Atlantic Refining Company Retal Outlets	Atlantic Refining Company Distributor Outlets
1. Factory	None	None
2. Warehouse	1,007	22
3. Goodyear Stores	412	None
4. Goodyear Dealers	1,139	None
5. Atlantic Refining Company Dealers Acting as O.C.S.D.'s	477	None

3773 COMMISSION EXHIBIT NO. 400-O.

Confidential List C

Item 8B

Location of Goodyear District Warehouses Making Direct Shipments To Atlantic Dealers and Distributors

Boston, Massachusetts
Hartford, Connecticut
New York, New York
Albany, New York
Buffalo, New York
Syracuse, New York
Philadelphia, Pennsylvania
Newark, New Jersey

NUMBER OF ATLANTIC REFINING COMPANY DEALERS AND DISTRIBUTORS RECEIVING DIRECT SHIPMENTS, THEIR LOCATION BY STATE AND THE GOODYEAR DISTRICT WAREHOUSES WHERE SHIPMENTS ORIGINATED.

State	Dealers	Distributors	District Warehouses
New Hampshire	14	—	Boston
Massachusetts	302	—	Boston, Albany & Hartford
New York	381	19	Newark, Albany, Buffalo & New York City
Vermont	1	1	Albany
Rhode Island	67	—	Boston
Connecticut	184	2	Hartford, Boston & New York City
New Jersey	140	—	Newark & Philadelphia
Pennsylvania	330	—	Philadelphia

The above data are as of June 30, 1956.

Confidential

List C
Item 8C
Page 1.

Statistical Data As To Number Of Atlantic Refining Company Dealers Signed Under SCP, Volume Of Sales, Commissions

	New England Region			New York Region			Philadelphia & New Jersey Region		
	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed
1950									
June							$ 271	$ 27.10	
July							13,344	1,344.40	
August							35,118	3,492.63	
September							27,188	2,195.93	
October							25,864	2,424.95	
November							21,366	1,881.88	
December							42,427	4,090.03	
Total							$ 165,578	$ 15,456.92	155
1951									
January							$ 7,924	$ 658.65	
February							19,614	1,858.35	
March							22,024	2,086.85	
April	$ 59,204	$ 5,730.43		$ 54,517	$ 5,310.28		104,144	10,256.28	
May	54,986	5,357.18		63,552	6,260.83		163,444	16,174.83	
June	98,856	9,556.35		89,892	8,708.60		117,727	11,708.18	
July	93,744	8,976.98		70,707	6,773.03		138,868	13,866.50	
August	53,587	5,413.30		66,847	6,474.97		116,863	11,646.63	
September	66,969	6,533.23		78,597	7,539.25		94,179	9,338.45	
October	75,317	7,289.74		61,848	5,963.53		107,398	10,689.26	
November	77,434	7,463.10		74,768	7,225.88		115,456	11,406.85	
December	108,203	10,660.48		65,282	6,246.85		123,857	12,076.20	
Total	$ 688,300	$ 66,980.74	607	$ 626,010	$ 60,502.62	442	$1,131,498	$111,767.03	311
1952									
January	$ 59,452	$ 6,178.13		$ 59,198	$ 5,774.43		$ 116,498	$ 11,604.98	
February	83,364	8,476.10		63,066	6,185.80		113,245	11,257.80	
March	73,990	7,204.00		47,372	4,657.28		83,830	8,433.58	
April	82,065	8,015.95		89,605	8,784.23		93,039	9,263.50	

	New England Region			New York Region			Philadelphia & New Jersey Region		
	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed
1952—Cont'd									
May	$ 106,085	$ 10,487.08		$ 81,999	$ 8,059.48		$ 137,249	$ 13,694.25	
June	116,754	11,481.68		75,821	7,415.23		173,823	17,330.35	
July	130,012	12,769.03		105,962	10,431.90		215,642	21,522.80	
August	153,413	14,905.25		104,119	10,203.83		209,241	20,826.50	
September	139,245	13,523.40		117,349	11,504.90		187,573	18,673.30	
October	115,965	11,341.25		91,731	8,987.00		184,161	18,352.18	
November	112,958	10,945.86		102,553	9,948.93		155,466	15,390.20	
December	137,904	13,475.07		102,810	10,002.73		147,331	14,655.08	
Total	$1,316,207	$128,802.80	647	$1,041,585	$101,935.74	418	$1,818,098	$181,004.52	262
1953									
January	$ 94,696	$ 9,266.28		$ 89,817	$ 8,819.15		$ 175,050	$ 17,493.30	
February	100,302	9,872.45		86,762	8,490.95		176,676	17,578.95	
March	89,537	8,850.33		62,158	6,115.87		130,680	13,027.95	
April	106,183	10,294.70		70,125	6,787.42		134,925	13,467.13	
May	143,060	14,049.78		112,007	10,896.58		206,362	20,609.97	
June	154,634	15,290.95		98,134	9,637.83		208,066	20,789.70	
July	131,956	12,729.13		134,580	13,092.80		224,539	22,435.72	
August	178,067	17,346.35		150,564	14,797.55		201,571	20,080.93	
September	159,961	15,861.20		138,408	13,636.70		271,061	27,095.33	
October	124,051	12,225.57		110,118	10,825.73		201,409	20,131.65	
November	132,657	12,989.80		131,828	12,941.90		177,486	17,743.68	
December	131,371	12,879.95		101,547	9,579.45		127,217	12,713.28	
Total	$1,546,475	$151,656.49	661	$1,286,048	$125,621.98	497	$2,235,042	$223,167.59	383
1954							$ 195,707	$ 19,527.18	
January	$ 88,976	$ 8,828.63		$ 125,118	$ 12,371.52		269,551	26,955.10	
February	87,967	8,652.23		109,459	10,538.80		175,482	17,590.48	
March	107,835	10,377.30		72,382	7,102.80		159,171	15,860.02	
April	111,398	11,049.78		83,761	8,217.00		158,650	15,861.55	
May	103,413	10,222.08		92,841	8,989.15		231,271	23,126.37	
June	142,923	14,129.08		107,207	10,496.53				

	New England Region			New York Region			Philadelphia & New Jersey Region		
	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed
1954—Cont'd									
July	$ 154,781	$ 15,073.88		$ 147,289	$ 14,430.35		$ 260,318	$ 26,020.22	
August	144,430	14,217.63		131,109	12,839.92		187,833	18,777.03	
September	119,271	11,736.40		107,611	10,572.20		185,507	18,550.70	
October	120,147	11,644.88		147,460	14,518.72		213,154	21,315.38	
November	141,641	13,960.50		121,746	12,066.10		215,541	21,527.40	
December	161,674	16,076.40		119,465	11,562.10		182,654	18,262.20	
Total	$1,484,456	$145,968.79	744	$1,365,448	$133,705.29	504	$2,434,839	$243,373.63	555
1955									
January	$ 81,400	$ 8,127.33		$ 102,553	$ 10,128.22		$ 248,470	$ 24,825.05	
February	126,916	12,623.83		94,741	9,182.55		251,980	25,196.30	
March	84,740	8,201.40		87,359	8,570.63		159,359	15,924.27	
April	141,559	13,941.97		109,279	10,646.65		189,344	18,928.63	
May	134,496	13,242.93		99,723	9,805.02		169,551	16,953.08	
June	134,266	13,255.47		133,159	12,950.00		212,681	21,265.18	
July	135,510	13,459.70		115,719	11,315.80		231,140	23,108.40	
August	150,589	14,589.45		137,844	13,445.62		233,654	23,361.93	
September	158,050	15,564.32		165,764	16,231.38		253,204	25,319.88	
October	132,293	12,878.28		143,775	13,890.02		241,066	24,103.85	
November	186,538	15,308.31		121,326	11,817.00		214,605	21,231.50	
December	224,617	19,553.94		101,162	9,801.76		191,689	18,907.00	
Total	$1,690,974	$160,746.98	1,009	$1,412,404	$137,784.65	577	$2,596,743	$259,125.07	622
1956									
January	$ 136,639	$ 12,585.33		$ 132,839	$ 12,782.83		$ 271,044	$ 26,958.27	
February	155,501	14,331.21		104,284	10,159.97		311,391	31,080.22	
March	106,707	10,115.10		84,085	8,254.96		187,973	18,745.02	
April	163,340	15,517.61		127,990	12,107.36		228,404	22,799.09	
May	167,695	15,539.17		139,486	13,180.83		237,395	23,670.13	
June	186,547	17,640.07		132,621	13,108.93		259,864	25,906.05	
Total	$ 916,429	$ 85,728.49	713	$ 721,305	$ 69,594.88	568	$1,496,171	$149,164.78	679

3777 COMMISSION EXHIBIT NO. 400S.

List C

Confidential

Item 8D

Commission Sales By Product Classification
By Atlantic Refining Company Marketing Regions
June 1950 Thru June 1956

	Total Tires and Tubes	Batteries (Including "X" and Cables)	Miscellaneous Repair & Recap Materials	Car & Home Accessories	Total
New England					
1950	—	—	—	—	—
1951	$ 439,837	$ 109,872	—	$ 138,591	$ 688,300
1952	899,644	163,002	—	253,561	1,316,207
1953	1,048,017	194,192	—	304,266	1,546,475
1954	989,907	173,552	—	320,997	1,484,456
1955	1,036,002	201,047	$ 82,006	371,919	1,690,974
1956	594,057	76,036	62,183	184,153	916,429
Total	$5,007,464	$ 917,701	$144,189	$1,573,487	$ 7,642,841
New York					
1950	—	—	—	—	—
1951	$ 466,499	$ 58,035	—	$ 101,476	$ 626,010
1952	799,691	102,962	—	138,932	1,041,585
1953	989,149	113,118	—	183,781	1,286,048
1954	1,033,714	131,344	—	200,390	1,365,448
1955	1,069,464	130,760	$ 6,353	205,827	1,412,404
1956	548,974	58,898	13,840	99,593	721,305
Total	$4,907,491	$ 595,117	$ 20,193	$ 929,999	$ 6,452,800
New Jersey & Philadelphia					
1950	$ 119,085	$ 21,375	—	$ 25,118	$ 165,578
1951	696,739	178,536	—	256,222	1,131,498
1952	1,168,855	259,928	—	389,516	1,818,098
1953	1,375,028	325,314	—	534,700	2,235,042
1954	1,458,993	362,389	—	613,457	2,434,839
1955	1,539,426	362,551	$ 28,507	666,259	2,596,743
1956	1,017,137	143,365	12,517	323,152	1,496,171
Total	$7,375,063	$1,653,458	$ 41,024	$2,808,424	$11,877,969

3778 **COMMISSION EXHIBIT NO. 401.**

Distribution List For Sales Department Correspondence

OFFICE

DeHoff
Johnson
Coarts
Krapp
Edmonston (5).

Leutner (4)
Kuester (20)
Daiger (2)
Hughes
Ward

J. W. Sherwood
J. R. Sherwood
J. M. Sherwood
Keller
Hall (5)

Jurgens
Feigo
Lawson (5)
Miss Ritter
Woisinger

MERCHANDISING DIVISION

McCauley
Van Horn
Wister
Clark

Weller
Cottman
Stuller

Neilson
E. Evans
Bowman
Geddes

Oswald
Holsinger
Wagner
Wrede

Brenizer
Ray Evans
Linthioum

Landon
Bray
Parker

CON'S. & IN'ST. DIV.

Henderson
Leimbach
Squiggins

BRANCH MANAGERS

E. W. Parsons (4)
Berlin, Md. (22)
Sherwood Hubbard (5)
Eastern, Md. (22)
Ralph McCool (5)
Elkton, Md. (37)
G. R. Shipley (8)
Frederick, Md. (80)
F. A. Welty (7)
Hagerstown, Md. (53)
Fred B. Parks (4)
Onancock, Va. (18)

C. E. Skipper (2)
Annapolis, Md.
C. C. Morgan (3)
Aberdeen, Md. (69)
H. M. Malone (2)
Cambridge, Md. (17)
T. H. M. Bramble (2)
Chestertown, Md. (4)
D. R. Fleming (2)
Cumberland, Md. (36)

SUPPLIERS

G. D. Crouso (2)
Denton, Md. (24)
D. R. Fleming (2)
Hancock, Md. (26)
B. F. Simms (3)
La Plata, Md. (33)
D. L. Sharrar (4)
Salisbury, Md. (29)
John R. Brown (4)
Finksburg, Md. (85)

DISTRIBUTORS

H. Glenwood Evans & Son
Crisfield, Md.
Vincent A. Buchholtz
Independent Motor Fuel Supply
W. National Blvd.
Cumberland, Md.

John R. Hill
Rock Hall, Md.
Paul D. Scarborough & Co.
Snow Hill, Md.

HIGHLANDTOWN

Jasper
Lichtenberg
Schaefer
Walger
Brown

Gerhold
Cook
Wheatley (2)
Glver (3)
Bornscheuer

Carson
Travers (2)
Blimline
Thomas (3)
Forsythe

SHERWOOD POINT

Charles Becker (2)
Bell (2)
Hoffnagle (2)

200—10/52

Retain 10 copies for file.

3780 COMMISSION EXHIBIT NO. 402-A

L.O. Stations—Baltimore City Including Metropolitan Area

Fee Stations	76
Lessor	56
	132

3782 COMMISSION EXHIBIT NO. 402B.

Bulletin No. LL & CE 52-15A

December 31, 1952

To: All Concerned

Attached is the Land, Lease and Construction Engineering Department bulletin revised as of December 31, 1952.

Listed are all Service Stations, Bulk Stations and Sub-Stations owned and leased by the Company, Service Stations leased for other purposes and idle properties, also revenue producing properties owned and leased by the Company.

Listed also are the names of Service Stations, Bulk Plant and Sub-Station operators and Bulk Station Code Numbers.

All invoices rendered by the Company for work performed, work orders prepared by operating departments, and all branch and general office accounting concerning these stations should show the number.

B. L. Edmonston
L.L. & C.E. Dept.
By: C.R.S.

CRS:K
Enc.

250-1/53

3784 **COMMISSION EXHIBIT NO. 402C.**

Sherwood Brothers Incorporated

Schedule of Service Stations, Bulk Stations & Sub-Stations Owned and Leased as of December 31, 1952

Baltimore, Md. Bulk Station #1009 (Code #10)
Sherwood Brothers Incorporated (S/S Nos. 1-299 & 600-699)

Sta. No. and Address, Operated By

2 Frederick & Caton Aves., Baltimore 29, Md., Frederick Ludwig
3 Pratt & South Sts., Baltimore 2, Md., Louis Vogel
4 Frederick Ave. & Mount St., Baltimore 23, Md., J. R. Hild
5 Reisterstown Rd. & Woodland Ave., Baltimore 15, Md., Harry Simm
13 Charles St. & North Ave., Baltimore 18, Md., C. H. Hudgins
15 Light & York Sts., Baltimore 30, Md., K. E. Porter
18 Fallsway Near Gay St., Baltimore 2, Md., B. Nechamkin
22 Washington Blvd. & Monroe St., Baltimore 30, Md., G. H. Zepp
25 Monroe & Presstman Sts., Baltimore 17, Md., Harry Zell
26 Eastern Ave. & Haven St., Baltimore 24, Md., W. A. Sommers
27 3510 Keswick Rd., Baltimore 11, Md., P. T. Ferguson
29 Paca & Dover Sts., Baltimore 1, Md., J. H. Stegman
30 York Rd. & Oakland Ave., Baltimore 12, Md., Louis H. Rettberg
33 Edmondson Ave. & Franklintown Rd., Baltimore 23, Md., R. McGarrie
34 Reisterstown Rd. & Garrison Ave., Baltimore 15, Md., R. Coleman
35 Reisterstown Rd. Nr. Walker Ave., Pikesville 8, Md., A. E. Caltrider
36 Gwynns Falls & Tioga Pkwys., Baltimore 16, Md., M. Leban
37 Washington Blvd. & Caton Ave., Baltimore 27, Md., S. E. Wenck
38 Old Harford & Joppa Roads, Baltimore Co., Towson 4, Md., N. C. Basier
39 3000 Liberty Heights Ave., Baltimore 15, Md., J. O. Leatherwood
40 Hanover & Westminster Pikes, Reisterstown, Md., S. K. Osborn
41 5250 Park Heights Ave., Baltimore 15, Md., J. W. Ittner
42 3524 N. Howard St., Baltimore 18, Md., G. B. Daniel
43 Charles St. & M.P.R.R., Woodbrook, Baltimore 12, Md., Chester G. Brown
45 Pulaski & Lexington Sts., Baltimore 23, Md., S. Zito
47 4604 Edmondson Ave., Baltimore 29, Md., E. M. Challoner & K. C. Harrington
49 Pulaski Hwy. & Haven St., Baltimore 24, Md., W. J. Rupperf Corp.
50 Broadway & Lombard St., Baltimore 31, Md., W. F. King
52 3514 Harford Rd., Baltimore 18, Md., J. H. Loggett
53 25th St. & Loch Raven Rd., Baltimore 18, Md., B. J. Haber
56 Main St., Sykesville, Md., R. H. Cutsail
59 Annapolis Blvd. N. of Mountain Rd., Millersville, Md., I. C. Gary
64 Dundalk & Baltimore Aves., Dundalk, Baltimore 22, Md., E. T. Phillips
67 Falls Rd. & 41st St., Baltimore 11, Md., R. H. Edrington
78 S.E. Cor. North Pt. Rd. & Merritt Ave., Sparrows Pt. 19, Md., G. F. Bamford
84 1301-03 Hollins St., Baltimore 23, Md., G. P. Jones
85 Liberty Heights & Ayrdale Aves., Baltimore 15, Md., Harry Zell
86 Harford Rd. & Southern Ave., Baltimore 14, Md., A. R. Alessi
87 York Rd. & Willow Ave., Towson, Baltimore 4, Md., F. L. Tawney
89 S.E. Side Belair Rd., Bel Air, Md., H. R. Rembold

Sta. No.	and Address, Operated By
92	3000 Wilkens Ave., Baltimore 23, Md., Regan Motors, Inc.
94	Liberty Hts. & Milford Aves., Baltimore 7, Md., J. H. Thompson
95	2110-12 Gwynn Oak Ave., Woodlawn, Baltimore 7, Md., E. G. Smith
96	Frederick Ave. & Calverton Rd., Baltimore 23, Md., J. J. Moran, Jr.
98	Belvedere Ave. & Pimlico Rd., Baltimore 15, Md., J. M. Collins
99	5316 York Rd., Baltimore 12, Md., W. G. Adolph
100	W. Side Belair Rd. (U. S. Hwy. #1) Fullerton Balto. County, Md., J. J. Butt
102	S.E. Cor. Belair Rd. & Anntana Ave., Baltimore 6, Md., A. M. Sariego
103	W. Side U. S. Hwy. #301 & Md. Hwy. #178, Millersville, Md., J. G. Deinlein

3786

106	S.W. Cor. 33rd & Barclay Sts., Baltimore 18, Md., C. A. Edmonston & B. F. Wilson
110	2026-32 Belair Rd., Baltimore 13, Md., E. G. Roehre
113	S.W. Cor. Bank & Wolfe Sts., Baltimore 31, Md., J. S. Marshall
116	S.E. Cor. Falls & Clarks Hill Rds., Baltimore 9, Md., C. L. Ridgely
118	N.E. Cor. Crain Hwy. & Ft. Meade-Odenton Rd., Millersville, Md., E. E. Wilburn
125	S.E. Cor. Eastern Blvd. & Proposed New 30 ft. Road opp. Martin Plant #2, Middle River, Md., A. L. Keath, Jr.
126	5924-26 Eastern Ave., Baltimore 24, Md., J. W. Stricklin & C. A. Ruttig
133	5008-10 Frederick Ave., Baltimore 29, Md., F. C. Joh
134	N.W. Cor. North Ave. & Ashburton St., Baltimore 16, Md., B. Frieman
136	8051 Ft. Smallwood Rd., Clearwater Beach, Baltimore 26, Md., L. C. Mock
137	N.E. Cor. Merritt & Wise Aves., Dundalk, Baltimore 22, Md., D. R. Woolford
138	S.W. Cor. Eastern Ave. & Kingston Rd., Middle River 21, Md., J. F. Zaloudek
139	S. Side Fred. Rd. Nr. Patapsco River, Ellicott City, Md., G. A. C. Hodges
140	N.W. Cor. Gov. Ritchie Hwy. & Severna Pk. Rd., Severna Park, Md., R. W. Petty
141	E. Side Gov. Ritchie Hwy. Nr. Elvaton Dr., Pasadena, Md., H. M. Jones
142	S.W. Cor. Pulaski Hwy. & Chesaco Ave., Rosedale, Balto., Md., H. Reitemeyer
143	S. Side Revell Hwy. (U. S. Hwy. #50), St. Margarets, Md., A. J. Slater
144	S.E. Cor. Key Hwy. & Jackson St., Baltimore 30, Md., J. H. Countess
145	S.E. Cor. Eastern Ave. & Woodward Dr., Essex, Baltimore 21, Md., G. W. Lang
146	N.W. Cor. Kenwood Ave. & Eager St., Baltimore 5, Md., H. W. Pokrywka
147	N.W. Cor. Gov. Ritchie Hwy. & Old Annaprd Rd., Glenburnie, Md., T. W. Rennie
148	S.E. Cor. Franklin & Pearl Sts., Baltimore 1, Md., D. W. Bryant & M. Kramer
149	1901 Edison Hwy., Baltimore 13, Md., J. G. Luerssen
150	N. Side U. S. #50, E. of Md. Hwy. #2, Parole, Md., Robert Stallings
153	N.W. Cor. Boston & Aliceanna Sts., Baltimore 31, Md., L. V. Weber
154	S.E. Cor. East Dd. & Linden Ave., Arbutus 27, Md., H. M. Andrest
155	N.E. Cor. York Rd. & Belvedere Ave., Baltimore 12, Md., George Koloup
156	S.W. Cor. York Rd. & Wash. Ave., Towson, Baltimore 4, Md., Elton Willett

Sta. No.	and Address, Operated By
157	S.E. Cor. Reisterstown Rd. & Glen Ave., Baltimore 15, Md., R. I. Walters
158	S.E. Cor. Old Harford Rd. & Taylor Ave., Parkville 14, Md., A. Glorioso
159	N.E. Cor. Pulaski Hwy. & Ft. Hoyle Rd., Edgewood, Md., C. R. Ricketts
160	N.E. Cor. Frederick & Delrey Aves., Catonsville 28, Md., C. W. Schaper
161	E. Side Kirk Ave. at Homewood Ave., Baltimore 18, Md., J. Glendenning
162	S.E. Cor. Pulaski Hwy. & Ebenezer Rd., White Marsh, Md., C. H. Mizello
163	S.W. Cor. York Rd. & Bellona Ave., Lutherville, Md., L. E. Stokes
164	5223 Edmonson Ave. W. of Charing Cross Rd., Catonsville 28, Md., L. Earl Fugitt
166	W. Side Reisterstown Rd. & Irving Place, Pikesville 8, Md., R. H. Cowley
167	S.W. Cor. Franklin St. & Fulton Ave., Baltimore 23, Md., J. Rock
168	N.E. Cor. Fayette & Exeter Sts., Baltimore 2, Md.
169	4922-24 Belair Rd., Baltimore 6, Md., B. S. Weilbrenner
172	N.W. Side Belair Road, Raspeburg, Baltimore 6, Md., J. H. Hefner
174	N.E. Cor. Wise Ave. & Pinewood Dr., Dundalk, Baltimore 22, Md., G. H. Goldschmidt & E. W. Kail
175	N. Side Md. Hwy. #176 E. of Md. Hwy. #713, Harmans, Md., J. C. Walsh
176	S.E. Cor. Md. Hwy. #170 & Benton Ave., Linthicum, Md., J. W. & M. E. Ritter
177	S.W. Cor. Gay St. & Patterson Park Ave., Baltimore 13, Md., F. S. Catania & B. R. Smith
178	N.W. Cor. Liberty & McDonogh Rds., Randallstown, Md., R. P. Haight
179	2244-46 Reisterstown Rd., Baltimore 17, Md., M. G. Bowen
180	S.W. Cor. Lafayette Ave. & Gilmor St., Baltimore 17, Md., W. S. Tucker
181	N.E. Cor. Dolfield & Cold Spring Lane, Baltimore 15, Md., W. E. Selenkow
182	S.E. Cor. Pulaski Hwy. & Ellwood Ave., Baltimore 24, Md., D. & J. C. Sause

3788

184	N.W. Cor. Fayette St. & East Ave., Baltimore 24, Md., R. Edgington
185	S.W. Cor. Joppa Rd. & Loch Raven Blvd., Baynesville 4, Md., M. F. Traband & J. J. Smith
186	S.E. Cor. Martin Blvd. & Middle River Rd., Middle River, Md., C. H. Bodine
187	S.W. Cor. Highland Ave. & Fayette St., Baltimore 24, Md., Fayette Fill. Sta. Inc.
188	N.E. Cor. Belair Rd. & Kenwood Ave., Baltimore 6, Md., L. W. Reaver & C. F. Reider
189	3030 S. Hanover St., Baltimore 25, Md., Aarid Van Lines, Inc.
190	N.W. Cor. Rolling & Windsor Mill Rds., Hebbville 7, Md., L. F. Stirn
192	E. Side New North Pt. Rd. Nr. Matthai Ave., Dundalk, Balto. 22, Md., A. J. Lombardi
193	S.E. Cor. Holabird & East Aves., Baltimore 22, Md., R. J. Butler
194	W. Side Southwestern Blvd., thru to 4311 Leeds Ave., Arbutus 27, Md., B. F. Croft
195	2001 Annapolis Rd., Westport, Baltimore 30, Md., B. P. Morrison & F. J. Cox, Sr.
196	N.E. Cor. Pulaski Hwy. & Golden Ring Rd., Baltimore 21, Md., C. R. Gross

Sta. No.	and Address, Operated By
197	E.S. U. S. Hwy. #301 & Quarterfield Rd., Glen Burnie, Md., F. Kallvoda & W. T. Lawrence
198	E.S. Reisterstown Rd., opp. Cockeys Mill Rd., Reisterstown, Md., W. L. Leaf
199	3030 Eastern Ave., Essex 24, Md., E. H. Simpson & L. C. Simmons
201	S.E. Cor. Loch Raven Blvd. & Taylor Ave., Baltimore 4, Md., C. H. Walper
202	West St. at Washington St., Annapolis, Md., L. H. Green
203	S.W. Cor. Carey & Mosher Sts., Baltimore 17, Md., C. O. Bailey & C. A. Greene
204	S.E. Cor. Clifton Ave. & Denison St., Baltimore 16, Md., S. L. Ayres & R. E. O'Meara
205	3004 Erdman Ave., Baltimore 13, Md., G. H. Walter
206	N.W. Cor. Harford Rd. & Harview Ave., Baltimore 14, Md., A. J. & M. G. Foertsch
207	N.W. Cor. Cherry Hill & Terra Firma Rds., Baltimore 25, Md., Isadore Hall
208	S.E. Cor. York Rd. & Windwood Ave., Anneslie 12, Md., J. B. McMaster
209	N.W. Cor. Chesapeake Ave. & 2nd St., Brooklyn 25, Md., R. J. Downey
210	900-06 E. Fort Ave., Baltimore 30, Md., J. Z. Matusak
211	N.W. Cor. Mountain & Disney Rds., Jacobsville, Md., S. E. Dunlap & W. C. Stallings
212	7533 Belair Rd., Raspeburg, Baltimore 6, Md., A. L. Krell
213	S.W. Cor. Erdman Ave. & Sinclair Lane, Baltimore 13, Md., O. P. Owens
214	S.E. Cor. Lombard & Conkling Sts., Baltimore 24, Md., Geo. H. Becker, Jr.
215	N.W. Cor. Belair Rd. & Glenarm Ave., Baltimore 6, Md., W. E. Bruns
216	N.W. Cor. Gov. Ritchie Hwy. & Hammonds La., Baltimore 25, Md., F. H. Ward
217	N.E. Cor. Patapsco Ave. & 9th St., Brooklyn 25, Md., Q. K. Porter
219	927 W. West St., Annapolis, Md., C. J. Merston
220	S.E. Cor. Sherwood & Overbrook Rds., Idlewylde 12, Md., R. R. Robertson
222	S.E. Cor. North Pt. Rd. & Norris Lane, Gray Manor, Md., J. F. Fotia
223	S.W. Cor. New Edmindson Ave. & Winters La., Catonsville 28, Md., Bruce E. Cameron
224	1725 Poncabird Pass, Baltimore 24, Md., F. B. Hildebrand
225	Gov. Ritchie Hwy. & Jumpers Hole Rd., R.F.D. #3, Box 535, Pasadena, Md., John Knott, Jr.
226	Gov. Ritchie Hwy. & Eighth Ave., Glen Burnie, Md., C. L. Durm
227	N.E. Cor. Eastern Blvd. & Stemmers Run Rd., Essex 21, Md., P. J. DiFilippo
228	S.E. Cor. Reisterstown Rd. & 7 Mile Lane, Pikesville 8, Md.
229	S.E. Cor. Gov. Ritchie Hwy. & Jones Rd., Jones, Md.
230	S.E. Cor. Reisterstown Rd. & Berrymans Lane, Reisterstown, Md., C. E. Caltrider
231	S.E. Cor. Old Annapolis Rd. & Hammonds La., Linthicum, Md., G. P. Brown & M. D. McCaslin
232	New Edmondson Ave. & Old Frederick Rd., Catonsville 28, Md.
234	S.E. Cor. Old Annapolis Rd. & 15th St., Fort Meade, Md., H. F. & T. F. Wheeler
235	319 Main Street, Ellicott City, Md., H. C. Wall

3790

600	N.E. Cor. Falls Rd. & 36th St., Baltimore 11, Md., H. L. Dovell
601	N.W. Cor. 25th St. & Kirk Ave., Baltimore 18, Md., H. P. & F. N. Koenig

Sta. No. and Address, Operated By

602 N.E. Cor. Eastern Ave. & Caroline St., Baltimore 31, Md., C. W. Napfel
603 S.W. Cor. Eutaw & Preston Sts., Baltimore 1, Md., J. Eisenberg
604 N.W. Cor. Penna. Ave. & Baker St., Baltimore 17, Md., C. E. Wohrna
605 S.W. Cor. Reisterstown Rd. & Ridgewood Ave., Baltimore 15, Md., C. Young
609 N.E. Cor. Pratt & Sharp Sts., Baltimore 1, Md., I. Finegold
610 S.W. Cor. Washington Blvd. & Annapolis Ave., Baltimore 30, Md., E. D. Wheeler
612 N.W. Cor. Schroeder St. & Fairmount Ave., Baltimore 23, Md., M. N. Oshry
618 W. Side Wash. Blvd. at North End of Laurel, Md., H. Hardingham
619 E. Side Wash. Blvd., Elkridge, Baltimore 27, Md., G. E. Ebie & C. F. Meyd
620 N.W. Cor. Wash. Blvd. & Guilford Rd., Savage, Md., S. J. Orndorff
623 Gov. Ritchie Hyw. & Furnace Branch Rd., R.F.D. #20, Box 50, Glen Burnie, Md., C. B. Didlake

Aberdeen, Md. Bulk Station #1037 & #1037A (Code #2710)
C. C. Morgan (S/S Nos. 800-819)

800 Franklin & Stokes, Havre de Grace, Md., O. M. Currier
801 S.E. Cor. Otsego St. & U. S. Hwy. #40, Havre de Grace, Md., O. M. Currier
804 S.E. Cor. Md. Hwy. #24 & #165, Bush's Cor., Street, Md., Woodrow W. DeVoe
807 110 S. Philadelphia Ave., Aberdeen, Md., W. Dixon & A. L. Rickey
808 N.E. Cor. Md. Hwys. #23 & #24, Forest Hill, Md., J. W. & L. W. Hicks
810 U. S. Hwy. #1—10 Mi. North of Bel Air, Street, Md., W. B. Anderson
811 W. Side U. S. Hwy. #40, Perryville, Md., D. Farmer & M. L. Mink
813 S.E. Cor. U. S. #40 & Md. Hwy. #22, Swan Creek, Md., Seymour Kronman

Annapolis, Md. Bulk Station #1020 (Code #65)
C. E. Skipper

None

Berlin, Md. Bulk Station #1036 & #1041 (Code #2520)
Sherwood Brothers Incorporated (S/S Nos. 920-923)
E. W. Parsons—Branch Manager

921 S.E. Cor. Church St. & Dupont Blvd., Selbyville, Del., J. Adkins
923 N.W. Cor. Pitts & William Sts., Berlin, Md., D. J. & C. E. Parker

3792

Cambridge, Md. Bulk Station #1027 (Code #2540)
H. M. Malone (S/S Nos. 900-919)

900 Md. State Hwy. #16 & Cordtown Rd., Cambridge, Md., E. H. Adler
901 Race & Washington Sts., Cambridge, Md., R. J. Phillips
903 S.W. Cor. Academy & Muir Sts., Cambridge, Md., Arthur Wroten

Chestertown, Md. Bulk Station #1028 (Code #2550)
Thomas H. M. Bramble (S/S Nos. 840-859)

841 Crumpton-Dudley Rd., Crumpton, Md., E. J. & C. R. Hamblet
844 N.E. Cor. Maple & Cross Sts., Chestertown, Md., Perry Wessel

Cockeysville, Md. Bulk Station #1004 (Code #20)
J. R. Brown (S/S Nos. 400-424 & 309)

Sta. No. and Address. Operated By
309 South Side Main St., Taneytown, Md., E. T. Newcomer
401 S.W. Cor. Penna. Ave. & Union St., Westminster, Md., H. T. Phillips
402 N.E. Cor. Falls & Shawan Rds., Shawan, Md., J. G. Brown
403 West Side Main St., Manchester, Md., D. V. Rhoten
404 Hanover Pike & Black Rock Rd., Hampstead, Md., A. J. Matthews
405 244-46 E. Main St., Westminster, Md., N. E. Ogg & E. H. Brenneman
406 S.E. Cor. Tne & Manchtester Rds., Westminster, Md., Jameson & Barnsley Company, Inc.
407 W. Side York Rd. 3/10 Mi. N. of Md. Hwy. #143, Cockeysville, Md., Roy M. Bosley
408 East Side Md. Hwy. #30, Greenmount, Md., Carroll E. Payne
409 N.S. U. S. Hwy. #140 ½ Mi. E. of Hwy. #91, Finksburg, Md., H. L. Zepp & S. A. Shipley
411 N. Side of Md. Hwy. #32, East end of, Taneytown, Md., R. J. Wagner

Cumberland, Md. Bulk Station #1034 (Code #2570)
Daniel R. Fleming (SS Nos. 700-729)

700 U. S. #40 Main St., Gransville, Md., Casselman Motor Co.
702 State Hwy. #9 & Cinder Rd., Paw Paw, W. Va., E. D. Vanosdale
706 South Side Main St., Westernport, Md., M. E. Wilson
707 N. Co. Fulton St. & Henderson Blvd., Cumberland, Md., F. E. Stitcher & F. C. Hill
708 Main St., Barton, Md., S. M. Berry
711 S.E. Cor. Mechanic & Bow Sts., Cumberland, Md., L. L. Wilkinson

Denton, Md. Bulk Station #1032 (Code #2580)
G. D. Crouse (S/S Nos. 860-879)

860 S.W. Cor. 5th & Choptank Aves., Denton, Md., E. M. Crouse
862 Main & Noble Sts., Preston, Md., C. S. White

Easton, Md. Bulk Station #1014 (Code #2610)
Sherwood Brothers Incorporated (S/S Nos. 880-899)
S. M. Hubbard—Branch Manager

881 Highway #404, Grasonville, Md., E. F. & W. E. Clevenger
882 S. Washington & South Sts., Easton, Md., H. R. & R. N. Willoughby
884 N.E. Cor. Oxford-Trappe Rd. & 1st St., Oxford, Md., R. T. Valliant
885 East Side Talbot St., St. Michaels, Md., R. E. Rude
887 U. S. Hwy. #50, N. of Dover Rd., Easton, Md., C. W. Roe
888 Md. Hwy. #404 (Eastern Shore Blvd.), Stevensville, Md., J. C. Palmer
889 S.E. Cor. U. S. #50 & Md. Hwy. #662, Skipton, Md., F. C. Henckel

Elkton, Md. Bulk Station #1029 (Code #2620)
Sherwood Brothers Incorporated (S/S Nos. 820-839)
Ralph W. McCool—Branch Manager

820 S.W. Cor. Main & Walnut Sts., Rising Sun, Md., R. T. Wilson, Jr.
821 35 W. Main St., Newark, Del., S. D. Kirk
824 North Side Main St., Rising Sun, Md., N. C. Biggs
825 North & Whig Sts., Elkton, Md., Clinton M. Jaquette, Jr.
827 South Side U. S. Hwy. #40, E. of Md. Hwy. #7, Elkton, Md., Samuel D. Kirk

Frederick, Md. Bulk Station #1030 (Code #2860)
Sherwood Brothers Incorporated (S/S Nos. 300 & 310 & 740-779)
G. R. Shipley—Branch Manager

Sta. No. and Address, Operated By

300 W. Patrick & N. Jefferson Sts., Frederick, Md., Stup Bros.
310 East Side Church St. N. of Main St., Thurmont, Md.
747 Northerly Side U. S. Hwy. #40, Middletown, Md., R. R. Keller
751 162 W. Patrick St., Frederick, Md., S. L. Hahn
756 N.W. Cor. W. Main & Church Sts., Thurmont, Md., H. R. Lewis
757 N.E. Cor. Md. Hwy. #32 & #571, Emmitsburg, Md., R. J. Miller
758 U. S. Hwy. #340 3 Mi. N.E. of Knoxville, Petersville, Md., J. E. Nicholson
759 U. S. Hwy. #240, Clarksburg, Md., J. R. & I. R. Whipp
760 West Side U. S. Hwy. #240, Hyattstown, Md., N. D. & F. T. McGee
761 423 E. Patrick St., Frederick, Md., C. T. Mohler
762 N.E. Cor. East & E. Church Sts., Frederick, Md., L. L. Moore
763 U. S. Route #340, R.F.D., Knoxville, Md., J. W. Aits

Hagerstown, Md. Bulk Station #1055 (Code #35)
Sherwood Brothers Incorporated (S/S Nos. 350-374)
F. A. Welty—Branch Manager

352 655 W. Washington St., Hagerstown, Md., E. L. Smith
359 662-70 Virginia Ave., Hagerstown, Md., Charles O. E. Stoner
365 877 Pennsylvania Ave., Hagerstown, Md., P. B. Norris
366 N.W. Side Potomac & Maple Aves., Hagerstown, Md., C. R. Smith
367 W.S. Penna. Ave. (U. S. #11) S. of Carroll Way, Hagerstown, Md., J. W. Gehr

3796

Hancock, Md. Bulk Station #1031 (Code #2700)
Daniel R. Fleming (S/S Nos. 730-739)

730 E. Main St. Nr. Church St., Hancock, Md., M. M. Johnson
732 S. Side Main St. Nr. By-Pass to U. S. Hwy. #522, Hancock, Md., George E. Fuss & Therman L. Hill

La Plata, Md. Bulk Station #1038 (Code #2740)
B. F. Simms (S/S Nos. 790-799)

790 N.W. Cor. Washington Ave. & Balto. St., La Plata, Md., V. B. Bowling, Jr.
791 W. Side Hwy. #3, Faulkner, Md., Geo. B. Lynch
793 W. Side Md. Hwy. #5, 7/8 Mi. south of Hughesville, Md., A. N. Bridgett & J. P. Long
794 E. Side U. S. #301 N. of Md. Hwy. #3, Bel Alton, Md., C. R. Bailey
795 S.W. Cor. U. S. #301 & Unnamed Rd., T. B., Md., J. E. Cooke, Jr.

Onancock, Va., Bulk Station #1026 (Code #8810)
Sherwood Brothers Incorporated (S/S Nos. 550-599 & 940-959)
Fred B. Parks—Branch Manager

550 Main St., Wachapreague, Va.
551 Chincoteague Island, Chincoteague, Va., J. Brasure
943 N.E. Cor. Mapp Ave. & U. S. Hwy. #13, Exmore, Va., G. H. Turner
945 S.W. Cor. Fig St. & Randolph Ave., Cape Charles, Va., Frank Thornes

Salisbury, Md. Water Terminal Bulk Station #1007 (Code #2870)
R. T. Isenhour, Plant Foreman, Sherwood Brothers Incorporated

Sta. No. and Address, Operated By

None

Salisbury, Md. Bulk Station #1007 (Code #2860)
Sherwood Brothers Incorporated (S/S Nos. 500-549)
D. L. Sharrar

500 E. Main St. & Poplar Hill Ave., Salisbury, Md., Thomas H. Carey
520 S.E. Cor. Main & Lillian Sts., Hebron, Md., R. L. & N. Messick
524 N.E. Cor. S. Division & Carroll Aves., Salisbury, Md., W. T. Purcell
525 S.W. Cor. Salisbury Blvd. & Union Ave., Salisbury, Md., A. L. Reichard

3798

Baltimore, Md. Bulk Station #1009 (Code #10)
Sherwood Brothers Incorporated

1 Frederick & Caton Aves., Baltimore, Md., F. Jasper
2 3000 Liberty Heights Ave., Baltimore, Md., F. Jasper
3 York Rd. & Oakland Ave., Baltimore, Md., F. Jasper
4 3514 Harford Rd. (Inactive), Baltimore, Md., F. Jasper
5 2524 N. Howard St., Baltimore, Md., F. Jasper

Aberdeen, Md. Bulk Station #1037 (Code #2710)
Sherwood Brothers Incorporated

8 S.E. Side Belair Rd., Bel Air, Md., C. C. Morgan

Service Station Sites Acquired by Company for Future Expansion

410 135-139 W. Main St., Westminster, Md. (Land & Dwelling)
84 1305 Hollins St., Baltimore, Md. (Dwelling)
217 N.E. Cor. Patapsco Ave. & 9th St., Brooklyn, Md. (Land & Dwelling)
218 W.S. Md. Hwy. #32 at end of Md. Hwy. #91, Gamber, Md. (Unimproved)
221 N.E. Cor. Maryland Hwys. #145 & #146, Jacksonville, Md. (Unimproved Land)
809 W. Side North End of Aberdeen, Harford County, Md. (Unimproved Land)
826 South Side Pulaski Hwy. West of Landing Lane, Elkton, Md. (Unimproved Land)
861 S.W. Cor. Market & Fifth Sts., Denton, Md. (Unimproved Land)
233 S.E. Cor. Liberty & Ellen Roads, Hillvale, Md. (Unimproved Land)

Revenue Producing Properties—Owned or Leased
Baltimore, Md. Bulk Station #1009 (Code #10)

201 S.E. Cor. Loch Raven Blvd. & Taylor Ave., Baltimore County, Md. (Golf Course)

Denton, Md. Bulk Station #1032 (Code #2580)

861 S.W. Co. Market & Fifth Sts., Denton, Md. (Miniature Golf Course)

Easton, Md. Bulk Station #1014 (Code #2610)

887 East Side U. S. #50, N. of Dover Rd., Easton, Md. (Advertising Sign)

3800

Sherwood Brothers Incorporated
Alphabetical Index—Baltimore Area

Location, Sta. No. and Operator

Annapolis, West St. at Washington St., 202, L. H. Green
Annapolis, 927 W. West St., 219, C. J. Marston
Annapolis, Parole, U. S. #50, East of Md. Hwy. #2, 150, Robt. Stallings
Annapolis Rd. & 15th St.—Fort Meade, 234 H. F. & T. F. Wheeler
Arbutus, East Drive & Linden Ave., 154, H. M. Andrest
Bank & Wolfe Sts., 113, J. S. Marshall
Bel Air, Md., 89, H. R. Rembold
Belair Rd. (West Side) Fullerton, 100, J. J. Butt
Belair Rd. (2026-32), 110, E. G. Roehre
Belair Rd. (4922), 169, B. S. Weilbrenner
Belair Rd., Raspeburg, 172, J. H. Hefner
Belair Rd., Raspeburg, 212, A. L. Knell
Belair Rd. & Anntana Ave., 102, A. M. Sariego
Belair Rd. & Glen Arm Ave., 215, W. L. Bruns
Belair Rd. & Kenwood Ave., 188, L. W. Reaver & C. F. Reider
Belvedere Ave. & Pimlico Rd., 98, J. M. Collins
Boston & Aliceanna Sts., 153, L. V. Weber
Broadway & Lombard St., 50, W. F. King
Carey & Mosher Sts., 203, C. O. Bailey & C. A. Greene
Catonsville, Frederick Rd. Nr. Melvin Ave., 57, W. L. Forestell
Catonsville, New Edmondson Ave. & Old Fred. Rd., 232
Charles St. & M.P.R.R., Woodbrook, 43, Chester G. Brown
Cherry Hill & Terra Firma Rds., 207, Isadore Hall
Chesapeake Av. & 2nd St., Brooklyn, 209, R. J. Downey
Clifton Ave. & Denison St., 204, S. L. Ayres & R. E. O'Meara
Crain Hwy. & Ft. Meade—Odenton Rd., Millersville, 118 E. E. Wilburn
Dolfield Ave. & Cold Spring Lane, 181, W. E. Solenkow
Dorsey Rd., Hwy. #176, Harmans, 175, J. C. Walsh
Dundalk & Baltimore Aves., Dundalk, 64, E. T. Phillips
Eastern Ave. (8030), Essex, 199, E. H. Simpson & L. C. Simmons
Eastern Ave. & Bonsal St., 126, J. W. Strickling & C. A. Ruttig
Eastern Ave. & Caroline St., 602, C. W. Napel
Eastern Ave. & Haven St., 26, W. A. Sommers
Eastern Ave. & Kingston Rd., Middle River, 138, J. F. Zaloudek
Eastern Ave. & Woodward Dr., Essex, 145, G. W. Lang
Eastern Ave. opp. Martin Plant #2, Middle River, 125, A. L. Keath, Jr.
Eastern Ave. & Stemmers Run Rd., Essex, 227, P. J. DiFilippo
Edison Hwy. (1901) & Sinclair Lane, 149, J. G. Luerssen
Edmondson Ave. (5223) W. of Charling Cross Rd., 164, L. E. Fugitt
Edmondson Ave. W. of Swan Ave. (4604), Ten Hills, 47, E. M. Challoner & K. C. Harrington
Edmondson Ave. & Franklintown Rd., 33, R. McGarrie
Edmondson Ave. & Winters Lane, Catonsville, 223, Bruce E. Cameron
Ellicott City, 319 Main St., 235, H. C. Wall
Ellicott City, Frederick Rd. nr. Patapsco River, 139, G. A. C. Hodges
Erdman Ave. (3004) W. of Belair Rd., 205, G. N. Walter
Erdman Ave. & Sinclair Lane, 213, O. P. Owens
Eutaw & Preston Sts., 603, J. Eisenberg

3802

Fairmount Ave. & Schroeder St., 612, N. M. Oshry
Falls & Clarks Hill Rds., Mt. Washington, 116, C. L. Ridgely
Falls Rd. & 36th St., 600, H. L. Dovell
Falls Rd. & 41st St., 67, R. H. Edrington

Location, Sta. No. and Operator

Fallsway Nr. Hillen St., 18, B. Nechamkin
Fayette St. & East Ave., 184, R. Edgington
Fayette St. & Exeter St., 168
Fayette St. & Highland Ave., 187, Fayette Filling Station
Fort Ave. (900 E.) & Lawrence St., 210, J. Z. Matusak
Fort Smallwood Rd. (8051), Clearwater Beach, 136, L. C. Mock
Franklin St. & Fulton Ave., 167, J. Rock
Franklin & Pearl Sts., 148, D. W. Bryant & M. Kramer
Frederick Ave. & Calverton Rd., 96, J. J. Moran, Jr.
Frederick & Caton Aves., 2, Frederick Ludwig
Frederick Ave. (5008-10), 133, F. C. Job
Frederick & Delrey Aves., Catonsville, 160, C. W. Schaper
Frederick Ave. & Mount St., 4, J. R. Hild
Gwynns Falls & Tioga Pkwys., 36, M. Leban
Hanover St. (3030), 189, Aurid Van Lines, Inc.
Harford Rd. & Harview Ave., 206, A. J. & M. G. Foertsch
Harford & Kentucky Aves., 52, J. H. Leggett
Harford Rd. & Southern Ave., 86, A. R. Alessi
Hebbville, Rolling & Windsor Mill Rds., 190, L. F. Stirn
Highland Ave. & Fayette St., 187, Fayette Filling Station
Holabird & East Aves., Dundalk, 193, R. J. Butler
Hollins & Carey Sts., 84, G. P. Jones
Homewood & Kirk Aves., 161, J. Glendenning
Howard St. N. of 25th St. (2524), 42, G. B. Daniel
Joppa & Old Harford Roads, Baltimore County, 38, N. C. Baslor
Joppa Rd. & Loch Raven Blvd., Baynesville, 185, M. F. Traband & J. J. Smith
Kenwood Ave. & Eager St., 146, H. W. Pokrywka
Keswick Rd. (3510), 27, P. T. Ferguson
Key Hwy. & Jackson St., 144, J. H. Countess
Lafayette Ave. & Gilmor St., 180, W. S. Tucker
Laurel; Wash. Blvd. at North end of Town, 618, H. Hardingham
Lexington & Pulaski Sts., 45, S. Zito
Liberty Heights Ave. (3000) & W.M.R.R., 39, J. O. Leatherwood
Liberty Heights & Ayrdale Aves., 85, Harry Zoll
Liberty Heights & Milford Aves., 94, J. H. Thompson
Light & York Sts., 15, K. E. Porter
Linthicum, Md. (Hwy. #170 & Benton Ave.) 176, J. W. & M. E. Ritter
Linthicum, Md. (Old Annapolis Rd. & Hammonds La), 231, G. P. Brown & M. D. McCaslin
Loch Raven Blvd. & Taylor Ave., Balto. County, 201, C. H. Walper
Lombard & Congling Sts., 214, Geo. H. Becker, Jr.
Lutherville, York Rd. & Bellona Ave., 163, L. E. Stokes

3804

Martin Blvd. & Middle River Rd., Middle River, 186, C. H. Bodino
Merritt & Wise Aves., Dundalk, 137, D. R. Woolford
Millersville, U. S. #301 & Md. Hwy. #178, 103, J. G. Deinlein
Monroe & Presstman Sts., 25, H. Zell
Mountain & Annapolis Rds., Lipins Corner, 59, I. C. Gary
Mountain & Disney Rds., Jacobsville, 211, S. E. Dunlap & W. C. Stallings
North Ave. & Ashburton St., 134, B. Frieman
North Ave. & Charles St., 13, C. H. Hudgins
North Point Blvd. Nr. Matthai Ave., Dundalk, 192, A. J. Lombardi
North Point Rd. & Merritt Ave., Sparrows Point, 78, G. F. Bamford
North Point Rd. & Norris Lane, Gray Manor, 222, J. F. Fotia
Old Harford Rd. & Taylor Ave., Parkville, 158 A. Glorioso
Paca & Dover Sts., 29, J. H. Stegman
Park Heights Ave. (5250), 41, J. W. Ittner

Location, Sta. No. and Operator

Patapsco Ave. & 9th St., Brooklyn, 217, Q. K. Porter
Patterson Park Ave. & Gay St., 177, F. S. Catania & B. R. Smith
Penna. Ave. & Baker St., 604, C. E. Wohrna
Pikesville, Reisterstown Rd. & 7 Mile Lane, 228
Pikesville, Reisterstown Rd. Nr. Walker Ave., 35, A. E. Caltrider
Poncabird Pass (1725), 224, F. B. Hildebrand
Pratt & Sharp Sts., 609, I. Finegold
Pratt & South Sts., 3, Louis Vogel
Pulaski Hwy. & Chesaco Ave., Rosedale, 142, H. Reitemeyer
Pulaski Hwy. & Ebenezer Rd., White Marsh, 162, C. H. Mizelle
Pulaski Hwy. & Ellwood Ave., 182, D. & J. C. Sause
Pulaski Hwy. & Ft. Hoyle Rd., Edgewood, 159, C. B. Ricketts
Pulaski Hwy. & Haven St., 49, W. J. Ruppert Corp.
Pulaski Hwy. & Golden Ring Rd., 196, C. R. Gross
Randallstown, Liberty & McDonogh Rds., 178, R. P. Haight
Reisterstown, Hanover & Westminster Pikes, 40, S. K. Osborn
Reisterstown, Reisterstown Rd. & Berrymans Lane, 230, C. E. Caltrider
Reisterstown, Reisterstown Rd., Opp. Cockeys Mill Rd., 198, W. L. Leaf
Reisterstown Rd. (2244), 179, M. G. Bowen
Reisterstown Rd. & Garrison Ave., 34, R. Coleman
Reisterstown Rd. & Glen Ave., 157, R. I. Walters
Reisterstown Rd. & Irving Place, 166, R. H. Cowley
Reisterstown Rd. & Ridgewood Ave., 605, C. Young
Reisterstown Rd. & Woodland Ave., 5, Hargy Simm
Revell Hwy. (U. S. Hwy. #50), St. Margarets, 143, A. J. Slater
Ritchie Hwy. & Eighth Ave., Glen Burnie, 226, C. L. Durm
Ritchie Hwy. & Elvaton Drive, Pasadena, 141, H. M. Jones
Ritchie Hwy. & Furnace Branch Rd., Glen Burnie, 623, C. B. Didlake
Ritchie Hwy. & Jones Road, Jones, 229
Ritchie Hwy. & Hammonds Lane, 216, F. H. Ward
Ritchie Hwy. & Jumpers Hole Rd., Pasadena, 225, John Knott, Jr.
Ritchie Hwy. & Old Annapolis Rd., Glen Burnie, 147, T. W. Rennie
Ritchie Hwy. & Severna Park Rd., Severna Park, 140, R. W. Petty

3806

Sherwood & Overbrook Rds., Idlewylde, 220, R. R. Robertson
Sinclair Lane & Erdman Ave., 213, O. P. Owens
Southwestern Blvd. thru to 4311 Leeds Ave., Arbutus, 194, B. F. Croft
Sykesville, Main St., 56 R. H. Cutsail
33rd & Barclay Sts., 106, C. A. Edmonston & [illegible] F. Wilson
25th St. & Kirk Ave., 601, H. P. & F. N. Koenig
25th St. & Loch Raven Rd., 53, B. J. Haber
Towson, York Rd. & Washington Ave., 156, Elton Willett
Towson, York Rd. & Willow Ave., 87, F. L. Tawney
U. S. Hwy. #301 & Quarterfield Rd., Glen Burnie, 197, F. Kalivoda & W. T. Lawrence
Washington Blvd., Elkridge, 619, G. E. Eble & C. F. Meyd
Washington Blvd. & Annapolis Ave., 610, [illegible] D. Wheeler
Washington Blvd. & Caton Ave., 37, S. E. Wenck
Washington Blvd. & Guilford Rd., Savage, 620, S. J. Orndorff
Washington Blvd. & Monroe St., 22, G. H. Zepp
Westport, 2001 Annapolis Ave., 195, B. P. Morrison & F. J. Cox, Sr.
Wise Ave. & Pinewood Dr., Dundalk, 174, G. H. Goldschmidt & F. W. Kail
Wilkens Ave. (3000), 92, Regan Motors, Inc.
Woodlawn, 2110-12 Gwynn Oak Ave., 95, E. G. Smith
York Rd. & Belvedere Ave., 155, Geo. Koloup
York Rd. & Oakland Ave., 30, Louis H. Rettberg
York Rd. & Windwood Ave., Anneslie, 208, J. B. McMaster
York Rd. (5316) Nr. Woodbourne, 99, W. G. Adolph

3808 COMMISSION EXHIBIT NO. 403A-S.

"Various Types of Dealers"

L.O. Stations (Lessee operated) on the attached list are those stations indicated by the number shown beside the name.

D.D. Stations are those stations handling two or more different brands of gasoline.

U.D. Stations (unmarked on the attached list) handle only Betholine and Sinclair H-C gasolines.

3810 Territory #1—Wrede

Adolph, W., #99, 5316 York Rd.
Berry, Louis E., Belmont & Bonaparte
Brown, Chester, #43, 6207 N. Charles St. Ave.
Chesapeake Cadillac Co., 24th & Charles Sts.
D.D. City Playboy, Inc., 1059 Homestead St.
Covahey, E. C., Timonium, Md.
Daniel [illegible]o. B., #42, 2524 N. Howard St.
Edmonston & Wilson, #106, 33rd & Barclay Sts.
Ehman's Garage, 5413 York Rd.
Engel, I. H., Providence Rd.—Towson
Glendening, John, #161, Homewood & Kirk Aves.
Goodyear Tire & Rubber Co., Mt. Royal Ave. & Oliver St.
Haber, Bernard J., #53, 25th St. & Montebello Ave.
Halsey, D. W., 900 Greenmount Ave.
Homewood Garage Co., 3300 St. Paul St.
Hudgins, Charles, #13, North Ave. & Charles St.
D.D. Kelly Buick Sales Corp., Mt. Royal Ave. & Charles St.
Koenig, H. P. & F. N., #601, 25th St. & Kirk Ave.
Kaloup, Geo., #155, York Rd. & Belevedere Ave.
Kolpack & Mitchell, Guilford Ave. & Chase St.
Lyons, John H., 2743 Greenmount Ave.
Mid-City Sales, 25th & Greenmount Aves.
McMaster, Jos. B., #208, York Rd. & Windwood Ave.
Nechamkin, B., #18, Fallsway Mr. Gay
Rettberg, Louis, #30, York Rd. & Oakland Ave.
Robertson, Robt., #220, Sherwood & Overbrook
Saylor, David, 24th & Montebello
Schneider, W., 881 Park Ave.

3812

Stokes, Landon E., #163, Lutherville, Md.
Tawney, Frank L., #87, York Rd., Towson
Vogel, Louis, #168, Fayette & Exeter Sts.
Weber, H. T. York Rd. & Homeland Ave.
Willett, Elton, York Rd. & Washington Ave.
Ziegler, Frederick J., #27, 3510 Keswick Rd.

3814

Territory #2—Brenizer

Alessi, A., #86, Harford Rd. & Southern Ave.
Basler, N., #38, Joppa & Old Harford Rds.
Bearsch, Wm. H, Abingdon, Md.
D.D. Bradfield Bros. & Schwartz, Belair Rd. & Southern Ave.
Brun, Wm. L., #215, Belair Rd. & Glenarm Ave.
Burns, John L., Belair & Mountain Rds.—Falston
Butt, John J., #100, Belair Rd.—Fullerton
Cowley & Nelson, Belair & Forge Rds.
Creeger, Anna, Harford & Chase
Fisher, Geo. C., Harford & Arizona Ave.
Foertsch Bros., #206, Harford Rd. & Harview Ave.
Fulker Motor Co., 4935 Belair Rd.
Glassman, Reuben, Mountain Rd.—Fallston
Glenmore Motor Co., Inc., 6418 Harford Rd.
Glorioso, A. A., #158, Old Harford Rd. & Taylor Ave.
Govoruk, Nickolas J., 2339 Harford Rd.
Green, C. H. & Son, Belair Rd.—Kingsville
D.D. Hanson's Garage, 4617 Harford Rd.
Hare, C. L., 3023 Hamilton Ave.
Haslbeck, John, Harford Rd. & Emerald Ave.
Hefner, J. Henry, #172, Belair Rd.—Raspeburg
Knell, A. L., #212, 7533 Belair Rd.
Lassahn Garage, 7413 Belair Rd.
LeBorys, Alexander J., Parkville
Leggett, J. H., #52, 3500 Harford Rd.
Link, John, Belair Rd.—Fullerton
Miller Brothers, Harford & Sunshine Rds.—Fork
D.D. Motoramp Gen. of Md., 208 Water St.
McGee, Rhuben T., 1714 Taylor Ave.
McKenzie, Chas., Harford Rd.

3816

D.D. New Mid-City Garage, 26 S. Charles St.
Parks, J. L., 5619 Harford Rd.
Reaver & Reider, #188, Belair Rd. & Kenwood Ave.
Rembold, Howard, #89, Belair, Md.
Richards, Emmet H., Towson, Md.
Roehre, Edw. G., #110, 2026 Belair Rd.
Rye, G. Leonard, Loch Raven
Spencer, Geo. E., #177, Gay St. & Patterson Pk. Ave.
D.D. St. Paul Garage Corp., St. Paul & Saratoga Sts.
Sandy, Charles E., 2018 Belair Rd.
Sariego, A., #102, Belair & Antana Rds.
Schneider, John E., Harford & Joppa Rds.—Towson
Traband & Smith, #185, Loch Raven
Walper, C., #201, Loch Raven & Taylor Ave.
Weilbrenner, Bradley S., #169, 4922 Belair Rd.
Zeller, M. Ridge Rd. & Fitch Ave.

3818

Territory #3—E. Evans

Abels, E. C., 1000 N. Rutland Ave.
Anderson, J. J., Joppa, Md.
Becker, Geo., #214, Lombard & Conkling Sts.
Betz, J. H., Raspeburg, Md.
Bowers, M. Pulaski Hwy., Edgewood
Brinkman, Arthur, Edgewood Rd.—Edgewood
Edgington, Robert, #184, Fayetts St. & East Ave.

Fruhling, C. C., Pulaski Hwy.—Joppa
Geiger, M., 901 Glover St.
Gettig, I., 332 S. Highland Ave.
Graham, Jennie, Old Philadelphia Rd.—Joppa
Gross, G. R., #196, Golden Ring & New Phila. Rds.
Highway Garage, Inc., 7306 Pulaski Hwy.
Hoffie & Harry, #49, Pulaski Hwy. & Haven Sts.
Jester, E. P. & Son, 1301 N. Spring St.
Keithley, G. T., White Marsh, Md.
Kramer, Henry, Noble & Conkling Sts.
Lessner, E. J. Jr., 2300 Llewellyn Ave.
Leurssen, J. G., #149, 1901 Edison Hwy.
Marshall, John, #113, Bank & Wolfe Sts.
D.D. Mayfield Garage & Filling Sts., 3312 Belair Rd.
Mizell, C. H., #162, Pulaski Hwy. & Ebenezer Rd.
Morgan, T. C., Abingdon, Md.
Owens, O. P., #213, Erdman & Sinclair Lane
Pokrywka, H. W., #146, Kenwood Ave. & Eager St.
Proctor's Garage, 602 N. Patterson Park Ave.
Reitemeyer, H., #142, Pulaski Hwy. & Chesaco Ave.
Ricketts, Clifford B., #159, Pulaski Hwy. & Ft. Hoyle Rd.
Ritter, W. A., Philadelphia Rd. & Spring Ave.

3820

Robb, E., 814 N. Chester St.
Sause, D. & J. C., #182, Pulaski Hwy. & Ellwood Ave.
Seubert, Jos. N., Pulaski Hwy. & 64th St.
Sonberg, C. J., Pulaski Hwy.—Belcamp
Tanner, Bernard F., Fradshaw, Md.
Walie Motors, 2230 E. Fayetts St.
Wagner, C. A., 963 Wolfe St.
Walter, Geo. H., #205, 3004 Erdman Ave.

3822

Territory #4—Oswald

Bamford, Geo., #78, North Pt. Rd.—Sparrows Point
Baxter, G. Ross, Oldham & Eastern Ave.
Bennett, Robert, Middle River, Md.
Berger, Julius, Leonard and Richard, #145, Eastern Ave. & Wood Ward Dr.
Bodine, Chas. H., #186, Martin Blvd. & Middle River Rd.
Bova Grocery, Golden Ring Rd.
Briggs, A., Rt. 14—Oliver Beach
Brunek, S. & R. Hewitt, Boston & Bonon St.
Bumgardner, 311 Avondale Rd.
Butler, Robt. J., #193, Holabird & East
DeFillippo, P., #227, Eastern & Stemmers Run Rd.
Farmer, Charles N., Sparrows Point Rd.
Fotia, Joseph, #222, North Pt. Rd.
Foulkes Motors, 50 Eastern Av.—Essex
Gebhard, Charles, 6902 Holabird Ave.
Gensler, Daniel, 401 S. Marlyn Ave.
Goldschmidt & Kail, #174, 108 Wise Ave.
Haetler, C. H., Back River Neck Rd.
Hall, F. H., Middleboro & Oak Rds.
Hildebrand, F. B., #224, Poncabird Pass
Hoesch, J. M., 7403 Eastern Ave.
Josenhan's Inc., Eastern Ave. & Turkey Pt. Rd.
Keath, A. L., #125, Eastern Ave. Rd.
Landa, Frank H., Mace Ave.—Essex
Lejeiak, Frank S., Lodge Forest, Md.

Lombardi, A., #492, Old North Pt. & New North Pt. Rds.
Markel, Dorothy, 7745 N. Point Creek Rd.
Mason, Donald, Sparrows Point, Md.
Meusel, H. C., 506 S. Ponca St.

3824

Mone, Claudio, Wise Ave. & Pincak Rd.
McAndrews, Wm. J., Eastern Ave. Rd.—Chase
Parrott, R., Back River Neck Rd.
Pecord, Frank & Armand Citroni, 4101 North Point Rd.
Phillips, E. T., #64, Dundalk, Md.
Simpson & Simpsons, #199, 8030 Eastern Ave.
Sommers, W. A., #26, Eastern Ave. & Haven St.
Strickling & Ruttig, #126, 5924 Eastern Ave.
Woolford, Dixon, #137, Wise & Merritt Ave.
Zaloudek, John F., #138, Eastern Ave. & Kingston Rd.
Zaunino, Larry, 201 North Point Rd.

3826

Territory #5—Holsinger

Arrid Van Lines, #189, 3030 S. Hanover St.
Baron, Harry H., 608 S. Regester St.
Bozek, Frank, Curtis Bay, Md.
Countess, J. H., #144, Key Hwy. & Jackson St.
Cox, Fred Sr., #195, Annapolis Ave. & Claire St.
Dotson, Wm. C., Furnace Branch Rd., Brooklyn
Downey, R. J., #209 Chesapeake & 2nd St.
Drgos, Stephen, 700 S. Montford Ave.
Dunlap & Stallings, #211, Mountain Rd., Pasadena
Finegold, I., #609, Sharp & Pratt Sts.
Fox Chevrolet Sales, 2020 S. Hanover St.
Gary, Ida, #59, Annapolis Blvd., Millersville
Gibson Island Club (Philip Lusby), Gibson Island, Md.
Gold, Aaron, 1513 E. Baltimore St.
Hall, Isadore, #207, Cherry Hill & Terra Firma Rds.
Heid, Wm. E., 600 S. Ellwood Ave.
Hock, Geo. J., Glen Burnie, Md.
Isaac, A., P. O. Pasadena, Md.
Juengst, C. Louis, 2200 Pennington Ave.
King, Wm. F., #50, Broadway & Lombard Sts.
Knieff, Royal, 2703 Foster Ave.
Kutchey, John B., 528 S. Conkling St.
D.D. Md. Yacht Club, Hanover St.
Matusak, James, #210, 900 E. Fort Ave.
Menser, H. G., 10 S. Bouldin St.
Mock, Lloyd C., #136, Clearwater Beach, 8051 Ft. Smallwood Rd.
Monaco, Val, Eastern Ave.
Napfel, Christopher W., #602, Eastern Ave. & Caroline St.

3828

Parker, Charles, 7500 Ft. Smallwood Rd.
Porter, K. E., #15, Light & Hill Sts.
Porter, Q. K., #217, 9th & Patapsco
Schanken, Earl L., Mountain Rd., Pasadena
Schaefer & Strominger, Eaton & Fleet Sts.
Schmidt, George, Mountain Rd., Jacobsville
Sheen, B., #3, Pratt & South Sts.
Stankiewicz, Walter, 4925 Pennington Ave.
Stegman, John, #29, Paca & Dover Sts.
Toland, A. J., 1200 S. Linwood Ave.
Vollmer, R. W., Water Oak Point
Weber, L., #153, 2119 Boston St.

3830 **Territory #6—R. Evans**

Brown, G. P. & M. D. McCaslin, #231, Old Annapolis Rd. & Hammonds Lane
Clark, W. E., Old Annapolis Rd. & Nursery Rd.
Deinlein, J. Geo., #103, Crain & Generals Hwys.
Diamond, Gus, RFD #2—Old Annapolis Rd.—Annapolis
Didlake, C. B., #623, Furnace Branch Rd.—Glen Burnie
Doering & Warfield, 4005—2nd St.—Brooklyn
Dove, Owen, Edgewater, Md.
Durm, C. L., #226, Ritchie Hwy.—Glen Burnie
Erwin, R. A., Eastport, Md.
Ewell Motors, Glen Burnie, Md.
Foundas, S. A., 170 Conduit St.—Annapolis
Galloway, Geo., Riva, Md.
Garey, Jos. J., Nursery & Hammonds Ferry Rd., Linthicum
Gorley, Wm. H., 5633 Belle Grove Rd.
Goudreau, E., Best Gate Rd.—Annapolis
Green, L. H., #202, West & Washington Sts.
Hanecke & Whitely, Arnold, Md.
Hild, J. R., Frederick & Mount Sts.
Jones, G. P., #64, 1301 Hollins St.
Jones, Hugh M., #141, Gov. Ritchie Hwy.
Kalivoda & Lawrence, #197, Rt. 301 at Quarterfield Rd., Glen Burnie
Kestler, E. W., Shipley Sta.—Linthicum
Knott, John, #225, Ritchie Hwy. & Jumpers Hole Rd.
Kolb, Clarence D., Harwood, Md.
Langford, G. L., Lansdowne, Md.
Lowman, Henry, Annapolis, Md.
Marsheck, F. M., Crain Hwy.—Millersville
Marston, C. J., #219, 927 West St., Annapolis
Micciche, Frank, Crain Hwy.—Millersville

3832

Miller, A. H., Annapolis, Md.
Moran, J. J., #96, Frederick Ave. & Calverton Rd.
Petty, Robert W., #140, Severna Park
Regan Motors, Inc., #92, 3000 Wilkens Ave.
Rennie, T. W., #147, Glen Burnie, Md.
Ritter, John & Marie, #176, Linthicum, Md.
Robinson, M. C., Shady Side
Schmidts, Charles, Ritchie Hwy.—Jones Sta.
Selsky, M., Shady Side, Md.
Slater, A. J., #143, Revell Hwy.—Annapolis
Stallings, Robert, #150, Camp Parole
Stearling, Rodger C., Shady Side, Md.
Stevens, J. W., #229, Ritchie Hwy. & Jones Rd.
Wagner, Carl, Glen Burnie
Ward, F., #216, Ritchie Hwy. & Hammonds Lane
Zepp, George H., #22, Washington Blvd. & Monroe St.
Zepp, D. R., Edgewater, Md.

3834 **Territory #7—Neilson**

Andrest, Harry M., #154, Arbutus, Md.
Barger, Wm. L., Crain Hwy.
Barrow Service Station, Odenton, Md.
Becker, Bernard M., Wilkens & Leeds Ave.
Brown, Jacob S., Glenig, Md.
Bryant, D. W. & M. Kramer, #148, Franklin & Pearl Sts.

Cassady, J. E., Dorsey, Md.
Croft, Benjamin F., #194, 4211 Leeds Ave.
Dorsey, Thomas, Cambrills, Md.
Dunn, Andrew J., Waterloo, Md.
Eble & Meyd, #619, U. S. Rt. #1—7 miles NE of Laurel
Economy Building & Sply., Harmans, Md.
Foley, G. B., Ridge Rd.—Harmans, Md.
Gosnell Brothers, 4819 Leeds Ave.—Arbutus
D.D. Hallyburton, Frank & Fannie, 710 Caton Ave.
Hardingham, Harry Jr., #618, U. S. Rt. 1—Laurel
Hastings, C. J., Newcut Rd.—Severn
Heintz, E. P., #1, Gambrills, Md.
Hobb, Leonard C., Dayton, Md.
Hodges, Addison, #139, Ellicott City, Md.
Jerman, Ray, Gambrills, Md.
Joh, Fred C., #133, Frederick Rd. & Norwood Ave.
Jung, F., 2700 W. Baltimore St.
King, Wm. E., Laurel to Bowie Rd.—Laurel
Leedy Bros., Severn, Md.
Ludwig, Frederick, #2, Frederick & Caton Aves.
Meyers, Alonzo, Simpsonville, Md.
Miller Chevrolet, Elkridge, Md.
Moore, Woodrow, Ellicott City, Md.
Nichols Motor Co., Laurel, Md.

3836

O'Lexey, John H., Severn, Md.
Orndorff, S. J., Washington Blvd.—Jessups
Orndorff, S. J., #620, U. S. Rt. #1—Savage
Oshry, M., #612, Fairmount Ave. & Schroeder St.
Palmer's Garage, Annapolis, Md.
Pickett, C. K., Clarksville, Md.
Schaper, C. W., #160, Frederick & Delrey Aves.
Schulte Motor Sales, Inc., 3605 Wilkens Ave.
Scovitch Brothers, Washington Blvd.—Laurel
Spitzer, H., Scaggsville, Md.
Taylor, F. M., Odenton, Md.
Vogelsang, Louis, Catonsville Junction, Md.
Wagner, J. W., 4010 Benson Ave.
Wall, H. C., #235, Ellicott City, Md.
Walsh, John C., #175, Harmans, Md.
Wenck, S. E., #37, Washington Blvd. & Caton Ave.
Wheeler, E. D., #610, Washington Blvd. & Annapolis Ave.
Wheeler, H. F., #234, 15th & Annapolis Ave.—Odenton
Wilburn, Edw. E., #118, Millersville, Md.
Williams, Henry K., RFD #2—Ellicott City
Wooten, H., Md. Rt. #198—Laurel
Zito, S., #45, Pulaski & Lexington Sts.

3838

Territory #8—Bowman

Ayers & O'Meara, #204, Clifton Ave. & Denison St.
Bonsall, J. F., #95, 2110 Gwynn Oak Ave.
Bradenburg, A., Lisbon, Md.
Brandt, John P., Liberty Rd.—Randallstown
Brown, Herman, Mt. Airy, Md.
Cameron, Burce E., #223, New Edmondson Ave. & Winters Lane
Clements Motors Co., Eldersburg, Md.
D.D. Crouthamel's Garage, 1905 Ellamont St.
Cutsail, R. H., #56, Sykesville, Md.
Eberthart, Wm., Windsor Hill Rd. & Forrest Ave.
Frieman, B., #134, North Ave. & Ashburton St.

Fuggitt, Earl, #164, Edmondson Ave. & Charing Cross Rd.
Gates, B. M., Marriottesville, Md.
Haight, R., #178, Randallstown, Md.
Harris, H., Edmondson Ave. & Payson St.
Hildebrand, James B., 2200 W. Lafayette Ave.
Hobbs, J. N., #47, 4604 Edmondson Ave.
D.D. Jones Motor Co., Ridgeville, Md.
Lauterback, John Jr., Liberty Rd.Randallstown
Leban, M., #36, Gwynns Falls & Tioga Pkwys.
Liebno, Carl, Franklintown, Md.
Marcus, Sidney O., West Friendship, Md.
McGarrie, R., #33, Edmondson Ave. & Franklintown Rd.
Powell, B. P., 7409 Liberty Rd.
Riddle, Henry I., Hebbville Garage—Woodlawn
Rock, Joseph, #167, Franklin & Fulton Aves.
Sauter, Marshall F., Ellicott City, Md.
Sauter, M. & M. Sta., By-Pass #40, New Edmondson Ave.—Ellicott City, Md.

3840

Schwartz, Geo. W., 5816 Windsor Mill Rd.
Schochets, D., 900 Edmondson Ave.
Shaffer, H. P., New Edmondson Ave. & Old Frederick Rd.
Smith, C. D., Woodstock, Md.
Smith, E. G., Edmondson Ave. & Harlem Lane
Stirn, Louis, #190, Rolling & Windsor Mill Rd.
Thompson, J. H., #94, Liberty Hgts. & Milford Aves.
Turner, Edw., Ingleside Ave. & Harlem Lane
Warfield, H. Deets, Mt. Airy, Md.
Zell, Harry, #85, Liberty Hgts. & Ayrdale Aves.
Zepp, P. F., Granite, Md

3842

Territory #9—Wagner

Astrin, Milton, #181, Coldspring Lane & Dolfield Ave.
Bailey & Green, #203, Carey & Mosher Sts.
D.D. Baltimore Motor Car Co., 908 Morton St.
Bloom, W., Reisterstown, Md.
Bowen, Marshall G., #179, 2244 Reisterstown Rd.
Brooks-Huff Tire Co., 5201 Fairlawn Ave.
Brown, Wm. D., Pleasant Hill, Md.
D.D. Burkholder, Frank A., Owings Mills, Md.
Caltrider, A. E., #35, Reisterstown Rd.—Pikesville
Caltrider, C., #30, Reisterstown Rd. & Berryman's Lane
Coleman, R., #34, Reisterstown Rd.—7 Garrison Ave.
Collins, James, #98, 2801 Belvedere Ave.
Cowley, R. H., #166, Pikesville, Md.
Dovell, Harry [illegible] #600, 36th & Falls Rd.
Edrington, R[illegible]l H., #67, 4101 Falls Rd.
Eisenberg, J., [illegible]603, Eutaw & Preston Sts.
Elburn, H. W., 4533 Falls Rd.
Garber, Edw., Barrymans Lane—Reisterstown
Hutzler's Shopping Center Garage, Mulberry St. nr. Howard
Ittner, John W., #41, 5250 Park Hgts. Ave.
Leaf, W. L., #198, Reisterstown Rd.—Reisterstown
Leatherwood, J. O., #39, 3000 Liberty Hgts. Ave.
Moyer Motor Co., Inc., 5401 Reisterstown Rd.
Niggell, A. J. & M. E., Greenspring Ave.—Owings Mills
Osborn, S. K., #40, Hanover & Westminster Pikes
Park Heights Auto Supply
Phillips, W. J., Reisterstown Rd.—Owings Mills
Ridgely, C. L., #116, Falls Rd. & Clark Hill Rd.

3844

Shipley, H. L., Reisterstown, Md.
Simms, Harry, #5, Reisterstown Rd. & Woodland Ave.
Tillman, T., Park Hgts. & Walnut Ave.
Trapp, Raymond, Riderwood, Md.
Tucker, Wm. S., #180, Lafayette Ave. & Gilmor Sts.
Walters, R. L., #157, Reisterstown & Glen Ave.
Wohrna, Charles E., #604, Pennsylvania Ave. & Baker St.
Young, A., #605, Reisterstown Rd. & Ridgewood Ave.

3846 COMMISSION EXHIBIT NO. 404.

Sherwood Brothers Incorporated

Bailment Agreement

This Agreement, made this ..... day of ....., 19....., by and between Sherwood Brothers Incorporated, a Maryland corporation, party of the first part, and ..... of .....

.....

party of the second part, Witnesseth, That,

For the mutual considerations hereinafter set forth and by reason of the special trust and confidence the party of the first part (hereinafter referred to as "Sherwood") reposes in the party of the second part (hereinafter referred to as "Agent"), it is agreed that Agent may act as a non-exclusive bailee for hire for Sherwood in the territory described at the end hereof, with headquarters at ..... , State of ..... ; and Agent hereby agrees to act in such capacity subject to the following terms and conditions:

1. The respective rights, duties and obligations of the parties in performing hereunder shall be those imposed by law upon Sherwood as bailor and Agent as bailee for hire as enlarged by this agreement, it being understood that the choice of the term "Agent" is for reasons of past Sherwood Brothers Incorporated practice and not for legal reasons, and there is no intention by the use of such term

or the performance of any act hereunder to clothe party of the second part with any powers, rights or authorizations, representative or otherwise, not herein affirmatively set forth.

2. Agent shall receive, care for, measure and account for in conformity to Sherwoods' requirements, and sell, exclusive of other similar products, the oils, lubricants and other products (herein referred to as "products") that Sherwood supplies for sale, and shall deliver and collect for all products thus sold, it being understood that all such products shall remain the property of Sherwood until sold and that the proceeds therefrom shall be the property of Sherwood and subject to its orders. If Agent shall handle and deal in property other than that supplied for sale by Sherwood, Agent shall not permit the same to interfere with Agent's obligations and duties hereunder, Agent agrees not to commingle with Agent's funds the proceeds of sales or other moneys of Sherwood and likewise agrees to keep Sherwood's products separate and apart from the property of Agent and that of third parties. Agent shall exercise the highest degree of care to insure against any contamination, adulteration or any accidental mixing together whatsoever of the various petroleum products to be stored, handled, sold and delivered hereunder.

3. Sherwood shall specify not only the prices at which products bailed to Agent shall at all times be sold but also all governmental taxes, excises and exactions to be charged and collected in connection with such products, their sale, delivery or other disposition; and Agent agrees not to deviate therefrom.

4. Unless otherwise directed, Agent shall make daily deposit of all collections in the bank designated by Sherwood, and shall each day secure and transmit receipted deposit slip, certificate of deposit or such other evidence of such deposit as Sherwood may specify; and shall report

daily, or as often as Sherwood may require in writing, all stocks, sales, collections, deposits and remittances on form provided by Sherwood, such report to show stocks, sales, collections, deposits and remittances made from date of last previous report to and including date of current report.

5. Agent shall send all reports, evidences of deposit, remittances, inventories, and correspondence to Sherwood at 10 Light Street, Baltimore 3, Maryland, except as otherwise directed by it.

6. Agent shall submit to Sherwood an inventory of all products and property remaining on hand on the last day of each month or on such other business day as Sherwood may direct for closing monthly business.

7. Agent shall obtain prompt return when due from customers of storage and sales equipment and all shipping barrels (heavy steel drums) and furnish strict accounting thereof, and of all light iron barrels returned for credit by customers, reporting the number to be credited to each customer by name; and shall make such disposition of all containers as Sherwood may direct.

8. Sherwood reserves the right to reject, either with or without cause and without assigning to Agent any reason for such action, any orders taken by Agent. No commissions are to be paid on rejected orders or on orders cancelled by purchasers. In computing and paying any commissions earned under this agreement, or any other sum that may be due Agent from Sherwood, there shall be deducted therefrom and retained by Sherwood for its own use sums equivalent to commissions which Agent may have theretofore received from sales upon which customers have returned the products for credit, and any other like items reducing Sherwood's net cash receipts from such sales.

9. Agent shall at Agent's own expense furnish necessary trucks, truck-tanks, motive power, drivers, labor, water, light, power, and heat, and shall also pay all neces-

sary expenses in draying Sherwood's products and equipment and in making sales, deliveries and collections. Agent shall also at Agent's own expense apply for in Agent's own name and have installed at Agent's headquarters a telephone which shall be listed in the proper telephone directory and other directories in the name of Sherwood Brothers Incorporated with the street address of Agent's headquarters. All charges for local and long distance calls made by means of such telephone, whether such calls be of a business or private nature, shall be for the account of Agent, and Sherwood shall not in any case be obligated to pay any such charges or to reimburse Agent for any payments so made. Sherwood may pay any such charges and deduct the amounts so paid from any moneys then due or thereafter to become due Agent.

10. Agent shall: (a) employ no improper, questionable or illegal methods in soliciting or securing business covered by this agreement; (b) observe the price schedules of Sherwood and any instructions given Agent covering matters for which Sherwood is responsible hereunder; (c) exercise due vigilance in protecting the equipment, property and products of Sherwood, notifying it promptly in writing of any condition which may arise requiring its attention; (d) make collections of such accounts in Agent's territory as Sherwood may deliver to Agent for that purpose; (e) assist Sherwood generally in promoting the successful merchandising of its products and the profitable utilization of its properties; (f) secure and maintain in force at Agent's cost any and all permits and licenses required by law for the conduct of Agent's operations as bailee hereunder; (g) comply with all valid laws, ordinances and regulations as to weights and measures and as to the transportation of flammable products and, in addition, with safety recommendations of Sherwood.

3848 11. In consideration of the fulfillment of the stipulations, obligations and requirements hereof, and as

full payment for any and all service performed by Agent hereunder, Sherwood agrees to pay monthly to Agent commissions on only those sales and deliveries made by Agent in Agent's territory which accord with the conditions and rates specified in the schedule set forth below:

Schedule of Commissions

(A) Unit Commissions.

(1) Betholine .....
(.....¢) Cents per gallon

(2) Sinclair H-C Gasoline .....
(.....¢) Cents per gallon

(3) Solvents and Napthas .....
(.....¢) Cents per gallon

(4) Kerosene .....
(.....¢) Cents per gallon

(5) Fuel Oils .....
(.....¢) Cents per gallon

(6) .....
Cents per .....

(7) .....
Cents per .....

(8) .....
Cents per .....

(B) Percentage commissions based on net realized price to Sherwood exclusive of all taxes, inspection fees, duties and charges now or hereafter imposed by any governmental authority applicable to the products, or to the manufacture, sale, delivery or handling thereof:

(1) All Anti-Freeze .....
(.....%) Per cent.

(2) Lubricating Oils and Greases .....
(.....%) Per cent.

(3) Specialties and Insecticides .....
(.....%) Per cent.

(4) .....
(.....%) Per cent.

(5) .....
(.....%) Per cent.

(6) .....
(.....%) Per cent.

12. The parties agree that the foregoing schedule includes all rates and describes the exact conditions and circumstances under which commissions shall be payable and that Agent shall be entitled to no compensation for any sale, delivery or service not plainly embraced within the specific terms of, or for which no applicable rate is provided in, said schedule. Sherwood reserves the right to effect deliveries from its stock of products bailed to Agent. Sherwood shall have the right to withhold payment of commissions on any sale or delivery made by Agent until payment therefor has been received by Sherwood. If Sherwood shall desire to change, add or eliminate any rate or any provision in said schedule the same shall become effective upon fifteen (15) days' written notice to Agent and a memorandum thereof in writing may be signed by the parties hereto as provided in Paragraph No. 25 hereof in lieu of the execution of a new contract, provided that no such change shall alter or modify any other provision of this agreement.

13. In the event Sherwood, at its sole discretion, pays to Agent any sum as an advance against commissions earned hereunder, the amount of such advance so paid to the Agent shall be deducted and withheld by Sherwood from the amount of Agent's commissions actually due during and payable for the month in which any such advance payment shall have been made.

3849 14. Agent shall not extend credit for Sherwood's account to any customer without first securing permission in writing from Sherwood so to do, and shall withdraw any credit so extended when so directed by Sherwood. Agent shall be liable to Sherwood for any loss sustained through violation of these provisions. Sherwood is authorized, at its option, to charge Agent with the invoice value to customers of products delivered in violation of such provisions, and shall have the right to deduct and retain for its own use said invoice value from any moneys that may then be due or which thereafter may become due Agent; and such deduction shall be construed and accepted as payment of commissions hereunder.

15. Agent shall be liable to Sherwood for any demurrage or storage charges assessed by any common or contract carrier owing to Agent's neglect to promptly unload and release stake and transport trucks, barges, tank cars and other railroad cars, or to take out merchandise shipments intended for Agent's handling.

16. Agent shall be responsible for, and hereby assumes all responsibility for, any and all acts of Agent and Agent's employees, whether they be acts of commission or omission, resulting in cost, loss or damage to Sherwood, and Agent hereby agrees to indemnify, save harmless, and reimburse Sherwood for and on account thereof. Agent hereby assumes all responsibility and full liability to Sherwood, and hereby agrees to indemnify and reimburse it, for any shortages or losses in, or arising out of, sales, collections or deliveries hereunder, or in the products, equipment or property of Sherwood bailed to Agent or coming under Agent's control including, without limitation, responsibility and liability for losses of Sherwood's funds by reason of loss, theft, robbery or burglary, and Agent hereby authorizes Sherwood to deduct from any and all moneys due to Agent during the life of this agreement, and retain for its own

use, amounts for the payment of such shortages or losses; and Agent agrees that Agent's liability hereunder shall be that of an insurer, except as to losses resulting from fires not due to Agent's negligence.

17. Agent agrees to and does hereby accept full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance and for old age retirement benefits, pensions and annuities now or hereafter imposed by the Government of the United States and by the Government of any State of the United States, which are measured by the wages, salaries or other remuneration paid to persons employed by Agent, for Agent's own account, for work Agent is required to perform or have performed under the terms of this bailment agreement and Agent further agrees that, in order to relieve Sherwood of any possible secondary liability for such taxes or contributions, Agent will do everything necessary from time to time to elect voluntary coverage under applicable laws or regulations and to comply with, or bear the burden of contesting, any regulations and any amendments thereto, which may be promulgated by the administrative authority under such applicable law. Sherwood shall have the right to withhold from commissions and any other sums due Agent the amounts of any such taxes and contributions which may be imposed or levied for the purpose of paying same direct to the proper State and Federal authorities; and Agent agrees to furnish Sherwood such information as may be requested or required by Sherwood to properly report and effect payment of such taxes.

18. If required by Sherwood, Agent shall furnish surety bond acceptable to Sherwood in form and amount to indemnify Sherwood fully against loss of any moneys, values, products, goods, wares, merchandise, equipment and property bailed to Agent or coming under Agent's control or possession hereunder.

19. If Agent is a corporation, or if unincorporated and has, at any time, one or more employees, Agent hereby agrees, at Agent's own expense, to provide and maintain in effect workmen's compensation insurance, securing the payment of compensation to Agent's employees, or employer's liability insurance in accordance with the laws of the States in which Agent performs work under this agreement.

20. If Agent is a copartnership, each of the partners acting for himself and for the copartnership agrees with each other and with Sherwood: (a) that the partners shall be jointly and severally bound and liable as general partners hereunder; (b) that Sherwood may deal with any (one) partner of its choice; and (c) that the death or withdrawal of any partner shall be effective to automatically terminate this agreement.

21. Agent hereby designates .....
one of Agent's employees, as Agent's duly authorized representative to receive products from Sherwood, to execute receipts for same, to make reports and transmit information to Sherwood at the time and in the form and manner required by Sherwood, and Agent hereby agrees that any and all acts of said representative shall be deemed to be the acts of Agent. Agent shall have the right to change Agent's designated representative, provided written notice of such change shall be first given to Sherwood at the place named in Paragraph No. 5 hereof.

22. At any time during the life of this agreement or at the termination hereof Sherwood shall have the right to audit the books, accounts, station records and inventories relating to this bailment and moneys and stocks on hand; and Agent shall afford Sherwood and its employees full cooperation and assistance in making such audit or audits.

23. As a gratuitous convenience to Agent and as limited herein, Agent may use, for the storage and distribution of products bailed to Agent pursuant to this agreement, Sher-

wood's bulk oil storage and distribution facilities, if any, located in Agent's territory consisting generally of a warehouse, storage tanks and auxiliary equipment, provided that any such use shall be in a careful and proper manner so as to effectively avoid the creation or continuance of any nuisance, fire hazard or dangerous condition whatsoever and that during the period of such use Agent shall keep Sherwood's facilities, together with its contiguous property, in a safe, clean, orderly and sightly condition. The parties expressly recognize that this authorization (a) does not in any way obligate Sherwood to continue to allow Agent to use any such facilities for any particular period of time, (b) constitutes a bare non-assignable license to Agent to use those portions of such facilities as Sherwood may designate and solely as herein specified, (c) may be revoked forthwith by Sherwood at any time upon giving oral or written notice, (d) shall in any event ipso facto terminate upon termination of the bailment arrangement herein established, and (e) under no circumstances or conditions gives Agent any estate, property interest or right of possession in any such facilities. Sherwood makes no representation to Agent as to the present or future fitness or suitability of such facilities for the uses herein authorized or as to the character or effect of any work hereafter performed for or by Sherwood, at its discretion, at, upon, or in connection with such facilities including maintenance, repair, removal, replacements or additions thereto and assumes no liability or responsibility whatsoever to Agent or Agent's servants, employees or third parties for injury to persons, damage to property, expense, or loss, of whatsoever nature occasioned by or connected with Agent's use of said facilities or directly or indirectly resulting from Agent's exercise of the license herein granted, whether or not occasioned by Sherwood's negligence or that of any agent, employee or contractor of

Sherwood. Agent agrees to reimburse Sherwood for any and all cost, expense or damage to Sherwood arising from or directly or indirectly connected with, the exercise by Agent of the right of use hereby authorized, excepting only normal costs of maintenance, repairs, removals, replacements or additions. Agent shall make no changes whatsoever in the physical condition of Sherwood's facilities without its prior written consent.

24. This agreement cannot be assigned in whole or in part by Agent without the consent of Sherwood in writing first obtained. Agent shall incur no indebtedness of any character whatsoever in the name of Sherwood, nor obligate Sherwood in any manner without first securing written authority so to do from an Officer or Manager of Sherwood. Sherwood shall not be responsible for any unauthorized debts or obligations incurred by Agent. Either party may terminate this agreement at any time with or without cause; and upon the termination hereof, regardless of the state of the mutual accounts, Agent shall forthwith deliver to Sherwood or its representatives all equipment, property, products, moneys, credits, books of account, and station records of whatsoever form, bailed to Agent or coming under Agent's control, Agent hereby waiving any and all liens and the right to assert the same.

25. This agreement cancels and supersedes all previous agency and bailment agreements between the parties. The counterpart hereof held by Sherwood shall be considered the original, and shall be the binding agreement in the event of any variation between such counterpart and the one held by Agent, and such counterpart held by Sherwood shall constitute the full and entire agreement between the parties hereto. All proposals, negotiations and representations with reference to the matters covered by this agreement are merged in this instrument, and no amendment or modification of this agreement shall be valid unless

evidenced by a writing signed by Agent and a representative of Sherwood authorized to sign this instrument.

Executed in duplicate the day and year first above written.

Sherwood Brothers Incorporated,
Bailor

By .....
President

....., *Bailee*

By .....
President

Attest or Witness:

.....

As to Bailee.

3850 COMMISSION EXHIBIT NO. 405A-B.

Sherwood Brothers Incorporated

Equipment Rental Agreement

This Agreement, made and entered into this ..... day of ....., 19....., and to become effective on the ..... day of ....., 19 ....., by and between Sherwood Brothers Incorporated, a Maryland corporation, party of the first part, hereinafter referred to as "Sherwood", and ..... of ....., party of the second part, hereinafter referred to as "Customer" and by the singular neuter pronoun.

Witnesseth, That, in consideration of the sum of One ($1.00) Dollar in hand paid by Customer, the receipt whereof is hereby acknowledged, and in consideration of the mutuality hereof and of the rentals provided herein, it is agreed by and between the parties hereto as follows:

1. Sherwood hereby hires and rents to Customer, and agrees to deliver to Customer's place of business, such equipment as Sherwood may from time to time deem necessary for the economical and convenient handling, storing, dispensing, advertising or testing by Customer of petroleum products on the premises herein described, and Customer hereby agrees to pay Sherwood as rental for such equipment the sum of One ($1.00) Dollar per annum, payable annually in advance, during the continuance of this agreement. Sherwood shall have the right to substitute for any equipment placed with Customer other equipment of like character and quantity and in the event of such substitution this agreement in all its terms shall apply to such substituted equipment.

2. Equipment delivered to Customer shall be used by Customer in its business upon only the following premises situated in the City of ....., State of ..... at No. ..... Street, or (if in the county) ..... miles .... of the City;

(Insert which direction)

of ..... on ..... Highway, State of ..... said premises also being known as ..... and owned by ..... and shall at all times be treated and considered as personal property and in no sense fixtures or a part of the real estate, regardless of the manner in which it may be installed or used on said premises.

3. Each delivery to and acceptance by Customer of any equipment that may from time to time be placed with Customer, including substitutions therefor, shall be evidenced by a receipt on Sherwood's Form SB-46 Equipment and Materials Receipt, which shall be signed by Customer at the time of receiving such equipment and which when so

signed shall become a part of this agreement with the same force and effect as though embodied herein; provided, however, that any equipment heretofore or hereafter delivered by Sherwood to Customer whether or not evidenced by said Receipt, shall be subject to the terms and conditions of this agreement. It is understood and agreed that Customer's acts of accepting such equipment described in said receipt was in good and serviceable condition at the time of its delivery to Customer.

4. Such equipment shall at all times be and remain the property of Sherwood, and shall be used by Customer only for the purpose of handling, storing, dispensing, advertising, or testing petroleum products. Any authorized representative of Sherwood shall at any reasonable hour have the right to inspect such equipment.

5. Customer hereby agrees that it will, unless specifically exempted by Sherwood in writing from so doing, maintain such equipment in good condition and repair and pay all cost and expense in connection therewith; that it will not encumber or remove such equipment or permit anyone except Sherwood to remove or take possession thereof; that it will exercise care in the protection and preservation of such equipment and will not efface, deface, damage or destroy the same or suffer others so to do; that it will not do or suffer to be done anything whereby such equipment or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the title of Sherwood thereto may in any way be altered, impaired or prejudiced; and that it will pay or reimburse Sherwood for any loss or damage Sherwood may sustain in the event of the happening of any of the foregoing or other contingencies. If, upon demand, Customer shall for any reason fail or refuse to return to Sherwood any of such equipment, Customer shall be liable to Sherwood for the value, set forth in Sherwood's said Form SB-46 Equipment and

Materials Receipt, of such equipment not returned or, if no value is set forth in said Receipt, for the fair market value thereof. Customer hereby further agrees to comply with all applicable state laws and municipal ordinances, rules, and regulations in connection with use, installation, erection, operation, maintenance and display of such equipment or of any part thereof.

6. In the event Customer should at any time use such equipment for any purpose other than the handling, storing, dispensing, advertising or testing of petroleum products, or should violate any of the obligations of this agreement, Sherwood shall have the right to declare this agreement terminated and, without notice to Customer, may with men, vehicles, and necessary tools enter the premises whereon such equipment or any part thereof may be located and remove the same therefrom, whether affixed to the premises or located in, on or under the same, or not, without recourse to any legal proceedings for that purpose, and without liability for damages resulting from so doing.

7. In the event this agreement is terminated within ..... year(s) from the date hereof, for any breach or default specified in paragraph numbered "5" or "6" hereof, the expenses of delivering and installing said equipment as such expenses are shown on Sherwood's books and records, shall be paid by Customer to Sherwood, unless such equipment shall have been installed at Customer's expense, and the expense incurred by Sherwood in removing such equipment shall also be paid by Customer to Sherwood.

8. This agreement shall continue so long as may be mutually agreeable to the parties hereto, it being further agreed that either party to this agreement may terminate the same at any time upon giving five (5) days' written notice to the other party (no previous notice being required in the event of breach or default); provided that in the

event this agreement shall be terminated by Customer as provided in this paragraph within the period specified in paragraph numbered "7" hereof, Customer shall reimburse Sherwood for its expenses as provided in paragraph numbered "7" hereof in the same manner as though this agreement had been terminated by reason of Customer's breach or default.

3852 9. Upon the termination of this agreement by notice or in any other manner Sherwood shall have the right and privilege of removing such equipment or any part thereof from the above described premises.

10. Customer shall pay all taxes, license fees, permit fees, inspection fees, occupation taxes and any and all charges, fees or assessments of whatsoever nature that may be levied, assessed or charged on or against such equipment or any part thereof, or on the installation thereof or Customer's use or operation thereof; and in the event of Customer's failure or refusal so to do, Sherwood may, at its option, pay the same, and, upon presentation of invoice therefor, Customer shall reimburse Sherwood for payments thus made.

11. If any of such equipment shall consist of signs or other advertising devices arranged for artificial illumination or if electric current is used in connection with the operation or maintenance of any of the equipment covered hereby, Customer agrees to pay for all charges for the electric current used in such illumination, operation, or maintenance.

12. Customer, for itself, its heirs, executors, administrators, successors and assigns, hereby releases, relinquishes and discharges, and agrees to indemnify, protect and save harmless, Sherwood, its sucessors and assigns, of and from any and all claims, demands and liability for any loss, damage, injury or other casualty to property (whether it be that of either of the parties hereto or of third persons),

and to persons (whether they be third persons, Customer, or employees of either of the parties hereto), by reason of any leakage, fire or explosion of or from any such equipment or any part thereof, or of any gasoline, oils, or other products in or about or contained in the same, or by reason of any defect in the construction or installation of such equipment, or by reason of the use or operation of such equipment, or by reason of the placing, erection, falling or dislocation of such equipment or any part thereof, or by reason of any other casualty, whether due to the negligence of Sherwood or otherwise.

13. Sherwood hereby authorizes Customer to use the trademarks and brand names of Sherwod solely on and in connection with the products purchased from and so identified by Sherwood, the same to be used during such time only as this agreement shall be in effect. If Sherwood shall lend to Customer or permit Customer to use any sign or device of any kind bearing Sherwood's name or any trade-mark, brand name, symbol or slogan, to be used for the purpose of identifying or advertising Sherwood's products Customer agrees upon demand to return such sign or device to Sherwood and to discontinue the use of any word, name, phrase or thing which Customer is hereby authorized to use. Customer is permitted to use Sherwood's said name, trade-marks, brand names, signs, devices and s'ogans only upon the following conditions: (a) that they will be used in such way only as Sherwood may authorize; (b) that they will not be used in the identifying or advertising of any products except those supplied by Sherwood; (c) that Customer will not permit anyone else to exercise or use any of the rights, privileges or things granted or lent to Customer; (d) that Customer will not claim any right, title or interest in or to Sherwood's name, trade-marks, brand names, signs, devices and slogans; and (e) that Customer will never directly or indirectly deny or assail or assist in

denying or assailin gthe sole and exclusive ownership of Sherwood in and to the same. Failure or refusal by Customer to comply with the terms and conditions set forth herein shall entitle Sherwood to terminate forthwith the within agreement; but such termination shall not in anywise prejudice Sherwood's claim for damages.

14. This agreement is personal to Customer and shall not be assigned in whole or in part by Customer without the consent of Sherwood in writing first obtained.

15. This agreement is executed in duplicate, and the counterpart thereof held by Sherwood is to be considered the original and shall be the binding agreement in case of a variance in any particular between it and any other signed copy. All proposals, negotiations and representations with reference to matters covered by this agreement are merged in this instrument; and no amendment or modification of this agreement shall be valid unless evidenced by a writing signed by a duly authorized representative of Sherwood.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

Sherwood Brothers Incorporated,
First Party

By .....
Sales Manager

.....
Second Party

By .....

WITNESS:

.....

To signature of Party of the Second Part.

LAND OWNER'S CONSENT

(Must be procured in all instances)

The undersigned; owner (herein referred to in the singular number, whether one or more) of the premises upon which the equipment referred to in the foregoing agreement has been or may be installed, hereby consents to the installation thereof and disclaims any title or right therein by reason of such installation, and agrees to the removal of such equipment by Sherwood as specified in the foregoing agreement; it being understood that, if the said premises are held under lease by Customer, said lease shall not be changed or modified by reason of this consent except as to the installation and removal by Sherwood of its said equipment or any part thereof.

Witness:

.....

.....

Owner

3854 COMMISSION EXHIBIT NO. 406A-B.

Sherwood Brothers Incorporated

Dealer Permit

This Agreement made and entered into this.....day of .....,19.....; by and between Sherwood Brothers Incorporated, a Maryland corporation having its principal office at 10 Light Street, Baltimore, Maryland, party of the first part (hereinafter designated as "Sherwood," and.....

of.....

party of the second part (hereinafter designated as

"Second Party," whether one or more, and when referred to by pronoun the singular masculine gender will be used).

Witnesseth:

1. That, Whereas, Sherwood, under and by virtue of a lease, is in possession of certain buildings, improvements, fixtures, machinery, equipment and appliances constituting an oil and gasoline service station (hereinafter referred to as "station") and of the following described real estate upon which said station is located and situated in the City of .....

.....,

County of ....., and State of .....,, to-wit:

2. Whereas, Second Party desires to use and operate said station on and for his own account for the purpose of storing, handling and marketing in and through said station petroleum products (hereinafter referred to collectively as "products"); and,

3. Whereas, Sherwood is willing that Second Party may use and operate said station on and for his own account for the purpose aforesaid:

4. Now, Therefore, in consideration of the payments to be made by the Second Party, as hereinafter provided, and in consideration of the full and faithful performance by the Second Party of all the terms and conditions to be performed by him, as hereinafter set forth, Sherwood hereby gives and grants Second Party the right to use and operate said station on and for his own account for ..... year(s) beginning the ..... day of ....., 19..... Unless terminated as hereinafter provided, before or at the expiration of such period, this Permit shall continue in full force and effect as to all its terms, provisions

and conditions from year to year, subject to cancellation by either party as herein specified. This agreement may be cancelled and terminated by either party at the expiration of the period herein specified, or at the end of any yearly period thereafter upon thirty (30) days previous written notice to the other party.

5. In consideration of being permitted to use and occupy said station and premises, to operate the same for his own account, for each month during the period in which this Permit shall be in effect or for each month of any renewal or extension thereof, Second Party shall pay Sherwood in accordance with either of the following:
Strike out either "A" or "B", whichever does not apply.

A. The sum of ..... ($.....) Dollars per month, payable in advance on the first business day of each month;

B. A sum equal to ..... (.....¢) cent(s) per gallon of all gasoline which shall be delivered to said station for sale therefrom, payable upon demand from Sherwood, provided however, that Second Party shall pay upon Sherwood's demand at least ..... ($.....) Dollars per month.

All sums payable hereunder shall be payable in lawful money of the United States at Baltimore, Md., or at such other place as Sherwood may from time to time designate.

3856 6. Second Party covenants and agrees that he will use and occupy the premises and station in a careful, safe and proper manner; that he will not permit or suffer any waste thereon or thereof, or any nuisance thereon or thereabout; and that he will maintain said premises in a clean, neat, orderly and sightly condition. Second Party further covenants and agrees that he will, at his own cost,

maintain in good condition and repair any and all buildings, structures, equipment, appliances, and other personal property on said premises; and that he will not encumber or remove the same, or do or suffer to be done anything whereby the same or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the right of Sherwood therein or the title thereto may in any way be altered, impaired or prejudiced; it being expressly agreed that Second Party acquires hereunder no interest in any buildings, structures, equipment, appliances, or other property now on said premises or which may hereafter be placed thereon by Sherwood, except the right to use the same as in this Permit provided.

7. Second Party shall be liable for and agrees to pay all license, permit, and inspection fees, occupation and license taxes, and all water, gas, telephone and electric light and power charges assessed or charged on or against said premises and station or Second Party's use of occupancy thereof, including all taxes levied and assessed on Second Party's property located thereon during the period hereof.

8. Second Party shall comply with and obey all laws, ordinances, rules, regulations and requirements of the State, City, Village, or other governmental subdivision in which said premises are located, so far as same affect Second Party's use and occupancy of said premises and the operation of said station.

9. Second Party, for himself, his heirs, executors, administrators and assigns, hereby releases, relinquishes, discharges and agrees to indemnify, protect and save harmless, Sherwood, its successors and assigns, of and from any and all claims, demands, and liability for any loss, damage, injury or other casualty to property (whether it be that of either of the parties thereto or of third persons) and to persons (whether they be third persons, Second Party, or employees of either of the parties hereto), caused

by, growing out of, or happening in connection with, Second Party's use and occupancy of said premises or any buildings, structures, equipment or appliance located or to be located thereon, or by reason of any other casualty, whether due to negligence of Sherwood or otherwise.

10. Second Party, for himself, his heirs, executors, administrators and assigns, hereby releases, relinquishes and discharges, and agrees to indemnify, protect and save harmless, Sherwood, its successors and assigns, of and from any and all claims, demands and liability for any loss, damage, injury or other casualty to property (whether it be that of either of the parties hereto or of third persons), and to persons (whether they be third persons, Second Party or employees of either of the parties hereto), by reason of any leakage, fire or explosion of or from any such equipment or any part thereof, or of any gasoline, oils, or other petroleum products in or about or contained in the same, or by reason of any defects in the construction or installation of such equipment, or by reason of the use or operation of such equipment, or by reason of the placing, erection, falling, or dislocation of such equipment or any part thereof, or by reason of any casualty, whether due to the negligence of Sherwood or otherwise.

11. In the event Second Party shall (a) violate any agreements, covenants, conditions, and obligations of this Permit upon him imposed, or (b) be in any manner in default hereunder, Sherwood shall have the right to declare this Permit cancelled and terminated; and shall have the further right, without notice and without recourse to any legal proceeding, to enter upon the premises and repossess itself of same, including all property embraced within this Permit; and shall have a first lien upon all merchandise and other property of Second Party located upon the premises to secure the payment of all charges accrued hereunder and the full performance by

Second Party of all obligations to Sherwood; and shall further have all the rights and remedies provided by law for the recovery of possession.

12. Upon the termination of this Permit by lapse of time or otherwise, Second Party agrees to return to Sherwood the said premises and station, together with all other property embraced within this Permit, and any other property of Sherwood located on said premises, in their condition when received by Second Party, reasonable wear and tear incident to proper use thereof excepted. In the event Second Party shall for any reason be unable to return any of said property, he agrees to replace the same with similar property of like value, or to pay Sherwood the market price therefor.

13. Sherwood reserves the right of entry of its representatives, agents, and employees for the purpose of examination and inspection of said premises and any property of Sherwood located thereon.

14. Second Party shall make no alterations or changes in or additions to any buildings, structures or improvements on said premises without first procuring the written consent of Sherwood so to do. Any work so authorized by Sherwood shall be at the sole cost and expense of Second Party, and any such alterations, changes or additions so made by Second Party shall forthwith become the property of Sherwood, and Second Party shall have no claim of any kind or character therefor.

15. This Permit is personal to Second Party and shall not be assigned in whole or in part, nor shall any rights or privileges herein granted Second Party be sold, transferred or assigned without the written consent of Sherwood first obtained.

16. If during the period of this Permit proceedings are instituted for the condemnation of said premises or any part thereof, or if Sherwood shall dispose of its interest in

said premises or any part thereof, either voluntarily or involuntarily, in order that the premises may be devoted wholly or partially to any public use; this Permit shall, at the option of Sherwood and upon written notice to Second Party, forthwith finally cease and terminate, and Second Party shall not be entitled to any damage award or purchase price, or any part of either, which may be paid on account of such condemnation or sale.

17. Any prior agreement or permit under which Sherwood gave to Second Party the right to use and operate said station on and for his own account is hereby cancelled and terminated on ~~and as of~~ the day preceding the commencement of the period hereof, except as to any liability or obligations which may or shall have accrued under and by virtue of any said agreement or permit prior to such effective cancellation date.

18. If the lease held by Sherwood shall be cancelled or shall terminate for any cause prior to the expiration of the within Permit, this Permit shall automatically terminate without previous notice, and Sherwood shall not be liable to Second Party in damages or otherwise on account of such cancellation or termination. If the operation of a service station on said premises shall be prohibited or restricted during the period hereof by statute, ordinance, order of court, or other governmental authority, and not because of any fault or neglect of Second Party, this Permit shall be subject to termination at the option of either of the parties hereto.

19. All notices given under this instrument shall be in writing, and may be given either in the statutory method, if any, in the State where the premises are located or by depositing the notice in the United States registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified as such party's address as shown in this instrument or at any other known address of Second

Party, and the date upon which such notice is so mailed shall be treated as the date of service. If there be more than one Second Party, notice to one shall constitute notice to all. In addition, any notice given by Sherwood to Second Party shall be valid if served upon Second Party in person or delivered to or left upon the premises.

In Witness Whereof, the parties have hereunto subscribed their names or caused the same to be done the day and year first above written.

Sherwood Brothers Incorporated,
First Party.

By .....
Sales Manager.

.....(Seal)
Second Party.

By .....(Seal)

Witness:

.....

To Signature of Party
of Second Part.

3858 COMMISSION EXHIBIT NO. 407 A-D

Service Station Lease

This Indenture of Lease, Made and entered into in duplicate this ..... day of ....., A. D., 19....., by and between Sherwood Brothers Incorporated, a Maryland corporation, authorized to transact business in the State of ....., having its principal office at 10 Light Street, Baltimore, Maryland, party of the first part (hereinafter referred to as "Lessor"), and ..... of ....., part ..... of the second part (hereinafter referred to as "Lessee," whether one or more, and when referred to by pronoun the masculine gender will be used);

Witnesseth:

1. Whereas, Lessee desires to lease from Lessor the filling and service station, including other structures and facilities, if any, for the servicing of motor vehicles, hereinafter referred to as "station", and the premises upon which the same is located, as hereinafter described, for the purpose of marketing through said station petroleum products and other merchandise; and,

2. Whereas, Lessor is willing to lease said station on the terms and conditions hereinafter set forth;

3. Now, Therefore, in consideration of the premises, the rents herein reserved, and the covenants, conditions, and agreements herein set forth, on the part of the Lessee to be paid, maintained, kept, and performed, Lessor does hereby demise and lease unto Lessee that part and only that part of the following described premises used for and constituting an oil and gasoline service station, and excluding all other parts or portions of said premises, located at .....
..... and situate in the City of ....., County of
....., and State of ....., to wit;

together with the buildings, structures, improvements, pumps, tanks, appliances, furniture, tools, and other personal property located thereon, as set forth in an inventory taken and signed by the parties hereto, marked "Exhibit A" and attached to and made a part of this lease to the same effect as though written out in full herein, including any additions thereto or substitutions thereof which may be made by Lessor from time to time; receipt of any substituted or added equipment shall be evidenced by Lessor's Receipt Form SB-46 "Equipment and materials Receipt," and said receipt when signed by Lessee shall become a part of this lease with the same force and effect as

though embodied herein; provided, however, that any equipment heretofore or hereafter delivered by Lessor to Lessee, whether or not evidenced by said receipt, shall be subject to the terms and conditions of this lease. It is understood and agreed that Lessee's act of accepting such equipment and signing said receipt shall be construed to be an acknowledgment by Lessee that the equipment described in said receipt was in good and serviceable condition at the time of its delivery to Lessee.

4. To Have And To Hold the above demised and leased premises, and all rights, privileges and appurtenances thereunto belonging, unto Lessee for and during a term beginning on the ..... day of ....., 19....., and ending on the ..... day of ....., 19....., and thereafter for successive terms of one year each, provided, however, that either party may terminate this lease at the end of the original term or any successive yearly term, on Thirty (30) Days' written notice given prior to the end of any such term. If the above premises are held by Lessor under lease, this lease shall in no event continue in effect for any longer period than the balance of the term specified in any such underlying lease, regardless of the term herein provided. No previous notice or refund of rentals shall be required in the event of termination or cancellation of this lease for breach or default as hereinafter provided.

3860 5. Lessee shall yield and pay to Lessor as rental for said premises for and during said term the following sums:

All rentals shall be payable in lawful money of the United States at 10 Light Street, Baltimore 3, Maryland, or at such other place as Lessor may from time to time designate.

6. Lessee covenants and agrees that he will use and

occupy said premises and station in a careful, safe and proper manner; that he will not permit or suffer any waste thereon or thereof, or any nuisance thereon or thereabout; that he will keep the sidewalks adjacent to said premises free from snow and ice; and that he will maintain said premises in a clean, neat, orderly and sightly condition. Lessee further covenants and agress that he will, at his own cost, maintain in good condition and repair any and all buildings, structures, equipment, appliances, and other personal property hereby leased to Lessee; and that he will not encumber or remove the same, or do or suffer to be done anything whereby the same or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the right of Lessor therein or the title thereto may in any way be altered, impaired or prejudiced; it being expressly agreed that Lessee acquires hereunder no intestest in any buildings, structures, equipment, appliances, or other property now on said premises or which may hereafter be placed thereon by Lessor, except the right to use the same as in this lease provided.

7. Lessee shall be liable for and agrees to pay when due all license, permit, and inspection fees, occupation and license taxes, all compensation fees, rents, and charges assessed and imposed by municipalities for the installation, use or maintenance of approaches or driveways serving said premises; also all water, gas telephone, and electric light and power charges assessed or charged on or against said premises and station or Lessee's use or occupancy thereof, including all taxes levied and assessed on Lessee's property located thereon during the term hereof.

8. Lessee shall comply with and obey all laws, ordinances, rules, regulations and requirements of the State, City, Village, or other governmental subdivision in which said premises are located, so far as same affect Lessee's use

and occupancy of said premises and the operation of said station.

9. Lessee, for himself, his heirs, executors, administrators and assigns, hereby releases, relinquishes, discharges, and agrees to indemnify, protect and save harmless, Lessor, its successors and assigns, of and from any and all claims, demands and liability for any loss, damage, injury or other casualty to property (whether it be that of either of the parties hereto or of third persons) and to persons (whether they be third persons, Lessee, or employees of either of the parties hereto), caused by, growing out of, or happening in connection with, Lessee's use and occupancy of said premises or any buildings, structures, equipment or appliances located or to be located thereon, or by reason of any other casualty, whether due to negligence of Lessor or otherwise.

10. Lessee, for himself, his heirs, executors, administrators and assigns, hereby releases, relinquishes and discharges, and agrees to indemnify, protect and save harmless, Lessor, its successors and assigns, of and from any and all claims, demands and liability for any loss, damage, injury or other casualty to property (whether it be that of either of the parties hereto or of third persons), and to persons (whether they be third persons, Lessee or employees of either of the parties hereto), by reason of any leakage, fire or explosion of or from any such equipment or any part thereof, or of any gasoline, oils, or other petroleum products in or about or contained in the same, or by reason of any defects in the construction or installation of such equipment, or by reason of the use of operation of such equipment, or by reason of the placing, erection, falling, or dislocation of such equipment or any part therof, or by reason of any casualty, whether due to the negligence of Lessor or otherwise.

11. Lessee agress to display continuously on said premises a sign to be furnished by Lessor showing that Lessee is occupying said premises under a lease.

12. If Lessee shall default in the performance of any covenant contained in this lease, or if Lessee shall violate any agreements, covenants, conditions and obligations of this lease upon him imposed, or if Lessee shall become bankrupt or become insolvent in the opinion of Lessor, or shall make an assignment for the benefit of creditors, Lessor in any such event shall have the right to declare this lease terminated, and shall have the further right, without notice and without recourse to any legal proceeding, to enter upon the premises and repossess the same, including all property embraced within this lease, and Lessor shall have a first lien upon all merchandise and other property of Lessee located upon the leased premises to secure the payment of rent and all charges hereunder and the full performance by Lessee of all obligations to Lessor; and Lessor shall further have all the rights and remedies provided by law for the recovery of rent and possession. It is understood that the acceptance of rent by Lessor after default or the happening of any above contingency shall not be construed as a waiver of the rights of Lessor herein specified. If Lessee is an individual and if he shall die during the term of this lease or any extension thereof, this lease shall automatically terminate.

3862 13. Upon the termination of this lease by lapse of time or otherwise, Lessee agrees to return to Leessor the said premises and station, together with all other property embraced within this lease, and any other property of Lessor located on said premises, in their condition when received by Lessee, reasonable wear and tear incident to proper use thereof excepted. In the event Lessee shall for any reason be unable to return any of said property, he

agrees to replace the same with similar property of like value, or to pay Lessor the market price therefor.

14. If there is a safe or chest included in the equipment leased hereunder, Lessee agrees to maintain said safe or chest in good and usable condition throughout the term hereof, and to bear the expense of any repairs thereon or replacement thereof; it being understood and agreed that Lessee shall assume any losses from robbery, burglary or larceny of the contents thereof, and of any property embraced within the lease.

15. Lessor reserves the right of entry of its representatives, agents, and employees for the purpose of examination and inspection of said premises and any property of Lessor located thereon.

16. Lessee shall make no alterations or changes in or additions to any buildings, structures, or improvements on said premises without first procuring the written consent of Lessor so to do. Any work so authorized by Lessor shall be at the sole cost and expense of Lessee, and any such alterations, changes or additions so made by Lessee shall forthwith become the property of Lessor, and Lessee shall have no claim of any kind or character therefor.

17. This lease is personal to Lessee and shall not be assigned in whole or in part, and said premises or any part thereof shall not be sublet, nor shall any rights or privileges herein granted Lessee be sold, transferred or assigned without the written consent of Lessor first obtained.

18. If during the term of this lease proceedings are instituted for the condemnation of said premises or any part thereof, or if Lessor shall dispose of said premises or any part thereof or its interest therein, either voluntarily or involuntarily, in order that the premises may be devoted wholly or partially to any public use, this lease shall, at the option of Lessor and upon written notice to

Lessee, forthwith finally cease and terminate, and Lessee shall not be entitled to any damage award or purchase price, or any part of either which may be paid on account of such condemnation or sale.

19. Any prior agreement under which the Lessor leased the above described premises and equipment to the Lessee is hereby terminated on and as of the day preceding the commencement of the term hereof except as to any liability which may or shall have accrued under and by virtue of any said agreement prior to such effective cancellation date.

20. If the above described premises are held by Lessor under lease, and if such underlying lease shall expire in accordance with its terms or be terminated for any cause at any time prior to the expiration of the term herein provided, this lease, at the same time, shall expire and terminate without previous notice to Lessee, and Lessor shall not be liable to Lessee in damages or otherwise on account of such prior termination. This lease shall be subject to all conditions and restrictions affecting the premises, including those which may be of record or in the underlying lease, if any, and also including building, building line, and zoning restrictions. If Lessee shall abandon, desert or vacate the premises during the term of this lease, or during any extension or renewal period, for a period of more than two (2) calendar days, Lessor may terminate this lease and repossess the premises. If the operation of a service station on said premises shall be prohibited or restricted during the term hereof by statute, ordinance, order of court or other governmental authority, and not because of any fault or neglect of Lessee, this lease shall be subject to termination at the option of either party.

21. All notices given under this instrument shall be in writing, and may be given either in the statutory method, if any, in the State where the premises are located or by

depositing the notice in the United States registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified at such party's address as shown in this instrument or at any other known address of Lessee, and the date upon which such notice is so mailed shall be treated as the date of service. If there be more than one Lessee, notice to one shall constitute notice to all. In addition, any notice given by Lessor to Lessee shall be valid if served upon Lessee in person or delivered to or left upon the premises.

22. This lease shall not be binding upon Lessor until signed on its behalf by its President or Vice-President, notwithstanding the delivery of possession to or the acceptance of any rent from Lessee. All proposals, negotiations, representations and agreements with reference to matters covered by this lease are merged herein, and no amendment or modification hereof shall be binding upon Lessor unless the same shall be in writing and signed by its President or Vice-President.

Witness the hands and seals of the parties respectively attested or witnessed, the day and the year first above written.

Sherwood Brothers Incorporated,

By .....

President,

.....(Seal)

Lessee,

.....(Seal)

Lessee.

Attest:

.....

Secretary.

Signed, sealed and delivered in the presence of:

.....

.....

3864 **Exhibit A.**

Inventory of buildings, improvements, appliances, and equipment embraced within the foregoing lease, and received in good order by the undersigned Lessee, from Sherwood Brothers Incorporated.

Buildings and Yard Improvements: .....
Pumps and Tanks: .....
Air Equipment: .....
Signs: .....
Furniture: .....
Tools: .....
Miscellaneous Equipment: .....

Certified as Correct.

Sherwood Brothers Incorporated,
Lessor.

By .....
Lessee.

3866 **COMMISSION EXHIBIT NO. 408.**

Amendment of Service Station Lease.

It is mutually agreed this ..... day of ....., 1952, between Sherwood Brothers Incorporated, Lessor and ....., Lessee of property at ..... under lease dated ..... that effective as of ..... the said Lease is amended as follows:

1. The term of said Lease shall be automatically extended for a period ending on the last day of the month in which the term as stated in said lease expires. Thereafter, said lease shall be automatically extended for successive terms of one year each provided, however, that either party may terminate this lease at the end of the

original term or any successive yearly term on thirty days written notice given prior to the end of any such term.

2. The Lessee shall pay and yield to Lessor as rental for said premises for and during the term hereof a sum equal to ____¢ per gallon for each gallon of gasoline and motor fuels delivered to said premises for resale during the term; provided, that the minimum monthly rental for each month shall be $_____ and the maximum monthly rental shall be $_____. The gallonage rent shall be paid by Lessee at the time of deliveries of gasoline and motor fuel. Adjustment of maximum rental shall be made at the end of each calendar quarter and the balance, if any, shall be refunded by Lessor within twenty-five days thereafter.

3. Lessor Reserves the Right to Cancel the Maximum Rent Provision Hereof at the End of the Term as Herein Extended or at the End of Any Three Month Period Thereafter on Fifteen Days Notice in Writing to Lessee.

4. Except as herein modified the parties re-affirm the said lease.

.....

President.

.....

Lessee.

Attest:

.....

Secretary.

Witness:

.....

M-256 6-52

3868 COMMISSION EXHIBIT NO. 409.

Termination of Service Station Lease.

It is hereby agreed by and between Sherwood Brothers Incorporated, and .....
that the .....
entered into on the ..... day of ..... 19.....
covering property located at .....
is hereby terminated this ..... day of .....
19....., and all rights, liabilities and obligations thereunder, except the liability of ..... to pay for products delivered thereunder and the rights of Sherwood Brothers Incorporated as to ownership of the equipment loaned, are hereby forever released and discharged.

Sherwood Brothers Incorporated,
By .....
President.
.....(Seal)

Attest:
.....
Secretary.

Witness:
.....

M-142 -200 -2/53

3870 COMMISSION EXHIBIT NO. 410A-B.

Sherwood Brothers Incorporated

Dealer Sales Agreement

This Agreement, made and entered into this ..... day of ....., 19....., by and between Sherwood Brothers Incorporated, a Maryland corporation, having its principal office at 10 Light Street, Baltimore - 3, Maryland, as Seller and ..... of ....., as Dealer:

Witnesseth, That for the considerations herein contained, Seller hereby agrees to and hereby does, sell to Dealer, and Dealer hereby agrees to, and hereby does, buy from Seller, during the period this agreement is in effect, Dealer's requirements for resale of the following petroleum products:

Betholine
Sinclair H-C Gasoline
Sinclair Pennsylvania Motor Oil
Opaline Motor Oil
Emerald Motor Oil
Pennant Motor Oil
Laclede Motor Oil
Sinclair Lubricants and Greases
Richsol Cleaning Fluid
Sinclair Superflame Kerosene
Sinclair Specialties
Sinclair Anti-Freeze

And such other products marketed by Seller as the parties hereto may agree upon from time to time.

Prices: For each delivery of any of the above products Dealer shall pay Seller's official established price per gallon (or other applicable unit) for the quantity delivered to

Dealer prevailing at the time and for the place of each such delivery (without any discount or deduction therefrom) as posted at Seller's bulk plant from which delivery is made. Dealer agrees that Seller shall have the right to change said price from time to time without notice to Dealer except as posted at Seller's bulk plant or as shown on Seller's invoices.

If at any time Seller may establish different prices applicable to different classes of dealers, Dealer agrees that Seller shall have the right to determine the classification (or classifications as to different products) in which Dealer belongs and the prices hereunder applicable to Dealer, and Seller's determination in that respect shall be conclusive as to Dealer.

Place of Delivery: Products purchased hereunder shall be delivered in quantities and at times established by Seller's delivery schedules to Dealer's place of business above listed and to any other points agreed upon between the parties.

Duration of Agreement: This agreement shall continue in effect for ..... year(s) beginning the ..... day of ....., 19..... Unless terminated, as hereinafter provided, before or at the expiration of such original period, this agreement shall continue in full force and effect as to all its terms, provisions and conditions from year to year, subject to cancellation by eiter party as herein specified.

Terms: Net cash on delivery. If Seller shall extend credit to Dealer, the right to withdraw credit at any time is reserved by the Seller. Payments shall be made by Dealer in lawful money of the United States, or its equivalent, and shall be made to Seller's agent through whom delivery is made or to Seller's principal office. Checks, if accepted, shall be subject to final collection.

Additional Provisions: The additional provisions printed on the reverse side hereof constitute a part of this agreement.

In Witness Whereof, Seller and Dealer have executed this agreement.

Sherwood Brothers Incorporated,
By: .....
Sales Manager.
.....(Seal)
.....(Seal)
Dealer.

Witness to Signature of Dealer:
.....

(See reverse side)

Additional Provisions

3872 1. In addition to the prices herein provided, Dealer shall pay Seller amounts equivalent to any and all taxes, duties, charges and inspection fees, and any and all increases therein, which are now or may hereafter be imposed, directly or indirectly, by any domestic or foreign governmental authority or agency on, against, in respect of or measured by the products covered by this agreement, or any material contained in such products, or the importation, exportation, production, manufacture, sale, transportation, delivery or other handling of such products or material or any feature thereof or of this agreement. The amounts of any such taxes, duties, charges or inspection fees shall be added to the prices herein provided when Seller either pays or becomes liable for the payment of any such taxes, duties, charges or inspection fees.

2. In the event that Seller should at any time during the life of this agreement discontinue the marketing of any products covered hereunder in dealer's territory and

market some other similar product as a replacement thereof Seller shall have the right and privilege to deliver such other product instead of the product discontinued.

3. This Agreement may be cancelled and terminated by either party at the expiration of the original period herein specified, or at the end of any yearly period thereafter, upon thirty (30) days' previous written notice to the other party. Dealer agrees that Seller shall also have the right to terminate and cancel this agreement at any time upon thirty (30) days' previous written notice by Seller to Dealer.

4. Dealer shall not change or alter by any means whatsoever the nature, quality, or appearance of any of the products purchased and sold hereunder. Any violation of this provision by Dealer shall give Seller the right to suspend immediately further deliveries hereunder of such products or to terminate this agreement. Seller shall have the right from time to time during the life of this agreement, to change, alter or amend any of the trade names or brands under which products covered by this agreement are now or may hereafter be marketed. Seller agrees that the commodity sold hereunder shall be uniform in quality and at all times up to its standards.

5. It is mutually agreed that Seller shall not be obliged to furnish any products hereunder nor be liable for loss or damages for failure so to do or for failure or delay in making deliveries of such products when such failure or delay arises from (a) any cause beyond Seller's control; or (b) by reason of reduction in or failure of Seller's supply of such products or containers therefor at any point from which Seller customarily makes or would make deliveries to Dealer or shipment to Dealer's destinations, or of Seller's supply at the point of manufacture, of raw or other materials from which such products are manufactured or which constitute components thereof; or (c)

from discontinuance or interruption of any means or method of transportation customarily used by Seller in making deliveries to Dealer's destinations or to the vicinity thereof; or (d) from or through acts of God, strikes, lockouts, differences among or with its workmen, fires, explosions, sabotage, accidents, riots, civil commotion, acts of war, results of warfare, or war conditions in this or any foreign country; or (e) mechanical breakdowns in its manufactories, or breaks in or total or partial destruction of its supplying pipe lines; or (f) the restriction or prohibition or pervention of the importation of necessary finished or raw materials; or (g) acts of foreign or domestic Governmental authority, or requests, orders or requisitions of constituted authorities, civil or military, or the exercise of eminent domain, or any seizure or appropriation of any of Seller's property or of the management or operation thereof, whether regarded as lawful or unlawful; or (h) any increase in Seller's cost of materials or of manufacture or of delivery, or any decrease in Seller's prices for such products, imposed by Governmental actions or orders; or (i) any other cause beyond Seller's control, not enumerated herein, whether or not such cause shall be similar to any of the specifications of excuse hereinbefore stated. Seller shall not be liable for loss or damage to the premises where deliveries are made or to Dealer's property unless such loss or damage is caused solely by Sellers negligence. Seller reserves the right to limit quantities delivered hereunder when in Seller's opinion the current or prospective supply of such product or products makes such limitation advisable.

6. This agreement cannot be assigned in whole or in part by Dealer without the consent of Seller in writing first obtained.

7. The sale of any motor fuel which may contain either an "Ethyl" or any other anti-knock compound under the

agreement is subject to (a) all the provisions contained in the agreements under which Seller is licensed to manufacture and sell motor fuel containing said compounds and (b) compliance by Dealer with all such provisions, rules, regulations and orders now in existence or which may hereafter be issued by the licensor or any governmental authority having jurisdiction insofar as the same apply to motor fuel purchased by Dealer from Seller. If Dealer shall fail or refuse to comply therewith, Seller may either suspend deliveries of such motor fuel or terminate this agreement in respect to such motor fuel. It is expressly agreed that such gasoline containing an "Ethyl" or other antiknock compound is sold for use as a motor fuel only and is not to be used or resold for cleaning purposes under any circumstances.

8. Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended at the address of such party herein specified, or when delivered personally to such party at such address.

9. Any Sales Contract or agreement covering petroleum products for resale heretofore entered into between the parties hereto is hereby cancelled and terminated on and as of the effective date hereof except as to any liability or obligations which may or shall have accrued under and by virtue of any said contract prior to such effective cancellation date.

10. In the event Seller shall cease to market any of the products listed herein in the territory where Dealer is located, this agreement shall cease to cover such products but shall remain in full force and effect as to other products covered.

3874 COMMISSION EXHIBIT NO. 411.

March 10, 1953

Mr. Henry I. Lipsky
Federal Trade Commission

As of March 10, 1953, there are approximately four hundred, twenty-two (422) Betholine-Sinclair Dealers who purchase Goodyear tires or tubes or batteries or car and home products.

Fred D. McCauley

FDM:kw

3876 COMMISSION EXHIBIT NO. 412A-H.

Sherwood Bros. Inc.
Baltimore, Md.

1-1-50

Sales Commission Plan.

Sherwood Bros, Inc will be paid a sales commission on net sales of Goodyear products to Sherwood accounts by authorized supply points.

All sales under this plan are sales by an authorized supply point to an independent Sherwood dealer account. Billing issued to Sherwood Bros. In covering purchases for "Own Consumption" are not subject to sales commission.

Payment of commission will be made to Sherwood by Akron and will be based on sales reported to Akron by Districts on monthly G-1204 reports.

Establishment of Authorized Supply Points

District Manager will determine supply point for each Sherwood Account approved.

Goodyear District, Field and Factory Warehouses, Goodyear Service Stores and Goodyear Independent Dealers may serve as authorized supply points for these accounts. See Page 1-A for products each class of supply point may deliver.

Establishment of Goodyear Stores and Independent Dealers as supply points for Car and Home merchandise requires prior approval by Akron.

The supply point will make delivery of the merchandise, issue billing and carry the Accounts of the Sherwood Accounts they serve.

Master Record G-1209

Sherwood Bros. Inc will prepare G-1209 on each Sherwood account which is to participate under the plan. All copies of the form should be approved and forwarded by Sherwood to the Goodyear District Manager for approval and completion.

The G-1209 must be filled in completely as provided on the form.

After G-1209 is completed and approved by both Sherwood and Goodyear District Manager

District Office will distribute copies as follows:

Original (white)—District Office File

Duplicate (canary)—Sherwood Bros, Inc Division Office

Triplicate (pink)—Goodyear Field Representative

Quadruplicate (blue) — Supply Point where a Goodyear Store (other supply points handled by list—see below)

G-1209 provided to Stores which are not supply points for merchandise other than Car and Home Merchandise must be clearly marked "applies only to Car and Home Merchandise".

If more than one Store will act as a supply point, the additional Store (stores other than the regular supply point) should be notified of the approved Sherwood account by letter.

Independent dealer supply points shoud be furnished a list of the Sherwood accounts who will buy from them and on whom we ask them to report.

Credit Policy

All Sherwood Accounts participating under this plan will establish credit with the Goodyear District, Store or Independent Dealer, which has been designated to serve them. Purchases may, of course, be made on a cash or COD basis also. Districts must maintain seperate B-80 and B-80D on each COD or cash account.

3878 Price Policy

Approved Sherwood Accounts under this plan will purchase their requirements on the same basis as any independent dealer at the prices and discounts for which they can qualify in accordance with our regular sales program for tires, tubes, batteries, C&H Mdse, etc.

Products Eligible Under Sales Commission Plan.

Sales of the following listed products to approved Sherwood accounts are to be reported on the G-1204 reports when delivery is taken from authorized supply point as indicated below:

(A) When delivery is taken from and/or billing issued by District

All Goodyear Tire and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries.

Goodyear produced Recaps & Repairs.

All Dill and Schrader Valve Merchandise.

Sea-Bee Outboard Motors.

Goodyear Repair Materials as follows—Small and Bicycle Tube Repair Kits, Quart size Steptread Cement, Emergency Self-Sealing Patches, Small Containers Cold Patch Cement, Gasket Compound, Bicycle Rim Cement, Shaler M-50 Repair Kits and Motorists Vulc-Patch Kits.

(B) When Delivery is taken from and billing issued by Goodyear Stores

All Goodyear Tires and Tubes (Except Airplane) including Seconds. Goodyear Automotive and Farmlight Batteries and Battery Cables.

Goodyear Produced Recaps & Repairs.

(C) When delivery is taken from a Field or Factory Field Warehouse

Goodyear Car and Home Merchandise.

Goodyear Brake Lining, Rivets and Wheel Weights.

Goodyear Repair Materials—The same and only those items listed above under (A).

Includes merchandise shipped direct to dealer by manufacturer.

(D) When delivery is taken from and billing issued by an Independent Dealer

All Goodyear Tire and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Sea-Bee Outboard Motors (Only if Akron has approved the dealer as supply point for Car & Home Mdse.)

Goodyear Car & Hom Mdse stocked at Goodyear Field Warehouse (Only if Akron has approved dealer as supply point).

Products Not Eligible Under Sales Commission Plan.

Billing covering products listed hereunder, regardless of delivery point, is not subject to commission and is not to be recorded by Stores nor included in G-1204 volume on which commission is to be paid.

3880 Adjustment billing of any of the eligible products listed above.

All products not listed above as eligible products including but not limited to

General Electric and Hotpoint Major Appliances
General Electric Radios
Motorola Radios, Aerials and Accessories
Motorola Car Heaters
Anti Freeze
Tire Chains unless delivered by Field Warehouse
All types of Equipment—Battery Chargers, Display, Service Station, etc.
Advertising and Sales Promotion items.

Sales Commission Plan.

General

All Goodyear shipments will be to the supplying dealer—we will not drop ship to the Sherwood dealer for account of the dealer.

Important—Careful attention under the Independent Dealer Supply Point handling is required to avoid payment to Sherwood of duplicated commissions under the following circumstances.

When a Sherwood account is authorized under this plan,

commissions are to be paid only on this Sherwood account's purchases from his supply point. If this authorized account is the supply point for other Sherwood accounts, then sales to such other accounts are not eligible for commission as such would result in our paying commission to Sherwood on the original sale and then paying a second commission on the same merchandise when it was resold to the other Sherwood Account.

The instructions outlined above under "Independent Dealer Supply Points", therefore, are applicable only if the dealer supply point is not an oil company approved commission account.

Goodyear Store Supply Points

District Manager will provide stores that are to function as supply point with G1209 of specified Sherwood Accounts for whom the store is the designated supply point. As any changes occur in the G-1209, District Manager will notify store of change by copy of G-1209. Upon receipt, Stores must immediately revise their records.

It is suggested that stores file the visible G 1209 form in their stock ledger binder for ready reference. Stores receiving lists of accounts from their District Manager should order supplies of blank G 1209 forms with which to establish their visible system.

3882 Payment of Commission

Akron will pay all commission to Sherwood in connection with this plan. Rates of commission varies by type of Sherwood account, and type of product, therefore it is of the utmost importance that all Sherwood accounts be correctly classified on G-1209 records and also when reported on G-1204 so that the correct amount of commission will be computed by Akron.

Rates of Commission follow:

(A) Approved Petroleum Jobber or Petroleum Distributor

All Merchandise (except Resolute Battery Volume) 7½%

Resolute Battery Volume 7½%

Identified on G 1204 and G 1209 as Oil Company Franchise Jobber or Distributor.

Car & Home Merchandise—If account is approved Car & Home Mdse. wholesaler 7½%

Identified on G1204 and G1209 as approved Car & Home Jobber.

(B) Approved Oil Company Dealer (not Jobber or Distributor)

All Merchandise (except Resolute Battery Volume) 10%

Resolute Battery Volume 7½%

Identified on G-1204 and G-1209 as Oil Company Dealer.

If account is approved Car & Home Merchandise wholesaler—Car & Home Commission 7½%

Identified on G1204 and G1209 as Car & Home Jobber.

3884 G-1204—Reports

Volume subject to sales commission must be segregated under the following classifications:

(A) All new tires and tubes including seconds and special priced stock, motorcycle, bicycle, truck farm, industrial and wheelbarrow tires and tubes but excluding airplane tires and tubes.

(B) Goodyear batteries including farmlight.

(C) Resolute batteries.

(D) Car & Home and other products subject to commission not detailed above. (See Page 1A—Sherwood Special Account Instructions).

Commission is payable on the above merchandise only if delivery is made in accordance with schedule on page 1A of Sherwood Special Account Instructions. Credit memos should be deducted from respective commission volume accumulations.

Recording of Volume for Accounts on District Ledgers
Tire and Tube Volume

Post bonusable items including credits for experimental truck to the B-80D statistical sheet as usual.

Non Bonusable Tire and Tube items such as Motorcycle, Bicycle Tires and Tubes, etc., which are eligible under the sales commission plan are to be posted in miscellaneous column of the B-80D at the time postings are made to the B-80. Post at merchandise net invoice level.

Goodyear Automotive Batteries Including Farmlight

Post Bonusable items to B-80D statistical section in usual manner. On guaranteed accounts postings should be made to the B-80D at the level prior to deduction of guaranteed annual bonus. Show annual bonus allowed as a separate item in a miscellaneous column at top of B80D. Enter net battery volume on G-1204 (Battery Bonus volume less annual bonus).

Resolute Batteries

Resolute volume should be entered on B-80D in appropriate column. This volume must be kept entirely separate from Goodyear Battery volume accumulations.

Car & Home Merchandise & Miscellaneous

Post to B-80D such volume which is subject to sales commission. Enter on B-80D at net invoice price after deduction of all allowances. Include only items specifically designated as applicable for sales commission.

Recording of Volume for accounts Sold by Stores and Supplying Dealers

Sales of merchandise subject to commission by dealer and store supply points to approved G-1209 accounts is to be entered to B-80D statistical ledger sheet as outlined in

Wholesale Field Operating Manual page C-30B.

Distribution of G-1204

Copy #1 and #2—Sherwood Bros.
#3—Statistical Division Sales—Accounting Dept., Akron
#4—District Manager
#5—District File
#6—Petroleum Representative

3886 G-1204—Reports

Volume subject to sales commission must be segregated under the following classifications:

(A) All new tires and tubes including seconds and special priced stock, motorcycle, bicycle, truck, farm, industrial and wheelbarrow tires and tubes but excluding airplane tires and tubes.

(B) Goodyear batteries including farmlight.

(C) Resolute batteries.

(D) Car & Home and other products subject to commission not detailed above.

(See Page 1A—Sherwood Special Account Instructions).

Commission is payable on the above merchandise only if delivery is made in accordance with schedule on page 1A of Sherwood Special Account Instructions. Credit memos should be deducted from respective commission volume accumulations.

Recording of Volume for Accounts on District Ledgers
Tire and Tube Volume

Post bonusable items to the statistical section of the B80 ledger sheet as usual.

Non Bonusable Tire and Tube items such as Motorcycle, Bicycle Tires and Tubes, etc., which are eligible under the sales commission plan are to be posted in miscellaneous column of the B-80 at the time postings are made to the B-80. Post at merchandise net invoice level.

* Although not posted to the B-80 statistical section, it is important that Truck Tire Bonus, Farm Tire Bonus, and annual bonus should be considered as a deduction from volume subject to commission when preparing G-1204 reports.

Goodyear Automotive Batteries Including Farmlight

Post Bonusable items to the statistical section of the B80 in the usual manner. Postings should be made to the B80 at the net invoice level. Enter battery volume on G1204.

Resolute Batteries

Resolute volume should be entered on B-80 in appropriate column. This volume must be kept entirely separate from Goodyear Battery volume accumulations.

Car & Home Merchandise & Miscellaneous

Post to statistical section of the B-80 such volume which is subject to sales commission. Enter on B-80 at net invoice price after deduction of all allowances. Include only items specifically designated as applicable for sales commission.

* Although not posted to the B-80 statistical section, it is important that Car & Home Distributor annual bonus

* Addition

should be considered as a deduction from volume subject to commission when preparing year-end G-1204 reports.

** Recording of Volume for accounts Sold by Stores and Supplying Dealers

Sales of merchandise subject to commission by dealer and store supply points to approved G-1209 accounts is to be entered to B-80 statistical section of the ledger sheet as outlined in Wholesale Field Operating Manual page C-16.

Distribution of G-1204

Copy # 1 and # 2—Sherwood Bros
3—Statistical Division Sales—Accounting Dept, Akron
4—District Manager
5—District File
6—Petroleum Representative

Replaces Page Dated 9-28-50

3888 Sherwood Bros, Inc will be paid a sales commission on net sales of Goodyear products to Sherwood accounts by authorized supply points.

All sales under this plan are sales by an authorized supply point to an independent Sherwood dealer account. Billing issued to Sherwood Bros. Inc covering purchases for "Own Consumption" are not subject to sales commission.

Payment of commission will be made to Sherwood by Akron and will be based on sales reported to Akron by Districts on monthly G-1204 reports.

Establishment of Authorized Supply Points

District Manager will determine supply point for each Sherwood Account approved.

Goodyear Districts, Field and Factory Field Warehouses, Goodyear Service Stores and Goodyear Independent Dealers may serve as authorized supply points for

** Change

these accounts. See Page 1-A for products each class of supply point may deliver.

The supply point will make delivery of the merchandise, issue billing and carry the Accounts of the Sherwood Accounts they serve.

Master Record G-1209

Sherwood Bros. Inc will prepare G-1209 on each Sherwood account which is to participate under the plan. All copies of the form should be approved and forwarded by Sherwood to the Goodyear District Manager for approval and completion.

The G-1209 must be filled in completely as provided on the form.

After G-1209 is completed and approved by both Sherwood and Goodyear District Manager

District Office will distribute copies as follows—

Original (white)—District Office File

Duplicate (canary)—Sherwood Bros, Inc Division Office

Triplicate (pink)—Goodyear Field Representative

Quadruplicate (blue)—Supply Point where a Goodyear Store (other supply points handled by list—see below)

G-1209 provided to Stores which are not supply points for merchandise other than Car and Home Merchandise must be clearly marked "applies only to Car and Home Merchandise".

If more than one Store will act as a supply point, the additional Store (stores other than the regular supply point) should be notified of the approved Sherwood account by letter.

---

* Deletion

Independent dealer supply points should be furnished a list of the Sherwood accounts who will buy from them and on whom we ask them to report.

Credit Policy

All Sherwood Accounts participating under this plan will establish credit with the Goodyear District, Store or Independent Dealer, which has been designated to serve them. Purchases may, of course, be made on a cash or COD basis also. Districts must maintain separate B-80 and on each COD or cash account.

Replaces pg. dated 8-31-51

3890 Price Policy

Approved Sherwood Accounts under this plan will purchase their requirements on the same basis as any independent dealer at the prices and discounts for which they can qualify in accordance with our regular sales program for tires, tubes, batteries, C&H Mdse, etc.

Products Eligible Under Sales Commission Plan.

Sales of the following listed products to approved Sherwood accounts are to be reported on the G-1204 reports when delivery is taken from authorized supply point as indicated below:

(A) When delivery is taken from and/or billing issued by District

All Goodyear Tire and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries.

Goodyear produced Recaps & Repairs.

All Dill and Schrader Valve Merchandise.

* Goodyear Car & Home Mdse (when delivered by Mfr. with DA billing through District.)

Goodyear Repair Materials as follows—Small and Bicycle Tube Repair Kits, Quart size Steptread Cement, Emergency Self-Sealing Patches, Small Containers Cold Patch Cement, Gasket Compound, Bicycle Rim Cement, and Motorists Vulc-Patch Kits.

(B) When Delivery is taken and billing issued by Goodyear Stores

All Goodyear Tires and Tubes (Except Airplane) including Seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries

Goodyear Produced Recaps & Repairs

(C) When delivery is taken from a Field or Factory Field Warehouse

Goodyear Car and Home Merchandise.

Goodyear Brake Lining, Rivets and Wheel Weights.

Goodyear Repair Materials—The same and only those items listed above under (A)

Includes Merchandise shipped direct to dealer by manufacturer.

Goodyear Battery Cables.

(D) When delivery is taken from and billing issued by an Independent Dealer

All Goodyear Tire and Tubes (Except Airplane) including seconds.

Goodyear Automotive and Farmlight Batteries and Battery Cables.

Resolute Batteries.

**

---

* Change

** Deletion

* Goodyear Car & Home Mdse stocked at Goodyear Field Warehouse. Including tire chains, anti-freeze, and Sea-Bee Outboard Motors:

* * * * *

Products Not Eligible Under Sales Commission Plan.

Billing covering products listed hereunder, regardless of delivery point, is not subject to commission and is not to be recorded by Stores nor included in G-1204 volume on which commission is to be paid.

Replaces pg. dated 8-31-51

3892 COMMISSION EXHIBIT NO. 413.

Sherwood Brothers Incorporated
Baltimore Trust Building
Baltimore 3, Md.

....., 19....

To: .....
(Dealer)
.....,
.....

We have delivered Credit Identification Cards to certain motorists, to be used by them for credit identification purposes. Such motorists may wish to use such cards in connection with their purchases on credit at service stations, of the following products:

(1) Petroleum Products Marketed by Sherwood Brothers Incorporated and service jobs performed at the ordinary service station which involve the sale or use of such Products, namely, chassis lubricating (in whole or in part) and car washing; and

(2) Goodyear tires, batteries and other automotive accessories (except radios and heaters), Provided tires are mounted and batteries and other accessories are attached to the motor vehicle at the time of purchase.

Credit Identification Cards are serially numbered and bear an expiration date. Specimens of these cards have been or will be furnished you on our Placard Form SB-2094.

We understand that you desire to make credit sales of the above mentioned petroleum products, services and accessories to those holding such Credit Identification Cards who may apply to your station for the same. We are willing to accept assignment of the accounts arising from such credit sales under the following terms and conditions:

All sales of the above products, services and accessories shall be made for your own account. In making such sales you shall use such forms of delivery tickets, invoices, reports and other forms as we may supply you for use. Credit Delivery Tickets covering sales to holders of Credit Identification Cards must, in each case, show the Kinds of Merchandise Sold, the Quantities Sold, the Prices at Which Sold, the Total Value of Each Purchase, the Credit Identification Card Number, Auto License Number, Customers Name and Signature of Purchaser. Credit Delivery Tickets not prepared in conformity with the foregoing will be rejected by the Company. We do not assume any liability and shall not be liable for any tax for which you are liable to any governmental authority. If any applicable tax is not included in or added to the price, you will be in the position of absorbing such tax. In any event, you will have to account to the proper governmental authority for any applicable tax. You shall assume and pay, and hold us free of, any and all taxes that are now or may hereafter be imposed on the products or services, or upon the sale or furnishing thereof.

Subject to the terms and conditions set forth on our Placard, Form SB-2094, we will accept assignment by you of the accounts arising from such credit sales and in consideration for the assignment of each such account, we will allow you credit for the amount thereof on your purchases from us.

As to such accounts you shall keep such records and make such reports to us as we may from time to time specify and require with the privilege to us to examine or have examined such records when we may wish to do so.

This proposal is submitted in duplicate, and if the terms and provisions thereof are acceptable to you, you will please so indicate by signing the same at the place indicated hereon, and when executed on our part it will constitute a contract between us, with the understanding that either of us may terminate it at any time with or without cause. A copy of the executed contract will be forwarded to you. Any contract or agreement now in effect with you covering credit sales by you to the holders of Credit Identification Cards is hereby cancelled and terminated on and as of the date hereof, except as to any liability that may have accrued prior to such date.

Sherwood Brothers Incorporated

By .....

Credit Manager

Date

Executed ..... 19....

The within and foregoing is hereby accepted and agreed to on and as of the date hereof:

.....

.....

Dealer.

3834 COMMISSION EXHIBIT NO. 414.

Sherwood Brothers Incorporated

Inter-Office Correspondence

To: Mr. DeHoff,
c.c. Mr. John R. Sherwood

Date March 28, 1944

File Reference

Subject Batteries

On Friday, March 24, 1944, a meeting was held with Mr. Ted Hardy, Goodyear Battery Division Manager, Mr. Stucky of Baltimore District, John Mann and myself. At this meeting the complete battery program was discussed.

Battery dealers are classified as Contract Dealer, Distributor and Service Distributor, depending on the amount of potential volume done. Most of our accounts will fall in the Contract Dealer class, some in the Distributor and eventually we will have one or two in the Service Distributor classification. Brooks-Huff is a Service Distributor. In order that there be no misunderstandings in the future, it will be set up that Brooks-Huff can sell a Service Distributor account and Goodyear will rebate the 2-7% discounts earned from Distributor. If this matter has not been brought up of course he would have been unable to sell such an account.

Very definite committments for the rest of this year have been received regarding supplies of batteries. We will be very surely allocated up to 1000 batteries for the rest of this year. Mr. Hardy made this committment. It is interesting to note that 2100 units have been allocated in complete size ranges. Half were shipped March 17 and have been received at Mt. Royal warehouse and the other

half were shipped yesterday. So the supply seems adequate for right now. While this is not a battery season right now, still I feel it is the one thing we can put immediate effort on and I am lining up a battery drive. Portfolios for our salesmen have been ordered will not be available until after Apr. 1st.

It has been agreed that Akron will handle all mailings on Tires, Batteries and Car & Home Supplies. As soon as lists can be compiled listing the different items each dealer handles, this mailing program will be instituted. I feel this is a much better method than for Brooks, Goodyear or Sherwood salesmen attempt to handle it. I am sure the information would not reach the dealers promptly and efficiently. Committments have been made from Akron. (Per Ford Cameron).

On Monday, Mar. 20, I further went over the plan with Hardy who at that time wanted to distribute through the Service Store. I would not agree to separate the distribution of tires and batteries and again definite commitments of 1000 per month were made.

3896 COMMISSION EXHIBIT NO. 415 A-B.

March 29, 1944

Subject

Goodyear Tire & Rubber Co.

Mr. DeHoff,

c.c. Mr. John R. Sherwood.

On Monday & Tuesday, Mar. 20 and 21st, further conferences were held with the Goodyear representatives. During this time a complete listing of all our dealers typed on 3x3 cards were presented. This is the list from which we will follow up sales of all Goodyear items and on which we will depend for checking of sales and estimating of

commissions. We have presented every retail account on Sherwood books including Leased outlets, Divided and Undivided Accounts, Agents and Distributors. In order that we may capture all our rightful profits we have listed dealers as well as distributors or agents. I did this because in certain instances the dealer will short circuit the agent and buy direct from the Goodyear Store. It is self evident that in cases of this nature which we could not control we would be placed in a position of losing certain commissions. Under the present agreement these accounts will be checked both ways and we will be insured against any loss of this nature.

As I suspicioned and foresaw, the chief discussion centered about two of the best accounts—namely, Armstrong and Dunn and Seibert. I will not go into details, enough to say that after the smoke lifted I was told I had made a very masterful presentation of our side. Before I left I had them committed to Dunn & Seibert 100% and at 10% commission. The other account was committed if we would accept and after conferring with Mr. DeHoff, who graciously admitted we would I later informed them and the outcome of the discussions is that we will share or receive commissions from all of the accounts we have presented them. (Before I proceed let me say that I apologize for the personal allusions in this paragraph and I do not like throwing of boomerang bouquets.) On the Armstrong account we should only expect to receive 7½% of his purchases from Goodyear.

These accounts were then assigned by Goodyear and the writer to Goodyear salesmen and Goodyear distributors. We will know just who will supply each account and who will contact each from Goodyear. This will be good information to have for organizational as well as promotional purposes.

The cards have been handed back to me for further edit-

ing and securing of Trade Names, Proprietors, etc. After this and from this list we will develop lists for Akron of all dealers and will indicate whether we want them
3898 to receive Tire information, Battery information, Car & home Supply information or any combination of these three departments. This is being worked upon.

It might be well to state right here that we are to receive our first Sales Report on or about May 1st which will be for the month of March. This is due to the fact Brooks-Huff and the other fellows have until the tenth of the following month in which to report sales, after which the Goodyear accounting offices will have to audit, check and compile a complete report which will be presented to us. So it does seem physically inpossible to get a report much sooner. I have requested that we be given a statement each month instead of the 60 day period mentioned at one time. We must have a 30 day report in order to follow up and get behind certain dealers for sales promotional reasons. This has been agreed to.

As soon as possible we will allocate all the Brooks-Huff accounts to his three salesmen and then they should be in turn allocated to our people.

Fred D. McCauley.

3900 COMMISSION EXHIBIT NO. 416.

Sherwood Brothers Incorporated

Inter-Office Correspondence.

To Mr. DeHoff,
c.c Mr. John R. Sherwood

Date March 29, 1944.

File Reference

Subject Goodyear.

On Monday, March 27th, I presented and discussed with John Huff our whole picture. He is very enthusiastic and cooperative as he certainly should be. As stated before he will assign all of our important accounts to his three salesmen who will immediately, or as soon as opportune start working same from the angle of putting in a bank stock, others to increase their battery and tire inventories, etc., and of course since we actually have batteries, they will push this merchandise and attempt to secure new dealers.

Inventories of tires needed right now in the various sizes were compiled and we retired to Goodyear to formulate some concrete plans for getting additional tire merchandise to us following the committments made by Mr. Gaylord. Mr. Doolittle after examining the list which also contained also an examination of the tires wanted as against those needed, doubled the largest order (tires wanted) and sent it to Akron. This was done in order to take proper care of the territories. The rest you know about. I have written to Mr. Gaylord urging delivery of this merchandise and John R. has followed it up most capably.

Not for the sake of alarm but only that all angles may be

considered I throw out that at some future date it is entirely possible, and maybe probable that Huff might go to a competitive brand which would make him a direct competitor of ours. In all probability that would be United States. Again, he could supply United States to all his other accounts, keeping our accounts Goodyear. If and when that time comes, we would have to move fast and to be sure I feel we would meet the emergency.

The only other matter I believe is pertinent at this time is we are endeavoring to secure 200 tire certificates from Akron at a price of $2.00 per. I think we will get them and this will enable certain of our dealers to keep a larger inventory on hand and preclude the loss of sales.

John Huff has committed himself to distributing all the order we have just put in to Akron to our accounts, as well as allotting 75% of all passenger tires received by him to Sherwood accounts.

Fred D. McCauley.

3902 COMMISSION EXHIBIT NO. 417.

Sherwood Brothers Incorporated

Inter-Office Correspondence

Date March 21, 1944.

To Mr. C. Roland DeHoff,
c.c. Mr. John R. Sherwood

File Reference

Subject Goodyear Commissions

Goodyear report sheets are now being typed by the Baltimore District Office showing Proprietor, Trade Name, Address, Discount or Commission on All Other Purchases Except Car & Home Supplies, Commission on Car and

Home Supplies and Supply Point or Distributor. The master sheet will enumerate the discount that applies while all other reports will give actual Commission figures for each account.

I think it well to set down in writing what discounts (Rate) we expect to receive so there can be no misunderstanding later. They are as follows:

	Commission on Total Purchases
G. D. Armstrong & F. A. Welty	7½%
All other accounts including Dunn & Seibert and all accounts supplied by Brooks-Huff Tire Co.	10%

The reason for the difference is that the first two named accounts are Agents of ours and the procedure in handling Commission Plan for Oil Companies provides for this differential.

While acceptable to me it is hard to reconcile Goodyear's reasoning in this connection and I have been able to get no logical explanations of it from Mr. Doolittle other than it is the cut and dried formula.

Fred D. McCauley.

3904 COMMISSION EXHIBIT NO. 418A-B.

July 13, 1944

Mr. Ted Hardy
Manager—Battery Department
Goodyear Tire & Rubber Co.
Akron, Ohio

Dear Ted:

Our battery campaign is over and I would like to give you a brief summary of the results obtained.

First, I want to thank you as well as Mr. Doolittle for arranging to have that fine gentleman and excellent salesman, Mr. Sellers, come up and spend a week with us and get the campaign started. I know it was out of the ordinary to ask Mr. Sellers to assist us in a retail selling campaign but it was largely through his efforts in pepping the boys up and outlining sales details of the campaign that we attained the success we did. I cannot speak too highly about Mr. Sellers. He is sincere, hard working, friendly and he knows his business. Unfortunately, I cannot say that for too many salesmen that I know. He certainly made a hit with all of our salesmen as well as our executives and I think you should be proud to have a man of this calibre working for you. We are eagerly looking forward to Mr. Sellers' early return to Baltimore.

As you know, I was most anxious to have Mr. Sellers' attention and cooperation with us re[illegible]ded and I had stated at the beginning of the campaign that I would be very happy to present him with an order for 500 batteries from Brooks Huff Tire Company at the end of the week. I am now happy to state that before the week was out, Mr. Sellers had secured an order for one carload of Goodyear batteries from Mr. Huff of the Brook Huff Tire Com-

pany. That carload of Goodyear batteries has been sold and additional orders placed.

The final results of the sales campaign which ran into the second week are as follows:

89 of the Delco Testers were sold to Sherwood dealers along with a total of 913 Goodyear batteries.

This means that instead of one out of ten of our better Sherwood dealers handling Goodyear batteries, we now have eight out of ten of our better dealers stocking and selling Goodyear. You will be interested to know, I am sure, that already a great many of these new Goodyear battery accounts have reordered and are really co-
3906 operating with us and are going to town. It will now be our job to keep the new Goodyear battery accounts in line and I feel sure that we are capable of doing just that.

I think the job was more outstanding because it was done during the worst battery selling month of the year and while I have not heard your reaction to the campaign directly, I feel sure that you are happy to know that we saved the battery allocation for the Baltimore district in July.

With kindest regards and best wishes—

Sincerely,

Sherwood Brothers Incorporated,
Fred D. McCauley,
Mgr. Tire & Merchandise Division.

(Illegible)

c.c. Mr. Doolittle
Mr. John R. Sherwood
Mr. DeHoff
Mr. Gottman
Mr. Sellers

3908 COMMISSION EXHIBIT NO. 419.

Copy for Mr. S. A. Gaylord
Mr. Fred McCauley

July 27, 1944

Mr. Butler Doolittle
Goodyear Tire and Rubber Company
Mt. Royal Ave. & Oliver St.
Baltimore, 17, Md.

Dear Butler:

We are making some rather important changes in our company setup and distribution which I want to tell you about.

Effective August 1 we are transferring to the Sinclair Refining Company all of our business in every respect in Washington and we in turn are getting out of the Washington territory completely. Sinclair will convert the brand names of Richfield to the corresponding brands of Sinclair. Sinclair, of course, know about our relationship with Goodyear and I have sent to them a list of the locations which we have on your approved list, which locations are within our Washington territory being turned over to Sinclair. For your information I am sending you also a copy of this list. Goodyear presumably will transfer these locations from Sherwood's list to Sinclair's list for the development of commissions, and so on.

On September 1 Sherwood is going to take over all of the Sinclair business in the State of Maryland and the Eastern Shore of Virginia. As soon as that is done we will develop a list of the locations which are to be put on the Goodyear approved list. We have a big job to do at these locations in developing merchandise sales because Sinclair has done very little in the past, but I am sure that

as time goes on we will be able to bring those locations around in good shape.

We also are going to change all Richfield brands to corresponding Sinclair brands. This will give use a very fine business in Maryland and give us a real opportunity for development in the future. I consider it a very fine forward step in total, although I do hate to lose the nice Goodyear business which we have developed in Washington; however we can't have the cake and eat it too. I am sure we will be able to replace that volume in Maryland before too much time goes by.

For his information I am sending a copy of this letter to Mr. Gaylord at Akron.

With kindest personal regards, I am—

Yours sincerely,

3910 COMMISSION EXHIBIT NO. 420A-B.

July 29, 1944

Mr. John B. Mann
Goodyear Tire & Rubber Co.
Mt. Royal Ave. & Oliver St.
Baltimore, Md.

Dear John:

Because of the importance of the change through which our Company is headed so that you might be generally informed of what is taking place I am sending you this memorandum at this time in spite of the fact that all of the details have not yet been worked out and developed.

In recent months we have devoted a great deal of effort to the study of our long range future. Because of development plans for the future now being made by Sinclair we have decided that our company will be considerably better off in the long run handling the Sinclair brands than handling the Richfield brands.

In order to accomplish this change many problems had to be solved. We have worked out a very splendid program with which I am very much pleased and I wish to pass it on to you in its present state as follows:

1. We are, effective August 1, 1944, transferring to Sinclair all of our Washington business and operations. This includes all of our properties, equipment, accounts, and everything else. It means that we will not have any participation whatever in any business or operations or problems involved in the territory formerly covered by our Washington Branch.

In Washington, Sinclair will convert all Richfield brands to their corresponding Sinclair brands. Our personnel will be transferred to the Sinclair organization.

2. In exchange for Washington, our Company will be given, effective September 1, 1944, the entire State of Maryland; the State line will be approximately our territory boundary. We will also include the Eastern Shore of Virginia in our territory. Sinclair will, of course, retain in Washington that part of Maryland which comprises the Washington metropolitan area.

In Maryland all of the existing Sinclair business will be transferred to Sherwood; consisting of fifteen agencies and two distributors. At the same time we will convert all of our Richfield brands to corresponding Sinclair brands. Our established Sherwood brands will, of course, not be changed.

3912 All of this will actually give our Company a decided boost in gasoline gallonage. The Sinclair gallonage is to a large extent consumer business, principally with farmers in the fine agricultural parts of our State; consequently their business fits in in a very complementary way with ours. It will give us a better rounded business than we could possibly expect to develop except through many years of hard effort.

As far as Sinclair public acceptance is concerned, we should find that with these changes it will be very materially improved and I feel that it will promptly exceed the public acceptance for Richfield. You may be pleased to know that according to the Maryland gasoline tax records our Company will be in second place, which is something that should make us feel mighty good.

3. There is under way a plan for decentralizing certain authorities and responsibilities concerning the operations of our Company. We expect to be given greater local authority. I am much pleased with this phase of the change because it should enable us to become, even more than ever, one big happy business family.

Mr. John R. Sherwood has told our people in New York that we were going to show them the finest marketing operation in the entire Sinclair organization. I know we can do it and I know that with this challenging, even exciting prospect for the future I can count on your wholehearted support in the days of hard work which lie ahead.

Mr. John R. Sherwood has already written to Mr. Doolittle concerning this change and asked him to remit sales figures on the Washington accounts after August 1 to Sinclair Refining Company instead of to Sherwood Brothers. This means that after August 1 you will completely forget the Washington territory. However, I shall still expect to receive the same and even more merchandise than before due to this fact that we will take on a much larger chunk of business than we are turning loose in Washington.

With kindest regards and best wishes—

Yours very truly

Sherwood Brothers Incorporated

Fred D. McCauley

Mgr., Tire & Merchandise Dept.

3914 COMMISSION EXHIBIT NO. 421.

August 19, 1944

Mr. Butler Doolittle, District Manager
Goodyear Tire & Rubber Company
Mt. Royal Ave. & Oliver St.
Baltimore 17, Md.

Sinclair Change-Over Goodyear Tire & Rubber Co.

Dear Mr. Doolittle:

Following up our conversation a few days ago and in an effort to clarify the situation, I would like to set down my thoughts concerning Goodyear quotas in Washington and the State of Maryland.

First, let me say that we cannot deprive the Washington dealers of the tires they have been getting even if it means taking their regular 15% of our total quota from us.

However, we are taking on somewhere around 290 additional Sinclair dealers in Maryland and we will want to have them handle Goodyear tires and batteries and other merchandise as soon as possible, therefore I would consider it very fair if Goodyear could arrange to let us have for Sherwood Brothers what we have been getting in the past but applying that quota only to Maryland. This would mean that Goodyear would set up an additional quota to take care of the number of tires which have been allocated to Washington, only they would set their quota up for the Sinclair dealers in Washington.

I prefer to think about this problem from the angle not of increasing the Sherwood quota but allowing it to remain at the same ceiling it has always been while any increase in quota should be considered for the Sinclair group of stations in Washington. I hope you get my point there.

I hope in the very near future to receive a complete list of the Sinclair dealers which we will take on in Maryland as of September 1, so that I can register them with your company. I hope to be able to forward this list to you in the very near future but in any event starting September 1, naturally I want to get commission on any Goodyear sales to any of our new Sinclair dealers.

Yours very truly,

Sherwood Brothers Incorporated

F. D. McCauley

Manager — Tire and Merchandise Dept.

FIMcC:CK

3916 COMMISSION EXHIBIT NO. 422 A-B.

Sherwood Brothers Incorporated

Inter-Office Correspondence

Date November 2, 1944

To Mr. Fred McCauley:

c.c. Mr. DeHoff

File Reference

Subject

I have noted with interest the survey form you have prepared for surveying the dealers in the agents' territories regarding tires, batteries, and merchandise. I suppose that our tire and merchandise program has been sufficiently explained to all of the agents so that they will know why we are making this survey and so that they will know relatively what additional information might be desirable to obtain such as past volume on tires, batteries, and merchandise, potential volume, just what is meant by budget selling, whether the agent thinks he can sell the particular

dealer on Goodyear tires and batteries, and on whatever lines of appliances and merchandise we might handle after the war. In any event, the form is a good starter and will give you some information.

It is my own opinion that all of our dealers throughout the territory should be undergoing a cultivation program starting right now to get them in tune mentally with the tire, battery, and merchandise program that we have in mind. It takes quite a little time to get over the first hurdles. Of course we expect to go over all of this with the agents when we get together for a meeting.

It might be too that we will have to plan meetings in each of the agents' territory to explain this program to the dealers themselves. The program will receive better impetus when we develop a plan for participation in the business by the agent. I suppose too you are asking each of the agents whether they are interested in going into this business from their viewpoint, whether it would be on a stocking basis for us, or a distributorship on their own account, or whatever other alternates there are.

I noticed too in your survey that you say nothing about store installations when they become available, in fact some installations are available now. Do you have catalogs to send to each of the dealers showing what may be coming along in the near future, or is it proposed that through the Sales Department each of the dealers will be contacted for development of this information.

In this whole matter I think it of paramount importance that we do not miss the broad view of this tire, battery, and merchandise program. We have in the State somewhere around 900 dealer outlets, each and every one of those, if it sells any gasoline at all, is a potential outlet for tires, batteries, or some kind of merchandise. Even if they sell one spark plug or one can of Utility Oil a year, I want that sale made. I want the merchandise on display, properly

displayed, well engineered and designed, and everything
else done to really make each of these 900 outlets
3918 produce the best overall volume. I know the agents
are busy with shortages, quotas, and so on. So are
the dealers, but there is nothing to make the time go by
more profitably or quickly than to be actively engaged in
a good constructive forward looking program.

Just how you and Mr. DeHoff are planning on carrying this down through the organization to the dealer himself I do not right now know, but it is my request that you develop a program, set up a schedule, and really get going. Of course the same thing applies even in greater degree to the surveying and developing of our dealers in Baltimore. I would like to see your program and schedule when you have it developed.

Very truly yours,

JRS:W John R. Sherwood.

3920 COMMISSION EXHIBIT NO. 423A-C.

The Goodyear Tire & Rubber Company, Inc.
Mt. Royal Ave. & Oliver St.
Baltimore 17, Md.

May 29th, 1945.

Mr Fred McCauley
Sherwood Brothers, Inc.
O'Sullivan Bldg
10 Light Street
Baltimore, Maryland.

Dear Sir:

Pursuant to our discussion concerning the possibility of authorizing your agents to become direct Goodyear dealers, I wish to place on record the outcome of our conference.

Our principal difficulty rests in that part of our territory known as the Del-Mar-Va Peninsula, plus the area covered by Kunkel Service Company of Bel Air, Md.

The consequence is that we find ourselves unable to set up as tire dealers your agents in the following territories—

2 Counties in Virginia at the tip of the aforementioned Peninsula.

Also Snow Hill, Md.
Berlin, Md.
Cambridge, Md.
Georgetown, Del.
Seaford, Del.
Dover, Del.
Smyrna, Del.
Easton, Md.
Chestertown, Md.
Elkton, Md.
Havre de Grace, Md.

The one territory on the Peninsula which we can approve, namely, Denton, Md., we recommend against appointing your agent as a tire dealer for the following reason. The Goodyear dealer handling this territory, namely, Earl Crouse, is your agent's brother.

Mr Crouse operates a Sherwood-Sinclair Station and consequently you receive credit for all of the Goodyear tires he sells. He is definitely interested in selling Goodyear tires to all of his brother's gasoline accounts and already has his brother's cooperation in performing this function.

Since the present arrangement, thereby, is apparently entirely satisfactory to both Sherwood Brothers and
3922 Goodyear, we feel that nothing would be gained by any change. If, however, you find it to your advantage to appoint this agent as a tire dealer, then you may consider that such action has our approval.

The territories in which we can approve your agents as tire dealers are—

Westminster, Md.
Frederick, Md. (2 agents)
Hagerstown, Md.
Hancock, Md.
Laytonsville, Md.
La Plata, Md.

This covers all the agency territories presented to me as represented by the territorial map which we studied, with the exception of one territory, namely, Cockeysville, Md.

I have asked that we not be required to give a "yes" or "no" for this territory until a later date and further discussion. The reason in this case is that your Cockeysville territory covers a very broad area about two thirds of which we could readily approve.

The eastern third of this area overlaps the territory

presently assigned to Kunkel Service Company of Bel Air and embraces a large number of towns in which Kunkel already has active Goodyear dealerships established, some of which are Sherwood-Sinclair outlets.

It is unfortunate that we are unable to approve the numerous territories covered by your agents on the Del-Mar-Va Peninsula, but we would like to make one rather positive statement of opinion pertaining to that section of Maryland—the Virginia part of this territory we can offer no solution for.

We believe, sincerely, that if we are permitted to operate in the Maryland and Delaware portion of the Del-Mar-Va Peninsula on the same basis that we have operated up to the present time, which is supplying your stations thru our already established dealers, that we will, Post War-wise, be able to realize for you and ourselves almost as large a volume of tire business as we would were your agents appointed tire dealers.

This we believe we would accomplish by virtue of the fact that in this section of Maryland we have an unusually fine group of active, aggressive and longstanding Goodyear dealerships. We would do all in our power to encourage these dealers to render to your service stations unusual service and cooperation, and, furthermore, we would take it as our personal responsibility to follow thru closely on all matters of service, solicitation and general assistance to your service stations in this territory.

3924 In short, we value your business most sincerely.

We believe that there is a great future advantage for both Goodyear and Sherwood to continue the fine exclusive relationship which has existed over the past few years, and we believe that our efforts to cooperate during the past period of the World War proves the sincerity of this feeling.

We do not feel that any great advantage could be gained for Sherwood Brothers other than a possible psychological advantage in appointing agents in the Eastern Shore Section of Maryland as direct tire dealers.

We invite your consideration to this viewpoint.

Very truly yours,
Butler Doolittle,
District Manager

Butler Doolittle
mh

CC—L H Shepherd, Mgr S E Div
Atlanta, Ga
S A Gaylord, Mgr Petroleum Sales
Akron, Ohio

3926 COMMISSION EXHIBIT NO. 424.

c.c. Mr. John R. Sherwood
Mr. DeHoff
Mr. Landon

June 6, 1945.

Mr. John D. Mann
Special Petroleum Sales Representative
Goodyear Tire & Rubber Co.
Baltimore 17, Md.

Dear John:

As you know, Mr. Doolittle has already approved the appointment of our agents as Goodyear dealers providing their territory lies in the area west and southwest of a line drawn northward from Baltimore City to the Pennsylvania State Line.

It is my wish now to enter into correspondence, conferences or discussions with Mr. D. E. Randall, Goodyear

District Manager, Pittsburgh, Pa. in an effort to have him commit himself to approving Messrs. Garland and Buchholts in Cumberland as Goodyear tire dealers.

When Mr. Shephard was here, he very definitely stated that there would be no opposition to the appointment of our agents in a territory where a Goodyear Service Store was located. I realize that he has no jurisdiction over the Pittsburgh district but feel that his statement was in line with general Goodyear policy. Since our agent and our distributor in Cumberland lie within such a territory, I can see no reason why Mr. Randall would not give his approval to setting these people up as Goodyear distributors.

I shall appreciate it if you will give this matter some thought and act promptly in order to secure a favorable answer to our request. You may want to write Mr. Randall or have Mr. Doolittle write Mr. Randall, or go to see him, or arrange a conference between the three of us but in any event, I would like to get the thing started and if there is any way that I can be of help or assistance, do not hesitate to call upon me.

Yours very truly,

Sherwood Brothers Incorporated
Fred D. McCauley
Illegible

Illegible

3928 COMMISSION EXHIBIT NO. 425A-B.

December 31, 1945

Mr. John D. Mann,
Special Petroleum Sales Representative
Goodyear Tire & Rubber Co. Inc.
Mt. Royal Ave. & Oliver St.
Baltimore 17, Md.

Dear John:

I would like for you to develop some information for me just as soon as possible after receipt of this letter. The information that I am requesting is a complete outline of how far and to what extent the Goodyear Tire & Rubber Company will assist and participate in an advertising campaign for 1946.

I really should have asked about this before and that is why I ask your prompt assistance in assembling all facts and data concerning a 1946 advertising campaign.

As you know, we have been planning for some time on doing some advertising on Goodyear products in connection with our dealer outlets. The time has come when we must have something definite from Goodyear in order to intelligently plan and carry out the program to a successful conclusion. It has been my understanding that it is Goodyear's practice to match dollar for dollar the advertising money spent by Goodyear dealers. Of course, in this instance I am sure you would classify Sherwood Brothers Incorporated as a dealer because it is our intention to advertise for all of our stations. By that, of course, I mean we would advertise for and in the name of Sherwood-Goodyear Dealers. The program would be centrally planned and coordinated and the bills would be paid by Sherwood Brothers Incorporated.

By handling the whole advertising campaign instead of leaving it up to individual dealers I feel it would help the sale of Goodyear products through our dealer outlets and would encourage more of our dealers to handle the Goodyear line.

It may be of interest for you to know that Mr. John R. Sherwood is personally willing to see our company spend some of its own money in order to promote the entire Goodyear setup with our dealers in all eligible territories and particularly here in Baltimore.

Now what I would like for you to do is to try and tie this whole idea together by giving me concrete facts, proposals, schedules, etc. The information I want would include realistic and specific plans on just how a co-
3930 operative advertising campaign would work and how it would be applied. I would like to know what amount of money Goodyear would be willing to put up. Should we anticipate a lump sum to be spent over the year or would it be on some sort of a sharing percentage basis related to total sales to our Sherwood dealers.

I would also like to know just how far Goodyear will cooperate in supplying electric signs for our dealer outlets. These would be signs placed either on the building or in the station windows or perhaps on sign poles at some other location.

To sum up I would like to have the whole advertising picture developed in a concrete manner so we would know exactly how far and to what extent we could count on Goodyear's help in both newspaper and radio as well as outdoor advertising in form of signs, electric signs, displays and other features.

It is very necessary that prompt action be taken on this request so that we will be able to do our planning and so that we will be able to swing into action if, as and

whom the supply of merchandise reaches the point where we can profitably do some advertising as part of our general merchandising scheme.

Sincerely yours

Sherwood Brothers Incorporated

Fred D. McCauley

FDM.mt *Manager—Tire & Merchandise Division*

c.c. Mr. Joseph Keeman
Ass't. District Mgr.
Goodyear Tire & Rubber Co.
Mr. John R. Sherwood
Mr. G. R. DeHoff
Mr. R. K. Johnson

3932 COMMISSION EXHIBIT NO. 426.

January 15, 1946

Mr. J. A. Lewin
Manager—Dealer Department
Goodyear Tire & Rubber Co., Inc.
Akron, Ohio

Dear Jack:

All of our Sherwood men have arrived safely home after a wonderful trip to visit the Goodyear people in Akron. I hasten to tell you that in my opinion the trip was most successful and I firmly believe that it will actually produce the results that I anticipated.

Again as I expected, you were the perfect host. All of the men are loud in their praises for the efficient manner in which you prepared the three day program as well as the fine entertainment features you provided for them. Jack, I appreciate this greatly and I thank you sincerely for your very splendid cooperation.

I am sure that these fellows have actually caught the enthusiasm of you and your fellow workers as I always do on my visits to Akron. Our men were particularly impressed with Vern Jones department and the store displays on the sixth floor of Goodyear Hall. That is just as I planned and wanted it.

While the boys were in Akron, we did a lot of conniving here and I know that you will be interested to know that they have immediately begun a campaign to sell Goodyear car and home supplies to our dealers and, briefly, the plan is that each territory salesman must bring in to this office every two weeks an order for merchandise from every Sherwood-Goodyear car and home merchandise distributor. Sales records will be kept of each salesman's efforts and I assure you that Goodyear car and home merchandise sales will be accelerated greatly in the year 1946.

We intend to hold up our end of this partnership, we expect to work for what we earn and I am confident that given the proper tools by you fellows, we will produce a job which you will be proud of.

Again I sincerely thank you for your kindness and courtesy to our Sherwood boys and they send their appreciation and kindest regards to a swell guy—Jack Lewin.

Sincerely yours,

Sherwood Brothers Incorporated

Fred D. McCauley

FDMcC:CK *Manager—Tire & Mdse. Div.*

3933 COMMISSION EXHIBIT NO. 427.

January 23, 1946

c.c. Mr. DeHoff
Mr. Landon
Mr. Clarke

Mr. John B. Mann, Special Petroleum Representative
The Goodyear Tire & Rubber Co., Inc.
Mt. Royal Ave. & Oliver St.
Baltimore 17, Md.

Dear John:

I just finished talking to our agent, Mr. Garland, at Chestertown, Maryland and he informs me that a Mr. Davis has taken over the station formerly operated by Mr. Norris Crewes.

Mr. Garland informs me that Mr. Davis is a returned air force pilot and from his description of the fellow, he must be right on the ball. Mr. Davis and Mr. Garland, as well as myself, are very very anxious to get this fellow set up in the tire business. Therefore, please arrange some way to have as many tires as possible, as well as tubes, allocated and tagged for Kunkel's Service Company to be delivered to Mr. Davis in Chestertown.

This is the first request of its kind that we have had from our agent at Chestertown, and it is my desire to show him that we intend to cooperate with him promptly and efficiently.

In addition, I would like for you to make arrangements with Ed Clario to run down there, measure up the place, sell him the necessary store fixtures and establish him as a Sherwood Goodyear Car and Home Merchandise Distributor.

It is very important that we set up these new dealers at the very beginning, therefore, the sooner you can call upon this account with our Mr. Clario, the much better it will work out for all of us.

Please advise me promptly what you are able to accomplish in the tire matter so that I may advise Mr. Garland in Chestertown.

Sincerely yours

Sherwood Brothers Incorporated

Fred D. McCauley

FDM:S *Manager, Tire & Merchandise Div.*

3934 COMMISSION EXHIBIT NO. 428.

March 6, 1946

Mr. Paul Spahr, Manager
Goodyear Tire & Rubber Co. Warehouse
910 Brown St.
Philadelphia—23, Pa.

Dear Paul:

Your letter of February 27 to which you attached the Goodyear Sales Department letter concerning the availability of garden tools was very much appreciated. I am particularly pleased with your fine cooperation and your willingness to help us out by giving us first call on all receipts of garden tools from now until April 1. It is certainly nice to have confidence in a friend and I am satisfied that you are standing by ready to do all in your power to dig us out of this hole in which we find ourselevs.

I appreciate your promptness in pulling the garden tool order for R. J. Papa located at Fayette & Exeter Streets, Baltimore.

Next week we are going to Akron for a few days and

upon our return maybe we will have something interesting to talk to you about. At any rate, I hope so.

You will be interested to know that we closed the month of February with $30,524.00 in Car and Home orders turned in to Goodyear. This means that Johnnie Mann lost his bet and we can look forward in the future to an honest-to-goodness big dinner. Strange to say, while losing his bet John Mann is just as happy about it as I am.

With kindest regards, I am

Sincerely yours,

Sherwood Brothers Incorporated

Fred D. McCauley

FDMcC:CK *Manager—Tire & Mdse. Div.*

c.c. Mr. DeHoff

3936 COMMISSION EXHIBIT NO. 429.

March 11, 1946

Miller Chevrolet Sales
Ellicott City
Maryland

Gentlemen:

Following is a list of towns in which you are free to solicit passenger car and truck tire sales as well as farm tire sales:

Daniels	Fulton	Lisbon
Annapolis Junction	Hanover	Marriottsville
Dorsey	Ilchester	Savage
Ellicott City	Jessups	West Friendship
	Woodstock	

The following list of dealers are at this time buying Goodyear Tires, and they wish you to solicit their business and supply their needs.

Shell Accounts

John Fyock—Glenelg, Md.
P. Olson—Frederick Rd., RFD Ellicott City, Md.
Kenneth Ridings—Hilton Hts., Columbia Pike, Ellicott City, Md.

Sherwood Accounts

G. A. C. Hodges—RiverRoad, Ellicott City, Md.
Parlett Motor Co.—Ellicott City, Md.
Marshall Sauter—By-Pass #40, Ellicott City, Md.
J. M. Sirk—Lisbon, Md.
Roger C. Wall—Ellicott City, Md.
West Friendship Garage—West Friendship, Md.

Very truly yours,

A. W. Littleton,
Field Representative.

AWL/n

3938 COMMISSION EXHIBIT NO. 430A.

August 6, 1946

As per your request of August 5, I am sending you herewith a copy of my memorandum to Mr. DeHoff and Mr. Jurgens dated December 7, 1945, which quotes from the letter of approval given us by our Directors to extend commissions on Goodyear merchandise to our agents to an extent not to exceed 4% of Goodyear's net billing price to the dealer. This should be sufficient for your files as to the authority for policy.

You also ask to have something specific in the form of a statement of the Company's plan and policy regarding this matter so you can set up your accounting handling accordingly. I would suggest that you take this matter up with Mr. DeHoff and Mr. McCauley because they know the de-

tails better than I do. It is our basic policy, for your information, to pay 3% to our commission agents on any Goodyear merchandise sold to our dealers within the territory assigned to each particular agent. In other words, out of our 10% commission, which is paid to us by Goodyear, 3% goes to the agent in the territory, leaving us 7% on that particular transaction. This would mean, I would think, that in each agency operation Goodyear billings to our dealers would be segregated by territories. Out of the commission paid us we would then pay to the agent the 3%. Of course the 3% is based on total, just as our 10% is. The agent would, in other words, receive 30% of our 10%. I would imagine that a routine would be set up whereby our agents would not receive their commissions until we had actually received our commissions from Goodyear.

If there is anything further I can do, let me know.

John R. Sherwood.

JRS:W

3940 COMMISSION EXHIBIT NO. 430B.

December 7, 1945

Mr. DeHoff:
c.c. Mr. Jurgens

I have received a letter from Mr. Beddingfield dated December 4 on the subject of TBA commission for commission agents. It reads as follows:

"The Directors have approved our sharing your commissions received from Goodyear on sale of TBA merchandise with your commission agents subject to the following:

1. Commission to be paid to the agent not to exceed 4% of Goodyear's net billing price to the dealer.

2. Commission to be paid to the agent based on volume and sales in each agent's territory.

"This authority is given with the understanding that no commission will be paid to commission agents who are dealers in TBA merchandise. The Robinson Patman Law specifically prohibits passing on of commissions to dealers."

"In view of this approval we can now specifically get together in our own minds and decide what we want to do. Personally I am in favor of passing along a 3% commission to our agents who are not already distributors or dealers in Goodyear merchandise; however I think we want to work up the instructions and philosophies back of this move and have everything clear so that we can make it part of a real program for the development of interest in the Goodyear line by our agents and, through them, with our dealers, so that when merchandise actually begins to flow we will have the largest possible number of outfets at the delaer level.

John R. Sherwood.

JRS:W

3942 COMMISSION EXHIBIT NO. 431.

Sherwood Brothers Incorporated,
10 Light Street,
Baltimore 3, Md.

July 30, 1946

This letter sets forth the complete understanding to become effective between us on August 1, 1946, covering the sale of Goodyear Tires, Goodyear Batteries and Goodyear Car & Home Merchandise through our dealers in the territory assigned to you. The arrangement is that you will actively assist in selling and promoting the sale of the above mentioned merchandise to and through dealers handling our petroleum products and will cooperate with Goodyear's representatives and ours in the promotion of such sales. Orders taken by you are subject to the approval or rejection by either Goodyear or our company.

On sales so made we will pay you a commission of 3%, computed on the net amount of invoices excluding the tax and so called "add-on" shown separately thereon after deducting all applicable discounts and allowances other than cash discounts and quantity bonus whether shown on the invoice or subsequently allowed. Sales records furnished us by Goodyear will be conclusive between you and our company as to the basis for computation of any such commission and payment thereof will be made as soon as practical after receiving our monthly statement from Goodyear.

Our company may from time to time authorize payment to you of commissions on the sale of certain merchandise other than that supplied by Goodyear. In such event you will be notified by letter as to the specific items and rates of commission to apply.

This understanding between us shall remain in effect from month to month unless terminated by either of us on 30 days notice to the other, but shall be automatically terminated upon the termination of the Commission Agency Agreement now existing between us covering the sale of petroleum products or upon any termination of the arrangement now in effect between our company and the Goodyear Tire & Rubber Company. Commissions earned prior to the effective date of any such termination will be paid to you in due course.

Please sign and return two copies of this letter as your assent to this arrangement and retain the third copy.

Yours very truly,
Sherwood Brothers Incorporated,
Vice President.

ML

Accepted:

.....
Agent.

3944 COMMISSION EXHIBIT NO. 432.

August 20, 1946

Mr. H. G. Harper, Manager
Associated Merchandise
Goodyear Tire & Rubber Company
Akron 16, Ohio.

Dear Henry:

I hope you will have an opportunity to see Fred McCauley when he pays a visit to Akron this week. I want him to keep in close touch with Goodyear and keep you apprised of the many problems that confront us in the working out of our Goodyear relationships and in working out

the construction of a firm foundation for the building of this business in the future.

Mr. H. F. Sinclair paid us a visit yesterday and spent the entire day inspecting our service stations and operations. He was rather complimentary but he let us know in no uncertain terms that he expects the Sherwood organizations in Maryland to act as a spark plug for Sinclair operations all over the country, particularly as far as merchandising and the TBA program is concerned. In order to do this we have got to have your full and strong cooperation, not only in the matter of ideas but also in the supply of merchandise and in the service of supplies.

This brings us to the matter of warehouse again. I know that you have been working hard to secure a warehouse in Baltimore and through no fault of yours the progress has moved forward slowly. I am familiar with the local real estate situation and understand the problems that must confront you in such an undertaking. We here would be glad to give you any possible assistance through our Real Estate Department if you care to have us attempt to do so. Of course we would probably run into the same thing that you have encountered. As you know, I am still very keen about this whole thing. We are moving steadily in the development of stores and in improving the quality of our outlets. We have received appropriations for the development of new stations in our entire territory. The program is definitely forward-looking. Our new stations will have considerably larger stores than the old ones. We are in this thing for keeps. I do hope that you will do everything possible to keep this program going.

With my very warmest regards to you all, I am

Yours sincerely,

John R. Sherwood,
Vice President.

JRS:W

3946 COMMISSION EXHIBIT NO. 433.

Mr. John D. Mann June 3, 1947
Goodyear Tire & Rubber Co., Inc.
Mt. Royal Ave. & Oliver St.
Baltimore 17, Md.

Dear John:

Attached please find car and home merchandise order for James Thompson as well as memo from Elmore Evans. Mr. Thompson sent in his financial statement to Goodyear some time ago and I wish you would endeavor to have this little order approved at distributor price and passed by your Credit Department. Elmore had worked hard on this account and the opportune time to get these accounts started with Goodyear is right after the lessee takes over the station.

In this respect, I think policy should be established by you and Butler regarding stations which are changed over. When one lessee takes over from another, they buy all of the merchandise on hand at the location, therefore, in most instances where the old lessee has already been approved as a car and home merchandise distributor, it is impossible for the new lessee to qualify by giving us a $250.00 order.

Under the circumstances, I wish you would indicate to me that you will approve the new lessee on the basis of Goodyear car and home merchandise on hand and also the fact that the old lessee was a car and home distributor. In other words, you would transfer the car and home merchandise distributorship from one lessee to another. This would be a big help and I wish you would develop this for me as a matter of future policy.

Sincerely yours,

Sherwood Brothers Incorporated

McC:CK Fred D. McCauley

Enc. *Manager, Tire & Mdse. Div.*

3948 COMMISSION EXHIBIT NO. 434A.

July 17, 1947

Mr. Howard Landon
c.c. Mr. DeHoff
Mr. Van Horn

John R. Brown
Cockeysville, Md.

With all the momentarily irrating things that happen during the day, it refreshes me here in the cool of the evening and makes me very happy to be able to report that most of the obstacles which have prevented us from signing up the subject agent as a Goodyear distributor have been overcome.

Butler Doolittle has finally given in and has agreed to franchise Brownie on the complete line of Goodyear products without any reservation or equivocation insofar as two or three accounts lying in Kunkel's territory are concerned. Mr. Kunkel, as I believe you all know, is the Goodyear distributor in Bel Air, Md. and has most of Harford and part of Carroll Counties.

Yesterday and again today Brownie further pledged me that he was going through with the deal and he was beginning to feel rather happy that he was falling in line with the Sherwood plan and he seemed enthusiastic over the fact that he would be in line 100% and would receive additional cooperation from this department which heretofore he has not been receiving.

Contracts, however, have not been signed yet but I think you should know some of the details at this time.

Brownie has on hand approximately $3,000.00 worth of

Firestone truck tires, most of which are in sizes which are very slow movers. It is imperative that he receive permission from Mr. Read, District Manager of Firestone, to return those tires to Firestone else he is stuck with them. Brownie owes Firestone some $1,800.00 for merchandise delivered last month and he is withholding payment until the truck tire matter is settled. He has been trying to arrange a conference with Mr. Read but has been unsuccessful up to this date.

The reason he will not sign or prefers not to sign with Goodyear at the present moment is so that he can truthfully tell Mr. Read that he has not signed with any other company because he feels that that question may be asked when he requests an O.K. to return the truck tires. I think his reasoning in this respect is very sound.

Goodyear is not supposed to deliver any tires to Brown unless they have a signed written agreement with him and they cannot possibly give him his full discount as a distributor until the whole deal is okayed by Mr. Sheppard, Goodyear's Division Manager in Atlanta, Ga.

3950 Brownie is completely out of the most popular size of passenger tires at this moment and, therefore, would like to have and has placed an order with me for 50—600 x 16 Goodyear tires.

Yesterday afternoon I suggested a way to work the deal out and Mr. Doolittle agreed to go along with me. My suggestion was to go ahead and ship Brownie the 50—600 x 16 Goodyear tires at regular contract dealer price and when the Firestone matter is squared away, we will date contract back and at that time reimburse him for all the discounts which he should rightfully have received before the contract was executed. We then immediately arranged with Mr. Burns, District Credit Manager, to extend a necessary amount of credit and this morning Brownie

okayed the whole deal—he has a complete understanding of it and seems to be very happy that he has made the move.

The tires will go forward to Brownie in the next day or two.

There is not much we can do now until Brownie gets straightened out with Firestone.

Any word of commendation which you may seep to Brownie in the interim will be most helpful and appreciated.

Fred. D. McCauley

McC:CK

3952 **COMMISSION EXHIBIT NO. 435.**

February 19, 1948

Mr. B. Lawson

c.c. Mr. DeHoff
Mr. Landon
Mr. Weller
Mr. Van Horn

Report of Goodyear TBA Commissions by Agency Territories

Total for year—1947

Agent	Territory	Volume	Commission
E. W. Parsons	Berlin, Md.	$ 13,410.00	$ 1,341.00
H. H. Malone	Cambridge, Md.	5,894.00	589.40
Thos. Bramble	Chestertown, Md.	5,837.00	583.70
J. R. Brown	Cockeysville, Md.	22,865.00	2,286.60
D. R. Fleming	Cumberland, Md.	2,036.00	203.60
G. D. Crouse	Denton, Md.	10,088.00	1,005.80
D. H. McMahon	Easton, Md.	10,552.00	1,055.20
J. M. McCool	Elkton, Md.	19,384.00	1,938.40
G. R. Shipley	Frederick, Md.	24,702.00	2,470.20
F. A. Welty	Hagerstown, Md.	19,605.00	1,960.50
D. R. Fleming	Hancock, Md.	8,176.00	817.00
C. C. Morgan	Havre de Grace, Md.	14,603.00	1,460.50
B. P. Simms	La Plata, Md.	15,956.00	1,595.60
G. D. Armstrong	Laytonsville, Md.	84,709.00	8,479.90
F. B. Parks	Quantico, Va.	—	—
~~J. C. Lindsay~~	Salisbury, Md.	14,689.00	1,466.90
D. B. Fleming	Westminster, Md.	335.00	33.50
Total Agents		$272,891.00	$27,289.10
Distributors			
H. C. Searborough	Snow Hills, Md.	463.00	48.30
Hill Brothers	Rock Hall, Md.	1,613.00	161.30
Total Distributors		2,096.00	209.60
Total Agents & Distributors		274,987.00	27,498.70
Percent to Total			37.70%
Baltimore		459,016.00	45,286.50
Percent to Total			62.22%
Grand Total		$734,003.00	~~$72,783.20~~

D. L. Sharrar

Fred D. McCauley

72,785.20

3954 COMMISSION EXHIBIT NO. 436.

February 2, 1949

Mr. B. Lawson

c.c. Mr. DeHoff
Mr. Landon
Mr. Weller
Mr. Van Horn

Report of Goodyear TBA Commissions by Agency Territories Year 1948

Agent	Territory	Volume	Commission
E. W. Parsons	Berlin, Md.	$ 10,539.00	$ 1,065.90
H. H. Malone	Cambridge, Md.	7,553.00	755.80
Thos. Bramble	Chestertown, Md.	1,813.00	181.80
J. R. Brown	Cockeysville, Md.	33,583.00	3,352.80
D. R. Fleming	Cumberland, Md.	3,913.00	391.30
G. D. Crouse	Denton, Md.	16,582.00	1,686.20
D. H. McMahon	Easton, Md.	5,821.00	582.10
J. M. McCool	Elkton, Md.	12,596.00	1,259.60
G. R. Shipley	Frederick, Md.	20,881.00	2,055.10
F. A. Welty	Hagerstown, Md.	11,018.00	1,101.80
D. R. Fleming	Hancock, Md.	7,213.00	721.30
C. C. Morgan	Havre de Grace, Md.	15,525.00	1,582.50
B. P. Simms	La Plata, Md.	22,836.00	2,283.50
G. D. Armstrong	Laytonsville, Md.	66,317.00	6,631.70
F. B. Parks	Onancock, Va.	50.00	5.00
J. C. Lindsay	Salisbury, Md.	5,892.00	589.20
D. B. Fleming	Westminster, Md.	66.00	6.60
Total Agents		$241,867.00	$24,158.70
Distributors			
H. C. Searborough	Snow Hill, Md.	—	—
Hill Bros.	Rock Hall, Md.	4,991.00	499.10
Total Distributors		4,991.00	499.10
Total Agents and Distributors		246,578.00	24,657.80
Percent to Total			33.91%
Baltimore		484,662.00	48,052.40
Percent to Total			66.09%
Grand Total		$731,240.00	$72,710.20

Fred D. McCauley

3956 COMMISSION EXHIBIT NO. 437.

April 30, 1948

Jackson Manufacturing Company
622 E. 3rd Street
Kansas City 6, Missouri

Gentlemen:

Last week when I was in Akron, Ohio for the purpose of discussing store fixture planning, with the Goodyear Tire & Rubber Company, Mr. Vernon Jones who heads the Goodyear Store Planning Department brought up the subject of Jackson Standards and Shelf Brackets. He explained the many advantages to be had in using your style fixtures and so impressed me that I requested the catalog which he had in his files.

He was of the opinion that any Goodyear dealer or associate dealer could purchase your products at the lowest price. May I explain in this connection that we as a petroleum company are associated with the Goodyear Tire & Rubber Company, Incorporated to the extent that they supply our dealer stations with TBA merchandise. We have our own Store Planning Department which works very closely with the Goodyear Store Planning Department. I believe this will qualify us to receive the lowest price offered.

We are planning on using your type standards and brackets extensively in our future station store planning jobs, and it will be necessary for us to have certain information from you so that we may plan accordingly.

Will you please send us your price lists and catalog covering store equipment, designing and also the availability of the standards and brackets. We would also like to

know the approximate time for delivery and whether f.o.b. your factory or delivered.

We will appreciate an early reply to this request as we have several jobs that we plan to use your equipment in planning the store setup.

Sincerely yours

Sherwood Brothers Incorporated
H. W. Van Horn
Merchandising Department

HWV:mt

3958 COMMISSION EXHIBIT NO. 438.

Mr. John Sause
c.c. Mr. Weller

September 23, 1947

Our lessee, Mr. Donnelly, located on the Washington Blvd. called in to our Credit Department one day last week and requested permission to mount a set of Goodrich tires on a customer's car who had one of our Sherwood C.I.C. cards.

He was refused because, as you know, this is not the policy of our company. The only merchandise that is to be sold on open account to any of our charge card customers is Goodyear merchandise with exception of certain accessories.

Therefore, will you contact this lessee and go over the whole situation with him and let us know if we can be of help to you in having a Goodyear representative call in order to secure an original stock of Goodyear tires, tubes and batteries.

Fred D. McCauley

McC:CK

3960 COMMISSION EXHIBIT NO. 439.

Weller

Sherwood Brothers Incorporated
10 Light Street
Baltimore 3, Md.

September 19, 1952

To: All Betholine-Sinclair Dealers
Authorized to Honor Credit Cards

Here is some real good news for you. It should help you increase your Goodyear tire and battery business.

Beginning October 1, 1952, you may sell New Goodyear passenger car tires, tubes and batteries on extended 30-60-90 day terms of payment, to holders of Sherwood and Sinclair unexpired credit cards.

Here is the procedure—please read carefully—

1—Confine such sales to New Goodyear passenger car tires, tubes and batteries mounted on the vehicle.

2—Prepare a separate charge ticket (Form SB-31) to cover each such sale. Do not include any other sales, such as gasoline or oil, on the same ticket. Insert, with red pencil, "30-60-90 Days" on the charge ticket in the space provided for "Order No." and be sure to show the license number.

3—It will be necessary that those instructions be followed precisely.

Expressing the hope that this will be of very material benefit to you—

Yours very sincerely,

G. R. DeHoff
Sales Manager

DoH:RK
650 9/52

c.c. All Sales Representatives and Others Concerned

3962 COMMISSION EXHIBIT NO. 440.

CIC—Sales

1952

January	$171,211.27
February	131,550.00
March	154,621.09
April	165,200.64
May	145,073.87
June	180,546.76
July	158,783.43
August	159,988.56
September	181,945.97
October	164,995.51
November	175,954.31
December	152,732.74
	$942,604.16

3962 COMMISSION EXHIBIT NO. 441.

The Goodyear Tire & Rubber Company, Inc.
Mt. Royal & Oliver Sts.
Baltimore 17, Md.

August 23rd, 1948

Mr. Fred D McCauley
Sherwood Brothers, Inc.
Baltimore Trust Building
Baltimore 3, Md.

Dear Mac:

Both manufacturers of valve hardware, namely Schrader and Dill, have agreed to extend a special price on their merchandise to Petroleum Distributors and/or commission agents who operate in the tire business on a basis of 100% wholesale only.

This price classification is to be known as "Jobbers" price. It is at a level between the present "Wholesaler" price and the present dealer level.

The idea is that it will enable Petroleum distributors and agents to handle Schrader and Dill merchandise for resale to their service stations on a profitable basis.

We have to have approval of Schrader and Dill before this price can be extended. Therefore, will you be so kind as to submit to me, as promptly as possible, a complete list of your distributors and agents who will fall in this category and who operate within the boundaries of the Baltimore District of Goodyear.

As soon as I receive your list, I will request Akron and Schrader and Dill approval.

Very truly yours,

Butler Doolittle
District Manager

Butler Doolittle
mh

Prices Subject to Change Without Notice

No Contract Valid Unless in Writing and Signed by Duly Authorized Officers

COMMISSION EXHIBIT NO. 442.

c.c. Mr. McCauley
Mr. Paul Goodyear

September 21, 1948

Mr. Butler Doolittle
Goodyear Tire & Rubber Company, Inc.
Mt. Royal Ave. & Oliver St.
Baltimore -17,Md.

Dear Butler:

In your letter to Mac on September 17, 1948 you requested a complete list of agents and distributors for approval as jobbers on Schrader and Dill Valve Hardware.

The following list of names and addresses are those which we would like for you to approve as jobbers on Schrader and Dill lines.

E. W. Parsons	Berlin, Md.	F. A. Welty	Hagerstown, Md.
H. M. Malone	Cambridge, Md.	Daniel R. Fleming	Hancock, Md.
T. H.M. Bramble	Chestertown, Md.	C. C. Morgan	Havre de Grace, Md.
J.R. Brown	Cockeysville, Md.	B. F. Simms	La Plata, Md.
D. R. Fleming	Cumberland, Md.	Fred L.Parks	Onancock, Va.
C. D. Crouse	Denton, Md.	D. L. Sharrer	Salisbury, Md.
D. H. McMahan	Easton, Md.	D. R. Fleming	Westminster, Md.
John McCool	Elkton, Md.	Hill Brothers	Rock Hall, Md.
C. R. Shipley	Frederick, Md.	H. C. Scarborough	Snow Hill, Md.

The correct form of address for the above is Sherwood Brothers Incorporated, care of the agent.

Does not apply to these, who are distributors - actually all agents to Check is addressed as such because she asks According to our records Brooks-Huff, Armstrong and Sherwood Bros. The Brothers Incorporated are the only ones set up as wholesalers with Schrader [illegible]. If there are any others we have overlooked that appear on your records, please advise us.

Thanking you for your courtesy in this matter.

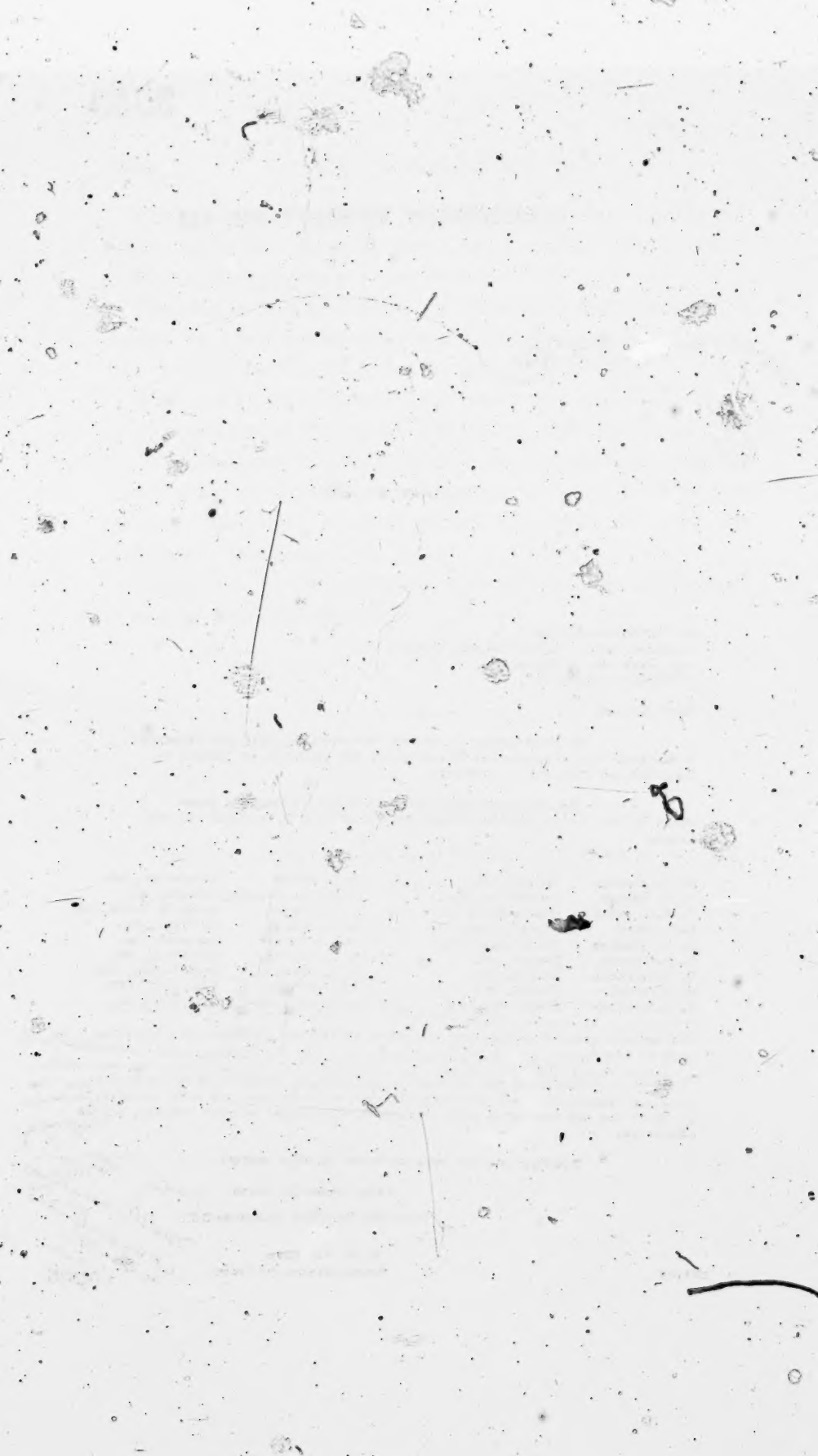
Very sincerely yours

SHERWOOD BROTHERS INCORPORATED

H. W. Van Horn
Merchandising Division

HWVahn

Mac
Mail unchanged
to be entered
OK
Jean
3965



3968 COMMISSION EXHIBIT NO. 443.

September 3, 1948

Mr. R. G. Crawford
Store Planning & Display Dept.
Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

Dear Mr. Crawford:

We are endeavoring to modernize as many of our dealer stores as possible this year. We feel that by careful study of the dealer's needs and with the use of Goodyear fixtures and hardware, we will be better able to give the dealer a more attractive and better merchandise store thereby selling more Goodyear products and putting more money into the dealer's pocket.

In checking my work sheet, I find that 30 days or more have passed since orders for Goodyear fixtures and hardware have been written and from information received from you some time ago, I was under the impression that a 30 day period could be expected on shipments of fixtures.

We are interested in learning from you the approximate shipping date on fixtures and hardware for the most pressing of these dealer store setups which are listed below:

Our Order 8/6/48	Wm. Dixon	Aberdeen, Md.
Our Order 8/6/48	S. Hahn	Frederick, Md.
Our Order 7/30/48	Dunlap & Stallings	Pasadena, Md.
Our Order 7/26/48	L. J. & Edward Balling	Dundalk, Md.

Any information that you can give me regarding the shipment of the above dealers' orders for fixtures and hardware will be greatly appreciated as we are working

on a schedule for our store engineers and can plan for setup dates after hearing from you.

After checking with the suppliers, will you please advice me as to the shipping date, if already shipped, and the approximate date that shipments may be made in cases where there might be a delay.

Thanking you for your cooperation in this matter.

Yours very sincerely

Sherwood Brothers Incorporated
H. W. Van Horn
Merchandising Department

HWV:mt
c.c. Mr. DeHoff

3970 COMMISSION EXHIBIT NO. 444.

January 7, 1949

Mr. J. A. Nelson
Service & Equipment Dept.
Retail Stores Division
Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

Dear Jim:

Within the next few months, we will be installing fixtures in stores of our new stations.

We will be using your equipment and will be purchasing same through our Purchasing Department, managed by Mr. G. L. Hughes. The prices to be used by him will be the same as shown on your latest price list sent to me during the month of December 1948. He will write you direct regarding the handling of this equipment and any cooperation shown him will be greatly appreciated.

On all future dealer installations, the deal will be handled the same as before, shipping direct to the dealer and coordination of materials handled by myself.

Thanking you for your usual kind cooperation, I remain

Sincerely yours

Sherwood Brothers Incorporated
H. W. Van Horn
Merchandising Division

HWV:mt
c.c. Mr. McCauley
Mr. Hughes

3972 COMMISSION EXHIBIT NO. 445.

Sherwood Brothers Incorporated
Baltimore Trust Building
Baltimore, Md.

August 9, 1949

To: All Betholine-Sinclair Dealers

A 1949 Custom Made Plan to Modernize Your Business

Do you know that our company has had more experience in the service station TBA business than any other petroleum company in this area? Through this experience we are able to provide our dealers with a store planning service that will modernize his business to provide: (1) the most effective use of the dealer's floor space, (2) the proper display and association of his merchandise, and (3) the creation of new sales and profit making departments.

In these very competitive times, the alert and aggressive dealer should adjust himself and his business to take every possible advantage of his opportunities. With this custom-built service it is not necessary for you to go to

the heavy expense of rebuilding the interior of your store. Our plan makes better use of your present floor space.

Here is all you have to do to join the many Betholine-Sinclair Dealers who have made use of this modernization plan and are showing better gross profits and still better, larger net profits:

1. Fill in the enclosed card and send it to our office in care of H. W. Van Horn, Merchandising Division.

2. One of our representatives will call upon you and go over the entire modernization plan with you, take measurements of your present store and give you a finished plan and estimate as to the cost of modernization. These plans will be made according to your needs, and every foot of space will be considered to make that space pay for itself in added sales opportunities.

3. Having decided that you wish this modernization made, we will order out all necessary material and arrange to have one of our store engineers install the fixtures. He will also place, price and departmentalize; and when the job has been completed, you are ready to introduce to your customers a modern retail store.

No matter what size store you have, we believe that with this modernization plan we can help you to do a better job, make a more attractive place for your customers to shop, and give you what you want most of all —Increased Profits.

Don't delay mailing the attached card, for it means money in your pocket.

Sincerely yours,

Sherwood Brothers Incorporated

/s/ H. W. Van Horn

H. W. Van Horn

Merchandising Division

HWV:S

600 8-49

3974 COMMISSION EXHIBIT NO. 446.

June 23, 1950

Mr. Van Horn
Boss Anderson, Station #27
Keswick Road

Estimates for remodeling in preparation for the new store fixtures at subject location have been approved and it has also been decided to install a centralized oil burning unit. Both of these projects will be tied together.

Therefore, will you contact Mr. Anderson, explain the delay and use this quite sizeable expenditure to insure that we get as much T.B.A. business as possible from this dealer.

Will you also please give me an estimate of increased T.B.A. volume which you think the new store will accomplish.

Also, in the future, when submitting store modernization estimates, please attach memo with your forecast of increased T.B.A. volume.

Fred D. McCauley

FDM:H

3976 COMMISSION EXHIBIT NO. 447A.

June 19, 1946

Mrs. Mabel Harmon, General Manager
Goodyear Tire & Rubber Co., Inc.
Mt. Royal Ave. & Oliver St.
Baltimore 17, Md.

Dear Mabel:

Attached please find a complete, exact and up to the minute, list of Sherwood dealers located in the metropolitan area of Baltimore, who would like to have advertising services as outlined, when the Goodyear identification truck reaches Baltimore.

I think it would be well to destroy the very crude and not so accurate list which I mailed you some week or two ago.

Many, many thanks for the kind remembrance you had a hand in sending me for Fathers Day and even though the guy rushing toward the bath with razor in hand was in a bigger hurry than I ever hope to be and is much better looking, I still love it. It's nice to be remembered; therefore, I appreciate the thought even more than the caricature.

With kindest regards, I am

As ever yours
Sherwood Brothers Incorporated
Fred D. McCauley
Manager, Tire & Mdse. Div.

FDMcC:C
Enc.

c.c: Mr. John D. Mann
Mr. Van Horn

3978 COMMISSION EXHIBIT NO. 447B-E.

June 1946

List of Sherwood Dealers In Metropolitan Baltimore for Goodyear Identification Truck.

Name and Address	Metal Sign	Diamond	Wincos Transparencies
Wm. R. Hinton—Timonium, Md.	x		x
William Clerk—Old Annapolis & Nursery Rds., N. Linthicum, Md.	x		x
A. J. Buettner—Stoney Creek Rd., Riveria Beach, Md.	x		x
Charles Collison—110 Chesapeake Ave., Baltimore, Md.	x		
J. L. Pancoast—Eastport, Md. (at end of bridge)	x		
E. Wheeler—Annapolis Ave. and Wash. Blvd., Baltimore, Md.	x		
John P. Brandt—8000 Liberty Rd., Rockdale, Md.	x		x
R. C. Wall—Frederick Rd., Ellicott City, Md.	x		x
Ira E. Mather—925 Frederick Rd., Catonsville, Md.	x		x
R. K. Barnes—Sykesville, Md.			x
James C. Peeling—5100 Liberty Hwy. Ave., Baltimore, Md.	x		
Leslie Childress—3800 Liberty Hgts. Ave., Baltimore, Md.	x		
John Reikert—2600 Gwynns Falls Pkwy., Baltimore, Md.	x		
J. Norman Hobbs—4604 Edmondson Ave., Baltimore, Md.	x		
Fred Ludwig—Frederick & Caton Aves., Baltimore, Md.	x		
Fred Job—5010 Frederick Ave., Baltimore, Md.	x		

Name and Address	Metal Diamond Sign	Wincos Transparencies
Louis Vogelsang—Edmondson & Dutton Aves., Catonsville, Md.	x	
Addison Hodges—Ellicott City, Md.	x	
Marshall F. Sauter—By-Pass #40, nr. Rogers Ave., Ellicott City, Md.	x	
Wm. Eberhart—Windsor Mill Rd. & Forest Pk. Ave., BaltimoreMd.,	x	
Carl D. Smith—2110 Gwynn Oak Ave., Woodlawn, Md.	x	
Sidney O. Marcus—West Friendship, Md.	x	
Clements Motors Co. Eldersburg, Md.	x	
3980 (Illegible) Hoeltsel — Randallstown, Md.	x	
Sol. Zito—2100 W. Lexington St., Baltimore, Md.	x	
Harry E. Prior—2124 Edmondson Ave., Baltimore, Md.	x	
D. & J. C. Sause—Phila. Rd. & Ellwood Ave., Baltimore, Md.		x
J. W. Sause—Fayette & East Sts., Baltimore, Md.	x	
George Becker—5601 E. Lombard St., Baltimore, Md.	x	x
J. H. Soubert—Pulaski Hwy. & 64th St., Baltimore, Md.	x	x
R. J. Papa—Fayette & Exeter Sts., Baltimore, Md.	x	
William King—Lombard & Broadway, Baltimore, Md.	x	
Chas. Rueffel—2026 Belair Rd., Baltimore, Md.	x	
C. R. Schumann—Belair & Kenwood Rds., Baltimore, Md.	x	
William Cardwell—Belair & Parkmont Rds., Baltimore, Md.	x	

Name and Address	Metal Sign	Diamond Transparencies	Wincos
Everding & Mogg—7500 Belair Rd., Fullerton, Md.	x		x
Ed. Wittmer—Philadelphia & Ebenezer Rds., White Marsh, Md.	x		x
O. P. Kraft—Philadelphia & Ft. Hoyle Rds., Edgewood, Md.	x		
W. Sutton—York Road, Parkton, Md.	x		x
C. V. Bohn—1516 M. Regester St., Baltimore, Md.	x		x
Hinton Bros.—York Rd., Timonium, Md.	x		x
C. Wisson—Reisterstown Rd. & Irving Pl., Pikesville, Md.	x		
C. McComas—5727 Falls Rds., Baltimore, Md.	x		
M. Bowen—2244 Reisterstown Rd., Baltimore, Md.	x		
Harry L. Dovell—36th & Falls Rds., Baltimore, Md.	x		
Herbert Elburn—4532 Falls Rd., Baltimore, Md.	x		
3982 Fehrles Fruhling—Joppa, Md.	x		x
Neil Moore—Belair, Md.	x		
Ed. Goetz—Fallston, Md.	x		x
H. Hefner—Bealir Rd., Raspeburg, Md.	x		
Ed. Gale—Patterson Park Ave. & Gay St., Baltimore, Md.	x		
R. Haight—53rd & Barclay Sts., Baltimore, Md.	x		
J. Glorioso—York and Oakland Rds., Baltimore, Md.	x		
J. B. McMasters—5316 York Rd., Baltimore, Md.	x		
Myers Bros.—York Rd. & Belvedere Ave., Baltimore, Md.	x		x
F. Tasney—York Rd. & Willow Ave., Towson, Md.	x		

Name and Address	Metal Sign	Diamond Transparencies	Wincos Transparencies
A. Reitemeyer—Loch Raven Blvd. & Joppa Rd., Baltimore, Md.	x		
B. Haber—25th & Loch Raven Blvd., Baltimore, Md.	x		x
George G. Fischer—9101 Harford Rd., Baltimore, Md.	x		x
H. J. Nelson—Old Harford & Taylor Ave., Baltimore, Md.	x		x
Glenmore Motor Co.—6418 Harford Rd., Baltimore, Md.	x		x
Wm. V. Quinn—Harford & Southern Rds., Baltimore, Md.	x		x
J. H. Leggett—3514 Harford Rd., Baltimore, Md.	x		x
Frank Sudek—5509 Harford Rd., Baltimore, Md.			x
Charles Hudgins—North Ave. & Charles St., Baltimore, Md.	x		
J. Glendening—Homewood & Kirk Ave., Baltimore, Md.	x		
H. F. Koenig—25th & Kirk, Baltimore, Md.	x		x
Al Notring—Guilford & Federal St., Baltimore, Md.	x		x
Fay Brothers—Harford & 25th St., Baltimore, Md.	x		x
3984 George Bamford—North Pt. Road and Wise Ave., Baltimore, Md.	x		x
P. W. Breeding—Key Highway & Jackson St., Baltimore, Md.	x		
S. F. Brown—Light & Hill Sts., Baltimore, Md.	x		
Francis Dingle—Eastern Ave. & Carroll St., Baltimore, Md.	x		
S. Galicki—Wise Ave. & Pinewood Rds., Baltimore, Md.	x		x
C. W. Haetler—Back River Neck Rd., Baltimore, Md.	x		x

Name and Address	Metal Sign	Diamond	Wincos Transparencies
J. A. Hild—Frederick & Mount Sts., Baltimore, Md.	x		
Jones & Wekon—Hollins & Carey Sts., Baltimore, Md.	x		
J. Marshall—Bank & Wolfe Sts., Baltimore, Md.	x		
D. A. McKenna—1501 Martin Blvd., Middle River, Md.	x		
C. W. Napfel—Eastern Ave. & Caroline St., Baltimore, Md.	x		
Oscar Wortman—Sparrows Point, Md.	x		x
John Wunder—Essex, Md., 601 Eastern Ave.	x		
Jos. Matusch—900 E. Fort Ave., Baltimore, Md.	x		x
John Stegman—Paca & Dover, Baltimore, Md.	x		
Jones & Wilson—Hollins & Carey, Baltimore, Md.	x		x
Schumann Bros.—5924 Eastern Ave., Dundalk, Md.	x		
Schumann Bros.—41st & Falls Rd., Baltimore, Md.	x		

3553

COMMISSION EXHIBIT NO. 448

REQUEST FOR GOODYEAR IDENTIFICATION TRUCK SERVICE

(A9G101L)

This request should be made out only when you are notified by District that an identification truck schedule has been established and the service available to the District. Complete national service will not be available until the entire fleet is in operation approximately September 1946.

Make three copies. Mail two to district office at once, keep the third copy until the job has been handled.

1

Dealer Brooks-Huff — Date 3-29-49

*If an American Dealer show Parent Dealer Below

Address Reisterstown & Garrison — Highway Route No. — District Balto.

City and State Baltimore, Md. — County — Salesman Rupport

*Parent Dealer — Address — City and State

2

TIRE DEALER	Sells: LifeGuards ☐	Goodyear Batteries ☐	Farm Tires ☐	
PETROLEUM ACCOUNT	Brand Gas	Co. Operated ☐	Leased ☐	Independent ☐
CAR DEALER	Make car	Sells Tires ☐	Sells LifeGuards ☐	
IMPLEMENT DEALER	Represents	Co. Owned ☐	Independent ☐	
MOTORCYCLE ACCT.	Represents	Sells Tires ☐	Sells LifeGuards ☐	
BATTERY DEALER	Exclusive Goodyear?	Sell Batteries only?		
MECHANICAL GOODS DISTRIBUTOR	☐ Indicate any special instructions on back of this request.			
AIRPORT DEALER	Indicate name of airport			
TIME PAYMENT SALES	Does dealer feature and want identification for Easy Pay Plan?			
RECAPPING	☐ Check if dealer is primarily engaged in tire treading and repairing.			

3

	1946 Goodyear	Amount Spent Week
NEW ACCOUNT (Has no Goodyear identification)		
NEW ACCOUNT (Has temporary identification)		
OLD ACCOUNT (Identification to be improved)		
CANCELLED ACCOUNT (Remove identification)		

4

EMERGENCY IDENTIFICATION for new accounts. Shipments will be made direct to dealers who need identification immediately. Use REQUEST FOR DIRECT SHIPMENT order form A-9398-L.

In cases where direct shipment is made, identification representative will be notified and will call on next trip to complete the job, which will include any improvement and revision that seems advisable, installation of window transparencies, identification of service truck, etc.

IDENTIFICATION ORDER FORMS

Request for Shipment Diamond Pure Signs A-9098-L
Electric Sign Order A-9083-L
Electric Sign Lenses A-9095-L
Request for Sandvalve Lenses A-98143-L
Rush Order for Sandvalve A-98142-L

Approved by District Office _____ 1946

Per 3986

District is to circumvolve these requests up to the date identification representative calls for district list. These instructions apply only when there has been a schedule established for the district.

3988 COMMISSION EXHIBIT NO. 449.

May 12, 1947

"Doc" Allen

c.c. Mr. F. D. McCauley

On my way out to Ten Hills Saturday I drove by Franklin & Fulton and noticed a Lee Tire Sign attached to lubritory door frame. I'm sure I've seen this sign many times before but must say that it failed to register until Saturday. I think we should ask Elmer to have it removed because of our general policy in not allowing any signs to be attached to station buildings.

Roland DeHoff

DeH:mt

3990 COMMISSION EXHIBIT NO. 450A-B.

August 25, 1952

Mr. Butler Doolittle
Goodyear Tire & Rubber Company, Inc.
Mt. Royal Ave. & Oliver St.
Baltimore 17, Md.

Dear Butler:

It was very nice of you to use your influence in having the identification truck in Baltimore recently to take care of our new and remodeled station identification needs and we sure appreciate it.

You may recall that it was mentioned some time ago that the new type of valance being used by the identification man on our station windows was not as effective as the Goodyear blue and gold valance and besides not liking the type of valance, I think it was mentioned that due to

our other stations having the regular Goodyear valance, this new type did not fit in with our set up.

A tour of stations was made recently by Messrs. John R. Sherwood and G. R. DeHoff and they noticed a change in the type of valance used and also felt that it was not what we wanted as it is our intention to make all of our stations uniform in regards to identification.

I would like to also point out that there is considerable replacement work to be done in the stations, where windows were broken and new ones replaced leaving the new window without a valance.

It is also a fact that most of our stations have exceptional high windows and in these cases it is necessary that the venetian blind valance be used with the regular border to make the installation more attractive. I understood from John Mann that the identification man working here recently did not carry any of the Goodyear blue and gold type valance and the venetian blind valance was not carried in the line.

Here is a summary of what we would like to have and will appreciate your efforts in obtaining same from your Identification Department.

1. We want only the Goodyear blue and gold type valance on All our station windows.

2. We want the venetian blind effect where needed, on the high windows.

3992 3. We particularly would like to have the identification truck here to finish identifying stations as per list given you the first of the year and to replace the new green and white valances that were installed on the windows at several stations recently.

Won't you please do your very best to have the requests handled. We would like to work toward a date of September 15, to have the identification truck and man here to complete the work.

On your reply, or better still, if you will send me an extra copy I will pass it on to Mr. DeHoff for his information.

Thanks again for your usual swell cooperation.

Sincerely yours,
Sherwood Brothers Incorporated
H. W. Van Horn,
Manager, T.B.A.

HWV:mt

c.c. Messrs. DeHoff
McCauley

3994 COMMISSION EXHIBIT NO. 451 A-B.

January 6, 1950

Mr. W. S. Martel, Mgr.,
Automotive Jobber Sales Division
Goodyear Tire & Rubber Company, Inc.
Akron, Ohio

Dear Mr. Martel:

My very best wishes to you for a very Happy and Successful New Year.

You, and through you, your representative, Mr. E. A. Robinson, have done much to make ours happy and successful. For years we have sincerely, and with enthusiam, tried to sell Goodyear automotive merchandise to our dealers and for years our results have not been commensurate with the effort because something has been lacking. I think a fit simile would be that we have been kidding ourselves and I might say, trying to move the immovable object. You and your faithful assistant have now supplied the ingredients in the formula for successful selling of your products and we are sincerely thankful.

No doubt, you have heard by now of the many, many dealers that have been converted 100% from Gates, American Brake Block, Dayton, etc. to Goodyear. I am sure it would delight you to visit us and inspect some of our lubritories with their 100% display of Goodyear fan belts, straight and curved radiator hose. I assure you that quite a transformation has been accomplished.

Your new policy of local distribution has been most successful and you are on solid ground in promoting similar distribution over the country. We have felt for many years that this was the answer to the Car and Home Merchandise sales problem and we have urged the Goodyear Company to establish a general Car and Home warehouse here in Baltimore. They agreed some years ago to do just this, but since the time they committed themselves to this move, there has been a lot of equivocation and we do not have the warehouse for local distribution. That leaves us in the almost untenable position of trying to move the mountain with a pitchfork. It just does not work, and I fear that our overall Car and Home Merchandise business will eventually be lost to competitors who can better serve our dealers.

I want to particularly thank you for sending your Mr. R. A. Robinson to take over the direction of the establishment and promotion of this deal. You could not have picked a better man. Ed is well liked by every salesman, merchandiser and supervisor in the Sherwood organization and the same is true with all of the Brooks-Huff Tire Company. He has a personality that is hard to beat. This may be exemplified by the close association and friendship he has built up with us in the short period he has been associated with us. He knows the features of his product, he knows how to present his proposition
3996 well and he is a tireless worker. We think he is a great fellow and a fine salesman and that applies

also to the many, many dealers whom he has personally contacted here in Baltimore. You know people are fast to criticize but slow to praise, but I have always felt that praise should be given where and when due, so once again thank you for sending Ed to us to do the job, because we know Ed had done it in a magnificent manner.

We are considering in the back of our heads a big dealer meeting, which if held would probably be within the next three or four weeks and if we go through with this plan, I think it would be appropriate for you to take part in the meeting. We would be most happy to have you talk to our dealer group and as plans develop, I will so advise.

Once again, let me thank you and Ed for the fine work you have done—we appreciate it—and we want you to know it.

With kindest regards, I am

Sincerely yours,

Sherwood Brothers Incorporated
Fred D. McCauley
Manager — Merchandising Division

FDM:mt

c.c. Mr. E. A. Robinson
14 Parsons Street
Harrison, New York
Mr. John Mann—Goodyear—Baltimore, Md.
Mr. G. R. DeHoff—Sherwood—Baltimore, Md.

3998 COMMISSION EXHIBIT NO. 452 A-B.

January 2, 1948

Mr. John Leimbach

c.c. Mr. Cottman
Mr. Weller
Mr. Van Horn

Developing Store at Charles Hudgins
North Ave. & Charles St.
Baltimore, Md.

You exemplified the correct attitude when you promoted the development of the store to Mr. Hudgins.

We would like for you to now take over the assignment of actually bringing this matter to a head.

We all are of the opinion that this location should have one of the most completely stocked stores in the whole State of Maryland. It is one of our topflight stations located at one of the busiest intersections in the City of Baltimore and it is embarrassing to the point of being ridiculous when we are forced to steer interested visitors away from this, one of our best locations because of the lack of store facilities and merchandise. Personally, I feel that if Western Auto can install a store in the middle of the lot south of our station location and Goodrich Rubber Co. can do the business they do at Charles & Oliver Sts., it is all the more reason why we should actually be ashamed of our setup here.

I honestly believe that a smart merchandiser (not necessarily Hebrew), if given this location even with its present facilities, he would do a bangup volume.

Personally, I feel that Charlie Hudgins has the capability for doing an outstanding job here but he needs to be

sold. It might be well to get him in the car and take him to Porter's and even Rennie's in Glenn Burnie as well as possibly Fayette Filling Station in east Baltimore.

We are not thinking now in terms of a complete new store using the new Goodyear Standard fixtures, but what we think should be done at this time is for Charlie to spend possibly $200.00 for additional center tables and possibly $2,000.00 for additional lines of merchandise.

We have proved conclusively many, many times that it takes mass display to sell merchandise and this is what Charlie has not done.

Your responsibility is to sell Charlie on this plan up to the point of getting a commitment from him and then calling on Van Horn for any help needed.

4000 It may develop that Charlie will want a commitment from us concerning his station lease. If this matter comes up, you can tell him point blank that we will make no such commitment, however, as long as he does the right thing and cooperates in operating the station as it should be operated, he need have no fear concerning his lease. On the other hand, if anything should happen he will always receive dollar for dollar for the merchandise purchased and the same applies to equipment less a small depreciation.

Go to it and I know you will be successful.

Fred D. McCauley

McC:CK

4002 COMMISSION EXHIBIT NO. 453.

February 23, 1948

Mr. Charles H. Hudgins
Betholine-Sinclair Service Station
Charles St. & North Ave.
Baltimore, Md.

Dear Charlie:

Please make arrangements to meet with us in our Merchandising Office, 1444 Baltimore Trust Building, on Thursday, February 26, at 9:00 a.m. to discuss your Lease and Dollar Sales Agreement which expires March 31, 1948.

Sincerely yours,
Sherwood Brothers Incorporated
Fred D. McCauley, Mgr.
Merchandising Div.

McC:CK

c.c. Messrs. Leimbach
Cottman
Weller

4004 COMMISSION EXHIBIT NO. 454.

February 29, 1948

Mr. Charles H. Hudgins
Betholine-Sinclair Service Station
Worth Avenue & Charles Street
Baltimore 18, Maryland

Dear Charlie:

Yesterday's meeting in the Conference Room was beneficial because we both had an opportunity to present our problems to each other and make definite plans for the future. It is always well when one can understand and appreciate the other fellows problems and point of view,

and then in a cooperative spirit, make plans which will be mutually beneficial.

The important items which you stated you would get started right away are as follows:

1. Get your present low oil ratio of 1.6 up to a minimum of 2% by training and directing your service station salesman to get under the hood, where possible, without asking the customer's permission, and endeavoring to sell more oil changes.
2. Personally train all new men as well as certain old men to give proper Betholine-Sinclair service, including the selling features of all Sherwood products.
3. Provide adequate fixtures and a generous supply of merchandise for resale in the store space to be commensurate with the other physical facilities and reputation of this station. We believe a large, modern, streamlined tire display, coupled with a tire sales course of instruction, would insure a large volume of tire business.
4. More personal service by you. People like to meet and talk to the boss; therefore, whenever possible, you should try to greet your customers personally, and direct the personnel on the driveways.

4006 You displayed a fine cooperative spirit yesterday, Charlie, and I feel sure that by working together, we can accomplish a lot more than we are doing right now.

Yours very sincerely,

Sherwood Brothers Incorporated
Fred D. McCauley,
Manager Merchandising Division

FDM:me

INTER-OFFICE MEMORANDUM

To Mac

3/3 1946

SUBJECT Attached

I talked to Harry today and he told him and Order on Par's Home Merchandise he told me not for 2 weeks yet. He said to tell you he is not willing to have his rent raised at its time (this) please the next time you see him if he is not in uniform give him the Works.

(He really appreciated what you Did)

D Holsinger
SIGNATURE AND DEPT. OR BULK STATION

4008

COMMISSION EXHIBIT NO. 455.

3565

COMMISSION EXHIBIT NO. 456A-B.

INTER-OFFICE COMMUNICATION
SHERWOOD BROTHERS INCORPORATED

Mr. F. D. McCarty
Merchandising Dept.
c.c. M. Henry Wilkie

March 16th 1948
Wm F. King #50
Broadway and Courtland Sts

In reference to your letter of March 11th, relative to the condition at the above location, I would like to say first that I agree with you 100%.

Even though it is not apparent, I do feel that some progress has been made in getting the dealer to go along with us on our "complete line".

During the first ten months of 1947, the only Goodyear product being purchased by King was tires, and as near as I was able to determine he was purchasing all of his [illegible] requirements locally - from the large stock of Dealer Belts, Ends and Union batteries.

I was being assigned to the above account in September, I have procured but two orders for accessories & any size; one in October of approximately $150.00 (Paid & delivered) the other in February 1948 for approximately $300.00 (Paid & delivered). I realize only too well that these meager results are far from being satisfactory & neither the best, but I do feel that we are making progress.

This dealer had several rather weak objections being raised & talked to him about his store arrangement and merchandise set-up. Briefly and main objection was that the local Independent was taking up the most of his space etc. - secondly that he felt obligated & loyal to this name & has an established chain, permanent type and large city - thirdly that he had the usual competition on accessories from the King on Broadway

4010

INTER-OFFICE COMMUNICATION
SHERWOOD BROTHERS INCORPORATED

#2

19

I have discussed our franchise and products very much King on several occasions and feel that we have covered all of the various objections. Think of all the Hotpoint appliances have been removed, second, I think he relizes that his best and fairest obligation is to his partner Howard Bros., and inorder to overcome his third objection, I spent three days in his store working with he and his men rearranging fixtures, trueing riddles, merchandise boxes, have the attic cleaned and rearranging displays, and in pricing merchandise. (Payne spent a full day to help with that)

During these 3 days I gave his men Little Talks on our products and merchandise and how to sell them, sort of to put life and began selling ourselves as well - it was apparent that the dealer was not following up our training and training his men to be salesmen.

Frankly, King himself is a good service station man as far as pumping gas, and getting cars serviced quickly - but he is not a good merchandiser (and never - was a big job for me)

I do have a recommendation to make, and you have already taken action on it, and that is to have King see the office for a thorough understanding as to his responsibilities as merchandising our complete line and training himself and his men to be better salesmen.

It has been my experience that the dealer respond more readily upon hearing it from you and Harry Weller than when King and I see it from the ground like salesmen.

H. Bolling 4-11-47

3568

COMMISSION EXHIBIT NO. 457

DEALER TBA SURVEY

DATE [illegible]

Fayette Filling Inc
DEALER NAME

Fayette & Highland Ave
ADDRESS

1. Brand of TIRES Goodyear

A. Why does dealer prefer? _____

B. What can we do to get this business? All [illegible]

2. Brand of BATTERIES Goodyear National

A. Why does dealer prefer? _____

B. What can we do to get this business? We are setting all of Batteries Insurance

3.

PRODUCT	MAKE	WHY?
Fan Belts	G.T.C.	Usage
Rad. Hose	✓	✓
Bat. Cables	✓	✓
Spark Plugs	A. Tuned	Usage
Oil Filters	Fram	Usage
Wiper Blades, Arms	Trico	Usage
Cleaner & Polish	Penn-Ex-Nap	
Radiator Chemicals	Bar-Nabb	

A. What can we do to get this business? This will require a visit from the Front Office - Milton [illegible]

4014

4016 COMMISSION EXHIBIT NO. 458.

April 25, 1952

Mr. D. A. Hilleary, Special Representative
Mechanical Goods Division
2750 N. Broad Street
Philadelphia 32, Pa.

Dear Mr. Hilleary:

Some time ago we requested your help in changing over sleeves on fan belts and radiator hose at Harry Stat's in Newark, Delaware. You gave us such swell cooperation in handling the request that we have another one for you.

We have installed a new dealer, Mr. Sam Kirk in our S. S. #827, located on the south side of U. S. Hwy. #40, east of Md. Hwy. #7 Elkton, Md. He has brought over to the station a large stock of competitive fan belts and radiator hose which should be changed over to Goodyear sleeves and labels.

At your earliest convenience, it will be greatly appreciated if you will call on this man and give him the same going over on his stock as you did at Harry Stat's in Newark, Delaware and advise me when it has been completed. He will give you the cooperation ecessary for completing the job.

Thanking you again for your swell assistance and cooperation, I remain

Very truly yours,
Sherwood Brothers Incorporated
H. W. Van Horn
Manager TBA.

HWV:mt

4018 COMMISSION EXHIBIT NO. 459.

June 3, 1952

Mr. Jurgens

cc: Mr. Hall
Mr. DeHoff
J. Norman Hobbs #47
4607 Edmondson Avenue

You will note the attached memorandum from our territory representative Mr. Bowman that Mr. Hobbs has made another request for 9,000 gallons of gasoline to the amount of $2,190 to be paid back at the rate of .01 per gallon on all future deliveries of gasoline. A demand note would be signed by J. Norman Hobbs and his wife Lena B. to substantiate this indebtedness. Some months back we gave Mr. Hobbs the same deal as requested here and he paid off the obligation promptly. He wants to use this money to increase his inventory of merchandise particularly in tires, anti-freeze and other Goodyear merchandise. I recommend to go along with him on this request.

Yours truly,

Harry J. Weller

HJW:kw

4020 **COMMISSION EXHIBIT NO. 460.**

Sherwood Brothers Inc. Purchases

Commission, Resale and Own Consumption

December and January 1 to December 31, 1944

	December 1944		January 1 through December 31, 1944	
	Volume	Commission	Volume	Commission
Commission				
New Tires & Tubes	$5.420	$542.00	$243,921	$24.392.10
Recaps & Used Tires	0	0	1,856	185.60
Batteries	3.276	327.60	37,455	3,745.50
Car & Home Supplies	0	0	933	93.30
Total	$8,696	$869.60	$284,165	$28,416.50
Own Consumption				
New Tires & Tubes	0	0	351	0
Grand Total Sherwood Bros.	$8,696	$869.60	$284,516	$28,416.50

Note:—Current Month Purchases are Independent Dealers—December 1944—Not Included in the Previous December Report

4021 COMMISSION EXHIBIT NO. 461A.

December 12, 1945

Mr. John R. Sherwood

c.c. Mr. DeHoff
Mr. Cottman
Mr. Johnson

In answer to Mr. Beddingfield's request for Sherwood Brothers' sales in the year 1944 and 1945 of Goodyear products, I am attaching to this memo a complete breakdown of sales in 1945, as well as the total volume of sales in 1944 by departments.

Mr. Beddingfield states in his letter that his Home Office Merchandising Department is interested in seeing a record of the Sherwood Brothers' sales of tires and batteries for the year 1944 and the year 1945. However, I am giving you sales of all departments, leaving to your judgment just what figures you should use.

I just hope that these fellows in New York do not set up a howl loud enough to be heard here and reflect in our Goodyear supply picture.

FDM:S

Fred D. McCauley

4023 COMMISSION EXHIBIT NO. 461B.

Sherwood Bros. Inc. Bonusable Volume & Commission Earned On Goodyear Products Sold to Dealers & Agents

1944

Tires & Tubes	Recaps & Used Tires	Batteries	C & H Merchandise	Total Volume	Commission
$243,921.	$ 1,856.	$37,455.	$ 933.	$284,165.	$28,416.50

4025 COMMISSION EXHIBIT NO. 461C.

Sherwood Brothers Incorporated Bonusable Volume and Commissions Earned On Goodyear Products Sold to Dealers & Agents—1945

1945	Tires & Tubes	Recaps & Used Tires	Batteries	C & N Merchandise	Total Volume	Commission
Jan.	$ 20,427.	$ 6.	$ 1,882.		$ 22,315.	$ 2,231.50
Feb.	16,862.	73.	287.	$ 2,864.	20,086.	1,986.65
Mar.	51,871.	60.	1,609.	3,877.	57,417.	5,735.70
Apr.	34,709.	98.	1,482.	1,638.	37,927.	3,791.75
May	30,330.	86.	1,173.	4,867.	36,456.	3,551.80
June	31,197.	155.	2,501.	3,108.	36,961.	3,692.45
July	24,200.	~~3,786.~~	1,275.	980.	29,211.	2,917.25
Aug.	~~30,769.~~	777.	2,336.	1,591.	~~35,473.~~	3,547.90
Sept.	34,694.	1,348.	1,176.	1,422.	38,640.	~~3,862.40~~
Oct.	30,022.	4,853.	962.	3,092.	38,929.	3,881.15
Nov.	37,058.	2,649.	2,528.	4,136.	46,371.	4,620.00
Total 11 Mos.	$342,139.	$12,861.	$17,211.	$27,575.	$399,786.	$39,818.55

Based on average monthly volume of $36,344 our total volume in 1945 should exceed $436,000.

All tire and battery sales are calculated at Contract Dealer or less.

Fred D. McCauley

FDM:mt

4027 **COMMISSION EXHIBIT NO. 462.**

Sherwood Brothers Inc. Purchaser

Commission Resale and Own Consumption
December and January 1 to December 31, 1945

		December 1945		January 1 through December 31, 1945	
		Volume	Commission	Volume	Commission
Commission					
New Tires & Tubes	10%	$36,699	$3,669.90	$380.611	$38,061.10
Recapped & Repaired Tires	10%	205 4,146	20.50 414.60	13,072 ~~21,350~~	1,307.20 2,135.70
Batteries	10%	17	85	3,218	160.90
Car & Home Supplies	5%	5,584	558.40	29,952	2,995.20
	10%	17	.85	3,218	160.90
Total	5%	46,634	4,663.40	444,992	44,499.20
Together	10%	$46,651	$4,664.25	$448,210	$44,660.10
Resale		0	0	0	0
Own Consumption					
New Tires — Tubes		$ 92	$	$ 2,456	$ 0
Recapped & Repaired Tires		0	0	113	0
Batteries		0	0	33	0
Car & Home Supplies		0	0	79	0
Total		92	$4,664.25	2,681	0
Grand Total Sherwood Bros.		$46,743		$450,891	$44,660.10

4028 COMMISSION EXHIBIT NO. 463A-B.

March 13, 1946

Mr. T. J. Beddingfield
Sinclair Refining Company
New York, N. Y.

Dear Mr. Beddingfield:

Subject: Sherwood TBA Program

I am very glad to be able to give you our total figures of business done with the Goodyear people for the year 1945. The dollar volume is as follows:

Tires and Tubes	$393,683
Batteries	21,357
Car & home merchandise	33,170
Total	$448,210

On this volume Goodyear paid us a commission of $44,660.10. Personally I think that this is a perfectly grand record considering the drastic shortage of merchandise. I am sure that this fine record could not have been accomplished without the enthusiastic and efficient leadership and administration of our Mr. Fred McCauley. Under his leadership we were able to do not only this nice volume of business, but we were also successful in laying considerable ground work for capitalizing on the TBA activity in the future. New dealers have been signed up, orders for stores and store fixtures have been taken, and we have established 12 or 13 dealers who will handle major appliances.

A new program was organized late in 1945 whereby our salesmen would be facilitated in doing a better job in the sale and follow up of car and home merchandise. This

program has already produced excellent results thus far in 1946. Our problem, of course, is the universal one of encountering difficulty in getting merchandise.

I do feel that great progress has been made and that we can look forward with confidence to a most successful business in our entire TBA undertaking.

I think we might consider that the commissions earned indicated above are practically entirely net, because the expenses that might be charged against the earning of these commissions are practically nil inasmuch as we have always carried on a merchandising assistance program with our dealers. Of course we must recognize too 4030 that the dealers made a substantial profit on this volume, all of which is reflected in the quality of our dealers and their operations and financially their ability to pay us satisfactory rentals for our stations. I am indeed very much pleased with this program.

Very truly yours,

Sherwood Brothers Incorporated
John R. Sherwood
Vice President.

JRS:W

4032 COMMISSION EXHIBIT NO. 464.

Sherwood Brothers Inc. Purchases

Commission, Resale and Own Consumption
December and January 1 to December 31, 1946

		December 1946		January 1, through December 31, 1946	
		Volume	Commission	Volume	Commission
Commission					
New Tires & Tubes	10%	$65,361	$6,536.10	$541,881	$54,188.10
Recapped & Repaired Tires	10%	3	.30	1,471	147.10
Batteries Only	10%	1,104	110.40	16,844	1,684.40
Car & Home Supplies, Etc.	5%	1,221	61.05	3,803	190.15
	10%	17,943	1,794.30	103,096	10,309.60
Total	5%	1,221	61.05	3,803	190.15
	10%	84,411	8,441.10	663,292	66,329.20
Together		85,632	8,502.15	667,095	66,519.35
Resale		0	0	0	0
Own Consumption					
New Tires & Tubes		$ 321	$ 0	$ 11,056	$ 0
Recapped & Repaired Tires		0	0	0	0
Batteries Only		0	0	0	0
Car & Home Supplies, Etc.		17	0	1,384	0
Total		338	0	12,440	0
Grand Total Sherwood Bros.		$85,970	$8,502.15	$679,535	$66,519.35

4033 COMMISSION EXHIBIT NO. 465A-B.

Copy for Mr. Fred McCauley

January 7, 1947

Mr. R. S. Wilson, Vice President
Goodyear Tire and Rubber Company
Akron, Ohio

Dear Mr. Wilson:

Nineteen Forty Six slipped away without my having had an opportunity to see you, and I hope that that will not recur in 1947; however as we enter the New Year I thought I would drop you a few lines to let you know how our business is developing with Goodyear.

As you know, in late 1944 we took over all of the Sinclair business in the State of Maryland and transferred to Sinclair our business in Washington, D. C. We now have a rather nice distribution picture in Maryland, and we are trying hard to improve it all the time, yet we already have an organization which in my opinion can do a very outstanding job on Goodyear products if we get the merchandise.

In 1946 we did just about $600,000 worth of business with Goodyear, of which $100,000 was in car and home merchandise. In order to produce the $100,000 in deliveries we took orders totaling about $175,000. We received nowhere near the number of tires that we were able to sell, nor were we supplied with anything like our requirements of batteries. In other words, there are still a great many foreign tires and batteries being sold to our dealer outlets. If we can convert that business alone we will materially increase our volume. The same is true of car and home merchandise, a great deal of which is being supplied to our dealers by local jobbers, who not only have

the merchandise but who are able to give better delivery service, due to our lack of a warehouse in Baltimore. I hope that that too will be corrected.

We have set as our goal with Goodyear for 1947 the amount of $1,000,000.00, of which we expect $200,000 to be in car and home merchandise, and I am hoping for at least a $2,000,000 business in 1950. Personally I believe it can be done and our organization is right with me.

We have separated our TBA Department from the rest of our sales organization. They are specializing in this work. We have taken on additional salesmen, and have put ourselves in position to hit this thing hard on our firm belief that now is the time to really get in there and fight, and build a foundation for this business in the future. If we do not take advantage of the opportunity to build our cornerstones now, we may suffer for years and years to come, and that would be most unfortunate.

4035 I do not want to be hoggish in the matter of supplies of merchandise, but in our organization you have really a laboratory case, which I honestly feel deserves special consideration. The work we are doing has been, and should continue to be, of great value in your development of your business with Sinclair. We can be of great value in this by setting an example of what can be done. To aid us in all this I sincerely hope that you will do everything in your power to help us secure merchandise and services during 1947. We are in this game with both sleeves rolled up. I hope you will get into it with us in the same spirit. Just do all you possibly can and we will do our best on this end of the line.

With every good wish for the New Year, during which I hope many of our problems will be ironed out, I am—

Yours sincerely,

Sherwood Brothers Incorporated

John R. Sherwood

Vice President.

JRS:W

4037 COMMISSION EXHIBIT NO. 466.

Sherwood Brothers Inc. Purchases

Commission, Resale and Own Consumption
December and January 1 Thru December 31, 1947

		December 1947		January 1. through December 31, 1947	
		Volume	Commission	Volume	Commission
Commission		44,743			
New Tires & Tubes	10%	~~$44,740~~	$4,474.30	$463,273	$46,327.30
Recapped & Repaired Tires	10%	224 6,906	22.40 690.60	1,125 47,368	112.50 4,736.80
Batteries Only	10%	514	25.70	12,302	615.10
Car & Home Supplies	5%	17,221	1,722.10	209,935	20,993.50
	10%	514	25.70	12,302	615.10
Total	5%	69,094	6,909.40	721,701	72,170.10
Together	10%	69,608	6,935.10	734,003	72,785.20
Resale		0	0	0	0
Own Consumption					
New Tires & Tubes		932	0	9,751	0
Batteries Only		0	0	0	0
Car & Home Supplies, Etc.		174	0	1,019	0
Total		1,106	0	10,770	0
Grand Total Sherwood Bros.		$70,714	$6,935.10	$744,773	$72,785.20

Note: Beginning with July 1947, all current month's and year to date portion of dollar sales thereafter are "net" as invoiced.

4038 COMMISSION EXHIBIT NO. 467.

October 16, 1947

Mr. DeHoff

c.c. Mr. Weller
Mr. Cottman
Mr. Van Horn
Mr. Landon

Yesterday morning we had a conference at Goodyear with Mr. Doolittle to discuss the contents of the letter I wrote him some two weeks ago which concerned our tire and tube volume this year as compared with last. I pointed out that up until September 21, our tire and tube volume was 21.62% less than for the same period in 1946, the decrease in volume being some $60,000.00.

We had an excellent month in September and were able to decrease the percentage of decline over last year to 11%. The volume decline up until October 1 was decreased to some $42,000.00 instead of the $60,000.00 figure which obtained as of September 1.

Facts developed at this conference were as follows: The greater portion of our decline was traced to two large accounts; namely, Brooks-Huff Tire Company and Armstrong in Laytonsville. Brooks-Huff has shown a decline this year over last year of 21% while Armstrong's decline has been 24%. The total Goodyear Baltimore District's decline for tire and tube volume this year over last year as ascertained by authentic figures which were shown to us is 32%. In the face of the Baltimore District decline of 32% and with the knowledge that the greater proportion of Brooks-Huff Tire Co. and Armstrong's decline is due largely to truck tire sales, our decline of 11% denotes that we are making progress even though we are still in the red in this department.

We will have to produce a tire volume of $206,000.00 during the remaining quarter of this year to equal last year's volume. Ways and means were discussed as to how to get this volume in the last quarter. Mr. Doolittle has committed himself to doing everything humanly possible to aid us in reaching our minimum quota for tire and tube sales. Things are being done right now to insure our reaching this volume.

I know you will be interested in knowing that even though we are in the red in the Tire & Tube Department as of October 1, our total volume was $67,681.00 above the same period for last year.

Fred D. McCauley

McC:CK

4040 COMMISSION EXHIBIT NO. 468.

January 26, 1951

Mr. G. R. DeHoff

c.c. Mr. J. R. Sherwood
Mr. C. D. Cottman
Mr. H. J. Weller
Mr. H. L. Landon
Mr. H. W. Van Horn

TBA Progress Report
for December 1950

	December			Year to Date		
	1949	1950	% +or—	1949	1950	% +or—
Tires & Tubes	$43,159	$34,073	21.05%	$388,428	$462,130	18.97%
Batteries	10,130	12,448	22.88%	48,338	62,314	28.91%
Car & Home	9,387	10,632	13.26%	111,518	99,902	10.42%
	$62,676	57,153	8.81%	$548,284	$624,346	13.87%
TBA						
Baltimore	$51,051	44,437	12.96%	$413,355	$469,245	13.52%
All Other Terr.	11,625	12,716	9.38%	134,929	155,101	14.95%

Fred D. McCauley

FDM:pw

4042 COMMISSION EXHIBIT NO. 469.

Total TBA Volume Sold to
Betholine-Sinclair Dealers
On Which We Receive Commission

	1951	1952
Jan.	52493	19281
Feb.	44962	73186
Mar.	50736	39186
Apr.	39439	54157
May	65653	61922
June	52621	89792
July	59345	78792
Aug	56220	87680
Sept.	72630	82736
Oct.	69016	62125
Nov.	45260	65013
Dec.	62918	70762
Totals:	671293	784632

4044 **COMMISSION EXHIBIT NO. 470.**

Sherwood Brothers, Inc.

Sales by Goodyear Districts
January 1, 1952 Thru December 31, 1952

Commission Sales

	New Tires and Tubes Excludes Marathon Truck	Pneu. Truck T&T[1]	Batteries (Excl Res) &Cables	Resol. Batt.	C & H Supp. Etc.	Total
Baltimore	542,215	72,824	64,915	16,309	152,021	775,460
Philadelphia	1,564	0	191	0	666	2,421
Pittsburgh	3,792	297	0	0	2,959	6,751
Total	547,571	73,121	65,106	16,309	155,646	784,632
			Own Consumption			
Baltimore	13,685	13,685	39	0	0	13,724
Grand Total	561,260	86,806	65,145	16,309	155,780	798,494

1. Included in New Tires & Tubes.

Statistics Division
Sales Accounting Dept.

Issued 2-13-53

4047 COMMISSION EXHIBIT NO. 472

Sinclair Refining Company

Marketer Agreement

This Agreement, made this.....day of.....,
19....., by and between Sinclair Refining Company, a Maine corporation, party of the first part, and.....
.....
of.....
party of the second part, Witnesseth, That,

For the mutual considerations hereinafter set forth and by reason of the special trust and confidence the party of the first part (hereinafter referred to as "Sinclair" or "bailor", as the context may require) reposes in the party of the second part (hereinafter referred to as "Marketer" or "bailee", as the context may require), it is agreed that Marketer may act as a non-exclusive bailee for hire for Sinclair in the territory described at the end hereof, with headquarters at.....
....., State of .....; and Marketer hereby agrees to act in such capacity subject to the following terms and conditions:

1. The respective rights, duties and obligations of the parties in performing hereunder shall be those imposed by law upon Sinclair as bailor and Marketer as bailee for hire as enlarged by this agreement.

2. Marketer shall receive, care for, measure and account for in conformity to Sinclair's requirements, and sell, exclusive of other similar products, the oils, lubricants and other products (herein referred to as "products") that Sinclair supplies for sale, and shall deliver and collect for all products thus sold, it being understood that all such products shall remain the property of Sinclair

until sold and that the proceeds therefrom shall be the property of Sinclair and subject to its orders. If Marketer shall handle and deal in property other than that supplied for sale by Sinclair, Marketer shall not permit the same to interfere with Marketer's obligations and duties hereunder. Marketer agrees not to commingle with Marketer's funds the proceeds of sales or other moneys of Sinclair and likewise agrees to keep Sinclair's products separate and apart from the property of Marketer and that of third parties.

3. Sinclair shall specify not only the prices at which products bailed to Marketer shall at all times be sold but also all governmental taxes, excises and exactions to be charged and collected in connection with such products, their sale, delivery or other disposition; and Marketer agrees not to deviate therefrom.

4. Unless otherwise directed, Marketer shall make daily deposit of all collections in the bank designated by Sinclair, and shall each day secure and transmit receipted deposit slips, certificate of deposit or such other evidence of such deposit as Sinclair may specify; and shall report daily, or as often as Sinclair may require in writing, all stocks, sales, collections, deposits and remittances on forms provided by Sinclair, such report to show stocks, sales, collections, deposits and remittances made from date of last previous report to and including date of current report.

5. Marketer shall send all reports, evidences of deposit, remittances, inventories, and correspondence to Sinclair at .....,

except as otherwise directed by it.

6. Marketer shall submit to Sinclair an inventory of all products and property remaining on hand on the last day of each month or on such other business day as Sinclair may direct for closing monthly business.

7. Marketer shall obtain prompt return when due from

customers of storage and sales equipment and all shipping barrels (heavy steel drums) and furnish strict accounting thereof, and of all light iron barrels returned for credit by customers, reporting the number to be credited to each customer by name; and shall make such disposition of all containers as Sinclair may direct.

8. Sinclair reserves the right to reject, either with or without cause and without assigning to Marketer any reason for such action, any orders taken by Marketer. No commissions are to be paid on rejected orders or on orders cancelled by purchasers. In computing and paying any commissions earned under this agreement, or any other sums that may be due Marketer from Sinclair, there shall be deducted therefrom and retained by Sinclair for its own use sums equivalent to commissions which Marketer may have theretofore received from sales upon which customers have returned the products for credit, and any other like items reducing Sinclair's net cash receipts from such sales.

9. Marketer shall at Marketer's own expense furnish necessary trucks, truck-tanks, motive power, drivers, labor, water, light, power, and heat, and shall also pay all necessary expenses in draying Sinclair's products and equipment and in making sales, deliveries, and collections. Marketer shall also at Marketer's own expense apply for in Marketer's own name and have installed at Marketer's headquarters a telephone which shall be listed in the proper telephone directory and other directories in the name of Sinclair Refining Company with the street address of Marketer's headquarters. All charges for local and long distance calls made by means of such telephone, whether such calls be of a business or private nature, shall be for the account of Marketer, and Sinclair shall not in any case be obligated to pay any such charges or to reimburse Marketer for any payments so made. Sinclair may pay any such charges and deduct the amount so paid from any moneys then due or thereafter to become due Marketer.

10. Marketer shall: (a) employ no improper, questionable or illegal methods in soliciting or securing business covered by this agreement; (b) observe any instructions given Marketer in so far as they relate to compliance with Federal, State and Municipal laws, regulations, rulings and ordinances affecting or regulating the possession, handling, sale, inspection or taxation (including exemptions from, and refunds of, taxes and excises) of Sinclair's products whether such instructions shall emanate from Sinclair or the lawful authorities charged with the enforcement of such laws, regulations, rulings and ordinances; (c) exercise due vigilance in protecting the equipment, property and products of Sinclair, notifying it promptly in writing of any condition which may arise requiring its attention; (d) make collections of such accounts in Marketer's territory as Sinclair may deliver to Marketer for that purpose; (e) assist Sinclair generally in promoting the successful merchandising of its products and the profitable utilization of its properties; (f) secure and maintain in force in Marketer's name and at Marketer's cost any and all permits and licenses required by law for the conduct of Marketer's operations as bailee hereunder; and (g) comply with all valid laws, ordinances and regulations as to weights and measures and as to the transportation of flammable products and, in addition, with safety recommendations of Sinclair.

11. Marketer shall not extend credit for Sinclair's account to any customer without first securing permission in writing from Sinclair so to do, and shall withdraw any credit so extended when so directed by Sinclair. Marketer shall be liable to Sinclair for any loss sustained through violation of these provisions. Sinclair is authorized, at its option, to charge Marketer with the invoice value to customers of products delivered in violation of such provisions, and shall have the right to deduct and retain for

its own use said invoice value from any moneys that may then be due or which thereafter may become due Marketer, and such deduction shall be construed and accepted as payment of commissions hereunder. In the event and as often as Marketer shall be indebted to Sinclair upon any account, whether the indebtedness shall arise under this agreement or by reason of any other contract or obligation whatsoever, Marketer agrees that Sinclair shall have the right to deduct from any moneys due or to become due Marketer amounts to be applied in satisfaction or partial satisfaction, as the case may be, of such indebtedness.

12. Marketer shall exercise the highest degree of care to insure against the occurrence of any contamination, adulteration or any accidental or negligent blending or mixing together whatsoever, whether in Marketer's hands or by or upon delivery into customers' containers, of the various petroleum products to be handled, sold and delivered hereunder and shall be directly, wholly and severally liable to all persons, including, without limitation, customers and Sinclair, for all loss, cost, expense, injury and damage, caused by, growing out of, or happening in connection with, any such contamination, adulteration or accidental or negligent blending or mixing however caused, and in addition shall pay all judgments and shall bear the expense of defending on behalf of Sinclair any litigation seeking damages alleged to be due by reason of any contamination, adulteration, blending or mixing together of said products, even if such litigation shall be groundless, false or fraudulent.

13. Marketer shall be responsible for, and hereby assumes all responsibility for, any and all acts of Marketer and Marketer's employees, whether they be acts of commission or omission, resulting in cost, loss or damage to Sinclair, and Marketer hereby agrees to indemnify, save harmless, and reimburse Sinclair for and on account

thereof. Marketer hereby assumes all responsibility and full liability to Sinclair, and hereby agrees to indemnify and reimburse it, for any shortages or losses in, or arising out of, sales, collections or deliveries hereunder, or in the products, equipment or property of Sinclair bailed to Marketer or coming under Marketer's control, including, without limitation, responsibility and liability for losses of Sinclair's funds by reason of loss, theft, robbery or burglary, and Marketer hereby authorizes Sinclair to deduct from any and all moneys due to Marketer during the life of this agreement, and retain for its own use, amounts for the payment of such shortages or losses; and Marketer agrees that Marketer's liability hereunder shall be that of an insurer, except as to losses resulting from fires not due to Marketer's negligence.

4049 5. The parties agree that the foregoing schedule includes all rates and describes the exact conditions and circumstances under which commissions and allowances shall be payable and that Marketer shall be entitled to no payment for any sale, delivery or service not plainly embraced within the specific terms of, or for which no applicable rate is provided in, said schedule. Sinclair reserves the right to effect deliveries from its stock of products bailed to Marketer, as to which a loading allowance only shall be payable. Sinclair shall have the right to withhold payment of commissions on any sale or delivery made by Marketer until payment therefor has been received by Sinclair. If Sinclair shall desire to change, add or eliminate any rate or any provision in said schedule, the same shall become effective upon fifteen (15) days' written notice to Marketer and a memorandum thereof in writing may be signed by the parties hereto as provided in Paragraph No. 26 hereof in lieu of the execution of a new contract, provided that no such change shall alter or modify any other provision of this agreement.

16. In lieu of making semi-monthly payments of commissions to Marketer, as provided for in Paragraph No. 14, Sinclair shall have the right to pay to Marketer as an advance payment of commissions accrued during the first half of each month such portion of Marketer's commissions as Sinclair may determine based upon its estimates thereof. The amount of such advance so paid to Marketer shall be deducted and withheld by Sinclair from the amount of Marketer's commissions actually due during and payable for the month in which any such advance payment shall have been made.

17. Marketer agrees to and does hereby accept full and exclusive liability for, the payment of any and all taxes and contributions for unemployment insurance, for sickness and disability, and for old age retirement benefits, pensions and annuities now or hereafter imposed by the Government of the United States and by the Government of any State of the United States, which are measured by the wages, salaries or other remuneration paid to persons employed by Marketer, for Marketer's own account, for work Marketer is required to perform or have performed under the terms of this bailment agreement, and Marketer further agrees that, in order to relieve Sinclair of any possible secondary liability for such taxes or contributions, Marketer will do everything necessary from time to time to elect voluntary coverage under applicable laws or regulations and to comply with, or bear the burden of contesting, any regulations and any amendments thereto, which may be promulgated by the administrative authority under such applicable law, Sinclair shall have the right to withhold from commissions and any other sums due Marketer the amounts of any such taxes and contributions which may be imposed or levied for the purpose of paying same direct to the proper Federal and State authorities; and Marketer agrees to furnish Sinclair such information as may be

requested or required by Sinclair to report properly and effect payment of such taxes.

18. If required by Sinclair, Marketer shall furnish surety bond acceptable to Sinclair in form and amount to indemnify Sinclair fully against loss of any moneys, values, products, goods, wares, merchandise, equipment and property bailed to Marketer or coming under Marketer's control or possession hereunder.

19. Marketer shall be liable to Sinclair for any demurrage or storage charges assessed by any common or contract carrier owing to Marketer's neglect promptly to unload and release stake and transport trucks, tank cars and other railroad cars, or to take out merchandise shipments intended for Marketer's handling.

20. If Marketer is a corporation, or if unincorporated and has, at any time, one or more employees, Marketer hereby agrees, at Marketer's own expense to provide and maintain in effect workmen's compensation insurance, securing the payment of compensation to Marketer's employees, or employer's liability insurance in accordance with the laws of the States in which Marketer performs work under this agreement.

21. If Marketer is a copartnership, each of the partners acting for himself and for the copartnership agrees with each other and with Sinclair: (a) that the partners shall be jointly and severally bound and liable as general partners hereunder; (b) that Sinclair may deal with any (one) partner of its choice; and (c) that the death or withdrawal of any partner shall be effective to terminate automatically this agreement.

22. Marketer hereby designates .....,
one of Marketer's employees, as Marketer's duly authorized representative to receive products from Sinclair, to execute receipts for same, to make reports and transmit information to Sinclair at the time and in the form and

manner required by Sinclair, and Marketer hereby agrees that any and all acts of said representative shall be deemed to be the acts of Marketer. Marketer shall have the right to change Marketer's designated representative, provided written notice of such change shall be first given to Sinclair at the place named in Paragraph No. 5 hereof.

23. At any time during the life of this agreement or at the termination hereof Sinclair shall have the right to audit the books, accounts, station records and inventories relating to this bailment and moneys and stocks on hand; and Marketer shall afford Sinclair and its employees full cooperation and assistance in making such audit or audits.

24. As a gratuitous convenience to Marketer and as limited herein, Marketer may use, for the storage and distribution of products bailed to Marketer pursuant hereto and property sold by Sinclair to Marketer, Sinclair's bulk oil storage and distribution facilities, if any, located in Marketer's territory consisting generally of a warehouse, storage tanks and auxiliary equipment, provided that any such use shall be in a careful and proper manner so as to avoid effectively the creation or continuance of any nuisance, fire hazard or dangerous condition whatsoever and that during the period of such use Marketer shall keep Sinclair's facilities, together with its contiguous property, in a safe, clean, orderly and sightly condition. The parties expressly recognize that this authorization (a) does not in any way obligate Sinclair to continue to allow Marketer to use any such facilities for any particular period of time, (b) constitutes a bare non-assignable license to Marketer to use those portions of such facilities as Sinclair may designate and solely as herein specified, (c) may be revoked forthwith by Sinclair at any time upon giving oral or written notice, (d) shall in any event ipso facto terminate upon termination of the bailment arrangement herein established, and (e) under no circumstances or conditions gives Marketer any estate,

property interest or right of possession in any such facilities. Sinclair makes no representation to Marketer as to the present or future fitness or suitability of such facilities for the uses herein authorized or as to the character or effect of any work hereafter performed for or by Sinclair, at its discretion, at, upon, or in connection with such facilities, including maintenance, repair, removal, replacements or additions thereto, and Sinclair shall have no liability or responsibility whatsoever to Marketer or Marketer's servants, employees or third parties for injury to or death of persons, damage to property, expense, or loss, of whatsoever nature occasioned by or connected with Marketer's use of said facilities or directly or indirectly resulting from Marketer's exercise of the license herein granted, whether or not occasioned by Sinclair's negligence or that of any agent, employee or contractor of Sinclair, all risks of use, including, without limitation, the risks of any and all defects and hazards whether they be patent or latent, being hereby assumed by Marketer. Marketer agrees to reimburse Sinclair for any and all cost, expense or damage to Sinclair arising from, or directly or indirectly connected with, the exercise by Marketer of the right of use hereby authorized, excepting only normal costs of maintenance, repairs, removals, replacements or additions. Marketer shall make no changes whatsoever in the physical condition of Sinclair's facilities without its prior written consent.

25. This agreement cannot be assigned in whole or in part by Marketer without the consent of Sinclair in writing first obtained. Marketer shall incur no indebtedness of any character whatsoever in the name of Sinclair, nor obligate Sinclair in any manner without first securing written authority so to do from an officer or manager of Sinclair. Sinclair shall not be responsible for any unauthorized debts or obligations incurred by Marketer. Either party may terminate this agreement at any time with or without cause; and upon the termination hereof, regardless of the

state of the mutual accounts, Marketer shall forthwith deliver to Sinclair or its representatives all equipment, property, products, moneys, credits, books of account, and station records of whatsoever form, bailed to Marketer or coming under Marketer's control, Marketer hereby waiving any and all liens and the right to assert the same.

26. This agreement cancels and supersedes all previous agency and bailment agreements between the parties. The counterpart hereof held by Sinclair shall be considered the original, and shall be the binding agreement in the event of any variation between such counterpart and the one held by Marketer, and such counterpart held by Sinclair shall constitute the full and entire agreement between the parties hereto. This agreement constitutes a merger of all proposals, negotiations and representations with reference to the subject matter and provisions hereof and may be altered, amended or modified only in writing signed by Marketer and a representative of Sinclair authorized to sign this agreement. Marketer acknowledges notice that this instrument may be executed on Sinclair's behalf only by one of its officers, managers, or chief clerks, and that none other has authority to consent or agree to any alteration, amendment, modification or limitation whatsoever of the terms of this agreement.

Executed in duplicate the day and year first above written.

Sinclair Refining Company,

By .....

Manager,

.....

Marketer,

By .....

President.

Attest or Witness:

.....

As to Marketer.

4050 COMMISSION EXHIBIT NO. 473.

Equipment Rental Agreement.

This Agreement, made and entered into by and between Sinclair Refining Company, a Maine corporation, party of the first part, hereinafter referred to as 'Sinclair,'' and Party of the second part, hereinafter referred to as "Customer'' and by the singular neuter pronoun,

Witnesseth, That, in consideration of the sum of One ($1.00) Dollar in hand paid by Customer, the receipt whereof is hereby acknowledged, and in consideration of the mutuality hereof and of the rentals provided herein, it is agreed by and between the parties hereto as follows:

1. Sinclair hereby hires and rents to Customer, and agrees to deliver to Customer's place of business, such equipment as Sinclair may from time to time deem necessary for the economical and convenient handling, storing, dispensing, advertising or testing by Customer of petroleum products on the premises herein described, and Customer hereby agrees to pay Sinclair rental for such equipment the sum of One ($1.00) Dollar per annum, payable annually in advance, during the continuance of this agreement. Sinclair shall have the right to substitute for any equipment placed with Customer other equipment of like character and quantity and in the event of such substitution this agreement in all its terms shall apply to such substituted equipment.

2. Equipment delivered to Customer shall be used by Customer in its business upon only the following premises situated in the City of ....., State of ....., at No. ..... Street, or (if in the country) ....., ... miles ..... of the City of ..... on ..... High-
(in which direction)

way, State of ..... said premises also being known as .....
and owned by ..... and such equipment shall at all times be treated considered as personal property and in no sense fixtures or a part of the real estate, regardless of the manner in which it may be installed or used on said premises.

3. Each delivery to and acceptance by Customer of any equipment that may from time to time be placed with Customer, including substitutions therefor, shall be evidenced by a receipt on Sinclair's Form 995, Equipment and Materials Receipt, which shall be signed by Customer at the time of receiving such equipment and which when so signed shall become a part of this agreement with the same force and effect as though embodied herein; provided, however, that any equipment heretofore or hereafter delivered by Sinclair to Customer, whether or not evidenced by said Receipt, shall be subject to the terms and conditions of this agreement. It is understood and agreed that Customer's acts of excepting such equipment and signing said receipt shall be construed to be an acknowledgment by Customer that the equipment described in said receipt was in good and serviceable condition at the time of its delivery to Customer.

4. Such equipment shall at all times be and remain the property of Sinclair, and shall be used by Customer only for the purpose of handling, storing, dispensing, advertising or testing petroleum products. Any authorized representative of Sinclair shall at any reasonable hour have the right to inspect such equipment.

5. Customer hereby agrees that it will, unless specifically exempted by Sinclair in writing from so doing, maintain such equipment in good condition and repair and pay all cost and expense in connection therewith; that it will not

encumber or remove such equipment or permit anyone except Sinclair to remove or take possession thereof; that it will exercise care in the protection and preservation of such equipment and will not efface, deface, damage or destroy the same or suffer others so to do; that it will not do or suffer to be done anything whereby such equipment or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the title of Sinclair thereto may in any way be altered, impaired or prejudiced; and that it will pay or reimburse Sinclair for any loss or damage Sinclair may sustain in the event of the happening of any of the foregoing or other contingencies. If, upon demand, Customer shall for any reason fail or refuse to return to Sinclair any of such equipment, Customer, shall be liable to Sinclair for the value, set forth in Sinclair's said Form 995, Equipment and Materials Receipt, of such equipment not returned or, if no value is set forth in said Receipt, for the fair market value thereof. Customer hereby further agrees to comply with all applicable state laws and municipal ordinances, rules, and regulations in connection with the use, installation, erection, operation, maintenance and display of such equipment or of any part thereof.

6. In the event Customer should at any time use such equipment for any purpose other than the handling, storing, dispensing, advertising or testing of petroleum products, or should violate any of the obligations of this agreement, Sinclair shall have the right to declare this agreement terminated and, without notice to Customer, may with men, vehicles, and necessary tools enter the premises whereon such equipment or any part thereof may be located and remove the same therefrom, whether affixed to the premises or located in, on or under the same, or not, without recourse to any legal proceedings for that purpose, and without liability for damages resulting from so doing.

7. In the event this agreement is terminated within ..... year ..... from the date hereof, for any breach or default specified in paragraph numbered "5" or "6" hereof, the expenses of delivering and installing said equipment as such expenses as shown on Sinclair's books and records, shall be paid by Customer to Sinclair, unless such equipment shall have been installed at Customer's expense, and the expense incurred by Sinclair in removing such equipment shall also be paid by Customer to Sinclair.

8. This agreement shall continue so long as may be mutually agreeable to the parties hereto, it being further agreed that either party to this agreement may terminate the same at any time upon giving five (5) days' written notice to the other party (no previous notice being required in the event to breach or default); provided that in the event this agreement shall be terminated by Customer as provided in this paragraph within the period specified in paragraph numbered "7" hereof, Customer shall reimburse Sinclair for its expenses as provided in paragraph numbered "7" hereof in the same manner as though this agreement had been terminated by reason of Customer's breach or default.

9. Upon the termination of this agreement by notice or in any other manner, Sinclair shall have the right and privilege of removing such equipment or any part thereof from the above described premises.

10. Customer shall pay all taxes, license fees, permit fees, inspection fees, occupation taxes and any and all charges, fees or assessments of whatsoever nature that may be levied, assesed or charged on or against such equipment or any part thereof, or on the installation thereof or Customer's use or operation thereof; and in the event of Customer's failure or refusal so to do, Sinclair may, at its option, pay the same and, upon presentation of

invoice therefor, Customer shall reimburse Sinclair for payments thus made.

4051 11. If any of such equipment shall consist of signs or other advertising devices arranged for artificial illumination, or if electric current is used in connection with the operation or maintenance of any of the equipment covered hereby, Customer agrees to pay for all charges for the electric current used in such illumination, operation, or maintenance.

12. Customer, for itself, its heirs, executors, administrators, successors and assigns, hereby release, relinquishes and discharges, and agrees to indemnify, protect and save harmless, Sinclair, its successor and assigns, of and from any and all claims, demands and liability for any injury to, including death of, persons (whether they be third persons, Customer, or employees of either of the parties hereto) and any loss of or damage to property (whether it be that of either of the parties hereto or of third persons) by reason of any leakage, fire or explosion of or from any such equipment or any part thereof, or any gasoline, oils, or other petroleum products in or about or contained in the same, or by reason of any defects in the contruction or installation of such equipment, or by reason of the use or operation of such equipment, or by reason of the placing, erection, falling, or dislocation of such equipment or any part thereof, or by reason of any like or difference casualty, neither due to the negligence of Sinclair or otherwise.

13. Sinclair hereby authorizes, Customer to use the trade-marks and brand names of Sinclair solely on and in connection with the products purchased from and so identified by Sinclair, the same to be used during such time only as this agreement shall be in effect. If Sinclair shall lend to Customer or permit Customer to use any sign or device of any kind bearing Sinclair's name or any trade-mark, brand name, symbol or slogan, to be used for the purpose

of identifying or advertising Sinclair's products, Customer agrees upon demand to return such sign or device to Sinclair and to discontinue the use of any word, names, phrase or thing which Customer is hereby authorized to use. Customer is permitted to use Sinclair's said name, trade-marks, brand names, signs, devices and slogans only upon the following conditions: (a) that they will be used in such way only as Sinclair may authorize; (b) that they will not be used in the identifying or advertising of any products except those supplied by Sinclair; (c) that Customer will not permit anyone else to exercise or use any of the rights, privileges or things granted or lent to Customer; (d) that Customer will not claim any right, title or interest in or to Sinclair's name, trade-marks, brand names, signs, devices and slogans; and (e) that Customer will never directly or indirectly deny or assail or assist in denying or assailing the sole and exclusive ownership of Sinclair in and to the same. Failure or refusal by Customer to comply with the terms and conditions set forth herein shall entitle Sinclair to terminate forthwith the within agreement; but such termination shall not in anywise perjudice Sinclair's claim for damages.

14. This agreement is personal to Customer and shall not be assigned in whole or in part by Customer without the consent of Sinclair in writing first obtained.

15. This agreement is executed in duplicate, and the counterpart thereof held by Sinclair is to be considered the original and shall be the binding agreement in case of a variance in any particular between it and any other signed copy. This agreement constitutes a merger of all proposals, negotiations and representations with reference to the subject matter and provisions hereof, and many be altered, amended or modified only in writing signed by Customer and a representative of Sinclair authorized to sign this agreement. Customer acknowledges notice that this in-

strument may be executed on Sinclair's behalf only by one of its officers or managers and that none other has authority to consent or agree to any alteration, amendment, modification or limitation whatsoever of the terms of this agreement.

In Witness Whereof, the parties hereto have executed this agreement this ..... day of ..... 19 ....., and have delivered the same free of any conditions not hereinabove set forth.

Sinclair Refining Company,

By .....,

Manager.

Witness:

.....

To Signature of Party of the Second Part.

.....

.....

By .....

(*Officer of Customer.*)

Land Owner's Consent.

(Must be procured in all instances.)

The undersigned owner (herein referred to in the singular number, whether one or more) of the premises upon which the equipment referred to in the foregoing agreement has been or may be installed, hereby consents to the installation thereof and disclaims any claim or right therein by reason of such installation, and agrees to the removal of such equipment by Sinclair as specified in the foregoing statement; it being understood that, if the said premises are held under lease by Customer, said lease shall not be changed or modified by reason of this consent except as to the installation and removal by Sinclair of its said equipment or any part thereof.

Witness:

.....

.....

.....

Owner.

4052A COMMISSION EXHIBIT NO. 474.

In the Territory of Bulk Plant
at .....

Station Lease.

This Indenture of Lease, made and entered into in duplicate this ..... day of ....., A. D. 19 .., by and between Sinclair Refining Company, a Maine corporation, authorized to transact business in the State of ....., having an office at ...., party of the first part (hereinafter referred to as "Lessor"), and .....; of ....., part ..... of the second part (hereinafter referred to as "Lessee," whether one or more, and when referred to by pronoun the masculine gender will be used);

Witnesseth:

1. Whereas, Lessor, in order to promote the sale of products manufactured and marketed by it, establishes uniform and attractive service stations combining characteristic exterior design, distinctive color scheme and unique advertising so as to be easily recognized by the motoring public as service stations where such products may be purchased; and

2. Whereas, said service stations are specifically constructed, equipped and advantageously located for the retail sale of gasoline, other petroleum products, tires, batteries, automobile accesesories and merchandise customarily sold to motorists, and contain sanitary rest rooms for the use and convenience of the motoring public; and

3. Whereas, for the purposes aforesaid and upon the terms and conditions hereinafter set forth, Lessee desires

to lease from Lessor the service station hereinafter described;

4. Now, Therefore, in consideration of the premises, the rents herein reserved, and the covenants, conditions and agreements herein set forth, on the part of Lessee to be paid, maintained, kept and performed, Lessor does hereby demise and lease unto Lessee the following described premises, including other structures and facilities, if any, used for and constituting an oil and gasoline service station (hereinafter referred to collectively as "station"), located at ....., and situate in the City of ....., County of ....., State of ....., to wit:

together with the buildings, structures, improvements, pumps, tanks, appliances, furniture, tools, and other personal property located thereon, as set forth in an inventory taken and signed by the parties hereto, marked "Exhibit A" and attached to and made a part of this lease to the same effect as though written out in full herein, including any additions thereto or substitutions thereof which may be made by Lessor from time to time; receipt of any substituted or added equipment shall be evidenced by Lessor's Receipt Form 995 "Equipment and Materials Receipt," and said receipt when signed by Lessee shall become a part of this lease with the same force and effect as though embodied herein; provided, however, that any equipment heretofore or hereafter delivered by Lessor to Lessee, whether or not evidenced by said receipt, shall be subject to the terms and conditions of this lease. It is understood and agreed that Lessee's act of accepting such equipment and signing said receipt shall be construed to be an acknowledgment by Lessee that the equipment described in

said receipt was in good and serviceable condition at the time of its delivery to Lessee.

5. To Have And To Hold the above demised and leased station, and all rights, privileges, and appurtenances thereunto belonging, unto Lessee for and during the following term:

If Lessor holds the station by virtue of an underlying lease, it is agreed that under no circumstances shall this instrument be deemed a transfer to Lessee of the entire unexpired term of such underlying lease so as to constitute an assignment thereof, and accordingly, in such event, a portion of the term of such underlying lease is hereby reserved to Lessor and the above stated term of this lease is hereby qualified to the extent that the term hereof shall in no event extend beyond the day preceding the last day of the term of such underlying lease or of any extension or renewal thereof, if same shall be extended or renewed by Lessor; provided, however, that Lessor shall not be obligated to extend or renew such underlying lease or the term thereof, pursuant to any right contained therein or otherwise, in order that this lease may continue in effect. No previous notice or refund of rentals shall be required in the event of termination or cancellation of this lease for breach or default as hereinafter provided.

4052B 6. Lessee shall yield and pay to Lessor as rental for said station for and during said term the following sums:

All rentals shall be payable in lawful money of the United States at the office of Lessor hereinabove stated, or at such other place as Lessor may designate from time to time.

7. If the amount of rental payable hereunder is dependent upon or is to be computed on the volume of business conducted at said station, Lessee covenants and agrees to promote diligently the sale of gasoline, other petroleum products, tires, batteries, accessories and merchandise, and to keep the station open for business and properly illuminated during at least those hours per day and days per month when competing service stations in the same general community as said station are open for business.

8. Lessee agrees that he will assert and maintain his right of entry and possession hereunder as against third persons and excuses Lessor from all duty and liability with respect thereto. Lessee covenants and agrees to use and occupy the station in a careful, safe and proper manner; not to permit or suffer any waste thereon or thereof or any nuisance thereon or thereabout; and Lessee further agrees that without Lessor's prior written consent no part of said station shall be used for the major repair, maintenance or painting of automobiles, the overhauling of motors, body or fender repairing or refinishing, tire recapping or welding, or for any activity which cannot be conducted safely in the presence of petroleum vapors or volatile petroleum products.

9. Lessee covenants and agrees at his own cost to keep the driveways, approaches and sidewalks adjacent to the station free from snow and ice; to maintain in good condition and repair the station, driveway, approaches and sidewalks adjacent thereto, rest rooms, structures, equipment, appliances, plumbing and other facilities, as well as any personal property hereby leased to Lessee; and not to encumber or remove the same, or do or suffer to be done anything whereby the same or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the right of Lessor therein or the title thereto may in any way be altered, impaired or prejudiced; it

being expressly agreed that Lessee acquires hereunder no interest in any buildings, structures, equipment, appliances or other property now on said station or which may hereafter be placed thereon by Lessor, except the right to use the same as in this lease provided. Lessee further agrees that without Lessor's prior consent, no sign, fixture or device shall be affixed permanently or in such manner as to cause damage to the station. Lessee agrees not to use said station, or any part thereof, whether or not adapted therefor, as living quarters or for dwelling purposes unless Lessor shall consent thereto by a separate written instrument setting forth the terms for such use.

10. The health, safety and expectation of the motoring public demand that the rest rooms and toilets at the station shall be kept at all times in a clean, neat and sanitary condition, and Lessee covenants and agrees that the minimum standard therefor shall be such as shall comply with all applicable public health ordinances, laws, rules and regulations governing such facilities; and if there be no such public ordinances, then nevertheless the rest rooms and toilets shall at all times be kept in such clean and sanitary condition that the same shall be safe for use from a public hygiene standpoint as determined from time to time or at any time by an inspection thereof conducted by any appropriate public health board, officer, inspector, doctor of medicine, registered nurse or other hygienic expert.

11. Lessee shall be liable for and agrees to pay when due all license, permit, and inspection fees and occupation and license taxes assessed or charged on or against the station or Lessee's use or occupancy thereof; also all compensation, fees, rents, and charges assessed and imposed by municipalities for the installation, use or maintenance of approaches or driveways serving the station, and all water, sewage and waste disposal, rubbish and garbage dis-

posal, gas, telephone, and electric light and power charges assessed or charged on or against the station or Lessee's use or occupancy thereof, including all taxes levied and assessed on Lessee's property located thereon during the term hereof.

12. Lessee shall comply with and obey all laws, ordinances, rules, regulations, orders, directives and requirements, whether regarded as valid or invalid, of the Federal, State, City, Village, or other governmental subdivision in which said station is located and of any and all of their agencies, bureaus and departments, to the extent that the same affect Lessee's use, occupancy or operation of the station.

13. Lessee, for himself, his heirs, executors, administrators, successors and assigns, hereby releases, relinquishes and discharges, and agrees to indemnify, protect and save harmless, Lessor, its successors and assigns, of and from any and all claims, demands and liability for any injury to, including death of, persons (whether they be third persons, Lessee, or employees of either of the parties hereto) and any loss of or damage to property (whether the same be that of either of the parties hereto or of third persons) caused by, growing out of, or happening in connection with, Lessee's use and occupancy of the station or any equipment or appliances located or to be located thereon, or by reason of any like or different casualty. In like manner and to the same extent set forth in the preceding sentence Lessee agrees to exonerate and save harmless Lessor even though the claim, loss or casualty is attributable to the negligence of Lessor.

14. Lessee, for himself, his heirs, executors, administrators, successors and assigns, hereby releases, relinquishes and discharges, and agrees to indemnify, protect and save harmless, Lessor, its successors and assigns, of

and from any and all claims, demands and liability for any injury to, including death of, persons (whether they be third persons, Lessee, or employees of either of the parties hereto) and any loss of or damage to property (whether the same be that of either of the parties hereto or of third persons) by reason of any leakage, fire or explosion of or from any leased equipment or any part thereof, or of any gasoline, oils, or other petroleum products in or about or contained in the same, or by reason of any defects in the construction or installation of such equipment, or by reason of the use or operation of such equipment, or by reason of the placing, erection, falling, or dislocation of such equipment or any part thereof, or by reason of any like or different casualty. In like manner and to the same extent set forth in the preceding sentence Lessee agrees to exonerate and save harmless Lessor even though the claim, loss or casualty is attributable to the negligence of Lessor.

15. Lessee shall furnish, install and display continuously on the exterior of the station at a point visible and accessible to the public, a legible sign showing that Lessee is occupying said station under a lease and is the sole owner of the business.

4053 16. If Lessee shall default in the performance of any covenant contained in this lease, or if Lessee shall violate any agreements, covenants, conditions and obligations of this lease upon him imposed, or if Lessee shall fail to comply with and obey any of the laws, ordinances, rules, regulations, orders, directives and requirements, whether regarded as valid or invalid, of the Federal, State, City, Village, or other governmental subdivision in which said station is located or of any and all of their agencies, bureaus and departments, as by this lease required, or if Lessee shall become bankrupt, or become insolvent in the opinion of Lessor, or shall make an assignment for the

benefit of creditors, Lessor in any event shall have the right to declare this lease terminated, and shall have the further right, without notice and without recourse to any legal proceeding to enter upon the station and repossess the same, including all property embraced within this lease, and Lessor shall have a first lien upon all merchandise and other property of Lessee located upon the station to secure the payment of rent and all charges hereunder and the full performance by Lessee of all obligations to Lessor; and Lessor shall further have all the rights and remedies provided by law for the recovery of rent and possession. It is understood that the failure or omission of Lessor to enforce any term, covenant or condition of this lease or the acceptance of rent by Lessor after default or the happening of any of the above contingencies shall not be construed as a waiver of the rights of Lessor herein specified. If Lessee is an individual and if he shall die during the term of this lease or any extension thereof, this lease shall automatically terminate.

17. Upon the termination of this lease by lapse of time or otherwise, Lessee agrees to return to Lessor the station, together with all other property embraced within this lease, and any other property of Lessor located thereat, in their condition when received by Lessee, reasonable wear and tear incident to proper use thereof excepted. In the event Lessee shall for any reason be unable to return any of said property, he agrees to replace the same with similar property of like value, or to pay Lessor the market price therefor.

18. If there is a safe or chest included in the equipment leased hereunder, Lessee agrees to maintain said safe or chest in good and usable condition throughout the term hereof, and to bear the expense of any repairs thereon or replacement thereof; it being understood and agreed that

Lessee shall assume any losses from robbery, burglary or larceny of the contents thereof, and of any property embraced within this lease.

19. Lessor reserves the right of entry of its representatives, agents, and employees for the purpose of examination and inspection of the station and any property of Lessor located thereon.

20. Lessee shall make no alterations or changes in or additions to any buildings, structures or improvements at the station without first procuring the written consent of Lessor so to do. Any work so authorized by Lessor shall be at the sole cost and expense of Lessee, and any such alterations, changes or additions so made by Lessee shall forthwith become the property of Lessor, and Lessee shall have no claim of any kind or character therefor.

21. This lease is personal to Lessee and shall not be assigned in whole or in part, and the station or any part thereof shall not be sublet, nor shall any rights or privileges herein granted Lessee be sold, transferred or assigned without the written consent of Lessor first obtained.

22. If during the term of this lease proceedings are instituted for the condemnation of the station or any part thereof, or if Lessor shall dispose of said station or any part thereof or its interest therein, either voluntarily or involuntarily, in order that the station may be devoted wholly or partially to any public use, this lease shall, at the option of Lessor and upon written notice to Lessee, forthwith finally cease and terminate, and Lessee shall not be entitled to any damage award or purchase price, or any part of either, which may be paid on account of such condemnation or sale.

23. Any prior agreement under which the Lessor leased the above described station or equipment to the Lessee is

hereby terminated on and as of the day preceding the commencement of the term hereof, except as to any liability which may or shall have accrued under and by virtue of any said agreement prior to such effective cancellation date.

24. If the above described station is held by Lessor under lease, Lessor shall have the right to exercise any and all termination rights reserved to it under such underlying lease, and if such underlying lease shall be terminated for any cause or in any manner at any time prior to the expiration of the term herein provided, this lease, at the same time, shall expire and terminate without previous notice to Lessee, and Lessor shall not be liable to Lessee in damages or otherwise on account of such prior termination. This lease shall be subject to all conditions and restrictions affecting the station, including those which may be of record or in the underlying lease, if any, and also including building, building line, and zoning restrictions. If Lessee shall abandon, desert or vacate the station during the term of this lease, or during any extension or renewal period, for a period of more than two (2) calendar days, Lessor may terminate this lease and repossess the station. If the operation of a service station on said premises shall be prohibited or restricted during the term hereof by statute, ordinance, order of court or other governmental authority, and not because of any fault or neglect of Lessee, this lease shall be subject to termination at the option of either party.

25. All notices given under this instrument shall be in writing, and may be given either in the statutory method, if any, in the State where the station is located or by depositing the notice in the United States registered mail,

postage prepaid, enclosed in an envelope addressed to the party to be notified at such party's address as shown in this instrument or at any other known address of Lessee, and the date upon which such notice is so mailed shall be treated as the date of service. If there be more than one Lessee, notice to one shall constitute notice to all. In addition, any notice given by Lessor to Lessee shall be valid if served upon Lessee in person or delivered to or left at the station. Lessee agrees to give to Lessor written notice within fifteen (15) days after the end of each quarter-annual period during the existence of this lease of each and every claim or demand that Lessee has against Lessor at the end of such period; and it is expressly agreed that Lessee's failure so to notify Lessor of any such claims or demands (if any there be) shall constitute and be a waiver and release by Lessee of such claims or demands, other than claims and demands enforceable by penal action, that Lessee has against Lessor up to and at the end of such period.

26. This lease constitutes a merger of all proposals, negotiations and representations with reference to the subject matter and provisions hereof, and may be altered, amended or modified only in writing signed by a representative of Lessor authorized to sign this instrument and by Lessee. Lessee acknowledges notice that this instrument may be executed on Lessor's behalf only by one of its officers or managers and that none other has authority to authorize any action for which Lessor's consent is required hereunder, or to consent or agree to any alteration, amendment, modification or limitation whatsoever of the terms of this lease. This lease shall not be binding upon Lessor until executed on its behalf notwithstanding any delivery of possession to, or the acceptance of rent from, Lessee.

Witness the hand and seals of the parties respectively attested or witnessed, the day and year first above written.

Sinclair Refining Company,
Lessor,

By .....
Manager,

.....(Seal)
Lessee,

.....(Seal)
Lessee,

Signed, sealed and delivered
in the presence of:

.....

.....
as to Lessor,

.....

.....
as to Lessee.

4055 COMMISSION EXHIBIT NO. 475

Sinclair Refining Company

Refined Oil Sales Agreement—Dealer
(Tank Wagon)

This Agreement, made and entered into this ..... day of ....., 19....., by and between Sinclair Refining Company (a Maine corporation), having an office at the address hereinafter specified, as Seller, and of ....., as Dealer;

Witnesseth, That, for the considerations herein contained, Seller hereby agrees to, and hereby does, sell to Dealer, and Dealer hereby agrees to, and hereby does, buy

from Seller, during each yearly period this agreement is in effect, not less than ..... gallons nor more than ..... gallons, in the aggregate, of

Sinclair H-C Gasoline

.....

.....

Prices: For each delivery of any above product Dealer shall pay Seller's official established tank wagon price per gallon to dealers (without any discount or deduction therefrom) for deliveries of such product prevailing at the time and for the place of each such delivery, as scheduled at the bulk plant from which delivery is made. Dealer agrees that Seller shall have the right to change said price from time to time without notice to Dealer except as scheduled at said bulk plant or as shown in Seller's invoices.

Place and Method of Delivery: The gasoline purchased hereunder shall be delivered in fairly even monthly quantities by tank wagons or transport trucks to Dealer's place or places of business at

Duration of Agreement: This agreement shall continue in effect for one year beginning the ..... day of ...., 19....., Unless terminated as hereinafter provided, before or at the expiration of such initial period, this agreement shall continue in full force and effect as to all its terms, provisions and conditions from year to year, subject to cancellation by either party as herein specified.

Terms: Net Cash (without discount) on delivery. If Seller shall extend credit to Dealer, the right to withdraw credit at any time is reserved by the Seller. Payments shall be made by Dealer in lawful money of the United States, or its equivalent, and shall be made to Seller's branch manager or marketer at ..... or to Seller's office at .....

ADDITIONAL PROVISIONS.

1. In addition to the prices herein provided, Dealer shall pay Seller amounts equivalent to any and all taxes, excises, duties, charges and inspection and other fees, and any and all increases therein, which are now or may hereafter be imposed, directly or indirectly, by any domestic or foreign governmental authority or agency on, against, in respect of or measured by the products covered by this agreement, or any material contained in such products, or the importation, exportation, production, manufacture, sale, transportation, delivery or other handling of such products or material or any feature thereof or of this agreement. The amounts of any such taxes, excises, duties, charges or inspection and other fees shall be added to th prices herein provided when Seller either pays or becomes liable for the payment of any such taxes, excises, duties, charges or inspection and other fees.

4056 2. Failure or refusal by Dealer to comply with requirements, which Seller may impose hereunder as to payments, shall entitle Seller to suspend deliveries pending such failure or refusal, or to terminate this agreement forthwith. The suspension of deliveries or termination of this agreement under any of the conditions herein set forth shall not in any wise prepudice Seller's claim for damages.

3. It is expressly understood and agreed that Seller shall not be obliged hereunder to sell or deliver Sinclair Power-X Gasoline or Sinclair U. S. Motor Specifications Gasoline or Sinclair Pennant Gasoline unless specificially included above and until Seller has a sufficient supply thereof at the bulk plant from which deliveries are made to the Dealer.

4. In the event that Sinclair U. S. Motor Specifications Gasoline or Sinclair Pennant Gasoline is covered by this agreement, Seller shall have the right and privilege of

discontinuing deliveries thereof at any time and from time to time without notice to Dealer; and in the event of any such discontinuance, Seller shall have the right and privilege of delivering hereunder, in lieu of the product so discontinued, any other Sinclair branded gasoline of approximately the same specifications as the one discontinued, and in such event the applicable terms and conditions relating to the product discontinued, including the price, shall apply with equal force and effect to the Sinclair branded gasoline so substituted, it being expressly agreed that Seller shall not be required to substitute any other branded gasoline.

5. In the event that Sinclair Power-X Gasoline is covered by this agreement and if Seller should at any time during the life of this agreement discontinue the marketing of Sinclair Power-X Gasoline in Dealer's territory and should market in such territory some other premium gasoline in place thereof, Seller shall have the right and privilege thereafter of delivering such other premium gasoline instead of Sinclair Power-X Gasoline.

6. This agreement may be cancelled and terminated by either party at the expiration of the initial period herein specified, or at the end of any yearly period thereafter, upon thirty (30) days' previous written notice to the other party.

7. Dealer shall not change or alter by any means whatsoever the nature, quality, or appearance of any of the products purchased and sold hereunder. Any violation of this provision by Dealer shall give Seller the right to suspend immediately further deliveries hereunder of such products or to terminate this agreement. Seller shall have the right from time to time during the life of this agreement to change, alter, or amend any of the trade names or brands under which products covered by this agreement are now or may hereafter be marketed. Seller agrees that

the commodity sold hereunder shall be uniform in quality and at all times up to its standards.

8. All orders hereunder will be filled with reasonable promptness, and it is agreed that Seller shall not be obliged to furnish any products hereunder nor be liable for loss or damage for failure or delay in making deliveries when such failure or delay arises from (a) any failure of Seller's supply of containers therefor at any point from which Seller customarily would make deliveries; or (b) interruption of any means of transportation; or (c) acts of God, strikes, lockouts, differences among or with its workmen, fires, accidents, civil commotion, war conditions in this or any foreign country, mechanical breakdowns in its manufactories or of its supplying pipe lines, acts of foreign or domestic Governmental authority, including, but not limited to, any system of priority controls, allocations or requisitions; or (d) any seizure or appropriation of any of Seller's property or of the management or operation thereof; or (e) any other cause reasonably beyond Seller's control, whether or not such cause shall be similar to any of the specifications of excuse hereinbefore stated.

9. The sale of any motor fuel which may contain either an "Ethyl" or any other anti-knock compound under this agreement is subject to (a) all the provisions contained in the agreements under which Seller is licensed to manufacture and sell motor fuel containing said compounds and (b) compliance by Dealer with all such provisions, rules, regulations and orders now in existence or which may hereafter be issued by the licensor or any governmental authority having jurisdiction insofar as the same apply to motor fuel purchased by Dealer from Seller. If Dealer shall fail or refuse to comply therewith, Seller may either suspend deliveries of such motor fuel or terminate this agreement in respect to such motor fuel. It is expressly agreed that such gasoline containing an "Ethyl" or other anti-knock com-

pound is sold for use as a motor fuel only and is not to be used or resold for cleaning purposes under any circumstances.

10. Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended at the address of such party herein specified, or when delivered personally to such party at such address. Dealer agrees to give to Seller written notice within fifteen days after the end of each quarter-annual period during the existence of this agreement of each and every claim or demand that Dealer has against Seller at the end of such period; and it is expressly agreed that Dealers' failure so to notify Seller of any such claims or demands (if any there be) shall constitute and be a waiver and release by Dealer of such claims or demands, other than claims and demands enforceable by penal action, that Dealer has against Seller up to and at the end of such period.

11. Any sales contract or agreement, covering tank wagon or transport truck deliveries of gasoline to the Dealer's place or places of business above specified, heretofore entered into between the parties hereto is hereby cancelled and terminated on and as of the effective date hereof, except as to any liability or obligations which may or shall have accrued under and by virtue of any said contract prior to such effective cancellation date.

12. Seller hereby authorizes Dealer to use the trademarks and the brand names of Seller solely on and in connection with the products purchased from and so identified by Seller, the same to be used during such time only as this agreement shall be in effect. If Seller shall lend to Dealer or permit Dealer to use any sign or device of any kind bearing Seller's name or any trade-mark, brand name,

symbol or slogan, to be used for the purpose of identifying or advertising Seller's products, Dealer agrees upon demand to return such sign or device to Seller and to discontinue the use of any word, name, phrase or thing which Dealer is hereby authorized to use. Dealer is permitted to use Seller's said name, trade-marks, brand names, signs devices, symbols and slogans only upon the following conditions: (a) that they will be used in such way only as Seller may authorized; (b) that they will not be used in the identifying or advertising of any products except those supplied by Seller; (c) that Dealer will not permit anyone else to exercise or use any of the rights, privileges or things granted or lent to Dealer; (d) that Dealer will not claim any right, title or interest in or to Seller's name, trade-marks, brand names, signs, devices, symbols and slogans; and (e) that Dealer will never directly or indirectly deny or assail or assist in denying or assailing the sole and exclusive ownership of Seller in and to the same. Failure or refusal by Dealer to comply with the terms and conditions set forth herein shall entitle Seller to terminate forthwith the within agreement; but such termination shall not in anywise prejudice Seller's claim for damages.

13. This agreement shall not be assigned by Dealer in whole or in part; constitutes a merger of all proposals, negotiations and representations with reference to the subject matter and provisions hereof; and may be altered, amended or modified only in writing signed by Dealer and by a representative of Seller authorized to sign this agreement. Dealer acknowledges notice that this agreement may be executed on Seller's behalf only by one of its officers, managers, or chief clerks, and that none other has authority to consent or agree to any alteration, amendment, modification or limitation whatsoever of the terms of this agreement.

Witness the hands and seals of the parties hereto the day and year first above written.

Witness to Signature of Dealer:

.....

Attest:

.....

Secretary of Dealer.

Sinclair Refining Company, Seller.

By .....

Manager.

..... (Seal)

..... (Seal)

Dealer.

4057 COMMISSION EXHIBIT NO. 476.

Sinclair Refining Company

Refiners Of Petroleum

.....

(Our Sales Office Address)

To: .....

(Dealer)

.....

.....

We have delivered Credit Identification Cards to certain motorists, to be used by them for credit identification purposes. Such motorists may wish to use such cards in connection with their purchases on credit at service stations of the following:

(1) Sinclair Petroleum Products and service jobs (which involve the sale or use of Sinclair Petroleum Prod-

ucts) performed at the ordinary service station, including chassis lubrication (in whole or in part) and car washing; and

(2) New Goodyear passenger car size tires, batteries and other automotive accessories (except radios and heaters), Provided tires are mounted and batteries and other accessories are attached to the motor vehicle at the time of purchase.

Credit Identification Cards are serially numbered and bear an expiration date. Specimens of these cards have been or will be furnished to you from time to time.

We understand that you desire to make credit sales of the above mentioned petroleum products, service and accessories to those holding such Credit Identification Cards who may apply to your station for the same. We are willing to accept assignment of the accounts arising from such credit sales under the following terms and conditions:

All sales of the above products, services and accessories shall be made for your own account. In making such sales you shall use such forms of delivery tickets, invoices, reports and other forms as we may supply you for use. Credit Delivery Tickets covering sales to holders of Credit Identification Cards must, in each case, describe the services performed for which a charge is made and show the Kinds of Merchandise Sold, the Quantities Sold, the Prices At Which Sold and the Total Value of Each Purchase. Credit Delivery Tickets not prepared in conformity with the foregoing will be rejected by the Company. We do not assume any liability and shall not be liable for any tax for which you are liable to any governmental authority. If any applicable tax is not included in or added to the price, you will be in the position of absorbing such tax. In any event, you will have to account to the proper governmental authority for any applicable tax. You shall assume and pay, and hold us free of, any and all taxes

that are now or may hereafter be imposed on the products or services, or upon the sale of furnishing thereof.

Subject to the terms and conditions established by the Company from time to time, we will accept assignment by you of the accounts arising from such credit sales, and in consideration for the assignment of each such account, we will allow you credit for the amount thereof on your purchases from us.

As to such accounts you shall keep such records and make such reports to us as we may from time to time specify and require with the privilege to us to examine or have examined such records when we may wish to do so.

This proposal is submitted in duplicate, and if the terms and provisions thereof are acceptable to you, you will please so indicate by signing the same at the place indicated hereon, and when executed on our part it will constitute a contract between us, with the understanding that either of us may terminate it at any time with or without cause. A copy of the executed contract will be forwarded to you. Any contract or agreement now in effect with you covering credit sales by you to the holders of Credit Identification Cards is hereby cancelled and terminated on and as of the date hereof, except as to any liability that may have accrued prior to such date.

Sinclair Refining Company,

By .....

Manager.

Date Executed ..... 19....

The within and foregoing is hereby accepted and agreed to on and as of the date hereof:

.....

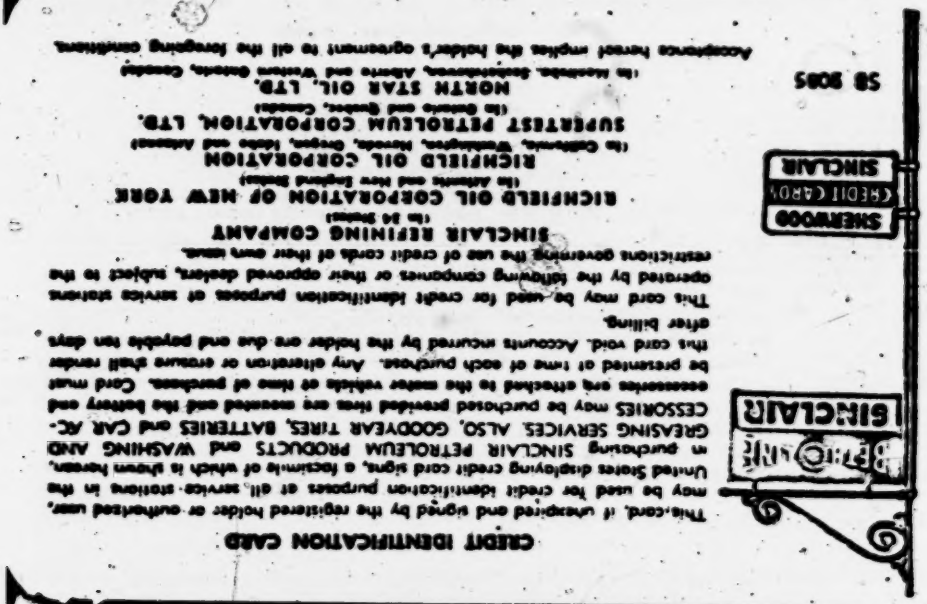
.....

Dealer.

3625

COMMISSION EXHIBIT NO. 477.

4053



CREDIT IDENTIFICATION CARD

This card, if unexpired and signed by the registered holder or authorized user, may be used for credit identification purposes at all service stations in the United States displaying credit card signs, a facsimile of which is shown hereon, in purchasing SINCLAIR PETROLEUM PRODUCTS and WASHING AND GREASING SERVICES. ALSO, GOODYEAR TIRES, BATTERIES and CAR ACCESSORIES may be purchased provided these are mounted and the battery and accessories are attached to the motor vehicle at time of purchase. Card must be presented at time of each purchase. Any alteration or erasure shall render this card void. Accounts incurred by the holder are due and payable ten days after billing.

This card may be used for credit identification purposes at service stations operated by the following companies or their approved dealers, subject to the restrictions governing the use of credit cards of their own issue.

SINCLAIR REFINING COMPANY
(In 26 States)

RICHFIELD OIL CORPORATION OF NEW YORK
(In Arizona and New England States)

RICHFIELD OIL CORPORATION
(In California, Washington, Nevada, Oregon, Idaho and Arizona)

SUPERTEST PETROLEUM CORPORATION, LTD.
(In Ontario and Quebec, Canada)

NORTH STAR OIL, LTD.
(In Manitoba, Saskatchewan, Alberta and Western Ontario, Canada)

Acceptance hereof implies the holder's agreement to all the foregoing conditions.

SB 8085

SHERWOOD
CREDIT CARD
SINCLAIR

SINCLAIR
REFINING

SHERWOOD BROTHERS INCORPORATED

CREDIT IDENTIFICATION CARD

EXPIRES [redacted] EXPIRES

Subject to the terms and conditions printed hereon, the below named is granted CREDIT PRIVILEGES of SHERWOOD BROTHERS INCORPORATED.

This card is NOT transferable. The privileges hereby granted may be revoked in whole or in part at any time without notice.

Signature of Registered Holder or Authorized User

Specimen

CARD No.

COMMISSION EXHIBIT NO. 478.

CREDIT IDENTIFICATION CARD

This card, if unexpired and signed by the registered holder or authorized user, may be used for credit identification purposes at all service stations in the United States displaying credit card signs, a facsimile of which is shown hereon, in purchasing SINCLAIR PETROLEUM PRODUCTS and WASHING AND LUBRICATING SERVICES. ALSO, GOODYEAR TIRES, BATTERIES and CAR ACCESSORIES may be purchased provided tires are mounted and the battery and accessories are attached to the motor vehicle at time of purchase. Card must be presented at time of each purchase. Any alteration or erasure shall render this card void. Accounts incurred by the holder are due and payable ten days after billing.

This card may be used for credit identification purposes at service stations operated by the following companies or their approved dealers, subject to the restrictions governing the use of credit cards of their own issue.

RICHFIELD OIL CORPORATION OF NEW YORK
(Atlantic and New England States)
RICHFIELD OIL CORPORATION
(California, Washington, Nevada, Oregon, Idaho and Arizona)
SUPERTEST PETROLEUM CORPORATION, LTD.
(Ontario and Quebec, Canada)
NORTH STAR OIL, LTD.
(Manitoba, Saskatchewan, Alberta and Western Ontario, Canada)
B P (CANADA) LTD.
(Ontario and Quebec, Canada)

3085

Acceptance hereof implies the holder's agreement to all the foregoing conditions.

SINCLAIR REFINING COMPANY
CREDIT IDENTIFICATION CARD

Subject to all the terms and conditions printed hereon, the below named is granted CREDIT PRIVILEGES of SINCLAIR REFINING COMPANY.

This card and the privileges thereby granted may be revoked at any time without notice. EXPIRES DEC. 31, 1957

Signature of Authorized User

4059

EXPIRES DEC. 31, 1957

4060 COMMISSION EXHIBIT NO. 479.

Agreement of Merger.

This Agreement of Merger, dated as of the 7th day of December, 1955, made by and between Sinclair Refining Company, a Maine corporation, having its principal business office at 600 Fifth Avenue, New York 20, New Work, hereinafter referred to as "Sinclair" and Sherwood Brothers Incorporated, a Maryland corporation, having its principal office at 10 Light Street, Baltimore 3, Maryland, hereinafter referred to as "Sherwood", witnesseth that:

Whereas, Sinclair and Sherwood desire to merge Sherwood into Sinclair;

Now, therefore, in consideration of the premises and of the covenants herein contained, Sinclair and Sherwood agree as follows:

1. Sherwood, a corporation organized and existing under the laws of the State of Maryland and being a wholly-owned subsidiary of Sinclair, shall be merged into Sinclair, the parent corporation, effective at the close of business on December 31, 1955, in accordance with the laws of the State of Maine and of the State of Maryland and pursuant to the terms and conditions of this Agreement of Merger.

2. Sinclair, a corporation organized and existing under the laws of the State of Maine, shall be the corporation to survive the merger and shall continue to bear the name "Sinclair Refining Company".

3. Sinclair was originally incorporated under the general laws of the State of Maine on October 19, 1908 under the name of "The Cudahy Refining Company", said name having been changed to Sinclair Refining Company by a

certificate of amendment filed in the office of the Secretary of State of said state on January 25, 1917. Sinclair qualified to do business in the State of Maryland on January 3, 1920 and is so qualified now.

Sherwood was incorporated under the laws of the State of Maryland on December 27, 1921.

4. No amendments to the certificate of organization, as heretofore amended, of Sinclair, the surviving corporation, are to be effected as a part of or by reason of the merger accomplished pursuant to this agreement.

5. The total number of shares of stock of all classes which Sinclair has authority to issue is 700,000, all being of the same class, having a par value of $100 each and an aggregate par value of $70,000,000.

The total number of shares of stock of all classes which Sherwood has authority to issue is 10,000. Such stock is divided into two classes, Class A common stock and Class B common stock.

4061 The number and par value of the shares of each class is 5,000 and $100 each. The aggregate par value of all such shares of all classes is $1,000,000.

6. On December 31, 1955, the effective date of the merger accomplished pursuant to this agreement, all of the shares of stock of all classes of Sherwood shall be cancelled and none of such shares shall be converted into shares of stick of Sinclair.

7. The principal offices in the State of Maryland of Sinclair and Sherwood are each located in the City of Baltimore.

Sherwood owns property within the State of Maryland, the title to which could be affected by the recording of an

instrument among the Land Records of Baltimore City and the following counties:

Allegany	Cecil	Montgomery
Anne Arundel	Dorchester	Prince Georges
Baltimore	Frederick	Queen Annes
Calvert	Garrett	St. Marys
Caroline	Harford	Talbot
Carroll	Howard	Washington
Charles	Kent	Wicomico
		Worcester.

8. The location of the principal office of Sinclair, the surviving corporation, in the State of Maine is 57 Exchange Street, Portland, Maine.

The Corporation Trust Incorporated, 10 Light Street, Baltimore, Maryland, is the resident agent of Sinclair in the State of Maryland, service of process upon which shall bind Sinclair in any action, suit or proceeding pending or thereafter instituted or filed against Sinclair under the provisions of the Subtitle designated "Consolidation, Merger and other Transfers of Property" of Article 23 of the Annotated Code of Maryland.

9. This agreement was duly advised and approved by the Board of Directors of Sherwood in the manner and by the vote required by the above Subtitle designated "Consolidation, Merger and other Transfers of Property."

10. This merger, which is to be effected in accordance with the laws of the State of Maine and of the State of Maryland, was duly advised, authorized and approved by the Board of Directors and stockholders of Sinclair in the manner and by the vote required by the certificate of organization, as heretofore amended, of Sinclair and by the laws of the State of Maine.

11. Upon the merger of Sherwood into Sinclair as provided by this agreement, the separate existence of Sherwood shall cease; all property, rights, privileges and fran-

chises of whatsoever nature and description of Sherwood, including the name of Sherwood, shall be transferred to, vested in and devolved upon Sinclair without further act or deed; Sinclair shall be liable for all the debts and obligations of Sherwood and any claim existing or action
4062 or proceeding pending by or against Sherwood may be prosecuted to judgment or decree as if the merger had not taken place, or Sinclair upon its motion or the motion of any party to such action or proceeding, may be substituted as a party in place of Sherwood.

In Witness Whereof, Sinclair and Sherwood have caused this Agreement of Merger to be signed and acknowledged in their respective names and on behalf of their respective corporations by their respective presidents or vice presidents, and the respective corporate seals to be affixed and attested by their respective secretaries or assistant secretaries, all as of the day and year first above written.

Sinclair Refining Company
By (Illegible)
President

Sherwood Brothers Incorporated
By John R. Sherwood
President

Attest:
R. E. Schuster
(Seal) *Assistant Secretary*

Attest:
Howard Jurgens
(Seal) *Secretary*

4063 Acknowledgments

State of New York,
County of New York. } ss.

Be It Remembered that on this 7th day of December, 1955, personally appeared before me the undersigned, James M. Flynn, a Notary Public within the County and State aforesaid, James E. Dyer, as President of Sinclair Refining Company, one of the parties to the within and foregoing Agreement of Merger, known to me and known to me to be such President, and duly acknowledged the execution of the within and foregoing Agreement of Merger as such President and acknowledged the same to be the act, deed and agreement of said Corporation.

James M. Flynn,

(Seal) *Notary Public*

James M. Flynn
Notary Public, State of New York
No. 41-6342000 Qual. in Queens Co.,
Cert. filed with N. Y. Co. Clerk
Term Expires March 30, 1956

State of Maryland:
City of Baltimore: To Wit:

I Hereby Certify, That on this 8th day of December, 1955, before me, the subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore, personally appeared John R. Sherwood, President or Sherwood Brothers Incorporated, a Maryland corporation, and in the name and on behalf of said Corporation acknowledged the aforegoing Agreement of Merger to be the corporate act of said Corporation.

Witness my hand and Notarial Seal the day and year above written.

Charles L. Brenner

(Seal) *Notary Public*

My commission expires: May 6, 1957.

4064 Sinclair Refining Company.

Certificate.

I, R. E. Schuster, duly elected and qualified Assistant Secretary of Sinclair Refining Company, a Maine corporation, do hereby certify that as such Assistant Secretary I have the custody and control of the corporate records of said Corporation and its corporate seal; that the following is a true copy of a resolution duly and unanimously adopted by a majority of the Board of Directors of said Corporation at a meeting of said Board, duly and lawfully held at the Corporation's office in the City of New York, State of New York on December 7, 1955, at which meeting a quorum of said Board was present and participating; and that said resolution is in full force and effect at the date hereof:

Resolved, that it is the opinion and judgment of the Board that it will be to the best interests of the Corporation to merge its wholly-owned subsidiary, Sherwood Brothers Incorporated, a Maryland corporation, into this Corporation in accordance with the laws of the State of Maine and of the State of Maryland; and be it

Further Resolved, that the form of Agreement of Merger, as submitted to and considered at this meeting, which prescribes the terms and conditions of such proposed merger, and the mode of carrying it into effect, be and the same is hereby approved by the Board and shall be delivered to the Secretary for initialing by him and for filing with the minutes of this meeting; and be it

Further Resolved, that the President or any Vice President of this Corporation be and he hereby is authorized and directed to execute said Agreement of Merger on behalf of this Corporation and duly to acknowledge the execution of the same on behalf of this Corporation and the Secretary or any Assistant Secretary be and he hereby is authorized and directed to

attest the same and affix the corporate seal thereto; and be it

Further Resolved, that a special meeting of the stockholders of this Corporation be called and held separately at the office of the Corporation at Portland, Maine on December 15, 1955 at 10:00 A. M. for the
4065 purpose of taking said Agreement of Merger into consideration and submitting the same for adoption or rejection by the stockholders; and be it

Further Resolved, that upon the adoption of said Agreement of Merger by the stockholders of this Corporation, the proper officers of the Corporation be and they hereby are authorized and directed, on behalf of this Corporation, to execute, acknowledge and deliver any and all necessary papers, and to do and perform all such other acts and things as may be necessary or desirable, in their judgment, to carry into effect said merger.

In Witness Whereof, I have subscribed my hand as such Assistant Secretary and have affixed the corporate seal of said Corporation this 7th day of December, 1955.

R. E. Schuster,

(Seal) *Assistant Secretary Sinclair Refining Company.*

4066 Sherwood Brothers Incorporated.

Certificate.

I, Howard Jurgens, duly elected and qualified Secretary of Sherwood Brothers Incorporated, a Maryland corporation, do hereby certify that as such Secretary I have the custody and control of the corporate records of such corporation and its corporate seal; that I was Secretary of a special meeting of the Board of Directors of Sherwood Brothers Incorporated duly and lawfully held at the corporation's office in the City of Baltimore, State of Mary-

land on December 8, 1955 at which meeting a quorum of said board was present and participated and that the following is a true copy of a resolution duly adopted by a majority of the entire Board of Directors of said corporation and that said resolution is in full force and effect as of the date hereof:

> Resolved, that it is the opinion and judgment of the Board that it will be to the best interest of the corporation that the corporation be merged into its parent corporation, Sinclair Refining Company, a corporation of the State of Maine, which is the owner of all of the authorized, issued and outstanding stock of this corporation, in accordance with the laws of the State of Maine and of the State of Maryland; and be it
>
> Further Resolved, that the form of Agreement of Merger as submitted to and considered at this meeting which prescribes the terms and conditions of such proposed merger and the mode of carrying it into effect be and the same is hereby approved by the Board of Directors and shall be delivered to the Secretary for initialing by him and for filing with the minutes of this meeting; and be it
>
> Further Resolved, that the President and/or Vice President of this corporation be and he is hereby authorized and directed to execute said Agreement of Merger on behalf of this corporation and duly to acknowledge the execution of the same on behalf of this corporation and the Secretary or any Assistant Secretary be and he is hereby authorized and directed to attest the same and affix the corporate seal thereto; and be it
>
> Further Resolved, that the proper officers of this corporation be and they hereby are authorized and directed on behalf of this corporation to execute, acknowledge and deliver any and all necessary papers and to do and perform all such other acts and things as may be necessary or desirable in their judgment to carry into effect said merger.

In Witness Whereof I have subscribed my hand as such Secretary and have affixed the corporate seal of said corporation this 8th day of December, 1955.

Howard Jurgens,
(Seal) *Secretary.*

4067 Sinclair Refining Company.

Certificate.

I, the undersigned, A. B. Farnham, Clerk of Sinclair Refining Company, a Maine corporation, do hereby certify: that the within and foregoing Agreement of Merger by and between Sinclair Refining Company, a Maine corporation, and Sherwood Brothers Incorporated, a Maryland corporation, prescribing the terms and conditions of the proposed merger of Sherwood Brothers Incorporated into Sinclair Refining Company and the mode of carrying the same into effect, was submitted to the stockholders of Sinclair Refining Company at a meeting of stockholders duly called separately for the purpose of taking said agreement into consideration, said meeting being held on the 15th day of December, 1955, at the office of said Corporation in Portland, Maine; that at said meeting said agreement was submitted to and considered by the stockholders of said Corporation, a vote of said stockholders was taken for the adoption or rejection of said agreement and said agreement was adopted by the unanimous vote of said stockholders who represented all of the voting power of said Corporation.

In Witness Whereof, I have made this certificate and have duly affixed the corporate seal thereto this 15th day of December, 1955.

A. B. Farnham,
(Seal) *Clerk of Sinclair Refining Company.*

4068 **Verifications.**

State of New York:
County of New York: To Wit:

I Hereby Certify, That on this 15th day of December, 1955, before me, the subscriber, a Notary Public of the State of New York in and for the County of New York, personally appeared R. E. Schuster and made oath in due form of law that he is the Assistant Secretary of Sinclair Refining Company, a Maine corporation, and that the matters and facts set forth in the within and aforegoing Agreement of Merger with respect to authorization and approval thereof by the Directors and stockholders of said Corporation are true to the best of his knowledge, information and belief.

Witness my hand and Notarial Seal the day and year above written.

Albert V. Nolan,
Notary Public.

(Seal)

Albert V. Nolan
Notary Public, State of New York
No. 30-8152600-Qual. In Nassau Co.
Cert. filed with N. Y. Co. Clerk
Term Expires March 30, 1956

State of Maryland:
City of Baltimore: To Wit:

I Hereby Certify, That on this 8th day of December, 1955, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared Howard Jurgens and made oath in due form of law that he is the Secretary of Sherwood Brothers Incorporated, a Maryland corporation and that he was the Secretary of a special meeting of the Board of Directors of said Corporation duly called and held on the 8th day of December, 1955 at which a quorum was present and that the execution of the aforegoing Agreement of Merger and the proposed merger were approved by a majority vote of the entire Board of Directors of Sherwood Brothers Incorporated.

Witness my hand and Notarial Seal.

Charles L. Bunnel
(Seal) Notary Public.

4069 Agreement of merger between Sinclair Refining Company, (A Maine Corp.) the survivor and Sherwood Brothers Incorporated, (A Md. Corp.) approved by the State Tax Commission of Maryland December 30, 1955 and received for record December 30, 1955 at 4:59 o'clock P. M., as in conformity with law and ordered recorded.
A 3473

Commissioners.

Recorded in Liber 528, follio 483, one of the Charter Records of the State Tax Commission of Maryland.

Capital
Increase of Capital

Bonus tax paid $ ..... Recording fee paid $20. $46.00 paid for 23 certificates to be filed in ~~land~~ record offices, 1 in each county and Baltimore City, except Somerset

To the clerk of the Superior Court of Baltimore City
4070 State Tax Commission of Maryland

This Is To Certify That the within instrument is a true copy of the Agreement of Merger between Sinclair Refining Company, (A Maine Corp.) the survivor and Sherwood Brothers Incorporated, (A Md. Corp.) as approved and received for record by the State Tax Commission of Maryland, December 30, 1955 at 4:59 o'clock P. M.

As Witness my hand and official seal of the said Commission at Baltimore this 10th day of December, 1957.

Albert W. Ward
Secretary

COMMISSION EHXIBIT NO. 483. 3639

FEDERAL TRADE COMMISSION
WASHINGTON, D. C.

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. EX 483
IN THE MATTER OF Goodyear
DATE 7/8/58 WITNESS Cooley
ACE REPORTING CO., Official Rep
By D. Mullins

Statement of RUSSELL E. COOLEY

Trading as RUSS COOLEY ATL

Located at 1104 CHENANGO ST
BINGHAMTON, N.Y. (PORT DICKINSON)

1. Type of outlet Class II - Leased

Terms of Lease Since 2/1/58 - on a 1 yr lease - "may leave" at this location for 7 yrs. previously 3 year to year lease and sales quotas increased, and work room added in 1952 yrs also increased. now has 5 year lease

Terms of Sales Contract Has agreement for purchase of gas, oils & grease separate from lease - signed 3rd dated 2/1/53 plus for protection

Credit Cards Authorized credit card dealer - States that he can sell other brands but credit cards

2. Brands of TBA carried

Tires and tubes Goodyear (doesn't want to be stuck)

Batteries Goodyear & Exide (only at Binghamton Battery)

Other TBA Sells products [illegible] Firestone, Pennzoil, Quaker State, Kendall, Wayne, Guardsman, Bowes Seal Fast, Champion Spark Plugs

Remarks: Dealer stated that according to the Sherman Act he may refuse to sell to anyone

3. Estimated monthly volume: Gasoline 16,000 gals.

TBA $4,800 dollars per year

4. TBA suppliers

Tires Goodyear Store - 10 Collier St. - good stock good service

Price information "C" dealer - 70% off list

Batteries Goodyear - from Store

Exide - Binghamton Auto Supply, 2 Hamilton St

Price Information

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 483
IN THE MATTER OF Goodyear
DATE 7-8-58 WITNESS Cooley
ACE REPORTING CO., Official
By D. M.

4077

17-3

4. (Cont.)

Other TBA Whipple's Auto Supply

Puncture Oil & Wax from Ely Motor Store

Price Information Store testified it cuts into competition at [redacted] service store; generally, intended to sell Firestone Oregon Trail tires; but Ely store quoted Lucile Potter Bros. Hardware owned offer - list was 5.99 - store sold for 4.0 Attorney alleges per Bell Comm'l Long Term from the store.

5. Reason for choosing line of TBA carried:

In 1950, ARC Dist Mgr entered and Dist Mgr per Ely, explained that ARC wanted TBA business. Mr. Kunell, ARC salesman for Ely with Ely's representative, would like to see Ely as TBA "Never handled Firestone". But is "supposed" to handle Ely TBA. Changed in 1950 from Firestone to ARC

ARC salesman is the Ely's over Dec 1 years - didn't ask for - Ely said permission - Can't find out if Ely's ever cancelled anything to do with handling Ely TBA by putting it other advertising

- Dealer explained the new arrangement that Ely wants to handle supply TBA; ARC wasn't sure dissatisfied. Survey conducted ARC that Ely was not for this

* - Salesman ARC collects rent - rent is payable by the 10th of each mo.

- At present 4 dealers transferred - Cuff & Hayford's Store (Hayford Bros) now @ Lucerne; 3 nearby. ARC would like to see, refused to move to town; (2) Clemens or Robinson (Carl); (3) Klamath Sales (Front St) (4) Penna & Vigstall formerly operated by J. King. Ely's Ely is employee of Commander Trade Ely employee has choice of operating 5 permanently of homes in valley owning to former boss as sales assistant

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below; and said information is to the best of my knowledge factual and correct.

Russ Cooley 1/26/ 1953

Edward Ripley
Attorney Examiner
Federal Trade Commission

4078

2/3

8

210

page 2

4. (Cont'd)

Other TBA

Price Information

5. Reason for choosing line of TBA carried:

Does not know how flat rental is calculated.

6% is put in over-all as a rule of everything except the sale of gasoline. Flat rental is now $150 plus 6% of "gross" - subject to "new rental" of $75 per quarter

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

Russ Cooley 1/5 1953

Henry J. Ripsky
Attorney Examiner
Federal Trade Commission

4079

373

9

COMMISSION EXHIBIT NO. 484.

3642

C-4164-65

FEDERAL TRADE COMMISSION
WASHINGTON, D. C.

Statement of FRANK R BUONGIORNE

Trading as BUONGIORNE & GAY

Located at 638 CHENANGO ST. PORT DICKINSON
BINGHAMTON, N.Y.

1. Type of outlet Agent in respect of (Docket 6414) Clear title to Mkt - Lessee of this location (or prior to that use as storage garage)

Terms of Lease Lease to 40 as - Gals 30 days - allowed to deduct from rent if paid within 30 days. Lease expires 1 year

~~Terms of Sales Contract~~ Rent $ - flat rent $70 mo. plus 6¢ per gal over about 43 sc per month. Do not pay to landlord

~~Credit Cards~~ Sells Lee tires to S.S. Jacobs, Collector Authorized Sells Atty. Lee at invoice

Also consigns Ulyr to 3 Allo stations & 4 new stations are consigned Lee

2. Brands of TBA carried Lee stock in garage & delivered from Sear station, ARC (subdivision of Sears) Ask to have tires given down."

Tires and tubes Lee & Ulyr

Batteries Exide & Ulyr

Other TBA

Remarks: Lee tires are stock in garage & delivered from Sear station, ARC (subdivision of Sears) Ask to have tires given down."

3. Estimated monthly volume: Gasoline 20 000 (est) gals.

TBA 300 gross dollars

4. TBA suppliers

Tires Ulyr - Ulyr Sea Store - 11th & Collier - Lee - Factory Branch (Dyer Bros.)

Price information "A" deal - Ulyr - ½-10-5-5-5 - Lee - One and two tire Ann Vol. Rebate

Batteries Ulyr - Ulyr Sea Store - Lee - Exide - Cities Supply Distributing (Hawley Street)

Price Information Ulyr - Sea Distrib.

Exide - 22-W (Distrib.)

4031

FEDERAL TRADE COMMISSION
DOCKET NO. 6414
IN THE MATTER OF
DATE 7-7-65 FILED
ACE REPORTING CO., OFFICIAL REPORTERS
By Buongiorne

4/3

4. (Cont.)

Other TBA Usual avenues - Train oil fatty
Pitcher chemicals (Wdyn); Wdyn formulas

~~Price Information~~ The thing that hurts is this - that dealers tho that he is being told how to run the business operation and TBA's handled. It is not like running your business as you think it is supposed to be, when you are told what to do.

5. Reason for choosing line of TBA carried:

We have none as such -

Dealer stated that the Wdyn set-up at first made him mad. Thinks he should get 5% ARC is getting. He believes it is 5% Salesmen don't sell. Wdyn came about 2 yrs ago. ARC discontinued Lee & Eaide; dealer kept stalling changes over to Lee. Henry & distributed. Lee is 5% Dealer satisfied with same - supply. Finally Wdyn truck came by (only from this truck) Stock Lee now dealer satisfied with Wdyn. Can't tie tallow & protein up properly. How long do you think we would be in business if we Wdyn up to Lee) cut front or stood Lee. Five investments Salesmen. Jobbers, because failure of business, ARC takes a little more business. Here residents Lee Five business - Other than increase. Big volume low in Wdyn - could buy Lee Wdyn charges. Would not be a long time over to complete with Wdyn, a cut-throat product. Manufacturers plan 5% go into ARC. Dealer hanging for that 5% Same as Lee Salesmen with Lee distributor Row

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

Leon Thompson 12/8 1953

Edward J Litsky
Attorney Examiner
Federal Trade Commission

3 of 3

11

212

4. (Cont.)

Other TBA Rent rental probably would be higher if TBA sales were lower. This place is an exception.

Price Information Partnership operation - leased only to Frank R. Buongiorno. Partners in Trade Stay - registered partnership.

5. Reason for choosing line of TBA carried:

Also ARCo. has been asking dealer to cut prices. When ARCo. had Goldware 5's @ Cost & Lt., operated, if the price was lowered to "go parity" - other dealers followed. This dealer has threatened to increase gas price. Will leave to a showdown.

- Minor repairs done in service station.
- Personal stored in back room.
- Credit card delivery tickets - mailed to Hyer and check for same received.
- Believes credit card sales limited to Hyer tires, batteries, accessories when they leased (See delivery ticket identification as Hyer.

What other cause is there for all ARCo. service stations handling Hyer TBA

At dealers who moved to last city

Killing Sve - Main & Mission previously

Howard Bros. - Court St (Goodyear from ARCo.)

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

Frank Buongiorno 12/8 1953

Henry J. Lipsky
Attorney Examiner
Federal Trade Commission

4083

3/3

12

4138 RESPONDENT'S EXHIBIT NO. A1.

Atlantic

This Lease, entered into as of the 1st day of Oct., 1954, by and between The Atlantic Refining Company, a Pennsylvania corporation, hereinafter called "Lessor" and John Chambers hereinafter called "Lessee":

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor hereby leases to Lessee that certain parcel of land at Chester Pike and Clifton Avenue in Sharon Hill, County of Delaware, State of Pennsylvania, more particularly described as follows:

All That Certain piece or parcel of land Situate in the Borough of Sharon Hill, County of Delaware, Commonwealth of Pennsylvania, more particularly described as follows:

Beginning at the intersection of the Northwesterly side of Chester Pike and the Southwesterly side of Clifton Avenue; thence (1) Southwestwardly along said Chester Pike 156 feet more or less to a point; thence (2) Northwestwardly along Florence Avenue 106 feet more or less to a point; thence (3) Northeastwardly 160 feet more or less to a point; thence (4) Southeastwardly along Clifton Avenue 107 feet more or less to the point and place of beginning.

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises".

2—The term of this lease shall begin on the 1st day of

October, 1954, and end on the 31st day of December, 1954, subject, however, in the event such term is longer than one year, to termination by Lessee at any annual anniversary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay rental at the rate of one and one-half cents (1½¢) per gallon on each gallon of gasoline or motor fuel delivered to the leased premises during the continuance of this lease; provided, however, that the minimum rental payable during each calendar month shall be Two Hundred Seventy-Five Dollars ($275.00), such minimum rental to be payable on a pro rata basis for any portion of a calendar month during which this lease is in effect; and provided further, that the maximum rental payable for each complete calendar quarter during which this lease remains in effect and ending on the last days of March, June, September and December shall be respectively $....., $....., $..... and $1200.00. Rental shall become due at the time gasoline or motor fuel is delivered to the leased premises and shall be paid not later than twelve (12) hours thereafter. The minimum monthly rental, when applicable, shall be payable on or before the last day of each calendar month. Lessee shall maintain on a current basis accurate records of all gasoline or motor fuel delivered to the leased

premises, and Lessor shall have the right to audit such records at all reasonable times to verify rentals payable hereunder.

5—Lessee shall pay, when due, all charges for telephone, water, gas, electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charge levied against Lessee or against the leased premises by reason of the conduct of Lessee's business thereon. Lessor shall pay all other taxes, assessments, and governmental charges levied or assessed upon the leased premises.

6—Should Lessee abandon the leased premises, Lessor shall have the right to terminate this lease. Closing of the leased premises for business for a period of seventy-two (72) successive hours shall be considered as abandonment.

7—Lessee shall use the leased premises with due and reasonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease, Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable thereto as Lessor may establish from time to time.

4139

Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs, trade marks or color arrangements appearing thereon.

8—Lessee shall make all repairs and replacements to the leased premises; provided however, that if Lessee gives prompt notice to Lessor of the need thereof, the responsibility shall then pass to the Lessor to make such necessary repairs and replacements as are specified, and provided further, that if in such event the specified repairs and replacements are necessitated by the wilful misconduct or negligence of Lessee, his agents or employees, the cost thereof shall be considered as additional rent payable on the last day of the calendar month next succeeding the month during which such cost is incurred.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee, his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to any claim for damages it might have, shall have the right to terminate this lease without liability; provided, however, that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowledge of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to terminate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to sum-

mary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Lessor shall have the right to terminate this lease.

13—This lease is personal, does not permit absentee operation, shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

14—Subject to the terms and conditions of Lessor's credit card program, outlined by Lessor from time to time, Lessor will (1) accept from Lessee assignment of accounts which result from retail credit sales made by Lessee to holders of valid Atlantic credit cards or those of other companies coming under Atlantic's credit privilege program and (2) pay or credit Lessee the amount thereof. Either party may terminate this credit card arrangement by giving to the other not less than 48 hours' advance written notice without termination or cancellation of any other provisions of this lease.

15—A waiver of any breach hereunder shall not be deemed a continuing waiver, or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

16—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

17—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to

the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

18—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Lessor at 260 S. Broad Street, Philadelphia 1, Pennsylvania and to Lessee at the leased premises.

19—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

The Atlantic Refining Company
By J. O. Estlow,
Regional Manager of Marketing.
John Chambers.

Witnesses:
H. H. Millerick,
J. F. Muldoon.

Gaa MB 10/13/54

4140 RESPONDENT'S EXHIBIT NO. A-2.

Atlantic

Mutual Consent of Cancellation

For and in consideration of the sum of One Dollar ($1.00) in hand paid by each of the parties to the other, The Atlantic Refining Company, and John Chambers of Sharon Hill, State of Pennsylvania hereby agree that their certain Lease Agreement dated Oct. 1, 1954 affecting premises situated at Chester Pike and Clifton Avenue in Sharon Hill County of Delaware, State of Pennsylvania shall by mutual consent expire as of November 28, 1954, because Dealer going with competitive oil company.

In Witness Whereof the parties hereto have duly executed this agreement as of the 29th day of Nov. 1954.

The Atlantic Refining Company
By J. O. Estlow
Regional Manager of Marketing
John Chambers.

Witnesses:
H. H. Millerick
Steven Petrison.

B-765 11/53

4141 RESPONDENT'S EXHIBIT NO. A-3.

A. R. Tombson:

Lease expiration is 3/31/53—this letter is due notice.
N. F. N.

February 26, 1953

To the Atlantic Refining Co.,
260 S. Broad Street,
Phila. 1, Penna.

Gentlemen:

You are hereby notified, in accordance with the terms of your lease of the parcel of land upon which is located your Service Station, located at 9th Street, Concord & Kerlin Avenues, in the City of Chester, Delaware County, Pennsylvania, that I desire to determine the lease of said property at the end of the term thereof, to wit: at the end of the 31st day of March, 1953, and that the lease will end at that time; and that thereupon I will deliver up and surrender possession of the said premises to you in accordance with the terms of said lease.

Very truly yours,
John Pollack.

JP:RRW

R-ex-A-3-id

4142 RESPONDENT'S EXHIBIT NO. A-4.

B-765 11/53

Atlantic

Mutual Consent of Cancellation

For and in consideration of the sum of One Dollar ($1.00) in hand paid by each of the parties to the other, The Atlantic Refining Company, and Elmer H. Booz, Jr. of Ogden, State of Pennsylvania, hereby agree that their certain Lease Agreement dated June 14, 1956, affecting premises situated at Naamans Creek and Meeting House Roads in Ogden (Upper Chichester Twp.), County of Delaware, State of Pennsylvania, shall by mutual consent expire as of November 14, 1956, because Dealer received better offer from competition.

In Witness Whereof the parties hereto have duly executed this agreement as of the 15th day of Nov., 1956.

The Atlantic Refining Company
By: J. O. Estlow,
Regional Manager of Marketing
Elmer H. Booz, Jr.

Witnesses:
H. A. Millerick
Steven Petrison

B-765 11/53

4209 **RESPONDENT'S EXHIBIT NO. A-20.**

TBA Program

Atlantic Dealer Training Program

4210 TBA Program & Orientation

Atlantic Dealer Training Program
Revised 1957

4211 Props:

Easel Pad and Crayon
Sample Tires and Batteries
Tire and Battery Illustrations (from TBA Catalog)
TBA Sales Promotion Pieces (from TBA Supplier)
Balanced Stock Recommendations (from TBA Supplier)
Tire Spotting Cards
Solicitation Give-Aways (Door Openers) (from TBA Supplier)
TBA Dealer Catalogs
Sample Supplier's Ads
Sample Dealer Ads and Mats

Note:

This outline is purposely written in general terms to make it adaptable for all regions. You should add any important features of your Supplier's Franchise to the outline, under the appropriate heading.

Time:

4 Hours.

4212 Introduction

This afternoon we want to talk with you about one of the most important features of your Atlantic Franchise—the Tire, Battery and Accessory business. We in the business call it TBA. It's a term you'll want to know more about because TBA merchandise plays a vital part in your business success.

Two Dealer Operations

Probably the best way to show you the importance of TBA's effect on your station's profit is to examine some facts about Two Typical Dealer operations. We'll discuss the significance of these facts as we go along.

Let's call our dealers John and Bill. Remember that these names are fictional—but the facts and figures involved are typical of hundreds of real dealers whose records we've studied.

15,000 a Month

John and Bill both have modern service stations in similar neighborhoods and they both sell about 15,000 gallons of gasoline a month. Let's write this on the pad.

Pad

	John	Bill
Gallons Per Month	15,000	15,000

(See Pad Diagram)

Pad Work

Of course, these dealers sell many other things beside gasoline. We're not going to discuss them here be-
4213 cause later your instructors will cover the sale of all products and services. But for our purpose here, let's put everything else these dealers sold in Octo-

ber in one pile. When we do, we see from our records that John enjoyed a gross profit on all business of $1157.00—and Bill's gross profit went to $1802.00.

(Pad Work Sample Attached)

Why the Difference?

The question is—Why? When two dealers having the same type facilities in similar neighborhoods sell the same amount of gasoline—why does one gross $645.00 more than the other?

Service Station Needs More Than Gasoline Sales

The answer lies in the sale of Other products and services in addition to gasoline. The Bible says "Man does not live by bread alone"—and believe me, a service station doesn't exist on the sale of gasoline alone. We have to have a balanced diet—in our business we call it "Balanced Selling."

Balanced Selling

Your instructor will cover the entire subject later, but here we're interested in how TBA helped earn $645.00 more profit for our dealer Bill. Let's put these figures down. In October, John sold $246.00 of TBA while Bill's gross sales were $740.00. Here's the profit story.

4214 Pad

(TBA Gross Profit)

TBA Gross

There's the picture—through aggressive selling Bill piled up $645.00 more gross profit in October than John—even though they both sold 15,000 gallons of gasoline! And TBA provided $121.00 of that increase—better than 18%!

TBA More Than 18% of Difference
Is TBA Worth Selling?

Is TBA worth selling?

(Get agreement from group)

Well, how did all this come about? Some of you no doubt remember the time when you couldn't even get a tire repaired in a service station—and stations selling batteries were unheard of.

Evolution in Marketing TBA

During the last two decades an evolution in the marketing of TBA products has taken place. As late as 1930 Gasoline and Motor Oil were about the only commodities carried by service stations. Motorists purchased their gasoline and oil from the service station and then shopped around for their other needs. Tires were purchased and repaired in tire shops; battery shops, hardware and electric stores filled other wants.

As the number of service stations increased, dealers began to realize that in order to stay in the business they must provide for additional motoring needs and offer one-stop service to their customers. Through the years the motorist came to rely more
4215 and more on the service station for all his motoring needs until today the motorist will not take the time to make more than one stop to get his car completely serviced down to the last detail. For this reason and to improve profit possibility, service stations must handle a complete T.B.A. line.

Gasoline and oil are still the fundamental products —they are to the service station what bread and sugar are to the grocer. However, neither the service station or the grocer will ever get very wealthy selling just staples. It is only after a substantial

volume of TBA has been built up that the dealer begins to realize his full sales expectancy and makes the most of his opportunity in a highly profitable enterprise.

So, while gasoline and oil are the foundation of a service station business, the products that draw customers into the station, dealers cannot keep these customers coming back until they can fill all their other driving needs.

A service station today can realize all its potential profit only through balanced merchandising. That means, briefly, balancing all the motorist's needs against gasoline sales—and then selling those needs through complete service.

4216 (Note to Instructor Use more up-to-date figure—if available)

The trend in consumer buying of automobile tires and tubes is very definitely to oil company outlets. In 1929, 6/10 of 1% of the motorist's tire purchases were handled through service stations. In 1956, the figure has risen to 35%. It's expected that this replacement figure will reach over 40%.

TBA Is Big Business

3 Billion TBA

(To Instructor) Use more up-to-date figure—if available

Those figures mean business—big business—for you as a service station TBA dealer. In dollars and cents, the industry estimates that service stations will sell over 3 billion dollars worth of TBA this year. Think of it—250 million monthly—over 8 million daily—over $90.00 every time the clock ticks. While we're talking here this afternoon dealers like yourselves will sell over 1¼ million dollars worth of somebody's TBA!

TBA Your Business

Any wonder why we say TBA is big business? And it's Your business. Now your next question should be "How can I cut a slice of that melon for My Station?" Well, Atlantic is ready to answer that one—with one of the most complete and profitable TBA programs the industry has to offer.

Atlantic's TBA Associate

In order to provide the best possible TBA program, Atlantic is associated with the best TBA marketer, the (Name) Tire and Rubber Company.

4217 Advertising

Everybody knows (Name) because of its powerful, nation-wide advertising drives in newspapers, magazines, radio and TV. You probably couldn't find a community in the country where (Name)'s name isn't known and respected.

Public Confidence in Familiar Brand

Thousands of dealers all over the country display the (Name) sign in their windows and driveways. They're cashing in on the natural desire of the buying public to do business at a familiar place and to buy familiar merchandise. A customer has to have confidence in you and in your product before you can sell him anything. You get a lot of that confidence ready made when you carry (Name).

Public Acceptance

The buying public accepts Atlantic as a leader in the petroleum field and (Name) as a leader in TBA. That is a powerful combination which is one of the most valuable aspects of your Atlantic Franchise.

J. Q. Public and Rumors

But before we go any further, let's take a minute to clear up one important point. Most people—Mr. average John Public—know very little about the oil business and they're inclined to believe any of the rumors or stories that are circulated about it. One of those "tall tales" is the claim that service station dealers are forced by threat of lease cancellation to buy their TBA merchandise from whomever the supplying oil company specifies.

4218

You Are Free to Buy TBA
of Any Kind
We Think the .....
the Best for You

Here are the facts: Atlantic offers you the (Name) TBA franchise because after exhaustive study and years of our own experience in the TBA business we sincerely believe it to be the best for you and the best for your customers.

Let me quote from a letter addressed to all Atlantic dealers in August, 1952 by Mr. D. T. Colley, Vice President and General Manager in Charge of Marketing of Atlantic.

Letter from Vice-President

"In the Spring of 1951, The Atlantic Refining Company presented to its dealers for their free acceptance or rejection a TBA sales program which long and intensive research had indicated would yield the greatest profit to you and would best serve the interest of the motoring public.

"I consider it our duty to recommend to you, those services and products which experience and honest research have proven best for you and your customers. However, when we originally adopted this

program, I wrote to you and to our sales force stating that this was an elective program. I now re-
4219 iterate—that this is Your program, instituted for Your benefit—Yours to accept or reject."

Why Best?

We've said the ..... Franchise is best for you. Why? We've already mentioned a few reasons briefly but let's take a closer look at some of the features that make the Fra. nise valuable.

Probably the best way to start is to find out what you men think. We realize that this matter of TBA still is rather strange to you but no doubt you have some opinion of your own on just what you'd expect to find in a good TBA program. Suppose you tell me some of these features you'd want and I'll write them on the pad.

What Would You Want

What features would you want in any TBA program you bought?

Pad

(Draw from group—

1. Public Acceptance
2. Quality Merchandise
3. Competitive Price Structure
4. Complete Market Coverage
5. Convenient Supply
6. Advertising Support
7. Sales Promotion Support
8. Budget Plan

4220 How ..... Meets Your Needs

That looks like a list of pretty stiff requirements. Let's see how well the ..... Franchise fills the bill on each one of them. First,

Public Acceptance

Public Acceptance
(Discuss)

The ..... name world-famous. One of world's largest rubber Co's. Stores and Dealers nation-wide.

Multi-million dollar advertising program.

Major tire supplier to new-car manufacturers; creating ready-made replacement market.

Quality

Quality Merchandise
(Discuss)

The ..... name a symbol of quality in the industry.

(Exhibit Sample Tire & Battery)

Tremendous research and development program.

Quality testing labs approve all products.

Road-test fleets check tire quality.

Most important—your customers believe in ..... quality.

Competitive Price

Competitive Price Structure
(Discuss)

Huge volume permits attractive dealer margins.

Tire and battery lines meet all ranges of price demand —from premium lines to mail-order house competition. You need not fear competition.

Volume discount policy lowers your cost as your sales increase.

4221 Complete Coverage

Complete Market Coverage
(Discuss)

A tire for every type of service. Passenger car—truck—farm—industrial—aircraft. Every size and design.

Distribute Illustrations of Tire & Battery Line (Available from Supplier)

Batteries—every size and price range passenger car, truck and industrial.

Accessories—one of the broadest lines in the business (Hold up and leaf through Accessory Catalog. Stress coverage of major items—oil filter cartridges, spark plugs, etc.)

Best of all, products are grouped in size and price ranges which enable you to obtain broadest popular coverage at minimum inventory investment.

Convenient

Convenient Supply
(Discuss)

Wherever you go in U. S. you're Near a _____ supply point. One near Your station.

Convenient delivery service.

Stocks at nearby supply point enable you to invest in only fast-moving merchandise. Rely on supply point for less popular items. This speeds up turnover and increases net profit to you. We're going to visit one of these supply points this afternoon.

4222 Advertising

(Show sample Magazine or Newspaper Ad)

Advertising Support
(Discuss)

Nation-wide coverage—radio—TV—magazines—newspapers.

Millions of motorists are pre-sold on your TBA line before they enter your station. Makes job easier. More sales.

Even distant transient customers know and accept your TBA—through advertising. More transient sales.

Promotion

(Distribute Sample Promotion Pieces)

Sales Promotion Support
(Discuss)

Campaign—Special sales—seasonal promotions specially designed for service stations.

Display and promotion kits include Banners—pennants—signs—hand outs—ad mats.

All help you tie-in with national campaigns.

Mass production makes professional material available to you at only fraction of cost.

Budget Buying

Budget Plan
(Discuss)

Millions in TBA sold on retail Budget Plans—chain stores—mail order houses—"$1.00 down and $1.00 a week" customer.

Budget sales return highest margin on merchandise—almost always at full list price.

The ..... Co. provides complete Budget selling plans—forms—ads—point of sale displays.

4223 Budget plan your opportunity to get into "Big Time" TBA. Your ..... Franchise includes complete program.

Sell Atlantic Credit Card
Time Payment Plan

Stress the advantages of Atlantic 30-60-90 day terms and the 6 month plan.

Does ..... Fill the Bill?

Now let's go back to our original list of desirable features that you helped make up. Don't you agree that the ..... Franchise fulfills every requirement?

(Review list briefly)

That's why we've said ..... is the best for you and best for your customers.

Stock

But just having an excellent Franchise available isn't enough. Before the profits start to jingle in your cash register you must first get the stocks of merchandise into your station and then sell TBA to your customers. These are two mighty important steps so let's see how we can handle them. First, the problem of stocks. You might start asking yourselves

"How many tires should I carry?"

"What sizes?"

"What price range?"

"What kind of accessories—how many of each?"

4224 Complete Line Huge
Avoid Dead Merchandise
Rely on Advice from Experience
Talk Stock Over

As you can see by now, the complete TBA line includes literally thousands of different items—and it takes years of experience to learn how to buy wisely. You probably can imagine the dangers of making ill-advised purchases. A dealer who stocks his station with slow moving or "dead" merchandise soon finds his profits suffering. Don't let that happen to you. And it won't if you just take advantage of Atlantic's and ..... 's years of experience in TBA and the assistance they're ready to give. Each one of you will want to talk over your own TBA stock situation with the Atlantic and ..... representatives who will call on you. We can't solve individual problems here but we do want to give you some sound and basic principles of profitable TBA purchasing that will apply to all of you.

No Empty Wagon
(Write on Pad) (Discuss)

1. You can't do business from an empty wagon, must have sufficient stocks.
   —customers won't wait while you run to supplier for some popular item.

Diversify (Distribute and Discuss
Bal. Stock Recommendations—
from Supplier) (Discuss)

2. Keep stocks balanced—(diversify your capital to get broadest coverage of popular items).
   —The ..... Co. has planned assortments to fit your station—use them.

4225 Get "Deals" (Discuss)

3. Take advantage of "Deals"—("Dating Plans"—"Season Specials" when available. Special prices on these programs cut your costs and increase profits).

Buy "Packages" (Discuss)

4. Buy "Packages" or Assortments when recommended. Usually these carry a special price or incentive offer and are made up of popular, fast moving merchandise.

Avoid Unknown Brands (Discuss)

5. Beware of unknown brands—fly-by-night salesmen—dead stock doesn't earn money—it costs money.

Get Competent Advice (Discuss)

6. Seek competent advice—your Atlantic salesman—your ..... representative.

If You Don't Know Jewels—
Know Your Jeweler

Probably this last one is the most important. There's an advertising slogan somewhere that says "If you don't know jewels—know your jeweler." That's awfully sound advice and it's true of the TBA business. Atlantic and ..... are ready to help you build a profitable TBA business and the best step you can take is to let them work with you.

Let's Sell It

As we move along with our TBA program let's assume now that we have a well balanced stock of fast moving merchandise in our station and now we're ready for the pay-off. Let's sell it!

4226 Other Subjects

Later in your school other instructors will go into detail on the subjects of Display—Solicitation and Retail selling that are so important to your TBA program so we won't attempt a detailed discussion here. But again we'll help you lay down several fundamental rules that are essential to any successful retail TBA sales program.

Take Advantage of Identification
(Write on Pad) (Discuss)

1. Identification
   Use approved signs and decals.
   Customers recognize you as one-stop ..... dealer.
   Makes ..... acceptance work for you.
   Identify billheads, ads, stationery, service truck.

Display (Discuss)

2. Display
   Follow principles you'll learn in display course.
   Use TBA supplier's display aids where practicable but don't make your station look like a bargain basement.

Train (Discuss)

3. Train
   Your course includes "Training in a Service Station."
   Use what you learn. Train your men to know their products and to sell!

4227 Solicit (Distribute Spotting Cards, Door-openers, etc.) (Discuss)

4. Solicit
   Use prospect lists—direct mail—neighborhood calls and tire spotting.

Use TBA supplier's solicitation materials.
Use what you learn in your "Solicitation" course.

Advertise (Discuss)

5. Advertise
Course coming on "Dealer Advertising."
Use ..... 's free mat service.
Ask Atlantic salesman's aid in planning advertising.

Sell (Discuss)

6. Sell!
This is the one that counts—
Tomorrow you'll begin your work in Retail Selling—make the most of it!
Without sales know-how you just can't have a successful TBA program.

Follow-Up (Discuss)

7. Follow-Up
To insure customer satisfaction.
Be ready for repeat sales.
Look for sale of other items to the same customer.
Course coming in "Follow-Up System"—it's a powerful TBA selling tool.

4228 All Fits Together to Make

Successful Dealership

We probably could talk for the rest of the day about How to Sell TBA and get a lot out of it. But as I've pointed out nearly all the other subjects in this course are important to TBA sales—and you'll deal with each one individually during the program. I'd like you to notice particularly how each part of this program dovetails into all the other parts. And

they all build a successful dealership. If you'll apply what you learn in these other subjects to TBA you just can't help being an outstanding TBA merchant. And that's where you'll find those Extra profits we talked about in the beginning.

TBA Movie

Now we're going to look at a TBA movie. You'll like it I'm sure and you'll find many of the points we've discussed are emphasized in the picture.

(Point out particular things to look for) (Show Firestone "TBA is Big Business" or Goodyear "We the Customer")

Review

That picture pretty well proves the points we've established ourselves. Before we move on let's briefly go over them again.

(Review 7 Selling Fundamentals briefly)—discuss in terms of movie.

4229 Catalog

How to Use

One of the most important tools we have to help us sell TBA is the dealer catalog. No one could possibly remember all the thousands of prices and specifications we have to deal with but we must know how to find the answers quickly in the catalog. These catalogs will be available to keep in your own station and you'll find them easy and simple to use after you've tried it a few times. Let's go through it briefly right now. (Distribute Dealer Catalogs)

Instruction

Proceed to instruct in each of the following:

a—use of index

b—how to find particular items

c—how to find prices
d—any important data peculiar to your supplier's catalog

Examples

Example—Premium tire for 1950 Plymouth—Original equipment replacement battery for 1948 Buick Series 60, etc.

Problems

(Give trainees several problems similar to those mentioned and have them continue to search the catalog until they use it properly)—collect catalogs.

4230 Tour

Now we're going to take you right into the TBA business so you'll get a first hand look at some of the things we've talked about this afternoon. We've arranged a visit to one of ..... 's nearby supply points and we think you'll enjoy seeing how the business operates.

Suggestion

(Take trainees to supply point). Introduce them to manager and if possible have manager accompany you on tour of store. Point out and briefly discuss the following:

New Tires (different types)
Recaps
Batteries
Major Accessories
Displays
Point of Sale Advertising
Any current campaign or promotion.

3872 *Respondent's Exhibit No. 31-A.*

4231 Pad Work—Sample

October

	John	Bill
Gasoline	15,000	15,000
Total Gross Profit	$1157.00	$1802.00
	Why?	
TBA Gross Sales	$246	$740
TBA Gross Profit	$ 60	$181
Gross Profit Per Gal.	7.7¢	12¢

4298 RESPONDENT'S EXHIBIT NO. 31A.

Policy

Long Term Dealer Lease

1. Upon the expiration of his current lease term, any Dealer who has operated his station during the preceding two years in conformance with the standard established by the "purpose and use" clause of Atlantic's revised lease form (Clause 3), shall be eligible for a three year lease. The three year lease shall provide an exclusive option on the Dealer's part to cancel on any annual anniversary date thereof by giving Atlantic at least sixty days advance written notice. The original specified rental shall remain the same during the entire three year period.
2. Any Dealer not eligible for a long term lease in accordance with the above may be eligible for a one year lease only if upon the expiration of any subsequent lease he shall have a record of having operated his station for two consecutive years without receiving any

written warnings specifying a default in compliance with the "purpose and use" clause under the revised lease form and failing to remedy such default within fifteen days following receipt of the corresponding warning.

In those cases where it seems desirable from a business viewpoint to afford a dealer a longer period than the usual fifteen days, the longer period should be specified in the warning letter.

3. Any Dealer whose record of operation during a three year lease shall not involve any unremedied defaults of the type specified in the preceding paragraph shall be eligible for another three year lease.

4. The above shall not be construed as meaning that Dealers will, upon termination of current or future leases, become automatically entitled to a new lease of either one year or three years duration. The policy is intended to mean that if Atlantic in its own discretion decides to enter into another lease arrangement with the Dealer upon the expiration of current or future leases, then, in such event, the Dealer's new lease will be either a one year lease or a three year lease in accordance with the policy described above.

5. This Policy is subject to change at Atlantic's sole discretion. Any change will not, however, affect leases outstanding at such time.

Domestic Marketing Dept. (attachments)
Revised June 21, 1955.

4299 RESPONDENT'S EXHIBIT NO. 31B.

Policy

Long Term Dealer Lease

Attachment No. 1

....., 1953

Dear Sir:

Atlantic's basic policy with Atlantic Dealers can be summarized in four words—Completely Fair, Businesslike Treatment.

You know without being told that each Atlantic station which is well run helps all your fellow Dealers operating Atlantic stations. And we also know what the "dogs" do for us.

Atlantic is adopting a new lease policy which is intended to reward Dealers who have demonstrated their capacity to operate superior service stations with the security that goes with the possession of a longer lease.

The attached page summarizes the new policy, and an Atlantic representative will be available to discuss both it and our new Service Station Lease form with you prior to the expiration of the current annual term of your particular lease.

The object of the new plan is simply to encourage superior Dealer performance by rewarding it.

.....

Domestic Marketing Dept.
January 2, 1953

4300 RESPONDENT'S EXHIBIT NO. 31C-D.

Policy

Long Term Dealer Lease

Attachment No. 3

(Suggested form letter to be discussed with Dealers and sent contemporaneously with execution of each revised lease form)

....., 195....

(Same date as lease execution)

Atlantic welcomes you as the Lessee of one of its service stations.

We have leased to you a modern, functional physical plant at a location carefully selected to produce profitable business in volume.

You have agreed to undertake the lawful, diligent and business-like operation of a first-class service station.

How can you do it?

First, let us emphasize that it is your business. We can't do your thinking nor your work. Your success or failure will depend upon your own business judgment, skill, imagination and initiative.

Secondly, we want to summarize some of the well-established standards which have been proved by experience to be necessary for the businesslike operation of a first-class service station. They are:

1. Housekeeping — Clean, sanitary premises — inside and out.
2. Use and Upkeep—Careful use and upkeep of building and equipment in safe, good operating condition.

3. Display—Neat, orderly arrangement of merchandise and advertising in a manner reasonably calculated to attract and solicit the attention of the motoring public.
4. Illumination—Safe and adequate to attract customers during night operations.
5. Personnel—Sufficient manpower to give prompt service and allocated to handle peak operating hours. Clean uniforms, courteous, trained to sell, adequate knowledge of services to be rendered.

4301

6. Hours of Operation—Uniform daily operating schedule based on buying habits of potential trade in the area.
7. Services—At least on a par with competition as to kinds of services rendered and efficiency of performance.
8. Adequate Inventory—Quality products and merchandise on hand to serve normal customer needs without delay.
9. Sales Promotion—Regular program for expanding sales, involving direct mail campaigns, personal solicitation, and advertising.
10. Prices—Competitive, quality and service considered.
11. Accounting—Maintenance on current basis of records adequate to reflect financial status and return from various phases of your business.

We wish you success. And remember that each station which is well run helps all your fellow dealers operating Atlantic service stations.

.....

Regional Manager

Domestic Marketing Dept.
January 2, 1953

4302 RESPONDENT'S EXHIBIT NO. 31E-F.

Policy

Long Term Dealer Lease

Attachment No. 4

Proposed Reporting Procedure

A. General—In every case where a service station lease is terminated, or where upon expiration of the lease we do not execute a new lease with the same dealer, the District will make a written report to the Region of the principal reason or reasons for termination or failure to continue the lease relationship. Data supporting the reasons can be kept at the District Office.

B. Mutual Cancellations—Most of our lease relationships are terminated via the mutual cancellation route. It is proposed that our present mutual cancellation form be amended to include a space for statement of reasons for cancellation. Such statement will represent the mutually agreed upon reasons for cancellation. In such cases, the requirements of the suggested Reporting Procedure will be met by the Regional Office merely retaining an executed copy of the mutual cancellation form.

The amendment to the present form will be handled by adding at the end of the part which describes the lease, the following words:

"'. . . shall by mutual consent expire as of ....., 19..., because ....."

Examples of how the "because" blank in the revised form might be filled in, dependent, of course, on the facts involved in each case, are:

(1) Because the parties are not in agreement as to whether Joe Smith has maintained clean, sanitary restrooms.

(2) Because the parties are not in agreement as to whether Joe Smith has taken proper care of the station equipment.

(3) Because of disagreement as to the standard of cleanliness that ought to be maintained at the station.

(4) Because of disagreement as to whether Joe Smith has had adequate manpower at the station.

(5) Because of disagreement as to whether Joe Smith has maintained competitive business hours of operation.

(6) Because construction work is scheduled for the station.

(7) Because street repairs have reduced station revenue.

(8) Because of Joe Smith's poor financial position.

(9) Because of personal reasons of Joe Smith.

4303 (10) Because of disagreement as to whether Joe Smith has maintained an adequate inventory of merchandise to serve customers without delay.

C. Termination because of breach—Normally there will be a formal written notice to the lessee. A copy of such notice and any preceding warning letters specifying a default will satisfy the Reporting Procedure.

Example: You are hereby notified that our service station lease dated ....., 19.... is terminated

effective today. Although there may be other grounds justifying this termination in accordance with the lease provisions, we are specifying particularly your failure to:

(1) Pay rent when due, or
(2) Maintain a safe station, or
(3) Maintain continuous operations, or
(4) Maintain a clean station, or
(5) Maintain adequate, competent manpower, or
(6) Maintain adequate bookkeeping records, or
(7) Etc.

In cases of abandonment we should have a short, concise written report setting forth the facts.

D. Expiration of lease and we don't execute a new one with outgoing dealer—A short written report somewhat along the following lines:

We did not continue our lease relationship with Joe Smith after expiration of the lease dated ....., 19.... because:

(1) Joe expressed a desire to get in some other kind of business, or
(2) Joe's performance has been below average. With the right kind of lessee, this station should sell a considerably increased gallonage, or
(3) Joe consistently ran a dirty station, or
(4) Joe was always in financial trouble, had difficulty paying his bills, or
(5) Joe never did take proper care of our equipment, or
(6) Joe could never maintain pleasant relations with his customers and this hurt his sales performance, or
(7) Etc.

Domestic Marketing Dept.
January 2, 1953

[fol. 3680]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 13339 and 13340

September Term, 1963 January Session, 1964

THE GOODYEAR TIRE & RUBBER COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent.

THE ATLANTIC REFINING COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent.

Petitions to Review and Set Aside Order of the Federal Trade Commission.

OPINION—April 24, 1964

Before Schnackenberg, Castle, and Swygert, Circuit Judges.

SWYGERT, Circuit Judge. The Goodyear Tire & Rubber Company and the Atlantic Refining Company request a review of the Federal Trade Commission order based upon a complaint charging a violation of section 5 of the Federal Trade Commission Act[1] and which challenged the legality of distribution of tires, batteries, and automobile accessories (TBA) to service stations under a sales commission agreement between petitioners.

[fol. 3681] Goodyear is an Ohio corporation engaged in the manufacture, sale, and distribution of rubber products,

[1] Federal Trade Commission Act § 5(a)(1), 66 Stat. 632 (1952), 15 U.S.C. § 45(a)(1) (1958), reads as follows:

"Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are declared unlawful.

including tires and inner tubes. It is the largest manufacturer of these products in the United States.

Atlantic, a Pennsylvania corporation, is a major producer, refiner, and distributor of gasoline and other petroleum products. It markets its products in seventeen states along the eastern seaboard.

The complaint issued by the Commission alleged that Atlantic produces and sells petroleum in commerce to wholesale distributors, automobile service stations, and others; that the distributors and retailers, ostensibly independent, nevertheless, are under the domination and control of Atlantic; that Goodyear and Atlantic entered into a sales commission contract whereby Atlantic agreed to promote the sale of Goodyear products, that is, tires, batteries, and accessories (TBA), to Atlantic's distributors and service station dealers located in a part of Atlantic's sales territory; that Atlantic had a similar contract with Firestone Tire & Rubber Company for the balance of Atlantic's territory; and that Goodyear had similar contracts with a number of other oil companies which, like Atlantic, dominate and control their distributors and service station dealers. The complaint further alleged that Atlantic is paid a sales commission by Goodyear and Firestone on their products which are sold by Atlantic's distributors and service station dealers. The complaint charged that by the use of the sales commission agreement and the practices of the two companies thereunder, Atlantic and Goodyear have restrained competition in the sale of TBA, and committed unfair acts and practices proscribed by section 5 of the Federal Trade Commission Act.

The hearing examiner dismissed the complaint against Goodyear, upholding the legality of the sales commission contract, but found that Atlantic had violated section 5 of the act by forcing a substantial number of its dealers to purchase Goodyear TBA. The examiner's order against Atlantic prohibited future actions of coercion.

Both Atlantic and general counsel for the Commission appealed from the examiner's ruling. The Commission sustained the examiner's finding that Atlantic had coerced its dealers to purchase sponsored TBA but held that the coercion was symptomatic of a more fundamental restraint

of trade, inherent in the sales commission plan itself. The [fol. 3682] Commission said that the principal issue raised by the complaint was the legality of the Goodyear-Atlantic contract. It noted, however, that Atlantic had a similar agreement with Firestone and that Goodyear had like agreements with a number of oil companies other than Atlantic.

The Commission determined that the sales commission method of marketing TBA is "a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." It found that Atlantic, which sells gasoline, has used its economic power over its dealers to cause them to carry substantial amounts of a different product, TBA; also, that the effects of the sales commission system are anticompetitive at the manufacturing, wholesale, and retail levels. It found that Goodyear's manufacturing competitors have been substantially precluded from selling TBA to the Atlantic service stations assigned to Goodyear; that wholesalers of TBA have also been substantially precluded from selling to Atlantic's service stations; that Goodyear wholesalers who are not supply points have been similarly restricted; and that Atlantic service station dealers have been restrained in marketing nonsponsored TBA. Finally, the Commission found that the public has suffered because lack of competition among the service stations' suppliers of TBA has precluded the possibility of price reductions to the consumer.

The Commission based these conclusions on the components of the sales commission system which include advance notice to Goodyear and Firestone of the selection of new dealers by Atlantic, training schools for Atlantic dealers in which Goodyear and Firestone TBA are used in demonstrations, sales solicitation by Atlantic salesmen of sponsored TBA from dealers, double teaming, use of a reporting technique whereby the tire company reports to Atlantic the TBA purchases of each dealer, Atlantic's recommendation to each dealer of a minimum Goodyear or Firestone TBA inventory, and Atlantic's assistance in advertising, and providing credit card facilities for the sale of sponsored TBA.

Upon finding the sales commission system an unfair method of competition, the Commission revised and expanded the examiner's order. The order of the Commission not only prohibits Atlantic from coercing its distributors and dealers to purchase a particular brand of TBA [fol. 3683] but also forbids its participation in any sales commission arrangement for the distribution of TBA. Further, the order prohibits Goodyear's participation in any sales commission arrangement with Atlantic or any other oil company for marketing its TBA.

Upon a consideration of the record as a whole, we conclude there was substantial evidence to support the Commission's ultimate findings and conclusions and that its order should be affirmed in all respects.

To narrate all relevant facts would extend our discussion unduly; we undertake a summary.

Atlantic's Operations.

Atlantic has three major kinds of customers: wholesale distributors, retailers, and commercial accounts; the last class was not involved in the administrative proceeding.

Wholesale distributors maintain their own storage facilities and resell Atlantic's products under its brand names to their retail customers, including service stations. In 1956 there were 236 Atlantic distributors selling to 2,897 service stations.

Retail dealers who purchase directly from Atlantic are of two classes: lessee-dealers, that is, service station operators who do not own their stations; and contract dealers, station operators who own their stations or lease from parties other than Atlantic, or operate garages, grocery stores, and similar establishments. The company had 5,537 direct retail dealers in 1956. Lessee-dealers accounted for approximately thirty-nine per cent of Atlantic's total gasoline sales in 1955 and the contract dealers eighteen per cent.

The usual lease between Atlantic and its lessee-dealers provides for a one year term with automatic renewal from year to year unless written notice is given before the expiration of any term. When the lease is executed the dealer is required to sign an "Eleven Point Lease Letter"

which prescribes operational standards for the service station. These include housekeeping, use and upkeep, display, illumination, personnel, hours of operation, services, adequate inventory, sales promotion, prices, and accounting. The standards are enforced by Atlantic through the surveillance of its sales personnel and so-called "phantom customer inspectors."

The Commission found that the eleven point letter is an [fol. 3684] integral part of the lease; that Atlantic at its option may terminate the lease in the event of its breach; and further, if a dealer violates any of the requirements of the letter, he is warned that the lease will be cancelled unless the noncompliance is remedied within fifteen days.

Atlantic adopted a policy in 1953 providing that any lessee-dealer who establishes a two year record of satisfactory operation is eligible for a three year lease. Moreover, Atlantic after 1953 no longer required its dealers to purchase Atlantic products except lubricants. The record shows, however, Atlantic's dealers handle its products exclusively.

In 1956 fifty per cent of the 3,044 Atlantic contract dealers operated service stations; the others operated grocery stores, garages, and similar outlets (outlets other than service stations ordinarily do not handle TBA).

Although contract dealers do not lease their stations from Atlantic, they usually enter into two kinds of agreements with the company, one providing for loans of station equipment and the other for the purchase of a minimum amount of gasoline. The loan agreements for equipment provide that Atlantic will install but the dealer must maintain the equipment (gasoline pumps, storage tanks, signs, compressors, etc.). The agreements ordinarily are for a one year term but may be terminated by notice of either party at the end of the original or any subsequent term. Atlantic may repossess its equipment upon termination of the contract; however, if the agreement is cancelled because of a breach by the dealer, Atlantic requires him to pay both the cost of installation and removal of the equipment or Atlantic has the option to leave the equipment and require him to pay for it.

Atlantic makes the same type of contract with its wholesale distributors for the purchase of gasoline as required of its contract dealers. The company, moreover, reserves the right to change the service stations' source of supply from Atlantic itself to its distributors.

Goodyear's Operations.

Goodyear has tire factories in five states. It also has fifty-seven warehouses from which its tires and the accessories it markets are distributed to wholesale and retail outlets. The batteries which Goodyear sells are distributed directly by the companies manufacturing them.
[fol. 3685] Goodyear operates approximately 500 company owned wholesale-retail stores throughout the United States. It also has more than 12,000 independent franchised dealers as well as a number of unfranchised dealers; both sell at wholesale and retail.

TBA.

TBA is an integral part of service station operations. Dealers must carry it in order to give complete service to motorists and to operate their stations at a profit. There are a large number of TBA items available to dealers, and there are constant changes and production developments in TBA of which the dealers must be trained and kept informed. Every major oil company offers some kind of TBA program to give training and advice to its service station dealers.

Atlantic's Purchase-Resale Plan.

For a number of years before Atlantic entered into sales commission contracts with Goodyear and Firestone, it merchandised TBA under a plan known as "purchase-resale."

Under this plan the oil company sells to its dealers at wholesale TBA products which it has purchased and warehoused. The products are merchandised either under the labels of various manufacturers or under the oil company's own labels. Atlantic under its purchase-resale plan bought Lee tires from the Lee Tire and Rubber Corporation, Exide batteries from the Electric Storage Battery Company,

and various accessories from other suppliers, and sold these products to its wholesale distributors and retail dealers. Between 1948 and 1950 Atlantic's sales of TBA to its distributors and dealers amounted to $22,000,000.

Atlantic became increasingly dissatisfied with the purchase-resale plan. It asserts that outside of the Philadelphia area the ready availability of Lee tires diminished and it could not give good delivery on batteries or keep them properly charged. It asserts further, that its warehouses were unsuited for handling accessories, and it was difficult to maintain an adequate supply of TBA to meet the demands of its dealers.

In 1948 and 1949 Atlantic conducted a survey of its dealers to determine their preferences of brands, sources of supply, and other aspects of TBA marketing. Sixty-[fol. 3686] seven per cent of the dealers interviewed preferred Lee tires and seventy-nine per cent preferred Exide batteries over competing brands. Only eleven per cent preferred carrying Goodyear tires and four per cent Firestone. A majority preferred to purchase their TBA from more than one source because of price advantage and variety of brands. Nevertheless, Atlantic, after conducting experiments under sales commission arrangements with both Firestone and Goodyear, entered into sales commission contracts with these companies, effective March 1, 1951, covering its entire marketing area and assigning a portion of its sales territory to each company.

While negotiating the Goodyear and Firestone contracts, Atlantic asked certain battery manufacturers whether they would offer a program similar to that of Goodyear or Firestone. Several manufacturers indicated an interest. However, both Goodyear and Firestone said they would refuse to sell only tires under the sales commission plan and insisted that they be allowed to handle batteries and accessories as well as their own products.

In order to effect the transition to the new plan, Atlantic held numerous meetings with its dealers at which its own representatives and those of Goodyear or Firestone explained the new program. The dealers were told that the plan was a change in company policy; that Atlantic wanted them to carry Goodyear or Firestone TBA rather than

Lee tires and Exide batteries and that the switch would be to the dealers' benefit. Letters were also sent to the dealers advising them of the availability of the new TBA program and urging them to take advantage of it. A Goodyear representative commented on the arrangement with Atlantic, "After years of courtship Atlantic and Goodyear have wed," and "We welcome wholeheartedly this merger."

To commence the plan, Atlantic gave Goodyear and Firestone the names of its dealers in their respective territories so that their advertising could be installed at the service stations. Under Atlantic's policy this meant that only Goodyear or Firestone identifications were to be displayed at Atlantic stations. Atlantic salesmen accompanied either by Goodyear or Firestone salesmen contacted the dealers concerning the change-over to sponsored TBA, and Atlantic received progress reports from Goodyear and Firestone. [fol. 3687] The reports included the names of dealers who refused to permit the installation of Goodyear or Firestone signs.

Within nine months after the sales commission system was inaugurated, Lee and Exide lost seventy-five per cent of their Atlantic sales notwithstanding the dealers' previous indication of a preference for these products. By October, 1951 ninety-seven per cent of Atlantic's New England region dealers and ninety-six per cent of its New York region dealers had signed with Goodyear. Firestone also signed virtually all the Atlantic dealers in its territory.

The Sales Commission System.

The sales commission contract between Goodyear and Atlantic and the contract between Firestone and Atlantic are similar. Under the contracts, Atlantic assigned to Goodyear its New England, New York, and Philadelphia-New Jersey marketing regions and to Firestone its eastern Pennsylvania, western Pennsylvania, and southern regions.

By the terms of the Goodyear contract, Atlantic receives a commission on all Goodyear TBA sold to Atlantic dealers in the territory assigned to Goodyear in return for Atlantic's efforts and cooperation in promoting the sale of Good-

year TBA to those dealers. Atlantic's contractual assistance to Goodyear includes continuous efforts, suggestions, and counseling its dealers that they maintain adequate Goodyear stock, joint calls with Goodyear salesmen upon the dealers, and the institution of a dealer TBA training program.

An important part of the Goodyear contract is the assignment of each Atlantic dealer to a specific supply point designated by the tire company. The supply point is a TBA wholesaler who may be a Goodyear company operated store, a franchised Goodyear dealer, or an Atlantic service station dealer or distributor who at the same time is a franchised Goodyear wholesaler. Atlantic receives ten per cent commission[2] on all purchases of Goodyear TBA made by its retail dealers from the tire company's supply points and seven and one-half per cent on purchases by Atlantic's wholesale distributors.

When Atlantic selects a new retail dealer, at least three [fol. 3688] separate interviews are held with the applicant at which the sales commission program with Goodyear is explained. The dealer is told that most Atlantic stations in the Goodyear territory are identified "Goodyear" and that it would be to his advantage to carry that company's products. When an applicant is selected but before he is given a lease, he attends an Atlantic training school where extensive discussions and demonstrations of Goodyear TBA are conducted. Atlantic's sponsorship of Goodyear TBA is explained. The prospective dealer is told what Goodyear inventory he should carry and that he should use approved Goodyear signs, decals, and advertising mats. Goodyear is advised of the opening of the applicant's station, and the new dealer is informed of the Goodyear supply point to which he has been assigned.

Atlantic establishes TBA quotas for its dealers which are considered "an agreed upon obtainable objective." Goodyear reports to Atlantic the monthly purchases of its products by each Atlantic dealer. This procedure en-

[2] Although termed a sales commission contract, the payments to Atlantic are not commissions on sales made by it but are override payments on sales made by Goodyear supply points to Atlantic's dealers.

ables the oil company to check on the dealers' progress in selling sponsored TBA and also serves as an accounting method for ascertaining the sales upon which Goodyear pays Atlantic its commission.

Atlantic salesmen police the dealers' contractual obligations with the oil company by contacting the dealers regularly. It is the salesman who makes the initial recommendation whether a dealer's lease or contract is to be renewed. Atlantic salesmen not only promote the sale of their own company's products but also Goodyear TBA; they help plan sponsored TBA promotions, they write up TBA orders, and they check the dealer's books to ascertain whether nonsponsored TBA has been purchased.

Under the sales commission system, the dealers are visited regularly by a Goodyear salesman accompanied by an Atlantic salesman. Goodyear considers "double teaming" an effective means of selling its TBA. This duality of sales effort is continued at dealer meetings by the presence of representatives of the tire company and the oil company.

Atlantic reserves control over the advertising and identification that may be displayed at its service stations. Its policy is that only sponsored TBA identification should be displayed. Moreover, Atlantic credit cards include TBA. From 1951 to 1953 the credit card facility was limited in Goodyear territory to Goodyear TBA.

I.

[fol. 3689] The Supreme Court in *F.T.C.* v. *Cement Institute*, 333 U. S. 683, 693 (1948), indicated that the Federal Trade Commission Act grants "the Commission and the courts . . . adequate powers to hit at every trade practice then existing or thereafter contained, which restrained competition or might lead to such restraint if not stopped in its incipient stages." The Commission has a latitude of flexibility within which it can restrain any new unfair method of competition "which the ingenuity of competitors may devise."[3]

Unfair methods of competition proscribed by section 5 of the Federal Trade Commission Act cannot be classified rigidly into categories of business methods that stifle com-

[3] S. Rep. No. 597, 63d Cong., 2d Sess. 13 (1914).

petition. Labeling at times is more harmful than helpful in formulating conceptions that correspond with reality.

Although petitioners contest the view of the general counsel that the Commission grounded its order on the existence of an illegal tying arrangment the Commission found that the sales commission system is, *in effect,* such an arrangement. It went on to explain, however, that because of the peculiar features of the system, it did not rest its decision on a "mechanical application of the rule of the *Northern Pacific* and *Osborn* cases."[4] The Commission said:

> The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The heart of this case is the economic power Atlantic possesses over its service station dealers. Ostensibly, they [fol. 3690] are independent businessmen; but behind the legalistic facade of independence, there exists a servitude caused by the coercive pressures which Atlantic exerts upon its dealers. The keystone of the actual relationship between Atlantic and its dealers is the lease and the equipment loan contract with their short term and cancellation provisions. Without repeating all the components of the relationship, it is evident that the service station dealer is more of an economic serf than a businessman free to purchase the TBA of his choice. We believe the Commission, in evaluating the evidence, correctly found that if a dealer wishes to continue in good standing with the company and

---

[4] *Northern Pac. Ry.* v. *United States,* 356 U. S. 1 (1958); *Osborn* v. *Sinclair Refining Co.,* 286 F. 2d 832 (4th Cir. 1960).

retain his lease or contract, it is advantageous that he carry sponsored TBA.

On the issue of coercion the examiner said:

> It is clear from the record in this proceeding that the Atlantic dealers did not consider the nonforcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the change-over and prospective dealers thereafter had the right to select or reject the TBA sales program offered by Atlantic. The prospective dealer making application for an Atlantic station would not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salesmen insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

He concluded that "coercion and pressure were used [by Atlantic] on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of nonsponsored items."

The Commission affirmed the examiner's finding of coercion. It said that although the proclaimed policy of Atlantic has been to permit its dealers to carry whatever TBA they choose, the policy in practice is ignored and the [fol. 3691] dealers "have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA."

The Commission referred in particular to witnesses representing suppliers competing with Goodyear and Firestone who testified that the dealers responded negatively to their sales efforts because the dealers felt they were

required to purchase sponsored TBA. There was evidence that if the dealers purchased nonsponsored TBA, they were told by Atlantic to return it or, in any event, not to display it. There was also testimony that leases had been cancelled or allowed to terminate because dealers had purchased nonsponsored TBA.

Atlantic contends that the finding of coercion is not supported by substantial evidence. It says that the finding rests on the testimony of only thirteen dealers out of more than five thousand; that these isolated instances of "unauthorized" coercion are insufficient to establish a violation of Atlantic's "free choice policy." We disagree. The evidence relating to overt coercive tactics, although not extensive, must be considered with the testimony of the witnesses representing competing suppliers to the effect that the dealers felt that if they did not carry sponsored TBA they risked reprisal. Also to be considered are the policing tactics of Atlantic's salesmen and the surveillance by the so-called phantom customer inspectors. Moreover, it should be noted that the examiner, in considering the testimony of the dealers who testified for Atlantic, recognized that these witnesses "were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases."

Atlantic's contention that sporadic reprisals against dealers are an insufficient basis for finding coercion is answered in *United States* v. *Loew's Inc.*, 371 U. S. 38, 50 (1962). There, the Court said:

> Appellants . . . make the . . . argument that each of them was found to have entered into such a small number of illegal contracts as to make it improper to enter injunctive relief. . We disagree. Illegality having been properly found, appellants cannot now complain that its incidence was too scattered to warrant injunctive relief.

[fol. 3692] . Atlantic's power to cause its dealers to carry either Goodyear or Firestone TBA does not depend upon overt coercive methods. The totality of facts surrounding the relationship between the oil company and the dealers

points to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA.

Atlantic says that its influence over its dealers to purchase sponsored TBA short of force, threat, or intimidation is lawful; that it may recommend high quality TBA to its dealers; and that such action serves a legitimate business purpose in the promotion of the sale of gasoline. This would be a persuasive argument except for the dealers' economic dependency upon the oil company. In that setting, recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats.

Osborn v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), although a private suit under the antitrust laws, dealt with a sales commission contract similar to the one before us. Osborn, a dealer, charged that his lease was cancelled because he had not purchased sufficient quantities of Goodyear TBA. The court of appeals held that an illegal "arrangement or condition," a tie-in, existed between the oil company and its dealers which permitted the plaintiff to recover. Although the court was not specifically concerned with the legality of the Goodyear-Sinclair sales commission contract, it held that, "the Goodyear TBA was tied to the lease and the sale of the gasoline." Chief Judge Sobeloff characterized the arrangement thus:

> The perniciousness of the imposed tie-in is aggravated by the fact that the defendant [Sinclair] is not even in the business of selling the tied products, but is employing its economic power in the gasoline industry to force his dealers to do business with a supplier in another industry under an arrangement that yields the defendant an extraneous revenue. The defendant in this case goes a step further than the supplier in the usual tie-in case, for here the tied product is not even handled or sold by the defendant, but it farms out to another, for a price, its coercive economic power.

[fol. 3693] We think this an apt characterization of the Goodyear-Atlantic sales commission system.

It is true that Goodyear's contract with Atlantic in itself has no tying features. Only when the contract is considered contextually with the oil company-dealer relationship and the economic power that Atlantic has over its dealers does its tying feature emerge. Manifestly, the system was designed to exploit Atlantic's created and controlled service station market. The Commission properly, we think, decided that the system integrates Atlantic's economic power over its service station market into the Goodyear TBA distribution system, thus giving Goodyear, for a price, a captive market.

As pointed out in *McElhenney Co.* v. *Western Auto Supply Co.*, 269 F. 2d 332 (4th Cir. 1959), an illegal understanding (such as a tying arrangement) may be implied from a course of dealing between the parties. Here, the tying arrangement *is* the sales commission system operated by Goodyear and Atlantic. In its narrower aspects the system is a tying arrangement because it requires the buyer of one product, the service station dealer who purchases Atlantic gasoline, to buy another line of merchandise, Goodyear TBA. Surrender by the dealer of his freedom to choose between brands of TBA is *per se* illegal if a "not insubstantial" amount of interstate commerce is affected. *Northern Pac. Ry.* v. *United States*, 356 U. S. 1 (1958); *International Salt Co.* v. *United States*, 332 U. S. 392 (1947).

Appraising the broader aspects of the system as a tying arrangement, we think the Commission correctly determined that the system injures competition in the distribution of TBA at the manufacturing, wholesale, and retail levels. Interbrand competition for the Atlantic service station TBA market is foreclosed to Firestone in Goodyear's territory and Goodyear is foreclosed from selling to the service stations in Firestone's territory. Moreover, the record substantiates the Commission's finding that suppliers of TBA competing with Goodyear and Firestone are substantially foreclosed from selling their products to Atlantic dealers. Atlantic's service station market is fenced off

so as to make it unavailable to both manufacturers and wholesalers of competing brands.

Intrabrand competition is perniciously affected. Restraint results inevitably from the designation of a single [fol. 3694] supply point for TBA sales to the Atlantic dealer. Other Goodyear wholesalers cannot compete with the supply point dealer for the business of the Atlantic service stations in his territory.[5]

We are convinced that the Commission correctly analyzed the sales commission system and found, in effect, a tying arrangement inherently anticompetitive. It is anticompetitive largely because competition for the business of the individual service station is replaced by competition for the oil company's domination of its dealers.

The Commission found that service stations constitute a large and necessary market for TBA and evaluated the Goodyear-Atlantic sales commission system in relation to Atlantic's seventeen-state service station TBA market. Atlantic has nearly seven thousand service stations in this territory. As of 1955 Goodyear had signed TBA contracts with 2,183 of the 2,248 Atlantic service stations in the eight-state territory assigned it. As of 1955 Firestone had signed virtually all the 4,698 Atlantic stations in the ten-state area assigned it. Goodyear's TBA sales to Atlantic dealers rose from approximately two and one-half million dollars in 1951 to more than five and one-half million dollars in 1955. Firestone's sales to Atlantic dealers increased from $3,243,350 in 1951 to $5,562,936 in 1955. Total Goodyear and Firestone sales under the Atlantic contracts from June, 1950 to June, 1956 was more than $52,000,000. Atlantic's stations constitute 3.4 per cent of the total number of service stations in the United States and it sells 2.5 per cent of the gasoline sold in the nation.

We believe the foregoing facts adequately demonstrate that a substantial amount of commerce has been affected by Atlantic's contracts with Goodyear and Firestone. These facts also demonstrate that Atlantic has sufficient economic

[5] Of the 1,155 independent Goodyear dealers in Atlantic's marketing area, only 128 were acting as supply points for Atlantic service stations.

power in the gasoline market to restrain a substantial amount of commerce in the service station TBA market within the territory serviced by Atlantic. Therefore, the Goodyear-Atlantic sales commission system is within the "substantiality of economic effect on commerce" test defined in *Northern Pac. Ry.* v. *United States, supra,* and *Standard Oil Co.* v. *United States,* 337 U. S. 293 (1949). *Cf. Osborn* v. *Sinclair Refining Co., supra.*

[fol. 3695] II.

Goodyear contends that the provision in the Commission's order prohibiting it from entering into sales commission contracts with any oil company is not supported by substantial evidence. Atlantic makes a similar contention that the order is too broad because it prohibits the oil company's participation in a sales commission arrangement with any TBA supplier.

We think the Supreme Court answered petitioners' contentions in *F.T.C.* v. *Ruberoid Co.,* 343 U. S. 470, 473 (1952), when it said:

> Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. In carrying out this function the Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.

Petitioners' contention that the Commission's findings are inadequate and do not meet the requirements of section 8 of the Administrative Procedure Act, 5 U.S.C. § 1007(b), is without merit.

Moreover, we are not persuaded by Atlantic's contention that the hearing examiner, in making his decision, considered evidence outside the record since he heard a similar

complaint filed against Firestone and Shell Oil Company; nor are we persuaded by Goodyear's contention that the finding of the violation against it is based on evidence admitted against Atlantic but struck as to Goodyear. While the examiner received evidence concerning both the Firestone-Atlantic and the Firestone-Shell sales commission contracts, we are satisfied that the findings of both the examiner and the Commission were based on proper and sufficient evidence and that there was no denial of procedural due process.

The Commission's order is affirmed and will be enforced.

[fol. 3696]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago, Illinois, 60610

Before Hon. Elmer J. Schnackenberg, Circuit Judge, Hon. Latham Castle, Circuit Judge, Hon. Luther M. Swygert, Circuit Judge.

Petitions for review of an order of the Federal Trade Commission.

Nos. 13339, 13340

THE GOODYEAR TIRE & RUBBER COMPANY, THE ATLANTIC REFINING COMPANY, Petitioners,

vs.

FEDERAL TRADE COMMISSION, Respondent.

JUDGMENT—April 24, 1964

This cause came on to be heard on the petitions for review of an order of the Federal Trade Commission and the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is ordered by this Court that the order entered in this cause by the Federal Trade Commission on March 9, 1961, be, and the same is hereby Affirmed, and the order will be enforced, in accordance with the opinion of this Court filed this day. Upon presentation an appropriate decree will be entered.

[fol. 3697] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13339

THE GOODYEAR TIRE & RUBBER COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent.

FINAL DECREE AFFIRMING AND ENFORCING ORDER TO CEASE AND DESIST—May 20, 1964

The Goodyear Tire & Rubber Company, a corporation, petitioner herein, having filed in this Court on May 10, 1961, a petition to review and set aside an order to cease and desist issued against it on March 9, 1961, by the Federal Trade Commission, respondent herein, in a proceeding before it entitled "In the Matter of The Goodyear Tire & Rubber Company, a corporation, and The Atlantic Refining Company, a corporation, Docket No. 6486;" and a copy of said petition having been served upon respondent; and the respondent having thereafter certified and filed in this Court a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument on January 9, 1964, and this [fol. 3698] Court having rendered its decision on April 24, 1964:

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the prayer of the aforesaid petition to set

aside the order of the Federal Trade Commission as to the petitioner herein be, and it hereby is, denied;

It Is Further Ordered, Adjudged and Decreed that the order to cease and desist of the Federal Trade Commission be, and it hereby is, affirmed, and that petitioner be, and it hereby is, commanded forthwith to obey said order and to comply therewith.

By the Court.

Elmer J. Schnackenberg, Circuit Judge, Latham Castle, Circuit Judge, Luther M. Swygert, Circuit Judge.

Entered: May 20 1964

[fol. 3699] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 3700]

SUPREME COURT OF THE UNITED STATES

No. 296, October Term, 1964

THE GOODYEAR TIRE & RUBBER COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION.

ORDER ALLOWING CERTIORARI—December 14, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S.
FILED
JUL 17 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JOHN F. SONNETT
80 Pine Street
New York, N. Y. 10005
Attorney for Petitioner.

Of Counsel:
CAHILL, GORDON, REINDEL & OHL
Arthur Mermin
David Ingraham
H. Richard Schumacher
80 Pine Street,
New York, N. Y.

WOLFE, HUBBARD, VOIT & OSANN
1 North La Salle Street
Chicago, Illinois.

July 20, 1964.

TABLE OF CONTENTS.

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTE INVOLVED	4
STATEMENT	4
A. The Litigation Context	4
B. The Commercial Context	7
C. Operation of Goodyear's Sales Commission Plans	11
D. Rulings Below	14
REASONS FOR GRANTING THE WRIT	
I—The case involves an issue of fundamental importance to the American economy	17
II—The Commission's treatment of sales commission plans violates controlling law	19
A. Economic Influence as "Unfair" Competition	22
B. Presumption of Sales Influence	27
III—The Commission failed to perform its required functions	32
CONCLUSION	37

A separately bound Appendix to this Petition contains the text of the various opinions, orders, and decrees below.

Table of Authorities.

Cases.

	PAGE
Audivox, Inc. v. *Federal Trade Commission*, 275 F. 2d 685 (1st Cir. 1960)	36
Automatic Canteen Co. v. *Federal Trade Commission*, 346 U. S. 61 (1953)	31
Brown Shoe Co. v. *United States*, 370 U. S. 294 (1962)	30
Burlington Truck Lines v. *United States*, 371 U. S. 156 (1962)	32
Elliot Knitwear, Inc. v. *Federal Trade Commission*, 266 F. 2d 787 (2d Cir. 1959)	36
Federal Trade Commission v. *Gratz*, 253 U. S. 421 (1920)	18
Federal Trade Commission v. *R. F. Keppel & Bro., Inc.*, 291 U. S. 304 (1934)	18
Federal Trade Commission v. *Royal Milling Co.*, 288 U. S. 212 (1933)	36
Federal Trade Commission v. *Ruberoid Co.*, 343 U. S. 470 (1952)	17
Matter of The Firestone Tire & Rubber Co., 58 F. T. C. 371 (1961)	8, 18
Gilbertville Trucking Co. v. *United States*, 371 U. S. 115 (1962)	32
Matter of The B. F. Goodrich Co., 58 F. T. C. 1176 (1961); CCH Trade Reg. Rep. 1961-63 Transfer Binder ¶16,378 (1963)	6
Jacob Siegel Co. v. *Federal Trade Commission*, 327 U. S. 608 (1946)	32, 33, 36
Korber Hats, Inc. v. *Federal Trade Commission*, 311 F. 2d 358 (1st Cir. 1962)	32
Matter of Kaiser Jeep Corp., FTC Dkt. C-739 (Order of April 27, 1964)	21
Matter of O. K. Rubber Welders, Inc., FTC Dkt. 8571 (Order of June 19, 1964)	21

PAGE

National Labor Relations Board v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217 (1949) 36

Northern Pacific Ry. v. *United States*, 356 U. S. 1 (1958) 16, 29

Osborn v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), *cert. denied*, 366 U. S. 963 (1961) 34

Richfield Oil Corp. v. *United States*, 99 F. Supp. 280 (S. D. Cal. 1951), *aff'd per curiam*, 343 U. S. 922 (1952) 33

Susser v. *Carvel Corp.*, 1964 CCH Trade Cases ¶71,103 (2d Cir., May 8, 1964) 23

Swanee Paper Corp. v. *Federal Trade Commission*, 291 F. 2d 833 (2d Cir. 1961); *cert. denied*, 368 U. S. 987 (1962) 36

Tampa Elec. Co. v. *Nashville Coal Co.*, 365 U. S. 320 (1961) 30

Times-Picayune Publishing Co. v. *United States*, 345 U. S. 594 (1953) 29

United States v. *Continental Can Co.*, ... U. S. ....., 32 U. S. LAW WEEK 4642 (June 22, 1964) 30

United States v. *Standard Oil Co. of California*, 78 F. Supp. 850 (S. D. Cal. 1948), *aff'd*, 337 U. S. 293 (1949) 34

United States v. *Standard Oil Co. of California*, 1959 CCH Trade Cases ¶69,399 (S. D. Cal. 1959) 34

United States v. *Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959) 34

White Motor Co. v. *United States*, 372 U. S. 253 (1963) 22

STATUTES.

PAGE

Automobile Dealers' Day in Court Act,
70 Stat. 1125, 15 U. S. C. §§1221-25 (1958) 26

Federal Trade Commission Act §5(a),
38 Stat. 719 (1914), as amended, 15 U. S. C. §45(a) (1958) 1, 3, 4, 10, 18

Robinson-Patman Act §2(f),
49 Stat. 1526 (1936), 15 U. S. C. §13(f) (1958) 31

28 U. S. C. §1254(1) (1958) 2

OTHER LEGISLATIVE AUTHORITIES.

H. R. COMMITTEE ON THE JUDICIARY, ANTITRUST SUBCOMMITTEE, Hearings on H. R. 11360 and S. 3879, 84th Cong., 2d Sess. (1956) 26, 27

H. R. 425, 85th Cong., 1st Sess. (1957) 27

H. R. 426, 85th Cong., 1st Sess. (1957) 27

H. R. 428, 85th Cong., 1st Sess. (1957) 27

H. R. 9894, 86th Cong., 2d Sess. (1960) 27

H. R. 5926, 87th Cong., 1st Sess. (1961) 27

S. 2480, 87th Cong., 1st Sess. (1961) 27

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. _____

THE GOODYEAR TIRE & RUBBER COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, The Goodyear Tire & Rubber Company (hereinafter "Goodyear"), prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Seventh Circuit in the above-entitled case. The opinion and order of the Court of Appeals were rendered on April 24, 1964 and a final decree was entered on May 20, 1964.

Opinions Below.

The court below affirmed an order to cease and desist entered by the Federal Trade Commission (hereinafter the "Commission") because of an alleged violation of Section 5(a)(1) of the Federal Trade Commission Act, 38 Stat. 719 (1914), as amended, 15 U. S. C. §45(a)(1) (1953).

The Initial Decision of the Hearing Examiner (R. 94),* which recommends dismissal of the complaint against Goodyear, is reported at 58 F. T. C. 309 (1961) and is printed as Appendix A hereto.** The Commission's order (R. 114) and its opinion reversing the Examiner (R. 118) are reported at 58 F. T. C. 309 beginning at page 323 and are printed as Appendix B hereto.

The opinion of the Court of Appeals affirming the Commission is reported at 331 F. 2d 394 and printed as Appendix C hereto.

Jurisdiction.

The order (Appendix D) and the final decree (Appendix E) of the Court of Appeals were entered on April 24, 1964 and May 20, 1964, respectively. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1) (1958).

Questions Presented.

Goodyear has sales commission agreements with The Atlantic Refining Company ("Atlantic"), its co-respondent in the instant proceedings before the Commission, and with some twelve other non-respondent petroleum companies. Pursuant to these agreements Goodyear pays commissions to an oil company in return for the latter's assistance in promoting the sale through its dealers of Goodyear tires, batteries, and accessories ("TBA" or "TBA products").

No conspiracy between Atlantic and Goodyear was alleged or found. It is undisputed that Atlantic entered into its sales commission agreement with Goodyear because

* "R." refers to the Joint Appendix (in five volumes) filed in the Court of Appeals.

** The Appendix to this petition is voluminous and is therefore separately bound and presented.

it had already used the only feasible alternative method of TBA distribution and had encountered serious distribution and cost problems. Nevertheless, the Commission found that Atlantic's "power" with respect to its dealers made the sales commission agreement with Goodyear an "unfair method of competition" within the meaning of the Federal Trade Commission Act §5(a)(1).

As to the non-respondent oil companies, there is no significant evidence of record concerning their dealer relationships or the presence or absence of oil company "power" to influence TBA sales. Nevertheless, the Commission entered an order barring Goodyear from any further participation in any sales commission agreement, not only with Atlantic but with any marketing petroleum company.

The Court below approved the Commission's action. There are thereby raised the following significant questions concerning the proper administration of the Act:

(1) Is the sales commission agreement with Atlantic totally unlawful merely because Atlantic has the ability, without the exercise of coercion or use of tying agreements, to influence the purchase of a substantial volume of TBA products?

(2) Is a sales commission agreement totally unlawful merely because a sponsoring party (in this case any petroleum company) may be able, without the exercise of coercion or use of tying agreements, to influence the purchase of a substantial volume of the sponsored product (here TBA)?

(3) May the Commission dispense with any attempt at market analysis and establish a conclusive presumption that any oil company which has leases with, or lends equip-

ment to, its franchised dealers has the ability, deemed unlawful, to influence the requisite "substantial" volume of sales of the sponsored product?

(4) May the Commission altogether outlaw a time-tested method of distribution which offers undisputed benefits to the public and to all parties concerned without considering the possibility of more limited alternative remedies?

Statute Involved.

The statute involved in this case is Section 5(a) of the Federal Trade Commission Act, 38 Stat. 719 (1914), as amended, 15 U. S. C. §45(a) (1958), which in pertinent part provides that:

> "(a) (1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.
>
> * * *
>
> "(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

Statement.

A. The Litigation Context.

This is a far-reaching case and the first of its kind to come to this Court. It involves an attempt by the Commission to prohibit totally a traditional and widely used method of distributing TBA products. This method is known as "sales commission" distribution.

The amended complaint, issued on May 22, 1956 (R. 5), joins as respondents Goodyear, The Goodyear Tire & Rub-

ber Company, Inc.,* and Atlantic. Goodyear is a large manufacturer of rubber products (R. 157, App. B 38). Atlantic is a medium-sized producer, refiner, and distributor of petroleum products. It markets its "Atlantic" brand of automotive gasoline and related petroleum products through retail outlets and wholesale distributors in 17 eastern states and in the District of Columbia (R. 28; R. 96, App. A 3).

The complaint attacks the legality of a contract entered into by Goodyear and Atlantic in 1951 whereby Goodyear pays sales commissions to Atlantic for assistance in promoting the sale of Goodyear TBA products through Atlantic outlets. The complaint also attacks other sales commission arrangements between Goodyear and some 12 other marketing oil companies in the United States. Of these latter companies, only one—the Shell Oil Company—is a national concern. Most are a good deal smaller than Atlantic.** The complaint also questions a substantially similar contract between Atlantic and The Firestone Tire & Rubber Company ("Firestone"), but does not name Firestone as a respondent.

At the time that the Commission initiated the present proceeding it also issued two other complaints—one

---

* The Goodyear Tire & Rubber Company, Inc. was a wholly-owned marketing subsidiary of Goodyear which was merged with Goodyear in 1956 (R. 1). This fact is not significant to this litigation, and both Goodyear respondents are hereinafter collectively referred to as "Goodyear".

** The petroleum companies which the record shows as having sales commission arrangements with Goodyear were: Anderson-Prichard Oil Corporation, Ashland Oil & Refining Co. Inc (and certain subsidiaries of Ashland), Atlantic Refining Company, Carter Oil Company, D-X Sunray Oil Company, Frontier Oil Refining Company, Quaker State Refining Corporation, Richfield Oil Company, Shamrock Oil and Gas Corporation, Shell-American Petroleum Company, Shell Oil Company, Sinclair Refining Company and Sherwood Brothers Inc. (R. 119, App. B 2; R. 2493, 2503)

against Firestone and the Shell Oil Company ("Shell") and the other against the B. F. Goodrich Company ("Goodrich") and the Texas Company ("Texaco"). These latter complaints attacked sales commission agreements which the respective respondents had with each other and which each of the respondents had with other companies for the sale of TBA products.

The three complaints were tried before the same Hearing Examiner,* who conducted hearings over a two-year period from October, 1956 to February, 1959. The Examiner thereafter devoted many months to briefings, to his review of voluminous transcripts (3,887 pages in the instant case) and exhibits, and to the preparation of his opinions. In October, 1959 he filed his Initial Decisions which, in each of the three dockets, recommended dismissal of the complaints against the rubber companies.

The Commission reversed in all three cases. It entered orders which altogether bar the rubber company respondents, including Goodyear, from participating in any sales commission plan with any petroleum company and which bar the oil company respondents from participating in any sales commission plan for the sale of TBA.**

Petitions to review and to set aside the Commission's orders followed in all three cases. Goodyear and Atlantic each filed a petition to review with the Court of Appeals for the Seventh Circuit. That court rejected the petitions and affirmed the Commission (App. C). The instant peti-

---

* Earl J. Kolb, later appointed the Commission's chief of hearing examiners.

** In the *Goodrich-Texas* case, the Commission initially remanded the case to the Hearing Examiner for further hearings as to the competitive effects of the sales commission agreements of the two companies. After such hearings, the proceeding returned to the Commission which then entered an order explicitly based on the original record. See *Matter of The B. F. Goodrich Co.*, 58 F. T. C. 1176 (1961), and CCH Trade Reg. Rep. 1961-63 Transfer Binder ¶16,378 (1963).

tion for a writ of certiorari, and a separate petition for such writ being filed by Atlantic, ask this Court to review the aforesaid determinations of the Seventh Circuit.

Meanwhile, petitions to review and to set aside the Commission's orders in the two other proceedings are before two other Courts of Appeals. The *Firestone-Shell* appeals were argued before the Court of Appeals for the Fifth Circuit on January 16, 1964. Goodrich and Texaco sought review from the Court of Appeals for the District of Columbia Circuit, which heard argument on April 10, 1964. These courts presumably will render their decisions in the near future.

B. The Commercial Context.

The sales commission method of distribution has been widely used, for more than two decades, to facilitate the marketing of TBA through automobile service stations. Motorists prefer "one-stop" service stations capable of supplying, not only gasoline and oil, but also the full range of products required for the operation of the modern automobile (R. 1505, 1846, 2267-68). As a result, the nation's neighborhood "gas stations" have become, in response to motorists' demands, one of the major sources of supply for replacement TBA products (R. 122, App. B 5).

To meet this consumer demand under contemporary conditions is a complex task. The service station must have access to a wide variety of tires—for example, Goodyear manufactures and markets approximately 130 different popular-sized tire models (R. 2221). In addition, the service station must carry various sizes and types of batteries and a host of accessories such as spark plugs, radiator chemicals, lamps and bulbs, windshield wipers and blades, polishes, waxes, etc. (R. 99-100, App. A 6; R. 517-19).

The efficient provision at point of sale of such a range of products requires knowledge, skill and organization. The service station operator must be trained in several areas: the products available, installation and repair of such products, sound inventory practices and modern sales techniques (R. 1507, 2221-24, 2268). Behind the station operator must stand a well-developed warehousing and distribution system.

Over the years, two methods have developed in the petroleum industry for meeting these marketing needs. One of these is the so-called "purchase-resale" method, which the Commission's opinion approves (R. 183-85, App. B 62-63). Under this method, the petroleum company purchases TBA products and resells them, along with gasoline and oil, to its service station dealers.

"Purchase-resale" has a particular vogue today among the largest petroleum companies, such as Standard of New Jersey (Esso, Humble), Standard of California (Chevron), Standard of Indiana, Socony-Mobil, and Phillips Petroleum. (*Matter of The Firestone Tire & Rubber Company*, 58 F. T. C. 371, 388 (1961)). They have the resources to provide, and a sufficient number of service station outlets to warrant, the necessary investment in warehousing and distribution facilities for TBA. Atlantic made use of the purchase-resale method in earlier days, but gave it up in 1951 when it found that its sales of TBA were insufficient to warrant the costs of training, warehousing and overhead (R. 100-101, App. A 6-7; R. 2357-62, 2859-64).

The second principal method of TBA distribution through service stations is the "sales commission" method involved in this case. It was pioneered a generation ago by rubber companies and oil companies as an alternative to purchase-resale. Goodyear, which manufactures tires and tubes in its own factories and distributes batteries and

accessories acquired from outside sources, entered such a sales commission plan with Atlantic in 1951.

In return for Atlantic's sales assistance, Goodyear agreed to pay to Atlantic a 10% commission on its sales of TBA to Atlantic retailers in seven northeastern states and the Philadelphia area of Pennsylvania and to pay a 7½% commission on TBA sales to Atlantic wholesale distributors in the same area. The Commission did not challenge either the rates of these commissions or the evidence that Atlantic made expenditures approximately equal to them. Moreover, there is no claim that Atlantic wholesalers and retailers who bought Goodyear TBA under this plan did so on different terms from other wholesale and retail customers of Goodyear or that they were required to absorb the commissions paid by Goodyear to Atlantic.

The services which Atlantic supplied to Goodyear in return for its commissions are described in the Hearing Examiner's Initial Decision and are not disputed by the Commission. Atlantic operated training schools for dealers and prospective dealers which included promotional and merchandising aspects of TBA sales; conducted tire clinics jointly with Goodyear personnel to familiarize Atlantic dealers in the care and repair of Goodyear tires; advised prospective new dealers of the importance of TBA and recommended Goodyear TBA products; assisted dealers in arranging for Goodyear TBA inventory; conducted dealer meetings which discussed TBA sales; arranged for advertising and promotion of Goodyear TBA products; suggested methods of TBA merchandising in its dealer magazines; and made Goodyear TBA products available to credit card holders (R. 101-102, App. A 8-9).

The sales commission plan is not an independent source of revenue to Atlantic, but rather aids Atlantic in its competitive efforts to sell gasoline and other petroleum prod-

ucts. Atlantic's commission receipts under its two agreements with Goodyear and Firestone have averaged about ¼ of 1% of its petroleum revenues, and the costs to Atlantic of its participation in the TBA program are approximately equal to its receipts from it (R. 2364).

The Hearing Examiner made clear—and the Commission did not deny—that an oil company TBA program benefits motorists and dealers, as well as oil companies and rubber companies:

> "Tires, batteries and accessories have become a necessary and integral part of the business operation of the Atlantic dealer. He cannot profitably and successfully operate his business without the added revenue from that portion of his business which also enables the dealer to give complete service to his customers. The service station is important to TBA manufacturers as an outlet for distributing to customers. It is to the interest of The Atlantic Refining Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline." (R. 99-100, App. A 6)*

The Commission's order would altogether outlaw sales commission distribution by condemning it, in every case and regardless of its manner of implementation, as an "unfair method of competition" within the meaning of FTC Act § 5(a)(1). The order bars Goodyear's participation in any sales commission agreement with any oil company of whatever size and regardless of the nature of that company's relationship with its dealers.

---

* The court below found that TBA products were essential to efficient service-station operations, that dealers must be trained and kept informed of TBA product changes and that every major oil company offers some type of TBA training program to its dealers (331 F. 2d 394, 397, App. C 6-7).

C. Operation of Goodyear's Sales Commission Plans.

Although the Commission has wholly condemned all of Goodyear's sales commission agreements, the evidence relates almost entirely to the operation and effect of the agreement with a single oil company, Atlantic.

The record, which describes the situation obtaining in 1955-56, shows that Atlantic distributes its gasoline and other automotive petroleum products to some 5,500 retail dealers, of whom some 2,400 are in the area covered by the Atlantic-Goodyear sales commission agreement (R. 140, App. B 22). In that area, in addition, Atlantic sells its petroleum products to some 47 wholesale distributors who service about 390 retail outlets (R. 146, App. B 27). Most of these gasoline retailers operate service stations which are likely to offer TBA (as contrasted to the country store or roadside restaurant which may have a gas pump, without more, in the yard).

The retailers serviced directly by Atlantic are of two types—lessee dealers and contract dealers. The former lease their stations from Atlantic, mostly for a term of one year, but often for longer periods (R. 140, App. B 22). The latter own their stations or rent them from lessors other than Atlantic; their contracts with Atlantic frequently provide for the loan by Atlantic of items of station equipment and generally call for the purchase by the dealer of a specified minimum amount of gasoline during the course of a year (R. 144, App. B 25-26).

Goodyear operates tire and tube factories in five states and 57 warehouses in all parts of the country. It markets its automotive products through 500 company-owned and operated stores and about 12,000 independent franchised dealers. Many of these outlets sell at both wholesale and retail (R. 157-58, App. B 38).

Atlantic advised all of its dealers in writing, both at the time of the plan's inception in 1951 and on several occasions thereafter, that they were under no obligation to buy Goodyear TBA despite its sponsorship by Atlantic.* Counsel supporting the complaint offered the testimony of eight former Atlantic dealers, all from the Philadelphia area, and of eight former dealers from areas not encompassed by the Goodyear-Atlantic agreement. Some of them testified that, despite the letters from Atlantic, certain of the latter's salesmen overtly or impliedly threatened them with sanctions if they failed to purchase sufficient amounts of Atlantic-sponsored TBA (R. 104, App. A 10).

Atlantic, in rebuttal, introduced the testimony of 38 dealers and ex-dealers who testified to selling non-sponsored TBA without objection from Atlantic (R. 108-09, App. A 14). It also was shown that petroleum companies compete aggressively for the services of qualified dealers, who often are local businessmen with established "followings" in their neighborhoods (R. 1493-1497, 2353). Thus, Atlantic would have scant incentive to jeopardize its basic business—the sale of petroleum products—by making demands on a dealer with respect to TBA, on which Atlantic makes no profit.**

---

* Atlantic stated: "However, your acceptance or rejection of the program is a matter of your own choice." (R. 2892); "[U]nder no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers" (R. 2891) and "If any of our people at any time insist on your buying any certain product or merchandise against what you feel is to your best interest, I want you to call the matter directly to my attention" (R. 3038). The last-cited letter is contained in Atlantic's franchise manual (which is reviewed with all prospective dealers) and is furnished to all new Atlantic dealers (R. 1438-40, 1780, 1920-21, 2025-26).

** The undisputed evidence is that there is "considerable expense" in replacing a dealer (R. 1496-97).

The Examiner found that no Atlantic dealer had confined his purchases of TBA to Goodyear or Firestone TBA and that all dealers "carried some non-sponsored TBA to satisfy demands of their customers . . ." (R. 109, App. A 15). He also concluded that Atlantic had induced a substantial number of its dealers to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored TBA by pressure and coercion (R. 110, App. A 16); at the same time he found Atlantic's contractual relationships with its dealers to be not unreasonable, and his proposed order sought only to prohibit acts of coercion by Atlantic (R. 111-13, App. A 16-19). As to Goodyear, the Examiner found:

> "There is no evidence that The Goodyear Tire & Rubber Company, or The Goodyear Tire & Rubber Company, Inc., engaged in, or participated in, any of acts or practices designed to force dealers and distributors of The Atlantic Refining Company to purchase Goodyear TBA products." (R. 110, App. A 16)

With respect to the actual operations of Goodyear's sales commission agreements with other oil companies, the evidence is virtually non-existent. The Hearing Examiner makes no mention whatever of these agreements and the opinion of the Commission does little more than note the existence of such agreements.* There is certainly no finding by the Examiner or the Commission that each one of such other oil companies coerced or pressured (or had

---

*Although the Hearing Examiner made no such finding, the Commission found that Goodyear's agreements with non-respondent oil companies "are in all material respects identical with the Goodyear-Atlantic contract" (R. 162, App. B 42). Neither the Commission nor the Court below, however, specifically found either that Goodyear's various arrangements with non-respondent oil companies were similar *in operation* to the Goodyear-Atlantic arrangement or that such non-respondent oil companies' relations with their dealers were similar to those between Atlantic and its dealers.

the power to coerce or pressure) its dealers to purchase Goodyear TBA.

As in the case of the Atlantic agreement, the outlets of such other oil companies are served by "supply points" comprised of some, but not all, of Goodyear's dealers. The Commission's decision attaches great adverse significance to this fact (R. 172, App. B 52). Nevertheless, there is no supporting finding, and, indeed, no evidence, that any competent Goodyear dealer was denied an opportunity to become a "supply point" or that any such dealer who was not a "supply point" was interested in becoming one.*

D. Rulings Below.

The Hearing Examiner found no fault with Goodyear's conduct and nothing wrong with the concept of its sales commission agreement with Atlantic (or with any other oil company).

Specifically, the Initial Decision concludes that

> —there was neither charge of nor proof of a conspiracy between Goodyear and Atlantic or anyone else to restrict competition in the sale of TBA (R. 110, App. A 16);
>
> —neither Goodyear's sales commission agreement with Atlantic nor the latter's agreements with its dealers required said dealers to purchase only Goodyear TBA (R. 110-11, App. A 16);

* The record does show that the majority of the 128 "supply points" servicing the outlets covered by the Atlantic-Goodyear sales commission agreement are independent franchised dealers, not Goodyear-owned outlets (R. 525). They must maintain the facilities and staffs required to keep contact with and to effect deliveries to the service stations. These often include special delivery trucks and driver salesmen. The supplying dealers also make to Goodyear the sales reports on which commissions to Atlantic are based. They receive no extra compensation for their participation in the sales commission plan (R. 525).

> —"The consideration for the payment of commission to Atlantic under the sales commission contract is based upon substantial services rendered by Atlantic in promoting the sale of Goodyear TBA to Atlantic dealers and distributors" (R. 111, App. A 17);

and that

> —the terms of the contracts and leases between Atlantic and its dealers were not unreasonable and did not themselves confer upon Atlantic control sufficient to require its dealers to carry only sponsored TBA (R. 111, App. A 17).

The proposed order directed Atlantic to cease and desist from coercing or attempting to coerce its dealers to carry sponsored TBA, but dismissed the complaint against Goodyear (R. 112-13, App. A 18-19).

Goodyear believes the finding that Atlantic pressured or coerced its dealers to carry sponsored TBA to be unjustified; however, this point is not raised as an issue in this petition, since the finding is not fundamental to Goodyear's position here. As the Examiner recognized, the finding about Atlantic's conduct, if valid, should properly affect only the relief ordered against Atlantic. The Commission, however, has gone far beyond the finding to strike down all then-existing sales commission agreements between Goodyear and other petroleum companies as to which no similar finding has been made or is possible.*

The Commission attempted to achieve this latter result by asserting that "these overt acts of coercion [by Atlantic] are mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself."

---

* Struck down, in addition, are a number of sales commission agreements between Goodyear and small petroleum companies entered into after 1956, the last year of the record.

(R. 156-57, App. B 37). The issue, in the Commission's view, was not the parties' conduct, but "the legality of respondents' use of a *particular method* of distributing TBA products." (R. 181, App. B 60; emphasis in original).

The Commission found that

> "Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic." (R. 181, App. B 60-61)

The Commission cited *Northern Pacific Ry.* v. *United States*, 356 U. S. 1 (1958), but stated it would "not rest its decision on a mechanical application of the rule" of that case. Rather:

> "Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents." (R. 181, App. B 61)

The Commission, after purportedly evaluating these effects, concluded that Goodyear's sale commission agreement effectively closed a market, which it defined as one consisting of Atlantic dealers in the area covered by the plan, to the TBA of other manufacturers. Without any specific evidence, the Commission also seems to have concluded that Goodyear's sales commission agreements with other oil companies resulted in a foreclosure of other markets similarly defined in terms of a particular oil company's retail outlets.

The Commission further concluded, again without specific evidence, that Goodyear's use of "supply points"

to handle sales to its service-station customers restricted competition among Goodyear's retail and wholesale dealers.

On the basis of these conclusions, the Commission rejected the Examiner's recommended order and entered an order which outlaws, not only the agreement between Goodyear and Atlantic, but any sales commission agreement between Goodyear and any oil company.

The Seventh Circuit affirmed, its opinion finding that there was substantial evidence to warrant the Commission's conclusions.

The Court justified the Commission's sweeping order against Goodyear by treating it solely as a matter of proper remedy. The opinion is content to deal with the issue by a bare quotation of one paragraph of this Court's opinion in *Federal Trade Commission* v. *Ruberoid Co.*, 343 U. S. 470, 473 (1952), which states that the Commission's remedial power is not limited to prohibition of illegality "in the precise form in which it is found to have existed in the past" (331 F. 2d at 403, App. C 18).

REASONS FOR GRANTING THE WRIT.

I.

The case involves an issue of fundamental importance to the American economy.

The Commission seeks to abolish a system of TBA distribution which is of such significance to the national economy that this Court should review the propriety of the Commission's action.

The decisions of the Commission and Court below do not actually rely upon any detailed evaluation of facts peculiar to this case. Rather, the Commission's decision and order, upheld by the Court below, are based on what may fairly

be described as a legislative judgment that all forms of sales commission merchandising in any industry where franchised-dealers are lessees or borrowers of equipment are, in all circumstances, "unfair methods of competition".

Although the Commission's views are entitled to weight, the question of what constitutes an "unfair method of competition" within the meaning of Section 5(a)(1) of the Act is ultimately a question of law to be decided by the courts. See *Federal Trade Commission* v. *R. F. Keppel & Bro., Inc.*, 291 U. S. 304, 314 (1934); *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427 (1920). The question of whether the sales commission method of marketing is *per se* an "unfair method of competition" is ripe for review by this Court. The issue is as clearly framed by the present record as it ever will be.

The number and scope of the interests which the Commission's decision affects are great. The Commission's opinion in the companion *Firestone-Shell* proceeding indicates that, in the petroleum industry alone, at least 28 different petroleum companies have sales commission agreements which are outlawed by the Commission's order in this case and in the two companion proceedings. (*Matter of Firestone Tire & Rubber Co.*, 58 F. T. C. 371, 383-84 and fn. 1-3 (1961)). These agreements were applicable, at the time of the record, to over 50,000 service stations and involved annual TBA sales in excess of $150,000,000 (58 F. T. C. at 352, 401, 1181; R. 3406).

These agreements confer important benefits, not only on the rubber companies such as Goodyear, but also on the petroleum companies, the service station operator, and the American motorist. As noted, the Hearing Examiner found this to be true of TBA product distribution (R. 99-100, App. A 6) and the Commission has not denied it.

The Commission has not only ignored the benefits provided by the sales commission method. It also nowhere discusses the fundamental economic setting of these proceedings. Its decision approves the purchase-resale system of distribution without considering the fact that Atlantic, a medium-sized company, abandoned purchase-resale as uneconomic for its size of operation. The Commission is mute as to the basic facts of economic life—namely, that medium and small-size petroleum companies are engaged in fierce competition with the largest petroleum companies —and that the sales commission system is particularly well adapted to the needs of smaller oil companies (and consequently their dealers) who, like Atlantic, may not be able economically to sustain the warehousing and distribution expenses of a purchase-resale system.

The sales commission system has been a natural and widespread response by smaller petroleum companies to the imperatives of TBA merchandising. It is a system, as well, which has a potential application in almost any of the growing marketing fields which are served by franchised dealers. Whether the benefits of the sales commission method are sufficiently outweighed by adverse effects to warrant its *per se* condemnation as an "unfair method of competition" is surely a question which should be reviewed by this Court.

II.

The Commission's treatment of sales commission plans violates controlling law.

The Commission, by its sweeping order barring Goodyear from participation with any petroleum company in any TBA sales commission program, has defined in this proceeding a new "unfair method of competition".

The Commission's decision so characterizes any sales commission plan involving sponsorship of a product by a franchisor (in this case an oil company) which "has sufficient economic power with respect to its [dealers] to cause them to purchase substantial quantities" of the sponsored product. In addition, the Commission's decision establishes, at the very least, a presumption (requiring no proof on the part of the Commission) that any franchise system in which leases or equipment loans play a part endows the franchisor with such power.

The doctrine thus enunciated conflicts with principles which this Court has recognized in applying the competitive policies at the base of the Federal Trade Commission Act and of the antitrust laws. It is submitted that if the doctrine is not erased by this Court, its application by the Commission in this and in other administrative proceedings will have pernicious effects on the national economy.

Goodyear has sales commission agreements with numerous non-respondent oil companies as to whom no finding of dealer-coercion is made or is possible.* It is patently unsound reasoning which has led the Commission to condemn all of these agreements without reference to facts concerning their operation or effect.

"The issue" in this proceeding, as the Commission's opinion plainly states, "is the legality of . . . a *particular method* of distributing TBA products", *viz.*, the sales commission method (R. 181, App. B60) (emphasis in original). The reasoning through which the Commission condemns every use of this method by Goodyear involves two

* The Commission devotes seven pages of its opinion to a review of the evidence bearing on coercion by Atlantic and concludes "that the record contains ample evidence to support the hearing examiner's finding that Atlantic has coerced a substantial number of its dealers to purchase sponsored TBA." (R. 156-57, App. B 37). The opinion's only other reference to dealer coercion concerns two incidents involving Sinclair in 1948 (R. 162-64, App. B 42-44).

steps, each of which brings the Commission into square conflict with pertinent decisions of this Court.

First, the Commission concluded that the petroleum company respondent before it, *viz.*, Atlantic, had "sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA *even without the use of overt coercive tactics or of written or oral tying agreements*" and that this power had the effect of giving Goodyear an advantage in the competition for the business of Atlantic dealers (R. 181, App. B 60-61) (emphasis supplied). This, in the Commission's abstract view, defined an unfair method of competition warranting abolition of a sales commission agreement.

Second, with respect to Goodyear's agreements with the non-respondent oil companies, the Commission's opinion merely notes that "Goodyear has sales commission contracts with a number of other marketing oil companies, and the agreements are in all material respects identical with the Goodyear-Atlantic contract" (R. 162, App. B-42). To reach and condemn these agreements, the Commission has obviously presumed, from the mere existence of a franchise system between oil company and dealer, the possession by each oil company of the requisite power to cause what the Commission considers improper economic effects.*

* The Commission's opinion does not articulate this step of its analysis since it jumps, without explanation, from the fact of Goodyear's sales commission agreements with non-respondent oil companies to their condemnation. Two recent consent orders of the Commission indicate, however, that the Commission, again without articulation, is perfectly willing to contradict itself.

In *Matter of Kaiser Jeep Corp.*, FTC Dkt. C-739 (Order of April 27, 1964), and *Matter of O. K. Rubber Welders, Inc.*, FTC Dkt. 8571 (Order of June 19, 1964), the Commission agreed to Consent Orders which did not outlaw the franchisor's sales commission plan, but simply ordered the franchisor to cease and desist from coercing its dealers to carry the sponsored product.

A. Economic Influence as "Unfair" Competition.

According to the doctrine of the Commission in this case, a sales commission agreement must fall if there exists, without more, a possibility that the franchisor (*e.g.*, a petroleum company) can influence a substantial volume of sales of a sponsored product (*e.g.*, Goodyear TBA) to dealers who are free to respond to the influence or not as they see fit.

In adopting this view, the Commission has ignored its obligation, when appraising a competitive method not marked by deception or overt restraint, to weigh the advantages of and justifications for the method under attack before condemning it as unlawful *per se*.

This Court has insisted upon that much even when appraising arrangements which are overtly restrictive. Speaking in *White Motor Co.* v. *United States*, 372 U. S. 253 (1963), of White's vertical territorial limitations among its distributors and dealers, this Court noted that such a limitation "may or may not have that purpose or effect [*viz.*, the stifling of competition]":

> "We do not know enough of the economic and business stuff out of which these arrangements emerge to be certain. They may be too dangerous to sanction or they may be allowable protections against aggressive competitors or the only practicable means a small company has for breaking into or staying in business (*cf. Brown Shoe*, *supra*, at 330 of 370 U. S.; *United States* v. *Jerrold Electronics Corp.*, D. C., 187 F. Supp. 545, 560-561, *aff'd*, 365 U. S. 567) and within the 'rule of reason' " (372 U. S. at 263).

Moreover, the Commission's doctrine takes no account of the fact that petroleum companies and most other franchise operators make valuable trademarks available to their dealers. By paying no heed to this fact, the Commission

casts doubt on the well established rule that the existence of a trademark legitimates forms of influence and "control" by its owner which might not be proper in other circumstances.

This has been recognized, for example, in the recent decision of the Court of Appeals for the Second Circuit in *Susser* v. *Carvel Corp.*, 1964 CCH Trade Cases ¶ 71,103 (2d Cir., May 8, 1964). In that private action under the antitrust laws, the Court held that Carvel, operator of a franchised chain of frozen custard stands in the Northeast, could require its dealers to handle only Carvel-approved products, saying,

> "The antitrust laws certainly do not require that the licensor of a trademark permit his licensees to associate with that trademark other products unrelated to those customarily sold under the mark. It is in the public interest that products sold under one particular trademark should be subject to the control of the trademark owner. See *E. I. du Pont de Nemours & Co.* v. *Celanese Corp. of America, supra; Arthur Murray, Inc.* v. *Horst, supra; Morse-Starrett Prod. Co.* v. *Steccone, supra.* Carvel was not required to accede to the requests of one or another of the dealers that they be permitted to sell Christmas trees or hamburgers, for example, which would have thrust upon Carvel the obligation to acquaint itself with the production and sale of these items so as to establish reasonable quality controls.
>
> "Nor do the antitrust laws proscribe a trademark owner from establishing a chain of outlets uniform in appearance and operation. Trademark licensing agreements requiring the sole use of the trademarked item have withstood attack under the antitrust laws where deemed reasonably necessary to protect the goodwill interest of the trademark owner . . ." (p. 79,362).

Here, the Commission's resort to a simple quantitative test,—the dollar amount of sponsored TBA products sold to franchised dealers—to appraise a sales commission plan not only disregards, but precludes consideration of, such contextual justifications. In the present case the Commission has ignored in fact, as its formula ignores in theory, the competitive needs of the petroleum companies which entered sales commission agreements with Goodyear.

To compete effectively at the retail level a petroleum company must have a TBA program. The nub of the matter is simply stated. Petroleum companies must be concerned with and have a right to attempt to influence the kind and quality of TBA products which are sold in the service stations carrying their gasoline brand name. Companies such as Standard Oil of New Jersey and Socony-Mobil achieve this through purchase-resale. A sales commission agreement with Goodyear is a means through which companies such as D-X Sunray and Shamrock can match their giant rivals.

Moreover, the Commission's action is irrational. Its decision to make the mere possibility of sales influence by the petroleum company the touchstone for the validity of a TBA sales commission agreement lacks logic, since the Commission here has specifically approved petroleum companies' participation in the purchase-resale of TBA. As the Commission's opinion itself notes, a petroleum company's power *vis-a-vis* its retail dealers "is a fact existing independently of the particular method of distributing or sponsored TBA used . . ." (R. 181, App. B 61). The Commission offers no reason (and common sense suggests none) why a petroleum company would exert less pressure upon its dealers in promoting the sale of its own TBA than in promoting the TBA of a party to a sales commission agreement.

Given the possibility of petroleum company persuasion of its dealers, a sales commission plan has no significant difference from a purchase-resale program. The Commission opinion labors to suggest differences, but its efforts do not hold water.

Thus, the Commission argues that, under a sales commission plan, the supply points of the rubber company involved in a plan "are assured of a substantial chunk of the market before the competitive race at the wholesale level begins" (R. 184, App. B 63). But, under purchase-resale, the petroleum company would be assured of the same "substantial chunk" at the start of the race.

The Commission also suggests that, since smaller rubber companies lack the distribution facilities and full product lines of the larger ones, they cannot compete for sales commission business, while they can compete for the business of petroleum companies marketing TBA by purchase-resale (R. 185, App. B 64). This argument is too glib, however, since the Commission did not prove—nor could it—that small rubber companies do not have sales commission agreements with petroleum companies. In any case, a method of competition can scarcely be illegal because one company offers a broader range of products and service than another.

Finally, in focusing on the possibility of influence by, rather than the actual conduct of, the franchisor as the basis for its condemnation of TBA sales commission plans, the Commission conflicts with a clear expression of Congressional policy. In the mid-1950's, there was much concern over the power which automobile companies had to influence the purchase of cars and other products by their franchised dealers. In 1956, the Congress responded to this concern by enacting, as a declared "supplement" to the antitrust

laws, the so-called Automobile Dealers' Day in Court Act, 70 Stat. 1125, 15 U. S. C. §§1221-25 (1958).

Under that act an automobile dealer was given the right to sue in the district courts for damages if his manufacturer failed:

> "... to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, cancelling, or not renewing the franchise with said dealer."

Good faith was defined in the act as follows:

> "The term 'good faith' shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.*" (emphasis supplied)

The economic power of an automobile company *vis-a-vis* its dealers is no less than the power of an oil company *vis-a-vis* its service station operators. Yet, in the dealers' statute, the Congress plainly held that an automobile company might actively influence its dealers to buy, provided that that influence was employed in a non-coercive way.

The legislative history of that statute makes it clear that it was contemplated that it could serve as a precedent for use in other industries such as the petroleum industry. See H. Rep. Committee on the Judiciary, Antitrust Sub-

COMMITTEE, Hearings on H. R. 11360 and S. 3879, 84th Cong., 2d Sess. (1956)*.

The Hearing Examiner applied that precedent to his view of the facts in this case. The Commission did not; it substituted instead a simple quantitative test of illegality which treats actual conduct as irrelevant and ignores all of the many justifications for the sales commissions method of TBA distribution. This doctrinal innovation should be reviewed and reversed by this Court.

B. Presumption of Sales Influence.

The Commission's decision does more than measure the legality of sales commission agreements by a naked and unadorned quantitative test of the amount of sponsored TBA products sold by oil company dealers. The decision also erects a presumption that the business operations of any sponsoring franchisor having lease or equipment loan arrangements with dealers meet this novel and unsound test.

It is solely on the basis of such a presumption that the Commission was able to reach and to condemn Goodyear's sales commission agreements with all non-respondent oil companies.

---

* In this connection it also is of interest to note that a bill identical in all material respects to the Automobile Dealers' Day In Court Act, but aimed at oil companies, was introduced in the House the following year. See H. R. 425, 85th Cong., 1st Sess. (1957). Also at least two bills intended to outlaw the sales commission plan have been introduced. See H. R. 428, 85th Cong., 1st Sess. (1957) and H. R. 9894, 86th Cong., 2d Sess. (1960). Similarly there have been bills aimed at purchase-resale, see H. R. 5926, 87th Cong., 1st Sess. (1961); S. 2480, 87th Cong., 1st Sess. (1961), and at exercise of control generally with respect to the reselling of gasoline or petroleum products as well as TBA, see H. R. 426, 85th Cong., 1st Sess. (1957). Despite this activity, no such bills have ever been reported out of committee, and the Congress has refused to act.

To determine the influence of Atlantic over its retail outlets, the Commission reviews at length the contractual relationships which link that company and its dealers and notes the different positions *vis-a-vis* Atlantic of its lessee and contract dealers (R. 139-47, App. B 21-28). And to measure the effect of this influence, the Commission's opinion makes some effort (though hardly sufficient) to assess Atlantic's market position in the Northeast (R. 139, App. B 21).

But, in the case of the non-respondent oil companies, there are no findings and, more importantly, no evidence which would permit such findings had the Commission thought it pertinent to make them.* The Commission's opinion does no more than note the aggregate volume of Goodyear's sales under its sales commission agreements with these other companies (R. 162, App. B 42).

The Commission's presumption that all sales commission agreements violate its new standard of legality for such agreements runs roughshod over controlling authorities of this Court. Even if there were merit to the Commission's touchstone of oil company "power" for testing such agreements, it seems clear that proof of such "power" is necessary and that the burden of proof should be on the Commission.

The Commission's presumption evades the need for market analysis. It permits the Commission to speak of a sponsor's "power" to influence a "substantial" volume of sales, while at the same time sparing the Commission the burden of determining what, in a particular context, "power" or "substantial" means. Yet meaningful analysis has been required heretofore in appraising outright require-

* There is not even any evidence of the amount or value of gasoline sold by these companies individually or collectively.

ment contracts, tie-in sales, and mergers, let alone the milder arrangement here.*

The only market facts that the Commission conceivably can infer from the present record is that the amounts of gasoline sold by the non-respondent petroleum companies and the amounts of TBA sold by Goodyear to the retail outlets of these companies are not, in some absolute dollar sense, *de minimis*. But neither such fact has been sufficient heretofore to establish an actionable restraint.

Size alone, unrelated to countervailing competitive forces, provides no reasonable foundation for an inference, let alone a conclusive presumption, that a seller is in a position to pressure its customers into taking a product they would rather purchase elsewhere. This Court made this clear in at least two recent decisions considering tying arrangements under the antitrust laws. See *Northern Pacific Ry.* v. *United States*, 356 U. S. 1, 6-7 (1958); *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594 (1953).

In addition, it seems clear that the substantiality of alleged foreclosure represented by Goodyear's sales of TBA to stations covered by sales commission agreements cannot be determined without a comparative reference. What portion of the TBA market is involved?** To proceed without such a comparative reference conflicts with the approach of

---

* The non-respondent petroleum companies with which Goodyear has or had sales commission agreements present a variety of different situations which the Commission has simply swept under the rug. The companies are of different sizes, operate in different areas, face different competitors, have different positions in their respective markets, provide markets for differing amounts of TBA, operate with different types of dealer outlets, etc.

** One market figure is clear from the record. In 1955 Goodyear TBA sales under its agreement with Atlantic were less than $6,000,000 (R. 133, App. B 14). These sales were approximately 15/100 of 1% of the annual national replacement TBA market in the mid-1950's, estimated in the record to be 4 billion dollars (R. 3103).

this Court's recent decision in *Tampa Elec. Co.* v. *Nashville Coal Co.*, 365 U. S. 320 (1961).

There a requirements contract was upheld under Section 3 of the Clayton Act even though it foreclosed $128,000,000 worth of business over a 20-year term. For when viewed in its market setting, this undeniably large sum of money represented an insignificant portion of the total market.

> "To determine substantiality in a given case, it is necessary to weigh the probable effect of the contract on the relevant area of effective competition, taking into account the relative strength of the parties, the proportionate volume of commerce involved in relation to the total volume of commerce in the relevant market area, and the probable immediate and future effects which pre-emption of that share of the market might have on effective competition therein. It follows that a mere showing that the contract itself involves a substantial number of dollars is ordinarily of little consequence" (365 U. S. at 329).*

This Court's decision in *Tampa Electric* has a deeper significance, as well. It teaches that market definition and analysis must become increasingly sophisticated if the antitrust laws are, indeed, to serve as a charter of economic liberty in our complex society. The Commission's contrasting superficiality in a matter of this importance warrants review by this Court. The Commission's uninformed action, if tolerated here, will have obviously far-reaching and obviously undesirable implications for the whole field of antitrust enforcement.

---

* This Court has also made clear that the relevant market setting is the key to legality of mergers. See *Brown Shoe Co.* v. *United States*, 370 U. S. 294, 343 (1962) and *United States* v. *Continental Can Co.*, ... U. S. ....., 32 U. S. LAW WEEK 4642, 4646 (June 22, 1964).

The Commission may seek, perhaps, to justify its presumption by characterizing it as a rebuttable one. But, as this Court pointed out in *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U. S. 61 (1953), the burden of proof in a matter of this sort properly rests with the Commission.

In that case, brought under Section 2(f) of the Robinson-Patman Act, 49 Stat. 1526 (1936), 15 U. S. C. §13(f) (1958), this Court held that even after the Commission had shown that respondent buyer knew he had obtained a price differential from his vendor, the Commission had the burden of coming forward with evidence to show that cost savings did not justify the differential. The reasoning which prompted that ruling would condemn, as well, any suggestion that the Commission not bear the burden of proof here.

In *Automatic Canteen*, as here, the Commission, with its broad subpoena power, is better equipped than any respondent to develop the facts. Moreover, here as in *Automatic Canteen*, an attempt by the respondent to develop facts pertinent to its defense "would almost inevitably require a degree of cooperation [with the petroleum companies] . . . that may offend other antitrust policies . . ." (346 U. S. at 69). As this Court there concluded:

> "[W]e think the fact that the [respondent] does not have the required information, and for good reason should not be required to obtain it, has controlling importance in striking the balance in this case" (346 U. S. at 78).

The Commission has piled novelty on novelty to reach its result in this case. Its actions deserve review by this Court.

III.

The Commission failed to perform its required functions.

In any case—and quite apart from the substantive issues discussed in the preceding Point—the process by which the Commission reached its conclusions violated controlling law.

From the finding against Atlantic the Commission vaulted to a condemnation against any Goodyear sales commission agreement with any petroleum company. The Commission did not consider whether measures short of complete abolition would satisfy its remedial function. It thereby failed to provide a stated basis for judicial judgment of the reasonableness of its sweeping remedy. The failure is compounded by the opinion of the Court below, which, as noted, did not discuss the issue beyond quotation of a paragraph from this Court's opinion in *Ruberoid*.

Such perfunctory treatment does an injustice to the dimensions of the issues to be decided and the character of the Commission's duties. The Commission acted as if it were unaware of *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608 (1946).* This Court there held that the Commission erred in ordering an outright prohibition of the use of a trade name which it had found deceptive; the Commission should have first considered whether measures short of such a drastic remedy would eliminate the deception. As the Court stated:

---

* This Court recently applied the doctrine of the *Siegel* case in *Gilbertville Trucking Co.* v. *United States*, 371 U. S. 115, 130-31 (1962), and *Burlington Truck Lines* v. *United States*, 371 U. S. 156, 165-67 (1962). See also *Korber Hats, Inc.* v. *Federal Trade Commission*, 311 F. 2d 358, 363 (1st Cir. 1962).

> "For the Commission seems not to have considered whether in that way the ends of the Act could be satisfied and the trade name at the same time saved. We find no indication that the Commission considered the possibility of such an accommodation. It indicated that prohibition of the use of the name was in the public interest since the cease and desist order prohibited the use of the name. But we are left in the dark whether some change of name short of excision would in the judgment of the Commission be adequate" (327 U. S. at 613).

The basis of the holding was put as follows:

> "[The Commission's] expert opinion is entitled to great weight in the reviewing courts. But the courts are not ready to pass on the question whether the limits of discretion have been exceeded in the choice of remedy until the administrative determination is first made" (327 U. S. at 614).

The facts here are even stronger than in *Siegel*. The value of a trade name is more than matched by the worth of a traditional marketing practice whose varied benefits were not denied by the Commission. Moreover, the breadth of possible remedies is wider here than in *Siegel*. There, the Commission's function was to adopt a proper remedy with respect to a specific trade name. Here, there is involved a prevalent and important distribution system—and, unlike the *Siegel* situation, there are a variety of remedies as to both petroleum and rubber companies which were open to the Commission's consideration.

Nor would the Commission have been breaking new ground in fashioning a remedy involving petroleum products and TBA which stopped short of total abolition. In *Richfield Oil Corp.* v. *United States*, 99 F. Supp. 280 (S. D. Cal. 1951), *aff'd per curiam*, 343 U. S. 922 (1952), total

requirements and tying arrangements were voided, but the decree left intact a sales commission plan for automobile accessories. Moreover, in two other litigated cases and a consent decree, the right of the oil company to "sponsor" TBA products was preserved. *United States* v. *Standard Oil Co. of California*, 78 F. Supp. 850, 891 (S. D. Cal. 1948) *aff'd*, 337 U. S. 293 (1949); *United States* v. *Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959) (decree unreported); *United States* v. *Standard Oil Co. of California*, 1959 CCH Trade Cases ¶69,399 (S. D. Cal. 1959).*

Thus, the Commission should have at least considered a number of possible remedies to the factors of which its opinion complains. Among them are the following:

1. An injunction against the exertion of undue pressure upon oil company dealers to purchase Goodyear TBA, making clear that dealers were free to purchase TBA products from anyone at any time. This might include requirements that:

(a) All oil company dealers be furnished a copy of the Commission's order;

(b) All oil company dealers be reminded periodically that they have freedom of choice;

(c) All oil company dealer complaints received by the oil company or the rubber company be passed on by the recipient to the Commission with an explanation as to the facts and any corrective measures taken.

* It was obviously the judicial judgment that the oil company "power" which concerns the Commission could be properly handled by careful circumscription. Among other remedies available if such "power" were to result in undue pressure against a dealer is a treble damage action. See *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), *cert. denied*, 366 U. S. 963 (1961).

2. An injunction circumscribing oil company "power" by modifying one or more of such elements of the oil company-dealer relationship as:

(a) Lease terms;

(b) Equipment loans;

(c) Credit card coverage;

(d) Cooperative advertising; and

(e) Joint merchandising.

3. An injunction against an oil company's limitation of a particular sales commission agreement to a geographical portion of its total sales commission arrangements.

4. An injunction assuring that an oil company in its sales commission arrangements affords its dealers an alternative choice of sponsored brands of TBA.

5. An injunction against any limitation of the number of Goodyear "supply points", coupled with requirements that:

(a) The "supply point" function be assigned to anyone who meets objective standards and is willing to assume the responsibilities; and

(b) unless completely impracticable in a particular case, an oil company dealer have more than one supply point available to him.

Instead of considering these or other possible remedies, the Commission issued a naked ukase. Yet, here the alleged violation is not a practice conceived and devoted to illegality. The undisputed evidence is that the sales com-

mission plan performs a variety of beneficial economic functions at every step of the economy. Given such benefits and a finding that Goodyear had not itself pressured Atlantic's dealers, there is no reasonable basis for broad-scale banishment.*

The instant sweeping and punitive order reflects the Commission's failure to make use of its expertise; the Commission was certainly capable of devising a remedy which preserved the positive benefits of sales commission distribution while putting an end to that which the Commission considered improper. The Congress created it to perform that very function; no legislative purpose is fulfilled by inexpert obliteration of an entire marketing institution.

It is submitted that the Commission's process of decision so clearly violates the *Siegel* doctrine in dealing with a matter of substantial importance that review by this Court is required.

---

* It is clear that the Commission's remedy must bear some reasonable relation to the alleged violation. See *e.g.*, *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217, 226 (1949); *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 217-18 (1933); *Swanee Paper Corp.* v. *Federal Trade Commission*, 291 F. 2d 833, 837-38 (2d Cir. 1961), *cert. denied*, 368 U. S. 987 (1962); *Audivox, Inc.* v. *Federal Trade Commission*, 275 F. 2d 685 (1st Cir. 1960); *Elliot Knitwear, Inc.* v. *Federal Trade Commission*, 266 F. 2d 787, 790-91 (2d Cir. 1959).

Conclusion.

The writ of certiorari should issue.

Respectfully submitted,

JOHN F. SONNETT
80 Pine Street
New York, N. Y. 10005
Attorney for Petitioner.

Of Counsel:

CAHILL, GORDON, REINDEL & OHL
Arthur Mermin
David Ingraham
H. Richard Schumacher
80 Pine Street
New York, N. Y.

WOLFE, HUBBARD, VOIT & OSANN
1 North La Salle Street
Chicago, Illinois

July 20, 1964.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 17 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JOHN F. SONNETT
80 Pine Street
New York, New York 10005
Attorney for Petitioner

Of Counsel:

CAHILL, GORDON, REINDEL & OHL
Arthur Mermin
David Ingraham
H. Richard Schumacher
80 Pine Street
New York, New York 10005

WOLFE, HUBBARD, VOIT & OSANN
1 North La Salle Street
Chicago, Illinois 60603

July 20, 1964.

TABLE OF CONTENTS.

APPENDIX A—Initial Decision of Hearing Examiner.

APPENDIX B—Opinion and Order of the Commission.

APPENDIX C—Opinion of the Court of Appeals.

APPENDIX D—Order of the Court of Appeals.

APPENDIX E—Decree of Court of Appeals.

Each of the above appendices is separately paginated. The appendices are separated by divider sheets of blue paper.

Filed: October 23, 1959

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

IN THE MATTER *of* THE GOODYEAR TIRE & RUBBER COMPANY, *and* THE ATLANTIC REFINING COMPANY, CORPORATIONS.	Docket No. 6486

INITIAL DECISION

By EARL J. KOLB, Hearing Examiner.

[Appearances omitted]

This proceeding is based upon an amended complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful certain contracts entered into between respondents The Goodyear Tire & Rubber Company, Inc., a wholly owned subsidiary of respondent The Goodyear Tire & Rubber Company and the Atlantic Refining Company, whereby The Goodyear Tire & Rubber Company, Inc., agreed to pay The Atlantic Refining Company a sales commission on all tires, batteries and accessories sold by said The Goodyear Tire & Rubber Company, Inc., to service stations and other outlets of The Atlantic Refining Company. The amended complaint further charged that respondent The Goodyear Tire & Rubber Company, Inc., had entered into similar contracts with certain

oil companies other than The Atlantic Refining Company, and that The Atlantic Refining Company had entered into a similar contract with The Firestone Tire & Rubber Company.

This proceeding is now before the hearing examiner for final consideration upon the amended complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions filed by all parties and briefs in support thereof, and reply briefs. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by the parties, and their briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings of fact, conclusions drawn therefrom and order:

1. Respondent The Goodyear Tire & Rubber Company is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company is engaged in the manufacture and in the sale and distribution of rubber products including tires and inner tubes, directly and through several wholly owned and controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

2. Respondent The Goodyear Tire & Rubber Company, Inc., (hereinafter sometimes referred to as "Goodyear") is a wholly owned subsidiary corporation of The Goodyear Tire & Rubber Company, organized under the laws of the State of Delaware with its office and principal place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company, Inc., is engaged in the sale and distribution in interstate commerce of tires, inner tubes, batteries, automotive parts and accessories which are

known to the trade as TBA products and will be hereinafter so referred to.

3. Respondent The Atlantic Refining Company (hereinafter sometimes referred to as "Atlantic") is a corporation organized, existing and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at 260 South Broad Street, Philadelphia, Pennsylvania. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers (hereinafter referred to as "distributors") and to service stations.

4. Respondent Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. This marketing territory is divided into six marketing regions which are, in turn, subdivided into twenty-nine districts, consisting of a city or other marketing center and the surrounding territory. The marketing regions and districts are as follows:

Region	District
New England	Providence, R. I.
	Springfield, Mass.
	Hartford, Conn.
	Boston, Mass.
	New Haven, Conn.
New York	Syracuse, N. Y.
	Southern Tier, N. Y.
	Albany, N. Y.
	Rochester, N. Y.
	Watertown, N. Y.
	Buffalo, N. Y.
Philadelphia-New Jersey	Philadelphia-Suburban, Pa.
	South Jersey
	Newark (or North Jersey)
Eastern Pennsylvania	Reading, Pa.
	Allentown, Pa.
	Wilkes-Barre, Pa.
	Harrisburg, Pa.
	Williamsport, Pa.
	Wilmington, Del.

Region	District
Western Pennsylvania	Pittsburgh, Pa. Altoona, Pa. Greensburg, Pa. Erie, Pa.
Southern	Charlotte, N. C. Baltimore, Md. Richmond, Va. Jacksonville, Fla. Miami, Fla.

5. As of April 30, 1956, there were approximately 394 salesmen calling on dealers and distributors of gasoline and lubricants, including service stations. These salesmen are divided into various classifications, dependent upon the functions which they perform as follows:

Type	Approximate Number	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to "promotable dealers", which term includes lessee dealers and contract dealers interested in complete service station operation.
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teach-

Type	Approximate Number	Function
		ing involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

6. All of respondent Atlantic's salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also for over-all gains) by those of their assigned dealers who have been in operation for a minimum of twelve months.

7. Respondent Atlantic sells its petroleum products to more than 5,500 retail dealers, a substantial number of whom operate service stations (as distinguished from grocery stores, garages, and other like outlets), and to more than 200 distributors who, in turn, sell said products to more than 2,800 retail outlets, a substantial number of whom operate service stations. These retail dealers and distributors are divided into the following classifications:

Present Designation	Percentage of Total Regional Gasoline Sales by Each Customer Class 1951 Percent	1955 Percent
1. Company-operated Station	1	0.1
2. Lessee Dealer	32	39.1
3. Contract Dealer	23	18.1
4. Commercial Account	15	16.6
5. Wholesale Dealer	3	1.1
6. Distributor	24	24.0
7. Jobber	2	1.0
TOTAL	100	100.0

8. The usual form of lease entered into by respondent Atlantic and its lessee dealers was for a term of one year, with automatic renewal from year to year unless written notice was given prior to the expiration of any term. Rental provided by any lease was usually a flat rental plus a cents-per-gallon charge, dependent upon location of station, financial condition of lessee and potential income. Such lease contained provisions relating to the use, maintenance and general appearance of the station. In the event of breach of any of the terms, conditions or covenants of the lease by the lessee, it was provided that Atlantic may, at its option, terminate the lease.

9. On April 1, 1953, respondent Atlantic adopted a long-term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory operation became eligible for a three-year lease with rental remaining the same during the entire period.

10. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Atlantic dealer. He cannot profitably and successfully operate his business without the added revenue from that portion of his business which also enables the dealer to give complete service to his customers. The service station is important to TBA manufacturers as an outlet for distributing to customers. It is to the interest of The Atlantic Refining Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

11. Prior to March 1951 (except as to three districts in which the Sales Commission Plan was tested beginning in 1950) respondent Atlantic purchased TBA for resale either directly or indirectly to Atlantic dealers. This purchase for resale arrangement was first begun in 1932 when respondent Atlantic began the sale and distribution of tires manufactured by the Lee Rubber & Tire Corporation. In 1937 a contract was executed with the Electric Storage Bat-

tery Company for the purchase and resale of Exide batteries in the Philadelphia region which was expanded to all marketing regions in 1945. Accessory items were added from time to time, including DuPont polishes, Thermoid fan belts, American Chain and Cable Company's weed chains and Fram oil filters. Distribution of such products to Atlantic dealers and distributors was made by respondent Atlantic either directly or through about forty-five warehouses located throughout its marketing area or through Atlantic supply dealers who distributed such products to other Atlantic dealers.

12. During the period that respondent Atlantic continued on the purchase and resale plan, Atlantic service stations were identified as sellers of such sponsored TBA products as Lee tires and Exide batteries, and to some extent of other TBA handled.

13. In 1951 after a test of the Sales Commission Plan of Goodyear and Firestone in three districts, Atlantic adopted the complete Sales Commission Plan of these companies in all six of its marketing regions. Atlantic assigned the entire marketing area by allocating the New York, New England and Philadelphia-New Jersey regions to Goodyear and the three remaining regions to Firestone.

14. The sales commission agreement entered into between The Atlantic Refining Company and The Goodyear Tire & Rubber Company, effective March 1, 1951, provided for the payment of commissions to Atlantic on the sales by Goodyear of its tires, batteries and accessories to Atlantic outlets, including service stations, distributors and consignees. The consideration of this agreement was the services to be rendered by the Atlantic sales organization in promoting the sale of Goodyear TBA products as outlined in said agreement. This agreement provided, among other things, for the payment of a commission of 10 percent on all sales of TBA to Atlantic dealer outlets, and 7½ percent on all sales of TBA to Atlantic franchise petroleum

distributors. The Atlantic Refining Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company, effective as of March 1, 1951.

15. The services which were performed by The Atlantic Refining Company pursuant to its contract with Goodyear and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Atlantic personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodyear or Firestone, and when dealers were selected would at times give advance notice of station openings or changes to Goodyear or Firestone and introduce the new dealers to the sales representative of Goodyear or Firestone, permitting such salesmen to complete any unfinished business with the outgoing dealer and enabling them to anticipate and to move promptly in handling the requirements of the new dealers.

(b) Atlantic gave assistance to dealers in arranging Goodyear or Firestone TBA supplies; took TBA orders from Atlantic dealers for either Goodyear or Firestone; and recommended the minimum Goodyear or Firestone inventory to be carried by the Atlantic dealer.

(c) Atlantic frequently conducted dealer meetings at which the sale of TBA was discussed, in some instances with the active participation of Goodyear or Firestone.

(d) Atlantic operated training schools for dealers and prospective dealers which included suggestions for displaying and merchandising TBA. In the discussion of TBA, Goodyear or Firestone products were used exclusively during the training school course.

(e) Atlantic incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodyear

or Firestone, and participated in promotions instituted by either Goodyear or Firestone.

(f) Atlantic also conducted tire clinics jointly with the personnel of Goodyear or Firestone which were important in familiarizing dealers in the care and repair of Goodyear or Firestone tires.

(g) Atlantic made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge, which served to augment the sale of Goodyear or Firestone TBA.

16. The sales of Goodyear TBA and commissions paid thereon under the Atlantic-Goodyear Sales Commission Plan were substantial as is shown by the following tabulation:

	Total Sales	Total Commissions
1951	$ 2,445,808	$ 239,250
1952	4,175,890	411,743
1953	5,067,565	500,437
1954	5,284,743	523,048
1955	5,700,121	557,599
1/56–6/56	3,133,905	296,988
TOTAL	$25,808,032	$2,529,065

17. The substantiality of the sales and commissions under the Atlantic-Firestone TBA Sales Commission Plan is shown by the following tabulation for the years 1951 to 1956:

	Total Sales	Total Commissions
1951	$ 3,243,350	$ 299,524
1952	4,349,616	404,948
1953	5,050,381	469,784
1954	4,867,689	452,083
1955	5,562,936	506,199
1/56–6/56	2,545,798	234,317
TOTAL	$25,619,770	$2,366,855

18. Under date of March 1, 1951, Atlantic sent a form letter to all Atlantic dealers entitled "A Statement of Atlantic's TBA Policy". This letter announced the adoption of the TBA Sales Commission Plan and included therein the statement that "Your acceptance or rejection of the program is a matter of your own choice". Under date of August 28, 1962, respondent Atlantic addressed a similar form letter to all its dealers entitled, "A Restatement of Atlantic's TBA Policy". Under date of June 24, 1955, a similar letter entitled "No Forcing" was sent to all Atlantic dealers, and since that time has been given to new Atlantic dealers.

19. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Atlantic and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Atlantic with Goodyear and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has deprived other suppliers of TBA of a substantial portion of the TBA business of the Atlantic petroleum outlets.

20. In support of the charges of the complaint, sixteen former Atlantic dealers were called to testify in this proceeding. With the exception of three of these dealers, they testified to various forms of coercion, adopted by Atlantic salesmen in an effort to induce them to purchase sponsored TBA. Some of these witnesses testified that they had received the so-called non-forcing letter, but that they were told by Atlantic salesmen that these letters were not controlling insofar as purchases of non-sponsored TBA was concerned. The testimony of the witnesses called to support the complaint pertaining to coercion is as follows:

(a) John Chambers, an Atlantic lessee from November 1952 to November 1954, purchased the bulk of his TBA from the Goodyear supplier. Atlantic salesmen were always

reminding him, that when his lease expired or was cancelled Atlantic would only accept sponsored merchandise, and that outside merchandise would not be accepted at all. This witness also testified that it was pointed out to him on a number of occasions that the acceptance or rejection of the Goodyear plan was up to the dealers.

(b) James Matthews, an Atlantic lessee from 1947 to 1957, was told at a meeting that dealers were free to buy wherever they saw fit, but whenever salesmen called they told him differently. At the time of the change-over from Lee to Goodyear, his Lee signs were removed from his station, and he was told to get rid of Lee tires and Auto-Lite batteries and handle Goodyear. Matthews testified that he discontinued the Lee tires because he did not want his lease cancelled because of non-sponsored TBA. He was requested by Atlantic salesmen in 1953 to sign a mutual cancellation, but he promised to follow the line and went 100 percent with Goodyear. He took ten Auto-Lite batteries in trade, to which objection was made. Atlantic also objected to his handling DuPont anti-freeze. Matthews left the station in May 1957 due to bad health. He recalled receiving non-forcing letter dated March 1, 1951.

(c) Aniello L. Iacono, an Atlantic lessee from 1952 to 1954, had difficulty with Parris, the authorized TBA supplier, and began buying non-sponsored tires and batteries. He was asked by Atlantic salesmen to get rid of the tires and batteries and when he refused, the salesman made an inspection of his place and claimed he was using untrained personnel, improper uniform, improper display, and maintaining a dirty station. His lease was not renewed.

(d) Isidore Jack Pollock, an Atlantic lessee from 1940 to 1953, testified that Atlantic salesmen objected to his purchase of a number of Lee tires at a special price, however, the sales supervisor stated that this would be satisfactory because of the number of years that Pollock had been with Atlantic, and he continued to purchase Lee tires thereafter. He purchased some Bowers batteries, and salesmen told

him he was going to have his lease cancelled. Pollock left the station to take over a tavern.

(e) Francis J. Ballaron, an Atlantic lessee from 1953 to 1957, carried Goodyear tires and batteries purchased through Miller, an authorized distributor. He kept non-sponsored tires on oil rack where Atlantic would not see them. Ballaron testified that he left the station because of pressure every month for not buying TBA where he should.

(f) James M. Meyers, Jr., an Atlantic dealer from 1950 to 1951, testified that he discussed non-forcing letter with Atlantic salesmen who told him to try buying other merchandise and find out what the letter meant.

(g) Norris Stein, was an Atlantic lessee, beginning July 26, 1954. About six months later he discontinued exclusive purchase of Firestone and was told by Atlantic salesmen that he would not long be an Atlantic operator. He stated that he had received no-forcing letter of June 22, 1955. Terminated his lease for reasons not involving TBA.

(h) Thomas J. Sullivan, Jr., an Atlantic lessee from 1953 to 1954, was told that Atlantic would like him to obtain all his products from Firestone. He bought some Bowers batteries and also Exide and was told by Atlantic salesman not to sell the batteries as they were not as good as Firestone and that he didn't want them displayed in the station. He removed the batteries from display. Sullivan further testified that he returned the Exide batteries and discontinued the Bowers batteries as he felt that if he rubbed Atlantic the wrong way that he would be in their disfavor, and that his lease might not be renewed. He stated that the Atlantic representative made no direct threats, but always left the impression that if he did not operate the way Atlantic wanted him to, the chances were that his lease would not be renewed. The Atlantic salesman always questioned him when he bought non-sponsored items and gave him the impression that he was expected to buy Firestone products. The salesman would ask him from time to time why he did not buy Firestone, and he got to the point

where he bought all items from Firestone because he was afraid of no lease renewal. It was put to him that he would not be forced to buy Firestone products, but Atlantic more or less expected him to do so. Sullivan sent in cancellation of lease because of price controversy.

(i) John Galle, an Atlantic lessee from 1954 to 1956, discussed with Atlantic salesman an offer of batteries and tires at prices lower than Firestone, and salesman informed him that he had signed an agreement to purchase TBA from Firestone and should not go against this agreement, and in addition Atlantic would not like to see competitive brands to Firestone in the station. He did not purchase these items, but continued to purchase Firestone tires and batteries. He received the non-forcing letter on June 22, 1955, but did not discuss it with the Atlantic salesman.

(j) Harry N. Hawes, an Atlantic lessee beginning in 1945, had three stations. In the first station he bought only Firestone TBA. In the second station carried Lee tires, and Atlantic salesman wanted to know what they were doing there, but he continued to handle them. In the third station he sold only Lee tires and some accessories from Firestone without much comment from Atlantic. Lease was not renewed on the second station, and the third station lease was cancelled at his request. Atlantic salesman refused to let the new dealer take over the Lee tires and batteries on hand.

(k) Richard Brown, Atlantic lessee from October 1955 to April 1957, because of dissatisfaction with Firestone, began to purchase Goodrich tires. Atlantic salesman told him that he did not like the purchase of non-sponsored items, as it was affecting his salary.

(l) James Parag, an Atlantic lessee from August 1, 1955, to March 1956, became dissatisfied with Firestone and began purchasing Goodyear tires and accessories from different sources. When Atlantic salesman saw the merchandise on his shelves he told him that he could not handle them, that if he did not handle what Atlantic handled he would

Commission's Opinion.

UNITED STATES OF AMERICA,

BEFORE

FEDERAL TRADE COMMISSION.

Commissioners:

EARL W. KINTNER, Chairman,
ROBERT T. SECREST,
SIGURD ANDERSON,
WILLIAM C. KERN.

IN THE MATTER *of* THE GOODYEAR TIRE & RUBBER COMPANY, a corporation, and THE ATLANTIC REFINING COMPANY, a corporation.	Docket 6486.

OPINION OF THE COMMISSION

By Kintner, Chairman:

This proceeding is based upon an amended complaint charging The Goodyear Tire & Rubber Company and its wholly owned selling subsidiary, The Goodyear Tire & Rubber Company, Inc., (hereinafter collectively referred to as "Goodyear") and The Atlantic Refining Company with acts, practices and agreements constituting a violation of Section 5 of the Federal Trade Commission Act. 15 U. S. C. §45 (1958). Respondents answered admitting in part the allegations of the complaint but denying that Section 5 had been contravened.

The principal issue framed by the pleadings is the legality of a contract between these respondents calling for the

lose his lease, and also because it also affected the salesman's commission.

(m) James R. Kelly, an Atlantic lessee from September 1952 to March 1953, began with Firestone TBA. Later sold whatever tires customers wanted. Atlantic salesman would not let him change window valances, he was told to leave them alone to keep the station uniform. Had some Goodyear and Goodrich tires which he kept in the back room. He felt he would get in trouble if he did not.

21. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodyear, were called as witnesses in this proceeding. This testimony was taken in three areas—Philadelphia, Pennsylvania, Wilmington, Delaware, and Baltimore, Maryland. These parties testified generally that they had difficulty in selling TBA to Atlantic stations and testified specifically as to reasons given by certain Atlantic dealers for not buying or selling their TBA items. This testimony as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* vs. *Loewe*, 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone.

22. In the course of its defense in this proceeding, The Atlantic Refining Company introduced the testimony of thirty-six Atlantic dealers and two ex-dealers. Substantially all of these witnesses testified to selling non-sponsored TBA in varying amounts without objection by Atlantic. Most of them testified to having received the non-forcing letter issued by Atlantic similar to the letter of March 1, 1951, which this record shows was delivered to all its dealers and prospective dealers.

23. The hearing examiner recognized that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record as a whole shows that there were no exclusive dealers in the sense that they confined themselevs entirely to sponsored TBA, as all dealers carried some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer demand. There was also in some instances evidence of confusion as to the definition of accessories among the dealers, as some included as accessories items generally considered as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodyear. Many of the dealers called maintained a high sales volume in gasoline gallonage and also oil, and Atlantic would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such dealers.

24. It is clear from the record in this proceeding that the Atlantic dealers did not consider the non-forcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the change-over and prospective dealers thereafter had the right to select or reject the TBA sales program offered by Atlantic. The prospective dealer making application for an Atlantic station would not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salesmen insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the

purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

25. After giving consideration to the testimony of the various witnesses appearing in this proceeding, and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure were used on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items.

CONCLUSIONS

1. The complaint does not charge, nor does the evidence introduced in this proceeding prove, the existence of a conspiracy between Goodyear and Atlantic to restrict and restrain competition in the sale and distribution of TBA products.

2. There is no evidence that The Goodyear Tire & Rubber Company, or The Goodyear Tire & Rubber Company, Inc., engaged in, or participated in, any of acts or practices designed to force dealers and distributors of The Atlantic Refining Company to purchase Goodyear TBA products.

3. Neither the sales commission contract between Atlantic and Goodyear nor the contracts between Atlantic and its dealers and distributors contain any clause or provision requiring such dealers or distributors to purchase only Goodyear TBA.

4. In making a determination as to whether leases made by Atlantic with its dealers are used to suppress competition, the extent to which they are in conformity with reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive, and the renewal and cancellation provisions of

the leases are in conformity with those which ordinarily appear in many leases of property.

5. The consideration for the payment of commission to Atlantic under the sales commission contract is based upon substantial services rendered by Atlantic in promoting the sale of Goodyear TBA to Atlantic dealers and distributors.

6. No inference or implication can be drawn from the contractual relationship between Atlantic and its dealers, that the degree of control by Atlantic over its dealers is sufficient to force its dealers to purchase only sponsored TBA.

7. The evidence in this proceeding shows that leases have, on occasion, been cancelled because of TBA practices involving the purchase or display of non-sponsored TBA products.

8. It is further concluded that for the purpose of inducing the purchase of sponsored TBA by Atlantic dealers, Atlantic representatives did, in fact, coerce, and attempt to coerce, and force Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and Atlantic accepted the benefits of such acts and practices. These acts of coercion consisted of demands that dealers discontinue the purchasing and displaying of non-sponsored TBA under threat of lease cancellation, non-renewal of lease or other corrective action. Such coercion need not be 100 percent effective in order to constitute an unfair method of competition or unfair act or practice in violation of the Federal Trade Commission Act.

9. The charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion even though it be found that the contracts entered into by the parties are not illegal.

10. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein.

11. The acts and practices of The Atlantic Refining Company, as herein found, which involve coercion of its dealers are all to the prejudice of the public and have a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER

IT IS ORDERED that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale and distribution of tires, inner tubes, batteries and other automotive parts, accessories and supplies (hereinafter referred to as "TBA products"), in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly

1. Inducing, or attempting to induce, the purchase of TBA products of a particular supplier by Atlantic dealers by threatening to cancel or to not renew lease of dealer or to take other retaliatory action if said products are not purchased.

2. Threatening the cancellation or non-renewal of any contract or lease if the dealer purchases or continues to purchase TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

3. Threatening the cancellation or non-renewal of any contract or lease if the dealer displays or con-

tinues to display TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

4. The performance of any acts of intimidation or coercion, either through statements, oral or written, made directly to dealers or by representatives of respondent, which are designed to, or have, the purpose or effect of intimidating or coercing respondent's dealers or other customers to purchase TBA products sold by any designated supplier sponsored, recommended or approved by respondent.

5. Compelling, or attempting to compel, dealers by any means or method to sell and distribute only products supplied by a designated supplier sponsored, recommended or approved by respondent.

6. Preventing, or attempting to prevent its dealers by means of threats, intimidation or coercion, from handling or displaying TBA or other similar products which the respondent does not sponsor, recommend or approve, or the sale of which is not promoted by the respondent.

IT IS FURTHER ORDERED that the complaint be, and it is hereby, dismissed as to respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

/s/ EARL J. KOLB,
Hearing Examiner.

October 23, 1959.

APPENDIX B.

OPINION AND ORDER OF THE COMMISSION.

The Opinion begins at page B-1.

The Order begins at page B-67.

payment by Goodyear of a sales commission to Atlantic in return for sales assistance in promoting automotive tires, batteries, and accessories (hereinafter referred to as "TBA" or "TBA products") of Goodyear to retail and wholesale petroleum outlets of Atlantic. In addition, Atlantic is charged with having entered into a substantially identical agreement with The Firestone Tire & Rubber Company, and Goodyear is charged with having entered into such agreements with a number of oil companies other than Atlantic, including Shell Oil Company.[1] Although Atlantic and Goodyear are the only respondents in the instant case, Shell and Firestone are joined as respondents in a companion case, Docket 6487, and in another companion case, Docket 6485, The Texas Company and The B. F. Goodrich Company are paired as respondents.

The complaint charges, in substance, that the success enjoyed by Goodyear and Firestone in selling to Atlantic outlets has been purchased at the expense of competing TBA suppliers at the manufacturing and wholesale levels. Counsel supporting the complaint contend that the Atlantic-Goodyear and Atlantic-Firestone sales commission contracts are unlawful because, *in conjunction with Atlantic's economic power over its ostensibly independent wholesale and retail petroleum outlets,* these contracts operate to stifle the free choice of Atlantic's retail and wholesale dealers insofar as their TBA purchases are concerned. Among the unlawful competitive effects stemming from Atlantic's sales commission contracts charged by the complaint are these: (1) That suppliers of TBA competing with Goodyear and Firestone at the wholesale level have been foreclosed from access to Atlantic's retail outlets on the same competitive terms as have been made available to Goodyear and Firestone; (2) That competing manufacturers of tires and

[1] Other oil companies having sales commission arrangements with Goodyear include Anderson-Pritchard Oil Corp., Ashland Oil and Refining Co., The Carter Oil Co., D-X Sunray Oil Co., Quaker State Refining Co., Richfield Oil Co. (accessories only), The Shamrock Oil and Gas Corp., Shell Oil Co., and Sinclair Refining Co. (accessories only).

other TBA items have been foreclosed from access to Atlantic's wholesale distributors on the same competitive terms as have been made available to Goodyear and Firestone; (3) That competition between Goodyear and Firestone in selling to wholesale and retail outlets of Atlantic has been destroyed; (4) That a substantial number of Atlantic's petroleum distributors and service station operators have been denied their right to act as independent businessmen in exercising freedom of choice as to TBA products which they may purchase and stock for resale; and (5) That the consuming public has been deprived of the benefits of free competition at the wholesale and retail levels insofar as TBA distribution through service station outlets under the sales commission plan is concerned.

Respondents deny these allegations and assert that their sales commission contract is a legitimate and competitive method of distributing TBA which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

After hearings extending from the latter part of 1956 into November 1958, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to Goodyear but holding that Atlantic, by forcing a substantial number of its dealers to purchase sponsored TBA through threats of lease cancellation or other retaliatory action, has engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. He further held that the charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion on the part of Atlantic even though the sales commission contracts themselves are not illegal. An order was entered against Atlantic prohibiting future acts of coercion or intimidation designed to force Atlantic dealers to purchase TBA products sponsored by Atlantic.

Both sides have appealed from the initial decision. Counsel supporting the complaint contend that, while the order entered by the hearing examiner is well supported by the evidence of record, it will not be an effective means of

remedying the unlawful effects on competition caused by the sales commission plan. They seek an order restraining respondents from continuing with their present sales commission agreement and enjoining them from entering into similar agreements in the future. They also contend that Atlantic should be enjoined from purchasing TBA products from any manufacturer or other vendor of such products for resale to any wholesalers or retailers of Atlantic petroleum products, ". . . or for distribution in any other manner, directly or indirectly, to any of the aforesaid wholesalers or retailers of Atlantic petroleum products."

Reply briefs were filed by Atlantic and Goodyear to the appeal brief of counsel supporting the complaint, and by counsel supporting the complaint to the appeal brief of Atlantic. Oral argument was heard by the Commission on June 23, 1960, and the matter is now before the Commission for decision. We *find* that Atlantic has in fact coerced a substantial number of its dealers to purchase substantial amounts of sponsored TBA through threats of lease cancellation or other retaliatory action. We further find that Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. For reasons set forth hereinafter, we conclude that the exercise of this power by Atlantic through the use of the sales commission plan in favor of Goodyear constitutes an unfair method of competition and an unfair act or practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

Characteristics of the Sales Commission Plan

Motorists may purchase replacement TBA items from several major classes of distributors. Manufacturers of these items, for example, Goodyear and Firestone, maintain either company-owned or franchised wholesale and retail distribution outlets in all of the marketing areas for TBA products considered in the course of the hearings in this case. Gasoline service stations constitute a second major

class of outlets for TBA products. According to a 1947 market survey relied upon by Goodyear in implementing its sales commission program with The Shamrock Oil and Gas Corporation of Amarillo, Texas, motorists purchase approximately 37 percent of their replacement tires and tubes, 44 percent of their replacement batteries, and 20 percent of their automotive accessories from gasoline service stations.[2]

The complaint in this case alleges that "service stations by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products." The truth of this allegation is conceded by both Goodyear and Atlantic, and Goodyear also admits that it ". . . sells TBA products directly and through wholesalers to many customers, including service stations who purchase for resale to consumers for replacement use in their automobiles."

Service station operators may purchase their requirements of TBA from two principal sources: (1) Local wholesale TBA dealers, representing Firestone, or Goodyear, or some other TBA manufacturer; or (2) Oil companies chiefly engaged in refining and distributing petroleum products which also purchase TBA products from manufacturers of these items, for resale along with the refinery products such oil companies distribute through their respective marketing organizations. TBA purchased by oil companies for resale may either be branded with a particular oil company's principal brand, for example, "Gulf," or with a private brand controlled by an oil company but used exclusively for TBA and not for refinery products, for example "Atlas," or with the supplying manufacturer's own brand, for example, "Lee" (tires) or "Exide" (batteries).

---

[2] Atlantic estimated in 1948 that approximately 21 percent of all replacement passenger tires are sold by service stations. Although Atlantic's estimate is considerably lower than Goodyear's, it is nevertheless clear that service stations account for a substantial percentage of total TBA replacement items sold to motorists.

No particular term is used in the industry to describe the marketing technique whereby service station operators purchase TBA from independent local wholesalers, but the term "purchase-resale" is customarily used to characterize the marketing technique whereby oil companies purchase and resell TBA to their respective service station dealers. The sales commission method of distributing TBA is a hybrid deriving certain of its attributes from the first and other attributes from the second of these marketing techniques. Both the purchase-resale plan and the sales commission plan make use of the marketing facilities of marketing oil companies, but in different ways and with differing competitive effects. This may be illustrated by contrasting the purchase-resale method of distributing TBA used by Atlantic prior to 1951 with the sales commission method adopted by Atlantic in 1951 and used by the company since that time.

Atlantic's Purchase and Resale Plan. Sometime in 1932, Atlantic commenced to purchase "Lee" tires from the Lee Rubber and Tire Corporation and to resell such tires to its wholesale and retail petroleum distributors. Later, in 1937, Atlantic commenced to purchase "Exide" batteries from the Electric Storage Battery Company (hereinafter referred to as "Exide") and resell such batteries, along with "Lee" tires, to Atlantic dealers. Thereafter, Atlantic began to purchase and resell the following automotive accessories:

Products	Supplier
DuPont polishes and chemicals	E. I. du Pont de Nemours and Company Wilmington, Delaware
Thermoid fan belts and radiator hose	Thermoid Corporation Trenton, New Jersey
Fram oil filters	Fram Corporation Providence, Rhode Island
Schrader valves	A. Schrader Sons Brooklyn, New York

Products	Supplier
Weed chains	American Chain and Cable Company York, Pennsylvania

Among the duties undertaken by Atlantic in connection with this program were the purchasing, financing, shipping, warehousing and selling of TBA items to its various classes of retail and wholesale petroleum dealers. Commenting on his company's TBA program in 1950, Mr. S. J. Heideman, TBA Manager for Atlantic, commented that "We receive a good gross margin in keeping with the duties left to us. . . ." Moreover, the overall satisfaction of Atlantic's dealers with the Lee-Exide arrangement was evidenced by the results of a TBA brand preference survey undertaken by Atlantic's Sales Research Section in 1948 and 1949. More than 1,000 service station dealers representing seven major oil companies, including Atlantic, located in 47 cities from Massachusetts to Florida were interviewed during the course of this survey. Of the Atlantic dealers interviewed, 67 percent preferred Lee tires and 79 percent preferred Exide batteries over competing brands of tires and batteries. Eleven percent of Atlantic's dealers stated a preference for Goodyear tires, 4 percent for Firestone tires, and the remainder announced a preference for various other tire brands. No preference for any particular brands of accessory items was found to exist, although "A definitely unsatisfactory supplier-dealer relationship" on accessories was observed. Sixty-seven percent of the Atlantic dealers contacted indicated that they would rather obtain their TBA requirements from several sources rather than a single source, the principal reasons given therefor being price advantages and the variety of brands. Of the remaining 33 percent of Atlantic dealers, who preferred a single source of supply for TBA products, less than 4 percent gave as a reason the fact that the single supplier could provide them with a complete line of TBA—better service was given as a reason by 35 percent of the Atlantic dealers.

preferring a single source of supply, and price was given as a reason by an additional 32 percent.

Atlantic's Changeover to the Sales Commission Plan

Contemporaneously with the TBA brand preference survey of service station dealers described above, Atlantic management was actively considering possible alternatives to their purchase-resale arrangement with Lee. On January 19, 1948, exploratory letters were sent to five major tire manufacturers, The Goodyear Tire & Rubber Company, United States Rubber Company, The B. F. Goodrich Company, The Firestone Tire & Rubber Company, and General Tire & Rubber Company, inquiring ". . . what interest you may have in the sale of your tires and tubes through ATLANTIC outlets." The tire companies were informed of Atlantic's desire ". . . to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise."

To assist the tire companies in preparing their quotations, Atlantic estimated it would require approximately 300,000 passenger tires and 40,000 truck tires annually, with tube requirements approximating 70 percent of tire requirements. Proposals were requested not only as to principal brands of the tire companies ("Goodyear," "Firestone," etc.) but also as to secondary brands controlled by these companies ("Kelly-Springfield," "Fisk," "Federal," "Miller" and "Hood") and as to private brands as well. Mansfield Tire and Rubber Company and Lee were also contacted and requested to submit proposals on a private brand tire.

A detailed analysis of responses received from the various tire companies was presented to Mr. D. T. Colley, Vice President in Charge of Domestic Sales of Atlantic, in a memorandum of June 22, 1948, from the company's TBA Manager, Mr. Heideman. This memorandum concluded with the statement:

> "This presentation and Atlantic's benefits with the several companies has been discussed at length with

> the members of the T. B. A. Products Committee. It was their unanimous opinion that Lee appeared to be the best choice for our company. To their approval, I would like to add my own, since it is my opinion after careful analysis that the Lee franchise is the best available at the present time for Atlantic."

In a subsequent memorandum of August 24, 1948, Mr. Heideman set forth several reasons why a proposed experiment then under consideration involving the sale of Firestone tires in one sales district of Atlantic should *not* be adopted:

> "It is apparent . . . that it would be unreasonable to expect too great an expansion of our present sales by the addition of a better known tire. As a matter of fact, it is our opinion that there is a very real possibility of a smaller market with Firestone due to their presently established company stores and distributors. Volume purchase requirements would leave a great number of our dealers in a poor competitive position.
>
> ". . . neither Firestone batteries nor accessories have the national acceptance of the lines we presently handle . . . [T]here is certainly an indication that consumer acceptance of the Firestone brand in batteries is very limited."

Nevertheless, negotiations with the tire companies continued throughout the remainder of 1948, and in May 1949, Goodyear expressed its willingness to offer a TBA program to Atlantic. However, it was Firestone which was selected for Atlantic's first experiment with the sales commission plan. In a letter of January 10, 1950, to the Regional Manager of its New York Region, an Atlantic official explained:

> "As you know, for the past year we have been studying T. B. A. as to its profitability to the Company. Our most recent findings indicate that it is

questionable whether this venture is paying us to the degree that the effort expended warrants.

"In our approaches to the subject, we have had discussions with various major tire manufacturers who, as you know, are interested in handling the entire T. B. A. line, paying us a commission.

* * * * * * *

"The proposition that seems most acceptable to us is one offered by Firestone. I will not attempt to go into detail covering this proposition, but when you come to Philadelphia for the Regional Manager's Meeting next week, Mr. Heidemann (sic) plans to sit down with you and go over the proposition with the thought in mind that you will elect to have your Region be the guinea-pig."

As it turned out, however, the Firestone plan was not introduced into the New York area. Instead, operations under the Firestone commission plan began in Atlantic's Erie, Pennsylvania, district on March 30, 1950, and in the Wilmington, Delaware, district on April 4, 1950. Operations under a sales commission plan with Goodyear commenced on an experimental basis in Atlantic's Newark, New Jersey, sales district on June 12, 1950. After these programs were instituted, Atlantic's Sales Research Section conducted a secret poll in July and August, 1950 among 600 of the 750 Atlantic dealers and distributors in the three TBA test districts. The purpose of this poll was to determine the preference of Atlantic dealers as between the Lee-Exide program and the sales commission program. Of the 123 dealers responding to the poll, 45 percent preferred the new sales commission plan, 40 percent preferred the former Lee-Exide arrangement, and 15 percent showed no preference for either plan.

In December, 1950, Atlantic contacted seven manufacturers of batteries, including Exide and Gould-National Batteries, Inc., "... in an attempt to discover whether they had at present or contemplated in the future a battery

program for direct dealer merchandising similar to the commission plan offered by certain tire companies." This suggests that Atlantic was considering limiting the sales commission contracts with Firestone and Goodyear to tires and tubes only, or perhaps to tires, tubes and automotive accessories only, with a separate sales commission arrangement for batteries with a supplier who could furnish a more widely-known battery than the "Firestone" and "Goodyear" brands. (Actually, Goodyear does not manufacture batteries, but instead purchases batteries marked with the "Goodyear" label from Electric Auto-Lite Company and Gould-National Batteries, Inc.)

Favorable replies were received from several of the battery manufacturers, with Exide showing particular interest in such a program. This company's manager for automotive replacement sales responded to the Atlantic inquiry on December 22, 1950:

> "Currently all Exide automotive replacement battery sales to dealers are made through our Wholesale Distributors, thus affording prompt delivery through many warehouses.
>
> "Your letter of December 15 inquires as to our plans for a commission arrangement to be offered national oil accounts on direct sales to dealers. We believe that our experience with this type of operation in past years should be of great value to you. Therefore, I suggest that immediately after the first of January you arrange for a meeting with interested members of your organization for a complete discussion of the many phases of this subject."

Negotiations between Atlantic and Exide were never consummated, however, and on February 14, 1951 a sales official of Exide reported to his superior as follows:

> "Mr. S. J. Heidman (sic), T. B. A. manager of the Atlantic Refining Company called today to give me advance confidential information regarding a decision made this morning by top management of

the Atlantic Refining Company regarding future handling of T. B. A. sales to Atlantic dealers.

"Effective as quickly as the changeover can be made, all T. B. A. sales to Atlantic dealers will be handled on a commission arrangement.

. . . . . .

"... Both Firestone and Goodyear had previously been approached regarding a plan whereby they would sell tires only to the Atlantic Refining Company accounts on a commission arrangement and had flatly refused such a plan insisting that either the complete program or none be sold by them."

TBA Manager Heideman submitted a memorandum entitled "T. B. A. Conversion to Firestone & Goodyear Programs" to Vice President Colley of Atlantic on March 21, 1951, summarizing the changeover to the sales commission program:

"On February 14th, the decision was made to swing over to the Commission Plan of T. B. A. marketing effective March 1st. It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania, and the South) were to market the program of the Firestone Tire and Rubber Company. *The split was largely a matter of regional selection, decided upon by local advantages enjoyed by the respective rubber companies but influenced by staff determinations to have the two rubber companies competing in different localities for an equal share in the development of the Atlantic dealer's T. B. A. business.* Although this move was sudden, events leading up to it were developed in an orderly fashion over a period of years.

. . . . . .

"It will be interesting to review some of the advantages that we enjoy under the Commission Plan. We are relieved of the purchasing function . . . We do not warehouse or deliver any merchandise; we are not involved in the handling of accounts, such as invoicing or credit and collection work; we do not issue catalogs or price books nor do we have to provide point-of-sale promotional helps. All of these responsibilities as well as sales training help are assumed by the rubber manufacturers. We assist in the selling job as well as in the dealer training and merchandising task, and for this effort receive a commission which varies according to class account and type of merchandise, but has been averaging well over 9%.

". . . We are indeed fortunate in having these two companies competing against one another for a more secure or favorable position with Atlantic. We stand to gain from this arrangement whether we are in a buyer's or seller's market.

"We have tried to estimate how our 1950 actual experience on T. B. A. would have compared with the same volume of performance if it were accomplished under the Commission Plan. Our T. B. A. volume *excluding the three test districts* amounted to seven and a half million dollars. Our gross profit ranging from 20 to 30% on the different products amounted to approximately $1,664,000. Estimated expenses chargeable to this operation total $2,071,000. This would indicate a loss of about $407,000."[3] (emphasis added)

---

[3] Whether Atlantic's purchase-resale program was as unprofitable in reality as appeared from the accounting procedures used by the oil company was questioned in a memorandum from the sales manager of Exide to the vice-president of this company in February, 1951:

"The accounting procedure set up by the Atlantic Refining Company was such that expenses charged against T. B. A. sales appeared to make this operation unprofitable.

MAP I, below, shows the manner in which Atlantic's marketing area was finally divided between Goodyear and Firestone. Although the three regions assigned to Firestone constitute a much greater geographical area than do the regions assigned to Goodyear, the TBA sales volume by the two rubber companies to Atlantic dealers and distributors within their respective assigned areas has generally been very nearly the same in every year since 1951, as indicated by TABLE I, below. This table shows that during the first 6 years of Atlantic's operation under the sales commission plan, Firestone's sales volume to Atlantic accounts totalled $26,078,095 and exceeded the sales volume of Goodyear by only $105,000.

TABLE I

TBA Sales Volume by Firestone and Goodyear to Atlantic Accounts, and Commissions Paid Thereon, June, 1950 Through June, 1956

	Goodyear Sales Volume	Firestone Sales Volume	Goodyear Commissions	Firestone Commissions
6-50/12-50	$ 165,578	$ 458,325[1]	$ 15,447	$ 43,894[1]
1951	2,445,808	3,243,350	239,250	299,524
1952	4,175,890	4,349,616	411,743	404,948
1953	5,067,565	5,050,381	500,437	469,784
1954	5,284,743	4,867,689	523,048	452,083
1955	5,700,121	5,562,936	557,599	506,199
1-56/6-56	3,133,905	2,545,798	296,988	234,317
Total	$25,973,610	$26,078,095	$2,544,512	$2,410,749

As a result of this and because the top management of the Atlantic Refining Company believed that their own men should participate only in the sales of petroleum products, it was decided early in 1950 to try out the Firestone and Goodyear sales commission plan . . ."

[1] Includes period from April, 1950 through December, 1950.

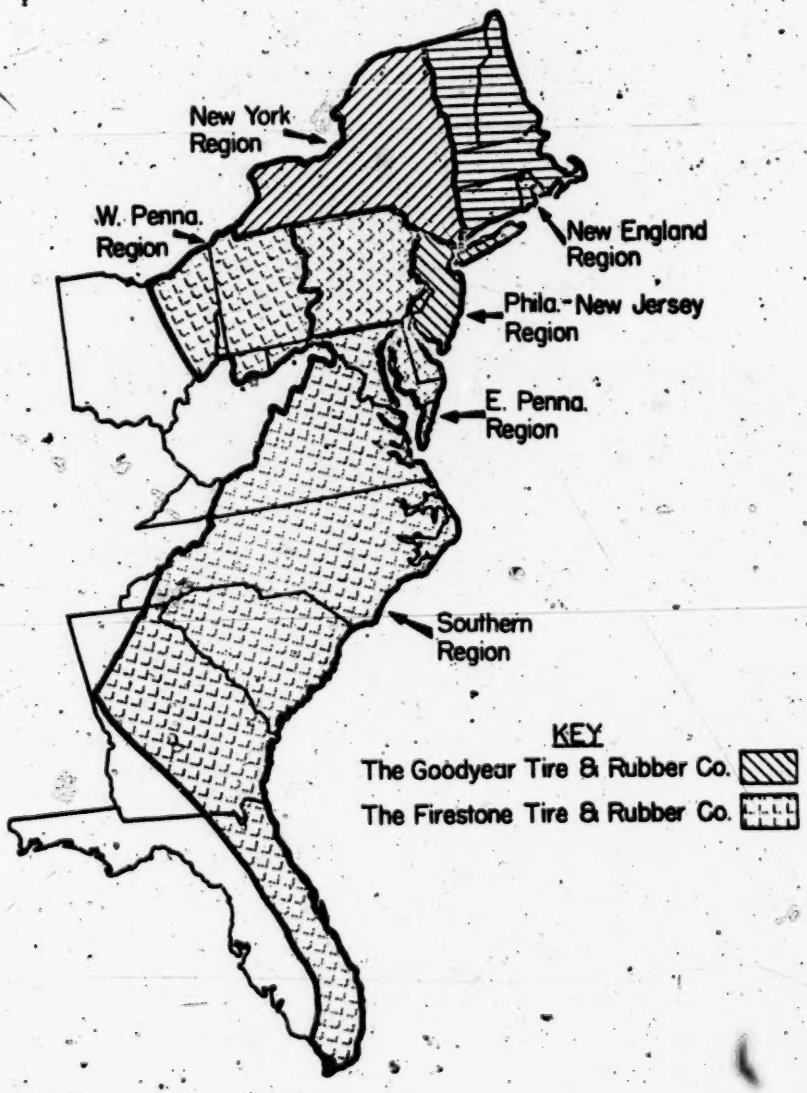
NOTE: In 1950, the sales commission plan was used in only 3 of Atlantic's 34 sales districts. The sales commission plan was not introduced in all 34 Atlantic sales districts until March 1, 1951.

MAP I

THE ATLANTIC REFINING CO.

DIVISION OF MARKETING REGIONS BY TBA SALES COMMISSION PLANS.

EFFECTIVE MARCH 1, 1951



In 1952, the first full year in which the sales commission plan was operative in all Atlantic sales districts, combined sales of Goodyear and Firestone TBA to Atlantic dealers and distributors amounted to $8,525,506, and the two rubber companies paid a total of $816,691 in sales commissions to Atlantic. The success with which Atlantic transferred its own former TBA sales volume under the purchase-resale plan to Goodyear and Firestone under the sales commission plan may be gauged from the fact that Atlantic's TBA sales volume in 1949, the last full year of operation under the purchase-resale plan, amounted to $6,697,471. In 1950 Atlantic continued the purchase-resale plan in all except 3 of its 29 sales districts, and in that year the oil company's TBA sales volume was $7,581,760.

The sales gains accruing to Goodyear and Firestone as a consequence of their sales commission contracts with Atlantic were accompanied by a corresponding loss in sales by Lee and Exide even though both companies made vigorous efforts to retain the business of Atlantic dealers and distributors after Atlantic switched to the sales commission plan. Lee opened new factory branches in Hartford, Connecticut; Providence, Rhode Island; and Syracuse, New York for this specific purpose. All branches of Exide were instructed to make it "their number one job" to solicit the business of Atlantic dealers and distributors. Nevertheless, within nine months after Atlantic began sponsoring Goodyear TBA on March 1, 1951, Lee concluded that "approximately 25% of the Atlantic Refining Company business will be salvaged this year." Seven months after the changeover, Exide found that it had retained all or part of the business of 22.5 percent of the better Atlantic accounts and all or part of the business of 24.7 percent of the total number of Atlantic accounts. Thus, some 75 percent of Lee-Exide sales to Atlantic distributors and dealers were lost within a nine-month period in 1951, even though a market survey conducted by the Atlantic Sales Research Section in 1949 had shown that 67 percent of Atlantic dealers and distributors preferred Lee tires and 79 percent preferred Exide batteries.

Lee's Vice President in Charge of Sales, Mr. W. F. Hinderscheid, complained bitterly to Atlantic about the wholesale replacement of Lee advertising signs at Atlantic stations with Goodyear advertising signs shortly after the sales commission plan was undertaken on a test basis by Atlantic in 1950:

> "I was under the impression, also, where dealers wanted to continue to handle Lee Tires through us it would be allright for them to do so and we could still have our identification on those locations, however, I find that even though the dealers continue to handle our tires their stations are identified with competitive signs. For instance, in the Newark District our identification is being taken down and Goodyear will be erected even though the dealer still wants to handle Lee Tires."

TBA sales by Firestone and Goodyear to Atlantic outlets continued to grow, and by 1955, the last full year for which data are available, combined sales of the two rubber companies under their sales commission contracts with Atlantic amounted to $11,263,057. In order fully to understand the devastating competitive effects on manufacturers and wholesalers of TBA products competing with Firestone and Goodyear which have resulted from the latter two companies' sales commission contracts with Atlantic, however, some further understanding of the functioning of the sales commission system is necessary.

Mechanics of the Sales Commission System

Goodyear and Firestone maintain either company-owned or franchised wholesale outlets in most of the principal cities and in many smaller communities throughout the entire marketing area of Atlantic Refining Company. Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. As has been shown, this market-

ing territory is subdivided into six sales regions, three of which have been assigned to Goodyear and three to Firestone. (See MAP I, supra.)

In cities and towns where Atlantic retail stations are located, such stations are assigned to a local Goodyear distributor (if in Atlantic's New England, New York or Philadelphia-New Jersey sales regions) or to a local Firestone distributor (if in Atlantic's Eastern Pennsylvania, Western Pennsylvania or Southern sales regions). The assigned TBA distributor is intended to be the supply point from which the Atlantic dealer will purchase a substantial percentage of his requirements of TBA.

The vast majority of Atlantic's retail service stations are operated by independent businessmen who either own or lease their stations. These dealers not only buy and sell Atlantic petroleum products, but also offer TBA at their stations, and in addition perform various automotive services and repairs. Atlantic maintains sales offices throughout its marketing area and employs salesmen whose duty it is to solicit orders for Atlantic petroleum products from Atlantic dealers, and to perform other functions for the oil company in its dealings with its service station operators.

When orders for petroleum products are obtained, the salesmen cause such products to be delivered to the Atlantic dealers, who pay for them at time of delivery or at other specified times. The same Atlantic salesmen *also* act as sales agents for Goodyea or Firestone, soliciting TBA orders from Atlantic dealers, frequently accompanied on their rounds by salesmen employed by either the local Goodyear or Firestone distributors. If TBA orders are obtained, such orders are turned in to the appropriate TBA suppliers—the local distributors of either Goodyear or Firestone—who deliver the merchandise and are paid by the Atlantic dealers. The TBA suppliers, in turn, make reports of such sales to the District Sales Offices of their respective companies, either Goodyear or Firestone.

Under the terms of the sales contracts between Goodyear and Atlantic and Firestone and Atlantic, Atlantic is

entitled to a commission amounting to 10 percent of the net sales value of all sponsored (i.e., Goodyear or Firestone) merchandise sold by Atlantic retail dealers, as consideration for the assistance given by the Atlantic sales organization in obtaining TBA orders from Atlantic dealers.[4] These payments are made by Goodyear and Firestone directly to Atlantic each month. Atlantic incurs no expense in connection with the purchasing, financing or warehousing of the TBA so supplied and has received sales commissions from Goodyear and Firestone over the years equivalent to more than 9 percent of the net sales value of all TBA products sold by these rubber companies to Atlantic dealers and distributors.[5]

Tires and tubes comprise the most important of the three components of the TBA line, accounting for about 70

---

[4] Atlantic has some 236 wholesale distributors, and is entitled to a commission of 7½ percent on purchases of sponsored TBA by these jobbers, compared with 10 percent on purchases by Atlantic's retail dealers.

[5] Goodyear's reasons for entering into its sales commission agreement with Atlantic were set forth in a "Confidential" memorandum of February, 1951, written by Mr. S. A. Gaylord, Goodyear's Manager of Sales to oil company outlets:

> "... As you know we have recognized the desirability of Atlantic distribution for many years and the need for more oil company distribution in the new territory now assigned to us, which represents more than 50% of the Atlantic T. B. A. sales and potential.
>
> "Early last year when supplies were plentiful and signs for the future pointed to over-production and increased competition, we mutually agreed on the marketing experiment with Atlantic in our respective Newark District territories with a commitment for expanded territory if the Goodyear Commission Plan proved successful—which it did.
>
> "It is true that even at a late date we could have withdrawn from our commitment to Atlantic, however, we would have been out of the account for keeps and our competition [Firestone], which placed no restrictions on moving in, would have the account 100 percent.
>
> "... The decision of our Management was made after consideration of all factors and particularly because it gave Goodyear the opportunity of entering into a long-term relationship with Atlantic providing our performance is satisfactory."

percent of total TBA sales to Atlantic outlets, with batteries and accessories representing about 15 percent each. Goodyear produces its own tires and tubes, and the more important categories of automotive accessories, including tire retread and repair materials, fan belts and radiator hose. Batteries marked with the "Goodyear" label are purchased for resale from Electric Auto-Lite Company and Gould-National Batteries, Inc., while the following accessories are purchased by Goodyear for resale under the original manufacturer's own brands:

Accessory	Brand	Manufacturer
Spark Plugs	AC	AC Spark Plug Div., General Motors Corp.
Oil Filters	AC	Same as above
Oil Filters	Purolator	Purolator Products, Inc.
Cleaners, Polishes and Waxes	du Pont	E. I. du Pont de Nemours & Co., Inc.
Cleaners, Polishes	Johnson	S. C. Johnson & Son, Inc.
Cleaners, Polishes and Waxes	Simoniz	Simoniz Company
Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss, Inc.
Radiator Chemicals	du Pont	E. I. du Pont de Nemours & Co., Inc.
Radiator Chemicals	Warner	Warner-Patterson Co.
Auto Lamps and Bulbs	Westinghouse	Lamp Division, Westinghouse Electric Corp.
Wiper Blades	Anco	The Anderson Company

The sales commission method of distributing TBA products thus affects competitive relationships among producers and distributors of various products, all linked by but one common factor: the motor vehicle. As a consequence, in order to show the net work of unlawful trade restraints and

inhibitions permeating the sales commission system of distributing TBA, it is necessary first to describe the marketing structure of Atlantic and to define the manner in which this company exercises control over its wholesale and retail petroleum distributors, and next to describe how the sales commission plan enables Goodyear to integrate such market control into its own system of distribution.

Distribution System of Atlantic Refining Company

Atlantic is a major integrated producer, refiner, and distributor of petroleum products. The company was organized in 1860, and was acquired by Standard Oil Company in 1874. Since the dissolution of the Standard Oil Trust in 1911, Atlantic has been operated as a separate corporate entity. In 1948, Mr. S. J. Heideman of Atlantic stated that "Atlantic's percentage of the *national* gasoline market is 2½% . . ."; and since the oil company markets its gasoline along the Atlantic Coast states and in parts of Ohio and West Virginia only, it may be inferred that Atlantic's share of gasoline sales in its own marketing area is substantially in excess of 2½ percent. Sales and operating revenue of this oil company totalled more than one-half billion dollars in 1954.

Atlantic markets its refinery products to three major classes of customers: (1) wholesale distributors; (2) retailers (chiefly service stations but including also garages, grocery stores, restaurants with outside gasoline pumps, etc.); and (3) commercial accounts. This opinion is not concerned with the last-named group, which accounted for 16.6 percent of total gasoline sales by Atlantic in 1954, as these accounts are customers who purchase for their own consumption and not for resale.

Atlantic sold gasoline and other petroleum products directly to some 5,537 retail customers in 1956, and these direct retail dealers accounted for 57.2 percent of total gasoline sales by Atlantic in 1955. Atlantic's direct dealers are of two classes: (1) Lessee dealers, who accounted for 39.1 percent of total Atlantic gasoline sales in 1955; and

(2) Contract dealers, who accounted for 18.1 percent of gasoline sales by Atlantic in the same year. Shown below in TABLE II are the numbers of lessee and contract dealers purchasing petroleum products directly from Atlantic in each of its marketing regions in June, 1956.

TABLE II

Numbers of Direct Lessee and Contract Dealers of Atlantic Refining Company in June 1956, by Marketing Regions

Region	Lessee Dealers	Contract Dealers
New England	495	220
New York	321	263
Philadelphia-New Jersey	481	640
Eastern Pennsylvania	480	1075
Western Pennsylvania	317	725
Southern	399	121
GRAND TOTAL	2493	3044

Lessee Dealers. The principal characteristic distinguishing lessee dealers from contract dealers is that the former do not own their own business properties, but instead lease them from Atlantic. Lease terms range from three months to three years; most lessee-dealers operate under one-year leases, however. The leasehold instrument does not require the lessee to handle Atlantic products, but does provide that the premises shall be used for the operation of a "first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets." Rental payments by lessees are based on specified percentages of gross monthly sales of all types of merchandise, including TBA. These percentages are as follows:

0 percent	First $500 monthly
6 percent	Next $2000 monthly
5 percent	Next $2000 monthly
4 percent	Next $2000 monthly
3 percent	Over $6500 monthly

At the time he executes his lease with Atlantic, each lessee-dealer is required to sign a separate document known as an "Eleven Point Lease Letter". This letter defines standards of operation for Atlantic lessee-dealers. Illustrative of these is the standard for "Housekeeping":

> "1. Housekeeping—Clean, sanitary premises, inside and out."

Other standards set forth in the "Eleven Point Lease Letter" are "Use and Upkeep", "Display", "Illumination", "Personnel", "Hours of Operation" ("Uniform daily operating schedule based on buying habits of potential trade in the area"), "Services", "Adequate Inventory", "Sales Promotion", "Prices", and "Accounting". These standards of operation are implemented by Atlantic not only through the surveillance of its sales force, but also by the employment of "Phantom Customer Inspectors".[6]

Since its adoption on April 1, 1953, the "Eleven Point Lease Letter" has been used by Atlantic to interpret and enforce Paragraph Three of dealer leases which, as noted, provides that ". . . the sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station . . .", thus the "Lease Letter" is an integral part of the lease itself. This is shown by the regularity with which Atlantic warns lessee-dealers in writing that their leases will be terminated if stated defaults with respect to the provisions of the

---

[6] Witness John Chambers, former Atlantic lessee-dealer who testified in support of the complaint in this proceeding, received the following letter from his former Atlantic District Sales Manager on October 14, 1954:

"Dear John:

"Our Phantom Customer Inspector has just reported to us that you received a 299 out of a possible 300 on a recent inspection.

"This is the kind of job which makes us all very happy and certainly is an important factor in running a profitable service station."

Witness Chambers' lease was subsequently terminated because he refused to go along with Atlantic's pricing policy and because he did not purchase sufficient quantities of sponsored TBA.

"Eleven Point Lease Letter" are not remedied within fifteen days.[7]

Prior to about August 1953, Atlantic's written agreements with its lessee-dealers also included an "Atlantic Franchise Agreement", providing for their purchase of motor fuels and automotive lubricants from their oil company lessor under stated terms and conditions. In recent years, only automotive lubricants have been covered by written purchase agreements between Atlantic and its lessees. Nevertheless, the facts of record clearly establish that Atlantic lessees purchase and resell Atlantic motor fuels exclusively.

Notwithstanding the economic power possessed by an oil company as a consequence of being both landlord and supplier to its lessee-dealer customers, the powers and responsibilities of an oil company's lessee-dealer ". . . satisf[y] all the requirements of an independent enterprise." *United States v. Richfield Oil Corp.*, 99 F. Supp. 280, 288 (1951) *aff'd*, 337 U. S. 922 (1952). Judge Yankwich's comments in the *Richfield* case as to the relationship of an oil company to its lessee-dealers apply with equal force to the instant case:

> "Implicit in the contract is the lessee's assumption of obligation and responsibility for his own acts upon the premises and those of his employees in their relation to the public, who come in contact with them during the time of his dominion. The lessee is not the employee of Richfield. Richfield

---

[7] Here, for example, is a letter dated December 8, 1953 to dealer Michael J. Clifford, Baltimore, Maryland:

"1. From observations, we note that your regular hours of operation are such that we believe your market area is not being properly supplied.

"2. We also note from observations that inventories maintained in your station are not adequate to serve normal customer needs without delay."

(This dealer's lease was terminated January 4, 1954, for noncompliance with the above defaults.)

pays him no wages or other remuneration. He must carry his own workmen's compensation. He is not carried on their books as an employee for the purpose of social security taxes or any of the withholding taxes, state or federal, incidental to the employer-employee relationship. Richfield is not required to withhold any moneys from him for income tax purposes. Neither are they required to perform any of the duties just mentioned as to any of the employees who may assist the lessee in the conduct of the station or of any auxiliary repair work upon the premises. The lessee is solely responsible for his own conduct and that of his employees which may cause damage to the persons or property of others." [99 F. Supp. at 288]

Contract Dealers. There were 3,044 contract dealers of Atlantic as of June 1956, and of this number about 50 percent operated service stations (as distinguished from grocery stores, garages, and similar outlets with gasoline pumps on the premises). Non-service station outlets generally do not purchase and resell TBA products; all service station outlets, however, are regarded as potential purchasers of TBA under Atlantic's agreements with Goodyear and Firestone.

Although contract dealers either own their own service station properties, or lease them from parties other than Atlantic, these dealers are subject to the control of Atlantic as a consequence of various contractual agreements between such dealers and Atlantic. Chief among these is an agreement having the following principal provisions:

"1. EQUIPMENT LOAN. ATLANTIC, reserving the right of addition, change, substitution, and maintenance, lends to BUYER [the contract dealer] for the purpose of storage and sale of motor fuel purchased solely from ATLANTIC and for no other purpose, equipment that has been installed or which ATLANTIC may install, which shall remain personalty and the

property of ATLANTIC, and which BUYER shall not remove, but shall repair and maintain as follows." [Lists equipment.]

"2. SALE AND DELIVERY. Provides that the contract dealer shall buy a specified number of gallons of motor fuel annually from Atlantic; that deliveries will not exceed one-eighth of such gallonage monthly; that the contract dealer 'shall order and accept not less than one-twentieth of such annual gallonage in any calendar month'; and that the times, manner and quantities of delivery shall be in accordance with Atlantic's current practice."

The agreement further provides that all petroleum products delivered thereunder shall be paid for at prices established by Atlantic. The term of such agreement is generally for one year, and may be terminated by either party at the end of the original or any subsequent term by giving 60 days notice. Upon termination, Atlantic is entitled to repossess any equipment loaned to the dealer, with or without legal process. If the agreement is cancelled by Atlantic because of breach by the dealer the dealer must pay a fixed sum to Atlantic as reimbursement for cost of installation and removal of the equipment or, *at its option*, Atlantic may leave the equipment in place and require the dealer to pay a fixed sum for the value of the equipment and improvements. The equipment most frequently loaned (without charge) by Atlantic to contract dealers includes gasoline pumps, underground storage tanks, compressors, air towers, lifts, signs, outside lighting and poster frames.

Both lessee-dealers and contract dealers have agreements with Atlantic relating to annual purchases of specified quantities of automotive lubricants, and to the terms upon which credit may be extended by these dealers to the approximately 160,000 holders of Atlantic credit cards.

Wholesale Distributors. This class of customers purchases refinery products from Atlantic for resale under the oil company's brand names. Wholesale distributors main-

tain bulk storage tanks capable of receiving truck deliveries of gasoline from Atlantic, and maintain their own delivery equipment for transporting such gasoline from their bulk storage tanks to retail customers, including service stations. There were 236 wholesale distributors of Atlantic products in 1956, who resold to 2,897 service stations, as shown by Table III:

TABLE III

Numbers of Wholesale Distributors of Atlantic Refining Company, and Service Stations Supplied by them in June, 1956, by Marketing Regions

Region	Distributors	Service Stations
New England	8	151
New York	39	238
Philadelphia-New Jersey	0	0
Eastern Pennsylvania	77	925
Western Pennsylvania	26	410
Southern	77	1,173
Grand Total	236	2,897

Atlantic had wholesale distributors in each of its six principal marketing regions in 1956, with the exception of the Philadelphia-New Jersey region. (There were 1,121 Atlantic service station outlets in the Philadelphia-New Jersey region in 1956, but all were supplied directly by the oil company.) These distributors accounted for 24 percent of total gasoline sales by Atlantic in each of the years 1951 and 1954. Eighty-seven percent of the 2,897 service stations supplied by wholesale distributors of Atlantic in 1956 were in the Eastern Pennsylvania, Western Pennsylvania, and Southern regions; the remaining 13 percent were in the New England and New York regions.

Wholesale distributors are parties to the same type of sales contracts for automotive fuels and lubricants with Atlantic as are Atlantic's contract service station dealers. Moreover, Atlantic has the power to change the source of supply for service station dealers from Atlantic itself to

wholesale distributors. During the period from April 1950 to June 30, 1956, Atlantic reassigned 53 contract service station dealers in the Wilmington, Delaware and Baltimore, Maryland sales districts from itself to particular wholesale distributors in those districts. Atlantic's use of the power to expand a wholesale distributor's retail market by adding to the number of service stations supplied by such distributor in order to induce such distributor to purchase and resell sponsored TBA to his service station customers was described by witness Lingenfelser, a salesman for Reading Batteries, Inc. (now the Reading Battery Division of the Electric Auto-Lite Company), who testified in support of the complaint.

The Issue of Coercion

The complaint in this case charges that Atlantic has caused its various classes of dealers to purchase substantial quantities of Goodyear or Firestone TBA through the use of threats to terminate either their tenure as lessees (if lessee-dealers) or their petroleum supply and equipment loan contracts (if contract dealers). It is conceded by counsel supporting the complaint that when Atlantic adopted the sales commission system on March 1, 1951, all its dealers were informed by letter entitled "A Statement of Atlantic's TBA Policy" as follows:

> "Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. *However, your acceptance or rejection of the program is a matter of your own choice.*" (Emphasis added.)

Notwithstanding this initial statement of policy by Atlantic, repeated periodically thereafter in form letters sent to its dealers, counsel supporting the complaint contend that in practice this officially-proclaimed policy has been ignored by Atlantic and that in fact, Atlantic dealers have been

orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA. This contention is supported by the testimony of former Atlantic dealers who appeared as witnesses and further reinforced by the testimony of witnesses representing many suppliers of TBA engaged in competition with Firestone and Goodyear, who testified that they encountered difficulty in selling TBA to Atlantic dealers because the latter group felt that they were required to purchase sponsored TBA and feared reprisal by Atlantic if they purchased non-sponsored items. Testimony of the competing TBA suppliers as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* v. *Loewe,* 235 U. S. 522 (1915). This testimony was received not as proof of the facts recited, but for the purpose of showing the state of mind of the Atlantic dealers. Such testimony is competent to show that Atlantic dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone TBA.

Among the former Atlantic dealers who testified in support of the complaint, several recounted specific instances in which either express or implied threats of lease cancellation were made. Other ex-Atlantic dealers testified to incidents occurring during their tenure as Atlantic lessees which made it apparent to them that they were expected to handle either Goodyear or Firestone TBA, and that if they failed to purchase sufficient quantities of such TBA, that their relationship with Shell might be terminated.

Typical of the former Atlantic dealers testifying in support of the complaint was witness John Chambers, who operated an Atlantic station in the Philadelphia area from 1945 until November 28, 1954. He gave this account of the events occurring when Atlantic changed over from the Lee-Exide program to the sales commission plan in 1951:

> Q. Mr. Chambers, referring . . . to the dealer meeting when the switch-over to the Goodyear TBA

line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic? A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

Thereafter, witness Chambers commenced purchasing Goodyear TBA from the local Goodyear distributor to whom he had been assigned, a Mr. Parris. From time to time, however, he also purchased TBA products from other suppliers in his area. Among these were the following:

Chester Auto Parts Chester, Pennsylvania	Waxes and other accessories
V. J. Auto Parts Sharon Hill, Pennsylvania	Accessories, including "Barsleak", a radiator sealer
C. A. Powers Chester, Pennsylvania (A Goodyear tire distributor)	Recapped tires, and also some new Goodyear tires and tubes

Witness Chambers testified that he was criticized by Atlantic salesmen for purchasing accessories from wholesalers other than Mr. Parris, his assigned supplier:

> Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris? A. Yes.
>
> Q. Would you please state some instances? A. . . . the one that is greatest in my memory right now was the Barsleak, . . . Joe Connelly was Atlantic [salesman] at that time, and Joe would pick it up and say, "What are you doing with this," and he would set it back down.
>
> . . . . . .
>
> Q. Were any comments other than the one referred to made by Atlantic representatives con-

cerning the purchases of TBA from local jobbers other than Ed Parris?

. . . . . .

A. Why yes, there was great criticism, shall I say, in reference to outside [i. e., non-sponsored] merchandise.

Q. Who made these criticisms?

. . . . . .

The Witness: Why salesmen who represented the company.

Q. Which company? A. Atlantic.

. . . . . .

Q. Where did these conversations take place between the Atlantic salesmen and you? A. Many times over a cup of coffee and sometimes out in the driveway. Q. Would it generally be a private conversation? A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature? A. It was never done openly.

Subsequently, in November 1954, witness Chambers was notified that his lease would not be extended beyond December 31, 1954. He discussed this with Mr. Parris, his TBA supplier, who was also a former employer of witness Chambers:

> Q. . . . what was the substance of your conversation with Mr. Parris? A. I asked, "what in the world happened, what could I do." He said, "Jack, you have been turned in by three [Atlantic] . . . salesmen for buying outside merchandise." I said "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise.[8]

[8] Atlantic regarded witness Chambers as an excellent service station operator, as is shown by the letter to him of October 14, 1954, quoted *supra*, note 6. This letter of commendation was received by witness Chambers just one month before he received notification that his lease would be terminated.

The above testimony must be assessed in the light of that given by Mr. Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester, Pennsylvania. His company sells automotive parts, batteries and accessories (but no tires) at wholesale. Witness Wetzel gave this account of his conversation with witness Chambers:

> Q. Do you recall any other conversations with other Atlantic dealers or Sinclair dealers, along similar lines? A. Yes. John Chambers.
>
> Q. Please state the time as nearly as you can, the place, and what was stated. A. I would approximate the time as about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.
>
> * * * * * *
>
> Q. Now will you please state what the conversation was? A. Jack said to me: "Glen, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Further testimony as to the state of mind of witness Chambers in 1953 and 1954 was given by witness Joseph Marabella, a partner in the firm of V. J. Auto Parts Company, Folcroft, Pennsylvania. Mr. Marabella testified as follows:

> Q. And did you solicit Bars Leak (sic) business from Mr. Chambers when he was an Atlantic lessee-dealer? A. Yes sir.
>
> * * * * * * *
>
> Q. And what was your experience with respect to the sale of Bars Leak to Mr. Chambers? A. My, well, business relations and experience with Mr.

> Chambers had been the same as with other gentlemen I have mentioned, enjoying good business relations, good sales on Bars Leak, up until the time he was told to remove it from his shelf, ...

Later, witness Marabella tried to sell Mansfield tires and tubes to witness Chambers and to another Atlantic dealer named Booz:

> A. Well, in the latter part of 1954 with Mr. Booz, Elmer Booz, Wycombe Avenue and McDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz's tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes." And that was the extent of the conversation.
>
> Q. Do you recall any other conversations with Atlantic dealers along similar lines? A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same answer, that he couldn't put anything but Goodyear in there.

Documentary evidence taken from the files of Atlantic reveals the vigor with which Atlantic carried out its campaign to replace Lee tires and Exide batteries with Goodyear and Firestone TBA products. The minutes of a meeting of Atlantic's Regional TBA coordinators held on October 21, 1951, reveal that as of that date, "New England reported that approximately *98%* of their accounts have been signed on a Goodyear program and that they are getting *about 75%* of the tire business they formerly enjoyed from these accounts. New York reported that they had about *96%* of their accounts signed on a Goodyear program and that they were getting about 65% of their former tire business . . ." By December 24, 1951, an Atlantic report showed that virtually all Atlantic dealers in

Goodyear's assigned territory who were potential purchasers of TBA had signed contracts agreeing to handle Goodyear products.

Accompanying the campaign to sign Atlantic dealers to Goodyear contracts was a drive to install Goodyear signs and advertising materials in Atlantic stations throughout Goodyear's assigned marketing areas. This is an excerpt from a letter of July 30, 1951, from Atlantic's TBA sales manager, Mr. Heideman, to another Atlantic official:

> "I asked Mr. O'Neill of the Goodyear Tire & Rubber Company to supply me with a list of the Atlantic dealers in the Philadelphia Region who refused to be identified on the Goodyear Program. Attached is a list of 46 dealers who, for reasons indicated, have refused this service.
>
> "You will probably wish to review the respective portions of this list with the District Managers concerned. Undoubtedly, facilities for identification are not the best at some of these locations, but with the others it is apparent that the proprietors have not been sold on the Goodyear program. In such instances, I believe that additional sales effort is called for. In any event, would you be kind enough to advise me at your convenience what action you have taken with regard to this list."

Mr. Heideman followed this letter up himself on August 21, 1951, with a letter to Mr. S. A. Gaylord, Manager, Petroleum Sales Department, of Goodyear:

> "I wonder if you can furnish me promptly with a report on the progress of the subject program. I should like to have this information broken down by our regional territories. As I understand it, the signs are being erected by Goodyear crews, but the decals are being erected by outside agencies. Furthermore, at the present time when we locate an Atlantic dealer who is without any Goodyear identification or without one or the other signs or decals,

we do not know whether an unsuccessful attempt has been made to complete the assignment or whether all or part of the job, whatever the case may be, is scheduled for attention.

"We should like to interest ourselves in the cases where an unsuccessful attempt has been made to provide the Goodyear identification. Perhaps this information could be made available to us in simplest form by stating the Atlantic District areas that have been covered by either sign crews or agencies that are applying the decals, and by supplying us a list of the dealers where attempts to erect decals or signs were unsuccessful.

"I have already received a list of this type for the Philadelphia and South Jersey areas, and this has been referred to our District Managers for further attention. However, I do not know if this is a partial or complete list of the dealers in that territory who could not be identified with Goodyear signs."

Atlantic's "sales efforts" met with complete success, for the entire group of 46 recalcitrant dealers referred to in Mr. Heideman's letter of July 30 was thereafter signed to Goodyear contracts and Goodyear advertising signs were installed at their stations. The letter of complaint from Lee Rubber and Tire Corporation to Atlantic over the question of removal of Lee advertising signs from Atlantic stations has already been referred to, supra at page 15. And on March 5, 1951, Mr. E. W. McCreery, another Lee vice president, stated in an intracompany memorandum referring to the Atlantic sales regions assigned to Firestone:

"In analyzing salesmen's reports on their calls on Atlantic accounts and with other information that we have, we are doubtful that many of the #2 type stations will stay on Lee tires. Because these stations are leased from Atlantic, some on a month-to-month basis, others on 90 days or longer basis, they

are not in a position to take an independent stand and as a result will probably find it expedient to handle Firestone tires."

In our opinion, the documentary evidence in this record —only a fraction of which is referred to above—and the testimony of the various representatives of suppliers of TBA competing with Goodyear and Firestone previously adverted to lend credence to the testimony of the ex-Atlantic dealers who gave evidence in support of the complaint in this proceeding. We affirm the hearing examiner's finding that agents of Atlantic have in fact coerced a substantial number of Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and that Atlantic has accepted the benefits of such coercion in the form of sales commissions.

Respondent Atlantic cites *United States* v. *J. I. Case Co.*, 101 F. Supp. 856 (D. C. Minn. 1951) as authority for the proposition that the hearing examiner erred in concluding that Atlantic has coerced a substantial number of its dealers in violation of Section 5 of the Federal Trade Commission Act. This District Court opinion is commonly regarded as a notable exception to the trend of decisions dealing with the subject of exclusive dealing.[9] But we need not dwell on the *Case* decision, since the subject of coercive practices has received careful scrutiny from the Seventh Circuit and from the Supreme Court in a line of cases in the field of automotive financing. In *United States* v. *General Motors Corp.*, 121 F. 2d 376 (7th Cir. 1941), General Motors and its affiliates, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Inc., appealed from a conviction of criminal conspiracy in violation of the Sherman Act. The indictment charged that these defendants had conspired to coerce franchised dealers of General Motors Corporation to finance their purchases and sales of automobiles through

[9] Robinson, *Providing for Orderly Marketing of Goods*, 15 A. B. A. Antitrust Sec. 282, 308 (1959).

General Motors Acceptance Corporation. In affirming the criminal convictions, the court stated:

> "The record leaves no doubt that the dealer body as a whole was made acutely aware and had knowledge of the set policy of the appellants with respect to the use of GMAC financing facilities. The fear of cancellation or refusal to renew contracts was great, so much so that the dealer was reluctant to refuse the terms and policies dictated by the appellants."

Approving the trial judge's instructions to the jury in the *General Motors* case, the Supreme Court stated in *Ford Motor Co. v. United States*, 335 U. S. 303 at 316-317 (1948):

> "... Their plain effect is to draw a line between such practices as cancellation of a dealer's contract, or refusal to renew it, or discrimination in the shipment of automobiles, as a means of influencing dealers to use GMAC, all, of which falls within the common understanding of 'coercion,' and other practices for which 'persuasion,' 'exposition' or 'argument' are fair characterizations."

We are of the opinion that the record contains ample evidence to support the hearing examiner's finding that Atlantic has coerced and forced a substantial number of its dealers to purchase sponsored TBA. However, we regard these overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself. The more dramatic and immediate impact of this system, to be sure, is upon retail service station dealers of Atlantic and other oil company dealers similarly situated. Their freedom to buy and sell as independent merchants is shown to be less complete in practice than in theory. Yet from the point of view of the anti-trust laws, it is the competitive effects of the sales commission system on competitors of Goodyear and Firestone which raise the most grave questions in this proceeding.

We turn, therefore, from an examination of the restrictive effects of the sales commission system upon service stations as buyers of TBA to an assessment of this system's impact upon wholesale and retail distributors of TBA engaged in competition with wholesale and retail distributors of Goodyear and Firestone. Preliminary to this inquiry, however, it will be helpful to have a more detailed understanding of the manner in which the sales commission plan enables Goodyear to integrate into its own nationwide distribution system the economic power possessed by Atlantic over its wholesale and retail petroleum outlets.

The Sales Commission Plan in Goodyear's System of Distribution

Goodyear is the largest manufacturer of rubber products in the United States, with net sales of more than one billion dollars in 1954. The company has tire and tube factories located respectively in the states of Ohio, Alabama, Michigan, California and Kansas. There are 57 Goodyear warehouses across the land, and Goodyear tires, tubes and accessories are distributed to wholesale and retail distributors through these warehouses. Batteries, because of the weight factor, are not warehoused by Goodyear except for emergency needs; all Goodyear wholesalers order "Goodyear" batteries directly from the factories of the two companies which produce "Goodyear" batteries under contract: Electric Auto-Lite Company and Gould-National Batteries, Inc.

Goodyear has approximately 500 company-owned and operated retail stores throughout the United States, and these stores also sell at wholesale. Apart from such company stores, there are more than 12,000 independent franchised stores selling Goodyear products at wholesale and retail and an unknown but very substantial number of firms not franchised by Goodyear but which purchase and resell Goodyear merchandise in the same manner as franchised Goodyear dealers. Franchised dealers are sometimes referred to as "direct" accounts, and non-franchised

dealers in Goodyear merchandise are sometimes referred to as "indirect" or "associate" accounts.

All direct Goodyear accounts, which include independent franchised Goodyear dealers, wholesale petroleum distributors of Atlantic, and some retail petroleum dealers of Atlantic, execute a franchise agreement with the Goodyear Company itself, and purchase Goodyear products from the nearest Goodyear District Sales Office. Indirect, or associate Goodyear dealers do *not* have contracts with the Goodyear Company and do *not* purchase Goodyear TBA from the Goodyear District Sales Office. Instead, they usually execute a "Goodyear Associate Dealer Agreement" with the particular Goodyear wholesaler to which they are assigned. Such wholesaler may be either a company-owned store, a franchised independent dealer of Goodyear, an Atlantic wholesale petroleum distributor, or an Atlantic retail petroleum dealer. Indirect, or associate, dealers normally purchase from the wholesaler to which they have been assigned, and normally pay higher prices for merchandise than do direct dealers of Goodyear.

Most service station customers, including Atlantic stations, are classified as indirect or associate dealers by Goodyear, although, as noted, some Atlantic stations are direct dealers of Goodyear and function as supply points to other Atlantic stations which are merely associate dealers. (The term "supply point" is used by respondents to refer to the local TBA supplier to which local Atlantic stations have been assigned.) A number of Atlantic wholesale distributors of petroleum products also function as supply points for Goodyear, and distribute TBA to the same retail stations which the wholesale distributors supply with Atlantic petroleum products. A supply point, then, is a local wholesaler of Goodyear TBA, although it may also be a retail dealer of Goodyear, a retail dealer of Atlantic, or a wholesale distributor of Atlantic as well. In the three marketing regions of Atlantic assigned to Firestone, the same classification of Atlantic dealers into direct and indirect accounts of Firestone is found as is described above with respect to Goodyear, and in all other material

respects the sales commission plan between Atlantic and Firestone functions in substantially the same manner as does the sales commission plan between Atlantic and Goodyear described herein.

An integral part of the Goodyear-Atlantic and Firestone-Atlantic sales commission plans is the assignment or allocation of each Atlantic retail outlet to a specific supply point designated by Goodyear or Firestone. When a new Atlantic station is opened, or when a new dealer replaces a retiring operator, Atlantic reports to Goodyear (or to Firestone, as the case may be) the name and address of the new Atlantic dealer on an appropriate Goodyear (or Firestone) form. The Goodyear (or Firestone) District Manager then assigns this outlet to a specific supply point and notifies the supply point and the Atlantic outlet of the assignment which has been made. No sales commission is paid to Atlantic unless the Atlantic outlet purchases from the designated supply point to which it has been assigned. In other words, even though an Atlantic dealer purchases Firestone or Goodyear TBA exclusively, unless he buys from his assigned supply point, Atlantic receives no sales commission. One reason why Goodyear does not pay a sales commission when TBA merchandise is purchased by an oil company dealer from someone other than his assigned supply point was set forth in a letter dated December 19, 1951, addressed to an official of Shell Oil Company, and signed by the Baltimore District Manager of Goodyear:

> "I am returning to you, unsigned, two G-1209's which request that G. D. Armstrong Co., Inc., of Laytonsville, Md., be approved as a supplying dealer for Laurel Park Servicenter at Laurel Park, Md., and Bowie Shell Service at Bowie, Md.
>
> * * * * * *
>
> "My reason for taking this attitude is the fact that we very definitely discourage our dealers from selling Goodyear tires outside of their authorized territory, and in servicing either Laurel or Bowie, the Armstrong Company are out of their territory.

> "A situation of this kind, of course, presents us with a serious problem for, naturally, we are not in a position to dictate to any good dealer exactly where he may sell the merchandise which he purchases from us—all we can do is ask that they remain within the boundaries which we establish. However, in the case of oil company stations where we have already authorized and established an ample number of supply points, all with good service, we cannot pay the oil company in question a commission on merchandise delivered by a dealer who is operating outside of his territorial boundaries."

Although in some cases Atlantic dealers are assigned to more than one supply point of Goodyear, in none of Atlantic's marketing regions are Atlantic dealers assigned to supply points of both rubber companies. For, as has been shown, Atlantic's sales commission contract with Goodyear is confined to the company's New England, New York and Philadelphia-New Jersey sales regions, whereas Atlantic's sales commission contract with Firestone is operative only in the Eastern Pennsylvania, Western Pennsylvania and Southern sales regions of the oil company.

A reporting technique has been established whereby Atlantic may determine the exact amount of sponsored TBA purchased by each Atlantic outlet from its assigned supply point or points each month. As both rubber companies use substantially the same reporting procedure, only the one used by Goodyear need be described in detail here.

Once every month each Goodyear supply point submits a report to the Goodyear District Sales Office for his district, showing his sales of TBA during the past month to each Atlantic outlet assigned to him.[10] The Goodyear Dis-

[10] One exception is Atlantic service stations acting as supply points. A 7½ percent commission is paid by Goodyear to Atlantic on the net sales value of TBA *purchases* by these Atlantic supply point dealers, and, consequently, no further commission is paid by Goodyear on the resale of merchandise by such Atlantic supply points to other Atlantic stations supplied by them.

trict Sales Office then compiles these reports into a master list, showing TBA purchases by each individual Atlantic dealer from his assigned supply point during the past month, and sends copies of this list to Atlantic and to Goodyear's home office in Akron, Ohio. Although these forms provide the basis for computation of sales commission accruing to Atlantic each month, they also afford Atlantic a means of determining the volume of sponsored TBA purchases by individual Atlantic dealers during that time.

A different procedure is followed with respect to TBA purchases by wholesale distributors of Atlantic (including, as indicated by footnote 10, *supra*, Atlantic retail dealers functioning as supply points). Wholesale distributors purchase directly from the Goodyear or Firestone district offices, and then resell such TBA to their retail dealers. Some 2,897 Atlantic retail outlets were supplied by wholesale distributors in 1956. Atlantic receives a 7½ percent sales commission on the net sales value of all sponsored TBA *purchased by* wholesale distributors, but no additional sales commission is paid when such purchased TBA is resold to retail dealers supplied by the wholesale distributors.

Goodyear has sales commission contracts with a number of other marketing oil companies, and these agreements are in all material respects identical with the Goodyear-Atlantic contract. Total sales by Goodyear under its sales commission contracts with such other oil companies, including Shell Oil Company and D-X Sunray Oil Company, increased from about $16,700,000 in 1951 to about $36,105,000 in 1955, with sales commissions paid thereon by Goodyear increasing from approximately $1,600,000 in 1951 to approximately $3,300,000 in 1955. The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA. Witness S. K. Osborn, for example, was a Sinclair dealer for 20 years, from May 1936 until May 1956. He was also a distributor of Firestone tires, and could therefore purchase Firestone tires at lower prices than Goodyear tires. He testified that he stocked Firestone tires exclusively at his service station

until 1948, at which time he was given a notice of lease cancellation:

> A. It was a few days after I got the lease cancellation. I was disturbed about it, and I wanted to find out what it was all about. I called up the company and finally got an interview with Mr. Weller, and Mr. McCauley [Sinclair officials] . . . I asked them why I was getting a lease cancellation. They told me that I wasn't doing the right things by them, that Goodyear tires, batteries and accessories were just as much Sinclair products, just as important to the company, as Betholine gas, Sinclair Gas, whatever they were marketing, and Opaline oil. And I promised to go along with their wishes. I gave them an order for Goodyear merchandise. In a few days I had a new lease.
>
> Q. You say you gave them an order for Goodyear TBA merchandise. Do you recall the approximate amount of the order? A. A thousand or more dollars worth.[11]

In order to keep his service station lease, therefore, this Firestone distributor was placed in the anomalous position of having to purchase Goodyear TBA, a competing brand, in order to maintain his status as lessee of a Sinclair service station.

Another former lessee-dealer, witness MacMasters, who operated a Sinclair station from 1944 until 1954, testified that he purchased Bowers batteries for resale at his station up to sometime in 1947 or 1948. At that time he was summoned to a conference with top-level Sinclair personnel at the oil company's offices:

> A. We went into a conference room, some sort of conference room that had quite a large table. They

---

[11] In *Osborn* v. *Sinclair Refining Co.*, F. 2d (4th Cir. 1960), the Court of Appeals held that the facts recited above by witness Osborn constituted an unlawful tying contract violative of Section 1 of the Sherman Act.

[Since the writing of the Commission's opinion the *Osborn* case has been reported as follows: 286 F. 2d 832 (4th Cir. 1960), *cert. denied*, 366 U. S. 963 (1961).]

put me on one side of the table, and the other three down the other side.

So, to make the conversation short, Mr. McCauley was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers because they took care of me during the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our [Goodyear] batteries or else."

And that was the end of the meeting."

Many other advantages accrue to Goodyear, and Firestone as well, as a consequence of their sales commission contracts with oil companies. A prime advantage is participation with each oil company's sales force in a number of joint merchandising programs. This advantage commences with the selection of persons to operate newly-opened service stations or to replace outgoing dealers in previously-operated stations. A continuing responsibility of Atlantic salesmen is to help newly-recruited dealers get established. Through these salesmen, the local Goodyear or Firestone supply points are notified of the names and addresses of new dealers *before* they actually take over operation of their stations and, as a result, before local competitors of Goodyear and Firestone in any community become aware of a new dealer's identity. This policy was implemented by a memorandum of April 25, 1952, by Atlantic's TBA Manager Heideman to Atlantic personnel:

> "*Station Openings.* We ask that you instruct your Districts to establish, as a regular practice, *automatic* and *advance* notice to the Goodyear District Office, of the openings of any new stations, or of change in proprietorship at any dealer location. Such

notice will be mutually beneficial to both Goodyear and ourselves. It will enable Goodyear to complete any unfinished business with the outgoing dealer and, further, will enable them to anticipate and to move promptly in handling the new dealer's requirements."

The importance of advance notification is indicated by the fact that the initial stocking order of TBA costs approximately $1,000—for large stations the amount may be much greater. And Atlantic's turnover of dealers is high. During 1955, 720 lessees of Atlantic ceased operation and had to be replaced, representing a turnover of about 29 percent of the oil company's total number of lessee-dealers in that year. Moreover, during the period March 1950 to June 1956, 389 *new* Atlantic stations commenced operations. Frequently these new or replacement dealers have recently completed Atlantic training schools in which Goodyear and Firestone TBA were used in demonstrations, and have already formed biases in favor of one or the other brand. However, the new dealer has no choice as to which of the two brands he will purchase and display—if his station is located in the three Sales Regions of the company in which Goodyear is sponsored, then he must take Goodyear TBA, and if his station is located in the three Sales Regions of Atlantic assigned to Firestone, then he must take the Firestone program.

Numerous other examples of joint merchandising programs favorable to the rubber companies having sales commission agreements with Atlantic could be cited. Although Atlantic officials stated in an intra-company memorandum shortly before the inception of the sales commission program that "Practically all sales promotional expense [will be] assumed by supplier [Goodyear]," Atlantic aggressively assists in carrying out the Goodyear program in various ways. For example, Atlantic salesmen obtain TBA orders from dealers and send them to local Goodyear supply points, recommend minimum Goodyear TBA inven-

tories to dealers, coordinate special Goodyear promotional programs with radio, television, and other forms of advertising by the Atlantic company and its dealers, and assist dealers in arranging Goodyear TBA displays. Atlantic credit card facilities are also available to motorists wishing to purchase Goodyear TBA products from Atlantic stations. Without doubt, however, the most effective joint merchandising tactic is dual solicitation, or "double-teaming." This refers to the practice of an Atlantic salesman accompanying a Goodyear or Firestone salesman in calls upon service station operators to urge them to purchase sponsored TBA.

Goodyear's heavy reliance upon double-teaming to convert Atlantic dealers from the Lee-Exide program to Goodyear TBA was set forth in a "Confidential" memorandum of February 27, 1951, from Mr. S. A. Gaylord, manager of the rubber company's sales commission programs with oil companies, to Goodyear District Managers located within the three Atlantic Sales Regions assigned to Goodyear:

> "You have been advised of the Sales Organization Meetings [between Goodyear and Atlantic sales personnel]. Mr. McConky [Goodyear Northeast Division Manager] will keynote for his Division. He will welcome the opportunity and pledge strong support and cooperation. No doubt he will stress the importance of Atlantic and Goodyear personnel getting acquainted and teaming up together when presenting the Goodyear franchise to Atlantic dealers. Because the Atlantic salesman has the 'in', but cannot be expected to know the Goodyear story at the start, so by team work the Goodyear Sales Representative will make the presentation and also assist in training the Atlantic Representative.
>
> "Two purposes will be accomplished by this teaming activity—first the Atlantic salesman will learn the basic details of our Franchise Presentation and, secondly—our Goodyear salesman will be very favorably introduced to the account through the sales influence of the Atlantic Representative, also bring up this point with your men."

Thereafter, on August 7, 1951, a Goodyear official wrote to Atlantic's TBA Manager, Mr. Heideman:

> "Having reviewed your letter of July 30th, I am pleased to outline below for your consideration steps that I suggest be followed in the handling of a new Atlantic Dealer on the Goodyear T. B. A. Program:
>
> "1. Arrange for double team contact by the Goodyear and Atlantic salesman."

Nine additional steps were outlined in this letter of August 7, the fifth being to "Take stock order (Tires, Batteries and Accessories)" and the sixth being to "Furnish initial price lists, tires, batteries and accessories." Goodyear thus appeared confident that the presence of an Atlantic salesman together with the Goodyear representative would render unnecessary any higgling or haggling over price *before* obtaining an initial order for TBA from Atlantic dealers.

Similar confidence in the efficacy of double-teaming activity was expressed in a memorandum setting forth action to be taken to introduce the sales commission plan to Atlantic outlets in the three Sales Regions assigned to Firestone:

> "Double-teaming activity with Firestone and oil company salesmen is then scheduled in order to sell the oil company's dealers on the Commission Plan."

Atlantic's Vice President, Mr. D. T. Colley, inaugurated the sales commission program on March 1, 1951, with the following letter to the oil company's sales force:

> "I am sure that the new T. B. A. program which we have carefully selected has so many advantages that it will not be difficult to convince Atlantic dealers and distributors of its superior merit. This job is to be done with the use of all the sales equipment and knowledge that we, or our suppliers, have at our respective commands. *I expect the results of our salesmanship to be highly successful.*

"You can appreciate the fact that under no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers. The sales you make must be made on the merits of the program and your ability to sell the dealer on its advantages to him. *Any evidence that coercion or misrepresentation were used in securing acceptance would be most embarrassing to our company.* This program is a challenge to your sales ability. I am confident that you will do a fine selling job." (emphasis added)

These quotations reflect the belief of Goodyear and Firestone, as well as Atlantic, that the presence of an Atlantic salesman is the almost indispensable ingredient needed to insure the success of the two rubber companies in selling their TBA products to Atlantic dealers under the sales commission plan. Perhaps one reason for this is that the annual evaluation by Atlantic salesmen of their respective lessee-dealers carries substantial weight with District Managers of Atlantic when the latter group make decisions as to extensions of dealers' leases for another year. Although respondent Atlantic has made vigorous efforts to create a record image of the typical Atlantic lessee-dealer as a stoutly independent businessman, able to close up shop as an Atlantic lessee on Saturday night and reopen down the street in a Sinclair or an Esso station the following Monday morning, the record as a whole suggests that this is a romanticized picture of a small businessman who is, more often than not, in a woefully weak bargaining position vis-a-vis his oil company lessor.

The typical lessee-dealer's dependence upon his lessor-supplier is explained by the following facts: The cost of constructing an average Atlantic service station is about $50,000. Few men who become service station operators have this amount of money—many have as little as $1,000, and very few have as much as $15,000. Most marketing oil companies, therefore, build a substantial portion of their own stations and lease them to operators. The lessee-dealer uses his own capital to purchase an initial inventory

of petroleum products, TBA, and tools and for other expenses incurred in commencing operations. It is frequently necessary for incoming dealers to borrow several thousand dollars from Atlantic in order to purchase these initial stocks of goods. Nor is the income of the typical lessee-dealer sufficient to enable him eventually to purchase his own station. Although an exceptional dealer with an unusually high-gallonage station may earn as much as $20,000 per year, the average annual net income of Atlantic dealers is in the range of 6 to 10 thousand dollars. But no matter how long an operator may remain as lessee, and no matter how much he strives to establish goodwill in his community, the time may come when his lease is not renewed—for any one of a number of reasons or for no reason at all except that the lessor would prefer to have someone else operate that particular station.

Many of the control devices available to Atlantic in its relationship with lessee-dealers are also applicable to contract dealers. Many of the latter are indebted to Atlantic, and most of them lease storage tanks, gasoline pumps and other equipment from their oil company supplier. These equipment leases specify that such equipment may not be used for storage or sale of petroleum products purchased from any supplier other than Atlantic. And serious inconveniences would be caused for any contract dealer whose petroleum supply contract with Atlantic was not renewed from year to year.

Service station operators are understandably susceptible to the urgings and recommendations of their oil company suppliers and lessors in the matter of TBA. The Goodyear salesman encounters less buyer resistance on the part of such a customer when an oil company salesman is standing nearby adding his endorsement to the sales presentation of the Goodyear representative. The technique of dual solicitation ("double-teaming") thus symbolizes in microcosm the competitive effects of the sales commission method of distributing TBA when introduced throughout the entire marketing area of a major oil company. It is to these macrocosmic effects that we now turn.

COMPETITIVE EFFECTS OF THE SALES COMMISSION PLAN AT THE MANUFACTURING, WHOLESALE AND RETAIL LEVELS.

A glance at MAP I, *supra*, suffices to show that competition between Firestone and Goodyear in selling to Atlantic oil company accounts has been wrecked by the operation of the sales commission system. But other evidence of record is available in abundance to illustrate the same point. The following is an exchange of correspondence between Atlantic and Goodyear concerning Republic Oil Company, a wholesale distributor of Atlantic products in Pittsburgh, Pennsylvania. (Atlantic's Western Pennsylvania sales region, it will be recalled, is assigned to Firestone.)

On August 2, 1951, Mr. E. C. Sauter, District Manager of Goodyear in Pittsburgh, addressed the following letter to Mr. F. W. McConky, Jr., Manager of Goodyear's Northeast Division:

> "Republic Oil Co.
>
> "This is a Pittsburgh concern who are acting as distributor of Atlantic products in parts of Pennsylvania and Northern West Virginia.
>
> "The retail division of this company operates about seventy-five (75) service stations. They have never gone into a TBA program and at present have no tire hook-ups. They are in process, however, of trying to get a deal with one of the major tire companies and would like to entertain a proposition from Goodyear whereby we would sell their stations direct or through supplying dealers at a price which would be in line with each outlet's volume with an override to the oil company.[12]

[12] Many service station operators and TBA dealers use the term "override commission" or "overriding commission" in referring to payments by a TBA manufacturer to an oil company such as those made by Goodyear and Firestone to Atlantic. However, as respondents and their witnesses usually use the term "sales commission" to refer to such payments, we are using "sales commission" in this opinion.

"Possibly we could use this additional distribution in the Pittsburgh area, particularly on passenger tires and tubes, so if you are interested possibly we should take the matter up with Petroleum Sales for their comments."

Thereafter, on August 3, 1951, the matter was referred by Mr. McConky to Mr. S. A. Gaylord of Goodyear in Akron:

"The attached from Eddie Sauter regarding Republic Oil and the possibility of their handling our products is a matter, in my opinion, for Akron decision, inasmuch as they [meaning Republic Oil] are distributors of Atlantic products.

"I don't want to spend any time lining up with these people if for example Atlantic-Philadelphia would prefer they handle Firestone, since this is the tire being handled by Atlantic in that area.

"Of course, I am not acquainted with the influence Atlantic might be able to bring to bear in forcing these people to a decision as to the line of tires that they—Atlantic—would like them to handle.

"At any rate, will you explore this from a management standpoint and advise so we can proceed according to Atlantic's desires."

On August 9, 1951, Mr. Gaylord addressed the following letter to Atlantic's TBA Manager, Mr. Heideman:

"Mr. Sauter, our District Manager at Pittsburgh, and Mr. McConky, advises that subject account is considering marketing T.B.A. products and have invited us to submit a proposal.

"Before taking any action in the matter we felt that we should take the matter up with you for further guidance and your good counsel in the matter.

"Will appreciate hearing from you on this as soon as possible."

On August 14, 1951, Mr. Heideman replied to Mr. Gaylord under the heading "Republic Oil Company":

> "Your note of August 9th has been received. Any overtures on your company's part to the subject could upset negotiations that we have underway at present. It was thoughtful of you to consult us and needless to say we appreciate it *as we will also appreciate your rejection of the invitation.*" (emphasis added.)

Not only has competition between Goodyear and Firestone been eliminated as a result of these companies' sales commission contracts with Atlantic, but even *within* Atlantic's sales regions assigned to Goodyear, competition among Goodyear wholesalers for the business of Atlantic accounts has been eliminated through the assignment of each Atlantic account to a designated supply point. There are 1,155 independent franchised Goodyear dealers in the Atlantic marketing territories assigned to Goodyear, but only 128 of these dealers, or *11 percent*, are supply points for Atlantic dealers. The remainder, representing 89 percent of all Goodyear dealers in the three Atlantic sales regions, are substantially foreclosed from access to Atlantic accounts.

Nor is this anticompetitive allocation of customers by Goodyear among its wholesale distributors confined to Atlantic accounts alone—nine other oil companies have sales commission contracts with Goodyear, and as shown by Table IV, below, only a minute fraction of the total number of Goodyear dealers in any of these oil companies' marketing areas have been nominated as supply points for local oil company outlets:

TABLE IV

Goodyear Dealers Acting as Supply Points for Oil Company Outlets Compared with Total Number of Goodyear Dealers in Each Oil Company's Marketing Area

Name of Oil Company	Total Number of Goodyear Dealers in Marketing Area	Number of Goodyear Supply Points
Anderson-Pritchard	3,825	28
Ashland & Subsidiaries	2,387	87
Carter	1,509	73
D-X Sunray	6,772	162
Quaker State	482	14
Richfield	1,691	3
Shamrock	1,717	25
Shell	10,756	679
Sinclair	10,963	10
Atlantic	1,155	128

The extent to which competition among Goodyear's own dealers at the wholesale level has been shattered by the operation of the sales commission plan may be inferred from the data in TABLE IV. In Shell's marketing area, for example, there are 10,756 Goodyear dealers; yet only 679 of these dealers have been appointed as supply points to Shell stations. In the marketing territory of D-X Sunray Oil Company there are 6,772 Goodyear dealers, but only 162 have been granted the privilege of becoming a supply point. And in Atlantic's New England, New York, and Philadelphia-New Jersey sales regions, only 128 out of 1,155 Goodyear distributors have been named as supply points.

To illustrate the elimination of competition among TBA wholesale dealers caused by the sales commission plan, evidence adduced in the course of hearings in Atlantic's Philadelphia-Suburban Sales District (one of several sales districts comprising Atlantic's Philadelphia-New Jersey Sales Region) may be considered. As of June 30, 1956, there were 226 lessee dealers and 291 contract dealers of Atlantic

in this district. These dealers were assigned to three Goodyear company stores and six independent franchised Goodyear distributors in the Philadelphia metropolitan area as follows:

TABLE V

Goodyear Supply Points in Atlantic's Philadelphia-Suburban Sales District and Atlantic Dealers Assigned to them, 1956

Supply Points	No. Lessee Dealers*	1955 Total Sales	No. Contract Dealers*
Goodyear District Office	$ 43,845	2	6
Harvey W. George	239,906	45	49
F. C. Glenn	300,723	52	42
E. F. Miller	239,900	39	19
Frank Hagan	130,682	(54 dealers)	**
Ellwood E. Kieser	420,788	40	116
Edward Parris	160,100	(61 dealers)	**
Goodyear Store (Jenkintown)	None	2	4
Goodyear Store (Norristown)	None	8	1
	$1,535,944		

* Includes some duplication due to 11 lessee dealers and 5 contract dealers having two alternate sources of supply.

** No breakdown is available as to the numbers of lessee and contract dealers, respectively, supplied by these two supply points. Mr. Hagan was supply point to a total of 54 lessee and contract dealers of Atlantic, and Mr. Parris to a total of 61 lessee and contract dealers of the oil company.

Witness Elmer H. Booz, for example, an Atlantic lessee dealer from 1952 until 1956, testified that Mr. Edward Parris was the designated Goodyear TBA supply point for dealers in his area. He stated that although he could have purchased Goodyear tires from other dealers at lower prices than from Mr. Parris, that he nevertheless obtained about 85 percent of his TBA requirements from Mr. Parris. One

competing Goodyear dealer offered tires to Mr. Booz at a discount from list price of 10 percent plus 5 percent, plus 2 percent whereas Mr. Parris gave only a 10 percent discount, plus 2 percent discount for cash.

As to competing brands of tires, Mr. Booz testified that he could make more profit on several such brands than he could on Goodyear tires. Lee tires were available at a discount from list price of 10 plus 10 plus 10 percent, plus 2 percent for cash. Moreover, the witness stated that he could never resell Goodyear tires at list price because "there is always someone from the Goodyear company or somebody else that is going to knock you down on it."[13]

Witness Francis J. Balloran commenced operating an Atlantic station in 1953 and was a contract dealer for Atlantic at the time he testified in this proceeding. He stated that after becoming an Atlantic dealer he purchased Goodyear TBA from his designated supplier, Mr. E. F. Miller (Table V, supra):

> Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller? A. That's right.
>
> Q. Why did you buy your Goodyear TBA from Mr. Miller? A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.
>
> Q. Was it a matter of your own choice? A. No, sir.
>
> • • • • • •
>
> Q. Did you want to purchase TBA from Mr. Miller? A. Not truthfully, no.
>
> Q. Why didn't you? A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to

[13] When Atlantic was considering adopting the Goodyear TBA program an intracompany memorandum recognized that Atlantic dealers would face ". . . a maximum amount of competition from established dealers and company stores, because it is reported that every county, marketing town and shopping center now has a Goodyear store or distributor."

send a man with a truck and waste an hour and a half to go pick it up and bring it back.

Q. Could you have purchased Goodyear tries at a cheaper price in the area? A. Yes, sir.

Q. What was the name of the supplier? A. Hires and Kocher.

Witness Balloran also testified that he occasionally purchased brands of tires other than Goodyear, but did not display them openly:

Q. Did you purchase U. S. tires from Harris and Leonard? A. That's right.

Q. Were such tires advertised, U. S. tires? A. Not out of my place they weren't.

Q. Where did you keep such tires? A. Back on the racks, back on the off racks where they couldn't be seen.

Q. Seen by whom? A. Any of the Atlantic men that came in there, the bosses.

* * * * * *

Q. Did you purchase Lee tires? A. Yes, sir.

Q. And where did you keep them? A. On the racks, sir . . .

Nineteen witnesses representing eleven TBA wholesale suppliers in the Philadelphia-Suburban District engaged in competition with one or more of the six Goodyear supply points named in Table V, *supra*, testified in support of the complaint. Without exception, these witnesses gave evidence that they were able to sell little or no TBA products to Atlantic dealers in their areas, and that such Atlantic dealers had stated that they must purchase their TBA needs from one or more of the designated Goodyear supply points listed in Table V.

Witness Michael T. Lanza, partner in the Philadelphia firm of Lanza Tire Service, stated that his company sells Goodyear and Firestone tires and tubes, as well as other brands, and also Exide batteries. He further stated that

there are from 45 to 60 Atlantic service stations in his sales area, and that all such stations stock and advertise Goodyear tires and batteries. Witness Lanza identified Messrs. Fred Glenn and Harvey George as Goodyear TBA suppliers to Atlantic service stations in the North Philadelphia marketing area of Lanza Tire Service.

Witness Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester, Pa., testified that his company sells Willard batteries, Dayton Rubber Co. fan belts and radiator hose, AC, Purolator and Fram oil filters, and a wide assortment of automotive waxes, polishes and cleaners in competition with other sellers of TBA in his company's marketing area, including Mr. Edward Parris. Witness Wetzel stated that it is "rather futile" to attempt to sell automotive batteries to Atlantic dealers, and "very difficult" to sell automotive accessories to them. On cross-examination he was asked this question:

> Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now? A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They buy six or eight cans of merchandise to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Witness Myer Duboff is an outside salesman for Lancaster Auto Supply Company of Philadelphia. This firm competes with Goodyear dealers Frank Hagan, E. F. Miller and Ellwood Kieser, *supra*, TABLE V. Witness Duboff testified that he had solicited the business of about 35 Atlantic stations in his area, all of which advertise Goodyear products ". . . right down the line." He stated that he had been told by a number of Atlantic dealers that they were unable to buy TBA items from him because they "must buy from the company." On cross-examination he was queried as to statements made to him by one Atlantic dealer:

> Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road? A. That is right.

Q. As having said something to you about inability to buy from you. I am not clear as to what he said. A. Do you want me to state what he said to me. He said to me. "I can't buy from you."

Q. Had he been buying from you? A. He was buying odds and ends and every time I come in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said "Why not," and he says "They know what I am doing," and I didn't think that was right.

Many other examples of such testimony could be cited, not only by former Atlantic dealers and by TBA suppliers from the Philadelphia area, but from other marketing areas of Atlantic as well. These facts are clear: Atlantic has allocated three of its six marketing regions to Firestone and the other three to Goodyear. Firestone's sales to Atlantic outlets amounted to $5,562,936 in 1955, the last full year for which data are available, and in the same year the rubber company paid commissions amounting to $506,199 to Atlantic. Goodyear's sales to Atlantic outlets amounted to $5,700,121 in 1955 and its sales commission payments to the oil company totalled $557,559.

We find that Atlantic has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gasoline distribution facilities to cause its dealers to purchase very substantial amounts of a different class of products, TBA. This finding, in conjunction with Atlantic's market position and the volume of TBA affected, would appear to bring this case within the Supreme Court's ruling in *Northern Pac. Ry. Co.* v. *United States*, 356 U. S. 1 (1958) and the more recent decision by the Fourth Circuit in *Osborn* v. *Sinclair Refining Co.*, F. 2d (4th Cir. 1960). [*]

The Court held in the *Northern Pacific* case that tying arrangements are *per se* violative of Section 1 of the Sherman Act ". . . whenever a party has sufficient eco-

[* This case now is reported at 286 F. 2d 832 (4th Cir. 1960), *cert. denied*, 366 U. S. 963 (1961).]

nomic power with respect to the tying product to appreciably restrain free competition in the tied product and a 'not insubstantial' amount of interstate commerce is affected" (356 U. S. at 6). The content of the phrase "sufficient economic power" with respect to the tying product was defined by the Fourth Circuit recently in the *Osborn* case.

Osborn was a lessee of Sinclair Refining Company from 1936 to 1948, at which time his lease was terminated and a new lease entered into which was continued until May 1956, when it was finally cancelled by Sinclair. During the years of Osborn's tenure as a Sinclair dealer, the oil company or its subsidiary, Sherwood Bros., Inc., was party to a sales commission contract with Goodyear in all material respects identical to the Goodyear-Atlantic and the Firestone-Atlantic arrangements in the instant case. Osborn filed suit for treble damages under the Sherman Act, claiming that the sale of Goodyear TBA to Sinclair dealers in Maryland was in furtherance of an illegal restraint of trade. On appeal, the court held that Sinclair had gone beyond mere salesmanship in inducing its dealers to carry substantial quantities of Goodyear TBA if they wished to continue selling Sinclair gasoline under their lease and sales agreements with Sinclair.[14] As phrased by the court, quoting its own earlier decision in *McElhenny* v. *Western Auto Supply Co.*, 268 F. 2d 332, 338 (4th Cir. 1959):

> "Probably nothing is more firmly settled in our antitrust jurisprudence than that an illegal contract may be inferred from all the circumstances."

According to the court, Sinclair had violated Section 1 of the Sherman Act through a series of *implied* tie-in agreements with its dealers in Maryland. Moreover, the court did not regard it as significant that Sinclair had not

[14] Sinclair did not have a sales commission plan in effect throughout its entire marketing area, but only in Maryland and, to some extent, in adjacent states. [286] F. 2d [832] at [834]. Osborn, plaintiff in the case discussed above, testified in the instant proceeding as a witness in support of the complaint.

required its dealers to purchase all their requirements of TBA from Goodyear:

> "To insist upon such exclusivity in a tie-in would be inconsistent with the trend of decisions in this area. If a substantial amount of commerce is restricted by such arrangements, the standard for illegality would seem to have been met."

As to the requirement of "sufficient economic power" in the tying commodity—Sinclair's position in the petroleum retail market—the court found that in 1956, Sinclair had operated about 300 out of some 2300 retail service stations in Maryland and that those stations had sold about 10 percent of the total sale of gasoline in the same state in that year. This was held to afford Sinclair sufficient economic power in the gasoline market appreciably to restrain commerce in TBA. No one questioned the finding that Goodyear TBA purchased by Sinclair dealers in Maryland comprised a substantial amount of commerce. Accordingly, the implied tie-in agreements between Sinclair and its dealers were held to constitute a *per se* violation of the Sherman Act.

Here we find that Atlantic, which describes itself as ". . . a large producer and distributor of petroleum products" whose operating revenue "totalled more than one half billion dollars" in 1954, distributes gasoline directly to more than 5,500 retail service stations and through wholesale distributors to more than 2,800 additional service stations in 17 states along the Atlantic Seaboard. Approximately 81 percent of Atlantic's total sales of gasoline in 1955 were accounted for by these approximately 8,300 retail service stations.

But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases. The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase

substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The record of this case conclusively establishes, in our minds, that the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels. Firestone dealers are foreclosed from Atlantic outlets in regions assigned to Goodyear, and Goodyear dealers are foreclosed from Atlantic outlets in regions assigned to Firestone. Even within regions assigned to Goodyear, or to Firestone, only those Goodyear or Firestone dealers fortunate enough to be nominated as "supply points" have any prospect of sales to Atlantic dealers. Wholesale TBA dealers representing other tire manufacturers, for example United States Rubber Company, Lee Rubber and Tire Corporation, and Mansfield Tire and Rubber Company testified to their inability to sell tires to Atlantic service station dealers, except upon an occasional "pick-up" basis when a motorist demands a tire brand other than the locally-sponsored offering available at the station.

Battery manufacturers and certain accessory suppliers are, if possible, even more severely disadvantaged by the sales commission system than are tire companies competing with Firestone and Goodyear. Local wholesale distributors of Exide, Willard, Bowers and other brands of batteries testified to their inability to sell batteries to Atlantic stations except upon a pick-up basis. The most shocking feature of the sales commission system as to batteries, however, is the fact that the sales commission contracts with Atlantic enable Goodyear and Firestone to exclude *their own suppliers of batteries* from the wholesale and retail markets represented by Atlantic service station outlets. For the evidence of

record indicates that Goodyear and Firestone both refused to execute sales agreements relating only to tires and tubes, but insisted that it include *all* TBA items sold by them or none. An analogous situation exists as to certain accessory products, for example, "Mac's" brand of polishes, waxes, and cleaners.

Moreover, as one of the chief characteristics of the sales commission plan is that it strengthens wholesale distributors of Goodyear and Firestone by pre-empting for their benefit a substantial segment of all of the various local wholesale TBA markets in Atlantic's marketing area, the sales commission system stands as a bar to the *expansion* by smaller TBA manufacturers of their own distributive organizations. As respondents concede, a substantial proportion of all replacement TBA items sold to motorists are accounted for by service stations and "service stations, . . . constitute a large and increasingly important market" for TBA products. Thus, the competitive dislocations engendered by the sales commission plan at the wholesale level entend backward to the manufacturing level.

Finally, the unfair competitive advantages resulting from the sales commission plan are not confined to the manufacturing and wholesale levels—they extend forward to the retail level as well. Many of the wholesalers who testified in this proceeding *also* sell at retail, directly to motorists. To the extent, therefore, that suppliers of TBA competing with distributors of Goodyear and Firestone at the wholesale level are weakened by the operation of the sales commission system, the dealers are also weakened at the retail level, in instances where they are engaged in retail as well as wholesale operations.

Counsel for Atlantic contend, however, that no competitive consequences attend the sales commission plan which did not characterize the purchase-resale program employed by Atlantic prior to 1951. This point deserves consideration since it implies that no useful purpose would be served by outlawing the sales commission plan between Goodyear and Atlantic as Atlantic would merely return to the purchase-resale method of distributing TBA, with the result that

Goodyear and Firestone dealers would lose a substantial volume of sales, but without improving the lot of competing TBA suppliers as they would still be unable to sell TBA to Atlantic dealers. We believe this argument to be without merit for several reasons.

First of all, what course of action Atlantic may follow with respect to TBA if the sales commission plan is outlawed is entirely speculative. Assuming for the moment, however, that Atlantic will return to the purchase-resale plan and flout the antitrust laws by requiring its dealers to handle Atlantic TBA exclusively, or even substantially,[15] it is obvious that local wholesalers of TBA competing with Firestone and Goodyear dealers in Atlantic's marketing area will at least no longer be laboring under the handicap of their competitors representing Firestone and Goodyear having already pre-empted a substantial share of the local wholesale TBA market. As the situation stands under the sales commission plan, local dealers representing Firestone and Goodyear are assured of a substantial chunk of the market before the competitive race at the wholesale level even begins. (See Table V, supra) Abolition of the sales commission system will at least terminate the unjust advantage presently enjoyed by distributors of Firestone and Goodyear over local competitors representing other tire manufacturers and TBA suppliers.

Not only do the competitive effects of the sales commission plan differ from those of the purchase-resale plan at the wholesale level, but at the manufacturing level as well. When Atlantic was considering changing from the purchase and resale of Lee tires and Exide batteries to some other method of merchandising TBA, it contacted several of the larger tire and rubber companies, including Goodyear, Firestone, The B. F. Goodrich Company, United States Rubber Company and General Tire and Rubber Company inquiring "... what interest you may have in the sale

---

[15] Cf., *Standard Oil Co.* v. *United States*, 337 U. S. 293 (1949); *Northern Pac. Ry. Co.* v. *United States*, *supra*; *Osborn* v. *Sinclair Refining Co.*, *supra*; *United States* v. *Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959).

of your tires and tubes through Atlantic accounts." Propositions were requested not only as to principal brands of these manufacturers, but as to secondary brands controlled by them and private brands as well. At the same time, Atlantic also contacted Mansfield Tire and Rubber Company and Lee Rubber and Tire Corporation soliciting proposals from them to furnish a private brand tire to Atlantic. This suggests that the smaller tire companies are able to compete with their smaller competitors in selling tires to oil company accounts on a purchase and resale basis. The evidence also shows, however, that the smaller tire companies are *unable* to compete with larger tire manufacturers for the business of oil companies using the sales commission plan *because the smaller tire companies lack distribution facilities which blanket the entire sales area of a major marketing oil company desiring to adopt the sales commission plan.* This was established by the testimony of Vice-President Colley of Atlantic, who appeared as a witness on behalf of this respondent.

A major oil company's decision to adopt the sales commission method of distributing TBA thus inaugurates a vicious cycle of injurious competitive effects: smaller tire and rubber companies are unable to compete in the first instance for the business of the oil company desiring to adopt a sales commission plan because they lack widespread distribution facilities at the wholesale and resale levels; and yet the operation of the sales commission plan stands as a bar to future expansion of the smaller tire companies' distributive systems since they are thereby foreclosed from a substantial segment of the wholesale and retail market *after* the oil company has adopted a sales commission plan offered by a larger tire company.

We believe that the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution). Other anticompetitive effects of the sales commission system are so obvious that they require no detailed consideration. The public suffers because it cannot rely upon

competitive rivalry among local TBA wholesalers to insure that service station outlets will be able to obtain price savings which may be passed along to consumers. And, too, the system prevents the service station operator himself from using his buying power to further his own business advantage instead of that of his oil company supplier. As the Court of Appeals said in its recent *Osborn* decision, in a situation identical in its essentials with the present case, insofar as the service station dealer is concerned:

> "Because of its financial interest in having its lessee-dealers sell Goodyear TBA rather than competing brands, Sherwood-Sinclair engaged in a course of conduct designed to bring about this result. The facts in this case utterly fail to reveal any business motive for the defendant's policy that its dealers should handle Goodyear products instead of others. Admittedly, it was proper for Sinclair-Sherwood to desire its lessees to carry a complete, high-quality line of TBA. It is conceded, however, that there are other competing brands, and there is no suggestion that Goodyear was superior to the other brands of TBA, or that there was any benefit to the dealers in handling Goodyear rather than one of the other lines."

Several additional points are raised by Atlantic, but we believe only one of these requires detailed consideration in this opinion. Respondent contends that it was error, violative of due process of law, for the same hearing examiner to have presided over and rendered initial decisions in both this case and in Docket 6487, The Firestone Tire & Rubber Company and Shell Oil Company. The crux of the contention seems to be that the hearing examiner could not possibly have rendered his initial decision in this case solely upon the basis of the record of the instant proceeding, since he also heard testimony and received evidence involving Atlantic's sales commission plan with Firestone in Docket 6487. As respondent puts it,

"While Atlantic has the utmost respect for the Hearing Examiner's integrity and ability, Atlantic submits that he could not humanly exclude from consideration his impression of the witnesses' demeanor and credibility in the Firestone-Shell proceedings and that his decision against Atlantic based on impressions gained in those other proceedings is a violation of due process."

Our study of the initial decision and of the record in this case indicates that there is no basis for the claim that the hearing examiner considered extra-record evidence in making his findings of fact and conclusions of law. Substantial evidence is present in the record of this case to support every finding of fact and conclusion of law by the hearing examiner. In any event, our own independent study of the record herein is the basis for the findings of fact and conclusions of law set forth in this opinion.

Conclusion.

Other exceptions of respondents Atlantic and Goodyear have been considered and rejected. The appeal of respondent Atlantic is denied. The appeal of counsel supporting the complaint is granted in part and denied in part. The initial decision, to the extent that it is contrary to the views expressed in this opinion, will be modified to conform with such views. An appropriate order will be entered.

March 9, 1961.

Commission's Order.

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

Commissioners:

EARL W. KINTNER,
Chairman

ROBERT T. SECREST
SIGURD ANDERSON
WILLIAM C. KERN

IN THE MATTER *of* THE GOODYEAR TIRE & RUBBER COMPANY, a corporation, and THE ATLANTIC REFINING COMPANY, a corporation.	Docket 6486

FINAL ORDER

Counsel supporting the complaint and respondent The Atlantic Refining Company having filed cross-appeals from the hearing examiner's initial decision in this proceeding; and

The Commission having considered said appeals, including the briefs and oral arguments of counsel and the entire record, and having rendered its opinion denying the appeal of respondent The Atlantic Refining Company and granting in part and denying in part the appeal of counsel supporting the complaint, and having determined that the initial decision should be modified in certain respects:

IT IS ORDERED that the findings and conclusions of the initial decision be, and they hereby are, modified and sup-

plemented to conform with the findings, conclusions and views set forth in the accompanying opinion of the Commission

IT IS FURTHER ORDERED that the following be, and it hereby is, substituted for the order contained in said initial decision:

IT IS ORDERED that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, or offering for sale, or sale and distribution of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement, or combination, express or implied, with The Goodyear Tire and Rubber Company, or The Goodyear Tire & Rubber Company, Inc., or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, and/or accessories, whereby The Atlantic Refining Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Atlantic petroleum products by any marketer or distributor of TBA products other than The Atlantic Refining Company;

2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of Atlantic petroleum products;

3. Using or attempting to use any contractual or other device, such as, but not limited to, agreements,

leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by any distributor or marketer of such products other than The Atlantic Refining Company to or through any wholesaler or retailer of Atlantic petroleum products;

4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Atlantic outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of such products other than The Atlantic Refining Company to any wholesaler or retailer of Atlantic petroleum products;

5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of Atlantic petroleum products to purchase any brand or brands of TBA products;

6. Preventing or attempting to prevent any wholesaler or retailer of Atlantic petroleum products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

It Is Further Ordered that respondents The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., (hereinafter collectively referred to as "Goodyear"), corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission

Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Atlantic Refining Company or with any other marketing oil company whereby Goodyear, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Atlantic Refining Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;

3. Reporting or participating in the reporting to The Atlantic Refining Company or any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

It Is Further Ordered that the initial decision as so modified and supplemented be, and it hereby is, adopted as the decision of the Commission.

It Is Further Ordered that respondents The Atlantic Refining Company, The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in

which they have complied with the aforesaid order to cease and desist.

By the Commission.

[SEAL]

/s/ ROBERT M. PARISH,
Secretary.

ISSUED: March 9, 1961.

C-1

IN THE

UNITED STATES COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT.

NOS. 13339 AND 13340.

SEPTEMBER TERM, 1963. JANUARY SESSION, 1964.

THE GOODYEAR TIRE & RUBBER COMPANY,
Petitioner,
v.
FEDERAL TRADE COMMISSION,
Respondent.

THE ATLANTIC REFINING COMPANY,
Petitioner,
v.
FEDERAL TRADE COMMISSION,
Respondent.

Petitions to Review and Set Aside Order of the Federal Trade Commission.

April 24, 1964.

Before SCHNACKENBERG, CASTLE, and SWYGERT, *Circuit Judges.*

SWYGERT, *Circuit Judge.* The Goodyear Tire & Rubber Company and the Atlantic Refining Company request a review of the Federal Trade Commission order based upon a complaint charging a violation of section 5 of the Federal Trade Commission Act[1] and which challenged the legality

[1] Federal Trade Commission Act §5(a)(1), 66 Stat. 632 (1952), 15 U. S. C. §45(a)(1) (1958), reads as follows:

> Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are declared unlawful.

of distribution of tires, batteries, and automobile accessories (TBA) to service stations under a sales commission agreement between petitioners.

Goodyear is an Ohio corporation engaged in the manufacture, sale, and distribution of rubber products, including tires and inner tubes. It is the largest manufacturer of these products in the United States.

Atlantic, a Pennsylvania corporation, is a major producer, refiner, and distributor of gasoline and other petroleum products. It markets its products in seventeen states along the eastern seaboard.

The complaint issued by the Commission alleged that Atlantic produces and sells petroleum in commerce to wholesale distributors, automobile service stations, and others; that the distributors and retailers, ostensibly independent, nevertheless, are under the domination and control of Atlantic; that Goodyear and Atlantic entered into a sales commission contract whereby Atlantic agreed to promote the sale of Goodyear products, that is, tires, batteries, and accessories (TBA), to Atlantic's distributors and service station dealers located in a part of Atlantic's sales territory; that Atlantic had a similar contract with Firestone Tire & Rubber Company for the balance of Atlantic's territory; and that Goodyear had similar contracts with a number of other oil companies which, like Atlantic, dominate and control their distributors and service station dealers. The complaint further alleged that Atlantic is paid a sales commission by Goodyear and Firestone on their products which are sold by Atlantic's distributors and service station dealers. The complaint charged that by the use of the sales commission agreement and the practices of the two companies thereunder, Atlantic and Goodyear have restrained competition in the sale of TBA, and committed unfair acts and practices proscribed by section 5 of the Federal Trade Commission Act.

The hearing examiner dismissed the complaint against Goodyear, upholding the legality of the sales commission contract, but found that Atlantic had violated section 5 of

the act by forcing a substantial number of its dealers to purchase Goodyear TBA. The examiner's order against Atlantic prohibited future actions of coercion.

Both Atlantic and general counsel for the Commission appealed from the examiner's ruling. The Commission sustained the examiner's finding that Atlantic had coerced its dealers to purchase sponsored TBA but held that the coercion was symptomatic of a more fundamental restraint of trade, inherent in the sales commission plan itself. The Commission said that the principal issue raised by the complaint was the legality of the Goodyear-Atlantic contract. It noted, however, that Atlantic had a similar agreement with Firestone and that Goodyear had like agreements with a number of oil companies other than Atlantic.

The Commission determined that the sales commission method of marketing TBA is "a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." It found that Atlantic, which sells gasoline, has used its economic power over its dealers to cause them to carry substantial amounts of a different product, TBA; also, that the effects of the sales commission system are anticompetitive at the manufacturing, wholesale, and retail levels. It found that Goodyear's manufacturing competitors have been substantially precluded from selling TBA to the Atlantic service stations assigned to Goodyear; that wholesalers of TBA have also been substantially precluded from selling to Atlantic's service stations; that Goodyear wholesalers who are not supply points have been similarly restricted; and that Atlantic service station dealers have been restrained in marketing nonsponsored TBA. Finally, the Commission found that the public has suffered because lack of competition among the service stations' suppliers of TBA has precluded the possibility of price reductions to the consumer.

The Commission based these conclusions on the components of the sales commission system which include advance notice to Goodyear and Firestone of the selection of new dealers by Atlantic, training schools for Atlantic

dealers in which Goodyear and Firestone TBA are used in demonstrations, sales solicitation by Atlantic salesmen of sponsored TBA from dealers, double teaming, use of a reporting technique whereby the tire company reports to Atlantic the TBA purchases of each dealer, Atlantic's recommendation to each dealer of a minimum Goodyear or Firestone TBA inventory, and Atlantic's assistance in advertising, and providing credit card facilities for the sale of sponsored TBA.

Upon finding the sales commission system an unfair method of competition, the Commission revised and expanded the examiner's order. The order of the Commission not only prohibits Atlantic from coercing its distributors and dealers to purchase a particular brand of TBA but also forbids its participation in any sales commission arrangement for the distribution of TBA. Further, the order prohibits Goodyear's participation in any sales commission arrangement with Atlantic or any other oil company for marketing its TBA.

Upon a consideration of the record as a whole, we conclude there was substantial evidence to support the Commission's ultimate findings and conclusions and that its order should be affirmed in all respects.

To narrate all relevant facts would extend our discussion unduly; we undertake a summary.

Atlantic's Operations.

Atlantic has three major kinds of customers: wholesale distributors, retailers, and commercial accounts; the last class was not involved in the administrative proceeding.

Wholesale distributors maintain their own storage facilities and resell Atlantic's products under its brand names to their retail customers, including service stations. In 1956 there were 236 Atlantic distributors selling to 2,897 service stations.

Retail dealers who purchase directly from Atlantic are of two classes; lessee-dealers, that is, service station operators who do not own their stations; and contract dealers,

station operators who own their stations or lease from parties other than Atlantic, or operate garages, grocery stores, and similar establishments. The company had 5,537 direct retail dealers in 1956. Lessee-dealers accounted for approximately thirty-nine per cent of Atlantic's total gasoline sales in 1955 and the contract dealers eighteen per cent.

The usual lease between Atlantic and its lessee-dealers provides for a one year term with automatic renewal from year to year unless written notice is given before the expiration of any term. When the lease is executed the dealer is required to sign an "Eleven Point Lease Letter" which prescribes operational standards for the service station. These include housekeeping, use and upkeep, display, illumination, personnel, hours of operation, services, adequate inventory, sales promotion, prices, and accounting. The standards are enforced by Atlantic through the surveillance of its sales personnel and so-called "phantom customer inspectors."

The Commission found that the eleven point letter is an integral part of the lease; that Atlantic at its option may terminate the lease in the event of its breach; and further, if a dealer violates any of the requirements of the letter, he is warned that the lease will be cancelled unless the noncompliance is remedied within fifteen days.

Atlantic adopted a policy in 1953 providing that any lessee-dealer who establishes a two year record of satisfactory operation is eligible for a three year lease. Moreover, Atlantic after 1953 no longer required its dealers to purchase Atlantic products except lubricants. The record shows, however, Atlantic's dealers handle its products exclusively.

In 1956 fifty per cent of the 3,044 Atlantic contract dealers operated service stations; the others operated grocery stores, garages, and similar outlets (outlets other than service stations ordinarily do not handle TBA).

Although contract dealers do not lease their stations from Atlantic, they usually enter into two kinds of agreements with the company, one providing for loans of station equipment and the other for the purchase of a minimum

amount of gasoline. The loan agreements for equipment provide that Atlantic will install but the dealer must maintain the equipment (gasoline pumps, storage tanks, signs, compressors, etc.). The agreements ordinarily are for a one year term but may be terminated by notice of either party at the end of the original or any subsequent term. Atlantic may repossess its equipment upon termination of the contract; however, if the agreement is cancelled because of a breach by the dealer, Atlantic requires him to pay both the cost of installation and removal of the equipment or Atlantic has the option to leave the equipment and require him to pay for it.

Atlantic makes the same type of contract with its wholesale distributors for the purchase of gasoline as required of its contract dealers. The company, moreover, reserves the right to change the service stations' source of supply from Atlantic itself to its distributors.

Goodyear's Operations.

Goodyear has tire factories in five states. It also has fifty-seven warehouses from which its tires and the accessories it markets are distributed to wholesale and retail outlets. The batteries which Goodyear sells are distributed directly by the companies manufacturing them.

Goodyear operates approximately 500 company owned wholesale-retail stores throughout the United States. It also has more than 12,000 independent franchised dealers as well as a number of unfranchised dealers; both sell at wholesale and retail.

TBA.

TBA is an integral part of service station operations. Dealers must carry it in order to give complete service to motorists and to operate their stations at a profit. There are a large number of TBA items available to dealers, and there are constant changes and production developments in TBA of which the dealers must be trained and kept informed. Every major oil company offers some kind of

TBA program to give training and advice to its service station dealers.

Atlantic's Purchase-Resale Plan.

For a number of years before Atlantic entered into sales commission contracts with Goodyear and Firestone, it merchandised TBA under a plan known as "purchase-resale."

Under this plan the oil company sells to its dealers at wholesale TBA products which it has purchased and warehoused. The products are merchandised either under the labels of various manufacturers or under the oil company's own labels. Atlantic under its purchase-resale plan bought Lee tires from the Lee Tire and Rubber Corporation, Exide batteries from the Electric Storage Battery Commpany, and various accessories from other suppliers, and sold these products to its wholesale distributors and retail dealers. Between 1948 and 1950 Atlantic's sales of TBA to its distributors and dealers amounted to $22,000,000.

Atlantic became increasingly dissatisfied with the purchase-resale plan. It asserts that outside of the Philadelphia area the ready availability of Lee tires diminished and it could not give good delivery on batteries or keep them properly charged. It asserts further, that its warehouses were unsuited for handling accessories, and it was difficult to maintain an adequate supply of TBA to meet the demands of its dealers.

In 1948 and 1949 Atlantic conducted a survey of its dealers to determine their preferences of brands, sources of supply, and other aspects of TBA marketing. Sixty-seven per cent of the dealers interviewed preferred Lee tires and seventy-nine per cent preferred Exide batteries over competing brands. Only eleven per cent preferred carrying Goodyear tires and four per cent Firestone. A majority preferred to purchase their TBA from more than one source because of price advantage and variety of brands. Nevertheless, Atlantic, after conducting experiments under sales commission arrangements with both Firestone and Goodyear, entered into sales commission

contracts with these companies, effective March 1, 1951, covering its entire marketing area and assigning a portion of its sales territory to each company.

While negotiating the Goodyear and Firestone contracts, Atlantic asked certain battery manufacturers whether they would offer a program similar to that of Goodyear or Firestone. Several manufacturers indicated an interest. However, both Goodyear and Firestone said they would refuse to sell only tires under the sales commission plan and insisted that they be allowed to handle batteries and accessories as well as their own products.

In order to effect the transition to the new plan, Atlantic held numerous meetings with its dealers at which its own representatives and those of Goodyear or Firestone explained the new program. The dealers were told that the plan was a change in company policy; that Atlantic wanted them to carry Goodyear or Firestone TBA rather than Lee tires and Exide batteries and that the switch would be to the dealers' benefit. Letters were also sent to the dealers advising them of the availability of the new TBA program and urging them to take advantage of it. A Goodyear representative commented on the arrangement with Atlantic, "After years of courtship Atlantic and Goodyear have wed," and "We welcome wholeheartedly this merger."

To commence the plan, Atlantic gave Goodyear and Firestone the names of its dealers in their respective territories so that their advertising could be installed at the service stations. Under Atlantic's policy this meant that only Goodyear or Firestone identifications were to be displayed at Atlantic stations. Atlantic salesmen accompanied either by Goodyear or Firestone salesmen contacted the dealers concerning the change-over to sponsored TBA, and Atlantic received progress reports from Goodyear and Firestone. The reports included the names of dealers who refused to permit the installation of Goodyear or Firestone signs.

Within nine months after the sales commission system was inaugurated, Lee and Exide lost seventy-five per cent

of their Atlantic sales notwithstanding the dealers' previous indication of a preference for these products. By October, 1951 ninety-seven per cent of Atlantic's New England region dealers and ninety-six per cent of its New York region dealers had signed with Goodyear. Firestone also signed virtually all the Atlantic dealers in its territory.

The Sales Commission System.

The sales commission contract between Goodyear and Atlantic and the contract between Firestone and Atlantic are similar. Under the contracts, Atlantic assigned to Goodyear its New England, New York, and Philadelphia-New Jersey marketing regions and to Firestone its eastern Pennsylvania, western Pennsylvania, and southern regions.

By the terms of the Goodyear contract, Atlantic receives a commission on all Goodyear TBA sold to Atlantic dealers in the territory assigned to Goodyear in return for Atlantic's efforts and cooperation in promoting the sale of Goodyear TBA to those dealers. Atlantic's contractual assistance to Goodyear includes continuous efforts, suggestions, and counseling its dealers that they maintain adequate Goodyear stock, joint calls with Goodyear salesmen upon the dealers, and the institution of a dealer TBA training program.

An important part of the Goodyear contract is the assignment of each Atlantic dealer to a specific supply point designated by the tire company. The supply point is a TBA wholesaler who may be a Goodyear company operated store, a franchised Goodyear dealer, or an Atlantic service station dealer or distributor who at the same time is a franchised Goodyear wholesaler. Atlantic receives ten per cent commission[2] on all purchases of Goodyear TBA made by its retail dealers from the tire company's

[2] Although termed a sales commission contract, the payments to Atlantic are not commissions on sales made by it but are override payments on sales made by Goodyear supply points to Atlantic's dealers.

supply points and seven and one-half per cent on purchases by Atlantic's wholesale distributors.

When Atlantic selects a new retail dealer, at least three separate interviews are held with the applicant at which the sales commission program with Goodyear is explained. The dealer is told that most Atlantic stations in the Goodyear territory are identified "Goodyear" and that it would be to his advantage to carry that company's products. When an applicant is selected but before he is given a lease, he attends an Atlantic training school where extensive discussions and demonstrations of Goodyear TBA are conducted. Atlantic's sponsorship of Goodyear TBA is explained. The prospective dealer is told what Goodyear inventory he should carry and that he should use approved Goodyear signs, decals, and advertising mats. Goodyear is advised of the opening of the applicant's station, and the new dealer is informed of the Goodyear supply point to which he has been assigned.

Atlantic establishes TBA quotas for its dealers which are considered "an agreed upon obtainable objective." Goodyear reports to Atlantic the monthly purchases of its products by each Atlantic dealer. This procedure enables the oil company to check on the dealers' progress in selling sponsored TBA and also serves as an accounting method for ascertaining the sales upon which Goodyear pays Atlantic its commission.

Atlantic salesmen police the dealers' contractual obligations with the oil company by contacting the dealers regularly. It is the salesman who makes the initial recommendation whether a dealer's lease or contract is to be renewed. Atlantic salesmen not only promote the sale of their own company's products but also Goodyear TBA; they help plan sponsored TBA promotions, they write up TBA orders, and they check the dealer's books to ascertain whether nonsponsored TBA has been purchased.

Under the sales commission system, the dealers are visited regularly by a Goodyear salesman accompanied by an Atlantic salesman. Goodyear considers "double team-

ing" an effective means of selling its TBA. This duality of sales effort is continued at dealer meetings by the presence of representatives of the tire company and the oil company.

Atlantic reserves control over the advertising and identification that may be displayed at its service stations. Its policy is that only sponsored TBA identification should be displayed. Moreover, Atlantic credit cards include TBA. From 1951 to 1953 the credit card facility was limited in Goodyear territory to Goodyear TBA.

The Supreme Court in *F. T. C.* v. *Cement Institute*, 333 U. S. 683, 693 (1948), indicated that the Federal Trade Commission Act grants "the Commission and the courts . . . adequate powers to hit at every trade practice then existing or thereafter contained, which restrained competition or might lead to such restraint if not stopped in its incipient stages." The Commission has a latitude of flexibility within which it can restrain any new unfair method of competition "which the ingenuity of competitors may devise."[3]

Unfair methods of competition proscribed by section 5 of the Federal Trade Commission Act cannot be classified rigidly into categories of business methods that stifle competition. Labeling at times is more harmful than helpful in formulating conceptions that correspond with reality.

Although petitioners contest the view of the general counsel that the Commission grounded its order on the existence of an illegal tying arrangement, the Commission found that the sales commission system is, *in effect*, such an arrangement. It went on to explain, however, that because of the peculiar features of the system, it did not rest its decision on a "mechanical application of the rule of the *Northern Pacific* and *Osborn* cases."[4] The Commission said:

> The issue here is the legality of respondents' use of a *particular method* of distributing TBA products.

---

[3] S. Rep. No. 597, 63d Cong., 2d Sess. 13 (1914).

[4] *Northern Pac. Ry.* v. *United States*, 356 U. S. 1 (1958); *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960).

> Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The heart of this case is the economic power Atlantic possesses over its service station dealers. Ostensibly, they are independent businessmen; but behind the legalistic facade of independence, there exists a servitude caused by the coercive pressures which Atlantic exerts upon its dealers. The keystone of the actual relationship between Atlantic and its dealers is the lease and the equipment loan contract with their short term and cancellation provisions. Without repeating all the components of the relationship, it is evident that the service station dealer is more of an economic serf than a businessman free to purchase the TBA of his choice. We believe the Commission, in evaluating the evidence, correctly found that if a dealer wishes to continue in good standing with the company and retain his lease or contract, it is advantageous that he carry sponsored TBA.

On the issue of coercion the examiner said:

> It is clear from the record in this proceeding that the Atlantic dealers did not consider the nonforcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the change-over and prospective dealers thereafter had the right to select or reject the TBA sales program offered by Atlantic. The prospective dealer making application for an Atlantic

> station would not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salesmen insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

He concluded that "coercion and pressure were used [by Atlantic] on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of nonsponsored items."

The Commission affirmed the examiner's finding of coercion. It said that although the proclaimed policy of Atlantic has been to permit its dealers to carry whatever TBA they choose, the policy in practice is ignored and the dealers "have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA."

The Commission referred in particular to witnesses representing suppliers competing with Goodyear and Firestone who testified that the dealers responded negatively to their sales efforts because the dealers felt they were required to purchase sponsored TBA. There was evidence that if the dealers purchased nonsponsored TBA, they were told by Atlantic to return it or, in any event, not to display it. There was also testimony that leases had been cancelled or allowed to terminate because dealers had purchased nonsponsored TBA.

Atlantic contends that the finding of coercion is not supported by substantial evidence. It says that the finding rests on the testimony of only thirteen dealers out of more than five thousand; that these isolated instances of "unauthorized" coercion are insufficient to establish a violation of Atlantic's "free choice policy." We disagree. The

evidence relating to overt coercive tactics, although not extensive, must be considered with the testimony of the witnesses representing competing suppliers to the effect that the dealers felt that if they did not carry sponsored TBA they risked reprisal. Also to be considered are the policing tactics of Atlantic's salesmen and the surveillance by the so-called phantom customer inspectors. Moreover, it should be noted that the examiner, in considering the testimony of the dealers who testified for Atlantic, recognized that these witnesses "were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases."

Atlantic's contention that sporadic reprisals against dealers are an insufficient basis for finding coercion is answered in *United States* v. *Loew's Inc.*, 371 U. S. 38, 50 (1962). There, the Court said:

> Appellants . . . make the . . . argument that each of them was found to have entered into such a small number of illegal contracts as to make it improper to enter injunctive relief. . . . We disagree. Illegality having been properly found, appellants cannot now complain that its incidence was too scatterd to warrant injunctive relief.

Atlantic's power to cause its dealers to carry either Goodyear or Firestone TBA does not depend upon overt coercive methods. The totality of facts surrounding the relationship between the oil company and the dealers points to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA.

Atlantic says that its influence over its dealers to purchase sponsored TBA short of force, threat, or intimidation is lawful; that it may recommend high quality TBA to its dealers; and that such action serves a legitimate business purpose in the promotion of the sale of gasoline. This would be a persuasive argument except for the dealers' economic dependency upon the oil company. In that setting,

recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats.

Osborn v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), although a private suit under the antitrust laws, dealt with a sales commission contract similar to the one before us. Osborn, a dealer, charged that his lease was cancelled because he had not purchased sufficient quantities of Goodyear TBA. The court of appeals held that an illegal "arrangement or condition," a tie-in, existed between the oil company and its dealers which permitted the plaintiff to recover. Although the court was not specifically concerned with the legality of the Goodyear-Sinclair sales commission contract, it held that, "the Goodyear TBA was tied to the lease and the sale of the gasoline." Chief Judge Sobeloff characterized the arrangement thus:

> The perniciousness of the imposed tie-in is aggravated by the fact that the defendant [Sinclair] is not even in the business of selling the tied products, but is employing its economic power in the gasoline industry to force his dealers to do business with a supplier in another industry under an arrangement that yields the defendant an extraneous revenue. The defendant in this case goes a step further than the supplier in the usual tie-in case, for here the tied product is not even handled or sold by the defendant, but it farms out to another, for a price, its coercive economic power.

We think this an apt characterization of the Goodyear-Atlantic sales commission system.

It is true that Goodyear's contract with Atlantic in itself has no tying features. Only when the contract is considered contextually with the oil company-dealer relationship and the economic power that Atlantic has over its dealers does its tying feature emerge. Manifestly, the system was designed to exploit Atlantic's created and controlled service

station market. The Commission properly, we think, decided that the system integrates Atlantic's economic power over its service station market into the Goodyear TBA distribution system, thus giving Goodyear, for a price, a captive market.

As pointed out in *McElhenney Co.* v. *Western Auto Supply Co.*, 269 F. 2d 332 (4th Cir. 1959), an illegal understanding (such as a tying arrangement) may be implied from a course of dealing between the parties. Here, the tying arrangement *is* the sales commission system operated by Goodyear and Atlantic. In its narrower aspects the system is a tying arrangement because it requires the buyer of one product, the service station dealer who purchases Atlantic gasoline, to buy another line of merchandise, Goodyear TBA. Surrender by the dealer of his freedom to choose between brands of TBA is *per se* illegal if a "not insubstantial" amount of interstate commerce is affected. *Northern Pac. Ry.* v. *United States*, 356 U. S. 1 (1958); *International Salt Co.* v. *United States*, 332 U. S. 392 (1947).

Appraising the broader aspects of the system as a tying arrangement, we think the Commission correctly determined that the system injures competition in the distribution of TBA at the manufacturing, wholesale, and retail levels. Interbrand competition for the Atlantic service station TBA market is foreclosed to Firestone in Goodyear's territory and Goodyear is foreclosed from selling to the service stations in Firestone's territory. Moreover, the record substantiates the Commission's finding that suppliers of TBA competing with Goodyear and Firestone are substantially foreclosed from selling their products to Atlantic dealers. Atlantic's service station market is fenced off so as to make it unavailable to both manufacturers and wholesalers of competing brands.

Intrabrand competition is perniciously affected. Restraint results inevitably from the designation of a single supply point for TBA sales to the Atlantic dealer. Other Goodyear wholesalers cannot compete with the supply

point dealer for the business of the Atlantic service stations in his territory.[5]

We are convinced that the Commission correctly analyzed the sales commission system and found, in effect, a tying arrangement inherently anticompetitive. It is anticompetitive largely because competition for the business of the individual service station is replaced by competition for the oil company's domination of its dealers.

The Commission found that service stations constitute a large and necessary market for TBA and evaluated the Goodyear-Atlantic sales commission system in relation to Atlantic's seventeen-state service station TBA market. Atlantic has nearly seven thousand service stations in this territory. As of 1955 Goodyear had signed TBA contracts with 2,183 of the 2,248 Atlantic service stations in the eight-state territory assigned it. As of 1955 Firestone had signed virtually all the 4,698 Atlantic stations in the ten-state area assigned it. Goodyear's TBA sales to Atlantic dealers rose from approximately two and one-half million dollars in 1951 to more than five and one-half million dollars in 1955. Firestone's sales to Atlantic dealers increased from $3,243,350 in 1951 to $5,562,936 in 1955. Total Goodyear and Firestone sales under the Atlantic contracts from June, 1950 to June, 1956 was more than $52,000,000. Atlantic's stations constitute 3.4 per cent of the total number of service stations in the United States and it sells 2.5 per cent of the gasoline sold in the nation.

We believe the foregoing facts adequately demonstrate that a substantial amount of commerce has been affected by Atlantic's contracts with Goodyear and Firestone. These facts also demonstrate that Atlantic has sufficient economic power in the gasoline market to restrain a substantial amount of commerce in the service station TBA market within the territory serviced by Atlantic. Therefore, the Goodyear-Atlantic sales commission system is within the

[5] Of the 1,155 independent Goodyear dealers in Atlantic's marketing area, only 128 were acting as supply points for Atlantic service stations.

"substantiality of economic effect on commerce" test defined in *Northern Pac. Ry.* v. *United States, supra,* and *Standard Oil Co.* v. *United States,* 337 U. S. 293 (1949). *Cf. Osborn* v. *Sinclair Refining Co., supra.*

II.

Goodyear contends that the provision in the Commission's order prohibiting it from entering into sales commission contracts with any oil company is not supported by substantial evidence. Atlantic makes a similar contention that the order is too broad because it prohibits the oil company's participation in a sales commission arrangement with any TBA supplier.

We think the Supreme Court answered petitioners' contentions in *F. T. C.* v. *Ruberoid Co.,* 343 U. S. 470, 473 (1952), when it said:

> Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. In carrying out this function the Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.

Petitioners' contention that the Commission's findings are inadequate and do not meet the requirements of section 8 of the Administrative Procedure Act, 5 U. S. C. §1007(b), is without merit.

Moreover, we are not persuaded by Atlantic's contention that the hearing examiner, in making his decision, considered evidence outside the record since he heard a similar complaint filed against Firestone and Shell Oil Company;

nor are we persuaded by Goodyear's contention that the finding of the violation against it is based on evidence admitted against Atlantic but struck as to Goodyear. While the examiner received evidence concerning both the Firestone-Atlantic and the Firestone-Shell sales commission contracts, we are satisfied that the findings of both the examiner and the Commission were based on proper and sufficient evidence and that there was no denial of procedural due process.

The Commission's order is affirmed and will be enforced.

APPENDIX D.

ORDER OF THE COURT OF APPEALS.

UNITED STATES COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT,

CHICAGO, ILLINOIS, 60610.

Friday, April 24, 1964.

Before:

Hon. ELMER J. SCHNACKENBERG, Circuit Judge,
Hon. LATHAM CASTLE, Circuit Judge,
Hon. LUTHER M. SWYGERT, Circuit Judge.

THE GOODYEAR TIRE & RUBBER COMPANY,
THE ATLANTIC REFINING COMPANY,
Petitioners,

vs.

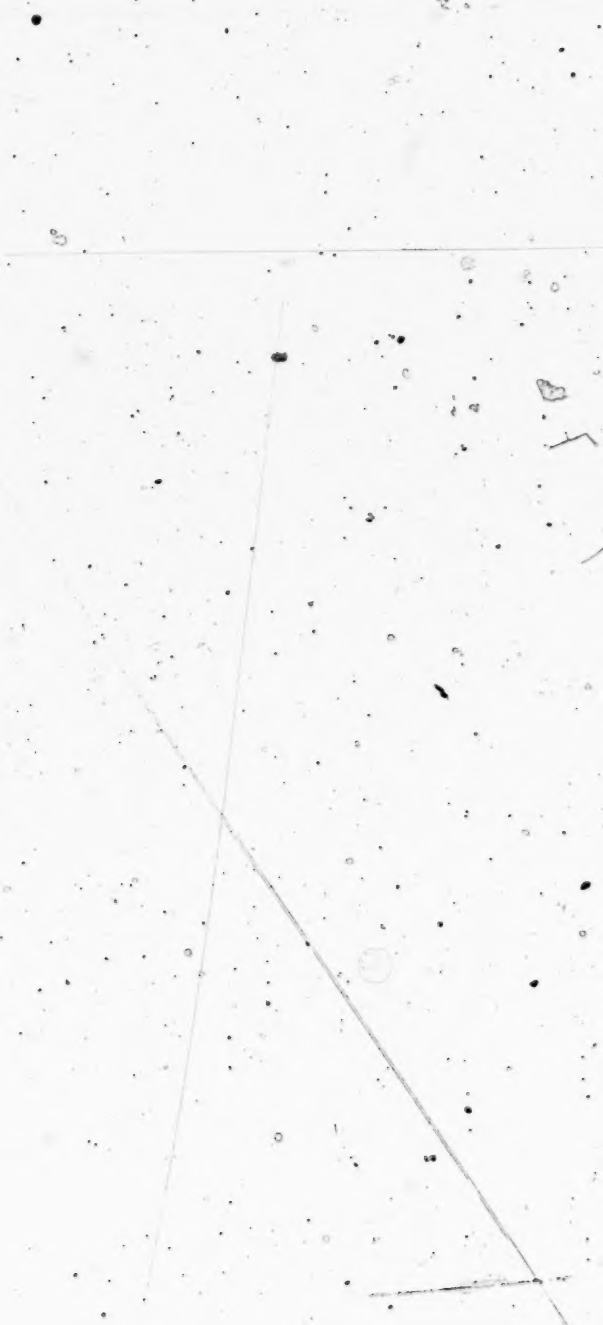
No. 13339, 13340.

FEDERAL TRADE COMMISSION,
Respondent.

Petitions for review of an order of the Federal Trade Commission.

This cause came on to be heard on the petitions for review of an order of the Federal Trade Commission and the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is ordered by this Court that the order entered in this cause by the Federal Trade Commission on March 9, 1961, be, and the same is hereby AFFIRMED, and the order will be enforced, in accordance with the opinion of this Court filed this day. Upon presentation an appropriate decree will be entered.



APPENDIX E.

DECREE OF THE COURT OF APPEALS.

UNITED STATES COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT.

THE GOODYEAR TIRE & RUBBER COMPANY, Petitioner, *v.* FEDERAL TRADE COMMISSION, Respondent.	No. 13339.

May 20, 1964
Final Decree Affirming and Enforcing Order to Cease and Desist

The Goodyear Tire & Rubber Company, a corporation, petitioner herein, having filed in this Court on May 10, 1961, a petition to review and set aside an order to cease and desist issued against it on March 9, 1961, by the Federal Trade Commission, respondent herein, in a proceeding before it entitled "In the Matter of The Goodyear Tire & Rubber Company, a corporation, and The Atlantic Refining Company, a corporation, Docket No. 6486;" and a copy of said petition having been served upon respondent; and the respondent having thereafter certified and filed in this Court a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument on January 9, 1964, and this Court having rendered its decision on April 24, 1964:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the prayer of the aforesaid petition to set aside the order of the Federal Trade Commission as to the petitioner herein be, and it hereby is, denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the order to cease and desist of the Federal Trade Commission

be, and it hereby is, affirmed, and that petitioner be, and it hereby is, commanded forthwith to obey said order and to comply therewith.

By the Court.

U. S. C. A.—7th Circuit
FILED
May 20 1964
KENNETH J. CARRICK
Clerk

/s/ ELMER J. SCHNACKENBERG
Elmer J. Schnackenberg, Circuit Judge

/s/ LATHAM CASTLE
Latham Castle, Circuit Judge

/s/ LUTHER M. SWYGERT
Luther M. Swygert, Circuit Judge

Entered: May 20, 1964

A True Copy:

Teste:

/s/ KENNETH J. CARRICK
Clerk of the United States Court of Appeals for the Seventh Circuit.

[SEAL]

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION

These cases primarily involve the validity, under Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, of a so-called "sales commission agreement" between the petitioners Atlantic Refining Company ("Atlantic"), a large marketer of petroleum products (Pet. App. A–5),[1] and Goodyear Tire & Rubber Company ("Goodyear"), one of the nation's largest tire com-

[1] "Pet. App." refers to the separate appendix volume filed with the petition for a writ of certiorari in No. 296.

747-576—64——1

panies. Pursuant to this agreement, Atlantic promotes the sale of Goodyear tires, batteries and automotive accessories ("TBA") to Atlantic gasoline dealers in the northeast United States, in exchange for the payment of a commission to Atlantic measured by the amount of Goodyear sales to such dealers.[2]

The Federal Trade Commission, describing the Atlantic-Goodyear sales commission agreement as "a classic example of the use of economic power in one market [gasoline distribution] to destroy competition in another market [TBA distribution]" (Pet. App. B–64), held that the agreement and its implementation constituted an unfair method of competition in violation of Section 5; and entered an order prohibiting either company from entering into or continuing any such agreements (Pet. App. B–67–71). In two companion cases, *Federal Trade Commission* v. *Texaco, Inc. and The B. F. Goodrich Co.* (FTC Docket 6485) and *Federal Trade Commission* v. *Shell Oil Company and The Firestone Tire & Rubber Company* (FTC Docket 6487), the Commission held other sales commission agreements similarly illegal and entered similar orders. In the present cases the Court of Appeals for the Seventh Circuit unanimously upheld the Com-

[2] The agreement provides for the payment of a 10 percent commission on all sales of TBA to Atlantic dealer outlets, and a commission of 7½ percent on all sales of TBA to Atlantic franchise petroleum distributors. Atlantic entered into a similar agreement with the Firestone Tire & Rubber Co. covering its dealers in another part of the country (Pet. App. A–7–8). Petitioner Goodyear also had similar sales commission arrangements for distribution of its TBA through the outlets of 11 other oil companies (Pet. App. B–2). The validity of these other distribution arrangements also is involved in these cases.

mission's orders (331 F. 2d 394; Pet. App. C–1–19). In the *Texaco-Goodrich* cases however, the Court of Appeals for the District of Columbia Circuit (Judge Washington concurring in part and dissenting in part) reversed the Commission and remanded the cause to the agency with instructions to dismiss the complaint (*Texaco, Inc. et al.* v. *Federal Trade Commission*, Nos. 17,915 and 17,923, C.A.D.C., July 30, 1964).[3] The opinion in the *Texaco* cases is reprinted in the Appendix (App. pp. 1a–27a).

The Seventh and the District of Columbia Circuits, in respectively upholding and condemning the sales commission contracts, each looked to the evidence of the oil company's economic power over its dealers and the impact of the sales-commission agreement in the particular market involved. Because the decisions rest upon different records, they might not appear to involve any conflict as to the governing legal principles. There is, however, a basic inconsistency in the rationale of the two courts which underlies the differing results. This conflict in approach is epitomized, we believe, by contrasting the majority's statement in *Texaco-Goodrich*, that Texaco's "contracts with the dealers do not give rise" to "controlling economic power over its dealers" (App. p. 15a), with the Seventh Circuit's assertion, in *Atlantic-Goodyear*, that Atlantic had controlling economic power over its dealers and that the "keystone" of this power was the lease and equipment loan contracts between Atlantic and its dealers (Pet. App. C–12). The conflicting approaches are further

---

[3] In a proceeding to review the Commission's decision in *Shell-Firestone*, the Fifth Circuit has heard oral argument and the case is pending decision.

illustrated in the response of the two courts to the argument that an oil company should be permitted to "recommend" sponsored TBA to its dealers. The Seventh Circuit stated that because of the dealers' "economic dependency upon the oil company * * * recommendation [by Atlantic] is tantamount to command" (Pet. App. C–14–15) and agreed with the Commission that, viewed in the context of the oil company-dealer relationship, Atlantic's recommendation made the sales commission system of TBA distribution "in effect, a tying arrangement inherently anticompetitive" (Pet. App. C–17).[4] The *Texaco-Goodrich* majority, on the other hand, stated (App. p. 16a):

> An oil marketing company's recommendation to its dealers that they purchase a particular line of TBA, even though it receives a commission for doing so, is not incompatible with its primary business of selling petroleum products.

The government believes that in view of the conflicting rationale of these two courts of appeals, review by this Court is appropriate.[5] Moreover, the validity of these sales commission agreements presents an important question. Such agreements are widely

[4] See, also, *Osborn* v. *Sinclair Refining Company*, 286 F. 2d 832, 838–841 (C.A. 4), certiorari denied, 366 U.S. 963, and *Lessig* v. *Tidewater Oil Co.*, 327 F. 2d 459, 469 (C.A. 9), certiorari denied, 377 U.S. 993, where the courts indicated that the sales commission system of TBA distribution when utilized by an oil company with controlling power over its dealers is illegal.

[5] It is, moreover, inevitable that the pending decision of the Fifth Circuit in *Shell-Firestone* will be inconsistent with either the Seventh or the District of Columbia Circuit decision.

used and have a substantial economic impact in the marketing of tires, batteries and accessories and upon the relations of petroleum companies with their dealers. The uncertainties and inconsistencies that would result if these two decisions were permitted to stand, are readily apparent.

The government intends to file a petition for a writ of certiorari to review the decision of the District of Columbia Circuit. While we believe that the decision below in the present cases is correct we join with the petitioners in urging this Court to review it.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JAMES MCI. HENDERSON,
General Counsel,
Federal Trade Commission.

OCTOBER 1964.

APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,915

TEXACO, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 17,923

THE B. F. GOODRICH COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petitions to Review Order of the Federal Trade Commission

Decided July 30, 1964

Before WILBUR K. MILLER, WASHINGTON and BURGER, *Circuit Judges.*

WILBUR K. MILLER, *Circuit Judge:* Texaco, Inc. (formerly The Texas Company) and The B. F. Goodrich Company have filed separate petitions for review of an order of the Federal Trade Commission which was issued April 15, 1963, after proceedings which

will be described. The cases were heard together and will be disposed of in a single opinion.

On January 11, 1956, after an investigation which began at least as early as 1952, the Federal Trade Commission issued a complaint against the petitioners charging them with violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by engaging in unfair methods of competition in interstate commerce. Specifically, the object of the Commission's attack was the implementation of a contract between the two companies, entered into in 1940, in which Texaco undertook, in return for a commission, to promote the sale of Goodrich tires, batteries and accessories (TBA) to its thousands of dealers in its petroleum products. It was alleged that Texaco has entered into a similar contract with Firestone Tire & Rubber Company.

The complaint stated that influence and control over the purchasing and marketing activities of its dealers has been and is being exercised by Texaco "by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodrich and Firestone, the sellers designated by it." The acts and practices of Goodrich and Texaco under the commission contract, the complaint said,

> ". . . have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act."

Essentially, the complaint was that Texaco coerces its dealers, through economic pressure, to distribute Goodrich TBA and thus unfairly and unlawfully prevents Goodrich's competitors from selling TBA to Texaco's outlets.

Answers by the companies placed the essential allegations of the complaint in issue, after which evidentiary hearings were conducted over a period of nearly three years. They were concluded December 10, 1958. The examiner, in his initial decision issued October 23, 1959, found that Goodrich had not done anything to force Texaco outlets to buy its products; that there was neither charge nor proof that Goodrich had conspired with Texaco to restrain competition; and that the commissions paid by it under the contract were for substantial services rendered by Texaco in promoting the sale of its products. Accordingly, the initial decision of October 23, 1959, dismissed the complaint against Goodrich.

With respect to Texaco, the examiner found that the contracts between Texaco and its dealers do not contain any provision requiring the latter to purchase only Goodrich TBA. He said the commission paid to Texaco by Goodrich is based on substantial services rendered by Texaco in promoting the sale of Goodrich TBA, and added:

> "No inference or implication can be drawn, simply from the contractual relationship between Texas and its dealers, that the degree of control by Texas over its dealers is sufficient to force its dealers to purchase only sponsored TBA."

The examiner found, however, that

> ". . . the record in this proceeding *as a whole* indicates that coercion and pressure was [*sic*], in fact, brought on *a substantial number*

> *of dealers* to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items."[1] (Emphasis supplied.)

Pursuant to this, the examiner's initial decision of October 23, 1959, ordered Texaco to cease and desist from coercing its dealers into purchasing TBA from any particular supplier.

In keeping with the deliberate progress of this proceeding, the Commission did not act on the initial decision of October 23, 1959, until March 9, 1961. On that day it handed down an opinion in which it not only reversed the examiner's dismissal of Goodrich but also found

> ". . . that Texaco had sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. . ."

Proceeding from its assumption that Texaco had controlling economic power over its dealers, "even without the use of overt coercive tactics," the Commission said:

> ". . . The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the*

[1] This was a rather extraordinary conclusion in view of the fact that not one of Texaco's more than 38,000 dealers was called to testify before the examiner in support of the complaint. The examiner based the statement on the testimony of five former Texaco dealers who said they had been coerced, although five other former dealers and 54 active dealers called by Texaco said they had never been coerced or influenced in any way as to Goodrich TBA.

competitive effects of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

"At issue in this litigation, then, is the legality of a particular method of distributing TBA used by respondents. A key fact in evaluating the competitive effects of respondents' use of the sales commission method of distributing TBA is the fact that Texaco has sufficient economic power with respect to its retail and wholesale petroleum distributors to cause them to purchase substantial quantities of the brand of TBA sponsored or sold by Texaco. But such economic power is a fact existing independently of any particular method of distributing TBA which Texaco may use. Whether the sales commission agreements between Firestone and Texaco and Goodrich and Texaco are unlawful must depend, therefore, upon the characteristics and the competitive effects of these sales commission agreements. For reasons set forth hereinafter, we conclude that this case must be remanded in order that market data may be introduced to show the competitive effects of Texaco's sales commission agreements with Goodrich and Firestone upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels."

Having thus concluded that the legality of the sales commission agreements depends upon the "characteristics[2] and the competitive effects" of the agreements, the Commission closed its opinion by saying:

"However, the record in this case does not contain sufficient market data to enable the

[2] The "characteristics" of the agreements were of course fully known to the Commission, which had before it their complete text.

> Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents. The case will be remanded to the hearing examiner for the taking of evidence indicating the competitive effects of the sales commission contracts at the manufacturing, wholesale and retail levels of TBA distribution."

More than a year after the remand of March 9, 1961,[3] the examiner conducted hearings from July 16 to July 19, 1962, at which the only proof introduced was in the form of exhibits received over the objection of the petitioners. A new initial decision was filed by the examiner September 24, 1962. In it he incorporated the findings of fact of his first initial decision and made additional findings of fact based on the record as supplemented after remand. The examiner noted that he was bound by the Commission's reversal of his dismissal of Goodrich, and by its finding that Texaco has sufficient economic power over its dealers to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. He conluded that

> ". . . the only issue left for consideration of the hearing examiner under the terms of the Commission's opinion and order of remand, is the competitive effects of the sales commission plan used by Goodrich with The Texas Company, and whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice."

---

[3] A part of this period was consumed in the petitioners' unsuccessful attempt to enjoin further hearings.

The examiner disposed of the "only issue left for [his] consideration" by concluding that

> "The use of the sales commission plan of distribution of TBA by the respondents, The Texas Company and The B. F. Goodrich Company as herein found, has a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act."

In obedience to the Commission's order on remand, the examiner abandoned his former position, held Goodrich as a respondent, and concluded:

> "The use of the sales commission method of distribution by Goodrich was designed to take advantage of the economic control which Texaco had over its dealers, and by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers."

Although he had the first time dismissed Goodrich, and had merely ordered Texaco to cease and desist from the coercive practices he had found from the testimony of five ex-dealers, this time the examiner entered a broad order as to both respondents. He ordered Texaco to cease and desist from entering into or continuing in effect any contract with Goodrich or any other rubber company or tire manufacturer, or

any other supplier of tires, batteries or accessories, by the terms of which Texaco receives anything of value in connection with the sale of TBA to its dealers. The examiner ordered Goodrich to cease and desist from operating under its contract with Texaco and prohibited it from entering into a similar contract with any other marketing oil company.

The order of remand of March 9, 1961, was entered by a Commission composed of Chairman Kintner and Commissioners Secrest, Anderson and Kern. Accompanying it was the opinion to which we have referred, written by Chairman Kintner and concurred in by the other three members of the Commission. Shortly thereafter—on March 21, 1961—Earl W. Kintner was replaced as Chairman by Paul Rand Dixon, who had not been a member of the Commission theretofore. One of the acts of the new Chairman when he had been in office only a short time led to the phase of the proceeding which we shall now consider.

On February 18, 1963, before the Commission had acted on the examiner's new initial decision of September 24, 1962, Texaco filed a motion that Chairman Dixon withdraw from participation in the proceeding or that the Commission determine him to be disqualified. The basis of the motion was a speech made by Dixon before the National Congress of Petroleum Retailers, Inc., in Denver, Colorado, on July 25, 1961, while the case was pending before the examiner after remand and before any steps had been taken by him. In the course of his address, according to a press release issued by the Commission itself, the then newly appointed Chairman of the Commission said:

> "Your problems are many, and many of them are the problems of the Federal Trade Commission, too; for the Commission is concerned with promoting fair competition. More par-

ticularly, many of your problems are ours because they arise from practices prohibited by two of the most important statutes administered by the Commission—discriminatory pricing, prohibited by the Robinson-Patman Act, and other unfair acts, practices, and methods of competition, prohibited by the Federal Trade Commission Act.

* * * * *

"We at the Commission are well aware of the practices which plague you and we have challenged their legality in many important cases.

"You know the practices—price fixing, price discrimination, and overriding commissions on TBA.

"You know the companies—Atlantic, Texas, Pure, Shell, Sun, Standard of Indiana, American, Goodyear, Goodrich, and Firestone.

* * * * *

"Some of these cases are still pending before the Commission; some have been decided by the Commission and are in the courts on appeal. You may be sure that the Commission will continue and, to the extent that increased funds and efficiency permit, will increase its efforts to promote fair competition in your industry."

The Commission denied the motion that it determine Chairman Dixon to be disqualified, and he declined to withdraw from participation. Instead, he took part in the entry of the order of April 15, 1963, more than two years after the remand, which adopted the examiner's initial decision and order of September 25, 1962, which as we have seen, was adverse to Texaco and Goodrich and which is now under review. Before turning to the question whether the order of April 15, 1963, was supported by the record, we consider the propriety of Chairman Dixon's participation in that decision.

In *Gilligan, Will & Co.* v. *Securities and Exchange Comm'n,* 267 F. (2d) 461 (1959), the Commission, three days after commencing proceedings, issued a press release stating in effect that Gilligan, Will & Co. and others had violated Section 5 of the Securities Act of 1933. Although the Second Circuit held that petitioners' failure to make timely objection had waived their right to assert the defect of prejudgment, the Court strongly disapproved of the Commission's behavior. It said, at pages 468–9:

> "* * * [T]he Commission's reputation for objectivity and impartiality is opened to challenge by the adoption of a procedure from which a disinterested observer may conclude that it has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it. * * *"

In this case, a disinterested reader of Chairman Dixon's speech could hardly fail to conclude that he had in some measure decided in advance that Texaco had violated the Act.

We said in *Amos Treat & Co.* v. *Securities and Exchange Comm'n,* 113 U.S. App. D.C. 100, 107, 306 F. (2d) 260, 267 (1962):

> ". . . [A]n administrative hearing of such importance and vast potential consequences must be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a quasi-adjudicatory proceeding meet the basic requirement of due process."

The administrative hearing in the present case was certainly as important as that in the *Amos Treat* case, and has perhaps even greater potential consequences. We conclude that Chairman Dixon's participation in the hearing amounted in the circumstances to a denial

of due process which invalidated the order under review. If that were the only infirmity in the order, we should be constrained to remand the cases to the Commission for a *de novo* consideration in which Chairman Dixon does not take part. His Denver speech, made before the matter was submitted to the Commission but while it was before the examiner, plainly reveals that he had already concluded that Texaco and Goodrich were violating the Act, and that he would protect the petroleum retailers from such abuses.

But that is not all. The Supreme Court has said that in reviewing the substantiality of the evidence we must consider all the evidence including "the body of evidence opposed to the Board's view." *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 487–8 (1951). Viewed in this way we are convinced that the order of April 15, 1963, is not supported by substantial evidence on the record as a whole. The order under review, as we have said, adopted the examiner's initial decision and order of September 24, 1962, after slight modification. In it, the Commission said:

> "Respondents contend that the tables, surveys, and matters officially noticed by the examiner on remand were improperly admitted both because they are inappropriate objects for official notice and because respondents were afforded inadequate opportunity to rebut them.
>
> "It is not necessary to pass upon the correctness of these contentions, since the Commission excludes from its present decision any reliance upon the challenged evidence. It finds that the other evidence of record amply supports the conclusions and the order of the hearing examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber Co., et*

al., Docket 6486, March 9, 1961, and *Firestone Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961. . . ."[4]

Thus, in its consideration of the revised initial decision and order, the Commission expressly disclaimed any reliance upon the evidence introduced after remand and held that the evidence or record before the remand "amply supports the conclusions and order of the hearing examiner." This was the same record which the Commission on March 9, 1961, had said "does not contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents."

But, in successfully resisting an action in the District Court by Texaco and Goodrich to enjoin the remand, the new Commission contended that it "needed additional evidence in order to decide the issues presented." It asserted that the opinion of March 9, 1961, ordering the remand showed that the Commission "is not seeking a retrial of matters already tried but rather envisions supplementary evidence on what it considered to be significant facts in any assessment of the competitive effects of the sales commission agreements. . . ."

Despite these representations, the Commission on April 15, 1963, contrary to the former Commission's determination that the record did not justify such a finding, found the petitioners in violation of Section 5 of the Federal Trade Commission Act on the basis of that record. It adopted the examiner's revised

[4] It is perhaps not without significance that Commissioner Anderson, the only member of the Commission as constituted on April 15, 1963, who had participated in the remand of March 9, 1961, did not concur "for the reason that the command of the remand order of March 9, 1961, has not been met and complied with . . ."

order which prohibited Goodrich from entering into sales commission agreements with Texaco or any other marketing oil company, and prohibited Texaco from entering into such agreements with Goodrich or any other rubber company or tire manufacturer, or any other supplier of tires, batteries or accessories.

The new Commission placed itself in an anomalous position: first, it vigorously asserted (as the former Commission had held when it remanded the proceeding) that it could not find against the petitioners without additional evidence as to the competitive effects of the sales commission contracts; then, it decided that same issue against the petitioners without any consideration of the record made after remand, and without repudiating or even commenting upon its confessed inability to reach that issue previously.

Although the two Commissions reached diametrically opposite conclusions from the same record as to whether unfair competition had been shown, both based their action upon their conclusion that

> "Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA *even without the use of overt coercive tactics. . . .*"[5] (Emphasis supplied.)

---

[5] Although the examiner concluded in his first initial decision that the record "as a whole" indicated coercion had been brought on "a substantial number of dealers" (five former dealers out of many thousands of former and active dealers), the remanding Commission apparently did not regard such meager proof as convincing, for it expressly discarded it as a basis of decision, and concluded as stated in the text above that Texaco had controlling economic power over its dealers without the use of coercive tactics.

The examiner's first initial decision had not so concluded, but the remanding Commission's conclusion as to Texaco's economic

But neither Commission referred to any evidence in support of this finding, and neither made any finding of fact which would sustain a conclusion that Texaco had such economic power over its dealers, and we are unable to see substantial evidence on the record as a whole to sustain that conclusion. The Commission did not reject its examiner's statement that no inference can be drawn from the contracts between Texaco and its dealers that the former has sufficient economic power over the latter to force them to purchase only sponsored TBA. And it did not say (for there was no proof from which it could conclude) that Texaco's treatment of its dealers and their reaction indicated that Texaco had, or had attempted to exercise, the controlling economic power over its dealers that the Commission found. Indeed, the examiner found as a fact that Texaco's policy, announced to all its salesmen as long ago as June 1, 1948, is that it has neither the right nor the desire to dictate to the dealer or to influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it.[6] This finding was adopted by the Commission.

---

power was parroted by him in his initial decision after remand. He added thereto the following sentence selected from another portion of the remanding Commission's opinion: "Such economic power exists independent of any particular method of distributing TBA which Texaco might use." This new conclusion was adopted by the Commission in its decision of April 15, 1963. Consequently, both Commissions concluded that Texaco had controlling economic power without the use of coercive tactics.

[6] Finding of Fact No. 8 in the examiner's post-remand initial decision is as follows:

"As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial man-

Consequently, we find no basis in the record for the Commission's conclusion that Texaco has controlling economic power over its dealers. The contracts with the dealers do not give rise to it, and it is the announced policy of Texaco to respect the independence of its dealers; as the evidence overwhelmingly shows, its practice has followed its policy. The mere fact that Texaco is a giant corporation and the dealers are in the main small businessmen cannot be said to demonstrate controlling economic power over the latter, particularly when, as here, the evidence is to the contrary. We hold, therefore, that the Commission erred in concluding that Texaco has sufficient economic power over its dealers, without the use of coercive tactics, to cause them to buy substantial quantities of Goodrich TBA. We have already noted that the Commission did not find coercive tactics had been used, and that the record as a whole demonstrates the contrary.

From its unwarranted assumption that Texaco had such economic power, the Commission proceeded to the conclusion that the question whether the exercise of that power in Goodrich's behalf amounts to an unfair method of competition depends on the "competitive effects" of the sales commission agreements. It

---

agers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a right to recommend certain lines, but that Texas has neither the right nor the desire to dictate to the dealer or to influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal."

said that Texaco's controlling economic power is a "key fact" in evaluating the competitive effects of the sales commission contracts. Thus, the Commission itself said that the supposed need to examine the "competitive effects" was due entirely to its conclusion that Texaco not only had, but exercised, controlling economic power over its dealers without using coercive tactics. This conclusion was indeed the keystone of the Commission's ultimate decision, without which it cannot stand. That being true, our holding that there is not a substantial evidentiary basis in the record for the Commission's assumption that Texaco had and exercised coercive economic power causes its conclusion based thereon to collapse.

The Commission's sweeping order not only condemned the Texaco-Goodrich contract but also held illegal any sales commission arrangement between an oil marketing company and a TBA supplier. This either attributes to all such oil companies inherent controlling economic power over their dealers, or implies there is basic illegality in such arrangements. Our view is that, in any case, there must be substantial evidence on the whole record of the supposed economic power of the oil marketing company before a prohibiting order can be based upon it. As to the implication that sales commission agreements between oil companies and TBA suppliers are basically illegal regardless of their terms, we disagree. There is no reason to condemn such contracts unless they result in unfair competition. An oil marketing company's recommendation to its dealers that they purchase a particular line of TBA, even though it receives a commission for doing so, is not incompatible with its primary business of selling petroleum products. The dealers, at least in the situation here involved, are quite free to accept or reject the recommendation, and to handle

a different line if they think it would be more acceptable to their customers.

The Commission's broad order prohibited contracts for sponsorship of TBA sales to oil marketing company dealers only when the company receives compensation for the sponsorship. The vice found by the Commission in the arrangement seems therefore to be the payment of commissions. Yet the Commission adopted the findings of the examiner which described in detail the services performed by Texaco under its contract with Goodrich and also adopted his conclusions that

> "The consideration for the payment of a commission to Texas under the sales commission contract is based upon substantial services rendered by Texas in promoting the sale of Goodrich TBA to Texaco dealers and distributors."

We see nothing illegal or even unethical in the payment of commissions for such services, except in instances where an oil marketing company forces its dealers through coercive tactics or controlling economic power to buy the sponsored products. Neither of those influences was proved in this case, and it may not be presumed that either will exist in future similar situations.

After four years of preliminary investigation followed by eight years of litigation, including the remand for additional evidence said to have been necessary but never used, the Commission has not been able to show illegality in the Texaco-Goodrich contract of 1940. During that long period, the companies necessarily have devoted much time and money to their defense. Although the Commission must be allowed considerable leeway in developing a record, its efforts in this case—fruitless after a dozen years—have exceeded permissible limits and have had unreasonably

harassing and oppressive effects upon the companies under attack. Because the Commission's drastic orders are not supported by the record as a whole and because of the undue protraction of the administrative process, we are of the opinion that this long drawn out proceeding should now be terminated. Accordingly, the order under review will be set aside, and the matter will be remanded to the Commission with instructions to dismiss the complaint.

It is so ordered.

WASHINGTON, *Circuit Judge, concurring in part and dissenting in part:*

I agree with the majority that Chairman Dixon's conduct disqualified him from participating in the Commission's order, and that the order must be set aside for that reason. I would not, however, dismiss the entire proceeding, either on the merits or because of the Commission's delays. I would remand for further consideration of the case by the Commission, without the participation of Chairman Dixon, and on a basis which I will outline later on.

I

With reference to Chairman Dixon's conduct, I would add only this. Federal Trade Commissioners, like other adjudicators, are entitled to hold and express views on the laws they are charged with enforcing and applying. They "do not stand aloof on . . . chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."[1] We do not equate impartiality with utter indifference. A judge does not deny litigants a fair hearing by sitting in a case "after he had expressed an opinion as to whether certain types of conduct

[1] CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 168 (1921).

were prohibited by law."[2] We do not expect a Trade Commissioner to be neutral on anti-monopoly policies.

A fair hearing is denied, however, if the administrative judge, prior to examining the evidence and findings, has indicated his belief that named individuals or firms are violating the statute, and the "guilt" or "innocence" of such parties depends on certain factual findings which are in dispute. Once an adjudicator has taken a position apparently inconsistent with an ability to judge the facts fairly, subsequent protestations of open-mindedness on his part cannot restore a presumption of impartiality. Whether justice was in fact done is not the issue; an administrative hearing "must be attended, not only with every element of fairness but with the very appearance of complete fairness."[3] We must presume that a fair hearing was denied[4] if a disinterested observer would have reason to believe that the Commissioner had "in some measure adjudged the facts . . . of a particular case in advance of hearing it."[5]

Chairman Dixon's speech leaves a clear impression that his belief that petitioners had violated the Act was far stronger than the "reason to believe" which

---

[2] *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683 at 703 (1948).

[3] *Amos Treat & Co.* v. *Securities and Exchange Commission*, 113 U.S. App. D.C. 100, 107, 306 F. 2d 260, 267 (1962).

[4] "[J]ustice must satisfy the appearance of justice." *Offutt* v. *United States*, 348 U.S. 11, 14 (1954).

[5] *Gilligan, Will and Co.* v. *Securities and Exchange Commission*, 267 F. 2d 461, 469 (2d Cir. 1959). In that case the Securities and Exchange Commission, three days after commencing adjudicatory proceedings, had issued a press release, stating that the parties involved had violated the relevant Act. The Second Circuit, in dicta, strongly disapproved of the Commission's behavior, but held that petitioners had waived their right to object by failing to make a timely motion.

justifies the issuance of a complaint. Indeed, his speech suggests not only a substantial conviction that Texaco and Goodrich are violating the Act but an implied promise to support the petroleum retailers in their struggle against alleged abuses by their suppliers. An independent observer could fairly conclude that Chairman Dixon was in some measure pre-committed to a determination adverse to petitioners. We must therefore—at the least—vacate the Commission's order and remand to the Commission for a de novo consideration of the record and the arguments without the participation of Chairman Dixon.[6]

II

The Absence of Reviewable Findings

The Commission's decision consisted of an assertion that the "other evidence of record[7] amply supports the conclusions and the order of the Hearing Examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber Co.* * * * and *Firestone Tire & Rubber Co.* * * *"

---

[6] *Federal Trade Commission v. Cement Institute, supra*, is to be distinguished on the grounds that (a) the disqualification of the entire Commission, which was there sought, would have effectively precluded any enforcement of the Act against the respondent (the "necessity doctrine"), and (b) the opinion does not indicate that the Commissioners had expressed a focussed bias against the respondent, rather a general "policy" bias against basing point systems.

[7] That is, exclusive of certain evidence adduced in the remand proceeding, which petitioners claimed was improperly admitted, and which the Commission in fact stated that it would not consider.

Section 8(b) of the Administrative Procedure Act, 5 U.S.C. § 1007(b) (1958), provides in part that all decisions "shall * * * include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record * * *." Recently, the Supreme Court set aside an order of the Interstate Commerce Commission, partly on the ground that—

> "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such adjudicatory practice."[8]

The mere citation of earlier opinions does not provide a sufficient basis to understand and evaluate the Commission's decision on the facts of this case. There are a variety of facts and findings relied on by the Commission in the *Goodyear* and *Firestone* cases which cannot be readily assumed here. For example, on the issue of coercion, in *Goodyear* the Commission found that "Atlantic dealers have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA."[9] In *Firestone* the Commission pointed to internal memoranda of the Shell Oil Company to support the conclusion of coercion. In both cases the Commission purported to make an examination of the competitive effects of the sales commission plan, saying, "Determination of illegality

---

[8] *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 167 (1962).

[9] 58 F.T.C. 309, 342 (1961).

in this context requires an evaluation of competitive effects resulting from respondents' use of the sales commission method of distributing TBA,"[10] and, in pursuing an alternative theory of a tie-in arrangement, purported to make findings on Atlantic's and Shell's economic power in the "tying" commodity.

Also to be noted is the fact that on the same day that the Commission decided *Goodyear* and *Firestone*—March 9, 1961—it considered this case, and did not affirm the findings of actual coercion but remanded to the Examiner for the taking of further evidence on "competitive effects":

> "'[T]he record in this case does not contain sufficient *market data* to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents."[11] (Emphasis supplied.)

On April 15, 1963, the Commission, reviewing the Hearing Examiner's remand decision, affirmed his conclusions of a statutory violation, even though it excluded from consideration any new evidence adduced on the remand, and cited the *Goodyear* and *Firestone* cases, even though the Commission had previously declined to find a violation on this record, when it remanded simultaneously with its formulation and ap-

---

[10] *Firestone*, 58 F.T.C. 371, 408 (1961); *Goodyear*, *supra* at 365. *E.g.*, Shell accounted for about 5% of the total gasoline sold at retail in the United States in 1955, 58 F.T.C. at 407; Firestone accounted for 15.3% and Goodyear 21.4% of total replacement tire sales at consumer level in 1954. 58 F.T.C. at 409.

[11] In *Goodyear* and *Firestone* the Commission considered such "competitive effects" as division of markets between manufacturers, foreclosure of battery and accessory manufacturers, foreclosure of smaller tire manufacturers, restraint on expansion of smaller tire manufacturers' distribution systems, foreclosure of wholesalers, preemption in favor of wholesalers selling sponsored products, and the impact on wholesalers who also sell at retail.

plication of legal theories in the companion cases. The one Commissioner who had participated in the earlier decision and was on the Commission on April 15, 1963, dissented from the decision rendered on that date.

These considerations indicate, not that the evidence, as a whole, fails to support a finding of a Section 5 violation under a proper interpretation of that section, but that the Commission failed to perform its function of articulating the facts and spelling out its theories. The Commission's decision falls short of the standards required for judicial review, for we are unable to discern with a fair degree of certainty the facts or the theories relied on below.[12] Under the circumstances, we should express no opinion on the merits.

In my view, we should hold simply that a court must know why a Commission acted in order to fulfill the function of judicial review (*Secretary of Agriculture* v. *United States,* 347 U.S. 645 (1954)), and that businessmen and other parties subject to administrative regulation are entitled to an explanation of their duties and obligations. Thus, even in the absence of the disqualification issue, we would—in my view—find it necessary to remand for a proper opinion. See *Radio Station KFH Co.* v. *Federal Communications Commission,* 101 U.S. App. D.C. 164, 247 F. 2d 570 (1957).

For the reasons given, I would set aside the Commission's order but would pass neither on the merits nor on other issues argued by the parties. The Commission could then be required to produce a new opinion within a reasonable time, such as sixty days, meeting the standard for judicial review.

---

[12] See *e.g.*, *Interstate Commerce Commission* v. *Mechling*, 330 U.S. 567 (1947); *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515, 532 (1945).

III

Though, as I have indicated, I do not think we should pass on the merits, the majority has done so. Under the circumstances, I am constrained to say that in my view the majority's conclusion that the record does not contain sufficient evidence to support a finding of a Section 5 violation is very doubtful. The crucial failing, in the court's view, is the lack of evidence to establish that Texaco has sufficient economic power over its dealers to compel them to handle Goodrich tires exclusively. I submit that under the antitrust laws, Texaco's relationship to its dealers must probably be deemed inherently coercive. See, e.g., *Simpson* v. *Union Oil Company of California*, —— U.S. —— (April 20, 1964); *Standard Oil Company of California* v. *United States*, 337 U.S. 293 (opinion for the Court per Frankfurter, J.), 323 (concurring opinion of Jackson, J.) (1949); *Federal Trade Commission* v. *Motion Picture Advertising Service Co.*, 344 U.S. at 402 (1953) (Frankfurter, J., in dissent, explaining his opinion in *Standard Stations, supra*); *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1961); *United States* v. *Sun Oil Co.*, 176 F. Supp. 715, 719–20 (E.D. Pa. 1959); *Schwing Motor Co.* v *Hudson Sales Corp.*, 138 F. Supp. 899 (D. Md. 1956); *United States* v. *General Motors Corp.*, 121 F.2d 376, 398 (7th Cir.), cert. denied, 314 U.S. 618 (1941). See, also, the recent opinion of the Seventh Circuit in *Goodyear, Tire & Rubber Co.* v. *Federal Trade Commission*, —— F. 2d ——, ——, (April 24, 1964). See, generally, S. Rep. No. 2073, 84th Cong., 2d Sess. (1956); H.R. Rep. No. 2850, 84th Cong. 2d Sess. (1956), relating to the Automobile Dealers' Franchise Act, 70 Stat. 1125, 15 U.S.C. § 1221.

Evidence which might tend to show coercive power in this case includes (a) one year leases and sales

agreements, terminable at the year's end upon 10 days' notice; (b) substantial contractual control by Texaco over the use, maintenance and appearance of stations (the obligations imposed by Texaco, in addition to being evidence of Texaco's bargaining power, are means by which Texaco could prematurely terminate the lease through enforcement of one of those obligations, under cancellation provisions); (c) high personal investments by the lessees in their stations; (d) close dealer supervision by Texaco salesmen; (e) Goodrich's manifest understanding that Texaco controls its dealers (e.g., Goodrich's books refer to the dealers as "oil company controlled dealers"); (f) testimony of competing TBA suppliers that Texaco dealers felt they risked reprisal if they did not carry sponsored TBA, and (g) testimony of former Texaco dealers of the existence of a pattern of coercive conduct throughout their tenure. Other evidence in the record that Texaco imposed a course of purchasing behavior on the dealers may be summarized by quoting from page 51 of Respondent's brief:

> ". . . the services performed by Texaco pursuant to its contracts include: Stressing the importance of TBA to *prospective* dealers and recommending BFG and Firestone; giving advance notice of dealer selection to BFG or Firestone and introducing new dealers to their salesmen; assisting new dealers with adequate TBA inventories; encouraging its salesmen to write sponsored TBA orders without awaiting formal dealer request; calling on dealers with BFG or Firestone salesmen ('double teaming'); conducting frequent dealer meetings and training courses, with active BFG and Firestone participation; arranging for and participating in BFG and Firestone advertising and promotions; and permitting sponsored TBA purchases on its credit cards. Texaco training schools are conducted at company-owned serv-

ice stations where only BFG or Firestone TBA is used. This can only solidify the dealer's 'choice' of sponsored TBA."

Thus, I suggest that it may well be the record as a whole would support findings of both the existence and the utilization of coercive economic power by Texaco over its dealers. Were we reviewing the Hearing Examiner's findings, and formulating the appropriate legal theory in the first instance, I suggest that we might also properly conclude that there was sufficient evidence of anti-competitive effect to warrant finding a violation under a tie-in theory.[13] But in the first instance it is the Commission, not this court, which must indicate what facts and what legal theories constrained it to find a violation. We could of course select those legal doctrines appearing in the cases cited in the Commission's opinion—*Goodyear*

[13] On the appropriate test of anti-competitive effect necessary to sustain a finding that a tie-in violates Section 1 of the Sherman Act (which generally puts a more stringent burden on the Government than does Section 5 of the FTC Act), see, *e.g.*, *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1 at 5–6 (1958). The percentage of the gasoline station market for TBA controlled by Texaco, on any reading of the record, certainly affects a "not insubstantial" amount of interstate commerce. *See International Salt Co.* v. *United States*, 332 U.S. 392 (1947), and *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 330 (1962).

On utilization of a tie-in theory under circumstances similar to those of the instant case, see *Osborn* v. *Sinclair Refining Co.*, *supra*, 286 F. 2d 832 (4th Cir. 1961). The fact that Texaco's power and practices resulted in something less than exclusive dealer use of sponsored TBA would not seem to require a different result. *Id.* at 838–39. See, also, the decision of the Seventh Circuit, in an appeal from a parallel decision of the Federal Trade Commission relied on below, *Goodyear Tire & Rubber Co.* v. *Federal Trade Commission*, —— F. 2d —— (April 24, 1964).

and *Firestone*—and those facts in the record before the Hearing Examiner, which would sustain the Commission's conclusions, and then affirm. But aside from the fact that such an approach would be less than faithful to the appropriate institutional relationship between this court and the Commission, it would not be possible in this case because of Chairman Dixon's disqualifying conduct.

The delays in this case are serious.[14] But I would not terminate the proceedings because of them. The public interest in effective competition should not lightly be subordinated to Texaco's interest in speedy adjudication.

---

[14] See, generally, *Note, Judicial Acceleration of the Administrative Process; The Right to Relief from Unduly Protracted Proceedings*, 72 YALE L.J. 574 (1963).

U.S. GOVERNMENT PRINTING OFFICE: 1964

Office-Supreme Court, U.S.
FILED
JAN 28 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1964.

No. 296.

THE GOODYEAR TIRE & RUBBER COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONER, THE GOODYEAR TIRE & RUBBER COMPANY.

JOHN F. SONNETT
80 Pine Street
New York, N. Y. 10005
Attorney for Petitioner.

Of Counsel:
CAHILL, GORDON, REINDEL & OHL
ARTHUR MERMIN
DAVID INGRAHAM
MARSHALL H. COX, JR.
80 Pine Street
New York, N. Y. 10005

January 28, 1965.

TABLE OF CONTENTS.

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTE INVOLVED	4
STATEMENT	5
A. Context of the Litigation	5
B. The Commercial Context	8
C. Operation of Goodyear's Sales Commission Plan with Atlantic	12
D. Rulings Below	15
SUMMARY OF ARGUMENT	18
ARGUMENT:	
I—The Commission's total abolition of Goodyear's sales commission plan with Atlantic violates controlling law	23
A. The Commission Was Required to Weigh the Benefits and Consider the Economic Setting of the Sales Commission Plan	23
B. The Commission's Postulate of Oil Company "Power" Was Used As a Substitute For Its Required Functions	28
1. The Commission and the Court Below Relied Solely on the Postulate of "Power"	28
2. The Goodrich-Texaco Decision	29

PAGE

3. The Commission's Presumption of "Foreclosure" 31

4. The Inherent Contradictions in the Commission's Approval of Purchase-Resale 36

C. Under Congressional Policy, Oil Company "Power" is No Basis for Abolition of a Sales Commission Plan 37

D. The Analogy to Tying Cases is Improper 40

Conclusion 44

II—Even if the Commission's abolition of the Goodyear-Atlantic sales commission plan were proper, its prohibition of all Goodyear plans with all oil companies is completely unwarranted 44

III—In fixing its remedy, the Commission failed to perform the duties which the Congress and this Court have held to be essential 54

CONCLUSION 60

ANNEX A ..... Annex A-1

FINAL ORDER ..... Annex A-2

STATEMENT OF THE FEDERAL TRADE COMMISSION ANNOUNCING BROAD INQUIRY INTO THE PROBLEMS OF COMPETITION IN THE MARKETING OF GASOLINE ..... Annex A

Table of Cases.

PAGE

Atlantic Refining Company v. *Federal Trade Commission*, 331 F. 2d 394 (7th Cir. 1964), *cert. granted* Dec. 14, 1964 (No. 292) 8, 15

Audivox, Inc. v. *Federal Trade Commission*, 275 F. 2d 685 (1st Cir. 1960) 60

B. F. Goodrich Company, 58 F. T. C. 1176 (1961), CCH Trade Reg. Rep., 1961-63 Transfer Binder ¶16,378 (1963) (not bound), *reversed, Texaco, Inc. and B. F. Goodrich Co.* v. *Federal Trade Commission*, 336 F. 2d 754 (D. C. Cir., July 30, 1964), *petition for cert. filed* October 1964 (No. 635) 7, 8, 19, 24, 29, 30, 31, 40, 41, 42, 45, 48, 49

Brown Shoe Co. v. *United States*, 370 U. S. 294 ..... 26, 27

Burlington Truck Lines v. *United States*, 371 U. S. 156 ..... 55, 56, 57

Chicago Board of Trade v. *United States*, 246 U. S. 231 26

Elliot Knitwear, Inc. v. *Federal Trade Commission*, 266 F. 2d 787 (2d Cir. 1959) 60

Federal Trade Commission v. *Gratz*, 253 U. S. 421 25

Federal Trade Commission v. *Raladam Co.*, 283 U. S. 643 25

Federal Trade Commission v. *Royal Milling Co.*, 288 U. S. 212 60

Federal Trade Commission v. *Ruberoid Co.*, 343 U. S. 470 ..... 17, 50, 51

Firestone Tire & Rubber Company, 58 F. T. C. 371 (1961), *appeal docketed* No. 18,969, 5th Cir., 1963 ..... 10, 46

Ford Motor Co. v. *United States*, 335 U. S. 303 ..... 38, 39

Gilbertville Trucking Co. v. *United States*, 371 U. S. 115 ..... 55, 56, 57

International Business Machines Corp. v. *United States*, 298 U. S. 131 42

International Salt Co. v. *United States*, 322 U. S. 392 42

PAGE

Jacob Siegel Co. v. *Federal Trade Commission*, 327 U. S. 608 ..... 54, 55, 57

Jerrold Electronics Corp. v. *United States*, 365 U. S. 567 42

National Labor Relations Board v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217 60

Northern Pac. Ry. v. *United States*, 356 U. S. 1 ..... 16, 41

Osborn v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), *cert. denied*, 366 U. S. 963 ..... 41, 42, 43, 59

Pure Oil Company, FTC Dkt. 6640, *dismissed* December 28, 1964 (Annex A) 51, 52

Securities and Exchange Commission v. *Chenery Corp.*, 318 U. S. 80 ..... 41, 48

Shell Oil Company, 58 F. T. C. 371 (1961), *appeal docketed* No. 18,967, 5th Cir., 1963 ..... 10, 20, 21, 46

Shell Oil Company, FTC Docket No. 8537, *dismissed* December 28, 1964 (Annex A) 51, 52

Standard Oil Co. v. *United States*, 221 U. S. 1 26

Standard Oil Company (Indiana), FTC Docket No. 7567, *dismissed* December 28, 1964 (Annex A) 51, 52

Swanee Paper Corp. v. *Federal Trade Commission*, 291 F. 2d 833 (2d Cir. 1961), *cert. denied*, 368 U. S. 987 60

Tampa Electric Co. v. *Nashville Coal Co.*, 365 U. S. 320 ..... 26, 32, 33

The Texas Company, 58 F. T. C. 1176 (1961), *reversed Texaco, Inc. and B. F. Goodrich Co.* v. *Federal Trade Commission*, 336 F. 2d 754 (D. C. Cir., July 30, 1964), *petition for cert. filed* October 1964 (No. 635) 3, 7, 8, 20, 27, 29, 30, 31, 37, 38, 39, 40, 41, 42, 45, 48, 49

The Texas Company, FTC Dkt. 6898, *dismissed* December 28, 1964 (Annex A) 51, 52

United Shoe Machinery Corp. v. *United States*, 258 U. S. 451 42

United States v. *American Tobacco Co.*, 221 U. S. 106 26

PAGE

United States v. *Continental Can Co.*, 378 U. S. 441 27
United States v. *E. I. du Pont de Nemours & Co.*, 353 U. S. 586 (1957) 33
United States v. *General Motors Corp.* (N. D. Ind.) *affirmed* 121 F. 2d 376 (7th Cir. 1941), *cert. denied*, 314 U. S. 618 ..... 38, 39
United States v. *Loew's Inc.*, 371 U. S. 38 42
United States v. *Paramount Pictures*, 334 U. S. 131 42
United States v. *Richfield Oil Corp.*, 99 F. Supp. 280 (S. D. Cal. 1951), *aff'd per cur.*, 343 U. S. 922 59
United States v. *Standard Oil Co. of California*, 78 F. Supp. 850 (S. D. Cal. 1948), *aff'd* 337 U. S. 293 59
United States v. *Standard Oil Co. of California*, CCH 1959 Trade Cas. ¶69,399 (S. D. Cal. 1959) 59
United States v. *Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959) 59

White Motor Co. v. *United States*, 372 U. S. 253 (1963) 25, 26

STATUTES.

Administrative Procedure Act, 60 Stat. 242 (1946), 5 U. S. C. §1007(b) (1958), Section 8(b) 56

Automobile Dealer's Day in Court Act, 70 Stat. 1125, 15 U. S. C. §§1221-25 (1958) 19, 38

Clayton Act, 38 Stat. 730 (1914), 15 U. S. C. §§12-27 (1958)

Section 3 26

Section 7 ..... 26, 27

Federal Trade Commission Act, 38 Stat. 717, 15 U. S. C. §§41-51 (1958)

Section 5(a), 15 U. S. C. 45(a) 1, 3, 4, 18, 23

PAGE

Sherman Act, 26 Stat. 209 (1890), 15 U. S. C. §§1-7 (1958).

Section 1 ..... 26, 43

Section 2 ..... 26, 43

28 U. S. C. §1254(1) (1958) 2

OTHER AUTHORITIES.

Factbook Issue, Mid-May 1964, National Petroleum News, 230 ..... 33, 47

H. REP. COMMITTEE ON THE JUDICIARY, ANTITRUST SUB-COMMITTEE, Hearings on H. R. 11360 and S. 3879, 84th Cong., 2d Sess. (1956) 40

H. R. 425, 85th Cong., 1st Sess. (1957) 40

H. R. 426, 85th Cong., 1st Sess. (1957) 40

H. R. 428, 85th Cong., 1st Sess. (1957) 40

H. R. 9894, 86th Cong., 2d Sess. (1960) 40

H. R. 5926, 87th Cong., 1st Sess. (1961) 40

The Oil and Gas Journal, April 13, 1964 48

The Oil and Gas Journal, July 13, 1964 ..... 48, 49

Oppenheim, *Guides to Harmonizing Section 5 of The Federal Trade Commission Act with the Sherman and Clayton Acts*, 59 MICH. L. REV. 821 (1961) 25

Report of the Attorney General's National Committee to Study the Antitrust Laws, pp. 148-49 (1955) 25

S. 2480, 87th Cong., 1st Sess. (1961) 40

Statement of the Federal Trade Commission Announcing Broad Inquiry into the Problems of Competition in the Marketing of Gasoline (December 30, 1964) 27, 52, 53

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 296.

THE GOODYEAR TIRE & RUBBER COMPANY,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONER, THE GOODYEAR TIRE & RUBBER COMPANY.

Opinions Below.

The Court below affirmed an order to cease and desist entered by the Federal Trade Commission (hereinafter the "Commission") because of an alleged violation of Section 5(a)(1) of the Federal Trade Commission Act, 38 Stat. 719 (1914), as amended, 15 U. S. C. §45(a)(1) (1958).

The Initial Decision of the Hearing Examiner (R. 94),* which recommends dismissal of the complaint against The Goodyear Tire & Rubber Company (hereinafter "Goodyear"), is reported at 58 F. T. C. 309 (1961). The Commis-

* "R." refers to the record herein which consists of the printed Joint Appendix (in five volumes) filed in the Court of Appeals and the opinion, judgment and final decree of the Court of Appeals.

sion's order (R. 114) and its opinion reversing the Examiner (R. 118) are reported at 58 F. T. C. 309 beginning at page 323.

The opinion of the Court of Appeals (R. 3680) affirming the Commission is reported at 331 F. 2d 394.

Jurisdiction.

The judgment (R. 3697) and the final decree (R. 3698) of the Court of Appeals were entered on April 24, 1964 and May 20, 1964, respectively. The petition for a writ of certiorari was filed July 20, 1964 and was granted December 14, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. §1254 (1) (1958).

Questions Presented.

Goodyear has sales commission agreements with The Atlantic Refining Company ("Atlantic"), its co-respondent in the instant proceedings before the Commission, and with some twelve other non-respondent petroleum companies.* Under those agreements Goodyear pays commissions to the oil company in return for the latter's assistance in promoting the sale through its dealers of Goodyear tires, batteries, and accessories ("TBA" or "TBA products").

No conspiracy between Atlantic and Goodyear was alleged or found, and it is undisputed that Atlantic entered into its sales commission agreement with Goodyear only after Atlantic had encountered serious distribution and cost problems in using the only feasible alternative method of

* The present tense is often used throughout in relating facts of record although such facts describe events no more recent than the filing of the complaint in 1956. Certain changes have taken place since then, as, for example, in the number of companies with which Goodyear has sales commission agreements.

TBA distribution. Nevertheless, the Commission found that Atlantic's "power" with respect to its dealers made its sales commission agreement with Goodyear an "unfair method of competition" within the meaning of the Federal Trade Commission Act, §5(a)(1).

As to the non-respondent oil companies with which Goodyear has sales commission agreements, there is no significant evidence of record concerning their dealer relationships or the presence or absence of oil company "power" to influence TBA sales. Nevertheless, the Commission entered an order barring Goodyear perpetually from any further participation in any sales commission agreement, not only with Atlantic but with any marketing oil company.

The Court below approved the Commission's action.

In the Commission's petition for a writ of certiorari to review a conflicting decision by the Court of Appeals for the District of Columbia Circuit in a pending companion proceeding, *Federal Trade Commission* v. *Texaco, Inc. and B. F. Goodrich Co.*, No. 635, October Term, 1964 (hereinafter "Petition, *Goodrich-Texaco*"), the Solicitor General has posed the controlling issue before the Court in the following language:

> (1) "Whether it is an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, for a major rubber company and a major oil company to enter into an agreement under which the oil company, in return for a commission, sponsors the sale of the rubber company's products to the oil company's retail dealers." (p. 2).

The question as stated* in No. 635 articulates—for the first time—just what the Commission has done, what the

* The reference to "major" oil and rubber companies is unwarranted, since the Commission's order bars Goodyear from a sales commission arrangement with *any* marketing oil company and bars Atlantic from such an arrangement with *any* rubber company.

Court below has approved and what the Court of Appeals for the District of Columbia Circuit has disapproved. Comprehended within this basic question are certain subsidiary questions which were set forth in our petition for certiorari:

> (2) Is a sales commission agreement between Goodyear and Atlantic totally unlawful merely because Atlantic has the ability, without the exercise of coercion or use of tying agreements, to influence the purchase of a substantial volume of TBA products?
>
> (3) Is any sales commission agreement totally unlawful merely where a sponsoring party (in this case any petroleum company) may be able, without the exercise of coercion, or use of tying agreements, to influence the purchase of a substantial volume of the sponsored product (here TBA)?
>
> (4) May the Commission dispense with any attempt at market analysis and establish a conclusive presumption that any oil company which has leases with, or lends equipment to, its franchised dealers has the ability, deemed unlawful, to influence the requisite "substantial" volume of sales of the sponsored product?
>
> (5) May the Commission altogether outlaw a time-tested method of distribution which offers undisputed benefits to the public and to all parties concerned without considering the possibility of more limited alternative remedies?

Statute Involved.

The statute involved in this case is Section 5(a) of the Federal Trade Commission Act, 38 Stat. 719 (1914), as amended, 15 U. S. C. §45(a) (1958), which in pertinent part provides that:

"(a) (1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.

* * * * * *

"(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

Statement.

A. Context of the Litigation.

The instant case is one of three parallel cases, all currently in the courts, brought by the Federal Trade Commission in 1956 to abolish one of the two traditional methods of distributing automobile tires, batteries and accessories through service stations. This method is called "sales commission" distribution.

Goodyear* and Atlantic were joined as respondents in an amended complaint, issued May 22, 1956 (R. 5), which charged that they had entered into agreements which "have the capacity and tendency to restrain unreasonably and have restrained unreasonably" the commerce in TBA products (R. 12). Goodyear is a large manufacturer of rubber products (R. 157). Atlantic is a medium-size producer, refiner and distributor of petroleum products; it markets gasoline and related petroleum products under the "Atlantic" brand through retail outlets and wholesale distributors in 17 eastern states and the District of Columbia (R. 28).

---

* The Goodyear Tire & Rubber Company, Inc., also named as a respondent, was a wholly-owned marketing subsidiary of Goodyear which was merged with Goodyear in 1956 (R. 1, 5-6). This fact is not significant to this litigation and both Goodyear respondents are collectively referred to as "Goodyear".

The complaint challenged a contract entered into in 1951 between Atlantic and Goodyear, whereby Goodyear agreed to pay Atlantic a commission on Goodyear's TBA sales to dealers in Atlantic's products in exchange for Atlantic's services in promoting Goodyear's TBA.

In addition, the complaint attacked similar sales commission agreements between Goodyear and some twelve other marketing oil companies;* of these companies, most are a good deal smaller than Atlantic, and only two are, or are affiliated with, national concerns. The complaint also alleged that Atlantic had entered into a similar TBA sales commission agreement with The Firestone Tire & Rubber Company ("Firestone").

It was alleged that all the contracts—those between Goodyear and all other oil companies and that between Atlantic and Firestone as well as the one between the parties here—were illegal (R. 12). However, only Atlantic and Goodyear were named as respondents to this proceeding.

Concurrently with the institution of the instant complaint, the Commission initiated two similar proceedings, one against Shell Oil Company ("Shell") and Firestone, and the other against The Texas Company ("Texaco") and The B. F. Goodrich Company ("Goodrich"). Like the instant one, these complaints attacked sales commission agreements between the respective parties and between each party with all other rubber or oil companies.

---

* The petroleum companies which the record shows as having sales commission arrangements with Goodyear were: Anderson-Prichard Oil Corporation, Ashland Oil & Refining Co. Inc. (and certain subsidiaries of Ashland), Atlantic Refining Company, Carter Oil Company, D-X Sunray Oil Company, Frontier Refining Company, Quaker State Oil Refining Corporation, Richfield Oil Company, Shamrock Oil and Gas Corporation, Shell-American Petroleum Company, Shell Oil Company, Sinclair Refining Company and Sherwood Brothers Inc. (R. 119, 2493, 242, 2573-76, 243).

All three complaints were tried as separate proceedings before the same Hearing Examiner (Earl J. Kolb, later appointed Chief Examiner) who held hearings over a two-year period from October 1956 to February 1959. In October, 1959 the Hearing Examiner rendered initial decisions finding in all three cases that the oil companies had exercised specific acts of coercion against their dealers, but that this was not caused by the rubber companies or the sales commission agreements. Accordingly, he entered injunctions against the oil companies' exercise of coercion, but dismissed the complaints against the rubber companies.

The Commission reversed all three decisions. Upon the original record in each case,* it found that the sales commission agreements violated Section 5 of the Federal Trade Commission Act. In each case the Commission issued an order barring the rubber company from entering into any sales commission plan with any oil company at all, thereby prohibiting not only existing agreements but any that might be contemplated in the future with any marketing oil company of whatever size. It also barred the three oil companies from participating in any sales commission plan for tires, batteries, or accessories with any company whatever.

All the cases were appealed. Goodyear and Atlantic filed petitions to review and set aside the Commission's order with the Court of Appeals for the Seventh Circuit. The petitions to review were denied by that Court and

---

* In the *Goodrich-Texaco* case, the Commission initally remanded the case to the Hearing Examiner for further hearings as to the competitive effects of the sales commission agreement. After such hearings, the proceeding returned to the Commission which then entered an order explicitly based on the original record. See *The B. F. Goodrich Co.*, 58 F. T. C. 1176 (1961), and CCH TRADE REG. REP. 1961-63 Transfer Binder ¶16,378 (1963) (not bound).

the Commission's order in all respects affirmed (R. 3680). That decision is now under review in this case and in No. 292, *The Atlantic Refining Company* v. *Federal Trade Commission, cert. granted,* December 14, 1964.

Goodrich and Texaco appealed to the Court of Appeals for the District of Columbia Circuit. That Court on July 30, 1964 set aside the order and remanded the case to the Commission with instructions to dismiss the complaint.*

Firestone and Shell petitioned to the Court of Appeals for the Fifth Circuit. Argument was heard on January 16, 1964, and decision is still pending.

B. The Commercial Context.

The sales commission method of distribution has been widely used, for more than two decades, to facilitate the marketing of TBA through automobile service stations. Motorists prefer "one-stop" service stations capable of supplying, not only gasoline and oil, but also the full range of products required for the operation of the modern automobile (R. 1505, 1846, 2267-68). As a result, the nation's neighborhood "gas stations" have become, in response to motorists' demands, one of the major sources of supply for replacement TBA products (R. 122).

To meet this consumer demand under contemporary conditions is a complex task. The service station must have access to a wide variety of tires—for example, Goodyear manufactures and markets approximately 130 different popular-sized tire models (R. 2221). In addition, the service station must carry various sizes and types of batteries and a host of accessories such as spark plugs,

* As already noted, a petition for a writ of certiorari to review the *Goodrich-Texaco* decision has been filed in this Court on the Commission's behalf (No. 635, October Term, 1964) and is *sub judice.*

radiator chemicals, lamps and bulbs, windshield wipers and blades, polishes, waxes, etc. (R. 99-100, 517-19).

The efficient provision at point of sale of such a range of products requires knowledge, skill and organization. The service station operator must be trained in several areas: the products available, installation and repair of such products, sound inventory practices and modern sales techniques (R. 1507, 2221-24, 2268). Behind the station operation must stand a well-developed warehousing and distribution system.

The Hearing Examiner made clear—and the Commission did not deny—that an oil company TBA program benefits motorists and dealers, as well as oil companies and rubber companies:

> "Tires, batteries and accessories have become a necessary and integral part of the business operation of the Atlantic dealer. He cannot profitably and successfully operate his business without the added revenue from that portion of his business which also enables the dealer to give complete service to his customers. The service station is important to TBA manufacturers as an outlet for distributing to customers. It is to the interest of The Atlantic Refining Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline". (R. 99-100).

The Court below agreed:

> "TBA is an integral part of service station operations. Dealers must carry it in order to give complete service to motorists and to operate their stations at a profit. There are a large number of TBA items available to dealers, and there are constant changes and production developments in TBA of which the dealers must be trained and kept informed. Every major oil company offers some

kind of TBA program to give training and advice to its service station dealers". (R. 3685).

Over the years, two methods have developed in the petroleum industry for meeting these marketing needs. One of these is the so-called "purchase-resale" method, which the Commission's opinion approves (R. 183-85). Under this method, the petroleum company purchases TBA products and resells them, along with gasoline and oil, to its service station dealers.

"Purchase-resale" has a particular vogue today among the larger petroleum companies, such as Standard of New Jersey, Standard of California, Standard of Indiana, Socony-Mobil, and Phillips Petroleum. (*The Firestone Tire & Rubber Company*, 58 F. T. C. 371, 388 (1961)). They have the resources to provide, and a sufficient number of service station outlets to warrant, the necessary investment in warehousing and distribution facilities for TBA. Atlantic made use of the purchase-resale method in earlier days, but gave it up in 1951 when it found that its sales of TBA were insufficient to warrant the costs of training, warehousing and overhead (R. 100-101, 2357-62, 2859-64, 239).

The second principal method of TBA distribution through service stations is the "sales commission" method involved in this case. It evolved a generation ago as an alternative to purchase-resale. Goodyear, which manufactures tires, tubes and certain accessories in its own factories and distributes batteries and accessories acquired from outside sources, entered such a sales commission plan with Atlantic in 1951.

In return for Atlantic's sales assistance Goodyear agreed to pay to Atlantic a 10% commission on sales of Goodyear TBA to Atlantic retailers in seven northeastern

states and the Philadelphia area of Pennsylvania and to pay a 7½% commission on TBA sales to Atlantic wholesale distributors in the same area. The Commission's opinion does not challenge either the rates of these commissions or the fact that Atlantic made expenditures approximately equal to them. Moreover, there is no claim that Atlantic wholesalers and retailers who bought Goodyear TBA under this plan did so on different terms from other wholesale and retail customers of Goodyear or that they were required to absorb the commissions paid by Goodyear to Atlantic.

The services which Atlantic supplied to Goodyear in return for its commissions are described in the Hearing Examiner's Initial Decision and are not disputed by the Commission. Atlantic operated training schools for dealers and prospective dealers which included promotional and merchandising aspects of TBA sales; conducted tire clinics jointly with Goodyear personnel to familiarize Atlantic dealers in the care and repair of Goodyear tires; advised prospective new dealers of the importance of TBA and recommended Goodyear TBA products; assisted dealers in arranging for Goodyear TBA inventory; conducted dealer meetings which discussed TBA sales; arranged for advertising and promotion of Goodyear TBA products; suggested methods of TBA merchandising in its dealer magazines; and made Goodyear TBA products available to credit card holders (R. 101-102).

The sales commission plan is not an independent source of revenue to Atlantic, but rather aids Atlantic in its primary business of selling gasoline and other petroleum products. Atlantic's commission receipts under its two agreements with Goodyear and Firestone have averaged about ¼ of 1% of its petroleum revenues, and the costs to Atlantic of its participation in the TBA program are approximately equal to its receipts from it (R. 2364).

C. Operation of Goodyear's Sales Commission Plan with Atlantic.

The evidence in this case concerning sales commission plans is devoted almost entirely to the particular sales commission agreement between Goodyear and Atlantic.

Goodyear makes tires and tubes for automotive vehicles in factories in five states. It sells these at wholesale and retail through some 12,000 independent franchised dealers, and 500 company-owned stores (R. 157-58).

Many of these dealers serve as supply points to oil company dealers under Goodyear's sales commission arrangements. For the Atlantic outlets, there were at the time of the hearing 162 supply points, of whom 128 were independent businesses (including Atlantic service stations) operating under franchise and selling to everyone they pleased, the other 34 being company-owned Goodyear stores (R. 525, 3407, 1449). To operate satisfactorily, supply points must carry a balanced and full stock of TBA products and maintain adequate equipment, business and staff facilities; they often employ delivery trucks and salesmen (R. 524-25).

There is no evidence and no finding that any competent Goodyear dealer not designated as a supply point wanted to become one, or that any such dealer was denied the opportunity to become one.

The record, which describes the situation obtaining in 1955-56, shows that Atlantic distributes its gasoline and other automotive petroleum products to some 5,500 retail dealers, of whom some 2,400 are in the area covered by the Atlantic-Goodyear sales commission agreement (R. 140, 132). In that area, in addition, Atlantic sells its petroleum products to some 47 wholesale distributors who service about 390 retail outlets (R. 146, 132). Most of these gasoline retailers operate service stations which are likely to offer TBA (as contrasted to the country store or roadside res-

taurant which may have a gas pump, without more, in the yard).

Atlantic sells directly to two types of retailers: contract dealers who own their own stations or lease them from others, and "lessee-dealers" who lease their stations from Atlantic. The contract dealers are often lent station equipment by Atlantic and their contracts usually require them to purchase a minimum amount of gasoline in the course of a year (R. 144). The lessee dealers generally hold one-year leases, although in some instances the lease term may be longer or shorter (R. 99, 140).

At the time Atlantic entered into the sales commission agreements in 1951 and at times thereafter, it advised its dealers that the plan did not obligate them to buy Goodyear TBA (R. 103-104, 2892-93, 220). Atlantic stressed that "under no circumstances are our dealers to be made to feel that they must buy this new program" (R. 2891, 220).*

During the hearings the Commission introduced the testimony of 16 former Atlantic dealers—8 from areas not covered by Goodyear, and the remaining from the Philadelphia area. Some of these testified that despite Atlantic's instructions, they had been pressured by Atlantic's salesmen to buy sponsored brands of TBA (R. 104-08).

In rebuttal, Atlantic introduced the testimony of 38 dealers and ex-dealers who testified that they had regularly sold other brands of TBA without objection (R. 108-09). The Examiner found on all the testimony that no dealers carried the sponsored brands of TBA exclusively; all dealers carried some non-sponsored TBA in varying amounts "to satisfy demands of their customers" (R. 109).

In addition, it was shown that there is aggressive competition between the petroleum companies for the services

* It instructed dealers to report directly to Atlantic any instance in which "any of our people at any time insist on your buying any certain products or merchandise against what you feel is to your best interest" (R. 3038, 406).

of qualified dealers, who are often local businessmen with an entrenched customer following (R. 1493-97, 2353). It would thus be in the interest of Atlantic not to jeopardize its dealer relationships in the petroleum business by demands with respect to TBA—on which Atlantic makes no profit.*

The Examiner concluded that the contracts between Atlantic and its dealers did not require the purchase of Goodyear TBA, and that "No inference or implication can be drawn from the contractual relationship between Atlantic and its dealers, that the degree of control by Atlantic over its dealers is sufficient to force its dealers to purchase only sponsored TBA" (R. 111). However, he concluded that certain of Atlantic's representatives had pressured some dealers into buying sponsored lines of TBA and to discontinue the purchase or display of other brands (R. 110). Accordingly, he entered a detailed order designed to prohibit coercion by Atlantic of its dealers (R. 112-13).**

At the same time, he found that Goodyear was not responsible for any coercion of Atlantic's dealers or guilty of any other coercive practices. He found that:

> "There is no evidence that The Goodyear Tire & Rubber Company, or The Goodyear Tire & Rubber Company, Inc., engaged in, or participated in, any of acts or practices designed to force dealers and distributors of The Atlantic Refining Company to purchase Goodyear TBA products". (R. 110).

This conclusion was based upon a record concerned almost exclusively with the nature and operation of Goodyear's sales commission agreement with Atlantic. The

---

* The mere replacement of a lost dealer is a matter of considerable expense (R. 1496-97).

** The findings of coercion by the Hearing Examiner, as approved by the Commission, are not now contested by Atlantic before this Court.

Initial Decision of the Hearing Examiner does not even mention Goodyear's sales commission agreements with other oil companies and made no finding as to their nature or operation. While the Commission made a bare passing reference to these agreements, its opinion contains no findings addressed to actual operations under any of them.* There is no finding by the Commission that each of these companies pressured its dealers to buy sponsored TBA. The Court below, except for reciting the complaint, makes no reference whatever to these other contracts and other oil companies. Indeed, its opinion states that "the heart of this case is the economic power *Atlantic* possesses over its service station dealers" (Emphasis added) (R. 3690).

D. Rulings Below.

The Hearing Examiner found that Goodyear had been guilty of no unfair practice. He found:

> —there was neither charge of nor proof of a conspiracy between Goodyear and Atlantic or anyone else to restrict competition in the sale of TBA (R. 110);
>
> —"The consideration for the payment of commission to Atlantic under the sales commission contract is based upon substantial services rendered by Atlantic in promoting the sale of Goodyear TBA to Atlantic dealers and distributors" (R. 111);

and that

> —the terms of the contracts and leases between Atlantic and its dealers were not unreasonable and did not themselves confer upon Atlantic control sufficient to require its dealers to carry only sponsored TBA (R. 111).

---

* The Commission remarked that the other contracts "are in all material respects identical with the Goodyear-Atlantic contract," and drew a bland inference from the isolated testimony of dealers from two other oil companies—Sinclair-Sherwood and Shell—that they had been subjected to pressure (R. 162).

Accordingly, he dismissed the complaint against Goodyear and prohibited Atlantic from coercion of its dealers (R. 112-13).

The Commission brushed coercion aside. In reversing, it relied upon a view that Atlantic and, inferentially, other oil companies had a "power" over their dealers which rendered a sales commission plan improper whether or not acts of coercion were proved (R. 119, 179-86).

The Commission cited *Northern Pac. Ry.* v. *United States*, 356 U. S. 1 (R. 179), but evidenced its unwillingness to rely thereon:

> "But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases. The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents" (R. 181).

After purportedly evaluating these "competitive effects" the Commission concluded that the sales commission plan foreclosed TBA sales by others to Atlantic dealers (R. 181-83), and that the use by Goodyear of "supply points" to handle sales to its service station customers restricted competition among Goodyear's retail and wholesale dealers (R. 182).

Upon this basis the Commission entered an order sweepingly condemning any use of the sales commission plan. It forbade Goodyear, *inter alia*, from:

> "1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with . . . any . . . marketing oil company whereby Goodyear, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;
>
> "2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to . . . . any . . . marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company" (R. 116-17).

On appeal, the Seventh Circuit affirmed the order in all respects, its opinion finding that there was substantial evidence to warrant the Commission's conclusions (R. 3683). The Court also invoked a "tying" theory to support the Commission's order, despite the Commission's statement that it did not rely thereon (R. 3690, 3693-95).

In answer to Goodyear's contention that there was no basis for outright abolition of sales commission plans with all oil companies, the Court said simply that "we think the Supreme Court answered petitioners' contentions in *F. T. C.* v. *Ruberoid Co.*, 343 U. S. 470, 473," which states that the Commission's remedial power is not limited to the prohibition of illegality "in the precise form in which it is found to have existed in the past" (R. 3696).

Summary of Argument.

I.

The Commission's order, approved by the Court below, violates controlling law in its attempt to abolish totally Goodyear's sales commission plan with Atlantic.

It is uncontradicted that a TBA program results in benefits to American motorists, service station dealers, oil companies and rubber companies. Yet, the Commission has completely prohibited Atlantic and Goodyear from a sales commission plan notwithstanding the fact that Atlantic attempted the only alternative method of TBA distribution (a purchase-resale plan) and found it economically unfeasible.

In ignoring the benefits derived by everyone concerned from a TBA program, the Commission also ignored the strictures of this Court that the advantages and the economic setting of a particular business method must be carefully considered before that method can be condemned under the antitrust laws. These precedents of the Court apply with equal force to a proceeding under Section 5 of the Federal Trade Commission Act when a long-standing and widespread method of product distribution is sought to be condemned as a *per se* unfair method of competition.

Instead, the Commission relies on a theoretical construct —a postulate that Atlantic has "power" over its dealers (derived solely from its contracts and leases with them) which renders any sales commission plan whatever totally illegal. The Commission did not explore the exercise of that claimed "power" and did not rely upon a finding that Atlantic had pressured its dealers; its result, rather, is based on the conclusive presumption, without supporting findings, that an oil company's "power" will always result

in a "foreclosure" of TBA sales to its dealers under a sales commission plan.

This presumption of the Commission is directly contradicted by the *Goodrich-Texaco* decision of the Court of Appeals for the District of Columbia Circuit, which ruled that there was no showing that Texaco had such "power" over its dealers, notwithstanding contracts and leases similar to Atlantic's.

Moreover, in adverting to the "effects" of the presumed "foreclosure" the Commission failed to define the line or lines of commerce, the area of effective competition and the substantiality of the competition alleged to have been foreclosed. In so doing, the Commission wholly disregarded the careful economic analysis which the decisions of this Court require.

In any case, there is no tenable basis for the Commission's decision. Given the Commission's notion of oil company "power" and its presumed effects, there is no justification for banning sales commission plans while permitting purchase-resale distribution, which is most easily employed by the larger oil companies. Furthermore, the idea that "power" is a justifiable basis for abolition of a sales commission plan is contradicted by the specific provisions of the Automobile Dealers' Day In Court Act and by the fact that the Congress has refused to enact bills which would limit or outlaw sales commission plans in the oil industry.

Finally, an analogy to "tying" cases cannot justify the Commission's action. In the first place, the Commission did not rely on a "tying" theory, and the Court below could not properly rest its decision on that ground. In any case even assuming that Atlantic had deliberately tied Goodyear TBA to Atlantic's sale of its own products to its dealers (an assumption unsupported by findings of the Commission or by the record), there is no basis in precedent for abolition

of the sales commission plan itself. The remedy in "tying" cases has uniformly been to enjoin the "tie", not to bar a firm from continuing to sell or lease the two product lines which had been "tied". In contrast, the order here is not content to enjoin Atlantic from any pressure upon its dealers (an aspect of the order which Atlantic has not appealed to this Court), but goes on to prohibit both Atlantic and Goodyear from continuing to sell Goodyear TBA to Atlantic's dealers on a sales commission basis without any tying whatsoever. The "tying" case precedents thus provide no escape from the inexorable conclusion that there is no basis in precedent, fact or equity for the Commission's destruction of the sale commission plan between Atlantic and Goodyear.

II.

The Commission's order, approved by the Court below, seeks to prohibit Goodyear permanently from engaging in any sales commission arrangement with *any* oil marketing company—of which there were 156 listed in the year 1964 in an authoritative trade publication. The Commission's order exhibits this vehemence notwithstanding the fact that there is virtually nothing whatsoever in the record as to the "power" of oil marketing companies with respect to their dealers. In addition, there are no findings either as to the actual operations of Goodyear's sales commission plans with oil companies other than Atlantic or as to the actual relationship of any such company with its dealers.

For example, as to one oil company which had a sales commission arrangement with Goodyear at the date of the record, Shell, there is hardly any pertinent evidence in the record here. Despite the fact that Shell brought before the Court of Appeals for the Fifth Circuit a review of the

Commission's order barring Shell, *inter alia*, from continuation of its sales commission plan with Goodyear—on a record which at least purports to examine Shell's relationship with its dealers—the Commission's order in this case operates so as to prohibit Goodyear from continuing the plan with Shell. This is the case notwithstanding the fact that Shell is voiceless here on a determination which is vital to it and which does not even claim to be based upon a factual analysis of Shell's relations with its dealers.

As to marketing oil companies other than Atlantic with whom Goodyear had sales commission arrangements as of December, 1964—20 in number (of whom 14 are relatively small marketing oil companies)—there are also no findings to justify the Commission's result even on its own theory of oil company "power". The clearest example of this is Goodyear's plan with Texaco. The order bars Goodyear from a sales commission plan with Texaco because of the Commission's presumption of uniform oil company "power"—while at the same time Texaco, itself, under the decision of the Court of Appeals for the District of Columbia Circuit, is completely free to enter into such an agreement with Goodyear or any other rubber company because that Court decided that there was insufficient evidence in the record before it to justify any conclusion that Texaco had any such "power" over its dealers.

As to the 156 oil marketing companies with whom Goodyear is barred from sales commission arrangements, there is a complete evidentiary vacuum—a dramatic example of failure of proof. The Commission simply did not know enough about oil marketing companies to have issued the instant order. Indeed, the Commission has itself very recently acknowledged that it does not yet know enough about oil company marketing. On December 28, 1964 the Commission dismissed four cases then before it on the

specific grounds that it had insufficient knowledge of the "highly complex" facts involved in the competitive marketing of gasoline; that this "dynamic industry" undergoes rapid change and has altered significantly since the mid-1950's; and that the Commission should not enter orders "against a few oil companies" when such orders could not provide "complete or effective solution to the competitive problems of the gasoline industry." The Commission therefore dismissed the cases in order to concentrate upon "a comprehensive industry-wide approach to the problems of competition in the marketing of gasoline".

It is submitted that the Commission's reasoning is precisely applicable to this case—and that this proceeding should be dismissed because the Commission has made huge presumptions, on a stale and sparse record, about an entire industry as to which it has explicitly recognized a lack of sufficient knowledge.

III.

Apart from the substantive argument in the preceding two Points that the Commission has improperly sought to abolish a legal and proper economic practice, it is clear that the Commission fixed upon a remedy without performing its required functions.

Contrary to the decisions of this Court that an administrative agency must consider various alternative remedies, the Commission's opinion provides no stated basis why the order here could not be framed in less sweeping terms. On the Commission's own view of this case there were many remedial measures open to it falling far short of the broad-scale banishment which it fixed upon. Nowhere does the Commission explain why any of these measures would not provide solutions to the problems which it found to exist in sales commission arrangements. Open reasoning by the Commission as to appropriate remedies is particularly

called for here because at least four previous judicial determinations have left intact the right of an oil company to "sponsor" TBA products to its dealers.

The Commission's function is to tailor remedies to the faults which it finds. One of the chief purposes of the Congress in creating an administrative agency is to provide a body with expertise in the vitally important area of remedial action. It is submitted that the Commission has here failed utterly to exercise such expertise and has displayed instead an unskilled and insensitive approach to an important and beneficial method of distributing products. In so doing, the Commission did not perform the very functions which the Congress created it to exercise.

ARGUMENT.

I.

THE COMMISSION'S TOTAL ABOLITION OF GOODYEAR'S SALES COMMISSION PLAN WITH ATLANTIC VIOLATES CONTROLLING LAW.

A. The Commission Was Required to Weigh the Benefits and Consider the Economic Setting of the Sales Commission Plan.

There is now before this Court a new and raw formulation of an "unfair method of competition" under Section 5 of the Federal Trade Commission Act.

As put by the Solicitor General on behalf of the Commission, the question presented is the validity of the Commission's view that it is an unfair method of competition "for a major rubber company and a major oil company to enter into an agreement under which the oil company, in return for a commission, sponsors the sale of the rubber company's products to the oil company's retail dealers."*

* As already noted, the formulation should be even broader than the Solicitor General has phrased it, since the Commission has condemned as illegal (a) any such agreement by Goodyear with any

Petition, *Goodrich-Texaco*, p. 2. The primitive simplicity of the question's phrasing is apt, for the Commission permits no qualifications to its freshly-devised formula. Instead, it condemns the sales commission plan without considering the plan's manifest benefits to the American motorist, service station operators, oil companies and rubber companies.

As noted in the Statement, the existence of these benefits is uncontradicted. The Hearing Examiner found—and the Commission did not deny—that an Atlantic dealer "cannot profitably and successfully operate his business" without the sale of TBA "which also enables the dealer to give complete service to his customers"; that service stations are an important outlet to TBA manufacturers; and that the sale of TBA by Atlantic's dealers builds a stronger dealer organization and increases the sale of gasoline (R. 99-100).*

These benefits are especially significant when the plan is used to assist the dealers of smaller oil companies,

---

and all marketing oil companies, small or "major", and (b) any such agreement by Atlantic with any rubber company, small or "major". Specifically, four of the oil companies with which the record shows Goodyear had sales commission arrangements—Anderson-Prichard Oil Company, Frontier Refining Company, Quaker State Oil Refining Corporation and Shamrock Oil & Gas Corporation—are undeniably "small" marketers of petroleum products. Furthermore, Goodyear's position among rubber companies is nowhere treated by the Commission as material to the lawfulness of sales commission plans in the oil industry—except for the Commission's unsupported (and in fact mistaken) assertion that "smaller tire companies are unable to compete with larger tire manufacturers for the business of oil companies using the sales commission plan" (R. 185).

* The Seventh Circuit freely found that sales of TBA were an "integral part of service station operations", aided stations in giving "complete service to motorists" and required that station operators be trained and kept informed of changes and production developments in TBA products. (R. 3685).

as was demonstrated here by Atlantic's decision to abandon purchase-resale (the alternative method of providing these benefits) when purchase-resale proved to be uneconomic and inefficient (R. 100-01, 2357-62, 2859-64, 239). Indeed, the basic facts of economic life—ignored by the Commission—are that small and medium-size oil companies are engaged in fierce competition with larger competitors and that the sales commission system is particularly well adapted to the needs of those smaller companies (and consequently their dealers) who may not be economically able to sustain the start-up costs and the continuing training, warehousing and distribution expenses of a purchase-resale system.

In spite of these considerations, the Commission chose to ignore the prior holdings of this Court that the advantages of and justifications for any business method under attack as possibly restraining trade must be carefully weighed and considered before that method can be condemned.* Indeed, the requirement that there be review and analysis of relevant economic data has been formulated by this Court in cases where the arrangements under appraisal, unlike the sales commission plan, were openly and obviously restrictive. For example, in *White Motor*

---

* It is submitted that in this respect the Sherman and Clayton Act holdings of this Court govern a Federal Trade Commission Act proceeding in which the Commission purports to find a "fundamental restraint of trade inherent in the sales commission system itself" (R. 157). The Commission's opinion does not argue that the Commission may totally ignore the requirement of these precedents. In any case, such an argument should fail—especially if, as here, it would endeavor to excuse the Commission's failure to consider the economic benefits and economic setting of a widespread method of product distribution which has been in effect for more than two decades (R. 1450). See *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427-28; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 647; Report of the Attorney General's National Committee to Study the Antitrust Laws, pp. 148-49 (1955); Oppenheim, *Guides to Harmonizing Section 5 of The Federal Trade Commission Act with the Sherman and Clayton Acts*, 59 MICH. L. REV. 821, 826, 836 (1961).

Co. v. *United States*, 372 U. S. 253 (1963), this Court said of the vertical territorial limitations imposed upon its distributors and dealers by White that such limitations "may or may not have that purpose or effect [*viz.*, the stifling of competition]."

> "* * * *We do not know enough of the economic and business stuff out of which these arrangements emerge to be certain.* They may be too dangerous to sanction or they may be allowable protections against aggressive competitors or the only practicable means a small company has for breaking into or staying in business (cf. *Brown Shoe, supra,* at 330; *United States* v. *Jerrold Electronics Corp.*, 187 F. Supp. 545, 560-561, *aff'd,* 365 U. S. 567) and within the 'rule of reason.' We need to know more than we do about the actual impact of these arrangements on competition to decide whether they have such a 'pernicious effect on competition and lack . . . any redeeming virtue' (*Northern Pac. R. Co.* v. *United States, supra,* p. 5) and therefore should be classified as *per se* violations of the Sherman Act." (Emphasis added) (372 U. S. at 263).

The Court sent the case back for full development of the facts by the trial court because the "rule of reason" read into the Sherman Act by *Standard Oil Co.* v. *United States*, 221 U. S. 1, "normally requires an ascertainment of the facts peculiar to the particular business" (372 U. S. at 261).*

---

* The requirement that a purported restraint be assessed against the background of "the facts peculiar to the business to which the restraint is applied" is of course applicable to cases across the entire antitrust spectrum. See, *e.g.*, *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238 (Section 2 of the Sherman Act); *United States* v. *American Tobacco Co.*, 221 U. S. 106, 180-83 (Sections 1 and 2 of the Sherman Act); *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U. S. 320 (Section 3 of the Clayton Act); *Brown Shoe Co.* v. *United States*, 370 U. S. 294, 321-22, 324, 328-31 (Section 7 of the

Here the Commission has failed to consider the "economic and business stuff" out of which the sales commission plan has emerged. Indeed, the Commission's approach seems almost calculated to avoid coming to grips with the complex facts as to the intensely competitive market, or markets, in which TBA products are sold.*

Clayton Act); *United States* v. *Continental Can Co.*, 378 U. S. 441, 449 (Section 7 of the Clayton Act) ("Concededly these guidelines [to the definition of product market] offer no precise formula for judgment and they necessitate, rather than avoid, careful consideration based upon the entire record").

* In sharp contrast (and as more fully discussed in Point II hereof), the Commission has recently announced a "broad inquiry" into the problems of competition in the marketing of gasoline, the very industry under consideration here. The Commission specifically rejected any simplistic approach:

> "It is evident both from these submissions and from the Commission's experience in this industry in enforcing the laws which it administers that a broad, comprehensive, and industry-wide approach to the competitive problems of the industry is necessary, *and that specific remedial measures required in the public interest should not be attempted before obtaining a solid factual foundation in regard to the competitive conditions of gasoline distribution.* As the Supreme Court stated in a recent decision, proper and effective remedial action in this industry requires that the Commission make realistic appraisals of relevant competitive facts, *and these facts are highly complex.* The Commission has accordingly determined forthwith to institute an industry-wide inquiry into the competitive problems of marketing gasoline. The Commission intends to employ its flexible administrative powers of investigation and fact-finding as may be found necessary to assure *a complete, fair, and realistic understanding of the structure and dynamics of competition in the industry.*" (Emphasis added) *Statement of the Federal Trade Commission Announcing Broad Inquiry into the Problems of Competition in the Marketing of Gasoline* (December 30, 1964). (See Annex A hereto, p. 8).

B. The Commission's Postulate of Oil Company "Power" Was Used As a Substitute For Its Required Functions.

1. The Commission and the Court Below Relied Solely on the Postulate of "Power".

In condemning Goodyear's sales commission arrangement with Atlantic, both the Commission and the Court below relied exclusively on the conception that Atlantic had a special kind of "power" with respect to its dealers.

In so doing, both the Commission and the Court rejected the reasoned approach of the Hearing Examiner, who limited his entire remedy to an order barring Atlantic from any coercion of its dealers—after concluding there was evidence of some specific coercive acts by Atlantic representatives despite written Atlantic policy to the contrary (R. 103-08, 111-13, 120).* The Commission made little of coercion: coercive acts were "mere symptoms" of a fundamental "restraint of trade" growing out of Atlantic's economic power over its dealers (R. 156-57, 121, 181).

Thus, the Commission's entire approach to the sales Commission plan is based entirely on its notion of Atlantic's "economic power" over its dealers. Although the Commission explicitly states that the issue presented by the case is "the legality of * * * use [by Goodyear and Atlantic] of a *particular method* of distributing TBA products" (R. 181) (emphasis in original), the Commission's central finding is:

---

* As noted in the Statement, the evidence as to coercion of dealers by Atlantic is sparse. However, the sufficiency of the record to support an order against coercing its dealers has not been raised in this Court by Atlantic, and the issue of coercion, which never had relevance to Goodyear or to the lawfulness of the sales commission plan, is now out of the case as it stands before this Court.

"Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic". (R. 181).

The Seventh Circuit took the same view.

"The heart of this case is the economic power Atlantic possesses over its service station dealers. * * * The keystone of the actual relationship between Atlantic and its dealers is the lease and the equipment loan contract with their short term and cancellation provisions. * * *

* * * * * * *

"* * * The totality of facts surrounding the relationship between the oil company and the dealers points to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA." (R. 3690, 3692-93).

The Commission's entire case rests therefore upon the premise—accepted by the Seventh Circuit—that short-term lease and equipment loan agreements outstanding between Atlantic and its dealers are such that the existence of an unlawful power in Atlantic to control its dealers' TBA purchases by mere sponsorship of a brand or brands of TBA is to be conclusively presumed.

2. The Goodrich-Texaco Decision.

It is at this point that the decision of the Court of Appeals for the District of Columbia Circuit in *Texaco, Inc. and The B. F. Goodrich Co.* v. *Federal Trade Commission*, 336 F. 2d 754 (D. C. Cir. 1964), comes into conflict

with the decision here. In the face of a record which indicated that Texaco has essentially the same kind of short-term lease and equipment loan agreements with its dealers* as those of Atlantic which were viewed as of paramount importance here, the District of Columbia Circuit nonetheless found "no basis in the record for the Commission's conclusion that Texaco has controlling economic power over its dealers" (336 F. 2d at 762). Indeed, that court specifically held that Texaco's contracts with its dealers "do not give rise to" such controlling economic power (*Ibid*).

The Soliciter General sees in the conflict between the opinions of the two courts "a fundamentally different conception of the nature of economic power in the oil industry" and concludes that "the different results in the two cases do not reflect merely the courts' respective evaluations of the different records" (Petition, *Goodrich-Texaco*, p. 14).

We agree that the two cases do not differ sufficiently in their facts to account for their flatly opposite results.**

---

* There is no discussion by the Commission of how long a lease must be to be classed as something other than "short-term". Atlantic has leases running as long as three years (R. 99), whereas Texaco's leases are all apparently of one-year duration (336 F. 2d at 767).

** As Judge Washington points out in his dissent in *Goodrich-Texaco*, the record there contains such evidence of Texaco's "power" over its dealers as:

> "(a) one year leases and sales agreements, terminable at the year's end upon 10 days' notice; (b) substantial contractual control by Texaco over the use, maintenance and appearance of stations (the obligations imposed by Texaco, in addition to being evidence of Texaco's bargaining power, are means by which Texaco could prematurely terminate the lease through enforcement of one of those obligations, under cancellation provisions); (c) high personal investments by the lessees in their stations; (d) close dealer supervision by Texaco salesmen; (e) Goodrich's manifest understanding that Texaco controls its dealers (*e.g.*, Goodrich's books refer to the dealers as 'oil company controlled dealers'); (f) testi-

We also note that there was no evidentiary basis upon which the two courts could demonstrate "different conceptions of the nature of economic power in the oil industry". Whether *all* marketing oil companies have power to control the TBA purchases of their respective dealers has never been factually considered by the Commission—as is discussed in Point II below.

The District of Columbia Circuit does not deny that Texaco may be able to influence its dealers to purchase TBA sponsored by Texaco. The decision, rather, rules in effect that the relationship between Texaco and its dealers has not been shown to be such that the mere sponsorship by Texaco of a given brand or brands of TBA warrants the Commission to indulge in a conclusive presumption that oil company "power" is synonymous with substantial and illegal market "foreclosure".

3. The Commission's Presumption of "Foreclosure".

In so ruling, the District of Columbia Circuit contradicts the Commission's holding here. The Commission has conclusively presumed that all or substantially all of the TBA purchases made by Atlantic's dealers are of Goodyear TBA, that all of such purchases of Goodyear TBA

---

mony of competing TBA suppliers that Texaco dealers felt they risked reprisal if they did not carry sponsored TBA, and (g) testimony of former Texaco dealers of the existence of a pattern of coercive conduct throughout their tenure." 336 F. 2d at 767.

In *Goodrich-Texaco*, the Commission also adopted the Hearing Examiner's conclusion that Texaco's "representatives have, in fact, attempted to and did coerce and force Texaco dealers to purchase substantial quantities of Goodrich and Firestone TBA." (Joint App. *Goodrich-Texaco* (No. 635), 226, 303). Just as in this case, however, the Commission's reason for holding Goodrich sales commission plans illegal does not depend upon a finding of coercion by Texaco. (Joint App. *Goodrich-Texaco* (No. 635), 302-03).

are the result of Atlantic's "power" and that competitors of Goodyear and its dealers are thus "foreclosed" from selling to Atlantic's dealers.

There is no factual finding which shows this presumption to be correct.*

Even assuming that the Commission were correct and that some "foreclosure" of others from the competition for Atlantic business were a result of the sales commission plan, the Commission was still required to determine and analyze the effects of any such foreclosure on the relevant market. Competition must be foreclosed in a substantial share of the line of commerce affected if a violation is to be found, as this Court made clear in *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U. S. 320, 327-28:

> "*First,* the line of commerce, i.e., the type of goods, wares, or merchandise, etc. involved, must be determined, where it is in controversy, on the basis of the facts peculiar to the case. *Second,* the area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, and to which the purchaser can practicably turn for supplies. In short, the threatened foreclosure of competition must be in relation to the market affected.
>
> * * * * * * *
>
> "*Third,* and last, the competition foreclosed by the contract must be found to constitute a substantial share of the relevant market. That is to say, the opportunities for other traders to enter into or remain in that market must be significantly limited * * *."

---

* Moreover, there is nothing in the sales commission agreement which gives Goodyear the right to deal exclusively with Atlantic or its dealers. If any Atlantic dealer chose to deal primarily in Goodyear TBA, the decision to do so was made independently of any requirements by Goodyear or the sales commission agreement.

Since the Commission described in terms of "foreclosure" the deleterious "effects" it relied upon (R. 182-86), the standards set out in *Tampa Electric* are clearly applicable. None of these was met: there has been no determination of the line or lines of commerce involved, no definition of the area of effective competition and no measurement of what share of that competition, if any, was foreclosed.

a. *Line or lines of commerce.* Since this is a TBA case, presumably the line or lines of commerce in which any effects are to be measured involve the sale and distribution of TBA. However, the Commission made no determination whether all sales of TBA to motorists constitute a line of commerce,* whether the sale of tires to motorists constitutes a distinct line of commerce but the sale of batteries and accessories to motorists can be broken down into numerous separate and distinct lines of commerce, or which of the almost innumerable other possible combinations and permutations properly can describe the line or lines of commerce in this case.

As this Court has stated of a claimed violation of the Clayton Act, "determination of the relevant market is a necessary predicate to a finding of a violation . . . because the threatened monopoly must be one which will substantially lessen competition 'within the area of the effective competition.' Substantiality can be determined only in terms of the market affected." *United States* v. *E. I. du Pont de Nemours*, 353 U. S. 586, 593 (1957) (footnote omitted). The Commission's opinion does not attempt to define the market with which this case is concerned.

---

* Service station sales of TBA—noted by the Commission as constituting an increasingly important source of TBA sales (R. 122)—may have changed since the date of the record. At least as to sales of replacement tires, service stations appear to have lost ground to their competitors in recent years (Factbook Issue, Mid-May 1964, *National Petroleum News*, 230).

b. *Area of effective competition.* Again violating the precepts of *Tampa Electric,* the Commission does not even attempt to chart "'the area of effective competition in the known line of commerce * * * in which [Goodyear or its supply points operate], and to which [Atlantic or its dealers] can practically turn for supplies" (365 U. S. at 327). The "foreclosure" relied on by the Commission is purported foreclosure of (1) other TBA manufacturers from competing for the business of selling to Atlantic and its dealers, (2) other manufacturers' wholesalers from selling to Atlantic's dealers, and (3) Goodyear's dealers who do not function as supply points from competition for the business of Atlantic's dealers (R. 182-86).

On this basis, any manufacturer of tires, batteries or automotive accessories anywhere in the country who sells or is willing to sell its products within the 17-state area in which Atlantic has stations is someone to whom Atlantic or its dealers could reasonably turn for such products. Whether shipping problems or other factors dictate who can effectively sell tires, batteries or accessories to Atlantic and its dealers is the kind of question not answered by the Commission.

As for the purported foreclosure of other wholesalers (whether wholesalers of non-Goodyear TBA or Goodyear dealers who are not supply points*) from competing

---

* There is no finding and no evidence that any competent Goodyear dealer was ever denied the opportunity to become a supply point for Atlantic's dealers (or for any of the dealers of any other oil company under any other sales commission agreement); nor is there any finding or evidence that any such Goodyear dealer who was not a "supply point" was interested in becoming one. The Commission has persistently ignored the fact that not all Goodyear dealers have the kind of operation necessary to the job required of a supply point. A supply point receives no special compensation for participation in the sales commission plan, and must maintain larger inventories and provide a broader range of services than are usually maintained and provided by other Goodyear dealers who do not perform that function (R. 524-25).

for the business of Atlantic's dealers, the identity of the innumerable competitors possibly involved is left a complete mystery. There are no data at all.*

c. *Substantiality of the competition foreclosed.* Finally, the Commission has made no effort to determine whether the competition allegedly foreclosed constitutes a substantial share of the relevant market or markets. This failure is *a fortiori* since there is no information as to what the relevant market is, how big it is, or what portion of it has in fact been foreclosed, if any. Information available in the record does show, however, that Goodyear TBA sales under its agreement with Atlantic totaled somewhat less than $6,000,000 in 1955 (R. 133). The annual national replacement TBA market, for a share of which all TBA manufacturers compete, is estimated to have been $4,000,000,000 in the mid-1950's (R. 3103, 415); thus the maximum share of that market that could have been foreclosed by the Goodyear-Atlantic agreement—even on the Commission's own untenable theory—is roughly 15/100 of 1%.

What all this comes down to is simple. To talk of market foreclosure in the vacuum created by the Commission's total failure to analyze and determine relevant markets and the competition therein is to reject entirely the careful standards and sensitivity to fact developed by this Court in a long line of antitrust cases whose teachings are applicable here.

---

*Thus, if in a given geographic area there are 20 Atlantic dealers who compete with 400 other stations, 20 tire stores, 3 large department stores, 3 discount houses and several retail stores of giant mail order chains in the sale of TBA at retail, and these dealers buy a substantial share of their total TBA requirements from a Goodyear supply point rather than from 25 other tire wholesalers, dozens of auto parts dealers and various occasional wholesale sellers of one or more TBA items, a determination of the area of competition for purchases by those 20 Atlantic dealers requires careful economic analysis. No attempt at such analysis has been made by the Commission in any possible market.

It is submitted that the Commission's presumption of "foreclosure" based on Atlantic "power" utterly fails to pay heed to the admonitions of this Court.

4. The Inherent Contradictions in the Commission's Approval of Purchase-Resale.

The Commission has also failed to evaluate the functions served by the sales commission plan, particularly in the case of smaller and medium-size oil companies like Atlantic. As noted, Atlantic originally abandoned purchase-resale and entered into sales commission agreements with Goodyear and Firestone because it was convinced that it could not economically provide high quality TBA for its dealers through its own distribution of products which it lacked the facilities and experience to handle (R. 100-01, 2357-62, 2859-64, 239). Yet now Atlantic is to be barred from the alternative method of distribution under which it has been able to achieve that very goal which the Hearing Examiner and the Court below found to be beneficial to dealers, service station operators and oil companies—the provision of high-quality TBA to service station operators trained in their use and sale (R. 114-16, 99-100, 3685).

This paradox in result is also present in the Commission's reasoning. It holds that Atlantic's "power" renders the sales commission plan illegal. But surely that "power" would not cease to exist if Atlantic were relegated to the purchase of TBA for resale to its dealers. Indeed, the Commission proffers nothing to support its silent assumption that the "power" would recede if each Atlantic salesman were himself to be selling, and not merely recommending, TBA.

The Commission's justification* for this incongruity is that there may be some tire, battery or automotive accessory

*The Commission also argues that under a sales commission plan the supply points of a rubber company "are assured of a substantial chunk of the market before the competitive race at the

manufacturers who—because of their more limited distribution facilities—are less able to compete for the business of Atlantic's individual dealers than they are to compete for the business of Atlantic. In short, the Commission has issued an order under which "competition for the business of the individual service station is [to be] replaced by competition for the oil company's domination of its dealers", the very thing condemned as anticompetitive by the Seventh Circuit in striking down the sales commission plan (R. 3695).

The Commission's emotionally-charged references to "smaller tire companies" and "smaller competitors" are misleading, for the Commission did not prove—nor could it—that small rubber companies do not have sales commission agreements with oil companies. In addition, as already noted, the Commission failed to consider the effect upon smaller oil companies and *their* dealers of banning a sales commission plan. In any case, a method of competition has never been held illegal heretofore simply because one company was able to offer a broader range of products and service than another.

C. Under Congressional Policy, Oil Company "Power" is No Basis for Abolition of a Sales Commission Plan.

The Commission's entire approach in establishing a conclusive presumption of illegality based upon Atlantic's purported power over its dealers, rather than upon any

---

wholesale level even begins" (R. 184). This is faulty reasoning, for under purchase-resale the petroleum company would be assured of the same "substantial chunk" at the start of the race.

Moreover, the adoption of purchase-resale by Atlantic and other oil companies with which Goodyear now has sales commission agreements would have the additional effect, under the Commission's own rationale, of "foreclosing" from competition for the business of the dealers of Atlantic and the other oil companies at least the 1,209 independent small businessmen who, as Goodyear supply points, presently sell to such gasoline dealers (R. 173).

acts by Atlantic with respect to its dealers, also conflicts with a clear expression of Congressional policy. In the mid-1950's there was much concern over the power which automobile manufacturers had to influence the purchase by their franchised dealers of cars and other products. In 1956, Congress responded to this concern by enacting, as a declared "supplement" to the antitrust laws, the so-called Automobile Dealers' Day in Court Act, 70 Stat. 1125 (1956), 15 U. S. C. §§1221-25 (1958).

Under that Act an automobile dealer was given the right to sue in the district courts for damages if his manufacturer failed

> "... to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, cancelling, or not renewing the franchise with said dealer." (28 U. S. C. §1222).

Good faith was defined in the act as follows:

> "The term 'good faith' shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.*"* (Emphasis supplied.) (28 U. S. C. §1221(e)).

---

* Congress appears to have taken the emphasized language from, and thus in a sense to have adopted, the trial court's charge in *United States* v. *General Motors Corp.* (*affirmed* at 121 F. 2d 376 (7th Cir. 1941), *cert. denied*, 314 U. S. 618), portions of which are set out at length in this Court's decision in *Ford Motor Co.* v. *United States*, 335 U. S. 303. In those instructions, the trial court told the jury it was not unreasonable for General Motors to have a finance company and to recommend its use to its dealers. In his charge, he commented, as follows, upon the Government's theory that General Motors' power to refuse to renew dealer contracts

The economic "power" of an automobile company vis-a-vis its dealers is surely no less than the power of an oil company vis-a-vis its service-station operators. Yet, in the dealers' statute, Congress plainly held that an auto-

---

was used as a club upon dealers to force them to use the finance company:

> "[The Government] can only complain if the defendants do sufficient of these acts charged in the indictment as constitute duress upon the dealer to accomplish a result that would have otherwise not have been accomplished, and to make a dealer do something that he would not have done of his own free will.
>
> "That, almost, is the question in this case—whether the dealer could act as a free man; whether he could act of his own free will.
>
> * * * * * *
>
> "You know, you have heard of the terms:
>
> "Exposition;
> "Persuasion;
> "Argument;
> "Coercion.
>
> "They are different steps. They are graduated steps that I suppose every salesman goes through, except perhaps the last.
>
> "In exposition one may expound the merits of that which he has to sell; he may explain its nature and by his exposition make a clear picture of what he has.
>
> "By persuasion he may endeavor to persuade the person to whom he is talking to accept that which he has to offer.
>
> "There is little advancement in his further progress, to argue.
>
> "Persuasion means something softer than argument, perhaps, but he may argue with him, and argue with him the respective merits of his product and other products being offered to the person to whom he makes his offer.
>
> "All of these are proper.
>
> "He may not go beyond that and use something that is within his power to use as a club to coerce the person to accept that which he has to offer.
>
> * * * * * *
>
> "You must remember that, after all, this coercion, if you find that coercion exists, then the ultimate question is: Has that resulted in unreasonable restraint of interstate commerce? And that is a question for you to determine from all of the evidence." (335 U. S. at 317 n-18 n).

mobile company might actively attempt to persuade its dealers to buy, provided that the influence was employed in a non-coercive way.

The legislative history of the statute makes clear the contemplation that the statute could serve as a precedent for use in other industries such as the petroleum industry. See H. Rep. Committee on the Judiciary, Antitrust Subcommittee, Hearings on H. R. 11360 and S. 3879, 84th Cong., 2d Sess. (1956).

A bill identical in all material respects to the Automobile Dealers' Day in Court Act, but aimed at oil companies, was introduced in the House the following year. See H. R. 425, 85th Cong., 1st Sess. (1957). At least two bills intended to outlaw the sales commission plan have been introduced. See H. R. 428, 85th Cong., 1st Sess. (1957), and H. R. 9894, 86th Cong., 2d Sess. (1960). Similarly, there have been bills aimed at purchase-resale, see H. R. 5926, 87th Cong., 1st Sess. (1961); S. 2480, 87th Cong., 1st Sess. (1961), and at exercise of dominion with respect to the reselling of gasoline or petroleum products as well as TBA, see H. R. 426, 85th Cong., 1st Sess. (1957). The Congress has chosen not to act.

The Commission has here set its face against this history and has issued a legislative declaration of illegality contradicting the Congress itself.

D. The Analogy to Tying Cases is Improper.

By their references to "tying" cases, the Commission (R. 179-81), the Court (R. 3690, 3693-95) and the Solicitor General (Petition, *Goodrich-Texaco*, pp. 15, 20) each indicate that their real concern lies with oil company power—and not with the sales commission plan. Thus, the Commis-

sion argues from its finding that Atlantic "has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gasoline distribution facilities to cause its dealers to purchase" TBA that this "would appear to bring this case within" *Northern Pac. Ry. Co.* v. *United States,* 356 U. S. 1, and *Osborn* v. *Sinclair Refining Co.,* 286 F. 2d 832 (4th Cir. 1960), *cert. denied,* 366 U. S. 963 (R. 179). However, it goes on to say that "we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases" (R. 181).*

But the difficulty with the tying argument is not simply mechanical; it is basic. As the Seventh Circuit points out, "Goodyear's contract in itself has no tying features" (R. 3694). Any tie, if it exists at all, is a tie of the sale of TBA to Atlantic's ability to sell gasoline and to make gasoline distribution facilities available to its dealers pursuant to leases and equipment loan agreements.

If Atlantic were to make an absolute condition to any lease or loan agreement or sale of its petroleum products to a dealer that the dealer purchase Goodyear TBA (or Firestone TBA, or Atlantic TBA under a purchase-resale method of distribution), such an arrangement might amount to an unlawful tying agreement, assuming the requisite effects upon competition. But unlawful for whom? It is clear that the tie would result purely from Atlantic's act, not from anything having to do with Goodyear.

In any event, the way to eliminate an unlawful tying arrangement is to enjoin the tie. In *Northern Pacific* an injunction was entered against the railroad's continuing

---

* Under this Court's decision in *Securities and Exchange Commission* v. *Chenery Corp.,* 318 U. S. 80, this explicit refusal to rely upon tying would appear to bar any argument now that the Commission's decision could be affirmed on a tying theory; but *cf.* Petition, *Goodrich-Texaco,* pp. 15, 20.

any condition in its leases requiring its lessees to use its shipping facilities in preference to other railroads. The railroad was not enjoined from continuing to lease property; it was not enjoined from continuing to engage in carriage by rail; nor was it enjoined from continuing to lease property and to furnish carriage by rail to the same persons. Similarly in *International Salt Co.* v. *United States,* 332 U. S. 392, the defendant was enjoined from tying the rental or sale of its patented machines to the sale of its salt but not from furnishing machines, from selling salt or from both. The "power" which the railroad derived from its ownership of specific real property and the "power" which the salt company derived from its patent monopoly are surely no less than the "power" of General Motors over its dealers or of Atlantic over its.*

The distinction between unlawful tying and the lawful conduct which the Commission seeks to proscribe in this case is also evidenced in *Osborn* v. *Sinclair Refining Company,* 286 F. 2d 832 (4th Cir. 1960), *cert denied,* 366 U. S. 963, a case relied upon by the Commission (R. 179-81), the Seventh Circuit (R. 3693-94), and the Solicitor General (Petition, *Goodrich-Texaco,* p. 20). The plaintiff Osborn, a former lessee-operator of a service station,

---

* Similarly, in other cases in which this Court found an illegal practice upon a tying theory, the order banned only the coercive activity, despite "power" in each instance no less than that which Atlantic may have. In no case was the company ordered to restrict production or sale of the tying or tied product. *United States* v. *Loew's Inc.,* 371 U. S. 38; *Jerrold Electronics Corp.* v. *United States,* 365 U. S. 567; *International Business Machines Corp.* v. *United States,* 298 U. S. 131; *United Shoe Machinery Corp.* v. *United States,* 258 U. S. 451, 456-57. In *United States* v. *Paramount Pictures,* 334 U. S. 131, this Court said:

> "We do not suggest that films may not be sold in blocks or groups, when there is no requirement, express or implied, for the purchase of more than one film. All we hold to be illegal is a refusal to license one or more copyrights unless another copyright is accepted." (334 U. S. at 159).

brought suit against Sinclair charging his former supplier-lessor had violated Sections 1 and 2 of the Sherman Act by requiring him to purchase Goodyear TBA and eventually cancelling his lease when he refused.

The Court saw the question before it as "whether there existed between Sinclair Refining Company and its customers an illegal tying arrangement prohibited by Section 1" (286 F. 2d at 834); it concluded there was illegal tying both because such illegal conduct might be inferred from the facts present and because one lease to Osborn "was actually made in pursuance of an express oral agreement to purchase Goodyear TBA" (286 F. 2d at 836-37). What concerned the Court was not the oil company's power but its use of pressure and coercion:

> "Of course, a seller may attempt to persuade a buyer to purchase his products rather than those of his competitors, and such salesmanship efforts do not run afoul of the anti-trust laws, unless the sale of one product (the tying product) is made under an agreement, arrangement or condition under which the buyer must also purchase another (the tied) product.
>
> * * * * * * *
>
> "* * * Sinclair-Sherwood's efforts to induce their dealers to carry a substantial quantity of Goodyear TBA went beyond mere persuasion or salemanship to effectuate Sinclair-Sherwood's policy and constituted an actual requirement and condition for the continued sale of gasoline under their leases." (286 F. 2d at 836).

It is submitted that this Court and the Court in *Osborn* have consistently viewed tying as a problem of *abuse* of power; that the Hearing Examiner was faithfully applying precedent and common sense when he confined the remedy to prohibition of coercive acts by Atlantic; that the Com-

mission in effect recognized that "tying" analogies gave it no basis for absolute prohibition of a sales commission plan; and that the Commission's order may not now derive sanction from tying analogies.

Conclusion.

The Hearing Examiner was clearly correct when he concluded that it was proper for Atlantic to "sponsor" TBA and thus seek to persuade its dealers in their TBA purchases—so long as Atlantic itself did not engage in improper behavior such as coercion or tying. The Commission and the Court below refused to adopt that eminently sound approach, substituting for it a simple quantitative test of illegality which treats actual conduct as irrelevant and ignores the many justifications for using the sales commission method to distribute TBA.

The decision under review is thus a departure from the antitrust mainstream, an effort to avoid the careful economic analysis and weighing of alternatives which this Court has consistently required. To permit the Commission's decision to stand would be to acquiesce in the Commission's assuming for itself the right to condemn business conduct as illegal *per se* without concern for either fact or law. This Court should reverse.

II.

EVEN IF THE COMMISSION'S ABOLITION OF THE GOODYEAR-ATLANTIC SALES COMMISSION PLAN WERE PROPER, ITS PROHIBITION OF ALL GOODYEAR PLANS WITH ALL OIL COMPANIES IS COMPLETELY UNWARRANTED.

The preceding Point I urges that the Commission could not properly abolish the sales commission arrangement between Goodyear and Atlantic. This Point II demon-

strates that, in any event, the Commission had neither factual nor legal basis for its far broader prohibition barring Goodyear from all sales commission plans with all oil companies.

The Commission's opinion is void of information about Goodyear's sales commission agreements with oil companies who were not respondents in this proceeding. The only specific references by the Commission to such agreements are as follows: (a) claimed coercion by Sinclair-Sherwood of two of its dealers in 1948 (R. 162-64), (b) a tabulation showing the number of Goodyear supply points servicing the dealers of nine non-respondent oil companies (R. 173), (c) the dollar amount of Goodyear's total TBA sales to dealers of a group of non-respondent oil companies under sales commission plans in the two years 1951 and 1955 (R. 162), and (d) a naked finding that Goodyear's agreements with other oil companies "are in all material respects identical with the Goodyear-Atlantic contract" (R. 162). The Commission made no effort to show that the sales commission plans as implemented by other oil companies were in any respect comparable to the Atlantic plan as implemented.*

As to other oil companies, there are no findings whatsoever as to the following:

a. How the sales commission plan with each of them works in actual practice;

b. The terms of, and the actual operations under, the oil company's contractual arrangements with its retail outlets

* The non-respondent petroleum companies with which Goodyear has sales commission agreements present a variety of different situations which the Commission has simply swept under the rug. The companies are of different sizes, operate in different areas, face different competitors, have different positions in their respective markets, provide markets for differing amounts of TBA, operate with different types of dealer outlets, etc.

(although, in the case of Atlantic, the Commission and the Court below found such arrangements to be the "keystone of the actual relationship between Atlantic and its dealers" (R. 3690));

c. How each oil company selects its dealers or how, if at all, it operates or participates in dealer training schools, dealer meetings, tire clinics, promotional programs, cooperative advertising or quota systems, or otherwise promotes the sale of Goodyear TBA;

d. How each company deals with initial stocks of TBA, check-out of dealers, the selection of supply points, TBA display, station identification, or non-sponsored products.

This failure of proof is emphasized by the procedural posture of this matter. For example, the Commission's order before this Court prohibits Goodyear, *inter alia*, from a continuation of its sales commission plan with Shell, although there is virtually no pertinent evidence in the record here. Yet there is still *sub judice* before the Fifth Circuit the very issue whether Shell should be permitted to continue its sales commission plans generally, including that with Goodyear. It is in that latter case, not this, that the Commission had the opportunity to examine Shell's relationship with its dealers—the Commission's own touchstone of legality of a sales commission plan. It is in that case, not this, that Shell's rights should be decided. But the Commission has so framed its order in this case that Shell is to be voiceless in a determination which affects its vital interests and which lacks the factual foundation necessary to such determination. This bizarre result is not alone a showing of unfairness to Shell; it is an irrefutable demonstration that the Commission's order in this case ranges destructively far beyond the record before it.

Nor is this all. Beyond the lack of findings as to oil companies other than Atlantic with whom Goodyear had sales commission arrangements at the date of the record, there is a further vacuum. The order is not content to nullify Goodyear's sales commission plans as of 1956: it bars Goodyear from entering into any sales commission plan with any marketing oil company at all in the future, without knowledge of that company's size, that company's actual relations to its dealers or the economic factors which this Court has ruled to be the governing criteria in antitrust cases.*

Thus, the Commission's order would void Goodyear's sales commission arrangements as of December, 1964 with 21 marketing oil companies (including Atlantic).** Most of

* Goodyear is thus to be barred from sales commission arrangements with at least 156 companies engaged in the marketing of petroleum products in 1964 (Factbook Issue, Mid-May 1964, *National Petroleum News*, 66-71).

** American Petrofina Company of Texas
APCO Oil Corporation (formerly Anderson-Prichard Oil Corporation)
Ashland Oil & Refining Company
Atlantic Refining Company
Champlin Petroleum Company
Cities Service Oil Company
Crown Central Petroleum Corporation
Frontier Refining Company
Husky Oil Company
Kerr-McGee Oil Industries, Inc.
Leonard Refineries, Inc.
Murphy Oil Corporation
Pennzoil Company (South Penn)
Quaker State Oil Refining Corporation
Shamrock Oil & Gas Corporation
Shell Oil Company
Skelly Oil Company
Sunray DX Oil Company
Tenneco Oil Company
Texaco, Inc.
Vickers Petroleum Company, Inc.

Goodyear also has sales commission agreements limited to "accessories" alone with Richfield Oil Corporation and Sinclair Refining Company.

these companies are not "major" oil companies—14 are not deemed to be among the largest marketing oil companies (21 or 22 in number) in terms either of total assets* or daily average refinery runs.**

The Commission's catch-all prohibition as to the future after 1956 has an ironic twist. One of the 21 companies with whom Goodyear now has a sales commission arrangement is Texaco (which has non-exclusive sales commission agreements with Firestone, Goodrich and United States Rubber Company as well). The Commission has thus held that it is unlawful for Goodyear to have a sales commission agreement with Texaco because of a presumed "power" by Texaco over its dealers, while at the same time Texaco itself, under the decision of the District of Columbia Circuit, is completely free to have such an agreement with Goodyear or anybody else because there was insufficient evidence in the *Goodrich-Texaco* case to establish that Texaco had any such power over its dealers. If this case involved coercion or other abuses by Goodyear, such a result might have a faint tinge of rationality (although it would be a rationalization only the Commission itself could provide, as is clear from *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80). Since, however, the only basis here put forward by the Commission for branding the sales commission plan unlawful is a presumption of power by all oil companies over their

---

* *The Oil and Gas Journal*, April 13, 1964, pp. 48-49.

** *The Oil and Gas Journal*, July 13, 1964, pp. 49-51. Of the 21 companies with which Goodyear has sales commission plans as of December, 1964, two had refinery runs in 1964 which exceeded 400,000 barrels per day; four had refinery runs of 100,000 to 400,000 barrels per day; two of 50,000 to 100,000 barrels per day; two of 40,000 to 50,000 barrels per day; two of 30,000 to 40,000 barrels per day; five of 20,000 to 30,000 barrels per day; two of 10,000 to 20,000 barrels per day; and two under 10,000 barrels per day. (*Ibid.*)

dealers, it is ridiculous to contend that it is unlawful for Goodyear to deal with Texaco after the Commission has tried but failed to show that Texaco has the requisite power.

Even assuming *arguendo* that the District of Columbia Circuit was wrong in concluding that the record in *Goodrich-Texaco* did not support a finding that Texaco has the requisite "power" over its dealers, that Court was at least absolutely correct in determining that the evidence for the finding should be assessed. Clearly, the existence of oil company "power" is, in each individual case, a matter of fact to be determined on a record. The Commission cannot properly determine the relationship of each company in the entire oil industry to its own particular dealers simply by purporting to examine the relationships between each of three oil companies and their respective dealers. For example, merely the gross disparity in size between Texaco on the one hand and Quaker State on the other* may or may not have anything to do with the power either can, or does in fact, exercise over its dealers, but the Commission has not even considered the possibility that such differences do exist in the oil industry. Moreover, Atlantic's experience with purchase-resale indicates that small marketing oil companies have no feasible alternative to sales commission distribution of TBA.

The Seventh Circuit treated in a brief paragraph the Commission's failure of proof as to the entire range of oil companies, small, medium or large, embraced and vitally affected by the Commission's order:

---

* Texaco's refinery runs for the year ended March 31, 1964 averaged 724,191 barrels per day; Quaker State's refinery runs averaged 9,049 barrels per day for the some period. (In this respect Texaco was second in the nation while Quaker State was sixty-eighth.) *The Oil & Gas Journal*, July 13, 1964, pp. 49, 51.

"We think the Supreme Court answered petitioners' contentions in *F. T. C.* v. *Ruberoid Co.*, 343 U. S. 470, 473 (1952), when it said:

> " 'Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. In carrying out this function the Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be bypassed with impunity.' " (R. 3696).

Ruberoid has no application to the issue here. The quotation in *Ruberoid* was in answer to a contention by Ruberoid that the Commission could not interdict admittedly illegal behavior in which the company had not specifically engaged. Significantly, the Court went on to point out that the company was not being prevented from engaging in lawful acts (343 U. S. at 473-76). Here, the Commission did not bar Goodyear from sales commission agreements with all oil companies as a matter of *remedy* addressed to a "transgressor". Rather, it grandly assumed that oil company "power" over dealers permeated the entire oil industry and barred Goodyear on the reasoning that a sales commission arrangement by any oil company would necessarily result in a violation of Section 5. Thus, the issue is whether the sales commission plan is an unfair trade practice at all when Goodyear engages in it with companies which do not have (or have not been proven to have) the power over their respective dealers which is the *sine qua non* of the Commission's unique new formulation of an

unfair method of competition. Whatever the purported evidence as to Atlantic, neither *Ruberoid* nor the Seventh Circuit nor the Commission sheds any light on why the Goodyear sales commission plan should be unlawful when used with any other marketing oil company in the country.

The Commission's order here is all the more remarkable because within the past month the Commission has specifically recognized that it does not know enough of the "highly complex" facts as to competitive conditions in the marketing of gasoline; that this "dynamic industry" changes rapidly and has significantly altered since a record which was closed in the 1950's; and that the Commission would forego "specific remedial measures" against "a few oil companies" before it obtained a "solid factual foundation" on an industry-wide basis.

In a situation involving marketing oil company cases growing out of practices with respect to dealers faced with gasoline price wars, the Commission's recent order held:*

> "(1) * * * The specific practices challenged in these cases occurred almost a decade ago, in the mid-1950's, and competitive conditions in this dynamic and rapidly changing industry appear to have altered significantly since then.
>
> "(2) The Commission has this date announced the initiation of a broad inquiry into the problems of competition in the marketing of gasoline. *Orders to cease and desist entered against a few oil companies—orders which would probably not become final, if at all, until completion of lengthy review proceedings in the Federal Courts of Appeals and the Supreme Court—could not provide complete or*

* *Pure Oil Company*, FTC Docket No. 6640; *The Texas Company*, FTC Docket No. 6898; *Standard Oil Company (Indiana)*, FTC Docket No. 7567; *Shell Oil Company*, FTC Docket No. 8537 (December 28, 1964).

effective solution to the competitive problems of the gasoline industry. It would appear to be more desirable, from the standpoint of effective administration of the law, that the Commission concentrate its necessarily limited resources on a comprehensive industry-wide approach to the problems of competition in the marketing of gasoline." (Emphasis supplied.)

(That order by the Commission, the dissent by Commissioner MacIntyre and an accompanying "Statement of the Federal Trade Commission Announcing Broad Inquiry Into The Problem of Competition In The Marketing of Gasoline" are set out as Annex A hereto.)

The statement announcing the Commission inquiry specifically recognizes that the Commission lacks expertise in petroleum marketing:

"The Commission has received a large number of inquiries, complaints, and petitions from various groups in the gasoline industry, from members of Congress, and from members of the consuming public, with respect to competitive problems in the marketing of gasoline. *It is evident both from these submissions and from the Commission's experience in this industry in enforcing the laws which it administers that a broad, comprehensive, and industry-wide approach to the competitive problems of the industry is necessary, and that specific remedial measures required in the public interest should not be attempted before obtaining a solid factual foundation in regard to competitive conditions of gasoline distribution.* As the Supreme Court stated in a recent decision, proper and effective remedial action in this industry requires that the Commission make realistic appraisals of relevant competitive facts, and these facts are highly complex. The Commission has accordingly deter-

> mined forthwith to institute an industry-wide inquiry into the competitive problems of marketing gasoline. The Commission intends to employ its flexible administrative powers of investigation and fact-finding as may be found necessary to assure a complete, fair, and realistic understanding of the structure and dynamics of competition in the industry." (Emphasis supplied.)

The Commission's present view that "proper and effective remedial action in [the petroleum marketing] industry requires that the Commission make realistic appraisals of relevant competitive facts" contradicts the course the Commission has pursued in this case. Its present recognition of the complexity of the markets with which this case is concerned and of the need for industry-wide data about "the structure and the dynamics of competition in the industry" is an unintended concession that there is no basis in the empty and stale record of this case for a conclusion that the sales commission plan cannot ever be legal if entered into with any oil company.

As is clear from Point I, *supra*, no realistic appraisal of relevant facts has been made by the Commission in the case of Atlantic. As for all other oil companies—whether they have sales commission plans with Goodyear or not—there is no appraisal at all. There is here not a mere inability to meet the proper standards of proof but a complete failure to find evidence of unlawfulness.

It is submitted that this Court should take stock of the Commission's present acknowledgment—more than eight years after the date of the record here and close to four years after the date of its order here—that it lacks sufficient knowledge of the relevant facts in the marketing of gasoline: this proceeding should be dismissed.

III.

IN FIXING ITS REMEDY, THE COMMISSION FAILED TO PERFORM THE DUTIES WHICH THE CONGRESS AND THIS COURT HAVE HELD TO BE ESSENTIAL.

Quite apart from the substantive argument in the preceding two Points that the Commission seeks to bar a legal and proper economic practice, it is clear that the Commission fixed its remedy without performing the functions which this Court requires of an administrative agency in the determination of an appropriate remedy.

Nowhere in its opinion does the Commission indicate that it gave consideration to an order more limited and specific than the order here. Instead there is the stubborn failure of the Commission to consider the benefits of the sales commission plan, to weigh any remedy short of flat abolition or to set out reasons why less Draconian relief would not suffice. Still, the requirement that an order by the Commission be reviewable is a requirement that there be a stated basis for the order, including reasoned explanation why the order could not be framed in less sweeping terms.

The importance to a reviewing court of an agency's articulation of the rationale underlying choice of remedy is forcefully set out in this Court's decision in *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608. In that case the Court held that the Commission had erred in ordering an outright prohibition of any use of a trade name which it had found to be deceptive; the Commission should have first considered whether measures short of so drastic a remedy would effectively eliminate the deception. The Court stated:

"For the Commission seems not to have considered whether in that way the ends of the Act

could be satisfied and the trade name at the same time saved. We find no indication that the Commission considered the possibility of such an accommodation. It indicated that prohibition of the use of the name was in the public interest since the cease and desist order prohibited the use of the name. But we are left in the dark whether some change of name short of excision would in the judgment of the Commission be adequate." 327 U. S. at 613.

The basis of the holding was put as follows:

> "[The Commission's] expert opinion is entitled to great weight in the reviewing courts. But the courts are not ready to pass on the question whether the limits of discretion have been exceeded in the choice of remedy until the administrative determination is first made." 327 U. S. at 614.

The Court recently affirmed this rule in two cases reviewing orders of the Interstate Commerce Commission, *Gilbertville Trucking Co.* v. *United States*, 371 U. S. 115 and *Burlington Truck Lines* v. *United States*, 371 U. S. 156. In each instance the Court approved the Commission's holdings as to statutory violation, but remanded for the Commission's consideration of remedies less harsh than those adopted. In *Gilbertville*, where divestiture of an individual's stock interest in a corporation had been ordered, this Court said:

> "'. . . the choice of remedy is as important a decision as the initial construction of the statute and finding of a violation. The court or agency charged with this choice has a heavy responsibility to tailor the remedy to the particular facts of each case so as to best effectuate the remedial objectives just described. *Cf. Hecht Co.* v. *Bowles*, 321 U. S. 329-331.
>
> . . . . . .

> "By referring to these mitigating considerations, we have no intention of prejudging the Commission or implying that divestiture would be unwarranted after proper treatment of the issue. These considerations merely indicate that a doubt can be raised and that a remand to the Commission is not purely academic for the sake of procedural regularity. When the Commission has exercised its judgment and issued its considered opinion, the propriety of the remedy chosen will be ripe for review. *Jacob Siegel Co.* v. *Federal Trade Comm'n, supra;* Administrative Procedure Act, §8(b), 60 Stat. 242, 5 U. S. C. §1007(b)." 371 U. S. at 130-31.

In *Burlington*, the Commission had concluded that certain union-indueed refusals to accept or deliver traffic from or to particular carriers or shippers were illegal and resulted in serious inadequacies in the service available. The Court agreed. However, the Commission chose to remedy the situation by certificating additional carriers. The Court remanded for the Commission to consider whether a cease and desist order addressed specifically to the discriminatory practices would have cured the violation:

> "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such adjudicatory practice. See *Siegel Co.* v. *Federal Trade Comm'n,* 327 U. S. 608, 613-614. Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise,* the strength of modern government, can become a monster which rules with no practical limits on its discretion.' *New York* v. *United States,* 342 U. S. 882, 884 (dissenting opinion)." 371 U. S. at 167 (footnote omitted).

The facts are even stronger here than those present in *Siegel, Gilbertville* and *Burlington*. The value of the trade name in *Siegel* is more than matched by the worth of a traditional marketing practice whose varied benefits were not denied by the Commission. Goodyear's right to continue to employ this method to distribute its products involves considerations at least as important as the right of a person whose family controls one motor carrier to own stock in another (as in *Gilbertville*) and the desire of motor carriers to avoid certification of additional competition (as in *Burlington*).

Moreover, the variety of possible remedies available to the Commission here is significantly greater than that available in the cited cases. In *Siegel*, for example, the Commission's function was to adopt a proper remedy with respect to a specific trade name, and the choice of remedies—once use of the trade name was found to be deceptive—was obviously restricted to a choice between an outright prohibition or a requirement of full disclosure to the public. Here, the various factors to which the Commission has already pointed in finding an improper restraint themselves indicate the broad range of specific remedies which the Commission could have and should have considered. Among such specific remedies are the following, as already set out in our petition for certiorari (pp. 34-5):*

1. An injunction against the exertion of undue pressure upon oil company dealers to purchase Goodyear TBA,**

* The listing of possible remedies short of total prohibition of all Goodyear sales commission arrangements does not, of course, mean that these possible remedies are appropriate on the facts and law here. Rather, the listing is undertaken to demonstrate that the Commission failed to consider remedies directly pertinent to the Commission's own view of the case.

** Although such an injunction could here be entered only against Atlantic, the Commission should have shown that it considered whether to enjoin Goodyear from entering into any sales commission agreement with a marketing oil company which did not promise in that agreement to meet such standards.

making clear that dealers were free to purchase TBA products from anyone at any time. This might include requirements that:

(a) All oil company dealers be furnished a copy of the Commission's order;

(b) All oil company dealers be reminded periodically that they have freedom of choice;

(c) All oil company dealer complaints received by the oil company or the rubber company be passed on by the recipient to the Commission with an explanation as to the facts and any corrective measures taken.

2. An injunction circumscribing oil company "power" by modifying an element of the oil company-dealer relationship such as:

(a) Lease terms;

(b) Equipment loans;

(c) Credit card coverage;

(d) Cooperative advertising; and

(e) Joint merchandising.

3. An injunction against an oil company's limitation of a particular sales commission agreement to a geographical portion of its total sales commission arrangements.

4. An injunction assuring that an oil company in its sales commission arrangements affords its dealers an alternative choice of sponsored brands of TBA.

5. An injunction against any limitation of the number of Goodyear "supply points", coupled with requirements that:

(a) The "supply point" function be assigned to anyone who meets objective standards and is willing to assume the responsibilities; and

(b) unless completely impracticable in a particular case, an oil company dealer have more than one supply point available to him.

Furthermore, the Commission would not have been breaking new ground in adopting a remedy involving petroleum products and TBA which stopped short of total abolition of sales commission arrangements. In *United States* v. *Richfield Oil Corp.*, 99 F. Supp. 280 (S. D. Cal. 1951), *aff'd per curiam*, 343 U. S. 922, total requirements and tying arrangements were voided, but the decree left intact a sales commission plan for automobile accessories. Moreover, in two other litigated cases and a consent decree, the right of the oil company to "sponsor" TBA products was specifically preserved. *United States* v. *Standard Oil Co. of California*, 78 F. Supp. 850, 891 (S. D. Cal. 1948), *aff'd* 337 U. S. 293; *United States* v. *Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959) (decree unreported); *United States* v. *Standard Oil Co. of California*, CCH 1959 Trade Cas. ¶69,399 (S. D. Cal. 1959).*

Rather than following precedent (indeed, rather than even mentioning precedent), the Commission fixed upon destruction of Goodyear's sales commission plans. But given the undisputed benefits of such plans, the finding that Goodyear did not itself engage in any pressuring of Atlantic's dealers, and the complete failure of proof of illegality in Goodyear's arrangements with other oil com-

* It was obviously the judicial judgment that the oil company "power" which concerns the Commission could be properly handled by restraint of its exercise. Moreover, another remedy available if such "power" were to result in undue pressure against a dealer is a treble damage action. See *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), *cert. denied*, 366 U. S. 963, discussed in Point I, *supra*.

panies, there is no reasonable basis for broad scale banishment.*

The order here represents a refusal by the Commission to use the very expertise which Congress intended it to exercise. No legislative purpose is fulfilled by unskilled obliteration of an entire marketing institution.

It is submitted that in imposing its remedy the Commission failed to perform its required duties.

CONCLUSION.

This Court should reverse and remand for dismissal of the complaint.

Respectfully submitted,

JOHN F. SONNETT
80 Pine Street
New York, N. Y. 10005
Attorney for Petitioner

Of Counsel:

CAHILL, GORDON, REINDEL & OHL
ARTHUR MERMIN
DAVID INGRAHAM
MARSHALL H. COX, JR.
80 Pine Street
New York, N. Y. 10005

January 28, 1965

* It is clear that the Commission's remedy must bear some reasonable relation to the alleged violation. See *e.g.*, *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217, 226; *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 217-18; *Swanee Paper Corp.* v. *Federal Trade Commission*, 291 F. 2d 833, 837-38 (2d Cir. 1961), *cert. denied*, 368 U. S. 987; *Audivox, Inc.* v. *Federal Trade Commission*, 275 F. 2d 685 (1st Cir. 1960); *Elliot Knitwear, Inc.* v. *Federal Trade Commission*, 266 F. 2d 787, 790-91 (2d Cir. 1959).

ANNEX A.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, Chairman
PHILIP ELMAN
EVERETTE MACINTYRE
JOHN R. REILLY
MARY GARDINER JONES

In the Matter of PURE OIL COMPANY, a Corporation.	Docket No. 6640
In the Matter of THE TEXAS COMPANY, a Corporation.	Docket No. 6898
In the Matter of STANDARD OIL COMPANY (INDIANA), a Corporation.	Docket No. 7567
In the Matter of SHELL OIL COMPANY, a Corporation.	Docket No. 8537

Annex A-2.

Final Order.

In the exercise of the Commission's administrative discretion, and without rendering decisions adjudicating any issues of law or fact involved,

IT IS ORDERED that the initial decisions in the above-captioned proceedings be, and they hereby are, set aside, and that the complaints be, and they hereby are, dismissed, for the following reasons:

(1) In three of these cases, there is no quorum of the Commission at the present time for rendering adjudicative decisions on the merits and issuing any orders to cease and desist based upon findings of violation of law. Adjudication of these cases would require reargument of the appeals. The specific practices challenged in these cases occurred almost a decade ago, in the mid-1950's, and competitive conditions in this dynamic and rapidly changing industry appear to have altered signficantly since then.

(2) The Commission has this date announced the initiation of a broad inquiry into the problems of competition in the marketing of gasoline. Orders to cease and desist entered against a few oil companies—orders which would probably not become final, if at all, until completion of lengthy review proceedings in the Federal Courts of Appeals and the Supreme Court—could not provide complete or effective solution to the competitive problems of the gasoline industry. It would appear to be more desirable, from the standpoint of effective administration of the law, that the Commission concentrate its necessarily limited resources on a comprehensive industry-wide approach to the problems of competition in the marketing of gasoline.

By the Commission, with Commissioner Dixon not participating and with Commissioner MacIntyre dissenting for the reasons stated by him in the accompanying dissenting opinion.

JOSEPH W. SHEA,
Secretary.

Issued: December 28, 1964

SEAL

Annex A-3

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

PAUL RAND DIXON, Chairman
PHILIP ELMAN
EVERETTE MACINTYRE
JOHN R. REILLY
MARY GARDINER JONES

In the Matter of PURE OIL COMPANY, a Corporation.	Docket No. 6640
In the Matter of THE TEXAS COMPANY, a Corporation.	Docket No. 6898
In the Matter of STANDARD OIL COMPANY (INDIANA), a Corporation.	Docket No. 7567
In the Matter of SHELL OIL COMPANY, a Corporation.	Docket No. 8537

Commissioner MacIntyre, dissenting:

These cases are of vital importance, not only to the public but to the businessmen engaged in the petroleum industry. Likewise, it is of importance that the vital issues involved in these adjudicative cases be resolved. This the Commission has decided to avoid. In its order the Commission states that the cases are being dismissed "without rendering decisions adjudicating any issues of law or fact involved." This is error. The "aggrieved" are entitled to a resolution of the issues involved here. This is demanded by not only the equities involved but also as a matter of moral right and by at least the spirit of the Administrative Procedure Act.

The Majority excuses its action by stating that these adjudicative matters are being dismissed "In the exercise of the Commission's administrative discretion" and "without rendering decisions adjudicating any issues of law or fact involved." I respectfully submit that the portion of the Administrative Procedure Act commencing with Section 5 under the heading of "Adjudication" contemplates no such treatment. Moreover, the further excuse is advanced through the indication that if remedial measures should be required regarding any practice, it would be attempted following the initiation of a broad inquiry into the problems of competition in the marketing of gasoline. In that connection, it is stated that orders to cease and desist, if entered in these cases, would not provide a complete or effective solution to the competitive problems of the oil industry. Let it be understood my dissent here is not directed against the absence of cease and desist orders in these cases; rather, I am dissenting to action by the Majority which avoids adjudication of the vital issues involved. The Majority has not fulfilled its responsibility for making findings of fact and stating its conclusions thereon regarding the practices involved. Thus, it is advising no one concerning the existence or the significance of any of the practices involved.

I am mindful of a statement in the Commission's "Final Order" to the effect that "there is no quorum of the Commission at the present time for rendering adjudicative deci-

sions on the merits." With that assertion I emphatically disagree. The Commission has mustered a quorum sufficient to act and with which it is acting on these cases. I agree that if the members of the Commission, who are acting to dismiss these cases without an adjudication of the issues, should undertake to adjudicate the issues involved, it would be appropriate for them to hear re-arguments on the appeals.

It is the position of the Majority that it would be inappropriate to hear re-arguments on the appeals. Reference is made to the limited resources available to the Commission. Re-arguments in these cases would not unduly draw upon the limited resources of the Commission. No convincing proof has been advanced which would show the need of any substantial additional allocation of funds or personnel to provide for re-argument of these cases. The work is done and the funds allocated to the cases have been spent. In passing, it should be noted that the Commission's records disclose that the tax payers contributed substantially to those funds. For example, the records show that the government has spent between $125,000 and $200,000 in covering the costs of the litigation in these cases. Undoubtedly the respondents spent much larger sums on the cases in the course of litigation. The result we get is the disposition of the issues without deciding the appeals on the merits.

The opinion of the Majority points to an intent to try the use of industry-wide methods for dealing with the problems and practices said to exist in the petroleum industry and for advising businessmen about their responsibilities concerning such problems and practices. On its face, this expression of intent is admirable. I hope, however, that I may be pardoned, under the circumstances, for finding this formula less than reassuring. The two most obvious avenues to an understanding of gasoline marketing problems are either making findings in the pending adjudicative cases or in the rule making fact finding proceeding requested by important segments of the industry. The proposed "broad inquiry" does not expressly provide for

the Commission to make findings of fact on the data submitted as it is obliged to do in adjudicative cases or in a trade regulation rule proceeding.

Unfortunately, I am unable to discern an interest here to find the facts and act on them in grappling with these challenging problems. Indeed, our present inability to act seems part and parcel of a more extensive malady. A recent line of Commission decisions evince a regrettable trend toward disposing of adjudicatory matters on procedural grounds, thus avoiding difficult legal and policy problems.[1] Undoubtedly this is a convenient formula, at least in the short run, for those of us responsible for administering these statutes. On final analysis, however, it plainly constitutes an abdication of the Commission's functions, which is charged with advising businessmen of their obligations under the law.

As a member of the Commission who participated with other members of the Commission in hearing appeals in these cases, I am convinced from what I have learned in hearing and considering these cases that undoubtedly in some of the cases the Commission on some issues would have found complaints not sustained. Findings on those

---

[1] *E.g., S. Klein*, 60 F. T. C. 388, 419 (1962). A case involving a most important commerce question was dismissed without reason for that action. In *General Electric Company*, Docket 8487, F. T. C. (February 28, 1964), a case involving very significant questions under Section 2(d) of the Robinson-Patman Act, as well as issues of price fixing under Section 5 of the Federal Trade Commission Act, was dismissed on February 28, 1964, "without adjudicating any issue of fact or law contested on this appeal." In *The Papercraft Corporation*, Docket 8489, F. T. C. (December 24, 1963), a charge of fictitious pricing was dismissed, although the issue had been fully tried because ". . . in the particular circumstances of this case, the public interest requires that the initial decision be vacated, and the complaint and complaint counsel's appeal dismissed, without determination of the merits of the charge." Further, the Commission refused to initiate a trade regulation rule proceeding, although requested to do so by representatives of the Gift Wrappings Industry, who contended such practices were rife in the industry. The Commission, in *Papercraft*, therefore, while abandoning the "case by case" basis, at the same time failed to act on an industry-wide basis in response to an industry-wide problem.

issues in those cases undoubtedly would have been differentiated from findings on other issues in other cases. I repeat, here we avoid dealing with those troublesome problems in cases where records on facts have been made. Indeed, we are here confessing bankruptcy in our efforts to find the facts and make judgments on these problems. Certainly, this is true to this date, insofar as the marketing problems of the oil industry are concerned. Although I am unable to accept as justifiable this bankruptcy at this point in time, I do find some consolation in the promise of the Commission that after a "broad inquiry" in the future the Commission will undertake to make some determination whether competitive problems really exist in the petroleum industry in the marketing of gasoline.

December 28, 1964

Statement of the Federal Trade Commission Announcing Broad Inquiry into the Problems of Competition in the Marketing of Gasoline.

The marketing of automotive gasoline to the public is a matter of direct and immediate concern to every American who owns a car, to the more than one hundred thousand independent retail gasoline dealers, to the producers, refiners, jobbers, and wholesale distributors of gasoline and other petroleum products, and to the nation's economy generally. The Federal Trade Commission has a broad range of responsibilities with respect to the preservation of fair and free competition in such marketing. The Commission is responsible for the prevention of deceptive and misleading advertising of gasoline to the consuming public. It is responsible for preventing discriminatory and other monopolistic and anticompetitive methods and practices in the distribution of gasoline. Most comprehensively, the Commission, in the role of watchdog of the free competitive system, has a responsibility to scrutinize the competitive functioning of the gasoline industry and, if necessary, to

take appropriate administrative action within its powers, and recommend legislative or other remedies to such competitive problems as may not be susceptible of effective solution under existing laws and procedures.

The Commission has received a large number of inquiries, complaints, and petitions from various groups in the gasoline industry, from members of Congress, and from members of the consuming public, with respect to competitive problems in the marketing of gasoline. It is evident both from these submissions and from the Commission's experience in this industry in enforcing the laws which it administers that a broad, comprehensive, and industry-wide approach to the competitive problems of the industry is necessary, and that specific remedial measures required in the public interest should not be attempted before obtaining a solid factual foundation in regard to the competitive conditions of gasoline distribution. As the Supreme Court stated in a recent decision, proper and effective remedial action in this industry requires that the Commission make realistic appraisals of relevant competitive facts, and these facts are highly complex. The Commission has accordingly determined forthwith to institute an industry-wide inquiry into the competitive problems of marketing gasoline. The Commission intends to employ its flexible administrative powers of investigation and fact-finding as may be found necessary to assure a complete, fair, and realistic understanding of the structure and dynamics of competition in the industry.

As the initial step in this inquiry, the Commission will conduct public hearings, to be held before the members of the Commission in Room 532 of the Federal Trade Commission Building, Pennsylvania Avenue and Sixth Street, commencing at 10:00 A. M. on May 3, 1965. All interested persons, including but not limited to members of the public and of the gasoline industry, are invited to participate in these hearings. Participants are invited to submit data, views, and argument on the following topics: (1) the market structure and competitive behavior of the various segments and levels of the gasoline industry; (2) the pricing of gaso-

line at all levels of distribution; (3) the causes and effects of so-called "price wars"; (4) competition between branded and unbranded gasoline and between integrated and non-integrated refiners; (5) gasoline grades and qualities, with specific reference to the bearing of gasoline exchange agreements, additives, and octane ratings; (6) other matters pertinent to competition in the marketing of automotive gasoline.

All interested persons are invited to file written data, views, or argument concerning the subject-matter of these hearings with the Secretary of the Federal Trade Commission, Pennsylvania Avenue and Sixth Street, N. W., Washington, D. C. 20580, not later than April 5, 1965. If practicable, twenty (20) copies of all written submissions should be filed. Any person desiring to present his views orally at the hearings commencing May 3, 1965, should so inform the Secretary of the Commission by April 26, 1965, and also inform the Secretary of the estimated time required for oral presentation. The Commission may impose reasonable limitations upon the time allotted to any person or organization. The data, views, and argument presented orally or in writing will be available for examination by interested persons at the Federal Trade Commission, Washington, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	4
1. The companies involved:	
(a) The Atlantic Refining Company	5
(b) The Goodyear Tire & Rubber Company	6
2. The relationship between Atlantic and its dealers and distributors	7
(a) The leases and contracts between Atlantic and its dealers and distributors	7
(b) Atlantic's loans to its dealers	11
(c) Atlantic's control over advertising displays at service stations	11
3. The sales commission plan	11
4. The operation of the sales commission plan	15
(a) The change-over to Atlantic and Goodyear TBA	15
(b) The present operation of the sales commission plan	19
5. The effect of the sales commission plan upon competition	25
6. The Commission decision	28
7. The court of appeals' decision	30
Summary of argument	32

767-124—65——1

Argument: Page

I. The Commission correctly held that Atlantic's sales commission agreements with Goodyear and Firestone constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act 36

A. Atlantic has the power to require its dealers to purchase substantial quantities of TBA and, pursuant to its agreements with Goodyear and Firestone, has exercised the power to accomplish that result 38

1. Atlantic's relationship with its dealers gives it the power to require them to purchase substantial quantities of TBA 38

2. In performing the sales commission agreements Atlantic exercised its power over its dealers to require them to purchase substantial amounts of sponsored TBA 44

B. The sales commission plan injured competition in the distribution of TBA 52

C. The Commission correctly held that the sales commission plan is an unfair method of competition because it causes Atlantic to use its economic power over its retail gasoline dealers to restrain competition in TBA 54

1. Section 5 of the Federal Trade Commission Act gives the Commission broad discretion to define unfair methods of competition, and at a minimum the Commission may prohibit conduct that has the same kind of anticompetitive effect as violations of the Sherman and Clayton Acts.. 54

Argument—Continued
I. The Commission correctly held, etc.—Continued
C. The Commission correctly held, etc.—Con. Page
2. The sales commission plan, by utilizing Atlantic's controlling economic power over its gasoline dealers to preempt for Goodyear and Firestone a substantial TBA market, causes the same kind of competitive injury as an illegal tying agreement 59
II. The Commission's order properly prohibits Atlantic and Goodyear from performing their sales commission agreement or from entering into or performing any similar agreement with any TBA or oil company, respectively 69
A. The Commission, upon holding that the Atlantic-Goodyear agreement was an unfair method of competition, properly enjoined its performance 69
B. The Commission properly enjoined Atlantic from entering into or performing similar contracts with companies other than Goodyear 72
C. The Commission properly enjoined Goodyear from entering into or performing similar contracts with companies other than Atlantic 73
1. The record shows that other oil companies have the same kind of power over their dealers as Atlantic 75
2. In performing their sales commission agreements with Goodyear, other oil companies used the same kind of pressure techniques that Atlantic did 76
Conclusion 84

CITATIONS

Cases:

	Page
American Column & Lumber Co. v. *United States*, 257 U.S. 377	43
Brown Shoe Co. v. *United States*, 370 U.S. 294	63
Fashion Originators' Guild v. *Federal Trade Commission*, 312 U.S. 457	58
Federal Trade Commission v. *Broch Co.*, 368 U.S. 360	73
Federal Trade Commission v. *Cement Institute*, 333 U.S. 683	33, 56, 57, 58, 73
Federal Trade Commission v. *Motion Picture Advertising Service Co., Inc.*, 344 U.S. 392	56, 58
Federal Trade Commission v. *National Lead Co.*, 352 U.S. 419	35, 74, 83
Federal Trade Commission v. *Ruberoid Co.*, 343 U.S. 470	84
Ford Motor Co v. *United States*, 335 U.S. 303	44
Gray v. *Powell*, 314 U.S. 402	56, 57
International Salt Co. v. *United States*, 332 U.S. 392	54, 63, 68, 83
Jacob Siegel Co. v. *Federal Trade Commission*, 327 U.S. 608	75, 84
Lessig v. *Tidewater Oil Co.*, 327 F. 2d 459, certiorari denied, 377 U.S. 993	40, 42, 47
Motion Picture Patents Company v. *Universal Film Manufacturing Company*, 243 U.S. 502	61
National Labor Relations Board v. *Hearst Publications*, 322 U.S. 111	56, 57, 58, 61
National Licorice Co. v. *National Labor Relations Board*, 309 U.S. 350	73
Northern Pacific Ry. Co. v. *United States*, 356 U.S. 1	34, 47, 60, 61, 72, 63, 65, 68
Osborn v. *Sinclair Refining Co.*, 286 F. 2d 832, certiorari denied, 366 U.S. 963	42, 66, 68, 82
Securities and Exchange Commission v. *Chenery Corp.*, 318 U.S. 80	61
Simpson v. *Union Oil Co.*, 377 U.S. 13	32, 41
Shell Oil Company and The Firestone Tire & Rubber Company, In the Matter of, 58 FTC 371	5
Standard Oil Co. v. *United States*, 337 U.S. 293	43, 63, 68
Tampa Electric Co. v. *Nashville Coal Co*, 365 U.S. 320	63
Texaco, Inc., and the B. F. Goodrich Co., In the Matter of, 58 FTC 1176	5

Cases—Continued

Texaco, Inc., et al. v. *Federal Trade Commission*, 336 F. 2d 754, petition for writ of certiorari pending, No. 635, this Term ..... Page 5

United States v. *Bausch & Lomb Co.*, 321 U.S. 707 61

United States v. *Loew's, Inc.*, 371 U.S. 38 ..... 34, 54, 60, 61, 63, 65

United States v. *Richfield Oil Corp.*, 99 F. Supp. 280, affirmed, 343 U.S. 922 ..... 54, 61

United States v. *Sun Oil Company*, 176 F. Supp. 714 ..... 39, 41, 42, 43

Vanity Fair Paper Mills, Inc. v. *Federal Trade Commission*, 311 F. 2d 480 83

Statute:

Federal Trade Commission Act:

Section 5, 15 U.S.C. 45 ..... 3, 4, 5, 28, 33, 36, 37, 54, 69, 70, 77, 83

Miscellaneous:

American Petroleum Institute, *Petroleum Facts and Figures*, pp. 13–14 5

H. Rep. No. 1142, 63d Cong., 2d Sess., pp. 18–19 55

S. Rep. No. 592, 63d Cong., 2d Sess., p. 13 54

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINIONS BELOW

The opinion of the court of appeals (A.R. 3282–3299, G.R. 3681–3697 [1]) is reported at 331 F. 2d 394.

[1] The record in this Court in No. 292 (*Atlantic Refining Co.*) is cited as "A.R.", and the record in No. 296 (*Goodyear Tire & Rubber Co.*) is cited as "G.R." These are the two records filed in the court below upon petitions to review the same Commission decision and order, and they contain much overlapping evidence. We have used the *Atlantic* record as our primary

The opinion of the Federal Trade Commission (A.R. 61–130; G.R. 118–187) is reported at 58 F.T.C. 309.

JURISDICTION

The judgment of the court of appeals was entered on April 24, 1964 (A.R. 3299). The petitions for writ of certiorari were filed on July 17, 1964, and were granted on December 14, 1964 (A.R. 3301, G.R. 3699; 379 U.S. 943). The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Federal Trade Commission properly held that it is an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, for a major rubber company and a major oil company to enter into an agreement under which the oil company, in return for a commission, promotes the sale to its dealers of the rubber company's products.

2. Whether having found that such an agreement between petitioners The Atlantic Refining Company and The Goodyear Tire & Rubber Company violated Section 5, the Commission properly entered an order

---

source and cite it alone for material duplicated in the two records.

The reason there are separate but overlapping records is that the Commission received evidence relating not only to the Atlantic-Goodyear contract (which evidence involves both petitioners and is contained in both records), but also to Atlantic's contract with Firestone (printed in the *Atlantic* record) and Goodyear's contracts with other oil companies (printed in the *Goodyear* record). The effect of the hearing examiner's order limiting the admissibility of the two latter categories of evidence to the party involved, is discussed *infra*, pp. 15–16, fn. 10.

prohibiting each petitioner from entering into or performing any similar agreement with any other company.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, provides in pertinent part:

(a)(1) Unfair methods of competition in commerce, and unfair * * * acts or practices in commerce, are declared unlawful.

* * * * *

(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair * * * acts or practices in commerce.

(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair * * * act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. * * * If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partner-

> ship, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. * * * After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require * * *.

STATEMENT

These cases present the question whether the so-called "sales commission" plan of distributing tires, batteries and accessories ("TBA") is an unfair method of competition under Section 5 of the Federal Trade Commission Act. Under the plan, an oil company agrees to promote the sale to its dealers of a tire company's TBA (known as "sponsored TBA") in return for a commission on the goods sold. The complaint of the Federal Trade Commission charged that The Atlantic Refining Company ("Atlantic") and The Goodyear Tire & Rubber Company ("Goodyear") violated Section 5 by entering into such a sales commission plan; and that like agreements between Atlantic and The Firestone Tire & Rubber Company ("Firestone") and between Goodyear and oil companies other than Atlantic were similarly illegal (A.R. 5–13). After full administrative proceedings, the

Commission in a lengthy opinion (A.R. 61–130) held that the sales commission method of distributing TBA violates Section 5, and ordered Atlantic and Goodyear to terminate their existing sales commission agreements and to refrain from entering into or performing any similar agreements with others (A.R. 131–134).[2]

1. THE COMPANIES INVOLVED

(a). *The Atlantic Refining Company.* Atlantic is a major producer, refiner and distributor of gasoline and other petroleum products (A.R. 82) which it sells in 17 states along the Eastern Seaboard (A.R. 2451). It divides the area into six marketing regions which, in turn, are subdivided into 29 districts (A.R. 43–44, 75, 83). In 1948 its sales in this area constituted 2½ percent of total national gasoline sales (A.R. 82, 2560–2561).[3] In 1954 Atlantic's total operating revenues exceeded $500 million (A.R. 82).

[2] In two companion cases, *In the Matter of Texaco, Inc. and The B. F. Goodrich Co.*, 58 FTC 1176; and *In the Matter of Shell Oil Company and The Firestone Tire & Rubber Company*, 58 FTC 371, the Commission held other sales commission agreements illegal and entered similar orders. In the *Texaco-Goodrich* case, the Court of Appeals for the District of Columbia Circuit (Judge Washington concurring in part and dissenting in part) reversed the Commission and remanded the cause to the agency with instructions to dismiss the complaint (*Texaco, Inc. et al.* v. *Federal Trade Commission*, 336 F. 2d 754, petition for writ of certiorari pending, No. 635, this Term). In a proceeding to review the Commission's decision in *Shell-Firestone*, the Fifth Circuit has heard oral argument. The clerk of that court has advised that the court intends to withhold decision until this Court has decided the present cases.

[3] Since Atlantic's 17-state marketing area accounted for about 36.7 percent of the gasoline sold in 1948 (American Petroleum Institute, Petroleum Facts and Figures, pp. 13–14), Atlantic's

Atlantic distributes its products to the general public through wholesale distributors and retail service station dealers (A.R. 82–83, 273).[4] Wholesale distributors maintain and operate bulk plants and delivery equipment (A.R. 88) and enter into contracts with Atlantic to purchase gasoline and lubricants (A.R. 89, 274, 2515, 2524). Retail dealers are subdivided into lessee dealers, who lease their service stations from Atlantic, and contract dealers, who either own their stations or lease them from someone other than Atlantic (A.R. 83, 87). (The relationship between Atlantic and its dealers is discussed below, pp. 7–11). In 1955 Atlantic had 2,493 lessee dealers, who purchased 39.1 percent of the gasoline sold by Atlantic, and 3,044 contract dealers, who bought 18.1 percent of such gasoline (A.R. 83, 273). Approximately 50 percent of the contract dealers operate service stations. The other 50 percent operate grocery stores, garages and other types of outlets which have gasoline pumps but which, in general, do not sell TBA (A.R. 86–87).

(b) *The Goodyear Tire & Rubber Company.* Goodyear is the largest manufacturer of rubber products in the United States. In 1954 its sales were more than $1 billion (A.R. 100).

Goodyear distributes tires, tubes and accessories

2.5 percent share of the national market represents about 6.8 percent of gasoline sales within the 17-state marketing area. Actually, Atlantic's share of its marketing area was somewhat higher because it covers only parts of some of these 17 states (A.R. 43, 75).

[4] Atlantic also sells to commercial accounts, who purchase for their own consumption rather than for resale (A.R. 82).

through 57 warehouses located throughout the country (A.R. 100). It does not warehouse batteries; "Goodyear" batteries are manufactured and directly distributed to Goodyear outlets by the Electric Auto-Lite Company and Gould-National Batteries, Inc. (A.R. 100–101).

Goodyear sells its products at wholesale and retail through approximately 500 company-owned stores and through numerous independent dealers (A.R. 101–102, 394). Its franchised dealers include more than 12,000 independent dealers, and some Atlantic wholesale petroleum distributors and retail petroleum jobbers (A.R. 101). Goodyear also has a substantial number of nonfranchised dealers; most service station customers, including Atlantic stations, are in this category (A.R. 101–102).

2. THE RELATIONSHIP BETWEEN ATLANTIC AND ITS DEALERS AND DISTRIBUTORS

The Commission found (A.R. 64; see the almost identical finding at A.R. 124) that "Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA***." This power flows primarily from three sources: (a) the short-term leases and gasoline contracts under which the dealers operate; (b) the loans of money and equipment that Atlantic makes to the dealers; (c) the control that Atlantic has over the advertising that may be displayed at its service stations.

(a) *The leases and contracts between Atlantic and its dealers and distributors.* The leases of Atlantic

service stations are standard documents prepared by Atlantic (A.R. 274; CX 86A–B, A.R. 2458; CX 88A1–2, A.R. 2466; CX 88E1–2, A.R. 2477 [5]). The lease provides that the "sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets" (A.R. 83–85; CX 88A1–2, A.R. 2467; CX 88E 1–2, A.R. 2478).

Although the terms of the leases range from three months to three years, the usual period is one year (A.R. 83 see A.R. 276, AX31A, A.R. 3274–3275; AX 18 (unprinted). In addition to signing a lease, the dealer also is required to sign a document known as the "Eleven Point Lease Letter," which obligates him to maintain his station in accordance with designated standards covering eleven categories of operations

[5] "CX" refers to Commission exhibits, and "AX" to Atlantic exhibits. There are no Goodyear exhibits.

[6] The letter specifies the following standards (CX 88B, A.R. 2473–2474):

"1. Housekeeping—Clean, sanitary premises, inside and out.

"2. Use and Upkeep—Careful use and upkeep of building and equipment in safe, good operating condition.

"3. Display—Neat, orderly arrangement of merchandise and advertising in a manner reasonably calculated to attract and solicit the attention of the motoring public.

"4. Illumination—Safe and adequate to attract customers during night operation.

"5. Personnel—Sufficient manpower to give prompt service and allocated to handle peak operating hours. Clean uniforms, courteous, trained to sell, adequate knowledge of services to be rendered.

"6. Hours of Operation—Uniform daily operating sched-

(A.R. 84–85, 274). Atlantic may cancel the lease for various reasons, including delinquency in paying the rent for five days, and failure to comply with the requirements of the Eleven Point Lease Letter (A.R. 85; CX 250–272, A.R. 2963–2996). Atlantic has both threatened to cancel, and has cancelled, leases for these reasons (A.R. 85, CX 250–272, A.R. 2963–2996); some of these threats were made to dealers who had been with the company a long time or had sold large volumes of gasoline (A.R. 433, 439, 441, 536, 540–541). Atlantic reserves the right in all instances to decide whether to renew a lease (AX 31A, A.R. 3275).

Atlantic requires its lessee dealers to enter into contracts for the purchase from it of automotive lubricants (A.R. 85). While the dealers are not required by contract to handle only Atlantic gasoline, in fact they "purchase and resell Atlantic motor fuels exclusively" (A.R. 85–86).

Contract dealers also sign a standard form of agreement, usually for one year, under which they agree to purchase a specified annual amount of gasoline at

---

ule based on buying habits of potential trade in the area.

"7. Services—At least on a par with competition as to kinds of services rendered and efficiency of performance.

"8. Adequate Inventory—Quality products and merchandise on hand to serve normal customer needs without delay.

"9. Sales Promotion—Regular program for expanding sales, involving direct mail campaigns, personal solicitation, and advertising.

"10. Prices—Competitive, quality and service considered.

"11. Accounting—Maintenance on current basis of records adequate to reflect financial status and return from various phases of your business."

prices which Atlantic sets from time to time (A.R. 87, 274; CX 90A–B, A.R. 2486–2487; CX 90C–D, A.R. 2491–2492). Atlantic agrees to loan to the dealer equipment such as gasoline pumps, storage tanks and compressors, to be used "for the purpose of storage and sale of motor fuel purchased solely from Atlantic," and the dealer agrees to indemnify Atlantic for any damages caused by or done to such equipment (A.R. 87, 274, 280; CX 90A–B, A.R. 2486–2490; CX 90C–D, A.R. 2491–2495). Either party may cancel the agreement for breach by the other, and the dealer commits a breach if any judgment is entered or process issued against him, or if he suffers "financial embarrassment," insolvency or bankruptcy (CX 90 A–B, A.R. 2488–2489; CX 90C–D, A.R. 2493–2494). In case of a breach by the dealer, Atlantic has the option of removing its equipment and requiring the dealer to pay the costs of installation and removal, or of leaving the equipment and requiring the dealer to pay therefor (A.R. 87–88; CX 90A–B, A.R. 2489; CX 90C–D, A.R. 2494). Like the lease with a lessee dealer, Atlantic is under no obligation to renew its agreement with a contract dealer (CX 90A–B, A.R. 2488; CX 90 C–D, A.R. 2493).

Wholesale distributors sign an annual agreement specifying the territory in which they may sell (CX 95D–F, A.R. 2515). Atlantic may suspend deliveries made to the distributor on credit if, in Atlantic's opinion, his financial responsibility becomes unsatisfactory (CX 95D–F, A.R. 2516). Atlantic has no obligation to renew a distributor's contract (see CX

95D–F, A.R. 2516), and it has eliminated many distributors (A.R. 295). Atlantic can, and does, increase or decrease a distributor's volume of business by changing the distribution outlet to which various dealers are assigned (A.R. 89–90, 350–351, 361–362; see A.R. 295).

(b) *Atlantic's loans to its dealers.* It costs between three and fifteen thousand dollars to purchase the initial stock of products and the equipment with which to open a new service station (A.R. 281). Many dealers cannot afford these costs, and in such situations Atlantic loans them the money (A.R. 277, 281, 953, 1057–1058, 1633–1634, 1961–1962, 2216–2217). As noted above, Atlantic loans equipment to contract dealers.

(c) *Atlantic's control over advertising displays at service stations.* Dealer leases require the lessee to have Atlantic's prior written consent (which it is stated will not be unreasonably withheld) before he places, alters, removes, defaces or obliterates any signs, trademarks or color arrangements appearing on the leased premises (CX 88A1–2, A.R. 2469; CX 88E1–2, A.R. 2480). Atlantic's policy is to have all its stations look uniform, including uniformity of advertising (A.R. 1056–1057, 1059, 2210–2212). The importance of gasoline station advertising is discussed *infra,* pp. 16–17, 23–24, 42.

3. THE SALES COMMISSION PLAN

Retail gasoline service stations are, by the very nature of their business, particularly well adapted to sell TBA (A.R. 147), and they constitute a large and

important market for such products (A.R. 16).[7] Since at least 1932 Atlantic has been distributing TBA to its dealers (A.R. 66–67). Prior to 1951, it did so under the so-called "purchase-resale" plan, under which it bought Lee tires, Exide Batteries and various accessories directly from the manufacturers, and resold them to its dealers and distributors (A.R. 66–78, 285–291).

In 1948 and 1949 Atlantic made a TBA brand preference survey among dealers representing seven major oil companies. The survey showed that 67 percent of the Atlantic dealers preferred Lee Tires, and that 79 percent preferred Exide batteries, over competing brands; and that only 11 percent preferred Goodyear tires and only 4 percent preferred Firestone tires (A.R. 67–68; CX 101A–Z20, A.C. 2569; CX 101Q, A.R. 2576). Atlantic stated that the study showed "A preference among Atlantic's dealers for Lee tires and Exide batteries that is very satisfactory" (CX 101A–Z20, A.R. 2565). In addition, 67 percent of the Atlantic dealers preferred to buy their TBA from several sources, and only 33 percent preferred to have a single source (A.R. 68; CX 101A–Z20, A.R. 2566).

While this study was under way, Atlantic also con-

[7] A Goodyear official stated in 1952 that 30 percent of all TBA had been sold through service stations in 1951, and estimated that the share would increase to 35 percent in 1952 (CX 66A–L, G.R. 2538). Goodyear also estimated that the service stations' share of total national TBA sales of $4 billion should be $1,540,000,000, or 37½ percent (CX 247B, A.R. 2940–2941). Atlantic stated that 35 percent of motorists' tire purchases in 1956 had been made through service stations (AX A–20, A.R. 3259).

sidered entering into a sales commission contract with a tire company by which the latter, rather than Atlantic, would sell TBA to Atlantic dealers and distributors. It sent letters to five major tire manufacturers (Goodyear, Firestone, the United States Rubber Co., The B. F. Goodrich Company, and General Tire & Rubber Company) inquiring "what interest you may have in the sale of your tires and tubes through Atlantic outlets" (CX 1A, A.R. 2337–2338; CX 99, A.R. 2559–2560). To assist the companies in preparing quotations Atlantic inclosed "data pertain-[ing] to what we have to offer" (CX 1A–1B, A.R. 2337–2338; CX 99, A.R. 2559), which set forth "Estimated Annual Requirements," number of retailers and wholesalers "Served," and Atlantic's marketing area (CX 1B, A.R. 2338). Although Goodyear "recognize[d] the importance and value of your account" (CX 2, A.R. 2340), both it and Firestone refused to enter into any agreement covering tires alone, and they insisted on selling their full line of TBA to Atlantic (CX 103, A.R. 2607; CX 305A–B, A.R. 3065–3066; CX 355A–B, A.R. 3157).

In 1950 Atlantic tested the Goodyear and Firestone sales commission programs in three districts (A.R. 70–71). Apparently satisfied with the results,[8] Atlantic in February 1951 decided to "swing over to the Commission Plan of T.B.A. marketing * * *"

[8] Shortly after the test programs were instituted, Atlantic conducted a poll of its dealers in the test areas to determine their preference as between the Lee-Exide program and the new sales commission plan. Of those responding, 45 percent favored the new plan, 40 percent preferred the old program, and 15 percent had no preference (A.R. 71).

(A.R. 72–73), and entered into contracts for such plans with Goodyear and Firestone (CX 13, A.R. 2360; CX 16, A.R. 2368; CX 104A–C, A.R. 2609; CX 106A–B, A.R. 2616). "It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania, and the South) were to market the program of the Firestone Tire and Rubber Company" (A.R. 73; CX 16, A.R. 2368; CX 106A–B, A.R. 2616).

The Atlantic-Goodyear contract requires Atlantic "actively [to] assist" Goodyear in "selling and promoting" Goodyear TBA (CX 13, A.R. 2360).* Atlantic agreed, among other things: to have its field offices "work energetically" with Goodyear in order to assist it "to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements" with Atlantic outlets; to have its field representatives "suggest" to dealers "the maintenance of adequate stocks of [sponsored] merchandise" and counsel dealers "as to the maintenance of proper identification and advertising" of such merchandise; to instruct its salesmen to encourage dealers "vigorously" to represent Goodyear; to have its "representatives call upon these customers [Atlantic outlets] in company with our

*CX 13 was the agreement covering the 1950 test of the Goodyear plan. In 1951 its terms were extended to cover the entire area in which the Goodyear plan was to operate (CX 16, A.R. 2368–2369). The Firestone contract cited in the text similarly originally covered only the 1950 test, but was extended in 1951 to the entire area assigned to Firestone (CX 104A–C, A.R. 2609; CX 106A–B, A.R. 2616).

[Goodyear's] salesmen"; to "cooperate with and assist" Goodyear in its "efforts to promote and increase the sale" by Atlantic dealers of sponsored merchandise; and to "maintain adequate dealer training programs in the sale of tires, batteries and accessories" (CX 13, A.R. 2360–2362). Atlantic's contract with Firestone similarly requires the oil company's sales organization to give "assistance and cooperation * * * in promoting the sale" of Firestone TBA, but it does not give specific details (CX 104A–C, A.R. 2609).

In return for these services, Goodyear and Firestone agreed to pay Atlantic a commission equal to 10 percent of their net sales to Atlantic's retail dealers and 7½ percent of their net sales to its wholesalers (A.R. 79–80). Under the plan, each Atlantic dealer or wholesaler is assigned to a particular "supply point" which is his source for sponsored TBA; this supply point may be a Goodyear (or Firestone) store, an independent Goodyear (or Firestone) dealer, or, occasionally, an Atlantic distributor or even an Atlantic retail dealer (A.R. 102–105; CX 13, A.R. 2361). No commission is paid "unless the Atlantic outlet purchases from the designated supply point to which it has been assigned" (A.R. 103).

4. THE OPERATION OF THE SALES COMMISSION PLAN [10]

(a) *The change-over to Goodyear and Firestone TBA.* Atlantic took immediate steps to carry out its

[10] While the hearing examiner entered an order (G.R. 90–93) which limited the use of evidence concerning the Atlantic-Firestone plan to the case against Atlantic and struck such evidence as against Goodyear, the latter does not rely on the order in challenging the Commission's case against it. Atlantic,

contractual obligations to promote the sale of sponsored TBA. It sent its dealers a letter announcing the change to the sales commission plan and describing its alleged virtues (CX 12, A.R. 2359; CX 29, A.R. 2397). Atlantic also held numerous meetings with its dealers at which both its and the tire company's representatives explained the new program and urged the dealers to promote the sponsored TBA (A.R. 165, 369, 2240; CX 27, A.R. 2393, CX 109A–I, A.R. 2640; CX 135A–C, A.R. 2706). A Goodyear outline of the presentation which its district managers were to make at such meetings included these statements: "After years of courtship Atlantic and Goodyear have wed"; "We welcome wholeheartedly this merger"; Atlantic and Goodyear "will combine efforts" and "can and will be a winning combination"; the dealers' "cooperation and patience in these days of shortages will be appreciated" (CX 27, A.R. 2393–2394). As noted above, Atlantic's leases gave it control over advertis-

---

in discussing its relations with its dealers and its implementation of the sales commission system (Atlantic Br. pp. 8–10, 15–17), does not distinguish between the Goodyear and Firestone plans. Petitioners thus do not question that the Goodyear and Firestone systems constitute a single interrelated plan of operation, so that evidence as to Atlantic's operations under either plan is relevant to its overall course of conduct and the latter's effect on competition. We shall therefore refer to the evidence under both plans in discussing Atlantic's activities, although, of course, Goodyear is not bound by the evidence as to Firestone's agreement with Atlantic. The examiner entered a similar order (A.R. 38–41) limiting the evidence respecting Goodyear's plans with other oil companies to the case against Goodyear, and striking it as to Atlantic. That evidence is pertinent only as to the scope of the order against Goodyear, discussed below, pp. 73–84.

ing displayed at the service stations. Atlantic gave Goodyear and Firestone lists of its dealers who handled TBA, so that the tire companies could remove the identification and advertising of other TBA and install their own (A.R. 291–292, 436, 538, 1532; CX 138, A.R. 2721; CX 277, A.R. 2998). Advertising of competing products was replaced by Goodyear advertising even though the dealers did not request the change, were opposed to it, or wished to carry the products whose advertising was removed (A.R. 436–437, 538, 1532; CX 277, A.R. 2998; see A.R. 910). Goodyear sent Atlantic the names of dealers who refused to permit installation of Goodyear advertising (CX 161–172B, A.R. 2787–2826), and Atlantic, which was "very definitely concerned about the refusal of dealers to permit Goodyear identification at their stations" (CX 162, A.R. 2790), forwarded their names to its district offices for "appropriate action" (CX 170A, A.R. 2812; CX 171A, A.R. 2820; CX 172A, A.R. 2825; see CX 163, A.R. 2792).

Atlantic salesmen, in company with Goodyear or Firestone personnel, called on dealers and discussed the switchover to the sales commission program (A.R. 1461; CX 24, A.R. 2384, 2389–2390; CX 109A–I, A.R. 2640; CX 135A–C, A.R. 2706). Goodyear considers such joint action "necessary" because the Atlantic salesman has "the 'in' with the account" (CX 24, A.R. 2389). Atlantic, which was required to protect its dealers against losses from defective Lee Tires, replaced such tires with Goodyear or Firestone instead of with Lee products (A.R. 293; CX 33, A.R. 2400–2401; CX 34–34C, A.R. 2402–2404; CX 139A–B, A.R.

2722). Similar steps were taken with respect to Exide batteries (A.R. 293; CX 37–39, A.R. 2408–2411; CX 139A–B, A.R. 2722). Goodyear and Atlantic relabeled unsponsored merchandise on dealers' shelves so that it would bear the Goodyear name (A.R. 167, 680, 1724; CX 48B–E, A.R. 2432). During 1951 and 1952 Atlantic credit cards were expressly limited to TBA "recommended by Atlantic"; credit card sales account for as much as 25 to 35 percent of a dealer's business (A.R. 293, 871, 950; CX 217A–B, A.R. 2925; see CX 146A–B, A.R. 2738).

By October, 1951—approximately seven months after the sales commission plans had gone into effect—Goodyear had signed contracts with 98 percent of Atlantic's outlets in its New England marketing area and with 96 percent of the outlets in its New York area (CX 179A–I, A.R. 2841).

In 1949, the last full year in which Atlantic operated its purchase-resale plan, its total TBA sales to its dealers were $6,697,471; and in 1950, when it operated the plan in all but the 3 of its 29 districts in which it was testing the sales commission program, its sales to dealers were $7,581,760 (A.R. 76–77). The sales commission plan became effective March 1, 1951; in that year Goodyear and Firestone made sales to Atlantic outlets of $5,689,158 (A.R. 76). In the latter part of that same year Lee and Exide estimated that, despite a greatly increased sales effort, they would be able to obtain from Atlantic only about 25 percent of their former business (CX 292A, A.R. 3044; CX 311, A.R. 3075–3076). In 1952, the first full year under the sales commission plan, total TBA

sales by Goodyear and Firestone to Atlantic outlets increased to $8,525,506 (A.R. 76).

(b) *The present operation of the sales commission plan.* Atlantic has continued its efforts to promote the sale of sponsored TBA to its dealers and distributors. These efforts begin with the selection and training of new dealers.

Prospective dealers are given three separate interviews—with an Atlantic salesman, the sales supervisor and the district manager—and sponsored TBA is thoroughly discussed and recommended on each occasion (A.R. 1438–1439, 1459, 1768, 1772, 1913, 1920, 2193–2194). If an applicant is tentatively selected to be a dealer, prior to his final selection he attends a five-week training school run by Atlantic (A.R. 277–278, 1433). Sponsored TBA is strongly emphasized during this course and sponsored products are used as props in TBA demonstrations (see CX 357A–364, A.R. 3260–3273 for the outline of the TBA material presented in this course, and A.R. 278–279). The discussion of TBA, which is conducted by representatives of both Atlantic and the tire company, is in terms of the sponsored products (A.R. 863, 864, 903, 937, 914–915; see 1868, 2034). Instructors stated that sponsored TBA was the dealers' "best bet," and that "when things got rough * * * the independent jobbers wouldn't be of any use to us or any help to us at all" (A.R. 864). While the Atlantic instructors indicated that the dealers would not be forced to buy sponsored TBA, "[t]hey did, however, stress that Atlantic more or less expected us to" (A.R. 915, 917, 918); that it was

"more or less I think understood" that dealers had to handle sponsored products (A.R. 937).[11] Atlantic representatives at the training course said that "they tried to keep all their stations uniform", which, in Firestone territory, meant "using Firestone products" (A.R. 1056).

Atlantic gives Goodyear and Firestone advance notice of station openings and reassignments (A.R. 1811; CX 176, A.R. 2836; CX 185, A.R. 2863). This notice is designed to enable the tire companies "to anticipate and to move promptly in handling the new dealer's requirements" (CX 176, A.R. 2836; CX 185, A.R. 2863). Atlantic also introduces a new dealer to his supply point before his station opens (A.R. 1811–1812). At times Atlantic has made a loan to a new dealer (see *supra*, p. 11) in the form of supplying sponsored TBA rather than providing cash (A.R. 953, 1058). The result of these activities by Atlantic is that Goodyear and Firestone generally obtain a deal-

[11] The testimony on this point of witness Hawes, a dealer in Firestone territory, who has been partially quoted above, was as follows (A.R. 937–938):

> Q. Which tire were they talking about [at the dealer training school]?
>
> A. Firestone. That is all we ever heard in there, Firestone.
>
> Q. Did anyone ever tell you that you were supposed to handle Firestone when you were in your station?
>
> A. Well, that is a question I wouldn't like to say that it was put to me that I had to. But it was more or less I think understood. For instance, when I was called back to Wilmington to buy all my accessories and so forth, it was a Firestone dealer who was there. There was nobody else there. It was a man that I was expected to buy from.

er's initial stocking orders of TBA (A.R. 207–208, 382–383, 707, 760, 895–896).

Once a dealer is established in his station, Atlantic continues to promote the sale to him of sponsored TBA. Atlantic and tire company salesmen regularly visit the dealer together (A.R. 314, 1461, 1791, 1831, 2323; CX 11, A.R. 2357; CX 364, A.R. 3173; CX 365A–B, A.R. 3174; CX 13, A.R. 2361). Atlantic salesmen, who make the initial recommendation as to whether a dealer's lease should be renewed (A.R. 1506; see A.R. 2718), promote dealer purchases of sponsored TBA (A.R. 270, 1453, 1787–1788, 1920, 2050), check dealers' stocks of TBA (A.R. 1459, 1498–1499, 1790) and actually solicit orders of sponsored products (A.R. 181, 409, 905, 1459, 1492, 1790, 1817; CX 109A–I, A.R. 2642).[12] Atlantic has established

[12] Matthews, a dealer in Goodyear territory, gave the following descriptions of how Atlantic salesmen sold him sponsored TBA (A.R. 444):

> Q. Did Atlantic salesmen or Mr. Parris [who owned a supply point] ever write up tire orders without your request?
>
> A. The salesman did, he sent in oil filters one time without my request and there were so many complaints from other dealers that Mr. Parris called me a day later and after he had sent them and said he understood that was the situation and he wanted to know if I wanted to send them back.
>
> * * * * *
>
> Q. Now, with respect to tire orders, did Atlantic salesmen write up tire orders for you?
>
> A. Usually Mr. Parris did.
>
> Q. And would you request certain purchases or how was this done?
>
> A. Uusually they'd come in and say "What sizes do you want?" It wasn't how many, they knew if you had a

"agreed upon attainable objective[s]" which represent the amounts of TBA the oil company expects each dealer to purchase (CX 155A–H, A.R. 2747–2748; CX 155I–M, A.R. 2753–2757; CX 157, A.R. 2759). Atlantic receives periodic reports showing the actual purchases, which permit a quick check on the attainment of these objectives (A.R. 407; CX 127A–H, A.R. 2675–2687; CX 130A–G, A.R. 2692; CX 42B–43B; G.R. 2458–2459; CX 44C, G.R. 2461; CX 227C–228K, G.R. 3064–3083.[13] An Atlantic dealer who sells Goodyear testified that his Atlantic salesman had a record book showing his TBA purchases from the assigned Goodyear supply point, and that the salesman would urge him to increase his purchases by references to the "attainable objective" (A.R. 636):

> They would say, "You're a little low this month, you're going to be a little under this year; can we get it up to show a little bit of an increase."

Atlantic salesmen have severely questioned and criticized the presence of unsponsored merchandise (A.R. 169–170, 438, 442–443, 485, 496, 498, 518, 539, 540, 635, 905, 906, 907, 928, 942), have told dealers not to

---

buck why they—and could afford to pay for them they were going to send them.

To the same effect, see the testimony of witness Balloran, at A.R. 657–658.

[13] An Atlantic document states that "A check on the progress of each account is made by comparing the activity reported * * * [on the reports showing each dealer's purchases]. If an account is not buying commensurate with the purchase level to which he is listed, this is quickly revealed in this comparison" (CX 179A–I, A.R. 2843).

display it (A.R. 496, 498, 540, 906, 910, see 653, 634), have told them to get rid of it (A.R. 438, 485, 518), have stated that Atlantic would like and expects dealers to purchase sponsored products (A.R. 905, 915; see 438, 986–987), and have stated that dealers are breaking their TBA agreements when they purchase unsponsored products (A.R. 910, 928).[14] In addition, from time to time Atlantic holds dealer meetings—which both the tire company and Atlantic representatives attend—at which sponsored TBA is discussed and promoted (A.R. 911–912, 937, 949–950).

Atlantic permits little or no advertising of unsponsored TBA at its stations (A.R. 1059). Atlantic

[14] A high Atlantic official described the duties of salesmen under the sales commission program as "a difficult policing job" because of the need "to closely co-ordinate the dealer's entire selling effort to be sure that his interest and those of our company are best guarded" (CX 100A–C, A.R. 2563). (This was in specific reference to the Firestone contract.) Policing the dealer in the company's interest is illustrated by this episode described by a dealer in Goodyear territory (A.R. 518):

> Q. Can you tell us who it was that complained [that the dealer witness was selling unsponsored merchandise]——
>
> A. (Interposing.) It was Tom Hayes [Atlantic salesman], George Arnholt [Atlantic official] and Ed Parris [Goodyear supply point dealer].
>
> Q. Do you recall their conversation relative to those problems?
>
> A. Well I remember one time he walked in behind Mr. Arnholt and I had Century tires and Tom Hayes was in front of him and he says to Tom Hayes—I recall this question—he said, "What kind of salesman are you with this man having Century tires in here," and Tom gave me a dirty look. And when it blew over, Tom came in and said, "I got the devil and you have to get rid of these tires. * * *"

salesmen told various dealers to remove or not to install such advertising (A.R. 173, 540; see 436, 538, 1532, 1598, and see 2998) and numerous witnesses testified that practically all Atlantic stations primarily or exclusively advertise Goodyear or Firestone TBA (A.R. 173, 203, 211, 242, 261, 382, 417, 728, 747, 850, 880, 895, 975, 1082, 1131). Atlantic has a package advertising arrangement which is available only to those dealers who carry sponsored TBA (A.R. 172–173). Although after 1952 Atlantic credit cards could be used to charge non-sponsored TBA, some dealers remained under the impression that the earlier prohibition on such use (see *supra,* p. 18) was still in effect (A.R. 174, 541, 951–952, 1061–1065, 1576–1578). While Atlantic ordinarily will repurchase a dealer's stock of TBA if the lease expires or is cancelled, it may refuse to repurchase unsponsored products (A.R. 171, 181–182, 949, 958).

Finally, Atlantic representatives threatened dealers with cancellation or non-renewal of their leases if they refused to purchase sponsored TBA or continued to handle non-sponsored brands. For example, Atlantic dealers were warned "to get rid of the Lee tires or else they would get rid of me * * *" (A.R. 485); that "if I didn't handle Firestone products I wouldn't long be an Atlantic operator-dealer" (A.R. 866); that "I couldn't handle" non-sponsored batteries and accessories and that "if I didn't handle according to what Atlantic handled, * * * I would lose my lease * * *" (A.R. 986–987); and that "If you do not remain a Firestone Dealer, you will not remain an Atlantic" (CX 320A–C, A.R. 3114). One

dealer testified that although he wanted to "continue to handle Lee tires," he did not do so because "I didn't want my lease cancelled"; that Atlantic asked him to agree to cancel his lease because "I wasn't buying [TBA] from the company as I was supposed to so they figured it was better for everyone concerned if I signed a mutual [cancellation] and they cancel my lease * * *"; that he refused such cancellation but, after being told that his lease would not be renewed, he agreed to "be a good boy" and "went one hundred percent Goodyear"; and that when he subsequently purchased ten non-sponsored batteries, he "was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease" (A.R. 438–441). Other instances of such threats are set forth in the hearing examiner's findings (A.R. 51–55), which the Commission adopted (A.R. 98).

5. THE EFFECT OF THE SALES COMMISSION PLAN UPON COMPETITION

As noted above (pp. 18–19), in the first full year of operation of the sales commission plan (1952), the sales by Goodyear and Firestone of TBA to Atlantic dealers were approximately 40 percent greater than the sales Atlantic had made during the last full year of the purchase-resale plan.

By June 1956, Goodyear had TBA contracts with 1960 of the 2420 Atlantic dealers in the areas allocated to it (CX 374, A.R. 3178; CX 400P–R, A.R. 3219). Although the record does not show the total number of dealers who had contracts with Firestone, Atlantic

believed that "virtually all" of its dealers in its Wilmington and Baltimore areas who were potential purchasers of sponsored TBA had signed initial franchise agreements with Firestone (A.R. 348, 359). During the six-year period between June, 1950 (when the sales commission plan was put into operation in three areas on a test basis) and June 1956, Goodyear sold more than $25 million, and Firestone more than $26 million worth of TBA to Atlantic outlets (A.R. 76, 294; CX 400D–E, A.R. 3209–3210).[15]

The effect of the sales commission plan has been to prevent wholesale suppliers of unsponsored TBA from selling their products to Atlantic stations (A.R. 210–211, 218, 230–233, 235, 237–239, 246, 381, 382, 383, 415–416, 422, 555–556, 557, 559, 619, 671, 680–681, 685, 694–705, 726–727, 742, 806, 817, 889–890, 893, 906–907, 971, 974, 1071–1072, 1082, 1120, 1129, 1130). Dealers and competing suppliers of TBA testified that it is difficult or impossible to sell to Atlantic dealers because the latter group felt that they were required to purchase sponsored TBA and feared reprisal by Atlantic if they purchased non-sponsored items (A.R. 182, 237, 239, 383, 415–416, 422, 427, 438–439, 444–445, 446, 557, 659, 671, 681, 695–704, 708, 742, 906–907, 910, 937–938, 970–971, 1059–1060, 1083, 1084, 1104, 1109, 1113, 1132–1134, 1157). Indeed, it is so difficult to sell competing TBA to Atlantic dealers that many wholesalers do not even try to solicit business from substantial numbers of such dealers (A.R. 200–201, 211, 414, 546–547, 766,

[15] Approximately 70 percent of these sales represented tires and tubes, with the remaining 30 percent equally divided between batteries and accessories (A.R. 80).

1031, 1101–1102, 1150.) In addition, wholesalers of sponsored products who are not designated as supply points were unable to sell such products to Atlantic dealers (A.R. 210–211, 230, 235, 383, 397–398, 556–557, 559, 634, 691–710, 726, 974, 1128–1130, 1153, 1157). Both categories of wholesalers were unable to sell to Atlantic dealers even though they offered a better price than is available under the sales commission plan (A.R. 559, 634, 1085).[16] Finally, as a result of Atlantic's separate contracts with Goodyear and Firestone covering different areas, Goodyear and Firestone limit their efforts to the assigned areas and do not compete with each other for sales to Atlantic dealers (A.R. 113–115, 124–125).[17]

Under the sales commission method, small TBA manufacturers find it difficult to sell to Atlantic (A.R. 128). An Atlantic vice president indicated that his company preferred to do business with a single supplier having many supply points and handling a full line of TBA than with many suppliers (A.R. 2299–3000; see CX 9, A.R. 2351; CX 136A–E, A.R. 2710; CX 147, A.R. 2739; CX 150, A.R. 2742–2743; CX 286B, A.R. 3021; CX 351A–C, A.R. 3141). Indeed, when Atlantic made its initial inquiries about the possibility of shifting to a sales commission plan, it ad-

[16] Atlantic sends so-called "spooks" into its stations who "offer merchandise at lower prices just to see if you would buy from someone else" (A.R. 556).

[17] As an example of this division of territories see the correspondence in which Goodyear requested Atlantic's advice before soliciting business from an Atlantic distributor in Firestone territory, and Atlantic disapproved such solicitation. CX 56–58, A.R. 2444–2447.

dressed them only to five major tire companies (see *supra*, p. 13). Small suppliers that do not have distributional facilities that fully cover the oil company's marketing area cannot meet Atlantic's requirements (A.R. 2300; CX 136A–E, A.R. 2710; CX 147, A.R. 2739; CX 150, A.R. 2742–2743; CX 286B, A.R. 3021; CX 351A–C, A.R. 3141), and thus are denied access to Atlantic outlets even in areas where their products have good consumer acceptance (A.R. 1541, 1615; see A.R. 829).

6. THE COMMISSION DECISION

The Commission held that, by their use of the sales commission plan of distributing TBA, Atlantic and Goodyear engaged in unfair methods of competition and unfair acts and practices, in violation of Section 5 of the Federal Trade Commission Act.

The Commission affirmed the hearing examiner's finding that Atlantic had coerced its dealers into buying sponsored TBA through threats of cancellation or of non-renewal of leases or other retaliatory action (A.R. 64, 98–100; see A.R. 51–59).[18] But it "regard[ed] these overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself [* * *, namely, its] competitive effects * * * on competitors of Goodyear and Firestone * * * [and its] impact upon whole-

[18] The examiner had held that Atlantic violated Section 5 by coercing a number of dealers to purchase sponsored TBA, and proposed a cease-and-desist order prohibiting only such coercion. He further held, however, that the sales commission agreement itself was not illegal, and dismissed the complaint as against Goodyear (A.R. 41–60).

sale and retail distributors of TBA engaged in competition with wholesale and retail distributors of Goodyear and Firestone" (A.R. 100).

Reviewing in detail the relationships between Atlantic and its dealers (A.R. 83–100, 107–113, 116–117), the Commission ruled that Atlantic "has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements * * *" (A.R. 124; see also A.R. 65); and that Atlantic "has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous retail gasoline distribution facilities to cause its dealers to purchase very substantial amounts of a different class of products, TBA" (G.R. 179; several words are missing from this sentence of the opinion as reprinted at A.R. 122).

The Commission ruled that Atlantic's sales commission contracts had restrained competition in various ways. Among them were: other manufacturers and distributors of TBA were foreclosed from selling to Atlantic outlets—a foreclosure that was particularly injurious to the smaller TBA manufacturers (A.R. 118, 119–121, 125–126, 128); Goodyear and Firestone wholesalers who were not designated as supply points were foreclosed from Atlantic's business (A.R. 113–119, 125); service station operators were denied the benefits of competition between TBA sellers and the right to purchase from the seller who offered them the lowest price (A.R. 129); and "Firestone dealers are

foreclosed from Atlantic outlets in regions assigned to Goodyear, and Goodyear dealers are foreclosed from Atlantic outlets in regions assigned to Firestone" (A.R. 124–125; see A.R. 113–115). The Commission concluded (A.R. 128–129) that "the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)."

The Commission entered an order prohibiting Atlantic and Goodyear from entering into or carrying out such sales commission contracts with each other or with any other TBA or oil company, and prohibiting Atlantic from coercing its dealers to purchase TBA (A.R. 131–134).

7. THE COURT OF APPEALS DECISION

The Court of Appeals for the Seventh Circuit unanimously affirmed. It ruled (A.R. 3285) that "the record as a whole" contained substantial evidence "to support the Commission's ultimate findings and conclusions," and that its order was valid "in all respects."

The court held that the "heart of this case is the economic power Atlantic possesses over its service station dealers," and, in turn, "The keystone of the actual relationship between Atlantic and its dealers is the lease and the equipment loan contract with their short term and cancellation provisions" (A.R. 3292). While holding that the Commission's finding that Atlantic had co-

erced its dealers was supported by substantial evidence (R. 3293–3294), the court agreed that "Atlantic's power to cause its dealers to carry either Goodyear or Firestone TBA does not depend upon overt coercive methods. The totality of facts surrounding the relationship between the oil company and the dealers point to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA" (A.R. 3295). In the setting of such "economic dependency," the court stated, "recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effective as express covenants and open threats" (A.R. 3295).

The court concluded that the Commission had correctly ruled that the sales commission system is "in effect, a tying arrangement inherently anticompetitive" (A.R. 3297), which utilizes Atlantic's economic power over its dealers to foreclose competition for a substantial amount of commerce (R. 3296–3297):

> The Commission properly, we think, decided that the system integrates Atlantic's economic power over its service station market into the Goodyear TBA distribution system, thus giving Goodyear, for a price, a captive market.
>
> * * * the record substantiates the Commission's finding that suppliers of TBA competing with Goodyear and Firestone are substantially foreclosed from selling their products to Atlantic dealers. * * *

SUMMARY OF ARGUMENT

I

A. The unlawfulness of Atlantic's sales commission agreements with Goodyear and Firestone rests upon the Commission's findings that (1) Atlantic has the power to require its dealers to purchase substantial quantities of tires, batteries and accessories ("TBA") even without overt coercion; and (2) Atlantic's performance of its sales commission agreements constitute the exercise of its power to require such substantial purchases of sponsored TBA. Atlantic's power, based upon its disparately large size and financial resources, is embodied in leases of service stations and loans of equipment which are generally short-term, are subject to cancellation for various acts or defaults under vague operational standards, and the renewal of which is within Atlantic's discretion. The serious economic impact of cancellation or nonrenewal makes dealers subservient to an oil company's wishes (*Simpson* v. *Union Oil Co.*, 377 U.S. 13, 17). The dealers also depend upon Atlantic for supply of their principal commodity, gasoline. Atlantic's control over advertising at its dealers' service stations is a further element which, in particular, impedes dealers' freedom of choice with regard to TBA.

As required by its sales commission agreements, Atlantic took vigorous action to begin the sale of sponsored TBA to its dealers, by use of letters, meetings, salesmen's visits and control of display advertising and credit card sales. The striking and rapid shift

of Atlantic dealers to sponsored TBA from brands which they had previously preferred is the clearest evidence of the effectiveness of Atlantic's sponsorship. Atlantic's promotion of Goodyear and Firestone has continued through, *inter alia*, stress on sponsored TBA in the selection and training of new dealers; various pressures exerted by salesmen upon dealers to purchase sponsored TBA; and even resort to threats of cancellation or nonrenewal of dealer licenses. There is substantial evidence in the record that Atlantic dealers believe—as Atlantic obviously wants them to—that they are required to purchase their TBA from Goodyear and Firestone.

B. As a result of Atlantic's power and promotional activities, the sales commission plan injured competition in the distribution of TBA. It foreclosed manufacturers and suppliers of TBA competing with Goodyear and Firestone from a substantial market represented by Atlantic dealer outlets. Moreover, even wholesalers of sponsored TBA cannot sell to Atlantic dealers unless they are designated as authorized supply points. Finally, the division of the Atlantic marketing territory between Goodyear and Firestone eliminates competition between these two major firms in selling TBA to Atlantic dealers.

C. The Commission properly held that Atlantic's sales commission plan, having the above results, is an unfair method of competition violating Section 5 of the Federal Trade Commission Act. In administering Section 5, the Commission has authority to define unfair competitive practices and its conclusion is entitled to great weight (*Federal Trade Commission* v.

Cement Institute, 333 U.S. 683, 708–709, 720). The Commission found that Atlantic's plan, by pre-empting a substantial TBA market for Goodyear and Firestone, causes the same kind of competitive injury as an illegal tying agreement. This finding justifies the conclusion that the plan is an unfair method of competition, since it covered a very substantial amount of commerce—$50 million in sales of sponsored TBA in the first six years of operation. As in the analogous tying cases, no elaborate market analysis is required when foreclosure of a substantial market is demonstrated (*Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1; *United States* v. *Loew's, Inc.*, 371 U.S. 38). The argument that the sales commission plan is most economical for Atlantic cannot justify the restraint upon competition. This is especially so since Atlantic's TBA program is merely ancillary to its petroleum business and since there are other, less restrictive means of distributing TBA through oil company dealers.

II

A. Having held that the Atlantic-Goodyear agreement was an unfair method of competition, the Commission properly enjoined its performance. The Commission ruled that the illegality inhered in the agreement because it induces, even requires, Atlantic to engage in a course of conduct which has the effect of compelling its dealers to purchase sponsored TBA. It was for this integrated course of conduct that Goodyear undertook to pay a substantial commission. The Commission's prohibition against use of this

particular method of distributing TBA is obviously a far less drastic remedy than Goodyear's suggestion to change the basic relationship between Atlantic and its dealers.

B. Atlantic's conduct in performing its sales commission agreements with Goodyear and Firestone was essentially the same, and both contracts were found by the Commission to have unlawfully injured competition in the distribution of TBA. Atlantic's use of economic power would be equally present in any similar contract which Atlantic might enter with any other TBA firm. The Commission properly enjoined Atlantic from entering into or performing any similar sales commission agreement.

C. The Commission also properly enjoined Goodyear from entering into or performing similar contracts with oil companies other than Atlantic. Goodyear has been an active participant in the illegal program found in this case and "must expect some fencing in" (*Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 431). The record provided the Commission with sufficient basis to conclude (1) that the other oil companies with whom Goodyear had sales commission agreements had the same kind of economic power over their dealers as Atlantic; and (2) that in performing such agreements those companies did and were likely to do the same things that Atlantic had done, with the same adverse effect upon competition. The record shows that oil companies generally use the same lease and contract arrangements. Goodyear's sales commission contracts are

in standard form, and the record shows that oil companies other than Atlantic with whom Goodyear had contracts also used coercive tactics to require their dealers to purchase sponsored TBA. If, as Goodyear suggests, there are individual oil companies who either do not have power over their dealers or would not exercise it, Goodyear may ask the Commission to modify the present order on the basis of the special facts of the particular case.

ARGUMENT

I

THE COMMISSION CORRECTLY HELD THAT ATLANTIC'S SALES COMMISSION AGREEMENTS WITH GOODYEAR AND FIRESTONE CONSTITUTE UNFAIR METHODS OF COMPETITION IN VIOLATION OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

The theory upon which the Federal Trade Commission held that Atlantic's sales commission agreements with Goodyear and Firestone violate Section 5 of the Federal Trade Commission Act was as follows: The various controls and pressures that Atlantic is able to exert on its dealers give it the power to require them to purchase substantial amounts of sponsored TBA. In performing its sales commission agreements with Goodyear and Firestone, Atlantic undertakes promotional activities which, because of its power over the dealers, has the effect of requiring them to make such purchases. The effect of thus preempting this substantial TBA market for Goodyear and Firestone has been to injure, among others: (1) competing

TBA manufacturers and suppliers who are foreclosed from selling in the market; (2) Goodyear and Firestone wholesalers who, because they are not authorized supply points, cannot sell to Atlantic dealers; and (3) the Atlantic dealers themselves, who are denied the right either to purchase competing brands of TBA or to purchase Goodyear and Firestone TBA from other distributors at lower prices than the authorized supply points offer. In short, the sales commission plan constitutes an unfair method of competition because it involves "the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)" (A.R. 128–129).

We shall show that the record fully supports the Commission's findings (1) that Atlantic does have such power over its dealers and has used it to require them to purchase substantial amounts of sponsored TBA, and (2) that the effect of such exercise of that power has been to injure competition at various levels of the TBA industry. We shall then show that the Commission correctly concluded that a distribution system having such anticompetitive consequences constitutes an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act.[19]

[19] The Commission held (A.R. 64) that the Atlantic-Goodyear agreement constitutes both an "unfair method of competition" and an "unfair act or practice" under that Section. Whatever may be the distinction between those two concepts—and we express no opinion thereon—it is unimportant for this case, and we therefore rest on the holding that the sales commission plan is an unfair method of competition.

A. ATLANTIC HAS THE POWER TO REQUIRE ITS DEALERS TO PURCHASE SUBSTANTIAL QUANTITIES OF TBA AND, PURSUANT TO ITS AGREEMENTS WITH GOODYEAR AND FIRESTONE, HAS EXERCISED THE POWER TO ACCOMPLISH THAT RESULT.

1. ATLANTIC'S RELATIONSHIP WITH ITS DEALERS GIVES IT THE POWER TO REQUIRE THEM TO PURCHASE SUBSTANTIAL QUANTITIES OF TBA

The basic fact of the relationship between Atlantic and its service station operators is that they do not deal with each other as economic equals. There is an obvious gross disparity in bargaining power.[20] Atlantic is a large company; its operating revenues in 1954 were more than half a billion dollars (A.R. 146–147). The average Atlantic dealer is a small businessman whose average net income is between six and ten thousand dollars (A.R. 112) and who, to an unusual extent, is dependent upon Atlantic for his economic well being. The cost of constructing a typical Atlantic service station is about $50,000, and few dealers have that much money (A.R. 111). Oil companies, therefore, have been forced to build a large number of their own stations and to lease them to operators (A.R. 112). Many dealers start in business with no more than $1,000, and few have as much as $15,000 (A.R. 111–112). Many do not even have the funds to purchase their initial inventory, and have to turn to Atlantic for a loan of several thousand dollars to finance it (A.R. 112). Atlantic also frequently loans dealers the equipment necessary to operate. It is in the light of these circumstances that

[20] While it is unquestionably true, as Atlantic states (Br. pp. 35–36), that it depends upon its dealers collectively to market its products, the critical question in determining Atlantic's power over its dealers is the relative economic strength of Atlantic and the individual dealer.

the relationship between Atlantic and its dealers must be appraised.

The court of appeals pointed out (A.R. 3292) that "[t]he heart of this case is the economic power Atlantic possesses over its service station dealers." The bases upon which this power rests are developed at length in the Statement, *supra*, pp. 7–11, 19–25.

"The keystone of the actual relationship between Atlantic and its dealers" as the court of appeals correctly observed (A.R. 3292), "is the lease and the equipment loan contract with their short term and cancellation provisions."[21] Although some of the service station leases run for three years, the usual term is only one year,[22] and Atlantic has complete discretion to decide whether to renew. In addition, Atlantic may cancel the lease for any violation of the necessarily vague operational standards set forth in the "Eleven Point Lease Letter" which every lessee dealer is required to sign. Contract dealers, who either own their stations or lease them from persons other than Atlantic, and to whom Atlantic loans various equipment needed to run the station, similarly operate under contracts that usually run for only a

[21] Since the leases are standardized, their provisions are not the result of negotiation but are imposed upon the dealers as a condition of doing business (see *United States* v. *Sun Oil Co.*, 176 F. Supp. 715, 722 (E.D. Pa.), a circumstance which itself is indicative of disparate bargaining power.

[22] Although Atlantic states (Br. p. 9, fn. 3) that the proportion of lessees having three-year leases "[u]nquestionably" is "much higher" today than when the hearings were held, the record shows that in 1955 no more than "several hundred" of about 2,500 lessees had the longer term contracts (AX 18 (unprinted); CX 374, A.R. 3178). At that time, in 1955, there was a 30% annual turnover of Atlantic dealers (A.R. 285).

year, and the renewal of which lies in Atlantic's discretion. Such contracts are subject to cancellation by Atlantic for various acts or defaults of the dealer, including such conduct as suffering "financial embarrassment," and in the event of such cancellation Atlantic has the option of removing the leased equipment at the dealer's expense (which also includes the cost of its earlier installation) or requiring him to buy it. See *supra*, pp. 9–10.

The effect of cancellation or non-renewal of a dealer's franchise is particularly serious in the retail gasoline business. Since that business is largely local, the dealer's good will is closely tied to and dependent upon the particular station he has been operating and the particular brand of gasoline he has been selling. Thus, as the Ninth Circuit recognized in recently holding that similar lease and contract arrangements gave an oil company the requisite economic power to force its dealers to buy TBA (*Lessig* v. *Tidewater Oil Co.*, 327 F. 2d 459, 470, certiorari denied, 377 U.S. 993), the consequences of termination of a dealer's lease or contract

> were disproportionately grave to the dealer. Tidewater could substitute one dealer for another readily, or operate the station for itself. The dealer was economically bound to his station and to Tidewater's petroleum products; they were to him unique. The good will of his business attached to them; moreover, he was bound by contract to purchase his requirements of petroleum products from Tidewater; and even if he were free to shift, a change would

involve substantial expense, and the dealer's economic resources were usually limited.

Indeed, even "[t]he changing over from one brand of petroleum products to another by a dealer [who owns his own station or leases it from a non-oil company source] subjects him to an economic hardship and even to the risk of a business failure" (*United States* v. *Sun Oil Co.*, 176 F. Supp. 714, 719 (E.D. Pa.)).[23]

This Court pointed out last term in *Simpson* v. *Union Oil Co.*, 377 U.S. 13, 17, a case involving resale price maintenance, that retail gasoline dealers' "fear of nonrenewal of short-term leases" by their oil company supplier may be a powerful and effective induce-

[23] The district court in *Sun Oil* explained this economic risk as follows (176 F. Supp. at 719–720):

> To begin with, the major suppliers of petroleum products scrupulously respect the contractual arrangements of their competitors and will not supply a dealer with its brand of products unless it is certain that the full term of a previous supply contract has been legally terminated. And the dealer will not always be able to obtain the brand of petroleum products of his choice for his station may not fit into the distribution plan of the supplier. Even when a new supplier is secured a time lag between the removal of Sun's dispensing equipment and signs and the installation of the new and the repainting of the station inevitably takes place. Moreover it takes time before all the motorists in the locality who have a preference for the newly installed brand of gasoline become acquainted with the fact that it is being sold at the location. And there is always the chance that the new brand of gasoline and motor oil will not attract customers as well as the former brand did. Consequently the supplier's threat of cancellation of a supply agreement is not lightly received by a dealer, and he will usually hesitate before accepting an ultimatum to discontinue an established business under the banner of a proven profitable product.

ment to the dealers to follow the oil company's wishes. Other courts similarly have recognized that the disparity between the economic power of a large oil company and its dealers, coupled with the dealers' concern over the possibility of cancellation or non-renewal of their leases and operating contracts, makes them subservient to the oil company's wishes. *Lessig* and *Sun Oil, supra; Osborn* v. *Sinclair Refining Co.*; 286 F. 2d 832 (C.A. 4), certiorari denied, 366 U.S. 963.

A second source of Atlantic's power over its dealers, which is particularly relevant in compelling TBA purchases, is its control over advertising at service stations. For it is difficult to sell TBA that is not advertised and displayed, and a dealer is unlikely to purchase products that he cannot advertise.[24] Atlantic's authority to prevent its dealers from advertising non-sponsored TBA was a powerful weapon in preventing them from handling such products.

[24] A wholesale supplier of competing TBA who operated in Atlantic's Goodyear territory testified as follows (A.R. 696):

> * * * I asked him [a Goodyear dealer], how about another case of Barsleak for stock, and he proceeded to tell me that if he bought it he would have to put it in the back room. He couldn't display it any more because he was told by his Atlantic representative salesman to take it off the shelf and only put the line which was carried by Atlantic on the shelf.
>
> So he said, "If I have to hide it in the back room, I would lose half of its saleability, so why should I continue to buy it?"

An Atlantic dealer similarly testified about the importance display advertising had upon his purchases (A.R. 634):

> A. After all, when a man sees a Goodyear sign up, he expects to buy Goodyear tires, so you try to deplete it

Third, Atlantic's control over the supply of gasoline gave it additional leverage over its outlets.[25]

The Commission thus reflected the realities of the retail gasoline business when it found that "Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics" (A.R. 64). For, as the court of appeals stated (A.R. 3295), because of the Atlantic "dealers' economic dependency upon the oil company * * * recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats." Cf. *American Column & Lumber Company* v. *United States*, 257

[stocks of Goodrich tires and batteries] as fast as you can * * *.

Q. And after that you never purchased Goodrich tires or batteries?

A. No.

In *United States* v. *Sun Oil Co.*, 176 F. Supp. 714, 719 (E.D. Pa.) the court stated: "Displaying a product and advertising it at service stations facilitates its sale. Hence, inconspicuous, undisplayed and non-advertised products cannot be effectively sold at such stations. Compelling the removal of signs displaying the fact that a particularly branded product is for sale at a dealer's station at least retards its sale, since motorists will not, as a rule, drive from station to station for the purpose of inquiring whether the brand of motor oil or TBA of their preference is being sold on the premises."

[25] As Mr. Justice Jackson has pointed out "[n]o retailer * * * can * * * remain in business if he does not always, and not just intermittently, have gas to sell" (*Standard Oil Co.* v. *United States*, 337 U.S. 293, 323) (dissenting opinion).

U.S. 377, 414; *Ford Motor Co.* v. *United States*, 335 U.S. 303, 323–326 (Mr. Justice Black, dissenting).

But any possible doubt as to Atlantic's power to compel its dealers to buy sponsored TBA is dispelled by the very fact that Goodyear and Firestone were willing to pay Atlantic substantial sums in return for the latter's services in "promoting" such purchases. The tire companies would not have paid commissions to Atlantic amounting to almost $5 million from 1950 to 1956 (A.R. 76) unless they were satisfied that Atlantic in fact was able to require its dealers to purchase sponsored TBA. As we now show, the actual operating practices and results under the sales commission contracts leave no doubt that Atlantic can, and did, require its dealers to purchase substantial quantities of Goodyear and Firestone TBA.

2. *In performing the sales commission agreements, Atlantic exercised its power over its dealers to require them to purchase substantial amounts of sponsored TBA*

As soon as Atlantic signed the sales commission agreements, it took vigorous action to perform its duty to promote the sale of sponsored TBA. It informed its dealers of the new plan;[26] held meetings with them at which its representatives joined with those of Goodyear and Firestone in explaining the program and urging the dealers to adopt it;[27] and

[26] A dealer described Atlantic's letter announcing the new plan as stating that "after a certain time, that Goodyear would be our distributor for accessories * * * [a]nd tires and batteries" (A.R. 1737).

[27] An Atlantic dealer described what happened at one meeting as follows (A.R. 182):

Q. Mr. Chambers, referring back to the time, to the dealer meeting when the switch-over to Goodyear TBA

had its salesmen join with tire company representatives in calling upon the dealers and urging them to shift to the new brands. Products of other manufacturers in the hands of Atlantic dealers were relabelled to bear the Goodyear or Firestone names, and defective Lee tires and Exide batteries were replaced by Goodyear and Firestone brands. During 1951 and 1952 Atlantic limited the use of credit cards, which accounted for as much as 25 percent to 35 percen of a dealer's business, to sponsored TBA; and even after that time, some dealers still believed that this limitation was still in effect. See *supra*, pp. 15–18, 24.

Under its leases and contracts with its dealers, Atlantic has broad control over the advertising displayed at the service stations. See *supra*, pp. 11, 42. Atlantic assisted Goodyear and Firestone in substituting their advertising for that of products previously featured by the dealers, and did so even at stations where the dealers wished to continue to advertise the competing brands. See *supra*, pp. 17, 23–24. Goodyear sent Atlantic the names of dealers who refused to permit the installation of Goodyear advertising, and Atlantic forwarded these names to its district offices for "appropriate action." The effectiveness of this action was demonstrated in Atlantic's Philadelphia and South Jersey districts, where 46 dealers who had refused to permit Goodyear advertising accepted it

line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?

A. No there was no choice; I mean the company said that they were going from one product which would be Lee and Exide over to full Goodyear.

after Atlantic referred the matter to the district offices (A.R. 316–317, 2763–2787).

In view of the pressures to which Atlantic subjected its dealers and their awareness of the possible consequences of opposition (see *supra,* pp. 38–44), it is hardly surprising that the program was highly successful in transferring to Goodyear and Firestone most of the TBA business that Atlantic itself previously had handled under the purchase-resale plan for Lee Tires, Exide Batteries and other products. A 1948–1949 Atlantic survey of dealer TBA preferences showed that 67 percent of its dealers preferred Lee tires and 79 percent preferred Exide batteries; and that only 11 percent preferred Goodyear tires and only 4 percent preferred Firestone tires. See *supra,* p. 12. Despite these strong dealer preferences for Lee and Exide, by October, 1951—only 7 months after the new plans had gone into effect—Goodyear had signed contracts with 98 and 96 percent, respectively, of Atlantic's outlets in two of the three marketing areas assigned to Goodyear (A.R. 2841). In that same year, Lee and Exide lost approximately 75 percent of their former Atlantic business (CX 292A, A.R. 3044, CX 311, 3075–3076). By 1952, the first full year under the sales commission plan, total TBA sales by Goodyear and Firestone to Atlantic outlets were 40 percent greater than Atlantic's own TBA sales had been in 1949, the last full year in which Atlantic operated its purchase-resale plan (A.R. 76–77).

This striking shift in a short period of the dealers' purchases from Lee and Exide, the brands for which

they previously had shown a strong preference, to Goodyear and Firestone, the brands they had disfavored, is the clearest evidence of how effectively Atlantic was able to use its economic power over its dealers to compel them to purchase sponsored TBA.[28] Cf. *Northern Pacific R. Co.* v. *United States*, 356 U.S. 1, 7–8; *Lessig* v. *Tidewater Oil Co.*, 327 F. 2d 459, 470 (C.A. 9), certiorari denied, 377 U.S. 993.

Atlantic has continued its vigorous "sponsorship" of Goodyear and Firestone products, and has used various techniques to insure that its dealers handle those brands rather than competing ones. Atlantic's program for selecting, training and installing new dealers emphasizes that it wants its stations to carry

[28] Atlantic asserts (Br. pp. 12, 15, 45–46) that its dealers bought sponsored TBA because Lee tires lacked public acceptance. To support this statement it relies on the testimony of two Atlantic officials and one dealer. One of those officials, the vice-president in charge of marketing, stated that the Lee product had "varied acceptance," that it was quite successful in the Philadelphia area, and that Exide batteries had national acceptance and that Atlantic did not drop that product for such failing (A.R. 2302). The record indicates the Lee tire has certain advantages over Goodyear: it provides a road hazard guarantee, while Goodyear does not (A.R. 370, 437, 1580; CX 9, A.R. 2353; cf. CX 108A–J, A.R. 2628); it is more profitable for dealers (A.R. 370, 1598; G.R. see A.R. 1580; CX 9, A.R. 2353; CX 108 A–J, A.R. 2628); Lee provides better terms on advertising (A.R. 373, 443–446); and some dealers were dissatisfied with Goodyear service and adjustments (A.R. 652, 654, 1633, 1738–1739, 2148). Atlantic's suggestion (Br. p. 25) that Lee rejected an opportunity to enter into a sales commission contract with it is refuted by the document cited (CX 280, A.R. 3005), which shows that Atlantic offered Lee only the opportunity to continue purchase-resale arrangements in any areas to which the sales commission plan might not be made applicable.

only sponsored TBA, and assures that the dealers begin operations with the sponsored products. Atlantic salesmen often accompany Goodyear and Firestone representatives when the latter call on Atlantic accounts. Atlantic salesmen themselves solicit orders for sponsored TBA, encourage its purchase to meet a specified quota, criticize the purchase of unsponsored goods and direct dealers to get rid of such goods and not to display them. Atlantic controls display advertising at its stations to feature sponsored TBA, and prevents the display or advertising of other goods. Indeed, Atlantic salesmen even have resorted to threats of cancellation or nonrenewal of licenses to enforce the purchase of sponsored TBA. These and other acts which Atlantic has done in the performance of its contracts with Goodyear and Firestone are detailed in the Statement, *supra,* pp. 19–25.

Although Atlantic informed its dealers that they had a "free choice" in selecting TBA and were not required to buy sponsored products (see Atlantic Br. pp. 17–20, Goodyear Br. p. 13), Atlantic's actual practice refutes this claim. There were a number of instances in which Atlantic salesmen resorted to direct threats to cancel or not to renew leases in order to force a dealer to buy sponsored TBA (see the Statement, *supra,* pp. 24–25). In addition, the record shows that despite what Atlantic *said,* what Atlantic *did* led dealers to understand and believe that they

were required to purchase substantial amounts of sponsored TBA.[20]

Dealer Matthews stated that he did not carry unsponsored TBA because "I didn't want my lease cancelled. I wanted my lease renewed when it terminated" (A.R. 438–439); and because "* * * I wanted to stay a dealer and knew I couldn't [carry unsponsored TBA]" (A.R. 445). Dealer Balloran said (A.R. 659):

> * * * You couldn't sell anything on that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that its representatives are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station, I know that. Anybody knows that. The salesman knew it. That's why I left the station.

Dealer Sullivan stated that he discontinued selling unsponsored products "Because I was afraid that if I rubbed Atlantic the wrong way by continuing to sell them, that I may be in their disfavor, and I had

---

[20] An Atlantic dealer described what happened when he pointed out to his salesman that Atlantic had stated that dealers were not required to purchase sponsored TBA (A.R. 826):

Q. Did you ever discuss that [no forcing] letter with salesman Way?

A. Yes I did.

Q. What did you state to salesman Way?

A. I said "Bill, does that letter mean what it says?" and he said, "You try it and you will find out". That was the answer I received.

Q. So you continued to purchase Goodyear TBA?

A. That's right.

been—at the time the discussion came up about the batteries, it was my—I guess it was my first warning that the company expected me to buy Firestone products and that if I did not buy Firestone products, chances were that my lease would not be renewed" (A.R. 906–907). Dealer Hawes said that "* * * it was more or less I think understood" that Atlantic outlets had to carry sponsored TBA (A.R. 937).

The testimony of suppliers also showed that the dealers believed that they had to purchase sponsored TBA. Several wholesalers said that their attempts to sell unsponsored TBA to Atlantic dealers met with comments such as these: "Sorry Glenn, but I have to reserve this for Ed Parris [a Goodyear supply point]. You understand the situation. I am in an Atlantic station. I must buy from an Atlantic TBA distributor" (A.R. 237); "Glenn, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax" (A.R. 239); "Joe, I would like to buy the batteries from you, but you know what I have been running into and what every Atlantic man has been running into. I cannot put anything but a Goodyear battery in here" (A.R. 704–705); "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes" (A.R. 708); "What do you want, the roof to cave in on me? I would lose my lease immediately" (A.R. 557); "I wish I could buy those deals, but I am not allowed to" (A.R. 556). Other explanations which wholesalers received from

dealers for their refusal to purchase non-sponsored TBA included:

"The same reason that most of these other fellows have given us whenever they have stopped buying any merchandise from us, pressure from Atlantic" (A.R. 699); "As one dealer told me, that he was to save it for the Atlantic salesman the next time he came around" (A.R. 383); "* * * at that time he told me that he is going to handle Firestone tires because the oil company has a tie-in with them" (A.R. 1083); "He said it is awful tough for him to buy any products except those he is supposed to buy through the oil company" (A.R. 1113); "He said he would no longer be able to buy merchandise from me; that this Atlantic salesman was applying pressure; that he would have to stock merchandise bought from them only" (A.R. 1157); "They told me then that Atlantic Refining Company had given them some additional outlets in their territory and they were practically compelled to go along with the Atlantic proposition program" (A.R. 817); "* * * and they told him he should stick with Firestone and he wouldn't buy them [unsponsored batteries]. I never did sell him" (A.R. 971); "He said he was mostly obligated to buy his TBA items from Firestone" (A.R. 1132).

In the face of this kind of pressure, it was hardly surprising that Atlantic's efforts to require its dealers to purchase Goodyear and Firestone TBA were highly successful. The extent of that success is shown by the fact that in the first six years of the program, each of those companies had total TBA sales to Atlantic outlets of more than $25 million

(A.R. 76). This success is not surprising in view of the substantial evidence in the record that Atlantic dealers believe—as Atlantic obviously wants them to—that, if they wish to remain in Atlantic's good graces, they are required to purchase their TBA from Goodyear and Firestone. See *supra,* pp. 26–27, 49–51. As the court of appeals stated (A.R. 3293), "the Commission, in evaluating the evidence, correctly found that if a dealer wishes to continue in good standing with the company and retain his lease or contract, it is advantageous that he carry sponsored TBA."

B. THE SALES COMMISSION PLAN INJURED COMPETITION IN THE DISTRIBUTION OF TBA

The Commission found that the sales commission plan injured competition at all three levels of the TBA industry: manufacturing, wholesaling, and retailing (A.R. 113–129). The court of appeals upheld the Commission's findings of such competitive injury, and specifically ruled that "the record substantiates the Commission's finding that suppliers of TBA competing with Goodyear and Firestone are substantially foreclosed from selling their products to Atlantic dealers. Atlantic's service station market is fenced off so as to make it unavailable to both manufacturers and wholesalers of competing brands" (A.R. 3296–3297).

As set forth in the Statement, *supra,* pp. 25–28, the record fully supports the Commission's conclusions on injury to competition. It shows that small manufacturers who either do not have distribution points throughout Atlantic's territory or do not have a full

line of TBA, are unable to sell to Atlantic because the latter insists on dealing with a single supplier who has an extensive distribution system and handles a complete TBA line—even though the smaller manufacturers' products have good consumer acceptance in the areas where they are sold. Wholesalers of unsponsored TBA have been precluded from selling their products to Atlantic dealers—not because the latter in the exercise of independent business judgment prefer Goodyear and Firestone, but because they believe that they run the risk of losing their leases or contracts if they buy other products. Indeed, many of such wholesalers do not even attempt to solicit business from many Atlantic dealers, since they have learned that such endeavors are fruitless. Moreover, even wholesalers of sponsored products cannot sell to Atlantic dealers unless they are authorized supply points for such dealers, even though such wholesalers offer lower prices than the supply points. Finally, the division of the Atlantic marketing territory between Goodyear and Firestone eliminates competition between these two major firms in selling TBA to Atlantic.

The market from which this competition was foreclosed was a substantial one. During the first six years of the Atlantic sales commission plans, Goodyear and Firestone together sold it more than $50 million worth of TBA; in 1955 (the last full year for which the record contains data) their total TBA sales to Atlantic were more than $11 million (A.R. 76, 78). In cases involving the validity of tying agreements under Section 1 of the Sherman Act, which are *per se*

illegal if they restrain a "not insubstantial" volume of commerce, far smaller amounts have been deemed substantial. See *United States* v. *Loew's, Inc.*, 371 U.S. 38, 49 (25 tying contracts of six companies, involving $60,000 to $2½ million each); *International Salt Co.* v. *United States*, 332 U.S. 392, 396 ($500,000 annually); *United States* v. *Richfield Oil Corp.*, 99 F. Supp. 280, 285–286 (S.D. Cal.), affirmed, 343 U.S. 922 ($3,600,000 of TBA).

C. THE COMMISSION CORRECTLY HELD THAT THE SALES COMMISSION PLAN IS AN UNFAIR METHOD OF COMPETITION BECAUSE IT CAUSES ATLANTIC TO USE ITS ECONOMIC POWER OVER ITS RETAIL GASOLINE DEALERS TO RESTRAIN COMPETITION IN TBA

1. *Section 5 of the Federal Trade Commission Act gives the Commission broad discretion to define unfair methods of competition, and at a minimum the Commission may prohibit conduct that has the same kind of anticompetitive effect as violations of the Sherman and Clayton Acts*

When Congress in 1914 enacted the prohibition in Section 5 of the Federal Trade Commission Act against "unfair methods of competition," it intentionally refrained from defining the term so that the Commission might develop the meaning with experience to meet changing competitive conditions. As the Senate Committee Report explained (S. Rep. No. 592, 63d Cong., 2d Sess., p. 13):

> The committee gave careful consideration to the question as to whether it would attempt to define the many and variable unfair practices which prevail in commerce and to forbid their continuance or whether it would, by a general declaration condemning unfair practices, leave it to the commission to determine

what practices were unfair. It concluded that the latter course would be the better, for the reason, as stated by one of the representatives of the Illinois Manufacturers' Association, that there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.

* * * * * *

* * * The committee was of the opinion that it would be better to put in a general provision condemning unfair competition than to attempt to define the numerous unfair practices * * *.

See also H.R. Rep. No. 1142, 63d Cong., 2d Sess., pp. 18-19 (conference report), where the House managers stated:

* * * The most certain way to stop monopoly at the threshold is to prevent unfair competition. This can best be accomplished through the action of an administrative body of practical men thoroughly informed in regard to business, who will be able to apply the rule enacted by Congress to particular business situations, so as to eradicate evils with the least risk of interfering with legitimate business operations.

It is impossible to frame definitions which embrace all unfair practices. * * * It is also practically impossible to define unfair practices so that the definition will fit business of every sort in every part of this country. Whether the competition is unfair or not generally depends upon the surrounding circumstances of the particular case. * * *

This Court has recognized that Congress left it to the Commission to give precise content to the concept of "unfair method of competition." Thus, in *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, the Court stated (p. 708–709):

> * * * This general language [unfair method of competition] was deliberately left to the "commission and the courts" for definition because it was thought that "There is no limit to human inventiveness in this field"; that consequently, a definition that fitted practices known to lead towards an unlawful restraint of trade today would not fit tomorrow's new inventions in the field; and that for Congress to try to keep its precise definitions abreast of this course of conduct would be an "endless task." See *Federal Trade Commission* v. *R. F. Keppel & Bro.,* 291 U.S. 304, 310–312, and congressional committee reports there quoted.

Similarly, in *Federal Trade Commission* v. *Motion Picture Advertising Service Co.,* 344 U.S. 392, 394, the Court noted: "Congress advisedly left the concept flexible to be defined with particularity by the myriad of cases from the field of business."

In the Federal Trade Commission Act Congress thus adopted the legislative principle, now thoroughly familiar, of enunciating broad but necessarily generalized standards, and leaving it to the specialized agency that enforces the statute to particularize those standards through their application to individual factual situations. Cf. *National Labor Relations Board* v. *Hearst Publications,* 322 U.S. 111, 130; *Gray* v. *Powell,* 314 U.S. 402, 411–412.

An important feature of this type of legislation is that great weight is accorded to the decisions of the expert body in performing its function of applying the statutory standards to particular situations. *Hearst, supra,* at 130–131; *Gray, supra,* at 412. In *Hearst* the Court stated (p. 131) that "where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. * * * [T]he Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

In the *Cement Institute* case, *supra,* this Court specifically applied that rule when it

> sustain[ed] the Commission's holding that concerted maintenance of the basing point delivered price system is an unfair method of competition prohibited by the Federal Trade Commission Act. *In so doing we give great weight to the Commission's conclusion, as this Court has done in other cases.* *Federal Trade Comm'n* v. *R. F. Keppel & Bro.*, 291 U.S. 304, 314; *Federal Trade Comm'n* v. *Pacific States Paper Trade Assn.*, 273 U.S. 52, 63. In the *Keppel* case the Court called attention to the express intention of Congress to create an agency whose membership would at all times be experienced, so that its conclusions would be the result of an expertness coming from experience. We are persuaded that the Commission's long and close examination of the questions it here decided has provided it with precisely the experience that fits it for per-

formance of its statutory duty. [333 U.S. at 720, emphasis supplied.]

Furthermore, "[i]t has long been recognized that there are many unfair methods of competition that do not assume the proportions of Sherman Act [or Clayton Act] violations." *Federal Trade Commission* v. *Cement Institute*, 333 U.S. at 694; *Federal Trade Commission* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392, 394–395. Conduct may constitute an unfair method of competition if it "runs counter to the public policy declared" in those Acts (*Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U.S. 457, 463).

As the case comes before this Court, therefore, the question is relatively narrow: whether the Commission's holding that the sales commission plan is an unfair method of competition "has 'warrant in the record' and a reasonable basis in law" (*National Labor Relations Board* v. *Hearst Publications, supra*, 322 U.S. at 131). As we now show, it has both. It has "warrant in the record" because the Commission's findings, which the court of appeals held were supported by substantial evidence, show that the plan resulted in the use of Atlantic's economic control over its dealers to foreclose competition in a substantial segment of the TBA market. It has "a reasonable basis in law" because the plan had the same kind of adverse effect on competition as an illegal tying agreement, and therefore properly was held to be an unfair method of competition.

2. The sales commission plan, by utilizing Atlantic's controlling economic power over its gasoline dealers to preempt for Goodyear and Firestone a substantial TBA market, causes the same kind of competitive injury as an illegal tying agreement

The Commission found—and the court of appeals upheld the findings—that the sales commission plan injured competition in the following respects, among others:

(a) Manufacturers and wholesalers of competing brands of TBA, and Goodyear and Firestone wholesalers who were not authorized supply points under the plan, were foreclosed from a significant market.

(b) Dealers were denied freedom of choice to select brands to sell and sources from which to buy.

(c) Goodyear and Firestone were each foreclosed from access to Atlantic outlets in the areas assigned to the other, and to that extent competition between them was eliminated.

These restraints upon competition were the result of the basic character of the sales commission plan. Under it Atlantic undertook to use its economic power in the retail gasoline business, stemming from its control over its dealers, to require them to purchase sponsored TBA. Although Atlantic usually did not explicitly require its dealers to purchase Goodyear and Firestone TBA as a condition to becoming or remaining an Atlantic dealer (but see the numerous instances where dealers were actually threatened with cancellation or non-renewal of leases or contracts unless they bought sponsored TBA, *supra*, pp. 24–25), Atlantic's sponsorship of those companies' products had that effect in practical operation. For, as the court of ap-

peals correctly pointed out (A.R. 3295), in the setting of the "dealers' economic dependency upon the oil company * * * recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats." Considering the vigor and thoroughness with which Atlantic hammered home its desire that its dealers handle sponsored TBA (see *supra,* pp. 15–18, 19–25), it was hardly surprising that Goodyear and Firestone quickly took over, and apparently retained, virtually the entire TBA market that Atlantic formerly had controlled through its direct sales to its dealers (see *supra,* pp. 18–19, 25–26, 46).

The net effect of the sales commission plan upon competition, therefore, was as though Atlantic had agreed with Goodyear and Firestone that it would require its dealers to purchase TBA. For that arrangement would cause the same major restriction upon competition that the present plans effect: the foreclosure of competing TBA manufacturers and distributors from a major segment of the substantial Atlantic TBA market—a segment that during the first six years of the plans' operation amounted to approximately $50 million.

If the sales commission plan had provided for express tying agreements between Atlantic and its dealers, there would be no doubt that such agreements, covering $50 million worth of commerce, would be illegal *per se* under Section 1 of the Sherman Act. *United States* v. *Loew's,* Inc., 371 U.S. 38; *Northern*

Pacific Ry. Co. v. *United States*, 356 U.S. 1; *United States* v. *Richfield Oil Corp.*, 99 F. Supp. 280 (S.D. Calif.), affirmed, 343 U.S. 922. An agreement requiring Atlantic to engage in such practices obviously would itself unreasonably restrain trade (*Motion Picture Patents Company* v. *Universal Film Manufacturing Company*, 243 U.S. 502; *United States* v. *Bausch & Lomb Co.*, 321 U.S. 707) and the Commission certainly could condemn such contract as an unfair method of competition (*supra*, p. 58).

The basic vices of tying agreements which this Court described in *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 6, are equally applicable to the sales commission plans involved in the present cases: "They deny competitors free access to the market for the tied product [TBA], not because the party imposing the tying requirements has a better product or a lower price but because of his power or leverage in another market. At the same time buyers are forced to forego their free choice between competing products." See, also, *United States* v. *Loew's, Inc.*, 371 U.S. 38, 45. The Commission's decision to treat as an unfair method of competition the present type of plan, which does not have an express tying requirement but nevertheless accomplishes the same result and causes the same injury to competition as if it did, surely had a "reasonable basis in law" (*National Labor Relations Board* v. *Hearst Publications, supra*).[30]

[30] Petitioners contend (Atlantic Br. pp. 56–58, Goodyear Br. p. 41) that the court of appeals, insofar as it relied on a tying theory, decided the case on a different basis than the Commission, contrary to the rule of *Securities and Exchange Commis-*

The petitioners contend (Atlantic Br. pp. 51–56; Goodyear Br. pp. 31–36), however, that the Commission could not rest its conclusion that the plan is an unfair method of competition upon the fact that it foreclosed competition from a substantial market ($50 million worth of TBA during a six-year period), but was required to make an elaborate economic analysis into such questions as the percentage of the total TBA market that the Atlantic business represented, the effect of the plan on that broader market, the avail-

---

sion v. *Chenery Corp.*, 318 U.S. 80. Citing the following statement in the Commission's opinion—"But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases" (A.R. 124)—they contend that the Commission thereby disavowed any reliance on a tying theory.

Petitioners misread the Commission's opinion. All that the Commission said in the quoted sentence was that it would not rest on the rule that tying agreements are illegal *per se* "whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected" (*Northern Pacific R. Co.* v. *United States*, 356 U.S. 1, 6. Rather, as it stated in the third sentence following that quoted, it would make "an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents."

While the Commission thus eschewed a "mechanical application" of the rule governing tying agreements, it repeatedly recognized the analogy between such agreements and the sales commission plan. Indeed, following the sentence that petitioners quote, the Commission summed up the basic vice of the sales commission plan in words that plainly reflected a tying theory: "We believe that the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)" (A.R. 128–129).

ability of other markets to competing TBA manufacturers and distributors, etc. To prove that a tying agreement is illegal, however, the only market impact that need be shown is that "a 'not insubstantial' amount of interstate commerce is affected" (*Northern Pacific, supra; International Salt Co.* v. *United States,* 332 U.S. 392); there is no occasion to make "a full-scale factual inquiry into the scope of the relevant market for the tying product and into the corollary problem of the seller's percentage share in that market" (*United States* v. *Loew's Inc.,* 371 U.S. 38, 45, fn. 4). The reason for this rule is that because tying agreements are inherently anticompetitive the mere fact that they cover a significant volume of commerce itself establishes that they injure competition. Since, as we have shown, the sales commission plan has the same anticompetitive effects as a tying agreement, the Commission properly applied the standards governing the latter in determining the validity of the former.[31]

Petitioners also argue (Atlantic Br. pp. 46–49; Goodyear Br. pp. 23–27) that the Commission was

[31] While petitioners rely upon *Tampa Electric Co.* v. *Nashville Coal Co.,* 365 U.S. 320, that case involved a requirements contract. This Court has distinguished between tying agreements, which are "inherently anticompetitive" and serve "hardly any purpose beyond the suppression of competition", and requirements contracts, which are governed by a less stringent rule (*Brown Shoe Co.* v. *United States,* 370 U.S. 294, 330–331; *Standard Oil Co.* v. *United States,* 337 U.S. 293, 305, 307). In *Standard Oil,* the Court specifically noted that an oil company's exclusive supply arrangements with its dealers for TBA (as distinct from gasoline) "should perhaps be considered * * * tying rather than requirements agreements" (337 U.S. at 305, fn. 8).

required to balance the asserted benefits of the sales commission plan against its competitive evils before condemning it as an unfair method of competition. As a corollary, they urge (Atlantic Br. pp. 42–46, Goodyear Br. pp. 36–37) that the Commission acted arbitrarily in prohibiting the sales commission plan while simultaneously approving the purchase-resale method of TBA distribution (under which Atlantic itself purchases the products and then resells them to its dealers), since the latter method has the same anticompetitive effects and also is a less effective method of distribution for Atlantic and other regional oil companies who are not large enough to maintain a comprehensive network of distribution outlets for TBA.

The latter argument rests on an erroneous factual premise. In prohibiting the sales commission plan, the Commission did not approve the purchase-resale method. The Commission's complaint challenged only the sales commission system, not the purchase-resale plan (A.R. 5–12), and its lengthy opinion stressed at several points that only the legality of the former method of distributing TBA was at issue (*e.g.*, A.R. 61–62, 124). In their appeal from the hearing examiner's decision, counsel supporting the complaint did seek an order enjoining Atlantic from purchasing TBA for resale to its wholesalers or retailers (A.R. 64), but this was obviously sought as relief that would be appropriate if the Commission reversed the examiner and condemned the sales commission plan. While the Commission did not grant

this broader relief sought by the staff,[22] such action merely represented a determination that a ban on use of the purchase-resale plan was not a proper remedy to cure the violation found. It cannot fairly be interpreted as an affirmative adjudication that the purchase-resale plan itself, whose substantive validity had not been challenged in the proceeding, was valid. Nor can the Commission be deemed to have validated the purchase-resale plan because it indicated (A.R. 127–128) that this plan was likely to have less severe anticompetitive consequences for smaller TBA manufacturers than the sales commission program it condemned.

Atlantic's argument that the sales commission plan is more economical for it than other systems of TBA distribution is no ground for invalidating the Commission's decision. In view of the demonstrated anticompetitive effects of the plan, it cannot be justified because it may be "beneficial to [Atlantic's] business" by reducing costs. *Northern Pacific Ry. Co.* v. *United States,* 356 U.S. 1, 6–7; *United States* v. *Loew's, Inc.,* 371 U.S. 38, 51–52. Indeed, the costs of Atlantic's TBA distribution program are properly viewed as part of the costs of its petroleum business. Petitioners state (Atlantic Br. pp. 11–12; Goodyear Br. p. 11) that Atlantic's receipts from its TBA contracts with Goodyear and Firestone are less than one-quarter of one percent of its total revenues from

[22] The provisions of the cease and desist order applicable to Atlantic prohibit it from entering into contracts, or using various devices, to promote the sale of TBA products to Atlantic outlets by any TBA distributor or marketer "other than The Atlantic Refining Company" (A.R. 132–133).

petroleum products. Atlantic apparently makes no profit on those sales commission contracts, since its receipts therefrom just about cover its expenses in sponsoring Goodyear and Firestone TBA (A.R. 2298).[33] It asserts (Atlantic Br. pp. 10–12; A.R. 1443; see A.R. 1444) that it seeks to develop the marketing of TBA by its dealers to strengthen them and thereby to increase its sales of gasoline and other petroleum products. In fact, TBA sales are so important to gasoline sales that Atlantic officials have stated that they will continue to train their dealers in TBA operations even if the company were not to be paid therefor (A.R. 1499–1500, 1819–1820; see A.R. 1442–1443).[34] In short, Atlantic conducts its TBA operations primarily as a necessary appendage of its petroleum business, and it cannot justify the restrictive consequences of the former on the ground that they

[33] While Atlantic disclaims any interest in revenues from the sales commission plan, it should be noted that recouping the costs of its TBA program represents a considerable saving of money for Atlantic over the previous purchase-resale program (Atlantic Br. pp. 13–15). Moreover, once the sales commission system was launched, the oil company had the strongest financial motive to increase the sales subject to commission (see *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d at 834). The record shows that Atlantic sought to increase the number of items on which it receives commissions (A.R. 2377, 2436–2437; and see R. 2608).

[34] If Atlantic dealers were to deal independently with TBA manufacturers and wholesalers (see text, *infra*, pp. 67–68), some of the costs would be borne by the latter instead of by Atlantic. The record shows that the tire companies circulate advertising material that tells dealers how much and what kind of products to purchase as well as how to display such products (CX 247B, A.R. 2935–2962).

are outweighed by a reduction in the operating costs of the latter.

Contrary to petitioners' apparent assumption, the sales commission and purchase-resale plans are not the only alternatives available for distributing TBA through oil company dealers. Another method would be to permit Atlantic dealers to make an independent decision as to TBA, thus allowing them to deal directly with the TBA wholesaler of their choice. The record shows that there are numerous independent TBA wholesalers desirous of selling to Atlantic stations and conveniently located for that purpose.[35] These wholesalers carry every type and brand of TBA product, including Goodyear and Firestone.[36] They call on their customers regularly, possess fully adequate delivery equipment, and give excellent service[37]—indeed, sometimes better than Goodyear or Firestone supply points (A.R. 652–653). Their prices are competitive:[38] they sometimes charge less for Goodyear, Firestone and competing products than the authorized supply points charge for sponsored prod-

[35] One supplier estimated that there are more than 60 TBA suppliers in his marketing area (A.R. 1068). The large number of aggrieved wholesalers who testified for the Commission itself indicates the ready availability of numerous sources of supply.

[36] A.R. 225, 379–380, 412–413, 573–574, 618, 669, 678, 691, 725, 741, 755, 845, 876–877, 972, 974, 1048–1049, 1067, 1077, 1117, 1128, 1152, 1156.

[37] A.R. 199–200, 225, 226, 380, 381, 413, 574, 666, 678, 692, 693, 725, 726, 746, 755, 769, 846, 878, 1050, 1067, 1078, 1085, 1117, 1683.

[38] A.R. 222, 559, 634, 643–644, 652, 692, 726, 847, 878, 1068, 1085, 1175, 1683, 2135.

ucts (A.R. 559, 634, 643–644, 652, 1085, 1175, 1683, 2134–2135). And, in addition to being served by wholesalers, Atlantic dealers can also be served by stores owned by TBA manufacturers, and by local company branches (A.R. 394, 1175, 2125, 2126, 3008–3009, 3215; G.R. 1294).

Atlantic has a legitimate business interest in assuring that its dealers carry TBA of high quality, and know how to stock, display and use it. But this interest can be protected by requiring the dealers to meet certain standards in conducting their TBA business (*Standard Oil Co.* v. *United States,* 337 U.S. 293, 306; *International Salt Co.* v. *United States,* 332 U.S. 392, 397–398; *Osborn* v. *Sinclair Refining Co.,* 286 F. 2d 832, 834 (C.A. 4), certiorari denied, 366 U.S. 963). If Goodyear and Firestone TBA are "in fact superior to that of [their] competitors, [Atlantic dealers] will presumably choose it anyway" (*Standard Oil Co.* v. *United States,* 337 U.S. at 306; *Northern Pacific Ry. Co.* v. *United States,* 356 U.S. at 9). Atlantic officials have recognized, however, that other brands of TBA are as good as Goodyear or Firestone (see A.R. 1493–1496, 1812–1813, 1815); see also *Osborn* v. *Sinclair Refining Co.,* 286 F. 2d at 834.[39] Atlantic cannot,

[39] Although petitioners and the *amici curiae* claim that the sales commission plan is essential effectively to meet their dealers' TBA needs, they assert at the same time that their dealers have and exercise free choice, and the *amicus* Champlin contends that unsponsored TBA constitutes over 70 percent of the total sold by their dealers. We fail to understand how the sales commission program can, at one and the same time, be both crucially necessary and unsuccessful. In any event, the claim of Atlantic dealers' free choice is refuted by the record, (*supra*, pp. 24–25, 48–51).

through the sales commission plan, deny its dealers the freedom of choice that the antitrust laws are designed to protect.

II

THE COMMISSION'S ORDER PROPERLY PROHIBITS ATLANTIC AND GOODYEAR FROM PERFORMING THEIR SALES COMMISSION AGREEMENT OR FROM ENTERING INTO OR PERFORMING ANY SIMILAR AGREEMENT WITH ANY TBA OR OIL COMPANY, RESPECTIVELY

A. THE COMMISSION, UPON HOLDING THAT THE ATLANTIC-GOODYEAR AGREEMENT WAS AN UNFAIR METHOD OF COMPETITION, PROPERLY ENJOINED ITS PERFORMANCE

The complaint charged that the sales commission agreement between Atlantic and Goodyear (as well as the former's similar agreement with Firestone, and the latter's agreement with other oil companies) constituted unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act (Pars. 7–12, A.R. 8–12). The Commission specifically held (A.R. 64) that Atlantic's exercise of its economic power over its wholesale and retail distributors "through the use of the sales commission plan in favor of Goodyear constitutes an unfair method of competition," and it characterized the "sales commission method of distributing TBA" as a "classic example of the use of economic power in one market * * * to destroy competition in another market * * *" (A.R. 128–129). In short, the Commission held that it was the sales commission agreement itself, and not merely the steps taken to implement it, which constituted an unfair method of competition.

The Commission's order prohibits both Atlantic and Goodyear from performing the illegal agreement (A.R. 131–134). The literal terms of the statute justify the order. Section 5 (*supra*, p. 4) directs the Commission, upon finding that any person has used any unfair method of competition, to order him "to cease and desist from using such method of competition * * *." The Commission found that Atlantic and Goodyear had used an unfair method of competition, namely, the sales commission plan, and its order is directed against the precise violation found, as the statute contemplates.

The Commission was fully justified in prohibiting the sales commission plan itself rather than attempting to change the basic relationship between Atlantic and its dealers or to interdict only particular misconduct in executing the agreement. For, as we have shown, the crux of the illegality of the Atlantic-Goodyear agreement is that it induces, if not requires, Atlantic to engage in a course of conduct which, because of the oil company's power over its dealers, has the effect of compelling them to purchase sponsored TBA. The Commission properly viewed everything that Atlantic did under the sales commission plan as a single integrated program, since these were the steps by which Atlantic satisfied its contractual obligation to sponsor and promote Goodyear products, and for which Goodyear undertook to pay it a substantial commission. These steps included the various activities described at length in the Statement (*supra*, pp. 16–18, 19–25), such as promotion of sponsored TBA at

dealer training schools and dealer meetings; giving Goodyear advance notice of the opening of new stations; refusal to permit dealers to display advertising for nonsponsored products; joint calls on dealers by Atlantic and Goodyear salesmen; solicitation of TBA orders by Atlantic salesmen; limitations on the use of credit cards to purchase non-sponsored products; and finally, threatening dealers who refused to purchase Goodyear TBA with cancellation or non-renewal of their leases or contracts. In sum, Atlantic marshaled the full measure of its economic power over its dealers to carry out a pressure campaign designed to get them to handle Goodyear and Firestone products and, because of the extent of that power, the campaign was highly successful.

In these circumstances, if the plan itself were to be permitted to continue, its anticompetitive effects could be dissipated only through some fundamental change in the relationship between Atlantic and its dealers that would eliminate the former's power to coerce them to buy TBA. The Commission noted (A.R. 100) that the overt acts of coercion which Atlantic committed against its dealers were "mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself." Elimination of that "inherent" restraint is the only remedy that would effectively cure the system's anticompetitive effects.

A prohibition against the use of a particular method of distributing TBA, which is a relatively minor portion of Atlantic's business, obviously is a far less drastic remedy than attempting, as Goodyear suggests,

to change the basic relationship between Atlantic and its dealers. Indeed, if the Commission were to follow Goodyear's suggestion—which, to be effective in opening up the Atlantic's TBA market to competition, would have to strike at the heart of Atlantic's control over its dealers—it would seem that Goodyear itself would no longer desire the sales commission arrangement. For, as the court of appeals stated (A.R. 3296), "the system integrates Atlantic's economic power over its service station market into the Goodyear TBA distribution system, thus giving Goodyear, for a price, a captive market," and the market no longer would be "captive" if Atlantic ceased to control it.

B. THE COMMISSION PROPERLY ENJOINED ATLANTIC FROM ENTERING INTO OR PERFORMING SIMILAR CONTRACTS WITH COMPANIES OTHER THAN GOODYEAR

Atlantic apparently challenges the remedy only insofar as it goes beyond the Atlantic-Goodyear contract to prohibit Atlantic from performing its present contract with Firestone and from entering into or performing similar contracts with other TBA companies.

The complaint alleged that both the Atlantic-Goodyear and the Atlantic-Firestone contracts were illegal (A.R. 8–12), and the Commission held (A.R. 124) that "the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels." Atlantic did the same things under both contracts, and the anticompetitive effects of the Firestone plan were no less serious than those of the Goodyear plan. As

the Commission ruled, the Firestone contract was just as illegal as the Goodyear arrangement, and the commission properly enjoined Atlantic from performing both of them. The fact that Firestone was not a party to this proceeding does not preclude the Commission from enjoining Atlantic, which was a party, from performing its illegal contract with Firestone. See *National Licorice Co.* v. *National Labor Relations Board,* 309 U.S. 350, 365–366, and cases there cited.

Since the basic vice of the sales commission plan is Atlantic's exercise of its economic power over its dealers to require them to purchase sponsored TBA, and since that same vice would be equally present in any similar contract that Atlantic might enter into with any other TBA firm, the Commission was fully warranted in making its cease-and-desist order run against such other agreements as well. *Federal Trade Commission* v. *Henry Broch & Co.,* 368 U.S. 360, 364; *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 728–729. Indeed, an order prohibiting a law violator from committing the same violation with others is a normal and usual form of administrative remedy.

C. THE COMMISSION PROPERLY ENJOINED GOODYEAR FROM ENTERING INTO OR PERFORMING SIMILAR CONTRACTS WITH COMPANIES OTHER THAN ATLANTIC

The prohibitions in the Commission's order directed against Goodyear are basically the same as those directed against Atlantic. That is, Goodyear is prohibited from performing its sales commission agreement with Atlantic, and from entering into or

performing similar contracts with any other oil company (A.R. 133–134). Goodyear was not only a party to an illegal agreement, but played an active role in carrying it out. Thus Goodyear representatives joined with Atlantic personnel in such activities as installing Goodyear signs and removing those of competitors, urging at Atlantic training schools that dealers use Goodyear products, and calling on Atlantic dealers to sell them TBA. Goodyear having been thus "caught violating the Act must expect some fencing in" (*Federal Trade Commission* v. *National Lead Co.*; 352 U.S. 419, 431).

Goodyear argues (Br. 44–53), however, that since the Commission's holding that the Goodyear-Atlantic sales commission plan is illegal rests upon Atlantic's use of its controlling power over its dealers to require them to purchase TBA, the Commission could not prohibit Goodyear from performing or entering into similar arrangements with other oil companies without proof (1) that such other companies had similar power over their dealers and (2) that the sales commission agreements with those companies resulted in a similar misuse of oil company power to force dealers to carry sponsored TBA. While the Commission's opinion did not articulate the reasons for the scope of the order, we submit that the record provided the Commission with a sufficient basis to conclude: (1) that the other oil companies with whom Goodyear had sales commission agreements had the same kind of economic power over their dealers as Atlantic; and (2) that in performing such agreements those companies did and were likely to do the same things that

Atlantic had done in performing its contract, with the same adverse effect upon competition. In these circumstances, the Commission did not exceed its "wide discretion in the choice of a remedy deemed adequate to cope with the unlawful practices" (*Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611) when it barred Goodyear from performing similar contracts with other oil companies.

1. *The record shows that other oil companies have the same kind of power over their dealers as Atlantic*

In its opinion, the Commission referred to Goodyear's sales commission contracts with nine oil companies beside Atlantic (A.R. 62, fn. 1). While the record does not show the size of those companies, it is hardly open to question that each of them has incomparably greater power than any of the service stations through whom they distribute their products. The general sales manager of Atlantic, who obviously is familiar with general industry conditions, testified (G.R. 2353) that "[p]ractically all the branded companies operate principally with lessee dealers," and he further stated that only three oil companies were using long-term leases of three years' duration (AX 18, unprinted). The record contains evidence dealing specifically with the short term features of the leases and contracts between Shell Oil Company ("Shell") and Sinclair Oil Company ("Sinclair") and their dealers. Shell has leases with more than 4,000 dealers which run for only one year and are cancelable on 30 days' notice (G.R. 1310), and contracts with consignment dealers which may be terminated upon 24 hours'

notice (G.R. 3221–3224). Sherwood Brothers, a Sinclair subsidiary, has a dealer sales agreement cancelable upon 30 days' notice (G.R. 3470, 3473), and Sinclair itself rents necessary equipment to dealers under an agreement which is cancelable upon 5 days' notice (G.R. 3596, 3599).

2. *In performing their sales commission agreements with Goodyear, other oil companies used the same kind of pressure techniques that Atlantic did*

The Commission found that Goodyear's sales commission contracts with "other marketing oil companies * * * are in all material respects identical with the Goodyear-Atlantic contract" (A.R. 105), and that "The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA" (A.R. 105).[40]

Most of Goodyear's contracts with other oil companies that are in the record are identical with Atlantic's.[41] These contracts thus impose upon those companies the same obligations that the Goodyear-Atlantic contract imposes upon Atlantic—"actively

[40] The Commission also indicated the substantiality of the commerce involved in Goodyear's arrangements with other oil companies, since Goodyear's sales under such contracts were about $16.7 million in 1951, and about $36 million in 1955 (A.R. 105, G.R. 3402–3403). Furthermore, the Commission referred to the anticompetitive effect of these sales commission programs in eliminating competition between Goodyear wholesalers, by the designation of supply points (A.R. 115–116, 3215).

[41] See contracts with Shell (G.R. 2498, 2503), Shamrock (G.R. 2515), Carter (G.R. 2522), Mid-Continent (G.R. 2558), D-X Sunray (G.R. 2569), Frontier (G.R. 2573), Quaker State (G.R. 2583), and Anderson-Pritchard (G.R. 2590).

[to] assist" in "selling and promoting" Goodyear products, and all the subsidiary actions which that duty comprehends, as defined in the contracts. See the Statement, *supra*, pp. 14–15.[42] In short, these contracts, like the Atlantic contract, require the other oil companies to bring to bear their full power over their dealers to require the latter to purchase Goodyear TBA. There is no reason to suppose that the other oil companies are any less vigorous than Atlantic in promoting sponsored TBA, or that the anticompetitive effects of their activities are any less significant. To the contrary, the record contains affirmative evidence that several companies pursued some of the very activities upon which the Commission rested its finding that the Atlantic-Goodyear arrangement violated Section 5.

When the Carter Oil Company (a division of Standard Oil Co. of New Jersey) signed a sales commission agreement with Goodyear, it arranged a series

[42] Goodyear's contracts with Sherwood (G.R. 2547), Sinclair (G.R. 2551) and Ashland (G.R. 2598), dating from an earlier period than those cited in the preceding footnote, are in different form. However, these three contracts also incorporate several of the provisions appearing in the later contracts, and similarly require the oil companies to push the sale of Goodyear products. They call for the oil companies to "actively assist" Goodyear in "selling and in promoting" sponsored TBA, to have their "field representatives call upon * * * [dealers] in company with our [Goodyear's] salesmen, to "cooperate and assist us [Goodyear] in our efforts to promote and encourage the sale of" sponsored merchandise, to see that its "field offices work energetically and efficiently with" Goodyear "with the view to assisting" Goodyear "in perfecting arrangements" with dealers, and to "at all times maintain adequate qualified personnel to render the services called for hereunder regularly and efficiently."

of dealer meetings (G.R. 2529), advised dealers peremptorily that, "As fast as current stocks of tires and other merchandise now in Carter warehouses and distribution points are disposed of, Goodyear merchandise will replace them, and your orders will be filled with Goodyear products" (G.R. 2534), and directed the swift installation of Goodyear identification and display advertising (G.R. 2531). Instructions to the dealers as to the latter program made it clear that they were expected to participate (CX 66A–L, G.R. 2543):

> One of the biggest chores connected with the new Carter-Goodyear T.B.A. arrangement is that of identifying service stations with Goodyear signs and window valences.
>
> Within the next few weeks your station will be visited by one of Goodyear's identification trucks, two of which are changing Carter stations over to the new T.B.A. identification.
>
> The identification trucks will be at your station about half a day, if it has not arrived already, and when they leave, your station will have much the same appearance as the one pictured above, with the Goodyear sign hanging prominently and Goodyear valences in the window.
>
> * * * * *
>
> You can help the changeover by preparing for the visit of the Goodyear truck. Scrape off the old Miller valence in your window and wash the windows thoroughly. Then when the Goodyear man arrives, he'll be in position to place Goodyear material in your windows in a minimum of time.

An important aspect of an effective program to push sponsored TBA is the selection and training of new dealers. A former Shell salesman stated that under his company's program "it is a must that they carry Goodyear tires and batteries and accessories. In fact you don't even have to ask the question, you just put them in or you don't accept the dealer as a Shell dealer" (G.R. 1324). The same salesman testified that he received instructions that a particular new dealer "had to purchase a supply of gasoline and motor oil, specialties, Goodyear tires and fan belts and accessories, which I seen to it that he had the proper product to sell gasoline, oil and tires" (G.R. 1327); that "My policy [as a Shell representative] was to place Goodyear tires and batteries in the stations" (G.R. 1329); that his superior told him, "If you can't get Goodyear tires in there, maybe you better start looking for another dealer" (G.R. 1316, see also G.R. 1319, 1356); and that "I told Mr. Laybold [a dealer] that he was to put Goodyear tires and batteries in, as it was a company policy" (G.R. 1330). Shell salesmen have instructed dealers to get rid of unsponsored goods (G.R. 1322, 1336). They can be relied upon to implement company policy, since the company sets quotas for them (G.R. 1422).

Sinclair also sets TBA quotas for its salesmen (G.R. 978–979), who visited dealers continuously and promoted Goodyear products during such visits (G.R. 1116–1117). Sinclair salesmen solicited orders for sponsored merchandise (G.R. 1117), and commented critically on the fact that a dealer was not purchas-

ing from his supply point (G.R. 1116, 1117, 1119–1120). A former Sinclair dealer testified as follows:

> Elmore [the Sinclair salesman] would come in there and say, "Mac, come here, I want to see you in the back room a minute."
>
> You would go in and you knew what he meant when he said "the back room." He would say, "Mac, we are checking over the inventories and so forth, and you are not purchasing so and so," or "I see something out front there. *You know you owe this business to the company.*" And they would lay down the law to you, real good. [G.R. 1117, emphasis added.]

The manager of the Tire and Merchandise Division of Sherwood (a Sinclair subsidiary) (G.R. 3518) stated that the "campaign to sell Goodyear" includes a plan that "each territory salesman must bring in to this office every two weeks an order for" Goodyear merchandise, which was expected to accelerate sales. A Sherwood salesman urged his superiors to put pressure upon a recalcitrant dealer, recommending that he be called into "the office for a thorough understanding as to his responsibility in merchandising our complete line" (CX 456A–B, G.R. 3567). A dealer was called into the Sherwood office, and confronted in a conference room by three Sherwood officials. The witness described the meeting (G.R. 1112–1113):

> A. * * * So to make the conversation short, Mr. McCauley [a Sherwood official] was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers, because they took care of me during the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our [Goodyear] batteries or else."

And that was the end of the meeting.

A former Shell salesman testified that Goodyear window advertising is the only TBA advertising in Shell stations in certain territories (G.R. 1325) and that "Instructions were that if non-sponsored advertising were exhibited in these stations, it was to take them down" (G.R. 1325). Shell's efforts to control advertising were successful; witnesses testified that only sponsored advertising appears in Shell stations and that such stations refuse to permit the installation of unsponsored advertising (G.R. 1156, 1178, 1222, 1228). The same situation existed in regard to Sinclair and Sherwood stations (G.R. 340, 1060, 1151, 1167, 1176, 1228). One Sherwood dealer testified that a pole sign was taken down without his request and replaced by a Goodyear sign (G.R. 983–984). And Sherwood, which exhorted its dealers to take advantage of the company's modernization plan, installed Goodyear fixtures and hardware as a part of this plan (G.R. 3541–3545). Shell, Sinclair and Sherwood limit credit card purchases to sponsored products, a practice that results in compelling dealers—

who recognize the importance of credit card sales—to carry sponsored TBA (G.R. 984, 1105, 1127, 3622–3623, 3625, 3490–3491, 3535).

Finally, the record shows instances in which Shell and Sinclair threatened to cancel the leases of dealers who carried unsponsored products (G.R. 971, 1112–1113, 1264, 1320–1321, 1326). One such incident reviewed in the Commission's opinion (A.R. 105–106, 122–123), was Sinclair's threat to cancel dealer Osborn for buying Firestone tires (available to him at lower prices than the sponsored Goodyear TBA).[43]

The result of these practices is that dealers of other oil companies that have Goodyear sales commission contracts understand and believe, as do the Atlantic dealers, that they are required to purchase sponsored Goodyear TBA and may not purchase other products;[44] and that sellers of unsponsored TBA are able to make only insubstantial sales to such dealers (G.R. 331, 339, 834–835, 1020–1021, 1040–1042, 1148–1149, 1154–1155, 1168–1170, 1173, 1174, 1179, 1222–1226, 1247–1248, 1255, 1282–1283, 1286, 1294–1296).[45]

In the light of this evidence in the record, and in the absence of any contrary evidence on this point

[43] This threat led to an overt tying agreement for the purchase of sponsored TBA, which the Fourth Circuit held illegal in *Osborn v. Sinclair Refining Co.*, 286 F. 2d 832, certiorari denied, 366 U.S. 963.

[44] For instances of dealers' failure to buy from such competitors even though the latter sell at lower prices, see G.R. 1175, 1178–1179, 1294; see also G.R. 1114–1116.

[45] The record shows that Goodyear sales commission plans had the following additional anticompetitive effects: territories were divided when other oil companies agreed (as did Atlantic) to sponsor Goodyear TBA to some of its dealers, another brand to others (*e.g.*, Shell, D–X Sunray, Ashland, G.R. 455, 2563, 2605); and intrabrand competition between Goodyear TBA

(Goodyear introduced no evidence at all in this case, see G.R. 2370–2371), the Commission did not act unreasonably or arbitrarily in drawing the inference that other oil companies, in performing their sales commission agreements with Goodyear, had engaged, and were likely to engage, in the same practices as Atlantic; and that those other agreements therefore resulted in sufficiently serious injuries to competition to warrant prohibiting Goodyear from performing them or entering into others. If, as Goodyear suggests, there are individual oil companies who either do not have the same power over their dealers or would not similarly exercise it in carrying out their plans, Goodyear may always seek from the Commission an exception to the order for the particular case. Thus "[a]s actual situations arise they can be presented to the Commission in evidentiary form rather than as fantasies" (*Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 431; see *International Salt Co.* v. *United States*, 332 U.S. 392, 401). Despite the breadth of the present order, "[t]he Commission's offices will still be open for discussion" (*Vanity Fair Paper Mills, Inc.* v. *Federal Trade Commission*, 311 F. 2d 480, 488 (C.A. 2)). See the Commission's power to reopen and modify orders in Section 5(b) of the Act, supra, p. 4.

The Commission, of course, "has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices" disclosed, and "the courts will not interfere except where the remedy selected has

---

wholesalers was restrained through the assignment of supply points (A.R. 115–116, G.R. 1114–1116, 1057–1061; see CX 400M, GR. 3407).

no reasonable relation to the unlawful practices found to exist." *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611, 613; *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 473. The Commission's conclusion that in all the circumstances of this case effective relief required that Goodyear should be barred generally from using the sales commission plan at all, and not just prohibited from using it with Atlantic, cannot fairly be said to have "no reasonable relation to the unlawful practices found to exist."

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
WILLIAM H. ORRICK, JR.,
Assistant Attorney General.
DANIEL M. FRIEDMAN,
Assistant to the Solicitor General.
LIONEL KESTENBAUM,
LAWRENCE R. VELVEL,
Attorneys.
JAMES MCI. HENDERSON,
General Counsel,
J. B. TRULY,
Assistant General Counsel,
ALVIN L. BERMAN,
LESTER A. KLAUS,
Attorneys,
Federal Trade Commission.

MARCH 1965.

U.S. GOVERNMENT PRINTING OFFICE 1965

Office-Supreme Court, U.S.
FILED
MAR 25 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 296.

THE GOODYEAR TIRE & RUBBER COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER, THE GOODYEAR TIRE & RUBBER COMPANY.

JOHN F. SONNETT
80 Pine Street
New York, N. Y. 10005
Attorney for Petitioner.

Of Counsel:
CAHILL, GORDON, REINDEL & OHL
ARTHUR MERMIN
DAVID INGRAHAM
MARSHALL H. COX, JR.
80 Pine Street
New York, N. Y. 10005

March 25, 1965.

TABLE OF CONTENTS.

	PAGE
I.—Goodyear is not a transgressor	2
II.—Even if abolition of the Goodyear-Atlantic sales commission plan were proper, prohibition of all Goodyear plans with all oil companies is unwarranted	3
A. The failure to make findings	4
B. In any event the record is wholly insufficient as to other oil companies	7
III.—The Commission's failure—now expressly conceded—to consider alternative forms of relief requires reversal and remand in any event	13
Conclusion	16

Table of Cases.

	PAGE
Atchison, T. & S. F. Ry. Co. v. *United States*, 295 U. S. 193	5
Burlington Truck Lines v. *United States*, 371 U. S. 156	14
Federal Trade Commission v. *National Lead Co.*, 352 U. S. 419	13
Federal Trade Commission v. *Ruberoid Co.*, 343 U. S. 470	13
Florida v. *United States*, 282 U. S. 194	5
Gilbertville Trucking Co. v. *United States*, 371 U. S. 115	14
International Salt Co. v. *United States*, 332 U. S. 392	13
Jacob Siegel Co. v. *Federal Trade Commission*, 327 U. S. 608	14
Securities and Exchange Commission v. *Chenery Corp.*, 318 U. S. 80	6
Shell Oil Co., 58 F. T. C. 371 (1961), *appeal docketed*, No. 18,967, 5th Cir. 1963	8
Texaco, Inc. v. *Federal Trade Commission*, 336 F. 2d 754 (D. C. Cir. 1964), *petition for cert. filed*, October 1964 (No. 635)	9

IN THE

Supreme Court of the United States

OCTOBER TERM 1964.

No. 296.

THE GOODYEAR TIRE & RUBBER COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER, THE GOODYEAR TIRE & RUBBER COMPANY.

This brief is submitted by Petitioner, The Goodyear Tire & Rubber Company (hereinafter "Goodyear"), in reply to the brief submitted on behalf of the Federal Trade Commission in Nos. 292 and 296 (hereinafter cited as "Comm. B.").

The bulk of the Commission's brief is devoted to justification of the order against The Atlantic Refining Company (hereinafter "Atlantic") deriving from the alleged relationship between Atlantic and its dealers. This reply brief does not deal with that question and instead concentrates upon that portion of the order which is addressed to Goodyear and which prohibits Goodyear from any sales commission plan not only with Atlantic but with any other marketing oil company, whatsoever.

I.

Goodyear is not a transgressor.

In an attempt to rationalize the broad-scale order against Goodyear, the Commission's brief insinuates that the sales commission contract with Atlantic was somehow itself improper (Comm. B., pp. 58, 59, 69, 70) and elsewhere points to Goodyear as a deliberate transgressor of the Act who must expect a dragnet order (Comm. B., p. 74).

In so doing, the Commission's brief ignores fundamental facts.

Three basic, uncontradicted conclusions as to Goodyear were made by the Hearing Examiner:

1. The complaint did not charge nor did the evidence prove the existence of a conspiracy between Goodyear and Atlantic to restrict and restrain competition in TBA products (G. R. 110).*

2. There was no evidence that Goodyear engaged in or participated in any acts designed to force dealers of Atlantic to purchase TBA products (*ibid.*).

3. No clause or provision of the sales commission contract between Atlantic and Goodyear required Atlantic's dealers to purchase only Goodyear TBA (G. R. 110-11).

Not a single finding by the Commission contradicted or altered these conclusions of the Hearing Examiner. Rather, the Commission found that Atlantic had a special kind of power with respect to its dealers which rendered the totality of its arrangements improper. The Commis-

* Reference is thus made throughout to the Goodyear record.

sion did not find anything illegal about the sales commission contract itself.* The illegality found by the Commission stemmed from its postulate of "power" in Atlantic; it reached a different result from the Hearing Examiner on this ground alone (G. R. 121).

We have heretofore argued that in light of these uncontradicted findings the Commission's order against Goodyear is manifestly unjust. We submit that the Commission's brief does not answer this point by ignoring the fact that the findings were made and still stand.

II.

Even if abolition of the Goodyear-Atlantic sales commission plan were proper, prohibition of all Goodyear plans with all oil companies is unwarranted.

> *"If, as Goodyear suggests, there are individual oil companies who either do not have the same power over their dealers or would not similarly exercise it in carrying out their plans, Goodyear may always seek from the Commission an exception to the order for the particular case."* (Comm. B., p. 83)

The Commission's brief thus flatly concedes that any Goodyear sales commission plan with any oil company is lawful unless the oil company participant *both* has "power" over its dealers to compel the purchase of Goodyear TBA *and* will exercise such power.

The Commission's brief acknowledges this double test and attempts to meet it by setting out two headings:

---

* Indeed, neither the Hearing Examiner nor the Commission found that Goodyear even had knowledge of any of the alleged coercive acts of Atlantic.

"(1) The record shows that other oil companies have the same kind of power over their dealers as Atlantic" (Comm. B., p. 75),

and

"(2) In performing their sales commission agreements with Goodyear, other oil companies used the same kind of pressure techniques that Atlantic did" (Comm. B., p. 76).

It is submitted that (1) the Commission made no findings that these criteria were met; (2) these findings cannot legally be supplied by the Commission's attorneys; and (3) in any case, the evidence either contradicts or does not support the conclusions which the Commission's attorneys seek to substitute for missing Commission findings.

A. The failure to make findings.

The Commission's brief candidly acknowledges that it is attempting to fill the void left by the Commission's failure to make the crucial findings by interposing its own arguments as to what the Commission might have found on the record below had it made findings.* But neither the candor of the Commission's attorneys nor anything they now say can cure that failure. As this Court observed

---

* "While the Commission's opinion did not articulate the reasons for the scope of the order, we submit that the record provided the Commission with a sufficient basis to conclude (1) that the other oil companies with whom Goodyear had sales commission agreements had the same kind of economic power over their dealers as Atlantic; and (2) that in performing such agreements those companies did and were likely to do the same things that Atlantic had done in performing its contract, with the same adverse effect upon competition." (Comm. B., pp. 74-75)

This concession of the lack of findings was of course necessary in light of the Commission's failure in its opinion to make any

in *Atchison, T. & S.F. Ry. Co.* v. *United States,* 295 U. S. 193, 201-02:

> "This court will not search the record to ascertain whether, by use of what there may be found, general and ambiguous statements in the report intended to serve as findings may by construction be given a meaning sufficiently definite and certain to constitute a valid basis for the order. In the absence of a finding of essential basic facts, the order cannot be sustained. *Florida* v. *United States,* 282 U. S. 194, 215."

In *Florida* v. *United States,* 282 U. S. 194, 215, the Court had said, reversing an order by the Interstate Commerce Commission:

> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (*The Beaumont, Sour Lake & Western Railway Company* v. *United States, ante,* p. 74), but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported."

---

finding at all as to the "power" of other oil companies over their dealers or the exercise of such power. The opinion did say that "evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA" (G. R. 162), but the only other oil company named by the Commission was Sinclair.

See also *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 87-88, 92.

The wisdom of refusing to substitute attorneys' arguments for the missing findings of an agency is strikingly illustrated here. The Commission's brief cites at several points the testimony of one Edwards, described as a "former Shell salesman" (see Comm. B., pp. 79, 80, 81, 82). Yet the Hearing Examiner, who made detailed findings about the testimony of former Atlantic dealers (G. R. 104-08) and also mentioned the testimony of competing TBA suppliers (G. R. 108), did not refer to Edwards' testimony; neither did the Commission refer to Edwards' testimony, although it did see fit to quote from the testimony of a number of witnesses, including two former Sinclair-Sherwood dealers. An explanation for the decision of the trier of fact to ignore Edwards may well lie in the conclusion that his testimony was not probative. Cross examination of Edwards had brought out material inconsistencies between his testimony in this case and his prior testimony in other matters.* Where the trier of fact has chosen not to resolve an issue posed as to the probity of a witness, the questioned testimony can hardly be dredged from the record

---

* Under cross examination, Edwards was confronted with inconsistencies between his testimony in this case and his prior sworn testimony given in another Commission proceeding (*Shell Oil Company*, Docket 6487) and before a Congressional committee investigating TBA practices. He responded, *inter alia*: "I have testified that way but it wasn't that way" (G. R. 1404); "I stated that and it was wrong" (G. R. 1344); and "That was testimony as of yesterday" (G. R. 1408) (his testimony "yesterday" had been before the same Hearing Examiner and dealt with the same subject matter but was given in the *Shell* proceeding). For examples of further inconsistencies admitted by Edwards, contrast G. R. 1343 with G. R. 1309, 1344, 1424; G. R. 1344 with G. R. 1327, 1429-30; G. R. 1411 with G. R. 1366-69. At the close of Edwards' redirect examination, the Examiner had observed: "I think you are just confusing us a little more, Mr. Kelaher [Commission counsel]. The witness has already stated that that was an error. * * *. An explanation probably won't help any" (G. R. 1429-30).

by counsel at some later date to serve as a ground for an otherwise unexplained result.

Given the concession in the Commission's brief concerning the Commission's failure to make findings about oil companies other than Atlantic, it is submitted that no proper basis exists for the prohibition of Goodyear's sales commission plans with other oil companies.

B. In any event the record is wholly insufficient as to other oil companies.

Even if an agency's attorneys were free to search a record for evidence to fill the gaps left by an agency's failure to make necessary findings, the Commission's brief is both insufficient and inaccurate.

1. *The existence of "power".* For example, the brief concludes that "other oil companies have the same kind of power over their dealers as Atlantic" (Comm. B., p. 75). Only *two* other oil companies are mentioned under this heading—Shell and Sinclair—and the reference to those two is limited to purported details of their arrangements with certain of their respective dealers. To this is added only the statement of an Atlantic executive, made in a different context, that "practically all the branded companies operate principally with lessee dealers."*

* If oil company power depends upon control of lessee dealers, the record herein is at best ill-suited to determining its existence. For example, the only evidence at all as to Shamrock is that, as of November 1951, it had but eight lessee dealers and approximately 300 stations buying from jobbers (G. R. 2509). In the case of Goodyear's sales commission agreement with Ashland, that contract applies only to TBA sales to Ashland's franchised jobbers and not to lessee dealers (G. R. 2598). Furthermore, there is nothing anywhere in the record that shows how many lessee dealers any other oil company had, except for data showing that Shell had, as of July 1, 1956, 4,028 lessee dealers and 7,068 other dealers and jobbers (G. R. 3393-96, 1447).

The difficulties in using the record as the Commission's brief now would be manifest:

—At most, the brief attempts to prove only that Shell and Sinclair had the same "power" over their dealers as Atlantic. The brief does not even claim, let alone prove, that Anderson-Prichard, Ashland, Carter, D-X Sunray, Frontier, Quaker State, Richfield and Shamrock (the other companies which the record shows as having sales commission plans with Goodyear, see Goodyear's main brief, p. 6n) also had such power. Further, the Commission's brief makes no attempt at all to explain how the Commission could conclude that every marketing oil company in the country (of which there are at least 156 as Goodyear's main brief pointed out at p. 47n) has and exercises the requisite power over its dealers. But then, the Commission offered no rationale either and, indeed, never stated such a conclusion. It simply entered an order outlawing any plan with all marketing oil companies.

—Particularly, it is outlandish for the Commission's brief to be arguing to this Court that the record in the *Goodyear-Atlantic* case permits the Commission to outlaw the Goodyear-Shell sales commission plan because it demonstrates Shell's power *vis-a-vis* its dealers (even though the Commission made no finding to that effect) when the very question of Shell's power over its dealers (and whether such power was exercised) was and is at issue in a Commission proceeding against Shell, review of which is now *sub judice* before the United States Court of Appeals for the Fifth Circuit, *Shell Oil Co.*, 58 F. T. C. 371 (1961), *appeal docketed*, No. 18,967, 5th Cir. 1963.

—It is even more outlandish for the Commission's brief to imply—though it does not dare to claim expressly—that

the testimony cited as to Shell and Sinclair establishes that Texaco (with which Goodyear presently has a sales commission plan) has the postulated "power" over its dealers after the Court of Appeals for the District of Columbia Circuit has ruled that there is "no basis in the record for the Commission's conclusion that Texaco has controlling economic power over its dealers". *Texaco, Inc.* v. *Federal Trade Commission*, 336 F. 2d 754, 762 (D. C. Cir. 1964), *petition for cert. filed*, October 1964 (No. 635).

2. *The exercise of "power".* The Commission's brief is also unsuccessful in canvassing the record for proof that "other oil companies used the same kind of pressure techniques that Atlantic did" (Comm. B., p. 76).*

The strongest assertion which the Commission's brief is willing to make about the state of the record on exercise of control by other oil companies is that "the record contains affirmative evidence that several companies pursued some of the very activities upon which the Commission rested its finding that the Atlantic-Goodyear arrangements violated Section 5" (Comm. B., p. 77).

Use of the phrase "several companies" is in this case an overstatement, even taking the "affirmative evidence" on the terms stated. The discussion (Comm. B., pp. 78-79) of Carter's decision to switch from purchase-resale distribution of B. F. Goodrich products (Miller brand) to a

*As to Atlantic itself, coercive acts have been enjoined by that portion of the Commission's order which Atlantic has not appealed to this Court. There is no finding by the Commission that Atlantic has a proclivity for violating the law or for other reasons could not be trusted to obey this injunction. Accordingly, of the two elements conceded by the Commission's brief to be necessary to illegality, one—the likelihood of actual exercise by an oil company of power over its dealers (Comm. B. pp. 74-75, 83)—is no longer applicable to Atlantic. There is, therefore, no basis to prohibit Goodyear from a sales commission contract with Atlantic, let alone with over 150 other oil companies.

Goodyear sales commission plan appears intended only to add the name of another company. No coercive conduct of any kind by Carter is pointed to, and most of the record references cited are found in a 12-page edition of the Carter dealers' newspaper, the whole issue of which was devoted to announcing the new TBA arrangements.

Aside from Carter, and setting aside the footnoted reference to territorial division (Comm. B., p. 82 fn. 45) which is simply inaccurate,* the only "other oil companies" referred to are Shell and Sinclair-Sherwood.

The brief's references to Shell have the continuing infirmities that (1) the Commission does not mention any coercion by Shell in its opinion, (2) the issue of Shell's exercise of power over its dealers was litigated before the Commission and is now *sub judice* before the Court of Appeals for the Fifth Circuit, and (3) the testimony principally cited is that of Edwards.

As to Sinclair, all references are really to Sherwood—a wholly-owned subsidiary merged into Sinclair in 1955 before the complaint was filed. The TBA sales commission plan with Sherwood was terminated when the merger took place (CX 68C, G. R. 2550). Since then Goodyear and Sinclair have continued a sales commission agreement made in 1944 which differs radically from the plan at issue since

---

* All Goodyear sales commission plans are non-exclusive. The decision to divide Atlantic's sales area into a Goodyear territory and a Firestone territory was made by Atlantic alone for its own reasons (G. R. 2361-62). Moreover, the Hearing Examiner ruled (and was not contradicted by the Commission): "After reviewing the record, the hearing examiner is of the opinion that no connection has been established between Goodyear and The Firestone Tire & Rubber Company contracts with The Atlantic Refining Company * * *" (G. R. 91). In other instances in which Goodyear and one or more other rubber companies have sales commission plans with the same oil company, there has been no division of territories.

it is limited to automotive accessories and excludes tires and batteries.

Apart from this hodge-podge of citations to largely unevaluated testimony and papers, the Commission's brief seeks to urge, from the fact that Goodyear's sales commission agreements with oil companies have substantially the same terms, that anything done by Atlantic to compel its dealers to purchase Goodyear TBA has necessarily been done by other oil companies which had sales commission arrangements with Goodyear:

> "In short, these contracts, like the Atlantic contract, require the other oil companies to bring to bear their full power over their dealers to require the latter to purchase Goodyear TBA. There is no reason to suppose that the other oil companies are any less vigorous than Atlantic in promoting sponsored TBA, or that the anticompetitive effects of their activities are any less significant." (Comm. B., p. 77)

The first of the quoted sentences is simply untrue, for there is nothing in any Goodyear sales commission agreement which can be construed as requiring the oil company participant to bring to bear its full power over its dealers to require the latter to purchase Goodyear TBA.* The second of the quoted sentences is incredible and inaccu-

---

* Indeed, the Commission's brief fails to bring to the attention of the Court the following express provision of the sales commission agreement between Goodyear and Atlantic:

> "* * * [A]s has been the practice in the test area, our resale outlets shall be free to choose whether, and to what extent, they shall avail themselves of the opportunity to purchase Goodyear products and services and * * * any resale outlet which chooses to carry products other than Goodyear shall not be prejudiced in any manner. Of course, we both understand that our organization cannot and will not use any methods other than salesmanship to encourage our resale outlets to purchase your products and services." (CX 16, G. R. 2406-07)

rate.* In the absence of a Commission finding, the Commission's attorneys now depart from the record and make a high-flown supposition—the effect of which is to devise a shifting burden of proof under which, at least when oil companies are involved, a reviewing Court is to presume that whatever is true of one oil company is true of all in the absence of a contrary showing.**

---

* Thus, the *amicus* Champlin points out that it can hardly be said to be exercising "power" over its dealers when 70 percent of their TBA purchases are of non-sponsored brands (*Amicus Curiae Brief of Champlin Petroleum Company*, submitted in No. 292 on behalf of nine small oil companies, pp. 10-11). There is currently at issue before the Court of Appeals for the Fifth Circuit the question whether more than 35 percent of the TBA sold by Shell dealers is sponsored TBA. In short, law and fact do not permit the overpowering, conclusive presumption that all oil companies uniformly and consistently treat their dealers in an unlawful fashion.

** Presumptions and suppositions about the nature of power in the oil industry do not now satisfy the Commission. Indeed, in its recent *Statement of the Federal Trade Commission Announcing Broad Inquiry Into Problems of Competition in the Marketing of Gasoline* (December 30, 1964), reprinted at Annex A-7-9 of Goodyear's main brief *but not even mentioned in the Commission's brief*, the Commission said:

> "The Commission has received a large number of inquiries, complaints, and petitions from various groups in the gasoline industry, from members of Congress, and from members of the consuming public, with respect to competitive problems in the marketing of gasoline. It is evident both from these submissions and from the Commission's experience in this industry in enforcing the laws which it administers that a broad, comprehensive, and industry-wide approach to the competitive problems of the industry is necessary and that specific remedial measures required in the public interest should not be attempted before obtaining a solid factual foundation in regard to the competitive conditions of gasoline distribution. As the Supreme Court stated in a recent decision, proper and effective remedial action in this industry requires that the Commission make realistic appraisals of relevant competitive facts, and these facts are highly complex. The Commission has accordingly determined forthwith to institute an industry-wide inquiry into the competitive problems of marketing gasoline. The Commission intends to employ its flexible administrative powers of investigation and fact-finding as may be found necessary to assure a complete, fair, and realistic understanding of the structure and dynamics of competition in the industry."

This suggestion (like the one that Goodyear may always seek to have a particular oil company classified as an exception to the order) is sought to be justified on the pretense that there is at issue really nothing but a question of remedy. Hence the brief's reference to cases where Commission orders were challenged not on the ground (as here) that no violation should have been found but on the theory that, admitting violation, the scope of the orders was too broad (Comm. B., pp. 83-84).

In *Federal Trade Commission* v. *National Lead Co.*, 352 U. S. 419, *International Salt Co.* v. *United States*, 332 U. S. 392, and *Federal Trade Commission* v. *Ruberoid Co.*, 343 U. S. 470, the concern was only with reach of the order once unlawfulness had been determined. The issue here is not merely scope of the order, but the basic lawfulness of Goodyear's sales commission arrangements—both actual and potential. It is submitted that the absence of Commission findings or evidence of record that all oil companies both have the requisite power over their dealers and will exercise it amounts to an utter failure of proof requiring reversal.

III.

The Commission's failure—now expressly conceded—to consider alternative forms of relief requires reversal and remand in any event.

Without reference to the issues discussed *supra*, this case must be reversed and remanded. Taken on its own ground of the appropriateness of the remedy, the Commission's brief expressly concedes that "*[T]he Commission's opinion did not articulate the reasons for the scope of the order*" (Comm. B., p. 74); this concession alone requires

that the matter be remanded for the Commission to consider the appropriateness of alternative forms of relief and to state its reasons for selecting the relief it chooses.

This Court has expressly held that an agency must "articulate" its choice of remedy. In *Burlington Truck Lines* v. *United States*, 371 U. S. 156, the case was remanded because of the agency's failure in choosing a remedy to "articulate any rational connection between the facts found and the choice made" (371 U. S. at 168). See also *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U. S. 608, 613-14; and *Gilbertville Trucking Co.* v. *United States*, 371 U. S. 115, 130-31.

These cases make clear that, without express consideration of alternatives, an agency fails to provide reviewing courts with a basis for adequate review.

In this instance, the point does not rest on mere technical defects. Goodyear's initial brief suggested, by way of example, five major areas of possible relief which the Commission should have considered, on its own theory of the case, before fixing upon the instant broadside order (pp. 57-59).

The Commission's brief reflects the need for the open and rational consideration which the instant order lacks.

The brief adverts to one of the possibilities mentioned by Goodyear (modification of an element of an oil company-dealer relationship) and opines that "Goodyear itself would no longer desire the sales commission arrangement" if such modification were effected (Comm. B., p. 72).

Another comment in the Commission's brief is of like character. Champlin Petroleum Company submitted in No. 292 an *amicus* brief on behalf of nine small marketing companies which requests that its sales commission plans with Goodyear and Firestone be preserved; Champlin

stated therein that over 70% of the TBA sold through its outlets was non-sponsored TBA "even after years of promotional effort in sponsored TBA" (pp. 10-11). In response, the Commission's brief states an inability to understand why an oil company would want an unsuccessful sales commission plan to continue (Comm. B., p. 68 n. 39).

We submit that it is not up to the Commission's attorneys to decide what is good for Goodyear, Champlin or any other oil or rubber company. It is the Commission's expertise, not attorneys' improvisations, to which the parties hereto were entitled. Through the study required by the careful and explicit weighing of remedy, the Commission might ultimately have come to realize that a sales commission plan does not depend on coercion or inordinate "power" and is not deemed unsuccessful if an oil company's dealers choose to sell more non-sponsored than sponsored TBA.

Goodyear's main brief demonstrated in Point III that the Commission had failed to perform its required duties in fixing a remedy (pp. 54-60). It is submitted that the Commission's brief has confessed error in openly admitting that the Commission failed to articulate the reasons for the scope of the order.

Conclusion.

This Court should reverse and remand for dismissal of the complaint.

Respectfully submitted,

JOHN F. SONNETT
80 Pine Street
New York, N. Y. 10005
Attorney for Petitioner.

Of Counsel:

CAHILL, GORDON, REINDEL & OHL
ARTHUR MERMIN
DAVID INGRAHAM
MARSHALL H. COX, JR.
80 Pine Street
New York, N. Y. 10005

March 25, 1965.

Office-Supreme Court, U.S.
FILED
MAR 26 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

~~MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND~~ BRIEF AMICUS CURIAE OF SHELL OIL COMPANY

WILLIAM F. KENNEY
Vice President and General Counsel
Shell Oil Company
50 West 50th Street
New York 20, New York

WILLIAM SIMON
JOHN BODNER, JR.
Howrey, Simon, Baker & Murchison
1707 H Street, Northwest
Washington 6, D. C.
Attorneys for Shell Oil Company

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Shell Oil Company respectfully moves the Court for leave to file the attached brief *amicus curiae* for the reasons stated therein. All parties have given their consent in writing to the filing of this brief. It is filed at this time because it responds to views expressed by the Government in its brief filed on March 15, 1965.

Respectfully submitted,

WILLIAM F. KENNEY
Vice President and General Counsel
Shell Oil Company
50 West 50th Street
New York 20, New York

WILLIAM SIMON
JOHN BODNER, JR.
Howrey, Simon, Baker & Murchison
1707 H Street, Northwest
Washington 6, D. C.

Attorneys for Shell Oil Company

BRIEF AMICUS CURIAE ON BEHALF OF SHELL OIL COMPANY

Shell Oil Company respectfully submits this brief *amicus curiae* because it is party to an appeal in a related case in the Court of Appeals for the Fifth Circuit (*Shell Oil Company* v. *Federal Trade Commission,* No. 18,967), and its position in that appeal may be prejudged by this Court if certain views expressed in the Government's brief filed in this case on March 15, 1965, are uncritically adopted. In submitting this brief, Shell neither discusses nor expresses any opinion on the merits of the instant appeal.

Nine years ago the Federal Trade Commission instituted three separate law suits challenging the use of the sales commission method for marketing tires, batteries and accessory items by three oil companies. *B. F. Goodrich Company and The Texas Company,* Docket No. 6485; *Goodyear Tire & Rubber Company and The Atlantic Refining Company,* Docket No. 6486; *Firestone Tire & Rubber Company and Shell Oil Company,* Docket No. 6487.*

These three cases were separately tried, separately decided at the hearing examiner level on the basis of the individual records in each case, and separately reviewed by the Commission, which issued separate opinions in each case.

---

* For the Hearing Examiner's Initial Decisions and the Commission's opinions and orders see *Goodyear Tire & Rubber Co.* (Atlantic Refining Co.), 58 F.T.C. 309 (1961); *Firestone Tire & Rubber Co.* (Shell Oil Co.), 58 F.T.C. 371 (1961); and *B. F. Goodrich* (The Texas Co.), 58 F.T.C. 1176 (1961) (remand by the Commission to the Hearing Examiner), after remand, Commission decision and order, Docket No. 6485, April 15, 1963.

The *Atlantic-Goodyear* opinion was reviewed and affirmed by the Court of Appeals for the Seventh Circuit, and that decision is now before this Court.

The *Texaco-Goodrich* opinion was reviewed and set aside by the Court of Appeals for the District of Columbia (*Texaco, Inc.* v. *Federal Trade Commission*, 336 F. 2d 754 (D.C. Cir. 1964)), and a petition for writ of certiorari has been filed, but not acted upon, in this Court (No. 635, October Term, 1964).

The *Shell-Firestone* opinion is presently on review in the Court of Appeals for the Fifth Circuit. At the time of the oral argument, the Fifth Circuit asked the parties to apprise the Court of any action taken in the judicial review of the other two cases; and the Fifth Circuit has since indicated that its decision will not be delivered until after this Court disposes of the instant appeals by Atlantic and Goodyear.

The Commission's order against Goodyear before this Court in the instant appeal is not confined to the Atlantic-Goodyear sales commission plan, but contains an unconditional prohibition against Goodyear having a sales commission arrangement with any other oil company. This sweeping order would, among other things, outlaw the sales commission agreement Goodyear has had with Shell for more than 25 years under which the parties currently market more than $25 million of TBA merchandise each year. Shell's concern arises because the Government, in attempting to defend this broad order against Goodyear, takes a position, which if adopted in the manner stated, would prejudge in a material way the factual issues in the appeal now pending in the Fifth Circuit in the *Shell* case.

The Government in the instant case is forced to admit that "the Commission's opinion did not articulate the reasons for the scope of the [Goodyear] order" (Br. 74), but it attempts to save the broad order by arguing "(1) that the other oil companies with whom Goodyear had sales commission agreements had the same kind of economic power over their dealers as Atlantic; and (2) that in performing such agreements those companies did and were likely to do the same things that Atlantic had done in performing its contracts, with the same adverse effect upon competition." (Br. 74-75).

Of course, neither of the above propositions was the subject of adjudication in the *Atlantic-Goodyear* proceeding. Hence there is no substantial evidence on these points in that record; and neither the examiner nor the Commission made any such findings of fact. In its brief in this Court, the Government tries to support the propositions by "inferences" drawn from incidental testimony in the *Atlantic-Goodyear* record relating to other oil companies.

We submit that in passing on the scope of the Goodyear order it is inappropriate for this Court to adjudicate, for the first time (since neither the Commission nor the Court of Appeals undertook to do so), the legality of the sales commission arrangement between Goodyear and Shell: first, because the legality of that arrangement is the specific subject matter of another law suit presently pending review before the Fifth Circuit; and second, because the incidental evidence in the *Atlantic-Goodyear* record does not support the inferences asserted by the Government, particularly as they relate to Shell.

1. In the *Shell* proceeding, the Commission challenged the legality of both of Shell's sales commission plans—one with Firestone and the other with Goodyear. The allegations of the complaint related to both plans. In a trial lasting three years, the parties introduced substantial evidence on both plans, calling over 200 witnesses and introducing over 700 documentary exhibits. The testimonial transcript alone contains more than 6,000 pages. It is this gigantic record, consisting of 9 printed volumes, which is on review before the Fifth Circuit, where it has been already comprehensively briefed and orally argued before that Court.

In its *Shell* opinion, the Commission said that it was "concerned primarily with the sales commission contracts between Firestone and Shell and between Goodyear and Shell". (58 F.T.C. at 416). It specifically adjudicated the legality of both plans and issued a cease and desist order prohibiting their further use by Shell. It is this opinion and order that are on review before the Fifth Circuit.

In view of this situation, it would be manifestly unfair, as well as a denial of the due process requirements of the Administrative Procedure Act, for this Court to prejudge the legality of the Shell-Goodyear plan before the Fifth Circuit has had an opportunity to review the order, decision and record in the *Shell* proceeding. This Court has declined to pass upon administrative actions until the appropriate Court of Appeals has first completed its reviewing function. In *Federal Trade Commission* v. *Anheuser-Busch, Inc.*, 363 U.S. 536 (1960), this Court, after construing the meaning of the Robinson-Patman Act, refused to review the other issues raised on the appeal because "the Court of Appeals did not consider whether the record sup-

ported a finding of requisite competitive injury, whether respondent's good faith defense was valid, or whether the Commission's order was unduly broad." (*Id.* at 542) In remanding, this Court said that "we believe that it would be unwise for us to grapple with these intricate problems, a solution to which requires a careful examination of a voluminous record, before they have been dealt with by the Court of Appeals." (*Ibid.*)

2. The unfairness and dangers inherent in adjudicating the legality of a sales commission agreement on the basis of inferences drawn from fragmentary evidence in one proceeding where the very factual issue of the legality of the same agreement has been fully tried in another proceeding is illustrated by the arguments of the Government in its brief regarding the Shell-Goodyear plan.

On the question of the power oil companies other than Atlantic have over their dealers, the Government's brief quotes a generalized statement by an Atlantic official that "[p]ractically all the branded companies operate principally with lessee dealers". (Br. 75) Whatever its validity as to other oil companies, the implications of this statement do not apply to Shell: lessees are but one of five classes of Shell dealers. Shell uses a variety of leases, contracts and supply agreements with its dealers and distributors, but none of these agreements limits or in any way restricts TBA purchases. Nor does Shell restrict dealers' TBA advertising or product display or use of credit cards.

On the question of the performance of the sales commission agreements between Goodyear and oil companies other than Atlantic, the Government makes

several references to testimony purporting to show the practices under the Shell-Goodyear plan. These statements are inaccurate and misleading. The Government, for example, flatly states that Shell limits its credit cards to sponsored TBA. "Shell, Sinclair and Sherwood limit credit card purchases to sponsored products, a practice that results in compelling dealers—who recognize the importance of credit card sales—to carry sponsored TBA. . . ." (Br. 81-82) This statement about Shell, as the *Shell* record establishes, is indisputably wrong. We quote the Commission's own finding in its opinion in the *Shell* case: "Then, too, sponsored as well as non-sponsored TBA may be sold on Shell credit cards, including up to six months' extended credit without any charge to the motorist or the dealer." (58 F.T.C. at 402)

The Government also refers to isolated portions of testimony of one former Shell salesman who testified in the *Atlantic-Goodyear* proceeding. (Since the witness is not identified by name, the references in the Government's brief, first at page 79 and then at page 81, may leave the impression that there were two such witnesses.) This same witness, Edwards, testified at great length in the *Shell* proceeding; on cross examination his testimony was thoroughly discredited;* and the Commission, in its *Shell* opinion, neither mentioned nor relied on his testimony.

---

* This is neither the time nor place to review the more than 150 pages of Edward's testimony establishing its unreliability, but we may give one example here. Edwards, who worked as a salesman for Shell over 12 years ago, openly admitted on cross-examination the inaccuracy of his prior testimony given before a Subcommittee of the House Small Business Committee, where he stated under oath that he had, as a Shell salesman, cancelled eight dealers who failed to purchase sponsored TBA. Asked about this testimony in the *Shell* case, Edwards said: "I testified to that, but that was wrong." Then he added: "I was excited." (Shell Record 670)

In its brief, the Government recognizes that all sales commission plans are not necessarily bad since the legality of an individual oil company's plan depends upon whether the oil company in fact possesses power to control its dealers and has exercised such power in carrying out the plan so as to adversely affect competition. (See Br. 36, 83) These are the very factual questions on review in the Fifth Circuit as to Shell's two plans with Firestone and Goodyear.

For the foregoing reasons, we submit that this Court, in passing on the scope of the Goodyear order, (1) should not prejudge the basic factual issues present in the *Shell* case now on review before the Fifth Circuit regarding Shell's relationship with its dealers and its performance under its sales commission plans with Firestone and Goodyear and (2) should in no event affirm the Goodyear order insofar as that order prohibits the continuation of the Shell-Goodyear sales commission arrangement.

Respectfully submitted,

WILLIAM F. KENNEY
Vice President and
General Counsel
Shell Oil Company
50 West 50th Street
New York 20, New York

WILLIAM SIMON
JOHN BODNER, JR.
Howrey, Simon, Baker &
Murchison
1707 H Street, Northwest
Washington 6, D. C.

Attorneys for Shell Oil
Company

VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964

No. 292

VOL. I, pp. 1 to 810

Office-Supreme Court, U.S.
FILED
JUL 17 1964
JOHN F. DAVIS, CLERK

In the

United States Court of Appeals

For the Seventh Circuit

No. 13340

THE ATLANTIC REFINING COMPANY,
Petitioner,
vs.
FEDERAL TRADE COMMISSION,
Respondent.

Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

Summary of Proceedings Below	1
Amended Complaint	5
Answer of Atlantic to Complaint as Amended	13
Answer of Goodyear to Complaint as Amended	22
Order Sustaining Interlocutory Appeal	29
Motion of Atlantic re Issues and Evidence, etc.	31
Answer to Motion of Atlantic, etc.	34
Order Denying Motion, etc.	36
Order on Motion to Strike Evidence, etc.	38
Initial Decision	41
Opinion of the Commission	61
Final Order	131
Petition for Review	135

TRANSCRIPT OF PROCEEDINGS.

Admissions of Respondents	145
Documents marked for identification	149
Colloquy	151, 614, 1178, 2303
Stipulation re testimony	266
Stipulation re Atlantic testimony	296
Stipulation re Goodyear testimony	322
Data re three marketing areas	332
Stipulation re Goodyear testimony	392
Offer of Exhibits	477
Stipulation re Warren and Hunterdone Counties in New Jersey	2276
Stipulation re Gay testimony	2277
Statement of Crawford Bryant	2281

Vol. I, pages 1 to 810; Vol. II, pages 811 to 1682; Vol. III, pages 1683 to 2336; Vol. IV, pages 2337 to 3281.

Witnesses for the Commission.

Testimony of:

Adams, E. Scott 875
Adams, William E. 892
Balloran, Francis J. 645
Best, Rolland C. 1116
Blumenthal, David B. 209
Booz, Elmer H., Jr. 631
Brown, Richard 952
Chambers, John 163
Colby, William 745
Connell, Conrad 588
Dashper, Herbert L. 969
Drennan, Robert B. 802
Duboff, Myer 412
Galle, John 924
Govoruhk, Nicholas 1046
Ferguson, Richard 754
Franks, William Lee 664
Freland, Edgar D., Jr. 1148
Hawes, Harry Noble 935
Hayes, Sherman 740
Heald, Felix B. 677
Heller, Edward C. 378
Hill, George J., Jr. 367
Hinderscheid, W. F. 450, 565
Hoffman, Jack 197
Huether, Lewis A. 1149
Iacona, Aniello L. 514
Johnson, Charles H. 1014
Johnson, Tyler L. 617
Kelly, James R. 1054
Kernaghan, Thomas J. 545

Kevis, Douglas W. 215
Lang, Elmer 1128
Lanza, Michael Thomas 724
Lingenfelser, Frederick 811
Marabella, Joseph 690
Matthews, James 433, 481
McCandless, Robert H. 573
McIntyre, James L. 776
McMaster, Joseph B. 1054
Migan, John J. 1070
Myers, James M., Jr. 822
Norris, Oster 1065
Parag, James 984
Pollock, Isidore Jack 536
Sabo, Carl 845
Sander, Homer August 1174
Savage, Eugene 1076
Scheiner, Joseph 1151
Siewierski, James W. 2311
Stein, Morris 859
Sullivan, Thomas J., Jr. 900
Vick, John J. 553
Walker, George Stanley Drew 768
Wetzel, Glenn L. 224

WITNESSES FOR RESPONDENT.

Testimony of:

Buongiorne, Frank R. 1546
Carlson, Robert O. 1823
Cary, Reuben 2123
Colley, Dwight T. 2283
Connelly, Joseph M. 2089
Cooley, Russel E. 1519
Detwiler, Charles K. 2018
Eckhardt, John A. 1347

Eckhardt, Tom 1355
Elko, Donald 1875
Elleni, Albert 1404
Foster, George F. 1396
Gaestel, Wilbur D. 1750
Gloth, Israel 1963
Godino, Alfred 1861
Grossman, Sam 1675
Hathaway, Holland M. 1190, 1414, 1491, 2327
Hayes, Thomas A., Jr. 2050
Jones, Thomas E. 1907
Klein, Robert 2075
Koehler, Fred 1335
Landis, Norman 1372
Leonard, William Henry 1252
Lott, Charles Henry 1708
Lozanski, Adam 1320
Luongo, Rudolph N. 1899
Mann, Isadore 1888
Mapes, August 1727
Marino, Joseph A. 1687
Maseyko, George Paul 1603
McCarthy, Harold F. 1979
McKaig, Charles G. 1229
Molinaro, Dominic., Jr. 2003
Mulholland, Richard G. 2234
Munch, Edward B. 1487
Provost, Robert C. 1868
Rhoades, O. Harris 2103
Ringenary, Edward 1845
Sartoff, Herman 1288
Shafer, Albert H. 2143
Snow, Edward L. 1996
Soukup, Albert J. 1308

Tavina, Nicholas V. 1383
Thomas, Richard D. 1501
Tydings, Gabriel 1270
Varnadore, J. W. 1193
Vayda, Albert J. 2072
Walsh, Charles A., Jr. 2184
Wash, Joseph J. 1655
Way, William L. 2083
Wright, Harry W., Jr. 1622
Wyckoff, Charles P. 1640
Zarella, George 1982

Stipulation re Goodyear 1952 Prices 2334

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets 2337
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks 2340
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord 2341
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks 2342
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman 2343
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al. . 2345
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord 2347
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al. 2349
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman 2350

9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the company's preference for the Goodyear program:" 2351

Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan" 2355

11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental" 2357

12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors 2359

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached 2360

14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2365

15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker 2366

16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr. 2368

17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman 2370

18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord 2372

19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman 2374

20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman 2375

21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord 2377

22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman.....2378

23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow"....2379

24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers 2381

25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting".....2391

26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting".....2392

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline".....2393

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2394

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic, Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2397

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2398

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers" 2399

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers.....2400

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2402

35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2406

36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2407

37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2408

38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2409

39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2410

40 A-B—Letter, February 9, 1951, from S. J. Heideman to J. E. Mayl, with enclosure 2412

41 A—Goodyear Form G-1209, with descriptive note 2415

44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement 2416

44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2417

44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2418

46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl 2419

47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al. 2421

47 C-D—Goodyear Sales Department Instructions, May 31, 1951 2424

47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2427

48 A-E—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951".....2429

49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord.....2436

50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman.....2437

51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman.....2439

51 A—Goodyear Form A98101L, "Request for Identification Field Service".....2441

52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company".....2443

54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953".....2444

56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord.....2444

56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr. 2445

57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman.....2446

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord.....2447

80 U—Map entitled "Goodyear Regions & Districts".....2449

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952.....2451
85 A-B—Atlantic Lease Form, B/3191, 6/49.....2454
86 A-B—Atlantic Lease Form, B/3191, 4-52.....2458
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2463
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station".....2466
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2466
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191.....2472
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *".....2473
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station"..2474
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants..2475
88 E1-2—Atlantic Lease Form B-3191Y, 5/55.....2477
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement.....2483
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement.....2484
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement.....2486
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2491
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants.2496
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants.2498
93—Atlantic Form of "Commission Agreement"...2502

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2505
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2509
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2515
96—Atlantic Form B-3119, 10/50, "Authorized Dis- Distributor's Agreement" 2521
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2524
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2527
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2529
98 A-G—Atlantic Form of Distributor Contract 2531
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2537
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider 2543
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2548
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers" 2553
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2556
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al. 2559
100 A-B-C—Memorandum, August 24, 1948, prepared by S. J. Heideman 2560
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study" 2565
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2591

102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments.....2601
103 Letter, January 10, 1950, from F. E. Neall to G. V. Ostrander.....2607
104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic.....2609
105 A-C—Letter Agreement, January 12, 1954 from Firestone to Atlantic.....2612
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone.....2616
107—Inter-office Memorandum, February 27, 1950, from F. M. Neall to D. T. Colley.....2618
108 A-J—Document, March 17, 1950, unsigned, entitled "Presentation to Atlantic Personnel in Connection with the Introduction of the Firestone Commission Plan".....2619
109 A-I—Document undated prepared by S. J. Heideman entitled "Report on Meeting for the Discussion of the Firestone Commission Plan"...2633
110—Letter, March 21, 1950, unsigned, to G. H. Milligan 2645
111—Letter, April 11, 1950, unsigned, to W. J. Griffiths.2646
112—Document, April 20, 1950, unsigned, entitled "Plan for Handling Adjustments for Atlantic Dealers on Lee Tires to be Replaced with Firestone Tires".....2647
113—Document, April 20, 1950, unsigned, entitled "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced by Firestone Batteries".....2648
114 A-D—Document, May 11, 1950, prepared by G. H. Milligan entitled "TBA-Firestone Commission Plan District Office Accounting Procedure....2650

115—Document, July 3, 1950, unsigned, entitled "TBA-Firestone Commission Plan District Office Accounting Procedure".....2656

116 A-B—Letter with enclosure, September 29, 1950, from G. M. Elliot to S. J. Heideman.....2657

117—Document undated and unsigned, entitled "Firestone Commission Plan Check List".....2658

118 A-B—Letter, March 13, 1950, unsigned, to Messrs. B. M. Boor, J. O. Estlow and W. J. Griffiths..2660

119 A-B—Letter, March 17, 1950, from S. J. Heideman to D. T. Colley.....2662

120—Letter, July 26, 1950, unsigned, to Messrs. B. M. Boor and W. J. Griffiths.....2664

121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachment..2665

123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord.....2670

124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman.....2671

125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord.....2672

126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear.....2673

126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear.....2674

127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company-Sales Commission".....2675

128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall.....2688

129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley.....2690

130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda 2691
131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson.....2698
132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al. 2699
133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region.....2700
134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for marketing of Tires, * * *".....2703
135 A-B-C—Document undated and unsigned entitled "Commission Plan".....2705
136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment 2709
137 A-E—Document entitled "Duties of the Dealer Salesman" 2715
138—Unsigned memorandum, June 25, 1951, to F. M. Neall 2721
139 A-B—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger.....2722
140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman 2725
140 A—Atlantic Form B-139, 10/51, Dealers' Credit Card Sales Slips.....2727
141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis.....2729
142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman 2730

143—Letter, July 9, 1951, to William Stockton.....2731
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2732
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2733
145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2734
146 A-B—Document entitled "Staff meeting held 7/14/52" 2737
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13".....2739
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr.....2740
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program".....2741
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantics' T. B. A. Policy"....2742
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell.....2743
153 A-B—Memorandum, April 5, 1951, from R. M. Taitt to Noble Hall.....2744
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2746
155 A-H—Document entitled "1951 Sales Plan New York Region Basis".....2747
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C".....2753
155 J-K—Document entitled "1951 Sales Plan—Report of Progress—Appendix D".....2754
155 L—Document entitled "Appendix E".....2756

155 M—Document entitled "Summary of Results"...2757
156—Document dated January 5, 1951 entitled "Station Modelization Policy".....2758
157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2759
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman...2760
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord.....2762
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments.....2763
—Document entitled "Goodyear Associate Dealers—New Jersey".....2778
161—Unsigned letter, July 30, 1951, to W. J. Jackson 2787
161 A-B—Document bearing two columns headed "Location" and "Reason".....2788
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman...2790
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord.....2791
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman.....2793
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman.....2794
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill.....2795
166—Letter, October 11, 1951, from J. W. O'Neill to S. J. Heideman.....2797
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman.....2798
167 A-M—Handwritten document entitled "Refusals" 2799

168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel.....2810
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis.....2811
170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment.....2812
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment.....2820
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment.....2825
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis.....2827
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, et al., June 1, 1951, with attachment..2827
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman.....2834
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman.....2835
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletion #17".....2836
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman.....2837
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord.....2838
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y."..2839
179 J—Form entitled "Atlantic-Goodyear Accounts".2854
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)."....2854

180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman.....2856
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill.....2857
182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 2858
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 2859
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries".2861
185—Document, April 25, 1952, prepared by S. J. Heideman entitled "Firestone-TBA Bulletin No. 17" 2863
186—Letter, July 18, 1952, from G. M. Elliot to S. J. Heideman 2864
187—Letter, September 3, 1952, from J. O. Long to Messrs. W. L. Schmidt, E. E. Sickels and Fred Wanders 2865
188—Letter, April 19, 1950, from G. V. Ostrander to D. T. Colley.....2866
189—Letter, May 18, 1950, from M. G. Davis to S. J. Heideman 2868
190—Letter, June 8, 1950, unsigned, to H. E. Powell.2869
193—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951".....2871
194—Document undated and unsigned, entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales, Erie and Wilmington Districts, April and May 1950).....2872
195 A-B-C—Letter with enclosures, June 2, 1950, from G. M. Elliot to Leon Serven.....2873
196 A-B—Letter with enclosure, June 6, 1950, from G. M. Elliot to S. J. Heideman.....2875

197 A-B—Letter with enclosure, June 23, 1950, from S. J. Heideman to J. A. Addison.....2876
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950".....2879
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949".....2881
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950".....2883
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949".....2885
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950".....2887
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949".....2889
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950".....2891
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs 1949".....2893
202—Tabulation entitled "Final T. B. A. Sales—October 1950".....2895
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950".....2896
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949".....2897
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950".....2898
204 A—Tabulation entitled "Final T. B. A. Sales—December 1950".....2899
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949".....2901
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950".....2902

205—Document unsigned and undated, entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Erie and Wilmington Districts, November and December 1950).....2903
206—Letter, August 28, 1952, from D. T. Colley.....2904
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers.....2905
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951"...2907
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951".....2907
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951"...2908
211—Document entitled "Atlantic Progress Report", October 29, 1951.....2909
212—Document entitled "Atlantic Progress Report", December 24, 1951.....2910
213 A-F—Letter with enclosures, May 14, 1951, from G. M. Elliot to Leon Serven.....2911
214 A—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Progress through 4/14/51".....2917
214 B—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Eastern Pennsylvania Region Progress Through 4/14/51".....2918
214 C—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Western Pennsylvania Region Progress Through 4/14/51".....2919
214 D—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Southern Region Progress Through 4/14/51".....2920

214 E—Document undated and unsigned, entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales for fiscal year 1951) ..2921
214 F—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales, November and December 1951) ..2922
215 A-B—Atlantic Credit Card—1950 ..2923
216 A-B—Atlantic Credit Card—1951 ..2924
217 A-B—Atlantic Credit Card—1952 ..2925
218 A-B—Atlantic Credit Card—1953 ..2926
219 A-B—Atlantic Credit Card—1954 ..2927
220 A-B—Atlantic Credit Card—1955 ..2928
221 A-B—Atlantic Credit Card—1956 ..2929
222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50) ..2930
223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51) ..2931
226 A—Letter, July 7, 1950, from Paul Castleberry, Jr. to Atlantic with attachments ..2932
227 A—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear ..2934
247 B—Booklet entitled "Goodyear T. B. A. Plan" ..2935
250—Letter, November 2, 1955, from The Atlantic Refining Company to Norris A. Stein ..2963
251—Letter, February 7, 1956, from The Atlantic Refining Company to Alfred R. Trivits ..2964
252—Letter, December 21, 1956, from The Atlantic Refining Company to William A. White, Sr. ..2965
253—Letter, May 2, 1955, from H. M. Hathaway to Messrs. Abraham Berman and Morton Shor ..2967
254 A—Letter, December 8, 1953, from J. G. Burns to Michael J. Clifford ..2968

254 B—Letter, January 4, 1954, from The Atlantic Refining Company to Michael J. Clifford....2969
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling....2970
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman....2971
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic....2972
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation"....2973
257 A—Letter, November 13, 1953, Atlantic to Aniello L. Iacona....2974
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic....2975
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania....2976
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro....2977
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro....2979
259—Letter, July 5, 1956, from Atlantic to A. Bennett....2980
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson....2981
261—Letter, October 21, 1955, from Atlantic to Charles Davis....2982
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice....2983
263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio....2984
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly....2985
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel....2986

266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette.....2987
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith.....2988
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco.....2989
268 B—Letter, November 10, 1954, Greco to Atlantic Refining Company.....2990
269—Letter, January 5, 1955, from W. J. McCambridge, Jr., to Duane Olthof.....2991
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski.....2992
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski.....2993
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw.....2995
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco.....2996
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers.....2997
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman.....2997
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al.....2999
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments.....3000
280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al.....3004
281 A-B—Document entitled "Sales Meeting February 19, 1951".....3006

282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card.....3008

283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3011

284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al.....3015

285—Letter, March 5, 1951, from E. W. McCreary to E. M. Fiffick, et al.....3018

286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment.....3019

287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al.....3022

288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3023

288 E—Memorandum, July 25, 1951, from E. W. McCreery to W. F. Hinderscheid.....3028

289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers 3030

290 A-I—Memorandum, August 6, 1951, with attachments 3031

291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3041

292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3044

293 A—Letter, August 14, 1952, from E. W. M. to B. M. Boor.....3047

293 B—Memorandum, August 12, 1952 unsigned, to E. W. McCreery.....3048
293 C—Letter, October 3, 1952, from E. W. McCreery to B. M. Boor.....3049
293 D—Letter, October 7, 1952, unsigned, to E. W. McCreery.....3050
294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews.....3051
295—Document entitled "Branches as of January 1, 1950".....3053
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950".....3053
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive".....3054
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell.....3056
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott.....3057
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co.....3060
302—Letter, December 22, 1950, from C. Connell to J. S. Parks.....3061
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville.....3062
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell.....3063
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst.....3064
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst.....3066

307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co. 3069
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3071
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell.....3072
310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell.....3073
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville.....3075
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher.....3077
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951".....3079
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley.....3087
317 A-B—Atlantic Lease Form B-3191- 3/53 executed by The Atlantic Refining Company and Norris A. Stein.....3090
317 C-D—Atlantic Form B-367, 7/52 executed by Norris A. Stein.....3097
317 E—Atlantic Franchise Agreement Form B-3191 B, 4/52 executed by The Atlantic Refining Company and Norris A. Stein.....3099
317 F—Atlantic Agreement Form B-3105, 8/53 executed by Norris A. Stein.....3101
317 G-H—Atlantic Lease Form B-3191, 8/54 executed by The Atlantic Refining Company and Norris A. Stein.....3104
318 A-B—Letter, July 26, 1954, from R. S. Zinn to Norris A. Stein.....3110
319—Letter, June 22, 1955, to all Atlantic dealers from M. G. Davis.....3112

320 A-B-C—Letter, February 1, 1956, from Norris A. Stein to M. G. Davis.....3113
320 D—Letter, February 2, 1956, from M. G. Davis to Norris A. Stein.....3118
321—Letter, February 6, 1956, unsigned to John Rule.3119
322—Letter, February 9, 1956, from E. E. Sickels to Howard M. Berg.....3121
323 A-B—Atlantic Lease Form B-3191, 3/53 executed by The Atlantic Refining Company and Thomas J. Sullivan, Jr. 3122
324 A-B—Atlantic Form B-367, 7/52 executed by Thomas J. Sullivan, Jr.....3128
325—Atlantic Agreement Form B-3194, 10/50 executed by The Atlantic Refining Company and Thomas J. Sullivan, Jr. 3131
326—Atlantic Equipment and Apparatus Form B-3191A, 10/52 executed by Thomas J. Sullivan, Jr. 3133
327—Firestone Associate Dealer Agreement executed by Thomas J. Sullivan, Jr., ...3134
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column.....3135
339—Goodyear Service Stores Invoice dated 12-27-55.3136
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks.....3137
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments.....3139
352—Letter, May 17, 1950, from G. A. Fearn to R. S. Zinn 3152
353 A-B—Letter, October 30, 1950, from J. A. Addison to S. J. Heideman.....3153
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3155

355 A-B—Letter, January 3, 1951, unsigned to D. T. Colley 3157
356 A-B—Letter, February 3, 1951, unsigned to D. T. Colley 3159
357 A-B—Letter with enclosure, March 4, 1953, from G. M. Elliot to R. G. Mulholland.....3161
358—Letter, March 4, 1953, from G. M. Elliot to R. G. Mulholland 3165
359—Letter, March 23, 1953, from G. M. Elliot to R. G. Mulholland 3166
360—Letter, May 1, 1953, from G. M. Elliot to R. M. Taitt 3167
361—Letter, May 22, 1953, from G. M. Elliot to R. G. Mulholland 3168
362 A-B—Letter with enclosure, July 27, 1953, from G. M. Elliot to R. G. Mulholland.....3169
363—Letter, April 28, 1955, from R. G. Mulholland to G. M. Elliot.....3171
364—Letter, December 29, 1955, from G. A. Fearn to Jack Hyde.....3173
365 A-B—Letter, January 31, 1956, from J. C. Heid to W. L. Zinn.....3174
366—Letter, April 26, 1956, from G. A. Fearn to J. C. Heid 3175
367—Letter, May 1, 1956, from J. C. Heid to G. A. Fearn 3177
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions" 3178
375—Document undated and unsigned entitled "Atlantic-Firestone TBA Sales".....3179
376—Document undated and unsigned entitled "Atlantic-Firestone TBA Sales by Class of Trade"..3180

377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade".....3181
378—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, January 1953).....3183
379—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year and December 1953).....3184
380 A-B—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year and December 1954).....3185
381—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year 1955 through December 20, 1955 and December 1955).....3187
382 A-B—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year 1956 through June 20, 1956 and June 1956).....3189
383 A—Letter, October 7, 1955, from G. M. Elliot to R. G. Mulholland.....3191
383 B-C—Firestone inter-office memorandum, October 6, 1955, to District Managers.....3192
384—Letter, February 1, 1955, from R. G. Mulholland to G. M. Elliot.....3196
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951".....3197
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951".....3198

387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3199

388 A-D—Firestone inter-office memorandum, February 2, 1956, to District Managers, Territory Salesmen, Store Managers.....3200

400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments.....3205

480—Document, March 17, 1953, entitled "Statement of Herman Sartoff" executed by Herman Sartoff.3221

481—Document, March 19, 1953, entitled "Statement of Adam Lozanski" executed by Adam Lozanski.3223

482—Document, March 26, 1953, entitled "Statement of Thomas C. Eckhardt" executed by Thomas Eckhardt 3225

483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley 3227

484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne 3230

485 A—Letter, August 29, 1958, from the Atlantic Refining Company to James W. Siewierski....3233

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow.....3234

2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow 3240

3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company.....3241

4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow.....3242

6—Atlantic Mutual Consent of Concellation Form B-765 11/53 executed by James Parag, November 2, 1955.....3243

7—Atlantic Mutual Consent of Cancellation Form B-765, 11/53 executed by The Atlantic Refining Company and James Parag, March 2, 1956....3243

10 A-C—Document March 27, 1953, executed by Fred Koehler 3244

10 D—Letter, March 1, 1951, from D. T. Colley, unaddressed 3247

10 E—Letter, August 28, 1952, from D. T. Colley, unaddressed 3248

11 A-G—Document, March 27, 1953, executed by Thomas C. Eckhardt.....3249

20—Atlantic booklet entitled 'TBA Program''.....3255

31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments.....3274

	Original	Print
Proceedings in the United States Court of Appeals for the Seventh Circuit	3282	3282
Opinion, Swygert, J.	3282	3282
Judgment	3298	3299
Final decree affirming and enforcing order to cease and desist	3299	3300
Clerk's certificate (omitted in printing)	3301	3301
Order allowing certiorari	3302	3301

APPENDIX.

SUMMARY OF PROCEEDINGS BELOW.

1956

Jan. 11—Original complaint issued against The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

Apr. 16—Answers filed by The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

Apr. 30—Motion filed by counsel supporting the complaint to amend the complaint by making The Goodyear Tire & Rubber Company, Inc.* an additional party respondent.

May 22—Order Amending Complaint filed by the Hearing Examiner.

July 6—Answers to the complaint as amended filed by Respondents.

Sept. 17—Pretrial conference in Washington, D. C. before Hearing Examiner Kolb.

Sept. 26—Counsel supporting the complaint filed motions to the Hearing Examiner to certify the proceeding to the Commission and to the Commission to affirm and modify the Hearing Examiner's Order Amending Complaint.

Oct. 8—Memorandum filed by Goodyear in opposition to motions of Sept. 26.

Oct. 11—Order filed by Hearing Examiner granting Sept. 26 motion of counsel supporting the complaint for certification of the proceeding to the Commission.

Oct. 26—The Commission issued its Order Affirming Hearing Examiner's Order Amending Complaint.

---

* The Goodyear Tire & Rubber Company, Inc. was a wholly-owned subsidiary of The Goodyear Tire & Rubber Company which since 1956 has been merged into its parent company. Both companies are hereinafter referred to collectively as "Goodyear," and The Atlantic Refining Company is hereinafter referred to as "Atlantic."

Oct. 29-30—Pretrial conference held in Washington, D. C. before Hearing Examiner Kolb.

Oct. 30—Initial hearing held in Washington, D. C. before Hearing Examiner Kolb.

Nov. 9—Interlocutory Appeal Brief filed by counsel supporting the complaint appealing a ruling made by the Hearing Examiner at initial hearing on October 30, 1956 rejecting certain evidence.

Nov. 26—Answer to Interlocutory Appeal filed by Atlantic.

Nov. 26—Answering brief in opposition to Interlocutory Appeal filed by Goodyear.

Dec. 5—The Commission Order Sustaining Interlocutory Appeal issued.

1957

Mar. 7 to Dec. 12*—Hearings for presentation of evidence by counsel supporting the complaint held before Hearing Examiner Kolb.

Dec. 2—Motion filed by Goodyear to withdraw issues and to strike evidence with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

Dec. 12—Answer in opposition to Goodyear motion of December 2 filed by counsel supporting the complaint.

1958

Jan. 2—Hearing Examiner's order denying motion of Goodyear to withdraw issues and to strike evidence filed.

Jan. 14—Order of the Hearing Examiner Closing the Case for the Taking of Testimony in Support of the Complaint, and Fixing Time Within Which to File Motions, filed.

Jan. 31—Interlocutory Appeal to the Hearing Examiner's Order of January 2, filed by Goodyear.

Feb. 12—Answer in Opposition to January 31 Interlocutory Appeal of Goodyear filed by counsel supporting the complaint.

---

* Hearings were conducted in Washington, D. C., Philadelphia, Pa., Wilmington, Del. and Baltimore, Md. on the following dates within this period: Mar. 7, June 13, 14, 24, 25, 26, 27, 28, July 1, 2, 3, Nov. 18, 19, 20, 21, 26, 27 and Dec. 12.

Feb. 17—Motion to strike evidence filed by Goodyear.

Feb. 19—Motion filed by Atlantic to Strike Evidence Received Subject to Atlantic's Motion to Strike or Over Atlantic's Objection.

Feb. 19—Motion filed by Atlantic with respect to Firestone issues.

Mar. 3—Counsel supporting the complaint filed answer in opposition to Atlantic's motion of February 19, 1958.

Mar. 7—Counsel supporting the complaint filed an answer in opposition to Atlantic's motion of February 19, 1958.

Mar. 7—Counsel supporting the complaint filed an answer in opposition to Goodyear's motion of February 17, 1958.

Mar. 21—The Commission issued Order Denying Interlocutory Appeal filed by Goodyear January 31.

Mar. 24—The Hearing Examiner filed an order denying Atlantic's motion filed February 19 relating to Firestone issues.

Mar. 24—The Hearing Examiner filed an order disposing of Atlantic's motion of February 19.

Mar. 24—The Hearing Examiner issued an order denying in part and granting in part Goodyear's motion of February 17.

June 30 to Nov. 19*—Defense hearings held before Hearing Examiner Kolb.

1959

Apr. 1—Proposed Findings of Fact, Conclusion of Law and Order filed by counsel supporting the complaint.

June 15—Proposed Findings of Fact and Conclusions filed by Goodyear.

June 15—Proposed Findings of Fact and Conclusions and Brief in support thereof filed by Atlantic.

June 31—Reply Brief filed by counsel supporting the complaint.

---

* Hearings were conducted in Baltimore, Md., Washington, D. C. and Philadelphia, Pa. on the following dates within this period: June 30, July 1, 2, 3, 8, 9, 11 and Nov. 5, 6, 7, 17, 18, 19. On the final day counsel supporting the complaint called one rebuttal witness and Respondent Atlantic one surrebuttal witness. Respondent Goodyear called no witnesses.

Oct. 21—Hearing Examiner entered Order closing all proceedings before the Hearing Examiner.

Oct. 23—The Hearing Examiner's Initial Decision filed.

1960

Apr. 22—Appeal Brief of counsel supporting the complaint filed.

Apr. 22—Appeal Brief of Atlantic filed.

May 25—Answering Brief of counsel supporting the complaint filed.

May 25—Answering Brief of Goodyear filed.

May 25—Answering Brief of Atlantic filed.

June 23—Oral argument before the Federal Trade Commission.*

1961

Mar. 9—Federal Trade Commission's Opinion and Order filed.

Apr. 21—Motion to Suspend Effective Date of Final Order filed by Goodyear.

Apr. 21—Motion to Postpone Effective Date of Commission's Final Order filed by Atlantic.

Apr. 28—Counsel supporting the complaint filed Answer to Separate Motions of Respondents to Stay Effective Date of Order to Cease and Desist Herein.

May 26—Federal Trade Commission issued order denying motions by Goodyear and Atlantic to suspend the effective date of the Final Order.

July 24—Motion of Respondents and Counsel for the Commission for Order to Correct Transcript of Hearings filed.

July 26—Federal Trade Commission issued Order Granting Motion to Correct Transcript.

---

* Commissioners: Earl W. Kintner, Chairman, Robert T. Secrest, Sigurd Anderson and William C. Kern. Commissioner Tait did not sit.

37 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

In the Matter of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations.	Docket No. 6486

AMENDED COMPLAINT.

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc. and The Atlantic Refining Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges as follows:

Paragraph One: Respondent, The Goodyear Tire & Rubber Company, (hereinafter sometimes referred to as "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear operates its business directly and through several wholly owned or controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

Respondent, The Goodyear Tire & Rubber Company, Inc.,

(hereinafter sometimes referred to as "Goodyear, Inc."), is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear, Inc. is a wholly owned subsidiary of Goodyear, engaging, among other things, in the sale of the latter's products. The principal officers of Goodyear and Goodyear, Inc. are the same and the two companies share the same principal office and place of business. Goodyear, Inc. is operated under the control and direction of Goodyear and is used as an instrument by the latter primarily for marketing purposes. All of the acts of Goodyear, Inc. referred to in this complaint were for and in the behalf of Goodyear.

38 Respondent, The Atlantic Refining Company, (hereinafter sometimes referred to as "Atlantic"), is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 260 South Broad Street, Philadelphia, Pennsylvania.

Paragraph Two: Goodyear is the largest manufacturer of rubber products in the United States, manufacturing a variety of rubber and associated products, including tires and inner tubes. The total net sales of Goodyear made directly and through its subsidiaries were more than one billion dollars in 1954.

Goodyear, Inc. sells various products manufactured by Goodyear, including tires and inner tubes. It also purchases for resale and distribution batteries, automotive parts and accessories and other items referred to as Car and Home Merchandise. Said products are sold directly to the consuming public through approximately 500 company owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various States of the United States.

Certain of said products, namely, tires, innertubes, batteries, automotive parts and accessories, and certain Car and Home Merchandise items, are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this complaint.

Paragraph Three: Atlantic is a large producer and distributor of petroleum products. Directly or through its wholly owned or controlled subsidiaries, Atlantic is engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum wholesalers (hereinafter referred to as "distributors") and service stations. In 1954 its sales and operating revenue totaled more than one-half billion dollars. Atlantic also acts as an agent in promoting the sale of the TBA products of certain companies, including those of respondent Goodyear, Inc., in the manner hereinafter described.

Paragraph Four: In the course and conduct of their said businesses respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship said products, including said TBA products, or cause them to be shipped, from the States in which said products are manufactured or warehoused to purchasers thereof located in other States of the United States and the District of Columbia.

Paragraph Five: In the course and conduct of their said business of promoting and selling TBA products in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms.

39 Paragraph Six: Goodyear, Inc. sells said TBA products directly and through wholesalers to many classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products.

Atlantic sells its petroleum products, directly and through distributors, to more than 10,000 service stations. In addition to petroleum products, a substantial number of these stations sell TBA products.

Paragraph Seven: In connection with the sale of TBA products in commerce, Goodyear, Inc. has entered into a contract with Atlantic under which Atlantic agrees to promote the sale of said TBA products to the service stations and distributors selling Atlantic's petroleum products in part of its sales territory. Atlantic has also entered into a substantially similar agreement with the Firestone Tire & Rubber Company (hereinafter referred to as Firestone) as to the stations and distributors selling its petroleum products in the remainder of its sales territory.

Under said contract Goodyear, Inc. pays Atlantic an "override" commission, ranging from 7½% to 10% on the net sales of TBA products to service stations and distributors selling Atlantic's petroleum products, in return for the influence and aid given by Atlantic in promoting said sales. Atlantic has a large number of service stations and distributors affiliated with it which sell only its petroleum products and, pursuant to its agreements with Goodyear, Inc. and Firestone, in various ways, urges, recommends and persuades the operators of these outlets to purchase the TBA products of Goodyear, Inc. and Firestone. Said stations and distributors at no time authorized or re-

quested Atlantic to find for them, or commit them to, a source of supply for TBA products. Said stations and distributors do not receive any part of the override commission.

Said service stations and distributors are operated ostensibly as independently owned business enterprises. However, their relationship with Atlantic is such that they are subject to its control. Such control is inherent in the power Atlantic has by virtue of the various types of contracts of employment, leases, purchase contracts, credit card contracts, franchises and other agreements between it and said service stations and distributors with respect to petroleum products and the occupancy, operation, use and tenure of the stations, other premises, facilities and equipment. Said agreements are for short terms and may be terminated or cancelled by Atlantic without reason at the end of the term or prior thereto for non-performance of certain provisions. Some of said provisions are so broad and general as to be susceptible of arbitrary interpretation and thus afford a basis for termination of the agreement by Atlantic.

Thus, the economic welfare of said service stations and distributors is largely dependent upon Atlantic. If Atlantic chooses, for whatever reason or no reason, to terminate said franchise or other agreements, the operator of the service station or distributor either loses his business entirely or must change to a different brand of petroleum products or change location or both, depending upon the type of lease arrangement involved. Such termination would result in great financial loss and irreparable injury to the operator, such as loss of his business, customer goodwill, sales, profits, and cost of relocation.

By virtue of these circumstances, Atlantic can greatly influence and control the purchasing and marketing activities of said service stations and distributors. Such

influence and control has been and is being exercised by Atlantic over its affiliated service stations and distributors by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodyear, Inc. and Firestone, the sellers designated by it.

Paragraph Eight: By virtue of said override commission agreement which Atlantic has entered into with Goodyear, Inc., the latter has sold substantial quantities of TBA products in commerce to said service stations and distributors. Goodyear, Inc. has been increasingly successful in selling TBA products to said service station and distributor market controlled by Atlantic. For example, Goodyear, Inc. made such sales, under said agreement, amounting to $2,445,808 in 1951 and $4,175,890 in 1952, on which it paid Atlantic commissions of $239,250 and $411,743, respectively, for those years.

Also, under the agreement between Atlantic and Firestone, as described hereinbefore, the latter has sold substantial quantities of TBA products to said service stations and distributors. Firestone made such sales amounting to $3,809,843 in its fiscal year 1952 and $4,796,304 in its fiscal year 1953, on which it paid Atlantic commissions of $354,354 and $446,286, respectively, for those years.

Paragraph Nine: In addition, Goodyear, Inc. has entered into the same or a substantially similar override agreement with other oil companies, including the Shell Oil Company. Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reasons as hereinabove alleged as to Atlantic. By virtue of said agreements, Goodyear, Inc. has been and is
41 increasingly successful in selling TBA products to the service station and distributor market controlled by said oil companies. For example, under such an agreement, Goodyear, Inc. made sales amounting to $11,857,287 in 1951,

and $16,595,761 in 1952, on which it paid the Shell Oil Company commissions of $1,091,385 and $1,523,122, respectively, for those years.

Paragraph Ten: Many competitors of Goodyear, Inc. and Firestone are unable to sell their TBA products to a substantial number of said distributors and service stations because of said override agreements. Many of these competitors do not pay override commissions to any oil company.

Paragraph Eleven: Among the effects of the adoption and use by respondents of said override commission agreements, and each of them, under the circumstances and in the manner hereinabove alleged are that they have:

1. Foreclosed a large and substantial amount of business to manufacturers, distributors, wholesalers and other vendors who compete with Goodyear, Inc. and Firestone in the sale of TBA products.
2. Injured, lessened, prevented and destroyed competition between Goodyear, Inc. and Firestone and between each of them and other manufacturers, distributors, wholesalers and other vendors of TBA products in the sale of said products.
3. Increased substantially the amount of TBA products business done by Goodyear, Inc. and Firestone.
4. Deprived a substantial number of petroleum distributors and service station operators of their right to act as independent businessmen by denying them freedom of choice as to the TBA products which they may purchase and stock for resale.
5. Deprived the consuming public of equal access to the TBA products of competitors of Goodyear, Inc. and Firestone and other advantages which would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

42 Paragraph Twelve: Said agreements between respondents and said agreements between a respondent and others not parties herein, and the acts and practices of respondents thereunder, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

43 Enclosure B—List of Specific Changes Made by Amended Complaint.

1. The name of respondent The Goodyear Tire & Rubber Company, Inc. is added to the caption of the complaint and is also added in the fourth line of the first unnumbered paragraph of the complaint.

2. A paragraph describing respondent The Goodyear Tire & Rubber Company, Inc. has been added as subparagraph 2 of Paragraph One of the complaint.

3. Paragraph Two of the complaint has been rewritten as now appears in the amended complaint.

4. In Paragraphs Three, Six, Seven, Eight, Nine, Ten and Eleven, wherever the name Goodyear appeared in the original complaint the name Goodyear, Inc. has been substituted in the amended complaint.

5. In Paragraph Seven of the amended complaint the first sentence has been changed to read as follows:

"In connection with the sale of TBA products in commerce, Goodyear, Inc. has entered into a contract with Atlantic under which Atlantic agrees to promote the sale of said TBA products to the service stations and distributors selling Atlantic's petroleum products in part of its sales territory."

71 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

ANSWER OF THE ATLANTIC REFINING COMPANY TO COMPLAINT AS AMENDED BY ORDER OF MAY 21, 1956.

Atlantic Refining Company (hereinafter referred to as "Atlantic") reserving to itself all, and all manner of, objections to the uncertainties and insufficiencies of the Complaint of the Federal Trade Commission as amended by the Order dated May 21, 1956 of Earl J. Kolb, Hearing Examiner, makes answer thereto as follows:

The Complaint as thus amended is defective upon its face for the reason that it does not state that the Federal Trade Commission has reason to believe that The Goodyear Tire & Rubber Company, Inc., a party respondent in the proceeding, has violated the provisions of Section 5 of the Federal Trade Commission Act and does not state
72 that it appears to the Commission that a proceeding against said respondent would be in the public interest.

Atlantic makes further answer to the numbered paragraphs of the Complaint as follows:

Paragraph One: Atlantic was incorporated in 1870 under the laws of the State of Pennsylvania, and has engaged in business continuously since that date. Its princi-

pal office and place of business is located at 260 South Broad Street in Philadelphia, Pennsylvania.

Atlantic is without knowledge of the corporate structure, location, officers, business or activities of respondent The Goodyear Tire & Rubber Company (referred to in the amended Complaint and hereinafter as "Goodyear") and its various subsidiaries, except as hereinafter noted. The Goodyear Tire & Rubber Company, Inc. (referred to in the amended Complaint and hereinafter as "Goodyear, Inc.") is the only corporation of the Goodyear group with which Atlantic has business relations. Its principal office and place of business is located at 1144 East Market Street, Akron, Ohio.

73 Paragraph Two: Atlantic is without knowledge of the business or activities of Goodyear. Goodyear, Inc. is engaged in the business of selling TBA products generally as described in Paragraph Two of the amended Complaint. Certain products, such as tires, inner tubes, batteries, automotive parts and accessories, are properly described as "TBA" products.

Paragraph Three: Atlantic has refined and sold superior quality petroleum products longer than any other major refiner on the East Coast and placed in operation the first modern type automotive service station facility in this country. Hence, Atlantic has been engaged in competition during almost the entire life span of the oil industry.

Directly or through wholly owned subsidiaries Atlantic now engages in substantially all branches of the petroleum industry. It purchases about half of its refinery crude oil requirements, and a great majority of the locations where Atlantic gasoline, motor oil and automotive lubricants are sold to the motorist consumer are owned by, or leased from owners other than Atlantic to dealers who operate service stations at such locations. Atlantic's annual sales of

74 such petroleum products to distributors and service station dealers constitute a small percentage of the market.

Atlantic denies that the Complaint fairly describes the manner in which it renders TBA sales assistance.

Paragraph Four: Atlantic admits that Goodyear, Inc. is engaged in commerce in TBA products. The averments as to Atlantic are denied except as hereinafter stated.

Atlantic markets petroleum products, including various grades of heating oils, waxes, liquid propane, industrial lubricants, asphalts, solvents, and a wide variety of other petroleum and petrochemical products. It is not a manufacturer of TBA, and since 1952 it has not been a wholesale distributor of TBA.

Service station dealers selling certain Atlantic petroleum products, such as gasoline, motor oil and automotive lubricants, are situated in a 17-State marketing area comprising the Eastern Seaboard States from New Hampshire to Florida and portions of Ohio and West Virginia. Atlantic makes no sales in the District of Columbia to distributors or service station dealers, and does not operate any wholesale facilities or service station in the District.

75 With the exception noted below, Atlantic admits that petroleum products sold by it are shipped from the States in which such products are manufactured, refined, stored or warehoused to terminals, bulk plants, or bulk storage located in other States for the purpose of sale and distribution to resellers and consumers in such other States, but denies that such course of conduct confers any jurisdiction in the Federal Trade Commission, insofar as Atlantic is concerned, with respect to the matters here in controversy.

Substantially all gasoline, motor oil and automotive lubricants sold by Atlantic to petroleum wholesalers and petroleum retailers located and doing business in Penn-

sylvania are manufactured, refined, shipped and sold within the State of Pennsylvania, and are not manufactured, refined nor warehoused outside such State nor shipped into it from outside its borders.

Paragraph Five: Admitted that Goodyear, Inc. is in competition with others in selling TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

76 Atlantic has never been a manufacturer of TBA. For many years prior to 1952 Atlantic was a purchaser-reseller of TBA, and during such time was engaged in competition with other corporations, partnerships, individuals and firms who also sold TBA. Atlantic's TBA activities since 1952 have been devoted to assisting Goodyear, Inc. and others to sell TBA.

Paragraph Six: Denied as averred. Atlantic sells certain of its petroleum products to petroleum distributors and to several thousand service station dealers, the more progressive and competitive of which purchase TBA products from others for resale to the motoring public.

Service stations are convenient, logical, and necessary points for satisfying the TBA needs of motorists. For this reason, the modern service station has become a large and important market for TBA products, and the retail sale of such products has become an integral, essential part of the modern retail service station business. Dealers who operate modern service stations have found that a competitively priced, readily available, nationally advertised superior quality TBA line increases their petroleum products and related services business, supplements
77 their income from the sale of petroleum products, and is essential to the successful, competitive conduct of their retail service station business.

In order for Atlantic to survive in the intensely competitive business of selling gasoline, motor oil, and automotive

lubricants it must utilize a system of distribution based on modern retail service stations operated by competent dealers. Atlantic cannot compete effectively with other oil companies unless dealers purchasing Atlantic's petroleum products are competitive at the retail level, and many of such dealers cannot compete successfully unless the TBA component of their retail business is competitive with the TBA selling activity of their retail competitors.

Many other economic realities explain and justify Atlantic's interest in the purchase and resale of superior quality TBA by distributors and dealers who handle principally Atlantic petroleum products.

Paragraph Seven: Atlantic has entered into contracts with Goodyear, Inc. providing for the rendering of certain services by Atlantic in connection with the sale of Goodyear TBA. Atlantic has also entered into contracts
78 of a generally similar nature with The Firestone Tire and Rubber Company, which is not a respondent in this proceeding. As to the terms of such contracts, reference is made to the contracts themselves. Atlantic denies that the Complaint fairly paraphrases, summarizes, or states the terms and effects of such contracts, and also denies the further allegations of Paragraph Seven except as hereinafter expressly stated.

Sales commissions paid by Goodyear, Inc. to Atlantic are compensation for services rendered by Atlantic. Atlantic admits that petroleum distributors and service station dealers purchasing Atlantic petroleum products receive no part of Atlantic's TBA sales commissions. The prices they pay for Goodyear TBA are necessarily competitive with prices paid by other dealers and distributors. Atlantic began withdrawing from the position of a TBA purchaser-reseller on an experimental basis during 1950 and by the latter part of 1951 had ceased to be a wholesale distributor of TBA. The economically

essential wholesaler distributive function formerly performed by Atlantic is now carried out by a substantial number of separate corporation, partnerships, individuals and firms whose competitive opportunities were sig-
79 nificantly enhanced or were created by Atlantic's withdrawal as a wholesale distributor of TBA.

Atlantic, since 1952, has neither manufactured nor purchased and sold TBA for resale. Atlantic has committed no one to the purchase or sale of Goodyear TBA.

Insofar as the motoring public in Atlantic's marketing area is concerned, oil companies compete with each other principally through the distributive medium of petroleum distributors and retail dealers. As to Atlantic this fundamental economic fact means that its competitive survival depends on two broad standards of business performance, namely:

(1) The economic necessity for Atlantic to support its distributor and dealer customers by being competitive with other oil companies as to all the essential components of the business, beginning with product quality and price and extending through the range of other factors to the competent rendering of expert economic advice and the furnishing of business-building counsel, which all customers can accept or reject, in whole or in part; and

(2) The economic necessity for Atlantic's reseller customers to be competitive with their competition as to
80 all the essential components of the business, beginning with product quality and price and extending through the range of other factors to the competent rendering of those services which the motoring public demands in return for its patronage.

Atlantic, having reached the conclusion that it would prefer not to engage as a direct participant in the TBA business, either as manufacturer or a wholesale distributor, found that the only economically feasible alternative

compatible with the competitive necessities of the market place was and is the endorsement, sponsorship, and active support of one or more other efficient, reliable sources of supply—i. e the Sales Commission Plan, an ordinary business method openly adopted and extensively employed in the industry over a period of many years.

The concept of commercial "control",—i.e., control of resellers' buying practices, and the opposing concept of salesmanship,—i. e., urge, recommend and endeavor to persuade, are contradictory concepts. Atlantic denies the "control" alleged in the Complaint.

Atlantic admits that it recommends, urges and endeavors to persuade petroleum products reseller customers
81 to purchase some Goodyear TBA. Many of Atlantic's customers purchase little or no TBA from recommended Goodyear, Inc., TBA supply points. Large quantities of TBA sold to and by such petroleum reseller customers of Atlantic are not TBA products manufactured, distributed, or sold by Goodyear, Inc. or by The Firestone Tire & Rubber Company.

Atlantic has no "contracts of employment" with its gasoline reseller customers.

Atlantic admits that its "credit card contracts" are subject to a 48-hour cancellation right. Neither the existence nor exercise of such cancellation right has resulted in control of its customers' buying practices.

With respect to the remaining types of contracts alleged to exist between Atlantic and petroleum distributors and service station dealers, Atlantic cannot be certain of the intended meaning or relevance of the descriptive conclusion "short term" but asserts that if the word "short" is measured by any reasonable yardstick in the light of existing market conditions and legitimate business considerations, Atlantic has not entered into any "short term" contracts of the type alleged. Atlantic's con-

tracts are definite as to term, as required by law,
82 and Atlantic denies that the expiration of a designated term imposes upon it a legal duty to renew an expired agreement.

Atlantic denies that its contracts with distributors and service station dealers contain provisions so broad and general as to be susceptible of arbitrary interpretation by Atlantic or that Atlantic has so attempted to interpret any provisions of such contracts. The provisions of such contracts are lawful and reasonably definite.

Atlantic admits that some of its contracts contain certain provisions providing for cancellation in the event of non-performance, but denies that the enforcement of a lawful right based on non-performance can simultaneously constitute the breach of any legal duty to the party whose non-performance gives rise to the cancellation right.

Atlantic's policy with respect to petroleum distributors and service station dealers is that such potential TBA customers are free to accept or reject any TBA program suggested and recommended by Atlantic. This policy has been publicized and called to the attention of Atlantic's petroleum products reseller customers on many occasions,
83 both in writing and orally, since Atlantic's adoption of the Sales Commission Plan. Atlantic's Management has consistently and diligently pursued a course of action reasonably calculated to achieve the objective of adequately informing its field force as to the meaning and scope of such policy and to assure itself that the policy was and is faithfully translated into actual practice.

Service station dealer customers of Atlantic who purchase Goodyear TBA are in direct competition with adjacent or nearby service stations selling the same or other brands of TBA products.

Paragraph Eight: Atlantic denies that Goodyear, Inc. in 1951 and 1952 sold the quantities of TBA products

specified in the Complaint in commerce to distributors and service station dealers handling Atlantic petroleum products, and denies the averment that the service station and distributor TBA market was or is "controlled" by Atlantic. Atlantic admits that certain amounts of Goodyear TBA were sold to such petroleum distributors and service station dealers by recommended Goodyear, Inc. TBA supply points and that the total amount thus sold in 1952,
84 the first complete calendar year of full scale operation under the Sales Commission arrangement with Goodyear, Inc. was greater than the corresponding total amount sold in 1951.

Although The Firestone Tire & Rubber Company is not a respondent herein, the admissions, denials, and explanations set forth above are applicable to the allegations of the Complaint respecting or relating to the Firestone Tire & Rubber Company.

Paragraph Nine: Atlantic is without knowledge of the facts averred and demands proof thereof to the extent, if any, that such facts may be deemed relevant to the Complaint against Atlantic.

Paragraph Ten: Atlantic denies that competitors of Goodyear, Inc. and The Firestone Tire & Rubber Company are unable to sell their TBA products and merchandise to petroleum distributors and service station dealers because of any agreement entered into by Atlantic. Atlantic has no knowledge of the extent to which unnamed competitors of Goodyear, Inc. and The Firestone Tire & Rubber Company have elected to pay sales commissions to other oil companies.

85 Paragraph Eleven: Atlantic denies each allegation of Paragraph Eleven of the Complaint.

Paragraph Twelve: Atlantic denies each and every averment of paragraph twelve of the Complaint. Atlantic entered into the above referred to Agreements with Good-

year, Inc. and The Firestone Tire & Rubber Company for the main and lawful purpose of increasing competition at all levels of distribution in the TBA and petroleum products business. Atlantic's acts and practices pursuant to and under such Agreements have been consistent with and reasonably related to the accomplishment of such purpose.

Wherefore, The Atlantic Refining Company respectfully prays that the Complaint be dismissed and that final judgment be entered for it.

Charles I. Thompson,
Attorney for Defendant, The Atlantic Refining Company.

Of Counsel:
Ballard, Spahr, Andrews & Ingersoll,
1035 Land Title Building,
Philadelphia 10, Pennsylvania.

Dated: .....

51 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption 6486) * *

ANSWER OF THE GOODYEAR TIRE & RUBBER COMPANY TO THE COMPLAINT, AS AMENDED.

The Goodyear Tire & Rubber Company, by its attorneys, for its answer to the complaint of the Federal Trade Commission, as amended by the order amending the complaint of the hearing examiner

I.

Answering generally the allegations of the complaint, as amended, alleges:

A. The sales commission plan, which is the subject of the complaint, as amended, is a practical, efficient and inexpensive method of distribution of essential TBA prod-

ucts to motorists through thousands of independent service stations throughout the United States.

52 B. Said sales commission plan is a legitimate and competitive method of marketing which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

C. Said sales commission plan is a part of intense and legitimate competition among suppliers of TBA products for the business of said service stations.

D. Said sales commission plan is not in violation of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) or any other statute.

E. The bringing and prosecution of the complaint and the complaint, as amended, is not in the public interest.

II.

Answering the specific allegations of the complaint, as amended, alleges:

1. As to paragraph 1 of the complaint, as amended, Denies each and every allegation of the first unnumbered paragraph, except admits that respondent, The Goodyear Tire & Rubber Company (herein called "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal

53 office and place of business located at 1144 East Market Street, Akron, Ohio and that Goodyear operates its business directly and does business with several subsidiaries and that The Goodyear Tire & Rubber Company, Inc. (herein called "Goodyear, Inc."), is a subsidiary which sells Goodyear's products.

Denies each and every allegation of the second unnumbered paragraph, except admits Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and

place of business located at 1144 East Market Street, Akron, Ohio; that Goodyear, Inc. is a wholly-owned subsidiary of Goodyear and sells products of Goodyear; that some of the principal officers of Goodyear are also officers of Goodyear, Inc. and that the two companies share the same principal office and place of business.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the third unnumbered paragraph, except as such facts are admitted by The Atlantic Refining Company (herein called "Atlantic"), in its answer to the complaint, as amended.

2. Admits the allegations of paragraph 2 of the complaint, as amended.

54 3. Denies each and every allegation of paragraph 3 of the complaint, as amended, except admits that Atlantic is a producer and distributor of petroleum products and admits that Atlantic renders sales assistance to certain companies, including Goodyear, Inc., in promoting the sale of TBA products and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 as to the business operations of Atlantic, except as such allegations are admitted by Atlantic in its answer to the complaint, as amended.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint, as amended, except admits so much of the allegations of paragraph 4 of the complaint, as amended, as to respondents Goodyear and Goodyear, Inc. as are allegations of fact and not legal conclusions.

5. Denies each and every allegation of paragraph 5 of the complaint, as amended, except admits that Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and that Atlantic renders sales assistanct to Goodyear, Inc. in promoting the sale of TBA products.

6. As to paragraph 6 of the complaint, as amended.

55 Admits the allegations of the first unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the second unnumbered paragraph, except admits that a number of stations selling the petroleum products of Atlantic sell TBA products.

7. As to paragraph 7 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to TBA products as to the terms of which contract reference is made to the contract itself and admits that Atlantic has entered into a sales commission agreement with respect to TBA products with The Firestone Tire & Rubber Company as to the terms of which agreement reference is made to the agreement itself.

Denies each and every allegation of the second unnumbered paragraph, except admits that Goodyear, Inc. has a sales commission contract with Atlantic for TBA products as to the terms of which contract reference is made to the contract itself; admits that Goodyear, Inc. pays

56 Atlantic sales commissions pursuant to said contract and admits that pursuant to said contract Atlantic renders sales assistance in connection with the sale by Goodyear, Inc. of TBA products covered by said contract; admits that the stations and distributors selling the petroleum products of Atlantic do not receive any part of any commission paid to Atlantic under said contract; and denies knowledge or information sufficient to form a belief as to the truth of the allegation that stations and distributors selling the petroleum products of Atlantic at no time authorized or requested Atlantic to find for them, or commit them to, a source of supply for TBA products.

Denies each and every allegation of the third unnumbered paragraph, except admits that the service stations and distributors selling the petroleum products of Atlantic are operated as independently-owned business enterprises and that Atlantic has various contractual arrangements with said service stations and distributors as to which arrangements reference is made to the contracts themselves.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth unnumbered paragraph.

57 Denies each and every allegation of the fifth unnumbered paragraph.

8. As to paragraph 8 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has sold TBA products to service stations and distributors selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Atlantic and that Goodyear, Inc. has paid commissions to Atlantic pursuant to said contract in substantially the amounts stated in the last sentence of said unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the second unnumbered paragraph.

9. Denies each and every allegation of paragraph 9 of the complaint, as amended, except admits that Goodyear, Inc. has entered into sales commission agreements with oil companies other than Atlantic as to the terms of which agreements reference is made to the agreements themselves; admits that pursuant to such agreements said oil companies have rendered and render sales assistance to Goodyear, Inc.; admits that Goodyear, Inc. has

58

made sales of TBA products to service stations selling petroleum products of such oil companies and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Shell Oil Company and that Goodyear, Inc. has paid commissions to the said oil company pursuant to said contract in the amounts stated in the last sentence of said paragraph 9 of the complaint, as amended.

10. Denies each and every allegation of paragraph 10 of the complaint, as amended, except admits that some suppliers of TBA products do not use a sales commission arrangement for the marketing of some or all TBA products.

11. Denies each and every allegation of paragraph 11 of the complaint, as amended.

12. Denies each and every allegation of paragraph 12 of the complaint, as amended.

III.

As further defenses to the complaint and order amending complaint of the Federal Trade Commission, respondent, Goodyear, alleges:

59 1. The complaint and order amending complaint do not comply with Section 5(b) of the Federal Trade Commission Act in that

(a) The complaint, as amended by the order amending complaint, was not premised upon a finding by the Federal Trade Commission that it had reason to believe that Goodyear has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce and by a finding that it appears to the Commission that a proceeding by it with respect to Goodyear would be in the interest of the public.

(b) The complaint, as amended by the order amend-

ing complaint, was not issued and served upon Goodyear by the Commission.

(c) The complaint, as amended by the order amending complaint, does not contain a notice of hearing upon a day and at a place therein fixed at least 30 days after the service of the complaint, as amended.

2. The complaint, as amended by the order amending complaint, does not comply with Rules 3.3 and 3.6 60 of the Rules of Practice of the Federal Trade Commission in that

(a) The complaint, as amended by the order amending complaint of the hearing examiner is not a complaint issued and served by the Federal Trade Commission.

(b) The complaint, as amended by the order amending complaint, does not provide notice of the time and place for hearing at least 45 days after service of the complaint, as amended.

Wherefore, respondent, The Goodyear Tire & Rubber Company, prays that the complaint, as amended by the order amending complaint of the hearing examiner be, dismissed.

Dated: July 6, 1956.

Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
63 Wall Street,
New York 5, New York,
Attorneys for The Goodyear Tire & Rubber Company.

152 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption—6486) • •

Commissioners:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

ORDER SUSTAINING INTERLOCUTORY APPEAL.

This matter having been heard on an interlocutory appeal, filed by counsel in support of the complaint, from rulings of the hearing examiner excluding from the record certain evidence relating to the extent and effect of the commission agreement between the respondent, The Atlantic Refining Company (hereinafter referred to as Atlantic) and The Firestone Tire and Rubber Company (hereinafter referred to as Firestone), and other evidence relating to the existence, extent and operation of alleged commission agreements between the respondent, The Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as Goodyear, Inc.) and a number of oil companies other than Atlantic; and

It appearing that the basis for the rulings complained of was that evidence of the relationships between Atlantic and Firestone and between Goodyear, Inc., and oil companies other than Atlantic have no bearing on the issues in this proceeding, which proceeding is concerned only with the contractual relationship between Atlantic and Goodyear, Inc., and the acts and practices engaged in pursuant thereto; and

It further appearing, however, that the allegations of the complaint are not limited to the existence of and activities under the commission contract between respondents Atlantic and Goodyear, Inc., but relate also to a gen-
153 eral course of competitive action by each of said respondents, under which respondent Atlantic is charged with having unlawfully entered into and acted under contracts with both Goodyear, Inc., and Firestone providing for the receipt by it of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., and Firestone to service stations controlled by Atlantic, and respondent Goodyear, Inc., is alleged to have unlawfully entered into and acted under similar contracts with a number of oil companies, including Shell Oil Company and Atlantic, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., to service stations controlled by said oil companies; and

The Commission being of the opinion that the evidence rejected by the hearing examiner apparently was relevant and material to the direct issues thus raised by the complaint and that, if so, it should have been received in support of said issues:

It Is Ordered that the appeal of counsel in support of the complaint be, and it hereby is, sustained.

It Is Further Ordered that the hearing examiner be, and he hereby is, directed to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Atlantic and Firestone and of the alleged similar commission contracts between respondent Goodyear, Inc., and each of a number of oil companies other than respondent Atlantic. Such evidence relating to the contract between Atlantic and Firestone should be admitted as against

respondent Atlantic unconditionally and as against respondent Goodyear, Inc., subject to a subsequent motion to strike upon a proper showing; and the evidence relating to the alleged contracts between Goodyear, Inc., and the oil companies other than Atlantic should be admitted as against respondent Goodyear, Inc., unconditionally and as against respondent Atlantic subject to the same type of motion.

By the Commission.

/s/ Robert M. Parrish,
Robert M. Parrish,
Secretary.

Issued: December 5, 1956.

367 BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

MOTION OF THE ATLANTIC REFINING COMPANY WITH RESPECT TO FIRESTONE ISSUES AND EVIDENCE AND OVERLAPPING EVIDENCE IN THE FIRESTONE-SHELL PROCEEDINGS.

To the Honorable Earl J. Kolb, Hearing Examiner:

Pursuant to Rule 3.8, The Atlantic Refining Company, by its attorneys, moves for an order granting the following relief:

(a) dismissing the Complaint insofar as it relates to the sales commission agreement between The Firestone Tire & Rubber Company and Atlantic;

(b) striking all evidence heretofore received in this proceeding with respect to the Firestone-Atlantic sales commission agreement and operations of Firestone and Atlantic thereunder, except evidence of the existence

of the agreement and the substantiality of sales thereunder; and

368 (c) nullifying the effect in this proceeding of overlapping and different evidence received by the Examiner in the Firestone-Shell proceeding (Docket 6487).

The grounds for this motion are:

1. Insofar as this proceeding relates to the Firestone-Atlantic sales commission agreement, Firestone is a necessary party because the legality of the agreement cannot be determined without consideration of the operations of both parties thereunder and because the rights and duties of neither party can be modified without injuriously affecting the rights of the other. Where a necessary party is not present, a valid order cannot be issued and the Complaint should be dismissed insofar as it involves the interests of that party.

2. The foregoing supports the Examiner's initial ruling rejecting all Firestone evidence except that pertaining to the existence of the agreement and the substantiality of sales thereunder. Atlantic believes that ruling to have been correct, despite the Commission's order sustaining an appeal therefrom, and files this motion to preserve its rights with respect thereto.

369 3. Due process and the Administrative Procedure Act require that the decision in this proceeding be based exclusively on the testimony and exhibits received in this proceeding subject to cross-examination by the parties herein. With due deference to the Examiner's previous rulings, it is submitted that the background of impression formed by him from the overlapping and different testimony and exhibits in the concurrent Firestone-Shell hearings must necessarily color his evaluation of the evidence on the same issues in this proceeding. Such over-

lapping and different testimony and exhibits in the Firestone-Shell case include:

(a) Some 21 Firestone documents, none of which were offered in evidence in the instant proceedings and most of which, if offered, would not have been admissible against Atlantic. This is in addition to the numerous documents which were received in both cases.

(b) The different testimony as to Atlantic's dealer operations in Baltimore and Wilmington by ex-Atlantic dealers Scheiner, Johnson, Sullivan and Galle. Scheiner and Johnson were also TBA suppliers to Atlantic service stations and testified differently in the two proceedings as to this aspect of their operations.

370 (c) The different testimony as to the effect of Atlantic's TBA program by Savage and Lang in Baltimore and by Lingenfelser, Hinderscheid and Connell in Philadelphia, and the testimony of Heideman in Philadelphia which was not offered in the instant case. The last named witness gave explanations of certain documents at variance with the explanations of the same documents of record in the instant case.

(d) The testimony of Atlantic employee McIntire on voir dire and direct and cross-examination in the Firestone-Shell case regarding a survey which was rejected by the Examiner in Firestone-Shell but received into evidence against Atlantic in Goodyear-Atlantic.

4. What steps may be appropriate to nullify in this case the effect of the overlapping and different testimony in the Firestone-Shell case depends in large measure on the disposition of Atlantic's foregoing motion to dismiss the Complaint insofar as it relates to the Firestone-Atlantic agreement and the foregoing motion to strike evidence relating thereto. The appropriate relief will also depend upon the testimony and exhibits that may be offered by respondents

in the two cases and upon the issues which are ultimately held to be determinative of the decision in this case.

371 At the least, Atlantic submits that under the Constitution and the Administrative Procedure Act the Examiner should withdraw from consideration in this case issues as to which there is different evidence in the Firestone-Shell hearings.

Respectfully submitted,

/s/ Charles I. Thompson,
Charles I. Thompson,

/s/ Frederic L. Ballard, Jr.,
Frederic L. Ballard, Jr.,

/s/ Roy N. Freed,
Roy N. Freed,

Attorneys for The Atlantic Refining Company.

Of Counsel:
Ballard, Spahr, Andrews & Ingersoll.

Dated: February 17, 1958.

374 BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

ANSWER IN OPPOSITION TO MOTION OF RESPONDENT THE ATLANTIC REFINING COMPANY WITH RESPECT TO FIRESTONE ISSUES AND EVIDENCE AND OVERLAPPING EVIDENCE IN THE FIRESTONE-SHELL PROCEEDINGS.

Come now counsel in support of the complaint and in opposition to the Motion of The Atlantic Refining Company With Respect to Firestone Issues and Evidence and Overlapping Evidence In The Firestone-Shell Proceedings urge

that said Motion be denied for the reasons hereinafter set forth.

Respondent Atlantic specifically moves to dismiss the complaint herein insofar as it relates to the Firestone-Atlantic agreement and to strike evidence relating thereto.

The reason why said Motion should be denied is that the Commission, in its Order Sustaining Interlocutory Appeal, dated December 5, 1956, specifically directed the Hearing Examiner "to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operations and competitive effects of the override commission contract between respondent Atlantic and Firestone * * *".

Although the Commission's prior ruling is dispositive of the instant Motion, it should also be noted that respondent Atlantic is receiving a full and fair hearing under
375 the Administrative Procedure Act so that, on the merits, said Motion should be denied.

The contentions of respondent Atlantic herein are basically the same as those advanced by respondent Goodyear in its Motion to withdraw issues and strike evidence relating to the Goodyear-Shell Oil Company agreement, previously denied by the Hearing Examiner and now on Interlocutory Appeal before the Commission. The Answers in opposition thereto, filed December 12, 1957 and February 12, 1958, are equally applicable to the present Motion, and reference is made thereto for detailed reasons why the present Motion also should be denied.

Respectfully submitted,

James S. Kelaher,

Peter J. Dias,

Counsel Supporting the Complaint.

March 3, 1958.

414 BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

ORDER DENYING MOTION OF THE ATLANTIC REFINING COMPANY TO DISMISS PORTION OF THE COMPLAINT AND TO STRIKE CERTAIN EVIDENCE RECEIVED.

This matter is before the hearing examiner upon motion of respondent The Atlantic Refining Company to dismiss the complaint insofar as it relates to the sales commission agreement between The Firestone Tire & Rubber Company and The Atlantic Refining Company, and to strike all evidence heretofore received with respect to the Firestone-Atlantic sales commission agreement and operations of Firestone and Atlantic thereunder, and answer thereto filed by counsel supporting the complaint.

1. On October 30, 1956, the hearing examiner rejected and refused to receive evidence as to agreements between The Firestone Tire & Rubber Company and The Atlantic Refining Company and agreements between The Goodyear Tire & Rubber Company and oil companies other than Atlantic.

2. An interlocutory appeal from this ruling was taken to the Commission and on December 5, 1956, the Commission issued its order overruling the hearing examiner and directing the hearing examiner as follows:

> "It Is Further Ordered that the hearing examiner be, and he hereby is, directed to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details,
> 415 operation and competitive effects of the override commission contract between respondent Atlantic and Firestone and of the alleged similar commission contracts between respondent Goodyear, Inc., and each

of a number of oil companies other than respondent Atlantic. Such evidence relating to the contract between Atlantic and Firestone should be admitted as against respondent Atlantic unconditionally and as against respondent Goodyear, Inc., subject to a subsequent motion to strike upon a proper showing; and the evidence relating to the alleged contracts between Goodyear, Inc., and the oil companies other than Atlantic should be admitted as against respondent Goodyear, Inc., unconditionally and as against respondent Atlantic subject to the same type of motion."

3. The hearing examiner is of the opinion that he is bound by the above order of the Commission and that said order is controlling as to the matters raised in this motion.

It Is Therefore Ordered that the motion of respondent The Atlantic Refining Company to dismiss the complaint insofar as it relates to the sales commission agreement between The Firestone Tire & Rubber Company and The Atlantic Refining Company and to strike evidence with respect to the Firestone-Atlantic sales commission agreement and the operation thereunder be, and the same is hereby, denied.

Earl J. Kolb,
Hearing Examiner.

March 21, 1958.

411 BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

ORDER DISPOSING OF MOTION OF THE ATLANTIC REFINING COMPANY TO STRIKE EVIDENCE RECEIVED SUBJECT TO MOTION TO STRIKE OR OVER ATLANTIC'S OBJECTION.

This proceeding is before the hearing examiner on motion of respondent, The Atlantic Refining Company, to strike evidence received subject to Atlantic's motion to strike or over Atlantic's objection, and answer thereto filed by counsel supporting the complaint.

1. The specifications contained in the motion to strike may be divided into the following categories:

A. Testimony and other evidence, including exhibits and stipulated facts pertaining to oil companies other than The Atlantic Refining Company.

B. Exhibits which are primarily internal documents of The Goodyear Tire & Rubber Company which were received in evidence either over the objection of The Atlantic Refining Company or subject to motion to strike by Atlantic.

C. Evidence admitted over objection of The Atlantic Refining Company.

412 2. The testimony and exhibits, including stipulated facts relative to TBA transactions, relating to oil companies other than The Atlantic Refining Company were received in evidence subject to motion to strike by respondent. The Atlantic Refining Company in compliance with a previous order of the Commission relative to such evidence. After reviewing the record, the hearing examiner is of the opinion that no connection has been established between The Atlantic Refining Company and The

Goodyear Tire & Rubber Company contracts with other oil companies and that the testimony and exhibits introduced with reference to the other oil companies should be stricken as to The Atlantic Refining Company.

3. With reference to exhibits which are inter-office documents of The Goodyear Tire & Rubber Company, it appears from the record that the contractual relationship between The Atlantic Refining Company and The Goodyear Tire & Rubber Company has been established by other competent evidence in this proceeding, that there also is in evidence contracts, or forms of contracts, between The Atlantic Refining Company and its various stations. The exhibits received, subject to motion to strike, might not be competent to show the existence of the contractual relationship between the two respondents, but this contractual relationship having been established, these exhibits are competent to show the steps taken to implement and carry out the contracts. It is, accordingly, the opinion of the hearing examiner that the documents are competent, relevant and material, and that the motion to strike by The Atlantic Refining Company should be denied and the documents received in evidence in this proceeding, except Commission's Exhibit 32 which is a document pertaining to a transaction between The Goodyear Tire & Rubber Company and Auto-Lite Company, to which motion to strike should be sustained and the document stricken as to The Atlantic Refining Company.

4. The evidence admitted over objections of respondent, The Atlantic Refining Company, pertaining to the state of mind of the dealers has been reviewed by the hearing examiner, and it appears that the objections were fully argued and considered at the time it was offered and the hearing examiner sees no reason for disturbing his rulings on evidence heretofore made during the course of this trial and while the witness was on the stand.

413 It Is Therefore Ordered that the motion of the respondent The Atlantic Refining Company to strike testimony pertaining to oil companies other than The Atlantic Refining Company be sustained and said testimony is hereby stricken as to The Atlantic Refining Company, but remains in the record as to respondent The Goodyear Tire & Rubber Company.

It Is Further Ordered that motion of respondent The Atlantic Refining Company to strike certain exhibits or such portions thereof pertaining to oil companies other than The Atlantic Refining Company be sustained, and that said exhibits, or such portions thereof, insofar as they pertain to oil companies other than The Atlantic Refining Company be stricken as to The Atlantic Refining Company, but remain in the record as to respondent The Goodyear Tire & Rubber Company.

It Is Further Ordered that motion of respondent The Atlantic Refining Company to strike certain stipulated facts pertaining to oil companies other than The Atlantic Refining Company be sustained, and that said stipulated facts insofar as they pertain to oil companies other than The Atlantic Refining Company be stricken as to The Atlantic Refining Company but remain in the record as to respondent The Goodyear Tire & Rubber Company.

It Is Further Ordered that the motion of respondent The Atlantic Refining Company to strike exhibits which are internal documents of The Goodyear Tire & Rubber Company which were received in evidence subject to a motion to strike by The Atlantic Refining Company is hereby denied and the documents are hereby received in evidence as to both The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

It Is Further Ordered that the motion of The Atlantic Refining Company to strike Commission's Exhibit 32 as being an inter-office communication of Auto-Lite Company

be, and the same is hereby, sustained and said document is stricken as to The Atlantic Refining Company only.

It Is Further Ordered that the motion of The Atlantic Refining Company to strike certain testimony pertaining to the state of mind of dealers is hereby denied.

Earl J. Kolb,
Hearing Examiner.

March 21, 1958.

1124 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

INITIAL DECISION.

By Earl J. Kolb, Hearing Examiner.

James S. Kelaher and Peter J. Dias, for the Commission.

Cahill, Gordon, Reindel & Ohl, New York New York, by Thomas C. Mason and Mathias F. Correa, for respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pennsylvania, by Frederic L. Ballard, Jr., for respondent The Atlantic Refining Company.

This proceeding is based upon an amended complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful certain contracts entered into between respondents The Goodyear Tire & Rubber Company, Inc., a wholly owned subsidiary of respondent The Goodyear Tire & Rubber Company and the Atlantic Refin-

ing Company, whereby The Goodyear Tire & Rubber Company, Inc., agreed to pay The Atlantic Refining Company a sales commission on all tires, batteries and accessories sold by said The Goodyear Tire & Rubber Company, Inc., to service stations and other outlets of The Atlantic Refining Company. The amended complaint further
1125 charged that respondent The Goodyear Tire & Rubber Company, Inc., had entered into similar contracts with certain oil companies other than The Atlantic Refining Company, and that The Atlantic Refining Company had entered into a similar contract with The Firestone Tire & Rubber Company.

This proceeding is now before the hearing examiner for final consideration upon the amended complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions filed by all parties and briefs in support thereof, and reply briefs. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by the parties, and their briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings of fact, conclusions drawn therefrom and order:

1. Respondent The Goodyear Tire & Rubber Company is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company is engaged in the manufacture and in the sale and distribution of rubber products including tires and inner tubes, directly and through several wholly owned and controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

2. Respondent The Goodyear Tire & Rubber Company, Inc., (hereinafter sometimes referred to as "Goodyear") is a wholly owned subsidiary corporation of The Goodyear Tire & Rubber Company, organized under the laws of the State of Delaware with its office and principal place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company, Inc., is engaged in the sale and distribution in interstate commerce of tires, innertubes, batteries, automotive parts and accessories which are known to the trade as TBA products and will be hereinafter so referred to.

3. Respondent The Atlantic Refining Company (hereinafter sometimes referred to as "Atlantic") is a corporation organized, existing and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at 260 South Broad Street, Philadelphia, Pennsylvania. Said respondent is engaged in the production and in the sale and distribution in inter-
1126 state commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers (hereinafter referred to as "distributors") and to service stations.

4. Respondent Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. This marketing territory is divided into six marketing regions which are, in turn, subdivided into twenty-nine districts, consisting of a city or other marketing center and the surrounding territory. The marketing regions and districts are as follows:

New England	Providence, R. I.
	Springfied, Mass.
	Hartford, Conn.
	Boston, Mass.
	New Haven, Conn.

New York	Syracuse, N. Y. Southern Tier, N. Y. Albany, N. Y. Rochester, N. Y. Watertown, N. Y. Buffalo, N. Y.
Philadelphia-New Jersey	Philadelphia-Suburban, Pa. South Jersey Newark (or North Jersey)
Eastern Pennsylvania	Reading, Pa. Allentown, Pa. Wilkes-Barre, Pa. Harrisburg, Pa. Williamsport, Pa. Wilmington, Del.
Western Pennsylvania	Pittsburgh, Pa. Altoona, Pa. Greensburg, Pa. Erie, Pa.
Southern	Charlotte, N. C. Baltimore, Md. Richmond, Va. Jacksonville, Fla. Miami, Fla.

1127 5. As of April 30, 1956, there were approximately 394 salesmen calling on dealers and distributors of gasoline and lubricants, including service stations. These salesmen are divided into various classifications, dependent upon the functions which they perform as follows:

Type	Approximate Number	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to 'promotable dealers', which term includes lessee dealers and contract dealers interested in complete service station operation.

Type	Approximate Number	Function
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teaching involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

1128 6. All of respondent Atlantic's salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also for over-all gains) by those of their assigned dealers who have been in operation for a minimum of twelve months.

7. Respondent Atlantic sells its petroleum products to

more than 5,500 retail dealers, a substantial number of whom operate service stations (as distinguished from grocery stores, garages, and other like outlets), and to more than 200 distributors who, in turn, sell said products to more than 2,800 retail outlets, a substantial number of whom operate service stations. These retail dealers and distributors are divided into the following classifications:

Present Designation	Percentage of Total Regional Gasoline Sales By Each Customer Class	
	1951 Percent	1955 Percent
1. Company-operated Station	1	0.1
2. Lessee Dealer	32	39.1
3. Contract Dealer	23	18.1
4. Commercial Account	15	16.6
5. Wholesale Dealer	3	1.1
6. Distributor	24	24.0
7. Jobber	2	1.0
Total	100	100.0

8. The usual form of lease entered into by respondent Atlantic and its lessee dealers was for a term of one year, with automatic renewal from year to year unless written notice was given prior to the expiration of any term. Rental provided by any lease was usually a flat rental plus a cents-per-gallon charge, dependent upon location of station, financial condition of lessee and potential income. Such lease contained provisions relating to the use, main-
1129 tenance and general appearance of the station. In the event of breach of any of the terms, conditions or covenants of the lease by the lessee, it was provided that Atlantic may, at its option, terminate the lease.

9. On April 1, 1953, respondent Atlantic adopted a long-term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory

operation became eligible for a three-year lease with rental remaining the same during the entire period.

10. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Atlantic dealer. He cannot profitably and successfully operate his business without the added revenue from that portion of his business which also enables the dealer to give complete service to his customers. The service station is important to TBA manufacturers as an outlet for distributing to customers. It is to the interest of The Atlantic Refining Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

11. Prior to March 1951 (except as to three districts in which the Sales Commission Plan was tested beginning in 1950) respondent Atlantic purchased TBA for resale either directly or indirectly to Atlantic dealers. This purchase for resale arrangement was first begun in 1932 when respondent Atlantic began the sale and distribution of tires manufactured by the Lee Rubber & Tire Corporation. In 1937 a contract was executed with the Electric Storage Battery Company for the purpose and resale of Exide batteries in the Philadelphia region which was expanded to all marketing regions in 1945. Accessory items were added from time to time, including DuPont polishes, Thermoid fan belts, American Chain and Cable Company's weed chains and Fram oil filters, Distribution of such products to Atlantic dealers and distributors was made by respondent Atlantic either directly or through about forty-five warehouses located throughout its marketing area or through Atlantic supply dealers who distributed such products to other Atlantic dealers.

12. During the period that respondent Atlantic continued on the purchase and resale plan, Atlantic service

stations were identified as sellers of such sponsored TBA products as Lee tires and Exide batteries, and to some extent of other TBA handled.

1130 13. In 1951 after a test of the Sales Commission Plan of Goodyear and Firestone in three districts, Atlantic adopted the complete Sales Commission Plan of these companies in all six of its marketing regions. Atlantic assigned the entire marketing area by allocating the New York, New England and Philadelphia-New Jersey regions to Goodyear and the three remaining regions to Firestone.

14. The sales commission agreement entered into between The Atlantic Refining Company and The Goodyear Tire & Rubber Company, effective March 1, 1951, provided for the payment of commissions to Atlantic on the sales by Goodyear of its tires, batteries and accessories to Atlantic outlets, including service stations, distributors and consignees. The consideration of this agreement was the services to be rendered by the Atlantic sales organization in promoting the sale of Goodyear TBA products as outlined in said agreement. This agreement provided, among other things, for the payment of a commission of 10 percent on all sales of TBA to Atlantic dealers outlets, and 7½ percent on all sales of TBA to Atlantic franchise petroleum distributors. The Atlantic Refining Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company, effective as of March 1, 1951.

15. The services which were performed by The Atlantic Refining Company pursuant to its contract with Goodyear and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Atlantic personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the

TBA products of Goodyear or Firestone, and when dealers were selected would at times give advance notice of station openings or changes to Goodyear or Firestone and introduce the new dealers to the sales representative of Goodyear or Firestone, permitting such salesmen to complete any unfinished business with the outgoing dealer and enabling them to anticipate and to move promptly in handling the requirements of the new dealers.

(b) Atlantic gave assistance to dealers in arranging Goodyear or Firestone TBA supplies; took TBA orders from Atlantic dealers for either Goodyear or Firestone; and recommended the minimum Goodyear or Firestone inventory to be carried by the Atlantic dealer.

1131 (c) Atlantic frequently conducted dealer meetings at which the sale of TBA was discussed, in some instances with the active participation of Goodyear or Firestone.

(d) Atlantic operated training schools for dealers and prospective dealers which included suggestions for displaying and merchandising TBA. In the discussion of TBA, Goodyear or Firestone products were used exclusively during the training school course.

(e) Atlantic incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodyear or Firestone, and participated in promotions instituted by either Goodyear or Firestone.

(f) Atlantic also conducted tire clinics jointly with the personnel of Goodyear or Firestone which were important in familiarizing dealers in the care and repair of Goodyear or Firestone tires.

(g) Atlantic made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge, which served to augment the sale of Goodyear or Firestone TBA.

16. The sales of Goodyear TBA and commissions paid thereon under the Atlantic-Goodyear Sales Commission Plan were substantial as is shown by the following tabulation:

	Total Sales	Total Commissions
1951	$ 2,445,808	$ 239,250
1952	4,175,890	411,743
1953	5,067,565	500,437
1954	5,284,743	523,048
1955	5,700,121	557,599
1/56-6/56	3,133,905	296,988
Total	$25,808,032	$2,529,065

1132 17. The substantiality of the sales and commissions under the Atlantic-Firestone TBA Sales Commission Plan is shown by the following tabulation for the years 1951 to 1956:

	Total Sales	Total Commissions
1951	$ 3,243,350	$ 299,524
1952	4,349,616	404,948
1953	5,050,381	469,784
1954	4,867,689	452,083
1955	5,562,936	506,199
1/56-6/56	2,545,798	234,317
Total	$25,619,770	$2,366,855

18. Under date of March 1, 1951, Atlantic sent a form letter to all Atlantic dealers entitled "A Statement of Atlantic's TBA Policy". This letter announced the adoption of the TBA in the statement that "Your acceptance or rejection of the program is a matter of your own choice". Under date of August 28, 1952, respondent Atlantic addressed a similar form letter to all its dealers entitled, "A Restatement of Atlantic's TBA Policy". Under date of June 24, 1955, a similar letter entitled "No Forcing" was

sent to all Atlantic dealers, and since that time has been given to new Atlantic dealers.

19. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Atlantic and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Atlantic with Goodyear and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has deprived other suppliers of TBA of a substantial portion of the TBA business of the Atlantic petroleum outlets.

20. In support of the charges of the complaint, sixteen former Atlantic dealers were called to testify in this proceeding. With the exception of three of these dealers, 1133 they testified to various forms of coercion, adopted by Atlantic salesmen in an effort to induce them to purchase sponsored TBA. Some of these witnesses testified that they had received the so-called non-foreing letter, but that they were told by Atlantic salesmen that these letters were not controlling insofar as purchases of non-sponsored TBA was concerned. The testimony of the witnesses called to support the complaint pertaining to coercion is as follows:

(a) John Chambers, an Atlantic lessee from November 1952 to November 1954, purchased the bulk of his TBA from the Goodyear supplier. Atlantic salesmen were always reminding him, that when his lease expired or was cancelled Atlantic would only accept sponsored merchandise, and that outside merchandise would not be accepted at all. This witness also testified that it was pointed out to him on a number of occasions that the acceptance or rejection of the Goodyear plan was up to the dealers.

(b) James Matthews, an Atlantic lessee from 1947 to 1957, was told at a meeting that dealers were free to buy

wherever they saw fit, but whenever salesmen called they told him differently. At the time of the change-over from Lee to Goodyear, his Lee signs were removed from his station, and he was told to get rid of Lee tires and Auto-Lite batteries and handle Goodyear. Matthews testified that he discontinued the Lee tires because he did not want his lease cancelled because of non-sponsored TBA. He was requested by Atlantic salesmen in 1953 to sign a mutual cancellation, but he promised to follow the line and went 100 percent with Goodyear. He took ten Auto-Lite batteries in trade, to which objection was made. Atlantic also objected to his handling DuPont anti-freeze. Matthews left the station in May 1957 due to bad health. He recalled receiving non-forcing letter dated March 1, 1951.

(c) Aniello L. Iacono, an Atlantic lessee from 1952 to 1954, had difficulty with Parris, the authorized TBA supplier, and began buying non-sponsored tires and batteries. He was asked by Atlantic salesman to get rid of the tires and batteries and when he refused, the salesman made an inspection of his place and claimed he was using untrained personnel, improper uniform, improper display, and maintaining a dirty station. His lease was not renewed.

(d) Isidore Jack Pollock, an Atlantic lessee from 1940 to 1953, testified that Atlantic salesmen objected to his purchase of a number of Lee tires at a special price,
1134 however, the sales supervisor stated that this would be satisfactory because of the number of years that Pollock had been with Atlantic, and he continued to purchase Lee tires thereafter. He purchased some Bowers batteries, and salesmen told him he was going to have his lease cancelled. Pollock left the station to take over a tavern.

(e) Francis J. Ballaron, an Atlantic lessee from 1953 to 1957, carried Goodyear tires and batteries purchased through Miller, an authorized distributor. He kept non-

sponsored tires on oil rack where Atlantic would not see them. Ballaron testified that he left the station because of pressure every month for not buying TBA where he should.

(f) James M. Meyers, Jr., an Atlantic dealer from 1950 to 1951, testified that he discussed non-forcing letter with Atlantic salesmen who told him to try buying other merchandise and find out what the letter meant.

(g) Norris Stein, was an Atlantic lessee, beginning July 26, 1954. About six months later he discontinued exclusive purchase of Firestone and was told by Atlantic salesmen that he would not long be an Atlantic operator. He stated that he had received no-forcing letter of June 22, 1955. Terminated his lease for reasons not involving TBA.

(h) Thomas J. Sullivan, Jr., an Atlantic lessee from 1953 to 1954, was told that Atlantic would like him to obtain all his products from Firestone. He bought some Bowers batteries and also Exide and was told by Atlantic salesman not to sell the batteries as they were not as good as Firestone and that he didn't want them displayed in the station. He removed the batteries from display. Sullivan further testified that he returned the Exide batteries and discontinued the Bowers batteries as he felt that if he rubbed Atlantic the wrong way that he would be in their disfavor, and that his lease might not be renewed. He stated that the Atlantic representative made no direct threats, but always left the impression that if he did not operate the way Atlantic wanted him to, the chances were that his lease would not be renewed. The Atlantic salesman always questioned him when he bought non-sponsored items and gave him the impression that he was expected to buy Firestone products. The salesman would ask him from time to time why he did not buy Firestone, and he got to the point where he bought all items from Firestone

because he was afraid of no lease renewal. It was put 1135 to him that he would not be forced to buy Firestone products, but Atlantic more or less expected him to do so. Sullivan sent in cancellation of lease because of price controversy.

(i) John Galle, an Atlantic lessee from 1954 to 1956, discussed with Atlantic salesman an offer of batteries and tires at prices lower than Firestone, and salesman informed him that he had signed an agreement to purchase TBA from Firestone and should not go against this agreement, and in addition Atlantic would not like to see competitive brands to Firestone in the station. He did not purchase these items, but continued to purchase Firestone tires and batteries. He received the non-forcing letter on June 22, 1955, but did not discuss it with the Atlantic salesman.

(j) Harry N. Hawes, an Atlantic lessee beginning in 1945, had three stations. In the first station he bought only Firestone TBA. In the second station carried Lee tires, and Atlantic salesman wanted to know what they were doing there, but he continued to handle them. In the third station he sold only Lee tires and some accessories from Firestone without much comment from Atlantic. Lease was not renewed on the second station, and the third station lease was cancelled at his request. Atlantic salesman refused to let the new dealer take over the Lee tires and batteries on hand.

(k) Richard Brown, Atlantic lessee from October 1955 to April 1957, because of dissatisfaction with Firestone, began to purchase Goodrich tires. Atlantic salesman told him that he did not like the purchase of non-sponsored items, as it was affecting his salary.

(l) James Parag, an Atlantic lessee from August 1, 1955, to March 1956, became dissatisfied with Firestone and began purchasing Goodyear tires and accessories from different sources. When Atlantic salesman saw the mer-

chandise on his shelves he told him that he could not handle them, that if he did not handle what Atlantic handled he would lose his lease, and also because it also affected the salesman's commission.

(m) James R. Kelly, an Atlantic lessee from September 1952 to March 1953, began with Firestone TBA. Later sold whatever tires customers wanted. Atlantic salesman would not let him change window valances, he was told to leave them alone to keep the station uniform. Had some Goodyear and Goodrich tires which he kept in the back room. He felt he would get in trouble if he did not.

1136 21. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodyear, were called as witnesses in this proceeding. This testimony was taken in three areas—Philadelphia, Pennsylvania, Wilmington, Delaware, and Baltimore, Maryland. These parties testified generally that they had difficulty in selling TBA to Atlantic stations and testified specifically as to reasons given by certain Atlantic dealers for not buying or selling their TBA items. This testimony as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* v. *Loewe,* 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone.

22. In the course of its defense in this proceeding, The Atlantic Refining Company introduced the testimony of thirty-six Atlantic dealers and two ex-dealers. Substantially all of these witnesses testified to selling non-sponsored TBA in varying amounts without objection by Atlantic. Most of them testified to having received the

non-forcing letter issued by Atlantic similar to the letter of March 1, 1951, which this record shows was delivered to all its dealers and prospective dealers.

23. The hearing examiner recognized that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record as a whole shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carried some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer and demand. There was also in some instances evidence of confusion as to the definition of accessories among the dealers, as some included as accessories items generally considered as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodyear. Many of the dealers called maintained a high sales volume in gasoline gallonage and also oil, and Atlantic would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such dealers.

1137 24. It is clear from the record in this proceeding that the Atlantic dealers did not consider the non-forcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the changeover and prospective dealers threafter had the right to select or reject the TBA sales program offered by Atlantic. The prospective dealer making application for an Atlantic station would

not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salesmen insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

25. After giving consideration to the testimony of the various witnesses appearing in this proceeding, and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure were used on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items

Conclusions.

1. The complaint does not charge, nor does the evidence introduced in this proceeding prove, the existence of a conspiracy between Goodyear and Atlantic to restrict and restrain competition in the sale and distribution of TBA products.

2. There is no evidence that The Goodyear Tire & Rubber Company, or The Goodyear Tire & Rubber Company, Inc., engaged in, or participated in, any of acts or practices designed to force dealers and distributors of The Atlantic Refining Company to purchase Goodyear TBA products.

3. Neither the sales commission contract between Atlantic and Goodyear nor the contract between Atlantic and its dealers and distributors contain any clause or provision requiring such dealers or distributors to purchase only Goodyear TBA.

4. In making a determination as to whether leases made by Atlantic with its dealers are used to suppress competition, the extent to which they are in con-
1138 formity with reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive, and the renewal and cancellation provisions of the leases are in conformity with those which ordinarily appear in many leases of property.

5. The consideration for the payment of commission to Atlantic under the sales commission contract is based upon substantial services rendered by Atlantic in promoting the sales of Goodyear TBA to Atlantic dealers and distributors.

6. No inference or implication can be drawn from the contractual relationship between Atlantic and its dealers, that the degree of control by Atlantic over its dealers is sufficient to force its dealers to purchase only sponsored TBA.

7. The evidence in this proceeding shows that leases have, on occasion, been cancelled because of TBA practices involving the purchase or display of non-sponsored TBA products.

8. It is further concluded that for the purpose of inducing the purchase of sponsored TBA by Atlantic dealers, Atlantic representatives did, in fact, coerce, and attempt to coerce, and force Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and Atlantic accepted the benefits of such acts and practices. These acts of coercion consisted of demands that dealers discontinue the purchasing and displaying of non-sponsored TBA under threat of lease cancellation, non-renewal of lease or other corrective action. Such coercion need not be 100 percent effective in order to constitute an unfair

method of competition or unfair act or practice in violation of the Federal Trade Commission Act.

9. The charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion even though it be found that the contracts entered into by the parties are not illegal.

10. The Federal Trade Commission has jurisdiction of the subject matter of this proceedings and of the respondents named herein.

11. The acts and practices of The Atlantic Refining Company, as herein found, which involve coercion of its dealers are all to the prejudice of the public and have
1139 a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Order.

It Is Ordered that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale and distribution of tires, inner tubes, batteries and other automotive parts, accessories and supplies (hereinafter referred to as "TBA products"), in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Inducing, or attempting to induce, the purchase of TBA products of a particular supplier by Atlantic dealers by threatening to cancel or to not renew lease of dealer or to take other retaliatory action if said products are not purchased.
2. Threatening the cancellation or non-renewal of any

contract or lease if the dealer purchases or continues to purchase TBA products not sponsored, recommended or approved by the respondent, or
1140 the sale of which is not promoted by the respondent.

3. Threatening the cancellation or non-renewal of any contract or lease if the dealer displays or continues to display TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.

4. The performance of any acts of intimidation or coercion, either through statements, oral or written, made directly to dealers or by representatives of respondent, which are designed to, or have, the purpose or effect of intimidating or coercing respondent's dealers or other customers to purchase TBA products sold by any designated supplier sponsored, recommended or approved by respondent.

5. Compelling, or attempting to compel, dealers by any means or method to sell and distribute only products supplied by a designated supplier sponsored, recommended or approved by respondent.

6. Preventing, or attempting to prevent its dealers by means of threats, intimidation or coercion, from handling or displaying TBA or other similar prod-
1141 ucts which the respondent does not sponsor, recommend or approve, or the sale of which is not promoted by the respondent.

It Is Further Ordered that the complaint be, and it is hereby, dismissed as to respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

Earl J. Kolb,
Hearing Examiner.

October 23, 1959.

1449 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

Commissioners:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern

OPINION OF THE COMMISSION.

By Kintner, Chairman:

This proceeding is based upon an amended complaint charging The Goodyear Tire & Rubber Company and its wholly owned selling subsidiary, The Goodyear Tire & Rubber Company, Inc., (hereinafter collectively referred to as "Goodyear"), and The Atlantic Refining Company with acts, practices and agreements constituting a violation of Section 5 of the Federal Trade Commission Act. 15 U. S. C. § 45 (1958). Respondents answered admitting in part the allegations of the complaint but denying that Section 5 had been contravened.

The principal issue framed by the pleadings is the legality of a contract between these respondents calling for the payment by Goodyear of a sales commission to Atlantic in return for sales assistance in promoting automotive tires, batteries, and accessories (hereinafter referred to as "TBA" or "TBA products") of Goodyear to retail and wholesale petroleum outlets of Atlantic. In addition, Atlantic is charged with having entered into a substantially identical agreement with The Firestone Tire and Rubber Company, and Goodyear is charged with having entered into such agreements with a number of oil companies

1450 other than Atlantic, including Shell Oil Company.[1]

Although Atlantic and Goodyear are the only respondents in the instant case, Shell and Firestone are joined as respondents in a companion case, Docket 6487, and in another companion case, Docket 6485, The Texas Company and The B. F. Goodrich Company are paired as respondents.

The complaint charges, in substance, that the success enjoyed by Goodyear and Firestone in selling to Atlantic outlets has been purchased at the expense of competing TBA suppliers at the manufacturing and wholesale levels. Counsel supporting the complaint contend that the Atlantic-Goodyear and Atlantic-Firestone sales commission contracts are unlawful because, *in conjunction with Atlantic's economic power over its ostensibly independent wholesale and retail petroleum outlets,* these contracts operate to stifle the free choice of Atlantic's retail and wholesale dealers insofar as their TBA purchases are concerned. Among the unlawful competitive effects stemming from Atlantic's sales commission contracts charged by the complaint are these: (1) That suppliers of TBA competing with Goodyear and Firestone at the wholesale level have been foreclosed from access to Atlantic's retail outlets on the same competitive terms as have been made available to Goodyear and Firestone; (2) That competing manufacturers of tires and other TBA items have been foreclosed from access to Atlantic's wholesale distributors on the same competitive terms as have been made available to Goodyear and Firestone; (3) That competition between

1. Other oil companies having sales commission arrangements with Goodyear include Anderson-Prifchard Oil Corp., Ashland Oil and Refining Co., The Carter Oil Co., D-X Sunray Oil Co., Quaker State Refining Co., Richfield Oil Co. (accessories only), The Shamrock Oil and Gas Corp., Shell Oil Co., and Sinclair Refining Co. (accessories only).

Goodyear and Firestone in selling to wholesale and retail outlets of Atlantic has been destroyed; (4) That a substantial number of Atlantic's petroleum distributors and service station operators have been denied their right to act as independent businessmen in exercising freedom of choice as to TBA products which they may purchase and stock for resale; and (5) That the consuming public has been deprived of the benefits of free competition at the wholesale and retail levels insofar as TBA distribution through service station outlets under the sales commission plan is concerned.

1451 Respondents deny these allegations and assert that their sales commission contract is a legitimate and competitive method of distributing TBA which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

After hearings extending from the latter part of 1956 into November 1958, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to Goodyear but holding that Atlantic, by forcing a substantial number of its dealers to purchase sponsored TBA through threats of lease cancellation or other retaliatory action, has engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. He further held that the charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion on the part of Atlantic even though the sales commission contracts themselves are not illegal. An order was entered against Atlantic prohibiting future acts of coercion or intimidation designed to force Atlantic dealers to purchase TBA products sponsored by Atlantic.

Both sides have appealed from the initial decision. Counsel supporting the complaint contend that, while the

order entered by the hearing examiner is well supported by the evidence of record, it will not be an effective means of remedying the unlawful effects on competition caused by the sales commission plan. They seek an order restraining respondents from continuing with their present sales commission agreement and enjoining them from entering into similar agreements in the future. They also contend that Atlantic should be enjoined from purchasing TBA products from any manufacturer or other vendor of such products for resale to any wholesalers or retailers of Atlantic petroleum products, "... or for distribution in any other manner, directly or indirectly, to any of the aforesaid wholesalers or retailers of Atlantic petroleum products."

Reply briefs were filed by Atlantic and Goodyear to the appeal brief of counsel supporting the complaint, and by counsel supporting the complaint to the appeal brief of Atlantic. Oral argument was heard by the Commission on June 23, 1960, and the matter is now before the Commission for decision. We find that Atlantic has in fact coerced
1452 a substantial number of its dealers to purchase substantial amounts of sponsored TBA through threats of lease cancellation or other retaliatory action. We further find that Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. For reasons set forth hereinafter, we conclude that the exercise of this power by Atlantic through the use of the sales commission plan in favor of Goodyear constitutes an unfair method of competition and an unfair act or practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

Characteristics of the Sales Commission Plan.

Motorists may purchase replacement TBA items from several major classes of distributors. Manufacturers of these items, for example, Goodyear and Firestone, maintain either company-owned or franchised wholesale and retail distribution outlets in all of the marketing areas for TBA products considered in the course of the hearings in this case. Gasoline service stations constitute a second major class of outlets for TBA products. According to a 1947 market survey relied upon by Goodyear in implementing its sales commission program with The Shamrock Oil and Gas Corporation of Amarillo, Texas, motorists purchase approximately 37 percent of their replacement tires and tubes, 44 percent of their replacement batteries, and 20 percent of their automotive accessories from gasoline service stations.[2]

The complaint in this case alleges that "service stations by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products." The truth of this allegation is conceded by both Goodyear and Atlantic, and Goodyear also admits that it "* * * sells TBA products directly and through wholesalers to many customers, including service stations who purchase for resale to consumers for replacement use in their automobiles,"

1453 Service station operators may purchase their requirements of TBA from two principal sources: (1) Local wholesale TBA dealers, representing Firestone, or

2. Atlantic estimated in 1948 that approximately 21 percent of all replacement passenger tires are sold by service stations. Although Atlantic's estimate is considerably lower than Goodyear's, it is nevertheless clear that service stations account for a substantial percentage of total TBA replacement items sold to motorists.

Goodyear, or some other TBA manufacturer; or (2) Oil companies chiefly engaged in refining and distributing petroleum products which also purchase TBA products from manufacturers of these items, for resale along with the refinery products such oil companies distribute through their respective marketing organizations. TBA purchased by oil companies for resale may either be branded with a particular oil company's principal brand, for example, "Gulf," or with a private brand controlled by an oil company but used exclusively for TBA and not for refinery products, for example "Atlas," or with the supplying manufacturer's own brand, for example, "Lee" (tires) or "Exide" (batteries).

No particular term is used in the industry to describe the marketing technique whereby service station operators purchase TBA from independent local wholesalers, but the term "purchase-resale" is customarily used to characterize the marketing technique whereby oil companies purchase and resell TBA to their respective service station dealers. The sales commission method of distributing TBA is a hybrid deriving certain of its attributes from the first and other attributes from the second of these marketing techniques. Both the purchase-resale plan and the sales commission plan make use of the marketing facilities of marketing oil companies, but in different ways and with differing competitive effects. This may be illustrated by contrasting the purchase-resale method of distributing TBA used by Atlantic prior to 1951 with the sales commission method adopted by Atlantic in 1951 and used by the company since that time.

Atlantic's Purchase and Resale Plan. Sometime in 1932, Atlantic commenced to purchase "Lee" tires from the Lee Rubber and Tire Corporation and to resell such tires to its wholesale and retail petroleum distributors. Later, in 1937, Atlantic commenced to purchase "Exide" batteries from

the Electric Storage Battery Company (hereinafter referred to as "Exide") and resell such batteries, along with "Lee" tires, to Atlantic dealers. Thereafter, Atlantic began to purchase and resell the following automotive accessories:

1454

Products	Supplier
DuPont polishes and chemicals	E. I. du Pont de Nemours and Company Wilmington, Delaware
Thermoid fan belts and radiator hose	Thermoid Corporation Trenton, New Jersey
Fram oil filters	Fram Corporation Providence, Rhode Island
Schrader valves	A. Schrader Sons Brooklyn, New York
Weed chains	American Chain and Cable Company York, Pennsylvania

Among the duties undertaken by Atlantic in connection with this program were the purchasing, financing, shipping, warehousing and selling of TBA items to its various classes of retail and wholesale petroleum dealers. Commenting on his company's TBA program in 1950, Mr. S. J. Heideman, TBA Manager for Atlantic, commented that "We receive a good gross margin in keeping with the duties left to us * * *" Moreover, the overall satisfaction of Atlantic's dealers with the Lee-Exide arrangement was evidenced by the results of a TBA brand preference survey undertaken by Atlantic's Sales Research Section in 1948 and 1949. More than 1,000 service station dealers representing seven major oil companies, including Atlantic, located in 47 cities from Massachusetts to Florida were interviewed during the course of this survey. Of the Atlantic dealers interviewed, 67 percent preferred Lee tires and 79 percent preferred Exide batteries over competing brands of tires and bat-

teries. Eleven percent of Atlantic's dealers stated a preference for Goodyear tires, 4 percent for Firestone tires, and the remainder announced a preference for various other tire brands. No preference for any particular brands of accessory items was found to exist, although "A definitely unsatisfactory supplier-dealer relationship" on accessories was observed. Sixty-seven percent of the Atlantic dealers contacted indicated that they would rather obtain their TBA requirements from several sources rather than a single source, the principal reasons given therefor being price advantages and the variety of brands. Of the remaining 33 percent of Atlantic dealers, who preferred
1455 a single source of supply for TBA products, less than 4 percent gave as a reason the fact that the single supplier could provide them with a complete line of TBA—better service was given as a reason by 35 percent of the Atlantic dealers preferring a single source of supply, and price was given as a reason by an additional 32 percent.

Atlantic's Changeover to the Sales Commission Plan.

Contemporaneously with the TBA brand preference survey of service station dealers described above, Atlantic management was actively considering possible alternatives to their purchase-resale arrangement with Lee.[3] On January 19, 1948, exploratory letters were sent to five major tire manufacturers, The Goodyear Tire & Rubber Company, United States Rubber Company, The B. F. Goodrich Company, The Firestone Tire & Rubber Company, and General Tire & Rubber Company, inquiring "* * * what interest you may have in the sale of your tires and tubes through Atlantic outlets." The tire companies were informed of Atlantic's desire "* * * to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise."

To assist the tire companies in preparing their quotations, Atlantic estimated it would require approximately

300,000 passenger tires and 40,000 truck tires annually, with tube requirements approximating 70 percent of tire requirements. Proposals were requested not only as to principal brands of the tire companies ("Goodyear," "Firestone," etc.) but also as to secondary brands controlled by these companies ("Kelly-Springfield," "Fisk," "Federal," "Miller" and "Hood") and as to private brands as well. Mansfield Tire and Rubber Company and Lee were also contacted and requested to submit proposals on a private brand tire.

A detailed analysis of responses received from the various tire companies was presented to Mr. D. T. Colley, Vice President in Charge of Domestic Sales of Atlantic, in a memorandum of June 22, 1948, from the company's TBA Manager Mr. Heideman. This memorandum concluded with the statement:

> "This presentation and Atlantic's benefits with the several companies has been discussed at length with the members of the T.B.A. Products Committee. It was their unanimous opinion that Lee appeared to be the best choice for our company. To their approval, I would like to add my own, since it is my opinion
> 1456 after careful analysis that the Lee franchise is the best available at the present time for Atlantic."

In a subsequent memorandum of August 24, 1948, Mr. Heideman set forth several reasons why a proposed experiment then under consideration involving the sale of Firestone tires in one sales district of Atlantic should *not* be adopted:

> "It is apparent * * * that it would be unreasonable to expect too great an expansion of our present sales by the addition of a better known tire. As a matter of fact, it is our opinion that there is a very real possibility of a smaller market with Firestone due to their presently established company stores and distributors.

Volume purchase requirements would leave a great number of our dealers in a poor competitive position.

"* * * neither Firestone batteries no accessories have the national acceptance of the lines we presently handle * * * [T]here is certainly an indication that consumer acceptance of the Firestone brand in batteries is very limited."

Nevertheless, negotiations with the tire companies continued throughout the remainder of 1948, and in May 1949, Goodyear expressed its willingness to offer a TBA program to Atlantic. However, it was Firestone which was selected for Atlantic's first experiment with the sales commission plan. In a letter of January 10, 1950, to the Regional Manager of its New York Region, an Atlantic official explained:

"As you know, for the past year we have been studying T.B.A. as to its profitability to the Company. Our most recent findings indicate that it is questionable whether this venture is paying us to the degree that the effort expended warrants.

"In our approaches to the subject, we have had discussions with various major tire manufacturers who, as you know, are interested in handling the entire T.B.A. line, paying us a commission.

* * * * *

1457 "The proposition that seems most acceptable to us is one offered by Firestone. I will not attempt to go into detail covering this proposition, but when you come to Philadelphia for the Regional Manager's Meeting next week, Mr. Heidemann (sic) plans to sit down with you and go over the proposition with the thought in mind that you will elect to have your Region be the guinea-pig."

As it turned out, however, the Firestone plan was not introduced into the New York area. Instead, operations under the Firestone commission plan began in Atlantic's Erie, Pennsylvania, district on March 30, 1950, and in the

Wilmington, Delaware, district on April 4, 1950. Operations under a sales commission plan with Goodyear commenced on an experimental basis in Atlantic's Newark, New Jersey, sales district on June 12, 1950. After these programs were instituted, Atlantic's Sales Research Section conducted a secret poll in July and August, 1950 among 600 of the 750 Atlantic dealers and distributors in the three TBA test districts. The purpose of this poll was to determine the preference of Atlantic dealers as between the Lee-Exide program and the sales commission program. Of the 123 dealers responding the the poll, 45 percent preferred the new sales commission plan, 40 percent preferred the former Lee-Exide arrangement, and 15 percent showed no preference for either plan.

In December, 1950, Atlantic contacted seven manufacturers of batteries, including Exide and Gould-National Batteries, Inc., "* * * in an attempt to discover whether they had at present or contemplated in the future a battery program for direct dealer merchandising similar to the commission plan offered by certain tire companies." This suggests that Atlantic was considering limiting the sales commission contracts with Firestone and Goodyear to tires and tubes only, or perhaps to tires, tubes and automotive accessories only, with a separate sales commission arrangement for batteries with a supplier who could furnish a more widely-known battery than the "Firestone" and "Goodyear" brands. (Actually, Goodyear does not manufacture batteries, but instead purchases batteries marked with the "Goodyear" label from Electric Auto-Lite Company and Gould-National Batteries, Inc.)

Favorable replies were received from several of the battery manufacturers, with Exide showing particular interest in such a program. This company's manager for automotive replacement sales responded to the Atlantic inquiry on December 22, 1950:

1458 "Currently all Exide automotive replacement battery

sales to dealers are made through our Wholesale Distributors, thus affording prompt delivery through many warehouses.

"Your letter of December 15 inquires as to our plans for a commission arrangement to be offered national oil accounts on direct sales to dealers. We believe that our experience with this type of operation in past years should be of great value to you. Therefore, I suggest that immediately after the first of January you arrange for a meeting with interested members of your organization for a complete discussion of the many phases of this subject."

Negotiations between Atlantic and Exide were never consummated, however, and on February 14, 1951 a sales official of Exide reported to his superior as follows:

"Mr. S. J. Heidman (sic), T.B.A. manager of the Atlantic Refining Company called today to give me advance confidential information regarding a decision made this morning by top management of the Atlantic Refining Company regarding future handling of T.B.A. sales to Atlantic dealers.

"Effective as quickly as the changeover can be made, all T.B.A. sales to Atlantic dealers will be handled on a commission arrangement.

* * * * *

". . . Both Firestone and Goodyear had previously been approached regarding a plan whereby they would sell tires only to the Atlantic Refining Company accounts on a commission arrangement and had flatly refused such a plan insisting that either the complete program or none be sold by them."

TBA Manager Heideman submitted a memorandum entitled "T.B Conversion to Firestone & Goodyear Programs" to Vice President Colley of Atlantic on March 21, 1951, summarizing the changeover to the sales commission program:

1459 "On February 14th, the decision was made to swing over to the Commission Plan of T.B.A. marketing

effective March 1st. It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania, and the South) were to market the program of the Firestone Tire and Rubber Company. *The split was largely a matter of regional selection, decided upon by local advantages enjoyed by the respective rubber companies but influenced by staff determinations to have the two rubber companies competing in different localities for an equal share in the development of the Atlantic dealer's T.B.A. business.* Although this move was sudden, events leading up to it were developed in an orderly fashion over a period of years.

* * * * *

"It will be interesting to review some of the advantages that we enjoy under the Commission Plan. We are relieved of the purchasing function . . . We do not warehouse or deliver any merchandise; we are not involved in the handling of accounts, such as invoicing or credit and collection work; we do not issue catalogs or price books nor do we have to provide point-of-sale promotional helps. All of these responsibilities as well as sales training help are assumed by the rubber manufacturers. We assist in the selling job as well as in the dealer training and merchandising task, and for this effort receive a commission which varies according to class of account and type of merchandise, but has been averaging well over 9%.

". . . We are indeed fortunate in having these two companies competing against one another for a more secure or favorable position with Atlantic. We stand to gain from this arrangement whether we are in a buyer's or seller's market.

"We have tried to estimate how our 1950 actual experience on T.B.A. would have compared with the same volume of performance if it were accomplished under the Commission Plan. Our T.B.A. volume
1460 *excluding the three test districts* amounted to seven and a half million dollars. Our gross profit ranging

from 20 to 30% on the different products amounted to approximately $1,664,000. Estimated expenses chargeable to this operation total $2,071,000. This would indicate a loss of about $407,000."[3] (Emphasis added.)

Map I, below, shows the manner in which Atlantic's marketing area was finally divided between Goodyear and Firestone. Although the three regions assigned to Firestone constitute a much greater geographical area than do the regions assigned to Goodyear, the TBA sales volume by the two rubber companies to Atlantic dealers and distributors within their respective assigned areas has generally been very nearly the same in every year since 1951, as indicated by Table I, below. This table shows that during the first 6 years of Atlantic's operation under the sales commission plan, Firestone's sales volume to Atlantic accounts totalled $26,078,095 and exceeded the sales volume of Goodyear by only $105,000.

---

3. Whether Atlantic's purchase-resale program was as unprofitable in reality as appeared from the accounting procedures used by the oil company was questioned in a memorandum from the sales manager of Exide to the vice-president of this company in February, 1951:

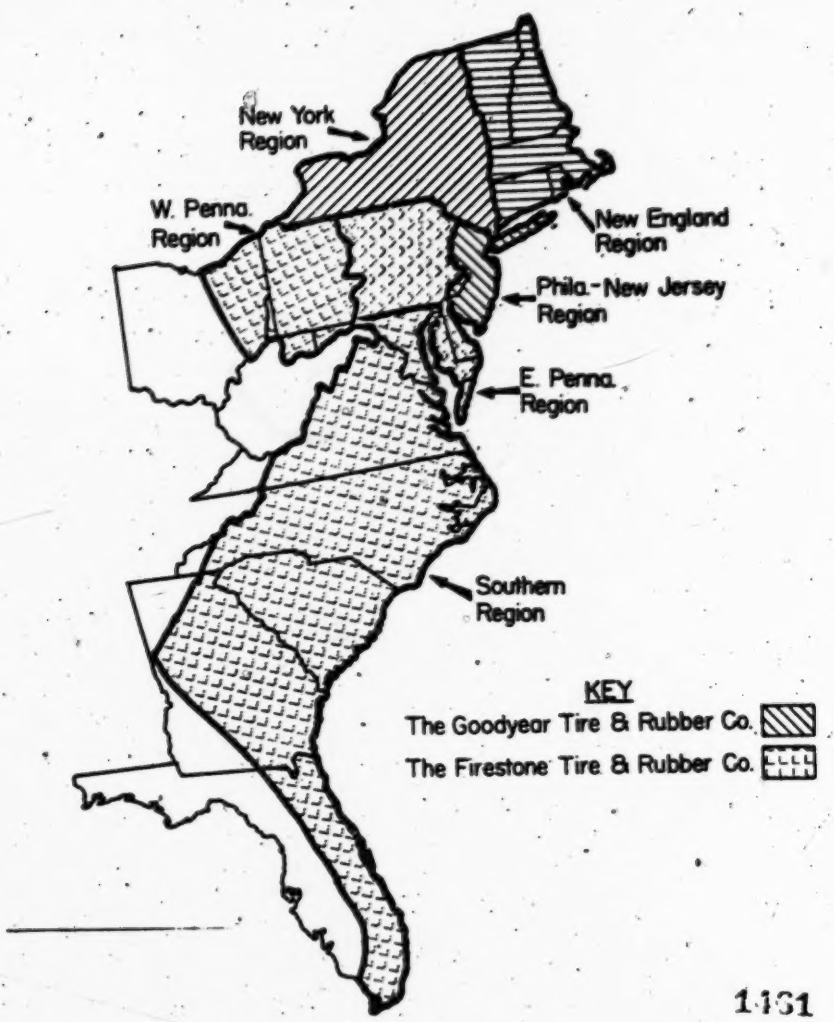
"The accounting procedure set up by the Atlantic Refining Company was such that expenses charged against T.B.A. sales appeared to make this operation unprofitable. As a result of this and because the top management of the Atlantic Refining Company believed that their own men should participate only in the sales of petroleum products, it was decided early in 1950 to try out the Firestone and Goodyear sales commission plan . . ."

MAP 1

THE ATLANTIC REFINING CO.

DIVISION OF MARKETING REGIONS BY TBA SALES COMMISSION PLANS

EFFECTIVE MARCH 1, 1951



1131

1462 **Table I**

TBA Sales Volume by Firestone and Goodyear to Atlantic Accounts, and Commissions Paid Thereon, June, 1950 Through June, 1956

	Goodyear Sales Volume	Firestone Sales Volume	Goodyear Commissions	Firestone Commissions
6-50/12-50	$ 165,578	$ 458,325[1]	$ 15,447	$ 43,894[1]
1951	2,445,808	3,243,350	239,250	299,524
1952	4,175,890	4,349,616	411,743	404,948
1953	5,067,565	5,050,381	500,437	469,784
1954	5,284,743	4,867,689	523,048	452,083
1955	5,700,121	5,562,936	557,599	506,199
1-56/6-56	3,133,905	2,545,798	296,988	234,317
Total	$25,973,610	$26,078,095	$2,544,512	$2,410,749

In 1952, the first full year in which the sales commission plan was operative in all Atlantic sales districts, combined sales of Goodyear and Firestone TBA to Atlantic dealers and distributors amounted to $8,525,506, and the two rubber companies paid a total of $816,691 in sales commissions to Atlantic. The success with which Atlantic transferred its own former TBA sales volume under the purchase-resale plan to Goodyear and Firestone under the sales commission plan may be gauged from the fact that Atlantic's TBA sales volume in 1949, the last full year of operation under the purchase-resale plan, amounted to $6,697,471. In 1950 Atlantic continued the purchase-resale

1. Includes period from April, 1950 through December, 1950.

Note: In 1950, the sales commission plan was used in only 3 of Atlantic's 34 sales districts. The sales commission plan was not introduced in all 34 Atlantic sales districts until March 1, 1951.

plan in all except 3 of its 29 sales districts, and in that year the oil company's TBA sales volume was $7,581,760.

1463 The sales gains accruing to Goodyear and Firestone as a consequence of their sales commission contracts with Atlantic were accompanied by a corresponding loss in sales by Lee and Exide even though both companies made vigorous efforts to retain the business of Atlantic dealers and distributors after Atlantic switched to the sales commission plan. Lee opened new factory branches in Hartford, Connecticut; Providence, Rhode Island; and Syracuse, New York for this specific purpose. All branches of Exide were instructed to make it "their number one job" to solicit the business of Atlantic dealers and distributors. Nevertheless, within nine months after Atlantic began sponsoring Goodyear TBA on March 1, 1951, Lee concluded that "approximately 25% of the Atlantic Refining Company business will be salvaged this year." Seven months after the changeover, Exide found that it had retained all or part of the business of 22.5 percent of the better Atlantic accounts and all or part of the business of 24.7 percent of the total number of Atlantic accounts. Thus, some 75 percent of Lee-Exide sales to Atlantic distributors and dealers were lost within a nine-month period in 1951, even though a market survey conducted by the Atlantic Sales Research Section in 1949 had shown that 67 percent of Atlantic dealers and distributors preferred Lee tires and 79 percent preferred Exide batteries.

Lee's Vice President in Charge of Sales, Mr. W. F. Minderscheid, complained bitterly to Atlantic about the wholesale replacement of Lee advertising signs at Atlantic stations with Goodyear advertising signs shortly after the sales commission plan was undertaken on a test basis by Atlantic in 1950:

> "I was under the impression, also, where dealers wanted to continue to handle Lee Tires through us it

would be all right for them to do so and we could still have our identification on those locations, however, I find that even though the dealers continue to handle our tires their stations are identified with competitive signs. For instance, in the Newark District our identification is being taken down and Goodyear will be erected even though the dealer still wants to handle Lee Tires."

TBA sales by Firestone and Goodyear to Atlantic outlets continued to grow, and by 1955, the last full year for which data are available, combined sales of the two rubber companies under their sales commission contracts with Atlantic amounted to $11,263,057. In order fully to understand the devastating competitive effects on manufacturers and wholesalers of TBA products competing with Firestone and Goodyear which have resulted from the latter two companies' sales commission contracts with Atlantic, however, some further understanding of the functioning of the sales commission system is necessary.

1464

Mechanics of the Sales Commission System.

Goodyear and Firestone maintain either company-owned or franchised wholesale outlets in most of the principal cities and in many smaller communities throughout the entire marketing area of Atlantic Refining Company. Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. As has been shown, this marketing territory is subdivided into six sales regions, three of which have been assigned to Goodyear and three to Firestone (See Map I, supra).

In cities and towns where Atlantic retail stations are located, such stations are assigned to a local Goodyear

distributor (if in Atlantic's New England, New York or Philadelphia-New Jersey sales regions) or to a local Firestone distributor (if in Atlantic's Eastern Pennsylvania, Western Pennsylvania or Southern sales regions). The assigned TBA distributor is intended to be the supply point from which the Atlantic dealer will purchase a substantial percentage of his requirements of TBA.

The vast majority of Atlantic's retail service stations are operated by independent businessmen who either own or lease their stations. These dealers not only buy and sell Atlantic petroleum products, but also offer TBA at their stations, and in addition perform various automotive services and repairs. Atlantic maintains sales offices throughout its marketing area and employs salesmen whose duty it is to solicit orders for Atlantic petroleum products from Atlantic dealers, and to perform other functions for the oil company in its dealings with its service station operators.

When orders for petroleum products are obtained, the salesmen cause such products to be delivered to the Atlantic dealers, who pay for them at time of delivery or at other specified times. The same Atlantic salesmen 1465 *also* act as sales agents for Goodyear or Firestone, soliciting TBA orders from Atlantic dealers, frequently accompanied on their rounds by salesmen employed by either the local Goodyear or Firestone distributors. If TBA orders are obtained, such orders are turned into the appropriate TBA suppliers—the local distributors of either Goodyear or Firestone—who deliver the merchandise and are paid by the Atlantic dealers. The TBA suppliers, in turn, make reports of such sales to the District Sales Offices of their respective companies, either Goodyear or Firestone.

Under the terms of the sales contracts between Goodyear and Atlantic and Firestone and Atlantic, Atlantic is

entitled to a commission amounting to 10 percent of the net sales value of all sponsored (i.e., Goodyear or Firestone) merchandise sold by Atlantic retail dealers, as consideration for the assistance given by the Atlantic sales organization in obtaining TBA orders from Atlantic dealers.[4] These payments are made by Goodyear and Firestone directly to Atlantic each month. Atlantic incurs no expense in connection with the purchasing, financing or warehousing of the TBA so supplied and has received sales commissions from Goodyear and Firestone over the years equivalent to more than 9 percent of the net sales value of all TBA products sold by these rubber companies to Atlantic dealers and distributors.[5]

1466 Tires and tubes comprise the most important of the three components of the TBA line, accounting for about 70 percent of total TBA sales to Atlantic outlets, with batteries and accessories representing about 15 percent each. Goodyear produces its own tires and tubes, and the more important categories of automotive acces-

4. Atlantic has some 236 wholesale distributors, and is entitled to a commission of 7½ percent on purchases of sponsored TBA by these jobbers, compared with 10 percent on purchases by Atlantic's retail dealers.

5. Goodyear's reasons for entering into its sales commission agreement with Atlantic were set forth in a "Confidential" memorandum of February, 1951, written by Mr. S. A. Gaylord, Goodyear's Manager of Sales to oil company outlets:

> ". . . As you know we have recognized the desirability of Atlantic distribution for many years and the need for more oil company distribution in the new territory now assigned to us, which represents more than 50% of the Atlantic T. B. A. sales and potential.
>
> "Early last year when supplies were plentiful and signs for the future pointed to over-production and increased competition, we mutually agreed on the marketing experiment with Atlantic in our respective Newark District territories with a commitment for

sories, including tire retread and repair materials, fan belts and radiator hose. Batteries marked with the "Goodyear" label are purchased for resale from Electric Auto-Lite Company and Gould-National Batteries, Inc., while the following accessories are purchased by Goodyear for resale under the original manufacturer's own brands:

	Accessory	Brand	Manufacturer
	Spark Plugs	AC	AC Spark Plug Div., General Motors Corp.
	Oil Filters	AC	Same as above
1467	Oil Filters	Purolator	Purolator Products, Inc.
	Cleaners, Polishes and Waxes	du Pont	E. I. du Pont de Nemours & Co., Inc.
	Cleaners, Polishes	Johnson	S. C. Johnson & Son, Inc.
	Cleaners, Polishes and Waxes	Simoniz	Simoniz Company
	Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss, Inc.
	Radiator Chemicals	du Pont	E. I. du Pont de Nemours & Co., Inc.
	Radiator Chemicals	Warner	Warner-Patterson Co.
	Auto Lamps and Bulbs	Westinghouse	Lamp Division Westinghouse Electric Corp.
	Wiper Blades	Anco	The Anderson Company

The sales commission method of distributing TBA products thus affects competitive relationships among producers and distributors of various products, all linked by but one common factor: the motor vehicle. As a consequence, in

---

expanded territory if the Goodyear Commission Plan proved successful—which it did.

"It is true that even at a late date we could have withdrawn from our commitment to Atlantic, however, we would have been out of the account for keeps and our competition [Firestone], which placed no restrictions on moving in, would have the account 100 percent.

". . . The decision of our Management was made after consideration of all factors and particularly because it gave Goodyear the opportunity of entering into a long-term relationship with Atlantic providing our performance is satisfactory."

order to show the network of unlawful trade restraints and inhibitions permeating the sales commission system of distributing TBA, it is necessary first to describe the marketing structure of Atlantic and to define the manner in which this company exercises control over its wholesale and retail petroleum distributors, and next to describe how the sales commission plan enables Goodyear to integrate such market control into its own system of distribution.

Distribution System of Atlantic Refining Company.

Atlantic is a major integrated producer, refiner, and distributor of petroleum products. The company was organized in 1860, and was acquired by Standard Oil Company in 1874. Since the dissolution of the Standard Oil Trust in 1911, Atlantic has been operated as a sepa-
1468 rate corporate entity. In 1948, Mr. S. J. Heideman of Atlantic stated that "Atlantic's percentage of the *national* gasoline market is 2½%. . . ."; and since the oil company markets its gasoline along the Atlantic Coast states and in parts of Ohio and West Virginia only, it may be inferred that Atlantic's share of gasoline sales in its own marketing area is substantially in excess of 2½ percent. Sales and operating revenue of this oil company totalled more than one-half billion dollars in 1954.

Atlantic markets its refinery products to three major classes of customers: (1) wholesale distributors; (2) retailers (chiefly service stations but including also garages, grocery stores, restaurants with outside gasoline pumps, etc.); and (3) commercial accounts. This opinion is not concerned with the last-named group, which accounted for 16.6 percent of total gasoline sales by Atlantic in 1954, as these accounts are customers who purchase for their own consumption and not for resale.

Atlantic sold gasoline and other petroleum products directly to some 5,537 retail customers in 1956, and these direct retail dealers accounted for 57.2 percent of total gasoline sales by Atlantic in 1955. Atlantic's direct dealers are of two classes: (1) Lessee dealers, who accounted for 39.1 percent of total Atlantic gasoline sales in 1955; and (2) Contract dealers, who accounted for 18.1 percent of gasoline sales by Atlantic in the same year. Shown below in Table II are the numbers of lessee and contract dealers purchasing petroleum products directly from Atlantic in each of its marketing regions in June, 1956:

Table II.

Numbers of Direct Lessee and Contract Dealers of Atlantic Refining Company in June 1956, By Marketing Regions.

Region	Lessee Dealers	Contract Dealers
New England	495	220
New York	321	263
Philadelphia-New Jersey	481	640
1469 Eastern Pennslyvania	480	1075
Western Pennsylvania	317	725
Southern	399	121
Grand Total	2493	3044

Lessee Dealers. The principal characteristic distinguishing lessee dealers from contract dealers is that the former do not own their own business properties, but instead lease them from Atlantic. Lease terms range from three months to three years; most lessee-dealers operate under one-year leases, however. The leasehold instrument does not require the lessee to handle Atlantic products, but does provide that the premises shall be used for the operation of a "first-class automotive service station retailing petroleum

products and TBA merchandise normally handled at competitive service station outlets." Rental payments by lessees are based on specified percentages of gross monthly sales of all types of merchandise, including TBA. These percentages are as follows:

0 percent	First	$ 500 monthly
6 percent	Next	$2000 monthly
5 percent	Next	$2000 monthly
4 percent	Next	$2000 monthly
3 percent	Over	$6500 monthly

At the time he executes his lease with Atlantic, each lessee-dealer is required to sign a separate document known as an "Eleven Point Lease Letter". This letter defines standards of operation for Atlantic lessee-dealers. Illustrative of these is the standard for "Housekeeping":

"1. Housekeeping—Clean, sanitary premises, inside and out."

Other standards set forth in the "Eleven Point Lease Letter" are "Use and Upkeep", "Display", "Illumination", "Personnel", "Hours of Operation" ("Uniform daily operating schedule based on buying habits of potential trade in the area"), "Services", "Adequate Inventory", "Sales Promotion", "Prices", and "Accounting".

These standards of operation are implemented by 1470 Atlantic not only through the surveillance of its sales force, but also by the employment of "Phantom Customer Inspectors".[6]

6. Witness John Chambers, former Atlantic lessee-dealer who testified in support of the complaint in this proceeding, received the following letter from his former Atlantic District Sales Manager on October 14, 1954:

"Dear John:

"Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

Since its adoption on April 1, 1953, the "Eleven Point Lease Letter" has been used by Atlantic to interpret and enforce Paragraph Three of dealer leases which, as noted, provides that "* * * the sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station * * *" thus the "Lease Letter" is an integral part of the lease itself. This is shown by the regularity with which Atlantic warns lessee-dealers in writing that their leases will be terminated if stated defaults with respect to the provisions of the "Eleven Point Lease Letter" are not remedied within fifteen days.[7]

1471 Prior to about August 1953, Atlantic's written agreements with its lessee-dealers also included an "Atlantic Franchise Agreement", providing for their purchase of motor fuels and automotive lubricants from their oil company lessor under stated terms and conditions. In recent years, only automotive lubricants have been covered by written purchase agreements between Atlantic and its lessees. Nevertheless, the facts of record clearly establish

---

"This is the kind of job which makes us all very happy and certainly is an important factor in running a profitable service station."

Witness Chambers' lease was subsequently terminated because he refused to go along with Atlantic's pricing policy and because he did not purchase sufficient quantities of sponsored TBA.

7. Here, for example, is a letter dated December 8, 1953 to dealer Michael J. Clifford, Baltimore, Maryland:

"1. From observations, we note that your regular hours of operation are such that we believe your market area is not being properly supplied.

"2. We also note from observations that inventories maintained in your station are not adequate to serve normal customer needs without delay."

(This dealer's lease was terminated January 4, 1954, for noncompliance with the above defaults.)

that Atlantic lessees purchase and resell Atlantic motor fuels exclusively.

Notwithstanding the economic power possessed by an oil company as a consequence of being both landlord and supplier to its lessee-dealer customers, the powers and responsibilities of an oil company's lessee-dealer" * * * satisf[y] all the requirements of an independent enterprise." *United States* v. *Richfield Oil Corp.*, 99 F. Supp. 280, 288 (1951) *aff'd*, 337 U. S. 922 (1952). Judge Yankwich's comments in the *Richfield* case as to the relationship of an oil company to its lessee-dealers apply with equal force to the instant case:

> "Implicit in the contract is the lessee's assumption of obligation and responsibility for his own acts upon the premises and those of his employees in their relation to the public, who come in contact with them during the time of his dominion. The lessee is not the employee of Richfield. Richfield pays him no wages or other remuneration. He must carry his own workmen's compensation. He is not carried on their books as an employee for the purpose of social security taxes or any of the withholding taxes, state or federal, incidental to the employer-employee relationship. Richfield is not required to withhold any moneys from him for income tax purposes. Neither are they required to perform any of the duties just mentioned as to any of the employees who may assist the lessee in the conduct of the station or of any auxiliary repair work upon the premises. The lessee is solely responsible for his own conduct and that of his employees which may cause damage to the person or property of others." [99 F. Supp. at 288]

Contract Dealers. There were 3,044 contract dealers of Atlantic as of June 1956, and of this number about 50 percent operated service stations (as distinguished from grocery stores, garages, and similar outlets with gasoline

pumps on the premises). Non-service station outlets
1472 generally do not purchase and resell TBA products; all service station outlets however, are regarded as potential purchasers of TBA under Atlantic's agreements with Goodyear and Firestone.

Although contract dealers either own their own service station properties, or lease them from parties other than Atlantic, these dealers are subject to the control of Atlantic as a consequence of various contractual agreements between such dealers and Atlantic. Chief among these is an agreement having the following principal provisions:

> "1. Equipment Loan. Atlantic, reserving the right of addition, change, substitution, and maintenance, lends to Buyer [the contract dealer] for the purpose of storage and sale of motor fuel purchased solely from Atlantic and for no other purpose, equipment that has been installed or which Atlantic may install, which shall remain personalty and the property of Atlantic, and which Buyer shall not remove, but shall repair and maintain as follows." [Lists equipment.]
>
> "2. Sale and Delivery. Provides that the contract dealer shall buy a specified number of gallons of motor fuel annually from Atlantic; that deliveries will not exceed one-eighth of such gallonage monthly; that the contract dealer 'shall order and accept not less than one-twentieth of such annual gallonage in any calendar month'; and that the times, manner and quantities of delivery shall be in accordance with Atlantic's current practice."

The agreement further provides that all petroleum products delivered thereunder shall be paid for at prices established by Atlantic. The term of such agreement is generally for one year, and may be terminated by either party at the end of the original or any subsequent term by giving 60 days notice. Upon termination, Atlantic is entitled to repossess any equipment loaned to the dealer, with or with-

out legal process. If the agreement is cancelled by Atlantic because of breach by the dealer, the dealer must pay a fixed sum to Atlantic as reimbursement for cost of installation and removal of the equipment or, *at its option*, Atlantic may leave the equipment in place and require the dealer to pay a fixed sum for the value of the equipment and improvements. The equipment most frequently loaned (without charge) by Atlantic to contract dealers includes gasoline pumps, underground storage tanks, compressors, air towers, lifts, signs, outside lighting and poster frames.

1473 Both lessee-dealers and contract dealers have agreements with Atlantic relating to annual purchases of specified quantities of automotive lubricants, and to the terms upon which credit may be extended by these dealers to the approximately 160,000 holders of Atlantic credit cards.

Wholesale Distributors. This class of customers purchases refinery products from Atlantic for resale under the oil company's brand names. Wholesale distributors maintain bulk storage tanks capable of receiving truck deliveries of gasoline from Atlantic, and maintain their own delivery equipment for transporting such gasoline from their bulk storage tanks to retail customers, including service stations. There were 236 wholesale distributors of Atlantic products in 1956, who resold to 2,897 service stations, as shown by Table III:

Table III.

Numbers of Wholesale Distributors of Atlantic Refining Company, and Service Stations Supplied By Them In June 1956, By Marketing Regions.

Region	Distributors	Service Stations
New England	8	151
New York	39	238
Philadelphia-New Jersey	0	0
Eastern Pennsylvania	77	925
Western Pennsylvania	26	410
Southern	77	1,173
Grand Total	236	2,897

Atlantic had wholesale distributors in each of its six principal marketing regions in 1956, with the exception of the Philadelphia-New Jersey region. (There were 1,121 Atlantic service station outlets in the Philadelphia-New Jersey region in 1956, but all were supplied directly by the oil company.) These distributors accounted for 24 percent of total gasoline sales by Atlantic in each of the years 1951 and 1954. Eighty-seven percent of the 1474 2,897 service stations supplied by wholesale distributors of Atlantic in 1956 were in the Eastern Pennsylvania, Western Pennsylvania, and Southern regions; the remaining 13 percent were in the New England and New York regions.

Wholesale distributors are parties to the same type of sales contracts for automotive fuels and lubricants with Atlantic as are Atlantic's contract service station dealers. Moreover, Atlantic has the power to change the source of supply for service station dealers from Atlantic itself to wholesale distributors. During the period from April

1950 to June 30, 1956, Atlantic reassigned 53 contract service station dealers in the Wilmington, Delaware and Baltimore, Maryland sales districts from itself to particular wholesale distributors in those districts. Atlantic's use of the power to expand a wholesale distributor's retail market by adding to the number of service stations supplied by such distributor in order to induce such distributor to purchase and resell sponsored TBA to his service station customers was described by witness Lingenfelser, a salesman for Reading Batteries, Inc. (now the Reading Battery Division of the Electric Auto-Lite Company), who testified in support of the complaint.

The Issue of Coercion.

The complaint in this case charges that Atlantic has caused its various classes of dealers to purchase substantial quantities of Goodyear or Firestone TBA through the use of threats to terminate either their tenure as lessees (if lessee-dealers) or their petroleum supply and equipment loan contracts (if contract dealers). It is conceded by counsel supporting the complaint that when Atlantic adopted the sales commission system on March 1, 1951, all its dealers were informed by letter entitled "A Statement of Atlantic's TBA Policy" as follows:

> "Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. *However, your acceptance or rejection of the program is a matter of your own choice.*" (Emphasis added.)

Notwithstanding this initial statement of policy by Atlantic, repeated periodically thereafter in form letters sent to its dealers, counsel supporting the complaint con-

tend that in practice this officially-proclaimed policy 1475 has been ignored by Atlantic and that in fact, Atlantic dealers have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA. This contention is supported by the testimony of former Atlantic dealers who appeared as witnesses and further reinforced by the testimony of witnesses representing many suppliers of TBA engaged in competition with Firestone and Goodyear, who testified that they encountered difficulty in selling TBA to Atlantic dealers because the latter group felt that they were required to purchase sponsored TBA and feared reprisal by Atlantic if they purchased non-sponsored items. Testimony of the competing TBA suppliers as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor* v. *Loewe*, 235 U. S. 522 (1915). This testimony was received not as proof of the facts recited, but for the purpose of showing the state of mind of the Atlantic dealers. Such testimony is competent to show that Atlantic dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone TBA.

Among the former Atlantic dealers who testified in support of the complaint, several recounted specific instances in which either express or implied threats of lease cancellation were made. Other ex-Atlantic dealers testified to incidents occurring during their tenure as Atlantic lessees which made it apparent to them that they were expected to handle either Goodyear or Firestone TBA, and that if they failed to purchase sufficient quantities of such TBA, that their relationship with Shell might be terminated.

Typical of the former Atlantic dealers testifying in support of the complaint was witness John Chambers, who

operated an Atlantic station in the Philadelphia area from 1945 until November 28, 1954. He gave this account of the events occurring when Atlantic changed over from the Lee-Exide program to the sales commission plan in 1951:

> Q. Mr. Chambers, referring * * * to the dealer meeting when the switch-over to the Goodyear TBA line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?
>
> A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

1476 Thereafter, witness Chambers commenced purchasing Goodyear TBA from the local Goodyear distributor to whom he had been assigned, a Mr. Parris. From time to time, however, he also purchased TBA products from other suppliers in his area. Among these were the following:

Chester Auto Parts Chester, Pennsylvania	Waxes and other accessories
V. J. Auto Parts Sharon Hill, Pennsylvania	Accesories, including "Barsleak", a radiator sealer
C. A. Powers Chester, Pennsylvania (A Goodyear tire distributor)	Recapped tires, and also some new Goodyear tires and tubes

Witness Chambers testified that he was criticized by Atlantic salesmen for purchasing accessories from wholesalers other than Mr. Parris, his assigned supplier:

> Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris?
>
> A. Yes.
>
> Q. Would you please state some instances?
>
> A. * * * the one that is greatest in my memory right

now was the Barsleak, * * * Joe Connelly was Atlantic [salesman] at that time, and Joe would pick it up and say, "What are you doing with this," and he would set it back down.

* * * * *

Q. Were any comments other than the one referred to made by Atlantic representatives concerning the purchases of TBA from local jobbers other than Ed Parris?

* * * * *

A. Why yes, there was great criticism, shall I say, in reference to outside [i.e., non-sponsored] merchandise.

Q. Who made these criticisms?

* * * * *

1477 The Witness: Why salesmen who represented the company.

Q. Which company?

A. Atlantic.

* * * * *

Q. Where did these conversations take place between the Atlantic salesmen and you?

A. Many times over a cup of coffee and sometimes out in the driveway.

Q. Would it generally be a private conversation?

A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature?

A. It was never done openly.

Subsequently, in November 1954, witness Chambers was notified that his lease would not be extended beyond December 31, 1954. He discussed this with Mr. Parris, his TBA supplier, who was also a former employer of witness Chambers:

Q. * * * what was the substance of your conversation with Mr. Parris?

A. I asked, "what in the world happened, what could I do." He said, "Jack, you have been turned in

by three [Atlantic] * * * salesmen for buying outside merchandise." I said "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise.[8]

1478 The above testimony must be assessed in the light of that given by Mr. Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester, Pennsylvania. His company sells automotive parts, batteries and accessories (but no tires) at wholesale. Witness Wetzel gave this account of his conversation with witness Chambers:

Q. Do you recall any other conversations with other Atlantic dealers or Sinclair dealers, along similar lines?

A. Yes. John Chambers.

Q. Please state the time as nearly as you can, the place, and what was stated.

A. I would approximate the time as about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.

* * * * *

Q. Now will you please state what the conversation was?

A. Jack said to me: "Glen, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Further testimony as to the state of mind of witness Chambers in 1953 and 1954 was given by witness Joseph

8. Atlantic regarded witness Chambers as an excellent service station operator, as is shown by the letter to him of October 14, 1954, quoted supra, note 6. This letter of commendation was received by witness Chambers just one month before he received notification that his lease would be terminated.

Marabella, a partner in the firm of V. J. Auto Parts Company, Folcroft, Pennsylvania. Mr. Marabella testified as follows:

> Q. And did you solicit Bars Leak (sic) business from Mr. Chambers when he was an Atlantic lessee-dealer?
>
> A. Yes sir.
>
> 1479 * * * * *
>
> Q. And what was your experience with respect to the sale of Bars Leak to Mr. Chambers?
>
> A. My, well, business relations and experience with Mr. Chambers had been the same as with other gentlemen I have mentioned, enjoying good business relations, good sales on Bars Leak, up until the time he was told to remove it from his shelf, * * *

Later, witness Marabella tried to sell Mansfield tires and tubes to witness Chambers and to another Atlantic dealer named Booz:

> A. Well, in the latter part of 1954 with Mr. Booz, Elmer Booz, Wycombe Avenue and McDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz' tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes." And that was the extent of the conversation.
>
> Q. Do you recall any other conversations with Atlantic dealers along similar lines?
>
> A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same answer, that he couldn't put anything but Goodyear in there.

Documentary evidence taken from the files of Atlantic reveals the vigor with which Atlantic carried out its campaign to replace Lee tires and Exide batteries with Good-

year and Firestone TBA products. The minutes of
1480 a meeting of Atlantic's Regional TBA coordinators held on October 21, 1951, reveal that as of that date, "New England reported that approximately 98% of their accounts have been signed on a Goodyear program and that they are getting about 75% of the tire business they formerly enjoyed from these accounts. New York reported that they had about 96% of their accounts signed on a Goodyear program and that they were getting about 65% of their former tire business. * * *" By December 24, 1951, an Atlantic report showed that virtually all Atlantic dealers in Goodyear's assigned territory who were potential purchasers of TBA had signed contracts agreeing to handle Goodyear products.

Accompanying the campaign to sign Atlantic dealers to Goodyear contracts was a drive to install Goodyear signs and advertising materials in Atlantic stations throughout Goodyear's assigned marketing areas. This is an excerpt from a letter of July 30, 1951, from Atlantic's TBA sales manager, Mr. Heideman, to another Atlantic official:

> "I asked Mr. O'Neill of the Goodyear Tire & Rubber Company to supply me with a list of the Atlantic dealers in the Philadelphia Region who refused to be identified on the Goodyear Program. Attached is a list of 46 dealers who, for reasons indicated, have refused this service.
>
> "You will probably wish to review the respective portions of this list with the District Managers concerned. Undoubtedly, facilities for identification are not the best at some of these locations, but with the others it is apparent that the proprietors have not been sold on the Goodyear program. In such instances, I believe that additional sales effort is called for. In any event, would you be kind enough to advise me at your convenience what action you have taken with regard to this list."

Mr. Heideman followed this letter up himself on August 21, 1951, with a letter to Mr. S. A. Gaylord, Manager, Petroleum Sales Department, of Goodyear:

> "I wonder if you can furnish me promptly with a report on the progress of the subject program. I should like to have this information broken down by our regional territories. As I understand it, the signs are 1481 being erected by Goodyear crews, but the decals are being erected by outside agencies. Furthermore, at the present time when we locate an Atlantic dealer who is without any Goodyear identification or without one or the other signs or decals, we do not know whether an unsuccessful attempt has been made to complete the assignment or whether all or part of the job, whatever the case may be, is scheduled for attention.
>
> "We should like to interest ourselves in the cases where an unsuccessful attempt has been made to provide the Goodyear identification. Perhaps this information could be made available to us in simplest form by stating the Atlantic District areas that have been covered by either sign crews or agencies that are applying the decals, and by supplying us a list of the dealers where attempts to erect decals or signs were unsuccessful.
>
> "I have already received a list of this type for the Philadelphia and South Jersey areas, and this has been referred to our District Managers for further attention. However, I do not know if this is a partial or complete list of the dealers in that territory who could not be identified with Goodyear signs."

Atlantic's "sales efforts" met with complete success, for the entire group of 46 recalcitrant dealers referred to in Mr. Heideman's letter of July 30 was thereafter signed to Goodyear contracts and Goodyear advertising signs were installed at their stations. The letter of complaint from Lee Rubber and Tire Corporation to Atlantic over the question of removal of Lee advertising signs from Atlantic

stations has already been referred to, supra at page 15. And on March 5, 1951, Mr. E. W. McCreery, another Lee vice president, stated in an intracompany memorandum referring to the Atlantic sales regions assigned to Firestone:

> "In analyzing salesmen's reports on their calls on Atlantic accounts and with other information that we have, we are doubtful that many of the #2 type stations will stay on Lee tires. Because these stations are leased from Atlantic, some on a month-to-month basis, others on 90 days or longer basis, they are not in a position to take an independent stand and as a result will probably find it expedient to handle Firestone tires."

14 In our opinion, the documentary evidence in this record—only a fraction of which is referred to above—and the testimony of the various representatives of suppliers of TBA competing with Goodyear and Firestone previously adverted to lend credence to the testimony of the ex-Atlantic dealers who gave evidence in support of the complaint in this proceeding. We affirm the hearing examiner's finding that agents of Atlantic have in fact coerced a substantial number of Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and that Atlantic has accepted the benefits of such coercion in the form of sales commissions.

Respondent Atlantic cites *United States v. J. I. Case Co.*, 101 F. Supp. 856 (D. C. Minn. 1951) as authority for the proposition that the hearing examiner erred in concluding that Atlantic has coerced a substantial number of its dealers in violation of Section 5 of the Federal Trade Commission Act. This District Court opinion is commonly regarded as a notable exception to the trend of decisions dealing with the subject of exclusive dealing.[9] But we need not dwell on the Case decision, since the subject of coercive

9. Robinson, Providing for Orderly Marketing of Goods, 15 A.B.A. Antitrust Sec. 282, 308 (1959).

practices has received careful scrutiny from the Seventh Circuit and from the Supreme Court in a line of cases in the field of automotive financing. In *United States* v. *General Motors Corp.*, 121 F. 2d 376 (7th Cir. 1941), General Motors and its affiliates, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Inc., appealed from a conviction of criminal conspiracy in violation of the Sherman Act. The indictment charged that these defendants had conspired to coerce franchised dealers of General Motors Corporation to finance their purchases and sales of automobiles through General Motors Acceptance Corporation. In affirming the criminal convictions, the court stated:

> "The record leaves no doubt that the dealer body as a whole was made acutely aware and had knowledge of the set policy of the appellants with respect to the use of GMAC financing facilities. The fear of cancellation or refusal to renew contracts was great, so much so that the dealer was reluctant to refuse the terms and policies dictated by the appellants."

1483 Approving the trial judge's instructions to the jury in the *General Motors* case, the Supreme Court stated in *Ford Motor Co.* v. *United States*, 335 U. S. 303 at 316-317 (1948):

> "'* * * Their plain effect is to draw a line between such practices as cancellation of a dealer's contract, or refusal to renew it, or discrimination in the shipment of automobiles, as a means of influencing dealers to use GMAC, all, of which falls within the common understanding of 'coercion,' and other practices for which 'persuasion,' 'exposition' or 'argument' are fair characterizations.'"

We are of the opinion that the record contains ample evidence to support the hearing examiner's finding that Atlantic has coerced and forced a substantial number of

its dealers to purchase sponsored TBA. However, we regard these overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself. The more dramatic and immediate impact of this system, to be sure, is upon retail service station dealers of Atlantic and other oil company dealers similarly situated. Their freedom to buy and sell as independent merchants is shown to be less complete in practice than in theory. Yet from the point of view of the antitrust laws, it is the competitive effects of the sales commission system on competitors of Goodyear and Firestone which raise the most grave questions in this proceeding.

We turn, therefore, from an examination of the restrictive effects of the sales commission system upon service stations as buyers of TBA to an assessment of this system's impact upon wholesale and retail distributors
1484 of TBA engaged in competition with wholesale and retail distributors of Goodyear and Firestone. Preliminary to this inquiry, however, it will be helpful to have a more detailed understanding of the manner in which the sales commission plan enables Goodyear to integrate into its own nationwide distribution system the economic power possessed by Atlantic over its wholesale and retail petroleum outlets.

The Sales Commission Plan in Goodyear's System of Distribution.

Goodyear is the largest manufacturer of rubber products in the United States, with net sales of more than one billion dollars in 1954. The company has tire and tube factories located respectively in the states of Ohio, Alabama, Michigan, California and Kansas. There are 57 Goodyear warehouses across the land, and Goodyear tires, tubes and accessories are distributed to wholesale and retail distributors through these warehouses. Batteries, because of the

weight factor, are not warehoused by Goodyear except for emergency needs; all Goodyear wholesalers order "Goodyear" batteries directly from the factories of the two companies which produce "Goodyear" batteries under contract: Electric Auto-Lite Company and Gould-National Batteries, Inc.

Goodyear has approximately 500 company-owned and operated retail stores throughout the United States, and these stores also sell at wholesale. Apart from such company stores, there are more than 12,000 independent franchised stores selling Goodyear products at wholesale and retail and an unknown but very substantial number of firms not franchised by Goodyear but which purchase and resell Goodyear merchandise in the same manner as franchised Goodyear dealers. Franchised dealers are sometimes referred to as "direct" accounts, and non-franchised dealers in Goodyear merchandise are sometimes referred to as "indirect" or "associate" accounts.

All direct Goodyear accounts, which include independent franchised Goodyear dealers, wholesale petroleum distributors of Atlantic, and some retail petroleum dealers of Atlantic, execute a franchise agreement with the Goodyear Company itself, and purchase Goodyear products from the nearest Goodyear District Sales Office. Indirect, or associate Goodyear dealers do not have contracts with the Goodyear Company and do not purchase Goodyear TBA from the Goodyear District Sales Office. Instead, they usually execute a "Goodyear Associate Dealer Agreement" with the particular Goodyear wholesaler to which they are assigned. Such wholesaler may be either a company-
1485 owned store, a franchised independent dealer of Goodyear, an Atlantic wholesale petroleum distributor, or an Atlantic retail petroleum dealer. Indirect, or associate, dealers normally purchase from the wholesaler to which

they have been assigned, and normally pay higher prices for merchandise than do direct dealers of Goodyear.

Most service station customers, including Atlantic stations, are classified as indirect or associate dealers by Goodyear, although, as noted, some Atlantic stations are direct dealers of Goodyear and function as supply points to other Atlantic stations which are merely associate dealers. (The term "supply point" is used by respondents to refer to the local TBA supplier to which local Atlantic stations have been assigned.) A number of Atlantic wholesale distributors of petroleum products also function as supply points for Goodyear, and distribute TBA to the same retail stations which the wholesale distributors supply with Atlantic petroleum products. A supply point, then, is a local wholesaler of Goodyear TBA, although it may also be a retail dealer of Goodyear, a retail dealer of Atlantic, or a wholesale distributor of Atlantic as well. In the three marketing regions of Atlantic assigned to Firestone, the same classification of Atlantic dealers into direct and indirect accounts of Firestone is found as is described above with respect to Goodyear, and in all other material respects the sales commission plan between Atlantic and Firestone functions in substantially the same manner as does the sales commission plan between Atlantic and Goodyear described herein.

An integral part of the Goodyear-Atlantic and Firestone-Atlantic sales commission plans is the assignment or allocation of each Atlantic retail outlet to a specific supply point designated by Goodyear or Firestone. When a new Atlantic station is opened, or when a new dealer replaces a retiring operator, Atlantic reports to Goodyear (or to Firestone, as the case may be) the name and address of the new Atlantic dealer on an appropriate Goodyear (or Firestone) form. The Goodyear (or Firestone) District Manager then assigns this outlet to a specific supply point and

notifies the supply point and the Atlantic outlet of the assignment which has been made. No sales commission is paid to Atlantic unless the Atlantic outlet purchases from the designated supply point to which it has been assigned. In other words, even though an Atlantic dealer purchases Firestone or Goodyear TBA exclusively, unless he 1486 buys from his assigned supply point, Atlantic receives no sales commission. One reason why Goodyear does not pay a sales commission when TBA merchandise is purchased by an oil company dealer from someone other than his assigned supply point was set forth in a letter dated December 19, 1951, addressed to an official of Shell Oil Company, and signed by the Baltimore District Manager of Goodyear:

> "I am returning to you unsigned, two G-1209's which request that G. D. Armstrong Co., Inc., of Laytonsville, Md., be approved as a supplying dealer for Laurel Park Servicenter at Laurel Park, Md., and Bowie Shell Service at Bowie, Md.
>
> * * * * *
>
> "My reason for taking this attitude is the fact that we very definitely discourage our dealers from selling Goodyear tires outside of their authorized territory, and in servicing either Laurel or Bowie, the Armstrong Company are out of their territory.
>
> "A situation of this kind, of course, presents us with a serious problem for, naturally, we are not in a position to dictate to any good dealer exactly where he may sell the merchandise which he purchases from us—all we can do is ask that they remain within the boundaries which we establish. However, in the case of oil company stations where we have already authorized and established an ample number of supply points, all with good service, we cannot pay the oil company in question a commission on merchandise delivered by a dealer who is operating outside of his territorial boundaries."

Although in some cases Atlantic dealers are assigned to more than one supply point of Goodyear, in none of Atlantic's marketing regions are Atlantic dealers assigned to supply points of both rubber companies. For, as has been shown, Atlantic's sales commission contract with Goodyear is confined to the company's New England, New York and Philadelphia-New Jersey sales regions, whereas Atlantic's sales commission contract with Firestone is operative only in the Eastern Pennsylvania, Western Pennsylvania and Southern sales regions of the oil company.

1487 A reporting technique has been established whereby Atlantic may determine the exact amount of sponsored TBA purchased by each Atlantic outlet from its assigned supply point or points each month. As both rubber companies use substantially the same reporting procedure, only the one used by Goodyear need be described in detail here.

Once every month each Goodyear supply point submits a report to the Goodyear District Sales Office for his district, showing his sales of TBA during the past month to each Atlantic outlet assigned to him.[10] The Goodyear District Sales Office then compiles these reports into a master list, showing TBA purchases by each individual Atlantic dealer from his assigned supply point during the past month, and sends copies of this list to Atlantic and to Goodyear's home office in Akron, Ohio. Although these forms provide the basis for computation of sales commission accruing to Atlantic each month, they also afford Atlantic a means of de-

10. One exception is Atlantic service stations acting as supply points. A 7½ percent commission is paid by Goodyear to Atlantic on the net sales value of TBA purchases by these Atlantic supply point dealers, and, consequently, no further commission is paid by Goodyear on the resale of merchandise by such Atlantic supply points to other Atlantic stations supplied by them.

termining the volume of sponsored TBA purchases by individual Atlantic dealers during that time.

A different procedure is followed with respect to TBA purchases by wholesale distributors of Atlantic (including, as indicated by footnote 10, supra, Atlantic retail dealers functioning as supply points). Wholesale distributors purchase directly from the Goodyear or Firestone district offices, and then resell such TBA to their retail dealers. Some 2,897 Atlantic retail outlets were supplied by wholesale distributors in 1956. Atlantic receives a 7½ percent sales commission on the net sales value of all sponsored TBA purchased by wholesale distributors, but no additional sales commission is paid when such purchased TBA is resold to retail dealers supplied by the wholesale distributors.

Goodyear has sales commission contracts with a number of other marketing oil companies, and these agreements are in all material respects identical with the Goodyear-Atlantic contract. Total sales by Goodyear under its sales 1488 commission contracts with such other oil companies, including Shell Oil Company and D-X Sunray Oil Company, increased from about $16,700,000 in 1951 to about $36,105,000 in 1955, with sales commissions paid thereon by Goodyear increasing from approximately $1,600,000 in 1951 to approximately $3,300,000 in 1955. The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA. Witness S. K. Osborn, for example, was a Sinclair dealer for 20 years, from May 1936 until May 1956. He was also a distributor of Firestone tires and could therefore purchase Firestone tires at lower prices than Goodyear tires. He testified that he stocked Firestone tires exclusively at his service station until 1948, at which time he was given a notice of lease cancellation:

A. It was a few days after I got the lease cancella-

tion. I was disturbed about it, and I wanted to find out what it was all about. I called up the company and finally got an interview with Mr. Weller, and Mr. McCauley [Sinclair officials] * * * I asked them why I was getting a lease cancellation. They told me that I wasn't doing the right things by them, that Goodyear tires, batteries and accessories were just as much Sinclair products, just as important to the company, as Betholine gas, Sinclair Gas, whatever they were marketing, and Opaline oil. And I promised to go along with their wishes. I gave them an order for Goodyear merchandise. In a few days I had a new lease.

Q. You say you gave them an order for Goodyear TBA merchandise. Do you recall the approximate amount of the order?

A. A thousand or more dollars worth.[11]

In order to keep his service station lease, therefore, this Firestone distributor was placed in the anomalous position of having to purchase Goodyear TBA, a competing brand, in order to maintain his status as lessee of a Sinclair service station.

1489 Another former lessee-dealer, witness MacMasters, who operated a Sinclair station from 1944 until 1954, testified that he purchased Bowers batteries for resale at his station up to sometime in 1947 or 1948. At that time he was summoned to a conference with top-level Sinclair personnel at the oil company's offices:

A. We went into a conference room, some sort of conference room that had quite a large table. They put me on one side of the table, and the other three down the other side.

So, to make the conversation short, Mr. McCauley was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

---

11. In *Osborn* v. *Sinclair Refining Co.*, ...F. 2d ..... (4th Cir. 1960), the Court of Appeals held that the facts recited above by witness Osborn constituted an unlawful tying contract violative of Section 1 of the Sherman Act.

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers because they took care of me during the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our [Goodyear] batteries or else."

And that was the end of the meeting.

Many other advantages accrue to Goodyear, and Firestone as well, as a consequence of their sales commission contracts with oil companies. A prime advantage is participation with each oil company's sales force in a number of joint merchandising programs. This advantage commences with the selection of persons to operate newly-opened service stations or to replace outgoing dealers in previously-operated stations. A continuing responsibility of Atlantic salesmen is to help newly-recruited dealers get established. Through these salesmen, the local Goodyear or Firestone supply points are notified of the names and addresses of new dealers before they actually take over operation of their stations and, as a result, before local competitors of Goodyear and Firestone in any community become aware of a new dealer's identity. This policy was implemented by a memorandum of April 25, 1952, by Atlantic's TBA Manager Heideman to Atlantic personnel:

1490 "Station Openings. We ask that you instruct your Districts to establish, as a regular practice, automatic and advance notice to the Goodyear District Office, of the openings of any new stations, or of change in proprietorship at any dealer location. Such notice will be mutually beneficial to both Goodyear and ourselves. It will enable Goodyear to complete any unfinished business with the outgoing dealer and, further, will enable them to anticipate and to move promptly in handling the new dealer's requirements."

The importance of advance notification is indicated by the fact that the initial stocking order of TBA costs approximately $1,000—for large stations the amount may be much greater. And Atlantic's turnover of dealers is high. During 1955, 720 lessees of Atlantic ceased operation and had to be replaced, representing a turnover of about 29 percent of the oil company's total number of lessee-dealers in that year. Moreover, during the period March 1950 to June 1956, 389 new Atlantic stations commenced operations. Frequently these new or replacement dealers have recently completed Atlantic training schools in which Goodyear and Firestone TBA were used in demonstrations, and have already formed biases in favor of one or the other brand. However, the new dealer has no choice as to which of the two brands he will purchase and display—if his station is located in the three Sales Regions of the company in which Goodyear is sponsored, then he must take Goodyear TBA, and if his station is located in the three Sales Regions of Atlantic assigned to Firestone, then he must take the Firestone program.

Numerous other examples of joint merchandising programs favorable to the rubber companies having sales commission agreements with Atlantic could be cited. Although Atlantic officials stated in an intra-company memorandum shortly before the inception of the sales commission program that "Practically all sales promotional expense [will be] assumed by supplier [Goodyear]," Atlantic aggressively assists in carrying out the Goodyear program in various ways. For example, Atlantic salesmen obtain TBA orders from dealers and send them to local Goodyear supply points, recommend minimum Goodyear TBA inventories to dealers, coordinate special Goodyear promotional programs with radio, television, and other forms of advertising by the Atlantic company and its dealers, and assist dealers in arranging Goodyear TBA

display. Atlantic credit card facilities are also avail-
1491 able to motorists wishing to purchase Goodyear TBA products from Atlantic stations. Without doubt, however, the most effective joint merchandising tactic is dual solicitation, or "double-teaming." This refers to the practice of an Atlantic salesman accompanying a Goodyear or Firestone salesman in calls upon service station operators to urge them to purchase sponsored TBA.

Goodyear's heavy reliance upon double-teaming to convert Atlantic dealers from the Lee-Exide program to Goodyear TBA was set forth in a "Confidential" memorandum of February 27, 1951, from Mr. S. A. Gaylord, manager of the rubber company's sales commission programs with oil companies, to Goodyear District Managers located within the three Atlantic Sales Regions assigned to Goodyear:

> "You have been advised of the Sales Organization Meetings [between Goodyear and Atlantic sales personnel]. Mr. McConky [Goodyear Northeast Division Manager] will keynote for his Division. He will welcome the opportunity and pledge strong support and cooperation. No doubt he will stress the importance of Atlantic and Goodyear personnel getting acquainted and teaming up together when presenting the Goodyear franchise to Atlantic dealers. Because the Atlantic salesman has the 'in', but cannot be expected to know the Goodyear story at the start, so by team work the Goodyear Sales Representative will make the presentation and also assist in training the Atlantic Representative.
>
> "Two purposes will be accomplished by this teaming activity—first the Atlantic salesman will learn the basic details of our Franchise Presentation and, secondly—our Goodyear salesman will be very favorably introduced to the account through the sales influence of the Atlantic Representative, also bring up this point with your men."

Thereafter, on August 7, 1951, a Goodyear official wrote to Atlantic's TBA Manager, Mr. Heideman:

> "Having reviewed your letter of July 30th, I am pleased to outline below for your consideration steps that I suggest be followed in the handling of a new Atlantic Dealer on the Goodyear T.B.A. Program:
>
> "1. Arrange for double team contact by the Goodyear and Atlantic salesman."

1492 Nine additional steps were outlined in this letter of August 7, the fifth being to "Take stock order (Tires, Batteries and Accessories)" and the sixth being to "Furnish initial price lists, tires, batteries and accessories." Goodyear thus appeared confident that the presence of an Atlantic salesman together with the Goodyear representative would render unnecessary any higgling or haggling over price before obtaining an initial order for TBA from Atlantic dealers.

Similar confidence in the efficacy of double-teaming activity was expressed in a memorandum setting forth action to be taken to introduce the sales commission plan to Atlantic outlets in the three Sales Regions assigned to Firestone:

> "Double-teaming activity with Firestone and oil company salesmen in then scheduled in order to sell the oil company's dealers on the Commission Plan."

Atlantic's Vice President, Mr. D. T. Colley, inaugurated the sales commission program on March 1, 1951, with the following letter to the oil company's sales force:

> "I am sure that the new T.B.A. program which we have carefully selected has so many advantages that it will not be difficult to convince Atlantic dealers and distributors of its superior merit. This job is to be done with the use of all the sales equipment and knowledge that we, or our suppliers, have at our respective commands. *I expect the results of our salesmanship to be highly successful.*

"You can appreciate the fact that under no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers. The sales you make must be made on the merits of the program and your ability to sell the dealers on its advantages to him. *Any evidence that coercion or misrepresentation were used in securing acceptance would be most embarrassing to our company.* This program is a challenger to your sales ability. I am confident that you will do a fine selling job." (emphasis added).

These quotations reflect the belief of Goodyear and Firestone, as well as Atlantic, that the presence of an Atlantic salesman is the almost indispensable ingredient 1493 needed to insure the success of the two rubber companies in selling their TBA products to Atlantic dealers under the sales commission plan. Perhaps one reason for this is that the annual evaluation by Atlantic salesmen of their respective lessee-dealers carries substantial weight with District Managers of Atlantic when the latter group make decisions as to extensions of dealers' leases for another year. Although respondent Atlantic has made vigorous efforts to create a record image of the typical Atlantic lessee-dealer as a stouthy independent businessman, able to close up shop as an Atlantic lessee on Saturday night and reopen down the street in a Sinclair or an Esso station the following Monday morning, the record as a whole suggests that this is a romanticized picture of a small businessman who is, more often than not, in a woefully weak bargaining position vis-a-vis his oil company lessor.

The typical lessee-dealer's dependence upon his lessor-supplier is explained by the following facts: The cost of constructing an average Atlantic service station is about $50,000. Few men who become service station operators have this amount of money—many have as little as $1,000,

and very few have as much as $15,000. Most marketing oil companies, therefore, build a substantial portion of their own stations and lease them to operators. The lessee-dealer uses his own capital to purchase an initial inventory of petroleum products, TBA, and tools and for other expenses incurred in commencing operations. It is frequently necessary for incoming dealers to borrow several thousand dollars from Atlantic in order to purchase these initial stocks of goods. Nor is the income of the typical lessee-dealer sufficient to enable him eventually to purchase his own station. Although an exceptional dealer with an unusually high-gallonage station may earn as much as $20,000 per year, the average annual net income of Atlantic dealers is in the range of 6 to 10 thousand dollars. But no matter how long an operator may remain as lessee, and no matter how much he strives to establish goodwill in his community, the time may come when his lease is not renewed—for any one of a number of reasons or for no reason at all except that the lessor would prefer to have someone else operate that particular station.

Many of the control devices available to Atlantic in its relationship with lessee-dealers are also applicable to contract dealers. Many of the latter are indebted to Atlantic, and most of them lease storage tanks, gasoline pumps 1494 and other equipment from their oil company supplier. These equipment leases specify that such equipment may not be used for storage or sale of petroleum products purchased from any supplier other than Atlantic. And serious inconveniences would be caused for any contract dealer whose petroleum supply contract with Atlantic was not renewed from year to year.

Service station operators are understandably susceptible to the urgings and recommendations of their oil company suppliers and lessors in the matter of TBA. The Goodyear salesman encounters less buyer resistance on the part of

such a customer when an oil company salesman is standing nearby adding his endorsement to the sales presentation of the Goodyear representative. The technique of dual solicitation ("double-teaming") thus symbolizes in microcosm the competitive effects of the sales commission method of distributing TBA when introduced throughout the entire marketing area of a major oil company. It is to these macrocosmic effects that we now turn.

Competitive Effects of the Sales Commission Plan at the Manufacturing, Wholesale and Retail Levels.

A glance at Map I, supra, suffices to show that competition between Firestone and Goodyear in selling to Atlantic oil company accounts has been wrecked by the operation of the sales commission system. But other evidence of record is available in abundance to illustrate the same point. The following is an exchange of correspondence between Atlantic and Goodyear concerning the Republic Oil Company, a wholesale distributor of Atlantic products in Pittsburgh, Pennsylvania. (Atlantic's Western Pennsylvania sales region, it will be recalled, is assigned to Firestone.)

On August 2, 1951, Mr. E. C. Sauter, District Manager of Goodyear in Pittsburgh, addressed the following letter to Mr. F. W. McConky, Jr., Manager of Goodyear's Northeast Division:

"Republic Oil Co.

"This is a Pittsburgh concern who are acting as distributor of Atlantic products in parts of Pennsylvania and Northern West Virginia.

"The retail division of this company operates about seventy-five (75) service stations. They have never gone into a TBA program and at present have no tire hook-ups. They are in process, however, of trying to get a deal with one of the major tire companies and
1495 would like to entertain a proposition from Goodyear whereby we would sell their stations direct or through supplying dealers at a price which would be in line

with each outlet's volume with an override to the oil company.[12]

"Possibly we could use this additional distribution in the Pittsburgh area, particularly on passenger tires and tubes, so if you are interested possibly we should take the matter up with Petroleum Sales for their comments."

Thereafter, on August 3, 1951, the matter was referred by Mr. McConky to Mr. S. A. Gaylord of Goodyear in Akron:

"The attached from Eddie Sauter regarding Republic Oil and the possibility of their handling our products is a matter, in my opinion, for Akron decision, inasmuch as they [meaning Republic Oil] are distributors of Atlantic products.

"I don't want to spend any time lining up with these people if for example Atlantic-Philadelphia would prefer they handle Firestone, since this is the tire being handled by Atlantic in that area.

"Of course, I am not acquainted with the influence Atlantic might be able to bring to bear in forcing these people to a decision as to the line of tires that they—Atlantic—would like them to handle.

"At any rate, will you explore this from a management standpoint and advise so we can proceed according to Atlantic's desires."

On August 9, 1951, Mr. Gaylord addressed the following letter to Atlantic's TBA Manager, Mr. Heideman:

1496 "Mr. Sauter, our District Manager at Pittsburgh, and Mr. McConky, advises that subject account is

12. Many service station operators and TBA dealers use the term "override commission" or "overriding commission" in referring to payments by a TBA manufacturer to an oil company such as those made by Goodyear and Firestone to Atlantic. However, as respondents and their witnesses usually use the term "sales commission" to refer to such payments, we are using "sales commission" in this opinion.

considering marketing T. B. A. products and have invited us to submit a proposal.

"Before taking any action in the matter we felt that we should take the matter up with you for further guidance and your good counsel in the matter.

"Will appreciate hearing from you on this as soon as possible."

On August 14, 1951, Mr. Heideman replied to Mr. Gaylord under the heading "Republic Oil Company":

"Your note of August 9th has been received. Any overtures on your company's part to the subject could upset negotiations that we have underway at present. It was thoughtful of you to consult us and needless to say we appreciate it *as we will also appreciate your rejection of the invitation.*" (Emphasis added.)

Not only has competition between Goodyear and Firestone been eliminated as a result of these companies' sales commission contracts with Atlantic, but even *within* Atlantic's sales regions assigned to Goodyear, competition among Goodyear wholesalers for the business of Atlantic accounts has been eliminated through the assignment of each Atlantic account to a designated supply point. There are 1,155 independent franchised Goodyear dealers in the Atlantic marketing territories assigned to Goodyear, but only 128 of these dealers, or *11 percent*, are supply points for Atlantic dealers. The remainder, representing 89 percent of all Goodyear dealers in the three Atlantic sales regions, are substantially foreclosed from access to Atlantic accounts.

Nor is this anticompetitive allocation of customers by Goodyear among its wholesale distributors confined to Atlantic accounts alone—nine other oil companies have sales commission contracts with Goodyear, and as shown by Table IV, below, only a minute fraction of the total number of Goodyear dealers in any of these oil companies' marketing areas have been nominated as supply points for local oil company outlets:

1497 **Table IV.**

Goodyear Dealers Acting as Supply Points for Oil Company Outlets Compared with Total Number of Goodyear Dealers in Each Oil Company's Marketing Area.

Name of Oil Company	Total Number of Goodyear Dealers in Marketing Area	Number of Goodyear Supply Points
Anderson-Pritchard	3,825	28
Ashland & Subsidiaries	2,387	87
Carter	1,509	73
D-X Sunray	6,772	162
Quaker State	482	14
Richfield	1,691	3
Shamrock	1,717	25
Shell	10,756	679
Sinclair	10,963	10
Atlantic	1,155	128

The extent to which competition among Goodyear's own dealers at the wholesale level has been shattered by the operation of the sales commission plan may be inferred from the data in Table IV. In Shell's marketing area, for example, there are 10,756 Goodyear dealers; yet only 679 of these dealers have been appointed as supply points to Shell stations. In the marketing territory of D-X Sunray Oil Company there are 6,772 Goodyear dealers, but only 162 have been granted the privilege of becoming a supply point. And in Atlantic's New England, New York, and Philadelphia-New Jersey sales regions, only 128 out of 1,155 Goodyear distributors have been named as supply points.

To illustrate the elimination of competition among TBA wholesale dealers caused by the sales commission plan, evidence adduced in the course of hearings in Atlantic's Phila-

delphia-Suburban Sales District (one of several sales districts comprising Atlantic's Philadelphia-New Jersey Sales Region) may be considered. As of June 30, 1956, there were 226 lessee dealers and 291 contract dealers of Atlantic in this district. These dealers were assigned to three Goodyear company stores and six independent franchised Goodyear distributors in the Philadelphia metropolitan area as follows:

1498

Table V.

Goodyear Supply Points in Atlantic's Philadelphia-Suburban Sales District and Atlantic Dealers Assigned to Them, 1956.

Supply Points	1955 Total Sales	No. Lessee Dealers*	No. Contract Dealers*
Goodyear District Office	$ 43,845	2	6
Harvey W. George	239,906	45	49
F. C. Glenn	300,723	52	42
E. F. Miller	239,900	39	19
Frank Hagan	130,682	(54 dealers)**	
Ellwood E. Kieser	420,788	40	116
Edward Parris	160,100	(61 dealers)**	
Goodyear Store (Jenkintown)	None	2	4
Goodyear Store (Norristown)	None	8	1
	$1,535,944		

* Includes some duplication due to 11 lessee dealers and 5 contract dealers having two alternate sources of supply.

** No breakdown is available as to the numbers of lessee and contract dealers, respectively, supplied by these two supply points. Mr. Hagan was supply point to a total of 54 lessee and contract dealers of Atlantic, and Mr. Parris to a total of 61 lessee and contract dealers of the oil company.

Witness Elmer H. Booz, for example, an Atlantic lessee dealer from 1952 until 1956, testified that Mr. Edward Parris was the designated Goodyear TBA supply point for dealers in his area. He stated that although he could have purchased Goodyear tires from other dealers at lower prices than from Mr. Parris, that he nevertheless obtained about 85 percent of his TBA requirements from Mr. Parris. One competing Goodyear dealer offered tires to Mr. Booz at a discount from list price of 10 percent plus 5 percent, plus 2 percent whereas Mr. Parris gave only a 10 percent discount, plus 2 percent discount for cash.

1499 As to competing brands of tires, Mr. Booz testified that he could make more profit on several such brands than he could on Goodyear tires. Lee tires were available at a discount from list price of 10 plus 10 plus 10 percent, plus 2 percent for cash. Moreover, the witness stated that he could never resell Goodyear tires at list price because "there is always someone from the Goodyear company or somebody else that is going to knock you down on it."[13]

Witness Francis J. Balloran commenced operating an Atlantic station in 1953 and was a contract dealer for Atlantic at the time he testified in this proceeding. He stated that after becoming an Atlantic dealer he purchased Goodyear TBA from his designated supplier, Mr. E. F. Miller (Table V, supra):

> Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller?
>
> A. That's right.
>
> Q. Why did you buy your Goodyear TBA from Mr. Miller?

---

13. When Atlantic was considering adopting the Goodyear TBA program an intracompany memorandum recognized that Atlantic dealers would face "* * * a maximum amount of competition from established dealers and company stores, because it is reported that every county, marketing town and shopping center now has a Goodyear store or distributor."

A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.

Q. Was it a matter of your own choice?

A. No, sir.

• • • • •

Q. Did you want to purchase TBA from Mr. Miller?

A. Not truthfully, no.

Q. Why didn't you?

A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to send a man with a truck and waste an hour and a half to go pick it up and bring it back.

1500 Q. Could you have purchased Goodyear tires at a cheaper price in the area?

A. Yes, sir.

Q. What was the name of the supplier?

A. Hires and Kocher.

Witness Balloran also testified that he occasionally purchased brands of tires other than Goodyear, but did not display them openly:

Q. Did you purchase U.S. tires from Harris and Leonard?

A. That's right.

Q. Were such tires advertised, U.S. tires?

A. Not out of my place they weren't.

Q. Where did you keep such tires?

A. Back on the racks, back on the oil racks where they couldn't be seen.

Q. Seen by whom?

A. Any of the Atlantic men that come in there, the bosses.

• • • • •

Q. Did you purchase Lee tires?

A. Yes, sir.

Q. And where did you keep them?

A. On the racks, sir • • •

Nineteen witnesses representing eleven TBA wholesale suppliers in the Philadelphia-Surburban District engaged in competition with one or more of the six Goodyear supply

points named in Table V, supra, testified in support
1501 of the complaint. Without exception, these witnesses gave evidence that they were able to sell little or no TBA products to Atlantic dealers in their areas, and that such Atlantic dealers had stated that they must purchase their TBA needs from one or more of the designated Goodyear supply points listed in Table V.

Witness Michael T. Lanza, partner in the Philadelphia firm of Lanza Tire Service, stated that his company sells Goodyear and Firestone tires and tubes, as well as other brands, and also Exide battteries. He further stated that there are from 45 to 60 Atlantic service stations in his sales area, and that all such stations stock and advertise Goodyear tires and batteries. Witness Lanza identified Messrs. Fred Glenn and Harvey George as Goodyear TBA suppliers to Atlantic service stations in the North Philadelphia marketing area of Lanza Tire Service.

Witness Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester, Pa., testified that his company sells Willard batteries, Dayton Rubber Co. fan belts and radiator hose, AC, Purolator and Fram oil filters, and a wide assortment of automotive waxes, polishes and cleaners in competition with other sellers of TBA in his company's marketing area, including Mr. Edward Parris. Witness Wetzel stated that it is "rather futile" to attempt to sell automotive batteries to Atlantic dealers, and "very difficult" to sell automotive accessories to them. On cross-examination he was asked this question:

> Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now?
>
> A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They buy six or eight cans of merchandise to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Witness Myer Duboff is an outside salesman for Lancaster Auto Supply Company of Philadelphia. This firm competes with Goodyear dealers Frank Hagan, E. F. Miller and Ellwood Kieser, supra, Table V. Witness Duboff testified that he had solicited the business of about 35 Atlantic stations in his area, all of which advertise Goodyear products "* * * right down the line." He stated that he
1502 had been told by a number of Atlantic dealers that they were unable to buy TBA items from him because they "must buy from the company." On cross-examination he was queried as to statements made to him by one Atlantic dealer:

> Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road?
>
> A. That is right.
>
> Q. As having said something to you about inability to buy from you. I am not clear as to what he said.
>
> A. Do you want me to state what he said to me. He said to me. "I can't buy from you."
>
> Q. Had he been buying from you?
>
> A. He was buying odds and ends and every time I come in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said "Why not," and he says "They know what I am doing," and I didn't think that was right.

Many other examples of such testimony could be cited, not only by former Atlantic dealers and by TBA suppliers from the Philadelphia area, but from other marketing areas of Atlantic as well. These facts are clear: Atlantic has allocated three of its six marketing regions to Firestone and the other three to Goodyear. Firestone's sales to Atlantic outlets amounted to $5,562,936 in 1955, the last full year for which data are available, and in the same year the rubber company paid commissions amounting to

$506,199 to Atlantic. Goodyear's sales to Atlantic outlets amounted to $5,700,121 in 1955 and its sales commission payments to the oil company totalled $557,559.

We find that Atlantic has used its power as a major wholesale and retail distributor of gasoline distribution facilities to cause its dealers to purchase very substantial amounts of a different class of products, TBA. This finding, in conjunction with Atlantic's market position 1503 and the volume of TBA affected would appear to bring this case within the Supreme Court's ruling in *Northern Pac. Ry. Co.* v. *United States*, 356 U.S. 1 (1958) and the more recent decision by the Fourth Circuit in *Osborn* v. *Sinclair Refining Co.*, ... F. 2d ..... (4th Cir. 1960).

The Court held in the *Northern Pacific* case that tying arrangements are *per se* violative of Section 1 of the Sherman Act "* * * whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the tied product and a 'not insubstantial' amount of interstate commerce is affected." (356 U. S. at 6.) The content of the phrase "sufficient economic power" with respect to the tying product was defined by the Fourth Circuit recently in the *Osborn* case.

Osborn was a lessee of Sinclair Refining Company from 1936 to 1948, at which time his lease was terminated and a new lease entered into which was continued until May 1956, when it was finally cancelled by Sinclair. During the years of Osborn's tenure as a Sinclair dealer, the oil company or its subsidiary, Sherwood Bros., Inc., was party to a sales commission contract with Goodyear in all material respects identical to the Goodyear-Atlantic and the Firestone-Atlantic arrangements in the instant case. Osborn filed suit for treble damages under the Sherman Act, claiming that the sale of Goodyear TBA to Sinclair dealers in Maryland was in furtherance of an illegal restraint of trade.

On appeal, the court held that Sinclair had gone beyond mere salesmanship in inducing its dealers to carry substantial quantities of Goodyear TBA if they wished to continue selling Sinclair gasoline under their lease and sales agreements with Sinclair.[14] As phrased by the court, quoting its own earlier decision in *McElhenny* v. *Western Auto Supply Co.*, 268 F. 2d 332, 338 (4th Cir. 1959):

> "Probably nothing is more firmly settled in our antitrust jurisprudence than that an illegal contract may be inferred from all the circumstances."

1504 According to the court, Sinclair had violated Section 1 of the Sherman Act through a series of *implied* tie-in agreements with its dealers in Maryland. Moreover, the court did not regard it as significant that Sinclair had not required its dealers to purchase all their requirements of TBA from Goodyear:

> "To insist upon such exclusivity in a tie-in would be inconsistent with the trend of decisions in this area. If a substantial amount of commerce is restricted by such arrangements, the standard for illegality would seem to have been met."

As to the requirement of "sufficient economic power" in the tying commodity—Sinclair's position in the petroleum retail market—the court found that in 1956, Sinclair had operated about 300 out of some 2300 retail service stations in Maryland and that those stations had sold about 10 percent of the total sale of gasoline in the same state in that year. This was held to afford Sinclair sufficient economic power in the gasoline market appreciably to restrain com-

14. Sinclair did not have a sales commission plan in effect throughout its entire marketing area, but only in Maryland and, to some extent, in adjacent states. ..... F. 2d ..... at ..... Osborn, plaintiff in the case discussed above, testified in the instant proceeding as a witness in support of the complaint.

merce in TBA. No one questioned the finding that Goodyear TBA purchased by Sinclair dealers in Maryand comprised a substantial amount of commerce. Accordingly, the implied tie-in agreements between Sinclair and its dealers were held to constitute a *per se* violation of the Sherman Act.

Here we find that Atlantic, which describes itself as "* * * a large producer and distributor of petroleum products" whose operating revenue "totalled more than one half billion dollars" in 1954, distributes gasoline directly to more than 5,500 retail service stations and through wholesale distributors to more than 2,800 additional service stations in 17 states along the Atlantic Seaboard. Approximately 81 percent of Atlantic's total sales of gasoline in 1955 were accounted for by these approximately 8,300 retail service stations.

But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases. The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring 1505 TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The record of this case conclusively establishes, in our minds, that the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels. Firestone dealers

are foreclosed from Atlantic outlets in regions assigned to Goodyear, and Goodyear dealers are foreclosed from Atlantic outlets in regions assigned to Firestone. Even within regions assigned to Goodyear, or to Firestone, only those Goodyear or Firestone dealers fortunate enough to be nominated as "supply points" have any prospect of sales to Atlantic dealers. Wholesale TBA dealers representing other tire manufacturers, for example United States Rubber Company, Lee Rubber and Tire Corporation, and Mansfield Tire and Rubber Company testified to their inability to sell tires to Atlantic service station dealers, except upon an occasional "pick-up" basis when a motorist demands a tire brand other than the locally-sponsored offering available at the station.

Battery manufacturers and certain accessory suppliers are, if possible, even more severely disadvantaged by the sales commission system than are tire companies competing with Firestone and Goodyear. Local wholesale distributors of Exide, Willard, Bowers and other brands of batteries testified to their inability to sell batteries to Atlantic stations except upon a pick-up basis. The most shocking feature of the sales commission system as to batteries, however, is the fact that the sales commission contracts with Atlantic enable Goodyear and Firestone to exclude *their own suppliers of batteries* from the wholesale and retail markets represented by Atlantic service station outlets. For the evidence of record indicates that Goodyear and Firestone both refused to execute sales agreements relating only to tires and tubes, but insisted that it include *all* TBA items sold by them or none. An analogous situation exists as to certain accessory products, for example, "Mac's" brand of polishes, waxes, and cleaners.

Moreover, as one of the chief characteristics of the sales commission plan is that it strengthens wholesale distributors of Goodyear and Firestone by pre-empting for their

benefit a substantial segment of all of the various local wholesale TBA markets in Atlantic's marketing area, 1506 the sales commission system stands as a bar to the *expansion* by smaller TBA manufacturers of their own distributive organizations. As respondents concede, a substantial proportion of all replacement TBA items sold to motorists are accounted for by service stations and "service stations, * * * constitute a large and increasingly important market" for TBA products. Thus, the competitive dislocations engendered by the sales commission plan at the wholesale level extend backward to the manufacturing level.

Finally, the unfair competitive advantages resulting from the sales commission plan are not confined to the manufacturing and wholesale levels—they extend forward to the retail level as well. Many of the wholesalers who testified in this proceeding *also* sell at retail, directly to motorists. To the extent, therefore, that suppliers of TBA competing with distributors of Goodyear and Firestone at the wholesale level are weakened by the operation of the sales commission system, the dealers are also weakened at the retail level, in instances where they are engaged in retail as well as wholesale operations.

Counsel for Atlantic contend, however, that no competitive consequences attend the sales commission plan which did not characterize the purchase-resale program employed by Atlantic prior to 1951. This point deserves consideration since it implies that no useful purpose would be served by outlawing the sales commission plan between Goodyear and Atlantic as Atlantic would merely return to the purchase-resale method of distributing TBA, with the result that Goodyear and Firestone dealers would lose a substantial volume of sales, but without improving the lot of competing TBA suppliers as they would still be unable to sell

TBA to Atlantic dealers. We believe this argument to be without merit for several reasons.

First of all, what course of action Atlantic may follow with respect to TBA if the sales commission plan is outlawed is entirely speculative. Assuming for the moment, however, that Atlantic will return to the purchase-resale plan and flout the antitrust laws by requiring its dealers to handle Atlantic TBA exclusively, or even substan-
1507 tially,[15] it is obvious that local wholesalers of TBA competing with Firestone and Goodyear dealers in Atlantic's marketing area will at least no longer be laboring under the handicap of their competitors representing Firestone and Goodyear having already pre-empted a substantial share of the local wholesale TBA market. As the situation stands under the sales commission plan, local dealers representing Firestone and Goodyear are assured of a substantial chunk of the market before the competitive race at the wholesale level even begins. (See Table V., *supra*.) Abolition of the sales commission system will at least terminate the unjust advantage presently enjoyed by distributors of Firestone and Goodyear over local competitors representing other tire manufacturers and TBA suppliers.

Not only do the competitive effects of the sales commission plan differ from those of the purchase-resale plan at the wholesale level, but at the manufacturing level as well. When Atlantic was considering changing from the purchase and resale of Lee tires and Exide batteries to some other method of merchandising TBA, it contacted several of the larger tire and rubber companies, including Goodyear, Firestone, The B. F. Goodrich Company, United States Rubber Company and General Tire and Rubber Company inquiring ". . . what interest you may have in

15. Cf., *Standard Oil Co.* v. *United States*, 337 U.S. 293 (1949); *Northern Pac. Ry Co.* v. *United States*, *supra*; *Osborn* v. *Sinclair Refining Co.*, *supra*; *United States* v. *Sun Oil Co.*, 176 F. Supp. 715 (E.D. Pa. 1959).

the sale of your tires and tubes through Atlantic accounts." Propositions were requested not only as to principal brands of these manufacturers, but as to secondary brands controlled by them and private brands as well. At the same time, Atlantic also contacted Mansfield Tire and Rubber Company and Lee Rubber and Tire Corporation soliciting proposals from them to furnish a private brand tire to Atlantic. This suggests that the smaller tire companies are able to compete with their smaller competitors in selling tires to oil company accounts on a purchase and resale basis. The evidence also shows, however, that the smaller tire companies are *unable* to compete with larger tire manufacturers for the business of oil companies using the sales commission plan *because the smaller tire companies lack distribution facilities which blanket the entire sales area of a major marketing oil company desiring to adopt the sales commission plan.* This was established by the testimony of Vice-President Colley of Atlantic, who appeared as a witness on behalf of this respondent.

A major oil company's decision to adopt the sales commission method of distributing TBA thus inaugurates a vicious cycle of injurious competitive effects: smaller
1508 tire and rubber companies are unable to compete in the first instance for the business of the oil company desiring to adopt a sales commission plan because they lack widespread distribution facilities at the wholesale and resale levels; and yet the operation of the sales commission plan stands as a bar to future expansion of the smaller tire companies' distributive systems since they are thereby foreclosed from a substantial segment of the wholesale and retail market *after* the oil company has adopted a sales commission plan offered by a larger tire company.

We believe that the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution)

to destroy competition in another market (TBA distribution). Other anticompetitive effects of the sales commission system are so obvious that they require no detailed consideration. The public suffers because it cannot rely upon competitive rivalry among local TBA wholesalers to insure that service station outlets will be able to obtain price savings which may be passed along to consumers. And, too, the system prevents the service station operator himself from using his buying power to further his own business advantage instead of that of his oil company supplier. As the Court of Appeals said in its recent *Osborn* decision, in a situation identical in its essentials with the present case, insofar as the service station dealer is concerned:

> "Because of its financial interest in having its lessee-dealers sell Goodyear TBA rather than competing brands, Sherwood-Sinclair engaged in a course of conduct designed to bring about this result. The facts in this case utterly fail to reveal any business motive for the defendant's policy that its dealers should handle Goodyear products instead of others. Admittedly, it was proper for Sinclair-Sherwood to desire its lessees to carry a complete, high-quality line of TBA. It is conceded, however, that there are other competing brands, and there is no suggestion that Goodyear was superior to the other brands of TBA, or that there was any benefit to the dealers in handling Goodyear rather than one of the other lines."

1509 Several additional points are raised by Atlantic, but we believe only one of these requires detailed consideration in this opinion. Respondent contends that it was error, violative of due process of law, for the same hearing examiner to have presided over and rendered initial decisions in both this case and in Docket 6487, The Firestone Tire & Rubber Company and Shell Oil Company. The crux of the contention seems to be that the

hearing examiner could not possibly have rendered his initial decision in this case solely upon the basis of the record of the instant proceeding, since he also heard testimony and received evidence involving Atlantic's sales commission plan with Firestone in Docket 6487. As respondent puts it, "While Atlantic has the utmost respect for the Hearing Examiner's integrity and ability, Atlantic submits that he could not humanly exclude from consideration his impression of the witnesses' demeanor and credibility in the Firestone-Shell proceedings and that his decision against Atlantic based on impressions gained in those other proceedings is a violation of due process."

Our study of the initial decision and of the record in this case indicates that there is no basis for the claim that the hearing examiner considered extra-record evidence in making his findings of fact and conclusions of law. Substantial evidence is present in the record of this case to support every finding of fact and conclusion of law by the hearing examiner. In any event, our own independent study of the record herein is the basis for the findings of fact and conclusions of law set forth in this opinion.

Conclusion.

Other exceptions of respondents Atlantic and Goodyear have been considered and rejected. The appeal of respondent Atlantic is denied. The appeal of counsel supporting the complaint is granted in part and denied in part. The initial decision, to the extent that it is contrary to the views expressed in this opinion, will be modified to conform with such views. An appropriate order will be entered.

March 9, 1961

1445 BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

Commissioners:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern

FINAL ORDER.

Counsel supporting the complaint and respondent The Atlantic Refining Company having filed cross-appeals from the hearing examiner's initial decision in this proceeding; and

The Commission having considered said appeals, including the briefs and oral arguments of counsel and the entire record, and having rendered its opinion denying the appeal of respondent The Atlantic Refining Company and granting in part and denying in part the appeal of counsel supporting the complaint, and having determined that the initial decision should be modified in certain respects:

It Is Ordered that the findings and conclusions of the initial decision be, and they hereby are, modified and supplemented to conform with the findings, conclusions and views set forth in the accompanying opinion of the Commission

It Is Further Ordered that the following be, and it hereby is, substituted for the order contained in said initial decision:

It Is Ordered that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any cor-

1446 porate or other device, in connection with the promotion, or offering for sale, or sale and distribution

of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect and contract, agreement or combination, express or implied, with The Goodyear Tire and Rubber Company, or The Goodyear Tire & Rubber Company, Inc., or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, and/or accessories, whereby The Atlantic Refining Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Atlantic petroleum products by any marketer or distributor of TBA products other than The Atlantic Refining Company;
2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of Atlantic petroleum products;
3. Using or attempting to use any contractural or other device, such as, but not limited to, agreements, leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by and distributor or marketer of such products other than The Atlantic Refining Company to or through any wholesaler or retailer of Atlantic petroleum products;

4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Atlantic outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of
1447 such products other than The Atlantic Refining Company to any wholesaler or retailer of Atlantic petroleum products;
5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of Atlantic petroleum products to purchase any brand or brands of TBA products;
6. Preventing or attempting to prevent any wholesaler or retailer of Atlantic petroleum products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

It Is Further Ordered that respondents The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., (hereinafter collectively referred to as "Goodyear"), corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Atlantic Refining Company or with any other marketing oil company whereby Goodyear, directly or indirectly, pays or contributes

anything of value to any such marketing oil company in connection with the sale of TBA products by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Atlantic Refining Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;

1448 3. Reporting or participating in the reporting to The Atlantic Refining Company or any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

It Is Further Ordered that the initial decision as so modified and supplemented be, and it hereby is, adopted as the decision of the Commission.

It Is Further Ordered that respondents The Atlantic Refining Company, The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the aforesaid order to cease and desist.

By the Commission.

Robert M. Parrish,
Secretary.

(Seal)
Issued: March 9, 1961.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

The Atlantic Refining Company, *Petitioner,*
vs.
Federal Trade Commission, *Respondent.*
No. 13340.

PETITION FOR REVIEW OF CEASE AND DESIST ORDER UNDER FEDERAL TRADE COMMISSION ACT, SECTION 5.

To the Honorable Judges of the Court of Appeals for the Seventh Circuit:

The Atlantic Refining Company ("Atlantic"), a Pennsylvania corporation having its principal office at 260 South Broad Street, Philadelphia, Pa. and carrying on business within the jurisdiction of this Court, by its attorneys, petitions the Court pursuant to Section 5(c) of the Federal Trade Commission Act for a review of the final order of the Federal Trade Commission In the Matter of The Goodyear Tire & Rubber Company and The Atlantic Refining Company, Docket 6486, issued March 9, 1961 and served on Atlantic March 13, 1961.

Nature of the Proceedings.

1. This was one of three proceedings under Section 5 of the Federal Trade Commission Act, 15 USC § 45, brought concurrently in January of 1956. All three proceedings challenged the legality of sales commission agreements between tire manufacturers and oil companies under which the oil companies are paid commissions by the tire companies for promoting the sale of the tire companies' tires,

batteries and accessories ("TBA") to dealers and distributors selling the oil companies' gasoline.

2. The complaint in the instant proceeding was directed primarily at a sales commission agreement between The Goodyear Tire & Rubber Company, Inc. ("Goodyear") and Atlantic, under which Atlantic promotes Goodyear TBA in a portion of Atlantic's marketing area. The complaint also challenged (a) a similar agreement between Atlantic and The Firestone Tire & Rubber Company ("Firestone") covering the remainder of Atlantic's marketing area and (b) other sales commission agreements between Goodyear and other oil companies. The complaints in the other two proceedings named as respondents Firestone and Shell Oil Company (Docket 6487) and The B. F. Goodrich Company and The Texas Company (Docket 6485) and in each case challenged a sales commission agreement between the two respondents and all sales commission agreements between each respondent and other companies. Thus, the legality of the Firestone-Atlantic agreement was at issue in the Firestone-Shell case as well as in the Goodyear-Atlantic case.

3. The three TBA cases were assigned to the same hearing examiner. The examiner held separate hearings, received separate exhibits, and handed down a separate initial decision in each case. Regarding the legality of the Firestone-Atlantic contract, he heard some of the same and some different witnesses and received some of the same and some different exhibits in the Goodyear-Atlantic and Firestone-Shell proceedings.

4. In brief, the complaint charged: first, that Atlantic dealers and distributors are subject to Atlantic's control by virtue of the contracts and leases between them and because the dealers' economic welfare is dependent upon Atlantic; second, that Atlantic exercises this control by causing dealers to purchase a substantial quantity of TBA

from Goodyear and Firestone; and third, that many competitors of Goodyear and Firestone were unable to sell tires, batteries and accessories to Atlantic dealers because of the sales commission agreements. The examiner did not find that the dealers were subject to Atlantic's control or economically dependent upon Atlantic. He concluded that the provisions of Atlantic's dealer leases were not unreasonable or oppressive, that the sales commission payments to Atlantic were supported by substantial services, that the sales commission contract between Goodyear and Atlantic was not illegal, and that the complaint should be dismissed as to Goodyear. With respect to Atlantic, he further concluded that Atlantic representatives had coerced Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA and that Atlantic had accepted the benefit of such coercion. He held that such acts of coercion constituted unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act and that the charges of the complaint were sufficiently broad to sustain an order prohibiting overt acts of coercion. Accordingly, he entered an order which would, in effect, have prohibited Atlantic from forcing its dealers to buy Atlantic-sponsored TBA or to discontinue buying tires, batteries or accessories not sponsored by Atlantic.

Substantially similar orders were entered in the Firestone-Shell and Goodrich-Texas proceedings.

5. Appeals from the initial decision were filed by Commission counsel supporting the complaint and by Atlantic. Upon briefs and oral argument, the Commission entered a final order which would, in practical effect, prohibit Atlantic from continuing its sales commission contracts with Goodyear and Firestone and from entering into similar contracts with any other suppliers of tires, batteries and/or accessories. Specifically, the order prohibits Atlantic from

(1) entering into or continuing any agreement whereby Atlantic receives consideration in connection with the sale of TBA to Atlantic outlets by any marketer other than Atlantic itself;

(2) accepting any consideration from any TBA vendor for acting as sales agent or otherwise promoting the sale of TBA by such vendor to Atlantic outlets;

(3) using any contractual or other devices to promote the sale of TBA by any marketer other than Atlantic to Atlantic outlets;

(4) using in any manner its relationship with Atlantic outlets to promote the sale of any specified brand of TBA by any marketer other than Atlantic to Atlantic outlets.

The order also prohibits Atlantic from coercing Atlantic dealers or distributors to buy any brand of TBA and from preventing Atlantic dealers and distributors from handling TBA of their own independent choice.

Concurrently, the Commission entered a final order against Goodyear requiring Goodyear, in effect, to cease and desist from entering into or continuing any sales commission agreement with Atlantic or any other oil company.

Substantially similar orders were entered in the Firestone-Shell proceedings. The Goodrich-Texas proceedings were remanded to the hearing examiner for the taking of evidence as to competitive effects of the sales commission plan.

6. The opinion of the Commission accompanying the order in the instant proceeding affirmed the hearing examiner's finding that agents of Atlantic have coerced a substantial number of Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and that Atlantic has accepted the benefits of such coercion. The opinion also contained a finding that Atlantic has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gaso-

line distribution facilities to cause its dealers to purchase very substantial amounts of TBA, and the opinion said that this would appear to bring the case within decisions striking down tying arrangements as per se violations of the Sherman Act. The opinion concludes that the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels.

Venue.

Section 5(c) of the Federal Trade Commission Act provides that any corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the Circuit Court of Appeals of the United States within any circuit where the method of competition or act or practice in question was used or where such corporation resides or carries on business by filing in the court within 60 days from the date of service of such order a written petition praying that the order of the Commission be set aside. Atlantic carries on business in the Seventh Circuit. It is licensed to transact business in the State of Illinois, maintains a sales office and warehouse in Chicago, Illinois, and sells substantial quantities of its products through such facilities to customers in Illinois and the other states in the Seventh Circuit.

Grounds for Relief.

1. The Commission's findings and conclusions and the Commission's order against Atlantic based thereon are unlawful in that, considering the whole record, there is no substantial evidence to support the Commission's findings as to (a) coercion; (b) Atlantic's economic power to control purchases of tires, batteries and accessories by Atlan-

tic outlets; (c) Atlantic's use of such power to cause Atlantic dealers to purchase substantial amounts of TBA; and (d) injury to competition.

2. The Commission's order is additionally unlawful in that Section 5 of the Federal Trade Commission Act does not, and under the provisions of the Constitution could not, authorize the Commission to prohibit Atlantic, as the Commission's order purports to do, from entering into or continuing sales commission arrangements with Goodyear, Firestone or other suppliers of tires, batteries or accessories, particularly where Atlantic acts "without the use of overt coercive tactics and of written or oral tying agreements."

3. The Commission's order is additionally unlawful in that it is arbitrary, capricious and constitutes an abuse of discretion in the following respects:

(a) it prohibits Atlantic from entering into sales commission contracts with suppliers of tires, batteries and/or accessories other than Goodyear and Firestone on the basis of evidence which, to the extent it was admitted against Atlantic, concerned only Goodyear and Firestone;

(b) it prohibits Atlantic from receiving any consideration for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products in the absence of any evidence tending to show that the receipt of such consideration is itself an unfair method of competition or an unfair act or practice or necessarily results in unfair methods of competition, acts or practices;

(c) it prohibits Atlantic from using any contractual or other device to sponsor, recommend, urge, induce or promote the sale of TBA products by a marketer other than Atlantic without limiting such prohibition to devices which constitute unfair methods of competition or unfair acts or practices;

(d) it prohibits Atlantic from using its relationship with Atlantic outlets to sponsor, recommend, urge, induce or otherwise promote the sale of any specified brand or brands of TBA products by any marketer other than Atlantic without limiting such prohibition to the use of the relationship in a manner constituting an unfair method of competition or unfair acts or practices.

4. The Commission's order is additionally unlawful in that it was issued without observance of procedure required by law in the following respects:

(a) the Commission's decision does not contain an adequate and proper statement of findings and conclusions as well as the reasons therefor on all material issues of fact and law as required by the Administrative Procedure Act; and

(b) the receipt by the same hearing examiner of different testimony and exhibits with regard to the legality of the Firestone-Atlantic contract in the instant proceeding and in the Firestone-Shell proceeding to which Atlantic was not a party violated the Administrative Procedure Act and the Fifth Amendment of the Constitution in that it denied Atlantic due process of law.

5. The Commission's order is additionally unlawful in that it is in excess of the jurisdiction and authority conferred upon the Commission by the Federal Trade Commission Act by reason of the fact that the acts and practices of Atlantic prohibited therein were not in interstate commerce.

Relief Prayed.

Wherefore, Atlantic prays this Honorable Court to set aside the order of the Commission, or, in the event the Court concludes that any portion of the order should be affirmed, to set aside the balance of the order and otherwise to modify the order accordingly.

Respectfully submitted,

Frederic L. Ballard, Jr.
Francis Ballard
Roy N. Freed
Land Title Building
Philadelphia 10, Pa.

Roy W. Johns
William F. Stotz
Joel L. Carr
P. O. Box 7258
Philadelphia 1, Pa.

Timothy G. Lowry
Owen Rall
Herbert C. Loth, Jr.
135 South LaSalle Street
Chicago 3, Ill.

Attorneys for Petitioner
The Atlantic Refining Company

Of Counsel:
Ballard, Spahr, Andrews & Ingersoll
Land Title Building
Philadelphia 10, Pa.

Peterson, Lowry, Rall, Barber & Ross
135 South LaSalle Street
Chicago 3, Ill.

Dated: May 10, 1961.

1 BEFORE THE FEDERAL TRADE COMMISSION.

• • (Caption—6486) • •

Room 332
Federal Trade Commission Bldg.
Washington, D.C.
Tuesday, October 30, 1956

Met, pursuant to agreement, at 1:00 p.m.

Before: Earl J. Kolb, Hearing Examiner.

Appearances:

James S. Kelaher, William J. Boyd, Jr., and Peter J. Dias, Attorneys for the Federal Trade Commission.

Thomas C. Mason, and David Ingraham, Attorneys for the Respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire and Rubber Company, Inc., Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York, N.Y.

Frederic L. Ballard, Jr., and Joseph K. Gordon, of Ballard, Spahr, Andrews & Ingersoll, attorneys for the Respondent, The Atlantic Refining Company, 1035 Land Title Building, Philadelphia 10, Penna.

2 PROCEEDINGS.

Hearing Examiner Kolb: This is the initial hearing in the matter of Goodyear Tire and Rubber Company and the Atlantic Refining Company, Docket 6486.

Mr. Kelaher: Mr. Examiner, to bring this matter up to date, I would like the record to show that pre-trial conferences were held on September 17, 1956, October 29, 1956 and the morning of October 30, 1956.

During the course of these pre-trial conferences and also as a result of informal discussions between counsel for the Respondents and counsel in support of the complaint, we have materially reduced the testimony to be adduced by counsel supporting the complaint.

During the course of the conferences and informal discussions we discussed three topics in general: (1) admissions (2) documents to be submitted by counsel in support of the complaint, and (3) possible stipulations as to the facts.

I would like to take this opportunity to commend the spirit with which counsel for the Respondents entered into these discussions. They have been very cooperative.

As the first order of business, I would like to hand to your Honor a copy of joint admissions of the Goodyear Tire and Rubber Company, the Goodyear Tire and Rubber Company, Inc., and the Atlantic Refining Company (handing) covering paragraphs 1 through 8 of the complaint as amended.

Hearing Examiner Kolb: Do you wish this to be read into the record and copied by the reporter?

Mr. Kelaher: Yes, your Honor.

Mr. Mason: No objection.

Mr. Ingraham: No objection.

Hearing Examiner Kolb: Will you copy this into the record, please?

(The document referred to is as follows:

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

Admissions of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., The Atlantic Refining Company.

The Goodyear Tire & Rubber Company (hereinafter referred to as "Goodyear"), The Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as "Goodyear, Inc.") and The Atlantic Refining Company (hereinafter referred to as "Atlantic"), make the admissions set forth below solely for the purpose of this proceeding and for no other action, case or proceeding. The making of
4 these admissions is not a concession that the facts so admitted are relevant or material to this proceeding or that they establish a cause of action or basis for a proceeding under Section 5 of the Federal Trade Commission Act. Insofar as the admissions cover matters as to which any respondent denied knowledge in its answer, such respondent makes these admissions in reliance on the admissions of the other respondents.

1. Goodyear is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear operates its business directly and does business with several subsidiaries.

Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear Inc., is a wholly-owned subsidiary of Goodyear and sells products of Goodyear. Some of the principal officers of Goodyear are also officers of Goodyear, Inc. and the two companies share the same principal office and place of business.

Atlantic is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at
5 260 South Broad Street, Philadelphia, Pennsylvania.

2. Goodyear is the largest manufacturer of rubber products in the United States, manufacturing a variety of rubber and associated products, including tires and inner tubes. The total net sales of Goodyear made directly and through its subsidiaries were more than one billion dollars in 1954.

Goodyear, Inc. sells various products manufactured by Goodyear, including tires and inner tubes. It also purchases for resale and distribution automotive batteries, parts and accessories and other items referred to by Goodyear as Car and Home Merchandise. Said products are sold directly to the consuming public by approximately 500 company-owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various states of the United States.

Automotive tires, inner tubes and batteries and certain automotive parts, accessories and supplies are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories.)

3. Atlantic is a large producer and distributor of petroleum products. Directly or through its wholly-owned or controlled subsidiaries, Atlantic is engaged in substantially all branches of the petroleum industry. It produces
6 crude oil from its wells, cracks and refines gasoline and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum retail dealers, some of whom operate service stations, and petroleum wholesalers (hereinafter referred to as "distributors"). In 1954 its sales and operating revenue totalled

more than one-half billion dollars. In certain cases, under a written contract (as amended) with Goodyear, Inc., Atlantic promotes the sale of certain TBA products and certain Car and Home Merchandise sold by Goodyear, Inc.

4. In the course and conduct of their businesses, Goodyear and Goodyear, Inc. ship certain products, including TBA products, or cause them to be shipped from the states in which said products are manufactured or warehoused to purchasers thereof located in other states of the United States and the District of Columbia.

In the course and conduct of its business, Atlantic ships some of its petroleum products from the states in which such products are manufactured, refined, stored or warehoused to terminals, bulk plants, or bulk storage located in other states for the purpose of sale and distribution to resellers and consumers in such other states.

5. Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and, as hereinafter
7 more fully described, Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. Goodyear, Inc. sells TBA products directly and through wholesalers to many classes of customers, including service station operators who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They have constituted an increasingly important market for TBA products at the present time.

Atlantic sells its petroleum products to more than 5,600 retail dealers, a substantial unmber of whom operate service stations, and to distributors who in turn sell said products to more than 2,800 retail dealers, a substantial

number of whom operate service stations. In addition to petroleum products, a substantial number of the dealers sell TBA products.

7. Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to certain TBA products and certain Car and Home Merchandise, as to the terms of which reference is made to the contract itself and to the various amendments thereto. Atlantic has also entered into a contract containing generally similar terms with the Firestone Tire and Rubber Company (here-
8 inafter referred to as "Firestone"). The respondents reserve the right to move to strike from the record this and all other references to Firestone contained herein and to object to the admission in evidence of any other testimony relating to Firestone.

There are a large number of dealers and distributors who sell principally Atlantic petroleum products. Under its sales commission contracts with Goodyear, Inc. and Firestone, Atlantic recommends, urges and endeavors to persuade some of these dealers and distributors in specified areas to purchase the products to which the aforesaid sales commission contracts relate and receives sales commissions in return for such services. Such urging, recommendation and persuasion is a factor which, with many other factors, causes some of these dealers and distributors to make purchases of products covered by the contracts. The dealers and distributors do not receive any part of commissions paid under the contracts.

The dealers and distributors selling the petroleum products of Atlantic operate as independently owned business enterprises. Atlantic has various contractual arrangements with said dealers and distributors as to which arrangements reference is made to the contracts themselves.

8. Goodyear, Inc. has sold TBA products and certain

Car and Home Merchandise to dealers and distributors
9 selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales. Goodyear, Inc. made sales covered by its agreement with Atlantic, amounting to $2,445,808 in 1951 and $4,175,890 in 1952, on which it paid Atlantic commissions of $239,250 and $411,743 respectively.

Firestone reported sales covered by its agreement with Atlantic amounting to $3,809,843 in its fiscal year 1952 and $4,796,304 in its fiscal year 1953, on which it paid Atlantic commissions of $354,354 and $446,286 respectively.)

Mr. Kelaher: The second subject I would like to discuss relates to the documents to be marked for identification as submitted by counsel in support of the complaint. During the pre-trial conference yesterday and this morning, we prepared a list of identification numbers and descriptions of such documents and we move that that be incorporated into the record at this time.

I would like to call your Honor's attention to the fact that the first portion of that list has been transcribed and is now available, and the second portion of the list should be available for introduction into the record before this hearing is adjourned this afternoon.

I would also like to call your Honor's attention to
10 the fact that this list of documents and Commission exhibits for identification numbers has not been checked and is being offered subject to verification and possible minor changes in the descriptions.

Hearing Examiner Kolb: This does not show the items objected to or not objected to.

Mr. Kelaher: I was coming to that, Your Honor. I will now list the items broken down into the various categories.

Hearing Examiner Kolb: First I suppose we better have

the reporter mark the exhibits as directed in the pre-trial conference document, which will be copied into this present record to show the identification of the exhibits.

• • • • •

39 Mr. Kelaher: Your Honor, at this time I would like to offer in to evidence Commission's exhibits for identification which have been classified as to which respondents object, either in whole or in part because reference is made to the Firestone Tire and Rubber Company which is not named as a respondent in this case but which is referred to in the complaint as having an overriding sales commission agreement with respondent Atlantic.

Those documents, for the purpose of record are these Commission exhibits for identification numbers 103.

Hearing Examiner Kolb: 100 A-C and 103. Did I hear you wrong?

Mr. Kelaher: I'm sorry, 100 A-C, 103, 107 through 120, 135 A-C, 153 A-B, and 185, 186 and 187. Before the ruling is made on the admissibility of such documents I beg leave of the Examiner to be heard on the question of their admissibility.

Hearing Examiner Kolb: I assume that they will object. What their objections are they have a right to answer. Do you offer those exhibits now?

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: Do you want to state your objections?

Mr. Mason: We believe, your Honor, that these documents are in the same category of documents that were embraced in your Honor's ruling in the case involv-

40 ing Texas and Goodrich and Firestone. That is that Firestone is not a respondent to the case that any detail of evidence with respect to the arrangement in Firestone has nothing to do with Goodyear in the case particularly and that it is outside of the scope of the complaint.

We have acquiesced in your Honor's ruling in the Texas-Goodrich case that evidence as to the contracts themselves and as to the basic statistics as to sales may go in but we have objected and registered our objections to those documents which set forth the detail of the Firestone plan and I am speaking now to my objection from the Goodyear people.

Mr. Ballard: Speaking for Atlantic, your Honor, I can add to Mr. Mason's statement, the fact is that Firestone is not a party, that the relationship between Firestone and Atlantic seems far alien to the relationship between Goodyear and Atlantic and we feel that evidence directed to the details of relationship between Firestone and Atlantic are a needless cluttering of the record and can lead only to confusion in your Honor's consideration of the issues before him which relate to another relationship and we also are prepared to acquiesce in the ruling in the Goodrich-Texas Company proceedings and in fact have in our admissions admitted the existence and general similarity of the Firestone-Atlantic contract and the size of the sales reported thereunder by Firestone and the size of the commissions paid thereunder.

41 Mr. Kelaher: Mr. Examiner, before I take each of the objections seriatim, I would like to review the complaint for the purpose of showing that these questioned documents are relevant to and come within the scope of the complaint.

The complaint alleges that the sales commission agreement and the acts and practices thereunder between Atlantic and Goodyear are unlawful. The complaint also alleges in paragraph 7 thereof that Atlantic has entered into a "substantially similar agreement", which counsel for respondents have just acknowledged, with Firestone, and that the agreement and the acts and practices thereunder are unlawful as set forth in paragraphs 11 and 12 of the complaint.

I would refer you to paragraph 11, subparagraph 2, which specifically states that among the effects of the adoption and use by respondents of said override commission agreement and each of them under the circumstances and in the manner here and as before alleged are that they have, as stated in subparagraph 2, "injured, lessened, prevented and destroyed competition between Goodyear, Inc., and Firestone."

If permitted, we propose to show documents which will substantiate that allegation of the complaint. Those documents will show that the Atlantic Refining Company has six marketing regions, three of which are designated as the New York Region, the New England Region, and the Philadelphia-New Jersey Region.

Three other Regions are described by Atlantic as
42 the Western Pennsylvania Region, the Eastern Pennsylvania Region, and the Southern Region. We propose to show that the sales commission plan agreements referred to in this complaint are market foreclosure devices. They are market devices which not only eliminate, they atomize competition. If permitted, we will show that Atlantic after exploring possible marketing alternatives actually assigned three marketing regions to Goodyear, namely the New York, New England and Philadelphia-New Jersey Regions, and actually assigned three Regions to Firestone, namely the Western Pennsylvania, Eastern Pennsylvania, and Southern Regions, both agreements to become effective simultaneously on March 1, 1951.

It is our contention that the control and influence which Atlantic has in this market is reflected in the manner in which they assign markets, and we contend that this plan, this sales commission plan, is simply that, is strictly a market control plan. We are not concerned here primarily with contracts between Atlantic and Goodyear. We are concerned here primarily with the dominant position

of Atlantic Refining Company in this market, and I would stress the point by stating that the Firestone contract, the Firestone statistics, and the Firestone mechanics, the operational mechanics of the Firestone plan will prove beyond a shadow of a doubt one important element of this case, and it is relevant to the Goodyear contract from that standpoint, and that important fact is that these tire
43 companies, Goodyear and Firestone, have actually entered into contracts in restraint of trade through the instrumentality of the Atlantic Refining Company, which are patently violations of Section 1 of the Sherman Act which bring them within the purview of Section 5 of the Federal Trade Commission Act.

That is the allegation we intend to substantiate and we feel we are severely restricted and hampered in our offers of proof and in our documentary proof if we are not permitted to introduce such evidence.

I would like to take the objections made seriatim by first Goodyear. They say Firestone is not a respondent. Well, that is true, Firestone is not a respondent, but it isn't necessary that Firestone be a respondent. This is a complaint in the public interest. The Commission has seen fit to attack this problem through this type of a complaint. It is for the protection of public rights. We are here interested in the elimination of trade restraints for eliminating the preservation of competition in the interests of the public. We are not interested in private rights. The Commission often has cases which transgress public rights and therefore contracts are abrogated or ruled invalid by the Federal Trade Commission and the courts. I refer your Honor to the National Licorice case 309 U. S. 350, where the Supreme Court stated that in proceedings before the Federal Trade Commission, the order restraining
44 unfair methods of competition may preclude the performance of outstanding contracts by the offender.

Such orders have never been challenged because the owners of the contracts were not made parties, and that is exactly the situation in this case.

In addition to the fact that the Firestone contract and the actual practices thereunder including the entire plan eliminates competition, and that is another thing I would like to mention, it is true that the motivating force of this plan lies in the contracts. It sounds in contract to that extent. However, once the dealer is signed, once the Atlantic dealer is signed to a Firestone contract, or once he has signed a Goodyear contract, other trade restraints raise their ugly head. This plan is simply saturated with trade restraints, and we feel that we should have an opportunity to present evidence to substantiate that statement. For example, once an Atlantic dealer is signed to a Goodyear contract, and the same thing applies to the Firestone contract, the Atlantic dealer is told where he must buy his supplies, his Goodyear supplies or Firestone supplies. He can't go to any Goodyear dealer, even to a Goodyear dealer in the area or even to a Firestone dealer in the area, he must go to the designated supply point. This plan has all types of ramifications over and above the contracts themselves, and the contracts are very innocuous. There is one preliminary contract entered into by Atlantic and Goodyear which is dated in June, 1950, and it took
45 them six months to work out the terms of the contract. These contracts are very innocuous in their meaning, and we have proof of that statement. Those documents are already in evidence to show that. So that takes
46 care of the first point. Coming back again to Goodyear's objections we state it isn't necessary for Firestone to be named as a respondent.

The second objection by the Counsel for Goodyear was that the detailed arrangements have no bearing on the Goodyear-Atlantic plan. I think that I have covered that

subject thoroughly. We say that the detailed arrangements between Firestone and Atlantic do have an essential bearing on the Goodyear-Atlantic plan. There is no question about it. If it weren't for Atlantic's command of the market the Goodyear plan would not be in effect today, and I would like to add at this point that the contracts I am referring to between Goodyear and Atlantic and between Firestone and Atlantic were entered into as of March 1, 1951, and to this date there has been a complete elimination of competition between Goodyear and Firestone in attempts to sell the entire Atlantic market.

Firestone sells in areas in the New York area, Firestone sells in the New England area and Firestone sells in the Philadelphia-New Jersey area, but they do not sell to Atlantic stations in those areas. There is a hands-off policy and we can prove it and likewise Goodyear since 1951 sells in the Western Pennsylvania area, they sell in the Eastern Pennsylvania area, they sell in the Southern area, but they do not sell to Atlantic stations in those areas because there is a common understanding and an agree-
47 ment that Firestone has been assigned those areas.

Now we are not saying that this is a conspiracy case although it has all the elements of a conspiracy case, but we do think it is important to show that Atlantic has domination and control of the market. That is an essential and vital part of our case.

Now going down through other objections by Counsel for Goodyear he stated that he would acquiesce as to the contracts themselves and as to the statistics. Of course, that in and of itself shows nothing. As I stated the contract is very innocuous. The statistics taken as a whole are meaningless. We can't show; we are prohibited if our documents don't go in, we are prohibited from showing how this program operates and its effect on the Goodyear-Atlantic plan.

His further objection and his last objection was to the mechanics of the Firestone plan. Well, as I have just stated the trade restraints in this case are barely underway by the time the mechanics of this plan go into effect. There are all types of trade restraints involved here and we think we should have an opportunity to show how this plan works.

Now as to Counsel for respondent Atlantic, who has raised similar objections. First he states that respondent Firestone is not a respondent. I believe I have answered that contention. He states secondly that the relations between Firestone and Atlantic are foreign and alien to
48 the Goodyear-Atlantic contract.

I think we have shown that they are not foreign and alien, they are an inseparable part of the Goodyear-Atlantic contract.

Third, it would lead to confusion. Of course I don't think I have to comment on that one. His fourth statement was that he acquiesced as to the contracts themselves and as to the statistics, and there again I say that it is not enough for our purposes. So on the basis of this statement I move the documents referred to be admitted in evidence.

Hearing Examiner Kolb: Mr. Kelaher, your chief objection as I understand it is an inability to show that there has been a division of territory.

Mr. Kelaher: It is our inability to show the dominance.

Hearing Examiner Kolb: I can't see how a ruling which I have made in the other case would prohibit you from showing a division of the territory, that Goodyear could not sell except in certain states.

Mr. Kelaher: Well, as we understand your ruling on the other case, and I am very happy to have that ruling clarified for the purpose of this case, I am assuming that that type of testimony would have been excluded. I would be very happy—

Hearing Examiner Kolb: I couldn't exclude testimony as to where Goodyear sells.

Mr. Kelaher: There is an exclusion of testimony
49 as to—referring now to the Goodrich-Texas Company case.

Hearing Examiner Kolb: I say if I follow the same ruling you would still be able in this case to show the territory or extent of the territory in which Goodyear sold and the division of the territory.

Mr. Kelaher: Yes, but we wouldn't be able to implement our allegation that competition has been eliminated. We have documentary proof going in to that question.

Hearing Examiner Kolb: The thing that bothers me is that you appear to be proceeding on a conspiracy case without pleading a conspiracy.

Mr. Kelaher: I tried to make it perfectly clear, Your Honor, that we are not proceeding on a conspiracy case. I simply make the statement that both contracts and the acts and practices under both contracts are essential to show the market domination and influence of Atlantic.

Atlantic simply assigns these areas to these people. We are attacking this sales commission plan. We say it is a market control device. It so happens that Goodyear is in now and Firestone is in. Tomorrow Atlantic may decide to put two other companies in there and we intend to show that they have that power.

Hearing Examiner Kolb: If Atlantic makes a contract with Firestone to sell in certain states and makes a contract with Goodyear to sell in certain states—

50 Mr. Kelaher: That is right.

Hearing Examiner Kolb: (Continuing.) —and you have no agreement among the three of them that the territory is being divided how are you going to prove a case against Goodyear by using Firestone?

Mr. Kelaher: We are going to show, as we allege in

the complaint, that the sales commission plan was entered into by Goodyear with the understanding that it was assigned three territories. We are going to show, if we are permitted, we have documentary proof of the fact that Goodyear does not go into the Firestone areas and vice versa. We say it is pertinent to show that the sales commission plan is a market control device.

It has a direct bearing on the Goodyear plan. One plan can't exist without the other. If this were not a market control device Firestone would be competing with Goodyear in the Goodyear territory and vice versa but they are not doing that.

Hearing Examiner Kolb: Do you have anything further to say?

Mr. Mason: No, Your Honor, except to say this, I think that Your Honor, in knowing the fact that this is not a conspiracy case, that there are not allegations of a division of territories between the three parties, has put your finger on the very nub of the problem here. The extent to which these people, the attorneys supporting the complaint,
51 would like to go into details of transactions with strangers so far as Goodyear is concerned is just going to completely confuse the case and take it out of what at least we understand it to be, an allegation that Goodyear and Atlantic together have participated in an unfair trade practice and that it is togetherness of their participation that makes this unfair trade practice.

Mr. Kelaher: The complaint also alleges, I might add, that Firestone and Atlantic are engaged in a similar unfair trade practice and one is part and parcel of the other.

Hearing Examiner Kolb: Would you consider this evidence as to Firestone to be admissible against Atlantic but not to Goodyear?

Mr. Kelaher: I would go that far. I think it is definitely admissible against Atlantic. I don't think there is any question about it being admissible against Atlantic.

Hearing Examiner Kolb: Where would you be if it was one and not the other?

Mr. Kelaher: It would show that the sales commission plan is what we claim it is. It is a market control plan. I think when you ask me whether I would hold it admissible against Goodyear it makes little difference whether it is admissible against Goodyear if the ultimate fact is found, namely that this is a market control device. It is a market allocation device. It is a customer allocation device. That is what we are attempting to reach in these cases.

52 I think it could be stated that it would be admissible against Atlantic and even with that limited applicability I think it would aid our presentation of the evidence. However, I would like to discuss that for a moment.

Hearing Examiner Kolb: I feel this way, this question has been raised and it is before the Commission now in the Goodrich case. If you feel that there is enough difference between this case and the Goodrich case to take it out of here perhaps the best way for me to do would be to refuse the acceptance of these documents and let you take another appeal at the same time, let them both be argued together.

Mr. Kelaher: We do contend, leave there be no misunderstanding on this point, that the basic issues are the same but we do think we have presented enough differences to show that the evidence we are referring to in this particular case would be admissible.

Hearing Examiner Kolb: I did have in mind deferring my decision until the Commission had acted upon the other appeal. However, if you wish to appeal this on that ground as well I can today sustain the objections and you can take your appeal to the Commission on this if you wish to do that. Whichever you wish.

Mr. Kelaher: Well, I would appreciate a ruling on the matter.

Hearing Examiner Kolb: All right then. Let the
53 record show that the objections to the exhibits which were enumerated as applying to Firestone are sustained.

Mr. Kelaher: May we have a five minute recess.

Hearing Examiner Kolb: Five minute recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Mr. Examiner, for purposes of the record, we would appreciate an amplification of your ruling as it pertains to this matter if you so desire.

Hearing Examiner Kolb: I don't see that any amplification should be made really. The matter is before the Commission in the other case and I would like to see what the Commission does about it before I do anything as a matter of fact. I am giving you an opportunity to appeal this ruling if you feel the division of territory has any bearing on it. I sustained the objection so that you could take your appeal at the same time with the Goodrich matter and have them both disposed of with the Commission.

Mr. Kelaher: I take it from your statement your ruling in this matte. is based on your rulings in docket 6485.

Hearing Examiner Kolb: There is no use in me making another ruling in the thing.

Mr. Kelaher: Thank you, Your Honor. There was another category of documents marked for identification, they being documents which relate to or incorporate,
54 they are in references to oil companies which have sales commission plan agreements with respondent Goodyear, Incorporated.

I ask now what your ruling would be with respect to such documents which I now offer in evidence.

Mr. Mason: Your Honor, we object to the introduction of these documents in evidence, objection that they present

precisely the same issues that were raised as to non-respondent oil companies in the Texas-Goodrich cases and because the issues are identical I will not engage in any extended argument in support of my objection.

Hearing Examiner Kolb: As I stated before, I might have some doubt as to Firestone but I have no doubt as to the inadmissibility of documents with reference to oil companies so I will sustain the objections to Exhibits 53, 55, 59 through 78.

Mr. Kelaher: I take it here again that your ruling is based on similar rulings in docket 6485.

Hearing Examiner Kolb: The matter is before the Commission and so I am leaving it before the Commission with the opportunity to appeal if you wish in this proceeding.

Mr. Kelaher: Thank you, Your Honor. I think that concludes the subjects as to which we had intended to discuss this afternoon. I leave it to Counsel for respondents whether or not there is anything further at this time.

Mr. Mason: We have no further business for Your Honor.

55 Mr. Kelaher: One more thing, Your Honor; for the record.

(Discussion off the record.)

Hearing Examiner Kolb: As a result of discussions off the record it was decided to have no further hearings until the Commission has decided the appeal and I am accordingly cancelling the hearings now set for November 7, 8, and 9, and November 12, 13, and 14, and resetting this matter for December 3 through December 7.

Mr. Kelaher: Your Honor, I would like to state that prior to the December 3 hearings Counsel for the respondent and Counsel for the complaint will attempt to resolve by stipulation the type of testimony elicited from top level officials in docket 6485.

Mr. Mason: We will do that.

Hearing Examiner Kolb: I have no objection to expediting the case any way you can.

Mr. Kelaher: Thank you.

Hearing Examiner Kolb. I guess that is all in this case.

* * * * *

87 Room 112,
U. S. Customs House and Appraisers Bldg.,
2nd and Chestnut Streets,
Philadelphia, Pa.,
Thursday, June 13, 1957.

Met, pursuant to notice, at 10:30 a.m.

Before Earl J. Kolb, Hearing Examiner.

Appearances:

James S. Kelaher, and Peter J. Dias, Attorneys for the Federal Trade Commission.

Thomas C. Mason and David Ingraham, Attorneys for the Respondents, the Goodyear Tire & Rubber Company and the Goodyear Tire & Rubber Company, Inc., Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York, N. Y.

Charles I. Thompson and Frederic L. Ballard, Attorneys for the Respondent, The Atlantic Refining Company, 1035 Land Title Building, Philadelphia 10, Pa.

Following Testimony Taken At Philadelphia

88 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: At this time I would like to offer into evidence map entitled "Atlantic Philadelphia Metropolitan and Suburban District," with Commission exhibit number to be assigned tomorrow.

Hearing Examiner Kolb: You wish to question the witnesses on that?

Mr. Kelaher: Yes, your Honor.

Hearing Examiner Kolb: Is there any objection to that?

Mr. Thompson: No objection, sir.

Mr. Kelaher: I would like to call John Chambers to the stand.

Mr. Thompson: Mr. Examiner, for the convenience of you, sir, and counsel, we have had this map of the Philadelphia Suburban District blown up, and you will see an enlarged edition of it on the wall. I thought it might be a help to everybody.

Hearing Examiner Kolb: Very well.

JOHN CHAMBERS, was thereupon called as a witness for the Commission, and, having been first duly sworn, 89 testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name?

A. John Chambers.

Q. Your home address?

A. 14 Sycamore Avenue, Alden, Delaware County, Pennsylvania.

Q. Mr. Chambers, were you at one time employed in an Atlantic service station?

A. I was.

Q. Will you please state the period during which you were employed and by whom, and with whom?

A. Well, I would say from the latter part of '45 until the latter part of '48 with Ed Parris.

Q. Where was his station located?

A. Chester Pike and Clifton Avenue, Sharon Hill.

Q. After your employment with Mr. Parris, what was your next occupation?

A. Then I became a dealer at 2nd and Lloyd, Chester.

Q. What kind of a dealer did you become?

A. A lessee dealer.

Q. During what period did you operate the station at 2nd and Lloyd Streets?

A. From November of '48 until November of '52.

90 Q. And what type lease or what was the term of your lease during that period?

A. Yearly.

Q. Then in November of 1952 what transpired?

A. I moved to the location at Chester Pike and Clifton Avenue, Sharon Hill.

Q. And during what period were you at that location?

A. From November of 1952 until November of 1954.

Q. And what type station was that?

A. Lessee.

Q. Was it an Atlantic station?

A. That is right.

Q. And what was the term of your lease during the period when you were at the Sharon Hill station?

A. Three to six months.

Q. Is that renewable every three months?

A. Yes.

* * * * *

91 Q. Mr. Chambers, just to clear the record, during the period 1945 on or during the period when you were employed, were you with an Atlantic station?

A. Oh, yes, sir.

Q. And during the period of your first lease was that at an Atlantic station?

A. That is right.

Q. When you began operating as a lessee dealer in November of 1948, what TBA did you carry in your station?

A. Lee and Exide tires.

Q. You mean Exide batteries?

A. Exide batteries, I meant, and much of my TBA was outside jobbers.

Q. Your accessories were from local jobbers?

A. That is right.

Q. How long did you continue to carry these tires and Exide batteries and the line of accessories you were handling?

A. Until the change was made.

92 Q. And do you recall the events leading up to the change you referred to?

A. No, I don't recall anything other than came about.

Q. At or about what time did the change take effect?

A. I could not be exact on that.

Q. And what was the change, what was the change you are referring to?

A. The change was from Lee tires, of course, Exide batteries, to a 100 percent Goodyear.

Q. Was Goodyear a 100 percent Goodyear TBA?

A. Everything.

Q. What was included in that line, Goodyear tires?

A. Batteries, fan belts and the accessories that goes along.

Q. Did you in or about March of '51 attend a meeting of Atlantic dealers?

A. Oh, yes.

Q. What was the purpose of the meeting?

A. Well, to inform us the company was making that change and they felt it was better for the entire industry, that is, our service station business.

Q. When you say the company, to whom are you referring?

A. Whoever was handling the meeting at that time, I don't recall.

Q. What Whiz brand line? What constitutes the Whiz brand line?

A. Very comparable to your Dupont or your Mac's-It line, or Simoniz line. It constitutes polishes, cleaners, radiator specialties, sealers, et cetera.

Q. Would you state your company's experience with respect to the Whiz line of waxes and polishes among 194 Atlantic and Simoniz stations particularly?

A. Well, when you have salesmen working on commission, you have to have something that they can sell. So finding that the Mac's-It line was drifting away for us, there was only one solution, to find something else to sell it and try to have it exclusively, which we did.

We took on the Hollingshead line and tried to replace wherever we could the Mac's-It line within the operations that were then using Mac's-It. They had originally been Dupont. We changed them from Dupont to Mac's on a selling basis. Now we had to unsell what we had sold and sell the Whiz, which we proceeded to do. We built that up to very comparable figures to our Mac's-It line.

Q. Comparable figures? Will you state approximately what your annual purchases were built up to?

A. In the vicinity of $6,000. Somewhere between $5,000 and $7,000 annual purchases.

Q. What was your general mark-up on the Whiz line?

A. The same as on the Mac's-It—20 percent.

Q. So a $6,000 volume would be a $7,200 selling volume?

A. Yes, sir.

Q. Who were your principal purchasers of the Whiz line?

A. Our previous purchasers of the Mac's-It line.

Q. And then were your previous purchasers of the Mac's-It line—did they continue to purchase Mac's-It products?

195 A. We replaced them pretty completely. It took about a year or a year and a half, but we pretty well replaced them.

Q. What was your experience with respect to the Whiz line? Would you please state the years you are speaking of?

A. We began with Whiz, I would say, in late 1951 or probably early 1952, and the build-up period was probably the same length of time, a year or a year and a half. So we probably peaked out somewhere around late 1953 or '54 on our Whiz products.

Q. Would you please state your experience with respect to the Whiz line in so far as it relates to the Atlantic market?

A. There again the product was available to the TBA distributor, or whatever they wished to call that individual, through Goodyear, and our sales were again replaced. In other words, the repeat business was lost to us and picked up by the TBA distributor.

Q. Was that repeat business picked up on the Whiz line or on another line?

A. It was picked up on the Whiz line.

Q. Which was handled by Mr. Parris?

A. Yes.

Q. Did you lose any of the business of the Atlantic or Sinclair service stations on the Whiz line?

196 A. Yes, sir.

Q. You did?

A. Yes.

Q. Can you give us the names of the Atlantic dealers to whom that business was lost?

A. Exactly the same group.

Q. The same group—

A. In other words, it was a repetition of the Mac's-It development and loss.

Q. Can you give us the names—and by "the same group" you are referring to the names you previously stated with respect to the Mac's-It line?

A. Yes. Probably with the exceptions of where dealers had either moved or been replaced by other dealers. But they were the same locations.

Q. Can you tell me whether your purchases and sales of the Whiz line declined from that peak period you
197 referred to, late 1953 or '54?

A. Yes, sir, it has. My purchases this past year on Whiz were below $500.

Q. Were the bulk of your sales of this line to Atlantic and Sinclair stations as previously?

A. Yes.

Q. Do you recall any conversations with Atlantic dealers relating to your loss of business on the Mac's-It or Whiz lines?

A. Yes.

Q. Would you please state the names of the individuals with whom you had such discussions, and the approximate time?

198 By Mr. Kelaher:

Q. Would you state—

Mr. Thompson: May we have the question reread?

Hearnig Examiner Kolb: Yes.

(Read.)

By Mr. Kelaher:

Q. You may answer that.

A. Burt Rehill; 1952.

Q. For purposes of convenience, I think it would be

just as well if you gave us the substance of the conversation as you went along. Would you state what reason Mr. Rehill gave you at that time?

Mr. Mason: I object to the form of the question. If he wants to have what he said, all right. But let's have no characterizations.

Mr. Kelaher: That is exactly what I am asking him.

Mr. Mason: That is not what you asked him.

Mr. Thompson: Will you accept the amendment?

Mr. Kelaher: I will accept the amendment.

By Mr. Kelaher:

Q. Just state the conversation.

A. The conversation was to this effect—

Mr. Thompson: May we have the place where it occurred?

199 Mr. Kelaher: Yes.

A. In his place of business. "Sorry, Glenn, but I have to reserve this for Ed Parris. You understand the situation. I am in an Atlantic station. I must buy from an Atlantic TBA distributor."

By Mr. Kelaher:

Q. Do you recall any other conversations with other Atlantic dealers or ~~Sinclair~~ dealers, along similar lines?

A. Yes. John Chambers.

Q. Please state the time as nearly as you can, the place, and what was stated.

A. I would approximate the time at about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.

Mr. Mason: I would like to have the answer read.

(Read.)

Mr. Mason: I move to strike everything in that answer after "it was to the effect" because it is not clear from the answer whether he is reciting a conversation that actually took place, a speculation of his as to a conversation that may have taken place somewhere else, or what.

Mr. Kelaher: He is referring specifically to a con-
200 versation.

Mr. Mason: You heard the answer read.

Hearing Examiner Kolb: Are you describing a conversation that you had?

The Witness: I am describing a conversation that I had.

By Mr. Kelaher:

Q. What did Mr. Chambers—

Mr. Mason: I object to the description. It starts with "to the effect". It does not purport to be a conversation at all but the impression of the witness.

By Mr. Kelaher:

Q. State as nearly as you can what Mr. Chambers said to you.

Mr. Thompson: Before he answers that question; I think the record is becoming confused again. It is my understanding that you are still referring to the Whiz line?

The Witness: Yes.

Mr. Thompson: And this conversation was about the Whiz line?

The Witness: Let's call it the chemical line.

By Mr. Kelaher:

Q. The chemical line, which would include Mac's-It, Whiz, and so on.

A. That's right, because Jack was still using some
201 Mac's-It at that time.

Mr. Thompson: I am thoroughly confused.

Mr. Kelaher: Your Honor, I think I should be permitted to conduct this examination. I am trying to get the substance of the conversation that he had with Mr. Chambers some time in 1954.

Mr. Thompson: I am merely trying to find the subject matter of the conversation.

Mr. Kelaher: I think we will develop it.

Hearing Examiner Kolb: Go ahead.

The Witness: The subject matter was TBA products generally, exclusive of tires.

By Mr. Kelaher:

Q. Now will you please state what the conversation was?

A. Jack said to me: "Glenn, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Mr. Thompson: I move the answer be stricken. It obviously is double hearsay. The man is saying what one Jack Chambers said to him what somebody in Atlantic said to him.

Hearing Examiner Kolb: He is explaining his reasons why he can't buy that product. I think the answer is admissible. I will overrule the objection.

202 By Mr. Kelaher:

Q. At that time did you make any remarks to Mr. Chambers? Do you recall whether you answered him?

A. None that I can recall.

Mr. Thompson: May I ask whether it is the purpose of this testimony to impeach Mr. Chambers, who testified that he had no TBA difficulties whatever with Atlantic?

Mr. Kelaher: He did. I believe you were listening to a different witness this morning.

Mr. Thompson: Is it the purpose to impeach Mr. Chambers?

Mr. Kelaher: It definitely is not. It is to corroborate Mr. Chambers.

By Mr. Kelaher:

Q. Now getting back to Mr. Burt Rehill, will you state what that discussion related to?

A. TBA products, exclusive of batteries or tires.

Mr. Thompson: The TBA products exclusive of tires and batteries? And accessories?

The Witness: I have batteries, but I wasn't discussing batteries with him. I do not have tires for sale.

By Mr. Kelaher:

Q. You say batteries and accessories, including the Mac's-It and Whiz lines and your other products. Did you sell your line in general to Atlantic and ~~Sinclair~~ stations prior to about 1951?

A. Did I sell?

203 Q. Did you sell them?

A. Yes, sir.

Q. What was your approximate volume of sales to those stations at that time?

A. I couldn't give you that figure without going back into the sales record.

Q. Since that time have you lost business to Atlantic and ~~Sinclair~~ dealers?

Mr. Mason: I object to the question such as that. He has already announced that he doesn't know what his figures are and can't give them from his head for a prior period.

Hearing Examiner Kolb: He doesn't know what he sold. He might be able to say what he lost. Objection overruled.

Mr. Mason: If he had his figures here, we would know what the facts were.

By Mr. Kelaher:

Q. I will restate the question. Taking your 1951 sales volume as 100 percent, did you increase, decrease, or remain constant with respect to your volume of sales of batteries and accessories to Atlantic and Sinclair dealers?

A. Sales to service stations are definitely down. That I can vouch for, because I know what has given rise
204 to existing sales at the present time, because I analyze those things myself. I want to know where I am selling my merchandise. And I know that I am not selling it to service stations in general.

Q. Does that include Atlantic and Sinclair service stations?

A. Yes, sir.

Q. Would you say then that there has been a decrease in sales volume since the peak period, or since the 1951 or 1950 level?

A. To service stations?

Q. Yes.

A. Yes.

Q. To Atlantic and Sinclair service stations.

Would you have any approximate idea of the percentage of decline since that time?

Mr. Mason: I object to an approximate idea.

Hearing Examiner Kolb: Objection overruled.

A. Service stations, 80 percent decrease.

By Mr. Kelaher:

Q. Eighty percent decrease. Does that apply to Atlantic and Sinclair stations?

A. Yes, sir.

205 Q. Mr. Wetzel, do you solicit the business of Atlantic or Sinclair service stations who are either opening as new stations or where a new operator is taking over?

A. Yes, sir, I do.

Q. What has been your experience with selling batteries and accessories to such stations?

A. You can't.

Q. Who supplies, based on your knowledge and observation, who supplies TBA to the stations indicated?

A. Goodyear.

Q. Is that true of the designated Goodyear supply points?

A. Yes, sir.

Q. Based on your observation and knowledge of the market, what type of advertising is done by Atlantic and ~~Sinclair~~ dealers with respect to TBA items?

A. Goodyear primarily. They have a valance type advertising and outdoor signs.

Q. Based on your knowledge and experience prior to 1951; what type of advertising was carried by the Atlantic stations? What type of tire, rather.

A. At that time there was more diversified TBA. As I recall, Thermoid belts and hose were in at that time.

Q. Do you recall the tires that were carried at that time?

A. Lee.

Q. Do you recall the batteries?

206 A. Some were Lee. And then others of course were buying off-brand merchandise. There were some Reading batteries, some Cadmidyne.

Q. Were there any Exide batteries displayed?

A. Yes, I believe there were. I feel sure there were.

* * * * * *

Q. Are you able to sell to any Atlantic or ~~Sinclair~~ stations on what is known as a stocking basis?

Mr. Thompson: I object to the use of the words "are you able to." Maybe he is, or maybe he isn't.

By Mr. Kelaher:

Q. Do you sell?

A. We are speaking now of TBA?

Q. Yes.

207 Mr. Mason: Not TBA.

Mr. Kelaher: Speaking of batteries and accessories. I think the record can show that when he refers to TBA, it is noted that Mr. Wetzel does not handle tires.

Mr. Thompson: My understanding, when he speaks of TBA, is that he is speaking of the Whiz line of accessories basically.

Mr. Kelaher: He is speaking of his complete line.

By Mr. Kelaher:

Q. Will you go ahead?

A. Some isolated hard parts are stocked by some of the stations that do minor repair work.

Q. Are hard parts included in the category known as TBA?

A. No.

Q. Now with respect to the battery and accessory lines you carry, what has been your experience?

A. I don't have any stocking accounts.

Q. Are you referring now to Atlantic and ~~Sinclair~~ stations?

A. Yes, sir.

Q. Mr. Wetzel, you stated that you solicit Atlantic and ~~Sinclair~~ stations. Do you solicit them for your own complete line of so-called—batteries and accessories?

A. Well, it is a rather futile attempt on batteries. The chemical lines, yes, we try. Filters, fan belts, hoses, again fall back into a category that is very difficult to sell

208 against the competition that you have in there.

Q. But you do attempt to get that business; is that correct?

A. Yes, sir.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: Cross examine.

Mr. Thompson: May we have a five-minute recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

209 Hearing Examiner Kolb: On the record.

Cross-Examination by Mr. Thompson.

Q. Mr. Wetzel, in your business biography, in view of the fact that Shell counsel is present, shouldn't we note on the record that you at one time worked for Shell?

A. Yes, sir.

Q. And after you left Shell you started this business of your own in Chester?

A. Yes, sir.

Q. You have done very well with it, haven't you?

A. It is successful.

Q. Approximately how many accounts do you have, Mr. Wetzel?

A. How many accounts?

Q. Yes.

A. Of all descriptions?

Q. How many people do you sell to among the categories that you described?

A. Approximately 250, I would say.

Q. What is this Whiz line? Is that a full or a short line of so-called chemicals?

A. It is a full line.

Q. I am not sure if the record is clear on what you told us about that Whiz line. Am I correct that after you had developed the Mac's line—that is M-a-c-'-s?

210 A. Yes.

Q. You switched your accounts to the Whiz line?

Mr. Kelaher: He is characterizing the witness' testimony. He didn't state that.

Mr. Thompson: I asked whether my understanding was correct, Mr. Kelaher.

The Witness: I didn't switch my Mac's accounts. I switched the Whiz accounts.

By Mr. Thompson:

Q. In other words, you have been selling about a dozen Atlantic dealers Mac's products, and commencing about 1951 you commenced to build up the Whiz line, and sold that to them?

A. I sold the Mac's line originally. When sales on Mac's began to drop as a result of my inability to continue to sell them, I had to find a line which would replace Mac's that I could sell without competing with the existing suppliers of Mac's at that time. So I went to Whiz, and the accounts who were then buying Mac's through TBA were sold on the basis of profitability, premiums, and profit on Whiz as against Mac's-It. And they dropped the Mac's-It line and began to buy the Whiz line.

Q. That began to happen about 1951 or 1952?

A. I would say in that vicinity; yes, sir.

Q. At that time was the Whiz line promoted by Goodyear, was that a part of their TBA line?

211 A. Being included in and being promoted by I think is a definite point. It was not being promoted by. It was in the Goodyear line, but not being promoted by.

Q. But it was being sold by Goodyear?

A. It was in their line.

Q. Was it being sold by Ed Parris?

A. He had it available.

Q. And in spite of that competition from Ed Parris and

Goodyear you built up the Whiz line to the same volume that you previously enjoyed on your Mac's-It line?

A. Yes, sir.

Q. You did that over a period of about two years?

A. Yes, sir.

Q. During all of that time Parris had it for sale?

A. He had it available if he wished to sell it.

Q. Are you inferring that Parris just stepped out of that particular type of competition and let you have those dealers, or what?

A. He is not in a position to be able to compete with my salesmen for this reason: He operates a business with two people, where it requires me thirteen. In other words, my delivery service and my selling services are services that he does not need.

Q. You sell a large number of Atlantic stations at the moment, don't you?

212 A. TBA items?

Q. Yes.

A. None.

Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now?

A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They buy six or eight cans of merchandise to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Q. How many competitors do you have in your accessories business in your part of the country?

A. Selling the same lines I sell?

Q. Selling the same types of accessories.

A. Selling the same lines, none.

Q. Selling the same types of accessories?

A. Three, in Chester.

Q. Who are they?

A. Motor Car, that is Motor Car Service; Auto Parts and Radiator; and E. B. Krausen.

Q. How about Philadelphia Wholesale Distributors?

A. Philadelphia Wholesale Distributors? They have a very few service station accounts most of which are Esso.

Mr. Kelaher: Are you referring to your marketing area?

213 The Witness: Yes.

By Mr. Thompson:

Q. What do you mean by "very few"?

A. I buy from Philadelphia Wholesale, and for that reason they respect my marketing area. Accounts that they had previous to the time that they sold to me on a jobber basis they have retained. Such accounts include G. M. Stull, which is a Ford agency; Luke Motors, which is the Oldsmobile agency; Maloney's Esso; John Chambers' Esso; —

Q. At his new Esso station?

A. At his new station.

Q. That is about the lot?

A. Chester Lincoln Mercury.

Q. No Atlantic?

A. Not to the best of my knowledge.

Q. Were you at the hearings this morning?

A. No, sir.

Q. You didn't hear Mr. Hoffman's testimony?

A. No, sir.

Q. How about Harris and Leonard? Aren't they your competitors?

A. No. I do not handle tires.

Q. How about Bowles? Are they your competitors?

Mr. Kelaher: Will you state the full name?

A. Bowes Corporation.

No, sir, they are not.

214 Mr. Kelaher: And their office?

Mr. Thompson: The principal office?

Mr. Kelaher: The one you are referring to.

Mr. Thompson: I don't know what their principal office is.

By Mr. Thompson:

Q. How about R. C. Chemical Company? Are they competitors of yours?

A. They have all off-brand merchandise and I do not consider them a competitor because the amount of merchandise that they sell in the Chester area is negligible.

Q. How about off-brand? What do you mean? Not nationally advertised?

A. Yes, sir.

Q. How about John Stewart?

A. John Stewart's lines are specialized lines such as car wash and bulk driveway items and bulk whiteside wall cleaner.

Q. Is he a competitor of yours?

A. Not in that category because most of the items I sell are resale items which would be sold on a resale basis and not self-consumed.

Q. Is V. J. Auto Parts one of your competitors, or do they carry off-brand merchandise?

A. V. J. would be considered a competitor. However, they are on the outskirts of my territory. They are in

215 Sharon Hill. That is just about the maximum of our territory.

Q. How about Lancaster Auto Supply?

A. I don't cross paths.

Q. Do you know Frank Buckingham?

A. Yes, sir.

Q. He has a station at Second and Lloyd, Chester?

A. Yes, sir.

Q. The station John Chambers formerly had?

A. Yes.

Q. Does he buy from you?

A. TBA items, no; hard items, yes.

Q. Doesn't he buy Puralator oil filters from you?

A. On the same basis that other dealers do, in quantities of one or two to fill in until such time as he can get a shipment from Ed.

Q. Is it your impression that he buys exclusively or substantially exclusively from the Goodyear supply point?

A. I would say 95 percent of his merchandise.

Q. Do you know his station at all and what he has for sale there?

A. It has been possibly three or four months since I have been in that territory, or in Frank's station. But basically I have some idea of some of the merchandise that is in there.

Q. Would you say I was exaggerating if I suggested to you that he had eight independent suppliers besides yourself?

216 A. No, that is very possible, but what is he buying from those eight suppliers?

Q. Perhaps you could tell me, sir, since you are on the stand.

A. You tell me who the suppliers are and I can probably tell you what he is buying.

Q. Delaware County Auto Parts. What do you suppose he buys from them?

A. Delaware County Motor Parts?

* * * * * *

Mr. Mason: On that basis, your Honor, I move that all previous testimony with respect to Whiz be stricken because that is not a part of the Goodyear TBA line.

Hearing Examiner Kolb: That is a comparable product

that is put out by Goodyear. Waxes, polishes, radiator solvents and so forth.

Mr. Mason: Whiz is not a part of the Goodyear TBA line, and there has been a good deal of testimony that he has lost business to Goodyear with respect to Whiz.

The Witness: That testimony was dated.

Hearing Examiner Kolb: As I understand, anti-
218 freeze is not a TBA product. The Whiz products are TBA products so far as they are comparable.

Mr. Mason: As I understand it, anti-freeze is a TBA product but is not part of the Goodyear TBA line.

Hearing Examiner Kolb: Motion will be denied.

By Mr. Thompson:

Q. Do you know from your observation of the Buckingham station whether he buys from the Bowes Corporation oil filters and stocks them?

A. From the Bowes Corporation?

Q. Yes.

A. It would be impossible for me to say.

Q. He does stock Bardahl, does he not?

Mr. Kelaher: Objection. Bardahl is not a TBA item. It is a motor oil.

Mr. Thompson: You are correct. I will withdraw that question.

By Mr. Thompson:

Q. Did you say you didn't know the R. C. Chemical Company?

A. I know that.

Q. Does Mr. Buckingham buy part of his so-called chemical line from the R. C. Chemical Company?

A. That would be difficult for me to say. I don't know.

Q. I don't want to be too prolonged on one station. You of course do sell Conneen, Chester Pike and Fairview Road?

219 A. Yes, sir.

Q. A large number of other suppliers do the same thing, don't they?

A. I couldn't say. I know that I sell him. I don't know what my competition sells him.

Q. How about Earl Connors?

A. At Ninth and Flower?

Q. Yes.

A. We sell Connors hard items, yes.

Q. How about DiFelice, at Ridley Park?

A. Yes, sir; I sell him hard items.

Q. You also sell him such things as Purolator filters, don't you?

A. Yes, sir. There is an interesting situation there. Perhaps you would be interested in hearing it. I sold him a bonanza deal and he was told to send it back to me.

Q. By whom?

A. TBA distributor.

Q. Did he?

A. He refused to. There were eight filters out of the bonanza and he told him to take them out of the new bonanza he was going to get from TBA, take them out and send them to me.

Q. The fact is that this man buys from about eight different suppliers, isn't that true?

A. That I couldn't say. I don't know where he buys.

220 Q. How often do you go to see him?

A. Once a week.

Q. You don't know what he buys and stocks?

A. I know the merchandise he stocks.

Q. Do you know how many sources of supply he has?

A. I know that he buys hard items from Eddy Davis,

and he buys hard items from myself. Where he is buying his chemicals other than Ed Parris I couldn't hazard a guess.

Q. I think you mentioned Drozdowski before?

A. Yes, sir.

Q. He still buys quite a bit from you, doesn't he?

A. Hard items, yes.

Q. And from a lot of other people? I mean he buys accessories from a lot of people, doesn't he?

A. That I could not say.

Q. He buys Purolator and AC filters from you?

A. No, sir, he does not.

Q. How about Sam Dugross?

A. No, sir. I do not have him on the books.

Q. He is not on your books at all? He is a customer of V. J. Auto Parts.

A. I don't know the gentleman.

Q. You don't know him?

A. No, sir.

Q. Is Main and Ridge, in Darby, out of your area?

221 A. Yes.

Q. How about Gillipan, Edgemont Avenue and Maple, Brookhaven?

A. That is Al Kahler's son-in-law?

Q. Yes.

A. Yes, he buys hard items from us.

Q. Frank Lancaster, Chester?

A. Hard items.

Q. Also Purolator?

A. I haven't sold Frank any more than two Purolators at a time in the past year and a half.

Q. He buys from C. A. Powers, doesn't he?

A. That I don't know.

Q. Delaware County Auto Parts?

A. No.

Q. You don't know who his suppliers are?

A. No.

Q. How much do you know about Mr. Mann's business at Haverford and Brookhaven Road?

A. I don't know.

Q. Is he one of your accounts?

A. No.

Q. Bill McKee, at West Chester Pike and Newton Road?

A. I sold Bill McKee hard items when he was at the station Al Kahler's son-in-law now has. I haven't seen him since he moved to Newtown Square.

222 Q. Do you know who does sell him?

A. I couldn't tell you now.

Q. How about Joseph Raffa? Is he one of your accounts?

A. He is in our marketing area but doesn't buy from us.

Q. You sell quite a bit to both Rehills, don't you?

A. Hard items, very definitely; mufflers, tail pipes.

Q. That is all? That is all you sell them?

A. Yes.

Q. Are your sales primarily for cash or credit to the service stations?

A. About 75 percent charge and 25 percent cash.

Mr. Thompson: May I have a one-minute recess to consult counsel?

Hearing Examiner Kolb: Yes.

(A brief recess was taken.)

223 Mr. Thompson: I have no further questions.

By Mr. Mason:

Q. Mr. Wetzel, when did you first learn that you were going to testify here?

A. Is there a date on that subpena?

Q. It was by virtue of the subpena that you first learned?

A. Yes.

Q. Had you been asked previously whether you would be willing to testify?

A. Yes, sir.

Q. Who asked you?

Mr. Kelaher: Objection. I can't see any relevance to this line of questioning.

Mr. Mason: This is cross examination.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Mason: Read the question.

(Question read.)

The Witness: I was asked by the Federal Trade Commission.

By Mr. Mason:

Q. Did the Federal Trade Commission happen to be represented by a person with a name at that time?

Mr. Kelaher: Objection, your Honor. I think he has answered the question. Any representative of the
224 Federal Trade Commission would be acting in an official capacity. I see no reason for putting names in the record.

Hearing Examiner Kolb: He can testify as to who he talked to.

By Mr. Mason:

Q. Who was it?

A. Mr. Kelaher, I don't believe I talked to you the first time, did I? There were three gentlemen, were there not, originally?

Mr. Kelaher: That's right.

By Mr. Mason:

Q. When did this original conversation take place?

Mr. Kelaher: I think, in order to get the record straight,

if he wants to go into it, I can give him the dates, going back a few years, when the Federal Trade Commission representatives called on him.

Mr. Mason: I don't intend to question him very long.

Hearing Examiner Kolb: Let him go along.

The Witness: I would say it probably has been sometime this year. The very early part of this year, I believe. The exact date I couldn't tell you.

By Mr. Mason:

Q. At this original conversation, were either of those two gentlemen in the room present?

225 A. This gentleman here was present.
(Indicating Mr. Kelaher.)

Q. At that time did you make available to the members of the Federal Trade Commission any of your books and records?

A. Yes, sir.

Q. Could you just tell us which books and records they were?

A. My purchases.

Q. And did they have the figures on these purchases as a result of this conversation? Did they take notes?

A. Notes were taken, yes.

Q. Let me ask you this: How would you feel about letting the other side have a chance to look at your records?

A. No objection whatsoever.

Q. So we can go and take a look at your records?

A. Sure. With my permission.

Q. At a time—

A. At my permission. I don't want you going into my place of business without my permission. I will be there at the time.

Q. Of course. We would like to work out such reasonable arrangements as we could. Did you, at this time, make any statements in writing?

Mr. Kelaher: At which time are you referring to?

Mr. Mason: At the first occasion.

The Witness: In writing? No.

226 By Mr. Mason:

Q. Have you ever at any time given any member of the Federal Trade Commission a statement in writing?

A. Not in writing, no.

Mr. Mason: I have no further questions.

Mr. Kelaher: I have some redirect, Mr. Examiner.

Redirect Examination by Mr. Kelaher.

Q. In order to get the record straight on the sequence of brand names with respect to Mac's-It, Whiz, et cetera, who was the original supplier of the Mac's-It line in your marketing area?

A. The original supplier?

Q. The original jobber-supplier.

A. From 1940 until 1946—

Q. I am talking about the period since you—

A. Since I have been it? I was.

Q. Just give us the date approximately, when did you begin to develop it? I think you have done it already.

A. 1946 actually when we first went in business. We had the line made available to us I would say in late 1946. 1947 was the development year.

Q. When was the Mac's-It line taken on by the Goodyear TBA supply point; Mr. Parris, first?

A. The exact date would be hard to say, Mr.
227 Kelaher. I don't know.

Mr. Thompson: It appears of record.

Mr. Kelaher: I think there is a little confusion on it.

By Mr. Kelaher:

Q. Was it taken on as a part of the Goodyear TBA line?

A. Yes. It appeared in the Goodyear TBA catalog,

the product appeared in there, and it was available to the distributor. At what time it became available I couldn't tell you. It may have been available as early as 1946. It may not have been available until 1948 or 1949. But it did appear in the catalog at the time that I began to lose business.

Q. You are referring to the Goodyear catalog?

A. Yes, sir.

Q. Did that appear in the Goodyear TBA catalog when Atlantic dealers originally began to purchase the Goodyear TBA line?

A. I believe it did.

Q. Then you stated, in the sequence of events, that you began to sell the Whiz line?

A. Yes, sir.

Q. To Atlantic dealers and ~~Sinclair~~ dealers?

A. Yes, sir.

Q. With respect to your loss of the Whiz line of business, was that business lost to the Whiz, a Whiz line 228 carried by the Goodyear TBA supply points?

A. Yes, sir.

Q. When did they begin to sell the Whiz line?

A. They began to take orders on it after I had sold it.

Q. Although it had been in the Goodyear TBA line prior to that?

A. Yes, sir.

Q. In response to a question by Mr. Thompson, he alluded to the fact that you had sold approximately 12 Atlantic stations at the peak. Would you state whether that is correct or incorrect?

A. I would say it is closer to 20.

* * * * *

Q. You have testified that your sales volume on Mac's-It line and on the Whiz line ranged from say 6,000 to 7,200 dollars, approximately?

A. Yes, sir.

Mr. Thompson: I object to that and suggest that Mr. Kelaher write his brief at the proper point. This is just repetitious.

Mr. Kelaher: It isn't.

Hearing Examiner Kolb: The objection will be over-229 ruled.

By Mr. Kelaher:

Q. I ask you now if that is considered a large sales volume on one brand of waxes and polishes?

A. For that particular marketing area, it is a good volume.

Q. Would that apply both to the Mac's-It volume and the Whiz volume?

A. Yes, sir.

Q. You were asked on cross-examination about a number of Atlantic service station dealers. I am going to ask you about each of these dealers to the best of our ability to take notes on them. There may be some confusion on names.

The first one you were asked about is a man identified as Frank Buckingham, I believe?

A. Yes, sir.

Q. What main line of TBA does that Atlantic dealer carry?

A. DuPont. You mean, as far as chemicals? He carries Goodyear tires, Goodyear batteries, Goodyear belt and hose line. I believe Frank carries Purolator, I am not sure. They have a couple of filters available to them.

Q. Who is the principal supplier of TBA products to this dealer?

A. Parris.

Q. What brands of TBA are advertised by Mr. Buckingham?

A. Goodyear.

230 Q. Does that include a Goodyear valance, a window valance, for example?

A. Yes, sir, I believe it does.

Q. Is there an outdoor sign?

A. I couldn't be definite on that. Most of them do.

Q. The next one you were questioned about was a Mr. Conneen. What brand of tires does Mr. Conneen carry?

A. Goodyear.

Q. What brand of batteries does he carry?

A. Goodyear.

Q. Who is his principal supplier of accessories?

A. Parris.

Q. And that is the Goodyear TBA line?

A. Yes, sir.

Q. Goodyear accessory line. What brand of TBA does Mr. Conneen advertise?

A. Goodyear.

Q. The next one—

Mr. Thompson: Do you know the answer to these questions?

Mr. Kelaher: I think I am entitled to develop this in my own way.

Mr. Thompson: Not unless he knows what he is talking about. I think you ought to develop that he knows the answer.

231 By Mr. Kelaher:

Q. These are based on your own knowledge?

A. Yes, sir.

Mr. Thompson: Are these based on your own knowledge?

The Witness: I am in Conneen's station every week.

Mr. Thompson: I think his memory has improved remarkably since cross-examination.

Mr. Kelaher: I think that is an unfair statement. He answered counsel's questions very clearly.

Mr. Thompson: I do not withdraw the statement.

Mr. Mason: I join in the statement.

By Mr. Kelaher:

Q. You were asked about a dealer by the name of Earl Connors?

A. Yes.

Q. Do you call on Mr. Connors' service station?

A. No, sir.

Q. Do you have any reason to know by observation, what line of TBA he carries?.

A. Unless it has changed since George Curney relinquished the station to Connors, it will be Goodyear.

Q. When was that station relinquished? Approximately?

A. I would say about 90 days ago. Perhaps four months.

Q. Up to that time they carried Goodyear TBA line?

A. Yes, sir.

232 Q. And, based on your observation of that station, do you know what brand of TBA was advertised?

A. It was Goodyear at that time.

Q. When you say Goodyear, you are also referring to waxes and chemicals which may be in the Goodyear line, is that right?

A. Yes, sir.

Q. And other accessories?

233 Mr. Mason: And others that may not be in the Goodyear line but sold by the Goodyear distributor.

By Mr. Kelaher:

Q. Let me ask you with respect to non-sponsored brands which are not in the Goodyear line. Do you see advertisements of such?

A. Mr. Kelaher, that is hard to say. These flash items come into the picture and go out. Somebody gets a demand,

we will say, for Turtle Wax and he gets five, six, or seven calls for it. He is liable to step out, buy a case of it, stick a banner up. If it begins to die off, the banner comes down, and the merchandise remains on the shelf until such time as it is eventually sold. That does come into the picture and it does change.

Q. With respect to window valances and outdoor signs, what identification is used? In the Atlantic stations that you have so far referred to.

A. The ones that I am calling on weekly, in the upper territory, DiFelice, Coneen, Crawford-Bryant and those boys, definitely have Goodyear advertisements. Their window valances are Goodyear.

Q. Without going into each individual station mentioned by counsel for respondent, I would like to ask you, based on your knowledge and experience, what the main line of TBA is that they carry—that each of them carries?

234 A. Goodyear in the rubber line, which constitutes the belts, hose, and rubber. Goodyear in the batteries. Dupont in the chemical lines. Purolator or AC in the filter lines.

Q. Would you say in general that they carry the Goodyear TBA line?

A. Yes, sir.

Q. With respect to all these Atlantic dealers what is their primary advertising, window valances and outdoor signs and so on?

A. It falls right in the same category as their TBA supply.

Q. And you're referring to the Goodyear TBA line?

A. Yes, sir.

Q. With respect to all these dealers, in order to clarify the record, I believe you stated—let me ask you: Do you sell hard parts to all these accounts?

A. Not all of them.

Q. Do you sell batteries and accessories on a regular basis to these accounts?

A. Occasionally we will sell a battery. It is during the daylight hours and they happen to be out of one particular number and they have an immediate sale and they have a car that they can hold it long enough to run to the store and pick it up or give us a call and ask us if we can shoot one battery to them. In other words, what we term shotgun delivery and shotgun sale.

235 Q. Would it be fair to say that you sell them on a fill-in basis, to these Atlantic dealers?

A. It wouldn't even be fill-in. It is sporadic. You may go three months and never sell them a battery, and then sell them a battery today, one tomorrow, and then not sell them one for six months.

Q. With respect to accessories, does that same answer apply?

A. Yes. It holds in chemicals on the basis of a half dozen cans to carry me over. That has been going on for several years.

Q. And the primary supplier of all these Atlantic dealers is Mr. Parris?

A. Yes, sir.

Q. You were asked a question about Mr. DiFelice?

A. Yes, sir.

Q. You made reference in your answer to a bonanza deal. Would you explain what the so-called bonanza deal is?

A. This spring Purolator brought out an assortment of filters, constituted approximately a $35 investment. For another $1.95, as I recall, there was a set of dishes in there, service for four. It was all packaged in a unit. Dishes and filters packaged in a unit.

It so happened that I received delivery before Ed Parris received delivery, and so wherever there were Purolators

I tried to sell the bonanza deal. I sold the bonanza
236 deal to Gino Di Felice. Approximately three weeks after I had sold it to him I stopped in and he said, "You got me in a mess of trouble with this bonanza deal." I said, "What is the matter?" He said, "I am supposed to send this thing back to you, but I refused to do it because there were nine filters sold."

I said, "If it will give you any heartaches, send it back." He said he wouldn't send them back, he would keep them.

Q. Did he indicate who asked him to send them back?

A. Yes.

Q. Who?

A. The salesman who was calling on him.

Q. Who was the salesman?

A. The Atlantic salesman.

Q. You were asked on cross-examination about being employed by Shell. Would you please state what your position was with Shell?

A. Shell?

Q. Shell Oil Company?

A. My last employment with Shell, post-war, was industrial lube oil engineer, State of Virginia.

Q. Are you a graduate chemical engineer?

A. Yes, sir.

Mr. Kelaher: That is all.

237 *Recross Examination by Mr. Mason.*

Q. Mr. Wetzel, I want to get clear in my own mind this business of the dates when you reached the peak of your sales of Whiz. Am I correct in recalling that you said it was 1948 and 1949?

A. Not Whiz. It was Mac's first.

Q. Am I also correct in recalling that it was about that time that you saw Mac's appear in the Goodyear TBA catalogue?

A. It was at the time of the beginning of the decrease that Mac's came in and was available to the service station for the TBA distributors.

Q. I am trying to fix dates. That was about 1950? 1948, 1949?

A. That is possible. I would rather take a look at my records and show you when my purchases decreased and then I can better tell you the exact date.

Q. We would have done a lot better if we had had your records here.

One thing I want to make clear, do you realize there was no arrangement between Goodyear and Atlantic back in the period that you were testifying about?

A. That I couldn't say. I don't know—

Mr. Kelaher: Objection, your Honor.

Mr. Mason: This is a matter of record. I want to 238 ask the witness whether or not he had that in mind when he was testifying.

Mr. Kelaher: I think he is mischaracterizing his testimony.

Hearing Examiner Kolb: It is cross-examination. Objection overruled.

By Mr. Mason:

Q. Did you have in mind the fact that there was no arrangement between Goodyear and Atlantic?

A. Let me put it this way—

Q. Just answer my question.

Mr. Reporter, would you read the question?

(Question read.)

By Mr. Mason:

Q. Let me amend the question to add: When you testified with respect to the dropping off of your sales of Mac's. You understand the question?

A. In other words, you would like me to quote a date at what time Mac's sales decreased?

Mr. Mason: Mr. Reporter, can you read the question as amended?

(Question read.)

A. Was I aware of it?

By Mr. Mason:

Q. Yes. At the time you testified earlier?

239 A. My earlier testimony I think if you check, will be approximately 1951 as a drop-off period. I think that is what I said. I feel pretty sure because it was in that vicinity that I changed from Mac's to Whiz, and then the build-up period on Whiz was from say late 1951 or early 1952 through the 1952-53 era.

Q. Did you ever look in the Goodyear catalogue to see whether Whiz was in it?

A. It isn't in it now.

Q. Was it ever in it?

A. Oh, yes.

Q. When was it in it?

A. I would say the Whiz products appeared from probably 1950 to 1953.

By Mr. Mason:

Q. Would it refresh your recollection if I told you that it is the understanding of Goodyear personnel with me here that the only Whiz product that has ever been advertised was Motor Rhythm, and that appeared in the catalogue from 1952 to 1954?

A. This I know: Mr. Bittenbender, of Whiz, definitely called on Ed Parris and I know that Ed Parris had available the entire Whiz line. To the best of my knowledge Mr. Bittenbender, as I recall talking to Mr. Bittenbender, all that material did come from Goodyear.

Q. So that is your understanding. But it could be 240 possible that you are wrong?

A. It is pretty difficult to say what is in what catalogues or what year. Do you know what was in Sears-Roebuck in 1953?

Q. In other words, you are not sure of your testimony?

A. Well, I know that it was made available to the dealers through Ed Parris.

Q. But you do not know whether or not it was a part of the Goodyear TBA program with Atlantic?

A. No, I couldn't say absolutely.

Mr. Mason: Thank you.

No further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Wetzel. Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will recess until 10:00 o'clock tomorrow morning, tenth floor, Land Title Building, at Broad and Chestnut Streets.

* * * * *

242 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Mr. Examiner, counsel for respondent Atlantic, and counsel supporting the complaint, have entered into a stipulation with respect to the testimony of appropriate officers and employees of Atlantic if called as witnesses in this matter.

It is our understanding that this stipulation will make it unnecessary to call officers and employees of respondent Atlantic insofar as we know at this time. However, it is clearly understood that this does not foreclose counsel supporting the complaint from calling such officers and employees of respondent Atlantic if circumstances later dictate.

I would also like to state that counsel for respondent Atlantic have cooperated fully in preparing this stipulation and that it will greatly expedite the trial of this matter.

Hearing Examiner Kolb: Let the record show that the stipulation was executed by both parties, and if satisfactory it will be read into the record at this time.

Mr. Ballard: It is satisfactory to be read into the record as far as Atlantic is concerned.

Mr. Kelaher: "United States of America. Before Federal Trade Commission. In the Matter of The Good-
243 year Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

"Stipulation re testimony of the Atlantic Refining Company personnel.

"Counsel for respondent, The Atlantic Refining Company ('Atlantic'), and counsel supporting the Complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the Complaint in this proceeding, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

"1. Organization of Domestic Sales Department.

"1.1 Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine), and the Southern Atlantic States. For administrative purposes this marketing territory is divided into six regions. CX

82A-C and 83A-C indicate the boundaries of these regions as of August 1952, and there have been no material changes since that date. Within the boundaries of the various
244 regions are large areas such as the State of Georgia (except for metropolitan Louisville, Augusta and Savannah) and the State of South Carolina (except for metropolitan Rock Hill and Dillon) in which Atlantic sells only to distributors and not to dealers, and other large areas such as New York, N. Y., and substantially the entire northern half of the State of Georgia where Atlantic has no outlets at either the distributor or the dealer level.

"1.2 Sales of Atlantic products to petroleum retail dealers and petroleum wholesalers are made by Atlantic's Domestic Marketing Department (formerly called 'Domestic Sales Department'). The organization of this department for the period 1949 through 1956 is shown in CX 81A-F.

"1.3 Within the Domestic Marketing Department there is a Regional Manager for each of the six sales regions. Such Regional Managers are entrusted with broad authority to implement the Company's over-all sales policies within their regions.

"1.4 The regions are subdivided into districts consisting in general of a city or other marketing center and the surrounding territory. A District Manager reporting to the Regional Manager is in charge of each district. The present districts are as follows:

"New England
Providence
Springfield
245 Hartford
Boston
New Haven

"New York

Syracuse
Southern Tier
Albany
Rochester
Watertown
Buffalo

"Phila.-New Jersey

Phila.-Sub.
South Jersey
North Jersey

"Eastern Pennsylvania

Wilmington
Allentown
Wilkes-Barre
Harrisburg
Reading
Williamsport

"Western Pennsylvania

Pittsburgh
Altoona
Greensburg
Erie

"South

Charlotte
Baltimore
Richmond
Jacksonville
Miami

"1.5 Each district has a staff of salesmen of various types reporting to the District Manager. The number of salesmen differs in accordance with the number and importance of customers and potential customers in the
246 district. As of April 30, 1956, there were in the aggregate approximately 394 salesmen calling on dealers

and distributors, an average of about 13 salesmen per district. The designations, approximate numbers and functions of these salesmen were as follows:

Type	Approximate No.	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to 'promotable dealers', which term includes lessee dealers and contract dealers interested in complete service station operation.
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teaching involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

247

All Atlantic salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also over-all gains) by those of their assigned dealers who have been in operation for a minimum of 12 months. Extra compensation for gasoline gains ranges from $4.70 per three months for
248 a 2 percent gain on deliveries of 299,999 gallons or less in the three-month period (as compared with the corresponding period in the preceding year) to $233.94 per three months on gains of 21 percent or more on deliveries of 3,000,000 gallons or more in a like period. Extra compensation for motor oil, TBA and for over-all gains are computed on a similar basis taking into account the quantity delivered and the percentage gain in the specified period.

"1.6 Within the Domestic Marketing Department there is a TBA Section Manager who is the staff person responsible for implementing TBA policies on a company-wide basis. Within each region the TBA Coordinator, reporting to his regional manager, is the staff person responsible for implementing Atlantic's TBA policies in his region. He advises, informs and assists the districts in his region in developing their TBA program. The current TBA coordinators and the regions to which they are assigned are as follows:

TBA Coordinator	Region
H. H. Roller	New England
L. K. Maisel	New York
W. J. Jackson	Philadelphia—New Jersey
G. E. Fearn	Eastern Pennsylvania
R. E. West	Western Pennsylvania
E. M. Singleton	Southern

"1.7 The Atlantic employees readily identifiable as being concerned with TBA and the approximate per-

249 centage of time spent by them in that connection are as follows:

(a) Employees devoting their full time to TBA:

Number	Classification
1	Manager, TBA Section
1	Field Assistant, TBA Section
1	Office Assistant, TBA Section
6	Region TBA Coordinators

(b) Salesmen concerned with TBA:

"The different types of salesmen described in paragraph 1.5 devote different percentages of their time to TBA, the largest percentage being devoted by the promotable dealer salesman and the smallest by the general salesman. On an overall basis it is believed that between 10 percent and 20 percent of these salesmen's time is devoted to TBA.

(c) Additional officials of the Domestic Marketing Department concerned with TBA:

"The officials listed below, together with their respective subordinate executive, administrative, secretarial, accounting and sales supervisory personnel, devote a portion of their time to TBA, the exact amount of which cannot be determined. For relationships of the various divisions and sections as of 8/15/56, see CX 81A. Certain of these relationships have since been revised.

250

Number	Classification
1	General Manager, Domestic Marketing Department.
1	Assistant General Manager, Domestic Marketing Department.
1	Manager, Product Sales Division.
1	Manager, Marketing Operations Division.

1 Manager, Service Station Section, Operations Division.
1 Manager, Sales Promotion Section.
1 Manager, Advertising Section.
1 Manager, Credit & Collection Division.
1 Manager, Real Estate Division.
1 Manager, Market Research Division.
6 Managers, Marketing Regions.
6 Managers, Region Sales Groups.
7 Region Direct Marketing Managers.

29 Managers, Marketing Districts.

"2. Leases, Contracts and Relationships with Customers.

"2.1 The designation and description of customer classifications for Atlantic's Domestic Marketing Department as of August 1952 and the percentage of total gasoline sales for 1951 are set forth in CX 84A-C. The corresponding designations at present* and the corresponding percentages of total gasoline sales for 1955 are:

251

Designation in 1952	Present Designation and Percentage of Total Gasoline Sales for 1955
I	Company-operated station, 0.1 percent
II	Lessee dealer, 39.1 percent*
III	Contract dealer, 18.1 percent*
IV	Commercial account, 16.6 percent
V	Wholesale dealer, 1.1 percent*
VI	Distributor, 24.0 percent*
VII	Jobber, less than 1.0 percent

"2.2 There are no leases or contracts between Atlantic and the managers of company-operated stations. As of September 30, 1956, there were 7 permanent company-operated stations and 39 temporary company-operated

* Commissions are paid under the sales commission plan on purchases by these classes of customer.

stations. The latter are stations intended for operation by a lessee which are temporarily operated by company employees while the lessee is being selected or trained.

"2.3 Typically, the documents between Atlantic and lessee dealers are as follows:

"(a) Dealer lease on Form B-3191.

"(b) Accompanying document referred to as 'Eleven Point Lease Letter', not identified by number or title.

"(c) Equipment and apparatus inventory, Form B-3191A.

"(d) Agreement covering purchase of Atlantic 252 automotive lubricants, Form B-3105.

"CX 88A-1 through 88D, respectively, are current versions of the foregoing forms.

"2.4 Prior to August 1956 the lease form in use in the New York region contained different provisions as to the determination of rentals in paragraph 4 from the lease in use in other regions, the New York form being designated as B-3191Y. (CX 88E-1—E-2) Prior to August of 1954 provisions respecting the credit card privilege of lessee dealers were contained in a separate agreement, Form B-3194 (CX 89, 89A), instead of in paragraph 14 of B-3191 as at present.

"2.5 Typically, the documents between Atlantic and contract dealers are as follows:

(a) Equipment loan and sale of motor fuel agreement, Form B-3107A (CX 90A-B, 90-C-D).

(b) Agreement covering purchase of Atlantic automotive lubricants, Form B-3105 (CX 91, 88D).

(c) Credit card agreement, Form B-3194 (CX89, 89A).

(d) Loaned Equipment Contract, Form B-42 (CX 97, 97A).

"2.6 Typically, gasoline distributors enter into an Authorized Distributor's Agreement, Form B-3143 (CX 95A-C, 95D-F), and an Authorized Distributor's Agree-

ment relating to Atlantic Automotive Lubricants, Form
253 B-3119 (CX 96, 96A); certain distributors enter into a Commission Distributors Consignment Agreement, not identified by number (CX 98H-L); wholesale dealers selling gasoline do not normally enter into any kind of contract with Atlantic; certain wholesale dealers selling gasoline enter into a Commission Agent Consignment Agreement, not identified by number (CX 98M-Q); and gasoline jobbers enter into a Bulk Sales Agreement, Form B-3137 (CX 98R-T).

"2.7 The following exhibits are forms used in or prior to 1952, the present status of which is indicated:

CX No.	Form Designation	Status
87	B-3191B	Discontinued.
92A-B	B-3121	Has always been and still is used with commercial accounts only.
93A-C	Commission Agreement Form	Replaced by Contract Sales Agreement Form.
94A-D	Commission Dealer Agreement Form	Replaced by Contract Sales Agreement Form.
97	B-42	Originally used primarily for commercial accounts; used today also for certain non-gasoline equipment of some dealers.
98A-G	Commission Distributor	Use discontinued about 1950; some
254.	Agreement	agreements may still be in effect.

The forms referred to in the preceding and following paragraphs have been revised from time to time. In revising forms, Atlantic follows the general practice of indicating the year and month of the revision immediately following the form number, and thereafter uses the revised

forms when leases and agreements in the old forms expire. Thus, at any particular time agreements may be outstanding in several different versions.

"2.8 Form B-3188 'Contract Sales Agreement—Trained Dealers' (CX 98U-V) is the form of agreement which, on occasion, is entered into between Atlantic and newly-trained dealers. This agreement, which provides in effect for sales of gasoline (but not other products) on consignment, is in addition to the regular B-3191 lease and is for a maximum period of 9 months, with an option for cancellation by either party at the end of 6 months.

"2.9 Where extraordinary competitive conditions adversely affect normal dealer operations, Atlantic is willing to enter into a Contract Sales Agreement, not identified by number (CX 98W-X), which also provides in effect for sales of gasoline on a consignment basis.

"2.10 With the exceptions noted in paragraph 2.8 and 2.9 above, Atlantic does not sell to dealers on what might be described as a consignment basis.

"2.11 On April 1, 1953, Atlantic adopted a long-
255 term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory operation is eligible for a 3-year lease on Form B-3191 containing an exclusive right on the dealer's part to cancel without cause as of any annual anniversary date on 60 days' notice, the rental remaining the same during the entire 3-year period. At the same time, Atlantic adopted the Eleven Point Lease Letter referred to in paragraph 2.3 (CX 88B) defining standards of satisfactory operation by lessee dealers. Prior to April 1, 1953, leases were customarily on a year to year basis. Under the present policy the salesmen report to the district manager what they consider instances of unsatisfactory operation by lessee dealers, and the district manager decides whether to issue a warning letter.

"2.12 In the years 1950 to 1955, inclusive, Atlantic made loans to its distributors for working capital or to finance the acquisition, construction or improvement of facilities as follows:

Year	No. Distributors Borrowing (non-cumulative)	Total Amount Lent
1950	1	$ 22,000
1951	1	10,000
1952	1	25,000
1953	0	0
1954	5	257,000
1955	0	0

256 "Loans are not made to distributors' customers. Loans are made to contract dealers for the same purposes as loans to distributors, but the number and amounts of such loans could not be determined without a costly and time-consuming survey.

"As of the specified dates, loans to lessee dealers, primarily to finance the acquisition of equipment, tools and inventory, were outstanding as follows:

As of These Dates	This Number of Lessee Dealers	Owed This Much Money	Against Loans Which Originally Amounted to
12/31/51	118	$140,834	$195,401
12/31/52	362	425,403	650,002
12/31/53	420	539,520	875,792
12/31/54	412	526,186	856,376
12/31/55	418	481,170	827,817

"Atlantic's policy is to charge interest on all loans. The handling of recommended TBA is not a requisite for obtaining a loan, and no records are kept as to whether distributors or dealers who obtain loans do or do not sell recommended TBA.

"2.13 Atlantic provides a five weeks' training course in service station operation for prospective lessee dealers

(who, upon completion of the course, are signed as lessees as stations become available for them) and also for contract dealers. On occasion, distributors' dealers at-
257 tend these courses. Also, in many cases, an Atlantic Service Salesman works with the newly-trained dealer during the first two weeks of actual operation. In addition, there is a program of in-station training for all established dealers conducted by Atlantic Service Salesmen, including clinics for dealers' employees.

"In these training courses and clinics recommended TBA items are used as 'props'.

"The five-week dealer training course involves a total of 180 hours, which are divided approximately equally between classroom and on-the-job instruction.

"Technical subjects make up the major portion, entailing at least 98 hours and including such topics as:

The Internal Combustion Engine
Lubrication Practice
Wheel Bearing Packing Procedure
Servicing Electro-Hydraulic Mechanisms
Car Waxing and Polishing Methods
Servicing Automatic Transmissions
Tire Changing and Repairing
Electrical System Servicing
Cooling System Servicing

"Courses on business management account for about 36 hours and cover such topics as bookkeeping, taxes, em-
ployee selection and training, and techniques for evalu-
258 ating business progress.

"Training in salesmanship and sales promotion covers a minimum of 26 hours and relates to solicitation, market surveys, displays and advertising.

"Many of the courses, including some already referred to, relate to TBA, but without reference to any particular

brand, except as props may be used in demonstrations. They cover the following: a description of what TBA comprises, and its economic importance to the dealer; the techniques for selling TBA, including direct solicitation, merchandise display and advertising; methods of installing and servicing the various types of TBA; selling TBA under the Atlantic credit card system; methods by which a dealer can evaluate his sales performance with respect to TBA; and methods for protecting the inventory of TBA from loss by deterioration and pilferage.

"About 8 hours of the course deals with the recommended line of TBA.

"2.14 Any dealer, to do business successfully, requires an initial stock of TBA. Atlantic assists him in evaluating the anticipated volume and nature of the business and deciding upon the amount of the initial stock. As part of its promotional activities under its sales commission contracts, Atlantic also attempts to convince him of the advantages of carrying the recommended brands but makes clear to him that he has every right to handle the TBA
259 brands he believes in. When there is a change of dealers at a station, the TBA stock on hand, regardless of brand, becomes available for purchase by the incoming dealer if he desires to purchase it, unless the outgoing dealer prefers to retain it for sale at a new location. The determination as to items to be sold is made by the dealers. Atlantic generally assists in securing prices on the various items and in estimating the salability of questionable items, such as shopworn or obsolete goods and used equipment. In cases where the purchase of any part of the stock is to be financed by Atlantic, Atlantic will purchase the same from the outgoing dealer and immediately transfer it to the incoming dealer against a note for the purchase price. In the infrequent instances where no replacement dealer is immediately available, Atlantic will purchase the TBA

stock of the outgoing dealer to the extent it believes such stock will be acceptable to the new dealer when one is obtained. While in general Atlantic purchases salable recommended TBA items, at times non-recommended items may be purchased if they are in salable condition. No adjustment is made as between Atlantic and the outgoing dealer in respect of their relative contributions to the good will of Atlantic, the dealer or the station.

"2.15 Atlantic provides equipment of various types and in varying degrees to its dealers, the assortment furnished to lessee dealers being relatively complete and 260 to contract dealers less extensive. 'Atlantic' signs and infrequently other items are provided to distributors for their dealers. There is no official list of such equipment, but the items most frequently provided to contract dealers include pumps, tanks, compressors, air towers, lifts, 'Atlantic' sign, outside lighting and poster frames, and to lessee dealers include, in addition to the foregoing, fire extinguishers, work benches, shelving and desks. No charge is made for these items to contract dealers or to distributors, and in the case of lessee dealers the items are considered part of the leased premises. No figures are available as to the average value of equipment supplied either to lessee or contract dealers or to distributors.

"2.16 Atlantic uses television, radio, newspapers, billboards, and (to a small extent) magazines to advertise Atlantic gasolines, motor oils, lubricants and car conditioning services and also to advertise TBA items and service without regard to brand. Such advertising is paid for entirely by Atlantic. Atlantic also has a sales promotion program involving the furnishing of driveway posters and other dealer aids to the dealers, direct mailings to credit card holders, and other promotional devices. Atlantic will guide individual lessee and contract dealers,

distributors and distributors' dealers in preparation of promotional material, and will reimburse lessee and contract dealers (but not distributors or their dealers)
261 for a part of the cost of advertising through direct mail, radio, handbills and newspapers (without regard to the brand of TBA which may be included), with the limitation that Atlantic's share of any dealer's advertising is limited to 1½ percent of the dealer's gross annual sales. For 1955 the total reimbursement under this program was $16,021.67 to both lessee and contract dealers; records do not disclose the totals for each such group separately. The records maintained are not kept in a manner that shows how this figure was split between promotional material for TBA and other products and services.

262 "2.17 Atlantic's average property investment in a newly constructed lessee-operated station which it owns, including land, building and equipment, is presently about $50,000.

"2.18 Service station operation requires land, buildings, equipment, tools, supplies and merchandise, which may be acquired as appropriate, by purchase for cash or on credit, by lease, rental or loan, or by consignment. The facilities may be simple or elaborate; the equipment, new or used; and the merchandise, basic or extensive. It is therefore impossible to establish meaningful average, minimum or maximum figures for investments by contract dealers and distributors. Because there is a greater uniformity in the design of leased stations at the present time, the minimum initial investment of a lessee dealer can be estimated at about $4,000 for the average lessee station, which sells about 15,000 gallons per month. Of this investment, approximately $500 would be in equipment and supplies, $1,000 in cash, and the balance in merchandise for resale. The minimum initial investment would be about $3,000 for a low-gallonage, lessee station and about $15,000 for a very high-gallonage, lessee station.

"2.19 Following is a list of service station services that Atlantic dealers should be able to render satisfactorily:

1. Driveway Service (filling gas tank, cleaning
263 windshield and lights, et cetera.)
2. Chassis Lubrication.
3. Other Lubrication Services:
   - A. Oil Change
   - B. Transmission
     - a. Conventional
     - b. Automatic
   - C. Differential
   - D. Air Cleaners
   - E. Speedometer Cable
   - F. Electro-Hydraulic Mechanisms
   - G. Front Spring Unit Housing (Knee Action)
   - H. Front Wheel Bearings
   - I. Lube Fitting Installation
   - J. Oil Type (Wet) Clutch
   - K. Hydraulic Steering Mechanisms

Services Occasionally Required

   - L. Universal Joints
   - M. Metal Covered Springs
   - N. Clutch Release Bearing

4. Battery Service
   - A. Preparation of Dry Batteries for Sale
   - B. Testing by Open Circuit Testers (and Hydrometer)
   - C. Adding Water
   - D. Cleaning Terminals
   - E. Fast Charging
264 - F. Slow Charging
   - G. Installing Batteries—6 Volt—12 Volt
   - H. Installing Battery Cables and Holddowns

5. Tire and Tube Services
   - A. Inflating Properly
   - B. Demounting and Mounting Conventional and Tubeless
   - C. Tube Repairing—Hot and Cold Patches
   - D. Rotating Tires
   - E. Minor Casing Repairs
   - F. Wheel Balancing (only if proper balancing equipment is available.)

6. Cooling System Service
   - A. Draining and Flushing
   - B. Cleaning and Protecting
   - C. Anti-freeze Servicing

7. Fan Belts
8. Radiator Hose
9. Shock Absorber Service
10. Brake Fluid—adding to master cylinder—bleeding
11. Electrical System
    - A. Ignition Wires
    - B. Lamps and Lights
    - C. Fuses and Circuit Breakers

12. Oil Filter and Filter Cartridges
13. Heater Hose

265 14. Spark Plugs—Testing, Cleaning, Regapping

15. Thermostats and Pressure Caps
16. Windshield Wiper Blades and Arms Service
17. Tire Chain Installation and Repair
18. Car Washing
19. Car Waxing and Polishing

266 : "In addition to the services listed, Atlantic encourages lessee and contract dealers to do 'tune ups', 'adjustments' and minor repairs. Atlantic discourages general repairs which occupy so much space or personnel

as to interfere with fundamental service station activities.

2.20 Service stations require long hours of operation. The hours of a particular station are determined by the buying habits of the trade where the station is located and the hours of competitive dealers. There are wide differences between stations in the number of hours of operation per week, on particular days of the week and in different seasons of the year. Atlantic expects its dealers to keep competitive hours but does not specify particular hours for particular stations. In the case of a few stations (generally operated by lessees) it is economically advisable to keep open 24 hours a day, and Atlantic encourages the dealers to do so.

"2.21 Atlantic makes available to its dealers a suggested system of service station bookkeeping, including bookkeeping materials (CX 191 A-Q). A minority of Atlantic's dealers are believed to use this suggested form of bookkeeping. While the number using this form might be expected to increase under the new lease form B-3191 (7/56) (CX 88 A-1—A-3), no such trend has yet become apparent.

"2.22 Atlantic does not establish TBA quotas, but 267 does recommend to all dealers handling TBA the maintenance of a balanced stock of these items. The exact items and the quantity of each such recommendation depend upon the volume of business, the type of customers, the location, the proximity to sources of supply, the availability of capital for investment in merchandise, and storage facilities. In making their recommendations, Atlantic salesmen may, on occasion, use the Goodyear [illegible] Atlantic does not guarantee the credit of its dealers to suppliers of TBA or other items purchased by them.

"2.23 Dealer meetings (at which all Atlantic dealers are welcome, including lessee dealers, contract dealers and

[or Firestone Basic Guide (CX 192)]

distributors' customers) are held from time to time by Atlantic salesmen or regional or district staff personnel, the regional TBA Coordinator, Goodyear * * *, either alone or jointly with Atlantic personnel, and manufacturers of accessories sold by Goodyear * * *. Manufacturers of tires, batteries and accessories not sold by Goodyear * * * also hold meetings for dealers, including Atlantic dealers. The frequency, location and character of dealer meetings depend upon many circumstances, including the personalities and methods of the persons and groups who hold such meetings and the funds and facilities available. The cost of such meetings is borne by the company or companies holding the same.

268 "2.24 During 1955 Atlantic had on the average about 2480 stations available for operation by lessee dealers, an increase of about 160 over the average for 1954. In the course of the year 1955, about 720 lessee dealers ceased to operate as lessees of Atlantic and had to be replaced by Atlantic.

"3. Atlantic's TBA Program Before 1950 and Exploration of Alternatives.

"3.1 Before 1950 Atlantic purchased tires, batteries and accessories for resale to Atlantic dealers. It handled principally Lee tires, Exide batteries, Du Pont polishes and chemicals, Thermoid fan belts and radiator hose, Weed chains, Fram oil filters and cartridges, Schrader valves, and other brands of other accessories. With immaterial exceptions, purchases of these items were made by Atlantic direct from the manufacturer. The company names and addresses of these manufacturers are as follows:

Brand Name	Manufacturer
Lee	Lee Tire & Rubber Company 22nd and Race Streets, Philadelphia, Pennsylvania.
Exide	Electric Storage Battery Company 42 South 15th Street, Philadelphia, Pennsylvania.
Du Pont	E. I. Du Pont de Nemours and Company Wilmington, Delaware.
269 Thermoid	Thermoid Corporation Trenton, New Jersey.
Weed	American Chain and Cable Company York, Pennsylvania.
Fram	Fram Corporation Providence, Rhode Island.
Schrader	A. Schrader Sons 470 Vanderbilt Avenue, Brooklyn, New York.

"3.2 In 1947 the Domestic Marketing Department, recognizing the fundamental importance of a TBA program to Atlantic, its dealers and their customers, initiated an investigation to determine whether there were more desirable TBA programs than that under which Atlantic was then operating. CX 99 is the form of letter dated January 19, 1948, from Atlantic to the rubber companies named therein, which was one of the first steps in that investigation. CX 1 is a copy of the letter in such form sent to Goodyear.

"3.3 After having initially declined to make a proposal in response to Atlantic's inquiry of January 19, 1948 (CX 1A—3A), Goodyear expressed its willingness to do so in a letter dated May 4, 1949. CX 4 is a copy of that letter.

"3.4 Atlantic made sales of TBA products to its dealers and distributors in the years 1949, 1950, and 1951 as indicated on CX 193.

270 "4. Introduction of Sales Commission Program on Test basis.

"4.1 In or about January, 1950, Atlantic decided to accept the sales commission proposal submitted by Firestone on a test basis in three districts, namely, Newark, Wilmington and Erie. The territory included in each of these districts is shown below:

Newark: Northern New Jersey, comprising all of Sussex, Warren, Passaic, Bergen, Morris and Hudson Counties; the northern three-quarters of Hunterdon, Somerset and Middlesex Counties; and the northeastern half of Ocean County.

Wilmington: All of Delaware; those portions of Virginia and Maryland on the Delmarva Peninsula; and a small portion of Pennsylvania adjacent to Delaware on the north and west and extending to the Susquehanna River.

Erie: The northwest corner of Pennsylvania, comprising all of Erie, Crawford, Mercer, Warren, Venango, Forest, and McKean Counties; the northern half of Clarion and Elk Counties; and the northwest corner of Cameron County.

"4.2. On March 17, 1950, Atlantic was notified by Firestone that it would not undertake the test program in Newark, although willing to do so in the other two districts. Atlantic decided, nevertheless, to proceed with
271 a test of the sales commission program in Newark and in May, 1950, after weighing the proposals of Goodyear and U. S. Rubber Company, chose the Goodyear proposal for this district. CX 119A-B, 128A-B, and 129 are Atlantic inter-office correspondence relating to this decision.

"4.3. CX 104 is the letter agreement dated March 30, 1950, which was entered into between Atlantic and Firestone in connection with the test program. CX 106 is an amendment to that agreement extending it to cover the Eastern Pennsylvania, Western Pennsylvania and South-

ern Regions of Atlantic, effective March 1, 1951. CX 105 is an amendment to the agreement dated January 12, 1954. CX 105C is another amendment to the agreement dated November 3, 1954. These are all the amendments to date.

"4.4. Operations under the agreement with Firestone can be considered to have begun in Wilmington on April 4, 1950, and in Erie on March 30, 1950.

"4.5. CX 121 is a draft of a proposal agreement between Goodyear and Atlantic, including Exhibit A thereto, which was not executed. CX 122 and 123 are correspondence between the parties referring to changes in this draft. CX 127-A-H comprises two Goodyear documents apparently sent to Atlantic for information. CX 13 is the contract as finally agreed upon, which (although dated June 1, 1950) was executed and delivered in December 1950. CX 124 and 125 are the letters transmitting the 272 executed counterparts of the agreement. CX 126 is an amendment to the agreement extending it to cover the Philadelphia-New Jersey, New York and New England Regions of Atlantic effective March 1, 1961. CX 126C and 126D are further amendments to the agreement dated July 7, 1954, and September 15, 1954, respectively. These are all the amendments to date.

"4.6 Operations under the agreement with Goodyear began in Newark on June 12, 1950. CX 130 sets forth the accounting procedure in connection with this operation, which is essentially the same as the procedure currently in effect in the three regions where Atlantic promotes the sale of Goodyear TBA. CX 131 sets forth Atlantic's recommendation as to battery charging equipment in the Newark District, which is essentially the same as its recommendation in all regions where it promotes the sale of Goodyear TBA.

"5. Adoption of Sales Commission Program on Company-Wide Basis.

"5.1 Subsequent to April 1950, progress reports were made purporting to report the number of dealers in the test districts accepting the program and the volume of TBA sales reported by Goodyear and Firestone in the test districts as compared with sales by Atlantic in the corresponding periods of 1949. CX 116B is a copy of one such report and CX 116A is the Firestone letter trans-
273 mitting the same. CX 194 through 205 are copies of additional reports.

"5.2 In July and August, 1950, Atlantic distributed a questionnaire to 80 percent of its dealers and distributors in the test districts. Of the 600 dealers and distributors to whom questionnaires were sent, about 120 executed and returned them. CX 134 is a copy of the questionnaire form showing in each answer space the total number of dealers and distributors who checked that space on their individual questionnaire, except for questions 3 and 4 from which are omitted those preferences for a combination of two or more sources. No information is available as to the omitted answers to questions 3 and 4 or as to the breakdown between dealers and distributors.

"5.3 In January 1951 Atlantic considered extending the program to one or more regions. The Regional Managers of the Western Pennsylvania, Eastern Pennsylvania and Southern Regions expressed willingness to participate in this further test and indicated preference for Firestone. The Philadelphia-New Jersey Regional Manager expressed his willingness and indicated a preference for Goodyear. (CX 158 is an inter-office letter from the Manager of this region relating to this general question.) Accordingly, Atlantic made arrangements with Firestone and Goodyear for a test in these four regions. On February 14, 1951, Lee Tire and Rubber Company, failing to obtain a
274 long-term contract with Atlantic covering the other two regions, canceled its contract effective March 1,

This precipitated the decision to adopt the sales commission plan for all six regions. In the light of this decision the New York and New England Regional Managers expressed a preference for Goodyear, and Atlantic arranged to extend the coverage of its contract with Goodyear to those regions as well as the Philadelphia-New Jersey region and to extend the coverage of its contract with Firestone to its other three regions. There is no formal record of Atlantic's informing Goodyear as to the regions covered by Atlantic's sales commission contract with Firestone or informing Firestone as to the regions covered by Atlantic's sales commission contract with Goodyear, but this soon became a matter of common knowledge in the industry.

"5.4 CX 135-A-C is apparently a record of a meeting of the Regional TBA Coordinators held sometime prior to February 14, 1951, to review the steps to be taken in regions where the sales commission TBA plan was to be adopted. The steps actually taken varied considerably from region to region, but followed the general outline recorded. CX 155 is the 1951 Sales Plan for the New York Region which was in preparation at the time of the decision to adopt the sales commission program in that area. CX 154 is an inter-office letter from R. W. Reed, administrative assistant to D. T. Colley, to S. J. Heideman and others forwarding the plan for comments. CX 157 is a letter, written after the decision to adopt the sales commission program in New York, from H. K. Paxson,
275 assistant to S. J. Heideman, to the Manager of the New York Region, commenting on the plan and pointing out changes required by the adoption of the sales commission program.

"5.5 CX 149 is the form of letter sent by D. T. Colley under date of March 1, 1951, to all Atlantic sales personnel announcing adoption of the sales commission program.

CX 150 is the form of letter on the same subject sent by D. T. Colley under the same date to all Atlantic dealers. CX 148 is an inter-office letter dated February 27, 1951, transmitting the foregoing form letters to Mr. E. R. Cox, Manager of Atlantic's Sales Promotion Section, with instructions that they be printed and mailed promptly. On August 28, 1952, a copy of CX 206 was sent to every Atlantic dealer, and thereafter and until July 1955 a copy of this letter and CX 150 was given to each new Atlantic dealer. In July 1955, a copy of a similar letter (CX 207) was sent to every Atlantic dealer and since that date has been given to each new Atlantic dealer.

"5.6 CX 136 is a letter from S. J. Heideman to D. T. Colley written three weeks after the adoption of the sales commission program and reporting on the transition to the new sales method.

276 "6. Transition to Sales Commission Program

"6.1 In 1950, when the test program was initiated, Atlantic turned over to Firestone and Goodyear lists naming all Atlantic dealers and distributors in the Erie and Wilmington and the Newark test districts, respectively, who to its knowledge handled TBA to any extent and commenced solicitation of these prospects to promote sales of the recommended brand of TBA. Shortly after March 1, 1951, Atlantic turned over similar lists of dealers and distributors and began similar solicitation in the balance of its regions. CX 173-175 are the only remaining records relating to the transmittal of such lists to either Goodyear or Firestone. Goodyear Form G-1209 and Firestone Form S-757, respectively, were prepared for the dealers and distributors named on the lists, and with rare exceptions Goodyear and Firestone approved the payment of commission on purchases of such dealers or distributors.

"6.2 Since prior to 1950, Atlantic has recommended to lessees the observance at their stations of the policy respecting signs which Atlantic follows at company-owned and operated stations. CX 132, which was written during the period of the test operation, sets forth this policy and its applications. Upon the adoption of the sales commission plan, Atlantic's Service Station and Sales De-
277 velopment Committees approved the design of Goodyear and Firestone signs recommended for use on Atlantic lessee stations selling Goodyear and Firestone TBA. Goodyear and Firestone then arranged for installation of such signs at stations handling their respective brands of TBA.

"6.3 From time to time Goodyear sign crews reported to Goodyear and Goodyear in turn reported to Atlantic the names of dealers (both lessee and contract) who would not permit Goodyear identification and, where possible, the reasons given for such action. From time to time Atlantic requested and Goodyear supplied supplemental lists of such dealers. Atlantic salesmen then revisited such dealers and attempted to convince them of the advantages of taking on the Goodyear line, if they did not already carry it, and displaying Goodyear identification. CX 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, and 172 are inter-company and inter-office correspondence relating to these activities. Atlantic did not and does not keep records of the identification displayed by its dealers and cannot state how many of the dealers who originally refused to permit Goodyear identification ultimately agreed to display the same.

"6.4 During the first months of the new program Atlantic obtained from Goodyear and Firestone progress reports showing the number of dealers taking on the
278 respective TBA lines and other information. CX 48F, and 208 through 214F are copies of such of these reports as were found in Atlantic's files.

"6.5 When the sales commission program was adopted, Atlantic had outstanding obligations to dealers who had purchased Lee tires and Exide batteries from Atlantic in respect of guarantees which Atlantic had authorized the dealers to make. Atlantic was obligated to reimburse the dealer for his net cost in fulfilling guaranty obligations, i.e., the difference between the dealer's cost of the replacement article and any amount paid by the dealer's customer in the transaction. This net cost was shared between Atlantic and Goodyear or Firestone, as the case might be. The tire company supply points handled the replacement transactions and Atlantic paid the tire company Atlantic's share of the cost. The total amount paid by Atlantic to Goodyear was approximately $6,637.05 and to Firestone was approximately $3,500. CX 47A-B and 47C-D are copies of memoranda dealing with the Lee and Exide adjustments, respectively.

"6.6 In 1951 and prior years, Atlantic credit cards specified that "tires, tubes, batteries and accessories" might be charged thereon. For the year 1950 and prior years, the credit card guides, the only instructions to Atlantic dealers on the subject, indicated that the credit
279 privilege was limited to 'new Lee tires and tubes and Exide batteries.' The credit card guide in use in 1951 and 1952 indicated that the credit privilege was limited to tires and tubes, recapping, batteries and automotive accessories 'recommended by Atlantic.' Similarly, on the 1952 credit card which was distributed in October of 1951 and was in effect from December 1951 to December 1952, 'tires, tubes, recapping, batteries, and automotive accessories recommended by Atlantic' were specified as the TBA items for which the credit card would be honored. In 1953 and subsequent years both Atlantic credit cards and the credit card guides have specified that tires, tubes, recapping, batteries and automotive accessories might be charged thereon without any limitation to those 'recommended by

Atlantic.' CX 146 is the minutes of a staff meeting at which Atlantic's present credit card policy was recommended to management. CX 215 through 221 are the credit cards for the years 1950 through 1956 and CX 222 through 225 are the credit card guides for those years. Atlantic keeps no record of TBA credit sales broken down by dealer classes. The estimated numbers of credit card holders for years 1951-1956 are as follows:

280

Year	Number of Credit Card Accounts (Estimated)
1951	73,000
1952	82,000
1953	96,000
1954	116,000
1955	130,000
1956	161,000

"6.7 In 1951 certain Atlantic personnel suggested that action be taken to limit the extension of credit to TBA supplied by Goodyear and Firestone, respectively. CX 140-145 relate to this proposal. No action was ever authorized or taken on this suggestion.

7. Supplemental Data

"7.1 Firestone's sales to Atlantic dealers and distributors on which commissions were paid to Atlantic by Firestone and such commissions for the years 1950 through June 30, 1956, are as follows:

Year	Sales on Which Commissions Paid	Commissions Paid
1950 (April thru December)	$ 458,325	$ 43,894
1951	3,243,350	299,524
1952	4,349,616	404,948
1953	5,050,381	469,784
1954	4,867,689	452,083
1955	5,562,936	506,199
1956 (to June 30)	2,545,798	234,317

"7.2 Atlantic has no knowledge of any Atlantic records from which the number of dealers and distributors who, from time to time in the past, signed Firestone franchise agreements can be determined. Except when specified on the documents, Atlantic does not know whether the numbers of dealers referred to in the Firestone progress reports are the numbers who became active purchasers of Firestone TBA as distinguished from those who signed Firestone franchise agreements.

281 "7.3 On the dates specified in the left-hand column Atlantic had the following numbers of lessee and contract dealers in the Eastern Pennsylvania, Western Pennsylvania and Southern marketing regions.

282

	Lessee Dealers			Contract Dealers		
	E. Pa.	W. Pa.	S.	E. Pa.	W. Pa.	S.
March 1950	451	234	249	1854	1341	548
December 1950	468	239	253	1776	1305	476
April 1951	468	244	263	1770	1246	465
December 1951	469	258	261	1739	1113	429
December 1952	484	270	268	1617	1059	366
December 1953	478	284	301	1179	929	318
December 1954	487	298	362	1054	853	191
December 1955	496	312	392	1096	749	134
June 1956	480	317	399	1075	725	121

"7.4 The following table shows for the dates specified the number of gasoline distributors and the approximate number of distributors' service station customers in each of Atlantic's marketing regions:

	March 1950		March 1951		March 1952		June 1956	
	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.
New England	8	*	8	*	7	*	8	151
New York	39	*	40	*	42	*	48	238
Phila.-N.J.	16	*	8	*	5	*	0	0
Eastern Pa.	52	*	53	*	54	*	77	925
Western Pa.	36	*	32	*	32	*	26	410
South	111	*	103	*	96	*	77	1173
	262		244		236		236	2897

* Data unobtainable.

315 Mr. Dias: The following stipulation has been agreed upon by counsel: Counsel for respondent, The Atlantic Refining Company ("Atlantic"), and counsel supporting the complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the complaint in this proceeding, and asked the following questions, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

316 CX 5A

Q. "Identify Neall."

A. In August 1949, F. M. Neall was Manager of Product Sales & Sales Development Division, Domestic Marketing Department, Atlantic.

CX 7

Q. "Identify E. R. Cox, Jr., Leon Serven, W. F. Stotz."

A. As of May 1950—E. R. Cox, Jr. was Manager, Sales Promotion Section, Atlantic. Leon Serven was Assistant Controller, Controller's Office—Domestic, Atlantic. W. F. Stotz was Senior Attorney, Legal Department, Atlantic.

CX 9A-E

Q. "Identify as to date, author, etc."

A. CX 9A-C was prepared by S. J. Heideman at some time prior to Atlantic's decision to test the sales commission plan in the test districts.

CX 9D-E is a separate document which was prepared by S. J. Heideman at some time prior to the commencement of the sales commission test program in the Newark District.

CX 9D

Q. "Identify Sales Promotion Section."

A. See under CX 179D.

CX 29

Q. "Dates."

A. Letters in this form were sent out by Atlantic
317 in the New England, New York, and Philadelphia-New Jersey Regions, except in the Newark, New Jersey District, on or about February 20, 1951.

CX 35 and 36

Q. "Develop further data re Schrader inventory."

A. Further data are unobtainable.

Q. "Is Schrader part of the Goodyear TBA line?"

A. Yes.

CX 39

Q. "Was document enclosed with CX 38?"

A. No.

CX 47B

Q. "Obtain copy of Atlantic-Lee Guaranty Forms."

A. A copy of that form is attached. (CX 47E.)

CX 48A-F

Q. "Who do TBA Bulletins go to?"

A. TBA bulletins are directed to Atlantic's TBA Coordinators in the various regions.

Q. "Is copy sent to Goodyear?"

A. Only occasionally.

Q. "Who are Automotive Missionary Men? Atlantic Refining Co. or Goodyear or both?"

A. They were employees of Goodyear.

Q. "What fan belts did Atlantic sell prior to commission plan?"

A. "Thermoid" brand, made by the Thermoid Corp., Trenton 8, N. J.

318 Q. "Review Progress Report."

A. See part 6 of stipulated testimony of Atlantic personnel.

CX 84A, B

Q. "Check current regions, etc."

A. There have been no material changes in the territories of the regions since the exhibit was prepared.

CX 100A-C

Q. "Distribution of document."

A. This was a memorandum for Mr. Heideman's file and, as far as can be ascertained, was not distributed to anyone else.

Q. "Describe Sales Promotion Department."

A. See under CX 179D.

CXID 101A-Z20

Q. "Origin, etc. Is basic data available?"

A. Reports are available for interviews believed to have been conducted in Boston, Mass., Fall River, Mass., Johnstown, Pa., Philadelphia, Pa., Pittsburgh, Pa., and Trenton, N. J. The Atlantic employee witness having the best knowledge of the origin and method is J. L. McIntire.

CX 102A

Q. "Identify J. M. McIlvain."

A. In August 1949, J. M. McIlvain was Chief Industrial Engineer, Industrial Engineering Department, Atlantic.

CX 104A-C

Q. "Firestone agreement, 3/30/50. Review C, D, 319 CE. DE, B and E classifications."

A. The agreement describes such classifications correctly.

CX 107

Q. "Identify Keen, Stotz, and Johns."

A. In February 1950—

William Keen was Manager, Operations Division, Domestic Marketing Department, Atlantic.

William F. Stotz was Senior Attorney, Legal Department, Atlantic.

Roy W. Johns was General Counsel, Atlantic.

CX 108A-J

Q. "Origin, date of meeting."

A. This document is believed to have been prepared by S. J. Heideman for presentation at the meeting of March 17, 1950, at which the persons listed on CX 109 were in attendance.

Q. "Explain antifreeze policy (CX 108I)."

A. Atlantic had decided to continue to sell antifreeze on a purchase and resale basis.

CX 109A-I

Q. "Explain policy on 'close out' merchandise (CX 109B(b)."

A. See paragraph 2.14 of stipulated testimony of Atlantic personnel.

Q. "Identify Mr. Stockton."

A. As of March 1950, William Stockton was Credit Manager, Domestic Marketing Department, Atlantic.

320 CX 109H

Q. "Obtain lists of dealers and distributors and maps and 1949 dealer TBA volume furnished Firestone for Wilmington and Erie districts."

A. The data furnished to Firestone for the Wilmington and Erie Districts cannot be located. According to other records, the 1949 dealer TBA volume in the Erie District was $343,028 and in the Wilmington District was approximately $200,000.

Q. "Check dates of dealer meetings and starting date of Firestone program."

A. The indoctrination meeting for Atlantic personnel in the Erie District was held on March 30, 1950, which can

be considered the starting date of the program in that district. Dealer meetings were held shortly thereafter.

CX 110

Q. "Identify SJH."

A. In March 1950, S. J. Heideman was Manager, TBA Section, Atlantic.

CX 111

Q. "Identify SJH and W. J. Griffiths."

A. In April 1950—

S. J. Heideman was Manager, TBA Section, Atlantic.

William J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

321-A CX 112, 113

Q. "Check origin, etc., and termination dates."

A. It cannot be determined by whom these documents were prepared.

The arrangement was terminated as indicated under CX 139A-B.

CX 114A

Q. "Obtain list, referred to under (3), of Firestone District Managers and District Offices."

A. The list referred to cannot be found.

Q. "Obtain Forms S-468."

A. A copy of this form is included in the data which were furnished in response to List C, par. 8(h).

CX 114B

Q. "Check accounts classifications on which commissions are paid."

A. The classifications in Par. 7 of CX 114B are correct as stated, except that the outlet designations have been changed as indicated by paragraph 2.1 of the stipulated testimony of Atlantic personnel.

321-B CX 114D

Q. "Identify personnel listed."

A. As of May 1950—

B. M. Boor was Manager, Western Pennsylvania Region, Atlantic.

Leon Serven was Assistant Controller, Controller's Office—Domestic, Atlantic.

S. J. Heideman was Manager, TBA Section, Atlantic.

J. C. Rigby was in the Auditing Department, Atlantic.

J. M. McAllister was in the Sales Statistical Section, Accounting Department, Atlantic.

J. P. Miller, Jr. was General Auditor, Atlantic.

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

C. P. Mumma was Manager, Sales Group, Eastern Pennsylvania Region, Atlantic.

G. A. Fearn was TBA Coordinator, Eastern Pennsylvania Region, Atlantic.

R. S. Zinn was Manager, Wilmington, Delaware District, Domestic Marketing Department, Atlantic.

CX 115

Q. "Identify writer."

A. This document was probably written by E. E. Sickles, then an Assistant Chief Accountant in the Philadelphia Sales Accounting Division of the Accounting Department, Atlantic.

Q. "What are 'O' Type dealer supply points referred to?"

A. "'O' Type dealer supply point" is a Firestone designation for independently owned and operated Fire-
322 stone dealers acting as supply points.

Q. What was the name of the company?

93 A. Goodyear and Atlantic.

Q. And approximately how many dealers were present at that meeting?

A. Well, I guess fifty or sixty.

Q. And after you were informed of the change-over as you call it, did you then begin to purchase Goodyear TBA?

A. Oh, yes.

By Mr. Kelaher:

Q. Did you observe whether other dealers changed to Goodyear TBA after the meeting referred to?

A. Yes.

Mr. Thompson: I object unless the other dealers which Mr. Kelaher is referring to are specified.

94 Mr. Mason: I object also.

Hearing Examiner Kolb: You may answer that.

By Mr. Kelaher:

Q. You may answer it.

A. Well, certainly I saw the merchandise around in other stations.

Q. And did you see the Goodyear TBA line go into the other stations?

A. Oh, sure.

Mr. Mason: I move to strike unless the stations are identified.

Mr. Kelaher: Your Honor, that is a matter of cross-examination.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. From whom did you begin to purchase your Goodyear TBA line?

A. From the Company distributor who was Ed Parris.

Q. At the time of the switch-over were any steps taken to identify your station with Goodyear signs of any type?

A. Yes, I just recall them putting these things across the window, I guess Decals or what have you, across the entire front of the building and re-sleeved a lot of my fan belts and hoses and identified them.

Mr. Mason: I move to strike the answer unless
95 "they" are identified.

The Witness: Goodyear re-sleeved the fan belts.

By Mr. Kelaher:

Q. Would you explain what is meant by re-sleeving?

A. Well, there was some thermoid belts and the sleeves were taken from that and Goodyear sleeves were put on it.

Q. You mean there was a change of brand name from thermoid to Goodyear?

A. That is right.

Q. Mr. Chambers, after March of 1951, did you purchase any TBA from suppliers other than Mr. Parris?

A. Yes.

Q. Would you please state the names of some of these jobbers at least from whom you purchased and the type of products you purchased?

A. I would say Chester Auto Parts.

Q. Will you please give the city where they are located?

A. Chester.

Q. Pennsylvania.

A. Right. Mac's Products is one.

Q. Is Mac's Products a line of chemical or waxes?

A. Chemicals and waxes.

Q. That would be an accessory item, is that right?

A. That's right. Of course, C. A. Powers, on recapping, snow grips.

96 Q. Where is C. A. Powers located?

A. Chester.

Q. What is C. A. Powers?

A. A Goodyear distributor.

Q. Did you purchase new tires and tubes from C. A. Powers?

A. Yes.

Q. In quantity or—

A. Never much quantity, no.

Q. Where was the bulk of your new Goodyear tires that you purchased?

A. Purchased from the distributor.

Q. And you say you had recapping done by C. A. Powers?

A. Right.

Q. Did Mr. Parris have recapping facilities?

A. No, not at that time.

Q. And would you name some of the other companies from whom you purchased?

A. Hymen Stein, who was in Chester, Zerex and Zerone.

Q. They are anti-freezes, are they not?

A. That is right. Then Auto Parts and Radiator Company in Chester, we purchased all polishes.

Q. And accessories. You can just identify them as accessories, tires, and batteries.

A. Just accessories.

97 Q. Were there any others you can recall?

A. Not in 1951.

Q. Well, from then on, from then until you left—

A. Well, V. J. Auto Parts in Sharon Hill, accessories, and Barrodin Auto Supplies in Philadelphia.

Q. Is that B-a-r-r-o-d-i-n?

A. That is right.

Q. And did you purchase a product known as Barsleak from any of these jobbers?

A. Yes, sir.

Q. Who did you purchase that from?

A. Barrodin.

Q. That's an accessory item, is it not?

A. Yes.

Q. What products did you purchase from V. J. Auto Parts?

A. Why, usually I would pick up items that I would have to have immediately and some accessories when there was a deal involved.

Q. Did you purchase Barsleak from V. J. Auto Parts?

A. I believe so.

Q. From whom did you purchase the bulk of your accessories?

A. The distributor, Ed Parris.

Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris?

98 A. Yes.

Q. Would you please state some instances?

A. Well, I mean, there is the one that is the greatest in my memory right now was the Barsleak, and of course Joe Connelly was saleman at that time, and Joe would pick it up any say, "What are you doing with this," and he would set it back down.

* * * * *

By Mr. Kelaher:

Q. Were any comments other than the one referred to made by Atlantic representatives concerning the purchases of TBA from local jobbers other than Ed Parris?

Mr. Thompson: I object to the form of the question. The only testimony so far has been with reference to something called Barsleak which I have never heard of.

Mr. Mason: Objection.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You may answer.

A. Why, yes, there was great criticism, shall I say, in reference to outside merchandise.

Q. Who made these criticisms?

Mr. Mason: Just a moment, I move to strike the statement, the witness' answer, unless the statement is clarified, it is too general.

Hearing Examiner Kolb: I understand what Mr. Kelaher is doing, he is clarifying it.

Mr. Kelaher: Would you please read back the last question?

(The stenographer read back the last question as follows:

"Q. Who made these criticisms?")

The Witness: Why, salesmen who represented the company.

By Mr. Kelaher:

Q. Which company?

A. Atlantic.

Q. Would you name some of the salesmen, if you please?

A. Of course, I only had about four during my time of dealership with Atlantic.

Q. Who were they?

A. There was Joe Connelly, Joe Muldoon, and Steve Petrison. There were three and the first was Al Vayda.

Mr. Mason: If your Honor please, I would like to move to strike the entire line unless the criticisms as such are identified. We are still talking in terms of a very general word; it is meaningless.

Hearing Examiner Kolb: I assume the following series of questioning will bring it out.

Mr. Mason: I want it to be understood I am placing an objection and we will move to strike if it isn't brought out.

By Mr. Kelaher:

Q. Mr. Chambers, did the men or did any of the men you have mentioned make such criticisms?

A. You were always reminded that on check-out.

Q. What is meant by check-out?

A. Well, they were going—when you left the business, in other words, when they expired your lease or when they cut your lease, they would only accept that merchandise that they sold or handled. The outside merchandise would not be accepted at all.

Q. In other words, if your lease expired, are you stating that Atlantic would not buy back any outside merchandise you purchased in the TBA line?

A. That is right, from outside sources if they did not handle it.

Q. And where did these conversations take place between the Atlantic salesmen and you?

A. Many times over a cup of coffee and sometimes 101 out in the driveway.

Q. Would it generally be a private conversation?

A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature?

A. It was never done openly.

Q. What was your experience with respect to advertising of TBA when you—

Mr. Mason: Pardon me, have you left the line that has to do with criticism?

Mr. Kelaher: We covered that quite entirely.

Mr. Mason: I move to strike because the criticisms have never been identified. All we have is a very general characterization and statements that have been made.

By Mr. Kelaher:

Q. Mr. Chambers, you named a number of Atlantic salesmen—

Mr. Mason: I would like to have a ruling.

Hearing Examiner Kolb: The criticism which has been referred to was the statement with reference to the non-return of products which were not Goodyear. The objection will be overruled and the motion to strike denied.

• • • • •

102 By Mr. Kelaher:

Q. Mr. Chambers, with respect to advertising in your station, what was your experience during your time as an Atlantic lessee dealer with respect to the advertisement of TBA products?

A. Well, as a dealer, you bought a package deal; I mean you paid for a package deal on advertising and of course they handled it for you.

Q. By "they" you mean who?

A. Atlantic handled the entire thing on a month-to-month basis; in other words, you bought it as a package deal.

Q. What products did you have advertised in your station?

103 A. All products sponsored by Atlantic, Goodyear.

Q. Did you advertise products not sponsored by Atlantic in the Goodyear TBA line?

A. Oh, no.

Q. Did you say no?

A. No.

Q. Why did you not advertise such non-sponsored products?

Mr. Mason: I object to the form of the question.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You may answer.

A. Well, because it wasn't handled by the company

and it wasn't included in the package advertising, and of course it just wasn't done.

Q. Did you ever attempt to advertise non-sponsored TBA?

A. Only through, shall we say, stickers or Decals on various things at the station.

Q. Was any comment ever made by such advertising, non-sponsored TBA by Atlantic representatives?

A. In reference to those advertisements?

Q. Yes.

A. Yes, sir.

Q. What comments were made?

104 A. To take them off.

Mr. Thompson: That is objected to unless the person who said that is identified.

By Mr. Kelaher:

Q. Will you please state the person who said that, from Atlantic?

A. Mr. Arnholt.

Q. Did you use credit cards at your station?

A. Yes, sir.

Q. Atlantic credit cards?

A. Yes, sir.

Q. And what products were you able to sell or what products did you sell on Atlantic credit cards?

Mr. Thompson: I object to that.

By Mr. Kelaher:

Q. What TBA products?

Mr. Thompson: Let's have the question read back.

(The stenographer read back the question as follows:

"Q. What products were you able to sell or what products did you sell on Atlantic credit cards?")

Mr. Thompson: It is obviously a double question.

Hearing Examiner Kolb: Reframe your question.

By Mr. Kelaher:

Q. What brand of TBA products did you sell on Atlantic credit cards?

105 A. Well, on the credit cards there was some flexibility. Now on the polishes and what have you, why, we never ran into any trouble on the small items. But like most businesses you could not expect Atlantic who was handling Goodyear tires to finance or charge Lee or Century, or something else.

Q. You never attempted to charge other than Goodyear on the credit cards?

A. Not on the big items; no, sir.

Q. What type of uniform did you normally wear at the station?

A. Well, we had a rented one that we paid for from—gee, I don't remember who it was.

Q. Was there ever a time when you did not wear the uniform you purchased?

A. There were many times; we got three suits a week on the rented setup and there were times when the suits were dirty and they were maybe on a holiday and something came in, of course.

Q. Did you ever change your type of cap?

A. Yes, once. I was never much for wearing a cap except these peak kind that service station people have.

Q. What kind did you wear?

A. I bought a leather hat, it's used by sportsmen; and at the time I bought a red one.

106 Q. Was any comment ever made by an Atlantic representative with respect to your uniform?

A. Yes. Mr. Arnholt asked me was I a gunner.

Q. Would you explain the incident?

A. Well, he apparently did not like the hat on me. He, with Mr. Connelly and Mr. Sanborn on the morning—

Q. All of Atlantic?

A. Yes, the hat was taken from my head and thrown in the waste paper basket.

Q. Who took the hat off your head?

A. Arnholt.

Q. What happened after that?

A. He took it out of the waste paper basket and put it back on my head again.

Q. At your request?

A. Yes.

Q. Did you keep books and records of your service station operation as an Atlantic lessee dealer?

A. Daily.

Q. Were those records inspected by an Atlantic representative?

A. Yes, I gave them full freedom to check my books and records at any time.

Q. Did that include inspection of your TBA purchases?

A. Anything that was in the book, sir, they were 107 free to check.

Mr. Kelaher: Mr. Examiner, I have a document which I would like to identify as Commission's Exhibit 274 for the reason that other documents have been identified, have been assigned numbers up to that number which will be put into evidence tomorrow.

Hearing Examiner Kolb: All right.

(Document identified as Commission's Exhibit 274.)

By Mr. Kelaher:

Q. Mr. Chambers, I hand you Commission's Exhibit 274 and ask you to state what that is.

A. Well, this is a letter that was sent out by Atlantic.

Q. Would you please give us the date?

A. This is October 14, 1954.

Q. And who was it from?

A. It is A. R. Sanborn, District Sales Manager, Philadelphia and Suburban.

Q. And would you please read the letter?

A. "Mr. John Chambers, Chester Pike and Clifton Avenue, Sharon Hill, Pennsylvania.

"Dear John: Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

"This is the kind of job which makes us all feel very happy and it certainly is an important factor in running
108 a profitable service station.

"Keep up the good work!

"Cordially yours"—Mr. Sanborn.

Mr. Kelaher: Strike the word—I think the word "feel" should be stricken, it does not appear in the letter.

Mr. Mason: Are you going to offer the document in evidence?

Mr. Kelaher: I have identified it. Are you making an objection?

Mr. Mason: No; simply as to its admissibility as to Goodyear. Goodyear is a stranger to this transaction.

Mr. Kelaher: I move that Commission's Exhibit 274 be received in evidence.

Mr. Thompson: No objection on behalf of Atlantic.

Mr. Mason: Goodyear objects because this is obviously a transaction that is between a third person and the witness and I do not believe the document will be admissible.

Hearing Examiner Kolb: The objection will be overruled.

(COMMISSION'S EXHIBIT 274 received in evidence.)

By Mr. Kelaher:

Q. Mr. Chambers, was it customary for the Phantom Customer Inspector to call at your station during your years as an Atlantic lessee dealer?

A. I think the Phantom was something new; I mean,
109 Atlantic was always service-minded and of course service and cleanliness is the basis of good business.

Through these inspections, they kind of kept the boys on their toes. Many times they would receive a bonus such as a dollar or a certificate for a dollar, for the service rendered, and the merchandise displayed at the location and the cleanliness of the location. Of course, the 290 there is based on service, display, and cleanliness.

Q. Did you know or did you have any reason to know when the Phantom Customer Inspector was in your station?

A. No.

Q. Were you ever advised in advance of his appearance?

A. No, not on this chap; but some of the other ones we used to get a chain letter or by a phone.

110 By Mr. Kelaher:

Q. Mr. Chambers, you stated that you were an Atlantic lessee dealer until November, 1954. Would you please explain why you did not continue as an Atlantic lessee dealer after that date?

A. Well, because they cancelled my lease; that is the reason I wasn't a dealer.

Q. Would you explain that, please?

A. Well, I mean, I kind of think a lot of things led up to it. I just don't know exactly where to start.

Q. Well, let me ask you this: You received a letter dated October 14, 1954. Did any events transpire after that date?

A. When I received that letter, I was on my way out then.

Q. You were?

A. Yes.

Q. Why did you think you were on your way out then?

111 A. I was told I was on my way out.

Q. Would you please explain that?

A. Yes, I will. Atlantic was going on a commission

basis with gasoline, which was fixing price, shall I say. We had to buy the gas or did not buy it, they put it in, stuck their tanks in and then we were charged with what we sold at a price. The salesman who was Steve Petrison made the rounds and according to my memory, he told me that he called on ten locations and out of ten locations he got five acceptances for the commission basis and five refusals. The five refusals were in an area, a given area of Sharon Hill, Darby, Collingdale, Glenolden, and they were not going to put up with that any longer.

Q. Who wasn't going to put up with it?

A. The salesman.

Q. Referring to the Atlantic salesman?

A. Yes. And we were going to have to take the commission deal and at that time he told me it did not make any difference whether I took it or not, my lease wasn't being renewed.

Q. Please go on.

A. I mean—

Q. Did he make any statement to you at that time?

A. Well, I said, "Is that it," I mean, "Are you serious?" He said, "Yes, dead serious." "Of course,
112 John," I said, this isn't my decision, it is the decision that was handed down from top level." I said, "It is rather cold and sudden, wouldn't you say?" He said, "That's the way it is, we are going to bust this up one way or another."

Q. What was he referring to?

A. A clique; that is, dealers that were trying to stay together. Can I go back a little bit?

Q. Yes, go ahead.

A. There were times in our business when we kind of felt as dealers we ought to make a few decisions ourselves. Many of the decisions were handed down by top level in the office, I believe, and maybe their intentions were good and

maybe they were not. Nevertheless, we feel as dealers that we should operate as independent business men and make some decisions ourselves. We pay the rent and we know we have the location and we know we have obligations to meet. And many times the company through the competition factor which exists today even still would not go along with us to meet the tank-wagon price of the competitive deal.

Q. I see.

A. In other words, we will say a company would sell a tank wagon at 19.9 and we would still charge 21.9 on the tank wagon, yet we were expected to meet competition.

Q. I see. Even though the competitors had a lower price.

A. Yes, many of the dealers got together and we
113 said, "Look, we will meet competition when the company comes along with us and gives us a helping hand." At that time they had a zoned area, it ran like the Chinese Wall. This guy got it on this side of the fence and this guy did not get it on this side of the fence.

Q. By getting it, you are referring to——

A. A subsidy they gave, and while we tried to band together and hold our price until the company did something to help us. There were times when I had a cardboard sign or an "A" sign that we have out in front that we use for advertising purposes of either Goodyear tires or Goodyear batteries, or Atlantic Hi-Arc. You turn the face around on those and we painted the sign on them—26.9 or 23.9. I was asked by Mr. Arnholt to get two professional four by eight signs and this involved quite a hassle because I checked into the price of the outside plywood and it ran me too much money. So I of course did not get the signs. So he said that when I told him I refused to get the sign, he said that—that is Mr. Arnholt—said to remember this conversation in the future because one day it would come

up. So I kind of think that as far as my association with Atlantic which—

Q. Mr. Chambers, I want to keep you on this. After your conversation with Mr. Petrison did you go to Atlantic or to an Atlantic representative?

114 A. No, I asked through Steve Petrison to have an interview with Mr. Sanborn, to try to reason it out; I mean, I had moved to Sharon Hill with the thought of staying in Sharon Hill.

Q. I see.

A. I joined a service club and I was quite active in and around the town to try to put things on their feet up there and make a dollar myself. Of course, I had a lot at stake. At that time I was having family trouble at home and of course I was—everything piled up at once.

Q. At this time did you discuss the matter with Mr. Parris?

A. Yes; I, of course went to Ed because Ed to me in the years I had been with Atlantic, of course I started with him as a—

Q. Excuse me, Mr. Chambers, what was the substance of your conversation with Mr. Parris?

A. I asked, what in the world happened, what could I do. He said, "Jack, you have been turned in by three dealer salesmen for buying outside merchandise." I said, "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise.

Mr. Thompson: I object to this and ask it be stricken, your Honor. It is totally hearsay.

Hearing Examiner Kolb: He is stating a conversa-
115 tion he had.

Mr. Thompson: No, sir; he is stating what somebody said, somebody else said.

Mr. Kelaher: No, he is not; he is stating the substance of his conversation with Parris.

Mr. Thompson: The only possible relevance would be that it is a repetition of what Mr. Parris said and what somebody else said. This would be clearly within your double hearsay ruling.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Kelaher:

Q. About what approximate time did your conversation with Mr. Parris take place? I am referring to the month.

A. It would be in—I am only guessing, I cannot be accurate, I would say it was around the first week in November.

Q. And you state that you left in November of 1954. How did that come about?

A. That would be—actually, it would be in October when I was there rather than November 1st, it was the 13th of November I was checked out.

Q. Mr. Chambers, did Atlantic salesmen take TBA orders from you?

A. Yes.

Q. And, Mr. Chambers, when you checked out, as 116 you say, November of 1954 did you have an inventory TBA on hand?

A. Did I have an inventory?

Q. Yes, an inventory of TBA on hand?

A. Oh, yes.

Q. And did you or did Atlantic purchase any of that inventory?

A. Well, the purchase was to include everything that Atlantic sold and if the incoming dealer wanted to buy the outside merchandise they would not stop him, but that was a personal check between the incoming dealer and myself.

Q. With respect to TBA, what did Atlantic re-purchase from you or purchase from you, rather?

A. Well, only that merchandise that they handled.

Q. Are you referring to the Goodyear TBA line?

A. That is right.

Q. Mr. Chambers, referring back to the time, to the dealer meeting when the switch-over to the Goodyear TBA line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?

A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

Q. Mr. Chambers, did Atlantic periodically hold so-called dealer meetings?

A. Yes, sir.

117-A Q. Did you ever attend any of those meetings?

A. Fairly near all of them.

Q. Was TBA ever mentioned at such meetings?

A. Well, yes; it would come up to that point; I mean, many of them were sales promotional meetings.

Q. Who would be present at such meetings of that type?

A. Well, the head of sales.

Q. For Atlantic?

A. Yes.

Q. Would anyone from Goodyear ever be present?

A. Only if a new product was coming out for something.

Q. They would be present on occasions?

A. Oh, yes.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: We will take a short recess at this point.

(A short recess taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Thompson.

Q. Mr. Chambers, when you left Atlantic in November of 1954, you took over the Esso station at 4th and Sproul Streets in Chester?

Mr. Kelaher: Objection as irrelevant.

117-B Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. Did you understand the question?

A. Yes. The address is 9th and Welch.

Q. Is that close to 4th and Sproul?

A. Five squares and one.

Q. What was that again?

A. 9th and Welch.

Q. Would you mind pointing out that location to us on the Chester map?

A. It would be right in this area here, sir (indicating on the map.).

Mr. Kelaher: Mr. Examiner, if counsel is marking the map, perhaps some symbol should be made.

Mr. Thompson: That is my copy, for my information.

By Mr. Thompson:

Q. That is rather a prize station, isn't it?

Mr. Kelaher: Objection, your Honor. He is referring to his present Esso station. It is irrelevant in this proceeding, your Honor.

Hearing Examiner Kolb: The objection is overruled.

Mr. Kelaher: I might add that our direct examination, counsel is going beyond the scope of the direct examination.

118 Mr. Thompson: This is not beyond the scope.

Hearing Examiner Kolb: It may be involved in this.

By Mr. Thompson:

Q. That is rather a prize station, isn't it?

A. No, sir; I would not say so, sir.

Q. You are doing very well there, aren't you?

Mr. Kelaher: Objection.

The Witness: I am doing all right.

By Mr. Thompson:

Q. Mr. Chambers, you also did well for Atlantic in the station you had for them, didn't you?

A. I thought I did, sir.

Q. May I go back a little bit in your history. You started the history of your career in the oil business with the year 1945. That was right after the war, was it not?

A. Right.

Q. Before the war, weren't you a direct employee of Atlantic Refining Company?

A. Just for six months, sir.

Q. But then after the war, when you took the Sharon Hill station, Ed Parris to whom you have referred was the lessee, was he not?

A. That is right.

Q. Now, at the time, was he not what is called the 119 key dealer for the Atlantic Company, distributing Lee tires?

A. That is right, sir.

Q. And you very quickly became the manager of that station, didn't you?

A. Well, not quickly, sir; there was three dealers went out ahead of me.

Q. I meant the Sharon Hill station that Mr. Parris had under the lease, you were the manager of that station.

A. I became manager of that station, yes.

Mr. Kelaher: Your Honor, Mr. Chambers, has referred

to another Sharon Hill station and I think the record should be clear as to the period involved and the location of the station involved.

By Mr. Thompson:

Q. I am now talking, Mr. Chambers, about the year 1945 to 1948 when you were an employee.

A. That is right.

Q. Of Ed Parris at the Sharon Hill station of which you subsequently became the lessee, is that correct?

A. Not of that location; no, sir.

Q. Not the same station?

A. No, sir; I went from there to 2nd and Lloyd.

Q. Yes, but later you did get the same Sharon Hill station.

A. Yes, sir; later I came back.

120 Q. Now, having served as manager for Ed Parris, you were promoted to your own station, weren't you, at 2nd and Lloyd?

A. That is correct.

Q. And that was on Mr. Parris' recommendation, was it not?

A. I think so, sir.

Q. And you had that station from November of 1948 until November of 1952, I think you testified?

A. That is correct, sir.

Q. And you did a mighty fine job for Atlantic there, didn't you?

A. I think so, sir.

Q. Now, at the time of what you call the change-over, you were at the 2nd and Lloyd station, were you not?

A. That is right.

Q. Now, didn't the same Ed Parris became the distribution point for Goodyear?

A. That is right, sir.

Q. And at that time you were very close to him, were you not?

A. I always was.

Q. So that quite naturally you would buy TBA from him whether it be Lee or Goodyear, would you not?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

The Witness: Yes.

121 By Mr. Thompson:

Q. Now, you referred to a meeting that you attended in the spring of 1951 when Atlantic announced to about fifty local dealers that they were going to go on the Goodyear plan?

A. Yes.

Q. I am now going to hand you a photostatic copy—Mr. Kelaher, instead of asking for the original—of Commission's Exhibit 150. Mr. Chambers, I show you a letter dated March 1, 1951 which is a photostatic carbon copy of a letter which is Exhibit 150 in this case and ask you whether you recall receiving that letter.

A. I probably did.

Q. You have no present recollection of it?

A. No.

Q. Well, at the meeting to which you referred did the Atlantic spokesman say to you dealers that the Goodyear plan was something which you could accept or reject and the choice was yours, words to that effect?

A. Probably could have.

Q. As a matter of fact they did, didn't they, Mr. Chambers?

A. I don't recall exactly.

Q. But that was the general sense of the meeting?

A. That was the general sense of it.

Q. Do you recall a similar meeting which was held
122 in August 28, 1952 when Mr. Mulholland became Atlantic's TBA coordinator, a breakfast meeting, with door prizes. Do you remember that particular meeting?

A. No, not offhand, I don't recall it, sir. Could you enlighten me?

Mr. Kelaher: Just answer the question.

The Witness: No, I don't.

By Mr. Thompson:

Q. You did refer to having attended a number of Atlantic dealer meetings?

A. Yes, sir.

Q. Wasn't it pointed out to you on a number of occasions that the acceptance or rejection of a Goodyear plan was up to you fellows?

A. That is right.

Q. Mr. Chambers, having done a good job at 2nd and Lloyd, you were promoted again by Atlantic, weren't you?

A. No, sir, no.

Q. To the Sharon Hill station?

A. No, that is not a promotion, sir.

Q. Didn't you regard that as a promotion?

A. Did I regard it as a promotion?

A. Yes.

Q. If you drop from around 22,000 a month or 23,000 a month down to 9 and 10,000 a month, would you
123 consider that a promotion? I went up there on my ability to build it.

Q. Well, Mr. Chambers, the Sharon Hill station was leased to you at your specific request, wasn't it?

A. That is right; I wanted to move up there.

Q. You wanted to move up there.

A. That is right.

Q. Isn't it true that the 2nd and Lloyd Streets station was on the old Industrial Highway?

A. Well, it is still on the same Industrial Highway.

Q. It is the old Industrial Highway, isn't it, which had been by-passed by the new Industrial Highway?

A. No, sir; it is still the same highway.

Q. But it is just opposite the Ford Assembly plant, isn't it?

A. That is correct.

Q. There is not an awful lot of traffic that goes by there.

Mr. Kelaher: Objection, your Honor.

The Witness: It would not be safe to walk across the street at four o'clock without watching the light, that is how much traffic.

By Mr. Thompson:

Q. When the Sharon Hill station came up, you knew of course that Atlantic was going to reconstruct it, didn't you?

124 A. Yes, I did.

Q. And that was in a very competitive well-traveled area, wasn't it?

A. That is right.

Q. But you were in effect at that time taking over a station which you were just opening, weren't you?

A. Explain that to me, sir.

Q. It was re-opened as a new station, wasn't it?

A. I went in the old location.

Q. At the old location but it was re-opened as a new station.

A. I went through the construction of it, yes.

Q. So when you started to operate that station, you had to build the gallonage up, didn't you?

A. Yes.

Q. You did it very quickly, didn't you?

A. Well, not as quickly as I would have liked.

Q. But Atlantic was very well pleased with the way you handled it, weren't they?

A. They did not indicate so, sir.

Q. How about the salesmen, weren't they all close friends of yours?

A. Well, I think so.

Q. Joe Connelly?

A. Yes, I think so.

125 Q. He had nothing but praise for you, didn't he?

A. Joe always had a good word for me, sir.

Q. Isn't that also so about Muldoon and Petrison?

A. I can speak only for Joe; I had more contacts with Joe than I did with the other two.

Q. He was the one who was your salesman for the longest period of time?

A. That is correct.

Q. Now, there was certainly never any problems so far as Atlantic was concerned about your housekeeping. You got nice letters from them, didn't you?

A. Well, that letter, yes.

Q. As far as TBA is concerned, you were a star salesman, weren't you?

A. Well, you will have to reclassify "star salesman".

Q. If anybody in the service station business sells TBA at the rate of say thirty dollars for a 1,000 gallons of gasoline, isn't that considered exceptionally high and very good salesmanship?

A. Yes, I think it is.

Q. Isn't that just precisely what you did?

A. I thought I ran figures like that.

Q. You were running very high on TBA, weren't you?

A. I thought I did, yes.

Q. You were operating in an extremely competitive

126 neighborhood, weren't you?

A. Yes, extremely.

Q. The fact Sharon Hill, there are just a lot of competitive TBA outlets within a very short distance, is that not true?

A. Yes, like on any other highway, I think.

Q. Isn't that particular highway sometimes called "Gasoline Alley"?

A. I never heard it referred to as that; the lower end, not that upper end.

Q. Now, you were referred, by the way, to the Red Cap.

A. Yes.

Q. After Mr. Arnholt criticized that, didn't you put up a gag on him by getting some of the other dealers to wear red caps, too?

A. Never, sir; never.

Q. Didn't you do it just as a joke on Mr. Arnholt?

A. Never, sir.

Q. Now, I direct your attention, Mr. Chambers, to the fall of 1954. You testified, I believe, that you had at the Sharon Hill station entered into a series of rather short term leases with Atlantic.

A. I thought—from the time of the new one, they were short term leases, yes.

Q. And those short term leases were during what 127 you fellows called the build-up of the station, weren't they?

A. The construction.

Mr. Kelaher: Objection; it was not identified who those fellows were.

Mr. Thompson: By "you fellow", of course I am referring to the service station operators.

The Witness: I don't know as we had anything to do with it. The leases were brought in from the main offices, we did not write the leases.

By Mr. Thompson:

Q. Of course, you did not write the leases, Mr. Chambers, but you signed them, didn't you?

A. Well, yes, if you wanted to stay in there, you signed it.

Mr. Thompson: I would like to have marked for identification a document entitled, in large letters: "Atlantic", which purports to be a lease of October 1, 1954, between John Chambers and the Atlantic Refining Company.

(The document referred to was marked Atlantic Exhibit Number 1 for identification.)

By Mr. Thompson:

Q. Mr. Chambers, I show you Atlantic Exhibit Number 1 and ask you whether that is your signature on the back of it.

A. Yes, that is mine.

128 Q. Now, may I call your attention to the fact, sir, that this lease runs from October 1, 1954 to the 31st of December of 1954.

A. Yes.

Q. Now, do you recall discussions with Atlantic's representatives prior to the execution of this October 1st lease?

A. Discussions?

Q. Yes, about the terms of your lease.

A. I recall something but as to just what, I don't know. It was as to the rent.

Q. Well, at that time Muldoon was your salesman, was he not?

A. I don't recall, sir.

Q. Well, was it Petrison?

A. It was one or the other.

Q. Well, both of them were very anxious to keep you in that station, weren't they?

A. They were anxious to keep me in it, sir?

Q. Yes.

A. If they were I had no indication of it, sir.

Q. Mr. Chambers, do you recall that you were offered a long-term lease on October 1, 1954 at a higher rental than you had previously been paying?

A. No, I don't recall; if I was I turned it down 129 because of the higher rental setup.

Q. Wasn't your difficulty with Atlantic with respect to the amount of the minimum rent that you would pay under your leases during the build-up phase of this Sharon Hill station?

A. I would say that was about it.

Q. Now, did you ever have any discussions with either Mr. Muldoon or Mr. Petrison with respect to Atlantic's cost of this Sharon Hill station and the amount of rent which it required to get a fair return from its investment?

A. Yes, I had a few, and I thought a lot of the figures were over rated.

Q. You had been paying $275 a month minimum rent at the station, hadn't you?

A. I don't recall the figures; if that was what it is, that is it.

Q. May I refer you to the October 1st lease.

A. Yes, if it is on there it must be.

Q. That lease was for $275, wasn't it?

A. That is right.

Q. That is the rent you had been paying, is that not true?

A. If it is on there I paid it.

Q. Didn't Mr. Petrison and Mr. Muldoon tell you that in order to get a fair return on the investment the 130 company would require $322 a month? Does that refresh your memory?

A. Yes, it does come back to me now.

Q. And they did offer you long-term lease for $322 a month, didn't they?

A. I don't recall, sir; I cannot say.

Q. If that is their recollection, you would not dispute it, would you?

Mr. Kelaher: Objection, your Honor.

The Witness: If I cannot remember, I cannot dispute something I do not remember.

By Mr. Thompson:

Q. Didn't you turn down a further lease of this property because they wanted you to pay $322 a month?

A. I disputed the rental setup because the gallonage was not—

Q. Do you recall the lease—

Mr. Kelaher: Will you finish your answer?

The Witness: Well, I just don't rightly recall. It seems to me like this was around the 3rd, I think the 3rd or it was to be the third rent increase in less than two years which wasn't giving me, I don't think, a fair chance in getting built to the peak. There was no telling what the peak was there and they were giving me no chance.

By Mr. Thompson:

Q. You, of course, were exceeding your minimum on 131 gallonage, weren't you?

A. No, sir; I was not.

Q. You were not?

A. No, sir. There are price factors there that was in the picture.

Q. Well, I perhaps did not make myself clear. I know of course that is a price war area, is it not?

A. Yes, predominantly a price war area.

Q. There is very strict competition.

A. Yes.

Q. Just from the point of view of the number of gallons

sold, you were exceeding the so-called minimum requirements for the station, weren't you?

A. No, sir; and my records will show.

Q. Had you received a proposition from Esso before the termination of your October 1st lease?

A. Well, when I had my notice, when I was given my notice, of course to look real fast. I had offers from all of the companies, sir.

Q. When you say your notice, what do you mean, sir?

A. When Petrison told me they were not renewing my lease.

Q. But, sir, may I refresh your recollection again. You actually did renew your October 1, 1954 lease, that was in effect on November 13th when you retired from the sta-

131-A tion, was it not?

A. No.

Q. May I refresh your recollection?

Mr. Thompson: May I ask that this document be marked as an exhibit? For the purposes of better identification, this is called, "Mutual Consent of Cancellation."

(The document referred to was marked Atlantic Exhibit Number 2 for identification.)

Mr. Thompson: Would your Honor care to see this?

Hearing Examiner Kolb: Thank you.

By Mr. Thompson:

Q. Mr. Chambers, I am handing you Atlantic Exhibit Number 2, called "Mutual Consent of Cancellation," and I ask you whether that is your signature on the bottom of that document.

A. That is.

Q. Does this document refresh your recollection with respect to the details of termination of the October 1st lease?

A. Surely if you were told in October you were not

going to have a job in December, what would you do, would you try to find another job?

Q. I think I am asking the questions, sir.

A. What do you want me to say, sir?

Q. My prior question was, whether you did not have
132 a proposal from the Esso Company before you signed the October 1st, 1954 lease?

A. No, sir, not before then.

Q. When did you get the Esso proposal?

A. Why, I got it by phone shortly after I had the notification or I was told that my lease was not going to be renewed in December, and then I got a phone call from a good friend of mine who had this station. And, of course, as I say, other ones moved in, too, and I accepted this one in Chester but it was after this here, because it wasn't until after I was told that my lease would not be renewed when I started to make phone calls.

Mr. Thompson: If your Honor please, I assume I may substitute a photostat of the two exhibits.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: No objection.

Mr. Thompson: That is all the questions, Mr. Chambers, that I have to ask you. Thank you very much, sir.

Mr. Mason: No questions, your Honor.

Mr. Kelaher: I have a few questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Chambers, Atlantic Exhibit Number 1 states that your lease was entered into as of the first day of October, 1954, is that correct?

133 A. Yes.

Q. And did Mr. Petrison give you oral notice that your lease would not be renewed after the signing of the lease?

A. No, it was during this period that this other happened.

Q. In other words, did the lease come before the notice?

A. Yes.

Q. Mr. Chambers, on cross-examination you stated that there were certain rent increases during the period of your operation at the Sharon Hill station, is that correct?

A. That is right.

Q. Will you explain that, please? As I understand it, at that time you were on the three-months lease, is that correct?

A. Yes, sir.

Q. Would you please state how those rent increases came about or the extent of them and so on?

A. Well, I don't remember exactly; it would be difficult for me to say. All I know is that the latter rent increases I felt were unfair until the station really got on its feet.

Q. Would the rent increases be concurrent with the new lease going into effect; for example, would they put the rental in the lease, in other words?

A. The rental was always in the lease.

Q. So the leases would speak for themselves as to 134 the rentals?

A. That is correct, sir.

Q. Do you recall what your first rental was at the Sharon Hill station?

A. Not exactly, no, I thought it was around $200.

Q. Do you recall the amount of the increase and when it occurred, the first increase?

A. Why, I think—there again I am not positive, I think it was either $250 or $275, I cannot be positive of that.

Q. When was that increase?

A. I cannot say.

Q. Do you recall how many increases there were during the period of your operation?

A. As I said before, it seemed to me as though, on this last lease, that would have been the third.

Q. And the last lease you referred to is Atlantic Exhibit Number 1, I believe. Would you look at that and state whether that was the last lease you signed with Atlantic.

A. Yes, that would be the last one.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No, sir.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

135 (Short recess.)

Hearing Examiner Kolb: The hearing will come to order.

JACK HOFFMAN was thereupon called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you please state your full name and business address?

A. Jack Hoffman,—my home address?

Q. Business address.

A. 5913 Ridge Avenue, Roxborough, Philadelphia.

Q. And the name of your company?

A. Philadelphia Wholesale Distributors, Incorporated

Q. And what is your position with that company?

A. Salesman.

Q. How long have you been with the company?

A. Thirty years.

Q. And you have been a salesman all that time?

A. Yes, sir.

Q. What type of business is the company engaged in?

A. We are wholesale distributors of automotive merchandise.

136 Q. And among the products that you handle, you handle tires, batteries and accessories?

A. In a limited way—we have discontinued tires.

Q. How about batteries?

A. Batteries; we are Exide distributors.

Q. How about chemicals; what do you handle?

A. DuPont, Hollingshead, Simonize, Johnson's, Prestone chemicals.

Q. Now, for the record, will you define chemicals. That is a broad field.

A. Chemicals are polishes, anything pertaining to preservation, finishes on an automobile, paint, touch-ups, removers, solvents.

Q. How about spark plugs and fillers?

A. We carry a complete line of spark plugs and fillers and also other items.

Q. How about belts and hoses?

A. We carry the Gates line in belts and hoses.

Q. All those things other than batteries, are they commonly referred to as accessories?

A. They are referred to in the TBA industry as accessories.

Q. Does your company also handle so-called hard parts?

A. Yes, we do.

Q. And what are included among hard parts?

137 A. Hard parts we would classify as equipment in the operation of a service station and the servicing of automobiles equipment.

Q. Name just a few of those.

A. Well, do you mean manufacturers or the items?

Q. Items.

A. Lubricating equipment, which the service station comprises, and drain pans, oil mixtures, floor jacks.

Q. How about mufflers and ignition parts?

A. We do not carry any automotive parts, no replacements parts.

Q. I see. What type customers do you sell to, Mr. Hoffman?

A. Well, we deal with the service stations and car dealers, independent repair shops, some hardware stores, electrical shops, and sporting goods stores.

Q. And your sales area, the company's sales area, is what?

A. The company's sales area is metropolitan Philadelphia area and that includes Bucks County, Delaware County, Chester County.

Q. Are there other firms similarly engaged in the sale of similar products?

A. Yes, very many of them.

Q. There are many, you say?

138 A. Yes.

Q. How do you rank in the field, do you know?

A. We are one of the key distributors.

Q. How many salesmen does the company employ?

A. We have nine salesmen.

Q. How are they compensated?

A. I cannot answer that, I am on a straight commission basis.

Q. Do you deliver your products that you sell, do you, personally?

A. Our own trucks deliver our merchandise.

Q. How many trucks do you have?

A. I think we have five.

Q. Do they have regular scheduled trips?

A. That is right.

Q. How often do they go out, do you have any idea?

A. We deliver in my territory once and twice a week. In some territories there is one delivery a week and in other parts of the territory, twice a week.

Q. You mentioned your territory, what is your sales territory?

A. The greater part of Delaware Country, south of Haverford Road including West Chester and Chester County.

Q. Do you attempt to sell to service stations?

A. We do sell to service stations.

139 Q. You, yourself?

A. Yes.

Q. And are there any Atlantic stations in your territory?

A. Yes.

Q. Can you give us some idea of how many there are?

A. Well, I could not answer th . . I would say in Delaware County, I'm making a rough guess, there should be approximately forty to fifty Atlantic service stations.

Q. And how many of those—do you call on all of those?

A. We did at one time; we do not today. I have about six active, I had eight active Atlantic dealers I would say today.

Q. And there are forty or fifty in your own territory?

A. I would say so, I cannot give you the exact number.

Q. Have you ever attempted to sell to the others?

A. We have sold them over a period of years, yes.

Q. Did you lose those accounts?

A. We drift away from them, I would say. I would not say we lost them, I would say that we drifted away.

Q. You drifted away and for what reason?

A. We could not get enough volume of business from those dealers.

Q. When was that that you formerly sold them?

A. Well, pre-wartime and during the war.

Q. World War II?

140 A. Prior to 1945.

Q. And prior to 1945 you could sell them, is that correct?

A. Yes, we had but very few problems.

Q. And when did you start losing them?

A. Well, I would say when Atlantic established their own TBA setup.

Q. Will you place that, roughly?

A. I would say '45, after the war.

Q. Now, when you were selling to them, you were selling them these TBA products, were you not?

A. That is right.

Q. You say you have about eight active accounts, is that correct?

A. That is right.

Q. What do you sell to those stations?

A. Well, we sell those stations, the lessee Atlantic stations, we sell them mostly merchandise they cannot secure from the TBA jobber.

Q. Such as what?

A. Well, we sell them some chemicals possibly that they don't have; we can sell them lubricants also. There are not too many items. We sell them chamois, possibly, washing materials, items pertaining to lubrication.

Q. You mentioned that you can sell that to the
141 lessee Atlantic stations. Of these eight stations, about how many are lessee stations, do you know?

A. I would say six of them.

Mr. Thompson: I object to that; how can this man possibly know which is a lessee station and which isn't?

Hearing Examiner Kolb: He can answer if he knows.

By Mr. Dias:

Q. Do you know which of these eight are lessee stations?

A. Yes, six of them are lessee stations.

Q. Six of the eight?

A. Yes.

Q. And of those six you sell them the products you just mentioned, is that correct?

A. Right.

Q. What other type Atlantic station is there?

A. Well, then there is an Atlantic dealer who has a garage where he does automotive repairing, where he has gasoline pumps in front of his station.

Q. Would he be a lessee dealer?

A. No, he would not, I do not believe so; definitely not.

Q. How about batteries, are you able to sell any of these stations batteries?

A. Not today, no.

Q. Not today. Have you ever sold them any batteries?

A. Yes.

142 Q. When was that?

A. Some years ago we sold them batteries; I would say ten years ago, twelve years ago.

* * * * *

By Mr. Dias:

Q. How often do you call on these eight Atlantic stations that you sell?

143 A. Weekly.

Q. You call on them weekly?

A. As a rule; maybe we may miss one or two weeks but as a rule they are a weekly call.

Q. Do you go into the station, you go to the stations yourself, is that right?

A. Yes.

Q. And have you observed any advertising on the premises of TBA products other than your own?

A. The Goodyear merchandise primarily, with their decals on the windows and possibly the dealers make up their own signs of sales of Goodyear tires and Goodyear batteries.

Q. And from your own observation have you seen anything in those Atlantic stations other than Goodyear TBA products?

Mr. Thompson: What Atlantic stations are you talking about?

Mr. Dias: We are talking about the eight he sells to.

The Witness: Yes, you will find other products in Atlantic stations other than their regular TBA items.

By Mr. Dias:

Q. Such as?

A. Such as those supplied by the TBA supplier.

Q. Do you know who the TBA supplier is in your area?

A. Yes, very well.

144 Q. Who is he?

A. Ed Parris is one and Ernie Miller is the other one, —Miller's Automotive Supplies.

Q. And do you know where they are located?

A. Yes, I do. Ed Parris' is in Glenolden on McDade Boulevard and Miller's Automotive Supplies is Garrett Road in Upper Darby.

Q. Will you name those eight stations you sell to, Mr. Hoffman?

A. Will I name them?

Q. Yes.

A. Well, do I have to name them? I don't want to involve any of my customers in this. Yes, I will name them, it is all right. Roger Rossi in Upper Darby; John Clark in Havertown; Richard Connor in West Chester; George

Hewitt in West Chester; Floyd Mohney in Alden, and John Hanighan in Upper Darby. Those are lessee stations. I have two contract accounts.

Q. Will you name those?

A. Sharon Hill Garage in Sharon Hill and Little's Atlantic Station in Chester Heights.

Q. Did any of these stations open up new during the time that you have been selling that area?

A. Yes.

Q. Were you able to sell—

145 A. All of the lessee stations are new stations.

Q. Have you ever been able to sell them an original stocking order?

A. We did years ago. Some of these are newer dealers and some are older dealers.

Q. Which ones?

A. I would not say stocking orders, no.

Q. When did you first call on these stations after they opened up, did you call on them?

A. I have known these boys for a period of years possibly before they were Atlantic dealers, some of these boys.

Q. When did you get orders from them?

A. At times when I called them.

Q. Was that as soon as they opened up their stations?

A. Well, I would not say; no, I would say that, after they were established.

Q. When you first started selling to them, did they have any TBA supplies in their stations?

A. Yes, they did.

Q. Do you recall the brand names?

A. Well, they were—

Mr. Thompson: I certainly object to that, sir. There is not sufficient identification. You are talking apparently about stations scattered over the whole metropolitan area.

146 Mr. Dias: He is talking about the six or eight lessees.

The Witness: I am talking about six customers.

Mr. Thompson: The last prior question referred to contract dealers. Mr. Dias, would you make it specific, so we can follow.

By Mr. Dias:

Q. Let us refer only to these lessee dealers of yours. Let us go down the list.

Mr. Thompson: May I ask whether the last question has been answered?

Mr. Dias: That was my impression.

Mr. Thompson: If it did, I have no objection; but if it did not you are running the entire metropolitan area Philadelphia and I most strenuously object.

Mr. Dias: We were referring to the lessees referred to by the witness.

The Witness:

Yes.

By Mr. Dias:

Q. As to Roger Rossi, is that correct, how long has he been in business?

A. I would say Roger has been in business for twenty-five years.

Q. Now when did you first start selling him?

A. I sold Roger when he was a partner of Van Le-
147 roy Bond in Upper Darby.

Q. And Clark, John Clark?

A. I knew John when he was one of the Atlantic salesmen and after John got his station we sold him some items.

Q. Will you give me some idea of the volume you sold to the Clark station?

A. Very little.

Q. And you sell that station any batteries?

A. No, sir.

Q. Do you know what brand of batteries he carries?

A. He carries Goodyear.

Q. How about Richard Carr?

A. That is Connor, Richard Connor.

Q. When did you first start selling to him?

A. After he opened his station in Westchester.

Q. When was that?

A. I guess Dick has been there about five years, I would say.

* * * * *

By Mr. Dias:

Q. Did you or did you not sell to this gentleman?

A. Yes.

Q. And when did you first sell to him?

A. After he opened his station.

Q. How soon after he opened?

A. I would say several months.

Q. Was he stocked with other TBA merchandise?

A. Yes.

Q. What merchandise.

A. Well, the regular TBA line that Atlantic carries, Goodyear tires and batteries, chemicals.

Q. Were you able to sell him any batteries?

A. No, sir.

Q. Your next dealer was George Hewitt. Will you tell us when he opened up?

Mr. Thompson: Is that H-e-w-i-t-t?

The Witness: That is right. He has been a customer of mine for a couple of years but there is very little merchandise we sold him.

By Mr. Dias:

Q. Does he handle TBA products?

149 A. Of Goodyear and Atlantic.

Q. And your next dealer, Mr. Mohney?

A. Floyd Mohney.

Q. And how long have you been selling to Mr. Mohney?

A. Well, Mr. Mohney is a customer of ours for thirty some years and I have sold him about fifteen years.

Q. Does he carry TBA products?

A. Yes, Atlantic and Goodyear TBA.

Q. And your next lessee—

A. John Hanigan is a very small account.

Q. Does he handle TBA products?

A. That is right and Goodyear.

Q. Those supplied on the contract stations, you have two. Will you name the first one and tell me what you sell.

A. Sharon Hill Garage, we sell him some items. We sell him oil.

Q. Does he handle TBA?

A. Right.

Q. And what products?

A. Supplied by the TBA Goodyear distributor.

Q. And your next contract man?

A. Erwin Little in Chester Heights. That is one of our better accounts. He has been an Atlantic dealer since 1928.

Q. What do you sell to him?

150 A. We sell him batteries, Exide batteries and he is one of our best accounts.

Q. Do you sell him any accessories?

A. We sell him accessories, Kendall oil.

Q. Does he handle any other batteries?

A. No, sir; he does not.

Q. Now, in addition to these years that you have been in that sales territory, have you ever sold a new station, a new Atlantic station?

A. What type of merchandise are you referring to?

Q. Batteries or accessories?

A. No.

Q. Have you called on any new ones?

A. Yes.

Q. Have you observed other TBA products in the stations?

A. Very few; that is, on the newer stations. I would say those TBA products are those supplied by the TBA distributor primarily, particularly on the new stations.

Q. And what products were they that they were carrying, what brand?

A. The company station?

Q. Yes.

A. Which they purchased from the TBA supplier, you mean?

Q. No, these new stations you called upon.

A. Well, they would carry Goodyear tires, Good-
151 year batteries, the duPont line, Johnson, Simonize items that are carried by the TBA distributor.

Q. Are you familiar with the Goodyear battery accessory line?

A. As a competitor, I am. In other words, what do you mean by that?

Q. As a competitor, you are familiar with it?

A. Yes.

* * * * *

By Mr. Dias:

Q. You offer delivery service, do you not?

A. That is right, we do.

Q. And will you state again how often you offer delivery service?

A. Most of my territory. We make a delivery once a week and in some parts of the territory twice a week.

Q. Now, if you know, does the Goodyear supplier furnish or offer better service, delivery service?

A. He could, yes, because he is right in the area. We are a few miles distance from our dealer and we haven't
152 any fast delivery service. We have our routine delivery, and that is all.

* * * * * * *

155 Mr. Dias: Your witness, Mr. Thompson.

Mr. Thompson: May I have a few minutes' recess?

Hearing Examiner Kolb: Yes, we will take a short recess.

(Short recess taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: I have no questions, sir.

Hearing Examiner Kolb: We will adjourn at this time until two o'clock.

(Whereupon, the hearing adjourned at 1:15 p.m. to reconvene at two o'clock p.m.)

156 Afternoon Session.

(2:00 P. M.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: Mr. Blumenthal, please.

Thereupon, DAVID B. BLUMENTHAL was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. David B. Blumenthal, 5913 Ridge Avenue, Roxborough.

Q. And the name of your company?

A. Philadelphia Wholesale Distributors.

Q. What is your position with the company?

A. Salesman.

Q. How long have you been with the company?

A. Thirty-eight years.

Q. Thirty-eight.

Q. Have you been a salesman all that time?

A. All that time.

Q. What is your sales territory, Mr. Blumenthal?

A. I would say it covers north of Hunting Park Avenue, north of Jenkintown, and Bucks County—part 157 of Bucks County, I should say, and Montgomery County, Roxborough, Manayunk.

Q. Do you work on a salary or commission?

A. Commission.

Q. What type customers do you sell to?

A. Mostly car dealers at the present time, and I would say maybe 20 percent service stations.

Q. Among those service stations are there any Atlantic stations?

A. I have one at the present time.

Q. Have you ever sold to more Atlantic stations?

A. Oh, yes. In the years gone by I have sold a lot of them.

Q. Will you tell us roughly how many is "a lot"?

A. Twenty-five.

Q. What type product—

A. Or thirty.

Q. What type products did you sell them formerly?

A. Well, as Mr. Hoffman related, we handled the full line of chemicals, and in those days I would sell them batteries, AC products, that is oil filters, plugs, and the kindred chemical lines—Dupont, whatever was the prevailing chemical at that particular day. I mean each year there is a new polish comes out, as you all know.

For instance, we handle turtle wax for the last two or three years as a polish. We are distributors of
158 Turtle Wax. Years previous to that there would be another wax. We would sell things like that to Atlantic dealers that they couldn't get through TBA.

Q. Why did you stop selling to Atlantic stations?

A. I just gave it up as a bad job. It was a question of making stops and not getting any business so I concentrated more on car dealers and stations that I could sell.

Q. How long ago was that?

A. It started about ten years ago, I guess.

Q. Do you sell to one Atlantic station now?

A. At the present time.

Q. Are there other Atlantic stations in your territory?

A. Oh, yes.

Q. Have you ever called on those stations?

A. Well, I have called on a few of them to try to sell them some of the items that we handle. And in some cases I was successful. I mean kindred lines, not the lines that they handle, TBA. But as I said before, there is not enough to it and I more or less gave it up.

Q. On these Atlantic stations in your territory, do you observe them as you make your rounds? Have you noticed them?

A. Oh, sure. I go right past them.

Q. And in those you stop at, will you tell us what they advertise on their station in the line of TBA?

A. You have your Goodyear batteries and Good-
159 year tires. That seems to be the feature on their windows, the decals. Other than that I don't see—unless they may put a streamer in the window, like Dupont, Exide, or something like that.

Q. You mentioned that you formerly sold them Exide batteries and Dupont line?

A. That is right.

Q. Can you give us some idea of the volume that you sold them?

A. Going back a few years, I would say it goes back maybe twelve years, ten years, the Dupont people supplied you with missionary men. You would go around with those missionary men, call on the accounts. It could be Atlantic or anything, whatever happened to be in the territory that particular day.

We always wrote up a lot of business in the Dupont line. When you asked for volume, I have written up as high as a thousand dollars in one day on Dupont. Of course it was a very good day. I am going back to the days when we sold 15 or 20 cases to a dealer and you would make 15 stops and you would sell a lot of merchandise.

Q. You talked about the Dupont line. What was your experience in the Exide line, Exide batteries?

A. With Exide, in those days, you would sell some dealers Exide and they might prefer Willard or they might prefer something else. In those days they were handling practically anything.

160 Q. When did you begin to lose the Dupont line, do you recall? Lose sales in the DuPont line?

A. The only thing that I can tell you is this, and I can't put my finger on the date, but I would say maybe four or five years ago the Atlantic men would go around with the Dupont missionary men to the Atlantic dealers. Naturally by the time we got there it was too late.

Q. Can you relate a similar experience with reference to Exide batteries?

A. No, I couldn't.

Q. Do you recall any specific instances of loss of sale? Any specific stations, Atlantic stations?

A. Any number of them. I mean—you don't want names on this, do you? It could be ten or twelve stations in a

particular vicinity where the Dupont manufacturer—the Dupont man, when he went out with me, would tell me there is no use going in that station, I was there with the Atlantic salesman a couple of weeks ago.

Q. Were you offering your Dupont line at the same price?

A. Definitely.

Q. Have you ever called on new Atlantic station operators in your territory?

A. No, sir.

Q. You have not? In the loss of specific Atlantic accounts did the operator ever give you any reason for refusing to buy?

161 Mr. Thompson: I object to the question unless it is made definite with respect to the time, the place.

Hearing Examiner Kolb: The question calls for a Yes or No answer; objection overruled.

By Mr. Dias:

Q. Did any Atlantic station operator ever give you a reason why he did not buy your merchandise?

A. I could answer that Yes or No. Some Yes and some No. That is the only thing I could tell you.

Q. As to those who did give you a reason, where the answer is Yes, can you give us the time and place and the name of the operator?

A. Sir, I would rather not do that. I would rather tell you my experience and let it go on from there, because I don't want to implicate any dealers in this thing. All I can tell you is this: That the proof of the pudding is that if you went into an Atlantic dealer and they—for instance, we do a big job on AC products. That is cartridges, spark plugs, which is one of the key lines that we carry. And it was practically impossible to sell them lines like that—cartridges or plugs.

You would go in and ask them about it and they would simply say, "We have enough, we will remember you the next time," or pass it off like that. There was never any definite reason for not buying, No.

Q. Do you recall what those particular stations were
162 handling in the TBA lines, what products?

A. They were handling the AC line, and Goodyear belt line, Dupont line. They are the three numbers that we were particularly interested in—AC, Dupont, and the battery line.

Q. Do you know where they got those lines from?

A. I know where my dealers get them from.

Q. Where do they get them from?

A. Mr. Glenn, Chestnut Hill.

Q. Mr. Glenn?

A. He is the Atlantic distributor.

Q. Is Mr. Glenn located in the Mount Airy section.

A. He is located at Willow Grove Avenue and Germantown Avenue. That would be Chestnut Hill.

Q. Do you furnish delivery service in your territory, Mr. Blumenthal?

A. Oh, yes.

Q. How often do you furnish delivery service?

A. Well, in my particular case I get service out there pretty promptly. I would say my territory overlapping I get every other day service. In some cases, every day.

Q. Is that an important feature in selling to the Atlantic stations?

A. I wouldn't think so.

Q. You do not?

A. No.

163 Not the lines that we handle. There may be ignition or hard parts where they get a car that they have to repair and they have to have something in a hurry. But if a man is going to buy Dupont polish he doesn't run down

to the last can before he has to re-order, or the same thing goes for spark plugs or cartridges.

In other words, if we could call on him every week and keep a supply up, it would necessitate a 24-hour service as far as delivery goes.

Mr. Dias: That is all, Mr. Chairman.

Cross-Examination.

Hearing Examiner Kolb: Cross-examine.

By Mr. Thompson:

Q. You sell to service station dealers for cash or credit?

A. Credit and cash.

Q. Depending upon the individual financial responsibility of each?

A. That is right.

Mr. Thompson: I have no other questions.

Hearing Examiner Kolb: That is all, Mr. Blumenthal. Thank you very much for coming down.

(Witness excused.)

164 Mr. Dias: Mr. Kevis, please.

Whereupon DOUGLAS W. KEVIS, was called as a witness for the Commission and, having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. Douglas W. Kevis, 1309 West Ninth Street, Chester, Pennsylvania. That is Harris and Leonard.

Q. What type business is Harris and Leonard in?

A. Distributor of U. S. Tires. We have our own capping shop.

Q. Do you handle any products other than tires?

A. Tires tubes, batteries and recapping. That is the extent of it.

Q. What about the company sales area? Can you define that for us, please?

A. Yes. Chester. We go out as far as Chadds Ford. We don't go into 69th Street. We go down by the river all the way up to the Philadelphia Airport.

Q. What type of customer, class of customer, does Harris and Leonard sell?

A. We sell industrial accounts, commercial accounts, gas stations, new car dealers, garages.

165 Q. How many salesmen does the company employ?

A. We have two salesmen on the routes that cover gas stations, new car dealers, and garages. Joe Leonard and myself take care of the industrial and commercial business.

Q. Did you at one time solicit service station business?

A. Yes, I did.

Q. Can you tell us when that was?

A. Back in 1953 or 1954.

Q. For how many years prior to that?

A. I would say about six.

Q. How long have you been with the company?

A. Ten years.

Q. Have you been a saleman with the company that length of time?

A. Yes. Six months I spent in the office and then I went outside selling.

Q. How are you compensated? Salary or commission?

A. Salary and commission.

Q. Does your company have delivery trucks? Do you afford delivery service?

A. Yes. Two routes. They pick up and deliver twice a week. They stop in the service stations and garages. Then

we have two trucks equipped with air compressors that take care of the industrial and the garages if they need it.

Q. How often do your service station account trucks
166 make deliveries?

A. They can make it any time. They will run back to the store, get it and take it out if it is a fast deal. But then they usually cover twice a week.

Q. You mentioned that there were two other salesmen that now solicit the service station accounts, among other accounts?

A. Yes.

Q. Who are those two?

A. Bob Brennan and William Colby.

Q. What was your territory when you were soliciting service station accounts?

A. Part of Chester, Media, all the way in. We didn't go into 69th Street. We went as far as Clifton Heights and down the river.

Q. Did you cover that territory in selling to, among others, service stations from the time you first started selling up to 1954, is that correct?

A. That's right.

Q. During the time that you were soliciting service station business, Mr. Kevis, were there any Atlantic service stations in your sales territory?

A. Yes.

Q. Can you give us some idea of how many there were?

A. That is a hard one. I can't come up with that just like that. There were quite a few.

167 Q. Did you solicit all those stations?

A. Oh, yes. Stopped at all those stations.

Q. Were you able to sell all of them?

A. Some recapping, and once in a while new tires if they—just in spots where they needed something in a hurry, a special thing.

Q. Among the Atlantic stations did you have any that bought your tires on a stock basis?

A. Well, there was one or two, but they were independents. They weren't set up as a class B station.

Mr. Thompson: I object to "independents" and ask that the answer be stricken.

The Witness: In other words, a man owned a building and everything else. He had Atlantic products in there.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Dias:

Q. What other type Atlantic station was there?

A. Just company-owned, I imagine.

Q. Were you able to sell or did you sell to company-owned stations on a stock basis?

A. No.

Q. Did you sell them any batteries on a stocking basis?

A. Once in a while, yes. Not too much.

168 Q. Was that on a stocking basis?

A. No, not on a stocking basis.

Q. With those company-owned stations, were you able to do any business with them?

A. Oh, yes.

Q. What type business?

A. Recapping.

Q. Among Atlantic stations, how often did you call on those stations in your territory?

A. Twice a week.

Q. On all of them?

A. Yes.

Q. Do you recall now the tires and batteries they carried in their stations?

A. Goodyear Tires, and Goodyear Batteries. They handled Lee before they had Goodyear.

Q. Can you tell us when that was, approximately?

A. I can't come up with that. I don't know that. I don't remember.

Q. Do you know in your sales territory at that time who the Goodyear supply point was? Who the Goodyear supplier was?

A. Yes. It was Miller, over in the 69th Street area. He used to come into Drexel Hill and points there. Then there was Ed Parris. He was in Sharon Hill at the time and
169 he finally moved into Glenolden, on McDade Boulevard.

Q. Were you at any time able to do any more business with the Atlantic stations?

A. How do you mean, "any more business?"

Q. You state that you were able to do some, that you did recapping and that you could sell an occasional tire or battery?

A. That's right.

* * * * *

By Mr. Dias:

Q. Have you ever sold any Atlantic stations on a stocking basis, tires and tubes?

A. Yes.

Q. What type stations were they?

170 A. I come back to that again.

Mr. Mason: I object on the ground the question has been asked and answered.

Hearing Examiner Kolb: Objection overruled.

The Witness: It is a station that isn't owned by Atlantic, and has Atlantic pumps in there.

By Mr. Dias:

Q. On the other type station that is owned by Atlantic, have you ever sold those stations, any of them, at any time, tires or batteries on a stocking basis?

A. Not on a stocking basis.

Q. By the way, what do you consider a stocking basis?

A. If a man puts in about 40 or 50 tires, I consider that a stocking basis, if he carries your line.

Q. In making calls on Atlantic stations, or in attempting to sell to them, did any operator ever give you any reason why he did not buy your line?

Mr. Thompson: I object to that question for the same reason as has been stated on this record before. No specification as to time or place or identity of people.

Hearing Examiner Kolb: That is a preliminary question I believe that requires a "yes" or "no" answer.

By Mr. Dias:

Q. You may answer. Was there such a situation?

A. I can give you a "yes" on that but I want to 171 explain something to you.

Hearing Examiner Kolb: He will ask you a further question.

By Mr. Dias:

Q. The answer is "yes," is that correct?

A. Yes.

Q. Can you tell us a situation, or when it occurred?

A. I can't tell you when it occurred but I can tell you where it occurred.

Q. Can you tell me where and with whom?

A. With Jim Myers, over on Westchester Pike in Manoa.

Q. Can you give us a time, roughly, on that? Was it in 1954 or prior to that?

A. I wouldn't even begin to go into that. I couldn't really say the time.

Q. What did Mr. Meyers tell you?

Mr. Thompson: That is objected to, without some specification as to time—as to a time which would show it had relevancy in this proceeding.

Hearing Examiner Kolb: Can't you say, Mr. Witness, whether it was in the last few years or longer, or what period of time generally?

The Witness: Well, it was before I started on commercial accounts, I can tell you that. I don't known when.

172 By Mr. Dias:

Q. And you started on commerical accounts when?

A. About 1953.

Q. Have you been selling to that station, to that operator?

A. Been selling recapping, yes.

Q. Have you sold him any tires?

A. No.

Q. Or batteries?

A. No. I think we sold him one set of white-walls one time that he needed in a hurry.

Q. How about batteries?

A. No, no batteries.

Q. Can you recall, how long had he been buying from you?

A. Do you mean prior to this?

Q. Prior to the time that you went over on commercial accounts.

A. I would say he had been buying from us for a couple of years.

Q. That would be about—

A. I am not sure of this time limit in here. I am just sort of more or less guessing.

Q. Did he carry other tires and batteries and accessories in his station?

A. Yes.

Q. Do you recall what type or what brand?

173 A. It was Goodyear. Goodyear tires and batteries.

Q. If I suggest the year 1952, would that refresh your recollection as to when this conversation took place?

A. I couldn't tell you on that.

Q. You can't answer?

A. No.

Q. Did he ever carry anything other than Goodyear tires, batteries and accessories?

A. Not that I know of.

Q. Sir?

A. No, not that I know of.

Q. How about the price lines in U. S. Tires, Mr. Kevis, what are the various price lines? Do they have a first line, second line?

A. Now a third line. They had two lines before, at that time.

Q. Are they comparable to the price lines of the Goodyear tires

A. Oh, yes. In fact the list price is exactly the same.

Q. It is the same?

A. Yes.

Mr. Dias: That is all.

Cross Examination by Mr. Thompson.

Q. Your principal competitor in this business is C. A. Powers?

174 A. That's right.

Q. Am I correct in my understanding that your company and C. A. Powers sell to about 100 percent of the Atlantic stations in your Chester area? Almost all of them?

Mr. Dias: May I have that question?

The Witness: I couldn't answer that one. I don't know what C. A. Powers is doing. I attend to my own business.

By Mr. Thompson:

Q. But that is your principal competitor?

A. I would say yes.

Q. And Powers is also soliciting the Atlantic stations in your territory?

A. I believe so, yes.

Q. You have been out of this particular phase of the business since 1954, haven't you?

A. 1953 I think.

Q. Which of your salesmen handles the service stations in the area that you formerly had in your sales territory?

A. That route was split. They cover the whole thing now. It is split up into two routes.

Mr. Thompson: Thank you.

Mr. Dias: Will you read Mr. Thompson's last question?

(Question read.)

175 *Redirect Examination by Mr. Dias.*

Q. Was it your testimony that you sell to a hundred percent of the Atlantic accounts, or solicit?

A. We solicit them. We don't sell to them. You are talking territory now, generally?

Q. In the territory that we were discussing, your territory, yes.

A. Yes.

Mr. Dias: That is all.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(A recess was taken.)

176 Hearing Examiner Kolb: Come to order please.

Thereupon, GLENN L. WETZEL, was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address, please.

A. Home address?

Q. Yes.

A. Glenn L. Wetzel, 316 Arlington Avenue, Milmont Park, Pennsylvania.

Q. What is your position with Chester Auto Parts, Inc., Mr. Wetzel?

A. I am the president.

Q. Where is that company located?

A. Ninth and Hyatt Street, Chester.

Q. Will you describe generally the history of your company, that is, as to when it began, the type of products sold, and so forth.

A. It was begun right at the end of the war when I came out of service. It was then a partnership. It existed as a partnership for nine years, at which time I bought out my partner and formed a corporation of Chester Auto Parts Company, Inc.

177 Q. Do you recall the year when the company was organized as a partnership originally?

A. June 1, 1946.

Q. Do you recall the date when it was organized as a corporation?

A. April 1, 1955.

Q. What is the business of Chester Auto Parts, Inc.?

A. Parts, paint, chemicals, machine shop.

Q. Do you sell what are commonly described as TBA items?

A. Yes, sir.

Q. What is the marketing area of your company?

A. Delaware County.

Q. Delaware County, Pennsylvania.

A. Yes.

Q. How many salesmen do you employ?

A. Two and myself. I work on the road also. So there are actually three salesmen.

Q. How are the salesmen other than yourself compensated? On a salary or commission or both?

A. The salesmen—speaking of the other two—are compensated on a commission basis.

Q. What type of delivery service do you have?

A. Four trucks.

Q. Do you have an office staff?

A. Yes, sir.

178 Q. How many are in your office staff?

A. Thirteen in my employ all together.

Q. Do you maintain a stock of inventory at your place of business?

A. Yes, sir.

Q. Including so called TBA items?

A. Yes, sir.

Q. Would you please state the principal TBA products and brand names carried by your company?

A. Willard batteries, AC filters, Purolator filters, Fram filters, Dupont chemicals, Mac'sit chemicals, Hollingshead or Whiz products.

Q. What are they? What type products are they?

A. The last three that I mentioned?

Q. Yes.

A. They are primarily your chemicals, as they are known in the trade. That is your polishes, cleaners, radiator products, et cetera.

Q. To what type of customers do you sell? By "you" I mean your company.

A. Service stations, car dealers, independent garage men, body shops, used-car dealers, industrial accounts. Commercial or industrial accounts.

Q. Is your company generally competitive as to price, quality, and service with other sellers of TBA products
179 in your area?

A. Yes, sir.

Q. Do you sell fan belts?

A. Yes, sir.

Q. What brand do you carry?

A. It is Dayton Rubber. The manufacturer's name is Modac.

Q. Do you carry hose and belts of any type?

A. Yes, sir; same manufacturer.

Q. And same brand name?

A. Yes, sir.

Q. How long have you been an outside salesman with the company?

A. Eleven years.

Q. Since its inception?

A. Yes.

Q. Are there any Atlantic service stations in your marketing area?

A. Yes, sir.

Q. Approximately how many?

A. The exact number of Atlantic stations I couldn't tell you. I can more probably tell you the ones that we call on. It would be approximately 20, I would say.

Q. How frequently do you call on such stations?

A. That varies. Some of the accounts that don't buy or buy very little in the way of hard items are called on
180 possibly twice a month. The others may be called on four times a month.

Q. What has been your experience with respect to sales of TBA products to Atlantic service stations?

Mr. Mason: I object to the form of the question. It is too broad.

Hearing Examiner Kolb: Read the question.

(Read.)

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. You may answer.

A. Well, shall we start at the beginning?

Q. Yes. Start back in 1947.

A. In 1947 and '48 sales to Atlantic stations were exceptionally good. At that particular time—

Q. Are you confining yourself to TBA in your answer?

A. Yes, tires, batteries, accessories, filters, fan belts; the standard line.

It was not too difficult to obtain—

Mr. Thompson: May I understand this. I understand you say tires, batteries, and accessories. I did not understand you before to say that you carried tires.

The Witness: Excuse me. I don't carry tires. I meant batteries and your other rubber products, other than tires —hoses and fan belts.

181 At that time it wasn't difficult to sell Willard batteries because batteries were scarce. If you went in and had batteries, it was possible for you to sell them. Brands were not important, whether it was Exide, Williard, Auto Lite, or whatever it was; they were all using whatever they could obtain.

At that particular time we tried to develop the Macsit line ourselves, which had not been marketed to any great extent through service stations in that area. And I felt that inasmuch as it was a line which no one else had, if I developed it, it was mine.

By Mr. Kelaher:

Q. What did that line consist of?

A. That was your wax and radiator, speciality lines. Waxes, polishes, et cetera. I was successful in building that to a point where my purchase approximated $5,000 to $6,000 a year. However, about that time—

Q. Pardon me for interrupting. Would you state what time that was, what year?

A. I would say 1949 I began to peak out on that. 1949 or 1950. Somewhere in that vicinity.

Mr. Mason: Are these purchases confined to Atlantic stations?

Hearing Examiner Kolb: So I understood.

Mr. Kelaher: He is talking about his own purchases.

182 The Witness: I am speaking of my purchases.

To go back to 1949 or 1950 and break out all individual service station sales would, well, if you gentlemen would like to do it, I will give you the records.

Mr. Mason: That is the vice of this kind of testimony. It is meaningless.

Mr. Kelaher: If we are given an opportunity, we will develop this.

Mr. Thompson: I do understand Mr. Kelaher, that this line of questioning applies to the business generally and not to Atlantic stations.

Mr. Kelaher: I will let the witness answer that question.

By Mr. Kelaher:

Q. You stated that your peak sales reached $5,000 or $6,000 maximum about 1949 or 1950?

A. Yes, sir.

Q. And the $5,000 or $6,000 represents the purchase price of your company, by your company of the Mac's-It line?

A. Yes.

Q. To whom did you sell the Mac's-It line?

A. The Mac's-It line was sold to service stations, which included Atlantic, ~~Sinclair~~.

Q. Approximately—

A. No Sun and no Gulf. We have never done much
183 business with either of those two. Basically Sinclair and Atlantic.

Q. How many Atlantic stations were you selling Mac's-It to at that time?

A. I would approximate 20 or 25 stations. It is difficult to say specifically at this time.

Mr. Mason: May it be understood that I have a running objection to questions concerning ~~Sinclair~~ stations?

184 Hearing Examiner Kolb: The objection as to the Sinclair stations will be overruled so far as Goodrich is concerned, and it will be received subject to a motion to strike so far as Goodyear is concerned.

Mr. Thompson: I understand this is applicable to all these questions.

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. What was your normal markup on the Mac's-It line at that time?

A. I grossed 20 percent on resale of that merchandise. That is wholesale, not resale. In other words, I bought it at 60 and sold it at 40, approximately.

Q. So a $5,000 purchase would represent about a $6,000 annual volume of sales, is that correct?

A. Yes.

Q. Did you—who were the principal purchasers of the Mac's-It line at that time?

A. Atlantic and ~~Sinclair~~.

Q. Now, would you take the story from there?

A. About that point the TBA structure began to develop within the service station marketing area, and I saw my sales of Mac's-It drifting away. It was being supplied through TBA structure of distribution rather than the jobber structure of distribution. and it continued 185 to drop to a point where I decided to drop the line.

In other words, that was the distribution of the line. I had to sell something that I wasn't in competition with TBA in order to remain within the market.

Mr. Mason: Can you fix the time?

The Witness: I would say about 1951.

By Mr. Kelaher:

Q. You lost the market about 1951 on?

A. It began to drop in '50 and continued to drop until 1951, about 1951 I took on the distributorship of Hollingshead or Whiz products.

Q. Did you continue to purchase the Mac's-It line after 1951?

A. Yes, but only by demand. My purchases of Mac's-It dropped to a tenth of my purchases. I was below a thousand dollars in purchases of Mac's-It products.

• • • • • •

186 By Mr. Kelaher:

Q. About 1951, did you observe to whom the Atlantic stations were purchasing the Mac's-It line from?

A. Ed Parris.

Q. Who is Ed Parris?

A. He is the Atlantic TBA distributor in Glenolden. At that time I think he was located in Sharon Hill and has since moved to Glenolden.

Q. Can you give us the names of any Atlantic dealers whose business was lost—whose Mac's-It business was lost to Mr. Parris?

A. Yes.

Q. Would you please state those names and their station locations, if you can?

A. Burt Rehill—

Mr. Thompson: Is this a matter within this wtiness' knowledge, Mr. Kelaher?

By Mr. Kelaher:

Q. I would like your answer to be based on your own knowledge.

187 A: This is on my own knowledge. They were my own accounts.

Q. Go ahead.

Mr. Thompson: Just a minute. Would you mind repeating the question?

(Question read.)

By Mr. Kelaher:

Q. Go ahead.

Mr. Thompson: I don't understand, sir, whether he is saying that it is to his own knowledge that he lost the accounts, or to his own knowledge that Mr. Parris lost the accounts.

Mr. Kelaher: To his own knowledge that he, meaning Mr. Wetzel, lost the accounts to Mr. Parris.

Mr. Thompson: How could he know whether he lost it to Mr. Parris?

Mr. Kelaher: Let the witness answer that.

Hearing Examiner Kolb: I think we are getting too technical.

The Witness: It is very easy to answer. The packages come in with Ed Parris' name right on them.

By Mr. Kelaher:

Q. Go ahead. Give the names.

A. John Rehill—

Q. Let's get the first one.

A. Burt Rehill.

188 Burt Rehill, 9th and Kerlin; John Rehill.

Q. Would you give the city, too?

A. That is Chester. John Chambers, Second and Lloyd; Al Kohler, 22nd and Edgmont; Laughead Service Station, Lynwood; Joe Boice. That would be Chester Pike and Oak Lane. That is Folcroft, I guess there.

Joe Abel, Fairview Road and Chester Pike, Crum Lynne.

Q. Did you at one time sell the Mac's-It line to a Chet Drozdowsky, Eddystone, Pennsylvania?

A. Yes.

Q. What was your experience on the sale of the Mac's-It line to Mr. Drozdowsky?

A. The same situation.

Q. And he was an Atlantic dealer?

A. Yes, at that time there was another man in there by the name of Charley Miller, at Chester's present location, and Chet was located at about 10th and Morton.

Q. He was at 10th and Morton location when this incident occurred?

A. Charley Miller was in on that other group. He was at the Eddystone location.

Q. Did you also lose the business of Charles Miller?

A. Yes.

Q. Was he an Atlantic dealer?

A. Yes.

Q. Did you at one time sell the Mac's-It line to
189 George Curney of Ninth and Flower Street, Chester, Pennsylvania?

A. Yes.

Q. What was your experience with Mr. Curney?

A. Well, George came in just—that had previously been Burt Rehill's station there, and he moved from there to Ninth and Kerlin, and George came in about the time that I began to push the Hollingshead line or the Whiz line.

George had bought small quantities of Mac's-It, but he went on to the Hollingshead line to a greater extent.

George just came into the picture about the time I went into transition from Mac's-It to Whiz.

Q. Did you at one time sell the Mac's-It line to an Atlantic dealer named Bill Sikorsky?

A. Yes. At the time I sold him he owned his own location. I never lost Bill's business.

Q. Where was he located?

A. He was at—he operated as Chester Highland Garage. He was at the corner of Highland Avenue and I believe Chichester Road, a Chester post office. It could possibly be a Feltonville post office.

Q. You stated that he owned his own station. Didn't these other Atlantic people own their own stations?

A. No, sir.

Q. Did you at one time sell the Mac's-It line to a Jack Pollock?

190 A. Yes. That is the location that Burt Rehill formerly had. Jack Pollock was in that location before Burt. These dealers move around.

Q. What was your experience with respect to sales of the Mac's-It line to Mr. Pollock?

A. It was a comparable situation.

Q. By that do you mean that the Mac's-It line business was lost to Mr. Parris?

A. That is right.

* * * * *

Q. For the record, would you please state whether Mr. Pollock owned his own station.

A. No, he did not.

Q. You stated that you also sold the Hollingshead line under the brand name of Whiz, I believe.

A. Yes.

CX 116B

Q. "Identify Mr. Burkett."

A. In September 1950, H. C. Burkett was Manager, Erie, Pennsylvania District, Domestic Marketing Department, Atlantic.

CX 117

Q. "Origin, etc. Who made corrections?"

A. This document is believed to have been prepared and corrected by S. J. Heideman, Manager, TBA Section, Atlantic, and to have been a working paper for his own use.

CX 118A

Q. "Identify Stotz, Cox, Griffiths."

A. In March 1950—

W. F. Stotz was Senior Attorney, Legal Department, Atlantic.

E. R. Cox was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

Q. "Obtain data referred to in paragraph 2 of letter."

A. The data, if compiled, cannot be located.

CX 120

Q. "Identify Griffiths and RMT."

A. In July 1950—

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

R. M. Taitt was Office Assistant, TBA Section, Atlantic.

323 CX 127A-E, CX 127F-H

Q. "Review for origin, distribution, etc."

A. CX 127A-E were prepared by Goodyear, and CX 127F-H are believed to have been prepared by Goodyear.

Apparently, these copies were distributed to S. J. Heideman, Manager, TBA Section, Atlantic, and were given by him to H. K. Paxson, Assistant Manager of that section.

CX 127H

Q. "Retroactive accounts. Explain."

A. Occasionally there is delay in submitting or securing approval of a G-1209 with respect to a petroleum company account. This was more frequent in the early stages of the program. In such a case, a belated G-1209 was prepared, pre-dated to the commencement of the account's TBA purchases, so that the oil company could collect the commissions due on such purchases.

CX 128A-B

Q. "Origin. Identify Sanborn."

A. Author: S. J. Heideman, Manager, TBA Section, Atlantic.

In May 1950, A. R. Sanborn was Manager, Newark, New Jersey District, Domestic Marketing Department, Atlantic.

CX 130-B

Q. "Obtain list of dealers and distributors in Newark for solicitation, and also list of those signed."

A. Neither of such lists can be located.

Q. "Describe Sales Statistical Section."

324 A. This is a section of the Marketing Accounting Division of the Accounting Department, which performs the various statistical functions required by the Domestic Marketing Department.

Q. "Obtain monthly G-1204 lists for Newark for June and July 1950."

A. A copy of each of these lists is attached, covering the three periods June 12-20, June 21-July 20, and July 21-August 20. (CX 226A-H, 227A-K, 228A-K, respectively).

Q. "When did Newark plan start?"

A. June 12, 1950.

CX 132

Q. "Identify the following:"

A. In August 1950—

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

H. H. Ingersoll was Manager, Southern Region, Atlantic.

H. W. Jollie was Manager, New England Region, Atlantic.

E. R. Cox, Jr. was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

C. P. Mumma was Manager, Sales Group, Eastern Pennsylvania Region, Atlantic.

W. W. Pleasants was Manager, Plant Development and Maintenance Section, Operations, Domestic Marketing Department, Atlantic.

Ed Stanton was Supervisor, Direct Marketing Sub-Group, Philadelphia-New Jersey Region, Atlantic.

Q. "Describe Service Station Committee."

A. This is an advisory committee which recom-
325 mends policies concerning the appearance and arrangement of facilities of Atlantic service stations.

CX 134

Q. "Origin; date of survey, areas included."

A. This survey was made in July and August 1950 by the Sales Research Section at the request of the Domestic Marketing Department, and was conducted by mail among dealers and distributors in the Newark, Wilmington and Erie districts. See paragraph 5.2 of stipulated testimony of Atlantic personnel.

Q. "Describe Sales Research Section."

A. This is a section in the Domestic Marketing Depart-

ment in Philadelphia which performs the research functions of that department.

Q. "Who was in charge of the section when the survey was made?"

A. Noble Hall.

CX 135A-C

Q. "Origin, date, distribution, etc."

A. See paragraph 5.4 of stipulated testimony of Atlantic personnel.

CX 135A

Q. "Who are Chairman and Committee (and members) referred to in first paragraph?"

A. The Committee was composed of regional TBA coordinators. The Chairman was S. J. Heideman. See under CX 135A-C.

Q. "Obtain data itemized under 1(1-7)."

326 A. The listing was merely of suggested steps for possible ultimate action when and if the contemplated program was adopted. There is no indication that the items listed were ever compiled or assembled.

CX 135B

Q. "Explain E."

A. See paragraph 6.2 of stipulated testimony of Atlantic personnel.

Q. "Explain K."

A. The Standards of Operation are policies prepared by the Service Station Committee. See explanation under CX 132.

Q. "Explain M."

A. If and when the sales commission plan in contemplation was adopted, it was expected that the Atlantic regions and districts affected would arrange to return for credit all unused signs, stands, merchandise, etc., which they had in stock.

CX 135C

Q. "Explain O."

A. See stipulated testimony of Atlantic personnel, paragraph 6.6.

CX 136A

Q. "Who attended the February 14, 1951 meeting?"

A. This exhibit does not refer to a meeting. On the date mentioned a decision was made by the Domestic Marketing Department, as indicated by the document. See paragraph 5.6 of stipulated testimony of Atlantic personnel.

CX 136B

Q. "Identify survey referred to."

A. The survey referred to is that reflected by CXID 101A-Z20.

Q. "Which 4 regions wanted new program?"

A. Eastern Pennsylvania—Philadelphia, New Jersey—Western Pennsylvania—Southern.

See paragraph 5.3 of stipulated testimony of Atlantic personnel.

CX 137A E

Q. "Origin, date, distribution, etc."

A. This was prepared by the New York Region in connection with its 1951 Sales Plan (CX 155A H).

Q. "Explain I, 2, e."

A. The operations procedures prescribe the care and maintenance of Atlantic's property and safety precautions to be observed.

Q. "Explain I, 4."

A. This was an informal report of the erection of competitive service stations.

Q. "Explain I, 6."

A. The dealer salesman was expected to assist in keeping at a minimum the outstanding balances owed to Atlan-

tic by its dealers by recommending credit limits applicable to his dealers and by making collections from them when accounts became overdue.

328 Q. "Explain I, 8."

A. B 30 is the standard Atlantic ticket evidencing a delivery of merchandise to a dealer or distributor. For the purpose of auditing delivery and collection reports of its drivers, Atlantic had its salesmen secure from its dealers periodically copies of such tickets left with them.

Q. "Explain I, 12."

A. The dealer salesman is expected to encourage each dealer to operate his station in the most effective manner, and to make specific recommendations to that end.

Q. "Explain I, 13, a."

A. See explanation for paragraph III D of CX 155A H.

Q. "Explain I, 14, a."

A. "Unit control" was a system of inventory control available for use by dealers.

Q. "Explain I, 14, b."

A. The phrase "minimum stock standards" refers to the minimum inventories of products which should be maintained under good operating practice.

Q. "Explain I, 14, c."

A. The dealer salesman is expected to recommend various steps for keeping a dealer's stock in salable condition, such as storage and display techniques which will avoid package damage, return of shopworn merchandise for repackaging, and the practice of selling the oldest stock first.

329 Q. "Explain I, 19, c."

A. The dealer salesman is expected to report informally, and as appropriate action by Atlantic's competitors.

Q. "Explain II."

A. The District Dealer Bank is a list maintained by each district office of persons who are interested in becoming Atlantic lessee dealers.

Q. "Explain III, 1."

A. The guide, copies of which are no longer available, outlined the respective responsibilities of various Atlantic employees in assisting a new dealer to become established.

Q. "Explain IV, 3."

A. To the extent that a dealer maintains books establishing sales goals and measuring performance and makes them and his bookkeeping records available, the salesman is expected to review the data and advise the dealer how to improve his efficiency and sales effectiveness.

Q. "Explain V, 3."

A. The service station school then current is described under paragraph II A of CX 155A H.

Q. "Explain V, 4 and V, 7."

A. The Retail Instructor was equivalent to the present service salesman and provided on-the-job instruction. See paragraph 1.5 of the stipulated testimony of Atlantic personnel.

Q. "Explain V, 8."

330 A. The merchandising and sales promotion instruction involved the general principles of such subjects and, as such, was applicable to all products regardless of brand.

Q. "Explain V, 10."

A. The salesman is expected to make certain that each dealer is aware of prices for goods and services which are being charged and servic which are being rendered by his competitors, and to advise the dealer to the extent the latter desires, how to maintain profitable operations under competitive conditions.

Q. "Explain V, 11, a."

A. To the extent that an annual review consultation does

not assist a dealer in establishing sales goals and merchandising programs for particular products or services, the salesman is expected to aid the dealer in that regard, but only to the extent the dealer wishes.

Q. "Explain V, 13."

A. The provision seems self-explanatory.

CX 138

Q. "Identify SJH."

A. In June 1951, S. J. Heideman was Manager, TBA Section, Atlantic.

CX 139A B

Q. "Identify SJH."

A. In January 1952, S. J. Heideman was Manager, TBA Section, Atlantic.

331 Q. "Check adjustment cut-off date of March 31, 1952."

A. The cut-off date for Lee tire adjustments was July 31, 1952 and for Exide batteries was July 1, 1952.

Q. "Identify C. O. Domestic and J. O. Long."

A. Controller's Office—Domestic, of which J. O. Long was Chief Accountant.

Q. "Is antifreeze under S. C. P. with Goodyear or Firestone?"

A. Not in the case of Atlantic.

CX 140

Q. "Identify B 139's."

A. B 139 is the designation of the sales slip form used by dealers to make sales on credit to Atlantic credit card holders.

A typical B 139 form as revised in October 1951, is attached. (CX 140AC)

CX 141, 142

Q. "What was correct information?"

A. See paragraphs 6.6 and 6.7 of stipulated testimony of Atlantic personnel.

CX 143, 144

Q. "Identify William Stockton and SJH."

A. In July and November 1951, William Stockton was Credit Manager, Domestic Marketing Department, Atlantic. At the same times, S. J. Heideman was Manager, TBA Section Atlantic.

332 CX 145

Q. Identify Taitt and Stockton."

A. In June 1952, R. M. Taitt was Office Assistant, TBA Section, Atlantic, and William Stockton was Credit Manager Domestic Marketing Department, Atlantic.

Q. "Obtain list attached to Taitt's letter of February 11, 1952."

A. Attached is a copy of the letter of February 11, 1952 with its attached list. (CX 145A D)

Q. "Was a list of Firestone products prepared?"

A. The list attached to Taitt's letter was the only list prepared by him and includes various accessory products regardless of brand:

That list was restated in terms of Goodyear and Firestone departmental numbers in CX 145. Neither that nor Taitt's list ever became an official part of Atlantic's credit program.

CX 146A B

Q. "Origin, date, distribution, etc."

A. This is part of the minutes of a regular meeting of the staff of the Domestic Marketing Department, i.e., the Vice President of Marketing, the Assistant General Manager of Domestic Marketing, and the Managers of the principal units of the department. Such minutes are normally distributed to members of the staff, the Sales Personnel Manager, and the Foreign Marketing Manager.

333 The date of the meeting is as indicated on the document itself.

Q. "Explain reference in 4(d)(1) to 'Class 2 Program'."

A. The phrase "Class 2 Program" referred to efforts then being made by Atlantic to strengthen lessee dealer marketing.

CX 148, 149, 150

Q. "Review re distribution."

A. The distribution specified in CX 148 was made.

Q. "Identify E. R. Cox, Jr."

A. As of February 1951, E. R. Cox, Jr. was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

CX 151

Q. "Identify Taitt."

A. In March 1951, R. M. Taitt was Office Assistant, TBA Section, Atlantic.

CX 153A B

Q. "Identify R. M. Taitt."

A. In April 1951, R. M. Taitt was Office Assistant, TBA Section, Atlantic.

Q. "Are distribution points still the same?"

A. Yes.

CX 154

Q. "Identify personnel."

A. As of January 1951—

Porter B. Caldwell was Manager, Gasoline Solvents and Naptha Section, Domestic Marketing Department, Atlantic.

334 J. J. Mulvey was Manager, Fuel Oil Section, Domestic Marketing Department, Atlantic.

H. B. Stone was Manager, Lubricants, Wax and Process Section, Domestic Marketing Department, Atlantic.

CX 155A-H

Q. "Author."

A. The plan was prepared by the New York Region.

Q. "Obtain complete sales plan plus appendices."

A. The masked portions of CX 155A-H relate to motor oil, kerosene, furnace oil, residual oils, and technical products, and are thus irrelevant.

Appendices A-1—A-6 represent the table on CX 155B-D broken down for each of the 6 districts in the New York Region and would, therefore, seem too detailed and trivial for inclusion here. Appendix B relates only to gasoline and is omitted as irrelevant. Copies of Appendices C, D and E (referred to in paragraph III F of CX 155) are attached (CX 155I, 155J-K, and 155L-M, respectively).

Q. "Were similar plans for other regions set up?"

A. Yes.

CX 155B

Q. "Gallons?"

A. Yes.

CX 155C, D

Q. "What is 1 unit—T & B?"

A. See Appendix C to the Plan.

335 Q. "Were stations assigned quotas on this basis?"

A. No.

CX 155E-G

Q. "Explain II A."

A. At the time, Atlantic's Red, White & Blue course was a one week informal dealer training program in service station operation, including the technical aspects of automobile servicing. In New York, the retail instructors were to expand their instruction to include the subjects mentioned, namely product merchandising and display.

Q. "Explain II D."

A. The Four Step Method of Instruction is an instructional technique, having the following primary steps:

1. Prepare the student.
2. Present the operation to him.
3. Try out his performance.
4. Follow up on his performance after completion of the instruction.

Q. "Explain II E."

A. The retail instructors were to utilize the D. P. A. CASE plan in teaching dealers how to sell. These letters are initials for instructive phrases and words as follows:

D—Determine the customer's need.

P—Point out that need to the customer.

A—Ask him to buy.

336 CASE stands for "Convenience," "Appearance," "Safety," and "Economy."

Q. "Explain III A."

A. Event openings are promotional devices for attracting customers, utilizing attractive station decoration, advertising, publicity, and possibly premiums.

Q. "Explain III B."

A. Efforts were to be made to modernize existing leased stations in accordance with currently accepted standards of appearance and layout.

Q. "Explain III C."

A. Each Marketing District was to maintain a list of potential lessee dealers and employees for such dealers, and to have its personnel constantly alert to opportunities to recruit such dealers and employees.

Q. "Explain III D."

A. The Dealer Annual Review is an annual informal meeting of each lessee dealer, his salesman, the supervisor of the salesman, and the Dealer Sales Manager, at which the dealer's prior performance and future plans are discussed and the dealer is advised how to achieve greater efficiency and profitability.

Q. "Explain III E."

A. Facilities were to be made available at which the training described under II A hereof could be provided.

Q. "Explain III F."

337 A. Quarterly dealer progress reports were made to check on the performance of lessee dealers. A copy of the report form is attached, designated "Appendix E."

Q. "Explain III G."

A. Prizes were to be awarded to dealers for excellence in service, and dealer performance was to be measured under normal operating conditions by Atlantic personnel visiting stations as customers.

Q. "Explain IV B."

A. When a new contract dealer is added Atlantic must incur expense for pumps and other equipment. A formula was used to determine whether the anticipated sale of petroleum products by a particular dealer would justify Atlantic's incurring the necessary expense and hence taking on that dealer.

Q. "What is C. R. S. (VI)?"

A. Commission Route Salesman.

Q. "Explain X A."

A. In establishing region-wide sales goals for TBA, consideration was given not only to normal sales increases by established outlets but also to sales by new outlets.

Q. "Explain X B."

A. The formulas referred to were the ratios stated in sections VI, VII, and VIII on CX 155C-D.

Q. "Explain X C."

A. The coordinator's plan provided for the train-
338 ing of dealers and Atlantic personnel in the features and application of new products, sales techniques, etc. through clinics and double teaming in the field with salesmen, and for assistance to dealers in planning events, holiday promotions, mass displays, and budget selling plans.

Q. "Explain XI."

A. This section lists the meetings to be held during the year and the approximate frequency. Paragraphs A and B refer respectively to meetings of Atlantic district and regional managers and to meetings of Atlantic district personnel.

CX 156

Q. "Origin, distribution, etc."

A. This document was part of the 1951 New York Region Sales Plan (CX 155A-H).

Q. "Refer to Sales & Operations Groups."

A. Sales Groups are personnel responsible for the Sales activities of the Domestic Marketing Department.

Operations Groups are personnel of the Operations Department, which is described under CX 183 hereof.

Q. "To whom does policy apply (Class 2, 3)?"

A. The policy applied to Class 2 stations in its entirety and to Class 3 stations as provided in paragraph (2) and in the first sentence of paragraph (3).

CX 157

Q. "Identify HKP (Paxson)."

339 A. In February 1951, H. K. Paxson was Assistant Manager, TBA Section, Atlantic.

Q. "Refers to appendices, etc."

A. See under CX 155A-H.

CX 159

Q. "Identify E. R. Cox and Mr. Fritsch."

A. In March 1951

E. R. Cox was Manager Sales Promotion Section, Domestic Marketing Department, Atlantic.

Paul R. Fritsch was in the Identification Division, Goodyear.

Q. "Describe Service Station Committee."

A. See under CX 132.

CX 160A

Q. "Identify J. O'Neill."

A. In June 1951, J. O'Neill was Division Petroleum Representative, Philadelphia, Goodyear.

Q. "Obtain description of Territories 7G, etc."

A. The various territories indicated by the number and letter symbols are Atlantic's salesmen's territories. Their respective areas are as indicated by the addresses of the retail outlets listed under each on CX 160 C-P.

Q. "Obtain New Jersey list."

A. A copy of the list is attached (CX 160Q-Y).

CX 161

Q. "Identify SJH."

340-A A. In July 1957, S. J. Heideman was Manager TBA Section, Atlantic.

Q. "Obtain list of 46 dealers."

A. A copy of the list is attached (CX 161A-B).

Q. "Advise as to action taken."

A. On July 24, 1951 the respective managers of Atlantic's Philadelphia-Suburban and South Jersey Districts were requested to have their personnel communicate with the 46 dealers and to report the results of such action. No reports having been received from the districts by August 20, 1951, follow-up letters were sent both managers on that date (see CX 162). On October 15, 1951, Goodyear sent Atlantic a list of stations not yet identified, which included all of the 46 dealers except the following (see CX 167):

P. Di Cicco, 26th & Snyder Sts., Philadelphia, Pa.
Henry's, Chester & McKinley, Norwood, Pa.
A. E. Mapes, 9th & Bay, Ocean City, N. J.
S. Van Sant, Townsend Inlet, N. J.
I. Wells, 34th & Asbury, Ocean City, N. J.

is not known whether or not identification arrangements were made with the 5 dealers listed above prior to October 15, 1951.

Q. "Obtain names of those who were eventually signed."

A. The lists attached to CX 160A indicate that all the 46 dealers signed Goodyear contracts.

Q. "Were 46 dealers all Class 3?"

340-B A. No.

CX 165

Q. "Obtain list of N. E. refusals."

A. A copy of the list (on 2 sheets) is attached (CX 165A-C).

CX 167

Q. "Obtain attached lists."

A. A copy of each of the lists is attached (CX 167A-M).

CX 170A-F

Q. "Were refusals all Class 3 dealers?"

A. No.

Q. "How many were later identified?"

A. This information is unobtainable.

Q. "What are valance structural difficulties?"

341 A. "Valance structural difficulties" refers to buildings of retail outlets which lack the type of windows on which valances can be applied.

CX 171A-D

Q. "Were refusals Class 3 dealers?"

A. Refusals included Class 2 and Class 3 dealers.

CX 172A-B

Q. "Were refusals Class 3 dealers?"

A. Refusals included Class 2 and Class 3 dealers.

CX 161—172A-B

Q. "Which of these dealers were later identified by Goodyear?"

A. No records were kept with respect to which dealers were later identified. Only with respect to CX 172B do any Atlantic personnel have any recollection, and of the dealers listed thereon the TBA Coordinator recalls that at least the following subsequently displayed Goodyear identification:

Frank Funk
F. H. Buongiorne
Ray Cochran
Ken Alt

CX 173

Q. "Obtain TBA Bulletin #17, June 1, 1951."

A. A copy is attached. (CX 173A-E.)

CX 174, 175

Q. "How many outlets were signed as Goodyear 342 dealers or associate dealers?"

A. This information is unobtainable.

CX 177

Q. "Who is Jennings Bros.? Explain."

A. See Goodyear comments on this exhibit.

CX 179C

Q. "Obtain form referred to in D. general."

A. A copy is attached. (CX 179J.)

Q. "Was this form used in other two regions?

A. No.

CX 179D

Q. "Describe Sales Promotion Section."

A. This is a section of the Domestic Marketing Department which provides sales promotion service to that department. To that end it devises and prepares programs, projects, and material designed to increase the sale of products and services by Atlantic retail outlets of all types.

CX 179E

Q. "Explain Training Program Plan."

A. This refers to the program for conveying to Atlantic field sales personnel in areas outside the three original test districts information concerning the mechanics of the sales commission plan and the products involved.

CX 179G

Q. "Explain XV 2."

343 A. At the time, lessee dealers in the New York Region paid as rental for their stations an amount equal to 6% of their gross dollar income from sales of products (other than gasoline and Diesel fuel) without regard to brand and from services rendered. Hence, if their TBA sales were reduced, rentals received by Atlantic would likwise be smaller.

Q. "Identify U. S. I."

A. U. S. Industrial Chemicals Co., Atlantic's source of menthanol or evaporative type antifreeze.

Q. "Obtain recommendation under XVII."

A. A copy of the recommendation of August 17, 1951, is attached. (CX 179K.)

CX 180, 181, 182

Q. "Describe 'Fram' and 'Purolator'."

A. "Fram" and "Purolator" are brand names of automotive oil filter equipment manufactured by Fram Corp., Providence 16, R. I. and Purolator Products, Inc., 970 New Brunswick Ave., Rahway, N. J., respectively.

CX 183

Q. "Describe Operations Department, Sales Development Committee, AR 50 design station."

A. The Operations Department is responsible for constructing, equipping and maintaining the plants, service stations and other properties under the jurisdiction of the Domestic Marketing Department.

344 The Sales Development Committee is an advisory committee of the Regional Sales Managers which makes recommendations to the Domestic Marketing Department of action designed to increase the sales of products by Atlantic directly and through Atlantic outlets.

AR 50 is the designation of the service station design adopted by Atlantic marketing management in 1950.

CX 185

Q. "To whom was distribution made?"

A. This bulletin was directed to Atlantic's TBA Coordinators in the Eastern Pennsylvania, Western Pennsylvania and Southern Regions.

CX 186

Q. "Identify Mr. Bergh."

A. In July 1952, Charles F. Bergh was a buyer in Atlantic's Purchasing Department.

CX 187

Q. "Identify all names listed."

A. In September 1952—

W. L. Schmidt was Chief Accountant, Western Pennsylvania Region, Atlantic.

E. E. Sickels was Chief Accountant, Eastern Pennsylvania Region, Atlantic.

Fred Wanders was Chief Accountant, Southern Region, Atlantic.

J. O. Long was Chief Accountant, Controller's Office—Domestic, Atlantic.

345 Charles F. Bergh was a buyer in Atlantic's Purchasing Department.

J. P. Miller, Jr. was General Auditor, Atlantic.

R. G. Mulholland was Manager, TBA Section, Atlantic.

G. M. Elliot was in the Petroleum Sales Department, Firestone Tire & Rubber Co.

Q. "Explain memo."

A. The sales commission contract does not provide for payment of commissions on purchases of TBA by Atlantic for resale through its company-operated stations. This memo establishes a procedure to insure that such purchases will not be included with sales of TBA on which commission is to be paid.

346 CX 170B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.

Class	Number
2	3
3	33

CX 171B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.

Class	Number
2	0
3	6

CX 171C

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.

Class	Number
2	5
3	7

CX 172B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.

Class	Number
2	4
3	0

347 Q. "State the classifications of the 4 dealers who are recalled to have subsequently displayed Goodyear identification."

A.

Dealer	Class
Frank Funk	2
F. H. Buongiorne	2
Ray Cochran	2
Ken Alt	3

348 Mr. Ballard: May it please the Examiner, with reference to the foregoing stipulations, I would like to point out that at page 62 of the record I stated with respect to Exhibit 137 that Atlantic did not admit that the document was ever officially accepted, promulgated, or used. I further stated that Atlantic was not certain as to the circumstances under which that document had been prepared. Subsequent investigation has disclosed that the document was in fact adopted by the New York region in connection with its 1951 sales plan, and the correct information with respect to the document is contained in the foregoing stipulation under an appropriate reference to CX 137-A through E.

* * * * * *

356 Hearing Examiner Kolb: United States of America, Before Federal Trade Commission. In the Matter of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

Stipulation re testimony of the Goodyear Tire & Rubber Company, and The Goodyear Tire & Rubber Company, Inc. ("Goodyear") personnel.

Counsel for respondent, The Goodyear Tire & Rubber Company, and The Goodyear Tire & Rubber Company, Inc. ("Goodyear"), and counsel supporting the Complaint agree and stipulate that if appropriate officers and employees of Goodyear were called as witnesses by counsel

supporting the Complaint in this proceeding, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding. For the purpose of this stipulation both the Goodyear Tire & Rubber Company and the Goodyear Tire & Rubber Company, Inc., are referred to as "Goodyear".

357 Goodyear Response to Request for Additional Information Concerning Certain Exhibits.

CX 23

Q. "Date of Document."

A. January or February, 1950.

Q. "Obtain ten issues of Goodyear Merchandiser furnished Oil Company accounts."

A. Submitted herewith. (CX 23-C to 23-L, inc.)

Q. "(Obtain) special Service Station Edition of Goodyear 1950 Advertising Book."

A. Submitted herewith is a photostat copy of the cover and index page of Goodyear's 1950 Advertising Book. (CX 23M.) Goodyear knows of no "special Service Station Edition" of this book and believes the reference thereto in CX 23 A is a reference to Goodyear's 1950 Advertising Book. This book contains 116 pages and Goodyear has been able to locate only one copy. This is available for inspection or copying, if necessary.

CX 25

Q. "Date, place, etc., of meetings."

A. Information is set forth on CX 24-B.

CX 26

Q. "Date, place, etc., of meetings."

A. Goodyear-Atlantic dealer meetings were held during March and April, 1951 in the following cities:

358 New England Region: Boston, Mass., N. Boston, Mass., S. Boston, Mass., Providence, R. I., Worcester, Mass., Springfield, Mass., Pittsfield, Mass., Hartford, Conn., Bridgeport, Mass., New Haven, Conn., Fall River, Mass.

New York Region: New York, N. Y., Buffalo, N. Y., Rochester, N. Y., Danville, N. Y., Syracuse, N. Y., Oneida, N. Y., Elmira, N. Y., Binghamton, N. Y., Watertown, N. Y., Malone, N. Y., Albany, N. Y., Newburgh, N. Y.

Philadelphia, Pa.-New Jersey Region: Philadelphia, Pa. (3 meetings), Trenton, N. J., Camden, N. J., Atlantic City, N. J.

CX 28

Q. "Date."

A. Shortly prior to February 27, 1951.

CX 30-31

Q. "Dates."

A. Shortly prior to February 27, 1951.

CX 35-36

Q. "Develop further data re Schrader Inventory. Is Schrader part of Goodyear TBA line, etc."

A. Schrader products were and still are part of the Goodyear TBA line. When Atlantic adopted the sales commission plan it had no need for its inventory of Schrader products. Goodyear was willing to take over this inventory and thought this was easier than the proposed arrangement whereby Atlantic would return the goods to Schrader.

359 CX 51

Q. "Obtain identification Form A-98101L."

A. Submitted herewith is the current version of Form A-98101L. (CX 51 A) No copies of the version in use as of 8/7/51 have been located.

CX 11

Q. "Identify."

A. This exhibit was written by R. W. Keil and J. W. Basista of Goodyear shortly prior to the commencement of the Newark test program which commenced on June 12, 1950. It was intended to be a tentative outline for field representatives to guide them in organizing the test. R. W. Keil was then working on the Newark program. He is now a Goodyear Petroleum Representative in New York assigned to the Shell program. J. W. Basista is identified on the Goodyear list of "Names Appearing on Documents."

Q. "What is the extent of Newark District territory?"

A. Goodyear's Newark District consists of the following counties:

N. Y.: Orange, Rockland, Sullivan.

N. J.: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren (except for Alpha and Phillipsburg).

CX 17

Q. "Identification Division, Advertising Depart-
360 ment (Goodyear)—Describe function."

A. The chief function of the Identification Division, Advertising Department is to furnish to Goodyear dealers signs and display materials to identify them as sales outlets for Goodyear products.

CX 18

Q. "Was Suburban Oil Co., Mt Vernon, N. Y. signed to Goodyear contract?"

A. No.

CX 19

Q. "Reference to Field Operating Department."

A. We assume that this is a request for a general description of the Field Operating Department. This department, formerly officially designated Wholesale Field Operating Department, is now called Field Operating Control. It performs the function of prescribing and administering procedures to be followed in executing the sales policies established by the sales departments. The Department has jurisdiction over all district offices, field sales accounting offices and five Car and Home warehouses.

CX 24

Q. "Date."

A. Shortly prior to February 27, 1951.

Q. "See 24-C reference to Phillipsburg meeting this week and display used there. Was this Phillipsburg, N. J.?"

361 A. It is not now known whether or not the reference is to Phillipsburg, N. J. In any event, the meeting referred to has no connection with Atlantic Refining Co. or with the Atlantic TBA program.

Q. "In what towns and cities, etc. were Dealer Meetings held?"

A. See response for CX 26.

Q. "Reference to Goodyear men."

A. We assume this is a request for identification of the Goodyear men referred to in the document. See Goodyear list of "Names Appearing on Documents."

Q. "Reference to Advertising Dept. Describe generally."

A. The advertising Department at Goodyear is headed by K. C. Zonsius, Director of Advertising, who reports to Mr. R. S. Wilson, Executive Vice President.

Under Mr. Zonsius are various managers and staff personnel divided generally according to product groupings.

The function of the Advertising Department is to determine promotion strategy in conjunction with the Sales Departments, to translate strategy into advertising, usually in conjunction with outside agencies, and either to supervise its publication by Goodyear in various media or to make it available to Goodyear's customers for their own use as they may desire.

CX 32

362 Q. "Review for identification of names."

A. Names are: W. E. Blank, Sales Manager, Replacement Sales, Auto-Lite Battery Corporation; L. A. Knight, of Auto-Lite; J. C. Thomas, Manager, Storage Battery and Brake Lining, Goodyear.

CX 34.

Q. "Reference to B-19 and B-19A forms (obtain)."

A. Copies of Form B-19 as used in 1951 cannot be found. Form B-19A was merely a gummed sticker with a number on it that was attached to the returned tire so as to identify the tire with the customer's claim.

Q. "Also reference to Service Department Policy. Describe generally."

A. Goodyear's Service Policy is based on its Lifetime Tire Guarantee:

> "Every tire or tube of our manufacture bearing our name and serial number, is guaranteed to be free from defects in workmanship and material without limit as to time or mileage. If our examination shows such tire or tube has failed under the terms of this guarantee, we will either repair it or make a reasonable allowance on the purchase of a new tire or tube.
>
> "This guarantee is made for the exclusive benefit of the owner actually using these products, is not assignable, and no claim hereunder will be recognized
363 unless submitted on our standard claim form duly filled out and signed by such owner.

"There is no other warranty or liability, express or implied, applicable to these products. No representative has authority to make any representation, promise, or agreement except as stated herein."

With the exception of the second paragraph, which was added in 1952, this has been the form of guarantee in force since prior to March, 1951.

By referring claims for adjustment to Goodyear, tires may be adjusted under this guarantee by Goodyear dealers or stores, either by repairing them free of charge or making a reasonable allowance on a replacement. When a dealer presents to Goodyear a repair bill or a tire properly adjusted in accordance with Goodyear's policy, he is reimbursed for his expense of adjustment, plus a handling fee of 10% of the adjustment price. This applies to all Goodyear dealers, whether or not covered by a Sales Commission Plan.

CX 39.

Q. "Was document enclosed with CX 38."

A. No. It was presumably enclosed with CX 37.

CX 46.

Q. "What is Battery Merchandiser?"

A. A battery merchandiser is a battery display rack with a trickle charger so that batteries placed for dis-
364 play will be kept charging.

CX 56-57-58

Q. "56 refers to attached from Eddie Sauter. Obtain letter. Identify Republic."

A. Copy of letter is submitted herewith. Republic is identified in the letter. (CX 56-A)

* * * * *

CX 159

Q. "Identify Mr. Fritsch."

A. Paul R. Fritsch—Staff, Identification Division (Goodyear), now Manager of this Division.

CX 160

Q. "Identify J. O'Neill."

A. Goodyear's Division Petroleum Representative, Philadelphia, Pa., now Assistant District Manager, Philadelphia.

CX 177

Q. "Who is Jennings Bros.? Explain."

A. According to the document, this was an independent wholesalers in Cranston, Rhode Island. Mr. Gaylord did not know if this Atlantic account was to be classified as an oil company supplying dealer, in which case Atlan-
369 tic would get a 10% commission on Car & Home merchandise, or whether it qualified as a jobber, in which case Atlantic would get a 7½% commission. Either way, it made no difference to Jennings.

370 Names Appearing On Documents 10-29-56.

Names		Positions
Howard E. Ammerman	1-1-34	Manager Service Department
	8-1-56	Special Assignments
Howard F. Aul	3-1-50	Philadelphia, Pennsylvania Service Representative
	1-1-56	Philadelphia, Pennsylvania Manager District Service Department
Louis A. Barnes	4-1-50	Assistant Manager, Wholesale Field Operations
	10-1-54	Manager, Wholesale Operating
	1-1-56	Manager, Wholesale Operating
Joseph W. Basista	6-1-50	Senior Staff Petroleum Sales Department
	11-1-56	Assistant Manager Petroleum Sales
David T. Buchanan	1-1-40	Staffman Advertising
	1-1-56	Manager, Advertising and Sales Promotion
Wilford E. Cameron, Sr.	7-1-39	Staff Man Petroleum Sales Retired—10-1-51
Paul Castleberry, Jr.	1-23-50	Newark, New Jersey District Oper. Manager
	10-1-50	Birmingham, Alabama Credit and Collection Clerk
	10-16-50	GS Birmingham, Alabama Assistant Store Manager—Operating

Names		Positions
Russel S. Colton	4-6-50	Albany, New York District Service Representative
	7-28-52	Albany, New York Headquarters Burlington, Vermont Field Representative #2
	Exited 4-30-55	
Henry F. Cook	7-31-46	Senior Staff
	1-1-56	Advt. Manager—Tire Depts.
371		
William W. Evans	3-1-49	Syracuse, N. Y. Service Repres.
	1-2-52	Syracuse, New York Headquarters Auburn, New York Field Repres.
	Exited 7-15-53	
Paul R. Fritsch	1-1-40	Staff Man—Identification
	1-1-56	Manager—Identification Div.
Samuel A. Gaylord	1-1-34	Manager Petroleum Sales
	11-1-56	Special Assignments
Henry G. Harper, Jr.	4-1-45	Manager Associated Mdse.
	11-1-51	New Toronto, Canada—Vice President in charge sales
Louis R. Harrah	2-16-45	Staff Man
	Deceased—8-17-50	
Victor Holt, Jr.	5-1-44	Manager Tire Department
	12-1-49	Vice President Chg. Tire Sales Div.
	4-2-56	Vice President
Charles E. Knight	4-1-50	New York, New York Assistant District Manager
	6-1-52	Buffalo, New York District Manager
	11-1-54	Cleveland, Ohio District Manager
	1-1-56	Cleveland, Ohio Assistant Div. Manager Retail Headquarters, Chicago, Illinois
	8-16-56	Cleveland, Ohio Assistant Division Manager Retail
John A. Lewin	6-1-44	Manager—Dealer Division
	Present	Manager—Dealer Division
Isaac D. Love	6-1-49	Newark, New Jersey District Manager
Fred W. McConky, Jr.	12-15-44	New York, New York Manager N. E. Divn.
	12-1-52	New York, New York Manager N. E. Divn. Assistant Vice President
372		
Joseph E. Mayl	6-1-44	Vice President Sales Manager Tire Sales Div.
	12-1-49	Vice President & Sales Coordinator
	6-27-52	Vice President & General Manager Films—Foam & Flooring Div.

Names		Positions
William M. Mettler	1-1-34	Assistant Secretary
	Deceased—6-7-55	
Clair L. Metzger	6-15-48	Assistant Manager Trade Relations
	11-1-51	Manager Associated Merchandise.
Jay T. Miller	10-21-36	Boston Chg. Service Dept.
	7-1-51	Boston, Massachusetts Service Representative
	1-1-56	Boston, Massachusetts Manager Dist. Service Dept.
Joseph W. O'Neill	1-1-47	Philadelphia, Pennsylvania Field Representative
	3-1-51	Philadelphia, Pennsylvania Div. Petroleum Representative
	11-1-54	Philadelphia, Pennsylvania Assistant District Manager
Clarence C. Osmun	5-1-44	Manager Trade Relations
	12-1-52	Sales Managers Office
	Retired—2-29-56	
William O. Reid	7-7-47	Hartford, Connecticut Dist. Service Repres.
	1-1-56	Hartford, Connecticut Mgr. Dist. Service Dept.
Charles C. Ross	12-1-47	Manager Retread & Repair Matls. Sales
	3-16-54	Manager Retread & Repair Matls. Sales
	10-16-54	Senior Staffman Comml. Sales
Harry J. Ryan	11-1-46	New York, New York District Manager
373		
Edward C. Sauter	12-1-50	Pittsburgh, Pennsylvania District Manager
	5-1-54	Manager Cycle Tire Sales
John W. Silk	8-16-50	Buffalo, New York Service Representative
	10-1-51	New York, New York Petroleum Repres. Tr.
	11-1-51	New York, New York Field Representative #1
	6-1-52	New York, New York Field Representative #2
	Exited—6-30-52	
Joseph C. Thomas	1-1-50	Manager Storage & Brake Lining
George L. Wright	5-1-49	Manager Wholesale Field Oper. Department
	Exited—4-15-51	
Kenneth C. Zonsius, Sr.	9-1-36	Manager—Auto Tire Div.—Tire Department
	1-1-52	Director of Advertising
	1-1-56	Director of Advertising

387 Hearing Examiner Kolb: The following data supplied by the Atlantic Refining Company concerning the three market areas designated by Counsel in support of the Complaint, namely, Philadelphia Suburban District; Wilmington, Delaware district; and Baltimore, Maryland district, will be received in evidence, with notation of the fact that portions of this data apply only to Goodyear, and portions apply only to Firestone.

The stipulation is as follows:

Data submitted by Atlantic Refining Company concerning the three marketing areas designated by the Federal Trade Commission in The Matter of The Goodyear Tire & Rubber Company, The Atlantic Refining Company, Corporations, Docket No. 6486. Dated: May 29, 1957.

Philadelphia-Suburban District.

1. Area comprising the Philadelphia-Suburban District: See map attached (CX 248-A).

2. Names of Atlantic and Goodyear personnel concerned with TBA in the Philadelphia-Suburban District:

(a) Names of Atlantic personnel:

J. O. Estlow—Region Manager—Philadelphia-New Jersey Region.

A. R. Sanborn—Region Sales Group Manager, Philadelphia-New Jersey Region.

F. H. Romer—Region Direct Marketing Manager, New Jersey Region.

388 W. J. Jackson—Region T. B. A. Coordinator, New Jersey Region.

E. D. Smyth—District Manager, Philadelphia-Suburban District.

C. H. Pence—Philadelphia—Suburban District Dealer Sales Manager.

G. A. Arnholt—Philadelphia—Suburban District Sales Supervisor.

W. Handy—Philadelphia—Suburban District Sales Supervisor.

E. McConaghy—Philadelphia—Suburban District Sales Supervisor.

Promotable Dealer Salesmen:

John Mantini
R. C. Dunham
Daniel Reynolds
Jack Diamond
Edward O'Driscoll
J. Kearns
Thomas Hayes
Jack Hoffman
S. Petrison
Joseph Snyder
James Gallagher
William Keen
Joseph Muldoon

General Salesmen:

W. H. Weaver
N. B. Ludwig
George Gill
Philip Hopely
E. L. McKenna
George Headly

Service Salesmen:

Matthew Murray
Don Keyser
Charles Rowland
John McKernan
J. McIvor
M. Petrillo
F. Jones, Jr.
B. McWilliams
S. McLoughlin
R. C. Ringling
E. D. Barr

389 (b) Names of Goodyear personnel with whom Atlantic personnel of this District come in contact:

T. Butler Doolittle—District Manager
Luther Hutchinson—Assistant District Manager
A. H. Shafer—Regional Petroleum Representative
J. W. Fitzgerald—District Petroleum Representative
Fred Schaake—Truck Tire Representative
J. Burke—General Line Salesman

J. Cavanaugh—General Line Salesman
Stan. Panza—General Line Salesman
C. McKeag—General Line Salesman
W. Whitaker—General Line Salesman
John Pease—General Line Salesman
John Curry—General Line Salesman
Gordon Harder—Store Manager
R. Weymouth—Store Manager

3. Names and addresses of Goodyear supply points serving dealers and distributors in the Philadelphia—Suburban District:

Goodyear Tire & Rubber Company, 2750 North Broad Street, Philadelphia, Pennsylvania.

@ Harvey W. George, 3301 Princeton Avenue, Philadelphia, Pennsylvania.

† F. C. Glenn, 8006 Germantown Avenue, Philadelphia, Pennsylvania.

• Frank Hagan, 54th and Chester Avenue, Philadelphia, Pennsylvania.

390 •• Ellwood E. Kieser, 1527 Fairmount Avenue, Philadelphia, Pennsylvania.

† E. F. Miller, 809 Garrett Road, Upper Darby, Pennsylvania.

• Edward Parris, McDade Boulevard and Ashland Avenue, Glenolden, Pennsylvania.

@ Former Atlantic contract dealer.

† Former Atlantic lessee dealer.

• Present Atlantic lessee dealer.

•• Mr. Kieser conducts his TBA supply operations separately from his operations as an Atlantic lessee dealer and is classified by Goodyear as an independent Dealer Supply Point.

Goodyear Tire & Rubber Company, 708 Summit Avenue, Jenkintown, Pennsylvania.

Goodyear Tire & Rubber Company, 310 Main Street, Norristown, Pennsylvania.

4. Data on the nominations of Atlantic outlets in the Philadelphia-Suburban District to Goodyear as of June 30, 1956:

Type of Atlantic Outlet	Total Number of Atlantic Outlets	Number Covered by Form G-1209†	Goodyear Classification§	
			Dealers	Associate Dealers
(a) Lessee Dealers	226	174	2*	226*
(b) Contract Dealers	434	228	6‡	289‡
(c) Distributors	0	0		
(d) Customers of Distributors	0	0		

391

* Two lessee dealers have chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, presumably because each classification offers some advantages not afforded by the other. Such dealers are included in both categories in these figures.

‡ Four contract dealers have chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, presumably because each classification offers some advantages not afforded by the other. Such dealers are included in both categories.

§ Information as to actual signing of franchise agreements is not available. It is believed that virtually all dealers covered by a G-1209 and a large majority of the customers of Atlantic supplying dealers sign at least an initial franchise.

† Indicates the number of dealers regarded as potential TBA purchasers on whose purchases, if any, a commission will be paid, and not the number to whom sales were made. Does not include 61 customers of Edward Parris and 54 customers of Frank Hagan, both of whom are Atlantic supplying dealers.

392 5. Total dollar sales of Goodyear TBA in the Philadelphia-Suburban District in 1955 on which Atlantic received a commission are shown below**. These sales figures are the actual prices paid by the Atlantic dealer, regardless of whether he is classified by Goodyear as a "Dealer" or "Associate Dealer".

Supply Points		Lessee and Contract Dealers* Tires	Batteries	Accessories	Total
Goodyear District Office	2750 N. Broad St., Phila.	$ 18,022	$ 9,363	$ 16,460	$ 43,845
Harvey W. George	3301 Princeton Ave., Phila.	140,758	33,477	65,671	239,906
F. C. Glenn	8006 Germantown Ave., Phila.	159,764	48,549	92,410	300,723
E. F. Miller	800 Garrett Rd., Bywood	136,009	41,679	62,212	239,900
Frank Hagan†	54th & Chester Ave., Phila.	81,015	16,678	32,989	130,682
Ellwood E. Kieser	1527 Fairmount Ave., Phila.	251,752	56,315	112,721	420,788
Edward Parrist	McDade Blvd. & Ashland Ave., Glenolden	103,134	21,708	35,258	160,100
Goodyear Tire & Rubber Co.	708 Summit Ave., Jenkintown, Pa.	0	0	0	0
Goodyear Tire & Rubber Co.	310 Main St., Norristown, Pa.	0	0	0	0
Total		$890,454	$227,769	$417,721	$1,535,944

** Atlantic has no distributors in this district.

* A breakdown between lessee and contract dealers can be obtained only by a costly and time-consuming analysis of voluminous records.

† In the case of these Atlantic supplying dealers the sales figures are the prices paid by the supplying dealer and not by his customer.

393 6. Names and addresses of Atlantic distributors in the Philadelphia-Suburban District who are covered by a Form G-1209:

Atlantic has no distributors in this district.

7. Atlantic dealers in the Philadelphia-Suburban District who became dealers of Atlantic gasoline distributors.

Not applicable.

8. Current addresses of Atlantic Training Facilities in the Philadelphia-Suburban District:

Classrooms:

Germantown Jewish Community Center, Lincoln Drive and Emlen Street, Philadelphia, Pennsylvania.

Training Stations:

Joseph Barton, Ellet and McCallum Street, Philadelphia, Pennsylvania.

Charles Schock, Henry Avenue and Leverington Street, Philadelphia, Pennsylvania.

9. Names and then current business addresses of dealers and distributors in the Philadelphia-Suburban District whose relationships with Atlantic ceased in 1954 or 1955 under the circumstances indicated:

(a) Leases or contracts cancelled during their terms are shown below. In all cases, formal termination was either by notice of cancellation from the dealer, by mutual cancellation by the dealer and Atlantic, or by death of the dealer.

394 (1) Lessee Dealers:

Leonard A. Anderson, Huntington Pike and Penn Street, Rockledge, Pennsylvania.

Harry Angelo, Island Road and Brewster Avenue, Philadelphia, Pennsylvania.

Joseph Arico, West Chester Pike and Marlboro Road, Stonehurst, Pennsylvania.

Edward F. Ausman, Montgomery Pike and Levering Mill Road, Cynwyd, Pennsylvania.

William Barton, Easton Road and Fair Oaks, Horsham, Pennsylvania.

Morris Bilson, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Morris Blum, Cheltenham Avenue and Pittman Road, Philadelphia, Pennsylvania.

W. G. Bond, Route #100, Uwchland, Pennsylvania.

Thomas Calvanesa, Chester Pike and Knowles Avenue, Glenolden, Pennsylvania.

Lynn Abbott Carden, Wycombe Avenue and Marshall Road, Lansdowne, Pennsylvania.

Bartholomew G. Casiello, Rising Sun Avenue, Front and Louden Streets, Philadelphia, Pennsylvania.

John Chambers, Chester Pike and Clifton Avenue, Sharon Hill, Pennsylvania.

Arthur Chapis, West Chester Pike and Naylor's
395 Run Road, Llanerch, Pennsylvania.

Albert Chase, Roosevelt Boulevard and Adams Avenue, Philadelphia, Pennsylvania.

William A. Crisman, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Arthur R. Cummins, DeKalb Pike and Ford Street, Bridgeport, Pennsylvania.

Ralph D'Ambrosio, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Alex DeCarlo, Long Lane and Alderbrook Road, Stonehurst, Pennsylvania.

Walter J. Donko, Durham and Hulmeville Roads, Midway, Pennsylvania.

Frank Eney, Jr., 262 Lincoln Highway, Fairless Hills, Pennsylvania.

William Eyer, Township Line Road and Church Road, Abington, Pennsylvania.

William R. Foster, 8759 Frankford Avenue, Philadelphia, Pennsylvania.

David J. Fowler, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Archibold W. Garvin, Jr., Bethlehem Park and Valley Green Road, Whitemarsh Township, Pennsylvania.

G. B. Gason-Niebling, Carlisle Street and Hunting Park Avenue, Philadelphia, Pennsylvania.

396 Mario Germani, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Angelo Giordano, 22nd and Bainbridge Streets, Philadelphia, Pennsylvania.

Alfred Godino, Belmont Avenue opposite Jefferson Street, Lower Merion Township, Pennsylvania.

John P. Hanlon, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Thomas Hanna, Front and Coral Streets, Philadelphia, Pennsylvania.

George G. Hewitt, Chester Pike and Fairview Road, Leiperville, Pennsylvania.

George Hinds, Frankford and Briston Pike, Croydon, Pennsylvania.

Louis Huber, Southwest Corner York Road and Moreland Avenue, Hatboro, Pennsylvania.

T. A. Kennedy, Cottman Street and Roosevelt Boulevard, Philadelphia, Pennsylvania.

Howard M. Kinsey, Route No. 100, Uwchland, Pennsylvania.

Albert Kohler, 22nd and Edgemont Avenue, Chester, Pennsylvania.

Samuel Levin, 5th and Bristol Streets, Philadelphia, Pennsylvania.

Angelo F. Lutz, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

397 Angelo Lutz, Belmont Avenue opposite Jefferson Street, Lower Merion Township, Pennsylvania.

Thomas Major, Torresdale Avenue and Levick Street, Philadelphia, Pennsylvania.

Harold J. Maloney, Frankford and Tyson Street, Philadelphia, Pennsylvania.

Charles A. McCafferty, Baltimore Pike and Providence Road, Media, Pennsylvania.

John and Robert McClay, Aramingo, Frankford and Deveraux Streets, Philadelphia, Pennsylvania.

Charles McKeefrey, West Chester Pike and Kirklyn Avenue, Kirklyn, Pennsylvania.

John J. Medelka, Lansdowne and Stratford Avenue, Pennsylvania.

Harold Miller, Island Road and Brewster Avenue, Philadelphia, Pennsylvania.

Anthony J. Morengo, Frankford Avenue and Tyson Street, Philadelphia, Pennsylvania.

Ronald C. Morrison, Rt. No. 100, Uwchland, Pennsylvania.

John A. Murray, Wadsworth and Cheltenham Avenues, Philadelphia, Pennsylvania.

Svend Nielsen, 262 Lincoln Highway, Fairless Hills, Pennsylvania.

Herman J. Polsky, N. W. Corner Bustleton Avenue and Knorr Street, Philadelphia, Pennsylvania.

398 Earl E. Rambo, Long Lane and Alderbrook Road, Stonehurst, Pennsylvania.

Thurman Riter, Garrett and Huntley Roads, Upper Darby, Pennsylvania.

Fred Rosato, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Donald T. Rothera, Roosevelt Boulevard and Cheltenham Avenue, Philadelphia, Pennsylvania.

Walter Runyon, N. S. Chester Park West of Hinkson Boulevard, Ridley Park, Pennsylvania.

Walter Runyon, Church Lane and Bailey Road, Yeadon, Pennsylvania.

Theodore Salvina, 10th, Ridge, and Callowhill Street, Philadelphia, Pennsylvania.

Boyd J. and Billy B. Sanderson, 262 Lincoln Highway, Fairless Hills, Pennsylvania.

Edward J. Santarlas, 28th Street and Passyunk Avenue, Philadelphia, Pennsylvania.

George Schofield, Ridge and Leverington Avenues, Philadelphia, Pennsylvania.

John Schtaba, Huntingdon Pike and Penn Street, Rockledge, Pennsylvania.

Donald Schurr, Montgomery Park and Levering Mill Road, Cynwyd, Pennsylvania.

399 Francis G. Shea, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Benjamin J. Skalski, Carlisle and Hunting Park Avenues, Philadelphia, Pennsylvania.

Sports Parking, Inc., 21st and Lehigh Avenue, Philadelphia, Pennsylvania.

Frank E. Stapleford, Jr., Easton and Bradfield Roads, Roslyn, Pennsylvania.

Louis Stein, Marshall Road and Owens Avenue, Lansdowne, Pennsylvania.

Frank Sweeney, Route 413 and Leamberis Avenue, West Bristol, Pennsylvania.

Paul Trapp, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Carl Unger, Route 413 near Newportville Road, Bristol, Pennsylvania.

Vernell L. VanAlstine, Naylor's Run Road, Llanerch, Pennsylvania.

Joseph Winnemore, Chester Pike and Knowles Avenue, Glenolden, Pennsylvania.

Alexander Zabielski, Bridge and Thompson Streets, Philadelphia, Pennsylvania.

(ii) Contract Dealers:

Alden Park Manor Garage, Chelten and Wissahickon Avenues, Philadelphia, Pennsylvania.

William Anderson, MacDade Boulevard and Wolfenden Street, Collingdale, Pennsylvania.

400 Bryner Chevrolet Company, 525 Township Line, Elkins Park, Pennsylvania.

James L. Burns, Jr., Main Street and Forrest Avenue, Jeffersonville, Pennsylvania.

Century Buick, Inc., S. E. Corner 18th and Jackson Streets, Philadelphia, Pennsylvania.

Cipressi Brothers, 6230 State Road, Philadelphia, Pennsylvania.

DeKalb Filling Station, Brown and DeKalb Streets, Norristown, Pennsylvania.

John DeNenno, Route 202, Dilworthtown, R. D., West Chester, Pennsylvania.

Dintenfoss & Cohen, S. E. Corner 11th and Race Streets, Philadelphia, Pennsylvania.

Fernwood Garage, 5934 Baltimore Avenue, Philadelphia, Pennsylvania.

Joseph Groner, Parkland, Pennsylvania.

Haddington Motor Service, 1654 North 57th Street, Philadelphia, Pennsylvania.

Henry S. Hoffman, Long Lane and Wildwood Avenue, East Lansdowne, Pennsylvania.

Godfrey J. Holmes, Haverford Road West of Wynnewood Road, Ardmore Park, Pennsylvania.

Juniata Auto Service, Erie Avenue and Bennington Street, Philadelphia, Pennsylvania.

401 Lehigh Service Garage, 2712 North 5th Street, Philadelphia, Pennsylvania.

George MacKissic, 150 South Main Street, Yardley, Pennsylvania.

Montgomery County Motors, Inc., Easton Road North of Maple Avenue, Horsham, Pennsylvania.

Moss Auto Repair, 860 North 40th Street, Philadelphia, Pennsylvania.

Newton Ford Company, Inc., Sycamore Street, Newton, Pennsylvania.

Norman's Service Station, Easton Road and Laurel Avenue, Horsham, Pennsylvania.

William J. O'Driscoll, S. E. corner Crystal and Tioga Streets, Philadelphia, Pennsylvania.

Albert Paul, S. W. corner 6th Street and Columbia Avenue, Philadelphia, Pennsylvania.

George S. Raynes Garage, 2431 Gordon Street, Philadelphia, Pennsylvania.

Adam Secoda, Welsh Road and Roosevelt Boulevard, Philadelphia, Pennsylvania.

J. W. Stevens, 108 South Keswick Avenue, Glenside, Pennsylvania.

Vince and Ralph's Service Station, 6055 Hazel Avenue, Philadelphia, Pennsylvania.

402 Edward A. Wheaton, 63rd and Dicks Avenue, Philadelphia, Pennsylvania.

Lewis White, 2658-60 Island Road, Philadelphia, Pennsylvania.

Harry W. Wiley, 1532-67th Avenue, Philadelphia, Pennsylvania.

(iii) Distributors:

None.

(b) Leases or contracts expired and were not renewed because of either the individual decision of Atlantic or the dealers, or the mutual decision of both:

(i) Lessee Dealers:

John Black, Huntingdon Turnpike and Bethayres Road, Bethayres, Pennsylvania.

James J. Bradley, West Chester Pike and Keystone Avenue, Upper Darby, Pennsylvania.

Aniello L. Iacono, Providence Road and South Avenue, Secane, Pennsylvania.

Howard Konkle, Wycombe Avenue and Marshall Road, Lansdowne, Pennsylvania.

Robert H. Mortimer, Torresdale Avenue and Levick Street, Philadelphia, Pennsylvania.

Arthur A. Mostardi, St. Lawrence Road and West Chester Pike, Highland Park, Pennsylvania.

403 Felix Piern, Lindbergh Boulevard and Wheeler Street, Philadelphia, Pennsylvania.

John P. Rafferty, Lindberg Boulevard and Wheeler Street, Philadelphia, Pennsylvania.

James E. Russell, N. W. corner 39th and Market Streets, Philadelphia, Pennsylvania.

Eugene A. Scott, Lancaster Pike and Wynnewood Road, Wynnewood, Pennsylvania.

Joseph K. Wilson, Baltimore Pike and Oak Lane Avenue, Clifton Heights, Pennsylvania.

(ii) Contract Dealers:

Anderson Tire Exchange, 613 Spring Garden Street, Philadelphia, Pennsylvania.

Cardona Brothers, 2635 West Passyunk Avenue, Philadelphia, Pennsylvania.

Carolselli's Service Station, Baltimore Pike and Saxer Avenue, Springfield, Pennsylvania.

Clock Service Station, S. W. corner 30th Street and Allegheny Avenue, Philadelphia, Pennsylvania.

H. W. Forth, DeKalb Pk., Bridgeport, Pennsylvania.

Fred C. Powell, Bradford Avenue, West Chester, Pennsylvania.

Michael Rose, 200 East Roosevelt Boulevard, Philadelphia, Pennsylvania.

Tony's Auto Repair, 1125 South 13th Street, Philadelphia, Pennsylvania.

404 (iii) Distributors:

None.

405 Wilmington, Delaware District.

1. Area comprising the Wilmington, Delaware District: See map attached (CX 249).

2. Names of Atlantic and Firestone personnel concerned with TBA in the Wilmington, Delaware District:

(a) Names of Atlantic personnel:

W. H. Quay—Region Manager—Eastern Pennsylvania Region.

R. W. Engle—Region Sales Group Manager—Eastern Pennsylvania Region.

R. B. Hamilton—Region Manager Direct Marketing—Eastern Pennsylvania.

G. A. Fearn—Region TBA Coordinator—Eastern Pennsylvania Region.

R. S. Zinn—District Manager, Wilmington, Delaware District.

T. E. Jones—Wilmington, Delaware District Sales Supervisor.

Promotable Dealer Salesmen
W. J. Raines
J. L. Sugg
W. C. Jordon
R. R. Klein
E. W. Martin, Jr.

Dealer Salesman
G. H. Stricker

Wholesale Salesmen
H. C. Hughes
E. H. Weer

406 Service Salesmen
C. A. Hayman
M. L. Davis
W. B. Tenley
J. E. Williamson
R. C. Zang, Jr.

(b) Names of Firestone personnel with whom Atlantic personnel of this District come in contact:
J. L. Cumming—District Manager
W. B. Jeffries—Manager Truck Tire Sales
E. C. Mewborn—Manager Truck Tire Sales (Alternate)
E. E. Pfeifer—Manager Stores
W. E. Hamlin—Manager Stores (Alternate)
W. W. Reynolds—District Credit Manager
A. A. Shaw—Regional Petroleum Representative

See also list of Firestone personnel for Atlantic's Baltimore, Maryland District.

Territory Salesmen
R. D. Daum
J. E. Sakers
C Chapman

Store Managers
Arthur Alves
J. G. Gurganus

3. Names and addresses of Firestone supply points serving dealers and distributors in the Wilmington, Delaware District:

Buchanan's Firestone Store—Dover, Delaware
Buchanan's Firestone Store—Milford, Delaware
407 Cambridge Tire Center—Cambridge, Maryland
Easton Sales Company—Easton, Maryland
Firestone Tire & Rubber Co.—Baltimore, Maryland
Firestone Store—Salisbury, Maryland
Firestone Tire & Rubber Co.—1620 S. 49th St., Philadelphia
Firestone Store—Wilmington, Delaware
Laurel Home & Auto Supply—Laurel, Delaware
Hitchen's Auto Service—Wilmington, Delaware
John Salisbury**—Ridgely, Maryland

(** Present Atlantic Contract Dealer.)

4. Data on the nominations of Atlantic outlets in the Wilmington, Delaware District to Firestone as of June 30, 1956:

Type of Atlantic Outlet	Total Number of Atlantic Outlets	Number Covered by Form S-757†	Firestone Classification*	
			Dealers	Associate Dealers
(a) Lessee Dealers	92	92	2†	91†
(b) Contract Dealers	99	53	3	50
(c) Distributors	13	6		
(d) Customers of Distributors	81	0		

† Indicates the number of dealers regarded as potential TBA purchasers on whose purchases, if any, a commission will be paid, and not the number to whom sales were made. Does not include at least one customer of John Salisbury, who is an Atlantic supplying dealer.

* Information as to actual signing of franchise agreements is not available. It is believed that virtually all dealers covered by an S-757 and a majority of the customers of Atlantic supplying dealers sign at least an initial franchise.

408 †One lessee dealer has chosen to be both a Firestone Dealer and a Firestone Associate Dealer, presumably because each classification offers some advantages not afforded by the other. This dealer is included in both categories in these figures.

409 5. Total dollar sales of Firestone TBA in the Wilmington, Delaware District in 1955 on which Atlantic received a commission are shown below. There sales figures are the actual prices paid by the Atlantic dealer, regardless of whether he is classified by Firestone as a "Dealer" or "Associate Dealer". Because of variations in classification and prices no generalization can be made as to comparative price levels to Atlantic dealers and distributors.

Supply Points	Lessee and Contract Dealers				Distributors				
	Tires	Batteries	Accessories	Total	Tires	Batteries	Accessories	Total	Total
Firestone District Office, Baltimore, Md.	$ 73,118	$ 6,176	$ 18,253	$ 97,547	$100,994	$ 949	$ 23,748	$125,691	$223,238
Firestone Store, Salisbury, Md.	26,495	2,359	3,435	32,289	242	—	—	242	32,531
Buchanan's Firestone Store, Dover, Del.	1,822	17	115	1,954	—	—	—	—	1,954
Hitchen's Auto Service, Wilmington, Del.	1,036	208	59	1,303	424	74	11	509	1,812
Laurel Home & Auto Supply, Laurel, Del.	1,663	631	699	2,993	—	—	—	—	2,993
Easton Sales Company, Easton, Md.	117	32	188	337	—	—	—	—	337
Firestone District Office, Philadelphia, Pa.	6,863	50	3,063	9,976	—	—	—	—	9,976
Firestone Store, Wilmington, Del.	107,866	16,896	19,653	144,415	305	13	171	489	144,904
Total	$218,980	$ 26,369	$ 45,465	$290,814	$101,965	$ 1,036	$ 23,930	$126,931	$417,745

* A breakdown between lessee and contract dealers can be obtained only by a costly and time-consuming analysis of voluminous records.

410 6. Names and addresses of Atlantic Distributors in the Wilmington, Delaware District who are covered by a Form S-757:

Clements Supply Company—Clayton, Delaware
Kellam Distributing Company—Belle Haven, Virginia
Walter H. Lister—Seaford, Delaware
Charles Marsh—Georgetown, Delaware
Serve U Oil Company—Fruitland, Maryland
Hammond & Taylor, Inc.—510 S. Market St., Wilmington, Del.

7. Names and addresses of Atlantic dealers whose source of supply for Atlantic petroleum products was at some time prior to June 30, 1956, changed from Atlantic to an Atlantic distributor. Dates of change are shown where available. All such dealers were contract dealers.

Dealers' Name—Address—Date

Greenville Betts—Stockley, Delaware—
F. Bowers—Milton, Delaware—February 1, 1955
David Bunting—Frankford, Delaware
G. Lewis—Roxana, Delaware
McGee & West—Selbyville, Delaware
Midway Service Station—Midway, Delaware
Horace S. Okie— Georgetown, Delaware
411 George L. Panyter—Rohoboth, Delaware
H. W. T. Purnell—Georgetown, Delaware
Seargeant & Tate—Oak Orchard, Delaware
Haas Brothers—R. F. D. Dover, Delaware—June 16, 1954
Walter T. Massey—Dover, Delaware
W. B. Donovan—701 Van Buren Street, Wilmington, Delaware—June, 1954
George Groff—Cambridge, Maryland
B. E. Harrington—Taylor's Island, Maryland—June 2, 1956

Ruth S. Johnson—Neavitt, Maryland
Mary McCarty—Tilghman, Maryland—February 1, 1955
Walter Horsey—Laurel, Delaware

8. Current addresses of Atlantic Training Facilities in the Wilmington, Delaware District:

Classrooms:

Young Men's Republican Club, 147 Market Street, Williamsport, Pennsylvania.

Training Stations:

P. S. Cillo, 4th and Washington Streets, Williamsport, Pennsylvania.
Ray. Zaner, 3022 W. 4th Street, Williamsport, Pennsylvania.
412 Harold Rhone, 1158 W. 4th Street, Williamsport, Pennsylvania.
K. G. Harman, 241 Broad Street, Montoursville, Pennsylvania.
Dale Dorsett, Washington Boulevard and Franklin Street, Williamsport, Pennsylvania.

9. Names and then current business addresses of dealers and distributors in the Wilmington, Delaware District whose relationships with Atlantic ceased in 1954 or 1955 under the circumstances indicated:

(a) Leases or contracts cancelled during their terms are shown below. In all cases, formal termination was either by notice of cancellation from the dealer, by mutual cancellation by the dealer and Atlantic, or by death of the dealer.

(i) Lessee Dealers:

Charles E. Banning, Washington and Water Streets, Milford, Delaware.

Robert Bruch, 205 French Street, Wilmington, Delaware.

George W. Bryan, Route 13, Farnhurst, Delaware.

William J. Carrigan, Routes 40 and 796, Glasgow, Delaware.

William E. Clark, James and Highland Streets, Newport, Delaware.

Mitchell Davis, 11th and Washington Streets, Wilmington, Delaware.

Harry Demitralis, 205 French Street, Wilmington, Delaware.

413 Leroy Derr, 205 French Street, Wilmington, Delaware.

Alexander Glass, 40th and Washington Streets, Wilmington, Delaware.

Alexander Glass, 3201 Concord Pike, Wilmington, Delaware.

Phil T. Harrison, Washington and Aurora Streets, Easton, Maryland.

Harry N. Hawes, 178 S. DuPont Road, New Castle, Delaware.

R. T. Hearn, Front and Central Avenues, Laurel, Delaware.

Harvey Hinrichs, 605 Vandever Avenue, Wilmington, Delaware.

William R. Hunt, Route 50 and Dover Road, Easton, Maryland.

Henry F. Jacobs, Concord Avenue and Tatnall, Wilmington, Delaware.

Wilbur W. Kirby, Route 113 and Plaza Boulevard, Dover, Delaware.

John C. Knight, 25th and Governor Printz, Wilmington, Delaware.

Wendall J. Marvel, Washington and Aurora Streets, Easton, Maryland.

Donald McBride, 5th and Rehoboth Avenue, Rehoboth, Delaware.

Robert W. Miller, Lancaster and Ford Avenue, Wilmington, Delaware.

414 George T. Mitchell, Millsboro, Delaware (Route 113).

Manlis K. Morris and William Howard Dennis, Main and Lang Streets, Salisbury, Maryland.

Andrew Poplos, 3201 Concord Pike, Wilmington, Delaware.

Robert E. Quillen, Governor Avenue and North Street, Dover, Delaware.

Aubrey H. Reed, 301 Philadelphia Pike, Wilmington, Delaware.

Woodall Sheats, 6th and Chestnut Streets, New Castle, Delaware.

Robert V. Sheridan, 4800 Governor Printz, Edgemoor, Delaware.

Oliver K. Smith, Route 13 and East State Street, Delmar, Maryland.

J. Harold Staats, Route 113 and Plaza Boulevard, Dover, Delaware.

Thomas J. Sullivan, Jr., 1602 Newport Pike, Newport, Delaware.

Wilmer G. Surgeson, Penn and First Avenue, Avondale, Pennsylvania.

Colin Thompson, 2530 Concord Pike, Wilmington, Delaware.

Ralph T. Toomey, Washington and Race Streets, Cambridge, Maryland.

415 James F. Tribbitt, Route 13 and Magnolia Road, Dover, Delaware.

William West, 2530 Concord Pike, Wilmington, Delaware.

Elton White, Pittsville, Maryland.

William A. White, Jr., Philadelphia Pike and Duncan Road, Wilmington, Delaware.

Robert Wickwire, 605 Vandever Avenue, Wilmington, Delaware.

Pres. Williams, Maryland Avenue, Salisbury, Maryland.

Maurice O. Wimbrow, Federalsburg, Maryland.

Graham S. Wood, 315 N. Maryland Avenue, Richardson Park, Delaware.

Thomas A. Worner, 4800 Governor Printz, Edgemoor, Delaware.

Thomas A. Worner, 2530 Concord Pike, Wilmington, Delaware.

(ii) Contract Dealers:

Fleetwood Sales Service, Route 13, Seaford, Delaware.

Bernard Taylor, Route 113, Pocomoke City, Maryland.

B. V. Whauton, Milford, Delaware.

John Lowsky, Stanton, Delaware.

Alfred Palmer, Naaman and Foulk Road, Wilmington, Delaware.

Sapp's Garage, Houston, Delaware.

416 N. B. Stapleford, St. Georges, Delaware.

E. M. Cope, South Third Street, Oxford, Pennsylvania.

Hastings Chevrolet Garage, Richardson Park, Delaware.

Franklin Currey, Harrington Road, Milford, Delaware.

(iii) Distributors: None.

(b) Leases or contracts expired and were not renewed because of either the individual decision of Atlantic or the dealer, or the mutual decision of both:

(i) Lessee Dealers:

Everett E. Alexander, 301 Philadelphia Pike, Wilmington, Delaware.

Edgar H. Cornman, New Castle Avenue, Rosehill, Wilmington, Delaware.

Edwin H. Erisman, 30th and Market Street, Wilmington, Delaware.

Frank Mohler, North Division Street, Salisbury, Maryland.

George H. Phillips, 4800 Governor Printz, Edgemoor, Delaware.

John R. Riggin, Sunburst Highway, Cambridge, Maryland.

Joseph Zakrzewski, 3201 Concord Pike, Wilmington, Delaware.

(ii) Contract Dealers:

W. C. Kilvington, Minquadale, Route 13, Delaware.

Witt & Bryden, Rock Hall, Maryland.

417 W. C. & Florence Angoe, Summitt Bridge, Delaware.

Mary Conner, Centerville, Delaware.

George H. Hoffecker, Route 13, Smyrna, Delaware.

(iii) Distributors:

Pearce Oil Company, Milford, Delaware.

(c) Circumstances are not indicated by available records:

(i) Lessee Dealers:

Leroy R. Dean, Route 113 and Plaza Boulevard, Dover, Delaware.

(ii) Contract Dealers:

Jarmon Garage, Berlin, Maryland.

(iii) Distributors: None.

10. Copies of "warning letters" sent to dealers and distributors in the Wilmington, Delaware District in the period April 1, 1950, through June 30, 1956, and any

subsequent correspondence between Atlantic and such dealers and Distributors.

(a) Warning letter of November 2, 1955 to

CX 250

Norris A. Stein, Lancaster and Ford Avenues, Wilmington, Delaware.

(b) Warning letter of February 7, 1956, to

CX 251

Alfred H. Trivits, East Side Route 13 and Oak Lane, Laurel, Delaware.

418 (c) Warning letter of December 21, 1956, to

CX 252

William A. White, Sr., 205-9 French Street, Wilmington, Delaware.

419 Baltimore, Maryland District.

1. Area comprising the Baltimore, Maryland District: See map attached (CX 249).

2. Names of Atlantic and Firestone personnel concerned with TBA in the Baltimore, Maryland District:

(a) Names of Atlantic personnel:

W. R. Holland—Region Manager—Southern Region

J. G. Burns—Region Sales Group Manager—Southern Region

G. W. Brown—Region Direct Marketing Manager—Southern Region

E. M. Singleton—Region TBA Coordinator—Southern Region

H. M. Hathaway—District Manager—Baltimore, Maryland District

H. W. Martin—Baltimore, Maryland District Sales Supervisor

Promotable Dealer Salesmen
Richard D. Thomas
Walter V. McGee
Edwin H. Williams

Service Salesmen
Joseph M. Bagley
Gilbert E. Moran
Harry W. Toy
William R. Simpson, III

General Salesmen
Ira D. Crumbacker
Howard A. Frost
R. A. Mumper

420 (b) Names of Firestone personnel with whom Atlantic personnel of this District come in contact:

E. B. Harris*—District Manager
M. H. Pritcher*—Manager Truck Tire Sales
E. V. Hensley*—Manager Stores
J. C. Heid*—Manager Oil Company Sales
J. D. Gotshall*—District Credit Manager
A. A. Shaw—Regional Petroleum Represent

Territory Salesmen
W. D. Flora
T. D. Stevens
T. Wilson
J. Q. Leslie
W. C. Thomas
K. T. Hoover

Store Managers
J. D. Warfield
F. E. Lezon

* Personnel of Atlantic's Wilmington, Delaware District also come in contact with these Firestone personnel.

R. H. Powell
A. Johnson
R. C. Rose, Jr.
N. E. Nasser
H. E. Woodward
R. Brinkman

3. Names and addresses of Firestone supply points serving dealers and distributors in the Baltimore, Maryland District:

Al's Tire Service—Havre de Grace, Maryland
Automotive Supply Co.—Somerset, Pennsylvania
Bartgiss & Zimmerman—Frederick, Maryland
Dezen's—Cumberland, Maryland
W. F. Flood & Son—Annapolis, Maryland
Firestone Tire & Rubber Co.—Baltimore, Maryland
421 Firestone Tire & Rubber Co.—1620 South 49th Street, Philadelphia, Pennsylvania
Firestone Store—Martinsburg, West Virginia
Firestone Store—Howard Street, Baltimore, Maryland
Firestone Store—604 Rhode Island Avenue, N. E., Washington, D. C.
Firestone Store—Edmondson Village, Baltimore, Maryland
Firestone Store—Wilmington, Delaware
Firestone Tire & Rubber Co.—Baum Boulevard, Pittsburgh, Pennsylvania
Firestone Store—Silver Spring, Maryland
Jack's Tire Service—Baltimore, Maryland
*Poffenberger Tire Co.—Hagerstown, Maryland
Southern Maryland Oil Co.—La Plata, Maryland
S. K. Osborne—Reisterstown, Maryland

* Present Atlantic Contract Dealer, classified as Atlantic supplying dealer. No customers are reported to have made purchases from him in 1955.

4. Data on the nominations of Atlantic outlets in the Baltimore, Maryland District to Firestone as of June 30, 1956:

422

Type of Atlantic Outlet	Total Number of Atlantic Outlets	Number Covered by Form S-757†	Firestone Classification*	
			Dealers	Associate Dealers
(a) Lessee Dealers	86	86	0	86
(b) Contract Dealers	61	34	3	31
(c) Distributors	7	5		
(d) Customers of Distributors	36	2		

423 5. Total dollar sales of Firestone TBA in the Baltimore, Md. District in 1955 on Which Atlantic received a commission as shown below. These sales figures are the actual prices paid by the Atlantic dealer, regardless of whether he is classified by Firestone as a "Dealer" or "Associate Dealer". Because of variations in classification and prices no generalization can be made as to comparative price levels to Atlantic dealers and distributors.

* Information as to actual signing of franchise agreements is not available. It is believed that virtually all dealers covered by an S-757 sign at least an initial franchise.

† Indicates the number of dealers regarded as potential TBA purchasers on whose purchases, if any, a commission will be paid, and not the number to whom sales were made.

Supply Points	Lessee and Contract Dealers*				Distributors				
	Tires	Batteries	Accessories	Total	Tires	Batteries	Accessories	Total	Total
Firestone District Office, Baltimore, Md.	$ 21,248	$ 533	$ 175	$ 21,956	$ 12,285	$ —	$ 1,215	$ 13,500	$ 35,397
Jack's Tire Service, Baltimore, Md.	1,024	584	—	1,608	—	—	—	—	1,608
S. K. Osborne, Reisterstown, Md.	984	92	37	1,113	—	—	—	—	1,113
Al's Tire Service, Havre de Grace, Md.	2,343	166	422	2,931	272	—	70	342	3,273
W. F. Flood & Son, Annapolis, Md.	515	278	442	1,235	—	—	—	—	1,235
Poffenberger Tire Co., Hagerstown, Md.	2,328	402	505	3,235	—	—	—	—	3,235
G. D. Armstrong, Daytonsville, Md.	114	—	17	131	—	—	—	—	131
Firestone Store, Edmundson Village, Baltimore, Md.	3,038	2,370	224	5,632	—	—	—	—	5,632
Firestone Store, Howard St., Baltimore Md.	72,622	8,991	18,956	100,569	—	—	—	—	100,569
Firestone Store, Martinsburg, W. Va.	1,826	333	38	2,197	—	—	—	—	2,197
Firestone Store, 604 Rhode Island Ave. NE Washington, D. C.	8,814	1,292	3,616	13,722	—	—	—	—	13,722
Bartgiss & Zimmerman, Frederick, Md.	19	—	94	113	—	—	—	—	113
Southern Md. Oil Co., La Plata, Md.	1,175	—	—	1,175	—	—	—	—	1,175
Firestone Tire & Rubber Co., 1620 So. 49th St., Philadelphia, Pa.	268	8	43	319	1,116	—	6	1,122	1,441
Firestone Store, Wilmington, Del.	1,969	375	270	2,254	1,136	—	5	1,141	3,395
Firestone Tire & Rubber Co., Baum Blvd., Pittsburgh, Pa.	2,719	774	9,770	13,263	583	259	318	1,160	14,423
Houser, Romney, W. Va.	64	—	243	307	—	—	—	—	307
Dezen's, Cumberland, Md.	5,241	366	3,682	9,289	248	15	513	776	10,065
Auto. Supply Co., Somerset, Pa.	4,062	19	105	4,186	—	—	—	—	4,186
Total	$130,613	$ 16,583	$ 38,639	$185,235	$ 15,640	$ 274	$ 2,127	$ 18,041	$203,276

* A breakdown between lessee and contract dealers can be obtained only by a costly and time-consuming analysis of voluminous records.

424 6. Names and addresses of Atlantic distributors in the Baltimore, Maryland District who are covered by a Form S-757:

Aero Oil Company—Frederick, Maryland
R. D. Rehmeyer—Hereford, Maryland
Stup & Costello—Gaithersburg, Maryland
Alger Oil Company—Rising Sun, Maryland
C. C. Hinkle—Pittsburg, West Virginia

7. Names and addresses of Atlantic dealers whose source of supply for Atlantic petroleum products was at some time prior to June 30, 1956 changed from Atlantic to an Atlantic distributor. Dates of change are not available. All such dealers were contract dealers.

D. S. Pennington—Westminster, Maryland
Margaret Rowe—New Windsor, Maryland
Harold T. Willard—Thurmont, Maryland
David H. Young—Middletown, Maryland
John C. Strine & Sons—New Windsor, Maryland
Yeiser-Kindig—Union Mills, Maryland
John Covell—R. D. #1, Lewistown, Maryland
Warrenfelt Brothers Garage—Wolfsville, Maryland
E. E. Henkle—Millville, West Virginia
J. R. Norman—Elk Garden, West Virginia
George Parker—Cumberland, Maryland
Potomac Motors—Cumberland, Maryland
T. E. Schaeffer—Mount Storm, West Virginia
Charles C. Sullivan—Cumberland, Maryland
Eastern Grain Growers—R. D. #5, Hagerstown, Maryland
Nathaniel Gray—Halltown, West Virginia
Guy Mason—Ganotown, West Virginia
Hummer's General Store—Darlington, Maryland
425 John T. Henry—Summit Point, West Virginia
Raleigh Moore—Millsville, West Virginia

Mrs. J. C. Myers—Shenandoah Junction, West Virginia
E. G. Robinson—Inwood, West Virginia
Paul Rutherford—Bolivar, West Virginia
D. L. Whittington—Sheppards Town, West Virginia
Charles Kendal—Clarksville, Maryland
Highland Garage—Ashton, Maryland
A. H. Reed—North East, Maryland
Viola Tarbert—Perryville, Maryland
C. L. Foster—Hereford, Maryland
Govans Battery Co.—5708 York Road, Baltimore, Maryland
Fred Jones—Melton Road, Greenhaven, Maryland
William M. Francis—Baldwin, Maryland
L. B. Bishop—Monkton, Maryland
H. C. Krout—Maryland Line, Maryland
Walker's Garage—Upper Cross Road, Maryland
Harford Motors—Harford Road, Baltimore, Maryland

8. Current addresses of Atlantic Training Facilities in the Baltimore, Maryland District:

Classrooms:

1621 South Boulevard—Charlotte, North Carolina

Training Stations:

Robert H. Price—Freedom & Berryhill, Charlotte, North Carolina
Kon Knell—36th & The Plaza, Charlotte, North Carolina

9. Names and then current business addresses of dealers and distributors in the Baltimore, Maryland
426 District whose relationships with Atlantic ceased in 1954 or 1955 under the circumstances indicated:

(a) Leases or contracts cancelled during their terms

are shown below. In all cases, formal termination was either by notice of cancellation from the dealer, by mutual cancellation by the dealer and Atlantic, or by death of the dealer, except for the case of Michael J. Clifford, in which notice of cancellation was given by Atlantic.

(i) Lessee Dealers

J. H. Bair, U. S. #301, North Charles Street, LaPlata, Maryland.

Lawrence E. Bowers, 34th & Keswick Road, Baltimore, Maryland.

Gerard S. Brenner, 106 Eastern Avenue, Essex, Maryland.

Gerard S. Brenner, 829 Eastern Boulevard, Baltimore, Maryland.

Olive I. Britner, Virginia Avenue & Englewood Avenue, Hagerstown, Maryland.

Edward L. Broom, 907 South Potomac Street, Hagerstown, Maryland.

Camer Carter, Reisterstown Road & Garrison Avenue, Baltimore, Maryland.

Brady B. Caudill, U. S. Route 40, Aberdeen, Maryland.

Charles V. Cearfoss, Ritchie Highway & Jumpers Hole Road, Elvaton, Maryland.

427 Michael J. Clifford, Park Heights & Garrison Avenues, Baltimore, Maryland.

Raymond E. Dabney, Joppa Road East of Loch Raven Boulevard, Baltimore, Maryland.

Raymond E. Dabney, 106 Eastern Avenue, Essex, Maryland.

H. E. Davis, 734 Potomac Avenue, Hagerstown, Maryland.

T. C. Eckhardt, Fleet & Flagley Street, Baltimore, Maryland.

William P. Edwards, U. S. Route 40, Aberdeen, Maryland.

Albert C. Fell, Harford & Overland Avenue, Baltimore, Maryland.

William Henry Fridinger, Jr., 907 South Potomac Street, Hagerstown, Maryland.

Hunter R. Lamb, 106 Eastern Avenue, Essex, Maryland.

Franklyn L. Layne, U. S. 301, Bel Alton, Maryland.

John Leabhart, Jonathan & Charles Streets, Hagerstown, Maryland.

Carroll E. Long, Reisterstown & Chatsworth Roads, Reisterstown, Maryland.

The M. G. K. Motor Co., Henderson Boulevard & Glenn Street, Cumberland, Maryland.

H. H. Marks, Joppa Road East of Loch Raven Boulevard, Baltimore, Maryland.

Joseph Brent Martin, U. S. 301 North of Charles Street, LaPlata, Maryland.

428 McAninch & Bills, U. S. 1 & Gorman Avenue, Laurel, Maryland.

Arthur E. Pittman, 34th & Keswick Road, Baltimore, Maryland.

Arthur E. Pittman, Reisterstown Road & Garrison Avenue, Baltimore, Maryland.

Teddie Rhone, Reisterstown Road & Garrison Avenue, Baltimore, Maryland.

Joseph L. Rohrer, Jonathan & Charles Streets, Hagerstown, Maryland.

Cornelius S. Romedy, Liberty Heights & Howard Park Avenues, Baltimore, Maryland.

Raymond J. Rosendale, Reisterstown Road & Garrison Avenue, Baltimore, Maryland.

S. & S. Tire Co., 630 West Franklintown Road, Baltimore, Maryland.

James F. Schafer, 6510 Harford Road, Baltimore, Maryland.

Joseph K. Shaner, Jonathan & Charles Streets, Hagerstown, Maryland.

Donald T. Sinicropi, U. S. 1, South, Laurel, Maryland.

Raymond P. Sipes, Virginia & Englewood Avenues, Hagerstown, Maryland.

George J. Smith, Jr., Governor Ritchie Highway, Glen Burnie, Maryland.

Paul L. Stewart, Jonathan & Charles Streets, Hagerstown, Maryland.

429 Victor H. Strother, Park Heights & Garrison Avenues, Baltimore, Maryland.

Stanley E. Teter, Reisterstown Road & Slade Avenue, Pikesville, Maryland.

Raymond Viands, Jonathan & Charles Streets, Hagerstown, Maryland.

M. F. Waters, 734 Potomac Avenue, Hagerstown, Maryland.

Homer A. Welsh, 638 Green Street, Cumberland, Maryland.

(ii) Contract Dealers:

Fred Bloomquist, U. S. 40, North East, Maryland.

E. A. Gray, Nottingham, Pennsylvania, Route 1.

Russell S. Myers, Fairplay P. O., Maryland (Tilmington, Maryland).

Ramsburg Supply Co., Edmondson Avenue Ext., Ellicott City, Maryland.

(iii) Distributors:

None.

(b) Leases or contracts expired and were not renewed because of either the individual decision of Atlantic or the dealer, or the mutual decision of both:

(i) Lessee Dealers:

Julius H. Finkle, 100 Compromise Street, Annapolis, Maryland.

430 (ii) Contract Dealers:

Gatto Chevrolet Sales, Havre De Grace, Maryland.
Kindle & Griffith, R. F. D. Keddysville, Maryland.
Mrs. E. V. Peltzer, 514 Main Street, Reisterstown, Maryland.
Smouse & Wambaugh, R. F. D. 1, Hyndman, Pennsylvania.
Joseph Spencer, U. S. 301, Wells Corner, Upper Marlboro, Maryland.

(iii) Distributors:

None.

10. Copies of "warning letters" sent to dealers and distributors in the Baltimore, Maryland District in the period April 1, 1950 through June 30, 1956, and any subsequent correspondence between Atlantic and such dealers and distributors.

Copies of the following are attached:

(a) Warning letter of May 2, 1955 to:
Berman and Shor
Reisterstown Road & Fordleigh Lane
Baltimore, Maryland (CX 253)

(b) Warning letter of December 8, 1953

Termination Notice of January 4, 1954 to:
Michael J. Clifford
Park Heights and Garrison Avenue
Baltimore, Maryland (CX 254-A, B)

* * * * *

440 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, before we call our first witness, I would like to make a statement with respect to several documents in the record.

With respect to the documents in the record referred to or identified as Commissions' exhibits 255 to 272, inclusive, appearing on pages 379 through 383 of the record, it should be noted that they were all of the warning letters sent by Atlantic during the period June, 1950, through June, 1956, to which dealers in the three marketing regions in which the Goodyear TBA sales commission plan was in effect.

It should also be noted that warning letter was sent to Mr. Robert R. Esposito, Morris Avenue, Morrison Road, Springfield, New Jersey, but that the papers are unavailable because the file was inadvertently destroyed.

It should also be noted that the data requested in item 7 for the Wilmington, Delaware and Baltimore districts appearing at pages 410 and 424 respectively of the record was for the period April, 1950, through June 30, 1956.

I would like to call Mr. George Hill to the stand, please.

GEORGE J. HILL, JR., was thereupon called as a witness for the Commission, and having been duly sworn, testified as follows:

441 *Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. George J. Hill, Jr., 112 Julianna Terrace, Collingdale.

Q. Are you here in response to a subpena?

A. Yes, sir.

Mr. Kelaher: Will you hand your subpena to the Examiner.

The Witness: (Handing.)

By Mr. Kelaher:

Q. Mr. Hill, were you at one time an Atlantic leasee dealer?

A. Yes, sir.

Q. Will you please state the period during which you were an Atlantic leasee dealer?

A. August 1949 to December 1956.

Q. And please state the location of your station.

A. McDade, below Chestnut Street, in Darby, Pennsylvania.

Q. Now beginning in 1949, would you please state what TBA products you sold?

A. Lee of Conshohocken tires, Exide batteries, Fram filters, Dupont products, chemical products, and Thermoid fan belts, Thermoid hoses.

Q. From whom were such products purchased?

A. From Edward Parris.

Q. And where was Mr. Parris located?

A. At that time at Clifton Avenue on Chester Pike in Sharon Hill.

442 Q. And for how long a period did you carry the products you just named? Up until what time?

A. From the time I had started into the station.

Q. And did you then subsequently carry Goodyear TBA?

A. Yes, sir.

Q. When did you begin to carry Goodyear TBA?

A. I believe it was in March of 1951, but I am not definitely sure.

Q. And in or about that time, did you attend an Atlantic dealer meeting?

A. I did, sir.

Q. And where was the location of that meeting?

A. 69th Street, at a restaurant, I believe Kostik's.

Q. Who were present at that meeting?

A. I would say in the neighborhood of approximately 40 dealers, Goodyear representatives, and also Atlantic.

Q. Were those 40 dealers you referred to Atlantic dealers?

A. Yes, sir.

Q. And what transpired at that meeting?

A. We had a training film showing the various qualities of the Goodyear tire and sponsoring the program they were about to set up on Goodyear merchandise and batteries.

Q. At that time was it announced that Atlantic was to sponsor the Goodyear TBA line?

A. Yes, sir.

* * * * *

443 By Mr. Kelaher:

Q. Mr. Hill, what was the purpose of the meeting just referred to?

A. My impression was to get across the quality and construction of the Goodyear merchandise and to show how the program would actually work and be a better product, sell better.

Q. Did Atlantic at that time state that it was going to sponsor Goodyear TBA, if you know?

A. Yes, sir.

* * * * *

Q. After the meeting in question, Mr. Hill, what brand of TBA or what TBA line did you begin to carry?

A. Well, in the beginning I had a sufficient stock of Lee—in fact, I had about 75 to 80 tires and I didn't buy Goodyear tires right off the bat because I was con-
444 cerned about what I had in stock.

Now in a few incidents we run into such as filters and such where as I run out of one, I replace it with the other, but it wasn't a mass change-over.

Q. When you say replace it with the other, what do you mean?

A. They carried AC and Purolator.

Q. By "they," who are you referring to?

A. Atlantic, but—

Q. Who did you begin to purchase—

Mr. Thompson: (Interposing) He didn't finish his answer.

Mr. Kelaher: Excuse me.

A. I would say Atlantic was—it was actually through Ed Parris, the same distributor that we had with Lee.

By Mr. Kelaher:

Q. Do I understand you to say that Mr. Parris then became the Goodyear TBA supplier?

A. Yes, sir, TBA distributor.

Q. Now, you stated that you continued to carry Lee tires. Were you satisfied with carrying Lee tires—

A. Up until that point I was happy with them because they had a road hazard guarantee and they were cheaper in price and we made a little more money on them.

Q. Did the Goodyear tire have a road hazard guarantee?

445 A. No, sir.

Q. Was the Goodyear tire price higher than the Lee price?

A. They were higher because you didn't quite get the discounts we got with Lee.

Q. I see. Now did you have any tire signs hanging in your station when you entered the premises in August of 1949?

A. I did.

Q. What type of signs did you have?

A. The outdoor, big sign, that was electrically lit up.

Q. Do you know of your own knowledge how long that sign had been at that particular station?

A. Well, I have been in that neighborhood since 1937 and it was there when I come in the neighborhood.

Q. After you changed—or rather, after March of 1951, was the Lee sign still on the premises, in March 1951?

A. In March 1951, I believe it was still on the premises.

* * * * * *

446 Q. Were you advised by anyone that the Lee sign was to be taken down?

A. Yes, sir.

Q. Who advised you?

A. Lee of Conshohocken.

Q. And what did Lee of Conshohocken represent to you?

A. They told me they had word to take the sign down.

Q. Who gave them the word?

Mr. Thompson: That is objected to.

Mr. Kelaher: I will rephrase the question.

By Mr. Kelaher:

Q. State the substance of the conversation between you and the Lee of Conshohocken representative.

A. Larry Deemer from Lee, the Branch Manager, asked me if I wanted the sign taken down. They had word to have it removed.

Q. And did he indicate whom he had received the word from?

A. No.

Mr. Thompson: It doesn't matter what was indicated.

The Witness: (Continuing) And he asked me if I wanted to fight the issue and I said "no."

By Mr. Kelaher:

Q. You said "no." What happened thereafter?

447 A. The sign was removed.

Q. And was it replaced by another type of sign?

A. Goodyear.

Q. And were you permitted thereafter, or did you thereafter advertise Lee tires?

Mr. Thompson: Which question are you asking?

Mr. Kelaher: I will withdraw the first one.

By Mr. Kelaher:

Q. Did you thereafter advertise Lee tires?

A. Nothing other than the tire stands.

Mr. Correa: I didn't hear that.

The Witness: Nothing other than the tire stands.

By Mr. Kelaher:

Q. Where were the tire stands located?

A. In front of the station with tires.

Q. Did you have thereafter any signs advertising—

A. (Interposing) Outside, no, sir.

Q. —(Continuing)—Lee tires.

Why didn't you advertise Lee tires thereafter?

A. Well, I had, as I say, a pretty heavy stock and I was trying to pair them off and I would have to buy tires in between to try to match them up in pairs to get rid of them. But I had no advertisement other than the tire stands when the change-over was made.

Q. Did you ever attempt to advertise Lee tires after that time?

448 A. No, sir.

Q. Why didn't you?

(After pause.)

Q. You may answer the question.

A. I really don't know. I mean, I just felt that I didn't want to buck the issue.

* * * * * *

By Mr. Kelaher:

Q. After March 1951 was any other advertising placed on your premises with respect to TBA?

A. Decals in the top of the windows, with Goodyear on them. And of course the original Goodyear tire sign.

Q. So your station was identified as Goodyear TBA thereafter, is that correct?

A. That is right.

Q. Do you know approximately the value of the stock of Lee tires you had on hand in or about March, 1951?

A. Rough guess, about a thousand dollars, I would say.

Q. Thereafter, who was your primary supplier of TBA products?

A. Mr. Ed Parris.

Q. And what line did you purchase from him?

A. Goodyear batteries, tires, AC filter, and he still had Dupont products. We had Goodyear fan belts 449 in place of Thermoid and Goodyear hose in place of Thermoid.

Q. Did you have any Thermoid fan belts on hand when the change-over occurred?

A. Yes, sir, they were re-sleeved. In other words, they put the Goodyear numbers on them for us.

Q. They put the Goodyear brand name on them too?

A. Yes, and they re-sleeved them to the Goodyear numbers.

Q. Now did you pay for your advertising from Lee?

A. No.

Q. Did you pay for your advertising, the advertising furnished by Goodyear?

A. Yes.

Q. Did you do a credit card business, Mr. Hill?

A. Yes, sir.

Q. Incidentally, about what was your gallonage at your station?

A. 32,000 to 35,000.

Q. Were you one of the larger dealers in that area?

A. Maybe the largest in Darby.

Q. And approximately how much of your business was on credit, do you recall?

A. Well, I always felt proud to say about one hundred dollars a day.

Q. That would be approximately how much of your overall business, percentage-wise?

450 A. Twenty-five percent.

Q. During the period you were in the station, when you originally went into the station, what was the term of your lease?

A. One year. The original lease, I believe, was only six months and then I got a year.

Q. And were there rent increases during that period?

A. Definitely.

Q. How often did the rent increases occur?

A. Well, I would say once a year, on the average. That is, as the station progressed.

Q. Do you recall one occasion where your rent was raised to a minimum of $100?

A. Yes, I do.

Q. Would you please state what happened at that time?

A. Well, in that particular case it was raised over $100 as a minimum and I protested it and was quite put out about it, but it didn't do me a lot of good to protest it. I didn't get anywhere and when I was done, why, I signed a lease and forgot about it.

Q. Do you recall what that increase was from, what your prior rent was, before it hit $100 minimum?

A. No I don't, sir.

Q. Do you recall when your last lease was entered into?

A. The end of 1954.

451 Q. And do you recall the circumstances surrounding the signing of it?

A. Well, I was handed a lease on the last day of the month in the afternoon and they told me I had to get it back in the mail by that night to make it legal.

Q. When?

A. Have the lease back in the mail by that night and I had very little time to look over the lease. It was on the last day of the month and I signed a three-year lease thinking it was a one-year lease, and didn't know it.

Q. How many hours, approximately, did you have to make up your mind?

A. Four and a half to five hours. I had to look it over while work was still going on and it was a pretty busy afternoon.

Q. How many hours did you keep your station open from the time you entered into business?

A. Twenty-four hours a day.

Q. Was there ever a time when you desired to reduce the number of hours of station operation?

A. Well, in 1955 business started to drop on the last shift, I mean the business was doing just about as well, but the expenses had gone up, manpower, rent, overhead, light and heat, so the station for the next two years just stood at a standstill, financially, and I would operate that night shift at probably about a $5.00 a day loss, by
452 my figures. So I would liked to have dropped that shift, but I couldn't get together and couldn't get permission to drop it.

Q. Permission from whom?

A. From the Atlantic representatives to drop it.

Q. Do you recall—

Mr. Thompson: (Interposing) I object to this line of questions and answer and ask they be stricken unless there is a specific identification of who in Atlantic talked

to him and what was said. The testimony that Atlantic wouldn't give permission is just a conclusion of this witness, and meaningless on the record.

Mr. Kelaher: I intend to develop this further, your Honor.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: I should like to object to this entire line on behalf of the respondent Goodyear on the ground that all of this is res inter alios acta.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. Mr. Hill, do you recall a conversation with Atlantic representatives in connection with the incident you are now referring to?

A. Well, I run into a problem on my night shift with manpower—

453 Mr. Correa: The question was "Do you recall." I move the answer be stricken.

Hearing Examiner Kolb: Read the question.

(Question read.)

A. Yes.

By Mr. Kelaher:

Q. Would you please state the circumstances, the conversation, rather, and identify the other party.

A. Stephen Petrison, the Atlantic salesman.

Q. Now would you please state the conversation?

A. Well, I was telling him about my problems on the night shift, that I thought I would have to close the station at those hours, that I couldn't make them pay. He said, well, he thought that the company wouldn't go for a closing at night time and he thought if I had any ideas like that, that it would be best to give up the station, sooner than run into trouble, more or less leave the station

if I thought I would have to close it. They thought that the station should be open.

Q. What happened after that?

A. Well, I didn't make up my mind at that time. That was around Labor Day, and I went on another month and a half before I actually decided to give up the station.

Q. When did you give up the station?

A. I signed a mutual cancellation in October of 1956.

454 Q. Mr. Hill, referring back to the meeting at Kostick's in or about March 1951, do you recall whether Atlantic representatives stated that you had your choice of the brand of TBA you could carry?

A. I don't really remember, sir.

Q. And you stated that there were approximately 40 other dealers, Atlantic dealers, present at that meeting?

A. That is right.

Q. Now based on your own knowledge, do you know whether those other Atlantic dealers changed over to the Goodyear TBA line at the time you did?

A. I only know a few personally. I mean, I know a lot of them to see them, but I only knew maybe 10 or 12 personally. They changed, of course.

* * * * *

By Mr. Kelaher:

Q. At that time, Mr. Hill, did you have any reason for discontinuing the sale of Lee tires?

A. For discontinuing the sale?

455 Q. Yes, sir.

A. Yes. In order to purchase the tires, I had to purchase them from Bryn Mawr and in order to adjust the tires, I had to adjust at Bryn Mawr and we would lose an hour's time every time we had a—

Q. I am referring to the March 1951 meeting, up to that time you were—

A. (Interposing)—Satisfied with them.

Q. You were satisfied with Lee tires?

A. That's right.

Q. Mr. Hill, before the change-over to Goodyear, I believe you stated you were buying Lee tires from Mr. Parris, is that correct?

A. That is true.

Q. And would the adjustment be made—

A. (Interposing.) Be done by Mr. Parris.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross examination?

Mr. Thompson: Atlantic Refining has no questions, sir.

Mr. Correa: We have none, if your Honor please.

Hearing Examiner Kolb: That is all, Mr. Hill.

(Witness excused.)

Mr. Kelaher: Mr. Examiner, I would like to call Mr. Heller.

456 EDWARD C. HELLER was thereupon called as a witness for the Commission, and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. Edward C. Heller, 55th and Walnut, 5500 Walnut, Philadelphia, Pa.

Q. And the name of your company?

A. E. P. Rotzell Company.

Q. Will you describe your company's business, please?

A. Hard parts, accessories, service station, garage, car dealer equipment.

Q. How about—

Mr. Thompson: (Interposing.) May I have that answer read? I couldn't follow that.

Hearing Examiner Kolb: Read the answer please.

(Answer read.)

By Mr. Dias:

Q. Are you familiar with the term "TBA"?

A. Yes, sir.

Q. Do you know what that includes?

A. Yes, sir.

Q. Does your company handle tires?

A. No tires.

457 Q. How about batteries?

A. Yes, sir.

Q. Will you name the brand of batteries?

A. Delco.

Q. Have you always carried Delco batteries?

A. No, sir.

Q. How long have you carried them?

A. A little over a year.

Q. And prior to that time—

A. (Interposing.) Willard.

Q. How long did you carry Willard?

A. Prior to my coming with the company.

Q. How long was that?

A. Well, I came with the company seven years ago.

Q. Have you been a salesman with Rotzell for those 7 years?

A. That's right, sir.

Q. How about filters, what brand of filters?

A. Purolator.

Q. And have you carried those for the full seven years?

A. Yes, sir.

Q. How about belts and hoses?

A. Durkee-Atwood.

Q. Spark plugs?

A. Champion.

Q. Chemicals?

458 A. The Dupont chemical line.

Q. What class customer does the Rotzell Company solicit?

A. Service stations, independent repair shops, garages, car dealers.

Q. What is the company's general trade area, do you know?

A. In what way?

Q. The company as a whole, the Rotzell Company, where do they sell?

A. All over the city of Philadelphia, Delaware County.

Q. Is that the entire trading area of the company?

A. Well, they do sell some over in Jersey, through the office, but that isn't in the salesmen's category.

Q. How many salesmen are employed?

A. Five.

Q. And how are they compensated, salary or commission?

A. Straight commission.

Q. Does Rotzell Company offer delivery service?

A. Yes, sir.

Q. How many trucks do they operate for that purpose?

A. Five.

Q. How many does the Rotzell Company—does the Rotzell Company have any branches?

A. Yes, sir. We have the main store and four branches.

Q. Can you give the addresses?

A. 18th and Christian—

459 Q. (Interposing.) Is that the main store?

A. No, the main store is 1627 Fairmont Avenue; the branch at 18th and Christian, one at 55th and Walnut,

and one on Lancaster Pike in Ardmore and one 6118 Germantown Avenue.

460 Q. Now, what is your particular sales territory?

A. West Philadelphia and eastern Delaware County.

Q. And do you solicit service stations?

A. Yes, sir.

Q. Are there any Atlantic stations in your sales territory?

A. Yes, sir.

Q. Do you sell batteries or accessories to any of those Atlantic stations?

A. Very very little.

Q. Do you have any regular accounts among the Atlantic stations?

A. Yes.

Q. Can you state how many?

A. Probably four or five of them.

Q. Can you tell us how many stations, Atlantic stations, there are in your sales territory?

A. Probably around 30, 35.

Q. Have you called on the 35 or 40 from time to time?

A. I have.

Q. And can you give us some idea how often you called upon them?

A. Well, I may, if I start to call on a new customer, I may call on him five or six weeks, straight in a row, if I see nothing, then I drop it and maybe once every two weeks, if I still get no business, then I drop down to

461 a month and after that I forget about it.

Q. I see. And how many stations would you say you sell to regularly, Atlantic stations?

A. Oh, in hard parts, such as king pins and bushings, mufflers, tail pipes, those items, I have four or five Atlantic customers that buy. But nothing in the TBA line.

Q. Now, on these Atlantic stations, that buy these hard parts, do you try to sell them batteries and accessories?

A. Yes, sir, I have.

Q. And how about the others, do you solicit their business for batteries and accessories?

A. Yes, sir.

Q. These stations, these Atlantic stations in your sales territory, do you recall the type, or do they carry TBA?

A. Yes, sir.

Q. And do you recall the brands that are advertised by the stations?

A. Goodyear tires, batteries.

Q. Is that true of all of them?

A. (Continuing.) Du Pont Chemicals.

Q. And is that true of all the stations, all the Atlantic Stations?

A. In my area, yes, sir.

Q. Have you ever called on a new Atlantic station? Have any new Atlantic stations opened in your sales territory.

462 A. Yes, sir.

Q. And have you called on those new stations?

A. Yes, sir, I have.

Q. How soon after they opened?

A. Oh, I try to watch and call within the week.

Q. And have you ever sold anything to those stations?

A. Some jacks, equipment that he may need, tire tools, or jacks that he may need for the driveway service.

Q. Have you sold them batteries or accessories?

A. No, sir.

Q. Have you called on new operators of old stations?

A. Yes, sir.

Q. And what has been your experience with those?

A. Practically the same.

Q. Now, on those new stations that opened up, did they have TBA supplies?

A. Yes, sir.

Q. Do you recall the brand they had?

A. Goodyear tires and batteries.

Q. And did the new operators of old stations have TBA on their premises?

A. That is right.

Q. And what was it?

A. Same brands.

Q. Do you recall any Atlantic stations that pur-
463 chased your TBA line at any time and then subsequently discontinued?

A. Well, a year or so ago we had the Du Pont Chemicals representative with us and we were the first ones to have him in the city of Philadelphia. I sold a couple of the Atlantic dealers, fellows I had known, and I ran into an Atlantic salesman later on, and after that, I had no more sales of the Du Pont Chemicals. As one dealer told me, that he was to save it for the Atlantic salesman the next time he came around.

Mr. Thompson: I object to it and move the answer be stricken unless it makes the test laid down by your Honor, of identification of the time, place and names.

By Mr. Dias:

Q. Can you recall the name of the dealer and the time this was told to you?

A. I can't recall the dealer, but I know the salesmen, Joseph Snyder, with the Atlantic Refining Company.

Q. Now, the dealers, you don't recall his name? Where was his station, do you recall that?

A. Fifty-five and Walnut.

Q. And can you give us a time, approximately that that occurred?

A. You mean the date?

Q. The date that he told you he—

A. No, I couldn't. I couldn't.

464 Q. Well, you stated about a year ago, did you not?

A. Yes it was about a year ago. It was—if I had to give you the month or the—the month that it happened. I couldn't. But that particular—it was not this past Spring, Spring a year ago, we had the Du Pont Chemical man with us first rather than the Atlantic salesmen. They come in the Spring of the year and work with each one of their jobbers, with their jobber salesmen, their merchandising men, they try to help the salesmen in each territory put over that particular product.

Q. Are there any Atlantic stations in your sales territory that advertise other than Goodyear TBA?

A. Only independents.

Q. And what is an independent?

A. Where he owns his own property.

Q. Do you know of any that fit that category?

A. Yes, sir, I do.

Q. Can you name them for us?

A. Frank Myers, 57 and Pine, Joe Klein at 38th and Walnut, and Rabins Brothers at 38th and Girard.

Q. And what do those stations advertise in the TBA line?

A. Frank Myers is Lee tires and Lee batteries, so is Joe Klein, Rabin Brothers is Lee tires, but batteries I couldn't tell you what their brand battery is.

Q. Do you know who the Goodyear supplier is in
465 your sales territory?

A. There is two or three of them.

Q. Can you name them?

A. Frank Hagan, Ernie Miller, Ed Parris fringes my territory.

Q. Can you give us some addresses?

A. Frank Hagan is 54th and Chester Avenue, Miller is

on Garrett Road in Upper Darby, and Ed Parrish is out on Sharon Hill or Glenolden, I don't know which he is now.

* * * * *

By Mr. Dias:

Q. Are you in competition in the sale of these TBA items with Messrs. Hagan and Miller and Parrish?

A. Yes, sir.

Q. Do you offer delivery service to these accounts?

A. Yes, sir.

Q. How often do you give them delivery service?

A. Why, I have seen customers get delivery service as high as four or five times within one day.

Q. Now, if you know—

466 Mr. Thompson: I move the answer be stricken as non-responsive.

Hearing Examiner Kolb: Read the question and answer.

(The reporter read the question and answer as follows:

"Question: How often do you give them delivery service?

"Answer: Why, I have seen customers get delivery service as high as four or five times within one day.")

Hearing Examiner Kolb: Were you referring to his delivery service—

Mr. Dias: Delivery service, his own company.

Mr. Correa: His question was what do they offer, not what is received.

Mr. Thompson: Not that he sent—

Hearing Examiner Kolb: I will overrule it and let it stand.

By Mr. Dias:

Q. Are you familiar with the Goodyear battery, Mr. Heller?

A. In what way, I am familiar with the battery, yes.

Q. Have you had any occasion to compare your battery with theirs?

Mr. Correa: I ask that the witness be instructed to answer that yes or no, because I will object to any
467 expansion on this until the witness is qualified.

Hearing Examiner Kolb: Answer yes or no.

The Witness: Only as far as price-wise, to sell a dealer.

By Mr. Dias:

Q. How does your battery compare price-wise?

A. Competitive.

Q. And by that what do you mean? Competitive price-wise with Goodyear is the same less or more?

A. One battery could be more, another a little less, but I think over the whole line, they would be very competitive.

Q. Mr. Heller, referring to these Goodyear supplier points, Mr. Frank Hagan, does he compete with you and do you compete with him in your entire sales territory?

A. No, well, I think he has a certain amount of service stations that he is supposed to take care of. I don't know how their set up is as far as knowing how many dealers he has or what his territory is. I don't know.

Q. You don't know. Is that same true of Ernie Miller?

A. That is right.

Q. You don't know.

A. I don't know what their area or territory would comprise.

Mr. Dias: That is all, your Honor.

468 Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

469 Hearing Examiner Kolb: The hearing will come to order.

Cross examination.

Cross-Examination by Mr. Thompson.

Q. Mr. Heller, are you familiar with the over-all business of the Rotzell Company?

A. Yes, sir.

Q. You have a subsidiary that operates out the main line, haven't you?

A. That's one of our branch stores.

Q. One of your companies?

A. That's right.

Q. As a matter of fact, sir, isn't it true that your company was just incorporated a year or two ago and succeeded to another company that had been operated by Mr. Rotzell?

A. That's right, sir; he passed away and Mr. MacPherson took it over.

Q. Mr. MacPherson took it over?

A. That's right.

Q. In recent years your company has been doing very well, has it not?

A. Yes, sir.

Q. Do you ever see the Dunn and Bradstreet reports on your company?

470 A. No, sir; I have not.

Q. Am I correct in my understanding that the volume of your sales and your profits have been substantially increasing in the last few years since Mr. MacPherson took it over?

A. That I couldn't say; I don't get into the books that—

Q. In dealing with service stations generally, do you offer to sell them on cash or do you give them credit?

A. We have both.

Q. Does that depend upon the appraisal of the financial standing of each of the prospective customers?

A. I take a credit statement and turn it into the office and it's up to the office to pass them on credit.

Q. Now, when you say you take a credit statement, do you mean you ask each of the service stations whom you solicit to give you information with respect to his own financial standing?

A. No, not his financial standing.

Q. Well, how do you determine when you solicit a service station whether it be Atlantic or any other one, whether you are going to offer to sell him for cash or for credit?

A. I ask him if he would like to have an open account and if he gives us the references that our office will open the account it's opened for him for credit.

Q. Could you tell us approximately how many of the Atlantic accounts you have solicited you have offered to sell on credit?

471 A. Twelve or fifteen of them.

Q. And there are 30 to 40 in your own particular sales area?

A. That's right, sir.

Q. Now, going back, if I may, to three of the service stations whom you called "independent"—

A. Independent, that's right, sir.

Q. I think you said they owned those stations?

A. That's right, sir.

Q. Did you mean that they owned them or that Atlantic does not own them?

A. They own them—those three own them themselves.

Q. And they are what are sometimes referred to as contract dealers?

Q. Are you familiar with that?

A. Not as contract dealers, but as independent dealers.

Q. Do you solicit those three accounts?

A. Yes, sir.

Q. Are they regular customers of yours?

A. Yes, sir.

Q. What do you sell them?

A. Hard parts, chemicals and accessories.

Q. Do you sell them batteries?

A. Fill-in batteries. I have sold all three of them batteries.

472 Q. By fill-in batteries, you mean special order?

A. Yes.

Q. They don't buy batteries regularly from you?

A. Not regularly; no, sir.

Q. Approximately how many active accounts does your company have in all of Philadelphia and Delaware County, do you know?

A. No, I do not.

Q. How many active accounts do you personally handle in your sales territory?

A. About 120.

Q. And those are in various categories, I assume, of the type you have mentioned, some garages?

A. That's right, sir.

Q. Some commercial accounts, or don't you handle them?

A. No, we have a regular fleet commercial man that calls on nothing but those accounts.

Q. Do the five trucks owned by the company handle deliveries to all of the Philadelphia and Delaware County area in which you operate?

A. Yes, sir.

Q. They certainly couldn't make four or five deliveries to very many of them, could they?

A. Each store has his own truck.

Q. Each store has one truck?

A. That's right. Each store has one truck.

473 Q. And your particular store is—

A. Fifty-fifth and Walnut.

Q. And out of that store you handle deliveries to West Philadelphia and Delaware County?

A. That's right, sir.

Q. And one truck attempts to service that whole geographical area?

A. That's right, sir.

Q. Would you mind telling me what you are talking about when you refer to hard parts because the phrase is new to me and I don't quite understand it.

A. King pins, brakes, wrist pins, rings, upper pins and bushings on the front end, coil spring, motor and chassis parts.

Q. It's the sort of equipment which is used for minor repairs of automobiles?

A. That's right, sir.

Q. Is that type of business also handled by Suburban Auto Parts Company?

A. Yes, sir.

Q. That company, then, is covering the same area that you sell to, is it not?

A. No, sir; they come to City Line and go from there West.

Q. In other words, they operate in Montgomery County?

A. That's right, sir.

474 Q. And you handle Delaware County?

A. That's right, sir.

Q. Yours is an extremely competitive business, is it not?

A. Yes, sir.

Q. Do you know how many companies there are that are attempting to sell hard parts and accessories in West Philadelphia and Delaware County?

Mr. Dias: I object to the form of the question, to the use of the word "attempting".

Hearing Examiner Kolb: The objection will be overruled.

Mr. Dias: I think Commission's Counsel is restricted to the phrase "sell to".

Mr. Thompson: I shall be happy to rephrase the question, sir, if there is any objection at all on the part of the staff.

By Mr. Thompson:

Q. Do you know about how many companies competing with Rotzell solicit accounts in West Philadelphia and Delaware County?

A. Probably 15 or 18 of them, maybe more.

Q. Thank you, that's all I had.

Mr. Correa: I have no questions at the moment.

Mr. Thompson: Thank you so much, sir.

Hearing Examiner Kolb: Any further questions?

475 Mr. Dias: Just a minute.

That's all, your Honor.

Hearing Examiner Kolb: That's all, Mr. Heller. Thank you very much.

(Witness excused.)

Mr. Kelaher: May we go off the record, your Honor?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. The hearing will come to order.

Mr. Kelaher: Mr. Examiner, counsel for respondent Goodyear and counsel supporting the complaint have entered into a stipulation with respect to the testimony of appropriate officers and employees of Goodyear if called as witnesses in this matter.

This stipulation will make it unnecessary to call officers and/or employees of respondent Goodyear in so far as we know at this time. However, it's clearly understood that this does not foreclose counsel supporting the complaint

from calling such officers and employees of respondent Goodyear if circumstances later dictate. In that connection I would like to state that we are presently attempting to stipulate further testimony in the matter with respect to counsel for respondent Goodyear.

I would also like to add that counsel for respondent
476 Goodyear have cooperated fully in preparing this stipulation and along with the stipulations we have entered into with counsel for respondent Atlantic we feel that they have greatly expedited the trial of this matter.

At this time I would like to have the stipulation read into the record.

Hearing Examiner Kolb: You may proceed.

Mr. Correa: No objection.

Mr. Kelaher: United States of America, Before the Federal Trade Commission.

In the Matter of The Goodyear Tire and Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

Stipulation Re Testimony of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

It is hereby stipulated and agreed by counsel for the respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., and by counsel supporting the Complaint that if appropriate officers and employees of said respondents were called as witnesses by counsel supporting the Complaint in this proceeding, they would testify in the manner set forth below, and that the facts stated below may be accepted by the Commission for the purpose of its determination and order

herein as if such witnesses had so testified and in
477 lieu of such testimony.

The statements set forth below are made solely for the purpose of this proceeding and for no other action, case or proceeding.

For the purpose of this stipulation, both The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc. are referred to as "Goodyear."

Company Organization—Sales of TBA
(As of April 22, 1957).

1. E. J. Thomas, President, is the Chief Executive Officer of Goodyear. Under the Chief Executive Officer the Company is divided into three broad areas—Production, Finance, Sales—each under the general jurisdiction of an Executive Vice President.

2. Mr. R. S. Wilson, Executive Vice President—Sales, has general jurisdiction over sales including sales of TBA. Under Mr. Wilson, Mr. Victor Holt, Jr., Vice President, has direct supervision over the Tire Sales Division. (CX-80-R.)

3. O. E. Miles, Sales Manager, Tire Division, reports directly to Mr. Holt. (CX 80-R.)

4. Reporting to Mr. Miles are six Regional Managers (Eastern, Southern, Central, Midwest, Southwest and Western.) Under the six Regional Managers are forty-nine District Managers. (CX-80-S and CX-80-U.)

5. Also reporting directly to Mr. Holt is R. W.
478 Fitzgerald, General Merchandising Manager, who has supervision over the Petroleum Sales Department, located in Akron. C. A. Eaves, Jr., became Manager of the Petroleum Sales Department on November 1, 1956, when S. A. Gaylord, Manager since January 1, 1934, became Consultant. Mr. Gaylord retired on January 31, 1957. (CX 80-T.)

6. Mr. Fitzgerald also has jurisdiction over the Associated Merchandise Department of which C. L. Metzger is Manager. The Associated Merchandise Department includes the Battery Sales Department, J. C. Thomas, Manager, and the Car & Home Merchandise Department, A. E. Patterson, Jr., Manager. The two latter departments are charged with procurement and merchandising of, respectively, batteries and automotive accessories, sold by the Company at wholesale to dealers and at retail through its stores. (CX 80-T.)

7. Also reporting directly to Mr. Holt is L. W. Moore, General Manager, Retail Stores. Mr. Moore has over-all supervision of the approximately five hundred retail stores owned and operated by the Company and located throughout the country. These retail stores also sell at wholesale. Each store is supervised at the field level under the Manager of the District in which it is situated. (CX 80-R.)

8. Working under the various District Managers are approximately four hundred and eighty Goodyear salesmen, called "general line salesmen," who solicit and service Goodyear tire dealers. Compensation paid to the 479 general line salesmen is in the form of salary plus bonus based upon sales quotas reflecting the potential of their territory.

9. The tire dealers solicited and served by the Goodyear general line salesmen include over 12,000 independent franchised Goodyear tire dealers plus an unknown but very substantial number of dealers who sell Goodyear tires but who have no contracts with Goodyear. Most of the contract dealers handle batteries and accessories, but this is at their election. Full TBA is available to them but is not required. The contract dealers sell to anyone who will buy—motorists, other dealers, commercial accounts, industrial accounts, government accounts, etc. Many solicit petroleum service stations and some may solicit oil company distributors.

10. The general line salesmen do not ordinarily attempt to call regularly on the many thousands of petroleum service stations scattered throughout the country. Instead they concentrate most of their sales efforts on the TBA supplying dealers who in turn solicit and service their petroleum service station customers.

11. "TBA Supplying Dealer" is a term used to designate a franchised Goodyear tire dealer who, as a part of his normal business (which may and often does include retailing) serves as a wholesaler of Goodyear TBA to petroleum service stations. He buys his TBA from Goodyear on the same regular program as to price, dis-
480 counts, terms, product availability, etc., as is extended to all other Goodyear tire dealers, including even some petroleum service stations which, because of the nature or volume of their TBA business, may elect to purchase directly from Goodyear, in which event they would be franchised directly as Goodyear tire dealers.

12. The TBA supplying dealer is also solicited and assisted, particularly with respect to the petroleum service stations which he supplies, by one or more Goodyear Petroleum Representatives. Of a total of thirty-eight Petroleum Representatives, four are currently assigned to work on the Atlantic TBA program. The function of the Petroleum Representative is to cooperate closely with all oil company sales personnel in training and assisting petroleum service stations in selling TBA, thus furnishing liaison at the field level between Goodyear and the petroleum company as well as between Goodyear and the petroleum service stations. Goodyear's Petroleum Representatives are compensated on a salary basis.

13. The names of the four Petroleum Representatives currently assigned to work on the Atlantic TBA program are as follows:

Albert H. Shafer—Division Petroleum Representative
John Fitzgerald—Philadelphia-New Jersey Region

Frederick J. Dowling—New England Region (Deceased 4/26/57, successor to be named.)
John P. Anthony, Jr.—New York Region.

481 Products—

14. The entire range of Goodyear passenger and truck tires is made available to Atlantic accounts under the sales Commission Plan.

Passenger tires are offered in all sizes, tube-type or tubeless, black or white sidewall, and in various types and thread designs. They are priced as follows:

Price Category	Brand
Premium line	—Double Eagle (10 different sizes)
	—Captive-Air (10 different sizes)
	—Blue Streak (6 different sizes)
	—Nylon custom Super-Cushion (13 different sizes)
First line	—Custom Super-Cushion (22 different sizes) (also sold for original equipment purposes)
Second line	—De Luxe Super-Cushion (8 different sizes)
	—Nylon De Luxe Super-Cushion (5 different sizes)
Third line	—Super-Cushion (3 different sizes)

Premium line tires are made with Nylon cord, first and second line tires with both nylon and rayon, and third line tires with rayon.

Truck tires are also available in all sizes, in many
482 different types and tread designs. The principal groupings, according to use, are highway, off-the-road and industrial. Truck tires represent 7 percent to 10 percent in dollar volume of all Goodyear tires sold under the Sales Commission Plan with Atlantic.

Goodyear's current prices for passenger and truck tires are shown in CX Nos. 229-237 inclusive.

15. In addition to tires and tubes, the products manufactured by Goodyear and sold under the Sales Commission Plan with Atlantic are:

Retread and repair materials
Fan Belts
Radiator hose

Goodyear's current prices for these products are shown in the following exhibits: CX 238, CX 239 (Retread and repair materials); CX Nos. 242-246 inclusive (Fan belts); CX 242-246 inclusive (Radiator Hose).

16. Products sold by Goodyear under the Atlantic Sales

Automotive batteries
Various automotive accessories.

17. Automotive batteries are manufactured for Goodyear for resale under its own brand, in approximately equal quantities, by Electric Auto-Lite Company, main 483 office at Toledo, Ohio, and Gould-National Batteries, Inc., main office at St. Paul, Minnesota. Batteries manufactured for Goodyear are both wet and dry charge and are of various different qualities, sizes and types. Current price lists for batteries are shown in CX Nos. 240-A-D, 240-E-H and 241.

18. The more important categories of automotive accessories purchased by Goodyear for resale under the manufacturer's brand to Atlantic service stations under the Sales Commission Plan include:

Accessory	Brand	Mfrs. Address
Spark Plugs	AC	AC Spark Plug Div. General Motors Corp. 1300 North Dort Highway Flint 2, Michigan
Oil Filters	AC	—See above—

Accessory	Brand	Mfrs. Address
Oil Filters	Purolator	Purolator Products Inc. 970 New Brunswick Ave. Rahway, New Jersey
Cleaners, Polishes and Waxes	du Pont	E. I. Du Pont de Nemours & Co., Inc. Specialties Div. Wilmington 98, Delaware
Cleaners, Polishes and Waxes	Johnson	S. C. Johnson & Son, Inc. Racine, Wisconsin
Cleaners, Polishes and Waxes	Simoniz	Simoniz Company 2101 Indiana Ave. Chicago, Illinois
Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss Co. Inc. 6040 N. Figueroa St. Los Angeles 42, California
Radiator Chemicals	du Pont	—See above—
Radiator Chemicals	Warner	Warner-Patterson Co. 920 South Michigan Ave. Chicago 5, Illinois
Auto Lamps and bulbs	Westing-house	Lamp Division Westinghouse Electric Corp. MacArthur Avenue Bloomfield, New Jersey
Wiper blades	Anco	The Anderson Company Gary 40, Indiana

484

Current price lists covering the above accessories are shown in CX Nos. 242-246, inclusive.

19. The number of automotive batteries and automotive accessories which Goodyear sells to Atlantic accounts under the Sales Commission Plan is but a very small part of the total number of such items which Goodyear purchases and resells to all its customers.

Flow of Distribution—

485 20. The flow of tires and tubes from Goodyear factory to consumer, via the Sales Commission Plan with Atlantic, is generally:

(a) Goodyear Factory
to
(b) Goodyear District Warehouse
to
(c) Wholesaler, i.e., "Supply point"
1. Goodyear Tire Dealer
2. Goodyear Service Store
3. 100 percent Petroleum Jobber
to
(d) Petroleum Service Station
to
(e) Consumer

The Goodyear tire and tube factories are located at Akron, Ohio; Gadsden, Alabama; Jackson, Michigan; Los Angeles, California; and Topeka, Kansas.

Goodyear District Warehouses are located in the following cities:

Albany, N. Y.	Buffalo, N. Y.
Atlanta, Ga.	Charlotte, N. C.
Baltimore, Md.	Chicago, Ill.
Birmingham, Ala.	Cincinnati, Ohio
Boston, Mass.	Cleveland, Ohio
486 Columbus, Ohio	New Orleans, La.
Dallas, Texas	Oklahoma City, Okla.

Denver, Colo.
Des Moines, Iowa
Detroit, Mich.
El Paso, Texas
Fargo, N. D.
Grand Rapids, Mich.
Harrisburg, Pa.
East Hartford, Conn.
Houston, Texas
Indianapolis, Ind.
Jacksonville, Fla.
Jersey City, N. J.
North Kansas City, Mo.
Los Angeles, Calif.
Memphis, Tenn.
Miami, Fla.
Milwaukee, Wis.
Minneapolis, Minn.
Omaha, Nebr.
Peoria, Ill.
Philadelphia, Pa.
Phoenix, Ariz.
Pittsburgh, Pa.
Portland, Ore.
Richmond, Va.
St. Louis, Mo.
Sacramento, Calif.
Salt Lake City, Utah
San Antonio, Texas
San Francisco, Calif.
Seattle, Wash.
Spokane, Wash.
East Syracuse, N. Y.
Wichita, Kansas

21. The flow of batteries from the manufacturer to consumer, via the Sales Commission Plan with Atlantic, is generally:

(a) Battery Manufacturer's Factory
to
487 (b) Wholesaler, i.e., "Supply Point"
1. Goodyear Tire Dealer
2. Goodyear Service Store
3. 100 percent Petroleum Jobber
to
(c) Petroleum Service Station
to
(d) Consumer

Because of the weight factor, stocks are carried in Goodyear District Warehouses only for emergency or convenience purposes. Any customer, whether wholesaler or re-

tailer, may—and frequently Atlantic Service Stations do—order direct factory shipment; currently the minimum order for this purpose is ten batteries.

The battery manufacturers' factories are located as follows:

Electric Auto-Lite Company—

Toledo, Ohio—Main Office
Reading Battery Division
Reading, Penna.
Niagara Falls, New York
P. O. Box 336
3125 Highland Ave.
East Point, Ga.
P. O. Box 309
Lawrence Ave.
488 Owosso, Mich.
P. O. Box 97
951 South Aiken Rd.
Vincennes, Ind.
P. O. Box 591
Oklahoma City, Okla.
P. O. Box 1965
600 South West Third Street
Oakland, Calif.
P. O. Box 126
Elmhurst Sta.
Paramount, Calif. (L A)
7701 East Compton Blvd.

Gould National Batteries, Inc.—

Chicago Heights, Ill.
12th & McKinley Streets
Dallas, Texas
4935 Cass St.
Denver, Colo.
2315 15th St.

East Point, Georgia
117 East Taylor Ave.
Houston, Texas
P. O. Box #14475
489 Leavenworth, Kansas
1901 South Fourth Street
La Puente, Calif. (L A)
14500 Nelson Ave.
Lynchburg, Va.
2800 Carroll Ave.
Marlboro, Mass.
303 Mechanic St.
Memphis, Tenn.
P. O. Box #3975 Lamar Station
North Bergen, N. J.
2101 85th Street
Ogden, Utah
160 West 28th Street
West Salem, Oregon
576 Patterson Ave.
St. Paul, Minn.
1025 No. Lexington Ave.
Zanesville, Ohio
1606 Moxahala Ave.
Main Office—St. Paul, Minn.
First National Bank Building

22. The flow of automotive accessories from the supplier to the consumer, via the Sales Commission Plan with Atlantic, is generally:

490 (a) Supplier
to
(b) Goodyear Car and Home Merchandise Warehouse (9 in number)
to

(c) Wholesaler, i. e., "Supply Point"
1. Goodyear Tire Dealer
2. Goodyear Service Store
3. 100 percent Petroleum Jobber
to
(d) Petroleum Service Station
to
(e) Consumer

The suppliers of automotive accessories are located in various states. The nine Goodyear Car and Home Merchandise Warehouses are located in or near the following cities:

Boston, Mass.	Kansas City, Mo.
Chicago, Ill.	Los Angeles, Calif.
Cleveland, Ohio	Philadelphia, Pa.
Dallas, Texas	Portland, Ore.
Gadsden, Ala.	

With the exception of Boston and Dallas, none of the above warehouses are located at the same address as any of the Goodyear District Warehouses listed in Par. 20 above.

23. In some instances an Atlantic service station may buy TBA direct as a franchised Goodyear dealer, in 491 which event there would be no intervening wholesaler.

On occasion such a service station may supply other service stations, thereby functioning as a wholesaler as well as retailer.

Supply Points—

24. The function of a supply point is to satisfactorily sell, service and supply TBA to its customers at wholesale competitive prices. This requires the carrying of balanced stocks of these items and the maintaining of adequate

facilities and equipment, often including one or more TBA Supply Trucks with driver salesmen.

25. Each Goodyear District Manager is responsible for distribution in his territory, and it is therefore part of his job and responsibility to find and provide supply points which will render the best service to those Atlantic accounts in his territory purchasing Goodyear TBA. Supply points buy and sell on the same terms as do all wholesalers of Goodyear's products and they receive no extra compensation for servicing Atlantic accounts under the Sales Commission Plan.

26. The number of Atlantic accounts served by a given supply point naturally varies according to local market factors. The average is approximately 16.

27. The majority of supply points serving Atlantic accounts are independent franchised Goodyear tire dealers--TBA Supplying Dealers. Such dealers are entirely
492 independent businesses. They sell Goodyear TBA or competitive lines of TBA to whomever they please, whether petroleum or non-petroleum accounts and without reference to whether or not such customers are connected with any Sales Commission Plan. Some Atlantic service stations serve as supply points but Atlantic does not designate which ones are to serve as such.

28. In some local areas there is a lack of independent dealers with adequate facilities for satisfactorily functioning as a supply point, or there is a lack of such dealers desiring to assume the responsibilities involved in being a TBA Supplying Dealer. In such areas the Goodyear District Manager may select the nearest Goodyear Service Store to act as the authorized supply point.

29. In certain local areas where neither independent dealers nor Goodyear service Stores are available to serve Atlantic accounts, such accounts may be supplied directly from Goodyear Districts and/or warehouses.

30. Atlantic actively participates in the improvement of TBA supply service to Atlantic petroleum outlets. It calls the attention of Goodyear to any inadequacy or weakness in the supply point service and suggests ways in which better service can be rendered. Such suggestions may include the addition of new supply points, enlargement of inventory or improvement in delivery service.

Similarly, improvements may be initiated by Good-
493 year itself or by suggestions offered by the supply points or by the Atlantic dealers purchasing Goodyear TBA.

Mechanical Features and Forms—

31. Commissions are paid monthly by check from Goodyear's Accounting Department in Akron. Under the sales commission plan Atlantic receives a commission of 7½ percent on sales of Goodyear TBA to Atlantic's franchised distributors. No further commissions are paid with respect to any Goodyear TBA which Atlantic service stations may purchase from the Atlantic distributors. Some Atlantic service stations may buy a part of their Goodyear TBA from Atlantic franchised distributors and part from designated supply points. In such cases Atlantic receives the ten percent commission only on those purchases from the designated supply points. In order that the payments due Atlantic under the terms of the Agreement may be accurately computed upon the basis of reliable sales figures, certain forms are used.

32. Form G-1209 (CX 41-B) is the basic record which shows that sales by the Goodyear supply points to the designated Atlantic dealer are subject to the payment of a sales commission by Goodyear to Atlantic. Generally the form is, in the first instance, prepared by Atlantic and forwarded to the Goodyear District Manager. The Goodyear District Manager designates on the form the supply

points whose sales to the particular dealer will be
494 subject to the payment of a sales commission by Goodyear to Atlantic. The Goodyear approval of the account for the payment of sales commission is indicated by the District Manager's signature to the form. (In rare cases, less than one percent of the time, approval by Goodyear may be withheld for such reasons as temporary inability to establish a supply point.) Copies of the completed G-1209 Form are distributed to the Goodyear District Office, the Atlantic District Office, the Goodyear general line salesman working in the area and to the Goodyear Service Store, if any, which is approved as a supply point for the account. An independent dealer serving as a supply point for Atlantic accounts is furnished a list of such customers.

33. Goodye 's policy is to solicit all Atlantic service stations in the territory covered by the Sales Commission Plan with Atlantic. Occasionally Goodyear will sell to an Atlantic service station for which a G-1209 has not been issued. When this occurs, Goodyear will recommend to Atlantic that a G-1209 be issued.

34. Independent dealers serving Atlantic accounts as supply points under the Plan submit monthly to the Goodyear District Office reports of their Goodyear TBA sales to said accounts. These reports are generally made by the supplying dealers on Form G-1201 (CX 43-B). Such reports are not made by Atlantic service stations which
495 may act as supply points since commissions are paid with respect to their purchases, not with respect to their sales.

35. In rare instances the independent supplying dealer does not maintain adequate bookkeeping facilities which would enable him to readily fill out and submit the G-1201 Forms. Also, occasionally, periodic checks by Goodyear of purchase volume against reported sales reveal that the

G-1201's submitted by a particular supplying dealer are inaccurate. In either of these cases, the use of the G-1201 will be discontinued and the sales of the dealer to his Atlantic accounts will be reported on Form G-1208 (CX 44-B). This Form is generally made out by the dealer and a Goodyear general line salesman working together from the dealer's invoices.

36. Goodyear Service Stores serving Atlantic accounts as supply points under the Plan submit monthly to the Goodyear District Office reports of their TBA sales to said accounts. These reports are made on Form G-1207 (CX 44-C).

37. In those instances where an Atlantic account is supplied on a direct franchise from a Goodyear District and/or warehouse, the District Office maintains a record of the TBA sales on Form B-91 (CX 44-D).

38. Form G-1204 (CX 42-B) lists all of the Atlantic dealers covered by Form G-1209 and records all of the sales for each particular month with respect to which commissions are to be paid by Goodyear to Atlantic.
496 Names of the Atlantic dealers are entered on the Form by Atlantic and the Form is forwarded to Goodyear. Thereafter, Goodyear fills out the remainder of the Form from information obtained from Forms G-1201, G-1208, G-1207 and B-91 which has been collected by the District Office.

39. Copies of the completed G-1204's are submitted monthly by the Goodyear District Office to Atlantic and to Goodyear, Akron and are used for calculating the commissions due Atlantic.

40. One other Form has been received in evidence, Form B-80 (CX 45-B) which has no connection with the Sales Commission Plan. This Form is maintained by each Goodyear District Office and on it are accumulated all sales

including those reported on the above-mentioned Forms and those having nothing to do with the Sales Commission Plan. Names of customers are not written down on the B-80, this form merely being a master summary of all sales used for general accounting purposes.

Atlantic Dealers—

41. The great majority of Atlantic dealers designated on Form G-1209 are indirect Goodyear accounts. These are accounts which purchase Goodyear TBA from a direct Goodyear franchised dealer. A number of Atlantic dealers are themselves direct Goodyear dealers and purchase their Goodyear TBA directly from the Goodyear district.
497 Such indirect and direct dealers may sign Forms designated as Associate Dealer Agreements (CX 44-E) and Goodyear Service Station Agreements (CX 44-F and CX 44-G), respectively. Goodyear is a party to the direct franchise contract but not to the indirect franchise contract.

42. Goodyear generally learns from Atlantic that a new Atlantic service station has opened up or that a new operator has taken over an existing Atlantic station. Such a dealer is contacted by the Atlantic sales representative and by either a Goodyear general line salesman, a Goodyear Petroleum Representative or a representative of the Goodyear supply point. Each of these persons will endeavor to promote the sale of Goodyear TBA to the Atlantic dealer. If it appears that such a dealer is a potential customer for TBA, a G-1209 Form will be issued in the manner described above.

43. Atlantic accounts which are direct Goodyear dealers are called on by Goodyear general line salesmen at such intervals as will assure maximum sales results. These accounts generally carry a large inventory, and visits by Goodyear general line salesmen will be at one, two, four

or six week intervals depending upon the particular necessities.

44. Atlantic accounts which are indirect or Associate Dealers are visited by the salesmen of their supply points.

Such accounts normally carry a small inventory and
498 depend upon frequent solicitation and quick service.

Their supply point salesmen call on them bi-weekly or at least once a week. These indirect accounts are so numerous and their individual unit volume of purchases are so low that Goodyear considers it to be more economical and efficient to have them solicited by their nearby supply points than by its general line salesmen who are primarily concerned with direct accounts.

45. All Atlantic accounts, whether direct Goodyear dealers or Associate Dealers, are regularly solicited for TBA by Atlantic Salesmen who carry Goodyear TBA order blanks. While Atlantic does not take title to the Goodyear products, its salesmen take orders which they forward to the supply points.

46. A number of Atlantic accounts as to which a Form G-1209 has been issued do not in fact buy any Goodyear TBA products. Many Atlantic accounts buy competing TBA products. All such accounts, however, continue to be solicited by Goodyear, by Atlantic and by supply point salesmen.

47. Goodyear prepares an inventory guide (CX 247-B) which is made available to all petroleum service station customers including Atlantic stations. The guide is based on the actual experience of thousands of average and high-gallonage service station outlets. The purpose of the guide

is to recommend quantities and types of merchandise
499 to be carried so as to secure maximum sales with minimum dollar investment.

48. Goodyear and Atlantic have agreed upon the design of metal signs and window valances which are made

available by Goodyear to all Atlantic outlets on a no-charge basis. In certain cases Atlantic dealers may want special signs such as electrical signs. These are available on a rental basis.

49. Cooperative advertising is available to all Atlantic service stations, direct dealers and associate dealers, on the same basis it is offered to all other Goodyear dealers and associate dealers. The types of cooperative advertising currently available embrace newspaper, radio, television and telephone directory advertising.

Additional Facts About the Goodyear-Atlantic Relationship and the Sales Commission Plan—

50. Goodyear had never had any kind of marketing arrangement with Atlantic prior to the commencement of the Sales Commission Plan in the Newark area on June 12, 1950. Goodyear solicited TBA business from Atlantic service stations for many years prior to June 1950. However, Goodyear's staff was never able to regularly call on and adequately service all Atlantic stations in any given area.

51. The sales commission agreement entered into by Goodyear and Atlantic was the result of negotiations 500 between the two companies following the receipt by Goodyear of Atlantic's letter of January 19, 1948 (CX 1-A). On April 6, 1948 Goodyear declined to make a proposal to Atlantic (CX 3-A), but under date of May 4, 1949 it notified Atlantic of its interest in discussing the subject of marketing TBA through petroleum service stations (CX 4-A-B). In May 1950 Atlantic notified Goodyear of its desire to test the Sales Commission Plan in the Newark area. Operation of the Newark test commenced on June 12, 1950. Subsequently, as of March 1, 1951, the plan was adopted by Atlantic for three of its marketing

regions—the New England Region, the New York Region, and the Philadelphia-New Jersey Region.

52. If there were no Sales Commission Plan with Atlantic, Goodyear and its supply points would have to increase very substantially the size of their sales forces and the extent of their sales promotion efforts in order to solicit and service the Atlantic accounts now buying Goodyear TBA in the manner and on the scale possible under the present plan.

Dated: June 24, 1957.

501 Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
63 Wall Street,
New York 5, New York,
Attorneys for the Goodyear Tire & Rubber Company and the Goodyear Tire & Rubber Company, Inc., Respondents.

Counsel Supporting the Complaint.

502 Mr. Kelaher: Your Honor, our next witness is scheduled for 2:00 o'clock, so I suggest that we adjourn until that time.

Hearing Examiner Kolb: He won't be here until 2:00?

Mr. Kelaher: He may be here at 1:30.

Hearing Examiner Kolb: Do you want to adjourn until 1:30 or do you want to adjourn until 2:00?

Mr. Kelaher: How about counsel for the respondents?

Mr. Correa: We are here, your Honor, far from home and our offices and our regular businesses, so that it doesn't matter to us.

Hearing Examiner Kolb: If he will be here at 1:30 I suggest we return at 1:30; however, if he won't be here then, why, that is something else.

Mr. Kelaher: We have every reason to believe he will be here at 1:30, your Honor.

Hearing Examiner Kolb: All right. The hearing will be adjourned until 1:30.

(Whereupon, at 11:35 o'clock a. m., the hearing in the above-entitled matter was recessed to reconvene at 1:30 o'clock p. m. this day.)

503 Afternoon Session.

(1:40 p. m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: I call Mr. Duboff.

MYER DUBOFF, was thereupon called as a witness on behalf of the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address for the record, please?

A. Myer Duboff, 45th and Lancaster Avenue, Philadelphia, Pa.

Q. And the name of the company?

A. Lancaster Auto Supply, 4500 Lancaster Avenue.

Q. What type business is the Lancaster Auto Supply Company in?

A. Well, we sell automotive parts, we sell supplies, machine shop work, anything in the automotive business. We sell oil filters, spark plugs, fan belts, radiator hoses, anything and everything in the business.

Q. Can you give us the trade names of the products you handle in the chemical line for example?

A. DuPont, Prestone.

504 Q. How about fan belts and hoses?

A. That is Raybestos.

Q. And batteries?

A. Exide, AC oil filters.

Q. That will do. What is the sales area of the company, Mr. Duboff?

A. Well, we are actually selling all over Philadelphia. We sell in the suburbs of Philadelphia, and the outside area.

Q. So to what class of customers do you sell?

A. Service stations, independent garages, industrial people, and well, contractors, we sell to stores, we try to cover every phase of the business.

Q. How many salesmen are employed there?

A. At the present time I believe there are about four.

Q. How are they compensated?

A. Salary plus commission.

Q. Is that the way you are compensated, too?

A. That's right, sir.

Q. Do you operate any trucks for delivery purposes?

A. We have two, three, we have I would say about five or six vehicles for service.

Q. Do you use those trucks for delivery service?

A. We use them for pick-up and delivery, yes, sir.

Q. How long have you been with the company, Mr. Duboff?

A. I would say roughly about 10 years.

505 Q. And in what capacity?

A. As a salesman, outside salesman.

Q. And what is your sales territory for the company?

A. Well, I can go anywhere, actually. If a fellow—in other words, if I know somebody in another section of

town, I can go up there and do business. I am not limited; I have the entire city at my disposition, anywhere I want to travel.

Q. What type customer do you solicit?

A. Everything and anybody in the business, the same thing as I said before.

Q. That includes service stations?

A. Service stations, garages, stores.

Q. In your sales territory, are there any Atlantic stations?

A. Yes, there are.

Q. Do you solicit their business?

A. Yes, I try to solicit their business.

Q. Do you sell to any of them?

A. I sell to a few independents. I can't sell to the company-owned stations, impossible.

Q. Will you define an independent?

A. Independent is a man that owns his own building, and is just selling Atlantic products, more or less their gas and oil.

Q. Do you have some idea of the number of Atlantic stations in your territory?

A. I would say anywhere between 30 and 35 that 506 I actually could maybe do business with.

Q. And do you solicit those, all of those?

A. No, I gave them up for a bad job to tell the truth, because you keep on going in there and they say they can't buy from you; not all of them, some of them.

Q. Do you sell to any of them?

A. Independents, we do, yes.

Q. What other type are there?

A. I beg your pardon?

Q. What other type stations?

A. Well, there is company-owned stations.

Q. I see. Now as to the independents, what do you sell to those stations, Atlantic stations?

A. To the independents we sell the entire line, to tell the truth. We sell wherever we can, fan belts, hoses, spark plugs, filters. We sell a complete line to them.

Q. And as to the other type Atlantic stations, do you sell to any of those on a regular basis?

A. I don't quite understand the question, sir.

Q. You have named independent Atlantic stations and company-owned Atlantic stations—

A. (Interposing.) I see what you mean.

Q. Now to company-owned stations, do you sell to any of those?

A. No, I can't sell them.

Q. Do you sell them anything outside of the TBA line?

507 A. I was at one time selling mufflers and some other things that didn't pertain to any of the products of the company.

Q. When did you sell to them?

A. Well, I would say within a period—to some of them. Now I don't remember exactly, about a year ago or something like that.

Q. You—at any time were you able to sell to any of the—in years past—able to sell to any of the Atlantic stations?

A. How many years are you speaking about, sir?

Q. Well, when was the last time you were able to sell to them?

A. Well, it is getting tougher and tougher to sell them, to tell the truth.

Well, I would say within the last couple of years it is getting worse.

Q. Do you continue to solicit their business?

A. I try to, but it is like barking up a tree. I mean,

you can't do anything with these fellows; they must buy from the company and that is the answers I get.

Mr. Thompson: I move that last answer be stricken, sir.

Hearing Examiner Kolb: Read the answer, please.

(Answer read.)

Hearing Examiner Kolb: Motion to strike denied.

506 By Mr. Dias:

Q. Can you state specifically the name of any Atlantic dealer that told you that?

A. I. Mann, at Brookhaven and Haverford Road.

Q. And can you place a time on that, please?

A. Well, that is every time.

Q. When was the last time you called on him?

A. A couple of months ago, I would say four or five or six weeks ago.

Q. Are there any others who made similar statements to you?

A. Well, they all beat around the bush. They just don't come out directly; they tell you they must still buy from their supplier.

Mr. Correa: Could we have these conversations fixed, the date, with whom, and exactly what was said, instead of these conclusionary answers?

Hearing Examiner Kolb: Try to fix the time of your conversations.

By Mr. Dias:

Q. Can you fix a time that these conversations took place, and the name of the party with whom you had the conversations?

A. Well, I. Mann has been right along, five or six weeks ago, and I will state that and that is true.

Q. Then I asked you if there was another one. Was there another instance of that?

509 A. Well, I can't actually at this time give you a specific date and time and specific persons because lots of time some of these fellows have given up their stations instead of going on with what they are doing.

Q. You say there are about 35 Atlantic stations in your sales territory?

A. I would say at least that, yes, sir.

Q. Have you noticed the type TBA that is carried in those stations?

A. Yes, sir.

Q. What brand is primarily advertised?

A. Goodyear products right down the line. Goodyear, AC spark plugs, AC filter, also their batteries, radiator hoses and fan belts.

Q. Do you know who the Goodyear supplier is in your territory?

A. Well, the one that I run into mostly is Frank Hagan.

Q. Are there any others?

A. Well, there is Ernie Miller up on Westchester Pike; there is Ellwood Kieser downtown.

Q. Are your products competitive with the Goodyear products sold by these three supply points?

A. Yes, sir.

Mr. Correa: I object to that, if your Honor please.

Hearing Examiner Kolb: Did you say the products,
510 are they competitive?

Mr. Dias: Yes, sir.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: I submit, if your Honor please, it is impossible to tell what the witness means or what counsel means for that matter by "competitive".

Hearing Examiner Kolb: I think we all understand it.

Mr. Correa: I beg to differ with your Honor. I don't understand what it means, and I submit it has no such

well recognized meaning to make this kind of evidence admissible in this proceeding.

Hearing Examiner Kolb: I overruled the objection.

Mr. Correa: Exception.

Hearing Examiner Kolb: Read the question to the witness.

(The reporter read the question and answer as follows: "Question: Are your products competitive with the Goodyear products sold by these three supply points? Answer: Yes, sir.")

Mr. Correa: May I supplement my objection by adding that the witness has not been qualified as able to testify to this matter and therefore there is no proper foundation laid.

Mr. Dias: This man has been a salesman for 10 years in the automotive supply business. I think case law 511 will sustain the position on the question to the effect that a man that has been in the business the length of time he has is certainly qualified to testify that, whether or not he is in competition with any given product.

Mr. Correa: If competition means, for example, quality, the witness, I submit, is not qualified. We have no showing in this record as to whether he is sufficiently expert to be able to deal with the relative merits of one battery and another battery, or one tire and another tire, let's say.

Hearing Examiner Kolb: I ruled on the objection. Proceed.

By Mr. Dias:

Q. If I have asked you this, you can stop me. Did I get the brand names of the products that you sell, batteries—

A. (Interposing.) Yes, you did.

Mr. Dias: That is all.

Hearing Examiner Kolb: Cross examination.

Cross-Examination by Mr. Thompson.

Q. You said there were four salesmen for the company, Mr. Duboff?

A. Yes, sir.

Q. Were all four of them selling all over the city of Philadelphia and the suburbs?

512 A. We do, sir.

Q. Do you all sell the full line of all of the merchandise, wholesaled by Lancaster Auto Supply Company?

A. I don't get that, sir.

Mr. Thompson: Would you read the question, please?

(Question read.)

The Witness: Wholesale and retail.

By Mr. Thompson:

Q. I guess I didn't make my question clear. Are all four of you engaged in soliciting whatever accounts you want all over the city?

A. Yes, and the suburbs.

Q. And all four of you try to sell all of the different items of merchandise which is handled by Lancaster Auto Supply, is that correct?

A. That is true.

Q. So that all four of you might be calling on the same garage?

A. Never on the same one. We all know each other's customers; sometimes I can't sell a man and the other fellow can.

Q. Your company does a lot of repair work, does it not?

A. I wouldn't say to the extent we used to, years ago. We don't repair cars. We do shop work.

Q. Does the phrase "hard parts", is that familiar to you?

A. Yes, sir.

513 Q. That is your company's specialty, is it not?

A. No, I wouldn't say that, sir. We only have two men in the shop. We used to have six and eight and ten people in the shop at one time.

Q. No, but your company sells hard parts to various retailers throughout the city, do you not?

A. Yes, sir.

Q. And that is your specialty, is it not?

A. No, it is not our specialty, no, sir.

Q. About 75 percent of your sales?

A. No, sir.

Q. What percentage, would you say?

A. I would say 20 percent, as a top. We only keep this as a background more or less to get the other business, but I am not in a position to tell you exact percentages. I only say 20 percent out of the sky, I don't know. I know it is very little.

Q. How about service station equipment, do you sell that?

A. Yes, we sell that.

Q. And that is a fairly large part of your business, is it not?

A. No, it is not, no, sir.

Q. What is the largest part of your business, accessories?

A. No, everything but hard parts, sir. Well, if you say accessories, your spark plugs, oil filters, fan belts,
514 hoses, that is repeat business, it is quite a bit, a lot of business.

Q. And that is your principal business?

A. Batteries, antifreeze. Yes, sir.

Q. And service stations are your principal customers?

A. Not necessarily. I wouldn't say principal. We do have other customers besides service stations.

Q. The company made great progress in their annual volume of sales in recent years, hasn't it?

A. I don't know. I am not in a position to answer that.

Q. How about your end of the business? Hasn't that been increasing substantially, your own sales?

A. My business is all right, yes, sir.

Q. About 70 percent of your sales are cash, are they not?

A. No, they are not.

Q. What percentage would you say?

A. I don't know, again, I do not know the percentages of cash against charge. I am only a sales man, sir.

Q. How about from your experience as a salesman, aren't most of your sales for cash?

A. No, sir.

Q. You handle credit accounts?

A. I don't handle them personally, no. We have a credit department that takes care of that.

Q. But you handle accounts to whom your company extends credit?

515 A. Yes, if the man is open, I certainly give him credit to leave him sign for it until the following month.

Q. What percentage of the service station accounts that you sell to are on credit and what percentage are on cash, approximately?

A. Of my own experience, sir?

Q. Yes, your own accounts.

A. Oh, my accounts. Well, I would say about 70 percent, at least, 70 percent that are charge accounts.

Q. And the others are for cash?

A. Yes, somewheres around that.

Q. How do you deliver when it is for cash? Do you drive a truck?

A. Oh, no, sir.

Q. What do you do, take an order—

A. (Interposing.) Either I phone it in or I write it up the next day and pass it on to the boys to pull the orders and write it up and get it out.

Q. And the deliveries are made COD?

A. If it is a cash customer, yes, sir.

Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road.

A. That is right.

Q. As having said something to you about inability to buy from you. I was not clear as to what he said.

516 A. Do you want me to state what he said to me? He said to me "I can't buy from you".

Q. Had he been buying from you?

A. He was buying odds and ends and every time I came in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said, "Why not," and he says "They know what I am doing," and I didn't think that was right.

Q. Isn't he presently buying Exide batteries from you?

A. He is not. He hasn't in years.

Q. Brake linings?

A. He might have bought some brake linings in between. Not to amount to anything, as far as I know.

Q. Jacks?

A. Jacks, no, I don't think he bought a jack. Maybe five years ago he might have.

Q. Wheel puller?

A. No, I don't think anything along that line. He did buy an impact tool from me, sir.

Q. What is an impact tool?

A. That speeds up putting the tires on and taking heads off of engines.

Q. Does your company sell assorted tools for service stations?

A. Yes, we sell assorted tools.

517 Q. Do you supply Mr. Mann with those?

A. I wouldn't say so, necessarily. He might have picked up odds and end tools he needed to fill in or something like that.

Q. Well now, let's take these hard parts. I think you said you found it impossible to sell anything to Atlantic stations?

A. Yes, sir.

Q. And that applies to hard parts, too?

A. Well, I wouldn't say—it would be the same if I walked in and see the man and asked him, I would say, ask if I can help him, anything you need along these lines, suggest these things, and hard parts is—the only time you get a hard part, you wouldn't sell a hard part directly in selling. The man would pick the telephone up and he called for delivery on a hard part.

Q. That same comment applies, would it, to service station equipment?

A. Depending on the service station equipment, sir.

Q. Do you find it impossible to sell service station equipment to Atlantic owned stations?

A. I wouldn't say that. Most of them were getting them from Alemite. They were getting their equipment from Alemite and I might be able to sell small parts, small grease guns or repair fittings, or ends, or maybe an assortment of grease fittings.

518 Q. Do you try to sell service station equipment and hard parts to the Atlantic-owned stations?

A. I wish I could, sir.

Q. Do you try?

A. I have been on the street and I just bat my head against the wall.

Q. They just won't buy anything from you?

A. They give you the same stock answer, what I said before. The same answer is what I get.

Q. And that is so regardless of what you try to sell them?

A. No, I wouldn't say that. If they want a hard part, they might call me. I don't know everything that is going on. I am in the street. They may call in, I don't know, and it goes through the works.

Q. Mr. I. Mann is the only one that you can now recall who told you that he couldn't buy from you because they wouldn't let him or something like that?

A. There are other fellows told me that.

Q. Who?

A. Who were they? Well, there was D'Ascenzo Service Station there.

Q. Where is he located?

A. He is at 49th and Lancaster, I think.

Q. And he is what you call an independent?

A. Yes, sir.

519 Q. On what side?

A. Well—

Q. He owns his own station?

A. Yes, sir.

Q. What did he say to you?

A. Well, he said they were putting the pressure on and he is right now ready to give it up, Atlantic, entirely, just on account of the pressures exerted on him, that is what he told me.

Q. Anybody else you can think of?

A. I beg your pardon?

Q. Any other names?

A. Quite a number of fellows are out of business today. I mean, I have been travelling the same territory for years

and a lot of these fellows are out of business today. I can't recall the names.

Q. Have you now mentioned all the names that you can recall?

A. No, I wouldn't say that. Maybe another date I might be able to get them down. Charles Robinson was another one. He is out of business.

Q. Where was he?

A. 63rd and Ludlow.

Q. What was he?

A. He was a company-owned station.

Q. Are there any other names that you can recall?

520 A. I couldn't recall at the present time, sir.

Q. Do you know what the brush-off technique is?

A. Well, yes.

Q. Did you ever have it applied to you?

A. Well, on the street you are liable to get anything, sir.

Q. Liable to get it from almost anyone, aren't you?

A. That is right.

Mr. Thompson: That is all.

By Mr. Correa:

Q. Is this Mr. I. Mann of whom you spoke, does he sell tires?

A. Tires?

Q. Yes.

A. I guess he does. We don't sell tires, sir.

Q. Have you been in his shop, place of business?

A. Yes.

Q. Have you seen tires there for sale?

A. Yes, sir, I saw them.

Q. What kind?

A. I don't know anything about tires, I don't sell them. I don't know anything about it. I don't sell tires, I wasn't concerned with that.

Q. Isn't it a fact that he sells Lee tires?

A. I don't know.

Q. You can't recall it, sir?

A. No, sir, I don't have anything to do with tires.

521 Mr. Correa: I have no further questions.

Redirect Examination by Mr. Dias.

Q. You were asked whether or not the company's business had increased. Has your own business increased in your sales territory?

A. Well, my business is increased on account of the higher dollar now, everything costing more, more or less.

Q. How much of that increase was due to larger or greater sales or more numerous sales to Atlantic stations?

A. Well, I took an independent man at 66th and Haverford Avenue and that man has been giving me over a thousand dollars a month from an independent gas station.

Q. What brand?

A. Atlantic gas station, and he has since changed over this last week.

Q. What was his name?

A. James Amen.

Q. What type merchandise were you selling him?

A. The complete line, Exide batteries, AC filters, AC spark plugs. I changed over from Goodyear belts to Raybestos last week so I will be selling Rabestos instead of Goodyear fan belts.

Q. Did you give us his address?

A. 66th and Haverford Avenue.

522 Q. Can you recall any other Atlantic business that has resulted in your particular increase in business, in your territory?

A. Particular—what?

Q. In TBA, that is.

A. I didn't quite get the question, sir.

Q. You have testified that your business in your territory has increased?

A. It has.

Q. And you have stated that your business with James Amen for example, runs about a thousand dollars a month?

A. That is right.

Q. Now my question is: Are there other Atlantic stations that buy similar lines from you?

A. No, I can't do any business with them, sir.

Q. Then is the overall increase in business in your territory due to increase in Atlantic sales, sales to Atlantic stations?

A. Is the overall business—

Q. Is your overall increase in sales in your territory a result of increased sales to Atlantic stations?

A. I still—you better word that again.

Q. Let me pass that up. On cash sales, do you get credit for cash sales that may be made?

A. Not so much, no. I don't get too much credit, 523 unless I know who the account is. There is a special folder on cash sales, I have a girl taking care of it. It is a long story. I get it and yet I don't. I will put it that way.

Q. You mentioned that Mr. Robinson said something about pressure. What did he tell you?

A. He told me everything under the sun. That man told me everything. This has been going on—the gas station has been taken over a number of times, a couple of fellows since, and all the time he had it, it was tough. It was tough grinding there. He said he had to buy, he had to buy from the dealers, is what he told me.

Q. Can you tell us when that was?

A. That is going back, I would say, about six years ago, I guess.

Q. Now let me return to the increase in business in your

territory. Mr. Thompson asked you if your business had increased, do you recall that, in your territory?

A. Has it increased?

Q. It has increased?

A. It has, yes, sir.

Q. It has, you say?

A. Yes, sir.

Q. Can you recall roughly what it was, what your monthly business was, for example?

A. Well, I know I am keeping going up the ladder,
524 I will put it that way.

Q. Now in going up the ladder, is it due to increased sales to more Atlantic stations?

A. No, no, sir. In other words, if I had more Atlantic stations, I would have more volume. I would love to do business with them.

Q. Now you also mentioned that D'Ascenzo complained of pressure. Can you recall what type of pressure, did he mention that?

A. No, he said they are bothering the life out of me, he is fed up to here and ready to throw in the sponge.

Q. Who did he refer to as they?

A. Atlantic Refining.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Any further questions?

Recross Examination by Mr. Correa.

Q. Were you interviewed by representatives of Federal Trade Commission prior to your testimony here?

A. Was I—what?

Q. Were you interviewed by representatives of Federal Trade Commission?

A. A man came into the store, yes.

Q. When?

A. That has been a long while ago.

525 Q. Give me an estimate.

A. An honest estimate, now wait a minute. I would say about six months ago.

Q. Was that the last time?

A. That is the last time I saw the man, that is right.

Q. Was that the only time?

A. That's right.

Q. Did you give any statement in writing concerning the matters about which you have testified?

A. I didn't give any statement in writing, no, sir.

Q. Have you written him or anybody else connected with the Federal Trade Commission any letters?

A. No, sir.

Q. Nothing at all in writing?

A. No, sir.

Mr. Correa: I have nothing further.

By Mr. Thompson:

Q. Mr. Duboff, were you advised by the representative of the Federal Trade Commission of the nature of this proceedings when he called upon you?

A. I wasn't advised about it, the nature of it. He just asked me questions about what was going on and I told him I couldn't sell Atlantic gas stations.

Q. Did he tell you this proceeding was pending?

A. What, sir?

526 Q. Did he tell you that this proceeding had been started?

A. No, sir, no, sir, I never knew anything at all about it, that it was pending.

Mr. Thompson: That is all.

By Mr. Correa:

Q. Did he tell you you might be called as a witness in a proceeding?

A. Yes, he told me I might be called as a witness, yes.

Q. But he didn't tell you what the proceeding was in respect to which you might be called as a witness?

A. No, he just asked me about different questions, what is going on in the field, and I just told him, so I said I would be glad to tell the truth, which I am telling, is the truth. I said I would be glad to sit up there and tell the truth what is going on.

Q. Did you just offer to be a witness without knowing of any proceeding or did you know there was a proceeding?

A. He did not tell me there was a proceeding of any kind.

Q. But he did tell you you might be needed as a witness?

A. I don't recall.

Q. There was some discussion, I gather, from what you told us about your testifying as a witness.

A. No, I don't recall him saying I would be a witness. He asked me about what was going on and I told him what was going on in the field.

527 Q. Didn't you say a moment ago he told you you might be needed as a witness?

Mr. Dias: Your Honor, I object to this line of questioning. I don't see it is relevant.

Mr. Correa: He said that a moment ago, if your Honor please. I think his credibility is in issue.

Mr. Dias: I don't see how it affects this proceeding one way or another.

Mr. Correa: If he says one thing five minutes ago and another thing now, that affects his credibility. Maybe that doesn't affect this proceeding in your idea, but it does in mine.

Hearing Examiner Kolb: Objection overruled. Read the question, please.

(The reporter read the question as follows: "Question: Didn't you say a moment ago he told you you might be needed as a witness?")

The Witness: If I said that, I made a mistake, because I don't recall him ever saying I might be a witness against Atlantic Refining. I do not recall that.

By Mr. Correa:

Q. But your present recollection, as of this moment, is that there was no discussion between you and this individual about your testifying as a witness?

A. There was no discussion, no, sir.

528 Q. That is your best present recollection?

A. That is right, sir.

Mr. Correa: That is all.

By Mr. Thompson:

Q. When did you learn you were going to be a witness?

A. When I got the subpoena from them.

Q. When the Federal Trade Commission representative called upon you, did you tell him about your conversation with Mr. I. Mann?

A. I told him about that, yes, sir.

Q. Did you tell him to the same effect that you have testified here, about what Mr. Mann said?

A. Well, I might not be wording it word for word, but more or less it would be somewhat similar.

Q. Well, I am curious to know how you could have done that if it is true, as you testified, that the Federal Trade Commission representative came to see you six months ago, and you had this conversation with Mr. Mann five or six weeks ago?

A. You asked me if the case was pending, and I said, I don't know about a case pending.

Mr. Thompson: Read the question, please, and you listen carefully.

(Question read.)

A. Well, the Federal Trade Commission man came 529 into our place, it wasn't against Atlantic Refining,

sir. And any question that you are asking me, might I have them mixed up with another case entirely.

By Mr. Thompson:

Q. Did he come back and see you again?

A. I don't recall.

Q. Don't you recall whether he came back to see you again?

A. He didn't come back to see me the second time.

Q. That is what I mean.

A. No, no, I didn't see him the second time.

Q. You haven't yet explained how you could have told a man six months ago something that happened five or six weeks ago.

A. That happened before then. I am bringing that same answer back that happened years ago.

Mr. Thompson: That is all.

Mr. Correa: One further question.

By Mr. Correa:

Q. Did this Federal Trade Commission representative that you saw make notes of what you told him?

A. Yes, he was writing something down, yes, I think he might have. I don't know. I didn't see what he was writing down.

Q. But he was making notes?

A. He was writing something down, yes, sir.

Mr. Correa: That is all.

530 Mr. Dias: Nothing further.

Hearing Examiner Kolb: That is all, Mr. Duboff.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

531 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Matthews to the stand, please.

JAMES MATTHEWS was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. James Matthews, 208 Woodcrest Road, Wallingford Summit, R.D. 20, Media, Pennsylvania.

Q. Are you here in response to a subpoena?

A. Yes, sir.

Mr. Kelaher: Would you please hand it to the Examiner.

The Witness: (Handing.)

By Mr. Kelaher:

Q. Mr. Matthews, were you at one time an Atlantic leasee dealer?

A. Yes, sir.

Q. During what period and at what locations?

A. December 10, 1947 to August 15, 1949 in Darby.

Q. Would you give the addresses as you go along?

A. That was McDade Boulevard.

532 Q. Do you have any further identification on that location?

A. That is all. Just McDade Boulevard, Darby.

Q. Then did you have a station after that?

A. August 15, 1949 until June 1, 1954, Church Lane and Bailey Road in Yeadon.

Q. And after that did you operate an Atlantic station?

A. From June 1, 1954 to May 7, 1957, Baltimore Pike and Providence Road in Media.

Q. So you operated as an Atlantic leasee dealer from December 10, 1947 until last month, is that correct?

A. Correct.

Q. Mr. Matthews, when you entered your station December 10, 1947, what TBA did you begin to carry?

A. Exide batteries, Lee tires, Fram oil filters, Auto-Lite spark-plugs, Thermoid fan belts.

Q. And who was your principal supplier of TBA products?

A. Ed Parris, in Sharon Hill at that time.

Q. Do you recall attending a meeting of Atlantic dealers in or about March 1951?

A. I do.

Q. Do you recall where that meeting was held?

A. Kasfik's in Upper Darby, I believe, if I am not mistaken.

Q. And what was the purpose of the meeting?

Mr. Correa: I object to that, if your Honor please.

533 Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Would you please state who was present at the meeting?

A. Who what?

Q. Who were present at the meeting?

A. In regards to who, the company or—

Q. If there were company representatives there, just state whether—were there Atlantic dealers present?

A. Yes, sir.

Q. Were there representatives of the Atlantic Refining Company present?

A. Yes, sir.

Q. Was there a representative of Goodyear present?

A. I can't be sure.

Q. What transpired at the meeting?

A. We were told that they were going to make a change or switch in their TBA.

Q. By "they," who are you referring to?

A. The company, in regards to the stations. In other

words, they were going to take on—in others words, sponsor new products.

Q. What was the new product?

A. Goodyear tires and batteries and Goodyear accessories.

Q. And by "they," are you referring to Atlantic Refining Company?

534 A. Yes.

Q. At that time were you advised that you could purchase whatever brand of TBA you desired?

A. Yes, sir.

Q. And which brand of TBA did you desire to purchase, which brand of tires, rather?

A. Lee.

Q. Now in or about that time, did you have—or prior to that meeting, rather, did you have what is known as service station identification, did you have signs in your service station?

A. Yes, we had decals in the windows, and signs outside also.

Q. Did you have a Lee sign outside?

A. Yes, in Darby I had a neon sign.

Q. Was that a large sign?

A. (Nodding affirmatively.) I am not positive whether it was a neon sign, but it was a lighted sign.

Q. How long had that been in your station?

A. It was in Darby when I took the station over in Darby.

Q. Now during the period in or about March 1951 you stated you were at the Yeadon station, is that correct?

A. That is correct.

Q. Did you have advertising of any type on your Yeadon station prior to March 1951, and what type of advertising did you have there, TBA advertising?

535 A. We had decals in the windows at the top.

Q. What brands were advertised?

A. Exide and Lee.

Q. Now, after this meeting in or about March 1951, did you continue to have Lee and Exide signs in your station?

A. (Nodding negatively.) They were taken down and others were put up.

Q. Would you please explain that in a little detail?

A. Well, I wasn't there when it occurred. They came in when I wasn't there and took down the signs and put up these other decals.

Q. By "they," whom do you mean?

Mr. Thompson: He said he wasn't there.

The Witness: I wasn't there, but I was told it was a representative from Goodyear and an Atlantic man was with him.

By Mr. Kelaher:

Q. Did you ask that the Lee and Exide signs be taken down?

A. I did not.

Q. Did you do anything about the Goodyear signs that were put up?

A. I took them down.

Q. What happened after that?

A. They came back out and put the Goodyear signs up again.

Q. Did they remove the Lee and Exide signs?

536 A. I had no more Lee and Exide signs to put up. They removed them the first time. The next time they came back and put them up after I took them down.

Q. How long after you removed them did they return and put the Goodyear signs up?

A. A week or so, as soon as they found out they were down.

Q. Now during the period prior to March 1951, you

stated that you sold Lee tires. Had you built up a fairly good volume in Lee tires?

A. Very good.

Q. And were you satisfied with Lee tires, price-wise?

A. Yes, sir.

Q. And were you satisfied with Lee tires as to the guarantee offered?

A. (Nodding affirmatively.)

Q. What type of guarantee was on the tires?

A. They had an unconditional guarantee; they also guaranteed against road hazard, over and above material and workmanship.

Q. And by road hazard, would you explain that a bit, what is meant by that guarantee?

A. Well, if you hit a curb and break it or hit a hole in the road and break it, it was still adjustable, based on the mileage it had travelled.

Q. And did Goodyear have a similar road hazard guarantee?

A. No.

537. Q. Did you desire—did you continue to sell Lee tires?

A. For some time after that, yes.

Q. How long after that did you continue to sell Lee tires?

A. Until, I would guess, very early in 1953.

Q. What happened at that time?

A. The company changed salesmen.

Q. By "company," you are referring to Atlantic?

A. Yes, sir.

Q. Who was the new salesman?

A. Bill Way.

Q. Will you please explain what relationship that has to do with your sale of Lee tires?

A. Well, prior to that time, I was bothered very little

with the salesmen. I very rarely saw him, and I don't think he knew what I was doing and if he did, he didn't care because he was leaving the company.

Q. In early 1953 you stated Mr. Way became the Atlantic salesman. Now would you please state what connection that has with your Lee tire sales?

A. He came out—I think his first trip was around—or he was brought around by the former salesman and introduced and nothing was said and the next time he came in a couple of days later, nothing was said. And two days later, he came in with his supervisor, Mr. Arnholt, and at that time everything broke loose then.

538 Q. By "everything broke loose," would you explain what you mean?

A. They told me what to do or else.

Q. What did they tell you?

A. They told me to get rid of Lee tires and to let's get with the company.

Q. "Let's get with the company"?

A. (Nodding affirmatively.)

Q. And did they make any comments with respect to accessories?

Mr. Thompson: Who is "they" at this point?

Mr. Kelaher: I am referring to Mr. Way and Mr. Arnholt.

The Witness: Yes, in regard to batteries they did because I had Auto-Lite batteries at that time.

By Mr. Kelaher:

Q. What comment did they make with respect to the Auto-Lite batteries?

A. They told me I had to handle Goodyear.

Q. Did you want to continue to handle Lee tires?

A. I did.

Q. And did you continue to handle Lee tires?

A. No.

Q. Why didn't you?

A. I didn't want my lease cancelled. I wanted my lease renewed when it terminated.

539 Q. Were you at any time asked by Atlantic representatives to sign a mutual cancellation of the lease?

A. I was.

Q. Would you please state when that was?

A. That was about two weeks after Mr. Arnholt and Mr. Way were there.

Q. And you fix that time early in 1953?

A. Correct.

Q. I would like for you to state just what happened then—with respect to the mutual cancellation of the lease document?

A. He came out and told me he had a cancellation for me to sign—

Q. (Interposing.) Who is "he"?

A. Mr. Way. I told him I wouldn't sign it. He told me I had to sign it and I said I didn't have to sign it. So we argued for three hours, and I didn't sign it.

Q. Was there any mention made of TBA during that conversation?

A. Sure, that is the reason he brought it out.

Q. What did Mr. Way say with respect to TBA?

A. He said I wasn't buying from the company as I was supposed to so they figured it was better for everyone concerned if I signed a mutual and they cancel my lease and I said I didn't want my lease cancelled and I said if I
540 cancelled mutual, I was making a liar out of myself.

Q. What did you say to Mr. Way as a result of the conversation?

A. I just told him I wouldn't sign it, but I told him I would be good and follow the line—actually, after we argued for two and a half to three hours, he told me then, he softened before I did, and he told me that he couldn't force

me to, and he couldn't do anything about putting me out until my lease expired in June, but that at that time my lease wouldn't be renewed. So I said all right, I will be a good boy and if I don't show a great increase in TBA and so forth by then, then you can cancel my lease and that way I felt I was going out because they wanted me to, but there was nothing I could do about it. I still wasn't making a liar out of myself by signing a mutual.

Q. After that conversation, did you increase your purchases of Goodyear TBA?

A. I did.

Q. And did you decrease your purchases of Lee tires and other non-sponsored brands of TBA?

A. Completely.

Q. So you went one hundred percent Goodyear at that time, is that correct?

A. I did.

* * * * * *

541 By Mr. Kelaher:

Q. Did you want to change from Lee tires to Goodyear tires?

A. No.

Q. Why did you change from Lee tires to Goodyear?

A. Atlantic pressure.

Q. Did you purchase at any time Auto-Lite batteries. I believe you mentioned them, that you had them at one time.

A. (Nodding affirmatively.) I purchased Auto-Lite batteries in Yeadon, and I purchased them in Media.

Q. From whom did you purchase the Auto-Lite batteries?

A. Auto Gear and Parts, in Lansdowne.

Q. Who was the salesman?

A. Mr. Wilbur.

Q. Is he a friend of yours?

A. More or less, yes.

Q. And was any comment ever made by Atlantic representatives with respect to your purchase of the Auto-Lite batteries?

A. Yes.

Q. Are you saying yes?

A. Yes, sir.

Q. Would you please state the circumstances surrounding such comments and the approximate time thereof?

542 A. In the fall of 1954 I purchased 10 Auto-Lite batteries, and I was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease.

Q. Who told you that?

A. Mr. Hayes.

Q. Is Mr. Hayes present today?

A. Yes, sir.

Q. Would you identify him?

A. Yes, sir. (Indicating.)

Mr. Thompson: I didn't hear what Mr. Hayes said. May I have it repeated?

Hearing Examiner Kolb: Read the answer.

(Answer read.)

By Mr. Kelaher:

Q. Who was your Goodyear TBA supplier in Yeadon?

A. Mr. Parris, he was in Sharon Hill at that time.

Q. And who was your Goodyear TBA supplier when you moved to Media?

A. The same.

Q. Mr. Parris was your Goodyear supplier at all times?

A. Yes, sir.

Q. And prior to taking on the Goodyear TBA line, he

supplied you with Lee tires, Exide batteries, and other lines of accessories?

543 A. Yes, sir.

Q. After the mutual cancellation of lease incident, you stated you went one hundred percent Goodyear. At any time after that did you attempt or did you purchase at any time after that non-sponsored TBA?

A. In small quantities, occasionally.

Q. Was anything ever said about that by Atlantic personnel?

A. I was warned every time I did it and they found out about it.

Q. Would you please state the names of the Atlantic representatives that warned you?

A. Mr. Hayes and also Mr. Parris, of course, he wasn't an Atlantic representative, but he was selling.

Q. You mean the TBA supply man, Mr. Parris, also warned you?

A. Yes, sir. One particular incident, I had some MOA on the shelves and he thought it was foreign merchandise, Mr. Hayes, and he asked me where I got it and then he found out it came from Parris.

Q. MOA? What is that?

A. Motor oil additive, made by DuPont.

Q. And you referred to that, you said that was purchased from Mr. Parris?

A. (Nodding affirmatively.)

Q. And did Mr. Hayes think you had purchased it from Mr. Parris?

544 A. Not at the time. He found out later I had.

Q. And did you have a Mr. Hoffman call on you?

A. I did.

Q. Did he ever make any comments about the non-sponsored TBA in your station?

A. Yes.

Q. What did he say?

Mr. Correa: Could we have a time and place fixed?

Mr. Kelaher: Yes, we will do that.

The Witness: Yes. Shortly after Mr. Hoffman came into the territory, which was January 1, 1957, he and I had a discussion about DuPont's antifreeze, because the company always handled Prestone.

Q. What did he say?

A. He said—

Q. By "he" I mean Mr. Hoffman.

A. He asked me what I was doing with DuPont's antifreeze and I told him that you had to have a certain amount of it for those customers that demanded it, but I only purchased it a case at a time, trying to make things as easy as possible.

Q. And do you recall any other incidents with Mr. Hoffman similar to the one you just mentioned?

A. No. But I recall one incident where he came in the office and I had a top coat and a jacket and I was on the way to the cleaners, and he threw them on the floor
545 and I only had laid them down long enough to talk to him because I was driving to the cleaners, on the way to the cleaners, and I saw him in the station and stopped in and carried them in with me. He took them and threw them on the floor.

Q. This is Mr. Hoffman you are referring to?

A. That is right.

Q. Was he doing that as a gag?

A. It might have been a gag to him, but it wasn't a gag to me. He told me to get them out of the front office.

546 Q. Did you receive advertising material from Goodyear?

A. I did, not because I ordered it, but because they sent it and billed me for it.

Q. In other words, they sent you advertising material without your request, is that correct?

A. Uh huh.

Q. Are you saying "yes"?

A. They did.

Q. Did Atlantic salesmen or Mr. Parris ever write up tire orders without your request?

A. The salesman did, he sent in oil filters one time without my request and there were so many complaints from other dealers that Mr. Parris called me a day later and after he had sent them and said he understood that was the situation and he wanted to know if I wanted to send them back.

Q. What type oil filters were they? What brand?

A. AC.

Q. Now, with respect to tire orders, did Atlantic salesmen write up tire orders for you?

A. Usually Mr. Parris did.

Q. And would you request certain purchases or how was this done?

A. Usually they'd come in and say "What sizes do you want?" It wasn't how many, they knew if you had a buck why they—and could afford to pay for them they were going to send them in.

547 Mr. Thompson: I move the answer be stricken.

Mr. Kelaher: I think it's perfectly proper, your Honor.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Kelaher:

Q. After the time in March or in 1953 when you discussed the mutual cancellation of lease document with Atlantic representatives, did you ever purchase non-sponsored TBA in large quantities?

A. No, sir.

Q. Why didn't you?

A. I knew better.

Q. When you stated you knew better, would you just explain that in a little detail.

A. Well, if I wanted to stay a dealer I knew I couldn't do it.

Q. You knew you'd—

A. In other words, you couldn't do it and get away with it.

Q. After that period when you did purchase non-sponsored TBA I believe you testified the comments were made by Atlantic representatives about it, is that correct?

A. That's correct.

Q. Mr. Matthews, you were an Atlantic lessee dealer from December 10, 1947 until last month, a period of 548 approximately ten years?

A. Correct.

By Mr. Kelaher:

Q. Mr. Matthews, you stated that you left your station May 7, 1957. Would you state whether or why you left your station at that time?

A. Due to my health.

Q. And did you at that time have an inventory on hand?

A. I did, of about stock and equipment $13,000.

Q. Did Atlantic repurchase any of the inventory?

A. They took most of the inventory and a small part of the equipment but equipment that I was told that I must buy when I went there they left me holding, which I'm still holding, approximately $3,000 worth of today.

Q. Did you have any Fram oil filters in your inventory?

A. I did, I had about 36 and I still have them.

Q. Would Atlantic repurchase them?

A. No, sir.

549 Q. They were non-sponsored?

A. No, they were sponsored.

Q. They were sponsored when?

A. I bought them from the previous dealer when I went there as dealer merchandise.

Q. Prior to '51?

A. That was in '54 when I bought them, June 1st.

Q. You bought those from Mr. Parris?

A. From Mr. McCafferty when I moved to the station.

Q. I see. But you didn't buy them from Mr. Parris?

A. They had been purchased from him.

Q. They had been?

A. Sure, I assume that they had.

Q. Mr. Matthews, you stated that you received advertising material from Goodyear. Prior thereto did you receive advertising material from Lee?

A. Certainly.

Q. Was there any charge for that advertising?

A. Not to my knowledge, no.

Q. Are you familiar with the gentleman referred to as the phantom customer inspector of Atlantic?

A. No.

Q. Did you ever have your station inspected as far as you know?

A. In regards to what now? Maybe I'm not clear.

550 on this when I answered.

Q. With respect to over-all operations?

A. Oh, sure. Sure.

Q. And how often would that occur?

A. Depending on what condition he found the station in.

Q. What do you mean by that?

A. Well, if you got a poor score why he came back oftener.

Q. Did you know when the phantom would be in the station or when the phantom was coming?

A. No.

Q. Do you recall attending Atlantic dealer meeting at Kosticks Restaurant during the summer of 1952?

A. No. It's possible that I did, but I can't just exactly say.

Q. Do you recall attending a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation came up?

A. No. Not definitely, no.

In 1953, I think it was in March, there were two men came into my place and conducted an investigation and I remember them at that time, but whether that was the only time I was ever approached from anybody from the Trade Commission.

Q. I'm referring now to a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation was mentioned. Do you recall any such meeting?

551 A. I remember one meeting we had when—but I can't say when it was exactly, when we were told that there was an investigation going on and that we were free to buy where we saw fit and so on and so forth; and that's what we were told at the meeting, but then after the meeting when the salesman came around and talked to us individually we were told something else.

Q. What else were you told?

Mr. Correa: May I ask, if your Honor please, that counsel identify who is "we" and who is doing the telling that all of this remains in the midst of anonymity.

By Mr. Kelaher:

Q. At the meeting you referred to who made the statements you have just alluded to?

A. At the meeting?

Q. Yes.

A. Representatives of the company, Atlantic.

Mr. Thompson: Who were they, is your next question.

Mr. Correa: And who was the "we"?

By Mr. Kelaher:

Q. Do you recall the name of the Atlantic representative who made the statement at the meeting?

A. Our salesman at that time was there, Mr. Arnholt was there.

Q. What was his name?

A. I can't tell you who the salesman was at that
552 time because I can't recall exactly when the meeting was.

Q. Did Mr. Arnholt make any statements?

A. The speeches were made and Mr. Arnholt took part.

Q. He took part?

A. Yes, sir.

Q. And you stated at the meeting he stated the substance of what you just mentioned, right?

A. Correct.

Q. After that time—

Mr. Correa: May we have the "we" identified? The witness says "we were told this," there's been no identification of who "we" was.

The Witness: The Atlantic dealers, as you might suppose that's who it would be.

By Mr. Kelaher:

Q. This was meeting of the Atlantic dealers?

A. That's correct.

Q. Now, after the meeting you have reference to you stated Atlantic salesman came in and told you something else, is that right?

A. That's correct.

Q. Now, who was the Atlantic salesman who came into your place?

A. Mr. Way.

Q. What did Mr. Way tell you?

553 Mr. Correa: May we have the time fixed?

By Mr. Kelaher:

Q. Yes. We are trying to.

A. Yes, it was early in 1953.

Q. And what did Mr. Way tell you?

A. That's when Mr. Way and I had the trouble that I just went through, the whole thing, lease, cancellation and so forth.

Q. I see.

Was that when he told you that you should not carry Lee tires?

A. That's right.

Q. At that Atlantic dealer meeting that you have reference to was any mention made of a Federal Trade Commission investigation?

A. I couldn't honestly say.

Mr. Kelaher: No further questions, your Honor.

Mr. Thompson: May we have just a minute?

Hearing Examiner Kolb: Yes.

(Discussion off the record.)

Hearing Examiner Kolb: Do you want to excuse the witness now until tomorrow morning at 9:00 o'clock. Is that it?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Is that all right with you,

554 Mr. Matthews?

The Witness: Yes, sir.

Hearing Examiner Kolb: All right; tomorrow morning at 9:00 o'clock.

Mr. Dias: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I would like to call Mr. Hinderscheid to the stand, plase.

W. F. HINDERSCHEID was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. W. F. Hinderscheid, 1139 Rock Creek Road, Gladwyne, Pennsylvania.

Q. Are you here in response to a subpoena, Mr. Hinderscheid?

A. Yes, I am.

Q. And what is your position with Lee Tire and Rubber Company?

A. Lee Rubber and Tire Corporation, I'm Vice President in Charge of Sales.

555 Q. You are Vice President in Charge of Sales of Lee Rubber and Tire Corporation, right?

A. That's right.

Q. Now, would you please explain the relationship between Lee Rubber and Tire Corporation and Lee Tire and Rubber Corporation, isn't it?

A. Well, at the present time there isn't any. All there is is Lee Rubber and Tire Corporation. Prior to a year ago, why, Lee Tire and Rubber Company of New York, Inc. was a sales company which was a subsidiary of Lee Rubber and Tire Corporation.

Q. But since that time it has been—

A. (Interposing.) Abolished, the Lee Tire and Rubber Company. Now it's Lee Rubber and Tire Corporation.

Q. For how long a period have you been Vice President in Charge of Sales?

A. November 1, 1948.

Q. Mr. Hinderscheid, prior to about March 1951 Lee had a sales contract with Atlantic Refining Company, is that right?

A. That's right.

Q. And when did that contract first become effective?

A. Well, I can't tell you just when that particular contract became effective because there had been contracts prior to that particular one.

556 Q. Yes. Well, when did the relationship with Atlantic first begin, that's what I'm trying to find out.

A. June 10, 1932.

Q. And that was the first contract entered into with Lee—between Lee and Atlantic, is that correct?

A. That's correct.

Q. And how long did the Lee-Atlantic contract remain in effect? I'm talking about the series of contracts?.

A. Well, the series of contracts from June 10, 1932 to March 15, 1951.

Q. And during the period when the Lee-Atlantic contract was in effect what was your form of distribution of Lee tires to the Atlantic market?

A. Our form of distribution to the Atlantic market was we had tires with the Atlantic Refining Company and they distributed to their dealers and service stations.

Q. Did you sell such tires to Atlantic Refining Company?

A. Yes.

Q. Did Lee physically deliver the tires to Atlantic for their warehousing and redistribution?

A. No, we delivered them to the Atlantic warehouses, they did the distribution themselves.

Q. And were there Atlantic warehouses in the entire marketing area in which Atlantic sells petroleum products?

A. I beg your pardon?

557 Q. Did you sell and distribute Lee tires to Atlantic's entire marketing area?

A. Not their entire marketing area; no.

Q. What part of it didn't you sell and distribute Lee tires to?

A. Well, I think they had marketing in the State of Ohio and we didn't have any Lee tires out there with Atlantic.

Q. Aside from that exception you sold and distributed tires to Atlantic in the remainder or the greater portion of their market?

A. I would say we did in a greater portion up until March about 1950.

Q. What happened in March 1950?

A. Well, Atlantic tested out distribution on a different basis in two or three spots between March 1950 and March 1951.

Q. And would you please name those areas?

A. Erie, Pennsylvania; Wilmington, Delaware; Newark, New Jersey.

Q. And were you advised by Atlantic that they were to undergo these so-called tests in those areas?

A. Yes.

Q. And were you also advised by Atlantic to solicit the sale of Lee tires in those test areas?

A. It was agreeable with Atlantic Refining Company for us to do so.

558 Q. I'm referring now to the sales to Atlantic stations.

A. Yes, sir.

Q. Now, Mr. Henderscheid, did you bring with you documents as specified in Specification 1 of the subpoena duces tecum?

A. Well, I had two different letters here—

Hearing Examiner Kolb: You may want to refer to this. (Handing document to the witness.)

The Witness: Specification I. I have it.

By Mr. Kelaher:

Q. Specification I.

A. I have it here.

Q. Are those documents authentic records of the Lee Tire and Rubber Company?

A. You're ~~taking~~ talking—

Q. I'm talking about the documents referred to in specification I of the subpoena.

A. Number I?

Q. Yes.

A. Yes.

Q. In addition to Specification I you were also requested to furnish certain data in Specification II. Do you have that material with you?

A. Which is Specification II?

Q. That is attached to the subpoena.

A. Yes, I have that.

Mr. Thompson: If you are showing something to
559 the witness, may counsel see it, Mr. Kelaher?

Mr. Kelaher: Certainly.

The Witness: That is Specification II you ask here for a list of Lee factory branches as of January 1, 1950.

By Mr. Kelaher:

Q. That's right. Do you have such a list?

A. Yes.

Q. And in the second request it asks for a list of Lee factory branches set up in the Atlantic Refining Company marketing areas subsequent to January 1, 1950 together with month and year each branch began operations.

A. I have that.

Q. And do you have the item called for in item 3?

A. I have that.

Q. And the last was for number and names of personnel referred to in items 1 to 19 inclusive of Specification I. List of official positions as of dates of documents.

A. I have that.

Mr. Kelaher: If agreeable to counsel we would like to have the photostatic copies called for in Specification I used in place of the originals.

Mr. Thompson: What do you mean by used?

Mr. Kelaher: For introduction into evidence.

Mr. Thompson: You mean to put into evidence?

Mr. Kelaher: Yes, sir.

560 Mr. Thompson: Well, unless I'm sadly mistaken you are not going to get most of them in evidence. I have no objection to the offer.

Hearing Examiner Kolb: You will make them for identification.

Mr. Kelaher: (To the witness.) May I have the documents?

The Witness: The ones that you sent to me, the photostatic copies? I have them numbered 1 to 19, the way you —numerical order.

Mr. Kelaher: And you also have the answer to specification—

The Witness: I have the answers to Specification II to number 1, number 2, number 3 and number 4.

Mr. Thompson: Unless it's a military secret could we know what Specification II is?

Mr. Kelaher: You certainly may.

Mr. Thompson: Is there a copy counsel could see?

Mr. Correa: I join the request, although I gather this has nothing to do with my client's part of the case.

Hearing Examiner Kolb: Do you want the documents marked for identification by the reporter?

Mr. Kelaher: Just a second, your Honor.

Off the record, your Honor.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

572 Mr. Kelaher: I would like to have the next document identified as Commission Exhibit 277. This is a letter dated June 16, 1950 from W. F. Hinderscheid to Mr. S. J. Heideman, Manager, TBA Sales, Atlantic Refining Company, Philadelphia, Pennsylvania.

573 (The document referred to was marked Commission's Exhibit 277 for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I show you Commission Exhibit 277 and ask you if this is a copy of a letter you sent to Mr. Heideman, dated June 16, 1950 (handing document to the witness).

A. Yes.

Mr. Kelaher: I now offer Commission Exhibit 277 into evidence.

Mr. Correa: I'll have to have a moment, if your Honor please. I have an exceedingly bad photostat which is going to take me a moment or two to read.

Mr. Thompson: Atlantic obviously has no objection to the offer, sir.

Mr. Correa: If your Honor please, on behalf of Goodyear we do object to this document. It is apparent that there has been no foundation laid as against Goodyear; no claim is made as I understand it that Goodyear had any notice of this document or that this document came from the files of Goodyear or has anything to do with Goodyear.

Further on the face of the document it is perfectly apparent from its context as well that it refers wholly and solely to some dealings taking place between Atlantic Re-

fining Company and Firestone Company which is, as to Goodyear, completely res inter alios acta and, there-
574 fore, I object to its being offered in evidence against Goodyear.

Hearing Examiner Kolb: This is a survey made just prior to taking over the Goodyear line?

Mr. Correa: Well, I don't know—

Mr. Kelaher: That's correct, your Honor. There was a test survey with Goodyear in Newark, New Jersey, and with Firestone in Erie, Pennsylvania and Wilmington, Delaware.

Mr. Correa: I see no reference to Goodyear in it and further I don't see even if it did refer to Goodyear how it could possibly be binding on Goodyear and how its introduction into this trial against Goodyear could fail but to commit hopeless prejudice against Goodyear in respect to the trial of the issues posted in the complaint herein.

Hearing Examiner Kolb: Overruled. The document will be received in evidence as Commission Exhibit Number 277.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 277, was received in evidence.)

Mr. Kelaher: I now ask the reporter to identify as Commission Exhibit 278 for identification a tabulation from Mr. D. R. McAvoy, dated 3/7/51, entitled "Monthly Sales to Atlantic Refining accounts in Newark District," to Messrs. Hinderscheid, Pettingell and Segur. That is Item 4 of Specification I of Mr. Hinderscheid's subpoena.
575 (The document referred to was marked Commission's Exhibit 278 for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I hand you Commission Exhibit 278 for identification and ask you to state what that is. (Handing document to the witness.)

A. That is the volume of sales that was done with Atlantic dealers and stations in the Newark District for the period between June and December inclusive—

Q. Of what year?

A. 1950.

Q. And during that period didn't Atlantic conduct a so-called test program with respect to Goodyear TBA in the Newark district?

A. As far as I know they did.

Q. And wasn't the purpose of this tabulation to inform you and other officials of Lee what sales were actually made to Atlantic refining accounts in the Newark district during that period?

Mr. Correa: I object, if your Honor please, to counsel leading the witness on this kind of thing. Counsel is telling the witness what the purpose of the tabulation was rather than vice versa, and I submit that vice versa is the proper and only proper procedure.

Mr. Kelaher: I'm asking—

576 Hearing Examiner Kolb: I think counsel is correct. You take a round-about-way of doing it. Go ahead.

By Mr. Kelaher:

Q. In June 1950, was Lee selling Atlantic Refining Company tires for distribution in the Newark, New Jersey district?

A. Yes.

Q. With respect to July 1950, were sales being made by Lee to Atlantic for distribution by Atlantic sales and distributors in the Newark, New Jersey district?

A. No.

Q. And does that same answer apply to August, September, October, November and December of 1950?

A. Yes.

Q. Now, would you please state what the column headed "Dollar Sales" and underneath that is "Month," and

underneath that is "ACC." Would you please state what they mean?

A. Well, the dollar sales means the volume of business that we did in those particular months which are listed on the left hand side and the ACC means accumulative.

Q. Now, who was the Charles W. Krieg Company?

A. A warehouse distributor that handles our tires in the Newark district.

Q. And what is the reference to New York branch mean?

A. We had a branch in New York City, our own operated.

Q. Does that refer to sales by the New York branch 577 during the months indicated?

A. That's right.

Q. In the Newark district?

A. Not in the Newark district.

Q. It states at the top, "Monthly Sales to the Newark Refining District."

A. That means the Newark district as far as Kreig is concerned and I presume in the Newark district we are figuring certain portions that our New York branch handled there that would come under the marketing area of the Newark district for the Atlantic Refining Company.

Q. In other words, as I understand your answer, this tabulation would relate to sales made by Lee to Atlantic accounts in Atlantic's Newark sales district, is that correct?

A. It would to the extent we were able to figure that's what it covered.

Q. Right. And down at the very bottom of the tabulation there is a heading "1949 AR Co. Sales based on 13.7 percent regional sales (last 6 months, 1949.)" Would you explain what that means, please.

A. Well, that is a figure that we estimated and we had no specific way of knowing, but it was purely an estimate on our part as to the amount of business we received

through Atlantic Refining Company when they were handling Lee tires.

I couldn't say that that figure was correct because,
578 it was more or less an estimate.

Q. I see.

A. We had no way of knowing.

Q. And this column entitled up at the top "Passenger tires" there are four columns, Passenger tires, truck tires, PASS tubes, TR tubes, and underneath that, Month and ACC, under each one. Would you explain what that is, please?

A. Under Pass period tires, that means passenger tires, and the month was the individual month and the ACC is the accumulation, and under Truck tires, why, it's the same as passenger tires, and passenger tubes and truck tubes, we use the same formula on the four of them as we did on the dollar or the monetary value.

Q. And does the number 676, for example, under July, Passenger Tires, represent the unit number of tires sold or dollar volume?

A. 676?

Q. Yes.

A. Unit, passenger tires sold.

Q. Thank you.

Mr. Kelaher: Mr. Examiner, I offer Commission Exhibit 278 in to evidence.

Mr. Thompson: Now, may I inquire the purpose of the offer, sir?

Mr. Kelaher: Yes. The purpose is to show, I think
579 it is self-explanatory, is to show sales made by Lee to Atlantic accounts in Atlantic's Newark district during the period mentioned on the tabulation.

Mr. Thompson: Is it the purpose to compare sales by Lee during certain months of 1949 with certain sales made during the same months of 1950?

Mr. Kelaher: Yes, it is. I think that comparison is made on the tabulation.

Mr. Thompson: Mr. Examiner, I object to the exhibit as completely meaningless because of Mr. Hinderscheid's statement which I was quite sure he would have to make, that the 1949 sales represent 13.76 percent of the regional sales made by Atlantic during 1949 and that was just a guess figure. It is perfectly obvious that instead of guessing 13.76 percent of Atlantic's sales in this particular region if Mr. Hinderscheid's people had guessed 6 percent, the comparison would have been exactly the opposite, the other way. It would have shown an increase in 1950 over 1949 instead of a decrease; unless there is some basis for the 13.76 percent, I submit the whole exhibit does nothing but encumber the record.

Hearing Examiner Kolb: Do you have any remarks on this, Mr. Kelaher?

Mr. Kelaher: Yes, I would like to ask the witness a further question along that line.

580 Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Hinderscheid, what was the 13.76 percentage based upon?

Mr. Thompson: If you know, sir, of course.

By Mr. Kelaher:

Q. If you know?

A. The 13.—this sheet shows 13.7 percent, as near as we could figure, why the 13.7 percent was the regional sales of the New York region for the Atlantic Refining Company, as I said before, when we applied it to Newark why it was an estimate on our part and I wouldn't—couldn't verify that this was 13.7 of 14.2 or 12.6.

Q. Was that the best estimate of your—

A. That is the best estimate that we could make.

Q. At the time?

A. At the time, that's right, but I couldn't say that this was an accurate figure.

Q. Was that estimate made for purposes of comparison with the 1950 figures?

A. Well, that's what we did on this sheet, made a comparison.

Q. That was the purpose of it, was it not?

A. That's right.

Q. And why were you forced to make an estimate?

A. We weren't forced to make an estimate.

581 Q. Why did you make an estimate?

A. We wanted to see how we were going from a sales standpoint.

Q. And wasn't it true, that the only alternative you had was to make an estimate because you, prior to that period in 1950, you had sold Lee tires to Atlantic and Atlantic had resold the tires in the Newark area? Isn't that correct?

A. They did, but we had this warehouse distributor of ours at the same time.

Q. So you could tell from your own records the points of distribution to Lee tires going into the Newark district, isn't that correct?

A. The main thing was to see what was necessary for us to increase our sales in that particular area. That was the main reason for it.

Q. And you knew that the distribution points you have mentioned there, you have listed on the tabulation, were the points which distributed Lee tires to Atlantic for resale into the Newark district before the Goodyear TBA test program began in that district. Isn't that correct?

A. I don't quite follow you.

Q. Well, let's put it this way. Prior to about June 1950 you were selling Lee tires to Atlantic, isn't that right?

A. That's right.

Q. And they were being distributed from certain distribution points, isn't that correct, to Atlantic?

582 A. That's correct.

Q. So that Atlantic itself had the record of sales to Atlantic accounts in the Newark district, isn't that correct?

A. I don't know, I presume that they did.

Q. Well, you were selling to Atlantic and not to the dealers?

A. We were selling to Atlantic.

Q. Right. So in order to make a comparison you had to estimate what the sales volume was to the dealers?

A. I might clarify this. We had no way of knowing what Atlantic's sales were in the Newark area because the Newark area as far as Atlantic was concerned, the reports that we received from Atlantic Refining Company not only included Newark but they included Syracuse, Rochester, Buffalo, Binghamton and so on, see, and I knew in that particular area of the whole of New York State that they were running approximately 13.7 or thereabouts and that is the reason I used that particular figure.

Q. So you personally—

A. (Interposing.) No, as far as Newark was concerned, Newark could have been lower than that, or it could have been higher but I had our people use the best figures that we had available. I knew that they weren't accurate.

Mr. Kelaher: Your Honor, I think it is clearly admissible.

583 Hearing Examiner Kolb: Any further objections?

The objection will be overruled, the document will be received in evidence as Commission Exhibit Number 278.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 278, was received in evidence.)

Hearing Examiner Kolb: We will recess for five minutes.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, I would like to have the next document identified as Commission Exhibit 279-A through D, which is identified as Item 5 on Specification I on Mr. Hinderscheid's subpoena, it may be described as follows: It is a memorandum and attached three page tabulation from H. K. Paxson to Messrs. Hinderscheid, McCreery and Segur, the first sentence of which reads, and I quote:

> "This will complete the record for Atlantic's test districts . . ."

That would be 279-A.

Exhibit 279-B is a tabulation attached thereto identified as follows: "Month by month sales to Atlantic Refining Company accounts in Erie District," signed with the name H. K. Paxson, and the date 3/16/51 thereon.

584 Exhibit 279-C is also appended thereto and it is identified as "Month by Month sales to Atlantic Accounts in Wilmington district." With the name H. K. Paxson and the date 4/2/51 appearing thereon and also the names Messrs. Hinderscheid, Segur and Niedringhaus.

Exhibit 279-B also had the names Messrs. Hinderscheid, McCreery, and Segur thereon.

Exhibit 279-D states "Monthly sales to Atlantic Refining Accounts in Newark district," with the name H. K. Paxson and the date 4/11/51, with the names Messrs. Hinderscheid, Pettingell, and Segur thereon.

(The document referred to was marked Commission's Exhibit 279-A through D inclusive for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I would like to call your attention to Exhibit for identification 279-A which is the first page of this group (handing document to the witness), and ask you to state what that means?

A. Page 4 here is the same as I just finished testifying on on the Newark—

Q. (Interposing.) That is 279-D that he has reference to now, your Honor, and that is the same as Commission Exhibit 278, correct?

A. That's correct.

Q. Excepting it is for a longer period, isn't that right?

585 A. Yes, it's for two additional months, January and February.

The page 2 covers the number of accounts that had been handling Atlantic products dealers and service stations in the Erie district—

Q. That is CX id. 279-B. Does that run for what period?

A. April of 1950 to February 1951.

Q. And is the data included thereon similar to that you testified to with respect to Commission Exhibit 278?

A. Well, it doesn't have exactly the same information. It does as far as dollar sales are concerned, but it doesn't have the units as 278 had.

Q. Right.

And would you please describe what would be sheet number 3 which is Commission Exhibit for identification 279-C.

A. You have reference now to the Wilmington district on it?

Q. Yes.

A. I don't know what number these are.

Q. To the Wilmington district.

A. Well, that is the same as the Erie—similar information as the Erie and Newark.

Q. And do the 1949 figures contained on these tabulations, 279-B and C reflect the best estimate that could be made by you and your staff with respect to 1949 sales to Atlantic accounts in the areas designated?

586 A. Well, we used the same formula on Wilmington and Erie as we did on the Newark set up.

Mr. Kelaher: Your Honor, I would offer 279-A through D into evidence.

Mr. Correa: If your Honor please, may I ask your leave to ask the witness a question or two on voir dire with respect to a possible objection I have to this exhibit or significant parts thereof?

Hearing Examiner Kolb: Yes.

Voir Dire Examination by Mr. Correa.

Q. Sir, referring to 279-B which is the second page of the exhibit before you, what is the significance of the Erie district in connection with that tabulation?

A. Well, Erie was—279-B?

Q. Yes, it is the second page of the exhibit before you.

A. Well, Erie was a test case the same as Newark and Wilmington was as far as Atlantic was concerned.

Q. Test of what, sir?

A. Of the selling of other than Lee products there, in fact, as far as Erie is concerned, why, it was a testing out of the Firestone.

Q. Firestone?

A. Firestone in Erie.

Q. And I draw your attention to 279-C, being the
587 third page of the exhibit before you and ask you, sir, with respect to that tabulation what is the significance of the Wilmington district?

A. Well, that was a test case on Firestone tires in Wilmington.

Q. That is also concerned with Firestone?

A. That's right.

Mr. Correa: If your Honor please, I object to this exhibit in its totality, because it's already been stated by the witness that 279-D is no more than another copy of 278 already in evidence; so I take it that part of the exhibit in and of itself would furnish no warrant for its admission at this junction.

I object to the admission of 279 with particular reference to 279-B and C because they refer to matters between Atlantic Refining Company and Firestone and do not involve the Goodyear Tire and Rubber Company and the respondent in the proceeding whom I represent. I submit, if your Honor please, that not only are they objectionable on the ground I have stated earlier, res inter alios acta, but in addition their admission into this proceeding is prejudicial to the respondent Goodyear and would result in the denial to that respondent to rights to proceed with due process to which it is entitled as well as its rights under the administrative procedure act and other relevant law.

588 Hearing Examiner Kolb: Any objection to me seeing a copy of it?

Mr. Kelaher: No, Mr. Examiner. I would like to correct counsel, he is under the mistaken impression that 279-D is the same as Commission Exhibit 278.

Exhibit 279-D includes the months of January and February 1951 which are not on Commission Exhibit 278 in addition to the same data which is on Commission Exhibit 278.

Mr. Correa: The witness has said they were the same, if your Honor please. Maybe the counsel is right and the witness is wrong.

The Witness: That's right. There are two additional months on it.

Hearing Examiner Kolb: I understood him to say it included a couple of more months.

Mr. Correa: In that event, if your Honor please, I will make my objection specifically to 279-B and C.

Hearing Examiner Kolb: I don't understand, Mr. Hinderscheid, you speak of a comparative tabulation. Doesn't this show the number of accounts you sold and the amount of sales in that particular area? Is that it or what does that show?

The Witness: That shows the number of accounts that we sold by months and the dollar volume of business. That is, your Honor, if you have 279—

589 Hearing Examiner Kolb: What connection does that have to do with Firestone?

The Witness: Well, it just so happened that in that particular area, the test case was on Firestone tires, whereas in the Newark test case it was on Goodyear tires.

Hearing Examiner Kolb: Regardless of who you were testing, this shows the sales of Lee in that particular area for the particular months?

The Witness: That's right.

Hearing Examiner Kolb: Any objections, Mr. Thompson?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Thompson: I have a couple of questions on voir dire first, if I may.

Voir Dire Examination by Mr. Thompson.

Q. I didn't understand, sir, referring now to B which is the second page and relates to the Erie district.

A. Yes, sir.

Q. How you got the 26.66 percent of Atlantic's 1949 sales in order to make a comparison with your own 1950 direct sales.

A. Well, where we arrived at the 26.66 percent was that of all of our sales to Atlantic Refining Company, 26.66 per-

cent was made in the Western Pennsylvania Region for Atlantic Refining Company and that is the only information that we had available to determine approximately how
590 many Lee tires Atlantic Refining Company sold in the Erie district because the Erie district was part of the Western Pennsylvania region. So, with the limited information that we had available why we used the information that we had available and we were assuming that Erie would be about the same as the remainder of Western Pennsylvania, that is I couldn't say that the 26.66 was accurate for Erie, it could be a different figure as far as Erie was concerned, but it was the best figure we had available to use to make a calculation.

Q. But, you do know sir, from the exhibit, if I may pursue that a little further, you do know from your own records that in 1950, during the test period, that is 1950 and in January and February of 1951, your company sold $94,853.29 in value of tires in the Erie district. Is that correct, sir?

A. That's right.

Q. Then when you make your comparison with the Atlantic Refining Company sales for ten months you derive a figure of $99,599.39 by using a percentage of 26.66 percent. Is that correct, sir?

A. Yes, sir.

Q. In other words, you allocated to Erie 26.66 percent of the sales which had been made to Atlantic for the Western Pennsylvania region in 1949. Is that correct, sir?

A. I have to think a little on it, it's been seven or
591 eight years since these figures had been made up.

Q. It is very confusing to me, sir, that is why I'm asking you these questions.

May I restate the same question in perhaps a more simple manner?

A. Yes.

Q. You were assuming for purposes of exhibit 279-B that in 1949, 26.66 percent of the sales made to Atlantic's Western Pennsylvania region had been for dealers in the Erie district. Is that correct?

A. That's right.

Q. Did you have a basis for that 26.66 percent figure, sir? Do you know why—

A. (Interposing.) At this time I can't tell you why the 26.66 percent—

Q. (Interposing.) Then when you come to Exhibit 279-C which refers to the Wilmington district you used a 12 percent figure, is that correct?

A. That's right. There it is.

Q. And was that estimate also made by you for purposes of determining what the Wilmington district sales of Atlantic Refining Company had been in 1949 as compared with a much larger region?

A. I don't think the 12 percent or the 26.66 percent that I arrived at those figures, that is the people that
592 worked these reports up, why, arrived at those figures and they were the best figures that they had available to work with. I didn't work up the figures at all.

Q. And you are not presently able to explain what method they used for computing it?

A. No.

Mr. Thompson: I object, sir, simply because I think all of these exhibits ought to be better authenticated than Mr. Hinderscheid is able to do. I am not referring any criticism of him in his position, he wouldn't know how these things were made up.

By Mr. Kelaher:

Q. Mr. Hinderscheid, who was Mr. H. K. Paxson whose name appears on those documents?

A. At that time, when those reports were made up, Mr.

Paxson was manager of our marketing research department and I might explain that on the one there for New Jersey or Newark there, why, we had Mr. McAvoy who had been previously manager of Marketing Research, Mr. McAvoy left the company and Mr. Paxson took over at that time as manager of Marketing Research.

Q. Mr. Hinderscheid, were these estimates made by men in the Lee organization qualified to make such estimates?

A. Well, I thought they were qualified.

Q. Thank you.

593 A. I don't know if they were qualified or not, but I thought they were.

Q. Well, the manager of the Market Research would have certain skills along those lines, would he not?

A. I imagine he had certain reasons to make a 26.66 instead of some other figure.

Q. Thank you.

Mr. Thompson: I think, sir, that this sort of tabulation is obviously proper for inter-company information but when you come to a law suit where an issue is whether the Lee company did or did not lose sales in a particular period of time, I think it's entirely too vague to be worthy of credibility and therefore of admissibility.

Mr. Kelaher: Mr. Examiner, I would like to call your attention to the fact that the same considerations are present here as were present when we discussed Commission Exhibit 278 which was admitted into evidence.

Hearing Examiner Kolb: The objection will be overruled, the document will be received in evidence as Commission's Exhibit 279-A to D.

(The document referred to, heretofore marked COMMISSION EXHIBIT 279-A through D inclusive, was received in evidence.)

Mr. Correa: Does that apply, your Honor, to our objection?

594 Hearing Examiner Kolb: I am passing on all objections made before me at the time.

Mr. Correa: Do these two parts of the exhibit having to do with another company not a respondent here—we are expected to defend as to what Firestone did, if your Honor please, or didn't do?

Hearing Examiner Kolb: I made my ruling.

Mr. Kelaher: Your Honor, I would like to have the document marked as Commission Exhibit for identification 280 which is a memorandum which is titled "Memorandum for Lee operating staff dated February 16, 1951 from Mr. A. A. Garthwaite, President, to Messrs. Brasaemle, Garthwaite, Jr., Hinderscheid, Leach, Nellen and Pouchot.

(The document referred to was marked Commission's Exhibit 280 for identification.)

Mr. Kelaher: It is also noted thereon that carbon copies went to Messrs. Conway, Dollison, Ikirt, Ingersoll.

By Mr. Kelaher:

Q. Mr. Hinderscheid, I show you Commission Exhibit for Identification 280 and ask you to state if that is an authentic copy of the memorandum from Mr. Garthwaite to you and others?

A. That's right.

Q. And where the other gentlemen named on the document members of the Lee Organization?

A. Lee Rubber and Tire Corporation, yes.

595 Mr. Kelaher: Your Honor, I offer Commission's exhibit for identification 280 into evidence.

Mr. Correa: May I inquire for what purpose, if your Honor please?

Mr. Kelaher: Your Honor, this is a document which is dated February 16, 1951, from the President of Lee to Lee operating personnel concerning the Lee-Atlantic contract, which expired on or about that date.

Hearing Examiner Kolb: Have you another copy here I could see?

Mr. Thompson: If anyone can read that document, I might object to it.

Mr. Correa: That is why I asked the purpose, because I can't read it.

Hearing Examiner Kolb: Any objection?

Mr. Correa: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's exhibit 280.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 280 for identification, was received in evidence.)

Mr. Kelaher: Your Honor, I would like to have marked as Commission's exhibit for identification 281-A and -B a two-page memorandum dated February 19, 1951 entitled "Sales Meeting," and the first sentence of which reads 596 as follows: "1. Atlantic Refining Company Contract cancelled effective March 1, 1951".

(The document referred to above was marked Commission's exhibit 281-A, -B for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I hand you Commission's exhibit for identification 281-A and -B and ask you to describe what it is, please?

A. This was an agenda for a sales meeting called for February 19, 1951 to advise our sales staff of the cancellation of the contract that we had with Atlantic Refining Company.

Q. Where was the meeting held?

A. Why, this meeting was held in Conshohocken, at our general office.

Q. And were you present at the meeting?

A. I was.

Mr. Kelaher: I offer Commission's Exhibit 281-A and -B in evidence.

Hearing Examiner Kolb: Any objection?

Mr. Correa: If your Honor please, the document is not, I suppose, in any sense prejudicial, but I am constrained as a member of the Bar to object to loading the record with this type of trivia. This is an agenda of a sales meeting; presumably the meeting took place; presumably they followed the agenda; maybe they didn't, who knows.

But what earthly use this can have toward the advance-
597 ment of the determination of the issues of fact in this case, I must confess escapes me entirely and I can't sit here and let the record be loaded with inconsequential material of this character and I object to it on that ground.

Mr. Kelaher: Your Honor, I would like to call your attention to the date, February 19, 1951, which was the month during which Lee's contract with Atlantic, which had been in effect from 1932 on, was terminated.

Mr. Correa: I don't deny for a moment it is a significant time, your Honor, in terms of the facts of the case. All I am saying is that the probative value of this piece of paper is nil and we are just loading the record.

Mr. Thompson: If your Honor please, I hate to disagree with my friend, but I think this paper, at least in one respect, has great significance and great probative value.

Now I particularly call your attention to item 2 c "Atlantic dealers and distributors are free to handle Lee tires and other accessories once bought through Atlantic." That is a fact we would almost admit in this case, Mr. Correa.

Mr. Correa: That is conceded. I don't think there is any doubt about that. It is cumulative.

Hearing Examiner Kolb: The objection will be overruled. The document is received in evidence as Commission's exhibit 281-A and -B.

598 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 281-A and -B for identification, was received in evidence.)

Mr. Kelaher: Your Honor, I would like to have marked for identification as Commission's exhibit 282-A and -B the letter from Mr. Hinderscheid, W. F. Hinderscheid, Vice President in Charge of Sales, to all Atlantic dealers, dated February 20, 1951, with a postcard attached, identified as Commission's exhibit 282-B.

(The document referred to was marked Commission's exhibit 282-A and -B for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, is this your signature appearing on Commission's Exhibit 282-A?

A. Is that my signature?

Q. Yes.

A. No, that isn't my signature.

Q. Is that your name?

A. Yes, but it is not my signature.

Q. Did someone sign it for you?

A. They did.

Q. With your permission?

A. Yes, with my permission, but it is not my signature.

Mr. Kelaher: I now offer Commission's exhibit 282-A and -B into evidence.

599 Hearing Examiner Kolb: Any objection?

Mr. Correa: No objection.

Mr. Thompson: No objection.

Hearing Examiner Kolb: It will be received in evidence as Commission's exhibit 282-A and -B.

(The document referred to, heretofore marked COMMIS-

SION'S EXHIBIT 282-A and -B for identification, was received in evidence.)

* * * * *

604 By Mr. Kelaher:

Mr. Hinderscheid, there are several tabulations here beginning with Commission's exhibit for identification 290, and on through several others, in which reference is made to Ar accounts and DAR accounts. I would like you to explain what those symbols mean.

A. Well, the AR accounts means those accounts that are handling Atlantic or were handling Atlantic Refining Company products.

Q. They are Atlantic outlets, is that right?

A. To the best of our knowledge, they were. And the DAR accounts are other accounts that we kept a record of that our salesmen were out trying to get a contract for or sign up to replace some of these Atlantic refining company accounts that we know wouldn't buy other brands of tires.

Q. Well, my understanding then is that you mean the DAR accounts refer to non-Atlantic service stations?

A. That is right. But it was due to the cancellation of the Atlantic Refining Company contract, but they had nothing to do whatsoever with Atlantic Refining Company; they were other accounts we signed up and started to sell.

Mr. Kelaher: Mr. Examiner, I would like to offer these documents into evidence, beginning with 283 A through C inclusive through 293-A through B, with the exception of

605 the portions of those which appear in certain of the documents beginning I believe with Commission's exhibit 290 A through I, where reference is made to DAR accounts. We are offering only the portions of those tabulations which refer to AR accounts, which reflect sales to Atlantic Refining outlets.

Hearing Examiner Kolb: Any objection?

Mr. Thompson: I am in a fair state of confusion with respect to the exhibits that have AR and DAR accounts on them, and I would like to look at them before I answer. I can answer as to the rest of them very quickly. I think those exhibits are 290 and 291 and 292.

Hearing Examiner Kolb: What do the initials DAR stand for?

The Witness. Those were accounts that we, after cancellation of Atlantic Refining Company contract, that we were able to go out and sign up immediately.

Hearing Examiner Kolb: They were still Atlantic Refining Company?

The Witness: No, they weren't handling any Atlantic products; they were just other accounts.

Mr. Kelaher: In the same area?

The Witness: Yes, approximately the same area.

Hearing Examiner Kolb: Then the AR doesn't refer to Atlantic Refining?

The Witness: It was just a designation as far as we were concerned.

606 Mr. Thompson: May I ask a questioin or two on Voir Dire?

Hearing Examiner Kolb: All right.

Voir Dire Examination by Mr. Thompson.

Q. I wonder whether you are not mistaken inadvertently about that. I am showing you one of those exhibits, and I refer you to the AR accounts and the column referring to DAR accounts, and I ask you whether the DAR accounts weren't Atlantic Refining Company Distributors?

A. No, they weren't.

Q. Are you sure of that?

A. I am positive.

By Mr. Correa:

Q. Sir, is the DAR, does that stand for anything, does that stand for any words beginning with the letters DAR respectively?

A. I will tell you what this stands for as far as words are concerned. Due to Atlantic Refining Company cancellation of the contract.

Q. Then these are former Atlantic Refining Company—

A. (Interposing.) It had nothing to do with Atlantic Refining Company whatsoever.

Mr. Thompson: Your Honor, in view of that—the hour is getting very late—I wonder if we might have a
607 chance to review these particular exhibits, in view of the witness' explanation because it puts them in an entirely new light so far as I am concerned. I had thought, in reviewing this before, and trying to understand and analyze them, that DAR meant distributor of Atlantic Refining Company, and now I have to take time to try to understand them in the light of Mr. Hinderscheid's explanation. So, could we reserve any objection we might have to these three exhibits until in the morning?

Hearing Examiner Kolb: Is it something Mr. Hinderscheid might have to explain. He wasn't to be here tomorrow.

Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: May I ask the status of those documents?

Hearing Examiner Kolb: They are just identified. I thought Mr. Thompson wanted to wait until tomorrow morning to have them offered.

Mr. Thompson: That was only the three.

Mr. Correa: I join him in the objection to those three, but I have no objection to the others.

Mr. Thompson: I have an objection, sir, to 289.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

(Witness temporarily excused.)

608 Hearing Examiner Kolb: Let's go through them in an orderly fashion. There is no objection to 283 A through C, is that right?

(No response.)

And there is no objection to 284-A and -B?

(No response.)

They will be received in evidence.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 283-A, -B, -C; and 284-A and -B, were received in evidence.)

Hearing Examiner Kolb: Exhibit 285, is there objection?

(No response.)

It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 285 was received in evidence.)

Hearing Examiner Kolb: Exhibit 286-A and B?

(No response.)

It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 286-A, and -B for identification was received in evidence.)

Hearing Examiner Kolb: 287?

(No response.)

It will be received in evidence.

609 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 287 for identification, was received in evidence.)

Hearing Examiner Kolb: Exhibit 288, do you have objection to that?

Mr. Thompson: No objection to 288.

Hearing Examiner Kolb: It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBITS 288-A, -B, -C, -D for identification was received in evidence.)

Hearing Examiner Kolb: Exhibit 289?

Mr. Thompson: Yes, sir, I have an objection to that. It is simply based on the ground that in that document it is apparent from the face of it that Mr. Hinderscheid attempted to state not the policy of the Lee Company, which of course he could do, but the policy of the Atlantic Refining and Goodyear Company.

Hearing Examiner Kolb: May I see the document?

Mr. Thompson: (Reading to the Examiner.)

Mr. Kelaher: Your Honor, Commission's Exhibit 289 is a follow-up to Commission's Exhibit 288 A through D, which is already in evidence.

Hearing Examiner Kolb: Have you completed your objection, Mr. Thompson?

610 Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: It will be overruled, and the document will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 289 for identification, was received in evidence.)

Hearing Examiner Kolb: Exhibits 290, 291, and 292 it is agreed that we hold them until tomorrow.

How about 293?

Mr. Thompson: I have no objection. And may I comment here, Mr. Kelaher, the reply to that letter I have here and we might save time by putting that in as a Commission exhibit, if you like, or otherwise we will put it in later.

Hearing Examiner Kolb: Let's hold that until tomorrow morning.

Mr. Correa: Mr. Examiner, I have an objection to 293-A and B, because it is apparent on the face of 293-B that both exhibits refer to an incident which has nothing to do with the respondent Goodyear; it involved apparently something arising in the area of the Firestone.

Hearing Examiner Kolb: May I see that?

Mr. Correa: (Handing to Examiner.)

Hearing Examiner Kolb: Your objection is to the attachment?

Mr. Correa: To both, because the other doesn't have any point except with the attachment, and the whole
611 incident around which both evolved makes it clear it had nothing to do with the respondent Goodyear.

Hearing Examiner Kolb: You have no objection, Mr. Thompson?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: The document will be received in evidence as to Atlantic and received subject to motion to strike on the part of Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 293-A and -B for identification, was received in evidence.)

Hearing Examiner Kolb: The hearing will adjourn, to reconvene in this court room tomorrow morning. I understand that Court Room number 7 is not available.

* * * * *

613 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, Mr. Matthews is being recalled for cross-examination.

JAMES MATTHEWS resumed the stand and testified further as follows:

Cross-Examination by Mr. Thompson.

Q. Mr. Matthews, I am going to show you one of the Commission's exhibits in this case, identified as CX-150. This isn't the original exhibit but I won't bother to get it because I have a photostat.

Mr. Kelaher, I am going to use a photostat instead of the one that is in evidence, if I may, of this letter.

Mr. Kelaher: Certainly.

By Mr. Thompson:

Q. And I will ask you whether you recall receiving a letter addressed to you in the form of Exhibit CX-150 dated March 1, 1951, signed by Dwight T. Colley, Vice President of Atlantic Refining? (Handing document to the witness.)

A. So?

Mr. Kelaher: I believe—

Mr. Thompson: There is a question.

614 Mr. Kelaher: Would you state the question; I don't know whether he knows there is a question pending.

Mr. Thompson: Let's have it read.

(The reporter read the following question:

"Question: I will ask you whether you recall receiving a letter addressed to you in the form of Exhibit CX-150 dated March 1, 1951, signed by Dwight T. Colley, Vice President of Atlantic Refining?")

The Witness: I do.

By Mr. Thompson:

Q. I am going to now show you Commission's Exhibit CX-206, dated August 28, 1952, also signed by Mr. Colley, called "A Restatement of Atlantic's TBA Policy," and ask

you whether you recall receiving a letter in that form addressed to you? (Handing document to the witness.)

A. I do.

Q. And I now show you Commission's Exhibit CX-207 addressed by Mr. J. O. Estlow on June 24, 1955, to all Atlantic dealers and ask you whether you recall receiving that letter? (Handing document to the witness.)

Mr. Kelaher: I beg your pardon, is that an exhibit and what is the number on that?

Hearing Examiner Kolb: 207

A. That one I don't recall.

615 By Mr. Thompson:

Q. I am going to ask you about a fourth communication sent to all Atlantic dealers and show you Exhibit 282, I guess, Mr. Kelaher, that is CX-282, one of the exhibits you offered yesterday?

Mr. Kelaher: Yes, sir.

By Mr. Thompson:

Q. Signed by Mr. Hinderschied, of the Lee Tire & Rubber Company dated February 20, 1951, and ask you whether you as a former Lee dealer recall receiving that letter? (Handing document to the witness.)

A. I don't recall receiving that letter or the post card attached.

Q. If you did receive the letter you did not send back the post card attached?

Mr. Kelaher: Objection, your Honor, he doesn't recall receiving the letter.

Hearing Examiner Kolb: The objection is overruled, cross-examination.

A. I don't recall receiving the letter.

By Mr. Thompson:

Q. Then my question was if you did receive the letter you didn't send back the post card?

A. I didn't answer that part.

Q. What is the answer?

616 A. Well, if I didn't recall receiving the letter naturally I wouldn't send back the card.

Q. In any event to the best of your recollection you did not send back a card to Lee saying that you wanted to deal in Lee tires?

A. I didn't receive the letter.

Q. You say you did not receive the letter?

A. To the best of my knowledge I didn't receive the letter.

Q. You were a fairly regular attendant at Atlantic dealer meetings, weren't you?

A. Correct.

Q. You referred to one yesterday held in the spring of 1951 at which you were told that the Goodyear TBA program was for you to accept or reject?

A. Correct.

Q. On how many subsequent occasions were similar statements made at dealer meetings? Quite frequently, were they not?

A. That's the only one in particular that I recall.

Q. And that was in the early part of '51?

A. Right.

Q. Well, you testified yesterday to another one which you said was in '52 and as I recall your testimony you said that shortly after that meeting in spite of those assertions by the Atlantic people, Mr. Way and Mr. Arnholt came out and told you the contrary. Was that a correct statement yesterday?

617 A. It was.

Q. So, there was more than one meeting at which you were told—

A. I said I did not recall at the present time.

Q. Do you now recall both of them?

A. The meeting at the beginning when we were told about this new TBA program, we were told at that time and we were told once at a later date.

Q. And that was in '52 or '53?

A. I would say that it was either late in '52 or early in '53. I can't be positively sure which.

Q. Fall of '52, perhaps?

A. I can't be sure.

Q. Called a "Football meeting?"

A. I can't be sure.

Q. Are you sure you went to that?

A. I went to all of them except one meeting that I remember missing.

Q. At every such meeting were not similar statements about no forcing made by the Atlantic representatives?

A. I don't recall it. I wouldn't say at every meeting; no.

Q. But you did receive two letters to that effect from Mr. Colley that you have already testified to?

A. I received two letters, the third letter I don't recall receiving.

618 Q. Now, after Atlantic adopted the Goodyear plan were you asked by Lee to sign an associate dealer franchise for Lee tires?

A. It's possible but I don't recall it.

Q. Did you sign such a franchise?

A. Well, if I don't recall it, I don't recall signing it.

Q. After March of '51 from whom did you buy Lee tires?

A. From their branch in Bryn Mawr.

Q. The branch in Bryn Mawr?

A. Yes.

Q. At that time you were in Yeadon?

A. Yes, sir.

Q. With whom in the Bryn Mawr branch did you deal?

A. Mr. Deemer.

Q. Did Mr. Way and Mr. Arnholt tell you some time in 1953 to discontinue selling Lee tires?

A. Either later in the fall of '52 or early in the spring of '53.

Q. Now, precisely who said what?

A. Mr. Way told me to get rid of the Lee tires or else they would get rid of me, to get them off of the racks and get them out of the station.

Q. And that was the entire conversation?

A. That was the heart of the conversation.

Q. Was this at the time Mr. Way suggested you 619 sign a mutual cancellation of your lease?

A. That was about two weeks prior to the time.

Q. Now, you say that was part of the conversation, was that the entire conversation and where was it held, was it held at your station?

A. Yes, sir.

Q. What was the entire conversation?

A. That's the main part of the conversation I remember.

Q. You don't now recall any other part of the conversation?

A. Nothing definite; no.

Q. Did you report to Lee what you say Mr. Way said?

A. I did not.

Q. Did you report to Mr. Colley?

A. I did not.

Q. Mr. Estlow?

A. No, sir.

Q. Well—

A. I didn't know anything about this report letter that you are talking about or I most certainly would have. That's the third letter you showed me there.

Q. You are now referring to a letter which was written in 1955 which, of course, you didn't know anything about?

A. No, I didn't know anything about.

Q. This was in 1953, did you say?

A. That's what I say, I don't know anything about that.

620 Q. But you had received two prior letters from Mr. Colley at the time of this alleged conversation with Mr. Way, had you not?

A. I don't know—I didn't look at the dates on the letters.

Q. You can refresh your recollection by looking at them again. One was in '52, one was in '51. (Showing documents to the witness.)

A. That would be before then, sure.

Q. Yes. So that you had already received those letters from Mr. Colley when Mr. Way is supposed to have said these things to you, correct?

A. Mr. Way did say them; there's no supposition about it.

Q. Well, we'll find that out later.

Now, you said something about a Lee sign having been taken down at your premises when you were away?

A. A sign from the windows were taken out, the decals.

Q. And how about the Lee tire sign on the station, was that taken down?

A. There wasn't any Lee tire sign at my Yeadon station, there was a Lee tire sign at the Darby station.

Q. And when you moved in 1949 from Darby to Yeadon there was no Lee sign on your station?

A. There was a Lee sign in Darby, yes, in '49, but there was no Lee sign in Yeadon.

Q. Was there a Lee decal?

621 A. Yes.

Q. I beg your pardon?

A. Yes.

Q. What is a decal?

A. It's a sign that's put on the inside of glass.

Q. Just pasted on the window?

A. That's right.

Q. And you say that was taken down?

A. That's right.

Q. At your Yeadon station?

A. Yes.

Q. Do you know by whom?

A. No, I wasn't there when it was taken down.

Q. You weren't there a lot of the time in those days, were you, Mr. Matthews?

A. I don't think that enters into it at all.

Q. We'll see whether it does. I would like you to answer my question.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

By Mr. Thompson:

Q. Is that true or false?

A. I don't have to answer—

Mr. Kelaher: Is what, your Honor?

Hearing Examiner Kolb: What is the question?

622 Mr. Thompson: The question is, "You were not at the station a lot of the time during those days, were you?"

The Witness: I wasn't at the station twenty-four hours. I worked a shift.

By Mr. Thompson:

Q. In fact, you were away from the station a great deal, weren't you?

There's a question.

A. Describe what you mean by "a great deal".

Q. I'm asking the questions, Mr. Matthews.

A. All right, make yourself more specific then.

Q. You can take your orders from the Examiner.

Hearing Examiner Kolb: Answer the questions as best you can, Mr. Matthews.

The Witness: I don't understand what he means by "a great deal," does he mean months, a year, or week? I took a vacation which I think everyone is entitled to.

Hearing Examiner Kolb: Answer the question. Were you there except for the vacation?

Mr. Kelaher: Your Honor, I think he's entitled to have a more specific question. A great deal of time means a lot of things to a lot of people. I think it should be specified with respect to hours, days, months, etc.

Hearing Examiner Kolb: Ask another question.

Mr. Thompson: I'll come back to it if I may.

623 By Mr. Thompson:

Q. About this Lee decal, did you tell the Lee distributor in Bryn Mawr that the decal had been taken down?

A. I did not.

Q. Why not?

A. Pardon?

Q. Why not?

A. I didn't feel it was necessary.

Q. Did you ask for another one?

A. I did not.

Q. Why not?

A. I had them in stock.

Q. You had them in stock?

A. I did.

Q. Did you testify yesterday that it wasn't put back again because you only had one?

A. No, I didn't.

Q. Well, your testimony will speak for itself.

A. I said I didn't put it back, but I didn't say that I only had one.

Q. Why didn't you put it back?

Mr. Kelaher: Objection, your Honor, to—he stated it's a fact he didn't put it back.

Mr. Thompson: I said "Why didn't you put it back?"

The Witness: I didn't get to it until they come back 624 and put more Goodyear decals up.

By Mr. Thompson:

Q. Now, you said that about two weeks after Mr. Way told you to get the Lee tires out of your station he came out with a proposed mutual cancellation of your lease, is that correct?

A. I would assume that it was approximately that time. After all, I didn't write it down and you're talking about something that happened five years ago.

Q. Now, that would make that incident the latter part of '52 or early part of '53, would it not?

A. It was the incident because my lease expired in May or June of '53, thereabouts, and it was, I would roughly guess, four to six months before my lease was due to expire.

Q. That would place it in the early part of '53?

A. Somewhere thereabouts.

Q. Now, you had been promoted from Darby to Yeadon by Atlantic, had you not?

A. I wouldn't call it a promotion.

Mr. Kelaher: Objection—all right.

By Mr. Thompson:

Q. Well, you had been moved to a more desirable station from Darby to Yeadon, hadn't you?

A. I wouldn't say it was.

Q. You hadn't been doing very well at Yeadon up to the early part of '53, had you?

A. I wouldn't say that.

625 Q. Gasoline volumes falling off?

A. Due to lack of support from the company and price condition; yes, sir.

Q. What do you mean by "lack of support from the company"?

A. They set up distress areas and I was left out.

Q. By "distress areas" you mean assistance to dealers on price?

A. Correct.

Q. Was that the reason your volume was falling off or was it because you were away from the station a great deal of the time?

A. I would say that it was due to distress areas being set up around me and I was left out.

Q. You could, of course, say that but I have some other questions I want to ask you on that score.

At that time were you not involved in a trucking business?

A. To some extent, but I had drivers, I wasn't doing my own driving.

Q. Didn't you operate a fleet of trucks?

A. I operated one and for a short time two, if you would call that a fleet.

Q. And you drove one of them yourself at night, didn't you?

A. No, I didn't.

Q. Not at all?

626 A. There was occasions when I drove a truck, but I wasn't a steady truck driver; no.

Q. When Mr. Way come out to see you and suggested a cancellation of your lease, did he not say to you that your outside interests were interfering with the operation of the station?

A. He did not.

Q. Did he say to you you were spending so much time on your trucking business that you were not adequately handling this station?

A. He did not.

Q. Did he say to you that one of your problems was that you drove a truck at night and were unable to be at the station the next day?

A. He did not.

Q. Did he ask you to discontinue the trucking business?

A. He did not.

Q. He made no mention of the trucking situation at all?

A. No, sir; not to my recollection he didn't.

Q. And on that occasion you said yesterday that he talked to you for three hours?

A. Correct.

Q. And you have summed that three hour conversation up—

A. Strictly an argument whether or not I would sign a mutual.

Q. And you argued about that for three hours?

A. Correct.

627 Q. And there was no reference to your outside activities and outside interests?

A. Not to my recollection; no.

Q. At that conversation did Mr. Way refer to the fact that you were in the Christmas tree business?

Mr. Kelaher: Which business is this?

Mr. Thompson: This is just another one; I'm coming to some more.

Mr. Kelaher: I just didn't understand you.

Mr. Thompson: Be patient, Mr. Kelaher.

Mr. Kelaher: I didn't understand you.

Mr. Thompson: Christmas trees.

Mr. Kelaher: Thank you.

By Mr. Thompson:

Q. Was that discussed?

A. No, sir. Furthermore, there was never a Christmas tree sold from the station; I never had a Christmas tree at that time to market, and as far as owning a farm I do own a farm but I have never done two hours work on the farm myself. So, what the Christmas tree business has to do with it is nothing.

Q. It diverted your attention from the station; you spent a great deal of time up there, did you not?

A. I did not. I went home to see my people once in a while; they live in the neighborhood. Yes.

Q. And shortly after—

628 A. Which I certainly think I'm entitled to.

Q. During this conversation with Mr. Way did he ask you to accept his counsel and advice about how to run a station profitably?

A. Yes, if I would go one hundred percent Atlantic on TBA and so forth.

Q. That is scarcely an answer to my question and I move that the response be stricken.

A. I answered to the best of my ability.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Thompson:

Q. Did he ask you to cooperate with him in trying to make this a top Atlantic station?

A. I told him if he would let me go to the end of my lease he could do as he saw fit.

Q. Did the station's volume and performance after this discussion with Mr. Way begin to improve?

A. I would not say yes or no volumewise, I know as far as purchasewise it did.

Q. Didn't you begin to spend more of your time there?

A. No, I began to spend more of my money for Atlantic TBA.

Q. Did you begin to spend more of your time there?

A. No.

Q. When your lease came up for renewal in 1954 629 did you ask for a Media station?

A. When my lease came up in '54, I don't understand the question at all.

Q. Well, I'll try to make it as simple as I can for your benefit.

Did you ask for the Media station?

A. I didn't understand the first part in regard to lease. What did you say about when my lease came up?

Q. I'm asking the questions. Did you ask for the Media station?

Mr. Kelaher: Your Honor, he asked the prior question with the word "leasing" in it.

Hearing Examiner Kolb: Read the question.

Mr. Thompson: My question is "Did you ask for the Media station?"

Mr. Kelaher: Get the original question, please.

Mr. Thompson: Mr. Examiner, I don't like this witness' attitude.

Mr. Kelaher: Your Honor, the witness is attempting to answer questions. When they are vague and general—

Mr. Thompson: It's a perfectly simple question. I asked him whether he requested a Media station?

The Witness: Well, what happened to this question you asked concerning a lease? That's what I want to know.

Hearing Examiner Kolb: He has passed that, Mr. 630 Witness; just answer this question.

The Witness: What happened to that question, your Honor?

Hearing Examiner Kolb: It's never been answered.

The Witness: Did I ask for the Media station; yes.

By Mr. Thompson:

Q. Do you know who recommended you for it?

A. Do I know?

Q. Yes.

A. Who?

Q. Yes.

A. Mr. Parris.

Q. Who else?

A. Mr. Hayes.

Q. Did you know Tom Hayes before you went to Media?

A. I did not.

Mr. Kelaher: You say you did not know him?

The Witness: I did not.

By Mr. Thompson:

Q. Tom Hayes interviewed you before you took the Media station?

A. Correct.

Q. You and he got to be close friends, did you not?

A. Just what do you mean by "close friends"? In business—

Q. Any way you want to answer it, Mr. Matthews. 631 I don't much care.

Mr. Kelaher: What was the question, please?

(The reporter read the question as follows: "Question: You and he got to be close friends, did you not?")

The Witness: Could you define what you mean by "close friends"?

By Mr. Thompson:

Q. No.

A. You mean in a business way or social way?

Q. You just answer the question the best you can and then I'll keep on asking other questions until I get the answer that I want.

Mr. Examiner, may we note on the record that it's taken this witness, by my stop watch, one minute—

Hearing Examiner Kolb: The witness has stated he didn't understand the question. Ask another one.

By Mr. Thompson:

Q. I'll ask it this way. Were you and Mr. Tom Hayes close friends?

Hearing Examiner Kolb: That was the same question you asked before.

Mr. Thompson: Yes, sir.

The Witness: To what extent? Do you mean did we play cards together, did we—I don't know what you
632 mean. Whether you mean just as a dealer-salesman relationship or what?

Q. When you were at the Media station did Mr. Hayes have a discussion with you about Auto-Lite batteries?

A. He did.

Q. Is Mr. Hayes in the court room?

A. He is.

Q. Mr. Tom Hayes, would you stand up, please.

(A gentleman in the back of the court room stood up.)

Q. Is the gentleman who is standing up the person you are talking about?

A. Correct.

Q. It was no one else? It was this gentleman?

A. That's right; and Mr. Parris was with him.

Q. And he was with him at the time of the instance you are going to talk about.

Thank you, Mr. Hayes.

Now, precisely what was said and by whom?

A. Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne

for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and
633 didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—

Q. Not "they," what two people talking at once?

A. Not to put them on display.

Q. Who said that?

Mr. Kelaher: Your Honor, I think the witness should be permitted to answer a question fully and not be interrupted when he is—

Hearing Examiner Kolb: He's giving a conversation, is he not?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Proceed with your conversation.

The Witness: So, they told me to put them out of sight until they got rid of them.

By Mr. Thompson:

Q. That's not my question. Who said that? Every time you answer I want to know what individual said what.

Hearing Examiner Kolb: Let the witness answer the question and then go back and find out if you want to.

By Mr. Thompson:

Q. May we have the question?

(The reporter read the following question and answer:

633 A "Question: Now, precisely what was said and by whom?

"Answer: Mr. Hayes and Mr. Parris came into the

station and there were te nAuto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—

"Question: Not 'they,' what two people talking at once?")

Mr. Kelaher: From there, he should be permitted to answer that question fully.

Mr. Thompson: Who said that?

Hearing Examiner Kolb: He hadn't finished answering the proceeding question.

Mr. Thompson: I thought he had.

Hearing Examiner Kolb: Had you finished your answer?

The Witness: No, sir.

Hearing Examiner: All right, finish your answer.

634 The Witness: How far had I gone when I was interrupted?

(The reporter read the following answer:

"Answer: Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want

to see any more of them in the station again. And not to put them—")

The Witness: So, I put them in the boiler room. They told me to put them out of sight, which I did, until I had gotten rid of them all.

But both Mr. Hayes and Mr. Parris referred to them as merchandise that should not be there.

By Mr. Thompson:

Q. Have you now finished your answer?

A. Yes, sir.

Q. Who said that?

A. I said Mr. Hayes and Mr. Parris both referred to them as merchandise which should not be there.

635 Q. But the conversation about the Auto-Lite batteries you referred to continuously as statements made by "them." Who? Which of the two made the statements.

Mr. Dias: We can't hear counsel over here, your Honor, I'm sorry.

The Witness: I said both of them; Mr. Hayes and Mr. Parris.

By Mr. Thompson:

Q. Did they say it in chorus together?

A. No, but I don't remember which one said it first.

Q. Both of them said it?

A. Yes, sir.

Q. Each of them, separately said it?

Mr. Kelaher: Your Honor, he's answered the question in every conceivable way.

Hearing Examiner Kolb: All right.

By Mr. Thompson:

Q. Did each of them separately say it?

A. I said I didn't know which one said it first.

Q. That means both of them said it at one time or another?

A. Correct.

Q. That was the only incident relating to TBA which you testified to yesterday, was it not, during your tenancy at the Media station?

A. I mentioned a motor oil additive which Mr.
636 Hayes questioned but it had been purchased from Mr. Parris, he found out later, Mr. Hayes did.

Q. Was there any other incident during the years you were at Media when Mr. Hayes complained about non-Goodyear TBA at the station?

A. I don't just recall it at the very minute. You have it on the record there.

Q. But you have stated everything that you recollect along those lines?

A. Just at the minute I do. After all, a person's mind is ninety percent subconscious, the other ten conscious.

Mr. Kelaher: Would you read the answer, please?

(The reporter read the last answer.)

By Mr. Thompson:

Q. The Media station is located on the Baltimore Pike, is it not?

A. That's right.

Q. And the Baltimore Pike is being widened?

A. That's right.

Q. Has the widening started yet?

A. It has.

Q. Has that interferred with that station?

A. Not according to the new dealer it hasn't to any extent.

Q. Was the widening started while you were still there?

637 Mr. Kelaher: Your Honor, off the record a minute, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: May I have the last question read?

(The reporter read the pending question.)

The Witness: No, not at the point of the station it wasn't.

By Mr. Thompson:

Q. Had your gallonage dropped off severely due to the improvements on the Baltimore Pike before you left the station?

A. No, I wouldn't say so.

Q. Was the widening of Baltimore Pike one of the reasons why you wanted to step out of this station?

A. No.

Q. It had nothing to do with it?

A. No.

Q. Now, at the time you stepped out you had a three year lease from Atlantic, of course, didn't you?

A. Correct.

Q. And you asked Atlantic if they would be willing to cancel it?

A. I did.

Q. And you had no difficulty in getting Atlantic to 638 cancel it, did you?

A. No extreme difficulty, no.

Mr. Thompson: I think I shall now turn you over to the tender mercies of former District Attorney Mr. Mathias Correa of New York.

Mr. Correa: Off the record.

(Discussion off the record.)

By Mr. Correa:

Q. On the record I just have a few points I would like to clear up.

Now, sir, you said that you were at a meeting of Atlantic dealers at which there was discussion of an investigation. Do you remember giving that testimony?

Mr. Kelaher: Your Honor, I think—if I understand your question, I don't think there was any such testimony.

By Mr. Correa:

Q. Let me ask you this, sir: Do you remember being asked on your direct examination and making the following answer. This is at page 550 and 551 of the record:

"Question: I'm referring now to a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation was mentioned. Do you recall any such meeting?

"Answer: I remember one meeting we had when—but I can't say when it was exactly, when we were told
639 that there was an investigation going on and that we were free to buy where we saw fit and so on and so forth; and that's what we were told at the meeting, but then after the meeting and the salesman came around and talked to us individually we were told something else."

Do you remember that, sir?

A. Yes, sir.

Q. Now, sir, do you recall the date of that meeting?

A. No, sir.

Q. Do yon recall the approximate date of it?

A. No, I would be guessing if I tried to establish about when it was.

Q. Do you recall the year in which it took place?

A. No, not definitely I don't. I would have to be guessing to—I could come close—

Q. (Interposing.) We don't want you to guess, we want your best recollection.

A. I could come close but I don't have it definitely established in my mind.

Q. You say you can tell us about when?

A. I could guess, I don't have anything established in my mind.

Q. You have no recollection?

A. No.

Q. All right. Now, you have said that after the 640 meeting the salesman came around and talked to you individually and you say "we were told something else." To whom does "we" refer to in your answer, sir?

A. Dealers in general.

Q. Well, does it refer to you in particular?

A. Yes.

Q. And to what other dealers to your knowledge, if you can?

A. Mr. Hill in Darby. George Hill.

Q. Mr. Hill in Darby. Anyone else?

A. That's the only one that I recall at the moment.

Q. So that when you said—"were told something else" in this answer at page 551 of the record you meant dealers in general, i.e. yourself and Mr. Hill of Darby, is that correct?

A. I meant myself and I knew of Mr. Hill in Darby at that time.

Q. Well, did you mean anybody else, sir, and if so, please name them.

A. I don't recollect anybody in particular at the moment.

Q. Do you recollect anybody in general?

A. Not at the moment.

Q. Now, sir, you recall that you were asked by Mr. Kelaher the following question and answer—on page 552 of the record:

"Question: Now, after the meeting you have refer-

641 ence to you stated Atlantic salesman came in and told you something else, is that right?

"Answer: That's correct.

"Question: Now, who was the Atlantic salesman who came into your place?

"Answer: Mr. Way.

"Question: What did Mr. Way tell you?"

And then I interposed and said: "May we have the time fixed."

"By Mr. Kelaher:

"Question: Yes, we are trying to.

"Answer: Yes, it was early in 1953."

Do you remember making those answers in response to those questions, sir?

A. Yes.

Q. Now, sir, does that refresh your recollection as to the date of the meeting at which you were told there was an investigation going on?

A. No, not exactly.

Q. Well, does it refresh your recollection at least to the effect that the meeting was some time prior to early in 1953.

A. Well, this thing was brought up at more than one meeting.

Q. Please, I'd like to stay with the meeting you talked about at page 551 of the record now, if I may, sir.

A. I can't definitely say for sure now.

642 Q. And those answers I last read you do not refresh your recollection as to whether or not that meeting was some time prior to early 1953?

A. Yes, but this thing of—

Q. Could you answer my question?

Mr. Kelaher: Let him answer the question.

The Witness: Wait a minute—

Mr. Correa: Please, Mr. Witness, I'm not taking any directions from you.

Hearing Examiner Kolb: The witness is trying to answer your question.

The Witness: You're not trying to submit any question or answer, you confuse me.

Mr. Correa: Would you instruct the witness that he is not to make remarks to counsel that this is the matter of your Honor's controlling the court room and not the witness. I ask for instruction, if your Honor please.

Hearing Examiner Kolb: Read the question.

(The reporter read the following question:

"Question: And those answers I last read you do not refresh your recollection as to whether or not that meeting was some time prior to early 1953?")

Hearing Examiner Kolb: Can you answer that question, Mr. Witness?

The Witness: Pardon?

643 Hearing Examiner Kolb: Does that refresh your recollection as to that having occurred prior to early 1953?

The Witness: No, because this TBA subject was mentioned at so many meetings—

Hearing Examiner Kolb: Well, it would have to be prior to '53, would it not?

The Witness: Well, there were times when the TBA was mentioned prior to '53, but what happened at which meeting I just can't definitely say.

Hearing Examiner Kolb: The question was whether it was discussed prior to that time. Is that correct, Mr. Correa?

Mr. Correa: Yes. Well, if your Honor please, the question was as to his recollection of when a meeting at which an investigation was mentioned took place. Now, he said that at the meeting he was told one thing and thereafter

salesmen came around and told him something else, and he says when asked when the salesman came around and told him something else that was early 1953.

Now, I asked him does that refresh your recollection—

The Witness: (Interposing.) That date is correct.

Mr. Correa: (Continuing.) —of when the meeting took place. That's all.

Hearing Examiner Kolb: We could spend all morning on this, Mr. Correa, but where are we going to be after you get finished with it?

644 Mr. Correa: If your Honor please, I submit that is not my fault. That is the witness. I dos't think these questions are particularly complicated or difficult and I don't see why we have had to spend this much time on it.

Hearing Examiner Kolb: You have spent considerable time on it. I was wondering why you were spending so much time on it. That's up to you, you are making the record.

By Mr. Correa:

Q. Well now, sir, coming back to this meeting—

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. At which you were told there was an investigation going on. Were you told what kind of an investigation or by whom?

A. I don't recall.

Q. Well, were you told whether or not there was a Government investigation?

The answer is "no"?

A. I said I don't recall at the moment. No.

Q. You will have to answer audibly because the reporter doesn't get it otherwise.

Now, you said, sir, that in 1953, in March, there were two men came into your place and conducted an inves-
645 tigation. Do you remember that answer?

A. Yes, sir.

Q. Now, sir, was that before or after the conversation with Mr. Way concerning a mutual consent cancellation of lease which you have testified about as having taken place early in 1953?

A. That was after I had the discussion with Mr. Way.

Q. Now, do you know who these two men who came into your place and conducted an investigation were?

A. No, at the present time I don't. I know that they identified themselves at the time.

Q. As what, do you know?

A. I can't be sure.

Q. What is your best recollection?

A. Whether it was FBI or Federal Trade Commission, but they had proper credentials for an investigation.

Q. You said they conducted an investigation, what did they do?

A. They asked me questions.

Q. And what questions did they ask you and what answers did you give?

A. I don't recall at the moment. It was all recorded at the time.

Q. What was the subject matter of their questions, sir, if you can't recall the questions specifically?

A. I wouldn't want to guess right at the moment.
646 Q. I don't want you to guess, but haven't you any recollection?

A. No, I wouldn't guess if I had.

Q. You have no recollection of the subject matter of their questions?

A. Not right at the moment. No, sir.

Q. Was it dealing in narcotics?

Mr. Kelaher: Objection, your Honor. I think that is a frivolous question.

Mr. Correa: Well, I submit—

Hearing Examiner Kolb: Objection overruled.

The Witness: What was the question.

Mr. Correa: Read the question, please.

(The reporter read the pending question.)

The Witness: Well, if you must be radical, I would have to say no.

By Mr. Correa:

Q. Well, you recall it was not that?

A. I do.

Q. Do you have any recollection of what it was?

A. Not at the moment, sir.

Q. Now, do you recall whether or not you discussed with these men who came into your place of business in March of 1953 the incident which you had related to us of your conversation with Mr. Way concerning the mutual consent to cancellation?

647 A. No, I don't recall.

Q. You have no recollection one way or the other on that?

A. No. sir.

Q. Did you discuss with these men who came into your place in March of 1953 the incident which you told us in your direct testimony occurred when advertising was placed in your place of business and subsequently removed by you?

A. I don't recall whether I discussed that point with them or not.

Q. Did they ask you questions on subjects related to either of those things?

A. I can't say whether they did or didn't.

Q. You have no recollection about that?

A. Not at the moment. No, sir.

Q. Now, sir, when this advertising was placed in your station you said you were not there, is that right?

A. That's correct.

Q. Who was?

A. The gentleman in charge of the place when I wasn't there. I wasn't out of town, I wasn't—

Q. I just asked you who was. We'll get on much faster if you will answer my questions.

A. I said the gentleman who was in charge—

Q. What was his name, if it's not a secret.

A. I don't recall at the moment.

648 Q. You don't remember his name?

A. No, sir.

Q. Now, don't you know, sir, didn't he tell you that he signed a receipt for that advertising saying that it had been installed to his satisfaction?

A. No, I wasn't—in fact, I was only gone a short time, I'd gone out for something and was working at the time and—

Q. (Interposing.) The question, if I may refresh your recollection, was don't you know?

A. That he signed, no; no, I didn't know that he signed.

Q. He didn't tell you that?

A. No, if he did I don't have any recollection of it.

Q. Now, sir, after this occasion in March of 1953 of which apparently you have no recollection, when was the next time you talked or corresponded with any Government investigators about the subject of your experience as an Atlantic station operator?

A. A week ago yesterday, by telephone.

Q. Where did that take place, sir?

A. I don't know exactly where the gentleman was when he called me.

Q. He called you?

A. That's correct.

Q. Now, sir, prior to your appearance here, have you discussed your testimony with anyone?

649 A. I have not, sir.

Mr. Correa: I have no further questions.

Mr. Kelaher: May we have a few minutes, your Honor?

Hearing Examiner Kolb: We will recess for five minutes.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Correa: If your Honor please, there is one further question I neglected to ask. May I have your Honor's leave to put it to the witness?

Hearing Examiner Kolb: Yes.

By Mr. Correa:

Q. Mr. Witness, on the occasion in March of 1953 when two Federal agents came to your place and in your words conducted an investigation, did you, sir, in connection therewith sign any statement in writing?

A. I did.

Q. You did?

A. Yes, sir.

Mr. Correa: I call for its production.

Mr. Kelaher: I have that right here.

Mr. Correa: Thank you.

May we have a moment, if your Honor please?

650 Mr. Correa: No further questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Witness, I would like to ask you if this is the statement you signed and please state the date. (Handing document to the witness.)

A. That's correct. 3/3/53. (Document is returned to counsel.)

Mr. Kelaher: Mr. Examiner, I now ask that this statement be marked for identification as Commission Exhibit 294-A and B—two pages.

(The document referred to was marked Commission's Exhibit 294-A and B for identification.)

Mr. Kelaher: Mr. Examiner, Commission Exhibit for Identification 294-A and -B is a statement signed by Mr. James B. Matthews on March 3, 1953, in the presence of Attorney Examiner L. E. Janson, an Attorney Examiner of the Federal Trade Commission in response to questions concerning his service stations operation as an Atlantic Service Station lessee dealer located at Church Lane and Bailey Road, Yeadon, Pennsylvania.

I now offer Commission Exhibit 294-A and 294-B into evidence.

Mr. Correa: No objection.

Mr. Ballard: No objection.

651 Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 294-A and -B.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 294-A and 294-B, were received in evidence.)

By Mr. Kelaher:

Q. Mr. Matthews, when Atlantic changed over to the Goodyear TBA line, did they consult you or ask your preference with respect to their change-over?

A. No.

Q. Mr. Matthews, during your operation of the three service stations did you always pay your rent in full and promptly?

A. Did I always pay my rent?

Q. Did you always pay your rent?

A. My rental up until December of this year—or this past year—was paid on a gallonage basis and it was changed

to a commission basis December 1, '56, and at that time we were—I left a deposit with the company of $650 in advance which is at, the company still have that at the present time because I haven't made settlement for the last month and the first 7 days of the next month.

Q. Up until that time you had—

A. It was always paid on a gallonage basis.

Q. And you paid it promptly, is that correct?

A. Well, within a few days—

652 Q. Within a specified time?

A. That's correct. Maybe I was late with a check once in a while for gasoline, but not any weeks or months or anything like that; just a matter of a couple of days.

Q. Did you ever receive a warning letter from Atlantic with respect to the cleanliness of your station during any of the three—in any of the three stations which you operated?

A. I can't ever say that I received anything in writing, I was told on a couple occasions that I should keep it cleaner, which we did in cooperation with the company.

Q. And did you normally keep a clean station?

A. Comparatively.

Q. And did you employ any personnel in your stations?

A. Yes, sir.

Q. And about how many hours did you keep the three stations open?

A. In Darby I operated 24 hours; in Yeadon I operated 17 hours—7 to 12—7:00 a. m. to 12:00 midnight; and in Media I operated 24 hours.

Q. And during all of the hours you have specified was either you or an employee of yours present at the station?

A. Yes, sir.

Q. Yesterday you referred to a Mr. Arnholt. Do you know what Mr. Arnholt's title was with Atlantic?

A. He was in a supervising capacity.

653 Q. And he was in charge of TBA in your area, is that correct? Sales supervisor.

Mr. Ballard: I object unless the witness knows the answer to this question.

Hearing Examiner Kolb: Does the witness know?

The Witness: He was in the sales department in the supervising capacity.

By Mr. Kelaher:

Q. Was he in charge of the various Atlantic salesmen such as Atlantic salesman Hayes and Hoffman who came into your station?

A. To the best of my knowledge, yes; he was their superior.

Q. And was he Atlantic salesman's Way's superior at that time?

A. Correct.

Mr. Kelaher: No further questions.

Mr. Correa: May I have the last exhibit?

(Document is handed to counsel for Goodyear.)

Recross Examination by Mr. Correa.

Q. Now, sir, remember I asked you whether on the occasion of this interview with Government investigators in March of 1953 you had said anything to them about the incident related on your direct examination when you

654 say Goodyear signs were put into your station in your absence and subsequently taken down by you. Do you remember that, you said you had no recollection.

A. Of it being mentioned at the time of the investigation?

Q. Yes.

A. I said I didn't have any definite recollection of it, no. But it was possible.

Q. I show you CX-294-A in evidence, and ask you does an examination of that exhibit refresh your recollection that you did not tell the Government investigators of any such incident? (Handing document to the witness.)

A. I don't see anything about it here.

Q. Well, my question, sir, is does it refresh your recollection that you did not tell the investigators of any such incident?

A. Well, I evidently didn't or they didn't write it down. I don't see it here.

Q. What is your recollection?

A. I still don't recall whether or not I did.

Q. Now, sir, you testified on direct examination that at this time your wish and desire was to sell Lee tires, is that correct?

A. That's correct.

Q. And that is the fact, is it?

A. That's right.

655 Q. And did you wish to sell Goodrich tires?

A. No, I never sold Goodrich tires. This question here that mentioned Goodrich tires the subject wasn't brought up by me.

Q. You hadn't given any thought to buying or to selling Goodrich tires prior to March of 1953?

A. Not to my recollection, no.

* * * * * *

No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: Just a minute, your Honor, I think we do when they have completed with the document.

656 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Matthews.

(Witness excused.)

Mr. Dias: Mr. Iacono, please.

ANIELLO L. IACONA was thereupon called as a witness for the Commission, and having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Please state your full name and home address.

A. Aniello L. Iacona, 1026 Woodland Avenue, Sharon Hill, Pennsylvania.

Q. Did you at one time operate an Atlantic station?

A. Yes.

Q. Can you give us the address of that station, please?

A. Well, it was the corner of Providence Road and South Avenue, Secane, Pennsylvania.

Q. When did you go into that station?

A. January 18, 1952.

Q. And did you change stations at all after that period, or were you in the same station throughout your term with Atlantic?

A. I stayed right there, one place.

Q. When did you leave the Atlantic station?

A. October, 1954, I think.

Q. Now, if you will, please, give us the periods— 657 you signed a lease when you went into the station, did you?

A. I think the first lease I signed was a six-month lease and then another six-month lease and then a year lease. Two six-month leases and a year's lease.

Q. Let's talk about the first lease. Do you recall the period involved there?

A. January to June.

Q. January to June of 1952?

A. Yes, and then June to December.

Q. June to December of 1952?

A. Yes.

Q. And the year's lease ran from when?

A. I think I had a lease in January—from October to October, I guess it was, when I went out.

Q. When, at any rate, you received your first year's lease, that was the latter part of 1952 or early 1953, is that correct?

A. I think it was, yes.

Q. And the four leases you received, that was another year's lease?

A. I think I was there two years, total, altogether, 1952 to 1954. I went out in October, I know that.

Q. Now referring to the time you took this station originally, was that a new station?

A. Brand new, I opened it up brand new.

Q. Did you carry TBA in that station?

658 A. Yes.

Q. And what brand TBA did you carry?

A. Mostly Goodyear TBA; the distributor was Ed Parris. I had all Goodyear tires and DuPont's chemicals, Goodyear tubes, batteries; when I first went in I got $1340 worth of TBA from Ed Parris, the salesman wrote up the order for me when I was just getting in.

Q. Which salesman?

A. John Clark of Atlantic Refining Company.

Q. Do you recall when he wrote that order for you? Was it before you went into the station?

A. Before I went in, in December, I think. The station was supposed to be ready in November and bad weather held it up and I didn't go in until January.

Q. Was the TBA in the station when you moved in and started doing business?

A. It was sent there a couple of days before I opened up.

Q. Did you mention John Clark? You mentioned him as the salesman, didn't you?

A. That was the salesman at the time.

Q. How did you come to choose Goodyear TBA?

A. How did I come to choose it?

Q. Yes.

A. Well, I was getting into business and I was trying to get the station so he says when I got home the
659 station was mine if I wanted it, and I had to have $5,000 to go into the station and there was so much rent to start, for the first six months, and he says "We have a distributor by the name of Ed Parris," which had his place of business in Sharon Hill at Clifton Avenue and Chester Pike at the time, and he says "You will get your TBA from him," tires, and tubes, and what-not. So he wrote up the order and I made out the check and paid him and Parris delivered the TBA, which was all Goodyear tires and tubes and the chemicals were DuPont's at the time.

Q. Did he ask you if that was what you wanted?

A. No, he didn't ask me.

Q. Did you carry anything other than Goodyear TBA thereafter?

A. Thereafter I did, yes. I had a problem there with adjustment on tires and I got kind of mad. They wouldn't make adjustment, so I started buying from Gaul Derr & Shearer and started putting in Century tires and tubes, Delco batteries and I put in Packard battery cables. And I put in other chemicals like Barsleak.

Q. Can you tell us roughly when that was you started buying those products?

A. I guess around 1953.

Q. The early part or the latter part of 1953?

A. I guess it was in the spring of the year, because I just got a load of tires in, 30, 60, 90 days and they wouldn't make adjustment on the tires that a customer of mine
660 got and that is when I got mad and called Ed Parris and told him to take the tires back if he wouldn't make

an adjustment, and they refused to make the adjustment and I talked to the salesman from Gaul Derr & Shearer and he said Century tires were unconditionally guaranteed and that is what I wanted because I had to please my customers, and I had a couple of defective Century tires they made good. And it was, I guess in the spring of the year.

Q. That was after your second six-month lease?

A. I think it was the second or the year's lease.

Q. How do those leases operate? You went in and signed a lease for six months?

A. Yes, I mean they couldn't base your rent until the station got operating, that was their idea, to find out what the station would do and they would give you a year's lease. I think I had two six-month leases.

Q. After the expiration of the first six-month lease, did you get a new lease?

A. Six-month, yes.

Q. Did you actually get a lease or did they extend the first one?

A. You got another written lease that had to be signed.

Q. When the second one expired, did you get a new lease for a year?

A. Yes, a new lease for a year.

661 Q. During your first lease, when you carried—during the first six-month lease in your station, did you receive any complaints about the operation of your station?

A. No.

Q. During the course of your second six-month period, did you receive any?

A. It was during the year's lease when I started to get complaints.

Q. Can you tell us when this occurred, the first complaint?

A. When I started to handle outside merchandise, like Century tires and tubes, and outside chemicals.

Q. Can you tell us who it was that complained—

A. (Interposing.) It was Tom Hayes, George Arnholt and Ed Parris.

Q. Do you recall their conversation relative to those problems?

A. Well, I remember one time he walked in behind Mr. Arnholt and I had Century tires and Tom Hayes was in front of him and he says to Tom Hayes—I recall this question—he said, "What kind of a salesman are you with this man having Century tires in there," and Tom gave me a dirty look. And when it blew over, Tom came in and said "I got the devil and you have to get rid of these tires." I said I wasn't going to. At the time I had a trickle charger that we used to put our wet batteries on and I had Delco batteries on the rack instead of Goodyear.

662 Q. Was there any comment as to that?

A. Yes. I was told to take them out, too. And then I refused to do it and I think this one month I hadn't bought hardly anything off Ed Parris, and the three of them, Tom Hayes and Ed Parris, come in and wanted to know what the trouble was, and Mr. Arnholt showed up, so I told Ed Parris what the trouble was, that I wasn't satisfied with the product because of their adjustment. It lost my customers on account of the adjustment, and I didn't think that was fair.

Q. Did you have any difficulty in connection with accessories? Did you carry accessories?

A. Yes, at the time I did.

Q. Fan belts, hoses?

A. Well, I carry, like I say, DuPont. We had a DuPont line of sealer and I used to carry Barsleak and I had Bardahl oil additive and Mr. Arnholt made a remark about that one day, that the Atlantic oil was so good we didn't need an additive, and I had people that used to ask for it.

Q. What about some of the other products you mentioned?

A. Barsleak, he didn't like the idea of having that on the shelf. He picked up a bottle of that and said "What is this," and he could read it, he knew what it was.

Q. How about fan belts?

A. I stuck to Goodyear fan belts and hoses. I had outside battery cables, like I said, Packard battery cables, 663 that I bought from Gaul Derr and Shearer.

Q. Was there any comment made by them about that?

A. Yes.

Q. What?

A. They were on the shelf when I checked out and the incoming dealer refused to buy them because it was outside merchandise.

Q. Did you do any advertising around your station?

A. What do you mean by advertising?

Q. Well, did you advertise any of the products which you carried other than Atlantic gasoline?

A. There was a Goodyear sign out on the pole, Atlantic and Goodyear tires.

Q. Did you advertise any of these other products you mentioned?

A. No, I just had them on the shelves, not outside.

Q. Did you ever put up signs or attempt to put up signs?

A. No.

Q. How did you come to terminate your lease in October of 1954? Was it your idea to get out, or what?

A. No, during the last year I was there, during the summer months, I remember Tom Hayes and George Arnholt coming out to reach an agreement and they tried to get me to sign it. I refused to sign it and he said, Mr. Arnholt said, he pulled an inspection on me and said I

had a dirty station, which I didn't think was dirty my-
664 self. They seemed to think so. So he sent me a letter that my lawyer in Chester has, Mr. Katana, and in the letter they said they would give me one week to get the station in tip top shape and there was five counts against me. They were: untrained personnel, improper uniform, improper display, didn't keep a date book, which I refused to show them, because I didn't think it was their business, it was my business, I was running it, and I had a date book and I refused to show it to them every time he come in and the five counts—the dirty station, that was the fifth count.

So I sent that letter to my lawyer and told him I didn't want to be bothered until my lease was up. I didn't receive any letter that they were going to cancel my lease. Tom Hayes said there was a new dealer coming in and that was the first of October, 1954 that he stopped in. Then I had a 7-up box out in front that George Arnholt didn't like because it was white and he says "Get that box out of here," and I refused to get it out and he said—it was a red, white and blue box, because it was 7-up, and he commented about that. I said I wasn't going to get it out, because it was my box, I bought it and paid for it, and he says Coca-Cola is putting out red boxes for Atlantic stations, which I thought was a fib myself, and he says that is why Coca-Cola is putting out a red box, and I said "If you want one, put one in, because I am not."

665 By Mr. Dias:

Q. I hand you Commission's exhibit 257-A and ask you if this is the five or six-point letter you referred to?

A. Yes, this is the letter.

Q. Taking these items one by one, "The standard of housekeeping maintained by you is deficient." What did that mean to you?

A. Read that again.

Q. "The standard of housekeeping maintained by you is deficient," lacking, in other words not up to par. What did that mean to you?

A. Well, at the time it didn't mean anything to me because I thought my station was as clean as any other Atlantic station around, because I used to go to other ones and I mean, the same station right now, I don't think it is as clean as they said it should be, even now. I go there about every day. I think I kept it cleaner than that when I had it. To me it looks like a pig pen today.

That is their idea, because I wouldn't keep their products in there, and that letter is some way to get you out of there.

By Mr. Dias:

Q. Let me refer you to number two now. "The efficiency of services performed at your station is not on a par with competition."

666 A. I didn't understand that myself, either. At the time we were in a price war. I don't know how you can stay in competition when you are having a price war and because I wasn't in a critical zone I wasn't allowed to go down in prices, so I say you can't meet competition.

Q. Number three: "You have not met the minimum requirements for display." What did that mean?

A. Well, I don't know. To me, I would have the proper display out of motor oil and tires. I don't know what else they wanted.

Q. Number four: "Personnel are poorly trained." How many personnel did you have?

A. At the time I had two full time and one part time and myself, four of us.

Q. How many hours did you keep the station open?

A. We were open from 7 a.m. to 11 p.m.

Q. Did you determine those hours yourself?

A. Yes, sir.

Well, they asked you, they would like you to keep open certain hours, but I thought those were good hours to keep, so I did.

Q. 7 a.m. to 11 p.m.?

A. Yes.

Q. How many shifts is that, off hand?

A. Two shifts.

667 Q. Did you have a man there at all times?

A. Yes, sir.

Q. Were you there most of the time?

A. Most of the time. If I wasn't there, there was somebody responsible there.

Q. Number five. "You do not have a regular program for expanding the sales involving direct mail campaigns, personal solicitation, and so on."

A. I didn't have personal solicitation, but I did have a mailing program.

Q. Of what type?

A. I would mail out cards on lubrication, tire sales, and what-not.

Q. Did you say tire sales?

A. I had a mailing list.

Q. You mentioned tire sales.

A. Yes.

Q. What type tire?

A. Goodyear tires.

Q. Number 6: "You do not maintain records adequate to reflect the financial status and return from various phases of your business."

A. I refused to show it to them, because it was my business not Atlantic Refining Company's business. I never went in to look at their books, and I didn't think they
668 had a right to look at my books, and that is the way I felt.

Q. Did anybody from Atlantic see your records ever?

A. Tom Hayes, the fellow in the courtroom.

Q. This was written in 1953. When did he see your records?

A. I have only showed them to him a couple of times. They expect to walk in and pick up your books and look at them any time. I would take them home so nobody could look at them but myself.

Q. What did those records contain?

A. It was a daily sheet of sales, how much TBA you would sell, and your labor for the day and gas and oil.

I have a date book from the day I started right up until today, with Cities Service, and I can show them every record they want to see, but I don't show anybody my records; the only person that sees them is the Government.

Q. Now after you received that letter, did you receive any other notice from Atlantic that you recall?

A. Notices?

Q. Yes, about inspections or anything of that sort?

A. No, only I had other inspections, but I mean this one particular inspection, after it was all over with, Tom Hayes said you came through with flying colors, and that was it. I never heard anything else. And we cleaned up because it was a special inspection as far as I was concerned, because George Arnholt was coming in to in-
669 spect himself, so just to keep peace, we cleaned the place up. It was spic and span. We keep it pretty decent for a service station.

Q. Have you ever heard of the phantom, Atlantic's phantom?

A. I heard of it, yes, but I don't remember him ever stopping around.

Q. You don't know whether he actually stopped in your station?

A. No. They might have, as far as I know.

Q. When you terminated, or when your lease was expired or cancelled, will you clear me upon that? Was it cancelled or not renewed?

A. I just didn't get a renewal. I figured all the trouble I had with them, I wasn't going to get another one anyhow.

Q. When did you first know it was not going to be renewed?

A. I guess the week before Tom stopped in and said he had a new dealer. I don't remember receiving any letter. I am almost sure I didn't. I mean, I had to get out. It was either get out or kill George Arnholt, one or the other. That was the problem I had, believe me.

Q. Did Mr. Arnholt give you any special trouble?

A. Well, I mean, I didn't like his attitude and his ways. He was disagreeable, you couldn't reason with him. I mean like that stuff about a white soda box. I don't see that. And I even said, "What are you, a Communist or something?" If I want a white soda box, I paid for it. That man would drive you nuts. I wasn't going to Norristown on account of him.

670 Q. Did he give you trouble on TBA products?

A. Yes, he did, he certainly did.

Q. Products other than the Goodyear line, is that correct?

A. He didn't like the idea of having anything in there. At one time I told him, "Mr. Arnholt, I wish I had a tape recorder in here, I would hang you right now." He says, "I didn't say nothing." And I said, "I know you didn't, because I don't have a tape recorder and a couple of witnesses." He was sneaky, brother.

Q. You were told by Mr. Hayes about a week before your lease was to expire, and as far as you remember, that was the only—

A. (Interposing.) As far as I remember, that was it. I don't remember anything else.

Q. Do you know who took your station over?

A. Carmen Gerace.

Q. What did you do when you terminated the station? Did you sell your products to him?

A. I sold him everything, it was only a couple of things we had argument on that he wouldn't buy because they were outside merchandise, and then there was a trickle charged there which was Goodyear that I didn't want to take with me and he refused to buy that, I had to leave it, and any outside merchandise I had he refused to buy. I don't remember everything I had.

671 Q. Was the Atlantic representative there during these negotiations?

A. Yes, Tom Hayes was there, the incoming dealer, the outgoing dealer, and I had my accountant with me.

Q. Did the Atlantic representative take any part in this closing out of the sale of products?

A. Yes, he wrote every item down he bought.

Q. That who bought?

A. The incoming dealer. I mean, each sheet was filled out with any merchandise he bought and we both had to sign it but when he came to outside merchandise, he refused to buy it.

He had gone to Atlantic's School and I guess he was taught not to buy anything from the outside.

Q. He came out of school?

A. Yes, he went to Atlantic's school.

Q. Did you have any difficulty, or did you sell him your Goodyear stock? Did you have Goodyear stock?

A. Yes, what I had he bought.

Q. Referring back to the time you started purchasing so-called outside TBA, can you name again for us the suppliers, the various suppliers you purchased from?

A. I bought off Gaul Derr & Shearer, in Philadelphia; I bought off of V. J. in Folcroft—at the time they were in Sharon Hill—and I bought off of Auto Parts and
672 Radiator in Folcroft, and I guess that is about it. And Ed Parris; he was the Atlantic distributor.

Mr. Dias: That is all.

Cross-Examination by Mr. Thompson.

Q. Mr. Iacona—did I pronounce your name correctly?

A. You did, sir.

Q. Do I correctly infer that you don't like George Arnholt?

A. Well, I don't, I will be truthful. I don't.

Q. But you do like Tom Hayes, don't you?

A. I am not too happy with Tom Hayes, I will be truthful.

Q. Did he push you around a bit?

A. He tried to, but I wouldn't let him.

Q. He came to see you pretty often, didn't he?

A. Quite often, yes, sir.

Q. These Atlantic salesmen get around once or twice a week to all the stations, don't they?

A. Sometimes more than that.

Q. Sometimes more?

A. Sometimes.

Q. Do you live around the neighborhood of this station, at Providence Road and South Avenue?

A. No, sir, I live in Sharon Hill, sir.

Q. That particular station is how far away from McDade Boulevard? Quite a ways, isn't it?

673 A. I would say it was within a mile. I might be wrong on that.

Q. It is out in the residential section of the county though, isn't it?

A. Well, it sits right around the street from the Secane station and there is only a few homes right around the station. There is more stores than homes in the area of the station, I would say.

Q. The old Tully-Secane (?) Golf Course is near the station?

A. Yes, that is half way between the station and McDade Boulevard.

Q. And that was a residential area?

A. There is a Catholic Church, Our Lady of Fatima, and school there now.

Q. And a lot of it has been turned into building developments?

A. That is part on Ashland Avenue side, and South Avenue.

Q. Closer to your station, just before the station opened, wasn't there quite a large building development?

A. Stores.

Q. And also a lot of houses?

A. Right in the area of the station?

Q. Yes.

A. Not close to it. There has been recently, in the past year, last couple of years.

674 Q. Well, do you know the people who live around there at all?

A. Do I know them?

Q. Yes.

A. Yes, quite a few of them.

Q. You talked about the station being late in opening. It was a new station, wasn't it?

A. Yes, sir.

Q. Do you remember why it was late?

A. Because of the bad weather, they run into bad weather, they was hoping to have it finished by December and run into bad weather and when I opened up, I opened up without a driveway, a macadam driveway, it was stone.

Q. Don't you recall that there was a neighboorhood protest against any kind of a gas station being opened at this location?

A. The building was almost finished then. Sure, there was a protest against it, but I didn't know about it. I heard about it afterwards.

Q. Did you know that the Zoning Board of Adjustment turned down application for a station here?

A. For that particular place?

Q. Yes.

A. No, I did not. I was in the Service at the time, sir.

Q. When did you get out of Service?

675 A. Well, I got called back during the Korean War. I was in the Second World War and I got home in 1946 and was home four years and got called back in the Korean War, because I was in the Reserves and when I got out, I went with Atlantic.

Q. Did the people in the neighborhood after you opened the station tell you the story of the Zoning Board turning it down and they appealed to the courts?

A. There was a few people told me about it, yes.

Q. You knew about it anyhow?

A. I knew after I was there.

Q. Did they tell you whether the Judge put some special conditions down for the station?

A. They never told me.

Q. You were not familiar with that?

A. No, sir.

Q. Were you told that Atlantic was paying particular attention to the appearance of this station because of the neighborhood problem?

A. Not as far as I remember I wasn't told about that, no.

Q. Now you and your wife are both quite good horsemen, aren't you?

A. Yes, sir.

Q. I have seen you in horse shows, I think.

A. You have never seen me.

Q. I have seen your wife then, haven't I?

676 A. No, sir.

Q. Where was your stable, just close to the station?

A. Right across the street from the station.

Mr. Dias: I object, your Honor. I don't see what this has to do with the problem at hand. I think it is improper cross-examination.

Hearing Examiner Kolb: I think the last question is confined to the station, wasn't it?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Thompson: It is very definitely relevant.

Hearing Examiner Kolb: Proceed.

By Mr. Thompson:

Q. Now while you were running the station, you were running a stable across the way?

A. I wasn't running a stable. My wife takes care of the stable. That is what George Arnholt thought, that I was running the stable, and he was wrong.

Q. You acted as the stable hand, didn't you?

A. No, sir. I would walk over now and then, when I wasn't busy, when I had proper help in the station, but I wasn't running the stable.

Q. How many horses were you keeping in those days?

A. I wasn't keeping any; my wife was keeping them.

Mr. Dias: I object, your Honor.

677 Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. There was about 12 horses in the stable across the way, weren't there?

A. That was a good block away from the garage.

Q. You are not going to tell me your wife cleaned out the stalls for 12 horses?

A. I had hired men there.

Q. You did a lot of it yourself, didn't you?

A. No, sir, I did not, and to this day I don't.

Q. I am very fond of horses, and I know they require a good deal of attention.

A. I had proper help to take care of the stable.

Q. You don't still run it, do you?

A. Yes, sir, I do.

Q. At the same place?

A. Same place.

Q. Didn't you spend about as much time at the stable as at the station?

A. I spent more time at the station.

Q. But it is true, Mr. Iacono, that on a number of occasions you would go over and help your wife clean out the stalls?

A. Never. Never.

Q. You didn't do that ever?

A. No, sir.

678 Q. You just never helped her?

A. I had the proper help to take care of the stable. I would go over and ride on Sundays.

Q. If you never helped her at that stable, I think you are a brute.

A. I might be, but I had the proper help to take care of the stable.

Q. Isn't it also a fact that in the summer time you would attend this station in dungarees and with no shirt on and completely covered with the things that you find around a stable?

A. I had coveralls on all of the time, from Eastern Overall. I had proper uniforms.

Q. And you wore them yourself?

A. I had mine on, with my name on it, "Andy."

Q. And you didn't serve the station in dungarees and without a shirt?

A. Not me, no, never. I never waited on customers without a uniform on.

Q. You had quite a lot of arguments with Tom Hayes about it, anyhow, didn't you?

A. When they started sticking their nose in your outside business, I don't think that is right. They didn't have anything to do with the station.

Q. How about your use of the station—

679 A. (Interposing.) What do you mean?

Q. I haven't finished my question.

A. All right.

Q. Did you use it as a used car lot or for cars for sale?

A. I had cars at times for sale there, yes, maybe one or two.

Q. That was specifically prohibited by the lease, wasn't it?

A. I don't remember, it might have been.

Q. Did the neighbors complain to you about that use of the station?

A. About used cars?

Q. Yes.

A. Not that I remember, no, sir.

Q. Were you told that they complained to Atlantic about it?

A. If I was told, I stopped it.

Q. Did you charge parking fees at the station?

A. Never.

Q. You operated it as a parking lot for friends, didn't you?

A. What is that?

Q. You say you did?

A. And they still do today, sir.

Q. You did operate it as a parking lot?

A. Customers would leave their cars there to be serviced, they parked there, yes.

680 Q. Do you know a gentleman living in that neighborhood named Mr. John Dowling?

A. No, sir.

Q. You never heard of him?

A. I can't remember.

Q. D-o-w-l-i-n-g?

A. Maybe I would recognize him if I saw him in person.

Q. Maybe I can refresh your recollection by identifying him. Do you recall him as being the nuisance inspector of the township?

A. He was the nuisance—

Q. Yes. Do you recall him?

A. From Upper Darby?

Q. Yes.

A. The only inspector I remember was the inspector that came around to check the garage, the fire chief inspector.

Q. How about the Health Commissioner, do you remember him?

A. No, that is the only one I remember.

Q. Now did the nuisance inspector come around and make complaints about the sanitary conditions at your station?

A. (Nodding negatively.)

Q. He did not?

A. Not that I remember. The only one I remember at the station was the fire chief.

Q. Did the fire chief complain about the amount of refuse in back of the station?

681 A. No, sir.

Q. Did the nuisance inspector or the Health Commissioner—

A. (Interposing.) I don't remember the gentleman, sir.

Q. Not when you were there?

A. Not when I was there, no.

Q. Did your employees report to you that that had happened several times?

A. (Nodding negatively.) If anybody important ever came to the garage, they would write down and tell me about it. I don't remember any gentleman by that name stopping in and I don't remember receiving a letter from the Health Department.

Q. Do you remember neighborhood complaints about an old truck body you had on the station a long time?

A. And it was taken away.

Q. But you do remember the complaints?

A. Yes, but what has that got to do with TBA? I can't understand that. We are talking about TBA and you are talking about horses and truck bodies and used cars.

Q. Well, I will try to make the point after a while.

A. Okay.

Q. How about these lads you had working around the station. You say you had two full time employees.

A. Well, one was just graduated from high school and the other was my son.

Q. How old were they?

682 A. 18, one, and the other one 17, and I had an older gentleman who was 27.

Q. Is it important in the operation of a station for the employees to know what they are doing when a car comes in for service?

A. That's right.

Q. They have to know all kinds of mysterious things like lubrication, don't they?

A. That's right.

Q. Had these boys been trained?

A. Well, I wasn't even trained myself, when you get down to it.

Q. Yes, I think I would agree with that. You never went to a training school at all?

A. I didn't go to a training school, no.

Q. Without in the slightest deprecating a competitor of Atlantic, your training had been gained by City Service, had it not?

A. What do you mean gained?

Q. Had you been a City Service operator before you got the Atlantic station?

A. No, no, never.

Q. You took City Service station afterwards?

A. Yes, sir.

Q. You came right out of the Service into Atlantic?

683 A. That's right.

Q. Do you know a Mr. W. P. Ferguson who lives in the area?

A. In the Secane area? No, I don't think so.

Q. How about a Mr. Cyrus McKeown, do you know him?

A. Not by name, no, sir.

Q. You don't recognize the names or don't know their wives as customers of the station?

A. Not off hand, I don't, no, sir. It has been back too far.

Q. Were you advised by Tom Hayes that both of them had filed complaints about the lubrication service they got at your station, complaints with Atlantic, I mean?

A. Not that I remember.

Q. Were you advised by Tom Hayes that other complaints were filed with Atlantic about the rudeness of the employees at your station to customers?

A. Not that I remember, no, sir. They might have, but I don't remember.

Q. Did Mr. Hayes tell you what ratings you were getting on the inspection reports at this station?

A. Yes.

Q. Very bad, weren't they?

A. As far as they were concerned, sir. Hell, I can pull an inspection on them and give them the same rating and pull another one on you and give you the same rating. 684 I have been through a lot of inspections, believe me, and I still have inspections today with City Service, and by God they are better. That is their opinion. When they don't like you, by God, they give you anything.

Q. Do you get along well with City Service?

A. Yes, sir.

Q. You are much happier than you were with Atlantic?

A. That's right, and if you don't believe me, ask Frank Gibble, because he used to be with Atlantic.

Q. I congratulate you on your sense of humor.

Mr. Thompson: That is all.

Mr. Correa: I have no questions.

Hearing Examiner Kolb: Any further questions?

Mr. Dias: No, sir.

Hearing Examiner Kolb: That is all, you may be excused.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a five-minute recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Pollack to the stand.

685 ISIDORE JACK POLLOCK was thereupon called as a witness for the Commission and having been sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your full name?

A. Isidore Jack Pollock.

Q. What is your home address?

A. 7442 Malvern Avenue, Philadelphia.

Q. Were you at one time an Atlantic leasee dealer?

A. Yes.

Q. During what period and what locations?

A. 1940 to 1948, at 10th and Chestnut Street, Chester, and from 1948 to March of 1953 at 9th and Kerlin Street, in Chester.

Q. So you were an Atlantic leasee operator for 13 years approximately?

A. Approximately, yes.

Q. When you first became an Atlantic dealer in 1940, was TBA a very important factor in service stations?

A. No, very secondary.

Q. When did it become an important factor in service stations?

A. I would say approximately after the war, about 1946.

Q. And from that time on did it develop as an 686 important factor?

A. It developed very important. It was quite a bit of profit in the gasoline business.

Q. Now do you recall being notified by Atlantic that it was going to sponsor Goodyear?

A. Well, the first I have a recollection of that, we were called to have a luncheon or a buffet, a dinner, or something and I don't recall what it was, and at that meeting

or dinner or luncheon, it was broached that we were going to be connected with Goodyear products.

Q. And do you recall the approximate date of that?

A. The approximate date?

Q. Yes.

A. I am afraid I couldn't. It might have been possible sometime in 1951, I think, I am not sure.

Q. Could it have been in or about March, 1951?

A. It could have been. I am not sure.

Q. Now prior, up to that time, what brand tires had you been carrying?

A. Lee Tires.

Q. And what brand batteries?

A. Exide.

Q. And what brand of accessories? Just some of the more important brands?

A. Why, polishes of one sort or another; then, it wasn't Simonize. And some of the DuPont, and—

687 Q. Did you purchase Fram oil filters?

A. Yes.

Q. And Thermoid fan belts?

A. That is right.

Q. And from whom did you purchase, who was your primary supplier of TBA?

A. Ed Parris.

Q. Where was he then located?

A. He was then in Sharon Hill. I don't recall the exact address now. On Chester Pike.

Q. And after that announcement of the change-over by Atlantic to Goodyear, did Mr. Parris continue to sell Lee tires, Exide batteries, and the various brands of accessories you were carrying?

A. Why, he sold them until his supply ran out.

Q. Did he then become the Goodyear TBA supplier in your area?

A. That is correct.

Q. And after the change-over at that time was your station identified with Goodyear valances, window valances?

A. Yes.

Q. And was it identified with the Goodyear outdoor sign?

A. Yes.

Q. Prior thereto, did you have a Lee or Exide sign up?

A. Yes, I think I did.

688 Q. And were they removed?

A. They must have been.

Q. And were you advised that this change-over in identification was to take place?

A. No, sir.

Q. Was it done at your request?

A. No.

Q. Now did you continue to carry Lee tires after the change-over in or about March 1951?

A. Yes, I carried them until I sold the merchandise I had on hand.

Q. And did you begin to purchase Goodyear tires at that time?

A. Yes, I purchased Goodyear tires.

Q. And from whom did you purchase Goodyear tires?

A. From Ed Parris.

Q. And after your Lee tires ran out of stock, did you thereafter purchase Lee tires?

A. Yes, I bought Lee tires afterwards also.

Q. Can you state the circumstances surrounding your first purchase of Lee tires after the stock ran out?

A. Well, I was offered a very good deal, I thought, from Lee Tire, and I purchased them.

Q. About how many tires did you purchase?

A. Anywhere from 25 to 50, I believe.

Q. That would be a substantial purchase, would it not?

689 A. That is right.

Q. Was anything ever said about such purchase by Atlantic representatives?

A. There was a Mr. Vayda, and he sort of tried to raise the devil with me about why I purchased—

Q. (Interposing.) Who is Mr. Vayda?

A. He was my salesman.

Q. And for which company?

A. Atlantic Refining Company.

Q. Did anyone else from Atlantic make any comments about purchasing—

A. (Interposing.) A Mr. Arnholt. He was the immediate superior of Mr. Vayda.

Q. About what approximate date did this occur?

A. I beg your pardon?

Q. About what approximate time were the statements made by Mr. Vayda and Mr. Arnholt?

A. It must have been sometime in—possibly in the latter part of the summer or fall of 1951.

Q. Would you state the conversations you had with Mr. Vayda and Mr. Arnholt at the time?

A. Well, they had asked me why I purchased the tires.

Q. Do you mean Lee tires?

A. Yes, instead of buying from Goodyear. Or from Ed Parris. And I told them that it was cheaper, the

690 deal that I received, and if I could receive the same deal from Goodyear or Ed Parris, as I did from Lee, I would have purchased Goodyear, but as I didn't, I bought the Lee tires.

And Mr. Arnholt said, after all, you have been with the company for quite some years, there is no reason why you shouldn't continue to buy from the company.

Q. And thereafter, did you make purchases of Lee tires?

A. Yes.

Q. And was any comment ever made by any Atlantic representative?

A. Just a sly dig now and then.

Q. Who would make the sly digs?

A. Mr. Vayda.

Q. Now, did you purchase any brands of batteries, other than Goodyear brand, after March 1951?

A. Yes, Bowers batteries.

Q. Was anything ever said to you by an Atlantic representative in respect to your purchases of Bowers batteries?

A. Yes. I had a large sign outside with batteries on the display and they asked me to take them in, to remove them.

Q. Was the large sign, did the large sign advertise Bowers batteries?

A. That is right.

Q. Can you fix the approximate time when this occurred?

A. It was approximately, I would say, the spring of 1952.

691 Q. And do you recall the name of the Atlantic representative who made the statement to you?

A. Mr. Vayda.

Q. Did Mr. Vayda ever make any other comments to you with respect to the purchase of Goodyear TBA by you?

A. In what respect?

Q. Did he ever threaten you with cancellation?

A. Well, with this battery deal, through the heat of the argument, I told him to get off the premises and he told me he was going to have the lease cancelled, and that is the way it remained.

Q. And was that the argument over the Bowers batteries?

A. That is right.

Q. Mr. Pollock, would you state your approximate gallonage during the period when you were in business? That covers quite a bit of time, but—

A. Well, from approximately 50,000 to 80,000, per month.

Q. 50,000 to 80,000 gallons monthly?

A. It rose, it averaged, I would say, close to 65,000 throughout the time I was there.

Q. Were you one of the largest dealers in the Chester area?

A. I think so.

Q. Did you do any business on credit?

A. Credit? Personal or—

Q. I am referring to Atlantic credit cards.

692 A. Yes, quite a bit.

Q. And were you limited on such sales to sponsored TBA items?

A. Yes.

Mr. Thompson: I object to that. It calls for a construction of the agreement. There is no such restriction in the agreement.

Would you read the question, please?

(Question and answer read.)

Hearing Examiner Kolb: The objection will be overruled. It will stand.

Mr. Kelaher: Re-state your answer, Mr. Pollock.

The Witness: Yes, I said.

By Mr. Kelaher:

Q. After the change-over to Goodyear TBA, the only TBA products you could sell on Atlantic credit cards were Goodyear TBA products?

Mr. Thompson: That is objected to for the same reason.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. Mr. Pollock, after the change-over to Goodyear TBA, who was your primary supplier of accessories?

A. Ed Parris.

Q. And did you purchase other accessories from 693 other local suppliers?

A. Yes, I did.

Q. Would you name some of them?

A. Chester Auto Parts.

Q. Where are they located?

A. In Chester, on 9th—

Q. That is all right. And the next one?

A. Berrodin Auto supplies in Philadelphia, Lee tires and Bowers batteries, Auto Parts and Radiator, and Delaware County Motor Parts.

Q. Mr. Pollock, are you familiar with the Delaware County Gasoline Dealers' Association?

A. Yes. In fact, I was one of the first presidents.

Q. You were the first president?

A. One of the first. I mean, it had been in effect, I believe, in 1935 or 1936, and then it was in abatement until 1944, I think, and then it was re-activated then and that is when I became president.

Q. And who belonged to the Association?

A. Why, I would say close to 50 percent of the dealers in Delaware County.

Q. Including Atlantic dealers?

A. Atlantic, Esso, everyone.

Q. And what was the purpose of the Association?

A. To help the gasoline dealers in any way possible.

694 Q. In what respect?

A. In every respect, in trying to keep the companies from riding roughshod over all the dealers.

Q. And by companies, you are referring to various oil companies, including Atlantic Refining Company?

A. That is right, all of the oil companies.

Q. Now referring back to the change-over meeting, the luncheon, dinner, or whatever it was, at which you were advised of the change-over by Atlantic to Goodyear TBA, were other Atlantic dealers present at that meeting?

A. Oh, yes, I believe it was two territories. That is the Chester territory and I imagine it was the Delaware County territories, there are two or three salesmen's territories involved in there, I think.

Q. So there were quite a number of Atlantic dealers present?

A. That's right.

Q. Do you recall where that meeting was held?

A. I think, I am not sure, but we had so many meetings, quite a few meetings, but I think it was out on 69th Street, at— (After pause.)

Q. Would the restaurant be Kostik's? Would that refresh your recollection?

A. That is right.

Q. And based on your own observation and knowledge, after that announcement, did other Atlantic dealers in
695 your area change over to Goodyear TBA?

A. As far as I know of, quite a few did.

Q. Would you say the majority of them did?

A. Yes.

Mr. Kelaher: Nothing further, your Honor.

Cross-Examination by Mr. Thompson.

Q. Mr. Pollock, you had a lot of friends in Atlantic, didn't you?

A. Oh, definitely, everyone.

Q. You didn't mention Joe Connelly, who was your salesman the last couple of years after Vayda left?

A. That's right.

Q. And he was a very good friend of yours?

A. He was, yes.

Q. Now when you left the station, you left for the purpose of taking a tap room in Chester?

A. That is right. A tavern, please.

Q. Excuse me. I was going to ask you the address. Next time I get through Chester, I want to stop in.

A. I have had a lot of requests for my address for stopping in, and if all the people stopped in, I would have to enlarge my place. So far, I haven't.

Q. You will recall your lease had a cancellation provision whereby before the end of any year you could 696 notify Atlantic of your desire to leave?

A. That's right.

Mr. Thompson: I ask that this document be marked for identification as Respondent's exhibit A-3.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: The document will be marked Respondent's Exhibit A-3.

(The document referred to, was marked Respondent's exhibit A-3 for identification.)

By Mr. Thompson:

Q. Mr. Pollock, you remember this letter, of course? I am showing you Respondent's exhibit A-3 for identification.

A. Yes.

Q. Yes?

A. Yes, I do.

Q. This letter was sent special delivery registered by you wasn't it, attention Mr. Walters?

A. Right.

Q. And in addition to that, didn't you drop in at Atlantic and have a pleasant farewell session with Mr. Nelson and Mr. Walters?

A. Yes.

Q. And there was no hard feeling about your termination at all?

A. No, none at all.

697 Q. As a matter of fact, Atlantic was very sorry to lose you, weren't they? Didn't they so express themselves?

A. I thought I felt that feeling, and was glad of it.

Mr. Thompson: That is all.

Mr. Correa: I have no questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you, Mr. Pollock. You are excused.

(Witness excused.)

Mr. Dias: I would like to call Mr. Kernaghan.

THOMAS J. KERNAGHAN was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follow:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address for the record?

A. Thomas J. Kernaghan.

Q. And your business address?

A. 1627 Fairmont Avenue.

Q. And the name of the company?

A. Rotzell Company.

Q. Is that a branch store of the Rotzell Company?

A. That is the main office, 1627 Fairmont.

698 Q. That is the main office?

A. That's right.

Q. How long have you been employed by Rotzell?

A. Approximately 12 years.

Q. In what capacity?

A. Salesman.

Q. Do you sell the full Rotzell line?

A. That is right.

Q. Were you employed in the TBA business prior to the time that you were employed by Rotzell?

A. Yes.

Q. For how many years?

A. Oh, I would say 12 to 15.

Q. What is your sales territory, Mr. Kernaghan?

A. South Philadelphia.

Q. Do you solicit service stations?

A. Yes, we do.

Q. Are there any Atlantic service stations in your sales territory?

A. Yes, there are.

Q. Do you solicit their business?

A. About four I believe I solicit now.

Q. Do you know how many there are in your territory?

A. I would say approximately 12.

Q. You say you solicit four now. When did you

699 discontinue soliciting the others?

A. A number of years ago.

Q. Can you tell us about how many years ago?

A. About four.

Q. Why did you discontinue soliciting their business?

A. Well, due to the fact that it seemed that they were more or less compelled to buy from the distributor, their own distributors.

Q. Do these stations carry TBA supplies?

A. Yes, they do.

Q. Do you recall the brands that are advertised by the stations?

A. Well, there is—you mean in the way of tires and that?

Q. Tires, and batteries?

A. Well, of course they used to have Lee tires and now I understand it is the Goodyear tire, and DuPont chemical line, Prestone antifreeze.

Q. Have you observed that advertising about those stations?

A. Yes, I have.

Q. You say you sell to four. What products do you sell to them?

A. Mostly antifreeze today.

Q. Today. Did you sell anything other than antifreeze to them heretofore?

A. Yes, I used to be able to sell them the DuPont chemical line.

700 Q. How long ago was that?

A. That has been several years ago.

Q. Can you recall the names of those stations that were purchasing—

A. (Interposing.) There has been quite a change of dealers, and consequently I don't recall their names now. But one in particular I do know that I get antifreeze business from is the Previti. They had two stations, one at 18th and Dickison and the other at 17th and Passyunk.

Q. You sell him antifreeze today, is that correct?

A. I sold him last season.

Q. Yes, but I mean currently.

A. Yes, sir.

Q. Did you sell him any other products prior to current?

A. No, I didn't sell them anything.

Q. Have you solicited all these stations at one time or another?

A. Yes, I have.

Q. How often do you call on the stations you are now selling?

A. About every two weeks.

Q. Do you solicit business, battery business?

A. Well, we would like to, but I can't sell them.

Q. How about your accessories, fan belts, hose filters?

A. That is tied up in their TBA set-up.

Q. Do you attempt to sell those products to them?

701 A. We tried to, yes. I have tried to.

Q. What do you sell to those stations that you are now selling to, mainly?

A. Well, a few of them are doing repair work, and we sell them brakes, fuel pumps, in other words—

Q. (Interposing.) Are they so-called hard parts, is that what you mean?

A. Yes, sir.

Q. Do those stations handle TBA?

A. Yes, they do.

Q. What TBA products do they carry in those stations?

A. Well, tires, batteries and accessories.

Q. But what brand?

A. Well, of course, as I said before, it was Lee and I beli[illegible] it is Goodyear batteries now and Goodyear tires, and—

Q. Do they have—excuse me, I am sorry. Go on and finish.

A. I believe, if I recall correctly, Thermoid belts, Goodyear belts today—they changed over from Thermoid to Goodyear.

Q. Do they advertise those products, Goodyear products, about the station?

A. Yes. I mean, they are on display and I would say they advertise them.

Q. Do they have banners or decals on the windows?

A. Yes.

702 Q. What store do you work out of in the Rotzell company?

A. The 18th and Christian Street store.

Q. So that the address you gave us earlier was the home office of Rotzell?

A. That is right.

Q. But you are working out of the 18th and Christian, is that right?

A. That is correct.

Q. And do you have truck service or delivery service?

A. Yes, we do.

Q. Do you, Mr. Kernaghan, know who the Goodyear supplier is in your sales territory?

A. I believe it is Ellwood Kieser.

Q. And are your products, your batteries, accessories, are they competitive with the products of Goodyear sold by Mr. Kieser?

Mr. Correa: I object to that question on the ground that it calls for a conclusion and judgment of the witness, and there is no proper foundation for it.

Hearing Examiner Kolb: The objection is overruled.

Mr. Dias: You may answer.

A. I would say they are, yes.

Mr. Dias: That is all.

703 *Cross-Examination by Mr. Ballard.*

Q. Mr. Kernaghan, I think you are with the same supplier as Mr. Heller, aren't you?

A. Yes, that is right.

Q. I think Mr. Heller told us that he served all kinds of customers; do you serve different classes of customers, too?

A. That is my privilege. I can solicit any sort of business, service stations, car dealers—

Q. (Interposing.) How about fleet accounts? Do you serve them?

A. Fleet accounts, yes, I have a few of those.

Q. What are the majority of your customers, what class?

A. Independent repair shops.

Q. You have some garages, too? Is that the same thing?

A. Yes.

Q. And some dealers, car dealers?

A. That is right.

Q. How many service stations all told?

A. Well, I have sorta gotten away from calling on service stations, due to the competition. I would say I have about 10 or 12 service stations today.

Q. How many customers all told?

A. About 175.

Q. And the area is generally in South Philadelphia?

704 A. South Philadelphia, yes.

Q. Are you free to go into other areas, if you wish?

A. With the permission of the office.

Mr. Ballard: I don't think I have any further questions.

By Mr. Correa:

Q. Mr. Kernaghan, you don't sell tires, do you?

A. No, we do not.

Q. Now you say you have 12 Atlantic stations in your territory?

A. How is that?

Q. Did you say you had 12 Atlantic stations or 12 service stations in your territory?

A. I call on about 12 service stations, including Atlantic.

Q. All told?

A. Yes.

Q. How many Atlantic?

A. I would say about 4.

Q. You say you sell four of the 12 service stations?

A. I have 12 service stations, yes.

Q. Do you know what line of tires the Atlantic service stations in your area sell?

A. Goodyear.

Q. Do you know whether any of them sell Lee tires?

A. Today, I don't know. I mean I know they used to sell Lee.

705 Q. You don't know whether they sell them still today or not, any of them?

A. I wouldn't be in a position to say.

Q. You are not really much interested in tires, are you?

A. That is right.

Mr. Correa: No further questions.

Hearing Examiner Kolb: Anything further?

Mr. Dias: I think there is a little confusion created by cross-examination.

Redirect Examination by Mr. Dias.

Q. I think you stated you sold to about 175 customers of all types?

A. That is right.

Q. And you call on about 10 or 12 service stations of all types?

A. That is right.

Q. And of that number about four are Atlantic stations, is that correct?

A. That is right.

Q. At any time since you have been employed by Rotzell did you sell to more service stations than these 10 or 12?

A. Yes, I used to call on quite a few service stations.

Q. How did the number of service stations at that time compare to the total number of customers in your sales territory—

706 Mr. Correa: (Interposing.) I object to the question unless at that time be fixed. We have no time.

Hearing Examiner Kolb: Try to fix the time, Mr. Dias.

By Mr. Dias:

Q. When you stated that you called on more service stations at one time, can you give us an approximate date on that?

A. Well, up until the time the oil companies came out with the TBA set-up, we were able to get some business from most any of the service stations.

Q. Approximately what time, when was that, do you recall?

A. I would say it was about eight years ago.

Q. About eight years ago?

A. Yes.

Q. All right then. Prior to that period of eight years ago, did you sell to more service stations than you sell to now?

A. That is right, yes, sir.

Q. And did you sell to more Atlantic service stations at that time?

A. No, I wouldn't say so.

Q. You did not?

A. No.

Mr. Dias: That is all, your Honor.

Mr. Ballard: No further questions.

Mr. Correa: No further questions.

707 Hearing Examiner Kolb: That is all, Mr. Kernaghan.

(Witness excused.)

Mr. Dias: I would like to call Mr. Vick.

JOHN J. VICK was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. State your full name and business address for the record please?

A. John J. Vick, 5913 Ridge Avenue, Philadelphia Wholesale Distributors, Incorporated.

Q. How long have you been employed by Philadelphia Wholesale Distributors?

A. Approximately 20 years.

Q. And in what capacity?

A. Salesman.

I wish to state that as a salesman, approximately 12 years.

Q. And prior to that time?

A. Inside.

Q. And what is your sales territory?

A. Primarily the Northeast, Frankford, Richmond, Kensington, Mayfair.

708 Q. Northeast Philadelphia?

A. That is right.

Q. What type customer do you solicit?

A. I solicit the service stations, fleet accounts, industrial accounts, and car dealers.

Q. Among your service stations, are there any Atlantic stations?

A. Yes, there are. There are, I believe—a rough estimate—25 Atlantic stations.

Q. In your sales territory?

A. That is right.

Q. And of that number, do you sell to any of them?

A. I sell to what I term an independent Atlantic sta-

tion, the person that owns his own property, approximately 10.

Q. What type product do you sell to him or to that type of station?

A. We sell him the entire TBA set-up, which includes batteries, polishes, antifreeze, oil, Kendall 2000 mile oil.

Q. Are there other type Atlantic stations in your territory?

A. Yes, they are what I call a lessee Atlantic station, one that pays rent to the Atlantic Refining Company?

Q. And you sell TBA products to those stations?

A. No, I don't.

Q. Do you attempt to sell to them?

A. Yes, I do, and wherever I do, I might get a sale 709 in a few stations, and they have to hide it in the back room.

Mr. Ballard: I object, and move to strike, your Honor, unless that is tied down with places, dates and times.

Hearing Examiner Kolb: The answer will be stricken unless tied down to a specific time.

By Mr. Dias:

Q. Can you give us a specific instance of that occurrence?

A. Well, I have sold to Pinkerton Atlantic, Caster and Unruh, and in any instance where I do sell them, I am more or less told, if an Atlantic salesman is around, not to—

Mr. Ballard: (Interposing.) —Your Honor, I object. That is one such instance singled out and told about and then another.

By Mr. Dias:

Q. Can you give us a time and place that that conversation took place?

A. That could be any time I call on the account.

Q. Well, the most recent time, can you place that?

A. About two weeks ago.

Q. Over what period of time has that occurred?

A. I don't understand that question.

Q. Well, you indicated that that has happened from time to time. Do you recall the most recent instance, two weeks ago, is that correct?

A. That is right.

710 Mr. Correa: I object to the question on the ground it is indefinite. I think this refers to something that has been stricken out, but I am not clear as to that either.

Mr. Dias: I thought the objection to the question was the lack of definiteness.

Mr. Correa: But you are not making it any more definite. This isn't making it definite. That was the objection. Counsel should ask his questions in the ordinary way, as in courts of law.

Hearing Examiner Kolb: If you discuss instances, you will have to get definite instances and state the parties involved.

The Witness: Pardon me. I shall give an instance where I made a call this morning.

Mr. Correa: I would rather the witness answered questions rather than volunteering or making a statement.

The Witness: I was asked for an instance and I am offering an instance.

Mr. Correa: There is no question pending.

Hearing Examiner Kolb: Yes, there is. There is a question pending as to instances. We have stopped him from going ahead because he hasn't stated the definiteness of it and he is now attempting to do that.

The Witness: Referring to an instance, I made a call this morning on Mr. Scotty McArthur at Lawn-
711 dale and Erie Avenue. I stopped in and asked for a Prestone antifreeze order. Mr. McArthur stated he has already placed his order and I asked him with whom and he said Atlantic Refining Company.

'I asked him if he would buy some Exide batteries and he said he is not allowed to buy them. I offered him a polish—if it is in order, I will also say the polish was $4.00 below the price of Atlantic's price, per case—and he said "I wish I could buy those deals, but I am not allowed to."

I also mentioned the fact I am going down to a hearing and he says "I wish you a lot of luck." He says, "I hope you can stop those fellows." That is an instance.

Another instance, I called on Mr. Ed Ringenary, Broad and Walnut Streets, and this was about two months ago. I call on him occasionally, and I asked him to buy Prestone, Exide, Kendall, and he says, "Are you out of your mind? Why, they would cancel my lease out immediately." He says, "They even have spooks in the territory." I said, "What do you mean by spooks?" He says, "Why they have fellows coming in here and trying to offer merchandise at lower prices just to see if you would buy from someone else." He again stated that he would even testify, if called, against the Atlantic Refining Company. He again wished us a lot of luck and wished that we would or-
712 ganize to fight against Atlantic, against the pressure of their purchases.

I think that is sufficient.

By Mr. Dias:

Q. You state that you sell regularly to independents. What do you sell to them?

A. To the independent, a fellow that owns his own property, we sell him Kendall oil, we sell him Exide batteries, we sell him Prestone antifreeze, we sell him AC sparks, filters, Fram filters, and I would say a hundred percent of what he pleases to buy.

Q. These leased stations in your territory, do you recall whether or not they handle TBA products?

A. Yes, they do. They handle the same lines we distribute. They carry DuPont chemicals, they cary John-

son's chemicals, they carry Prestone antifreeze, they carry AC spark plugs, and filters, yet we are unable to secure their business.

Q. What type tires do they carry, do you recall?

A. We carry the Goodrich line of tires and we are not in a position to do a job with Goodyear because of the tire set-ups with the refining companies. We more or less do very little on tires.

Q. I was referring to the tires carried by these leased Atlantic stations in your section?

A. They carry the Goodyear tires.

Q. Batteries?

A. They carry Goodyear batteries.

713 If you wish another instance, I will give you another instance of an account—

Mr. Correa: (Interposing,) Is the examination being conducted by the witness or by counsel, may I inquire?

The Witness: I have been asked for instances; I offer another instance.

Hearing Examiner Kolb: He is answering as he thinks of them.

The Witness: I can't offer everything within five minutes, so I am just proceeding with the interrogation and the questions asked.

By Mr. Dias:

Q. Do you recall any other instances?

A. Mr. Bob Provost, Jr., Witaker and Hunting Park Avenue, I went in to offer him or solicit him DuPont antifreeze business, and he says: "What do you want, the roof to cave in on me? I would lose my lease immediately." So I asked him if he did any business with the jobbers, and he says very little. "The only time I give any business to a jobber is when I am out of a certain part that Atlantic doesn't carry and I will call on a jobber."

Q. Can you tell us when that occurred, when that conversation with Mr. Provost occurred?

A. This was about March.

Q. This year?

714 A. Yes.

Q. Mr. Vick, do you know who the Goodyear supplier is in your territory?

A. There are two that I know of, Ellwood Kieser and Harvey George.

Q. Harvey George?

A. Yes, as he is referred to.

Q. Can you give their addresses? We have the address of Ellwood Kieser. How about Harvey George?

A. He is up in the Northeast somewhere. I don't know his address. He covers the Northeast territory.

Q. If you know, Mr. Vick, do these Goodyear suppliers, Kieser and George, supply Atlantic stations?

A. Yes, they do.

Q. And if you know, do they both cover the same territory or different territories?

A. I don't know, I don't believe so. Ellwood Kieser operating, I believe, out of Fairmont Avenue covers more or less the downtown area, whereas Harvey George possibly covers from Erie Avenue North or approximately that territory.

Q. Mr. Vick, are your batteries and accessories and other items in TBA line in competition with Goodyear batteries and accessories sold by Kieser and George?

A. Yes.

Mr. Correa: Give me a chance to object. I object,
715 your Honor, on the grounds I have heretofore stated, that it calls for a conclusion of the witness, it calls for the operation of the witness' mind, and is an objectionable question on every traditional ground, as I have stated in a court of law with respect to this type of question.

Hearing Examiner Kolb: Overruled.

Mr. Dias: Have you answered that?

Mr. Correa: Yes, I think he answered before I objected.

The Witness: I shall bring up an instance again before even this question was brought up, where in calling on Mr. McArthur, speaking of competitive prices, I offered him a case of polish $4.00 cheaper than Atlantic bills him for it, and he still couldn't buy it.

By Mr. Dias:

Q. What type of polish was that?

A. Johnson's polish.

Q. What type does he carry?

A. He carries Johnson's and DuPont's.

• • • • •

716 Mr. Dias: That is all.

Cross-Examination by Mr. Correa.

Q. Mr. Witness, do you sell tires?

A. We distribute tires, I don't sell them.

Q. Do you?

A. No, I don't.

Q. Have you ever sold a tire?

A. Yes.

Q. When?

A. Only to accommodate—I can't specifically—

Q. (Interposing.) When? Can't you answer my question?

A. I have no definite date of selling a tire.

Q. Can you give me an approximation?

A. An approximation, about one month ago.

Q. And how many tires have you sold in the last year?

A. About a dozen.

Q. Last five years?

A. A couple of dozen.

717 Q. And in the last ten years?

A. A couple dozen.

Q. So that means, I take it, that in the five years preceding the last five years, you sold none?

A. That's right.

Q. What tires have you sold, sir?

A. Goodrich.

Q. In every instance?

A. That is right. I also wish to state that I didn't sell to Atlantic dealers, if that is the question.

Q. Mr. Witness—

A. (Interposing.) You asked the question if I sold tires and I wish to state I didn't sell to Atlantic stations.

Mr. Correa: I think, Mr. Examiner, it would be helpful if the witness might be told to confine himself to answering questions responsively; we would get on faster.

Hearing Examiner Kolb: Just answer the questions that are asked.

The Witness: Yes, sir.

By Mr. Correa:

Q. Now sir, you have mentioned two or three dealers, Atlantic dealers, with whom you have had conversations, you say, which you related in the record?

A. That's right.

Q. And I take it you have supplied, prior to your

718 appearance here, supplied counsel for the Commission with the information concerning those dealers and what they had to say about this matter?

A. What information are you asking about?

Q. The information you gave us on the record a while ago.

A. No, how could I supply them when I made that call this morning. I didn't see these gentlemen this morning.

Q. The question was, did you or didn't you. You say no?

A. No, I didn't.

Q. All right, you have answered my question. Now you say you saw certain of these dealers, one I think you said two weeks ago and another two months ago, didn't you?

A. I didn't get that question.

Q. Did you tell us of a conversation you had with an Atlantic dealer two weeks ago and of another conversation you had with another Atlantic dealer two months ago?

A. That's right.

Q. Is it not the fact that the Atlantic dealer who, according to you, said he was willing to come and testify in this proceeding; was the one you interviewed two months ago?

A. That's right.

Q. Now did you advise counsel for the Commission of the willingness of this gentleman to come and testify in this proceeding?

A. This particular gentleman, yes.

719 Q. You did?

A. Yes, sir.

Q. Now did you advise them also of the conversation you had with the gentleman whom you interviewed, according to you, two weeks ago?

A. No, I didn't see the gentlemen two weeks ago.

Q. Now sir you said that the Atlantic stations in your territory are supplied by Ellwood Kieser and Harvey George?

A. That is right, sir.

Q. And they are Goodyear dealers, are they?

A. That is right.

Q. And they are in competition with you?

A. In what respect, sir, sales or—

Q. Sales, yes.

A. Yes.

Q. No doubt, is there?

A. Sales, yes.

Q. And if this proceeding would result in their competition with you being rendered less effective, that would be a consummation devoutly desired by you, would it not?

A. I think that is more or less the purpose of this meeting.

Mr. Correa: Thank you.

Mr. Ballard: No questions.

720 *Redirect Examination by Mr. Dias.*

Q. In reference to those men, Ellwood Kieser and Harvey George, did they offer you the type competition that you can't meet individually?

A. No, we offer the same things, there are standard prices. However, they are not permitted to buy from us, that is, the Atlantic service stations.

Q. Do you sell to other type service stations in your sales territory?

A. Yes, I do.

Q. And Mr. Kieser, Mr. George, are they competitive factors in those?

A. No, just in Atlantic stations is their—more or less their field and territory.

Q. As a matter of fact, do you know, if you know, do those two suppliers sell to any stations or dealers other than Atlantic stations?

A. None that I know of, sir.

Mr. Dias: That is all.

Recross Examination by Mr. Correa.

Q. Would you say they didn't, or you just don't know?

A. None that I know of.

Q. You just don't know?

721 A. None that I know of.

Q. You just don't know whether they did or not?

A. I say none that I know of.

Q. Would you mind answering the question?

A. What is the question?

Hearing Examiner Kolb: The witness answered the question.

Mr. Correa: I submit he hasn't, but I am not going to spend any more time—

Hearing Examiner Kolb: (Interposing.) There is no use in spending a half hour arguing about that.

Mr. Correa: I am not going to argue with this witness. He seems to be a frustrated lawyer.

The Witness: I wish I were.

Mr. Correa: That is all.

The Witness: Am I excused, sir?

Hearing Examiner Kolb: Yes.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until two o'clock.

(Whereupon, at 12:40 p.m. the hearing was adjourned to reconvene at 2:00 p.m. the same day.)

722 Afternoon Session.

(2:05 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Examiner, may I refer to Commission Exhibit 293-A and B which were received in evidence at the close of the hearing yesterday.

With the permission of staff counsel I desire to add to those exhibits as 293-C and -D the following two documents which are pertinent to the exhibit heretofore offered.

Exhibit 293-C is a letter from Mr. McCreery to Mr. Boor dated October 3, 1952 on the same subject matter as the

letter of August 14, 1952, and Exhibit 293-D is a reply from Mr. Boor to Mr. McCreery dated October 7, 1952.

I understand there is no objection.

Mr. Kelaher: No objection.

Mr. Correa: If your Honor please, on the assumption which the proffer of the exhibits which I have not seen relate to the subject matter of 293-A and 293-B on behalf of Goodyear they are objected to on the ground that the whole subject matter of these four exhibits relates wholly and solely to dealings between Atlantic Refining Company and the Firestone and has nothing to do with Goodyear; therefore, is not material.

Hearing Examiner Kolb: Exhibits 293-C and -D will be received into evidence subject to the motion to strike 723 by Goodyear.

(The documents referred to were marked for identification as COMMISSION'S EXHIBITS 293-C and 293-D and were received in evidence.)

Mr. Thompson: May we withdraw these two documents from Atlantic's files so that we may substitute photostatic copies? That may be done?

Hearing Examiner Kolb: Yes.

Proceed.

Mr. Kelaher: I would like to recall Mr. Hinderscheid to the stand, please.

Mr. Thompson: Off the record for a moment, sir?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

W. F. HINDERSCHEID resumed the stand and testified further as follows:

Mr. Kelaher: Before questioning Mr. Hinderscheid further, Mr. Examiner, there were three exhibits offered into evidence yesterday, marked for identification yesterday, identified as CX-290-A through I, CX-291-A through C, and 292-A through C. Counsel for the respondents asked for an opportunity to examine the documents before deciding whether there would be any objection.

724 I now offer the documents into evidence—or at least I offer that portion of the documents which relate to AR accounts, Atlantic Refining accounts, and not to that portion of the documents which relate to DAR accounts.

Mr. Thompson: I object to any partial offer of the exhibits. I have no objection if they are offered as they appear.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 290-A to -I, 291-A to -C, and 292-A to -C.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 290-A through -I, 291-A through -C, and 292-A through -C, were received in evidence.)

Mr. Kelaher: Your Honor, at this time I would like to have the following documents marked for identification:

For identification as CX-294, a list of Lee—

Hearing Examiner Kolb: You have already used 294 on your statement for Mr. Matthews this morning.

Mr. Kelaher: I'm sorry. Thank you.

I would like to have marked as CX-295 a list which is a list of Lee factory branches as of January 1, 1950.

(The document referred to was marked for identification as Commission's Exhibit 295.)

Mr. Kelaher: For identification as Commission Ex-
725 hibit 296 a list of Lee factory branches set up in the Atlantic Refining Company marketing area subsequent to January 1, 1950, together with the month and year each branch began operations.

(The document referred to was marked Commission's Exhibit 296 for identification.)

Mr. Kelaher: As Commission Exhibit 297-A and -B the names and positions of Lee personnel referred to in Items 1 to 19 inclusive of Specification I of the subpoena duces tecum served upon Mr. Hinderscheid.

(The documents referred to were marked Commission's Exhibits 297-A and 297-B for identification.)

Mr. Kelaher: And 288-E—

Hearing Examiner Kolb: You have used 288—do you mean 298?

Mr. Kelaher: Excuse me, there is a reference made in CX-288 series to a memorandum and Mr. Hinderscheid was requested to furnish that memorandum so I think in order to keep the exhibits in proper order it should properly go with the 288 series.

Hearing Examiner Kolb: All right.

Mr. Kelaher: I call your Honor's attention to Commission Exhibit 288-C, the fourth paragraph of that letter from Mr. Hinderscheid to Mr. Dwight Colley of Atlantic,
he states: "I am attaching a copy of the memoran-
726 dum" etc., and this CX-288-E is the memorandum referred to.

(The document referred to was marked Commission's Exhibit 288-E for identification.)

Mr. Kelaher: I now offer Commission Exhibits for identification 295, 296, 297-A and 297-B, and 288-E into evidence.

Mr. Thompson: At the moment, sir, I am wholly con-

fused about what the exhibits are because I couldn't hear Mr. Kelaher. I will have to check with him.

If your Honor please, Atlantic has no objection to the CX-295, CX-296, CX-297-A or 297-B. So far as 288-E is concerned I have no objection if the offer is limited to the purpose of showing what complaint was registered by Lee with Mr. Colley of the Atlantic. If, on the other hand, the document is offered for the purpose of proving the facts stated therein, such facts are obviously hearsay and in so far as the author of the document, Mr. McCreery is concerned, and in a number of instances involve double or triple hearsay.

Mr. Correa: If your Honor please, the respondent Goodyear does not object to any of the proffered exhibits with the exception of Exhibit 288-E for identification and that is objected to by Goodyear on the ground that it appears from the face of the exhibit that this has to do wholly and solely with dealings between Atlantic and Firestone to which Goodyear was not only not privy but was in-
727 deed a stranger and it is immaterial and irrelevant in so far as any issue in this case concerning the respondent Goodyear Tire & Rubber Company is concerned.

Hearing Examiner Kolb: That applies only to 288?

Mr. Correa: Only to that one, if your Honor please. The others we have no objection to.

Hearing Examiner Kolb: May I see 288-E, please?

(The document was handed to the Examiner.)

Hearing Examiner Kolb: The document 288-E will be received in evidence subject to the qualifications specified by counsel for Atlantic and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked for identification COMMISSION EXHIBIT 288-E, was received in evidence.)

Mr. Kelaher: Your Honor, would you please state the

qualification or have the qualification reread by the reporter?

Hearing Examiner Kolb: All right, will the reporter read the qualification?

(The reporter read the following statement:

"Mr. Thompson: • • • If, on the other hand, the document is offered for the purpose of proving the facts stated therein, such facts are obviously hearsay
728 and in so far as the author of the document, Mr. McCreery is concerned, and in a number of instances involve double or triple hearsay.")

Hearing Examiner Kolb: There being no objection to documents 295, 296 and 297-A and -B they will be received in evidence.

(The documents referred to, heretofore marked for identification COMMISSION EXHIBITS 295, 296, 297-A and 297-B were received in evidence.)

Direct Examination by Mr. Kelaher (Resumed).

Q. Mr. Hinderscheid, will you please state Mr. McCreery's position with the company?

A. Now or then?

Q. E. W. McCreery.

A. At what time?

Q. As of July '51.

A. He's Vice President and Regional Sales Manager, what is known in our organization as Region Number 4.

Q. And where was he located?

A. He was located in the General Offices, Lee Rubber & Tire Corporation, Conshohocken.

Q. And was he in charge of the regional offices in various parts of the country?

A. He was in charge of branch offices in certain
729 parts of the country.

Q. And were certain of such branch offices located in Pittsburgh, Altoona and Erie, Pennsylvania?

A. Yes.

Q. And the information stated by him in CX-288-E was based on reports from those branches, is that correct? (Handing document to the witness.)

A. I assume that they were, but I have no way of telling.

Q. That would be the normal operation procedure, wouldn't it?

A. The normal procedure was for him to get this information from the branch manager and the branch manager probably in turn received the information from the sales representative covering that particular territory.

Q. I see.

And that information contained in CX-288-E would be based on that procedure, is that correct?

A. That's right.

Mr. Kelaher: Your Honor, on the basis of Mr. Hinderscheid's statement we submit that Commission Exhibit 288-E is qualified for introduction into evidence as a record made in the regular course of business and should be admitted without qualification.

Hearing Examiner Kolb: This appears to be a report from Mr. McCreery as to information that came to 730 him from other sources and reported to Mr. Hinderscheid. I think that needs the qualification.

Mr. Kelaher: It is a report based on salesmen coming under the jurisdiction of Mr. McCreery.

Mr. Thompson: Are you through, Mr. Kelaher?

Mr. Kelaher: Yes. Does Mr. Thompson have anything further to say about CX-288-E or have you ruled finally on it?

Mr. Thompson: I understood your Honor ruled.

Hearing Examiner Kolb: I ruled on it.

By Mr. Kelaher:

Q. Mr. Hinderscheid, I just want to ask you whether or not it would be possible to get the names of the salesmen who were in the Wilmington Branch in April 1950? I'm referring to Commission Exhibit for identification 275-A through -H and asking if any of those salesmen are still with Lee, if you know?

A. To the best of my knowledge, why, none of them are with us today.

Q. None of them?

A. No.

Q. And could you furnish us not right now but within the next day or so with the names of the Lee salesmen who were in the Wilmington branch at that time?

A. 1950?

Q. April 1950.

731 A. I don't know whether I can get it within the next day or so because you are going back in the records seven to eight years and I don't know just how available those records are.

Q. Say before Friday?

A. Yes. I think we could get them within two or three days.

Q. Thank you.

Mr. Kelaher: Your Honor, I just would like that the record to show that I do have—we do have an objection to the introduction of CX-288-E with the qualification appended.

Hearing Examiner Kolb: Do you want to withdraw it?

Mr. Kelaher: No, I just want to have the objection noted in the record.

Hearing Examiner Kolb: All right.

Mr. Kelaher: We have no further questions of Mr. Hinderscheid.

Mr. Thompson: May I have a second to confer with counsel, sir?

Hearing Examiner Kolb: All right.

Cross-Examination by Mr. Thompson.

Q. Mr. Hinderscheid, I was not able, sir, with the documents which I have read with some care to determine the extent to which your organization back in 1950 and 1951 operated through distributors as distinguished from your company branches.

732 Did you at that time have a number of independent distributors around the country?

A. Yes.

Q. And you do at the present time also, do you not, sir?

A. Yes, sir.

Q. The independent distributors—take Philadelphia, if I may for an example—are today directly soliciting with oil company service stations, are they not?

A. Distributors?

Q. Yes.

A. Our distributors?

Q. Yes.

A. Yes, I would imagine so.

Q. And were they doing that—

Mr. Kelaher: (Interposing.) Your Honor, I move the answer be stricken unless he knows of his own knowledge. He said he imagines so.

Hearing Examiner Kolb: Read the question and answer.

(The reporter read the following questions and answers:

"Question: The independent distributors — take Philadelphia, if I may for an example—are today di-

rectly soliciting with oil company service stations, are they not?

733 "Answer: Distributors?

"Question: Yes.

"Answer: Our distributors?

"Question: Yes.

"Answer: Yes, I would imagine so.")

Hearing Examiner Kolb: The answer may stand.

By Mr. Thompson:

Q. Of course, sir, you qualified your answer because you wouldn't know how your distributors were soliciting?

A. I wouldn't have any way of knowing that?

Q. They don't report to you who their customers are?

A. No.

Q. Now, were your independent distributors operating in the same way in 1950 and 1951?

A. Yes, they were soliciting dealer business.

Q. That would have been so in Newark and Erie, Wilmington, Baltimore, in fact, in places anywhere in the country, would it not?

A. Yes.

Q. So that referring, sir, to the portions of the Exhibits 290, 291 and 292 which refer to sales in various regions—

A. Yes, that's right.

Q. To Atlantic accounts, you were, I assume, merely reporting the sales which had been made by your own factory branches, is that not so?

734 A. That's right.

Q. And you would not either in 1950 or 1951 or today know the extent to which the various independent distributors in the various regions were also selling to Atlantic accounts?

A. It wouldn't be possible for us to know.

Q. It would be impossible to know.

Mr. Thompson: Thank you very much, sir; that's all I have.

Mr. Correa: I have nothing, sir.

Hearing Examiner Kolb: Further questions?

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That's all, Mr. Hinderscheid. Thank you.

(Witness excused.)

Mr. Dias: I call Mr. McCandless.

ROBERT H. McCANDLESS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Mr. McCandless, will you state your full name and spell your last name for the reporter.

A. Robert H. McCandless—Mc capital C-a-n-d-l-e-s-s.

Q. And your business address?

735 A. 8 East Ninth Street, Chester, Pennsylvania.

Q. And the name of your company?

A. Auto Parts and Radiator Company.

Q. What type of business is Auto Parts and Radiator, Mr. McCandless?

A. In the automotive replacement parts and equipment line.

Q. And does that include TBA products?

A. And TBA also.

Q. Do you handle tires?

A. Yes, sir.

Q. You do handle tires?

A. Yes, sir.

Q. What brand tire do you handle?

A. Inland tires.

Q. And your batteries?

A. Delco batteries.

Q. And can you name some of the more common accessories such as filters?

A. AC products, a complete line, Alemite CD-2.

Q. How about belts and hose?

A. Gates belts and hose, National Carbon products.

Q. What is the trade area of your company, Mr. McCandless?

A. We cover from the Delaware River as far as the Lincoln Highway.

Q. Lincoln what?

736 A. Lincoln Highway, and from the Philadelphia area as far as Delaware.

Q. Does the company employ salesmen?

A. Yes, sir.

Q. How many of them?

A. Three.

Q. And what kind or what class of customers are solicited by the company?

A. Garages, independent garages, service stations, fleets, industrial plants, car dealers.

Q. Does the company have delivery trucks?

A. Yes, sir.

Q. How many?

A. Approximately five.

Q. Five?

A. Five. Yes, sir.

Q. How are your salesmen compensated, salary or commission?

A. Strictly commission.

Q. Now, how long have you been employed by the company, Mr. McCandless?

A. Eight years.

Q. And of that time, have those eight years been as a salesman?

A. Yes, sir.

Q. What is your sales territory?

737 A. The Western part of Chester and as far as the Delaware State Line.

Q. Do you solicit the same type of customers as your company as a whole solicits?

A. Yes, sir.

Q. Or do you specialize in any one particular—

A. (Interposing.) No.

Q. You just solicit them all. I take it then, you solicit service stations?

A. Yes, sir.

Q. Are there any Atlantic service stations among your territory?

A. I have 12 in my territory.

Q. And do you solicit all of them?

A. Approximately seven.

Q. Approximately what?

A. Seven.

Q. What about the other five?

A. Well, I don't call on them any more.

Q. When did you last call on them?

A. Approximately two years ago.

Q. And why did you discontinue it?

A. Couldn't get any business out of them.

Q. These 12 stations in your territory, do they handle TBA products?

738 A. Yes, sir.

Q. Do you recall what brands they carry?

A. In the Chester area it's Goodyear.

Q. Do you sell in another area too?

A. Just one account that I call on in the Delaware area, he carries Firestone.

Q. Now, these seven that you call on, how often do you call on them?

A. Approximately every two weeks.

Q. And can you tell us what you sell to them?

A. A few oil filters, occasionally a few spark plugs, and small pieces of equipment, and some ignition parts.

Q. I see. By "equipment" is that what it known as hard parts?

A. Well, equipment that they use in the service stations.

Q. Oh, I see, service station equipment.

Now, these five, do you attempt to sell or do you solicit their business on your batteries? Do you attempt to sell them batteries?

A. No.

Q. You do not?

A. No, sir.

Q. Is there any reason for that?

A. Well, I couldn't sell them so I stopped talking about them.

739 Q. That is true with these five or seven stations that you are selling to now, is that correct?

A. Yes, sir.

Q. Or is that true of the five that you stopped calling on?

A. Out of the five I'd say all but one.

Q. All but one is what?

A. That I sell batteries to. That's a rare occasion, I mean, I don't push after them.

Q. Well, what is it that you attempt to sell mainly to those stations, then?

A. Ignition and brake parts.

Q. How about chemicals?

A. Chemicals, some chemicals and some polishes, which is a chemical also.

Q. Are you familiar with the Bert Rehill Atlantic Station?

A. I haven't called on him for a couple of years.

Q. Do you know where they are located?

A. Ninth and Kerlin Street.

Q. In where?

A. Chester, Pennsylvania.

Q. When was the last time you called on them?

A. Well, approximately two years I imagine.

Q. Three years ago?

A. Two years.

Q. Two years. Did you call on that station regularly?

740 A. Pretty regular for a while.

Q. For how long a period?

A. Maybe—approximately two years.

Q. For a year?

A. About two years.

Q. About two years?

A. Yes.

Q. Did you make any sales to that station?

A. I think I made one sale—one or two sales.

Q. And do you have—

A. Myself, actually myself.

Q. I see.

What do you mean by that?

A. Other times, you know they pick it up or call in the store and we give them delivery service on that.

Q. Do you get credit on sales of that kind?

A. Yes, sir.

Q. Do you know how often you called on that station during the year that you were calling on them or the two years?

A. Can I look at this record here?

Q. Are those your company records of calls and sales?

A. Yes, sir.

Q. Yes.

A. Well, I don't have the number of calls here, 12 times during one year.

741 Q. Which year was that?

A. 1954.

Q. And do you have a record of the total amount of sales?

A. $13.75.

Q. And do you recall what the products were?

A. No, I don't. Prior to that, 1953, there was one sale of $20.40.

Q. Do you know how often you called on him during that year?

A. No, there's no record here on it.

Q. Does the Bert Rehill station handle tires, batteries and accessories?

A. Yes, sir.

Q. What brand do they advertise on and about the station?

A. Goodyear, I believe.

Q. Now, are you familiar with the John Rehill Station at Fourth and Highland in Chester?

A. Yes, sir.

Q. Do you sell to that station at this time?

A. I haven't called on him since '54. In other words, I stopped calling on him in 1954, the end of '54.

Q. Why did you stop calling on him?

A. I couldn't do too much business with him.

Q. Did you sell him anything in 1954?

A. $68.67.

Q. And do you know how often you called on him

742 during that year?

A. I only made seven calls on him in that year.

Q. Do you have any information on other stations in your sales territory, Atlantic stations?

A. Yes, sir.

Q. Before we get off the John Rehill station, will you tell us whether or not he handles TBA?

A. Yes, sir.

Q. He does. And what brand of TBA does he handle?

A. Goodyear.

Q. Now, do you have other instances of Atlantic stations in your sales territory that you have called upon?

A. Pardon me?

Q. Do you have other instances of Atlantic stations in your sales territory that you have called upon?

A. Yes, sir.

Q. Would you name them, please?

A. Do you want the amounts or the number of calls?

Q. First I would like to know the name and address of the Atlantic station.

A. Buckingham's Atlantic, Second and Lloyd Streets in Chester.

Q. And do you sell to that station at this time?

A. No. sir.

Q. When was the last time you sold to that station?

743 A. I actually didn't sell him anything, he called the store and ordered it which I get credit for. In 1955 I made 8 calls for $211.44 worth of business.

Q. A total of eight calls in one year?

A. Yes, sir.

Q. And that was your total annual business?

A. That was a part of a year because I didn't have him for the full year of 1955.

In 1956 there was ten calls for $381.28.

Q. Did you sell him any batteries?

A. No, sir.

Q. Do you recall what it was that you sold to that station?

A. I imagine brake shoes would be the most important thing, brake shoes and these car rugs that you put on the floors and stuff like that.

Q. Car what?

A. Car rugs.

Q. Buckingham Atlantic Station, is that the name of it?

A. Yes, sir.

Q. Do they carry TBA?

A. Yes, sir.

Q. And what brand TBA do they carry?

A. Goodyear also.

Q. Do you have any other specific instances?

A. Village Green Atlantic Station.

744 Q. Village Green?

A. Village Green Atlantic, that's Concord and Scheivert Roads in Village Green, Pennsylvania.

Q. Now, do you sell to that station at this time?

A. No, he's out of business now; that is he went into another station, I believe, as of last Thursday, I believe he's not there any more.

Q. Well, up until the time that he closed out did you do any business with him?

A. Yes, sir.

Q. Can you tell us how much?

A. 1956, 19 calls, $786.19.

Q. And how about 1955?

A. Now, that was a new account that I took over. I don't believe he was there in '55. I couldn't say for sure because it is just a new account that I took over from another salesman in 1957—15 calls, $934.52.

Q. Do you recall what it was that you sold to that station?

A. Ignition, brakes, brake parts.

Q. Any batteries?

A. No batteries.

Q. Filters, chemicals?

A. A few chemicals.

Q. How about filters?

A. No filters.

745 Q. Did he handle TBA in that station?

A. Yes, sir.

Q. What brand TBA did he handle?

A. Goodyear.

Q. Do you have any other instances of stations that you have sold to?

A. S. K. Watson's Atlantic Station, Boothwyn and Meeting House Road, Boothwyn, Pennsylvania.

Q. Have you sold to him this year?

A. Yes.

Q. Is he one of your regular customers?

A. Since the first of this year.

Q. I see. And what do you sell to him?

A. Gates belts, hoses.

Q. How about batteries?

A. He does buy some batteries occasionally on call only. He doesn't stock them.

Q. Do you have any idea of the volume of business with him?

A. For 1957, $33.81.

Q. $33.81?

A. Yes.

Q. How about 1956?

A. '56, $161.94.

Q. Do you know how many calls you made on him that year?

A. This year I have only called on him since Janu-
746 ary, but there were 22 calls made on him in 1956.

Q. And this year do you know how often you have called on him?

A. About every two weeks.

Q. Does he handle TBA in his station?

A. I'm not too sure, I don't think he does. He doesn't carry a very large stock.

Q. Does he own his own station do you know?

A. Yes.

Q. How about this Village Green station, does that gentleman own his own station?

A. Village Green Atlantic?

Q. Yes.

A. No, that was a leased station.

Q. Do you have the names of any other of your customers there?

A. Harry and Jim's, Naamans Creek Road and Meeting House Road. That's in Ogden, Pennsylvania.

Q. What do you sell to him?

A. He's a pretty new station, so this year there is $104.93.

Q. When did he open up, do you recall?

A. I don't recall, someone else had that account until just recently.

Q. Do you recall what it was you sold to him?

A. A majority of the sales here were parts that he 747 called store and had delivered.

Q. What type parts? Is this hard parts?

A. I really couldn't say what they were.

Q. I see.

A. Minor parts for repairs, I imagine, like brake hoses and maybe a set of brake shoes.

Q. Do you have any other accounts which you sell to? Atlantic accounts?

A. Brookhaven Atlantic Station, Middletown Road, Brookhaven, Pennsylvania. Just for 1957 we have $50.

Q. You were not selling to him prior to '57?

A. I have only had him since the first of the year.

Q. Did some other salesman—

A. Some other salesman called on him.

Q. From your company, is that correct?

A. Yes, sir.

Q. Who would that be, do you know?

A. Quinton Siefert, he isn't with us any more.

Q. Do you recall what those sales consisted of, this 1957, $50?

A. The $50, that was for car rugs.

Q. Did you say only?

A. That's all, yes. You see, when they call in the store we don't know what they buy, actually, because our truck delivers it out to them. When we write it on an order 748 pad we naturally know what we are selling him.

Q. You get a commission on his purchases anyway?

A. On anything that he buys.

Q. Have you given me your seven Atlantic stations or do you have others?

A. Well, there is one new one here, but he just opened recently.

Q. How recently did he open?

A. I'd say about two months ago.

Q. You have called on him, have you?

A. Yes, sir.

Q. How recently?

A. In May. I made one call on him in May and one on June the 7th, and that's the last time I called on him.

Q. Have you sold him anything?

A. Ignition.

Q. Can you place the date of his opening a little more closely, please. You say about two months ago.

A. I'm pretty sure it's some time in May.

Q. Some time in May?

A. Yes.

Q. Well, do you know how soon after he opened up you called upon him?

A. I'd say about two weeks.

Q. Did you offer him your line of batteries and accessories?

749 A. No, I didn't.

Q. To sell?

A. No.

Q. Why not?

A. Well, at that time he was pretty well tied up and he asked me to call back again. When I called back again that's when I sold him ignition, but I just stated where we were located and the type of services that we were performing and so forth and it's pretty hard to get everything over the first time, especially when the man is just new.

Q. Did he have any TBA in the station when you called on him?

A. Yes, sir.

Q. What brand was that?

A. Goodyear.

Q. Would you mind repeating the address of that station, please?

A. Castagna's Atlantic Station, Conchester Road, RFD #1, Boothwyn, Pennsylvania.

Q. Did you tell me you had one Atlantic station over in Delaware in your territory in Delaware?

A. Stan's Atlantic Station.

Q. I don't recall that you gave us a name, but didn't you tell me there was in your Delaware territory one Atlantic station?

750 A. Just one, that's it.

Q. And which one is he?

A. Stans—S-t-a-n-'-s—Atlantic Station.

Q. Where is he located?

A. Naaman's and Marsh Roads, Wilmington, Delaware.

Q. And what do you sell to him?

A. Small pieces of equipment like a jack or water buckets and stuff like that and a few chemicals.

Q. Do you have any idea how often you call on him?

A. About every two or three weeks.

Q. Do you have any idea of the volume of purchases from you?

A. In 1955, $122.52.

Q. Do you know how often you called on him that year?

A. About 20 times that year?

Q. Twenty times?

A. Twenty times.

Q. Did you do business with him in 1956?

A. $268.86.

Q. Do you recall how often you called on him in that year?

A. They have 40 calls down here, but I think that's an error, 40 calls, that's a lot of calls in one year.

In 1957, $57.64.

Q. $57 what?

A. $57.64.

751 Q. Now, do you know how often you called on him that year?

A. Seven times this year.

Q. Do you have any idea what you sold him this year or did you tell us—how about '56?

A. '56, no, I don't recall what that was. I don't recall what that was, sir.

Q. Does he handle TBA products in that station?

A. Yes, sir.

Q. Do you recall what TBA products they are?

A. Firestone.

Q. Who are Goodyear suppliers in your territory, do you know, Mr. McCandless?

A. Edward Parris.

Q. And does he cover—is he the supply point for all the stations in your territory including that Delaware? No, not the Delaware.

A. Not the Delaware station.

Q. Do you know who the supplier—who the Firestone supplier is in the Delaware area?

A. No, it's out of Wilmington, Firestone out of Wilmington is who handles him.

Q. Was it the Village Green Atlantic Station at Concord and Scheivert that is closed, is that the one you told me?

A. Well, it's not closed, the man that was in there he took another station, I believe, he's taken another 752 station and there is a new operator in it.

Q. But it's still an Atlantic station?

A. Yes, it's still an Atlantic station.

Q. And the man that was in there, what was his name, do you recall?

A. Edward Zoba.

Q. Has he opened another Atlantic station now?

A. He's opened a Sinclair station.

Q. Did you ever attempt to sell Mr. Zoba your batteries?

A. On some occasions, yes, sir.

Q. Did you sell him any?

A. No.

Q. How about your chemicals?

A. I tried to sell him but wasn't very successful.

Q. Filters?

A. No.

Q. Did you tell me that you made sales amounting to about $786 in 1956 to that station and $932 in 1957, was that the station?

A. Yes, sir.

Q. What did those sales consist of?

A. Mostly brakes, ignition, and maybe a small piece of equipment—brake parts.

Q. What type delivery service do you offer your customers?

A. Well, if it's an emergency we try to send it out
753 immediately within, oh, as long as it takes to get it on the truck if it's an emergency delivery. But we do have scheduled deliveries in the morning and in the afternoon. That is for more or less stock orders.

Q. I see. And is that daily?

A. Every day. Up until 12:30 on Saturday.

Mr. Dias: That's all.

Cross Examination by Mr. Ballard.

Q. Mr. McCandless, during your testimony you have been refreshing your recollection with some records in front of you, isn't that right?

A. Yes, sir.

Q. May I see those records, please?

(The witness handed the document to counsel.)

Q. You also have a letter there from the Federal Trade Commission?

A. Yes, sir.

Q. May I see that, please?

Mr. Dias: I would like to see the records myself, I haven't seen them either.

(The documents were handed to counsel by the witness.)

Mr. Correa: Are these made up from some record kept in your office?

754 The Witness: Yes, sir.

Mr. Ballard: We have no questions, your Honor.

Mr. Correa: I have no questions, if your Honor please.

Mr. Kelaher: May we have a recess?

Hearing Examiner Kolb: That's all, Mr. McCandless, thank you.

(Witness excused.)

Hearing Examiner Kolb: We'll recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Connell to the stand, please.

CONRAD CONNELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your full name and address, Mr. Connell?

A. Conrad Connell, Six East Amnurst Road, Kenwood, Pennsylvania.

Q. And are you an employee of the Electric Storage Battery Company?

755 A. I am.

Q. And for how many years have you been with that company?

A. For twenty-eight years.

Q. Twenty-eight years. And could you briefly describe the positions you have held with that company during that time?

A. I assume you mean briefly.

I started as a salesman in the Industrial Division in 1929; in 1937 I was transferred to Automotive Sales as Senior Salesman in the Philadelphia Branch; in 1949 I moved to the General Offices as Supervisor of Exide Replacement Sales; about a year or two later the title was changed to

Manager of Exide Replacement Sales; in 1954 I was made Sales Manager of the Northeast Region of the Exide Automotive Division of the Electric Storage Battery Company. That is the position I hold today.

Q. Are you familiar with the history of the—does your company manufacture the Exide brand of batteries?

A. We do.

Q. And do you also manufacture other brands of batteries either through the parent company or subsidiaries if you have subsidiaries?

A. Through the parent company; yes, sir.

Q. And what brands of batteries do you manufacture?

A. Well, as a proprietary brands we have Exide, Willard, and Grant in addition to which we manufacture 756 a number of other brands so-called private brands, I'm not sure that I can name them all.

Q. Name some.

A. We manufacture Atlas, Ford, Firestone, Mobile, I think of the important ones that would cover it.

Q. Thank you.

At one time did your company have a contract with Atlantic Refining Company in connection with the sale of Exide Batteries?

A. We did.

Q. And would you please state when that contract originally went into effect?

A. We had initially a contract on what I would term a local basis, on a region basis with the Atlantic Refining Company which I believe started in 1937.

Q. What do you mean by a local regional basis?

A. Only for the sale, it was an. I would say a trial balloon, I believe the initial start for the sale of batteries by the Atlantic Refining Company. That is my impression of it.

Q. And do you mean that certain areas were designated in which you had this trial run, so to speak?

A. I mean that we had a contract with the Philadelphia Region of the Atlantic Refining Company for distribution by them in that region.

Q. And then later was that contract expanded to
757 cover other regions of Atlantic?

A. Later we signed a contract for the national distribution; that is in the entire area in which Atlantic Refining operated.

Now, they didn't go into all the areas at one time but the contract was on a basis of their distributing Exide batteries throughout their operation.

Q. When did that contract go into effect, approximately?

A. I'll tell you, I believe—1949.

Q. 1949?

A. 1949, that's correct.

Q. And prior thereto, weren't you distributing Exide batteries for many years into various Atlantic marketing regions?

A. Into Atlantic marketing regions?

Q. Yes.

A. Yes, we were.

Q. I'm not quite clear on your reference to 1949. You stated that your original contract with Atlantic was in 1937.

A. That's correct.

Q. Now—and that was confined to the Philadelphia region or was that the Philadelphia-New Jersey Region of Atlantic?

A. I can't from memory define the boundary territories, but it was what Atlantic Refining considered their Philadelphia region.

Q. Now, after 1937 do you recall the dates when
758 you expanded the program in so far as Atlantic was concerned?

A. Well, the expansion would have taken place from the signing of the 1949 contract.

Q. At any time after 1937 did you enter into a contract with Atlantic to sell Exide batteries for distribution in any area other than the Philadelphia Region?

Mr. Thompson: I didn't understand the question.

The Witness: Mr. Kelaher, I have to correct a statement I made.

The contract on a national basis was made in 1945 rather than 1949.

By Mr. Kelaher:

Q. And from 1945 on you sold Exide batteries under a contract with Atlantic Refining Company for distribution to Atlantic outlets, is that correct?

A. That's correct.

Q. And would you just state briefly the flow of distribution of the Exide batteries to Atlantic outlets, all going to Atlantic outlets?

A. Well, Atlantic Refining were one of a number of distributors of Exide batteries in the territory. Our policy is to sell to distributors who in turn, and one of which was Atlantic Refining Company, sold to service stations, car dealers, any outlet, any retail outlet, consumer outlet for the sale of storage batteries.

759 Q. Well now, with reference to the batteries sold to Atlantic solely, were they physically handled by Atlantic and put in warehouses for redistribution or just how did that operate?

A. Just as you have described it and in exactly the same way as every other distributor: they bought from us at a standard distributor price, accepted delivery, billing, paid their bills, made their own deliveries.

Q. You dealt directly with Atlantic and not with Atlantic stations, is that correct?

A. That's correct.

Q. Now, Mr. Connell, you are here in answer to a subpoena duces tecum, are you not?

A. Yes, sir.

Q. And have you examined the documents referred to in Specification I of the Specifications attached to your subpoena?

A. Yes, I have.

Q. Are they true and accurate copies of documents in the files of the Electric Storage Battery Company?

A. They are.

Mr. Kelaher: Your Honor, at this time I would like to ask counsel for respondents if they will concede the authenticity of the documents mentioned in Specification I?

Mr. Thompson: If Mr. Connell says they are from
760 the files of the Electric Storage Battery, of course we will concede it.

Mr. Kelaher: We would also like to ask counsel if we may substitute photostats for the originals so that the originals may be kept in the files of Electric Storage Battery Company?

Mr. Thompson: Certainly.

Mr. Correa: No objection.

Mr. Kelaher: Thank you.

Your Honor, I think if agreeable to you and to counsel I will identify all the documents at one time.

Hearing Examiner Kolb: I think that would be better.

* * * * *

764 Mr. Kelaher: I offer Commission's exhibits 298 through 313 into evidence, your Honor.

Mr. Correa: If your Honor will give us a moment, I think we may be able to handle these all in one lot.

Hearing Examiner Kolb: All right.

Mr. Correa: If your Honor please, with respect to the proffered exhibits, we have no objection to the following:

298, 301, 302, 303, 304, 307, 308, 309, 310 and 311. Exhibits for identification marked 299, 300-A-B, 305-A-B, 306-A-B, 312 and 313 are objected to, if your Honor please.

Hearing Examiner Kolb: The documents not ob-
765 jected to will be received in evidence: Commission's exhibits 298, 301, 302, 303, 304, 307, 308, 309, 310 and 311.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 298; 301; 302; 303; 304; 307; 308; 309; 310; and 311 for identification were received in evidence.)

* * * * *

768 Mr. Thompson: If your Honor please, with respect to 300, A and B, the objection of Atlantic Refining Company is a qualified one. I have no objection to the admission of this report provided the second sentence on 300-A relating to one Joseph Wash be received merely to indicate a state of mind of Mr. Wash and not to prove the fact stated.

On exhibit 300-B, the same qualification in my view applies to the second sentence of the statement referring to one Joseph Marino, that is to say, I would have no objection to it as state of mind evidence provided it is limited to that particular subject.

Mr. Correa: We associate ourselves with the statement just made by Mr. Thompson, if your Honor please.

Mr. Kelaher: Your Honor, I would like to call your attention to the fact that on Commission's exhibit 300-A and -B, they are willing to accept the credibility of the document excepting as to the statement made by Joseph Wash, which indicates—which states that "he advised
769 us that he has to stock Goodyears since this is a leased station," and there is a statement with respect to Joseph Marino, 300-B, that they advise that the majority

of the batteries they sell are still Exides, but do not stock any number because of the constant pressure being exerted by the salesmen for the Atlantic Refining Company.

If they are willing to accept the other statements in the document, it is quite surprising that they would pick out two of the numerous reports here and qualify to that extent.

Mr. Thompson: That is the most naive remark I have heard for a long time, sir. It isn't surprising in the least. It is certainly what you would expect of me, if you think I am a good ~~paeton~~ person.

Mr. Kelaher: Clearly, if it has credibility as to 10 of them, it should have as to the other 2 and I think there is nothing naive about that. I think that is a naive objection.

Hearing Examiner Kolb: I think this comes within the Danbury-Hatters case and Lawlor vs. Loewe, in which the testimony as to the statements made by various parties was admitted as to the state of mind and not to prove the truthfulness of the statements. And I think this is certainly within that, and will have to be received on that basis and no other.

770 Mr. Kelaher: But as to all of them, not to two of them?

Hearing Examiner Kolb: The whole thing is received on the basis I just stated.

(The document referred to, heretofore marked as COMMISSION'S EXHIBIT 300-A and -B for identification was received in evidence.)

Mr. Thompson: I have no objection, sir, except as stated. Mr. Kelaher offered the document. My objection was a qualified one. So far as I am concerned, the rest of the document is in evidence, for any purpose anybody wants to use it for.

Mr. Kelaher: As I understand the Examiner's statement, the ruling applies to the entire document, isn't that correct?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Mr. Connell, I show you Commission's exhibit for identification 305-A and -B, and ask you whether you are the Mr. Connell who prepared that memorandum and forwarded it to Mr. R. Whitehurst?

A. That is correct.

Mr. Kelaher: Your Honor, I offer Commission's Exhibit 305-A and -B into evidence.

Mr. Correa: If your Honor please, we object to exhibit 305. This is a memorandum in which this witness purports to set forth the substance of a telephone call he had 771 from somebody connected with Atlantic Refining concerning a decision made by the top management of Atlantic Refining.

Now we submit, if your Honor please, that this testimony, if it were offered in the proper way and there is no reason shown why, with the witness sitting in the witness stand, his memorandum of the fact is offered rather than his testimony, except perhaps that his testimony would be clearly inadmissible and it is hoped that the memorandum on some theory or other might be used as a device for smuggling what would otherwise be inadmissible into the record. And we object to that, if your Honor please.

Mr. Kelaher: Mr. Examiner, I would like to be heard in answer to counsel's statement at your convenience.

Hearing Examiner Kolb: All right.

Mr. Kelaher: Mr. Examiner, this was a document made on February 14, 1951; it was made contemporaneously with the conversation that this gentleman had with Mr. Heidman, and he is available for—

Hearing Examiner Kolb: (Interposing.) You have the witness on the stand, and he didn't say anything about that. I think you ought to ask the witness a few questions.

By Mr. Kelaher:

Q. Mr. Connell, would you please state when this memorandum was drafted, the date when it was drafted?

A. Well, I think that is quite clear, it is dated
772 February 14, 1951, and I state that it was written after conversation, telephone conversation that same day.

Q. With whom?

A. Mr. S. J. Heidman.

Q. And he was with which company?

A. TBA Manager of the Atlantic Refining Company.

Q. And the memorandum was drafted the same day?

A. The same day.

Q. And this recounts the conversation you had with Mr. Heidman, is that correct?

A. That is correct.

Mr. Correa: Is this being offered as past recollection recorded, may I inquire, because if so, I submit that no proper foundation has been laid, and if not, I must confess as to being at a complete loss as to the theory on which it is offered.

Mr. Kelaher: You have the witness available for cross-examination.

Mr. Correa: But you have him available for direct examination.

Hearing Examiner Kolb: There appears to be no doubt the conversation took place. The witness says the conversation was held. I overrule the objection.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 305-A and -B for identification were received in evidence.)

773 Mr. Correa: May I add on behalf of the Respondent Goodyear, the further objection that the subject of the document and—or the conversation which it purports to set forth is hearsay. It is not a conspiracy case here and statements made by or on behalf of the Respondent Atlantic Refining Company are in no way and in no sense binding or admissible against Respondent Goodyear except pursuant to the proper rules of evidence, which this document transgresses in every particular, we respectfully submit.

Hearing Examiner Kolb: I have ruled on the objection.

Mr. Correa: May the record show that your Honor additionally ruled on the separate objection of Goodyear based on—

Hearing Examiner Kolb: (Interposing.) You make your objections before I rule, not after I rule.

There have been several occasions when that has been done. I have attempted to rule on these as fairly as I posments after I rule. That has been my position all the time in all these cases. If you want to object, make it before I rule.

Mr. Correa: If your Honor please, in this case—

Hearing Examiner Kolb: (Interposing) As far as I am concerned, I overrule your second objection.

Mr. Correa: Your Honor will appreciate I am in 774 some difficulty because many of these documents are objectionable as to both respondents on general grounds. They are additionally and independently objectionable as to the Respondent Goodyear on separate grounds that perhaps are applicable only to that Respondent, and sometimes it is necessary to amend that separate objection to preserve Goodyear's position.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. I show you Commission's exhibit for identification 306-A and -B, and ask you to state further, Mr. Connell, whose name appears at the bottom of that document?

A. Mine.

Q. Would you please state the purpose of that memorandum?

Mr. Correa: I object to a statement of the purpose of the memorandum, if your Honor please.

Hearing Examiner Kolb: Ask him what it is.

By Mr. Kelaher:

Q. Would you please state what the memorandum is?

A. The memorandum is addressed to Mr. R. Whitehurst, Vice President, signed by me, subject, "Atlantic Refining Company." This memorandum is in the form of a report to Mr. Whitehurst, our Vice President, indicating the steps which we planned to take to attempt to retain the business that has been flowing through the Atlantic Refining Company for the sale of Exide batteries.

775 Q. Now the date of that is February 22, 1951, is that correct?

A. That is correct.

Q. When was your contract with Atlantic cancelled?

A. The official written cancellation from Mr. Parks was dated February 23, 1951.

Q. And when did you receive the notification that it was going to be cancelled from Atlantic?

A. Unofficially, February 14.

Q. And this second memorandum was written eight days thereafter?

A. Eight days thereafter, yes.

Mr. Kelaher: Mr. Examiner, I now offer COMMISSION'S EXHIBIT 306-A and -B into evidence.

Mr. Correa: If your Honor please, I wish to state my objection now, when your Honor is ready.

Hearing Examiner Kolb: Just a minute, please.

All right.

Mr. Correa: If your Honor please, as to the defendant Goodyear, this document, 306-A and -B is objected to on the ground that, as to the Defendant Goodyear, this is rank hearsay. These are statements and declarations made by various personnel of the Atlantic Refining Company, who is our co-respondent in this case, but we are not charged in this case as being in any conspiracy with the Atlantic Refining Company, we are not charged with being in any other relationship which would make their
776 statements and declarations binding on us as an exception to the hearsay rule, and consequently, as to us, this is just a collection of rank hearsay, and your Honor will see that, if your Honor would note, for example, the second sentence of the memorandum which reads "Additional information has been received from the Atlantic Refining Company, and steps have been taken with our branches to insure our retaining the maximum possible share of this business."

And down at the beginning of the third paragraph appearing on 306-A, "Mr. D. T. Colley, Vice President and General Manager of the Atlantic Refining Company, has already requested their Purchasing Department to formally notify"—and so forth, to do thus and so.

The very next paragraph, still on 306-A, "Mr. Heidman is now preparing letters to go out over Mr. Colley's signature, one to all of their dealers and the second", and so forth, as to what they are going to do.

On 306-B, the first paragraph beginning on that page, "Mr. Colley has clearly indicated to Mr. Heidman"—now that is undoubtedly scuttle-but which Mr. Connell was getting from somebody in Atlantic Refining Company as to various things that that company was doing, and may or may not be admissible as against that respondent in this

proceeding; from that proposition I resign, Mr.
777 Thompson will handle that quite adequately, I am sure.

But as to Respondent Goodyear, I submit this without any showing of a basis on which the admissions, if they be that, of our co-respondent, can be taken as against us, ought to be ruled inadmissible and we further, if your Honor please, make a separate and independent objection on general grounds, that I have never in my court or even in an administrative proceeding—with all due respect to the alleged or supposed informality and perhaps laxity so far as the rules of evidence are concerned of the administrative process—I have never heard of a proceeding whereby a witness was called to the witness stand, sworn, and instead of being asked to testify, was shown documents of his authorship and asked to identify them as being of his authorship, and not even asked to say the statements made in the document were true and correct, lest the statements might go in in sworn form, and then that pitiable excuse for evidence is offered in lieu of the testimony of the witness, without any showing that the witness lacks recollection, that he needs his recollection refreshed, or that he is in any other manner incapable of testifying and on all of those grounds, if your Honor please, we object to the proffered exhibit.

Mr. Thompson: If your Honor please, I join in Mr. Correa's objection.

Hearing Examiner Kolb: His objection is to Good-
778 year, and not to Atlantic.

Mr. Thompson: Yes, sir, and I shall revise my statement by saying I thoroughly concur in Mr. Correa's reasoning as a former instructor of evidence in the University of Pennsylvania Law School.

I don't know of any rule of evidence which permits a man to write a memorandum up and then bring it into court and say, "Here, I want to testify, here is what I

wrote sometime ago, instead of having a memorandum which refreshes his present recollection, to which he can refer in the course of his testimony, or says he can't remember anything about it and it was all true when I wrote it and then it is admitted as past recollection.

As Mr. Correa says, that is the only way I know you can get these documents in which a witness writes.

Mr. Kelaher: Mr. Examiner, do you care to hear from counsel supporting the complaint?

Hearing Examiner Kolb: I want to hear from all of you before I rule and when you finish, I will rule, not before and not after.

Mr. Kelaher: I was never a professor in a law school on evidence, but—

Mr. Thompson: (Interposing) I thought that ought to be on the record.

Mr. Kelaher: (Continuing)—I do have some ability 779 to read and I think in Title 28, Section 1732 of the U. S. Code there is such a thing as records in the regular course of business. And that clearly says that a document prepared in the regular course of business, which this undoubtedly was, that records facts, contemporaneous in the event, were recorded, and I would like to call your Honor's attention to the fact that the Electric Storage Battery Company was vitally affected at that time. They had a contract in effect to supply Exide batteries to the entire Atlantic market, as of February 14, 1951, and the Electric Storage Battery Company, through Mr. Connell, was advised that that contract was no longer in effect and that the Goodyear Tire and Rubber Company had entered into a TBA sales Commission plan with Atlantic covering three regions and that the Firestone Tire and Rubber Company had entered into a contract covering TBA sales in these other marketing regions of Atlantic, the three regions.

Therefore this company was vitally affected, they took steps as stated by the witness to attempt to retain as much of the business as they possibly could by selling directly to Atlantic dealers and I certainly think it is relevant, material, and it has great credibility.

Mr. Correa: May I inquire of counsel supporting the complaint, if your Honor please, on what theory, if he has any theory, he thinks that hearsay declarations made
780 by Atlantic officials to this witness are admissible against the Respondent Goodyear?

Mr. Kelaher: I think the document speaks for itself. Mr. Connell prepared the document. I suggest you ask him.

Hearing Examiner Kolb: It has never been clear in my mind, the way this complaint is pleaded, as to whether or not this is a conspiracy or not; I never have been able to figure that out.

Mr. Correa: All I can say to that your Honor is it seemed to me from other complaints which I have read that when it is the intent of the Commission to charge conspiracy, they generally charge it, ipsio verbis.

Certainly, if at this late stage in the matter we are now to be told that this is a charge of conspiracy, I shall have to plead surprise and take whatever remedies that may be available to me in light of being surprised by a change in theory on the part of counsel supporting the complaint when the case is well on its way through trial.

As a matter of fact, my attention has been directed to the fact, if your Honor please, that in a brief written by our learned friend supporting the complaint, in an interlocutory appeal to the Commission, earlier in this same proceeding, at page 13, the statement appears and I quote: "While the complaint does not charge a conspiracy, we do contend that the contemporaneous contracts entered into by Atlantic with Goodyear and Firestone were utilized
781 to divide the Atlantic market and constitute contracts

in restraint of trade within the meaning of Section 1 of the Sherman Act and as such are within the purview of Section 5 of The Federal Trade Commission Act."

That would appear to be a pretty—

Hearing Examiner Kolb: (Interposing) He was trying to say a conspiracy backwards there.

Mr. Correa: I am of the old fashioned school who believes that words mean what they say and when they say "While the complaint does not charge a conspiracy," I am old fashioned enough to take them at face value. Maybe they meant the opposite of what they said, George Orwell's 1984, but I am not that advanced.

Hearing Examiner Kolb: Well, Mr. Kelaher, this appears to me to be a memorandum written by the witness and if he said that certain things are proposed to be done, I am not quite clear from this whether or not they have been done. I sympathize with counsel for the respondent in raising the question with the witness on the stand of putting the document in which says that certain things are going to be done when you have the witness here and you can let him testify with reference to that document, or at least as to the correctness of what was or was not done.

Mr. Kelaher: May I be permitted to question him?

782 Hearing Examiner Kolb: Yes. He is called as a witness.

By Mr. Kelaher:

Q. Mr. Connell, let's start with the beginning of this document, and go down the line.

You state: "My letter of February 14 advised you of the Atlantic Refining Company's change in policy for the handling of TBA sales to the dealers." Is that a correct statement?

Mr. Thompson: I object to this form of questioning of this witness.

This document which is before him either does or does not refresh his recollection.

Mr. Kelaher: I am at quite a loss to understand what is wanted by counsel. First they accuse me of not asking him about the document, and when I start, then they object.

Hearing Examiner Kolb: The document is a memorandum and he can refresh his recollection. Let him refresh his recollection and testify as to the document.

By Mr. Kelaher:

Q. Does that first sentence refresh your recollection as to events that happened at that time?

A. Yes, it does.

Q. Would you please state in your own words what the import of that first paragraph is?

783 Mr. Thompson: That is objected to, sir. That is not the way to examine a witness on the stand in my experience.

Mr. Correa: I associate myself with that objection.

By Mr. Kelaher:

Q. You stated that it refreshes your recollection with respect to Atlantic Refining Company's change in policy. Now would you please state what information you received with respect to the change in TBA sales?

Mr. Thompson: May I ask received from whom?

Mr. Kelaher: From Atlantic.

Mr. Thompson: From whom in Atlantic?

Mr. Kelaher: I am asking the witness.

Mr. Correa: What is the question, if I may ask, the pending question?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: From Atlantic.

Mr. Correa: That is objected to on behalf of the respond-

ent Goodyear on the ground that it calls for hearsay as to Goodyear and is not binding on Goodyear.

Mr. Kelaher: Would you—

Hearing Examiner Kolb: (Interposing) As far as I am concerned, this complaint charges sufficient amount of conspiracy and I am not going to sustain the objection on the ground that Atlantic is involved and not Goodyear.

784 Mr. Correa: If your Honor please, then I have to submit that we have been misled by Counsel supporting the complaint, we have been, granted the complaint may be far from lucidly clear and no one would be faster to concede that than myself. We have had characterizations of the complaint and of the theory and specifically in respect of this point of conspiracy made formally and in briefs submitted to the Commission, when we were arguing, as your Honor will recall, the point in respect of which this matter of whether or not the complaint charged conspiracy was far from irrelevant and this is a very late date indeed in the proceeding to be told that despite their asseverations to the contrary, counsel supporting the complaint now claims that this complaint charges—

Hearing Examiner Kolb: He hasn't made any statement so far this afternoon. It is a question I have raised because you are sitting there and saying that this is a matter between the witness and Atlantic and you have nothing to do with it. When they come to Goodrich, he sits there and says its is a matter between the witness and Goodrich, and I have nothing to do with it, and then the complaint charges that the two of you, Goodyear and Atlantic, by means of this contract have done certain things, that is what the complaint charges. Then it must apply to both, whether it is called a conspiracy in the course of action or

785 common course of action, or whatever they are going to call it. It just doesn't make sense to me.

Mr. Correa: If your Honor please, I submit with great

respect that the complaint does not charge that the Goodyear and Atlantic together or in a common course of action did certain things. The charge is that Goodyear had a contract with Atlantic which provided for certain things to be done by Goodyear, which Goodyear did, and it charges that in connection with that contract, Atlantic did certain things and exercised certain influence and so forth over its dealers. That is what it charges. It doesn't charge any where conspiracy.

Hearing Examiner Kolb: That is what this witness is testifying to, what Atlantic did in connection with their dealers, in furtherance of the Goodyear and Atlantic contract and you are saying he can't testify because Goodyear is not involved.

Mr. Correa: I am saying, if your Honor please—

Hearing Examiner Kolb: (Interposing.) Well, we have to draw the line somewhere.

Mr. Correa: There is no exception to the hearsay rule under which this hearsay testimony, because that is what it is, let's face it, can be admitted in this proceeding, as binding on Goodyear. Now there is nothing in the world to stop counsel supporting the complaint from going
786 out and proving what Atlantic did in the ordinary and proper way, which they seemingly are allergic to, by getting testimony and witnesses and putting them on the stand and letting them testify directly. But for some reason they want to go around the barn and not get direct testimony, but get somebody who can only say as to what he was told by somebody else, and offer that for the truth, present somebody else, an absent declarant, if I may use the technical language of the law of evidence, and I object to that, if your Honor please, and I submit that not only is here no basis in this complaint for the admission of any such evidence, but the complaint at least as explained and amplified by the statements of counsel supporting it, ab-

solutely negates a basis of that kind and that is the basis, if your Honor please, of any objection and nothing else.

Hearing Examiner Kolb: Let me see that letter.

Mr. Kelaher: (Handing to the Examiner.)

Mr. Correa: May I add, before your Honor rules, because I wish to heed your Honor's admonition and complete my argument before your Honor rules, that it may well be that this seeming difficulty in which we find ourselves, owing to the application of the ordinary rules of evidence, and the difficulty which seems to arise about this complaint which one day has to be one thing for one purpose and another day another, a diametrically opposite thing,
787 for a different purpose, arises not out of the rules of evidence or even out of the philosophic principle of contradiction which says that a thing can not at one and the same time and in the same respect be and not be, but perhaps arises out of an adherent and basic weakness or inadequacy of the case attempted to be pleaded by this complaint against the respondent Goodyear.

Hearing Examiner Kolb: That will come out at the end of the case.

Mr. Correa: I agree, but I am quite serious in the suggestion I make. I think sometimes a weak case does not wait until the end to manifest itself.

Hearing Examiner Kolb: Well, I think the information contained in this letter, if properly approached by the witness, the witness could testify to it as far as Atlantic is concerned undoubtedly. I don't think you will question that.

Mr. Correa: No, if your Honor please. I make no point as to the admissibility of the evidence or the testimony proffered against Atlantic one way or the other. My only objection is it being taken as against the respondent Goodyear.

Hearing Examiner Kolb: Well, that is where we get into difficulty.

Mr. Thompson: I wonder if we could have a one minute recess for me to consult with counsel.

788 Hearing Examiner Kolb: All right.

(Whereupon, a short recess was taken.)

789 Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Examiner, during the short recess there was a conference of counsel and it is stipulated in so far as Atlantic and staff counsel are concerned that the last sentence on Commission Exhibit 306-B is withdrawn from the offer of the document, and with that understanding, so far as Atlantic is concerned, I will withdraw my objection to the admissibility of the document and thereby save the time that would otherwise be involved in having Mr. Connell testify to its contents.

Hearing Examiner Kolb: Will you strike that last sentence off the exhibit?

Mr. Kelaher: It can be done with pencil.

Mr. Correa: If your Honor please, for the respondent Goodyear I am willing to withdraw so much of our objection as goes to the introduction of the document in lieu of testimony in the ordinary way by the witness. So much of our objection as would lie against the reception of the substance of the evidence contained in this document, whether given in the form of an exhibit or given in the form of testimonial declaration on the stand still stands, but I gather from your Honor's previous rulings that that is a matter with which your Honor feels you can best deal with at a later stage in this case.

Hearing Examiner Kolb: I suggest it be received

790 subject to your objection.

Mr. Correa: Thank you, your Honor.

Hearing Examiner Kolb: Commission Exhibit 306-A

and B will be received in evidence under stipulation and subject to objection of counsel for Goodyear.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 306-A and B, were received in evidence.)

By Mr. Kelaher:

Q. Mr. Connell, I call your attention to the fact that Commission Exhibit for identification 312-A through D inclusive, and 313 are documents with the name, R. S. Findley at the bottom thereof, is that correct?

A. That's correct.

Q. Is Mr. Findley still an employee of the Electric Storage Battery Company?

A. He is.

Q. And can arrangements be made to have Mr. Findley appear at this hearing some time during the remainder of this week to testify in connection with these documents?

A. I believe they can.

Q. Thank you.

Mr. Kelaher: Your Honor, we will reserve offering Commission Exhibits 312-A through D and 313 into evi-
dence pending the appearance of Mr. R. S. Findley,
791 who authored the documents.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Any further questions of this witness?

Mr. Kelaher: Yes.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Connell, after your contract with Atlantic terminated in February of 1951 did you then sell Exide batteries directly into Atlantic dealers, directly to Atlantic

dealers, by that I'm talking about the Electric Storage Battery Company soliciting Atlantic accounts directly.

A. The first, did we directly sell to Atlantic dealers, the answer to that would be no; did we attempt to sell or sell any Atlantic accounts, the answer to that is yes, because Atlantic Refining had both what we considered, in our opinion, distributors as well as dealers or subdistributors, and those accounts we attempted to solicit ourselves with some degree of success, the dealers we attempted to have our other wholesale distributors solicit their business.

Q. So, the Electric Storage Battery Company through its own branch such as the Philadelphia branch did solicit certain Atlantic dealer accounts?

A. Not dealer accounts, distributor accounts.

792 Q. I'm referring to Atlantic Dealers who were classed by your company as distributor accounts, is that correct or are you referring to—

A. (Interposing.) Shall I put—Atlantic accounts who supplied other dealers?

Q. You are referring to Atlantic accounts classified as distributors by Atlantic, is that correct?

A. I can't say how they classify them. They were classified in our opinion as distributors, because the order indicated that they sold other Atlantic dealers, other dealers.

In other words, we do no business direct with dealers, only with distributors.

Q. Are you familiar with so-called supplying dealers, such as Harvey George and Mr. Parris, Ed Parris?

A. I would say that I knew some of them. I knew a few of them personally, others I knew by hearsay.

Q. Now, would that type of account be solicited directly by your company or not?

A. I would have to refresh my memory on that. I would say that as this letter indicates, we actually signed

up three Atlantic accounts as direct wholesale distributors, one located in New Oxford, the other in Lancaster, and the other in St. Thomas. They do not happen to include the ones you mentioned. Those accounts we signed direct and retained for quite some time.

793 Q. I would like to show you Commission Exhibit for identification 312-A through D and on 312-B for example, reference is made to Aero Oil Company, Incorporated, New Oxford, Pennsylvania; Herr Thompson Oil Company, Inc., Lancaster, Pennsylvania; E. C. Barnes and Son, St. Thomas, Pennsylvania.

Now, the letter states, "three former AR Company wholesalers were signed up under WD contracts and are now buying exclusively from us."

Now, is a WD contract signed by the Electric Storage Battery Company directly, by one of your salesmen directly?

A. With these accounts, yes; that is a wholesale distributor account, it—the WD represents wholesale distributor.

Q. Reference is made on that same page to AW contract. Would you explain who solicits that business?

A. We had for the purpose of obtaining better distribution to small subjobbers, an arrangement with wholesale distributors whereby they could solicit the business of the so-called subdistributors, or jobbers, who in turn solicited dealer business. They were sold at a lower price than the authorized dealer price.

Q. Does your company directly solicit the business of W dealers?

A. If you say directly solicit them, we had on occasion in connection with the wholesale distributor man, if

794 there was a question of can we get the business or if a distributor said "I would like to get Joe Smith, and I'm able to, will you help me get him as a subdistributor?" then our man might work with them. But actually in most

cases the soliciting was done by the wholesale distributor and agreed upon with us.

Q. Well—

A. That is approved by us.

Q. So these accounts named in Mr. Findley's letter identified as Commission Exhibit 312-A through D, could have been called on by Mr. Findley personally or by someone under his supervision, is that correct?

A. No. I should correct the statement in that you asked me, I thought, broadly what our arrangement was for obtaining W accounts. In the case of the Atlantic Refining Company, with these so-called Atlantic wholesalers, they solicited the business of these accounts and handled all business with them without our aid. Now, this—

Mr. Thompson: I don't think the record is clear on who you mean by "they." Do you mean that the wholesale distributors solicited the wholesale accounts?

The Witness: The Atlantic Refining Company solicited this business and agreed to sell them at wholesaler prices.

Now you haven't asked me to volunteer this—

By Mr. Kelaher:

Q. After your contract with Atlantic expired who 795 solicited these accounts, the company directly?

A. No, then we asked our remaining wholesale distributors to go after this business, on a W basis. The only ones that we solicited direct— Now, I shouldn't say the only ones, but the ones we solicited and we thought justified a direct wholesale distributor contract and obtained were these three named above, you see, Aero Oil, Thompson and E. C. Barnes.

Now, when Mr. Findley says "28 Atlantic wholesalers have been signed under W contract as follows:" he means they were accounts who had been sold by Atlantic Refining Company, who upon termination of our contract with At-

lantic Refining Company, our other wholesale distributors went after in an effort to get their business for Exide.

Q. At that time your company was working with these other wholesale distributors, is that correct?

A. We were doing everything we could to retain the business, as we do any time we lose any customer.

796 Mr. Thompson: The WD accounts, they were your direct large distributor accounts, and the so-called W accounts were sub-wholesalers?

The Witness: That is correct.

Mr. Thompson: Who were signed up by the large wholesale distributors?

The Witness: That is correct. The contract is an agreement that they would buy at a pre-determined subdistributor price.

Mr. Thompson: But the sub-distributors dealt with the W distributors, wholesale distributors or with your company direct?

The Witness: No, their dealers, they were billed, their collections were the responsibility, their credit was the responsibility of the wholesale distributor.

Now I certainly can't say that our man would never contact a wholesaler. Certainly he did anything he could to further the obtaining of Exide batteries, but the overall picture was a relationship with the wholesale distributor.

Mr. Thompson: Well, I think you said previously that Mr. Findley worked in cooperation with the wholesale distributors to get the W contracts, to get the sub-jobber business?

The Witness: Because you were talking about a broad proposition, we have all types of wholesale distributors

797 some do things on their own and some can not, some require guidance and assistance.

Mr. Thompson: So he was fully informed as to the accounts listed in the document that he referred to? They were in his sales territory, were they not?

The Witness: That is correct. This letter is a report to me as a result of my asking why they weren't selling more Exide batteries, and this is his answer.

Mr. Thompson: To whom?

The Witness: To anyone. Why his sales were off.

Mr. Thompson: Did you refer him specifically to sales to Atlantic Refining accounts?

The Witness: That one I can't answer, although I am of the opinion that I asked why, asked the Philadelphia Branch why their sales were off and what they were doing to pull them up.

Mr. Thompson: And this is Mr. Findley's answer to you?

The Witness: This is one of a number of answers I got.

Mr. Kelaher: In view of the witness' statements, I think it would probably be appropriate to call Mr. Findley, who was working in the market at the time and question him about conditions at that time.

Mr. Correa: The work on the stipulation is for
798 nothing, I take it, then. I don't know why we wasted the time.

Mr. Thompson: If your Honor please, it is 20 of six and in view of that statement, I obviously can not start the cross-examination of this witness tonight. If they were not going to call Mr. Findley, I was going to waive cross-examination, but since they are apparently, I would like to defer the cross-examination of Mr. Connell either until tomorrow morning or until after Mr. Findley has testified.

* * * * *

806 Mr. Kelaher: Mr. Examiner, before we call a witness, I would like to state that we have appended a specification 2 to the subpena duces tecum served upon Mr. Connell. It calls for a printed list of Exide wholesale dis-

tributors by states and cities and branches July 15, 1951 and also if available in printed form similar lists printed as of dates in 1950 and 1957, current.

If agreeable with counsel, I have been furnished with three lists dated July 15, 1951, November 1, 1950, and May 1, 1957, in response to this request, and I will now show them to counsel and if agreeable, it may be possible to stipulate these into the record without calling Mr. Connell back. (Handing to Respondent counsel.)

Mr. Kelaher: Your Honor, now that we have withdrawn 312 and 313, will the next number replace 312?

Hearing Examiner Kolb: No, it still remains that number. The next number will be 314.

Mr. Kelaher: At this time, your Honor, I would 807 like to have marked for identification as Commission's exhibit 314-A through D a letter from William P. Cairo, Assistant Secretary of the Electric Storage Battery Company, dated June 26, 1957 addressed to me, to be identified as 314-A; and to be identified as 314-B a document entitled "Exide Wholesale Distributors by States and Cities, November 1, 1950"; and to be identified as 314-C a document entitled Exide Wholesaler Distributors by States and Cities, July 15, 1951"; and to be identified as exhibit 314-D a document entitled "Exide Wholesale Distributors by States and Cities, May 1, 1957."

(The document referred to was marked Commission's exhibit 314-A, -B, -C, -D for identification.)

Mr. Kelaher: I now offer these documents into evidence.

Mr. Correa: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. Any objection?

Mr. Correa: No objection.

Mr. Thompson: I have no objection.

Mr. Kelaher: I would like the record to show that the exhibit just offered into evidence was furnished in response to specification 2 of a subpena served upon Mr. C. Connell of Electric Storage Battery Company.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission's exhibit 314-A through D inclusive.)

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 314-A, -B, -C, -D for identification was received in evidence.)

Mr. Thompson: If your Honor please, you will recall that yesterday we, with your permission, deferred the cross-examination of Mr. Connell.

I have at the present time no intention of recalling Mr. Connell for cross-examination upon the assumption that the record is clear and in the event, when we look at the record, we find that there are ambiguities in it or things which require clarification, I should like still to reserve the right to call him.

Hearing Examiner Kolb: You can make the request after you have examined the record.

Mr. Thompson: Yes, sir. We haven't up to this point on the record waived it. I just wanted to be clear on that.

Hearing Examiner Kolb: Yes

Mr. Kelaher: I assume that that request will be made during this week so we can recall Mr. Connell this week?

Hearing Examiner Kolb: I assume so.

Mr. Thompson: Yes.

Mr. Dias: I call Mr. Johnson, please.

809 TYLER L. JOHNSON was thereupon called as a witness for the Commission and having been duly sworn, examined and testified as follows:

Direct Examination by Mr. Dias.

Q. State your name and business address for the record, Mr. Johnson.

A. Tyler L. Johnson, 6118 and -20 Germantown Avenue.

Q. What is the name of your Company?

A. E. P. Rotzell Company.

Q. What is your position with the Rotzell Company?

A. I am a salesman in that territory.

Q. How many years have you been employed by Rotzell?

A. 16 years.

Q. All that time as a salesman?

A. Part of that time as a store manager.

Q. How long was that and when?

A. Two years, a little over, as store manager, due to the death of my store manager.

Q. And how long ago was that?

A. That was—I had been with the company about two years—that would be 1942, from 1942 to 1944.

Q. Since that time you have been a salseman?

A. Yes, sir.

810 Q. What is your sales territory, Mr. Johnson?

A. Roxborough, Manayunk, Chestnut Hill, Germantown, Mount Airy, and I also cover east of Board Street, just a few scattered calls.

Q. Do you attempt to sell the full Rotzell line?

A. Yes, sir.

Q. To what classes of customers do you attempt to sell?

A. I call on gasoline stations, automboile repair shops, new car agencies, used car dealers.

Q. Do you sell-so-called hard parts?

A. Pardon?

Q. Do you sell hard parts?

A. Hard parts?

Q. Yes.

A. Yes, sir.

Q. Is that term familiar to you?

A. No, it is not.

Q. Repair parts.

A. Repair parts, yes.

Q. What do you include in repair parts?

A. Well, replacement parts for transmission, rears, motors, ignition parts, and batteries and fan belts, and all that would come under those parts.

Q. Batteries would?

A. All in the replacement parts line.

811 Q. Among the service stations in your territory, are there any Atlantic service stations?

A. Yes, sir.

Q. Can you tell us approximately how many there are?

A. Approximately 25 or 30.

Q. And do you solicit those stations?

A. I solicit quite a few of them, not all of them.

Q. How many do you solicit?

A. Well, I would say 15 or 20.

Q. How often do you call on them?

A. Approximately every two weeks.

Q. What about the remainder of the Atlantic stations in your territory, do you call on them at all?

A. Well, some of those stations are located in the Northeast section of the city and they are beyond our range of delivery.

Q. How many of those are there, do you have any idea?

A. Well, I would say it would be 10 or more over in that section.

Q. Well, confining yourself then just to those stations which are within your reachable area, your sales territory and those that you can reach, how many are there? Do you call on them all?

A. Yes, I call on approximately all of them in the Roxborough Manayunk and Germantown, Mount Airy and Chestnut Hill areas.

Q. What do you sell them?

812 A. Well, we try to sell them accessories, and when I say accessories, I mean the chemical lines, fan belts. And I also try, if they do any minor repairs, try to sell them mufflers, brakes, and ignition parts, fuel pumps, fuel lines.

Q. What particular products constitute the majority of your sales to those stations?

A. To all the Atlantic stations, the ones that are doing minor repairs, most of our sales are in brakes, mufflers, or ignition parts.

We try to sell them chemicals and batteries and fan belts, but—

Q. (Interposing.) Do you sell them those items, batteries, chemicals and fan belts?

A. No, we don't. We are not able to sell them any of those. The prices are all right, but most of them carry a stock of batteries and they just don't handle—don't touch our batteries at all.

Q. What batteries do they carry?

A. Well, they carry Goodyear batteries.

Q. How about fan belts and hoses?

A. They carry Goodyear fan belts and hoses.

Q. Was there ever a time that you were able to sell to those stations?

A. Yes, a few years back we were able to sell them hoses, some fan belts, and we were able to sell them chemicals, anti-freeze also.

813 Q. How about batteries?

A. Batteries, well, once in a while, if they needed one, but we were never able to sell them a stock of them.

Q. How long ago was that?

A. I would say four or five years ago.

Q. Are you familiar with the George Kee Atlantic station?

A. Yes, sir.

Q. What is his address?

A. 6201 Ridge avenue.

Q. Do you sell to that station?

A. Yes, sir.

Q. Can you tell us what you sell to him?

A. Why, we sell them antifreeze—not all of their requirements, just a part of their requirements. We sell them mufflers occasionally, and brake linings, shock absorbers.

Q. How about batteries?

A. No.

Q. Filters?

A. Oil filters, no.

Q. Chemicals?

A. Can't sell them any chemicals.

Q. Do you know where he buys his supplies from?

A. He buys his chemicals and his batteries and fan belts from the Goodyear distributor.

Q. Do you know the name of that distributor?

814 A. Fred Glenn.

Q. Do they advertise TBA products on the stations?

A. Yes, sir.

Q. What type do they advertise?

A. They advertise Goodyear products and also the DuPont chemical line. They have Goodyear signs—well, the DuPont chemical line is handled by the Goodyear distributor.

Q. Fred Glenn?

A. That is right.

Q. Are you familiar with the Tom Beale station?

A. Yes, he has an Atlantic station at 8601 Ridge Avenue.

Q. Do you solicit his business?

A. Yes, sir.

Q. What do you sell to him?

Mr. Correa: If your Honor please, I must object just on the grounds that this is cumulative. We have already had the Atlantic stations in this gentleman's territory dealt with in testimony of a whole group of them. If we go through each one by one, we can sit here for ever I suppose. I don't object to the testimony as such, although I don't think it is particularly relevant and material, but I do object to having to sit here for endless assimilation of the same points.

Mr. Dias: As I recall yesterday, your Honor, there was some criticism about the fact that we didn't have specific instances, and now we have specific instances and they say it is going to take too long.

815 I don't know how to satisfy the other side of the room.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: Exception.

By Mr. Dias:

Q. Are you familiar with the Tom Beale station?

A. I am acquainted with Tom Beale and his station, yes, sir.

Q. Do you sell any of your products to him?

A. The only products we sell him are brakes and mufflers.

Q. Do you try to sell him batteries?

A. Yes, sir.

Q. Filters?

A. Yes, sir.

Q. Chemicals?

A. And chemicals, yes, sir.

Q. How long have you been selling to that station, do you have any idea?

A. I have been calling on Tom Beale I think ever since he opened the station.

Q. How long has that been?

A. I would say—I wouldn't say positive, but eight or nine years.

Q. Does he advertise TBA products on the station?

A. Yes, sir.

Q. What products does he advertise?

816 A. He advertises the same line as the other stations, Goodyear tires and batteries, and DuPont chemicals.

Q. Do you know where he gets those products?

A. He gets those from TBA distributor.

Q. Do you know who the TBA distributor is?

A. Fred Glenn.

Q. Are you familiar with the Bill Crowley station?

A. Yes. He has an Atlantic station in Chestnut Hill.

Q. Do you solicit his business?

A. I have called on Bill Crowley for eight or nine years. And I am soliciting for all of what you would call TBA items, batteries, chemicals, and also our lines, mufflers, ignition parts, and antifreeze. The only thing we are able to sell him is a little antifreeze, and maybe once in a while some ignition parts. He doesn't do much repair work up there. He is mainly a service station in the sense of a service station, in that he does lubrication, tire changes, sells batteries, and does that type of work more than repair work.

Q. What brand TBA does he advertise on or about the station?

A. Goodyear brand; he has signs out front and on the windows.

Q. Do you know where he gets those supplies?

A. Fred Glenn.

Q. Are you familiar with the Bill Driskill station?

A. Yes, sir. Bill Driskill is at Germantown and Roumfort Road.

817 Mr. Thompson: May we have the spelling of that name?

The Witness: D-r-i-s-k-i-l-l.

By Mr. Dias:

Q. Will you state the items you sell him?

A. We sell Bill Driskill fuel pumps, mufflers, and batteries—pardon me, not batteries. Ignition parts. That is all we are able to sell him.

Q. Do you know whether or not he carries other TBA products?

A. H carries Goodyear's line of batteries and DuPont's chemical line and Goodyear tires and fan belts.

Q. Do you know where he gets those supplies?

A. From Fred Glenn. All of the territory which I cover, all of the territory, Germantown, Chestnut Hill and Roxborough, Manayunk, are covered by Fred Glenn, who is the Atlantic TBA distributor up there.

Q. I see. Are you familiar with John Bean's station?

A. Yes, John Bean is at Lincoln Drive and Mount Pleasant Avenue.

Q. How often do you solicit his business?

A. John Bean and myself are very friendly and have been for quite a number of years. I call on John about every week. I used to call more often than that. In fact, we used to have lunch together a couple of times a week.

Q. Does he buy—

A. (Interposing.) He buys ignition parts. brakes,
818 mufflers, and some antifreeze from us, but the chemical line, I can't sell him that anymore and filters, I can't sell him those, or I can't sell him batteries.

Q. You say you can't sell him the chemical line any more. Did you at one time?

A. At one time I sold John Bean quite a bit of chemicals, That was about five years ago. I used to sell him oil filters but since the change has been made to Goodyear, why, he sticks pretty much to that line.

Q. Does he advertise Goodyear on the station?

A. Yes, sir.

Q. Are you familiar with the Sid Saman's station?

A. Yes. He owns his station. He is across the street, across Lincoln Drive and below John Bean. He has a small station there. He does lubrication and sells the Goodyear batteries and tires. We sell Sid mufflers, and brakes, that is about the only repair work that he does in his station.

Q. Does he carry TBA?

A. He carries Goodyear batteries and tires.

Q. Are you familiar with Lee Asher?

A. Lee Asher is at Germantown Avenue and Washington Lane and he does a very large repair business. When I say repairs, I mean in the minor repair field.

Q. Yes.

A. Motor tune-ups. We sell him ignition parts, we sell him fuel pumps, we sell him brakes and mufflers
819 and tail pipes. I have tried to sell him batteries, tried to sell him chemicals, but he buys from the Goodyear TBA distributor, Fred Glenn.

Q. Does he advertise the Goodyear products on the station?

A. Yes, sir.

Q. Are you familiar with the Amos Atlantic station.

A. Amos Atlantic is at Green and Queen Lane. He handles all of the Goodyear TBA line and we only sell him mufflers once in a while, and we were able to sell him a couple of little tire changing tools lately, and a fuel pump. The rest of the lines he handles, why, we can't sell him.

Q. And does he advertise Goodyear TBA?

A. Yes, sir. Goodyear TBA and DuPont. We incidentally also carry a DuPont chemical line, number 7 line, which is handled by all these Atlantic dealers, but even though we carry that line, we still can't sell to them.

Q. If you know, are your prices the same as theirs?

A. Our prices are the same as the Atlantic distributor, yes.

Q. What sort of service do you offer?

A. We have the truck available at all times for delivery service, and the truck covers that territory from 8:30 in the morning until 5 o'clock at night.

Q. Do you know whether or not your service is as good as Glenn's?

A. I think our service is better. We deliver to a 820 lot of places as much as two and three times a day.

Q. Are you familiar with the Mahlon Craig station?

A. Yes, he is at 6242 Rising Sun Avenue.

Q. Do you sell him any TBA?

A. We sell him a large amount of brakes and ignition. That is about all we can sell Mahlon. He buys his—he advertises Goodyear and he buys his chemicals, number 7 chemicals and Goodyear tires from the TBA distributor in that territory, whose name is George. I don't know his first name. G-e-o-r-g-e.

Q. Can you name any other stations in your sales territory that you sell to?

A. There are other stations there. I am not very successful as far as selling them anything. I call on them fairly regularly, at least once every two weeks or once a month. There is Wayne Johnson, spelled the same as mine, s-o-n. He is at Ogontz Avenue and Washington Lane.

Q. Do you sell him anything?

A. Fuel pumps occasionally, mufflers occasionally. No chemicals, no batteries, no antifreeze.

Q. Does he advertise TBA on the station?

A. He advertises Goodyear, and DuPont 7 line.

Q. Who is his supplier, Glenn or George?

A. Fred Glenn is his supplier.

Q. Are there any others?

A. Al's Atlantic, at York Road and Cheltham Avenue.

821 Q. What do you sell to that station?

A. The only thing we have been able to sell him, I called him about once a month. We sold him a little equipment for his service truck, a starting unit and a couple of jacks and a battery jumper cables. Those are emergency cables for road service.

Q. How about batteries, did you sell him those?

A. I haven't been able to sell him batteries, chemicals or anything else.

Q. What does he advertise on or about his station?

A. The Goodyear line and the number 7 line.

Q. Are there any others?

A. There are some other Atlantic stations. I can't remember them off hand.

Q. All those that you named, how often did you say you called on those people?

A. I call on them at least twice a month. On most of them. And some of them once a month. And when I call on them, we have a catalogue and I talk to them about all the items which they could possibly sell at a service station, oil filters, shock absorbers, I talk Delco batteries, and the different manufacturers whom we represent at different times have deals or have a Spring offer or a Fall offer, and at those times why, we solicit the service stations more extensively than we do in the in-between seasons because at that time they can sell more of
822 the chemicals and also we solicit them for antifreeze in the Spring and Fall.

Q. Have you any new Atlantic stations opened in your territory recently?

A. No, not in my immediate territory that I know of.

Q. Have any Atlantic stations changed hands recently in your territory? That you know of?

A. None that I know of.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Any cross-examination?

Cross-Examination by Mr. Ballard.

Q. Mr. Johnson, you said I think that you call on gasoline stations?

A. Yes, sir.

Q. Repair shops?

A. That's right.

Q. New car dealers?

A. Yes, and used car dealers.

Q. How many accounts do you call on all told?

A. I would say about 150 to 175.

Q. And the bulk of your sales are repair parts, aren't they?

A. Yes, sir, and when I say repair parts, I include ignition and shock absorbers and brakes on that.

Q. Yes, parts for minor everyday repairs?

823 A. That is right.

Q. And I suppose the garages are the best customers for that kind of parts, I take it?

A. The garage is our best customer for heavy repair work. What I mean by that is motor parts, ignition parts, brakes, mufflers, and transmission rear parts. The service station is our best outlet for chemicals and antifreeze, apparently because they see the customer more often than the garage.

Q. How many garages do you suppose there are in your list of 150 customers?

A. About half.

Q. And new car dealers and used car dealers would make up how much?

A. Well, I would include the new car dealers and the used car dealers in with the garages. That is the way I figure it, that way, because a new car dealer in his used car department will use the same parts as a garage for servicing used cars for resale and then we also are able to sell new car dealers parts for their own cars, like if they run short or—the car dealers today don't stock parts for their own cars over five years of age, except fast moving parts.

As an illustration, last week one of the agencies in our territory, one of my customers, purchased three rear springs from me for a 1949 automobile. They don't carry them any more.

824 Q. Well now, you say that for a while you were a store manager?

A. Yes.

Q. What branch was that?

A. See I originally came with Rotzell at the branch at 3917 North Broad which was closed and then they moved over to 5919 Germantown Avenue, or 5921 Germantown Avenue, and after we had been there for approximately a year, my store manager was taken ill and died and while he was sick he had shown me from time to time how to operate the store and I had helped him due to his illness.

Q. Now you call that a store. Is that a retail store? Could I go in and buy something there?

A. You can come in and buy something there and you would purchase it at list price unless you had an order from a garage man or from some company who would be entitled to a discount.

Q. In other words, that store sells to the public, just the way a service station or garage would sell?

A. Yes.

Q. Just to the consuming public?

A. If they come in and ask for it. Our sales on list price are very small. We are mainly wholesalers but we do display the merchandise, which we handle and we do have customers come in from time to time and purchase items.

Q. Now speaking about these various Atlantic 825 dealers, for instance Mr. George Kee, you don't know of course all the suppliers he deals with, do you?

A. No, only all I know is he deals with Fred Glenn and I know he deals with the Bowes Seal-Fast man. I don't know his name. They sell tube repairs.

Q. Do you happen to know that he also deals with Gaul Derr & Shearer?

A. I believe I have seen their salesman in there. You see, in service stations, salesmen from pretty nearly all the parts houses of which there are quite a few in Philadelphia, if they have branches within delivery distance, their salesmen will call on the same people that I call on.

Q. In other words, almost all of these stations that you named for us, other suppliers call on them just the way you do?

A. Yes, sir.

Mr. Ballard: I have no further questions.

Mr. Correa: I have a question or two.

By Mr. Correa:

Q. How many salesmen does the Rotzell Company of yours have?

A. Six — seven.

Q. And we had only three.

A. What?

Mr. Correa: That's all right. No further questions.

Mr. Thompson: May I ask a question off the record?

Hearing Examiner Kolb: Off the record.

826 (Discussion off the record.)

Hearing Examiner Kolb: On the record.

Redirect Examination by Mr. Dias.

Q. You stated on cross-examination that there are sales made over the counter at your store. Do you work on a commission?

A. Yes, sir.

Q. Do you get credit for those sales made over the counter if it is your customer that comes in?

A. If my customer comes into the store, I get credit for any purchases he makes and if he calls up, anything, any customers that I call on, whether they call up, whether I write the order or whether they come into the store, I get credit for their sales.

Q. You also stated that Rotzell has seven salesmen. I think we heard the other day there were five.

A. Well, we have four stores, under the name of E. P. Rotzell Company—

Mr. Correa: (Interposing.) I object to counsel impeaching his own witness.

Mr. Dias: I just want to clarify it, I am not trying to impeach the witness.

Mr. Correa: You are calling attention to the conflict between this witness of yours and another witness of yours, from your many Rotzell witnesses.

827 By Mr. Dias:

Q. Will you name all your salesmen and the area?

A. Well, in South Philadelphia territory, we have Thomas Kernaghan; in the West Philadelphia territory we have Ed Heller; in the Germantown territory, myself; and in the Fairmont, out of the Fairmont store, we have Charles Marriott, who calls on fleets.

Q. Does Mr. Marriott call on service stations, too?

A. He calls on some, but mostly on fleets.

Q. Who is the next one?

A. Herman Rabinowitz. He calls on the same type of accounts that I do.

Q. In what area?

A. He calls on the area north of Fairmont Avenue, Fairmont up to Lehigh, I believe, and then we have a store, it is a sub-store, Suburban Auto Supply, we have a man there by the name of George Walker, and—pardon me. I was wrong when I said seven. It is six.

Mr. Dias: That is all.

Hearing Examiner Kolb: Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

828 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Booz to the stand please.

ELMER H. BOOZ, JR. was called as a witness and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Elmer H. Booz, Jr., 312 Prospect Avenue, Secane, Pennsylvania.

Q. Were you at one time an Atlantic lessee dealer, Mr. Booz?

A. Yes.

Q. Where was your station located?

A. Wycombe and McDade Boulevard.

Q. And for how long a period did you operate that station?

A. February 14, 1952, to May 31, 1956.

Q. And prior to that time, did you operate another service station?

A. Yes, a Texas station, two blocks up.

Q. And did you bring any of the merchandise, the TBA merchandise, you had in the Texas station to your Atlantic station when you moved in?

A. Yes, I brought all the tires, tubes, batteries and accessories.

829 Q. And what kind of tires did you bring; what brand of tires?

A. B. F. Goodrich.

Q. What brand of batteries?

A. Goodrich.

Q. Who was the Atlantic representative with whom you discussed the change in operation?

A. Mr. Al Vayda.

Q. Did Mr. Al Vayda make any remarks with respect to the Goodrich tires and batteries?

A. He told me I could bring them up until I depleted the stock of them.

Q. And when you moved into your Atlantic station, what outdoor—was there an outdoor sign located on the station?

A. All there was was Goodyear signs.

Q. And how about the window valance?

A. They were Goodyear too.

Q. And were you, or did you rather, advertise the fact that you were selling B. F. Goodrich tires?

A. No.

Q. And did you have any other brand of tires in stock?

A. Yes; we had some Lees.

Q. And where had you obtained the Lee tires?

A. When the other dealer checked out we bought them off him.

Q. And was there any other brand of tires in the station?

A. Goodyear.

830 Q. Did you advertise the Lee tires?

A. No.

Q. Why didn't you?

A. Well we were mainly selling Goodyears.

Q. About what percentage of your stock at that time was Goodrich tires?

A. About one third.

Q. About what percent was Lee tires?

A. One third.

Q. And was the remaining one third Goodyear tires?

A. That is right.

Q. Now, after you moved into the station, how long did you continue to carry the Goodrich tires and batteries?

A. Until the stock was depleted.

Q. And after that, what brand did you carry?

A. Goodyear.

Q. And while the Goodrich batteries were in your place of business, in your Atlantic station, were you ever visited by a Mr. Arnholt?

A. Yes.

Q. And did Mr. Arnholt make any comment about the Goodrich batteries?

A. He covered the "rich" part on the battery and said, "Now it looks half right."

Q. I guess it was no mere coincidence that the spon-
831 sored brand begins with G-o-o-d.

A. Right.

Q. Did you at any time carry the Bowers battery line?

A. Yes, I did.

Q. And where had you displayed the Bowers battery?

A. Well, I tried to keep them in the heater room.

Q. And where was the heater room?

A. In the back of the building.

Q. And why had you kept them in the back of the building?

A. Well, I had the only key for that.

Q. Was that because you didn't want Atlantic representatives to see the batteries?

A. Well, it wasn't good for them to see them.

* * * * *

By Mr. Kelaher:

Q. Did you at any time purchase from—let me ask you first from whom did you purchase your Goodyear TBA supplies?

A. Mainly from Ed Parris. Approximately 85 percent of it.

Q. I beg your pardon?

832 A. Approximately 85 percent of it.

Q. And could you have purchased Goodyear tires at a lower price than you were paying Mr. Parris?

A. Yes.

Q. Do you recall how long it took for your Goodrich tires and battery stock to become depleted?

A. Oh, I would say approximately about five or six months.

Q. And after that—

A. After all, when a man sees a Goodyear sign up, he expects to buy Goodyear tires, so you try to deplete it as fast as you can and sometimes you give a man a better price on a tire to get rid of it.

Q. And after that you never purchased Goodrich tires or batteries?

A. No.

Q. Now, who was your principal supplier of accessories?

A. Mr. Parris.

Q. And did you purchase accessories from other jobbers or other sellers of TBA in the area?

A. Yes.

Q. Would you name those suppliers, please?

A. V. J. Auto Parts, Auto Gear, and Auto Radiator.

833 Q. And what products did you purchase from V. J. Auto Parts?

A. Mostly Barsleak.

Q. And was any comment ever made by an Atlantic salesman with respect to your Bars stock?

A. Well, they didn't like it on the shelf and I asked if we could put it on the back shelf—

Mr. Thompson: May we have an identification of who the salesman was at the time?

By Mr. Kelaher:

Q. Do you recall approximately when that request was made by Atlantic?

A. I would say in '53, '54, the end of '53 or the beginning of '54. The name I couldn't tell you because we had a rough territory and the salesmen didn't last too long there. I mean, it was mostly price.

Q. Now, can you give us the name of some of the Atlantic salesmen who called on you?

A. Al Vayda, Joe Connelly, Joe Muldoon. I think there was another one in there.

Q. Was there a Mr. Petrison?

A. Well, there's one between Joe Muldoon and Steve Petrison, I believe.

Q. And was it one of those four men who made this comment about Barsleak?

A. Yes.

834 Mr. Thompson: Which one, please, Mr. Kelaher?

The Witness: That I couldn't tell you, after all, I can't remember back that far.

By Mr. Kelaher:

Q. It would be the salesman who was calling on you at the time you specified, is that correct?

A. That would be the one.

Q. Mr. Booz, did any Atlantic representative ever show you what is known as the "black book"?

A. Well, don't state it that way, that sounds pretty bad, it's more or less of a record book.

Q. I mean the color, I don't mean to imply what you are thinking, it's kept in a black binder.

A. Yes, it's a black binder and it's—it keeps all your TBA records in there, your gasoline and oil, what you purchase each month.

Q. Would the TBA—would it show specifically your TBA purchases as an Atlantic dealer?

A. That's right, what you bought from your Atlantic supplier.

Q. And in your case it would show what you bought from Mr. Parris?

A. That's right.

Q. And would it show any other purchases you might have made from other suppliers of TBA?

A. No.

835 Q. And would they ever make any comments about your TBA purchases?

Mr. Thompson: Who is "they" please, Mr. Kelaher?

By Mr. Kelaher:

Q. By "they" I'm talking about an Atlantic representative.

A. They would say, "You're a little low this month, you're going to be a little under this year; can we get it up to show a little bit of an increase," which we always did like to do.

Q. And they would refer—and they were referring to your TBA purchases from Mr. Parris?

A. That's right.

Q. Now, would you state who made such statements to you in the Atlantic organization?

A. I couldn't give you a truthful answer.

Q. Would Atlantic salesmen, Muldoon for example, have made such statements?

A. Well, out of all of them he'd be more than likely.

Q. Did Mr. Parris ever make such statements?

A. No.

Q. But as I understand it they had an accurate record from your purchases from your Goodyear TBA supply point?

A. That's right.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examine.

836 *Cross-Examination by Mr. Thompson.*

Q. Mr. Booz, am I not correct that you also were the lessee of another Atlantic Station, Naaman's Creek and Meeting House Road in Ogden?

A. That's right.

Mr. Kelaher: I beg your pardon, would you please read the question and answer, I didn't catch it.

(The reporter read the question and answer.)

By Mr. Thompson:

Q. And that was a new station which Atlantic was just opening up when you took it?

A. That's right. That was a brand new station.

Mr. Kelaher: Would you fix the time, please?

Mr. Thompson: I can ask the questions and I will come to it in my own inept way if I may.

Mr. Kelaher: I defer to the distinguished professor of evidence of Pennsylvania.

By Mr. Thompson:

Q. And that I think was about June of 1956, wasn't it, Mr. Booz?

A. That's right; June of '56, and November 15, '56.

Q. And you requested Atlantic to transfer you to that new station, didn't you?

A. That's right, due to price condition along Uycomb Mac Dade Boulevard.

837 Q. That is a tough place for a service station operator, isn't it?

A. That's right.

Q. Price wars all the time?

A. I figured there wouldn't be any out there, but, of course, there wasn't any customers out there either. (Laughter.)

Mr. Kelaher: Would you read the answer, please?

(The reporter read the answer.)

By Mr. Thompson:

Q. After you had been there a few months you had a proposition from Sun and wanted to take that and asked Atlantic to let you out of your lease. Is that about the story?

A. That's correct, it was a much better lease and a much better rent set up, and much more gallonage.

Q. As I understand it Atlantic was mightly sorry to lose you, Mr. Booz?

A. Well, I hope so, because I had good relations with them and I left under good terms, I hope.

Q. I show you, sir—

Mr. Thompson: Would you mark that please? That will be A-4.

(The document referred to was marked Respondent's Atlantic 4 for identification.)

Mr. Kelaher: May we see that?

Mr. Thompson: Yes, indeed. (Handing document 838 to counsel for the Commission.)

By Mr. Thompson:

Q. I show you a document marked A4 identified by the phrase at the top, "Mutual Consent of Cancellation," and ask you whether that is your signature on the document? (Handing document to the witness.)

A. Yes, it is.

Q. And I call your attention to the fact that the document says "Dealer received better offer from competition," and that was the reason why you left Atlantic, was it not?

A. That's right.

Mr. Thompson: I think, sir, I cannot offer this document at this time; I shall have to do so as part of Atlantic's case later.

At that time I think it is understood that I may substitute a photostat?

Mr. Kelaher: That is correct.

By Mr. Thompson:

Q. Mr. Booz, are you old enough to remember the old baseball phrase "Tinkers to Evers to Chance"?

A. No, I'm not quite that old. (Laughter.)

Q. You were Texaco to Atlantic to Sun, weren't you?

A. That's right.

Q. As a matter of fact, a good operator like yourself always has opportunities to go with other companies, isn't that true.

839 A. That's right.

Q. And you and George Hill have a happy partnership together now at a Sun station?

A. Do you realize it's one of the happiest relations we ever had?

Q. Sharing the responsibilities, neither of you have to work quite so hard, do you?

A. Let's put it this way: we are both working just as hard but better pleasure, we don't have as much pressure.

Q. Share the responsibilities?

A. Share the responsibilities and pressure from the company itself.

Q. Sun's not as aggressive as Atlantic, is it?

A. Well—

Mr. Kelaher: What was the question?

A. That's a way of putting it.

Q. Maybe that's why we sell more gasoline here than they do.

A. That's possibly true. We're pumping 50,000 and the station across the street, which is Atlantic, is only pumping 18,000.

Q. I'm sorry to say that I can't say truthfully I wish you luck. (Laughter.)

A. Well, if I may, I mean, this doesn't have any bearing on the case, I know—

Mr. Kelaher: Well, if it doesn't I suggest it not 840 be put into the record.

The Witness: Like a farmer, you have to plant a seed before you can harvest the crop. If Atlantic—

Mr. Thompson: The Examiner wants you to get back to the case, Mr. Booz.

By Mr. Thompson:

Q. Now, Vayda was the first salesman that you had on Mac Dade Boulevard?

A. That's right. He was a very good salesman.

Q. He didn't last as your salesman very long, did he, because Joe Connelly took it over.

A. That's right. Mr. Al Vayda went to a better job.

Q. With the Ford Motor Company?

A. That's right.

Q. And Joe Connelly took over, he was—

A. That's right, he was another good salesman.

Q. And he also went to a better job?

A. That's right.

Q. With Atlantic?

A. That's right.

Q. And then Muldoon took over for a very short time?

A. Very short.

Q. And then was followed by Steve Petrison?

A. No, I think there was another man in there, I'm not sure. He wasn't there too long, maybe it was a vacation for somebody else, but I'm pretty sure there was an-
841 other salesman in there.

Q. According to records I have—and see if this refreshes your recollection—Joe Connelly was your salesman from July of 1952 until sometime in 1954.

A. Yes.

Q. Now, you did make a reference to an incident which happened with a salesman in '53 or '54. Would it have been Joe Connelly you were talking about.

A. If he was the salesman at that time that is who it would have been. That I can't remember.

Q. Did Joe every try to push you around?

A. No, Joe was very good.

Q. Well, how about Steve Petrison, did he ever push you around?

A. No, he didn't have that much of experience at the time.

(Laughter.)

Q. Fellows like Joe Connelly, Steve Petrison, of course, tried to sell you TBA, didn't they?

A. Pardon, what was that question?

Q. I said, Joe Connelly, Steve Petrison, Vayda, the various salesmen you had, tried to sell you TBA, didn't they?

A. That is right, yes, sir, they did.

Q. As a matter of fact, they carried TBA order books, didn't they?

A. Not all the time. Once in a while they had for-
842 gotten them and left them home; mainly that wasn't their job to sell TBA, they would—DuPont had a run on something, so Joe would take half the territory and maybe Ed Parris would take the other half, the same way with Steve and Ed Parris, they would take half, and you might buy five or ten cases of DuPont or you might get in on a spring dating on tires.

Q. During those promotions and things like the spring dating on tires, the Atlantic salesmen were out trying to sell the Goodyear line, weren't they?

A. Yes.

Mr. Kelaher: Would you restate that question, please. This is getting to be a closed conversation over there, I am sorry to say. I know it is inadvertent. We can't hear what is going on.

(Question and answer read.)

Mr. Thompson: That is all for Atlantic.

Mr. Correa, do you have any question?

Mr. Correa: No questions.

Mr. Kelaher: May we have a moment, your Honor?

Redirect Examination by Mr. Kelaher.

Q. Mr. Booz, on cross-examination you were asked about your relationship with George Hill and you stated that it was very enjoyable because there was less pressure, among other things, there was less pressure from the oil company.

843 A. That is right.

Q. Well, Atlantic is like this gentleman here said, more aggressive, they are after you more to stock. The more stock you have, the more you are going to sell be-

cause you have got to sell to get your money to pay for the stock that you have got.

Q. So you are referring to more pressure to purchase Goodyear TBA?

A. That is right. Yes, it would be Goodyear TBA, that is all they sold.

Mr. Kelaher: That is all, your Honor.

Recross Examination by Mr. Thompson.

Q. Are these fellows pretty good TBA salesmen, Atlantic fellows?

A. They have got to be. I was first in the territory; I think Steve can tell you that, in 1954 I was first in tires, second in batteries and third in accessories. And that is out of 28 stations. And I was, I believe, the fourth highest in gallonage.

Q. When you sell TBA it is pretty profitable, you get a pretty good margin on TBA, don't you?

A. Not necessarily. On tires you are working approximately on about—I had it figured out one year there was 19 and a half percent, which isn't very good at all. Of course, you can never sell tires at list price, there is
844 always someone from the Goodyear company or somebody else that is going to knock you down on it. If you could sell from list, you would only have to sell two tires a week, but that is impossible, so you sell a dollar over key and get your ten percent plus your two percent and discount, which comes out approximately to 19 percent, when you figure in your used tires.

Q. Then your Goodyear tire, of course, has to be competitive with the Kelly Springfield next door and the Goodrich tire?

A. Well, the Goodyear tire can't be competitive with Kelly, because we buy Kelly at a cheaper price. We can

get quantity prices, which you can't do with Goodyear. You get a flat ten unless you bought some place else besides Ed Parris and then you get 10, five, and two, which I used to buy my white-walls there and my black-walls off Ed Parris. That was the best way I knew of keeping track of it.

Q. How about your mark-up on accessories, isn't that higher than the mark-up on tires?

A. That, too, is also how you buy. If you wait for your sales to come off, why you can buy at approximately 45 percent mark-up on it. If you don't, why it runs around 30 or 33 and a third. It all depends on who you buy it off of.

Q. A service station couldn't operate today without TBA though, could it?

A. No, that is definite. No, they couldn't.

845 Mr. Thompson: Thank you very much.

Further Redirect Examination by Mr. Kelaher.

Q. Mr. Booz, if I understood you correctly, you stated you could buy Goodyear tires at lower prices at suppliers other than Mr. Parris.

A. That is right. I could buy them at ten, five, and two, once in a while 10, 10, and two. And off of Lee you could get three tens and two.

Whether you bought one, 50, or a hundred from Ed. Parris, you would get 10, two, two percent cash at the end of the month, 30 days.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Correa: No questions.

Hearing Examiner Kolb: That is all, thank you very much.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Balloran, please.

846 FRANCIS J. BALLORAN was called as a witness for and on behalf of the Commission and, having been first duly sworn, assumed the witness stand and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Francis J. Balloran; 4312 Florida Avenue, Florida Park, Newtown Square, Pennsylvania.

Q. And at one time did you operate an Atlantic service station?

A. Yes, I did.

Q. And were you a lessee dealer?

A. Yes, sir.

Q. And during what period was that station operated?

A. September 23, '53, to January 21, '57.

Q. And where was the station located?

A. Route 252, on Westchester Pike, Newtown Square.

Q. And would you tell us whether you were from Newtown Square—how long did you live there?

A. Forty-one years.

Q. Forty-one years?

A. Originally from Philadelphia.

Q. And—

847 Mr. Thompson: He doesn't look old enough to have been there 41 years.

The Witness: Well, I am just 60, young man.

Mr. Thompson: Thanks for the compliment.

By Mr. Kelaher:

Q. And were you active in civic affairs in Newtown Square?

A. Yes, sir. Scout Master; Fire Chief; Fire President; everything but the Mayor of the Town, pretty near.

Q. And did you serve in the Armed Forces of the country?

A. Both wars.

Q. Both World Wars?

A. Yes, sir.

Q. And did you have any sons who served in World War II?

A. Two; and one daughter, a nurse.

Q. I think you are to be congratulated on your record and your family's record.

Now, you stated that you began operating the Atlantic station in September—did you say September?

A. Twenty-third, yes, sir.

Q. September 23, 1953, and at that time what TBA did you carry?

Did you carry tires?

A. Yes, sir.

Q. Did you carry batteries?

A. Yes, sir.

848 Q. Did you carry accessories?

A. Everything.

Q. And what brand did you carry?

A. I carried Goodyear tires, Goodyear batteries; I carried DuPont accessories. Well, I carried all TBA that was furnished by Mr. Miller, our supplier.

Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller?

A. That's right.

Q. Why did you buy your Goodyear TBA from Mr. Miller?

A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.

Q. Was it a matter of your own choice?

A. No, sir.

Q. In or about November of 1955, did a Mr. Arnholt and Mr. Hayes visit you?

A. Yes, sir.

Q. And what was the purpose of their visit?

Mr. Correa: Objected to, if your Honor please.

By Mr. Kelaher:

Q. Would you please state the conversation you had with those gentlemen?

Hearing Examiner Kolb: Objection overruled.

A. Do you want me to answer that?

Mr. Kelaher: Yes, you may answer.

849 A. The conversation the main part of that day was that Mr. Arnholt said they would not renew my lease as of January the first, so I wanted to find out why. I asked why, and they couldn't tell me. They just said it was a lot of little things. Well, I had never been a gasoline station operator; I had taken this for my sons in the town and I knew very little about service stations, to be frank about it, only the pulling of the gas, but I figured that was —It was a good company. Their product was good, and I figured I'd take that station and build it for the boys.

Q. How many boys did you have?

A. Four.

I asked for a leave of absence from the U. S. Navy Department to get them started for the first year or two, and then that's what happened. Now, they said they wouldn't renew the lease from January the first, and my object from

that point on was to find out why, and I tried all methods to find out.

Q. And at that time did you call on any of your neighbors for assistance in the matter?

A. Yes, sir. Senator George Wharton Pepper, who has been a personal friend of mine for about 40 years.

• • • • • •

850 By Mr. Kelaher:

Q. Did you later have a conference with Atlantic officials concerning the matter?

A. Yes, sir. I was sent from Mr. Pepper's office to Atlantic, 260 South Broad Street.

Q. And what happened when you arrived at 260 South Broad Street?

A. Well, we went over with Mr. Brennan and Mr. Sanborne; we went over the different things that happened on the station; up to that time I had never received no letters or no complaints of anything, and Mr. Brennan asked me to hold off until he got some things straightened out, and he would come out to see me, which he did, about 36 hours —the second morning after I was there he came out to the station.

Q. This is Mr.—who are you speaking about?

A. Tom Brennan.

Q. And thereafter, did Mr. Brennan or anyone else from Atlantic come out to see you?

A. Yes, sir. There was Mr. Sanborne with him, and my recollection is that the salesman, Tom Hayes, Tom always came out.

Q. And at that time was anything done about your lease?

Mr. Thompson: Could we fix the approximate date, 851 Mr. Kelaher?

By Mr. Kelaher:

Q. Yes. I thought we had.

Would you state the approximate date you were visited by Mr. Sanborne, Mr. Brennan and Mr. Hayes?

A. I would have to take it from the letter from Mr. Colley.

Mr. Correa: May we inquire what letter? The witness made a gesture, if your Honor please, said the letter to Mr. Colley there. I just wondered what he was talking about.

(The document was marked Commission's Exhibit 315-A and B for identification.)

By Mr. Kelaher:

Q. Mr. Balloran, I hand you a document identified as Commission's Exhibit 315-A and B and ask you to state what it is. (Document handed to the witness.)

Mr. Thompson: It is polite to show it to opposing counsel.

Mr. Kelaher: I thought after I identified it we would.

A. It was a letter written to Mr. Colley to find out what was happening—

Mr. Thompson: Objected to.

Mr. Kelaher: I just want you to say who it is from and to.

852 The Witness: From me to Mr. Colley, Vice President of Atlantic Refining Company.

By Mr. Kelaher:

Q. What is the date?

A. December 14, 1955.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I will now offer Commission Exhibit 315-A and 315-B into evidence.

Hearing Examiner Kolb: Any objection?

Mr. Thompson: No objection, but I don't think it has anything to do with the case.

Hearing Examiner Kolb: The letter is received in evidence—

Mr. Correa: I am sorry, if your Honor please. I realize we are phantom respondent here, but I still guess we had better preserve our record notwithstanding that, and our character is well exemplified by this letter which is apparently a matter between the witness and Atlantic Refining having chiefly to do with the witness' sales of petroleum products and having nothing to do with TBA or the respondent Goodyear, or anything relating thereto. So I think as the respondent Goodyear, the matter is completely immaterial, irrelevant, and incompetent. I would like to note the objection.

853 Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence as Commission's Exhibit 315-A and B.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 315-A and B for identification, was received in evidence.)

Mr. Thompson: Are you going to substitute a photostat?

Mr. Kelaher: If that is agreeable we can do that.

By Mr. Kelaher:

Q. Now, this letter, CX 315-A and B, is dated December 14, 1955. Does that fix in your mind the visit of Mr. Sanborne, Mr. Brennan and Mr. Hayes?

A. Yes. It was just about a week later when those men come out.

Mr. Thompson: What was the date of that letter, Mr. Kelaher?

Mr. Kelaher: December 14, 1955.

By Mr. Kelaher:

Q. And at that time were you presented with a three-year lease?

A. Yes, sir.

Q. Did you accept the lease?

A. Yes, I did.

Q. Now, Mr. Ballaron, you stated that you person-
854 ally were not too familiar with the service station business?

A. That is true.

Q. Did you have any employees in the service station?

A. Yes, sir, I had nine.

Q. Nine employees?

A. Yes, sir.

Q. And were any of your sons among the nine?

A. Yes, sir, two of them.

Q. Two of your sons?

A. Yes, sir.

Q. And who managed the station, principally?

A. My oldest son was the one that—I started to train him to manage the station by sending him to school and taking over, but he thought police work was better, so he quit the gas and went in the police work.

Q. What was his name?

A. Albert, Albert Balloran. Then I put my next son in.

Q. What is his name?

A. Charles. And left him take over. At that time I was not coming back for about six months.

Q. At that time what—

A. I was knocked out for about six months. I couldn't even go to work for six months.

Q. Did you personally work in the station from time to time?

A. I worked in the station six months from the 41
855 months I had it. I worked in that station 14 to 17 hours a day, seven days a week.

Q. So you did become familiar with service station operations?

A. I bet you.

Q. Now, you stated a few moments ago that you were furnished Goodyear TBA by a Mr. Miller.

A. Ernie Miller.

Q. E. F. Miller. Is he the Goodyear TBA supply point in this area?

A. Yes, sir; on Garrett Road.

Q. When you say that, you mean your purchased Goodyear TBA supplies?

A. That is true.

Q. Did you want to purchase TBA from Mr. Miller?

A. Not truthfully, no.

Q. Why didn't you?

A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to send a man with a truck and waste an hour and a half to go pick it up and bring it back.

Q. Could you have purchased Goodyear tires at a cheaper price in the area?

A. Yes, sir.

Q. What was the name of the supplier?

856 A. Hires and Kocher.

Q. And why didn't you purchase Goodyear tires from Hires and Kocher?

A. Why didn't I?

Q. Why didn't you?

A. I did.

Q. And did you purchase them in large quantities?

A. Yes. Their records will prove that I purchased tires in pretty large quantities.

Q. And did you purchase in large quanties from Mr. Miller?

A. As far as I could go, yes, but the—why I purchased

from Hires and Kocher was a simple—I could get any tire I wanted in 20 minutes and I could get them cheaper than I could buy them off of Mr. Miller.

Q. Was anything ever said to you by Atlantic representatives about that situation?

A. No, sir, not offhand.

Q. Now, did you ever purchase any other brand of tires?

A. I practically purchased everything in the tire line. When my customers wanted Firestone, I bought a Firestone tire; if they wanted Royal—it was according to what the customer wanted. I was there to give them service and give them what they wanted.

Q. Were any comments ever made by Atlantic sales-857 men about your purchases of other brands of tires?

A. Not directly, no, sir.

Q. Did you purchase U. S. tires from Harris and Leonard?

A. That's right.

Q. Were such tires advertised, U. S. tires?

A. Not out of my place they weren't.

Q. Where did you keep such tires?

A. Back on the racks, back on the oil racks where they couldn't be seen.

Q. Seen by whom?

A. Any of the Atlantic men that came in there, the bosses.

Q. Who came into your station?

A. Well, the main man that used to come into my station was Mr. Thomas Hayes, my salesman, and Mr. Arnholt would come out once in awhile.

Q. Would they make comments if they saw them?

A. I don't know.

Mr. Correa: I object.

The Witness: I wouldn't know that. I never displayed them; I never displayed any other make of tire.

By Mr. Kelaher:

Q. Did you purchase Lee tires?

A. Yes, sir.

Q. And where did you keep them?

A. On the racks, sir. The Vice President of that
858 company lives right in my town. If he wanted Lee tires or his customers wanted Lee tires, I purchased Lee tires.

Q. And did you purchase U. S. tires on a regular stocking basis or on a fill-in basis?

A. Possibly all the off-brand tires were bought on the customers fill-in job.

859 Q. Would you state what you mean by "off-brand tires"?

A. Well, I'm handling Goodyear to begin with, if I buy a Royal or Lee or Firestone, or any make, to me that's an off-brand tire.

Q. So that you would only buy that type of a tire on a fill-in basis?

A. That's right. I can give you the men's name that ever bought them tires.

Q. Now was Mr. Miller's service on batteries?

A. The same way.

Q. Same way. What do you mean by that?

A. Well, you could get them or you couldn't get them, so you'd have to go somewhere else to buy them.

Q. Did he have them in stock in his place of business?

A. Not when I wanted them half the time.

Q. Where did you obtain the batteries if you couldn't obtain them from Mr. Miller?

A. Lee Tire, on Lancaster Pike.

Q. Did you always ask Mr. Miller first?

A. It was always a fact in our station that either one of the boys or any one of the fellows helping them, the assistant helping them would call Miller first before anything like that was bought.

Q. I see. What was the reason for that?

A. Well—

860 Q. Why did you call Miller first?

A. When you have a service 'station and you have men on there, a customer comes in there and wants to know the price of this or that, or what kind of battery, that fellow don't know the price, he's in a wrong position, if he has to run to me to ask for it or to know when to order, why it's wrong, I think.

Q. Who was the salesman who called on you from U. S. Tires, do you recall?

A. That was Bob—I don't know what his last name is.

Q. Would it refresh your recollection to mention that it might have been Bob Drennan?

A. Little Bob Drennan, he was the fellow that always came up there.

Q. And did you purchase anything from—well, did you do any recapping business for Mr. Drennan?

A. Plenty of it.

Q. And at that time was Mr. Miller in the recapping—did he have recapping facilities?

A. Yes. We'd just got a letter notifying us that Miller was going to start in the recapping business.

Q. At what time was that?

A. Oh, Lord, I'll never tell you no more, it was all approximately—all the way up. But I dealt with Harris and Leonard from the first day I—that he came around there.

• • • • •

861 By Mr. Kelaher:

Q. Were any comments ever made by Atlantic salesmen with respect to your purchases of these so-called off-brand tires or off-brand batteries or accessories?

862 Mr. Thompson: That question has been asked three times already, sir; and answered. It's purely repetitious.

Hearing Examiner Kolb: Objection overruled. The witness may answer.

* * * * *

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. Now, you stated that you left the Atlantic station in January of 1957?

A. Yes, sir.

Q. Would you please state your reasons for leaving the station?

863 A. Pressure.

Q. Pressure?

A. That's right.

Q. What type of pressure?

A. Do you want to go back on the whole story?

Q. Was there any pressure on TBA?

A. The only pressure on TBA is when the monthly thing came around that they could generally tell you every nickel and dime that I bought off of Miller but nothing off of anybody else.

Q. And when you say "they" who are you referring to?

A. My salesman Mr. Hayes.

Q. And would he comment on your purchases from Mr. Miller?

A. Well, he could show me right there in figures what I purchased from him.

Q. And would he ever comment as to whether that was high or low, or so on?

A. Well no, not off-hand, it wouldn't be—it's just a thing of being told that you weren't buying the stuff you bought where you belonged. That's the way it meant to me, I don't know what it meant to them.

Q. And you considered that pressure to buy from Mr. Miller, right?

A. Positively.

Q. Mr. Balloran, did Mr. Miller have recapping 864 facilities when you began business in September of 1953?

A. I wouldn't be able to say that, but if he didn't he'd have them recapped for you, I believe that. I don't know whether he had his own facilities to do that or not, but I know if we sent them in there he'd have them done.

Q. Was it after that that you received the notice to the effect that he had recapping facilities?

A. That's right.

Q. And can you fix in your mind now approximately when that time was?

A. About a year and a half after I opened the station.

Q. And up to that time had you been having your recapping done by Harris and Leonard?

A. Harris and Leonard, right.

Q. Now, did you continue to have your recapping done by Harris and Leonard, by Mr. Miller?

A. Yes, practically all the way through until the last day in what I had left over he took back and returned my money for them.

Q. Who was that?

A. Harris and Leonard.

Q. Now, with respect to your purchases of batteries, in what quantities did you purchase Goodyear batteries from Mr. Miller?

A. Fifteen with one free every time; that's the 865 way it worked out, if you bought 15 you had one free, you got a cheap battery free.

Q. Did you always request that many?

A. No, sir; sometimes we used to send in for two or three, four or five, according to different batteries that

was needed in the automobiles. Like to keep so many of each type on hand to fit the different cars.

Q. And if you sent in for two or three as you mentioned, would you sometimes get 15 batteries back?

A. No, they'd try to sell you 15, but you didn't need that many.

Q. And would you sometimes keep the 15 or return them?

A. Yes, I'd keep them. We'd get rid of them, but half the time you'd have them laying around, especially the wet batteries they were the worst to lay around.

Q. They not only tried to sell them to you, they did sell them to you?

A. Well, that was their job.

Mr. Correa: I object, if your Honor please, as to the form of the question. It's cross-examination. The counsel gets the answer; he doesn't like the question, he starts trying to force the witness to give him an answer. I object to this form of question.

Hearing Examiner Kolb: It's rather confusing, his answer. He said laying around. I think it's proper. 866 The objection is overruled.

By Mr. Kelaher:

Q. Did any of your employees ever have conversations with Mr. Hayes or Mr. Arnholt?

Mr. Thompson: I object to that, sir. How could you possibly know.

Hearing Examiner Kolb: Can you answer yes or no?

The Witness: Yes.

By Mr. Kelaher:

Q. And did such employees report to you about such conversations?

A. They told me just what took place.

Q. And did any of the reports concern TBA?

A. No, they did not.

Q. Are you presently an Atlantic dealer, Mr. Balloran?

A. Yes, sir. We have a station at Zieglerville, Pennsylvania, Route 29. That's a two pump station.

Q. Are you presently a contract dealer or lessee dealer?

A. I'm my own dealer this time.

Q. What do you mean you are your own dealer this time?

A. No one is going to tell me what to buy or sell from this station.

Q. Was anyone telling you what to buy or sell from the last station?

Mr. Correa: I object, if your Honor please. I
867 think the witness' testimony speaks for itself.

Hearing Examiner Kolb: The objection is overruled.

By Mr. Kelaher:

Q. You may answer.

A. Let me have that question again.

Mr. Kelaher: Will you read the question, please?

(The reporter read the following question:

"Question: Was anyone telling you what to buy or sell from the last station?")

By Mr. Kelaher:

Q. Did anyone tell you what to buy or sell at the last station?

A. Yes, they did. You couldn't sell anything on that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that its representatives are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station, I know that. Anybody knows that. The salesman knew it. That's why I left the station.

Mr. Kelaher: That's all, your Honor.

The Witness: If I invest my own money, I want to buy what I want to buy; I don't have nothing against the product, the thing is you have to do certain things and if you want to do that you might as well go to Russia.

868 By Mr. Kelaher:

Q. And you are stating that you had to buy Goodyear TBA from Miller, is that correct?

A. That's true.

* * * * *

Mr. Thompson: Now, are you through, Mr. Kelaher?

Mr. Kelaher: I'm finished.

Mr. Thompson: This is one of the surprise witnesses, your Honor, as you know.

Mr. Kelaher: Your Honor, this is the only surprise witness we have brought in.

869 Mr. Thompson: This is one of the surprise witnesses I understand there are going to some more.

Mr. Kelaher: There is only one in Philadelphia, one in Wilmington.

Mr. Thompson: Under your Honor's ruling I think we may defer cross-examination until Friday—or was that a stipulation with you, Mr. Kelaher?

Mr. Kelaher: We have no objection if it's convenient for the witness to come back.

The Witness: I have to be at a settlement on Friday at 1:00 o'clock, that's at 69 Upper Darby.

Mr. Kelaher: Could you be here later in the day?

The Witness: Yes, sir; but I must be at the settlement for 1:00 o'clock.

Mr. Kelaher: What time would be convenient for you? Three o'clock?

The Witness: Give me an hour to get down here.

Mr. Kelaher: Could you come down in the morning?

The Witness: I'm at Zieglerville tomorrow unless it's absolutely necessary.

Mr. Thompson: I meant Friday morning.

The Witness: Friday morning, as long as I can get back there at the settlement, it's the Land Title—

Mr. Kelaher: If you could you come in any time convenient to you Friday morning. Could you come in at 10:00?

870 The Witness: Right, I'll be here at 10:00 o'clock.

Mr. Kelaher: That is agreeable then. That's all for the present, Mr. Balloran.

Hearing Examiner Kolb: The witness will be excused until Friday morning.

Mr. Correa: Off the record if I may, your Honor.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: If it please the Court: At this time I move the recall for further cross-examination of the witness Matthews and I base my motion upon the following grounds. We were given notice that the witness Matthews would be a witness only on Thursday before he appeared, despite the fact that apparently the witness had given a signed statement to the counsel supporting the complaint as long as four years ago and had not been in the employ of or had not been a lessee of the Atlantic Refining Company since May 7th, well over a month ago.

In view of the shortness of time we were unable, adequately, to search old files relating to the testimony of the witness as respects Goodyear and particularly in respect of the witness' claim that Goodyear, without his consent or commission, and against his will, in fact, had gone into his place of business and installed certain signs.

871 We have now been able to complete the search of these records and the company which under contract was charged with installing these signs in service stations

has produced or has furnished us a form on which appears —it is a carbon copy of the form—and on which appears purportedly the signature of Matthews, underneath the legend, a printed legend reading in part: "This installation meets with my entire approval. No damage has been done to my property." Dealers signature, Matthews.

Now, I may say that we have compared the signature appearing hereon with the signature appearing on Commission's Exhibit 294-A and -B, and at least on inspection this appears to be an authentic signature, assuming that the signature on the exihibit is and that was, I believe, identified by the witness as being his veritable signature.

So, for these reasons we wish the recall of the witness for further cross-examination in the nature of impeachment.

Hearing Examiner Kolb: As I recall, Mr. Correa, you asked the witness some questions about the signing of this document indicating to me at the time that you had some sort of a signed document.

Mr. Correa: No, if your Honor please.

Hearing Examiner Kolb: You should have produced it at the time you asked the witness about it.

872 Mr. Correa: If your Honor please, we did ask the witness whether in his absence, because all we had was his version of the facts at that time, whether in his absence this employee of his who was there had signed a document similar to this because, of course, we knew of the practice, and the witness, as I recall his testimony, said "I don't know. If he did he didn't tell me," which left the matter sort of up in the air. We did not know, of course, at that time that in truth and in fact the witness himself had signed such a document.

Mr. Kelaher: Mr. Examiner, two points I would like to make.

First, to get the record straight, when we notified counsel. I personally made a long distance call on January

17th to Mr. Ballard and to Mr. Mason to notify them that Mr. Matthews would appear as a witness. That was the first day that I knew that he was going to be called as a witness.

Hearing Examiner Kolb: What date was that?

Mr. Kelaher: That was on January 17th—

Hearing Examiner Kolb: January—

Mr. Kelaher: I mean June 17th, which was a week ago, and in so far as the signature is concerned, I would like to call your Honor's attention to the testimony of Mr. Hinderscheid, Vice President in Charge of Sales of 873 Lee. I recall showing him a document with his signature on it and apparently it conformed with his signature on other documents and he stated that he didn't sign it. So, I don't think you can just presume that Mr. Matthews signed this statement.

Mr. Correa: Well, if your Honor please, I submit that in any court in the land you are permitted to offer an identified signature and a questioned document and permit a jury to look at them both and decide, or a judge or any other trier of the fact. I never heard such a ridiculous proposition.

Hearing Examiner Kolb: The witness was called, you were notified a week ahead of time, the witness was examined, cross-examined and released. I think the request comes too late on that at this time.

Mr. Correa: All right.

Mr. Kelaher: I move we adjourn until 2:00 o'clock.

Hearing Examiner Kolb: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:18 o'clock p.m., the hearing in the above-entitled matter was recessed to reconvene at 2:00 o'clock p.m., this day.)

874 Afternoon Session.

(2:10 p.m.)

Hearing Examiner Kolb: Come to order.

Mr. Dias: I call Mr. Franks.

WILLIAM LEE FRANKS, was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Mr. Correa: If your Honor please, before we get into this witness, there is one matter of straightening out the record that I would like to make clear.

Just before we adjourned for lunch, I made a motion for the recall for further cross-examination of the witness Matthews and stated in the record my ground.

Now I should like that statement to stand as an offer of proof and in connection with that statement or in the course of that statement I referred to a paper signed by the witness Matthews, and I should like to have that paper at this point marked for identification, to stand as a part of my offer of proof.

Hearing Examiner Kolb: The document will be marked Respondent's exhibit G-1 for identification.

(The document referred to was marked Respondent's exhibit G-1 for identification.)

Hearing Examiner Kolb: Let the record show the 875 document marked for identification Respondent's exhibit G-1 will be received as part of the offer of proof.

(The document referred to, heretofore marked RESPONDENT'S EXHIBIT G-1 for identification, was received as an offer of proof.)

Direct Examination by Mr. Dias.

Q. Mr. Franks, will you state your full name and business address?

A. William Lee Franks, 8 East 9th Street, Chester, Pa.

Q. And the name of your company?

A. Auto Parts and Radiator Company.

Q. How long have you been with Auto Parts, Mr. Franks?

A. Five years.

Q. And in what capacity, sir?

A. Approximately two and a half years on the inside as a counter man and two and a half years on the outside as a salesman.

Q. Which two and a half years have been on the road?

A. The past two and a half years.

Q. What is your sales territory right now?

A. My sales territory right now is Media, Newtown Square, West Chester, Folsom, Springfield, Paoli, Bryn Mawr.

Q. Did you have a different sales territory at one time?

A. Yes, I did.

Q. What was that, and over what period?

876 A. That was prior to January 1st, of this year.

Q. And what was that territory?

A. That territory consisted of Clifton Heights, Drexel Hill, Collingdale, Springfield, Folsom, and Woodlyn.

Q. And you worked that territory about a year and a half, is that correct? How long did you work that?

A. Just about two years.

Q. Well, confining your remarks then to that period of time prior to January 1, 1957, what type customers did you solicit?

A. Service stations, automobile dealers, independent repair shops, body shops and contractors.

Q. And among the service stations, were there Atlantic stations?

A. Yes, sir, there were.

Q. Can you tell us about how many Atlantic stations there were in your territory?

A. Nine.

Q. Did you sell to any of the nine?

A. Yes, sir, I did.

Q. How many?

A. Six.

Q. And can you tell us how often you called on the six?

A. Very faithfully once a week.

Q. And what about the other three?

A. Periodically.

877 Q. Did you call on them periodically during the two-year period?

A. Not during the whole two-year period.

Q. Have you ever sold those three?

A. No, sir.

Q. Of those three, referring to those three, did they handle TBA products?

A. Yes, sir.

Q. Do you recall the type brands they had, the brands they handled?

A. Goodyear tires, batteries, fan belts, hoses.

Q. Was that true of the three?

A. Yes, sir.

Q. Now the six that you sell to, can you tell us what you sell to each of them and can you name the stations?

A. Bryant's Atlantic station, MacDade Boulevard and Fairview Road in Woodlyn, Pennsylvania.

Q. Bryant?

A. Yes.

Q. What did you sell to that station?

A. The only thing I sell Bryant is mufflers, tail pipes, brakes, and so forth. I sell him no TBA items.

Q. Do you attempt to sell him those items, that is, TBA items?

A. Yes, sir.

878 Q. Does Bryant handle TBA?

A. I beg your pardon?

Q. Does he handle TBA?

A. Yes, sir.

Q. What brand?

A. Goodyear tires, batteries, fan belts, Prestone antifreeze, DuPont chemicals.

Q. Can you name another station?

A. Russell's Atlantic station.

Q. What is his address?

A. 2319 Marshall Road, Lansdown, Pennsylvania.

Q. And what do you sell to him?

A. Mufflers, tail pipes, ignition.

Q. Have you tried to sell batteries and accessories to that station?

A. Yes, sir.

Q. Have you been able to sell those to him?

A. In the year 1955, when I called on Smedley Rusell, I received a pre-season order for Prestone antifreeze from him. During October of 1956 when I returned to get another pre-season order for the winter of 1956, at the time he wasn't ready to talk about antifreeze. A few weeks later I walked in and he had 10 cases sitting on the floor and I asked him why he didn't buy them from me, and his explanation was that they put pressure on him, and he
879 in turn still gave me an order for 10 cases of antifreeze.

Q. Who was he referring to when he said they put pressure on him?

A. The Atlantic distributor.

Q. Referring back to that Bryant station, can you give us some idea of your volume of sales to that station and the number of times you called on them?

A. Yes. In 1955 I called on him 18 times. I received total sales of $477.72.

Q. And in 1956?

A. In 1956 I called on him 20 times and I received $334.28.

Q. How about Russell's?

A. Russell's Atlantic station, in 1955 I called on him 29 times. I received $954.43 worth of business.

In 1956 I called on him 50 times and I received $1,865.11 worth of business.

Q. Can you name another station?

A. A & E Atlantic Station.

Q. What is their address?

A. Springfield Road and Ridley Avenue, Clifton Heights, Pennsylvania.

Q. And what do you sell to that station?

A. Brakes, mufflers, hard parts.

Q. What are hard parts?

A. Hard parts are upper control pins, king pins—

860 Q. (Interposing) Yes. Are hard parts and repair parts synonymous? Do they mean the same thing?

A. Yes.

Q. Did you attempt to sell him batteries or accessories?

A. No, sir, I didn't.

Q. You did not?

Does he advertise on the station TBA products?

A. Yes, he does.

Q. And what is it he sells?

A. Goodyear tires, batteries, fan belts, hoses, Prestone antifreeze.

Q. Did I understand you to say you didn't attempt to sell him batteries?

A. No, sir.

Q. Or filters?

A. No, sir.

Q. Will you name the next station, please?

A. The next station is an independent station, Gill's Atlantic station, 2142 Darby Road, Havertown, Pennsylvania.

Q. And what products did you sell to Gill's?

A. Fan belts, hoses, ignition, brakes, chemicals, wire cable, antifreeze, equipment.

Q. And your volume of sales to him, do you have that?

A. During the year 1955 I called on him 36 times, I received a total of $1,706.65 worth of business.

881 And in 1956, I called on him 52 times, and I received $2,593.25 forth of business.

Q. Does that station handle TBA?

A. No, sir.

Q. It does not. Do they have any advertising at all about the station?

A. No, sir.

Q. Do you have another Atlantic station?

A. Herbey's Atlantic station, Burmont Road and Market Street, Drexel Hill, Pennsylvania.

Q. And your sales to that station?

A. During the year 1955 I called on him 29 times. I received a total of $314.86. During 1956 I called on him four times. I received a total of $534.44.

Q. And what type products did you sell to that station?

A. Mufflers, hard parts, brakes.

Q. How about batteries and accessories?

A. No, sir.

Q. Did you attempt to sell those to that station?

A. Yes, sir.

Q. Does that station carry TBA? Do they have tires in that station?

A. I am not sure. I think he has Goodyear tires and fan belts and hoses.

Mr. Ballard: I move to strike the last answer. The 882 witness is just hazarding a guess.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Dias:

Q. That is five. I believe you have one more station, is that correct?

A. Way's Atlantic Station, Township and State Road, Drexel Hill, Pennsylvania. During the year 1955 I called on him 11 times and received a total of $25.42 worth of business. During 1956 I called on him 31 times and received a total of $144.29 worth of business.

Q. And what were the type of products you sold to that station?

A. Car rugs, fuses, Ever Ready bulbs, and that is about all.

Q. Did you attempt to sell any batteries to him?

A. No, sir.

Q. You did not?

A. No, sir.

Q. How about filters and other accessories?

A. No, sir.

Q. On these stations, Bryant's, Russell's and Herbey's, you have attempted to sell them your batteries and accessories and so forth, is that correct?

A. Yes, sir. Herbey's Atlantic is an independent station.

Mr. Correa: Is that the one the witness said didn't sell any TBA?

Mr. Dias: No.

• • • • •

883 By Mr. Dias:

Q. Referring to Bryant, you attempted to sell him batteries and accessories, did you?

A. Yes, sir.

Q. And they refused to buy?

A. Yes, sir.

Q. Did they give you any reason why they wouldn't buy?

A. Bryant said to me a couple of times "I have to
884 buy from Parris or I will be put out of my station."

Q. When did he tell you that?

A. July of 1956. During the month of October of 1956 when I tried to get a pre-season order of Prestone antifreeze, he told me that he could not give me an order for even one case because Ed Parris knew how much he used, he was going to send it in to him and he still had antifreeze on the shelf left over from the year 1955.

Q. Who is Parris?

A. Ed Parris is the Atlantic distributor.

Q. And is he the Atlantic distributor throughout your entire territory?

A. To the best of my knowledge, sir.

Q. Now you mentioned that you attempted to sell batteries and accessories to Russel's. Did Russell give you any reason for not buying batteris, or accessories?

A. The only reason Russell give me is "I have to play ball with them."

Q. With whom?

A. Ed Parris.

Q. Can you state when he made that statement?

A. That was during the month of July 1956. The incidents I talked about of the antifreeze was during October.

Q. Now, October 1956, did that relate to Bryant's or Russell's? I understood it related to Bryant.

885 A. It relates to Russell.

Q. Russell's?

A. Russell's.

Mr. Correa: Could I have that last question and answer read, if your Honor please?

Hearing Examiner Kolb: Read the question and answer.

(The reporter read as follows: "Question: Now, October, 1956, did that relate to Bryant's or Russell's? I understood it related to Bryant. Answer: It relates to Russell. Question: Russell's? Answer: Russell's.")

Mr. Correa: The man said Bryant said something. How can that relate to Russell?

Mr. Dias: I find now he originally testified in that regard and I lost track of it, in respect to Russell.

Mr. Correa: It doesn't make sense.

By Mr. Dias:

Q. To clarify it, did you have a similar experience with both Bryant and Russell?

A. Yes, sir, I did.

Q. And they both occurred during October, 1956, is that correct?

A. On the Prestone antifreeze incident, yes, sir.

Q. Does your company furnish delivery service?

A. Yes, sir.

Q. In your opinion are your products, your bat-
886 teries and accessories, competitive with those Good-year products sold by Parris?

Mr. Correa: I object—

The Witness: (Interposing.) Yes, sir.

Mr. Correa: I object to the question and move to strike the answer in view of the witness having answered before I had an opportunity to object on the ground that no proper foundation has been laid. The witness has been asked to give an opinion without the slightest effort or even pretense, shall we say, of qualifying him as expert in any way.

Mr. Dias: I think the witness testified, your Honor, that Parris was the distributor in his territory. He must know whether or not he runs into his competition along the line.

Mr. Correa: I submit that that is complete non sequitur. Why must he know? He must know if he knows and if he knows, bring it out.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

Mr. Dias: Did you answer that question?

Mr. Correa: He answered the question before I had a chance to object.

Hearing Examiner Kolb: He answered the question.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examination?

887 *Cross-Examination by Mr. Ballard.*

Q. Mr. Franks, you were refreshing your recollection from a document there, were you not?

A. Yes, sir, these are my personal notes. (Handing to Mr. Ballard.)

Mr. Ballard: Thank you. (Returning to witness.)

By Mr. Ballard:

Q. Mr. Franks, how many accounts do you solicit regularly, of all kinds?

A. 276.

Q. Are the majority of those accounts service stations?

A. No, sir.

Q. Do you know what brand of antifreeze Ed Parris sells?

A. Yes, sir.

Q. What brand is it?

A. Prestone Antifreeze.

Q. He sells Prestone?

A. Yes, sir.

Q. Do you know what brand of antifreeze the Atlantic Refining Company sells?

A. DuPont's.

Q. DuPont?

A. Yes.

Q. And you yourself sell—

888 A. Prestone antifreeze.

Q. I think you said that you were a counterman for two and a half years?

A. Yes, sir.

Q. Does that mean that your company runs a retail store as well as your activities as a salesman?

A. Yes, sir.

Q. Where is that store located?

A. 8 East 9th Street, in Chester, Pennsylvania.

Q. Now all of the incidents you told us about, or all these customers you told us about, Bryant's Russell's, A & E, Gill's, Herbey's and Way's, those were your customers prior to the first of this year?

A. There is a few of them in there that are still my customers. A & E Atlantic I no longer call on. Gill's Atlantic I no longer call on. And Russell's Atlantic I no longer call on.

Q. That is because they are out of your territory?

A. Now, because they are out of my territory.

Q. Now, Mr. Franks, you have testified that a number of these stations purchased some or all of their TBA from Ed Parris, is that right?

A. Yes, sir, to the best of my knowledge.

Q. Is Bryant's one of those stations?

A. Yes, sir.

889 Q. Do you know where else Bryant purchases TBA?

A. No, sir.

Q. Do you know who else calls on him?

A. No, sir.

Q. But there are other TBA salesmen who do call on Bryant's?

A. Not to the best of my knowledge. I know there are other jobbers calling on him.

Q. Do you know which ones?

A. Yes, sir. Would you like me to name them?

Q. Yes.

A. Chester Auto Parts, Delaware County Motors, V. J. Auto Parts, and I guess that is about it.

Q. Would the same be true of Russell's, about the same group call on him?

A. No, there would be a different group calling on him.

Q. Could you tell us who would call on him?

A. Burrion Auto Supply.

Q. Who else?

A. Gaul Derr and Shearer, Clifton Auto Parts, Burmont Auto Supply.

Q. You wouldn't know how much those suppliers sell to those stations, would you?

A. No, sir.

Mr. Ballinger: No further questions.

Mr. Correa: I have only one question.

890 By Mr. Correa:

Q. Is Newtown Square in your territory?

A. Yes, sir.

Q. Did you ever call on a Mr. Ballaron?

A. No, sir.

Mr. Correa: No further questions.

Mr. Dias: That is all.

Hearing Examiner Kolb: That is all, Mr. Franks.

(Witness excused.)

Mr. Kelaher: Could we have a short recess?

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

Mr. Correa: If your Honor please, in connection with the testimony of the last witness, I believe there is a little confusion that ought to be cleared up in the interest of all of us.

I believe it is the fact, and indeed I think there was an objection made by one of counsel supporting the complaint sometime back on this ground, that antifreeze is shown by the Commission exhibits not to be embraced within the scope of the sales commission plan or agreement between Atlantic and Goodyear, that is, Prestone antifreeze. Am I correct on that?

Mr. Kelaher: That is my understanding, your
891 Honor, that Atlantic itself however sells antifreeze directly to the service stations. Is that correct?

Mr. Ballard: That is correct. Prestone antifreeze.

Mr. Correa: Of course Goodyear is not interested in what Atlantic sells to its stations directly and I don't think the issue is in this case.

Furthermore, I understand and perhaps counsel is informed on this, that Ed Parris in fact does not wholesale any kind of antifreeze.

Mr. Kelaher: Actually I am not informed on that. I would be glad to answer that if I could.

Mr. Correa: I thought perhaps you knew of that fact. We will show it in due course.

Mr. Kelaher: I would like to call Mr. Heald.

FELIX B. HEALD was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your name and home address.

A. Felix B. Heald, 1870 Eckard Avenue, Arlington, Pennsylvania.

Q. Were you at one time with Atlantic Refining Company, Mr. Heald?

A. Yes, sir.

892 Q. How many years?

A. A little over 20.

Q. And when did you leave Atlantic Refining Company?

A. The first of April, 1951.

Q. Immediately prior to that time, what was your position with Atlantic Refining Company?

A. Well, it was generally known as TBA supervisor.

Q. What section or what area?

A. New Jersey.

Q. Any particular section of New Jersey?

A. The southern part of New Jersey and also part of Delaware County.

Q. Part of Delaware County, in Pennsylvania?

A. That is right.

Q. Now after you left Atlantic, did you organize a jobbing concern?

A. Yes, sir.

Q. What was the name of that concern?

A. F & C Automotive Specialties, Incorporated.

Q. And when was that company organized or started in business?

A. In May of 1951.

Q. Would you please describe the business, what type of products you carried?

A. Well, it was a specialty jobbing business. I had a warehouse distributorship on three lines, namely,
893 Exide batteries, R. M. Hollingshead and Thermoid.

Q. What was the second one?

A. R. M. Hollingshead Company in Camden. They were warehouse deals that enabled me to sell to other jobbers on those three lines. The other lines I bought on a jobbing basis or where I didn't think there was enough volume, I bought on a so-called sub-jobbing basis.

Q. Would you please state which products you carried as a sub-jobber?

A. Fram—

Q. Fram? What products would that be?

A. Cartridges.

Q. Oil Filters?

A. Yes, sir. I bought on the bottom deal on Ever Ready and a few other lines. But the main lines were those three I first mentioned.

Q. Did you handle tires?

A. Yes, sir.

Q. What brand?

A. Lee tires.

Q. And were the brands you handled all nationally advertised brands?

A. Yes, sir, nothing else.

Q. What was the marketing area of F & C Automotive Specialties?

A. Well, the lower part of Montgomery County, and
894 New Jersey surrounding the Camden area, including Morrestown and Woodbury and Merchantville, and some in Philadelphia, not too much in the city.

Q. Do you have any delivery trucks?

A. Yes. I had a station wagon that I used as a delivery truck.

Q. And were you, yourself, an outside salesman for the concern?

A. Yes.

Q. And did you travel this marketing area you just described?

A. Yes, sir.

Q. Was your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Oh, yes.

Q. And what classes of customers did you sell to?

A. Gas stations, repair shops, car agencies.

Q. Did you call on Atlantic service stations?

A. Incidentally, I did forget to say that I put up a chemical line of four items, under my own brand, a car wash, a white wall cleaner, and what I called Speedy Wash and also a rubber cleaner, which I put up myself.

Q. When you say put up yourself, does that mean you prepared it?

A. That's right.

Q. And would that be classed as accessory items?

895 A. That's right, I would say so.

Q. Now I believe there is a question pending. Did you call upon Atlantic service stations?

A. I called on all of them, including Atlantic.

Mr. Thompson: I didn't understand the answer.

The Witness: I called on all service stations that I thought I could do business with. The Atlantic stations were pretty desirable because generally they had more business than the others, Atlantic, Sun and Standard.

By Mr. Kelaher:

Q. At the time you began operations, had Atlantic begun its sponsorship of the Goodyear TBA line in your marketing area?

A. They were just starting about that time.

Q. Was there a time when you were able to sell or when you did sell Lee tires, Exide batteries, Thermoid products, Fram products, and your other lines to the Atlantic service stations?

A. Yes, sir.

Q. During what period were you able to make such sales?

A. That was generally during 1951, probably into January of 1952.

Q. What happened after January of 1952?

A. It stopped.

Q. And did you at one time solicit the business of Mr. Charles Lott in Morrestown, New Jersey?

896 A. Yes, I did.

Q. And did you at one time sell to Mr. Lott?

A. Yes, sir.

Q. What products did he purchase?

A. He purchased several different products and he bought fan belts from me and I had a man come down from Trenton to resleeve them.

Q. What brand?

A. Thermoid belts.

Q. Who was the man who came from Trenton?

A. A representative of the Thermoid Rubber Company.

Q. Is their factory in Trenton?

A. Yes.

Q. What happened after that?

A. The next time I got there, they were all back to Goodyear again.

Q. Did you have any conversation with Mr. Lott concerning Thermoid products?

A. He asked me as a personal favor, he said, it embarrassed him for me to come in there and asked me as a personal favor would I desist and I said sure.

Q. So thereafter he did not purchase any TBA from you?

A. No.

Q. Why would it embarrass him for you to go in there?

Mr. Thompson: I object, sir.

897 By Mr. Kelaher:

Q. What was the substance of his conversation?

A. I am afraid I couldn't repeat it at the moment.

Q. Did you at one time call on a Gus Mapes?

A. Well, Gus Mapes, I used to go to Ocean City every summer and I have known him for many many years. And if he wanted to buy a few things, he would drop me a line, and when I went to the seashore, I would take them to him.

Q. Did he purchase Lee tires?

A. Yes.

Q. Exide batteries?

A. Yes.

Q. Car wash?

A. I sold him Speedy car wash, which can be used as a car wash.

Q. Did he continue to purchase those products from you?

A. No, he stopped.

Q. Did he give you a reason why he stopped?

A. He said that the supervisor there had really given him quite a hard time.

Q. The supervisor for which company?

A. Atlantic Refining Company.

Mr. Thompson: If your Honor please, this testimony is of course taken not to prove the fact, but really as state of mind testimony?. Otherwise, of course I object to it.

898 Hearing Examiner Kolb: I think it is all right.

By Mr. Kelaher:

Q. Did Mr. Mapes make reference to any particular—

Mr. Thompson: Would you mind confining this—the acoustics in this room are rather bad and I have heard that name several times, but I haven't gotten it.

The Witness: Mr. Mapes, M-a-p-e-s.

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. Mr. Mapes, did he state the name of the Atlantic representative?

A. Why, he used the name of Mr. Kramer.

Q. Who was Mr. Kramer?

A. He was assistant supervisor in New Jersey, as I recall.

Q. Do you recall who he was assistant to?

A. Mr. Esbach.

Q. Mr. Heald, about what time did this incident occur?

A. This was in 1953.

Q. 1953?

A. Yes.

Q. And did Mr. Mapes discontinue purchasing the TBA from you?

A. Yes.

Q. Do you recall calling on a Lloyd Martin, Rising Sun Avenue and Godfrey Street, Philadelphia?

899 A. Yes.

Q. Did you sell TBA products to Mr. Martin?

A. I sold him quite a little.

Q. What type of products did you sell him?

A. Oh, generally most everything I had, until he approached me about—he had some obsolete radiator hoses, Thermoid hoses and he told me if I would arrange with the Thermoid factory, so he could exchange it for the more modern type of hose, he would buy fan belts from

me and they agreed to send a man down to resleeve them and the next time I got there, it was all Goodyear again.

Q. When you talk about resleeving, you are referring to the change of brand name?

A. That is a practice in the business.

Q. Mr. Martin, did he continue to purchase TBA from you?

A. No. He said the pressure was too much.

* * * * * *

By Mr. Kelaher:

Q. Do you recall the conversation he had with you?

A. I don't think so.

Q. Do you recall when he stopped purchasing TBA from you?

A. It was in 1952.

* * * * * *

901 By Mr. Kelaher:

Q. Getting back to Mr. Martin. What TBA products was he carrying at the time he made this statement to you?

A. Well, he was carrying Goodyear tires. I never sold him any tires, nor batteries, but I sold him practically everything else.

Q. Was he carrying the Goodyear TBA line?

A. Yes, sir.

Q. And did he have Goodyear identification on his station?

A. Oh, yes.

Q. Now, do you recall soliciting the business of a Bob Rockfeller, Carlisle and Hunting Park Avenue, Philadelphia, Pennsylvania?

A. Yes, sir.

Q. And did you sell any TBA products to Mr. Rockfeller?

A. I sold him only car wash.

Q. And how were such deliveries made?

A. By truck.

Q. Did Mr. Rockfeller always accept delivery when you brought the car wash?

A. Well, there was one time when I delivered it he just waved me out and afterwards he told me the Atlantic salesman was in there.

Q. Well, when he waved you out did you go out and return later?

902 A. I just didn't go in, he just waved through the window.

Q. Now, do you recall soliciting the business of a Denny Denshaw, Decatur and Frankford Avenues, Philadelphia, Pennsylvania?

A. Yes, I did.

Q. Did you sell TBA products to Mr. Denshaw?

A. Yes, I did.

Mr. Thompson: Is this Denshaw, Benshaw, Henshaw?

Mr. Kelaher: Denshaw to rhyme with Denny.

The Witness: I sold him about everything.

By Mr. Kelaher:

Q. He bought Lee tires and Exide batteries?

A. Yes.

Q. Did he stop buying TBA from you?

A. Yes, he did.

Q. And did he give you a reason for stopping?

A. Well, in April of '52 he gave me an order for 200—I think I have a memorandum on it here. April the 12th, $222 and he called me up and told me—

Q. What did that consist of?

A. It was tires and batteries only.

Q. Lee tires and Exide batteries?

A. That's right.

Q. He called you—will you proceed?

A. He called me up and told me that there were
903 four Atlantic men over there and told him to send the tires back and asked me if I would mind. In the meantime by the time I got there he had sold some, but I took back merchandise to the extent of $162 rather than embarrass him.

Q. And thereafter, did Mr. Denshaw stop buying from you?

A. Very little, practically none.

Q. And what TBA was Mr. Denshaw selling in his station primarily?

A. Well, he was not selling the Goodyear filters, he was selling Fram filters which I was selling him.

Q. Was he selling Goodyear tires?

A. Yes, he had Goodyear tires.

Q. Was he selling Goodyear batteries?

A. No, he didn't have Goodyear batteries, he eventually did.

Q. What identification did he have in his station?

A. Well, of course all the Atlantic-owned stations have the Goodyear identification.

Q. Approximately how many Atlantic stations did you at one time sell to?

A. Well, I would say in the neighborhood of 20, possibly more.

Q. And did you lose the business of—

A. I lost them all eventually.

Q. Who were the Goodyear TBA supply points in
904 the area in which you served?

A. There was one in Westville.

Q. Westville, New Jersey?

A. Yes.

Q. Do you recall his name?

A. It was John something—his last name escapes me. There was one in Germantown.

Q. Would that be Mr. Glenn?

A. Yes.

Q. Was Mr. Parris a supply point in your area?

A. No, I didn't sell in his territory.

Q. How about Mr. Miller? E. Miller.

A. I didn't sell in his territory.

Q. Well, Mr. Heald, you stated that all Atlantic Service stations carry Goodyear TBA identification, is that correct?

A. Well, that was my experience.

Q. I mean based on your experience.

A. Based on my experience.

Q. Based on your experience at the time you were TBA supervisor for Atlantic what identification did Atlantic stations carry?

Mr. Thompson: I couldn't hear your question, Mr. Kelaher. The acoustics are bad.

(The reporter read the pending question.)

The Witness: They carried Exide when I was there.

905 By Mr. Kelaher:

Q. And Lee tires?

A. Yes.

Q. Based on your experience was there a change-over in that market area from Lee tires and Exide batteries to Goodyear TBA?

A. Yes.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: Cross examine.

Mr. Thompson: May we have a minute to confer with counsel?

Hearing Examiner Kolb: Yes.

Mr. Correa: May we have a moment's recess, if your Honor please?

Hearing Examiner Kolb: Yes. We'll take a recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, before cross begins I have one further question to ask the witness.

By Mr. Kelaher:

Q. How long did F and C Automotive Specialties, Inc., remain in business?

A. Four years.

906 Q. Do you recall the termination date or approximately the termination date?

A. January 31, '55.

Mr. Kelaher: That's all, your Honor.

Cross-Examination by Mr. Thompson.

Q. Sir, you tried to sell in quite a large geographical area, did you not?

A. Fairly so, yes.

Q. It's a pretty big territory, isn't it, all the way from Morrestown down to Delaware county?

A. I didn't sell in Delaware County, I think I stated that.

Q. I thought I understood you to say that was when you were with Atlantic. You tried to take Montgomery, Philadelphia, and Bucks County?

A. That's right. The explanation of that, I worked generally around home and one day a week I went over to Jersey.

Q. But you worked generally around your own home and spent one day calling on accounts over in New Jersey?

A. That's right.

Q. Sir, weren't you slightly undercapitalized in this business?

A. Yes.

Q. And you were handling your deliveries with one

907 station wagon, I think you said?

A. That's right.

Q. That is a pretty tough deal to compete with the big wholesalers, isn't it?

A. It is. Of course, my son went with me in the beginning and I was relying on a fast start and I did get one but he was called back and sent to Korea after three months. That left me with the business.

Q. He was a lieutenant in the Marines, wasn't he?

A. Air Force.

Q. You know, of course, you are awfully well thought of down in Atlantic?

A: I hope so. I think well of them.

Q. There are a lot of nice things in the file about you.

A. Good.

Mr. Thompson: That's all I have, sir.

Mr. Correa: I have no further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all Mr. Heald.

(Witness excused.)

Hearing Examiner Kolb: Is that all you have?

Mr. Kelaher: Yes, your Honor.

Hearing Examiner Kolb: Before we adjourn I would like to correct a ruling that I made on the record yes-
908 terday with reference to Mr. Correa's objection, I believe, to Commission's Exhibit No. 306-A, in which I admitted the document subject to objection.

Of course, that can be considered two ways. One of them is that I have overruled the objection but by specifying it might be interpreted as being a right to make a motion to strike later on in the case, I don't want to have that impression left, so I wish to strike that provision and subject to objection and simply overrule Mr. Correa's objection to the document.

Mr. Correa: And I take it, so that the record may be clear, your Honor understand that so far as we are con-

cerned, speaking for the respondent Goodyear, our objection still stands of record.

Hearing Examiner Kolb: Your objection stands of record.

Mr. Correa: And the evidence is received over our objection?

Hearing Examiner Kolb: Over your objection.

Mr. Correa: And furthermore, on the matter of motion to strike, we conceive it to be our right to make a motion to strike any evidence which has been received over our objection at any time when we could conceive there to be grounds for such a motion.

Hearing Examiner Kolb: But I am not inviting 909 such a motion.

Mr. Correa: I understand. We don't always need an invitation, if your Honor please.

Hearing Examiner Kolb: The hearing is adjourned until 9:00 o'clock tomorrow morning.

• • • • •

911 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, at the close of the direct examination of Mr. Connell, the Vice President of the Electric Storage Battery, day before yesterday, I reserved the right to cross-examination and intimated at the time that if staff counsel were not planning to call Mr. Findley of the Storage Battery Company, I would probably waive cross-examination.

In view of the fact that Mr. Kelaher stated yesterday that they were not calling Mr. Findley, I will waive cross-examination of Mr. Connell.

Mr. Correa: And I will also, if your Honor please.

Hearing Examiner Kolb: He is not expected to return.

Mr. Dias: No, he is waiting on call, as I understand it.

Mr. Correa: I think that is the way it was left.

Mr. Kelaher: Mr. Examiner, before we call a witness, it has been stipulated between counsel as to Mr. Heald, who was a witness yesterday, if he were called he would testify that the F&C Automotive Specialties, Inc., was located at 1201 York Road, Abington, Pennsylvania.

I would like to call Mr. Marabella.

912 JOSEPH MARABELLA was called as a witness for the Commission and, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Joseph Marabella; my home address is 31 King Avenue, Folcroft, Pennsylvania.

Q. Are you associated with V. J. Auto Parts Company?

A. Yes, sir.

Q. And what is your position with V. J. Auto Parts?

A. Partner.

Q. And who is your partner?

A. My brother, Vincent.

Q. And where is your firm located?

A. 1516 Chester Pike, Folcroft, Delaware County, Pennsylvania.

Q. Have you always been at that location?

A. No, sir. In March of '56 we moved from 111 Sharon Avenue, in Sharon Hill.

Q. And when did your firm begin business?

A. January 2, 1951.

Q. And you were at 111 Sharon Avenue from that time until—

A. Until March of '56.

Q. And from March of '56 to date you are at the 913 present location.

A. Yes, sir, at the present location.

Mr. Thompson: Mr. Kelaher, would you mind identifying where Folcroft is? Is that in Delaware County?

The Witness: It is in Delaware County; it is on the Chester Pike.

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. Would you please describe the principal products sold by your company?

A. Yes, sir.

Well, the biggest percentage is hard parts. By that I mean the mufflers, tail pipes, ignition, and so forth, and then our next biggest line is our chemical or what would be referred to as TBA items.

Q. Do you carry batteries?

A. Yes, sir.

Q. What brand?

A. Delco batteries.

Q. And what items in the chemical line do you carry?

A. Your DuPont line; simonize; Johnson products; Bars Leak, which is one of our biggest items, we are distributor on it.

Q. Spark plugs?

A. Yes, sir. A. C., Auto Lite.

Q. Do you sell filters?

914 A. Yes. Fram and AC.

Q. Do you sell belts and hoses?

A. Yes, sir. We are distributor on the Raybestos line.

Q. Tires?

A. Yes, sir, tires and tubes.

Q. What brand of tires?

A. The Mansfield tires and L&D tubes.

Q. Who makes the L&D tubes?

A. The Mansfield people do.

Q. Is that the Mansfield Tire and Rubber Company of Mansfield, Ohio?

A. Yes, it is.

Q. In what area does your company solicit business?

A. Well, we cover thoroughly 10-mile radius of the store.

Q. And where would—would you describe that in more detail?

A. Well, first of all, the store is midway between Philadelphia and Chester and it would take in, I'll say, 75 percent of Delaware County; all of your Upper Darby area and all of your Chester area through Springfield.

Q. Do you stay solely in Delaware County?

A. No, we solicit business in North Philadelphia, and South Philadelphia, and so forth. Those are fellows who have given us the backbone of our business from the time we started out.

Q. I see.

915 A. But the biggest percentage of our business comes from that 10-mile radius right in Delaware County.

Q. And how many salesmen are employed by your company?

A. Two, sir.

Q. And does that include yourself?

A. That includes myself, yes, sir.

Q. And aside from yourself, how is your other salesman compensated?

A. Salary and commission; expenses.

Q. You have delivery trucks?

A. Yes, sir.

Q. How many.

A. Three trucks.

Q. And is your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Yes, sir.

Q. Now, would you please describe the classes of customers to whom you sell?

A. Car dealers, fleets, independent repair shops and service stations; contract and lessees.

Q. Are there any Atlantic service stations in your company's marketing area?

A. Yes, sir. I would say, oh, 25 to 30 in the area.

Q. Of that number do you know approximately how many own their own stations?

916 Mr. Thompson: I didn't hear the answer to the first question.

Mr. Kelaher: Of that number—you didn't hear the answer?

Mr. Thompson: The answer to the first question.

The Witness: I believe there is 25 to 30 Atlantic stations in that area that we actively solicit.

By Mr. Kelaher:

Q. Of that number do you know how many own their own stations?

A. To my knowledge I would say no, but I do know of three who do, and there may be more. But I do know positively three.

Q. Three of the 25 to 30?

A. Yes.

Q. And are the remainder company-owned stations?

A. Yes, I believe so, to my knowledge.

Q. Do you solicit business from Atlantic service stations?

A. Yes, sir; actively.

Q. And how frequently do you solicit such business?

A. Those fellows in our trading area are called on once a week.

Q. Do you call on all the 25 to 30 you have mentioned?

A. Yes, sir; every one in our area is actively solicited every week.

Q. What products do you sell to Atlantic service stations?

A. Well, there is a big problem. They will call us 917 for a nut and a bolt. We will deliver it. We sell primarily hard parts, but items that are to eventually end up on their shelves as stock, that is just only on a fill-in basis.

* * * * *

By Mr. Kelaher:

Q. Do you sell TBA items to Atlantic service stations?

A. No, sir, only on a fill-in basis.

Q. And are TBA items customarily stocked on the shelves or displayed on the shelves?

A. Yes, sir.

Q. And did you at one time solicit the business of Atlantic lessee dealer, Elmer Booz, Wycombe and McDade Boulevard, Darby, Pennsylvania?

A. Yes, sir, I did myself.

Q. Were you able to sell him TBA items?

A. For a period we were able to sell him some AC oil filter cartridges; that was the extent of the TBA that we were able to sell Elmer, and that went on I'd say for a five or six month period, and he in turn informed me that he could not buy any more from us.

Mr. Thompson: Just a minute. I move the last answer be stricken on this ground: Mr. Booz has testified in 918 this case. The only possible relevance of the question and answer would be to ascertain Mr. Booz's state of mind. Had Mr. Kelaher desired to ascertain that fact, he could have asked Mr. Booz.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Kelaher: Would you read Mr. Marabella's answer, please?

(Answer read.)

Mr. Correa: I move to strike the answer, if your Honor please, on the grounds stated by Mr. Thompson, and it is patently unresponsive to the question.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. At or about what time did Mr. Booz start purchasing AC oil filter cartridges from you?

A. Spring of 1954.

Q. And do you recall the conversation you had with Mr. Booz at that time?

A. To a certain extent, yes.

Q. Would you state the conversation?

Mr. Correa: I object to the conversation, if your Honor please, on the grounds stated by Mr. Thompson, and on the additional ground that counsel apparently is seeking to impeach a witness whom he has offered and for whose
919 credibility he has vouched, because I could conceive of no other purpose of the question he has now put to the witness.

Mr. Kelaher: Just so the record will be clear, we are attempting to confirm the testimony of Mr. Booz.

Hearing Examiner Kolb: The objection will be overruled.

A. Well, as was my usual practice, I would go in and on items that Elmer stocked, would try to solicit his business, and at this particular time I went back in and checked his oil filter cartridges, and I saw he was low on some numbers. I marked them down and proceeded to try to obtain an order on the cartridges. Elmer said, "Well, Joe, I am sorry, but I must discontinue buying those cartridges from you." Well, I said, "Well, gee, you have been buying them for a short period of time, I realize. Would you mind telling me why?" He says, "Well, I am getting some pressure and that is as far as I can go."

Q. Did he say who was applying the pressure?

A. He said it was coming from Atlantic Refinery.

Q. And do you know who the supplier was who then sold him AC filter cartridges?

A. I believe it was the TBA distributor in the area, Mr. Parris.

Q. Now, did you sell an item called Bars Leak to Mr. Booz?

A. Yes, I did.

920 Q. And did you ever have any conversations with him with respect to Barsleak?

A. Yes, I did.

Q. Would you state the approximate time of the conversation?

A. Well, that was about the same time, which was in the Spring of 1954. Elmer had been buying it and doing a nice job on it. He had bought three or four cases and sold it. So I noticed that he was low on that, and I asked him, how about another case of Barsleak for stock, and he proceeded to tell me that if he bought it he would have to put it in the back room. He couldn't display it any more because he was told by his Atlantic representative, salesman, to take it off the shelf and only put the line which was carried by Atlantic on the shelf.

So he said, "If I have to hide it in the back room, I would lose half of its salability, so why should I continue to buy it?"

Q. Was Mr. Booz carrying the Goodyear TBA line?

A. Yes, sir.

Q. Did you attempt to sell tubes, or DuPont chemicals to Mr. Booz?

A. Why on the tubes, I had given that up as a bad job, but the DuPont chemicals, yes. And all we ever got on the DuPont chemicals from Elmer was, as I refer to, we refer to in the business as fill-ins, where he needed a dozen
921 or a case of an item. We could not get any spring or fall orders.

Q. Did he ever give you any reason for not purchasing?

A. Yes. He told me he had to buy it from Atlantic.

Q. Did you solicit the business of Mr. Iocona, former Atlantic dealer in Secane, Pennsylvania?

A. I myself did personally, yes, sir.

Q. And were you able to sell any TBA items to Mr. Iocona?

A. No, sir. Just as I mentioned, on a fill-in basis.

Q. Did you solicit Mr. Iocona on business on Barsleak?

A. Yes, sir; that was another one.

Q. Did you sell him Barsleak?

A. Yes. I had been selling him Barsleak for, I'd say about a year, and he had been doing a nice job with it. And he also had to stop buying it.

Mr. Thompson: I move the answer be stricken.

By Mr. Kelaher:

Q. Did you have any conversation as—

Mr. Thompson: Mr. Kelaher—

Hearing Examiner Kolb: Read that last sentence.

Hearing Examiner Kolb: The motion to strike is denied.

Mr. Thompson: Your Honor did not hear the sentence to which I objected. It was the sentence before that.

Hearing Examiner Kolb: Read the whole sentence.

(Question and answer read.)

922 Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Did you have any conversations with Mr. Iocona with respect to Barsleak?

A. Yes, sir.

Q. And what was the conversation?

Mr. Thompson: That is objected to on the same ground I objected to the state of mind testimony about the prior witness, Mr. Booz.

Mr. Correa: And I join in the objection, if your Honor please, and submit this is a perfectly outrageous procedure, calling a witness such as this to testify concerning statements allegedly made by other people who have been called on the witness stand who gave no such testimony whatever.

Now I have never heard of any procedure like that being followed in any court, and I object to it and—

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. I will restate the question.

Did you ever have any conversations with Mr. Iocona as to why he stopped purchasing Barsleak?

A. Yes, sir; more or less along the same lines as Mr. Booz. He told me he in turn was told to remove it from his shelf.

Q. By whom?

923 A. By his Atlantic representative.

Mr. Thompson: May it be understood, sir, so that I won't be needlessly repetitious, that my objection applies to this entire line of testimony?

Mr. Correa: And may mine also apply?

Hearing Examiner Kolb: It may apply. The objection will be overruled.

By Mr. Kelaher:

Q. Can you state the approximate time of your conversation with Mr. Iocona?

Mr. Thompson: I can't hear you.

(Question read.)

A. Yes, sir. That was also—well, there was two conversations, one was in the spring and then prior to the fall season, anti-freeze season, of '54. Both were in 1954.

By Mr. Kelaher:

Q. And both were connected with the Barsleak?

A. Absolutely, yes, sir.

Q. Did you at one time sell simonize products to Mr. Iocona?

A. Yes, sir.

Q. Can you state the approximate time when such sales were made?

A. Well, that was also in the early part of '54 when we were actively soliciting Mr. Iocona's business.

Q. And did he continue to purchase Simoniz from you?

924 A. He did for approximately, I'd say a three-month period; he had bought one complete order and then informed me that he would have to stop buying Simoniz.

Q. And did he give you a reason why he would have to stop buying Simoniz products from you?

A. The same reason that most of these other fellows have given us whenever they have stopped buying any merchandise from us, pressure from Atlantic.

Q. Have you attempted to solicit tube business from Atlantic dealers?

A. Yes, sir; myself, I have.

• • • • •

By Mr. Kelaher:

Q. Do you recall, or did you solicit the business of Carmen's Atlantic, South Avenue and Providence Road, with respect to the sale of tubes?

A. No, I myself did not, Mr. Kelaher. That is our other salesman who did that.

Q. Who would that be?

A. Jerry Tarquinio.

Q. Did you yourself solicit the business of any

925 Atlantic dealer with respect to tubes?

A. Yes, I did.

Q. And do you recall any instance with respect to such solicitation?

A. Yes, sir; on the tubes themselves the boys have told me that they would be glad to use us in a back order situation or a fill-in, but they could not give me or our company an order on L&D tubes.

Mr. Thompson: I move the answer be stricken, unless there is identification.

Hearing Examiner Kolb: Mr. Kelaher, I wish you would either follow through with your identification, which I assume you will—

Mr. Kelaher: That is correct.

By Mr. Kelaher:

Q. When you state "the boys," to whom are you referring?

A. I am referring to Jack Chambers; I am referring to Elmer Booz; I am referring to Andy Iocona; those fellows in particular.

Mr. Thompson: It is understood that the same objection I made before applies to Mr. Jack Chambers, who was also a witness.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Such conversations were held with these gentle-
926 men when they were Atlantic dealers?

A. Absolutely; yes, sir.

Q. Have such statements been made to you on more than one occasion?

A. Yes, sir.

Q. And could you fix the approximate time of such statements?

A. Well, Mr. Kelaher, most of this problem that did

arise started in the spring of '54, through '55 and '56, up to the present, but the particular instances in my mind, two are in the fall of 1954 with Mr. Chambers and Mr. Booz, Mr. Iocona, you might say the latter part of '54.

Q. And did you solicit Barsleak business from Mr. Chambers when he was an Atlantic lessee-dealer?

A. Yes, sir.

Q. And was he at that time located at Sharon Hill, Pennsylvania?

A. Yes, sir.

Q. And did Mr. Chambers purchase Barsleak from you?

A. Yes, sir.

Q. And what was your experience with respect to the sale of Barsleak to Mr. Chambers?

A. My, well, business relations and experience with Mr. Chambers had been the same as with the other gentlemen I have mentioned, enjoying good business relations, good sales on Barsleak, up until the time he was told to
927 remove it from his shelf, and he gave me the same answer that the other fellows had given me.

Q. When was that?

A. That was in the fall of 1954.

Q. Now, do you recall who succeeded Mr. Chambers at the Sharon Hill station?

A. A fellow by the name of Crum, Fred Crum.

Q. And did you solicit the Barsleak business from Mr. Crum?

A. Yes, I did.

Q. And what was your experience with respect to that?

A. Well, we succeeded in selling Mr. Crum, and I believe it was two or three cases we had sold him, and he also ran into the same road block. He was told to get it off of his shelf.

Q. And do you recall the approximate date of that conversation?

A. That was in '55, the latter part of '55.

Mr. Thompson: Would you be kind enough, Mr. Kelaher, to proceed with the identification to save me the trouble of moving to strike?

Hearing Examiner Kolb: I will ask counsel to make a motion to strike after he has done that.

Mr. Thompson: Yes, sir, before you rule. If I let a question go by, I have lost the opportunity.

Hearing Examiner Kolb: On this identification, you 928 still have your rights.

Mr. Thompson: You will be lenient then in that situation.

By Mr. Kelaher:

Q. Have you solicited DuPont, Johnson, or Simoniz product business from a Carmen's Atlantic?

Mr. Thompson: I move the testimony with respect to Mr. Carmen be stricken because of lack of proper identification of the alleged conversation.

Mr. Kelaher: Mr. Examiner, I am continually interrupted; I am giving specific dates, names, products, if counsel can be patient.

Hearing Examiner Kolb: It might save a few objections if you ask if you had the conversation and when you had the conversation, and then the substance of the conversation; that will end all of the objections, rather than getting the time after the witness has testified what the conversation was.

Mr. Thompson: That is right.

Mr. Kelaher: Well, I would do that if I am first permitted to lay a foundation for the questions.

Mr. Thompson: Have you departed from Mr. Crum? Because you laid no foundation for his alleged state of mind.

Mr. Kelaher: I thought that was sufficiently covered.

By Mr. Kelaher:

Q. Are you familiar with, or did you solicit the 929 business of a Carmen's Atlantic, and if so, would you please state the location of the station?

Mr. Thompson: May I renew my motion to strike the alleged statements of one Mr. Carmen for lack of proper identification?

Hearing Examiner Kolb: I believe he said the conversation took place in 1954, did he not?

Mr. Thompson: I think—I do think he said sometime in 1954; there was no identification.

The Witness: 1955.

By Mr. Kelaher:

Q. Mr. Marabella, would you please state when your conversation with Mr. Crum took place?

A. 1955.

Mr. Thompson: May we have where?

The Witness: In Sharon Hill.

By Mr. Kelaher:

Q. Where is the station?

A. Sharon Hill.

Q. Location?

A. Clifton Heights and Chester Pike, in Sharon Hill, Fred Crum's Atlantic.

Q. And will you give us the location of Carmen's Atlantic station?

A. Carmen's Atlantic, South Avenue and Provi- 930 dence Road, Secane, Pa., Delaware County.

Q. Did you solicit TBA business from Carmen's Atlantic?

A. I did, yes, sir.

Q. And would you please state what your experience has been; if you had any conversations, when they took

place and if they took place, the location of the conversation.

A. Yes, sir.

I had a conversation with Carmen in the spring of 1956 in his station, South Avenue and Providence Road, in Secane, concerning the spring program for DuPont chemicals. Carmen told me himself he would like very, very much to give me the order but that he had already been solicited by Atlantic and he had been more or less forced to promise them the order. I asked him to elaborate and he came out with the same thing that everyone else has come out with, which is pressure.

Q. Are you familiar with the location of Don Elko's Atlantic station?

A. Yes, sir.

Q. And where is that located?

A. That is the station at Clifton Avenue and Chester Pike in Sharon Hill, that has had three or four dealers since it was built.

Q. Now, at the time Mr. Elko was there, please state whether or not you solicited TBA business from Mr. Elko; whether or not you had any conversations with Mr. Elko with respect thereto, and if so, the approximate dates
931 of the conversations and the locations of the conversations.

A. Well—

Mr. Thompson: I congratulate you, Mr. Kelaher, that is a splendid question.

A. Very frankly, on that particular account, it is covered by our other salesmen, but I myself had a personal contact, personal solicitation on the TBA item, namely Delco batteries, in January of this year, 1957, that took place in Don Elko's station. I solicited along with the Delco battery man his battery business, and he just threw up his hands. He said, "Joe, I would like to buy the bat-

teries from you, but you know what I have been running into and what every other Atlantic man has been running into. I cannot put anything but a Goodyear battery in this place. If I don't have a battery I will be more than glad to buy it from you because I know you can give me the service and the price is right."

By Mr. Kelaher:

Q. Now, I take it you were unable to sell Delco batteries to Mr. Elko?

A. Absolutely.

• • • • •

932 By Mr. Kelaher:

Q. Did you at one time solicit the Bars Leak business from Mr. Elko? If so, please state when such solicitation took place; whether or not you made such sales; whether or not you had any conversations with Mr. Elko. If such conversations were held, the approximate date of the conversation and the approximate location of the conversation.

Mr. Correa: I submit, your Honor, that is not a question; it is a questionnaire.

Mr. Kelaher: We would be very happy to save the time, Mr. Examiner—

A. Mr. Kelaher, I make it a practice to call on a fellow when he takes over a new station, no matter what company he is with. And I went out to see Mr. Elko the latter part of January, 1957. I acquainted him with the
933 prices of the various products that he had on his shelf, and I also solicited actively in his station on Clifton Avenue and Chester Pike in Sharon Hill, the sale of Bars Leak. He bought it and re-ordered. He was also told by his Atlantic representative to take it off the shelf. He refused and told the Atlantic man that it was better than the other product, and he was going to continue to keep it on the shelf, and to this day he still has it on his shelf.

By Mr. Kelaher:

Q. Could you give us the approximate date of your call on Mr. Elko when he opened the station?

A. That particular—that was not the opening of the station, that was in the latter part of January of '57, which was on this Bars Leak.

Q. I see.

A. And he had already opened.

Q. I see.

A. See, that particular account is in my other salesman's territory but I make it a point to go out and have personal contact in the, you know, near future, when a fellow has opened a station and go out and introduce myself and so forth.

Q. you stated that you sell Delco batteries. In what category or what category distributor are you for Delco?

A. Why, we are a warehouse distributor on Delco batteries; we received that distributorship in January, 1957.

934 Q. And do you purchase such batteries direct from the company itself?

A. United Motors, yes, sir.

Q. And as a wholesale distributor, what lots do you purchase in?

A. Three, four, five hundred at a time.

Q. Have you attempted to sell Delco batteries to John Branca, Yeadon, Pennsylvania?

A. No, I did not solicit that, that was solicited by my other salesman.

Q. And did you as a result of any conversations with Mr. Branca—

A. Not particularly on that, no.

Q. Did your company sell Delco batteries to Mr. Branca?

A. Not on a stock basis, no, sir.

Q. And did your salesman report to you the reasons why he was not selling on a stock basis?

A. Yes, sir.

Q. What did he report?

A. Only stocking Goodyear batteries; that was also in January of '57. We worked the whole week with the Delco battery representative.

Q. Have you attempted to sell, or have you solicited TBA business from new Atlantic service stations or Atlantic service stations with new operators?

935 A. Well, as I said, we do make it a practice of going out to these boys whether they are a new operator or—I mean a new station or a new operator taking over an old location, but all the initial order of stock or merchandise that would go on the shelf does come from Atlantic. We ourselves cannot break in on that.

Q. When you say it comes from Atlantic are you referring—

A. TBA distributor.

Q. Is that Mr. Parris in all these instances?

A. In all these instances in our area, yes, sir.

Q. And the stations you have reference to is, what type of identification is on the station, as to outdoor signs?

A. Well, the Atlantic and the Goodyear signs.

* * * * *

940 Q. And did the conversations with the Atlantic dealers you have named—

A. (Interposing.) Yes, on the property, the location of the station.

Q. What has been your experience with respect to the sale of Mansfield tires in Atlantic stations?

A. Just on a fill-in basis, no stock orders whatsoever.

Q. And have any reasons ever been given you by Atlantic dealers for buying on a fill-in basis?

Mr. Thompson: Please go on and state the rest of the question.

A. Yes, sir; there's definite reasons given.

By Mr. Kelaher:

Q. Now, would you give us the details and I will state it briefly: Give us the details as to such conversations.

A. Well, in the latter part of 1954 with Mr. Booz, 941 Elmer Booz, Wycombe Avenue and MacDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz' tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes." And that was the extent of the conversation.

Q. Do you recall any other conversations with Atlantic dealers along similar lines?

A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same manner, that he couldn't put anything but Goodyear in there.

Q. Now, you stated that your company sells so-called hard parts. Are you able to sell hard parts to Atlantic stations?

A. Yes, sir; there is a—and that's a situation where the fellows do use us for delivery service, they are now allowed to do minor repairs, consequently they do call upon us for deliveries on mufflers, tail pipes and so forth, and we have no problem whatsoever soliciting their business on that.

Q. And you have no problem in selling them hard parts, is that correct?

A. No, sir.

942 Mr. Thompson: I couldn't understand the question, I'm sorry, would you mind repeating the question?

(The reporter read the question.)

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb. Cross-examine.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Cross-Examination by Mr. Thompson.

Q. Mr. Marabella—

A. Yes, sir.

Q. For identification I represent the Atlantic Refining Company in this case and the extremely handsome gentleman across the way represents the Goodyear Company.

Your business has progressed pretty well since you started it in '51 on an over-all basis, has it not?

A. Yes, sir.

943 Q. The gross sales have been increasing rapidly—

A. Yes, sir.

Q. And also your profit, have they not?

A. Not as much as we'd like them to, sir.

Q. Isn't that so of all of us?

A. I don't know.

Q. When were you first interviewed by a representative of the Federal Trade Commission about tires, batteries and accessories?

A. Three months ago.

Q. That was the first time the Federal Trade Commission called on you?

A. Yes, sir.

Q. And that would have been, then, about March of this year?

A. Yes.

Q. Have you discussed your testimony in this case with Jack Chambers, Elmer Booz, and Andy Iacona?

A. I haven't even talked to those fellows.

Q. So you don't know what they testified to when they were on the stand?

A. No, sir.

Q. Did I understand you to say that you can't sell orders for stocking of accessories at any of the Atlantic stations?

A. Yes, sir.

Q. You solicit them all, do you?

944 A. In our trading area, yes, sir.

Q. Does your trading area go out as far as Lynwood?

A. No, sir.

Q. I suppose that it obviously covers MacDade Boulevard?

A. Yes, sir.

Q. Do you solicit Ed Holmes?

A. Yes sir.

Q. Does he stock your accessories?

A. Ed Holmes, isn't he a contract station?

Q. I'm asking the question, Mr. Marabella. My question was whether you solicited him and whether he stocked your accessories which he bought from you?

A. When you speak of accessories you are referring to chemicals, sir. No, he does not buy those from me.

Q. How about Mansfield tires?

A. No, sir.

Q. Hard parts?

A. Yes, sir.

Q. Is he one of the Atlantic dealers who said that because of pressure he couldn't buy accessories from you or tires?

A. No, sir.

Q. Did he ever make any such remarks at all?

A. No, sir.

Q. Now, why can't you sell him tires and why can't you sell him accessories?

945 A. On the tubes I sell Mr. Holmes. I sell Mr. Holmes tubes.

Q. Why can't you sell him accessories?

A. Well, I believe that Mr. Holmes is a pretty fair minded man and he splits his business up.

Q. Among a lot of—

A. Jobbers.

Q. Among a lot of jobbers?

A. Yes, sir.

Q. Don't a great many of the Atlantic accounts do precisely that?

A. Not on TBA items, sir.

Q. Why not?

A. I wish I knew the answer to that.

Q. You don't know why Mr. Holmes doesn't buy TBA from you?

A. No, sir.

Q. He's never given you any reason?

A. I have never actively solicited too much of his TBA.

Q. Does he buy from Ed Parris, do you know?

A. That I couldn't tell you, sir.

Q. As a matter of fact, you can't tell us whether any of these Atlantic dealers buy from Ed Parris, can you?

A. Oh, yes I can.

Q. How?

A. I see invoices.

946 Q. You mean the dealers show you the invoices?

A. No. The invoices are laying on the desk just like in any other business.

Q. Just laying on the desk?

A. That's all.

Q. Well, who else besides yourself does sell TBA to Atlantic dealers in your sales territory? Who are your competitors?

A. Well, as far as competitors go, whether or not they sell TBA to Atlantic, I don't know. You have got Auto Parts and Radiator, with a branch store in Folcroft, the main store in Chester; E. B. Krausen in Chester. You have got Chester Auto Parts; you have got Motor Parts Service in Norwood; Prospect Park, rather; you have got Clifton Automotive, Clifton Heights, Pennsylvania, all actively soliciting in the area plus all the Philadelphia jobbers who travel out to the Chester Pike area, Gaul, Derr and Shearer.

Q. In—by and large do all of those dealers call on all of those stations?

A. Yes, sir.

Q. There must be a parade of jobbers into a station every day.

A. I have had it said to me that's all they do, is interview salesmen all day long.

Q. I have had it said to me, too, Mr. Marabella.

Chester Auto Parts, did you mention that, Mr. Wet-
947 zell's Company?

A. Yes, sir.

Q. Does your sales area go out as far as Morton?

A. Yes, sir.

Q. How about Walter McCullough. Do you solicit his account?

A. Yes, hard parts.

Q. Is that all you get from him?

A. That's right.

Q. Did he ever tell you why he doesn't buy tires, batteries and accessories from you?

A. Never personally, because I don't call on him.

Q. Your other salesman does, but your firm has never been able to sell him anything except hard parts?

A. We have sold occasionally on the chemicals on fill-in, but never what you would call a stock order, or batteries once in a while for delivery.

Q. Has your salesman ever reported to you why Mr. McCullough doesn't buy TBA from you?

A. Sir, I have never really asked him why because I only have so many hours in a day and I have more or less resigned myself to the fact that unless, I don't think we'll ever sell Atlantic TBA so I don't even bother.

Q. Do you think Atlantic puts pressure on Mr. McCullough?

A. I don't know. I don't know what his status is.

Q. Except for fellows like Chambers and Hill and 948 Booz, do you really know the status of any of the people you have talked about?

A. Elko, Don Elko, he's a lessee.

Q. You mentioned him.

A. George Hill who was down on MacDade Boulevard in Darby is a lessee.

Q. He's an old friend. He's been here.

A. Sam Dubrow's in Darby, he's a lessee.

Q. You mentioned him, didn't you?

How about your relationship with the Minka Brothers station down in Chester. Where is that, Sixth and Morton?

A. Yes, sir; but we don't do anything about that.

Mr. Kelaher: Which was that?

Mr. Thompson: Minka—M-i-n-k-a.

By Mr. Thompson:

Q. Do you solicit that account?

A. Yes, sir. Actually they are right in the heart of three or four jobbers down there, and very frankly it would be foolish for those fellows to buy from us.

Q. They can get service right next door?

A. Yes, sir.

Q. Now, how about Sharon Hill Garage. That is a pretty big outfit?

A. Yes, sir.

Q. Do you deal with them?

949 A. Yes, we do.

Q. Do you sell them TBA?

A. Occasionally, yes.

Q. Do they stock Mansfield tires?

A. No, sir.

Q. Do they stock any of the accessories bought from you?

A. They do, but it's more or less as I mentioned on a fill in basis. Most all of his TBA is on a—as I mentioned —it's more or less a fill-in basis from us. We get no stock orders from him at all, other than hard parts.

Q. Mr. Marabella, I have forgotten who is running that Sharon Hill parts—

A. Tom.

Q. Do you remember his last name?

A. I can't pronounce his last name, it's an Italian name.

Q. Can you spell it?

A. I can't spell it either.

Q. Tom something-or-other?

A. I'm Italian and I can't pronounce it.

Q. Do you call on him personally?

A. No, the other salesman solicits him.

Q. You don't know of your own knowledge why he doesn't stock your TBA items?

A. Not of my own knowledge, no.

Q. Have you had reports from your salesman?

950 A. Yes.

Q. What were the reasons reported?

A. Well, he tries to—as I said, I don't know what his

status is, but he does try to identify himself through what I have found myself with Atlantic and Atlantic TBA items.

Q. And you mean on Goodyear when you say Atlantic TBA items?

A. On some items, as I say I have only been down there to talk to him once or twice and other—the other salesman contacts him.

Q. I see.

How about Pachel out at Morton, is he one of your customers?

A. No, the other boy contacts him.

Q. Do they stock or buy TBA from you?

A. No, sir; not from us; hard parts, yes.

Q. Has it been reported to you why?

A. No, sir.

Q. There has been no report to you of any Atlantic pressure on that account?

A. No specific report to me; no, sir.

Q. But nevertheless they don't stock your TBA, do they?

A. That's right, sir.

Q. Do you go out as far as Boothwyn?

A. No, sir.

Mr. Kelaher: Could I have that question reread?

951 (The reporter read the question.)

Mr. Kelaher: Would you mind identifying that in some way. We are strangers to Philadelphia and—

Mr. Thompson: Have you heard the answer? Perhaps you will lose interest when you hear the answer. The answer was "no."

Mr. Kelaher: I have lost interest.

By Mr. Thompson:

Q. Mr. Marabella, you referred to a store, do you people retail as well as wholesale? Do you sell over the counter at the store?

A. No, sir.

Q. So that the store is what, really headquarters, warehouse?

A. That's right, sir.

Q. By the way, are you selling Elmer Bodz TBA now?

A. To a certain extent down there, yes.

Q. Is he stocking Mansfield tires?

A. No, sir; he's stocking tubes.

Q. Stocking tubes, and how about accessories?

A. Yes, sir.

Q. Buying them from you?

A. I would like to elaborate one minute. When you asked about Mansfield tires, he's not stocking and none of these boys are, because I gave up the Mansfield line.

Q. When did you do that?

952 A. Two years ago, sir; the latter part of 1955.

Q. That's quite enlightening. I didn't realize that from your prior testimony.

A. All I did was get rid of what I had on hand.

Q. Did you take on another tire line?

A. No, sir.

Q. Now, you have three trucks which service an area which I understand to be a radius of about ten miles from your store?

A. Yes, sir.

Q. Do those three trucks provide adequate delivery service?

A. During the Pennsylvania state inspection period, which is at present, I have to get another truck.

Q. In other words, to do a job out there you would require about four trucks?

A. I would need another truck.

Mr. Kelaher: I beg your pardon. What was your answer?

The Witness: The way it's been so busy we'll need another truck.

By Mr. Thompson:

Q. You couldn't handle that business with one truck, could you?

A. Absolutely not.

953 Q. How about with just one station wagon?

A. No, sir.

Q. You'd be broke, wouldn't you?

A. Yes, sir.

Mr. Thompson: That's all I have.

Mr. Kelaher: I would like to have the last series of questions and answers read.

(The reporter read the following questions and answers:

"Question: Now, you have three trucks which service an area which I understand to be a radius of about ten miles from your store?

"Answer: Yes, sir.

"Question: Do those three trucks provide adequate delivery service?

"Answer: During the Pennsylvania State inspection period, which is at present, I have to get another truck.

"Question: In other words, to do a job out there you would require about four trucks?

"Answer: I would need another truck.

"Mr. Kelaher: I beg your pardon. What was your answer?

"The Witness: The way it's been so busy we'll need another truck.

"By Mr. Thompson: Question: You couldn't
954 handle that business with one truck, could you?

"Answer: Absolutely not.

"Question: How about with just one station wagon?

"Answer: No, sir.

"Question: You'd be broke, wouldn't you?

"Answer: Yes, sir.")

954 By Mr. Correa:

Q. Now, Mr. Marabella, you spoke of Mr. Iacona, and you said you sold what to Mr. Iacona?

A. Specifically hard parts, Bars Leak, which is a cooling system sealer.

Q. And what else?

A. And occasional fill-ins on various items of the TBA or what have you.

Q. Did you sell him tires?

A. No, sir.

Q. Did you sell him batteries?

A. Occasionally, when he needed a battery.

Q. Referring to the year 1953, did you solicit Mr. Iacona that year?

A. I did myself personally.

Q. You did?

A. Yes, sir.

Q. Did you attempt to sell him tires?

955 A. No, sir.

Q. Do you know what tires he stocked during that year?

A. No, sir; I do not.

Q. You were in his place of business around the time?

A. Yes, sir.

Q. You didn't happen to see his invoices?

A. No, sir.

Q. He kept them in the drawer of his station?

A. I might clarify that, sir. I can just see the top of the name of whose ever invoice it is, I don't make it a practice to go down and check prices or quantities of merchandise.

Q. Whatever your practice in the case of Mr. Iacona you didn't see his invoices?

A. Where he was buying his tires?

Q. Yes, sir.

A. No, sir.

Q. And you don't know?

A. No, sir.

Q. And you didn't try to sell him?

A. No, sir.

Q. You were selling Mansfield tires at the time?

A. Very, very few.

Q. Weren't you able to deliver as many as you could sell?

A. Not in '53; no, sir.

Q. Not in '53. So, you didn't want to sell him 956 tires in 1953?

A. Let's say maybe I didn't want to go round and round with Mr. Iacona in 1953.

Q. Did you take a look around his place to see what kind of tires he was stocking in 1953?

A. Very truthfully, sir, I couldn't tell you what type of tires he was stocking in 1953.

Q. Now, you said you did sell him an occasional battery in 1953, is that right?

A. Yes, sir; when it would be an odd battery that he did not carry in stock.

Q. What kind of batteries did you sell him?

A. Delco. We were a contract jobber at that time before we became a warehouse distributor.

Q. What kind of batteries was Mr. Iacona stocking in 1953?

A. I wouldn't truthfully know. I think that he was carrying some, I believe, Goodyears, sir.

Q. Is he stocking anything other than Goodyear?

A. Not to my knowledge.

Q. Would it help your recollection if I told you that Mr. Iacona testified here the day before yesterday that in the spring of 1953 he started putting in Delco batteries?

A. Well, I don't know who he was buying them from for stock, I can tell you that. I was getting the fill-in business for an odd job if he didn't have one on the shelf.

957 Q. Do you know whether or not he was buying the Delco batteries from Ed Parris?

A. That I couldn't tell you, sir.

Q. Did you make any effort to sell Mr. Iacona Delco batteries on a stocking basis in 1953?

A. I myself did. Yes, sir.

Q. What did he tell you?

A. Sticking with Goodyear. I know that I went in there myself every week up until the time Mr. Iacona left that location and I can truthfully say that he may have had them, if he did have the Delco batteries as you say he didn't have them on display.

Q. Not as I, as he says.

A. As Mr. Iacona says.

Q. I don't know what he said—

Mr. Kelaher: May we have the reference to the testimony?

Mr. Correa: Yes, sir. 659.

Mr. Kelaher: Thank you.

By Mr. Correa:

Q. Now, sir, did you sell Mr. Iacona in 1953 all the Delco batteries he bought on any basis, fill-in, stocking or what ever?

A. Did I?

Mr. Kelaher: Objection, your Honor; he would have

958 no way of knowing.

Mr. Correa: Well, if he knows.

Hearing Examiner Kolb: This is cross examination.

Mr. Kelaher: Certainly.

Mr. Correa: If he knows. That, I may say, is to be understood on all of my questions.

Mr. Kelaher: I think that the qualification should be stated orally in this type of question.

Mr. Correa: I think it should be clear.

The Witness: All I can say is he called us for a battery on a specific job. To my knowledge, as far as I can recollect, Mr. Iacona never bought any Delco batteries from me for stock.

By Mr. Correa;

Q. Did he buy them from any of your competitors?

A. That I couldn't tell you.

Q. Specifically do you know whether or not he bought them from Gaul, Derr, and Shearer?

A. I could not tell you, sir; I don't know.

* * * * *

Mr. Correa: I have no further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: May we have a minute, your Honor?

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: Yes, I just have a few.

Redirect Examination by Mr. Kelaher.

Q. Mr. Marabella, you were asked on cross examination if your gross sales had increased during the period since you began business in 1951?

A. Yes, sir.

Q. Have your sales increased with respect to the sale of TBA items to Atlantic service stations?

A. Specifically, no, sir.

Q. So, the gross sales increase is not due at all to any increase in sales of TBA to Atlantic service stations?

961 A. No, sir; there's other factors involved. There's price increases, naturally, which puts your sales up.

Q. Have you increased your sale of hard parts?

A. Very much so, sir.

Q. And does that account primarily for your increase in gross sales?

A. That is the biggest factor but as I mentioned the price increases is a factor and also buying merchandise on a direct basis; in other words, not paying a premium to another distributor which gives us a greater profit margin.

Q. Such as on Delco batteries?

A. Yes, sir.

Q. You were asked on cross examination to give the names of various competitors. I noted that you did not mention the name of Mr. Parris. I would like to ask you whether Mr. Parris competes with you in your whole trading area?

A. As far as the Atlantic stations go, sir, when we speak of competitors I have about given up as far as the TBA goes on some of these other items and I speak of hard parts competitors.

* * * * * *

962 By Mr. Kelaher:

Q. Reference was made in cross examination to a Sharon Hill Garage. Do you know whether or not that is owned by the gentleman with the unpronounceable name, or whether it's a leased station?

A. To my knowledge it's not a lease operation; in fact, I believe it's a Mr. Lewis owns the building.

Q. And as the name would seem to indicate, is that primarily a garage for repair of automobiles?

A. Yes, primarily.

Q. Now, with respect to Mansfield tires, you stated on direct that you at one time—and I understood you to say

that you were handling Mansfield tires to date—but you stated on cross you discontinued them. When you began business did you begin to handle Mansfield tires?

A. Not immediately.

Q. When did you begin handling them?

A. In 1952.

Q. Do you recall what part of, '52?

A. I would say the spring of '52.

Q. And you continued to handle them until when?

963 A. Well, up until we sold our inventory out which was just up until the end of this spring.

Q. Until the spring of 1957?

A. Yes.

Q. I see.

Now, on cross examination you stated that you discontinued, did you say buying Mansfield tires in 1955?

A. Yes. That's when the contract terminated, the latter part of '55.

Q. But you had some Mansfield tires in stock that you continued to sell until—

A. Quite a few of them.

Q. And that stock was not depleted until the spring of 1957?

A. Yes, sir.

Q. Now, I would like to ask you about tubes. When did you begin to handle tubes?

A. Well, about the same time that we started handling tires.

Q. And do you still purchase tubes for resale?

A. Yes, sir.

Q. And I think you mentioned the brand name as L & D, is that correct?

A. Yes, but it's made by the Mansfield people.

Mr. Kelaher: No further questions, your Honor.

Mr. Thompson: No question.

Mr. Correa: No further questions.

964 Hearing Examiner Kolb: That's all, Mr. Marabella. Thank you.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

965 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Lanza.

MICHAEL THOMAS LANZA was thereupon called as a witness for the Con.....sion and having been duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Michael Thomas Lanza. 1500 East Duval Street, Germantown, Pennsylvania..

Q. Mr. Lanza, are you associated with the Lanza Tire Service?

A. I am, sir.

Q. What is your position with them?

A. Partner.

Q. And who are the other partners in the company?

A. My two brothers.

Q. What are their names?

A. Frank and Fred.

Q. How long has your company been in business?

A. Thirteen years.

Q. And where was your company first located?

A. 420 East Mechanic Street, Germantown.

Q. That is in the city of Philadelphia?

966 A. Yes, sir.

Q. How long were you at that location?

A. 12 years.

Q. And after that time, did you move to a new location?

A. 525 Armstrong. That is in Philadelphia.

Q. Are you engaged in the sale and distribution of new tires and tubes?

A. I am, sir.

Q. What tires do you sell?

A. Mainly Goodyears and Firestones. Of course if they want U. S., whatever they want, I try to get them.

Q. Primarily do you sell—

A. Goodyear and Firestone.

Q. Do you sell batteries?

A. Exide batteries.

Q. Are you also engaged in a recapping business?

A. That is my main business, recapping.

Q. Now what is your marketing area? In which area do you sell these products?

A. Northeast, part of Bucks County, part of Montgomery County, and North Philadelphia.

Q. When you say Northeast, are you referring to Northeast Philadelphia?

A. Out towards Bristol.

Q. Do you have delivery trucks?

967 A. Yes, sir.

Q. How many?

A. One delivery truck and we have two trucks on the road.

Q. Two trucks on the road?

A. Yes, sir.

Q. So in all you have three trucks which are used for delivery of merchandise to the customers?

A. Yes, three moving trucks.

Q. And are you, yourself, an outside salesman for the firm?

A. I am.

Q. Do you employ any other outside salesmen?

A. One.

Q. Is the other outside salesman compensated on a salary or a commission, or both?

A. Salary.

Q. Are there any Atlantic service stations in your trading area?

A. I would say anywhere from 45 to 50, possibly 60.

Q. Is your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Yes, sir.

Q. Now in addition to tires and batteries, do you also sell tubes?

A. Yes, sir.

Q. What brand of tubes?

968 A. Goodyear and Firestone.

Q. Do you solicit the business of the Atlantic stations you have mentioned?

A. The ones I come in contact with, yes.

Q. Approximately how often do you solicit such stations?

A. Twice a week.

Q. Are you able to obtain recapping business from such Atlantic stations?

A. Yes, sir.

Q. Are you able to obtain new tire business from such Atlantic stations?

A. Fill-in orders.

Q. Fill-in orders?

A. Yes.

Q. Are you able to obtain stocking business?

A. No, sir.

Q. Are you able to obtain battery business from Atlantic stations?

A. When Atlantic had the Exide batteries, I used to sell a lot of them, but since they took on Goodyear batteries, I sell very few.

Q. And are you able to sell tubes to Atlantic stations?

A. Yes, sir.

Q. You are able to sell some tubes?

A. Yes.

969 Q. Are you—

Mr. Correa: (Interposing.) Just a minute. Let the witness—

Mr. Kelaher: I will withdraw the question. Strike it from the record.

By Mr. Kelaher:

Q. Are new tubes sold on a stocking or fill-in basis?

A. Mostly fill-in basis.

Q. Based on your own knowledge, do you know what line of TBA products is carried by Atlantic service stations?

A. I don't fool with that, sir. I strictly stay with tires and batteries and recapping.

Q. What type or what brand of tires do the Atlantic service stations carry?

A. Goodyears and some Firestone. It all depends. Like in Bucks and Montgomery, most of them handle Firestone.

Q. I beg your pardon?

A. In Bucks County and Montgomery County, a lot of them handle Firestone.

Q. Are you talking about Atlantic service stations?

A. Yes, sir.

Q. You are talking about the stations who own their own—

A. (Interposing.) Atlantic stations.

Q. And what type signs do you find on Atlantic service stations?

970 A. Firestone and Goodyear.

Q. When you speak of Bucks County, what part—is that north of Philadelphia?

A. It would be Northeast.

Q. Northeast. And how far up?

A. Up in Bristol, and back in Feasterville.

Q. How do you spell that?

A. F-e-a-s-t-e-r-v-i-l-l-e.

Q. Now in the Philadelphia area, what brand of TBA is carried by Atlantic stations?

A. As far as tires and batteries, it is Goodyear.

Q. Do you solicit new tire, tube and battery business from these Atlantic stations?

A. Yes, sir.

Q. And you stated that you sell on a fill-in basis only, is that correct?

A. Only, no stock orders.

* * * * * *

971 By Mr. Kelaher:

Q. Mr. Lanza, do you know in the Philadelphia area who the Goodyear TBA suppliers are, to Atlantic service stations?

A. Up around the north, it is Fred Glenn, and then down in the northeast, it is George Harvey, or Harvey George, rather.

Mr. Kelaher: No further questions.

972 *Cross-Examination by Mr. Correa.*

Q. Mr. Lanza, you said that recapping or retreading was your main business?

A. Retreading, yes.

Q. That is really retreading, isn't it?

A. That is a better name for it, yes.

Q. That is your main business?

A. Yes, sir.

Q. And you are pretty successful retreaders, as I understand?

A. I do a lot of travelling, let's put it that way.

Q. And you have what, 20-some-odd molds?

A. We don't have them all connected, but we have approximately 22.

Q. That is a pretty big operation?

A. Yes.

Q. And most of the work is done by you, is that correct?

A. And my brothers.

Q. My information is that you personally put in 15, 16 hours a day?

A. A lot of hours.

Q. And you said on direct, I think, that that was your main business?

A. Recapping?

Q. Yes.

973 A. Yes, sir.

Q. Or retreading?

A. Yes, sir.

Q. Would you say it was 80 percent of your business?

A. I would think so.

Q. In addition to that, do you do retail business?

A. Yes, sir. Very very little though as far as door selling, but we do some; to say none at all wouldn't be right.

Q. You have retail customers?

A. Some, yes.

Q. To whom do you sell tires?

A. Mostly mine is wholesale.

Q. I see. And what portion of your business would be retailing?

A. Well, some recaps, some new tires. A very small portion of it.

Q. Ten percent, you would say?

A. About 20 percent, let's put it that way.

Q. The retreading business in recent years has become pretty profitable, hasn't it?

A. Well, I never knew what a tire was until about 13 years ago and since I have been on the road, I have seen my brothers put out some wonderful work, which made me a salesman in order to sell it.

Q. Isn't it true that over recent years in particular retreading has sort of come up?

974 A. In great momentum, yes.

Q. During the war retreading got kind of a bad name, didn't it?

A. That was because of the merchandise.

Q. But in recent years it is quite a profitable business, I believe?

A. Yes, sir.

Q. And that would be true as contrasted with other phases of the tire business, such as even selling new tires, isn't that right?

A. Well, I don't know just how to put it. Naturally with the trend of recapping up, as it is, it would even require that you sell new tires too, because there is that many more cars on the street.

Q. But isn't actually an efficient operation such as you conduct more profitable than new tires?

A. Yes, sir.

Q. Would I be right in inferring that that accounts for the emphasis in your business on the retreading phase of it?

A. That my retreading is better—

Q. Yes.

A. Definitely, more in recapping than in new tires.

Q. You have no particular difficulty getting retreading business from Atlantic dealers, do you?

A. No, sir.

975 Q. You are quite successful in that as a matter of fact?

A. Yes, sir.

Q. Harvey George and Fred Glenn offer retreading services, don't they?

A. Yes, sir.

Q. And you have been able to outsell them to quite a few Atlantic dealers?

A. Here recently it has been getting a little bit off since you boys put up a new plant.

Q. Well, you can't blame us for trying to get your business, really.

Richard Kaiser of Abbington, Pennsylvania, is he an Atlantic dealer?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Yes, sir. He says I do anyway.

Q. Well, we will have to take his word for that, I guess.

A. Well, a lot of these guys tell you things and you take it for granted.

Q. How about Fred Phillips of Philadelphia? Is he an Atlantic dealer?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Yes, sir.

Q. And how about Charles Shock?

A. Yes, sir.

976 Q. Also of Philadelphia. Is he an Atlantic dealer?

A. Yes, in Roxborough.

Q. And you have a hundred percent of his business?

A. Yes, sir.

Q. James Amos, also Philadelphia. Is he an Atlantic dealer?

A. Yes, sir, Germantown.

Q. You have a hundred percent of his retreading business?

A. As far as I know.

Q. That is what he tells you anyway, isn't it?

A. (Nodding affirmatively.)

Q. William Barton, also Philadelphia?

A. Yes, sir.

Q. He is an Atlantic dealer, is he not?

A. Yes, sir.

Q. And you have a hundred percent of his retreading business?

A. Not here recently.

Q. Not recently?

A. No.

Q. Well, have you still substantial business of William Barton on retreading?

A. Well, I would say yes.

Q. How about George Kee? Is he an Atlantic dealer?

A. Very good recapping customer.

Q. A hundred percent of his business?

A. Yes, sir.

977 Q. How about J. Ferrari? I don't have his first name.

A. No, sir.

Q. You don't have his business?

A. No, sir.

Mr. Kelaher: What is his name?

Mr. Correa: Ferrari. I don't know what the "J" stands for.

The Witness: Joseph.

By Mr. Correa:

Q. How about D. Pinelli? I don't know what the "D" stands for.

A. Pinelli's, in North Hills?

Q. Fairless Hills, I have here.

A. Oh, Danny, yes. Of course. He is in North Hills. Not North Hills, he is in Fairless Hills. He is over in General—

Q. Fairless Hills, right. You say he is over in General—

A. (Interposing.) He has been my customer for almost a year now.

Q. When you say he is over to General, are you referring to some competitor or—

A. (Interposing.) Yes. A stipulated guarantee.

Q. What competitor is that, sir? Is that General tire and Rubber Company?

A. Yes, sir.

Q. He has become a customer of theirs for retreading, is that it?

978 A. Yes, sir.

Q. And they have a guarantee on them?

A. With every tire, that is right, which I don't get.

Q. I see. And how about Mr. Kepp of Eddington, Pennsylvania?

A. I used to have him as a customer.

Q. But not any more?

A. No, sir.

Q. Who has him now?

A. I don't know, sir.

Q. I take it you have other Atlantic dealers, other than the ones I mentioned, who have been good customers of yours for retreading?

A. Yes, sir.

Q. Do you have other Atlantic dealers other than the

ones I have mentioned, who give you all of their retreading business?

A. Yes, sir.

Q. I wish you all the continued success in your business.

Mr. Correa: That is all.

By Mr. Thompson:

Q. Mr. Lanza: I represent the Atlantic Refining Company. Who is your principal competitor? Does Harris & Leonard operate in your territory?

A. I don't know of him, sir.

Q. There are other people who handle retreading 979 and recapping business that try to sell accounts in your territory, aren't there?

A. Yes, sir.

Q. Who are your principal competitors?

A. Such as McCleary, Clock, and well, Goodyear too, Firestone as far as that goes. And then there is a lot of jobbers such as National Tire, J. P. Burke, and then there is Foster, Miller and Bierly, they are sending men out, and then you see a lot of jobbers going out on the street, too.

Mr. Thompson: That is all. Thank you very much.

Redirect Examination by Mr. Kelaher.

Q. Mr. Lanza, on cross-examination you gave some approximate percentages of your sales volume. You stated that approximately 80 percent of your volume was due to retreading?

A. Yes.

Q. And you gave a 20 percent figure. Would you state what that was?

A. Well, as far as new tires, I said the 20 percent figure, as far as selling, like people coming to the door, but of

course, including the 20 percent as far as new tires and tubes and batteries, and who comes to the door.

Q. What part of that 20 percent would be wholesale, approximately?

(After pause.)

980 Q. On cross-examination I understood you to say that you sold very little in retail, is that correct?

A. Retail, yes.

Q. So the bulk of this 20 percent is wholesale?

A. Yes, as far as new tires and batteries.

Q. Now approximately what inventory stock, what is the value of inventory stock of new tires you keep on hand?

A. Well, I have run my inventory down because of the situation.

Q. What situation?

A. Right now it is out on the street.

Q. What do you mean? Will you explain that?

A. Well, the cheap tires now that is going out that makes it very difficult for recapping, and I have run my new tire sale down.

Q. If you know, what is your approximate inventory evaluation now?

A. I am just trying to figure. We did have a figure of $6,000 but we ran that down and I would say about $2,000.

Q. Does that include Goodyear?

A. I am including some of my camel back and all.

Q. Does that include Goodyear?

Mr. Thompson: Is that dollars or tires?

The Witness: Dollars, because I had run it way down. So I will be getting ready for my snow tires now.

By Mr. Kelaher:

981 Q. Does Mr. Glenn, the Goodyear TBA supplier you referred to, have recapping facilities on his premises?

A. No, sir. Not to my knowledge and I have known him for some time.

Q. Does Mr. George, the Goodyear TBA supplier you also mentioned, have recapping facilities?

A. I don't know, sir.

Q. Now you stated, in answer to a question on cross-examination, that—you made reference to "you boys" opening up a new recapping plant. What did you mean?

A. Goodyear down on Thompson Street, isn't it?

Q. This is Goodyear?

A. Yes.

Q. When did they open up that new plant?

A. I couldn't say the date.

Q. Was it in 1957 or 1956?

A. Before that. I couldn't tell you exactly. Goodyear could tell you.

Q. Has it been fairly recent?

Mr. Kelaher: Mr. Examiner, if there are any Goodyear gentlemen present, maybe they would supply us with the approximate date they opened up this Goodyear plant.

Mr. Correa: I am told that the plant has been here since 1952, but it has recently moved its location.

The Witness: That is right. There was one on Rid-
982 ley Avenue. Is that still in operation?

* * * * * *

983 Mr. Kelaher: Just a minute, your Honor, I am going—

Hearing Examiner Kolb: (Interposing.) I am not going to wait around all night for you to do it.

By Mr. Kelaher:

Q. Now you stated on cross-examination that at one
984 time you had the business of Atlantic dealer William Barton—

Mr. Correa: (Interposing.) I submit, if your Honor please, now counsel has left it and therefore—

Mr. Kelaher: I think that is grossly unfair. I am just looking at my notes here. I haven't left it at all. I am just beginning to davelop it.

Mr. Correa: The witness said certain unidentified people made certain statements, I move to strike that testimony unless the people are identified.

Hearing Examiner Kolb: That has been stricken.

Mr. Correa: Then I am in error. Thank you.

Mr. Kelaher: At this time I would like to have the record read back, the names that were given to us, that were referred to by Mr. Correa.

Mr. Correa: I would be glad to give Mr. Kelaher my notes in the interest of expediting the proceeding. (Handing.)

By Mr. Kelaher:

Q. With reference to J. Ferrari, in Bethayres, Pennsylvania, Mr. Ferrari is an Atlantic station.

Mr. Kelaher: For the record, all of these names I am about to refer to are Atlantic service stations.

Mr. Thompson: You mean they are, or are you asking him whether they are?

Mr. Correa: He has testified they are.

Mr. Kelaher: Yes.

985 By Mr. Kelaher:

Q. Have you done any recapping business for Mr. Ferrari?

A. To be specific, three tires and that has been about four years ago.

Q. When you say three tires are you referring to three recaps?

A. That is right.

Q. So he has not been a regular customer of yours?

A. No, sir.

Q. You referred to a Mr. Kepp?

A. Yes.

Q. Was he at one time a regular customer of yours, on recapping?

A. Yes, sir.

Q. And when did he discontinue being a regular customer, approximately?

A. Approximately three years ago.

Q. With reference to Mr. Richard Kaiser, Abington, Pennsylvania, is he a regular customer of yours?

A. In recapping, yes.

Q. Recapping, that is.

A. Yes.

Q. And has he ever made any statement to you recently concerning recapping business?

A. As far as recapping?

986 Q. Yes.

A. No, sir.

Q. I refer you to Fred Philips, in Philadelphia. Is he a regular customer of yours?

A. In recapping.

Q. And has there been any decrease in the recapping business with that account?

A. The only decrease I see is like I said before, when the cheap new tires came out.

Q. I am talking about—I would like you to confine your answers to this statement you made with reference to the Goodyear plant.

Mr. Correa: I submit, your Honor, that is most unfair. The witness' answer was completely responsive and counsel doesn't apparently like it, but that is no basis for suggesting that it was unresponsive.

By Mr. Kelaher:

Q. I would like to ask you about William Barton, of Philadelphia. You stated that he was a regular customer

of yours, but not recently, I think was the way you put it. Is that correct?

A. As far as new tires are concerned.

Q. I am talking about recapping.

A. Well, like I say, since this cheap tire came out, my recapping has fell off.

987 Q. Did Mr. Barton ever make any statements to you with respect to shifting the recapping business?

A. Well, he has mentioned the fact that they might have to like give some recapping to Goodyear.

Q. And he was one of the dealers you have referred to as having made that remark?

A. Yes, sir.

Q. And your recapping business has decreased with Mr. Barton, isn't that correct?

A. No, the man was honest enough, he showed me a couple of tires he bought from Glenn, he said he bought a couple of tires off Glenn.

Q. Talking about recaps?

A. Yes, sir.

Mr. Kelaher: No further questions.

Recross Examination by Mr. Correa.

Q. Mr. Lanza, just one question. Fred Glenn has been offering recapping or retreading to Atlantic service stations, dealers, since at least 1952, isn't that correct?

A. Well, I guess he has.

Q. Don't you know that, sir, if you think back, cast your recollection back?

A. He has—let me put it this way: He has solicited recapping business.

988 Q. Since 1952 at least?

A. Well, what year I couldn't tell you.

Q. Well, as far back as you can remember, is that correct?

A. Even when I was on—there at McCollum and Elliott Street.

Q. So it would be pretty fair to say as far back as your business was, you can remember?

A. If you want to put it—I wouldn't say specifically just when.

Mr. Correa: I see. Nothing further.

Mr. Thompson: No further questions.

Hearing Examiner Kolb: Anything further?

Mr. Kelaher: No, your Honor.

Hearing Examiner Kolb: That is all, Mr. Lanza.

(Witness excused.)

Mr. Kelaher: I would like to call Mr. Hayes, please.

SHERMAN HAYES was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Sherman Hayes, 9814 Woodfern Road, Philadelphia 15, Pennsylvania.

Mr. Hayes, at one time were you an employee of 989 Tri-State Distributors, Inc., 7th and Lehigh Streets, Philadelphia?

A. 17th and Lehigh, that is right.

Q. During what period were you an employee there?

A. From 1946 until 1955.

Q. And during part of that period were you an outside salesman for the firm?

A. That is correct.

Q. And what period was that?

A. From 1954—the end of '53 until 1955.

Q. Did Tri-State Distributors at that time sell TBA products?

A. Yes, they did.

Q. What products did they sell?

A. DuPont chemicals, Gates fan belts, Purolator oil filters, Champion spark plugs, Simoniz, Goodyear tires, and Armstrong tires.

Q. Batteries?

A. Exide and Gould National batteries.

Q. When you became an outside salesman, what was your sales territory?

A. Parts of eastern Montgomery and Bucks County.

Q. Do you recall whether there were Atlantic service stations in your trading area?

A. Yes, there were.

Q. Do you know approximately how many?

A. I would say well over 50. I never actually counted them.

990 Q. And did you at one time call on a Russell Tompkins, an Atlantic dealer located at Butler and Lindenwold, Ambler, Pennsylvania?

A. That is correct.

Q. And did you solicit TBA business from Mr. Tompkins?

A. Yes, I did.

Q. And were you able to sell him any TBA?

A. I—

Mr. Correa: Has the date been fixed for this, may I inquire?

The Witness: 1954. I sold Russell Tompkins Exide batteries and DuPont Zerone and Zerex.

By Mr. Kelaher:

Q. And had Mr. Tompkins been buying any of those products prior to the time you became a salesman?

A. Yes, he had.

Q. And had he been buying Exide batteries prior to the time you took over the territory from your company?

A. Yes, he had.

Q. And did he continue to purchase Exide batteries from you?

A. No, he hadn't.

Q. If he gave you a reason, I would like you to state the reason, the approximate time, when it was given, and the location of the place where the conversation took place?

A. Well, it was in the Atlantic station at Butler Pike and Lindenwold Avenue in Ambler and the time was, 991 as close as I recall, late summer or early fall of 1954.

At the time I made the call at the station, I talked to Russ and his battery stock at that time was very depleted, due to the hot weather and the sale of batteries at that particular time. And I talked to Russ about filling his battery merchandise with the batteries that he was turning over and the ones he would need. And he said, "I am sorry, but I can't buy Exide batteries." He said "I have had to place my order with the Goodyear TBA distributor for Goodyear batteries."

Q. Do you recall who was the Goodyear TBA distributor?

A. I believe it was Fred Glenn.

Q. And from that time on, were you unsuccessful in selling Exide batteries to him?

A. After that time I sold very few batteries to Russ Tompkins. It was a case of the consumer wanting an Exide battery and not a Goodyear battery.

Q. Then he might call on you for a battery?

A. That is right.

Q. Mr. Hayes, prior to the time you became an outside salesman for Tri-State Distributors, did you work in the—

A. I worked in the office and warehouse.

Q. In the warehouse?

A. That's right.

Q. And were you familiar with the inventory stock?

A. Yes, I was.

992 Q. And were you familiar with the records with respect to Exide batteries stock?

A. Well, I was in charge of the billing and so I did know where merchandise went.

• • • • •

By Mr. Kelaher:

Q. You sfated, Mr. Hayes that you were with Tri-State Distributors a period of about 9 years. That would begin about 1946?

A. That is correct.

Q. Do you know, based on your own knewledge, what brand of batteries Atlantic stations were carrying at that time?

Mr. Correa: What time?

Mr. Kelaher: The beginning of 1946.

The Witness: Based on my own knowledge, I would say it would either be Lee or Exide, probably Exide mostly.

993 By Mr. Kelaher:

Q. Do you recall whether Atlantic stations began to carry other than Exide batteries at a later date?

A. At a later date?

Q. Yes.

A. Yes.

Q. What brand did they begin to carry?

A. Goodyear.

Mr. Kelaher: No further questions.

994 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

Q. Now, sir, you were an outside salesman for about a year, is that right?

A. Almost two years.

Q. Almost two?

A. That is right.

Q. And you told us of a conversation you had with Mr. Russell Tompkins.

A. That is correct.

Q. And Mr. Tompkins did change over from Exide batteries to Goodyear batteries at or about that time?

A. That is right.

Q. And isn't the fact, sir, that the reason Mr. Tompkins changed over was because Goodyear has just come out with a dry charge battery?

A. That is correct.

Q. And he told you that, didn't he?

A. That is right.

Q. Now, sir, where are you presently employed?

A. Lanza's Tire Service.

Q. That is the Mr. Lanza who preceded you on the witness stand?

A. That is correct.

995 Q. Now, sir, you know who Fred Glenn is?

A. Yes, sir.

Q. Now are you familiar with the fact that Fred Glenn has a service station at one time?

A. I believe I know that he had a service station.

Q. Do you know that he gave it up and sold out to an employee of his?

A. I wasn't aware of that fact, no.

Q. Do you know that thereafter Mr. Lanza took over the recapping business of that station?

A. No, I didn't.

Q. You didn't know that?

A. No, I don't.

Mr. Correa: I have no further questions.

Hearing Examiner Kolb: Atlantic have any questions?

Mr. Ballard: No, sir.

Hearing Examiner Kolb: Any redirect?

Redirect Examination by Mr. Kelaher.

Q. Mr. Hayes, how frequently did you service Mr. Tompkins on Exide batteries?

A. I made it a practice of calling on the stations at least once a week.

Q. Did you replace old batteries or deteriorated batteries and so on, to keep them in fresh stock?

996 A. We rotated stock that was slow-moving and didn't turnover, yes.

Mr. Kelaher: No further questions.

Mr. Correa: Nothing further.

Hearing Examiner Kolb: You are excused, thank you.

(Witness excused.)

Mr. Dias: Mr Colby, please.

WILLIAM COLBY was called as a witness on behalf of the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your full name and business address?

A. William Colby, Harris and Leonard, 1301 West 9th Street, Chester, Pennsylvania.

Q. How long have you been employed by them?

A. Three years.

Q. In what capacity?

A. Salesman.

Q. For the entire three years?

A. Yes.

Q. And what is your sales territory?

A. Well, Hollyoak, Delaware, to West Philadelphia,
997 and Yeadon Chester Pike to Industrial Highway.

Q. What type accounts do you solicit?

A. Service stations, garages, new car dealers.

Q. Among the service stations are there any Atlantic stations in your territory?

A. Atlantic stations?

Q. Yes.

A. Yes.

Q. And can you tell us about how many there are?

A. Thirty or 35.

Q. And do you solicit any of those stations?

A. Twenty-three or so, 23 to 30.

Q. And how often do you call on them?

A. Two times a week.

Q. There are others in the territory then that you do not call on, is that correct?

A. Yes, there is a few I don't call on.

Q. Why is that?

A. Well, we never had too much success in calling on them and the territory is too big to fool with them.

Q. Have you called on them in the past, those remainders, above those that you call on regularly now?

(After pause.)

Q. You call on 23 now regularly?

A. That's right.

998 Q. The other 7, did you call on them regularly at one time?

A. When I first started I was calling on them pretty regularly.

Q. Of these 23 that you call on, do you sell them new tires?

A. Only on a fill-in basis, or what I mean by that is that if they need a tire for a specific job or something like that, I sell to them.

Q. And do you sell them batteries?

A. Very seldom.

Q. You attempt to sell them new tires and batteries, do you?

A. I have attempted to sell them new tires and batteries, yes.

Q. What are those stations advertising on or about their property in the line of TBA?

A. In my territory, well, in the Delaware territory it is Firestone, but in the Delaware County, it is Goodyear.

Q. Now, can you name some of your accounts for us, please, and tell us what you sell to them?

A. Well, there is Samuel Watson, Boothwyn, Pennsylvania; I sell him new tires. He owns his own station though, he does not lease it from the Atlantic Company.

Q. Does he buy on a stocking basis?

A. Yes, he does.

Q. How about recaps, do you have recap business with him?

A. Yes, he does.

Q. Can you name some others?

999 A. With recapping as the main thing, there is Gene DeFelice, of Ridley Park.

Q. Do you sell him any new tires?

A. I have sold him new tires, very seldom though. I mean, as I say, on a fill-in basis.

Q. Now each of these stations that you named, are these the stations that you call on twice a week?

A. Yes.

Q. Will you name another customer of yours, Atlantic station?

A. Earl Conners, of Chester.

Q. And what do you sell to Mr. Conners?

A. Well, I have sold him a few batteries, fill-in, where he needed them for a specific job; recapping; that is about it.

Q. Do you do recapping business with him regularly?

A. I do, yes. He doesn't do too much of it, but I think I do most of it.

Q. Have you tried to sell him new tires?

A. I try to sell them all new tires, but I mean I don't have too much luck with him.

Q. Can you name another account, Atlantic account?

A. Don Elko. That is in Sharon Hill. I do recapping with him.

Q. And how about batteries with Elko? Do you do any battery business with him?

A. No.

1000 Q. No new tires either?

A. No new tires or batteries.

Q. How long have you been doing recapping business with each of these that you have named so far?

A. Well, the first one, Watson, I have been doing that with him ever since I have been with the firm.

Conners, about a year and a half.

Elko, he has only been in business I would say about six to eight months, or maybe a little longer.

And DeFelice, for three years.

Q. Do you know who the Goodyear supplier is in that area?

A. Yes, Ed Parris; Edward Parris.

Q. And I believe you said you had an account or two in Delaware.

A. Yes.

Q. Do you know who the Firestone supplier is?

A. Firestone Store of Wilmington.

Q. Does the Firestone Store do any recapping?

A. Yes, they do.

Q. How about Parris, does Parris do any recapping?

A. Mr. Parris, he doesn't do his own recapping to my knowledge. I mean, he gets recapping for dealers, but he doesn't do it himself I don't think.

Q. Can you name another customer?

A. Wait a minute. Larry Conneen.

1001 Q. Spell that.

A. Conneen.

Q. Where is he located?

A. Crum Lynne.

Q. Is that in Pennsylvania?

A. Yes, Crum Lynne, Pennsylvania.

Q. What type business do you do with him?

A. Recapping mainly.

Q. Can you name another customer?

A. John Stockett, of Glenolden.

Q. What type business did you do with him?

A. Recapping, and I have sold him occasionally a new tire.

Q. On Conneen, can you tell us how long you have been selling to him.

A. Roughly two years.

Q. And Stockett?

A. About the same time, about two years.

Q. Can you name another account?

A. Clarence Nelson's Atlantic in Darby.

Q. And the type of business with that station?

A. That is again as a recapping business.

Q. Any more?

A. Frank Buckingham's Atlantic, of Chester.

Q. What type of business is that?

A. Recapping.

1002 Q. Any more? Can you name another one?

A. Frank Lancaster's Atlantic of Chester.

Q. Is that recapping?

A. That is recapping and used tires.

Q. Used tires?

A. Yes. And occasionally I have sold Frank a new tire.

Q. Do you sell him any on a stocking basis?

A. No, none of these are on a stocking basis.

Q. Can you name another account?

A. A station under the name of Harry and Jim's Atlantic, of Boothwyn.

Q. And what is it you sell to them?

A. Recapping.

Q. Have you ever sold him any batteries?

A. No.

Q. All right. Can you name another one?

A. Ed Stowe, Atlantic. About two years ago I have sold him a couple new ones, and I have sold him recapping, but it is not too big an account.

Q. Can you name another one?

A. John Rehill, of Chester. That is about the majority of them, the main accounts.

Q. I did forget to ask you about Nelson, how long have you been selling to him.

A. Three years.

1003 Q. Buckingham?

A. Three years.

Q. Frank's?

A. Lancaster?

Q. Yes.

A. About a year.

Q. Harry and Jim's?

A. About eight months.

Q. Ed Stowe?

A. Three years.

Q. And John Rehill?

A. Off and on about three years.

Q. Has your business remained about the same with them through the years?

A. In regards to recapping, yes, up until these Atlantic companies have come out with a third line Goodyear tire, which has definitely hurt the recapping sales.

Q. And when was that, approximately, do you recall?

A. I would say that happened around six to eight months ago.

Q. By the way, you handle U. S. Royal's, isn't that correct?

A. That is correct.

Q. Do you have a U.S. Royal tire that is in the same price category as this cheap Goodyear you mentioned?

A. Well, we do, but I mean it would not pay us 100% to sell it, there would be no profit in it.

Q. You have it though?

A. Yes, we could sell it to meet that price, but I mean I would be making roughly 40 cents, and there is not too much sense in doing it.

Mr. Dias: That is all, your Honor.

Cross-Examination by Mr. Thompson.

Q. Mr. Colby, I represent the Atlantic Refining Company and this gentleman across the way, Goodyear.

A. Yes, sir.

Q. Are you the only Harris and Leonard salesman in the territory that you have described?

A. Well, in my territory, yes. We have another salesman that does the same job I do, and he takes from McDade to Westchester Pike.

Q. That is Mr. Kevis?

A. That is Mr. Drennen. Mr. Kevis is the commercial salesman.

Q. Your principal competitor is C. A. Powers, is it not?

A. Yes, I would say he is the principal one.

Q. Is it not a fact that Parris and Leonard and C. A. Powers virtually divide the recapping business down in the Chester-Delaware County area?

A. Yes, I imagine it is about 60-40.

1005 Q. Did you get the 60—

A. I would say so.

Q. And that is most of the recapping business down in that area, isn't it, the two of you together?

A. Well, now, Superior Tire, they are in there a little bit, but the two principal ones are Harris and Powers.

Q. But you get much more of the business than C. A. Powers, don't you?

A. I would say so.

Q. Isn't it also true you sell virtually all the Atlantic accounts in your area?

A. Yes, I sell all the recapping.

Q. And recapping, of course, is the Harris and Leonard specialty?

A. That is our main business.

Mr. Thompson: I have no further questions.

Mr. Correa: I have no questions.

Redirect Examination by Mr. Dias.

Q. Just one question because the acoustics are bad. Did you say you sold all the Atlantic stations all their recapping, or you sell all of them some recapping? Which is it?

A. Well, I mean it is hard to say what you sell a man. You don't know, but I would say 85 percent of the

1006 recapping is divided between Powers and Harris and Leonard, and I think I get the biggest amount of it.

Q. You do recapping then for all Atlantic stations, is that correct?

A. The ones I mentioned, yes.

Q. But you do not have it all in each of those stations?

A. No, that is pretty tough, to get it all.

Q. Are their other U. S. Royal distributors in your area, Mr. Colby?

A. No, not in that particular area there. The closest one I think would be Burke, I guess, in Philadelphia. He has come down in that area, but he is not too popular down there.

Q. Am I right in saying that Harris and Leonard is the sole U. S. Royal distributor in that area?

A. Yes.

Mr. Dias: That is all, your Honor.

Mr. Correa: No further questions.

Mr. Thompson: No further questions.

Hearing Examiner Kolb: That is all, Mr. Colby.

(Witness excused.)

Hearing Examiner Kolb: Any further witnesses this morning?

Mr. Kelaher: No further witnesses. I move we adjourn until 2:00 p.m.

Hearing Examiner Kolb: We will adjourn until 1007 2:00 o'clock.

(Thereupon, at 12:25 p.m., the hearing was adjourned, to reconvene at 2:00 o'clock p.m. this days.)

1008 Afternoon Session.

(2:10 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: Mr. Ferguson, please.

RICHARD FERGUSON was called as a witness for the Commission and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address, please?

A. Richard Ferguson, 8 East Ninth Street, Auto Parts and Radiator, Chester, Pa.

Q. How long employed?

A. Four years.

Q. And in what capacity?

A. Salesman.

Q. Have you been a salesman for the entire four years?

A. Well, yes, four years and about four months; four months inside and four years on the road.

Q. And what is your sales territory?

A. Delaware County, part of Philadelphia.

Q. Is any of your territory in the State of Delaware?

A. None at all.

Q. What type business do you solicit, Mr. Ferguson?

1009 A. Auto repairing, chemical business, anything that has to do with automobile repair, gasoline engines and diesels.

Q. I mean, rather, the type of outlets or retail outlets that you call on. Do you call on service stations?

A. Service stations.

Q. Garages?

A. Garages; fleets; car dealers.

Q. You mentioned handling chemicals. What chemicals does your company handle, Mr. Ferguson?

A. Well, we handle Prestone chemicals, cooling system chemicals; waxes, Prestone waxes; polishes and car wash, Johnson's wax; Rust Master chemical products; Carb Master; almost any chemical they'd use in a service station or a garage.

Q. I am more interested now in knowing what all is in the Prestone chemical line. Is that more than just anti-freeze?

A. Oh, yes.

Q. Will you name the various items that are in the Prestone chemical line?

A. Well, there is Prestone anti-rust; Prestone 10-minute Flush; Prestone sealer, and Prestone prime, but it is just called prime, that is a gas line anti-freeze.

Q. Waxes and polishes, are they considered chemicals and in the Prestone line?

A. Yes. Prestone wax and there is a Prestone 1010 polish and Prestone car wash.

Q. In your sales territory, are there any Atlantic stations?

A. Oh, yes.

Q. And do you call on them?

A. Yes, I do. There are some I call on and some I do not call on.

Q. Well, how many are in your territory at all, can you tell us that?

A. Can I look at my notes here of my own?

Q. Yes.

A. There is about 15 of them in my territory, about 11 I call on, and the 11 I call on is only a few I call on steady; what I call steady is every week or every two weeks.

Q. How many do you call on steady?

A. Well, about seven of them steady.

Q. And the others that are in your territory, do you call on them periodically?

A. Once a month; once every two months.

Q. Have you ever called on them more often?

A. No, because I have a hard time selling them—I can only sell them hard parts.

Q. Of these stations that you do call on regularly, can you name them and tell us what it is that you sell to them?

A. Well, do you want me to give you the name of the station and tell you just what I sell to them?

1011 Q. If you can.

A. I can tell you if you want independents; I have a few independents included in that seven.

Q. What do you mean by independents?

A. Well, they own their own station; they are not lessees.

Q. Yes, include those.

A. Include those.

Well, I have first on the list here is Sandy's Cities Service; that is in Darby. If you would like to know the—

Q. Sandy's Cities Service?

A. Sandy's Service Stations; that is Atlantic, I am sorry, in Darby, and the only thing I can sell him is ignition and brake lining and mufflers. That is all. He does stock my ignition.

Q. Sir?

A. He does stock my ignition.

Q. Is he an independent?

A. No. He is a lessee.

Q. All right.

A. I have John Stockett's Atlantic, in Glenolden. That is just ignition.

Now, Henry's Atlantic, Chester Pike in Norwood. That is an independent Atlantic station.

Mr. Ballard: I beg your pardon, I didn't get the name.

The Witness: Henry's Atlantic, at Chester Pike
1012 and McKinley Avenue, in Norwood. He is an independent Atlantic station, and I call on him regularly every week. He is a very good account. He buys practically all his chemicals from me plus all hard parts.

By Mr. Dias:

Q. All right, sir.

A. Minka Brothers, Atlantic, 6th and Morton, in Chester. They are an independent Atlantic station and a very good account of mine, and I sell them chemicals and hard parts. Between Chester Auto Parts and Auto Parts and Radiator we sell them all the chemicals.

Q. And did you say he was an independent?

A. Independent.

Q. M-i-n-k-a?

A. That's right. M-i-n-k-a, 6th and Morton.

Triangle, Atlantic, at Island and Suffolk Avenue, in Philadelphia, he is another independent Atlantic station, and I sell him Gates belts, hoses, a portion of his chemicals.

Q. Now these three stations that buy chemicals, which of your chemicals do they buy? Do they buy your Johnson's or your Prestone?

A. Henry's Atlantic buys Prestone chemicals; he is a very big—he sells a lot of waxes and he does sell Prestone wax.

Q. How about Minka?

A. Minka, they have Prestone and DuPont anti-
1013 rust chemicals. They do have some DuPont.

Q. And Triangle?

A. Triangle, I sell them Rust Master chemicals and Prestone chemicals.

Q. All right, sir.

Now, there is another station or two. That is five so far.

A. I have another one I call on quite regularly, Bakers Atlantic, Chester Pike and Eddystone. He is a lessee, and that is hard parts and equipment business. No chemical business at all.

And the rest I have down here I can tell you the number of calls and how much business it is, how much business I have got out of them and it doesn't pay and if you want me to tell you, I can tell you that.

Q. Yes, I'd like to have that.

A. These are lessees. Branca's Atlantic in Yeadon. That is at Church Lane and Bailey Road in Yeadon; there is another operator in, Frank has only been there about a year, and in 1956 I called on him 20 times and done $50.15 worth of business.

Q. How many times?

A. Twenty calls. That was all hard parts such as alemite hoses or something he needed for his grease equipment or muffler or tail pipe.

Q. What was your volume with him again? How 1014 many dollars worth of business?

A. $50.15.

Q. Thank you.

A. DeFelice, Atlantic, at Chester Pike and Hinkson Boulvard, Ridley Park; in 1955 I called on him 14 times and sold him $171.19, my write-up business. That is no call-in business that is repairs on jacks and such as that. No chemicals and very few hard parts there. 1956, 11 times and $77.80.

I have Green's Atlantic at 204 East Fifth Street; 1956 I called on him 14 times and $16.34 worth of business.

Then Larry's Atlantic, Chester Pike and Fair Glenn Road in Crum Lynne; 1955 called 11 times and received

$51.17 worth of business. Stopped calling on him only periodically; once every two or three months.

Q. What type of products?

A. Just Blue Streak ignitions and maybe a muffler or tail pipe.

Q. Of all of those stations that you named, Sandy's, John's, Stocketts, Henry's and so on, with the exception of Henry's, Minka and Triangle, do those stations carry TBA? Do they carry tires in those stations?

A. The independents or the lessees?

Q. All but the independents. What do the lessees carry?

A. The lessees, they carry Goodyear.

Q. Tires?

1015 A. Tires, batteries, accessories.

Q. And they advertise them about the station, do they?

A. Oh, yes.

Q. What about the three independtnts, do they all carry Goodyear TBA?

A. No, they don't.

Q. What does Henry's carry?

A. Henry handles Lee tires, Bowers batteries, they do handle Goodyear fan belts and Gates hoses.

Q. And how about Minka?

A. Minka, they also handle Lee tires; Lee batteries; they do have some Goodyear batteries in there, too; Gates fan belts and Gates hoses.

Q. And Triangle?

A. Triangle, he doesn't stock tires. He buys them as he needs them and he will sell any kind that the customer wants. He is mostly in the repair business; batteries, he stocks some Delco and Gates fan belts and hoses.

Q. Since you have been on your territory have any new Atlantic stations opened in that territory?

A. Oh, yes.

Q. Have you called on them as soon as they have opened?

A. Well, I find it a losing proposition to call on Atlantic stations to try to get the equipment, because that is included right in the building.

1016 Q. Well, how about TBA products?

A. Well, there—that is all set up before I go there. I haven't even got a chance there.

Q. How about new operators of old stations where a station changes hands, have you ever called on them soon after they opened?

A. Yes, I have.

Q. Have you been able to sell any TBA in those stations?

A. None at all.

Q. Those new stations and where the stations have changed hands, what TBA do they carry?

A. Where they have changed hands?

Q. Yes. Where they've changed hands or in those instances where a new Atlantic station opens up, what TBA have you noticed in the stations?

A. Oh, Goodyear.

Q. Do you know who the Goodyear distributor is in your territory?

A. Ed Parris is a Goodyear distributor in my territory.

Q. How do your batteries, accessories, compare price and quality-wise with those of Parris?

A. Price is comparable, and quality, well, of course, I sell the Gates line, Delco batteries, I think I have a much better product to offer, a much better service to offer them.

Q. What type service do you offer?

1017 A. Well, if they were to need a battery, say in the morning, I could have it there in 20 minutes to a half hour or an hour at the most.

Q. And what is your brand battery?

A. Delco.

Mr. Dias: That is all, your Honor.

1018 Hearing Examiner Kolb: Any cross examination?

Cross-Examination by Mr. Ballard.

Q. Mr. Ferguson, how many accounts do you have all told?

A. It changes one month I might have 190, I take off and put on—I could be safe in saying 200.

Q. And do you call on the majority of them 15, 20 times a year?

A. No, I don't call on the majority of them. Some of them I call on once a week; my better accounts I call on once a week. There are a few I have to call on twice a week, some I call on every two weeks, every three weeks, once a month, and maybe once a year, just to get maybe an antifreeze order. And a lot of them I make phone calls to that I don't have to call on.

Q. You, of course, don't make a sale on every call, do you?

A. No.

Q. No salesman would do that, would he?

A. It's impossible to do that.

Q. When you mention a call, how long does a call take generally?

A. It depends, sometimes a call will take a half a day, sometimes it will—a normal call takes 20 minutes to half an hour.

Q. Sometimes you just stop in and pass the

1019 time of day with the fellow?

A. If he's busy I stop in and say hello and goodbye.

Q. A lot of other fellows call on your customers, too, don't they?

A. Oh, yes. There are quite a few salesmen.

Q. For instance, is that Henry's Atlantic Service that you told us about on Chester Road and McKinley Avenue?

A. A very good account.

Q. I think you said you sold him most of his accessories?

A. Well, I would say so. Yes, and all of his equipment.

Q. He does buy, however, from other suppliers, doesn't he?

A. I would say he does buy a little from Ed Parris, but he does do business with two other supply houses, three other supply houses that I know of besides myself.

Q. Which would they be?

A. Motor parts Service in Prospect Park, VJ Auto Parts in Sharon Hill and Philadelphia Wholesale, Philadelphia.

Q. Of Course, they sell him DuPont radiator chemicals, don't they?

Take Philadelphia Wholesale Distributors, they sell DuPont Radiator chemicals to him?

A. I don't know what they sell, but I last sold him Prestone chemicals and Rust Master.

Q. But you don't know whether they sell him radiator chemicals or not, do you?

1020 A. Well, I would say not because I don't recall seeing it on the shelf.

Q. How about Turtle wax?

A. Turtle wax, he buys that from Philadelphia Wholesale, I know that.

Q. Now, he gets his Wings oil from Delaware County Motor—

A. They are the only distributor of Wings Oil I know of.

Q. Does he have that on his shelf?

A. I couldn't say that for sure.

Q. Now, this Triangle Station that you mentioned is really a garage, isn't it?

A. That's right; it's an inspection station and repair shop.

Q. It has a pump or two outside?

A. It has three pumps.

Q. Three pumps. Does it have an island where you can drive in?

A. He has a big island, he does a big gas business down there; he does a lot of business with tractor trailers, he is mostly in the repair business though.

Q. Do you know how much business you are responsible for in a year? How much business do you write in a year?

A. What I write or the total?

Q. That you write.

1021 A. In a year?

Q. Yes, approximately.

A. I'll average between—about four thousand dollars a month. Some months I'll go over. This month I'm up to $5,500.

Q. Has this been a good year?

A. Very Good.

Q. Better than last?

A. Better than last.

Q. And last year was better than the year before?

A. Oh, yes.

Q. Business has been improving?

A. Every year.

Q. I congratulate you.

Do you know what the company's business is in a year?

A. No, I have no idea what the company does.

Q. The company has been growing though, hasn't it? It's added new branches?

A. Yes, it has.

Q. What was the most recent branch, do you know?

A. We bought Tri-State Auto Parts, I think they were a subjobber of Auto Gear there in Marcus Hook. That's our branch. It's still called Tri-State Auto Parts, I think.

Q. But your company bought it?

1022 A. That's right, we bought it. It's in Marcus Hook.

Q. When did that take place?

A. I couldn't say. About six months. I couldn't say for sure. About six or eight months ago.

Q. Mr. Ferguson, do you call on Ed Holmes' Atlantic station?

A. I do not know.

Q. Well—

A. I did at one time, I haven't called on him in four years, three and a half years. I called on him for about the first three months I went out on the road.

Q. Why don't you call on him now?

A. Because we all have a set territory and another salesman from our company calls on him.

Q. I see.

A. That was only a temporary deal.

Q. How about Walter McCollough. Do you know him in Morton?

A. I don't call on Morton at all. No, that's another salesman's territory in our company. He calls on him, I imagine.

Q. Well, you do call on Chester Drozdowski?

A. That's Bakers Atlantic, Chester Poke, and Eddystone Avenue in Eddystone.

Q. Do you call on him?

A. I do.

1023 Q. Do you sell him Gates Radiator Hose?

A. I sold him a deal of Gates radiator hose at one time, this was when I first went on the road. We hung

the racks and everything, put the hoses up and collected the money. The next week I went around, it was changed over to Goodyear, now there's three or four Gates' hoses mixed in with the Goodyear even today.

Q. That is fairly common in the industry, isn't it?

A. I would say so, in Atlantic stations.

Q. Only in Atlantic stations?

A. Usually when you set up an account with a good line such as we carry, Gates hoses or fanbelts or Blue Streak ignitions, it's very, very rarely that they ever, ever change over. If you take the proper care of them.

Q. You also sell him Fram and AC?

A. No.

Q. You don't?

A. No Fram or AC.

Q. You do sell him Auto parts and equipment?

A. I sell him his equipment.

Q. You don't sell him parts?

A. I sell him a few parts, not to many.

Q. Doesn't he buy Champion plugs from you?

A. I don't handle Fram and I don't handle Champion.

Q. I see.

1024 Mr. Ballard: No more questions.

By Mr. Correa:

Q. Mr. Ferguson, you said something about batteries, didn't you? Did you mention a battery you sold?

A. Delco batteries.

Q. That's right. I couldn't remember for a moment. Do you offer those batteries to service stations on 30, 60, 90 basis? That is payment one-third in 30 days; one-third in 60 days, one-third in 90 days?

A. Sure, I'll do better than that.

Q. I mean do you customarily? I'm just wondering what your practice is.

A. Yes.

Q. Do you offer them on any basis of a free battery if so many batteries are bought by the dealer?

A. Well, no; but we don't have any deal like that, so many free if you buy like 25 batteries, give them one free?

Q. Let's say 15.

A. I think if I took a deal like that to my boss I could get it through.

Q. Have you ever offered that deal is what I'm getting to?

A. No.

Q. Ed Parris does that, 15 batteries and one free battery.

A. I don't know.

Mr. Correa: I have no further questions.

1025 By Mr. Dias:

Q. Mr. Ferguson, you have been selling for four years?

A. That's right.

Q. Can you recall back during your first year, second year and third year, and now your current year, was there ever any time when you were selling to more Atlantic stations than you are today?

A. Well, no; I don't bother too much with the Atlantic stations because of their TBA set up. I don't bother too much with them. I have a few that I call on that I get hard parts business out of. In other words, I won't call on an Atlantic station unless he's a hustler and he will do repair work that I can get hard parts business out of him, an occasional jack or a wheel balancer, something like that. Equipment sale.

Q. But you have tried them all from time to time, have you, tried to sell them batteries and fill-ins?

A. I have tried to sell them. Yes.

Q. You were asked about Bakers, have you tried to sell Baker any filters?

A. I have never tried to sell Baker any filters.

Q. How about other accessories?

A. Oh, I've tried to sell him other accessories such as Rust Master chemicals and Prestone chemicals and never had any luck with it.

1026 Q. Did he give you any reason why he wouldn't buy them from you?

A. Well, he wouldn't buy them because he knows if he did buy them his distributor would certainly tell him about it.

Mr. Dias: That's all, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Correa: Nothing further.

Mr. Ballard: No questions.

Hearing Examiner Kolb: That's all, Mr. Ferguson.

(Witness excused.)

Mr. Thompson: If your Honor please, when Mr. Balloron left the stand he was directed to return tomorrow morning for cross-examination. So far as Atlantic is concerned I have no questions that I want to ask Mr. Balloron and if Goodyear—

Mr. Correa: (Interposing.) So far as Goodyear is concerned, your Honor, we have had opportunity since Mr. Balloron left the stand to read his testimony and we are content to rest on Mr. Kelaher's cross-examination of him.

Mr. Kelaher: Thank you.

Mr. Correa: As eliciting all the points we needed.

Mr. Kelaher: Coming from you that is a compliment.

Mr. Thompson: We thought that would permit Mr. Balloron—

Hearing Examiner Kolb: (Interposing.) Mr. Bal-
1027 loron will then be released and will you notify him?

Mr. Kelaher: We will notify him.

Mr. Thompson: That will permit him to spend tomorrow morning with his old friend Senator Pepper.

Mr. Kelaher: That's right. He's a good friend to have, I may add.

Mr. Dias: I call Mr. Walker, please.

GEORGE STANLEY DREW WALKER, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. George Stanley Drew Walker of Suburban Auto Parts, 221 West Lancaster Avenue, Ardmore, Pennsylvania.

Q. And could you tell us how long you have been employed by Suburban Auto Parts?

A. Just four and a half years.

Q. Will you describe or tell us a little about Suburban Auto Parts, is that an independent Company?

A. Well, it's registered as an independent corporation and it's wholly owned by the owners of the A. P. Rotzell Company.

Q. It is considered to be a branch of Rotzell, actually?

A. Well, it's registered as a separate corporation, 1028 but we buy principally through Rotzell.

Q. Do you handle the same—

A. Yes, we handle all the same products that Rotzell handles.

Q. And what is your sales territory? How are you employed, you are a salesman, are you not?

A. I'm a salesman employed on commission.

Q. What is your sales territory?

A. Well, I operate west of City Line and between the Schuylkill River and West Chester, Pennsylvania.

Q. Will you tell us the type of customer that you solicit?

A. Well, independent garages, service stations, car dealers and some fleets.

Q. Did you say service stations?

A. Service stations, yes.

Q. Among the service stations are there any Atlantic stations?

A. There are a number of Atlantic stations in the territory, I don't go into all of them.

Q. Can you tell us approximately how many there are?

A. Well, there's from, oh, between 12 and 20, I imagine in that territory.

Q. How many do you call on, Mr. Walker?

A. Well, I call on about eight of them fairly regularly and the others I stop in once in a while.

Q. And how often is regularly?

1029 A. Well, about six of them once a week and the others maybe once a month.

Q. And those other four?

A. The other four, would be anything special comes up of interest I stop in there.

Q. The six that you call on regularly, can you tell us what products you sell to them? Can you name those stations?

A. Well, I sell mostly parts that they need in the repair business, mufflers, shock absorbers, if they need an odd battery that they don't stock in a hurry, we give them that. In other words, if we give them better service where they'd lost a customer, we do that.

Q. Who is their regular supplier?

A. Ernest Miller of Upper Darby.

Q. What products does he supply?

A. Mostly Goodyear tires and batteries, DuPont chemicals and one or two others, I don't know his full line.

Q. These Atlantic stations in your territory, do they advertise TBA products about their stations?

A. Well, they have been on display on their shelves and they use the regular window streamers and that sort of thing.

Q. What products do they advertise?

A. They all have the full line of DuPont chemicals and the lessee stations have Goodyear tires and batteries, some of the independents have other brands.

1030 Q. How many independents are in your territory?

A. Well, there's either two or three. There's one out the end of this week and there's one, I think that went back under company control, so there are really only about two completely independent.

Q. How do you define "independent"?

A. Well, where the fellow has complete control over the real estate where he operates.

Q. And what do they advertise? What do those independents advertise?

A. Well, I think the two that are operating now have got Lee tires and one has got Lee batteries. The other has Willard batteries and then they have a variety of accessories. They carry the DuPont line.

Q. Would you care to name those two stations for us?

A. Lou Dorn in Broomall and there's Wynnewood Park Service Station on Haverford Road in Wynnewood. The other one is in Garrett Road, he's going out of business in another week, he's turning it over to another oil company, not Atlantic.

Q. These lessees in your territory, do you attempt to sell them batteries, your batteries?

A. Only we let them know that we have batteries and when they need them they can call.

* * * * *

1032 Next question.

Mr. Dias: I thought there was one pending.

By Mr. Dias:

Q. Sir, let me ask you. Did they give you a reason?

A. Yes.

Q. Now, who was it gave you a reason? Which particular station operator, can you name him?

A. Jim Daley out in Kenwood.

1033 Q. And when did he make this statement to you?

A. The early part of this year.

Q. And what reason did he give you for not buying the batteries?

A. Because there was a possibility he might move from that station or Atlantic might give up the location and then he'd be stuck with them.

Q. Were there other similar statements by other dealers made to you?

A. Well, there's—

Mr. Correa: I object to that question, if your Honor please, "were other similar statements made to you by other dealers?"

Mr. Dias: I don't know how I can find out whether or not there were—

Hearing Examiner Kolb: I think that question is all right. He may answer yes or not to that.

Mr. Dias: You may answer yes or no, Mr. Walker.

The Witness: Yes.

By Mr. Dias:

Q. Now, will you tell us when and by whom and the substance of the statements?

A. Well, we always get the statement, whether it's a brush off is like the fellow who says, "Well, I'll keep you in mind." "Well, you know I can't handle your products because I have to handle the others."

1034 Q. I'm asking you for a specific statement by a specific operator. Can you recall any other Atlantic operator that made this specific statement to you?

A. I can recall some years ago when Al Godino was operating the station on Belmont Avenue in Belmont Hills saying he couldn't buy accessories from us even if he could get them cheaper.

Q. And did he tell you why he couldn't buy them from you?

A. Because he said that his contract with Atlantic, he'd have to get these accessories through their approved source.

Mr. Ballard: I now move to strike the last answer, your Honor, unless we know when some years ago is.

The Witness: Early part of '53.

By Mr. Dias:

Q. Did you say "several years"?

A. In the early part of '53 when I first started on the job.

Q. When in '53?

A. The early part of '53.

Q. You gave us his name?

A. Al Godino.

Mr. Dias: Off the record.

Hearing Examiner: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

1035 Mr. Ballard: I withdraw the motion to strike, your Honor, in order to straighten out the record.

By Mr. Dias:

Q. Mr. Walker, I may have asked you this, but if so I have forgotten.

Do you know who the Goodyear supplier is in your territory?

A. Yes. Ernest Miller of Upper Darby.

Mr. Dias: That's all, your Honor.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Ballard.

Q. Mr. Walker. you, of course, also call on Korbo, A. Korbo, trading as Korbo Brothers Atlantic Station?

A. No.

Q. You don't call on them?

A. No.

Q. Do you call on J. Gill at—

A. Occasionally, yes.

Q. And do you sell anything to Mr. Gill?

A. Not recently, no.

Q. Did you used to sell him anything?

A. We sold him a little but he has a brother-in-law working for a competitive house and so he gives the business to the family.

1036 Q. What house was that?

A. In Auto Gear and Radiator I think they call themselves in Chester.

Q. Are they big competitors of yours?

A. Not too much, but they come in on some products in some parts of the territory.

Q. How about Henry Matus at Haverford Road and Bryn Mawr?

A. Occasionally.

Q. What do you sell him?

A. Nothing lately. Some mufflers at one time.

Q. You don't sell him any chemicals?

A. No.

Q. Why doesn't he buy chemicals from you?

A. I haven't been calling on him too regularly, he hasn't been in there too long. I called on his predecessor.

Q. Did he ever give you any reason for not buying the chemicals?

A. No, he hasn't.

Q. Do you happen to know whether he's a lessee station or not?

A. I don't believe Atlantic owns that property.

Q. You don't think so?

A. And I don't know the terms of his lease.

Q. And now how about J. J. Ryan, do you go out as far as Radnor?

1037 A. Yes, I see Ryan once in a while, but I wouldn't classify Ryan as a service station; it's a grocery store.

Q. Do you sell him chemicals?

A. Once in a while.

Q. How about Davis Brothers in Bryn Mawr?

A. Well, Davis Brothers, at least they have got a garage there, but they hardly do any work in there at all.

Q. Do you sell them anything?

A. No, they don't use any of our parts.

Q. Do you call on them?

A. Once in a while just to say hellow. They don't do any business, it's just a store and garage.

Q. How about DeMar Company at—

A. That's Wynnewood Park Service Station?

Q. That's right.

A. I call on them.

Q. Do you sell them anything?

A. Chemicals occasionally and parts for his inspection station.

Q. Hard parts that is?

A. Yes.

Q. Did you ever sell him any batteries?

A. No. Well, if he's stuck for them once in a while, it's Willard batteries and he buys them from a jobber.

Q. How about Mr. Gill on Darby Road?

1038 A. I said I used to call on him. He's the one that has a relation in the business.

Q. That's right. Excuse me.

And the number of customers that you carry all told?

A. About 200.

Mr. Ballard: I have no further questions.

By Mr. Correa:

Q. Do you sell batteries, sir?

A. Yes.

Q. What kind? Perhaps you said but if you did I'm afraid I missed it.

A. Delco.

Q. And you offer batteries to sell to service stations?

A. Yes.

Q. Including Atlantic Service Stations?

Have you ever offered Delco batteries on the basis of one free battery with every 15?

A. No. Those batteries sell for the same price whether they go to a General Motors dealer or service station.

Q. So you don't make any offer?

A. We don't make any price concession to anybody.

Q. Now, does Mr. Ernest Miller offer batteries for sale, Goodyear batteries on the basis of 1 free with every 15 that the service station buys?

A. I don't know his price structure at all.

1039 Q. You don't know that?

A. I don't know what he does.

Mr. Correa: No further questions. Thank you.

Mr. Dias: That's all, sir.

Hearing Examiner Kolb: Is that all?

Mr. Dias: That's all.

Hearing Examiner Kolb: That's all, Mr. Walker.

(Witness excused.)

Hearing Examiner Kolb: We will take a five minute recess.

(Whereupon, a short recess was taken.)

1040 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: Mr. Examiner, we are now going to get back to Commission Exhibit for identification 101-A through Z-20. This is identified in the record at page 22 and I quote, "Document entitled 'TBA Study,' dated May, 1949, Sales Research Section, the Atlantic Refining Company."

At the hearing on March 7, 1957, at the beginning of page 73, this document was offered into evidence. At that time objections were raised by counsel for both respondents, and considerable discussion ensued, which carries through page 83 of the transcript. On page 83 of the transcript the offer was withdrawn tentatively as a result of your Honor's suggestion that a witness be called who would be qualified to discuss the document itself.

Since that time respondent Atlantic has furnished us with the name of J. L. McIntire, and at this time I would like to call him to the stand.

JAMES L. McINTIRE was called as a witness for the Commission and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Home Address?

1041 Q. Yes.

A. J. L. McIntire; 2258 North 53rd Street, Philadelphia.

Q. What is your first name?

A. James.

Q. And are you presently employed with Atlantic Refining Company?

A. Yes, sir, I am.

Q. And for how many years have you been employed with them?

A. Twenty-one.

Q. And at one time were you in the Sales Research Section of Atlantic Refining Company?

A. Yes, sir. I was.

Q. During what period?

A. Well, it ended in 1950, at the Korean War. I think it started about 1948, late '47 or early '48.

Q. And what were your duties in the Sales Research Section?

A. I was the manager of it.

Q. And what would the duties of the manager involve or entail?

Q. We would make studies in the market as we were requested by the sales managers, if they had a problem on which they wanted an analysis of the market or a consumer survey or dealer survey, then we would make it.

Q. Did you have training to make such studies?

A. No, sir. I am afraid not, except as I had ac-
1042 quired it by trial and error.

Q. Did you have prior experience in the field?

A. Yes. I had been a salesman before the war and then after the war I had worked for the Assistant General Manager of Sales, as a sort of a field investigator for him. That was the thing that eventually materialized into a formal Sales Research or Sales—I think we called it Sales Research Section.

Q. What has become—when did that, become officially known as the Sales Research Section?

A. About 1948.

Q. Were you in charge of the Section?

A. Yes, I was the first person in charge.

Q. And just to—this may be repeating, but to clarify your duties, you did make surveys of various types for management, is that correct?

A. That is correct, yes, sir.

Q. And what type of surveys did you prepare?

A. Well, I will have to try to remember. Let's see, some surveys of course you had to employ outside interest just to make. Some surveys we made with our own personnel. We had four or five people in that section. We made such surveys as trying to evaluate the desirability of this prospective service station site versus this one. We ran what we called market studies to find out what percentage of the market the various brands of gasoline
1043 enjoyed in that particular market. We did a study connected with what the consumer wanted in his service station. In other words, did they want their windshield wiped, or didn't they, and things like that. There were quite a few. I can't remember them all, but that gives, I think, some idea.

Q. I now show you Commission Exhibit 101-A through Z-20 and ask you to state what it is?

A. That is the so-called TBA study that we made. This is May, 1949.

Q. Now were you in charge of this particular study?

A. Yes, sir, I was.

Q. Now would you please state what methods were used in preparing this study?

A. Well, I guess the method would be called a somewhat modified depth interview. We arranged through an outside firm, Stewart Dougall and Associates, to furnish interviews. I don't remember how many cities, but I suppose it is in here, and then one of the junior partners of Stewart Dougall and myself designed this questionnaire and Stewart Dougall's interviewers took it around and filled in the answers.

Q. So you and the associate designed the questionnaire upon which that survey is based?

A. Yes.

Q. Now on the first page of that, that would be Commission Exhibit for identification 101-B. I would like you to read the first paragraph there.

1044 A. "This study represents the opinions and the attitudes of 1,071 dealers in 47 cities from Massachusetts to Florida. These dealers were chosen on a random basis within the following limits."

Do you want the rest?

Q. Is this a correct statement?

A. Yes, sir.

"(1), a quota for each brand based on that brand's acceptance in the city.

"(2) Satisfy the definition of a promotable dealer."

Do you want me to read the rest?

Q. That will be sufficient.

Are any of the basic records still available which form the basis for this document 101-A to 101-Z-20?

A. I would say 85 percent of them seem to have disappeared. Here and there a copy of the report and a couple of questionnaires, which are only a very small part of the whole. I even ascertained that the records of the company in New York were destroyed. They keep them four or five years, but this goes back some years. There is no complete data available.

Q. However, there are reports available, are there not?

A. Yes, sir, such as this one.

Q. I am talking about basic source data now.

A. There are one or two folders of basic source data.

Mr. Kelaher: Your Honor, at this time I would 1045 like to refer to a stipulation entered into with counsel for the respondent Atlantic and refer to page 318 of the transcript. In reference to a question as to whether or not—in response to a question concerning Commission Exhibit for identification 101-A through Z-20, the question was, "Origin and so forth, is basic data available?" "An-

swer. Reports are available for interviews believed to have been conducted in Boston, Massachusetts, Fall River, Massachusetts, Johnstown, Pennsylvania, Philadelphia, Pennsylvania, Pittsburgh, Pennsylvania, and Trenton, New Jersey."

Is that correct, Mr. McIntire?

The Witness: Yes, sir.

By Mr. Kelaher:

Q. Mr. McIntire, the reports available would show the questionnaire form that was used to prepare this summary, isn't that correct?

A. Oh, yes, sir.

Mr. Kelaher: Your Honor, at this time I offer Commission Exhibit 101-A through Z-20 into evidence (handing document to Examiner).

Mr. Ballard: Would you care to hear the respondents now, sir, or would you like to read it?

Hearing Examiner Kolb: Let me see what it says.

Mr. Ballard: Your Honor, with regard to this document, the first problem I have is the purpose for which 1046 it is offered.

As your Honor can see, it is a tabulation, under a number of headings, and I would like to find out if I could whether it is offered to prove that the dealers said the answers attributed to them, that that is their attitude, is it state of mind testimony, and if so, the dealers of course are not identified. When we know what the purpose of the offer is, your Honor, I would like to reserve the right to question this witness on voir dire in order to elucidate some points which I think have not been brought out about the nature of this study and the reliability of the information that is presented.

Mr. Mason: If your Honor please, we feel that this document is wholly irrelevant, so far as Goodyear is con-

cerned. In the first place, it antedates any time that there was a sales commission arrangement between Goodyear and Atlantic.

Furthermore, it is in the nature of opinion evidence and it should be fully qualified by a detailed exposition of the techniques by which the document was prepared.

Mr. Kelaher: Mr. Examiner, we argued this at length on March 7, but I would like to call several important facts to your attention for your consideration. This was prepared in 1949—

Hearing Examiner Kolb: Let me see that transcript a minute please.

1047 (Document handed to Examiner.)

Hearing Examiner Kolb: I believe the purpose is stated in the record at the bottom of page 75.

Mr. Ballard: Mr. Kelaher, could I look at that record?

Your Honor, with respect to the statement at the bottom of page 75 of the record, to which you have directed our attention, that statement is a statement by Mr. Kelaher, which reads as follows: "Your Honor, we are offering this with respect to respondent Atlantic to show you the research engaged in by respondent Atlantic in determining which marketing alternative it would adopt."

Your Honor, I am not certain what that language means. We, of course, admit and will be glad to stipulate, what research was done. In fact, the witness testified without objection as to the research that was made and if that is all Mr. Kelaher wishes, I don't see that the report itself adds anything to it. If by this language he wishes to bring in the substance of the report and not merely the fact that the research was done and the report was rendered, then we must object to it, your Honor.

And I again ask for an opportunity to question the witness before your Honor rules on admissibility.

Mr. Kelaher: Your Honor, just so there will be no mis-

understanding about it, it would be sort of ridiculous
1048 to offer the survey if I just wanted to show it was
made. I am offering the survey as proof of the facts stated therein. Its trustworthiness has been established; it was prepared by the Manager of the Sales Research Section of the Atlantic Refining Company. He has testified as to the sound procedures used. It reflects the preference of Atlantic dealers for TBA at that time, and I would like to call your Honor's attention to Commission Exhibit 136-A through D. This is an inter-office letter from Mr. S. J. Heidman, who at that time was Atlantic's manager of TBA sales, to D. T. Colley of Atlantic, who was and is Vice President of that company, and the subject matter is: "TBA conversion to Firestone and Goodyear programs," and it is stated right in the letter all the steps that were taken before Atlantic decided to convert to the Firestone and Goodyear TBA programs. And among such steps I would like to read you a paragraph, the second full paragraph of 136-B.

"Having established the fact that our TBA program was somewhat unique among oil companies, we then employed an outside agency to sample opinions of both Atlantic dealers and competitive dealers in our area. The important finding from this survey was that our present program was far from flawless and that there was a great deal of dissatisfaction with it among our dealers. The dealers of other marketers appeared more content with the TBA programs that were available to them."

It is very clear, your Honor, that Atlantic placed
1049 great emphasis on this report. We think we are
entitled to have that report in the record. It certainly is an important factor in this case. It is relevant; it is material; it is competent. And we think that we now have the witness here; counsel for either respondent has him available for cross-examination, and we see no reason why it shouldn't be admitted.

Mr. Mason: If your Honor please, I think this document is wholly inadmissible as to Goodyear. A minimum requirement to qualify such a document which purports to be a survey, is that the basic material be available, and here the witness says that it is unavailable. So that so far as we are concerned, we have no way of checking the authenticity and soundness of the procedures by which this document was arrived at.

Mr. Ballard: Your Honor, one point.

Mr. Kelaher, may I see that exhibit again?

(Document handed to counsel.)

Mr. Ballard: If this document is being offered in substantiation of the statements Mr. Kelaher read, which were to show that the present program was far from flawless and there was a great deal of dissatisfaction with it among Atlantic dealers, by the present program they meant, of course, the program in 1949, then while it is cumulative evidence, we would not object to it, if that is what Mr. Kelaher says it shows.

1050 I might point out that as a perfectly good example of the fact that this document is an ambiguous one, those statements are somewhat difficult to reconcile with the statements on the face of the document itself. It appears that each person who reads this document can draw different conclusions from it, and I submit, your Honor, that it is not reliable evidence of the facts stated therein.

Mr. Kelaher: Now, your Honor, it was considered reliable evidence by Atlantic Refining Company when it converted to the Goodyear TBA program, and I think the record also shows they began this exploration of marketing alternatives prior to 1949.

Mr. Ballard: Will you stipulate with me that this document shows that Atlantic dealers were far from satisfied and that the program they were then using was far from flawless?

Mr. Kelaher: I am offering the document in evidence to speak for itself. You ask me to stipulate to something which is meaningless when we have the survey here.

Mr. Mason: Are you limiting your offer to Atlantic?

Mr. Kelaher: I am not.

Mr. Mason: Obviously the considerations of Goodyear are quite different from anything Mr. Kelaher mentioned.

Hearing Examiner Kolb: It looks to me as though the survey is exact and has been properly taken. If the
1051 underlying data is not available, it would seem to me that it would be competent to go in after cross examination of the witness. Atlantic had the survey made, they apparently had at one time these documents available; they know what it is all about, and I can't see how Atlantic can make an objection to it on the basis of the underlying data not being available.

Mr. Ballard: If your Honor please, if your feelings are as expressed, then I would like an opportunity to examine this witness in the matter of Voir Dire, before you finally rule.

Hearing Examiner Kolb: Yes, I intended to do that. I was just making those remarks as to my reaction at the present time. I am not ruling on the question. You may proceed.

Mr. Mason: Is your Honor ruling on the Goodyear objection?

Hearing Examiner Kolb: I don't know yet how much of the data is available.

Mr. Mason: I submit it is plain it hasn't been qualified yet.

Hearing Examiner Kolb: He said he has the data available for various localities.

Mr. Mason: Yes, but on the face of the document it says it covers the entire Atlantic marketing area
1051A and it has been testified that only a portion of the

data exists and the witness testified that the records of the company making the survey have been destroyed and about 85 percent of the underlying material has been destroyed. Now that means that the data is not available for checking by Goodyear.

1052 *Voir Dire Examination by Mr. Ballard.*

Q. Mr. McIntire, with respect to this study, Commission's exhibit 101-A through Z-20, do you have in your file a copy of the questionnaire that was used in preparing this study?

A. Yes, sir.

Q. May I see that, please?

A. Yes, sir. (Handing.)

Mr. Ballard: I ask that the reporter mark this document as Respondent's exhibit A-5 for identification.

(The document referred to was marked Respondent's exhibit A-5 for identification.)

By Mr. Ballard:

Q. Now I refer you, sir, to the first page of this questionnaire, and ask you if those are the questions that were used in deciding whether the particular service station was a promotable dealer?

A. Some were. The one that says "Lubrication facilities," this was designed to screen out stations that the interviewers might erroneously include.

We had told them, evidently, from the front of this—I am sorry, the instructions aren't available—we wanted to get promotable dealers and one definition would be that he could provide lubrication facilities. So if the questionnaire had come in with no lubrication facilities, it

1053 would have been thrown out as a non-promotable dealer. The checking of the lubrication facilities is a sort of a check on the data here. Similarly, stations

doing under 10,000 gallons of gasoline a year obviously is not what the oil company would call a promotable station, therefore we weren't particularly interested in their attitudes or opinions.

Q. Now if a man checked "yes" on lubrication facilities and showed over 10,000 gallons of gasoline a year, you would accept him as a promotable dealer, regardless of whether he owned the station or leased the station. Is that right?

A. Oh, yes; well, I am not sure whether it was 10,000 or 25,000 that we used as our final break on promotable, but the substance of your question—it didn't make any difference whether he owned or leased the station.

Q. Did it make any difference, if he leased it, whether he leased it from the oil company, from a distributor, or some other landlord?

A. Not a bit.

Q. You accepted all of those?

A. Yes. As far as defining a promotable dealer.

Q. And did it make any difference whether he purchased—I am now on this questionnaire—purchased from the oil company who owned the brand name, through a distributor, from an agent, from a wholesale dealer, or some other source?

A. No. That may sound confusing, but when we
1054 originally planned this survey, we had hoped to spend considerably more money and have a much much bigger sample, in which case we could have controlled all these various breaks and cross sample their answers, but we didn't have that, so a lot of this was never usable.

Q. So when this survey refers to petroleum supplier, that could mean the oil company?

A. Yes, sir.

Q. It could mean a distributor?

A. Yes, sir.

Q. It could mean an agent?

A. Yes, sir.

Q. It could mean a wholesale dealer?

A. Surely.

Q. And if there are any other sources, it could mean those?

A. Anybody who supplied them with petroleum products.

Q. Now, turning for a moment to—

Hearing Examiner Kolb: (Interposing.) Before you get away from that, if a man answered no on lubrication, but did purchase more than 10,000 gallons of gas, was that thrown out?

The Witness: I didn't understand you, sir.

Hearing Examiner Kolb: You were telling about lubricating facilities. Where the party would answer no, as to having lubricating facilities, but does purchase more 1055 than 10,000 gallons of gasoline, would that be used?

The Witness: He would not be considered a promotable dealer.

Hearing Examiner Kolb: Regardless of the amount of gasoline he might use?

The Witness: Yes, sir.

By Mr. Ballard:

Q. Now, Mr. McIntire, there were instructions that went along with this questionnaire?

A. Yes there were instructions that went along with it.

Q. Were they written instructions?

A. They were written instructions, written and prepared by Stewart Dougall in conjunction with myself, because the interviewers were employees of Stewart Dougall.

Q. Did you search your files for copies of those instructions?

A. Yes. See, when I left, first of all remember I left

the department and I think it has had three different managers since I left, and each one keeps different files and different systems, so what I did was contact the new present manager who assured me he had searched his files and there is no data relative to this survey there.

Q. Were the interviewers given oral instructions as well?

A. No, sir.

Q. They were given written instructions and the questionnaires?

A. That is correct.

1056 Q. Now turning to question 1 on page 1 of the report itself, that is, Commission's exhibit 101-C, you see at the top of the page a question which is in the form of a question.

Was that the question the interviewers were supposed to ask the station operator? Were those the words that they were supposed to use in asking the station operator the question?

A. No, sir.

Q. According to the questionnaire, what were those words?

Hearing Examiner Kolb: I thought this document was the questionnaire.

Mr. Ballard: The fact is that in preparing the report, that is to say—I don't want to make more of a mystery than this is—in preparing the report they used the form of questions, but those are not the questions that appear on the questionnaire. So in each case, you have to go back to the questionnaire and see what the question was, to find out the purport of the answers.

It is made even more difficult by the fact that they didn't follow the same numbering.

What I am trying to ask him is that the question which appears as question 1 of the report itself, the actual Com-

mission exhibit, is not the same as the question which appears on the questionnaire.

I wanted to call that to your Honor's attention.

Mr. Kelaher: If I am looking at the same thing,
1057 Mr. Ballard is looking at, I can't see any great difference.

Mr. Ballard: Your Honor, the differences may not appear great in all cases. I think, as you progress, there may be some that are of more importance. But I want to call the witness' attention to the introductory remark, which the interviewer was supposed to make.

The Witness: The interviewer would read all of this and there was a multiple choice of three and a reason, so that multiple choice 1 was matched with its reason as 1, and the next multiple choice with its reasons, as 2, and the further along you go, the more the spread between correlating questions and answers, but this was only prepared for our internal use, and therefore at the time it didn't appear very important. It appears rather important at this point, if you are trying to understand it, but it didn't eight years ago.

By Mr. Ballard:

Q. Now you asked the dealer this question; you asked the station operator—at least you hoped your investigators asked the station operator this question: "Assume for the moment that you did not carry a line of tires, batteries and accessories and you were just about to put in a line of such merchandise. Under such circumstances, do you think you would prefer to buy all your major TBA items from one source or from several sources?"

A. That is right.

1058 Q. The operator was then given an opportunity to check "one", "several", or "Don't know." Then the investigator was supposed to ask for answers to this question: "Why?" and those I take it were free answers?

A. That is correct.

Q. In other words, no answer was suggested to the operator there?

A. No, sir. They couldn't, because you were using women interviewers, who wouldn't have the faintest—at least I am sure the majority of them wouldn't—have any knowledge about such things.

Hearing Examiner Kolb: Where is your last question transferred into your survey?

Mr. Ballard: I am coming to that. The answers to the "Why" question appear I believe—I hope your Honor will pardon a certain amount of leading—but I believe they appear do they not on page 2?

The Witness: No, they appear—

By Mr. Ballard:

Q. The answer to the "Why" question.

A. Oh, yes, they appear on 2 and 3.

Q. Pages 2 and 3 of the report itself, is that right?

A. Yes.

Q. And 2 is Commission's exhibit 101-D and 3 is 101-E?

A. That is a continuation of the same thing. May I explain?

1059 Mr. Ballard: Please do.

Mr. Kelaher: I think it might be helpful to let the witness explain this.

The Witness: This question was posed, just as Mr. Ballard said. I pose this question to this gentleman here and he says "one source." You check "one source," and you say "Why?". And he writes it in. The interviewer writes in what he says.

Now he would appear on page 1, under the caption "Prefer one source for TBA," but his "Why" would appear on page 2, under the caption "why do you prefer one source for your TBA (asked only of those making this preference in question 1).

Now the next gentleman says "Several." He would also appear on page 1, but down under the "Prefer several," but his "why" would appear over here on page 4 under the caption, Question 2(b), "Why do you prefer several sources? (asked only of those making this preference in 1).

Do you follow me?

Mr. Kelaher: That is very clear.

By Mr. Ballard:

Q. Now, Mr. McIntire, turning to page 2 of the report, Exhibit 101-D, this page purports to give the answers as to why those who preferred one source had that preference.

A. That is correct.

1060 Q. Now for instance the second column there headed "2" says "Price." I take it that you classified the various answers into these categories, is that right?

A. That is correct.

Q. If the man said—mentioned price protection, where would that be?

A. That would be in "Price."

Q. If he mentioned "long margin," where would that be?

A. "Price."

Q. If he mentioned "low price to the consumer"?

A. "Price."

Q. If he mentioned "quantity discounts," where would that be?

A. That would be "price."

Q. Now if he mentioned "guarantee by the supplier," where would that be?

A. That would be "guarantee."

Q. Suppose he mentioned guarantee by the manufacturer of the tires?

A. That would still be under "guarantee."

Q. I suppose it would be a variety of reasons that might be catalogued under "service," is that right?

A. Oh—

Mr. Kelaher: Objection, your Honor. I can appreciate Mr. Ballard's trying to expedite the matter, but I think on some questions it might be helpful if he just asked
1061 the witness what went under those categories.

Mr. Ballard: I will accept your recommendation, Mr. Kelaher.

By Mr. Ballard:

Q. Would you state, Mr. Witness, what is included under the category "service," if you know?

A. Well, I will try to remember. It is quite a while ago and I haven't done this kind of thing for a long time. Certainly speedy delivery. Satisfaction billing in that the billing came out and they were the wrong bills and they were always in hassels back and forth with the supplier. Availability of merchandise, close by, which is more or less a corollary of delivery.

You see, these people, especially being in different cities and different nationalities, and what-not, sometimes they say the same thing in a variety of ways. And then it becomes as any type of survey of this nature, somebody has to arbitrarily sit down and say this is apples and this is oranges, and this is wrong and that is what we did.

By Mr. Ballard:

Q. The only way we could check your divisions into apples and oranges would be to examine the original questionnaires?

A. That is correct. The rule was, I know, that anything that said "guarantee", that is clean, and anything that has to do with money, whether it be margins, discounts, or what, that is "price."

1062 Now where we differentiated between for example "acceptance" and "quality," which are more or less synonymous, I couldn't tell you. "Service" would include assistance, promotional assistance as distinguished from advertising.

Q. Now I don't wish to prolong this unduly. It must be apparent that this same line of questioning could be repeated as to almost every question here.

But now I would like to call your attention to question number 4 of the report, which appears on page 7 of the report, Commission's exhibit 101-I. The questionnaire asks "What brand of tires would you prefer"—

Hearing Examiner Kolb: (Interposing.) Which document are you on now?

Mr. Ballard: The report, sir, itself, exhibit 101-I, page 7.

Mr. Dias: What is the comparable question?

Mr. Ballard: I think it is 3-A.

The Witness: 3(a), yes.

Mr. Ballard: Question 4 on the report shows the answers to question 3(a) on the questionnaire form. I am sorry, but it does.

By Mr. Ballard:

Q. Now the question that was asked—or at least that you believe was actually asked, was the one on the questionnaire under 3(a), is that right?

1063 A. That is correct.

Q. Would you read that question?

A. "Assuming that you are about to put in a line of TBA and forgetting your present commitments, which of the following named brands of tires (these represent about 4 out of every 5 tires sold) would you prefer to sell?" And then there is a list of Firestone, Goodyear, Lee, Goodrich, U.S., General, Kelly, Seiberling, Your Oil Company's Brand, and other. (Specify.)

And that, regardless of what they said, had to fall into something here. That pretty well covers it, doesn't it?

Then the next part of the question "Why would you prefer this brand?"

Q. Now in your capacity as head of this research section, did you think that that question was enough to distinguish the brand of tire from the method of selling same?

A. No, they are bound up together.

Q. In other words, if a man was handling Lee tires or you knew the method of selling and buying Lee tires, and expressed a preference for Lee tires, do you believe that his preference was for the brand or for buying pattern, or for both?

A. I don't know. That wasn't part of the reason for having this study made. We were trying to find out, as it said in the front, the attitude and opinion of our dealers.

Mr. Kelaher: These figures are on 101.

1064 By Mr. Ballard:

Q. Now keeping in mind the question, would that question—would the answers to that question be the foundation for your first conclusion on the first page of this survey? I refer to the conclusion that reads as follows: "A preference among Atlantic's dealers for Lee tires and Exide batteries".

A. That is satisfaction. That is very important.

In other words, that says—we felt our dealers—and of course all things are relative, but we felt our dealers were satisfied with what they had at that time.

Q. By "what they had" do you mean the brand or the buying pattern?

A. I mean both, because they could buy Lee tires from Lee's branch stores had they preferred Lee and not liked us to distribute Lee. There were Lee stores in most of

the major cities, and had been since the days I was a salesman back before the war, who sold Lee tires to service stations, garages, and so forth, just as we were selling them to our dealers.

Q. In your view, does the answer show that dealers were satisfied with their way of buying or with the brand, or both?

A. Well, both.

Mr. Kelaher: Your Honor, he has answered the question two or three times. I think it is pretty clear by this time they preferred Lee tires.

Mr. Ballard: It seems they preferred both.

1065 The Witness: You must put it together with questions 8 and 6. Question 4 says what brand do you prefer; question 6 says "What do you sell?" and question 8 says, "From what type of supplier would you prefer to buy?" and then on to question 10, and on a survey of this type, to get a conclusion, you have to put the various pieces together.

Mr. Kelaher: It still winds up Lee tires and Exide batteries, does it not?

Mr. Ballard: Are you questioning the witness?

Mr. Kelaher: I am just trying to follow you, hopping around and I hope you will forgive me.

Mr. Ballard: I am trying not to, any more than is necessary.

Mr. Kelaher: I know you are.

By Mr. Ballard:

Q Turning now to question 7 in the report, which is Commission's exhibit for identification 101-M, the corresponding question on the questionnaire, I believe, is number 5(a), is that not right?

A. That is right.

Q. Check and be sure.

A. Yes.

Q. Now would you explain the circumstances under which the question was to be asked and the full question? In other words, would you tell us how that question fits into the questionnaire?

1066 Mr. Kelaher: Are you referring to 5(a)?

Mr. Ballard: Questionnaire 5(a).

The Witness: And question 7 in the answers. Well, 5(a) couldn't be asked unless you asked 4. 4 says, "What brand of tires do you carry now?" And you are given two places, (1) and (2).

And then it says, "If one or more brands are not the same as preferred," you ask them "Why don't you carry your preferred brand?"

But if one or more of the tires which they carry are the same as their preferred brand, you don't ask them. They become the "I do's."

By Mr. Ballard:

Q. What does the word "exclusively" have to do with it? I see that on question 5(a).

A. I don't know. I can't remember that much of the detail that far back.

Q. Was the investigator supposed to say "Why don't you carry your preferred brand," or was he supposed to say "Why don't you carry your preferred brand exclusively."?

A. Frankly, I couldn't tell you without the instructions because up here it says "If one or more are the same," then this was to be asked. Now whether we had in the instructions a break between the one only and the one or more, I don't know.

1067 Q. If a man had showed a preference for let's say Firestone tires, and he showed in number 4 that he was carrying both Firestone tires and Kelly tires,

don't you think the question for 5(a) would be "Why don't you carry Firestone tires exclusively"?

A. I don't know.

Mr. Kelaher: Objection, your Honor. I think that is speculative.

Hearing Examiner Kolb: I think we are getting into speculation as to why these questions on this questionnaire were drawn. Certainly conclusions were reached from that questionnaire which became a part of the survey.

Mr. Mason: Which we don't have.

By Mr. Ballard:

Q. Now referring then to the reported answers, the answers to this question 7 in your report, you have there a category entitled "Obligation to Petroleum Supplier." Would you state to the best of your recollection what kinds of answers you might have put under that?

A. This questionnaire was designed and the interpretation of it—this I do remember—to show us as unfavorably as possible. In other words, if there was anything on the shady zone, it was thrown against us, because we were looking for things which we should correct in order to improve, if necessary our relationship with our dealers.

Therefore, anything that implied any relationship 1068 whatsoever, be it friendly, contractual, or anything else, between the company and the dealer, which induced him to buy, was arbitrarily categorized "Obligations to Petroleum Supplier," and that gave you a piece there and of course competitive dealers were coded the same way, so your relative measurement remained true, but any inferences of corrected measures needed would be heavily weighted against us.

Does that explain it?

By Mr. Ballard:

Q. I think it does. If a dealer stated that he had a relationship—say he was a relation of his petroleum supplier's dealer, would that be—

A. What is that?

Q. If he was the brother-in-law of his petroleum supplier's salesman, would that be "Obligation to Petroleum Supplier"?

A. I don't recall we ever had one quite like that, but if he said "I like the salesman," or "I like the company," or "I always buy everything from the company," that was put in that category.

Q. That was put in "Obligation to Petroleum Supplier"?

A. Yes.

You must remember this thing was designed for our internal usage and not designed for this particular type of thing or obviously it would have been—I mean by
1069 that the questions and answers at least would have carried the same numbers, so we wouldn't have to go back and fourth.

Q. Let me take one more question, and then I will stop. I am sure that my point has been gotten across.

Will you turn to the next page, which is page 12 of the report, Commission's exhibit 101-N. Now the question on that I think is 6(a) in the questionnaire?

A. Yes.

Q. Would you read the question and the questionnaire for us?

A. "Still assuming you were about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your tires?

"For example, to name a few types, there are: Your petroleum supplier; the tire manufacturer; the independ-

ent distributor of tires; another dealer acting as a supplier; an automotive jobber; a wagon peddler; other (Describe)".

In case they mentioned one that didn't fall into that category, they had the "other". And then "No preference."

Q. Now do you remember whether your instructions contained any definition of "buy", as, for instance, was a man instructed to consider who was selling, who was taking the orders, who was making delivery, who was sending the bills?

A. The interviewer?

Q. Yes. Was he instructed as to which of those 1070 was the man from whom the dealer was buying?

A. I doubt it. I don't remember.

Q. In other words, the dealer could use his choice as to who was selling and from whom he was buying?

A. Yes.

Mr. Ballard: I don't think I have any further questions, your Honor.

By Mr. Mason:

Q. Mr. McIntire, if some third person were asked to check the validity and reliability of this study, what material would they have to have before them to make such a check?

A. Well, you would have to have the questionnaires and I suppose, number two, the names and addresses of the people that filled them out, the people who were interviewed, I should say.

Q. Would you need to have this instruction sheet that went out with the questionnaire?

A. Sure, you would have to have the whole package, if you were out to spot check it, I imagine, leading up to it. If you were out to spot check it, you would have to have it, and those things were available up until — Stewart

Dougall, who would have had the names and addresses, destroy their files after I think it is five years, so up until 1952 that material was available.

Q. If you had let's say I were to hire, on Good-
1071 year's behalf, a market research firm to check whether this was a sound study, what kind of material would they ask for, from your experience in this field?

A. They would ask you for the questionnaires.

Q. And the whole—

A. (Interposing.) And the instructions you gave to the interviewer.

Q. Are those questionnaires available?

A. I understand, from the thing read and that is the way I was told it, that there are about five cities out of the 40-odd of which some part of the questionnaires are available. Of course it was a mass of data at the time that was taken.

Q. Would that remnant be enough to check the survey?

A. Oh, no. If you are going to check a survey, you have all—just as this survey says, you need a random sample. You have to set up some kind of a system. You would have to take a cross sample, in order to get a cross section, and that is just plain statistics.

Q. So that there is no way you know of now that the accuracy of this survey could be checked by a third party?

A. No, sir.

Mr. Mason: Your Honor, I renew Goodyear's objection to the admissibility of this document in evidence as to the truth of the matter asserted which I understand to be the offer of the attorney for the complaint.

1072 Mr. Kelaher: Your Honor, in that connection, I think the soundness of the survey has been amply demonstrated by examination of the witness. The entire quesitonnaire is available; this man has demonstrated he is a very competent analyst; and it seems to me there shouldn't be any question about his trustworthiness.

Mr. Mason: I think his testimony already indicates the fact that it is very dubious whether this data set down here actually reflected underlying work material and I think under those circumstances it would be highly prejudicial to Goodyear to admit this document into evidence.

Hearing Examiner Kolb: Well, as far as I am concerned, I don't see any reason why it shouldn't be admitted. This document has been prepared by Atlantic and the analyst has made his analyzation.

Of course now he brings some question about it which I think are too late now to sufficiently affect the document.

I will admit it so far as Atlantic is concerned, subject to motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 101-A through Z-20 for identification, was received in evidence.)

Mr. Mason: Could I have the Hearing Examiner's statement read, preceding his ruling?

(Statement read.)

1073 Mr. Mason: I take it the suggestion that these questions come too late doesn't apply to Goodyear?

Hearing Examiner Kolb: Well, I said subject to strike on the part of Goodyear. I am not impressed by the analyst questioning his own analyzation at this time in this proceeding.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. The questionnaire will be received in evidence as Commission's exhibit 101-Z-21 through 27.

Mr. Kelaher: I think the record should note that this document was previously identified as Respondent's exhibit A-5.

Hearing Examiner Kolb: All right.

(The document referred to, heretofore marked Respondent's Exhibit A-5 for identification, was re-marked COMMISSION'S EXHIBIT 101-Z-21 through 27, and received in evidence.)

Hearing Examiner Kolb: Anything further?

Mr. Kelaher: We have nothing further today, your Honor.

Hearing Examiner Kolb: We will adjourn until 9 tomorrow morning.

* * * * *

1075 Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: I will call Mr. Drennan.

ROBERT B. DRENNAN was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your full name and business address?

A. Robert B. Drennan, Harris & Leonard, 1301 West 9th Street.

Q. How long have you been employed by Harris & Leonard?

A. Approximately four years.

Q. In what capacity?

A. As a salesman.

Q. Were you a salesman for the full four years?

A. That's right.

Q. Will you tell us what your sales territory is?

A. Oh, it consists of Media territory, MacDade Boulevard, and over in West Chester Pike and Upper Darby.

Q. Is any part of your territory in the State of Delaware?

A. No, sir.

Q. What type accounts do you solicit?

A. Mostly gas stations and new car dealers, a few commercial.

1076 Q. How often do you call on those accounts?

A. Twice a week.

Q. Are there any Atlantic service stations in your sales territory?

A. Yes, sir.

Q. Can you tell us how many?

A. There are quite a few. I call on 20 of them.

Q. Are there more than 20?

A. I would say so.

Q. Have you ever called on those others?

A. Yes, sir.

Q. When and how often?

A. Well, when I first took the territory over and when there is a new man goes in I call on him, and I can't do any business with him in recapping, then I don't bother any more.

Q. These 20 that you call on, do you solicit their business for new tires, recapping and batteries?

A. Yes, sir.

Q. What type business do you do with them?

A. Well, I do all 75 percent of their recapping, and a few of them on new tires.

Q. 75 percent. Will you explain that, please?

A. I would say 75 percent of their recapping. In other words, they are sending some of it out to somebody else; I am not getting all of it.

1077 Q. I see. Now can you name some of those accounts that you sell to?

A. Yes, sir. Joe Castagna; Hap Little's; Clover Leaf Service; Lloyd Ammon; Jimmy Matthews; Don McLaren; Vern Carron; Floyd Mohney; Edward Sprague; F. J. Bal-

loran; Ed Zola; Bill McKee; Parks & Dawn; Russell's Atlantic; Ted Riter's Atlantic; Earl Shank's Atlantic; Young's Atlantic Service; Terence Atlantic; Tim Cappeli; and Bill Way.

Q. Mr. Drennan, now you have listed the Atlantic stations to which you sell, is that correct?

A. That is right, sir.

Q. And will you tell us the type business you do with each of them? Do they all buy about the same thing?

A. Yes, sir.

Q. Will you please tell us what they buy?

A. Well, they buy all their recapping from me, as I said, about 75 per cent of it, and a few of them buy new tires. Now and then.

Q. Sir?

A. Now and then, an occasional tube.

Q. Can you point out those that buy a new tire or tube occasionally?

A. Yes, sir. Vern Carron, in Springfield has bought tires from me. And Russell Smedley, on Marshall Road, in Drexel Hill, Russell's, has bought tires.

1078 Q. Are there any others?

A. Clover Leaf, he has bought tires from me. And Hap Little, he has bought tires from me. Balloran bought tires from me. Earl Shank; Young's Atlantic; and Terence's Atlantic.

Q. Is that all?

A. Yes, sir.

Q. Now those that buy the tires from you, did they buy on a stocking basis?

A. No, sir.

Q. How about batteries, do they buy batteries from you?

A. No, sir.

Q. Did any of these stations buy your batteries?

A. Well, I would say Clover Leaf now and then might have bought a battery from me.

Q. Any other stations?

A. No, sir.

Q. Did you offer them batteries, or offer to sell batteries to each of these stations?

A. Yes, sir.

Q. How often do you call on them?

A. Twice a week.

Q. Do these stations carry tires, batteries and accessories, all of them?

A. Yes, sir.

Q. Do you recall the type or brand that is adver-
1079 tised on or about the stations?

A. Yes, sir. Goodyear.

Q. Are there any exceptions, any in there that do not carry Goodyear?

A. Yes, sir, there is. Hap Little carries Firestone. Clover Leaf, he carries U. S. and Goodyear. And Earl Shank, he carries anything. Parks and Dawn, it is Lee. Young's Atlantic, it is Lee. And Terence's, why, he carries anything, Goodyear or U. S. He don't stock too many.

Q. Take Clover Leaf. Is that an Atlantic station?

A. Yes, sir.

Q. Does that operator own his own property?

A. No, he is an independent. He leases the property from somebody else.

Q. How about this Little's?

A. He owns his own property.

Q. How about Parks and Dawn?

A. He owns his own property.

Q. Earl Shank's?

A. He owns his own property.

Q. And Young's Atlantic?

A. Well, he is renting from somebody else.

Q. Other than Atlantic, you mean?

A. Yes, sir.

Q. How about Terence?

1080 A. He is renting from somebody else other than Atlantic.

Q. Now you stated that you have tried to sell them all new tires from time to time?

A. Yes, sir.

Q. Has any operator given you any reason why he wouldn't buy your tires?

A. Well, yes.

Q. Who, which operator?

A. Well, Floyd Mohney, Ed Sprague.

Q. Is that all?

A. Yes, sir.

Q. What did Floyd Mohney tell you, and when?

A. Well, he told me, he said, "After all," he said, "You can't bite the hand that feeds you."

By Mr. Dias:

Q. What else did he say?

A. Well, being as he is leasing from Atlantic, why, he thought he should handle their product.

Q. When was it he told you that?

A. About a year ago.

Q. What did Ed Sprague tell you? And when?

1081 A. Well, as a matter of fact, he told me about two weeks ago. He said, "After all, I am leasing from Atlantic, it would look bad if I bought a set of U. S. Royals off you and put it on the credit card for 30, 60 and 90 days."

Q. Are there any others that made statements to you?

A. Well, Smedley, I talked to Russell Smedley, I talked to him on tubes, and he stated that it wouldn't look right

if I had U. S. Royal tubes sitting on the rack where I should be having Goodyear 'cause that is what he handled.

Q. When did he tell you that?

A. About a year ago.

Q. You mentioned that you also sold to Balloran?

A. Yes, sir.

Q. Hasn't Balloran left the station—what was the address of that station?

A. West Chester Pike and Newtown Road, Newtown Square.

Q. When did you start selling him?

A. When I first went with Harris & Leonard, approximately 4 years ago.

Q. What did you sell to him at that time?

A. I occasionally sold him a U. S. tire; he would call for it and I would run it out. And I did all his recapping.

Q. And did you continue to sell him all the time he was in the station?

A. Up until a few months ago, yes, sir.

1082 Q. When was that, approximately?

A. I would say maybe February, March. Back in that time.

Q. Did he leave his station at that time?

A. No, sir, he left the station about a month and a half or 2 months ago.

Q. Did he give you any reason why he discontinued purchasing from you?

A. Well, he said he wasn't carrying enough of his own stock on hand, and that he had to stock up on his own.

Q. Is that all he told you?

A. Yes, sir.

Q. Do you know who the Goodyear distributor is in your district, your territory?

A. Well, there is two of them. Ed Parris is one of them, and Miller, I think it is Ernie Miller.

Q. Do you know whether either of those gentlemen have recapping facilities?

A. No, sir, they don't. I know Ed Parris doesn't. I wouldn't say on Ernie Miller.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Ballard.

Q. Mr. Drennan, this list that you have furnished us was made up from your records?

1083 A. Yes, sir.

Q. And this constitutes all the Atlantic stations who were your regular customers?

A. Yes, sir.

Q. Harris and Leonard's specialty is recapping, isn't it?

A. That is right, 99 percent of our business is recapping.

Q. And your biggest competitors are C. A. Powers—

A. In that territory, yes.

Q. The Lanza people don't get down that way very much, do they?

A. Who?

Q. Are you familiar with that company?

A. I never heard of them.

Q. C. A. Powers are the biggest competitor of yours then?

A. Yes.

Q. Between you, you do most of the recapping business in your territory?

A. Yes, sir.

Q. Now are you pretty familiar with Mr. Parris?

A. I don't know him personally, but I meet him occasionally.

Q. I think he offers recapping, doesn't he?

A. Yes, sir.

Q. I suppose he arranges to have that done by what? Would it be Goodyear stores?

A. Goodyear in Philadelphia.

1084 Q. They have a plant here in Philadelphia?

A. That is right.

Q. I suppose he advertises that as factory recapping?

A. Yes, sir.

Q. And he offers that to the same Atlantic dealers that you do?

A. Yes.

Q. And do they deal with you?

A. Yes, I can give them quicker service. In other words, if they call me up at 8 o'clock in the morning, I can go out and pick the tires up and have them back the same day.

Q. Miller offers the same deal to his dealers, does he?

A. I imagine so.

Q. And I forget, what kind of batteries do you handle?

A. U. S.

Q. U. S. batteries?

A. That's right. It has our own U. S. name on it, made by National Carbide.

Q. What is your price on those batteries? What quantities do you offer them at?

A. Not any quantities. I sell them at distributor billing.

Q. Do you ever make a concession below that price?

A. No, sir.

Q. Ever put on a special deal of them?

A. No, sir, distributor billing is all.

1085 Q. You don't have this baker's dozen deal?

A. No, sir.

Q. Did you ever hear of that?

A. Yes, sir.

Q. I think—is it Miller or Parris that offers that?

A. I don't know.

Q. One free for every 15 or something like that?

A. Yes, something like that.

Q. You don't offer that?

A. No, sir.

Q. This fellow, Bill Way, he is one of your customers, isn't he?

A. Yes, sir.

Q. Do you know him pretty well?

A. Well, as a customer.

Q. He used to be an Atlantic salesman, I think?

A. Yes, sir, he did.

Q. I think he had about the same territory where his station is, didn't he?

A. Yes, sir.

Mr. Ballard: No further questions.

Mr. Mason: No questions.

Redirect Examination by Mr. Dias.

Q. Mr. Drennan, on that battery purchases, do you
1086 have any customers that purchase batteries on a stocking basis, whether Atlantic or anything else?

A. No, sir.

Mr. Dias: That is all.

Hearing Examiner Kolb: That is all, Mr. Drennen.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

• • • • •

1087 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Lingenfelser to the stand, please.

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964

No. 292

Office-Supreme Court, U.S.
FILED
JUL 17 1964
JOHN F. DAVIS, CLERK

VOL. II, pp. 811 to 1602

In the

United States Court of Appeals

For the Seventh Circuit

No. 13340

THE ATLANTIC REFINING COMPANY, *Petitioner,* vs. FEDERAL TRADE COMMISSION, *Respondent.*	Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE CUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

Summary of Proceedings Below..... 1
Amended Complaint 5
Answer of Atlantic to Complaint as Amended..... 13
Answer of Goodyear to Complaint as Amended..... 22
Order Sustaining Interlocutory Appeal..... 29
Motion of Atlantic re Issues and Evidence, etc. 31
Answer to Motion of Atlantic, etc. 34
Order Denying Motion, etc. 36
Order on Motion to Strike Evidence, etc. 38
Initial Decision 41
Opinion of the Commission..... 61
Final Order 131
Petition for Review..... 135

TRANSCRIPT OF PROCEEDINGS.

Admissions of Respondents..... 145
Documents marked for identification..... 149
Colloquy 151, 614,1178, 2303
Stipulation re testimony..... 266
Stipulation re Atlantic testimony..... 296
Stipulation re Goodyear testimony..... 322
Data re three marketing areas..... 332
Stipulation re Goodyear testimony..... 392
Offer of Exhibits..... 477
Stipulation re Warren and Hunterdone Counties in New Jersey 2276
Stipulation re Gay testimony.....2277
Statement of Crawford Bryant.....2281

Witnesses for the Commission.

Testimony of:

Adams, E. Scott..... 875
Adams, William E. 892
Balloran, Francis J. 645
Best, Rolland C. 1116
Blumenthal, David B. 209
Booz, Elmer H., Jr. 631
Brown, Richard 952
Chambers, John 163
Colby, William 745
Connell, Conrad 588
Dashper, Herbert L. 969
Drennan, Robert B. 802
Duboff, Myer 412
Galle, John 924
Govoruhk, Nicholas 1046
Ferguson, Richard 754
Franks, William Lee 664
Freland, Edgar D., Jr. 1148
Hawes, Harry Noble 935
Hayes, Sherman 740
Heald, Felix B. 677
Heller, Edward C. 378
Hill, George J., Jr. 367
Hinders[illegible]d, W. F. 450, 565
Hoffman, Jack 197
Huether, Lewis A. 1149
Iacona, Aniello L. 514
Johnson, Charles H. 1014
Johnson, Tyler L. 617
Kelly, James R. 1054
Kernaghan, Thomas J. 545

Kevis, Douglas W. 215
Lang, Elmer 1128
Lanza, Michael Thomas 724
Lingenfelser, Frederick 811
Marabella, Joseph 690
Matthews, James 433, 481
McCandless, Robert H. 573
McIntyre, James L. 776
McMaster, Joseph B. 1054
Migan, John J. 1070
Myers, James M., Jr. 822
Norris, Oster 1065
Parag, James 984
Pollock, Isidore Jack 536
Sabo, Carl 845
Sander, Homer August 1174
Savage, Eugene 1076
Scheiner, Joseph 1151
Siewierski, James W. 2311
Stein, Morris 859
Sullivan, Thomas J., Jr. 900
Vick, John J. 553
Walker, George Stanley Drew 768
Wetzel, Glenn L. 224

WITNESSES FOR RESPONDENT.

Testimony of:

Buongiorne, Frank R. 1546
Carlson, Robert O. 1823
Cary, Reuben 2123
Colley, Dwight T. 2283
Connelly, Joseph M. 2089
Cooley, Russel E. 1519
Detwiler, Charles K. 2018
Eckhardt, John A. 1347

Eckhardt, Tom 1355
Elko, Donald 1875
Elleni, Albert 1404
Foster, George F. 1396
Gaestel, Wilbur D. 1750
Gloth, Israel 1963
Godino, Alfred 1861
Grossman, Sam 1675
Hathaway, Holland M. 1190, 1414, 1491, 2327
Hayes, Thomas A., Jr. 2050
Jones, Thomas E. 1907
Klein, Robert 2075
Koehler, Fred 1335
Landis, Norman 1372
Leonard, William Henry 1252
Lott, Charles Henry 1708
Lozanski, Adam 1320
Luongo, Rudolph N. 1899
Mann, Isadore 1888
Mapes, August 1727
Marino, Joseph A. 1687
Maseyko, George Paul 1603
McCarthy, Harold F. 1979
McKaig, Charles G. 1229
Molinaro, Dominic., Jr. 2003
Mulholland, Richard G. 2234
Munch, Edward B. 1487
Provost, Robert C. 1868
Rhoades, O. Harris 2103
Ringenary, Edward 1845
Sartoff, Herman 1288
Shafer, Albert H. 2143
Snow, Edward L. 1996
Soukup, Albert J. 1308

Tavina, Nicholas V. 1383
Thomas, Richard D. 1501
Tydings, Gabriel 1270
Varnadore, J. W. 1193
Vayda, Albert J. 2072
Walsh, Charles A., Jr. 2184
Wash, Joseph J. 1655
Way, William L. 2083
Wright, Harry W., Jr. 1622
Wyckoff, Charles P. 1640
Zarella, George 1982

Stipulation re Goodyear 1952 Prices 2334

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets 2337
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks 2340
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord 2341
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks 2342
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman 2343
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al. . 2345
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord 2347
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al. 2349
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman 2350

9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the company's preference for the Goodyear program:" 2351

Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan" 2355

11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental" 2357

12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors 2359

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached 2360

14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2365

15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker 2366

16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr. 2368

17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman 2370

18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord 2372

19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman 2374

20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman 2375

21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord 2377

22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman.....2378

23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow"....2379

24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers 2381

25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting".....2391

26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting".....2392

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline".....2393

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2394

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic, Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2397

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2398

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers" 2399

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers.....2400

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2402
35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2406
36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2407
37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2408
38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2409
39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2410
40 A-B—Letter, February 9, 1951, from S. J. Heideman to J. E. Mayl, with enclosure 2412
41 A—Goodyear Form G-1209, with descriptive note. 2415
44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement 2416
44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2417
44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2418
46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl 2419
47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al. 2421
47 C-D—Goodyear Sales Department Instructions, May 31, 1951 2424
47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2427

48 A-F—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951".....2429

49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord.....2436

50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman.....2437

51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman.....2439

51 A—Goodyear Form A98101L, "Request for Identification Field Service".....2441

52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company".....2443

54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953".....2444

56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord.....2444

56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr. 2445

57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman.....2446

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord.....2447

80 U—Map entitled "Goodyear Regions & Districts".....2449

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952.....2451
85 A-B—Atlantic Lease Form, B/3191, 6/49.....2454
86 A-B—Atlantic Lease Form, B/3191, 4-52.....2458
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2463
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station".....2466
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2466
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191.....2472
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *".....2473
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station"..2474
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants..2475
88 E1-2—Atlantic Lease Form B-3191Y, 5/55.....2477
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement.....2483
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement.....2484
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement.....2486
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2491
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants.2496
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants.2498
93—Atlantic Form of "Commission Agreement"...2502

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2505
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2509
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2515
96—Atlantic Form B-3119, 10/50, "Authorized Dis-Distributor's Agreement" 2521
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2524
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2527
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2529
98 A-G—Atlantic Form of Distributor Contract 2531
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2537
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider 2543
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2548
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers" 2553
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2556
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al. 2559
100 A-B-C—Memorandum, August 24, 1948, prepared by S. J. Heideman 2560
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study" 2565
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2591

102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments.....2601
103 Letter, January 10, 1950, from F. E. Neall to G. V. Ostrander.....2607
104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic.....2609
105 A-C—Letter Agreement, January 12, 1954 from Firestone to Atlantic.....2612
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone.....2616
107—Inter-office Memorandum, February 27, 1950, from F. M. Neall to D. T. Colley.....2618
108 A-J—Document, March 17, 1950, unsigned, entitled "Presentation to Atlantic Personnel in Connection with the Introduction of the Firestone Commission Plan".....2619
109 A-I—Document undated prepared by S. J. Heideman entitled "Report on Meeting for the Discussion of the Firestone Commission Plan"...2633
110—Letter, March 21, 1950, unsigned, to G. H. Milligan 2645
111—Letter, April 11, 1950, unsigned, to W. J. Griffiths.2646
112—Document, April 20, 1950, unsigned, entitled "Plan for Handling Adjustments for Atlantic Dealers on Lee Tires to be Replaced with Firestone Tires".....2647
113—Document, April 20, 1950, unsigned, entitled "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced by Firestone Batteries".....2648
114 A-D—Document, May 11, 1950, prepared by G. H. Milligan entitled "TBA-Firestone Commission Plan District Office Accounting Procedure....2650

115—Document, July 3, 1950, unsigned, entitled "TBA-Firestone Commission Plan District Office Accounting Procedure".....2656

116 A-B—Letter with enclosure, September 29, 1950, from G. M. Elliot to S. J. Heideman.....2657

117—Document undated and unsigned, entitled "Firestone Commission Plan Check List".....2658

118 A-B—Letter, March 13, 1950, unsigned, to Messrs. B. M. Boor, J. O. Estlow and W. J. Griffiths..2660

119 A-B—Letter, March 17, 1950, from S. J. Heideman to D. T. Colley.....2662

120—Letter, July 26, 1950, unsigned, to Messrs. B. M. Boor and W. J. Griffiths.....2664

121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachment..2665

123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord.....2670

124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman.....2671

125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord.....2672

126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear.....2673

126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear.....2674

127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company-Sales Commission".....2675

128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall.....2688

129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley.....2690

130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda 2691
131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson.....2698
132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al. 2699
133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region.....2700
134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for marketing of Tires, * * *".....2703
135 A-B-C—Document undated and unsigned entitled "Commission Plan".....2705
136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment 2709
137 A-E—Document entitled "Duties of the Dealer Salesman" 2715
138—Unsigned memorandum, June 25, 1951, to F. M. Neall 2721
139 A-B—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger.....2722
140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman 2725
140 A—Atlantic Form B-139, 10/51, Dealers' Credit Card Sales Slips.....2727
141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis.....2729
142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman 2730

143—Letter, July 9, 1951, to William Stockton.....2731
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2732
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2733
145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2734
146 A-B—Document entitled "Staff meeting held 7/14/52" 2737
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13".....2739
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr. 2740
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program".....2741
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantics' T. B. A. Policy"....2742
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell.....2743
153 A-B—Memorandum, April 5, 1951, from R. M. Taitt to Noble Hall.....2744
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2746
155 A-H—Document entitled "1951 Sales Plan New York Region Basis".....2747
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C".....2753
155 J-K—Document entitled "1951 Sales Plan—Report of Progress—Appendix D".....2754
155 L—Document entitled "Appendix E".....2756

155 M—Document entitled "Summary of Results"...2757
156—Document dated January 5, 1951 entitled "Station Modelization Policy".....2758
157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2759
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman...2760
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord.....2762
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments.....2763
—Document entitled "Goodyear Associate Dealers—New Jersey".....2778
161—Unsigned letter, July 30, 1951, to W. J. Jackson 2787
161 A-B—Document bearing two columns headed "Location" and "Reason".....2788
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman...2790
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord.....2791
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman.....2793
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman.....2794
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill.....2795
166—Letter, October 11, 1951, from J. W. O'Neill to S. J. Heideman.....2797
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman.....2798
167 A-M—Handwritten document entitled "Refusals" 2799

168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel.....2810
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis.....2811
170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment 2812
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment 2820
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment 2825
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis.....2827
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, et al., June 1, 1951, with attachment..2827
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman.....2834
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman.....2835
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletion #17".....2836
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman.....2837
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord.....2838
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y."..2839
179 J—Form entitled "Atlantic-Goodyear Accounts".2854
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)."....2854

180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman.....2856
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill.....2857
182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 2858
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 2859
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries".2861
185—Document, April 25, 1952, prepared by S. J. Heideman entitled "Firestone-TBA Bulletin No. 17" 2863
186—Letter, July 18, 1952, from G. M. Elliot to S. J. Heideman 2864
187—Letter, September 3, 1952, from J. O. Long to Messrs. W. L. Schmidt, E. E. Sickels and Fred Wanders 2865
188—Letter, April 19, 1950, from G. V. Ostrander to D. T. Colley.....2866
189—Letter, May 18, 1950, from M. G. Davis to S. J. Heideman 2868
190—Letter, June 8, 1950, unsigned, to H. E. Powell.2869
193—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951".....2871
194—Document undated and unsigned, entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales, Erie and Wilmington Districts, April and May 1950).....2872
195 A-B-C—Letter with enclosures, June 2, 1950, from G. M. Elliot to Leon Serven.....2873
196 A-B—Letter with enclosure, June 6, 1950, from G. M. Elliot to S. J. Heideman.....2875

197 A-B—Letter with enclosure, June 23, 1950, from S. J. Heideman to J. A. Addison.....2876
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950".....2879
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949".....2881
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950".....2883
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949".....2885
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950".....2887
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949".....2889
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950".....2891
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs 1949".....2893
202—Tabulation entitled "Final T. B. A. Sales—October 1950".....2895
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950".....2896
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949".....2897
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950".....2898
204 A—Tabulation entitled "Final T. B. A. Sales—December 1950".....2899
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949".....2901
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950".....2902

205—Document unsigned and undated, entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Erie and Wilmington Districts, November and December 1950).....2903
206—Letter, August 28, 1952, from D. T. Colley.....2904
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers.....2905
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951"...2907
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951".....2907
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951"...2908
211—Document entitled "Atlantic Progress Report", October 29, 1951.....2909
212—Document entitled "Atlantic Progress Report", December 24, 1951.....2910
213 A-F—Letter with enclosures, May 14, 1951, from G. M. Elliot to Leon Serven.....2911
214 A—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Progress through 4/14/51".....2917
214 B—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Eastern Pennsylvania Region Progress Through 4/14/51".....2918
214 C—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Western Pennsylvania Region Progress Through 4/14/51".....2919
214 D—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Southern Region Progress Through 4/14/51".....2920

214 E—Document undated and unsigned, entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales for fiscal year 1951)..2921

214 F—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales, November and December 1951).....2922

215 A-B—Atlantic Credit Card—1950.....2923

216 A-B—Atlantic Credit Card—1951.....2924

217 A-B—Atlantic Credit Card—1952.....2925

218 A-B—Atlantic Credit Card—1953.....2926

219 A-B—Atlantic Credit Card—1954.....2927

220 A-B—Atlantic Credit Card—1955.....2928

221 A-B—Atlantic Credit Card—1956.....2929

222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50).....2930

223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51).....2931

226 A—Letter, July 7, 1950, from Paul Castleberry, Jr. to Atlantic with attachments.....2932

227 A—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear.....2934

247 B—Booklet entitled "Goodyear T. B. A. Plan"...2935

250—Letter, November 2, 1955, from The Atlantic Refining Company to Norris A. Stein.....2963

251—Letter, February 7, 1956, from The Atlantic Refining Company to Alfred R. Trivits.....2964

252—Letter, December 21, 1956, from The Atlantic Refining Company to William A. White, Sr....2965

253—Letter, May 2, 1955, from H. M. Hathaway to Messrs. Abraham Berman and Morton Shor...2967

254 A—Letter, December 8, 1953, from J. G. Burns to Michael J. Clifford.....2968

254 B—Letter, January 4, 1954, from The Atlantic Refining Company to Michael J. Clifford.....2969
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling.....2970
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman.....2971
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic.....2972
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation".....2973
257 A—Letter, November 12, 1953, Atlantic to Aniello L. Iacona.....2974
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic.....2975
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania.....2976
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro.....2977
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro.....2979
259—Letter, July 5, 1956, from Atlantic to A. Bennett.....2980
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson.....2981
261—Letter, October 21, 1955, from Atlantic to Charles Davis.....2982
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice.....2983
263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio.....2984
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly.....2985
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel.....2986

266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette.....2987
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith.....2988
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco.....2989
268 B—Letter, November 10, 1954, Greco to Atlantic Refining Company.....2990
269—Letter, January 5, 1955, from W. J. McCambridge, Jr., to Duane Olthof.....2991
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski.....2992
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski.....2993
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw.....2995
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco.....2996
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers.....2997
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman.....2997
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al. 2999
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments.....3000
280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al. 3004
281 A-B—Document entitled "Sales Meeting February 19, 1951".....3006

282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card.....3008

283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3011

284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al. 3015

285—Letter, March 5, 1951, from E. W. McCreary to E. M. Fiffick, et al. 3018

286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment.....3019

287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al. 3022

288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3023

288 E—Memorandum, July 25, 1951, from E. W. McCreery to W. F. Hinderscheid.....3028

289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers 3030

290 A-I—Memorandum, August 6, 1951, with attachments 3031

291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3041

292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3044

293 A—Letter, August 14, 1952, from E. W. M. to B. M. Boor.....3047

293 B—Memorandum, August 12, 1952 unsigned, to E. W. McCreery.....3048
293 C—Letter, October 3, 1952, from E. W. McCreery to B. M. Boor.....3049
293 D—Letter, October 7, 1952, unsigned, to E. W. McCreery.....3050
294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews.....3051
295—Document entitled "Branches as of January 1, 1950".....3053
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950".....3053
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive".....3054
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell.....3056
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott.....3057
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co.....3060
302—Letter, December 22, 1950, from C. Connell to J. S. Parks.....3061
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville.....3062
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell.....3063
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst.....3064
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst.....3066

307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co. 3069
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3071
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell.....3072
310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell.....3073
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville.....3075
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher.....3077
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951".....3079
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley.....3087
317 A-B—Atlantic Lease Form B-3191- 3/53 executed by The Atlantic Refining Company and Norris A. Stein.....3090
317 C-D—Atlantic Form B-367, 7/52 executed by Norris A. Stein.....3097
317 E—Atlantic Franchise Agreement Form B-3191 B, 4/52 executed by The Atlantic Refining Company and Norris A. Stein.....3099
317 F—Atlantic Agreement Form B-3105, 8/53 executed by Norris A. Stein.....3101
317 G-H—Atlantic Lease Form B-3191, 8/54 executed by The Atlantic Refining Company and Norris A. Stein.....3104
318 A-B—Letter, July 26, 1954, from R. S. Zinn to Norris A. Stein.....3110
319—Letter, June 22, 1955, to all Atlantic dealers from M. G. Davis.....3112

320 A-B-C—Letter, February 1, 1956, from Norris A. Stein to M. G. Davis.....3113
320 D—Letter, February 2, 1956, from M. G. Davis to Norris A. Stein.....3118
321—Letter, February 6, 1956, unsigned to John Rule.3119
322—Letter, February 9, 1956, from E. E. Sickels to Howard M. Berg.....3121
323 A-B—Atlantic Lease Form B-3191, 3/53 executed by The Atlantic Refining Company and Thomas J. Sullivan, Jr. 3122
324 A-B—Atlantic Form B-367, 7/52 executed by Thomas J. Sullivan, Jr. 3128
325—Atlantic Agreement Form B-3194, 10/50 executed by The Atlantic Refining Company and Thomas J. Sullivan, Jr. 3131
326—Atlantic Equipment and Apparatus Form B-3191A, 10/52 executed by Thomas J. Sullivan, Jr. 3133
327—Firestone Associate Dealer Agreement executed by Thomas J. Sullivan, Jr., ...3134
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column.....3135
339—Goodyear Service Stores Invoice dated 12-27-55.3136
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks.....3137
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments.....3139
352—Letter, May 17, 1950, from G. A. Fearn to R. S. Zinn 3152
353 A-B—Letter, October 30, 1950, from J. A. Addison to S. J. Heideman.....3153
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3155

355 A-B—Letter, January 3, 1951, unsigned to D. T. Colley 3157
356 A-B—Letter, February 3, 1951, unsigned to D. T. Colley 3159
357 A-B—Letter with enclosure, March 4, 1953, from G. M. Elliot to R. G. Mulholland 3161
358—Letter, March 4, 1953, from G. M. Elliot to R. G. Mulholland 3165
359—Letter, March 23, 1953, from G. M. Elliot to R. G. Mulholland 3166
360—Letter, May 1, 1953, from G. M. Elliot to R. M. Taitt 3167
361—Letter, May 22, 1953, from G. M. Elliot to R. G. Mulholland 3168
362 A-B—Letter with enclosure, July 27, 1953, from G. M. Elliot to R. G. Mulholland 3169
363—Letter, April 28, 1955, from R. G. Mulholland to G. M. Elliot 3171
364—Letter, December 29, 1955, from G. A. Fearn to Jack Hyde 3173
365 A-B—Letter, January 31, 1956, from J. C. Heid to W. L. Zinn 3174
366—Letter, April 26, 1956, from G. A. Fearn to J. C. Heid 3175
367—Letter, May 1, 1956, from J. C. Heid to G. A. Fearn 3177
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions" 3178
375—Document undated and unsigned entitled "Atlantic-Firestone TBA Sales" 3179
376—Document undated and unsigned entitled "Atlantic-Firestone TBA Sales by Class of Trade" 3180

377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade" 3181
378—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, January 1953) 3183
379—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year and December 1953) 3184
380 A-B—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year and December 1954) 3185
381—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year 1955 through December 20, 1955 and December 1955) 3187
382 A-B—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year 1956 through June 20, 1956 and June 1956) 3189
383 A—Letter, October 7, 1955, from G. M. Elliot to R. G. Mulholland 3191
383 B-C—Firestone inter-office memorandum, October 6, 1955, to District Managers 3192
384—Letter, February 1, 1955, from R. G. Mulholland to G. M. Elliot 3196
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951" 3197
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951" 3198

387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3199
388 A-D—Firestone inter-office memorandum, February 2, 1956, to District Managers, Territory Salesmen, Store Managers.....3200
400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments.....3205
480—Document, March 17, 1953, entitled "Statement of Herman Sartoff" executed by Herman Sartoff.3221
481—Document, March 19, 1953, entitled "Statement of Adam Lozanski" executed by Adam Lozanski.3223
482—Document, March 26, 1953, entitled "Statement of Thomas C. Eckhardt" executed by Thomas Eckhardt.....3225
483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley.....3227
484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne.....3230
485 A—Letter, August 29, 1958, from the Atlantic Refining Company to James W. Siewierski....3233

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow.....3234
2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow.....3240
3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company.....3241

4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow.....3242

6—Atlantic Mutual Consent of Concellation Form B-765 11/53 executed by James Parag, November 2, 1955.....3243

7—Atlantic Mutual Consent of Cancellation Form B-765, 11/53 executed by The Atlantic Refining Company and James Parag, March 2, 1956....3243

10 A-C—Document March 27, 1953, executed by Fred Koehler 3244

10 D—Letter, March 1, 1951, from D. T. Colley, unaddressed 3247

10 E—Letter, August 28, 1952, from D. T. Colley, unaddressed 3248

11 A-G—Document, March 27, 1953, executed by Thomas C. Eckhardt.....3249

20—Atlantic booklet entitled 'TBA Program".....3255

31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments.....3274

	Original	Print
Proceedings in the United States Court of Appeals for the Seventh Circuit	3282	3282
Opinion, Swygert, J.	3282	3282
Judgment	3298	3299
Final decree affirming and enforcing order to cease and desist	3299	3300
Clerk's certificate (omitted in printing)	3301	3301
Order allowing certiorari	3302	3301

FREDERICK LINGENFELSER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. My name is Frederick Lingenfelser. I live at 1918 Hamilton Street, Allentown, Pennsylvania.

Q. What is your present—by whom are you presently employed?

A. I am presently employed by the Reading Battery Division of the Electric Auto-Lite Company.

Q. And prior to the time Reading Batteries became a division of Electric Auto-Lite Company with whom were you employed?

A. Reading Batteries, Inc., in Reading, Pennsylvania.

Q. And do you recall the approximate time when Reading Batteries, Inc., was acquired by Electric Auto-Lite Company?

A. In May of 1956.

Q. And how long were you employed as a salesman by Reading Batteries, Inc.?

1088 A. I came to Reading Batteries in March 1941.

Q. What brand batteries does Reading Batteries sell?

A. Rebat. We also make some brand batteries: Powerlite, Action and Federal.

Q. And are you referring to the present division or the prior company?

A. Prior company.

Q. Prior company?

A. And present division, too.

Q. Did you at one time call on an Aero Oil Company in New Oxford, Pennsylvania?

A. I did.

Q. And about what time did you begin to call on Aero Oil Company?

A. In March of 1941.

Q. Will you please state what the Aero Oil Company is—what business it is in.

A. They are large distributors of petroleum products.

1092 Mr. Kelaher: It has been stipulated between counsel Supporting the Complaint and counsel for Atlantic, that Aero Oil Company of New Oxford, Pennsylvania, distributed Fleet Wing petroleum products from October 26, 1929 to June 1, 1946. On the latter date it changed its source of supply to the Atlantic Refining Company and has continued from that date to be supplied by the Atlantic Refining Company with respect to petroleum products.

It is further stipulated, subjected to verification, that in 1946 the Aero Oil Company operated 7 bulk plants, 2 transports, and 10 tank trucks; and further that it supplied 150 dealers and around 1,600 commercial, rural and domestic fuel oil accounts.

Mr. Mason: It will be noted that counsel for Goodyear does not join in that stipulation.

1093 Mr. Thompson: It is my understanding, of course, that this stipulation refers only to petroleum products. That is to say, gasolines—

Hearing Examiner Kolb: That is all that is covered in that brochure.

Mr. Thompson: Yes, sir; and oil.

Mr. Kelaher: Your Honor, the brochure also mentions TBA products.

Mr. Thompson: Well, I'm not stipulating anything about TBA products. I think that is perfectly clear.

Mr. Kelaher: That is perfectly all right, we will develop that.

Hearing Examiner Kolb: Let the record show that Exhibit 316 is withdrawn.

(The document referred to, heretofore marked Commission's Exhibit 316 for identification, was withdrawn.)

By Mr. Kelaher:

Q. Now, Mr. Lingenfelser, would you please restate when you started calling on Aero Oil Company?

A. In March of 1941.

Q. And at that time did you sell Rebat batteries to Aero Oil Company?

A. We didn't have Rebat at that time; we had what we called Reading batteries.

1094 Q. And did you sell Reading batteries to Aero Oil Company?

A. Yes.

Q. And prior to the time you called on the account had your company been selling Reading batteries to Aero Oil Company?

A. Yes, sir.

Q. For approximately how long a period had they been making such sales?

A. Well, I think they had sold them since 1936.

Q. And do you know whether Aero Oil Company purchased Reading batteries exclusively?

A. They did at that particular time; yes.

Q. And from 1936 up until—and when you started calling on the account were they buying Reading batteries exclusively?

A. That's right.

Mr. Mason: I take it, your Honor, that this testimony is going in subject to connection, so far there's obviously no connection to Goodyear and this oil company and I

don't want to object continuously because of the lack of connection, but I'd like it to be understood that if it's not connected up it's taken subject to a motion to strike.

Hearing Examiner Kolb: These questions all appear to be preliminary questions at the present time.

By Mr. Kelaher:

Q. And are the general offices of Aero Oil Company located in New Oxford, Pennsylvania?

1095 A. Yes.

Q. And when you began calling did you call at the general offices in New Oxford, Pennsylvania?

A. Yes.

Q. And were purchases made by Aero Oil Company at that office for their entire organization?

A. Yes.

Q. So that you were selling Reading batteries for the entire Aero Oil Company organization, is that correct?

A. That's right.

Q. Now, was Aero Oil Company considered a good account?

A. Yes.

Q. Was it a large buyer of Reading batteries?

A. It was a good volume account.

Q. When did your company change the brand name from Reading batteries to Rebat?

A. I don't know the exact date.

Q. But at some later date, as I understand it, you mentioned earlier in your testimony that they did sell Rebat batteries?

A. That's right.

Q. Was that just a change in brand name?

A. That's right.

Q. Did you sell Reading batteries to Aero Oil Company during 1942?

1096 A. Yes.

Q. Exclusively?

A. In '42?

Q. Yes.

A. Yes, sir.

Q. For how long a period did you sell Reading batteries to Aero Oil Company exclusively?

A. Until Atlantic Refining went in, I think in 1946.

Q. What happened after Atlantic Refining went in?

A. It took on Exide.

Q. Did they continue to purchase Reading batteries?

A. Yes.

Q. Did they continue to purchase in the same volume you had been selling prior thereto?

A. I would say approximately about the same; yes.

Q. And do you have a record of your sales of Reading batteries to Aero Oil Company starting about in 1946?

A. Yes, I do.

Mr. Mason: I take it, your Honor, this has gone beyond the preliminary stage and it still has no connection with anything that is a part of this law suit and certainly has no connection so far as Goodyear is concerned and I object to this line of testimony.

Hearing Examiner Kolb: The objection will be overruled.

1097 By Mr. Kelaher:

Q. Will you please state how many batteries you sold to Aero Oil Company in 1946?

A. 1,346 units.

Q. And do you have the number of batteries you sold to Aero Oil Company in 1947?

A. 1,854.

Q. And now taking 1948, how many did you sell?

A. 650.

Q. 1949?

A. 491.

Q. 1950?

A. 395.

Q. 1951?

A. 281.

Q. 1952?

A. 75.

Q. Now, 1953?

A. Nothing.

Q. Have you sold any batteries to Aero Oil Company since 1953?

A. No.

Q. Do you recall when the 75 batteries were sold to Aero Oil Company in 1952? Approximately.

A. I'd say in the first period of the year, I mean 1098 the 75 were purchased in the period of from January to March.

Q. And at that time were you selling Rebats?

A. At that time we were selling Rebats, yes.

Q. Now, did you thereafter solicit Rebat business with Aero Oil Company?

A. I called on them.

Q. Did you call on them shortly after March of 1952?

A. Yes.

Q. And did you discuss the situation with anyone at Aero Oil Company?

A. Yes.

Q. With whom did you speak?

A. With William Snyder and Mr. Bert Simpson.

Q. What was Mr. William Snyder's position with Aero Oil Company?

A. He wrote up the orders.

Q. He was—was he the one who purchased the batteries?

A. That's right.

Q. And what was Mr. Simpson's position with Aero Oil Company?

A. He was TBA manager.

Q. Will you please state your conversation with these gentlemen at that time?

Mr. Mason: I object to any conversation with a total stranger to this law suit and a person whose connection with anything that is involved here, it's not even been
1099 brought out—this is the worst kind of hearsay testimony.

Mr. Kelaher: I think if the counsel will just be patient.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. You may answer, Mr. Lingenfelser.

A. Would you repeat that?

Q. Would you please state the conversation you had with Mr. Snyder and Mr. Simpson when you called there shortly after March of 1952?

A. Yes. They told me then that Atlantic Refining Company had given them some additional outlets in their territory and they were practically compelled to go along with the Atlantic proposition—program.

Q. And what about batteries, was Atlantic supplying that?

A. Firestone.

Q. And thereafter you never sold any batteries to Aero Oil Company, is that correct?

A. No.

Mr. Kelaher: No further questions, your Honor.

Mr. Mason: I move to strike the entire testimony as having absolutely no connection with this law suit and certainly no connection with Goodyear. I wish, counsel

has kept promising me I was going to understand at some point along here how this connected up, but I cer-
1100 tainly don't see it all now.

Hearing Examiner Kolb: I see no connection with Goodyear with this.

Mr. Kelaher: Your Honor, I will state that the New Oxford, Pennsylvania is in the Eastern Pennsylvania marketing region which comes under the Firestone TBA sales commission plan.

Mr. Mason: On the other hand, this hasn't even been connected up with the sales commission plan.

Hearing Examiner Kolb: His testimony will be received subject to a motion to strike.

Mr. Ballard: Your Honor, may we have a short recess to discuss possible cross-examination?

Hearing Examiner Kolb: Yes.

(Short recess.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: We are ready to proceed, your Honor.

Hearing Examiner Kolb: All right. Cross-examine.

Cross-Examination by Mr. Ballard.

Q. Mr. Lingenfelser, I represent the Atlantic Refining Company, as you have probably gathered, and this Gentleman represents the Goodyear Company.

Now, I imagine that during the years 1946, '47,
1101 even back into '41, there were other battery manufacturers calling on Aero Oil, were they not, trying to get that business?

A. I imagine.

Q. It was a good customer, Aero Oil was a good customer?

A. That's right.

Q. Desirable customer?

A. That's right.

Q. During the years '46, '47, '48, '49 and '50 Aero was handling Exide batteries in addition to Reading batteries, is that right?

A. That's right.

Q. And Atlantic Refining was selling those Exide batteries to Aero, is that right?

A. I don't know that.

Q. You don't know who was selling them?

A. They were buying an Exide battery.

Q. But you don't know who they were buying from?

A. No.

Q. Now, do you happen to know that in 1951 Aero Oil got a new contract with Exide?

A. I don't know.

Q. You don't know that?

A. No.

Q. They became a wholesale distributor—did you ever hear that they became a wholesale distributor of Exide in 1951?

1102 A. I was always under the impression that they were.

Q. They kept on buying Exide—they bought Exide in 1951, didn't they?

A. That's right, to the best of my knowledge they did.

Q. And in 1952?

A. Yes.

Q. And in 1953?

A. I don't know.

Q. You don't know whether they bought Exide or not?

A. I believe they did; I still think they handle Exide, I don't know for sure.

Hearing Examiner Kolb: I think you have the wrong battery, haven't you?

Mr. Ballard: No, sir. Exide battery is the battery I'm talking about. Is that the battery you are talking about?

The Witness: Yes, sir.

Hearing Examiner Kolb: That's not the battery he sells, though?

Mr. Ballard: No, sir; he sells Reading batteries.

Hearing Examiner Kolb: All right.

By Mr. Ballard:

Q. Exide batteries, of course, is a nationally advertised battery, isn't it?

A. That's right.

1103 Q. Reading batteries are not nationally advertised?

A. That's right.

Q. When did you stop calling on Aero Oil, sir?

A. Well, I would say—you mean to solicit business?

Q. Yes.

A. Oh, I made—I actually stopped calling on them in '52, but I did stop in to see them every once in a while.

Q. But your knowledge of their purchasing really ends about 1952, is that right? Their purchases.

A. That's right.

Q. I think you did say that Reading batteries has been purchased by Electric Auto-Lite?

A. That's right.

Q. Are they still making the Reading battery, the Rebat brand?

A. That's right.

Mr. Ballard: I have no further questions.

Mr. Mason: Nothing here concerns me. I have no questions.

Mr. Kelaher: We have a few, your Honor.

Redirect Examination by Mr. Kelaher.

Q. Mr. Lingenfelser, you were asked on cross-examination if Reading batteries was nationally advertised and you stated no. However, isn't Reading batteries well known in the East?

1104 Mr. Mason: What kind of a question is that?

Mr. Ballard: I object to that question.

Mr. Kelaher: Is it advertised?

The Witness: Well, they did some extensive advertising in the Saturday Evening Post, I would say, a few years ago.

By Mr. Kelaher:

Q. So that would be national advertising, wouldn't it?

A. Sure.

Q. Up until—

Mr. Thompson: (Interposing.) Are we off the record?

Mr. Kelaher: No, we are on the record.

By Mr. Kelaher:

Q. Prior to the acquisition by Electric Auto-Lite Company what was Reading Batteries, Inc., marketing area? Generally speaking.

A. Generally speaking we worked as far as the New England states, down South, I would say as far as Tennessee. Now, they had some accounts in those areas, they didn't have salesmen soliciting business in those areas—out as far as including Ohio, New York, and that section.

Q. Did you advertise Rebat batteries in your trading area?

A. No, they didn't go in for advertising too heavily in that, in newspapers and things of that sort, you mean?

1105 Q. Signs?

A. We had signs and distributor and dealer identification.

Q. Did you have road signs, too?

A. They didn't go in for road signs, no.

Mr. Kelaher: No further questions, your Honor.

Mr. Ballard: No further questions, your Honor.

Mr. Mason: No questions.

Hearing Examiner Kolb: That's all, Mr. Lingenfelser.

(Witness excused.)

Hearing Examiner Kolb: Do you want a recess now, gentlemen?

Mr. Dias: Please.

Hearing Examiner Kolb: We'll have a recess at this point.

(Thereupon, a short recess was taken.)

1106 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would call Mr. Myers to the stand, please.

JAMES M. MYERS, JR. was thereupon called as a witness and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. James M. Myers, Jr., and I live at 214 Sugartown Road, Devon, Pennsylvania.

Q. And were you at one time an Atlantic lessee dealer?

A. Yes, sir.

Q. During what period?

A. It started sometime in May of 1950, and it ended September first, I believe, of 1951.

Q. And where was your station located?

A. At the corner of Eagle Road and West Chester Pike, Minoa, or Havertown, if you want to call it that.

Q. In Pennsylvania?

A. Yes, sir.

Q. Did you invest your own capital in the station?

A. Yes, sir.

1107 Q. Approximately how much?

A. I would say around—well, I said my own—it was partly borrowed capital, but it was from my father and my own, and about, I would say, around $7,000.

Q. Now when you began operations in May 1950, what TBA did you carry?

A. Well, Lee tires, Exide batteries, and I believe rubber products were Thermoid, and then just the other general run of polishes and all those things that you would have.

Q. And who was your supplier of TBA products?

A. Ernie Miller. Miller Automotive, I believe they call it.

Q. What was your reason for purchasing Lee tires, Exide batteries, Thermoid fan belts, and so forth from Mr. Miller?

A. Well, it was just—he handled the line for Atlantic and it was just understood that you purchased from him.

• • • • •

1108 By Mr. Kelaher:

Q. Did you attend training school at the time you opened the station?

A. Yes. I believe that I went to a training school, it seems to me it was for two weeks.

Q. Was that conducted by Atlantic?

A. Yes. A fellow by the name of Ed Krebs handled it and it was conducted at the corner of City Line and Conshohocken Avenue, at the Atlantic station, in the back room.

Q. And was TBA mentioned at that training school?

A. Yes.

Q. Were any specific TBA products mentioned at the training school?

A. Well, I really don't recall.

* * * * *

1109 By Mr. Kelaher:

Q. Prior to the time you became an Atlantic dealer, had you had experience in service station operations?

A. Yes, back many years before that I started with Esso, Standard Oil Company of Pennsylvania, as an employee. They didn't have dealerships in those days, and I worked in the service station and became a manager of a service station.

Q. About what year was that?

A. Well, I started 1930, I think, and about 1931 I took over as manager of the service station in Bryn Mawr and then from there I went to City Line and Bryn Mawr Avenue, which was one of their largest stations at that time.

Q. So that you were experienced as a service station operator?

A. Yes, I had a wonderful experience in the service station business.

Q. Now how long did you continue to carry Lee tires, Exide batteries, and the other TBA products you mentioned?

1110 A. Until the date when Atlantic changed over to Goodyear.

Q. And that was—

A. Which I can't recall the exact date. It has been four or five—four years ago, whenever it was.

Q. I show you Commission's exhibit 150, which was a letter sent by Mr. Colley to dealers, dated March 1, 1951, and ask you to read that, please.

A. Out loud?

Q. No, just to yourself.

A. All right, I have read it.

Q. Do you recall receiving that letter?

A. I don't want to say yes for the simple reason that I had letters, but if it was that letter, I couldn't say, it has been too long ago for me to identify that letter and be an honest man.

Q. But you did receive letters announcing the change, is that correct?

A. Yes, sir, that I did receive.

Mr. Kelaher: Your Honor, I think the record does show that this Commission's exhibit 150 was sent to all Atlantic dealers at that time.

Mr. Thompson: I will stipulate that is so.

By Mr. Kelaher:

Q. Now when the change-over to Goodyear TBA was announced by Atlantic, did any Atlantic represen-
1111 tative make any statement to you concerning the matter?

A. Yes, just that we were changing over to Goodyear. I mean, we were told that we were changing to Goodyear and we were not going to have Lee any more.

Mr. Thompson: Without the proper identification, I move to strike again.

Hearing Examiner Kolb: Well, he said it was around the middle of 1951 when the change-over was made.

Mr. Thompson: Yes, sir, but the person who made the remark hasn't been mentioned.

Mr. Kelaher: If counsel will be patient, for one question, we will get to that.

By Mr. Kelaher:

Q. Who was the Atlantic representative who made that statement to you?

A. William Way.

Q. Do you recall the statement he made to you at the time, or the conversation?

A. No, I don't, sir. Just that we were changing, that was all, and no particular conversation, no excitement about it or anything.

Q. And did you then begin to purchase Goodyear TBA?

A. That's right.

Q. From whom?

A. Ernie Miller.

1112 Q. Now you stated at the time that you received a letter or letters from the Atlantic Refining concerning the change-over, is that correct?

A. Yes.

Q. And did such letters state that you had freedom of choice as to purchasing TBA?

A. I can't recall. You are speaking of the time of the actual change-over?

Q. Yes, at the actual change-over.

A. No, I don't recall it said freedom of choice or otherwise, at that particular point.

Q. Subsequent to that, did you receive a letter which stated that?

A. Yes, I did receive a letter later than that, stating that I had freedom of choice.

Q. Did you ever discuss that letter with salesman Way?

A. Yes, I did.

Q. What did you state to salesman Way?

A. I said "Bill, does that letter mean what it says?" and he said, "You try it and you will find out." That was the answer I received.

Q. So you continued to purchase Goodyear TBA?

A. That's right.

Q. Do you recall at one time that Atlantic used your station as a model station?

1113 A. I recall it very clearly.

Q. Do you recall the approximate time when that occurred?

A. All I can tell you is I would say the late winter or early spring of 1951.

Q. And would you just describe what transpired at that time, in your own words?

A. Well, there were four or five days where salesmen of the Atlantic Refining Company and what they called—I don't know what they were—fellows who worked on service stations, and helped the boys around to teach them different things, I don't know what they called them, but these men were brought in there, five, six or seven of them, and they worked to clean and scrub and paint and do all this sort of thing, and rearrange your inventory so it looks nice and all, coming to a point where, on this one particular lay, there would be certain gentlemen from Atlantic Refining Company come out there and just view this thing, as a model station.

I mean it was, everything was in place, in order, and that was the idea of the thing.

Q. Now was anything done with respect to TBA when they made your station into a model station?

A. Yes. Any items that I had, which I had very few of, which were foreign to the Atlantic ordinary TBA program, were not supposed to be in view.

Do you want me to go on, or do you want to question me?

1114 Q. Please go right ahead.

A. The night before this model station was to happen, which was to happen the next morning—by the way all the men were dressed in brand new coveralls, with bow ties and we were to look real pretty. So they asked me if they could remove these items from my place.

Q. What specific items are you referring to?

A. I had a few foreign tires, as I recall.

Q. What brand?

A. I think I had a couple U. S. Royals laying around and a few Lees left, which I hadn't sold from the time I had them, and they asked me if they could remove them, and I told them absolutely not to take anything from my place, but the next morning when I came in they were gone and I understood they were hauled around in the—some of the men's cars, in the backs of the cars.

And I didn't receive those back for several days, and some of the things there I am sure I never got back because at the time I was very upset about it. It was just one of those things.

Q. Now did they also take some accessories at that time which were not in the sponsored line?

A. Yes, but I can't recall what they were. There was a number of items taken.

Q. And they were put in the cars of these Atlantic representatives?

1115 A. One thing I can remember was taken out of there. I used to sell a lot of seals for front wheel bearings, and I had a case—in those days we were not allowed to sell those things, and I had a case of them on the wall and that was removed and brought back to me later.

Q. Do you recall the brand name of that item?

A. No, but I can find out for you. They are now in certain stations, I see them.

Q. Now you stated that these items that you have mentioned, the only items that were taken out were non-sponsored TBA items, is that correct?

A. That's right.

Q. Did the company ever reimburse you for any of the TBA they failed to return to you?

A. They claimed they returned it all, so there was no such thing as reimbursement.

Q. But according to your statement, you don't think they did return it all?

A. That's right.

Q. At the time of the change-over to Goodyear TBA, was your station identified with Goodyear signs?

A. Yes.

Q. And did you request such identification?

A. No, but if we were going to sell Goodyear, we certainly had to have some identification, which I just understood.

1116 Q. Now prior to handling Goodyear TBA, you stated that you handled Lee tires, Exide batteries; were you dissatisfied with Lee tires and Exide batteries?

A. No, I never was. And there was a good reason.

Q. What was the reason?

A. Well, Lee had a fine guarantee with them, and we had no guarantee except for faulty workmanship with Goodyear, but we had a road hazard guarantee with Lee tires, a very fine one, which people liked.

Q. Now, price-wise, how did Lee tires compare with Goodyear?

A. Just about the same. You see, I bought them all from Ernie Miller and as near as I know they were around the same. I don't recall that.

• • • • •

1117 By Mr. Kelaher:

Q. Was it your own choice to purchase TBA from Miller's Automotive?

A. No.

Q. Were you called upon by other sellers of TBA?

A. Oh, yes.

Q. Do you recall a Mr. Douglas Kevis, of Harris and Leonard?

A. Yes, sir.

Q. Did he call on you?

A. Yes, for the whole time I was there.

Q. Did you give him any of your recapping business?

A. I gave him all my recapping business.

Q. At that time were you solicited for recapping business by Atlantic's representatives, or by Mr. Miller?

A. No, because Mr. Miller didn't have any recapping up until the point I left. I left soon after that, before he got into recapping. I understood we were going to have it, though. I had heard there was going to be recapping.

Q. Now, did Mr. Kevis ever solicit the sale of new U. S. tires from you?

A. Yes.

Q. Do you recall—did you purchase such new tires from him?

1118 A. No, I didn't.

• • • • •

1119 By Mr. Kelaher:

Q. Did Mr. Kevis solicit business from you after the change-over to Goodyear TBA?

1120 A. Yes.

Q. And did he solicit business from you prior to the change-over to Goodyear TBA?

A. Yes.

Q. And did other jobbers and sellers of TBA solicit business from you both prior and after the change-over to Goodyear TBA?

A. Yes.

Q. Would you name some of those other suppliers?

A. The ones I recall, well, Harris and Leonard you have. John Stewart was one, he sold service station supplies such as towels and that sort of thing, brooms, mops, anything like that. Then there was Gaul Derr and Shearer, who has a very wide selection of anything to sell or for use I mean as tools or equipment in the service station.

And Aviation Auto Supply, was one who had a wide selection of anything you wanted in service station supplies or TBA. Then there was an Upper Darby Automotive; they are now out of existence.

Q. Do they solicit TBA business from you?

A. Yes.

Q. Both before and after the change-over to Goodyear TBA?

A. Yes, sir.

Q. Did you purchase TBA from them?

A. Very, very little. I mean just odd items that 1121 maybe I couldn't get from Ernie Miller.

Q. What kind of business relations did you have with Atlantic representatives? Were they cordial or—

A. For the first four months, yes.

Q. What happened after that?

A. Well, for many years I believe we had had no wars on gas, and they started after I was in there about four months, in the business. And it was a very severe drop in prices and it was suggested that I lower my price on gasoline, which I couldn't see to do.

Q. Who suggested that?

A. The salesman told me, Bill Way, told me I should lower my price and get in line with the other dealers.

Q. The Atlantic salesman?

A. That's right.

Q. Do you remember his name?

A. Bill Way.

Q. Go ahead.

A. So I asked him what was going to happen, was I going to stay there and go broke or what, and he shrugged his shoulders. So I told him unless they did something about it that I was going to do something about it. So he just smiled at me and the next day I proceeded, and I put a one page ad in the Havertownship News, advertis-

ing one quart of oil with every 10 gallons of gas. I also had four 4 x 8 signs put up on each side of my station,
1122 with the same information on it, on both sides, and then I proceeded to give these people the oil.

At first I was paying for it, but I kept my price up where it was, didn't drop it, and then if the price finally went down to where it was three cents below where I was selling then I would start to lower slightly, keeping it three cents all the time above and that was paying for this oil I was giving away. And then Atlantic came through with subsistence, which they told me—Bill Way and he came and told me unless I complied with their wishes, and brought my prices in line with the other dealers, I would not get the subsistence.

So I warned him he better discuss it with the company lawyer before he started to do that, take exception to me over other dealers, so nothing more was done and I did get my subsistence, which was used to pay for this oil to give to the clients or customers, and I used that for four months under terrific pressure by Mr. Lukens and Mr. Arnholt and Mr. Bowman, Bill Way and Pete Lonenzo all were involved and came out there and gave me this terrible pressure and I refused to ever drop my price or do anything that would stop me from making money because I was making money when the rest were losing it and they were not going to tell me how to lose my money and that is what happened and that was the first trouble I had.

And then my relationship, of course, was very un-
1123 cordial during that period. They were rough.

Q. Now were all the men you just mentioned Atlantic representatives?

A. Every one.

Q. Did anything occur after that with respect to your—did you have any further instances with Atlantic after that?

A. Well, not about that.

Q. Did you have any incident with respect to any other matter concerning station operations?

A. Yes. In the spring of 1951, sometime in there, I just can't recall dates, it is four years ago, but I had purchased or had given Bill Way an order one day for $600 worth of oil, as I recall, of which there were 25 cases of Capital Motor Oil, which was their very cheap oil, sold in two-gallon cans, and that would be 75 cans, in other words, of oil.

Previous to that I had purchased larger quantities, but I had no place to put it and it would sit out around the building and would rust up and the cans would leak and I was taking a loss on it.

So I didn't want any more than that of it. And three days later, before this oil was received, I had a visit from Mr. Arnholt, and Bill Way and the TBA man, whose name I can't recall. It was George somebody. And he was the man who apparently sort of kept track of TBA for Atlantic. And Bill Way told me that when he walked in,
1124 they all walked in, and Bill Way told me that he would like to sell me one hundred cases of Capital Motor Oil. So I told him "I can't do that. I have just given you an order, I haven't received the oil yet, for $600 worth of oil, including 25 cases of this motor oil, Capital," and I just couldn't see my way clear to buy any more and have it lay around the place.

In fact, they told me I could park it out around the driveway, and I said "Yes, I guess I could put it on the roof, too," but after Bill stopped talking this George started next. And I was very courteous to Bill Way, but I wasn't quite so courteous the next time, and I told that gentleman the same thing, and then Mr. Arnholt spoke to me and I was very discourteous and I told him that I had already told all three of them and if they had called on any

other place except an Atlantic station, they couldn't violate the man's ethics the way they were doing with me, and I was too busy to talk to them and please leave.

By Mr. Kelaher:

Q. Did Atlantic representatives ever look at your records?

A. We were supposed to keep a record at all times of our sales each month and the salesmen would come in once a month and ask for that book and look at the record of sales.

Q. And did you ever have any conversations with an Atlantic salesman concerning your records?

A. Oh, yes, we would have conversations, but I 1125 don't know what you refer to.

Q. Did your records include sales of TBA?

A. Oh, yes. I kept an accurate record of that.

Q. Now you stated that you left—let me ask you this first. When you first went into the station in May 1950, how long a lease did you have?

A. Three months.

Q. And then that would take you up to about September, 1950, and at that time what lease did you have?

A. Then I received a one year lease.

Q. At that time did Atlantic have a three-year lease?

A. I don't think so. That came later. As I recall, and it was, I think, after my time, in fact. I heard about it, but I don't believe they did.

Q. Now you stated that you left the station in September 1951. Would you please state the circumstances which led up to your leaving the station?

A. Well, the first thing that happened was approximately the first of August—I received a visit out at my home. I had been sick for several days but Mr. Arnhold, Mr. Lukens and Bill Way came over and they just walked in and sat down in the living room and handed me a piece

of paper saying that my lease was terminated as of September first. So I asked them if that was all there was to say, and they said "yes," and I said, "well then, that is fine." I will be seeing you, and they walked out.

1126 And so then I decided to go into Atlantic Refining and see if I could not reason with someone up near the top, which I did, and I got as far up as Mr. Bowman, who was there at that time, and he assured me I could do nothing and I was wasting my time there.

I asked him for reasons and the only reason I can recall that was given was that my place was not clean.

So I didn't say any more, but I went out and immediately had my 4 x 8 signs changed over to these words: "Atlantic has terminated my lease." Then I had a large "W H Y?" with a question mark, and then "Ask your Atlantic dealer, he knows." And I proceeded to stay there for the balance of that month until the time came for me to go.

And we left there 11 o'clock the last night I believe of the lease, and they had I think eight men out that day including a lawyer, they told me, and it was pretty rough sailing all day—

Mr. Thompson: (Interposing.) Who, me?

The Witness: You know, I believe it was. If you just smoked a pipe, I think it would be you.

By Mr. Kelaher:

Q. Now how did you gallonage run in the station?

A. When I opened, the first month I opened, we sold 40 or 41 thousand. I don't quite recall. It was over 40.

Q. Do you recall what Atlantic expected of a sta-

1127 tion that first month?

A. They told me 24 and I had told them that I was sure it would pump 40 because I knew the corner very well and was familiar with that whole area.

1128 Q. Were other dealers after that station at the time?

A. Yes, I understood. I was told by Mr. Arnholt there were many after it and I was in the leather business, and I came in there and we had—I did a sales job with him, and told him what I could do and he went along. And I finally received word from him by telephone, I called him from Pittsfield, Mass. one day when he had told me to call and he said the place was mine, and that night I picked up the phone and called Chicago and resigned from my position in the leather business. And I came down there, very innocently.

Q. And now you started at 40,000. Did you increase your gallonage?

A. Yes, the gallonage reached almost 50,000 in the month of August before I left. I may qualify that. It may be July, I'm not sure. There was one month it was over 49,000, either July or August, possibly July. And the next month was very close to that. It had moved up close to a 10,000 increase over the year.

Q. And did you always pay your rent promptly?

A. There was no such thing as paying rent promptly. That was deducted from your gasoline.

Q. And were you in your opinion a good station operator?

A. I still think I'm the best one around.

Q. And you were never given a reason by Atlantic for terminating your lease?

1129 A. No, sir.

Q. Now did Atlantic encourage promotion deals during various parts of the year?

A. Yes.

Q. Would you tell us a little bit about that?

A. Well, the number one promotion was the day I went in there, when we had search lights beaming up in the sky

off a truck, using up a lot of electricity, by the way, and we had cigarettes we gave away, pack to every man and we had gardenias for the ladies—every lady, and all of that costs a lot of money and they also—Mr. Lomenzo suggested I have dancing girls on the driveway.

Mr. Thompson: I would like the record to show that that is the day I was at the station.

The Witness: They never were there.

Mr. Thompson: Neither was I.

By Mr. Kelaher:

Q. Who paid for this?

A. That was paid for by the dealer, by me. And as I recall the figure, it came close to $500 for all of that.

1130 Q. How much?

A. Around $500.

Q. Did they have promotions after that of any kind?

A. Yes, we had another promotion which they came out there about—and I just don't recall the details of that promotion. It was more of a sign promotion or that type of thing, or advertising, which we helped pay for. They were supposed to pay for part and we were supposed to pay for part, and we would pay for a part and that ran maybe several hundred dollars for that. That was—I don't know what point that happened.

Then I was told in the spring of 1951 that I should put on another driveway promotion like the first one.

Mr. Thompson: Tell me by whom, would you please?

The Witness: Yes, that was by Bill Way, and I guess Bill Way was the only one I can recall. I know for sure. The rest I wouldn't know. There may have been others.

By Mr. Kelaher:

Q. And the others would be Atlantic representatives, too?

A. If they did say that, and I don't want to say that because I might—I am not sure.

Q. What type of promotion was this one?

A. That was gardenias for the ladies and cigarettes for the men, I believe, again, that we went for, and we had that again, and—

Q. Who paid for that?

1131 A. I paid for that entirely myself.

Q. And did you need that type of promotion?

A. No, sir, I sure did not. Not with an increase of gallonage like I had and an increase in general business over the year, I needed no promotions or no advertising. I was having a job taking care of the business I had.

Q. So you only had this promotion at Atlantic's request?

A. That is exactly right.

Mr. Kelaher: No further questions.

Mr. Thompson: May we have a couple of minutes to consult counsel, your Honor?

Hearing Examiner Kolb: We will recess for five minutes.

(Whereupon, a short recess was taken.)

1132 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Thompson.

Q. Mr. Myers, I was a little curious about this model station you considered.

A. Yes, sir.

Q. Did you mind your station being a model?

A. I didn't think I was going to mind it, but I found out that I did mind it terribly before I was finished.

Q. That happened in 1951, didn't you say?

A. Yes, sir.

Q. And the purpose of it was to have a lot of Atlantic people come out and view a model station?

A. That's right.

Q. They did come out and take a lot of pictures?

A. Not a lot, just two people.

Q. They were top brass?

A. I think Mr. Bowman, Mr. Lukens.

Q. Fairly high Atlantic officials?

A. I guess you'd call them high.

Q. And you recall that a lot of pictures were taken of the station?

A. I don't believe any were taken.

Q. You don't. Well, you don't recall pictures being taken?

1133 A. No, I don't. No, sir.

Q. You yourself are rather photogenic?

A. I'd rather have you decide that than me.

Q. Modesty prevents you from answering.

Was your picture taken that day with these people?

I have to withdraw the question—

Mr. Kelaher: Objection.

By Mr. Thompson:

Q. Would it refresh your recollection if I asked you if your picture was taken with these people?

A. No, it wouldn't.

Q. Would it refresh your recollection if I suggested to you that this station of yours having become a short time model was later used for advertising purposes? Do you recall anything of the kind?

A. No, sir.

Q. I am going to ask you a few questions about the circumstances surrounding the failure of the Atlantic to renew your lease on September 1, 1951. That was correct, wasn't it?

A. I believe so.

Q. Before I come to that, it's my recollection that your testimony was inadvertent in one respect in fixing a date. I think you said that the model station incident occurred the latter part of 1951 and that the record does so say—

A. No, I didn't say that. I said I thought that it
1134 happened—mind you, this is four years ago—and I did say that I thought it happened in the latter part of the winter or the early part of spring.

Q. Yes. Would it refresh your recollection as to the date if I suggested to you that the model station incident occurred before Atlantic had adopted the Goodyear plan and was a kind of a set up arrangement for advertising purposes?

A. No, I wouldn't want to say that. I have no recollection of whether it was before or afterward. That is just something I can't remember. It's impossible to remember things back that far as to months and dates.

I know it was in the spring or late winter.

Q. But the change-over wasn't until after the 1st of March '51, was it?

A. You'll have to tell me, sir; I can't remember that.

Q. You didn't recall receiving a letter dated March 1, 1951 from Mr. Colley which announced the change-over? That was shown to you by Mr. Kelaher.

A. Yes, the one you brought over here?

Q. Yes, sir.

A. That exact letter I just wouldn't want to say that I could remember. It's impossible to remember that long the particular wording or anything of a letter and if I said otherwise it might not be true.

Q. But this model station incident must have been
1135 just about that time because that announcement, you will recall, was in March of 1951.

A. Spring starts when?

Q. I can't remember that year very well, can you?

A. It could have been, I said in late winter or early spring. It could have been after that—I just can't tell you.

Q. All right, sir.

Now, may we direct your attention to a couple of months later, that is to say the summer of 1951.

A. Yes, sir.

Q. Before your lease expired and before Mr. Arnholt visited you you retained counsel, did you not?

A. I did not.

Q. You did not, sir?

A. I have never had counsel.

Q. Didn't Arthur E. Dennis represent you?

A. No, sir; never heard of him.

Q. Well, this is extraordinary. Didn't you ask him to call on Atlantic on your behalf?

A. Never heard of such a man.

Q. Were you a member of the Delaware County Dealers Association?

A. Oh, yes.

Q. And do you recall making a speech at a meeting 1136 of that association?

A. I believe I did.

Q. Do you recall Mr. Dennis as counsel for that association?

A. Well, see, he was counsel for the association, what he did was something else, but I did not retain counsel.

Q. Well, do you now recall Mr. Dennis?

A. I can't say yes. There was someone, and I can't recall if his name was Dennis or what took place at that time.

Q. How about Mr. Gorson, do you remember him? Another attorney in Delaware County.

A. Associated with the association, was he?

Q. Well, did Mr. Gorson ever represent you?

A. I don't know. I don't know the man's name. I never obtained counsel—private counsel from anyone. If it had anything to do—it could have been that someone from the association might have contacted Atlantic, there were a lot of—the association was trying, working for dealers at that time but they were not my counsel, my personal counsel.

Q. How about a Mr. Green. Did he ever represent you?

A. Yes, there was a Mr. Green that I spoke to, but he didn't represent me.

Q. Did he talk to Atlantic?

A. I believe he called them on the telephone and possibly stopped over there, but I mean he just did it as a friend and he told me there was nothing that could be done.

1137 Q. Did you authorize Mr. Green to threaten suit against Atlantic because of price discrimination against you?

A. Not that I recall.

Q. Did you assert a claim against Atlantic on the ground that they had not accorded you as much price protection during the price war as they had other dealers in your area?

A. No. I was concerned only with leaving the station at that time.

Q. Is it not a fact that when Mr. Arnhold came out to see you at your house he said in effect that it was obvious that you and Bill Way and he had not been getting along and it would probably be happier for both of you if the lease was just permitted to expire?

A. He probably did; but he didn't take into consideration my happiness. He made that statement.

Q. Didn't you reply to that and say that you agreed that you had not been getting along with Atlantic because

of these price matters and that you might as well just let it ride?

A. There was no question I wasn't getting along with them at all, hadn't been.

Mr. Thompson: That's all.

Mr. Mason: I have no questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Myers, with respect to the model station, 1138 did you request that your station be made a model station?

A. I certainly did not. It was Atlantic's request.

Q. And how many days were involved in changing the station over or in making the station a model station?

A. I would roughly say four or five days.

Q. And was your business disrupted during that time?

A. Yes, particularly the last day. The last day they painted my lifts red and no cars were allowed to come on my lifts that day because they would have left marks on the lifts. So, that's how my business was disrupted.

Q. Were you able to do a normal business on the days immediately prior thereto, when they were renovating the station or whatever they were doing to the station?

A. Fairly so. I mean, there were men trotting all around the place there and I was able to go along fairly well, the last day was the day that I couldn't do a normal business.

Q. Now, did Atlantic compensate you for the lost business or for the time involved?

A. No, and I suggested that, too, at the time, but there was no such thing.

Q. Now, what TBA identification was on the station when it was a model station?

A. Well, that gets back to the question that this gentle-

man (referring to Mr. Thompson) asked me which I'm not able to say, if it was prior to or after the change-over,
1139 you see, and I wouldn't want to say that, because I feel that it was after but I'm not sure. I can't recall dates for four years, and so it's impossible for me to answer that correctly.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: That's all, Mr. Myers.

(Witness excused.)

Hearing Examiner Kolb: Any further witnesses?

Mr. Kelaher: No further witnesses, your Honor.

Mr. Thompson: If your Honor please, off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The record will show the hearing adjourned to reconvene Monday, July 1, at 10:00 a. m., Wilmington Armory, Tenth and DuPont Streets, Wilmington, Delaware.

Following Testimony Taken At Wilmington

1141 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Sabo to the stand, please.

CARL SABO was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your name and home address?

A. My name is Carl Sabo, 275 Birch Avenue, Elsmire Manor, Wilmington, Delaware.

Q. Mr. Sabo, are you presently employed with Keil's?

A. Yes, I am.

Q. What is your position with Keil's?

A. I am the manager of the tire department.

Q. Would you please describe generally Keil's business?

A. We are a company that consists of quite a few things. Tires is just one phase of our business. We are in the appliance business; we are in the air-conditioning business, retreading business, home improvement; we service automobiles; we are a Chrysler-Plymouth dealer.

Q. You mentioned tires. Do you sell tires?

1142 A. Yes.

Q. What brand of tires?

A. Goodyear.

Q. Do you sell tubes, also?

A. Goodyear tires, Goodyear tubes, Goodyear batteries.

Q. Are you a large distributor of Goodyear tires?

A. Well, I like to think we are.

Q. Are you the only distributor of Goodyear tires in this area?

A. In New Castle County; yes, sir.

Q. What is the marketing area of your tire department?

A. Strictly New Castle County.

Q. And that includes Wilmington and surrounding area?

A. Wilmington and surrounding area. I would say a radius of approximately fifteen miles.

Q. From a population standpoint that would be the most populous Delaware County?

A. That is correct.

Q. How many counties are there in Delaware?

A. Three.

Q. How long has Keil's been in business?

A. The business was organized in 1919.

Q. And you have been in business ever since?

A. That is correct.

Q. How long have you been with the company?

1143 A. Approximately sixteen years.

Q. That would be beginning 1941?

A. 1941, that is correct.

Q. How many salesmen are employed in the tire department?

A. In sales, five.

Q. And how many trucks does the tire department operate?

A. Seven.

Q. Are they modern trucks?

A. Yes.

Q. Do you have two-way communication?

A. We have a telephone system in the trucks.

Q. What is the purpose of that?

A. That is to be able to render quicker service.

Q. How are your salesmen compensated?

A. They are on a salary and commission.

Q. How many people are employed in the tire department, the office staff?

A. The office staff?

Q. Over-all, the whole staff?

A. Keil's wholesale staff would consist of approximately 200 people.

Q. Of that number how many are in the tire department?

A. Twenty-two.

Q. Would that be 22 in addition to the five salesmen?

A. No. That would include the five salesmen.

1144 Q. In how many buildings is Keil's located?

A. Five.

Q. Are they all in the City of Wilmington?

A. All within a small area, yes.

Q. Is your company competitive as to price, quality, and service with other sellers of TBA products?

A. Yes, we are.

Q. Are you competitive with Firestone?

A. Yes, we are.

Q. Are you competitive with Firestone as to tires and tubes?

A. I think we are; yes, indeed.

Q. Are you competitive as to batteries?

A. We are.

Q. Approximately what percent of Keil's business is devoted to the tire department?

A. I would say approximately perhaps about 12 or 15 percent over-all.

Q. Generally in dollars and cents what would that come to?

A. It would exceed a half million.

Q. A half million dollars?

A. Yes.

Q. The tire department alone?

A. Yes.

Q. Does your firm have recapping facilities?

A. Yes, we have.

1145 Q. Are there any Atlantic service stations in your marketing area?

A. Yes, there are.

Q. Approximately how many?

A. I would say, at a guess, approximately twenty. There could be a couple more or less.

Q. Would you state your position again? Are you manager, did you say?

A. I am manager of the tire department.

Q. Have you solicited new tire and tube business and battery stations from Atlantic stations?

A. Yes, we have.

Q. Going back, for how long a period have you done that?

A. I suppose, going back even before my time, I suppose they have been solicited, too. They have been solicited ever since I have been there.

Q. And have you been able to sell tires, tubes, or batteries to Atlantic stations on a regular stocking basis?

A. No. Let me qualify that. Only one case that I know of.

Q. Only one Atlantic station?

A. Yes.

Q. Prior to about March 1951, did you actively solicit tires and battery business from Atlantic stations?

A. Yes.

Q. At that time did you or have you handled ac-
1146 cessories at any time?

A. Yes, back at that time we did.

Q. What accessories did you handle?

A. We handled everything in accessories. I wouldn't say everything but most everything like spark plugs, fan belts, radiator hose, batteries, tires, tubes, retreading.

Q. What brand of fan belts did you have?

A. Goodyear.

Q. What brand of fan belts and hose?

A. Goodyear.

Q. And I assume Goodyear batteries, and tubes?

A. Yes.

Q. Did you also carry a line of what is known as chemicals at that time—waxes and polishes?

A. Yes, we did.

Q. At that time were you able to sell Atlantic stations on a regular stocking basis?

A. Not on a stocking basis, no. We did sell Atlantic stations. Not on a stocking basis.

Q. At that time, prior to March 1951, did you at any time have what was known as a Keil's moving tire store?

A. Yes, we did.

Q. Will you please state what the purpose of that was, or what it was?

A. The purpose of it was to solicit strictly the gas
1147 station trade. It was somewhat of a moving van, a new truck, and we had it equipped with everything that we thought would be interesting to the service stations.

Q. Did you call on Atlantic service stations?

A. We called on all service stations.

Q. Over how long a period was such truck operated?

A. Approximately a year and a half.

Q. What was your experience with such truck?

A. Well, it wasn't too profitable. We finally discontinued the operation of the truck.

Q. At that time do you recall what brand of tires were being sold Atlantic stations?

A. Yes, they were Lee.

Q. Did Goodyear tire prices compare with Lee prices?

A. Not at that time, no.

Q. In what way?

A. Well, Lee's were much lower. I would say that they were 15 to 20 percent differential.

Q. Did your prices compare with Firestone prices at that time?

A. Yes.

Q. So that Lee prices were—

A. They were lower than Goodyear or Firestone at that time.

Q. Was that project eventually abandoned?

A. Yes.

1148 Q. At that time do you recall the serive station identification in Atlantic stations?

A. Back around 1950-51?

Q. Yes.

A. They were identified with Lee.

Q. Back about that time did you attempt to sell Goodyear batteries? You attempted to sell all your TBA?

A. Yes.

Q. Was there a time when Atlantic service stations discontinued advertising Lee tires?

A. There was. I can't remember the exact date.

Q. Was it about March 1951?

A. I wouldn't remember that date, no.

Q. What service station identification appears in Atlantic service stations?

A. Today there is Firestone.

Q. Firestone tires?

A. That is right.

Q. Firestone batteries?

A. Yes.

Q. Firestone accessories?

A. That is correct.

Q. What tires are Atlantic service stations now selling? What brand of tires?

A. Firestone, I think.

1149 Q. What brand of batteries?

A. I would think Firestone.

Q. Would you think also it was the Firestone line of accessories?

A. Yes.

Q. What has been your experience since the switch-over to Firestone in Atlantic stations?

A. Business-wise?

Q. Business-wise, yes.

Mr. Correa: Will you read that?

(Question read.)

A. Frankly, I haven't seen any difference.

By Mr. Kelaher:

Q. Do you have any difficulty selling to Atlantic stations?

Mr. Correa: I object.

Mr. Kelaher: Strike that.

By Mr. Kelaher:

Q. What do you mean by that?

A. We have never been able to get into the stocking with Atlantic stations, whether it be Firestone or whether it be Lee.

Q. I believe you testified that your prices—you are competitive—

A. I would say we are competitive, yes.

Q. (Continuing.) —with Firestone.

1150 You stated earlier that you did sell on a stocking basis to one Atlantic station. Will you identify the station?

A. I think the person you were talking about is the Atlantic station on South Market Street and I think the man's name is Parag.

Q. What products did you sell to Mr. Parag?

A. We sold Mr. Parag tires, retreading, batteries, on a stocking basis.

Q. During what period were you able to do that?

A. Approximately October 1955 to March 1956.

Q. What do you consider a regular customer, a regular tire customer?

A. Do you mean a dealer?

Q. A dealer, yes.

A. To me a dealer would be the type of person that would stock your product.

Q. Would you consider advertising also important?

A. Yes, I would.

Q. Mr. Sabo, I believe you testified that your company does a recapping business, is that correct?

A. That is correct.

Q. Are you able to do recapping business with Atlantic service stations?

A. Yes, we do.

Q. You do recapping business with most of the 1151 Atlantic service stations?

A. With most service stations. Atlantic and others.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: If your Honor please, at this time on behalf of the respondent Goodyear I move to strike the testimony of this witness as against Goodyear on the ground that no connection has been shown between his testimony and any of the issues in the complaint affecting the respondent Goodyear.

Hearing Examiner Kolb: The testimony of this witness which involves Firestone will be received, subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Correa.

Q. Mr. Sabo—

Mr. Kelaher: Excuse me. I understand Mr. Correa is about to cross-examine?

Mr. Correa: Yes.

Mr. Kelaher: If he is taking the position that he has no connection with Goodyear, what is his position?

Hearing Examiner Kolb: For the record so far, it is in there, his motion to strike.

Mr. Correa: It is a curious position on the part of counsel to take, because as long as the testimony remains in the record, even though it is subject to a motion
1152 to strike, I must cross-examine about it against the possibility that the motion to strike might be denied. A possibility, I grant you. It is inconceivable to anticipate, but in an abundance of caution.

By Mr. Correa:

Q. You have been in the tire business sometime?

A. Quite a long time.

Q. And you were employed by Goodyear for a number of years?

A. That is right.

Q. Your department does retreading?

A. Yes, we do.

Q. Is that an important part of your business?

A. Very important.

Q. Do you sell retreading to the service station market of your marketing area?

A. Yes, we do.

Q. You are pretty successful?

A. I think we are, yes.

Q. Would that, what I have called the service station market, include Atlantic service stations?

A. Yes.

Q. Do you sell most of the Atlanic service stations?

A. I would say we sell most of them; that is correct.

Q. In your area?

A. Yes.

1153 Q. That is, of the ones that buy retreads?

A. That is right.

Q. Do you sell most of the Atlantic service stations most of their retreading requirements?

A. That would be a hard question for me to answer.

Q. I take it you hope you do?

A. I would say that the Atlantic stations, my experience has been that they will buy from us and they will buy from others, too, in retreading.

Q. You said you also sell Goodyear tires and tubes to service stations in your area?

A. That is correct.

Q. Specifically to Atlantic service stations?

A. Not specifically; to all service stations.

Q. Is it the fact that you sell Goodyear tires and tubes to Atlantic service stations?

A. Yes, we have, that is correct.

Q. I take it from your answers on direct that the volume of such sales has not changed materially over the years?

A. No, it hasn't.

Q. That would be true going back to 1948 or 1947 or thereabouts?

A. That is correct.

Q. What percentage of your total business is with service stations in the sale of tires and tubes and batteries?

1154 A. I would say perhaps in service stations the total would be a half percent, or thereabouts.

Q. Service station business has never been an important part of your business?

A. No.

Q. Have you concentrated particularly on the service station business or not?

A. Well, we have, at one time. Recently it is strictly on retreading.

Q. Is retreading more profitable than the new tire business?

A. Yes, indeed.

Q. Is there a considerably larger profit making in it?

A. That is correct.

Q. You did mention a Mr. Parag, is that correct?

A. Yes.

Q. I am not sure that it is clear in the record. He was an Atlantic service station dealer?

A. He was an Atlantic dealer.

Q. And you sold him—

A. Goodyear products.

Q. On a stocking basis?

A. That is correct.

Q. How many salesmen do you have calling on service stations?

A. One, just one.

Q. How many trucks or delivery wagons do you 1155 have devoted to that business?

A. To that business, just to stations, gas stations?

Q. Yes.

A. Just one for that purpose.

Mr. Correa: I have no further questions.

By Mr. Thompson:

Q. Mr. Sabo, I represent the Atlantic Refining Company in this case. I have just two or three questions.

You said, sir, on direct, as I recall it, that the Atlantic stations sold Firestone TBA?

A. That is correct.

Q. What is your personal familiarity with the buying and selling habits of the Atlantic stations? Do you personally solicit them?

A. Do I personally solicit them?

Q. Yes.

A. No. I have in occasion been to them. But I don't personally solicit them.

Q. So that you have no personal knowledge of what particular items they are presently—

A. Outside of the reports that I get from the man that does solicit.

Q. From your one salesman?

A. Yes.

Q. Who, as I understand it, solicits all service stations?

1156 A. Yes.

Q. In New Castle County?

A. Yes.

Q. Approximately how many service stations would there be all together in New Castle County?

A. That is a question that would strictly be guess work on my part.

Q. It is a very large number?

A. Very large.

Q. Are you familiar with the Atlantic accounts that Keil's sells?

A. Some of them I am, yes.

Q. You are no longer engaged in selling accessories?

A. No.

Q. You gave that up about seven or eight years ago?

A. Somewhere about seven years, six or seven years, somewhere along in there.

Q. You mentioned only Mr. Parag as an Atlantic dealer who stocked Goodyear regularly?

A. He did at the time he was in business, yes.

Q. How about the Hill Atlantic station, at 505 South Market? Haven't they been stocking Goodyear for years?

A. Retreading, I think he has.

Q. New tires, too; don't they stock Goodyear tires?

A. Only on a pick-up basis like the other dealers.

1157 I wouldn't say that he has stocked, or identified with Goodyear in any way through advertising.

Q. What you mean by that is that he does not have the Goodyear sign on his station?

A. No; that's right.

Q. But he does stock and display Goodyear tires?

A. Not to my knowledge. He has bought Goodyear tires, but as far as on a stocking basis that I have never known of, for him to stock Goodyear tires.

Q. How about the Maier station on South Held Street, Wilmington? Are you familiar with that account?

A. No.

Q. Do you know whether Maier does or does not stock new Goodyear tires?

A. I don't have his name. I am not a bit familiar with him.

Q. Do you have the names of the Goodyear accounts who display and stock Goodyear recaps?

A. Do I have the names in the Atlantic stations?

Q. Yes.

A. Yes.

Q. A very large number of them, aren't there?

A. Quite a bit.

Q. In fact, most of them?

A. I would say most of them, that is correct.

1158 Q. Is it not true that today a number of the Atlantic stations are stocking Lee tires?

A. That I couldn't answer. I don't know.

Mr. Thompson: Thank you. That is all that I have.

Hearing Examiner Kolb: Are there any further questions?

Redirect Examination by Mr. Kelaher.

Q. Mr. Sabo, approximately when did your Keil's moving tire store operate?

A. Around 1950 or 1951, about a year and a half.

Q. Did Keil's moving tire store call on Atlantic accounts regularly at that time?

A. Yes.

Mr. Kelaher: No further questions.

Mr. Correa: No further questions.

Hearing Examiner Kolb: That is all, Mr. Sabo. Thank you very much.

(Witness excused.)

Mr. Diaz: I will call Mr. Stein, please.

Mr. Thompson: I haven't had a chance to talk to Mr. Correa since last Thursday. Could I have five minutes to chat with him before this witness goes on the stand?

Hearing Examiner Kolb: All right. We will recess for five minutes.

1159 Hearing Examiner Kolb: The hearing will come to order.

NORRIS STEIN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Diaz.

Q. Will you state your full name and home address, Mr. Stein?

A. Norris Stein, 122 Homewood Road, Wilmington, Delaware.

Q. Were you at one time an Atlantic station operator?

A. Yes, I was.

Q. Did you bring some documents for me this morning, Mr. Stein?

A. Yes, sir. (Handing.)

Mr. Diaz: If counsel have no objections I will substitute phostatic copies. These are the documents we sent to you.

Mr. Thompson: Of course we have no objections, but perhaps the originals are more legible. The photostats on some of them are not.

Mr. Dias: Your Honor, I would like to have marked for identification as Commission's Exhibit 317-A and B, an Atlantic lease dated the 27th day of July, 1954, executed by Mr. Stein and Atlantic.

1160 A document dated 7/26/54 as 317-C, entitled "Atlantic Housekeeping Standards."

As 317-D, a document entitled "Atlantic Housekeeping Rating."

And as 317-E, Atlantic franchise agreement dated July 27, 1954.

And as 317-F, an Atlantic agreement dated 1954 for the period July 26, 1954, to July 25, 1955.

(Whereupon, the documents referred to were marked Commission's Exhibit 317-A through F for identification.)

By Mr. Dias:

Q. Mr. Stein, I hand you documents marked for identification as Commission's Exhibits 317-A through F and ask you whether or not that is the lease agreement that you entered into with Atlantic in July of 1954, and the various franchise agreements, et cetera. Do you recall?

A. Yes, they are.

Mr. Dias: I would like to have marked for identification as Commission's Exhibit 318-A and B a two-page letter dated July 26, 1954, to Norris A. Stein, from R. S. Zinn, district sales manager.

(Whereupon, the documents referred to was marked Commission's Exhibit 318-A and B for identification.)

By Mr. Dias:

Q. I ask you, Mr. Stein, was this also part of your
1161 original leasing arrangements with Atlantic? Or did you receive that in the mail? Can you explain how you received that, 318-A and B?

A. I don't honestly remember.

Q. Referring to 317-A through F, those documents represent your original agreement with Atlantic. Is that correct?

A. Yes.

Mr. Dias: At this time I would like to offer it in evidence.

Mr. Correa: If your Honor please, I would like to state on the record that I have not—in the case of the last notice, your Honor will note that I did not make objections throughout his testimony, but rather made a motion to strike at the conclusion of his entire direct examination.

Unless your Honor prefers to have me do it otherwise, in the interest of not having to make an objection to every

question, I shall continue that procedure. Is that satisfactory?

Hearing Examiner Kolb: Yes.

Mr. Dias: Is this on the ground that it involves Firestone primarily?

Mr. Correa: That's right. That it has nothing to do with Goodyear.

Hearing Examiner Kolb: I think you had better make your objections to the exhibits separately.

Mr. Correa: I do object to the proffered exhibits 1162 on the ground that there is no showing that they relate in any way to the issues in this case involving the respondent Goodyear.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(Whereupon, the documents, heretofore referred to as COMMISSION'S EXHIBIT 317-A through F, were received in evidence.)

By Mr. Dias:

Q. I show you, Mr. Stein, Commission's Exhibit for identification 318-A and B. Will you tell us whether or not those documents related to your original agreement, lease agreement, with the Atlantic Oil Company?

A. Yes, they did.

Mr. Dias: I offer those in evidence at this time.

Mr. Correa: I have the same objection.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(Whereupon, the document, heretofore referred to as COMMISSION'S EXHIBIT 318-A and B, was received in evidence.)

By Mr. Dias:

Q. Mr. Stein, your original lease was dated sometime in July of 1954. How long were you in your station, and will you give us the address of that station, please.

1163 A. The address was Lancaster and Ford Avenues in Wilmington, and the time was two years and several days. Approximately three or four days over two years.

Q. Do you recall when you renewed your lease?

A. It was on or about August 1, 1955.

Q. Did you at that time receive a separate or new lease?

A. I believe I did.

Q. Were you able to find that document?

A. No. I didn't find it.

Q. Before you moved into your station originally—

Mr. Thompson: Mr. Dias, I have a photostat in my file if you would like to have it.

Mr. Dias: Yes, I would just as soon put it in.

I would like to have marked for identification as Commission's Exhibits 317-G and H, Atlantic lease arrangement dated July 29, 1955, between Atlantic and Mr. Stein.

(Whereupon, the document referred to was marked Commission's Exhibit 317-G and H for identification.)

Mr. Dias: I offer those in evidence at this time.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(Whereupon, the document, heretofore referred to as COMMISSION'S EXHIBIT 317-G and H for identification was received in evidence.)

1164 By Mr. Dias:

Q. Prior to the time that you executed the first contract with Atlantic, Mr. Stein, Did you go to a training school?

A. Yes, I did.

Q. Can you tell us when, approximately, you went to the training school?

A. It was around the 15th of June, 1954.

Q. How long did the course last?

A. I believe it was five weeks.

Q. Can you tell us where the course was conducted?

A. In Scranton, Pennsylvania.

Q. And who was it conducted the class, the school?

A. Atlantic Refining Company.

Q. Can you tell us a little bit about your training course? What did it consist of?

A. Well, it was a matter of indoctrinating a person such as myself, who had no experience with service station operation, into the knowledge and the necessary equipment to operate a service station, toward bookkeeping, salesmanship, products, advertising.

Q. Was the entire five weeks made up of classroom work?

A. No. Part of it was classroom work and part of it was actually working in a service station.

Q. How much work was spent in the classroom, and how much in the station?

1165 A. Pretty much half and half.

Q. Can you tell us a little bit about your classroom work? Was there any mention made of TBA?

A. Yes, sir. There was.

Q. Do you recall how often TBA was discussed?

A. Rather often.

Q. Would you place it at once a day, a couple of times a week, just about how often?

A. I couldn't place it accurately.

Q. Was there any emphasis on brand name?

A. Yes, there was.

Q. And what brand of TBA?

A. Firestone.

Q. Who made reference to the Firestone?

A. Both the people in operation of the school, and there was also a Firestone representative there one day who gave demonstrations and so on and so forth.

Q. Who was your instructor at the school?

A. Lew Sulyard—

Q. Can you spell that?

A. I'm afraid I couldn't tell you.

Q. Will you pronounce it again?

A. Sulyard.

Q. Do you recall any specific statements he made about TBA?

A. Yes, I do. There was not one but several spe-
1166 cific statements made concerning TBA, that Firestone was our best bet. This was a class not only conducted for myself but for other dealers, other prospective dealers, other dealers presently in operation, and Atlantic employees were also in the class. That Firestone was our best bet. And also the remark was passed, which stands out vividly in my mind, that when things got rough, that Firestone would be our best bet; that the independent jobbers wouldn't be of any use to us or any help to us at all.

Q. Can you place roughly when it was that he made that statement?

A. No, I couldn't.

Q. Can you recall how many were in the class?

A. Around 20.

Q. You took your station in July of 1954. Did you carry TBA in that station?

A. Yes, I did.

Q. And when did you make your arrangements to carry TBA?

A. When?

Q. Yes.

A. On the day I arrived. The day I opened.

Q. The same day that you opened? Is that correct?

A. Yes.

Q. And with whom did you place an order for TBA products?

A. With the Firestone Salesman.

1167 Q. Were there Firestone supplies in the station when you moved in?

A. I can't honestly answer that. I don't know.

Q. What is it that you purchased from the Firestone salesman? Did you buy tires?

A. Tires. Just what it says—tires, batteries, accessories.

Q. That was all Firestone. And how long did you—at any time that you were in the station did you at any time buy other than Firestone?

A. Yes, I did. After about the first six months I deviated from the exclusive Firestone franchise.

Q. What did you purchase then?

A. I purchased any brand that I could get, for the best price.

Q. Did you say that was after the first six months?

A. Approximately.

Q. During those first six months did you receive any complaints from Atlantic as to the method of operation of your station, or appearance, or any other complaints from them?

A. Not complaints. Remarks.

Q. What type?

A. Well, periodic visits, and this should be painted and that should be cleaned, and the restrooms are dirty, and so on and so forth. Nothing in writing.

Q. After you started handling TBA other than
1168 Firestone, did you receive any complaints?

A. Yes, I did.

Q. What type of complaints did you receive then?

A. The one that stands out in my mind is that my Atlantic salesman made a remark to me one day that if I didn't handle Firestone products I wouldn't long be an Atlantic operator—dealer.

Mr. Thompson: May we have the date, Mr. Dias, and the name?

By Mr. Dias:

Q. Can you tell me approximately when that occurred? And the name of your Atlantic salesman?

A. I would say in the neighborhood of December 1954, somewhere in that time.

Q. December 1954?

A. Yes. And the salesman's name was Jones. Mr. Jones.

Q. After that occurrence in December 1954, were any other comments made by Atlantic personnel about these TBA products other than Firestone in your station?

A. No, sir.

Mr. Dias: I would like to have marked for identification as Commission's Exhibit 319, a letter dated June 22, 1955, signed by M. G. Davis, and addressed to "All Atlantic Dealers," entitled "No Forcing."

1169 (Whereupon, the document referred to above was marked Commission's Exhibit 319 for identification.)

By Mr. Dias:

Q. I show you that document, Mr. Stein, and ask you whether or not you recall receiving a similar letter?

A. Yes, I did.

Mr. Dias: I would like to offer the document in evidence at this time.

Hearing Examiner Kolb: The document will be received in evidence, with the right to move to strike by Goodyear.

(Whereupon, the document, heretofore referred to as

COMMISSION'S EXHIBIT 319 for identification, was received in evidence.)

By Mr. Dias:

Q. Mr. Stein, did you receive any complaints of any type thereafter from the Atlantic people? I would like to refresh your recollection by showing you Commission's Exhibit 250.

A. Yes, I did receive this letter.

Q. What was your answer?

A. Yes, I did receive that letter, by registered mail.

Q. Do you recall the complaint about your housekeeping? Can you tell us anything about the condition of your station at that time?

A. The condition of my station?

Q. Yes. Do you know what it was that brought 1170 about the warning letter?

A. Apparently Atlantic, as I recall, they had a gentleman called the "phantom" who travels around from station to station and makes a purchase and observes the condition of the station, the service and so on and so forth. And the dealers are rated by a numbered point system. I believe—I am not sure but I believe that letter was a result of a visit by this so-called phantom.

Q. What steps did you take after that to improve your station?

A. Steps that I took to improve my station?

Q. Yes.

A. None, specifically.

Q. Was there a reason for that, Mr. Stein?

A. Well, I believed that my station was in such bad physical condition that there wasn't much I could do to make it look any better.

Mr. Dias: I would like to have marked for identification as Commission's Exhibits 320-A through C, a letter

dated February 1, 1956, from Mr. Stein to Mr. Davis of the Atlanic Refining Company.

And for identification as 320-D, a letter dated February 2, 1956, from Mr. Davis to Mr. Stein, acknowledging receipt of that three-page letter.

1171 (Whereupon, the documents referred to were marked Commission's Exhibits 320-A through D for identification.)

By Mr. Dias:

Q. I ask you, sir, if you recall sending that letter to the Atlantic Company?

A. Yes, I did. And I recall receiving the answer.

1172 Mr. Dias: I would like to offer these documents in evidence at this time.

Mr. Thompson: I assume, sir, that the letter written by Mr. Stein to Mr. Davis is offered for the purpose of showing his state of mind as of February 1, 1956?

Mr. Dias: Yes.

Mr. Thompson: And not as proof of facts stated in it.

Mr. Dias: I offer this to show his state of mind, and the fact and condition that brought about that state of mind.

Mr. Thompson: But they are two different things Mr. Dias.

Mr. Dias: They may be but I think they are related.

Mr. Thompson: If the purpose of this letter is to show the state of mind of Mr. Stein on February 1, 1956, of course I have no objection.

Would your Honor care to look at it?

Mr. Dias: Your Honor, this is a document that was written by the witness a short time after he had received a warning letter to the effect that his housekeeping wasn't up to standard. This letter in my opinion not only shows the frame of mind of the writer but the facts as they ex-

isted at that time. There was no thought of a suit
1173 here. And the witness is available for cross-examination if the respondents care to cross-examine on that.

Mr. Correa: I object to it.

Mr. Dias: It is material and relevant.

Mr. Correa: I object, if your Honor please, on behalf of the respondent Goodyear, owing that it has no connection with or relations to the issues affecting the respondent Goodyear.

Mr. Thompson: If your Honor please, it is perfectly obvious that this letter is not a business entry, not the kind of a document which can be put in the record under the Federal Act. The witness is on the stand. If the sole purpose is to—if it is received for the purpose of showing his state of mind at the time he wrote it, I have no objection. If it is offered for the purpose of proving something didn't work around the station, the man is here and can tell us about it.

Hearing Examiner Kolb: He received a warning letter and this is a reply to the warning letter. He is here for cross-examination. I will overrule the objection and receive the document in evidence, subject to a motion to strike by Goodyear.

(The document heretofore marked COMMISSION EXHIBIT 320-A through D for identification, were received in evidence.)

1174 By Mr. Dias:

Q. Mr. Stein, during the time that you were in the Atlantic station, were there any other inspections that you know of by Atlantic representatives?

A. Yes. There was one other that I recall specifically.

Q. What type was that, and when did it occur?

A. It was the same type of inspection.

Q. Did they also—

A. Excuse me. There were many other inspections by Atlantic personnel from Wilmington.

Q. What type inspections?

A. Apparently the station was inspected every time one of them walked on to the premises. But a purposeful inspection, I know of one other instance where there was a purposeful inspection.

Q. Will you tell us what that purpose was, and when it occurred?

A. It was the same thing, with this so called "phantom". The reason I know about it, because it happened to be a fellow that I knew quite well. And that is how I knew that he was there, otherwise I wasn't supposed to know that he was there.

Q. What was the phantom?

A. This was a, as I said, a fellow who drove into the station, made a purchase, and observed the condition 1175 and the service of the station.

Q. Was he an Atlantic employee?

A. Yes.

Q. What type of employee, do you recall?

A. I believed they are termed "service salesmen."

Q. Can you tell us when that occurred?

A. No.

Q. Did you maintain books at your station, Mr. Stein?

A. Yes, I did.

Q. What type entries did you keep in the books?

A. All types of bookkeeping entries. Purchases, sales.

Q. Of what specific items?

A. Of all my items—gasoline, tires, batteries, accessories, everything.

Q. Did you turn those books over to the Atlantic representative?

A. I offered them to the Atlantic representative on several occasions to look at, to peruse.

Q. Did they ever look at your books without your offering them to them.

A. I think it was a sort of an accepted fact that I didn't mind, and the books were looked at without my specific permission.

Q. Did you have credit card privileges at your station, Mr. Stein?

1176 A. Yes, I did.

Q. Were they important to you?

A. Yes.

Q. Can you give us some idea of the volume of business by credit card?

A. I can't give it to you exactly. I would say in the neighborhood of 20 or 25 percent.

Q. How did the credit cards operate? Let's take a case. After you make a sale by credit card, what did you keep, what did you send in to the company?

A. The latest credit card setup, there were two while I was in my station. The latest one was a matter of taking the credit card number, the customer's credit card number, recording it with the amount of the sale on a long sheet, totaling it, and mailing it to the Atlantic refining in Philadelphia. I believe it was in Philadelphia. I am sure it was. And then usually within three or four or five days I received a check for that amount.

Q. How did you pay rent at that station?

A. Every time I purchased gasoline.

Q. Were your credit sales subject to attachment for rent?

A. I wasn't aware that they were, but apparently they were.

Q. Did that occur?

A. Yes. Several times.

Q. Can you tell us approximately how often that happened?

1177 A. I don't want to perjure myself. I am not sure.

Q. Did it happen more than once?

A. Yes it did.

Q. Did you complain to Atlantic about that proceeding?

A. I certainly did. On several occasions.

Mr. Dias: I would like to have marked for identification Commission Exhibit 321, a letter dated February 6, 1956, from Mr. Howard M. Berg, attorney for Mr. Norris Stein, addressed to Mr. John Rule, Atlantic Refining Company; subject: deductions of rental payments from monies due on credit card sales.

And for identification as Commission Exhibit 322, a letter dated February 9, 1956, from Mr. E. E. Sickels to Mr. Howard M. Berg, Mr. Stein's attorney, acknowledging receipt of the letter dated February 6, 1956.

(The documents referred to were marked Commission's Exhibits 321 and 322 for identification.)

By Mr. Dias:

Q. I ask you if you recall those letters. (Handing.)

A. I do.

Mr. Dias: I would like to offer those letters in evidence at this time.

Mr. Correa: I object to the proffered exhibits on behalf of the respondent Goodyear.

1178 Hearing Examiner Kolb: The documents will be received in evidence, subject to a motions to strike by Goodyear, as Commission Exhibits 321 and 322.

(The documents heretofore marked COMMISSION EXHIBITS 321 and 322 for identification, were received in evidence.)

By Mr. Dias:

Q. Mr. Stein, I refer you to Commission Exhibit 322 where it is indicated that amounts due on your rent were in one instance $28.52, and $2.42 in another.

Can you tell us whether or not the amounts that were due on other occasions that you mentioned were larger than those amounts?

A. No, I can't, offhand.

Q. You can't remember?

A. No, not offhand.

Q. When did you leave your station, Mr. Stein?

A. July 31, 1956.

Q. Can you tell us the reason you left? Did you terminate the lease of your own accord or did Atlantic terminate it?

A. No, I terminated it.

Q. And at the time that you closed out, did you have any TBA in stock?

A. Yes, I did.

Q. Can you tell us the brand of TBA that you had in stock?

1179 A. There were several brands involved.

Q. Did you have Firestone tires?

A. Yes, I did.

Q. Batteries?

A. Yes, sir.

Q. And accessories?

A. Yes, sir.

Q. And did you have other brands of the same products?

A. Yes, sir.

Q. Can you describe your closing out process, Mr. Stein? Did the Atlantic people introduce the new operator to you?

A. Yes. They supervised the closing out process by taking the three of us—the three of us took a physical inventory, and it was changed over from the inventory.

Q. Did the new operator purchase all your TBA supplies?

A. No, sir.

Q. Can you tell us what products he did not buy?

A. He didn't buy anything from me. Atlantic Refining did.

Q. What products did Atlantic buy from you?

A. They bought everything but repairing—parts for repairing, like ignition parts, brake parts, in one category; no tires. They bought no tires.

Q. How about Firestone tires?

A. No, sir.

Q. They didn't buy those?

1180 A. No, sir. I might interject. I sold the tires to the Firestone Company.

Q. How about your supply of batteries, and accessories?

A. They bought those. There were very few items they didn't buy. The tune-up parts, ignition parts, brake parts, and the tires, they did not buy.

Q. Did they inventory and buy on the same day?

A. Well it was agreed upon on the same day, or it may have been carried over to the next day, due to lack of time.

Mr. Dias: I think that is all.

Mr. Correa: I move to strike the entire testimony of this witness, if your Honor please, on the ground that it is not connected with nor related to any issue rising under the complaint herein affecting the respondent Goodyear.

Hearing Examiner Kolb: The testimony of this witness relating to Firestone will be received in evidence, subject to a motion to strike by Goodyear.

Mr. Thompson: May we have a minute to confer?

Hearing Examiner Kolb: Yes. We will have a short recess.

(A short recess was taken.)

1181 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: I have no questions on behalf of Firestone.

Mr. Correa: I have no questions.

Mr. Kelaher: May I have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Mr. Kelaher: I would like to call Mr. Adams, please.

E. SCOTT ADAMS was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. E. Scott Adams, 9 East Clearview Avenue, Hollyoak, Wilmington.

Q. Are you associated with Adams Parts?

A. I am a partner in Adams Parts.

Q. Who are the other partners?

A. Two brothers and a brother-in-law.

Q. Would you give us the names of your brothers?

A. William E. Adams; Joseph F. Adams, and William R. King.

Q. Would you please describe your company's business?

A. We are jobbers and distributors of automotive
1182 parts, supplies, equipment. We sell to the car dealers, service stations, fleets, general automotive trade.

Q. Did I understand you to say that you sold so-called hard parts?

A. Yes, that's right.

Q. And you also sell TBA items.

A. That's right.

Q. You do not handle tires?

A. We don't handle tires.

Q. What batteries do you handle?

A. Delco.

Q. And how long have you been handling Delco?

A. Since—

Q. Approximately.

A. November, 1955.

Q. And prior thereto did you handle any other brand of batteries?

A. Auto-Lite.

Q. And would you please state some of the principal brands of accessories you carry?

A. We have the AC line of spark plugs and oil filters; we have DuPont automotive chemical line; we have Goodyear fan belts and hoses; and other automotive rubber products.

Q. When you say other automotive rubber products, are you referring to some of the Goodyear brand names?

1183 A. Yes, but not tires. They are hose items, I might say. Small mechanical hose.

Q. Do you carry any waxes and polishes?

A. Yes, we do.

Q. What brands?

A. We have DuPont; Johnson, and Prestone.

Q. Do you carry Prestone waxes and polishes?

A. We don't have Prestone wax and polish. We have Prestone cooling system products. Cooling system chemicals.

Q. Would that include antifreeze?

A. That includes antifreeze.

Q. And there are also other products in that line besides antifreeze?

A. That's right, service products.

Q. What is the sales area of your company?

A. We work the Wilmington area and Wilmington suburban area, and just a very small part of Maryland and Pennsylvania that is adjacent to Delaware.

Mr. Thompson: May I ask whether that means New Castle County?

By Mr. Kelaher:

Q. Does your sales territory include the entire State of Delaware?

A. No.

Q. Just sections of it?

1184 A. New Castle County predominantly. Almost entirely New Castle County.

Q. What counties do you get into in Maryland and Pennsylvania?

A. I can't tell you the counties.

Q. What are the towns?

A. The towns, we work Elkton, Maryland; Charlestown, Maryland. We work Oxford, Pennsylvania. That is principally the direction and the towns that we work.

Q. How many men does your company employ?

A. We employ two salesmen. My brother, who is a partner, also works a small territory.

Q. Which brother?

A. That is William E.

Q. And what class of customers are solicited for business?

A. Car dealers, service stations.

Mr. Thompson: He has already covered that, Mr. Kelaher.

The Witness: We cover the entire retail automotive trade.

By Mr. Kelaher:

Q. Is your company competitive as to price, quality and service with other sellers of batteries and accessories?

A. I believe we are, yes.

Q. Does your company solicit Atlantic Service stations?

A. Yes, we do.

1185 Q. Approximately how many Atlantic service stations are in your marketing area?

A. Of course, we don't have accurate information available, but our estimate is 40 to 50 in the Wilmington area. Wilmington and suburban area.

Q. Are there Atlantic service stations in the Maryland and Pennsylvania area?

A. Oh, yes. But we don't—we don't comb that area and we don't work it aggressively. We don't completely cover it.

Q. Do you work the Wilmington and suburban area aggressively?

A. Yes, we do.

Q. Are all Atlantic stations solicited for battery and accessory business?

A. Yes. Our policy is to call on all service stations.

Q. What has been the company's experience in selling hard parts to Atlantic stations?

A. We have been very successful selling hard parts and ignition parts, and brake lining. Items in that category, to Atlantic service stations.

Q. What has been the company's experience in selling batteries and accessories to Atlantic stations?

A. We have been able to sell the Atlantic stations bat-

teries and accessories, mostly on a pick-up basis. We haven't been able to my knowledge to sell any Atlantic stations as a stocking dealer on batteries. I have to
1186 be specific and say batteries. Some of our other TBA items we may sell them. I wouldn't have the information available on that.

Q. How long has your company been in business?

A. Since 1946.

Q. What is your position with the company?

A. I am a partner in the company and I act as more or less office and credit manager. I also get into the buying. We are a very closely knit organization and many of our operations are done as a group of partners rather than individuals.

Q. And do you also have conferences with your salesmen?

A. Oh, yes.

Q. Have any reasons ever been given as to why you only sell batteries and accessories on a pick-up basis to Atlantic stations?

Mr. Thompson: It is objected to as involving double hearsay.

Hearing Examiner Kolb: The question can be answered yes or no.

Read the question.

(Question read.)

A. Yes.

1187 By Mr. Kelaher:

Q. Have you ever yourself observed the TBA carried by Atlantic service stations?

A. Yes.

Q. What brand is carried by Atlantic service stations?

A. Firestone.

Q. Have you yourself observed the advertising of TBA items in Atlantic service stations?

A. It is predominantly Firestone.

Q. You handle Delco batteries. Have you ever seen any Delco signs in Atlantic service stations?

A. No, I haven't.

Mr. Kelaher: No further questions.

1188 Mr. Correa: I move to strike the testimony of the witness, if your Honor please, as against the respondent Goodyear, on the ground that it is not connected with or related to any of the issues in the case involving Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be subject to a motion to strike on the part of Goodyear.

Cross-Examination by Mr. Thompson.

Q. Mr. Adams, your company has a number of competitors in New Castle County?

A. Yes.

Q. Would you mind telling us who some of your principal competitors are?

A. Taylor Auto Supply Company; Motor Car Service Company; Wilco Supply Company. They are our principal competitors.

Q. How about Durham Motorist?

A. Durham Motorist, yes.

Q. That is another one?

A. Yes, they are competitive.

Q. Motor Parts and Service?

A. Yes.

Q. Suburban Auto Parts?

A. Yes.

Q. That is rather a new company, is it not?

A. That is rather new, yes.

1189 Q. Don't the Chester suppliers also come to Wilmington a good deal?

A. I believe they come down here. I don't believe a good deal.

Q. Since your company doesn't handle tires, you don't offer recap service do you?

A. No.

Q. You stated, as I understood you, sir, that you have observed Atlantic stations in this area.

A. Yes.

Q. And from your observation noted that they carry Firestone?

A. Yes.

Q. You do not go on the street yourself and sell any of these accounts, do you?

A. No. I don't call on the trade to sell them.

Q. Are you familiar with the accounts that your company has among the Atlantic dealers? I mean, do you know who they are, if I ask you a question about it?

A. Oh, yes.

Q. May I ask you, as a generality, first, whether it is not true in the Wilmington area, in New Castle County, that all or substantially all of the Atlantic dealers carry TBA in addition to Firestone?

A. I would have to answer that in generalities. I would say handle them to, I would say, a much lesser extent.

1190 Q. Than Firestone?

A. Than Firestone.

Q. Is it not true from your observation that a large number of them carry Lee tires?

A. I can't answer that.

Q. Is it not true from your observation that a very large number of them carry Exide batteries?

A. I couldn't answer that as a large number. I think a few do.

Q. Is it not true from your observation that most of them carry accessories either other than or in addition to Firestone accessories?

A. I think most of them do carry other accessories to some extent, yes.

Q. Do you know the Nicholas DeLeo station?

A. Yes.

Q. That station stocks Lee tires, does it not?

A. I couldn't answer that.

Q. Do you know from whom that particular station operator buys accessories?

A. He buys considerable from us, due chiefly to the fact that he is close to us. In fact, he is running in and out of the store daily. But I don't know exactly what items he buys. I think they are mostly repair parts.

Q. That is what is called a lessee station, is it not?

1191 A. I believe it is, yes.

Q. Is not the same comment so with respect to James Donovan?

A. Yes.

Q. At Newport Gap Pike?

A. We sell him considerable.

Q. And also Norman Landis, on New Castle Avenue?

A. Landis, I am not familiar with.

Q. Do you know who his accessory supplier is?

A. I don't know the account at all.

Q. Do you solicit the account, do you know?

A. I can't answer that.

Q. How about the Maier's station—M-a-i-e-r. That is one of your customers, is it not?

A. Yes.

Q. They buy substantial amounts of accessories from you?

A. No, they don't. Very sparingly.

Q. But they are one of your customers.

A. They are one of our customers.

Q. I am now talking about accessories, not just hard parts.

A. He doesn't buy much of anything from us.

Q. How about Walter Mitchell, 1706 New Road, Forest Park, do you know him?

A. Yes. He buys considerable from us.

Q. The same thing is true with respect to Mr. Pavloski?

A. I don't know the account.

1192 Q. Front and Tatnall.

A. No.

Q. Don't you sell that account Champion spark plugs?

A. We don't sell Champion spark plugs.

Q. Do you know whether that company doesn't stock and sell and display Champion spark plugs?

A. I don't know the account at all.

Q. Do you know Mr. William A. White, Sr., with two Atlantic stations?

A. I knew I believe the son. I didn't know the father. And I just—just casual. I met him a couple of times.

Q. Do you solicit either of the White stations?

A. I believe they are out of business, although I am not positive of that.

Q. Recently they took a station at 3201 Concord Pike, Wilmington.

A. I am not familiar with that.

Q. How about Henry Weight—W-e-i-g-h-t? He is one of your accounts, is he not?

A. What was the name?

Q. W-e-i-g-h-t. It is either Weight (weight) or Weight (wight).

A. I am not familiar with that.

Q. New Castle Boulevard and Stamford Boulevard.

A. I am not familiar with that.

Q. That is in the City of New Castle. Do you cover the City?

1193 A. We cover New Castle, yes.

Q. But you are not familiar with that—

A. I am not familiar with that particular account.

Q. As a generality, is it not so that most of the Atlantic lessee dealers buy accessories from your company?

A. I wouldn't say that most do, no. I would say some do. But most of them don't.

Q. I hate to go over a long list with you, sir. You have already identified a number of your accounts.

How about Benedett—B-e-n-e-d-e-t-t—at 11th and Washington?

A. We don't sell them.

Q. Do you know who does?

A. No, I don't.

Q. Do you know whether or not Durham Motorist is their principal supplier?

A. I don't know. I can't answer.

Q. How about the Bennett station—B-e-n-n-e-t-t—Marsh and Wilson Roads, is that one of your—

A. We sell him small amounts.

Q. And the Bochenek station, on Naaman's Road?

A. We don't sell him.

Q. How about Bruton station, 2530 Concord Pike?

A. Yes, we sell him.

Q. That company stocks National batteries, does it not?

1194 A. I can't tell you. It is a new account, just recently opened. I am not familiar with what he buys.

Q. Do you know the C-o-n-t-o-m-p-a-s-i-s station?

A. That is in Hollyoak, or Gordon Heights.

Q. Hillcrest.

A. Yes. That's right. He operates under the trade name of Pete's Atlantic station. He obviates the situation.

Q. Do you recall that station?

A. Yes.

Q. He stocks Lee tires, doesn't he?

A. I can't answer that. I really don't know.

Q. The Foster station, at Pacific Avenue and Clayton, buys its fan belts and hose from you? Am I not correct?

A. I don't recall the station by that name. But at that address we have F&M Atlantic station, which suggests the same thing.

Q. That is probably Foster and somebody else?

A. And somebody else, yes. We sell him. I don't know what items.

Q. Do you handle the Gates line at all?

A. No, we don't.

Q. Do you sell Ted Hill? At 4800 Governor Printz Boulevard?

A. I don't know the account. No.

Q. You don't know whether you solicit him?

A. I presume that we should solicit him, although
1195 I am not definite. I can't say that we have.

Q. How about LaMarr—L-a-M-a-r-r, 40th and Washington?

A. We don't sell that account. When I say we don't sell him, it is entirely possible that any of those accounts could walk in our store with an order and purchase material. We don't sell them—

Q. Are you familiar with that station at 40th and Washington?

A. What did you say?

Q. Are you familiar with the station at 40th and Washington?

A. Yes, I am. I ride past it. I say I am familiar. I know where it is.

Q. Have you ever noticed it and noted what they do sell as you go by?

A. No, I haven't.

Q. Would it refresh your recollection if I suggested to you that they stock and display and sell Goodyear tires?

A. No, it wouldn't.

Q. You must know Nicholas Tavani.

A. Yes.

Q. He is a rather well known dealer, isn't he?

A. I believe he is one of the oldest Atlantic dealers in Wilmington.

Q. Advertises and stocks and displays both Lee and Exide, doesn't he? Instead of Firestone.

A. I can't tell you Lee. He does Exide.

1196 Q. Do you know Gerard VanSchaik?

A. Yes, I do.

Q. He is one of your accounts, isn't he?

A. Yes, we sell him considerable.

Q. And the same comment is true, is it not, with respect to Sidney Wallace?

A. No.

Q. Do you know that account?

A. We don't sell that account.

Q. Do you know who his supplier is?

A. No, I don't.

Q. How about William Whitman—W-h-i-t-m-a-n?

A. We sell him some.

Q. He is a Lee tire dealer, isn't he? Do you know the account?

A. I know the account, but I can't answer that question on tires.

Q. Also handles Goodyear accessories? Do you know?

A. Not to my knowledge.

Q. How about George Whorl—W-h-o-r-l—out of Hollyoak?

A. We sell him. I don't know how much, but we sell him.

Q. All of the dealers that I mentioned are what you call lessee dealers, are they not?

A. That's right. Of course, when I said we sold them, I didn't—I wasn't specific as to what type of items.

1197 Some cases I don't know.

Q. You sell not only hard parts but also accessories to substantially all of the contract dealers in this area, do you not?

A. What do you mean by contract dealers?

Q. Those who either own their own stations or lease stations from people other than Atlantic Refining.

A. Yes.

Q. There are a large number of such accounts, too, are there not?

A. Yes, there is.

Q. You don't handle Wix filters, do you?

A. No.

Q. Do you know the Baird station at Farnhurst?

A. Yes.

Q. That is one of your accounts?

A. We sell him.

Q. Are you familiar with that particular station, Mr. Adams?

A. I would say yes, I am fairly familiar with it.

Q. Until fairly recently they didn't even sell Firestone tires, did they?

A. I can't answer that on tires. I am familiar with the account in the sales I see moving through for him.

Q. Do you sell him Exide batteries?

A. No, we don't.

1198 Q. Just accessories?

A. We don't sell him batteries.

Mr. Kelaher: The witness testified that he doesn't handle Exide batteries.

By Mr. Thompson:

Q. I beg your pardon. Delco.

A. We don't sell him Delco, to the best of my knowledge. We don't sell him as a stocking deal, I will put it that way.

Q. How about the Graybeal station, at Glasgow?

A. No, we don't sell him.

Q. You don't get over to Newark, do you?

A. Newark, Delaware?

Q. Yes.

A. Yes, we work Newark.

Q. Aggressively?

A. Not aggressively, no. What we term high-spot it.

Q. Do you have any particular Atlantic accounts over there at Newark that you can now recall?

A. I don't recall any stations in Newark.

Q. How far away is Newark from Wilmington?

A. I think about 12 miles.

Q. How far is New Castle, just to get my geography straight.

A. Three or four.

Q. Is it that close?

A. It is closer than Newark.

1199 Q. Is Mr. Dashper—D-a-s-h-p-e-r—one of your salesmen?

A. Yes, he is.

Q. What territory does he have, so far as batteries and accessories is concerned?

A. Wilmington, Newark, Newark, Delaware, New Castle. That would be the points of his territory. It covers—

Q. How about your brother, Mr. William Adams? What territory does he cover on batteries and accessories?

A. He works a few accounts in Wilmington, Oxford, Pennsylvania. That is about it.

Q. Is he on the street much or in the office most of the time?

A. About half the time he is on the street.

Q. Mr. Dashper is on the street—

A. Entirely.

Mr. Thompson: Thank you very much. That is all that I have.

Mr. Correa: No questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Adams, you stated on cross-examination that you sold to a James Donovan. I believe you answered that you sell considerable. What is it that you sell to Mr. Donovan?

I will rephrase the question. Do you sell hard parts or batteries and accessories?

1200 A. I think we sell predominantly hard parts to him, items such as brake lining and ignition.

Q. And the same question was asked you with respect to an Atlantic dealer named W. Mitchell. What do you sell him?

A. I believe our sales to Mitchell is entirely hard parts and ignition.

Q. Just for the record, Mr. Adams, if I didn't ask you: What is the address of your business?

A. 1601 Governor Printz Boulevard.

Q. Wilmington?

A. Wilmington, 2.

Q. You were asked about your sales to quite a large number of Atlantic dealers. As to some you stated that you did make sales and as to others you stated that you didn't, and so on. But as to those to whom sales were made, do you sell hard parts to such accounts?

A. Predominantly, yes.

Q. Predominantly hard parts?

A. Yes.

Q. And not batteries and accessories, is that correct?

A. Batteries and accessories to a far lesser extent. Most of the batteries and accessories we sell we term a pick-up basis.

Q. Do you sell any batteries and accessories to the Atlantic dealers named on what is known as a stocking basis?

1201 Mr. Thompson: That has been answered before. This is improper redirect examination.

Hearing Examiner Kolb: I think probably it is a question that you asked and that the witness has answered.

Mr. Kelaher: If he has answered—

By Mr. Kelaher:

Q. Why don't you answer it again?

The Witness: Ask it again, I missed it.

(Question read.)

A. Not to my knowledge.

By Mr. Kelaher:

Q. You were asked about so-called Atlantic contract dealers on cross-examination. I think that term was defined to you by Mr. Thompson. I am not too clear on your testimony with respect to those contract dealers. Do you sell hard parts to such dealers?

A. Yes.

Q. Approximately how many contract dealers do you have?

A. I believe before I said considerable, because I didn't understand the question. In the case of Atlantic, there would be comparatively few.

Q. And do you sell batteries and accessories to such Atlantic accounts?

A. I can't answer that possibly. I don't know.

Q. Offhand, right now you know of no Atlantic
1202 contract dealer to whom you sell batteries or accessories, is that right?

A. No, I don't know of any.

Mr. Kelaher: No further questions.

Recross-Examination by Mr. Thompson.

Q. You testified over my objections that salesmen have reported to you that you couldn't sell batteries to Atlantic stations because of pressure?

Mr. Kelaher: That was stricken.

Mr. Thompson: I withdraw the question. That is all.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Adams. Thank you.

(Witness excused.)

Mr. Kelaher: I suggest we adjourn until 2:00 o'clock.

Hearing Examiner Kolb: The hearing will be adjourned until 2:00 o'clock.

(Thereupon, at 12:50 p. m., the hearing was adjourned, to reconvene at 2:00 o'clock, p. m., this day.)

1203 Afternoon Session.

(2:10 P. M.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. William E. Adams, please.

WILLIAM E. ADAMS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and address?

A. My name is William E. Adams, 710 Woodsdale Road, Belleview Manor, Wilmington.

Q. Are you a partner in the firm of Adams Parts?

A. Yes, I am.

Q. What is your position with Adams Parts?

A. I am in charge of sales in our trading area.

Q. How long have you been in charge of sales?

A. Since the company was founded; approximately ten and a half or eleven years ago.

Q. Are you a brother to Mr. E. Scott Adams?

A. That is correct.

Q. Do you supervise the selling activities in your 1204 firm's entire marketing area?

A. Yes, I do.

Q. Could you approximate the number of Atlantic service stations in your company's marketing area?

A. I would say there are approximately 40 to 50.

Q. Are you referring to the Wilmington area?

A. I am referring to the Wilmington and Wilmington suburban area.

Q. As I understand your brother's testimony your firm also gets into adjacent Maryland and Pennsylvania areas, is that correct?

A. We do, but we actively work Wilmington and suburban Wilmington. The outside area is more or less what we term high-spotted. We call on large accounts only.

Q. Have you personally contacted Atlantic service stations over the years that you have been with Adams Parts?

A. Yes, I have.

Q. At the present time how many salesmen do you have, in addition to yourself?

A. We have two.

Q. Do they actively solicit service station accounts?

A. Yes, they do.

Q. Do you today actively solicit service station accounts?

A. I do.

1205 Q. What has been your experience in selling battery and accessory items to Atlantic service stations?

A. We have been rather unsuccessful. We naturally can't put our finger on exactly why, but we have been unsuccessful in recent years.

Q. During that period have you been selling hard parts to Atlantic stations?

A. Yes, we have been much more successful selling them what we term hard parts.

Q. Do you recall calling on an Atlantic dealer by the name of Robert Miller, Lancaster and Ford Avenue, Wilmington, Delaware?

A. Yes.

Q. Did you sell batteries or accessories to Mr. Miller?

A. Yes.

Q. What brand of batteries did you sell to Mr. Miller?

A. At that time we were selling and distributing Auto-Lite batteries.

Q. Would you give us the approximate time that you have reference to?

A. I would say it was approximately 1932.

Q. For how long a period did you sell Auto-Lite batteries to Mr. Miller?

A. I would approximate a year and a half.

Q. Do you recall approximately how many batteries you would average a month selling to him?

1206 A. He was an average battery dealer. I might say approximately ten batteries a month.

Q. What was the price per unit? Would you have any idea?

A. That is going back five years ago. I would say the approximate price was in the vicinity of $11, depending on the type of battery.

Q. Did you sell accessories to Mr. Miller at that time?

A. Yes, I did.

Q. Do you recall any of the accessory items that you sold to him?

A. Fan belts, radiator hose, some polish, bulbs.

Q. Was Mr. Miller purchasing Auto-Lite batteries on a stocking basis?

A. Yes, he was.

Q. Did he continue to purchase Auto-Lite batteries from you on a stocking basis?

A. No. I lost the account.

Q. You lost the account?

A. I lost the account.

Q. Did Mr. Miller ever give you a reason why he stopped buying Auto-Lite batteries from you on a regular basis?

A. He merely told me, "Bill, I can't buy batteries from you any longer."

Q. Did he state which batteries he was going to buy?

A. Yes; Firestone.

1207 Q. After that conversation did he purchase Auto-Lite batteries from you on a regular stocking basis?

A. No.

Q. Did his volume of accessory purchases remain the same after that conversation?

A. No. They were lower.

Q. Are you familiar with what is known as service station identification in Atlantic stations?

A. Yes, I would say I was.

Q. Referring to the outdoor signs and window valances?

A. Yes.

Q. What type of service station identification have you observed in the Atlantic service stations?

A. In Atlanic service stations?

Q. Yes.

A. I would say predominantly Firestone.

Q. Have you observed the batteries carried by Atlantic service stations? The brand?

A. The storage batteries?

Q. Yes.

A. Yes. The majority of them I would say, handle Firestone.

Q. What has been your experience with respect to selling new Atlantic service stations? Let's take new Atlantic service station dealers to be more accurate.

1208 A. I would say they are rather difficult to sell. Batteries or accessory items. However, we are somewhat successful in selling them hard parts.

Q. Have you noted what batteries and accessories are carried by these new dealers, new Atlantic dealers?

A. Atlantic dealers?

Q. Yes.

A. I would say predominantly Firestone.

Q. Do you recall whether such new station dealers were stocked with Firestone TBA at the commencement of their business?

A. Do you mean by that the day they open up, for doing business with the public?

Q. Yes.

A. Yes, I would say most of the times they are.

Q. Mr. Adams, you stated that you were selling accessories to Mr. Miller, such as fan belts, oil filters, et cetera. What brand of fan belts were you selling at the time?

A. At that time we were selling Thermoid.

Q. What brand of radiator hose?

A. Thermoid.

Q. Do you recall the oil filters?

A. The oil filters I believe at that time was AC, same as they are today.

Q. What line of chemicals were you selling at that time?

1209 A. We were selling primarily Hollingshead.

Q. Is that the Whiz line?

A. The Whiz line.

Q. You stated that after a conversation you had with Mr. Miller your accessory sales declined. Do you recall what accessories he was purchasing at the time, or what other source of supply he had for accessories?

A. Other than myself?

Q. Yes.

A. Of course he may have had other jobbers supplying him. But I think the larger percentage of his accessory purchases were probably Firestone.

Q. State the number of delivery trucks your firm has.

A. We have two.

Q. How often do you make deliveries?

A. We make three deliveries a day in the Wilmington area.

Q. Three deliveries a day in the Wilmington area?

A. That is correct.

Q. How does such delivery service compare with the delivery service of Firestone stores, if you know?

A. I can't answer that. I don't know Firestone's delivery schedule.

Mr. Kelaher: No further questions.

Mr. Correa: I move to strike the testimony of this witness against the respondent Goodyear on the
1210 ground that it is not shown to be connected with or related in any way to the issues arising under this complaint as respects the respondent Goodyear.

Hearing Examiner Kolb: The testimony of this witness will be received subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Ballard.

Q. Mr. Adams, I believe your brother told us that you were on the street about half the time, is that right?

A. That is correct, approximately.

Q. Is that in the Wilmington area mostly?

A. Mostly; yes, sir.

Q. I think you do get up to Oxford, Pennsylvania?

A. That is correct; yes, sir.

Q. Do you have any idea how many accounts you cover all told?

A. That I cover myself?

Q. Yes.

A. That is on a regular contact basis, or just spasmodically dropping in to see them?

Q. On a regular basis?

A. On a regular basis I would say I cover roughly about 18 accounts.

Q. What do you call a regular basis, once a week?

1211 A. Once a week.

Q. How many are there on a spasmodic basis?

A. I cover, from time to time, practically every account we have on the books; I would say roughly around—that is, of any size—roughly around a hundred.

Q. Out of your 18 accounts, I suppose most of those are car dealers and garages?

A. The majority of them are car dealers, State of Delaware, and rather large potential accounts.

Q. Are there any service stations in those 18?

A. Yes.

Q. Which ones?

A. Practically the only ones I call on are Standard Oil stations.

Q. In other words, you don't have any Atlantic stations in those 18?

A. No, sir.

Q. Where do you get your familiarity with the status of Atlantic accounts?

A. We do have, of course, quite a few Atlantic stations on our books that are called on by the other salesmen, and I do stop in to see them occasionally.

Q. You just stop in to sort of pass the time of day with them?

A. That is correct, more or less.

1212 Q. Mend your fences, I believe the politicians call it?

A. Yes, sir.

Q. Mr. Dashper is primarily in the Wilmington area, too, is he? The city part of Wilmington?

A. Primarily; yes, sir. He does cover Delaware City, Port Penn.

Q. I imagine he visits his service stations much more frequently than you do?

A. His regular accounts he visits once a week.

Q. I think you said that as far as signs go, the stations

were predominantly Firestone, is that right? The Atlantic stations?

A. The Atlantic stations.

Q. I guess the ones that aren't Firestone are mostly Lee, aren't they?

A. I can't answer that. I don't know.

Mr. Ballard: I have no further questions.

Mr. Correa: I have no questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Adams. Thank you very much.

(Witness excused.)

Mr. Kelaher: Your Honor, we have another witness but he won't be able to appear until 3:45. I move we adjourn until that time.

1213 Hearing Examiner Kolb: Is that the only witness you have?

Mr. Kelaher: Yes, the only witness.

Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will recess until the witness gets here.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Commission Exhibit 273 is withdrawn as it already appears in the record as Commission Exhibit 248-B.

(The document heretofore received in evidence as Commission Exhibit 273 was Withdrawn.)

Mr. Kelaher: I would like to call Mr. Sullivan.

THOMAS J. SULLIVAN, JR. was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Thomas J. Sullivan, Jr. Sometimes I go by that. Sometimes I am listed as Sullivan. My home address 1214 at the present time is 11 Monterry, Brookside, Newark, Delaware.

Q. Were you at one time an Atlantic lessee dealer?

A. That is correct.

Q. During what period did you operate the station?

A. From the third of November, 1953, to the night of the—I believe it was the 23rd of October, 1954.

Q. Mr. Sullivan, I hand you a document identified as Commission Exhibit for identification 323-A and B and ask you to state what it is?

A. This is the lease under which I assumed the proprietorship of the station.

Mr. Kelaher: Mr. Examiner, I offer Commission Exhibit 323-A and B in evidence.

Mr. Mason: I object on the grounds of lack of connection with respondent Goodyear.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear, as Commission Exhibit 323-A and B.

(The document heretofore marked COMMISSION EXHIBIT 323-A and B for identification was received in evidence.)

Mr. Kelaher: If agreeable with counsel, we will substitute a photostatic copy for the original.

Mr. Ballard: That is agreeable.

By Mr. Kelaher:

Q. I show you Commission Exhibit for identifica-
1215 tion 324-A and B and ask you to state what it is, Mr. Sullivan?

A. This is—I don't know what you would call it, a document or what you would call it, but it is an outline of the Atlantic Refining Company housekeeping standards on class 2 locations, which is the type station that I assumed the dealership of. And it has the first statement on the page, it says this: "Paragraph 7 of the B-3191 lease of the Atlantic Refining Company provides as follows:" and then it goes on and states the provisions of the housekeeping standards.

Q. This then is a part of the lease that you signed, is it not?

A. I assume that that is what it is, yes.

Mr. Kelaher: Your Honor, I now offer Commission Exhibit 324-A and B into evidence.

Mr. Mason: Goodyear has the same objection.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(The document heretofore marked COMMISSION EXHIBIT 324-A and B for identification was received in evidence.)

By Mr. Kelaher:

Q. Mr. Sullivan, I now show you Commission Exhibit for identification 325 and ask you to state what it is?

A. This is an agreement that I made with the
1216 Atlantic Refining Company, or that they made with me, that I was able to accept credit cards.

Q. That is a credit card agreement?

A. That is right.

Mr. Kelaher: Your Honor, I offer Commission Exhibit 325 into evidence.

Mr. Mason: Same action as to Goodyear.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(The document heretofore marked COMMISSION'S EXHIBIT 325 for identification was received in evidence.)

By Mr. Kelaher:

Q. Mr. Sullivan, I now show you Commission Exhibit for identification 326 and ask you to state what it is?

A. This is a list of the inventory of the location that I assumed, and the inventory that is listed on this is the equipment that belongs to the Atlantic Refining Company that was in the station.

Mr. Kelaher: I offer Commission Exhibit 326 into evidence.

Hearing Examiner Kolb: The document will be received into evidence, subject to a motion to strike by Goodyear.

(The document heretofore marked COMMISSION'S EXHIBIT 326 for identification was received in evidence.)

1217 By Mr. Kelaher:

Q. Mr. Sullivan, I hand you Commission exhibit for identification 327 and ask you to state what it is.

A. That is an Associate Dealer Agreement with the Firestone Tire and Rubber Company. It authorized me to buy and sell Firestone products.

Q. Were you an Atlantic lessee dealer at the time you entered into this contract?

A. That's right, yes.

Mr. Kelaher: I offer Commission Exhibit 327 for identification into evidence at this time.

Mr. Ballard: Mr. Kelaher, I assume that when you

make photostatic copies that you will make some for the respondents as well?

Mr. Kelaher: I will be happy to.

Mr. Mason: Same objection on the part of Goodyear.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 327, subject to a motion by Goodyear to strike.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT NO. 327 for identification, was received in evidence.)

Mr. Kelaher: It is the understanding of counsel that photostatic copies will be introduced for all exhibits just referred to, 323-A through 327.

1218 By Mr. Kelaher:

Q. Did you attend Atlantic training school?

A. Yes, I did.

Q. Where was the training school located?

A. At the time the training school was located in Allentown, Pennsylvania.

Q. How long a training period did you receive?

A. I believe it was a six weeks' school.

Q. Was TBA discussed at the training school?

A. Yes.

Q. Any particular brand of TBA?

A. Firestone.

Q. In what way was that discussed?

A. Well, there were Firestone representatives who gave instruction in the school on sales procedures and sales promotion, tires, batteries, and accessories, on Firestone items.

Q. When you opened your station did you invest any capital in it?

A. Yes, I did.

Q. How much?

A. A thousand dollars.

Q. Did you receive a loan from Atlantic?

A. Yes, I did.

Q. Approximately how much?

A. $3,000.

1219 Q. Did you receive that in the form of cash or just how was that operated?

A. The day that I took over the station I was accompanied by a representative, by two representatives of the Atlantic Refining Company, Mr. Jones and Mr. Jordan, and along with the out-going dealer we covered everything in the station, and I bought all of his equipment and what few items that he had for resale I bought from him, all that I wanted to purchase from him. Those items that I did not desire to buy, naturally I didn't buy.

In regard to the $3,000, I am not sure whether some of the accessory items that I bought at the time were paid for through this loan or now. However, every piece of equipment that I bought from the out-going dealer was paid for with this loan.

Q. You received a certain amount of it in stock, equipment, and so forth, and the balance was given to you in cash?

A. Yes. In fact, if I recall correctly, the balance, as close to as possible, was given to me in gasoline.

Q. The balance was given to you in gasoline?

A. Yes.

Q. So you received very little if any cash?

A. Yes, but there is a possibility—you see, I can't give you an exact figure, because it has been so long, I am not too familiar with the exact figure. However,

1220 there was a considerable amount of gasoline that I purchased at that time because the out-going dealer's tanks were rather low. And naturally that is why I was

there, to sell gasoline, and other things, and I had to have it, and it came out of that loan that I got from Atlantic.

Q. What brand of TBA did you begin to carry when you began your operations?

A. Firestone.

Q. Do you recall who took your first order for Firestone TBA?

A. On the day that I took over there were many items that I needed. There was no—naturally I had—I am not sure of the date of that Firestone agreement. But I had not made any contacts myself with the Firestone people. And at the time the Atlantic salesman, Mr. Jones, took an order for me and relayed it to Firestone, and I believe later on that day or early the next day a Firestone salesman came out and completed my order.

Q. At that time did Mr. Jones make any remarks to you with respect to TBA?

A. At that time I had no intention of—let's say that I hadn't even made any contacts with any other jobbers, and I was concerned mainly with getting settled and starting in business, and I don't believe the subject came up that first day.

Q. Did it come up shortly thereafter?

1221 A. I would say that it came up within 30 days of that time, yes.

Q. In what way did it come up?

A. Well, I bought some items from jobbers that either Firestone at that time were out of, or that they did not handle, one or the other. Any items that I bought from a jobber that Firestone did not handle, why I was never questioned on. However, any item that I did handle that Firestone handled and distributed themselves, I was told that the company would like me to purchase all of my products from Firestone.

Q. Who made—

A. The company I am referring to is Atlantic.

Q. Who is the Atlantic representative that you are referring to?

A. Mr. Jones.

Q. What type batteries did you handle when you first went into the station?

A. Firestone.

Q. Thereafter did you purchase any other brand of battery?

A. Yes, I did. I purchased some Bowers batteries from a direct salesman.

Q. Direct salesman from the Bowers company?

A. Yes. And I purchased, well, I can't say I purchased them, I ordered some Exide batteries. The jobber's name now slips me. Anyhow, they delivered the batteries
1222 but I actually had not made the purchase because usually when a dealer buys a list of items from a jobber he is billed for them and pays for them at the end of that month. Within that period I was approached by Mr. Jones and told that I should not sell those batteries; they weren't as good as the Firestone batteries; and that he didn't want me to display them in the station. So I removed the batteries from display in the display room of the station to the back of the lube bay in the station, and the Exide batteries I returned to the jobber. So actually I did not make any purchase of the Exide batteries. I still did keep the Bowers' batteries, and I finally discontinued selling them.

Q. Why did you discontinue selling them?

A. Because I was afraid that if I rubbed Atlantic the wrong way by continuing to sell them, that I may be in their disfavor, and I had been—at the time the discussion came up about the batteries, it was my—I guess it was my first warning that the company expected me to buy

Firestone products and that if I did not buy Firestone products, chances were that my lease would not be renewed.

Q. Did an Atlantic representative ever threaten you with lease termination?

Mr. Ballard: I object to the question, your Honor. That is clearly a leading question.

Hearing Examiner Kolb: I think not. He men-
1223 tioned the fact that he thought his lease would be terminated.

A. Yes. There are various ways that it happened. It happened at various times. Never really a definite threat, but always a round-about, let's say, threat. It was always that—I was always left with that impression, and there was always that implication, that if I didn't do and operate the way Atlantic wanted me to, I would be—chances are my lease would not be renewed. And when it came to buying items, if I bought items that Firestone sold, if I bought items that Firestone sold but bought them from another jobber, I was always questioned as to why; where did you get these items; why did you buy them from this jobber when you could have bought them from Firestone. Firestone sells them, and Firestone has an agreement with Atlantic; you know that; that was explained to you; and why didn't you buy them from Firestone.

Of course, the reason I would say is that the mark-up that Firestone gave was usually 30-33 percent, and the mark-up that I could get elsewhere would average about 40 percent. And the reason that I didn't buy these products from Firestone was because I could get them elsewhere cheaper.

So then the subject came up about lease renewal, and so I was sort of afraid to buy them again. However, I at various times spoke with the Firestone salesman on the same subject and he assured me that any item that I could

buy elsewhere at a cheaper price, Firestone would
1224 sell them to me at that same price.

And that worked this way: I had to prove to him that I could buy the item at a cheaper price by buying one item from a jobber and showing him a receipt, and then placing an order with Firestone and he would sell them to me at that price. And the next time I placed an order for that same item with Firestone, I got them at the other price again, so I had to go back and do the same thing over again. It just kept getting to a point where I was—I became, well, I felt ill toward the Atlantic Refining Company for doing such a thing and forcing me to do that.

Q. Did Mr. Julian White ever call at your station?

A. Yes, he did.

Q. Do you recall his title?

A. At the time Mr. White I believe was—

Q. Was he Mr. Jones' superior?

A. Yes, he was Mr. Jones' superior. His exact title—

Q. That is all right.

Did he ever make any comments to you about TBA?

A. Yes. In a rather vague way. He never—with regard to TBA items, he never openly singled out an item and compared it with the Firestone item. Well, probably for one reason is there were very few items that I carried that were not Firestone. But as I recall, later on, as the months rolled by, it became more apparent that his intentions were the same.

1225 Q. The same as whose?

A. Mr. Jones. In that they expected me to buy Firestone products.

I can't give you an exact incident where Mr. White himself accused me of not cooperating with the company by buying items from someone else. However, I do believe that that may have happened in the course of the 11 months that I had the station.

Q. Did you purchase accessories from other than Firestone?

A. I did. I purchased—the majority of accessories that I purchased from other than Firestone were accessories that Firestone did not handle. There were times when I purchased items that Firestone did handle from other jobbers, and they were mostly at times when either Firestone couldn't make a quick enough delivery or when Firestone was out of the item.

Q. Would you name some of the other jobbers from whom you purchased accessories?

A. I purchased accessories from Taylor Auto, and Durham Motor and Adams Parts.

Q. Was any comment ever made about your purchase of non-sponsored accessories by Atlantic representatives?

A. Any item that I sold that Firestone did not handle, no statement was made about it.

Q. Was any comment ever made by Mr. Jones about such items?

A. The only comment Mr. Jones ever made about 1226 items of that type were items that I could have bought at Firestone. Any items that I ever bought from any other jobber that Firestone did not handle, I was never—they never came up.

Q. I see. You were only questioned about items that were in the Firestone line?

A. That is correct.

Q. Which you purchased from another jobber?

A. Yes, sir.

Q. And what comment did he make about such items as the latter?

A. Well, generally he would say, "You know that you can get these items at Firestone. Why didn't you buy them from Firestone? You were instructed in the school that Firestone items were sponsored in all the stations, and

the agreement that you have as a Firestone dealers more or less doesn't compel you to buy only from Firestone, but the agreement that you made with them more or less states that on your part you''—meaning my part—that I would buy them. And any item that he saw—I won't say every item that he saw, but most of the items that he noticed that were Firestone items, he would ask me why I didn't buy them from Firestone, and why I bought them from someone else. And then we would get back to what we were discussing earlier, and my same reasoning would come up.

However, after a few times I got to the point where these items I bought almost all Firestone items be-
1227 cause I was afraid of this non-lease renewal.

Q. Mr. Sullivan, did you have an outdoor sign at your station?

A. Yes.

Q. What type, what brands of advertising?

A. Are you speaking with regard to tires, batteries and accessories?

A. Tires, batteries, and accessories.

A. There were signs in the window and there was a tire rack outside that had the Firestone sign on it, and there were Firestone signs in the windows, and decals, a trim of decals, Firestone tires, batteries, accessories, all the way around the display room.

Q. Were they placed there at your request?

A. No, they were put in there by—I don't know whether Firestone came out and—you see, the decals that were already in the window were of the same type, and they were old, and they were renewed. They were cleaned off and new ones were put in there, and I don't know whether the Firestone salesman put them in or one of the Atlantic salesmen.

Q. Were you ever visited by an Atlantic phantom customer inspector?

A. Yes.

Q. Were you advised of his coming to the station?

A. No. Of his coming to the station?

1228 Q. Yes.

A. Only that I was advised by letter that the phantom was on his way and he would be around the next, say, couple of weeks, and maybe next month or next month and a half, and to be on the look out for him, make sure you spot the item he needs, et cetera.

1229 Q. What do you mean by "spot the item he needed?"

A. Well, the phantom inspector always had an item missing on his car that was a tire, battery, or accessory item. And as you approached the car and gave the phantom customer service, delivery service, if you did it in the correct fashion you got, I don't know, ten or twenty points, and if you were dressed nice and neat you got another twenty points, and if you spotted the item that he needed on his car that was missing, like—let's say he had a worn fan belt or he needed a quart of oil, or his rearview mirror was missing, or he needed a wiper blade—if you spotted that item you got another ten or fifteen points. And if your displays were neat, and if your restrooms were neat and clean, you were awarded more points and a perfect station I believe got a total of 300 points. And all perfect stations in the area at the end of this inspection period usually were awarded a War Bond or something like that by the Atlantic Refining Company.

Q. Did you attend Atlantic dealer meetings?

A. Yes, I did.

Q. Was a Firestone representative ever present at such meetings?

A. Almost always.

Q. What did the Firestone representative do at such meetings?

A. He would display Firestone products and usu-
1230 ally it was previous to a sales promotion deal, and whenever a new line came out of Firestone products. Mainly it was on tires. They would be displayed and their features would be extolled to us so that we could pass them on to the customers.

Q. What was your approximate gallonage when you moved in to the station, Mr. Sullivan?

A. I understand that the dealer from whom I assumed the station was doing about 8,000 gallons a month.

Q. Did you increase that gallonage?

A. Yes, I did.

Q. To about what?

A. To about, I believe, seven months later, my gallonage was 21,500.

Q. You stated that you left the station on or about October 23, 1954?

A. That's right.

Q. Would you give us the reasons for leaving the station at that time?

A. Yes. About a month before that time, maybe a little longer, I was approached by Mr. Jones and Mr. White, and it seemed that there was another dealer in the immediate area, another Atlantic dealer, who was located about maybe five or six blocks from the location that I had, yet on another vein of traffic. However, his residential customers all came from the same growing area that mine did.
1231 The fellow in whose name the station was, is a fellow by the name of Clark—William Clark. I did a market survey for him because he had forgotten how to do the survey, and I found that most of his customers, most of his residential customers, were drawing from the area that my customers came from. And at that time Mr.

Clark was quite concerned about his business because he had not had too much of a control over his credit.

I believe he was something like $1,000 or 1,100, he had that much money out in credit. That is why I helped him make this survey. And so when we found out that our marketing areas were from almost the same place, shortly thereafter I was approached by Mr. Jones and Mr. White and I was asked to release the option that I had with the S&H Green Stamp Company so that Mr. Clark could handle the S&H Green Stamps.

I felt that this was one of the main reasons why I had increased the gallonage in the station, and that regardless, even though Mr. Clark was a brother Atlantic dealer, I naturally wasn't going to cut my own throat by releasing the option in that area of those stamps to him.

So I was told by Mr. Jones and Mr. White that if I did not, the retail—the tank-wagon price on gasoline would be lowered to Mr. Clark and he would sell his gasoline at a lower price. So I said, "If you do that, you can have the keys to my station."

1232 Sometime thereafter, shortly thereafter, a lady drove into the station and she said, "What is the idea of your selling your gasoline two cents higher than the fellow around the corner?" So I hopped in the truck and went around, and sure enough he was selling his gasoline a penny or two cheaper than I was, and he had a big sign out along the end of the driveway, and it was—and I understand from that dealer that it was painted by personnel of the Atlantic Refining Company, and the sign was an inverted "V" shape type sign and it had a hand on it and a couple of eyes, and it said, "Hey, look, low prices." And attached to the pump was a smaller sign, advertising the price of the gasoline.

So I went back to my station and I called the Atlantic Refining Company office and I told them that I would give

them an hour to come down and take down the signs or pick up my keys. So Mr. Jones and Mr. White came out and they tried to talk me out of doing it. And of course I wouldn't.

So they went around and they removed the signs. Whether they removed the signs themselves, I do not know. However, the next time I went around to Clark's station the signs were taken down off of the end of the driveway, but the sign was still on the pump and the price of the gasoline was still the same.

Whether the Atlantic Refining Company actually reduced the tank-wagon price to Mr. Clark or not, I can't prove. I don't know.

1233 However, they did induce him to lower his price.

And so I got out my contract, and I agreed—or I believe I got out the contract and read where I had to give 30 days notice or one thing or another. So I typed out a notice to them that I was going to leave the station. I felt that if my own company would cut my throat like that, that I would be better off out of the company.

Q. Did you remain for the 30 days and then leave?

A. Like I say, that day, I don't know exactly which day it was, it may have been longer than 30 days from the day that I left the station. They had a little trouble getting a fellow to take over the station I think, and it was a few days, one way or the other.

Q. Mr. Sullivan, you attended the Atlantic dealer training school in Allentown, Pennsylvania?

A. That's right.

Q. You stated in answering my questions that Firestone representatives were there and discussed TBA. Did Atlantic Refining Company representatives discuss TBA as well?

A. Yes.

Q. Did they refer to any specific brand?

A. Oh, yes. Firestone. They did not stress at the school that we were compelled to buy Firestone products. They did, however, stress that Atlantic more or less expected us to.

Mr. Kelaher: No further questions.

1234 Mr. Mason: I move to strike the testimony of the witness on the ground that it has no connection with any issue in this case relating to respondent Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be received, subject to a motion to strike by Goodyear.

Mr. Ballard: Your Honor, may we have what will be a short recess?

Hearing Examiner Kolb: Yes.

(A recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Ballard.

Q. Mr. Sullivan, I represent the Atlantic Refining Company in this matter. Mr. Mason here represents Goodyear Tire and Rubber Company.

Going back to the dealer training course for just a moment, there were of course a lot of other things that were covered in that course besides TBA, weren't there?

A. That is correct.

Q. Such things of course as lubrication, brake procedure?

A. Brake procedure? In which way?

Q. I imagine it tells you how to service brakes and things like that.

A. The only thing that I was ever taught about brakes was how to refill a hydraulic brake system.

1235 Q. How to refill it?

A. That's right.

Q. And how to service the electrical system, I suppose?

A. Not complete service of an electrical system. How to replace a bulb, spot a bulb, things like that.

Q. The things that a service man is expected to know more than a repair man?

A. That is correct.

Q. And they also had some courses on business management, didn't they?

A. That is correct.

Q. And they tried to tell you how to promote sales and—

A. That's right.

Q. —things of that nature.

In the course of that they explained this relationship between Atlantic Refining and Firestone, didn't they?

A. Yes.

Q. Told you that Atlantic was trying to sell Firestone merchandise, promote the sale of it?

A. They did not tell me that Atlantic was selling the Firestone merchandise.

Q. What did they tell you?

A. They told me that the Atlantic Refining Company had an agreement with the Firestone Tire and Rubber Company, and they explained the reason for this agreement.

1236 Years ago Atlantic used to have an agreement with the Lee Tire and Rubber Company, and they sold Lee Tires and I bel[illegible] batteries and accessories. And Atlantic warehoused them and delivered them, and handled them, which cost Atlantic an awful lot of money, so that they came upon this agreement with Firestone whereby they would not have to ship them or handle them or warehouse them or take orders for them or anything. And Firestone, in turn, would give Atlantic a ten percent cutback on it.

Q. They called it a commission, didn't they?

A. I think so, yes.

Q. You prefer to think of it as a cutback, do you?

A. Well, I just used that. Let's say commission.

Q. And they told you that the Atlantic salesman would be trying to promote the sale of tires, didn't they?

A. No, sir.

Q. They never told you that at all?

A. No. They told me that the Atlantic refining company, due to this agreement, would expect me to buy Firestone products.

Q. Do you think those are about the words they used?

A. I would think that generally those are the words that they used.

Q. Would you remember the names of the personnel at that school by any chance?

1237 A. The director of the school I think was a fellow by the name of Lew Sulyard.

Q. We had that name this morning and we couldn't get it then.

A. How do I spell it?

Q. Yes.

A. S-i-l-l-i-a-r-d.

Q. Silliard?

A. Yes.

Q. He was the director?

A. I believe he scheduled the school and handled most of the instruction. There was one fellow, I understood, who was directly in charge of him, over the whole training, and his name I forgot.

Q. You think that probably the man that told you that you were expected to buy Firestone was Silliard?

A. Not necessarily. Whenever the subjects came up—and they were liable to come up during any period, and Mr. Silliard was not the instructor at any period, because

various Atlantic salesmen and Atlantic representatives of one type or another gave instruction on different items.

And sometimes we would get off tangent to the subject and we would get on to this agreement with Atlantic and Firestone. And it was always put to us in a way that we would not—this is at the school now—that we would
1238 not be forced to buy only Firestone products. But more or less expected us to.

Q. It sort of gave you the idea that other dealers would be buying, is that the idea?

A. Oh, yes.

Q. Sort of that that was the kind of thing that you would be apt to find in an Atlantic station, is that the idea?

A. That is correct.

Q. Didn't they stress the fact that the motorist expects it?

A. No, sir.

Q. Didn't mention that?

A. No, sir.

Mr. Kelaher: Would you read the last question?

(Question read.)

1239 By Mr. Ballard:

Q. When you took over this station you began to build the gasoline volume up pretty fast, didn't you?

A. Well, I think that is a matter of opinion. I think I did.

Q. Didn't Jones think you did?

A. I should think so.

Q. He gave you a pat on the back when you began to get these high volume figures, didn't he?

A. He would say that I was doing pretty good, yes.

Q. And I think you always got pretty—

A. I attribute, like you mentioned earlier, I attribute

a great deal of my success there in raising the gallonage to the school.

Q. You think the school did a good job for you?

A. Certainly, yes. In this way: other oil companies, I think they are all getting around to this school business any how now. However, in the past other oil companies had found that when they had trouble acquiring a new dealer, they would usually take a guy who had enough capital to assume the station and open the door, and there it was, and he had to feel his way around. I think that this school helped me much more than I would have been able to do by myself. In regard to manager and control over the business, inventory, selling, all those.

1240 Q. It was a worthwhile school?

A. I would say that, yes.

Q. Was that by any chance the reason that you chose to be an Atlantic operator, because of that school?

A. Well, I would say that was one reason. Another reason could have been that Atlantic was going to lend me the remainder of what capital that I needed to take over the station.

I won't say that I regarded Atlantic Refining Company as the only and the best oil company, and one that I could sell more products than another company.

Q. Do you think you could have gotten a dealership with another company?

A. If I had had the money I would have taken a dealership with another company.

Q. You would have?

A. Yes.

Q. There were two or three others available that you could have had?

A. I didn't have the money.

Q. If you had had the money you could have?

A. If you had the money now you could take one. There

were that many available. That is my opinion of the thing. Personally, I would have—this doesn't enter into it—I would have taken an Esso station because they sell
1241 more gasoline. That is the thing.

Q. Not that I am interested, you understand—

A. I didn't want to get off on a tangent but I think your questions led that way.

Q. I think your point is well taken.

Tom Jones came around once a week?

A. Sometimes he wouldn't be there for a couple of weeks.

Q. He wouldn't?

A. That is right.

Q. And sometimes he would be there pretty often?

A. I would say so.

Q. You talked about the phantom inspector?

A. Yes.

Q. And a letter that you got saying the phantom is on his way?

A. That is correct.

Q. Who did you get the letter from?

A. From, I believe,—I don't know whether it was the regional office.

Q. Somebody in Atlantic?

A. That is right.

Q. It was almost a little game, wasn't it, to see if you could spot the item that was missing?

A. That is correct.

Q. And did Tom Jones tell you after it was all
1242 over—by the way did you ever spot the item that was missing?

A. I believe the day that he came, I was out to lunch and my number one man was in town picking up some parts, and a fellow who worked part time for me, who—

he relieved me for lunch and he didn't have a uniform on and we got black-balled.

Q. Did Tom Jones give you a hard time about that?

A. No, I think he got a kick out of it.

Q. Was that the only time in the year, just that one time?

A. The only time I recall.

Q. He never gave you a chance to redeem yourself?

A. Although you expect him any day during the whole year. That was the object of the thing, to keep your place so that you would get a score of 300, whenever he walked in, which would have been any time.

Q. You honestly think you could have gotten 300 points any days?

A. Well, Friday night—

Q. Any other day?

A. When I was busy I would say no. Any other time, yes.

Q. As a matter of fact, you never did buy any substantial number of batteries from Firestone, did you? May I refresh your recollection. I think the amount was $21 worth?

A. $21 worth?

Q. Yes. In the year. On batteries now, I am speaking of.

1243 I suggest—

Mr. Kelaher: Let the witness answer. I don't mind him asking the question.

The Witness: In the first place are you questioning me or are you stating facts?

By Mr. Ballard:

Q. I suggest to you that that was the amount.

A. I will not say to you that that was the amount. I will say that—it is my opinion that I bought more bat-

teries than that from Firestone. However, when we are talking about batteries we are not talking about a high volume item because the market in service stations for a battery is very low due to competition in the area, mainly Sears and Roebuck.

In order for me to make a reasonable profit on a battery, less the ten percent that Atlantic was taking, I had to sell that battery at list price, and if I didn't, which naturally I was cutting down my profit and you could go to Sears and Roebuck and get a battery, probably not as good a service out of the battery, but at a much cheaper price.

Q. You figure Firestone added that ten percent back on the price, do you?

A. Well, I am not saying that Atlantic included exactly ten percent. I am not saying that I know it to be a 1244 fact that Atlantic got exactly ten percent of everything that I bought from Firestone before the tax was taken out or after tax was taken out. I mean if you want to pinpoint me to the thing you can't because I can't tell you that, because I don't know that to be a fact. However, I do know that the mark-up from Firestone was about ten percent less than the mark-up from any other agency, and I assumed that Atlantic was getting—that that was the reason for it; that Atlantic was getting the difference.

Q. You didn't think Atlantic was doing much to get it, either, do you?

A. No, I didn't.

Q. To get back to the batteries, how many batteries do you think you maybe did buy from Firestone over the year?

A. Like I say, it is not a high volume item. If I were to sell you a Firestone battery, a first class battery—

Q. Weren't you getting—

A. And pay $26 or $27 for it, about. The only time you

would buy it from me is when you couldn't go another foot with your car.

Q. Can't you answer my question? How many batteries did you buy from Firestone, about?

A. I will give you an estimate.

Q. Give me your best estimate, please.

A. Probably maybe ten.

1245 Q. How many did you think you got from Bowers in a year?

A. I think I bought six.

And due to the fact that I was asked not to display them, which—I sold six of them, and ordered a couple more. Exactly how many, though, that figure six I am not exactly sure of.

Q. Isn't it a fact that when you decided to leave this station that Tom Jones tried to get you to take one of two other stations?

A. Yes, he wanted me to take a station I believe on Vandever Avenue, and the other station I believe he wanted me to take was 25th and Governor Printz.

Q. Those are both stations closer to your home?

A. Yes.

Q. Tom thought they might be more attractive to you?

A. He thought they would.

Q. He was quite anxious to have you take one of those stations?

A. Yes, he wanted me to take that station, that is correct. I don't think that he was dissatisfied with my ability.

Q. I don't think he was, either.

Mr. Ballard: I don't have any further questions.

Mr. Kelaher: No questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

1246 Hearing Examiner Kolb: We will adjourn until 9 o'clock tomorrow morning.

* * * * *

1248 Hearing Examiner Kolb: The hearing will be in order.

JOHN GALLE was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. John Galle, 30 Miles Road, Claymont, Delaware.

Q. Were you at one time a lessee of an Atlantic service station?

A. Yes, I was.

Q. Where was this station located?

A. Highland Avenue and James Street, Newport, Delaware.

Q. During what period did you operate the station?

A. December 1954 up to about April 1956.

Q. What was the term of your lease?

A. One year.

Q. Prior to that time did you work in an Atlantic service station?

A. Yes. I worked at Stein's Atlantic Service.

Q. Where was that located?

A. Lancaster Avenue.

1249 Q. Norris Stein?

A. Yes.

Q. How long were you employed there?

A. I think about five months. Five or six months. I believe he opened July or August.

Q. And you worked there until you opened your own station?

A. Until I opened my own.

Q. What was your purpose in becoming an employee of Norris Stein?

A. Mainly to learn the business.

Q. Did you know, or did Atlantic know that you wanted to become an Atlantic lessee operator when you began your employment with Mr. Stein?

A. Yes. They understood the situation, that I was interested in taking a station.

Q. That was a preliminary training period in a sense, is that correct?

A. That is right.

Q. You stated that you opened your station in December 1954. Did you invest your own capital in the station?

A. Yes.

Q. Approximately how much?

A. Four thousand dollars.

Q. What TBA did you stock in your station?

A. Mainly Firestone TBA.

1250 Q. And when you began, when you first opened the station, what TBA did you have in there at the time?

A. I bought the TBA that was in the station, except any off-brands that I didn't want.

Q. So you had Firestone? What brand tire did you have?

A. Firestone.

Q. Batteries?

A. Batteries.

Q. And accessories?

A. Purchased from Firestone.

Q. Who was your supply point? Who supplied you with the Firestone products?

A. Firestone, in Wilmington. Firestone stores.

Q. Did you have any difficulty in selling Firestone TBA?

A. Well, actually the TBA itself, excluding tires and batteries, is pretty much a standard price.

Q. Let's take Firestone tires. Did you have difficulty selling Firestone tires?

A. Firestone tires, the difficulty was mainly in price.

Q. In what way?

A. Mainly the situation that existed at the time was the price that we paid, that I paid for the tires was a little bit higher than what I could buy equal brands for at other places; equal brands, same quality.

Q. Did you have any competition in the sale of 1251 Firestone tires? Were there other stores selling Firestone tires?

A. Yes, Firestone store.

Q. Were you able to meet that competition?

A. No.

Q. Were you able to meet Firestone store competition on batteries?

A. No, not when Firestone had a sale. I couldn't compete with them at all unless I tied up a good bit of money in buying their merchandise to sell at their price, and the profit between them wasn't worth it.

Q. Could you have purchased other brands of batteries than Firestone at a better profit margin?

A. Yes.

Q. Were you satisfied, after you had been operating for a little, with Firestone tires and batteries?

A. Not as far as once again price, buying, the price that I had to pay for them, I wasn't satisfied with it. Because you could buy other lines at a cheaper price, which is mainly after all what you are concerned with.

Q. Was there a time when you attempted to buy other brands at cheaper prices?

A. I wouldn't say I attempted to buy cheaper brands. I looked into it rather thoroughly, to see what situation existed in the market, and I found out that I could buy competitive brands at a better price than offered by Firestone.

1252 Q. And does that apply to both tires and batteries?

A. Yes.

Q. Could you designate the brands on which you could get better prices?

A. Well, at one time one of these supply houses—at that time one of the supply houses offered me Auto-Lite battery at a better price. And a salesman from Keil's came around and offered me tires at a better price.

Q. What kind of tires?

A. I think it is Goodyear. I believe it is Goodyear.

Q. Who offered you the better price on Auto-Lite batteries? What jobber?

A. Adams Parts.

Q. Do you recall the name of the salesman?

A. Herb Dashper.

Q. After you made this study of prices did you discuss the matter with an Atlantic representative?

A. Yes, I did.

Q. Who was the Atlantic representative?

A. At that time it was Tom Jones.

Q. Would you state the conversation that you had with Mr. Jones?

A. Well, at that time I took it up with Tom. I thought it might be better as far as I was concerned personally in the business if I could buy cheaper from another

1253 source of supply other than Firestone, and Tom had said that I had signed an agreement to purchase

from—that is, TBA tires and batteries—from Firestone, and that more or less you shouldn't go against the agreement; plus the fact that Atlantic didn't like to see competitive brands to Firestone in the station.

Mr. Ballard: Mr. Kelaher, can we have the date of this conversation?

By Mr. Kelaher:

Q. Can you fix the approximate time?

A. I took the station in '54. I think it was somewhere in '55, and I believe it was either in the spring or in the summer. But I can't pinpoint it any better than that.

Q. Did Mr. Jones make any further statements at that time?

A. Other than they didn't like to see competitive tires and batteries in the station, if I took them in I would probably have a visit from the men above Tom in the Atlantic office.

Q. Who were they?

A. I think that the one was J. White, who was sales manager or sales supervisor, and Dick Zinn, who was district manager.

Q. After your talk with Mr. Jones did you purchase Auto-Lite batteries?

A. No, I didn't go ahead with it at all.

Q. After you talked with Mr. Jones did you purchase Goodyear tires?

A. No.

1254 Q. And thereafter what brand of tires did you purchase?

A. I purchased Firestone tires and batteries.

Q. So during your entire period as a lessee dealer you handled nothing but Firestone tires and batteries?

A. Yes.

Q. What line of accessories did you handle? Who was your principal supplier of accessories?

A. My principal supplier was Firestone.

Q. Mr. Galle, you stated that you were not competitive with Firestone stores as to price, as I understand your testimony?

A. Yes, that is right.

Q. Would you explain that in a little more detail, please?

A. Well, about the easiest way to do that would be that I took the advertising that Atlantic has available for dealers, and in that advertising a lot of it is—wait a minute, wait a minute, excuse me. I am wrong in that.

I bought Atlantic and Firestone, I believe there are two separate packages. And it was in the Firestone advertising where they have the circle to put inside the tire, which advertises the price. I know at that time that Firestone's selling price or sales price, put it that way, the sale that they were having, and they wanted Firestone dealers to join in it. I couldn't—if I made anything, I believe at the time I figured that even buying the tire deal, that I 1255 only cleared on the tire about $1.

Q. So your cost price was at or about the selling price of the Firestone tire?

A. It was close to it. It wasn't worthwhile for me to tie up money to take a chance on not selling the tires.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: You may cross-examine.

Mr. Ballard: May we have a very short recess, your Honor?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Mason: I would like to make a motion on behalf of Goodyear to strike the testimony of the witness since

it has no bearing on any of the issues of this case affecting Goodyear.

Hearing Examiner Kolb: The testimony will be received, subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Ballard.

Q. Mr. Galle, I represent the Atlantic Refining Company, and Mr. Mason, next to me, represents the Goodyear Tire & Rubber Company.

I think you told us that prior to taking over the 1256 station at Highland Avenue and James Street you were employed by Norris Stein for four or five months?

A. Yes.

Q. Prior to that you had been with the Piasecki Helicopter people, is that right?

A. Yes.

Q. And I think you prepared at the Academy of Aeronautics?

A. That is right.

Q. Where is that?

A. At LaGuardia Field, New York.

Q. You are a graduate of that institution?

A. Yes.

Q. Mr. Galle, I show you a document marked Commission Exhibit 319 and ask you whether you recall receiving a copy of that. Would you look at that, please?

A. Yes, I remember receiving a copy of this.

Q. I call your attention to the date on this document, June 22, 1955, and I ask you: That was about the time I believe that you had your discussion with Tom Jones about Goodyear, wasn't it?

A. Somewhere in that time. It could have been before it could have been after. I can't pinpoint that.

Q. Do you recall whether this letter came up in the course of your discussion? Did you discuss that?

A. No, I don't believe that it did. I don't believe
1257 that it did.

Q. Did you ever discuss this letter with Jones?

A. No, I don't think I did. I remember getting the letter, and I had a file on the lower right-hand side, I put it down there, and I took it home. As a matter of fact, I probably still have that letter.

Q. You never reported Jones to Mr. Davis, did you?

A. No.

Q. You never felt that it was necessary to do that?

A. Honestly, no.

Mr. Kelaher: What was the answer?

The Witness: No, I didn't believe that it was necessary to report anything like that to Mr. Jones—to Davis.

By Mr. Ballard:

Q. The Firestone people run three or four tire sales a year, don't they?

A. I believe that is correct.

Q. One of them I think is their Fourth of July sale, isn't it?

A. Yes, I believe one is the Fourth of July and I believe one is Labor Day. They run two big ones.

Q. During those sales they announce a special low price to the customer?

A. That is right.

1258 Q. And that is the price you were speaking about that gives you about a $1 margin?

A. That is right, somewhere in there.

Q. Isn't it true that then they offer you a $2 concession on the tires you buy during that sale? Don't they offer you $2, a $2 lower price?

A. They offer you a lower price if you buy a certain

number of tires. Not in size. A certain quantity of tires you get a lower price.

Q. Are you sure they don't give you that lower price on every tire during the sale?

A. On every tire, yes, that you buy; but the point that I am driving at is you couldn't get that lower price, as far as I remember, if you were buying one or two tires. I think—

Q. Even though it was a sale?

A. Yes. I believe that you have to buy a certain number, 10, 15, 20, whatever it may be. I think that is what they call their tire deal, on quantity buying of tires.

Q. When you got these Goodyear price lists, you got them for purposes of comparison, didn't you?

A. That is right.

Q. And you and Tom Jones sat down and went over the price list side by side, didn't you?

A. I don't think we went over any prices. We may have. I don't recall it that way. Tom came in and
1259 I—we were both standing there, that I remember, and I brought it up to Tom that I could get a better price from Goodyear by buying—that is, I could get a better price if I bought one tire or if I bought ten tires. That is the point that I am trying to make.

Q. Didn't Tom tell you that if you could make a better deal with Goodyear on a spot job like that to go ahead and do it?

A. I don't recall that. I don't recall that at all.

Q. He knew you had the Goodyear prices, of course?

A. Oh, yes, I told Tom that I had the prices.

Q. And he tried to persuade you that Firestone was a better deal?

A. Yes.

Q. Acted like a salesman, didn't he?

A. Yes, he did; a good salesman.

Q. Mr. Galle, with respect to this contract with Firestone that you mentioned, that was the regular little Firestone franchise agreement?

A. Yes, dealer franchise. That is right.

Q. It wasn't any special contract?

A. Not that I know of, no.

Q. Just a little printed piece of paper, about half a sheet?

A. Yes, I think it looked like a certificate or something.

1260 Q. I think we saw one of those yesterday.

One other question. On these annual sales by Firestone, they are principally tires, aren't they?

A. Yes.

Q. As a matter of fact, I think they don't lower the price on batteries, do they?

A. On the battery situation, you have a price, if you buy one battery, and I bought mainly in ten battery lots because I remember I got a better price. I got them cheaper in groups of ten. I believe that was the number specified.

Q. That price doesn't change during the sale?

A. No.

Q. Are batteries covered by the sale at all?

A. I think every now and then Firestone used to have a battery sale that they would advertise, where they would sell a battery of certain type at a certain price on a sale, and they would have their—they would make it available to the associate dealers to do the same thing. But you had to buy a certain quantity of batteries in order to get a reduced price.

Mr. Ballard: I have no further questions.

Mr. Mason: I have no questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Galle, you stated on cross-examination that
1261 Firestone runs I believe you said three or four tire sales a year?

A. As I remember it, I think there were somewhere around three or four.

Q. Were those sales at various parts of the season? I think you mentioned the Fourth of July?

A. Yes, I think there are two special ones, I believe; one Labor Day and the other Fourth of July.

Q. Then do they run others during the year?

A. During the course of the year they I believe have other tire deals available.

Q. Are those sales run when the consumer demand is high for tires?

A. Yes, I would say they were.

Q. So that the tire purchasing is seasonal in a sense, is it not?

A. Yes. It is usually seasonal. I would say that it was; mainly in spring and summer.

Q. Did Firestone run these sales at or about the same time each year? Is it a regular thing with Firestone?

A. I believe that it is.

Q. You were also asked on cross-examination about battery sales by Firestone. Based on your purchases, your own purchases, were you able to meet such competition price-wise?

A. Was I able to meet competition?

Q. On the Firestone?

1262 A. On the Firestone battery?

Q. On the Firestone battery deal without buying special large quantities?

A. No.

Q. Was the selling price on the Firestone deal at or about your purchase price on Firestone batteries?

A. What was that again?

Q. Was the Firestone selling price on batteries during these sales, at or about the same price as your cost of the Firestone battery?

A. Well, there was a spread. I don't remember how much. That I don't remember.

Q. Was it narrow?

Mr. Mason: He doesn't remember.

A. (Continuing.) I think that it was. It was pretty narrow at the time that they would have a sale.

Mr. Kelaher: That is all, your Honor.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: That is all, Mr. Galle. Thank you very much.

(Witness excused.)

Mr. Dias: Mr. Hawes, please.

1263 HARRY NOBLE HAWES was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your full name and home address?

A. Harry Noble Hawes, 7th Atkins Avenue, Colonial Park, Delaware.

Q. Did you at one time operate an Atlantic station?

A. Yes, I did.

Q. Will you give us the address, please, of that station?

A. The first one was at DuPont Parkway, New Castle,

Delaware, approximately around State Road, not far from it.

Q. Will you tell us when you moved into that station?

A. May of 1945.

Q. 1945?

A. 1954, rather.

Q. Did you attend a training school before you moved into that station?

A. Yes, I did.

Q. The training school was operated by the Atlantic Company, was it?

A. It was.

Q. Can you tell us where that training school was?

A. Well—it was Williamsport, Pennsylvania.

1264 Q. How long was the course?

A. I think it was seven weeks, if I am not mistaken. It used to be five; maybe it was five.

Q. Do you recall when you started your training at that training course?

A. It was the week around the 15th of May. I couldn't tell you the exact day.

Q. Can you describe the training course? Was it all classroom work, was it field work?

A. It was a combination of the two. We went to class. The first two or three days strictly all class. And then we started in with going to class a half day and a half day in the field, and vice versa, we would start in the field and come back to the class. It consisted of a combination of both class and working in the field.

Q. What did the field work consist of?

A. Of changing tires, wheel bearings, lubrications.

Q. Where?

A. In various stations, Atlantic stations in that community.

Q. And what did your classroom work consist of?

A. Different parts of the car, the breakdown of the different oils and its ability to do and carry out, the grade of oils, and gasoline, and the DPA.

Q. What is DPA?

A. That was waiting on customers and so forth,
1265 how to approach people.

Q. Was TBA discussed during the course?

A. Oh, yes.

Q. How often?

A. Quite often.

Q. Was it daily, a couple of times a day?

A. Well, it would come in in the course of a day. It would come in sometimes during the day practically every day, either in the field or sitting in the office.

Q. Who discussed TBA?

A. I am not too much on names.

Q. Was it an Atlantic representative or a rubber company representative?

A. We had a combination. We had Atlantic and Firestone.

Q. What in particular was said about TBA, do you recall?

A. Well, I think it was a breakdown, the tire company, for instance, where they would tell you the grade of tire they had, how it was made, why it was a better tire.

Q. Which tire were they talking about?

A. Firestone. That is all we ever heard in there, Firestone.

Q. Did anyone tell you that you were supposed to handle Firestone when you were in your station?

A. Well, that is a question I wouldn't like to say that it was put to me that I had to. But it was more or less I think understood. For instance, when I was called
1266 back to Wilmington to buy all my accessories and so forth, it was a Firestone dealer who was there.

There was nobody else there. It was a man that I was expected to buy from.

Q. Did you, before you signed up, have any particular preference for Firestone?

A. What was that again?

Q. Did you have a particular preference for Firestone?

A. No.

Q. Would you tell us the name of your Atlantic instructor during the time of your schooling?

A. We had several different ones. Could I be refreshed on any of them?

Q. Yes. May I suggest the name of Souilliard?

A. Souilliard was one.

Q. I wonder if we may let the record show that it is spelled S-o-u-i-l-l-i-a-r-d. The first witness yesterday, Mr. Stein, couldn't take a guess at it. The second witness estimated it was S-i-l-l-i-a-r-d. I believe this is the correct spelling now.

When you finished your schooling, Mr. Hawes, you mentioned awhile ago that you went into Wilmington to close out the deal for your station, is that correct?

A. Well, I hadn't finished my schooling when I was notified that I was expected back in Wilmington to get my accessories and things.

1267 Q. And at that time did you sign your leases and finish your negotiations?

A. I am not too sure just when they were signed.

Q. Did you at that time place an order for TBA?

A. I did.

Q. And I believe you stated that it was with Firestone?

A. That is right.

Q. Who was your Firestone supply point?

A. Well, the man that I signed up with was named Hill.

Q. Hill?

A. Yes. A salesman for Firestone.

Q. Did they supply out of the Firestone stores or is there an independent supply point, do you know?

A. No, they come from the stores.

Q. Did you invest any money in the business? Did you have to lay out any cash?

A. Yes, approximately $2500 to $3000. I just don't remember the figure.

Q. Do you know how much of that was spent on TBA?

A. $2500 to $3000.

Q. That was TBA alone?

A. Yes.

Q. Did you buy tires?

A. I did.

Q. Batteries?

1268 A. I did.

Q. And accessories?

A. I did.

Q. How long did you operate in that station, Mr. Hawes?

A. From May until January, the following year.

Q. While you were in that first station did you buy any TBA other than Firestone TBA?

A. Not that I recall.

Q. In January you left that station. Did you go to another station?

A. Fortieth and Washington; Atlantic station.

Q. Did you execute another lease at that time, or was it just an extension of your first one?

A. No, I executed another lease.

Q. This second station at 40th and Washington, was that a brand new station?

A. No, it wasn't.

Q. Did you buy any products from the old operator when you moved in?

A. A few; not too many.

Q. What products did you buy, do you recall?

A. I bought a few tubes, a few tires, mostly oil, gasoline, and a few of the—just odds and ends, because he took most of it with him.

Q. What tubes and tires did you buy? What brand?

1269 A. They were all Firestone.

Q. Did you have any TBA equipment left at your first station?

A. Yes, I did.

Q. Did you take that with you?

A. I did.

Q. After you moved into the second station, did you buy any TBA products other than Firestone?

A. Yes, I did.

Q. Can you tell us when and what brands?

A. Well, various times. I bought Lee. I was offered what I thought was a better deal, certainly, in buying smaller amounts anyway. I could buy one tire, two tires or three. I felt that I could get them at a little better deal than I could with Firestone.

Q. What in particular did you buy in the Lee line?

A. Tires and some batteries, tubes.

Q. Do you recall the name of the jobber that you purchased those from?

A. Not right off-hand. I probably can think of it before I leave here.

Q. How about accessories? Did you buy any accessories other than Firestone accessories?

A. No.

Q. You did not?

1270 A. No. Not that I recall of. It is possible. On account of there is another station involved, and I did buy a few.

Q. What hours did you keep in the first station, Mr. Hawes?

A. Twenty-four hours.

Q. And in your second station what hours did you keep?

A. Seven to eleven, except on Sundays, and I closed at 10:00 P. M.

Q. On that 24-hour stint in your first station, did Atlantic specify that?

A. No, I did myself.

Q. You did yourself?

A. Yes.

Q. And in the second station?

A. They specified from seven to eleven.

Q. Did they specify these hours before you moved in?

A. Yes, they did.

Mr. Thompson: May we have who "they" are?

Mr. Dias: When I say "they" I am referring to Atlantic.

The Witness: That is right.

Mr. Thompson: May we have a definition of "they"?

Mr. Dias: I assume it is in the lease.

1271 By Mr. Dias:

Q. When Atlantic specified hours in the second station, was it an individual representing Atlantic, or was there a specification in the lease? Do you recall?

A. It was in the lease as well. It was in both. It was specified by the individual, and also in the lease.

Q. Do you recall who the individual was?

A. Well, there were four or five involved. When you transact a deal there, there is more than one involved. There is usually two or three.

Q. Can you just name one? I think that will be satisfactory.

A. I guess Mr. White, at that time. He was involved.

Q. Mr. White?

A. Yes.

Q. After you purchased the Lee Tires and Tubes and Batteries, did you stock them in your station?

A. Yes, I did.

Q. And what occurred, if anything, after that?

A. Well, I was asked at one time what they were doing there.

Q. Who asked you that?

A. I had about three salesmen there, and I wouldn't want to say which one it was. There were three different salesmen that were working there at the time. It could have been one of the three.

Q. Who did these salesmen represent?

1272 A. Firestone.

Q. Firestone?

A. Yes. What we call salesmen.

Q. Did an Atlantic salesman ever make any comment about those tires and batteries?

A. Yes, they did. Wanted to know what they were doing there.

Q. Do you recall who that gentleman was?

A. Well, he has since quit his job as salesman, one way or another anyway, and he is now an operator, at 30th and Market Streets.

Q. And you don't recall his name or you do recall it?

A. No, I don't, right now.

Q. He is currently an operator at 30th and where?

A. 30th and Market.

Q. Do you recall approximately when it was that he asked you that question?

A. I would say the spring of 1954. 1955, rather.

Q. The spring of 1955 when that occurred?

A. Yes.

Q. Was there anything further said? Did you continue to carry Lee Tires, Tubes, and Batteries?

A. Yes, I did.

Q. Was anything further said to you about those?

A. Well, not exactly. But coming close to the end of my contract I wanted to know whether to put an ad
1273 in the telephone book about the station or not, and I called up and wanted to know if I was going to get my lease renewed. I heard that I weren't, indirectly. I didn't get a definite answer, other than, "Go ahead and put the ad in," because the man can use it anyway if I didn't stay there.

By Mr. Dias:

Q. What type ad was that that you wanted to place, Mr. Hawes?

A. An ad in the business part of the telephone.

Q. Listing your station?

A. Yes. Advertising.

Q. Did you intend to advertise products, too?

A. Not necessarily. More or less, "Atlantic Service Station, Pick Up and Delivery."

Q. Did you obtain another station sometime during 1955?

A. Yes, I did. On the First of September.

Q. Where was that station?

A. Concord Pike. Tallyville, I think they call it. It is right at the Concord Diner, right across the street—
1274 diagonal across, 45 degrees.

Q. Did you check out of the second station, the one at 40th and Washington?

A. No, I didn't. I operated the two of them.

Q. Concurrently?

A. At the same time.

Q. This third station, in Concord, did you buy that station outright, or did you lease it from Atlantic?

A. I leased it from Atlantic.

Q. You leased it from Atlantic?

A. Yes, I did. All I bought was gasoline and oil, nothing else.

Q. You handled no TBA products in the third station?

A. Yes, I did.

Q. What?

A. Mostly Lee Tires and Tubes, batteries, and some accessories from Firestone. Whatever I felt I wanted, I bought. I bought it very independently.

Q. Was any comment made about those Lee Tires, Tubes, and Batteries in that third station?

A. Not too much. Only when I got ready to move out, to sell it.

Q. Do you recall the amount of your rent in that third station?

A. They more or less guaranteed me so many 1275 gallons, and if I didn't sell them they made up the difference.

Q. By "they" you mean who?

A. Atlantic Refining. Like they would guarantee me, say, just to use an example, 800 gallons.

Mr. Thompson: May we have an identification of "they?"

The Witness: Or 8000 gallons a month. And if I didn't sell that much they would pay me the difference.

By Mr. Dias:

Q. By "they" do you mean Atlantic?

A. Yes.

Mr. Thompson: May we have an identification of "they"?

The Witness: "They?"

Mr. Thompson: Atlantic can't talk.

By Mr. Dias:

Q. Who specifically in Atlantic?

A. That was in the contract, also. I would say Mr. White, and two or three others.

Q. Did you eventually leave your second station at 40th and Washington?

A. Yes, I did.

Q. And will you state when you left, and the reason for leaving?

A. I left the second of January. I believe that 1276 is the right date. 1956.

Q. Did you leave that station of your own accord?

A. I didn't particularly want to leave. I more or less understood that Atlantic had another dealer for it.

Q. Did Atlantic renew your lease?

A. No, they didn't.

Q. Did they notify you that they were cancelling your lease?

A. I don't recall ever getting it, only by mouth.

Q. Do you know who it was that told you orally?

A. This gentleman sitting back there. I can't think of his name right now.

Mr. Arnaud: Arnaud, A-r-n-a-u-d.

By Mr. Dias:

Q. Can you tell me approximately when Mr. Arnaud notified you that your lease would not be renewed?

Mr. Thompson: I object to the question as a distortion of what the witness has testified to, Mr. Dias. He didn't say that.

Mr. Diaz: I must have misunderstood.

Hearing Examiner Kolb: He testified that they refused to renew his lease.

Mr. Thompson: No, sir. He said he didn't particularly want to leave. I made a note of it when he said it.

Mr. Dias: I think you will find that he followed
1277 that up that he received oral notification from Mr. Arnaud.

Mr. Thompson: Can we clarify it by asking him?

By Mr. Dias:

Q. Mr. Hawes, can you tell us what Mr. Arnaud told you at that time?

A. He said they weren't satisfied with the amount of gasoline I was selling there, and they had another dealer for the station. And they felt that when I bought the other station that I was going—that it was understood, more or less, that I was going to go in business there, or at least train my son for—they wanted me to train my son to take over and take the other business.

Q. The third station you are referring to?

A. Yes. I had had a heart attack in all this time, you see, but I had taken the station after the heart attack. They knew I had the heart attack and yet they let me have the station at Concord Pike.

Q. Do you recall when it was that Mr. Arnaud gave you that information?

A. It was in December 1954.

Q. Early or latter part?

A. Or 1955, rather.

Q. Do you recall if it was the early or latter part?

A. I asked two or three times. I asked one time down at the main building, and there was nothing definite
1278 answered. And I knew my 30 days—that I was supposed to get it 30 days before, some kind of notification, and I hadn't gotten it yet and I was just wondering if I was going to get some kind of a notice, and I didn't get anything, other than it was just more or less—well,

they could have notified me in 30 days I guess, any time they wanted to. I didn't have any new lease, anyway.

Q. When you went into your third station you executed a lease on that third station, did you?

A. Yes, I did.

Q. And for what term?

A. It was more or less for a year.

Q. For a year?

A. Where I could get out if I wanted to, and so forth. I didn't have no trouble getting out. They got another dealer for me when I asked to get out.

Q. When you closed the second station, when you moved out of the second station, did you have any TBA left on hand?

A. Not too much. I had taken it with me. I had it, but I had taken it.

Q. To the third station?

A. To the third station.

Q. Did you have anything to sell, to dispose of, when you left the second station?

A. Most of all my equipment.

1279 Q. I see.

A. Approximately all of it. I had a fair deal on that.

Q. After you moved into the third station, was there and condition in your lease relative to your hours in the third station?

Mr. Thompson: If your Honor please, the lease will speak for itself. If the staff hasn't got a copy, I will be glad to supply one.

Mr. Dias: I wish you would. Mr. Hawes was unable to supply one. If you have all these leases I would be glad to put them in.

The Witness: I wouldn't know anyway, because I didn't keep open those hours.

Mr. Thompson: Shall we pass this? If you want the lease I will provide them later.

Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Dias:

Q. How long did you stay in your third station, Mr. Hawes?

A. Until June.

Q. Of what year?

A. 1956.

Q. If I understand it correctly, you went into that 1280 third station in September of 1955 and terminated in June of 1956?

A. Yes.

Q. Was the lease terminated at your request or Atlantic's request?

A. At my request.

Q. At your own request?

A. Yes.

Q. When you left that third station did you have any TBA on hand?

A. I did.

Q. Can you tell us what TBA you had on hand? What brand tires for example?

A. I had quite a few tires and tubes.

Q. What brand?

A. Lee.

Q. Did you have any Firestone?

A. No, I didn't.

Q. How about batteries?

A. I had I think four or five. I don't just recall.

Q. Do you recall what brand?

A. Lee.

Q. And just accessories in general, what type did you have in the station?

A. I had a very small coverage, but I had belts and spark plugs and polishes and so forth.

1281 Q. Did the new dealer come into that station when you left it, the third station?

A. Yes, he did.

Q. Did he buy your Lee Tires, Tubes, and Batteries?

A. No, he didn't.

Q. Did you attempt to sell them to him?

A. Yes, I did.

Q. Did he refuse?

A. Here again, he didn't refuse, so much.

Q. Who did?

A. The same friend over there, sitting. They wouldn't be bought. I can't recall his name.

Q. Mr. Arnaud?

A. Mr. Arnaud.

Mr. Thompson: The same friend said what?

The Witness: That the dealer was not buying those tires. He answered for him.

By Mr. Dias:

Q. During all the time of your association with Atlantic in various stations, were there any station operator meetings of any type?

A. Meetings for Atlantic?

Q. For station operators, Atlantic station operators.

A. Oh, yes.

Q. Did you attend any?

1282 A. Quite a few of them.

Q. Were those meetings sponsored by Atlantic?

A. Some of them were.

Q. What, in general, was discussed at those meetings, do you recall?

A. TBA, gasoline—gasoline, rather, the two gasolines.

Q. Two gasolines?

A. Well, their regular and premium. Plus Firestone Tires. Mostly tires.

Q. Was there ever a Firestone salesman present at those meetings?

A. Oh, yes.

Q. Can you tell us how often those meetings were held?

A. Well, I would judge around three or four times a year.

Q. Did you have credit card or credit check privileges at any or all of those stations?

A. What do you mean by "all those stations?"

Q. You had three stations. You were in three stations.

A. Oh, yes. My credit was good. I didn't have any credit card.

Q. I don't mean your credit. I mean these national credit cards—the president's credit card, or credit checks, as Atlantic calls them.

A. Oh, yes, I used them. I honored them.

Q. Was that an important sales factor in your business?

1283 A. Well, I don't know that it was. I honored them and they in return honored them also, the credits, and paid me back in cash.

Q. I don't think you understood my question primarily. Did you do much business by credit?

A. A good bit of it. A right good bit.

Q. Can you give us some idea of the amount of your business that was done on those credit cards?

A. On the highway I would say roughly around 30 to 35 percent. At 40th and Washington it was about 15 to 20 percent, credit cards.

Q. And the third station?

A. And on the third station it was around 35 to 40 percent again. Quite a few "pay" customers.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examination?

Mr. Thompson: May we have the customary five minutes?

Hearing Examiner Kolb: We will have a short recess.

(A recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Mason: I move to strike the testimony of the last witness as having no connection with Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be received, subject to a motion to strike by Goodyear.

1284 *Cross-Examination by Mr. Thompson.*

Q. Sir, I might identify myself as counsel in this proceeding for the Atlantic Refining Company.

At your Tallyville station, when you were handling Lee Tires exclusively, did you have them on consignment or did you buy them from the distributor? Do you remember?

A. Well, I had—I bought them on a ninety-day—they give me ninety days to pay for them.

Q. Lee took them back, didn't they?

A. Yes, they did.

Q. Were you selling Lee Tires to holders of Atlantic credit cards?

A. Atlantic credit cards?

Q. Yes. Holders of Atlantic Refining Company credit cards. When you sold Lee Tires, you of course permitted those customers to charge them, didn't you?

A. No, I never sold one.

Q. Never sold Lee Tires?

A. Never sold a Lee Tire on an Atlantic credit card.

Q. Really?

A. Yes.

Q. How about Lee Batteries?

A. Never sold one the whole time I was at the Concord station.

1285 Q. You sold all your Lees for cash?

A. Absolutely cash.

Mr. Thompson: That is all.

Hearing Examiner Kolb: No further questions?

That is all, Mr. Hawes. Thank you.

(Witness excused.)

1286 Hearing Examiner Kolb: The hearing will come to order.

RICHARD BROWN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address.

A. Richard Brown, 221 Duncan Road, Wilmington, Delaware.

Q. Were you at one time an Atlantic lessee dealer?

A. Yes.

Q. During what period were you an Atlantic lessee dealer?

A. October 1955 to April 1957.

Q. Where was your station located?

A. 2530 Concord Pike.

Q. You stated that you were an operator from October 1955 until April of this year, is that correct?

A. Yes.

Q. Did you invest any of your own capital in the station?

A. Yes.

Q. How much?

A. About a thousand dollars.

Q. Did you receive a loan from Atlantic?

A. Yes.

1287 Q. In cash or stock?

A. In stock.

Q. Did it include TBA products?

A. Yes.

Q. What brand of products?

A. Firestone.

Q. Do you know approximately what the value of the Firestone TBA was?

A. About $600.

Q. How was your station identified as to TBA?

A. Had a Firestone emblem on top.

Q. Did you have an outdoor Firestone sign, too?

A. No.

Q. How long was your lease, for what term?

A. It was from October to September, and then they renewed it and I had it suspended—cancelled.

Q. When you went in the station you stated that you had a stock of Firestone tires.

A. Yes.

Q. Firestone TBA?

A. Yes.

Q. With respect to the Firestone tires, were you satisfied with the Firestone tires?

A. No.

Q. Why not?

1288 A. Because you could buy other brands of tires cheaper.

Q. Did you receive any competition in the sale of Firestone tires?

A. From the Firestone stores.

Q. Was that competition difficult to meet?

A. Yes.

Q. Do you recall any specific loss of business?

A. Well, there were several customers I lost because I couldn't meet competition.

Q. Were they customers who came in to your station?

A. Yes.

Q. Did they price the Firestone tires there?

A. Yes.

Q. Where did they eventually purchase the tires?

A. At the Firestone store.

Q. How was the delivery service from the Firestone store?

A. Very poor.

Q. Will you explain that.

A. You would call up for something and you would never know when you would get it. That was about the size of it. You could get it from another jobber immediately.

Q. Did you become dissatisfied with Firestone tires?

A. As far as the price differential, yes.

Q. Did you begin to purchase another brand of tires?

A. Yes.

1289 Q. What brand?

A. Goodrich.

Q. From whom did you purchase the Goodrich tires?

A. From Allen Tire Company.

Q. When did you commence to buy Goodrich tires, approximately?

A. I think maybe it was around February—it was in February 1956.

Q. With respect to your accessory purchases, when you

first went into the station you stated that you had a stock of Firestone accessory line, is that correct?

A. Yes.

Q. Did you become dissatisfied with the Firestone accessory line?

A. Not—

Mr. Ballard: Your Honor, may I object to the form of these repeated questions? He is leading the witness. I know he is doing it in the interest of saving time.

Hearing Examiner Kolb: I don't think it is anything that involves anything in particular. He isn't telling him what to say. I will overrule the objection.

By Mr. Kelaher:

Q. You may answer.

A. Well, the only way that I was dissatisfied was through the kind of service that I got from Firestone.

1290 Q. You are referring to delivery service?

A. Yes.

Q. Did you commence to purchase accessories from local jobbers?

A. Yes.

Q. Would you name some of the jobbers from whom you purchased?

A. Taylor Auto, Suburban, and Duromotive.

Q. Do you know the full name of Suburban?

A. Suburban Auto.

Q. Is it located in Wilmington?

A. In Hollyoak. Philadelphia Pike.

Q. And Taylor Auto Supply?

A. Yes. That is in Wilmington.

Q. And Duromotive?

A. In Wilmington.

Q. Did you have an Atlantic salesman by the name of Robert Klein call on you?

A. Yes.

Q. Were any comments ever made by Mr. Klein with respect to non-sponsored TBA that you purchased?

A. Yes. He said that he didn't like it, that it affected his salary.

Q. He said it affected his salary?

A. Yes.

1291 Q. Do you recall the approximate time of the conversation?

A. I think it was about May 1955.

Q. Do you mean 1956?

A. Yes, 1956.

Q. Do you recall his language, substantially?

A. He just—they told me only that I was cutting their throats, cutting their salary by not buying from Firestone.

Q. Did anyone in addition to salesman Klein from Atlantic make such comments?

A. Mr. Jones made one time, or several times, and Mr. Connolly made it once.

Q. Mr. Connolly?

A. Yes.

Q. Did you attempt to sell Goodrich tires under the Atlantic credit card system?

A. Yes.

Q. Did you have any incidents with respect to that situation?

A. When the customer got dissatisfied over the adjustment of a tire, he didn't pay his bill, so then they told me that I wasn't supposed to sell other products on the credit card, other than Firestone.

Mr. Ballard: Can we have that identified?

Mr. Kelaher: Yes.

1292 By Mr. Kelaher:

Q. Would you give us the name of the salesman who said that to you?

A. Mr. Klein.

Q. Can you give us the approximate date?

A. In May—I mean December, 1956.

* * * * *

By Mr. Kelaher:

Q. You left the station in April 1957. Will you give us the circumstances leading up to your leaving the station?

A. Mr. Jones came in one night and we were standing there talking, and he just up and told me that he had somebody else for the station, if I wanted to get out that they would put him in it. So I thought it over. It made we kind of mad. I wasn't mad to start with. I thought that was a heck of a thing for a man in his position to be saying, that I had never said anything about it. The next day I just called the salesman and told him if he felt that way that I was getting out.

Q. What salesman was that?

A. I told Mr. Klein the next day.

Q. Mr. Klein, the next day?

1293 A. Yes. Then he come back and told me later that he was kidding.

Q. Who came back?

A. Mr. Jones. And I told him I never liked that kind of kidding.

* * * * *

By Mr. Kelaher:

Q. Was any reason ever given for your leaving the station?

A. No.

Q. I would like to have you tell us something about what transpired when you actually left the station. Did you check out, as they call it, in the presence of other gentlemen?

A. Yes.

Q. Was anyone from Atlantic there?

A. Yes, there were two representatives from Atlantic there.

Q. Who were they?

A. Mr. Klein and Mr. Hayman.

Q. Was the incoming dealer present?

1294 A. Yes.

Q. Do you recall his name?

A. Burton—B-u-r-t-o-n.

Q. Did you attempt to sell your stock and equipment to Mr. Burton?

A. I did.

Q. Did you sell it to Mr. Burton?

A. There was a lot of it that wasn't sold to him.

Q. What was the reason for that?

A. Well, a lot of it, they influenced him not to buy.

Q. Who were they?

A. Klein and Hayman.

Q. Influenced the new dealer not to buy?

A. Yes.

Q. Did that include TBA items?

A. Yes.

Q. Were such TBA items purchased from other than Firestone stores?

A. Yes.

Q. So you were left I take it with a certain amount of TBA stock on hand?

A. Yes.

Q. What disposition did you make of that?

A. I practically had to give it away in order to get the guy to buy the tools and stuff.

1295 Q. You gave that to the incoming dealer?

A. No. I gave it to another man. I sold my tools. I practically gave it to him. The same thing.

Q. Getting back Mr. Brown to that credit card incident, what brand of tire was that that you sold?

A. Goodrich.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: You may cross-examine.

Mr. Mason: Before cross-examination begins, I would like to move to strike on behalf of Goodyear on the grounds that the testimony has no connection with the respondent Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be received, subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Ballard.

Q. Mr. Brown, I represent the Atlantic Refining Company. This area here represents Goodyear. When you checked out of the service station at Concord Pike; 2530 Concord Pike wasn't it?

A. Yes.

Q. You had pretty complicated credit dealings with Atlantic Refining Company, didn't you?

A. It would depend upon what you call complicated.

1296 Q. You owed them some money and they owed you some money, is that right?

A. That is right.

Q. They granted you credit for quite a lot of equipment and inventory, didn't they?

A. They gave me credit?

Q. Yes. They gave you credit for the inventory and equipment that they bought, isn't that right?

A. Yes.

Q. And included in that were some Goodyear tubes, isn't that right?

A. Yes, I believe there were.

Q. Four Goodyear tubes.

A. Yes.

Q. Of course you didn't buy those from Firestone.

A. No.

Q. There were also some Champion spark plugs, weren't there?

A. Yes.

Q. Did you buy those from Firestone?

A. No. I didn't buy them from Firestone. I bought them from Atlantic.

Q. You bought them from Atlantic?

A. Yes.

Q. When did you buy them from Atlantic?

1297 A. When I went in the station.

Q. They had been there all that time?

A. Yes.

Q. Then there were some autostat parts, weren't there—thermostats?

A. Yes. They were in there, too.

Q. Where did you buy those?

A. From Atlantic.

Q. You bought them when you came, too. So they had to take them back?

A. They didn't have to. They didn't take a lot of the other stuff.

Q. How about Bardahl? Was that in there when you took the station over?

A. It seems to me that the guy had a rack there, but I don't think there was any Bardahl in when I bought the station.

Q. Where did you buy the Bardahl?

A. From the Bardahl man.

Q. And Atlantic took that over when you left?

A. Yes.

Mr. Kelaher: I would like the record to show that Bardahl is not a TBA item.

Mr. Ballard: Mr. Kelaher, I can't stipulate that with you. I will stipulate it is not covered by the sales
1298 commission plan.

Mr. Kelaher: I don't think it requires a stipulation.

Mr. Ballard: Whatever you want. It is a TBA item.

Mr. Kelaher: Bardahl? An oil?

Mr. Ballard: It is an additive. I think those are considered.

By Mr. Ballard:

Q. Mr. Brown, the incident that you told us about, that tire, I think you said it was a Goodrich tire?

A. Yes.

Q. Was that the tire that you sold to a Mr. H. A. White?

A. Yes.

Q. And Mr. White complained, did he not, that he had a flat tire very shortly after that?

A. Yes.

Q. In fact he had two of them.

A. I believe that is what he told the salesman. I only know that he had one.

Q. He told him that the flats resulted from pinching the tube in the tire casing?

A. Yes.

Q. Were you the fellow who put that tire on?

A. Yes.

1299 Q. What did you finally do about that?

A. I had the tire adjusted. It wasn't caused by that. It was caused by hitting a hole in the road and breaking the casing, which in turn pinched the tube.

Q. Did the Goodrich people allow an adjustment on that?

A. They did allow me an adjustment.

Q. Did Mr. White finally pay for it, the rest of it?

A. Yes. He had a run-in with Atlantic and me. He kept fooling around and fooling around and wouldn't pay for the tire. But finally he came down and did pay for it.

Q. Who did you buy that tire from?

A. Allen Tire Company.

Q. Actually you sold quite a lot of different kinds of tires from your station, didn't you at one time or another?

A. Yes.

Q. You sold Fisk at one time?

A. Mostly all of it we bought from Allen.

Q. Mostly Goodrich?

A. They sold Fisk and they sold some Firestone and they sold Goodrich.

Q. Did they sell U. S. Rubber?

A. No.

Q. They didn't sell U. S.?

A. I think they did sell U. S., but I never bought any. Put it that way. They handled U. S.

1300 Q. Did they handle General?

A. No they didn't handle General.

Q. Did you ever sell any General?

A. No. I sold some of their recaps. I never sold their new tires.

Q. Did you get that recapping from Allen, too?

A. Yes.

Q. You continued to charge sales of these different tires on the Atlantic credit slips, didn't you?

A. Yes.

Q. You never got into any other difficulties with Atlantic about it, did you?

A. No. That was the only one.

Q. Just that one with Mr. White?

A. Yes.

Q. Of course, when you sold accessories you charged them on the credit cards, didn't you?

A. Yes.

Q. And that would include the accessories that you bought from Taylor?

A. Yes.

Q. And Suburban, and Duromotive?

A. Yes.

Q. Is that one word?

A. Yes, Duromotive.

1301 Q. Did Firestone store put you on a COD basis?

A. Yes.

Q. And I imagined Taylor extended you credit, did they?

A. They extended some credit. I paid for most of it in cash.

1302 Q. How much was the total amount you owed Atlantic when you went into the station?

A. As I remember it was about $2,200.

Q. Actually you operated on a consignment basis the whole time you were there, didn't you?

A. No.

Q. You didn't?

A. No.

Q. You were on a consignment basis in the beginning?

A. Yes.

Q. Do you remember when you got off consignment?

A. About a year later.

Q. Then did you go back on consignment later on?

A. No.

Q. What they called a "contract sales plan?"

A. They brought that into effect when they had a price war, February or March.

Q. Actually you were under-capitalized at this station, isn't that a fact?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

The Witness: I don't think so.

By Mr. Ballard:

Q. Didn't you have a good deal of credit difficulty all the way through the operation of this station?

1303 A. Yes. I think there are very few that don't.

Q. That could be.

A. Actually they do.

Q. You had trouble with the Freihofer Bread Company?

A. Yes.

Q. They had a judgment against you, I think, didn't they?

A. Yes.

Mr. Kelaher: Objection. What relevancy does the Freihofer Baking Company have to this?

Hearing Examiner Kolb: Was this man running a restaurant there?

Mr. Ballard: No, your Honor. I will ask the witness.

Hearing Examiner Kolb: I don't think bread would be a TBA item.

Mr. Kelaher: No. I think that is very unfair cross-examination.

By Mr. Ballard:

Q. Didn't the Freihofer people serve a notice of an attachment on Atlantic for that judgment?

A. I believe they said they did. I didn't get no money back from Atlantic.

Q. No, I guess not. Then you had trouble with your electric bill, didn't you, and light bill?

A. Yes.

Mr. Kelaher: Objection.

1304 Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Atlantic helped you straighten that matter out?

A. Yes.

Q. They lent you $200?

A. Yes, and got it right back.

Could I ask one question? Where did Atlantic get their authority for collecting electric bills?

Q. For collecting electric bills?

A. Yes.

Q. I guess you will have to go around and see the Atlantic Refinery Company about it.

A. I have asked but I have never found an answer.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Do you have any further questions?

Mr. Kelaher: Yes, I have a couple.

Redirect Examination by Mr. Kelaher.

Q. Just so the record is clear, I don't understand this, but I made reference before to a Bardahl product. I understand counsel for respondent stated that that would be an accessory item. Was Mr. H. A. White, who bought the Goodrich Tire from you, a good customer of yours?

A. Very good.

1305 Q. Was he a good gasoline customer?

A. Very good.

Q. Was he a good credit risk?

A. Yes.

Q. You were asked on cross-examination about being put on a COD basis by Firestone stores. Did you ever have any arguments with the Firestone store over the prices charged by them?

A. On numerous occasions, yes.

Q. What would that arise from?

A. They would quote you one price and when you got the price it would be another price.

Q. They would quote you one price?

A. Yes.

Q. And you would be billed another price?

A. Yes.

Q. And then an argument would ensue, is that correct?

A. Yes.

Q. Were you able to build up your gasoline gallonage as an operator?

A. Yes.

Q. Would you state approximately what you started at?

A. Well, the first month I had it it was approximately 8,000 gallons.

Q. How did you—

A. It went as high as 15,000. But I averaged over ten.

1306 Q. And your station was a good clean station, would you say?

A. Yes.

Q. You never received any warning letters about your housekeeping, did you, from Atlantic?

A. No.

Q. Or anything of that type?

A. No.

1307 Q. You were asked on cross-examination about some credit difficulties in connection with the Freihofer Baking Company. What was that about?

A. Well, when I went with Freihofer's I had a franchise with them.

Q. You meant you were a dealer for Freihofer?

A. I was a dealer for them.

Q. It had nothing to do with your Atlantic dealership?

A. It had nothing to do with my Atlantic dealership whatever.

Q. How did Atlantic enter into the picture in connection with this Freihofer Baking incident?

A. They kept "horning" me and horning me and finally told me that they would sell the equipment and the stock in the station for the balance of what I owed them.

Q. Who kept after you?

A. Freihofer Baking Company, including the sheriff. So somehow or other they were out one morning and I told them Atlantic owned everything that was in there, that they had an attachment on it, so then they went down to see Atlantic, and that was it.

Q. At this point do you owe Atlantic any money or does Atlantic owe you any money?

A. Atlantic still owes me some but they are holding it, I guess. I don't know what for.

1308 Q. What do they owe you for?

A. They owe me for the TBA and the equipment in the station.

Q. Would you explain that in a little more detail?

A. I have never got paid from the stuff that I sold to the other guy.

Q. You have never been paid for the TBA you sold incoming dealer, is that correct?

A. No.

Q. And you left the station when?

A. In April.

Q. April 1957?

A. Yes.

Q. How much is involved?

A. Well, it is around about way—it involves around $900. But they claim $400 already, and another $400 is in rent, as soon as I get my statement.

Q. How much is owing to you at this point?

A. About $900.

Q. Was any indication given to you when you will get the $900?

A. They wrote letters to my creditors that I have already been paid, but then I got a notice from them that this guy from Freihofer's has a judgment with them for them not to pay me.

1309 Q. So you never got the $900?

A. I never got the $900.

Mr. Kelaher: No further questions.

Recross Examination by Mr. Ballard.

Q. Mr. Brown, as far as you know, you are still under attachment for the Freihofer debt, is that right?

A. I don't know whether I am or not, to tell you the truth.

Q. What about the amount you owed the Wilco people?

A. I don't owe Wilco anything.

Q. You did owe them at one time?

A. I did at one time but I paid them.

Q. You paid that off?

A. Yes.

Q. That was for purchases of Fisk tires?

A. No, sir.

Q. What was that for?

A. That was for the purchase of TBA, no Fisk tires.

Q. What kind of tires?

A. No tires.

Q. What kind of batteries?

A. No kind of batteries.

Q. Just accessories?

A. Just accessories.

1310 Q. Was it about $320?

A. $350, I think, after the magistrate got hold of it.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Are there any further questions?

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you, Mr. Brown.

(Witness excused.)

Hearing Examiner Kolb: We will recess until 2:00 o'clock.

(Thereupon, at 11:55 o'clock a. m., the hearing was recessed, to reconvene at 2:00 o'clock p. m., this same date.)

1311 Afternoon Session.

(1:55 P. M.)

Hearing Examiner Kolb: The hearing will come to order.

HERBERT L. DASHPER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Herbert L. Dashper, 125 River View Drive, Collins Park, New Castle, Delaware.

Q. What is your present employment?

A. Salesman, Adams Parts Company.

Q. What is the address of Adams Parts?

A. 1601 Northeast Boulevard, sometimes known as Governor Printz. They use both addresses—Wilmington.

Q. How long have you been with the Adams Parts Company?

A. About nine years.

Q. What is your capacity with them?

A. Salesman.

Q. How long have you been a salesman?

A. The full nine years.

Q. What is your marketing area?

1312 A. I go into Elkton, Maryland, Newark, Claymont, Wilmington, Delaware City.

Q. Are there Atlantic service stations in your marketing area?

A. Yes.

Q. Approximately how many?

A. About 25.

Q. Of this number how many do you solicit?

A. Eight regularly.

Q. How often do you call on the eight?

A. Once a week.

Q. Do you recall at one time calling on John Galle—G-a-l-l-e—whose station was located at Highland Avenue, Newport, Delaware?

A. Yes.

Q. Did you solicit battery business from Mr. Galle?

A. Yes, I did.

Q. Were you successful in selling him batteries?

A. No, I never sold him any.

Q. Do you recall any reason he may have given, and if so would you please state the approximate time and the details of the conversation?

Mr. Ballard: Your Honor, I object to this line of questioning on the ground that Mr. Galle was here this morn-

ing. Mr. Kelaher, if he had wished to ask him about
1313 his state of mind at any particular time could have done so. It is not necessary to ask this witness about Mr. Galle's state of mind. The best evidence was here this morning.

Hearing Examiner Kolb: The objection will be overruled.

A. Well, at the time, roughly the summer of '55, as near as I can remember, we tentatively agreed that he would buy batteries. I talked to him one week, and he said the next week I will buy some.

By Mr. Kelaher:

Q. What brand?

A. Auto-Lite batteries. When I called back the next week he said that he had talked to somebody in Atlantic, I don't know who, and they told him he should stick with Firestone and he wouldn't buy them. I never did sell him.

Q. Did you at one time call on an Atlantic lessee dealer by the name of Edgar Cornman, New Castle Avenue and Lamlican Lane, Grosshill, New Castle, Delaware?

A. Yes.

Q. During what period did you call on Mr. Cornman?

A. From about the end of 1949 until roughly in '55, whenever he left the station. I don't know what the date was.

Q. Did you solicit battery and accessory business from Mr. Cornman?

A. Yes.

1314 Q. Were you successful in selling him batteries and accessories?

A. Yes.

Q. What type battery did you sell him?

A. Auto-Lite.

Q. Did he purchase on a stocking basis?

A. Yes.

Q. He purchased Auto-Lite batteries?

A. Yes.

Q. Did he purchase any accessories on a stocking basis from you?

A. Yes, he did.

Q. Could you give us an idea of which ones?

A. Oil filters, spark plugs, various chemicals.

Q. What brand oil filters were you selling him at that time?

A. At one time it was Fram, and later it was AC. I can't recall when it changed.

Q. Do you recall what brand spark plugs?

A. AC. The very beginning it might have been Auto-Lite. We had the two different brands and I couldn't be sure.

Q. And the chemical line, do you recall the brand?

A. There were various brands. We had Hollingshead line for awhile, and Prestone chemical line.

Q. Hollingshead is the Whiz line?

A. That is right.

1315 Q. Did you ever have any conversations with Mr. Cornman with respect to his purchase of TBA from you?

A. Yes, at various times he mentioned that an Atlantic dealer should buy more Firestone and less outside TBA lines.

Q. Do you recall when those conversations were held?

A. No. It would be at various times. I wouldn't have any idea as to the exact time.

Q. It was over the years?

A. Over a period of time that I called on him.

Mr. Ballard: I move to strike on the grounds the conversations have not been properly identified in time.

Hearing Examiner Kolb: Will you fix the time?

By Mr. Kelaher:

Q. Mr. Dashper, did these conversations take place after Mr. Cornman's—after the switchover to Firestone TBA?

A. Yes.

Q. Do you recall the approximate time when that occurred?

A. It would be hard to try to nail it down. There were different occasions. I wouldn't want to try to nail it down.

Q. What identifications—

Mr. Ballard: I renew my motion to strike. This witness has testified over a six-year period.

Hearing Examiner Kolb: Couldn't you make it more definite, what year, when?

The Witness: It would probably be between the
1316 beginning of 1954 and '55. That is as close as I can get.

Mr. Kelaher: Thank you.

Mr. Ballard: We renew the motion, your Honor.

Hearing Examiner Kolb: Are you moving again now?

Mr. Ballard: Yes.

Hearing Examiner Kolb: Denied.

By Mr. Kelaher:

Q. Did you sell hard parts to Mr. Cornman?

A. Yes.

Q. And referring back to Mr. Galle, did you sell hard parts to Mr. Galle?

A. Yes.

By Mr. Kelaher:

Q. Did he make any further statements to you?

A. He said it was he thought because he didn't cooperate more with the Firestone salesman.

1317 Q. You state that you solicited eight Atlantic stations at the present time.

A. Yes.

Q. Do you recall what TBA identification those stations have?

A. As far as I know, every one has a Firestone decal in the window.

Q. And that advertises Firestone tires, batteries and accessories?

A. Yes, as far as I know.

Q. At the present time I believe you are selling Delco batteries, are you not?

A. That is right.

Q. Do you sell any of these Atlantic stations Delco batteries on a regular stocking basis?

A. No.

Q. Do you sell hard parts to these eight Atlantic stations?

A. Yes.

Q. Do you sell accessories to these Atlantic stations on a regular stocking basis?

A. Some, not much, but some.

Q. When you say "some," about how many? Would you explain that in more detail?

A. Well, I had one that stocks fan belts and hose for me, another one that stocks these oil filters. I would
1318 say they were the only two on a regular stocking basis.

Q. What brand of fanbelt and hose do you carry?

A. Goodyear.

Q. What brand of oil filters do you carry?

A. AC.

Q. Is the AC brand also carried by the Firestone people?

A. Yes.

Q. Have you asked Atlantic dealers from time to time to put up advertising signs of the products you sell?

A. Yes, we ask all of our customers to display advertising.

Q. What success do you have with that?

A. Very little.

Q. Do they refuse to put up the signs?

A. Some refuse, some say "Leave the advertising, I will put it up." But it doesn't seem to get up.

Q. Are you referring to battery and accessory signs?

A. Whatever the particular material happened to be that we sell them.

Mr. Kelaher: No further questions.

Cross-Examination.

Mr. Mason: I move to strike the testimony of the witness as having no connection with any issue relating to the respondent Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be received, subject to a motion to strike by 1319 Goodyear.

By Mr. Ballard:

Q. Mr. Dashper, I represent the Atlantic Refining Company in this matter. I think you said that you had eight regular Atlantic stations, operators, customers?

A. Yes.

Q. Regular customers?

A. Yes.

Q. Could you give us the names of those eight?

A. Van Schaik Atlantic; Pete's Atlantic. Do you want the trade name?

Q. I think we had him the other day. Mr. Adams told us about him. He is Petro Contompasis?

A. That is right.

Mr. Kelaher: May we have the towns where the stations are located?

By Mr. Ballard:

Q. Can you give us Van Schaik's address?

A. Claymont.

Q. Philadelphia Pike and Seminole Avenue?

A. Yes.

Q. Claymont?

A. Yes.

Q. Do you want to try to spell Petro's?

A. P-e-t-r-o C-o-n-t-o-m-p-a-s-i-s.

1320 Q. He is in Hillcrest?

A. That is right.

Jacobs Atlantic, on Vandever Avenue; McGinnis Garage, at McDonough, Delaware, Route 13; Baird Atlantic, Route 13, Farnhurst; Bell, Inc., Market Street, 13th and Market; Atlantic Station at Annaline Village—but for the life of me I can't think of the name—Smith's Atlantic.

Q. Sylvester Smith?

A. Yes.

Lupes (?) Atlantic, Lancaster Avenue. I don't know the address.

Q. That is eight. Do you have any more?

A. That is it.

Q. Taking Pete's Atlantic, how often do you call on Pete?

A. Once a week.

Q. You are pretty much familiar with what he has in his station?

A. Fairly so.

Q. Do you know what suppliers he deals with?

A. No, I couldn't say where his merchandise comes from, other than what I supply him.

Q. Do you know what brand of tires he carries?

A. No, I wouldn't want to testify on that.

Q. As a matter of fact, he carries quite a lot of Lee tires?

A. I don't know, honestly.

1321 Q. You have never seen them?

A. I don't pay that much attention. We don't sell tires and I don't check each one that closely.

Q. Do you know what kind of batteries he carries?

A. I believe he has Firestone batteries. I have seen Exide there in the past. I think he distributes tires.

Q. How long ago do you suppose the Exide was there?

A. Probably a year, maybe somewhere in there, maybe later.

Q. You don't call on John Bruton, on Concord Pike?

A. No, sir.

Q. Are you the salesman who calls on Nicholas DeLeo?

A. No. We don't—I called on him just two or three times. We don't actively solicit his business. He buys from our store, I understand. But so far as I know, nobody calls on him.

Q. You wouldn't know what kind of TBA he carries?

A. No, sir.

Q. Do you call on Nicholas Tavani?

A. No, sir. There is another salesman from our house calls on him.

Q. Who would that be?

A. Marion Adams.

Q. We haven't met Marion. You don't know what kind of TBA—

A. I am not familiar with the station at all.

1322 Q. Do you call on William Whitman?

A. No.

Q. Nor William White?

A. No.

Q. Did you ever call on those?

A. When Whitman first went into his station I called a few times. White I never did.

Q. Why don't you call on Mr. White?

Mr. Kelaher: Objection. He stated he doesn't call on him.

Mr. Ballard: I can certainly ask why he doesn't call on him.

Hearing Examiner Kolb: Objection overruled.

A. For the reason that there are hundreds of accounts around, and we just try to pick the accounts that we can reach. So I have never called on him.

By Br. Ballard:

Q. This fellow Sylvester Smith, do you sell him all his accessories? You don't?

A. No; very few of his accessories.

Q. He carries I think Gates fanbelts largely?

A. Yes, he does.

Q. Do you know where he gets those?

A. No, I don't.

Q. And Walker filters?

1323 A. I believe so.

Q. I think he has a sign and a rack.

A. He has a rack. I don't know about a sign. I know he has the rack.

Q. Where would he buy the Walker filters?

A. I presume Taylor Auto, but I don't know for sure.

Q. Baird I think you said was one of your regular customers?

A. Yes.

Q. That is in Farnhurst.

He doesn't buy all of his accessories from you either?

A. I think the only thing that you could classify as accessories would be his fanbelts and hose.

Q. He also buys Gates fanbelts, doesn't he?

A. I have never seen one in there.

Q. Does he handle Champion plugs?

A. I think he has both Champion and AC, from my observation.

Q. Do you know where he would get those Champion plugs?

A. I think there would be two or three outlets in Wilmington. I wouldn't know which one.

Q. Firestone doesn't have one?

A. Not to my knowledge.

Q. What about filters? What brand of filters does he carry?

A. I think he has Walker filters but I am not positive.

Q. I think also in Farnhurst is Syntzyszyn's Atlantic?

1324 A. I am not familiar with that.

Q. He has an unpronounceable name—S-y-n-c-z-y-s-z-y-n.

A. I am not familiar with that.

Q. How many accounts do you have all together, Mr. Dashper, personally?

A. About 95.

Q. How many of them do you call on on a weekly basis?

A. About 80 of them weekly.

Q. The bulk of those are garages, I assume?

A. Garages, service stations, car dealers, mostly.

Q. I imagine with 80 regular customers you are a pretty busy man, aren't you?

A. Well, some of those you spend very little time with. If you understand the story, some may be next door to a good customer and you just drop in to see if you could pick something up from him.

Q. You classify them as regular—

A. Because you are stopping in, rather than by the amount of business you get from him.

Q. Put it this way: If you had more time you could call on more people, more customers?

A. That is always true.

Q. There are more available customers around to call on?

A. Yes.

Mr. Ballard: I have no further questions.

1325 Mr. Mason: No questions.

Redirect Examination by Mr. Kelaher.

Q. Do you know which of your accounts are so-called lease dealers and which are contract dealers? Your Atlantic accounts?

A. I believe so. I think there are two, I believe, who are not lease dealers.

Q. Who would they be?

A. McGinnis Garage, I am quite sure he owns his own place; and Smith's Atlantic, I believe—I am not positive of that—I believe he leases from an individual.

Q. And McGinnis' Garage—

A. He is a garage-service station combination, more or less.

Q. What do you sell him?

A. Mostly hard parts.

Q. With respect to Van Schaik, what TBA products do you sell to that Atlantic dealer?

A. Speaking as a stocking?

Q. Yes, regular stocking.

A. The oil filter is the only one I sell him on a stocking basis; TBA.

Q. Do you sell him hard parts?

A. Yes.

Q. What TBA identification does he have in his station?

1326 A. Firestone.

Q. And Petro's Atlantic, what item do you sell him?

A. Ignition, brakes, and then various parts for minor repairs which he might do.

Q. Apparently you have reference to hard parts?

A. That is right.

Q. Hard parts only.

A. Hard parts only.

Q. What TBA identification does he have in his station?

A. To my knowledge, Firestone in the window.

Q. With reference to Jacobs Atlantic, what items do you sell to Jacobs Atlantic?

A. Strictly hard parts to Jacobs.

Q. What identification does Jacobs Atlantic have?

A. Firestone.

Q. With respect to Bell, Inc., what items do you sell to that account?

A. They would be more in the nature of, aside from polishes and waxing, more in the nature of janitor's supplies, tools, floor compounds. It is mostly a parking lot with very little active service station work, but it is Atlantic.

Q. So you sell no hard parts?

A. They don't use hard parts there.

Q. Now the battery and accessory line, what do you sell?

A. To my knowledge they are not selling any
1327 there. They don't handle them.

Q. With respect to Lupes—L-u-p-e-s—what items do you sell to that Atlantic dealer?

A. He is a new dealer. He probably has been there a

month. I have only sold him hard parts in that length of time.

Q. How soon did you call on that account after he opened for business?

A. I think he was there a week, roughly a week.

Q. Did you notice what TBA items were in the station?

A. Well, he—do you mean as far as brands?

Q. Yes. Which brand of TBA was he carrying?

A. Firestone oil filters and fanbelts. He had DuPont radiator chemicals and polishes. Probably other assorted chemicals that I didn't take that much notice to.

Q. What brand of battery?

A. Firestone batteries.

Q. What brand of tires?

A. I didn't notice on the tires.

Q. Do you recall what identification he has on the station?

A. He has a Firestone decal in the window.

Q. How did you learn that that station was opening up—Lupe's Station?

A. Well, I was familiar with his brother, and he told me that he was going to take it over.

Q. You received no word from Atlantic, did you, 1328 that the station was opening up?

A. Oh, no, no.

Q. I think the only one we haven't covered is Baird's Atlantic. I think you testified as to that dealer earlier, if I am not mistaken.

A. I did.

Q. What identification does that station carry?

A. To my knowledge it is Firestone.

Q. And you do sell—do you sell batteries to the station?

A. No, in the accessory line it is fanbelts and hose.

Q. That is Goodyear?

A. That is Goodyear.

Recross Examination by Mr. Ballard.

Q. Mr. Dashper, when you say "to my knowledge," do you mean that you know that to be a fact, or as far as you know that is a fact?

A. You are getting a little technical. I would say that from my observation every Atlantic station that I go into has a Firestone sign on the window, if that is what you are referring to.

Q. That is it.

A. I think that is where I view it mostly. I wouldn't want to specifically say one station has it and it may 1329 have something else. But to my knowledge, at least I feel sure that everyone has it. I would say 95 percent have Firestone on the window.

Q. So that you are testifying that in general Atlantic stations have Firestone on them?

A. Yes.

Q. But on any particular Atlantic station you could be wrong?

A. Certainly.

Mr. Ballard: No further questions.

Mr. Mason: No questions.

Hearing Examiner Kolb: Thank you, Mr. Dashper.

(Witness excused.)

Mr. Kelaher: May we have a recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

JAMES PARAG was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

1330 A. James Parag, 113 Landers Lane, Swanwyck Gardens, New Castle.

Q. Were you at one time an Atlantic lessee dealer?

A. Yes, sir.

Q. Where was your station located?

A. 505 South Market Street.

Q. Wilmington, Delaware?

A. Yes, sir.

Q. When did you begin operating the station?

A. August 1, 1955, I think is the exact date.

Q. When did you leave the station?

A. It was sometime in March of 1956. I am not sure exactly of the right date.

Q. Were you on a one-year lease?

A. Yes, sir.

Q. Did you invest capital in the business?

A. Yes, sir; invested $4500 all told.

Q. Did you receive a loan from Atlantic?

A. No, sir.

Q. Did they promise to loan you money?

A. Yes, sir. They promised to loan me money so that I could operate. I was told I would get money from Atlantic so I could operate to keep up the small credits on their credit cards.

Q. But you never received the money?

1331 A. No, sir.

Q. Do you know approximately how much they promised to loan you?

A. Oh, roughly $2,000 to $2,500. In between there I asked for.

Mr. Thompson: May we have identification as to that? Atlantic is a pretty big company.

By Mr. Kelaher:

Q. Who was your conversation with respect to the loan about?

A. Tom Jones. He seemed to be the boss over all the stations, more or less the man—

Q. He was the man with whom you discussed the—

A. That is right. He was the man I signed the lease with and did all the communications with.

Q. When you first opened your station, what brand of TBA did you carry?

A. Firestone.

Q. And who was your supply point?

A. Firestone here in Wilmington. I think it is 11th and West; 10th and West. Anyway, it is close.

Q. Were you satisfied with the service you received from Firestone?

A. No, sir, I was not.

Q. Why not?

A. Well, to start with, one week I would be on credit, next week I would be on cash, and I would be deliv-
1332 ered on credit and have to pay cash, and whenever I paid cash sometimes they would rebill me on it, and sometimes you have to send checks in, not realizing that I had paid it once. My wife made out most of the checks. And we finally caught up with it and we told them about it, and we would get straightened out for a couple of days and the same thing would happen all over again. Then they wouldn't deliver like they promised. Half the time you wouldn't get it for three months and then you wouldn't have the stock in stock. So that is why I didn't like the service.

Q. Was there a time when you began to purchase other brands of TBA?

A. Yes, sir.

Q. Approximately when was that?

A. Roughly speaking, about December.

Q. December?

A. 1955.

Q. And what brand of tires did you begin to purchase?

A. Goodyear.

Q. What brand of batteries?

A. Goodyear.

Q. Who was the supplier?

A. Keil's Motor Company here in Wilmington.

Q. Where is it located?

A. Eleventh and West.

1333 Q. Did you begin to purchase accessories from other than the Firestone stores at that time?

A. Yes, sir; I did.

Q. Who did you purchase such accessories from?

A. Wilco Supply, Motor Car Service, Taylor Auto, there were a couple of other odd jobbers but I can't remember right offhand who they were.

Q. Were you extended credit by those jobbers?

A. Yes, sir; plenty of credit.

Q. Was there ever any question about your credit?

A. No, sir, there was not; never.

Q. After you began to purchase the Goodyear tires and batteries and the non-sponsored accessories, was anything said by an Atlantic representative?

A. Well, they came down one day, saw—

Q. Would you please identify the gentlemen as you go along and the approximate time?

A. All right, sir.

Mr. Tom Jones came down and saw all these batteries and accessories stocked up and on the shelves. He told

me I couldn't handle them. I said, "Why can't I? According to you, when I first went in here, I was allowed to handle anything." I said, "Firestone can't get me what I want. My people want it. When a man has a dead battery he doesn't want to wait three months for a new
1334 battery to come in. And when it comes to adjustment they want adjustment right away." I said, "Keil Motor Company is very good at it, so I am dealing with them. They don't take ten minutes to give me a new battery whenever it is dead. Why shouldn't I deal with them?" That was it.

Q. Did he say—did any of the Atlantic representatives comment upon your purchase of non-sponsored accessories? By non-sponsored I mean purchases of accessories from other than Firestone stores?

A. Yes, there was. There was other things, a few things that Firestone sold, but I did not purchase from them. And then they knew that I didn't purchase from them because they didn't get their commission on it. It wasn't turned in to Atlantic. That is how they found out. So then things got a little hotter and hotter as it went along, because I dealt with the people that gave me the service I needed.

Q. When you say they got hotter and hotter are you referring to any specific Atlantic representative?

A. Yes, sir. Mr. Jones. He kept right up with it.

Q. Would you mind reciting some of the other statements by Mr. Jones?

A. Well, he told me that if I didn't handle according to what Atlantic handled, he said I would lose my lease, which I knew from before that that I wouldn't stay in there longer than August anyway because it started from
1335 the time I went to school. I was supposed to be going to the Atlantic school.

Q. Mr. Parag—

Mr. Mason: Let him finish his testimony. I am interested in what he was saying. He hadn't finished his answer. He was going to say about what started since he went to school. He is answering your last question and you interrupted his answer.

By Mr. Kelaher:

Q. Have you finished answering my question?

A. Yes, sir.

Q. Now let me ask you about the school business that you began to speak about. Please describe what happened with respect to that.

A. When I first took the station, there was nothing told me about I had to go to school. And he told me, he said my service station would be used for schooling.

Q. By "he" you are referring to Mr. Jones again?

A. Yes, Mr. Jones.

Q. Please try to give us the approximate date of the conversation.

A. That was about two weeks before I took over the service station, because he came back to see me at my home. He explained to me that my station would be used for schooling purposes, and I would get paid for the use of the station. So, that seemed satisfactory to me.

1336 And after I took over the service station he asked me would I like to go to school. I said, "I imagine I would. Maybe I can learn something."

So then he went on and I tried to go to school for a couple of days, and the windup was that I was going to somebody else's service station for schooling. I said, "I would like to go to my own service station because I can learn more, and I can watch my business."

He said, "No, you cannot go to your own service station because you will not get the proper schooling." So I told him, "In that case, I will have to stay with my business.

and I can't go to school." He said, "Then you will lose your lease because we will not have non-Atlantic trained service station operators."

Well, that upset me naturally, because I had all this money tied up. I didn't know what to do with all the equipment. So I tried it a couple of more days. It just didn't work out because I had to be at my business, and I told him, "I have to manage my business." He said, "We will put a man in there for you. You will pay him to run your business." I said, "What will happen if I lose my money?" He said, "Well, that would be your tough luck." I said, "In other words, I am going to lose my money no matter how I look at it, because at the end of the year I won't get my money out of the equip-
1337 ment, and if I put a man there he is losing my money and I am going to lose it anyhow, so I think I will stay here and watch me lose it, because I am not going to make anything here anyhow, because I can't get along with this." Well then, well, I don't know—

Q. Then—

Mr. Mason: Let him finish his answer.

Mr. Kelaher: I think he finished.

Mr. Mason: No, he said "Well then." Let him finish his answer.

Mr. Kelaher: You will have ample time—

Mr. Mason: I want him to respond to your question completely.

By Mr. Kelaher:

Q. Go right ahead.

A. That pretty well concludes the story part of it.

Q. I beg your pardon?

A. That pretty well concludes the schooling part of it because then I dropped it off altogether because I just wouldn't go to school and let somebody else run my busi-

ness. I never did business that way before, where somebody has to tell me how to run my business. And I didn't need it because I felt this way, because if I thought I was incapable of getting in that service station, I wouldn't take it. I had been in my own business all my life and never needed directions of anybody telling me how to run
1338 my business and I didn't feel I needed it then. If I thought for one minute that I needed schooling, or something like that, I would have been more than glad to go.

So that is it.

Mr. Kelaher: Does counsel feel the answer has been concluded?

Mr. Mason: It sounds like it was concluded.

By Mr. Kelaher:

Q. You stated that you purchased accessories from jobbers other than Firestone?

A. Yes, sir.

Q. Were any statements made with respect to those accessories by an Atlantic representative?

A. Yes, sir. He said if I didn't—

Q. Who is "he"?

A. Mr. Jones said that if I didn't buy strictly Atlantic products, that I would strictly lose my lease because he gets his commission according to what I buy.

Q. When you say "Atlantic products" are you referring to Firestone TBA products?

A. They consider that Atlantic products.

Mr. Thompson: After all, Mr. Kelaher, we have had this too often. Really let this witness answer and not lead him, please.

Mr. Kelaher: He seems to be doing a good job.

1339 Mr. Mason: You are leading him very well.

By Mr. Kelaher:

Q. Now if we can get back to where we were, would you go right ahead?

Mr. Mason: With what?

Mr. Kelaher: That is what I would like to know.

Mr. Mason: Let's have the question read.

Hearing Examiner Kolb: Was that a remark to Mr. Kelaher or a motion to the Hearing Examiner?

Mr. Mason: I would like to have the question read to know whether or not to object to it.

Mr. Kelaher: Your Honor, I think instead of comments between counsel the questions or remonstrances should be directed to you, or oral statements.

Hearing Examiner Kolb: Read the question.

(Question read.)

By Mr. Kelaher:

Q. Did a gasoline price war develop in your area while you were an operator?

A. Yes, sir.

Q. About what time did that develop?

A. The gas war itself was already on when I went in. They had I think the service station—no, I wasn't either. The service station was not on commission. I mean a gallonage commission. They had me on strictly rent, 1340 a cent and a half rent, or base rent. That wasn't too bad when I went in. Then, about a month afterward, the tank wagon went up a half cent. So naturally I cut my profit on the gasoline.

I went back and explained to them, about the prices going up. I said, "We would like to have our prices increased." They said, "We will increase, because there are other companies fighting among themselves to try to get it up." They said, "It will go up in less than two weeks."

Q. By "they"—who is "they"? Atlantic salesmen?

A. Yes, sir.

Q. Jones or who?

A. I seem to be referring to Tom Jones as "they" at all times, it seems to me, because when—I always considered Tom Jones a part of the representatives of Atlantic, and whatever he said should be a word of honor. I mean there should be a word that should be carried out by their company. Otherwise, they should not have such a man in there. That is the way I look at it.

Q. Now go right ahead.

A. I spoke to Mr. Jones—I will try to use his name as much as possible—about the prices. I said, "It is going to cut my profit in the gasoline again." I said, "We have to have a better margin." He said, "In less than two weeks it should be up."

Two weeks went by, a month went by and we still
1341 didn't have no increase. Actually, there was no gas war between private owners. It was a gas war between companies, and the poor man is getting the licking down there. I was a private operator down there, and before me was Esso, Sunoco, and Save-Way. Those were all company-operated. When they put the tank wagon price up on me that cut my profit and yet the company wouldn't put their prices up so I could meet competition with them. They kept their prices down.

In other words, I was taking the licking where the company was making big profit.

1342 Q. Did you receive any communication from Mr. Jones or Atlantic with respect to your gasoline price at that time?

A. Yes. It was a little bit later, about three months later after the prices were not changed. No, it was not three months, it was in January sometime. I received a registered letter from Atlantic, saying that they were trying to break up the gas war in the area. We all felt pretty

happy about it because we thought it was going to be ending.

Mr. Thompson: Excuse me. Do we have a copy of that letter, Mr. Kelaher?

Mr. Kelaher: I haven't it.

The Witness: No, sir, I do not have it because I figured all service stations must have got the same copy, because otherwise Mr. Jones would not have come down the next morning and told me to put up my prices a half cent. He said, "within two weeks put it up another half cent and keep it there." So I said to him, "That is going to mean a droppage of gallonage." He said, "Don't worry about the droppage of gallonage, we will take care of you on that, because your rent will have to drop then." I said, "My rent will drop below my marking, below the standard that I am supposed to pay." He said, "Don't worry about that, Atlantic is prepared to take care of it." Well, me thinking he was supposed to be a qualified representative, I went along with him, and put it up another 1343 penny. People drew off at a half cent. People used to buy 18 or 20 gallons, and they would say, "That is ten cents more, I will go next door, it is just as good a gas, so why should I buy yours." What could I do about it? The gallonage dropped and two weeks later it went up another half cent. People who bought it at a half cent drove off, they just wouldn't buy. So the only thing helped me open was what little commercials I was able to hold.

Then later on, when I sold out, any way, I found out that they did not make adjustment toward my rent on what they promised, what I was promised. They deducted that from the money that I was supposed to receive.

Q. Approximately how much of a drop did you have in gallonage as result of those price increases?

A. Roughly speaking, 50 percent. 50 percent droppage.

Q. What was your gallonage before, approximately, and after?

A. It was anywhere from 20,000 to 25,000 a month, and it dropped down less than 12,000 I am pretty sure. Of course, I can't use the exact figures because after all, I have been out over a year and I haven't thought of it any more. The further I get away from it the better I will feel.

Q. When did you first know that your lease was not going to be renewed?

A. Oh, from the time that I refused finishing school for them.

1344 Q. Thereafter—

A. They just kept agitating and reminding me that I would not get a new lease and it would be proper for me to get out while getting would be good. I said, "Sure, I will get out, find me a man to buy the stuff. But I can't put it in my backyard, because I am restricted against such things. And if I took it home, it won't be worth two cents to me."

Q. Did you own the equipment in the station?

A. Well, I should say pretty much 100 percent, but maybe I should say 98 percent of it, because part of that stuff Atlantic did own. That is proper.

Q. What type of equipment did you own?

A. Everything that was movable, I owned.

Q. Would that include such items as guns?

A. Yes, sir.

Q. Grease guns?

A. Yes, sir.

* * * * *

1345 By Mr. Kelaher:

Q. Mr. Parag, you testified that you left the station in March, 1956. Is that correct?

A. Yes, sir.

Q. Would you state the circumstances leading up to that termination?

A. Yes, sir. In January, a fellow was supposed to come down to buy the service station at the price that we were going to agree on. So he told me I would have to sign a mutual release. I told him all right, I would sign it, because the fellow I talked to seemed real nice about it, he wanted to buy, so in the meantime the fellow backed out. That left an undated release for the service station, undated release. And then the same fellow finally came back who I bought out, he wanted the service station back again. Then—I want to try to get as close as I can to be accurate— then the fellow come back, he wanted the 1346 service station back again, and Mr. Jones told me that he had a buyer for it—all this time I wasn't knowing who the buyer was. I found out later who the buyer was. And a couple of weeks rolled by. I thought to myself, this is mighty suspicious, he has a buyer for it and the man not coming around to see me, to see if I really want to sell or what is going on. So after awhile they come around and I found out more, and I was talking to Mr. Jones about it some more, and I found out that they just wanted to buy the products that Firestone sold, and what Atlantic sold and then they were going to pile all my stuff in one pile and I was supposed to get together with the fellow who was buying me out. I thought to myself, this is very fishy and doesn't sound right to me. A fellow buying out like that.

Then he said, "You know we have a release signed by you. We can put you out anyhow." I said, "You can, huh!" That is when I got my attorney and we worked on it. And that is when we had to go according to standards. They finally bought out everything that went along, because that is what my attorney told them.

Q. Approximately how much did you lose during your service station operation?

A. I would say anywhere from $4,000 to $5,000.

Q. I may have asked you this. What TBA identification did you have in your station? What signs?

1347 A. Signs? Strictly Firestone, whatever they have.

Q. Did you advertise your Goodyear products?

A. No, sir.

Q. By signs?

A. We were not permitted.

Q. By whom were you not permitted?

A. Mr. Jones.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examination.

Cross-Examination.

Mr. Mason: If your Honor please, I move to strike the testimony of the witness as having no connection with Goodyear, except insofar as he did buy some Goodyear products and sell them, in which case he was well advised, but I move to strike all of his testimony.

Hearing Examiner Kolb: The testimony will be received, subject to a motion to strike by Goodyear.

By Mr. Thompson:

Q. Mr. Parag, I understood you to say that Tom Jones came down to the station and saw you and found Goodyear and other non-Firestone TBA at your station.

A. Yes, sir.

Q. Maybe I am mixed on my geography, but I think I have seen your station, sir, and my recollection is that it is right at the gate of the Atlantic office building.

1348 A. Yes, sir.

Q. And the Wilmington bulk plant.

A. Yes, sir.

Q. Mr. Jones was stationed there, wasn't he?

A. Yes, sir.

Q. Didn't he go by your station four, five, or six times a day?

A. If he did, I couldn't say for sure, because I wouldn't see him that often.

Q. But the gate to the Atlantic Wilmington office, the bulk plant, is right by your station.

A. All the officials went by there.

Q. Every day?

A. Yes, sir.

Q. And that was Mr. Zinn, the manager?

A. Yes, sir.

Q. And Mr. Joe Connolly, the sales supervisor?

A. Yes.

Q. And the region people would come in for meetings, wouldn't they?

A. I wouldn't know them.

Q. I mean all the Atlantic big brass would be coming by there all the time.

A. It seems to me they would.

Q. So that Atlantic was kind of conscious of the 1349 appearance of your station.

A. Yes, sir.

Q. Didn't Joe Connolly and Tom Jones complain to you quite a lot about the appearance of it.

A. Well, they would complain because they could find nothing else to complain about.

Q. You mean you think your sales volume was pretty good?

A. Well, just how did you mean that, sir?

Q. Well, this was Ed Hill's station for 8 years, was it not?

A. That is exactly what I mean.

Q. During the time Ed Hill had the station you were a customer.

A. Off and on.

Q. You knew the station well from the Hill business.

A. I knew it before he got there.

Q. And even before Hill got there?

A. Yes, sir.

Q. You have known it for a long time?

A. Yes, sir, I did.

Q. Hill recommended you for that station, didn't he?

A. I don't know that he recommended me or not, but any way he had been wanting to sell out for quite a while.

Q. And Hill had gone off to take a job with somebody else?

A. Yes, sir.

1350 Q. As a matter of fact, it was a GMAC agency that he was going to try.

A. Yes, sir. He got that job.

Q. And that is what created the vacancy at this particular station, was it not?

A. Well, I guess that is one way of putting it.

Q. Hill moved out?

A. Yes, sir.

Q. And then you moved in?

A. Yes, sir.

Q. When you moved in, you went over the volume of gasoline that Mr. Hill had sold at this particular station, didn't you?

A. No, I did not. Wait a minute. Mr. Hill stated to me that that station was pumping anywhere up to 40,000 gallons a month.

Q. Yes, sir.

A. That was Mr. Hill's word.

Q. Yes, sir.

A. But Mr. Jones quoted different.

Q. What did Mr. Jones quote you?

A. I really couldn't tell you offhand, but he quoted the annual. I couldn't tell you.

Q. Didn't Mr. Jones tell you that when you took the station over, Mr. Hill had been very recently doing
1351 about 25,000 gallons a month?

A. Oh, I am not complaining about the gallonage of what it sold.

Q. Mr. Hill, for a period of 8 years had run a very high volume station at this point, hadn't he?

A. Yes, sir.

Q. Do you have with you your records of how many gallons of gasoline you sold during the few months you were at this station?

A. No, sir, I don't have that. I didn't bring anything with me.

Q. You took over in August of 1955?

A. Yes, sir.

Q. And that was your first month?

A. Yes, sir.

Q. Who had been Mr. Hill's station manager? A man named Harry?

A. Yes, sir.

Q. What is his last name?

A. Schaefer.

Q. Mr. Parag, for about three months you kept the volume of that station up pretty well, didn't you?

A. Yes, sir.

Q. Would it refresh your recollection if I said that in August 1955, you had 26,600 gallons? Would that be
1352 about right?

A. It would be somewhere close.

Q. And in September around 24,000 or 25,000?

A. I imagine it would be pretty close. I don't know whether it would be exact.

Q. Mr. Parag, just at about that point is it not true that your brother came up from Florida and you put him in charge of that station?

A. No, sir. That was way before that. I didn't put anybody in charge of that station except me, myself.

Q. How about Harry?

A. Harry kept the books.

Q. You fired him, didn't you?

A. No, sir. I laid him off. I laid him off because I couldn't afford to pay him the wages that he would have received. That was pretty high for a service station man. Not because of his insufficient work.

Q. Harry moved to the Esso station just down the street, didn't he?

A. No, sir.

Q. Where did Harry go?

A. Harry, for about a 30 day period, I think to be exact, didn't do anything.

And then he went to a fellow named Rickney.

Q. A service station operator?

1353 A. Yes, sir, Atlantic service station operator, too.

Q. Atlantic?

A. Yes, sir. He was at that time.

Q. Didn't he first go to an Esso station?

A. No, sir, he didn't. Not to my knowledge.

Q. Isn't it a fact that a number of your large accounts were just taken away from your station by Harry when you laid him off?

A. No, sir, I would not say that. No, sir. I dropped one or two of the larger accounts because I found that I was losing money on them, I tried to compromise with the people. I was putting $.45 oil into their trucks, I was getting $.30. I was charging $3.50 for washes—$3.50 or $4.00, I don't remember exactly now—and I received somewhere in the neighborhood of $1.50 to $1.75 and gasoline

was discounted at two cents. The lubrications were discounted. In other words, it was costing me money to hold them. I tried to prove it to Mr. Jones and the other officials, and they couldn't see it because the gallonage would drop so much. That is what they were after. They didn't care how much money I made. They were interested in how many gallons I was selling, regardless of what it cost me.

Q. It is a fact that your gallonage at that station dropped off from the first month, which you said 1354 was about 26,600—

A. Yes, sir.

Q. Down to about 10,700?

A. Yes, sir.

Q. When did you first learn that Mr. Hill was not satisfied with his GMAC agency and wanted his own station back?

A. When I first learned it? It would be about a week or two before I sold out. In fact the Atlantic Refining Company bought for him. I should say it that way.

Q. Did you continue to be familiar with that station which you had known about for so many years after Mr. Hill returned to it?

A. Do you mean after I sold out?

Q. Yes.

A. No, sir. I was treated like a dog when I went in there. I was more or less known that I wasn't wanted.

Q. I said after Mr. Hill took the station back—

A. Yes, sir.

Q. And started to operate it, did you continue to be familiar with the station?

A. I don't understand the way you are putting that.

Q. Do you know how many gallons a month Mr. Hill did immediately after you left when he took the station back?

A. No. Just like I say, every time that I went around there, they more or less ignored me, just let me know
1355 I wasn't wanted. So wherever I was not wanted I would not go there, just like anybody else.

Q. Is it a fact—

A. I mean I had no hard feelings to Mr. Hill because he bought me out. I was willing to continue buying his product because, like I said before, I have no complaints about the product Atlantic put out. They have a good product but it is just the way the stations are operated.

* * * * *

By Mr. Thompson:

Q. I would like to go back to the school business that you were talking about. Was it not understood between you and Mr. Jones that if Atlantic gave you this station that you would attend the training school?

A. Not at the time, no, sir.

Q. Wasn't that one of the—

A. No, sir.

Q. —oral conditions Atlantic proposed when they gave you the lease?

A. No, sir. Not at the time. It was after.

Q. You said that you wanted to run this school at your own service station?

1356 A. They were having school there. I couldn't see why I couldn't be there in case something turned up I could be there.

Q. Did you go to the Wilmington school at all?

A. For a while.

Q. For about two days, am I correct?

A. Roughly, yes.

Q. How many other dealers were at the school?

A. I imagine as many as could possibly make it.

Q. But you were there for two days. How many other dealers were attending school at the same time?

A. I really couldn't tell you.

Q. About 35?

A. I imagine, yes. Roughly. You have the exact figures.

Q. You were concerned—

A. I wouldn't question the figures.

Q. You were questioned about the fact that Atlantic wanted to employ someone while you were at school?

A. Yes, sir.

Q. Did not Atlantic offer to pay you while you were at school?

A. Yes, sir.

Q. $50 a week?

A. Yes, sir.

1357 Q. You had had no prior training in service station operation before this particular station?

A. No, sir, not a service station operator. I worked a little here or there but nothing to operate, for operation.

Q. It is not a simple business to operate a service station, is it?

A. There is no business simple.

Q. You really have to know a good deal about automobiles and lubrication and repairs?

A. Yes, sir.

Q. All manner of such things?

A. Yes, sir, you do.

Q. You mentioned a cancellation form which you said you signed in January?

A. Yes, sir.

Mr. Thompson: May I have this document marked, please, as respondent's exhibit A-6.

(Whereupon, the document referred to was marked Respondent's Exhibit A-6 for identification.)

Mr. Thompson: There has been marked as Respondent's Exhibit A-6, a document entitled "Mutual Consent of cancellation," dated November 2, 1955.

By Mr. Thompson:

Q. Mr. Parag, you hadn't been in this station more than a couple of months before you wanted to get out, isn't that so?

1358 A. Yes, sir.

Q. I show you the document which has been marked Exhibit A-6, and ask you if that isn't your signature on it?

A. May I also—

Q. Just answer my question first.

A. Yes, sir, that is my signature.

Q. You can talk all you like, sir. Go ahead if you have any comment.

A. Yes, sir. I also said that the date was not put in when I signed it.

Q. The date was not put in when you signed it?

A. No, sir. That was undated.

Q. The 2nd of November, 1955, is in Mr. Jones handwriting, is it not?

A. They said this was voided on account of I was in there more than 30 days after the release was signed, November 2nd. So I took it for granted it was torn because in January he told me I had to sign another one, so I signed another one, but it was undated. That was all in good faith.

Q. Back in November you wanted to leave Delaware and go down to some business interests in Florida, didn't you?

A. Yes, sir.

Q. And you asked Atlantic to let you off your lease as of the 3rd of January?

A. May I also remind—

1359 Q. Just answer the question first.

A. All right, sir.

Q. Is that correct?

A. Yes, sir.

Q. You may add to your answer.

Mr. Thompson: I am happy to have him talk all he wants, Mr. Kelaher.

The Witness: I want you people to know the true facts of why that one was signed.

By Mr. Thompson:

Q. You tell us.

A. There was another man for that same service station, but he went back, spoke to the company, he told me he was willing to take it. This was on a Sunday that he spoke to me. I think it was, to be exact. The fellow spoke to me, he went back and talked to Mr. Jones, and I never saw the man any more.

Q. This was in November?

A. I am pretty sure it was. I am not—I don't have that clear a memory to remember the exact date. But that was before the first of the year. I will put it that way. So that is the only one was signed before then.

Q. You have testified that was at a time when you were buying Firestone TBA?

A. Yes, sir.

1360 Mr. Thompson: I ask that there be marked for identification another form of mutual consent of cancellation, as Exhibit A-7.

(Whereupon the document referred to was marked Respondent's Exhibit A-7 for identification.)

By Mr. Thompson:

Q. Mr. Parag, do you recall a discussion with Mr. Connolly and Tom Jones, about February, about a month or so before you left the station?

A. I don't know exactly what date, but I recall a conference between us, yes, sir.

Q. Didn't you at that conference, at that discussion, tell them that you had been losing money on this station?

A. Yes, sir.

Q. And that you really didn't feel up to handling it, and that you would like to drop it?

A. Yes, sir. I told them at the time that the service station was not doing the business because of the price of the gasoline, and that I could not keep it up because of the gallonage. They again reminded me, do not worry about gallonage.

Q. I now show you a mutual consent cancellation dated March 2, 1956, and ask you whether that is your signature on that. Just answer my question first whether it is your signature.

A. That is my signature.

Q. And your signature was witnessed by Tom Jones.

1361 A. Yes, sir.

Q. The sky is the limit, Mr. Parag. Tell us anything you like about the mutual cancellation.

A. The cancellation must be the one that was not dated, and, because I have signed no release to the fact without the permission of my attorney. My attorney handled all the cancellations.

Q. So you are—

A. I am not questioning the signature. The signature is exact.

Q. But you say this wasn't dated when you signed it?

A. Yes, sir. It is because the date was not known, the exact date when the man was buying out, and according to Mr. Jones the exact date has to be on there. That was the—

Q. Which date wasn't on it? That the lease shall expire as of March 8, or the March 2nd date? Which date do you think wasn't on it when it was signed?

A. This was completely blank. This is my signature.

Q. Do you mean the whole form was completely blank?

A. All except for the heavy print.

Q. But this was signed on the second of March, was it not?

A. No, sir. It was not. If I recall, to be exact, I sold out in March, and I would not sign because I feared that there was something omnious coming off between Mr. Jones and the buyer. That is when I got my attorney.
1362 They used the idea of this cancellation lease over my head, because it was blank—Mr. Connolly—both did. My attorney has stated, "Well, this was signed all in good faith for another man that was willing to buy."

Q. If I correctly understand you, you are saying that this mutual consent of cancellation dated March 2nd, was just in blank when you signed it? Nothing on it but the print and no typing on it. Is that correct?

A. Not my—

Q. Tell us what was on it when you signed it?

A. Just my signature.

Q. Just your signature?

A. Yes.

Q. And all the rest was blank?

A. Yes, sir.

Q. Did you sign more than one of them on that day?

A. I really couldn't recall that, sir.

Q. Maybe I can refresh your recollection.

A. I know I usually sign three.

Q. Do you mean whenever you sign a mutual consent cancellation you always sign three?

A. They said it was required. One had to go to Reading, one for them, and one for the front office.

Q. That is exactly correct. Your memory on that is very good.

1363 Mr. Thompson: I would now like to have identified as A-8 and A-9 these two documents.

(Whereupon, the documents referred to were marked Respondent's Exhibits A-8 and A-9 for identification.)

By Mr. Thompson:

Q. I ask you to look at two mutual consent of cancellation forms which have been marked A-8 and A-9, and ask you whether that is your signature on both of them?

A. That is my signature. At least it looks it.

Mr. Kelaher: May we see the documents?

(The documents were handed to counsel.)

By Mr. Thompson:

Q. You are familiar of course with Mr. Jones' signature?

A. Oh, yes.

Q. That is Ton Jones' signature on there? On A-8?

A. Do you mean his signature?

Q. Yes.

A. I really have not tried to keep any signature memories in mind.

Q. So you don't know whether that is Mr. Jones' signature?

A. Oh, I imagine it is. I am not questioning it.

Hearing Examiner Kolb: We will take a short recess.

(A recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

1364 By Mr. Thompson:

Q. Mr. Parag, you mentioned some credit problems that you had at this station with Firestone?

A. Yes, sir.

Q. Those weren't the first credit problems that you had with Firestone, were they?

A. With Firestone?

Q. Weren't you—

A. Oh.

Q. Weren't you running a truck before you took the station?

A. Yes, sir.

Q. And you bought your tires from Firestone?

A. Yes, sir.

Q. And did you pay for them?

A. They come after them.

Q. I beg your pardon?

A. They come after them. I didn't want to give them back. They come after them.

Q. You mean they came after the tires?

A. Yes, sir.

Q. That happened before or after you went into the Market Street station?

A. It was before.

Q. And you never did pay the bill for the tires, did you?

A. If I had had my tires they would have had the
1365 money. Because I bought a new car they said if you can afford a new car you can—it is this way: If you can buy a new car—how did they put it now—anyway, they said I couldn't afford a new set of tires. So when I couldn't afford a new set of tires I gave them back to them. I went to the Kiel's Motor Company and bought a new set of tires. And they were paid for.

Q. I think you said that Mr. Jones told you if you didn't buy Atlantic accessories you would lose the station?

A. That's right.

Q. When was that?

A. I can't remember the exact dates. That all happened about the time that I was dealing with other products. The exact dates I can't quote. It was sometime around December I would say.

Q. You also testified that when you went into the station Mr. Jones said you could buy anything you wanted to?

A. Yes, sir. At one time he also said that I could stay there, they weren't going to worry about the schooling again.

Q. Did you ask him—

Mr. Kelaher: I would like to note that the answer of the witness ended on an "and" and I presume he would like to carry on.

Hearing Examiner Kolb: Read the last answer.

(Answer read.)

1366 Mr. Thompson: I defer to you.

Mr. Mason: I have no questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Parag, it was brought out on cross-examination that your station was located in the vicinity of the Atlantic plant, was that it?

A. Yes, sir.

Q. Were your customers primarily commercial or—

A. I would say pretty much of it was 90 percent commercial.

Q. Would that be trucks?

A. Trucks and other heavy equipment.

Q. Heavy equipment?

A. Yes, sir. Stuff that I had to discount. I tried all commercial.

Q. You were asked on cross-examination about the use of your station as a training school?

A. Yes, sir.

Q. What statements, if any, were made by Mr. Jones prior to the time you took over the station with respect to that subject?

A. Well, Mr. Jones said my station would be used for purpose of schooling. And if I remember correctly, he

asked me the permission of it. I said yes, it is quite all right with me, because I would get paid for it any-
1367 how. My understanding was that I was supposed to get $50 a week for the use of the station. It wound up $50 a month, which the money part of it did not bother me because the station belonged to Atlantic anyhow, so I let it go at $50 a month and forgot about it.

Q. When he stated it was to be used at $50 a month, who was to be trained there? Who were to be trained there?

A. It was supposed to be no one—it was supposed to be the new employees coming in for the new stations.

Q. For Atlantic?

A. Yes, for Atlantic employees. I don't know. At least that is what I gather out of it.

Q. And it wasn't until after you began operating the station that you learned that you were—that you were asked to go to the school in New Castle, was it?

A. Well, no, it was in the Wilmington area, I think.

Q. In the Wilmington area?

A. Yes, sir.

Q. Where was the Atlantic training school located in the Wilmington area?

A. There were three. Mine, another one at Mingledale—I think that is a New Castle address, too, that is on the Du Pont Highway; and another one down on State Road, I don't exactly know the address. That is on Du Pont Highway, too. That is next to the big truck center.

Q. Where were the classes held which you at-
1368 tended for a few days?

A. The classes—the oral classes—were held at the Shamrock Room, that is what they called it, I am pretty sure, at the Motel de La Ware.

Q. Is that the one near the Delaware River Memorial Bridge?

A. Yes, it is.

Q. How far was that from your service station?

A. I would say at least two miles.

Q. Two miles?

A. Yes, sir. At least that.

Q. In order for you to go to that training school, did I understand that you would have had to hire a man?

A. Yes, sir.

Q. Did you not hire a man for the days you attended the school?

A. What was that again?

Q. Did you hire a man during the days when you attended the classroom sessions?

A. No, sir, I did not hire anyone to take my place because I thought I would only be in that place down there just for a couple of days and I would be back at my own station, which wouldn't have been too bad.

Q. What, approximately, would it have cost to have hired a man as an attendant at the service station?

A. Well, judging from the way I was paying my 1369 men, it would average me from $75 to $80 a week. That is, to get a good man.

Q. I have just one or two questions on the mutual cancellation agreements.

Referring you to Respondent's Exhibit A-7, you were asked certain questions about these documents by counsel for respondent Atlantic. The date March 2nd appears on there. When was this—when did you actually put your signature on there?

A. Well, if I recall correctly, I signed two sets of releases. One was filled in, properly. That was before December. That is when they were putting the pressure on me because I could not stay in the service station because of no schooling. Then they couldn't find anybody for the station and more than 30 days elapsed.

They said automatically it goes back to my original lease of one year. So then we found another man who wanted to buy my service station, in January. I would say January 1. It wasn't the latter part of January. And we signed a blank release, because he said he would not look for a man unless he had a release, and he said he had one but didn't know what day it would come off. I think the fellow was down at Chester. The fellow came down and spoke to me, about the service station, but I never saw the man any more. So this was left blank because of that account.

1370 And if I remember correctly, the requirement of three sets of releases, one for me, one for Reading,—wait a minute. One for this terminal, one for Reading and one for Philadelphia. I think that is how they worked it. Anyhow, I am pretty sure it was three sets. And the dates were not put in. So when they found out I would not sell in March, because they knew I was getting a dirty deal, how it was coming off, then they said, "You know you signed a release." I said, "No, I didn't." They said, "You signed one back in January, don't you remember? It was undated." I said, "You can't use that one." They said, "Why?" I said, "Because more than 30 days had passed and you told me I go back to my own lease." They said, "It is blank, we can fill it in any time."

I knew right away I had to get a lawyer. I explained to my attorney about it and he brought it up there, and my attorney told me you can tear that up.

Q. To the best of your knowledge and recollection, the last mutual consent of cancellation that you signed was in January 1956?

A. That is it exactly, because if these dates were accurate, my attorney would have had no jurisdiction over this, because this would have been later. They would have

thrown my stuff out on the street and said get out. That is exactly the words they were putting in.

Mr. Kelaher: No further questions.

1371 Hearing Examiner Kolb: Are there any further questions?

Mr. Thompson: No, sir.

Mr. Mason: I have none.

Hearing Examiner Kolb: That is all, Mr. Parag.

(Witness excused.)

Hearing Examiner Kolb: The hearing will be adjourned to reconvene Wednesday, July 3, at 10:00 o'clock, in Courtroom 709, Appraisers Stores Building, 103 South Gay Street, Baltimore, Maryland.

Following Testimony Taken At Baltimore

1373 Hearing Examiner Kolb: The hearing will come to order.

CHARLES H. JOHNSON was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Charles H. Johnson, 306 Westshire Road, Baltimore 29, Maryland.

Q. When did you first become associated with Atlantic Refining Company, Mr. Johnson?

A. In May of 1932.

Q. And what was your position at that time?

A. Service station attendant.

Q. And where was the service station located, do you recall?

A. Cathedral and Eager. That was where I started as an attendant.

Q. In Baltimore?

A. Yes.

Q. How long were you employed in that station?

A. From May '32 to December 31st of '32. And January the 1st of '33 I went to 33rd and Barclay Street.

1374 Q. As an employee?

A. As an attendant.

Q. That was 1933?

A. That's right.

Q. Now, how long did you work there as an attendant?

A. Until the spring of '34 at which time they made me a service station salesman.

Q. What was your function as a service station salesman?

A. Well, at that time they had 13 service station salesmen and 1 was assigned to each service station and his job was to solicit accounts, keep the service station in line, businesswise, that's sort of a balanced selling thing, and solicit lubrications, wash jobs, tires and accessories.

Q. Was TBA an important factor at that time in Atlantic Service Stations?

A. It had just become, they went into the Lee end of it, the tire end of it, I think in the fall of '32.

Q. After being an Atlantic Service Station salesman did you continue with Atlantic in any capacity?

A. On July the 1st of 1936 the Atlantic leased me the service station at 33rd and Barclay Street, I was a lessee of an Atlantic station.

Q. And were you successful at that time as a service station operator?

A. Yes, sir.

1375 Q. And did you expand your business shortly thereafter?

A. Yes, sir. In 1937 the Atlantic Refining leased me a station on Gwynns Falls Parkway which made two that I operated. And at the end of the same year they made me what they term a key dealer in tires. That's all we had at that time, tires.

Q. Lee tires?

A. Yes. Lee tires.

Q. And what did that involve? The key dealership?

A. That involved the distribution to the service stations in the Baltimore area, just around Baltimore. If, for instance, a station in the North end would need two tires they called on me for them in preference to running to the Atlantic or having the Atlantic driver deliver them. I stocked the tires and that gave easy access to the other dealer, they could just pick from me whenever they wanted.

Q. By "other dealers," are you referring to other Atlantic dealers?

A. Atlantic service stations; yes.

Q. Did you eventually become a distributor of Lee tires and other products?

A. In about the beginning of the war the company said that we couldn't get gasoline and I gave up Gwynns Falls Parkway Service Station. I think I had it maybe two or three years, I'm not sure, but I came back to 33rd Street where my headquarters were and from that point on—you had a tire problem with the tickets, where
1376 a man had to have a ticket, Government—

Q. Requisition?

A. Tire ticket. If you need a tire. In that case the Atlantic would then dump their quota of tires on my driveway, as many as six hundred in a month, and I would have to distribute them according to the Atlantic set up. They had it on a co-efficient figure, I think the word was, that each deealer would get so many tires and they gave me that

list which I in turn delivered to the dealers and that satisfied them as far as the Government was concerned. That's the tickets.

Q. I see.

A. Because the dealer could only get the tires for the tickets he had. In other words, if he sold ten tires he had ten tickets, Government tickets, and Atlantic would tell me to deliver ten tires and I'd pick those ten tickets up which would clear me as far as doing anything wrong with the tire was—

Q. Generally described as an allocation system?

A. That's right.

Mr. Thompson: It was really rationing, I think.

The Witness: Rationing is what it was.

By Mr. Kelaher:

Q. That's right, rationing would be proper.

A. Yes.

Q. And did you at that time begin to distribute batteries or accessories?

1377 A. During the war, yes. We had Weatherbee and Lee batteries, the company couldn't get all of one brand so they had to substitute, and we also had United tires, that was the name of the extra tires we had to handle in lieu of the regular supplier.

Q. And did you carry accessories or have accessories?

A. No, sir; in about '45 they started on a full-scale of TBA—tires, batteries and accessories.

Q. What brands did they carry?

A. Well, for instance, in polishes and cleaners they carried DuPont—

Q. Oil filters?

A. Oil filters were Fram.

Q. Fan belts?

A. Thermoid.

Q. Chemicals?

A. Well, DuPont covered that pretty good, the chemicals, but I'm trying to think of a—Weatherhead, Weatherbird—

Q. Hollingshead?

A. Hollingshead was one, Whiz Products.

Q. Windshield wipers?

A. ANCO, blades, wipers and arms.

Q. What brand of tires and batteries were being carried?

A. In '45 it was Lee tires and Exide batteries.

Q. Now, what effect did that have in or about—you state this was in or about '45 when Atlantic began
1378 their full scale TBA program, is that correct?

A. Yes.

Q. And what effect did that have on your distribution of the products?

A. Well, at that point they had a warehouse at Key Highway and I had tire storage space, so the accessories and what not I picked up at Key Highway—

Q. By "they" are you referring to Atlantic?

A. Atlantic, yes. And they had a man that—a stockroom man who tended to that and I picked the stuff up there and delivered it along with the tires and batteries to the other dealers.

Q. Other Atlantic dealers?

A. Atlantic dealers, yes, sir.

Q. And did that system continue for some time?

A. Yes, sir; that continued roughly until '46 at which time another dealer entered the picture. He wanted a share in it and they gave it to him, a man named Eckhardt.

Q. What was his name?

A. Thomas Eckhardt.

Q. Where was he located?

A. At Fleet and Fagley Street, in Baltimore.

Q. Is he an Atlantic lessee dealer?

A. He was an Atlantic lessee, yes, sir; same as I. And at the time I told Mr. Bishop who was then in charge
1379 in Baltimore, that he would die on the vine, which he subsequently did within a year and then I was told to go over and buy his stock which I did, and that gave me the entire area for myself again.

Q. Who told you to buy his stock?

A. Mr. Bishop.

Q. Mr. Bishop?

A. The Atlantic representative, yes.

Q. During this period did you purchase tires, batteries and accessories or what was the method by which you obtained control of the products?

A. Well, the Atlantic Refining Company had a man, Mr. Cunzeman, he was the last man, and I would call orders in to him. For instance, if I wanted two hundred tires and one hundred batteries, they would place the order with Lee and Exide. They would be shipped directly to me. Atlantic would pay Lee and Exide, I in turn would pay Atlantic.

Q. And what was the situation with respect to accessories?

A. Well, as near as I can recall the accessories after the Atlantic got out they discontinued their warehouse at Key Highway, then I had to purchase all they had in their warehouse and have a warehouse of my own for a distributing point.

Q. And did you then purchase your accessories direct from the—

A. Yes, sir; I think I did.

Q. (Continuing.) —outlets?

1380 A. I'm not so sure of that, but it was, I think, the Atlantic ordered them—or I ordered them and the

Atlantic okayed it and then the people—supplier shipped it directly to me.

Q. And you paid the suppliers, is that correct, or do you recall?

A. No, I think I paid Atlantic. I think I did.

Q. You think you paid Atlantic?

A. Yes.

Q. And that same was true of batteries and tires, is that correct?

A. Yes, sir.

Q. Now, when you obtained the full distributorship that was about what time? What year? You may have stated it.

A. Well, I bought a house to build a warehouse in the back yard and to have an office in 1947 so it must have been around there that they turned the whole thing over and at that time I might add this, that at that time I wasn't in a position, for instance, if you ordered 200 tires and the bill was $1,000 I didn't have that kind of money. At that time the Atlantic Refining Company had what they called a B-30. Well, I'd get an OK from them to deliver a dealer and all a given amount of tires on their credit slip, then the Atlantic would allow me credit for that sale against my purchase so that I wouldn't tie my own money. I couldn't. I didn't have it.

Q. Did you incur any expense when you became 1381 the distributor in the area?

A. Yes, sir; in as far as I recall, '48, I bought one house, in '49 I bought the one adjoining for storage facilities, and in '49 then I also bought a garage building up the street which—

Q. Up which street would that be?

A. Barclay. I was on Barclay Street, the whole operation. I bought a garage building which I had thought could be divided partly into warehouse, partly into repair

shop. I had carpenters in there—the insurance regulations made you put tin up over the door as fire prevention. I had carpenters tinning up the back end of this building when the man in charge of the Baltimore Division from Philadelphia, Mr. Ingersol, the first morning that I was there, he looked at the building and he said, "Too small." So, I immediately knocked the carpenters off, told them "get out of there," and moved back to the two houses that I had purchased.

I tried to get the operation in one group instead of having it spread out. So, I subsequently made this larger building into a repair shop which it still is and then I went back to the two houses that I originally purchased and used those for storage and office and what not.

Q. Do you have any idea what your additional cost was for these facilities

A. The first house was $2,500, the second one was $4,250. Now, the garage building I did not use, other
1382 than for office space. I didn't use it for a warehouse because it was too small.

Q. And did you have to have an office staff?

A. I had my wife—there were two bookkeepers and a clerk, two truck drivers and two trucks. And there were two additional salesmen. One of them a former emplyee of Atlantic, and they helped me with sales.

Q. What was your selling territory?

A. Well, it was called the Baltimore District and I have notations, I went to, for instance—

Q. If you could just tell us some of the towns that you covered, I think that—

A. Patuxent Naval Air Station at St. Marys County, Randallstown, Westminster, Reisterstown, Aberdeen, Elkton, NorthEast, Clarkville on the West, Friendship an the West, Glen Burnie on the West, Gambrills— it was all over the place.

Q. And did you sell to Atlantic dealers in those areas?

A. Where Atlantic had stations, yes, sir; and I also sold my own accounts. Now, I had accounts stretched around through there, too.

Q. Were they commercial accounts? So-called commercial accounts? Who did you call on in addition to Atlantic service stations?

A. Well, I had commercial accounts—they are what I term a truck tire account, there they have large 1383 trucks and one of them was the Cloverland Dairy, Arthur Phillips Steel Company, Western Electric was passenger tires mostly.

Q. Now, approximately—

Mr. Thompson: Excuse me. Had you finished the answer, sir?

The Witness: I can't recall all of them. I didn't make notes.

By Mr. Kelaher:

Q. Approximately how many Atlantic service stations were in your marketing area?

A. I would assume, without checking, there were 75 roughly—you can't hold me to that. Some of them were leased dealers, some owned their own property in which case I would deliver to them but I don't think the Atlantic took note of their sales. Now, I'm not sure of that.

Q. I see. They are known, I believe, as contract dealers?

A. Yes, sir.

Q. So you had both lessee dealers and contract dealers?

A. Yes, sir.

Q. What was the principal, taking all of your accounts as a whole, bulk of your sales?

A. Lessees.

Q. Did you sell principally to Atlantic service stations?

A. Principally, yes, sir.

Q. Do you have any idea approximately what your
1384 percentage of sales would be to Atlantic services stations of your total? Was it a fairly high percentage or was it a medium percentage?

A. Yes, it was a high percentage because what I endeavored to do, Mr. Kelaher, was to match their sales with my sales.

Q. By "their," would you explain that. When you say "their sales."

A. For instance, if the Atlantic dealers bought—I'm just going to say 50 thousand dollars worth of merchandise, I in turn would solicit and try to sell 50 thousand dollars of my own.

Q. I see.

A. I mean outside accounts.

Q. To other than Atlantic accounts?

A. To other than Atlantic accounts: Yes, sir.

Q. And did the ratio work out 50/50 that way or—

A. It was running pretty close.

Q. Now, how were sales made to these Atlantic service stations? Who did the selling?

A. Well, they have four, as near as I can recall, salesmen who divided up the territory in and around Baltimore.

Q. Four Atlantic salesmen?

A. Yes, sir; and they had outside salesmen, too. And they would go into a service station and take the order for what the man wanted and write it on their pad and deliver the pad—the copy to me and I would deliver
1385 it. After first getting credit clearance from Atlantic until about 1950 Atlantic stopped carrying the credit and forced me to carry it—didn't force me but told me I had to carry it—and that's how those orders were taken, along with my truck drivers and telephone operation, they'd call in.

Q. Now, was selling done in that manner to Atlantic lessee dealers?

A. Yes, sir.

Q. Was selling done in that manner to Atlantic contract dealers? If you recall.

A. I'm trying to think of a specific case. I don't remember exactly that it was.

Q. Did you normally or someone from your staff call on the contract dealers normally?

A. No, Mr. Kelaher. How that happened was that after the transition from Atlantic to me when one of their contract dealers would call in to the office and want an order they would refer it to me to take the order and give it to me. See. Because I had no record of the contract dealers that they had. They might have one stuck out here in the country somewhere that I didn't know about, and then they'd call me and say "Take him so many tires," and this and that.

Q. So, you did not call on the contract dealers or the lessee dealers?

A. No, sir. Yes, the lessees now. Some of them 1386 we did. My own trucks called on them, when they delivered they would say, "What else do you want? You're out of so and so."

Q. So they would solicit business from the lessee dealers?

A. Yes, sir.

Q. Did you report sales by Atlantic Service stations to Atlantic salesmen?

A. They had, as I recall, a company paper called the Yardstick, and that was my office had to compile a salesman's territory and turn it in monthly to the Atlantic.

For instance, if one man had 13 stations, those 13 stations' sales would be listed against that man's name, his name would go in the Yardstick as having sold 10 thou-

sand dollars worth of material for that given month as would the other salesmen and we had to compile those figures and send it in for their records.

Q. Did you compile them for individual dealers? For example you stated one salesman might have 13 dealers, would you show the names of the dealers?

A. I'm not clear, I might have. See, we would send it in by names. If the 13 stations bought so much. Now, whether it was broken down—I think it was, because then you could see which each station did—what each station did.

Q. Would that show the amount of Lee tires purchased by each station and the amount of—

A. I think, if I'm not mistaken, it was a dollar 1387 volume. Now, I'm not sure.

Q. Dollar volume?

A. I think it was; I'm not sure.

Q. Showed the TBA dollar volume, is that correct?

A. Yes.

Q. That was all you distributed, wasn't it, was TBA?

A. Yes, sir.

Q. Mr. Johnson, how long did you continue as a TBA distributor to Atlantic service stations?

A. Until February of 1951.

Q. What happened at that time?

A. At that time I was in the hospital for an operation and the first part of February, maybe the first week, I had—was just coming out of the anesthetic, the first evening, my wife ran down to the hospital all up-set, and she didn't want to tell me, she didn't know what to do. So, I finally saw there was some trouble. I asked her what was the matter. She said, "Well, the TBA is no more."

Mr. Thompson: I'm sorry, I couldn't hear the answer.

The Witness: She said that the TBA was no more.

So, I said to her, I said, "Well, if that's the way it is there's nothing I could do." I was flat on my back.

By Mr. Kelaher:

Q. Did she explain in any detail why it was no more?

A. Other than she heard at 5:00 o'clock that after-
1388 noon that effective the next morning there was no TBA, that I wasn't to distribute any further TBA for the Atlantic Refining Company.

Q. And did she give you any reason?

A. She didn't know and I didn't, nobody knew, and I was groggy, I wouldn't have known if she had told me.

Q. Then did you subsequently learn why there was no more TBA for you?

A. The only thing I learned was that the Firestone Company had come in and taken the thing over and I was out. That was it. I mean, I had no—and I think if I recall that that was strictly grapevine, I didn't have any—

Q. No official notice from Atlantic?

A. I don't think I did. I might have.

* * * * *

By Mr. Kelaher:

Q. Did you thereafter make any sales of TBA to Atlantic service stations?

A. Only to the extent of an adjustment. See, if
1389 you had a tire that went back the Atlantic service station would adjust that tire and I would replace it for that. But there were no more sales. There was just to clear the thing up. It was—as effective the next morning there was no more.

Q. So the market was lost overnight, is that correct?

A. Yes, sir.

Q. And prior to that time you lost the market overnight what advertising appeared in Atlantic service stations?

Mr. Thompson: Now, if your Honor please, again I wish to object to the recurring form of Mr. Kelaher's questions. He just cannot seem to resist trying to put some concept which he may have of this case in the mouth of a witness. He has just said "lost overnight, didn't you?" I mean, that was not the witness' statement. I would be deeply grateful if your Honor would request Mr. Kelaher to ask questions in the proper manner.

Mr. Kelaher: Your Honor, it was my impression, based on his testimony, that he testified that he lost the business overnight.

Hearing Examiner Kolb: He testified to that extent but I don't think you ought to paraphrase the witness' answer in making your questions under any circumstances.

Mr. Kelaher: Thank you, your Honor, I'll try to avoid that.

By Mr. Kelaher:

Q. Up to February of '51 period what advertising 1390 of TBA appeared in Atlantic Service stations, if you know?

A. Lee tires and Exide batteries.

Q. And if you know which brand of tires, batteries and accessories were purchased by Atlantic service stations up to that time?

A. Up to that time in '51?

Q. Yes.

A. Lee tires and Exide batteries and their associated accessories that the company approved.

Q. Now, after that time, if you know, what advertising appeared in Atlantic service stations, after February '51? Or thereabouts.

A. Well, they came around and took the Lee signs down and put up Firestone.

Q. By "they" who are you referring to?

A. I imagine the company or the Firestone, they lettered windows in the more modern stations, the older stations they put up Firestone tin signs I call them.

Q. By "the company" I suppose you are referring to Atlantic, is that correct?

A. That's right. Well, it may have been Firestone that did it, I don't know, but it was what was done.

Q. That's right. Atlantic or Firestone.

Mr. Correa: I think we should move to strike what it may have been.

1391 Hearing Examiner Kolb: Let it go.

Mr. Correa: If we are keeping an orderly record.

By Mr. Kelaher:

Q. Do you recall whether Exide battery signs appeared in Atlantic stations after about February of '51?

A. I couldn't recall because I didn't go into them any more after that, that's only not on business.

Q. But you do recall the Firestone TBA signs, is that correct?

A. It was just Firestone, I don't know that it had TBA, you know, just Firestone.

Q. All right.

Was an effort made by you or by Lee to retain any portion of that market after February of '51?

A. Well, if I'm not mistaken the Lee people notified my wife that evening of the transition and effective immediately they sent salesmen out covering all the dealers and trying to retain some of them.

Q. And do you know of your own knowledge whether any part of that market was retained by Lee?

A. Only one I can answer for is myself. My market, my particular station was retained by Lee, and I also added Firestone in with it.

Q. When you stopped selling TBA to Atlantic service

stations did you have any inventory on hand, any stock on hand?

A. Yes, sir; I had 14 thousand dollars worth of
1392 accessories, I think. That was my inventory. In that period—in February of '51, for that month, I think I owed the Atlantic Refining Company 18 thousand dollars at which time I told them if they—because they took the market, if they would accept those accessories at 14 thousand or whatever they inventoried them, I would pay the difference and squash the bill. We'd just break off even.

Well, I heard no word in March; I heard no word in April; and in the beginning of May Mr. Wanders in Charlotte who is a credit manager or was some credit representative, and here I might have to digress because to understand this thing in a service station, if you come in and have an Atlantic credit card your purchase is put on the credit card which goes in to the company and gives me cash back—it did at that time. Now, it is used as cash, but then they gave me a check back. Well, Mr. Wanders in May started to snatch these Atlantic gasoline tickets which would have knocked me flat. I couldn't do a thing. I contacted the Baltimore office and I got no where as far as doing anything about it—at that time I might add that a transition took place in the Baltimore office, the man who was in charge, Mr. Bishop, left and Mr. Burns then came in in his job. So, this Wanders kept taking the gasoline tickets against my bill with them and on May the 30th, 1951, I wrote a letter of resignation into the Atlantic Refining Company that effective June the 1st or a
1393 month later, I wanted to be relieved of the service station. I wanted it clear that they had to bring a man in there to take it over to take over these accessories that I was stuck with and couldn't get rid of as well as having the money to take the service station over.

Well, that brought some men in from Philadelphia, I

believe, and then they said, "Well, you haul the accessories back to us and we'll give you credit." I hauled them back to them. They sold them to other dealers, not me, and I paid the difference in the bill and then we squared off.

Q. You hauled them back to Philadelphia?

A. Atlantic, no, sir; to the Key Highway office.

Q. In Baltimore?

A. Yes, sir.

Q. Now, you were talking about gasoline tickets. I would like to have that clarified. Are you referring to sales of gasoline made at your service station at 33rd and Barclay?

A. Yes, sir; gas, oil and what not.

Q. And I wish you'd correct me if I'm incorrect about this, but instead of—such sales were made on Atlantic credit cards, is that correct?

A. That's correct.

Q. And you normally received your cash back from Atlantic?

A. That's right.

Q. But at this particular time you speak of you 1394 were not receiving the cash back from Atlantic?

A. No, sir; he notified us that against that bill he was taking those gasoline tickets which had no connection at that time other than he wanted their money at that time. I couldn't survive if he was taking my credit tickets. It was impossible. I just couldn't do it. In some cases, Mr. Kelaher, I might go further, in the case of 10 people coming in and they buy on a credit card that's so much money. If 10 come in and pay cash that's so much money again. But the credit card went in to Charlotte, they mailed me a check back for that at that time. Well, I only had the money coming in from the cash sales to operate on and I couldn't do it.

Q. And the credit sales were being applied against the balance owed Atlantic?

A. Right.

Q. And at that time you had a 14 thousand dollar inventory of accessories?

A. At that time. It took them three months to clarify the thing and Mr. Burns, I think, is the man that pulled the strings or whatever he did to get the thing clarified. I give him credit for that, I think.

Q. Now, after this transition to Firestone, did you attempt to sell Lee tires, Exide batteries or the accessories that you had on hand to Atlantic service stations?

A. No, sir; only to the extent of, as I say, an 1395 adjusted tire or a bad battery or something like that. It wasn't any more sales.

Q. And why didn't you solicit such business from Atlantic service stations?

A. Well, as near as I can recall their salesman handled the Firestone end from that point on. Now, at that time I might add that the Firestone people came to my home, I was still under the weather, and they offered me a quarter of the city, just one-quarter. Now, they wouldn't take the accessories back that the Atlantic had or I had for Atlantic, but they would restock me completely with tires and stuff under the Firestone set-up, but only for a quarter of the city. Well, I couldn't live on 10 or 12 service stations.

Q. They offered you a distributorship for a quarter of the City of Baltimore?

A. That's right.

Q. If you would transfer to Firestone TBA?

A. That's right. But without taking my 14 back and trying to get some squared up that way. See. I was still stuck with that.

• • • • •

1396 Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: All right, we will take a recess.

1397 (Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. Mr. Johnson, what effect, if any, did the switch by Atlantic from Lee and Exide and associated accessories to Firestone have on your business as a distributor?

A. Well, I'd say it was 85 percent cut-off.

Q. Eighty-five percent cut-off.

Mr. Kelaher: Thank you. No further questions.

Hearing Examiner Kolb: Cross-examination.

Mr. Correa: If your Honor please, I move that the testimony of this witness in its entirety be stricken as to the respondent Goodyear on the ground that it had no connection whatever or any relation to any of the issues arising under the complaint and answer herein with respect to the respondent Goodyear.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Thompson.

Q. Sir, I represent the Atlantic Refining Company in these proceedings and the gentleman on my left represents the Goodyear Company. Can you hear me, sir?

A. I can hear you.

1398 Q. I think you probably know, sir, that you were one of two key dealers of Atlantic before the change-over South of the Mason-Dixon Line.

A. No, sir; I don't know how many they had. I was only in Baltimore.

Q. You know of no others?

A. I do know one in Richmond, I think, that had one.

Q. Who was that, sir?

A. He visited me once, but I couldn't recall his name. I know that he had the same set-up or a similar set-up.

Q. At 33rd and Barclay, you ran an extremely successful station, did you not?

A. Yes, sir.

Q. Mr. Kelaher did not ask you on direct examination about what happened to that station.

Is my impression correct that you continued to be a lessee dealer yourself until 1953 at that station?

A. '53. Yes, sir.

Q. Is my impression also correct, sir, that you had two very loyal employes named Pool and Hunt who took that station over when you gave up your lease?

A. Right.

Q. Now, your termination of that lease relationship was not at Atlantic's request, was it?

A. No, sir; it was my physical condition.

1399 Q. And is it not true that you and the Atlantic between you financed Pool and Hunt in that enterprise when you gave up the station?

Mr. Kelaher: Objection, your Honor. I believe we are going beyond the scope of the direct.

Hearing Examiner Kolb: Overruled.

A. Atlantic and I financed?

By Mr. Thompson:

Q. Didn't you help them get started in business?

A. Yes, sir.

Q. And Atlantic helped too, did they not?

A. I think they helped, yes.

Q. Now, over the many years that you had an association with Atlantic your general relationship was extremely pleasant and a happy one, wasn't it?

A. Yes, sir.

Q. And you have got a lot of good friends in the organization?

A. Yes, sir.

Q. And they still are your friends, are they not?

A. Yes, sir.

Q. And you still see a number of them fairly frequently, don't you?

A. That's right.

Q. As a matter of fact, sir, don't you just as a matter of sentiment still go to Atlantic dealer meetings?

1400 A. Yes, sir. I have a standing invitation, I think that is what they called it.

Q. Yes, sir.

You referred to the fact that you were in the hospital in February of 1951.

A. Right.

Q. When you learned through your wife of the adoption by Atlantic of the Firestone Sales Commission Plan?

A. That's right.

Q. Do you not recall, sir, that before your wife gave you this information Atlantic had called a dealer meeting at the Southern Hotel and that you were in the hospital at the time?

A. That could have been. I was in the hospital. I didn't get notified, you know—

Q. (Interposing.) But didn't you subsequently learn from your dealer friends—

A. No, sir.

Q. Excuse me, I hadn't finished my question. Didn't you subsequently learn from your dealer friends and from Atlantic that this whole question had been taken up at an Atlantic dealer meeting in Baltimore?

A. No, sir.

Q. At the Southern Hotel?

A. No, sir. The only notification I had, I think, was from the Lee Tire and Rubber Company who notified
1401 me and my wife like at 4:00 o'clock in the afternoon.

Now, that's as near as I can recall. I had no official notification whatever.

Q. But there were a number of subsequent dealer meetings at which the Firestone Plan was discussed with the dealers, were there not?

A. After I got out?

Q. Yes, sir.

A. Oh, yes; after I was out of there, yes. I went to them, as a matter of fact.

Q. You recall one particularly, I think, which took place in August of 1952 at the Plaza Park Hotel?

A. Park Plaza?

Q. Park Plaza, is that the name of it, Park Plaza Hotel in Baltimore?

A. Yes.

Q. And do you recall generally what happened at that meeting?

A. I can't say—well, did you say in '52?

Q. Yes, sir.

A. I think they had a Firestone display of the batteries and tires and their salesman. I'm not certain of that, but I think it was.

Q. Do you know Dick Mulholland, the Atlantic TBA coordinator?

A. Mulholland. I think I have met him, but at the time a fellow named Heideman, Sid Heideman was the man as I recall.

Q. Do you recall a meeting at which Mr. Heide-
1402 man introduced Mr. Mulholland and talked about the general operation of the Firestone Plan?

A. No, sir.

Q. Do you recall a meeting at which the dealers were

told by an Atlantic representative that the company was not in any sense married to Firestone or any other company and that the acceptance or rejection of the Firestone Plan was entirely up to the dealers?

Mr. Kelaher: Would you repeat the question, please?

(The reporter read the pending question.)

Mr. Kelaher: Thank you.

A. I think there was a meeting to that effect, yes, sir; after I was out of the thing.

By Mr. Thompson:

Q. But before you left your station, sir, was there not such a meeting?

A. I think there was; yes, sir.

Q. Now, Mr. Johnson, was it not made very clear to you and the other dealers by the Atlantic people that under no circumstances would there be any forcing or compulsion of the Firestone Plan upon you?

A. I think they understood that. I think that there—after Firestone took over there wasn't any forcing or compulsion. I think they understood that.

Q. Now, in your particular case, sir, you had a 1403 station which after the change-over continued to handle Lee and Exide just as before, isn't that correct?

A. That is true, except that I handled Lee and Lee batteries, I didn't handle Exide.

Q. I beg your pardon, sir. After change-over you handled Lee batteries?

A. And Lee tires.

Q. And Lee tires.

Did anyone representing Atlantic ever tell you not to carry those Lee products?

A. No, sir.

Q. Did you ever have any difficulty in lease renewal because of carrying non-sponsored brands?

A. No, sir.

Q. Did not Atlantic representatives tell the dealers at the meeting that their primary interest was in supplying a program under which the dealers could make the most sales and the best profits, or words to that effect?

A. Words to that effect, I think they did.

Q. And didn't they ask all the dealers to comment upon whether they did or did not like the Firestone plan?

A. That's true.

Q. And is it not true that a great majority of them indicated that they did like the Firestone Plan?

A. As I recall they were satisfied as near as I can recall.

1404 Q. The one thing that you said, sir, I didn't get. After you got out of the hospital didn't Mr. Cummings, the Firestone Store Manager, come to see you about taking a Firestone Master Supply distributorship?

A. That is true, he and his credit man, whoever, I can't recall his name, but they came to my home and I was still under the weather and they offered me a quarter of the city and they wanted to take over my garage building as a Firestone store. And my reply to them was, "No."

Q. But the matter of the quarter of the city, sir, was that the quarter of the city or the quarter of the Baltimore District?

A. City.

Q. City?

A. As near as I recall, sir.

Q. I put it to you, sir, that they offered you the entire City of Baltimore.

A. Well, my wife was there, and that's as near as I can come to it. That's been a long time. I thought it was a quarter of the city and they wanted to take that garage building over as a Firestone store which would have meant that I would have had to have spent additional money

with the money I had tied in this warehouse that I couldn't get use from.

Q. Is it not also true, sir, that you were, having been in the hospital, didn't want to take on the responsibility of the introduction of a new line to the Atlantic sta-
1405 tions because it was too much work?

A. That in itself is partially true. The main reason behind it all was that I have had dealings before and the Firestone line comprised refrigerators, outboard motors and what not, and I would assume that it would take quite a bit of money to start a line like that and I didn't feel that at that time I should do it.

However, I might add that the dealings that I had with Firestone as opposed to Lee were different. In part I will cite tire shipment that they made to me in which a tire was stuffed so that it couldn't be sold. Well, I was about four or five months trying to get that thing straightened out. I don't know whether it ever was straightened out or not, but I had reason to believe that that wouldn't be the best thing in the world for me.

Q. Do you still retain an active interest at all in the 33rd and Barclay Street station run by Pool and Hunt?

A. I'm what is known as a helper.

Q. Yes, sir.

A. I work from 11:00 to 4:00 in the service station while those boys are about other duties.

Q. And that station is still carrying Lee as its primary line, is it not?

A. I would say so. They have Firestone also.

Q. And miscellaneous accessories?

1406 A. Yes, they have miscellaneous accessories as well as, I think, some Firestone.

Q. Is it a fair statement, sir, that Pool and Hunt buy whatever TBA that they choose and select and whatever they want to buy?

A. I'd say it was a true statement.

Q. Now, sir, in the days when you were a key dealer for Atlantic did you get around personally among the service stations—did you personally solicit or did you leave it to your salesmen?

A. No, sir; I did some. See, how that happened, I had two trucks, the Atlantic at the time wanted me to cover the city, for instance, on schedule. Well, if a man needed tires Monday and his delivery day wasn't until Wednesday, you can't hold it, so I'd have to special those out, I'd put them in my car and take them to the particular dealer or customer and that way I did occasionally talk to them.

Q. Yes, sir.

A. And then over the phone quite a bit.

Q. Did you get to know the proprietors personally in the days when you were a key dealer handling Lee and Exide?

A. Well, they've never been to my home. I have met them in the station and we've talked and so forth.

Q. Now, there are quite a number of those lessees who are still with Atlantic, aren't there?

1407 A. Well, having been away now four years I wouldn't know. I know of several of them that I can recall but they have a turnover, and, of course, I don't have any access to their records, so I wouldn't know.

Q. You don't get to the stations any more to see what they are actually carrying?

A. No, sir.

Q. Do you get to the Atlantic stations in the vicinity of 33rd and Barclay frequently?

A. No, sir; I can't walk, I'm lucky to be getting around here.

Q. So that you have no personal knowledge of what these stations are presently carrying by the way of TBA?

A. No, sir.

Q. Are you still a distributor, sir, for Lee?

A. No, sir.

Q. When did you give that up?

A. This is '57, as near as I can recall '54 or '55. I wouldn't know exactly. I still had accounts that I had to service, I mean as far as tires were concerned I couldn't get out of there, I had to replace Lee with Lees.

Q. But after February or March of '51 when Atlantic adopted the Firestone Sales Commission Plan Program did you continue actively yourself or through your salesmen to solicit the Atlantic stations to buy Lee and Exide?

1408 A. I don't think I did. I know I had a Bethelene station, I know I had an Amoco, they were competitors that I sold, and then my regular accounts I think I did. That's the commercial accounts, but I didn't solicit service stations.

Now, there may have been one that needed a tire or tube that got them, but that would be it.

Q. Mr. Johnson, before the change-over I understood you to say that you tried to match your business 50/50 between Atlantic service stations and outside accounts.

A. That's correct, sir. That was my aim.

Q. I think you said that before the change-over you had been pretty successful in working that out proportionately in that way.

A. I'd say that I was. I solicited accounts and sold accounts and so forth in addition to handling the Atlantic.

Q. After the change-over did you continue to solicit the non-Atlantic accounts?

A. No, sir; I held what I had and I say—if they dropped—some of them hadn't dropped off yet, if they did I dropped off. I couldn't call on them if they were a block away so I couldn't—

Q. Certainly, the drop off on the non-Atlantic accounts had nothing whatever to do with the Firestone program?

A. I wouldn't say it did. No.

Q. Mr. Johnson, are you sufficiently familiar today with the operation of the station at 33rd and Barclay to
1409 know how the Atlantic credit cards are honored by Pool and Hunt?

A. Yes, sir.

Q. You testified, sir, as I recall it, that when you were operating the station yourself you sold Lee tires and at that time I guess Exide batteries?

A. Yes, sir.

Q. At the station to holders of Atlantic credit cards and that Atlantic would remit to you?

A. That's right. Now, they use that as cash instead of—before they would send me a check for it and that's what they took when I sent the tickets.

Q. Today when Pool or Hunt sell a Lee tire or Lee battery to the holder of an Atlantic credit card, that is the equivalent of cash to them, isn't it?

A. Yes, the company approves it and regardless of what they sell on that card it's approved. I mean the company remits.

Q. Certainly. Atlantic has no objection to the charging of Lee tires or Lee batteries on Atlantic credit cards, has it?

A. I don't think they have. At least I've never been called on it, or they haven't to my knowledge. They might have been called on the amount of the bill, like you have to get permission if it's a hundred dollars.

Q. If it's more than a hundred dollars.

A. Yes, something like that.

Q. That is a matter of the individual credit of the
1410 holder of card, is it not? That is just a question of how much credit the individual has?

A. That's right.

Mr. Thompson: May I have one minute, sir, to confer with Mr. Correa?

Hearing Sxaminer Kolb: Yes.

Mr. Thompson: Thank you very much, sir. That is all.

Mr. Kelaher: I have a few questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Johnson, prior to February of '51, what was your total number of accounts, in numbers?

A. I would say between 100 and 150, as near as I can guess, I'm just guessing.

Q. And of that number how many were Atlantic accounts?

A. Well, I actually recall 38, but there were more of them because I can't enumerate right on down the line every service station they had. For instance, Annapolis did have four stations in it, I think, and that was four dealers; and as I try to recall I would say from 50 to 75, roughly. Now, I don't know.

Q. Would it be approximately about 50 percent of the total number of your accounts?

A. Seventy-five—well, actually I think it would be more of a percentage in their favor, that is they had more
1411 accounts than I did. I had my own accounts and they had their service stations. Well, they had more service stations than I had individual accounts, but how many I couldn't say.

Q. Now, you stated with respect—you have made references to 50 percent, you also made a reference to an 85 percent figures. Does that have reference to sales volume or to number of accounts?

A. Sales volume, everything.

Q. Your sales volume was greater from your Atlantic

accounts than from your commercial accounts, is that correct?

A. No, I tried to, Mr. Kelaher, digressing just a minute, when this thing all came about, when they decided to make a distributor, Mr. Bishop, as I recall said, there was only one man to give it to, that I had done an outstanding job and I should be the man because nobody else had sold what I had sold and on that basis, then, I started to try to equalize, if they did, say, 50 thousand dollars worth of business, I tried to equal it.

Q. Well, were you always successful in doing that?

A. Well, no, it's a rough go. I did my best, that's all I can say.

Q. Now, when did you—it was developed on cross-examination that you were a lessee dealer at 33rd and Barclay in or about February of '51 and after that period. When did you start carrying Firestone tires at that station?

1412 A. Well, see, that's going to be hard, Mr. Kelaher, because I had a warehouse down in back of that station and in the station maybe I didn't carry any, I don't know, but in the warehouse I did have some as well as Lee.

Q. Was that before or after the switch-over by Atlantic to Firestone?

A. Well, it was up until the time I wanted to resign the service station; like, they had a salesman named Hoffman who sold me some materials that I subsequently resold but tires were still tight, I mean, you just couldn't go out and order a million of them and get them.

Q. Who did you purchase the Firestone tires from?

A. The Firestone Tire and Rubber Company.

Q. Through Mr. Hoffman, I'm not quite clear.

A. Through Mr. Hoffman, he was the salesman who had my territory.

Q. And who was he with?

A. Firestone.

Q. I see.

A. He was the route salesman, I think they called him. He went around to all stations and everywhere.

Q. I see. Now, having sold both Lee tires and Firestone tires, how did your purchase price compare on Lee tires versus Firestone tires?

A. Well, the Lee had the better deal, that is discountwise.

1413 Q. The price was lower on Lee tires than the Firestone tires?

A. That's right, that is the discount. I don't think the basic price of the tire was. Lee would give you something like 23 percent off and Firestone only 17.

Q. Would that ever increase your profit margin on the Lee tires over the Firestone tires?

A. Yes, sir; and at that time they had to my way—in my opinion, they had a better guarantee in every respect than Firestone had.

Q. And was that known as the "Road hazard guarantee"?

A. Yes, sir.

Q. And Firestone did not have that guarantee? Did it?

A. As far as I recall it was workmanship and material.

Q. Only on Firestone?

A. That's as far as I recall. Now, they may have had it, as far as I know it was material and workmanship.

Q. On cross-examination you were asked some questions about being offered a quarter of the city as a Firestone—as a distributor of Firestone products to Atlantic service stations, is that correct?

Mr. Thompson: No, those weren't the questions. I asked him whether he hadn't been offered the whole city, Mr. Kelaher.

By Mr. Kelaher:

Q. Well, with that qualification I would like to
1414 ask you some questions about that.

A. Yes, sir.

Q. Would that have involved additional expense to undertake that distributorship?

A. As I recall, Mr. Cummings and the Firestone credit man came to my house, I was in sound financial condition, and to have done that and taken their whole line would, as near as I could guess, would have cost ten or fifteen thousand—whatever their line would be for everything from brake shoes to outboard motors, and it would have been all under my wing, so to speak. I still had the 14 thousand with Atlantic hanging and I would have had, say, 10 or 15 hanging with Firestone.

Q. Ten or fifteen thousand dollars?

A. Yes, sir. Atlantic, until I forced the issue, that's asked them to get out of the service station, I got nowhere for three months. I was left high and dry.

Q. With the 14 thousand dollar inventory.

A. That's right.

Q. Is that correct?

A. Yes, sir.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No furthr questions.

Hearing Examiner Kolb: No further questions. Thank you very much, Mr. Johnson.

1415 (Witness excused.)

Hearing Examiner Kolb: Any further witnesses?

Mr. Kelaher: No further witnesses, your Honor.

Hearing Examiner Kolb: The hearing will adjourn to reconvene at Baltimore, Maryland, on Monday, September 16, 1957, Room 709, Appraisers Stores Building, at 11:00 o'clock a. m.

1417 Hearing Examiner Kolb: The hearing will come to order.

There will be no smoking in the hearing room during the course of the hearing.

Mr. Kelaher: I have been advised by counsel for the Shell Oil Company, and counsel for the Firestone Tire and Rubber Company, that they have filed motions to quash subpoenas duces tecum served on them. One such subpoena was served on Firestone on or about October 1 or 2nd. Another subpoena was served on Firestone on or about November 7. And there was a subpoena served on Shell on or about November 7.

In view of the fact that we will be holding hearings for most of the next ten days when we will be required to file answer, I would like to make a motion for extension of ten days within which to answer these motions.

Hearing Examiner Kolb: Leave will be given to file an answer 20 days from today.

* * * * *

1545 Hearing Examiner Kolb: Are there any further witnesses?

Mr. Kelaher: Yes, we have, your Honor, in just a moment.

NICHOLAS GOVORUHK was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your full name and home address?

A. Nicholas Govoruhk. My home address is 2329 Harford Road, Baltimore 18.

Q. Are you connected with the AA Distributing Company?

A. I am.

Q. And the Baltimore Battery Company?

A. Yes, sir.

Q. What is the relationship of the Baltimore Battery Company to the AA Distributing Company?

A. The AA Distributing Company is a specialty in TBA lines of various products that I get from manufac-
1546 turers all over the country.

Q. When was the AA Distributing Company incorporated?

A. It is not incorporated. It is a company.

Q. Are you the sole owner of the company?

A. I am.

Q. Would you please state what the Baltimore Battery Company is, and what its relationship is to AA Distributing Company?

A. Baltimore Battery Company, I started that in 1951, in April. Do you want me to go into details?

Q. Are you the sole owner of the—

A. I am, of the Baltimore Battery Company.

Q. Is that a subsidiary related to the AA Distributing Company?

A. That's right.

Q. Do you make a distinction between the AA Distributing Company—

A. Yes, I do. I sell batteries practically only with Baltimore Battery Company.

Q. What products do you sell with the AA Distributing Company?

A. They number quite various.

Q. What type, what lines? Do you sell tires?

A. Well, I sell tires, I sell voltage regulators.

Q. Accessories?

A. A number of things. If you want me to go into detail.

1547 Q. Do you have a line of accessories which are sold by AA Distributing Company?

A. Yes, sir.

Q. So that you sell tires and accessories through AA Distributing Company presently, and you sell batteries through Baltimore Battery Company?

A. That's right.

Mr. Kelaher: Your Honor, I think it should be noted that when I refer to "your company" it means referring to specific products as defined here.

By Mr. Kelaher:

Q. Mr. Govoruhk, what line of TBA do you sell?

A. Presently?

Q. Yes, presently.

A. What line of TBA?

Q. Yes.

A. I sell batteries—

Mr. Correa: I object to the question as being outside the scope of the issues of this proceeding.

Mr. Kelaher: I am merely trying to establish at this time what this man's business is.

Hearing Examiner Kolb: Are you withdrawing your objection?

Mr. Correa: Yes, I will withdraw the objection since it is preliminary.

1548 By Mr. Kelaher:

Q. Would you state the principal TBA products sold by your company, the brands?

A. The brands?

Q. Yes.

A. Goodyear, Bowers.

Q. And give the products too.

A. Batteries—Goodyear, I would say about six months

from this month I could have sold and have sold a great number of TBA products listed in the Goodyear catalogue.

Q. Are you a Goodyear distributor?

Goodyear TBA distributor?

A. I could at that time have bought anything that they sold at distributor's price.

Q. What time are you referring to?

A. In 1956.

Q. Let's go back and start in 1951 with Baltimore Battery Company. Beginning with 1951, what products did you sell, referring to TBA products?

A. I first started my business in '51 and I got in contact with Goodyear, and they sent a salesman down on Maderia Street at the time, in '51. I think that the gentleman's name was Bucker, who was my salesman at that time.

He was a representative of Goodyear, which is designated as Goodyear Service Store. That is where I was buying my products at that time.

1549 Q. So, that if I understand you correctly, you were buying Goodyear TBA at that time and reselling it, is that correct?

A. Yes, sir.

Q. To what class of accounts did you re-sell Goodyear TBA?

A. I tried to sell it to service stations, trucking concerns, taxicabs, each and everybody that would buy it.

Q. You mentioned Bowers Batteries. When did you begin to sell Bowers Batteries?

A. I practically sold them just as long as I have been in business.

Q. What is your sales territory?

A. I have no specific sales territory. I go as far as Lynchburg, Virginia; Washington.

Q. Do you sell in the Metropolitan Baltimore area?

A. Yes, sir.

Q. And are you the outside salesman for your company?

A. I am one of them.

Q. How many do you have?

A. At one time I had two.

Q. How many trucks or delivery cars do you have?

A. At present?

Q. Presently.

A. I have one car and one truck.

Q. And prior to 1957 did you ever have any more?

A. I had two trucks and two cars.

1550 Q. When was that?

A. In 19—the first part of 1956 to the—I will say the whole year practically of 1956.

Q. Up until that time?

A. Yes, sir.

Q. Do you sell any other brand of batteries besides Goodyear or Bowers?

A. Yes. At the one time I sold the Allied Battery, which is a subsidiary of Price Battery Manufacturing Company.

Q. Is that in Hamburg, Pennsylvania?

A. I think it is.

Q. You stated that you sold Goodyear TBA products since 1951, is that correct?

A. Yes, sir.

Q. Do you compete with other sellers of TBA products in the Metropolitan Baltimore area or other areas, in your sales area?

A. I compete with everybody that is out there.

Q. Could you give us the names of some of the companies with whom you compete in the Metropolitan Baltimore area?

A. You mean service stations or general trade?

Q. All jobbers.

A. R. J. Loock, Hunt, Baltimore Gas Light, Bowers Battery Company, Goodyear.

Q. Do you compete with Brooks-Huff Company?

A. Yes, sir.

1551 Q. Do you compete with Stuart-Pressley?

A. Yes, sir.

Q. Do you compete with Goodyear's own service stores or district stores?

A. Both of them.

Q. Are there Atlantic Service Stations in your sales district?

A. Yes, sir.

• • • • •

Q. Do you solicit it—

Mr. Thompson: Mr. Kelaher, I don't think we have had the territory defined, have we?

Hearing Examiner Kolb: Yes, right at the start he gave it.

Mr. Thompson: I think he said he sold in Virginia, but I don't think it has been defined.

Mr. Kelaher: He said as far south as Lynchburg, Virginia.

By Mr. Kelaher:

Q. When were you first given a Goodyear TBA distributorship?

A. You say TBA distributorship?

Q. Well, a distributorship. Explain what type it is.

A. That is the latter part, which is in December, 1955.

1552 Mr. Correa: May the record show that the witness refreshed his recollection by looking at some papers which he holds in his hands.

By Mr. Kelaher:

Q. In December, 1955, what type of distributorship were you given by Goodyear?

A. I was handed—again, I will refer back to a couple of books here; one is a Goodyear catalogue, which can be gotten in any counter of a Goodyear service store, Mount Royal and Oliver Streets, which is the address listed on this book.

Also, to use the right terms designated here, this says "distributors price" that the service stations would buy the TBA products at the price.

Mr. Correa: May I have the question and answer read back please.

(The reporter read the question and answer.)

Hearing Examiner Kolb: I don't believe the witness finished the answer, had he?

Mr. Kelaher: I don't believe so.

The Witness: There is another book, and how many underneath that, I don't know, which at the time which I got it, in 1956, was a white book that I could buy the TBA products, of which I could re-sell it and make a profit in the yellow book, the distributor's price.

By Mr. Kelaher:

1553 Q. With whom did you talk at Goodyear in connection with your Goodyear distributorship?

A. Bill Allen, who was at that time the manager of Goodyear's service store on Mount Royal and Oliver.

Q. Would you fix that time again, please?

A. That was the latter part of December of 1955.

Q. Do you recall the conversation you had with Mr. Allen at that time?

A. Yes, sir.

* * * * *

1564 Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: Let's adjourn until 10:00 o'clock tomorrow morning.

Mr. Correa: Mr. Examiner, may I ask an instruc-
1565 tion to the witness that he bring back with him tomorrow the same papers which he had on the table here today, including specifically those invoices?

Hearing Examiner Kolb: You will bring those back tomorrow.

The Witness: Yes, sir.

• • • • •

1567 *Direct Examination (Resumed).*

Mr. Kelaher: Your Honor, at this time I would like to offer Commission's Exhibits 331, 332, and 333 into evidence.

Hearing Examiner Kolb: Is there any objection?

Mr. Correa: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Commission's Exhibits 331, 332, and 333.

(Whereupon, the documents referred to, heretofore marked COMMISSION'S EXHIBITS 331, 332, and 333 for identification, were received in evidence.)

Mr. Thompson: The exhibits, of course, are taken subject to my objection and motion to strike?

Hearing Examiner Kolb: Subject to motion to strike by Atlantic.

By Mr. Kelaher:

• • • • •

1624 Hearing Examiner Kolb: The hearing will be in order.

JOSEPH B. McMASTER was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination.

Hearing Examiner Kolb: Will you state your name for the record.

The Witness: Joseph B. McMaster.

* * * * *

1676 Hearing Examiner Kolb: The hearing will be in order.

JAMES R. KELLY was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your full name for the record, and your home address?

A. James R. Kelly, 1006 Overbrook Road, Baltimore 12.

Q. Mr. Kelly, did you at one time operate an

1677 Atlantic service station?

A. Yes, sir.

Q. Would you please state the location of your station?

A. 5103 York Road.

Q. In Baltimore?

A. Baltimore.

Q. And during what period did you operate the station?

A. I can't recall that exactly. About three years ago, roughly.

Q. Will it refrsh your recollection if I said it was from about September 1952 to on or about March 26, 1953?

A. That sounds about right. It started in September.

Mr. Thompson: April 16, actually, Mr. Kelaher.

Mr. Kelaher: April 16, 1953.

Do you have the date when the lease commenced?

Mr. Thompson: September 27, 1952. And it was cancelled by mutual consent on April 16, 1953.

Mr. Kelaher: Thank you, Mr. Thompson.

By Mr. Kelaher:

Q. Mr. Kelly, when did you first become interested in being an Atlantic dealer?

A. As I recall it, they had a business opportunity ad in the paper, it was like an ad, anyone who was interested in a business opportunity. So I went down to apply for it.

Q. This was Atlantic that had the ad?

1678 A. Yes.

Q. Do you recall what the ad said, generally speaking?

A. No, I don't.

Q. Did the ad make any reference to finances or whether or not you needed money or capital or anything of that nature?

A. I don't recall that. When I was down there at the interview they told me.

Q. Then in answer to the ad you were interviewed by someone, is that right? Atlantic?

A. Yes.

Q. Who interviewed you at Atlantic, if you know?

A. I am trying to think of his name. I don't know right off-hand.

Q. But they were Atlantic representatives?

A. He was district manager or something like that. District sales manager or something like that.

Q. What were you told during the course of that interview?

A. First at the interview I wasn't accepted for the

job until I put up an argument—I mean a little talk. They wanted sombody who didn't have any experience at all, and I wanted to get a business of my own so I argued with the man. I already had seven or eight years experience and I wanted to have a chance or opportunity, so I tried to show him my point of view. So in a day or so they called me back and told me I was accepted to go to school.

1679 Q. Did you say you had seven or eight years experience? Do you mean as a service station attendant?

A. Attendant and operator.

Q. Then you were accepted? After that what transpired? Were you sent to school?

A. I think it was a couple of weeks or something like that. I had taken a physical. There was a whole bunch of fellows who applied for the job. There were about six of us, I believe about six of us, that passed to go to this school. Then we went to a large station out in Essex, I believe it was a three-month training period, in which we received training and they paid us while we were taking the training.

Q. What generally was taught at this dealer training school?

A. What generally what?

Q. Was taught? What was the purpose of the dealer training school?

A. It was to try to teach a man everything that he should know in how to operate his station, and how to be a service salesman on the front to sell your product, and courtesy, polite. Everything that you should know.

Q. During that period was any mention made of TBA by Atlantic representatives?

A. TBA, they tried to keep all their stations uniform, using Firestone products. So when people travel back

and forth they would have all their stations, they
1680 know all Atlantic stations sold Firestone.

Q. Was that told to you by Atlantic representatives at the training school?

A. I believe it was at the school. At the station, too.

Q. At the station too, later?

A. Yes.

Q. Approximately how many enrolled in the class you were in at the training school?

A. I believe it was only six of us there. There were a lot more applied for the job but there were only six of us that—there were six of us that went to school. Out of the six three of us came out.

Q. Do you have an idea of how many applied for the job originally?

A. Well, I don't know off-hand. I heard it was over a hundred.

Q. And of that number six went into the school and of the six three came—

A. Three of us come out.

Q. Three of you graduated?

A. Yes.

Q. Then what happened after you left the school?

A. After we left the school, it was a matter of a couple of days, I had a station.

Q. Up to that time was any mention made of any
1681 capital investment by you?

A. No. They had a list of what my assets were. They were nothing. So they more or less financed the whole thing for me and I paid it back on a gallonage basis, so much a gallon, on every gallon I sold. In turn, it pays back my loan. I actually made a loan from them.

Q. Do you recall the approximate amount of your loan?

A. I am not sure. I think it was somewhere around $2800.

Q. And as part—

Mr. Thompson: If you want the precise amount I will stipulate it.

The Witness: I would like to know myself.

Mr. Thompson: $2,670.03.

By Mr. Kelaher:

Q. Did you receive the loan in cash or in inventory?

A. No; in inventory.

Q. Inventory.

A. They filled all my gas tanks up, and put some tires, batteries, fanbelts, and oil and things I needed to start out and get myself started.

Q. And what brand of TBA was stocked in your station?

A. Firestone.

Q. Firestone?

A. Yes.

Q. Mr. Kelly, did you continue to handle Fire-
1682 stone tires at your station?

A. Yes, I tried to keep on hand Firestone tires and stuff, as much as I could.

Q. Was there any time when you purchased other brands of tires?

A. Oh, yes. Other people wanted—I would give the people what they wanted to buy. It was their money. If they wanted Goodrich or U. S. Royal, I would go get it for them.

Q. You mentioned Goodrich. Did you purchase Goodrich tires for resale?

A. I believe once or twice. I don't remember.

Q. What window valances and advertising did you have in your service station?

A. I had Firestone up there.

Q. Was there ever—

A. I was going to change once, but in a roundabout way I was supposed to leave it up there to keep all the stations uniform.

Q. Would you please tell me, explain the latter part of your answer? Were you told this by an Atlantic representative?

A. It was one of the salesmen.

Q. What was his name?

A. Grady Law, I think was his name.

Mr. Thompson: May I have what Mr. Law told him? I didn't understand.

1683 By Mr. Kelaher:

Q. Would you please state what Mr. Law told you?

A. I don't remember too well offhand. All I remember is that he sort of said something that I should leave them up there to keep the stations uniform, and somebody might not like it if I took them down to change them.

Q. Did you take down the Firestone signs anyway?

A. No, because I listened to his advice to leave them up.

Q. Did you purchase any other brands of tires besides Firestone and Goodrich?

A. No, I don't believe so. Goodrich and Firestone.

Q. Did you purchase any Goodyear tires?

A. Yes, Goodyear, that is what I was trying to think of. Just a couple of Goodyears. I don't remember when it was.

Q. Where did you generally display your Goodyear and Goodrich tires?

A. I didn't display them.

Q. Where did you keep them?

A. If I had any, I don't know; I generally keep them in the car. I kept them in the back room.

Q. Why did you keep them in the car or keep them in the back room?

A. They said they wanted to keep all their stations uniform, and I couldn't take the decals down, so I figured I would wind up in trouble and kept them in the back
1684 room and in the car. I gathered I couldn't take them down. So rather than cause me any trouble while I was there I just kept them hidden.

Q. What brand of batteries did you purchase?

A. Firestone.

Q. Did you purchase any other brands?

A. I purchased Bowers batteries. I got fast service out of them. It was a cheaper battery and some of the people in the neighborhood just didn't want an expensive battery.

Q. Was your service on Bowers batteries better than on Firestone batteries?

A. I don't know about that. I got faster delivery service. The least little thing went wrong, they just asked no questions, they just handed me a new battery. You could buy a new battery from them for $7 or something. People liked that.

Q. And your price was less on the Bowers battery than on the Firestone battery?

A. The price was much less.

Q. From whom did you purchase your accessories?

A. I purchased—what accessories are you referring to?

Q. I am referring to what are known as automotive accessories, oil filters, spark plugs, fanbelts, things of that type?

A. You mentioned fanbelts. I got most of my fanbelts, all my oil filters, most of my tires and batteries from Firestone. Everything else I bought from everybody.
1685 They say split your business around, it is good for you.

Q. Did you honor Atlantic credit cards in your station?

A. Oh, yes.

* * * * *

Mr. Kelaher: Your Honor, I think he has a right to testify as to his practice, to the operation of his station with respect to credit cards.

Hearing Examiner Kolb: You can ask him whether or not he sold items other than what was specified on the card.

Mr. Thompson: If your Honor please, the credit charge has no limitation; the Atlantic card. That is in the record.

Mr. Kelaher: I don't think all the Atlantic cards in the record show that, Mr. Thompson.

Mr. Ballard: This year it does.

Mr. Thompson: At least they will speak for themselves.

Mr. Kelaher: I am quite sure they don't.

1686 By Mr. Kelaher:

Q. Did you ever sell Goodrich tires on a credit card?

A. No.

Q. Did you ever sell—

A. Couldn't do that.

Q. You couldn't do that?

A. No. When I sold tires I would just list "two tires", the size and the amount of money.

Q. And if they were Firestone tires what would you list?

A. I would still list two tires and the size.

Mr. Thompson: The same way as Goodrich? Is that what I understood you to say?

The Witness: The same way with polish.

By Mr. Kelaher:

Q. You stated a minute ago you couldn't do that?

A. What is that?

Q. When I asked you if you sold Goodrich tires on Atlantic credit cards. You said you couldn't do that. What did you mean by that?

A. I can't specify B. F. Goodrich tires.

Q. You can't specify B. F. Goodrich tires.

A. As far as I know, I can't.

Q. Do you mean by that that you are only supposed to charge Firestone TBA?

A. I could put down two tires, if I want. Nobody
1687 knows what kind of tires they are. It is like accessories. Instead of putting down two cans of Firestone polish, I just put down two cans of polish.

Q. Whether it was Firestone or not?

A. That is right.

Q. What was your reason for doing that?

A. I guess the same as everything else.

Q. It has been stipulated that you left the station on or about April 16, 1953. What was your reason for leaving the station?

A. Well, it wasn't going so good and bookkeeping wasn't so good, either. I think that is why I failed, because of the bookkeeping system. I tried doing it the way they taught us at school, but we only had two days out there. And the salesman, he went along and tried to help me and kept me straightened out but he couldn't be there every day to check me in and out. So days he wasn't there I fell behind. Different ones kept urging me to keep on trying, to take time out and fill out. I said I would rather get a bookkeeper and get it over with. That is his job and let him do it for me. To get a bookkeeper would only cost me $20 a month to start with and I would rather be out front selling instead of messing with books. I don't like figures anyhow.

Q. Did you at any time get a bookkeeper?

A. I eventually did get a bookkeeper there. It took
1688 about a month and a half to get me all straightened out.

Q. Did Atlantic representatives ever make any remarks to you with respect to your obtaining a bookkeeper?

A. They thought it was easy enough for me to keep myself. But I couldn't see it. I just couldn't keep everything down.

Q. Did an Atlantic salesman ever assist you with keeping your records?

A. Whenever he could, now and then. But it wasn't enough, to me. He has more than one station to take care of.

Q. Did you invest any money in a sales promotion program?

A. Yes. Just before I decided to give it up I had a few hundred dollars left and I asked the district sales manager to put on a sales promotion and see if it wouldn't help bring up my business for me. So it didn't bring it up. So I asked to leave.

Q. That is when you asked to leave?

A. I asked them to find me a new dealer, to find a new dealer because I would like to leave. I was so far in the hole it would take me forever to get out.

Q. When you took over the station, Mr. Kelly, was there any non-sponsored TBA in the outgoing dealer's stock? Do you recall that?

A. What do you mean? Other than Firestone?

Q. Other than Firestone?

A. There was Firestone there. There was DuPont 1689 radiator cleaner and polish, and stuff like that; popular brands.

Q. Did the Atlantic representative make any remarks to you concerning the non-sponsored stock?

Mr. Thompson: By an Atlantic representative? Did you say no?

Mr. Kelaher: He hasn't answered yet.

Mr. Thompson: I would like the Atlantic representative identified, please.

By Mr. Kelaher:

Q. Was there an Atlantic representative at the station when you took over?

A. Yes. They were taking inventory when I first took the station over.

Q. Do you recall his name?

A. I don't recall. The salesman of that territory was there.

Q. Who was he?

A. That was Grady, wasn't it? Grady Law?

Q. Was any statement made with him regarding the non-sponsored TBA?

A. Not by him, but the other man was there, he said was there any stuff I didn't want I didn't have to buy it.

Q. Did he say anything about the Firestone TBA?

A. He said he would like me to take all the Firestone stuff, gas, oil and equipment. The man I took the
1690 station off was bad off. He was sick. So I took everything I possibly could in order to help him out. He was right bad off.

Q. You stated during your examination you had an Atlantic loan of approximately $2,670. Do you still owe money on that indebtedness?

A. Yes.

Q. Are you making payments on it now?

A. I tried to for awhile. For a long time I couldn't make any money. I have just started back up again. I wrote Mr. Leopold a letter here about a month ago. I sent him a check last month and told him I would send him a check the first of every month as much as I could possibly afford, I was on my feet now and I could afford to send some money.

Q. Who is Mr. Leopold?

A. I don't knew exactly his title. He has something to do with the credit manager.

Q. For Atlantic?

A. For Atlantic. In South Carolina, or North Carolina.

Mr. Kelaher: No further questions.

Mr. Correa: If your Honor please, I move to strike the testimony as to the respondent Goodyear.

Hearing Examiner Kolb: The motion will be overruled. The testimony will be received subject to a motion to strike.

Mr. Thompson: Mr. Examiner, I have no questions.

1691 Hearing Examiner Kolb: Thank you, Mr. Kelly.

(Witness excused.)

1692 OSTER NORRIS was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Oster Norris, 1922 South Road, Baltimore 9, Maryland.

Q. Are you associated with the business of R. W. Norris and Sons, Inc.?

A. That is correct.

Q. And what is your position with that company?

A. Treasurer, Sales manager, and vice president.

Q. Vice president?

A. Yes.

Q. What is the business address of R. W. Norris and Sons?

A. 342 North Gay Street, Baltimore 3.

Q. How long have you been associated with the Norris Company?

A. Thirty-five years.

Q. Would you please describe the nature of your company's business?

A. We are in the automotive wholesale parts and supply business.

Q. Do you sell any other products?

1693 A. Well, we sell allied products such as rims and wheels, which are allied to the automotive industries. Also upholstery supplies for the same industry.

Q. Will you please describe the present sales area of your company?

A. Presently it covers the state of Maryland, District of Columbia, a small portion of West Virginia, a small portion of Virginia, and a small portion of Pennsylvania.

Q. Going back to in or about 1947, will you state the sales territory of your company, and whether or not you had any branches at that time?

A. It covered the same states, only it was more intensively covered, and the states of Virginia, Pennsylvania, and Delaware were incorporated at that time on a larger scale.

At that time, in 1946, and for a few years following that, we operated nine other stores than our main office. They were in Oxford and York, Pennsylvania; Dover, Delaware; Salisbury, Maryland; Fredericksburg, Virginia; Harrisonburg, Virginia; Winchester, Virginia, and Cumberland, Maryland. I believe that is nine.

Q. Since 1946 or 1947 have you closed any of such branches and, if so, approximately when, by year?

A. Well, between the years of 1948 and 1952 we closed our stores in Fredericksburg, Harrisonburg, Dover, Oxford, Pennsylvania, and Hagerstown. I think I omitted Hagerstown before.

Q. Since that time have any been closed?

1694 A. Since that time we have closed our Salisbury, Maryland, branch.

Q. In what year, approximately?

A. In 1954. Our York branch in 1953. And our Winchester branch in 1955.

Q. At the present time how many branches do you operate?

A. One branch. That is in Cumberland, Maryland.

Q. What so-called TBA items are carried by your company? What brands?

A. All nationally-known brands, such as Fram oil filter line, Gates fan belt line, tires and tubes, everything that can be used in the automotive business, really. Delco batteries.

Q. What brand spark plugs?

A. Autolite spark plugs.

Q. What brand of chemicals?

A. DuPont and others.

Q. Does your company also sell what are referred to as "hard parts"?

A. Yes, they do.

Q. What class of customers are solicited by your company?

A. Gasoline service stations, commercial or fleet accounts, car dealers are the main customers.

Q. How many salesmen are employed in the sale of TBA items, approximately?

1695 A. They would run between twelve and fifteen. That will vary.

Q. How are such salesmen compensated?

A. By commission.

Q. How many delivery trucks do you operate?

A. I would say eight.

Q. Is that in your main office?

A. Yes.

Q. Do you have any trucks in your—

A. We have one truck in Cumberland.

Q. How many salesmen are at Cumberland?

A. Two.

Q. Two of the total number you mentioned?

A. That's right. We have other men that do sell, but we don't consider them in the category of salesmen, of course.

* * * * * *

Q. Mr. Norris, are there other sellers of TBA items in the marketing area in which you operate?

1696 A. Oh, yes.

Q. Could you give us the names of some of those, please?

A. The R. J. Loock Company, Baltimore Gas Light Company, Replacement Parts Company, Service Parts Company, Monarch Products, Salvo Auto Parts, and I guess there would be sixty additional.

Q. Does your firm operate in areas where Brooks-Huff Tire Company operates?

A. Yes, sir.

Q. And Firestone Stores?

A. Very definitely.

Q. And Stuart-Pressley Company?

A. Yes.

Q. And Goodyear service stores and district stores?

A. Yes, sir.

Q. How do your products compare as to price with these other sellers of TBA in your trading area?

A. I would say they are competitive in every respect, price, quality, both.

Q. "Price, quality—" what?

A. Both as to price and quality.

Q. How does your service compare?

A. We think it is every bit as good as any competitor we have.

Q. In both your former and your present mar-

1697 keting area, were there Shell, Atlantic, and Sinclair service stations?

A. Yes.

Q. You have testified that you closed—was it nine branches?

A. We closed eight.

Q. You have closed eight?

A. The ninth one is open.

Q. You have closed eight branches since 19—

A. Since 1948.

Q. Has this resulted in an increase or decline in your sales of TBA to the service station market?

A. Very definitely a decline.

Q. Do you have an approximation of the percentage of decline?

A. In TBA products?

Q. In TBA products to the service stations.

A. I would say approximately around thirty percent.

• • • • •

1698 Q. Has there been since about 1948 an increase or decrease, or has the volume remained the same, with respect to the sale of TBA to Shell and ~~Sinclair~~ service stations in your marketing area?

A. A decrease.

Q. And has that decrease been substantial?

A. We think so, yes, sir.

Mr. Kelaher: No further questions, your Honor.

Mr. Mason: No questions.

Mr. Ballard: Your Honor, I assume that all the testimony pertaining to Shell and ~~Sinclair~~ is received subject to a motion to strike?

Hearing Examiner Kolb: It is subject to a motion to strike by Atlantic.

You may be excused.

(Witness excused.)

Mr. Kelaher: We have one more witness who has traveled quite a distance. We would like to put him on.

1699 JOHN J. MIGAN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. John J. Migan, Randallstown, Maryland. I live at Church and MacDonald Road.

Q. Mr. Migan, are you an employee of the R. W. Norris and Sons Company?

A. Yes, sir.

Q. How long have you been associated with that firm?

A. It will be twenty-eight and a half years.

Q. What is your capacity with that firm?

A. I represent them as a salesmen on the road.

Q. Are you what is known as an outside salesman?

A. That's right.

Q. Have you been an outside salesman for some time?

A. Just about twenty years.

Q. What is your sales area?

A. I cover practically all of Baltimore County, part of Howard, part of Carroll, and part of Anne Arundel, and part of Prince Georges County.

Q. Are there any Atlantic service stations in your

1700 marketing area?

A. Oh, yes. Quite a few.

Q. Do you know approximately how many?

A. That I call or that I pass by?

Q. That you pass by.

A. I guess 25 or 30.

Q. Of this number how many are solicited by you?

A. I suppose five or six.

Q. Do you sell tires to any of these service stations?

A. I do not.

Q. Do you sell batteries to any of these service stations?

A. No, I do not now.

Q. Did you at one time?

A. An independent station. I have sold him batteries at one time.

Mr. Ballard: I move to strike that answer unless the name of the dealer is specified.

By Mr. Kelaher:

Q. Would you please specify the name of the dealer?

A. The name of the dealer is Klohr Service Station at Randallstown.

Q. How many of these so-called independent Atlantic stations are in your territory, or do you solicit, I should say?

A. Two, that I can recall right now. There are 1701 quite a few in my territory.

Q. And the other stations you term company-owned stations?

A. Company-owned stations. I call on a few, maybe five or six company-owned stations.

Q. With respect to the Company-owned stations, do you sell tires?

A. No, I do not.

Q. Batteries?

A. A little bit I can sell them, yes.

Q. Do you sell batteries?

A. We sell batteries, but I can not sell to Atlantic stations.

Q. That is what I meant. Do you sell accessories to Atlantic stations?

A. Very few. It has to be something special that we would carry that they probably couldn't get from the company.

Q. Do you stock any of your lines in Atlantic stations?

A. Very few, if any.

Q. What brand of TBA is carried in Atlantic stations in your territory, if you know, by your observation?

A. Batteries.

* * * * * *

1702 By Mr. Kelaher:

Q. Although you have testified to it, will you state what brand of TBA is predominantly carried by Atlantic service stations?

1703 A. Firestone.

Q. What service station identification appears on the Atlantic service stations? I mean by window valance and outdoor signs with respect to TBA.

A. Practically all you can see is Firestone, unless he is an independent dealer, naturally he will have some other type of sign.

Mr. Ballard: I move to strike, your Honor.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Kelaher:

* * * * * *

1718 By Mr. Ballard:

Q. Mr. Migan, my name is Ballard and I represent the Atlantic Refining Company.

Let me first ask you, how many accounts do you have all told that you call on?

A. That I call on?

Q. Yes.

A. I think on my list I have about 185.

Q. About how often do you get around to see them?

A. Some of them every two, some three, some every four weeks.

Q. One of those accounts is a gentleman named Pollard that runs an Atlantic station?

A. That is right.

Q. York and Joppa Roads?

A. Yes, sir.

Q. He has been there a long time?

A. Yes, sir; a long time.

Q. He buys tire chains from you?

1719 A. Yes, sir.

Q. And Zerone and Zerex?

A. Yes, sir.

Q. I don't think he gets his Gates hose from you, or does he?

A. No. He used to buy belts from me but he doesn't.

Q. He doesn't anymore?

A. We changed our lines and we don't have his line.

Q. What does he have today?

A. He has Dayton today, and we went to Gates.

Q. He gets those Dayton belts from the Boyd Company? Is that where he gets them?

A. I don't know where he gets them. We used to sell him. I put in his original stock and I kept him supplied until just when we took on Gates about two years ago.

Q. That is a company-owned station, of course?

A. I understand it is.

Q. Is Joppa—yes, here is another one on Joppa and York Roads, Albert Schilling. Is that the same station?

A. I wouldn't think so.

Q. You don't know Alvin Schilling?

A. No.

Q. Going back to Pollard, he has a sign on those Dayton belts, doesn't he?

A. Oh, yes.

1720 Q. Displays them?

A. Yes.

Q. Stocks them?

A. Yes, he does that.

Q. Is Howard Triplett one of your customers?

A. Yes.

Q. He is an Atlantic station?

A. Atlantic station, yes.

Q. That is a company-owned station?

A. Yes, I understand so.

Q. Do you sell him Zerone and Zerex?

A. Yes, I do.

Q. Does he get his Champion spark plugs from you?

A. No.

Q. He gets those from Rogerstown Oil Supply?

A. I could not tell you, sir.

Q. He does have them, though?

A. I couldn't tell you that. We don't carry Champion plugs.

Q. You don't carry Champion?

A. No.

1721 Q. You don't know what plugs he carries?

A. No. I have never questioned him on his plugs. I did try to get some of his ignition business but I don't seem to be able to get that, although I don't think that has anything to do with his TBA.

Q. That is hard parts. Is that what you call hard parts, the ignition business?

A. I wouldn't know whether you call it hard or not.

Q. It is not TBA?

A. I wouldn't consider that part of the TBA, no.

Q. Do you call on Wineger and Vanador? Do you know that station?

A. No, I do not.

Q. A very big Atlantic station?

A. No, I don't know it. I have one at Timonium.

Q. What is the name of it?

A. Timonium Atlantic.

Q. Do they buy from you?

A. He buys a few items.

Q. Mr. Migan, are you the only supplier of Delco batteries in the city?

A. I wish we were.

Q. There are a number of others, is that right?

A. Indeed there are.

Q. What other suppliers handle Delco?

1722 A. Well, Parks and Hull. It is on Cathedral Street. Service parts company; and R. H. Boyd, I believe that is right.

I can't think of them that fast but there are quite a few of them. F and L Auto Supply; Salvo; I think Mazor Brothers. I just don't know them all. I have been in the meeting when they were all in one group but I can't recall who they were. I know there are quite a few of them.

Q. Do you know any Atlantic stations that carry Delco that don't buy from you?

A. No, I do not. I used to sell Klohr, at Randallstown, but he has gone over to Lee now. I don't sell him.

Hearing Examiner Kolb: Is that all?

Mr. Ballard: That is all.

Hearing Examiner Kolb: Do you have any questions?

Mr. Kelaher: Just a few.

Redirect Examination by Mr. Kelaher.

1724 By Mr. Kelaher:

Q. With respect to the Pollard Station, did you sell tires or batteries to the Pollard Station?

A. No, I did not.

Q. And accessories, what was your experience on accessories?

A. I do very little with Jack on accessories.

Q. And what identification does Mr. Pollard carry on his station?

A. I think most anybody could put up a sign there. Jack is not particular on any part.

1725 You can't compare that with other, I would say, legitimate stations, that is all. Not that he is not legitimate himself, but to operate.

Q. Is there a Firestone sign on the premises?

A. There may be. I don't recall one being there, if there is.

Mr. Kellaher: No further questions.

Mr. Ballard: I don't think I have any further questions.

Mr. Mason: No further questions, your Honor.

Hearing Examiner Kolb: That is all. Thank you very much for coming down.

* * * * *

1727 Hearing Examiner Kolb: Come to order, please.

EUGENE SAVAGE was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your name and home address.

A. Eugene Savage, 4301 Fairview Avenue, Baltimore, Maryland.

Q. Mr. Savage, are you associated with the Burke-Savage Tire Company, Inc.?

A. I am.

Q. What is your position with that company?

A. I am an outside salesman and I am the treasurer of the firm.

Q. How long have you been with Burke-Savage?

A. I have been with Burge-Savage twelve years.

Q. How long have you been an outside salesman with that firm?

A. About nine years.

Q. That would put it back to about 1948, is that right?

A. Approximately.

Q. Will you please describe your company's business?

A. We are basically wholesalers. We go after the service station and garage business. We also carry retail and commercial business.

1728

Q. What products do you carry?

A. We carry two major brands. We carry the U. S. Royal line and we also carry the Armstrong tire line.

Q. Do you carry batteries?

A. We also carry batteries. U. S. Royal batteries.

Q. Do you carry accessories?

A. Not now, No. We dropped the complete accessories line.

Q. At one time did you carry a line of accessories?

A. Yes, we did.

Q. What brands and what products primarily?

Mr. Correa: Could we have a date fixed, please?

The Witness: When we carried the accessories?

Mr. Correa: When you dropped the accessories.

By Mr. Kelaher:

Q. We will develop that if you will just let me work this out. I think we will get right along.

Mr. Correa: Is there a mystery about it, Counsel?

Mr. Kelaher: He can't answer more than one question at a time.

By Mr. Kelaher:

Q. Go ahead.

A. What was the question?

(Question read.)

A. We carried U. S. Royal accessories. We car-
1729 ried the U. S. Royal fan belts; we carried the AC spark plugs; we carried the complete line of Whiz, which is a Hollingshead product, chemical line.

Q. During what period did you carry such products?

A. We were carrying the line when I came with the firm. We were carrying these accessories lines. I would say that we were carrying the lines up until about six years ago.

Q. And after that time did you continue to carry any accessories at all?

A. We slowly went out of the accessories business and today we have nothing.

Q. Mr. Savage, how many salesmen does your firm employ?

A. Twelve salesmen.

Q. How are they compensated?

A. Do you mean today how many we employ?

Q. Today, yes.

A. Today we have eight salesmen.

Q. And at one time did you employ more salesmen?

A. Yes. When I went with the firm we had 12 salesmen.

Q. How are these salesmen compensated?

A. We pay our men a weekly salary. We pay them commissions on their sales. We also pay them a bonus at the end of the year.

Q. How many trucks does your firm operate?

A. We operate eight trucks.

1730 Q. What is the sales area of the company?

A. We cover the complete Baltimore area and sort of the outlying sections. I would say we cover say within a thirty-mile radius.

Q. Of Baltimore?

A. Of Baltimore.

Q. Are you a large wholesaler of U. S. Tires in this area?

A. I would say we are the largest tire wholesaler in the Baltimore area.

Mr. Correa: If your Honor please, I think I shall have to move to strike that answer as unresponsive because it leaves the question unclear. Counsel asked the question, is the witness' firm a large wholesaler of U. S. tires and the witness replied by saying we are the largest tire wholesaler. Whether he means tires in general or U. S. tires is left obscure by the unresponsiveness.

The Witness: I would say we are the largest U. S. wholesalers.

Mr. Correa: That solves the problem.

By Mr. Kelaher:

Q. Who are some of the other sellers of tires in your sales area, large sellers?

A. Who are some of the other sellers of U. S. tires, or of other tires?

Q. Of other tires?

1731 A. Well, Brooks-Huff is in our area selling tires; Stuart-Pressley—

Q. Which brand?

A. Brooks-Huff carries the Goodyear tires.

Q. Did you mention Pressley?

A. Pressley also carries the Goodyear line. Also, of course the Goodyear store itself sells tires to dealers.

Q. Are there Firestone stores in Baltimore?

A. There are two Firestone stores that sell tires.

Q. And are there other sellers—who are the principal sellers of batteries in your sales area who sell other than U. S. batteries?

A. These batteries are also sold by the same suppliers.

Brooks-Huff carries the Goodyear battery and so does Pressley carry Goodyear. And of course the Goodyear store also of course carries Goodyear batteries.

Q. What type of delivery service do you furnish to your customers?

A. We pride ourselves on the same day delivery service. We give our dealers when they call up, we give them the service the same day. In fact, it is not uncommon for us to make deliveries within two hours or so after they call.

Q. And do you know whether Brooks-Huff has similar delivery service?

A. To my knowledge, in talking to these dealers, they all tell me that Brooks-Huff uses a two-day delivery service. They tell them two-day delivery in that area, and and they only get deliveries on those two days.

Q. Do you mean by that that they will specify two days in the week?

A. That is right. In East Baltimore, for instance, they may tell the dealer he can get deliveries on Mondays and Thursdays. And that is the only two days he can call in and get deliveries.

Q. Approximately how many Sinclair stations are in your sales territory?

Mr. Correa: That is objected to, if your Honor please. This witness has testified that he does not presently and has not for some years sold accessories. As your Honor will recall, the only product in the TBA line covered under any sales commission plan existing between Goodyear and Sinclair at the time of the issuance of the complaint herein is accessories. And since the witness does not handle accessories, at least at any time since the complaint herein was filed, I submit that the question and the line of evi-

dence to which it points can have no possible relevance to any issue arising under this complaint in this proceeding.

Hearing Examiner Kolb: In view of the controversy with reference to accessories and so forth, I will receive this evidence, subject to a motion to strike after we get the whole matter straightened out.

1733 Mr. Kelaher: I will withdraw that question and ask him another question.

By Mr. Kelaher:

Q. You stated that you have been an outside salesman from approximately 1948 to date with your company, is that correct?

A. That is correct.

• • • • • •

1752 Q. Approximately. how many Atlantic stations are in your sales territory? And I might say, as I understand it, the Firestone-Atlantic TBA sales commission plan is still in effect in this area.

Mr. Thompson: When you say Atlantic, I presume you mean Sherwood.

Mr. Kelaher: I mean Atlantic.

Mr. Correa: I know nothing about the Firestone-Atlantic sales commission plan and concede nothing with respect to it.

Also, if your Honor please, if counsel is going into Atlantic, I take it the testimony may be received subject to my motion to strike.

Hearing Examiner Kolb: Subject to a motion to strike by Goodyear.

Mr. Thompson: I move at this time to strike all the testimony relating to Sherwood and Sinclair.

Hearing Examiner Kolb: The motion will be denied. The testimony will be received subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. Approximately, how many Atlantic stations are in your sales territory?

A. I would say approximately 30.

1753 Q. And during the period, you have been an outside salesman, that is, from 1948 on, have you solicited the business of Atlantic service stations?

A. I have solicited approximately 75 percent of them.

Q. You did or you now do?

A. I solicit them. I am definitely not selling any.

Q. When you first started soliciting business from Atlantic service station, what brand of tires did you notice predominantly in those stations?

A. Lee tires.

Q. What tires do you now notice predominantly in Atlantic stations?

A. I would say it is predominantly Firestone now.

Q. And about—

A. Almost exclusively Firestone in these Atlantic stations.

Q. When did you notice the change from Lee to Firestone?

A. I don't have an exact date.

Q. I will withdraw that question.

A. It was hard to say because there was a conversion period there. It wasn't an overnight situation.

Q. But presently, today, do you find Firestone tires?

A. Yes.

Q. What type of identification do you find in Atlantic stations?

A. The tire identification is almost exclusively
1754 Firestone identification in Atlantic stations.

Q. What type of window valances and outdoor signs do you see?

A. Also Firestone.

Q. Have you attempted to place U. S. Royal or Armstrong advertising in Atlantic station?

A. Yes, I have. I have also tried to put up U. S. decals and U. S. Royal metal signs and other advertising materials, and the service stations would not allow me.

* * * * *

By Mr. Kelaher:

1755 Q. Have you lost the business of any Atlantic service stations since you have been an outside salesman?

A. Yes, I have.

Q. Do you recall the names of any such dealers?

A. Yes. I called on a station at Fallsway and Center, Leonard's Atlantic Station. At one time previous to 1953 he carried all U. S. Royal tires. He carried a complete stock of U. S. Royal tires. And today I do not call on this station because he now handles Firestone tires.

Q. Did you have any conversations with Mr. Leonard concerning his purchase of tires from you?

A. Yes, I did.

Q. When was the approximate time, and what was the substance of the conversation?

A. I would say it was approximately 1954, and at that time he told me that he is going to handle Firestone tires because the oil company has a tie-in with them.

Mr. Thompson: Has what?

The Witness: A tie-in with them.

Mr. Thompson: Because what has?

The Witness: Because the oil company has a tie-in with them. That was his conversation.

1756 By Mr. Kelaher:

Q. Do you recall the names of any other Atlantic dealers with whom you had conversations concerning their purchase of U. S. tires?

A. Yes. There is a service station now in business at Edmondson Avenue and Swan. A Mr. Varnadone—V-a-r-n-a-d-o-n-e—he has a partner.

At one time Mr. Varnadone, in another station, carried exclusive Burke-Savage products. He does not stock anything but Firestone tires today.

Q. You stated at "another station." Is it another Atlantic stations you are referring to?

A. Yes. He had an Atlantic station, that's right. He owned his own station previous to this station that he now has. When he owned his own station he carried Burke-Savage products exclusively. Now that he leases a station he carries Firestone tires.

Q. Did you have a conversation with Mr. Varnadone?

A. Mr. Varnadone told me exactly that when he owned his own station he was at liberty to carry what he wanted to carry. But now that he leases his station he is forced into carrying Firestone products.

Q. When did this conversation take place?

A. Sometime in 1954.

Q. Do you have the names of any other former 1757 Atlantic customers of yours?

A. Yes. I called on Eckhardt Service Station on Fleet Street.

Q. In Baltimore?

A. In Baltimore, that's right.

Mr. Thompson: What is the name?

Mr. Kelaher: We can furnish the names, rather than break into the continuity of his testimony.

Mr. Thompson: I would like to have the spelling. I would like to have it now, rather than later.

How is it spelled?

The Witness: E-c-k-h-a-r-d-t. I believe his first name was "Tommy" Eckhardt.

By Mr. Kelaher:

Q. When did you first call on Mr. Eckhardt?

A. I started calling on him approximately 1951. I sold him tires up until approximately 1954. At that time he told me he could only carry the Firestone tires.

I believe—I stopped calling on him when he naturally couldn't purchase any more tires from Burke-Savage. I believe that he is no longer with that station.

Q. Was he at one time a stocking customer, a regular stocking customer of Burke-Savage?

A. Yes, he was.

Q. Who is the principal supplier of Firestone tires 1758 to Atlantic stations?

A. I would say the Firestone Company stores are the principal suppliers.

Q. How do the prices of Burke-Savage compare with the tire prices of the Firestone Stores, and the battery prices?

A. In most cases, I would say that we gave a larger and better discounts to dealers.

Q. How did your service compare with the service of Firestone?

A. We still prided ourselves on same-day delivery, and the oil company used the two-day delivery service.

* * * * *

1765 Q. During the period 1948 on, did your sales of accessories to Atlantic service stations increase, decrease, or remain the same?

Mr. Thompson: May I have the question read?

(The reporter read the question.)

Mr. Thompson: I have no objection to that question. Of course, it already appears of record that Atlantic was not on the sales commission plan in those years, so I don't see any possible relevance. But it might be an interesting academic fact.

Mr. Kelaher: They went on the sales commission plan in 1951, as I recall.

Mr. Thompson: Not in 1948, which is what your 1766 question is.

Mr. Kelaher: I am taking him up to date.

Mr. Thompson: This fellow dropped accessories, he said, in 1951, the same year that Atlantic went on—

Hearing Examiner Kolb: If there is no objection to the question, let the witness answer.

Go ahead.

The Witness: Over that period of years our accessories decreased. Accessories sales decreased.

By Mr. Kelaher:

Q. During the year—

Mr. Thompson: The date you are talking about is 1948 and thereafter?

The Witness: That's right.

By Mr. Kelaher:

Q. Were you soliciting accessories business in 1951 from Atlantic service stations?

A. I was.

Q. And what has been your experience in the sale of accessories to Atlantic service stations beginning in 1951?

A. I would say that the greatest decrease started in 1951.

* * * * *

1768 By Mr. Kelaher:

Q. Mr. Savage, I would like to have you state more specifically how long your company carried accessories products?

A. As I said, the company was handling accessories—we have been in the business close to forty years, and the company was handling accessories when I went with the

firm. In 1951 our accessories business started to drop off very badly, and over a period of a few short years we finally went out of the complete accessories line.

Q. In 1951 you still had a stock of accessories?

A. That's right.

Q. And you were soliciting—

A. We were still soliciting from our stock, but our sales had dropped off so badly because it was so tough to sell oil company leased service stations, that we eventually stopped buying accessories.

Q. After you stopped buying, you still had a stock on hand?

A. We still carried a stock, yes.

Q. You still solicited accessories business?

1769 A. We solicited from our stock.

Q. Until your stock was exhausted?

A. That's right.

Q. How long a period did it take to exhaust your stock?

A. Approximately two years.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1770 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

Q. I take it, sir, that you understood your assignment here this morning to be to testify against certain tire companies and certain oil companies, including—

Mr. Kelaher: Objection.

Mr. Correa: May I finish?

Mr. Kelaher: Yes, and I will object.

By Mr. Correa:

Q. (Continuing.) —including among the tire companies my client Goodyear, is that right?

Mr. Kelaher: I object to the form of the question.

Hearing Examiner Kolb: Objection overruled.

A. My only understanding was to come here today to tell the truth about our business.

By Mr. Correa:

Q. And you were telling the truth when counsel asked you who your competitors were—

A. That is right.

Q. (Continuing.) —in the sale of tires to service station dealers and others? And you mentioned Brooks-Huff, a Goodyear dealer?

A. That is right.

Q. Pressley, a Goodyear dealer?

1771 A. That is right.

Q. A Goodyear store and the Firestone store?

A. That is right.

Q. Did you mean to imply that you have no other competitors in the sale of tires in this area?

A. No, I didn't.

Q. You have a great many others, do you not?

Mr. Kelaher: Let him answer.

Mr. Correa: He answered. He said "I didn't."

Mr. Kelaher: He hadn't completed his answer.

Hearing Examiner Kolb: Stop this controversy. Answer the question.

By Mr. Correa:

Q. The pending question is that you have a great many others, do you not?

A. Through service stations, no, there aren't a great many other ones. A very few. He asked me for some of my prime competitors, and I gave him a list of some of

the prime competitors. There are several others, but not too many.

Q. Are Goodrich tires sold in your marketing area?

A. That is right.

Q. Who sells Goodrich tires?

A. There is a Goodrich store.

Q. Is the Goodrich store a competitor of yours?

A. That is right.

1772 Q. Are General tires sold in this marketing area?

A. Not in service stations, no. General is to my knowledge—I have never seen a General tire sold through service stations.

Q. Are Lee tires sold in this marketing area?

A. Very, very limited. Very limited in my customers that I call on, that I see about tires.

Q. Could you answer the question?

A. Are Lee tires sold in this area?

Q. In your marketing area?

A. Yes, Lee tires are sold. But in a small degree.

Q. You say that you had the same-day delivery—

A. That is right.

Q. (Continuing.) —in your company. And you said that Brooks-Huff has a two-day delivery?

A. That is right.

Q. Don't you know that the fact is that Brooks-Huff has the same-day delivery?

A. If they do, I have been in service stations when they have called Brooks-Huff on the phone, and actually heard conversations where they told them they couldn't deliver until certain days of the week.

Q. Don't you know it is a fact that Brooks-Huff currently maintains a truck to make deliveries in response to calls within a matter of hours?

A. You say currently. I don't like to cross-ex-

1773 amine you. Are you talking about—is that something new that he has just done in the last few months?

Q. I am asking you—no, it is not but I am asking you what is the situation now.

A. To my knowledge the situation is the same, because I have dealers calling me up very recently and telling me that they have actually called Brooks-Huff and couldn't get the merchandise right away, and they have called Burke-Savage because they knew they could get same-day delivery.

Q. You have said that you sold tires at a lower price than Brooks-Huff?

A. In most cases, yes.

Q. What tire were you referring to? U. S. Royal or Armstrong?

A. Both.

Q. Do you sell U. S. Royal and Armstrong at the same price?

A. Well, it is a pretty hard thing to—

Q. Don't you know whether you do or don't, Mr. Witness?

A. Yes, we do know.

Q. What is it?

A. Are you talking level for level?

Q. I am talking about the price that the dealer pays for the tire he buys.

A. We sell first line Armstrong tires at a lower price than we sell first line U. S. Royal tires. But we sell higher level tires in Armstrong at a better recovery than
1774 we sell premium U. S. tires. Does that answer your question?

Q. Do you sell U. S. batteries, also?

A. That is right.

* * * * *

1788 Q. Do you mount truck tires for dealers who buy them?

A. Do we? Yes, we do.

Q. Are you in the recapping business, also?

A. Yes, we are.

1789 Q. Do you do recapping with service station dealers?

A. Yes, we do.

Q. Who is your principal competitor in the recapping business in Baltimore?

A. Well, now, recapping is a different basis than new tires. We have many more competitors in recapping than we do in new tires through service stations.

Q. Could you please now—

A. Who is my principal competitor?

Q. Let's get down to my question.

A. Is that plural? Competitors?

Mr. Correa: Read the question, please, Mr. Reporter, and see if the witness can answer.

(Question read.)

The Witness: Unless you can be more specific—is that in service stations, or commercial accounts? It is a pretty tough thing. In other words, there are several. Car dealers are you talking about or what?

By Mr. Correa:

Q. Let's say in service stations.

A. Who is my principal competitor?

Q. In recapping.

A. Suppose I have three competitors who are all selling the same amount. Who would be the principal one?

Q. Name the three if it is three and let's stop 1790 fencing if you please.

A. I am not trying to fence. If you would only have made it plural, I think I could have answered it.

Q. If it is three, name three, and if it is a dozen, name a dozen.

A. Brooks-Huff is a principal competitor of mine; C. D. Erdman is a principal competitor of mine and Frank Jacobs Tire Company is also a principal competitor of mine.

Q. How about Armor Tread?

A. Armor Tread is also a principal competitor. There are several. It is hard to name one.

Q. You spoke of handling accessories, Mr. Witness. Is that the U. S. line of accessories?

A. We handle quite a few U. S. line of accessories. We handle the U. S. fanbelt and we handle spark plugs that we purchase through United States Rubber Company, etc.

Q. Did U. S. Rubber Company cut down or eliminate its accessories lines in recent years?

A. Nationally? Are you talking of nationally or Baltimore?

Q. Nationally?

A. I have no real—I wouldn't be able to answer that. I don't know the United States Rubber Company's statistics or figures on accessories.

Q. You don't know whether they have cut down on their accessories line.

1791 A. I wouldn't know. I honestly couldn't answer that.

1797 Afternoon Session.

(1:40 P. M.)

Hearing Examiner Kolb: You may proceed.

Thereupon, EUGENE SAVAGE resumed the stand as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Cross-Examination (Resumed) by Mr. Thompson.

Q. Mr. Savage, did I correctly understand you this morning to say that you had very few competitors in your sales territory?

A. Well, can you be more specific? Again I ask you, are you talking about service stations? And any particular type of service station?

Q. Let's confine the question primarily to service stations. Do you have very few competitors in your efforts to sell service stations?

A. That is right.

Q. Very few. Is the Norris Company one of your competitors?

A. Norris? Are you talking about tires, of course?

Q. I am not talking about tires, of course, at all.

A. As I stated before, we are out of the accessories business now.

1798 I would say that Norris is not a competitor of mine on tires.

Q. How about batteries?

A. In batteries, I would say they are a major competitor.

Q. When you were selling accessories for some years after you decided actively to drop the business but were

selling out of stock, was Norris one of your accessories competitors?

A. Yes, he was.

Q. You know the company, of course?

A. R. W. Norris, isn't it? Is that the one you are referring to?

Q. R. W. Norris.

A. Yes.

Q. Were you present yesterday when Mr. Norris testified?

A. No, I wasn't.

Mr. Kelaher: All witnesses had been excluded except one in response to Mr. Correa's request.

By Mr. Thompson:

Q. Would it refresh your recollection about the number of people engaged in the tire, battery, and accessories wholesale business in selling to service stations if I suggested to you that there are more than 60 such concerns based on the testimony of Mr. Norris?

A. Selling—

Q. Selling TBA to service stations.

1799 A. Are you talking primarily from any one service station, or are you getting into the category of Cities Service stations?

Q. I am talking about—

A. In other words, if I call on a Betholine service station, my only real competitor is Brooks-Huff. I don't see the Atlas supply house selling—

Q. If you call on an Atlas station, your only competitor is who?

A. Firestone. Not my only competitor but my major competitor. There are other tire companies that fringe into business but aren't large competitors.

Q. Who are your principal competitors in your efforts to sell Atlantic stations?

A. Firestone.

Q. Who else?

A. I would say they are the largest competitor there. I would say Firestone.

Q. That is the only competitor you can think of in your efforts to sell service stations?

A. The only major competitor.

Q. Do you regard the Loock Company as one of your competitors?

A. In tires; no, sir.

Q. They don't make any efforts to sell tires to service stations, is that correct?

A. I wouldn't say that they don't make any effort. 1800 I don't even know what kind of tires they handle.

There are several types of tires that I have seen around, that I call off-brand tires, that are handled through some of these jobbers. I am not sure which type of tire Norris handles. They aren't that much of a competitor.

Q. Your sales territory is what I think you referred to as the greater Baltimore area?

A. That is right.

Q. Would that be roughly Baltimore and say a radius of roughly 20 miles or something like that?

A. Approximately.

Q. In that area you offer U. S. Royal tires and Armstrong tires, am I correct?

A. That is right.

Q. Aren't the Dunlop tires also sold in that area?

A. To a small degree.

Q. How about Fisk?

A. I see some Fisk tires but I wouldn't consider them a major competitor in the service stations that I mentioned.

Q. How about Gillette?

A. I see some Gillette.

Q. And you of course see a lot of Goodrich?

A. Goodrich is a major competitor, yes.

Q. And of course Goodyear is a major competitor?

A. And Goodyear, and also Firestone.

1801 Q. And Hood?

A. Very—I don't even remember seeing any Hood tires in any service stations.

Q. Kelly-Springfield?

A. In these stations, I havn't seen any Kelly's, either. I see some Kelly-Springfield in some Sunoco stations. If you would be more specific, for instance, when I call on, say, a Texaco station, I would say that my major competitor is Firestone and Goodrich. And that would constitute possibly 80 to 90 percent of competition I receive in that particular service station.

Q. Aren't there a number of wholesalers in the Baltimore, Greater Baltimore area, selling Lee tires?

A. Selling Lee tires?

Q. Yes.

A. The only one that I know is the company store itself. I don't know of any other large Lee dealers that sell service stations.

Q. You never heard of the Hillen Tire Company?

A. I have heard of the Hillen Tire Company. I know Mr. Schnitzer and most of his business is commercial business, not service station business. Mr. Joseph Schnitzer I saw a couple of weeks ago and told me it is so small it isn't even worth talking about.

Q. So they don't try to sell service stations?

A. No, they don't—

1802 Q. Do any of these companies that you mentioned make any efforts to sell service stations, outside of Firestone and Goodyear?

A. I would say they make some effort, yes.

Q. How about Mansfield? Isn't that a rather well-known name in Baltimore?

A. Again, I say I can't even remember seeing a Mansfield tire in any one of these service stations that I call on.

Q. Perhaps at a later point I shall have occasion to try to refresh your recollection. In the meantime, is the McCreery tire sold in the Greater Baltimore area?

A. In service stations?

Q. Yes.

A. Not to my knowledge.

Q. Never see it there?

A. Not in service stations.

Q. How about Michelin?

A. I have never seen a Michelin tire in any service station at any time in the last twelve years.

Q. How about the Miller tire? Is that a local tire sold in Baltimore?

A. I don't know if it is local or not. I believe there are some Miller tires sold in Baltimore. I know of one retailer that handles Miller tires. Again I have never seen a Miller tire in any service stations.

1803 Q. They don't try to sell service stations?

A. Not to my knowledge.

Q. How about Schenuit, is that a Baltimore company?

A. Schenuit is a Baltimore company. Schenuit is probably a little more prominent than all these other off-brands that you mentioned in service stations.

Q. Do you regard Lee as one of your off-brand tires to which you referred?

A. Well, it is terminology. Anything which is not original equipment I sort of refer to as "off brand" tires.

Q. What are the original equipment tires to which you refer?

A. U. S. Royal, Goodyear, Firestone, Goodrich, and General are original equipment tires.

Q. What do you mean by original equipment?

A. Original equipment are tires that are equipped on new automobiles.

Q. And therefore more readily sold as replacement tires?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: I can answer that. Armstrong is not an original equipment tire, and yet we—

By Mr. Thompson:

Q. Are the original equipment tires more easily salable as replacement tires?

Mr. Kelaher: He is trying to answer the question, 1804 I think.

Hearing Examiner Kolb: Read the question.

(Question read.)

A. I would say yes.

By Mr. Thompson:

Q. How about Seiberling line, isn't that sold around Baltimore?

A. Yes, it is.

Q. And you are not by any means the only U. S. Royal distributor, are you?

A. No. There is one other distributor.

Q. Who is that?

A. C. E. Kimmel.

Q. Do you regard Kimmel as one of your competitors?

A. Not through service stations.

Q. Not through service stations?

A. Not through service stations.

Q. Perhaps we will have a chance to refresh your recollection at a later point.

Are there not many, many brands of batteries sold to service stations in the Greater Baltimore area?

A. Are there many brands of batteries?

Q. Yes.

A. Yes, there are.

Q. Would twenty be a pretty good guess?

1805 A. I would say so.

Q. Mr. Savage, when you come to accessories—and I understand, of course, that you are now out of the accessories business—I also understood you to testify that after 1951 you spent several years disposing of stock, is that correct?

A. That is right.

Q. Are there not just innumerable brands of accessories which are sold to service stations by a very large number of wholesalers?

A. Well—

Mr. Kelaher: Object unless the questioning is more specific, your Honor.

Hearing Examiner Kolb: Overruled.

A. I would say yes.

By Mr. Thompson:

Q. If I correctly understood you this morning, you said you had diverted your attention to commercial and car dealer accounts?

A. That is right.

Q. But you still solicit and sell service stations?

A. Well, I solicit more service stations that own their own property and are independent, do not lease their stations.

Q. So that by and large your service station activity is confined to service stations which are not leased stations?

1806 A. That is right.

Q. That interests me very much, and I will come back to that in a moment, if I may.

What percentage of your time do you spend on com-

mercial accounts as against car dealers and service stations?

A. It is divided about in three parts.

Q. Divided in three parts?

A. I think that is fair.

Q. So that you spend about a third of your time on the service station accounts?

A. That is right.

Q. Are you familiar with the survey of service stations which was published and widely circulated, made by the Baltimore News-Post?

A. No, I am not.

Q. How many service stations would you estimate there are in the Greater Baltimore area, and by that I mean Baltimore and within a radius of about twenty miles?

A. How many service stations?

Q. Yes. I am talking of service stations now. I don't mean just pumps, and I don't mean garages. I mean real service stations.

A. It would be a sort of a wild guess.

Q. May I suggest to you that the survey—and ask you whether this would refresh your recollection or aid you—that the survey says there are 1,180 in that area?

1807

Mr. Kelaher: May I ask when the survey was made? We have no identification of the survey. The Baltimore News-Post has been in business for many years.

Mr. Thompson: I am not testifying. I would be glad to put it on the record if anybody is interested.

Mr. Kelaher: In fairness to the witness—

Hearing Examiner Kolb: The witness has answered it. Let's go ahead.

By Mr. Thompson:

Q. You said you would guess that is about right?

A. I will accept your figures.

Q. Of those roughly 1100 or 1200 stations, upon how many do you call? How many do you solicit?

A. Now?

Q. Yes.

A. About 130.

Q. I beg your pardon?

A. About 130; possibly 150.

Q. 130 to 150?

A. That is right.

Q. If I correctly understood your testimony this morning, you said there were about thirty Atlantic stations in your sales territory?

A. Approximately.

1808 Q. Did I correctly also understand you to say that you called upon about 75 percent of them?

A. No.

Q. Then if the record so reads, that would be an error?

A. I said, I definitely said, that I had solicited at least 75 percent. I do not continually call on 75 percent of them today.

Q. Let's draw a distinction between continually call and solicit, because that leaves me a little in the air, and I think it would be confusing on the record. Let's start with solicit.

A. Go ahead.

Q. Talking now about today, how many of these thirty Atlantic stations which you say are in this Greater Baltimore area do you solicit?

A. Today I solicit approximately six or seven because I find it impossible, due to the competitive market of the oil company tie-in with the service station to sell any more than that.

Q. So that you also continuously solicit those six or seven, or are you drawing a distinction?

A. No, I am not drawing. I continue to solicit that six or seven stations.

Q. And you don't call on any others?

A. Not anymore.

1809 Q. In the past how many of the Atlantic stations did you call upon or solicit, and tell us when?

A. I have to bring my sales reports here to give you the exact dates.

Q. I don't need exact dates; approximate dates will be fine.

A. I said before that I have solicited 75 percent of these stations. Sometimes I went in and made one call and was told by the operator that he cannot handle any other tire but Firestone and I would be wasting my time.

Q. Who told you that, please?

A. The lessee of the station.

Q. Which one? Those you mentioned this morning?

A. No. I mentioned some I had been selling, the various accounts that I stopped in, that I saw one or two times. And I didn't bring a full list but I can. I can get those on my sales reports that I made up.

Q. You can get those from your sales reports that you made up?

A. Yes.

Q. The person you mentioned this morning who sticks most clearly in my mind is a man named Varnadorn. Did I get that name correctly?

A. That is right.

Q. For purposes of the identification of the Varnadorn that you are talking about, with Mr. Kelaher's per-
1810 mission I am going to show you the classified telephone book and see if we have the right man.

Mr. Kelaher: What date is the telephone book?

Mr. Thompson: June 1957.

By Mr. Thompson:

Q. I show you the classified telephone book, page 89, under the heading "Exide Batteries" and point to the name Atlantic Service Center, Edmondson and Swann Avenues. Is that the station to which you were referring?

A. That is right.

Q. And that is listed in this book as an Exide dealer, correct?

A. Right.

Q. Is Mr. Varnadorn a partner of Mr. Wyniger?

A. That is right.

Q. And you know that station well?

A. Yes, sir.

Q. And that is one that you still solicit, one of the six?

A. No. The station was so poor in the new tires sales that I turned it over to another salesman.

Q. You mentioned a conversation that you had with Mr. Varnadorn this morning?

A. That is right.

Q. I would appreciate it greatly if you would repeat your recollection of what was said.

1811 A. The exact conversation?

Q. Yes, sir.

A. Mr. Varnadorn told me that—

Q. Before you say just what he told you, would you mind—

A. You asked me for the conversation.

Q. Would you mind telling us the approximate date?

A. Approximately two years ago.

Q. That would be then in the latter part of 1955, perhaps?

A. I would say it would be a little later than that. It would be into 1956.

Q. The early part of 1956?

A. Yes.

Q. Where did the conversation take place?

A. In the service station.

Q. Were you there making a solicitation?

A. That is right.

Q. Now repeat as closely as you can exactly what was said.

A. I asked Mr. Varnadorn to—

Q. Excuse me. Was there anyone else present?

A. There were, I believe his partner, I am almost sure his partner was standing there.

Q. Mr. Wyniger?

A. Yes. But he really didn't have too many comments to make.

Q. He heard the conversation? He was present?

A. I am almost positive.

1812 Q. Before you repeat what Mr. Varnadorn said, tell me the circumstances, will you please; what led up to it?

A. I had a package deal, a price on approximately 25 tires that Mr. Varnadorn could buy at an attractive discount. And he made the comment that the price is right and he had conceded he could sell these tires, but in lieu of the fact that he was so close to Firestone stores, his comment was that the salesmen and big shots would come over and see other brand tires in this station and put him in definite jeopardy with his lease.

And for that reason he did not order the tires from me and sort of a sympathy order he did order several used tires. And he has been buying nothing but used tires from Burke-Savage in the last two years. If I may continue to go along with that, he did—

Q. I would be happy to have you do so.

A. I will tell you what he did say to me: "I will tell you what I will do, I will take some Firestone take-offs

from you, because I can take some Firestone take-offs and disguise them in with my own inventory so they will not show up as so-called foreign brands."

1813 Q. Is it your impression that the conversation that you have just related is the same or a different conversation from the one you testified to this morning?

A. It is the same conversation just elaborated.

Q. When you answered Mr. Kelaher's question about conversation, why did you not state any of the things which you have now recalled?

A. Because I am going into a long procession, and I just thought I had answered it in a smaller concise fashion.

Q. I see.

A. Then, he said he couldn't stock any other brand but Firestone, and I think what I said summed up to the same thing. I was just trying to give you the related conversation almost as it happened, to my recollection.

Q. But you have been familiar with that station for a long time, have you not?

A. I have been familiar with his station from the day it was built.

Q. And since the day it opened for business, has not that station been Exide dealer?

A. Let me say this: our battery business—

Q. That is not responsive to my question. Will you please answer my question?

A. I do not know. I was trying to answer it, in a fashion.

Q. In a fashion.

1814 A. I was trying to tell you I didn't solicit the battery business there.

Q. Why didn't you solicit the battery business?

A. Because the battery business with Burke-Savage has taken almost the same back seat as the accessories business due to—

Q. Because Firestone is forced upon these stations?

A. That's right.

Q. Is Firestone forced upon this station to which you are referring?

A. Maybe not this particular station.

Q. But this station you said was right next door to the Firestone store, and the big shots came over from the Firestone store to see the Firestone equipment.

A. Our conversation related to tires only, and I must say this to you: I can always use my tires as an opening wedge. If I can sell a customer my tires then at a later date, I try to get other parts of his business such as his recapping and his battery business. But if I cannot sell him tires, I couldn't even go into the conversation of selling him batteries.

Q. Is it not a fact that at this station there are Exide batteries all over the place?

A. Until you showed me this, I had no knowledge of what kind of batteries he was selling.

Q. Did you ever—

A. I can honestly say that. When I walk in, my 1815 mind is in the track of selling tires and tubes as an opening up of selling a contract, and at later dates, I may try to sell him other products.

If he is an Exide dealer, I had no knowledge of it until you opened that book, and that is the Gospel truth.

Q. Does this man sell any Firestone batteries at all?

A. I do not know what kind of batteries he handled until you showed me this ad. And just because—

Q. Now—

A. I would like to say this: because you have shown me this ad, is it possible that Exide just put his name in? I still don't know whether he handled Exide batteries or not.

Q. You are on the stand. I am not.

A. I am telling you the truth.

Q. Do you know who else sells this account? What other people, wholesalers in the TBA business, are the suppliers?

A. I do not know.

Q. Of this stage?

A. I do not know.

Q. Is Monarch Products one of the wholesale TBA people?

A. I would have no knowledge. I said before—

Q. Now, when you go into a station, don't you see Thermoid belts and A. C. filters all over the place?

A. I don't know if you remember. I said I turned this account a year ago over to another salesman. I don't
1816 know how long he may have been an Exide dealer—for the last three months. I haven't been in that station for 12 months. So, I wouldn't be—

Q. So, this is not one of the accounts that you now solicit?

A. That I solicit personally?

Q. Yes.

A. No. But we have another salesman that calls on him now.

Q. And he sells Burke-Savage tires to this account at the present time, doesn't he?

A. Used tires. He sells some used tires to this account.

Q. Doesn't the Martin Auto Supply sell a lot of TBA to this particular station?

A. I do not know.

Q. How about Norris—R. W. Norris?

A. I am not familiar with any of his suppliers.

Q. Or any of the other suppliers of this station?

A. Except Firestone. It was the only conversation that we had.

Q. You do know from visiting the station that this

man carries many TBA products which are not Firestone, don't you?

A. No, I didn't.

Q. Let's go to one that you may know a little better. Another man you mentioned was a Mr. Eckhardt?

A. Yes.

Q. And that station is at Fleet and Fagley Street?

A. That's right.

1817 Q. You testified this morning about a conversation that you had with Mr. Eckhardt. Before I ask you about that I would like to ask you this: was that Mr. Tommy Eckhardt or Mr. John Eckhardt?

A. At the time I called on him, it was Mr. Tommy Eckhardt.

Q. Is Mr. John his brother?

A. I believe he is.

Q. Is Mr. John also now at that station?

A. I haven't been in that station for four years.

Q. For four years?

A. Three or four years, I would say.

Q. So, that is not one of the stations that you solicit?

A. Not today.

Q. Does one of your salesmen solicit that station?

A. I turned the same account over to another salesman, and I believe that he is calling on them but not getting any kind of business, because I have never seen—I haven't seen any tickets in reference to that account.

Q. I would like you to repeat, recalling this time what you said this morning, what the conversation was that you had with Mr. Tommy Eckhardt. And, then, sir, I am going to take pleasure comparing what you said this afternoon with what you said this morning. So, I ask you to be careful. Repeat the conversation.

Mr. Kelaher: I think that part of the question is 1818 unnecessary and uncalled for.

Hearing Examiner Kolb: Overruled.

The Witness: Mr. Eckhardt told me that with his—

By Mr. Thompson:

Q. First of all, what were the circumstances? Give us the approximate date, the place the conversation took place and what led up to it.

A. I had been calling on Mr. Eckhardt for many years. At the time he was instructed that Firestone is now selling Atlantic stations he put in a complete line of Firestone tires and accessories and told me that he will not be able to stock any U. S. products.

Q. That was the end of the conversation?

A. Well, you are asking me to give you conversation almost word by word that happened three or four years ago. And if I stood up here and told you I could give you that, I don't think I would be fair.

Q. After this conversation you went away and did not attempt to sell him any more U. S. Royals?

A. I made several trips back and saw it was fruitless.

Q. Recently?

A. Oh, no. Since from that date. I said I hadn't been in the station three or four years.

Q. Entirely hopeless to try to sell him any U. S. Royal tires?

A. I would say so; yes.

1819 Q. Do you keep in touch with what your competitors do?

A. I have no way of getting my competitors' records, if that is what you mean.

Q. Don't you know that Mr. Kimmel, your competitor, the other distributor in Baltimore, sells U. S. Royal tires to this station, and that they are stocked?

A. Is that Mr. Tommy Eckhardt that still has that station?

Q. Mr. Tommy and Mr. John Eckhardt.

A. They both have the station?

Q. Don't you know that?

A. No, not if I haven't been in the station for three or four years, I wouldn't know.

Do they sell them U. S. Royal tires?

Q. Yes, sir. For stock. And you didn't know that?

A. No, I didn't.

Q. Did you know that this station also stocked Goodyear tires?

A. No, I didn't know that.

Q. And that Mr. Kimmel is the supplier?

A. No, I didn't know that either.

Q. Maybe you had better get your salesman on the ball, Mr. Savage.

Mr. Kelaher: Objection, your Honor. I think that is unnecessary.

The Witness: I think that is uncalled for.

By Mr. Thompson:

1820 Q. Being gratuitous advice, I am sure it is worth just what you are paying for.

A. Did you know that Mr. Kimmel has certain service stations that he has a reciprocity deal with, that he in turn will get all his gas from his trucks and such and in turn they will buy tires from him? There are several accounts that he has that with. In view of the fact that Mr. Kimmel has a branch on Fleet Street, I would presume from what you are telling me here that he has a reciprocity dealing, the fact that he buys all his gas for all his trucks, and in turn he is buying tires from him. And again the only way I would have to do anything with myself or the salesman was to go down there and see that all our trucks bought gas from him so we could throw Mr. Kimmel out.

Q. One day you will be wholly-enlightened because we will ~~cause~~ call Mr. Eckhardt and have him tell us about it.

Mr. Kelaher: Which one?

Mr. Thompson: Both of them.

By Mr. Thompson:

Q. You made a kind of a general broad statement that you couldn't put up signs at Atlantic stations?

A. That's right.

Q. Which stations? Which of the six are you talking about?

A. Which of the six Atlantic stations?

Q. Yes.

1821 A. Well, the station that I mentioned here we couldn't, Leonard's Atlantic, Eckhardt, Mr. Varnadorn. We couldn't put signs up. In fact, I don't know of any Atlantic station where we could put signs up, anywhere at any time.

Q. You get around to only six?

A. I have only six.

Q. I guess we had better have a list of the six that you know something about. Who are your six customers?

A. I have to get them off my sales report.

Q. Let me start on another attack. You said this morning that you had a routine list of service stations upon whom you had called for many years, is that not correct?

A. That's right.

Q. And it is still the same list?

A. No, that list varied. They are always lessees leasing their leases, getting out, and new men coming in. It is a flux.

Q. Can you remember the names of six Atlantic stations upon whom you call?

A. I would have to look at my sales reports.

Q. Can you remember the names of any of them except the three that you have mentioned?

A. I would have to think.

Q. By all means. That would be perfectly charming if you did.

1822 A. This all relates back to such a small amount of business from these stations.

Q. Maybe I can refresh your recollection. You cannot recall them?

A. You probably have a list of them right there.

Mr. Kelaher: May I ask counsel if his question pertains to accounts now being solicited or past accounts that were solicited.

Mr. Thompson: Either one, if they can remember past accounts that will be fine.

Mr. Kelaher: Are you asking now about present accounts or past accounts?

Mr. Thompson: Both.

Mr. Kelaher: The question is unclear, your Honor. I think it should be more specific.

The Witness: I just thought of another Atlantic station which I sold tires to.

By Mr. Thompson:

Q. Good, Good, Good. Which one?

A. It was Jerry's Atlantic, then it turned into Joe's Atlantic, and then he got thrown out.

Q. For buying your tires?

A. He definitely told me he got thrown out for buying other people's products, besides the products coming from the oil companies.

1823 Q. Let's have all the details about him and the whole conversation. This is Joe or Bill, which?

A. Joe's.

Q. This is Joe's?

A. Joe's Atlantic.

Q. Where was his station?

A. On Eastern Avenue.

Q. Eastern Avenue?

A. Yes. At the corner—this may be—

Q. That is the station at 829 Eastern Avenue?

A. I believe that is it. Is that at the—Is there a road, a street that runs through there that is listed on that? This man would know. Is that the station that Jerry Brenner had previously?

Q. Yes, that is the station.

Let's have the conversation with Joe, if that was his name.

A. I called on the man for a short while. I called on this man a very short while.

Q. You said you had a conversation with him. I am trying to pin you down.

A. I had a conversation with him when I was in his station.

Q. What did he say?

A. He said it is awful tough for him to buy any products except those that he is supposed to buy through 1824 the oil company.

Q. Mr. Savage, do you know that that station has a U. S. Royal Tire sign on it?

A. I know that. Jerry Brenner put it there.

Q. And that is certainly not one of the stations that wouldn't let you put a competitive sign up, is it?

A. After he put it up, he was in the station a very short while.

Q. Don't you know that sign is still there?

A. Is it still there?

Q. And the present dealer sells U. S. Royal?

A. And the dealer who went in after Jerry Brenner was there a short while. Then, I saw a flux of dealers getting out it wasn't worth while calling on that station anymore either.

Q. So, that is one of the stations you stopped calling on?

A. That's right.

Q. So that we are still down to three, aren't we? Three Atlantic stations that you know anything about?

A. I would have to get my sales report to give you any other information.

Q. Let's just pick a couple of stations. Take a small town. Do you sell at Elkton?

A. No, I don't.

Q. Perryville?

A. No.

1825 Q. Do you go down to Annapolis?

A. Yes, I go down to Annapolis.

Q. Then, you probably remember the Naff Atlantic Station there?

A. I only call on several car dealers in Annapolis.

Q. No service stations in Annapolis?

A. No service stations.

Q. You don't look at the service stations when you go down there?

A. I looked at one Crown station one time when I was down there.

Q. I guess we will have to ask you about Baltimore, then. Do you know where 33 and Barkley is? Do you remember that station?

A. I know where it is.

Q. It used to be the Johnson station, now Pool and Hunt, Atlantic lessee station.

A. Yes.

Q. That has been a Lee dealer forever, hasn't it?

A. Johnson had the Lee franchise.

Q. And that is still a Lee station, isn't it?

A. Is it still Lee?

Q. I am asking you if you know.

A. I don't know. I wouldn't be familiar. I knew Mr. Johnson and I don't believe he is in the tire business anymore.

1826 Q. That station has a big Lee sign on it, hasn't it?

A. It could be. I am not familiar with it.

Q. How about Herman Shartoff, Pratt and Monroe, are you familiar with that?

A. No, I am not.

Q. Don't know it at all?

A. No, sir.

Q. Do you know the Welkowitz Station at Hanover and Hill?

A. No.

Q. No?

A. No.

Q. Salzman Station on Reisterstown Road?

A. I don't solicit that station either.

Q. Do you solicit the Schilling Station at Joppa and York?

A. No, I don't.

Q. Silberstein at Liberty and Howard?

A. No, I don't.

You named about eight stations. Is that right?

Q. I will name 30 if you like?

A. You were naming those stations for what reason?

Q. Reasons of my own. Just wanted to know if you got around at all. Better look them up in your book sometime Mr. Savage.

Mr. Thompson: That is all. Thank you.

Mr. Kelaher: May we have a couple of minutes, your Honor?

1827 Hearing Examiner Kolb: Does that finish cross-examination?

Mr. Kelaher: Yes, they are finished. He said that was all.

Hearing Examiner Kolb: Do you want a few minutes?

Mr. Kelaher: Just a second.

No questions, your Honor.

Hearing Examiner Kolb: Thank you.

(The witness was excused.)

Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1828 ROLLAND C. BEST was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kaplan.

Q. Would you state your name and home address, please?

A. I am Rolland C. Best. I live at 102 Shetland Hills Drive, Lutherville, Maryland.

Q. Mr. Best, are you associated with the Best Battery Company, Inc.?

A. I am president and treasurer.

Q. And how long have you been operating under the name Best Battery Company?

A. We were incorporated on November 1, 1953.

Q. And had you been operating under any other name prior to that time?

A. Yes. Prior to that time, for a period of about four months, we had a partnership going under the name of B&G Battery Company.

Q. And have you been known under any other name other than B&G and Best?

A. When we originally went into the battery busi-
1829 ness we were known as the Dev-i-Co Battery Company.

Q. What year did that begin, sir?

A. That was from May of 1951 until October of 1952. I believe that is right.

Q. Are you the sole stock owner of the Best Battery Company, Inc.?

A. The stock is owned jointly by my wife and myself.

Q. What product or products does your company sell?

A. We sell nothing but batteries. Lead-acid batteries.

Q. Does that include both wet and dry-charge?

A. Both.

Q. Do you manufacture these batteries?

A. No. These batteries are manufactured for me under contract, on an annual renewal basis.

Q. What company does that manufacturing for you?

A. At the present time they are manufactured by Scranton Battery Company, in Archbold, Pennsylvania.

Q. And prior to this company?

A. Price Battery Company, Hamburg, Pennsylvania.

Q. About how long have you been in business now, sir?

A. Since May 1951, in the battery business.

Q. And what territory does your company cover in its operations?

A. We have the entire United States, but we limit ourselves to an area within twenty miles from our shop.

1830-1839 Q. How many salesmen does your company employ?

A. One.

Q. Is that yourself or in addition?

A. In addition.

Q. How many trucks does your company operate?

A. Three, and a station wagon which I use.

Q. Mr. Best, are there any Atlantic service stations in your territory?

A. A considerable number.

Q. Could you approximate the number at all?

A. I have never gotten statistics on them, but I know that there are quite a few of all kinds. I wouldn't have any idea as to the number.

• • • • •

1840 By Mr. Kaplan:

Q. Mr. Best, do you have any competitors in your territory as far as the sale of batteries is concerned?

A. Yes. We have Willard, Autolite, Exide, Bowers, Delco. Probably Bowers is the one most nearly like ourselves who sell direct, who compete on city and state contracts and things of that nature.

Q. These are all manufacture outlets?

A. Bowers is a manufacture. I think Bowers is the only manufacturers' branch in Baltimore. The rest of them are distributors or jobbers.

Q. Do you have any other jobbers as competitors in your product?

A. Other jobbers? Well, every auto supply house is a competitor. Every tire dealer is a competitor. That is, a tire distributor is a competitor because they all handle batteries as a sideline.

Q. Are any jobbers that specifically sell to Atlantic stations your competitors?

A. I would have to admit that everybody is my competitor. They are all my competitors, wherever they sell.

Q. Could you name your principal competitor in relation to Atlantic stations?

A. Well, that would have to be either Firestone or Goodyear.

• • • • •

Q. How does your price compare?

A. Naturally being on a lead basis, which I believe is the same basis on which most manufacturers buy their batteries, we are in position naturally with our limited advertising to offer a higher quality product at a lower price.

Q. It is a higher quality product?

A. I believe so.

Q. How does your service compare to these competitors?

A. We pride ourselves on the fact that you call us within an hour and we will have your battery. That is why we confine ourselves to an area within twenty miles of the shop.

Q. Mr. Best, since you have been in business, have
1843 you had many sales to Atlantic stations in batteries?

A. Do you mean relative to my overall business or just to Atlantic stations as such?

In the overall picture they are inconsequential. I can remember offhand three, four, or five Atlantic stations we did business with:

Q. And Atlantic as such?

A. Yes, one, Jack's Atlantic at the corner of Lockraven Road and 25th Street, I think it is, a couple of brothers there, Jack and Simon. I don't know their last name. They call it Jack's Atlantic. They have been out of business for the last year and a half or so.

Q. Did you stock this Jack's Atlantic station?

A. Oh, no. They had Firestone in the front but we bring them in the lube room.

* * * * * *

1844 By Mr. Kaplan:

Q. When were you selling Jack's Atlantic, sir?

A. This sheet, which shows a balance carried forward, the last sheet is dated—the first entry is September 27, 1955. There was a balance carried forward which was

from a previous sheet. But this date is dated September 27, 1955. And the last entry on this sheet is February 2, 1956.

Mr. Kaplan: Your Honor, I would like the sheet that Mr. Best is holding to be marked for identification, please.

(Whereupon, the document referred to was marked Commission's Exhibit 341 for identification.)

By Mr. Kaplan:

Q. Does Jack's Atlantic still buy your batteries?

A. No. They haven't bought from me since the last entry on that sheet.

Q. Is Jack's Atlantic still operating?

A. I don't believe so. I believe they have changed hands.

Q. Did they stop purchasing from you before they went out of business?

A. I believe they did.

Q. Mr. Best, have you been able to, on a stocking
1845 basis, sell any Atlantic stations?

A. Don't have a one on the books.

* * * * *

1849 Q. Mr. Best, you said that you had a salesman in your employ now, is that correct?

A. Yes, sir; since February 4, 1957.

Q. Had you had any salesman in your employ prior to that time?

A. Oh, yes. I once made an effort—I learned early in life in this business if I wanted to survive and feed my family I had to forget about gas stations and go out and make a living for myself, which I have done. I always had in mind that there is a tremendous amount of business out there, so why can't you get it. So I made a concentrated effort. I hired a fellow who worked for eight years for the Bowers Battery Company out in some little territory in back of where the old ferry used to cross to go to

Atlantic City. He had that entire area back there—New Jersey, and part of Delaware—and he worked off a truck. He came to me and said "Look, I have been out of this business for five years but I did do a wagon job for Bowers and I did a good job."

So I proceeded to call up the vice president of Bowers, whom I know very well, and asked him about the man and the man said, "Yes, he did a good job for us and I would like to hire him, if we could, if we had an opening for him or if he wanted to come back to work for us."

On that basis I took the man on and supplied him with a truck and said, "Look, dad, all you have to do is
1850 get out there, call on gasoline stations, automobile repair shops, used car dealers and boys of that nature." And I said, "With the experience that you say you had, and as good a man as you tell me you are, we shouldn't have any problem, with as good a battery as I am going to give you to sell." So he went out there—

Q. When was this?

A. This was in September 1955, that I put him on.

Q. What was the man's name?

A. His last name is Baughner. His first name I think is Frank. I don't even remember that. I have a record of it here. It is Bill.

Q. Go ahead.

A. I kept a record of what the man did. Of course this is—I wanted first of all to see what he did do because he came to me so highly recommended that I wanted to meet a good salesman for a change.

And secondly, I figured that if I was losing money on this bird I wanted to know it right quick, which is exactly what happened. Here is his volume of sales for September. I paid him an advance of $300 a month. My gross profit in the month of September was $231.33. So I had a loss of $68.07, on salary, plus my truck expense, plus maybe a few other things which we won't go into.

In October I have his entire record here. In Octo-
1851 ber I have his entire record here. In October his gross sales for the entire month were $1,457.30. His total sales for September and October then equalled $2,497.63. My gross profit in the month of October was $388.46. That was gross. I advanced him $300 again plus truck expense.

In the month of November he dropped back a little bit. No, he didn't, either. In the month of November he did $1,751.82, which is traditionally one of the best months in the battery business. He did $1,751.82. I advanced him $300 again. I don't think I even bothered to take a gross profit that month to see how I came out. I think I made up my mind to let him go.

In the month of December, which was his last month, his sales were $1,381.59, net. I advanced him $375 because of Christmas and I had a loss of $7.74 plus truck expense. So here is the whole result of a man who spent eight years in the business calling on TBA accounts.

Q. Mr. Best, did this salesman during this period call on Atlantic stations?

A. Oh, yes. He called on everything that came along. I limited him to gasoline stations, automobile repair shops, used car dealers, new car dealers. In other words, what we refer to as the scum of the business.

* * * * *

1852 A. I have here these pink copies of the salesman's copies of my autographic register. And in here you will find Atlantic, gasolines, used car dealers. This is as they came out. These will probably tally with the ones on front. At least they should.

Q. Were these large purchases?

A. No.

Here is the record. These are all the sales he made.

He made a good many sales but there isn't any money in it.

Mr. Kaplan: Your Honor, I would like to have these records marked for identification.

(The documents referred to were marked Commission Exhibits 342-A to Z-1, 343-A to Z-40, 344-A to Z-62, and 345-A to Z-55 for identification.)

By Mr. Kaplan:

Q. Mr. Best, did you receive any reports from your salesman as to why he was experiencing so much difficulty selling service stations, and in particular Atlantic?

Mr. Correa: I suggest that the answer to that question be Yes or No, because I apprehend there may be an objection to the next one.

1853 Hearing Examiner Kolb: Answer Yes or No.

A. Yes.

• • • • •

1854 By Mr. Kaplan:

Q. You presently have another man in your em-

1855 ploy, is that correct?

A. I do.

Q. What are his duties?

A. He is—I supply him with a Courier, a Ford Courier. He is a truck salesman. He doesn't like that, but that is what he is, a truck salesman.

Q. Does he call on Atlantic, • • • stations?

A. In the course of his rounds as he is going around, if there is a station in the immediate area where he is, he will drop in.

Q. Has he had any success in selling these specific accounts, these specifically named stations?

A. No more than my other boy had.

Mr. Kaplan: No further questions, your Honor.

Cross-Examination by Mr. Correa.

Q. Mr. Best, in the year 1956 did the annual volume, dollar volume of your business, increase substantially over the preceding year?

A. In 1956? Not substantially; about 12 percent.

Q. It did increase?

A. 1957 increased again.

Mr. Kaplan: Your Honor, I object to the question. We did not go into the volume of business of Mr. Best's company.

1856 Hearing Examiner Kolb: I will overrule the objection.

By Mr. Correa:

Q. What was your annual volume in the year 1955?

A. 1955?

Q. Yes.

A. I wish I had my accountant. Say $125,000.

Q. And it increased?

A. 1956 it went up to $138,000 or $140,000. In 1957 it is around $180,000 to $200,000.

Q. Or at the rate of?

A. My fiscal year ended in October. Calendar year it will go over 200.

Q. By the way, at the time you put batteries in Russ Cowley's station, did you at that time have a dry-charge battery?

A. I don't believe I did.

Q. Something you said suggested that maybe you did.

A. They were available to me. Let me put it that way. But whether or not I put any in there I can't say. I probably had some in the shop. But whether I put in any with Russ I can't answer Yes or No. I will qualify that further by stating that they have been available to me since—at that time Price was my supplier, and I know they were

making them for, say Firestone, for instance, or Atlas,
1857 and they also were available to me through the same channels.

Q. Do you mean from Price?

A. From Price, at additional cost.

Q. You ascribed the fact that you were able to sell your batteries at a lower price than some of the companies you mentioned as your competitors, as battery manufacturers you mentioned—because of your limited advertising, is that correct?

A. Well, limited advertising would be one factor. Perhaps lower mark-up would be another.

Q. When you speak of advertising, were you referring to the fact that such companies as Willard, Auto-Lite, and Exide have nationally advertised brand names?

A. And Delco.

Q. And Goodyear?

A. Goodyear. Goodyear you see very little advertising of batteries. I only see tires. But Delco is I believe the biggest advertiser of batteries at the present time.

Q. The name Goodyear is a nationally advertised name as a name?

A. As a name, oh, definitely; very definitely.

Mr. Correa: I have nothing further.

By Mr. Ballard:

Q. Mr. Best, I take it that today you don't personally call on any Atlantic service stations, is that correct?

1858 A. I devote myself to commercial and industrial business. Personally, with few exceptions. I have two or three buddies that operate gasoline stations where I stop in myself. But that is of long standing. I do not make it a point to call on any new ones, if that is what you want.

Q. You have one salesman, is that correct?

A. That is correct.

Q. I am speaking currently.

A. Currently, yes.

Q. I take it that salesman also does not call regularly on service stations?

A. He is getting educated.

Q. You say he doesn't call on Atlantic service stations?

A. I wouldn't say he doesn't call.

Q. Do you know who he does call on?

A. Oh, yes. He calls on Atlantic, ~~Sinclair, Shell, Esso~~. He calls on everybody. One of the ways that you can best train a man in this business is to have him call on gasoline stations, because there he is really brushing up on his sales talk, because he will get all kinds of replies and he can really get to know the answers to them.

Q. He will get a lot of brush-offs?

A. He will get brush-offs.

Q. You mentioned Goodyear. Do a fair number of Atlantic stations stock Goodyear?

1859 A. I have seen them in some Atlantic stations.

Q. Do you happen to recall any in which you have seen them?

A. No, I can't say as I have, because I can't name any specific instances where I have.

Mr. Ballard: No further questions.

Redirect Examination by Mr. Kaplan.

Q. Mr. Best, we missed one question about Mr. Baughner before. What was his sales territory?

A. Well, he left here and he traveled on Route 40 as far as Mountain Road—

Q. Would you say—

A. Metropolitan Baltimore. An area within Bel Air, possibly, and as far north as Aberdeen, and maybe out Washington Boulevard to Southwestern Boulevard and

through Arbutus and throughout there, and up through Towson.

Q. And Mr. Correa asked you with reference to the volume of business you have done in the last three years, and each year you indicated an increase in that volume. Would you say that any substantial amount of that increase has been due to an increase in service station business?

A. Definitely not.

Mr. Kaplan: Your Honor, at this time we do not choose to enter into evidence Exhibits 341 through 343, and would like to have the witness retain them and have them 1860 available for examination.

Mr. Correa: By both sides.

Hearing Examiner Kolb: Is that all that you have of this witness?

Mr. Kaplan: Yes, sir; that is correct.

(Witness excused.)

Hearing Examiner Kolb: The testimony of this witness with reference to oil companies other than Atlantic will be received, subject to a motion to strike by Atlantic.

Mr. Correa: May the testimony to the extent that it is with reference to Atlantic-Firestone relations be received subject to a motion to strike by Goodyear?

Hearing Examiner Kolb: It will be so received, but I don't think there was any.

We will take a short recess.

(A short recess was taken.)

1861 Hearing Examiner Kolb: The hearing will be in order.

Whereupon, ELMER LANG was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Elmer Lang, 500 East Fourteenth Street, Baltimore.

Q. Are you an employee of the R. J. Loock Company, Mr. Lang?

A. That is correct.

Q. And how long have you been employed by that company?

A. Sixteen years.

Q. What is your position with the R. J. Loock Company?

A. I am an outside salesman.

Q. How many years have you been an outside salesman?

A. Nine years.

Q. So, that would put you back to 1948 to date that you have been an outside salesman?

A. Yes.

Q. What class of products are sold by R. J. Loock Company?

A. Well, we handle the general TBA line, which would be tires, batteries, chemicals, accessories.

Q. Would you name the principal brand names?

A. We have Mansfield tires, Autolite batteries, 1862 DuPont chemicals, Gates fan belts and radiator hose, Fram oil filters, and recently added Purolators.

Q. When did you add Purolator oil filters?

A. Back in 1956.

Q. Are there any Atlantic service stations in your marketing area?

A. Yes, there are.

Q. Approximately, how many?

A. Well, in the particular territory I work, I would say about 15 or 20.

Q. Do you solicit TBA business from Atlantic service stations?

A. I did at one time. I haven't at the present time.

Q. When did you begin soliciting such business?

A. Well, when I first went out in the territory around 1948-1949, up until about a year and a half or two years ago.

Q. How many did you solicit originally, do you recall?

A. I think about—I had approximately eight stations. Eight to ten. It is hard to recall exact numbers.

Q. How many do you solicit at the present time?

A. I have one station at the present time that I call on.

Q. During the period when you have solicited Atlantic stations, have you been able to sell tires to Atlantic stations?

A. No. I never have sold tires to Atlantic stations at all.

Q. What brand of tires do you find principally in Atlantic service stations?

1863 A. I have found both Firestone and—

Mr. Thompson: I object unless the question is limited to the one that he solicits.

By Mr. Kelaher:

Q. I am referring now to that based on your observations of the Atlantic stations in your market—

Mr. Thompson: He hasn't stated any observations.

Hearing Examiner Kolb: He stated that he used to call on Atlantic stations.

Mr. Thompson: Eight, he said.

The Witness: That is correct; approximately eight.

Mr. Kelaher: He testified that there were others in his area, though.

Mr. Thompson: He hasn't testified that he sold any, Mr. Kelaher:

Mr. Kelaher: If he didn't see them, I wonder how he knows they were there.

The Witness: In traveling around you certainly know the number of stations that are available to you to call on. I don't say that I solicited all Atlantic stations. I am only referring to the ones that I call on or had called on at that time.

By Mr. Kelaher:

Q. What brand of tires did you find predominantly in those stations?

1864 Mr. Thompson: Which stations? May we have that specifically?

The Witness: Mostly Firestone.

Hearing Examiner Kolb: He said those stations which were the ones which he called on.

Mr. Thompson: The eight?

The Witness: That is correct.

By Mr. Kelaher:

Q. What brand of batteries did you find in those stations?

A. Firestone.

Q. What was your experience in selling batteries to those stations?

A. I have never been able to sell the station or Atlantic station a stocking deal of batteries. It is mostly emergency pick up.

Q. And what has been your experience in selling accessories to those Atlantic stations?

A. Mostly fill-in.

Q. Have you sold accessories on a stocking basis to those Atlantic stations?

A. No.

Q. Who was the principal supplier of TBA to Atlantic stations?

A. Firestone.

Q. Are you competitive as to price with the sup-
1865 plier of Firestone products?

A. To my knowledge, I would say Yes in the chemical line and the battery line.

Q. What about the tire line?

A. Tires are not a main item as far as our house is concerned. We do very little with tires.

Q. How does your delivery service compare with the delivery service of the Firestone suppliers?

A. Well, I would say our delivery service, we can give a man service within a couple of hours, the same day that he calls.

Q. Is that as good as the Firestone delivery?

A. I would say to my knowledge it is as good if not better.

Q. What type of service station identification do you find in Atlantic service stations?

A. I am referring to the window valance and outdoor signs?

A. Mostly Firestone.

Mr. Thompson: This is limited to the eight stations that he solicits?

The Witness: I am referring to the eight stations that I mentioned before.

By Mr. Kelaher:

Q. Did you at one time call on McKaig Atlantic Station?

A. Yes, I did.

Q. Where is that located?

1866 A. That is located on York Road in the forty-four hundred block.

Q. Had Mr. McKaig been purchasing any TBA products from you?

A. Mr. McKaig purchased some filters from us only on a fill-in basis, not as a stocking dealer.

Q. Do you still call on Mr. McKaig?

A. No, I do not.

Q. Why did you stop calling on him?

A. For the reason that the volume that I received from Mr. McKaig was not sufficient to warrant my contacting him any more.

Q. Did you ever have any conversations with Mr. McKaig concerning the matter?

A. I talked to Mr. McKaig about a number of items that he carried, and particularly his oil filter line, and he told me that he was unable to purchase from us on a stocking basis.

Q. When was such conversation held?

A. That was around the early part of 1956.

Q. Did he tell you the reason why he was unable to purchase from you?

A. He said he was mostly obligated to buy his TBA items from Firestone.

Q. Did you at one time call on Bill's Atlantic Station, 909 Dundalk Avenue, Baltimore?

A. Yes.

Q. Do you sell any TBA products to this account?

1867 A. No, I haven't.

Q. Have you had any conversations with the operator of this station concerning TBA?

A. The first few times that I called on Bill Batchelse, we had some discussion in regards to his stock and his merchandise on his shelf. He told me at that time that the best he could do for me would be refills or emergency stock orders; mostly his TBA items came from Firestone through the Firestone salesman.

Q. When did you have this conversation with the operator of Bill's service station?

A. That was the latter part of 1955.

Q. What TBA stock does this operator carry?

A. He carries, of course, Firestone stock and his Firestone batteries, and tires, and he now has Fram oil filters.

Q. Did you at one time call on the—

Mr. Thompson: Could you fix the date of that conversation, Mr. Kelaher?

Mr. Kelaher: Late in 1955.

By Mr. Kelaher:

Q. Did you at one time call on the L&S Atlantic Station, 2700 block of Gwynn Falls Parkway, Baltimore?

A. I did.

Q. Will you please state when you called on this account, and what your experience was?

A. The L&S Service Station I contacted in 1953, was introduced to that particular operator through an 1868 other dealer that I called on. The station had not been opened as yet but I had what we term an "in" and I had written a stock order for that particular station of shelf merchandise.

Q. Shelf merchandise?

A. Shelf merchandise which we referred to as stock orders, which is chemicals, plugs, and things of that nature.

And the order was written and a legitimate order, and when I returned the following week to find out the delivery date—the date of delivery—the gentleman told me that he would not be able to buy anything from me or give me that order, only on emergency things that he needed. So, I asked him—

Mr. Thompson: What gentleman is that? Are we going to have some identification?

Mr. Kelaher: Yes. He is now referring to the operator of the station.

By Mr. Kelaher:

Q. Is that right?

A. That is correct. And—

Mr. Thompson: But there isn't any gentleman called L&S Station that I know of.

By Mr. Kelaher:

Q. Who is the gentleman you talked to?

A. I don't recall the gentleman's name at this particular time. It was back in 1953. He has since changed his operation. He has a station in Brooklyn, now. I believe it is Texaco.

1869 Q. Would it refresh your recollection if I mentioned the name Lester Lewis?

A. Right. That is the gentleman.

Q. Getting back to your conversation with Mr. Lewis, would you please state the substance of the conversation?

A. Getting back to the time that I checked back with Mr. Lewis to get a delivery date on the merchandise, he then told me that he was approached by Firestone salesman and supervisor, and that his initial stock order must come from Firestone one hundred percent. If there is anything that they didn't have, that we had, he was free to buy it from us.

Consequently, that order was terminated as far as R. J. Loock and Company was concerned and as far as I was concerned, which amounted to several hundred dollars.

Q. Did you thereafter sell TBA to Mr. Lewis?

A. Only on a very limited basis. Emergency orders is about all we were able to get.

* * * * *

1878 Q. What has been your experience in placing advertising signs in Atlantic service stations on TBA products?

A. We have been unable to place any type of ad-
1879 vertising in any of the Atlantic stations.

* * * * *

Q. Are your major lines nationally advertised lines?

A. That is correct.

Q. What line of batteries do you carry?

A. Autolite.

Q. Would you tell us something about the R. J.
1880 Loock Company? R. J. Loock Company is a large jobber, is it not?

A. We are considered as being one of the largest jobbing houses in the city, and also one of the largest firms on the East Coast in the automotive jobber business.

We have eight men out on the street. We have some seven or eight delivery trucks. Most of our lines are nationally advertised lines. They are lines that millions and millions of dollars have been spent on advertising, such as Autolite, Champion spark plugs, the DuPont line, Gates fan belts and radiator hose, and Fram oil filters.

We have nothing in an off-brand nature that the average car owner hasn't at one time or another seen advertised in some magazine, of some description. It is all nationally advertised merchandise.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examine.

Mr. Correa: We would like a moment, if your Honor please, off the record.

Hearing Examiner Kolb: Very well.

(A short recess was taken.)

1881 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

• • • • •

1892 Mr. Correa: No further questions.

By Mr. Thompson:

Q. Mr. Lang, you have been in the automotive supply business as I recall your testimony, a total of about 16 years?

1893 A. That is correct.

Q. As an old timer I suppose they call you "auld Lang syne"? I am not clear on what your sales territory is. Would you be good enough to explain it to us?

A. It is pretty hard to explain. As I explained before, we in Loock and Company don't work on a specific territory. In that I mean we don't have any boundaries of any description. We are free to call in the city or in the county or anywhere that we choose to go. We are not limited to who we call on. We can call on anyone that we choose.

Q. Do the various salesmen for your house call upon the same service stations?

A. No. You mean the same account?

Q. Same accounts.

A. The same two people calling on the same account?

Q. Yes.

A. No, we do not.

Q. Do you have some method by which you divide the accounts among the salesmen?

A. No. The only way I can answer that for you is in respect of—in that some of us cover certain areas more often than others do. It so happens that the customer list falls that way. As far as the house is concerned, if they feel that they were having an account that they want

us to call on, they would try to pick the area where
1894 we are the heaviest and the account is the easiest for us to get to.

Q. Generally speaking, then, do you roam the entire city of Baltimore and environs?

A. I would say so. Not in my particular case, but—

Q. Do you personally?

A. I am personally mostly city.

Q. Mostly in the city?

A. I would say 75 percent of my calls are in the city.

Q. Of course it is part of your job to know who your competitors are, am I correct?

A. That is right.

Q. Mr. Norris yesterday estimated there were about 60 jobbers selling TBA in this area. Would that ring a bell with you?

A. How many?

Q. About 60?

A. I hardly think it is that many.

Mr. Thompson: I would like to take a shortcut, if I may, sir. I will hand this witness, with your Honor's permission, a list, eight and a half pages long, with about eight names on each page, and ask him to take a pencil and just tick the names of these companies which he recognizes as TBA jobbers in the Baltimore area. I think that would be a lot quicker than calling off the list.

May I do that?

1895 Mr. Kelaher: That is agreeable.

Mr. Thompson: I need not have it marked for identification because when the list has been ticked I will ask the stenographer to copy it into the record as part of Mr. Lang's testimony.

Mr. Kelaher: May I ask what the total number of jobbers would be on that list?

Mr. Thompson: I haven't counted them. I would guess there are 60 to 70.

Mr. Kelaher: Did you ask him to tick off jobbers who sell in his territory? Is that the idea?

Mr. Thompson: I will ask the stenographer to read the question.

(Question read.)

1896 Mr. Kelaher: What is your definition of a TBA jobber? What does the list purport to be in the first place?

The Witness: I notice only some of those names you have what we call specialty houses who carry nothing but tires and batteries, and then you have one or two houses there such as Parks and Hull, who are strictly legal, which we term specialty houses. R. J. Loock of course covers a lot of actually TBA items. The houses I checked off there to my knowledge are ones that sell practically the same as we do.

Mr. Thompson: That is what I wanted.

Now I will ask on that basis to have the stenographer copy the list into the record.

Hearing Examiner Kolb: Very well.

(The checked list of TBA Wholesalers in Atlantic Refining Company's Baltimore District is as follows:)

Ancor-Salawitch, Inc., 3100 Washington Boulevard, Baltimore, Maryland.

B-B Auto Supply Co., 335 N. Gay Street, Baltimore, Maryland.

Baltimore Auto Supply, 3515 Dolefield Avenue, Baltimore, Maryland.

Baltimore Gas Light Co., 341 N. Calvert Street, Baltimore, Maryland.

Bearings Service Co., 11 Liberty Street, Westminster, Maryland.

H. R. Boyd, 1202 Maryland Avenue, Baltimore, Maryland.

1897 Brooks Huff Co., 4122 W. Belvedere Avenue, Baltimore, Maryland.

Capitol Auto Parts, 3635 S. Hanover Street, Baltimore, Maryland.

Cleaning Supply and Auto Equipment Co., 6104 Belair Road, Baltimore 6, Maryland.

Comis Auto Supply, 1351 S. Clinton Street, Baltimore, Maryland.

Ditch, Bowers & Taylor, Inc., North & Mt. Royal Avenue, Baltimore 17, Maryland.

F & L Auto Supply, 901 York Road, Towson, Maryland.

Federal Auto Parts, 1301 Light Street, Baltimore, Maryland.

General Machinery and Supply Co., 411 E. Lombard Street, Baltimore 2, Maryland.

Glenmore Motors Co., 6400 Harford Road, Baltimore, Maryland.

B. F. Goodrich Store, 1266 E. North Avenue, Baltimore, Maryland.

Goodyear Service Store, Mt. Royal Avenue & Oliver Street, Baltimore, Maryland.

Holly Auto Supply, Lock Raven Boulevard, Baltimore, Maryland.

J. R. Hunt, St. Paul and Calvert Streets, Baltimore, Maryland.

K & S Auto Supply, 3301 Clark Lane, Baltimore, Maryland.

H. E. Kilner Co., 2840 N. Calvert Street, Baltimore 18, Maryland.

Kitz Motor Co., 3237-39 E. Baltimore Street, Bal-

1898 timore 24, Maryland.

Kunkel Service Co., Bel-Air, Baltimore, Maryland.

Liberty Auto Supply (Tire Co.), 2346 E. Fayette Street, Baltimore, Maryland.

R. J. Loock Co., 346 N. Gay Street, Baltimore, Maryland.

Marsheck Auto Parts, Inc., 6226 Holabird Avenue, Dundalk, Maryland.

Martin Auto Supply, 1855 W. Pratt Street, Baltimore, Maryland.

Mazer Bros., Eastern Avenue, Essex, Maryland.

Mazer Bros. Auto Parts & Equipment Co., 915 York Road, Towson 4, Maryland.

Monarch Products, 5519 Reisterstown Road, Baltimore, Maryland.

R. W. Norris Co., 330 N. Gay Street, Baltimore, Maryland.

North Port Automotive, Inc., 2817 North Point Road, Dundalk, Maryland.

Parks and Hull Co., Cathedral Street, Baltimore, Maryland.

Stuart Pressley, U. S. #1, Elkridge, Maryland.

Quaker City, 2930 Remington Avenue, Baltimore, Maryland.

Replacement Parts Service, Inc., 41-45 W. Oliver Street, Baltimore 1, Maryland.

Roper & Neagley Co., 1515 N. Fulton Avenue, Baltimore, Maryland.

Salvo Auto Parts, 14 Back River Neck Road, Bal-
1899 timore, Maryland.

Service Parts Co., 2230 Reisterstown Road, Baltimore, Maryland.

1900 By Mr. Thompson:

Q. You have checked approximately how many houses, Mr. Lang? Would you mind making a rough count?

A. Thirty-nine.

Q. The Loock Company is by no means the only jobber in this area which distributes Mansfield tires, is it?

A. No, sir, they are not.

Q. There are others?

A. Yes, sir.

Q. If I remember your testimony correctly, you distribute Autolite batteries?

A. Yes.

Q. Are there not a large number of other Autolite battery distributors in the Baltimore area?

A. I wouldn't say a large number. There are actually three houses distributing Autolite batteries. There are two other than ourselves.

Q. And those are Boyd, International Harvester, and Service Parts?

A. That is correct. We don't include International Harvester. They service a different trade.

Q. I was interested in noting on the list that you checked that you omitted checking Best Battery Company. Have you ever heard of that company?

A. I have not, no, sir.

1901 Q. Gates fan belts and other Gates products are distributed, are they not, by a very large number of distributors?

A. Yes, I would say approximately seven.

Q. The same would be true with respect to Champion Spark Plugs?

A. Yes.

Q. And certainly Fram and Purolator have a number of distributors in this area, have they not?

A. Yes.

Q. Isn't that so, sir, with respect to substantially all of the accessories carried by your house?

A. Yes. We have nothing exclusive.

Q. When you spoke of the eight Atlantic stations which had formerly been solicited by you, did you include the McKaig station, Bill's station, and the L&S station as three of the eight?

A. That's right. Yes.

Q. Could you now recall, sir, the names of the other five that you formerly solicited?

A. It is going to be pretty hard.

Q. Can you remember any of them?

A. There was an Atlantic station I used to solicit around Orleans Street, I can't remember the name, which has since changed operators.

Q. At the present time I think I understood you 1902 to say that you are only personally soliciting one Atlantic account?

A. Yes, sir.

Q. Which station is that?

A. Al Miskiel.

Q. At Harford and Bayonne?

A. Yes.

Q. Are you pretty familiar with that station, Mr. Lang?

A. Well, I have called on Al for a number of years. I would say fairly so.

Q. Do you know who his other suppliers are?

A. Well, he buys—the only other one that I know that goes in there, to my knowledge, is Quaker City.

Q. I have a note of Quaker City. How about Cleaning Supply Company? Doesn't he buy chemicals from Cleaning Supply Company?

A. I don't know. He never told me so.

Q. Don't you also call on Mr. Sullivan's Atlantic station at 34th and Keswick?

A. Yes, I do.

Q. So that is two at the present time?

A. That slipped my mind.

Q. I wonder if I could ask you this question: Is there some arrangement among you gentlemen who sell for Loock that the Atlantic stations are called on by a Mr. Snowman?

A. No. We have no arrangement whatsoever.

1903 Q. He is one of your salesman?

A. That is correct.

Q. Does he, to your knowledge, call upon a large number of Atlantic accounts?

A. I don't know whether he called on a large number. I am sure he probably contacts some of them.

Q. Do I take it that your personal knowledge of the Atlantic stations is limited to the eight to which you have testified, and the two which you are now currently soliciting?

A. I would say so, yes.

Q. Do you carry in your head, because of your long experience with the company, the names of additional Atlantic accounts which are sold by other salesmen?

A. No. I am not familiar with what the—who the other salesmen call on. Only if they are apt to be mentioned at the store or counter at the time I am there. That would be the only knowledge that I would have.

Q. I think you estimated that in what you call your sales territory there were fifteen or twenty Atlantic stations?

A. That is correct.

Q. You subsequently defined that territory as being substantially all of metropolitan Baltimore?

A. I would say the biggest percentage of it.

Q. Is that not true, sir, that substantially all of those accounts are Loock customers?

1904 A. I wouldn't say that was true, no, sir. I don't know.

Q. Aren't most of them?

A. I couldn't answer that either. I don't know.

Q. You did mention a conversation that you had with a Mr. McKaig. Do you recall that?

A. Yes.

Q. His station was and still is at 4420 York Road?

A. That is correct.

Q. That is the correct station, is it?

A. Yes.

Q. You had the conversation to which you testified at that station?

A. At that particular time, yes. I no longer contact the account, though.

Q. Do you still see that station?

A. It is still there, yes.

Q. Would you mind telling us the background, the circumstances which led up to the conversation that you had with Mr. McKaig?

A. Well, at the time I contacted Mr. McKaig we—in fact, Mr. McKaig was introduced to me by another customer, and at that particular time Mr. McKaig stated to me that the majority of his purchases were from Firestone, and that he would fill-in if necessary on whatever I could offer him or whatever he could fill in.

1905 Q. Is that the sum and substance of the conversation?

A. That is generally how it went, yes.

Q. And that is about all he said?

A. That is all.

Q. At the time you had the conversation, were you at the station?

A. It was in the station, that is correct.

Q. Is it not true that Mr. McKaig was then and for many years previously had been, and ever since has been, a Lee Tire dealer?

A. That I couldn't answer. I don't know.

Q. You do recall, sir, don't you, the Lee sign on Mr. McKaig's station?

A. I have never noticed it.

Q. Take a look the next time you go by.

A. I sure will. I live out there and I have never noticed it.

Q. Let's shift to batteries for a moment. Is it not true that Mr. McKaig, at the time you had the conversation, was actually stocking Bowers batteries?

A. He had some Bowers batteries, that is correct.

Q. And that he was handling Purolator oil filters?

A. At one time, that's right.

Q. And that was at the time you had the conversation, wasn't it?

1906 A. No. He had Fram at that time.

Q. Wasn't he then carrying Purolator?

A. No, sir, he was not.

Q. Do you know that he is now carrying Purolator?

A. He probably does. I haven't contacted Mr. McKaig for over a year. I don't make any money off accounts of that type, so I can't call on them every week.

Q. But somebody must.

A. Apparently they do, but I am sure it is not a jobber-salesman.

Q. Then I wonder who would be selling the Lee line?

A. That could be Lee Tire and Rubber Company.

Q. How about the Bowers Company, the same thing? Bowers Company?

A. Bowers batteries.

Q. How about the Purolator; would that be the Purolator Company?

A. It could be.

Q. They have a lot of distributors, three in this area?

A. That is correct.

Q. Do any of them make direct sales?

A. I don't know.

Q. Any of those three manufacturers, do they make direct sales?

A. Not directly to the station. It must come from
1907 the distributor.

Q. So they all come from distributors?

A. I would say mostly jobbers.

Q. Let's shift to Bill's. I don't know where you said that station was.

A. Dundalk.

Q. That is 909 Dundalk Avenue?

A. That's right.

Q. And the conversation that you had with Bill, whose real name is William Batchelor—B-a-t-c-h-e-l-o-r—

A. That's right.

Q. —was, as I recall, the latter part of 1955?

A. I think so.

Q. And the conversation was held at the station?

A. That's right.

Q. You observed the station when you were there?

A. Fairly well.

Q. You had sold the station, hadn't you?

A. Sir?

Q. You sold the station, hadn't you?

A. I had, yes.

Q. Let me ask you this: Is it not true that when you were at the station Bill was stocking Goodyear and Goodrich tires?

A. He may have. Tires are not our major line. We are not a tire house. I don't attempt to even get into the tire field.

1908 Q. I understand that of course, sir. But now let's go back to the conversation that you had with Bill, because, as I recall it, something was said about his feeling obligated to buy Firestone. Is that correct?

A. That is what he told me.

Q. You don't think that was the brush-off, do you?

A. Well, it is two schools of thought on that.

Q. Is it not also a fact that at that time, before the time of your conversation that day, the principal accessories supplier of Bill is Marsheck Auto Parts Company?

A. Marsheck is in that vicinity. Whether he is made a supplier, I couldn't answer that.

Q. You do know, don't you, that Bill buys from Marsheck?

A. He may. I don't know for sure.

Q. Let's get to the third one on your list, L&S station. The conversation to which you referred was in 1953, was it not?

A. Yes.

Q. Do you know how long the L&S partnership, Lewis and Loefer was with him, stayed at that station?

A. They didn't stay very long. I don't know the exact time or period because I am not familiar with that.

Q. It was really just a couple of months?

A. I think it was. I am not sure. I think it was.

Q. You made a kind of a general statement, as I recall it, that you were unable to place competitive signs
1909 of Atlantic stations, Loock signs?

A. Not exactly Loock signs but—

Q. The brand names that you carry.

A. Brand names, yes.

1910 Q. Did you personally ever try to persuade an Atlantic lessee to permit you to put a sign in his station? I am talking about personally.

A. Yes. I have mentioned it to several of them and there have been occasions where we had I think DuPont transparent signs that were put up at one time several years ago. And I happened to be in the station at the time that the operator put them up. And the following week when I returned the signs were down.

Q. Can you remember the name of that station?

A. This has been quite some time back and I don't recall the name.

Q. Upon what was your general statement made about signs? Was it something somebody told you or what?

A. Well, it came from the operator himself.

Q. But then I would ask you to be more definite and name every operator who made any such statement to you. Having rather full records here, I can check to see whether or not the competitive signs are there or not.

A. I wouldn't be in a position to go that far back. My memory isn't that good.

Q. Can you remember the names of any of them?

A. I can't remember any of them at the time. It has been around 1954 or '55.

Mr. Thompson: Thank you very much. That is all.

* * * * *

1912 Hearing Examiner Kolb: Thank you, Mr. Lang.

(Witness excused.)

(Discussion off the record.)

1913 Hearing Examiner Kolb: The hearing will be in order.

EDGAR D. FREELAND, JR. was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your name?

A. Edgar D. Freeland, Jr., 10 Cedar Road, Catonsville 28, Maryland.

Q. Are you an employee of R. J. Loock Company?

A. I am.

Q. How long have you been with that company?

A. Since 1949.

Q. Are you an outside salesman with that company?

A. I am.

Q. Over what period have you been an outside salesman?

A. The entire period.

• • • • • •

1926 Mr. Correa: I have no further questions.

Mr. Ballard: I have no questions, your Honor. I hope the usual objection will be noted on the record.

Hearing Examiner Kolb: Yes. It is received subject to a motion to strike as to matters involving other oil companies.

Mr. Kelaher: No questions, your Honor.

• • • • • •

1928 Hearing Examiner Kolb: The hearing will be in order.

LEWIS A. HUETHER was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kaplan.

Q. Would you please state your name and home address?

A. Lewis A. Huether, 400 North Lakewood Avenue, Baltimore 24.

Q. Mr. Huether, are you employed by R. W. Norris and Sons, Inc.?

A. Yes.

Q. In what capacity are you employed?

A. Representative.

Q. How long have you been a representative with that company?

A. Since 1920.

Q. Since 1920?

A. About 36 or 37 years. I have been employed with them longer than that.

Q. How long have you been employed by that company?

A. Since 1914.

Q. How long have you been an outside salesman 1929 with that company?

A. How long? Since 1920.

Q. What has been your territory?

A. Baltimore city and a portion of Baltimore County.

Q. Mr. Huether, how many Atlantic service stations are in your territory, would you say?

A. I don't know. Twenty or twenty-five. Fifteen, twenty, twenty-five in the whole territory.

Q. Do you solicit any Atlantic stations?

A. Just one now, and that is for antifreeze.

Q. Was there ever a time when you did solicit Atlantic stations?

A. Oh, yes. Way back a good many years ago.

Q. How long ago would you say that was?

A. I guess fifteen years ago.

Q. When did you stop soliciting Atlantic service stations?

A. About that time. Competition from the companies got too strong on me and there wasn't any use of me calling—the oil companies.

Mr. Ballard: I move to strike the answer, beginning with "competition", as not being responsive to the question.

Hearing Examiner Kolb: Motion denied.

Mr. Mason: We have our motion to strike on the ground that this does not relate to Goodyear.

Hearing Examiner Kolb: Yes.

1930 The testimony will be received subject to a motion to strike by Goodyear as to that portion pertaining to other Auto supply companies.

By Mr. Kaplan:

• • • • • •

1965 (Hearing Examiner Kolb: You are excused.

(The witness was excused.)

Hearing Examiner Kolb: Let the record show that Respondent's Exhibit G-5 has been withdrawn.

(Whereupon, Respondent's Exhibit G-5 for identification was withdrawn.)

Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

JOSEPH SCHEINER was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Joseph Scheiner, 3605 Woodlea Avenue, Baltimore 14.

Q. And are you associated with the S&S Tire Company?

A. The S&S Tire Company is a corporation. I am the president of it.

Q. What is the business of the S&S Tire Company, and what is the present address of the S&S Tire Company?

A. We have a re-cap shop. We sell the re-caps to service stations as well as retail. Also handle new tires

as distributors, and batteries. And we are presently
1966 located at Saratoga and Pearl Streets. Our shop is on Franklintown Road.

Q. What is the address of your shop?

A. Franklintown Road and Harlen Avenue.

Q. Are you an outside salesman for the firm, in addition to your other capacity?

A. I am the only outside salesman for the firm.

Q. What are generally the boundaries of your sales territory?

A. Baltimore and its environs, to Essex and Dondalk.

Q. Were you at one time a distributor of Firestone tires?

A. Yes, in October 1951. We took on an order of Firestone tires, mainly because we had an Atlantic service station and Atlantic tied up with them.

Q. Approximately—

A. Before that we handled Lee tires.

Q. Approximately, what was the amount of your tire purchases from Firestone at that time?

A. Just over $3,000.

Q. In addition to the Atlantic station you referred to, were you also doing business as S&S Tire Company at that time?

A. Yes, we were.

Q. Were you at that time soliciting Atlantic and other service stations in your marketing area?

A. I should say Atlantic and all other major oil companies.

Q. After you purchased the Firestone tires in
1967 October 1951, did you begin to solicit Atlantic service stations and all other stations in the area?

A. Well, I didn't just begin at that time. I had been already and I just continued.

Q. As to Firestone tires?

A. Yes, sir.

Q. Did you have any discussions—

Mr. Thompson: I didn't understand the last question and answer.

Hearing Examiner Kolb: Read the question and answer.

(Question and answer read.)

By Mr. Kelaher:

Q. By that do you mean at that time you started selling Firestone tires?

A. Firestone tires.

Q. Prior to that time you were soliciting another brand?

A. Recapping and another brand of tires and batteries.

Q. I believe you did testify that the brand you were carrying before that was Lee, is that correct?

A. Yes.

Q. After October 1951 did you have any conversations with Firestone representatives concerning your sale of Firestone tires?

A. I would say a couple of months later the Firestone salesman told me he had become aware of my calling 1968 on Atlantic * * * as well as other service stations—well, he wasn't concerned with the others—

Mr. Thompson: If your Honor please, I wonder if I may look at the documents the witness seems to be reading from.

The Witness: It is nothing here.

(Handing documents.)

Mr. Thompson: Thank you very much.

The Witness: What was the question?

(Question read.)

The Witness: —soliciting their business on Firestone tires. He told me that in view of the Firestone contracts with Atlantic * * * he didn't feel that I should call on them to solicit their business.

By Mr. Kelaher:

Q. That was the extent of the conversation?

A. That was the gist of it.

Mr. Correa: I am sorry, I wanted to get in before that last question a motion to strike the testimony of this witness at this point in so far as it relates to Firestone-Atlantic, and also on the independent ground in so far as it relates to Firestone-Shell, two strangers to this proceeding.

Hearing Examiner Kolb: The motion will be denied. The evidence will be received subject to a motion to strike by Goodyear.

1969 By Mr. Kelaher:

Q. What brand of batteries do you currently handle—new batteries?

A. Bowers.

Mr. Thompson: Mr. Kelaher, unless you are going to proceed further and identify the Firestone salesman about whom you were talking, I move to strike that part of the testimony because it is not sufficiently specific to meet the standards set up in this proceeding.

Hearing Examiner Kolb: Can you identify the salesman?

The Witness: I don't remember his name. I looked up the bill, but Firestone doesn't seem to think enough to put his name on that bill.

By Mr. Kelaher:

Q. Was he the Firestone salesman with whom you had contacts at that time?

A. Yes. The district office salesman.

Q. Was he from the Baltimore district office?

A. Baltimore district office.

Q. Of Firestone Tire and Rubber Company?

A. Yes.

Q. Where did the conversation take place?

A. At our location. At that time we were at 630 North Franklintown Road, at the Atlantic station.

1970 Q. And I think you stated the approximate time. Would you give us the approximate time of the conversation again?

A. I would guess about—I would say about two and a half months after I bought the tires in October.

Mr. Thompson: I renew my motion to strike on the grounds it is impossible for Atlantic Refining Company, respondent in this case, to identify the salesman of a non-respondent about whom this witness is talking.

Hearing Examiner Kolb: Was this conversation with Atlantic?

Mr. Kelaher: This conversation was with a Firestone representative. At the time Firestone had, as the record will show, a sales commission plan agreement with the Atlantic service stations.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Thompson: You understand the basis for my objection, sir. I think I have made it clear.

Hearing Examiner Kolb: They can determine who the local salesman was at that time in this particular locality if that becomes necessary.

Mr. Thompson: But Firestone is not a respondent in this case.

Hearing Examiner Kolb: But Atlantic is.

Mr. Thompson: Yes, sir.

1971 Hearing Examiner Kolb: All right.

By Mr. Kelaher:

* * * * *

1983 Q. Did you at one time call on a Mr. Gabriel Tydings, an Atlantic dealer, at Clifton and Denison Streets in Baltimore?

A. Yes.

Q. During what period did you solicit tire and 1984 battery business from Mr. Tydings?

A. I guess that was during 1953 and 1954.

Q. Did you have any conversations with Mr. Tydings during that period concerning his purchases of TBA from you?

Mr. Thompson: Could we have the location of the station?

Mr. Kelaher: I gave it. Clifton and Denison Streets, Baltimore.

The Witness: Yes, from time to time he and I had conversations regarding TBA.

By Mr. Kelaher:

Q. Did these conversations take place during the period that you just mentioned, 1952-53, or whatever you mentioned?

A. I did business with Tydings, I guess, for about four or five years.

Q. Beginning when?

A. It could have been as early as 1951. In fact, it was.

Q. What brand of tires and batteries were you handling during this period when you were soliciting tire and battery business from Mr. Tydings?

A. I had both Lee and Firestone tires, and Lee and Bowers batteries.

Q. Did you have any conversations with Mr. Tydings during that period 1951 and four years thereafter? Four or five years thereafter?

1985 A. Yes. He told me that he—

Mr. Thompson: Wait a minute.

By Mr. Kelaher:

Q. Just say Yes or No.

A. Yes, period.

Q. Please tell us the substance of your conversation. First let's fix the approximate date of the conversations. If there were more than one, so state.

A. I would say about the summer of 1954 he told me that he couldn't—he wouldn't be able to—

Q. What did he tell you at that time?

A. He told me—

Mr. Thompson: Could we have the place and the usual specificity?

By Mr. Kelaher:

Q. Where did this conversation take place in the summer of 1954?

A. At Tydings' location, at his station at Clifton and Denison.

Q. Now, state to the best of your knowledge the conversation that took place between you and Mr. Tydings.

A. He said he would no longer be able to buy merchandise from me; that this Atlantic salesman was applying pressure; that he would have to stock merchandise bought from them only.

1986 Q. What brand of merchandise was that?

A. Firestone tires and batteries. I think the battery line was.

Q. You, at that time, were handling Firestone tires, also, you testified, is that correct?

A. Yes.

Mr. Correa: I make the usual motion with respect to this testimony on behalf of Goodyear.

Hearing Examiner Kolb: It will be received, subject to a motion to strike by Goodyear.

By Mr. Kelaher:

Q. From whom did he purchase his Firestone tires and batteries? Who was his supplier of Firestone tires and batteries other than you?

Mr. Thompson: If you know, of course.

By Mr. Kelaher:

Q. If you know.

A. Atlantic. Do you want to name the—

Q. The supplier.

A. The supplier for Atlantic was Johnson—

Mr. Thompson: Do you know from whom this particular man bought? That is the question.

The Witness: Wait a minute. Johnson didn't handle Firestone. So all I know is Atlantic.

1987 By Mr. Kelaher:

Q. Are there Firestone stores in Baltimore?

A. Yes, sir.

• • • • •

By Mr. Kelaher:

Q. Up to this time, at the time of this conversation, what products were you selling to Mr. Tydings?

A. I was selling him Lee tires, Vanderbilt tires, Lee and Bowers batteries.

Q. Had you been able to sell Firestone tires to him?

A. Yes, we sold a few to him.

Q. After this conversation did your volume of sales increase, decrease or remain the same with respect to sales of tires and batteries to Mr. Tydings?

A. My sales went down with Tydings.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will recess until 1:30.

(Thereupon, at 12:46, the hearing was recessed, to reconvene at 1:30, this day.)

1988 Afternoon Session.

(1:45 p. m.)

Hearing Examiner Kolb: The hearing will come to order.

JOSEPH E. SCHEINER resumed the stand and, having been previously duly sworn, testified as follows:

Cross-Examination by Mr. Correa.

Q. Mr. Scheiner, you have told us you have a recapping business?

A. Yes, sir.

Q. And that you also distribute tires and batteries?

A. Yes.

Q. And do you also have a service station business?

A. Yes.

Q. What gasoline do you pump?

A. We formerly had Atlantic. Now we have Crown.

Q. How many employees do you have?

A. Right now there are four. There were five at that time.

Q. Which time?

A. During the period covered by this inquiry.

Q. What period do you have in mind?

A. Up until two and a half years ago.

1989 Q. Two and a half years ago. And in the last two and a half years you have had four employees, is that right?

A. That's right.

Q. Is that in your whole operation, station and recapping?

A. We don't do much station work.

Q. How many of your people are employed in the recapping work?

A. Two.

Q. How much recapping plant do you have?

A. We have four molds. Four recapping molds, two vulcanizing molds, two spotters.

Q. How many men do you have engaged in that work?

A. Two.

Q. Do you have a man to look after your pumps?

A. Yes. One man.

Q. What does your fourth man do?

A. I am he.

Q. And you do—

A. Outside.

Q. Outside work?

A. Yes.

Q. Do you solicit recapping business?

A. Yes.

Q. And you sell tires and you sell batteries?

A. Yes.

1990 Q. What part of your business, in terms of let's say your annual dollar volume, is in recapping?

A. About thirty to—around thirty thousand.

Q. I was thinking more of a percentage than I was of an absolute figure.

A. About—I guess it would run around 65 to 70 percent. It would be more than $30,000.

Q. What part of your business, percentage-wise, would be in your pumping operation, or service station operation, let's say?

A. Maybe ten percent.

Q. And the remaning twenty percent would be—

A. In new tires and batteries.

Q. —in new tires and batteries?

A. Yes.

Q. That activity is carried on principally by yourself?

A. Yes.

Q. Do you operate a truck?

A. Yes.

Q. One truck or more than one?

A. One. I handle one that I—it is a station wagon.

Q. And you drive that yourself?

A. I drive that. And I have a pickup truck in addition to that. One of the fellows in the shop uses that for quick deliveries and pickups.

1991 Q. You spoke of selling to service station dealers on a stocking basis?

A. Yes.

Q. Is it correct, sir, that nowadays at least—by "nowadays" I mean post-World War II, really—most service stations order TBA merchandise pretty much from week to week on a basis of keeping their inventory up to whatever size they have in mind as the proper inventory of the particular item involved?

A. Well, it varies according to the operator, I would say. Some of the smaller fellows won't stock any tires, new tires.

Q. They just don't stock at all?

A. Some won't.

Q. Those—

A. They don't have the money in lots of cases.

Q. Those fellows, I take it, pretty much buy tires on a spot basis as they have need for them?

A. Yes. Of course there are others who stock considerably.

Q. What would you say the average is?

A. It runs from nothing all the way up. There is no limit.

Q. What would you say the average is?

A. Esso dealers buy in lots of a hundred tires at a time, under their setup.

Q. Hasn't the—

A. Others less.

1992 Q. What I was getting at was this: Having the stocking habits, if we may call them that, of service stations, been affected by the introduction after World War II of these wagon peddlers, I believed they are called in the trade?

A. I see a number of them around. I wasn't in it before the war.

Q. As a matter of fact, they are a part of your competition, aren't they?

A. They handle mostly accessories, which I don't go into. None of them handle new tires that I know of. I don't know of any of them handling batteries. And recapping, none of them do.

Q. I wasn't including or thinking of recapping in this connection. You don't know of any wagon peddlers who deal in batteries?

A. I don't know of any.

* * * * *

1993 Q. Do you extend credit terms to any of your customers for tires or batteries?

A. Some few. Not many.

Q. Generally—

A. COD almost to everybody.

Q. Generally you deal on a COD basis?

A. Yes.

Q. Do you generally make the sale and delivery of the goods at the same time?

A. No. I will take the order and deliver later. Next day usually, if it is a stock item.

* * * * *

1995 Hearing Examiner Kolb: Any questions, Mr. Thompson?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Proceed.

By Mr. Thompson:

Q. Mr. Scheiner, you have a number of business enterprises, haven't you, sir?

A. What are you referring to?

Q. Until 1955 didn't you own a bottling company?

A. Yes.

Q. Also, during the same period, weren't you a partner in a store enterprise? Grocery store?

A. Not during the same period.

Q. Not during the same period, but you are at the present time?

1996 A. No.

Mr. Kelaher: Your Honor, Mr. Thompson has asked me to fix dates throughout our examination. I think maybe we should have some dates fixed as to this bottling plant.

Mr. Thompson: The date was fixed, Mr. Kelaher. I will ask it more specifically.

By Mr. Thompson:

Q. You sold the bottling plant in 1955, about that time?

A. During 1955.

Q. Then didn't you go into the store business after that?

A. No, I was never in the store business.

Q. Never?

A. That is, after that.

Q. When were you in the store business?

A. One of my partners bought the store.

Q. So that you personally had no interest in it?

A. That's right.

Q. As I recall your testimony, you were an Atlantic lessee at 630 North Franklintown Road?

A. Yes, sir.

Q. You had that station under lease from Atlantic for about ten years, did you not?

A. About, just about.

Q. From 1946 until the end of 1955?

A. Yes.

1997 Q. During that period was that Atlantic station your business headquarters?

A. I would say better than fifty percent of my time. At least fifty percent.

Q. Is that the point from which you operated your tire and battery distributor business?

A. Yes, sir.

Q. And also your recapping business?

A. Yes, sir.

Q. You mentioned on your direct that before 1951 you had been a Lee dealer?

A. Yes.

Q. As a matter of fact, you continued to be a Lee dealer—

A. We are still friendly with Lee.

Q. I didn't finish my question, sir.

A. All right.

Q. You continued to be a Lee dealer throughout the period of your lease with Atlantic Refining, didn't you?

A. Yes, sir.

Q. The station at North Franklintown Road during all of your tenancy had a Lee sign on it, did it not?

A. Yes.

Q. You were also, I think, a distributor for Vanderbilt tires?

A. Yes.

1998 Vanderbilt, by the way, is one of the Dunlop brand names, is it not?

A. Yes, sir.

Q. You also had a Vanderbilt sign on your Atlantic property, did you not?

A. I don't think so. I don't remember it.

Q. You were selling, in addition to Lee batteries, also Bowers batteries, were you not?

A. Yes.

Q. And you did have a quite large Bowers sign on the property, did you not?

A. We had a Bowers sign displayed.

Q. And those signs were displayed throughout the entire tenancy?

A. Yes.

Q. Confining my questions at the moment to the Atlantic station at North Franklintown Road, what brands of tires did you sell at retail to your customers at the station?

A. Whatever we had on hand—Firestone, Lee, or any other brand.

Q. Primarily Lee, wasn't it, at the station?

A. I wouldn't say so.

Q. Which did you find the best brand from the point of view of customer acceptance?

Mr. Kelaher: Objection, your Honor.

1999 Hearing Examiner Kolb: I don't think that is material. I will sustain the objection.

Mr. Thompson: I think it is very material, sir. Here is a man who is offering four brands of tires at his station. I would like to know which one he found—

Hearing Examiner Kolb: Suppose one or the other has a better acceptance. What has that to do with the proceedings in this case?

Mr. Thompson: I shall argue that point in my brief.

If your Honor doesn't think it is relevant, I will withdraw the question.

Hearing Examiner Kolb: I don't think it is relevant.

Mr. Thompson: I think it is relevant.

Hearing Examiner Kolb: All right. I will let the witness answer.

The Witness: Frankly, I paid little attention to retail sales. That was up to the man inside to push whatever we wanted to get rid of.

By Mr. Thompson:

Q. Do you mean your employees handled the sales at the station?

A. Yes.

Q. At that station you sold Bowers batteries at retail to your customers, didn't you?

A. Yes.

2000 Q. And also Lee batteries?

A. No.

Q. No Firestone, either?

A. I don't think we ever handled Firestone batteries.

2001 Q. I am not now talking about your wholesale business but didn't you sell accessories at retail at the Atlantic station?

A. Yes, we did.

Q. And there was never at any time any Firestone accessories, were there?

A. No. That was part of our understanding when we took it over, that we would not allow Atlantic to pressure us regarding anything we sold.

Q. And they never did, did they?

A. No, sir—Yes.

Q. Tell us about it.

A. After we took on the Firestone line, Claude Bishop told me in his office—

Q. Who is that?

A. Claude Bishop, the manager at that time.

Q. The manager of whom?

A. The local manager for Atlantic. He asked me to stop selling to Atlantic stations; stop selling Firestone tires to Atlantic stations. As far as pressure at the station was concerned, he never tried to apply any.

Q. As a matter of fact, for retail use at your station you never really bought any Firestone, did you, during the entire time that you were lessee of Atlantic?

A. We bought Firestone tires. Does that answer it?

We bought Firestone tires.

2002 Q. For sale at the station or for distribution to other service stations?

A. Does it matter whether we bought them for—why should we differentiate between what we sell at retail or wholesale?

Q. Sir, if you will just be kind enough to answer the question—

A. We never felt that—

Q. I would be delighted. You never did sell Firestone tires at retail at the station, did you?

A. We sold some.

Q. Very few?

A. I would say less than Lee.

Q. Who was your Atlantic salesman at your station?

A. The first man I remember is Ehrlich. This gentleman over here was a salesman at one time.

Q. Do you mean Mr. Duckworth?

A. Mr. Duckworth was at one time.

Q. Was Mr. Lou Miller ever your salesman? Do you remember him?

A. Lou Miller?

Q. Yes.

A. I remember the name, yes.

Q. During the period 1951 to '55 wasn't Lou Miller your salesman?

A. Very likely was.

2003 Q. And then he was succeeded by Mr. Duckworth?

A. That is very likely true.

Q. How familiar are you with the Clifton and Dennison Station which you referred to this morning as the Tydings Station?

A. I know there has been—for a while there was a partnership. Now, Tydings is out. Does that answer your question?

Q. In part. You testified, as I recall your direct, that you sold Mr. Tydings at that station beginning in 1951 for a period of about five years?

A. We did, but I wouldn't say the beginning of 1951 for five years. I don't know. I would say we sold him for about five years. I don't remember when we began—

Q. What—

A. To be exact.

Q. What products did you sell Mr. Tydings during the period you were selling that station?

A. We sold him, as I stated before, Firestone and Lee tires, Lee and Bowers batteries, at one time or another.

Q. Do you know when Mr. Tydings became the leasee of that station?

A. I know it was after Joe—

Q. Perhaps, I could refresh your recollection. Was it about January, 1951?

Mr. Kelaher: Just a moment. What is the pending question? I didn't catch Mr. Thompson's question.

2004 Mr. Thompson: When Mr. Tydings became a leasee of the station at Clifton and Dennison.

By Mr. Thompson:

Q. About January 1951?

A. It sounds about right.

Q. Do you recall that Mr. Tydings gave up his lease and left that station in 1953?

A. You may be right.

Q. Do you recall that?

A. I remember that he went out. He went into a partnership with Wells before he left, and then Wells took over completely. As far as the number of years that he was in there, five years may be too long.

Q. Would it refresh your recollection if I suggested to you that the partnership with Mr. Wells was formed about January 1, 1954, and that the two men went back to the station together at that time?

A. I didn't know Wells was a partner before 1951. Is that what you said?

Q. I said 1954.

A. I know that they were partners around that time, yes.

Q. Then, you know that Mr. Tydings dissolved the partnership and left the service station business.

A. I know he did.

Q. About when would you say that was?

2005 A. I would say it was just under a year after they formed the partnership. Just less than a year, I think.

Q. Sometime in 1954?

A. Yes.

Q. You testified this morning to a conversation that you had with Mr. Tydings. I wonder if you could a little more accurately place the date of that conversation?

A. Well, it was before the partnership was—it was before the partnership went into effect, when Tydings was

operating with his son, which would place it very likely in 1953.

Q. And about what time of year was it?

A. I would say in the fall.

Q. In the fall of 1953?

A. Fall of 1953.

Q. I thought we had established that in the fall of 1953 Mr. Tydings wasn't in the service station business at all; that he had left the station. Are you sure it isn't Mr. Wells you had talked to or somebody else?

A. No. It was Tydings.

Mr. Kelaher: Your Honor, I suggest that that question is not in accord with Mr. Thompson's chronological history, as I understand it. I think it is an unfair and improper question.

Hearing Examiner Kolb: The objection will be overruled.

2006 By Mr. Thompson:

Q. Do you actually have a recollection of this conversation? Can you picture in your mind?

A. Yes. I know that several times, we had several conversations.

Q. I am now referring to the conversation about which you testified this morning. I would like you to tell us the circumstances that led up to this a little more fully, precisely what was said by both of you.

A. He said he had been—

Q. No, the circumstances that led up to it. Did you go to see him to solicit or what?

A. Yes. I made regular calls on him. At least once a week. And during one of my regular calls I asked him about filling in what he had sold. He said he wouldn't be able to, that his salesman had gotten after him about stocking.

Q. Do you know who his saleseman was?

A. I don't remember who he was. It could have been Lou Miller.

Q. It was Lou Miller, wasn't it?

A. It could have been.

Q. Your station is fairly close—the Atlantic station which you had is fairly close to what you called the Tydings station.

A. Yes, sir.

Q. Didn't you ever see Mr. Miller at the Tydings station?

2007 A. Yes, I did.

Q. Then, the salesman was Mr. Miller, wasn't it?

A. Yes.

Q. The Tydings salesman was Mr. Miller, wasn't it?

A. Yes.

Mr. Kelaher: Your Honor, has any time been specified? I understand there were a number of salesmen in that area through the years. Mr. Thompson has named some.

The Witness: I think he had a fellow named Reilly at one time, too.

By Mr. Thompson:

Q. I am trying to place the Atlantic salesman at the time of the conversation that you said you had with Mr. Tydings. If you place that conversation in 1953, my specific question is whether Mr. Miller wasn't both your salesman at your own station and Mr. Tydings' station during that year.

Mr. Kelaher: Your Honor, it seems to me that that is a matter of record with the number of salesmen—

Mr. Thompson: I am testing this man's credibility, Mr. Kelaher. Please don't interrupt.

Hearing Examiner Kolb: He can answer if he knows.

Mr. Kelaher: If he knows.

The Witness: Yes, he was.

By Mr. Thompson:

Q. When Mr. Tydings said to you that Miller
2008 was trying to pressure him into buying Firestone or something to that effect—is that about what he said?

A. He said he couldn't stock my merchandise. That was the gist of it.

Q. Who said that?

A. Tydings. Tydings told me that he would have to discontinue stocking my merchandise.

Q. Is that all he said?

A. And if he wanted any, he would have to call on either—either get us to deliver or come down and pick it up himself.

Q. Is that all he said?

A. He said he didn't want to—

Q. In other words, have you repeated the entire conversation?

Mr. Kelaher: Just a minute. He hasn't completed his answer.

The Witness: I don't recall what else you might want me to bring out here.

By Mr. Thompson:

Q. I don't care what you bring out. I am just trying to get the facts, Mr. Scheiner.

Hearing Examiner Kolb: Read the last question to the witness.

(Question read.)

The Witness: He very likely said Atlantic wanted him to handle Firestone from them.

2009 By Mr. Thompson:

Q. Was Atlantic Refining Company to the best of your knowledge the supplier of Firestone to the Tydings station?

A. Yes, I think so.

Q. Was Atlantic Refining Company the supplier of Firestone to your station?

A. No. We were handled through the district office of Firestone.

Q. Did Mr. Tydings mention who in Atlantic wanted him to handle Firestone? Did he mention Mr. Miller or anybody by name?

A. He might have. I wouldn't say Yes or No. Very likely he was referring to Lou Miller. I wouldn't know for sure anymore.

Q. Did you believe what Mr. Tydings said to you? Or did you think he was giving you the brush-off?

A. I believe him.

Q. In spite of the fact that you had never had any pressure on you at your own Atlantic station by anyone?

• • • • •

2010 Mr. Thompson: May we have about a minute's recess?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Mr. Thompson: I have no further questions, your Honor.

Mr. Kelaher: I have maybe one or two.

Redirect Examination by Mr. Kelaher.

Q. Mr. Scheiner, in selling Firestone tires to Mr. Tydings, Lee tires and Lee and Bowers batteries, how did your prices compare with those of competitors?

A. I could sell him Firestone tires at just about the same price. I could give a little better price on Lee tires.

Q. Than on Firestone?

A. Yes.

Q. With respect to Lee and Bowers batteries, how did your prices compare with other brands of batteries?

A. They were lower prices. The Lee was about, I would say, around the same.

Q. The same as—

A. The same as Firestone. But Bowers was less.

* * * * * *

2011 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Scheiner. Thank you very much for coming down.

(Witness excused.)

Hearing Examiner Kolb: Let's take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

HOMER AUGUST SANDER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Homer August Sander, Bayside Beach, Pasadena, Maryland.

2012 Q. Are you associated with the Bowers Battery and Spark Plug Company?

A. I am the branch manager of the Baltimore division.

Q. How long have you been with the Bowers Battery Company?

A. Since 1949.

Q. Did you begin with Bowers Battery here in Baltimore?

A. In the City of Baltimore as a salesman on the street.

Q. How long did you continue as an outside salesman?

A. To 1952.

Q. In 1952 what duties did you assume?

A. Commercial sales.

Q. When did you become the branch manager?

A. 1954.

Q. When did you cease being an outside salesman altogether?

A. February, 1952.

Q. During the period 1949 to 1952 did you call on trade in the Baltimore metropolitan area?

A. Service stations and garages.

Q. What products does your company sell?

A. Storage batteries.

Q. Do you have a full line, short line, or what type of line?

A. We have a complete line of batteries. Wet and dry storage batteries.

Q. How do the prices on Bowers batteries compare with the prices of other sellers of batteries in the metropolitan Baltimore area?

A. Well, we are much lower than a majority of the brands that are on the market due to our operation.

Q. Is Bowers Battery and Spark Plug Company a manufacturer?

A. We are a manufacturer.

Q. And this is a factory branch?

A. This is a company-operated branch.

Q. During the period 1949 to date has there been an increase, decrease, or has the sales volume remained the same on the sale of Bowers batteries to Atlantic service stations?

Mr. Thompson: That is objected to, your Honor. The record very clearly shows that Atlantic was not on a sales commission plan until sometime in 1951.

By Mr. Kelaher:

Q. I will amend that to 1951 to date. During the period 1951 to date has there been an increase, decrease, or has the sales volume remained the same with respect to the sale of Bowers batteries to Atlantic service stations?

A. There has been a decrease as far as our branch operation is concerned.

Q. I am talking about in the metropolitan Baltimore area?

A. Yes, sir; metropolitan area of Baltimore.

Q. And what has been the percentage of decrease during that period?

2014 A. Taking in general, including all—

Q. I am talking about Atlantic service stations.

A. One hundred percent. We don't have any.

Q. In or about 1951, did Bowers branch sell to any Atlantic service stations in the metropolitan Baltimore area?

A. From 1949 through '51 we did.

Q. Approximately how many, do you recall?

A. I recall five at that time.

Mr. Thompson: I move the answer be stricken because it covers a period when Atlantic was not under the sales commission plan.

Mr. Kelaher: He said through 1951.

Mr. Thompson: Excuse me. He didn't. He said 1949 through '51, didn't you?

The Witness: Yes, sir.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Thompson: Your Honor understands that he is talking about 1949 and 1950?

Hearing Examiner Kolb: I understand he is attempting to show the situation before and after the institution of the sales plan. I think it is proper.

Mr. Thompson: There has been so much confusion I didn't understand. Did he say he had five Atlantic accounts?

The Witness: Approximately five.

2015 By Mr. Kelaher:

• • • • •

2018 By Mr. Thompson:

Q. Mr. Sanders, there is one thing I don't understand about your method of distribution which I am sure was not brought out?

A. All right, sir.

Q. Back in 1949, '50 and '51, had your branch sold direct to service stations?

A. Yes, sir.

Q. Do you sell direct to service stations today?

A. We try to. But we are not having any luck.

Q. How many distributors do you have in the Baltimore area?

A. What do you classify as a distributor.

Q. Jobbers, wholesalers.

A. As far as I can recall, two.

Q. Who are they?

A. Baltimore battery and S&S tire.

Q. How many Atlantic accounts does the Baltimore battery have?

A. I am not familiar with their records.

Q. How many Baltimore accounts—what is the name of the other distributor?

A. S&S tire.

Q. How many do they have?

2019 A. I don't know. You should ask those gentlemen. They run their business and I run mine.

Q. I am asking you questions now and you can just answer them.

Mr. Kelaher: Just answer the questions.

By Mr. Thompson:

Q. Have you any idea how many Atlantic Stations these two distributors have?

A. No, sir, I do not.

Q. You know mighty well it is an awful lot more than five, don't you?

A. They may a[illegible] they may not: I don't know.

Q. Is thirty about right?

A. I wouldn't know, sir.

Q. Don't you know what your distributors do in this town?

A. No, sir; we have no means of getting to their records.

Mr. Thompson: That is all.

By Mr. Correa:

Following Testimony Taken At Washington

2034 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Edwards.

Mr. Correa: Your Honor please, before this witness is sworn, I should like to put this, I hope brief statement, in the record. We have been put on notice of certain facts which indicate to us that if the present plans of counsel supporting the Complaint in this case and in another case are carried through, we will be deprived of a fair hearing within the significance of that term under the Administrative Procedure Act as well as the appropriate authorities defining our right to a fair hearing.

The facts to which I allude are substantially these: As I understand it, this witness and he may be only an example of this procedure, I don't know that, I can only speak of the facts of which I am now on notice officially; this witness, Edwards, is to be called to testify in this case and also this afternoon, I am told, in the Shell-Firestone Case,

also being heard by your Honor as trial examiner on the identical issue in each case, the issue being an issue of fact as to the nature and operation of the Shell-Goodyear Sales Commission Plan, which is that issue in each of these two cases.

Now it seems to us, if your Honor please, that is the situation which is, if one may call it that, pregnant with error because it seems to us that once this witness
2035 testifies on the identical factual issue in this other case where we are not present, where his testimony is as to us in every technical sense wholly ex parte, as much as if your Honor were to take his testimony in your Honor's Chambers, we have been seriously prejudiced and we feel indeed prejudiced to the point where we have been denied some of the essential prerequisites of a fair hearing as contemplated by Section 7 and 8 of the Administrative Procedures Act.

I have in mind, among other requirements, particularly Section 7, Sub-division C, which reads in part, "Every party shall have a right to present his case by defense of oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

Now obviously we can have no cross-examination of this witness as to what testimony he may give on the issue in our case, mind, your Honor, in this other hearing before your Honor this afternoon. And similarly, we have no opportunity—

Hearing Examiner Kolb: (Interposing.) Since you are not a party to the other case, it would not affect you.

Mr. Correa: If your Honor please, with great respect, that is not entirely true. I speak in this brief outline of argument because I am not going to argue the point extensively, as trial examiner, I'm not speaking of your Honor

individually or personally, but simply of the general-
2036 ity of hearing officers or trial examiners and it seems to me it is completely unrealistic to suppose that whatever consciousness, and I am sure your Honor and all the other examiners of this agency bring to their appointed task the highest possible degree of consciousness, but with whatever consciousness, I do not see how realistically a trail examiner can so compartmentalize his mind as to separate out in it the impressions he gains of the witness, of his testimony, of his credibility, all these things in one hearing, and apply that only in one case, and do similarly in another hearing where the witness testifies in each case on the identical issue, identical factual issue is involved in each case.

Now, if your Honor please, it seems to us this contemplated procedure, as I say, does deprive us of substantial rights and we feel it is our duty to note that fact on the record at this moment because it is precisely at this moment that we are for the first time on official notice that this procedure is being followed and accordingly, we do note it and will, of course, make such appropriate motions and objections as whatever ensues in these proceedings may warrant, but I think our duty is clear and plain to note what is happening before it happens and while there still exists opportunity to remedy it.

* * * * *

2253 Afternoon Session.

(2:00 P. M.)

Hearing Examiner Kolb: You may proceed.

Mr. Kelaher: Mr. Examiner, the following stipulation has been agreed upon by counsel for respondent Atlantic, and counsel supporting the complaint. Counsel for respondent, the Atlantic Refining Company, and counsel supporting the complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the complaint in this proceeding and asked the following questions, such witnesses would testify as follows; and that the following may be accepted by the Examiner and the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony.

The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

Answers Submitted by the Atlantic Refining Company in Response to F. T. C. Request for Additional Information Concerning Certain Exhibits in the Matter of the Goodyear Tire & Rubber Company, The Atlantic Refining Company, Corporations Docket No. 6486

2254 CX 84-B (Initials JVP)

Q. "Identify Joseph VanPelt."

A. In August 1952, Joseph VanPelt was Assistant to the Manager of Gasoline, Naphtha and Solvent Section, Domestic Marketing Department, Atlantic.

CX 102 A-D

Q. "Identify T. E. Kelley and K. M. Ford."

A. In August 1949, T. E. Kelley was Director, Organization and Methods Department, Atlantic.

In August 1949, K. M. Ford was Sales Industrial Engineer, Industrial Engineering Division, Atlantic.

CX 110

Q. "Identify G. H. Milligan."

A. In March 1950, G. H. Milligan was Chief Accountant, Chief Accountant's Office, Atlantic.

CX 114 A-D

Q. "Identify G. H. Milligan."

A. In May 1950, G. H. Milligan was Chief Accountant, Chief Accountant's Office, Atlantic.

CX 138

Q. "Identify W. J. Butler."

A. In June 1951, W. J. Butler was Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

2255 CX 139 A-B

Q. "Identify W. J. Butler."

A. In January 1952, W. J. Butler was TBA Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

CX 154

Q. "Identify R. W. Reed."

A. In January 1951, R. W. Reed was Administrative Assistant, Office of the Vice-President and General Manager of Marketing, Atlantic.

CX 171 A

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 172 A

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 173

Q. "Identify W. C. Hoffman."

A. In July 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 179 I

Q. "Identify W. C. Hoffman."

2256 A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 181

Q. "Identify W. C. Hoffman."

A. In May 1952, W. C. Hoffman was TBA Marketing Coordinator, TBA Section, Domestic Marketing Department, Atlantic.

CX 183

Q. "Identify W. J. Butler."

A. In May 1952, W. J. Butler was TBA Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

2257 Mr. Kelaher: Mr. Examiner, we have entered into another stipulation with counsel for respondent Atlantic whereby it is stipulated and agreed that supplemental data concerning the three market areas designated by counsel in support of the complaint, namely, Philadelphia-suburban district, Wilmington, Delaware district, and Baltimore, Maryland district, may be received in evidence, with notation of the fact that portions of this data apply only to Goodyear, and portions apply only to Firestone. Such data relate to the number of Atlantic dealers in each designated district covered by a form G-1209, broken down by Goodyear supply points with respect to the Philadelphia-suburban district, and the number of Atlantic dealers in

Atlantic's Wilmington, Delaware and Baltimore, Maryland districts covered by form S-757, broken down by Firestone supply points, all data as of June 30, 1956.

(The stipulation follows:)

2258 Number of Atlantic dealers in Atlantic's Philadelphia-Suburban District who, as of June 30, 1956, were covered by a Form G-1209, broken down by Goodyear supply points:

Supply Point	Atlantic Dealers Covered by Form G-1209 Lessee Dealers*	Contract Dealers*
Goodyear Tire and Rubber Co., Philadelphia, Penn. (District Office)	2	6
Harvey W. George, Philadelphia	45	49
F. C. Glenn, Philadelphia	52	42
Ellwood E. Kieser, Philadelphia	40	116
E. F. Miller, Philadelphia	39	19
Goodyear Tire and Rubber Co., Jenkintown, Penn. (Goodyear Store)	2	4
Goodyear Tire and Rubber Co., Norristown, Pennsylvania (Goodyear Store)	8	1

* Includes 11 lessee dealers and 5 contract dealers classified by Goodyear as associate dealers, who had two alternate supply points; and 3 contract dealers who, having chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, dealt with the Goodyear District Office in the former capacity and with a different supply point in the latter capacity.

Does not include 61 customers of Edward Parris and 54 customers of Frank Hagan, both of whom are Atlantic supplying dealers.

2259 Number of Atlantic dealers in Atlantic's Wilmington, Delaware, District who, as of June 30, 1956, were covered by a Form S-757, broken down by Firestone supply points:

Supply Point	Atlantic Dealers Covered by Form S-757	
	Lessee Dealers*	Contract Dealers
Buchanan's Firestone Store, Dover.....	11	13
Buchanan's Firestone Store, Milford....	8	7
Easton Sales Company, Easton, Md.....	4	0
Firestone Tire & Rubber Co., Baltimore, Maryland (District Office)	1	1
Firestone Store, Salisbury, Md.....	16	9
Firestone Tire & Rubber Co., Philadelphia, Pennsylvania (District Office)...	1	2
Firestone Store, Wilmington	47	19
Laurel Home & Auto Supply, Laurel:....	4	1
Hitchen's Auto Service, Ridgely, Md....	2	1

* Includes one lessee dealer classified by Firestone as an Associate Dealer who had two alternate supply points, and one lessee dealer who, having chosen to be both a Firestone Dealer and a Firestone Associate Dealer, dealt with the Firestone Philadelphia District Office in the former capacity and with a different supply point in the latter capacity.

Does not include at least one customer of John Salisbury, who is an Atlantic supplying dealer.

2260 Number of Atlantic dealers in Atlantic's Baltimore, Md. District who, as of June 30, 1956, were covered by a Form S-757, broken down by Firestone supply points:

Supply Point	Atlantic Dealers Covered by Form S-757 Lessee Dealers*	Contract Dealers*
Al's Tire Service Havre de Grace	5	1
Automotive Supply Co., Somerset, Pa.	6	8
Dezen's, Cumberland	6	5
W. F. Flood & Son, Annapolis	1	1
Firestone Tire & Rubber Co., Baltimore	0	3
Firestone Store, Martinsburg, West Virginia	1	2
Firestone Store, Howard Street, Baltimore	59	12
Firestone Store, Washington, D. C.	9	0
Firestone Store, Edmondson Village, Baltimore, Md.	1	1
Firestone Store, Wilmington, Del.	1	4
Firestone Store, Silver Springs	1	0
Jack's Tire Service, Baltimore, Md.	2	0
Southern Maryland Oil Co., LaPlata	4	0
S. K. Osborne, Reisterstown	1	0

* Includes 17 lessee dealers and 18 contract dealers, classified by Firestone as associate dealers, who had two alternate supply points.

2308 400 Commerce Street
Baltimore, Maryland
Monday, 30 June 1958

Met, pursuant to notice, at 10:00 a. m.

Following Testimony Taken At Baltimore

2309 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, I wish to call to the stand Mr. Holland Hathaway for a few preliminary questions. I plan to call Mr. Hathaway as a substantive witness at a later stage of the proceeding, but not today.

Mr. Hathaway?

Mr. Kelaher: Mr. Examiner, before we take testimony from witnesses, I think at our last hearing there was a rule requested by counsel for respondents for exclusion of witnesses. I think we should have the same arrangement now that respondents are beginning to put in their defense.

Mr. Thompson: Mr. Examiner, may I speak to that point for a moment?

In the case of witnesses from the Atlantic Refining Company who are in sales positions, it would save a lot of time if they were permitted to be present in the courtroom and hear the testimony of their predecessor witness. If that is not done, it will be necessary, when I come, for example, to examine a substantive witness who is reporting to Mr. Hathaway, the district sales manager here, to ask him a lot of questions about subject matter which would be merely corroborative but present essential background.

I think it would shorten the hearing a lot if, when 2310 I come to those witnesses, I could ask them with respect to a number of more or less formal topics, whether they had heard the testimony of their predecessor, and whether he had correctly stated the information, so

far as they knew. If we do it the other way, I think it will cause a lot of confusion and prolong the record.

Mr. Kelaher: Mr. Examiner, I think, as I understand counsel, he has no objection to excluding dealers; is that correct? Atlantic dealers who will be called?

Mr. Thompson: Mr. Kelaher, this of course is a public hearing. I know of no law or rule or policy of the Commission which excludes witnesses from a public hearing. It doesn't make any difference to me which way you do it. But it does seem to be an odd procedure.

Mr. Kelaher: An odd procedure? I would like to call your attention to the fact that the same request was made by counsel for respondents and we were faced with the problem of excluding witnesses, and there was quite a furor raised when you found one in here one day that we didn't know about.

Mr. Thompson: Not by me. At no stage of this proceeding have I ever moved that any government witness be excluded from the hearing room while testimony was being taken.

Mr. Kelaher: It is true it was counsel for respondent Goodyear, but the rule applied just the same.

Mr. Mason: May I suggest that there is a distinc-
2311 tion now because this is the only air-conditioned room on a very hot summer day. It would be a very great burden on the witnesses to keep them out in this hot weather.

Mr. Thompson: What is your objective? Would you state it for the record? What is the reason back of your motion?

Mr. Kelaher: I am not so sure that you had to give any reason at the time, but I will give a number of reasons.

Mr. Thompson: I didn't make such motion. I will ask you to state your reasons.

Mr. Kelaher: I would like to talk first about the At-

lantic dealers. I don't think there is any question about the fact that we should have Atlantic dealers excluded.

Now, with respect to Atlantic personnel, where you have the hierarchy in, you have a salesman, a sales supervisor, and you will have a district manager, it seems to me that in all fairness you should have them testify separately and not sitting here listening to what a prior witness has said in order to correlate their testimony. I am not saying that they will, but there is always that possibility.

Mr. Thompson: You understand, of course that that will quite materially prolong the hearings, Mr. Kelaher?

Mr. Kelaher: I will have to take that chance, I guess.

Hearing Examiner Kolb: He will be entitled to
2312 keep one man in to assist in the trial of this case. If Mr. Kelaher insists on it, we will have to exclude the witnesses. I was hoping he wouldn't be too insistent on it in view of the fact it is quite warm outside.

Mr. Thompson: Does your ruling apply to company witnesses as well as dealers?

Hearing Examiner Kolb: Yes. You can retain one man.

Mr. Thompson: May I ask, for my own information, whether this is Federal Trade Commission policy?

Hearing Examiner Kolb: It is the law.

Mr. Thompson: I have rarely run into it, sir, in public hearings. I have no real objection. I am not making an issue of it.

These are purely formal questions. We can put Mr. Varnadore out to suffer if you want to. It won't make a particle of difference to him.

Mr. Kelaher: Mr. Examiner, Mr. Thompson has explained, as I understand it, that Mr. Hathaway will be called on July 2nd—at least he is scheduled to be called on July 2nd. It is my understanding that any cross-examination by me can be deferred until that time. Is that correct?

Mr. Thompson: I don't think I am going to bring out anything you will want to cross-examine on, Mr. Kelaher, But if I do, I suggest that you cross-examine now.

2313 HOLLAND M. HATHAWAY was called as a witness for the Respondent and, having been first duly sworn, testified as follows.

Direct Examination by Mr. Thompson.

Q. Will you state your full name and address?

A. Holland M. Hathaway, 100 Croftley Road, Lutherville.

Q. Mr. Hathaway, you are the Atlantic Refining Company's district manager in the Baltimore district?

A. I am.

Q. I am going to ask you a very few questions about some men who were referred to in the testimony during the presentation by the government of its case.

Do you know a J. W. Varnadore?

A. Yes, sir.

Q. Mr. Varnadore was referred to by one Eugene Savage, a government witness, in the transcript of testimony beginning at Page 1756, and on cross-examination at Pages 1810 to 1812.

Is Mr. Varnadore presently an Atlantic lessee?

A. Yes, sir.

Q. Has Mr. Varnadore been subpoenaed to appear as a witness in this proceeding and to appear today?

A. Yes, sir.

Q. Do you know a Mr. Charles G. McKaig who
2314 was referred to by government witness Elmer C. Lang transcript of testimony 1866 on direct examination, and 1905-1906 on cross-examination?

A. Yes, sir.

Q. Has he been subpoenaed to appear as a witness in this proceeding today?

A. Yes, sir.

Q. Do you know a Mr. William H. Leonard who was referred to by Eugene Savage, a government witness, at Pages 1754 and 1755 on Direct and on cross-examination at Pages 1820 and 1821?

A. Yes, sir.

Q. Has he been subpoenaed to be present today?

A. Yes, sir.

Q. Do you know a Mr. Gabriel Tydings, who was referred to by Joseph Scheiner, a government witness, at Pages 1948 to 1987 on direct examination, and 2004 to 2010 on cross-examination?

A. Yes, sir.

Q. Is he a former Atlantic lessee?

A. Yes, sir.

Q. Do you know what he is now doing?

A. He is a route salesman for Cloverland Dairies, Baltimore.

Q. Has he been subpoenaed to come here today?

A. Yes, sir.

Q. Do you know a Mr. Lester Lewis?

A. I know him.

Q. Was he a former one-time Atlantic lessee?

2315 A. Yes, sir.

Q. Mr. Lewis was referred to by one Elmer Lang at Pages 1868 and 1869 in the testimony. Have you been able to locate Mr. Lewis?

A. Yes, sir.

Q. He is no longer an Atlantic lessee?

A. No, sir.

Q. Has he been subpoenaed to come here today?

A. Yes, sir.

Q. Another man who was referred to in the testimony

by Mr. Elmer Lang was a William T. Batchelor, Pages 1866 and 1867 on direct examination, and 1907 and 1908 on cross-examination. Is Mr. Batchelor presently an Atlantic lessee?

A. No, sir.

Q. Have you made an effort to locate him?

A. Yes, we have.

Q. Were you able to do so?

A. No, sir. We are unable to do so.

Q. You were not able to serve a subpoena upon him?

A. We were not able to locate him.

Q. You don't know where he is?

A. Have no idea.

Q. Have you ever heard of a man named Joseph Hackett, who was referred to by Eugene Savage on direct examination at Pages 1822-1824?

2316 A. Yes, sir. He is a former Atlantic dealer.

Q. Did you make an effort to locate him?

A. Yes, we did.

Q. Did you find out where he is?

A. To the best of our knowledge he is somewhere in Tennessee.

Q. You were unable to subpoena him to be present?

A. That's right.

Mr. Thompson: That is all. Mr. Kelaher, do you have any questions to ask on those subjects?

Mr. Kelaher: I have no questions.

Mr. Thompson: Thank you, Mr. Hathaway. You will be recalled at a later point in the hearing.

I have a few more questions, Mr. Hathaway.

By Mr. Thompson:

Q. When Lester Lewis was an Atlantic lessee, was his station known as the L&S Station?

A. Yes.

Q. Was that at 2607 Gwynne Falls Parkway?

A. That is correct.

Q. We referred a moment ago to a Joseph Hackett. Did he run a station called Joe's Atlantic, 829 Eastern Avenue, Baltimore?

A. That is correct.

Mr. Kelaher: May I have a question?

2317 *Cross-Examination by Mr. Kelaher.*

Q. Do you recall the name of Mr. Lewis' partner, if he had a partner?

A. I believe it was Strauss.

Q. Was it Howard A. Strauss, Jr.?

A. I can't testify as to the name, except Strauss.

Mr. Kelaher: That is all.

(Witness excused.)

Mr. Thompson: Under the motion for exclusion stated by Mr. Kelaher, he stated a supervisory employee of Atlantic might assist me during this case. I designate Mr. Hathaway as that assistant.

J. W. VARNADORE was called as a witness for the respondent Atlantic, and having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: State your name.

The Witness: J. W. Varnadore.

Direct Examination by Mr. Thompson.

Q. Where do you live?

A. 8103 Subet Road, Baltimore, Maryland.

Q. Mr. Varnadore, in this investigation I represent the Atlantic Refining Company. My name is Thompson.

2318 The gentleman who just swore you is Mr. Kolb, who is the Trial Examiner and presiding officer of the Federal Trade Commission in this case. The extremely handsome looking gray-haired gentleman with glasses sitting on your left is my opponent, Mr. Kelaher, who represents the Federal Trade Commission.

Mr. Varnadore, are you an Atlantic lessee service station operator?

A. I am.

Q. Do you have the so-called Edmondson Village Service Center?

A. Edmondson and Swann.

Q. How long have you had that station.

A. About six years.

Q. Since about October 1951?

A. Around that, yes.

Q. Do you have a partner named Joe Wyninger?

A. I do.

Q. Is your station also sometimes known as the Atlantic Service Center?

A. That's right.

Q. Is your telephone number Longwood 6-9764?

A. It is.

Q. Have you, since about 1953, had three-year leases from Atlantic Refining?

A. Right.

Q. What is the term of your lease? Is it three years?

2319 A. It runs three years, yes.

Q. Is this the second time you have had a three-year lease?

A. Yes.

A. There is a shopping center in which your station is located?

A. That's right.

Q. What is the name of the shopping center? Edmondson Village?

A. Edmondson Village.

Q. Before you took a station as an Atlantic lessee about 1951 or so, were you also a service station operator somewhere else?

A. Yes, I had a place on Key Highway, Atlantic.

Q. Was that Key Highway and Light Street?

A. Yes.

Q. About how many years did you have that station?

A. I had that about ten years.

Q. Did you own it, Mr. Varnadore?

A. Yes.

Q. So that you were an Atlantic dealer?

A. That's right.

Q. And did you sell that station about 1951?

A. Yes, I sold the business.

Q. And at that time you took a lease from Atlantic?

A. About a year and a half after that.

Q. When you sold that contract station of yours, 2320 did you have offers from a number of oil companies?

A. Oh, yes.

Q. In addition to Atlantic?

A. That's right.

Q. And you took an Atlantic station as lessee?

A. That's right.

Q. And that is the station which you still have?

A. It is.

Q. When you had your own service station at the Key Highway location, did you handle TBA?

A. Yes.

Q. What kind of a building was it when you had your own station? One story, or two story?

A. It was a two-story building.

Q. So that you had some storage space in it?

A. Oh, yes, plenty of storage.

Q. When you had your own station, what kind of tires were you carrying?

A. Well, I handled practically all tires, you know, most anything, Goodyear, Firestone, U. S., Armstrong.

Q. Did you buy your U. S. tires from Burke-Savage, do you remember?

A. I did.

Q. And your Firestones from the Firestone store?

A. That is right.

2321 Q. And Goodyear from whom?

A. I get them off the dealer.

Q. Plotkin?

A. Yes. B. Plotkin handles tires.

Q. Was there or was there not a tire shortage in those days.

A. Well, there was, you know, right after the war there was. During the war you couldn't get them.

Q. Do you recall how long that shortage lasted?

A. No, I can't, not off-hand.

Q. As late as 1951, would you say?

A. Oh, yes.

Q. Why did you carry Firestone tires at your own station on Key Highway?

A. Well, because I had a few that wanted Firestone. I had some customers that wanted Firestones so I carried Firestones.

Q. Did you find that Firestone had good customer acceptance?

A. Oh, yes.

Q. Were they easy to sell?

A. Yes. Firestone is easy to sell.

Q. Was that true before 1951 and true today? Has it always been true?

A. Well, ain't none of them so easy to sell today.

Q. Getting harder?

A. They are all hard, yes.

Q. When you had your Key Highway station, 2322 what kind of batteries did you handle?

A. Exide, when I quit building by own batteries.

Q. And you built your own batteries for a while?

A. Yes.

Q. Then you took on the Exide line?

A. That is right.

Q. What kind of accessories did you carry at your own station on Key Highway?

A. I carried practically everything, you know, that goes along with a car, the accessories.

Q. Did you have a lot of different suppliers?

A. Yes.

Q. When you took your lease from Atlantic at Edmondson Village, was Atlantic then promoting the Firestone-TBA line?

A. I believe it was.

Q. Do you recall receiving certain letters from Atlantic about its TBA policy?

A. A few weeks ago?

Q. No, over the years.

A. Oh, yes, always get them.

Q. Relating to TBA policy?

A. Well, I didn't read up on it much.

Q. Mr. Varnadore, I am going to hand you two letters which have been marked in this case as exhibits Commission's exhibits 206 and 207, and I will ask you first to 2323 take a look at a letter from Mr. Colley dated August 28, 1952, and ask you whether you remember receiving it as an Atlantic dealer? (Handing to witness.)

A. Yes, I received one of these.

Q. Do you remember receiving another letter in the form of Commission's Exhibit 207 dated June 24, 1955.

This particular letter happens to be signed by a man named Estlow, and if you received one it would have been signed by the regional manager of Atlantic in the Southern Region. I am going to ask you to look at it and see if you remember that form of letter. (Handing to witness.)

A. Yes.

Q. Mr. Varnadore, since you took the Edmondson Village Atlantic station, what kind of tires have you been handling principally?

A. Well, I have handled Firestone and a few other brands.

Q. Would you be kind enough to tell the Examiner your reasons for handling Firestone tires?

A. Well, because it is handy for me.

Q. Explain that, please.

A. Well, there is a Firestone store right in back of me, and it is easy to get—I haven't got the room to carry the stock I like to carry in all sizes, and it comes in handy by the store being back there. That is the reason I carry Firestone. It is easy to get.

2324 Q. In other words, there is a Firestone store just a few doors from your station?

A. Right behind me, yes.

Q. And you had previously handled Firestone at your Key Highway station?

A. Oh, yes.

Q. What had you found with respect to Firestone quality?

Mr. Kelaher: Objection, your Honor. The same question was asked on direct and objection was always raised with respect to any testimony as to quality.

Mr. Thompson: I don't understand the objection, Mr. Kelaher.

Mr. Kelaher: I don't think he is qualified to testify as to the quality of the tires.

Mr. Thompson: I shall rephrase the question, happily.

By Mr. Thompson:

Q. In your experience for many years as a service station operator, what opinion have you reached with respect to the quality of Firestone tires?

Mr. Kelaher: Objection, your Honor. Don't answer until we get a ruling.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Thompson:

Q. Go ahead.

A. I always found the Firestone a good tire.

2325 Q. Do you find public demand for Firestone tires?

A. Well, I guess about the same as any of the rest of them.

Q. About the same as any other name brand?

A. You generally sell yourself when you sell them, you know, to a customer.

Q. Has your own experience with Firestone been good? Firestone tires?

A. Oh, yes.

Q. You don't stock many tires at your present station?

Mr. Kelaher: Objection, your Honor. That is a leading question.

Mr. Thompson: I will rephrase it.

By Mr. Thompson:

Q. Do you stock many tires at your present station?

A. Well, a good many.

Q. Did you say the Firestone store gave you good delivery?

A. Oh, yes.

Q. Did you say it gave you a decent price?

A. Well, yes.

Mr. Kelaher: Your Honor, my good friend is probably trying to curtail examination, but I think he is leading the witness in his questions.

Hearing Examiner Kolb: I don't think it is anything that will bother us very much at present.

2326 By Mr. Thompson:

Q. At your present station, are you handling reconditioned tires?

A. A few, yes.

Q. What brand do you use?

A. Any brand.

Q. Do you buy reconditioned U. S. Royal from Burke-Savage?

A. High-tops.

Q. High-tops?

A. Yes.

Q. Is that a U. S. Royal tire?

A. All makes.

Q. Do you handle any tires your customers want at your station?

A. If they want them, I get them for them.

Q. Outside your station, out on the driveway, what kind of tires do you put out there?

A. Well, I have some old tires out there for show.

Q. In other words, you put the reconditioned tires outside?

A. Yes, that is right.

Q. And keep the Firestone and other new tires inside?

A. That is right. Only have a couple outside for people to see.

Q. What brand of battery do you carry at your present station, Mr. Varnadore?

2327 A. Exide.

Q. I will ask you to refresh your recollection by looking at a classified telephone directory for the City of Baltimore, page 89, and the listing under "Exide Batteries," of "Atlantic Service Center, Edmondson and Swann Avenues."

A. That is right.

Q. With the telephone number Longwood 6-9764, and I ask you whether that is your station?

A. That is my station.

Mr. Kelaher: For the record, could we have the date of the telephone directory?

Mr. Thompson: This particular issue is June 1957.

By Mr. Thompson:

Q. Mr. Varnadore, have you been listed in the classified directory as an Exide dealer for some years?

A. Oh, yes.

Q. Many years?

A. A good many.

Q. Do you prefer Exide batteries to Firestone batteries?

A. Well, yes, I do.

Q. Who do you buy your Exide from, Mr. Varnadore?

A. I get them from Martin Brothers.

Q. Do they give you good—

A. (Interposing.) In other words, it is Martin Auto Sales. It is good service.

2328 Q. (Continuing.) —service?

A. Yes.

Q. Good price?

A. Well, I get a pretty good price.

Q. Where do you keep these Exide batteries? Are they out in the open?

A. No, right in the office.

Q. Inside your station?

A. Right inside the office, yes.

Q. Are they in plain sight?

A. Oh, yes.

Q. Are they visible to anybody who comes into the station?

A. Anybody who comes in there can fall over them.

Q. So that Atlantic salesmen when they come in can see them?

A. Oh, yes, they can see them.

Q. Anybody else can see them?

A. Anybody. That is what I have them for.

Q. How about your accessories? Where are you buying them?

A. Most any place. From wagons that come around, from different dealers, different jobbers.

Q. Could you name a couple of accessory jobbers who are your principal suppliers?

A. Well, yes, Replacement Parts, Martin Auto, Monarch, K&C—that is a wagon.

Q. Is it K&C or K&S?

2329 A. K&S.

Q. Is that the one called K&S Auto Supply?

A. That is right.

Q. Did you mention R & N?

A. No, I didn't.

Q. Is that Roper and Negley?

A. Yes.

Q. Do you buy from them?

A. Yes, I buy from them.

2330 Mr. Kelaher: I object to questions of that type. He hadn't mentioned the particular supplier until counsel asked him if he had mentioned it.

That is leading.

Mr. Thompson: If your Honor please, I have a list of about 100 Baltimore dealers. It seems to me it is entirely proper for me to ask any witness whether he buys from a particular account.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: I have no objection to that. But I assumed—perhaps it was inadvertent—

Hearing Examiner Kolb: He can, if he wishes, to exhaust the man's memory and name them all, if he wants to take that route.

By Mr. Thompson:

Q. How about R. W. Norris, do you buy from them?

A. Oh, yes; I buy from them.

Q. Did you ever hear of a company called Baltimore Gas and Light?

A. Oh, yes. I have dealt with them for years.

Q. Wasn't the Baltimore Gas and Light salesman a very close personal friend of yours?

A. Yes, very close.

Q. Did he die?

A. He died.

2331 Q. After he died, did you continue to buy as much from Baltimore Gas and Light?

A. No, I didn't.

Q. Did you ever hear of a company called J. R. Hunt?

A. Oh, yes.

Q. Did you buy from them occasionally?

A. Yes. I used to get all my batteries from them, Exide, after I stopped making my own batteries.

Q. How about Loock—L-o-o-c-k—Company?

A. R. J. Loock?

Q. Yes.

A. Yes, I used to buy stuff off of them.

Q. Have you dropped them or are you still buying from them?

A. Here is the whole thing. If I bought all of them I would be talking to salesmen all day.

Q. Do you buy some accessories from Firestone?

A. Oh, yes.

Q. Right there in the same village?

A. Right there. Or I order down from 25th Street.

Q. How about your accessories, are they on your shelves?

A. Oh, yes.

Q. Are they openly displayed so anybody can see them?

A. Yes, anybody can see them who walks in there.

Q. Did any representative of Atlantic ever criticize you for carrying these non-Firestone batteries or tires?

2332 A. No, they never bothered me.

Q. Did anybody from Atlantic ever tell you to stop buying those things?

A. No.

Q. Did they ever tell you to get them out of the station?

A. No.

Q. Did they ever suggest that you hide them?

A. Oh, no. Can't hide them.

Q. Who decides what kind of TBA you buy?

A. Well, my partner and myself.

Q. Did Atlantic ever try to force you to buy something you didn't want to buy?

A. Oh, no, they never force me to buy nothing.

Q. Did you feel free to buy any TBA you want?

A. I do.

Q. Do you feel free to buy TBA from any source you want?

A. Any place I want to get it.

Q. Do you feel you have to buy Firestone tires if you don't want to?

A. No, I don't have to buy them.

Q. Do you think Atlantic would cancel your lease if you didn't buy Firestone?

A. I don't know whether they would or not. I hope not.

Q. Do you think they would?

A. No, I don't think so.

2333 Mr. Kelaher: Objection to that question and answer.

Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. Did anybody from Atlantic ever tell you you had to buy from Firestone?

A. No.

Q. Mr. Varnadore, all this non-Firestone TBA that you carry, do you sell that on Atlantic credit cards?

A. Part of it, I do. Part of it I carry myself. When they got an Atlantic credit card I put it on their credit card.

Q. And you carry your own personal accounts sometimes?

A. That's right.

Q. Have you ever had any hesitancy about selling non-Firestone TBA on Atlantic credit cards?

A. No.

Q. Did anybody ever criticize you for doing it?

A. No.

Q. Mr. Varnadore, your lease has come up for renewal a lot of times, has it not?

A. That's right.

Q. When your lease comes up for renewal, has your salesman or supervisor or the Atlantic District Manager ever criticized you for carrying this non-Firestone TBA?

A. No.

2334 Q. Has that subject ever been mentioned when your lease came up for renewal?

A. Well, no, not that I recall.

Q. Do you deal with Mr. Hathaway when your lease comes up for renewal?

A. When it comes up, I deal with Mr. Hathaway.

Q. Sir, as a gentleman in business for a long time, have you had, since 1951, propositions from competitors?

A. Oh, yes.

Q. I mean Atlantic competitors?

A. That's right.

Q. If you wanted to quit Atlantic, would you have any difficulty getting another station from another company?

A. Not a bit in the world.

Q. Have you, in the years that you have been in business, developed a kind of personal trade that comes to the station because of you?

A. Well, I guess every station does to a certain extent.

Q. Have your relations with Atlantic always been good?

A. Oh, yes.

Q. Do you know a man named Eugene Savage?

A. I do.

Q. Is he an outside salesman for the Burke-Savage Tire Company?

A. That's right.

2335 Q. Mr. Varnadore, Mr. Savage testified in this case on November 20, 1957, before Judge Kolb here. He said some things about you that I want to read to you, and ask you to comment upon them.

My friend, Mr. Kelaher, at transcript page 1756, asked Mr. Savage this question:

"Do you recall the names of any other Atlantic dealers with whom you had conversations concerning their purchase of U. S. tires?"—referring to U. S. Royal tires.

Mr. Savage said, "Yes. There is a service station now in business at Edmondson Avenue and Swann."

That would be your station, would it not?

A. That's right.

Q. And Mr. Varnadore—that is of course you?

A. That's right.

Q. Mr. Savage said, "At one time Mr. Varnadore, in another station, carried exclusive Burke-Savage products."

A. He is wrong there.

Q. Is that true?

A. I didn't carry everything of Burke-Savage.

Q. You testified that you carried a number of brands?

A. Oh, yes; I carried a number of brands.

Q. Then he went on and said, "He doesn't stock anything but Firestone tires today."

Is that true?

2336 A. That's right.

Q. In addition to Firestone tires, do you carry U. S. Royal reconditioned?

A. No. Well, yes, reconditioned. That is the high tops.

Q. And deal in any other tires you want?

A. That's right. In other words, I bought new ones off of them as I get an order for them.

Q. Mr. Savage also said this, referring to you: "He had an Atlantic station?

"That's right. He owned his own station previous to this station that he now has. When he owned his own station he carried Burke-Savage products exclusively."

A. Not everything. Not all.

Q. You said that was not so?

A. No.

Q. I am sorry to be repetitious.

A. I carried different brands.

Q. I am trying to read to the testimony.

Mr. Savage made the same statement twice.

A. Different brands.

Q. Then he said, "Mr. Varnadore told me exactly that when he owned his own station, he was at liberty to carry

what he wanted to, but now that he leases his station he is forced into carrying Firestone products."

A. He is wrong in the "forced" part.

2337 Q. Did you ever tell him that?

A. No. Not that I can recall it. In fact, I wouldn't use that word. Nobody forced me to do nothing.

Q. Then he was asked: "When did this conversation take place?"

And he said: "Sometime in 1954."

Have you any recollection at all of any such conversation?

A. Well, I might have talked to him but I didn't bring it out in those words.

Q. What would you have said to him?

A. Well, if I had said it, I would have said, "I will handle your tires but I haven't got the room to carry all brands of tires here. I will handle a few of your tires but I haven't got the room to carry all brands of tires here. I will handle a few of your tires as I need them."

Q. At a later point, Mr. Savage in answer to another question, at transcript page 1812, testified to a conversation which he said he had with you, and he placed this conversation having occurred at your station in 1956. He said—this is Mr. Savage talking now:

"I had a package deal, a price on approximately 25 tires which Mr. Varnadore could buy at an attractive discount, and he made the comment that the price is right and he had conceded he could sell those tires, but in view of the fact that he was so close to the Firestone store his

2338 comment was that the salesman, and big shots, would come over and see other brand tires at this station and would put him in definite jeopardy with his lease."

A. No. I never made them words.

Q. You said no words before I asked the question. Did you ever say any such thing to Mr. Savage?

A. I can't recall ever using the words like that.

Q. Did you ever say any such thing to Mr. Savage?

A. No.

Q. As a matter of fact, sir, didn't you testify that outside of your station, where people could see them, you carried the reconditioned Burke-Savage tires?

A. That's right.

Q. And placed them on the driveway?

A. Yes.

Q. And nobody ever threatened you with your lease for doing that?

A. No.

Q. Or criticized you?

A. Never did.

Q. I asked Mr. Savage, on cross-examination, this question, and he made the following answer, and I would like to read it to you. I said to Mr. Savage:

"Is it not a fact that at this station there are Exide batteries all over the place?"

2339 And he said: "Until you showed me this ad"—he was referring to the yellow telephone classified directory—"I had no knowledge what kind of batteries he"—mentioning you, Mr. Varnadore—"was selling."

Had not Mr. Savage been to your station a number of times?

A. Oh, yes.

Q. Is my recollection correct that you said there were Exide batteries all over the place, and anybody would trip over them?

A. That's right.

Q. Mr. Varnadore, it is possible that the gentleman sitting on my right, Mr. Mason, who represents the other company being investigated in this proceeding—and that is the Goodyear Tire and Rubber Company—may want to ask you some questions.

Do you, sir?

Mr. Mason: I don't want to ask any questions. And I would ask that this testimony be accepted subject to Goodyear's motion to strike since it has no bearing on Goodyear-Atlantic sales commission plan.

Mr. Thompson: It is also possible that Mr. Kelaher might want to ask you one or two questions.

Hearing Examiner Kolb: The testimony will be stricken so far as Goodyear is concerned and will apply only to Atlantic.

We will recess for a few minutes.

(A short recess was taken.)

2340 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Varnadore, I would like to get some dates a little clearer in mind with respect to your service station operation.

Do you remember the year when you started as a contract dealer for Atlantic?

A. Yes, it was in 1952 I believe.

Q. As a contract dealer?

A. Yes.

Q. Wasn't that in the 40s?

A. That was back in the 40s, yes.

Q. What year did you begin?

A. It was a good many years before the war.

Q. Did you say your memory—

A. It was around '39 or '40.

Q. How long did you—

A. No, I take that back. It was '37.

Q. How long did you continue to operate the Atlantic station as a contract dealer?

A. Until 1951.

Q. Do you remember the month in 1951 when you ceased to be an Atlantic contract dealer?

A. I believe it was in June.

2341 Q. And according to your testimony on direct examination, you said it was a year and a half after you ceased to be a contract dealer that you became an Atlantic lessee dealer. You also testified on direct that you became an Atlantic lessee dealer in October 1951.

A. No, not a lessee dealer.

Q. That would put you up to when? When did you become an Atlantic lessee dealer?

A. I can't recall the year on that. I sold out down there—I don't know whether it was in 1950 or—November 1952 I believe.

Q. You believe it was November 1952 when you became a lessee dealer?

A. Yes, I believe it was. I was out about a year and a half, you know.

Q. So October 1951 is incorrect, is that right?

A. It must have been.

Q. At the time you were a contract dealer, going back to that time, you testified that you handled various brands of tires, is that correct?

A. That is right.

Q. And were you a substantial purchaser of U. S. Royal tires from Burke-Savage at that time?

A. Well, here is the whole thing. I would buy most any place I could get tires. I carried a few Burke-Savage 2342 and a few Plotkin, Goodyear, such as that. And also Firestone, if dealers wanted that kind.

Q. Did you stock U. S. Royal at that time?

A. I stocked a few, yes.

Q. What other brands of tires did you carry at that time?

A. Well, I carried a few Goodyear, and Mohawk tires, and Armstrong.

Q. Did you carry Lee tires at that time?

A. No, not at that time. I carried Lee years ago.

Q. Before that?

A. Yes.

Mr. Thompson: What time are you talking about? I am confused.

By Mr. Kelaher:

Q. You say before that time. Would you clarify what you mean by that?

A. Well, I was on this side of the street in another building, and when I first started in the business I handled Lee tires.

Q. You were on this side of what street?

A. Key Highway and Light.

Q. Were you on that other side of the street as an Atlantic lessee dealer?

A. That is right.

Q. And that was beginning about 1937, is that correct?

A. Around that, yes.

2343 Q. When did you move to the other side of the street?

A. Well, about that time.

Q. You were only in the first station a short time?

A. No, I bought a man out in 19—when the depression hit, in 1929.

Q. You just mentioned 1929.

A. In 1929 I went into business on this side of the street.

Q. As an Atlantic dealer?

A. No, not as an Atlantic dealer, as a battery and tire and radio equipment.

Q. And your association with Atlantic didn't begin until 1937, is that correct?

A. Let me think. I bought a new Lincoln in 1936. It was either 1936 or 1937. It is too far back to remember.

Q. Your testimony on direct examination is that you became an Atlantic lessee dealer in October 1951. That is incorrect. That is established, I think, now. Is that correct?

A. I can't recall. I would have to get some records on that.

Q. You stated a few moments ago that it was November 1952.

A. Well, 1952 I think it was.

Q. You mentioned that you bought Goodyear tires from Plotkin. I am not quite sure that Plotkin handles Goodyear tires.

A. What, now?

Q. Now.

A. I don't know whether he handles them now or not.

2344 Q. You are sure it wasn't Goodrich tires?

A. Either Goodrich or Goodyear. One of the two.

Q. You don't recall which?

A. No, I don't recall. I know they are Goodrich dealers.

Q. That is right.

A. But they handle everything too. You can go there and get any brand you want.

Q. You were buying either Goodyear or Goodrich from Plotkin?

A. Yes, you could get any brand you wanted.

Q. When you became an Atlantic lessee dealer in or about November 1952, were you on a year-to-year lease?

A. The first lease I think was a year.

Q. I am going to show you a copy of Commission's Exhibits 86 and 86-B, which is an Atlantic lease form B-3191 4-52, and ask you if that is the type of lease you signed at that time? (Handing to witness.)

A. I can't recall whether this is a copy of it or not, to tell the truth.

Mr. Kelaher: I think Atlantic has stipulated, your Honor, that the number shown on a particular lease would be applicable to any dealer becoming an Atlantic lessee dealer after that date.

Mr. Thompson: If it would save time—

The Witness: (Interposing.) I can't recall if that would be the lease or not.

2345 Mr. Thompson: If it would save time, I would be glad to stipulate with Mr. Kelaher the form of whatever leases Mr. Varnadore has with the company, and the dates.

Mr. Kelaher: That would be agreeable. It will be stipulated then that he entered into a lease form designated B-3191 4-52, Commission's Exhibits 86-A and -B.

Mr. Thompson: Excuse me. I am not stipulating now. I said I would stipulate. We will have to check of course.

Mr. Kelaher: I think it will interfere with cross unless we can determine that.

Mr. Thompson: Very good, sir, I will withdraw the offer to stipulate.

By Mr. Kelaher:

Q. Then after your first one-year lease you entered into a three-year lease, is that correct?

A. That is correct.

Q. And that would have been entered into in November 1953, is that correct?

A. Yes, I guess it is. I can't recall the dates.

Q. You can't recall the dates?

A. No.

Q. In 1953 you entered into a three-year lease, is that right?

A. That is right.

Mr. Kelaher: And according to the stipulations in
2346 the record, in 1953 an Atlantic lessee dealer would have executed Commission's Exhibit 86-A and -B.

By Mr. Kelaher:

Q. Do you have available, or do you recall the date of your current lease?

A. Well, yes. The last lease, I just signed up a new lease I think last month.

Q. Last month?

A. Yes.

Q. That would be—

A. This year covered the lease I had signed before, you see. In other words, when the three years run out, I signed another three-year lease, and I am under a new lease now from the one I took out before.

Q. When was the new lease effective?

A. The first of June.

Q. June 1, 1958?

A. Yes. I am pretty sure that is the time.

Q. I show you Commission's Exhibits 88-A-1 and A-2, A-3 and 88-B, and I ask you if these are copies of the documents which you have just executed, 88-A-1 and A-2 being the dealer lease, identified as B-31917/56. Attached thereto is a schedule A, 88-A-3, and also appended thereto as 88-B is what is known as the 11 point lease letter.

Do these constitute the documents which you entered into?

2347 A. Yes.

Q. Is this a copy of your current—

A. That is right.

Q. Schedule A, 88-A-3?

A. Yes.

Q. Mr. Varnadore, on direct examination you stated that you have been listed as an Exide battery dealer for a "good many years." Is that correct?

A. Yes.

Q. That would take you back to when?

A. Well, let's see. I started handling Exide before the War. I would say about 1940, I guess.

Q. And you have been listed in the yellow book of the telephone directory edition since that time?

A. Not every year, no. Not every year.

Q. Since you have been an Atlantic lessee dealer at your present station, have you been listed as an Exide dealer?

A. That's right.

Q. And you say you have been listed, as I understand your testimony, as an Exide dealer in the Baltimore Directory since November 1952, is that correct?

A. I am pretty sure it is.

Q. Would it come as a great surprise to you to know that you are not listed in the telephone directory, and the only one to which I had access was dated Septem-
2348 ber 1955, Baltimore classified telephone directory, yellow page section?

Mr. Kelaher: I made a personal inspection of that, your Honor, at the Federal Trade Commission library, was unable to bring a copy with me. I would like to reserve the right to have a photostatic copy of that placed in the record.

Mr. Thompson: If this purports to be a question, I object to the form, unless Mr. Kelaher here wants to take the stand. I move the question be stricken.

Mr. Kelaher: I asked him a question.

Hearing Examiner Kolb: Read the question.

Mr. Thompson: I move that Mr. Kelaher's statement be stricken. Mr. Kelaher, if he wants to enter into a stipulation with counsel for Atlantic he will find we will always agree to anything that is true.

Mr. Kelaher: I asked him if it would come as a surprise

to him to find he was not listed in the Baltimore telephone directory every year since he became a lessee dealer.

The Witness: My partner takes care of all the advertising.

By Mr. Kelaher:

Q. Who does?

A. My partner, he takes care of all the advertising.

Q. So actually you are taking the position now that you are not sure of whether you are listed or not, is that correct?

2349 A. I wouldn't say every year. I say I am listed now in the telephone book.

Q. You made the statement that you had been listed every year since you became a lessee dealer, as an Exide—

A. Oh, no.

Q. (Continuing.) —battery dealer.

A. Not an Exide battery dealer.

Q. You stated, answer to a question by counsel for respondent Atlantic, that you had been so listed for a good many years. That is incorrect, isn't it?

A. Well, I don't know how many years you call a good many years.

Q. I asked you to identify the period, and you said since you became an Atlantic lessee dealer, which would put you back to November 1952, would it not?

A. It might not have been that long.

Q. It might not have been that long?

A. No.

Q. Do you know how long it has been?

A. No, I can't recall it. You know, right off hand.

Q. So actually the only one you know about is the one that is in the current directory, is that correct?

A. I know I was in there last year.

Q. In the one last year?

A. Yes.

2350 Q. Prior to that time, you don't know whether you were in or whether you were not in, is that correct?

A. I never looked up all the numbers, to tell you the truth.

Q. So your answer is that you are without knowledge as to anything prior to the June 1957 directory?

A. Well, no, not that I know of. I don't know whether it was in there or not, to tell you the truth. I would have to look back on my records.

Q. Do you recall when Mr. Savage stopped calling on you as a salesman?

A. I didn't know he had stopped.

Q. He testified that he had stopped calling on you some time—

Mr. Thompson: The record reference?

Mr. Kelaher: 1811.

The Witness: I don't know that he even stopped until a few weeks ago.

By Mr. Kelaher:

Q. Just a minute.

Mr. Thompson: If you are quoting Mr. Savage, I want to see the record.

Mr. Kelaher: It is 1811. I gave you the quotation.

Mr. Thompson: Whereabouts?

Mr. Kelaher: He said he stopped calling on him some time in 1956.

2351 Mr. Thompson: I think your recollection is in error.

Mr. Kelaher: I know it is not in error, because I have checked it already.

The Witness: I bought tires off of him a couple of months ago.

Mr. Kelaher: Mr. Savage testified "I don't know if you remember, I said I turned this account a year ago over to another salesman. I don't know how long he may have been an Exide dealer—for the last three months. I haven't been in that station for 12 months."

The Witness: Who is saying this?

By Mr. Kelaher:

Q. This is Mr. Savage.

A. Which one?

Q. Mr. Eugene Savage?

A. Eugene? There is another salesman calls on me, representing the same outfit.

Q. That is right. That is the question I asked you.

A. Well, that is all right. You said Savage. When you say Savage, any salesman could call me, and it is still Savage.

Q. Do you know the name of the current salesman from Burke-Savage?

A. Eugene.

Q. Isn't it a man by the name of Schramm currently calling on you?

2352 A. I don't know. I don't even know his name, to tell you the truth. Frank used to call on me, years ago. Frank Savage.

Q. Do you know that another man, other than Eugene Savage, has called on you also, from Burke-Savage Tire Company?

A. A young fellow. I don't know what his name was, I know he was with Savage.

Q. He is with Savage?

A. Yes.

Q. How long have you known Eugene Savage at Burke-Savage?

A. I guess I have known him about, around 10 years.

Q. Around ten years?

A. About that.

Q. And he was calling on you and selling you tires on a stocking basis when you had your contract station, isn't that correct?

A. On a stocking basis?

Q. Yes. Wasn't he selling U. S. Royal tires to you?

A. That's right, that's right.

Q. Did he also sell Armstrong tires to you?

A. That is right.

Q. Over this period you have had a number of conversations with Mr. Eugene Savage, I presume, isn't that correct?

A. A few, yes.

Q. Mr. Thompson, on direct examination, called your attention to a conversation appearing at transcript
2353 1812, which Mr. Savage testified to. Do you recall such conversation?

A. Well, no, not like that.

Q. Just how do you recall it?

A. Well, here is the whole thing: I haven't got the room to stock all kinds of tires. I told him whenever I would need tires, I would get them from him.

Q. And—

A. Which I do. I still get them.

Q. But do you get reconditioned tires?

A. I do.

Q. At the time of this conversation, did he offer you approximately 25 tires at a discount?

A. I can't recall that. There is always somebody coming in to offer you a discount for this or a discount for that.

Q. So actually you are not too certain as to just what the total conversation was?

A. No.

Q. And I think you also testified that your station is located near a Firestone store, is that correct?

A. That is correct.

Q. What determines the take-on? What is a take-off?

A. A take-off is a tire which comes into a show room, on a car, and people want white walls put on. That is what you call a take-off. In other words, the car may have been—the tire may have been driven 4 or 5 miles. That is what you call a take-off.

2354 Q. Is it possible to have a take-off, or would you have Firestone take-offs?

A. That is right.

Q. Would you have other brands, too?

A. Yes. If anybody wants them, but I don't handle them.

Q. But you do have Firestone take-offs?

A. That is right.

Q. Do you place those in your stock inventory of Firestone tires which are purchased from the Firestone stores?

A. I got them on the side. In other words, those tires, they are sold at a special discount, just like I buy them at a discount.

Q. Is it possible you could take some of those tires and put them in with your inventory of tires?

A. No, you couldn't very well on account of they have the stuff to spray cars underneath them, coat a car. And that is all over them.

Q. Mr. Savage testified, at transcript 1812, that you made the following statement to him during the time of this purported conversation: "I will tell you what I will do: I will take some Firestone take-offs from you because I can take some Firestone take-offs and digest them in with my own inventory so they will not show up as so-called foreign brands." Do you recall this conversation?

A. No, no, I don't recall that conversation, not in those words.

2355 Q. Not in those words?

A. I told him I would take the Firestone, but I didn't put the other to it.

Q. You told him you would take the Firestone take-offs?

A. I would take the Firestone, yes.

Q. Did Mr. Savage ever ask you to place U. S. Royal signs in your station after you became a lessee dealer?

A. Not that I recall. We don't place no signs around there.

Q. Why don't you?

A. Because the wind takes them away. And we got no place to put them.

Q. That is your only reason?

A. That is the only reason. There is no place to hang them, there are no windows to put them in. I even have a tune-up sign for the front, for tune-up motors, and that is always blowing over.

Q. Do you have window decals?

A. Very few.

Q. What do you have as service station identification on your windows?

Do you have a Firestone sign?

A. I have a small Firestone sign up there. My window is only about that wide. (Indicating.)

Q. Do you have an Exide sign up?

A. No, the only sign I got up is "Balance Wheels," and such as that.

2356 Q. And you have no brands advertised other than Firestone?

A. No.

Q. And what reason did you state for not putting up signs?

A. I haven't got the place to put no signs.

Mr. Thompson: You don't have to answer that.

Mr. Kelaher: I am asking him, your Honor—

By Mr. Kelaher:

Q. Are you familiar with the terms of your lease, your Atlantic lease?

A. Well, to a certain extent, yes.

Q. Do you know that under the terms of your lease, under the terms of your current lease, referring you to paragraph 7 of Commission's Exhibit 88-A-2, that you can not put up signs without the prior written consent of Atlantic?

Mr. Thompson: I object to the question. He is asking a legal opinion of a lay witness. He is asking him to interpret the provisions of an Atlantic document which is in the record.

Hearing Examiner Kolb: A question like that shouldn't be subject to legal interpretation, should it?

Mr. Thompson: No, sir. You can look at the lease 2357 and interpret it yourself, or I can or Mr. Kelaher here can.

Hearing Examiner Kolb: He is asking if he knew the clause was in the lease.

Mr. Thompson: I don't object to that question. But that is not the way I understood the question.

Mr. Kelaher: That is the question.

Hearing Examiner Kolb: I understood that to be the question, whether he knew that clause was in the lease.

Mr. Thompson: I have no objection to that question. Would you re-state the question, please, Mr. Kelaher?

Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: The witness may answer.

By Mr. Kelaher:

Q. You may answer.

A. Answer what?

Mr. Thompson: That is the best question yet.

Mr. Kelaher: Read the question to the witness.

(Question read.)

The Witness: No.

By Mr. Kelaher:

Q. You did not know that?

A. No.

Q. Do you read your lease when you execute it?

A. Here is the whole thing: I read it, some of it, and some of it I don't.

2358 Q. Do you think an independent business man should have the right to advertise any products he chooses to advertise?

A. Here is the whole thing: It is just like an insurance policy. You read them, you can keep on reading them, and then when you have an accident and something comes up, you are not in that clause.

Q. And as a matter of fact, it is impossible for you to advertise any brand other than Firestone in your station without—

A. I don't know whether it would be or not.

Q. (Continuing.) —without the prior written consent of Atlantic?

A. I didn't pay no attention to that.

• • • • •

By Mr. Kelaher:

Q. You stated on direct examination that you apparently are a very free man with respect to the operation of your business, is that correct?

A. In what way?

2359 Q. In any way you look at it. Can you buy what you want and sell what you want?

A. That's right.

Q. And are you able to make decisions as to how many hours your station can stay open?

A. Oh, no. Well, no, we sign a lease as to that. In other words, we open up at 7 and close at 11. Sunday we open up at 8 and close at 10.

Q. With respect to your hours of operation, if you decided to change your hours of operation, would you have the right to do that?

A. Well, if I wanted to make it longer, I could, yes.

Q. If you wanted to make it shorter, could you?

A. No, I wouldn't want to do that. I don't think I could.

Q. You don't think you could?

A. No, not under the lease.

Q. Because Atlantic wouldn't let you, under the lease?

A. I don't think so. The business calls for me to stay open those hours.

Q. That is right. So Atlantic controls the hours you stay open?

A. To a certain extent they do. If you have the help, why not stay open.

Q. You stated that you have received Commission's Exhibit 88-B, which is the so-called 11 point lease

2360 letter, and I will ask you to take a look at that again. (Handing.)

A. Is this the same one?

Q. Yes. This is attached to your current lease.

A. Yes.

Q. Isn't it a fact that you must meet Atlantic standards with respect to the 11 points enumerated in that letter?

A. Yes, you are supposed to do that.

Q. And isn't it a fact that if you do not meet their standards, your lease is subject to termination of 15 day's notice after receipt of the warning letter?

A. I don't know about that. I never got one of them.

Q. And you haven't read your lease in that connection, apparently?

A. I don't waste all my time reading those, to tell the truth.

* * * * * *

2361 Mr. Kelaher: I will withdraw the question.

By Mr. Kelaher:

Q. Under your current lease, you are on what basis for the payment of rent?

A. Well, it tells you right there on payments.

Q. And you are on a flat basis plus a percentage of your gross receipts?

A. That is right.

Q. Exclusive of gasoline. For that reason, under the terms of your lease, you pay a percentage, do you not—

A. Yes.

Q. (Continuing.) —you pay a percentage on your sales of TBA to Atlantic, is that correct?

A. That is right.

Q. And would you designate approximately what bracket you would fall into?

A. I guess I would fall around here.

Q. Around the 4 percent. The first 500 monthly, nothing, zero percent; next, 2000 monthly, 6 percent; next 2,000 monthly, 5 percent; next 2,000 monthly, 4 percent. And you would fall around the 4 percent?

A. Around that.

Q. Leading up to the 4 percent bracket, rather?

Have you signed a Firestone Associate dealership, do you recall?

2362 A. I don't recall that.

Q. I show you Commission's Exhibits 372 and 373. It is possible of course that your partner may have done some of this work.

A. Oh, that is true.

Q. This is an associate Firestone dealer agreement.

A. I never signed one of those.

Q. You never signed one?

A. Not that I know of.

Q. On direct examination you were asked if you had received certain letters from Atlantic, and in response to that question you asked if counsel was referring to letters you received a few weeks ago. Do you recall that question and answer?

A. Yes, on the last lease.

Q. Were you referring to the last lease?

A. Yes, that is right.

Q. You were asked about your purchase of accessories. Are you familiar with the term "hard parts" in service station operation?

A. What kind of parts?

Q. Hard parts, as distinguished from accessories.

A. Well, yes. You would take automobile accessories of all kinds.

Q. For example, ignition parts.

A. That is right.

2363 Q. When you stated that you buy from many jobbers, were you referring to that type of purchase also?

A. Yes.

Q. You do purchase accessories from the Firestone store?

A. Some, yes, very little.

Q. What do you buy from them?

A. Well, I buy some polish, a few little odds and ends that I need.

Q. Do you buy any batteries at all from the Firestone store?

A. Very seldom.

Q. And your tires, you stock Firestone tires exclusively?

A. Yes, I stock Firestone tires.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Do you have any further questions?

Mr. Thompson: I have one very important question, sir.

Hearing Examiner Kolb: Go ahead.

Redirect Examination by Mr. Thompson.

Q. You said in 1936 you bought a Lincoln?

A. Yes.

Q. What kind of car are you driving now?

A. Cadillac.

Mr. Thompson: Thank you.

2364 Hearing Examiner Kolb: That is all.

(Witness excused.)

2365 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Before the next witness is called, in view of your ruling with respect to the testimony of Mr. Varnadore, which I assume you will make with respect to other dealers in this area, I would just like to note an exception at this time.

Mr. Thompson: What ruling are you talking of?

Mr. Kelaher: His ruling where, instead of receiving the testimony subject to a motion to strike, I believe he just struck the testimony.

Is that correct? As to the respondent Goodyear?

Hearing Examiner Kolb: The reason I did that is because I already disposed of the motion to strike as to the case in chief, and I see no reason to receive it subject to a motion to strike now since I have already ruled on it, to be consistent with my ruling.

Mr. Kelaher: I would like to preserve an exception.

Hearing Examiner Kolb: You have an exception under the rules on anything I do.

Mr. Thompson: It isn't necessary, is it, to note the exception?

Mr. Kelaher: No, but in view of the change of the ruling I thought I would call it to everyone's attention.

Mr. Thompson: May I call to the stand Mr. Charles G. McKaig?

2366 CHARLES G. McKAIG was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give the reporter your full name, please?

A. Charles G. McKaig.

Q. Where do you live?

A. 4428 Wrenwood Avenue, Baltimore 12, Maryland.

Q. Mr. McKaig, my name is Thompson, and I represent the Atlantic Refining Company in this investigation. The gentleman on your right is the trial Examiner and presiding officer, Judge Kolb, from the Federal Trade Commission. The extremely handsome gentleman on your left, with gray hair, somewhat white, is Mr. Kelaher, who is my opponent in this case. He represents the staff of the Federal Trade Commission.

Mr. McKaig, are you an Atlantic lessee of a service station?

A. Yes, sir.

Q. Is your station located at 4420 York Road in Baltimore?

A. Yes, sir.

Q. About how long have you had that station?

A. 1953.

Q. Since about 1953, have you had three-year leases?

2367 A. Yes, sir.

Q. That is, the term of your lease has been three years?

A. Yes, sir.

Q. Since about 1953?

A. Yes, sir.

Q. Before you took that Atlantic station at 4420 York Road, had you had some prior experience in the service station business?

A. Yes, sir.

Q. Mr. McKaig, have you worked at that same station at 4420 York Road as an attendant before the war?

A. Yes, sir.

Q. And you were there for some time?

A. Quite some time, yes, sir.

Q. Do you recall the approximate dates?

A. I really don't know the dates that I was there.

Q. Would it have been about ten years, sir?

A. I imagine so.

Q. And you started before the second World War, did you not?

A. Yes, sir.

Q. Then for a time in the late 1940s did you work for Charlie Johnson?

A. Charley Johnson and Barclay.

Q. That is the station, is it not, which is now operated by Poole and Hunt?

2368 A. Yes, sir.

Q. And Poole and Hunt also used to work for Charlie Johnson?

A. Yes, sir.

Q. Then you moved from Charlie Johnson's station to your own station at 4420 York Road?

A. Yes, sir.

Q. When you first opened your own Atlantic station in 1950, did you carry TBA?

A. Yes, sir.

Q. Do you remember what brands?

A. Lee and AC filters, Purolator.

Q. What kind of batteries?

A. Lee batteries. Lee and Firestone, both.

Q. I am now talking, sir, about when you first opened the station in 1950.

A. That was Lee.

Q. When you first opened your station, was there a tire shortage? Were new tires difficult to get?

A. Not to me they weren't.

Q. You had a personal friendship and relationship with Charlie Johnson?

A. Yes, sir.

Q. Was he your supplier of tires?

A. At that time he was.

Q. Do you recall that about 1951 Atlantic began 2369 to promote the Firestone brand of TBA?

A. Yes, sir.

Q. At that time did you try the Firestone tire line?

A. I did.

Q. What brand of tires have you carried primarily since 1951?

A. Firestone.

Q. Do you like them?

A. Yes, sir.

Q. Were you pressured by Atlantic Refining Company to take on the Firestone line?

A. No, sir.

Q. What were your reasons for carrying the Firestone tires?

A. Well, it is a very good tire, and I had no complaint with them when I first started with them.

Mr. Kelaher: Would you repeat the last part of the answer?

(The reporter read the answer.)

By Mr. Thompson:

Q. Have you had any complaints with respect to Firestone tires over the years that you have been carrying them?

A. No, sir.

Q. Do you find there is a customer demand for them?

A. I would say yes.

Q. Do you get good delivery service on your Firestone tires?

A. Yes, sir.

2370 Q. Is the price okay?

A. Price is okay.

Q. In addition to the Firestone tire, do you handle U. S. Royal and Lee tires?

A. I handle any tire the customer wants.

Q. Is U. S. Royal one of them?

A. Well, I don't get too many U. S. Royals.

Q. Do you still handle Lee?

A. Once in a while.

Q. What kind of batteries have you been carrying since 1951?

A. Bowers.

Q. From whom do you buy your Bowers batteries?

A. From Bowers.

Q. That is direct from the manufacturer?

A. Yes, sir.

Q. May I ask you whether you have ever heard of a battery called the Best Battery?

A. Oh, yes.

Q. You have heard of it?

A. Yes, sir.

Q. Have you ever dealt in the Best Battery? Have you ever carried it?

A. No, sir.

Q. Why do you handle the Bowers battery? Just tell us in your own words your reasons, will you please?

2371 A. Well, it is a little cheaper as far as the battery is concerned. But it isn't any better than Firestone. And Firestone, in my opinion, has a better type battery.

Q. But you still carry Bowers?

A. I still carry Bowers.

Q. Turning to accessories, do you carry them, sir, at your station?

A. Yes, sir.

Q. Do you carry a large variety of accessories?

A. No, sir.

Q. Who are your principal accessories suppliers?

A. Belvedere Sales and Mr. Kilner.

Q. Is that K-i-l-n-e-r?

A. Yes, sir.

Q. May I ask you, sir, about filters. What type filters do you carry?

A. Lee, Purolator, and AC.

Q. Do you carry Voit hose?

A. Yes, sir.

Q. Do you carry Champion spark plugs?

A. Yes, sir.

Q. And Purolator, Lee, Voit, and Champion plugs are not in the Firestone line of accessories, are they?

A. I don't think so.

Mr. Kelaher: Which ones did you mention?

2372 Mr. Thompson: Purolator and Lee filters, Voit hose, and Champion plugs are not in the Firestone line, was my question.

By Mr. Thompson:

Q. Do you carry waxes and polishes?

A. Yes, sir.

Q. Is 7-Up one of your brands?

A. 7-Up? Number 7.

Q. Is Bodysheen another?

A. Yes.

Q. Bodysheen—

A. Bodysheen, Autobrite, Vista Wax, and Number 7 Wax.

Q. In effect, do you just shop around for accessories?

A. Shop around only through these two dealers. That is all I get.

Q. And you buy practically nothing from Firestone?

A. Very little.

Q. Are these non-Firestone products to which you referred openly displayed at your station?

A. All products are displayed at the station.

Q. Just as a matter of curiosity, what kind of racks do you use for your Bowers batteries?

A. Bowers batteries, I use Firestone racks.

Q. Without a Firestone battery in the rack?

A. That is right.

2373 Q. Are these various accessories to which you have referred on your shelves?

A. In the window.

Q. They are in plain sight?

A. Plain sight.

Q. Visible to anybody who comes to the station?

A. Anyone at all, yes, sir.

Q. Do you sell them on Atlantic credit cards?

A. Yes.

Q. Have you ever been criticized by Atlantic for doing that?

A. No, sir.

Q. In fact, have you ever been criticized by Atlantic for carrying Bowers batteries?

A. No, sir.

Q. Have you ever been criticized for carrying any of these non-sponsored accessories you have been talking about?

A. No, sir.

Q. Have you ever been criticized for handling, when you do, the Lee tire or the U. S. Royal or any other brand of tire?

A. No, sir.

Q. Has anybody from Atlantic ever told you to stop buying these things?

A. By all means, no.

Q. Have they ever told you to get them out of your station?

A. No, sir.

2374 Q. Have they ever told you to hide them?

A. No, sir.

Q. Who decides what you buy, Mr. McKaig?

A. I do.

Q. Do you feel free to buy any TBA you want to buy?

A. I do.

Q. Do you feel free to buy TBA from any source you like?

A. Yes, sir.

Q. Do you feel that you have to buy Firestone tires because of Atlantic?

A. No, sir.

Q. Do you think Atlantic would cancel your lease if you stopped buying Firestone tires?

A. Not in the least, no, sir.

Q. Did anyone from Atlantic ever tell you you had to buy Firestone tires?

A. No, sir.

* * * * *

2375 By Mr. Thompson:

Q. Does Atlantic from time to time inspect your station?

A. Yes, sir.

Q. When an inspector comes to your station does he ever comment unfavorably upon the fact that you have all these non-Firestone TBA items?

A. No, sir.

Q. Is the matter ever mentioned to you?

A. No, sir.

Q. Mr. McKaig, do you know a man named Elmer Lang—L-a-n-g?

A. I don't recall him, no.

Q. Do you know the R. J. Loock Company, or have you heard of it?

A. I have heard of it, yes, sir.

Q. I am going to read you a statement made by Mr. Lang in this proceeding last November, and ask you to comment upon it.

Mr. Lang appeared here as a witness called by my friend, Mr. Kelaher, and was asked these questions.

Mr. Kelaher said, at Page 1866 of the transcript of testimony, he asked Mr. Lang a question to which Mr. Lang replied: "Mr. McKaig purchased some filters from us only on a fill-in basis, not as a stocking dealer."

Then the question was, "Do you still call on Mr. McKaig?"

The answer is, "No, I do not."

Then the question was, "Why did you stop calling on him?"

2376 The answer was, "For the reason that the volume I received from Mr. McKaig was not sufficient to warrant my contacting him any more."

Then the question was, "Did you ever have any conversation with Mr. McKaig concerning the matter?"

And the answer, "I talked to Mr. McKaig about a number of items that he carried, and particularly his oil filter line, and he told me that he was unable to purchase from us on a stocking basis."

Then he was asked when that conversation took place.

The answer was, "That was around the early part of 1956."

And then Mr. Kelaher said, "Did he tell you the reason why he was unable to purchase from you?"

And Mr. Lang answered, "He—" that is, referring to you, Mr. McKaig "—said he was mostly obligated to buy his TBA items from Firestone."

Now, I ask you, having repeated Mr. Lang's statement, whether you ever had any such conversation with Mr. Lang?

A. I don't recall ever having any conversation with him.

Q. Did you say to Mr. Lang the things that he attributed to you?

Mr. Kelaher: Objection, your Honor. He said he didn't recall the conversation.

Hearing Examiner Kolb: Overruled. The witness may answer.

2377 By Mr. Thompson:

Q. Did you say to Mr. Lang the things that he attributed to you?

A. No, sir.

Q. Did you ever tell Mr. Lang that you were obligated to buy your TBA from Firestone?

A. No, sir.

Q. About 1953 were you visited by an investigator for the Federal Trade Commission; do you recall?

A. I don't recall offhand.

Q. Do you recall whether anybody asked you to make and sign a statement in this investigation for the Federal Trade Commission?

A. No, sir.

Mr. Thompson: Thank you very much, Mr. McKaig. Those are all the questions that I have. My friend, Mr. Kelaher, may want to ask you a few questions.

I do have one more question.

By Mr. Thompson:

Q. What kind of a car do you drive?

A. I drive a Packard.

Mr. Thompson: Thank you.

Cross-Examination by Mr. Kelaher.

Q. Mr. McKaig, do you recall the months when 2378 you became an Atlantic lessee dealer?

A. The month? February.

Q. February 1950?

A. That's right.

Q. And how long were you on a year-to-year lease?

A. How long? I don't recall the dates. I wouldn't know.

Q. Approximately. Are you now on a three-year lease?

A. Now on a three-year lease.

Q. When was that executed? When was the current lease executed?

A. Last month.

Q. That was June 1958?

A. That's right.

Q. Was your prior lease a three-year lease?

A. Yes, sir.

Q. So that would have put it back to June 1955, is that correct?

A. Yes, sir.

Q. And then prior to that were you on a three-year lease or a one-year lease?

A. A three-year lease.

Q. So that would put it back to June 1952.

A. Then it was one.

Q. Prior to that it was one year?

A. Yes, sir.

2379 Q. Mr. McKaig, I am going to show you Commission's Exhibits 88-A-1 and A-2 and A-3, and 88-B, and ask you if they constitute the documents pertaining to your last lease?

A. They do.

Mr. Thompson: May I have the question now?

Hearing Examiner Kolb: Read the question.

(The reporter read the question.)

By Mr. Kelaher:

Q. Reviewing your direct testimony for just a second: You stated that when you first went into the station you handled Lee tires and Lee batteries?

A. That is right.

Q. And Firestone batteries; is that correct?

A. Yes.

Q. And were you handling those products when Atlantic began to sponsor Firestone TBA?

A. Yes, sir.

Q. And at that time you switched over to Firestone tires?

A. To Firestone.

Q. And at that time did you switch over to Bowers batteries?

A. Yes, sir.

Q. And you have continued to carry Bowers batteries since that time?

A. Yes, sir.

Q. Would you recognize your signature if you saw it?

2380 A. I probably would.

Mr. Kelaher: Mr. Examiner, I now show the witness a signature and ask him to state if that is his signature (Handing).

The Witness: That is.

By Mr. Kelaher:

Q. Mr. McKaig, I would like to ask you if you recall being interviewed by an attorney-examiner of the Federal Trade Commission on March 19, 1953?

A. I don't recall that.

Q. You don't recall?

A. No, sir.

Q. Does the fact that your signature appears on there indicate to you that you signed that particular statement?

Mr. Thompson: Just a second. When I have seen it you can show it to him, Mr. Kelaher.

By Mr. Kelaher:

Q. Mr. Witness, I show you this document and ask you to examine it, and after that I will ask you a question or two about it (Handing).

Mr. Thompson: Did you read it, Mr. McKaig?

2381 By Mr. Kelaher:

Q. I call your attention to the statement at the bottom of the document, which is printed thereon, and I will read

"I certify that the information recorded above and which I have read was given by me in response to the questions of the attorney-examiner, Federal Trade Commission, whose name appears below, and said information is, to the best of my knowledge, factual and correct. Charles G. McKaig, 1953."

And 3-19 appears on the first part of the document. The attorney-Examiner, who also signed, is Bartley Garvey, Attorney-Examiner, Federal Trade Commission.

Does that refresh your recollection with respect to the document?

A. Well, it could be possible. If that is the man out there—

Q. Mr. Garvey?

A. Mr. Garvey.

Q. Do you remember him being out there?

A. No, I don't.

Q. Do you remember any FTC man being out there?

A. There was only one man out there, to my knowledge, and he was so rude I didn't think much of that man was out there. If that is him, I don't remember him.

Q. But you have identified this as your signature?

A. That's right.

2382 Q. The man who was at your station, Mr. Garvey, I should say, quite obviously submitted this statement to you for your signature. I would like to compare that statement with your direct examination here today.

Mr. Thompson: Have you put the date of the statement on the record?

Mr. Kelaher: I have put it on. March 19, 1953.

By Mr. Kelaher:

Q. You stated on direct examination that you carried Lee batteries and Firestone batteries at the time of the change-over in 1951. I am talking now about the time of the Atlantic sponsorship of Firestone TBA. Correct? it:

A. That's right.

Q. Your signed statement states: "He changed over to Firestone from Lee and Exide at the time of the change-over by Atlantic because Atlantic changed."

In your direct testimony—

Mr. Thompson: May I—

Mr. Kelaher: I beg your pardon?

Mr. Thompson: I have an objection to the form of the question.

Mr. Kelaher: There is no question yet.

Mr. Thompson: Simply, Mr. Kelaher, in that you did not bring out who wrote the statement that you read, and the inference on the record would be that the witness
2383 had written it; whereas, as is apparent to anybody who look at that document, the statement which you quoted is in an entirely different hand writing.

Mr. Kelaher: There is no objection to that statement going on the record. I showed it to the witness and I asked him to read the certification at the bottom.

Mr. Thompson: My objection is to the fact—

Mr. Kelaher: Your Honor, I am not going to spend any time arguing. I don't even have a question. I don't think this is the time to be interrupted.

Mr. Thompson: Whether you choose to spend time arguing or not is in the presiding officer's discretion. My objection is to the fact—

Mr. Kelaher: What is your objection?

Mr. Thompson: Your question—

Mr. Kelaher: There is no question.

Mr. Thompson: Your question indicates that that man wrote that statement, whereas you know he didn't.

Mr. Kelaher: I didn't say that. I read the statement.

Mr. Thompson: You read it as his statement.

Mr. Kelaher: I did not. I read it as a statement signed by him. It is obvious he signed it.

Hearing Examiner Kolb: There is no pending question.

2384 Mr. Thompson: No. I have an objection to the form of the question, unless it is brought out that the hand writing in which the statement appears is not this witness' handwriting, but was written by somebody else.

Mr. Kelaher: We have no objection to bringing that out, if that satisfies counsel.

Mr. Thompson: That is so stipulated then?

Mr. Kelaher: That is so stipulated.

And of course it is stipulated that he read it before he signed it, I assume.

Mr. Thompson: That is not stipulated. You have to bring that out from the witness.

Mr. Kelaher: I brought that out in reading the certification. I think that will speak for itself.

By Mr. Kelaher:

Q. First of all, on your direct examination you didn't mention that you were carrying Exide batteries prior to the switch-over in or about 1951, did you?

A. No, I didn't.

Q. And at that time you were carrying Exide batteries?

A. No. Not that I know of.

Q. You signed the statement to the effect that you were carrying them. Which is correct?

A. I didn't carry Exide batteries.

Q. It is right here in black and white that you

2385 carried Exide batteries.

A. That is what it looks like.

Q. That is not what it looks like, that is what it is. Secondly, you stated, on direct examination—

A. He could only have wrote part of that after it was signed, and filled in the rest.

Q. I call your attention to the fact that you state right

on there that you read the entire statement before you signed it.

A. That is my writing.

Q. That is your writing?

A. That's right.

Q. And you also stated on direct examination that you have been carrying Bowers batteries since the time Atlantic began to sponsor Firestone batteries, which was on or about 1951, isn't that correct?

A. That is correct.

Q. Your signed statement shows that you were carrying Firestone batteries on March 19, 1953, and I show you your statement again. Which is correct?

A. It is on here.

Q. It is on here. So you were carrying Firestone batteries and not Bowers batteries on March, 1953?

A. I could have been both then.

Q. You didn't mention Firestone batteries on your 2386 direct examination.

A. How do you know that? He didn't put it down.

Q. I know it because I was sitting here listening and you didn't mention it.

A. On there.

Q. You didn't mention it on here. On your direct examination you didn't mention the fact that—

A. I didn't have any Exide batteries.

Q. I am talking about Exide batteries and Bowers batteries since March, 1951. And as a matter of fact you have led this Court to believe that you carried nothing but Bowers batteries since about March, 1951 when in fact you have a signed statement that you were carrying Firestone batteries on March 19, 1953. Isn't that so?

A. I carried both batteries, Firestone and Bowers.

Q. You made no mention—go ahead.

A. The majority are Bowers.

Q. You made no mention of Firestone on your direct examination.

Mr. Thompson: Let the witness complete his answer, please. And stop arguing with him.

By Mr. Kelaher:

Q: You go ahead.

A. I carried Bowers and Firestone, both.

Q. This is the first mention made of Firestone. You have carried Firestone batteries since the change-over, have you not?

2387 A. Sure.

Q. Why didn't you tell that to counsel when he asked you the question on direct examination?

A. Did he ask how many batteries we carried?

Q. I think he did.

A. You only think so?

Q. He did. You told him you carried Bowers batteries?

A. That's right. We carry Bowers Batteries and Firestone, both.

Q. This is the first indication we have of it.

So we have the record straight on that.

You gave a very nice reason why you changed over to Firestone TBA at the time Atlantic began to sponsor it. And the reason you gave was that it was "a very good tire and I had no complaints with them when I first started with them."

Is that the only reason you changed to Firestone tires?

A. I left Charlie Johnson, and when Firestone took over—when Atlantic took over I changed to Firestone.

Q. The reason given was that Firestone was a good tire.

A. Well, it is a good tire.

Q. But that wasn't your real reason for changing to the Firestone TBA, was it?

A. The real reason for changing over to—

Q. The real reason why you began to handle Firestone TBA was what?

2388 A. I wasn't with Charlie Johnson any more. I would buy wherever I wanted to buy.

Q. I am talking about March, 1951, when you had your own station. Is that correct?

A. Yes, sir.

Q. What do you say the reason was why you changed to Firestone TBA?

A. I liked Firestone.

Q. Let me read from your signed statement: "He changed over to Firestone from Lee and Exide at the time of the change-over by Atlantic because Atlantic changed." That was given as your reason on March 19, 1953, as to why you changed to Firestone TBA.

Mr. Thompson: Is that a statement or question?

Mr. Kelaher: I am asking him a question. A series of questions.

A. Firestone had the Lee before they changed over.

By Mr. Kelaher:

Q. Who had the Lee?

A. Atlantic.

Q. Atlantic had Lee?

A. That's right. They changed over to Firestone. Right?

Q. That's right.

A. So I changed over to Firestone.

Q. And you changed because Atlantic changed, did you not?

2389 A. Not only that reason, no. Because I found out that Firestone is a very good tire, and is more well advertised.

Q. Isn't it a fact that Lee also has good consumer acceptance in this area?

A. That could be.

Q. It is a fact, isn't it? And isn't it a fact that your price was lower on Lee than it was on Firestone tires?

A. Lower?

Q. Lower. That is correct.

A. Not to my knowledge it wasn't any lower. It could be.

Q. And the fact of the matter is, Mr. McKaig, that you were influenced by Atlantic's statistics to change to Firestone TBA?

A. No, sir.

Q. You gave that as your reason in your signed statement. You said you changed because Atlantic changed?

A. I wasn't influenced by them.

Q. You weren't influenced by them. You just changed because Atlantic changed, is that correct?

A. Atlantic hasn't influenced me to do anything.

Q. However, you go along with Atlantic, don't you?

A. I work for Atlantic.

Q. That's right. And when Atlantic stopped sponsoring Lee and Exide you switched to Firestone TBA, didn't you? That is what the facts show.

2390 A. I got Firestone tires, but I didn't get any of the TBA.

Q. You also got Firestone batteries, according to your signed statement.

A. Firestone batteries?

Q. And you also got some Firestone accessories?

A. It could have been then. I don't do it now.

Q. You still carry Firestone tires, don't you?

A. Sure.

Q. And you stock them.

Getting back to March, 1951, or thereabouts, when Atlantic began to sponsor Firestone TBA in the Baltimore area, to your knowledge, did other Atlantic service stations change over to Firestone TBA?

A. I wouldn't know.

Q. Let me read your signed statement.

A. Other Atlantic stations?

Q. Other Atlantic dealers.

A. What do I have to do with other Atlantic dealers?

Q. I am asking, of your knowledge, whether or not you knew they did change?

A. Not to my knowledge. I don't know what they do.

Q. This is what you said on March 19, 1953: "The only person I know who didn't change over was C. H. Johnson. He was Lee distributor under old program—stayed with Lee, he thinks." So at that time you knew that the
2391 entire market changed over to Firestone TBA, did you not?

A. How would I know? I don't know the dealers.

Q. You know all within your knowledge changed over. Isn't that a correct station?

A. It could be one station.

Q. That is being—it would be rather unusual if you knew only one Atlantic station in the City of Baltimore, wouldn't it?

A. I don't know whether he changed over or not.

Q. You know more than one Atlantic service station in the City of Baltimore, isn't that correct?

A. That is correct.

Q. And your statement on March 19, 1953, was that the whole market changed over, all that you knew, all the Atlantic service stations that you knew, changed over to Firestone TBA with the exception of Mr. Johnson.

Mr. Thompson: I object to the form of that question. I would like to see the actual statement.

Mr. Kelaher: Here it is. I read the actual statement, verbatim.

Mr. Thompson: I move the last bit of testimony by Mr. Kelaher be stricken from the record. It is a complete

reverse twist on what this man actually signed, written by the Federal Trade Commission examiner. He did not say that the whole market changed to Firestone. All he
2392 said was, "The only person I know who didn't change over was Johnson."

Mr. Kelaher: What does that mean to you?

Mr. Thompson: You are trying to make it appear that this witness has said that the Atlantic dealers, generally, changed to Firestone tires at this time. He has no knowledge of that, and he said that is a fact.

Hearing Examiner Kolb: Let the record stand as it is.

Mr. Kelaher: I might add that I did read that statement verbatim. If not, I will read it again.

Hearing Examiner Kolb: No, you have it in there.

Mr. Kelaher: I think it is verbatim.

By Mr. Kelaher:

Q. In answer to a series of questions by counsel for respondent, Atlantic, you stated that you had freedom of choice with respect to the TBA you purchased, and that Atlantic never put any pressure on you to purchase Firestone TBA, or that you never bought any TBA for that purpose, and so on, for that reason.

Now let me ask you a question. Did Atlantic salesmen or personnel ever indicate in any way to you that they expected you to buy some Firestone TBA?

A. No.

Q. If they never did, let me read your statement on that, and I quote: "You are expected to buy at least
2393 some Firestone." According to your signed statement it is obviously inconsistent with your direct statement, but it certainly indicates that Atlantic expects you to buy some Firestone TBA, and in your mind you know that they expect you to buy some Firestone TBA; isn't that correct?

A. I never buy any. Very seldom I ever buy any TBA

from Firestone. I buy from Kilner and from Belvedere Sales.

Q. By Firestone TBA, I am referring to tires, batteries, and accessories. You have testified that you stock Firestone tires?

A. That is correct.

Q. That is correct?

A. Yes, sir.

Q. And also your signed statement showed that you also stocked Firestone batteries in March 19, 1953?

A. I still buy Firestone batteries.

Q. And you still buy Firestone?

A. Firestone and Bowers.

Q. And then your accessories are still purchased, some of your accessories are also purchased from Firestone?

A. I said very few.

Q. You said very few. But the point is that you are expected to buy some, at least some Firestone because of Atlantic's sponsorship of Firestone TBA, isn't that correct?

A. No. I don't have to buy anything from them.

2394 Q. Then you say even today, in the light of your written statement, that you are not expected to buy some Firestone TBA?

A. I don't buy any Firestone TBA now.

Q. You are confusing TBA with accessories. Are you expected to buy some Firestone tires?

A. Am I expected? No. I can buy them wherever I want to buy them.

Q. You buy Firestone, don't you?

A. Sure, I buy Firestone tires.

Q. And the reason you buy them is because Atlantic is sponsoring Firestone?

A. Not necessarily so. If you want to come in and buy another brand you can buy it.

Q. I am not talking about other brands. You are getting away from the point. I asked why you buy Firestone and you stated in 1953 that you were expected to buy at least some Firestone?

A. No, not expected.

Q. I will let the record speak for itself on that.

Mr. Kelaher: I don't think I have any further questions of this witness.

Redirect Examination by Mr. Thompson.

Q. Is Bower your primary battery line?

2395 A. Yes, sir.

Q. Has it been for some years?

A. It has.

Q. When you took your station, did Atlantic recommend Firestone to you?

A. Never recommended any battery to me. I bought what I wanted to buy.

Mr. Thompson: That is all.

Thank you.

Hearing Examiner Kolb: That is all.

(Witness excused.)

Is that all for this morning?

Mr. Thompson: We have one more witness scheduled.

2396 WILLIAM HENRY LEONARD, was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Leonard, as I told you, this gentleman is Mr. Kolb, the Examiner for the Federal Trade Commission and acts as the judge in these proceedings. The gentleman across the table is my opponent, Mr. Kelaher. He represents the Federal Trade Commission.

Would you state your full name?

A. William Henry Leonard.

Q. Mr. Leonard, you are an Atlantic lessee dealer, is that correct?

A. That is right.

Q. What is the address of your station?

A. Fallsways and Center Streets.

Q. That is in Baltimore?

A. Yes.

Q. And how long have you had that station?

A. Since 1948.

Q. When you came into that station in 1948, was the tire shortage still in effect?

A. Yes.

2397 Q. Do you remember about how long it lasted?

A. Not exactly. But as close as I can remember, I would say a year to a year and a half.

Q. Would you give us the month in 1948?

A. October 1948.

Q. What kind of tires did you handle at your station when you first came in?

A. Lee, US Royal, Mansfield.

Q. Where did you buy your Lee tires?

A. Charlie Johnson, through Atlantic.

Q. And you US Royal tires?

A. Burke-Savage.

Q. And Mansfield tires?

A. R. J. Loock.

Q. What batteries did you handle?

A. Exide and Bowers.

Q. Did you handle any Firestone batteries?

A. Not when I first went in. In fact, I didn't know they had Firestone batteries when I first went in.

Q. Your station is in a commercial area, is it not?

A. Yes.

Q. What kind of customers do you have, primarily?

A. Mostly truckers and business houses with fleet accounts.

Q. Are they price conscious?

A. Very much so. They can buy almost as cheap 2398 as I can; in some cases cheaper.

Q. There came a time when the Atlantic Refining Company stopped selling Lee and Exide and changed to Firestone?

A. That is right.

Q. Did you take up the Firestone brand at that time?

A. I started them a few at a time, with the idea of getting rid of the stock that I had on hand.

Q. Speaking of tires, why did you change to Firestone on tires?

A. Well, I couldn't sell Lee tires, and—I could sell a few, but I couldn't sell them as well as Firestone. I like the brand, I like the service. I figured I could sell those easier.

Q. What about Firestone prices?

A. Well, we first went in, we couldn't buy Firestone tires for the same price that we bought US or Lee or Mansfield.

Q. Are you speaking of when you first went into the station?

A. When I first went into the station. But when Atlantic started handling the Firestone tires and TBA then we got a better discount that brought it down as cheap as we could buy the others, and in some cases cheaper.

Q. What about batteries? When did you shift on batteries?

A. I handled a few when—I would say a good number when they were wet. But when they started dry-charging batteries, I switched completely to Firestone because
2399 of the stocking problem. I have no self life on those. They were, as far as I know, the first ones that came out with dry-charge batteries, and that was ideal for my station because of stocking and an easy way to handle them.

Q. Speaking of accessories—and by "accessories" we don't include repair parts here; we include the lighter kinds of accessories, waxes, polishes, chemicals, that kind of thing—where do you buy your accessories today?

A. We buy from Firestone, R. J. Loock, R. W. Norris, B-B Auto Supply, we buy a little bit from J. R. Hunt once in a while. They are the main ones. We buy some from Behrend Brothers. They are right across the street from me.

Q. These accessories that you buy from these supply houses, do you put them on your shelf?

A. Oh, sure.

Q. Are they openly displayed?

A. Yes.

Q. Firestone as well as non-Firestone?

A. Yes.

Q. Does the Atlantic salesman see them when he walks in?

A. Sure does.

Q. Did the Atlantic salesman ever criticize you for carrying those?

A. No. As long as we sell stuff, he doesn't care.

Q. Did anyone from Atlantic ever tell you that you
2400 had to buy Firestone?

A. No.

Q. Do you feel free to buy any TBA you want?

A. I do. I do it now. Always have.

Q. Do you get along well with your Atlantic salesmen?

A. Fine.

Q. Do you find them of help to you in your TBA matters?

A. They will help us with anything that he possibly can. A lot of times if we have a problem they will help us with it. Usually we don't have too many difficulties.

Q. Comparing them with the salesmen from the Norris company or the Loock company, would you find the Atlantic salesmen more helpful or less helpful?

A. They would be more helpful for the main reason he is usually a man who has been in the service station and has been trained to know what a service station needs.

Q. In the course of your being in this station, your lease has been renewed quite a number of times, is that right?

A. That is right. Fairly often.

Q. What is the term of your current lease?

A. Three years.

Q. When your lease is renewed, what is the procedure?

A. Well, a salesman usually gets in touch with me. Of course, I am not always at the station. I have another interest. The salesman usually calls me up in the even-
2401 ing, leaves word at the station also, and asks me to arrange to meet him some way, when I am going to be there, the exact time, so that he can get in touch with me and get the lease signed.

Q. Do you read those leases over carefully before you sign them?

A. No. I am a bad businessman. I don't think there is any need to. I haven't found any yet. On rainy days I do that kind of stuff.

Q. Mr. Leonard, you know of course—you are familiar with the Burke-Savage Company?

A. Yes.

Q. Do you know a representative of that company named Eugene Savage?

A. Very well. Ever since I have been in the station.

Q. You know, I believe, that Mr. Savage testified in these proceedings in November 1957?

Mr. Kelaher: Objection. How does he know?

By Mr. Ballard:

Q. Do you know that fact?

A. I have heard it. This thing has been going around through grapevine and whatnot. I have heard a lot of things about it. I have heard it. Where, I don't know, but I have heard it.

Q. I would like to read you some material from the record of Mr. Savage's testimony, Page 1755 or thereabouts. Mr. Savage was being questioned by Mr. Kelaher.

2402 Mr. Kela[illegible] said to him: "Have you lost the business of any Atlantic service stations since you have been an outside salesman?"

Mr. Savage answered, "Yes. I called on a station at Fallsway and Center, Leonard's Atlantic station."

That is your station he was referring to?

A. That is correct.

Q. "At one time previous to 1953 he carried all US Royal tires." Is that a correct statement?

A. No.

Q. You, in fact, carry—

A. I carried other ones, too. In fact, I think there was always Lee tires in there, and probably a couple—I don't carry too many tires but I had Lee, US, Mansfield, and I would have had a couple of Goodyears, Goodrich.

Mr. Kelaher: Your Honor, in connection—how did you phrase that? Did you ask what he carries or stocks or handles?

Mr. Ballard: I asked if it was a true statement. The statement Mr. Savage made, Mr. Savage claimed that Leonard's Atlantic carried all US Royal tires. I asked if that is a correct statement.

By Mr. Ballard:

Q. Mr. Savage next said, "He carried a complete stock of US Royal tires, and today I do not call on this 2403 station because he now handles Firestone tires." Is that last statement correct? Does he call on you today?

A. He doesn't call on me, but why I don't know.

I probably do. I slowed down buying from him. I would buy very little from him. The only reason I haven't got the sales.

Mr. Kelaher: What was the last statement?

The Witness: The only reason I don't buy from him is because I don't have a sale for the US. I sell a few, but I always go up to their store to pick them up. I sell what the customer wants. If he asks for US, if he prefers US, that is what I will sell him.

By Mr. Ballard:

Q. The next question Mr. Kelaher asked Mr. Savage was: "Did you have any conversations with Mr. Leonard concerning his purchase of tires from you?"

The answer that Mr. Savage gave was this: "I would say it was approximately 1954, and at that time he told

me that he was going to handle Firestone tires because the oil company has a tie-in with them."

Would you tell the Examiner what you were referring to there?

A. I don't know as to—

Mr. Kelaher: Objection. I don't thing that is a proper question, in the form it is asked. He didn't ask him
2404 whether he said it or not. He asked him to tell you what he meant.

By Mr. Ballard:

Q. Did you say that to Mr. Savage?

A. I would say yes. It may not have been the exact words, but it is about the gist of it.

Q. To what were you referring?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. You may answer.

A. I don't know as to when that was, but I do know that when Atlantic sold Lee and Exide and the rest of that line, I changed over to Firestone. I told Gene I was going to handle it because we now had a connection where we could buy the Firestone line and get it at a price where we could sell it.

Mr. Kelaher: Would you read the answer?

(The reporter read the answer.)

By Mr. Ballard:

Q. In response to a previous question—this is on Page 1754—Mr. Savage testified: "I have also tried to put up US decals and US Royal metal signs and other advertising materials, and the service stations would not allow me."

Later, at Page 1820, Mr. Thompson questioned Mr.

Savage, and he said: "You made a kind of a general
2405 broad statement that you couldn't put up signs at Atlantic stations. Which of the size are you talking about?" That is at Page 1820.

Mr. Savage said, "Well, the station that I mentioned here, we couldn't, Leonard's Atlantic." And then he mentioned some other stations.

Do you recall Mr. Savage ever attempting to put up a US Royal metal sign and US decals on your station?

Mr. Kelaher: Objection. I don't think that is what the testimony is.

Mr. Ballard: I will read it again, Mr. Kelaher:

"I have also tried to put up US decals and US Royal metal signs and other advertising materials and the service stations would not allow them." That is 1754.

I am asking the witness if he recalls any such attempt on the part of Mr. Savage at his station.

Hearing Examiner Kolb: You may answer.

The Witness: He may have asked. I don't exactly remember. But we did have small signs up. We don't put up any signs because we have no place to put them. We have one window. If we put any signs up we can't see out.

We have very few signs. We have a few of the fillers that we put in tires, a couple of small ones that go in one of the side windows, and little stands that the tires rest in, tripods, or something, whatever you call them. We had all brands in those. We had Lee, Armstrong, in
2406 fact I probably had some of them laying around the station yet with those names on them. And when Firestone sent theirs down, we used theirs.

Mr. Kelaher: What is this you are referring to? Signs?

The Witness: Yes, small stands, real small stands.

Hearing Examiner Kolb: Tire stands.

The Witness: Because we don't have any place to put

big ones. Once in a while we get a banner we can tie up somewhere.

By Mr. Ballard:

Q. Mr. Leonard, you operate another business?

A. That is right.

Q. What business is that?

A. That is a drilling business.

* * * * *

Mr. Ballard: I have no further questions.

Cross-Examination by Mr. Kelaher.

Q. I would like to discuss your lease for a moment. You began your station operation in October 1948; is that correct?

2407 A. That is right.

Q. And were you on a year-to-year lease at that time?

A. My station, I think, operates a little different than others. I understand that is a sublease.

Q. You understand what?

A. I am under the impression it is a sublease. I am not positive.

Q. You don't know whether you are on a lease or sublease, do you mean?

A. I understand Atlantic owns most of the grounds of their stations and then lease them to the operator. Whether I am correct or not, I don't know. This particular one they don't own the ground to start with. So whether that makes me a lessee or not—

Q. Who do you lease from?

A. From Atlantic.

Q. When did you begin to lease from Atlantic?

A. In 1948.

Q. Was your first lease a year-to-year lease or for a longer term?

A. I don't remember.

Q. You don't remember?

A. No, sir. I probably have it in the safe.

Q. When did you execute your last lease?

A. I do know our leases are different now than
2408 they were, because for some unknown reason we couldn't get a long lease before.

Q. You couldn't?

A. No. But I was under the impression, I was told, that it was because the people who owned the ground wouldn't give a long-term lease to the Refinery.

Q. Now do you think you can remember when you signed the last lease?

A. No, I don't think so.

Q. Is it a three-year lease or one-year lease or what?

A. It is a three-year, the last two or three leases. But I don't know when I signed the last one. It is in the safe at the office.

Q. Do you know when this lease expires?

Hearing Examiner Kolb: What difference does it make? He said his last two or three leases were three-year leases.

Mr. Kelaher: I am trying to establish which particular leases he entered into. There has been a change in Atlantic's form of leases over the years. I am trying to get some specificity in the question.

Mr. Ballard: May I suggest that you can't establish that any way but to find the leases and show it to him.

Mr. Kelaher: I can establish it from his recollection, if that is possible.

2409 By Mr. Kelaher:

Q. In any event, your last two leases were for three years?

A. Yes.

Q. That you know?

A. I think this last one expires this coming year. I am not sure—next year.

Q. You think it expires in 1959?

A. Yes. In fact, I don't think the station will be there in 1959.

Q. Why is that?

A. Because the expressway will probably close it down.

Q. So you apparently entered into a lease about 1956?

A. I think it was later than that. I am not positive.

Q. You stated, I believe, on direct examination, that you have known Mr. Eugene Savage for some time; is that correct?

A. Yes.

Q. And did that relationship begin when you became an Atlantic lessee?

A. Right.

Q. Did he first start calling on you at that time?

A. Yes.

Q. He sold you US tires on a stocking basis for some years, you testified; is that correct?

A. What do you mean by "stocking basis"?

Q. Do you know what the word "stocking" means? In quantity.

2410 A. Whatever I wanted. Never sold me US tires in large quantities. Armstrong.

Q. Armstrong?

A. But not US.

Q. He sold you Armstrong on a stocking basis, is that correct?

A. Yes, that is right.

Q. And he also sold you US Royals?

A. A few US. Mostly Armstrong.

Q. And that continued for a period of some time, apparently, didn't it, from October 1948 up until when?

A. I wouldn't say it started in 1948.

Q. When did it start?

A. It took a little time before I knew what was going on there.

Q. When did this start?

A. I would say that it was after the tire situation had eased up. I would say it was probably a year or two years after I went in there. Sometime in the '50s when I started buying Armstrong tires. I am not positive.

Q. Then from that period on you did stock Armstrong tires and bought some US tires from Burke-Savage?

A. That is correct.

Q. Is that correct?

A. That is correct.

Q. And then sometime after the change-over by
2411 Atlantic to sponsorship of Firestone TBA you changed over completely to Firestone—you stocked Firestone tires, right?

A. I stocked them but I didn't change over completely.

Q. What else did you stock?

A. I don't have any one line specifically in nothing except gasoline and oil.

Q. But on your tires did you discontinue the purchase of Armstrong and US?

A. That is right.

Q. And begin the purchase of Firestone?

A. I purchased more Firestone, that is right.

Q. And prior to that time you handled Exide and Bowers batteries and after the switch-over you eventually changed over to stocking Firestone batteries; is that correct?

A. That is correct.

Q. Now with respect to accessories, you also began to purchase some accessories from Firestone; is that correct?

A. That is correct.

Q. Who do you purchase your Firestone TBA from?

A. How do you mean that?

Q. Which store do you purchase it from?

A. 21st and Howard.

Q. Is that a Firestone service store?

A. I guess that is the warehouse. I think they have several in town. In fact, I know they do.

2412 Q. Do you know whether that is your designated supply point?

A. Yes. That is where they delivered to for our section. Or rather, where they deliver from, for our section. It is close.

Q. And prior to this switch-over you purchased Lee tires from Charlie Johnson; is that correct?

A. Yes.

Q. And you also purchased Mansfield tires from R. J. Loock; is that correct?

A. Yes.

Q. And that has also been discontinued, apparently?

A. Yes.

Q. You stated that the reason you changed to Firestone tires was because through Atlantic you could get a better price on Firestone tires?

A. That is right.

Q. Did you ever check Firestone's price schedule with the US price schedule, or with the Goodyear price schedule, or other price schedules?

A. At the time we started buying Firestone I did.

Q. And isn't—

A. Now they are pretty close to the same thing again.

Q. Isn't it a fact that there is little if any difference between the prices of the major brands? Isn't that correct?

A. That is correct.

2413 Q. And isn't it also a fact that the Lee tire is cheaper than the major brands, and that the Mansfield tire is cheaper than the major brands?

A. And they are a cheaper tire in quality. That is right.

Q. They are cheaper tires, but your discount margin is longer, is it not?

A. I don't know. I don't think Lee is.

Mr. Ballard: Just a moment. Would you read back that colloquy? There was one word that he said that I don't know whether the reporter got it or not.

(The reporter read the record.)

By Mr. Kelaher:

Q. How do you know that they are cheaper in quality?

A. I think I am entitled to my opinion. My opinion is that they are.

Q. It is strictly a matter of your own opinion?

A. That is right.

Q. You have no basis other than your own opinion for that, I am sure.

Mr. Ballard: I move that last remark be stricken.

Hearing Examiner Kolb: Let it stay. Let's get moving.

By Mr. Kelaher:

Q. When you were purchasing Lee tires from Charlie Johnson, it was under the Atlantic setup, wasn't it?

2414 A. Yes.

Q. And even though they were cheaper in quality, you purchased Lee tires; is that correct? In your opinion.

A. Yes.

Q. Wasn't that because Atlantic sponsored them?

A. It could be, I guess.

Q. The answer is Yes, isn't it?

A. Yes.

Q. You stated that the reason you changed to Fire-

stone tires was because you could get a better discount. Isn't it true that Atlantic has nothing whatsoever to do with your price classification when you purchase Firestone tires?

A. As far as I know.

Q. As far as you know they have nothing to do with the price you receive. It is based on your purchase volume, isn't it?

A. That is right.

Q. You are either an AB dealer, a B dealer, or a C dealer, or your price is based on the Firestone price list, isn't it?

A. Right.

Q. So your statement that you changed because you could get a better price is not true; you stated—

A. But it is true, I have the bills to prove it.

Mr. Ballard: Let him answer.

The Witness: I have the bills at home to prove it.

2415 By Mr. Kelaher:

Q. Let me ask you: You stated that because of the Atlantic tie-in you could get a better price buying Firestone tires?

A. Yes.

Q. Now how—

Mr. Ballard: Let him answer.

Mr. Kelaher: Let me ask the question.

Mr. Ballard: The man is giving an answer. The reporter can't get it.

Mr. Kelaher: I am asking my questions.

The Witness: You asked how it is true or how is it possible?

By Mr. Kelaher:

Q. How is it possible?

A. When I was buying on my own, which I still do the

same thing with everything I buy, when I buy one tire from anybody, if I go to Goodyear and buy one tire, I can't buy it as cheap as I can buy Firestone tires.

Q. What price classification does Goodyear give you if you buy one tire?

A. I wouldn't know.

Q. Have you ever looked at the prices?

A. When I tried before I could never get them. When Firestone—when Atlantic started handling Firestone, evidently they gave all the stations a better price than 2416 individually.

Q. Have you ever seen the Firestone price list? Have you been shown one by your Atlantic salesman, or Firestone salesman?

A. I have them in the drawers of my desk.

Q. And isn't it a fact that your pricing classification is based on your purchase volume?

A. It might be. And I don't feel I buy the volume, in fact I know I don't buy the volume for the discount that I get.

Q. In other words, you are getting—

A. I get a discount of a better volume than I do.

Mr. Kelaher: Apparently we may be getting into another field here, Your Honor.

By Mr. Kelaher:

Q. You did testify that the price was coming around to the same as the others at this time; is that correct?

A. As far as I know. I don't check them any more. I have no reason to.

Q. You just buy Firestone tires?

A. Right.

Q. Period.

A. Period.

Q. What type of service station identification do you

have in your station? I am talking about window decals and outdoor signs.

2417 A. Sir?

Q. Do you have a window decal on your station?

A. No. No window.

Q. Do you have an outdoor sign advertising tires?

A. Not any more. It blew down.

Q. You had an outdoor sign. So you don't do any advertising at all?

A. No place to put it. We have no sidewalk. We can't even use a sidewalk sign.

Q. As I understand your direct testimony, you do recall your conversation with Eugene Savage, of Burke-Savage Tire Company, is that correct, in about 1954?

A. I recall talking to him. Not verbatim, though.

Q. How did you first learn that Mr. Savage had testified about your station in this proceeding?

A. I told you I don't know where I got it, but there is such a thing—you hear a lot of things and no one knows where.

Q. By the grapevine?

A. Right.

Q. Did an Atlantic salesman or personnel from Atlantic ever mention it to you?

A. It wouldn't have been the salesman. I don't see the Atlantic salesman too often.

Q. Who is your Atlantic salesman?

A. Walt McGee.

2418 Q. Could it have been one of the other Atlantic personnel?

A. I wouldn't know.

Q. You can't recall?

A. No.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Ballard.

Mr. Thompson: I think it has a bearing in this case. One of the things is economic dependence, inability to make a living. I offer to prove that this man has a new Cadillac convertible. I think it has a bearing on the case.

Hearing Examiner Kolb: He is also in another business.

By Mr. Ballard:

Q. Mr. Leonard, do you buy only one brand of tires?

A. No. You can look in my stock right now and you will find at least four or five different brands. They are always in there.

Mr. Ballard: Thank you.

Mr. Mason: May I move to strike the testimony of the last two witnesses as to Goodyear?

Mr. Kelaher: I have a question on recross.

2419 *Recross Examination by Mr. Kelaher.*

Q. You did testify that you do stock Firestone?

A. Yes. I stock all kinds.

Hearing Examiner Kolb: The motion of counsel for Goodyear to strike the testimony so far as it pertains to Goodyear will be sustained. The testimony will remain in the record as to Atlantic.

Thank you, Mr. Leonard.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:30.

(Thereupon, at 1:25 p. m., the hearing was adjourned, to reconvene at 2:30 p. m., this day.)

2420 Afternoon Session.

2:30 p. m.

Hearing Examiner Kolb: On the record.

Mr. Thompson: I wish to call as a witness Mr. Gabriel Tydings.

Whereupon GABRIEL TYDINGS was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Mr. Tydings, in this investigation I represent the Atlantic Refining Company. Immediately on your right is Mr. Kolb who is the Hearing Examiner and presiding officer in the case. The extremely youthful, coal-black headed man on your left is Mr. Kelaher, who is my opponent, and represents the Federal Trade Commission.

Mr. Tydings, what is your present occupation?

A. I am a milkman salesman.

Q. Did you start on that job early this morning?

A. I sure did.

Q. How early?

A. One o'clock I started serving milk.

Q. Have you had any sleep since?

A. No, sir.

Q. Were you at one time a lessee operator of a
2421 service station owned by the Atlantic Refining Company?

A. Yes, sir.

Q. Did you have a station at Clifton and Dennison Streets?

A. Yes, sir.

Q. Do you recall about when you first took that station?

A. '51 I think it was.

Q. And kept it until about July, 1953?

A. '53.

Q. That was a station, was it not, which had been previously operated by Joe Wyniger?

A. Yes, sir.

Q. And he left it to become a partner of Mr. Varnadore?

A. I think he went in the real estate business first, didn't he?

Q. He eventually became a partner of Mr. Varnadore?

A. Yes.

Q. Then from July to December, 1953, were you working at a Sinclair station?

A. That is correct.

Q. And then at the end of 1953 did you come back to an Atlantic station with Mr. Wells?

A. Yes, sir.

Mr. Kelaher: When?

By Mr. Thompson:

Q. About December, 1953?

2422 A. December, 1953.

Q. And you kept that station in partnership with Mr. Wells until about November, 1955?

A. That's right.

Q. Since that time you have been with the Cloverdale—

A. Cloverdale Dairy?

Q. When you took over the station at Clifton and Dennison from Mr. Wyniger in January, 1951, what kind of TBA did you have?

A. Lee tires and batteries.

Q. Was that stock which you purchased from Wyniger?

A. Yes, sir.

Q. When you say "Lee", do you mean Lee tires?

A. Lee tires, Lee batteries.

Q. Do you recall the time in the spring of 1951 when Atlantic Refining shifted from Lee and Exide to the Firestone line of TBA?

A. Yes, sir.

Q. I hand you, sir, three letters identified in this record as CX-150, CX-206, CX-207, and ask you with respect to each whether you recall, as an Atlantic lessee dealer, having received the letters.

The first I show you is CX-150, which is a copy of a letter from Dwight Colley, Vice President of Atlantic Refining Company, dated March 1, 1951, and entitled: 2323 "A statement of Atlantic's TBA Policy".

Would you be kind enough to look at that letter and tell me whether or not you recall receiving it.

A. Yes, sir.

Q. The second letter I show you is identified as CX-206, and that is a letter dated August 28, 1952, addressed by Mr. Colley to the dealers and entitled, "A Restatement of Atlantic's TBA Policy."

I hand you that letter and ask you whether you recall, also, receiving that?

A. Yes, sir.

Q. And the third letter I want to show you is identified as CX-207, dated June 24, 1955, addressed to Atlantic dealers and entitled, "No Forcing."

This particular one, sir, happens to be signed by J. D. Estlow. If you had received one I think it would have been signed by Mr. Gordon Burns.

A. That's right.

Q. Do you recall receiving that letter shortly before you left the station?

A. Yes, sir.

Q. Mr. Tydings, do you recall any dealer meetings held

in Baltimore in 1951 and 1952, at which time the
2424 Firestone-Atlantic TBA program was explained?

A. Yes, sir.

Q. Was it or was it not made clear to you at that time that you could take it or leave it?

A. I could take it or leave it.

Q. Was it made clear that so far as the dealers were concerned the program was voluntary?

A. Yes, sir.

Q. Since the change-over from the Lee-Exide line to the promotion by Atlantic of the Firestone line, what brands of tires have you carried at your station during the time that you and Mr. Wells were there?

A. Just about all kinds: Lee, Firestone, Goodyear, Vanderbilt.

Q. Referring, sir, to Vanderbilt, were they purchased from Joe Scheiner of the S & S Tire Company?

A. Yes, sir.

Q. Have you known Joe Scheiner for a lot of years?

A. Just for the amount of years that I was in the service station.

Q. Did you also purchase recaps from S & S Tire through Joe Scheiner?

A. Yes, sir.

Q. Did you have any experience with Mr. Scheiner with respect to recaps which have a bearing upon
2425 your continuing to do business with him?

A. We got a bad lot of recaps from him; call him up and talk to him about it. He didn't want to make them good. In fact, he didn't make them all good. I had to stand part of the loss myself, so I just cut down buying from him at that time, and just bought what I had to have.

Q. Do you remember to what company you shifted when you dropped S & S Tire on recaps?

A. Ezrine.

Q. Is that E-z-r-i-n-e?

A. Yes.

Q. Do you recall another occasion when you purchased or ordered some Suburbanite tires from Mr. Scheiner of S & S Tire?

A. Yes, sir.

Q. Will you tell us about that incident?

A. That was when Mr. Wells and I went in there together. We ordered Suburbanites. We got them. We didn't notice them right away. We put them on people's cars. And they come back to us and complained, the tread was not the same bar. The bar was such smaller than the Suburbanite bar and the snow tire. It didn't last as long. They wore out real fast. And we called Mr. Scheiner on it. He came up and explained that it was a smaller bar. He had duplicated the Suburbanite tread, but it was a smaller bar on the tire.

Mr. Kelaher: Mr. Thompson, would you identify 2426 the Suburbanite tire a little more? Who the manufacturer is?

The Witness: Suburbanite tire is a snow tread, has a bar type on it.

Mr. Kelaher: Is that a brand of tire? Or type of tire or what?

The Witness: That is a Goodyear tread. That is a Goodyear recap snow tire, what they call a Suburbanite snow tire.

By Mr. Thompson:

Q. As a result of that incident did you indicate to Mr. Scheiner that you were not planning to continue to buy from him?

A. We told him exactly that if we couldn't have the Suburbanite we couldn't use his tires because people wouldn't take them, they were complaining about them.

Q. After Atlantic started to promote the Firestone line of batteries, what brand of batteries did you and Mr. Wells carry at this station?

A. Lee, Firestone, and if a customer come in and wanted an Exide, we went out and got it, or whatever kind they want we went out and got it for them.

Q. Were you at first dealing in Bowers batteries?

A. When I first took the station it was Bowers batteries in there. The first month I was in the station a lady bought a Bowers battery and said she only had it a
2427 month. She had the guarantee. I called Bowers about it and Bowers wouldn't do anything about it. So I just discontinued handling Bowers batteries and handled Lee's.

Q. How about the brands of accessories which you carried since 1951 at that station, Mr. Tydings?

A. We handled products from the Baltimore Supply, Monarch, R. J. Hunt, R. W. Loock, and R. W. Norris—J. R. Loock and R. W. Norris.

Q. Did you also buy from the Baltimore Auto Supply Company?

A. Baltimore Auto Supply, yes, sir.

Q. And until you had the instance to which you referred from S & S Tire—that is, Joe Scheiner?

A. We bought all along from them. We bought from Scheiner TBA, too. When we needed it in emergency and didn't have it in stock we would go down to Scheiner's and get it.

Q. You didn't mention Firestone as accessories. Did you ever buy any accessories from Firestone?

A. Oh, yes. We bought some from Firestone.

Q. Some?

A. Yes.

Q. Were all these brands of TBA to which you have referred openly displayed at your station?

A. Yes, sir.

Q. Did you have a Lee rack, by any chance, for tires?

A. Yes, sir—no, a Lee rack for batteries. We had
2428 our own racks for tires. We had Lee display cards in our tires sitting out front. And Firestone Displays.

Q. Did you, by any chance, have a Lee sign on your station?

A. Yes.

Q. Did you sell these non-Firestone brands of TBA on Atlantic credit cards?

A. Yes, sir.

Q. Did Atlantic ever criticize you for doing that?

A. No. We sold everything on the credit card a customer asked for.

Q. To the extent that you handled Firestone tires, what was your basic reason for handling Firestone tires?

A. Mostly customers.

Q. By that, do you mean that there was a customer demand for Firestone tires?

A. Some of them.

Q. Mr. Tydings, I want to read from the transcript of the evidence that has been given before in this case, a couple of things that Joe Scheiner said about you, and ask your comments.

Mr. Kelaher, at page 1984 of the testimony you will find a reference by Mr. Scheiner to Mr. Tydings.

Mr. Kelaher: Go right ahead.

By Mr. Thompson:

Q. Mr. Kelaher asked Mr. Scheiner: "During what period did you solicit tire and battery business from Mr. Tydings?"

2429 Mr. Scheiner answered: "Well, I guess it was during 1953 and 1954."

Then he said, at a little later point: "Yes, from time to

time I had conversations—he and I had conversations regarding TBA."

At another point at about the same place Mr. Scheiner, in response to a question asked by Mr. Kelaher, said: "I did business with Tydings, I guess, for about four or five years."

Then the question was, "Beginning when?"

And Mr. Scheiner said, "It could have been as early as 1951; in fact it was."

Then Mr. Kelaher said, "What brand of tires and batteries were you handling during this period when you were soliciting tire and battery business from Mr. Tydings?"

And Mr. Scheiner said, "I had both Lee and Firestone tires, and Lee and Bowers batteries."

Mr. Scheiner then testified to a conversation which he said that he had with you at your station at Clifton and Dennison Streets. At page 2005 of the testimony Mr. Scheiner identified this conversation as having occurred before the partnership went into effect, when Tydings was operating with his son, which would place it very likely in 1953.

I pause to ask you, sir, whether in 1953 you had one of your sons helping you at the station?

2430 A. That's right.

Q. At page 1985, in response to a question by Mr. Kelaher, Mr. Scheiner testified as follows: "He", referring to you, Mr. Tydings, "said that he would no longer be able to buy merchandise from me;"—that is, from Mr. Scheiner—"that his Atlantic salesman was applying pressure; that he would have to stock merchandise from them only."

I ask you, sir, whether you made any such statement to Joe Scheiner?

A. No such conversation went on.

Q. At another point in his testimony, at pages 2006 and 2007, in response to a question by Mr. Kelaher, Joe Scheiner

said: "I made regular calls on him"—referring to you, Mr. Tydings—"at least once a week, and during one of my regular calls I asked him about filling in what he had sold." That is, what you had sold.

"He"—meaning you, Mr. Tydings—"said he wouldn't be able to do so, that his salesman had gotten after him about stocking."

I ask you these questions: Was Lou Miller your salesman?

A. Yes, sir.

Q. Did he ever get after you about stocking non-Firestone TBA?

A. No, sir. Mr. Miller only got after me about house cleaning.

2431 Mr. Kelaher: About what?

The Witness: House cleaning.

By Mr. Thompson:

Q. Did either Mr. Miller or anybody else from Atlantic criticize you for carrying non-Firestone TBA?

A. No, sir.

Q. Did any of them ever tell you to stop buying it?

A. No, sir.

Q. Did any of them ever tell you to get it out of your station?

A. No, indeed. No, sir.

Q. Did they ever suggest or ask you to hide it?

A. No, sir.

Q. Did you make your own decisions about what you were going to buy?

A. Yes, sir.

Q. Did you feel free to buy any kind of TBA you wanted to buy?

A. Yes, sir. When I was in there I did.

Q. And from any source you wanted to buy from?

A. Yes, sir.

Q. Have you a recollection of an investigator from the Federal Trade Commission coming to see you back about 1953?

A. Yes, sir.

Q. Did he ask you questions?

2432 A. Yes, sir.

Q. Do you remember what he asked you, or what you said in reply?

A. No, I can't exactly recall what I said, but he didn't like some things I said to him because he didn't tarry too long. He asked me about if we had to pay for signs, and I told him No, we had nothing to do with signs. He asked me about the decals, and I told him No, Atlantic Refining Company took care of all that stuff.

Q. Did he ask you whether Atlantic forced you or pressured you into buying Firestone TBA, do you recall?

A. I can't recall whether he asked me that or not. But he did ask me if I was buying strictly Firestone products.

Q. Were you requested or subpenaed to be a witness for the Federal Trade Commission here in Baltimore last November?

A. No, sir.

Mr. Thompson: Mr. Tydings, those are all the questions that I have. It is entirely possible that my handsome friend, Mr. Kelaher, may have a couple of questions he would like to ask you.

In fact, I would be surprised if he didn't.

Excuse me, I have one other question.

By Mr. Thompson:

Q. You came here under a subpena today?

A. Yes, sir.

2433 Mr. Thompson: Thank you.

Cross-Examination by Mr. Kelaher.

Q. Mr. Tydings, going back over your leases, I would like to get some dates a little straighter. You began your Atlantic service station operation in January, 1951?

A. Yes, sir.

Q. And at that time did you enter into a one-year lease, or a two-year lease, or three-year lease?

A. I believe it was an extenuation of lease. If I am correct on it, it was an extenuation of lease.

Q. Let's say the first lease you signed in January, 1951, do you remember if it was a year-to-year lease, a one-year lease?

A. I think it was a year extenuation; I think that is the way it was.

Q. Did you ever sign another lease?

A. No, not until I went back with Wells.

Q. That was in what month?

A. That was in December, 1953.

Q. First you operated by yourself?

A. That's right.

Q. From January, 1951 until about July, 1953? Right?

A. Right.

Q. Then you went back with Mr. Wells from December, 1953 to about November, 1955, is that correct?

A. Right.

2434 Q. Starting with January 1951, what TBA did you begin to handle at the beginning of January 1951?

A. Lee and Bowers.

Q. Lee tires?

A. Lee tires.

Q. And batteries?

A. Lee tires and batteries.

Q. And Bowers batteries?

A. Bowers batteries.

Q. From whom did you purchase the Lee tires?

A. Lee Tire and Rubber Company.

Q. At or about March 1951, Atlantic began to sponsor Firestone TBA; do you recall that?

A. Yes, sir.

Q. Before we get into that, you also stated that you purchased Vanderbilt tires from Mr. Scheiner?

A. That is right.

Mr. Kelaher: I would like the record to show at this time that in addition to the products named by counsel for respondent Atlantic as being carried by S&S Tire Company through Joe Scheiner, he also testified at transcript 1987, I believe, that he carried Lee tires, Vanderbilt tires, Lee and Bowers batteries, and Firestone tires.

By Mr. Kelaher:

Q. So that, as you stated, you did purchase Van-
2435 derbilt tires from Mr. Scheiner?

A. Right.

Q. Did you purchase any other products from him?

A. Yes.

Q. What other brands did you purchase from him?

A. Lee.

Q. Lee tires?

A. Lee tires, Lee batteries, Firestone tires.

Q. Bowers batteries?

A. No. I quit handling Bowers batteries.

Q. When you did purchase Bowers batteries, who did you purchase them from?

A. Scheiner.

Q. When the change-over came in about March 1951, did you make any changes in your source of supply of tires, batteries, and accessories? I am referring now to the period when Atlantic began to sponsor Firestone TBA.

A. Yes, sir. I bought just about everybody else's.

Q. Did you begin to stock Firestone tires?

A. Some of them. I still stock Lee's.

Q. You still stock Lee's?

A. Yes, sir.

Q. Who did you purchase your Firestone tires from?

A. Scheiner, some of them from Scheiner, some of them from Firestone.

2436 Q. Do you recall the Firestone location where you purchased your Firestone tires from?

A. Edmondson Village.

Q. At that time was your price on Lee tires lower than your price on Firestone tires?

A. [illegible]st about the same.

Q. About the same?

A. Yes.

Q. With respect to batteries, what batteries did you carry after Atlantic began to sponsor Firestone TBA?

A. Lee and Firestone.

Q. Lee and Firestone?

A. Exide.

Q. And you stated on direct testimony that you had a Lee rack; is that correct?

A. Yes, sir.

Q. At the time of the change-over, you testified on direct examination in effect that you had nothing to do with the signs; is that correct?

A. That is right. Other than the display signs that the tire company gave us.

Q. With respect to your service station identification, so-called window decals, what service station identification did you have prior to the Atlantic change-over to Firestone TBA?

2437 A. We had no decals, I don't think, until Firestone, did we?

Q. No decals until Firestone?

A. I don't think there was any decals.

Q. How about an outdoor sign?

A. We had Lee outdoor signs.

Q. You had Lee outdoor signs?

A. Tire signs.

Q. After the change-over to Firestone TBA, did you request Firestone or Atlantic to identify your station with Firestone advertising?

A. No, sir.

Q. And was your station identified with Firestone advertising?

A. Yes.

Q. You made no request for this?

A. No, sir.

Q. And would you state how that came about? Your station was identified with Firestone window decals, is that correct?

A. Yes, sir.

Q. Who put them there?

A. Atlantic Refining Company, I guess.

Q. You guess? You were the lessee operator at the time, weren't you?

A. Yes, but I had nothing to do with the signs. I didn't pay for no signs.

2438 Q. You didn't ask them to put the signs there, did you?

A. No, sir.

Q. How about your outdoor sign? Did they put up a Firestone outdoor sign on your premises?

A. I don't remember whether it was an outside Firestone sign put up or not.

Q. After the change-over you stated that you continued to stock Lee tires; is that correct?

A. Yes, sir.

Q. And did you have Lee window decals in your station any place?

A. No.

Q. No Lee advertising?

A. Only the tire signs which you put inside the tires, and little signs you paste on the windows.

Q. And there was no Lee outdoor sign, was there?

A. No, sir, nothing. Not then.

Q. Was there before?

A. Yes.

Q. What happened to them?

A. Took it down.

Q. Atlantic took it down?

A. No, I took it down.

Q. You took it down before—

A. Took it down before we made any changes be-
2439 cause it was in our way.

Q. Then was a Firestone sign put up?

A. No, sir.

Q. You are sure that you had no outdoor Firestone sign?

A. If it was, it wasn't on the ground. If they put it up, they put it on a pole.

Q. It would be on the premises, though, wouldn't it?

A. Yes.

Q. Then there was one put up, wasn't there?

A. Yes, I think so.

Q. I beg your pardon?

A. I think there was, one on the pole.

Q. And you didn't ask anybody to put it there, did you?

A. No.

Q. Could you have taken that sign down if you had wanted to?

A. I don't know. Never asked.

Q. You didn't know whether under the terms of your lease you could take it down or not?

A. No.

Q. I would like to ask you again about this Lee rack that you stated was given to you. Are you certain that that was not a Firestone tire rack?

A. No. The Lee rack was in there when I went in.

Q. Was that taken out and a Firestone rack put in?

A. No, sir. We kept that for a couple of years afterwards.

2440 Q. With respect to your conversations with Mr. Scheiner, you stated that you do recall Mr. Scheiner; is that correct?

A. I recall Mr. Scheiner, yes, sir.

Q. And in connection with the conversation you were questioned about on direct examination, Mr. Scheiner was asked, at transcript 2009, this question by Mr. Thompson: "Do you believe what Mr. Tydings said to you? Or did you think he was giving you the brush-off?"

The answer by Mr. Scheiner was, "I believed him."

So, apparently, he had quite a high regard for you.

A. He didn't know what I had for him.

Q. Do you recall during the course of Mr. Scheiner's calls on you—you did have conversations with him, I assume?

A. Oh, yes.

Q. And you have testified that you purchased all of the products which he said he sold you. In his direct testimony he testified at transcript 1987 that he sold you Lee tires, Vanderbilt tires, Lee and Bowers batteries, and a few Firestone tires. That is correct, isn't it?

A. That is right.

Q. And there did come a time, did there not, when your purchases from Mr. Scheiner or S&S Tire Company decreased; is that correct?

A. On the basis of bad tires that he sold us.

Q. You testified on direct with respect to Sub-
2441 urbanite tires purchased from Mr. Scheiner. You also testified on direct that you were a partner with Mr. Wells at that time.

A. That is right.

Q. Mr. Scheiner states that his conversation with you was prior to the time that you became a partner with Mr. Wells. Do you recall any conversations with him when you operated the station by yourself?

A. There was no conversation with Mr. Scheiner when I operated by myself in regard to any compulsory or anything about Atlantic Refining Company that I had to do.

Q. Did you have any complaints with him then with respect to—

A. Let's make this whole thing clear about Mr. Scheiner. I bought from Mr. Scheiner on 30-day bases. I didn't pay my bill one month. And I sent down there to get stuff and he put me strictly on cash basis, and he would come up every week and collect some money. I got a little determined with him. The only time he called on me every week was when he came up to get some money on his, I think it was $190. He would come up every week to get some of that money. That was most of his intentions for calling on me.

Q. So you don't look too kindly toward Mr. Scheiner, I take it?

A. Mr. Scheiner don't look too kindly toward me, I don't think, because I held him up on his money.

2442 Q. When did all this take place?

A. When I was in there by myself.

Q. When you were in there by yourself?

A. Yes, sir. Maybe that will let you understand a little more.

Q. I think it does.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Tydings. Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Examiner, the next witness whom we planned to call was Mr. H. Lester Lewis, whose residence address is 103 Third Avenue, Brooklyn, Baltimore 25.

I have the subpena which the Commission issued, and the return showing that it was served at Mr. Lewis' place of business by R. D. Thomas, who is one of the Atlantic Refining Company's salesmen here in Baltimore, on June 27th, which was last Friday.

Mr. Lewis did not appear in response to this subpena which required him to be present in this room today
2443 at 3:00 o'clock P. M. During the intermission my associate, Mr. Francis Ballard, made an investigation and ascertained from Mr. Lewis' place of business that he left on his summer holiday on Thursday, June 26th, with his wife. So that it would appear from the circumstances that he is not in contempt of the Commission but simply has not been in town and has not received the subpena.

Therefore, sir, I am unable to call him at this time.

As we have no further witnesses scheduled for today, and the hour is 25 minutes of four, I suggest that we adjourn until tomorrow morning.

Mr. Mason: May I make a motion to strike the testimony of the last witness—Mr. Tydings' testimony? His only testimony concerning Goodyear was some Suburbanite

tires, and he apparently didn't get Goodyear tires, so it has no connection.

Hearing Examiner Kolb: The testimony with respect to the witness Tydings will be stricken so far as Goodyear is concerned, but will remain in the record insofar as Atlantic is concerned.

* * * * * *

2445 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, I call to the stand Mr. Herman Sartoff.

HERMAN SARTOFF was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Mr. Sartoff, will you give the court reporter your address please?

A. Place of business?

Q. Both place of business and home address.

A. Atlantic service station, Monroe and Pratt Streets; and I live in Catonsville.

Q. I am Mr. Thompson and I represent the Atlantic Refining Company in this investigation. The gentleman on the left is Mr. Kolb, who is the presiding officer and Trial Examiner for the Federal Trade Commission. The gentleman on your left is Mr. Kelaher, who is the attorney for the Federal Trade Commission.

Mr. Sartoff, do you lease that station at Pratt and Monroe Streets in Baltimore?

2446 A. I do.

Q. About how long have you been an Atlantic lessee?

A. Between 28 and 29 years.

Q. That is to say, you have been at that station 28 or 29 years?

A. I have.

Q. For a while weren't you there in a salary capacity?

A. Yes, sir. Before the stations were leased.

Q. And the station has been leased to you, actually leased to you for about twenty years; am I not right?

A. Approximately 20-21 years.

Q. So that you have been an Atlantic lessee since 1937 or 1938?

A. About 29 years.

Q. Before you became a lessee, did you at one time drive a truck for Atlantic?

A. I did.

Q. So you are quite an old timer with the Atlantic Refining Company, are you not?

A. Yes, sir.

Q. You have a three-year lease at your station?

A. Yes, sir. Three years.

Q. And I guess this is the second three-year lease?

A. That is right.

Q. Mr. Sartoff, do you recall that about 1951 2447 Atlantic started to promote the Firestone TBA line?

A. I do.

Q. Before that, do you recall what brands of TBA you carried at your station?

A. Lee tires.

Q. How about batteries?

A. Lee or Exide.

Q. Do you remember from whom you bought your Lee products?

A. Oh, yes. Lee Tire and Rubber Company.

Q. Before 1951 did you also carry Berger tires?

A. Berger tires, yes, sir, Berger Tire Company. It

was more or less an obligation to him. I was enjoying all their business. And Martin's, across the street, I bought batteries from them on the same principle.

Q. Do you know a brand of tire called the Pennsylvania tire?

A. Yes, sir.

Q. Before 1951 did you handle Pennsylvania tires, too?

A. Some, through Berger Tire Company.

Q. Before 1951 were you purchasing from the Martin Auto Supply Company?

A. Oh, yes.

Q. Did that company handle Exide and Lee batteries?

A. Exide batteries.

Q. Exide batteries?

2448 A. Yes, sir.

Q. Did you purchase some Exide batteries from them?

A. Oh, yes. Very convenient; right across the street. Lee batteries I bought from the Lee Tire and Rubber Company.

Q. Do you recall any meetings or discussions at the time that Atlantic started to promote the Firestone line?

A. Oh, yes. I went to their meetings.

Q. Were you told that you had to buy Firestone thereafter, or anything like that?

A. Oh, no.

Q. Do you remember, generally speaking, what was said?

A. Generally speaking, they advertised their line and told us what a good product it was. But we wasn't under any compulsory to buy anything from the Firestone Company.

Q. Mr. Sartoff, I am going to show you three letters, the first of which has been identified in this proceeding with the symbol "CX-206", signed by D. T. Colley, dated Au-

gust 28, 1952, and is called a "Restatement of Atlantic's TBA policy", and was addressed to dealers.

Also, another document identified as CX-150, dated March 1, 1951, entitled "A statement of Atlantic's TBA policy", and on the letterhead of Mr. Colley, and addressed to dealers.

I ask you to look at those two letters and let me know whether you recall receiving either or both of them.

2449 A. Yes.

Q. You say Yes with respect to CX-150?

A. Yes, sir.

Q. How about the one designated CX-206?

A. Yes.

Q. Referring now to the time commencing in 1951 and subsequent years when Atlantic was promoting the Firestone line, what kind of tires did you handle at your station?

A. Mostly Lee tires.

Q. Also some Firestone?

A. Firestone. Occasionally a Firestone. But I had better service from Lee because they were in the neighborhood, and also from Berger Tire Company, which was right around the corner.

Q. What kind of tire did the Berger Tire Company sell at that time?

A. They handle the Pennsylvania tire.

Q. And you continued to buy the Pennsylvania tire after 1951?

A. That is true.

Q. Did you or did you not also handle tires sold by the Ezrine Company?

A. That is right.

Q. Turning to batteries, after 1951 what kind of batteries did you stock and sell?

2450 A. Mostly Exide.

Q. From whom did you buy the Exide battery?

A. From the Martin Company.

Q. That is Martin Auto Supply?

A. Martin Auto Supply.

Q. Did you for a while buy any batteries from Berger?

A. Very seldom. In the event some of the others were closed. But mostly from the Martin Company. They handle the Exide battery. And occasionally a Lee battery for the Lee tire man. And occasionally a Firestone man came around, if he had specials on, or anything like that, I would buy batteries from him. It didn't make any difference who I bought from.

Q. Did the Berger Tire Company go out of business?

A. Yes, sir. Just about a year ago. Less than a year.

Q. How about your recap business; did you deal with Berger on recaps?

A. Mostly with Berger.

Q. Until they went out of business?

A. Yes, sir, mostly with Berger.

Q. And then to what company did you shift?

A. Ezrine. These are all in the neighborhood, and I have enjoyed the business of both Ezrine and also from Berger.

Q. Turning to accessories, what kind of accessories have you been buying since 1951—from whom?

2451 A. All from Martin Auto Supply. When I say "all" I mean at least 90 percent.

Q. And occasionally some Firestone?

A. If the man came around, yes, sir. I always thought I wanted to give him a little order. You become friendly with him, you know, you talk with him, and you give him a little order. But mostly from Martin and Company. Very fortunate that they were across the street. I didn't have to have too much stock. I could go over and get whatever I wanted right from Martin's.

Q. Do you remember a few minutes ago I spoke to you outside of this room?

A. Yes, sir.

Q. You have some pencils in your pocket, haven't you?

A. Yes, sir (handing).

Q. Would you be kind enough to read into the record what type of pencil you carry in your pocket?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: What is the materiality of that?

Mr. Thompson: Advertisement for an independent jobber.

Mr. Kelaher: Your Honor, I am going to object to an offer of this type unless he can show the materiality and relevancy of the offer.

2452 Hearing Examiner Kolb: I will sustain the objection unless you can show the materiality.

Mr. Thompson: I simply offer to prove that one of the Atlantic lessee dealers advertises, by carrying in his pocket and using pencils which—

Hearing Examiner Kolb: Is this his own pencil?

Mr. Thompson: Yes. I just pulled them out of his pocket.

Hearing Examiner Kolb: Then I will overrule the objection.

By Mr. Thompson:

Q. You are carrying in your pocket two pencils, both of which advertise the Martin Auto Supply Company; is that correct?

A. Yes, sir.

Q. Mr. Sartoff, at your station do you have a Lee tire rack?

A. Lee tire rack? I have a couple of little stands, you know. I don't have a rack.

Q. With the Lee name on them?

A. Yes, sir. Individual tires; I don't have the rack.

Q. What kind of battery tester do you have in the station?

A. Just my own personal. No name on it at all. You said tester?

Q. Yes.

2453 A. Yes, sir. But I have a charger which is Lee-Exide. An Exide charger.

Q. Does it have the Exide name on it?

A. Yes, sir.

Q. And is used at the station?

A. Yes, sir.

Q. Going back to tires, are non-Firestone tires openly displayed at your station?

A. I don't have too many tires displayed at the station. I don't have too many tires. There is no particular name of tires displayed at all. I don't advertise Lee tires or Firestone tires or Goodrich. Just tires. I have a rack there with no specified name on them.

Q. Are whatever tires you have there open to inspection by anybody who comes to the station?

A. Oh, yes. Why sure.

Q. Perfectly visible to all comers?

A. Sure.

Q. Is that also true with respect to whatever batteries and accessories you have there?

A. That is right. It is right in the open.

Q. Do you do business on Atlantic credit cards?

A. Sure do.

Q. Do you sell any brand of tires or batteries or accessories you want on Atlantic credit cards?

2454 A. I do.

Q. Have you ever been criticized by Atlantic for so doing?

A. No, sir.

Q. Have you ever been criticized by Atlantic for carrying all these various brands of non-sponsored tires, batteries and accessories?

A. Never at any time.

Q. Has anybody from Atlantic ever told you to stop buying them?

A. Oh, no.

Q. To get them out of your station?

A. Never.

Q. Or to hide them?

A. Never.

Q. Has Atlantic ever tried to put any pressure upon you to buy Firestone?

A. No, sir.

Q. Have you always felt free to buy any kind of TBA you wanted to buy?

A. Always have.

Q. Always made your own decisions about what you buy?

A. Yes, sir.

Q. I show you another communication from the Atlantic Refining Company to dealers, identified as CX-207, dated June 24, 1955. This particular letter happens to be 2455 signed by the manager of the Philadelphia region. If you received one it would have been signed by Mr. Gordon Burns. Do you know who he is?

A. Yes, sir.

Q. I ask you to look at it and tell me if you recall receiving such a letter in the summer of 1955 (handing).

A. Yes, sir.

Q. Mr. Sartoff, have you had any difficulty in obtaining renewals of your lease from Atlantic Refining Company?

A. Never.

Q. When your lease has from time to time been renewed,

has there been any comment about the fact that you don't handle much Firestone TBA?

A. No, sir.

Q. Have you got a lot of competition in the area from other service stations?

A. There are a few. There is always some competition there. Within one block there is one service station; two blocks to the right there is three service stations; two blocks south there are two service stations.

Q. Have you from time to time received offers from competitors of the Atlantic Refining Company, to take stations that they own?

A. I have.

Q. Quite frequently?

2456 A. The last one was about two years ago.

Q. Are you happy in your relationship with Atlantic Refining Company?

A. I have been with them 29 years.

Q. Mr. Sartoff, as an old-time service station operator in this business, is it, in your opinion, helpful to the new and inexperienced dealers for Atlantic to have a TBA program with Firestone?

Mr. Kelaher: Objection, your Honor.

Mr. Thompson: I would think, sir, that this man would be qualified in view of his 28 years experience as a service station operator to express an opinion as an expert.

Hearing Examiner Kolb: Read the question, please.

(The reporter read the question.)

Mr. Kelaher: I object. I don't think he is in a position to express an opinion as to what is good for some other Atlantic dealer.

Hearing Examiner Kolb: I will let him answer. The objection will be overruled.

The Witness: I have been to practically every meeting that they have had, regardless of whether it was Atlantic

or Firestone, and I think all those meetings are beneficial. They are always helpful.

By Mr. Thompson:

Q. Are they helpful even to an old timer like yourself?

2457 A. Oh, yes. There are always new points brought out. They are always helpful.

Q. Mr. Sartoff, in 1953, more than five years ago, did a man call upon you who represented himself as an investigator of the Federal Trade Commission?

A. I have a faint recollection, but I don't recall the party, wheever it was, saying that he was an investigator.

Q. Or a representative of the Federal Trade Commission.

A. Probably, yes, sir. Probably a representative. But I don't recall him ever saying he was an investigator.

Q. Did he ask you some questions?

A. From my recollection it was out on the driveway that we were talking there, and I had an appointment there and I told the gentleman that, and I asked him to come back tomorrow, that I had an appointment. We spoke for a few minutes there. And a car drove up and I left in the car. We were on the outside.

Q. Do you recall whether you did or did not sign some kind of a statement that he handed you?

A. I don't recall, honestly. I may have, but I don't recall.

Q. While he was talking to you—

A. He came inside and then we walked on the outside because I was waiting for this car.

Q. While he was talking to you, was he writing things down on a piece of paper; do you remember?

A. No, I can't recall.

2458 Mr. Thompson: Mr. Sartoff, those are all the questions I have. It is possible that Mr. Kelaher may want to ask you a couple of questions.

2459 *Cross-Examination by Mr. Kelaher.*

Q. Would you recognize your signature if you saw it?

A. Oh, sure.

Q. I ask you to look at a document which I hand you and ask you if that is your signature?

Mr. Thompson: I think you should show it to counsel.

Mr. Kelaher: I am asking if that is his signature. Obviously, I will show it to counsel.

A. That's right; the signature is right.

Mr. Kelaher: Your Honor, the document which I have shown the witness is a document with this printed certification appearing thereon: "I certify that the information recorded above, and which I have read, was given by me in response to the questions of the attorney-examiner, Federal Trade Commission, whose name appears below, and said information is, to the best of my knowledge, factual and correct." Signed "Herman Sartoff, March 17, 1953." And also signed, "Henry Lipsky"—L-i-p-s-k-y—"Attorney-Examiner, Federal Trade Commission."

By Mr. Kelaher:

Q. Mr. Sartoff, does that refresh your recollection with respect to an interview by a Federal Trade Commission representative?

A. Only on the driveway. Just for a few minutes.

2460 Q. And you do remember signing this document?

A. That is my signature. I can't recall, but that is my signature, it is true. It is my signature.

Mr. Thompson: Mr. Sartoff, you are permitted to read the entire document and see if that is the document you signed.

Mr. Kelaher: Yes, I was going to give him that opportunity.

(The document was handed to the witness.)

The Witness: It just says here—

By Mr. Kelaher:

Q. Just a minute. Just read it and I will ask you some questions.

A. It doesn't say anything on here. It just says I don't handle—

Q. Don't bothering answering anything until I ask you. You have read the statement now?

A. Yes. I don't see nothing on there—

Mr. Thompson: Has that statement been identified for the record, Mr. Kelaher? If it hasn't, it should be.

Mr. Kelaher: I don't know whether an identification is necessary, other than—

Hearing Examiner Kolb: Are you going to offer it in evidence?

2461 Mr. Kelaher: I don't intend to at this time.

Hearing Examiner Kolb: Do you still want it identified?

Mr. Thompson: I think, sir, if he is trying to use some kind of document either for the purpose of refreshing the witness' recollection, or—

Hearing Examiner Kolb: All documents used for refreshing a witness' recollection are not necessarily going in evidence, or identified.

Mr. Thompson: Not necessarily but it is entirely possible that I might want to offer this document in evidence.

Hearing Examiner Kolb: You can do that at that time.

By Mr. Kelaher:

Q. Mr. Sartoff, on direct examination you stated that you have been an Atlantic lessee dealer for 20 or 21 years, is that correct?

A. Approximately.

Q. On your written statement it places you—it states: "Lessee station until nine years ago, location was company-owned and operated." The statement was made in 1953.

So that would mean that you became a lessee dealer about 1944.

Mr. Thompson: I object to the form of the question. It doesn't mean any such thing. It may well have been that some investigator from the Federal Trade Com-
2462 mission wrote that on a piece of paper.

I think Mr. Kelaher's proper question is to ask Mr. Sartoff whether that is or isn't a statement which he made.

Mr. Kelaher: I think we have established that he has read the statement, and that he has subscribed to them.

Mr. Freed: All you have done is establish that there is a certain printed boiler plate at the bottom of that document.

Mr. Kelaher: I didn't understand that remark.

Mr. Freed: All you have done is established that there is certain printed boiler plate at the bottom of the document, above the witness' signature.

Mr. Kelaher: It states in the printed boiler plate that he read the document.

Mr. Thompson: Why don't you ask him whether he read it. That is one way of finding out.

Mr. Kelaher: I would like to carry on my cross-examination here, if I can.

Hearing Examiner Kolb: Go ahead.

By Mr. Kelaher:

Q. On your direct testimony you stated that you have been a lessee dealer for approximately 20 or 21 years, and on your signed statement the fact is established that you have been only a lessee dealer for about 15 years.

Mr. Thompson: I object to the assertion that the
2463 fact is established. That fact has not been established.

By Mr. Kelaher:

Q. What would account for that difference?

Mr. Thompson: I object to the question.

Hearing Examiner Kolb: Mr. Kelaher, we are not going to fight over five years 15 years ago, are we?

Mr. Kelaher: I want to determine—

Hearing Examiner Kolb: A man can almost miss that in making a statement.

By Mr. Kelaher:

Q. Is it possible you were mistaken on your direct examination?

A. I don't know. The only thing I know, I have been with the Company about 28 years.

Q. Right—

A. I do know that. And I know for about 6 or 7 years it was all-company operation. It might be 8 years. I can't pin-point it down to any particular year.

Q. But there is a possibility that you have been a lessee since—

A. It has been over 15 years. That is for sure.

Q. Right now it is slightly over 15 years?

A. A whole lot over 15 years.

Q. On direct examination you stated that prior to Atlantic sponsorship of Firestone TBA you carried
2464 Lee tires, is that correct?

A. That's right.

Q. After Atlantic began to sponsor Firestone TBA you stated on direct examination that you began to carry some Firestone, but you minimized the importance of it, is that correct?

A. No, I didn't—I don't recall saying I minimized the

importance of it. I handled the Lee tires and whenever the Firestone salesman came around if I felt like giving him an order I gave him an order.

Q. I call your attention to the signed statement which says that you stocked Firestone and Lee tires?

A. Some. When I stock, it could be two tires. Firestone and Lee. "Sells all tires."

Q. But you did stock Firestone?

A. Some. Two tires, probably.

Q. You don't call carrying one or two tires "stocking"?

A. I only carry an eight- or ten-tire stock there. A couple of Lee's. I have to carry a couple.

Q. So you stocked as many Firestone as you did Lee then, in other words?

A. Not necessarily. I favored Lee. I always favored Lee.

Q. You always favored Lee. But the point is, after March, 1951, you did begin to stock Firestone tires, is that correct?

A. And probably before, too.

Q. And you didn't mention on your direct testi- 2465 mony that you stocked them before March, 1951?

A. Probably I was never asked.

Q. Did you stock them before March, 1951?

A. I can't recall. I can't pin-point myself down.

Q. But you do know that you began to carry them afterwards?

Mr. Thompson: Let the witness finish his answer.

A. No. I always handled whatever I wanted.

By Mr. Kelaher:

Q. You also stated that after 1951 you carried mostly Exide, purchased from Martin Auto Supply Company?

A. That is true.

Q. Your signed statement, as of March 7, 1953, under "Batteries", doesn't even mention Exide.

Mr. Thompson: Hold it a minute. I am going to object to this line of questioning for this very good reason, sir: Mr. Kelaher, referring to a document which is not in evidence, is purporting to quote. If he wants to put it in evidence he can put it in evidence and then read from it. But just a stray document which is sitting in his lap he has no right to read from and say, "You said this in 1953".

Why don't you identify it? Why don't you put it in evidence?

Mr. Kelaher: I don't think it is necessary that I do.

Mr. Thompson: I object to this line of questioning.

2466 Hearing Examiner Kolb: I think under the method you are using you will have to put it in evidence.

The Witness: If it will help you I had an Exide charge account for 15 years.

Mr. Kelaher: Wait until we get a ruling on this.

Hearing Examiner Kolb: I will sustain the objection.

Mr. Kelaher: I will ask that this document be marked for identification as the next Commission exhibit.

The Witness: Does it say "Bowers Batteries" on there, too?

Mr. Kelaher: I think your Honor should instruct the witness just to answer questions as they are asked.

I know you are trying to be helpful.

Hearing Examiner Kolb: That will be Commission Exhibit 480.

(The document referred to was marked Commission's Exhibit 480, for identification.)

Hearing Examiner Kolb: Any objections?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 480.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 480, was received in evidence.)

2467 Mr. Kelaher: Now may we proceed?

Hearing Examiner Kolb: Proceed.

By Mr. Kelaher:

Q. You stated on direct examination that you purchased mostly Exide batteries since March, 1951—since Atlantic began to sponsor the Firestone TBA program. Is that correct? Is that what you stated on direct examination in answer to a question by Mr. Thompson?

A. I have handled Exide batteries for quite a number of years.

Q. On your signed statement I will read three TBA brands, suppliers, and prices. Under subheading "B": "Batteries: Bowers—few. Also buys Lee from Lee distributor."

On March 17, 1953, you didn't have an Exide battery in your station apparently?

A. I have always had one. Let me explain something to you for example. Every once in a while these fellows come out with a deal, they are just starting their batteries. Lee came out just about a month ago. They have had a few off-numbers that they are discarding and they are cutting the price on them. So I just bought three Lee batteries, just because the price has been cut and they are discarding that number.

Q. That is fine. But let's get back to March—

A. And the same with Exide and the same way with Bowers.

2469 Q. These are supposed to represent the battery brands and your suppliers on that date.

Mr. Thompson: I object.

Hearing Examiner Kolb: Did he mention Berger as a supplier?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Of batteries?

Mr. Thompson: Yes, sir.

Mr. Kelaher: There is no Berger mention.

The Witness: Bowers.

Mr. Thompson: I object to Mr. Kelaher saying this is supposed to be something or other. That was the form of the question. If the question is still pending I would like a ruling on it. I would like it re-read and have a ruling on it.

Mr. Kelaher: Mr. Examiner, I am going to make this observation. Whenever Mr. Thompson during our case-in-chief entered on cross-examination and I objected, he raised the roof because he said he had great latitude on cross-examination. And I think this is strictly harassing and diversionary tactics and I am going to strenuously object to it. I am entitled to wide latitude on cross-examination, too.

Hearing Examiner Kolb: I don't think Mr. Kelaher made quite the approach somebody else would make. We will let him go ahead.

2470 The Witness: Mr. Kelaher, I will tell you one thing—

By Mr. Kelaher:

Q. Just answer the questions.

Mr. Thompson: Why don't we have a question and see whether it is objectionable.

By Mr. Kelaher:

Q. On direct examination you testified that you purchased 90 percent of your accessories from Martin Supply Company, is that correct?

A. That is true.

Q. Do you sell many accessories?

A. Very little.

Q. Very little. That is true?

A. That's right. Very little.

Q. I am happy to say that that is supported by your written statement.

A. Very little.

Q. Which under "C, Accessories" states "Very small line of accessories"?

A. True.

Q. Where is your station located?

A. Monroe and Pratt Streets.

Q. Is that in a commercial area?

A. I would say no. Just a few stores, two blocks. But outside of that there isn't.

2471 Q. Is most of your trade, transit trade?

A. I would say it was on a 50/50 basis some time ago. Of course, now that has dropped off and we do more neighborhood business.

Transit trade dropped off due to the harbor tunnel.

Q. Prior to that time it was a transit station?

A. It was transit.

Q. And as a matter of fact your sales of TBA have been low for some time, have they not? Is that correct?

A. Always about the same TBA.

Q. And that has been fairly low, is that correct?

A. They work out an average.

Q. You say that you are presently under a three-year lease, as I understand. Do you recall when that lease was executed?

A. About a year or so ago.

Q. I am going to show you Commission's Exhibit 88-A-1 and -A-2, which is entitled "Dealer Lease", with an appended Schedule A identified as Commission's Exhibit 88-A-3, and an appended document which has been designated as 11-point lease letter in the record, as Commission's Exhibit 88-B, and ask you if they are the document which you executed at the time you signed your last lease? (Handing.)

Mr. Thompson: Mr. Kelaher, may we establish, to clarify the record, when the last lease was signed?

Mr. Kelaher: He said a year ago, he thought.

2472 The Witness: Approximately.

Do you want me to go over this?

By Mr. Kelaher:

Q. No. I just want to ask you if this is the lease you executed. 88-3-A, for example, there is a scale showing the percentage of lessee's gross sales which is used in estimating the rent. Do you have that in your lease?

A. No, sir.

Mr. Thompson: Mr. Examiner, if it is pertinent, I would be delighted to find out precisely what kind of a lease this gentleman has and stipulate it with Mr. Kelaher.

Mr. Kelaher: It is my impression that counsel for Atlantic stipulated that if Atlantic officials were called they would testify that the lease that was executed was determined by the date. For example, this one on the printed form has July, 1956 as the date. So that if he entered into a lease in 1957, I assume that he would be entered into this type lease.

Hearing Examiner Kolb: Why don't you stand on the stipulation and not ask specific questions?

Mr. Kelaher: I want to establish whether or not he is operating under this particular form.

The Witness: No, sir.

Mr. Kelaher: No further questions.

2473 *Redirect Examination by Mr. Thompson.*

Q. Mr. Sartoff, referring to your signed statement of March 17, 1953, which has been offered in evidence as the Government's Exhibit DX-480, was a copy of that statement left with you by the Federal Trade Commission man who wrote the information on it?

A. I don't have a copy.

Q. Has this document ever been in your possession?

A. No, sir.

Q. Did the Federal Trade Commission man take it with him after you had signed it?

A. Oh, yes.

Mr. Thompson: Thank you.

Hearing Examiner Kolb: Is that all?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: That is all, Mr. Sartoff.

(Witness excused.)

We will take a short recess.

(A short recess was taken.)

2474 Hearing Examiner Kolb: The hearing will come to order.

ALBERT J. SOUKUP was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Hearing Examiner Kolb: Will you give your name and address to the reporter.

The Witness: Mr. Albert J. Soukup.

Direct Examination by Mr. Ballard.

Q. Would you give the reporter your address, also?

A. Station?

Q. Yes.

A. 501 Washington Boulevard.

Q. And your home address?

A. 4114 Moravia Avenue, Baltimore 6.

Q. Mr. Soukup, the gentleman on your right is Mr. Kolb, the presiding Examiner at this hearing. The gen-

tleman on your left is Mr. Kelaher; he represents the Federal Trade Commission.

Mr. Soukup, how long have you been at your present station, Atlantic station?

A. I had a partner at that time, in 1936.

Q. You took it over in 1936 with a partner?

2475 A. With him, yes. That is right. He left and I bought him out in 1944, March, I think, 1944.

Q. And have you operated it yourself?

A. Operated it myself ever since.

Q. Do you recall, Mr. Soukup, a number of years ago, in March 1951 to be exact, Atlantic changed over from selling Lee tires and Exide batteries to sponsoring Firestone TBA? Do you recall that?

A. I remember. I remember they changed over. The exact date I don't recall.

Q. Would you tell us what tires you were selling before that change-over?

A. Mostly Lee tires and we would pick up some other tires, US Royals, occasionally a customer would ask for them. We went down to Plotkin's and he had Shenuits down there, I think, and we would pick up Shenuits down there. Different brands.

Q. Did you handle any Firestone tires at that time?

A. To any extent, no, I couldn't say whether I had any of those or had any calls for those. If I did it was very seldom.

Q. When Atlantic began to promote the Firestone line, did you make any change in your tire buying?

A. No. I kept on handling mostly Lee tires, practically all Lee tires. And Firestone.

2476 Q. Where did you get your Lee tires?

A. Direct, right from the branch. Previous to the handling of Firestone?

Q. Previous to the handling, where did you get them?

A. Charles Johnson—Charlie Johnson.

Q. And after the handling of Firestone? After Atlantic moved to Firestone?

A. I bought them from the Lee distributors. In other words, the factory branch on Franklintown Road. I still buy there.

Q. What brands of batteries do you handle?

A. Previous or at the present time?

Q. At the present time.

A. At the present time?

Q. Yes.

A. Mostly Lee batteries.

Q. How long have you been handling them, primarily?

A. Lee's?

Q. Yes.

A. Since they came out. Since they made batteries. I don't know about when Lee started making batteries. I don't know if it is four, five, or seven years ago Lee started making batteries and I have been handling them ever since.

Q. What did you handle before Lee?

A. Occasionally we would go across the street, a little supply place over there, and they had Willard's in
2477 there and Delco. When we needed one we would go over there and pick one up.

Q. Did you ever handle the Bowers battery?

A. Bowers battery, yes, I handled that almost one hundred percent.

Q. Speaking of accessories—by "accessories" I don't mean repair parts, I mean lighter accessories—where do you get your accessories for your station?

A. At the present time?

Q. Yes.

A. From Baltimore Gas Light, and Service Parts, Firestone.

Q. Do you also deal with Norris—R. W. Norris?

A. Yes. We occasionally pick up something at Norris. Lately we haven't been buying too much from Norris.

Q. And J. R. Hunt?

A. Not at the present time. I haven't been buying anything from them.

Q. Did you use to buy from them?

A. Yes, from J. R. Hunt.

Q. These tires, batteries, and accessories that you have been talking about, are they displayed in your station?

A. Yes. They are displayed up on shelves, and the tires are racked up in the back room, about ten or fifteen tires, whatever I have in stock. Usually I carry about ten tires in stock.

2478 Q. Out of that ten tires, how many would probably be Lee tires?

A. You mean at present?

Q. Yes.

A. I don't have any Lee's up there at present. About two Lee's.

Q. Two Lee's?

A. That is right. I usually call them. They deliver pretty fast. I don't have to carry a stock of them.

Q. And your batteries, are they displayed there, too?

A. Yes, they are displayed in the showcase.

Q. Are they visible to the Atlantic salesmen when they come in?

A. He can see them, yes.

Q. Has he ever criticized you for carrying those?

A. He never said a thing about it.

Q. Has anyone at Atlantic ever tried to stop you from buying Lee tires, Bowers batteries?

A. No, they haven't because I haven't heard anyone say anything to me about it as yet.

Q. Do you feel free to buy your tires, batteries, and accessories from any source you want?

A. I always have, yes.

Q. Mr. Soukup, in the course of your stay at your station, your lease has been renewed many times, hasn't it?

2479 A. That is right.

Q. On the occasion of those renewals, has Atlantic ever criticized you for not handling Firestone TBA?

A. No, they never said anything to me, just told me my lease was up and a new one was being written. That was all that was said.

Q. Do you recall an occasion some years ago when a man from the Federal Trade Commission interviewed you about TBA matters?

A. I recall him coming there, but the date I wouldn't know. I had a conversation with him. What date I wouldn't know.

Q. Did you have any idea how many years ago it might have been?

A. It could have been five, six years, anything. I couldn't tell the date.

Q. How was that interview conducted, to the best of your recollection?

A. He came in and showed his credentials. I was standing in the office there. He showed his credentials and told me it was Federal Trade and started asking me some questions about stock and different things. And I explained to him, as best I could, and he asked me about different things and I said, "You can look around and see what I've got."

Q. Did he make notes of what you told him?

2480 A. I think he was making notes, yes.

Q. Do you recall whether you signed those notes after he had made them?

A. It has been quite a while ago, as I say. I do think I signed something, I am sure.

Q. Do you have a copy of the statement he gave you—of the statement he took?

A. No. He didn't give me a copy.

Q. You have never seen it?

A. Never.

Q. Since you have signed it?

A. That's right.

Q. Mr. Soukup, as we took notes of what you said in regard to the tires that you are handling today, it says "practically all Lee tires and Firestone." My question to you is, is it practically all Lee tires, or practically all Lee and Firestone?

A. Do you mean at the present time what I have been selling?

Q. Since 1951.

A. Since 1951? It was mostly Lee tires. Mostly all Lee tires.

Mr. Ballard: I don't think I have any more questions. Mr. Kelaher will probably have some questions of you.

2481 *Cross-Examination by Mr. Kelaher.*

Q. Prior to Atlantic change-over to Firestone TBA, which took place in about March 1951, you testified that you purchased Lee tires from Charlie Johnson; is that correct?

A. I am sure Charlie Johnson was handling them at that time.

Q. Wasn't that part of the Atlantic setup at that time?

A. I think it was, yes.

Q. You stated that you made some purchases of US Royal at that time. Who did you buy those tires from?

A. I think I bought those from Fisk or US Royal, the

same thing. I had to call for a pair, a set of them, from Paul Schnitzer out on Hillen Street.

Q. And at that time you testified you very seldom purchased Firestone tires; is that correct?

A. That is right.

Q. After the change-over in March 1951, you discontinued purchasing from Mr. Johnson—Lee tires from Mr. Johnson; is that correct? You testified that you purchased from the Lee factory branch.

A. Well, I think that when he gave it up I bought them from the Lee factory branch; that is right.

Q. It was at that time that you changed over?

A. That is right.

Q. Where do you buy your Firestone tires from?

2482 A. From the Firestone people. Do you mean at the present time?

Q. Yes. The Firestone store?

A. Yes, the Firestone store.

Q. I wasn't too clear on one answer you gave. What tires do you have in stock at the present time?

A. At the present time?

Q. Yes.

A. I have Firestone and Lee up there. Firestone and Lee.

Q. Firestone and Lee?

A. That is right.

Q. And on direct you testified that you had two Lee tires in stock at the present time?

A. That is right.

Q. And the rest of them are Firestone?

A. That is right. It is about five Firestone up there. Very seldom I carry a large stock because when I call Lee they deliver right away. In half an hour they will have a tire down.

Q. So I take it your purchases of Firestone tires in-

creased after Atlantic changed over to Firestone TBA setup?

A. Previous to Atlantic handling Firestone, I didn't have any calls for Firestone tires.

Q. After they began to handle it you began to increase your purchases of Firestone tires; is that correct?

2483 A. Well, I handled more than I did before, yes. But the majority of the tires I handled were Lee's.

Q. But you did increase your purchases of Firestone?

A. Yes.

2484 Q. You also testified that you have been handling Lee since they began to manufacture them. Is that correct?

A. Batteries?

Q. The batteries.

A. That's right.

Q. How long ago was that?

A. Off-hand, I don't know when Lee started making the batteries.

Q. Approximately. How long have you been buying them, approximately?

A. From Lee, batteries?

Q. Lee batteries.

A. I would say 5 to 7 years.

Q. And you also purchased Firestone batteries?

A. I wouldn't say over two a year. One or two a year. When I had a call for that I would purchase Firestone.

Q. At one time you testified on direct that you purchased some accessories or purchased accessories from J. R. Hunt.

A. That is quite a few years back; yes, sir.

Q. Do you recall the accessories you purchased from him? Did you purchase batteries from him?

A. No. I don't remember. I think he was handling Exide batteries. If I got a call I would pick a battery up. But it was very seldom.

Q. That was part of the Atlantic set-up at that
2485 time, too, I believe.

A. I don't recall that, whether it was or not, sir. Of course, Hunt charged me for whatever it was. In other words, I received a bill from Hunt.

Q. Do you have an outdoor sign in your station advertising any of your TBA products?

A. Outside?

Q. Outside. Outdoor sign?

A. Yes, I think there is one there, yes.

Q. You think there is?

A. Well, the last I saw it, it was still hanging there.

Q. That was this morning?

A. That's right. I knew it was there.

Q. What sign is that?

A. Firestone.

Q. Did you ask Atlantic or Firestone to put that sign up there for you?

A. I don't recollect whether I did or not, sir.

Q. Don't you recall whether you asked them to put a sign up in your station?

A. I don't know, because that sign has been there quite a while. I wouldn't know at the present time whether they put it up—

Q. When was the sign put up?

A. I don't know when it was put up, what date. I
2486 wouldn't know when. It is down at the end of the property on a pole down there. When it was put up, I wouldn't know.

Q. Was it put up after Atlantic began to sponsor Firestone TBA?

A. I am sure of that, yes.

Q. You are sure of that?

A. Yes.

Q. As I understand your answer, you did not request Firestone or Atlantic to put the sign up?

A. I don't remember whether I asked them to put the sign up; no, sir. If they asked me whether I wanted the sign or asked them to put it up I don't know.

Q. Do you sell TBA on credit cards?

A. That's right, yes.

Q. And have you ever sold Lee tires on credit cards?

A. Yes, sir.

Q. And when you report that type of sale to Atlantic, what brand do you mark down?

A. When we first started we used to put in there Firestone.

Q. Even though you were selling Lee tires you would mark it Firestone?

A. Yes, sir.

Q. What was the reason for doing that?

A. The reason was that we felt that when we sold the Lee tire we would have the company feel that we were
2487 selling Firestone. I don't know whether they checked it or not. But have them feel that we were selling the product, the Firestone tire.

Q. So you were actually deceiving Atlantic at that time?

A. At that time, I imagine I was, sir.

Q. And I think you are very honest to admit it. And it is also true that you also marked other brands as Firestone in addition to Lee, at that time, isn't that correct? Batteries, for example?

A. At the beginning I am positive that I did, at the beginning. But I corrected that after a time. I didn't see any reason for doing it any more, regardless.

Q. Wasn't that because you knew that Atlantic expected you to handle Firestone TBA?

A. Well, I mean —

Q. Wasn't that your reason now for—

Hearing Examiner Kolb: Let the witness answer the question.

By Mr. Kelaher:

Q. Go ahead.

A. Would you repeat it?

(Question read.)

I don't know, "expected". I don't know how you can put that, sir, because I had everything else in there. You understand what I mean. I imagine they expected 2488 me to buy some Firestone products.

Q. And that was the reason you used the Firestone identification on your report of credit card sales?

A. I wanted Firestone to feel that I was selling something, yes.

Mr. Kelaher: That is all, your Honor.

Redirect Examination by Mr. Ballard.

Q. Mr. Soukup, when did you stop putting Firestone—identifying sales of Lee as Firestone? How many years ago?

A. As I say, on the date, I couldn't say when we stopped, you understand.

Q. Could you say how many years ago it might be?

A. I would say three or four years ago; yes, sir. We didn't sell that many that we had to do that, so it was discontinued.

Mr. Ballard: No further questions.

Mr. Kelaher: I have no further questions.

Hearing Examiner Kolb: That will be all.

(Witness excused.)

Mr. Kelaher: Mr. Examiner, as you will recall, yesterday I cross-examined Mr. McKaig with reference to a signed statement. In view of your ruling of this morning,

and in order to preserve my record, I would like to have the signed statement marked as Commission's Exhibit 481.

Mr. Thompson: Mr. Examiner, I will have no
2489 objection to this statement being put in evidence, provided I am permitted to recall Mr. McKaig for cross-examination with respect to statements contained in it.

If Mr. Kelaher wanted this document on the record, it should have been put in while Mr. McKaig was on the stand and when I had an opportunity to examine him.

Mr. Kelaher: Mr. Examiner, I would like to call your attention to the fact that the statement was available to counsel for Atlantic yesterday, and they reviewed it, read it, and had every opportunity to use it.

Hearing Examiner Kolb: That is a lot different, Mr. Kelaher, from putting it in evidence. In putting it in evidence I think probably he would have the right to recall him for cross-examination. I see no occasion for going through that procedure. I will just overrule the motion to put it in evidence.

Mr. Kelaher: I am not offering it in evidence at this time. I just want it marked for identification.

Mr. Thompson: I see no purpose in marking it for identification unless it will be offered.

Mr. Kelaher: It may be at some further time.

Hearing Examiner Kolb: Not as long as the witness is gone.

Mr. Mason: Mr. Examiner, at this point I would like to move to strike the testimony of Mr. Sartoff and
2490 Soukup so far as respondent Goodyear is concerned.

Hearing Examiner Kolb: The motion of the respondent Goodyear to strike the testimony of the witnesses, since their testimony pertains entirely to Firestone, to that extent that testimony will be stricken as to Goodyear, but will remain in the record as to Atlantic.

We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: May I call to the stand Mr. Adam Lozanski.

ADAM LOZANSKI, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give the reporter your full name and address?

A. Adam Lozanski.

Q. Where do you live?

A. 2025 East Ramblewood Road, Baltimore.

Q. Are you the lessee of an Atlantic service station?

A. Yes, sir.

Q. What is the address?

2491 A. 22nd and Howard Streets.

Q. H-o-w-a-r-d?

A. Yes, sir.

Q. Is that located in Baltimore?

A. Yes, sir.

Q. Mr. Lozanski, was Howard Street once called Oak—O-a-k—Street?

A. Yes, sir.

Q. How long have you been a lessee of that station?

A. Under my own, 13, and one year working for somebody else. A Mr. Fuchs, for one year—F-u-c-h-s. He has now passed away. He passed away about two years ago, I imagine.

Q. Then you were for one year at that station under him?

A. Under him, yes. I worked for him and then I went in for my own. It would be 14 years altogether there.

Q. So that you took the lease about 1944?

A. Yes, sir.

Q. And you have been in the same station ever since?

A. Yes, sir.

Q. You have a three-year lease?

A. Yes, sir.

Q. This is probably your second three-year lease?

A. Yes.

Q. Do you remember that about 1951 Atlantic Refining Company started promoting the Firestone TBA line?

2492 A. Yes, I do. I recall that.

Q. Before 1951, what kind of tires and batteries did you handle at your service station, and from whom did you buy them?

A. I bought them from most anybody. I bought a lot from Lee, Exide, Willard, Bowers.

Q. This is before 1951?

A. Yes, sir.

Q. Did you also buy from Charlie Johnson?

A. Oh, yes. Yes, sir.

Q. Was he a friend of yours?

A. Yes. I would say Charlie is a friend of mine, yes.

Q. And you bought Lee tires and Exide batteries from him, I suppose?

A. Yes; yes, sir.

Q. At the time Atlantic changed over to promoting the Firestone line, do you recall receiving a letter from Mr. Colley, of the Atlantic Refining Company, which has been marked for purposes of identification in this record as CX-150, dated March 1, 1951, and is called "A Statement of Atlantic's TBA Policy"? Would you be kind enough to look at that letter and tell me if you recall receiving it back in those days.

A. Yes, I do recall that.

Q. Thank you. Now, I show you another letter 2493 from Mr. Colley, addressed to dealers on August 28, 1952, entitled "A Restatement of Atlantic's TBA Policy", which is identified in this proceeding as Exhibit CX-206.

I ask you to take a look at that letter and let me know whether you remember having received it.

A. Yes, I do. I recall that.

Q. Mr. Lozanski, after Atlantic started promoting the Firestone brand, what tires did you handle at your service station?

A. Well, I tell you, I have handled so many of them, I have handled General, I have handled Goodrich, I have handled McCord, I have handled Shenuits. I have handled all kinds of tires, sir. Any particular tire that I could get a good price on I would handle, or any particular tire that a customer wanted I would get.

Q. And you are referring to the period after 1951?

A. Well, I am going to be honest with you sir. I handled anything I want since I have been up there.

Q. Did you continue for a while after March of 1951 to handle Lee tires, too?

A. Yes, I did. I handled them off and on. In other words, sometimes I felt sorry for the salesman. If he cried hard enough for me I would maybe buy a few tires and make me feel good.

Q. And do you also carry, and have you also car- 2494 ried some Firestone tires?

A. Oh, yes, sure.

Q. From what store do you buy the Firestone tire?

A. Howard and 21st.

Q. Is that right close to your station?

A. One block from it.

Q. Is that a regular Firestone store?

A. Oh, yes. Been there for years. One of the first Firestone stores ever built in Baltimore.

Q. Do they give you good service?

A. Well, I don't depend on too much service because when I need anything it is so close we just run down and get it. Three minutes to five minutes and we get what we want.

Q. What batteries have you been handling since 1951?

A. I have handled some batteries, I can't even remember the names, already. I have handled Best, Exide, Willard, Firestone.

Q. Bowers?

A. Bowers. I have handled quite a few batteries in my time.

Q. Do you buy batteries on price? Is that your primary consideration?

A. Well, not necessary, sir, because I am not in the position to buy anything in job lots to save any extra money, because I am really too small, to be honest with you.

2495 The last four or five years I have had a little too much sickness. It really took what little bit of capital I had. It really took it away from me. I just buy as I need in the way of speaking.

Q. How about accessories; where do you get most of your accessories?

A. Well, I get—I buy from Firestone, I buy from Quaker City a few items.

Q. Auto Parts?

A. Quaker City, H & Z Sales.

Q. All these things that you buy you openly display at your station so anybody who comes in can see them?

A. Oh, yes, sure.

Q. Do you sell them on Atlantic credit cards?

A. Sure, I will sell them on Atlantic credit cards. That is as good as cash to me.

Q. And has Atlantic ever criticized you for selling these non-Firestone items on credit cards?

A. Nobody ever said anything to me, sir.

2496 Q. Has Atlantic ever criticized you for handling non-Firestone TBA?

A. No, sir.

Q. Ever told you to stop buying it?

A. No, sir.

Q. Ever told you to get it out of your station?

A. Well, if they did—

Q. Go ahead. Finish your answer.

A. I just would tell them to get the hell on out, to be honest with you.

Q. In other words, you make your own decisions?

A. Look, I got my time and money invested up there. Atlantic Refining Company may own the building, but that is all. My time and efforts are there.

Q. They don't try to force you to do anything you don't want to do?

A. No, sir.

Q. They don't use any pressure on you of any kind?

A. No, sir.

Q. You feel free to buy any kind of TBA that you want?

A. Yes, sir, always did.

Q. And you do it?

A. Yes, sir, always did.

Q. And you do buy anything you want?

A. Yes, sir. I tell you, I would rather buy from

2497 Firestone anyway for the simple reason is this: It saves—if I want to buy a couple of tires, all I got to do is send a car down there and they will even put them on for me, and I will still make my same amount of profit. So I mean, I have a good deal there.

Q. Does Firestone give you a decent price?

A. Yes, sir.

Q. When your lease comes up for renewal, do you ever have any trouble getting it renewed?

A. I don't know what you mean by trouble, sir.

Q. They don't tell you that they won't renew your lease unless you buy more Firestone TBA or something?

A. No. No, they have never said that to me.

Q. Have they ever mentioned Firestone TBA at the time of lease renewal?

A. No, sir.

Q. You have been in business a long time. Do you have a lot of other stations that are competing with you in that area?

A. Yes, there are quite a few around that area.

Q. Have you had chances to leave Atlantic and go as a lessee with another company?

A. Oh, I could have done that—I could have done that quite a few times.

Q. Do you remember some of the oil companies that have offered you stations?

2498 A. I could have went with Crown; I could have went with Amoco; I could have went with Sinclair. Quite a few companies I could have really went with. I never made no effort. They came around to me, as far as that goes.

Q. Do you recall if a man came to see you some years ago, about 1953, and said he represented the Federal Trade Commission and asked to talk to you?

A. I believe I do recall something about that.

Q. Have you got any present recollection of what happened, or what was said, or what he did and what you said, and so forth? If so, just tell us in your own words, will you?

A. As far as I can recall, he said something about asking me whether the company puts any pressure on my buying anything; did I have to buy something from them.

And I told him at that time definitely no. It has been so long I can't recall every word that I mentioned to him.

Q. Did he write things down when you were talking to him, do you recall?

A. If I am not mistaken, he had some sort of a little black book that he was writing this down in, as far as I can recall.

Q. Did he show you what he had written after he wrote it down, do you remember?

A. I am going to be honest with you. I don't remember.

Q. Do you remember whether you signed any kind of a statement?

A. I may have, sir. I may have. Because at that 2499 time, if I can recall, I think I was right busy to begin with, and I was sort of in such a hurry to get my work done, because I am a stickler for time. In other words, if I promised a man an automobile at 2:00 o'clock, I like to have that thing rolling at least 10 minutes to 2:00. And I really don't recall. I will be honest with you.

Q. Did he leave with you a copy of whatever he wrote down?

A. No, sir. That I don't have. No. I don't have that.

Mr. Thompson: Mr. Lozanski, those are all the questions that I have. Mr. Kelaher probably has a couple of questions that he would like to ask you.

Cross-Examination by Mr. Kelaher.

Q. I would like to review some of the answers you gave on direct examination and see if I have them correct.

Before Atlantic changed over to the Firestone TBA plan, in 1951, you testified that you bought a lot of Lee tires, is that correct, from Charlie Johnson?

A. Well, I mean I bought merchandise from Charlie Johnson. I mean that was the—I bought a lot of merchandise, tires and batteries and tubes.

Q. What products were they? Lee tires?

A. Lee tires.

Q. Exide batteries?

A. Yes.

2500 Q. And accessories?

A. Such as cleaners, DuPont cleaners and stuff like that. And I also bought from other places.

Q. And you also purchased Willard batteries, did you say, and Bowers batteries?

A. Yes, sir.

Q. And who were your Bowers batteries purchased from?

A. Right from the—

Q. From the Bowers branch?

A. Yes. Down on Edgear Street, I think they were.

Q. And you purchased Willard batteries. Who were they purchased from?

A. As far as I can recall, I think it was—Willard was purchased from Ditch, Bowers and Taylor. I don't think I bought too many there. I never went for Willard too much because Willard was always a real high priced battery in a way of speaking, and my neighborhood don't call for that kind of prices, in other words.

Q. After the change over in 1951, when Atlantic began to sponsor Firestone TBA, did that affect your purchases of tires? Did you begin to purchase from some other source?

A. No. I bought what I wanted, sir.

Q. And did you handle any one tire principally after the change-over? Since the change-over?

A. No. Not necessarily, no, sir.

2501 Q. With respect to batteries, did you handle any other brand of batteries principally since 1951?

A. I'll tell you, being as you are bringing batteries up, I had H. R. Boyd up until last year. In fact, to tell you

the truth, I owe him a few more dollars, since you mention that. I had batteries under consignment even.

Q. And did you purchase—did you increase your purchase of Firestone tires after the change-over in 1951?

A. Did I increase?

Q. Did you increase your purchase of Firestone tires?

A. No. I think I am selling less tires now than I ever sold since I have been in business.

Q. Less tires overall?

A. Overall.

Q. At the time of the change-over in 1951 did you decrease your purchases of Lee tires and increase your purchases of Firestone tires?

A. I wouldn't say that, because I tell you the reason why, I never sold much of TBA to amount to anything, to be honest with you.

Q. You have a very low sales volume of TBA?

A. Yes. I have a low sale volume.

Q. You mentioned that your station is at a bad location. Is that the reason?

A. It is that, yes. It is that.

2502 Q. Prior to the change-over in 1951, did you have any service station identification on your station, any window decals or outside signs?

A. Referring to what?

Q. You know, the window valances. Do you have window valances in your station? Do you have any advertising signs in your station?

A. Brake work.

Q. I am talking about a Firestone sign.

A. No, I don't have anything like that. I don't want it up there. I am not going to make Firestone rich. I want to try to get rich myself, if I can.

Q. Did you at any time since 1951 have Firestone identification on your station?

A. Never. If I put too much Firestone up there they will go down the street and put it on a budget anyway. I can't afford to carry a budget.

Q. You stated on your direct examination that you are located close to a Firestone store, is that correct?

A. Right down the street, yes, sir.

Q. Does that affect your sales of TBA, the fact that you are near a Firestone store?

A. I think it affects any station. Any station close by, because after all they can do business in a way that the average little man can't do.

2503 Q. So you find that the Firestone store competition is difficult to meet, don't you?

A. No. It is not difficult to meet. The only thing is I can't budget anything like they can. That is the only difference. Other than that there is no other reason.

Q. What do you mean by budget?

A. I mean a dollar down and a dollar a week. You know how they can do it. They have the money to do that; I don't.

Q. You can't afford to sell on credit?

A. That's right. That is the only thing about that.

Q. Isn't it true that a Firestone store can sell at or about the same price that you can sell your Firestone tires?

A. I think when it comes to cash, if a man wants to pay cash money, you cannot go down there and get anything cheaper than you can get it for, in other words.

Q. Would it be about the same price?

A. About the same thing. But I am not going to let nobody—I am not going down there and spend, say, $15.00 for a tire and have a man come in and give me a dollar down and a dollar a week, wear the tire out, and still owe me $14.00. That isn't going to happen.

Q. You are not financially able to do that?

A. I can't do it.

Q. You were asked on direct examination if you had been interviewed by a representative of the Federal
2504 Trade Commission. Do you recall that question?

A. Some years back, yes, sir. I do remember that.

Q. That was about 1953, was it not?

A. I would say about around there, yes, sir.

Q. And at that time weren't you handling principally Firestone tires?

A. In '53?

Q. Yes.

A. No, sir.

Q. Weren't you handling—

A. I had all kinds of tires then. I had some Goodyears, I had some—I may have had some U. S. Royals; I may have had a few McCreary tires, too; Lanvale—I was dealing with Lanvale at that time, too, if I recall, because they were buying gasoline from me, because they have quite a few cars and trucks. They said if I buy some tires from them they would sort of give me some business, in other words.

Q. Isn't it true that at that time you were handling principally Firestone tires, at the time of that interview?

A. No. I can't recall that I would say that I did, no sir.

Q. Isn't it true that at the time of the interview you were handling principally Firestone batteries?

A. No.

Q. You don't recall that either?

A. No. I wouldn't say—gentlemen, I will tell you
2505 the truth. I handled just what I felt like handling and bought what I did.

Q. I am not trying to embarrass you. I am trying to refresh your recollection.

A. I know, but you—I have done pretty well so much what I felt like doing up there, that I mean, throwing

these questions at me like this, I can't remember everything, you know.

Q. That is true.

Mr. Kelaher: May I have a few minutes recess?

Hearing Examiner Kolb: Yes.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. Mr. Lozanski, getting back to your conversation with the gentleman from the Federal Trade Commission in 1953, I believe it was, did he ask you questions concerning your TBA at that time?

A. Yes, sir.

Q. And did you answer those questions to the best of your ability and knowledge?

A. Yes, I did.

Q. And after they were answered, did he make notes of those statements?

A. Yes. If I am not mistaken, he had sort of a 2506 black book, writing in some little black notebook.

Q. Do you recall after that whether he handed you a form which contained the substance of your statements to him and asked you to read it?

A. I am going to be perfectly frank. I don't remember that.

Q. You don't recall?

A. I really don't recall. I would be lying if I told you I did.

Mr. Kelaher: Your Honor, I regret doing this, but I am going to have to ask that this document be marked for identification as Commission's Exhibit 481.

(The document referred to was marked Commission's Exhibit No. 481 for identification.)

(The document was handed to Mr. Thompson.)

Hearing Examiner Kolb: Are you offering that in evidence?

Mr. Kelaher: Not yet, your Honor.

By Mr. Kelaher:

Q. Mr. Lozanski, I hand you Commission exhibit for identification 481 and ask you to take your time and read it. Is that your signature at the bottom?

A. Yes, I would say that is.

Q. Does that refresh your recollection as to your interview with the Federal Trade Commission attorney-examiner?

A. If that was at the same time, the same man, 2507 then most likely that is it, then.

Q. I would like to call your attention to "Item 3, TBA—brands, suppliers and prices: A, tires: 'principally Firestone'." Principally Firestone is in quotes.

A. What do you mean it is in quotes, principally Firestone?

Q. The document states thereon that at that time you were carrying principally Firestone tires, is that correct?

A. Well, at that particular time most likely the principal reason I did—I got anywhere from 10 to 20 percent more discount from Firestone than I was getting from any other tire dealer. That is the reason I went to Firestone. That is the reason I went to Firestone, because I was getting I know at least 10 to 20 percent more discount on a tire.

Q. So you were stocking principally Firestone?

A. I didn't stock any particular tire. If you call two or three tires a stock, then—which I don't—

Q. You were handling principally Firestone, according to your statement. Under batteries, I quote "Firestone principally." So at the time of the interview you were also principally carrying Firestone batteries, isn't that correct?

A. At the time that I can recall on any of this stuff here, I had any tire or any battery at all. I had Bowers in; I could have had Exide in; I could have had most any type of battery with that. I wasn't any one particular line that I had. The only reason why I went to Firestone
2508 is due to the fact that I got a better price. That is the only reason.

Q. But you did go to Firestone?

A. Certainly I went there. Why shouldn't I? For a better price.

Q. On direct examination you stated that you have never had any Firestone identification in your station since 1951, is that correct?

A. You mean such as poster or window?

Q. Do you have a window valance?

A. No. Nothing like that. No decals or anything.

Q. An outdoor sign of any kind?

A. I have an outdoor sign for brake work, such as Power Mate—stuff like that, referring to gasoline.

Q. You have no Firestone signs on your station, on the premises?

A. No, sir, I don't.

Q. According to this statement, CX-481 for identification, at the time of the interview your station had "Firestone identification."

A. It must have been very small, because I never had anything on the window.

Q. What do you mean? What type of identification did you have? What type of Firestone identification did you have?

A. It may have been like, say, for instance, line on a lube window for instance, they might have sent a
2509 beautiful piece of—a picture of a tire of a racing car or something like that that would be worth-while looking at. That is the only identification that I ever recall putting up.

Q. You know most service stations have a window valance?

A. Yes, sir, decals and stuff like that.

Q. Yes.

A. I have nothing like that.

Q. And you have no outdoor sign?

A. No, sir.

Q. And you did not at the time of the interview on March—

A. No, I never did.

Q. (Continuing.) —19, 1953?

A. Never did. Never.

Mr. Kelaher: Your Honor, I offer CX-481 in evidence.

The Witness: In the first place, my windows are little to begin with. I believe it would make the window more attractive if I did, in other words, as far as that goes.

Mr. Kelaher: I have no further questions.

Hearing Examiner Kolb: Do you have objection?

Mr. Thompson: No objection.

Hearing Examiner Kolb: Mr. Mason, do you have objection?

Mr. Mason: No, but I move however to strike this testimony against Goodyear.

Hearing Examiner Kolb: It will be received.

2510 (The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT NO. 481, was received in evidence.)

Hearing Examiner Kolb: The motion of Goodyear to strike the testimony of the witness as pertains to Goodyear will be sustained. It will remain in the record as to Atlantic.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:00 o'clock.

(Thereupon, at 12:45 o'clock p. m., the hearing was adjourned, to reconvene at 2:00 o'clock p. m., this day.)

2511 Afternoon Session.

2:00 p. m.

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: I wish to call to the stand Mr. Fred Koehler.

FRED KOEHLER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Mr. Koehler, would you give your home address, please, to the court reporter?

A. 3900 Greenmount Avenue, Baltimore 18.

Q. I represent the Atlantic Refining Company in this matter. The gentleman on your right is Mr. Kolb, who is the presiding officer from the Federal Trade Commission conducting the hearings. This gentleman on your left is Mr. Kelaher, who is the attorney for the Federal Trade Commission. I have some questions I would like to ask. When I get through maybe he will want to ask you some questions; I don't know.

Mr. Koehler, where is your service station?

A. North and Woodbrook—1400 West North.

2512 Q. Are you a lessee of that station from the Atlantic Refining Company?

A. Yes, sir.

Q. About how many years have you been an Atlantic lessee?

A. About fifteen.

Q. Since about 1941?

A. 1941; that is right.

Q. Have you got a three-year lease from Atlantic?

A. Right now, yes, sir.

Q. And is this your first three-year lease or have you had three-year leases before that?

A. I have had a couple of three-year leases before that.

Mr. Kelaher: Mr. Thompson, could we have the date of his last lease so we won't have any problem on that?

By Mr. Thompson:

Q. Do you recall, Mr. Koehler, when you signed your very last lease?

A. I just signed it the other day. It is due now.

Q. Just a few days ago.

Before you became an Atlantic lessee, were you an employee of Atlantic?

A. I drove a truck for them, yes, sir.

Q. Was that your first job when you started work, or did you have other jobs?

A. Oh, no, I had other jobs before that.

Q. In the operation of this station, do you handle TBA?

2513 A. Yes, sir.

Q. Do you recall that about 1951 Atlantic announced that it was going to start to promote the Firestone line of TBA?

A. I heard it in a roundabout way. I didn't hear it directly. I mean no one came out directly and told me about it.

Q. I would like to ask you, sir, whether you recall receiving an announcement letter on or about March 1, 1951, from Mr. Colley, of Atlantic, entitled "A statement of Atlantic's TBA policy"—

A. Yes.

Q. —which is identified in this record as CX-150. Would

you take a look at that, sir, and see if that refreshes your recollection (handing)?

A. Yes, I remember getting one like this.

Q. Here is another one dated August 28, 1952, also from Mr. Colley, called "A restatement of Atlantic's TBA policy," which has been identified as CX-206. Would you be good enough to look at that and see if you recall receiving that one (handing). Take your time, sir, there is no hurry.

A. I believe I did get one of these, yes.

Q. Before March of 1951, you operated this station for about ten years, did you not?

A. Yes. About ten years.

Q. Do you recall what brands of TBA you were 2514 carrying from 1941 to 1951?

A. I handled most anything. I handled, I think, up to that time, Exide batteries, Lee tires, I think I handled Edison batteries, too, at the time. I actually bought from anyone. I just can't remember who all I did buy from. I bought from practically every jobber that came in the place, if I needed anything.

Q. Was Charlie Johnson one of your suppliers?

A. Charlie Johnson was one of them.

Q. After Atlantic changed to the Firestone plan and started promoting Firestone, what tires did you carry at your station at first?

A. I still handled what I had been carrying. I handled Lee, then I got Shenuits. I handled Shenuits tires. I handled Goodyear or any other brand of tire if the customer demanded that particular kind. I would send down and get that.

Q. Did you purchase Vanderbilt tires from a man named Joe Scheiner?

A. Joe Scheiner, yes. That is the S&S Tire Company.

Q. Do you recall whether after 1951 you also carried US Royals for a while?

A. I never carried them in stock.

Q. Never carried them in stock?

A. No.

2515 Q. You bought them on a pick-up basis?

A. That is right.

Q. Did you buy them from Burke-Savage when you bought them?

A. I bought some from Burke-Savage, yes, sir. I would send down and get them, see.

Q. Still talking about tires, as of today—now talking as of June 1958—do you handle Firestone tires?

A. I have two.

Q. When did you first begin to stock Firestone tires?

A. I put in Firestone tires when I had a salesman who changed his position. He was formerly my insurance collector, and he went to work for Firestone. He stopped in to see me, and he told me that I have known him so long, that if there was anything I could throw his way to help him with his job, he would appreciate it.

Q. Was his name Henry Scheck?

A. Henry Scheck. I think it is S-c-h-e-c-k.

Q. About when was it that you first bought Firestone tires?

A. I just don't remember. But I know it was the day that he changed his job. I guess it was maybe four months.

Q. That would be about February or March 1958?

A. Somewhere like that.

Q. Was that the first time that you had ever stocked Firestone tires?

A. That was the first time I ever stocked Firestone tires.

2516 Q. After 1951, what batteries did you carry at first?

A. Autolite.

Q. Did you drop the Exide line?

A. I dropped the Exide line, yes, and put in Autolite. I got a better deal by Autolite and I put them in.

Q. About how long did you continue to carry the Autolite battery line?

A. I carried Autolite batteries up until the same time I changed over and bought the tires from Mr. Scheck.

Q. Until about four months ago?

A. That is right. I still handle Autolite now. I haven't done away with them. But I handle two now. I handle some Firestone and some Autolite.

Q. And is the spring of this year the first time that you have ever stocked Firestone batteries?

A. That is the first time. I had bought some years ago, and I sent four of them back. And I never put any more Firestone in from then on.

Q. Until this spring?

A. Until this spring.

Q. Since 1951, what sources of supply have you had for your accessories which you handle at the station?

A. The same sources of supply that I had during the War. I have had R. J. Loock, R. W. Norris, Service Parts, Replacement Parts, Baltimore Gas Light, Standard
2517 Battery Company, Martin brothers; I buy from all of those.

Q. Are you still buying from those same companies?

A. Yes, sir.

Q. Have you been buying accessories at all from Firestone?

A. No.

Q. All these non-Firestone tires and batteries and accessories which you have around the station, have they been openly displayed?

A. Oh, yes.

Q. Visible to anybody who came in?

A. Anybody at all, yes, sir.

Q. Do you from time to time have Autolite and Champion advertisements around the station?

A. Yes, sir. Vanderbilt, also. Whenever I get the advertisement I stick it up on the wall, or on the window.

Q. Do you sell these non-Firestone products on Atlantic credit cards?

A. Yes, sir.

Q. Have you ever been criticized by Atlantic for doing that?

A. No.

Q. Have you ever been criticized by Atlantic for carrying these non-sponsored TBA items?

A. No, sir.

Q. Did anybody ever suggest or tell you that you
2518 ought not to buy them?

A. No, sir.

Q. Did anybody ever tell you to get them out of your station or to hide them?

A. No, sir.

Q. Do you make your own decisions about what you buy?

A. Yes, sir.

Q. Have you felt at all times free to buy any kind of TBA you wanted from any sources you wanted?

A. I certainly have, yes, sir.

Q. When your lease comes up for renewal, have you ever had any difficulty getting it renewed?

A. No, sir. Not in the least.

Q. Has the fact that you have not been carrying Firestone TBA ever been held up against you by anybody?

A. Not to my knowledge.

Q. Do you feel that it has anything at all to do with your lease renewals?

A. Absolutely not.

Q. Mr. Koehler, you have been quite a successful service station operator, have you not?

A. Yes, sir.

Q. Have you had offers from other companies than Atlantic? Have other companies wanted you to take leases from them?

A. Yes, sir.

2519 Q. And to drop Atlantic?

A. Yes, sir.

Q. Has that happened over the years a number of times?

A. Yes, quite a few times.

Q. Since you have been in this service station business for 17 years, I would like to ask your opinion as an expert. Do you think that the Atlantic TBA program with Firestone would be helpful and beneficial to young, inexperienced dealers?

A. Very much so.

Mr. Kelaher: Objection, your Honor. This is opinion testimony.

Mr. Thompson: We have had a ruling on that this morning with a man with similar qualifications.

Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. Do you recall, about March 1953, a man came to see you and identified himself as representing the Federal Trade Commission?

A. Yes, sir.

Q. Did he interview you at your station?

A. At the station. He asked me some questions.

Q. Did he take notes of what you said?

A. He took notes, yes, sir.

Q. Did you ask him to look around your station?

A. After he asked me to sign the papers, I told
2520 him after I read it that I would sign it. And then he told me that he didn't believe I didn't have anything there from Firestone.

I said, "My place is open; I will show you." So I myself took the man upstairs and all through the place and asked him if he could find anything there at all from Firestone, I would like to see it. At that particular time I had nothing in there from Firestone.

Then he told me that he wasn't satisfied. He said, "My boss won't believe it."

So then they came back, about a week or so later with another man—there was two of them—and I told him the same thing and took him around and showed him. There was nothing in my place at all from Firestone.

Q. Did you tell your Atlantic salesman about these people coming to see you?

A. Yes, I told Jack Crawford about it. That was my salesman at the time.

Q. Did Jack come out to see you and ask you whether you would write a statement of what you told these people?

A. He came out.

Q. Do you recall whether you wrote a statement about what you told the Federal Trade Commission people?

A. Oh, yes.

Mr. Thompson: I will ask that this document be marked as an exhibit for identification.

2521 (The documents referred to were marked Respondent's Exhibits A-10-A through A-10-E for identification.)

(The document was handed to Mr. Kelaher.)

By Mr. Thompson:

Q. Mr. Koehler, I am now going to show you a document which has been marked for identification as Respond-

ent's Exhibits A-10-A through A-10-E, and ask you whether this bears your signature on the third page?

A. Yes, sir, that is my signature.

Q. And there is another signature here called "Witness." Whose signature is that?

A. That is Jack Crawford, the company salesman.

Q. Do you recall writing this statement, sir? Do you recall the fact that you wrote a statement and gave it to Mr. Crawford?

A. That is right.

Q. Would you be kind enough to read it and see whether it refreshes your recollection about what you told these Federal Trade Commission people in March of 1953.

A. That is right. I have everything in there.

Q. Mr. Koehler, did a Federal Trade Commission representative give you a copy of whatever statement that he took from you?

A. That is right. And I signed it. He gave me a copy.

Q. And he gave you a copy?

A. Yes, sir.

Q. Do you know what happened to that copy, sir?

2522 A. I mailed it in to the office.

Q. You are not confused between that statement and this one, are you, sir?

A. No, no. That is practically the same statement, right there.

Mr. Thompson: If your Honor please, it will save a lot of time if I just offer this in evidence. If Mr. Kelaher objects, I will go through the tortuous procedure of asking Mr. Koehler to refresh his recollection and repeat what he told the Federal Trade Commission investigator.

So it is your choice, Mr. Kelaher.

Mr. Kelaher: Is this being offered as past recorded, or to refresh his recollection? What is the basis of your offer?

Mr. Thompson: Do you object to it on either ground?

Mr. Kelaher: I am not saying I will object to it. I am just asking.

Mr. Thompson: Frankly, if you object, I don't think this document is admissible because he remembers the conversation. I was just trying to save time.

Mr. Kelaher: Then on the basis of your own statement, I should formally object.

Mr. Thompson: You can object if you wish, in which case it will waste a lot of time because it will put me in the position where I have to ask him to refresh his
2523 recollection and state as of today what he said back in 1953. I will do it that way if you prefer.

Mr. Kelaher: May I look at that again?

Mr. Thompson: Surely (handing).

Mr. Kelaher: I have no objection, your Honor, to it going in as his statement of what he told the Federal Trade Commission attorney-examiner.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-10-A to A-10-E, inclusive.

(Whereupon, the document referred to, heretofore marked RESPONDENT'S EXHIBIT A-10-A through A-10-E for identification, was received in evidence.)

Mr. Thompson: Thank you, Mr. Koehler. As far as I am concerned, those are all the questions that I have to ask you. Mr. Kelaher may have some questions.

2524 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Koehler, with respect to the statement which was just introduced in evidence, RX-A-10-A through -A-10-E, was that prepared by Mr. Crawford for your signature, or did you dictate the statement?

A. I wrote that. I dictated exactly what went on, and he copies it down.

Q. Then did he prepare this statement, or did you?

A. He prepared that one.

Q. He prepared that?

A. Yes.

Q. And he sent it to you and you signed it?

A. That's right. He brought it to me.

Q. You read it, signed it, and sent it back to him?

A. That's right.

Q. And at the same time did you also send a copy of the statement you signed for the Federal Trade Commission representative to Atlantic?

A. To Atlantic, yes, sir.

Q. That doesn't appear in their files apparently.

Mr. Thompson: We have been unable to find it.

I would be perfectly delighted if Mr. Kelaher would supply us with a copy which we can't find.

Mr. Koehler, would you have any objection to Mr. Kelaher releasing to Atlantic the statement which you
2525 signed and gave to the Commission.

The Witness: No, indeed.

Mr. Thompson: Mr. Kelaher, may I have a copy?

Mr. Kelaher: It is not within my authority to give you a copy. If you wish to make application to the Commission for it you are certainly entitled to do that.

By Mr. Kelaher:

Q. What type of station do you operate? I mean in appearance. Do you have window space?

A. I have a roof over my place.

Q. Do you have a large window in front?

A. No. Two medium sized windows. I don't have no big display window.

Q. Have you ever had Firestone identification or Firestone signs up?

A. Now, I have on my tires. But I didn't have before.

Q. You had none before?

A. No.

Q. Do you have any window decals?

A. Didn't handle their products so I didn't need any decals.

Q. Was there any identification at all on your—

A. Absolutely none.

I have them now. I just put them up there. I have two signs in the tires for the sale, Firestone tire sale. That is only for the sale over the Fourth of July. Previ-
2526 ous to that I didn't have any, no.

Q. And you had no signs on your premises?

A. Not on the premises, no.

Q. I believe you testified that you now stock Firestone tires, is that correct?

A. Two. I have two.

Q. And you have Firestone batteries?

A. Yes sir.

Q. And you handle what? Firestone batteries?

A. Autolite batteries.

Mr. Keiaher: No further questions.

Mr. Thompson: Thank you, sir.

Hearing Examiner Kolb: That is all.

(Witness excused.)

We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Examiner, at this time I would like to call to the stand Mr. John Eckhardt.

JOHN A. ECKHARDT was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

2527 *Direct Examination by Mr. Ballard.*

Q. Mr. Eckhardt, would you give your name to the reporter?

A. John A. Eckhardt.

Q. Would you give your residence address?

A. 3914 Foster Avenue, Baltimore 24.

Q. Mr. Eckhardt, the gentleman on your right is Mr. Kolb. He is the presiding officer at this hearing. The gentleman on your left is Mr. Kelaher. Hs is a lawyer for the Federal Trade Commission.

Mr. Eckhardt, what is the address of the Atlantic station that you lease?

A. Fleet and Fagley Streets.

Q. That is in Baltimore?

A. Baltimore 24.

Q. How long have you been connected with that station?

A. Altogether about 20 years I have been there. But three years, a little better than three years as a lessee.

Q. And before you were the lessee, what was your connection with the station?

A. The station was run by my brother and I was an operator for him.

Q. Your brother was Tom Eckhardt?

A. Yes, sir.

2528 Q. During the time that your brother was the lessee, were you familiar with the TBA stock that was carried in the station?

A. Yes, sir.

Q. And were you familiar with the places where that stock was purchased?

A. Yes.

Q. Speaking of the present day, sir, what brands of tires do you carry at that station now?

A. Right now I handle Firestone and Shenuit.

Q. Can you give us an approximation of how much is Firestone and how much is Shenuit?

A. I would say it is about 50/50.

Q. Where do you buy your Firestone tires?

A. From Jack's Tire Service.

Q. Where do you buy your Shenuit?

A. Plotkin's.

Q. What batteries do you handle?

A. Delco.

Q. Where do you get those?

A. R. W. Norris.

Q. Speaking of accessories, and by accessories I don't include repair parts but polishes, cleaners, hoses, belts, and that kind of thing—where do you buy most of your accessories?

A. Most of my stuff is pretty well scattered. I
2529 will give you a few names if you want to put them down: Ditch, Bowers and Taylor; Ancorp.

Q. Is that called—

A. Ancorp-Salawitch; Richman's Auto Supply; Colmis; Salvo Auto Parts; Baltimore Auto. Is that enough or do you want some more?

Q. If you have some more, I would like to have them.

A. R. W. Norris; Baltimore Gas Light. That is as many as I can remember.

Q. Do you display those Delco batteries that you buy?

A. Yes, sir.

Q. Do you have a Delco battery rack?

A. A regular rack with a sign on top of it, "Delco Batteries."

Q. Is that visible to people who come into your station?

A. Definitely.

Q. Does it include the Atlantic salesmen?

A. Oh, yes.

Q. Has the Atlantic salesman ever criticized you for carrying Delco batteries?

A. No, sir.

Q. Have they ever criticized you for carrying Shenuit tires?

A. No, sir.

Q. Do you feel free to buy any TBA you want?

A. Yes, sir, I do. I have been buying that way 2530 and I have never had anything jammed on me.

Q. Do you feel free to buy TBA from any source you want?

A. That's right.

Q. Mr. Eckhardt, do you remember the date of your first lease with Atlantic? Approximately?

A. May 1, 1955.

Q. Do you remember whether that lease was a one-year lease or a three-year lease?

A. One. My present lease is three.

Q. At the time your lease was renewed, was there any discussion with Atlantic about TBA?

A. No, sir.

Q. Mr. Eckhardt, I'show you a document marked CX-207, which is a form of letter from the Atlantic Refining Company to all Atlantic dealers. This one is signed by Mr. Estlow, who was the manager of the Philadelphia, New Jersey, region.

I ask you if you remember receiving a letter like this but signed by Mr. Burns, the manager of your region?

A. Yes, sir, I received that.

Q. Mr. Eckhardt, do you buy any U. S. Royal tires today?

A. No, sir.

Q. Does anybody from Burke-Savage call on you today?

A. No, sir.

Q. Have they ever called on you since you were a lessee?

A. No, sir.

2531 Q. During the time that your brother, Tom, was the lessee, did he buy U. S. Royal tires from Burke-Savage?

A. Yes, he did.

Q. Do you know why he stopped buying?

A. No, sir; I can't answer that.

Q. Do you know why Burke-Savage stopped calling on the station?

A. No, sir.

Q. Were you or your brother, to your knowledge, ever instructed that Firestone is now selling Atlantic stations and you must put in a complete line of Firestone tires and accessories?

Mr. Kelaher: Objection, your Honor.

Mr. Ballard: What is the objection?

Mr. Kelaher: He is asking if it was ever said to the witness or his brother.

Mr. Ballard: I said, to his knowledge.

Hearing Examiner Kolb: Whether he knows or not?

Mr. Kelaher: What was the statement again?

(Statement read.)

Mr. Kelaher: Objection, unless it is a little clearer.

Hearing Examiner Kolb: I will overrule the objection. Go ahead.

2532 A. No, sir.

By Mr. Ballard:

Q. Did your station ever put in a complete line of Firestone tires and accessories?

A. Never.

Mr. Ballard: I have no additional questions, Mr. Examiner. I think perhaps Mr. Kelaher will have some for you.

Cross-Examination by Mr. Kelaher.

Q. As I understand your testimony, you worked as an employee in your brother's station for some time, is that correct?

A. Yes, sir.

Q. Prior to the time when Atlantic began to sponsor Firestone TBA you testified you carried Lee tires.

Mr. Ballard: Mr. Kelaher, I don't think he so testified.

Mr. Kelaher: I beg your pardon. I will ask you.

By Mr. Kelaher:

Q. What tires did your station carry prior to the time Atlantic changed over to Firestone TBA?

A. My brother handled the tires then. He handled Lee tires, he handled U. S. Royal, and he handled Pharis.

Q. And at that time were U. S. Royal tires being 2533 purchased from Burke-Savage?

A. Most of them; yes, sir.

Q. And at that time Atlantic was sponsoring Lee tires, was it not?

A. Right.

Q. And your station, your brother's station, was purchasing Lee tires, isn't that correct?

A. Yes, sir.

Q. And your station does quite a large tire business, does it not?

A. No, sir.

Q. Insofar as your tires, batteries and accessories are concerned, referring to your brother's station, do tires constitute the major part of your TBA sales?

A. No, sir.

Q. Was there a time when they did constitute a major part of your TBA sales?

A. I would say it was quite a bit of it at one time. Between that and batteries, I would say were our biggest sales.

Q. Would that be around 1951-'52-'53?

A. No. I would say it would be back a little further than that.

Q. After the switch-over by Atlantic to Firestone TBA, your brother eventually discontinued purchasing U. S. 2534 Royal tires from Burke-Savage, is that correct?

A. I think he discontinued from Burke-Savage before that.

Q. However, you are not certain whether it was before or after, is that correct?

A. No. That is correct, I am not certain there.

Q. When did your brother's station begin to purchase Firestone tires in quantity?

A. I would say in the last couple of years that my brother was in the station he did not purchase very many Firestone tires because at one time he was doing some buying from C. E. Kimmel and Company.

Q. He did thereafter, sometime after the change-over by Atlantic to Firestone, decrease his purchase of Lee tires, did he not?

A. Well, Lee tires weren't handled at all by any of our callers after they stopped being handled by the Company. We had nobody calling on us from Lee Tires at all.

Q. So you stopped buying Lee tires?

A. Yes, sir.

Q. And at that time your brother began purchasing Firestone tires, is that correct?

A. No. He bought more Goodyear tires than he did Firestone.

Q. Did he also buy some Firestone?

A. He bought some, yes.

Q. What type service station identification do you
2535 have in your station?

A. Pardon me, I didn't understand that.

Q. What type service station identification do you have? I am referring to window decals and outdoor signs.

A. I don't have any window decals at all. My station is just listed as an Atlantic service station, but no decals whatsoever on the windows.

Q. Do you have an outdoor sign on your station, on the premises?

A. As to tires, no, sir.

Q. Is there a Firestone sign on your premises?

A. No, sir.

Q. And at the time your brother operated the station after March, 1951, there were Firestone signs on the premises, were there not?

A. Yes, there were decals.

Q. And there was also a Firestone outdoor sign up, was there not?

A. I can't recall that.

Q. Do you make any purchases of accessories at all from the Firestone store?

A. Very little.

Q. But you do make some?

A. Some.

Q. I noticed you didn't mention Firestone on your
2536 direct examination. You do make some purchases?

A. Yes, sir. It was an omission. It was my fault.

Q. Some of these suppliers you mentioned must sell to you in small quantities, don't they?

A. That's right.

Q. Would that be true of the major part of them?

A. Well, a lot of these I buy from because it is very convenient for me. Most of them are within six blocks

of my station, which is convenient for me to use them as a warehouse.

Q. So you don't stock from these particular buyers, do you?

A. Oh, my shelves are always stocked; yes, sir. But I can buy in smaller quantities off of these people.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no questions, your Honor.

Hearing Examiner Kolb: That is all, Mr. Eckhardt. Thank you very much for coming down.

(Witness excused.)

Mr. Mason: Your Honor, I would like to make my usual motion to strike the testimony of the last two witnesses as having no bearing on Goodyear, and strike them as to Goodyear.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The motion of Goodyear to strike the testimony of
2537 last two witnesses, Koehler and Eckhardt, will be sustained as to Goodyear, but the testimony will remain in the record as to Atlantic.

Mr. Thompson: May we have a minute's recess before we adjourn?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

TOM ECKHARDT was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Please state your name for the record.

A. Tom Eckhardt.

Q. You were, I believe, the lessee of the Atlantic station at Fleet and Fagley Streets in Baltimore for some 15 years?

A. 18 years. From '37 to '55.

Q. You are not an Atlantic lessee today, are you?

A. No, sir.

Q. Are you connected with Atlantic in any way?

A. In no way.

Q. Mr. Eckhardt, when you took over your sta-
2538 tion in 1937 did you carry any tires at that station then?

A. Very few. We didn't have any money to buy them.

Q. When you did begin to buy the tires, what kind did you buy?

A. We bought them from Burke-Savage and some from Carl Marshall. Just a couple odds and ends. We never supplied many—stocked many tires.

Q. The tires you bought from Burke-Savage were U. S. Royals?

A. Well, it was U. S. Royal and Pharis and I think Silver Eagle was another off-brand tire that he had on that line, too; I bought some from Surplus Tire on Hanover Street here.

Q. Did you buy tires from Kimmel?

A. C. E. Kimmel. That was a little bit later. That wasn't in the early years, though.

Q. What kind did you buy from Kimmel?

A. The reason we bought from Kimmel, Kimmel always had a place down town. Then they moved up the street from us on Fleet Street, Fleet and Dean. I went up and contacted them, trying to get their business. They shot their gasoline and repair work to my station and I felt kind of obligated there to buy their tires.

That was the main reason for pretty well dropping most of my other connections.

Q. What kind of tires did you buy from Kimmel?

A. Goodyear and U. S.

2539 Q. And did you pretty much drop Burke-Savage at that time?

A. Pretty well, sir.

Q. Could you give us the approximate date of that?

A. That might have been in the early '50s. Somewhere around in there. It may have been '49, something like that, as far as my memory can serve me.

Q. After you had been dealing with Kimmel for a while, did you change your—transfer your tire business to another principal supplier?

A. After a while I did, because there was a fellow named Jack Spangenberg.

Q. Would you spell that?

A. S-p-a-n-g-e-n-b-e-r-g. He was Kimmel's top man, and he left Kimmel and went in business for himself. He bought out Carl Marshall who had a place of business on Bank and Eaton Street, who was at that time handling General tires. Jack went with him. And right previous to Jack moving out from Kimmel, Kimmel started splitting his gasoline and repair work all around the city. He said he was losing business. And so I was losing a lot of what I was getting as gravy train.

When Jack went over to Carl Marshall's place, when he bought it out, I had the same set-up with Jack with regard to servicing his equipment.

Q. What kind of tires was Jack selling at that time?

A. He was selling General at that time.

2540 Q. Did he later change his brands?

A. Later on, I don't know, it may have been a year, he switched over completely to Firestone, then I started buying Firestone tires.

Q. Is he the Jack's Firestone Store today?

A. Yes, sir. That is on the corner of Bank and Eaton Streets.

Q. During the time that you were an Atlantic lessee, Mr. Eckhardt, what batteries did you carry?

A. Exide and Delco and Willard.

Q. During that time did the Atlantic personnel ever criticize you for not carrying Firestone?

A. In no way at all.

Q. Tires and batteries?

A. In accessories, tires or batteries, they never criticized me at all.

Q. Did you feel free to buy any TBA you wanted?

A. I didn't only feel free, I bought that way.

Q. Do you know Mr. Eugene Savage, a salesman for the Burke-Savage Tire Company?

A. Yes, I do.

Q. Mr. Savage testified in these proceedings—

Mr. Kelaher, the reference, I believe, is on page 1756 of the record—

Mr. Kelaher was questioning Mr. Savage at that
2541 point and Mr. Kelaher asked this question: "Do you recall the names of any other Atlantic dealers with whom you had conversations concerning their purchases of U.S. tires?"

And Mr. Savage said: "Yes, I called on Eckhardt Service Station, on Fleet Street. I believe his first name was Tom Eckhardt."

That would be you, would it not?

A. He believes. Yes, sir, it was.

Q. In response to a later question, Mr. Savage said: "I started calling on him approximately 1951. I sold him tires up until approximately 1954. At that time he told me he could carry only the Firestone tires. I stopped calling on him when he naturally couldn't purchase any more tires from Burke-Savage."

Did you ever tell Mr. Savage that you could carry only Firestone tires?

A. Never made a statement like that, sir.

Q. Later on, on cross-examination, Mr. Thompson asked Mr. Savage the circumstances of the conversations.

This is on page 1817 of the transcript.

Mr. Savage said this: "I had been calling on Mr. Eckhardt for many years. At the time he was instructed that Firestone is now selling Atlantic stations. He put in a complete line of Firestone tires and accessories and told me that he will not be able to stock any U.S. products."

2542 Did you ever put in a complete line of Firestone tires and accessories?

A. In no way at all. If you will check back my records, I doubt, to my knowledge, that I ever bought anything with the exception of Firestone tires that had a Firestone name on it, because I always purchased name products such as DuPont products, and the like of that. We never put any Firestone accessories in at all.

Q. Did you ever tell Savage that you had received instructions from Atlantic on this point?

A. Never at all, sir.

Q. Did you ever tell him that you would not be able to stock any U.S. products?

A. No, sir. You know, along that line, besides handling Firestone tires I still purchased some tires from Kimmel, who was still up the street from me, and he is still there today. We didn't have a hundred percent Firestone. Be-

sides that we handled some Goodyear in there, too. If we have a customer coming in for Goodyear tires, we sell him Goodyear tires.

Mr. Ballard: I have no further questions.

I think Mr. Kelaher has some for you.

Mr. Kelaher: I think I do.

May I have a minute or two?

Hearing Examiner Kolb: Yes.

2543 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Eckhardt, you became an Atlantic lessee dealer in 1927, is that correct?

A. Yes, sir.

Q. Have you always operated at that same station, or did you change locations along the line?

A. No, I was in that station constantly for 18 years, with one exception. For a couple of years I had two stations. I had another at 5500 Bel Air. But I was in one of them steady.

Q. And your brother testified here today. How long was he with you as an employee?

A. That is about 12 years.

Q. Was he in your station from the middle '40s on?

A. John was away from me during the war-time. He worked for A. Gross Candle Company.

Q. When did he return to your station as an employee? Was it in the '50s sometime?

A. I can't recall the date. It may have been in the early '50s.

Q. You began to purchase U.S. Royal tires from Burke-Savage practically from the time you opened your station, as I understand your testimony; is that correct?

A. Pretty far back; yes, sir. I would say it was
2544 about pretty well when we first opened. Between Surplus and Burke-Savage.

Q. And you continued to buy from Burke-Savage until when?

A. I can't recall what year it was. We bought from them—I didn't stop buying from them altogether.

Q. Completely?

A. No, sir, never did stop buying entirely.

Q. So you were buying from them after Atlantic began to sponsor Firestone TBA?

A. Yes, sir.

Q. Is that correct?

A. They did a lot of retreading for me, they did a lot of vulcanizing tires for us, and we bought some in between.

Q. So you did see Eugene Savage after Atlantic changed over to Firestone TBA; is that correct?

A. Yes, sir.

Q. You also purchased Lee tires, did you not?

A. Yes, sir.

Q. And what was your reason for purchasing Lee tires?

A. We had been getting an awful lot of kicks and complaints on poor workmanship on Lee tires.

Q. What was your reason for purchasing Lee tires? You said you purchased Lee tires. Prior to 1951 did you purchase Lee tires?

A. Yes, we did.

2545 Q. What was your reason?

A. What was the reason for buying Lee tires?

Q. For buying Lee tires?

A. I bought them from Charlie Johnson. He was another Atlantic dealer. Charlie always gave us a good price on tires. His price was competitive.

Q. Wasn't Charlie Johnson a part of the Atlantic set-up at that time with respect to Lee tires?

A. Yes, sir.

Q. And Exide batteries, and so on?

A. Yes.

Q. And you did purchase Lee tires. Did you purchase other products from Mr. Johnson?

A. I don't think we bought anything from Mr. Johnson, if my memory serves me right.

Q. Other than Lee tires?

A. Other than Lee tires. Wait a minute. I bought a few Exides from Charlie. It was very few. We bought practically all them from J. R. Hunt.

Q. And J. R. Hunt was part of the Atlantic set-up at that time, was he not?

A. No, sir.

Q. Was not?

A. No.

Q. He was an Exide distributor, wasn't he?

A. That's right. For years and years.

2546 Q. You began to purchase Firestone after Atlantic began to sponsor Firestone tires; is that correct?

A. No, I bought my first Firestone from Jack Spangenberg.

Q. When was that?

A. It must have been around late—no, it was the early '50s there.

Q. Did the fact that Atlantic sponsored Firestone influence you to purchase Firestone tires?

A. Atlantic in no way at all insisted on my buying certain products.

Q. I am not asking that question. I am asking if the fact that Atlantic sponsored Firestone was the reason why you purchased Firestone tires.

A. No, sir. You recall a few minutes ago I said I bought them from Jack Spangenberg, due to getting all of his business. That is how we started buying Firestone tires.

Q. And what was the approximate date when you started buying Firestone tires?

A. I can't recall what date it was.

Q. Isn't it a fact that you discontinued purchasing Lee tires when Atlantic discontinued sponsoring Lee tires?

A. No, sir, we stopped before they did.

Q. You say that the fact that Atlantic sponsored Firestone tires had no influence on your reason for carrying Firestone tires?

2547 A. No, sir.

Q. At your station did you have what are known as window decals and an outdoor sign?

A. Yes, sir.

Q. Prior to the time when Atlantic sponsored Firestone TBA, what window decals and outdoor signs did you have in your station?

A. We had Lee up there then.

Q. You had Lee?

A. Yes, sir.

Q. When Atlantic began to sponsor Firestone TBA—if you can take your memory back to that period in 1951—did you continue to have the Lee identification on your station?

A. I had Lee taken out a long time previous to that because we had stopped handling Lee tires.

Q. Did you put any identification up after you took Lee down?

A. I didn't have anything at all.

Q. After Atlantic began to sponsor Firestone TBA, did you have service station identification?

A. We did.

Q. What was that?

A. That was Firestone.

Q. Who put it there?

A. The reason was that they had seen we were
2548 handling Firestone tires, and they offered to put Firestone advertising up, and it didn't cost me anything at all, so I gave permission to do it.

Q. Did they ask your permission to do that?

A. Yes, they did.

Q. Did Burke-Savage ever ask your permission to put up US Royal signs?

A. No.

Q. Did any other brand such as Goodyear salesmen ever ask you to put a sign up?

A. No, sir.

Q. Even though you were selling other brands, the only identification you had was—

A. Stationary signs, but we would have these cardboard signs that you would put up for advertising, like you would put on a desk or nail up on the wall. We had quite a few of those. But no stationary signs on the building.

Mr. Ballard: The record isn't clear. Those cardboard signs, what brand were they?

Mr. Kelaher: Why don't you let me continue with my cross-examination?

Mr. Ballard: Excuse me.

By Mr. Kelaher:

Q. I am referring to the window decals and outdoor signs. They were put up by Atlantic?

2549 A. By Firestone.

Q. By Firestone personnel?

A. By Firestone personnel, that is right.

Q. After March 1951, did you purchase Firestone TBA or Firestone tires because you thought Atlantic expected you to purchase Firestone tires?

A. No, sir.

Q. Did you think that Atlantic had a right to expect you to carry Firestone tires?

A. I don't think they had a right to. I guess if I probably owned property like they did and I leased off of them, I might expect somebody to buy off of me the same way.

Q. So, as a matter of fact, you did think that they had a right to have you buy Firestone tires; isn't that correct?

A. But they never forced any issue on it.

Q. Wasn't that one of the reasons why you purchased Firestone TBA?

A. No, sir. The only thing we handled in Firestone was tires. I bought them from Jack Spangenberg.

Q. I understand that. But you stated on direct examination that you stocked Firestone tires.

A. That is correct.

Q. You purchased Firestone tires on a stocking basis. And you purchased Firestone tires on a stocking basis after Atlantic began to sponsor Firestone tires. Isn't that correct?

2550 A. That is correct.

Q. Do you recall being interviewed by a Federal Trade Commission attorney-examiner, Mr. Eckhardt?

A. Yes, sir.

Q. You do recall that. And do you recall the fact that he asked you a number of questions?

A. It has been a long while ago, though.

Q. That was quite a long time ago. Would it refresh your recollection if I mentioned that it was in March 1953? It was that long ago.

A. It has been a good while ago, I am sure of that.

Q. Do you remember whether he prepared a statement and asked you to read it at the time?

A. I am pretty sure I did.

Q. And you recall, I imagine, that you also signed the statement at that time?

A. Yes, sir.

Mr. Kelaher: Mr. Examiner, I ask the reporter to mark this document as Commission's Exhibit 482 for identification.

(The document referred to was marked Commission's Exhibit 482 for identification.)

(The document was handed to Mr. Ballard.)

Mr. Ballard: Will you show it to the witness and give him a chance to read it? It was written so many years ago.

2551 By Mr. Kelaher:

Q. Mr. Eckhardt, I ask you to examine Commission's Exhibit 482 for identification. Take your time to read it. I will ask you a few questions about it after you have finished reading it.

Is that your statement, Mr. Eckhardt?

A. It is down there.

Q. And is that your signature appearing on the bottom of Commission's Exhibit 482 for identification?

A. Yes, sir.

Q. I am going to read a statement appearing thereon to this effect, and I quote, under "reason for choosing line of TBA carried" this statement appears: "Used to handle Lee when Atlantic warehoused and sold directly. Then when Atlantic 'sanctioned' Firestone, purchased Firestone. Dealer felt that as long as Atlantic 'sanctioned' Firestone, he would buy Firestone. No pressure because haven't gone out of step."

That is what you told the—

A. I can't recall that.

Q. You can't recall that?

A. No, sir.

Q. That is your statement as of March 26, 1953, is it not?

Mr. Ballard: He said he can't recall.

Mr. Kelaher: I don't care whether he recalls or not. This is what he said. I am establishing the fact that

2552 this is a signed statement.

Mr. Ballard: That is the statement that is on the piece of paper. It is what the investigator wrote down.

Mr. Witness: Anything could have been put on after that. I don't recall all of that being on there when I signed that, sir.

By Mr. Kelaher:

Q. You read it before you signed it, didn't you?

A. I read it. I can't testify to those words.

Q. You testified that you read the statement before you signed it; is that correct?

A. Yes, but I can't remember any of that being on there because I hadn't had any pressure put on me that I had to buy those tires.

Q. But the fact that Atlantic sanctioned Firestone was the reason you purchased Firestone tires, is it not?

A. I purchased them from Jack Spangenberg before we bought any from Atlantic.

Q. But then you began to stock Firestone tires, you testified here today.

A. We did stock them, yes.

Q. And that was after Atlantic sponsored Firestone tires, was it not?

A. It could have been.

Q. And the reason that no pressure was applied
2553 was because you stated to Mr. Lipsky at the time "you haven't gone out of step"?

A. I can't recall any of that because I haven't had any trouble along that line. Never did.

Q. Wasn't it also true that you thought you should buy some Firestone in order to keep Atlantic from getting angry at you? Isn't that true?

A. I could have said that, yes.

Q. The answer is yes, is it not?

A. Yes. I said I felt that in my own way, now; I didn't say that Atlantic was mad at me.

Q. That is right.

A. I said in my own way.

Q. In your own way.

A. That is right.

Mr. Kelaher: I move the admission in evidence of Commission's Exhibit 482.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 482.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 482 for identification, was received in evidence.)

Mr. Ballard: May we have a few minutes?

Hearing Examiner Kolb: Yes.

2554 *Redirect Examination by Mr. Ballard.*

Q. Mr. Eckhardt, recalling the conversation that you had with the investigator from the Federal Trade Commission, did the investigator put down every word that you said?

Mr. Kelaher: Objection, your Honor. I think the document speaks for itself.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. You may answer the question.

A. I can't recall half of that stuff that is on that paper.

Q. My question is this, sir: Did he put down every word that you said?

A. I am sure he didn't.

Q. Was it a long conversation?

A. Very much longer than is shown on this application.

Q. He chose what he wanted to put down?

Mr. Kelaher: Objection, your Honor.

By Mr. Ballard:

Q. And you read it?

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Did he choose the words that he wanted to put down?

A. That is what he put down.

Q. Shortly thereafter, did you inform the Atlantic
2555 Refining Company of this incident?

A. Yes, I did.

Q. And did some representatives of the Atlantic Refining Company come and talk to you about it?

A. Yes, sir.

Q. And did you give them a statement?

A. I did.

Q. Did you sign that statement for them?

A. I did.

Mr. Ballard: I would like to have this document marked for identification as Respondent's Exhibit A-11-A through A-11-G.

(The document referred to was marked Respondent's Exhibit A-11-A through A-11-G for identification.)

(The document was handed to Mr. Kelaher.)

By Mr. Ballard:

Q. Mr. Eckhardt, I show you this document marked RX-A-11-A through A-11-G, and ask you if that is a copy of the statement that you signed very shortly after the Federal Trade Commission investigator talked to you.

As you look at that, is that a copy of what you signed?

A. Yes, sir.

Q. Does that record refresh your recollection of what you told the Atlantic Refining Company representative?

A. Yes, sir.

2556 Q. Does it all refresh your recollection of what you told the Federal Trade Commission?

A. This is more like the words I used, yes, sir.

Q. Those are more like the words that you used?

A. Yes, sir.

Mr. Ballard: I am in the same situation.

Mr. Kelaher: No objection, if you intend to offer this in evidence.

Mr. Ballard: What I would like to do, your Honor, is offer this in evidence, with the privilege of substituting the original signed one when we have it. It is in Philadelphia. With your permission, we will substitute that. And I believe it has attachments, the same attachments. And if they are attached to the original, I hope that you will permit those to be received, too.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-11-A through A-11-G, inclusive, subject to the right to substitute the original at a later date.

(Whereupon, the document referred to, heretofore marked RESPONDENT'S EXHIBIT A-11-A through A-11-G for identification, was received in evidence.)

By Mr. Ballard:

2557 Q. Mr. Eckhardt, I show you CX-482 and I ask you if this correctly indicates that at the time of the investigation you were carrying Firestone, US, and Goodyear tires and tubes?

A. That is correct.

Q. It also indicates that you were buying US and Goodyear from Kimmel; is that correct?

A. That is right, sir.

Q. It indicates that you were buying Firestone tires from the Firestone store. By that did you mean Jack's store, or the Firestone Company store?

A. Jack's store.

Q. At that time was Jack's store an authorized denominated supply point under the Atlantic-Firestone system?

A. No, sir.

Mr. Ballard: I have no further questions.

Recross Examination by Mr. Kelaher.

Q. I believe you testified that you continued to purchase some US tires from Burke-Savage after 1951; isn't that correct?

A. Yes, sir.

Q. So that, as of March 26, 1953, isn't there a possibility that you may have been purchasing some US tires from Burke-Savage? Or did you discontinue prior to that time?

A. I can't recall exact dates on that, sir.

Q. You can't recall?

A. No, sir.

2558 Q. So you can't recall whether your sole supplier of US tires on March 26, 1953, was C. E. Kimmel, can you?

A. I can't say that I recall that. No, sir.

Q. Do you know whether Jack's Tire Store ever became a supply point under the Firestone-Atlantic TBA program?

A. To my knowledge they never did.

Q. I am sorry to say that your knowledge isn't—

Mr. Ballard: Jim—

Mr. Kelaher: Just a minute. I would like the record to show that at our hearing on June 14, 1957, Jack's Tire Service, Baltimore, Maryland, is listed as a Firestone supply point serving dealers and distributors in the Baltimore, Maryland, district.

The Witness: But I went out of business in 1955; that is why I can't recall.

By Mr. Kelaher:

Q. So you don't know whether it became a supply point before or after you went out of business, can you? You can't truthfully say you know.

A. The records will show.

Mr. Kelaher: I move to strike all that testimony with all the interruptions, I don't know where we stand on it.

Hearing Examiner Kolb. Can you answer the question?

The Witness: Yes, sir. I can.

Hearing Examiner Kolb: Go ahead.

2559 The Witness: To my knowledge, Jack never did supply for the company—I am sure he didn't—when I was in business with him in 1955.

Mr. Ballard: May I make a statement for the record?

Mr. Kelaher: Not until I am finished.

Mr. Ballard: I think you are taking very unfair advantage of this witness.

Mr. Kelaher: Taking unfair advantage? I have a right to recross. I can't understand why I can't ask him some questions. I am being rushed here at a mile a minute. I am trying to cooperate with you. I am hurrying through my notes.

Mr. Ballard: The fact is that Jack's Store did not become a supply point until 1957. I will be glad to stipulate it with you.

Mr. Kelaher: Now we know it. I didn't know it when I asked the question.

I have no further questions, but I am not willing to stipulate the last remark of counsel at this time.

Mr. Ballard: We will supply you with the evidence, if you wish.

Hearing Examiner Kolb: The hearing will adjourn to reconvene tomorrow morning in Room 532, Federal Trade Commission, at 10:00 o'clock.

2560 Room 532
Federal Trade Commission
Washington, D. C.
Wednesday, 2 July 1958

Met, pursuant to adjournment, at 10:18 a.m.

Following Testimony Taken At Washington

2561 Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Examiner, before I call the first witness, I would like to note for the record that, in line with your Honor's ruling of yesterday, I have sitting with me and helping me today Mr. Thomas Jones, a representative of the Atlantic Refining Company. It is quite possible Mr. Jones will be called as a witness later in the proceeding. Mr. Kelaher tells me he has no objection to Mr. Jones assisting me today.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: I will call as my first witness Mr. Norman Landis.

NORMAN LANDIS was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Landis, would you state your full name for the record?

A. Norman Landis.

Q. Would you give us your home address?

2562 A. 114 Landers Lane, Swenwyck Gardens, New Castle, Delaware.

Q. Mr. Landis, what is the location of your Atlantic station?

A. It is located in Rose Hill, New Castle Avenue and Lambson Lane, New Castle.

Q. And are you the lessee of that station?

A. That is right.

Q. How long have you been a lessee at that station?

A. I took over the station on September 15, 1954.

Q. Is your present lease at that station a three-year lease?

A. It is, sir.

Q. Prior to leasing that station from the Atlantic Refining Company, did you lease another station from another oil company?

A. Yes. I leased a station from the American Oil Company.

Q. Where was that located?

A. Fourth and Walnut Streets, Wilmington.

Q. What were the dates that you were in that station?

A. 1944 to '52.

Q. Mr. Landis, what kind of tires do you carry at your present station?

A. Firestone and Lee.

Q. Could you give us an approximate breakdown as to which, between Firestone and Lee?

A. I sell about 75 percent Lee, perhaps a little over that, and about 25 Firestone.

2563 Q. On batteries, what brand of batteries do you carry?

A. I carry Firestone batteries and Lee.

Q. Could you give us the breakdown on those?

A. Well, I sell—I would say it was the reverse on batteries—I sell 75 percent Firestone and maybe 25 percent Lee, or maybe a little less Lee.

Q. On accessories—and in this proceeding we define

"accessories" as not including repair parts, what are sometimes called hard parts. We include polishes, waxes, chemicals, hoses, fan belts, things of that nature. Where do you buy your accessories?

A. I buy most of my accessories from Duromotive, at Third and Washington.

Q. Is that D-u-r-o-m-o-t-i-v-e?

A. That is right.

Q. Do you have any other source of supply for accessories?

A. Yes. I buy some from Motor Car Service.

Q. Where are they located?

A. Ninth and French Streets.

Q. That is in Wilmington?

A. Yes.

Q. And Duromotive is in Wilmington?

A. Yes, on Washington Street, between Third and Fourth.

Q. Do you have any other source of supply?

A. From Wilco I buy antifreeze. They have Zerex and Zerone.

2564 Q. Is that W-i-l-c-o?

A. That is right.

Q. And that is in Wilmington, too?

A. Yes, sir.

Q. Do you have any other places you trade for accessories?

A. There are places I call, but I very seldom buy. There is Suburban Auto Parts; I don't buy much from them. And Adams Parts; they call once in a while on me. But the two that I mentioned, they get—in Firestone I deal with them; I get some things off of them in the accessories line. But outside of those three, they get the bulk of it.

Q. Do you carry Champion spark plugs?

A. Yes, sir. That is the only spark plug I sell.

Q. Do you have a Champion decal in your window?

A. I have two of them on there, one in the front and one on the side window.

Q. Do you have one of those Champion spark plug cleaners?

A. I have.

Q. With the name "Champion" on it?

A. Yes, sir.

Q. What kind of filter cartridge do you carry?

A. I carry Fram and I took over a new line—Well, not a new line, but I took over Hastings in the last month.

Q. Has Hastings given you a display rack?

A. They have.

2565 Q. Does that have the Hastings name on it?

A. Yes, sir.

Q. Does Lee provide you with tire stands for their tires?

A. Yes, sir.

Q. Those are the little stands that the tire—

A. That the tire sets in. They do. And inserts, also, that go in the tire when they are setting in them.

Q. These Lee tires and Lee tire stands and the Hastings filters, are they displayed in your station?

A. Yes, sir.

Q. Visible for anyone to see?

A. Anyone can see them.

Q. Does your Atlantic salesman see them?

A. Yes. He couldn't help.

Q. Does he discuss them with you?

A. He has never criticized me for handling Lee tires.

Q. Did he ever try to persuade you that the Firestone filter was a better filter than Hastings?

A. Never has.

Q. Do you sell all these things on Atlantic credit cards?

A. I sell anything in the TBA line—tires, batteries and accessories—on the Atlantic credit card.

2566 Q. Has your Atlantic salesman ever criticized you for selling Lee tires on Atlantic credit cards?

A. No one has ever said anything to me about it.

Q. When you are deciding what TBA items to buy, what is the most important—what are the most important things that you take into account in your own mind?

A. Price and what kind of a dealer setup you can have. What I mean by the dealer set up is, in a lot of cases, if you buy 24, you can get it quite a bit cheaper. But I am interested in the deal that if I need to replace one item, if I can get it at that 24-price by buying a certain quantity at the beginning.

Q. Speaking of TBA items, do you feel free to buy any TBA items you want?

A. Yes, sir.

Q. Do you feel free to buy TBA from any source you want?

A. Yes, sir.

Q. Did anyone from Atlantic ever tell you that you had to buy Firestone TBA?

A. No one has ever told me that.

Q. Mr. Landis, I show you a document which you will see is marked CX-207, a letter or form of letter dated June 24, 1955, addressed to Atlantic dealers. This particular copy is signed by Mr. Estlow who is the manager of the Philadelphia-New Jersey region. But, of course, if you had received one it would have been signed by
2567 the manager of your region.

I ask you to look at that letter and tell me if you ever received such a letter.

A. I have seen a letter like that, but nobody ever told me I had to buy any place, any particular place.

Mr. Kelaher: That wasn't the question. Didn't you ask him if he received the letter?

By Mr. Ballard:

Q. I asked you, did you receive such a letter from Atlantic? Did they send you a letter like this?

A. They never sent me a letter like that, that I can recall of.

Q. Mr. Landis, who is your Atlantic salesman?

A. Jordan—William Jordan.

Q. How often does he call at your station?

A. I see him every week. Sometimes maybe it is oftener he comes around.

Q. Do you find that he is helpful to you in matters of TBA?

A. Yes.

Q. Does he suggest to you TBA promotions?

A. Yes.

Q. Does he ever point out a TBA deal to you?

A. Yes, sir.

Q. Of course that would be a Firestone deal, wouldn't it?

A. It would be a Firestone deal.

2568 Q. When he points out a good Firestone deal, do you sometimes take it?

A. I do.

Q. Your lease has been renewed several times, has it not?

A. Yes, it has. When I went in in 1954, it was from the 15th to the 15th—a year. Then I think the following year, when the year was up, they renewed it again. But then they started to lease from year to year, from the first of January to the last of December. Prior to that they gave me a three year lease.

Q. You mean after that?

A. After that. That's right.

Q. At the time that that happened, was there any discussion about your buying Lee TBA?

A. No. They never discussed anything about that to me.

Q. Mr. Landis, do you have any customers who are your own personal credit customers as distinguished from Atlantic credit-card holders?

A. Yes, sir.

Q. Do you have any idea about how many?

A. I would say offhand, 15 or 25.

Q. Those are people to whom you sell on your own credit?

A. On my own terms, on my own credit. Personal credit, as I call it.

Q. Thinking of the area around your station, are 2569 there other oil company stations in the immediate area?

A. Yes. There is an Esso to the north of me; and then to the south, there is the Sun; American Oil Company Amoco, they call it; and down from that is another Esso; and then an Atlantic and a Gulf.

Q. Have any of these companies ever approached you to lease a station from them?

A. Yes, sir.

Q. Do you remember any ones particularly?

A. Yes.

Q. Could you name them for us?

A. Tydol, which is not the nearest station to me. They wanted me to take a station. Gulf, and Esso was there once.

Q. If you took a station, a near-by station with one of those companies, do you think you could take your personal credit customers with you?

Mr. Kelaher: Objection, your Honor. This is speculative.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Do you think you could take your personal credit customers with you?

A. I would say within a mile or two I could take nearly all of my personal credit with me.

Q. How much of your total business ou think
2570 you could take with you?

A. I would say 30 to 35 percent.

Q. Mr. Landis, in 1956 do you recall an investigator from the Federal Trade Commission getting in touch with you?

A. Yes. He called on the phone.

Q. And do you remember what you told him?

A. Yes.

Q. Would you tell us what you told him?

A. He asked me if the Company made me buy from any certain source, and I told him they didn't, that I could buy wherever I wanted to. And I did. And they never said anything to me.

And he said, "Well, I guess you are not my boy."

Q. Did you ever see him again?

A. I have not.

Q. Did you ever hear from him again?

A. I haven't.

Q. Mr. Landis, does not the Atlantic salesman try to persuade you that the Firestone line is a good line, and you ought to buy more of it?

A. Well, they tell us that the Firestone is a good line, which it is. I think their tires is tops. But when you are in a small—when you have a small business and operate a small business you have to consider the price that you pay for the product and meet the competitive price. There-
fore, speaking of tires, I can buy Lee tires cheaper
2571 than I can buy Firestone. That is why the large
percentage of tires that I sell are Firestone,—are Lee tires.

Mr. Ballard: Mr. Landis, I don't think that I have any more questions for you. But I think Mr. Kelaher has some questions for you.

Mr. Kelaher: Mr. Examiner, I am going to have to ask for a short recess to check some of our files.

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Landis, you testified on direct examination that you were called by a Federal Trade Commission investigator?

A. That's right.

Q. By 'phone in 1956?

A. That is correct.

Q. Did the FTC investigator identify himself in any way?

A. He said he was investigating, what I understood he was a Federal investigator.

Q. That is what you understood?

A. Yes, sir.

Q. Did he identify himself in any way to you over 2572 the 'phone?

A. Well, he did say that he was investigating the stations for the buying, and if you were pressured into selling. And he asked me who I bought from and if I bought from Firestone. I told him I bought from whoever I wanted to.

Q. Did he give you his name?

A. No, he did not give the name.

Q. He did not give the name. Anyone could have called you and asked you the same question, couldn't they?

A. Well, yes, they could have. But in this case I don't

think it was because I know the fellow that called up. He called from his station.

Q. You know the fellow that called up?

A. I don't know the fellow that called up, but I do know the station that he called from.

Q. Where is the station that he called from?

A. It is on Lancaster Avenue, Stein's Atlantic Station that he called from.

Q. And you have no identification at all from this man?

A. No.

Q. There was no way you had of knowing whether he was an FTC investigator or not, isn't that correct?

A. I do know this, when Stein called up he told me that there was a fellow who was investigating, an investigator, and he wanted to talk to me, and the fellow, when he 2573 got on the 'phone, he told me what he was and where I bought, and I told him I bought from whatever sources I wanted to, and that is why I say he was a Federal investigator.

Q. So you must took his word for it that he was an investigator?

A. Yes. But I don't think this other operator would have said he was an investigator if he hadn't been.

Q. Mr. Landis, do you have a Firestone outdoor sign on your station?

A. Yes. There is one in the window and I have tires stands.

Q. Do you have a Firestone sign on the pole outside your station?

A. No.

Q. I thought you just said Yes?

A. I have tire stands that are outside, with tires set in. And also the—

Q. Are they Firestone?

A. Yes, sir.

Q. They are Firestone?

A. Yes, sir. They are Firestone.

Q. Do you have Firestone window decals?

A. I have, sir.

Q. A big Firestone display on your window?

A. That's right.

Q. When you moved into the station, was that 2574 Firestone identification on your station?

A. They put a new one on. Whether it was or not, I don't know. I wouldn't like to commit myself.

Q. Who put it on?

A. The salesman for Firestone, Walker, I think was his name. Mr. Walker.

Q. Did he just come in and put the signs up?

A. I was there quite a while before he put them up.

Q. Before he put them up?

A. Yes, sir.

Q. Was that more or less automatic? In other words, he came in and just—

A. No, I asked for them because the decals that were on were bad, and it does a station justice when you have nice decals and it is trimmed up nice.

Q. You are talking about new decals?

A. Yes.

Q. But the old decals were Firestone, too. Did you have Firestone identification?

A. I don't know if they were or not. Truthfully, I could not answer that question.

Q. Chances are that they were Firestone, isn't that true?

A. Yes, the chances are they were. They were tied up with the Firestone.

Q. You knew that Atlantic was tied up with Firestone—

2575 A. Oh, yes.

Q. —TBA?

A. That's right.

Q. So it was only natural that your station would be identified with Firestone TBA, is that correct?

A. That's right.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: That is all, Mr. Landis. Thank you very much.

(Witness excused.)

Mr. Ballard: Your Honor, there is no objection to the man sitting in the room after he has testified?

Hearing Examiner Kolb: No.

Mr. Ballard: Your Honor, may we have a short recess while I talk to the next witness?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: I will call Mr. Nicholas Tavani.

2576 NICHOLAS V. TAVANI, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Tavani, will you give your full name and home address to the reporter?

A. Nicholas V. Tavani, 1529 Barley Mill Road, Wilmington, Delaware.

Q. What is the address of your Atlantic station?

A. Southeast corner of Fourth and Young, Wilmington, Delaware.

Q. You are the lessee of that station?

A. Yes, sir.

Q. How long have you been the lessee of that station?

A. Since May of 1939.

Q. Your present lease has a term of three years?

A. Yes.

2577 Q. Going back to the period before 1950, can you remember the brand of tires that you carried at that station?

A. Lee.

Q. Where did you buy those Lee tires?

A. Some from Atlantic and some from Lee Tire and Rubber Company.

Q. What brand of batteries did you carry?

A. Exide.

Q. Where did you buy those?

A. Some from Atlantic, and some from Motor Car Service, in Wilmington.

Q. In the year 1950 do you remember that Atlantic stopped selling Lee tires and Exide batteries and began to sponsor the Firestone brand?

A. Yes.

Q. Do you remember meetings or a meeting, a dealers' meeting, at which that program was introduced?

A. I remember one meeting at the Hotel DuPont that I went to.

Q. Do you remember who was present at that meeting?

A. There were a lot of Firestone executives, some Atlantic.

Q. Were they introduced to you at that—

A. Yes.

Q. Was the plan explained to you at that meeting?

A. Yes, it was.

Q. I show you, sir, a document which is marked CX-150.

It is a form of a letter from Dwight T. Colley,
2578 Vice President of the Atlantic Refining Company. It is dated March 1, 1951. I ask you if you remember receiving such a letter?

A. Yes, I do.

Q. Now I show you another letter marked CX-206, likewise from Dwight Colley, and dated August 28, 1952, and ask you if you remember receiving that letter?

A. Yes, I do.

Q. Or a letter in that form?

A. Yes.

Q. Mr. Tavani, what brand of tires do you carry in your station today?

A. I carry about 95 percent Lee tires.

Q. Has that been true since 1950?

A. Yes, sir.

Q. And where do you buy them today?

A. Lee Tire and Rubber Company.

Q. And what batteries do you carry?

A. Exide.

Q. Would that be one hundred percent Exide?

A. One hundred percent.

Q. And where do you buy those?

A. Motor Car Service.

Q. They are the same people that you bought batteries from—

A. Yes.

2579 Q. —in the beginning.

What brands of accessories do you carry?

A. Well, I carry almost all kinds of polishes and different accessories. Whatever hits the market at the time, or hits my fancy.

Q. Where do you buy most of your accessories?

A. Different jobbers in Wilmington.

Q. Could you name some of them?

A. Motor Car, Taylor Auto, Wilco, Adams; that is about it.

Q. Does a distributor named Auto Parts and Radiator Company ever call on you?

A. Auto Parts and Radiator Company?

Q. Yes.

A. I don't think so.

Q. Does the Keil Company ever call on you?

A. Oh, yes. They have called on me before, Keil.

Q. Do you buy from them?

A. Occasionally I do.

Q. These various brands of accessories that you mentioned, do you put those on the shelves of your office?

A. Yes, I do.

Q. They are right back of your desk there?

A. Yes.

Q. Are they in plain sight?

A. Yes, they are.

2580 Q. Visible to Atlantic salesmen?

A. The office is very small. They are visible to anyone.

Q. Do you sell them on Atlantic credit cards?

A. Yes, I do.

Q. Anybody from Atlantic ever criticize you for displaying those?

A. No, not that I can remember.

Q. Did they ever criticize you for selling them on credit cards?

A. No.

Q. Did they ever tell you that you had to buy Firestone TBA?

A. No, they didn't.

Q. Do you, in fact, feel free to buy any TBA you want?

A. Yes, I do.

Q. Do you, in fact, buy any TBA you want?

A. I do.

Q. Do you sell your Lee tires and Exide batteries on credit cards?

A. Yes.

Q. Have you been criticized for that?

A. No.

Q. I show you another document marked CX-207 addressed to "All Atlantic Dealers." It is a form letter. This one happens to be signed by the manager of another district. If you had received one it would have been signed by the manager of your district. I ask you if you

2581 recall receiving that?

A. Yes, I do.

Q. A letter in that form?

Mr. Kelaher: What was the name of the manager of his district at the time?

By Mr. Ballard:

Q. Do you know the name of the manager of your district?

A. Mr. Zinn. No, he was down here in '55.

Q. Excuse me. This isn't the district. This is the region. I mis-spoke. It is the manager of the region. Mr. Zinn is the manager of his district. This was signed by the regional manager.

Mr. Kelaher: I have no objection to him showing a letter if he identifies the sender. Is this a form letter?

Mr. Ballard: This is a form letter. It is the one you put in evidence. It happens to be an estlow copy. If you wish, in the future—

Mr. Kelaher: I think we should have the name of the man who signed it.

By Mr. Ballard:

Q. Is M. G. Davis the name of the manager of your region?

A. That is right. I met him shortly after that.

Q. In the course of your operation of that station, your lease has been renewed many times, hasn't it?

A. Yes.

2582 Q. On the occasion of renewing your lease, has Atlantic ever discussed your purchases of non-sponsored TBA?

A. No.

Q. Over the years have you built up a number of personal credit customers at that station?

A. Yes, I have.

Q. About how many accounts do you have?

A. Approximately about 175.

Q. Are there other oil company stations in the area around your station?

A. Yes.

Q. Could you name a few of them?

A. There is Standard, Sun, Gulf.

Q. Standard is the Esso brand?

A. Yes.

Q. Have any of those companies ever indicated to you that they would be glad to have you for a lessee?

A. Yes, they have.

Q. If you went as a lessee to one of those nearby stations do you think you could take your personal credit customers with you?

A. I like to think I can. I don't know whether I could or not.

* * * * *

2583 By Mr. Ballard:

Q. About how much of your gallonage is repeat customers?

A. About 85 to 90 percent.

Q. As distinguished from one-stop, transient customers?

A. About 85 to 90 percent.

Q. Are you personally acquainted with most of those customers?

A. Yes, I am.

Q. You know them by name?

A. Yes.

Q. Do they know you by name?

A. Yes.

By Mr. Ballard:

Q. Mr. Tavani, do you recall in 1956 a visit from a gentleman who identified himself as an investigator 2584 for the Federal Trade Commission?

A. Yes.

Q. Did he show you his credentials?

A. Yes, he did.

Q. He came to your station, did he?

A. Yes.

Q. Do you happen to remember his name?

A. I think his name was Brady.

Q. Do you recall what he said to you and what you said to him?

A. Well—

Q. In a general way.

A. He asked me some questions and I answered him by letting him look around. He asked me if I was forced to buy certain things and I told him I bought what I could sell and what I felt like buying—not I could sell.

Q. Did he make notes of what you told him?

A. That I don't know.

Mr. Ballard: I have no further questions. I think Mr. Kelaher may have some questions.

Cross Examination by Mr. Kelaher.

Q. Mr. Tavani, you were just asked about a visit by an attorney-examiner from the Federal Trade Commission in 1956. You stated his name was Mr. Brady. You were also asked to give the substance of your conversation
2585 with him. I would like you to state fully what you told him?

A. He asked me if I was forced to buy certain Firestone items and tires, and I told him that I wasn't, and I told him I bought Lee tires. We spoke for about a half an hour about different things. He asked me other questions about accessories and stuff pertaining to that. I explained to him that I bought pretty much as I pleased.

Q. And that is all you remember of the conversation; is that correct?

A. He asked me if I would like to be a witness, and I told him that I wouldn't be much of a witness for the government.

Q. Do you remember anything else about the conversation?

A. He asked me where there were some more Atlantic dealers and I told him.

Q. Of course, there are Atlantic dealers all over Wilmington. He must have asked you more than that, didn't he?

A. He didn't ask me much. Well, it has been a pretty good while back.

Q. You seem to remember the other things pretty well. I want to get the entire conversation, to the best of your knowledge.

A. Well, let's see.

He come in and showed me his credentials. He asked me different questions about Firestone and the program,
2586 and I explained to him as well as I could how the

program worked. He asked me if we were forced to to buy it, and I told him that my place is very small—it is not very big—and all my accessories are displayed right in the office. So I told him, by looking up on the shelf, that I bought pretty much as I pleased. So he agreed with me.

Q. You say he asked you nothing else at that time?

A. Well, he asked me a few other questions.

Q. Let's hear what the few other questions were.

A. That is what I am trying to think of.

He asked me about antifreeze, if I bought my antifreeze from Atlantic, and I told him I didn't.

Q. You seem to be a bit hazy, so I will ask you a few questions.

Didn't he ask you if Atlantic was applying pressure to Atlantic lessee dealers to carry Firestone TBA?

A. Yes, he did.

Q. And didn't you refer him to an Atlantic lessee dealer whom you thought was having such difficulties?

A. Yes, I did.

Q. Yes, you did. And who was that man?

A. Norris Stein.

Q. That is right. That is the first we have heard of that conversation. So you did know that Atlantic—you had heard, had you not, that Atlantic was applying pressure?

2587 A. I told him that Mr. Stein was having trouble with Atlantic. I didn't tell him that he was having trouble on account of being forced to buy Firestone.

Q. The reason your sent him to Mr. Stein was because you thought he was having trouble concerning the fact that—

A. That's right.

Q. —concerning Firestone TBA; is that correct?

A. That is correct.

Q. So you did know that there were dealers in Wilming-

ton who were having pressure applied to them by Atlantic with respect to Firestone TBA; isn't that correct?

A. That is possible.

Q. The answer is Yes, isn't it?

A: Yes. Well, I mean I have trouble renewing my lease sometimes on a minimum. I mean he may have been having trouble some other way. I mean I have no way of knowing. That was purely speculation on my part.

Q. Of course, Mr. Brady was in there inquiring about the Atlantic-Firestone setup, so you sent him to Mr. Stein with that thought in mind.

A. Correct.

Q. Is that correct?

A. Correct.

Q. You stated that you have a very small station; is that correct?

2588 A. Yes.

Q. And you maintain your TBA stock where?

A. Right in the main office.

Q. In the main office?

A. In the main office.

Q. Is the main office small?

A. Very small.

Q. Is that where you maintain your tire stock and battery stock?

A. No. We have—the battery stock I maintain in a room behind the office. And the tires are in the lube room alongside the office.

Q. So actually your battery stock is, you say, in the lube room behind the office?

A. No. It is in the—sort of like a—I guess it would be another little back room like a storage room.

Q. So your Exide batteries are kept in a back room; is that correct?

A. But they are plainly visible.

Q. How would they be visible if they are in back of the office? I am not quite clear on your description of your premises.

A. It is hard to explain because the office is so small. When you walk in you can walk out of it very fast.

Q. Yes, but when you walk into the office you may
2589 see some accessories, but you don't see any batteries in there, do you?

A. Well, at the time Mr. Brady was there the batteries were right alongside of the door to go into the back door. We have a rack where we keep the trickle charger on it that keeps the batteries fully charged. And the stock we keep under a bench in the back room.

Q. The stock is under a bench. So it is out of view. If it is under a bench in the back room it seems to me it is out of view.

A. The eight batteries sit in clear view right in the front of the office there.

Q. That was at that time, you say?

A. Yes.

Q. But today they are not out there?

A. No.

Q. They are in a back room under a bench, aren't they?

A. Well, I occasionally take them out and—it is purely merchandising, because the batteries now come dry-charged and I can stack them in a—

Q. You led us to believe they were on open display—

Mr. Ballard: I object to that characterization. If you will check the record you will not find that he led you to believe any such thing.

Mr. Kelaher: I was certainly under that impression.

2590 You asked him about his displays.

Mr. Ballard: I did. You can check the record if you want to make that accusation.

Hearing Examiner Kolb: Let's not argue. Proceed.

Mr. Kelaher: I am happy to hear counsel's statement because it just confirms the witness' testimony.

By Mr. Kelaher:

Q. Do you have any window decals in your station?

A. No.

Q. No window decals?

A. No.

Q. And you have no outdoor sign, do you?

A. I think I have one outdoor sign. It is a brake sign.

Q. You have no Lee sign out there, no big—

A. No. I have no Firestone sign, either.

Q. And no Firestone sign?

A. No.

Q. At one time did you have a big Lee sign out there?

A. Yes.

Q. What happened to that?

A. Well, they since put new glass in, and I never replaced it.

Q. When was that, about?

A. The Lee sign has been down a long time. I didn't replace them when they were first taken down.

2591 Q. When they were first taken down? Who took them down the first time?

A. I took them down.

Q. Were they taken down about the time Atlantic switched over to the Firestone plan?

A. I don't think so. It wasn't done for that reason. Like I say, the station is very small. Any sign would block the light in the office. That was the reason for taking them down.

Q. You have no identification on your station to the effect that you sell Lee tires or Exide batteries; is that correct?

A. That is correct.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Ballard.

Q. Mr. Tavani, did anyone from the Atlantic Refining Company tell you to put those batteries in your stock storage room?

A. No. The only reason I put them in the stock room is because I started to handle dry-charge batteries and I can stack them much easier, and the others had to be constantly maintained on the charger, to be kept alive, or they would just die sitting in stock.

Mr. Ballard: I have no further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Tavani.
2592 Thank you very much.

(Witness excused.)

Mr. Ballard: May we have another brief recess, your Honor?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

2593 Hearing Examiner Kolb: The hearing will come to order.

Mr. Gordon: Mr. Foster?

GEORGE F. FOSTER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Gordon.

Q. Mr. Foster, will you give your name to the reporter?

A. George F. Foster.

Q. And your home address?

A. 518 Springer Street, Wilmington, Delaware.

Q. You are a lessee of an Atlantic station?

A. That's right.

Q. Where is that station located?

A. Pennsylvania Avenue and Clayton Street—1603 Pennsylvania Avenue is the street address.

Q. When did you first become associated with that station?

A. In 1945, in partnership with Albert Elleni.

Q. And you and your partner leased that station until when?

A. Until 1956, when the partnership was dissolved.

Q. And you did what?

A. I took over the station myself.

Q. And you are still leasing it?

2594 A. That's right.

Q. What is the term of your lease?

A. One year.

Q. Do you know where your partner went?

A. Yes. He is also an Atlantic dealer today.

Q. Before you were an Atlantic dealer, what did you do?

A. I had a Cities Service Station.

Q. Where was that located?

A. 616 North Union Street.

Q. In Wilmington?

A. In Wilmington.

Q. About how far away from your present station is that?

A. Approximately a mile.

Q. Do you recall, Mr. Foster, approximately when Atlantic took on the Firestone program?

A. Approximately 1950.

Q. Before they did that, did you have any conversation with Atlantic about the Firestone program?

A. An Atlantic salesman wanted to know if we would accept a program for taking on Firestone TBA.

Mr. Kelaher: Your Honor, I am going to object to conversation unless we can name the salesman and the approximate time of the conversation with the salesman. I think we should have identification of the conversation.

Mr. Gordon: I think we can do that.

2595 Hearing Examiner Kolb: Bring that out, please.

By Mr. Gordon:

Q. Do you know approximately when this conversation was?

A. It was in early 1950.

Q. Do you know where it was?

A. It was right at the station location.

Q. And who talked to you about the Firestone program?

A. The Firestone program was talked to us at that time by the salesman. His name was James Robinson.

Q. What did they tell you, and ask you?

A. They said they were going to, if possible, take over this line, the Firestone line for the dealers. It was a voluntary proposition and they asked us to investigate it.

Q. What did you tell them?

A. We told them we would be glad to do so.

Q. Did you tell them anything else?

A. We would be glad to do so for the reason we weren't satisfied with the tire setup that we had with Lee because they were under-selling us in the open market.

Q. Did you tell them that you liked the Firestone line?

A. We hadn't had very much experience with it, but what we had was satisfactory.

Q. Mr. Foster,—

Mr. Kelaher: Was that a part of the conversation? I am not sure I got that. Was that part of his conver-
2596 sation with the salesman?

By Mr. Gordon:

Q. Was that part of your conversation with the salesman, the Atlantic representative?

A. No, when they asked us, at the time they approached us at first, we told them we would be glad to try it on account of the fact that Lee was under-selling us in open market.

Q. I show you this letter which is marked at the top, CX-150. It is a letter dated March 1, 1951. It has Mr. Colley's name in the corner; it is a "Statement of Atlantic's TBA Policy." Can you identify the fact that you received that letter?

A. Yes, sir. It was received.

Q. I also show you this letter which has CX-206 at the top, and is dated August 28, 1952, also from Mr. Colley. Can you say that you received that letter?

A. That's right. That was received.

Q. I also show you this letter which is dated June 24, 1955, and has CX-207 at the top, which was sent to you from Mr. Davis, Regional Manager. "No Forcing" is the subject.

A. That was received.

Q. Do you recall, Mr. Foster, whether meetings were held at the time Atlantic took on the Firestone program?

A. After the program was taken on there was a meeting held by the dealers, but I didn't attend it myself,

2597 By Mr. Gordon:

Q. Was it or was it not made clear to you that the Firestone program would be voluntary?

A. It was made clear at the very beginning.

Q. Would you tell me, Mr. Foster, what tires and batteries you are now carrying?

A. Tires and batteries? Firestone, 100 percent.

Q. And where do you buy your accessories?

A. My accessories are bought wherever I feel like it.

Q. About what portion are bought from Firestone and what portion from other sources?

A. Outside of batteries and tires and accessories, I would say about 25 percent from Firestone and the balance is divided with other suppliers.

Q. Where do you purchase your recaps?

A. Recaps? What little recap business I do is with Hassler Tire Company, Salem, New Jersey.

2598 Q. What sort of fan belts do you carry?

A. Gates.

Q. And filters?

A. Filters; I handle Walker and AC.

Q. What sort of spark plugs?

A. I handle spark plugs to manufacturer's requirements. I handle AC, Champion, and Autolite.

Q. Has Atlantic ever criticized you for carrying accessories that Firestone does not sell?

A. They have never criticized me in any way, manner, shape or form.

Q. Are the accessories that you have mentioned clearly visible?

A. Right on my display shelves.

Q. Do you sell any TBA that you carry on Atlantic credit cards?

A. Yes, indeed.

Q. Does Adams Parts Company solicit your TBA business?

A. No.

Q. Does Auto Parts and Radiator Company solicit you?

A. No. They never solicit.

Q. Does the Keil Company solicit your business?

A. No.

Q. Does Taylor Auto Supply solicit your business?

A. I have been dealing with them for about 25 years.

2599 Q. Does Motor Parts and Service?

A. They do.

Q. And you buy from them?

A. That's right.

Q. Would you tell me why you buy the Firestone tire?

A. I think Firestone gives you the better value and it gives you an equally as good profit.

Q. Do you like its public acceptance?

A. That's right.

Q. Can you make a profit on it?

A. Yes, indeed. If I wouldn't, I wouldn't sell it.

Q. Do you feel free to buy any TBA you want?

A. Yes, sir.

Q. Do you feel free to buy TBA from any source you want?

A. I always have.

Q. Do you think that Atlantic would cancel your lease if you didn't buy Firestone TBA?

A. No, sir.

Q. Did anyone from Atlantic ever tell you that you had to buy Firestone TBA?

A. Never.

Q. Have you ever been forced or pressured to buy Firestone?

A. No, sir.

Q. Having been in an Atlantic station since approximately 1945, you have had several leases renewed, is that not right?

2600 A. That's right.

Q. At the time those leases were renewed was TBA ever discussed?

A. Never.

Q. Mr. Foster, you were a Cities Service lessee before you went with Atlantic?

A. I wasn't, a lessee of Cities Service. I handled Cities Service products. I had the station—the station was from an outside source, where the owner was from an outside source, but I handled Cities Service products.

Q. Did you have any personal credit customers when you were with that Company?

A. Oh, yes.

Mr. Kelaher: Your Honor, I am going to object to his operation of a Cities Service station. I don't see the relevancy of that to this particular proceeding.

Hearing Examiner Kolb: That is probably too remote to this.

Mr. Gordon: I believe subsequent questions, your Honor, will make the subject relevant.

Hearing Examiner Kolb: All right. You may proceed.

By Mr. Gordon:

Q. When you then became an Atlantic lessee, did any of your personal credit customers come with you?

A. Yes. Many of them.

2601 Q. What portion would you say?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Gordon:

Q. You may answer.

A. About 75 percent.

Q. Are any of those with you today?

A. I have one man who has been with me for 23 years.

Q. And you have others?

A. Others are still there. But he is the oldest one.

Q. Are there many oil companies active in your area?

A. Yes, there are.

Q. Can you name some of those?

A. Yes, I can. There is Mobile, Texaco, Tydol, Sun, Standard.

Q. Mr. Foster, in past years, have any of those companies or other companies asked you to take stations?

A. I have been approached in the past, yes.

Q. Is it true or isn't it true that qualified service station dealers are in demand?

A. They are.

Q. Do you recall in 1956, Mr. Foster, an investigator from the Federal Trade Commission talking to you in your station?

A. He came to the station. My partner did the talking. I didn't have anything to say. I know he was there.

2602 Mr. Gordon: I don't have any more questions. Perhaps Mr. Kelaher does.

Cross-Examination by Mr. Kelaher.

Q. Mr. Foster, prior to Atlantic's sponsorship of Firestone TBA, you were handling Lee tires and Exide batteries; is that correct?

A. That is correct.

Q. And also the accessories in the Atlantic TBA program at that time?

A. No, not too many. We still had the outside sources.

Q. You still had some?

A. That's right. Our outside sources were the main TBA.

Q. After the change-over to Firestone you began to handle Firestone tires and batteries 100 percent; is that correct?

A. That's right.

Q. And were you also dissatisfied with Exide batteries? Was that the reason you changed?

A. Well, Exide batteries, to me there wasn't very much difference on that because it was my belief and knowledge that I handled Willard and Exide, and Firestone batteries were made by Willard. For that reason I had no qualms to changing over.

Q. As long as Atlantic wanted Firestone you went along with them on batteries, is that correct?

2603 A. Not particularly with Firestone, that Atlantic wanted it.

Q. No, but because Firestone was in the—

A. In the program, that's right. In other words, I knew I had a quality article.

Q. Right. And you went along with the program, of course?

A. That's right.

Q. You also have the Firestone identification on your station, I presume?

A. I have a decal in the window.

Q. And of course that was put there by Firestone or Atlantic, was it not?

A. Firestone.

Q. Firestone personnel?

A. That's right.

Q. They came out?

A. That's right.

Q. And put it up?

A. That's right.

Q. Did you have any decal there before that?

A. No, none before. I had Lee before that. It was Lee.

Q. Lee, of course, was taken down?

A. That's right.

Q. And Firestone went up?

A. That's right.

Mr. Kelaher: No further questions.

2604 Mr. Gordon: No further questions.

Hearing Examiner Kolb: That is all, Mr. Foster. Thank you very much.

(Witness excused.)

Mr. Ballard: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: The hearing will be in order.

ALBERT ELLENI, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Elleni, will you spell your name for the reporter?

A. Albert Elleni—E-l-l-e-n-i.

Q. And would you give him your home address, please?

A. 1006 Gallery Road, Woodland Heights, Wilmington 5, Delaware.

Q. Mr. Elleni, you were for a period of about ten years the lessee of an Atlantic service station at Pennsylvania and Clayton Avenues in Wilmington, in partnership with Mr. Foster; is that correct?

A. That's right.

2605 Q. And that is the Mr. Foster who just preceded you into the hearing here?

A. That's right.

Q. From 1957 to the present, you have been on your own as an Atlantic lessee?

A. Yes, sir.

Q. Where is your present station located?

A. 301 Philadelphia Pike, Wilmington 3, Delaware.

Q. When you first came with Atlantic in 1946, that was the post-war period, was it not?

A. That's right.

Q. Were tires at that time in short supply?

A. Yes, sir.

Q. What tires did you buy for your station at that time?

A. Lee tires.

Q. Did you get them through the Atlantic Refining Company?

A. Yes, sir.

Q. Did Atlantic Refining Company have an adequate supply of them?

A. Fairly adequate, considering the shortness of supply at that time.

Q. Were other brands more difficult for you to get?

A. Yes, sir.

Q. In the early part of 1950, were you visited by some representatives of the Atlantic Refining Company 2606 and the Firestone Tire and Rubber Company?

A. Yes, I was.

Q. Do you remember the names of the people from Atlantic?

A. I do remember George Fearn and Clyde Muma.

Q. I believe the spelling on Fearn is, F-e-a-r-n?

A. F-e-a-r-n, that is correct.

Clyde Muma and they had a representative from Firestone, whose name I don't recall. They at that time—

Q. Just a moment. Was your salesman with them?

A. Yes.

Q. What was his name?

A. Robinson.

Q. Do you recall the substance of that conversation?

A. Yes. They came in and presented the proposed program of going with Firestone TBA—that is, Firestone tires, batteries and accessories—and asked our opinion of that proposal.

My former partner and I were very much in favor of it. We thought it was an improvement in quality of products which were nationally advertised, and more readily sold than the products we were carrying in the past. So we were heartily in favor of it and recommended that Atlantic should make the deal as far as we were concerned.

Q. Shortly after that, did Atlantic begin to sponsor Firestone?

A. Yes, sir.

2607 Q. Now, turning to the year 1951, I show you a document marked CX-150, which is a form letter from Mr. Colley, the Vice President of Atlantic; address is blank in this particular form. Do you recall receiving a letter in that form?

A. Yes, sir.

Q. About a year later; I show you a letter, CX-206, another form-letter from Mr. Colley. Do you recall receiving a letter in that form?

A. Yes, sir.

Q. Finally, quite recently, there is a letter of June 24, 1955, marked CX-207. This particular form is signed by Mr. Estlow of the Philadelphia and New Jersey region. If you had received it it would have been signed by Mr. Davis, the Region Manager for your region. Do you remember receiving that letter or a letter in that form?

A. Yes, sir; I do.

Q. Do you remember dealer meetings being held at about the time Atlantic introduced the Firestone program?

A. Yes, sir.

Q. Did you understand, as a result of those meetings, that the program was a voluntary one?

A. Yes, sir.

2608 Q. Beginning with the introduction of the Firestone program by Atlantic, what tires have you been carrying in your station?

A. Firestone.

Q. What brand?

A. Firestone.

Q. Could you tell us why you prefer the Firestone brand?

A. Well, I have been a Firestone dealer at Hartford for a long time. I preferred Firestone tires long before we sold it. So definitely when we went with the Firestone program I felt that it was easier for me to sell a Firestone, in which I believed, than any other tire on the market. And I am still of the same feeling.

Q. Does the Firestone store give you competitive prices?

A. Yes, they do.

Q. Do you also buy Firestone batteries?

A. Yes, sir.

Q. Speaking of accessories—and by that I do not include parts and things, but polishes, waxes, belts, hoses—where do you buy your accessories?

A. I buy from five different suppliers: Taylor Auto Supply, Suburban, Motor Parts and Service, Motor Car Service, and Chester Auto Supply.

Q. Does the Adams Parts Company call on you?

A. No, they don't.

Q. Does the Keil Company call on you?

2609 A. No, they don't.

Q. You mentioned Auto Parts. Is that the same as Auto Parts and Radiator Company?

A. Pardon?

Q. Auto Parts and Radiator; is that the same company?

A. No.

Q. Does Auto Parts and Radiator call on you?

A. No, they don't.

Q. What kind of oil filters are you displaying and promoting at your station today?

A. Walkers.

Q. Are you taking part in that Walker Hi-Fi promotion?

A. I certainly am. It is advertised at the station.

Q. Have you taken part in promotions for other brands of TBA in the past?

A. I have. Yes, sir.

Q. Including brands not sold by Firestone?

A. That is right, sir.

Q. Have the Atlantic Refining Company people ever criticized you for doing that?

A. It has never been mentioned to me.

Q. Do you feel free to buy your TBA from any source you want?

A. Yes, sir.

Q. And do you feel free to buy any TBA you want?

2610 A. Yes, sir.

Q. When you buy TBA that isn't carried by Firestone, do you charge it on Atlantic credit cards?

A. Yes, sir, I have.

Q. Has Atlantic ever criticized you for that?

A. I have never heard from them.

Q. Have you found the Atlantic-Firestone TBA program helpful to you?

A. Very much. I liked the program very much right from the beginning, and I think it is the most helpful program I have hit in my thirteen years of experience. The Firestone program I find it that the store itself is very cooperative, and they will help a dealer under many con-

ditions to try to make a sale. So besides not only believing in their quality, I like their policy of business.

Q. Do the Atlantic salesmen also help in this program?

A. Yes, sir, they do.

Q. When you opened up your new station—was that a new station when you opened it up?

A. No. I replaced a dealer.

Q. When you first went into that station then in 1957—was it 1957?

A. That is right, sir.

Q. Did representatives of other oil companies indicate to you that they would be glad to have you in their stations?

2611 A. Yes, sir. I was contacted by several; Standard Oil, Tydol, Gulf, and Amoco.

Q. In your experience would you say that qualified gasoline dealers are in demand?

A. Absolutely.

Q. Do you recall in the spring of 1956 a visit at your station from an investigator for the Federal Trade Commission?

A. Yes, sir.

Q. Did you tell him approximately what you told us today?

A. Yes, sir, I did.

Q. Did he ask you for the names of some other dealers that he might go and see?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Ballard:

Q. Did he ask you that? You may answer the question.

A. Yes, he did.

Q. Do you know what dealers you referred him to?

A. Cliff Gavin. Nick Tavani.

Q. Why did you refer him to Mr. Tavani?

A. Well, he intimated he had a source of information, and I told him to go and see him on his own.

Q. The same reason for Mr. Gavin?

A. That is right.

Mr. Ballard: I don't think I have any further
2612 questions for you. Perhaps Mr. Kelaher does.

Mr. Kelaher: I have just a few, your Honor.

Cross-Examination by Mr. Kelaher.

Q. I think it has been established that you are the partner of Mr. Foster, was it, who appeared here right before you; is that correct?

A. Yes, sir.

Q. On direct examination you weren't asked this question, but I would like to ask you: What batteries did you carry before you changed to Firestone batteries?

A. Exide.

Q. Weren't Mr. Fearn and Mr. Muna, of Atlantic, Mr. Robinson's supervisors, weren't they the brass, so to speak, in the Wilmington district at that time?

A. That is right.

Q. And they called on you along with a Firestone representative at that time?

A. That is right.

Q. I am speaking now of the time when Atlantic decided to adopt the Firestone TBA program. You say you attended certain dealer meetings. I assume that would be attended by all the Atlantic dealers in the Wilmington area, would it not?

A. That is right.

Q. And at that time the Firestone TBA program
2613 was discussed with the dealers?

A. That is right.

Q. And the tire you handled before you went on Firestone was Lee; is that correct?

A. Yes, sir.

Q. According to your direct testimony you didn't want to handle Lee; is that correct?

A. No. I was handling Lee at the time. I didn't say I didn't. I preferred Firestone to Lee.

Q. You preferred Firestone to Lee, but of course Atlantic was handling Lee so you went along with Atlantic, I presume?

A. At that time with the tire shortages we were fortunate to be able even to pick up Lee.

Q. Atlantic at that time was also selling Exide batteries; is that correct?

A. That is correct.

Q. So you went along with Atlantic; is that correct?

A. That is right.

Q. On direct examination you weren't asked this question, either, but I would like to ask it. You named some suppliers of accessories. I don't think you mentioned Firestone Stores. Do you buy accessories from Firestone Stores?

A. I do.

Q. Did you buy accessories from Firestone Stores when you were in partnership with Mr. Foster?

2614 A. We did.

Q. When you went into your new station, did you obtain a loan from Atlantic?

A. No, sir.

Q. You furnished your own capital?

A. Yes, sir.

Q. Getting back to your first station, I would like to ask you a couple of questions. When you were handling Lee tires you had a Lee sign in your station, did you not, a Lee window decal?

A. That is right.

Q. What happened to that when you went on to the Firestone TBA program?

A. It was on there for about a year before we got a Firestone decal put on there.

Q. And then Firestone went up; is that right?

A. That is right. With our permission.

Q. With your permission?

A. Yes.

Q. Of course. Did you also have a Firestone outdoor sign in your station?

A. Not in the beginning. At Pennsylvania Avenue and Clayton location I don't remember a Firestone outdoor sign. The only place I have ever had one is at the present location.

Q. You do have one at the present location?

2615 A. Yes, sir.

Q. You do also have Firestone decals at the present location, I assume?

A. Yes, sir.

Q. Were they in there when you went into your present location?

A. No. I wouldn't swear on the decals. The outdoor sign was not there. That was just put in just prior to the winter.

Q. I am referring now to—

A. The decals.

Q. —to the decals in your present station.

A. I believe they were.

Q. In any event, you now have Firestone decals and Firestone outdoor signs?

A. That is right.

Q. Of course when Atlantic went on the Firestone TBA program in your first station, you discontinued carrying Exide batteries and began to carry Firestone batteries?

A. Not in the beginning.

Q. But you did?

A. I did eventually.

Q. You went over one hundred percent?

A. That is right, sir. I found it profitable to do so.

Q. And did you know that the Exide battery was made by—that the Exide people also made the Firestone battery?

2616 A. I was aware of that, yes, sir.

Q. You were aware of that. So with the Firestone identification of course, it was much simpler to sell Firestone batteries than the Exide; isn't that correct?

A. That is right.

Mr. Kelaher: No further questions.

Mr. Ballard: I have just a couple of questions, your Honor.

Redirect Examination by Mr. Ballard.

Q. Mr. Elleni, back before 1950 did you occasionally handle Willard batteries, too?

A. Yes, sir, we did.

Q. Now speaking of your present station, I think you said that when you got there there was no outdoor Firestone sign; is that correct?

A. That is right, sir.

Q. Did you ask them to have that sign put up?

A. I certainly did.

Q. Do you think that a sign that is hanging up on the post has much to do with the brand of battery the customer wants?

A. I don't think so, as far as the brand of battery is concerned. The principal reason for asking to have the Firestone sign was when fifty percent of your new equipment, new car equipment is equipped with Firestone

2617 tires, I think it is a wonderful piece of advertising.

Mr. Ballard: I don't think I have any more questions.

Recross Examination by Mr. Kelaher.

Q. I take it from your answer that Firestone advertising is important in the operation of your station; isn't that true?

A. Definitely.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Elleni. Thank you very much.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:15 this afternoon.

(Thereupon, the hearing was adjourned at 12:33 p.m., to reconvene at 2:15 p.m., this day.)

2618 Afternoon Session.

2:20 p.m.

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Hathaway?

HOLLAND M. HATHAWAY was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Mr. Ingraham: Your Honor, I move to strike the testimony and other evidence of the witnesses of this morning, Landis, Tavani, Foster, and Elleni, as not involved in the Atlantic-Goodyear plan. Also, we move to strike as against Goodyear the testimony of the witness Tom Eckhardt, who was the last witness yesterday in Baltimore. I don't believe that the transcript shows our motion on that testimony.

Hearing Examiner Kolb: The testimony of the witnesses named, insofar as it pertains entirely to Firestone, will be stricken as to Goodyear, but remain in the record as to Atlantic.

Mr. Thompson: Mr. Hathaway has previously been sworn and is now recalled.

Direct Examination by Mr. Thompson.

Q. Mr. Hathaway, we established when you were
2619 called on Monday that you are Atlantic's district manager in the Baltimore district.

A. That is right, sir.

Q. What was your first employment with the Atlantic Refining Company?

A. I was first employed by Atlantic in the marine department as an able-bodied seaman.

Q. Was that just before or during the war?

A. It was in 1939.

Q. Did you stay in the Atlantic marine department during the war?

A. Yes, sir, until 1945.

Q. Did you serve on tankers?

A. Exclusively.

Q. What was your position when you left the tanker service?

A. I was a Master.

Q. Weren't you rather young to be a skipper?

A. I guess they were hard to find.

Q. As a matter of fact, you were the youngest in the Merchant Marine at the time, weren't you, Mr. Hathaway?

A. At one time I understand that, yes, sir.

Q. After the war did you continue your employment with Atlantic?

A. Yes, I did.

Q. What was your first post-war position?

2620 A. I went to Boston, Massachusetts, as a salesman trainee.

Q. When you finished your training, did you become a dealer-salesman in Boston?

A. Yes.

Q. How long did you have that position, approximately?

A. Approximately three or four years, I believe.

Q. In your job as a dealer-salesman in Boston, did you handle lessee dealers?

A. Yes, I think I handled only lessee dealers.

Mr. Kelaher: Mr. Thompson, I wonder if we could establish the years as we go along.

Mr. Thompson: May I finish the next question and then I will tie it together, Mr. Kelaher.

Mr. Kelaher: Go ahead.

By Mr. Thompson:

Q. Were you then promoted to sales supervisor in Boston?

A. Yes, sir.

Q. And continued in that position until sometime in 1950?

A. I believe it was 1950. Somewhere in 1950.

Mr. Thompson: Mr. Kelaher, if y want the dates accurately—

Mr. Kelaher: That is accurate enough.

Mr. Thompson: Mr. Hathaway gave me a memorandum which would simplify it. May I show it to him?

Mr. Kelaher: Yes.

2621 By Mr. Thompson:

Q. Using the data which you furnished me, Mr. Hathaway, to refresh your recollection, what year did you leave Boston and in what capacity were you serving when you left?

A. I left Boston in 1950, and at the time I was a sales supervisor in Boston.

Q. From Boston to what city were you transferred?

A. I was transferred to Providence, Rhode Island.

Q. How long did you stay there?

A. I was there approximately four years.

Q. And during that period, what was your position in the Atlantic organization?

A. I was the personnel supervisor for the New England region.

Q. In that position and during those four years, did you have any direct connection with sales?

A. No, sir, I had no sales responsibility at all.

Q. Entirely personnel work?

A. Entirely personnel.

Q. Then at what time were you transferred from Providence to some other position and to what city?

A. I was transferred in 1954 to Charlotte, North Carolina, as the direct marketing supervisor for the Southern region.

Q. That was the early part of 1954?

A. April 1954.

2622 Q. Just in a couple of words, what were the responsibilities of the position of direct marketing supervisor?

A. Direct marketing supervisor is a staff assignment under the supervision of the sales manager of the Southern region, and he is the liaison between the region and the different districts having to do with direct marketing activities through service stations, contract sales, any direct marketing accounts that we may have, all phases of gasoline sales, motor oil, TBA, sales promotion, training.

Q. When you were acting in the capacity of direct marketing manager in the Southern region, were there several people who worked under your supervision in

charge of various aspects of the type of marketing to which you have referred?

A. There were three main categories under the direct marketing manager. They would be the TBA coordinator, the sales promotion coordinator, and the training coordinator.

Q. Do you recall how long you held that position, Mr. Hathaway, and when you were transferred to your present position? Was it in August 1954?

A. I was transferred to Baltimore in August of the same year.

Q. So that since August 1954 you have been the Atlantic district manager in the so-called Baltimore district?

A. That is correct.

Q. Just to refresh your recollection of a fact 2623 already stipulated, would you be kind enough in a very few words to indicate the geographical extent of the Baltimore district?

A. The Baltimore district includes Maryland, with the exception of the eastern shore, and with the exception of a small portion of Garrett County.

Q. That is the extreme northwestern part of the state; am I correct?

A. Yes. It also includes a portion of West Virginia.

Q. So that except for a very small section in northwestern Maryland, and the eastern shore, your district comprises the State of Maryland plus a small portion of west Virginia?

A. Yes, sir, that is right.

Q. Is it a part of your district manager's job to study and become aware of and know the competitive situation in your district?

A. Yes, it is a very big part of the district manager's job.

Q. Does Atlantic have competition from other oil companies in your district, Mr. Hathaway?

A. Yes, sir, we certainly do. We have a lot of competition.

Q. About how many large or major companies are competing with Atlantic for business in the district?

A. I believe there are eleven all together.

Q. Are there, in addition to the eleven major companies, independents?

2624 A. Yes, there are more and more independents every day.

Q. Becoming more and more aggressive?

A. Yes, sir, they are.

Q. Your headquarters are located in the city of Baltimore?

A. My district headquarters are, yes, sir.

Q. In the city of Baltimore?

A. Yes.

Q. Before I come to that, where are the headquarters of the region?

A. Charlotte, North Carolina.

Q. And just as briefly as you have described the geographical extent of the district, would you please describe the geographical extent of the region?

A. It extends from the Maryland-Pennsylvania line, excluding the eastern shore, down the eastern seaboard to Key West in Florida.

Q. You referred to the number of competing companies in the Baltimore district. Are there approximately the same number or the same actual companies which compete in the metropolitan Baltimore area?

A. In the—

Q. In the metropolitan Baltimore area.

A. In the metropolitan Baltimore area I would say exactly the same.

Q. The phrase "metropolitan Baltimore" I shall
2625 have occasion to use again. Would you be kind enough to indicate what you mean by it?

A. To me metropolitan Baltimore includes the city of Baltimore; it includes a good portion of Baltimore County from the east around the north of the city and to the west; it includes a good bit of Anne Arundel County which includes principally Glen Burnie; it would include a small portion of Howard County.

Q. Would I be correct in describing it as a kind of semi-circle with the Chesapeake Bay on the east, Baltimore in the center and which surrounds Baltimore?

A. Yes, sir.

Q. Approximately how many gasoline retailers are there in the district? And I am now referring to the entire district.

A. The Baltimore district?

Mr. Kelaher: May I have the question read?

(The reporter read the question.)

Mr. Kelaher: I object to the question unless it is rephrased. I am not too clear on the question myself.

Mr. Thomposn: May I continue for another question, and I will ask him to define what he means by "retailer." I am sure that is what you have in mind.

Mr. Kelaher: All right.

Mr. Thompson: I will rephrase the question to meet your point, which I think is a good one.

2626 By Mr. Thompson:

Q. When I asked you how many gasoline retailers there are in the Baltimore district, I was merely referring to outlets where gasoline is available for purchase by the consumer. I was not referring at this moment to a real service station.

A. Well, I would estimate about 2,200 to 2,300 retail outlets.

Hearing Examiner Kolb: Is that exclusive of service stations?

Mr. Thompson: I am coming to that next, sir.

By Mr. Thompson:

Q. Does that number of 2,200 or 2,300 include what we refer to as service stations?

A. Yes, sir.

Q. How would you define a real service station?

A. I would define a real service station as one that dispenses gasoline, can also do lubrication, possibly washing, can do tire repairs, minor repairs, sells TBA, handles the installation of TBA.

Q. Of the 2,200 or so gasoline retailers in your district, would most of them be service stations in the sense in which you have defined it?

A. No, I would say possibly 1,200 or 1,300 would be real service stations.

Q. May I now direct your attention to metropoli-
2627 tan Baltimore, as you have defined it, and I would like to ask you about how many retail outlets, including service stations, there are in metropolitan Baltimore.

Mr. Kelaher: Your Honor, I wonder if we can have some statement of the purpose of this type of testimony. I am not too clear of the relevancy of it at this point.

Mr. Thompson: It must be obvious to your Honor.

Hearing Examiner Kolb: I am rather confused about these outlets other than service stations.

Mr. Thompson: I don't understand the nature of your Honor's confusion. I should be happy to try to help.

Hearing Examiner Kolb: Are you taking in bulk plants and everything else in that?

Mr. Thompson: That was not within his definition, sir. His definition was retail outlets where gasoline is sold to the consumer.

Hearing Examiner Kolb: Bulk plants sell to fleets. They would be consumers.

By Mr. Thompson:

Q. In your estimate, Mr. Hathaway, were you including such places as bulk plants which serve large industrial accounts?

A. No, sir.

Q. This is just the place where you can buy gasoline for an automobile?

A. Yes, sir.

2628 Q. We are now coming to the question of gasoline outlets and real service stations in the metropolitan Baltimore area. Can you tell us from your long experience and knowledge about how many of each type there are?

A. I would say in metropolitan Baltimore there are probably 1,200 retail outlets, of which approximately 1,000 of them would be real service stations.

Q. Are new service stations being built every year in the Baltimore district?

A. Yes. Every year. It seems like every day.

Q. Have you statistical information available to you which keeps you advised of the number of such stations which are being constructed?

A. Yes, we try to keep advised of that.

Q. Is it part of your job to know the answer to that question, what your new competition is?

A. I consider it part of my job, yes.

Q. About how many new stations have been built in your Baltimore district in the last year or so?

A. Well, in 19—

Mr. Kelaher: Your Honor, if he has to test this, it would probably be easier if he furnished the statistics.

Hearing Examiner Kolb: The witness may answer, if he knows.

2629 By Mr. Thompson:

Q. Answer the question.

A. Our last count showed that in 1957 and the first three months of 1958 there were 100 new service stations constructed.

Q. In Maryland?

A. In Maryland.

Q. And about how many of those would have been in the Baltimore district, your Baltimore district? I am not talking about metropolitan Baltimore; I am talking about your Baltimore district.

A. In all Baltimore it would, as I recall, be more than half.

Q. Are you now referring to the metropolitan Baltimore district? I think we have to distinguish between the two.

A. Metropolitan Baltimore would be approximately half.

Q. You mean Metropolitan Baltimore?

A. Yes.

Q. Then most of the rest of them would have also been built in your so-called Baltimore Atlantic district?

A. Yes.

Q. How many lessee stations does the Atlantic Refining Company have in the Baltimore district?

A. We have 93 lessee stations.

Q. About how many of the 93 are in the metropolitan Baltimore area?

2630 A. About 70.

Q. Could you just indicate briefly where the other 23 are located in your Baltimore district?

A. We have some in Cumberland; we have a couple in

West Virginia; we have some in Hagerstown; we have some in southern Maryland, what we call southern Maryland which is down Route 301; we have a few around Washington suburban area.

Q. But you have none in the District of Columbia, have you?

A. No, sir.

Q. Does Atlantic also sell gasoline through so-called contract stations in your district?

A. Yes, sir.

Q. About how many contract retail outlets have you, including what you have defined as real service stations?

A. We have somewhere around 60.

Q. And of those, how many would you classify as real service stations?

A. No more than five or six.

Q. In addition to selling gasoline to your lessees and to your contract stations, do you also sell to distributors in the Baltimore district?

A. Yes, sir.

Q. How many distributors have you?

A. We have six.

Q. Do those distributors in turn sell to retail 2631 outlets and service stations?

A. Yes, sir.

Q. Could you tell us how many real service stations are supplied in your district by the distributors?

A. All together, about twelve.

Mr. Kelaher: How many?

The Witness: About twelve.

Mr. Kelaher: Did I understand the question correctly? Is it twelve service stations are supplied by the six distributors?

Mr. Thompson: Twelve real service stations supplied by the distributors.

Mr. Kelaher: Real service stations.

2632 By Mr. Thompson:

Q. Mr. Hathaway, would you describe in a general way some of your duties and responsibilities?

As a preliminary question: Are you in general charge for Atlantic of the Baltimore district?

A. I am.

Q. To whom do you report?

A. I report to the Regional Manager.

Q. Who makes the policy decisions for Atlantic in your district at the district level?

A. At the district level, I make decisions.

Q. What do you regard as your primary responsibility as District Manager?

A. My primary responsibility is to promote the sale of gasoline through our own service stations and other outlets.

Q. Are your other activities secondary to that primary objective?

A. As far as I am concerned, that is the objective in everything we do and I would even go on to say that that is the objective of everybody who works in this district.

Q. In your capacity as District Manager, do you direct the activities of the Atlantic personnel who are located in your district?

A. Yes, sir.

Q. Do you have an annual expense budget?

2633 A. Oh, yes.

Q. About how much does that budget run a year?

A. It runs somewhat over $500,000.

Q. Do you recall what it is for this year?

A. I believe it is $578,000 for 1958.

Q. You are referring to the expense budget, which is under the control of the District Manager?

A. Yes.

Q. What are the principal items of expense which are included in that budget?

A. Well, the principal item, of course, is payroll expense, service station maintenance, terminal up-keep and maintenance, administrative expenses, selling expense. That would be—

Q. Truck maintenance? Is truck maintenance in your budget?

A. Maintenance, yes.

Q. Truck maintenance?

A. Yes.

Q. You referred to terminal expense. What is the terminal?

A. The terminal is the bulk plant where we store our oil and where we warehouse motor oils and that sort of thing.

Q. Are Atlantic's capital expenditures in the Baltimore district included in your District Manager's expense budget?

A. No, sir; no capital expense.

Q. The purchase of sites for service stations, would that not be included in that budget?

2634 A. No, sir. That is capital.

Q. Or the purchase of new trucks?

A. No, sir. That is capital.

Q. Or depreciation on stations or trucks?

A. No, sir. That is not in.

Q. The company trucks or new stations?

A. Has nothing to do with our expense budget.

Q. Or alterations or remodeling of stations which are not mere maintenance?

A. No. Alterations and remodeling would be under capital.

Q. How is your district organized under you? Have you got personnel which have direct contact with your various lessee and other dealers?

A. Yes, I have a sales group.

Q. By classification, who is in the sales group?

A. A sales supervisor, promotable dealer salesman, general salesmen, service salesmen, and I think that covers it.

Q. Do you have a credit supervisor?

A. I have an office manager.

Q. Going back over the people that you have mentioned that have contact with the dealers, there is one sales supervisor?

A. Yes. We have one sales supervisor in the district.

Q. And how many promotable dealer salesmen do you have?

A. I have four promotable dealer salesmen.

Q. How many service salesmen?

2635 A. Four service salesmen. And five general salesmen.

Mr. Thompson: Mr. Kelaher, I don't want to prolong Mr. Hathaway's testimony.

The stipulation, you will recall, describes in a general manner the duties of each of those classifications of salesmen. Would it be of any assistance to your Honor if he, in about four sentences, refreshed your recollection with respect to the jobs that these various people do, what their primary responsibilities are?

Hearing Examiner Kolb: It may be well to have that in the record.

By Mr. Thompson:

Q. Mr. Hathaway, just as briefly as you can describe it, what is the job of the sales supervisor?

A. The sales supervisor is directly concerned with the lessee dealers and contract dealers. It is his job to supervise the promotable dealer salesmen and the general salesmen and the service salesmen in their duties connected with principally the lessee dealers.

Q. Is he second in command in the district?

A. Yes.

Q. In your absence would he function for you? Would he assume your responsibilities?, or some of them?

A. May I clarify that? I have also an operations supervisor who is on exactly the same level as the sales
2636 supervisor. One, I think, would be more apt to take command of his own group and the other would handle his people in my absence. If it came to choosing one, I believe I would choose the sales supervisor as the top man.

Q. Your four promotable dealer salesmen report first to the sales supervisor or directly to you?

A. No, sir, they report to the sales supervisor.

Q. What, again, as briefly again as you can describe it, are the duties and responsibilities, the principal ones, of the promotable dealer salesmen?

A. The promotable dealer salesman handles only lessee dealers. His job is to keep the stations operating with the best possible lessee dealer that he can have; to promote the sale of gasoline; and to help them increase their sales of gasoline.

Q. That is their primary responsibilities?

A. As far as I am concerned, yes, sir, that is it.

Q. How about your service salesmen, what do they do?

A. The service salesmen work more or less under the promotable dealer salesmen in training new dealers, training dealers' employees, helping dealers in solicitation or setting up promotions, or that sort of thing.

Q. What do your general salesmen do?

A. The general salesman handles some lessee dealers and also some contract dealers, and possibly some
2637 consumer accounts.

Q. In addition to those people whose functions and primary responsibilities you have described, you, of course, have other personnel in the district.

A. Oh Yes.

Q. And they report either directly or indirectly to you?

A. Yes.

Q. You mentioned, I think, your operations supervisor.

A. Yes. I have an operations supervisor who heads up the Operations Department. Under him would come people such as your chauffeurs, warehouse people, terminal people, dispatchers, pump and tank mechanics, automotive mechanics.

Q. Then you have, I think, a distributor salesman who handles the six distributor accounts?

A. I have a distributor salesman who handles our distributors, a wholesale salesman who handles wholesale fuel oil accounts, and we have—

Q. Do you have another classification called "industrial salesmen"?

A. Oh, yes. I have an industrial salesman who handles big or industrial firms, factories and that sort of thing.

Q. So-called commercial accounts?

A. We call them industrial accounts.

Q. Do you have a real estate representative, too?

A. Yes, sir, we have one real estate representative.

2638 Q. Who in your organization handles credit problems arising out of dealer—out of credits to dealers?

A. Of course we have a credit department based in Charlotte. The office manager of the Baltimore district does handle credit policy on a local level.

Q. What are your responsibilities generally and without going into detail, with respect to leases and supply contracts?

A. Well, I select, I am the final approver as far as the lessee is concerned—.

Q. To keep the record straight, are you saying that you are the person in the district who makes the final selection of some prospective operator of a lessee station?

A. Yes, sir.

Q. Are you also the person in the district who makes

the final decision whether a particular lease will or will not be renewed?

A. Yes, sir.

Q. In the event that you had occasion to terminate a lease for cause, would the notice of such termination be your responsibility? The decision whether to terminate, would that be your responsibility?

A. Would you clarify that just a bit? Do you mean during the term of a lease?

Q. Yes.

A. Yes, it would be my decision to terminate.

2630 Q. If you had to terminate a lease for cause during the—

A. If we had to during the term of the lease.

Q. Who, in the Atlantic organization, executes the supply contracts for your district?

A. I execute supply contracts.

Q. You have referred to your responsibility of keeping the 93 company-owned stations operating with lessees. Do you find it easy or difficult to find competent lessee operators in the Baltimore district?

A. I think that is probably the hardest job that we have. By "we" I mean my sales supervisor and myself and my salesman—to find good, competent dealers who can operate our stations. It is extremely difficult to find them. It is difficult in some ways to hold them. Of course, every company is looking for the best dealer that they can get to run a particular station which in itself subjects all of us to raiding each other in trying to entice each other's dealers away from them in any way that we can.

Q. There is no stand-by arrangement among the major oil companies in your district not to raid each other's dealers?

A. If there is, I have never seen it.

Q. Is there?

A. No, sir. I will take every dealer that I can get from any competitor at any time, if he is any good.

Q. Do you find that your competitors have the
2640 same attitude with respect to Atlantic?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

A. Yes. My competitors will take every good dealer I have got, if they can get away with it.

By Mr. Thompson:

Q. You referred to a "good dealer". How would you describe a good dealer?

A. To me, a good dealer is a dealer who is a good manager, and that means a good manager of money, a good manager of people, of people that are working for him, a good manager of his stocks and his records, and inventory, a man who isn't afraid to work hard, who has a good sales ability or a sales appeal to the public, somebody who can be out and solicit for business and make people like him enough to want to come in and do business with him; somebody who will keep a station clean and attractive, who is always interested in getting additional business.

I think that about covers it.

Q. Do you know, from your experience, what a good dealer, as you have described him, can net annually out of the operation of an Atlantic service station?

A. Yes. A good average dealer can net between $10,000 and $15,000 a year.

Q. Have you some that do considerably better than that?

2641 A. Yes, we have some who admit to doing considerably better.

Q. As high as what?

A. As high as $25,000 a year.

Q. Does Atlantic have an interest in its good dealers taking an active interest in civic and community affairs?

A. Yes. We would like very much to have all of our dealers become active in their community. It is very good business. They are doing business with the people in their community, and I think we like to have them looked up to as solid, substantial businessmen. And anything that they can do to help themselves get established in their community by joining various organizations, such as community clubs and businessmen organizations, chambers of commerce, and that sort of thing, we would certainly like to help them, and we do try to promote it.

Q. Are a number of them active in Rotary and similar organizations?

A. Yes, a number of them are.

* * * * *

By Mr. Thompson:

Q. Did you preface your remark with "surprisingly enough", Mr. Hathaway? Does this status of your dealers surprise you?

I wonder what you meant by "surprisingly enough".

A. Well, when you talk a long time to a dealer in trying to get him to join in the community affairs, sometimes it does surprise you just how far they go with it, and just how many organizations they do belong, and just how substantial they do become in their communities.

Q. Did you tell me one of them was the mayor of a town?

A. Mr. Kelaher objected to my talking about him.

Mr. Kelaher: He was with another station, I take it; another company.

By Mr. Thompson:

Q. Do you try to keep a good list of dealers in Atlantic?

A. Yes, sir; we will do every thing we can to keep our good lessee dealers with us just as long as we can keep them with us.

Q. Do you try to help them to be successful?

A. We will do anything we can to help them be successful.

Q. When you have to replace a lessee dealer; is
2643 there any expense involved?

A. Yes, there is considerable expense.

Q. Would you amplify that and tell us what it would involve?

A. Well, we like to send all of our new dealers through a training school, which is of five-week duration. Our training school in this region costs us $780 per trainee. Together with that when we put a man in the station we put a service salesman in with him for two weeks which costs us approximately $250.

To estimate the time that a salesman spends in looking for a dealer would be very hard to do. The time that the sales supervisor spends in assisting the dealer, or the dealer salesman, excuse me, to find a dealer is something else I wouldn't know how to estimate. The number of ads we put in a paper, the running around that we do in our automobiles, the night work, and that sort of thing involved in looking for a dealer is something that I just wouldn't know how to measure.

Q. If a station shut down and you had no lessee, you would lose gallonage, too, wouldn't you?

A. I would lose gallonage, and a lot of sleep, and so would everyone else involved, I think.

Q. In your experience, have you found whether good dealers do or do not develop their personal following of customers?

A. Yes. Any good dealer will develop a goodly
2644 portion of his business as a personal business. People come in to see the dealer. They don't come in to buy a particular brand. They come in because they like the man, they like the service they get, they like the way they

are treated, and the work that is performed on their car. So each dealer, each good dealer, you can certainly point to a great portion of his business as being his own business.

Q. Does such a dealer have any difficulty in your district in finding another station to operate, other than Atlantic?

A. Any good dealer in Atlantic in our district could find any number of good stations, if he wanted to.

Q. Are dealers of the type to which you refer economically dependent upon Atlantic?

A. No, they certainly aren't economically dependent upon Atlantic. In fact, Atlantic is much more dependent upon its dealers than any dealer is dependent upon us.

Q. Mr. Hathaway, from time to time you do lose lessees, do you not?

A. Yes, we do.

Q. What are the primary reasons why you lose them?

A. I think there are several reasons. One of them is that the man might become ill. He may not like the hours, because the hours are long. He may not like the hard work, because the work is hard.

One of the things that is becoming increasingly
2645 difficult is the fact that his wife doesn't like the hours that he spends working at the station.

He may have financial problems, either he goes broke, he may over-extend himself on credit to his customers, and of course when they don't pay him immediately he is in trouble financially.

The neighborhood could change from a residential to commercial and he might lose a lot of business that way and just become discouraged and want to leave for that reason.

Q. What is the Atlantic policy in your district and what is your policy with respect to term of leases?

A. To term of leases?

Q. Yes. What duration?

A. Our leases—

Q. How many days, weeks, months, or years, in other words?

A. Our lease, we have a one-year lease which we give to a new operator for a two-year period. At the end of the second year we extend to him a three-year lease.

Q. Suppose one of your lessees had a three-year lease, and wants to quit at the end of six months or a year and a half, or some time before the end of the lease. What is your policy with respect to that lessee?

~~customer business. They discuss with him the fact that we sponsor Firestone TBA in this district. They discuss~~

A. Our policy then is to immediately go out and look for a replacement for that particular dealer and as soon as we can get one we replace the man and allow him

2646 to cancel his lease by mutual consent.

Q. In other words, you don't hold him to the full term of his lease if he wants to leave?

A. No. There would be no sense in trying to hold him if he wanted to go. He certainly would not want to do much business while he was there, and we would have nothing to gain by trying to keep him.

Q. Do you recall any situations since you have become the District Manager in the Baltimore District where, during the term of a lease, you have cancelled the lease for cause?

A. No, sir. There has been none of that since I have been District Manager in Baltimore.

Q. What percentage of the lease terminations during the term of lease have been instigated by the dealer or with the dealer's full consent? All of them?

A. 100 percent.

Q. Do you know what this thing is that is called a "warning letter" to a lessee?

A. I know what it is, yes.

Q. Have you had occasion to write warning letters to lessee dealers since you have been District Manager in the Baltimore District?

A. I wrote one once. That was some while ago. I just don't use them myself. I think it is much better to go out and talk to the dealer and tell him what the problem
2647 is, discuss it with him, and in every case we have seen eye-to-eye and been able to straighten out our difficulties and gone on from there.

Q. What sort of difficulty would cause you to make that kind of visit to a dealer?

A. We think a dealer, in order to do business in our station, has got to keep a clean-looking station, attractive to the motoring public. We want him to keep the rest rooms clean. And that can be quite an irritating problem in some cases.

We also, of course, want him to give good service as well as keep the place clean. And that would be the only problem that we would have, would be in housekeeping. And somewhat in service.

Mr. Thompson: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will take a recess for five minutes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Thompson:

Q. Mr. Hathaway, before the brief recess you referred generally to the fact that there were difficulties in
2648 finding lessee dealers in your district. Would you

describe for us how the district goes about locating potential dealers? What do you do?

A. Well, we put ads, of course, in the newspaper.

Q. Before you go to another subject: Do you find that an effective means of producing potential dealers?

A. Newspaper ads?

Q. Yes. Does it work? Do you get response?

A. We get some response. It is not any more effective than any other way.

Q. What other means do you adopt besides newspaper advertising?

A. Of course we contact competitive dealers, we contact competitive dealer's employees, we contact our own dealers in hopes that they would know of a customer or friend who might be interested; we contact our dealer's employees; we go to clubs, to the police department, the fire department, any organization that we can find. We even go to churches, we go to barber shops, we go door-to-door soliciting. I would guess we go just any place that we think we can possibly find anyone who would either know of anybody who would be interested in a service station or who themselves might be interested.

Q. When you say "we", do you refer to yourself as well as your salesmen? Do you personally participate 2649 on occasions in the search for lessees?

A. Mr. Thompson, I am always on the search for lessee dealers myself.

Q. How do your salesmen get to know competitive dealers and their employees?

A. I personally try to get my salesmen to contact every competitive dealer in their particular territory as they make their rounds, to look at them, to know them, so that in the event they find that he is a good dealer and can become friendly and get a chance to tell them how good Atlantic is and how good our stations are, that perhaps

when the time comes that we need a dealer we can steal that particular man.

Q. Do you think, sir, that is a violation of Section 5 of the Federal Trade Commission Act?

A. Sir, I don't know Section 5.

Q. As a practical matter, if you can raid a competitor and get one of his lessees or the attendant of his lessees, does that save Atlantic expense?

A. It not only saves us expense because we have much less training to do, it also has the added inducement of having the man bring with him some of his customers who traded with him because they like him, and he can usually transfer them to the next station that he takes.

Q. Mr. Hathaway, I wish you would describe for us the procedure for screening potential dealers. Let us
2650 assume that one of your salesmen has located somebody that might be a prospect. What happens?

A. Our salesman in the very beginning would sit down with the applicant and discuss Atlantic, would discuss the station, would discuss the prospect's finances, his experience, try to determine in the station-man's mind the man's potential ability to run a station successfully, and once he has determined all of those facts then he would bring him into the office or ask the sales supervisor to meet with him in the field to interview the applicant a second time and give—

Q. Excuse me. You said he would do that. Is that in fact what happens?

A. Yes. Always.

Q. Go ahead.

A. The sales supervisor then has a chance to go over the same facts and arrive at his own decision as to how he personally feels about the man. If the salesman and sales supervisor both agree that this is a good prospect, one that they would like to see in an Atlantic station or

in any particular Atlantic station, then they bring him in to me and sit down with me and I, too, discuss Atlantic, the station, the potential, and so forth, with the prospective dealer.

Q. Under the routine when the salesman brings a potential lessee to an interview with the sales supervisor, is there any discussion of TBA and, if so, what is it?

2651 A. They discuss TBA. They discuss the fact that we, in Atlantic, think a dealer should sell TBA because it is advantageous to him in the station, and it helps build the business and make customers, well, increase his customer business. They discuss with him the fact that we sponsor Firestone TBA in this district. They discuss with him the fact that we do not in any way force or try to coerce the dealer to buy, that he has complete freedom of choice. However, that we would like him to carry TBA regardless of where he gets it.

Q. If the potential lessee passes the supervisor and he is brought to you as District Manager for your final decision, do you have a personal conversation with him?

A. Yes, I do.

Q. Would you indicate the nature of the discussion that you have? What do you talk about?

A. Yes. I talk about the station itself, the business potential that I think it has, what we expect of a dealer in the way of good appearance and good service, good operation. I discuss the fact that we are interested in gallons in that station, and helping him every way that we can to build up the volume of gallons in the station. The fact that we are interested in helping him become successful and become a sound, solid businessman. The possibility of him getting acquainted in the commu-

2652 nity in which he is going to do business.

We talk about—I talk to him about the fact that we do promote Firestone in the Baltimore district. However,

I make clear to him and make sure that he understands that there is no forcing, no coercion, that he can buy whatever he wants wherever he wants it, and that he has a complete freedom of choice.

Q. Assuming that the man gets by the interview with you and that a lease is signed, is there any document delivered to him with his lease, and if so, what is it?

A. Yes. With his lease he has a 11-point letter and the "No Forcing" letter.

Q. By the "No Forcing" letter, you mean one of the letters in the form written by Mr. Colley stating Atlantic's TBA "No Forcing" policy?

A. That is correct.

Mr. Kelaher: Your Honor, there are a number of such letters in the file. I wonder if we could have a reference to a specific exhibit.

Mr. Thompson: Happily. I thought we had them in the record so many times we didn't need them any more.

Mr. Kelaher: I am just asking which one.

Hearing Examiner Kolb: It is already in the record.

Mr. Kelaher: Just refer to the exhibit number.

Mr. Thompson: Commission Exhibit 207.

2652 By Mr. Thompson:

Q. Is it your job as Atlantic's District Manager to implement and enforce that "No Forcing" TBA policy?

A. Yes, sir.

Q. What is your understanding of that policy, Mr. Hathaway?

A. My understanding of the policy is that we promote Firestone. However, a dealer is free to buy where he wants it, or where he wants, what he wants, when he wants, and that our salesmen in no way, shape or form will do anything to force or coerce the dealer.

Q. Have you any policy against non-Firestone TBA?

A. None whatsoever.

Q. How does your sales organization, the sales people who work under you, learn that that is Atlantic's policy?

A. Well, they see the letter when they deliver it with the lease, for one thing. They have gone to a training school where the dealer and the salesman-trainee hear the "No Forcing" policy explained. They hear me talk about it when I talk to prospective dealers. I am sure they would hear the sales supervisor talk about it when he talks to prospective dealers.

Q. Can you state, of your own knowledge, that your salesmen know that policy?

A. My salesmen know that policy.

Q. You referred, a few moments ago, to some 2654 statements which you made to prospective lessees about advantages to them in selling TBA at their station. I would like you to supplement those few remarks by explaining the reasons why Atlantic has a TBA program in your Baltimore district at all.

Is my question clear?

A. Yes, sir.

Mr. Kelaher: It isn't clear to me.

Would you read it?

Mr. Thompson: Then I would like to have it repeated because it is an important question, Mr. Kelaher. And if you don't understand it I am sure the witness won't understand it.

Mr. Kelaher: I am not saying I didn't understand it. You lost me about half way down.

Hearing Examiner Kolb: Read the question.

(Question read.)

The Witness: The advantages to a dealer are mainly that it will help him increase the business in his station. A dealer today won't make money selling simply gasoline. A customer today wants to be able to buy just about

anything for his automobile in the station in which he is going to trade.

We think that the advantages of having a program
2655 with a quality name such as Firestone is advantageous to the dealer because it is an item that is easy to sell; it is a nationally advertised brand; it is very well accepted in the Baltimore area; the price to our dealers is good; very competitive; the service is good; there is one service point that the dealer has to think about; there is one Firestone salesman that he would have to worry with instead of a bunch of different suppliers for very different items; our own people know something about the quality and the methods and the ways to sell it. I am running out of—

Q. Without such a plan, would the inexperienced dealer, in your opinion, be at a disadvantage?

A. I think the inexperienced dealer could be at a great disadvantage because he wouldn't know what he should have. He would be visited by droves of jobber salesmen who would be trying to sell him just about anything and everything; he would have an inventory of items which may wind up as being unsalable, sitting on his shelves and tying up his money; he might not have an item which he could sell because it isn't nationally advertised and a good quality brand, so that his customers might object;—

Q. I don't mean to interrupt you, but might I ask you this question—

Mr. Kelaher: I think he was finished, wasn't he?

2656 By Mr. Thompson:

Q. Had you finished, Mr. Hathaway? I have a supplemental question.

A. Please go ahead, sir.

Q. Does Atlantic regard it as part of its function to advise dealers, regardless of brand, what types and items of TBA they will find salable?

A. Oh, yes. Yes, we like to do that because we want a dealer to be successful. That is our main object in life. If he can be successful he is going to sell more of our gasoline.

And that is all that we are really interested in, selling more gasoline and more Atlantic motor oil. And if we can help a dealer get his money in items that he can move, regardless of what they are, so that he can realize a good profit return on that merchandise, then he is going to be able to build himself up successfully as a good businessman and his station will sell more and more volume of gasoline.

2657 Q. Is it true, Mr. Hathaway, that from time to time new and improved items of TBA are introduced by one company or another?

A. Yes. I think—well, let's take a look at the dry-charge batteries. They came out not too long ago. They were introduced—I have heard it mentioned that Firestone was the first. It was a new item. A lot of people didn't know much about it. Our people were trained and explained the whole situation as far as the story on the new item. They in turn explained it to our dealers. Tubeless tires and other things, that was a relatively new item. There were a lot of questions about it, how you change a tire, and how you put a tire on a wheel, a new tubeless tire on a wheel, what it does, how you repair them. All of those things are new to the trade, and somebody has to get out and explain to these dealers so that they know how to service them.

Q. Is that a part of the function of your sales force?

A. Yes, sir.

Q. You have explained why a TBA line is advantageous to the dealer. I think you mentioned in passing that you regard the sponsorship of a good brand as advantageous to Atlantic. Have you specific reasons for that statement?

If I haven't made that clear, I can simplify my question.

Why is it advantageous to Atlantic as a company to
2658 sponsor the Firestone line?

A. In my opinion it is advantageous to Atlantic because it does promote the sale of more Atlantic gasoline, and it makes our dealers more successful. And a successful dealer is a dealer who is selling more and more gasoline every single year.

Q. You have explained fully and clearly Atlantic's "no forcing" TBA policy. Why is that Atlantic's policy?

A. Well, it isn't good business to force a dealer to do anything. He is only going to leave you. And if a good dealer leaves you then we lose business.

Q. Could you force your dealers to buy something they didn't want, if you tried to?

A. I have never seen one that you could—a dealer, that is, that you could force him to do something he didn't want to.

Q. Is a part of your job to handle dealers complaints?

A. It is part of my job, and it is also part of the sales supervisor's job.

Q. To the extent that you get complaints, what do they relate to primarily?

A. Dealer complaints relate primarily to the fact that they don't have enough facilities in their station, they want another bay or they want a bigger window, or remodel the whole station, or put more pumps on, widen the driveway.

2659 Q. Have you ever in all your experience as Atlantic's district manager ever received a complaint from any dealer that any Atlantic salesman was trying to force or pressure him to buy Firestone TBA?

A. No, I have never heard of such a complaint, either as district manager or before that.

Q. Atlantic inspects its stations, does it not?

A. Oh, yes.

Q. Would you briefly describe what types of inspection of stations are made?

A. Yes. We inspect their appearance and we inspect their service, because as far as we are concerned, as I think I probably said before, a good station is one that is attractive to the motoring public to get them into the station, and when they come in gives them good service in order to keep them coming back.

So therefore, we have what we call a shopper inspection in which we send people around to approach the station as a customer would, and just record what they see as a customer as far as the outside appearance of the station. Either it is attractive to them or it is dirty; their rest rooms are either clean or they are dirty; and the service that you get at the pump island either is good service or bad service.

Q. Is the type inspection you are referring to made in the district under your supervision?

2660 A. Occasionally.

Q. Does the region inspect your stations? Does the regional headquarters inspect your stations?

A. Yes. The region has a definite plan set up to inspect our stations during the year.

Q. Does Atlantic's home office in Philadelphia occasionally send somebody out to inspect your stations?

A. Yes. They have a plan in which they inspect a percentage of the stations in the region during the year.

Q. Is my understanding correct, then, that there would be inspections that would emanate from three different levels: the district, the region, and the home office?

A. Yes. But primarily from the home office and the region.

Q. Do the results or reports of such inspections come to your attention?

A. Oh, yes.

Q. Is the brand of TBA carried by your dealers ever the subject matter of any comment in any of those reports?

A. No. TBA has absolutely nothing to do with it. We are interested, as I said, in the appearance of the station and in the service that the person gets at the pump island.

Q. Mr. Hathaway, is a part of your job to get out to the field and see your dealers yourself?

A. Oh, yes.

Q. Do you sometimes do it all by yourself?

2661 A. Yes, occasionally.

Q. More usually do you go with another one of your salesmen or the sales supervisor?

A. Yes. I like to ride with my salesman or with my sales supervisor.

Q. Do you know each and every one of your lessee dealers?

A. Yes, I know them all.

Q. Have you visited each and every service station at which Atlantic gasoline is sold in your district?

A. Oh, yes. I visit them frequently.

Q. In addition to your lessees, do you know your contract station operators?

A. Yes. I would see them not as frequently, probably, but I do know them and I do see them occasionally.

Q. Do you even visit from time to time the service stations which are supplied by Atlantic distributors?

A. Oh, yes. Yes, sir.

Q. When you visit these stations, do you observe the TBA which they are selling? Do you see it?

A. Yes, I try to observe everything that I can when I visit the station.

Q. If a dealer is handling non-Firestone TBA, from your own observation, is it openly displayed?

A. Oh, certainly.

Q. Do you see it in these stations?

2662 A. Yes, sir. It is open so everybody can see it.

Q. You of course know that your various dealers sell TBA on Atlantic credit cards. Does that make the slightest bit of difference in the world to you whether the TBA charged on Atlantic credit cards is sponsored or non-sponsored TBA?

A. It wouldn't make a bit of difference to me what it was.

Q. The TBA credit tickets are routed through your office to the credit department in Philadelphia, are they not?

A. They would be when they are used by the dealer as cash payment, or in lieu of cash.

Q. And that is a system by which the dealer is permitted to come to your office and cash credit tickets?

A. No—

Mr. Kelaher: Objection. I think on questions of this type, instead of a leading question, it would be better to ask just what the procedure is.

Mr. Thompson: Mr. Kelaher, I was trying to conclude this afternoon, but I see now it is going to be impossible. So I apologize for the leading question. I confess my error. I was merely trying to expedite the hearing. I will now ask it in the proper manner.

Mr. Kelaher: Very good. Very well said.

By Mr. Thompson:

Q. Would you be kind enough to explain, sir, how this credit deal works?

2663 A. Let me go back to the beginning.

A dealer writes up a credit ticket on a credit card sale, holds them in his station and has the prerogative of either sending them to Philadelphia to our credit department, which if he does has a check returned to him from the Philadelphia credit department, or he can use those credit tickets to pay in lieu of cash for gasoline or motor oil which we deliver to him.

In the event they are used as cash to pay for gasoline or motor oil, the chauffeur would bring them back and turn them in to the cashier in our district office.

Q. Will you be kind enough to state when the credit tickets—is that what you call them?

A. Yes. That is what I call them.

Q. —when the credit tickets are brought into your office, whether some one does or does not look at them to ascertain whether TBA is or is not a sponsored brand?

A. Some one adds up the money to see that the dealer got the right addition, and that is the end of it.

Q. Is it a matter of supreme indifference to you what brand of TBA is on the ticket?

Mr. Kelaher: Objection, your Honor.

Mr. Thompson: I withdraw the question.

Hearing Examiner Kolb: Overruled. Let him answer.

2664 A. I don't see the tickets, so it is obsolutely no concern of mine.

By Mr. Thompson:

Q. Seriously, Mr. Hathaway, is any point made by your organization with respect to the brand sold on credit cards?

A. No, sir, no point whatsoever.

Q. From your observation in visiting your lessee stations, contract stations, and the stations supplied by your distributors, what TBA brands do the dealers carry?

A. What do they carry? What brands?

Q. Yes. What do they carry?

Mr. Kelaher: Objection, your Honor. Unless we attempt to get some foundation laid similar to the type we were required to lay every time we got into this question.

Mr. Thompson: I don't know what you are talking about.

Hearing Examiner Kolb: He is talking about the men

in this man's district. He knows the dealers and visited them periodically. I think he should be able to answer that.

Mr. Kelaher: Would you read the question again, please?

(The reporter read the question.)

Mr. Kelaher: I think counsel intended to add "in your district."

Hearing Examiner Kolb: He mentioned, the ones
2665 which he visited, so I assume it would be limited to his district.

The Witness: The numbers of brands of varied items are so many I couldn't name all of the brands. All I can say is that the dealers buy what they want to buy from wherever they want to buy it, any kind of brand they want to buy, because they are all over, they all have every different kind of brand, it seems.

By Mr. Thompson:

Q. I will come back to that with a little more detail later.

Mr. Hathaway, in your district approximately what are your gross commissions from the Firestone Company per annum?

A. Approximately $20,000.

Q. That would be about $1,700 a month?

A. About.

Q. On your annual expense budget for your district, if my recollection serves me correctly, for non-capital items, payroll and maintenance, as you have described, it is in excess of a half million dollars a year?

A. That is correct.

Q. And this year it is running at the rate of $578,000?

A. That is correct.

Q. So that your TBA commissions would be about four percent of your out-of-pocket payroll and expense
2666 budget in your district; is that correct?

A. That is close, yes.

Mr. Kelaher: What did you say?

The Witness: It sounds close.

By Mr. Thompson:

Q. What are your gross sales of petroleum products in your district each year?

A. Our gross sales would be about $8,000,000.

Q. Are you a good enough mathematician to tell me without a calculating machine what percent of your gross sales are represented by the gross commissions received from Firestone?

Mr. Kelaher: Your Honor, I am going to object to this line of questions unless we are a little more specific; unless we lay a foundation for the sales involved and other factors which he is casually talking around here.

Mr. Thompson: I will be glad to make it more specific.

Hearing Examiner Kolb: You were talking to the back of the room on the last part of the question. Will the reporter read it?

Mr. Thompson: I will withdraw the question and make it more specific.

Hearing Examiner Kolb: All right.

By Mr. Thompson:

Q. Do I understand that the gross commissions
2667 received in your district annually from the Firestone plan are in the order of one-quarter of one percent of your petroleum products revenues?

Mr. Kelaher: Objection. If there was ever a leading question, that is it.

Hearing Examiner Kolb: Has this witness testified to anything that would permit that question?

Mr. Thompson: This witness has testified, sir, that his gross sales of petroleum products in his district are $8,000,000 annually. He has also testified that his gross commissions from the Firestone plan are $20,000 annually.

I pride myself, sir, on being an excellent mathematician, and I just computed the percentage and came out with one-quarter of one percent.

Mr. Kelaher: I think he should develop these figures in a proper way. We are getting a lot of leading testimony and I am not objecting to most of it. But I think we are going to have to call a halt pretty soon.

Hearing Examiner Kolb: You have the figures; the percentage is just a matter of computation.

Mr. Thompson: That is right.

Mr. Kelaher: I am not sure it is, not on that question. He referred to something about a quarter million dollars. I haven't heard him talk about that yet.

Mr. Thompson: A quarter million dollars? What 2668 is this?

Mr. Kelaher: What did he say before that?

Hearing Examiner Kolb: Gross sales were how much? $8,000,000?

Mr. Thompson: $8,000,000.

Hearing Examiner Kolb: And the TBA was $20,000?

Mr. Thompson: TBA gross, $20,000. One-quarter of one percent.

Hearing Examiner Kolb: All right.

Mr. Thompson: I will take another line, Mr. Kelaher, and you can indulge in mathematics on cross-examination if you want to.

By Mr. Thompson:

Q. Mr. Hathaway, as district manager of Atlantic in this Baltimore district, which is more important to you: gross dollars received as commissions from Firestone or the intangible advantage to Atlantic of having a Firestone TBA line?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

A. I think the fact that we drew $8,000,000 worth of petroleum business certainly is much more important to me than $20,000 in commissions.

By Mr. Thompson:

Q. That wasn't my question. Which is more im-
2669 portant: the dollar commissions you receive from Firestone, or the intangible advantage to Atlantic of having the Firestone plan for your dealers? That is my specific question.

A. The intangible advantage to having a Firestone program is much more important to me.

Q. Does Atlantic have direct expenses in promoting the Firestone TBA line in your district?

A. Oh, yes.

Q. The company has on its staff a full-time TBA coordinator?

A. They have on the regional staff a full-time coordinator of TBA. They also have one in the headquarters staff in Philadelphia. And I am sure he has a group working for him.

Q. Let's take the regional TBA coordinator first. Is my recollection correct that at one time he worked under your direct supervision?

A. Yes, that is correct.

Q. Does the regional TBA coordinator visit your district now that you are a district manager?

A. Yes, he would visit my district probably once a month.

Q. For how long on each trip on the average?

A. He would stay anywhere from two or three days to the whole week.

Q. Are there regional staff groups which concern themselves with Firestone TBA in your district?

A. I am sure that the regional manager is con-
2670 cerned with TBA, and the sales manager is concerned with TBA, and the direct marketing manager is concerned with TBA. And of course the coordinator is very definitely concerned with TBA.

Q. Which of the Atlantic employees in your district paid out of your expense budget have as a part of their job the promotion of Firestone products, or the assistance of Firestone? Do you understand that question or shall I make it more specific?

A. I believe I understand the question. It is part of my job to promote Firestone TBA. It is part of my sales supervisor's job; it is part of every promotable salesman's job; it is part of every general salesman's job; it is part of the distributor salesman's job.

Q. Reverting to your prior testimony when you said that you have in your district one district manager, one sales supervisor, four promotable dealer salesmen, four service salesmen, five general salesmen, and one distributor salesman, that would make 16 Atlantic employees compensated out of your half-million dollars annual expense budget—

A. Right.

Q. —who have direct responsibilities with respect to the promotion of Firestone TBA. Is that correct?

A. That is correct, yes, sir.

Q. Have you considered and are you able to estimate the percentage of time spent by your salesmen in the
2671 promotion of Firestone TBA?

A. Yes. Our figures indicate that the average salesman in our district spends between ten and twenty percent of his time in actually promoting Firestone TBA.

Q. I was referring a moment ago to expense incurred by Atlantic in assisting Firestone. Is extra compensation

paid to your salesmen on Firestone orders from their accounts?

A. Extra compensation is paid an Atlantic promotable dealer salesman and general salesman for TBA that they sell over and above a certain quota.

Q. By the word "quota" what do you mean? What is a quota in the sense that you have used it?

A. It is how much they sold last year versus this year, actually. Last year's sales would be the base.

Q. In other words, it is a sales objective which you ask them to try to meet?

A. Yes.

Q. Would that be a correct interpretation of what you are talking about?

A. Yes.

Q. Do your service salesmen actually help dealers in the operation of their stations?

A. In that they train the dealers and train the dealer's employees in the operations, yes.

Q. Do you have what are sometimes called clinics for dealers?

2672 A. Yes, we have them all the time, for both dealers and employees.

Q. What is a clinic in the business of marketing petroleum products at retail through service stations? What does the word mean?

A. Well, a clinic is a short training course which may take place for a day in the service station of a dealer, or it might be that the dealers or the dealer's employees all go to one station in a given area, and there they spend a day in being taught and trained on various things, such as possibly driveway service, possibly selling tires or selling batteries or servicing them or putting on oil filters or something of that order.

Q. Do you also have dealer meetings occasionally in your district?

A. We have dealer meetings, oh, yes. Atlantic has them.

Q. About how many times a year would you have a dealer meeting in a given area?

A. Our salesmen can have dealer meetings, they can have them maybe half a dozen times a year. It depends on the salesmen and the amount of times he wants to get his dealers together to have a meeting.

Q. This in-station training provided by your service salesmen, your dealer clinics and your dealer meetings, involve expense to Atlantic, do they not?

2673 A. Oh, yes. It is a direct expense.

Q. To what if any expense do those three things to which I have referred—that is, the in-station training the dealer clinics, and the dealer meetings—aid the promotion of Firestone products?

A. In the in-station training we are trying to sell Firestone products if the dealer has Firestone products, or any other TBA products he might have.

When we are having a clinic we are trying to help him learn more about batteries and that sort of thing, or tires or how to sell them.

At dealer meetings we occasionally talk about subjects, the salesman does, that may be new to the business, new to TBA industry itself that a dealer should know about and should know something so that he can properly handle them when they come into his station.

Mr. Kelaher: I am not sure that is responsive to the question. I think the question was limited to how it aids Firestone TBA. I am not sure he understood it. I heard Firestone once in his answer. He is referring to other TBA, too.

Mr. Thompson: Is there a motion?

Hearing Examiner Kolb: Is there a motion to strike?

Mr. Kelaher: I will let the answer stand.

Mr. Thompson: Mr. Examiner, I see that the
2674 time is 4:25. I am not possibly going to be able to complete this examination tonight. I have, however, a suggestion I would like to make, very largely in the interest of assisting my friend, Mr. Kelaher. I could lead into it perhaps this way:

By Mr. Thompson:

Q. Mr. Hathaway, did you come to my office in Philadelphia several weeks ago?

A. Yes, I did.

Q. Did we have a discussion about what the Atlantic salesmen in your district do to promote Firestone TBA?

A. Yes.

Q. Did you give me a great deal of information on that subject?

A. Yes, sir.

Q. During the course of the conversation did I make notes and did we then jointly prepare an outline of the subject matter which we had discussed?

A. We did.

Mr. Thompson: If your Honor please, in the morning, when we resume, I think it would save you, sir, and all of us, a lot of time if I were permitted to ask Mr. Hathaway just one question on this subject, and that is this: What do the Atlantic salesmen do to promote Firestone TBA?

If he were permitted then to refresh his recollection by the use of the outline which he and I jointly prepared.
2675 I am bringing that subject up at this time because I would be charmed and delighted to give Mr. Kelaher a copy of it to study overnight, if he wants it.

Mr. Kelaher: I would be charmed to take a copy of it if it is understood that there is no commitment being

made as to my decision in the morning as to whether or not I will object or not.

Mr. Thompson: Then you can't have it. That is easy. We will proceed in a leisurely manner, Mr. Kelaher—

Mr. Kelaher: How can you expect me to accept something I have never seen?

Mr. Thompson: May we go off the record for a second?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Kelaher, I am not asking you to accept anything. I am simply suggesting that it would expedite this proceeding if this witness were permitted, in answer to a question, to refresh his recollection by using notes which were in effect prepared by him. Have you any objection to that procedure?

Mr. Kelaher: I may have, because as I understand the rule of evidence—without making a check on it right
2676 now—you can use a document to refresh a witness' recollection with respect to the particular subject he is testifying to. Your question was, "What do Atlantic salesmen do to promote Firestone TBA?" What he said to you is of little or no importance, and whether or not you give him a memorandum to recollect what he told you seems to me to be carrying the rule of evidence pretty far.

I am not prepared to make any statement one way or the other at this time.

Mr. Thompson: Mr. Kelaher, you have just wholly missed the point. This man can testify from his memorandum, which includes a lot of topics which he wants to discuss, or I can ask him the questions. We will play it either way you like.

Mr. Kelaher: Let's ask the questions.

Mr. Thompson: That seems to me fine.

May we adjourn for the day, sir, and take it up at 10:00 o'clock in the morning?

Hearing Examiner Kolb: We will adjourn until ten o'clock tomorrow morning.

• • • • •

2678 Hearing Examiner Kolb: The hearing will come to order.

HOLLAND M. HATHAWAY resumed the stand and, having been prevoiously duly sworn, testified as follows:

Direct Examination (Resumed) by Mr. Thompson.

Q. Mr. Hathaway, during your testimony yesterday you referred to some sixteen sales personnel in your district who did something or other with respect to the promotion by the Atlantic Refining Company of Firestone TBA. Do you recall that testimony?

A. Yes, sir, I do.

Q. Is it a part of their responsibility to point out to dealers what they deem to be the advantages of the Firestone TBA line?

A. Yes. It is a good part of their responsibility to point out the various advantages in Firestone. such as the fact that—

Q. May I interrupt you for a second? By "advantages" do you mean advantages to Atlantic or advantages to the dealers?

A. I am talking about advantages to the dealer.

Q. Thank you. I am sorry to have interrupted you.

2679 A. He may point out to the dealer the various advantages, such as the fact that Firestone is a nationally advertised brand, that it has a great consumer ac-

ceptance, that the consumer actually in many cases demands Firestone, making it very easy to sell. Firestone's quality is excellent, which means that there is very little complaint from a defect or inferior merchandise standpoint. The delivery points are kept to a minimum because they have supply points which are adequate to handle cities such as Baltimore. The prices are competitive.

Q. Is that in general the summary of the Firestone advantages to the dealers which your sales personnel are expected to suggest?

A. Yes. They are some of the advantages that our people would point out.

Q. In your district on what specific occasions are these matters pointed out to dealers or prospective dealers?

A. Well, they are pointed out in the very beginning at the interview that the salesman would have with a prospective dealer applicant. Then of course they are pointed out again when the sales supervisor and the salesman together interview the applicant, and when I interview the applicant with the supervisor and the salesman of course I will point out these advantages, too.

Q. I think you testified yesterday that in all three
2680 of those interviews with Atlantic "no forcing" policy was also explained.

A. Oh, yes, sir.

Q. Have your salesmen any responsibilities or duties, or do they make any effort with respect to the actual taking of orders from dealers for Firestone TBA?

A. Yes, our salesmen take a good many orders from their dealers. Of course, as they go into a station to call on a dealer they would check his stock. They use a minimum inventory stock list which they would check and use to make fill-in orders to see that the dealer had a minimum stock of the items that he wanted to carry.

Q. By "he" who do you mean?

A. The dealer. They would phone in orders that a dealer would give the salesman as he called on them.

Q. When you say "phone in", phone in to whom?

A. They would phone the order that the dealer would give our Atlantic salesman to the Firestone store for filling and delivery.

Q. Are there in the course of the year a substantial number of orders thus placed by telephone by your salesmen?

A. Yes. Our salesmen I think constantly make telephone orders to the Firestone stores.

Q. Are those telephone calls made frequently or usually on pay telephones?

2681 A. Yes. Almost all dealer stations have a pay phone in them, and of course that is the phone that our salesman would be using.

Q. Do the salesmen include the cost of such telephone calls on their expense accounts?

A. Yes, sir, they do.

Q. And do those expense accounts go across your desk for your approval?

A. Yes, sir, they do.

Q. So that you know from such expense accounts that such telephone calls are made in substantial number?

A. Yes. I have questioned some of them and found from the salesman that they do make a substantial number of calls for the dealer or on the dealer's behalf to the Firestone store in calling in orders.

Q. You referred a moment ago, Mr. Hathaway, to the ability of your salesmen to check the stock of a dealer. By "checking stock" do you mean observing from the TBA on display what is or what is not there?

A. Well, they would check his stock to see what items he had that he may be selling, and when they get down to a certain level the dealer has agreed that at that level he

would like to have his stock replenished. The dealer-salesman or the promotable salesman then would take note of what was needed in the station, discuss it with the
2682 dealer, and then if the dealer wanted to order it he would either call the order to the Firestone store or take it to the Firestone store to get the order filled.

Q. That same opportunity or privilege is equally available to any salesman for any company who comes in and looks at the dealer's stock?

A. Yes, I believe many competitive salesmen do just about the same thing. It is good salesmanship.

Q. Do your salesmen ever call on Atlantic dealer accounts in company with Firestone salesmen?

A. Yes. That is a regular procedure. The Firestone salesman and our salesman double-team in calling on Atlantic accounts. It is good, I think, for our salesman as well as for our dealers. They get first-hand information of the different products that are available and learn how they are used and installed and learn of new products that may be available and just what makes them saleable, how you would promote them and sell them.

Q. Do your salesmen on their calls use their own automobiles?

A. Yes, they do.

Q. Does Atlantic give them some kind of a mileage allowance for the use of their cars on business?

A. Yes. They have a flat allowance, a monthly allowance. They are also paid 3½ cents a mile for mileage that they do on company business. We also pay them or
2683 provide for them a liability and property insurance policy.

Q. To what extent in the use of the automobiles to which you have referred do salesmen go to the Firestone stores for the dealers to actually pick up fill-in orders for

them? Is that a common occurrence or does it rarely happen?

A. I would term it as a frequent occurrence.

2684 Q. What, if any, service do your Atlantic people render to Firestone in connection with their own service and deliveries to your dealers?

A. Of course our salesmen will discuss with Firestone a better delivery schedule to more adequately serve and give quicker service to the Atlantic stations. They try to eliminate dealer complaints which may occur because the dealers don't get service as quickly as they think they should. So that it becomes a part of our salesman's job to talk to the Firestone manager of the store if he is the one who is scheduling the deliveries, to try and speed up deliveries, make them more efficient, give better service, in other words, to our dealers.

Q. Mr. Hathaway, do you find that in the selection by your dealers of the items of TBA they carry that they require assistance or advice with respect to salability?

A. Yes. A lot of inexperienced dealers, in particular, are apt to buy things that they just aren't able to sell, or certainly are slow moving items, and they might have a good bit of their money tied up in such stock. So that our salesman would advise them on items that they know through their own experience are items that will move fast, that the dealer will make money on and that they won't have tied up on their shelf until they become shop-worn or just plain unsalable.

Q. Have your dealers been trained in TBA salesmanship?

2685 A. Our dealers are trained a great part by our own people. Our salesmen, our service salesmen will train them and teach them to sell TBA, as we term it, on the drive-way or in the lube bay, how to approach a customer, how to point out what the customer needs, and then how to ask the customer to buy.

Q. What, if any, service do your salesmen render to Firestone in connection with promotions of TBA items? Do they suggest promotions to dealers to cooperate with Firestone in any manner when that company is desirous to run some sort of a promotion?

A. From time to time, Firestone has promotional materials and aids which are available to your dealers. Our salesmen would know of these and would present them to the dealer and suggest that he use them, help them set up a promotion in which he would use these materials; develop some sort of ideas and schemes of promoting various items with these promotional aids that are available.

Q. Does Firestone, from time to time, bring out new TBA products?

A. Oh, yes.

Q. What, if any, assistance do your Atlantic salesmen render to Firestone on such occasions?

A. Well, I think in particular to the recent dry-charge battery that was brought out, which was new to the industry and which took some explaining to the dealer,
2686 our salesmen got the first-hand information from Firestone and then went right into the station and explained the whole thing to our dealers, what it was made up of, how it was made, how you added the electrolyte to charge it, installed it.

And the same thing on these tubeless tires, when they came out of course they were a new item. There were different methods used to install them on a wheel. You had to take them off the rim a little differently. All of that stuff had to be taught our dealers in order that they could handle and service these things properly.

Q. What, if any, advertising assistance does Atlantic render to Firestone in your district?

A. I am not sure I understand your question.

Q. Do you in your district, Mr. Hathaway, have any

kind of cooperative advertising program or plan with the Firestone Company?

A. Our dealers have a cooperative advertising plan with Firestone.

Q. But Atlantic and Firestone do not?

A. We would cooperate with the dealer. As far as cooperating with Firestone, if that is your question, I am sorry I just don't know of it.

Q. Do the dealers, from time to time, make arrangements with Firestone for the advertising of Firestone products?

A. Yes. Firestone has a regular cooperative ad-
2687 vertising program which is available to dealers.

Q. And under that program do dealers perhaps push their own ads in newspapers and that kind of thing?

A. Yes. They will place their own ad in a newspaper or they might use a flyer handout, or they could use radio.

Q. Do you know whether your dealer salesmen do or do not help the service station operators in connection with such ads?

A. Yes, they do. They help them quite often, whenever the dealer feels the need of using Firestone's cooperative advertising, which is a good item and one that they should use to help their own business; our salesmen will pitch right in and help the dealer set up the ad, suggest copy, line it up with the newspaper, go to the radio station either with the dealer or alone and set the thing up in any way that they can help the dealer.

Q. Does the Firestone Company, from time to time, have dealer meetings in your district?

A. Yes, they do. They have them quite often.

Mr. Kelaher: Did you ask about Firestone?

Mr. Thompson: Yes.

By Mr. Thompson:

Q. Do your salesmen sometimes themselves attend those meetings?

A. Yes. Every time they have a meeting, I would
2688 say, our salesmen almost always attend.

Q. Do they or do they not sometimes try to pick up dealers and take them along?

A. That is a regular practice. Our salesmen would pick up their dealers and drive them down to the meeting. Usually a bunch of the dealers in the salesman's territory will all go together and the salesman is normally the chauffeur.

Q. Do you have in your district what is sometimes called a service station clinic in which Firestone participates with Atlantic?

A. Yes. If there is a new item, or it might be a better explanation of old items, Firestone will join with our sales people in a service station and try and teach on the spot the difference in the new product or different ways of selling some of the older and established products.

Q. You have testified, Mr. Hathaway, that your annual commission under the Firestone sales plan runs around $20,000 a year. Is my recollection correct?

A. Approximately, yes, sir.

Q. Based upon your experience in preparing expense budgets for sales operations, if Atlantic did not perform the services to Firestone which you have described, in your opinion would it cost Firestone more or less than $20,000 a year to supply the same sales services to your dealers?

Mr. Kelaher: Objection, your Honor.

2689 Hearing Examiner Kolb: The objection will be overruled.

Mr. Kelaher: He is asking, as I understand it, what the cost would be to Firestone, not to Atlantic, you understand.

Mr. Thompson: That's right. I am asking his opinion as an expert in money.

Mr. Kelaher: He is asking his opinion as to what the cost would be to Firestone if the services weren't being performed. How would he be in a position to know that?

Hearing Examiner Kolb: I have ruled on the objection.

A. In my opinion it would cost Firestone more than $20,000 to perform the same services that our people, all of them, perform in promoting and selling.

2690 By Mr. Thompson:

Q. I want to shift to a different subject and ask you what factors are considered by you when a dealer lease comes up for renewal?

A. Well, the factors are the gallonage of the station; the appearance, in other words the housekeeping condition and the rest rooms; the service that the dealer performs to his customers; and of course his economic situation.

Q. By which you mean whether he does or doesn't pay his bills to Atlantic?

A. That is right, whether he does or doesn't pay his bills.

Mr. Kelaher: What was the first two that he gave?

(The reporter read the answer.)

By Mr. Thompson:

Q. Upon such occasions when leases come up for renewals, do you or do you not consider as a factor what brand of TBA the dealer is selling?

A. No, sir, it has nothing to do with lease renewal.

Mr. Thompson: May I have a moment to make a reference to the record? I have a specific question I want to ask Mr. Hathaway.

By Mr. Thompson:

Q. Mr. Hathaway, while my associate, Mr. Freed, is looking up a specific reference for me, I would like to ask you another question.

Have you, in your experience with Atlantic as a
2691 district manager, ever cancelled any dealer's lease because he didn't buy sponsored TBA?

A. No, sir.

Q. Have you ever refused to renew a lease for TBA reasons?

A. Never, sir.

Q. Mr. Hathaway, have you ever heard of a man named Eugene Savage, who is a salesman for the Burke-Savage Company in Baltimore?

A. Only in connection with these hearings.

Q. During the course of his testimony, and on cross-examination, at transcript reference 1822, Mr. Savage said, volunteering this information: "I just thought of another Atlantic station which I sold tires to."

And I said, "Good, good. Which one?"

And he replied, "It was Jerry's Atlantic. Then it turned into Joe's Atlantic. And then he got thrown out."

And I said, "For buying your tires?"

And Mr. Savage said, "He definitely told me he got thrown out for buying other people's products, besides the products coming from the oil companies."

Then that station was identified by Mr. Savage as Joe's Atlantic on Eastern Avenue.

Can you, from that information, identify that station and the former proprietor?

A. The only Joe's Atlantic on Eastern Avenue
2692 would have been Joe Hackett, at Eastern and Marlyn.

Q. Is that the station which at one time was operated by somebody called Jerry Brenner?

A. Yes, sir, that is it.

Q. Was Joe Hackett a former lessee of Atlantic Refining Company at the station to which you referred?

A. Yes, he was.

Q. Were you the district manager at the time he left that station?

A. Yes, sir.

Q. Do you know the circumstances of him leaving the station?

A. Yes, sir.

Mr. Kelaher: Mr. Examiner, I wonder if we can have some specificity with respect to dates?

By Mr. Thompson:

Q. Do you recall approximately—

Mr. Kelaher: I object unless we have more specific dates.

Mr. Thompson: You don't even let me finish a question, Mr. Kelaher.

Mr. Kelaher: I think I probably listened to your objections quite a while.

He has been a manager for a few years. I think we should have some dates.

Mr. Thompson: There was a question under way at 2693 the time when I was most recently interrupted by Mr. Kelaher. How did it start, Mr. Reporter?

(The reporter read the question.)

By Mr. Thompson:

Q. Do you recall approximately—Mr. Kelaher, my next words would have been—the date when Mr. Hackett departed from this station? I don't mean the specific day. I mean the year.

A. I believe it was 1956.

Q. Or thereabouts?

A. Or thereabouts.

Q. Do you recall the circumstances of Mr. Hackett's departure?

A. Yes, I believe I do.

Q. Woud you state them, please?

A. Mr. Hackett, to put it very simply, went broke, asked to be replaced, which we did.

Q. Did he or you initiate the termination of his lease?

A. Mr. Hackett initiated.

Q. Do you know Mr. Varnadore, who testified in this proceeding last Monday in Baltimore?

A. I know him very well.

Q. During the course of Mr. Kelaher's cross-examination of Mr. Varnadore he asked him questions about a new form of lease signed by Mr. Varnadore quite recently.

2694 May I ask, first, whether you recall the approximate date of Mr. Varnadore's new lease?

A. Yes.

Q. When it became effective?

A. Yes, I know when it became effective.

Q. When?

A. June 1st, this year.

Q. What were the circumstances leading up to the change in form of the Varnadore lease?

A. Mr. Wyniger, who is Mr. Varnadore's partner, called me on the telephone and asked if he could come in and talk to me, which he did, and requested that we cancel their present lease, which was a gallonage lease, and gave them a new percentage lease.

Q. Would you briefly explain the difference between the gallonage lease and the new percentage lease?

A. The gallonage lease was based on the gallons, a certain number of cent per gallon, the gallonage volume that a station did during a month, with a minimum, and in many cases with a maximum.

The percentage lease is based on the business that a station does in gross sales volume. We have certain per-

centages against the various—I hope I am saying this so that you understand it—we base our lease rental on percentages of the gross sales volume, with a decreasing
2695 percentage which runs from six percent decreasing to three percent.

Q. And starting with what?

A. It starts at the—the first five hundred dollars of gross sales has no rental.

2696 Q. I think it is not necessary for you to continue because this information has already been placed off record by stipulation, Mr. Hathaway.

Would you go on, please, sir, with what happened next about the Wyniger and Varnadore leases. Did Mr. Wyniger come to see you?

A. Mr. Wyniger came to see me and explained that they would like to have the new percentage lease, because their accountant, who also happened to be the accountant for several other Atlantic stations, had figures for them that they would save approximately $90 per month if they were put on the percentage lease.

We mutually concelled their present lease and put them on the percentage lease effective June 1.

Q. Has that percentage lease been accepted by a number of your other lessee dealers in the Baltimore area?

A. Yes. Of course it is accepted by every dealer whose lease expires. In several cases, dealers like Mr. Wyniger and Mr. Varnadore have requested the new percentage lease and it has been given them.

Q. Have you made for your district your own personal survey of the impact or effect of the percentage lease against the prior form of gallonage lease and determined whether your lessee dealers are paying more or less rent to Atlantic under the new form of lease?

2697 A. All of our dealers, with the exception of one to date, are paying less rent under the new percentage lease than they paid on the gallonage lease.

Q. Have your dealers commented to you whether they like or dislike the new form of lease?

A. Our dealers, without—let's say, with one exception—have commented that they are very, very much in favor of our new percentage lease.

Q. Mr. Hathaway, I inadvertently omitted one question which I had intended to ask you yesterday.

When one of your leases is, for some reason or other, terminated and a new lessee dealer comes in to take his place, do you have what is sometimes referred to as a check-out?

A. Yes.

Q. What is Atalntic's policy with respect to the advice which you give the incoming dealer on his purchase or refusal to purchase the out-going dealer's TBA?

A. Our advice to the incoming dealer is that he purchase any TBA item which he considers salable from the out-going dealer.

Q. Is that true regardless of brand?

A. Regardless of brand; yes, sir.

Q. And whether or not the out-going dealer has or has not purchased the TBA items from Firestone?

2698 A. That has nothing to do with it. We like the change-over to be as nice and as friendly as possible, so that the incoming dealer can retain some of the out-going dealer's customers, if possible. And if we get into an argument during the change-over, it doesn't help either party.

Q. Do you know Tommy Eckhardt?

A. Yes, sir. Very well.

Q. Were you present in Baltimore, sitting at the council table with me, during his testimony late Tuesday afternoon, in Baltimore?

A. Yes, sir.

Q. Have you ever heard of Jack's Tire Store?

A. In Baltimore? Yes, sir.

Q. That store sells Firestone products, does it not?

A. Yes, sir.

Q. Do you recall Mr. Eckhardt's testimony that up until the time he left Atlantic in 1955 he purchased Firestone TBA from Jack's Tire Store?

A. Yes, sir.

Q. Jack's Tire Store, or whatever the correct name is—Mr. Ballard's recollection is that Mr. Eckhardt described it as "Jack's Tire Service."

Do you happen to have the testimony here, Mr. Kelaher?

Mr. Kaleher: I have it in my room.

I believe it is Jack's Tire Service.

2699 By Mr. Thompson:

Q. May I rephrase my question, Mr. Hathaway.

Mr. Kelaher's records and Mr. Ballard's memory indicate that the name used by Tommy Eckhardt was "Jack's Tire Service" and not "Jack's Tire Store", to which I referred awhile ago.

But whichever it was, during the time Mr. Eckhardt was a lessee, was that—Jack's establishment—one of the Firestone outlets, purchases from which entitled the Atlantic Refining Company to a commission under the Firestone plan?

A. No, sir; it was not.

Q. Does it therefore follow that the Atlantic Refining Company received no commission whatever upon any of the purchases by Tommy Eckhardt from Jack's Tire Service?

A. We received no commissions whatsoever.

Q. On Tommy Eckhardt's Firestone purchases?

A. On Tommy Eckhardt's Firestone purchases from Jack's Tire Service.

Mr. Thompson: Mr. Hathaway, thank you very much.

These are all the questions that I have on direct. I would suppose Mr. Kelaher would want to take a little time before he starts cross-examination.

Or do you want to go right ahead?

Mr. Kelaher: I will go right ahead. I might say that I knew Mr. Hathaway was coming, but I didn't know
2700 the scope of his examination. So I would like to proceed for awhile and then have an opportunity to refresh myself on what he testified this morning, and then continue with the examination, if that is all right.

Hearing Examiner Kolb: We will recess now.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Hathaway, I believe you were present at the hearings in this matter, Docket 6486, that were held in Baltimore, isn't that correct; at the hearings held in 1957 and those held in 1958?

A. Yes.

Q. Did you attend any other hearings in this matter in other areas?

A. No, sir.

Q. And have you read the complaint in this matter, the complaint in Docket 6486 directed against the Atlantic Refining Company?

A. No, I haven't read it.

Q. When you became Baltimore District Manager in April, 1954, you knew that the Federal Trade Commission had attorneys in the Baltimore district in connection
2701 with Atlantic's sponsorship of Firestone TBA; isn't that correct?

A. No, it is not.

Q. Did you learn soon after that that the FTC attorneys were in the Baltimore area?

A. No. I didn't know anything about that until just before these hearings started.

Q. At the Baltimore hearings that were held this week, on Monday and Tuesday, signed statements were produced which were in the files of the Atlantic Refining Company taken from Atlantic dealers as far back as March, 1953.

Do you say now that you don't know that the Federal Trade Commission was conducting an investigation into the Firestone TBA at that time?

Mr. Thompson: He didn't say that.

That is a distortion. All he said was that he didn't know they were doing it in Baltimore. He didn't say he didn't know they were doing it elsewhere.

Mr. Kelaher: Let's have the question read.

(Question read.)

A. I did not know until a good while after I had come to Baltimore that there were any such statements taken.

By Mr. Kelaher:

Q. In view of your answers I am going to ask you this question: You have been with Atlantic since 1939 in one capacity or another, haven't you?

2702 A. That is correct.

Q. Didn't you know before you arrived in Baltimore that the Federal Trade Commission was investigating Atlantic's tie-up with both the Goodyear Tire and Rubber Company and with the Firestone Tire and Rubber Company on TBA?

A. I may have heard it, Mr. Kelaher, but I don't recall it, no.

Q. Isn't it a matter that would be discussed among Atlantic personnel?

A. Not particularly.

Q. And were you aware that a complaint issued against Atlantic Refining Company in January, 1956, charging them with violations of Section 5 of the Federal Trade Commission Act because of their tie-ins with Goodyear and Firestone on TBA?

A. I imagine I heard it but certainly I cannot pinpoint the date or anything like that.

Q. You certainly have been aware of this. It is very difficult for me to sit here and believe that you haven't heard of this investigation or proceeding at some time during your career with Atlantic Refining Company.

A. I have been very much aware of it in the last year.

Q. And prior to that you knew about it, isn't that correct?

A. Possibly, but I didn't give it too much thought.

Q. Yesterday you testified with respect to the 2703 number of gasoline retailers in the Baltimore district, as you will recall.

A. Yes.

Q. I would like to ask you some questions about those figures, mainly for the purpose of clarification.

You stated that in the Baltimore district there were, as I understood your testimony, 2200 or 2300 gasoline retail outlets. Is that correct?

A. Yes, I said that.

Q. In the first place, would you define what you call a gasoline retail outlet?

A. It is a place that sells gasoline at retail.

Q. Could you give us any further description than that? What type of a place, for example?

A. It could be a service station, it could be a grocery store, it could be a garage, it could be a new car dealer.

Q. So it would include various types of retail outlets.

Breaking that figure down, as I understood your testimony, there were approximately 1000—you testified there

were approximately 1200 or 1300 service stations; is that correct, in the Baltimore district?

A. Approximately, yes.

Q. And of that number approximately 1000 were described by you as real service stations. What is your distinction between that 1000 and the remaining 200
2704 or 300 service stations?

Mr. Thompson: I don't recall that testimony, Mr. Kelaher. I think, sir, your note is in error.

By Mr. Kelaher:

Q. Didn't you refer to certain service stations as real service stations?

A. That's right.

Mr. Kelaher: He testified to that. He just stated it.

Mr. Thompson: My notes—may I tell what my notes recall?

Mr. Kelaher: I will bring it out from the witness.

Mr. Thompson: You are confused between the metropolitan Baltimore area and the Baltimore district, which are two different geographical locations.

Mr. Kelaher: I am aware of that.

Mr. Thompson: I tried to keep that clear on the record. Maybe I didn't.

Mr. Kelaher: I am aware of that.

By Mr. Kelaher:

Q. With respect to your 2200 or 2300 retail outlet figure, which did that relate to, the Baltimore district or the metropolitan area?

A. That would be the district.

Q. What did your 1200 or 1300 figure relate to?
2705 You stated there were 1200 or 1300 service stations, as I recall.

A. Didn't I say 1200 to 1300 retail outlets in metropolitan Baltimore?

Q. In the metropolitan Baltimore area.

Of that number you broke that down, as I understand your testimony, and stated that of that number there are approximately 1000 which you designated real service stations; is that correct?

A. In the metropolitan Baltimore area?

Q. Yes, in the metropolitan Baltimore area.

A. Yes.

Q. What is your definition of a "real" service station?

A. It is a service station that can dispense gasoline, has lubrication facilities, washing facilities, can handle TBA, installation of TBA, and do many of the services that an automobile customer expects or can have done to his automobile.

Q. And such a class of service station would be potential TBA outlets, would they not?

A. Yes, sir.

Q. That leaves, in that category, 200 or 300 stations which you did not define. But I would like to ask you to state a little more definitely what would be in that group.

A. That would be the retail outlet that was not a real service station, such as a grocery store, possibly a garage, a car dealer.

2706 Q. Would they be what are sometimes referred to as "filling stations" as distinguished from a service station?

A. No. I wouldn't refer to them as filling stations.

Q. Would these be potential TBA outlets?

A. No, I wouldn't think so.

Q. In the metropolitan Baltimore area, are the bulk of those stations, you have referred to, lessee stations?

A. I would assume they are lessee, for the most part.

Q. Referring again to the metropolitan Baltimore area, you stated that your Company, Atlantic, is in competition

with a number of other major oil companies; is that correct?

A. That is correct.

Q. And you stated about 11. Does that apply to the metropolitan Baltimore area? Are there that many major competitors?

A. Yes, it would apply to metropolitan Baltimore.

Q. And who are your principal competitors in metropolitan Baltimore area?

A. Esso, Amaco, Sinclair, Sun, Texaco, Shell, Crown, Socony.

Q. Do you consider Crown a major or an independent?

A. I consider it a major in metropolitan Baltimore.

Q. But it is not a national company, is it, or do you know?

A. They certainly market in other places besides Baltimore.

Q. Go ahead.

2707 A. Tydol, Calso.

Q. And in addition, you have some independents, or did you name them all?

A. Oh, no; there are a number of independents.

Q. In view of your last answer, to the effect that you have these major competitors and independents, it would appear that Atlantic shares as substantial a share of the market as any of the other companies; is that pretty much so?

A. I don't—I am not quite sure I understand what you mean by a "share".

Q. You say you have 1200 or 1300 stations in metropolitan Baltimore area. They are divided among Atlantic and these other companies apparently?

A. Yes.

Q. How would Atlantic rank insofar as the number of service stations is concerned?

A. Some companies would have more and others would have less.

Q. However, Atlantic is one of the principal companies in the metropolitan Baltimore area, is it not?

A. We don't have that big a share of the business.

Q. I am talking about with respect to numbers of outlet stations, service stations.

A. We don't have the least number by any means, nor do we have the most. I wouldn't know how else to answer you.

Q. That is sufficient.

2708 With respect to contract stations, you stated that there were around 60 Atlantic stations. Would that be in the Baltimore district or the metropolitan Baltimore area?

A. That is in the district.

Q. And in the metropolitan Baltimore area, how many contract stations does Atlantic have?

A. In what I defined as metropolitan Baltimore we would have no more than 15.

Q. No more than 15. And are any of those so-called real service stations?

A. I would class two of them as real service stations.

Q. They would be potential TBA outlets?

A. Yes.

Q. And the others would not; is that correct?

A. Yes.

Q. And when you stated on direct, that five or six in the Baltimore district of the 60 contract dealers were real service stations, that would indicate that the five or six were potential TBA outlets and the remainder were not; is that correct?

A. They are real service stations.

Q. And they are potential TBA outlets?

A. Yes, sir.

Q. And the remainder would not be potential TBA outlets; is that correct?

2709 A. That is correct.

Q. In connection with the figures which you have given, are they current figures or as of what period are you talking about? With reference to all these numbers that we have been discussing here.

A. They would be first quarter 1958 figures.

Q. First quarter of 1958?

A. Yes.

Q. And you have reviewed published sources to obtain this information; is that correct?

A. Yes, sir.

Q. You made a reference to the fact that there have been 100 new service stations which have opened in the metropolitan Baltimore area?

A. Yes.

Q. During a particular period. What period was that?

A. 1957 and 1958, up to June.

Q. That would be a period of a year and a half?

A. Approximately a year and a half.

Q. Of that number, how many were new Atlantic service stations?

A. Approximately six.

Q. Approximately six during that same period?

A. Yes.

Q. I am going to call your attention to some

2710 ratios that were developed yesterday, which I have studied with great interest. As District Manager for the Baltimore district, you of course have occasion to examine operating statements, do you not, to show profits and losses of one type or another?

A. No, I don't have any profit statements.

Q. Do you have any accounting background at all?

A. None whatsoever.

Q. Are you familiar with the difference between gross income and net income, or between profit and loss?

A. Without an accounting background I think I know the difference between profit and loss, yes.

Q. That is fine, because I would like to ask you about some of these ratios.

In the first place, you said that the gross commissions on Firestone TBA program in the Baltimore district was approximately $20,000; is that correct?

A. That is correct.

Q. That was for what period?

A. 1957.

Q. By some slight-of-hand that was related to a figure of $578,000—

Mr. Thompson: I object to the aspersions on my questioning of this witness. There was no slight-of-hand at all.

2711 By Mr. Kelaher:

Q. A figure of half a million dollars was described as the expense budget. I am going to ask you a few questions about that expense budget.

What does that include?

A. It includes payroll, service station maintenance, terminal maintenance, administrative expenses. Those would be the major.

Q. And that expense item of half a million dollars relates to the operational expense with respect to Atlantic's entire business in the Baltimore district; isn't that correct?

A. Yes.

Q. I assumed it would be.

So the half million dollars was expended in producing income from all sources, was it not?

A. Yes.

Q. The figure of $20,000 we have established was the income from Firestone TBA in the Baltimore district; correct?

A. Yes.

Q. You have taken that as income, and from that you have deducted an expense figure of $578,000, or over a quarter of a million dollars.

A. That is mighty deep.

Q. I am asking you what this is intended to prove.

Mr. Thompson: I object to the form of the ques-
2712 tion. The witness has done no such thing.

Mr. Kelaher: I will put it another way.

By Mr. Kelaher:

Q. The question you were asked was this: What was the relationship of $20,000 to $578,000, and it turned out to be about four percent. Do you remember that figure?

A. Yes.

Q. What is the significance of the 4 percent?

A. The significance is that the TBA commissions—it merely points up that this is a definite side-line with the Atlantic Refining Company.

Q. How does it point up it is a definite side-line when you are taking an expense pertaining to your entire company operations and applying it to your income from TBA only? I don't get the significance of your statement. I am just trying to show that it is not a fair comparison. Do you still think it is?

A. I think it is a good comparison.

Q. All right, we will let it stand there.

Now, I would like to ask you about another ratio which was developed on your direct examination, which also intrigues me.

You referred to a gross sales figure of $8,000,000?

A. Yes, sir.

Q. What is included in that gross sales figure?

2713 A. That would include the gasoline, motor oil, burning oils, antifreeze, industrial lubricants, industrial chemicals, washes, anything that Atlantic sells in petroleum.

Q. That is from all sources that you could think of?

A. Yes.

Q. Mr. Thompson asked you some questions which related to $20,000 income from TBA, from Firestone TBA commissions, to the $8,000,000, and you came out with a very minor percent amounting to one-quarter of one percent; do you recall that figure?

A. Yes, I do.

Q. I don't know whether you realize what you have done, but I am going to take you through this a little bit.

Hearing Examiner Kolb: The quarter of one percent was Mr. Thompson's figure.

Mr. Thompson: Was I wrong?

Mr. Kelaher: His computation is accurate, but the procedure is quite intriguing.

2714 By Mr. Kelaher:

Q. What you have done here, as I understand your testimony, both on direct and now on cross, is to take a gross sales figure of $8,000,000 from which you have made no deductions whatsoever—and I assume you pay something for your gasoline and your other products—

A. I am sure we do.

Q. Which would be quite a sizable figure running into the millions, would it not?

A. It should be.

Q. It should be is correct. And you have taken a gross income figure of $8,000,000, to which has been related an income figure of $20,000 from TBA, which does not have deductions other than some which have not been so far

itemized, but in effect you have taken a gross sales figure and related it to what amounts to almost a net income figure. Do you think that is a proper comparison?

Mr. Thompson: I object to the form of the question. The $20,000 commission is not a net figure at all, and Mr. Kelaher knows it.

Mr. Kelaher: The $20,000 figure—

Mr. Thompson: I object to your characterization of the $20,000 as a net figure.

Hearing Examiner Kolb: I think the witness testified this morning that on that $20,000 figure you would
2715 have to take into consideration the sales expense on the part of the salesman in promoting the sale of the TBA.

Mr. Kelaher: I mentioned that in my question. I said it was subject to certain deductions which have not as yet been itemized.

But the $8,000,000 figure I say—I am asking if it is an unfair comparison to take a figure of $8,000,000 before deducting the cost of gasoline, petroleum products, and numerous other expenses—in other words, the cost of manufacture, sale and delivery—and comparing that with a figure of $20,000 which has no cost of manufacture, no cost of delivery, and just some minor selling expenses.

Mr. Thompson: That is objected to. There wasn't any testimony that these were minor selling expenses.

Mr. Kelaher: We will strike the word "minor" at this point, and we will develop that later.

By Mr. Kelaher:

Q. I am asking you, in your opinion, is that a fair comparison?

A. I think it is a fair comparison.

Q. Why?

A. Because I think again it points out the gross sales

that we enjoy in Baltimore on our petroleum products versus the very small gross commission that we get from Firestone, and again simply points out the fact that
2716 we are so much more interested in the sales of our petroleum products, that our TBA is very much of a sideline.

Q. You keep saying about your gross sales of TBA being insignificant. Isn't it a fact that the sales of Firestone TBA in the Baltimore district aggregate in the neighborhood of a quarter of a million dollars a year?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. So when you keep referring to a $20,000 figure, it is actually your commission, it is not a sales figure?

A. But all I am interested in from Atlantic is the gross commission.

Q. But you still, as I understand your answer, figure that this was a valid comparison?

A. Yes, sir.

Q. I will let it stand at that.

In your testimony you also referred to the fact that you have a sales supervisor and various classes of salesmen. To bring the record up to date, would you give us the name of your current supervisor?

A. Mr. E. B. Munch.

Q. And your promotable dealer salesmen, you have four promotable dealer salesmen. Would you give us their names?

A. Mr. R. D. Thomas, R. R. Goudey, and W. C.
2717 McGee, and E. H. Williams.

Q. I will show you a list appearing in the transcript at Page 419 and ask you if the service salesmen and general salesmen's names have changed since June 1957.

Would you just state? Maybe it would be easier to give

us the names of the current general salesmen and the current service salesmen.

A. Gilbert Moran, W. R. Simpson III, Arthur Hendley, and Donald Hactel.

Q. And they are what?

A. They are service salesmen.

Q. And you also have three general salesmen; is that correct?

A. We have five general salesmen.

Q. On direct examination you stated that promotable dealer salesmen call on lessee dealers only; is that correct?

A. Yes.

Q. Also, on direct examination you referred to the fact that you are interested in what you refer to as a good dealer to operate your service stations.

A. I certainly am.

Q. And you also stated that the income of a good average dealer would range from $10,000 to $15,000, in some instances a dealer would have an income of $25,000.

A. Yes.

Q. Isn't TBA included in that income?

2718 A. Oh, sure.

Q. And isn't it an important source of income to the dealer?

A. Yes.

Mr. Kelaher: Mr. Examiner, at this time I would like to have an opportunity to review the witness' examination earlier this morning. This may be a good time to adjourn until two o'clock.

Hearing Examiner Kolb: Do you have any other witnesses?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Then we can take the next witness until 12:30.

Mr. Kelaher: Adjourn until 12:30 for the next witness?

Hearing Examiner Kolb: Yes, unless there is objection.

Mr. Thompson: On that basis shall we go right ahead with the next witness now?

Hearing Examiner Kolb: Yes.

Mr. Ballard: May we have a recess before we take the next witness to figure out who it will be?

Hearing Examiner Kolb: Yes.

(Witness temporarily excused.)

(A short recess was taken.)

2719 Hearing Examiner Kolb: The hearing will come to order.

EDWARD B. MUNCH was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Munch, will you state your name for the reporter?

A. Edward B. Munch.

Q. And will you state your home address?

A. 202 Charmuth Road, Lutherville, Maryland.

Q. What is your present position with the Atlantic Refining Company?

A. Sales supervisor, Baltimore district.

Q. Could you briefly outline your previous positions? I believe you have a memo you made of the dates. You can use that to refresh your recollection and tell us the dates and positions that you have held.

A. I was employed on August 12, 1940, and until January 8, 1943, was tire salesman for the Atlantic Refining Company.

From January 8, 1943, to September 25, 1945, military service.

September 25, 1945, to October 20, 1947, tire salesman.

October 20, 1947, to April 20, 1950, TBA salesman.

2720 April 20, 1950, to June 4, 1951, Richmond sales supervisor.

June 4, 1951, to December 7, 1957, sales training coordinator, Southern region.

From December 7, 1957, until now on my present assignment.

Q. Mr. Munch, referring to your tour of duty as training coordinator for the Southern region, what were your duties and responsibilities in that position?

A. To coordinate all training in the Southern region, which included the training of company personnel just coming with the company, as well as prospective dealers for service stations.

Q. Where was that training done, sir?

A. In the last several years in Charlotte, North Carolina.

Q. Is there a permanent school there?

A. The school was given a permanent location with a class room and training stations in Charlotte, North Carolina.

Q. Do Atlantic dealers who are to be trained from the various districts in the Southern region all go to that school?

A. Did you say dealers?

Q. Dealers who are to be trained, yes.

A. From Baltimore to Miami, all go to that school.

Q. When a new man is taken into the sales depart-
2721 ment of Atlantic, does he go to that school?

A. The first day of employment with the company is the day that he enrolls in the school.

Q. And the dealers and the company's sales trainees go to the same school?

A. They take the first training program together.

Q. In the same classes?

A. Same classes.

Q. Is that school a five-week program?

A. That is a five-week school.

Q. Now, sir, in that school is Atlantic's "no forcing" TBA policy presented to the students?

A. On Wednesday of the first week of the school the trainees receive the orientation on TBA where they tell the dealers and the trainees the value of selling TBA, and then explain Atlantic's TBA policies and programs to them.

Q. Did you yourself give that course in that school occasionally?

A. On quite a few occasions.

Q. And when you did that did you explain the policy to the trainees under your charge?

A. Every instructor has a script to follow, and in that it is a must that we read a letter written by Mr. Colley to all the dealers in 1951 when we went on our present TBA program, stating the reasons behind it, and also point-
2722 ing out very vividly that it is theirs to accept or reject, that it is in no way compulsory.

Q. In your more recent experience in the Baltimore district, have you found that policy to be carried out in practice?

A. The policy is carried out in practice in the Baltimore district.

Q. You have salesmen under your charge in the Baltimore district, is that not a fact?

A. Yes.

Q. You are in charge of salesmen?

A. Yes.

Q. Do your salesmen explain that policy to the new Atlantic dealers as they are recruited?

A. They explain that to the prospect during the recruiting period. Then if he impresses the salesman he is brought

in to my office, or I on occasions will visit the prospect at his home, where again I point out to him once the screening is complete and we have decided on the likely prospect, we take them in to Mr. Hathaway, and he again explains our program.

Q. Does his explanation include a statement of the "no forcing" policy?

A. We all use that same approach.

Q. I am not quite sure. I may have covered this point. When you discuss it with dealer recruits, do you ex-
2723 plain the policy to them?

A. Yes.

Q. And you see that your salesmen do?

A. Oh, definitely.

Mr. Ballard: I have no further questions of Mr. Munch. Doubtless Mr. Kelaher will have a few.

Cross-Examination by Mr. Kelaher.

Q. Mr. Munch, I listened to your direct examination and your direct testimony, and I haven't heard either counsel or you make reference to the brand of TBA which you sponsor in your region. I think the record probably should show that. You were the sales training supervisor, is that right?

A. Coordinator.

Q. Of the Southern region?

A. That is right.

Q. Now would you tell us what brand of TBA you were referring to during your testimony?

A. As I said, we first empressed the trainees with the value of selling TBA, and did try to sell them Firestone.

Q. You didn't assume your present assignment as sales supervisor in the Baltimore district until September 2, 1957, is that correct?

A. No. December 4, 1957.

Q. December 4, 1957?

2724 A. That is right.

Q. And your assignment began as sales supervisor in the Baltimore district at that time?

A. It is still the same thing.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until two o'clock.

(Thereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 2:00 p.m., this day.)

2725 Afternoon Session.

2:00 p.m.

Hearing Examiner Kolb: The hearing will come to order.

You may proceed.

Mr. Kelaher: May we recall Mr. Hathaway to the stand, please?

HOLLAND M. HATHAWAY resumed the stand and, having been previously duly sworn, testified as follows:

Cross-Examination (resumed) by Mr. Kelaher.

Q. Mr. Hathaway, how do your service salesmen promote Firestone TBA, if at all?

A. I don't think my service salesmen have much to do with promoting Firestone TBA except as they may work under the direction of a salesman in a particular location in which they happen to be working.

Q. Yesterday, and I think this may have been inadvertent, on your direct examination your attention was called to the fact that there were 16 employees who you stated had direct responsibility with respect to promoting Firestone TBA, and included in those 16 were four service salesmen.

Is that correct?

2726 A. Yes.

Q. You recall that statement?

A. Yes, sir.

Q. And you stated that the service salesmen, in fact all 16, as I understood your testimony, spent from ten to twenty percent of their time promoting Firestone TBA. Would that be true of service salesmen?

A. They would do a lot of the teaching and the training and handling of Firestone TBA items, and teaching the dealer and the dealer's employees. Of course they are constantly teaching service, installation and that sort of thing of the Firestone TBA item. They don't take orders or that type of thing the way the salesman does. But in the installation, training, teaching and all, they would be spending a good bit of their time on that basis.

Q. However, that wouldn't be classed as promoting Firestone TBA. They are more in the nature of salesmen who teach them how to perform services of one type or another, and they may use Firestone TBA in doing that. But they are not really promoting Firestone TBA with their dealers, are they?

A. Well, they do assist the salesman in great measure, the salesman's job, in promoting the TBA. So I do think that they are in many ways promoting the sale.

Q. They are promoting the sale of TBA, but are you referring to all TBA or Firestone TBA?

2727 A. I would have to refer to both Firestone TBA and non-Firestone TBA.

Q. TBA in general?

A. TBA.

Q. So that your figure of ten to twenty percent of their time might be slightly high, or might be high, would you think, with respect to promoting Firestone TBA?

A. No, I don't think I would want to change that figure in their case.

Q. Does your same answer hold true with respect to the other twelve employees, including yourself, that you referred to yesterday with respect to that ten percent or twenty percent figure?

A. Yes, sir, I believe it would.

Q. I will come back to that in a little while. At this time I want to go into another subject.

You were asked on direct examination this morning to state the advantages to Atlantic of an Atlantic dealer handling Firestone TBA. Do you recall that question?

A. I honestly don't quite recall it. I said so much up here.

Mr. Thompson: I think the question was asked yesterday, Mr. Kelaher. That may be the confusion.

Mr. Kelaher: No. I have it in my notes as of today.

2728 Mr. Thompson: It must be true then if you have it in your notes. A similar question was asked yesterday with respect to the training of Atlantic personnel which may have caused the confusion.

By Mr. Kelaher:

Q. One of the reasons you gave on direct examination as to why it is to Atlantic's advantage for a dealer to handle Firestone TBA is because Firestone is nationally advertised. Do you recall that?

A. Yes. I know that is an advantage.

Q. Do you recall saying that.

A. It seems to me that we were talking about what Atlantic salesmen do to promote Firestone TBA.

Q. This is another topic. We are talking about the advantages to Atlantic of Atlantic dealers handling Firestone TBA, and you gave what amounts to a five-point answer. I can refresh your recollection on it if you wish.

A. I wish you would.

Q. First, you said that Firestone is nationally advertised; second, you said that Firestone has consumer acceptance and, as I understood you, customers in some instances actually demand Firestone; Firestone quality is excellent—I am not using your exact words, but I have the substance of what you said—and the next one is that delivery points are kept to a minimum; and next, that prices are com-
2729 petitive on Firestone. Do you recall that testimony this morning?

A. Yes, but I don't recall it in response to the question that you are asking me.

Q. Do you think there are advantages to Atlantic of Atlantic dealers handling Firestone TBA?

A. I certainly think there are advantages to the dealer, and if there are advantages to the dealer then of course they would be advantages to Atlantic.

Q. In your opinion there are advantages to both?

A. Yes, sir.

Q. Let me ask you this: Why is it more advantageous to a dealer to handle a Firestone TBA than any other nationally advertised TBA, such as Goodyear, for example?

A. I couldn't very truthfully say that there wouldn't be advantages for a dealer handling Goodyear.

Q. Or/and other nationally advertised brand?

A. I am interested in Firestone. And because I am interested in Firestone I just think it is better.

Q. However, you stated it was an advantage to the dealer to handle Firestone—

A. I think.

Q. —TBA. Wouldn't it be just as advantageous for him to handle some other brand?

A. In our market in Baltimore Firestone seems to have the best acceptance and therefore in our opinion—

2730 in my opinion it has the best advantage to the dealer.

Q. Isn't it true that Goodyear, US, Goodrich, and many other national brands are nationally advertised and sold in Baltimore?

A. Oh, yes. Everything seems to be sold in Baltimore.

Q. Isn't it true that many dealers might think that it would be to their advantage to handle one of those other brands?

A. If they do, then they are free to handle them.

Q. You state that another advantage to the dealer—of course you say they are free to handle them but in your opinion it would be to their disadvantage to handle them; is that correct?

A. No, I wouldn't say that at all.

Q. Fine. You also state that another advantage to the dealer is that Firestone has consumer acceptance and that there are requests for Firestone. Isn't it true that other brands of tires, including Goodyear, also have consumer acceptance?

A. It certainly is.

Q. Isn't it true that customers demand other brands of tires other than Firestone?

A. I am sure they do.

Q. Isn't it true also that at one time Atlantic thought that Lee tires were better for their dealers, and Exide

2731 batteries, than any other brands; isn't that correct?

A. We used to sell them.

Q. Isn't that correct? Wasn't that the reason that Atlantic sponsored Lee-Exide, because they thought it was better for their dealers?

Mr. Thompson: If you know, Mr. Hathaway.

Mr. Kelaher: He was with the organization at the time.

A. I can't state that they thought they were better.

By Mr. Kelaher:

Q. But they thought it would be more advantageous for their Atlantic dealers to handle those products, did they not, than other products?

A. I can't tell you that.

Q. You can't answer that question?

Let's see now. You also said that it was advantageous to Atlantic dealers to handle Firestone TBA because of the quality. Isn't it true that there are other brands of tires, batteries, and accessories which also are of like grade and quality as Firestone?

A. I know the Firestone quality because I see a lot of them, and therefore that is why I can truthfully recommend them.

Q. But you are in no position to say that there aren't other tires, batteries, or accessories which are not of

2732 equal quality, are you?

A. No, I am in no position to say that.

Q. You also made the statement yesterday, which is one of the ones that Mr. Thompson had reference to, I believe, that you thought it was advantageous to an inexperienced dealer not to have "droves of jobber salesmen calling on him." Do you recall that?

A. Yes.

Q. So in your opinion you prefer—Atlantic, rather, thinks it is to a dealer's advantage not to have jobber salesmen calling on Atlantic stations; is that correct?

A. Not to have droves of jobber salesmen calling on them.

Q. How would you limit it then? Are you in favor of having some jobber salesmen and not others?

A. I think every dealer would have some jobber sales-

men calling on him, certainly. Droves of jobber salesmen calling on them certainly in my opinion is not an advantage for a dealer.

Q. But you don't deny the right of a jobber salesman to call on any businessman that he cares to, do you?

A. Not in the least. No, sir, not in the least.

Q. Then you also stated that one of the advantages to Atlantic dealers—you say "as well as to Atlantic"—for handling Firestone TBA, is because their prices are competitive. Isn't it true that Atlantic dealers can ob-
2733 tain the same or better prices in other brands of TBA than Firestone?

A. Not to my knowledge, no, sir.

2734 Q. Are you familiar with the price structure in the fire industry?

A. Do you mean, can I quote tire prices, Mr. Kelaher?

Q. Do you know whether or not some brands in the tire industry are generally sold at lower prices than other brands?

A. Yes, some brands would be sold at lower price. I would know that.

Q. So that there are brands which could be obtained by Atlantic dealers at lower prices than Firestone?

A. Of lesser quality.

Q. That is debatable.

You are in no position, I take it, to pass on the quality of Firestone, are you?

Mr. Thompson: If your Honor please, Mr. Kelaher just very carefully qualified Mr. Hathaway as an expert on quality a little while ago.

Mr. Kelaher: Not on quality.

By Mr. Kelaher:

Q. This morning you will recall in connection with a question with reference to Mr. Varnadore you made reference to the new lease, the new Atlantic lease?

A. Yes, sir.

Q. That lease was—I think the printed date is July, 1956, so that Atlantic dealers who have executed leases since that time or have asked for a change have
2735 entered into that particular lease; is that correct?

A. That is correct.

Q. Under that lease Atlantic obtains a return as rental on gross receipts, exclusive of certain taxes, and so forth, from its Atlantic dealers, isn't that correct?

A. Yes, on gross sales.

Q. And that includes gross sales of TBA?

A. Yes.

Q. Isn't that true?

A. That is true.

Q. So that from a financial standpoint it doesn't make any difference whether an Atlantic dealer sells Firestone or non-Firestone TBA; Atlantic still obtains a percentage of the gross sales of that TBA; isn't that correct?

A. A percentage of the gross sales that the dealer does.

Q. So it makes no difference from the brand standpoint, as I understand your answer, what TBA is sold by the Atlantic dealer insofar as rentals are concerned?

A. It would be based on the total gross sales of the station regardless of what he sells.

Q. And in that connection do you audit the books of the dealer or review the books of the dealer in computing rentals?

A. The salesmen do.

Q. You also made reference to the fact, this morning, that your salesmen, Atlantic salesmen, use an inven-
2736 tory stock list in connection with inventory checks at Atlantic dealer stations; do you recall that?

A. Yes, sir.

Q. Isn't that the Firestone basic inventory guide that you are referring to which is used?

A. It could be, or it could be one that they devised themselves.

Q. It could be one that Firestone devised themselves?

A. Or the salesmen's own, yes.

Q. Or the salesmen's own?

A. Yes.

Q. In connection with new types of TBA products which come on to the market, you referred to the fact that Atlantic personnel, salesmen particularly, must train Atlantic dealers on new TBA products; is that correct?

A. Yes, sir.

Q. And in that connection you referred to dry-charge batteries—the Firestone dry-charge batteries and tubeless tires?

A. Yes, sir.

Q. Isn't it true that competitors of Firestone also have such products, and such training would be necessary in any event, not just because Firestone happens to have them?

A. I picked those two examples because they are new to the industry and I believe Firestone was the first
2737 with the dry-charge battery. We took the opportunity to train our dealers in handling them. The tubeless tire is something that I would image all tire companies have tubeless tires today.

Q. So, in any event, you would have to train your dealers whether it was a Firestone brand or some other brand, as I understand your answer; isn't that correct?

A. We make it a point to train our dealers on all new innovations in our industry.

Q. During the course of your testimony you have made it quite clear, I think, that TBA is an essential part of the complete service station operation. Isn't that correct?

A. I feel that way; yes, sir.

Q. Isn't it true that an Atlantic service station dealer

must carry TBA to remain competitive with other service station dealers of other oil companies?

A. We believe that.

Q. And isn't it an essential part of Atlantic's program to keep its dealers competitive so that, of that fact itself, it must devote considerable time to TBA with respect to its service station dealers?

A. Yes.

Q. So it follows, then, that it is to the interests of Atlantic to train dealers, teach dealers, and so on, in connection with TBA to protect its own interests with
2738 respect to competitive oil stations; is that correct?

A. Yes, sir.

Q. And that is true regardless of the brand which is carried by any service station, isn't that true?

A. Yes, sir.

Q. So isn't it true, and based on your testimony now, that all the expenses incurred by Atlantic in connection with TBA, do not in and of themselves represent a saving to Firestone because they are expenses which would be normally incurred by Atlantic in the course of its normal business operations with service station dealers?

A. If I understand your question correctly, we would be doing a good bit of this training and teaching anyway.

Q. I have just one more group of questions.

I would like you to turn your attention to loans to dealers for a moment.

A. I beg your pardon?

Q. I would like to ask you some questions about loans to dealers.

In your experience as District Manager, have loans been made to new service station operators or to new operators of old service stations?

A. Yes, sir.

Q. And have those loans at times been in inventory instead of cash, or in lieu of cash?

2739 A. Not normally. It might be in gasoline, but that is a very—we don't like to do that.

Q. How is it in connection with TBA?

A. We would much rather do it on equipment.

Q. Do you recall any loans to dealers in stock rather than in cash?

A. We would make it in money unless we used gasoline. We don't like to use gasoline, so we keep away from that. Otherwise we would make loans based on a cash loan to a dealer with his equipment as collateral.

Mr. Kelaher: No further questions.

Mr. Thompson: No questions.

Hearing Examiner Kolb: That is all, Mr. Hathaway.

(Witness excused.)

Mr. Thompson: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

2740 Hearing Examiner Kolb: The hearing will come to order.

RICHARD D. THOMAS, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Freed.

Q. Mr. Thomas, will you give the reporter your full name and address?

A. Richard D. Thomas, 2803 Arlene Circle, Baltimore 7.

Q. Mr. Thomas, what is your present employment?

A. I am presently a promotable dealer salesman in the Baltimore district for the Atlantic Refining Company.

Q. What did you do before entering Atlantic's employ?

A. I went through normal schools, went to college, and upon graduation went into the United States Air Force, where I served as a personnel officer for two years.

Q. And how did you happen to communicate with the Atlantic Refining Company concerning employment?

A. When I came out of the service my brother was employed by Atlantic in Erie, Pennsylvania, as a promotable dealer salesman, and he told me the advantages of working with Atlantic and how well he liked it, and suggested that I try it.

2741 Q. By whom and when were you employed by Atlantic Refining Company?

A. I was employed in October of 1954 by Mr. Hathaway.

Q. What was your first assignment as an employee of Atlantic?

A. The first thing they did was send me to the Atlantic dealer training school in Miami, Florida, on November 1, 1954.

Q. Was that a regular dealer training school, a five-weeks course?

A. It was a regular dealer training course of five weeks, of which there were approximately sixteen Atlantic dealers, prospective dealers, and four of us company employees.

Q. That is four, including yourself?

A. Including myself.

Q. What was your assignment in the Atlantic Company thereafter when you finished school?

A. When I came back from school I was assigned as a service salesman to work with various promotable dealer salesmen throughout the entire Baltimore district.

Q. And how long did you serve as a service salesman in the Baltimore district?

A. From December, late December 1954 to January 14, 1957.

Q. In January 1957 was your position changed?

A. At that time I was promoted to promotable dealer salesman.

2742 Q. And have you had that same position in the same district since?

A. I have.

Q. How many customers of Atlantic Refining Company do you serve as a promotable dealer salesman?

A. I have nineteen customers.

Q. And are those customers lessee dealers or contract dealers?

A. They are all lessee dealers.

Q. Would you just describe generally the territory which you handle?

A. Yes. My territory roughly would include West Baltimore, Southwest Baltimore, City and County, and Anne Arundel County.

Q. In the course of serving your customers, do you have occasion to know them rather intimately?

A. Yes. In calling on your dealers you get to know them very well, by their first names, you develop a friendship with the dealer.

Q. How often do you cover your customers?

A. Well, I try to call on all my dealers at least once a week. Some dealers maybe twice a week.

Q. And in serving your customers of the Atlantic Refining Company, what is your major purpose?

A. My major purpose is to sell Atlantic gasoline and motor oil, the most of it I can.

2743 Q. Under whose immediate supervision do you work?

A. My immediate supervisor is Mr. Munch.

Q. And his position is?

A. Sales supervisor.

Q. Are you also supervised by Mr. Hathaway, the district manager?

A. From time to time Mr. Hathaway also supervises me.

Q. In carrying out your activities as a promotable dealer salesman, are you free to establish the policy under which you will operate?

A. No. I have to go by the policy as given to me by the Atlantic Refining Company.

Q. And what is your understanding of the consequences if you are ever to breach that policy?

A. I think I would lose my job.

Mr. Kelaher: Is that a speculative answer?

By Mr. Freed:

Q. Is that your understanding, that you would lose your job?

A. I think I would lose my job if I violated policy.

Q. In connection with the leasing of service stations to your customers, what is your responsibility as a promotable dealer salesman?

A. Well, the first responsibility is to keep these stations operated at all times.

2744 Q. What is your understanding about the availability of operation of service stations by Atlantic Refining Company itself?

A. As far as I am concerned, it just doesn't exist. I never had that experience.

Mr. Kelaher: May I have that question and answer?

(The reporter read the record.)

Mr. Kelaher: I have to admit I am confused on the question. You are talking about the availability of dealers?

Mr. Freed: I will clarify that.

By Mr. Freed:

Q. Is the alternative of operating stations under your supervision as an Atlantic promotable dealer salesman by Atlantic Refining Company itself available to you?

A. It is not.

Q. So far as you understand, all of the stations have to be operated by lessee dealers?

A. That is correct.

Q. And what would be the consequence to you, so far as you understand, if you were not able to provide lessee dealers to operate the stations under your jurisdiction?

Mr. Kelaher: Objection. I hesitate to object, but we are getting into some speculation here about the consequences of whether he does this or does that. I think we should stick to the facts.

2745 Mr. Freed: On the contrary, your Honor, I think that his understanding of his responsibilities is very important in this regard. Whether they are potential or are not is not important, so long as he understands that this is the situation and operates under that basis. I think it is germain to the issue.

Hearing Examiner: Kolb: The objection will be overruled.

The Witness: Again I would have to repeat, I think I would lose my job if I am not good enough to keep these stations operated.

By Mr. Freed:

Q. I want to go back to one point, and that is what do you do in connection with the leasing of service stations to dealers? What function do you perform in the decision to grant a lease?

A. I have no decision to grant a lease. What I do is primarily recommend to my sales supervisor, and Mr. Hathaway, respective lessees.

Q. Do your dealers know that that is your function, your sole function?

A. I think so, yes, sir.

Q. Whose decision is it to grant a lease on behalf of Atlantic Refining Company?

A. Mr. Hathaway, the district manager.

2746 Q. In the event that there would be a recommendation against renewing a lease, what would be your responsibility?

A. Well, in that case we would have discussed the lessee's shortcomings with the sales supervisor and he and I together would submit our recommendations to Mr. Hathaway in sufficient time to give the lessee plenty of notice.

Q. Would you have to make a detailed justification of any such recommendation?

A. In most cases it would have to be quite detailed. However, I have never had that experience.

Q. You have never made any such recommendation?

A. No.

Q. Have you, on the other hand, ever made recommendations that leases be renewed?

A. I have always made recommendations that leases be renewed.

Q. Have you had occasion to lose lessee operators of stations under your supervision?

A. Yes. This is one of the things that we are always faced with, losing dealers.

Q. What are the common reasons why you will lose a lessee dealer?

A. Well, they are varied, but perhaps the most common are family dislikes for service station operation, meaning extra hours that the husband isn't accustomed to;

2747 secondly, he just isn't able to make any money. In other words, he doesn't—he gets into financial diffi-

culties. In some instances the dealer or the lessee feels that he can better himself in another business, and he will go into a competitive business or an entirely different business.

Q. And in these cases does the initiative for leaving the station come from the lessee dealer himself?

Mr. Kelaher: Your Honor, I think it might be better if we didn't have leading questions on questions of this type.

Mr. Freed: I am sorry.

Hearing Examiner Kolb: I will let him answer that question. It is obvious, anyway.

By Mr. Freed:

Q. You may answer the question. Do you want it read back?

A. Would you read it back?

(The reporter read the question.)

A. Yes. In all cases, with my experience, all cancellations have come from the lessee.

Q. From your experience is it easy or difficult to locate satisfactory dealers to take the place of dealers who have left?

A. It is one of the most difficult jobs, part of my job, is locating dealers. Satisfactory dealers are very hard to find. We search many ways to find them.

2748 Q. What are some of the search methods?

A. We use newspaper ads, which usually bring you quite a few bodies, but not too many good, sound businessmen. You waste a bit of time there. So the next thing we use, we call on competitive service station dealers. We find that quite profitable because these people are people who are already in the business, they like the business, and they are much easier to talk into maybe coming over to your station. We also talk to route sales-

ment, dairy salesmen, postmen, farmers, and what have you.

Q. By any chance in your inquiries do you discuss this subject with your existing lessee dealers?

A. That is also another source, if you have lessees that are quite well known in their area, have been there for many years, they are many times able to offer you a lead as to a person who would like to go into the service station business.

Q. What is Atlantic's TBA policy?

A. As I understand Atlantic's TBA policy, we have sponsored TBA, but it is there for the dealer to accept it or reject it at his desire, his wishes.

Q. By "sponsored TBA" you mean the Firestone line of TBA?

A. I mean the Firestone line of TBA.

Q. Where did you learn of that policy?

A. I first heard of that policy when I attended
2749 the dealer training school in Miami, Florida. During that training course they brought out the fact that this was a good line of TBA, it had many advantages, but still it was up to the dealer to accept it or reject it. And I was subsequently informed of it at various sales meetings that we had while I was a service salesman, and again when I made promotable dealer salesman, Mr. Hathaway restated this policy to me.

Q. Do your dealers know about the "no forcing" policy?

A. Yes, they do.

Q. How do they know about it?

A. Well, I tell them of this policy when I first talk to them as a prospect in their homes. And they later learn about it, if they are successful in getting us interested in them, at an interview, and finally they learn about it again through a "no forcing" letter which they get from our regional manager after the signing of the lease.

Q. Do they also hear about it if they pass the first two steps and eventually get to Mr. Hathaway as a prospective lessee?

A. Well, yes. That was what I was referring to as the second step. In other words, when we take them in the office, if they are satisfactory to us, acceptable as a lessee, the sales supervisor and I take them in to Mr. Hathaway's office and he again goes over the TBA program with the dealer.

Q. And that TBA program includes a statement of the policy?

2750 A. "No forcing."

Q. Is that so?

A. That is true. That is correct.

Q. From your experience as a salesman, do you agree personally with the "no forcing" policy as a method of doing business?

A. I do.

Q. Why?

A. I think that is the only effective way to sell, is through salesmanship, getting the customer to like you so that he will buy from you. In the long run you will sell more TBA that way.

Q. In the granting of leases to new dealers is the handling of Firestone TBA ever made a condition or understanding of securing a lease?

A. It has never been, with my experience.

Q. Mr. Thomas, what kind of TBA do your dealers handle, anyhow?

A. They handle all kinds of TBA. I mean by that all brands. They buy anything they want.

Q. Do some of them buy very small quantities of Firestone TBA?

A. I have some that buy hardly any. I have others who buy a considerable amount.

Q. Can you give me some examples of those?

2751 A. Yes. Fred Koehler, a dealer of mine at North and Woodbrook, I can count on my fingers the dollars and cents figures that he has given as far as sponsored TBA.

Q. Has he been a lessee for very long?

A. Yes. Fred has been a lessee dealer for some seventeen years.

Q. More example, if you will.

A. With reference to Mr. Varnadore, who is in partnership with Joe Wyninger, they have been buying Exide batteries for years. Ever since I have known them, and I understand a considerable time before that.

The McNeill brothers at Glensfalls Parkway—

Q. Before you leave Varnadore—

Mr. Kelaher: I object to the latter part of his answer with respect to his understanding about the period before he arrived.

Hearing Examiner Kolb: Just limit the testimony to this man's time and that he has been with the company.

Mr. Freed: I beg your pardon.

Hearing Examiner Kolb: Let's limit his testimony to the time he has been with the company.

Mr. Kelaher: Is that part of the answer stricken, your Honor?

Hearing Examiner Kolb: I doubt if that will be necessary. Let it stand.

2752 By Mr. Freed:

Q. Can you give us further examples with that limitation of their dealer buying practices since you have been a promotable dealer salesman in Baltimore?

A. The McNeill brothers at Glensfalls Parkway, I installed them in the station last summer and they initially stocked Autolite batteries.

Q. Have they carried them since?

A. They are still carrying Autolite batteries.

Then Gill Heiderman, who is a dealer with some twelve years with the Atlantic Refining Company, who buys practically no sponsored TBA.

Q. Do you have some further examples?

A. George Anderson, at 5640 Ritchie Highway, buys Fram filters exclusively, and has since I have been there, and handles Gates radiator hose and fan belts exclusively.

Willis McKeel, at Ritchie Highway and Jumper Hole Road, handles Best batteries and stocks them, and has done that since I have had him as one of my customers.

Q. Does he handle any other brand of batteries in addition?

A. No, he doesn't.

Virgil Tackett, Mountain Road and Rockpoint Road, handles Delco batteries exclusively.

Cake and Dorr, a partnership, at Hanover and Potee Streets, handle Fram filters exclusively, Bowers bat-
2753 teries, at least fifty percent.

I think that pretty well summarizes the—

Q. Can you think of anyone else? Can I refresh your recollection if I mention Amos Wells?

A. Oh, yes. Amos Wells, Clifton and Denison Streets, who has been I consider one of my finest dealers, buys US Royal and Kelly tires and stocks them. And he also purchases AC filters and spark plugs from an outside jobber.

2754 Q. Would it refresh your recollection if I mentioned Dick Gallagher?

A. Yes. Dick Gallagher, who is a past contract dealer of ours, we recently built a new station and he is now a lessee dealer and handles Dunlop tires and tubes. He did so as a contract dealer and he does now as a lessee dealer.

Q. Does he carry Dunlop batteries also?

A. I thought I said batteries. Yes, he does.

Q. From your experience, Mr. Thomas, does the pur-

chase by a lessee dealer of TBA from sources other than Firestone play any part in Atlantic's decisions on granting promotions to better stations or improving existing stations?

A. No. My experience has been that the reverse is true, not that we penalize a dealer—

Q. Can you give us—

Mr. Kelaher: I don't believe he finished.

By Mr. Freed:

Q. Go ahead.

A. We actually have rewarded some of our dealers with newer type stations in spite of the fact that they buy outside or non-sponsored TBA.

Q. How about some examples?

A. An example is Amos Wells, who we are presently building a new three-bay service station for, to be ready in about two months. He will be the lessee.

2755 Q. Is that rebuilding of an existing station?

A. This is an entirely new location. He is moving from his present location to a new location. And Dick Gallagher, we completely remodeled his station at the present location.

The Gilbert Heiderman station is scheduled for remodeling within the next three months.

Q. Could you describe the extent of remodeling in that case?

A. A remodeling job, as I know it, is one where we completely tear down the old structure and build from the ground a modern service station.

Q. And that is what you are doing for Heiderman right now?

A. That's right.

Q. Is there any other example you can give us of similar action?

A. Well, I have an example, the McNeill brothers at Glensfalls Parkway. I am presently considering splitting the partnership up and giving Purcel McNeill, one of the acting partners, another one of my stations.

Q. And have you already discussed this with Mr. McNeill?

A. It has been discussed.

Q. Has this matter also been discussed with Mr. Hathaway?

A. It has.

Q. It has his approval?

A. He thinks it is a good move.

Q. In the course of calling on your customers, do 2756 you have occasion to see on display in the stations the TBA which is not bought from the Firestone store?

A. Yes. All the merchandise in the station is displayed openly, and I have an opportunity to see it at any time I like.

Q. Have you ever asked or told any of your customers not to display any of that TBA which was not bought from Firestone?

A. No.

Q. Were you present this morning, Mr. Thomas, when Mr. Hathaway was discussing and describing what Atlantic promotable dealer salesmen do to promote the sale of Firestone TBA?

A. Yes, I was.

Q. Do you, as a promotable dealer salesman, do the various things which Mr. Hathaway described as being done by people of your category?

A. Yes. He described it very well.

Mr. Freed: I have no further questions, Mr. Kelaher.

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

2757 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Thomas, I would like to get a couple of dates clear. You became a promotable dealer salesman in the Baltimore area on January 14, 1957; is that correct?

A. That is correct.

Q. And at that time did you know that the Federal Trade Commission had issued a complaint against Atlantic Refining Company and Goodyear with respect to TBA commissions paid to Atlantic by Goodyear and Firestone?

A. No, sir; I didn't learn of that until just about three weeks ago, maybe—four weeks ago.

Q. The complaint was issued in January, 1956. And you haven't heard about it until when?

A. About three or four weeks ago.

Q. About three or four weeks ago?

A. Yes, sir.

Q. Never was it ever mentioned at discussions of Atlantice personnel, Atlantic salesmen?

A. Not to my knowledge.

Q. You stated that your major purpose was to sell Atlantic gas and motor oil, and direct; is that correct?

A. That is correct.

Q. Do you attempt to sell Firestone TBA at all?

A. I do.

2758 Q. Is it to your financial advantage to have an Atlantic dealer purchase Firestone TBA?

A. Not at the present time; no, sir.

Q. I am asking you to answer Yes or No.

A. No.

Q. Whether it is to your financial advantage?

A. No.

Q. It has already been stipulated in the record and Mr.

Hathaway testified that as a promotable dealer salesman you are on a quota system. Isn't that true?

A. There is no quota system whatsoever.

Q. Don't you receive extra compensation?

A. There is an extra compensation plan, which is available to the promotable dealer salesmen.

Q. Don't you operate under that plan?

A. It is available to me.

Q. What do you mean, "it is available"? You either operate on it or you don't.

A. I mean simply this: I have not received any compensation under it.

Q. But you have been operating under it at all times since you have been a promotable dealer salesman, haven't you?

A. It has been available to me.

Q. I would like to explore that a little.

Are you assigned a specific amount of Firestone 2759 TBA for a particular period?

A. No, sir; I am not.

Q. How is your extra compensation computed?

A. The extra compensation plan is computed based on the previous year's performance.

Q. Take it a little bit from there. In other words, this being 1958, if your 1958 sales of Firestone TBA exceeded your 1957 sales of Firestone TBA, you get extra compensation, don't you?

A. Providing you meet the minimum percentage increase.

Q. Providing you meet the quota, isn't it?

A. I don't have a quota, sir.

Q. You just said, now, that first you have a base figure. You say it is the previous year, so that would be 1957?

A. Yes, sir.

Q. Then you are assigned a quota which is a percentage increase over that base figure; isn't that correct?

A. I choose to call it "performance", performance factor.

Q. I don't think we have to engage in a battle of semantics. It seems to me that it is a very simple operation. You have a base figure which is your prior year's figure. That is number one, right?

A. Yes, sir.

Q. If you exceed a certain percentage, by a certain percentage, that amount, you get extra compensation, don't you?

2760 A. Yes, sir.

Q. So, getting back to my question, it is to your financial advantage to have an Atlantic dealer purchase Firestone TBA, is it not?

A. It hasn't been to date.

Q. That is not in response to the question. I think the response is obvious. It would have to be yes.

A. Put it this way: I have not ever received any extra compensation for the sale of Firestone TBA.

Q. Is that because you haven't tried to receive extra compensation?

A. It is not because I haven't tried.

Q. Then you have tried to receive extra compensation; is that correct?

A. I do try; yes, sir.

Q. And that is an incentive to you, to increase your sales of Firestone TBA, is it not?

A. I think it is an incentive; yes, sir.

Q. You think it is? It is, isn't it? Isn't the answer yes?

Hearing Examiner Kolb: He answered "Yes".

By Mr. Kelaher:

Q. You went down the list on ten Atlantic lessee dealers who are serviced by you and referred to the fact that they were buying non-sponsored Firestone TBA. Do you

2761 recall those names?

A. Yes, sir.

Q. The first one you mentioned, one of the first you mentioned was J. Varnadore. Do you recall that?

A. Yes.

Q. Isn't it true that Mr. Varnadore purchases Firestone tires?

A. It is.

Q. And stock them?

A. He does purchase Firestone tires.

Q. And isn't it true that Mr. Varnadore also purchases some Firestone accessories?

A. He purchases Firestone tubes, hardly any accessory items.

Q. But he does purchase some?

A. Very little.

Q. Is there an Exide battery sign on Mr. Varnadore's station?

A. There is an Exide battery rack in the inside of the sales room.

Q. I have asked you if there was an Exide sign on the station.

A. What do you mean "on the station"?

Q. On the outside of the station, is there an Exide sign?

A. No, sir.

Q. Is there a Firestone sign on the station? On the window?

2762 A. I think so, sir.

Q. Was your testimony to the effect that none of the dealers you mentioned purchased any Firestone TBA? Was that the substance of their testimony with respect to these ten dealers?

A. If I understand you right—

Q. You listed ten dealers. I want to know if none of the ten purchased Firestone TBA at all.

A. No, I don't think there is any that purchased none.

There are some so close to it that they could be called None.

Q. Let me ask you about George Anderson, for example. Does he purchase any Firestone TBA?

A. He purchases some Firestone tires and tubes.

Q. Tires and tubes are an important part of the TBA program, are they not?

A. Yes, they are.

Q. I will pick some at random here. Let me ask you about Cake and Door. Do they purchase any Firestone TBA?

A. They purchase very, very little Firestone TBA. Practically none.

Q. What batteries do they handle?

A. Bowers.

Q. Do they handle any other batteries?

A. They handle one or two Firestone batteries.

Q. On direct examination, you said they handle
2763 50 percent Bowers and 50 percent of some other battery, which was unnamed. The other was Firestone, wasn't it?

A. That is correct, sir.

Q. So where does that leave us? Do you mean they only have two Bowers batteries in the—

A. At the last sales call they had two Bowers and two Motor Kings, which is a Firestone battery.

Q. And two Firestone batteries?

A. Yes, sir.

* * * * * *

2766 Hearing Examiner Kolb: The hearing will come to order. You may proceed.

Mr. Thompson: I call Mr. Russell Cooley to the stand.

RUSSELL E. COOLEY was called as a witness for the Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Mr. Cooley, give your full name and residence address for the reporter?

A. Russell E. Cooley, 755 Chenango Street, Binghamton, New York.

Q. Mr. Cooley, are you presently the lessee of an Atlantic Station at Chenango and Nolan Streets in Binghamton, New York?

A. Yes.

Q. Is your station located in the City of Binghamton itself?

A. No, it is in the suburbs in Binghamton. It is called Hillcrest.

Q. The Binghamton area, I think, is sometimes referred to as the Tri-City or Triple City area?

2767 A. That is correct.

Q. What are those three cities?

A. Binghamton, Endicott and Johnson City.

Q. And they are all contiguous?

A. Yes.

Q. I believe, sir, that you first took this station with a partner in about 1947, is that correct?

A. January of 1947.

Q. Who at that time was your partner?

A. His name is Paul Purpie.

Q. Then did he later withdraw from the station?

A. Yes, he did, because of health reasons.

Q. About when was that?

A. About 1950 or '51.

Q. Since that time, you have been the sole lessee of this station?

A. That is correct.

Q. You have, I believe, a three-year lease?

A. Yes.

Q. This is what, your second three-year lease?

A. Second one. I believe it terminates this coming January.

Q. Now, before you became an Atlantic lessee, what had been your experience?

A. I was with the Metropolitan Life Insurance Company as an agent for five years, counting three years 2768 in the Army. Before that time, I had worked and had leased a Socony Service Station.

Q. So that you had had three types of experience: One as a life insurance agent and second in the Army?

A. Yes.

Q. And third as a lessee of a Socony Station?

A. Right.

Q. As a matter of interest, sir, where did you serve in the Army?

A. I was in the European Theater in an armored division.

Q. Now going back, sir, to the operation of your station in Binghamton with Mr. Purple from 1947 until 1950 or '51, did you in those days handle TBA at that station?

A. Yes, we did.

Q. Do you recall whether at that time there was or was not a tire shortage where tires were still difficult to get?

A. I believe there was a tire shortage but the greater shortage was before we took the station over. In '47, I believe tires became more available.

Q. What kind of tires were you handling at that time at that station?

A. Lee, L-e-e tires.

Q. What kind of batteries?

A. Exide batteries.

Do you recall at about 1951, Atlantic Refining Com-
2769 pany commenced to sponsor Goodyear TBA in your area?

A. Yes, I do.

Q. Do you recall whether you did or did not attend a dealer meeting at which the Goodyear plan was explained by Atlantic?

A. Yes, that was held at the Arlington Hotel.

Mr. Kelaher: Which hotel?

The Witness: Arlington.

By Mr. Thompson:

Q. Do you recall generally, sir, what was said about it by the Atlantic people—can you tell us?

A. I believe they explained they were going to handle Goodyear TBA products although it wasn't necessary for us to buy strictly Goodyear products. It would be to our benefit to handle Goodyear tires because of the advertising and quality of the product.

Q. Was it made clear to you, sir, that you could accept or reject the plan?

A. Yes, it was. I think it was so stated in a letter that we received from the home office about that time.

Q. Now, sir, I am now going to show you three letters, the first of which has been identified in this case as CX 150, which is dated March 1, 1951 and signed by Mr. Colley, Vice President of Atlantic Refining entitled "A Statement of Atlantic's TBA Policy" and ask you to look at that carefully and let me know whether you recall having
2770 received it at or about the time of its date?

A. Yes, I remember it.

Q. The second document I want to show you has been identified as CX-206, and is also a letter from Mr. Colley dated August 28, 1952 called "A Restatement of Atlantic's TBA Policy" and I ask you to look at that letter carefully

and let me know whether at or about the time of its date, you recall receiving it?

A. Yes, sir, I remember that one also.

Q. I had showed you these letters immediately before you testified, had I not?

A. Yes.

Q. Then do you recall receiving still another letter in 1955 in the form which I now show you signed by some one other than J. D. Estlow, this document having been identified for this record as CX-207?

A. Yes, I remember this too.

Q. With respect to CX-207, the one that I have shown you is signed by Mr. J. O. Estlow, Manager of the Philadelphia and New Jersey Marketing Region, do you recall who the manager of the New York region for Atlantic was in 1955?

A. I don't believe I do. I think it was Ostrander, O-s-t-r-a-n-d-e-r.

Q. The letter you received would not have been signed by Mr. Estlow but by Mr. Ostrander or whoever was
2771 the Region Manager in New York at that time?

A. Yes. I'm not positive who it was at that time.

Q. Thank you, sir. Now, since Atlantic commenced promoting and sponsoring Goodyear TBA brand in 1951, what tires have you actually handled or carried at your station, sir?

A. I have carried several brands. My main stock, of course, is Goodyear, but if a customer wants a Lee tire or Firestone tire or a Goodyear tire, I don't hestitate to buy it.

Q. Have you from time to time bought Lee tires from Mr. Boungiornk?

A. Yes, I have. He was my supplier.

Q. Is that spelled B-o-u-n-g-i-o-r-n-k?

A. Yes. He is an Atlantic dealer about half a mile from my station and he handles Lee tires.

Mr. Thompson: Now, would you mind repeating for me, please, his answer to the question about Lee tires.

(The reporter read the answer as requested.)

By Mr. Thompson:

Q. For a time after Atlantic commenced to promote and sponsor the Goodyear tires, where you handling Lee at your station?

A. Yes. Pardon me, at the time, we changed to Goodyear?

Q. Yes.

A. We were handling Lee tires.

Q. After the change, too?

2772 A. Yes, I continued to handle them for some time.

Q. About how long, sir, do you recall?

A. Probably a year.

Q. Why did you shift to Goodyear tires?

A. Well, I found that the name "Goodyear" is more acceptable to the public, quality of the brand, the advertising and the fact that they have a large stock available.

Mr. Kelaher: Could I have that answer again, please?

(The reporter read the answer as requested.)

By Mr. Thompson:

Q. Now, since 1951, Mr. Cooley, what brand of batteries or brands have you been carrying at your station?

A. Exide batteries and on occasion I have secured Willard or Delco batteries for a customer.

Q. Have you been handling Goodyear batteries at all since 1951?

A. I have sold a few Goodyear batteries also.

Q. Now, about your accessories, what sources of supply have you used since 1951?

A. I buy from several wholesalers, namely, Whipple's

Automotive; Rose Unit Parts; United Auto Parts, Binghamton Auto Supply and several others besides those I mentioned.

Q. Do you buy accessories in any substantial quality from Goodyear?

A. No, not many accessories.

2773 Q. Are these non-Goodyear TBA items to which you have referred openly displayed at your station?

A. Yes, they are.

Q. Do you have an Exide sign at your station?

A. Yes, I believe there is.

Q. Do you carry Gates belts and hose?

A. Yes, I do.

Q. Are there signs or advertising pieces relating to those two Gates' items at your station?

A. Yes, there are.

Q. Do you have a Johnson's wax sign at your station?

A. I believe there is one.

Q. Do you have decals on your windows?

A. There were decals on the windows and they remodeled the station about two years ago as far as the windows were concerned and I believe there are no decals on the windows now, the new windows.

Q. Do you have Exide battery testers and chargers at the station?

A. Yes.

Q. Do they bear the Exide name?

A. Yes, they do.

Q. Do you have one of these Bowes thermometers on your station, do you recall?

A. I had a Bowes thermometer on the station. I
2774 believe it has been removed but I do have a Bowes sign saying "Tubeless repairs."

Q. Now, are all these non-Goodyear TBA items displayed so that they are visible to the Atlantic salesman and representatives who come to your station?

A. Yes, they are.

Q. Have they always been so displayed?

A. Yes, they have.

Q. Do you sell TBA on Atlantic credit cards?

A. Yes.

Q. Do you sell non-Goodyear TBA on Atlantic credit cards?

A. Yes.

Q. Have you ever been criticized for so doing by Atlantic?

A. Not at all.

Q. Do numerous TBA jobbers solicit your business?

A. Yes, they do.

Q. Do jobbers of tires other than Goodyear solicit your business ?

A. Yes, they have.

Q. Can you mention some of the brands which you have been solicited to buy in recent years?

A. Goodrich Tire Company; Firestone Tire Company and recently an Atlas representative. I believe Atlas is an Esso produet

Q. Do you from time to time buy from any of these tire jobbers?

2775 A. Yes, I have.

Q. Mr. Cooley, have you ever been criticized by Atlantic for carrying non-Goodyear TBA?

A. No, I haven't ever.

Q. Have you ever been told to stop buying it?

A. No.

Q. Have you ever been told to get it out of your station?

A. No.

Q. Ever been told to hide it?

A. The way my station is constructed, it would be physically impossible to hide anything.

Q. Has Atlantic ever sought to force or pressure you to buy Goodyear TBA?

A. Not in the least.

Q. Have you at all times felt free to buy any brand of TBA that you wanted?

A. Yes.

Q. Have you in fact always done so?

A. Yes, I have.

Q. In the 21 years in which you have been an Atlantic lessee, has your lease been renewed many times?

A. Yes, I believe you made an error in the number of years there.

Mr. Kelaher: Yes, I think so.

Mr. Thompson: Excuse me, 11.

2776 The Witness: You said 21, it has been 11.

By Mr. Thompson:

Q. I mean 11?

A. Yes, that has been true.

Q. Upon the occasion of the renewal of your lease, has Atlantic ever brought forth the fact that you handle primarily non-Goodyear TBA?

A. No.

Q. Have you ever at any time felt that your lease was in jeopardy because of your handling of non-sponsored TBA?

A. Never.

Q. Are there a lot of oil companies actively in the Tri-City Binghamton area?

A. Yes, several.

Q. A number of service stations of competing companies?

A. Yes.

Q. In the years in which you have been at your station, have you built up a personal clientele who visit you and who rely upon you as a gasoline and TBA supplier?

A. Yes. My station is 90 percent neighborhood trade. I'm not on a through highway.

Q. Do you know many of your customers by name?

A. At least 95 percent of them I know by their first name.

Q. They know you by name?

A. Yes, sir.

2777 Q. Incidentally, sir, do you give personal credit to some of your customers?

A. Yes.

Q. So that they have charge accounts with you?

A. Yes.

Q. Have you from time to time been solicited by competitors of the Atlantic Refining Company to take a lease from one of them?

A. Yes.

Q. With all due modesty, would you care to mention a couple of names?

A. Yes, brand names—you mean of other companies?

Q. Yes. I mean what other companies have solicited you to take stations?

A. Well, as I said before, my station is on a neighborhood street and the reason it is—there is a short four-lane bypass which is about three-quarters of a mile long and on this three-quarters of a mile of a four-lane highway, I think there are six different companies represented by new stations. And at some time or other, I think I have been solicited at least twice by all of these companies. There is a Gulf station, a Socony station, a Sonoco station, two Esso stations, and American station and a Rotary station.

Q. Rotary is the name of an individual which does business in the Binghamton area?

2778 A. Yes, I think the company is known as the Southern Oil Company.

Q. Mr. Cooley, with all those opportunities, why have you stayed with Atlantic?

A. Because I am happy in my present situation.

Q. Is your station from time to time inspected by Atlantic representatives?

A. Yes, it is.

Q. Are the results of such inspection discussed with you by Atlantic?

A. Sometimes.

Q. On the occasions when they do discuss the inspection, is the point raised that you are dealing in non-Goodyear TBA?

A. No, it never is. I think the primary reason for those inspections is either appearance or service.

Q. Does the sales supervisor or the district manager sit down with you once a year or occasionally and have a review of your business?

A. Yes, they do.

Q. In the course of such discussions, do they make suggestions to you about how you might improve your earning capacity at the station?

A. Yes, I believe that is the object of those meetings, to produce a balanced selling job.

Q. Do you find such discussions helpful to you?

2779 A. Yes, they are.

Q. At such discussions, do they ever criticize you for not carrying Goodyear TBA?

A. No.

Q. Were you one of the Binghamton dealers who was honored by a visit from a Mr. Lipsky back in 1953?

A. Yes, I was.

Q. Did Mr. Lipsky identify himself as an investigator of the Federal Trade Commission?

A. Yes, he did.

Q. Did he seek to talk to you about your operations at the station?

A. Yes.

Q. Did you have such a discussion?

A. Yes, we did.

Q. Was it a fairly long discussion?

A. Yes, I believe it lasted about two hours.

Q. What was his objective and purpose in talking to you, if you can tell us briefly?

A. I believe the object of the discussion was that he was trying to discover if Atlantic were using any force on the Atlantic dealers to handle Goodyear TBA.

Q. At the time of his visit to you, did you have non-Goodyear TBA openly displayed at your station?

A. Yes, I did.

2780 Q. As he talked to you, did he write things down on a piece of paper?

A. Yes.

Q. Were the words he wrote down your words or his?

A. They were his words. I signed my name to the final sheet.

Q. Did he discuss the provisions of your lease with you?

A. Yes, he did and he asked to see a copy of my lease.

Q. Did he mention to you a provision in the lease which is sometimes called a 30-day cancellation clause—do you recall it at all?

A. Yes, I do.

Q. What was his objective and what did he say about it?

A. Why I gathered that he was trying to find out if Atlantic would ever use the 30-day clause as a whip in case they wanted us to handle an exclusive product. I believe I answered I didn't know and I didn't believe so.

Q. With respect to your own personal dealings and relationships with Atlantic, did you in your own words

give him substantially the same information which you have given us here today?

A. Yes.

Q. That was back in 1953?

A. Yes.

Q. And since that time, you have in fact been carrying any brand of TBA you wanted to carry?

2781 A. Yes.

Q. Now, Mr. Cooley, the distinguished looking gentleman on my left here is counsel for the Goodyear Company and he may want to ask you some questions. The gentleman on my right, the particularly handsome gentleman, is Mr. Kelaher who represents the Federal Trade Commission and I'm sure he is going to have some questions for you.

Mr. Ingraham: I have no questions.

Hearing Examiner Kolb: You may cross-examine.

Cross-Examination by Mr. Kelaher.

Q. Mr. Cooley, I would like to review some of the answers you gave in response to questions by Mr. Thompson to see if we have them clear in our minds. Since Atlantic began the Goodyear TBA program, which was in or about March 1951, you stated on direct examination that you carried Goodyear tires as your main stock, is that correct?

A. Yes, that is correct.

Q. You also stated that you carried other brands of tires, is that true?

A. Yes, I do. I don't carry them in stock necessarily but I do obtain them if the customer wants other brands.

Q. If the customer requests you obtain that particular tire?

A. Yes.

2782 Q. The only tire you stock is Goodyear?

A. That is right. I believe I still have a few Lee tires on my shelves left over from Lee stock.

Q. Now, with respect to batteries, you say that since Atlantic changed over to the Goodyear TBA program, you have carried Exide batteries as your principal stock?

A. That is correct.

Q. And also on occasion, you had purchased some batteries bearing the Willard or Delco brands, is that correct?

A. Yes, customer request.

Q. You also stated that since Atlantic changed over to Goodyear TBA program you have only carried a few Goodyear batteries, is that correct?

A. That is right.

Q. Now, with respect to the accessories, you stated that you make purchases from several wholesalers?

A. Yes.

Q. Is that true?

A. Yes.

Q. You also stated that you do not make many purchases of accessories from Goodyear?

A. That is right.

Q. Now, with respect to your service station identification, prior to the time that Atlantic began to carry the Goodyear TBA line, you stated you stocked Lee tires 2783 and Exide batteries, is that correct?

A. Yes.

Q. Did you also—were they purchased from Atlantic?

A. Yes, I mentioned Frank Boungiornk as my lead supplier. The reason I mentioned that is because he is very close to me where I have to go across town to get to the Atlantic warehouse. At the same time I did get some Lee tires from the Atlantic warehouse as well as Exide batteries.

Q. That is when Atlantic was selling Lee tires and Exide?

A. They were in the TBA business.

Q. At that time did you also purchase some accessories from Atlantic?

A. Yes, I did.

Q. Now, at that time, did you have any window decals on your station or outdoor signs?

A. Yes.

Q. Before the changeover to Goodyear?

A. Yes, I did.

Q. What brands did you have out there?

A. I believe there was Exide batteries decal on the window and I believe a Lee tire decal.

Q. What happened after Atlantic changed over to Goodyear TBA with respect to those signs?

A. Well, they were removed by, I believe, a Goodyear salesman and a Goodyear decal was put up.

2784 Q. Did you request them to remove the Lee and Exide signs and put up the Goodyear signs?

A. No, I don't believe I requested it.

Q. Beg pardon?

A No, I don't believe I did request it.

Q. You made no request. Did they just come around and take down the Lee-Exide and put up the Goodyear?

A. Yes. They do that quite frequently with promotions. Our Atlantic salesmen and Goodyear salesmen come around and put up different tire sales signs. In fact, they even come and take them down.

Q. You are talking now about Goodyear signs?

A. Yes.

Q. Now, I would like to go over with you the circumstances which led up to your discontinuing Lee tires and beginning to handle Goodyear tires and other Goodyear products. Do you recall specifically how you first learned about the fact that Atlantic was going to sponsor Goodyear TBA?

A. I believe we first received a letter from Atlantic

explaining that they were going out of the TBA business and we would be able to get supplies and tires from Goodyear Tire and Rubber Company. I think that was followed by a meeting at the Arlington Hotel.

Q. What happened at the Arlington Hotel?

A. Well, there was a discussion and display of
2785 Goodyear products and it was explained to us how it would be to our benefit to handle Goodyear tires and TBA.

Q. Now, who were present at the Arlington Hotel meeting to which you refer?

A. We were Atlantic employees as well as Goodyear.

Q. Was the Atlantic district manager there?

A. Yes.

Q. Was the Goodyear district manager?

A. Yes.

Q. Were all the Atlantic dealers in the Binghamton area present to your knowledge?

A. I believe they were.

Q. Was it made clear to you at that time that Atlantic would like to have you carry Goodyear TBA?

A. Yes, it was.

Q. Was it made clear to you that Atlantic expected you to carry TBA?

A. No, I don't believe there was anything said that they expected us to but I think they explained that it would be to our benefit to handle Goodyear products.

Q. Did Atlantic make it clear to you that you were supposed to handle Goodyear TBA?

A. No.

Q. Now, I would like to discuss the signed statement you referred to in your direct examination. You
2786 stated that Mr. Lipsky spent about two hours with you?

A. Yes.

Q. So you recall that discussion very well?

A. Yes.

Q. And you also recall that you read the statement, do you not?

A. Yes, I did read it before I signed it.

Q. To your knowledge and belief, the statements appearing thereon were truthful, were they not?

A. Yes.

Mr. Kelaher: Mr. Examiner, I would like to have the reporter mark for identification the document which I hand her as CX-483, which I believe is the next number.

Hearing Examiner Kolb: Exhibit 438 is the next one.

(The document referred to was marked Commission's Exhibit 483 for identification.)

By Mr. Kelaher:

Q. Mr. Cooley, I am going to show you Commission's Exhibit 483 for identification and ask you to state what that is?

A. (After inspection.) I believe this is a statement that I gave Mr. Lipsky in 1951.

Q. 1953?

A. 1953, I'm sorry.

Mr. Kelaher: Your Honor, I now offer in evidence Commission's Exhibit 483, which is a statement of
2787 Russell E. Cooley dated December 8, 1953, bearing his signature and also the signature of Henry I. Lipsky, Attorney Examiner, Federal Trade Commission.

Mr. Thompson: May I have the purpose of the offer?

Mr. Kelaher: The purpose of the offer is to abide by the Hearing Examiner's ruling in our Baltimore hearings. As I recall it, if I were to interrogate the witness on the signed statement for any purpose, it should be offered in evidence. That is the reason I am doing it at this time.

Mr. Thompson. On that basis and for the reasons stated

by Mr. Kelaher, I have no objection. May I ask the witness whether he can read this writing because I can't.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 483.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 483, was received in evidence.)

Mr. Thompson: This is in the nature of a voir dire question.

Hearing Examiner Kolb: You said no objection.

Mr. Thompson: I just wanted to ask one voir dire question. This stuff is not in your writing, is it?

The Witness: No, it isn't.

Mr. Thompson: Can you read it? Can you read the fellow's writing?

2788 The Witness: There are parts of it that I can't quite make out.

By Mr. Kelaher:

Q. At the time Mr. Lipsky prepared this statement, he conferred with you for about two hours and he went over everything in the statement with you, did he not?

A. Yes, he did.

Q. At the time you knew everything that was in the statement and you could read the statement and it was discussed with you at length, isn't that true?

A. That is right.

Q. If there were any additions or corrections, you were asked to make them at that time, isn't that correct?

A. Yes.

Q. Now, Mr. Cooley, on direct examination today, you stated that you do not stock any batteries but Exide, is that correct?

A. That is correct. I believe there is one Goodyear battery in the station at the present time.

Q. Now, you also stated on cross-examination that has been the situation since Atlantic changed over to Goodyear TBA in 1951?

A. Yes, and that was the situation before. Exide has been the only battery I have stocked.

Q. Now, in your signed statement, under two
2789 brands of TBA carried, you have batteries, "Goodyear and Exide (only stocks cheap battery, formerly Resolute, now All Weather.)" Now, both the Resolute brand name and the All Weather brand name are brands of the Goodyear Tire and Rubber Company, isn't that correct?

A. Right.

Q. So your statement on direct that you never stocked Goodyear batteries is wrong, isn't it?

A. There was a time when they first came out with dry charge batteries and Goodyear Tire and Rubber were the first ones to come out with a dry charge battery where the acid is shipped separately and because of storage problems, I bought a few Goodyear batteries at that time. Exide at that time had not come out with dry storage batteries.

* * * * * *

Mr. Thompson: May I also suggest, Mr. Kelaher, when you examine a witness with respect to a statement
2790 in Mr. Lipsky's handwriting, which he was induced to sign, that you show it to him.

Mr. Kelaher: I object. I don't understand your frivolous statement. I not only showed it to him, he has read it and there is nothing in this record to indicate he was induced to sign it. He has read the statement carefully. I gave him all the time he wanted to read.

Mr. Thompson: When you ask questions about this statement, I would appreciate it if you would show the witness the document to which you are referring and the

part to which you have reference and are quoting. If you don't want to adopt the suggestion, I will just object when you follow some other practice.

Mr. Kelaher: You just keep objecting. I am not going to adopt it.

Mr. Thompson: I will start objecting when you get out of bounds like I always do.

Mr. Kelaher: I am just attempting to get the facts here and there is no attempt to embarrass the witness. If there is a conflict in his testimony, I think we are entitled to show it.

By Mr. Kelaher:

Q. Now, you also stated on direct examination that you purchased from a number of suppliers and that you purchased very few accessories from Goodyear, is that correct?

2791 A. Yes, I do purchase a few however from Goodyear too.

Q. You do purchase a few. And what products have you purchased from Goodyear Service Store since March 1951?

A. Well, I have purchased Purolator oil filters.

Q. Do you stock Purolator oil filters?

A. Yes, I did. However, I don't purchase my oil filters from them at the present time. I believe they handle AC filters now. I do have Purolator filters in stock.

Q. But you have purchased from Goodyear on a stocking basis in the past?

A. Yes.

Q. Now, what other accessories have you purchased from Goodyear Service?

A. I believe Simonize products and DuPont products, polishes, DuPont chemicals.

Q. Have any of those been purchased on a stocking basis?

A. Yes, they have. Sometimes they come up with a spring deal.

Q. So your statement that you only make a few purchases of accessories from Goodyear Service Stores, I believe, is slightly understated, is that correct?

A. No, I would say just a few.

Q. Even though you purchase items on a stocking basis?

A. Have occasionally. Most of my TBA is purchased from salesmen who come to the station and I don't
2792 particularly buy from any certain one. It is whatever I happen to need when a certain salesman comes along.

Q. Now, at the time of December 1953, when Mr. Lipsky called at your station, the only other TBA supply of accessories that you mentioned was Whipple's Auto Supply, is that correct?

A. That is possible.

Q. At that time you didn't mention this whole list of TBA jobbers you referred to in your direct testimony, is that correct?

A. It is possible I was buying only from Whipple's because Whipple is the nearest supply house to my station.

Q. So at that time, you were purchasing accessories from Goodyear Service Store and from Whipple's Auto Supply and from no one else?

A. I don't believe that is true. I think I had on occasion purchased from these other houses I mentioned.

Q. On occasion, but your purchases were very few from the other houses?

A. Very few.

Q. Now, I would like to discuss with you the events leading up to your changeover to Goodyear TBA. In your signed statement, reference is made to the fact, and I will show you this part of your statement, under 5, and ask you

if that refers to the meeting at the Arlington Hotel to which you referred in your testimony. I quote:

2793 "In 1950, ARC District Manager introduced District Manager for Goodyear, explained that ARC going out of TBA business."

Was that the Arlington Hotel meeting?

A. Yes.

Q. Then the next sentence: "Mr. Russell, ARC salesman together with Goodyear representative would like to see Goodyear TBA." Was that statement made at the meeting or was that made later individually with you, do you recall?

A. I would imagine that statement was made later as Mr. Russell was my salesman.

Q. He was your salesman?

A. Yes.

Q. He, together with a Goodyear representative, called on you, is that correct?

A. I believe it is.

Q. They discussed the situation with you?

A. Yes.

Q. And at that time Mr. Russell said that they would like to see you go Goodyear, is that right?

A. Correct.

Q. Did the Goodyear representative also say that, do you recall?

A. Yes, I would imagine he said he would like to see us handle Goodyear.

* * * * *

2794 By Mr. Kelaher:

Q. Let me put it this way. On direct examniation, you gave a number of reasons why you changed from Lee-Exide, and so on to Goodyear TBA. Do you recall your answers on direct?

A. Yes.

Q. You referred to such things as quality, advertising, public acceptance and the fact that they had a large stock available and so on. Wasn't the real reason the fact that you knew that in order to remain in the good graces of Atlantic, it was to your advantage to carry Goodyear TBA?

A. No, I don't believe that was true at all. I think what I said, we were supposed to handle Goodyear. I think what I meant there by the word "supposed" is the fact that all Atlantic stations were soon to be associated with
2795 Goodyear Tire and Rubber and in order to benefit by the advertising and the name "Goodyear," the public acceptance of the name "Goodyear," it would be to my benefit to handle Goodyear batteries.

Q. Now, as I understand your answer now, you knew that all of the Atlantic stations in the Binghamton area were going to switch over to Goodyear TBA?

A. I didn't know they were going to but I knew that they were going to be offered Goodyear products and tires and that the majority of them were going to handle Goodyear Tire and Rubber.

Q. That is exactly what happened?

A. Yes, that is what happened.

Q. Now, you also state in your signed statement that you make reference to a survey. Do you recall that at the time? The statement on this signed statement says:

"Survey conducted ARC that Goodyears was more favorable." Do you recall any statements by Atlantic to you that Goodyear was more favorable to Atlantic dealers than other brands? Do you recall that statement?

A. I don't recall the exact statement. I think it was brought out in meetings.

Q. What did they say about the survey, do you recall that?

A. I believe they said they had a survey in the State of Pennsylvania—

2796 Q. (Interposing.) Which was Atlantic?

A. Yes, and that I think Firestone Rubber and Goodyear were considered in our area and they found that Goodyear had better acceptance than Firestone.

Q. Did they ever ask you which one you preferred?

A. Yes, I believe they have asked me my thoughts along the line, and I have told them Goodyear.

Q. Was this prior to 1951?

A. I can't say for sure.

Mr. Kelaher: May I have a short recess, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

2797 Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. Mr. Cooley, prior to Atlantic's switch over to TBA, you carried Lee tires on a stocking basis, did you not?

A. Yes.

Q. And that means you carried them from about 1947 to sometime in '51, over four years, approximately?

A. That is right.

Q. Lee tires have a good consumer acceptance in your area, do they not?

A. Yes, very good.

Q. And did Lee tires have a road hazard guarantee, which is particularly acceptable, isn't that true?

A. It is very attractive. That was one of the things I felt bad about when we left Lee tires was the fact we were giving up the road hazard guarantee. Goodyear guaranteed against workmanship and material. Since that time, I have found in the past five years I have had three tire adjustments on Goodyear tires.

Q. Three what?

A. Tire adjustments. At the time we were handling Lee tires I found we had a tire adjustment everyday.

Q. You had no trouble getting adjustments on Lee?

A. No, the tire I replaced the chances were in a
2798 short time I would be adjusting that.

Q. But the fact is that Lee does have good consumer acceptance and Lee is also advertised in your market area, too, isn't it?

A. So.

Mr. Thompson: I object to the double questions, Mr. Kelaher. I don't know which one he is answering. You asked about advertising and you also asked about public acceptance in the same question. It is impossible to tell which question he is answering when you ask a double question.

Mr. Kelaher: I will rephrase it. I think the witness understood it, but I will rephrase it.

By Mr. Kelaher:

Q. Lee tires are advertised in your market area, too, are they not?

A. They are, but I will say since Atlantic has changed to Goodyear—

Q. (Interposing.) I am just asking you. Well, you go ahead, finish your sentence.

A. I wanted to say since Atlantic has changed to Goodyear, Lee tire has become almost extinct in my area.

Q. Thank you.

And, of course, prior to when Atlantic was carrying Lee tires, Lee tires were a big seller in your area?

A. They were as far as Atlantic was concerned.

2799 Q. Now, was it also true that you could get a lower price on Goodyear tires?

A. There may be some instances where the price is a little lower on Goodyear, but I think they are comparable.

Q. Now, you also stated one reason you preferred Goodyear versus Lee was due to quality. You don't profess to be an expert on the quality of the tires, do you?

A. No, I don't, but I believe that the Goodyear tire is a much better tire.

Q. In your own opinion.

A. In my own opinion after 10 years of experience in the tire business.

Q. But, Lee also puts out a tire which is comparable to Goodyear as to line, do they not?

A. Yes, they do.

Q. Now, weren't you able to purchase Lee tires from Mr. Buongiorne after Atlantic discontinued the Lee program?

A. Yes, I was, and did on occasion.

Q. So that you did have a stock available if you wanted them?

A. Yes, sir.

Q. So you did state on direct examination that one reason you preferred Goodyear was because they had a large stock available. But you also had a stock available of Lee, is that true?

A. Yes, but the Goodyear service stock was much 2800 larger and more varied than Frank Buongiorne's was.

Q. Of course, there was also a Lee factory branch in Syracuse, I believe, where you could have obtained them; is that true?

Mr. Thompson: Just a minute. Mr. Kelaher is—

Mr. Kelaher (interposing): I also believe there was a Lee factory branch in Syracuse, New York, where he could have obtained Lee tires.

The Witness: Yes, there was. I don't know whether it is still there or not.

By Mr. Kelaher:

Q. There was at the time, but there is a change over?

A. Yes.

Q. Now, have you had any difficulty since you changed to Goodyear tires competing with the Goodyear service store?

A. No, I have not.

Q. Well, I would like to refer you to this statement in your signed statement.

Mr. Thompson: Would you be kind enough to show it to him, Mr. Kelaher?

(The document was shown to the witness.)

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. I would like to read the statement that he can't match the competition of Goodyear service store. Recently Lee wanted to sell Links Aviation Company some 2801 truck tires, but Goodyear store quoted Links a better price than the dealer could offer. His list was $59.00; Store sold for $60.00, almost as cheap as he could buy tires from the Store. Do you recall that?

A. Yes. I think that is true on a fleet such as Links would have. The Goodyear store does give them a fleet price.

Q. So you do have difficulty competing with the Goodyear service stores in some instances or it is in many instances?

A. No, I would say that is an isolated case. Evidently, I did have trouble with that case.

Q. Do you think that was somewhat unfair that your purchase price was about the same as Goodyear's selling price?

A. Well, I think probably they are selling Links tires at a free price, the same price as they would sell them to me as far as that is concerned.

Q. The point is the Goodyear service store is in competition with you for business, is it not?

A. Yes, that is true.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Thompson.

Q. Did you object to the installation of a Goodyear decal on your station?

A. No.

Q. Did you consent to it?

A. Yes.

2802 Q. You were not requested or subpoenaed to appear in this proceeding as a witness for the Federal Trade Commission, were you, sir?

A. No.

Q. I can readily understand why, sir.

Mr. Thompson: That is all.

Recross Examination by Mr. Kelaher.

Q. With respect to the service station identification, I believe you did testify, and your statement so shows that they did not ask your permission, neither Atlantic nor Goodyear asked your permission to put up the Goodyear window decals, did they?

A. I don't know as they asked my permission. They told me that they were going to put them up. I think if I had objected that they wouldn't have put them up.

Q. However, according to your statement, they did not ask your permission and at least they went up; is that correct?

A. Yes, they went up. But I was present at the time, and if there had been any objection, I certainly would have told them.

Mr. Kelaher: No further questions.

Mr. Thompson: Thank you, very much, Mr. Cooley.

(The witness withdrew from the stand.)

Mr. Thompson: I will find Mr. Buongiorne. He is
2803 our next witness.

Hearing Examiner Kolb: We will take a few minutes recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, may I call Mr. Frank R. Buongiorne to the stand.

FRANK R. BUONGIORNE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give your full name to the court reporter, please?

A. Frank R. Buongiorne.

Q. What is your residence address?

A. Three Watson Avenue, Binghamton, New York.

Q. Mr. Buongiorne, as you know, I was here representing the Atlantic Refining Company with Mr. Gordon, whom you have also met. On his left is Mr. Ingraham, who represents the Goodyear Company, and the distinguished gentleman on my right is Mr. Kelaher, who represents the Federal Trade Commission.

Now, you, sir, are an Atlantic lessee of the station
2804 in the Binghamton area?

A. Yes, sir. 638 Chenango Street.

Q. I believe, sir, that you have had that same station since about 1945?

A. Yes, sir. March, I believe, '45.

Q. And at first you were a lessee with a partner, Mr. Gay?

A. No, sir, I wasn't. At first I leased the station in my own name, because at that time Atlantic did not lease to a partnership. A little later on it was changed to a partnership lease, and we were partners for quite some time after that.

Q. What was the name of the partnership?

A. Buongiorne and Gay.

Q. G-A-Y?

A. Yes, sir.

Q. I think, sir, there are two Gay's in your area, are there not?

A. Yes, it gets confusing.

Q. Which Mr. Gay was your partner?

A. Frank Gay. Frank E.

Q. And that partnership continued until about 1957?

A. October 1st, sir; yes.

Q. And since that time he has withdrawn from the partnership and taken another Atlantic station?

A. No, sir.

Q. He is not in the business anymore?

2805 A. He is working for another Atlantic dealer. I bought him out in October.

Q. You bought him out?

A. Yes, sir.

Q. Since October of '57 you have again been the sole lessee of the station?

A. That is right, sir.

Q. Now, before you took the station in 1945 what had been your prior experience? Had you been a service station operator before?

A. Before I took this Atlantic station?

Q. Yes.

A. Yes, sir. I had at one time leased in a partnership

agreement with Mr. Gay I spoke of before. I had previously leased at one time two Esso stations. Previous to that I had leased an Esso myself, and previous to that I had an Amoco station.

Q. Did you serve during the war in the armed forces?

A. Yes, sir. Eighth Air Force.

Q. And except for that interval during the war, have you been in the service station business since about 1934?

A. I would say with the exception of about six months when I had to go into another business to get even.

Q. That was when? Before the war?

A. Previous to the war I was sort of young, at 2806 least that is the excuse I make for myself, and I did go broke and in order to get clear and be able to go back into business, I took other employment and straightened with Esso, and the facts bear themselves out because after that I re-leased from them.

Q. After that you went with Atlantic?

A. Well—

Q. (Interposing.) After the war?

A. Yes, sir. Right after the war, with Atlantic.

Q. And you say you have never gone broke working for Atlantic, have you?

A. No, sir.

Q. Now, in the operation of your present Atlantic station before 1951, did you carry TBA?

A. Certainly.

Q. What brands of tires did you carry before 1951?

A. Before '51 I believe I carried Lee tires exclusively.

Q. Did you carry Exide batteries at that time?

A. Yes.

Q. Do you recall the time about 1951 when Atlantic ceased to market Lee tires and Exide batteries and commenced to promote and sponsor the Goodyear TBA line?

A. Yes.

Q. Do you recall attending any dealer meetings about 1951 where the Atlantic change-over was explained?

2807 A. Yes, sir, very well.

Q. Do you recall generally what happened at that meeting and can you describe to us what was said to the dealers about the change-over?

A. Yes, I think I can. It was held in the Arlington Hotel in the Binghamton. It was a dinner meeting, as I remember it, and the entire program was presented, and we were briefed on the reason that Atlantic was going out of the TBA business—the thing that comes to my mind was transportation, etc., distribution—

Q. (Interposing.) I couldn't hear you.

A. I say we were briefed on the reasons Atlantic had gone out of the TBA business, and it comes to my mind that it was a transportation problem, distribution, and so on, and that the Goodyear program was made available to us, and I believe at that time one of the reasons that it was made available, stock, supplies, at that time, was a little tough to procure stock.

Q. Tires, particularly?

A. Yes, tires particularly, and in view of the fact that most of us, I say most of us, I should say myself, I was buying a good deal of my inventory from Atlantic—

Mr. Kelaher (Interposing): Your Honor, excuse me. I would just like to have an answer to the question, and he just asked him what transpired at the meeting, as

2808 I understand it.

Mr. Thompson: He is explaining the background.

By Mr. Thompson:

Q. Have you finished your explanation?

Mr. Kelaher: He is getting into what he did at his service station. I think we should stick to the meeting first and then go into this later.

By Mr. Thompson:

Q. Have you finished what went on at the dealer meeting, Mr. Buongiorne?

A. No, what I wanted to tell you, point out why it was made available to us, because I couldn't at that time go out on the market and buy exactly what I wanted. Without a supplier I think I would have been in tough shape at that particular time. That is all.

Q. Yes, sir.

Mr. Kelaher: I don't think that is responsive to the question.

Mr. Thompson: Totally responsive to the question that I asked him.

Mr. Kelaher: I thought you asked him what transpired at the meeting.

Hearing Examiner Kolb: Objection overruled. Let's go ahead.

2809 By Mr. Thompson:

Q. Mr. Buongiorne, was it made clear to you at that meeting that you could take the Goodyear program or leave it, that it was a voluntary program so far as all of you dealers were concerned?

A. Yes, the program was available to us.

Q. Now, following the Atlantic change-over to the promotion of Goodyear TBA, did you continue to handle Lee tires?

A. Yes, sir.

Q. Have you been a Lee tire distributor for a number of years, Mr. Buongiorne?

A. Since the date of the Atlantic change-over, I have been a distributor in that area, yes, sir.

Q. Did you procure a distributorship from Lee at the time of the change-over?

A. I did.

Q. And you are still a Lee tire distributor?

A. Yes, sir, both wholesale and retail.

Q. Before I ask any further questions about that, I should like to ask you whether you recall having received from the Atlantic Refining Company a document which has been identified on this record as CX-150, dated March 1, 1951, from Mr. Colley, the vice-president of the Company (handing document to the witness). Take a good look at that and let me know whether you recall receiving it, will you?

2810 A. Yes, sir. I believe it is in my files at home.

Q. And did you also receive a document identified as CX-206, which is a letter from Mr. Colley, dated August 28, 1952 (handing document to the witness)?

A. Yes, sir; I remember this one specifically.

Q. And do you recall also receiving another document identified as CX-207, dated June 24, 1955, from the Atlantic Refining Company, in the form which I now show you that is signed by someone other than Mr. Estlow (handing document to the witness)?

A. I had this one, but it seems to me that it came from Mr. Ostrander.

Q. And he was the Atlantic region manager in New York?

A. Syracuse, sir.

Q. With headquarters at Syracuse?

A. Yes, sir.

Mr. Thompson: I ask that this document be marked for identification as Atlantic's Exhibit 12.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 12 for identification.)

Mr. Thompson: And also a second document to be identified as RX-A-13.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 13 for identification.)

2811 By Mr. Thompson:

Q. Mr. Buongiorne, have you from time to time sold TBA on credit at your station to your customers?

A. Yes, sir.

Q. And by on credit I mean your personal credit.

A. Yes, sir.

Q. I show you a document which has been identified as RX-A-12, headed "Buongiorne and Gay" and ask you whether during your partnership with Mr. Gay this was the form of bill used by you in rendering statements to your TBA customers (handing document to the witness)?

A. Yes, sir.

Q. Was that form of document in use by you for some years before 1957?

A. As long as Mr. Day and I were in business we had that form.

Q. And did your form of bill head always include the advertising for Lee tires and Exide batteries, which is shown on this paper?

A. Yes, sir.

Mr. Thompson: I offer in evidence RX-A-12.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: Let it be received in evidence as Respondent's Exhibit A-12.

2812 (Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 12 for identification, was received in evidence.)

By Mr. Thompson:

Q. After Mr. Gay withdrew from the firm and you continued yourself under the name of Frank R. Buongiorne, did you use RX-A-13 as the form of your own personal bill to your TBA customers (handing document to the witness)?

A. Yes, sir.

Q. And since October of '57 has your bill head always contained the advertisement for Lee tires and Exide batteries which appears on A-13?

A. That is right, sir.

Mr. Thompson: I offer in evidence RX-A-13.

Hearing Examiner Kolb: Any objection, Mr. Kelaher?

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-13.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 13 for identification, was received in evidence.)

By Mr. Thompson:

Q. Do you from time to time advertise Lee tires in other manners by so-called give-a-way pieces?

A. Yes, sir; we have a cooperative deal with Lee 2813 on advertising.

Q. Including a—

A. (Interposing.) That is a rain hat, I believe, sir.

Q. Including a rain hat, which is contained in a little colored envelope marked with your name?

A. Yes, sir.

Q. And also the Lee tire name?

A. That is right.

Q. Are you listed in the Binghamton classified telephone book as a Lee distributor?

A. Yes, sir.

Q. And have you been so listed, either you, yourself, or your partnership, Buongiorne and Gay, for many years?

A. I couldn't give you the dates, sir, but as long as I can remember, I would dare say ten years without exaggeration.

Q. Are you still handling Lee tires?

A. Absolutely.

Q. Have you continuously handled Lee tires since you opened this station as lessee back in '45?

A. Right from the beginning.

Q. Do you also handle some Goodyear tires?

A. Certainly.

Q. And any other brand that your customers want?

A. Yes, I have Goodrich, Royal.

Q. You stated that prior to 1951 you were handling
2814 Exide tires at your station.

A. Exide batteries, sir.

Q. Exide batteries at your station.

A. Previous to '51.

Q. Yes?

A. Yes.

Q. Did you continue to handle Exide batteries after 1951?

A. I handled them right up to date, yes, sir.

Q. Do you also handle some Goodyear batteries?

A. Probably handle more Goodyear than Exide right at the present time, yes, sir.

Q. Which has better acceptance in your area so far as batteries are concerned, Goodyear or Exide?

A. Are you talking in relation to price, sir?

Q. No, I am talking about customer acceptance, which do you have more demand for at your station?

A. Goodyear.

Q. Going back to tires for a moment, do you still have demand in your area for Lee tires, customer demand?

A. Yes.

Mr. Kelaher: Could I have that question. The truck made a noise.

(The reporter read the question and answer.)

By Mr. Thompson:

Q. What source do you use for accessories at your
2815 station, Mr. Buongiorne?

A. All local wholesalers in the Binghamton area. Do you want the names of them, sir?

Q. Would you mention a few, please, sir?

A. I buy from Whipple's Auto Supply, Rose Unit Parts, United Auto Parts, Auto Supply Distributing, all car dealers' parts requirements in some cases, that would be Buick, Chevrolet, and so on. Actually, it is a case of the salesman that is there when you need something. I don't have any, you know, set deal with anyone, actually.

Q. Do you also from time to time buy accessories from Goodyear?

A. Oh, certainly. His chances are as good as the next fellow's if he is there at the right time.

Q. Is the non-sponsored TBA, that is to say, the non-Goodyear TBA, which you carry at your station, openly displayed?

A. I don't understand you.

Q. Do you keep it right out in the open, all these Lee tires and Exide batteries and non-Goodyear accessories so anybody can see them?

A. I couldn't sell them if they couldn't see them. Yes, sir.

Q. Have you got any Lee and Exide signs on your station?

A. I have, I believe, two Lee signs, one Exide. I am not much on signs at my station to be truthful with you. I try to keep it uncluttered because it is one of those things
2816 that will grow. But I do have, I believe, those three exterior signs.

Q. Do you have a Goodyear decal on the window?

A. Around the top, yes, sir.

Q. Do you sell non-Goodyear TBA to holders of Atlantic credit cards?

A. Do I sell other than Goodyear TBA to holders of Atlantic credit cards?

Q. Yes.

A. Yes.

Q. Have you always done that?

A. I never gave it a thought to be truthful with you, but I assume we have, yes.

Q. Well, nobody from Atlantic has ever criticized you for selling any kind of TBA on an Atlantic credit card, have they?

A. No.

Q. In addition to Goodyear, are you solicited by other tire manufacturers?

A. Yes, quite regularly.

Q. Can you name a few of them?

A. Oh, Cooper tires, Dunlop, some of the ones I mentioned previously that I do buy solicit regular with the idea of stocking their brand, you know, more or less be a stocking dealer because, naturally, the chances of the product moving would be greater, but I don't actually
2817 stock anything but Lee and Goodyear.

Q. And buy anything else that any customer wants, I suppose?

A. Yes. If a person specifically wants a brand, why, we will buy them for them.

Q. Has Atlantic ever criticized you for being a Lee distributor?

A. To the best of my knowledge, no, sir.

Q. Have they ever told you to stop dealing in Lee tires or Exide batteries or any of these other non-sponsored TBA items?

A. No.

Q. Have they ever told you to hide them or get them out of your station?

A. As far as I know, no, sir.

Q. I mean, have they?

A. Why, no.

Q. Have they ever tried to put pressure on you or to force you to buy Goodyear TBA?

A. No way whatsoever, sir.

Q. Have you always felt free to handle any brands of TBA you liked?

A. I do. I still do. Yes, sir.

Q. And do you, in fact, handle any brand of TBA you like?

A. Whatever I can make a dollar on that is what I handle.

Q. And your lease has been renewed many times 2818 since you started as an Atlantic lessee?

A. Yes, sir.

Q. Upon the occasion of lease renewals has anybody ever tried to hold against you the fact that you deal in these non-sponsored TBA items?

A. No.

Q. The subject never mentioned?

A. No, sir.

Q. Your station is in a pretty competitive area, is it not, Mr. Buongiorne?

A. I can't answer with a Yes or No, sir.

Q. Well, really all I am interested in is this: have you from time to time had opportunities to take stations from competitors in the Atlantic Refining Company?

A. Yes, sir.

Q. A number of such chances over the years?

A. Quite a few of late, especially, yes.

Q. Why do you stick with Atlantic in view of the offers of competitors?

A. Why do I stick with them?

Q. Yes.

A. Well, I have always had what I considered a very nice relation with them. I have always made a very good living, and as far as I am concerned, I intend to stay with

them until I cease doing anything, which I hope isn't
2819 too far in the future.

Q. I suppose the Atlantic representatives inspect your station from time to time?

A. Inspect the station?

Q. Yes.

A. Yes, sir.

Q. Then, do they later discuss with you the results of the inspection?

A. Yes, sir.

Q. On such occasions the fact that you carry large quantities of non-Goodyear TBA, has that ever been brought up in a critical sense?

A. Not with the inspection. It is cleanliness, orderliness, and so on.

Q. It has nothing to do with TBA brands?

A. No, sir.

Q. Once a year or so, does the Atlantic sales supervisor discuss with you ways of increasing your business and your profits in a kind of an annual review?

A. Yes, sir, in the annual review. That is right.

Q. Is there any emphasis in those reviews about the brand or kind of TBA that you are carrying at your station?

A. No, sir.

Q. They, of course, are interested in your selling TBA, are they not?

2820 A. In a balance selling sense.

Q. Yes, sir. Now, are you one of the gentlemen in your area who was honored by a visit from Mr. Lipsky?

A. Yes, sir.

Q. Was that back in 1952 or 1953?

A. I couldn't tell you sir, but I do remember that he was there.

Q. A number of years ago?

A. Yes, sir.

Q. Do you recall him as a person? Would you know him if you saw him?

A. I wouldn't, no.

Q. Did he ask you a lot of questions about TBA, do you remember?

A. Actually I am not clear on what the man asked me. I remember he was there, and I remember talking to him, and it runs in my mind that I did at the time show him the entire setup there, the stock, displays and so on, and so forth, but actually it is vague, really it is.

Q. Do you remember whether he wrote things down on a piece of paper while he was talking to you?

A. I believe he took notes all the time I was talking to him and it runs in my mind, and this I can't say for sure, I signed the thing when he finished.

Q. That you signed some kind of a paper which 2821 he had written up?

A. Yes, sir. I think I did.

Mr. Thompson: Thank you, very much, sir. That is all the questions I have at this time.

Mr. Ingraham, representing Goodyear may want to ask you some questions, or Mr. Kelaher may.

Have you any questions, Mr. Ingraham?

Mr. Ingraham: I have no questions.

Hearing Examiner Kolb: You may cross-examine.

Mr. Kelaher: May I have a minute, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Buongiorne, I want to go over your direct examination to see that we have some of these matters clear. I don't think it has been established yet when your partnership began with Mr. Frank E. Gay. Do you recall the approximate time when you became a partner with Mr. Gay?

A. Could I ask Mr. Detweiler a question?

Q. You go right ahead. Who is Mr. Detweiler?

The Witness: Do you know when Atlantic's policy 2822 went into effect?

Mr. Detweiler: Frank, I think it was—I know it was after I came down there. I came down in '52, and I am guessing now, I think it was around '54, early '54, regarding partnerships you are referring to?

The Witness: It was a matter of form, sir, and I had no reason to—

By Mr. Kelaher:

Q. (Interposing.) I am just trying to get some facts clear. You said that at first you leased the station in your own name, but at that time was Mr. Gay your silent partner? I am trying to get the facts.

A. No, sir. I see where that is confusing. At the time I leased the service station originally from Atlantic Refining Company, Atlantic would not lease to a partnership. They would lease only to one person; so, I held the lease. My partner and I had a legal partnership, registered in Broome County as partners, but the lease was in my name.

Q. And that continued until Atlantic permitted partnership leases?

A. At that time when our new lease came up, which was periodically, we had it in both names.

Q. You say that is about 1954?

A. I would say that is what Mr. Detweiler says. I can't say for sure.

2823 Q. Now, going along on your direct examination, I would like to check some of these items with you. You said that before 1951, that is before Atlantic began to sponsor Goodyear TBA, you carried Lee tires exclusively, correct?

A. Yes, sir.

Q. And did you also carry Exide batteries exclusively?

A. Not exclusively on the Exide batteries, sir. I did carry them, and it was my major battery, yes, sir.

Q. And did you purchase accessories through the Atlantic program at that time?

A. Yes, sir.

Q. Now, do you recall on your direct examination that you were asked about the Atlantic dealer meeting at the Arlington Hotel?

A. Yes, sir.

Q. In Binghamton, I presume?

A. Yes, sir.

Q. And at that time in connection with that testimony you stated that it was made clear to you that you could take the Goodyear TBA program or leave it, in effect; is that right?

A. Yes, sir.

Q. You could take it or leave it?

A. Yes, sir.

Q. You were under no pressure whatsoever?

A. No, sir.

2824 Q. And I think along those lines you have testified that you have been as free as the air, so to speak, to handle whatever TBA you wish?

A. Yes, sir.

Q. You have been under no pressure whatsoever from

Atlantic during any of this time that we are discussing, isn't that true?

A. That is true, sir.

Q. And specifically when Atlantic changed over to Goodyear TBA plan, you have been under no pressure whatsoever from Atlantic to handle Goodyear TBA?

A. No pressure, sir.

Q. No pressure, and they have committed no acts or made no statements or done anything which would lead you to believe that they wanted you to handle Goodyear TBA; is that correct?

A. Other than in a selling job that a salesman—any salesman would do, yes, sir.

Q. Yes, sir. Now, you also have sold any brand of TBA you desire on Atlantic credit cards; is that true?

A. Yes, sir.

Q. And you have never had any problem in connection with that?

A. Not a bit, sir.

Q. Now, you also testified that Atlantic never criticized you for being a Lee distributor, correct?

2825 A. That is right.

Q. And they never told you to hide Lee tires, and this applies also to the fact that you carry Exide batteries?

A. Yes, sir.

Q. They never asked you to hide Lee or Exide or get them out of the station; is that correct?

A. That is correct, sir.

Q. You also stated on direct examination that you have two Lee signs and one Exide sign on your station; is that correct?

A. I believe it is, sir. Yes, sir.

Q. And have those signs been there since Atlantic began to sponsor Goodyear TBA, were they placed there since Atlantic began to sponsor Goodyear TBA?

A. They have been there as long as I have been in that building which is a comparatively new building, I would say five years. They were also on the old building as far as that goes, but—

Q. Was there ever a time when Goodyear TBA signs were put up in your station?

A. Yes, I have one Goodyear sign and Goodyear decals around the top of the windows in the showroom, office.

Q. And did you at one time have Lee window decals or Exide window decals?

A. Never had, sir, that I can remember.

2826 Q. Did you ever have Lee or Exide sign, outdoor sign?

A. I have a Lee—an Exide outside sign now, and have always had—and I did have an Exide electric sign in my side window at one time. It was a clock afair, you know, that said Exide on it.

Q. Now, when Atlantic put up the Goodyear or when the Goodyear—what were the circumstances leading to the placing of the Goodyear TBA signs in your station? Did you have any objection to Atlantic putting those signs up?

A. Atlantic didn't. Goodyear did. And I had no objection other than the first time they put them up. I wasn't quite ready for them yet, the building was new, we hadn't cleaned it and so on and so forth; so, they came back at another time and put them on.

Q. Now, Mr. Buongiorne, I would like to ask you a few questions about the time that a gentleman from the FTC called on you.

A. Yes, sir.

Q. We have Mr. Henry I. Lipsky in the room with us, and I would like to have him stand and ask you if that refreshes your recollection as to the gentleman who called on you.

(At this point Mr. Lipsky stood.)

A. I have been looking around the room trying to remember the man. I just didn't remember him. Maybe it is the glasses. I do now. Yes, sir.

2827 Q. You do now?

A. Yes, sir.

Q. That is fine. You also remember that he talked at length with you at the time of his visit, isn't that true?

A. It seems to me he was there quite a while, yes, sir.

Q. Quite a long time, and at the time he made notes which he showed to you, isn't that correct?

A. I believe so, yes, sir.

Q. You believe it is. And isn't it also true that he asked you to read the statement which he showed to you and thereafter asked you to sign it?

A. I would imagine so. I wouldn't have signed it if I hadn't—

Q. (Interposing.) You would not have signed it if you had not read it?

A. Right.

Mr. Kelaher: At this time, your Honor, I ask that the document I hand the reporter be marked as CX-484.

(Whereupon, the document referred to was marked Commission's Exhibit 484 for identification.)

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. Mr. Buongiorne, I am going to show you Com-

2828 mission's Exhibit 484 for identification and ask you to state whether or not that is the statement which was signed by you on December 8, 1953, at the time of Mr. Lipsky's interview.

A. May I read it sir?

Q. Sure, go right ahead.

(The document was handed to the witness.)

Mr. Thompson: Take your time, Mr. Buongiorne.

By Mr. Kelaher:

Q. Is that the statement that you signed?

A. I believe it is to the best of my knowledge, yes, sir.

Mr. Kelaher: Mr. Examiner, at this time I offer Commission's Exhibit 484 into evidence.

Mr. Thompson: This is going into the evidence on the same basis, for the purpose of assisting you in cross-examination and not as substantive evidence?

Mr. Kelaher: It is going into evidence for all purposes, including the truth of the statements made therein, period.

Mr. Thompson: I, of course, object to it on that basis, your Honor.

Mr. Ingraham: We also object, your Honor.

Hearing Examiner Kolb: The objection will be overruled, and the document will be received in evidence as Commission's Exhibit 484.

2829 (Whereupon, the document, heretofore marked COMMISSION'S EXHIBIT 484 for identification, was received in evidence.)

Mr. Kelaher: If I understand counsel, and so there will be no misunderstanding, my purpose in admitting CX-483, which was the statement of Mr. Cooley, was also for all purposes, including the truth of the statements made therein. I didn't know there was any question about that.

Mr. Thompson: That wasn't the purpose for which you offered it at the time.

Mr. Kelaher: That was my clear intention.

Mr. Thompson: You mean you are now trying to enlarge your offer?

Mr. Kelaher: I certainly am not. I was under the impression that was the offer I made. I don't think it is any time to quibble about technicalities on a matter of this

type. I offered statement after statement in Baltimore, and they were all offered for the same purpose. I don't feel that I should be restricted to the objection made by counsel.

Mr. Thompson: Are you through?

Mr. Kelaher: I sure am.

Mr. Thompson: May I have the floor?

Mr. Kelaher: You may have it as long as you want.

Mr. Thompson: Thank you, very much.

Why, of course, I object to a statement pulled out
2830 of the files of the FTC if it is offered for the purpose of proof of the substantive statements made by the witness. Obviously a document signed by Mr. Buongiorne, if there be any slight inconsistencies between his present statement and something said to Mr. Lipsky in 1953 can be used for purpose of cross-examination, but not as substantive evidence in the case.

It would seem to me, sir, that that was pretty elementary.

Mr. Kelaher: I think counsel is in error on that. You can introduce direct testimony to show self-contradictory statements of a witness once you have laid the foundation for it, which we have done here.

Mr. Thompson: You can do it for purposes of impeachment, but not as substantive evidence.

Hearing Examiner Kolb: I think the document is competent to show whether or not he made certain statements five years ago which did or did not conflict with what he has testified today, and once it goes in for that purpose, I think it is in for all purposes. I see no occasion for any further hazzle on it.

Mr. Thompson: My objection is on the record, and your Honor has ruled on it.

Hearing Examiner Kolb: Do I understand that that objection also applies to the previous exhibit?

2831 Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: I am overruling that objection also.

Mr. Kelaher: Thank you.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I would like to have it understood on the record that this witness is not to talk to counsel or to Atlantic representatives or to anyone else concerning the testimony he has given here today or the statement which was given to him.

Mr. Thompson: You mean you are asking—

Mr. Kelaher: (Continuing.) Otherwise, we will be compelled to go forward.

Mr. Thompson: I think you had better go forward, Mr. Kelaher, as I do not like the inference at all. You go right ahead and I will sit here.

Mr. Kelaher: It certainly wasn't intended to be occasion—

Mr. Thompson: (Interposing.) Go ahead. You just go ahead and cross-examine your witness.

By Mr. Kelaher:

Q. Mr. Buongiorne, I would like to establish one thing at the outset. You actually maintain two businesses, do you not?

2832 A. No, sir.

Q. Aren't you a Lee distributor as well as an operator of an Atlantic service station?

A. No, I wouldn't say two businesses, sir, no, one business, one income tax.

Q. Don't you have, or at the time of the interview, your station was located at 683 Chenango Street; is that correct?

A. That is right.

Q. And your warehouse for Lee tires was at 640 Chenango Street, right?

A. That is right.

Q. And wasn't that a garage behind your service station?

A. That is right, sir.

Q. And, as a matter of fact, you have sold Lee tires from a separate warehouse, have you not, and stocked them in a separate warehouse?

A. I have stocked them there, but I don't have room in my regular service station, yes, sir.

Q. I am going to take you over your direct testimony and compare with what you stated to Mr. Lipsky in 1953.

At that time you stated—let me put it this way. You stated here today on direct examination that you have continued to stock Lee tires. Were you implying that you continued to stock Lee tires in your service station since Atlantic changed over to Goodyear TBA?

2833 A. That is right, sir.

Q. Now, your signed statement says that—

Mr. Thompson (interposing): Show it to him, please, Mr. Kelaher.

Mr. Kelaher: Beg pardon?

Mr. Thompson: Will you show it to him?

Mr. Kelaher: He has read it.

Hearing Examiner Kolb: He can read it to him and then show it to him. Go ahead.

By Mr. Kelaher:

Q. Your signed statement says Goodyear stored in service station located at above address, and it also says that Lee is stored at the garage behind the service station.

A. That is right.

Q. So, when you say that Lee was stocked in your service station since 1951, you were incorrect, were you not?

A. May I explain it, sir?

Q. You go right ahead.

A. Wholesale operation is much greater than service

station operation. For wholesale purposes we stock two or three hundred tires. There is certainly no room for them in the service station.

Q. So, at one time, did you stock Lee tires in your service station since 1951?

A. I do right now, yes, sir.

Q. And at one time were you asked to get those 2834 Lee tires out of your service station by—

A. (Interposing.) Never.

Q. Let me read it to you.

A. I read it, sir, but that is not exactly what it was.

Q. You read that statement before you signed it, you understand?

A. Yes, but that was more of a—a salesman trying to sell merchandise, the same as a Purolator man would ask me to take Fram out; just in a selling manner.

Q. I would like to read this to you in connection with your stocking of Lee tires. You have stated here today that you were under no pressure to handle Goodyear TBA at the time of the change over?

A. That is right.

Mr. Thompson: If you won't show the witness what you are using, may I watch it?

Mr. Kelaher: You certainly may.

By Mr. Kelaher:

Q. "Dealer stated that the Goodyear"—

Mr. Thompson (interposing): Why don't you begin at the beginning of the sentence. I thought you would do that.

Mr. Kelaher: I will begin not only at the beginning, I will go up a paragraph.

By Mr. Kelaher:

Q. "The things that hurts is this—the dealer states 2835 that he is being told how to run the business, hours

open and TBA handled. It is not like running own business, as it is supposed to be, when you are told what to do."

Mr. Thompson: Now that you have read that, have you got a question?

Mr. Kelaher: I am reading this whole thing and then I will propound the question.

By Mr. Kelaher:

Q. This is all in connection with the fact that you say you can handle any TBA you want.

"No pressure as such—

"Dealer stated that the Goodyear set-up at first made him mad. Thinks he should get five percent Arco is getting. He believes it is five percent. Salesmen don't sell."

There, were you referring to Arco salesmen, I presume?

A. I would imagine, yes, sir.

Q. You would imagine, sir.

Then: "Change came about two years ago. Arco discontinued Lee and Exide; dealer kept stalling change and went into Lee heavy and distributed Lee to service station dealers who were without source of supply. Finally, Goodyear truck came by—sales promotion truck—took down Lee signs and replaced with Goodyear."

Do you recall that now? Do you not?

2836 A. I recall decal deal, yes, sir.

Q. And—

A. (Interposing.) But I don't recall them taking down Lee signs, because I don't believe in my new building we have ever had any Lee signs, that is, on the windows.

Q. What is your present station location address?

A. 683 Chenango.

Q. And this interview took place at 683 Chenango; is that correct?

A. Yes, sir.

Q. And prior to that what was your station location?

A. That I would have to explain if I could have a minute.

Q. Just give us the address, the prior address.

A. It is an impossibility, sir.

Q. Can't you give us the address of your prior—

A. (Interposing.) 683 Chenango Street.

Q. Has it always been 683 Chenango Street?

A. That is what I would like to explain.

Q. Go ahead.

A. At 683 I had a service station, an old building, it was actually a house converted to a service station. Atlantic built me a new one on the same property and, after the new one was built we worked out of the old one until it was completed, and then we moved into the new one and demolished the old one. That is why we run into this 2837 discrepancy on the addresses.

Q. So you actually had an old station and a new station at the same address?

A. Yes, for a matter of the change-over period, yes, sir.

Q. All right. But the Goodyear, you stated that the Goodyear truck came by, took down your Lee signs and replaced them with Goodyear. That is correct, isn't it?

A. I can't tell you, honestly.

Q. Are you saying now that the statement you gave to Mr. Lipsky is not correct?

A. I am not saying it is not correct, but the thing is vague in my mind because of the change-over at that time. Whether the Lee signs were in the old building along the windows the same as the Goodyear signs are on the windows now, I don't know for sure. I don't intend to—by the way—I don't intend to say that Mr. Lipsky has it wrong. It is just not clear in my mind.

Q. But the Lee signs did come down, that you remember, and the Goodyear signs went up?

A. That is right, yes, sir.

Q. That is correct. And you have testified here today that you had Lee signs and have always had Lee signs on your property?

A. That is right.

Q. But there was a time when some Lee signs
2838 were taken down, isn't that correct?

A. Sir, we are talking about two different kinds of signs.

Q. Apparently, we are. What sind of sign are you talking about?

A. Around the top of the window in the Atlantic station today is a Goodyear decal that goes around the top, says, "Tires, Batteries, Accessories—" and so on. The signs I am referring to, or signs I have always had at the station, exterior signs, pole signs, a metal sign that will go on a roof. Do you understand?

Q. I understand what a pole sign is. Are you saying there is a Lee pole sign on your premises now?

A. There is a Lee roof sign on my premises now.

Q. Is there a Goodyear sign?

A. There is a Goodyear pole sign.

Q. And that is the sign that was put up when the Goodyear truck came around?

A. No, not the pole sign. The decals in the windows.

Q. All right. Then, we go on here. You stated that you "can't install own advertising on property." You recall that statement, I take it?

A. That is true.

Q. That made you very mad, didn't it?

A. At the time, yes.

Q. In other words, you had to advertise what
2839 Atlantic wanted you to advertise; isn't that correct?

A. No, sir; the policy was, no advertising on the building. We have a metal building, and I did try—in fact, I did put up either a Bowes or a Prestone sign on my

building in metal and I found to my sorrow it made a mess of the place I put it.

Q. You stated, "Can't install own advertising on the building."

A. Not on a metal building.

Q. That was with reference to the Lee signs?

Mr. Thompson: Was that a statement or a question?

Mr. Kelaher: I am asking him a question.

Mr. Thompson: Let him answer it.

The Witness: The Lee signs have been at my place of business as long as I have been there are there and are still there and they have never came down. The decals are in the window are now Goodyear, where previous to Atlantic having a TBA program with Goodyear they were Lee.

By Mr. Kelaher:

Q. They were the ones that were taken down?

A. That is right, along the top of the window.

Q. Then you went on to state: "How long do you think we would be in business if we had signs up (Lee) out front or stored Lee tires in the service station."

Do you recall making that statement, I assume, to Mr. Lipsky?

2840 A. I must have if I signed that thing, yes.

Q. So, actually, to be truthful about it, you were not free to handle Lee tires or other TBA in your station, you had to handle Goodyear TBA?

A. No, sir.

Q. Well, that is in direct conflict with your statement.

Mr. Thompson: Stop arguing with the witness and ask him questions.

Mr. Kelaher: I have a right to answer questions and let me proceed.

The Witness: I think you misinterpret the thing, sir.

By Mr. Kelaher:

Q. You further stated: "To be frank, because of volume of business, Arco takes a little more from us." Did you mean that they take a little more from you than they did from other Atlantic dealers?

A. What do you mean, "take a little more"? Dollars?

2841 Q. This is your statement: "To be frank, because the volume of business, Arco"—meaning Atlantic—"takes a little more from us."

A. We were on a percentage basis at the time.

Q. Did you mean they took more from you than they did from other Atlantic dealers in any respect?

A. Our rent was based on a six percent basis and for that reason they would take more. My rent would be more than a dealer that wasn't doing the tire volume that I was doing.

Q. Then, you further stated: "Now conducts Lee tire business—stores them in garage." So, your Lee tire business, your Lee tire stock has been in your garage for sometime, has it not?

A. Could I explain that, please?

Q. You go right ahead.

A. Back when we were on the percentage basis, which was six percent of our gross other than gasoline, I was wholesaling a lot of tires to dealers that had previously handled Lee before the Goodyear program came about. Atlantic dealers, by the way.

With the setup that I had at six percent and with a narrow margin in wholesale, it wouldn't be very profitable to sell them through my Atlantic service station because my wholesale markup, by the time I paid six percent on my rent out of my wholesale profit, it would have been

2842 pretty near a losing proposition. So, for that reason at that time I did not put my wholesale business

through my service station business. I rented the garage at 640 Chenango Street to store tires in, but the main reason they were in there was because of the volume that we carried, the inventory at the time.

Q. But, isn't it a fact that you wanted to continue to carry Lee tires in your Atlantic service station at the time Atlantic changed over to Goodyear tires, Goodyear TBA?

A. That is absolutely true.

Q. That is true?

A. Yes, sir.

Q. And you resisted the change?

A. I did at the time, absolutely.

Q. And you finally gave in because you were forced to give in, isn't that true?

A. No, sir, it is not true. I was forced to give in, no, sir. Because, sir, I have never given in yet.

Q. Well, it seems to me you have.

A. Why don't you check my Lee invoices for the last ten years?

Q. Let me ask you—let me read this next statement: "Would not be here too long if went 100 percent Lee."

A. Well, that, in a sense, is true.

Q. That is true. Now, we are getting somewhere.

A. But not in the malicious way that you put it.

2843 Q. Believe me, I am just attempting to establish the facts.

A. The fact that I have been there 15 years kind of proves that there certainly hasn't been too big of an objection to my handling Lee tires and Exide batteries.

Q. But the fact is you were afraid of some retribution—

A. (Interposing.) I wanted to see what was going on before I stepped off, yes, sir.

Q. There was a possibility that your lease might be cancelled?

A. No, sir; the lease was never mentioned.

Q. Did you ever give thought to the fact that you were on a lease which could have been terminated on short term?

A. I used to be, yes, sir.

Q. And at that time you stated here that you were on a year to year 30 day clause?

A. That is right, sir.

Q. When it boils down to reasons stated there, it is 30 days. In other words—

A. (Interposing.) Either way.

Q. You felt that you were there from month to month, so to speak?

A. And by the same token I could leave month to month, yes, sir.

Q. Now, you also said that you also sold any brand of TBA on Atlantic credit cards. Do you recall that on 2844 your direct testimony?

A. Yes, and I remembered that, too.

Q. And you also stated on direct testimony that you have seldom given any thought to the matter?

A. That is right.

Q. Now, you state here, and I quote: "Believes credit card sales limited to Goodyear tires, batteries and accessories: when other sales made (Lee) delivery ticket identifies tire as Goodyear."

A. Yes.

Q. So, it was your practice when you were selling Lee tires through your service station to report it to Atlantic as Goodyear, isn't that true?

A. When this change-about came about—

Q. (Interposing.) Just answer that question Yes or No.

A. What is it, sir?

Mr. Thompson: You don't have to answer it Yes or No. Answer the question and then explain as much as you like and take your time in answering it.

By Mr. Kelaher:

Q. I ask you if it isn't true that when you sold Lee tires on Atlantic credit cards you reported it to Atlantic as a Goodyear tire?

A. At that time, yes, sir. Now, may I explain it?

Q. What was your reason for doing that?

2845 A. Well, as I told you previously—on another question you asked me—when we went into this change-over deal we didn't know from nothing. We didn't know just what we were getting into.

Q. What do you mean? Explain that in a little detail.

A. Well, I will tell you, we had had a very nice relation with Atlantic through the TBA program that they had and at the time of this change-over I think everyone felt the same way, they didn't go for it to start with. But as the thing shaped up and we realized the advantages of it, it changed our mind all the way along, and as far as the credit ticket was concerned, why, I believe my tickets could be checked back for a long, long period to this statement deal here, and that Goodyear thing at the time we may have used it, because we didn't know whether we could or whether we couldn't. It had never been brought out. So, rather than get into any deal at all over it, why, we probably did use Goodyear.

Q. And that was to—

A. (Interposing.) Not to hide the fact we sold Lee tires because my Lee tires were right there in sight and they have been. Mr. Lipsky knows they were in sight.

Q. Now, are you finished?

A. Yes, sir.

Q. Isn't it true that you wanted Atlantic to think that you were selling only Goodyear tires on Atlantic credit cards?

2846 A. No, sir.

Q. Wasn't that the reason you reported it as Goodyear?

A. Absolutely not.

Q. What reason would you have?

A. Because if there had been a policy that a Lee tire could not be charged on an Atlantic credit card, we would lose sales through not being able to put them on Atlantic credit cards.

Q. That is exactly what I said or asked you in another way.

Now, credit card sales are an important part of service station operation, are they not?

A. Today, yes. At that time, no.

Q. Well, at that time you made this statement to Mr. Lipsky with respect to the fact that Atlantic credit cards were limited to Goodyear TBA:—

A. I thought—yes, sir.

Q. (Continuing.) —"What other reason is there for all Arco service stations handling Goodyear TBA?"

Now, my question is this: that credit card sales have been an important part of service station operation for sometime, including 1953, isn't that true?

A. The volume in '53 was nowhere near the volume that it is today, credit card sales by, I would dare say, four or five hundred percent.

Q. What did you mean by this statement: "What
2847 other reason is there for all Arco service stations handling Goodyear TBA?

Mr. Thompson: Why don't you show him the statement and let him see it in context instead of picking a stray statement out of the middle of a page?

(The document was handed to the witness.)

The Witness: Well, you know, Mr. Kelaher, a lot of the wording that is here, with due respect to Mr. Lipsky, I probably said, but I don't know if I said it in this exact

manner, and this was a long time ago. It is not too clear to me.

I don't connect the two paragraphs, sir, really, I don't.

(The document was returned to counsel.)

By Mr. Kelaher:

Q. However, it does appear from your statement that all Atlantic stations in the Binghamton area swung over to Goodyear TBA; is that correct? That is, at the time of the changeover.

A. Yes, I would say that was correct, yes, sir. We had to have a source of supply at the time:

Q. In connection with your statement about a source of supply, isn't it true that you had a source of supply for Lee tires at the Lee factory branch in Syracuse, New York?

A. I did, yes, sir.

Q. And you were buying from that branch, were you not?

2848 A. Yes, sir. That is on tires only.

Q. Beg your pardon?

A. That is on tires only. I have never had any Lee batteries.

Q. I am referring to tires only, so that you did have a source of supply?

A. On tires, yes.

Q. And weren't there also other competitors of Goodyear in the Binghamton area selling tires at that time, or haven't there been tire salesmen in the Binghamton area for many, many years?

A. Absolutely, yes.

Q. And you have suppliers of all brands of tires?

A. I buy all brands of tires; that is right.

Q. Now, isn't it true that Lee tires have good consumer acceptance in the Binghamton area?

A. Yes.

Q. And isn't it true that the road hazard guarantee of Lee was a strong selling point on Lee tires?

A. That is true, sir.

Q. And isn't it true that Goodyear had no such road hazard guarantee?

A. That is right.

Q. Is that correct?

A. Absolutely.

Q. And isn't it true that you were able to get 2849 lower prices on Lee tires than Goodyear tires?

A. That is right.

Mr. Kelaher: Your Honor, I wonder if I may have about two minutes, and then I think I can finish up shortly.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Buongiorne, on direct examination you were shown Respondent's Exhibit A-12 and Respondent's Exhibit A-13. Referring first to Respondent's Exhibit A-12, what purpose is this used for—is this used in connection with your wholesale business?

A. Both, sir.

Q. Both wholesale and retail?

A. Yes, sir.

Q. Do you also have a separate Atlantic form for your retail business?

A. Are you referring to credit cards?

Q. Yes, sir.

A. Yes, sir.

Q. Is this for credit card?

A. No, sir.

Q. This is for any type of sale?

A. That is right.

Q. Do you also have a special Atlantic form for credit cards?

A. That is right.

2850 Q. And that does not carry Lee tires or Exide battery testing?

A. It is strictly a form, sir. It has nothing on it. We run it through a printing machine.

Q. This statement, RX-A-13, is that used in connection with your wholesale business?

A. Wholesale and retail, both.

Q. And retail, both?

A. Yes, sir.

Q. Now, in connection with the storing or stocking of Lee tires in your service station, you stated that no comments were made by Atlantic with respect to such tires. Do you recall that testimony?

A. Yes, sir.

Q. I would like to read your remarks concerning that matter: "Lee tires are stored in garage. When stored in service station, Arco salesman—general manager would ask, 'When are those tires going down?' "

Do you recall that?

A. Yes.

Q. Now, does that refresh your recollection?

A. Yes.

Q. And so, as a matter of fact, you were asked by Atlantic salesmen, the personnel, to get those Lee tires out of your service station, were you not?

2851 A. I don't think it says that there, sir.

Q. How do you interpret that?

A. That particular instance comes to my mind very well. Naturally, the Atlantic salesman was trying to sell me Goodyear a hundred percent, and in the course of conversation, from what it says here—and I assume that I must have said it at the time—he asked me, "When are those tires going down?"

Q. What did he mean by that?

A. Well, when can he—the Lee tires were in my service station—when will I take those down and start selling Goodyear. But not in a sense of, get those tires out of here, here comes some Goodyear. Because the tires are still there, I am still not selling Goodyear a hundred percent.

Q. With respect to batteries, I think you did state that you stock more Goodyear than Exide, is that true?

A. Yes, sir.

Q. On your accessories you indicated that you purchase from a number of suppliers?

A. Yes, sir.

Q. Do you purchase from the Goodyear service store, any accessories from the Goodyear service store?

A. Yes, sir.

Q. What products do you purchase from it?

A. From Goodyear?

Q. From Goodyear.

2852 A. Some AC products, some Du Pont products—

Q. (Interposing.) Do you stock Goodyear fan belts?

A. Yes, sir. Goodyear fan belts.

Q. And, as a matter of fact, you stock a number of accessory products which are purchased from the Goodyear service store, isn't that correct?

A. Yes, that is right.

Q. So, when you state that you buy from everybody that comes around, you are not indicating that you stock from everyone who comes around?

A. I was kind of waiting for that one, sir. We carry a representative name brand line which is also carried by Goodyear. I am called on by salesmen at least one a day, most days, two or three, from our local wholesalers other than Goodyear. Goodyear calls on me one day a week, which is Wednesday. Okay. All the wholesalers

in our area that carry the brands that I carry have as much access to sending me merchandise as the Goodyear man, and I believe that the Goodyear share would be comparatively small compared to the other wholesalers that supply me. I think my records would bear that out.

Q. However, fan belts, for example, you do stock Goodyear fan belts?

A. A hundred percent, yes, sir.

Q. And fan belts is a good seller in the service station business?

2853 A. It isn't a big seller, but it is a necessity.

Q. Right. And we have established that you also stock other accessories purchased from Goodyear service store. Would they be polishes and chemicals of various types?

A. I carry the Du Pont line which is also carried by Goodyear. I don't carry any of the Goodyear polishes and chemicals that are put up under the Goodyear name.

Q. But in the Goodyear line, of course, you have many national brands and you carry those?

A. Right; that is right, sir.

Q. Right. Now, you stated a moment ago, just to clarify this, that you do not maintain two separate businesses?

A. That is right, sir.

Q. And, of course, there, as I recall your answer, you stated you do not maintain two separate businesses for income tax purposes; is that correct?

A. That is true, sir.

Q. With respect to your rental paid Atlantic for your service station, isn't it true that that is based on the operation of your service station and is separate and distinct from your warehouse opertaion?

A. No, sir; not now.

Q. Now it isn't. Was it at one time?

A. Our leases are not the same as they were back at this period.

2854 Q. What type of lease are you on now?

A. It is an altogether different lease.

Q. Well, under the current lease, are you under the type of lease—

A. (Interposing.) I have a long term lease, sir.

Q. Let me ask you this to clarify this. At one time you paid a flat rental plus six percent of gross receipts exclusive of gasoline, right?

A. That is right.

Q. Now, that has been changed, apparently?

A. That is right.

Q. Now, under the new type of lease that Atlantic has, you pay in some areas at least, and apparently in your area, do you pay a percentage of gross sales of all products?

A. That is right, sir.

Q. Now, at this time are you telling us that if you sell Lee tires as a warehouse distributor for Lee, you pay a percentage of that to Atlantic as rental?

A. That is right, yes, sir. Could I say something else there.

Q. You go right ahead. I would like to have that clarified.

A. At the time you were referring to before, I would be paying six percent of the gross wholesale as rent, is that right, on my old lease?

Q. Yes.

2855 A. On the new lease that would be maybe two percent or two and a half percent. So there isn't quite the difference that there was.

Q. But the rental is paid on your wholesale operations?

A. That is right, sir.

Q. I just have one more series of questions, and then we will conclude cross-examination.

I would like to ask you if you recall attending a meeting of Atlantic dealers in 1951 concerning Lee tires, and this was after the Goodyear TBA plan was sponsored by Atlantic. Do you recall such a meeting?

A. No, sir.

Q. Do you recall a meeting with other Atlantic dealers who were dissatisfied with the Atlantic change to Goodyear tires from Lee tires? Do you recall such a meeting?

I can refresh your recollection by mentioning the names of the dealers who were present, if you wish me to.

A. If you would, sir.

Q. Mr. Herman Gay, Mr. Maseyko, Mr. Dunham, and Mr. Harder. Do you recall such a meeting?

A. I must certainly, but I can't, no. But I must have been there.

Q. And would it refresh your recollection if I told you that you expressed dissatisfaction with the fact that Atlantic was now sponsoring Goodyear TBA instead of Lee tires?

2856 A. That is absolutely true, as I told you before.

Q. So, there was such a meeting, and the matter was discussed?

A. Apparently, yes, sir.

Q. Wasn't it decided at that meeting that you and these other Atlantic dealers would attempt to go back to selling Lee tires in your Atlantic service stations?

A. I can't tell you, sir. You say "go back". I had never discontinued it.

Q. You recall nothing further about that meeting; is that correct?

A. No, I honestly don't. Other than—you keep going on Lee tires. It was the entire program at the time that we

didn't go for it to begin with. We had a very excellent deal with Atlantic as far as TBA was concerned.

Q. And you were satisfied?

A. And we, let's say, didn't want to try something new. it has since proven to be an excellent deal for all concerned.

Q. But at the time there was general dissatisfaction among Atlantic dealers?

A. Right.

Q. Nevertheless, the program did go into effect at that time?

A. No, it didn't go into effect at that time. I think it was a gradual change-over, and it wasn't a cut-it-off here and start Goodyear tomorrow deal.

2857 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any questions?

Mr. Thompson: Yes, sir.

Do you wish to continue the torture? I am getting hungry.

Hearing Examiner Kolb: Do you want to adjourn?

Mr. Thompson: Mr. Kelaher might suspect me of leading the witness with answers to questions.

Mr. Kelaher: You would be the last person I would suspect, Mr. Thompson.

Mr. Thompson: From time to time, Mr. Kelaher, may I have the privilege of using Mr. Lipsky as an interpreter of his handwriting? There are words here which I can't read.

Mr. Kelaher: I don't see any particular need for that. If the need arises, we will meet it.

Mr. Thompson: I will consult you if that need arises.

Redirect-Examination by Mr. Thompson.

Q. Now, Mr. Buongiorne, except for the signature on one page of this four-page document is anything there contained in your handwriting (showing document to the witness)?

A. No, sir.

Q. Was this entire document written by Mr. Lipsky?

2858 A. Yes, sir.

Q. Were the words that he used your words or his?

A. That I couldn't tell you, sir. That was a long time ago. I would imagine that it was a condensation of what he interpreted me saying.

Q. Did he try to put words into your mouth during this conversation?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: I don't remember Mr. Lipsky, honestly I don't. I remember him being there, but not as a person or what he said. Could I take a moment and explain maybe how some of that came about?

By Mr. Thompson:

Q. Surely; go right ahead.

A. Maybe it has no bearing, but it does to me.

At the time of this statement we had amongst our dealers in the area—I may be cutting my throat—an unhealthy situation, not in relation to the Lee tires or Goodyear tires, but another deal, and at that time I think most of our dealers were a little antagonistic over another matter now, which has no bearing on this deal, and I think, as I said before, it has since been clarified and rectified, and it no longer exists, and I believe that if Mr. Lipsky, on the day he came, I was concentrating on that other matter

2859 which I probably was, I wasn't too happy at the time.

Q. Did Mr. Lipsky suggest to you that there was a 30-day cancellation clause in your lease?

A. I couldn't tell you, sir. I knew there was a 30-day cancellation clause in my lease, which could work both ways. I could cancel, too.

Q. By that you refer to a provision in your lease which permits either the Atlantic Refining Company or you as the dealer to cancel 30 days before the expiration of the term, is that what you are talking about when you say 30-day cancellation clause?

A. Yes, sir; that is right. I have to give them 30 days notice previous to a new lease, and they would give me 30 days notice previous to a new lease. But it worked both ways, it was as fair for one as for the other.

Q. Mr. Kelaher pointed out to you that there is a printed phrase in this document of Mr. Lipsky's called "Terms of Lease" that it then says "year to year".

A. Yes.

Q. Since about 1953 have you not had a three-year lease?

A. That is right, sir.

Q. Then, he pointed out notation in Mr. Lipsky's handwriting which seems to read: "With 30-day clause."

A. You are referring to the old year-to-year lease.

Q. In the old year-to-year lease?

2860 A. That is right.

Q. Now, the 30-day clause to which you referred was the 30-day provision entitling Atlantic or you at the termination of the lease to cancel it on 30-days' notice; is that correct?

A. Thirty days previous to the expiration of my lease I could notify them that I wasn't going to renew it or they could me. That is the way I understood it.

Q. There has never been in any lease you have ever had from Atlantic Refining a provision entitling Atlantic to cancel on 30 days' notice?

A. I honestly, under oath, I have never read my lease. For 15 years I didn't have to question it, and I don't see why I should read it now.

Q. That was Mr. Lipsky that suggested it to you that there was a 30-day cancellation clause in your lease?

Mr. Kelaher: Objection, your Honor.

The Witness: I don't understand what they mean, sir. I know about the 30 days at the expiration. In other words, if I were contemplating getting out of business, I would have to look at my lease, see when this expiration occurs, I would have to notify Atlantic 30 days previous to the expiration that I was not a renewer. I believe it worked the same way on the other one, because I believe my lease is the same except it is longer.

2861 Mr. Thompson: May I call upon an interpreter.

Mr. Kelaher: Maybe I can interpret it.

Mr. Thompson: Maybe you can do a better job. What does this say.

Mr. Kelaher: "When it boils down to reasons stated there, it is 30-day."

Over here, then starting a new sentence, "Renew each year."

By Mr. Thompson:

Q. Did Mr. Lipsky suggest to you that when it boils down you had a 30-day lease? Did he give you that impression?

A. No, because I think I would have contradicted him. I couldn't do business on a 30-day basis to begin with.

Q. Have you ever had any apprehension at all about Atlantic cancelling any one of your leases?

A. The proof is that I still have one.

Q. Have you ever had any apprehension about it?

A. No, never been mentioned as far as the lease is concerned.

Q. At all times since 1951 have you had Lee tires openly on display for sale at retail at your service station?

A. Yes, sir.

Q. At all times since 1951 have you had openly displayed at the station Lee tire advertising signs?

A. Yes, sir.

Q. When Mr. Lipsky came to your station, did
2862 you show him Lee tires actually in the station displayed for sale at retail?

A. That, Mr. Lipsky could answer better than I. I don't remember. But if he looked around, I think he saw them.

Q. At the time Mr. Lipsky came to your station was Exide your primary battery line?

A. At that time I believe I was pretty near a hundred percent Exide, yes, sir.

Q. Did you have Exide batteries in your station displayed for sale?

A. I not only had Exide batteries, I had a rack that had been moved from my old building over into the new building. It is still there, by the way.

Mr. Thompson: Mr. Interpreter, there is an illegible something or other here that is blotted. It looks as if somebody had spat upon it. What is this word?

Mr. Kelaher: "Lee tires are stored in garage. When stored in service station, Arco, salesman; general manager, would ask, 'When are those tires going down?' "

By Mr. Thompson:

Q. Did you understand what the interpreter read?

A. Yes, sir.

Q. Now, in addition to having Lee tires on display at your station, do I correctly understand that so far as your wholesale business was concerned you were stocking
2863 and storing Lee in an adjacent garage?

A. That is right.

Q. There is an interlineation here that says, apparently, "When stored in service station Arco, salesman, general manager would ask, 'When are those tires going down?' "

In the first place, do you know what the interlineation of general manager means after the word "salesman"?

A. No, I don't.

Mr. Kelaher: Could you speak up so we can all hear you?

The Witness: No, sir; I don't know what that is written in there for, but I do know this: it may or may not be the way the thing happened, but maybe Mr. Lipsky, in our conversation, which that must be, but just in part as near as I can figure. Certainly, he was there much longer. This was just what he picked out.

By Mr. Thompson:

Q. What you are saying is he only wrote down part of the things?

A. I would say that, yes. He may have asked me, was any pressure brought upon me, did the sales man ever say anything about the tires up? I could have said—apparently I did because he has it wrote down there—when are you going to take those tires down. I don't remember the conversation at all. I do know the tires are still there,
2864 and to the best of my knowledge have not been taken down.

Q. You own and run the station. Now, am I correct in my understanding that you have at all times stocked Lee since '51 right at the service station?

A. That is right, sir.

Q. So that if the Atlantic salesman tried to persuade you to shift to Goodyear tires, he was not successful, was he?

A. No, sir, he didn't sell me in the sense of getting rid of Lee to stock Goodyear, no. I stocked them both. I found it was to my advantage to stock them both the same as I have told you about Goodrich and Royal.

Mr. Kelaher: About what was that last?

The Witness: Other tires that I have stocked and sold. The same as other accessories.

By Mr. Thompson:

Q. Under other TBA Mr. Lipsky wrote into this statement: "Usual accessories—Fram oil filters". Is that what that says?

A. I have always sold Fram, nothing else.

Q. Is Fram in the Goodyear line?

A. No, sir; that is a holdover from Atlantic, they sold me on it years ago, and I have never changed.

Q. And you still have been stocking Fram over all these years?

A. One hundred percent. There is no other filters 2865 in my place, never have been, they are there today.

Q. Then, Mr. Lipsky wrote in this statement: "The thing that hurts is this—the dealer states that he is being told how to run the business, hours open"—

A. (Interposing.) Yes.

Q. (Continuing.) —"and TBA handled."

A. That is right.

Q. What did you mean by that statement?

A. That was the situation that I referred to a moment ago. We had a dealer in town that either was left his place of business and took another one due to the fact that he had been—tried to persuade him to keep different hours than what he was doing, and rather than do it, he moved and that is why when I came across that it kind of came into my mind while we were under this duress at the time. I don't think that situation exists anymore.

Q. Then, you were referring in this—

A. (Interposing.) Which burned me up at the time, let's face it.

(Laughter.)

Q. And you are no longer burned up, Mr. Buongiorne?

A. No, I mean at that time I was, yes. But—

Q. (Interposing.) What I was really trying to get at is this:—

Mr. Kelaher: Did you finish?

2866 Mr. Thompson: Go ahead.

By Mr. Thompson:

Q. When Mr. Lipsky wrote down the dealer states that he is being told how to run his business, was he referring to you or the other dealers to which you have referred?

A. I was referring to the other dealer at that time.

Q. And this statement was not a personal statement that it is hurting you because you were being told how to run your business? You were referring to some other dealer?

A. I wasn't at the time; from this other dealer, I thought I might, in fact, at the time I thought Mr. Lipsky was here on this other deal.

Mr. Kelaher: Will you speak up?

The Witness: I said I th' k that at the time Mr. Lipsky was questioning me more on a lease basis than he was the product that I sold.

By Mr. Thompson:

Q. In other words, the tenor of the conversation related to the provisions of your lease, hours of operation, things of that type, rather than TBA?

A. I think so. In fact, I believe he read or asked to read my lease.

Q. Then, under "Reason for choosing line of TBA carried" Mr. Lipsky wrote down "No pressure as such."

A. That is right.

2867 Q. What did you mean by that?

A. That there was no pressure at all on what accessory line I carried. I think it is obvious from that.

Q. Then, Mr. Lipsky next wrote down "Dealer stated that the Goodyear set-up at first made him mad. Thinks he should get five percent Arco is getting."

A. That is right.

Q. So the thing that made you mad was that you felt that whatever commission Atlantic was getting should be given to you, or was that the point?

A. In a sense, yes. Actually, when we had our own TBA program through Atlantic, the price structure was much different than the Goodyear price structure, and when we first went into the Goodyear program, we naturally, lost an extra percentage that we were getting with Atlantic, and, well, we just didn't like it, of course. Since, the thing has come around into shape and it is all right, but it was a new deal to all of us and when it was presented there were a lot of things that we didn't like about it, and that is the reason that a lot of us didn't accept it, and we continued on with the lines that we were selling or we went out on the open market and dickered and see where we could get a deal on different items.

Q. You are still doing that, aren't you?

A. We are still doing it. Heck, yes, we have to.

Q. When Mr. Lipsky wrote down "Salesmen don't
2868 sell", were you referring to Atlantic salesmen or to Goodyear salesmen? Would you mind looking at it in context and let me know (document handed to the witness)?

A. I don't connect the two.

Q. The answer is you don't connect the two?

A. Yes.

Q. You can't tell from this statement when Mr. Lipsky wrote down "Salesmen don't sell" he was referring to the Goodyear salesman or to Atlantic salesman?

A. No, I don't.

Q. Let me ask you this, then: over the course of the past seven years since Atlantic has been promoting Good-

year, have Atlantic salesmen endeavored to sell you on the Goodyear line?

A. Oh, yes. Yes, sir.

Q. Is that a continuous performance? I mean, do they always try to?

A. I think they have given up on me.

Q. You think they have given up on you?

A. Other than periodic deals they will sell me, like a spring dating, the tires stock for the summer, and the fall dating for my merchandise and so on, which, by the way, I would buy from Goodyear whether Atlantic was in the deal or not, because they have the most acceptable snow tires on the road today, and they have had for some time. I don't sell Lee snow tires.

2869 Q. There is a reference here which I find hard to read. Perhaps you can. It refers to S.S. dealers who were without source of supply. There is a reference here to your sales of Lee. The statement reads: "Dealer"—I suppose that means you—"kept stalling change and went into Lee heavy and distributed Lee to S.S. dealers who were without source of supply."

A. That is right. That is how I happened to get into the wholesale business of Lee to begin with.

Q. In other words, when Atlantic stopped selling Lee—

A. (Interposing.) It was a beautiful market, sir.

Q. (Continuing.) —you wired Lee and got a distributorship?

A. That is right.

Q. And picked up whatever business you could from the service station operators selling them Lee; is that correct?

A. That is right.

Q. When you say a Goodyear truck came by and took down Lee signs and replaced with Goodyear, has it been made clear on the record that the reference was not to signs, but to the decals in the windows?

A. I hope so, sir, because that is exactly what it was.

Mr. Thompson: Will you mark this Respondent's Exhibit A-14 for identification.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 14 for identification.)

2870 By Mr. Thompson:

Q. I show you a picture of a service station. This has been identified as R-A-14. Is that your service station in Binghamton?

A. Yes, sir.

Q. Is that an accurate picture of it?

A. Yes, sir.

Q. Do you recall when this picture was taken, Mr. Buongiorne?

A. I don't know, sir.

Q. About two years ago, something of the kind?

A. It is long enough ago so that I have forgotten when the actual time. It wasn't taken recently. There might be some way I could tell by looking at it.

Q. Are the Lee signs which appear in the picture the signs to which you have been referring?

A. Yes, sir, you can see them, both of them.

Mr. Kelaher: I am going to object to the use of the photograph unless it is identified more clearly as to the date when the photograph was taken.

The Witness: I think I can—

By Mr. Thompson:

Q. (Interposing.) Mr. Buongiorne, Mr. Kelaher has objected to the use of this picture unless we can identify more clearly what it represents.

Mr. Kelaher: When it was taken.

2871 By Mr. Thompson:

Q. Does this picture accurately portray photographically your service station as it now appears in 1958?

A. I would say it would be exact with the exception of this Coca-Cola cooler which I have since painted to blend in with the building.

Q. Otherwise it is the same?

A. Yes, sir.

Q. Are the Lee signs which appear in this picture the same signs which have been there for many years?

A. Yes, sir.

Mr. Thompson: I offer in evdence R-A-14.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-14.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (Atlantic) 14 for identification, was received in evidence.)

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record,)

Hearing Examiner Kolb: On the record.

By Mr. Thompson:

Q. Were those Lee signs on your station when Mr. Lipsky came there?

2872 A. I believe they were, weren't they?

Mr. Kelaher: He is asking.

The Witness: Yes, I would say so, yes, sir. They have been there.

By Mr. Thompson:

Q. Do you know why Lipsky wrote into your statement: "How long do you think we would be in business if we had signs up for Lee out front or stored Lee tires in the service station?"

A. No.

Q. At the time he was there the Lee signs were up and

you were storing Lee tires in the service station, weren't you?

A. That is right. Yes, sir.

Mr. Kelaher: Does that picture show that Lee tires were stored in the service station?

The Witness: I don't—unless there would be one in the window.

Mr. Thompson: Is this redirect examination? I think I am competent to ask my questions.

Mr. Kelaher: I am just—

Hearing Examiner Kolb (interposing): Let's go ahead here. Let's go ahead.

By Mr. Thompson:

Q. There is a statement here Mr. Lipsky made which says: "Big volume done in Goodyear—could buy Lee tires cheaper."

2873 Do you understand that reference? What that means.

A. I have never done a big volume in Goodyear. That is in comparison to my Lee volume. But I don't quite get what that does mean.

Q. What is the comparative pricing situation on Goodyear and Lee, Mr. Buongiorne?

A. Are you talking about retail prices?

Q. Yes, sir.

A. It is identical. The retail prices.

Q. The retail price to the consumer is identical?

A. That is right, yes, sir.

Q. As a Lee wholesaler, am I correct in my assumption that you can buy Lee tires at a better discount than you can buy Goodyear tires?

A. Absolutely.

Q. That, of course, is why you are in the business of distributing Lee tires?

A. It is about as good a reason as I have, sir, yes.

Q. In 1953 did you think that you might not be there long if you went a hundred percent to Lee?

A. That is a tough question to answer.

Q. Do you think today if you went a hundred percent Lee, Atlantic would bother your lease?

A. I don't think they would, no. I am practically as far as the tire business is concerned, I am about 80
2874 percent Lee anyway. It wouldn't be to my advantage to go a hundred percent Lee.

Q. But if you kept your volume and your gasoline gallonage up as such, do you think for a minute that Atlantic would bother you if you handled Lee exclusively?

A. It has always been my opinion as long as my gallonage was up and I kept a neat, orderly station and run a business as it should be that I had no lease worries. I have never bothered them as far as that goes.

Q. Isn't the pragmatic test of that the fact that you have been handling 80 percent Lee tires and Exide batteries for many years and nobody has ever mentioned it on a lease renewal?

A. That is about what I have said from the start.

Q. If I understand your responses to cross-examination by Mr. Kelaher, you thought in 1953 that there might be some doubt about whether you were permitted to charge Lee and Exide products on Atlantic credit cards.

A. I explained that, sir. All the time we were selling Lee tires and batteries and accessories, whatever Atlantic sold, we wrote two Lee tires, there was no reason not to. When we went over to the Goodyear program, I suppose we wrote two Goodyear tires even if they were Lee. Maybe there was a discrepancy there, maybe there wasn't, but why ask for it. I don't know. You are looking out for yourself. I do it everyday.

2875 Q. And you don't specify—

A. (Interposing.) We specify nothing on them, nothing at all. Usually tires, amount, tax, sales tax.

Q. And you have followed that practice for some years, haven't you?

A. That is right. I think my tickets will bear it out.

Q. I think you already testified that that practice on your part has never been criticized by Atlantic, has it?

A. No, sir.

Q. You did mention the fact, Mr. Buongiorne, that you handle a lot of the nationally advertised accessories, which are in the Goodyear line.

A. Yes, sir.

Q. Does that mean that you buy them from Goodyear necessarily, or from anybody who handles that particular brand?

A. I buy them wherever it is convenient. My invoices over the past, if they could be looked at, which would be much simpler than questioning me, would show where they were bought from. My sales would show where they went, and the invoices would show where they came from, whether Goodyear, United Auto Parts, Whipple's or whoever I bought from.

Q. Do some of those jobbers whom you have just mentioned handle, for example, the DuPont Chemical line?

A. I believe everyone but one I mentioned, and they happen to handle the Hollingshead line, which I don't handle.

2876 Q. And when you have DuPont chemicals on your shelf for display, does that mean that you bought them from Goodyear?

A. If you know our business, you would realize that that is a foolish question.

Q. Foolish as it may be, that is the inference that Mr. Kelaher tried to create and I am just trying to get the facts fairly on the record.

A. Let me give another example, please, sir.

Q. Would you mind answering the question? You could have bought that Du Pont Chemical from any one of a half dozen—

A. (Interposing.) United Auto Parts was giving a blanket about two months ago; so, I bought Du Pont from them. Maybe next month they will be giving a pop corn popper, I will buy it from them. I have no specific place that I buy my chemicals, Du Pont line.

Q. And does that same answer apply with respect to other nationally advertised brands of accessories which are in the Goodyear line and are also sold by other jobbers?

A. That is right, sir.

Mr. Thompson: Thank you, very much, sir.

Hearing Examiner Kolb: Do you have any questions, Mr. Kelaher?

Mr. Kelaher: I have just a couple.

2877 *Recross Examination by Mr. Kelaher.*

Q. Just a few minutes ago on redirect Mr. Thompson referred to the fact that you were selling 80 percent Exide batteries.

A. How many percent?

Q. Eight percent Exide batteries. I think you testified earlier that you sell more Goodyear than Exide.

A. That is right.

Q. Then, the 80 percent was not correct?

A. At the time that Mr. Thompson was asking me, that figure was correct. Now, it isn't. Now, I buy Goodyear in volume. Price-wise I come out much better than I did on Exide. However, I still stock Exide because I do a little wholesale business.

Mr. Kelaher: Your Honor, I have no further questions, but I would like the record to note that this witness' name

is mentioned in CX-172-A, -B, and also in the transcript at page 341 in connection with his service station identification.

CX-172-A, -B, shows that as of October 24, 1951 this witness refused to permit Goodyear signs to be placed in his station. The address was given as Chenango and Bromley, Binghamton, New York. A stipulation entered into with counsel for Atlantic shows that this witness did subsequently display Goodyear identification, transcript 341.

2878 Mr. Thompson: I think, sir, that the record further shows that Mr. Buongiorne refused to permit the Goodyear signs to be placed on his station because it was under construction and further testified that when the station had been modernized, it did permit the signs to be put up.

The Witness. That is absolutely correct.

Mr. Kelaher: That is in the testimony, not in the document. It just says, refused.

Hearing Examiner Kolb: We will adjourn until 3:00 p.m.

(Whereupon, at 1:50 o'clock p.m., the hearing in the above entitled matter was recessed to reconvene at 3:00 o'clock p.m., the same day.)

2879 Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Maseyko, would you take the stand, please?

VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964

No. 292

VOL. III, pp. 1603 to 2336

Office-Supreme Court, U.S.
FILED
JUL 17 1964
JOHN F. DAVIS, CLERK

In the

United States Court of Appeals

For the Seventh Circuit

No. 13340

THE ATLANTIC REFINING COMPANY,
Petitioner,
vs.
FEDERAL TRADE COMMISSION,
Respondent.

Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

Summary of Proceedings Below 1
Amended Complaint 5
Answer of Atlantic to Complaint as Amended 13
Answer of Goodyear to Complaint as Amended 22
Order Sustaining Interlocutory Appeal 29
Motion of Atlantic re Issues and Evidence, etc. 31
Answer to Motion of Atlantic, etc. 34
Order Denying Motion, etc. 36
Order on Motion to Strike Evidence, etc. 38
Initial Decision 41
Opinion of the Commission 61
Final Order 131
Petition for Review 135

TRANSCRIPT OF PROCEEDINGS.

Admissions of Respondents 145
Documents marked for identification 149
Colloquy 151, 614, 1178, 2303
Stipulation re testimony 266
Stipulation re Atlantic testimony 296
Stipulation re Goodyear testimony 322
Data re three marketing areas 332
Stipulation re Goodyear testimony 392
Offer of Exhibits 477
Stipulation re Warren and Hunterdone Counties in New Jersey 2276
Stipulation re Gay testimony 2277
Statement of Crawford Bryant 2281

Vol. I, pages 1 to 810; Vol. II, pages 811 to 1602; Vol. III, pages 1603 to 2336; Vol. IV, pages 2737 to 3281.

Witnesses for the Commission.

Testimony of:

Adams, E. Scott..... 875
Adams, William E..... 892
Balloran, Francis J..... 645
Best, Rolland C..... 1116
Blumenthal, David B..... 209
Booz, Elmer H., Jr..... 631
Brown, Richard..... 952
Chambers, John..... 163
Colby, William..... 745
Connell, Conrad..... 588
Dashper, Herbert L..... 969
Drennan, Robert B..... 802
Duboff, Myer..... 412
Galle, John..... 924
Govoruhk, Nicholas..... 1046
Ferguson, Richard..... 754
Franks, William Lee..... 664
Freland, Edgar D., Jr..... 1148
Hawes, Harry Noble..... 935
Hayes, Sherman..... 740
Heald, Felix B..... 677
Heller, Edward C..... 378
Hill, George J., Jr..... 367
Hinderscheid, W. F..... 450, 565
Hoffman, Jack..... 197
Huether, Lewis A..... 1149
Iacona, Aniello L..... 514
Johnson, Charles H..... 1014
Johnson, Tyler L..... 617
Kelly, James R..... 1054
Kernaghan, Thomas J..... 545

Kevis, Douglas W. 215
Lang, Elmer 1128
Lanza, Michael Thomas 724
Lingenfelser, Frederick 811
Marabella, Joseph 690
Matthews, James 433, 481
McCandless, Robert H. 573
McIntyre, James L. 776
McMaster, Joseph B. 1054
Migan, John J. 1070
Myers, James M., Jr. 822
Norris, Oster 1065
Parag, James 984
Pollock, Isidore Jack 536
Sabo, Carl 845
Sander, Homer August 1174
Savage, Eugene 1076
Scheiner, Joseph 1151
Siewierski, James W. 2311
Stein, Morris 859
Sullivan, Thomas J., Jr. 900
Vick, John J. 553
Walker, George Stanley Drew 768
Wetzel, Glenn L. 224

WITNESSES FOR RESPONDENT.

Testimony of:

Buongiorne, Frank R. 1546
Carlson, Robert O. 1823
Cary, Reuben 2123
Colley, Dwight T. 2283
Connelly, Joseph M. 2089
Cooley, Russel E. 1519
Detwiler, Charles K. 2018
Eckhardt, John A. 1347

Eckhardt, Tom 1355
Elko, Donald 1875
Elleni, Albert 1404
Foster, George F. 1396
Gaestel, Wilbur D. 1750
Gloth, Israel 1963
Godino, Alfred 1861
Grossman, Sam 1675
Hathaway, Holland M. 1190, 1414, 1491, 2327
Hayes, Thomas A., Jr. 2050
Jones, Thomas E. 1907
Klein, Robert 2075
Koehler, Fred 1335
Landis, Norman 1372
Leonard, William Henry 1252
Lott, Charles Henry 1708
Lozanski, Adam 1320
Luongo, Rudolph N. 1899
Mann, Isadore 1888
Mapes, August 1727
Marino, Joseph A. 1687
Maseyko, George Paul 1603
McCarthy, Harold F. 1979
McKaig, Charles G. 1229
Molinaro, Dominic., Jr. 2003
Mulholland, Richard G. 2234
Munch, Edward B. 1487
Provost, Robert C. 1868
Rhoades, O. Harris 2103
Ringenary, Edward 1845
Sartoff, Herman 1288
Shafer, Albert H. 2143
Snow, Edward L. 1996
Soukup, Albert J. 1308

Tavina, Nicholas V. 1383
Thomas, Richard D. 1501
Tydings, Gabriel 1270
Varnadore, J. W. 1193
Vayda, Albert J. 2072
Walsh, Charles A., Jr. 2184
Wash, Joseph J. 1655
Way, William L. 2083
Wright, Harry W., Jr. 1622
Wyckoff, Charles P. 1640
Zarella, George 1982

Stipulation re Goodyear 1952 Prices 2334

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets 2337
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks 2340
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord 2341
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks 2342
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman 2343
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al. 2345
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord 2347
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al. 2349
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman 2350

9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the company's preference for the Goodyear program:" 2351

Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan" 2355

11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental" 2357

12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors 2359

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached 2360

14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2365

15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker 2366

16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr. 2368

17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman 2370

18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord 2372

19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman 2374

20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman 2375

21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord 2377

22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman.....2378

23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow"....2379

24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers 2381

25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting".....2391

26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting".....2392

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline".....2393

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2394

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2397

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2398

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers" 2399

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers.....2400

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2402

35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2406

36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2407

37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2408

38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2409

39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2410

40 A-B—Letter, February 9, 1951, from S. J. Heideman to J. E. Mayl, with enclosure 2412

41 A—Goodyear Form G-1209, with descriptive note. 2415

44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement 2416

44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2417

44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2418

46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl 2419

47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al. 2421

47 C-D—Goodyear Sales Department Instructions, May 31, 1951 2424

47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2427

48 A-F—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951".....2429

49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord.....2436

50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman.....2437

51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman.....2439

51-A—Goodyear Form A98101L, "Request for Identification Field Service".....2441

52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company".....2443

54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953".....2444

56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord.....2444

56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr. 2445

57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman.....2446

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord.....2447

80 U—Map entitled "Goodyear Regions & Districts".....2449

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952.....2451
85 A-B—Atlantic Lease Form, B/3191, 6/49.....2454
86 A-B—Atlantic Lease Form, B/3191, 4-52.....2458
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2463
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station".....2466
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2466
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191.....2472
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *".....2473
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station"..2474
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants..2475
88 E1-2—Atlantic Lease Form B-3191Y, 5/55.....2477
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement.....2483
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement.....2484
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement.....2486
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2491
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants.2496
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants.2498
93—Atlantic Form of "Commission Agreement"...2502

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2505
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2509
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2515
96—Atlantic Form B-3119, 10/50, "Authorized Dis-Distributor's Agreement" 2521
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2524
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2527
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2529
98 A-G—Atlantic Form of Distributor Contract 2531
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2537
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider 2543
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2548
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers" 2553
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2556
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al. 2559
100 A-B-C—Memorandum, August 24, 1948, prepared by S. J. Heideman 2560
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study" 2565
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2591

102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments.....2601
103 Letter, January 10, 1950, from F. E. Neall to G. V. Ostrander.....2607
104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic.....2609
105 A-C—Letter Agreement, January 12, 1954 from Firestone to Atlantic.....2612
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone.....2616
107—Inter-office Memorandum, February 27, 1950, from F. M. Neall to D. T. Colley.....2618
108 A-J—Document, March 17, 1950, unsigned, entitled "Presentation to Atlantic Personnel in Connection with the Introduction of the Firestone Commission Plan".....2619
109 A-I—Document undated prepared by S. J. Heideman entitled "Report on Meeting for the Discussion of the Firestone Commission Plan"...2633
110—Letter, March 21, 1950, unsigned, to G. H. Milligan 2645
111—Letter, April 11, 1950, unsigned, to W. J. Griffiths.2646
112—Document, April 20, 1950, unsigned, entitled "Plan for Handling Adjustments for Atlantic Dealers on Lee Tires to be Replaced with Firestone Tires".....2647
113—Document, April 20, 1950, unsigned, entitled "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced by Firestone Batteries".....2648
114 A-D—Document, May 11, 1950, prepared by G. H. Milligan entitled "TBA-Firestone Commission Plan District Office Accounting Procedure....2650

115—Document, July 3, 1950, unsigned, entitled "TBA-Firestone Commission Plan District Office Accounting Procedure".....2656

116 A-B—Letter with enclosure, September 29, 1950, from G. M. Elliot to S. J. Heideman.....2657

117—Document undated and unsigned, entitled "Firestone Commission Plan Check List".....2658

118 A-B—Letter, March 13, 1950, unsigned, to Messrs. B. M. Boor, J. O. Estlow and W. J. Griffiths..2660

119 A-B—Letter, March 17, 1950, from S. J. Heideman to D. T. Colley.....2662

120—Letter, July 26, 1950, unsigned, to Messrs. B. M. Boor and W. J. Griffiths.....2664

121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachment..2665

123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord.....2670

124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman.....2671

125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord.....2672

126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear.....2673

126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear.....2674

127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company-Sales Commission".....2675

128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall.....2688

129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley.....2690

130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda 2691
131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson 2698
132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al. 2699
133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region 2700
134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for marketing of Tires, * * *" 2703
135 A-B-C—Document undated and unsigned entitled "Commission Plan" 2705
136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment 2709
137 A-E—Document entitled "Duties of the Dealer Salesman" 2715
138—Unsigned memorandum, June 25, 1951, to F. M. Neall 2721
139 A-B—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger 2722
140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman 2725
140 A—Atlantic Form B-139, 10/51, Dealers' Credit Card Sales Slips 2727
141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis 2729
142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman 2730

143—Letter, July 9, 1951, to William Stockton.....2731
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2732
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2733
145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2734
146 A-B—Document entitled "Staff meeting held 7/14/52" 2737
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13".....2739
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr. 2740
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program".....2741
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantics' T. B. A. Policy"....2742
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell.....2743
153 A-B—Memorandum, April 5, 1951, from R. M. Taitt to Noble Hall.....2744
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2746
155 A-H—Document entitled "1951 Sales Plan New York Region Basis".....2747
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C".....2753
155 J-K—Document entitled "1951 Sales Plan—Report of Progress—Appendix D".....2754
155 L—Document entitled "Appendix E".....2756

155 M—Document entitled "Summary of Results"...2757
156—Document dated January 5, 1951 entitled "Station Modelization Policy".....2758
157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2759
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman...2760
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord.....2762
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments.....2763
—Document entitled "Goodyear Associate Dealers—New Jersey".....2778
161—Unsigned letter, July 30, 1951, to W. J. Jackson 2787
161 A-B—Document bearing two columns headed "Location" and "Reason".....2788
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman...2790
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord.....2791
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman.....2793
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman.....2794
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill.....2795
166—Letter, October 11, 1951, from J. W. O'Neill to S. J. Heideman.....2797
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman.....2798
167 A-M—Handwritten document entitled "Refusals" 2799

168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel.....2810
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis.....2811
170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment 2812
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment 2820
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment 2825
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis.....2827
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, et al., June 1, 1951, with attachment..2827
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman.....2834
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman.....2835
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletion #17".....2836
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman.....2837
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord.....2838
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y."..2839
179 J—Form entitled "Atlantic-Goodyear Accounts"..2854
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)."....2854

180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman.....2856
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill.....2857
182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 2858
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 2859
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries".2861
185—Document, April 25, 1952, prepared by S. J. Heideman entitled "Firestone-TBA Bulletin No. 17" 2863
186—Letter, July 18, 1952, from G. M. Elliot to S. J. Heideman 2864
187—Letter, September 3, 1952, from J. O. Long to Messrs. W. L. Schmidt, E. E. Sickels and Fred Wanders 2865
188—Letter, April 19, 1950, from G. V. Ostrander to D. T. Colley.....2866
189—Letter, May 18, 1950, from M. G. Davis to S. J. Heideman 2868
190—Letter, June 8, 1950, unsigned, to H. E. Powell.2869
193—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951".....2871
194—Document undated and unsigned, entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales, Erie and Wilmington Districts, April and May 1950).....2872
195 A-B-C—Letter with enclosures, June 2, 1950, from G. M. Elliot to Leon Serven.....2873
196 A-B—Letter with enclosure, June 6, 1950, from G. M. Elliot to S. J. Heideman.....2875

197 A-B—Letter with enclosure, June 23, 1950, from S. J. Heideman to J. A. Addison.....2876
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950".....2879
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949".....2881
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950".....2883
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949".....2885
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950".....2887
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949".....2889
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950".....2891
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs 1949".....2893
202—Tabulation entitled "Final T. B. A. Sales—October 1950".....2895
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950".....2896
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949".....2897
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950".....2898
204 A—Tabulation entitled "Final T. B. A. Sales—December 1950".....2899
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949".....2901
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950".....2902

205—Document unsigned and undated, entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Erie and Wilmington Districts, November and December 1950).....2903
206—Letter, August 28, 1952, from D. T. Colley.....2904
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers.....2905
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951"...2907
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951".....2907
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951"...2908
211—Document entitled "Atlantic Progress Report", October 29, 1951.....2909
212—Document entitled "Atlantic Progress Report", December 24, 1951.....2910
213 A-F—Letter with enclosures, May 14, 1951, from G. M. Elliot to Leon Serven.....2911
214 A—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Progress through 4/14/51".....2917
214 B—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Eastern Pennsylvania Region Progress Through 4/14/51".....2918
214 C—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Western Pennsylvania Region Progress Through 4/14/51".....2919
214 D—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Southern Region Progress Through 4/14/51".....2920

214 E—Document undated and unsigned, entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales for fiscal year 1951)..2921
214 F—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales, November and December 1951).....2922
215 A-B—Atlantic Credit Card—1950.....2923
216 A-B—Atlantic Credit Card—1951.....2924
217 A-B—Atlantic Credit Card—1952.....2925
218 A-B—Atlantic Credit Card—1953.....2926
219 A-B—Atlantic Credit Card—1954.....2927
220 A-B—Atlantic Credit Card—1955.....2928
221 A-B—Atlantic Credit Card—1956.....2929
222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50).....2930
223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51).....2931
226 A—Letter, July 7, 1950, from Paul Castleberry, Jr., to Atlantic with attachments.....2932
227 A—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear.....2934
247 B—Booklet entitled "Goodyear T. B. A. Plan"...2935
250—Letter, November 2, 1955, from The Atlantic Refining Company to Norris A. Stein.....2963
251—Letter, February 7, 1956, from The Atlantic Refining Company to Alfred R. Trivits.....2964
252—Letter, December 21, 1956, from The Atlantic Refining Company to William A. White, Sr....2965
253—Letter, May 2, 1955, from H. M. Hathaway to Messrs. Abraham Berman and Morton Shor...2967
254 A—Letter, December 8, 1953, from J. G. Burns to Michael J. Clifford.....2968

254 B—Letter, January 4, 1954, from The Atlantic Refining Company to Michael J. Clifford.....2969
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling.....2970
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman.....2971
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic.....2972
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation".....2973
257 A—Letter, November 12, 1953, Atlantic to Aniello L. Iacona.....2974
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic.....2975
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania.....2976
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro.....2977
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro.....2979
259—Letter, July 5, 1956, from Atlantic to A. Bennett.....2980
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson.....2981
261—Letter, October 21, 1955, from Atlantic to Charles Davis.....2982
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice.....2983
263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio.....2984
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly.....2985
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel.....2986

266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette.....2987
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith.....2988
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco.....2989
268 B—Letter, November 10, 1954, Greco to Atlantic Refining Company.....2990
269—Letter, January 5, 1955, from W. J. McCambridge, Jr., to Duane Olthof.....2991
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski.....2992
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski.....2993
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw.....2995
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco.....2996
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers.....2997
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman.....2997
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al.....2999
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments.....3000
280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al.....3004
281 A-B—Document entitled "Sales Meeting February 19, 1951".....3006

282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card.....3008

283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3011

284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al.....3015

285—Letter, March 5, 1951, from E. W. McCreary to E. M. Fiffick, et al.....3018

286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment.....3019

287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al.....3022

288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3023

288 E—Memorandum, July 25, 1951, from E. W. McCreery to W. F. Hinderscheid.....3028

289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers 3030

290 A-I—Memorandum, August 6, 1951, with attachments 3031

291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3041

292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3044

293 A—Letter, August 14, 1952, from E. W. M. to B. M. Boor.....3047

293 B—Memorandum, August 12, 1952 unsigned, to E. W. McCreery.....3048
293 C—Letter, October 3, 1952, from E. W. McCreery to B. M. Boor.....3049
293 D—Letter, October 7, 1952, unsigned, to E. W. McCreery.....3050
294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews.....3051
295—Document entitled "Branches as of January 1, 1950".....3053
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950".....3053
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive".....3054
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell.....3056
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott.....3057
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co.....3060
302—Letter, December 22, 1950, from C. Connell to J. S. Parks.....3061
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville.....3062
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell.....3063
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst.....3064
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst.....3066

307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co. 3069
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3071
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell 3072
310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell 3073
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville 3075
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher 3077
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951" 3079
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley 3087
317 A-B—Atlantic Lease Form B-3191- 3/53 executed by The Atlantic Refining Company and Norris A. Stein 3090
317 C-D—Atlantic Form B-367, 7/52 executed by Norris A. Stein 3097
317 E—Atlantic Franchise Agreement Form B-3191 B, 4/52 executed by The Atlantic Refining Company and Norris A. Stein 3099
317 F—Atlantic Agreement Form B-3105, 8/53 executed by Norris A. Stein 3101
317 G-H—Atlantic Lease Form B-3191, 8/54 executed by The Atlantic Refining Company and Norris A. Stein 3104
318 A-B—Letter, July 26, 1954, from R. S. Zinn to Norris A. Stein 3110
319—Letter, June 22, 1955, to all Atlantic dealers from M. G. Davis 3112

320 A-B-C—Letter, February 1, 1956, from Norris A. Stein to M. G. Davis.....3113
320 D—Letter, February 2, 1956, from M. G. Davis to Norris A. Stein.....3118
321—Letter, February 6, 1956, unsigned to John Rule.3119
322—Letter, February 9, 1956, from E. E. Sickels to Howard M. Berg.....3121
323 A-B—Atlantic Lease Form B-3191, 3/53 executed by The Atlantic Refining Company and Thomas J. Sullivan, Jr. 3122
324 A-B—Atlantic Form B-367, 7/52 executed by Thomas J. Sullivan, Jr. 3128
325—Atlantic Agreement Form B-3194, 10/50 executed by The Atlantic Refining Company and Thomas J. Sullivan, Jr.....3131
326—Atlantic Equipment and Apparatus Form B-3191A, 10/52 executed by Thomas J. Sullivan, Jr. 3133
327—Firestone Associate Dealer Agreement executed by Thomas J. Sullivan, Jr., ...3134
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column.....3135
339—Goodyear Service Stores Invoice dated 12-27-55.3136
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks.....3137
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments.....3139
352—Letter, May 17, 1950, from G. A. Fearn to R. S. Zinn 3152
353 A-B—Letter, October 30, 1950, from J. A. Addison to S. J. Heideman.....3153
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3155

355 A-B—Letter, January 3, 1951, unsigned to D. T. Colley 3157
356 A-B—Letter, February 3, 1951, unsigned to D. T. Colley 3159
357 A-B—Letter with enclosure, March 4, 1953, from G. M. Elliot to R. G. Mulholland 3161
358—Letter, March 4, 1953, from G. M. Elliot to R. G. Mulholland 3165
359—Letter, March 23, 1953, from G. M. Elliot to R. G. Mulholland 3166
360—Letter, May 1, 1953, from G. M. Elliot to R. M. Taitt 3167
361—Letter, May 22, 1953, from G. M. Elliot to R. G. Mulholland 3168
362 A-B—Letter with enclosure, July 27, 1953, from G. M. Elliot to R. G. Mulholland 3169
363—Letter, April 28, 1955, from R. G. Mulholland to G. M. Elliot 3171
364—Letter, December 29, 1955, from G. A. Fearn to Jack Hyde 3173
365 A-B—Letter, January 31, 1956, from J. C. Heid to W. L. Zinn 3174
366—Letter, April 26, 1956, from G. A. Fearn to J. C. Heid 3175
367—Letter, May 1, 1956, from J. C. Heid to G. A. Fearn 3177
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions" 3178
375—Document undated and unsigned entitled "Atlantic-Firestone TBA Sales" 3179
376—Document undated and unsigned entitled "Atlantic-Firestone TBA Sales by Class of Trade" 3180

377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade".....3181
378—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, January 1953).....3183
379—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year and December 1953).....3184
380 A-B—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year and December 1954).....3185
381—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year 1955 through December 20, 1955 and December 1955).....3187
382 A-B—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year 1956 through June 20, 1956 and June 1956).....3189
383 A—Letter, October 7, 1955, from G. M. Elliot to R. G. Mulholland.....3191
383 B-C—Firestone inter-office memorandum, October 6, 1955, to District Managers.....3192
384—Letter, February 1, 1955, from R. G. Mulholland to G. M. Elliot.....3196
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951".....3197
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951".....3198

387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3199

388 A-D—Firestone inter-office memorandum, February 2, 1956, to District Managers, Territory Salesmen, Store Managers.....3200

400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments.....3205

480—Document, March 17, 1953, entitled "Statement of Herman Sartoff" executed by Herman Sartoff.3221

481—Document, March 19, 1953, entitled "Statement of Adam Lozanski" executed by Adam Lozanski.3223

482—Document, March 26, 1953, entitled "Statement of Thomas C. Eckhardt" executed by Thomas Eckhardt.....3225

483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley.....3227

484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne.....3230

485 A—Letter, August 29, 1958, from the Atlantic Refining Company to James W. Siewierski....3233

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow.....3234

2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow.....3240

3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company.....3241

4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow.....3242

6—Atlantic Mutual Consent of Concellation Form B-765 11/53 executed by James Parag, November 2, 1955.....3243

7—Atlantic Mutual Consent of Cancellation Form B-765, 11/53 executed by The Atlantic Refining Company and James Parag, March 2, 1956.....3243

10 A-C—Document March 27, 1953, executed by Fred Koehler.....3244

10 D—Letter, March 1, 1951, from D. T. Colley, unaddressed.....3247

10 E—Letter, August 28, 1952, from D. T. Colley, unaddressed.....3248

11 A-G—Document, March 27, 1953, executed by Thomas C. Eckhardt.....3249

20—Atlantic booklet entitled 'TBA Program".....3255

31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments.....3274

	Original	Print
Proceedings in the United States Court of Appeals for the Seventh Circuit	3282	3282
Opinion, Swygert, J.	3282	3282
Judgment	3298	3299
Final decree affirming and enforcing order to cease and desist	3299	3300
Clerk's certificate (omitted in printing)	3301	3301
Order allowing certiorari	3302	3301

GEORGE PAUL MASEYKO was thereupon called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you be kind enough to give your full name, please?

A. George Paul Maseyko.

Q. Where do you live?

A. 98 North Street, Johnson City, New York.

Q. Is Johnson City one of the so-called "triple cities" around Binghamton?

A. That's right.

Q. The other being Johnson city?

A. Endicot.

Q. The three are Endicot?

A. Endicot, Johnson City, and Binghamton.

Q. Thank you. Are you an Atlantic Refining Company lessee?

A. Yes, sir, I am.

Q. Where is your station, Mr. Maseyko?

A. 225 Front Street, Binghamton, New York.

Q. How long have you been at that station?

2880. A. Twenty-four to twenty-five years.

Q. Since about 1935?

A. That's right.

Q. For the first few years I believe you had somebody as a partner with you?

A. Yes, there were originally three of us, and then two, and finally myself.

Q. Since about 1938 you have been the sole operator of the station?

A. That's right.

Q. And sole lessee?

A. That's right.

Q. And before you became an Atlantic lessee operator of a service station, do I correctly understand that you served in the United States Navy?

A. That's right.

Q. Now, of course, you have a three-year lease for your station?

A. That's right.

Q. And this would be your second three-year lease?

A. I believe so. At the present time, I might clarify that, I have renewed this lease which went into effect this month. I have taken in a partner who is my brother.

Q. I understand, sir, that when you retire you plan to turn the station over to your brother?

2881 A. That's right.

Q. Before 1951, were you handling primarily Lee tires and Exide batteries at your station?

A. Yes, I believe so.

Q. Do you recall that in 1951 or about then, Atlantic dropped the direct marketing of TBA and began to sponsor the Goodyear plan?

A. Yes, I remember.

Q. Do you recall going to dealer meetings in 1951, about the time of the change over?

A. Yes.

Q. And again in 1952?

A. Yes.

Q. Could you tell us in your own way, generally, what happened at those meetings?

A. Well, Goodyear had sponsored a dinner in this particular instance at the Arlington Hotel and they were explaining their TBA deal to the dealers.

Q. Were Atlantic representatives present?

A. Yes, sir, they were.

Mr. Kelaher: Excuse me, is this the first meeting, counsel?

Mr. Thompson: I asked him about 1951.

Mr. Kelaher: Oh.

2882 By Mr. Thompson:

Q. Was the program explained to you not only by Goodyear but also by Atlantic?

A. Yes, sir, it was.

Q. Was it made clear to you this was a voluntary program so far as the dealers were concerned?

A. Yes, sir, the dealers could take it or leave it.

Q. Now, after Atlantic had explained the program, did you or did you not decide to try the Goodyear line of TBA?

A. Yes, sir, I did.

Q. Have you since 1951 used Goodyear tires as your primary tire line?

A. It is my primary tire line.

Q. And you purchase, I believe, anything else your customers want?

A. Anything they want, I will buy.

Q. Would you explain to us in your own words why you have continued to handle the Goodyear tires?

A. Well, I think probably the easiest is my mark-up is a little better. My discount on the Goodyear tire is a little better than I can get off competitors and it has a public acceptancy, that is, in my local area.

Q. Do you find the Goodyear tire easy to sell?

A. Yes, I do.

2883 Q. How about batteries, Mr. Maseyko, what lines and brands of batteries have you been carrying since 1951?

A. Well, I handle Goodyear primarily, but I have sold also Auto-lite.

Q. Do you stock Auto-lite batteries?

A. Occasionally, yes.

Q. How about accessories, from whom do you buy accessories?

A. Well, that would cover just about every wholesaler in town.

Q. In other words, you buy from a large number of sources?

A. It depends on how my stock varies at that particular instant.

Q. Could you name some of your suppliers?

A. Well, Whipple's Automotive, Rose Units, United Auto, and Binghamton Auto Parts.

Q. Are these non-Goodyear accessories openly displayed at your station?

A. Yes, sir, they are.

Q. So they are visible to anyone?

A. That's right.

Q. Do you have a Bowes decal at your station?

A. Yes, sir, I do.

Q. Why do you have a Bowes decal, do you carry Bowes products?

A. It is more or less for tubeless tires. I have carried Bowes products, yes.

Q. What kind of battery charger do you use?

A. Exide.

Q. Does that have the Exide name on it?

2884 A. Yes, it does.

Q. And all these things are visible to the Atlantic salesmen when they come to your station?

A. They sure are.

Q. Do you sell TBA on the Atlantic credit cards?

A. Yes, I do.

Q. Do you sell TBA regardless of the brand, on the Atlantic credit cards?

A. Yes, yes, sir.

Q. That is, you sell non-Goodyear TBA on the Atlantic credit cards?

A. Oh, yes.

Q. When you turn your charge slips in to Atlantic, do you mention any brand on the charge slips?

A. It is just recently I have—I don't know, I have never have heard any brand on the tire, I just have named the size of the tire and price and let it go at that. I have never put any brand on.

Q. How about batteries?

A. Batteries the same way.

Q. Has that been, to the best of your recollection, your continuous practice?

A. That is more or less recently. I can't quite remember back whether I done it all the time or not.

Q. Has Atlantic ever criticized you or commented
2885 upon the fact that you charge non-sponsored TBA on credit cards?

A. No, they haven't.

Q. Are you solicited at your station by tire manufacturer's representatives or salesmen other than Goodyear?

A. Yes, I have been.

Q. Do you occasionally buy from them?

A. Yes.

Q. Has any representative of Atlantic ever criticized you for handling Auto-lite batteries or non-Goodyear accessories?

A. No, they haven't.

Q. Have they ever suggested to you that you should not buy them?

A. No, they haven't.

Q. Or told you to hide them?

A. No.

Q. Who makes the decision at your station about what you buy? What brand of TBA you carry?

A. I make my own decisions.

Q. Has Atlantic attempted to force you or press you to buy Goodyear?

A. No, they haven't.

Q. Do you feel free to buy any brand of TBA you desire?

A. Yes, I do.

Q. Do you feel that you could carry Goodrich or Lee or Exide 100 percent at your station without criticism by Atlantic?

2886 A. Yes, I think I could.

Q. Or without danger to your lease?

A. Yes, I believe I could.

Q. Now, your lease has, of course, been renewed many times, has it not?

A. That's right.

Q. Has your TBA purchase practices ever been commented upon on the occasion of a lease renewal?

A. No, it has not.

Q. Do you handle some of your accounts by extending personal credit to customers?

A. Yes, I do.

Q. Have you built up in your neighborhood a large number of customers who reside near your station?

A. Yes, I believe 95 percent of my business is neighborhood business.

Q. Do those people know you well, and do you know them?

A. Yes, I do.

Q. Have you from time to time received offers from competitors of Atlantic Refining Company to take stations of theirs?

A. Yes.

Q. Has any recent example occurred to you?

A. Yes, back there about, might be a year or two ago, Amoco contacted me.

Q. Why do you stick to Atlantic, Mr. Maseyko?

2887 A. Because I am heartily sold on them.

Q. Doesn't Atlantic inspect your station from time to time?

A. Yes, they do.

Q. Do you see the results or discuss the results of the inspection with them?

A. Yes, we do.

Q. Are the TBA brands carried by you ever the subject matter of discussion following inspection?

A. Oh, no, no. Inspection, all it does is more or less, they discuss the cleanliness and the efficiency of the service station.

Q. Then do you have once a year or so, a discussion of your business with the sales supervisor or district manager?

A. Yes, I do.

Q. Is it the purpose of that to try to help you make money at your station?

A. Yes, and I am strongly for this particular type because when I first went in business, now had this thing been instructed to me the way it is today, why, I would be far better off because this shows the dealer where he is missing out on his day-to-day sales with the contact with the public. It is a very good deal for the younger men today.

Q. Now are you one of the elect in the Binghamton area who was visited by Mr. Lipsky of the Federal Trade Commission?

A. Yes, yes I am.

2888 Q. Do you know why you were selected for that distinguished honor?

A. No, I don't.

Q. Do you recall the interview? Is it clear to your mind?

A. Well, I can recall the particular incident where I was down—I had the old-type service station where we had a grease pit, and I believe my man was sick and I was running the business all alone, and I had been pressured all

day by salesmen and he walked in there; just about the time I am underneath the car, and he wanted to know who I was, and I looked up from underneath and asked him who the hell he was, and I think that is when he told me he was so and so from the Federal Trade Commission. And then I asked him for his credentials and he showed it to me and that is when I come up from underneath.

Q. When you said you were pressured all day from salesmen, were you referring to Atlantic salesmen?

A. No, no, no.

Q. Now, when you say you are pressured from salesmen, do you mean the large number of jobber salesmen who come to see you?

A. Yes, it is these wholesalers of course, have salesmen who call on dealers from time to time, and this particular day happened to be the day that maybe two or three of them had called on me, and one of those days I just wasn't in the mood to talk to them.

Q. You were not in a happy frame of mind?

2889 A. Very much.

Q. Do you remember whether Mr. Lipsky asked you whether Atlantic tried to force you to buy Goodyear products, or words to that effect?

A. Yes, I believe he did.

Q. Do you recall what answer you gave him?

A. Well, the answer that I would give right now, that we weren't pressured.

Q. Did you feel in 1953 you were being pressured?

A. No, I don't.

Q. During the course of the conversation with Mr. Lipsky, did he write down things on a piece of paper?

A. Yes, he did.

Q. When he was through writing things down, did he show it to you?

A. Yes, he did.

Q. Did he ask you to sign the statement?

A. Yes, which I did.

Q. Were the words in the statement his or yours?

A. No, I believe they were his to the best of my knowledge.

Q. Do you recall whether he read it carefully or hastily?

A. Well, after about two hours of Mr. Lipsky I was in a hurry to get rid of him, so it had to be hastily.

Mr. Thompson: Mr. Ingraham, any questions.

Mr. Ingraham: No questions.

2890 Mr. Thompson: Mr. Kelaher?

Cross-Examination by Mr. Kelaher.

Q. Mr. Maseyko, I would just like to go over some of the answers you have just given to Mr. Thompson. Before 1951, before Atlantic began to sponsor Goodyear TBA, you stocked Lee tires, is that correct?

A. That is right.

Q. Did you stock them exclusively?

A. That's right.

Q. Did you stock Exide batteries exclusively?

A. Yes, I believe so.

Q. Now, you weren't asked—

A. (Interposing.) Excuse me, you are referring to stocked exclusively. There would be occasions where a customer would want a tire other than the Lee or a battery other than an Exide that I would go out and buy through a wholesaler. Exclusively my stock in service station was Lee and Exide.

Q. What other brands would you go out and buy?

A. Well, for instance, there would be the Willard battery or the Delco battery, or the Firestone tire, or the Goodrich tire, whatever the party would want.

Q. Then after Atlantic began to sponsor Goodyear TBA, what brand of tires and tubes did you carry?

A. After Atlantic sponsored Goodyear?

2891 Q. In 1951.

A. Goodyear.

Q. And you stocked Goodyear tires and tubes exclusively, right?

A. Well, yes.

Q. Now, with respect to your batteries. After Atlantic entered into the Goodyear TBA program, what batteries did you begin to stock?

A. I handled Goodyear batteries and on occasion I handled Auto-lites.

Q. Did you stock Goodyear batteries exclusively?

A. Yes.

Q. So that your sales of Auto-lite were just sporadic, is that right?

A. Yes.

Q. Now, on your accessories—let me ask you this first: When Atlantic was sponsoring Lee-Exide, they also had a line of accessories in their program, as you will recall, and at that time, were you purchasing accessories through the Atlantic program prior to 1951?

A. Off and on, yes.

Q. Now, after Atlantic began to sponsor Goodyear TBA, about March 1951, from whom did you purchase your accessories?

A. Well, it could be from a number of them. It was from Goodyear, of course, and then there was Whipple's Rose Units, United Auto, and Binghamton Auto.

2892 Q. And what percentage of your accessories were purchased from Goodyear, that would be the Goodyear service stores, is that correct?

A. That is right.

Q. That is located in Binghamton?

A. Yes. Well, I am guessing roughly there, at the

present time, I would say between 40 and 50 percent of the accessory line.

Q. And the balance is—

A. (Interposing.) From the other.

Q. (Continuing.) —is distributed among the other jobbers?

A. That's right.

Q. So, you were practically Goodyear right down the line in TBA?

A. Let me put it this way, you have to understand a little about this Goodyear deal before we get too far.

Q. I am not asking you that.

Mr. Thompson: Let him answer the question.

Mr. Kelaher: I just asked him if he were not, he has testified tires, batteries,—

The Witness: (Interposing.) I would like to state the reason that I am a Goodyear man.

By Mr. Kelaher:

Q. I haven't asked you that yet, but I will if you just give me time.

2893 A. At the present time, I do buy Goodyear products.

Q. Right. Now, what type of service station identification did your station have when you were carrying Lee, Exide products?

A. Just what do you mean by "what kind of identification"?

Q. I am referring to signs.

A. I had Lee Tire signs out and I had Exide Battery signs out.

Q. And what happened, if anything, after the Goodyear TBA program went into effect? Did those signs remain there?

A. No. In fact, I believe I took the sign down myself

and used them as a carry-all in my grease pit, and I put up the Goodyear signs.

Q. You say that you yourself put up the Goodyear signs?

A. Well, with the help of the Goodyear salesman, and the Atlantic salesman. I think both was there.

Q. Was your permission asked to put up the Goodyear signs?

A. Oh, yes.

Q. Did the Goodyear driver or anyone make any comments to you at that time about the placing of the Goodyear signs in Atlantic service stations?

A. Well, what do you mean by "comments"?

Q. I am just asking you if there was any conversation that went on at that time between you and the Goodyear driver?

A. Well, I believe that in my particular case, I
2894 asked for a sign to be put on my pole to identify me as a Goodyear dealer.

Q. And at that time was the Goodyear truck going to Atlantic service stations in the area putting up Goodyear identification on Atlantic stations?

A. This might have been prior to that, but of course, the time, it could have happened at the time they were putting these decals in the window.

Q. They were putting them in the windows of all the Atlantic stations, is that what you mean?

A. That's right.

Mr. Thompson: Off the record, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Direct Examination (Resumed) by Mr. Thompson.

Q. I simply forgot to ask you a question, Mr. Maseyko. I show you three documents labeled CX 150, CX 206 and CX 207, being letters from Atlantic Refining Company to dealers.

Will you take a look at them and let me know whether you received all of those precise letters or letters substantially the same?

A. (After inspection.) Yes.

Q. Do you recall those letters, sir?

A. Yes, I do.

2895 Q. Did you receive those?

A. That's right.

Cross-Examination (Resumed) by Mr. Kelaher.

Q. Now you carried Lee tires and Exide batteries for quite a number of years, did you not, Mr. Maseyko?

A. That's right.

Q. And there was good consumer acceptance for Lee tires and Exide batteries in the Binghamton area, was there not?

A. Yes, but that was through the efforts of the dealers.

Q. Well, regardless of whose efforts they were, there was consumer acceptance there?

A. That's right.

Q. And the road hazard guarantee was a good selling point in Lee tires, was it not?

A. Sure.

Q. And at that time, going up to about 19—well, during the time you handled Lee, were you able to get a better price on Lee tires than you were on other brands of tires, such as Goodyear?

A. Well, I don't believe so. Let me put it this way, I didn't have the opportunity other than when I had the

occasion to buy the tire, I could not do as good as I had done with Lee. I guess that would be right; Lee gave me the better deal.

Q. Lee gave you the better deal?

2896 A. At this particular time.

Q. And your mark-up was higher on Lee?

A. Well, it was at the time.

Q. In 1951?

A. Prior to the Goodyear deal.

Q. Yes. Well, even after the Goodyear deal, weren't you still able to get Lee tires at a lower price than Goodyear tires?

A. Well, that was one of those deals I was a little shy of.

Q. I don't think I understood you.

A. Well, for one reason, there wasn't a distributor in the marketing area at the time, outside of Frank and I didn't know Frank was a distributor, but the tires were to be shipped in from Syracuse, and I didn't like the set-up, so that is the reason I didn't go into it.

Q. I am asking you—

A. (Interposing.) But the price was a little better, yes.

Q. Your answer is "yes" to my question?

A. Yes.

Q. Now, you stated on direct examination, you gave some reasons as to why you began to handle Goodyear TBA and why you continued to handle Goodyear, relating to tires right now. Do you recall that testimony? Do you recall the reasons you gave for wanting or for handling or carrying Goodyear?

A. When was that?

Q. Today, in the answer to a question by Mr. Thompson.

2897 A. Yes, public acceptance, for one.

Q. Yes.

A. And better price.

Q. Was that true? And you just testified that the mark-up on Lee tires about 1951 was better than on Goodyear tires?

A. Now, that again takes a little explanation. That was a one-shot deal, and only a one-shot deal.

Q. What was a one-shot deal?

A. You are getting ahead. Here is a market or here comes Lee's Tire Company that loses a marketing area, and she is trying to come in and build herself back up, so she gives the dealer a one-shot deal, but yet, over the long period of tire buying, I wasn't better off. I was better off with the Goodyear set-up. I am not looking for a one-tire deal, I am not here today and gone tomorrow. I am in the business to stay. It is the only thing I know.

Q. Well, I gather from your answer that what you are referring to is the fact that when Goodyear and Atlantic began to sponsor Goodyear TBA, Lee lost the marketing area, is that correct? Lost the Atlantic marketing area?

A. Well, yes.

Q. And the same thing applied to Exide, did it not?

A. Well, the Exide had a marketing area there, but I just felt I wanted to go along with Goodyear.

Q. So, didn't the fact that Atlantic sponsored
2898 Goodyear TBA influence you to handle Goodyear TBA?

A. Well, I don't think it was the main factor. I think price, wholesale price, that is what I am mainly interested in, is making that extra dollar.

Q. You just testified that you could have obtained a larger mark-up on Lee tires than Goodyear tires?

A. I also said it was a one-shot deal.

Q. When was this one-shot deal given to you? In what year? Was this after Atlantic went over?

A. Right after I went into the Goodyear line.

Q. What happened then?

A. Nothing.

Q. Did Lee come around?

A. The salesman come in from Syracuse area and I just wasn't interested.

Q. He offered you a better price than you got from Goodyear?

A. Just on that particular one-shot to get the Lee tire in.

Q. Did he say it was just for a one-shot deal?

A. That was the deal.

Q. Was that for a stock of tires?

A. That is right, an introductory offer, so to speak.

Q. Now, let me ask you this question: How close are you to the Pennsylvania border? How close is Binghamton to the Pennsylvania border?

A. I would say in the neighborhood of 15, 18 miles.

2899 Q. 15, 18 miles. You are very close to the border up there, as I understand it?

A. Yes.

Q. Do you know that Atlantic sponsors Firestone TBA in that area of Pennsylvania?

A. Yes.

Q. In Atlantic Service Stations?

A. Yes.

Q. Now, if Atlantic had sponsored Firestone TBA in your station, would you have also adopted that program?

A. If their price was better than Goodyear, yes.

Q. Well, Goodyear would not have entered into it at that time.

A. Let's put it—if Firestone was as good as Lee or better, let's put it the other way.

Q. The chances are you would have gone along with the Firestone recommendation, isn't that right?

A. Well, that is possible, yes.

Q. Now, isn't it true that you at one time attended a meeting of Atlantic dealers who were dissatisfied with the fact that Goodyear tires were being sponsored by Atlantic?

A. Let me put it this way, you have been misinformed. This thing had nothing to do with Goodyear tires.

Q. You did have a meeting though?

A. But it had nothing to do with Goodyear prod-
2900 uct, it only had to do with Atlantic gasoline pricing,

Q. What was that about?

A. In this particular marketing area, which we sometimes refer to as "cut throat alley," Atlantic had lost a dealer. When I say it had lost a dealer, the dealer became dissatisfied, and let's say with Atlantic policy, whatever it was, I don't know, but he had taken his business with him down the street. So Atlantic had taken the station over, which she had done, and in order to meet the competitive price of that station, she had to post a sign, which was all right in that locality, because she was meeting price. But the price was two cents cheaper than it was in my area.

Q. That is, Atlantic was posting the price?

A. Yes. And that was the reason the dealers got together, but that had nothing to do with the Goodyear product.

Q. And as far as you know, you never attended a meeting where Atlantic dealers discussed the fact that they were getting a better mark-up on Lee tires and they had a better guarantee on Lee tires and were dissatisfied with Goodyear tires?

A. Never knew of one existing in the area.

Mr. Kelaher: May we have a minute, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

2901 By Mr. Kelaher:

Q. When did you first learn that Atlantic was going to sponsor Goodyear TBA?

A. I think it was directly through a letter that we received.

Q. And did that come before this dealer meeting at the Arlington Hotel which you have referred to in direct testimony?

A. I would think yes, but—

Q. (Interposing.) About that time, and was that dealer meeting attended by all of the Atlantic dealers in the Binghamton area?

A. Yes. That is, within the vicinity of Bingahmton. I think it covered a little more than Binghamton itself.

Q. Did it get over to the tri-city area

A. Yes, I believe so.

Q. Johnson City and Endicott?

A. Yes.

Q. And was that a meeting of the Binghamton district of Atlantic, would you remember?

A. So far as I recollect, yes.

Q. And therefore, were you paid a visit by your Atlantic salesman or other Atlantic personnel with a Goodyear representative?

A. Yes.

Q. And what happened at that time?

A. Well, they discussed the advantages of the Goodyear products, and they discussed the various price

2902 situations, and I think that is about what it was.

Q. Did the Atlantic salesman or the Goodyear salesman indicate that they would like to have you start to handle Goodyear TBA at that time?

A. Well, they left it to me whether I wanted it or not. I don't recall whether at that particular instant I bought them or not.

Q. And shortly after, if not then, you bought the program, is that right?

A. That's right.

Mr. Kelaher: No further questions.

Mr. Thompson: I thought you had one further question, Mr. Kelaher. You faithfully promised Mr. Maseyko you would ask him why he was a Goodyear dealer, and you never did.

Mr. Kelaher: I thought we went over that at length.

Redirect Examination by Mr. Thompson.

Q. May I ask, Mr. Maseyko, why you are a Goodyear dealer?

A. Because I am thoroughly sold on Goodyear products.

Q. And not only tires, but also batteries and accessories?

A. That's right.

Q. In the meeting of the dealers in which you discussed pricing in the Binghamton area of gasoline, was Mr. Buongiorne present?

A. I believe he was, yes.

Mr. Thompson: That is all, thank you, sir.

2903 Hearing Examiner Kolb: Thank you. You may be excused.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Gordon: Mr. Wright, will you take the witness stand.

HARRY W. WRIGHT, JR. was thereupon called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Gordon.

Q. Will you give your full name to the stenographer?

A. Harry W. Wright, Junior.

Q. What is your home address?

A. 1413 Arch Drive, Vestal, New York.

Q. Now before we begin, Mr. Wright, the gentleman sitting at the table—Mr. Thompson is saying a word to him—is Mr. Kelaher. He is the attorney for the Federal Trade Commission. Mr. Kolb is the Examiner, and Mr. Ingraham down here is counsel for Goodyear.

When were you first with the Atlantic Refining Company?

A. I went to work for them as a stock clerk in 1947, I believe.

Q. Did you then go into another branch of the
2904 Atlantic Refining Company at a different type of work?

A. Yes, I was a service salesman, I think it was in 1951.

Q. 1951?

A. Yes.

Q. Do you remember when in 1951?

A. April, I believe it was.

Q. And you continued as a service salesman until when?

A. I think it was in January, January 31—no, January 20 of '53.

Q. Now what area did you work in as a service salesman?

A. I was all over.

Q. When you say "all over" do you mean all over Atlantic's entire marketing area?

A. I was in Liberty, Monticello, Binghamton, Ithaca.

Q. Was it in one district of Atlantic's marketing area?

A. Well, it was more than one district represented there, I believe.

Q. Were you in the Binghamton area to any extent?

A. Most of the time, except on special occasions when I was out of town.

Q. When did you become an Atlantic lessee?

A. In February of '53.

Q. And have you been one ever since then?

A. Yes.

Q. Where is your station located?

2905 A. 1610 East Main Street, Endicott.

Q. Endicott is one of the triple cities of which Binghamton is another?

A. That is right.

Q. What is the term of your lease?

A. At the present time, it is three years, sir.

Q. Now at the time you became a service salesman, do you know what kind of TBA Atlantic was selling?

A. They were handling Lee and Exide. I believe, at one time. Whether I was a stock clerk or salesman, I can't recall which.

Q. Did you attend any meetings as an Atlantic service salesman at which Atlantic TBA policy was discussed?

A. If I did, I don't rightly recall it.

Q. Were you ever in a meeting in Elmira?

A. Not to my knowledge, no.

Q. I show you this document which is marked CX 206, dated April 28, 1952, and headed, "A Restatement of Atlantic TBA Policy" and signed by Mr. Colby. Do you recall receiving that letter?

A. Yes, I do.

Q. Were you a service salesman at the time you received that letter?

A. Yes.

Mr. Kelaher: What was the date of that?

Mr. Gordon: August 28, 1952. CX 206.

2906 By Mr. Gordon:

Q. Do you also recall receiving this letter which is marked CX 207 and dated June 24, 1955? It would have been sent to you by Mr. Ostrander, the regional manager.

A. Yes.

Q. This leter is known as the non-forcing letter.

Mr. Kelaher: Just one question on that. These are addressed to the Atlantic dealers. Wasn't the other addressed to Atlantic Dealers also?

Mr. Gordon: That was also stipulated, Mr. Kelaher, as having been sent to all personnel. This one was addressed to all Atlantic dealers and he has already testified that he became an Atlantic lessee-dealer prior to that date.

By Mr. Gordon:

Q. Prior to the time you became an Atlantic dealer then, you were familiar with Atlantic TBA policy?

A. Yes.

Q. Would you tell me what kind of tires you are now carrying in your station?

A. Goodrich.

Mr. Kelaher: Goodrich?

The Witness: Goodrich.

By Mr. Gordon:

Q. Entirely?

A. Entirely.

2907 Q. What kind of batteries are you carrying?

A. Delco.

Q. Entirely?

A. Entirely. Now I make the stipulation in the event a customer specifies a certain brand, I can get them, but I stock Delco and Goodrich.

Q. Now where do you buy your accessories?

A. Do you want the names of the houses?

Q. Yes.

A. Auto Supply, United Auto, Piersall K. N. W. Tire Service, Whipple's.

Q. Where do you purchase your recaps?

A. From K. N. W. Tire Service.

Q. Are these accessories—do you purchase any accessories from Goodyear?

A. Not in some time, no. I would say it has been over a year now.

Q. Are these tires, batteries, and accessories that you have described, openly displayed in your station?

A. Yes.

Q. What kind of a battery rack do you have in your station?

A. It is a big Delco rack.

Q. What kind of tire repair kit do you have?

A. Bowes.

Q. Are your TBA items on the shelves in your station?

2908 A. Oh, yes.

Q. And your Atlantic salesmen see them?

A. Definitely.

Q. Can anyone else see them?

A. I want to sell them.

Q. Do you sell the TBA you have just described on credit cards?

A. Yes.

Q. Do you indicate the brand name on the credit slip?

A. Sometimes, yes, sometimes, no. I mean, it makes no difference actually.

Q. Has Atlantic ever criticized you for charging non-Goodyear TBA on credit cards?

A. No.

Q. Are you also solicited by other tire suppliers?

A. From time to time, I have been solicited by General and Firestone and Lee.

Q. What is the main reason for your buying the TBA you do?

A. Well, the price is right for one thing, the service, in my thinking, has to be excellent because of my location, and I have to have a product that is well accepted by the public.

Q. How far are you from the Goodyear store?

A. Oh, approximately 10 or 12 miles.

Mr. Kelaher: From which store is that?

Mr. Gordon: Goodyear store.

2909 By Mr. Gordon:

Q. Have you ever been criticized by Atlantic for carrying non-Goodyear TBA?

A. No.

Q. Have you ever been told by Atlantic to stop buying TBA you are buying?

A. No.

Q. Has your Atlantic salesman ever told you to remove the non-Goodyear TBA you carry in your station?

A. No.

Q. Has your Atlantic salesman or anyone else from Atlantic ever told you to hide non-Goodyear TBA?

A. No.

Q. Who makes the decisions as to what you buy in the way of TBA products in your station?

A. I make my own decisions.

Q. Do you feel free to buy any TBA you want?

A. Definitely.

Q. Do you feel free to buy TBA from any source you want?

A. Yes.

Q. Do you think that your lease is in jeopardy because you buy non-Goodyear TBA?

A. No.

Q. While you were a service salesman, did you work in a number of Atlantic stations?

2910 A. Yes.

Q. Were those stations lessee stations?

A. Yes, most of them.

Q. Did you have the opportunity to observe on numerous occasions the Atlantic salesman talking to the lessee-dealer?

A. Many times, because we used to double team quite a bit and I was nearby so I could overhear the conversation if I wanted to.

Q. Did you ever observe while you were working in Atlantic stations as a service salesman, Atlantic salesmen or personnel trying to force an Atlantic dealer to buy Goodyear TBA?

Mr. Kelaher: Objection, your Honor, to that question. That calls for hearsay.

Mr. Gordon: That is the same sort of question, your Honor, that Mr. Kelaher has asked so often. I thought he would hardly object to it.

Hearing Examiner Kolb: Overruled.

Mr. Gordon: Would you answer the question?

The Witness: Would you repeat the question again, please?

Mr. Gordon: Would you read the question to him?

(Whereupon, the reporter read the pending question as requested.)

The Witness: No.

By Mr. Gordon:

Q. Mr. Wright, you have had several leases from

2911 Atlantic, have you not?

A. Yes.

Q. Your leases have been renewed two or three times?

A. Yes.

Q. At the time your lease was renewed, did Atlantic ever discuss with you the fact that you were buying non-sponsored TBA?

A. Yes, we discussed it and I explained my problem that I have had with Goodyear on service and deliveries and so on, and I asked the sales supervisor, I said, "Do you blame me?" and the answer is, "Definitely not."

Q. Do you know most of your customers pretty well by their first names?

A. I would say 75 percent of them.

Q. Do you do a substantial amount of business on personal credit?

A. Yes, I do.

Q. Are most of your customers rather regular, repeat customers?

A. Yes, they are all regular customers.

Q. Are there many other oil companies active in your area?

A. Yes, sir.

Q. Have you received offers from any of these companies to go with them?

A. I have been solicited by Amoco and Sunoco.

Q. Are qualified dealers in demand?

A. Very much so.

2912 By Mr. Gordon:

* * * * *

Q. You are familiar with the fact that Atlantic inspects its stations, aren't you?

A. Yes.

Q. Your station has been inspected, in fact, has it not?

A. Yes, many times.

Q. After these inspections, does Atlantic discuss with you the results of the inspection?

A. They point out the weaknesses, if there are any, and

corrective measures that we might take, and I think it is a good incentive for the men too; it keeps them on their toes, along with myself.

Q. When you say "the men" who are you referring to?

A. The men that work for me.

Q. Are TBA brands ever mentioned in these discussions?

A. No.

Q. Are you familiar with what is called the annual review?

A. Yes.

Q. What is that?

A. Well, to me it means that we sit down and we discuss the past year's business and we analyze the
2913 weak spots in my business, and then try to decide what we are going to do in the following year to correct those weaknesses.

Q. Are they helpful?

A. Very much so. I think we are all lazy at one time or another, and they get us over that hard spot.

Q. Is the fact that you carry non-Goodyear TBA mentioned?

A. Yes, it was mentioned, and we discussed it at length. I told them the reasons for my not buying from Goodyear, and I feel in my own mind that I could sell more tires with Goodyear and it is because of my past experience, well, I have been in business now five years, and I have sold more tires in the past with Goodyear, but I can't sell tires if they won't deliver them to me, and so, I have gone to another supplier for that reason.

Q. Were you visited by an investigator for the Federal Trade Commission?

A. Yes.

Q. Do you recall roughly when that was?

A. Oh, it was latter part of '53.

Q. Did he identify himself to you?

A. Yes, he showed me his credentials.

Q. Did you tell him substantially what you have testified to today?

A. Yes, I believe I did.

Q. Did you sign a paper for him?

A. Yes.

2914 Q. Did you get a copy of what you signed?

A. No, he didn't give me any copy.

Q. Who wrote the statement?

A. He wrote the statement.

Q. Whose words were used in the statement?

A. He used his own words.

Mr. Gordon: Mr. Ingraham?

Mr. Ingraham: No questions.

Mr. Gordon: Mr. Kelaher?

Mr. Kelaher: I have a few questions.

Cross-Examination by Mr. Kelaher.

Q. Mr. Wright, I would like to review your testimony you have just given here under oath on direct examination and see if we have it correct.

You began the operation of your service station in February 1953, is that correct?

A. That's right.

Q. And as a former Atlantic service salesman, you knew that the Goodyear TBA program had been in effect about two years by that time, did you not?

A. Yes.

Q. Now, you stated on direct examination that you stock Goodrich tires exclusively?

A. That's right.

2915 Were you implying that you have always stocked Goodrich tires exclusively?

A. No, I stocked Goodyear up until, oh, I would say a year ago and at that time, as I have stated before, I had to change because of the service that was made available to me.

Q. So, you stocked Goodyear exclusively, is that correct, up until sometime in 1957?

A. No, I stocked them, and if a person specified another tire, I was able to get those too.

Q. But I am talking about stocking, you do that also with Goodrich, as I understand it?

A. Yes.

Q. But you were stocking Goodyear tires exclusively up until 1957, is that right?

A. Yes.

Q. Now, on direct examination, you stated that you are stocking Delco batteries. Do you mean to imply that you have always stocked Delco batteries?

A. No, up until that time I was handling Goodyear batteries.

Q. So, you did stock Goodyear batteries exclusively until sometime in 1957, correct?

A. That is correct, yes, sir.

Q. Now, with respect to accessories, you implied or you stated rather on your direct examination, that you buy accessories from a number of suppliers. Did you mean to imply that you have never bought accessories from
2916 Goodyear during the entire period of your station operation?

A. No, I bought Goodyear also.

Q. And isn't it a fact that the majority of your accessories were purchased from Goodyear service store?

A. On the accessories, no, I don't believe so.

Q. Up until 1957?

A. No.

Q. What percent will you estimate that you carried up to '57 of Goodyear accessories?

A. 30, 40 percent, I would say.

Q. And the balance was distributed among these other products?

A. Yes.

Q. Isn't it a fact you carried Goodyear fan belts and you also carried other accessories in the Goodyear line on a stocking basis for some time? Isn't that true?

A. Well, they may have been brands handled by Goodyear. Doesn't necessarily mean I bought them from Goodyear.

Q. You did buy some of them from Goodyear?

A. Some of them.

Q. Are you referring to products like DuPont polishes and so on?

A. Yes.

Q. Is it your testimony that since some time in 1957 you are not buying Goodyear accessories at all, or do you still buy some?

2917 A. I am not buying anything.

Q. Incidentally, as an Atlantic employee and an Atlantic dealer, were you familiar with the fact that the Federal Trade Commission issued a Complaint against Atlantic concerning its sponsorship of Goodyear TBA in January 1956?

A. At that time I wasn't an employee.

Q. You were a dealer at that time?

A. I was a dealer at that time. I may have heard it, but no one came to me and told me about it.

Q. As a matter of fact, you were carrying Goodyear TBA at the time the Complaint was issued in this matter?

A. Yes, I was. At that time, I might say, I had a high feeling and a high respect for Goodyear because they did have a good product. I still think they have a good product.

Their service was excellent and they had, as I say, a good product, but since that time, why things have changed.

Q. What is the problem today, or what was your reason for changing?

A. My reason for changing was service. I would make a call to the store for a specified number of tires, and I had a sale for that tire probably in the afternoon or next day. I was promised delivery, and that was never up-held. They might bring it two days later or three. I don't run my business on promises and I have to fulfill my end of it too, so I had to go to another supplier where I could get
2918 that service. Incidentally, K. N. W. and Goodyear are located practically in the same location in Binghamton. There is not too much difference.

Q. So, it was a problem of service?

A. That's right.

Q. Do you think they were taking your business for granted because you were an Atlantic dealer?

A. No, I don't think so.

Q. Now, what was your original reason for stocking Goodyear TBA?

A. I think I just stated that. I thought they had a good product, they gave me good service, and it was a well-known product, well accepted by the public.

Q. Let me ask you this: Didn't you one time when you started business obtain a loan from Atlantic?

A. Yes, I did.

Q. And what was the amount of the loan?

A. Twenty-seven, twenty-eight hundred, something like that.

Q. Approximately $2800?

A. Yes.

Q. And what was that loan used for?

A. I don't recall what it was exactly. I had a $1000 of

my own and I needed $2800 more to start business, to go into business to function.

Q. Wasn't the total loan approximately $2800 though?

A. Yes.

2919 Q. Wasn't that the amount of the loan from Atlantic?

A. That's right.

Q. Wasn't that used to purchase the stock of the outgoing dealer, Paul Urban?

A. Yes.

Q. And was the check made by Atlantic payable to Paul Urban for his inventory at that time?

A. I never saw the check.

Q. You never saw the check, so it went directly to Mr. Urban?

A. Yes.

Q. You executed a promissory note in the amount of $2800?

A. Yes.

Q. And as part of that loan, was your station stocked with Goodyear TBA?

A. That is a long time ago. As I recall, he had a fairly well balanced stock and I don't think I had to replace too much at the time.

Q. And that stock was Goodyear, was it not?

A. There were some Exide batteries, there was some Goodyear batteries. There were Lee tires, and there were Goodyear tires.

Q. What type of service station identification was on the station when you went into the station?

A. It was a Goodyear decal on the front window.

Q. Was the Goodyear sign on the outside pole?

2920 A. Oh, yes.

Q. That was pretty much true of all Atlantic stations in that Binghamton area, wasn't it?

A. Yes.

Q. Now, did you pay interest on that loan?

A. Yes, the first six months the payment was a-half cent a gallon, and the next six months, it was half a cent a gallon plus interest, and then it was for the next two years, a cent a gallon plus interest.

Q. For the first six months no interest was charged?

A. That's right.

Q. And part of that loan was used to equip your station with Goodyear—was it primarily Goodyear TBA?

A. I don't recall. As I say, as I recall it, I think most of it was used for gasoline and motor oil.

Q. And in addition to the TBA which Mr. Urban had on hand, was any part of the loan used to purchase TBA?

A. There might have been some used to bring it up to par, as I say, I don't recall.

Q. Was that money used to purchase Goodyear TBA? I am talking about part of the loan money.

A. No.

Q. None of it was used to purchase TBA?

A. No, I don't believe so. That particular $2800 went for gas and oil inventory and equipment and I still
2921 had a thousand of my own, I used to spend.

Q. And you used part of your money to purchase TBA, is that right?

A. Yes.

Q. Did you purchase Goodyear TBA at that time?

A. As I say, I don't recall.

Q. Now, you stated on direct examination that you have a big Delco rack in your station. I assume that was not there until about 1957 when you began to handle Delco batteries, is that correct?

A. Yes.

Q. Now, you stated in answer to question on direct examination that there came a time when you were dis-

satisfied with the Goodyear service store's service to your station, is that right?

A. Yes.

Q. Now, didn't you at that time go to Atlantic and discuss the matter with Atlantic personnel?

A. I had discussed it with my salesman, and—

Q. (Interposing.) What was your salesman's name?

A. I have to think back—Ken Goodhart.

Q. Ken Goodhart?

A. Yes.

Q. And why did you think it was necessary to discuss the matter with Mr. Goodhart? Was he the first one you discussed it with from Atlantic?

2922 A. I wanted to get some action on the Goodyear, and I felt that maybe with my trying and maybe all getting together, we could get some action.

Q. And what happened after that?

A. The same thing, nothing.

Q. You had no action. So then did you discuss the matter again with Mr. Goodhart or anyone else in the united organization?

A. No, I don't believe so. I just made up my mind that I had been bit too many times and that was it. I had found a better supplier.

Q. And then at that time, you switched, you changed over from Goodyear to other products?

A. Yes.

Q. Now, thereafter, you had conferences with Atlantic personnel, as I understand your direct testimony, either in connection with the annual review or did you have also other conferences with Atlantic personnel?

A. That was the only one.

Q. That is the one you are talking about? That was the one you were talking about when you referred to dis-

cussions with Atlantic personnel concerning the handling of non-sponsored TBA, is that correct?

A. Yes.

Q. And did you give your reasons to Atlantic personnel why you did not want to handle Goodyear TBA?

2923 A. Yes.

Q. Did you bring up the subject?

A. Yes, I did.

Q. Why did you feel you had to justify your action in handling it?

Mr. Gordon: I object to that.

Mr. Kelaher: Why?

Mr. Gordon: Because you are characterizing the statement, not the witness.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You may answer.

The Witness: Will you repeat the question?

Hearing Examiner Kolb: Read the question.

(Thereupon, the reporter read the record as requested.)

The Witness: I still feel as I stated before, I think Goodyear sells itself through their advertising and public acceptance and if possible, I wanted to continue to buy Goodyear, but under the circumstances, It wasn't possible.

By Mr. Kelaher:

Q. Did you feel that as an Atlantic dealer and knowing that Atlantic was sponsoring Goodyear TBA, that you had to justify your reasons for switching to non-sponsored TBA?

A. No.

Q. Well, it must have been a matter of some concern for you to have discussed it with top brass in Atlantic, isn't that true?

2924 A. No, I don't believe so. They had been trying to sell me Goodyear merchandise, and I explained to them why.

Q. Just who was present at this meeting?
A. George Babikian.
Q. And what is his title?
A. Sales supervisor.
Q. In the Binghamton district?
A. Yes.
Q. Who else was present?
A. Trimay.
Q. How do you spell his name?
A. T-r-i-m-a-y.
Q. What is his title?
A. Salesman.
Q. In the Binghamton district?
A. Yes.
Q. He was your salesman?
A. Yes.
Q. Anyone else present from Atlantic?
A. No.
Mr. Kelaher: May I have a minute, your Honor?
Hearing Examiner Kolb: Yes.
Mr. Kelaher: I am ready to go ahead, Mr. Examiner.
Hearing Examiner Kolb: Go ahead.

2925 By Mr. Kelaher:

Q. Mr. Wright, I believe you testified that you had a Goodyear window decal in your station, is that correct?
A. Yes.
Q. Has there been any change in that in your station?
A. No, I tried to take it off one day and I couldn't get it off, so I gave up.
Q. So, now even though you are selling Goodrich tires and Delco batteries, you still carry Goodyear advertising on your station, is that correct? Service station identification?
A. Yes, I do.
Mr. Kelaher: No further questions.

Redirect Examination by Mr. Gordon.

Q. Mr. Wright, did the fact that you were financed by Atlantic have anything to do with the brand of TBA you carried?

A. No.

Q. Prior to 1957 did you feel free to buy any TBA you wanted to?

A. Oh, yes, many times I did, I bought Lee tires or Goodrich tires, Firestone tires.

Q. To carry them and stock them?

A. Not to carry them; if a person specified they wanted them, I got them.

Q. Did you feel free to carry them if you wanted to though?

A. Yes.

2926 Q. And stock them?

A. Yes.

Mr. Gordon: That is all.

Recross Examination by Mr. Kelaher.

Q. I want to clear up one thing. Part of the time you were asked on redirect if you felt free to stock any brand of tires or any brand of TBA prior to 1957, and you said "yes." But the fact remains, does it not, that you only stocked Goodyear tires and Goodyear batteries prior to 1957?

A. Yes, that is true, but—

Mr. Kelaher: (Interposing.) That is all.

The Witness: Could I answer that question?

Mr. Kelaher: He can go ahead if he wants to, but he has answered the question.

The Witness: I felt free to do whatever I wanted to. There was no—

Mr. Kelaher: (Interposing.) No further questions.

Hearing Examiner Kolb: Is that all? You are excused.

(Witness excused.)

Hearing Examiner Kolb: The meeting is adjourned until 10:00 o'clock tomorrow morning.

* * * * *

2928 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Wyckoff, will you come over and sit here?

CHARLES P. WYCKOFF, was called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give your full name, sir, to the court reporter, please?

A. Charles P. Wyckoff.

Q. Where is your residence?

A. 176 Broad Street, Washington, New Jersey.

Q. Washington, New Jersey, not to be confused with the District of Columbia Washington.

Mr. Wyckoff, are you an Atlantic Refining Company lessee?

A. I am.

Q. You operate a service station in Washington, New Jersey, owned by Atlantic Refining Company?

A. I do.

Q. How long have you had that station, sir?

A. I went in November, 1942, that would be—

2929 Q. (Interposing.) That is about 17 years?

A. That's right.

Q. You had a three-year lease, sir?

A. Beg pardon?

Q. You have a three-year lease?

A. Yes.

Q. I believe that is your second three-year lease?

A. It is.

Q. Before you became an Atlantic lessee, did you at one time have an Esso station?

A. I did.

Q. So that you came to Atlantic with prior experience in the service station business?

A. Yes.

Q. What type of trade do you have at you station? Is it a community station?

A. Yes, very much. I am on a highway that isn't—well, it is the main highway, but not like some of these super highways. I have to depend mostly on local trade.

Q. Is a large percentage of your trade derived from inhabitants of Washington, New Jersey and the surrounding area?

A. That's right.

Q. Do you do any of your business, sir, on personal credit? Do you extend credit to some of your customers?

A. Yes, some personal, and mostly local business concerns.

2930 Q. Have you gotten to know your customers well and do they know you well?

A. Oh, yes.

Q. Do you recall that about 1950, Atlantic ceased selling Lee tires and Exide batteries and commenced to promote the Goodyear TBA line?

A. Yes.

Q. Do you recall whether you did or did not attend a meeting of dealers in 1950 at which the Goodyear program was to be explained?

A. I did not attend, I was sick at the time.

Mr. Thompson: If your Honor please, it is stipulated between Mr. Kelaher and myself that Mr. Wyckoff received and recalls receiving the so-called non-forcing letters, Exhibits 206, 207, and 150.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: I might say, Mr. Kelaher, I verified that information with this witness just before he went on the stand.

Mr. Kelaher: Right.

By Mr. Thompson:

Q. When Atlantic started to promote the Goodyear TBA line, did the Atlantic salesman try to sell you 2931 on the idea of switching from Lee and Exide?

A. He mentioned it, yes, said that they were going to handle Goodyear line, but I told him that inasmuch as my trade was local and I had previously built up a big trade on the product that I was handling, I didn't feel that I could change it at that particular time.

Q. So that you did not change to the Goodyear line?

A. Not wholly, no. I did take on a few tires, but never the complete line.

Q. Was there any effort on the part of Atlantic to force you to change to Goodyear?

A. No.

Q. By the way, sir, who is your present salesman, Atlantic salesman?

A. Robert Carlson.

Q. C-a-r-l-s-o-n?

A. Yes.

Q. Since 1951, what has been your primary tire line?

A. Tire line?

Q. Yes.

A. About 95 percent Lee.

Q. Do you also handle a few Goodyear tires?

A. I have a few, yes.

Q. What is your reason for carrying a few Goodyear tires?

A. Mainly if some transit trade should stop in
2932 and they insisted on Goodyear, well, I would have it. That is all, just to satisfy the transit trade.

Q. Do you find from the point of view of the transit trade, Goodyear is a better known brand than Lee?

Mr. Kelaher: Objection, your Honor. I have no objection to leading in the many instances, but if we are going to get into consumer acceptance and things of that kind, I think it would be better to ask the witness.

Hearing Examiner Kolb: I will overrule the objection at this time.

Mr. Thompson: You may answer the question.

The Witness: Would you mind please repeating the question?

(The reporter read the record as requested.)

The Witness: It might possibly be a better known product for the transit trade, but on the other hand, I have sold plenty of Lee tires to transit as well.

By Mr. Thompson:

Q. What brand batteries have you been carrying since 1951, sir?

A. Exide.

Q. Exclusive Exide?

A. That is correct.

Q. And from whom do you purchase accessories?

A. Oh, I purchase them from different jobbers. Do you want to name the firms?

2933 Q. I would appreciate if you would name some of them.

A. Well, the batteries come from Allentown Wholesale; I deal with Way Brothers, that is in Allentown, and then I deal with Way Brothers in Easton; Washington Auto Parts in Washington, Sea Automotive in Washington, and I buy some from Whelan Brothers who are the Goodyear representatives, they are jobbers in that territory.

Q. Do you have a business reason for dealing with a number of accessory suppliers?

A. Yes, I do. In as much as I was a dealer through the War, I was really handicapped in getting supplies a lot of times, and I made a statement at that time that I wouldn't be caught again, not with all my eggs in one basket, so that is the one reason why that I deal with different dealers because I can get various products from different jobbers.

Q. By the way, sir, what kind of hose do you carry?

A. Gates.

Q. Do you have a Lee tire rack at your station?

A. I do.

Q. Do you have any battery signs around your station?

A. I do, I have an Exide sign right on the fence.

Q. Now, of course, sir, these Lee tires and Exide batteries are openly displayed so that everybody who comes to the station sees them?

A. That is true.

2934 Q. Do you recall, sir, that I dropped in at your station with Mr. Gaestel and Mr. Carlson a few weeks ago and paid you a short visit?

A. That is true.

Q. And all of these tires and batteries and non-sponsored accessories were clearly and openly visible to everybody including me, were they not?

A. That is right.

Q. Do you sell these non-Goodyear tires and batteries and accessories on Atlantic credit cards?

A. I do.

Q. Have you always done so?

A. Yes.

Q. Has Atlantic ever criticized you for doing that?

A. No.

Q. Or suggested in any way that you shouldn't?

A. No.

Q. Approximately what percentage of your business at your station is done on Atlantic credit cards?

A. Oh, roughly, I would say 25 to 30 percent.

Q. During these years that you have been carrying Lee tires and Exide batteries and non-sponsored accessories, has Atlantic ever criticized you for so doing?

A. No.

Q. Have they ever told you to stop buying them?

2935 A. Never.

Q. Or to get them out of your station?

A. No.

Q. Have they ever tried to force or pressure you into buying Goodyear TBA?

A. No.

Q. Now of course, you know your salesman, Bob Carlson?

A. Beg pardon?

Q. Of course, you know your salesman, Bob Carlson?

A. Oh, yes.

Q. Do you know him well?

A. Yes.

Q. Does he come to see you frequently?

A. Yes.

Q. About how often?

A. Once a week, every two weeks at the most.

Q. How about Bill Gaestel, do you know him?

A. Yes.

Q. What is his position with Atlantic?

A. Assistant manager, I believe, or manager.

Q. I think actually sales supervisor, sir, in his official title, but you know him as Bob Carlson's boss?

A. That is correct.

Q. Does he come to see you?

A. Yes.

2936 Q. Do you know the Atlantic district manager in Northern New Jersey?

A. Yes.

Q. What is his name?

A. Geer Leshi.

Q. G-e-e-r, isn't it?

A. I believe so.

Q. Does he come to see you occasionally?

A. Possibly once or twice a year he drops in.

Q. Now in the 17 years that you have been an Atlantic lessee, you, of course, have had your lease renewed many times?

A. That is true.

Q. Have you ever had any problem at all about lease renewal?

A. No.

Q. On the occasion of lease renewal, has the fact that you do not handle Goodyear TBA been adversely commented upon?

A. No.

Q. Have you been criticized for it?

A. Not at all.

Q. Are there a lot of companies other than Atlantic which have service stations in your general marketing area?

A. Yes.

Q. Did Esso try to get you to leave Atlantic and go with them?

A. Well, being an Esso dealer in the beginning, and

then there was an opportunity two or three years ago
2937 that the salesman approached me to take over that particular station, and I told him I wasn't interested whatsoever.

Q. Why did you stick with Atlantic, Mr. Wyckoff?

A. How was that?

Q. Why did you stay with Atlantic?

A. I don't know; I just like it, that's all. I like their products, I think I am sold on them; and that is the reason I stayed with them.

Mr. Thompson: Now, Mr. Wyckoff, the gentleman on my right, Mr. Kelaher, represents the Federal Trade Commission. He may have some questions he wants to ask you.

Cross-Examination by Mr. Kelaher.

Q. Mr. Wickoff, I think we ought to get some information about Washington, New Jersey into the record.

What is the population of Washington, New Jersey?

A. Well, at the present time, it is around 5200, I believe.

Q. And how far is that located from Newark, New Jersey?

A. Around 45 miles, I believe.

Q. It is quite a distance from the heavy populated metropolitan Newark area, is it not?

A. Yes.

Q. And how many other Atlantic service stations are in Washington, New Jersey?

A. One.

Q. One other station?

2938 A. One other station.

Q. Who is the operator of that station?

A. Dick Robowitz. Don't ask me to spell it.

Q. And where is his station located?

A. His station is on the circle on the junction of Route 24 and 69.

Q. That would be east of your station?

A. East, yes.

Q. And your whole area there is just you and one other Atlantic dealer?

A. Yes, we are about five blocks apart.

Q. About five blocks apart. Did the other Atlantic dealer go along with the Goodyear program?

A. I don't know.

Q. You don't know?

A. No.

Q. You are just five blocks apart and you don't know?

A. I stay on my end of town and he stays on his.

Q. You can't say whether he did or didn't?

A. I could not.

Q. How far are you from the town of Phillipsburg, New Jersey?

A. Twelve miles.

Q. Twelve miles. And there are Atlantic dealers in Phillipsburg, New Jersey, are there not?

A. Yes.

2939 Q. Approximately how many?

A. Two on the Memorial Parkway and one on South Main Street that I know of. There may be others, I don't know, but those are the three I know of.

Q. About three. Do you know whether they went over to Goodyear TBA program when Atlantic did?

A. I don't know.

Q. You were asked about a meeting of the Atlantic dealers in 1950. Where was that meeting held?

A. I believe it was in Newark.

Q. You believe it was in Newark?

A. Yes.

Q. That would have been quite a long trip for you. You say you were sick?

A. I was sick for about six months.

Q. Do you handle a large volume of tires, overall tire volume?

A. Do you want to know—

Q. (Interposing.) Just like your stock. What would your stock be?

A. I carry between 70 and 80 tires at all times.

Q. At all times, and including that stock are some Goodyear?

A. Some are Goodyear.

Q. Is it possible that you carry some Goodyear tires to stay on friendly relations with Atlantic to some extent? Is that the reason?

2940 A. Well, I don't know. Possibly I buy them—if they sold any other brand, I would possibly buy that, but—

Q. (Interposing.) In other words, if they were sponsoring Firestone in your area, you would probably stock Firestone, isn't that correct?

A. Well—

Q. (Interposing.) It is a means of maintaining good relations?

A. Well that, and possibly to satisfy any transit trade. If someone comes in and if they ask about Goodyear or Firestone or what have you, why I say, "Well, I carry Goodyear."

Q. And of course, you are not too far from Easton, Pennsylvania, are you? You are only about 14 miles from Easton?

A. That's right.

Q. And do you know that Atlantic sponsors Firestone TBA in that area?

A. Yes.

Q. You do; and you know it is the Atlantic service stations over in that area with Firestone identification all over them?

A. Yes.

Q. And the same is true of Allentown, Bethlehem, up through the whole Lehigh Valley, is that right?

A. Yes.

Q. On your side of the river you find Atlantic stations with Goodyear identifications on them, isn't that correct?

A. Yes.

2941 Q. That seems like something of an unusual situation, doesn't it?

A. Yes.

Q. You say it does.

Mr. Thompson: Is that a question or statement?

Mr. Kelaher: I asked him.

The Witness: I don't know why it is that way. I never asked any questions in regard to why Pennsylvania would be one brand and New Jersey another. I never asked questions.

By Mr. Kelaher:

Q. Right: You were asked a question about your salesman, Bob Carlson. How long has he been calling on you?

A. Oh, I would say four years, approximately, possibly five.

Q. Possibly five?

A. Four or five years, I don't know exactly.

Q. And has Mr. Gaestel been calling on you for a longer period or shorter period?

A. Well, I believe he—yes, he did call on me after the Newark territory took over; that is when I first met Mr. Gaestel.

Q. When did the Newark territory first take over in that area?

A. Along in '51, I guess.

Q. About '51? There are references in the record to a Newark district and a Newark, Jersey district. Are

you in the Newark district or is it the same thing, or two different names for the district?

2942 A. I don't know, I have all my dealings with Newark.

Q. All your dealings with Newark and it wasn't until 1951 that was the situation, is that correct?

A. Around that time.

Q. Before that where did you have your dealings?

A. Allentown.

Q. You were so close to the Pennsylvania line, that it was natural for you to deal with Allentown than with Newark?

A. I guess so, there was just a small section in that corner of New Jersey that was under Allentown when this change over came. Newark took over that territory.

Q. Are you talking about the change over to Goodyear TBA?

A. Well, when the management changed, I would say.

Q. Right. Where is Whelan Brothers located?

A. In Hackettstown.

Q. Is that your designated Goodyear supply point?

A. Yes.

Q. For Goodyear TBA?

A. Yes, they handle for that territory.

Q. Do you have a window valance on your station, Mr. Wyckoff?

A. Yes.

Q. What type is that?

A. Goodyear.

Q. Is it Goodyear?

A. Yes.

2943 Q. Well, you say you handle Lee primarily?

A. That's true.

Q. But you have a Goodyear window valance, isn't that somewhat odd?

A. It may be.

Q. What is the reason for that? It just seems a little unusual.

A. Goodyear man comes along and puts them up, but other than that, I never questioned anything about it. I still handle what my trade desires.

Q. Of course, if you are selling Lee, it would be preferable if you could advertise Lee, wouldn't it? Is the answer yes to that?

A. I advertise them. I have them in Lee stands, that is the tire is in Lee stands. I advertise Lee tires as well as Goodyear as far as that goes.

Q. Do you have an outside sign on your station? Do you have a Goodyear sign pole?

A. Yes.

Q. You don't have a Lee sign out on your station, do you?

A. No.

Q. Did you at one time have a Lee sign outside the station?

A. At one time there was a metal sign on the fence.

Q. That was a Lee sign?

A. Lee sign, but then it got rusted out and I never—

Q. (Interposing.) Never put it back?

A. Never put it back up.

2944 Q. Now, how did the Goodyear sign get up there in your station? Will you tell us how you got the Goodyear sign?

A. They came there one day and put it up.

Q. Who is "they"?

A. The—

Q. (Interposing.) Was it Goodyear personnel or Atlantic personnel?

A. That, I don't know.

Q. But it was one or the other?

A. It was, outside contractor, or I don't know. I didn't pay any attention to it.

Q. Was this done about the time that Atlantic changed over to Goodyear TBA?

A. I believe so, yes.

Q. You believe so. Now, that big outdoor Goodyear sign is visible from the highway there, I would assume, is it not?

A. Yes.

Mr. Kelaher: Maybe that was an inadvertent use of the word "impression," but if you were driving along the highway the sign that would be seen would be
2945 the Goodyear sign, is that correct?

The Witness: That would be.

By Mr. Kelaher:

Q. And anyone driving along the highway would not know you carried Lee until they went into your station?

A. No.

Q. So that if they were looking for Lee tires, they would go right by your place?

A. Unless they pulled in.

Q. Unless they pulled in?

A. For gasoline and like that; I have them on display, that is all. There is no pronounced advertising as far as Lee is concerned.

Mr. Kelaher: Thank you. No further questions.

Redirect Examination by Mr. Thompson.

Q. You said in response to a very persuasive question by Mr. Kelaher that you had no Lee sign out of your station. Didn't I see one when I was there the other day, sir?

A. There isn't on the fence.

Q. There isn't any on the pole?

A. There isn't any on the pole, and I have these display racks, what the tire sets in, the Lee display racks.

Q. Is my recollection incorrect, sir, that you have a Lee sign on your fence?

2946 A. I did have at one time, but—

Q. (Interposing.) Isn't it still there, sir?

A. No, it isn't. It was rusted out and I never replaced it, or Lee never replaced it.

Q. If you wanted to put up a Lee sign, would you feel perfectly free to do it?

A. I would, yes.

Mr. Kelaher: Objection to that question and answer, because it is controlled by the lease, included in the lease, one of the provisions.

Mr. Thompson: Perfectly obvious question and perfectly obvious correct question.

Hearing Examiner Kolb: Objection overruled. The answer may stand.

By Mr. Thompson:

Q. Have you at all times since 1951 felt free to buy any kind of TBA that you wanted to buy?

A. That is right.

Mr. Thompson: That is all. Thank you very much.

Mr. Kelaher: I would like to ask another question.

Recross Examination by Mr. Kelaher.

Q. Don't you think that Atlantic dealer should feel free to purchase any TBA he wants to rather than to handle the brand that the company wants him to handle?

2947 Mr. Thompson: Is the question asked on the assumption that the witness is a psychiatrist or what? I have no objection, go ahead and ask it.

The Witness: No, I tried to give my customers what is in my mind a good product for their money.

By Mr. Kelaher:

Q. And you feel you can do that better by buying whatever you want to buy?

A. Yes.

Q. Rather than following the sponsored program of the Atlantic? Is that correct?

A. That is correct.

Mr. Thompson: Thank you very much.

Hearing Examiner Kolb: That is all, Mr. Wyckoff. You are excused.

(Witness excused.)

Mr. Thompson: May we have a couple of minutes recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

JOSEPH J. WASH was called as a witness by Respondent the Atlantic Refining Company and, having been duly sworn, was examined and testified as follows:

2948 By Mr. Thompson:

Q. Would you give your name please to the reporter?

A. Joseph J. Wash.

Q. Where do you live, Mr. Wash?

A. 168 East Washington Avenue, Atlantic Highland, New Jersey.

Q. Is that close to Newark?

A. Oh, that is about 40 miles away from Newark.

Q. About 40 miles away from Newark. Do you operate an Atlantic Refining Company service station?

A. I beg your pardon?

Q. Do you operate an Atlantic Refining Company service station?

A. Yes, sir.

Q. Do you lease the station?

A. Yes, sir.

Q. Where is it located?

A. 1399 Chestnut Avenue, Hillside, New Jersey.

Q. How long have you leased that station, Mr. Wash?

A. Five years.

Q. Since about 1952?

A. That's right.

Q. That is really about 6 years then, isn't it?

A. Well, five and one-half, something like that, not close to six.

Q. Now before you got that station, did you have 2949 another Atlantic station?

A. Yes, sir.

Q. Did you lease that one?

A. Yes, sir.

Q. Where was it located?

A. 254 South Street.

Q. Where?

A. Newark, New Jersey.

Q. Newark, New Jersey?

A. Yes.

Q. How long did you have that prior station, during about what years?

A. I would say about three years.

Q. Do you know Bill Gaestel?

A. Yes, sir.

Q. Was he your Atlantic salesman when you had your station at 254 South Street in Newark?

A. Yes, sir.

Q. Did you ask Mr. Gaestel whether you could get a better station?

A. Yes, sir.

Q. Did he get you one?

A. Yes, sir.

Q. And that is the station you now have?

A. That's right.

2950 Q. Do you carry TBA at your present station?

A. Yes, sir.

Q. Did you carry TBA at your prior station in Newark?

A. Yes, sir.

Q. Do you remember that somewhere around 1950 Atlantic started to sponsor the Goodyear TBA line?

A. Yes, sir.

Q. Do you remember whether you went to any dealer meetings about that change by Atlantic from selling Lee and Exide to promoting Goodyear?

A. No, I don't.

Mr. Kelaher: You say no?

The Witness: No.

By Mr. Thompson:

Q. You do remember getting certain letters from Atlantic about the program?

A. Oh, yes.

Mr. Thompson: Shall we stipulate, Mr. Kelaher?

Mr. Kelaher: Yes.

Mr. Thompson: It is stipulated that this witness received the three no-forcing letters, CX 206, CX 207, and CX 150.

By Mr. Thompson:

Q. After Atlantic changed to the promotion of Goodyear tires, did you try Goodyear tires?

2951 A. Yes, sir.

Q. Have you been dealing in Goodyear tires since about 1951?

A. Yes, sir.

Q. First at one station and then the other?

A. Yes, sir.

Q. Who is your so-called authorized supply point at your present station for Goodyear tires?

A. Frabel Brothers.

Mr. Thompson: What was the last question, please?

(The reporter read the pending question as requested.)

By Mr. Thompson:

Q. Do you buy some Goodyear tires from Frabel?

A. Yes, sir.

Q. Do you buy Goodyear tires from other wholesalers?

A. Yes, sir.

Q. Would you tell us who?

A. Summitt Tire Company.

Q. Is that a so-called authorized supplier so far as you are concerned, of Goodyear tires?

A. Yes, sir.

Q. I mean, is that the supplier which has been designated by Atlantic as your supplier?

A. No, sir.

Q. Do you buy Goodyear tires from McDonough?

A. Yes.

2952 Q. Is McDonough an authorized Goodyear supplier?

A. No, sir.

Q. Do you buy Goodyear tires from Bell and Wells?

A. Yes, sir, when I find it convenient.

Q. When you need it?

A. Yes.

Q. Is that wholesaler an authorized supplier to you?

A. No, sir.

Q. Do you shop for your Goodyear tires and buy them on price?

A. Yes, sir.

Q. I mean, why do you buy Goodyear tires at all?

A. Well, I think it is a good tire, well advertised tire.

Mr. Kelaher: Beg pardon?

The Witness: Well advertised tire, it is a name tire.

By Mr. Thompson:

Q. You find it easy to sell to your trade?

A. Pardon?

Q. Do you find Goodyear is easy to sell in your trade?

A. Yes, sir.

Q. What kind of batteries do you carry, Mr. Wash?

A. National batteries.

Q. Do you carry National exclusively?

A. Yes, sir.

Q. Before 1950 were you carrying Exide batteries?

Yes, sir.

2953 Q. After 1950 did you continue to carry Exide batteries?

A. After 1950?

Q. Yes. Let's put it this way. I will withdraw the question because I think we can ask you about your new station which you took in what, about '52?

A. Yes.

Q. Since you have been in your new station, have you been handling Exide batteries?

A. No, sir.

Q. Have you handled some Goodyear batteries?

A. Yes, sir.

Q. Did the Atlantic salesman persuade you to try the Goodyear batteries?

A. No, sir.

Q. How did you happen to handle the Goodyear battery?

A. Well, used the Frabel distributors of the Goodyear battery.

Mr. Kelaher: I didn't catch that answer.

(The reporter read the answer.)

By Mr. Thompson:

Q. You used Frabel?

A. He handled Goodyear batteries.

Q. Did you buy Goodyear batteries from other sources too?

A. Not that I recall.

Q. Then why did you switch to the National battery line?

A. Well, Frabel was handling the dry charge bat-
2954 tery and I preferred the wet charge battery, so I turned over to National.

Q. So you dropped Goodyear—

A. (Interposing.) That's right.

Q. I think you said you now handle National exclusively?

A. Yes, sir.

Q. And you also handled accessories?

A. Yes, sir.

Q. And of course, you handled accessories at the prior station in Newark which you had before 1952?

A. Yes.

Q. From whom have you been buying your accessories, Mr. Wash?

A. Well, from Frabel and from Vesney or Vesely, you can pronounce it either way.

Q. Is that V-e-s-n-e-y?

A. V-e-s-e-l-y.

Q. Is that William Vesely?

A. Yes.

Q. Headquarters in Garwood division?

A. Yes.

Q. From which of those two suppliers do you buy most of your accessories?

A. Vesely.

Q. And you buy from other jobbers?

A. Occasionally.

Q. Is that again a question of price with you on your accessories.

2955 A. Well, if you get a good buy, we buy it.

Q. Now these National batteries and accessories which are non-Goodyear products, are openly displayed at your station, are they not?

A. Yes, sir.

Q. And you have shelves in your station?

A. Yes, sir.

Q. Do you recall that I visited you for five or ten minutes a few weeks ago? Do you remember me coming in with Mr. Gaestel?

A. Yes.

Q. And at that time you had non-Goodyear accessories and National batteries?

A. That's right.

Q. Openly displayed at your station?

A. That's right.

Q. Now has that been your practice over the years?

A. Yes, sir.

Q. Now do you sell these non-Goodyear products on Atlantic credit cards to your trade?

A. Yes, sir.

Q. Anybody in Atlantic ever told you that you cannot or criticized you for doing it?

A. No, sir.

Q. So far as that goes, has Atlantic ever criticized you for handling these non-Goodyear TBA items?

2956 A. No, sir.

Q. Ever tell you to stop buying them?

A. No, sir.

Q. Or suggested that you hide them some place?

A. No, sir.

Q. Would you hide them if they told you to?

A. No, sir.

Q. Because you have them for sale?

A. Can't sell them if you hide them.

Q. Do you decide what kind of TBA you are going to buy?

A. Yes, sir.

Q. Or does Atlantic decide for you?

A. I decide.

Q. Has Atlantic ever tried to force you or pressure you into buying Goodyear?

A. No, sir.

Q. Do you feel free to buy anything you want in the way of TBA from anybody that you choose?

A. Yes, sir.

Q. Have you always done so?

A. Yes, sir.

Q. You were first promoted at your request to a better station by Atlantic, were you not?

A. Yes, sir.

Q. And since that time your lease has been renewed several times?

2957 A. Yes, sir.

Q. And you are now on a three-year lease?

A. Yes, sir.

Q. I think I perhaps asked you earlier whether this isn't your second three-year lease?

A. No, this is the first three year.

Q. First three year lease?

A. Yes, sir.

Q. On the occasion of lease renewals, has the question of the brand of TBA which you are carrying ever been discussed?

A. No, sir.

Q. Have you ever been criticized when your station has been inspected because you handle non-Goodyear TBA?

A. No, sir.

Q. Have you ever been told not to buy from Goodyear jobbers like McDonough and Summitt which are not authorized Goodyear supply points?

A. No, sir.

Q. Do you know a man named E. E. Stevenson, who is an Exide salesman?

A. No, sir.

Q. You don't remember him?

A. No, I don't.

Q. I am going to read you from the record in this case a memorandum from Mr. E. E. Stevenson of the
2958 Exide Company to his superior, Mr. DeMott, which is dated December 14, 1950, and has been identified in this record as CX 300-A.

The memorandum reads:

Mr. Kelaher: It is 300 A-B.

Mr. Thompson: All right. He says, referring to you, Mr. Wash, "This account carried six Goodyear batteries purchased from R. A. McDonough."

As I said, it was dated December 14, 1950. Do you recall by any chance whether by the end of 1950 you were buying Goodyear batteries from McDonough?

The Witness: I don't remember.

By Mr. Thompson:

Q. You don't remember?

A. I don't, no.

Q. Then it goes on. "One Willard and two Scranton." Do you know the Willard and Scranton battery brands?

A. Yes, I know the brands, but I don't—

Q. (Interposing.) Do you recall whether you did or didn't have them actually or not?

A. Yes.

Q. Then the memorandum goes on; this is Mr. Stevenson writing the memorandum: "When I called December 6 with Mr. Van Tuno, the proprietor advised us that he had to stock Goodyear since this is a leased station."

My first question is, do you know Mr. Van Tuno?

2959. A. No, sir.

Q. Do you recall whether you were or were not visited by Mr. Stevenson and Mr. Van Tuno?

A. I could have—I just don't remember.

Q. What?

A. I could have, but I don't recall.

Q. Do you recall any conversation with any Exide salesmen in which you advised them that you had to stock Goodyear since you have a leased station?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Read that question, please.

(The reporter read the pending question as requested.)

Mr. Thompson: Could I have the basis of the objection, Mr. Kelaher?

Mr. Kelaher: He has been questioning him about a Mr. Stevenson and a Mr. Van Tuno and the witness has testified that he doesn't remember either gentleman, and my objection goes to the fact that he hasn't laid a foundation for the question.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Thompson:

Q. Now may we have the question repeated, please?

(The reporter read the pending question as requested.)

The Witness: No, sir.

By Mr. Thompson:

Q. Do you get visited by salesmen all the time?

2960. A. All day long.

Q. Do you know what the brush-off treatment is?

A. Well, you try to get rid of them any way you can, so you can get about doing what you have to do. Some of them are pretty persistent.

Q. Have you ever felt that you have to stock Goodyear batteries since you have a leased station?

A. No, sir.

Q. Have you ever felt that you had to stock any part of the Goodyear TBA line because you have a leased station?

A. No, sir.

Q. To the best of your recollection, have you ever told anybody that you had to stock Goodyear TBA?

A. No, sir.

Mr. Thompson: Your witness, Mr. Kelaher: You may proceed or have a cigarette, whichever you choose.

Mr. Kelaher: I think we might just as well carry on.

Cross-Examination by Mr. Kelaher.

Q. Mr. Wash, just to get your facts straight, you began your operation of the Newark station about when? Was it in 1950 or 1949?

Mr. Thompson: If your Honor please, I don't like to interrupt my friend, but "to get the facts straight," I think all these facts were terribly clearly brought
2961 out, if I may say so, sir, by me and I don't see any point, as these witnesses come, of having perfectly indisputed facts rehearsed by Mr. Kelaher. It just seems to me to be a waste of time. I don't suppose I can object to the form of the question, but I do object to the delay caused by repetition of facts which Mr. Kelaher and I could readily stipulate.

Mr. Kelaher: We could have had the answer by the time he got finished with the observation.

Hearing Examiner Kolb: I don't suppose there is a

legal ground for objection that I can see; it may not be the best way to ask a question.

Mr. Kelaher: Well, here is a man who had two stations, I am simply asking him when he started operating the first one. It is as simple as that.

When did you start operating the first station?

Mr. Thompson: The course of procedure, I am objecting to more than the particular question, Mr. Kelaher; it happens repetitiously.

Mr. Kelaher: I am not going to argue about the matter.

By Mr. Kelaher:

Q. When?

A. '49 or '50.

Q. Right. Now, you were at that time—Atlantic was selling Lee tires, Exide batteries, and a line of accessories, was it not?

2962 A. Yes, sir.

Q. And at that time, did you begin to purchase Exide batteries? Did you stock Exide batteries in your station?

A. I don't remember. I don't recall.

Q. Well—

A. (Interposing.) If Atlantic was handling them, we probably had them.

Q. I am sorry I can't hear that.

A. If Atlantic was distributing them, then I probably handled them, but I don't recall off-hand.

Q. If Atlantic was distributing them you probably handled them?

A. Yes.

Q. If Atlantic was distributing Lee tires, you probably handled those too?

A. Yes.

Q. In other words, you generally go along with Atlantic, as I understand your testimony?

A. Well, not necessarily. I go according to the way I think is best.

Q. Sure. Now, do you recall that sometime in 1950 Atlantic began to sponsor Goodyear TBA, you recall that, I presume?

A. Yes.

Q. Now at that time, was there an Atlantic dealer meeting in the Newark area?

A. I don't remember.

2963 Q. You don't remember?

A. They probably did. If they did, I didn't go to it.

Q. Now, at that time was a call made on you by an Atlantic representative and Goodyear representatives?

A. Yes, sir.

Q. And what did they say to you at that time? Do you remember?

A. I don't remember.

Q. You don't remember that?

A. You know, just changing over.

Q. They said Atlantic was discontinuing Exide and so on and was changing over to Goodyear, correct?

A. That's right.

Q. And did they indicate that they would like to have you purchase Goodyear TBA?

A. Well, no, they just told me they were going to change over.

Q. And they told you they were changing over and what else did they tell you?

A. Well, they told me which dealer was going to handle their TBA, the distributor.

Q. Who was that at the time?

A. I think it was Frabel.

Q. Frabel Brothers?

A. Yes.

Q. And they told you that Goodyear TBA could be purchased from Frabel Brothers, is that correct?

2964 A. That's right.

Q. And at that time, did you begin to purchase any Goodyear TBA?

A. No, not then.

Q. Not then. Shortly thereafter did you begin to purchase Goodyear?

A. I don't remember, but it took quite some time before we got rid of the merchandise we had then at that time.

Q. Beg pardon?

A. Well, we were still stocked with other merchandise.

Q. You were still stocked with Lee?

A. Yes.

Q. But as that stock went out, you bought from Goodyear?

A. Yes.

Q. You went along with Atlantic, in other words, right?

A. Well, if I bought from Goodyear—I mean, if you want to put it that way.

Q. Right. You began to purchase Goodyear TBA because Atlantic began to sponsor Goodyear TBA, is that correct?

A. Yes.

Q. Now, wasn't that generally true of other Atlantic dealers in the Newark area?

Mr. Thompson: That is objected to. In the context in which the question is asked, it is objected to. That question must be considered in the light of the last prior question.

2965 Hearing Examiner Kolb: In the light of the last question before. Let's hear the last question.

(The reporter read the record as follows:

"Question: Right. You began to purchase Goodyear TBA because Atlantic began to sponsor Goodyear TBA, is that correct?

Answer: Yes.

Question: Now, wasn't that generally true of other Atlantic dealers in the Newark area?")

Hearing Examiner Kolb: I don't know how this witness can testify as to what other Atlantic dealers bought.

Mr. Kelaher: I think it is a perfectly proper question.

The Witness: I cannot tell you about any other dealers anyway.

By Mr. Kelaher:

Q. I will ask you this question. At this time, you were located in Newark, New Jersey, is that correct?

A. Yes, sir.

Q. And there are a number of Atlantic service stations in Newark, New Jersey, isn't that true? Quite a number in that area?

A. Yes, sir.

Q. And did you notice that after Atlantic began to sponsor Goodyear TBA, that all of the Atlantic service stations began to carry Goodyear identification, Good-
2966 year window valances, and outdoor signs?

Mr. Thompson: I object to the form of that question because it assumes the conclusion; the question was "Did you notice," and then he stated what he thinks is a fact. The question is just clearly improper.

Mr. Kelaher: What is wrong with that?

Hearing Examiner Kolb: It is proper cross-examination.

Mr. Thompson: May I repeat his question and make my point because this happens a number of times. He said to this witness, did you notice that all of the other

stations in Newark began to put Goodyear signs on their stations, or something to that effect.

Mr. Kelaher: I didn't ask him that.

Mr. Thompson: May we have the question repeated? I would like to get procedural points straightened out. I am getting to know it by the way you ask questions.

Mr. Kelaher: I would imagine so.

(The reporter read the record as requested as follows:

"Question: And did you notice that after Atlantic began to sponsor Goodyear TBA, that all of the Atlantic service stations began to carry Goodyear identification, Goodyear window valances, and outdoor signs?")

Mr. Thompson: That assumes in the question a fact which has not been testified to by this or any other witness.

It is simply the form of the question I am objecting to.

2967 Hearing Examiner Kolb: The witness can answer whether or not he knows. I think it is proper. The objection will be overruled.

The Witness: I didn't notice.

By Mr. Kelaher:

Q. You didn't notice after Atlantic began to sponsor Goodyear TBA there were other Atlantic stations with Goodyear signs on them in the area?

A. No, sir, I never paid any particular attention.

Q. Now, as I understand your testimony, you stock Goodyear tires exclusively, is that correct?

A. Yes, sir.

Q. And one of your suppliers is your authorized supply point, which I take it, was Frabel—has it always been Frabel Brothers?

A. Yes, sir.

Q. Even at your prior station?

A. Yes, sir.

Q. And do you purchase most of your Goodyear tires from Frabel Brothers?

A. I purchase some from Summitt tire and Frabel.

Q. Do you purchase from these other Goodyear distributors in equal quantities, or do you purchase most of your Goodyear tires from Frabel Brothers?

A. I would say from Frabel Brothers most of them.

Q. Most of them purchased from Frabel?

2968 A. Yes.

Q. Now with respect to your batteries, as I understand your testimony, you did carry Exide until Atlantic began to sponsor Goodyear. Sometime thereafter, you began to carry Goodyear batteries, is that correct?

A. That's right.

Q. Up until a certain period, which we have not yet established, when you switched to National batteries?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And when did this switch come over to National batteries?

A. About two years ago.

Q. About two years ago?

A. Yes, sir.

Q. Sometime in 1956?

A. That's about right.

Q. Now the accessories you handle, you purchased considerable amount of accessories from Frabel Brothers, is that correct?

A. I get more from Vesely than from Frabel.

Q. You get more from Vesely?

A. Yes, sir.

Q. But you stock some Goodyear accessories?

A. Yes, sir.

Q. Which items do you stock?

2969 A. That is hard to recall. Maybe polishes and—

Q. (Interposing.) Waxes and chemicals and things of that kind?

A. That's right.

Q. Now, does your service station have a window advertising valance, as they call it?

A. Yes, sir.

Q. And that is Goodyear, I presume?

A. Yes, sir.

Q. And you also have an outdoor pole sign on your premises?

A. Yes, sir.

Q. And I assume that is also Goodyear?

A. No, sir.

Q. Is there a sign out there?

A. Not at all.

Q. Beg pardon?

A. No sign at all.

Q. I am sorry, I thought you said you had a sign. Now let's get back to your first station before Atlantic began to sponsor Goodyear TBA, when you were buying Lee, Exide, and so on, did you have any signs in your station at that time?

A. I don't remember.

Q. Did you have a Lee sign up in the window?

A. I don't think so because the window wasn't big enough to stick a sign in it.

Q. How about an outdoor sign? Have a big outdoor sign?

2970 A. No sign, not that I remember.

Q. You didn't have any signs?

A. Not that I remember.

Q. After Atlantic began to sponsor Goodyear TBA, did they attempt to put signs in your station?

A. No, not that I remember.

Q. You didn't have room for the signs; is that your story?

A. That's right.

Q. But at your new station you do have a Goodyear sign?

A. Yes, sir.

Q. Now back in 1950, you did have Exide salesmen calling on you, did you not?

A. I don't recall.

Q. You were buying Exide batteries, weren't you?

A. I don't remember.

Q. Well, you have testified here today that you were buying Exide batteries, in that first station I am talking about, for a few months.

A. We were handling Exide batteries at the time I was buying Exide batteries.

Q. So you did have salesmen from Exide calling on you?

A. Well, they could have.

Q. They could have?

A. Yes.

Q. But you don't remember the names of the gentlemen?

2971 A. No, I don't.

Q. I take it that if you had any conversations with them you don't remember it?

A. No, you meet so many salesmen it is hard to remember all of them.

Q. Sure it is.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Thompson.

Q. Mr. Wash, when Atlantic started to promote Goodyear and the salesman came and talked to you, did he make it clear to you that you didn't have to take the Goodyear TBA line unless you wanted to?

A. Yes, sir.

Q. You switched from Goodyear, you testified, to National batteries?

A. Yes, sir.

Q. You testified, as I recall it, that your reason was that you preferred the wet charge to the dry charge battery?

A. That is right.

Q. You switched from the Goodyear to the National battery at whatever time Goodyear dropped the wet charge and came out with its dry charge battery? I mean, was that the time when you changed to National?

A. Well, we handle some Goodyear batteries, but 2972 we weren't satisfied with them.

Q. But we were trying to find out about when you made the change from Goodyear to—was that when Goodyear came out with dry charge?

A. About then, I would say.

Q. In the days before Atlantic began to sponsor Goodyear, did Atlantic salesmen sell Lee tires and Exide batteries to you, or did you deal with a Lee and Exide salesman?

A. I think Atlantic was handling them.

Mr. Thompson: Thank you, sir, that is all.

Mr. Kelaher: I just have another question I would like to ask.

Recross Examination by Mr. Kelaher.

Q. At the time the Atlantic and Goodyear people came out to see you in 1950, they explained the fact that Atlantic was going to sponsor Goodyear TBA, you remember that?

A. Yes.

Q. And did you feel that it would help your relations with Atlantic if you went along with the Goodyear TBA program?

A. No, I don't think it would.

Q. Did you feel that because Atlantic sponsored it it might be better for you to go along with Goodyear?

A. Well, I thought it would be.

Q. You thought it would be?

2973 A. Yes.

Mr. Kelaher: Sure. That is all.

Mr. Thompson: Thank you very much.

Hearing Examiner Kolb: That is all. You are excused.

(Witness excused.)

Mr. Thompson: May I have a short recess?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

SAM GROSSMAN was called as a witness by Respondent the Atlantic Refining Company and, having been duly sworn, was examined and testified as follows:

Mr. Thompson: If your Honor please, it is not 12:05 and I find this witness has a plane to catch at 1:00, so with your Honor's permission, Mr. Kelaher and I will try to complete this examination before the lunch recess.

Direct Examination by Mr. Thompson.

Q. Will you give your full name to the court reporter?

A. Sam Grossman.

Q. Grossman. Where do you live?

A. 786 Colonial Arms Road, Union, New Jersey.

Q. Is that near Newark?

2974 A. Exactly ten miles outside of Newark.

Q. You have an Atlantic service station in Newark?

A. I have.

Q. You are a lessee of that station?

A. Yes.

Q. It is located, I believe, at Raymond Boulevard and Foundry Street in Newark?

A. Right.

Q. You have had that station for about eight years?

A. Approximately eight years.

Q. Took it over in about 1950?

A. Right.

Q. Correct?

A. Correct.

Q. You have a three-year lease, I believe, sir?

A. I have.

Q. Do you recall from whom you—at your station, do you handle TBA?

A. I do.

Q. And you have handled it ever since you went into the station?

A. Right.

Q. Do you recall from whom you bought your first stocking order of TBA when you went into this station?

A. Everything was bought from Frabel Brothers, Irvington.

Q. That was the Goodyear authorized supply point for your area at the time?

A. Right.

Q. And I think it still is—

A. Right.

Q. (Continuing.) —the authorized supply point for the area?

A. Right.

Q. Now at the time you opened your station, Atlantic was promoting the Goodyear TBA line?

A. They were.

Q. Did Atlantic salesmen assist you in the selection of your initial TBA stock? Do you recall?

A. Yes, he did in a way, because I was new in the business and didn't know too much what to buy.

Q. He advised you what items?

A. What I needed for the type of station I was contemplating running.

Q. How long did you continue to deal with Frabel?

A. Approximately a year.

Q. Did you drop Frabel as your source of supply in or around 1951?

A. Approximately, yes.

Q. From whom have you been buying tires since that time?

A. Anyone that I possibly can buy them from, the one that gives me the best deal and the cheapest price.

Q. Do you recall, sir, that I visited your station for a very few moments a few weeks ago, with Mr. Gaestel?

A. Right.

Q. Do you recall, sir, that you then had Hood and Silvertown tires on display? Am I correct?

A. Right.

Q. Is that something new or have you been carrying Hood and Silvertown for a number of years?

A. No, I have been handling them for a number of years, and I just had one left over that wasn't sold and I kept it outside.

Q. What other brands of tires have you been handling at the station since 1951?

A. I think every make.

Q. Have you bought anything from Frabel since 1951 that you recall?

A. No.

Q. What brand of batteries have you been carrying since 1951?

A. Exide and Delco.

Q. From whom have you been buying accessories since 1951?

A. Clinton Square, in Newark, Ring Brothers, and a few others where I can get the best and cheapest.

Q. Who handles your recapping business?

A. Alper Tire.

Q. Now all these tires and batteries and accessories are openly displayed since 1951?

A. Yes.

2977 Q. Did Atlantic ever criticize you for carrying these non-Goodyear brands?

A. No.

Q. Have they ever told you to stop buying them?

A. No.

Q. Ever tried to put pressure on you to switch back to the Goodyear line?

A. No.

Q. Have you at all times felt free to buy any TBA brand you wanted?

A. Anything I wanted.

Q. Have you, in fact, always bought any TBA brands that you wanted?

A. All the time except the initial order, which, I said, came from Frabel Brothers. That was Goodyear products.

Q. Did you at the time want to buy that stock or were you forced or compelled to buy?

A. No, bought it on my own free will at the time.

Q. Your lease has been renewed many times?

A. Every year up until last year when I was given a three-year lease.

Q. It has never been the subject matter of discussion at the time of lease renewal that you weren't handling Goodyear?

A. Oh, no. The lease was just brought down to me, signed and brought back, that was it.

2978 Q. Have you from time to time received offers to leave Atlantic and take leased stations of Atlantic's competitors?

A. I have.

Q. Isn't there an Esso station quite close to your station, sir?

A. An Esso station a block away which was offered to me only a short time ago, the dealer went out, they came down to me and wanted to know—same type of station, truck stop, wanted to know if I would take it over.

Q. Do you have a lot of trucker business which is personal to you?

A. Seventy-five percent of my business is truckers.

Q. Are they truckers who come back to you time and time again?

A. Yes, not transit, they are steady customers that are with me all the time.

Q. They are repeat customers, repeat business every day? Your own trade?

A. My own trade that I brought into the station, that I built up when I started the station.

Q. And you have known these people for a lot of years?

A. Since—I have some dealing with me since the day I went into business. Others have left, gone out of the territory, have gotten different work, still come back whenever they are in the territory to see me.

* * * * *

2979 Mr. Thompson: I don't see the basis for it, sir, but I, of course, defer.

Hearing Examiner Kolb: Whether he brought it to his station, I suppose you would end up with speculation of whether he could take it some place else.

Mr. Thompson: I simply offered to prove, sir, by this witness that his business is so personal to him he could take it with him if he moved to a competing station.

Thank you very much, sir, I think Mr. Kelaher probably has a couple of questions. We will both keep an eye on the clock and try to help you catch that plane.

The Witness: Thank you.

Cross-Examination by Mr. Kelaher.

Q. Mr. Grossman, did you have a loan from Atlantic?

A. No, never had a loan.

Q. Never had a loan?

A. No.

Q. Now, would you tell us the circumstances lead-
2980 ing up to your first stocking order when you became an Atlantic dealer. You stated your station was stocked completely with Goodyear TBA, is that correct?

A. No, not everything Goodyear. I had—

Q. (Interposing.) Your stocking order.

A. I had DuPont and so forth. DuPont products were in the station.

Q. Of course, that is in the Goodyear TBA line.

A. Then that was Goodyear then.

Q. Was that a sizeable order?

A. Yes.

Q. Approximately how much?

A. Off-hand, I really couldn't say.

Q. And was your station identified with the Goodyear window valances when you went into it?

A. Yes.

Q. Was this a new station or was this a station you took over from someone?

A. No, opened up brand new.

Q. Opened up brand new?

A. I was the first dealer in.

Q. First dealer and when you went in did it have Goodyear valances in it?

A. About a month, I would say, when they got around to it, a little after I was in it, by being a new station, they
2981 came down and put it in, put the Goodyear sign outside.

Q. Who came down and put it in? Was it Atlantic people or Goodyear people?

A. No, Goodyear representative.

Q. And did they put up the big outdoor pole sign for you?

A. They did.

Q. And who took that order for the first stocking order, was that taken by an Atlantic salesman?

A. An Atlantic salesman plus Mr. Frabel.

Q. Pius Mr. Frabel, who was the Goodyear distributor?

A. Goodyear distributor.

Q. And there were other Goodyear distributors in that area, were there not, distributors of Goodyear's tires, batteries, and accessories?

A. Tires and batteries and so forth, I don't know about accessories.

Q. Why was it that you placed your order with Frabel Brothers?

A. Well, I was new going into the business. That was my first venture. Of course I didn't know too much about it, what I would need and the salesman at the time, he gave me a hand, suggested this and that, and so forth.

Q. That was the Atlantic salesman that suggested this?

A. That is right.

Q. Did he tell you your authorized Goodyear supply point was Frabel Brothers?

2982 A. Yes, Frabel Brothers if I needed anything, get it from Frabel Brothers, he was able to supply me with everything I needed.

Q. Now, you continued to buy from Frabel Brothers for how long?

A. Approximately a year.

Q. Approximately a year?

A. Give or take a little; I couldn't say exactly to the day.

Q. Were you dissatisfied with Frabel Brothers' service, quality, or prices?

A. No, the service was all right. The service was, but after being in a business for a little, shopping around, I found out that I could save a little money for the same item by buying it elsewhere.

Q. For the same item, you mean like a Goodyear tire, you could buy elsewhere?

A. Yes, Goodyear tires included, I could have bought from McDonough, Goodyear dealer, maybe save a few cents on the tire.

Q. So you continued to purchase Goodyear tires after that, I take it?

A. Occasionally, if a customer insisted on Goodyear, I get them today for him to satisfy the customer, but I buy it from McDonough instead of Frabel.

Q. So your authorized supply point, you found, was charging higher prices than other Goodyear distributors?

2983 A. A little, yes. Where I could buy a half case or a quarter of a case for the same price, that I would have to buy a case, in case lots from Frabel Brothers.

Q. Did you find your service was as good or better from other jobbers as it was from Frabel?

A. I get good service from other jobbers. Being right in the city doesn't take too long to deliver and I get good service.

Q. Is your station on a busy thoroughfare location?

A. Main thoroughfare coming in from New York on Raymond Boulevard, coming off Pulaski Skyway ramp coming into Newark.

Q. Is that near Route 22?

A. It is, I would say, beginning of US 1, Route 1 coming from New York, coming off Pulaski Skyway. The Skyway ends and Route 1 begins.

Q. Now, what has been done about the Goodyear identification on your service station?

A. Not a thing; it is still there. They came down and put another one on once when the window broke.

Q. How recent was that?

A. I think about two or three years back.

Q. At that time, you were handling—

A. (Interposing.) Everything else but Goodyear.

Q. Everything else but Goodyear. Did you think it was unusual you should be advertising Goodyear when you were handling everything else but Goodyear?

2984 A. Well, no, I did handle Goodyear, as I said, if a customer insisted, to satisfy the customer. Few came in and wanted Goodyear, to satisfy them I would call up and have it down within a half-hour or 20 minutes.

Q. Wouldn't you have preferred to put up a Delco sign or Exide sign?

A. Personally, it didn't make any difference.

Q. Do you believe in advertising?

A. Advertising, yes, but people come in, they see the Goodyear sign, and if they want Goodyear, I get it for them. But if they came and just wanted a tire—

Q. (Interposing.) Isn't it true—

Mr. Thompson: (Interposing.) He hasn't finished his answer.

Mr. Kelaher: I think he finished his answer.

The Witness: If a customer come in and just wanted a tire, I would buy or make a call. If you wanted a set of tires for your car, I would call Firestone or call U. S. Royal, whichever, the same tire, both major brands, whichever I can get the better deal on, I would buy.

By Mr. Kelaher:

Q. Now you know, I would imagine, from reading newspapers and national magazines, that Delco and Exide and all the tire companies, spend a tremendous amount for advertising, isn't that true?

A. That is true.

2985 Q. And advertising, brand names, are quite important in the TBA business, are they not?

A. They are.

Q. Now if you are handling Delco batteries, for example, or if you are handling Goodyear tires or if you handle some other brand of tires, wouldn't it be to your advantage to make that known to the trade, transit trade going by so that if they wanted a Delco battery they could come in and buy it from you?

A. If I did that, I would have my window pasted up with all the different—I wouldn't see anything out of the window because I handle every kind.

Q. That is right, but when people go by your station, they don't know that you handle Delco batteries, for example.

A. No, not unless they stop in. They don't know what I handle unless they stop in; just saw Goodyear sign on the window.

Q. So if potential Delco battery customer came by, you would undoubtedly lose him unless he stopped in your station?

A. That's right.

Q. The same is true of potential Goodrich tire customers or any of the other brands you have mentioned, which are not Goodyear, isn't that true?

A. That is true.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Do you have any other questions?

Mr. Thompson: No, sir. Mr. Kelaher, may we
2986 make the stipulation we have been making recently about receipt of the three no-forcing letters?

Mr. Kelaher: Yes.

Mr. Thompson: It is stipulated that the witness received CX-206, CX-207, and CX-150.

Hearing Examiner Kolb: That is all, Mr. Grossman, you are excused. Thank you very much.

The Witness: Thank you, sir.

(Witness excused.)

Hearing Examiner Kolb: The hearing will adjourn now until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock p.m., the hearing was adjourned until 2:00 o'clock p.m. of the same day.)

2987 Afternoon Session.

Hearing Examiner Kolb: The hearing will come to order.

JOSEPH A. MARINO was called as a witness by the Respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Francis Ballard.

Q. Give your name to the reporter.

A. Joseph A. Marino.

Q. Mr. Marino, where do you live?

A. Petty Avenue, North Haledon.

Q. What town is that in or city?

A. That is the town of North Haledon itself.

Q. In New Jersey?

A. In New Jersey.

Q. Mr. Marino, this is the first time you have had an opportunity to be here while any testimony is being taken. My name of course, is Ballard. That is the trial examiner on your right there, Judge Kolb, and Mr. Kelaher is the gentleman sitting at this table. He is the attorney for the Federal Trade Commission.

Now, sir, you are the operator of an Atlantic Refining service station?

2988 A. That's right.

Q. You are a lessee of that station?

A. That's correct.

Q. Could you tell us where that station is located?

A. The station is located on the corner of Hamburg Turnpike and Terhune Drive in Wayne Township.

Q. Terhune; could you spell that?

A. T-e-r-h-u-n-e.

Q. Now how long have you had that station?

A. It is going on three years. It will be three years in November or December.

Q. As I understand it, you had another Atlantic station before you took this station at Hamburg Turnpike?

A. Correct, at 35 and Market in Paterson, New Jersey.

Q. How long, sir, did you have the station at 35th and Market Streets at Paterson?

A. Approximately three years, I would say. Possibly even longer than that.

Q. Would it be fair to say that you were at the Paterson station from about 1949 or '50 to 1955?

A. Yes, that would be more correct.

Q. And then you moved over to your present station in 1955?

A. That's right.

Q. Why did you move from one station to another?

A. Well, I was looking for a nicer neighborhood
2989 than where I was actually located because of the neighborhood around me at 35th and Market in Paterson. I was kind of tired with that.

Q. Did you ask the Atlantic people to get you a new station?

A. I did.

Q. Or a different station?

A. I did.

Q. And they got it for you?

A. They certainly did.

Q. At that time, had your lease expired at Paterson in New Jersey? Or was it in the middle of the lease?

A. No, it was still in effect, as I recall.

Q. Now, going back a little bit further, I also understand at one time you were employed by the Atlantic Refining Company in another station?

A. That's right.

Q. But you were not the operator or the lessee of that station?

A. No, I was working directly for them.

Q. Prior to 1950 or 1951, is it your recollection that Atlantic was selling Lee tires and Exide batteries?

A. Yes, we were handling Lee and Exide.

Q. And what type of accessories were you handling then, sir?

A. Well, I personally handled all kind.

Q. Prior to 1951 did you handle other tires than Lee tires?

A. Occasionally when the occasion arrived. If a customer wanted a different brand, I would get it for him.

2990 Q. Now, do you recall the time when Atlantic changed from selling Lee and Exide tires and batteries to promoting Goodyear tires and batteries?

A. I would say that would be in the—oh, I would say in about the middle of '50 or early part of '50, I think is when they changed over.

Q. Did you attend any meetings where the change over was explained to Atlantic dealers?

A. Yes, and I think that was held either in Orange or Newark, I don't remember the town, but it was in a hotel. I believe it was Orange, New Jersey.

Q. And it was what, an evening meeting or day time meeting?

A. No, evening, if I recall, evening.

Q. Can you tell us, sir, generally what was the subject matter of that meeting?

A. Well, at that meeting Atlantic told all dealers that they were going to change over from Exide and so on, whatever we had, to Goodyear, and they wanted the opinions of the dealers to find out what they thought of it. We thought whether it would be a good idea or a bad one.

Q. Do you have any recollection of what the response was of the dealers who were at that meeting?

A. I would say the majority of them were very much in favor of it.

Q. Were you in favor of it?

2991 A. I was at the time, yes, sir.

Q. Did Atlantic—did you say you were? What was your answer?

A. I said I was.

Q. Did anybody at that meeting tell you or any other dealer that you heard that you had to buy the Goodyear TBA line?

A. No, no, definitely not.

Q. Now you have just stated in answer to my prior question that you were in favor of the Goodyear line. Can you tell me why?

A. Well, primarily in our area, the Goodyear line was much more known, more popular, and it would be a lot easier to handle Goodyear products and sell them than it would have been to handle a lesser known brand.

* * * * *

By Mr. Ballard:

Q. Since 1955, in your present station, what tires have you been handling generally?

A. Well, the majority of the tires that I have been handling have been Goodyear, but I have handled others, such as Lee and Cooper, or any other brand. Lees, I bought a few times, Coopers upon customer demand, who wanted something other than the Goodyear.

Q. In your tire buying business, is price an important consideration?

A. Yes, definitely.

2992 Q. What kind of batteries have you been handling, Mr. Marino?

A. I have been handling Goodyear.

Q. Have you handled any other types of batteries, particularly?

A. Oh, occasionally.

Q. Are the tires and batteries, now I am talking about both of them, do you buy the Goodyear tires and batteries from your authorized supply point or do you buy them from another Goodyear outlet?

A. I buy most of them from my authorized supply point.

Q. Do you buy any substantial quantity from another Goodyear outlet?

A. Not a substantial quantity, no.

Q. Now, sir, I am going to ask you about accessories, about the TBA. In these proceedings accessories do not include motor parts, hard parts, things of that sort, but it does include waxes, polishes, fan belts, radios, things of that sort. Where do you buy your accessories?

A. Mostly from my supplier.

Q. Do you buy outside of your supplier?

A. Once in a while.

Q. Mr. Marino, do you know a gentleman named E. E. Stevenson?

A. I recall the name, but I don't know the man personally.

Q. Mr. Stevenson, sir, appears in the record of this case, to have been a salesman for the Exide Company. In December of 1950 Mr. Stevenson wrote a letter to a
2993 man named DeMott. The letter has been identified as CX-300-A. In that letter there is a reference to you. I would like to read you the letter, as much of it as refers to you, and then ask you a few questions about it.

"I called on this account," meaning you, "December 13, and found that they had five Goodyear and one Exide battery which was purchased from Clement DePope. They

advised that the majority of the batteries they sell are still Exide, but do not stock any number because of constant pressure being exerted by the salesman for the Atlantic Refining Company."

Now, sir, did you or did you not at any time in your career purchase Exide batteries from Clement DePope?

A. It is pretty hard to recall. If Clement DePope had Exide batteries and I purchased any, I probably did, but it is hard to recall whether I actually did or not.

Q. Do you recall any conversation of this sort with Mr. Stevenson on December 13, 1950 or at any other time?

A. Those apparently are Mr. Stevenson's words, not mine.

Q. You do not recall making this statement to Mr. Stevenson?

A. Not to him, I don't, no, or to anyone else as far as I am concerned.

Q. Has any Atlantic salesman ever exerted constant pressure on you to buy Goodyear TBA?

A. Not to me.

Q. Now, sir, there was a period of time when you 2994 did carry Exide batteries?

A. Yes, and when Atlantic changed over to Goodyear, I possibly did have maybe one or two left in stock, when I started to purchase my Goodyear batteries in order to fill my shelves up with the proper coverage.

Q. Did you have any trouble with the Exide batteries that you kept on in your station?

A. Well, the o[illegible] reason I think I got rid of Exide was because I had trouble and they wouldn't stand behind it, and that was the one reason I just didn't bother handling them anymore.

Q. Had it not been for that trouble, would you be carrying Exide batteries today?

A. On and off.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You may answer.

Mr. Ballard: Did you get the answer?

Hearing Examiner Kolb: He did answer.

Mr. Kelaher: What was his answer?

Hearing Examiner Kolb: On and off.

Mr. Ballard: Would you read the question and the answer as you have it in your record, please?

(Whereupon, the reporter read the record as requested.)

Mr. Ballard: I am sorry we were going to fast, Mr. Kelaher. We should slow down; I apologize.

2995 By Mr. Ballard:

Q. Mr. Marino, do you do any portion of your business on Atlantic credit cards?

A. Greatest majority of it.

Q. More than 50 percent?

A. I would say yes.

Q. Your station is what, a neighborhood station or industrial or commercial?

A. I would say it is mostly neighborhood, partially highway.

Q. Have you ever charged non-Goodyear TBA on credit cards?

A. I always do.

Q. Have you ever been criticized by Atlantic for having done that?

A. Not to my knowledge, never.

Q. Have you ever been criticized by anyone from Atlantic for charging any non-Goodyear TBA?

A. Truthfully, no.

Q. Have you ever been told to stop buying on the outside?

A. No.

Q. Have you ever been told to remove any non-Goodyear TBA from your station?

A. Never.

Q. Ever been told to hide it?

A. No.

Q. You are presently on a three-year lease, did
2996 you so testify? Is that your first or second three-year lease?

A. Oh, I have had three-year leases since Atlantic came out with them. I don't know whether it would be the second or third, I imagine about the second, I would say.

Q. By any chance, did you come to Atlantic and ask for a three-year lease after they were announced?

A. No.

Q. In the course of your lease renewals, has anybody from Atlantic ever mentioned the fact that you buy non-Goodyear TBA?

A. No.

Q. Now, sir, are there within your neighborhood, which is—

A. (Interposing.) Wayne Township.

Q. Wayne Township, are there other gasoline service stations there from other oil companies?

A. Yes.

Q. Have any of them ever approached you to take a station with them?

A. Yes, I have had Tidewater, Tydol, Texaco, Gulf people have asked me, and also City Service.

Mr. Ballard: No further questions.

Cross-Examination by Mr. Kelaher.

Q. In what general area is your present location in respect to one of the larger cities in New Jersey?

A. I don't quite understand.

2997 Q. Are you in the Newark area or Paterson area?

A. I would call it more in the Paterson area.

Q. Are you in a well populated area?

A. No, we are around on the outskirts.

Q. On the outskirts of Paterson. How far—

A. (Interposing.) From the town of Paterson.

Q. How far away are you from the town of Paterson?

A. Approximately nine miles.

Q. Now you have been in that station since November or December of 1955, is that correct?

A. That is about correct.

Q. Then prior to that time you were at 35th and Market Streets in Paterson, New Jersey?

A. That is correct.

Q. And that would be in the city itself, I would think, downtown area? Or is that on the outskirts?

A. Not in the downtown area.

Q. Not in the downtown area. Is that on the outskirts?

A. Just exactly what do you mean by "downtown"? Some people by saying "downtown" they mean in the heart of the town. No, that is not—we are on the outside of town.

Q. But in a heavy populated area?

A. Yes, industrial area.

Q. And before that time you were also an Atlantic employee, is that correct?

2998 A. Yes.

Q. How long were you an Atlantic employee?

A. From '45, well, to the end of '49.

Q. And at that time were you operating a service station for them, or were you in other capacities?

A. Well, prior to going to 35th and Market Street, I was at 211 Central Avenue in Orange for the Atlantic Refining Company.

Prior to that—

Q. (Interposing.) Were you operating a station for them at that time?

A. I was assistant manager.

Q. Assistant manager of a station?

A. Yes.

Q. Go ahead.

A. And prior to that, I was in Philadelphia with them.

Q. Now, before Atlantic sponsored Goodyear TBA, you stocked, is this true, you stocked Lee tires, is that correct?

A. I stocked them. What do you mean by "stocking"? If you mean by stocking, carrying any great amount, no.

Q. In your direct testimony you stated you handled Lee tires.

A. We handled them.

Q. And occasionally you purchased other brands?

A. That is right.

Q. What do you mean by that?

A. What do you mean, what do I mean by that?

2999 Q. Does that indicate—that indicates to me that you were carrying Lee as your principal brand tire.

A. That was my principal leader, was the Lee, and upon customer request, I would get whatever they want, whether it be Firestone or U. S. Royal or Goodyear or Fisk or anything they wanted, I would get.

Q. At that time your principal battery that you sold was Exide, is that correct?

A. That is right.

Q. And did you carry a stock of Exide?

A. Well, the way you mean "stock" I guess you would say yes.

Q. You had them available for sale. You know what the word "stocking" means, I assume?

A. By "stocking" we mean a full amount of coverage for all cars. But at that time I didn't have a full amount of coverage for all cars.

Q. By stocking, I mean—

A. (Interposing.) Principally Exide, yes.

Q. A number of Exide, you carried a number of Exide batteries for sale.

And now I would like to ask you a few questions about this dealer meeting that took place about the middle of 1950. Did you say that was in Orange, New Jersey?

A. If I recall, I think it was in Orange, New Jersey.

Q. And who attended the meeting?

3000 A. Oh—

Q. (Interposing.) Were there Atlantic dealers from all over?

A. A lot of Atlantic dealers from area were there.

Q. Would that be from the Paterson-Newark area or just from the Paterson area?

A. I think it was from other areas beside Paterson. Of course, I didn't know some of them.

Q. Approximately how many Atlantic dealers were there, would you know?

A. About one-hundred, I would say, it looked like.

Q. Were there Atlantic representatives present?

A. Yes.

Q. Who were the Atlantic representatives?

Mr. Ballard: If the witness knows.

Mr. Kelaher: Any answer he gives will have to based on his knowledge, of course.

By Mr. Kelaher:

Q. Let me ask you, was the District Manager or Sales Supervisor—

A. (Interposing.) I think he was, I think Mr. Sandborn was District Manager at the time.

Q. And he was present?

A. Yes.

Q. And were any other so-called Atlantic "brass" present?

A. I think Mr. Romer was there. And a few Atlantic salesmen.

3001 Q. Was your salesman there at that time, do you recall?

A. No, I can't recall. He apparently was, I guess.

Q. Now in addition to Atlantic personnel, were any people there from Goodyear?

A. Yes.

Q. And was the so-called Goodyear "brass" in that area there, unless you know their titles?

A. I don't know who they were from Goodyear.

Q. At that time, did Atlantic announce that it was going to begin to sponsor Goodyear TBA in the Newark district?

A. Yes, if I recall.

Q. And at that time, did Atlantic announce that it was going to discontinue the sale of Lee tires and Exide batteries?

A. No, never mentioned it.

Q. They never mentioned them. But Atlantic did discontinue the sale of Lee tires and Exide batteries at or about that time, do you know?

Mr. Ballard: I don't know if that is within the witness' knowledge. So long as the question is limited to his station—

Hearing Examiner Kolb: (Interposing.) He knows whether he is buying them or not.

Mr. Ballard: Whether he is buying them.

Hearing Examiner Kolb: Or selling them. Objection will be overruled.

3002 Mr. Kelaher: You may answer.

The Witness: Would you repeat it again?

Hearing Examiner Kolb: Read the question.

(Whereupon, the reporter read the pending question as follows: "Question: They never mentioned them. But

Atlantic did discontinue the sale of Lee tires and Exide batteries at or about that time, do you know?")

The Witness: From our own personal salesman, our salesman, Atlantic salesman.

By Mr. Kelaher:

Q. I am not clear about your answer. Are you saying at that time Atlantic through the salesmen that called on you stopped—

A. (Interposing.) If I wanted to order tire and batteries from my own salesman, Atlantic salesman, we couldn't get Exide or Lee, because they discontinued them, naturally.

Q. That is the point I am making. Now, getting back to this big meeting, do you recall the events at the meeting? What happened first, for example? Did Atlantic make a presentation, or did Atlantic introduce Goodyear personnel?

A. You have me there, I don't remember that.

Q. And did you say that Atlantic asked the dealers if they wanted to change to Goodyear TBA, is that correct?

A. More or less asked if we were in favor of it.

Q. Well, what do you mean by "more or less asked if you were in favor"?

3003 A. Well, they wanted our opinion, more or less, as to whether we would object if they were to handle Goodyear products, and whether we liked the idea or not, and I would say the majority of the dealers liked it.

Q. And when they asked for your opinion, did they ask you by secret ballot or did they ask you to voice your opinion on the floor, or what?

A. Well, it was more or less an open voiced opinion.

Q. Open voiced opinion. And were there some dealers who stated that they did not want Goodyear TBA?

A. Not in my immediate table, no.

Q. You used the word "majority" were in favor of

Goodyear TBA, so I assumed there was a minority who were opposed to the idea, is that correct?

A. About one or two maybe.

Q. At your table or—

A. (Interposing.) No, not at my table, that was from talk later on.

Q. Later on, but at the meeting itself, was there any talk to that effect?

A. I didn't hear any open objections, no.

* * * * * * *

3004 By Mr. Kelaher:

Q. Now, thereafter, you began to carry Goodyear tires, is that correct? That is what I understand your direct testimony.

A. Principally, yes.

Q. You began to stock Goodyear tires instead of Lee tires, is that right?

A. That's right.

Q. And your reason, one of your reasons you gave for that change was the fact that price was in consideration and I believe you also stated that Goodyear had good consumer acceptance in your area?

A. That's right.

Q. And did it have better consumer acceptance than Lee?

A. Yes.

Q. Now, if you were so sold on Goodyear tires, why didn't you carry them as your principal stock from the time you opened your station until Atlantic began to sponsor them?

A. Well, when I first opened the station there were
3005 Lee tires in there, and I purchased what was in there.

Q. And you never made any purchases of tires after that from any source?

A. Of Lees?

Q. Of anything.

A. Oh, yes, I bought what I wanted where I wanted to.

Q. Well, if you preferred Goodyear to Lee, why did you purchase the Lee tires in the station? If you wanted to handle Goodyear, why did you handle Lee, in other words?

A. It wasn't that I wanted to handle Goodyear. When I went into the service station and Lee tires were in there, I purchased them from the man going out.

Q. Was that considered as part of the deal when you went into the station that you would buy out the inventory of the dealer?

A. I could buy whatever I wanted to in the station, but for business purposes, or etiquette, or whatever you may want to call it, I just didn't feel it right to leave the tires there and say I didn't want them and have the man take them out. After all, he couldn't do anything with them. I had more of a chance of selling them than he did.

Q. Wasn't the fact that Atlantic was sponsoring Lee at that time—

A. (Interposing.) That had nothing to do with it.

Q. And the fact that you changed over to Goodyear had nothing at all to do with the fact that you began
3006 to handle Goodyear tires, is that what you are telling us today?

A. I don't quite get what you mean. I more or less buy what I want to when I want to, and from whom I want to. And I have never been told to do otherwise, and no one has ever told me and I don't ever intend to have them tell me.

Q. You still haven't answered the question.

A. Because I don't quite understand what you mean.

Q. I will make it very clear for you. Isn't it a fact that Atlantic sponsorship of Goodyear TBA influenced your decision to begin to purchase and sell Goodyear TBA?

A. No, not their sponsorship didn't influence me. I think the name Goodyear and their acceptance in our neighborhood more or less influenced me to try them out and see what could be done with them.

Q. If Atlantic had sponsored Firestone in your area, would you have still preferred Goodyear TBA?

Mr. Ballard: Objection. Don't answer the question. I object to it as being speculative or hypothetical, whichever phrase you prefer.

Hearing Examiner Kolb: Objection will be overruled.

The Witness: I forgot the question.

Mr. Kelaher: Read the question.

(Whereupon, the reporter read the record as requested.)

The Witness: I don't think so. Firestone is just as good a seller.

3007 By Mr. Kelaher:

Q. You would have begun to handle Firestone TBA?

A. Any big brand name that would sell would be all right with me.

Q. Now, with respect to your stock of batteries, you stock Goodyear batteries principally?

A. That's right.

Q. Incidentally, who is your authorized supply point? Would you give us the name of the authorized Goodyear supply point?

A. Our supply point is Klepper Auto Service in Hawthorne.

Q. How do you spell that?

A. In Glenrock—I am sorry.

Q. How do you spell that?

A. Klepper?

Q. Yes.

A. K-l-e-p-p-e-r.

Q. And that is in Glenrock?

A. Glenrock, New Jersey.

Q. And are there other suppliers of Goodyear TBA in your marketing area?

A. Yes.

Q. Do you purchase all of your Goodyear TBA from Klepper?

A. No.

Q. Do you purchase principally from Klepper?

A. Principally, yes.

3008 Q. Now on your accessories, I believe you stated that most of your accessories are purchased from your Goodyear supply point and once in a while you purchase from another jobber, is that correct?

A. That's right.

Q. Now, with respect to the questions concerning a document identified as CX-300-A and 300-B, you did state that you recalled a Mr. Stevenson by name, is that correct? You recall the name?

A. I recall the name because it has been mentioned a few times.

Q. When your Atlantic salesman was selling Exide batteries you placed your orders with the Atlantic salesman, is that correct, for Exide batteries?

A. Yes, but not always.

Q. Would you also purchase Exide batteries from another source?

A. Yes, I did.

Q. What was the other source?

A. Reliable Magneto, I think was the name of the source.

Q. And does the name Mr. VanTuno mean anything to you?

A. No.

Q. After Atlantic stopped selling Exide batteries then you began to get calls from Exide salesmen, isn't that correct?

A. I still purchased Exide after Atlantic went
3009 over to Goodyear, yes, I purchased them from Reliable Magneto.

Q. Right. So you did have some men from Exide calling on you, someone selling Exide batteries?

A. Not steadily.

Q. And Mr. Stevenson may have been one of those gentlemen, but you don't recall whether he was or not?

A. No.

Q. And when you were asked if you made the statement that you do not stock any number of Exides because of constant pressure being exerted by the salesman from United Refining Company, you answered to the effect that they were not your words, they were Mr. Stevenson's words.

Do you recall any conversation with any Exide salesman concerning that pressure?

A. No, it is too far back to recall accurately. In fact, I can't remember anything to that effect, but if there were an Exide salesman into my place at that time, if I did purchase Exide batteries, which I did once in a while, according to customer requests, I would purchase them from Reliable Magneto, and I don't more or less want to be bothered with other outside men.

Q. Isn't it true that when Atlantic swung over to Goodyear TBA that Atlantic salesmen were interested in having you purchase Goodyear batteries in preference to Exide or other brands?

A. Well, all salesmen are interested in selling their product.

3010 Q. Didn't they indicate that they expected you to carry Goodyear batteries?

A. I don't quite get what you mean "indicated."

Q. Well, did they state or imply or did they have any talks with you concerning the matter?

A. No.

Q. Did Atlantic salesmen have any talks with you concerning the matter?

A. No, they just stated that Atlantic was turning over to Goodyear, and if we would cooperate in any way, in order for that, naturally, for him to sell his products, but not necessarily that I had to carry them if I didn't want to.

Q. But they asked for your cooperation, and did they explain to all of the Atlantic service stations in the area who were going under Goodyear TBA plan at the time?

A. No, not that I recall.

• • • • •

3011 By Mr. Kelaher:

Q. At the time you were handling Lee tires and Exide batteries, did you in your service station at that time, have any window decals up on the station when you were handling Lee?

A. I don't remember.

Q. Did you have any Exide signs in your station?

A. I am trying to think now—I think I had an Exide charger, if that is what you mean, Exide display shelf.

Q. I am talking about signs, you know, the window valances, the window signs. Isn't it entirely possible that you had a Lee sign, Lee-Exide sign up there in your station window when you were selling Lee-Exide products?

A. Possibly a sign of Lee when Atlantic was sponsoring Lee.

Q. That is what I am talking about, when Atlantic was sponsoring Lee.

A. More or less one of those.

Q. Did you have one of those big Lee outdoor signs on your premises when Atlantic was sponsoring Lee tires?

A. What do you mean? Hanging signs?

Q. Hanging signs.

A. Not that I ever recall.

Q. You never had one of those?

3012 A. No.

Q. Now when Atlantic began to sponsor Goodyear TBA, was Goodyear identification put on your station, Goodyear window sign and a Goodyear outdoor sign placed on the premises?

A. Goodyear signs were put up in the window, but I never had an outside sign.

Q. You never had the outside sign?

A. No.

Q. But you did have Goodyear sign put in the window?

A. Yes.

Q. And if there had been a Lee sign there, that would have been removed?

Mr. Ballard: I object to the question, your Honor.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Ballard: He hasn't proved, sir, not definite, it is entirely speculatively; if the witness stated there were a Lee sign first, then he could ask him whether it was removed.

Mr. Kelaher: He stated there possibly was one, as I remember his testimony.

Hearing Examiner Kolb: Overruled. Proceed.

By Mr. Kelaher:

Q. Whatever sign was there was replaced by the Goodyear sign in your window?

A. I would say yes.

3013 Q. Now at your current station, do you also have a Goodyear window valance for the station?

A. Yes.

Q. At this station, do you have the outdoor sign too, Goodyear outdoor sign too?

A. No.

Q. Just the window signs?

A. Just the window signs.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Francis Ballard.

Q. Mr. Marino, I have just one further question. In your opinion, do you think you would lose your Atlantic lease if you stopped buying Goodyear TBA?

A. No.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled. The answer may stand.

Recross Examination by Mr. Kelaher.

Q. Let me ask you one question. In your opinion, does it lessen your chance of having your lease if you handle Goodyear TBA?

A. I don't think handling Goodyear TBA, whether I do or not would affect my chances for a lease with At-
3014 lantic one way or another.

Q. Isn't it a fact that by handling the sponsored brand, you eliminate any friction with the company with respect to TBA?

A. I have never had any occasion to have any friction with the company.

* * * * *

Is that all for the witness?

Mr. Ballard: I have nothing further.

Hearing Examiner Kolb: You are excused.

(Witness excused.)

Mr. Ballard: May we have a moment's recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Lott, will you take this seat, please?

CHARLES HENRY LOTT was called as a witness by Respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

3015 *Direct Examination by Mr. Frederick Ballard.*

Q. Mr. Lott, will you give us your full name and residence address?

A. Charles Henry Lott, 300 Highland Avenue, Morristown, New Jersey.

Q. Mr. Lott, in case you haven't met all these gentlemen, to your right is Judge Kolb, he is the Hearing Examiner and presiding officer; and on your left is Mr. Kelaher, my opponent, he is the lawyer for the Federal Trade Commission.

If you will try to speak so I can hear you, then I am sure Judge Kolb can hear you and also the stenographer.

Mr. Kelaher: Let's include me too.

Mr. Ballard: I neglected to mention Mr. Kelaher, but that was not intentional, I assure you. I would like Mr. Kelaher to hear every word you say.

By Mr. Ballard:

Q. Now, sir, what is the address of your Atlantic station?

A. Route 38 on Church Street, Morristown, New Jersey.

Q. How long have you been the lessee of that station?

A. May 2, 1945.

Q. Now, when you moved into that station, where did

you buy your tires and batteries and accessories, when you first moved into that station?

A. Off of John Reader, Brooklawn, New Jersey.

3016 Q. At that time, I believe tires, at least, were in pretty short supply, weren't they?

A. I had a certificate to buy 25 tires and I couldn't get one.

Q. What kind of tire did Mr. Reader carry?

A. He handled Lee tires and United.

Q. And what kind of batteries did he carry?

A. I didn't buy batteries from him, he didn't have any batteries.

Q. When the wartime shortage was over, did he take on some batteries?

A. Yes, he did.

Q. Did you buy them from him?

A. Yes, sir.

Q. Do you remember what brand he happened to carry then?

A. Exide.

Q. Mr. Reader was, in fact, an Atlantic supply dealer, wasn't he?

A. Yes, sir.

Q. Not for your area, I believe, though?

A. No, sir.

Q. Was Mr. Reader a personal friend of yours?

A. Yes, sir.

Q. Give you good service?

A. Yes, sir.

Q. Now, do you recall that in 1950 or there about's, Atlantic began to sponsor the Goodyear line of tires,

3017 batteries and accessories?

Mr. Kelaher: Objection. I don't think the record establishes that was the date of this hearing. I am not certain but I don't think it was.

Mr. Ballard: I think you are correct. I am sorry, I have gone back and forth between areas. I will withdraw that question, or correct it to read this way: Do you recall that in about 1951, Atlantic began to sponsor the Goodyear line of tires, batteries and accessories?

The Witness: Yes, sir.

By Mr. Ballard:

Q. And did Mr. Reader take on the Goodyear line at that time?

A. Yes, sir.

Q. And did you continue to buy from Mr. Reader?

A. Yes, sir.

Q. Of course, after he took on Goodyear, you were buying Goodyear?

A. Yes, sir.

Q. Have you been pleased with the Goodyear line?

A. Yes, sir.

Q. Now, do you remember about the time that Atlantic took on Goodyear, receiving a letter from Atlantic Refining Company on the subject of TBA?

A. Yes, sir.

Q. Do you remember what the letter said?

3018 A. I would have to—I couldn't be precise and tell you exact words, but I can tell you almost what the meaning of the letter was.

Q. Would you do that for me?

A. I am quite sure it was from the Vice-President.

Mr. Kelaher: Your Honor, I think we have the letter in evidence. I think under these circumstances he should just refer to the letter, that is the best evidence and it speaks for itself.

Mr. Ballard: Your Honor, it seems to me while the letter may be the best evidence of what was said, what I am asking is this witness' understanding of Atlantic policy

as explained in the letter, and I think Mr. Kelaher would be anxious to know that.

Mr. Kelaher: I still think the letter speaks for itself and he doesn't even know, he may not know which letter he is referring to. I don't know—which one are you referring to?

Hearing Examiner Kolb: I think Mr. Kelaher's objection is correct. I will sustain it.

Mr. Ballard: Do you want to stipulate the witness received these letters?

Mr. Kelaher: Let's ask him.

By Mr. Ballard:

Q. Mr. Lott, I show you a document marked 3019 CX-150, it is a form of a letter. It isn't addressed to anyone, signed by Mr. Colley, Vice President of Atlantic, and I ask you to look that letter over and see if you recall getting a letter in that form, which of course, would have been addressed to you?

A. (After inspection.) I remember the letter.

Q. Now, I show you a second letter. This also is a form letter signed by Mr. Colley, it is marked CX-206 and is dated August 28, 1952 and is entitled "A Restatement of Atlantic TBA Policy."

Perhaps you will let me know whether you do or do not recall receiving that letter?

A. (After inspection.) Yes, sir.

Q. Finally, sir, I show you a letter which is marked CX-207, and this letter is from the office of, and it is signed by, Mr. J. O. Estlow, the manager of the Philadelphia-New Jersey marketing region. I believe that is your region, isn't it?

A. Yes, sir.

Q. And it is dated June 24, 1955, addressed to all Atlantic dealers. I wonder if you recall receiving such a letter as that?

A. (After inspection.) I remember this letter too, sir.

Q. Do you remember it?

A. Yes, sir.

Q. Mr. Lott, has anybody from the Atlantic Refining Company ever tried to force you to buy any TBA you didn't want to buy?

A. No, sir.

3020 Q. You have, of course, had your lease renewed many times?

A. Yes, sir.

Q. Do you think you would lose your lease if you stopped buying Goodyear TBA?

A. No, sir.

Q. Mr. Lott, do you remember a gentleman that used to be employed by the Atlantic Refining Company named Felix B. Heald?

A. Yes, sir.

Q. Do you remember that after he left Atlantic, Mr. Heald went in business under the name F & C Automotive Specialties, or some such name?

A. Yes, sir.

Mr. Ballard: Now, Mr. Heald appeared as a witness in this proceeding in June of 1957. Mr. Kelaher, the transcript page, I think, is 896, although I must say that doesn't look exactly right.

Mr. Kelaher: That's right.

By Mr. Ballard:

Q. Mr. Heald, as a witness, was examined by Mr. Kelaher here, and Mr. Heald mentioned your name, Charles Lott. So, Mr. Kelaher asked him this question: "What products did he", meaning you, Charles Lott, "purchase?" And Mr. Heald answered: "He purchased several different products, and he bought fan belts from me, and I had a man come down from Trenton to resleeve them."

Did you, in fact, buy products from Mr. Heald from
3021 time to time?

A. I couldn't really tell you what I bought from him. I did purchase from him, but I don't know what it was, it has been a long time ago, and I can't recollect just what it was.

Q. Well, the next question that was asked of Mr. Heald is: "What brand?" And Mr. Heald answered "Thermoid." I take it you don't remember whether you bought Thermoid belts or not?

A. I really couldn't tell you unless I saw some evidence, sales slips or something of that nature.

Q. Then the next question is: "What happened after that?" And Mr. Heald said, "The next time I got there, they were all back to Goodyear again." And then Mr. Kelaher asked, "Did you have any conversation with Mr. Lott concerning Thermoid products?" And Mr. Heald said this: "He," meaning you, Mr. Lott,—

Mr. Kelaher: (Interposing.) Your Honor, I am going to object. The proper way would be to ask him, instead of leading him, what the conversation was.

Mr. Ballard: On the contrary, this is procedure we followed from the beginning.

Mr. Kelaher: This isn't cross-examination.

Hearing Examiner Kolb: This is all testimony in evidence, is it not?

Mr. Ballard: I am quoting from the record and this is in evidence. I am about to ask the witness' recollec-
3022 tion of this matter. If I go at it in any other way, Mr. Kelaher is going to say I am not correctly quoting the record.

Hearing Examiner Kolb: Overruled.

By Mr. Ballard:

Q. The answer Mr. Heald gave is this: "He asked me as a personal favor, he said it embarrassed him for me to

come in there, and ask me as a personal favor, would I do this, and I said, 'Sure' ".

Now, sir, I ask you whether you recall any such conversation with Mr. Heald?

A. I recall no such conversation with Mr. Heald. The answer to that is no.

Q. Did you ever ask Mr. Heald, as a personal favor or otherwise, to stop calling on you?

A. No, sir.

Q. Now the final question that was asked of Mr. Heald was: "So, thereafter, he did not purchase any TBA from you?" And Mr. Heald said: "No."

Now, as a matter of fact, did you stop buying from Mr. Heald or did he stop selling to you?

A. Well, the way I recall it, Mr. Heald just stopped coming around. In fact, I considered him a friend; he used to work for Atlantic and I was always glad to see him, and he just stopped coming in. I don't remember ever doing anything to make it uncomfortable for him in any way,
3023 ever asking him to leave or not to come back.

Q. If he called around today, would you be glad to see him?

A. I would be very happy to see him.

Mr. Kelaher: That would be a little difficult because he is out of business.

Mr. Ballard: Do you want the remark to stand on the record?

Mr. Kelaher: I sure do.

Mr. Ballard: Mr. Lott, I don't have any further questions. I believe Mr. Kelaher does. He seems to have some on his pad.

Cross-Examination by Mr. Kelaher.

Q. Mr. Lott, what Atlantic district are you in? We have had a number of witnesses today and they are coming from various areas. Are you in the Southern jurisdiction of Atlantic?

A. I really couldn't tell you, sir, I am not sure.

Q. Who contacts you? Someone from the Philadelphia office?

A. We have a regular salesman who calls on me, yes, sir.

Q. And your contacts are with the Philadelphia office, not Newark, New Jersey, are they?

A. No, sir, my contacts are with an office in Belmar.

Q. In where?

A. Belmar.

Mr. Kelaher: Perhaps counsel can tell us. Is this 3024 dealer located in the South Jersey district?

Mr. Ballard: I believe he is, Jim. Incidentally, I would be more than glad to furnish you with a map of any Atlantic district or anything I can to prevent confusion.

Mr. Kelaher: I just wanted the record to be clear, Your Honor, at this point, I would like to make this observation. We had Mr. Wash, Mr. Marino, Mr. Wyckoff, and it is my understanding they are all from the North Jersey district.

Mr. Ballard: I believe that is correct.

Mr. Kelaher: And Morristown is south, it is near Camden and so the chances are he is in the South Jersey district.

Mr. Ballard: He is indeed in the South Jersey district.

Mr. Kelaher: Good. Fine.

By Mr. Kelaher:

Q. You became a lessee dealer on May 2, 1945?

A. That is correct.

Q. And at that time you began to carry the Atlantic sponsored line, Lee-Exide, and so on, is that correct?

A. Name some of the products and I will tell you.

Q. Well, just going over your direct testimony, you testified that you carried Lee tires, Exide batteries, and I am not clear on what your accessory purchases were, but did you also buy those from John Reader?

A. Yes, sir.

3025 Q. So, included in those accessory purchases, were Thermoid belts at the time, if you will recall.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. So, you purchased Thermoid fan belts from 1945 and you purchased all of the Atlantic sponsored products from 1945 until Atlantic changed over to Goodyear TBA, is that correct?

A. Yes, sir.

Q. And at that time you also swung over to Goodyear TBA?

A. Yes, sir.

Q. Now, I would like to ask you a little bit about this fellow John Reader. R-a-e-d-e-r?

A. R-e-a-d-e-r.

Q. He is located where?

A. Belmar, New Jersey. Excuse me, Brooklawn, it is Brooklawn.

Mr. Ballard: Perhaps you better spell it too. We don't all have New Jersey backgrounds.

The Witness: B-r-o-o-k-l-a-w-n.

By Mr. Kelaher:

Q. Now is Mr. Reader, did I understand you to say he ran an Atlantic service station?

A. Yes, sir.

Q. He operates an Atlantic service station?

A. Yes.

3026 Q. And he is an Atlantic supplying dealer for Goodyear TBA products at this time, is that correct?

Mr. Ballard: The witness hasn't answered the question. Did you understand the question? We can always have it read back.

By Mr. Kelaher:

Q. I will put it this way. On direct examination, you said Mr. Reader was Atlantic supplying dealer. I am just asking you if that is correct?

A. Yes, sir.

Q. And I take it that Mr. Reader discontinued handling Lee-Exide, Thurmoid, and so on, other products, when Atlantic swung over to Goodyear TBA, was that the setup? And then at that time commenced to handle Goodyear tires, batteries, and accessories?

A. Yes, sir.

Q. That is correct. Now, let me ask you a little bit about this change over in South Jersey. Was there a dealer meeting there at that time when Atlantic announced it was going to change to Goodyear TBA?

A. I think there was.

Q. And at that time, was Atlantic personnel present and Goodyear personnel present at the meeting?

Mr. Ballard: I object, your Honor, simply because the witness hasn't testified that he was present. I hon-

3027 estly don't know, but I think you are being a little unfair to ask him who was present.

Mr. Kelaher: Maybe I misunderstood his answer. Maybe I didn't ask you if you attended the dealer meeting?

The Witness: I attended. I don't know what dealer meeting you are speaking of. I attended a lot of dealer meetings.

By Mr. Kelaher:

Q. I am talking about where Atlantic switched over to Goodyear TBA in 1951. Do you recall attending that meeting?

A. If you would give me a date, or let me know—

Q. (Interposing.) About March 1951.

A. Where was the meeting held?

Q. I am asking you; I don't know where it was held. I am asking you if a meeting was held at that time at which Atlantic announced it was going to sponsor Goodyear TBA?

A. I attended several meetings where they displayed Goodyear products and showed them to us.

Q. Were those meetings attended by a large number of Atlantic dealers?

A. Yes, sir.

Q. Now, after the meeting, was a call or visit paid to you by Mr. Sandborn or someone else in the Atlantic organization or—

A. (Interposing.) I don't know anybody by the name of Sandborn.

Q. Who was your district manager at that time, do you recall?

A. I couldn't recall.

3028 Q. Regardless of names, did anyone, did Atlantic personnel and Goodyear personnel visit you at the time of the change over to Goodyear TBA to talk to you about it?

A. Yes, sir.

Q. They did. And was that when you agreed to carry the Goodyear TBA line?

A. Yes, sir.

Q. And prior to that time, you carried Lee tires and Exide batteries—

A. (Interposing.) I think I stated I carried United and Lee tires, and Exide batteries.

Q. United and Lee tires, right, but you did carry Lee tires, Exide batteries and other products in the Atlantic line from 1945 until 1951, about six years, we will say?

A. Yes.

Q. And did Lee tires have good consumer acceptance in your area?

A. Well, I sold more United tires, I had better luck and better service out of United tires than I did from Lee. In fact, I was very happy when they dropped the Lee line.

Q. Was your reason for handling it the fact that Atlantic had it in its line?

A. No, sir, I had Lee and United tires.

Q. You just said that you were happy when they dropped the Lee line. I was just wondering what you mean by that.

3029 A. I meant that public acceptance is much better on Goodyear tires because of their advertising program, and I personally like them myself.

Q. Did you purchase the Lee tires because they were part of the Atlantic program?

A. Yes.

Q. And you were happy when they dropped Lee and began to sponsor some other brand and it turned out to be Goodyear, and you were happy when they began to sponsor Goodyear and you went right along with the program?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, Exide batteries, do they have a good consumer acceptance in your area?

A. I believe they do, sir.

Q. Exide batteries are made by a Philadelphia firm, as you know.

A. That's right, sir.

Q. And you are in the general Philadelphia metropolitan area?

A. Would you like my own personal feelings about Exide batteries?

Q. I am just going to ask you about consumer, whether you have demand for Exide batteries there in the Philadelphia area.

A. I never saw the Exide salesman; in fact, nobody ever called and tried to sell me an Exide battery.

3030 I think after Atlantic dropped the franchise or dropped the—

• • • • • •

By Mr. Kelaher:

Q. Well, I did ask you this, whether or not Exide had consumer acceptance in your marketing area. What is your answer to that?

A. I don't really think I am an authority to answer about consumer acceptance.

Q. Did you sell them?

A. I could tell you personally what I thought of Exide batteries.

Q. You go ahead and tell us.

A. Personally, we had a lot of trouble with them and I don't care for the Exide battery.

• • • • • •

3031 Mr. Kelaher: The witness and I aren't having a bit of trouble.

Mr. Ballard: You aren't having any trouble testifying, Mr. Kelaher. I don't know about the witness.

Mr. Kelaher: We understand each other completely. Now you are derailing me here.

By Mr. Kelaher:

Q. You stated that you personally didn't have any great preference for Exide batteries, is that correct?

A. That is purely personal.

Q. Purely personal, right. Now the record shows and you have testified, that for about six years you carried Exide batteries?

A. I didn't say that.

Mr. Ballard: I object to that characterization, sir. I think the witness was about to object as well. The witness did not say that.

Mr. Kelaher: Why don't you let the witness answer if you are sure?

3032 Mr. Ballard: Improper characterization you are throwing at him. If you ask him what he carried—

Mr. Kelaher: Talk about improper. He testified on direct he only handled Exide.

Mr. Ballard: He testified on direct examination, to the best of my recollection, he did not begin to handle Exide until sometime after he went into this station.

Mr. Kelaher: I am talking about prior to 1951. When did you begin to handle Exide batteries then, if that is the big stumbling block.

The Witness: I really didn't handle too many Exide batteries. I sold Weathervane batteries.

By Mr. Kelaher:

Q. Where is that made?

A. Philadelphia.

Q. Didn't you carry some Exide batteries because Mr. Reader began to be the supplier for Exide batteries?

A. Yes.

Q. And that was part of the Atlantic set-up, right?

A. Yes.

Q. And when Mr. Reader dropped Exide and began to carry Goodyear batteries, you began to carry Goodyear batteries, is that the status?

A. Yes.

Q. At the time you were carrying the Exide, did 3033 you have any signs, Lee signs or Exide signs in your station?

A. No, sir, I don't think I did. I can't recall whether I did or not.

Q. And after you began to handle Goodyear TBA, were Goodyear signs put in your station?

A. Goodyear people came there and put up signs, yes, tires and batteries, Goodyear tires.

Q. Put up a window valance?

A. Yes, sir.

Q. Did they give you one of the big outdoor signs too, pole with the Goodyear sign?

A. No, sir.

Q. Now, based on your own knowledge and your observation of the area, Atlantic dealers all had Goodyear TBA signs put in their stations after Atlantic began to sponsor Goodyear TBA, isn't that correct?

A. Well, I couldn't speak for them all. Do you mean 100 percent?

Q. Within your knowledge; I am sure you can't speak for them all. It was pretty general, wasn't it?

A. Yes, sir.

Q. Now, let's talk about Mr. Heald awhile. Mr. Heald, at the time he worked for Atlantic called on you in his official capacity as an Atlantic representative, isn't that true?

A. Yes.

Q. When Atlantic discontinued handling Lee tires, 3034 Exide batteries, Thermoid fan belts, and so on, Mr. Heald, about that time, left Atlantic, if you will recall. Do you remember?

Mr. Ballard: The witness hasn't answered the question.

The Witness: He asks the questions and answers them himself.

Mr. Kelaher: You answer them yourself. I am trying to speed it up.

Hearing Examiner Kolb: Let the witness testify, Mr. Kelaher.

By Mr. Kelaher:

Q. You knew Mr. Heald very well, didn't you?

A. I knew him personally very well.

Q. And he is a very fine gentleman?

A. Very fine gentleman.

Q. And when did he first start calling on you to sell products?

A. I really couldn't tell you the dates.

Q. Was it after Atlantic began to sponsor Goodyear TBA?

A. I wouldn't want to say, sir. I don't know.

Q. What product was Mr. Heald selling?

A. I couldn't even tell you that, it has been so long ago.

Q. Would it refresh your recollection if I told you he was selling Lee tires, Exide batteries and Thermoid fan belts among others?

A. Probably.

Q. Probably?

3035 A. Yes, sir.

Q. Would it refresh your recollection if I told you that after the Atlantic discontinued selling Lee tires, Exide batteries, and Thermoid fan belts, and other products, Mr. Heald went into business for himself, and started to sell those products to Atlantic dealers whom he knew in that area. Does that ring a bell with you?

Mr. Ballard: I was lost, could we have that one read over again?

Hearing Examiner Kolb: Read the question.

Mr. Kelaher: He understands.

Mr. Ballard: I am sure he understands, but I don't. I am entitled to too.

(Whereupon, the reporter read the record as requested.)

The Witness: He called on me to sell me products. I don't recollect whether it was Exide batteries he was push-

ing or Lee tires, but he didn't call on me—but he did call on me and I made purchases.

Mr. Kelaher: And you did make purchases?

The Witness: Yes.

By Mr. Kelaher:

Q. Is it entirely possible that you purchased Thermoid fan belts from him?

A. It is possible that I purchased Thermoid—I couldn't recall.

3036 Q. It is possible, is it not, that the Thermoid brand, the Thermoid fan belts were later resleeved as Goodyear, is that possible?

A. It is possible and it is a fact that Goodyear did resleeve the belts.

Q. Now we are getting somewhere.

A. And—

Q. (Interposing.) They did receive the belts and did they resleeve the Thermoid fan belts?

A. They resleeved the Thermoid fan belts, but I had a stock—I would like to clarify this and tell you.

Q. Go right ahead.

A. The Goodyear people came in and resleeved the belts, and put—but not the belts Felix Heald—I don't know whether I purchased from Felix Heald or John Reader, but the belts were resleeved when we took over Goodyear franchise. The Goodyear people come around every year and they will take my dead stock. I still have some belts that I purchased, I don't know whether they are Thermoid or just what belts they are, but Goodyear takes back the stock that isn't selling, that is why it is attractive.

Q. So that the fan belts were resleeved in any event. And it is also true, is it not, when Mr. Heald started to phone you to solicit your business that you had conversations with him of one type or another?

3037 A. About what?

Q. About TBA?

A. Certainly we talked about product, I don't know just what product it would be, but he came to me plenty of times as a customer, and other times as a gentleman selling something.

Q. I am talking about the occasions when he came to you when he had his own business. You certainly had conversations with him about TBA because he was trying to sell you TBA, isn't that true?

A. Well, if I knew what kind of TBA he was trying to sell me I could probably answer the question.

Q. I can tell you based on the testimony, he was trying to sell you Thermoid fan belts, among other things.

A. In all probability, he did try to sell me Thermoid fan belts, but—

Q. (Interposing.) In all probability you may have purchased some from him, isn't that true?

A. I couldn't tell you unless I saw the actual sales records and sales receipts. I wouldn't want to make a statement that I did or didn't.

Q. That is, you testified you did make some purchases from him of TBA?

A. I purchased from him but I don't know what it was. It has been so long ago I can't recall.

Q. It is also possible that a statement attributed
3038 to you by Mr. Heald may have been made by you and you may not recall?

A. It absolutely is not. I never made that statement to Mr. Heald because I considered him a friend, and I would never make a statement like that to him.

Mr. Kelaher: No further questions.

Mr. Ballard: May we have just a moment, your Honor?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

Redirect Examination by Mr. Frederick Ballard.

Q. Mr. Lott, during the time that you have been an Atlantic dealer, have you at all times felt free to buy whatever TBA you wanted?

Mr. Kelaher: Your Honor, I object.

Mr. Ballard: Your Honor, the man's state of mind is certainly in issue in this case.

Mr. Kelaher: I think he is picking up some questions he overlooked on his direct. He is going beyond the scope of the cross.

Hearing Examiner Kolb: I will overrule the objection.

Mr. Ballard: Would you read the question so the witness can answer?

(Whereupon, the reporter read the record as requested.)

The Witness: I think I answered that before and,
3039 in fact, I stated that I purchased from a lot of other people.

Mr. Ballard: I don't think I have any other questions.

Mr. Kelaher: I have nothing further.

Mr. Ballard: Thank you very much indeed, sir.

Hearing Examiner Kolb: You are excused, sir.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Mapes.

AUGUST MAPES was called as a witness for respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name.
The Witness: August Mapes.

Direct Examination by Mr. Francis Ballard.

Q. Mr. Mapes, you have been sitting outside here; I don't think you have been in this room. Perhaps you have met some of these gentlemen. The gentleman on your right behind the bench, is Judge Kolb, who is the Federal Trade Commission Examiner here, and the gentleman here is Mr. Kelaher who is the attorney for the Government here.

My name is Mr. Ballard.

3040 Mr. Mapes, where do you live?

A. I live in Somer's Point, New Jersey.

Q. And you operate an Atlantic service station at 9th and Bay Street in Ocean City?

A. Ninth and Bay Avenue, Ocean City.

Q. You have a lease on that station?

A. Yes.

Q. For how long have you been operating an Atlantic service station?

A. I have been in since 1929. I was about six years or more for the company and then I operated it all the rest as a dealer.

Q. Now I believe those dates are a little bit inaccurate. Would it refresh your recollection if I told you that you took the station in Ocean City, where you now are, in September of 1939? Does that seem about right?

A. Somewhere—I just can't recall just how many years.

Q. It is a long way back.

A. A long way back. I know I have been in since '29 altogether.

Q. Now, sir, what is the term of your present lease?

A. Three years.

Q. And before you got the lease that you are now working under, did you have a series of leases for that station?

A. I have had three quarters and a year.

Q. And then, renewals?

A. Renewals.

3041 Q. Through the years?

A. Yes.

Mr. Ballard: Will your Honor grant me just a moment's recess while I assist here for a moment at the counsel table?

By Mr. Ballard:

Q. Mr. Mapes, am I right in saying that until about 1951 Atlantic was selling Lee tires and Exide batteries to its dealers?

A. That's right.

Q. Well, before 1951, what tires, batteries, and accessories were you carrying in Ocean City?

A. Well, it was the same, Lee tires and Exide batteries, that is, before 1951?

Q. Yes.

A. Yes.

Q. Did you carry any other types of tires back in those days?

A. No.

Q. How about your accessories before 1951?

A. Accessories—when I first started operating the station for myself, I just got the accessories off of J. C. Miller from Atlantic City.

Q. Now when you were buying accessories from J. C. Miller, was Atlantic selling accessories to you?

A. Just tires and batteries when they first started in.

Q. Now then, in 1951, Atlantic changed over from Lee and Exide to Goodyear tires, batteries, and accessories?

3042 A. Yes.

Q. Is that right?

A. Yes.

Mr. Ballard: Mr. Kelaher, I have just recently checked with this witness, and may I enter into the same stipulation with respect to the three letters?

Mr. Kelaher: No objection.

Mr. Ballard: It is stipulated that this witness has received and read Exhibits number CX 150, CX 206, and CX 207.

By Mr. Ballard:

Q. Now, sir, at the time of the change over from Lee and Exide over to Goodyear, did you attend any meetings with reference to the change over?

A. Well, I attended a couple of meetings, some of them I missed.

Q. Do you remember generally who was at the meetings that you attended?

A. Well, let's see—I don't know off-hand. I think the sales manager, Mr. Estlow, I think he was at them, and Al Debenedetto.

Q. Who was Al Debenedetto?

A. Al Debenedetto was a salesman at the time.

Q. Without going into too much, who was there, what was the purpose of the meeting, what was said at the meeting?

A. They were explaining the product that we
3043 would have and telling us they were going to give us a good service on it with the accessories and stuff.

Q. Did anybody at that meeting say that the dealers had to buy Goodyear TBA?

A. No.

Q. Now since the change over in 1951, what has been your principal line of tires?

A. Since then?

Q. Yes.

A. Well, I have some Lee and the majority is Goodyear.

Q. Now as to the batteries, what has been your split-up in the batteries?

A. Exide and Goodyear.

Q. And your accessories, sir?

A. Accessories is from J. C. Miller and the Goodyear.

Q. About what portion of your accessories do you buy from J. C. Miller?

A. Well, at times it runs about 60 percent.

Q. What kind of hose do you carry?

A. Why, I have some Gates hose and some Goodyear.

Q. Do you have Fram and A C Filters?

A. Fram and A C Filters.

Q. You have Exide batteries?

A. Exide.

Q. And Lee tires?

3044 A. Lee tires.

Q. What kind of washers and waxes do you carry?

A. I have DuPont and Speedy Wash.

Q. Mr. Mapes, do you recall my visit to your station down there oh, a while back, when I was down?

A. Yes, sir.

Q. Is there a contraption in your Bay area that is marked "Fram"?

A. There is a Fram air cleaner, is that what you mean? It looks like a cart.

Q. How big is that, approximately?

A. That runs, I would say, about four by five, stands about four feet high,

Q. And it is painted with the name "Fram" and in the Fram colors?

A. Fram colors and name on it.

Q. Are these accessories, the Exide batteries and the Lee tires openly displayed in your station?

A. Yes, sir, right on the rack, people can see them as they come in the station.

Q. Have you sold those items on Atlantic credit cards?

A. Yes, sir.

Q. Have you ever been criticized by anyone from Atlantic?

A. No, sir.

Q. You have not been criticized?

A. Nobody criticized.

3045 Q. Have you ever been criticized generally by Atlantic for carrying non-Goodyear TBA?

A. No, sir.

Q. Have you ever been told to stop buying it?

A. No, sir.

Q. Have you ever been told to get it out of the station?

A. No, sir.

Q. Or to hide it?

A. No, sir.

Q. Do you have free choice as to what TBA you buy?

A. I do.

Q. You touched a moment ago on the various lease renewals that you had in the course of your career. Has any Atlantic person ever mentioned the fact that you buy non-Goodyear TBA in the course of getting a lease renewal?

A. No.

Q. Have you got any other gas stations in Ocean City?

A. No.

Q. I mean, are there any other gas stations in Ocean City?

A. You mean that I can get?

Q. Yes.

Mr. Kelaher: He is ahead of the question, I think.

The Witness: Well, I could turn around at one time and get three-quarters of the stations along 9th Street, there about 15 stations, and all those companies asked
3046 me to take those stations over.

Mr. Kelaher: That isn't responsive to the question, but I won't object as that would have been the next question.

Mr. Ballard: And we all want to speed it up.

By Mr. Ballard:

Q. Mr. Mapes, do you recall a man named Felix Heald.

A. Felix Heald?

Q. Yes.

A. Yes.

Q. He testified in this proceeding at pages 897 and 898 of the record, and I am going to read you his testimony and ask you to comment on it as we go through it. It is fairly long so I will interrupt myself at occasions to ask you whether it is accurate.

He was being questioned by Mr. Kelaher, the gentleman at the other table. Mr. Kelaher asked Mr. Heald, "Did you at one time call on August Mapes?" To which the answer was, "Well, Gus Mapes, I used to go to Ocean City every Summer and I have known him for many, many years. And if he wanted to buy a few things, he would drop me a line and when I went to the Seashore I would take them to him."

Is that right?

A. That is right.

Q. Then the next question was, "Did he purchase Lee tires, Exide batteries—"

3047 Mr. Kelaher: That wasn't the next question. You are reading it from a different transcript.

Mr. Ballard: Off the record, please?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. The next question, Mr. Mapes, was "Did he purchase Lee tires?" To which the answer was, "Yes."

Is that correct?

A. Yes, I purchased a few off of him.

Q. The next question was, "Exide batteries?" To which the answer was, "Yes."

A. Yes, a few.

Q. The next question was, "Car wash?" And the answer was, "I sold him Speedy car wash which can be used as a car wash."

A. That's right.

Q. The next question was, "Did he continue to purchase these products from you?" And the answer was, "No, he stopped."

A. That's right, I still have stuff on hand.

Q. That you bought from him?

A. Yes.

Q. The next question was, "Did he" that is you, "give you a reason why he stopped?" To which the answer was, "He said that the supervisor there had really given him a hard time."

3048 A. No, that is wrong.

Q. Did you ever tell that to Felix Heald?

A. No.

Q. Now the subsequent question, sir, identifies the supervisor as being Mr. Cramer. Did Mr. Cramer ever given you "quite a hard time"?

A. No, sir.

Q. Now, you have stated, of course, that you did buy some of these items which we have gone through?

A. Yes.

Mr. Kelaher: I would like the record to show that he testified that he bought all that were mentioned in the testimony.

The Witness: I bought Lee tires, Exide batteries, and Speedy Wash; I bought all three items off of him.

By Mr. Ballard:

Q. All right, sir. Why did you stop buying from Mr. Heald?

A. Well, for one reason, I still have some of the stuff on hand. Another reason was I sent him an order through the mail and he had moved and the order was held up. In the meantime, the customer that ordered the staff got tired of waiting and I turned around and sold him Goodyear tires in place of it, and when Mr. Heald come down with it, I took what I had ordered off of him, and still have them in stock, because the lady turned around afterwards, cancelled the order off altogether and got it off of
3049 some friend.

Mr. Ballard: I see. I have no further questions.

Cross-Examination by Mr. Kelaher.

Q. In answer to one question about your lease, I thought I heard you make reference to three-quarter—

A. (Interposing.) Nine month lease.

Q. Nine months?

A. Nine months lease.

Q. At one time was that?

A. At one time it was nine months.

Q. Nine months lease. Now, as I understand your testimony, when Atlantic first started to sell Lee tires and Exide batteries without the accessories, right?

A. Yes.

Q. And at that time you began to purchase Lee tires and Exide batteries from Atlantic?

A. Yes.

Q. Is that right?

A. Yes; when I first went in for myself?

Q. Yes.

A. You see, they didn't sell accessories right off the bat.

Q. When did they begin to sell accessories? Or, let me put it this way, when they did begin to sell accessories, did you start to purchase accessories from Atlantic?

3050 A. Well, it was several years later when they started to bring accessories down into Jersey, and I did buy them off of them. They used to have one of the men in Atlantic City operating a station, he was the dealer.

Q. Do you recall his name?

A. Why Jimmie Clark was the first man.

Q. Jimmie Clark?

A. Yes.

Q. And he was an Atlantic service station dealer?

A. He was an Atlantic service station dealer and he handled the accessories.

Q. And—

A. (Interposing.) Then after Jimmie Clark there was a fellow by the name of Earnie Miller.

Q. Earnie Miller?

A. Yes.

Q. Where was Mr. Miller?

A. Mr. Miller, he had another station in Atlantic City —I got it, I think, sir, Clark was the first and Earnie Miller was the second, or whether it was vice versa, or anyhow, either one of them were Atlantic dealers. One was at Missouri and Pacific and the other one was at Morris and Atlantic where Mr. Clark had his stations, and Earnie Miller had his station at Missouri and Pacific.

Q. Now, when you were purchasing Lee tires, who

3051 did you purchase those from?

A. I purchased those right from them, they were the distributors for accessories and tires and batteries.

Q. Everything came from these men?

A. Yes.

Q. From Mr. Clark and Mr. Miller? And they were Atlantic service station operators who were also wholesaling?

A. Authorized dealers for Atlantic down here.

Q. And was that, at that time, did Atlantic advise you that you could get your TBA from those points?

A. Well, I said they were the distributors, yes.

Q. Now, I would like to ask you a few questions about the time when Atlantic began to sponsor Goodyear TBA.

A. Yes, sir.

Q. You stated that you attended several meetings. Do you recall that testimony?

A. Yes.

Q. To begin with, your station is located in what would be the South Jersey district of Atlantic?

A. Yes, South Jersey.

Q. And did other Atlantic dealers from your area attend the meetings you referred to?

A. As far as I can recall, the boys came up from Wildwood, up to Atlantic City to the meeting, and the boys in Atlantic City, and from Egg Harbor.

3052 Q. So you covered quite a wide territory?

A. That was all on my salesman's territory, yes, right through in there.

Q. Who was your salesman at that time?

A. Let's see, I had several of them—George Mullen was one, and—

Q. (Interposing.) Was there a Mr. Cramer who was your salesman at one time.

A. Mr. Cramer was the district salesman.

Q. He was the district salesman?

A. Yes.

Q. Well, getting back to the meeting, approximately

how many Atlantic dealers were present at the meetings in Atlantic City at that time?

A. At the meeting?

Q. At the meeting when the Atlantic announced it was changing over to Goodyear TBA.

A. Well, I would say around 20 anyhow.

Q. Around 20?

A. Yes.

Q. And I believe you did state that Mr. Eastlow was present, who was Atlantic sales manager?

A. He was my first supervisor when I worked for the company, and then afterwards, after the company discontinued operating down there, then I think a George Mullen come in as salesman.

3053 Q. Just getting back to the meeting, I am trying to establish who the men were who were present at that meeting. Were there several men from Atlantic present and several from Goodyear?

A. Oh, yes.

Q. And then at that time, was a vote taken as to whether or not the Atlantic dealers wanted to change to Goodyear or not?

A. I was never at any meeting where we voted on anything.

Q. They just announced that Atlantic was going to change over to Goodyear TBA?

A. I got a letter on the fact that they after a certain time, that Goodyear would be our distributor for accessories.

Q. And also for tires and batteries?

A. And tires and batteries, yes.

Q. Just as simple as that. You say you were told who your Goodyear dealer would be?

Mr. Ballard: Excuse me, Mr. Mapes; I object to the form of the question, your Honor. It is about a three part question.

Mr. Kelaher: Three parts, tires, batteries, and accessories.

Mr. Ballard: No, three questions all in one. I think it ought to be rephrased.

Hearing Examiner Kolb: Read the question.

(The reporter read the record as requested.)

Hearing Examiner Kolb: Objection overruled.

3054 Mr. Kelaher: You may answer.

The Witness: I think that is the way it was. I myself, I don't think I had ever been where we voted on it. If it had been, I had missed that meeting altogether.

By Mr. Kelaher:

Q. Now, after that meeting, did an Atlantic representative and Goodyear representative call on you personally at your station and discuss the new program, the new Goodyear program?

A. I don't recall.

Q. When it was announced, was either Mr. Clark or Mr. Miller designated as your authorized supply point at that time or was there another Goodyear supply point?

A. Well, after the company done away with the accessories, the distributor down in Atlantic City was tires and appliances. Goodyear Tires and Appliances, it was called.

Q. Where were they located?

A. They were located on the—

Q. (Interposing.) In what city?

A. Atlantic City.

Q That's good enough.

A. I just can't figure what street it was.

Q. That's all right. That's fine. And were you told you could purchase your Goodyear TBA at that specific point from Goodyear Tire and Appliance in Atlantic City?

A. What we wanted we could get over there.

3055 Q. That was what was known as your designated supply point?

A. Yes, supply point, yes. I was going to say it was a very bad place.

Q. You say it was a very bad place?

A. It wasn't such a good dealership.

Q. You didn't like the service?

A. No, sir, it was awful.

Q. Now, did you continue to purchase from Goodyear Tire and Appliance?

A. Yes. Now it is under a new name now. It is called G & H Tire and Retreading.

Q. G & H Tire and Retreading?

A. Yes.

Q. And why did you continue to purchase from Goodyear Tire and Appliance if the service was so poor?

A. Well, there was some material that my customers wanted and I got.

Q. Were they the only Goodyear distributors in the area?

A. Just around here, yes, otherwise I would have to go either to Wildwood or to Black Horse Pike.

Q. Now, since Atlantic changed over to Goodyear TBA, has the majority of your tire stock been Goodyear?

A. Most of my tire stock is, yes.

Q. And it has been that way since the changeover, is that correct, in March '51?

3056 A. Yes.

Q. Now, you stated that you also have carried Exide and Goodyear batteries since March '51, is that true?

A. Exide and Goodyear batteries.

Q. And which do you carry the most of? Which do you stock the most of?

A. Why, at the present time, I have about 50 percent of each.

Q. Fifty percent of each?

A. Yes.

Q. Prior to the time that Atlantic began to sponsor Goodyear TBA, did you just carry Exide batteries?

A. Yes.

Q. At that time, you did not carry Goodyear batteries, did you?

A. No.

Q. Did you take on the Goodyear batteries because Atlantic began to sponsor Goodyear batteries?

A. Well, I just brought in the articles, I mean, on account of the product, I figured, was a good brand, and had a good name reputation behind it.

Q. But up to that time you had never purchased or sold Goodyear batteries?

A. No.

Q. But the fact that Atlantic began sponsoring it influenced your decision to carry the Goodyear batteries, isn't that true?

A. Well, not altogether, no.

3057 Q. Not altogether, but it did to some extent?

A. To a little extent, yes.

Q. Now, in answer to a question on accessories, you stated that you carried accessories which are purchased from J. C. Miller and also accessories from your Goodyear supply point. Is that correct?

A. Yes, sir.

Q. And you said that sometimes, you used the word "sometimes", 60 percent of your accessories were purchased from Miller.

A. That's right.

Q. Now, at other times has 60 percent been purchased from Goodyear? Does it vary from time to time?

A. No, most of it I get from J. C. Miller.

Q. But you do stock some Goodyear items?

A. Oh, yes.

Q. What ones, for example?

A. Well, they have the DuPont products which I can get from either one I have off of them. I have DuPont, the Simonize and the Johnsons, A. C. plugs, A. C. filters.

Q. All from Goodyear?

A. They are from Goodyear.

Q. So, you carry quite a considerable stock of Goodyear accessories?

A. Yes, and a considerable stock of Fram cartridges.

Q. They are purchased from Mr. Miller?

3058 A. And Champion spark plugs.

Q. Now Mr. Ballard said when he visited you he saw a Fram air cleaner. What is that used for?

A. Why, on these cars since 1957 they have what we call a dry air cleaner on them to filter air to the carburetor.

Q. Piece of equipment used for repairing automobiles?

A. Used for servicing the air cleaner.

Q. Has nothing to do with TBA?

A. Yes, because your air cleaner comes from the Fram people.

Q. Of course, the air cleaner does.

A. I mean the cartridges, the air cartridges.

Q. I should say the air cleaner has nothing to do with TBA.

A. The cartridge fits into the air cleaner, it is made by Fram.

Q. That is inserted in the air cleaner in servicing the car?

A. It purifies the air going into the carburetor, takes all the dirt and catches the dirt and stuff.

Q. Can you use any type of cartridge on that? Any brand?

A. Why the A. C. has finally come out with one too, now, but I have gotten my Frams first so I am using Frams.

Hearing Examiner Kolb: Is that cartridge used on the car or on the cleaner?

The Witness: The cartridge sits in the top of the air cleaner.

Hearing Examiner Kolb: Of the cleaner?

3059 The Witness: Yes.

By Mr. Kelaher:

Q. Now, Mr. Mapes, when you were carrying Lee tires and Exide batteries, and other products you purchased from Atlantic, did you have any signs in your service station advertising Lee tires and Exide batteries?

A. On the fence.

Q. On the fence?

A. Yes.

Q. And after you swung over to Goodyear TBA, were any signs, any Goodyear signs placed in your station?

A. Well, there were finally some put in, yes, on the windows.

Q. On the windows, put a window valance in?

A. Window valance in.

Q. When you say "finally," you mean they didn't get around to it?

A. At first I wasn't there when the man come around, you see, and then afterwards the man come around and asked me about it and I told him he could put it up there.

Q. Did they also put up an outdoor pole, a Goodyear pole?

A. Just put a sign on the little pole.

Q. On the little pole. Had there been a Lee sign up there?

A. Not on the little pole.

Q. Did they take the Lee sign down?

A. No, the signs were taken down by me because

3060 we had too many signs. They were all old and ~~stull~~ stale and—

Q. (Interposing.) Did you take the Lee sign down about the time you put the Goodyear signs up?

A. No, the Lee signs were down before.

Q. They were down before?

A. Before.

Q. Before the Goodyear signs went up?

A. Oh, yes.

Q. After the Goodyear TBA plan went into operation, is that right?

A. Yes, it was about, right afterwards.

Q. In other words, when you heard Atlantic was going to sponsor Goodyear TBA, you took down the Lee signs, is that what you said?

A. I took all signs down.

Q. Took all signs down?

A. Yes.

Q. What other signs?

A. Cigarette signs, soft drink.

Q. Did you have any Exide battery signs?

A. No, I didn't have no Exide signs. I never had an Exide battery sign.

Q. Now, did you observe in your marketing area, after Atlantic changed over to Goodyear TBA, other Atlantic dealers also had Goodyear identification placed in
3061 their stations, such as Goodyear window valances or Goodyear outdoor signs?

A. Well, to tell the truth, I didn't pay much attention to it because I didn't get around too much to the other Atlantic stations. I generally always come to my own and go right back home.

Q. Hasn't it been your observation, even today in your area, that you see Goodyear identification?

Mr. Ballard: I object, your Honor, the witness has already answered the question. He said he does not observe other Atlantic stations.

Hearing Examiner Kolb: Cross-examination. Objection overruled.

Mr. Kelaher: You go ahead, Mr. Mapes.

The Witness: I noticed it in some of them in Atlantic City. I won't swear too much about the other dealers in Ocean City. I don't know whether he has it up there or not.

By Mr. Kelaher:

Q. In Atlantic City?

A. I have seen it in one dealer in Atlantic City.

Q. Goodyear identification?

A. Goodyear identification.

Q. Now you carried Lee tires for quite some time before Atlantic swung over to Goodyear TBA, I notice from your testimony?

A. Yes.

Q. You carried them from about September '39 3062 when you went in until about March '51?

A. I have had them for quite a while.

Q. That would be about 12 years. And were you satisfied with Lee tires?

A. Well, I never had any trouble with them.

Q. And Lee tires had a road hazard guarantee which was very good, wasn't it?

A. Lee has a road hazard.

Q. And Lee tires had good public acceptance in your area, did they not?

A. No, we didn't sell too many.

Q. Didn't sell too many?

A. No.

Q. Why at that time did you continue to handle Lee tires?

A. Well, I always had a few tires on hand.

Q. You always had Lee?

A. Yes.

Q. You said you always carried Lee.

A. Yes.

Q. Let me ask you this, was that because Atlantic was selling Lee? Was that the reason you were carrying them?

A. At the first start off when I went into business for myself, Atlantic—I was selling Lee tires and batteries and I turned around and purchased some tires and batteries from them, and I continued on with it.

3063 Q. And you just continued on as part of the Atlantic program?

A. At that time, that was the only thing that Atlantic sold in the beginning, to the dealers in South Jersey.

Q. And the reason that you were handling Lee was because that was all that Atlantic was selling at that time, isn't that right?

A. I just handled one brand. I didn't want to stock up too much because I wasn't very much in the finance field to turn around and overstock myself, which I am a little better today.

Q. The reason you were handling Lee tires instead of Goodyear at that time or some other brand, is because they were selling Lee tires?

A. Yes.

Q. Beg pardon?

A. Yes, I could get them on my credit, I mean at the time.

Q. And the reason you were handling Exide batteries at the time was because Atlantic was selling Exide batteries?

A. They were selling them and J. C. Miller was selling them too.

Q. Yes.

A. I could get them off of J. C. Miller's the same as Atlantic.

Q. And at that time you were not stocking Goodyear tires and Goodyear batteries?

A. Yes.

Q. And at that time, you were purchasing quite a number of Atlantic accessories in the Atlantic program, 3064 and that was because Atlantic was selling those accessories, isn't that so?

A. Well, I wasn't buying too many when I first started off, though.

Q. We got that.

A. I bought some off of Atlantic because my other distributor didn't sell that brand. My part of it is—on the stock of inventory—I carried those to satisfy my customers. The customer comes in and asks for a brand, if they are a steady customer of me, I get what they ask me to get, and I carry those articles.

Q. Now at the time Atlantic began to sponsor Goodyear tires were you able to buy Lee tires at a lower price back in '51, or did you pay the same price?

A. Same price.

Q. Same price from the Atlantic distributor?

A. Yes, sir.

Q. So, there was no advantage to handling Goodyear from a price standpoint?

A. No, all the standard brands of tires, don't make any difference which brand you buy, they all sell at the same price.

Q. Now if Atlantic had started to sponsor Firestone TBA in your area at that time, would you have changed over to Firestone TBA?

A. Well, I might have got some of it. I wouldn't have got too much of it, I don't care too much for Firestone products.

Q. Now, if Atlantic had sponsored—the fact that 3065 Atlantic sponsored Goodyear TBA was one of the reasons why you began to carry that; I believe you have testified to that, haven't you?

A. I bought some on that, yes, on account of Atlantic was having them.

Q. All right. Now I would like to ask you a few questions about Mr. Heald. Mr. Heald was with Atlantic for a long period of time, wasn't he?

A. I don't know, to tell the truth.

Q. Did he call on you for any length of time?

A. You see, how I come to know Mr. Heald, his two boys worked for me. That is how I come acquainted with Mr. Heald. Mr. Heald had two sons and they both worked in my service station after they had turned around and gave up their own stations.

Q. After they'd what?

A. You see, they used to have an Atlantic station themselves in Ocean City, and then after they got through there, they came and worked for me a couple of summers.

Q. Now, at the time Mr. Heald did call on you in his capacity as a representative of Atlantic, did he not?

A. No.

Q. He never did?

A. No.

Q. You were out of his area?

A. I was out of his area altogether.

Q. You met him through his sons?

3066 A. I met him through his sons.

Q. And you knew him for how long a period of time? Did you know him for many years?

A. Well, let's see. I have known Mr. Heald about two years before he started in the business for himself.

Q. You corroborated what Mr. Heald stated that you did purchase Lee tires, some Lee tires, Exide batteries, and Speedy car wash from him?

A. I bought about three Exide batteries off of him, and I don't believe I bought more than a half dozen Lee tires off of him altogether.

Q. These were just small purchases?

A. Just small purchases.

Q. And these purchases were made after Atlantic began to sponsor Goodyear TBA?

A. Yes, sir, because I had a customer that wanted Lee tires and the fellow on that sold Lee tires in Ocean City, he wanted me to pay just the same as what a customer come in and bought a tire off of him, so I turned around and wrote to Mr. Heald for the tires, he told me at the time when he was in that he had Lee tires, you see.

My first dealing with Mr. Heald was to buy Speedy car wash, that was soap that Atlantic manufactured and then they discontinued manufacturing, and he could get it through the jobbers in Philadelphia, but they came
3067 under a different name, came under Speedy wash.

Q. Now was your supervisor at that time a Mr. Cramer of Atlantic? You mentioned Mr. Cramer earlier. I am not sure just what his title was or what—

A. (Interposing.) Mr. Cramer was a supervisor. I think at the time, right at the end when I stopped buying off Mr. Heald, Mr. Cramer came down as supervisor, Mr. Cramer just about got into the territory.

Q. Was he the assistant to a Mr. Estrow, or could it have been Mr. Estback?

A. Mr. Estback was the manager for South Jersey and Mr. Cramer was Mr. Estback's assistant.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Francis Ballard.

Q. Mr. Mapes, I just have a couple of questions here. In the course of your direct and your cross-examination, you have mentioned the name Miller a couple of times and I want to make sure we don't get too confused.

A. J. C. Clark, he was one distributor that Atlantic had down here, then they started bringing accessories down.

And James Clark, and then Earnie Miller was another one. Now I don't know—

Q. (Interposing.) Who was J. C. Miller?

A. Earnie Miller.

3068 Q. Who was J. C. Miller?

A. J. C. Miller, he was one of the boys that worked for Atlantic Refinery, I didn't mean J. C.

Q. I know that.

A. Oh, J. C. Miller, that is the distributor in Atlantic City, that is from Atlantic City and Hamilton. They have —they are not connected with Atlantic Refining whatsoever.

Q. Is it from J. C. Miller that you buy some accessories, sometimes up to 60 percent?

A. Yes.

Q. Did you buy Exide batteries from J. C. Miller? Do you buy Exide batteries from J. C. Miller?

A. Yes.

Q. Did you buy Exide batteries from J. C. Miller before 1951?

A. When I needed one in a hurry, yes.

Q. All right, sir. Now, there was another area of your cross-examination where you were talking about the early days when you first went into your station. Can you tell me whether or not tires were easy to get in those days or difficult?

A. Well, at times, like when the War was on, I couldn't get no tires at all because, you see, I didn't have authorization to get tires. Most of your car dealers had the tires at that time in place of the service stations.

Q. That wartime shortage, did that continue after the war?

A. No, after the war was over, then we could get tires again.

3069 Q. I see. After the war could you get any kind of tires or was it only Lee that you could get plenty of?

Mr. Kelaher: Objection, your Honor, I think we have gone into that far enough, myself.

Hearing Examiner Kolb: Objection overruled.

The Witness: I could get any kind of tires. I mean, whatever kind of tire a customer wanted, I would go out and get.

Mr. Ballard: I have no further questions.

Mr. Kelaher: Nothing further.

Hearing Examiner Kolb: That is all, Mr. Mapes, you are excused.

(Witness excused.)

Hearing Examiner Kolb: The hearing will adjourn until Friday at 10:00 o'clock a.m.

* * * * *

Hearing Examiner Kolb: The hearing will come to order.

3071 WILBUR D. GAESTEL was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name to the reporter, please.

The Witness: Wilbur D. Gaestel.

Direct Examination by Mr. Thompson.

Q. Mr. Gaestel, where do you live?

A. I live in Caldwell, New Jersey.

Q. Are you an employee of The Atlantic Refining Company?

A. I am.

Q. When were you first employed by The Atlantic Refining Company?

A. September 1943.

Q. Did you refresh your recollection from the company's records to determine the dates in which you have served in various capacities?

A. I did, and I have a note in my pocket to it.

Mr. Thompson: Do you mind, Mr. Kelaher, if he uses that?

3072 Mr. Kelaher: Go right ahead.

By Mr. Thompson:

Q. Refreshing your recollection from that note, will you tell us in what capacities you have served for Atlantic and during what periods of time?

A. I will be glad to.

An office clerk from September '43 to June '45.

Q. Where were you then?

A. In Newark. All my service has been in Newark, in the Newark district.

I was a general salesman from June '45 to August '46; commercial salesman from August '46 to January '47; and, a promotable dealer salesman from January '47 to October '51.

Office supervisor from October '51 to October '54, and a sales supervisor from October '54 to date.

Q. You were then a promotable dealer salesman from 1950 when Atlantic tried the Goodyear TBA plan in the Newark district on an experimental basis?

A. That is true.

Q. Do you recall the events leading up to the first experimental use of the so-called Goodyear plan by Atlantic in your district?

A. Well, I recall the meeting at which the experiment was announced.

Q. And where was that meeting held?

3073 A. That was held in the Suburban Hotel, I believe, in East Orange, New Jersey.

Q. That was in 1950?

A. I believe it was 1950, yes, sir.

Q. Have you a recollection of what happened at the meeting?

A. Well, a reasonable recollection, yes, sir.

Q. Well, would you tell us in your own words what happened?

A. Well, the meeting was held for Atlantic sales personnel and all Atlantic dealers in the Newark district and proceeded with a dinner. After the dinner the Atlantic district manager introduced to the audience various brass of The Goodyear Tire and Rubber Company and gave a very brief idea of what Goodyear was going to do. Then, Goodyear took over the meeting because it was actually their meeting and announced the program to the Atlantic personnel and to our dealers, saying that it would be on an experimental basis, that henceforth we would be handling the Goodyear TBA line in the Newark district.

Q. Who do you mean by "we"?

A. Atlantic Refining would have available for its dealers the Goodyear TBA line replacing the line of tires, Exide batteries—

Q. (Interposing.) About how many people were present at that meeting?

A. If my memory serves me, there were approximately 200 people at the meeting.

3074 Q. Did you attend as an Atlantic salesman?

A. I attended as a promotable dealer salesman.

Q. Did the other Atlantic sales people attend?

A. Yes, sir.

Q. Who was then the district manager for Atlantic in the Newark district?

A. Arthur Sanborn.

Q. Was he there?

A. He was there.

Q. What, if anything, was said to the dealers in the

presence of your salesmen about whether this plan was compulsory or at their option?

A. To my recollection—and naturally I have done some thinking about this—it was very definitely stated that it was an optional plan for our dealers, that the Goodyear line would be available if they so chose.

Q. In your present job as sales supervisor in the Newark district, is it part of your responsibility to keep abreast of competition?

A. It certainly is.

Q. Speaking first of suppliers who compete with Atlantic, are there a number of them in your district?

A. Are you referring to TBA suppliers or petroleum?

Q. I am referring now to the major oil companies who market gasoline in the area.

3075 A. I believe there are 12 or 13 major suppliers in our area.

Q. About how many gasoline retailers are there in the area?

A. In the Newark district, the district in which I serve, I believe there are approximately 6,000 retail outlets.

Mr. Kelaher: Could we have a definition of that at this time?

Mr. Thompson: I am coming to it.

By Mr. Thompson:

Q. Is there a distinction in your mind between a retail outlet and a service station?

A. There is a large distinction, yes, sir.

Mr. Thompson: Before I go further with that, Mr. Kelaher, I think it might be helpful if we have a clearer concept of what the Newark district is.

I would like this map to be marked as an Atlantic exhibit, and that will be A-15.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 15 for identification.)

By Mr. Thompson:

Q. I show you a map of the state of New Jersey, which has been identified as RX-A-15, and ask you whether that map shows the Newark district of The Atlantic Refining Company, and also the Southern New Jersey district?

A. That is true.

3076 Q. Does the large blue line which crosses the map indicate the division line between the two districts?

A. Yes, it does.

Q. Have you, or has there under your supervision, been placed upon the portion of that map which shows the Newark district certain red circles?

A. Yes, sir.

Q. What do those red circles represent?

A. They represent service stations and retail outlets that fly the Atlantic flag in the North Jersey district.

Q. When you say "retail outlets and service stations" you said before that you drew a distinction between the two?

A. Yes, sir.

Q. Would you define for us, first, retail outlet, in the sense in which you have used it, and then service station?

A. I will try, yes, sir.

A retail outlet is any spot or location that has for sale to the motoring public gasoline. Now, this could include a grocery store, pumps at the curb of a garage; it could be a new car dealer, and it could be a service station, a regular modern service station.

Q. How would you define a service station?

A. Well, I define a service station as a spot that a motorist can pull in and reasonably expect to have the majority of needs outside of major repairs for his car

3077 taken care of, and a service station would have a lubrication bay, it would have a wash bay; the motorist could expect to buy his normal TBA needs in that service station and have minor work done on his car.

I exclude major repair work. I do not consider that part of the service station.

Q. When you hereafter in your testimony refer to service stations, will you be meaning service stations, the sense in which you have just defined it?

A. That is true, yes, sir.

Q. Do these red circles indicate Atlantic service stations in the northern district of New Jersey, sometimes call the Newark district?

A. They indicate both Atlantic service stations and retail outlets.

Q. Are there some retail outlets on this map which are not service stations?

A. There are.

Q. Are there also on that map indicated by red circles some contract stations which are not owned by Atlantic?

A. Yes, sir.

Q. You referred to approximately 6,000 retail outlets in your district?

A. That is right.

Q. Approximately how many of those outlets would
3078 be service stations in the sense in which you have defined it?

A. I am afraid I would be a little leery about venturing an opinion because it would have to be an opinion. I am sorry; I cannot—

Q. (Interposing.) It would just be a guess?

A. It would have to be a guess; I could not tell you.

Q. Before I come to that, was there a change made in the geographical area of the Northern New Jersey or Newark district some years back?

A. Yes, sir.

Q. What was the change? Can you indicate on this map?

A. There is a certain area in the western part of the

state that was originally associated with the Eastern Pennsylvania region, the Allentown district, and it was decided to take that part of the country and make it all part of the Newark district.

Q. When did that change occur?

A. As near as my recollection, it would be in the area of 1950.

Q. Was it before or after or contemporaneous with the Atlantic experiment in your district under the Goodyear TBA plan?

A. To my memory, they both occurred pretty near the same time. It was almost coincidental.

Q. What was the reason for the change in the district? Did it have anything to do with the TBA experiment?

3079 A. To my knowledge it had nothing to do with the TBA experiment.

Q. How many stations does Atlantic own and lease in your district?

A. I am sorry, I missed the first word. "How may" did you say?

Q. How many service stations do you own and lease?

A. 133.

Q. So that you have 133 leases?

A. That is true.

Q. Can you, by use of that map, indicate in a general manner where the Atlantic leased stations are located?

A. Well, they would be in any part of our district. We have every part of the state, we do own stations and lease them, but there is no particular area confined to just Atlantic-owned stations.

Q. Is there a high concentration of leases in the area of the city of Newark?

A. Yes, sir.

Q. And in other large cities in Northeastern New Jersey?

A. Yes, but we do have the contract as well.

Q. Would you read me the answer, please.

(The reporter read the answer.)

By "the contract as well," you mean you do have contract outlets?

3080 A. Yes, sir, and in the area you mentioned.

Q. Do you know how many contract service stations you have in the district?

A. We have a total of 168 stations; 133 are leases.

Q. And the balance are contract?

A. Yes, sir.

Q. Now, are you distinguishing in stating the balance between retail outlets and service stations, or are they all service stations?

A. They are both, both retail outlets and service stations in that balance.

Q. But my question is: about how many real service stations are operated by contract operators as distinguished from leases?

A. Fifteen.

Q. So that confining your answer to service stations, you have 133 lessee outlets and 15 contract operators?

A. That would be it, yes, sir.

Q. That would make a total of 148 service stations?

A. Yes, sir.

Q. You have in your district, I believe, no service stations operated by wholesale distributors?

A. We have no wholesale distributor service stations.

Q. As sales supervisor, to whom do you report in the organization?

3081 A. I report to the district manager.

Q. What is his name?

A. His name is Leslie Geer.

Q. Are you in effect second man in the district?

A. Yes, sir.

Q. At the present time is Mr. Geer away from the office?

A. Mr. Geer is on vacation right now.

Q. And in his absence do you act as district manager?

A. I am acting district manager at the present.

Q. As sales supervisor, is it part of your function to know and to enforce Atlantic's policies in your district?

A. Yes, sir.

Q. What is the primary responsibility of the sales supervisor?

A. Well, my primary responsibility is to promote the sale of gasoline to our service stations and retail outlets.

Q. How many sales personnel report to you or act under your supervision in your district?

A. I have 11 sales personnel, 11 men that report to me.

Q. And what are they called? What are their titles?

A. Well, I have—

Q. (Interposing.) Are some of them promotable dealer salesmen?

A. I have seven promotable dealer salesmen; one dealer salesman; and, three service salesmen.

3082 Q. Does the so-called dealer salesman, of which I believe there is one, sell Atlantic products to service stations?

A. Not as we have defined service stations.

Q. His responsibility is primarily the contract retail outlet, which is not big enough to be a service station?

A. That is true.

Q. Turning now to your so-called promotable dealer salesmen, do they handle both lessee stations and contract stations?

A. Yes, sir.

Q. Is it part of your responsibility and function as sales supervisor to keep these lessee stations manned with operators?

A. Yes, sir.

Q. Is that a difficult or easy thing to do?

A. That is a rather difficult and time-consuming job.

Q. Do you find qualified lessees easy or difficult to get?

A. Very difficult.

Q. Do you find in your district that there are more service stations than there are qualified dealers?

A. Unfortunately, yes.

Q. Are you in competition with the other major oil companies for lessees?

A. Yes, sir, tense competition.

Q. Also, in competition with them for the right to supply the contract service stations?

A. Yes, sir.

3083 Mr. Kelaher: Beg pardon? What was that question?

(The reporter read the question and answer.)

By Mr. Thompson:

Q. You have referred to qualified lessee or qualified dealer. How would you define that kind of a person?

A. You mean our method of searching them out?

Q. No, I said how would you define a good dealer?

A. How would I define?

Q. What are the requisites of a good dealer?

A. Well, the requisites of a good dealer: Number 1, that he be intelligent, be a good manager—both of any employees he might have, his own finances—he must be sober, industrious, hard working; must be sales minded, able to meet people; in fact, must like people to be able to sell; must have the backing of his wife and family, the necessary finances to enter our business; must be willing and eager to make himself a part of his local community, to serve his community in any function that it might be necessary. Offhand, those are some of the immediate requisites that I think of.

Q. What do you find in your district that an Atlantic lessee dealer who meets those specifications can net a year out of the operation of one of your stations?

A. I would say an average from possibly nine or ten to fifteen thousand dollars.

Q. Are some of them higher than that?

3084 A. Yes, sir; there are dealers who make more than that.

Q. Do you find some who make over $20,000 a year?

A. Yes, sir.

Q. When you get a qualified dealer, is it your objective to keep him, or would you just as soon let him go away?

A. Pardon me for smiling. When I have a qualified dealer, I will do anything to keep from losing him.

Q. Why should that be so?

A. Well, I stated earlier they are extremely hard to find. The competition for good dealers is very intense in the Newark district. If we find one who is qualified, we certainly wish him to become an Atlantic dealer.

Q. Is there any expense involved in the replacement of a lessee?

A. Yes, sir.

Q. Have you made any analysis, yourself, of what that expense is? Do you know what it is in your district?

A. Actually, to dollars and cents, no, I haven't, but I know it is a very time-consuming job for both the salesman and myself and for our service salesmen. Would you like me to elaborate a little bit?

Q. Yes.

A. Well, we spend—

Q. (Interposing.) No, I am talking about expense now. What is the expense involved? You mentioned time

3085 of sales personnel and finding a lessee.

A. Yes, sir.

Q. When you get an inexperienced prospect, do you send him to training school?

A. Yes, sir. And that is a very expensive venture.

Q. If he passes the training school and starts a station, do you put a service salesman in to show him what to do for a couple of weeks?

A. In every case, yes, sir.

Q. When you lose a lessee, do you or do you not lose gallonage?

A. I would say yes in every case we lose gallonage with the loss of a lessee.

Q. Have you, from your own experience, as sales supervisor in Newark, had situations where a qualified lessee was taken away from you by a competing company?

A. Too often, yes, sir.

Q. In such case, do you or do you not find that he can take a substantial part of his gasoline gallonage to your competitor?

A. Depending on how far away his new location is. If it is reasonably near, of course, he can murder us by making such a move.

Q. When you say "murder" you, you mean take his local trade with him?

A. Yes, sir.

Q. Do you find in your area that your dealers 3086 develop their own personal and local business?

A. Yes, sir.

Q. Would you say that your lessee dealers are dependent upon Atlantic for their living in your district?

A. No, sir. Very definitely no. Any qualified dealer, if I may expand, certainly could not be dependent upon Atlantic because our competitors are constantly aware of our dealers. They know which of our dealers are good and which are mediocre, and there are always service stations available for a good, qualified dealer. So, he is not depend-

ent upon Atlantic. We feel, and experience has proven to us, that people do not buy companies, they buy from individuals. They buy from a dealer, not the brand of gas, but they buy from Charley and Joe, or whoever might own or run the service station.

Q. I don't suppose you are inferring that Atlantic Imperial is not the best brand of gasoline?

A. Not at all. But not everybody knows that.

Q. Seriously, Mr. Gaestel, when you lose a lessee, what are the principal reasons which cause the termination of the relationship?

A. Well, there could be many reasons. It could be a matter of dealer mismanaging his own service station and thereby getting himself in financial difficulties; it could be a matter of its being an ill choice for him to go into our type of business because it is a demanding and time-con-
3087 suming business; it could be a matter of family pressure, the wife not enjoying the idea of her husband being away from home pretty frequently.

There is a multitude of reasons for which we lose a man. Competition, of course, is constantly attempting to raid our dealer force and steal our dealers. Occasionally, illness or death strikes. There are many reasons.

Q. Is my recollection correct that you told me that you were presently looking for a replacement because of an unfortunate accident to one of your good lessees?

A. Well, I have been fortunate enough to get the replacement, in fact, it is taking place today.

Q. What happened to the man that you had to replace?

A. Well, the man that I had to replace struck a tree at a speed of about 70 miles an hour, and, of course, was killed. His car, lost control.

Q. Since you have been sales supervisor, have you had any occasion to terminate any lease during the term of the lease for cause?

A. You mean, have I forced a cancellation?

Q. Yes, has Atlantic forced a cancellation?

A. In one case that I can recall.

Q. What was the reason?

A. The man was running everybody but a service station. It was a welding shop, a steam cleaning shop; it was everybody but a service station, and we moved in and
3088 requested, and after a good deal of discussion, obtained a mutual cancellation of the lease.

Q. In other cases—I am generally speaking—has the termination been requested or instigated by the lessee?

A. I would say in over 99 percent of the cases. I happen to recall the one that we requested cancellation.

Q. Have you ever, in your district, since 1950 when you started on the Goodyear plan, cancelled or failed to renew a lease because your lessee did not handle sponsored TBA?

A. In no case, no, sir.

Q. Have you ever threatened to cancel or fail to renew a lease for TBA reasons?

A. No, sir.

Q. You said that new lessees were hard to find or difficult to get, or words to that effect, in your area. When you have to get a replacement at one of your service stations, what is your procedure? What steps do you take to try to find a prospect or a candidate for the station?

A. Well, newspaper advertising, of course, immediately.

Q. May I interrupt you for a second?

A. Yes, sir.

Q. You have been either a promotable dealer salesman or an office supervisor or sales supervisor in the Newark district since 1947, have you not?

A. Yes, sir.

3089 Q. Confining your answer to the period 1950 to date, has your office from time to time placed adver-

tisements in numerous papers looking for prospects to operate your service stations?

A. Almost constantly, yes, sir.

Q. Did you at my request procure from your office some samples of such advertisements which have been inserted in the New Jersey papers?

A. Yes, sir.

Mr. Thompson: Mr. Kelaher, I have a large number of them. I have just picked out two as illustrative. Let me have these marked, please, for identification.

(Whereupon, the documents referred to were marked Respondent's Exhibits (Atlantic) 16-A through -D, and 17 for identification.)

Mr. Kelaher: I wonder if we could have the years or dates established on some of these.

Mr. Thompson: I will. I haven't shown them to him yet.

Mr. Kelaher: All right.

By Mr. Thompson:

Q. Mr. Gaestel, I show you RX-A-16-A, -B, -C, and -D, and ask you whether those exhibits contain clippings from newspapers, as indicated on the exhibits, which are part of the files of the Atlantic Newark district office (handing documents to the witness)?

3090 A. Yes, sir.

Q. Now, these ads were inserted in the year of 1952, were they not?

A. I would say that, yes, sir. 1952.

Q. This is a 1952 ad file from the Newark office?

A. Well, every ad that we have cut out we have dated as well; so, if that says 1952, yes, they are from the 1952 file.

Q. I call your attention to the fact, sir, that RX-A-16-A is clipped to RX-A-16-B. 16-B is dated in May 1952 but no specific date appears upon 16-A. Do you know whether 16-A was also a 1952 advertisement?

A. Yes, it would be, because of the name Mr. Dunham here. He was an office assistant in 1952, sales supervisor, and consequently took telephone calls from the telephone inserted in the newspaper; so, he was there in 1952.

Mr. Thompson: I offer RX-A-16-A through -D in evidence.

Mr. Kelaher: May I ask a question?

Voir Dire Examination by Mr. Kelaher.

Q. Was Mr. Dunham sales supervisor for any period other than 1952?

A. Mr. Dunham has never been sales supervisor. He was an office assistant, sort of a male secretary.

Q. Was he an office assistant or male secretary for 3091 other a period of 1952?

A. It would have been a little bit of 1951. Yes, sir.

Mr. Kelaher: Your Honor, I have no objection to clippings which have specific dates, but there are some which are undated.

Mr. Thompson: There are two, here, sir, which are not dated.

Mr. Kelaher: I object to those.

Mr. Thompson: If Mr. Kelaher objects to the fact that they are not dated, and I am unable to specifically prove at this time that these ads appeared in the indicated papers in May of 1952, it will be necessary for me at some later date to call somebody from the Newark office to establish that fact. Do you persist in your objection, Mr. Kelaher?

Mr. Kelaher: I am not clear on that—.

Hearing Examiner Kolb: (Interposing.) Is the purpose of this testimony to show the difficulty or what steps were taken to get dealers?

Mr. Kelaher: I am not clear what the purpose is.

Mr. Thompson: It has a double purpose. One purpose is to establish the difficulty of finding a lessee in the Newark

district. The second purpose is to show that it is represented by Atlantic to the dealers in the ads in which we seek to get them to come to our office for an interview that if they become an Atlantic lessee, they run their own
3092 business and they are their own boss.

Mr. Kelaher: I think dates have some significance.

Hearing Examiner Kolb: What difference does it make whether it is 1951, '52, '53, or '54? I will overrule the objection. The document will be received in evidence, Respondent's Exhibit A-16-A through -D will be received.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 16-A through -D for identification, was received in evidence.)

Direct Examination (resumed) by Mr. Thompson.

Q. Mr. Gaestel, I show you RX-A-17 and ask you whether the nine clippings pasted on that page are part of the records of the district office in Newark?

A. Yes, sir.

Mr. Thompson: Now, Mr. Kelaher, on each of these ads the date is specifically indicated by the office; so, I think there would be no problem.

Mr. Kelaher: No problem with those.

Mr. Thompson: I offer in evidence RX-A-17.

By Mr. Thompson:

Q. Now, Mr. Gaestel, the first sample ads I showed you were dated in 1952. This group of ads are dated in part in 1957 and in part in 1958. My question is whether these ads are merely illustrative and samples and whether similar ads were placed in the papers by Atlantic during the entire period from 1950 to 1958?

A. They are illustrative, yes, sir. That form of
3093 advertising for dealers has not changed. The problem has been the same since '51-'52.

Mr. Thompson: Now, with Mr. Kelaher's permission—

Hearing Examiner Kolb: (Interposing.) Do you want that received in evidence?

Mr. Thompson: Which?

Hearing Examiner Kolb: That A-17?

Mr. Thompson: Certainly.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-17.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 17 for identification, was received in evidence.)

Mr. Thompson: May I, please, sir, substitute photostats for the originals, since these are part of our office records?

Hearing Examiner Kolb: Photostats may be substituted for the originals.

By Mr. Thompson:

Q. Sir, when we got into a discussion of the type of ad used by Atlantic in your district, you have testified that newspaper ads was one method used to locate prospective dealers. What other things do you do there to try to find dealers?

A. As I mentioned earlier, competition raids Atlantic stations. We, in turn, seek to entice competitive
3094 dealers to take our service stations. We look amongst our own service stations for good employees of dealers. We look amongst the competitive service stations for their best employees, their night man—they might have a good night man. Dependent upon how successful we are with the first steps, we contact local business people in the area in which our service stations are located. We will speak to high school principals, local police departments, ministers, priests, clergymen, to be brief.

Q. Clubs and organizations?

A. Clubs, the Lions is right there; we leave very little unturned.

Q. For Mr. Kelaher's benefit, do you solicit the Knights of Columbus?

A. Being a member of the Knights of Columbus, yes. That goes for the Elks as well.

Q. Now, assuming as a result of these efforts that you did locate a prospect or two, what is the screening process used in your district to ascertain whether he will be a good service station operator, whether you can induce him to try the job? What happens? What is the procedure?

A. Well, the initial screening, of course, is done by the salesman, and he weeds out the immediate unlikely prospects, and it is up to him to ascertain which of his prospects would be most likely to make a good dealer. He then
3095 sets up an appointment with sales supervisor, myself, and I sit down with the prospect either in the field—but most often right in our own district office—and interview the prospect. Then, if both the salesman and myself are satisfied that a prospect would make a good dealer, the prospect is then presented to our district manager, Mr. Geer, for an interview and his approval. And if our district manager approves, why, then, of course, the prospect is notified and arrangements are made to select a date for a change-over.

Mr. Thompson: I now ask that this book be identified as RX-A-18.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 18 for identification.)

By Mr. Thompson:

Q. I show you a book identified as RX-A-18 with a little label on it saying "Number 2" on the inside cover and ask you whether this—I will ask you what book is (handing document to the witness).

A. Well, that is my interview bible.

Q. Is that your personal copy of that book?

A. This is my personal copy of that, sir.

Q. And you know that because of the "Number 2" which is on it?

A. Yes, sir.

Q. Mr. Geer, I assume, would have "Number 1"?

3096 A. That is right.

Q. And is that book—is a copy of that book identical in its context in the possession of each of your salesmen?

A. Yes, sir.

Q. How long has this particular book been in use in your district?

A. Sometime early in 1955, if my memory serves me.

Q. What use is made by you and your salesmen of its counterparts?

A. We use the book as a guide and a pattern in interviewing the prospect. The book is placed in a dealer prospects hands. The salesman, of course, goes over it with the prospect point by point. There are many questions in there that we want a dealer prospect to ask himself. I think in the front part of that book you will find that. Then, when the prospect is brought into the office again, the prospect sitting across my desk, we go over the book again. Many times before I sit down with a prospect, because of delays that I am forced to incur, I hand the book to the prospect to have him read and he can formulate any questions he might have. It helps us lay out a pretty clear pattern of the service station business and what it can mean to a prospect. And it keeps Atlantic personnel pretty well on the track to make sure they cover the points that this man should be advised of.

Q. On the occasions when you personally go over
3097 this book with a prospective lessee, about how long does it take you to do it?

A. Depending upon the individual and how thoroughly

the salesman has gone over it, it can be anywhere from one to three or four hours that I can spend on an interview, and, of course, that book is a good part of it.

Q. Of course, I don't want you to spend either one or four hours discussing the content of this book, but I would like you to take it and simply indicate in a general manner by reference to pages and the numbered questions contained in this book how you would go about your interview with a prospective lessee? What do you emphasize? What points are made?

A. Well, I have certain favorite questions, things that I want to get across, and I first off ask the prospect if he has gone through the book in its entirety. And, then, there are certain questions I want the—

Q. (Interposing.) Excuse me a moment, sir. I am going to give Mr. Kelaher a copy so he can follow your testimony. (The document was handed to counsel for the Commission.)

Go ahead, sir.

A. In my interview with the prospect, using the book and having the book for the prospect to see, there are certain questions I want his direct answers to. Of course, I would have to call it, I guess, page two.

The first question, "Do you like being your own 3098 boss?" And then, I want to know why the prospect wants to be his own boss, and I bring up the meeting people, which would be item number two, question number two on here, "Is your attitude right?" And, of course, we discuss attitude, and the vicissitudes of people that come into service stations, dispositions of people, and I want to be reasonably assured that our dealer prospect is a man that will not automatically be a grouch, because the customer is a grouch, be reasonably sure that his attitude is going to be pleasant.

And, of course, question number five is extremely im-

portant, that is, "Do you have backing at home?"—"Do your parents approve?" "Does your wife approve?" We have lost many dealers because of unhappy wives; so, it is something I request that my prospect consider carefully, because going into our business—

Q. (Interposing.) Wives get unhappy because of the dealer's hours?

A. The hours, mostly, the fact that they miss meals constantly and they are dragged out of bed sometimes in the middle of the night because some customer is broke down within a reasonable distance, or very early in the morning because somebody's battery won't turn over. It is a hectic life at times.

Then, of course, question number six, "Are you financially sound? I want to be reasonably assured that
3099 my prospect can financially afford to take over the service station business.

Then, the following page I go over the things that the service station business can mean to the prospect, that he is independent, that he is his own boss, that he is responsible for the operation of his own business; he is going to have to do his own hiring, his own training, his own firing; the products he sells, the amount of money he makes in this business is entirely up to him; that he is an independent businessman and he is going to either make it or break it. The way he operates his business—although we are ready to stand by with whatever assistance and whatever counsel we can give—but in the final analysis, and I am talking now as I would talk, I am afraid, depends upon his own, whether he is a self-starter, his own initiative and his own drive, his own personality. He is the man that is going to decide the success or failure of his business.

Mr. Kelaher: Your Honor, with respect to this testimony which is getting a little long, is he supposed to be

testifying to what he asks the interviewee or the applicant, or are we going off into his reasons for asking these questions? It seems that we are covering a much broader area than the question calls for.

Mr. Thompson: Is that an objection?

Mr. Kelaher: I am going to object to further
3100 answer. As I understand the question, you asked him what he goes over with the applicant.

Mr. Thompson: To eliminate the necessity for a ruling by his Honor, I will ask the witness to confine the balance of his answer to what points he goes over with the prospective lessee and what is the subject matter of the conversation between them.

The Witness: I am afraid I do not miss any part of the book. I cover the book pretty thoroughly in my interview. That is part of my responsibility, and, of course, it is a way that I have of determining—it helps me determine whether my prospect is someone I want as an Atlantic dealer.

By Mr. Thompson:

Q. In the course of your discussion, is TBA mentioned?

A. Well, in the latter part of the book we have our no forcing letter, yes. TBA is mentioned, number one, as to Atlantic's supply position, the fact that we in the Newark district handle Goodyear TBA. We explain that Goodyear has set up suppliers in different areas to cover different dealers and service stations. We discuss, of course, the Goodyear line, the quality, the fact that they are competitive and priced right. And on TBA there is in the latter part of this book, a copy of our no forcing on TBA letter that Mr. Estlow, our regional manager, has signed, and, of course, we discuss that in our conversation with our dealer prospect.

3101 Q. What is the discussion on that letter, Mr. Gaestel?

A. Well, I have all prospects that I am beginning to feel favorable toward read the letter, any prospect that we decide on reads the letter while going through the interview. If half way through the interview I feel that the prospect would not make a good dealer, why, I, as nicely and tactfully as possible, bring the interview to a halt and stop, since it does involve time—a good interview involves a lot of time. But any dealer that I have any serious consideration for, any prospect rather, does read the no forcing letter.

Q. Now, the no forcing letter to which you refer is the Estlow letter of June 24, 1955, which has been introduced in this case previously as CX-207. Is a copy of that letter in the book of every salesman?

A. Yes, sir.

Q. In other words, this isn't your special copy. The salesman's books are identical with yours?

A. That is right.

Q. In the back of this book there are several mimeographed sheets marked for salesman's use. I will call your attention particularly to the page entitled "For Salesman's Use, Questions and Answers" and ask you whether in your interviews with prospective lessees you refer to questions and answers three, four and five?

A. Yes, sir.

3102 Q. Now, question number three is: "Will I be thrown out after I build up the business of my station?" What answer does Atlantic give the prospective lessee to that question?

A. Would you like it in my words or in the words of the book?

Q. I would like it not in the words of the book, which, of course, is obvious, but I would like to know what you say to the dealer and what you, as sales supervisor, have your salesmen say in answer to that question?

A. Of course, to us the answer is the very obvious. We know how hard it is to get qualified dealers. We know how much it costs us to lose a successful dealer; so, we very definitely assure any prospect that the chances of his being thrown out of a service station after building a successful business are absolutely nil, that Atlantic wants and needs good dealers and very definitely would want to, at all times, keep any dealer who had been successful and, of course, we readily admit to any prospect that the dealer controls the business, not the Atlantic brand, not the flag, that it is his own personal business and we can not afford to lose any.

Q. What answer do you give to question number four: "Am I forced to handle your TBA line?" I am interested now in what you say and what you instruct your salesmen under you to say, not what the book says. That is printed; that is in the record.

3103 A. Well, the question, "Am I forced to handle your TBA line?", we instruct, of course,—my salesmen have heard this pretty repeatedly; in fact, any time we have a push on any TBA item they are again reinstructed that they sell and not to try to force any dealer to buy. But we outline to any prospective dealer the fact that we handle the Goodyear line, that it is a quality line. We also advise them that they are independent businessmen and in no way are they forced to handle the Goodyear line. We try to point out the advantages of handling the line, but that in the final analysis the choice of whether they handle Goodyear or XYZ brand becomes solely theirs.

Q. Now, the next question to which I call your attention relates to whether the dealer must stay open on Sundays, and what hours he must be open. What do you tell him in answer to that question?

A. Well, I tell any dealer prospect that we, Atlantic Refining Company, do not and cannot set a specific rule on hours of operation for any group or any individual station;

that the hours of operation of the service station are set by two means: Number one, and most important, by the customers—when they want to buy their product—and, number two, by the competition. I am talking about the competitive service stations. They, and not Atlantic Refining Company, decide what are the proper hours of operation for any given service station.

3104 Q. I call your attention, Mr. Gaestel, to the fact that while you promote the Goodyear line in the Newark area, your own book contains a picture of a Firestone tire.

Mr. Kelaher: I was wondering how that slipped in there.

The Witness: I have seen that before.

By Mr. Thompson:

Q. Contrary to the inference just made by Mr. Kelaher, did you slip that in this book, that picture of the Firestone tire?

A. That has been in this book since the inception of this book; it has been in my book since I have had it.

Mr. Kelaher: I think counsel understands I wasn't making any inference.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: I offer in evidence RX-A-18 in its entirety.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received as Respondent's Exhibit A-18.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 18 for identification was received in evidence.)

3105 By Mr. Thompson:

Q. Now, you testified, sir, that this book commenced to be used by you and your salesmen in the early part of 1955. Prior to 1955, that is to say, from 1950 to 1954, how did you handle these interviews with prospective lessees without having the use of that book?

Mr. Kelaher: Your Honor, at this time I am going to make an objection, because I do not think he can talk from his personal knowledge. He was the office supervisor during most of that period from October '51 to October '54.

Mr. Thompson: If your Honor please, this gentleman was a promotable dealer salesman handling lessee accounts and contract accounts until October of 1951, and I now ask you Mr. Gaestel, whether you have personal knowledge of what was said to prospective lessees during the period 1950 and up until October 1951?

The Witness: Yes, sir.

By Mr. Thompson:

Q. As a promotable dealer salesman, was it part of your function to interview prospective lessees?

A. I interviewed them, of course, at the salesman's level.

Q. Right. And you took them to whoever was then your sales supervisor for another interview?

A. Yes, sir.

Q. During the period from October 1951 until
3106 October 1954 while you were serving as office supervisor, were you or were you not personally familiar with the method of interviewing prospective lessees, and what was or was not said to them during the interview?

A. I was very familiar with what the type of interview used while I served as office supervisor.

Q. What was the nature of the interview during the

period from 1950 until this book came into use in your district?

A. The nature of the interview is basically the same, without its fancy cover and without its very nice coloring pictures, but the context—we had a paper bound form of outline that we used in the Newark district. My predecessor, as a sales supervisor, was a good deal responsible for this fancy edition in his present job after he left the Newark district. The responsibility of this book, this came from your original interview book.

Q. More specifically, what were you salesmen instructed to say and what did you salesmen say with respect to TBA before this book came into existence?

A. There has been no change in our policy as far back as I can remember.

Q. Before this book came into existence, did you orally, and without pointing it out on a page of a written book, explain the Atlantic TBA policy to prospective lessees?

A. Very definitely, yes, sir.

3107 Q. Until the summer of 1955 there was no such thing as the Estlow letter because that was written in the summer of '55?

A. Yes, sir.

Q. Did you and all of your other salesmen have as a part of your permanent file a copy of Mr. Colley's 1951 no forcing letter, which has been offered in evidence in this case as CX-150 (handing document to the witness)?

A. Yes, sir, every Atlantic salesman or sales personnel are very familiar with that letter.

Q. Did you all also have the second Colley letter, called a restatement of Atlantic TBA policy, CX-206 (handing document to the witness)?

A. Yes, sir.

Mr. Thompson: May I go off the record for a second?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

We will recess at this time.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, I inadvertently omitted to offer in evidence RX-A-15, which is the New Jersey map referred to by Mr. Gaestel in his testimony, and I now offer it in evidence.

3108 Mr. Kelaher: May I ask him one question on this with respect to the meaning of the red dots?

Mr. Thompson: Surely.

Voir Dire Examination by Mr. Kelaher.

Q. Do the red dots indicate that—let me put it this way: is there one red dot on for each Atlantic service station, or does that just represent a town or location where there are Atlantic service stations?

A. There is a dot for each retail outlet.

Hearing Examiner Kolb: Any objection?

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-15.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 15 for identification, was received in evidence.)

Mr. Thompson: And if your Honor please, I should like to return, if I may with Mr. Kelaher's permission, to Mr. Gaestel's personal copy of the book entitled "What A Service Station Can Mean to You" and substitute a copy.

Hearing Examiner Kolb: It may be substituted.

Direct Examination (Resumed) by Mr. Thompson

Q. Mr. Gaestel, you have referred to and have de-
3109 scribed Atlantic's no forcing policy in your district.

Are you familiar with the manner in which TBA is dealt with and treated in the training schools to which the new lessees in your district are sent?

A. Yes, sir; I am reasonably familiar with it.

Q. Do your new employees who are going to be service salesmen attend training schools with new lessee dealers?

A. Yes, sir.

Q. And do they go to the same classes?

A. Yes, sir, they both take the five-week training course, both our dealer prospects and our service salesmen. That is part of their training, the exact five-week course.

Q. What is said at those training schools with respect to the freedom of the dealers or lack of freedom that they can buy whatever TBA they want?

A. Naturally, I cannot quote the person that gives the discourse on TBA, and our policy regarding TBA, but I know it goes on for several hours, and the fact that any dealer, any Atlantic dealer, has free choice in his designation or selection of a brand, whether it is "T", "B" or "A" is brought out very definitely. The statement is made that while we handle and sponsor a line of TBA, it does not mean in any way that the dealer must buy that sponsored brand of TBA, but he is free to make his own choice.

Q. So that is told to them at the training schools,
3110 then again by the salesman who interviews the lessee as a prospective dealer?

A. Well, the salesman, of course—

Q. (Interposing.) I beg your pardon. That would have happened first, would it not?

A. That would have happened first.

Q. Then, that is repeated by you when you interview them?

A. Yes, sir.

Q. Then, if the district manager also interviews the prospective lessee with you and the salesman, does he repeat the same information?

A. Yes, sir.

Q. Then, they receive it gain at the training school?

A. In the training school, yes, sir.

Q. When a lease is sent to the prospect, is the no forcing letter sent with the lease in your district?

A. That is part and package of every lease, yes, sir.

Q. Are there a number of jobbers offering TBA in your district?

A. Yes, sir; there are a good number. Are you talking about competitive jobbers?

Q. Yes, sir.

A. Yes, sir, a good number of competitive jobbers in the Newark district.

Q. By a good number, do you mean a large number?

3111 A. I mean a large number.

Q. Do you find that when you install or place a lessee that Atlantic and Goodyear have competition from other jobbers for the original stocking order of TBA?

A. Yes, sir.

Q. Does Atlantic always get the order?

A. No, sir.

Q. Who does get the order? I mean, how do you know who gets the order?

A. Well, naturally, we can tell if one of our Goodyear suppliers get the order because the salesman is on the scene and will take the order. And if our salesman does not get an order, naturally, the dealer buys outside merchandise itself on display, and, of course, the salesman sees it and knows that someone else has beaten him to the punch.

Q. Why do you have an Atlantic TBA-program in the Newark district at all?

A. Why do they have the Atlantic TBA program?

Q. Yes.

A. TBA is an essential part of the service station business; it is a necessity for dealer survival in my opinion. Naturally, customers today want to make their automotive purchases pretty much on a one-stop basis. They want to be able to go to one place to buy their gasoline, have their oil changed, to buy their tires, their batteries, their
3112 fan belts. Of course, the list is endless. Consequently, the dealer who is able to offer these services has a far greater chance of building his business to a much more successful extent.

Q. Is there any advantage to Atlantic in promoting the Goodyear TBA line?

A. Yes, sir.

Q. What would you say the advantages were to Atlantic?

A. Well, of course, Atlantic Refining Company has always been proud of the quality of its products. We have a policy, a sales policy that states, if I can remember it word for word, that no competitor will top the quality or performance of Atlantic products. We are definitely a quality company. Now, we are conscious of the quality, of course—I have to speak for the Newark district—of the Goodyear products, and we like to see quality products sold in our service stations. We know that our dealers can sell with more assurance a quality product and make their own selling job much easier.

Q. From your many years of sales experience have you formed an opinion whether a good brand of TBA helps the oil company's gasoline gallonage?

A. Well, yes, sir; the two go hand in hand. Naturally, the more customers a dealer is able to accrue to his sta-

tion, why, the more gasoline gallonage he will have and a man that is in the position of giving good one-stop service will have definitely a better share of his local market
3113 versus the man who possibly just sells gasoline or motor oil. So, consequently, more customers mean more gallonage, and more product for Atlantic, and that is our prime desire, to sell more gasoline and motor oil.

Q. If you were able to do so, would it not be good business for Atlantic to force its dealers to buy Goodyear TBA?

Mr. Kelaher: Objection—not objection—but I wonder if I could have that question read. I didn't catch the first part of it.

Hearing Examiner Kolb: Read the question.

(Question read.)

The Witness: Well, of course, we are not able to do so, and I have to venture an opinion. But I do not believe so. I have been salesman a long time, and I think selling is much easier and much more successful on a good, sound, selling basis, which certainly would leave any forcing out of it.

Does that answer your question, Mr. Thompson?

By Mr. Thompson:

Q. Yes, sir. Is it part of Atlantic's routine to make inspections of its leased stations?

A. Yes, sir. It is.

Q. Do reports of such inspections pass over your desk? Do you see them?

A. I see them all, yes, sir.

Q. Are the inspection reports concerned with the
3114 brand of TBA carried by the lessee dealer?

A. Never.

Q. What is the Atlantic policy in your district when a lessee checks out and is replaced by another dealer with

respect to the TBA stock of the outgoing dealer? Do you give any advice to the incoming dealer about whether he should or should not buy whatever stock is at the station?

A. Well, yes, sir. We recommend the incoming dealer buy all salable merchandise, all salable TBA merchandise. When I say salable, I mean that is in condition that a customer will buy it. It isn't beat up or abused or in reduced cans or anything else.

Q. You make that recommendation regardless of the brand of TBA which is in the stock?

A. Yes, sir, regardless of the brand.

Q. Can you tell us from your experience how the incoming and outgoing dealer determines the price of the TBA which is to be sold by the outgoing dealer and purchased by the incoming dealer?

Mr. Kelaher: I wonder if we can have that read again. It is a little complicated.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

The Witness: Well, by using up-to-date price sheets on the merchandise. That is the basis of the price.

3115 By Mr. Thompson:

Q. Do I understand, then, that the outgoing dealer gets the going price for the salable items which he has in his station?

A. Yes, sir; he gets the going price.

Q. Is it your practice in your district to finance the TBA stock of a new dealer?

A. No, sir; it is not.

Q. If you finance an incoming dealer or a new dealer, is your financing limited to equipment and Atlantic petroleum products?

A. It is limited to equipment.

Q. So that in your district you don't even finance gasoline or motor oil?

A. We do not finance product. We finance equipment in my district.

Q. I notice, Mr. Gaestel, in the book which is used with prospective dealers that under the topic "Independence" and after stating, "You are the boss and do the hiring and training," that there is a further reference to hours. The statement is, deleting unnecessary words "You set hours, figure out what to buy and sell." Would you comment upon the policy in your district with respect to hours of operation by lessee stations?

A. Would I comment upon it?

Q. Yes, would you comment on what is your policy with respect to hours of operation by lessees?

3116 A. That the competition sets the hours, that we request our dealers to be competitive in their hours of operation.

Mr. Kelaher: What was the answer, please.

(The reporter read the pending answer.)

By Mr. Thompson:

Q. In your capacity as sales supervisor, do you visit dealers in the field?

A. Yes, sir.

Q. Does that answer apply to lessees and your contract dealers who operate service stations alike? Do you visit all of them?

A. I visit all dealers whether they be lessee or contract, yes, sir.

Q. All dealers who operate service stations?

A. All dealers who operate service stations and retail outlets, yes, sir.

Q. Do you manage to get around to the small retail outlets also?

A. Infrequently, yes, sir.

Q. But you visit your lessee dealers and contract dealers who operate service stations regularly?

A. Yes, sir.

Q. How often do you get to see those dealers?

A. Well, a minimum of, I would say, probably a minimum of two to three times a year. Naturally, there
3117 are others that I do see more frequently. I buy gasoline like any other motorist, and there are certain dealers that I might see several times a week, merely as a customer.

Q. Do you know all your lessee dealers?

A. Do I know any lessee dealers?

Q. Do you know all lessee dealers?

A. Yes, sir, I know all of them.

Q. Everyone of them?

A. Yes, sir, everyone of them

Q. Do you know all your contract dealers who operate service stations?

A. I do, indeed. Yes, sir.

Q. When you visit the stations do you personally observe what TBA they are handling?

A. That would be part of my observation, yes, sir.

Q. Is whatever TBA they are handling openly displayed at their station and offered for sale as merchandise which is visible to any customer or anybody who comes in?

A. Yes, sir.

Q. Do you know of any instance in which any dealer has ever tried to hide some non-sponsored TBA?

A. No, sir; I don't.

Q. If he wanted to, could he?

A. Well, I think it would be a little difficult to hide it and still have it for sale. I can't think of any in-
3118 stance or any reason why a dealer would do that.

Q. What TBA do your lessee and contract dealers purchase and handle at their stations?

A. What TBA do they handle?

Q. What brands?

A. Oh, all brands.

Q. Is that true at both contract and lessee stations?

A. That would be true in one and the other, yes, sir.

Q. Is there any distinguishable difference in the TBA purchasing habits and practices of your lessee and contract dealers?

A. Not noticeable that I know of, no, sir.

Q. I suppose most of your stations have a Goodyear decal or a Goodyear sign on them, don't they?

A. Yes, sir.

Q. How about your contract stations, do they have Goodyear decals or metal signs on them?

A. Yes, sir.

Q. Does Atlantic make any effort to force its contract dealers to put Goodyear decals or signs on their stations?

A. No, sir, and I certainly wouldn't want to try in our district. Contract dealers are very independent.

Q. Is the placing of the Goodyear decal and sign on the contract stations the wholly voluntary act of those contract dealers unaffected by anything Atlantic does?

3119 A. I am not sure I understand your question, Mr. Thompson.

Q. Let me repeat it.

When your contract dealers put up Goodyear decals on their stations, or put up Goodyear metal signs, who makes the arrangements?

A. Well, the arrangements would come from Atlantic at the—the decals and signs are offered to the contract dealers and sometimes requested before they are offered. The arrangements then are made between the Atlantic Refining Company and the Goodyear Tire and Rubber Company.

Q. Do you know of any contract dealer who has a service station that has not either asked for or consented to the placing of a Goodyear decal or sign on his station?

A. No, sir, I don't.

Q. Of course, sir, you know all the salesmen who work under your supervision intimately, do you not?

A. Yes, sir.

Q. Reference was made by one or two of the dealers to a salesman named Carlson; does he work under you?

A. Yes, sir.

Mr. Kelaher: Is counsel referring to dealers who were called as witnesses in this case?

Mr. Thompson: Yes, sir. Thank you, Mr. Kelaher.

By Mr. Thompson:

Q. Is Carlson a typical salesman?

3120 A. Yes, sir.

Q. Does he handle typical dealers in your area?

A. Yes, sir.

Q. Now, Mr. Gaestel, I am going to ask you some questions about what you and your staff of sales people do to promote Goodyear TBA.

First, in your district you receive a commission from Goodyear on certain Goodyear TBA sales, do you not?

A. Yes, sir.

Q. Is it part of the duties of your salesmen to try to sell the dealer on the advantages of the Goodyear line?

A. Yes, sir.

Q. Do you and do they have a sales talk about the Goodyear TBA line?

A. Well, naturally, we have a talk, yes, sir.

Q. What do you tell your dealers about Goodyear? Do you try to describe the advantages to them of handling the Goodyear line?

A. I do; indeed, yes, sir.

Q. What do you tell them?

A. Well, this could go on for hours, Mr. Thompson, but I will try to be very brief.

Q. Summarize it; be very brief.

A. I try to point out the advantages, the quality product.

Q. Advantages to whom?

A. To the dealer. Things that will make the Good-
3121 year line—his line much easier for him to sell. The quality product which very definitely Goodyear has. They have consumer acceptance and, of course, in that public demand ties in as well.

Goodyear's line is completely competitive at all grades, both in quality and in price.

Q. May I interrupt you to ask what you mean by "at all grades"? Does Goodyear have more than one grade of tires?

A. Oh, yes, sir; Goodyear has several levels. I mean, in the tire business a tire is at a certain level. An 80 level, a hundred level, and I am not an expert, but the level of the tire sets the price of the tire.

Q. I interrupted you; go ahead, sir.

A. Well, back to the advantages of buying. Also, in the Goodyear line, as I say, we are sure that our dealers can buy at competitive prices and certainly receive quality products. They can take part in the Goodyear cooperative advertising which Atlantic gets into as well. The handling of any possible claims on material is much easier in most cases. There are possibly others, but right now that is all I can think of.

Q. You referred to price of Goodyear TBA price. Is it part of your function and part of your salesman's function to ascertain whether the Goodyear price in particular areas and at particular stations are fair and competitive?

A. Yes, sir.

Q. Do you from time to time receive complaints
3122 from your dealers with respect to prices charged by the Goodyear authorized supply point?

A. From time to time, yes, sir.

Q. Do you investigate such complaints?

A. Every complaint.

Q. What do you find?

A. Well, I would say in the probably 99 percent of the cases that it is a misunderstanding on the part of the dealer who has complained. Again, I have to go back into my levels. When I talk about different levels, you must understand that our stations are being constantly called upon by competitive salesmen and if I would take a, say a first line tire, and if I may pull a figure out of the air that our supplier is selling for $20.00, well, competitive salesmen come in and say, "What are you paying for a 715 by 15 tire?" and the dealer would say $20.00. And the competitive salesman being smart and trying to sell tires, say, "Well, I sell a 710 for $18.00." The average dealer at that point sees red. He is on the telephone either to myself or to the salesman involved saying, "I am being taken by my Goodyear suppliers." Well, investigation will generally show that the quotation he received of $18.00 was probably on a second-brand or different level, and a different level tire. We have to go through this and sit down with the supplier, check out on the offer made by a competitive salesman, and we can present the facts to
3123 the dealer, and, as I say, 99 percent of the cases, satisfaction comes out. The same thing holds true with batteries, different amp hours. On that, again, I am not a specialist, but I know enough about it too—naturally, I have had these complaints over the years and I automatically figure this is the way I am going to have to handle this and look for these things first. When I was first sales supervisor, I might get upset about these little problems, but most complaints end up in that direction.

Q. I suppose it is true that not only the authorized Goodyear supply point, but jobbers from time to time offer special deals to the dealers?

A. Yes, sir.

Q. And those deals would involve quantity discounts and that sort of thing?

A. That is true, yes, sir.

Q. Do your salesmen take orders from the dealers for Goodyear TBA?

A. That is part of the responsibility, yes, sir, to take orders for TBA and to place them with the supplying dealer.

Q. Do they from time to time phone in to the Goodyear supply point orders for deliveries to dealers?

A. Well, I would say that they phone in the majority of their orders to the Goodyear supply point, yes, sir.

Q. Now, how do you as a practical matter know that that is so?

3124 A. Well, part of my responsibility is the curtailing of expenses wherever possible, and part of that, of course, is surveying my sales peoples' expense accounts, and I have a reasonable idea of what telephone expense should be and different expenses and pretty frequently I ask for explanations of certain items and, of course, telephone items would be on that, and the salesman will come back to me and tell me he has called the supply dealer on a rush order—maybe it was a long list—and it took eight, ten, or fifteen minutes for the party on the other end to write the order down; so, there are ways, very definitely we have.

Q. Do the salesmen for Atlantic look over the TBA stock of the dealers when they visit his stations?

A. Yes, sir, that is part of the responsibility.

Q. Do salesmen for wholesalers selling TBA other than Goodyear do precisely the same thing?

A. Yes, sir.

Mr. Kelaher: What is this they do?

(The reporter read the record as requested.)

By Mr. Thompson:

Q. In other words, can any representative of any wholesaler visiting a service station check the service station operator's TBA stock?

A. Yes, sir, with dealer approval, unless the dealer should object to it.

3125 Q. Do your salesmen from time to time double team with Goodyear salesmen?

A. Yes, sir.

Q. What do you mean by double team?

A. Well, that is my salesman and a salesman from the Goodyear Tire and Rubber Company will spend possible a day, two or three days at different intervals, calling on Atlantic service stations, possibly on tires, batteries and other products.

Q. Is it part of the normal routine of your salesmen to pick up orders for Atlantic dealers at supply points by car? I mean, do they do that in your district?

A. Yes, sir.

Q. As a convenience, help and service to the dealer?

A. That is right.

Q. By the way, Mr. Gaestel, do the Atlantic dealers register whatever complaints they may have about their station or other subjects with you? Do they talk to you about their gripes and their grievances?

A. Well, generally they will discuss them with the salesman and wherever possible we like them settled at that level. If it can't be handled that way, why, then I am the next level.

Q. Has any Atlantic dealer ever complained to you that some salesmen try to push or force him or compell him to buy some TBA he didn't want to buy?

3126 A. Yes, sir.

Q. What was the occasion?

A. Well, that was several years ago one of our dealers

called to complain that the salesman was trying to force him to buy TBA.

Q. What did you do?

A. Well, the salesman and I went out and called on the account to find out the full details of the story. Would you like me to—

Mr. Kelaher (interposing): Your Honor, I wonder if we could have the dealer identified as we were doing in our part.

By Mr. Thompson:

Q. Do you remember who the dealer was?

A. Well, the dealer's name was Joseph Malazia.

Q. Who was the salesman?

A. The salesman was Joseph Fitzpatrick.

Q. What did you do? What happened?

A. Well, I would have to give you a little background if you don't mind.

Q. Go ahead.

A. Actually, the dealer was backed, had a financial sponsor in this business, a businessman from a factory right directly across the street from the station. I believe he was a personnel man and he wanted a good place for different employees to be able to leave their cars and
3127 have them serviced while working and he had backed this dealer. Then, after the complaint came in, of course, Mr. Fitzpatrick and myself went out to discuss the situation with Mr. Malazia and I tried to reason with Mr. Malazia, and it was a rather difficult assignment to talk to him; so, I, knowing of this connection, this financing, I asked Mr. Malazia if he would mind if we had his backer in on the discussion to ascertain whether we were using undue pressure or trying to force him to buy TBA; so, we made a date with the gentleman and sat down and we put our picture before him, and, of course, Mr. Malazia, the dealer put his. The result was Mr. Malazia agreed that he

would abide and we agreed that we would abide by whatever his backer said. And, of course, at the end of our interview, the backer told the dealer, Mr. Malazia, that he was entirely all wet on the situation, it was a normal sales effort on the part of the salesman, and requested him to be a little more sensible, and where he had cases, he could purchase from us because of price and one thing or another that he would recommend that he would do so.

Q. Now, in your long history in the sales department of Atlantic, is that the only complaint that ever came to your attention?

A. Yes, sir.

Q. Or about which you have any knowledge?

3128 A. Yes, sir.

Q. Where a dealer said that some Atlantic salesman was trying to put too much pressure on him to buy TBA?

A. Yes, sir.

Q. If Fitzpatrick did try to put pressure on this account, was his conduct wholly unauthorized?

A. If he had tried to put pressure, undue pressure?

Q. Yes, that is right.

A. That would be unauthorized, yes, sir.

Q. Did Fitzpatrick know what your policy was?

A. Fitzpatrick was fully conversant with the policy and in my opinion operated within our policy.

Q. In other words, in your opinion, having personally investigated the facts, you reached the conclusion that he had not tried to force the dealer to buy anything he didn't want to buy?

A. He absolutely did not try to force; it was a normal sales effort a salesman makes.

Q. Now, getting back to what you do for Goodyear, is it part of your function and of your salesmen's function to give advice to dealers on what items of TBA are salable?

A. Yes, sir.

Q. Is that just part of your normal functioning?

A. Well, of course, we have to have a good product knowledge; we are advised by experts from within our company and from within Goodyear as well. I hope
3129 I am on the right track in your question.

Q. You are answering my question.

A. Inventories for number one. I mean, there are fan belts and the amount of them, of course, is astronomical, but certain fan belts will sell faster and easier than others because of the number of automobiles that that size of fan belt takes. But we advise our dealers it is a stocking problem, so they do not have too much of one and not enough of another. That would hold true right through the line. We have a good idea of what is a fast moving item, and what is a slow moving item, and that is part of our service.

Q. Do a large number of your dealers need that kind of advice and assistance?

A. I think most dealers can use that type of assistance, yes, sir.

Q. Do you give them sales' hints and instruct them on sales' techniques with respect to Goodyear TBA?

A. Yes, sir.

Q. Do you help them on Goodyear sales promotions from time to time?

A. Yes, sir. We help them plan promotions. We help them dress their stations up for promotions. We have them write any ads they might want to write for any sales or promotions or special events as we commonly call them.

Actually, my service salesmen at times will work
3130 right in the station, help them go out and solicit customers for these promotions whether it be a tire promotion or polish promotion or whatever it is. We play a very definite part in our dealers' promotions, yes, sir.

Q. Is it part of your routine to keep abreast of new Goodyear products and explain such products to your dealers?

A. Yes, sir. Myself, my salesmen, my service salesmen are all kept abreast of new products and new ways and means of either using or selling or handling these products. That information is funneled on to our dealer force.

Q. Is tubeless tire an example?

A. Tubeless tires is a very definite example. We held dealer meetings where we actually mounted and dismounted tires for the dealers. We let them try it. We trained them. We have held clinics to teach them the easiest and fastest ways.

Q. What would be another illustration of something new that had to be explained to your dealers—the dry charged battery was one of them?

A. The dry charged battery would be the same thing. You would have to know how to handle, store, how to prepare them, the installation of the electrolight that will bring the battery to life, how long it would have to be on a charger before being put in use, the possible mistakes they could make in the installation of a dry charged battery.

3131 Q. Do you care in your district office or pay any attention to what brand of TBA is sold by your lessee or contract dealers on Atlantic credit cards?

A. No. sir; it is of no consequence to me.

Q. From your long experience in marketing, is a sign on a service station indicating that the dealer sells a particular brand of battery a significant factor in procuring sales of batteries?

A. I would say no, sir.

Q. Why?

A. The batteries, unlike tires, are sold in two ways. Number one, either the motorist steps into his garage

some morning and finds his battery has gone dead, at which point he will call the nearest service station to come out and get him started, which often means replacing the battery.

Number two, a battery that is due to fail is picked up by the service station attendant or manager who checks the battery out with the hydrometer and advises the customer that the battery is due to go and he is, therefore, able to sell a battery. The average customer does not ride along thinking he will buy himself a new battery and look for signs. That has been my experience. The answer would be no.

Mr. Thompson: Thank you, sir. Mr. Kelaher, you may start cross-examination if you are prepared, or anytime you are ready.

3132 Mr. Kelaher: Well, Mr. Examiner, I was advised that this witness would appear, but I didn't know the scope of his examination, which has been extremely lengthy, but I do think that if I could have until 2:00 o'clock that I can cross-examine him at that time.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

We will adjourn until 2:00 o'clock.

(Whereupon, at 12:20 p.m., the hearing was recessed to reconvene at 2:00 p.m., the same day.)

3133 Afternoon Session (2:00 p.m.).

Hearing Examiner Kolb: The hearing will come to order.

WILBUR D. GAESTEL resumed the stand as a witness and, having been previously properly and duly sworn, was further examined and testified as follows:

Cross-Examination by Mr. Kelaher.

Q. Mr. Gaestel, you were present at the hearings earlier this week, were you not, when witnesses from your district testified?

A. Yes, sir.

Q. And for the record, would you—we have heard references to Jersey district and the Newark district and North Jersey district; is that synonymous?

A. It is synonymous.

Q. When did you first learn that the Federal Trade Commission was investigating the TBA sales commission plan between Atlantic Refining Company and Goodyear?

A. Well, are you talking about a recent, or of any further information?

Q. No, how—well, it goes back quite a number of 3134 years, doesn't it?

A. Yes, I have had an inkling, possibly a few years ago, the Federal Trade people were in the district questioning dealers.

Q. Were you aware that as far back at 1952 the Federal Trade Commission investigators had called on Atlantic Refining Company concerning legality of this plan?

A. I can't recall I was, no, sir.

Q. Nor were you aware that a complaint was issued in January 1956 concerning the legality of the plan?

A. The actual date, no, I cannot.

Q. You are aware that a complaint is out I am sure?

A. I am now, sure.

Q. In giving us your background, most of these functions are pretty clear to us, but one you gave as office supervisor from October '51 to October '54, what were your duties in that capacity?

A. Well, in charge of the personnel working in the office who handle the normal clerical work for the district.

Q. That would have nothing to do with supervision of sales personnel at that time?

A. Not actual supervision as supervision is understood, but I have worked hand in hand with the salesmen pretty constantly. An office supervisor in our district does work with the salesman practically everyday of the week in one form or another; advises on credit, collections, pol-
3135 icies, rental, and office supervisor also worked somewhat in the form of an administrative assistant to the district manager. So, you become pretty thoroughly involved with the sales policies and programs.

Q. The entire operation?

A. Yes, sir.

Q. With respect to one statement you made in response to a question you referred to the fact that there were 12 or 13 major oil companies in your marketing area?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

Q. Atlantic is one of the majors, is it not?

A. We consider ourselves a major, yes, sir.

Q. Another question, just for purposes of clarification, at one time a section of Western New Jersey was part of the Eastern Pennsylvania region, as I understand your testimony?

A. That is right.

Q. And was that a particular county, was that Warren county, for example?

A. That would be Warren county, yes.

Q. And that was the only county involved, was it, or did it cover a wider range?

A. I am not very good at defining county lines. If you would like to bring the map out, I might be able to tell you better.

3136 Q. I would like to get that a little clearer in my mind, sir. I show you RX-A-15 and ask you to state that (showing map to the witness).

A. Yes, it would be Warren and Huntingdon counties.

Mr. Thompson: All of Warren or only part of it, Mr. Gaestel?

The Witness: I would say all of Warren.

Mr. Kelaher: Approximately.

The Witness: At the time of the change my scope was limited and I had no relations with anything out in that area, and I can't tell exactly where the defines were.

Mr. Thompson: Mr. Kelaher, if you would like, I will put another map on the record showing what the precise division was at some later date, or I will be glad to stipulate with you when we ascertain the facts.

Mr. Kelaher: I think this would probably be sufficient, but if there is any marked change in that, maybe we could have a little more precise one.

Mr. Thompson: Right.

By Mr. Kelaher:

Q. One of your principal functions is to keep dealers in Atlantic stations, isn't that correct?

A. Yes, sir.

Q. And isn't that necessary because of the large investment that Atlantic has in lessee stations?

3137 A. Yes, sir, unless the stations are open of course we can't sell gasoline.

Q. You don't get a return in your investment unless you have a lessee dealer operating it, right?

A. That is correct.

Q. And your investment in your lessee stations in your district would run to a figure that would be—the current replacement value would run fairly high, I would think, on your lessee stations?

A. I would like to have you define "high"—everything is relative.

Q. Yes. It would depend, of course, on your average cost of operating or building a station, and we do have one figure in the record that it would average around $50,000 to buy the land and build the station, and that probably has gone up over the past year.

A. I frankly am not sure of the figure, honestly, and rather than commit myself, I think the figure might be—

Q. (Interposing.) Based on a $50,000 figure you would have almost a $7,000,000 investment in your lessee stations alone is the point I am making. The current replacement value would be somewhere aroun $7,000,000, isn't that true, if your average investment is $50,000?

A. Well, if your mathematics are correct, and the average investment is $50,000, I guess that would be so.

3138 Q. All right.

Getting back to the fact that you are interested in getting a return on Atlantic's investment in a station, isn't it also a fact that the sale of Goodyear TBA or rather the purchase of Goodyear TBA by lessee dealers increases Atlantic's return on its investment?

A. To some small extent, yes.

Q. You have also stated that a good dealer nets from $9,000 or $10,000 a year and in some instances, he nets more. You will recall that testimony, I believe.

A. Yes, sir.

Q. Now, isn't part of the net return to the dealer in your figure based on his income from the sale of TBA?

A. Yes, it would be.

Q. That is an important part of service station operation, I believe you testified.

A. Extremely important, yes, sir.

Q. In addition to the successful dealers, there are some, I imagine, who go broke, so to speak, in their operation, aren't there?

A. It happens, yes, sir.

Q. And the figure of $9,000 or $10,000, is that an average? Are there some dealers who make less than that?

A. Yes, there are dealers who make less than $10,000.

Q. How much less, or what would be the minimum figure?

3139 A. Well, I am afraid that would be a little difficult for me to answer, almost as much for me to pick someone out working on the street and telling you what they earn. I don't have access to—

Q. (Interposing.) It would be something less than $9,000 apparently?

A. Yes, there are some who do earn less than $9,000, of that I am reasonably sure.

Q. You also made the statement on direct examination, which I would like to call to your attention and then ask a few questions. I believe you stated that dealers—put it this way, that people do not buy from companies, they buy from dealers. Do you remember that statement or words to that effect?

A. Yes.

Q. Were you implying by that that a dealer is able to build up goodwill, personal goodwill in his station?

A. Yes.

Q. And I would like to ask you this question then: when such a dealer leaves the station and moves to a distant

location or goes out of the business, doesn't that goodwill inure to Atlantic's benefit?

A. No, sir. Using my word and then yours, personal goodwill—and that is what it amounts to, and I have to qualify that. There are possibilities it can, but in
3140 actual experience, actual practice, in every change-over of a service station, regardless of how far the dealer moves or goes out of business, there is business loss.

Q. It is certainly true that a good dealer can build up a trade, some of which will continue to come to that station after he leaves, isn't that so?

A. Yes, sir; that is so. If you have a good product.

Q. And that would be the result of his operation there?

A. And the product, yes, sir.

Q. Now, on your direct examination you made reference to the fact that since October '54 there was only one forced cancellation to your knowledge in your district. I don't think you told us who that was. Could we have the name of that dealer?

A. Frankly, I can't recall, the station is very vivid in my mind.

Q. Can you give us the station location?

A. Yes, the station was at North Bergen, 1502 Tonnelle Avenue.

Q. And was the 15-day warning letter in effect at that time?

A. The 11-point letter of service was in effect.

Q. Did you send him a 15-day warning letter?

A. Yes, we did.

Q. And I wonder if you could produce a copy of that for us or have it produced or sent to us?

A. I believe it it possible, yes, sir.

3141 Q. Was his lease cancelled at the termination of the 15 days?

A. It was. I cannot say definitely it was cancelled right at the 15 days. But it was within the period of time, and it was cancelled, yes.

Mr. Kelaher: I would like to have this witness or counsel—we asked for all warning letters which I think covered that period, and I don't think we have that one in our record—we would like to have that and all correlating to it.

Mr. Thompson: We will ask Mr. Gaestel to look up the facts in the district office, and we will place them on the record at some later date.

Mr. Kelaher: Thank you.

Mr. Thompson: I think, Mr. Kelaher, that Mr. Gaestel testified this morning—he will correct me if I am wrong—that there was a mutual cancellation executed in that case, am I correct?

The Witness: Yes.

Mr. Kelaher: I think he did say that, yes.

The Witness: Yes.

Mr. Thompson: But we will supply you with the facts, whatever they are, sir.

Mr. Kelaher: Thank you.

By Mr. Kelaher:

Q. Now, you also mentioned in passing this morn-
3142 ing that apparently your company raids other service stations for new Atlantic dealers, among other sources of supply.

A. Yes, sir. It is normal procedure.

Q. Do you consider that an ethical practice to raid the dealers of another oil company?

A. Well, it is survival, and I have never even considered the ethics of it. It has been a practice before I was in the business, and it will probably go on long after I am out of it by all companies.

Q. I would like for you to direct your attention to this

process of screening new dealers which was gone into at some length this morning. Would it be correct to say that that is a very selective process?

A. Yes, sir.

Q. As I understand it, first the salesman makes the initial screening, then, after that the sales supervisor, which would be you, would discuss the matter with the applicant, and then after that the district manager would be called in if the applicant reaches that point; is that a correct statement of the procedure?

A. Yes, sir; that is right.

Q. During the course of your talk with the applicant, you have stated that you discuss the fact with him that your district sponsors Goodyear TBA. That is correct, isn't it?

A. Yes, sir.

3143 Q. And does he ever express his viewpoint at that stage of the game as to whether or not he will carry the sponsored brand or not?

A. Yes, you are asking for every case or—

Q. (Interposing.) The general situation, you might say.

A. I have experienced cases where the man sitting across from my desk has told me that possibly he has been with another company, another oil company, and has a marked preference for some tire, at which point he will ask further, even going beyond my discussion, what will happen if he handles such a tire, and it does not conflict or have any bearing on our ultimate decision whether this man is the right man to run our service station or not. But there have been times, yes, sir.

Q. I don't know whether you have completely answered my question.

A. I will be glad to put in what I have left out, if you will let me know.

Q. Sure. My question is whether or not an applicant

ever states that he will purchase the Goodyear TBA at that stage when you are screening him through?

A. Well, that would hold true just as well as the answer I stated of the one who said he wouldn't. Yes, some applicants do say that they know the Goodyear line, they know how well-known the brand is, and would be glad to consider it. Again, many of them have handled
3144 Goodyear lines in other service stations and intend to continue doing so.

Q. Is it at that stage, or is it later when you designate the Goodyear supply point for your dealers?

A. It isn't for the dealer, it is actually for the location itself that the supply point is set up; so, on a prospect coming in that supply point for that particular service station we might be discussing has been designated long past. That is nothing that we decide on on considering the applicant himself, that is, the service station and his location.

Q. As I understand your answer, you have authorized a Goodyear supply point for each territorial area; is that correct?

A. Not necessarily each territorial area, but a given area. It could cross over. When you say territorial area, I think of salesmen's territory.

Q. No, I am thinking of geographical area.

A. Yes, that would be it.

Q. I am just trying to get your answer clear. Do you have a different supply point for each geographical area in your district?

A. That would be right, yes, sir.

Q. When a dealer gets a station location in a specific geographical area, the name of the Goodyear supplying dealer is given to him; is that correct?

A. That is right, yes, sir.

3145 Q. And if a new dealer indicates a preference for Goodyear TBA, are arrangements made with the

Goodyear supplying dealer to put the initial stock of Goodyear TBA into that new dealer's station?

A. Well, of course, that does not happen in every case, it happens in some cases—

Q. (Interposing.) I am asking you—well, you go ahead and answer in your own way.

A. It can happen and it cannot. Frequently, the salesman will bring the Goodyear supplier around and introduce him to the dealer after the dealer is installed. Possibly the salesman will contact the supplier and say, "I am having a change-over on such and such a date."

Q. By salesman, you mean Atlantic salesman?

A. I am talking about the Atlantic salesman, sure.

Q. So it can happen either way?

A. That is right. He can either bring him around in person or have him come around latter.

Q. Now, when you are discussing Goodyear TBA with applicants and later at the training school, I might add, do you point up the fact that you have uniform Goodyear TBA identification on most Atlantic service stations in your district? It that given as a selling point?

A. I don't think so. I can't recall making any point of that with any applicants and I cannot recollect that that is so in the training program.

3146 Q. Do you make it known to them that most Atlantic dealers do purchase Goodyear TBA in accordance with the Atlantic recommendation?

A. I would let them know a large number of Atlantic dealers in our area handle the Goodyear line, yes.

Q. In your district?

A. That is right, in my district.

Q. You were asked some questions on direct examination about hours of operation. You were asked these questions at two different stages of your direct, but, as I recall your answer, you stated that these hours of operation are set by

competition and by customer demands, to summarize it. Is that accurate?

A. Yes, sir.

Q. You also stated that you request Atlantic dealers to operate certain hours; is that right?

A. I said I request them to be competitive with their competition.

Q. Isn't it a fact that under your 11-point lease letter that you make it clear that an Atlantic lessee dealer must meet Atlantic standards with respect to hours of operation, or it may be grounds for lease cancellation? I am referring to CX-88-B.

Mr. Thompson: I am objecting to the form of the question because he is asking the witness to construe a 3147 written document which is in evidence.

Hearing Examiner Kolb: This is cross-examination, and the witness has testified as to terms and so forth. The objection will be overruled.

Mr. Thompson: May I suggest, then, that Mr. Kelaher show the witness the exhibit? I am perfectly sure he never heard of that exhibit number.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I was about to do that. Also, I think he referred to the 11-point lease letter in his direct examination.

By Mr. Kelaher:

Q. Mr. Witness, I show you CX-88-B (handing document to the witness) and ask you if that is not the 11-point lease letter you were referring to in your direct testimony?

A. Yes, sir.

Q. I call your attention to item six, which reads: "Hours of Operation: Uniform daily operating schedule based on buying habits of potential trade in the area."

My question is this, and I will rephrase it in the light

of the objection: Isn't it a fact that Atlantic sets the standards for hours of operation and not the lessee dealer?

A. No, sir.

Q. I beg your pardon?

A. No, sir.

3148 Q. No, sir, you say. Are you familiar with a lessee dealer by the name of Policastro, I believe?

A. Yes, sir.

Q. I would like to show you Commission's Exhibit 258, which is a letter from Mr. Leslie Geer, whom you have identified as the Newark district manager, and which has a carbon copy going to you, and ask you to read 258-A (handing document to the witness).

Mr. Thompson: May counsel see it, too?

Mr. Kelaher: Certainly.

By Mr. Kelaher:

Q. I would like you to read—the particular point I am interested in is number two. I would like to have you read that into the record and also the last paragraph. You can read the whole letter in the record, if you want to, but it is already in there. Just read the—

A. (Interposing.) "From our observations we note irregular hours of operation of your station to the point that we believe your marketing area is not being properly served."

Q. Then, the last paragraph.

A. "You are further reminded that in accordance with the terms of your lease, you have 15 days from the day you receive this notice to remedy these defaults; otherwise, your lease will have been breached."

Q. Now, I call your attention to Commission's

3149 Exhibit 258-B, which is a letter from Leslie Geer to Mr. Policastro with a carbon copy to you and three other gentlemen.

A. Would you like me to read this?

Q. I would like you to read the entire letter.

A. Mr. Thomas J. Policastro, Hudson Boulevard and 88th Street, North Bergen, New Jersey. Mr. Policastro:

"It was extremely gratifying to both Mr. Gaestel and myself to find your spirit of cooperation manifested in your having done such an outstanding job in cleaning your station and to hear you say you were not yet satisfied and were going to continue to improve it.

"We are also pleased to receive your promise to operate your station under normal station hours.

"I am sure that with this cooperation and our working together that your gallons will rapidly increase and you can be sure that we will do all within our policies to help you achieve this goal."

Q. Thank you. Isn't it a fact that you have the power under your lease to terminate a lease agreement if the station dealer does not measure up to your standards as to what his hours of operation should be?

Mr. Thompson: Objected to as calling for a legal conclusion.

Hearing Examiner Kolb: Objection overruled.

The Witness: Would you repeat the question.

3150 Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

The Witness: I have to honestly say in—

By Mr. Kelaher:

Q. (Interposing.) Let's answer the question Yes or No, and then you can amplify.

A. I have to answer No.

Q. You answer No in the light of this evidence in the record?

A. Yes, sir.

Q. All right. I will go on to something else.

Mr. Thompson: You can explain your answer, if you want to.

The Witness: I would like to explain the answer.

By Mr. Kelaher:

Q. You go right ahead.

A. I do not believe that we could make that part of our lease enforceable under actuality.

Q. Well, that is very interesting. Why do you threaten a dealer with lease cancellation for not maintaining hours of operation, then?

A. Psychological persuader, possibly.

Q. Do you also use other measures of that type in threatening dealers with lease cancellation?

A. I know of no others, no, sir. That is purely my opinion on that.

3151 Q. That seems to be a common practice, does it not, on the part of Atlantic Refining Company with respect to hours of operation to advise dealers that they are to maintain certain hours of operation?

A. No, sir, not in the Newark district. That is the only district I can speak for.

Q. Well, all of your lessee dealers get the 11-point lease letter, do they not?

A. Yes, sir.

Q. All right. You also stated on direct examination that there are a large number of competitiors of Goodyear in your Newark district?

A. Yes, sir.

Q. And does that include suppliers of all types of competitive brands of tires, batteries, and accessories?

A. Yes, sir.

Q. And does that include sellers of Lee tires and Exide batteries?

A. Yes, sir.

Q. And Thermoid products and Fram products?

A. Yes, sir.

Q. Now, going on to another subject, you were asked some questions about original stocking orders in connection with lessee dealers, the question pertained to whether or not Goodyear always gets the TBA original stocking
3152 order in a new Atlantic station; do you recall that testimony this morning?

A. Yes, sir.

Q. And you said they don't always get the original stocking order. Is it a fact that they do get the stocking order at times?

A. Yes, sir.

Q. Is it a fact that in most instances that Goodyear gets the original stocking order?

Mr. Thompson: Are we talking, Mr. Kelaher, about a new station or a replacement?

Mr. Kelaher: I think we would include not only new stations but new dealers replacing old dealers in the same station. Is that what the answer went to this morning?

The Witness: I can define it possibly for you. On new stations, Goodyear would have a reasonably good chance of getting the initial stocking order.

By Mr. Kelaher:

Q. On new stations?

A. On a brand new station, yes, sir.

Q. Why would that be?

A. Well, because of the pattern of our business. We would advise Goodyear that we were opening a brand new station, naturally, and arrange to have the dealer meet the Goodyear supplier and make a selection of the stock to open the station with. That would be done before the station would be opened.

3153 Q. You would give the Goodyear supplier advance notice of the new station opening; is that correct, sir?

A. We would arrange prior to opening of a new station, if the dealer was at all agreeable, to get together with the Goodyear supplier, and we would set up an initial stock order so when we opened the station it was ready to do business.

Q. And when you opened the station would you also have the Goodyear window valances and outdoor advertising installed, or would that take a little time?

A. It could take time, depending on where the crew was.

Q. Eventually that identification would be in the station?

A. We would request Goodyear put the identification in the station.

Q. Atlantic would request Goodyear to put that identification in the station, you say?

A. That would be the only way it would be put in.

Q. Do you give any competitors of Goodyear advance notice of new station openings.

A. No, sir; I sell Goodyear.

Q. You just stated you sell Goodyear which leads us to another subject. On direct examination this morning you were asked to state some of the advantages to Atlantic dealers for handling Goodyear TBA. Do you recall that testimony?

A. Yes, sir.

Q. And you went down the line and listed a num-
3154 ber of reasons. One was quality of product and so on.

Do you think it is in the Atlantic dealer's interest to handle Goodyear TBA for all the reasons you listed in preference to other brands of TBA?

A. Would you be specific on other brands? I mean, there are certain brands, yes, very definitely Goodyear would be far more advantageous than certain brands, yes.

Q. For example, you stated that you recommended the

Goodyear line because (1) of the quality of the product. Well, it is true, is it not, that there are many brands of tires and batteries and accessories which are of like grade and quality to Goodyear's isn't that true?

A. I would assume it is, but I sell Goodyear, and I know it is a quality product. I don't have to make any assumption on Goodyear.

Q. Is it also true that there are other brands of TBA which have consumer acceptance in your marketing district?

A. I am sure there are, yes.

Q. And isn't it true that there are other brands, other suppliers of TBA, in your marketing district who have stocks of TBA sufficient to supply the needs of Atlantic dealers and other customers?

A. I would assume so, yes, sir.

Q. And isn't it true that there are other suppliers of TBA who are able to sell brands at competitive prices with Goodyear TBA?

3155 A. I would assume so, yes.

Q. Do you think the reasons you stated this morning as to why it was advantageous to Atlantic and to the dealer to handle Goodyear TBA are the real reasons why Atlantic is sponsoring Goodyear TBA in the Newark district?

A. Yes, sir.

Q. And you were in the Newark district prior to June 1950, as I understand your testimony?

A. I was.

Q. You were promotable dealer salesman from January 1947 to October '51; so, did you know from your experience in the Newark district that Atlantic originally intended to sponsor another brand of TBA in the Newark district?

A. No, sir; I didn't.

Q. Do you know—and the record herein shows—that

in January 1950 Atlantic decided to test Firestone TBA in the Newark district?

A. I didn't.

Q. Did you know that on March 17, 1950, Firestone advised Atlantic that it could not go into the Newark district?

A. No, sir; I didn't.

Q. And were you aware that it was not until May 1950 that Atlantic decided to sponsor Goodyear TBA in the Newark district?

A. I wouldn't remember the exact date we did decide to handle Goodyear.

3156 Q. So, it would seem quite apparent, would it not, that the reason for sponsoring Goodyear TBA is due to the fact that Goodyear was willing to pay Atlantic an override commission for sponsoring Goodyear products in the Newark district?

Mr. Thompson: Objected to.

By Mr. Kelaher:

Q. And not the reasons you stated?

Hearing Examiner Kolb: Objection will be overruled.

Mr. Thompson: The question is obviously argumentative. The witness has said he never heard of the Firestone proposal. I understand I am overruled. I am just putting my reason on the record.

Hearing Examiner Kolb. I appreciate the reason before I rule, not after.

By Mr. Kelaher:

Q. You can answer the question.

A. Would you read it?

(The reporter read the pending question.)

Mr. Thompson: May I respectfully comment, sir, that I have rarely heard Mr. Kelaher put a question which is subject to more possible objections than that one.

3157 By Mr. Kelaher:

Q. Isn't it a fact that if Atlantic were to sponsor any particular brand of TBA that you would think it was to the dealer's advantage to handle that brand?

A. I am sure that Atlantic would sponsor a quality product only.

Q. Is your answer Yes or No?

A. My answer would be Yes based on my opinion.

3158 Q. Thank you. In connection with certain questions this morning concerning complaints you received from Atlantic dealers with respect to Goodyear TBA, you stated—and you can correct me if I am wrong on this—that most of the complaints you received from dealers relate to prices; it that correct?

A. Yes, sir.

Q. And as one example you referred to the fact that an Atlantic dealer might be buying a Goodyear tire, 710 by 15 at $20.00 and a competitive salesman might come and offer the same sized tire for $18.00. You stated as a matter of good salesmanship, you implied that as a matter of good salesmanship, he might indicate that it was the same level tire as the Goodyear tire. Did you intend that implication in the record?

A. I don't know that he would intend to say it was the same tire, but I have seen it happen frequently where there is no differentiation made that it is a tire and it is the same sized tire.

Q. It wasn't your intention to imply, I assume, that every competitor of Goodyear misrepresents the level of its tires?

A. Absolutely not.

Q. Or batteries?

A. I was trying to illustrate a point, the problem.

Q. In answer to one other question—you were asked what brands of TBA your lessee and contract dealers

handle at your stations, Atlantic stations—and the answer you said, all brands; do you recall that answer?

3159 A. Yes, sir.

Q. You did not mean to imply that Goodyear was not the principal TBA carrier by your lessee and contract dealers, did you?

A. No, I did not mean to imply Goodyear was not the principal, but every station has competitive brands of merchandise.

Q. However, some of the competitive brands are more on a fill-in basis, aren't they, or at particular customer request, or in response to a particular customer request?

A. It works both ways. Sometimes a Goodyear supplier sells as a fill-in on something that a competitor might be normally selling the dealer.

Mr. Kelaher: May I see a copy of that booklet that you had?

(The document was handed to counsel.)

By Mr. Kelaher:

Q. I might ask at this time, too, do you have any indication of the total amount of Goodyear TBA sold in the Newark district annually?

A. Yes, sir, do I know the figures?

Q. Approximately.

A. Yes, sir.

Q. What would that be?

A. 1957, approximately $380,000.

3160 Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. I just have a few more questions.

First, in connection with your statement that Atlantic salesmen take orders, you mentioned that they do—what was your testimony on that? Do Atlantic salesmen take Goodyear TBA orders from Atlantic dealers frequently or infrequently?

A. I would say frequently, yes, sir.

Q. Isn't it true that Atlantic lessee dealers also telephone orders in to their supply point?

A. Yes, sir, it works both ways.

Q. That is a normal procedure for them, is it not?

A. That happens with Atlantic products as well as—

Q. (Interposing.) Or with Atlantic product?

A. That is right.

Q. And that is done on a large scale, I would think, taking into consideration your entire district?

A. A reasonable scale. It works both ways. The salesman calls once a week, and the dealer always thinks of something two hours later, and rather than wait until he sees the salesman again, he will call either Atlantic or possibly the local Goodyear supplier.

3161 Q. Does the Goodyear salesman also take orders?

A. The supplier?

Q. The Goodyear supplier dealer?

A. Will take orders, yes, sir. He also calls.

Q. With respect to your testimony concerning Joseph Malizia, I would like to ask you a few questions.

A. Yes, sir.

Q. What was Mr. Malizia's complaint or his gripe, so to speak?

A. In very few words, Mr. Malizia did not believe the Atlantic salesman had a right to try to sell him anything more than gasoline and motor oil.

Q. What TBA products was Mr. Malizia carrying at the time of the complaint?

A. What TBA—

Q. (Interposing.) What brand of TBA products?

A. He was carrying all sorts of brands. He was carrying Goodyear tires. Mr. Malizia bought, it seems to me, from anyone who came along when he happened to have a need. I can't recall that he had one specific supplier. It seemed to me he bought from a multitude of suppliers.

Q. And was it his specific complaint that the Atlantic salesman was attempting to pressure him into buying Goodyear TBA?

A. He seemed to be against the idea that the Atlantic salesman should sell him—

3162 Q. (Interposing.) Was this his specific complaint? That is what I am asking you.

Mr. Thompson: Mr. Gaestel is answering your question. You didn't let him finish the answer.

The Witness: Well, the complaint, it was given in the form of a complaint, said that the Atlantic salesman was trying to force him to buy TBA, but in speaking to Mr. Malizia the only conclusion I could come to was that the Atlantic salesman was trying to sell him TBA.

By Mr. Kelaher:

Q. Goodyear TBA?

A. Goodyear TBA and at this point is when I requested that both Mr. Malizia and ourselves present the case to Mr. Malizia's backer and saying we would both abide by his decision, whether it was a matter of forcing him to buy TBA from Atlantic or whether the salesman was just trying to sell him TBA.

Q. Now, you also stated what this other gentleman's decision was. I wasn't too clear on your answer on that. Would you tell us again what that was?

A. Well, the gentleman concerned, after hearing both sides of the case, advised Mr. Malizia that the salesman certainly acted within his rights to try to sell him TBA.

Q. Goodyear TBA?

A. Goodyear TBA. That is right, my salesmen sell TBA and they are selling TBA—

3163 Q. (Interposing.) I think you added something to your answer with reference to Goodyear TBA, which I am not too clear on.

A. Well, his backer made a recommendation to him that he—if he needed some product when the salesman tried to sell it to him, there was no reason at all why he shouldn't buy it and recommended that he do buy some from our salesman.

Q. And did Mr. Malizia's purchases of Goodyear TBA increase after that meeting?

A. Yes, sir.

Q. What was the approximate time of this meeting?

A. The date?

Q. The year or the month, or whatever you have.

A. I think it would be approximately three years ago.

Q. Sometime in 1955?

A. I would say in the area of 1955, yes, sir.

Q. And do you have the name of Mr. Malizia's backer that you have reference to?

A. I can't recall it at the moment. I could get it for you, yes.

Q. Could you give us Mr. Malizia's station location and town where he is located?

A. He is located on Highway 10 in Livingston, New Jersey, the station.

Q. You also stated on direct examination that it was necessary for salesmen to keep Atlantic dealers posted

3164 on improvements in TBA products and as an illustra-

tion, you referred to tubeless tires and dry charged batteries. Do you recall that testimony?

A. Yes, sir.

Q. Were you implying that Goodyear was the first to come out with these products and, therefore, it was necessary to train your dealers in that respect?

A. I wasn't implying that Goodyear was the first to come out with the product, no.

Q. Isn't it true that regardless of whether or not Goodyear manufactured these items, it would be necessary for Atlantic dealers to receive some training from someplace in connection with the servicing of such products; is that true?

A. Yes, if I might add to that, air suspension just is becoming popular and we have trained our dealers on air suspension and we don't sell air suspension. We feel it is something our dealers should be conversant with; so, we have taken it upon ourselves to train them on air suspension and let them know the difficulties and hazards that can be encountered.

Q. I have a last series of questions here, and I must admit that I was somewhat surprised on your testimony on this score, and would like to have you explain it a little more.

In answer to a question as to the importance of advertising signs in the sale of batteries in service stations, you made the somewhat emphatic statement that you
3165 thought that they had no value. Do you recall that testimony in the sale of batteries?

A. I am not sure if I said no value or very little value.

Q. You were asked this question, in substance: from your long experience, is a sign on service stations a significant factor in the sales of batteries, and you said, "No, sir."

A. That is right, I do not believe it to be a significant factor.

Q. Do you think that it is a waste of money, so to speak, for Delco, Willard, Exide, and all other battery manufacturers to spend large sums of money in the advertising of their products?

A. Well, apparently they do not think so. They certainly must spend the money.

Mr. Thompson: May I ask you to clarify that question, Mr. Kelaher? Is that question directed to signs at service stations, which is the subject matter of his testimony, or national advertising?

Mr. Kelaher: I am referring to national advertising, including signs on service stations or in any other form.

Mr. Thompson: Did you so understand the question, Mr. Gaestel?

The Witness: I believe so.

By Mr. Kelaher:

Q. Is it your opinion that advertising signs, bat-
3166 tery brands, on service stations are of no significance whatsoever in the sale of batteries of any particular brand?

A. They would have to be of a very minimum significance.

Q. How does that account for the fact that so many batteries are sold by such houses as Sears, Roebuck, for example, or other houses?

A. Newspaper advertising.

Q. And isn't it true that advertising does play an important part in the purchase of batteries?

A. That is a different type of advertising altogether.

Q. What were your reasons for saying that advertising is of no value in service stations with respect to batteries?

A. Because it is my opinion, and from observation, that people just aren't riding around looking to buy batteries for automobiles. It is a part of an automobile that the

average motorist has no idea of or knowledge of whether it is in good condition or bad condition unless some service station attendant has told him his battery is getting weak and is liable to give up operating, or he has been unable to start his car.

Tires, conversely, people can see the tread wearing down on tires, but a battery is—

Q. Is it your opinion—are you finished?

A. I can be finished, yes, sir.

Q. Is it your opinion that there is no consumer demand for particular brands of batteries?

3167 A. No, that is not my opinion.

Q. How do you reconcile that with your statement that advertising signs are of no value in service stations?

A. Well, I can only say that people do not ride around looking for batteries when they go. Now, if you have ever had a battery go on you, through reading national advertising, you may have a preference, but if you break down in front of XYZ service station, and he only handles something else—

Q. (Interposing.) Are you limiting your answer to situations where a motorist breaks down out on a distant highway in front of a service station and has to take a battery?

A. I think nine out of ten batteries are sold on an emergency basis.

Q. Isn't it a fact that many, many buyers have a particular preference and choose a particular brand for one reason or another?

A. Yes, sir, for national advertising, but I do not feel that a sign on a service station has any—helps influence their decision. I think the decision has been formed possibly from national advertising, and when they get around to buying a battery, if they buy in an Atlantic service station, they are liable to designate, I need a new battery and I

want X brand, and any intelligent dealer certainly to satisfy his customer will arrange to get X brand.

Q. Isn't it a fact that that Goodyear sign up there 3168 indicates to a customer who wants a Goodyear battery that Atlantic is the place to get it?

A. I think it refers more to—I think the impression received by the customer is more on the Goodyear tire line.

Q. You are willing to concede that the signs have great value in advertising tires; is that correct?

A. I think a sign has some value in advertising tires, yes.

Q. Do you say it has some value or has great value?

A. Well, I stated that I thought battery signs were of little consequence, and I think tire signs are a definite asset.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any questions, Mr. Thompson?

Mr. Thompson: You, sir, have a plane at 3:40?

The Witness: Yes, sir.

Mr. Thompson: It is now 3:12. I will waive any further questions, and let this witness try to get his plane, provided Mr. Kelaher will answer a question for me.

(The witness was excused.)

ROBERT O. C[redacted]N was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Carlson, will you give your full name and 3169 address to the reporter?

A. Robert O. Carlson, 14 Banghart Place, Mount Tabor, New Jersey.

Q. Mr. Carlson, you work for the Atlantic Refining Company?

A. Yes, sir.

Q. What is your position?

A. I am a promotable dealer salesman.

Q. In the Newark district?

A. That is right.

Q. Your superior is Mr. Gaestel?

A. That is right.

Q. That is the man who just preceded you on the stand?

A. That is right. He is my sales supervisor.

Q. Above him who is the next superior?

A. Mr. Geer, the district manager.

Mr. Ballard: Mr. Kelaher, you have no objection to the witness refreshing his recollection from a memo?

Mr. Kelaher: No, sir.

By Mr. Ballard:

Q. I believe you have a memorandum there of the periods of your various jobs with Atlantic?

A. Yes, sir.

Q. You were hired by Atlantic in April of 1946?

A. That is right.

Q. And you have been with the Newark office ever since?

3170 A. That is right.

Q. Would you tell us what the year, the various jobs that you have had in that office and the years during which you had them?

A. Well, from May 1946 to August 1946 I served as service salesman in Newark; from August 1946 up until today I have been a promotable dealer salesman with the exception of a three-year period when I sold fuel oil.

Q. As I understand it, sir, that three-year period en-

compassed the time when Atlantic changed from Lee and Exide to Goodyear in the Newark area?

A. That is right.

Q. This is a map which has been introduced in evidence as RX-A-15; referring to that map would you give us a description of the geographical territory which you serve in the Atlantic Newark district?

A. Morris, Warren, Hunterdon, and a small part of Union county.

Q. Those are all counties that you designated, right?

A. That is right.

Q. And you cover those counties as a dealer salesman?

A. That is right.

Q. How many accounts do you handle in that area?

A. Eighteen.

Q. And the 18 are shown by red dots on that map?

3171 A. Yes, sir.

Q. Can you tell us a little bit about those 18 dealers that you service, tell us a bit about how long they have been in the stations and their characteristics?

A. Well, some of the dealers have been in since 1946 and the most recent was installed in 1956.

Q. Do you know each one of those dealers?

A. Personally.

Q. Call them by their first name?

A. Oh, yes; very friendly.

Q. Do you know their wives and families?

A. Oh, yes.

Q. Generally speaking, Mr. Carlson, how often do you call on your 18 dealers?

A. At least once a week, but in an emergency, sometimes I have to go two weeks before I see them.

Q. And do you sometimes call more often than once a week on a particular dealer?

A. Oh, yes.

Q. What do you consider to be your principal duties as a promotable dealer salesman?

A. Well, first, to see that the stations are manned and also to see that they are the best possible outlet for Atlantic products.

Q. Now, in connection with your first statement,
3172 the question of keeping operators in the stations, is that a particularly difficult problem in your area?

A. That is a difficult problem in every area. Locating dealers is a hard part of our job, good dealers.

Q. How many turnovers of this sort have you had while you have had this territory?

A. In the last four years I have had six changeovers.

Q. You consider yourself fortunate?

A. Very fortunate.

Q. I don't want you to go into too much detail, but on those six turnovers, what were the reasons why the dealer who went out left his station?

A. One fellow just wanted out, his wife was pressuring him; another fellow had had a heart attack, and it was doctor's orders that he get out of that activity.

Q. Would it be safe to say that in each instance the dealer initiated the—

A. (Interposing.) He requested it, that is right.

Q. Now, in any of those instances, was the reason the dealer left the station, did it have anything to do with TBA?

A. None whatsoever.

Q. One other question. On those six instances did they occur at the end of the particular dealer's lease or in the middle?

A. I don't recall offhand, but some I know would
3173 be in the middle; they weren't near termination. They wanted out and we arranged it.

Q. That has been Atlantic's policy as far as you know it?

A. Oh, yes.

Q. Now, again trying to keep your testimony to a minimum, I believe you were in the hearing room this morning while Mr. Gaestel, your superior testified?

A. That is right.

Q. Did you hear his testimony concerning the difficulty in obtaining dealers and the methods by which he goes about obtaining new dealers?

A. Yes.

Q. Do you agree with the statements which he made here this morning on those subjects?

A. I certainly do.

Q. That has been your experience also?

A. Yes, I have used everyone of those efforts.

Q. I want to ask you one specific question. There is an Atlantic folder of record as RX-A-18, it is called "What a Service Station Can Mean to You." Mr. Gaestel's copy is actually of record. Do you have a book similar to this?

A. Yes, I do, carry it all the time.

Q. Is it identical with this?

A. Identical.

Q. And you use it?

3174 A. All the time.

Q. Does the copy that you use contain the Estlow letter of June 24, 1955?

A. Yes.

Q. Now, when you say you use it, sir, you use it in making your initial contact with a dealer applicant; is that right?

A. Yes, with a prospective dealer.

Q. And you go over it with him page by page?

A. Thoroughly.

Q. Sir, there was testimony this morning to the effect

that that book was not in use, this particular book was not in use until 1955. What did you use in its stead before 1955?

A. Well, we used approximately everything that is said in there but one of the problems that came up was that quite frequently prospects would want to discuss things other than what we wanted to accomplish in the interview, and they would wander, and, of course, to be friendly and keep them talking, we would wander with them. This book gave us the opportunity to hold the conversation in line and try to show them what we were offering them if they wanted to be an Atlantic dealer. It gave us a good basis to keep the interview more in the order in which we would like to present it.

Q. Mr. Gaestel also spoke this morning about the efforts that were made in selecting a new dealer and in selling him on the Atlantic brand choice, the efforts that were
3175 made to explain and sell the Goodyear TBA line. I don't want to go into those again. I want to ask you one specific question.

Do you or do you not when you interview a dealer applicant specifically state Atlantic's no-forcing policy with respect to TBA?

A. Oh, yes, we go through that book from cover to cover, and we make them read that letter because a lot of times it is a question they request, "Am I forced to go with this Goodyear policy?" and we turn to that and show them, "Here is your answer," and we don't have to answer it. It is there for them, no forcing.

Q. There is in the back of this same exhibit a mimeographed set of questions and answers which are marked for salesman's use. There was reference to questions and answers marked 3, 4, and 5 this morning (showing document to the witness). Have those questions been asked

of you by a dealer applicant, and, if so, have you given the answers that are set out there?

A. Yes, and I don't use this phraseology in giving an answer, but the same thought applies, that we never throw a dealer out if he builds up his business properly, and he is not forced to handle our TBA line. And "Must I be open on Sundays?" Competitive practice is what dictates that. And "Do you tell me what hours I must be open?" No, we don't tell him what hours he must be open.

I have frequently requested that if he has any idea 3176 but doesn't know just how long to operate a station that starting at 7:00 in the morning and operating until 11:00 at night and explain that 7:00 o'clock in the morning, that is when most people are going to work and by 11:00 o'clock at night, that is when the entertainment is over and towns generally are closing down. And over a period of time he will see for himself what his competitive stations are doing who have been in business and know what the town will do and then it is up to him.

Q. To judge for himself?

A. That is right.

Q. Now, sir, the second duty that you mentioned with reference to your job was the question of making sure that each of your 18 stations sells as much Atlantic Refining Company petroleum products as possible?

A. Right.

Q. What do you think are the requisites that a station has to have in order to sell a maximum amount of Atlantic petroleum products?

A. Well, he should have a sufficient inventory of product on hand to be able to adequately serve the public at their demand.

Q. Right.

A. I think most times a car pulls in for service it is for gasoline; so, there should be a good supply of that on hand.

Next, I believe that most frequently a car is lubri-
3177 cated; so, motor oil is a big item because also when they are buying gasoline their oil is checked on the drive-in for service.

Third, I think they should have an adequate supply of any TBA products that are necessary to require service to the customer. It should be adequately stocked.

Q. When you approach a station in your automobile, are there other criteria that you measure the station by?

A. Yes. The first thing I have grown in the habit of doing is looking at a station from its appearance angle as though I was the customer approaching it. Is this the type of station I want to pull in? What can I find that I should talk to the dealer about?

When I am in the station I will look his personnel or listen to the way they talks to customers, maybe talk to them about something I can help them with in making a sale, or suggesting that they wear a clean uniform as it will be more presentable for the station and the dealer.

Q. Are you interested at all in the internal operation or the management or the management of the station?

A. Very much so. So much so that a lot of the dealers ask me if they are doing a good job and we measure in the light of what other dealers are doing and try to compare and if it appears that there is a weakness in selling—let's take, for instance tires—we try to build that up so
3178 that he becomes a more successful dealer financially.

Q. Would it be fair, Mr. Carlson, to say that trying to summarize what you have just stated that the way you measure a station is the products, the service, appearance of the station, personnel, management?

A. Right.

Q. Now, in the light of those tests, do you care whether or not the TBA that is in the station is Goodyear or non-Goodyear?

A. No, it is not the most important whether it is Goodyear or another brand. The successful dealer will sell TBA as such because it is an integral part of the business, and he is in business to make money and it is my job to help him make money.

Q. But you do try to sell Goodyear TBA?

A. Oh, yes.

Q. And would you take a second, sir, and in your own words tell us what sales pitch you use with your dealers to get them to take on the Goodyear TBA line?

A. Well, a sales pitch would go along the lines of, have they tried any Goodyear TBA, trying to find out why they resist it, and then building up with a nationally advertised product is easier to sell, more people know about it, naturally. There is a quality there, it has to be there. They have to back their advertising, naturally. It is available at several sources. In my particular marketing ar a, whether through my own supply dealer or other supply 3179 dealers, they are Goodyear dealers.

There has been resistance, and in some cases solid, and there is no sense in forcing that man to try to change him.

Q. You mean, you mean there is no sense in trying to sell that dealer—

A. (Interposing.) No, we will try to sell, but when you continually get No, No, No, and what he feels a qualifed reason, you realize that you have to wait then for an opportunity to introduce it. You won't get it through just open selling by continually hammering at it.

Q. Now, in promoting the sale of Goodyear products, aside from the pitch that you have just spoken to me about, do you devote some of your time, as Mr. Gaestel was speaking about this morning, to double-teaming in these various promotions?

A. Oh, yes.

Q. How often does one of these promotions on Goodyear T, B or A come up?

A. Well, those promotions break—I can't give you a calendrical example—maybe two or three times a year. With regard to accessories it might be more frequently. I have in mind this much, that tires, you have a winter type of tire and you have a normal type of tire. Naturally you sell a winter type of tire in the wintertime; so, we have a winter promotion. Likewise, in the spring, when
3180 they are converting over to the regular treads we have another promotion. But, then, you have polishes, you have spark plugs, filters, in which we double-team with other than our Goodyear salesmen, and those are considered promotions, too.

Q. In selling Goodyear TBA, have you, yourself, actually taken orders from the dealer and transferred them to the Goodyear supply point?

A. Frequently.

Q. Have you ever had occasion to pick up the actual merchandise and bring it out to the dealer?

A. Yes.

Q. Do you concern yourself much with a question of competitive prices asecertaining what they are and trying to relay them to Goodyear through Atlantic?

A. That is part of my job, yes.

Mr Kelaher: May I have that question and answer.

(The reporter read the question and answer.)

By Mr. Ballard:

Q. Mr. Carlson, do you agree with the TBA policy of Atlantic as stated by Mr. Gaestel and as understood by Mr. Gaestel this morning?

A. Do you mean the use—I mean the no-forcing?

Q. Yes, I mean is that your understanding of Atlantic's policy?

A. Yes. A good salesman never forces, he sells.

Q. Well, I want to know just is that Atlantic's
3181 policy as far as you understand it?

A. Yes.

Q. And how did you yourself come to understand that to be Atlantic's policy?

A. Well, when I first became a promotable dealer salesman and we were handling our own TBA line, we were always told to sell it. We couldn't force a dealer then.

At the time I was a fuel oil salesman, I got a copy of Mr. Colley's original letter stating there would be no forcing.

Q. Is that his letter of March 1, 1951?

A. That is right.

Mr. Ballard: Will you stipulate, Mr. Kelaher, that he has reference to CX-150?

Mr. Kelaher: Yes.

Mr. Ballard: It is stipulated that the witness has just made reference to CX-150.

By Mr. Ballard:

Q. So, you received Mr. Colley's letter even though you were a fuel oil salesman at the time?

A. That is right.

Q. Has the policy been brought home to you in any other fashion since you have been with the company?

A. In the refresher course I took in training school, it was brought up there.

3182 Q. It is in that book?

A. It is in that book when that was presented to us, yes.

Q. And by that book I mean Exhibits RX-A-18. Is that correct?

A. Yes.

Q. Mr. Carlson, have you ever forced or attempted to force an Atlantic dealer to buy Goodyear TBA?

A. No, never.

Q. Have you ever pressured an Atlantic dealer to buy Goodyear TBA?

A. No, never.

Q. I just have one final series of questions.

You have, I think you said, 18 dealers in your district?

A. That is right.

Q. Do you visit those dealers, we will say, on the average of once a week?

A. That is right.

Q. Suppose you and I were to get in a car tomorrow morning and drive throughout your district and visit those 18 stations, would we see TBA openly displayed?

A. In every station.

Q. Now, would you tell us some of the brands of tires, batteries and accessories that we might see there stocked?

A. Tires, you would find Goodyear, Armstrong, a 3183 tire known as ATA, Gates, and Firestone.

Mr. Kelaher: Firestone, too?

The Witness: Yes, sir.

By Mr. Ballard:

Q. If we drove into Charley Wyckoff's station, what would we see—

Mr. Kelaher: (Interposing.) Objection, your Honor. Mr. Wyckoff testified in this case. I think that would be repetitious to go over that type of testimony.

Mr. Ballard: Strike the question.

Hearing Examiner Kolb: Are you asking him what he saw in Wyckoff's station?

Mr. Kelaher: That is what he asked him.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: He asked him what he saw in Wyckoff's station. Wasn't that it?

Hearing Examiner Kolb: Yes, that is what it has to

mean. What he saw displayed. Isn't that what you are asking him?

Mr. Ballard: I am asking him what we would see displayed if we went into Mr. Wyckoff's station.

The Witness: Lee tires, and we would also find Exide batteries.

By Mr. Ballard:

Q. While we are on batteries, on this trip that I
3184 am proposing here, what type of batteries would we see displayed in your dealer's stations?

A. Willard, Delco, Rebat.

Q. Goodyear?

A. You would find Goodyear. I think that is most of them.

Q. How about accessories, sir?

A. Accessories, you could find—they are too numerous to mention. You find every kind of accessory necessary to operate a station under good dealer operation.

Q. Some of it Goodyear accessories or in the Goodyear line, some of it outside of the Goodyear line?

A. That is right.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Cross-examine.

Cross-Examination by Mr. Kelaher.

Q. Mr. Carlson, you stated you have 18 accounts in your sales territory. Are all of those accounts lessee dealers?

A. No, sir; 14 are lessee.

Q. Are the remaining four contract dealers?

A. Four contract dealers.

Q. Are all of the contract dealers what were referred to by Mr. Gaestel as real service station outlets?

A. Oh, yes.

Q. They are all potential TBA outlets; is that correct?

3185 A. Yes.

Q. When you are interviewing prospective dealers for Atlantic stations, you do discuss TBA, I understand?

A. Yes.

Q. You are the gentleman who originally screens, makes the initial screening of applicants, as I understand your set up; is that correct?

A. That is right.

Q. At that time you discuss Goodyear TBA with them?

A. Yes.

Q. And then they go from you to the sales supervisor?

A. That is right.

Q. And either he alone or in your presence you go over the applicant's position or you ask him questions and you again discuss Goodyear TBA; is that correct?

A. That is right.

Q. And then from there you go to the district manager who again discusses Goodyear TBA with the gentleman, with the prospective applicant; is that correct?

A. Yes.

Q. And if he meets with the approval of all three of you gentlemen, then he goes to a training school, a five-week training school, and there again Goodyear TBA is discussed; is that correct?

A. That is right.

3186 Q. And then, after that at dealer meetings from time to time Goodyear TBA is discussed; is that correct?

A. No, it would depend on what the dealer meeting is about; if it is for TBA, yes.

Q. Then, you would discuss the Goodyear TBA?

A. Oh, yes.

Q. When you are discussing Goodyear TBA with pros-

pective applicants, do you point up the fact that Atlantic service stations carry the Goodyear service station identification for the most part?

A. Yes.

Q. You point that up to them. Is that a selling point with you?

A. Well, as a field man advertising is a selling point with me.

Q. You recognize the value of advertising, do you not?

A. I have to say that, yes.

3187 By Mr. Kelaher:

Q. And do you tell the prospective applicant that in the consumer's mind Atlantic is identified with Goodyear and Goodyear is identified with Atlantic? Isn't that a selling point for an applicant for a potential Atlantic dealer to handle Goodyear TBA?

A. If this man is a man looking to me for advice, I would, because I am sold on it myself. But if it is a man who has been in business and has convictions, then he can probably do what he wanted to.

Q. But you do point up the fact that this advertising of Goodyear in Atlantic stations is of paramount importance as far as you are concerned?

A. No, I wouldn't say it is of paramount importance.

Q. Well, it is of importance?

A. It is a good way to sell.

Q. And it is a good way to sell a potential applicant for Atlantic station on the value of handling Goodyear TBA, isn't that correct?

A. Yes.

Q. You were present when Mr. Gaestel was testifying with respect to hours of operation, were you not?

A. Yes.

Q. And the dealers in your--I would like to ask you a couple of questions about that. Your dealers, the
3188 dealers in your territory receive the 11-point lease letter which has been identified as CX-88-B, and with which I think you are familiar; is that correct?

A. Yes, sir.

Q. As a promotable dealer salesman, you are on what has been referred to variously as a bonus or quota system in connection with the sale of Goodyear TBA; isn't that right?

A. Yes.

Q. And that, of course, is an incentive to you as a promotable dealer salesman to sell Goodyear TBA to Atlantic service stations; is it not?

A. Yes.

Q. At one time, as I understand your record, this chronological record with Atlantic, you were promoting the sale of Lee tires, Exide batteries, and the accessory products—

A. (Interposing.) That is right.

Q. (Continuing.) —sold by Atlantic at that time?

A. That is right.

Q. And at that time did you tell Atlantic dealers that it was to their advantage to handle Lee tires, Exide batteries and so forth?

A. To their advantage. I don't understand what you mean. At that time I was selling Lee tires and tried to sell Lee tires, and I met resistance then with people who wanted to buy Goodyear, Firestone and something else.

Q. But you were attempting to promote the sale
3189 of Lee tires, Exide batteries and so forth?

A. Yes.

Q. Would it be fair to say that as a promotable dealer salesman that you would vigorously promote the sale of any brand of TBA which the Atlantic hierarchy sponsored? Would that be correct?

A. You say vigorously promote?

Q. You can strike the word "vigorously" if that is bothering you.

A. Yes, because I promote where I can.

Q. One question here about double-teaming with suppliers of products other than Goodyear. Are you referring to products like Du Pont?

A. Yes.

Q. And other name products?

A. Polishes.

Q. Which are in the Goodyear TBA line; is that correct?

A. Yes, sir.

Q. You gave some testimony with respect to Mr. Wyckoff and if my memory serves me correctly—and this may have been inadvertent on your part—but you did not describe all the products that you would see in his station. You said you would see Lee tires and Exide batteries.

A. Yes. I didn't go into accessories on anybody else.

Q. I am referring to tires.

3190 A. You may find a few Goodyear's.

Q. Well, he testified that he handles Goodyear tires.

A. He does.

Q. You didn't mention that on your direct. I just wanted to correct the record on that.

A. Yes. All right.

Q. And you weren't asked either if you went into Mr. Wyckoff's station, what identification you would see on his window and what sign you would see outdoors. Do you recall what you would see?

A. Yes, in the window you would find the current promotion.

Q. What brand? I am talking about the window valance.

A. You would find Goodyear.

Q. And the outdoor sign?

A. You would find a Goodyear sign on his light pole and you would find an Exide battery sign on his fence.

Q. On his fence?

A. Yes.

Q. But no Lee tires sign on his fence?

A. I believe he has a Lee tire sign on a tire rack right outside the bay door.

Q. Not on the fence, I think he testified.

A. Nothing on the fence, no, sir.

Q. You said, "Oh, yes, you would see a Goodyear window valance on his station." Are you implying that
3191 that would be on all of the Atlantic stations in your territory, where they have window valances?

A. Generally, yes.

Q. Do most of them have the big outdoor sign, the pole, Goodyear sign?

A. Yes.

Q. Isn't it true that the majority of your dealers stock Goodyear tires and stock Goodyear TBA?

Mr. Ballard: I would like to ask Mr. Kelaher to either ask one question or ask them one at a time. That is two questions.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

Mr. Kelaher: If there is any question about it, I will just ask him if it isn't true—

Hearing Examiner Kolb (Interposing): Ask about the tires and then ask about the TBA.

The Witness: It is hard to answer it just that way.

Mr. Ballard: May I also request that Mr. Kelaher clarify the use of the word "stock". We have had this problem before.

Mr. Kelaher: Would you—

Mr. Ballard (Interposing): That you clarify the use of the word "stock". I believe your question is, do they stock Goodyear TBA—

3192 Hearing Examiner Kolb: (Interposing.) I think the witness knows what stocking is.

Mr. Kelaher: Counsel used the word "stock" in his question that I am going through here, and I think we know what he means.

The Witness: Well, when it comes to tires, to be honest with you, I have never figured whether the majority were Goodyear. I guess they would be.

By Mr. Kelaher:

Q. I beg your pardon?

A. I guess the majority of my dealers stock Goodyear tires. On batteries, it favors the other way. On accessories, they lose our identification on the shelf.

Q. On your accessories a lot are name-brands, like Du Pont, Johnson's and so on?

A. Jobbers sell; so, I can't identify them.

Q. Although you do have Goodyear fan belts and other products of that type with Goodyear on them?

A. Yes, sir, but the majority of my dealers stock Gates fan belts.

Q. But you do have some dealers who do stock Goodyear fan belts, I presume?

A. Yes.

Mr. Kelaher: No further questions.

Mr. Ballard: Will your Honor indulge me just a

3193 minute?

Redirect Examination by Mr. Ballard.

Q. This is just a question of straightening out the record, Mr. Carlson. On cross-examination, when Mr. Kelaher was discussing with you the process of interviewing a new applicant—

A. (Interposing.) Yes.

Q. (Continuing.) —I believe you stated that an experienced man or a man who had had some business in the service station before, in a service station before, can do what he wants. Did you mean by that to imply that an inexperienced man can't do what he wants?

A. No, what I meant to say was the inexperienced man generally looks to us for advice to get him started. As a salesman for Atlantic, I would naturally suggest the Goodyear line. He has a right to refuse that if he has a preference for something else. But the experienced dealer who has used some other TBA line and knows it is confident in it, maybe I can't sell him the Goodyear line right then.

Q. Mr. Carlson, let me give you a piece of paper, if I may, and a pencil. Would you figure out here, first, let me ask you one question. In 1957 did you receive incentive pay based on TBA sales to your stations?

A. Yes.

Q. Don't tell me how much it was.

3194 A. No.

Q. And in the year 1957 you were also paid a salary by the Atlantic Refining Company?

A. Oh, yes.

Q. Would you figure out here—keep the figures to yourself, if you would—the percentage that your TBA incentive pay bore to your salary in the year 1957?

Mr. Kelaher: Off the record a minute.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The Witness: It amounts to 2.3 percent.

Mr. Ballard: I have no further questions.

Mr. Kelaher: May I see it?

The Witness: Certainly.

(Document handed to counsel.)

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Did you in 1957 receive approximately $200 as your incentive pay for the sale of Goodyear tires, batteries, and accessories?

A. That is right.

3195 Mr. Kelaher: Is that all?

Mr. Ballard: That is all.

Recross Examination by Mr. Kelaher.

Q. Mr. Carlson, as I understand the incentive system, that means that you had an increase in your Goodyear TBA sales in your territory over the preceding year; is that correct?

A. That is correct.

Hearing Examiner Kolb: Is that all?

Mr. Kelaher: That is all.

Hearing Examiner Kolb: That is all, Mr. Carlson.

(The witness was excused.)

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

This hearing is adjourned until November 3, for two weeks, at Washington, D. C.

Mr. Thompson?

Mr. Thompson: Of course, we will do it here if we can.

Hearing Examiner Kolb: We will set it for Washington. If anything comes up and you want to change it, you let me know.

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: The hearing is adjourned.

3197 Court Room No. 3
United States Court House
9th and Market Streets
Philadelphia, Pennsylvania

Met, pursuant to notice, at 10:00 o'clock a. m.

Following Testimony Taken At Philadelphia

3198 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Before we begin our proceedings, I would like to express our regret at the passing of the distinguished counsel for respondent Atlantic, Mr. Thompson, since our last hearing.

Mr. Fred Ballard: I appreciate that very much indeed.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Fred Ballard: If your Honor please, before calling my first witness, I would like to explain, as I have to counsel supporting the complaint, that the witnesses we propose to call this morning are dealers and ex-dealers, from the Atlantic dealers and ex-dealers, from the Philadelphia area, who were mentioned in the testimony taken before your Honor in this city I guess in July of 1957.

I don't know whether any of the names will be familiar. It was June or July. But it may make it easier if you have that much background on them in any event.

Hearing Examiner Kolb: Was that July 7?

Mr. Fred Ballard: They were during the hearing
3199 in June, 1957, at various places, and I think all the page references will be noted on the record as we get to them.

Hearing Examiner Kolb: All right.

EDWARD RINGENARY was called as a witness on behalf of the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Fred Ballard.

Q. Will you give the reporter your name and address?

A. Edward Ringenary, southeast corner of Board and Wallace is my business address.

Q. Mr. Ringenary, you are currently an Atlantic dealer, is that right?

A. Yes, sir.

Q. And I believe you lease the station at Broad and Wallace Streets in Philadelphia?

A. I do.

Q. How long approximately have you had that station?

A. It will be six years in February.

Q. In other words, you took that station in February—

A. February 17, 1953.

Q. Previously, did you have another Atlantic station under lease?

A. I had two others.

3200 Q. Where were they?

A. Glenwood and Cambria, I think, from 1939 to 1942, and after the war, from '45 to '52, I was at Fifth and Spring Garden.

Q. Mr. Ringenary, speaking of TBA, which, of course, means tires, batteries, and accessories, do you handle and sell tires, batteries, and accessories at your present station?

A. I certainly do.

Q. Where do you buy the greater part of those tires, batteries, and accessories?

A. From Elwood Kaiser.

Q. He, of course, is an Atlantic supply man, a Goodyear supply point?

A. Yes.

Q. What brand of tires and batteries does he carry?

A. Goodyear.

Q. Now, during—have you bought from him during the entire time you were at the Broad and Wallace Street station?

A. You mean was he a supplier then?

Q. Yes. Have you been buying during that period?

A. Yes.

Q. When you were at Fifth and Spring Garden Streets, did you buy from Elwood Kaiser?

A. Yes.

Q. During that time, what brand of tires was he carrying?

3201 A. Lee and Exide, and then they went Goodyear.

Q. Mr. Ringenary, do you also buy some TBA from other sources than Elwood Kaiser?

A. Sure.

Mr. Kelaher: Objection, your Honor, to the form of the question.

Hearing Examiner Kolb: The objection will be overruled. It is a preliminary question.

By Mr. Fred Ballard:

Q. You may answer.

A. Yes. I buy outside, from other suppliers.

Q. Could you name one or two?

A. Gaul-Derr & Shearer; Kit Auto Parts; Shankin Brothers; Broad Motors; Harry Crouse; Oldsmobile; Scott Smith Cadillac; any other automobile agency, too.

Q. Now, the things you buy from the automobile agencies, are they parts for the automobiles?

A. Yes, parts.

Q. We are interested primarily in tires, batteries, and accessories, and not so much parts.

A. Well, I buy other tires at J. P. Burke. That is U. S. Royal dealer. I get most of my recapping done there.

Q. Now, Mr. Ringenary, referring to the merchandise that you buy from these other suppliers, which you just testified about, do you display those in your station?

3202 A. Certainly.

Q. Are these visible there for the Atlantic salesman to see?

A. Right on the shelf.

Q. Has he ever told you to stop buying them?

A. No.

Q. Has he ever told you to remove them from your station?

A. No.

Q. Or to hide them?

A. No, sir.

Mr. Fred Ballard: Off the record.

(Discussion off the record.)

By Mr. Fred Ballard:

Q. Mr. Ringenary, do you know a salesman named Al Vick, from Philadelphia, a wholesale distributor?

A. Yes, sir.

Q. Excuse me, John J. Vick, from Philadelphia, a wholesale distributor.

A. I always knew him by Vick. I didn't know the first name.

Q. Now, June 25th of last year, Mr. Vick testified in these same proceedings, and he said, at page 711 of the transcript—the question was asked of Mr. Vick on page 710, the Hearing Examiner said that "there is pending a question as to instances. We have stopped him from going

ahead because he hasn't stated the definiteness of it, and he is now attempting to do that."

Mr. Vick then went ahead for a while and he finally
3203 testified in these words, and the words I am now about to use are Mr. Vick's. He said, "Another instance, I called on Mr. Ed Ringenary, Broad and Walnut Streets, and this was about two months ago"—that would have been in April 1957—"I called on him occasionally, and I asked him to buy Prestone, Exide, Kendall, and he says, 'Are you out of your mind? Why, they would cancel my lease immediately.' He says, 'They even have spooks in the territory.' I said, 'What do you mean by spooks?' He says, 'Why they have fellows coming in here and trying to offer merchandise at lower prices, just to see if you would buy from someone else.' He again stated he would even testify, if called, against the Atlantic Refining Company. He again wishes us a lot of luck and wished we would organize to fight against Atlantic, against the pressure of their purchases."

Mr. Ringenary, do you recall any such conversation as that?

A. Definitely not.

Q. Do you feel that Atlantic Refining would cancel your lease if you brought products from Mr. Vick?

A. I do buy outside and they don't cancel it.

Q. Is it your understanding that Atlantic has spooks in the territory?

A. Well, I never used that expression. I don't know where he got it.

3204 Q. Do you think Atlantic has people coming into your station, trying to offer merchandise at lower prices, to see if you would buy from them?

A. No.

Q. Did you ever tell Mr. Vick or anybody else that you wished he would organize to fight against Atlantic?

A. Absolutely not.

Mr. Fred Ballard: I have no further questions of Mr. Ringenary, but Mr. Kelaher, representing the Federal Trade Commission, will probably have some questions to ask you.

Cross-Examination by Mr. Kelaher.

Q. Mr. Ringenary, when you were at your first station, Glenwood and Cambria, was TBA an important factor in those days?

A. Well, I don't think Kaiser had the variety he has now. I don't know what you mean by "important". I think it was important with me.

Q. Was it as important then as it is, as it has been since World War II, insofar as income is concerned?

A. It was with me.

Q. You have always been—

A. (Interposing.) With me it was always important.

Q. Now, do I understand from the answer you gave
3205 me that beginning in 1939 you began to purchase from Mr. Kaiser, TBA?

A. Yes.

Q. And at that time was he handling Lee tires, Exide batteries, and a line of accessories?

A. I think he was. I wouldn't want to be—I believe it was Lee and Exide though.

Q. What caused you to purchase from Mr. Kaiser back at the outset of your career as an Atlantic dealer?

A. We always got service.

Q. Was that part of the Atlantic TBA set-up at that time?

A. I don't believe they had a set-up of TBA at that time. I would have to look back at my records. I don't think so.

Q. At that time was Mr. Kaiser also an Atlantic service station operator?

A. Yes.

Q. Was he recommended to you by Atlantic?

A. That I don't remember either.

Q. Now, going to your next station, Fifth and Spring Garden, was that station a larger station or more important station than the first one?

A. Yes, sir.

Q. Did that represent somewhat of a promotion for you in a sense?

A. Well, I came back after the war, in 1945, and I went to the company, and they offered me that spot, and I accepted it.

3206 Q. Now, in the beginning of 1945, at Fifth and Spring Garden, what TBA did you carry?

A. We had Lee and Exide.

Q. At that time did you also resume purchasing from Elwood Kaiser?

A. Yes, sir.

Q. At that time did he handle a line of accessories?

A. He had some items.

Q. He had expanded his line to some extent?

A. Yes.

Q. Did he handle Thermoid fanbelts and other products?

A. Well, I wouldn't want to name the products. I forget.

Q. Do you remember some of the brand names he handled?

A. I believe it was Thermoid.

Q. Now, how long did you continue to purchase Lee tires, Exide batteries, and accessories from Mr. Kaiser?

A. I continued until he switched to Goodyear.

Q. And that was, the record shows in this cases on or about March 1951; is that correct?

A. Yes.

Q. Now, in or about March 1951 did you attend a meeting

of Atlantic dealers concerning the change-over to Goodyear TBA?

A. I believe they had a dinner—I believe they had a luncheon meeting at the Ben Franklin Hotel. I am not positive.

Q. At that meeting was it announced that Atlantic 3207 was going to sponsor Goodyear TBA?

A. I don't remember that.

Q. Do you recall any of the circumstances leading up to your change-over from Lee, Exide, etc., to Goodyear TBA line?

A. May I have that question again please?

(The reporter read the pending question.)

The Witness: I don't recall any, because that is all with Kaiser, whatever I would take from Kaiser.

By Mr. Kelaher:

Q. Isn't it true that you were asked to sign a Goodyear associate dealer contract at that time, do you recall that?

A. No, I don't.

Q. Do you know whether or not you did sign such a contract?

A. I couldn't swear if I did or not.

Q. Well, the record in this case shows you did, for your information.

A. Well, I certainly don't remember it.

Q. Now, I am referring to CX-160-A and -F, for the record.

At the time of the change-over to Goodyear TBA, was a call made on you by an Atlantic salesman and a Goodyear salesman to discuss the matter with you?

A. I don't recall that either. I mean that is so far back.

Q. This is only 1951 I am talking aout.

A. That is seven years.

Q. At that time, prior to the change-over, what
3208 service station identification did you have in your station? I am talking about window valances and outdoor signs.

A. I think the only thing I had was an Exide clock, if I remember correctly.

Q. Did you have a Lee sign of any kind?

A. I don't remember. I believe we had a Lee sign nailed on the fence down at the far corner. I think that is all I had.

Q. Now, after the change-over to Goodyear TBA, was your service station identification changed to Goodyear? Was a window valance put in the station?

A. I think so, yes.

Q. Was a Goodyear sign put up outside the station?

A. I don't think they put any Goodyear signs at my Fifth Street station.

Q. Didn't you change to Goodyear TBA because Atlantic began to sponsor Goodyear TBA in 1951?

A. I would sell anything Elwood Kaiser would sell.

Q. And he was definitely a part of the Atlantic set-up with respect to TBA, wasn't he?

Mr. Fred Ballard: I object to that question, your Honor.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

Hearing Examiner Kolb: Objection overruled.

3209 The Witness: I really don't know what his set-up was, Atlantic, or any sort of contract, or anything else.

By Mr. Kelaher:

Q. Isn't it a fact that Elwood Kaiser was a designated supply point in the Atlantic-Goodyear TBA program?

Mr. Fred Ballard: I object again, your Honor. There is no showing this witness knows what the designated supply point in the Goodyear program is.

Hearing Examiner Kolb: He can testify to what he knows.

The Witness: I don't know. I would buy anything he sold. I don't know who tells him what to sell, but I would buy it.

By Mr. Kelaher:

Q. Isn't it a fact that Atlantic told you in 1951 that Elwood Kaiser was your supply point for Goodyear TBA?

A. I never recall any time that Atlantic told me anything that anyone was my supplier.

Q. You have no recollection of that?

A. No, sir.

Q. Now, in 1953, you moved to your present location at Broad and Wallace?

A. Yes, yes.

Q. Is that a larger station than the Fifth and Spring Garden?

A. Yes, sir.

3210 Q. And the location is much better, is it not?

A. In some respects.

Q. Broad and Walnut is right in the heart of the downtown area.

A. Broad and Wallace, you mean?

Q. Yes.

A. Yes, Wallace, 600 North on Broad Street.

Q. But that was, or is a larger station than the previous station?

A. Yes, sir.

Q. And does that in a sense represent a promotion?

A. Well, I hope it does.

Q. Now, when you went into the Broad and Wallace station, were there Goodyear window signs up and a Goodyear sign outside?

A. No, the whole station was torn down and rebuilt, when I took it over.

Q. So it was a newly built station?

A. I worked out of a shack.

Q. And then when the station was built, what identification was on the station? Was it Goodyear window valances?

A. Oh, yes, Goodyear.

3211 Q. And Goodyear outdoor signs?

A. Yes, but I have taken them down.

Q. You have taken the outdoor sign down?

A. (Nodding yes.)

Q. Why was that?

A. I think I have better signs, I took them down several years ago. I use them for oil since, anything I run a special on.

Q. But you have the Goodyear window valance?

A. Yes.

Q. Now, who became—maybe you already testified on this—Mr. Kaiser is still your Goodyear TBA supplier?

A. Yes, sir.

Q. So reviewing your testimony, your principal supplier through all of your years as an Atlantic dealer has been Elwood Kaiser?

A. Yes, sir.

Q. Now you stated on direct examination that you also purchased some TBA from other jobbers besides Kaiser. Do you recall that testimony?

A. Yes.

Q. What do you purchase from Broad Motors, for example, or was that included in your answer with respect to hard parts?

A. Well, I would purchase anything that we may
3212 be short of, because we can run across the street and buy it.

Q. Do you purchase tires from them?

A. No, sir.

Q. Batteries?

A. No, sir.

Q. What type of accessories do you purchase?

A. Anything that would be a genuine part for Ford cars, or well maybe a radiator hose, if I was out of it, we could run across and get it.

Q. Is it mostly what are known in the trade as hard parts?

A. Yes, genuine parts; yes.

Q. Now you also mentioned a firm whose first name is Shankin. I missed the last part of it. Do you purchase tires from Shankin?

A. No.

Q. Batteries?

A. No.

Q. Do you purchase hard parts from Shankin?

A. Well, the accessories part of it I purchase from him would be like when he would have a special on Rizlone or CD2 or something like that.

Q. What is Rizlone?

A. It is a motor oil additive.

Q. And CD2 is also?

A. The same, yes.

3213 Q. So your purchases are limited from Shankin?

A. And then I get just about all my janitorial supplies from him, cleaning supplies, and that is basically what he is interested in selling. And I also get my, I get my brake fluid off him, too.

Q. Now Kitt Auto Parts, do you buy tires from him?

A. No, he doesn't sell tires.

Q. Batteries?

A. No.

Q. What do you buy from Kitt?

A. Just parts.

Q. Hard parts again?

A. Yes.

Q. That gets us down with respect to TBA to Gaul, Derr & Shaerer. Do you buy tires from him?

A. No.

Q. Batteries?

A. The only time I would ever have an occasion, it would be a very odd battery, that Kaiser wouldn't have, some odd truck or maybe some motor boat or yacht battery or something.

Q. So it would be just sporadic purchases?

A. Yes, in that line. But I bought a lot of Prestone from him.

Q. Now, what else do you buy from that firm?

3214 A. I do the same thing with Gaul Derr & Shaerer like I said about—if Kaiser don't have it, I will go there—when I run out of Prestone, I will go there, and I get all my—the same thing with mufflers and tail pipes, if Kaiser don't have it, I get it there.

Q. So you just purchase on a fill-in basis from Gaul Derr & Shaerer?

A. On some items.

Q. And otherwise you purchase nothing from him, is that right?

A. I wouldn't say several hundred dollars a month is nothing.

Q. Maybe we are not—I am not following your answer. Let's confine this to accessories. Now do you just purchase what are known in the trade as accessories, on a fill-in basis from Gaul Derr and Shaerer?

A. What are you going to class as accessories, motor oil additives or—

Q. Well, fanbelts, hose, chemicals, polishes.

A. We get fanbelts, hoses, motor oil additives, like Rizlone, when they have a good deal; Prestone, tail pipes and mufflers, which is an accessory.

Q. However, as I understood your testimony, your primary TBA supplier is Mr. Kaiser?

A. Yes, sir.

Q. Do you attend Atlantic dealers meetings from time to time?

3215 A. When it is an advantage to me, I go.

Q. Now at those meetings, have you heard Goodyear TBA discussed by Atlantic?

A. Well, when they would come out with a new item to promote or something along those lines.

Q. And are there Goodyear personnel present at such meetings from time to time?

A. It has been a long time since I attended one where there was. I don't recall.

Q. Now, with respect to the testimony of Mr. Vick, the Philadelphia wholesale distributors, Mr. Vick has called on you from time to time, hasn't he, over the years?

A. Well, up until the time this letter—when was that letter dated?

Q. Which letter are you referring to?

A. His te timony that was just read here, was that June '57 or something?

Q. June '57.

A. Yes, up to that time I used to see him about every week, and he didn't call on me to sell, he would leave his car to go across the street to eat.

Q. And isn't it true that he solicited your business for such items as Prestone and Exide batteries?

A. I don't ever recall.

Q. Did he call on you for a number of years and

3216 never asked you to buy anything?

A. I did buy Turtle wax from him one time.

Q. So he did solicit your business from time to time?

A. I guess you would say he did.

Q. When did you first learn that he had testified about you in this case?

A. Last winter.

Q. Well, the testimony was in June 1957, and you learned that winter he had testified about you?

A. I didn't know he testified. I heard he wrote a letter about me.

Q. And now after that—

A. And it was a surprise to me, because I had wondered why he stopped coming in to leave his car to go eat.

Q. Did you ever have any conversations with him after that time?

A. No, he has ignored me, avoided me, in fact, and avoided men of mine, and we wondered why.

Q. Was any—was this matter called to your attention by anyone, after his testimony in June '57?

A. Well, like I said, I was told he wrote a letter, I was told that last spring by our lawyers.

Q. By your lawyers, you mean lawyers for—

A. Mr. Ballard.

I didn't know he had testified.

3217 Q. Now, are you stating that you never had—let me ask you this: Have you ever had any conversations with Mr. Vick concerning your purchases of Goodyear TBA?

A. To my knowledge, I didn't. This thing here today is all new to me.

Q. This is the first time—you say that over the years—how many years have you known Mr. Vick?

A. Well, only since I think I went to Broad and Wallace.

Q. And you have been there since 19—

A. 1953.

Q. So he has been calling on you, at the time of his testimony, has been calling on you for approximately two years—or four years, is that right? And you say during

all that time you never discussed your purchases of Goodyear TBA with him?

A. Absolutely not.

Q. Did you ever give as a reason for not purchasing from him the fact that you were buying primarily from Mr. Kaiser?

A. As a dealer, as a business man, we may often say "I am satisfied where I am buying, I don't want to bother with anyone else."

Q. Isn't it true what you began to say in your answer, as an Atlantic dealer you were buying from Mr. Kaiser? Is that what you told him?

A. Not necessarily, No.

3218 Q. Not necessarily, but it is possible?

A. Well, I mean Atlantic is fresh in your mind here. As an independent business man, I feel I can buy anywhere, and I think I do.

Q. Well, was an independent business man, you say you can buy anywhere, but during—your testimony appears that during the 19 years as Atlantic dealer, you followed the Atlantic TBA program down the line?

A. Why should I change? If I am satisfied with the service, price, and I am making money?

Q. Did Mr. Vick ever call your attention to the fact that his prices on Prestone polishes were lower than Mr. Kaiser's price—on any polishes? I think his testimony was as to Johnson's polishes. Do you carry those?

A. Well, Goodyear carries it, but I don't like it, I don't carry it.

Q. Did Mr. Vick ever say, did he ever indicate his prices were lower than the prices of certain chemicals in the Goodyear line?

A. Well, he might have said so. I never asked him to prove it. I couldn't say if they were or not.

Q. But if he did, you would still have purchased from Mr. Kaiser, is that right?

A. Definitely.

Mr. Kelaher: No further questions.

3219 *Redirect Examination by Mr. Fred Ballard.*

Q. Have you found, Mr. Ringenary, over the years, Mr. Kaiser's prices to be competitive with those of other TBA suppliers?

A. He over-extends himself on being competitive. All we need to do is call him and tell him that we were offered something, and he will definitely look into it.

Q. Does he meet the price then, if he finds—

A. If it is a legitimate jobber, he will meet the price, if it is not just a peddler that bought something at a fire sale, he will meet the price.

Q. Do you find his delivery and service satisfactory?

A. There is none better.

Mr. Fred Ballard: I don't think I have any more questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

ALFRED GODINO was called as a witness for the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name to the reporter.

The Witness: Alfred Godino.

3220 *Direct Examination by Mr. Francis Ballard.*

Q. Will you give us your address?

A. 37 Madison Avenue, Philadelphia 27, Pennsylvania.

Q. Mr. Godwin, you presently operate a station for Sinclair, is that right?

A. Yes.

Q. Specifically, with reference to June 1952, through February 1955, did you have an Atlantic station?

A. Yes, I did.

Q. And were you a lessee in the Atlantic station?

A. Yes.

Q. Could you tell us where it was located?

A. Belmont and Jefferson Streets, Belmont Hills.

Q. That is what is also known as Manayunk?

A. West Manayunk.

Q. You left the Atlantic station in February, 1955?

A. Yes.

Q. When did you start with Sinclair?

A. June of 1957.

Q. And what did you do between February of 1955, and June of 1957?

A. I operated an Esso station at Levering Mill Road and Mill Road and Belmont Avenue. Bala-Cynwyd.

Q. Mr. Godino, those three stations that you have
3221 mentioned are all very close to one another?

A. Yes, they are.

Q. Within a question of blocks?

A. I would say so.

Q. Now I am going to ask you a series of questions which goes only to the time you were with Atlantic, has nothing to do with the Esso station or Sinclair station. While you were with Atlantic, in Belmont Hills there, what type of tires did you stock?

A. Goodyear tires, and Lee tires.

Q. Where did you buy the Lee tires?

A. From the Lee Company, in Bryn Mawr.

Q. The Goodyear tires you got from Ernie Miller?

A. Yes.

Q. And he was the Atlantic supply man?

A. Yes.

Q. Where did you get your batteries?

A. Well, I bought them from him, also.

Q. From Miller?

A. Yes, and some from another Goodyear distributor.

Q. What was the name of that other Goodyear distributor?

A. John Gabriel.

Q. How about the accessories, where did you get those?

A. Well, I bought accessories from Miller, and from Maxwell Auto Parts Company, and Aviation Auto Parts.

3222 Q. Pretty generally, from several houses?

A. Yes.

Q. Specifically, Mr. Godino, with reference to those Lee tires you mentioned, where did you store them?

A. On the shelf, with the rest of the tires.

Q. Were they openly displayed?

A. Yes.

Q. Did Atlantic ever criticize you about about carrying those Lee tires?

A. No.

Q. Did they ever tell you to stop buying them or to hide them?

A. No.

Q. Did they tell you to remove them from the station?

A. No.

Q. Mr. Godino, do you know an outfit called Suburban Auto Parts?

A. Yes, I know the name of the company.

Q. Do you know a fellow named George Stanley Drew Walker?

A. No, I don't, never met the man, I wouldn't know him if I saw him.

Q. You stated, sir, you do not know George Stanley Drew Walker?

A. No.

Q. He testified, in this proceeding, in June of 1957 3223 —that would be a little over 18 months ago—and he stated in his testimony that he was a salesman for this Suburban Auto Parts, and that is the concern you know?

A. (Nodding Yes.)

Q. Now, sir, I am going to read to you a question and answer from the record and this is, for the record, at page 1,034. These are questions which were put to Mr. Walker by the attorneys, and his answers.

> "Question: I am asking you for a specific statement by a specific operator. Can you recall any other Atlantic operator that made this specific statement to you?"

To that question Mr. Walker answered:

> "I can recall some years ago, when Al Godino was operating the station on Belmont Avenue, in Belmont

Hills, saying he couldn't buy accessories from you, even if he could get them cheaper."

And then the attorney asked him this question:

"Question: And did he tell you why he couldn't buy them from you?"

And Mr. Walker answered:

"Because he said that is his contract with Atlantic, he would have to get these accessories through their approved source."

Now, Mr. Godino, you say you do not know Mr.
3224 George Stanley Drew Walker?

A. No, I don't know him.

3225 Q. Do you know any other salesman for Suburban Auto Parts?

A. No.

Q. Did you ever make the statement which was attributed here to you to any salesman for Suburban Auto Parts?

A. No, I don't remember. It has been so long ago and so many salesmen has come in the place. I don't remember. I don't think I did. I am almost sure I didn't.

Q. Let's not worry about that as much as this question: Did you, in fact, have a contract with the Atlantic Refining Company that you would buy your accessories through the approved source?

A. Oh, no, I didn't.

Q. Were you, in fact, free to buy accessories wherever you chose?

A. Yes, I was.

Mr. Francis Ballard: That is all.

Cross-Examination by Mr. Kelaher.

Q. Mr. Godino, you went into the Atlantic station in June 1952 and remained there until February 1955 according to your testimony. Is that correct?

A. Yes, sir.

Q. When you went into the Atlantic station, why did you begin to purchase TBA from Ernie Miller?

A. Why did I begin?

3226 Q. Yes.

A. Well, he was our distributor.

Q. He was the Atlantic distributor?

A. That is right.

Q. And wasn't and didn't an Atlantic salesman or representative acquaint you with the fact that Mr. Miller was your supply point, that you would buy your TBA from him?

A. Well, he was our distributor and we were supposed to buy TBA off him, batteries, accessories, and things like that.

Q. And that is what you did?

A. Not all of it. I bought some outside.

Q. As I understand your testimony on direct examination, you bought tires, batteries, and accessories from Miller, is that right?

A. Yes, I did.

Q. And wasn't Mr. Miller your principal TBA supplier?

A. Yes, he was.

Q. When you went into your Atlantic station, were the Goodyear window valances already up and Goodyear outdoor signs already up in your station?

A. When I went where?

Q. Into the Atlantic station in '52.

A. Yes, they were.

Q. Now, I would like to direct your attention to Mr. Walker's testimony again. According to Mr. Walker's

3227 testimony, he called on you in the early part of 1953

when he first started on the job. Now, isn't it possible that he may have called on you at that time to solicit your business?

A. Yes, it is possible, but I don't remember.

Q. You just don't remember him. Now, isn't it true that there were many jobber salesmen who called on you while you were at the Atlantic station?

A. Yes.

Q. And you don't remember all those either, do you?

A. I remember the ones I purchased from, like Maxwell, and Aviation. I remember those people, those I did business with.

Q. But you don't remember the ones you didn't purchase from, do you?

A. They might have come there and wanted me to purchase from them, and I told them I wasn't interested or had a couple of suppliers to supply me.

Q. And the fact remains there were jobber salesmen in addition to Mr. Walker whom you don't remember?

A. There were salesmen coming in practically every day trying to sell you something.

Q. So it is entirely possible he did call on you?

A. Yes, but I don't remember.

• • • • •

3228 By Mr. Kelaher:

Q. Is it your testimony that you do not recall sign-
3229 ing a contract concerning the purchase of accessories with an approved, from an approved source?

Mr. Francis Ballard: I object to the question. Once again his testimony is that he did not sign a contract with Atlantic Refining Company, that he buy accessories through the approved source.

Hearing Examiner Kolb: You can ask him whether he remembers that or not. The objection will be overruled. It is cross-examination.

The Witness: I remember signing a lease for the building. That is all.

By Mr. Kelaher:

Q. Do you remember signing a Goodyear associate dealer contract?

A. No, I don't.

Q. Now, it is entirely possible you signed such a contract, is it?

A. That is too far back for me to remember now. I don't know whether I did or not. I know I signed a lease for the service station.

Mr. Kelaher: May we have a minute until I check the record, your Honor?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Mr. Godino, I show you Commission's Exhibit 3230 44-E, which is a Goodyear associate dealer agreement, with a space for a dealer's signature, and ask you if you recall signing any such agreement?

A. No, I don't. I don't recall at all.

Q. It is possible, however, you may have signed an agreement of this type?

A. I might have, but I don't remember.

Mr. Kelaher: No further questions.

Mr. Francis Ballard: Thank you sir.

(Witness excused.)

Mr. Fred Ballard: Your Honor, could we have a short recess at this time?

Hearing Examiner Kolb: Yes.

(Short recess.)

Hearing Examiner Kolb: The hearing will be in order.

ROBERT C. PROVOST was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Robert C. Provost, 116 Apel Avenue, Oreland, Pennsylvania.

3231 *Direct Examination by Mr. Fred Ballard.*

Q. Mr. Provost, you are, I believe, an Atlantic lessee; is that right?

A. Yes, sir.

Q. What is the location of service station?

A. Hunting Park and Whitaker, Philadelphia.

Q. How long have you been in that station, sir?

A. Five years, this July.

Before you went into that station, had you had any experience in operating a service station?

A. No, sir.

Q. Did you go to the Atlantic dealer training school before you went into that station?

A. Yes.

Q. In that school did they tell you that Atlantic sponsored the Goodyear brand of tires, batteries, and accessories?

A. Yes, sir.

Q. When you came out of training school, and went to this station, did your Atlantic salesman introduce you to a Goodyear supplier of TBA?

A. Yes, he did.

Q. What was his name?

A. Harvey George.

Q. Have you bought TBA from that supplier since?

3232 A. Ever since then.

Q. Do you find Mr. George's service is satisfactory?

A. Very Good.

Q. Prices?

A. Very fair.

Q. How about his credit terms?

A. Excellent.

Q. Have you on occasion bought TBA from other suppliers?

A. Yes, I have.

Q. Could you name one of them?

A. Target Auto Supply.

Q. Has Atlantic ever criticized you for buying TBA from other suppliers?

A. No, sir.

Q. Do you feel you can buy TBA wherever you want?

A. Yes, I do.

Q. Do you know a supplier named Philadelphia Wholesale Distributors?

A. I know of them.

Q. Has a salesman from that supplier ever called on you?

A. Yes, he did.

Q. Do you know whether the salesman's name was John J. Vick?

A. I do not know.

Q. Now, as I have previously told you, Mr. Vick, a salesman from that supply house, testified in these proceed-

3233 ings last summer. It was June 25 that he testified here. He was questioned by a lawyer representing the Federal Trade Commission, and the question was, "Do you recall any other instances?" And this is the answer Mr. Vick gave, and I am using Mr. Vick's words here: "Mr.

Bob Provost, Sr., Whitaker and Hunting Park Avenue"—that is you—he says, "I went in to offer him or solicit him DuPont anti-freeze business, and he says, 'What do you want, the roof to cave in on me. I would lose my lease immediately.'"

Now, sir, do you feel you would lost your lease if you bought DuPont anti-freeze from Philadelphia Wholesale Distributors?

A. I don't know whether I would lose my lease if I bought from Philadelphia Wholesale. However, I have been buying for about four years DuPont anti-freeze.

Q. Who have you been buying it from?

A. This year we bought it off of Auto Gear.

Q. Auto Gear and Parts; is that the full name?

A. Yes, sir.

Q. Now, Vick went on and says: "So, I asked him if he did any business with the jobbers, and he says, 'Very little'." Now, this is what Vick is quoting you as saying: "'The only time I give any business to a jobber is when I am out of a certain part that Atlantic doesn't carry and I will call on a jobber'."

3234 Is that substantially your business practice?

A. No.

Q. You do give—

A. (Interposing.) Not substantially, no. If I might say, we bought our anti-freeze off Gaul-Derr & Shearer last year. We didn't even buy any off Atlantic. Atlantic was selling Prestone last year.

Mr. Fred Ballard: Will you note for the record that the testimony to which I referred is on page 713 of the record.

I have no further questions, Mr. Provost.

Cross-Examination by Mr. Kelaher.

Q. Mr. Provost, you began your station operation as an Atlantic lessee dealer in July 53?

A. Yes, sir.

Q. I am not clear on whether you are still a lessee dealer or not.

A. I am still a dealer, yes, sir.

Q. Now, at the time you wanted to become an Atlantic dealer, were you contacted or did you contact someone in the Atlantic organization?

A. No, I went to Atlantic Refining Company themselves, 260 South Broad Street, and asked for the outline on getting a station.

3235 Q. And then were you screened along the line by various Atlantic personnel?

A. Well, all I know is they got me a job to wait, to cover the time when the next training class would start, and I worked at an Atlantic station for about four months and then I went to dealer school.

Q. Prior to that time, or about the time—let's take it up to the training school: You were advised that Atlantic was sponsoring the Goodyear TBA line, were you not?

A. Up until the time I went to training school?

Q. In the school.

A. In the training school, yes, I think at the end of the last week they told us they were sponsoring Goodyear TBA.

Q. Now, when you moved into your station, did you move into a new station or did you replace another dealer?

A. I moved into a new station.

Q. When you moved in, did they already have the Goodyear window signs up, do you recall, or did they come later?

A. Honestly, I don't remember.

Q. They are there now, are they not?

A. I know the window trim wasn't up, because I remember I had to take the window display out after I was in. I don't know about the sign outside. I don't think it was, but I can't say for sure.

Q. They are up there now?

3236 A. Yes.

Q. And they were placed in there shortly after you arrived, if they weren't there at the time?

A. Yes, sir.

Q. When you were told that you were going to be the dealer at your station location, weren't you also told that your Goodyear TBA supply point would be Harvey George; is that correct?

A. No, I wasn't told. I was introduced and they helped me with the credit out with Harvey George. I went to see him.

Q. You were introduced by an Atlantic salesman?

A. Yes, sir.

Q. Who was he?

A. Mr. Hoffman, John Hoffman.

Q. Is he still your Atlantic salesman?

A. No.

Q. Who is your present salesman?

A. Douglas MacDonald.

Q. Now, at the time you entered the station, did you have any, make any loans from Atlantic?

A. Just temporarily, and then I made—it is an equipment contract for merchandise that was a very short time —about two weeks.

Q. You borrowed some money—

A. (Interposing.) They lent me money for one year for equipment. That was the loan. But not for TBA.

3237 After Harvey George stocked the station, there was about a two-week time of credit, straightened out after that.

Q. But your initial stock was from Harvey George of TBA?

A. Yes.

Q. And since that time you have purchased tires from Harvey George; is that correct? Goodyear tires?

A. Yes, sir.

Q. Are all of your tires purchased from Harvey George?

A. No, sir.

Q. Do you purchase on a fill-in basis from others?

A. We don't purchase any recap merchandise from Goodyear.

Q. Other than recap.

A. Strictly from Harvey George.

Q. Your new tires are from him stirctly?

A. Yes.

Q. And are your batteries strictly from Harvey George?

A. Yes, sir.

Q. And your principal accessories' supplier is Harvey George; is that correct?

A. Chemical-wise, I would say.

Q. Do you purchase Goodyear fanbelts?

A. Yes.

Q. And other items in addition to chemicals?

A. Hoses, tires, tubes, batteries.

Q. Now, with reference to Philadelphia Wholesale
3238. Distributors, you testified that you do recall a salesman from that company calling on you?

A. Yes, I do recall the salesman.

Q. And did he give you his card or mention his name?

A. He probably did, but I don't remember the man's name.

Q. Could you describe him?

A. No, sir.

Q. Isn't it a fact that the salesman from Philadelphia

Wholesale Distributors solicited your DuPont anti-freeze business?

A. I don't really remember what we talked about at that time. I just don't remember. I do believe he was there, I remember some of the conversation, we discussed it with the attorney.

Q. And let's have the conversation. You say you discussed this—

A. (Interposing.) Something about blowing the roof off the place, because that is about all I remember, because that is pretty well a stock answer of mine.

Q. So you did make that statement to him?

A. I probably did say that to him.

Q. You probably did say to him, "What do you want, the roof to cave in on me?"

A. I probably did.

Q. And "I would lose my lease immediately"?

A. I don't know whether I said that.

3239 Q. But you could have?

A. I don't think I said that. I might have had a bad day and wanted to get rid of him, but I don't think I did.

Q. Apparently you have said it on occasions?

A. No, sir.

Q. Didn't he also offer you a Johnson's polish at a price $4.00 per case lower than the price of Harvey George? Do you recall that?

A. I don't remember.

Q. And isn't it also true, from your testimony, that your principal TBA supplier is Harvey George?

A. Absolutely.

Mr. Kelaher: No further questions.

Recross Examination by Mr. Fred Ballard.

Q. On occasion has Harvey George extended credit to you?

A. The first year I was in business I got in a little hot water, lost a lot of money, and he sure did, he helped me over the winter.

Q. Would you mind giving the amount he extended at that time?

A. It was roughly in the neighborhood of about $1200 at that time. It must have been the following January, after I started. I had chains, snow tires, and things like that I had not moved out, and he said, "Don't worry about
3240 them, keep them and try to move them, and if you do, okay, and if you don't, okay, too."

Mr. Fred Ballard: I have no further questions.

Mr. Kelaher: Nothing further.

Hearing Examiner Kolb: That is all.

(Witness excused.)

3241 DONALD ELKO was called as a witness on behalf of the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Will you give the reporter your name and address.

The Witness: Donald Elko, 1133 String Street, Sharon Hill.

Direct Examination by Mr. Francis Ballard.

Q. Mr. Elko, you are an Atlantic lessee?

A. Right.

Q. Could you tell the Examiner where your station is?

A. It is at Chester Pike and Clifton Avenue, Sharon Hill.

Q. When did you go into that station?

A. January 21, 1956.

Q. '56 or '57?

A. '57, I am sorry.

Q. Am I right in saying that is the only station that you have operated, as a lessee for Atlantic?

A. Yes, sir.

Q. You have worked in other stations before as an employee?

A. Yes, sir.

Q. Before you went into that station, or when you
3242 took it over, did you go up to a training school with Atlantic Refining?

A. Yes.

Q. How long was that school?

A. Five weeks.

Q. And actually I think it is true that when you were in the school, you were also in the station?

A. Yes.

Q. Now, did anybody from Atlantic suggest to you that Ed Paris was the Goodyear distributor in your area?

A. I already knew that before I took the station. He is a cousin of mine.

Q. And had you worked as an employee in this very same station you now have?

A. Yes, the fellow that had it just before I took over.

Q. Ed Paris is your source of TBA?

A. Yes, sir.

Q. How is he on price?

A. As good as the others.

Q. How about his credit?

A. Very good.

Q. Mr. Elko, can we stop there for a moment—don't

answer this question unless you choose to—but you have had a good deal of credit from Mr. Paris?

A. Very good, large sum.

3243 Q. It was quite a large sum?

A. Quite a few thousand dollars.

Q. How about Mr. Paris' service?

A. Very good.

Q. His delivery?

A. Very good.

Q. You are happy with him?

A. Yes, sir.

Mr. Kelaher: Your Honor, I am going to permit this cross-examination to go on, but I think when we get along a little further, I will start objecting.

Hearing Examiner Kolb: Try not to lead the witness too much.

Mr. Francis Ballard: All right, sir.

By Mr. Francis Ballard:

Q. Do you, or do you not, buy tires, batteries, and accessories, from persons other than Mr. Paris?

A. I have bought, yes.

Q. Could you name the companies from whom you have bought, or company, and the products which you bought from them?

A. I bought some batteries off V. J. Auto Parts. I bought tires off Albert Tire Company, Harrison Leonard, in Chester, Paris, in Chester Motor Parts, Prospect Park.

Q. Well, motor parts we are not keeping them in this.

A. You are speaking of tires and batteries?

3244 Q. Yes, tires, batteries and accessories. Are those purchases which you have just told us about of tires and batteries, are they for stock or just to supply a specific order from a customer?

A. Mostly orders.

Q. Do you or do you not buy Bardahl?

A. I buy Bardahl, yes.

Q. Who do you buy that from?

A. Off the Bardahl man himself.

Q. Do you or do you not buy Bars Leak?

A. Yes.

Q. I want to pause for a moment on that Bars Leak. Do you have any Bars Leak in your station now?

A. Yes, it is on the shelf.

Q. Has anybody from the Atlantic organization ever told you to take it off the shelf?

A. No, never.

Q. How about the Bardahl, where is that?

A. Right on the shelf and I have it on the stand out front.

Q. That is an outdoor rack, you mean?

A. Yes.

Mr. Kelaher: Mr. Examiner, I think at one of our earlier hearings, counsel for Atlantic raised objection to questions concerning Bardahl, stating it was not a TBA product. I would like to call that to counsel's attention.

3245 Mr. Fred Ballard: Your Honor, we have had this discussion a number of times, and as I understand it, the fact is that Bardahl is an oil additive, and I think there is no comparable item in the Goodyear sponsored line, I believe it would unhesitatingly be classified by any dealer as a TBA product.

Mr. Kelaher: All I know is I wasn't able to ask any questions about it.

Hearing Examiner Kolb: Well, there is no comparable product in the Goodyear line.

Mr. Fred Ballard: I believe that is true, your Honor. I will refer to any Goodyear colleagues on that point.

Mr. Ingraham: I believe that is true.

By Mr. Francis Ballard:

Q. Mr. Elko, leaving Bardahl, as a result of this interchange, completely out of the discussion, have you ever been criticized by anybody from Atlantic for carrying non-sponsored, non-Goodyear TBA?

A. No.

Q. Have you ever been told to stop buying?

A. No.

Q. Ever been told to get it out of the station, or to hide it?

A. Never.

3246 Q. I think you mentioned earlier in your testimony, Mr. Elko, the firm of Harris and Leonard. Is that right?

A. Yes.

Q. Have you ever made any purchases from Harris and Leonard?

A. Yes, I have.

Q. What of?

A. Mostly recapped tires.

Q. Do you still buy recap tires from Harris and Leonard?

A. Yes. I have some on stock now from them.

Q. Have you or have you not bought any batteries from Harris and Leonard?

A. No, I never have, they never approached me on it.

Q. You say they never approached you for batteries?

A. No.

Q. Have they ever approached you for the sale of new tires?

A. No.

Q. Do you know a gentleman named Joseph Marabella?

A. Yes.

Q. He is connected with V. J. Auto Parts, is that right?

A. Yes.

Q. Do you buy from V. J. Auto Parts?

A. Yes, I do.

Q. What do you buy from V. J.?

3247 A. I buy repair work, brakes, drums, wheel cylinders, volume tank regulators.

Q. Do you buy any Bars Leak from V. J. Auto?

A. Bars Leak, windshield wipers.

Q. Now you said you knew Mr. Marabella. Does he call on your station?

A. He has a salesman, he calls on me.

Q. Not Mr. Marabella?

A. No, he has called twice, when the salesman was on vacation.

Q. How often does the salesman call?

A. Once a week.

Q. You say Mr. Marabella called on you twice?

A. Yes.

Q. Mr. Elko, Mr. Marabella testified in this case at page 931 of the record, and what I am going to do now is read you what he said, and then ask you a couple of questions about it. In earlier questions and answers your name had come up, and at page 931 Mr. Marabella said:

"Very frankly, on that particular account"—referring to you—"It is covered by our other salesman, but I myself had a personal contact, personal solicitation, on TBA items, namely Delco batteries, in January of 1957. That took place in Don Elko's station. I solicited
3248 along with the Delco battery man his battery business, and he just through up his hands, he said 'Joe, I would like to buy the batteries from you, but you know what I have been running into and what every other Atlantic man has been running into, I cannot put anything but a Goodyear battery in this place. If I don't have a battery, I would be more than glad to buy it from you, because I know you can give me the service and the price is right'."

Do you recall that conversation?

A. No.

Q. Have you had any conversations with Mr. Marabella concerning Delco batteries?

A. No, never.

Q. Has he come to your station in company with a representative of the Delco Company?

A. No, never.

Q. And you say Mr. Marabella has only been in your station twice?

A. Yes.

Q. Mr. Elko, do you feel free, if you choose to, to put Delco batteries in your station?

A. Yes.

Mr. Frances Ballard: No further questions.

3249 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Elko, you stated you worked as an employee in an Atlantic station, prior to becoming an Atlantic lessee dealer. Where did you work and for how long?

A. I worked in two stations. Firstly, I worked at Johnny Franca's station, on McDad Boulevard and Collingdale Avenue, in Collingdale. I worked part-time there for about a year; off and on, with Johnny.

Q. Beginning when?

A. Well—

Q. Was it just prior to the time—

A. No, when I first come out of the service, about 1954, to about 1955. Somewhere in April, I would say, I started with him. I had just come out of the service.

Q. Then after that did you work as an attendant at that station?

A. Yes.

Q. Then did you go to another Atlantic station?

A. I went to a Gulf station first, and then over to another Atlantic.

Q. What was the name of the second Atlantic station that you want to?

A. Jack Farragher.

Q. How long were you at that station?

3250 A. Eight months.

Q. Was that immediately prior to the time you became a dealer?

A. Yes.

Q. And you moved—your present station location is at Chester Pike and Clifton Avenue, Sharon Hill?

A. That is the station I worked at with Jack Farragher, that address.

Q. Did Mr. Farragher—you succeeded him as the lessee dealer there?

A. Yes.

Q. Prior to Mr. Farragher, weren't there several other Atlantic dealers who had had that station?

A. Yes.

Q. Would you name some of those?

A. Fred Crumb, Chambers, Powers.

Q. So there were four dealers in that station, including yourself, in a period of four or five years, would you say?

A. Yes.

Q. Now because of your relationship, as a cousin to Mr. Parris, and because of your employment by Atlantic, you were well aware that Mr. Parris was supplying all of the Atlantic stations with Goodyear TBA, in that area; isn't that right?

A. Yes.

3251 Q. So that when you became a lessee dealer, in Sharon Hill, you knew that you would automatically begin to purchase your TBA from Mr. Parris, didn't you?

A. Yes.

Q. When you went into your Atlantic station, were the Goodyear window valances up at that time?

A. Yes.

Q. Was the Goodyear outdoor pole sign up at that time?

A. Yes.

Q. And was your initial stocking order sent in by Mr. Parris? Did you contact Mr. Parris or did he contact you, or how did the Atlantic salesman arrange to have—

Mr. Francis Ballard: Your Honor, I think there are three questions that have just been asked.

Mr. Kelaher: I am attempting to clarify a question.

Mr. Francis Ballard: Question by question would help the witness, I think. Could we have a ruling on the form of that question?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: (Continuing.) —your initial stocking order get into the station?

Hearing Examiner Kolb: The objection will be overruled.

3252 By Mr. Kelaher:

Q. Or did you simply just—let me ask it this way: Was the station already stocked with TBA when you went in as a lessee dealer?

A. Yes, it was stocked.

Q. And it was stocked with Goodyear TBA, wasn't it?

A. Yes. There was other things, other than Goodyear TBA in there.

Q. But the principal stock was—

A. The principal stock, yes.

Q. When you went into the station, did you have a loan from Atlantic?

A. Yes.

Q. How much was that?

A. $3,000.

Q. Was part of that loan used for purchasing TBA, Goodyear TBA?

A. No.

Q. None of it?

A. (Nodding No.) I am sorry, I think I misunderstood you.

Q. Was any of the $3,000 used by you to purchase Goodyear TBA?

A. No, that was already, it was stock in the station.

Q. Would you clarify that?

A. It was used against the stock in the station.

Q. In other words, there was a certain amount, a
3253 certain dollars worth of stock in the station and this was applied against it?

A. Yes.

Q. Was the whole $3,000 applied against stock in the station?

A. Stock, yes.

Q. Goodyear TBA stock?

A. Gasoline, do you consider that stock?

Q. Yes.

A. Yes.

Q. As a result of that loan of $3,000, did you feel you had an obligation to purchase Goodyear TBA from Mr. Parris?

A. No, I had no obligation to Mr. Parris.

Q. Did you feel that as long as Atlantic had played ball with you, you would purchase Goodyear TBA from Mr. Parris?

A. Goodyear TBA is a top brand name and I would be a fool not to buy anything else but top brand.

Q. And the fact that Atlantic sponsors it, you say, does not influence your decision to handle Goodyear TBA?

A. I have other merchandise—

Q. I am asking this specific question about Goodyear TBA.

A. I don't believe it influenced me any.

Q. You dont' think it has any influence whatsoever?

A. No.

Q. Now, Mr. Marabella testified, and you have
3254 substantiated his testimony, to the effect that another salesman from his company calls on you principally?

A. Yes, sir.

Q. Now, Mr. Marabella did call on you, did he not?

A. He called on me twice.

Q. And on one of those occasions—did he call on you when you opened your station, in January 1957?

A. No.

Q. Beg your pardon?

A. No.

Q. Did he call on you shortly after that?

A. Well, it was in the summer, when the salesman was on vacation.

Q. Was that the first time?

A. Yes.

Q. Did he solicit Delco batteries or any other business at that time?

A. Not Delco. I might have given him an order for other things.

Q. I am asking you if he solicited your business on Delco batteries or any other products?

A. No.

Q. At that time was he—he was handling Delco batteries, was he not?

A. I believe so.

3255 Q. And you say he didn't ask you to purchase Delco batteries?

A. No.

Q. Has the other salesman for V. J. Auto Parts ever asked you to purchase Delco batteries?

A. He asked me when I needed any, to consider him and I have bought some batteries off him.

Q. Have those purchases been on a fill-in basis only?

A. Yes, sir.

Q. All of your batteries are purchased from Mr. Parris, are they not?

A. Yes.

Q. And that is the Goodyear battery?

A. Yes.

Q. Now let's talk about Bars Leak for a minute. You say you do purchase Bars Leak from V. J. Auto Parts?

A. Yes.

Q. And Mr. Marabella so testified you do. Who was your Atlantic salesman beginning in January 1957, when you went into the station?

A. Joe Snyder.

Q. Has he been your only Atlantic salesman?

A. Yes.

Q. And you recall no Atlantic salesman asking you to remove Bars Leak from your shelves, is that right?

A. No.

3256 Q. Is it possible they may have made a comment to that effect?

A. No.

Q. When did you first learn that Mr. Marabella had testified concerning this conversation with you, or purported conversation with you?

A. The first meeting.

Q. When?

A. The first hearing.

Q. Were you advised by counsel for Atlantic or did you learn from some other source?

A. Through Atlantic.

Q. Did you resent him naming you in his testimony?

A. No.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Francis Ballard.

Q. Mr. Elko, I want to straighten out one thing. On cross-examination Mr. Kelaher asked you some questions about TBA stock, when you took over your station in January 1957. Did I understand you to say that there was some non-Goodyear items in that stock?

A. Yes, there was.

Q. And the station was not newly erected, was it?

A. No.

3257 Q. Did you buy the TBA that was in the station?

A. Yes.

Q. And from whom did you buy it?

A. From Jack Farragher.

Q. That is the fellow, he was the dealer whom you succeeded?

A. Yes.

Q. You bought all of his TBA stock?

A. Yes.

Q. Which included non-Goodyear TBA?

A. Yes.

Mr. Francis Ballard: Thank you.

Recross Examination by Mr. Kelaher.

Q. When you say he had some non-Goodyear stock, are you referring to Bardahl, for example?

A. No, he didn't carry Bardahl.

Q. Are you referring to antifreeze, for example?

A. There was Bars Leak, some tubes, tire patch repair kits, that were not TBA, I know there was a lot of stock that was other—

Q. Wasn't the principal stock Goodyear TBA, tires batteries and accessories, right?

A. Yes.

Mr. Kelaher: No further questions.

(Witness excused.)

3258 Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

ISADORE MANN was called as a witness on behalf of Respondent Atlantic, and having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Isadore Mann. My home address is 1305 Kimberly, Philadelphia, 31.

Direct Examination by Mr. Fred Ballard.

Q. Mr. Mann, you are a lessee of an Atlantic service station, is that right?

A. I am.

Q. What is the address of your station?

A. Haverford Avenue and Brookhaven Road.

Q. Do you remember when you first leased that station?

A. When I first leased it?

Q. Yes.

A. Two days before Christmas I knew I was getting it. I opened it up March 17, 1949 that was.

Q. 1949 or 1950, sir?

A. 1949 is when I knew I was getting it and in 3259 1950, March 17, I opened it up.

Q. Now when you opened that station, was that a new station, sir?

A. Yes, sir.

Q. Who did you buy your—such tires, batteries and accessories as you did buy, who did you buy them from?

A. Frank Hagen.

Q. Had you previously known Mr. Hagen?

A. I knew Hagen, I used to work for an employer at 55th and Buist Avenue, and Frank was a short distance away, and I stopped there several times and I knew him as a friend.

Q. Did your Atlantic salesman also tell you that Hagen was a supplier for Atlantic stations?

A. That is right.

Q. Now at that time I believe Hagen was carrying Lee tires and Exide batteries, is that right?

A. Yes.

Q. Did Hagen subsequently change to another brand?

A. Hagen switched to Goodyear and we naturally went to Goodyear.

Q. Have you found that Goodyear tires are easier to sell than Lee tires?

A. Goodyear is the leader in the field, yes, it is a lot easier to sell.

Q. Do you still carry some Lee tires?

3260 A. Yes.

Q. Where do you buy those?

A. 22nd and Race, Lee Tire Company.

Q. That is a store, apparently, a factory branch?

A. Yes.

Q. Do you buy your batteries from Hagen?

A. I buy batteries from Hagen and I also buy Delco batteries from Genuine Auto Parts.

Q. Your accessories, do you buy those from Hagen?

A. I buy accessories from Hagen; also from the outside.

Q. Are your Lee tires visible in your station today?

A. Yes, sir.

Q. Does your Atlantic salesman know you have them?

A. Yes.

Q. Has he ever told you to remove them from the station?

A. At no time was I ever told to remove anything from the station.

Q. Has he ever told you to stop buying them?

A. No, sir. In fact, I have had three salesmen since I opened, and none ever told me.

Q. At any time have you hidden your Lee tires from your Atlantic salesman?

A. No.

Q. Do you know a supplier called Lancaster Auto Supply?

A. I do. I used to buy from them.

3261 Q. Are you acquainted with a salesman for that supplier named Meyer Duboff?

A. I am.

Q. I believe you also know that on June 24, 1957, Mr. Duboff testified in these same proceedings. His testimony is reported, as far as I am reading, beginning on page 507 of the record. In these proceedings Mr. Duboff was asked whether at any time he had been able to sell any of the Atlantic stations and he, after answering that question, was then asked: "When was the last time you were able to sell them?"

His answer was: "It is getting tougher and tougher to sell them to tell the truth. I would say within the last couple of years it is getting worse.

"Question: Do you continue to solicit their business?

"Answer: I try to, but it is like barking up a tree. You can't do anything with these fellows. They must buy the company and that is the answers I get."

Then the next question was: "Can you state specifically the name of the Atlantic dealer that told you that?"

And Mr. Duboff then said: "I. Mann, at Brookhaven and Haverford Road."

That would be you?

A. That is right.

Q. Do you recall ever saying to Mr. Duboff that you must buy from the company?

3262 A. I did not.

Q. Now beginning at page 515 of the record, Mr. Duboff was asked this question:

"You mentioned one person, Mr. I. Mann, Haverford and Brookhaven Road?"

And his answer was: "That is right."

Then the question was: "As having said something to you about inability to buy from you. I am not clear as to what he said."

And Mr. Duboff answered, "Do you want me to state what he said to me? He said to me 'I can't buy from you'."

Did you ever say that to him?

A. I did not. I bought from Mike—I call him Mike—I bought quite a few things from Mike. I bought equipment, I bought Prestone, I bought a lot of things off him. But then I got to doing business with Genuine Auto Parts, who is closer, and the thing is, after all, you can't just give everybody business, so I stopped doing business with Lancaster, which is his company.

* * * * *

3263 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Mann, your station was a new station when you opened, as I understand your testimony?

A. That is right.

Q. Now at that time that you began to purchase Lee tires, Exide batteries, and a line of accessories from Mr. Frank Hagan, is that correct?

A. That is right, sir.

Q. And at that time Atlantic was sponsoring those brands, isn't that right?

A. That is right.

Q. And Mr. Hagan was the supply point for Atlantic dealers in your area?

A. That is right.

Q. And that was why you purchased from Mr. Hagan, wasn't it?

A. Yes, sir.

Q. Now the switch, or change-over to Goodyear, according to this record, came in or about March 1951. Now at that time, according to your testimony, Mr. Hagan began to carry Goodyear TBA instead of Lee tires, Exide batteries, and accessories, is that correct?

A. That is right, sir.

Q. And at that time you began to purchase Goodyear TBA from Mr. Hagan, is that right?

3264 A. That is right.

Q. Now at that time, or prior to that time, was your service station identified with Lee signs and Exide signs?

A. Yes.

Q. And shortly after the change-over or in or about the time of the change-over, were those signs changed to Goodyear signs?

A. Right after that they were changed to Goodyear signs. Well, in buying Goodyear tires, naturally we use more Goodyear tires—rather, the Goodyear tire sells faster than Lee tires, and naturally I think the dealers were tickled to death to go along with it, because I know from that time to this time the amount of tires I sell has increased because of that, but I still sell Lee tires.

Q. Now you stated just now and earlier in your direct

examination that Goodyear tires are easier to sell than Lee tires, right?

A. That is right.

Q. If that was the case, why did you carry Lee tires as your principal stock of tires from 1950, when you opened the station, until 1951?

A. I didn't just carry Lee tires.

Q. You stocked Lee tires, did you not?

A. We started with Lee, the company, through Frank Hagan, and we naturally purchased Lee tires and accessories, but I still sell all kinds of tires. I don't limit
3265 myself to two tires. I sell whatever the customer wants. I can get them, and do stock them.

Q. But you testified up to this point that when you opened your station in 1950, you stocked Lee tires, primarily?

A. That is right.

Q. Right?

A. Not all Lee tires, no. You misunderstood. Not complete. I stocked Lee tires, but I still bought other tires also.

Q. Well, you bought other tires on a fill-in basis or when a customer wanted them?

A. Fair enough. Right.

Q. Well, if Lee tires were more difficult to sell than Goodyear tires, why did you continue to stock Lee tires for two years?

A. Well, it is like anything else. You don't always do things right away. As a new dealer in the business, just one of the things. I guess you need a push once in a while to go ahead.

Q. Isn't it a fact that the reason you carried and stocked Lee tires was because Atlantic sponsored Lee tires during that period?

A. I sold Lee tires because the company sponsored them, yes.

Q. And that is the reason you didn't stock Goodyear at that time?

A. When I stocked Goodyear, it was just a few of them, I will say that.

3266 Q. When Atlantic changed over to Goodyear, you changed to Goodyear, right?

A. Yes, sir. I still say this, that I kept a good stock, I keep a good stock of Lee tires, when I changed to Goodyear, too.

Q. But your principal stock is Goodyear?

A. I would say right now if you went to my place between where I stock them and in the place and all, I would say about 60-40.

Q. In favor of Goodyear?

A. Yes. Well, they are the largest selling tire, Goodyear.

3267 Q. Now, you mentioned you have had three salesmen in your territory. What were their names?

A. Thomas Jenner—no, I am wrong. Actually I should say, well, I started—it is four salesmen, but the first one was only with me about two weeks, but if you want his name, I can pass on. Bill, William Way, Thomas Jenner, Joseph Snyder, and Stephen—

Q. (Interposing.) Petrison?

A. Yes.

Q. Is he your present salesman?

A. Yes. See, they changed salesmen at the beginning of the year. As I told you, two days before Christmas is when I found I was getting the station, and at New Year's Mr. Way went out, went to another territory, and Mr. Jenner took over.

Q. Now, Mr. Duboff of Lancaster Auto Supply Company has called on you for some years, has he not?

A. From the beginning, yes.

Q. From the time you opened the station in 1950?

A. I went in there and bought equipment off him, like jacks, vacuum cleaner, all different kinds of equipment.

Q. Primarily equipment?

A. Yes.

Q. And at one time didn't you buy Exide batteries from him?

A. I never bought Exide batteries from Mike.

3268 Q. Did you buy an Exide battery on a fill-in basis from him?

A. You are right, one fill-in, one I couldn't get, a Group Three, which is a big truck battery.

Q. And you have purchased no Exide batteries from him since that time?

A. No, I actually don't do any business with him anymore.

Q. Did you ever have any conversations with Mr. Duboff concerning your purchases of Goodyear TBA from Mr. Hagan?

A. No, I did not.

Q. Are you—have you ever had conversations with any jobber salesman who has come into your station concerning the fact that you purchased Goodyear TBA from Mr. Hagan?

A. No, I bought some of—if you want to call it Goodyear TBA, I bought it from other sources besides Mr. Hagan.

Q. I am not asking you that. I asked you if you ever had any conversations with Mr. Duboff or any other jobber salesman concerning your reasons why you would not purchase their TBA?

A. No.

Q. Have you ever given a reason to a jobber salesman as to why you would not purchase the TBA they were selling?

A. No. I am a very busy man. I try to give a salesman a little time, courtesy, but I don't have much time to talk

about anything that doesn't pertain to my business, or for my business.

3269 Q. Do you just say, "I don't want to buy from you," or don't you give any reason at all as to why you won't buy some TBA?

A. No, my main reason, and I think I said it before, is that you just can't go giving everybody business; the first thing, nobody gets nothing, and your account isn't worth anything. Make checks out at the end of the month for $10.00 here or $15.00 here—that isn't worth while to break it up like that.

Q. Did you at the time you opened your station receive a loan from Atlantic Refining Company?

A. No, sir.

Q. Did you make a substantial investment in your station?

A. I certainly did.

Q. Do you feel it is to your advantage to go along with Atlantic as to the TBA line they sponsor?

A. I personally have nothing against Atlantic in buying from them. I am treated right. I have no trouble.

Q. And isn't it a fact that there is less friction when you do buy the sponsored TBA than the non-sponsored TBA?

A. I never had any friction. I don't know about anybody else. I never had any.

Q. That is because you have been buying the sponsored TBA line since you went in?

3270 A. No, I have a lot of things on my shelf that doesn't come through Atlantic. If you went there, you would see right now at least eight different items on my shelf that doesn't come through Atlantic TBA and it is items that could be bought from Atlantic, in a different name and different brand, like Wynne products, Stuart products.

Q. What is Wynne's?

A. That is oil. Different kinds of oil—tune-up oils,

carburetor additives, valve oil. DuPont, which is Atlantic TBA, has MOA, and Wynne has their own. There is at least six or seven I am sure.

Q. But your principal accessories and batteries and tires you purchase from Mr. Hagan; is that correct?

A. I would say about 60 percent.

Q. It is more than that on batteries, is it not?

A. On batteries, it is more, you are right. I would say about 90 percent.

Q. And on accessories, it is more than 60 percent?

A. Well, about 75 percent.

Q. Now, do you recall signing a Goodyear associate dealer contract at the time of the change-over to Goodyear TBA?

A. To be truthful, I don't remember.

• • • • •

3271 By Mr. Kelaher:

Q. Mr. Mann, I show you Commission's Exhibit 44-E, and ask you if you recall signing this type of a document, associate dealer agreement.

A. I don't recall, sir. I definitely don't recall. That is quite a few years ago.

3272 Q. And you don't maintain your records or files back to 1951?

A. No, I definitely don't recall that.

Mr. Kelaher: Your Honor, the witness does not recall signing Exhibit 44-E, but I would like the record to show that Exhibit 160-A and -I—

Hearing Examiner Kolb (interposing): The record already shows that. There is no occasion to bring it up in connection with this testimony.

Mr. Kelaher: I think in connection with this witness' testimony for purposes of the record—

Hearing Examiner Kolb (interposing): He doesn't recall he signed it.

Mr. Kelaher: I withdraw the remarks with respect to Commission's Exhibit 160-A; no further questions.

Hearing Examiner Kolb: Thank you.

(Witness excused.)

Mr. Fred Ballard: Before we call the next witness, I don't know if I am going to shed any light on this additive business or not, but I am advised that the word "additive" is a word of many meanings, that according to Commission's Exhibit 246, the Goodyear Catalog does include something called Pyroil, which is considered to be an additive. I am also informed that it includes an item named Casite, which is described as an additive. I think it is
3273 fair to say that—I don't know whether Bardahl is competitive with those items or not. I do know that Atlantic Refining Company feels that Bardahl is not necessary for use with Atlantic motor oils.

I can get more information on this, if your Honor please, but I am confused on it myself.

Mr. Kelaher: The point I was making was that we were foreclosed from going into something on Bardahl. If they have no objection to reinstating any testimony concerning the matter, which we put in in our direct testimony, if that is the situation—

Hearing Examiner Kolb: You couldn't very well reinstate without recalling the witness.

Mr. Kelaher: I think there was certain testimony concerning Bardahl oil, and there was much objection, and as a result of very vigorous objections, we were forced to discontinue any further examination concerning that product. It would seem a little irregular to me to permit them to come in now with evidence as to a particular product, as to which they raised such vigorous objections during the course of our direct testimony.

Mr. Mason: Do you have the transcript reference?

Mr. Fred Ballard: Sir, it is not our intention to press evidence with regard to Bardahl. The Atlantic dealers recognize that Bardahl is not an Atlantic-sponsored or recommended product, and when asked about non-
3274 recommended and sponsored products, they are apt to mention Bardahl, and were not trying to press the point, I can assure you. I don't know whether it is in the case or out of the case. I am sure I don't know whether my predecessor had a better idea than I do.

Mr. Kelaher: I was asked to find a reference to it in the testimony. I don't think I should take time now, but I will be glad to do so during the lunch hour.

Hearing Examiner Kolb: Let's proceed.

RUDOLPH N. LUONGO, was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Rudolph N. Luongo; 931 North Avenue, Springfield, Pennsylvania.

Direct Examination by Mr. Francis Ballard.

Q. Mr. Luongo, you are an Atlantic lessee dealer?

A. Yes, sir.

Q. Where is your station?

A. City Line and Golf Road.

Q. That is out in what area?

3275 A. Wynnefield.

Q. When did you move into that station, Mr. Luongo?

A. December 19 or 21, something like that, last year.

Q. 1957?

A. Yes.

Q. Am I right that you had a station at 55th and Walnut Streets, prior to that time?

A. Yes, sir.

Q. And do you recall the month and year you moved into 55th and Walnut?

A. August 17, '53 or '52.

Q. '53 is the figure I have.

A. Somewhere around there.

Q. And those are the two stations that you have operated for Atlantic as a lessee?

A. Yes, sir.

Q. When you went into that station at 55th and Walnut, did you notice Mr. Hagan, the Goodyear supplier?

A. Personally, did I notice him personally?

Q. Either personally, or any other way.

A. I knew he had a station somewhere, and he was a distributor; that is all.

Q. Did you go to any training school of Atlantic before you went into that station at 55th and Walnut?

A. No, sir.

3276 Q. Did an Atlantic representative identify Hagan as a Goodyear distributor in your area?

A. Yes, sir.

Q. Now, on TBA, Mr. Luongo, who do you buy most of your TBA from now?

A. Frank Hagan.

Q. Why?

A. Well, I get a fair deal with Frank, he extends me credit, gives me good service. I don't know any reason why I shouldn't.

Q. Is he a good friend of yours now?

A. Yes.

Q. Does he have an employee named Duffy?

A. Yes, sir.

Q. What does Duffy do for you?

A. He comes in and checks my stock and anything I need he fills me in with. He doesn't bother to take up my time to tell him what I need. We have arrangements where he fills my stock up to what I should have and it has been working out very well.

Q. You like that arrangement?

A. Yes, sir.

Q. Mr. Luongo, do you buy any other tires, batteries, and accessories from sources other than Mr. Hagan?

A. On occasion, yes.

3277 Q. What companies?

A. Albert Tire, I have purchased tires from.

Q. Do you buy anything from Rotzell Company?

A. Yes, I do, things like anti-freeze, points, mufflers, tail pipes, I can't think of anything else. Quite a line of stuff.

Q. Do you or do you not carry Bars Leak?

A. Yes, sir.

3278 Q. Who do you get that from?

A. Usually from Rotzell.

Q. Bars Leak, for instance, is that openly displayed in your station?

A. Yes, sir, it is on the shelves in the show room.

Q. Is it readily visible to anybody who walks in?

A. Yes, sir.

Q. Have you ever had any criticism from Atlantic for carrying Bars Leak or any other non-Goodyear TBA?

A. No, sir.

Q. Did they ever tell you to stop buying it?

A. No, sir.

Q. Ever tell you to get it out of the station?

A. No, sir.

Q. Or to hide it?

A. No, sir.

Q. Mr. Luongo, in the spring of 1956, where was your station?

A. 55th and Walnut.

Q. Do you know a man named Edward C. Heller?

A. Yes, sir.

Q. Mr. Heller testified—who does Heller work for?

A. Rotzell.

Q. Mr. Heller testified in these proceedings that he was unable to identify the dealer that he spoke about, but he was able to say it was the dealer who was at 55th and
3279 Walnut, in the spring of 1956 and he was also able to say that Mr. Joseph Snyder was the Atlantic salesman for that dealer. Now, sir, again, you were the dealer at 55th and Walnut in the spring of 1956?

A. Yes, sir.

Q. Was Mr. Snyder your salesman at that time?

A. Yes, sir.

Q. I am going to read from page 463 of the record. This is testimony by Mr. Heller. He said:

"Well, a year or so ago we had the DuPont Chemical representative with us, and we were the first ones to have him in the City of Philadelphia. I sold a couple of the Atlantic dealers, fellows I had known, and I ran into an Atlantic salesman later on, and after that, I had no more sales of the DuPont chemicals. As one dealer told me"—and he subsequently identifies this dealer as the fellow at 55th and Walnut in the spring of 1956—

Mr. Kelaher: I wonder if we could have—this has been going on all morning. When they read from the record, there are a lot of interpolations.

Hearing Examiner Kolb: You have the record there. Do you question the statement?

Mr. Kelaher: I question the interpolation at that stage.

Mr. Francis Ballard: Mr. Kelaher, would you
3280 stipulate with me that Mr. Luongo—

Mr. Kelaher: Why don't you finish the sentence and then explain it.

Mr. Francis Ballard: I will have to start all over again.

Mr. Kelaher: Go ahead. I withdraw all objections.

By Mr. Francis Ballard:

Q. I am reading the testimony: "As one dealer told me, he was to save it for the Atlantic salesman the next time he came around". You were the Atlantic dealer at 55th and Walnut in the spring of 1956. Do you know Mr. Heller?

A. Yes.

Q. Did you tell Mr. Heller that you had to save a DuPont chemical deal for the Atlantic salesman the next time he came around?

A. No, sir.

Q. Have you ever given an order to Mr. Heller?

A. Yes.

Q. Does he call on you to this day?

A. Yes, sir.

Q. Have you ever purchased any Motor Zoom from Mr. Heller?

A. Yes, sir.

Q. This is a new product, Mr. Luongo. Would you tell us what Motor Zoom is?

A. It is a product added to the oil to prevent smok-
3281 ing and burning, excessive oil burning.

Mr. Kelaher: Is that what is known as an oil additive?

Mr. Francis Ballard: You will have to ask the witness.

The Witness: I think it would be classed as one.

By Mr. Francis Ballard:

Q. Now, as a matter of fact, Mr. Luongo, when DuPont, for instance, has a promotion, who do you buy it from?

A. Frank Hagan, usually.

Q. You do save it for Hagan?

A. I don't know I save it for him. I generally do buy from Hagan.

Q. Has anybody in the Atlantic organization told you you had to have these deals for Hagan?

A. No, sir.

Mr. Francis Ballard: That is all.

Cross-Examination by Mr. Kelaher.

Q. As I understand your testimony, you became an Atlantic dealer in August 1953, correct?

A. Yes, sir.

Q. Who was your Atlantic salesman at that time?

A. Joe Snyder.

Q. Is he still your Atlantic salesman?

3282 A. No, sir.

Q. Who is your present salesman?

A. Harry Fisher.

Q. Isn't it a fact that—I believe you so testified—that Mr. Snyder identified Mr. Hagan as the Atlantic supply point for your Goodyear TBA, when you took the station over? Isn't that right?

A. I guess it was Joe Snyder. I can't recall that far back.

Q. Whoever the Atlantic salesman was, would have told you that?

A. I would assume so, yes.

Q. And was your station a new station or did you replace a dealer?

A. I replaced a dealer.

Mr. Francis Ballard: Could you identify which station you are talking about?

Mr. Kelaher: I was talking about the station you started operating first, August 1953.

The Witness: That is 55th and Walnut. I replaced a dealer there; yes, sir.

By Mr. Kelaher:

Q. Then at your present station, did you also replace a dealer?

A. No, sir, that is a new station.

3283 Q. And you started in this new station in December 1957, to get this chronology correct?

A. Yes, sir.

Q. Now when you replaced the dealer at 55th and Walnut Street station, were the Goodyear signs up, the Goodyear window valance and outdoor sign?

A. Yes, sir.

Q. And you automatically began to purchase Goodyear TBA from Mr. Hagan, is that right?

A. Yes, sir.

Q. Now when you went out to your present station, in December 1957, were the Goodyear window valances and outdoor sign up when you went into the station?

A. Yes, sir.

Q. And did Mr. Hagan remain as your supply point at that location?

A. Yes, sir.

Q. I believe you testified that you occasionally buy from Albert Tire Company, is that right?

A. Yes, sir.

Q. And what brand would that be, what do they handle?

A. They handle all of them, Goodyear, Firestone.

Q. Which brand do you buy from them?

A. It varies, it all depends on the situation. I could buy Goodyear or Dunlap, it all depends on what I am selling.

3284 Q. Depends on what the customer asks for?

A. Yes, whatever the customer wants.

Q. Now you have known Mr. Heller for sometime, is that correct?

A. Ever since I went into the station at 55th Street. That is where I first became acquainted with him.

Q. And Mr. Heller still calls on you, right?

A. Yes, sir.

Q. Isn't it a fact that Mr. Heller solicited your business on DuPont from time to time?

A. He probably has, yes.

Q. I am referring now to the DuPont chemical line.

A. Yes, sir.

Q. And isn't it a fact that you might have stated to him that you were saving the PuPont chemical business for Mr. Hagan?

A. No, sir.

Q. But in fact you have testified that your principal supplier of DuPont chemicals is Mr. Hagan, is that right?

A. Yes, sir.

Mr. Kelaher: No further questions.

Mr. Fred Ballard: No questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn at this 3285 time until 2:15 p.m.

(Thereupon, at 12:55 o'clock p.m., the hearing was recessed, to reconvene at 2:15 o'clock p.m., this same date.)

3286 Afternoon Session.

(2:15 P.M.)

Hearing Examiner Kolb: The hearing will be in order.

THOMAS E. JONES was called as a witness on behalf of the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Thomas E. Jones, 219 Florence Avenue, McDaniel—Wilmington, Delaware.

Direct Examination by Mr. Fred Ballard.

Q. You are presently employed by Atlantic Refining Company?

A. Yes, sir.

Q. And what is your present occupation or position with Atlantic?

A. I am the promotable dealer, sales supervisor in the Wilmington district.

Q. When did you join Atlantic?

A. In January 1952.

Q. What was your capacity then?

3287 A. I started out with a job classification called service salesman.

Q. What was your next job with Atlantic?

A. I was promoted to a job of promotable dealer salesman.

Q. Were you then promoted to your present position?

A. Yes, sir.

Q. What was the date of promotion to the present position?

A. December 1956.

Q. What was the date of promotion to promotable dealer salesman?

A. That was in August 1953.

Q. Have all these jobs been in the Atlantic Wilmington district?

A. Yes, they have.

Q. Before coming to Atlantic, what was your occupation?

A. I was in business for myself, service station business, operating service stations in the State of West Virginia.

Q. Now returning to Atlantic's Wilmington district, can you give us a general description of the area that that district covers?

Mr. Kelaher: I think that is already in the record in the form of a map.

Mr. Fred Ballard: I think so, yes, Jim, but I would like to get fresh in the Examiner's mind the rather broad scope of this.

Will you answer that question?

3288 A. The Wilmington district is comprised of what is commonly known as the Delmarva Peninsula. It includes two counties in Pennsylvania, Chester and Lancaster Counties, all of the State of Delaware, and the eastern shore sections of Maryland and Virginia.

Q. And of course it includes metropolitan Wilmington?

A. Yes.

Q. Now, are there other oil companies besides Atlantic operating in that district?

A. Yes, there are.

Q. Could you give the names of some of them?

A. Of course we have Esso, Gulf, Sun, Mobil, Sinclair, Cities Service, Shell, Texas, Tidewater.

Q. American?

A. Calso.

Q. Does American operate in that area?

A. Yes, Amoco, American.

Q. Does Pure operate in your district?

A. Yes, Pure Oil operates in the district.

Q. Save-way?

A. The ones I listed were the majors. In addition to those we have three independent oil companies that operate in the district, Save-way, Spur, and Save.

Q. Is there active competition among those oil companies?

A. Very keen competition between the companies, yes.

3289 Q. On occasion are there what is known as price wars in the district?

Mr. Kelaher: Objection, your Honor. I would like to know the relevance of this line of questioning. What do price wars lead us to?

Mr. Fred Ballard: Your Honor, a number of the witnesses in this proceeding have testified to the existence of price wars. We feel the existence of price wars has a bearing on the witness' state of mind, and that will be brought out in later testimony, sir. I think it is relevant to show here that this is a keenly competitive area, where there is competition of that kind.

Hearing Examiner Kolb: I overrule the objection.

The Witness: Yes, there is a keen competition in the area, primarily because of these independent operators, that I mentioned, who oftentimes lower the price of their gasoline to get the market and of course the majors, to survive, must go along with it.

By Mr. Fred Ballard:

Q. Now, Mr. Jones, we have used the phrase "service station" in this proceeding, and I think we have generally

defined it as a station which has facilities for lubrication, washing, and the selling and installing of TBA. Using that definition, how many service stations are there in the Wilmington metropolitan area approximately?

3290 A. In what I would call the metropolitan area of Wilmington, there is between 250 to 275 service stations.

Q. If we include the entire Wilmington district, Atlantic's entire Wilmington district, how many service stations are there?

A. Nearly 800.

3291 Q. Are new service stations being built in the district?

A. Yes, in 1957 there were 23 just in the metropolitan area of Wilmington alone.

Mr. Kelaher: Excuse me. Do these figures relate specifically to Atlantic stations.

Mr. Fred Ballard: The questions I have asked— have you understood the questions I asked as relating to service stations of all kinds?

The Witness: Yes, you spoke of service stations, and I assumed that was everyone's.

By Mr. Fred Ballard:

Q. Now, speaking of Atlantic service stations, how many service stations does Atlantic own in the district for lessee operation?

A. There are 94 at the present time.

Q. Of those, how many would be in metropolitan Wilmington?

A. Fifty.

Q. There are also, I believe, some contract stations in Atlantic's Wilmington district?

A. Yes, our present count of contract dealers in the Wilmington district is 117.

Q. About how many of those are operating a real service station?

A. Of those, 18 are classified as promotable or the real service station.

3292 Q. There are also some distributors in the district, are there not, Atlantic distributors?

A. We have nine active Atlantic distributors in the district.

Q. They have about how many outlets?

A. Between 90 and 95.

Q. Would you have any idea what proportion those outlets would be service stations?

A. Around 30 to 34.

Q. Your particular concern, however, as promotable sales supervisor, is lessee stations; is that right?

A. That is true.

Q. Do you have also a few contract stations?

A. Promotable contracts, yes, sir.

Q. By that you mean a station that has full service station facilities?

A. Full facilities, as we describe a service station to be.

Q. How many personnel are under your charge?

A. Eight.

Q. Could you give us the numbers and classifications?

A. I have five men who are classified as promotable dealer salesmen, two men that are classified as retail specialists, and one man that is classified as a merchandiser.

Q. Are the classifications retail specialist and merchandiser a break down of what was formerly known

3293 as service salesmen?

A. Yes, there has been a name change, formerly known as service salesmen.

Q. What is the job of a promotable dealer salesman?

A. His primary responsibility is to keep tenanted the stations assigned to his territory, with the best possible

dealers he can find, and to promote the sale of Atlantic petroleum products.

Q. Does he also promote the sale of Firestone products to those dealers?

A. I would say all products that a dealer would be selling or retailing.

Q. Now, promotable dealer salesmen are paid on what basis, sir?

A. Well, they, of course, are on a salary, and then we have an extra compensation bonus plan.

Q. When did that extra compensation bonus plan go into effect?

A. April, 1956.

Q. Can you give us the general basis of the extra compensation plan?

A. Well, in extra compensation, the compensation earned is based on sales through stations that were open, this present year, and the prior year. You are paid on gains through outlets open both years.

3294 Q. How are the gains divided, roughly?

A. Gasoline is one section entirely by itself; motor oil is a second; and we have one for TBA and anti-freeze; and then there is a jack-pot bonus that an overall gain will give him for the compensation.

Q. Now, in 1957, how many of your five salesmen received a bonus?

A. Three out of the five earned compensation in 1957.

Q. What is the highest bonus that any of your salesmen ever had?

A. The highest bonus paid was a promotable salesman in 1956, who earned $797.00 for the year.

Q. Do you recall what the highest amount paid to a salesman on account of TBA and anti-freeze was?

A. That was the same salesman, who received for 1956 TBA compensation of $148.00.

Q. How many accounts does that salesman service?

A. During 1956 he handled 20 accounts.

Q. As sales supervisor, are you eligible for extra compensation under this plan?

A. No, sir, salesmen only.

Q. Are your promotable dealer salesmen allowed to take premiums or extra compensation from TBA suppliers whom they represent?

A. They are not.

3295 Q. Who is the person in your organization who is initially responsible for selecting dealers to man Atlantic stations?

A. Well, the initial recommendation, of course, is made by the salesman. He will interview a prospect, and then come to me, discuss what he has found with this man, and recommend that I then interview him, and together we make the recommendation on whether to accept him.

Q. Does that recommendation go to the district manager?

A. That recommendation is made to the district manager and oftentimes, if the district manager is in the office, he, too, will interview the prospect along with me.

Q. When the lease of an Atlantic dealer expires, what is the procedure with regard to renewing or not renewing that lease?

A. Well, the procedure that we follow is that 90 days prior to a dealer's lease expiring, the regional office where all the lease information is kept notifies us that the lease will expire on a certain date. The salesman calling on that dealer and I will sit down and discuss the man's past history, and study his finances and so forth, and then make our recommendation to the district manager that we renew the lease at the end of the period, and extend the lease for the dealer.

Q. Do you occasionally recommend that the lease be not renewed?

A. In my experience with Atlantic since 1952, as
3296 a salesman and supervisor, I have never made the recommendation to the district manager that we do not renew a dealer's lease.

Q. In deciding on your recommendations, do you discuss with your salesmen the brands of TBA that the dealers are handling?

A. No, it is not discussed, on what brands he handles.

Q. Now, is Atlantic's three-year lease policy in operation in your district?

A. Yes, it is.

Q. Are most of your dealers on the three-year lease?

A. We have in the district at the present time approximately 18 or 19 dealers on three-year leases.

Q. Under that policy—would you state your understanding of the three-year lease policy in general?

A. Well, for a dealer to become eligible for a three-year lease, he must first have successfully operated the station for two one-year lease periods. At the renewal of his third lease, he is offered a lease for a period of three years. It is up to the dealer to accept or reject.

Q. Is that offering automatic in all cases or on recommendation?

A. That is right, in fact, the regional office, at the expiration of the second one-year lease, will write us a letter and state this man is eligible for a three-year lease.

Q. If you do not agree with him, can you recommend to the contrary?

3297 A. If we don't recommend a three-year lease, we have to specify the reasons why, in writing, and return that to the regional office.

Q. Have you ever made such a non-recommendation?

A. Since 1953 I have made two recommendations, as a

salesman and supervisor, not to give the dealer a three-year lease, but in both cases we offered and he accepted a one-year lease.

Q. In either case was that recommendation for reasons of the brand of TBA that the dealer was handling?

A. No, the recommendation was strictly made in both cases for poor appearance of the service stations. We were having trouble getting the dealer to keep the station clean.

Q. Now, under Atlantic's three-year lease policy, or long-term lease policy, is there a provision for sending warning letters to dealers on three-year leases?

A. Yes, we can send warning letters to any dealer, either if they operate a one-year or three-year lease.

Q. Those warning letters, they would be considered with what?

A. Primarily appearance. That is the biggest thing, the biggest problem we have when we send a warning letter.

Q. Have warning letters been sent to dealers in your experience?

A. Yes.

Q. Have any of those warning letters finally resulted in the termination of a dealer?

3298 A. Not a one. In all cases where the warning was given for appearance, at the end of the 15-day time that we ask them to get cleaned up in, when going to the location with the salesman we always found what we wanted has been complied with, the station is clean and there has been no reason to cancel leases at the end of the warning letter period.

Q. I take it, however, that some dealers' leases have terminated in one way or another; is that right?

A. Yes, what we call mutually terminated.

Q. Who initiates most of these mutual terminations?

A. Most of those are always initiated by the dealer.

Q. What are the most usual reasons that the dealer, that would compel a dealer to initiate a termination?

A. One reason that comes up quite often is they have been offered a better location by a competing oil company. Hours, the hours it is necessary to put in at the station, the wife is unhappy because he is away from home so many hours. Finances, in some cases. Or a desire of some dealers to get out of that business and into some other type of business with shorter hours.

Q. Is it Atlantic's practice to honor these requests for termination of the lease?

A. Yes. When we receive a notice from a dealer that he desires to leave the location, we want him to leave as quickly as we can find a replacement.

3299 Q. Now, are the leases that are being signed in your district now the percentage leases, so called?

A. Yes. Since September 1956.

Q. Have you found that lease to be popular with the dealers?

A. Very popular.

Q. On an overall basis are the dealers paying less rent or more rent under these leases than they were under the previous leases?

A. Less.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

Mr. Kelaher: I think we ought to have a little more specificity with respect to some of these broad statements we are getting.

Hearing Examiner Kolb: You will have an opportunity on cross-examination to bring it out, if you wish.

By Mr. Fred Ballard:

Q. You may answer the question.

Mr. Kelaher: He did answer.

The Witness: We, as a district, are receiving less rent than we received on the old-type lease.

By Mr. Fred Ballard:

Q. Now, Mr. Jones, does Atlantic have a business interest in the success of its lessees?

A. Yes, very definitely. The successful lessee de-
3300 termines the success of our own company. We are selling our petroleum products through lessee locations and if they are successful, of course, we will sell more products.

Q. Is it expensive to Atlantic to replace a dealer who terminates his lease?

A. Yes, these are actual figures. In 1957, the Eastern Pennsylvania region, it cost $1,541 per trainee to train a man for the five-week training school. So, everytime we have a replacement, we are immediately faced with that experience, to train a man to replace a dealer.

Q. Do you also suffer a loss in gallonage when a dealer leaves his station?

A. Yes, we do, for many reasons. Personal credit, perhaps, the outgoing dealer has some he takes. If he moves to a competitive location in or around the neighborhood, he certainly takes some of his customers with him. Goodwill, which a man builds up over a period of time, is not transferable from one dealer to another; so, anytime we have a dealer changeover, we are faced with the possibility of a loss of gallonage.

Q. When a dealer does leave an Atlantic station, does he have a choice as to the disposition of his TBA and equipment that he owns?

A. Yes, he can either take it with him, if he is moving to a competitive location, or he can sell it to the incoming dealer.

3301 Q. Does Atlantic take any attitude with regard to the brand of TBA he has?

A. No.

Q. Is the incoming dealer free to buy any TBA from the outgoing dealer he wishes?

A. Yes, he is.

Q. Who determines the price as between the two dealers?

A. Well, of course, the outgoing dealer knows the price he paid for the product or item he is selling, and when we are making a change-over, we use the wholesale price as our guide, to sell it to the incoming dealer.

Q. Does that mean that the outgoing dealer generally recovers what he paid for the item?

A. Yes, he will have his full price back for it.

Q. Have you personally taken part in a number of these turn-over transactions?

A. Yes, I have.

Q. And in your experience, do they include substantial amounts of non-sponsored merchandise?

A. Yes.

Q. By that I mean non-sponsored TBA items.

A. Yes.

Q. Now, sir, do you find it easy or difficult to replace lessees when they leave your stations?

A. It is a very difficult job. You have 12 or 13
3302 major oil companies, competing in an area, and they are all looking for good dealers; so, finding a good dealer, when one decides to leave, is a very difficult job.

Q. Do you ever succeed in getting a dealer who is operating another company's station to come with you?

A. Yes, competitive stations is one of our main sources of new Atlantic dealers.

3303 Q. What other principal sources do you have?

A. Well, we have our own present dealers, where we will discuss with their No. 1 men or their employees, garages, car agencies, milk truck drivers, delivery men, that are used to meeting the public and perhaps you let it

out in the neighborhood that you are looking for a dealer; friends of the salesman or friends and acquaintances of my own I might have, organizations they belong to and meet people, newspaper ads of course, is a source we use constantly. We have an ad running almost daily in papers within the district. It is actually looking all the time and everywhere is what we are doing, constantly.

Q. When you are looking for a good dealer, what are the principal qualities you are looking for in a man?

A. Well, we are looking for a man who has the ability to meet and talk to people, he is going to after all be a salesman. We are looking for a man who can handle money, handle employees, can hire and train people. He has to be energetic, this in particular, and has to have a desire to make money and get ahead; all those characteristics a good dealer must have.

Q. Does he also need a minimum capital?

A. Yes, he must have some capital to invest, the minimum which at the present time is $1,000.

And to obtain the other capital he would have to 3304 have, he has to have a good credit rating, too.

Q. When you are, I will say, selling the Atlantic franchise to a candidate of this kind, what do you stress with him, as the advantages of becoming an Atlantic dealer?

A. Well, the big things that we stress and it is a caption we carry in our newspaper ads, is "Be in business for yourself, be your own boss." You are an independent business man, not tied down to any whims of an employer as to when you will or won't work and the small investment versus the payoff, if the guy is a good and successful dealer, what it can be, free choice of doing just about what you want to do and in business for yourself.

Mr. Kelaher: Is that last responsive to the question?

Mr. Fred Ballard: I think it is.

Hearing Examiner Kolb: I believe so.

By Mr. Fred Ballard:

Q. How much do you think a successful dealer can make in a year?

A. We have many, many dealers that make over $10,000 a year. We have quite a few that make over $15,000 a year.

Q. Now when you are talking with a dealer candidate, do you tell him about Atlantic's TBA program?

A. Yes, we do, that is part of the franchise story.

Q. Mr. Jones, I show you a copy of Atlantic's Ex-
3305 hibit 18, which is a booklet entitled "What a service station can mean to you". This is a booklet that was used in Atlantic's Newark region. I ask you to look this over and let me know whether you use this kind of booklet in your discussions with dealer candidates, recognizing of course that the references in your booklet would probably be to Firestone and not to Goodyear and would be to local places and not to Newark.

Would you look that over and see if you use a booklet like that (handing to the witness)?

A. Yes, we use this book.

Q. Now in the course of discussing this booklet with the dealer, what do you say to him about Atlantic's TBA program?

A. Well, we explain what Atlantic's TBA program is, that we promote and try to promote with him, the Firestone brand of TBA. We tell him that from time to time part of the salesman's job is to promote the TBA line, the program that is being offered, the current promotions, and the stress with the salesman and particularly on the interview with either myself or the district manager, that the whole program is his to accept or reject.

Hearing Examiner Kolb: Was that Respondent's Exhibit 18-A?

Mr. Fred Ballard: A-18, yes, sir, this booklet.

3306 By Mr. Fred Ballard:

Q. Is it the policies and practice in your district for new dealers to be sent to the Atlantic training school?

A. Yes, we send all new dealers that we can get to attend the Atlantic dealer training school.

Q. Is it the practice also to send new members of the sales organization to that school?

A. Yes, that is the first step in the training of a new man, is to attend the five-week course.

Q. I show you, sir, a copy of Commission Exhibit 207, which as you can see is a form of letter from a regional manager to Atlantic dealers, dated June 24, 1955, and it is entitled "No Forcing". Is that letter given to each dealer each time he renews or signs a lease?

A. It is. It is part of the procedure to give him that prior to his signing a first lease with the company and at every renewal date.

Q. Do you personally make sure that is done?

A. Yes, I do.

Q. Mr. Jones, in your observation of the business of Atlantic dealers in your area, do you think it is in Atlantic's interest to have a TBA program?

A. Yes, I feel it for several reasons. In today's service station business, TBA is absolutely a necessary sideline.

3307 A fellow must have it to be successful. He must have the things that the TBA line affords, that customers are coming into his place of business want to buy. I think that definitely the company has to have an interest in it because of so many people that are in the TBA business that owe no loyalty or have no interest in this dealer, other than selling his merchandise. And that the dealer needs coaching and counseling by someone who has experience, to guide him in just what he can afford to buy and how much he can afford to have, because without that interest, on his part, he would soon be TBA-poor.

It would be possible he would have many things in his station which would be very slow movers and he would have too much money tied up to remain in business and have the necessary capital he would need to work with.

Q. Does Atlantic have an interest in the quality of the TBA that its dealers handle?

A. Yes, very definitely, because we have to have an interest in the quality; otherwise, customers buying an inferior product would of course look to Atlantic as being partly responsible, that he was able to get that. That would be true particularly with credit card customers and has happened on occasion, where the credit card customer writes the home office, making a complaint about merchandise he bought in an Atlantic station.

Q. There are, however, other concerns that do 3308 offer TBA to the Atlantic dealers in your district, is that correct?

A. Yes.

Q. About how many offering TBA or any combination of TB and A?

A. Oh, a combination of all?

Q. Well, take them either way that is easiest for you to analyze it.

A. We have two major concerns in Wilmington that handle a complete line of tires, batteries and a very complete line of accessories. They of course would be able to offer any or all to a dealer they were calling on.

Q. Are those two in addition to Firestone?

A. Yes, in addition to Firestone. Then we have another five tire marketers, that are very active in the service station tire market, three or four of which would handle batteries, but no accessories, nothing more than tires or batteries. Then we have about six or seven major source houses or parts houses, that are very active in the acces-

sory business, but they don't handle a line of tires or batteries.

In addition to those, we have an untold number of suppliers who work out of their truck, stop at a station, make the sale on some accessories item and sell it right out of the truck and collect for it and go on their way.

Q. Do you personally visit the stations of the Atlantic dealers, promotable dealers in the Wilmington district?

3309 A. Oh, yes, yes, every day.

Q. Do you see there the TBA they have on display?

A. Yes, it is very visible, setting on the shelf, displayed in the station.

Q. Do you observe on their shelves TBA items not carried by the Firestone store?

A. Yes, in all stations there are some items not handled by Firestone.

Mr. Kelaher: Your Honor, at this stage I am going to object to any further leading questions.

Mr. Fred Ballard: I don't think I am leading the witness. I am directing his attention to the items.

Mr. Kelaher: The last question was leading.

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Fred Ballard: Your Honor, I submit that is simply suggesting to the witness the line of testimony.

Hearing Examiner Kolb: All right, proceed.

By Mr. Fred Ballard:

Q. Mr. Jones, does Atlantic have any policies with regard to the use of credit cards in connection with the non-Firestone TBA?

A. No, it is a practice that the dealers can sell anything

on the credit card as long as the amount does not exceed $150 and it can be of any brand.

3310 Q. As a matter of practice is any check made to see what brands the dealer is selling on the credit card?

A. No, none to my knowledge at all.

Q. As a matter of practice does Atlantic conduct inspections of the Atlantic stations in your district?

A. Yes, we have two inspection programs. We have one that is called the customer shopping inspection by the home office, which is directly out of Philadelphia, and we have that same inspection program set up on an original basis, where we have a regional customer shopper.

Q. Are those inspections concerned with the brands of TBA that are carried by the dealers?

A. No, those, they are unannounced inspections where a person will drive into the service station and make a purchase of gasoline and there rate the service he received on the driveway, the appearance of the service stations, and the appearance of the rest rooms. There is no mention of TBA at all.

Q. Are those reports of those inspections shown to the dealers?

A. Oh, yes.

Q. Are they discussed with the dealers?

A. Yes, they are.

Q. Do the dealers express themselves as pleased with the program?

3311 A. Yes, because it helps a dealer to get occasionally a rating through the eyes of someone that actually came in and checked the station as a customer, and the dealer is then aware of how his station looks through the eyes of a customer and he also occasionally finds out what kind of service is being given by an employee when he is not there.

Q. In your capacity as sales supervisor, do you occasionally receive complaints from dealers about one thing or another?

A. Yes, I do.

Q. What do the majority of those complaints concern themselves with?

A. They are mostly all about facilities. They need an extra bay to enlarge their repair business, they need more lights, they need more modern pumps, they need something fixed up around the station and facilities they are working with.

Q. Have any of them ever complained to them about forcing by an Atlantic salesman?

A. No, I have never received a complaint on forcing by one of my salesmen.

Q. Mr. Jones, is it part of your salesmen's duty and was it part of your duty when you were a salesman, to promote Firestone TBA?

A. Yes.

Q. Where a dealer is not carrying the Firestone 3312 brand, what effort do you make to promote Firestone to him?

A. Well, where I had a dealer who didn't carry the Firestone line, I would talk to him about the public acceptance of the line, the quality of the merchandise that they handled, I was in a position in many cases to offer some sort of a special, that was a promotion in effect for a period of time, that gave them a price advantage. We were always able to compare prices and offer him more profits, in most cases, than where he was buying.

Of course national advertising, you always could pick up a current magazine and show the guy where the Firestone Company was promoting and advertising a line we would like for him to carry. The locale of the district is fortunate in having supply points that are centrally

located, and we were always able to talk to him about the closeness of a supply point, and the good service the supply point could provide.

Those are some of the features that, as a salesman, I was able to talk to a dealer that didn't handle the Firestone line.

Q. Suppose in the case of a dealer who was already handling the Firestone line, what would you do to promote Firestone to and through him?

A. Well, on every sales call, I would check his stock, and determine if he needed a replacement order. Once
3313 again, we had the current TBA promotions that we could discuss with him, the deals or promotions that were in effect. If he was handling Firestone, he was eligible for budget-buying or dating, buying and paying for it at a later date. If he had any complaints of service or not getting service from the supply point, or some complaints on billing, I was always in a position to work between the supply point and dealer and get those settled.

Q. From time to time, are there new developments in the Firestone line?

A. Well, there are new developments in the whole TBA line, that we of course would receive service tips on, or information from Firestone, that we were able to pass on to the dealer's organization.

Q. On occasion did you go in team, that is, call in company with a representative of the Firestone supply point?

A. Yes, on a regular basis.

Q. Did you occasionally team with representatives of the manufacturers of Firestone accessories?

A. Yes, we did.

Q. Do your salesmen do that today?

A. Yes, we do.

Q. About how many days a month do they spend double-teaming on the average?

A. Well, they are scheduled one day per month,
3314 excluding dealer change-overs, where you have a dealer change-over, and that is excluding that sale of TBA at the time, they are to spend one other day a working month, the double team, with the Firestone representative.

Q. Do they spend other parts of other days on TBA problems?

A. Oh, yes, you have TBA problems sometimes every day, minor problems you would work on and work out.

Q. How many major Firestone supply points — how many Firestone supply points are there in your district for Atlantic stations?

A. There are five major supply points.

Q. How many of those are company stores?

A. Two of those are company stores, the other three are Firestone distributor outlets.

Q. Is it part of your job, first as an Atlantic salesman and then as an Atlantic supervisor, to know the prices that those Firestone stores are charging your dealers?

A. Yes.

Q. Is there ever an occasion where you—well, are those prices in general competitive with the prices charged by competitive stores?

A. Yes.

Q. Are there ever cases where the dealer is dissatisfied with the prices Firestone stores are offering?

A. Yes.

3315 I can think of one. As a salesman, where a re-threader of retread tires out of New Jersey came into Wilmington and was opening a market and came in offering a larger discount than either Firestone or any other retread shop in the area was offering, and he was

doing it of course to get started in the market, and Firestone, upon our recommendation and their investigation, found the prices to be right, and lowered their discount on retreads to the dealers this guy was calling on, the competitor.

Q. Is it possible for a dealer, on occasion, to buy other brands cheaper than Firestone?

A. Not counting the quality of the two grades.

Mr. Kelaher: I move to strike the latter part of the answer.

Mr. Fred Ballard: Your Honor—

Mr. Kelaher: He hasn't been qualified as an expert on quality. He answered the question.

Hearing Examiner Kolb: The objection will be overruled. The answer will stand.

By Mr. Fred Ballard:

Q. Leaving aside the question of quality of brand, is it possible for the dealer on occasion to buy tires, some tires, cheaper than Firestone?

A. Some tires, yes.

Q. Are those, in your experience, lesser known 3316. brands than Firestone?

A. Yes, they are.

Q. In your experience, can a dealer make as much profit selling those brands as he can with Firestone?

Mr. Kelaher: Objection. I don't think he is qualified to testify as to the profit margin of a dealer with respect to other tire brands.

Mr. Fred Ballard: Your Honor, the question is not about a dealer. This man sells.

Mr. Kelaher: That is what the question called for.

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: As I understand the question, it calls for the dealer's profit margins on tires other than Firestone.

Mr. Fred Ballard: I will hold the question then, and ask it this way:

By Mr. Fred Ballard:

Q. Mr. Jones, what determines the amount of profit a dealer makes on the tires he sells?

A. Well, I don't understand the question, what determines the profit.

Q. Mr. Jones, in promoting the Firestone brand to dealers do you tell them that it will bring greater
3317 profits for them or do you not?

A. I tell them it will.

Q. What reasons do you give to them for so saying?

A. Well, when selling the Firestone tire, they are selling a quality tire, that has a suggested list price; they can sell it for what they want to, but the suggested list price versus their buying price, the margin of profit is very good, versus—and I am thinking of another tire a dealer can buy and have had experience with—a Vanderbilt tire, where a tire is cheaper. But at the same time to be sold and to be purchased by a customer, it has to be sold at a much lower price, so the profit the dealer would be getting actually is not as large.

Q. Does Atlantic, in your district, organize dealer meetings?

A. Yes, on a regularly scheduled basis.

Q. And dealer clinics?

A. Yes.

3318 Q. Do those meetings and clinics on occasion relate or are they concerned with Firestone TBA?

A. Yes.

Q. Does Atlantic run them?

A. Yes.

Q. Atlantic personnel runs them?

A. Yes, they do.

Q. Atlantic, of course, has a TBA coordinator for the Eastern Pennsylvania region?

A. Yes, we do.

Q. Does he visit your district?

A. Yes, quite often.

Q. And he is concerned entirely with TBA?

A. Entirely with promoting of TBA, yes.

Mr. Kelaher: Could we have the gentleman's name.

The Witness: George Fearn, F-E-A-R-N.

By Mr. Fred Ballard:

Q. The man's name we are looking for is the TBA coordinator.

A. He is regional TBA coordinator.

Q. I am told your spelling was wrong.

A. F-E-A-R-N.

Q. Excuse me; that is right.

No. Mr. Jones, you were present, I believe, at the hearings that were held in the Wilmington district in this proceedings, in July of 1957, were you not?

3319 A. Yes.

Q. Do you recall the testimony—you may recall that one Richard Brown testified.

A. Yes, I do.

Q. Richard Brown was a former Atlantic dealer?

A. Yes.

Q. Referring to page 1290 of the record, Mr. Brown was asked this question: "Were any comments ever made by Mr. Klein with respect to non-sponsored TBA you purchased?" The answer was, "Yes, he said he didn't like it, it affected his salary."

Then, on page 1291, Mr. Brown was—I think I had better

read the whole thing: "Q. He said it affected his salary?" "A. Yes. "Q. Do you recall the approximate time of the conversation?" "A. I think it was about may 1955." "Q. Do you mean '56?" "A. Yes, 1956." "Q. Do you recall his language, substantially?" "A. He just—they told me only I was cutting their throats, cutting their salary by not buying from Firestone." "Q. Did any one in addition to salesman Klein from Atlantic make such comments?" "A. Mr. Jones made one time or several times, and Mr. Gus Conway made it once."

Mr. Jones, did you ever say to Mr. Brown, in words or to the effect, that he was cutting your throat by not buying from Firestone or that he was cutting your salary by not buying from Firestone?

3320 A. Definitely not. I never called on Mr. Brown as a salesman. It was only in the capacity of a supervisor, and, as such, I was not on the extra compensation; so TBA, one way or another, made any difference to me.

Q. In fact, was Mr. Brown at that time in a position to buy more from Firestone?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: The objection will be overruled.

The Witness: No, he wasn't, because Mr. Brown's credit with Firestone was such that Firestone would only make him deliveries on a cash basis. He owed them money for quite sometime; his checks bounced whenever he gave one. And to the contrary, the salesman and I were willing for him to buy TBA wherever he could get it, because we definitely knew he couldn't get it from the Firestone supplier.

By Mr. Fred Ballard:

Q. Now, sir, at page 1292 of the record, Mr. Brown was asked this question by Mr. Kelaher: "You left the station

in April 1957. Will you give us the circumstances leading up to your leaving the station?" The answer: "Mr. Jones came in one night and we were standing there talking, and he just up and told me he had somebody else for the station, if I wanted to get out, that they would put him in. So, I thought it over. It made me kind of mad. I wasn't
3321 mad to start with. I thought that was a heck of a thing for a man in his position to be saying, that I had never said anything about it. The next day I called the salesman and told him if he felt that way, I was getting out."

Do you recall any conversation to which Mr. Brown may have been referring in that testimony?

A. Yes, I do. Sometime during the first week of March, Mr. Klein, my salesman, came to me, told me that Mr. Brown wished to leave the location and that he was going to look for a replacement and replace him as quickly as possible. About three weeks later Brown called me on the telephone in the office and told me that he had given Mr. Klein such a notice, and that evidently Mr. Klein wasn't doing anything to replace him. I knew better than that, because I had talked to Bob several times in the intervening three weeks about what he was trying to do to get a new dealer. Living near that station, or in that neighborhood, I told Mr. Brown that I would stop that evening after work and talk to him.

So, that evening I stopped at the station, and at that time told Brown that I knew that Bob was working trying to find a replacement, and that we had a dealer in the school being trained at that time, that if Brown would stay another two weeks until this dealer graduated, that we would put the graduate dealer in his station, which Brown agreed to do, and everything was satisfactory.

3322 Q. Did you finally put that graduate in the station?

A. Yes, we made the change-over with that graduate after he got out of school.

Q. You will also recall or were you also present when an ex-dealer named John Galla testified at the Wilmington hearing?

A. Yes, I was.

Q. At page 1251 of the record, Mr. Kelaher asked Mr. Galla this question: "Was there a time when you attempted to buy other brands at cheaper prices?" Mr. Galla's answer was: "I wouldn't say I attempted to buy cheaper brands. I looked into it rather thoroughly to see what situation existed in the market, and I found out I could buy competitive brands at a better price than offered by Firestone." "Q. Does that apply to both tires and batteries?" "A. Yes." "Q. Could you designate the brand on which you could get better prices?" "A. Well, at one time one of these supply houses, at that time, one of the supply houses offered me Auto-lite battery at a better price, and a salesman from Keil's came around and offered me tires at a better price." "Q. What kind of tires?" "A. I think it was Goodyear, I believe it is Goodyear." "Q. Who offered you the better price on Auto-lite batteries, what jobber?" "A. Adams Parts." "Q. Do you recall the name of the salesman?" "A. Herb Dashper." "Q. After you made this study of prices, did you discuss the matter with an Atlantic representative?"
3323 "A. Yes, I did." "Q. Who was the Atlantic representative?" "A. At that time it was Tom Jones." "Q. Would you state the conversation that you had with Mr. Jones?" "A. Well, at that time I took it up with Tom, I thought it might be better as far as I was concerned personally in the business if I could buy cheaper from another source of supply, other than Firestone, and Tom had said that I had signed an agreement to purchase from him, that is, TBA—tires and batteries—from Firestone, and that more or less you shouldn't go against the agreement, plus the fact that Atlantic didn't like to see competitive brands to Firestone in the station."

Then, after a discussion, there was another question: "Did Mr. Jones make any further statements at that time?"

"A. Other than they didn't like to see competitive tires and batteries in the station. If I took them in, I would probably have a visit from men above Tom in the Atlantic office."

Mr. Jones, do you recollect some such conversation as that between yourself and Mr. Galla?

A. I recall a conversation with Mr. Galla on tire prices. There was nothing discussed about batteries, and I recall nothing ever being said about batteries. I do recall a conversation on tires. It was brought about because on a regular sales call, when I stopped at the station, I saw spread out on the desk several price sheets of Goodyear tires. I asked Galla at the time was he considering
3324 handling Goodyear tires, and he said Yes, because I can make a better buy. What had happened—

Mr. Kelaher (interposing): Objection, your Honor, unless we get the conversation.

Mr. Fred Ballard: Confine yourself, Mr. Jones, to what Galla said to you and what you said to him, to the best of your recollection.

The Witness: I am sorry. Mr. Galla told me he felt he could buy Goodyear tires cheaper. We sat down together, taking his Goodyear sheets, and my Firestone catalog, and by comparing the same quality tires, he was presently buying Firestone at 20 cents cheaper on the tire. Then, he asked me what should he do, because he had a customer who was talking about Goodyear tires, could he stock them for that customer. And I pointed out or asked him what, or why he would want a complete stock for one sale. And I told him at that time by all means if the customer could not be sold Firestone that he had in stock

to buy the Goodyears and make the sale and make the profit. I remember the conversation very distinctly.

By Mr. Fred Ballard:

Q. Mr. Jones, as far as you know, did Mr. Galla have any agreement to purchase tires from Firestone?

A. No, no agreement was signed at all to that effect.

3325 Q. Have you ever been instructed as an Atlantic salesman or sales supervisor to get competitive brands out of Atlantic stations?

A. No, sir.

Q. Actually, do you see competitive brands in Atlantic stations everyday?

A. Everyday, and practically every station.

Q. Now, sir, you may recollect that another dealer who testified in Wilmington was a, I guess he was an ex-dealer, Harry N. Hawes, and on page 1280—

Hearing Examiner Kolb (interposing) What was the name of that man?

Mr. Fred Ballard: Hawes, sir.

By Mr. Fred Ballard:

Q. He was asked this question: "When you left that third station, did you have any TBA on hand?" "A. I did, yes." "Q. Can you tell us what TBA you had on hand, what brand of tires, for example?" "A. I had quite a few tires and tubes." "Q. What brand?" A. Lee."

I am now skipping some questions. On page 1281, "Q. Did the new dealer come into that station when you left it, the third station?" "A. Yes, he did." "Q. Did he buy your Lee tires, tubes, and batteries?" "A. No, he didn't." "Q. Did you attempt to sell them to him?" "A. Yes,

I did." "Q. Did he refuse?" "A. Here again he didn't refuse, so much."

3326 "Q. Who did?" "A. The same friend over there, sitting. They wouldn't be bought. I can't recall his name." "Q. Mr. Arnaud?" "A. Mr. Arnaud."

And then, Mr. Thompson said: "The same friend said what?" And Mr. Hawes said "that the dealer was not buying those tires. He answered for him."

Now, Mr. Jones, is Mr. Arnaud one of the salesman who is responsible to you?

A. No, not at the present time. He has been promoted to another job.

Q. Was he at the time in question, when Mr. Hawes checked out of his station?

A. At the time in question, he had been transferred, too; he had been promoted at that time.

Q. I think we had better find out which time we are talking about. Is it your understanding that Mr. Arnaud did or did not take part in Mr. Hawes' check-out?

A. Yes, he did.

Q. At my request, and in your capacity as sales supervisor, have you checked this testimony with Mr. Arnaud?

Mr. Kelaher: Objection, your Honor. I think we are getting into a rare form of hearsay here. If he is going to testify as to conversation between Mr. Arnaud, the Atlantic dealer, and Mr. Hawes.

Hearing Examiner Kolb: Off the record.

3327 (Discussion off the record.)

Hearing Examiner Kolb: On the record.

That last question is not objectionable. He can answer Yes or No to that.

The Witness: Yes, I did.

Hearing Examiner Kolb: All right, proceed.

By Mr. Fred Ballard:

Q. Will you tell us what Mr. Arnaud told you about the conversation he had, or the check-out of Mr. Hawes?

Mr. Kelaher: This I object to unless it is specifically understood this is based on a check made after the testimony in question.

By Mr. Fred Ballard:

Q. Was your check with Mr. Arnaud made after Mr. Hawes testified in this proceedings?

A. Yes, they were.

Q. Was it made at my request?

A. Yes, sir.

Q. What did Mr. Arnaud say to you about this transaction?

A. The Lee tires and tubes at Mr. Hawes' third station were placed there on consignment, and as such, were not Mr. Hawes' property to sell. Mr. Arnaud knew that, because of being his salesman, and so advised Mr. Hawes that he could not permit the incoming dealer to buy consigned stock.

Mr. Kelaher: I object. As I understood the ques-
3328 tion, he was going to testify as to what he told Mr. Hawes. Is that not correct, not as to all the reasons.

By Mr. Fred Ballard:

Q. Mr. Jones, is that what Mr. Arnaud told you?

A. That was what Mr. Arnaud told me he had told Mr. Hawes.

Mr. Kelaher: I think he should be limited on a question of this importance as to what he did specifically tell him.

By Mr. Fred Ballard:

Q. Would you state to the best of your knowledge what Arnaud said to Mr. Hawes?

A. Mr. Arnaud told Mr. Hawes that he was aware that

the merchandise was consigned, and, as such, was not Mr. Hawes' to sell.

Q. Now, there was also a dealer who testified named Mr. James Parag. The question was asked him, at record page 1334, "Q. Would you mind reciting some of the statements by Mr. Jones?" A. Well, he told me that if I didn't handle according to what Atlantic handled, he said I would lose by lease, which I knew from before this that I wouldn't stay in there longer than August anyway, because it started from the time I went to school. I was supposed to be going to the Atlantic school."

Now, Mr. Jones, did you ever tell Mr. Parag that if he didn't handle what Atlantic handled, he would lose 3329 his lease?

A. I did not.

Q. Did you ever tell him that if he didn't handle Firestone TBA he would lose his lease?

A. No, sir.

Q. In fact, what TBA did he handle mostly?

A. Well, he handled mostly Goodyear, because he couldn't get Firestone.

Q. Why was that?

A. Well, prior to Mr. Parag's becoming an Atlantic dealer, he was in the trucking business. I didn't know this at the time, but he had purchased Firestone tires in this trucking business, and they, in turn, had brought suit and garnisheed his truck and tied the thing up and did everything they could to collect for the tires and finally, as a last resort, were forced to remove the tires from the truck to get their money.

* * * * * *

By Mr. Fred Ballard:

Q. Do you know of your own knowledge whether or not Mr. Parag was engaged in financial difficulties with Firestone stores?

A. Yes, he was.

Q. Do you know of your own knowledge whether Firestone store would or would not sell to him on credit?

A. They would not.

Q. Do you know of your own knowledge the reason that the Firestone store, the grounds that the Firestone store asserted for not selling Mr. Parag on credit.

Mr. Kelaher: Objection.

Mr. Fred Ballard: That is a part of this man's job, and he so testified when dealers have difficulty with the Firestone store, he goes down and finds out what it is about and tries to get a satisfactory adjustment for his customer. I think he is allowed to testify why the Firestone store—

3331

Hearing Examiner Kolb (interposing): I think you covered the point by showing he could not buy Firestone because his credit was no good. There is no use going into what Firestone told him as to why it wasn't.

Mr. Fred Ballard: I think you are right, sir.

By Mr. Fred Ballard:

Q. Now, page 1347 of the record, the question was asked of Mr. Parag, "Did you advertise your Goodyear products?" "A. No, sir." "Q. By signs?" "A. We were not permitted." "Q. By whom were you not permitted?" "A. Mr. Jones."

Mr. Jones, do you recall any conversation between yourself and Mr. Parag having to do with Goodyear signs?

A. The only conversation I recall regarding Goodyear signs is that Parag requested me to get him Goodyear signs for his service truck, and I had no way of getting Goodyear identification signs. At that time he wanted to know if he could put them on his truck, and he was told it was his truck, he could put any kind on that he wanted to.

3332

Q. Did you tell him that?

A. I told him that, yes.

Q. Did he then put Goodyear signs on his truck?

A. No, he never did get around to doing it.

Q. Now, sir, do you recall an ex-dealer, Mr. Norris Stein, on the bottom of page 1167 Mr. Stein was asked this question:

"After you started handling other than Firestone, did you receive any complaints?

"Answer: Yes, I did.

"Question: What type of complaints did you receive then?

"Answer: The one that stands out in my mind is that my Atlantic salesman made a remark to me one day that if I didn't handle Firestone products, I wouldn't long be an Atlantic operator-dealer."

Now then, after that question and answer it was established, at least Mr. Stein said that the incident occurred in December 1954 and that the salesman's name was Jones. I assume you are the Jones who was Mr. Stein's salesman in December, 1954?

A. Yes.

Q. Do you recall any conversation with Mr. Stein to the effect that he might not long be an Atlantic operator or dealer?

A. I am not certain of the date. I do remember a 3333 conversation I had with Mr. Stein where several things that he wasn't doing were contributing to the decrease in his business to such an extent that for what he was getting out of the business, he would soon lose interest and wouldn't desire to be a dealer. At this time the station appearance had become very bad, he had shortened his hours up considerably, he had decreased his help to such a place that he was a one-man operation, and all these things were contributing factors to a decline in the gallonage at this location and knowing Mr. Stein and the standard of living that he was accustomed to, I felt sure

that if these things were not remedied, that he wouldn't be satisfied with the income the station would provide for him.

Q. And do you recall an ex-dealer who testified in Wilmington named Thomas Sullivan?

A. Yes.

Q. At page 1221 of the record he was asked this question:

"Thereafter did you purchase any other brand of battery?

"Answer: Yes, I did. I purchased some Bowers batteries from a direct salesman.

"Question: Direct salesman from Bowers Company?

"Answer: Yes, and I purchased—well, I can't say I purchased them, I ordered some Exide batteries,
3334 the jobber's name now slips me. Anyhow, they delivered the batteries, but I actually had not made the purchase because usually when a dealer buys a list of items from a jobber, he is billed for them and pays for them at the end of that month. Within that period I was approached by Mr. Jones, and told that I should not sell those batteries, they weren't as good as the Firestone batteries, and that he didn't want me to display them in the station. So I removed the batteries from display in the display room of the station, to the back of the bay in the station and the Exide battery returned to the jobber."

Now, sir, do you recall any conversations between yourself and Mr. Sullivan relating to Bowers or Exide batteries?

A. Yes.

Q. Would you tell us the substance of that conversation?

A. Well, the Bowers batteries are the only batteries that he had at the station, the only ones I recall talking to Sul-

livan about. He bought the Bowers batteries because he felt he needed a cheaper battery.

Q. When you say he bought them because he felt, is that what he told you?

A. Yes, he told me that he felt he had to have a cheaper battery, to offer to his customers. I sat down with
3335 him, and at the time, as part of our Firestone catalogue, we had comparison charts, Firestone brand versus the other major brands. The Bowers battery was a battery of less plates than the Firestone Motor King and when the quality of the items were concerned, the $1.50 difference from the price was not enough of an offer that Sullivan should try to sell them to his customers.

We discussed the qualities of the two lines of batteries, and Mr. Sullivan at that time agreed that the Motor King was the best battery and he could sell them for the additional $1.50. Now the moving to the back room, at that time they were sitting on the bottom shelf in the sales room. The Bowers was a wet battery, it was the acid and water was in the battery at the time you bought it and as such, if not placed on a trickle charger, would soon run down, and would have to have been recharged before it could have been sold.

I pointed out to Mr. Sullivan that if he was going to keep the Bowers batteries, he should put them on the trickle charger and keep them charged. They were moved to the back of the bay, because that is where the trickle charger was sitting and located in the station. He put them there and connected them up.

Q. Now, Mr. Jones, at my request, did you investigate the whereabouts of a former Atlantic dealer named—
3336 two former Atlantic dealers, Edgar Cornman and Robert Miller?

A. Yes, I tried to locate them.

Q. Have you been able to locate either of them?

A. Neither one. Mr. Cornman's last known residence, the contact I was able to make, he had moved to Indiana. Mr. Miller and his wife had separated and no one seems to know his present whereabouts.

Q. Did you look at the files, Atlantic's files, regarding the termination of these two gentlemen's leases?

A. Yes.

Mr. Fred Ballard: I have no further questions.

Mr. Kelaher: Your Honor, on direct examination there were quite a number of matters gone into. I think I will have to ask for a little time to review this record before I begin my cross-examination. I mean by that, I am talking in terms of 15 or 20 minutes, or a half hour. It will
3337 take a little time to review the testimony of these witnesses. I think almost every—well, he mentioned for example the testimony of a number of the dealer, or ex-dealer witnesses in Wilmington who testified concerning Mr. Jones. And I would like to have—not a deferred cross, but I would like to have a little time to review his direct examination, or if you care to handle it another way, if they want to call the next witness, and maybe we could do it that way and put this gentleman over until morning.

Hearing Examiner Kolb: Any objection to deferring cross-examination to tomorrow morning?

Mr. Fred Ballard: I have no real objection. If Mr. Kelaher is planning a short cross-examination, I think the witness and everybody else would like to get through. He has been here most of the day and I have witnesses coming from New England tomorrow, who have to be put on in the morning because they have reservations back.

Hearing Examiner Kolb: We could start at nine o'clock tomorrow morning, if you prefer.

Mr. Fred Ballard: That is kind of rough.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will recess for five minutes.

3338 (A short recess was taken.)

Hearing Examiner Kolb: Come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Jones, at the outset I would like to get the Wilmington district straight. I am going to ask you to look at Commission Exhibit 249 and ask you if that still constitutes the map of the Wilmington district (handing to the witness)?

A. Yes, that is the division line of the district.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. Now the Wilmington district extends up into part of Pennsylvania, does it not?

A. Yes, two counties in Pennsylvania.

Q. Two counties in Pennsylvania. And would you repeat those?

A. Chester County and Lancaster County.

Q. That would be just a section of Lancaster County, I presume?

A. Yes.

Q. Now on the other side of the Wilmington district line, going north toward Chester, you get into the

3339 Philadelphia suburban district, is that correct?

A. Right.

Q. And in that district, they sponsor Goodyear, Atlantic sponsors Goodyear TBA?

A. Yes, I believe they do, yes.

Q. How far does the Wilmington district line come to Chester, Pennsylvania?

A. What? Come to Chester, Pennsylvania?

Q. Is it a matter of five or six miles?

A. Our district line stops at that point at the Delaware-Pennsylvania line, at the border.

Q. How far would that be from Chester, ten miles or so?

A. Ten or eleven miles.

Q. Now you were a service salesman with Atlantic beginning in January 1952, and until August 1953, is that correct?

A. Yes.

Q. Then you were promoted to promotable dealer salesman. And you remained a promotable dealer salesman until December 1956?

A. Yes.

Q. What is your correct title now?

A. Dealer Sales Supervisor.

Q. For the Wilmington district?

A. Yes.

Q. You testified in connection with the TBA in-
3340 centive plan or I should say in connection with the bonus plan, which includes TBA, that a particular salesman received the highest amount paid. Was that in recent years, 1956?

A. That was for the year 1956.

Q. What was his name?

A. Robert Klein.

Q. Is that the Bob Klein you have been referring to in your testimony today?

A. Yes.

Q. It is a fact, is it not, that the bonus system is an

incentive system, designed to increase the sales of the particular products involved, in the Atlantic program, including TBA?

A. Yes, it is an incentive based on the sales over and above last year, through the same number of outlets.

Q. As I understood your testimony, the dealer, promotable dealer salesman does not receive a bonus unless he shows an increase over the prior year's sales?

A. That is true.

Q. On your direct examination you made reference to certain warning letters. I am going to show you Commission Exhibit 251 and 252, which are three warning letters relating to dealers in the Wilmington district, and ask you if you were the promotable dealers salesman or sales supervisor at the time these letters were sent (handing to 3341 the witness)? Commission Exhibit 250 is a letter addressed to Mr. Norris A. Stein, Lancaster and Ford Avenue, Wilmington, Delaware, 1955.

A. That is right. I was a salesman at the time.

Q. Exhibit 251 is a letter dated February 7, 1956, to Mr. Alfred Trivits at the address given in Laurel, Delaware.

A. I was not his salesman or the supervisor at that time.

Q. Commission Exhibit 252 is a letter dated December 21, 1956, addressed to Mr. William White, Sr., at the address given in Wilmington, Delaware.

A. I was a supervisor at the time.

Q. December 1956, you had just started on your duties as—

A. Twenty-one days previous, yes, the first of December.

Q. As a sales supervisor.

It is Atlantic's policy, is it not, and yours as sales super-

visor, to supervise the hours of operation of Atlantic stations?

A. Only to this extent: We don't supervise the hours by establishing set hours. We supervise the hours he should be open in relation to the competition in his area.

Q. And isn't it a fact, as shown by Comission Exhibit 252 that you do threaten lessee dealers with lease cancellation, if they do not remain open the hours you deem sufficiently long for that particular station?

Mr. Fred Ballard: Your Honor, I object to the 3342 characterization of Commission Exhibit 252. He says as shown by it. He is not showing it to the man.

Mr. Kelaher: I just showed it to him. I think he is qualified to answer the question.

Mr. Fred Ballard: I object to the characterization.

Hearing Examiner Kolb: He just saw it, didn't he?

Mr. Fred Ballard: He looked at three of them. I don't know if the word "threatened" appears in there or not. The exhibit speaks for itself. Mr. Kelaher is simply characterizing that as some kind of threat.

Hearing Examiner Kolb: Show it to the witness.

By Mr. Kelaher:

Q. I show you Commission Exhibit 252 and ask you to examine that and read it.

A. All right.

Q. Now will you answer the question, please?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Fred Ballard: I object to the question again. If he wants to ask whether they send these warning letters it is all right. I don't see how he can add anything to the letter itself.

Hearing Examiner Kolb: This is cross-examination. The objection is overruled.

The Witness: I don't agree with your word
3343 "threat". We do send warning letters when dealers are operating a business, contrary to good business standards. This particular letter I remember. I know that the dealer was closing at six o'clock in the evening, which is much too early to close a service station in the area that it was located and with the hours of competition in that area. That was the reason for the letter, that and housekeeping.

Q. And the letter specifically states unless he remedy the situation, through proper procedures, his leas would be terminated; is that correct?

A. The letter relates to a lease violation of purpose and use of the premises, that he was doing things that for the purpose of use of a service station were contrary to good business principles and practice.

Q. They were contrary to what Atlantic considered good business practice?

A. What the dealers themselves think, too.

Q. Did Mr. White increase his hours of operation?

A. Yes, he did.

Q. And his lease was not terminated?

A. No, corrections were made within the 15 days.

Q. You were also asked some questions concerning new percentage lease. Isn't it true that under that new lease, Atlantic also gets a return on gross sales of TBA by the dealer under a specific schedule?

3344 A. Yes.

Q. You also testified on direct with respect to many of the reasons why there is a drop in gallonage when a lessee dealer leaves a station. Among other things, you said that a dealer builds up good will. Do you recall that testimony?

A. Yes.

Q. And then when he does so, it is not transferrable,

and that was one of the reasons for the drop in gallonage. Does Atlantic reimburse the dealer for good will under any circumstances?

A. No, good will is something you can't guage, as to the value of dollars it may have for the outgoing dealer.

Q. On direct examination you also referred to the capital investment by an Atlantic dealer and you stated that $1,000 was the minimum. Now isn't it also a fact that Atlantic's investment of course is substantially greater in all of its lessee stations?

A. Yes, it would in the case where we had a prospect with a minimum, absolute minimum of $1,000, our investment would be more.

Q. In other words, you would have the cost of building the station and cost of the property, and other expenses of that type?

A. Oh, yes, sure.

Q. So that your investment in 94 stations would 3345 run into the millions of dollars, would it not?

A. I imagine it would.

Q. And isn't part of your responsibility as district sales supervisor to see Atlantic gets a return on that investment?

A. Well, by promoting the sales of petroleum products, through good lessee operation, naturally the return on the investment will be more.

Q. And isn't it a fact the more Firestone TBA you sell through those stations, the more return Atlantic gets on the investment?

A. Yes, that is true.

Q. On direct examination you stated that jobbers or TBA sellers other than Firestone, have no interest or no loyalty, to an Atlantic dealer, and you gave that as one of the reasons why you felt that the dealer should handle Firestone TBA. Is that correct?

A. Well, when I say no loyalty, I mean that they have no loss involved, directly with them or the companies they represent.

Q. In what respect?

A. Well, in my own experience, I have seen it happen, where jobbors will come in and over-stock a dealer, in some item, that although it is attractive in price, it has a short span of interest to the customers, and they will
3346 over-stock him to the place where he has much too much money invested in those things.

Q. You are not implying that all competing sellers of TBA in your district attempt to over-stock Atlantic dealers?

A. No, I am not implying that.

Q. Isn't it a fact that there are many sellers of TBA who have just as much interest in the success of their customers as Atlantic might have or Firestone might have?

A. No, because if they lose a customer, or a dealer, Atlantic has the responsibility of first finding that man, which is expensive. They have a responsibility of training him, which is expensive. He has been put into a station and they, upon no cost to them, have assumed another customer, if they can begin to sell him.

Q. For that reason you feel Atlantic dealers have an obligation to purchase Firestone TBA?

A. No, no obligation.

Q. For that reason do you feel that Atlantic has a right to expect its dealers to purchase Firestone TBA?

A. Not unless we can offer them quality lines at competitive prices, I wouldn't expect a dealer to buy from us.

3347 Q. Isn't it a fact that Atlantic dealers can buy products which are competitive as to price and quality from jobbers who give comparable service to that of Firestone?

A. Will you phrase that again?

(The reporter read the pending question.)

The Witness: Well, in practice, if they find they can, they will and do buy from other jobbers.

By Mr. Kelaher:

Q. Isn't it a fact that Atlantic dealers have complained to you about the poor service of Firestone stores in the Wilmington area?

A. We have gotten complaints and sometimes on occasion from outlying areas where the routing isn't what the dealer thinks he should get, or the truck doesn't get there as often during the day.

Q. And haven't you had complaints from Atlantic dealers closer in than that with respect to the poor delivery of Firestone stores?

A. No, I have not.

* * * * * *

3348 By Mr. Kelaher:

Q. You also made the statement on direct examination that credit card customers have made complaints as to merchandise bought in Atlantic stations. You are not implying, are you, that complaints come in from credit card customers with respect to all competing TBA, other than Firestone, that is purchased from Atlantic stations?

A. No, I made the statement that credit card customers do complain about merchandise they have bought in Atlantic stations.

Q. But is that—you are not saying that—

Mr. Fred Ballard (interposing): Your Honor—

Mr. Kelaher (interposing): I have a right to cross-examine.

Mr. Fred Ballard: You have no right to interrupt him.

Mr. Kelaher: I thought he had finished.

The Witness: I have specific cases in mind that I have

been aware of and have been associated with as a salesman and supervisor, where we have gotten letters from the Philadelphia office outlining complaints on merchandise purchased on credit card sales.

3349 By Mr. Kelaher:

Q. How often does that happen?

A. Perhaps two or three times a year.

Q. On your direct examination you said it happens very often. So that would be what you are referring to?

A. That would be very often.

Mr. Fred Ballard: I am sorry to keep objecting. I don't think he said that.

Hearing Examiner Kolb: The witness can take care of himself.

The Witness: Three or four times a year would be very often for a salesman in one territory handling only 20 accounts.

By Mr. Kelaher:

Q. I might add my notes show you did say very often. You also referred to other competitors of Firestone in the Wilmington area. You named two, or mentioned two major concerns. Would you name those again?

A. Wilco Supply Company is a concern that handles both tires, batteries, and accessories.

The other is Lee Tire and Rubber Company.

Q. You also mentioned five tire companies.

A. Then, you have the tire companies, where tires are primarily their one item. You have Central Tire Company, Delaware Tire Center, Kiels General Tire, and Coopers.

3350 Q. And Kiels is the Goodyear distributor in the area, is he not?

A. Yes.

Q. And it is an extremely large distributor, is it not, of Goodyear tires?

A. I think he is. I am not that acquainted with him.

Q. Now, you also made some reference to suppliers who sell out of trucks. You said there was an untold number, which comes as somewhat of a surprise, because that is the first we have heard of that type of seller in that area. What did you mean by an untold number?

A. Well, we have a nick-name for them, for lack of anything better, they are called bobtailers. They have an automobile, or a panel truck, and usually they sell one, two, or perhaps three fast moving items, something that is popular at the moment. They will come into a station, sell it, out of the back of the car, take the dealer's money, and they are on their way. It is very popular among people in that business, or in my conversations about meeting them in that business, that they just work up and down the East Coast. They have no one central area.

Q. How many did you mean by an untold number?

A. Twenty-five or thirty. I have no way of counting them.

Q. Are you basically opposed to that type of jobber, selling to Atlantic dealers?

3351 A. Yes, I am.

Q. And don't you think that type of seller has a right to peddle his wares, wherever he can?

A. Yes, he does. May I elaborate on why I have an objection?

Q. You go ahead and elaborate.

A. We recently had one within the past couple of years of key machines, where a guy came through with a panel truck selling a machine to make keys.

Mr. Kelaher: I will object to any further discussion of keys. That is getting afar afield.

The Witness: All right.

By Mr. Kelaher:

Q. I judge from your answer, when you talk about this 25 or 30, you are talking about various types of these bobtailers who sell various kinds of products, including key machines and various things?

A. It is mostly something that is tied in with the accessories' line of the business.

Q. Do you have the deferred credit card payment plan in effect in your area with respect to TBA?

A. Yes, we do.

Q. Is that limited to Firestone TBA only?

A. No, that is any brand of TBA that the dealer is selling.

Q. At one time was it limited to Firestone TBA only?

3352 A. Not to my knowledge.

Q. Not in your area, at least?

A. Not in my area nor to my knowledge since I have been with the company.

Q. You also testified on direct as to two types of inspections, which are conducted by Atlantic, one from the main headquarters in Philadelphia and the other from the regional headquarters. You referred to them as customers shopping inspections; is that correct?

A. I think they have been referred to also in this case as phantom inspections.

Q. That was the question I was about to ask.

On direct examination you got into a discussion with counsel concerning the price of Firestone tires in comparison with other tires. You implied, if you did not state directly, that lesser known brands could be purchased at lower prices than Firestone.

A. That is true.

Q. And correct me if I am wrong, but I believe you

stated that these lower priced tires were not as popular as Firestone. Is that correct?

A. That is true, they are not as popular.

Q. Are you familiar with the prices on Lee tries?

A. Not without checking or cross-checking price lists I couldn't tell you within the dollars what the prices are.

3353 Q. I don't mean within the dollars. Isn't it a fact that the price of Lee tires is lower than Firestone tires and has been for some time?

A. Without checking price lists I couldn't say.

Q. Then, how could you answer that the prices of some tires were higher than others?

A. I am thinking of two brands that are popular, Vanderbilts and Coopers, that are two very low-priced tires.

Q. And was your answer limited to Vanderbilt and Cooper tires?

A. When I spoke of the low-priced tire, I was thinking of that type of tire, yes.

Q. And you were not implying that other tires could not be purchased at lower prices, which were like grade, quality with Firestone, were you?

A. No.

Q. Isn't it a fact that Atlantic dealers handled Lee tires for many years prior to the change-over to Firestone in your area?

A. Yes, they handled Lee, and still do.

Q. Isn't it true Lee has a road hazard guarantee, which Goodyear does not and for that reason is popular with consumers in that area?

A. You said Goodyear. You mean Firestone.

Q. Yes.

3354 A. Firestone has a guarantee that is interpreted as the same thing.

Q. When did that come into effect?

A. They have a guarantee that the tires are guaranteed

against workmanship or material for the life of the tire and for most occasions, the guarantee is just as good.

Q. For most occasions, but it is not the road hazard guarantee of the Lee tire, is it?

A. No, it doesn't have the road hazard guarantee of hitting a rock or curb.

Q. Now, I would like to have you turn your attention to the testimony concerning these various dealers, or ex-dealers of Atlantic, who testified in Wilmington. As stated by counsel, you were present during all those hearings, as I recall?

A. Yes.

Q. Now, when Mr. Brown testified as to May 1956 you stated you were a promotable dealer salesman; is that right?

A. Mr. Brown went out in May of 1957.

Q. Yes, but you were asked a question about May 1956 and at that time the record shows you were a promotable dealers salesman, without getting to the next step.

A. I was asked about Brown's conversation, which was May of 1957.

Mr. Kelaher: I withdraw the question then.

3355 By Mr. Kelaher:

Q. Mr. Brown went out in April 1957, according to the record. Now, were you aware of arguments between Mr. Brown and Firestone stores concerning prices, prior to that time?

A. Not arguments on prices, no.

Q. Were you aware of the fact that the Firestone store would at times quote him one price and charge him a higher price upon delivery? Did he make complaints of that type?

A. He made no complaints to me whatsoever of that type.

Q. However, you did not become the sales supervisor until a few months prior to the time—

A. (Interposing.) December of 1956.

Q. Were you aware of the fact that Mr. Brown had complained of poor service of Firestone?

A. Not to me.

Q. Were you aware of the fact that Mr. Brown had complained of the competition he was getting from Firestone stores as to price?

A. I received no complaints from Mr. Brown on TBA whatsoever.

Q. You stated on direct examination, as I recall, and you can correct me if I am wrong, that Mr. Brown was on a COD basis, so to speak, with Firestone, and you implied that was the reason why he was not buying Firestone. Was that the intent or import of your testimony?

3356 A. Well, they had had such poor credit relations with him in his two years as an Atlantic dealer that they just wouldn't sell him anything unless he agreed to pay when delivered.

Q. Isn't it a fact that Mr. Brown was completely dissatisfied with his purchasing from Firestone, TBA from Firestone stores, and that was the reason he wanted to purchase elsewhere?

A. He made no such statements to me whatsoever.

3357 Q. You stated you do recall the conversation with Mr. Brown sometime in or about April, 1957, concerning the termination of his lease?

A. At the end of March, yes.

Q. Do you recall where that conversation took place?

A. In the service station.

Q. Do you recall that after that conversation you again called Mr. Brown? Do you recall that?

A. I do not, no.

Q. Do you recall on that next conversation you told him you were just kidding? Does that refresh your recollection?

A. No, I wasn't kidding. There was no calls after that saying that I was kidding.

Q. And you deny you made that statement to him, as I understand your testimony now?

A. Yes, I do.

Q. Now getting on to John Galle. You stated on direct examination he could buy Firestone tires at 20 cents cheaper per tire than Goodyear tires. Is that correct?

A. With the volume discount he had at the time he could.

Q. And on direct examination I don't believe you mentioned volume discount, but I wanted to ask you about that. Isn't it a fact he would have to purchase in volume to get that cheaper price?

A. Not always.

3358 Q. But isn't it a fact that in most instances he would have to buy in volume to get a cheaper price than he would have then been able to get from Goodyear?

A. No, because Mr. Galle was enjoying the best volume price he could get as a lessee dealer at the time we were comparing price.

Q. Mr. Galle stated if he bought one or ten tires from Goodyear, he would get a certain price, but he had to buy ten, fifteen, twenty, or whatever, to get the lower price from Firestone. Is that a fact?

A. No, that is not a fact.

Q. What is your statement with respect to price now? Do you state that if he bought one tire or ten to fifteen or twenty tires, he would get the same price from Firestone?

A. Yes, sir, he would.

Q. A few minutes ago you said if he took advantage of his volume discount he would get a lower price.

A. Volume discount is not volume on a certain number of units, but the volume that the station would fall into in a classification over a period of a year. In other words, from zero up to a certain number of dollars they had a certain volume discount and over that they went into another volume discount.

Q. But the price you are talking about as being cheaper than the Goodyear price is the volume price, isn't it?

3359 A. I don't recall now what Mr. Galle's volume price was, but the price that he was being invoiced at the time we had our conversation compared to the price list he had in his possession, was what we were using to base the fact that he could buy Firestone 20 cents cheaper per unit.

Q. My question is: Your answer is accurate if he did purchase a specific volume of tires, isn't that right?

A. No, he was already in the classification; whether he bought one tire or 50 or none, he still had the classification assigned to him.

Q. What classification was he in, do you recall?

A. Most of our dealers, in fact all of them, were in the B classification, which is the best you can get for a service station.

Q. And your statement is that that is a better price than the similar C classification for Goodyear tires?

A. At the time it was 20 cents on the unit cheaper.

Q. In any event, as a result of your conversation with Mr. Galle, he did not purchase the Goodyear tires, did he?

A. He purchased them for the one particular customer.

Q. But he did not stock them?

A. No, he didn't.

Q. Now getting down to Mr. Parag, on direct examination you stated that he couldn't get Firestone TBA, is that right?

A. He couldn't get it on credit.

3360 Q. He couldn't get it on credit?

A. Yes, sir.

Q. Were you his promotable dealer salesman at that time?

A. Yes.

Q. And are you aware of the fact that he carried Firestone TBA from August 1955 to December 1955?

A. If he did, he paid cash for it when he bought it.

Q. I am not asking you how he paid for it. He did carry Firestone TBA at that time, didn't he?

A. Well, he carried Firestone TBA up until the time he left.

Q. You made the broad statement that the reason he wasn't carrying Firestone was because he couldn't get it. So that was inaccurate, was it?

Mr. Ballard: Now, your Honor, I don't mind him characterizing, but I am not sure that is what he said. Could we find out what the record said on that?

Hearing Examiner Kolb: They wouldn't give him credit is the reason he couldn't buy it.

By Mr. Kelaher:

Q. As a matter of fact, he was buying Firestone TBA, you say, during all the time he was there?

A. He was also buying Goodyear.

Q. But he didn't start buying Goodyear until about December 1955?

A. He bought Goodyear the third day he was in the station.

3361 Q. Did he stock Goodyear?

A. Yes.

Q. And do you know or don't you know that he had no credit problems with Kiels, with respect to Goodyear TBA, did he?

A. I don't know what basis he was buying from Kiels, whatsoever.

Q. With respect to Mr. Thomas J. Sullivan, Mr. Sullivan testified that when he became an Atlantic lessee dealer he received a $3,000 loan from Atlantic. If you know, would you state whether any part of that was used to stock his station with Firestone TBA?

A. I don't know how that was spent. It could have been for gasoline and equipment, and he could have bought his own TBA out of the money he started with. I wouldn't have any way of knowing how the break-down on the money was used.

Q. It is possible it may have been used in part at least for the purchase of Firestone TBA, is that correct?

A. For his station, it would take more than that to buy the gasoline, motor oil, and equipment, so I assume the TBA he bought himself.

Q. Did you ever make loans to Atlantic lessee dealers in the form of TBA stock?

A. Petroleum products we make loans for.

Q. How about with respect to Firestone TBA?

A. Do you mean that we pay the TBA—

3362 Q. In other words, you would advance a certain amount of TBA, Firestone TBA, to a new dealer. Do you make loans of that type?

A. Well, we make a loan to cover the cost of going into business. The gasoline is purchased, the motor oil is purchased, and TBA, the dealer purchases, the equipment he purchases, and the total of everything that he has purchased is added up, and the amount of our loan is deducted and he gives us a check for the balance. That is the procedure.

Q. So in some instances you may loan him the entire amount and in others, part of the amount. Is that what you mean?

A. Except we don't violate the thousand dollars minimum. He must have that.

Q. He always has to have the thousand dollars minimum?

A. That is right.

Q. How high do your loans go to dealers?

A. Well, we have a policy, it is 80 percent for a trained dealer. So if he has one, we can give him a maximum of four.

Q. If the total amount of investment, capital, was five thousand dollars, you would give him four thousand dollars? (sic.)

A. We could loan him four, if it was warranted.

Q. Is that a normal practice?

A. Not to go that high.

Q. Is it normal to give loans of that type to incoming dealers?

A. Oh, yes, yes, sir.

3363 Q. And are any of such loans interest-free?

A. No, they are not.

Q. What interest do you charge?

A. Five percent.

Q. Now with respect to Mr. Edgar Cornman, were you his promotable dealer salesman when he was in his station?

A. When he left I was, yes.

Q. Would you explain that a little more? I mean as the time period when you were his promotable dealer salesman.

A. When I was a promotable dealer—

Q. Salesman, for him.

A. Oh. Well, he left, let's see—I am trying to think. The fellow that replaced him went to school with Norris Stein, they graduated at the same time. It would be late 1954.

Q. And were you the promotable dealer salesman for Mr. Miller? Was that Robert Miller?

A. Robert Miller. Yes. He was replaced by Mr. Stein.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no questions.

Hearing Examiner Kolb: That is all, thank you.

(Witness excused.)

Hearing Examiner Kolb: The meeting will adjourn until ten o'clock tomorrow morning.

3365 Hearing Examiner Kolb: The hearing will be in order.

ISRAEL GLOTH was called as a witness for the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Israel Gloth. My home address, 19 Shknollwood Street, Springfield, Massachusetts.

Mr. Ballard: Your Honor, before proceeding with this witness, I thought I might do the same as I did yesterday and explain the witnesses that will be appearing this morning are dealers from the New England region of Atlantic. They are not dealers whose names I think have previously appeared in the record.

Hearing Examiner Kolb: All right.

By Mr. Ballard:

Q. Now, Mr. Gloth, in answering my questions, the primary purpose is that the Examiner may hear you, and also Mr. Kelaher, representing the Federal Trade Commission, and the reporter must hear you, so try to keep your voice up.

3366 You are, I believe, the lessee of an Atlantic station?

A. Yes.

Q. And what is the address, location of your service station, sir?

A. 1032 Dwight Street, Springfield, Massachusetts.

Q. Is that known sometimes as Dwight and Careu Streets?

A. Yes.

Q. And how long have you leased that station from Atlantic, sir?

A. Since 1934.

Q. Do you presently have a three-year lease?

A. Yes.

Q. Now in addition to gasoline and other service station services, do you also sell tires at your station?

A. I do.

Q. Would you say that tires was an important part of your business?

A. Yes, it is.

Q. What brands of tires do you sell?

A. I sell Firestone, Goodyear, and I sell Lee tires.

Q. Could you give us an indication of the percentage of each that you sell, about?

A. Well, I sell about one-third of each brand. It is about evenly divided.

3367 Q. Now, where do you buy your Goodyear tires, sir?

A. I get those from two sources. One of them is the Goodyear store in Springfield, and the other—that is run by Goodyear—and the other is Rucki's, of Chicopee. They are a distributor of Goodyear tires. Chicopee is about three miles from Springfield.

Q. Are those both supply points for Atlantic stations?

A. Yes, as far as I know.

Q. Where do you buy your Firestone tires, sir?

A. I get most of those from the Firestone Tire Center in Springfield.

Q. And Lee tires?

A. From the Lee Rubber & Tire Corporation, factory branch, in East Hartford, Connecticut.

Q. Do you also sell batteries at your station?

A. Yes.

Q. And what brand are you selling today?

A. Goodyear.

Q. And how long, approximately, have you been selling Goodyear?

A. Well, I think it must be at least about two years.

Q. What brand were you selling before then, sir?

A. Well, previous to that I was selling Perrine batteries.

Q. That is a battery made in the Boston area?

A. It is made in Waltham, Massachusetts, yes.

3368 Q. What was your reason for switching from Perrine batteries to Goodyear batteries?

A. Well, the local distributor in Springfield, of Perrine batteries, left his connection with the company, and he was not immediately replaced. It was during the fall of the year, I think, and the battery business was fairly good and I had to get another source of supply, so I had to drop the Perrine line. There was no representative at that time.

Q. Did Goodyear offer you the best other line, proposition?

A. At the time, yes, they did.

Q. Where do you buy the accessories you sell at your station?

A. I buy most of them from the Albert Automotive Supply in Springfield, and I buy some from the Tarbell-Waters Company in Springfield.

Q. Mr. Gloth, do you recall that a number of years ago Atlantic was selling Lee tires?

A. Yes, they were.

Q. At that time, did you buy Lee tires from them?

A. I did.

Q. Where were those tires delivered to you from?

A. From the Atlantic warehouse, in Springfield.

Q. That was run by Atlantic?

A. Yes.

Q. And do you recall that Atlantic stopped selling
3369 Lee tires and began to sponsor Goodyear tires?

A. I remember that, too.

Q. Sir, I show you a copy of Commission Exhibit 150, which is a form letter dated March 1, 1951, entitled "A statement of Atlantic's TBA policies" and it is on the letterhead of Mr. Colley, the vice president of Atlantic. Do you recall receiving a letter in that form?

A. Yes, I remember getting a letter.

Q. In that form?

A. Yes.

Q. I show you also a letter marked Commission Exhibit 206, also on Mr. Colley's letterhead, dated August 28, 1952, a restatement of Atlantic's TBA policies and ask you if you recall receiving that letter? A letter in that form?

A. I remember receiving that, the same letter.

3370 Q. Finally, I show you a letter, dated June 24, 1955, that is marked Commission's Exhibit 207, and this letter was on the letterhead of the manager of the Philadelphia-New Jersey region. If you had received one, it would be on the letterhead of the New England region. Will you tell me if you received a letter in that form from the manager of the New England region?

A. I remember receiving a letter like that.

Q. Do you happen to remember the name of the manager of the New England region?

A. It was Harrold W. Jollie.

Q. Now, Mr. Gloth, do you, on occasion, advertise the tires that you have for sale at your station?

A. Yes.

Q. Where do you generally run those advertisements?

A. Well, in the two Springfield newspapers, The Springfield Union, and The Springfield Daily News.

Q. Do you run both of your advertisements in both papers?

A. It is automatically run in both. They are run by the same company.

Q. Have you ever advertised on television or radio?

A. Yes.

Q. Which one, sir?

A. I have used both, on different occasions.

Mr. Ballard: Would you mark these documents for 3371 me for identification.

Hearing Examiner Kolb: They may be marked Respondent Atlantic Exhibit 19-A through -F for identification.

(Whereupon, the documents referred to were marked Respondent Atlantic Exhibit 19-A through -F for identification.)

By Mr. Ballard:

Q. Mr. Gloth, I show you documents which have been marked A-19-A, -B, -C, -D, -E, and -F for identification. They are photostatic copies. Could you tell me whether those are copies of advertisements that you have run in the papers you described?

Mr. Kelaher: Off the record, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Will you answer the question, please?

A. These are the advertisements I ran in those papers.

Q. Have you also run other advertisements in addition to these?

A. Yes, I have.

Q. Look, if you will, sir, at the first sheet, A-19-A. Can you tell me approximately the year in which that advertisement was run?

3372 A. I think it was in 1952 or it may have been in 1953.

Q. A-19-B, has on it the date 4/22/54. Is that about the time that advertisement appeared?

A. Well, I have an exhibit marked -B and another one marked -C. They are identical ads, and one is dated 4/15/54 and one is dated 4/22/54.

Q. Which one is marked 4/15/54?

A. They are both exactly the same ad. One is dated the 15th and one the 22nd.

Mr. Ballard: As far as I am concerned, I will withdraw -C.

Hearing Examiner Kolb: Let the record show Exhibit A-19-C is withdrawn.

By Mr. Ballard:

Q. Now, let's look at Exhibit A-19-D, which is an exhibit of Lee tires, and it is dated 4/27/54. Is that the approximate date that was run?

A. Yes. Here is the date up here, to verify it.

Q. Right. A-19-E is an advertisement with a picture of a monkey on the top. I hope that isn't suggestive of anything to anybody here. Can you give us about the date that was run?

A. That was run in 1952, or it might have been 1953.

Q. And finally, A-19-F is an undated advertisement of

a carload tire sale, and a picture of your station at
3373 the top. Can you give us about the date that was run?

A. That was run at about the same time as the others, 1952 or '53.

Q. Now, in addition to advertising those, running those advertisements, do you also display the Firestone and Lee tires in your station?

A. Yes.

Q. And do you also have a sign or have you on occasion had a sign on your station advertising the Firestone and Lee tires?

A. Yes, I have.

Q. Has your Atlantic salesman ever told you to stop buying the Firestone and Lee tires?

Mr. Kelaher: Objection, your Honor. I am going to object to the form of the question. I think it is leading. I haven't objected strenuously heretofore, but I think we can frame the questions a little better in this hearing.

Mr. Ballard: Your Honor, I don't think that is an unduly leading question under the circumstances, and I may say it has been used in these proceedings without objection many, many times. It seems to me a late date for Mr. Kelaher to get on his high horse on that particular question.

Hearing Examiner Kolb: The objection will be overruled.

3374 By Mr. Ballard:

Q. Have you ever been told to stop buying Firestone and Lee tires?

A. No, never.

Q. Have you ever been told to remove them from the station?

A. No.

Q. Have you ever been told to hide them?

A. No.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Are you going to offer the advertisements in evidence?

Mr. Ballard: Yes, sir. I offer Atlantic Exhibit A-19-A, -B, -D, -E, and -F in evidence.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibit A-19-A, -B, -D, -E, and -F.

(Whereupon, the documents, heretofore marked ATLANTIC EXHIBIT 19-A -B, -D, -E, and -F for identification, were received in evidence.)

Cross-Examination by Mr. Kelaher.

Q. Mr. Gloth, just to get the record straight, Springfield, Massachusetts, is in the Springfield district of the New England Region under Atlantic's set-up, is it not?

3375 A. Yes.

Q. There are quite a number of Atlantic stations in that area, are there not?

A. Yes, there are.

Q. Now, you began operating as an Atlantic lessee in 1934, is that correct?

A. That is right.

Q. And have you been at the same location all these years?

A. Yes, I have.

Q. And when you first began operating in 1934, was TBA considered an important part of service station operation?

A. I don't think so.

Q. Isn't it true that it assumed larger proportions after World War II than before World War II as an important part of service station operations?

A. Well, I can't honestly answer that question. I don't know enough about it.

Q. I am talking about in your business.

A. Well, I have done more after World War II with it than I did before, but I don't know whether that is representative of the other stations.

Q. I am just asking about your station.

A. Yes, I have done more.

Q. Now, when did you first begin to handle Lee tires?

A. I began to handle Lee tires when the Atlantic
3376 Refining Company became a distributor of Lee tires.

Q. And you continued to handle Lee tires from that time or at that time, rather, you began to purchase them from the Atlantic warehouse in Springfield; is that correct?

A. Yes.

Q. And then do you recall attending the dealer meeting in the New England, or in the Springfield district concerning Atlantic's change-over to the Goodyear TBA line?

A. Yes, I remember that.

Q. Where was that dealer meeting held, and who was present?

A. I am trying to remember the place where it was held. I think it was one of the hotels.

Q. The city would be fine.

A. In Springfield.

Q. Were Atlantic dealers present?

A. Yes, we had a big turn out.

Q. Big turn out of Atlantic dealers from the Springfield district?

A. Yes.

Q. Were Goodyear and Atlantic personnel present?

A. Yes.

Q. And what transpired at the meeting?

A. Well, they explained to us that the Atlantic Refining Company would, in the future, sell Goodyear tires and batteries to us instead of Lee tires, and they also
3377 explained that instead of warehousing the tires at the Atlantic warehouse, the local Goodyear distributor would warehouse the tires and deliver them to us. And they said that the Atlantic salesman would call on us or sometimes it would be a Goodyear man, but they were going to discontinue the Lee tire franchise.

Q. At that time did they discontinue the sale of Exide batteries, also, and the line of accessories they were handling?

A. I think they did.

Q. Did you handle Exide batteries back at that time?

A. Yes, I handled Exide batteries.

Q. Did you purchase some accessories from Atlantic, such as Thermoid fanbelts and other items?

A. Yes, I did buy some from them.

Q. And Fram filters?

A. Yes.

Q. Now shortly after that meeting was a call made on you by an Atlantic salesman along with a Goodyear representative?

A. I don't remember that.

Q. Do you remember whether an Atlantic salesman came in later and talked to you about the matter?

A. Oh, yes.

Q. What was his name?

A. If I remember correctly, at that time the salesman who called on me was Charles Parker, but I am not absolutely sure of that.

Q. That is all right. At least the Atlantic salesman

3378 came in, and at that time did a Goodyear man later come in, or someone from the Goodyear store in Springfield come in to see you?

A. Oh, yes, I have seen Goodyear representatives from time to time.

Q. I am talking about this time of the change-over. Of course, you had calls on you by the Springfield store, Goodyear store then, did you not?

A. I might have had calls from the Goodyear representative, but I don't remember definitely that I did.

Q. At that time, after the change-over, did you begin to purchase from the Goodyear service store in Springfield?

A. No, I didn't.

Q. You didn't at that time?

A. No.

Q. Did you purchase Goodyear tires shortly after that time?

A. From any stores, you mean?

Q. From any stores?

A. Yes, I did.

Q. Who did you puchase the Goodyear tires from?

A. I purchased Goodyear tires from the Interstate Tire Stores in Springfield.

Q. At that time, after the change-over from Lee to Goodyear—let me ask you this first: Prior to the change-over was your principal stock of tires Lee tires?

3379 A. Yes.

Q. And at that time were you carrying any stock of Goodyear or Firestone?

A. Yes, I did.

Q. Were they in smaller quantities than your Lee stock?

A. I think at that time they were.

Q. Now, after the change-over, did your purchases of Goodyear tires increase, after the change-over by Atlantic to the Goodyear TBA line?

A. Not immediately, no.

Q. Did they shortly after the change-over? How soon after the change-over did your purchases of Goodyear tires increase?

A. It was a few years after the change-over.

Q. And was that when you started to purchase from the Springfield Goodyear service store?

A. No, I started to purchase from the Goodyear service store this year, for the first time.

Q. And prior to that, were your purchases from Interstate Tire Company?

A. They were very minor, because I didn't sell very many Goodyear tires at all at that time.

Q. I see.

A. I sold a few. I featured Lee tires.

Q. Did you have a window valance with Lee on it at that time, or an outdoor pole sign with Lee on it?

3380 A. I don't think I did.

Q. Did you have any service station identification in your station as to tires?

A. You mean before the change-over?

Q. Yes, before the change-over.

A. I don't think I had any. I might have had some Lee signs, but I don't think I had any permanent Lee signs.

3381 Q. Do you have any window valances now?

A. No.

Q. Do you have any Goodyear signs on your premises?

A. Yes, I do.

Q. A Goodyear outdoor pole sign?

A. I have one Goodyear sign attached to a floodlight pole.

Q. Yes, that is the so-called Goodyear pole sign. When was that placed on your premises?

A. I don't remember.

Q. Was that sometime ago?

A. It was more than a year, I know.

Q. It was after Atlantic changed over to the Goodyear TBA line, was it not?

A. Yes.

Q. Are you familiar with, from your observation, have you seen the other Atlantic stations in your area or district?

A. Yes, I have seen them.

Mr. Ballard: I will let that answer stand, but before you answer the next question, I might want to object to it.

By Mr. Kelaher:

Q. Based on your observation of Atlantic stations in that area, isn't it true that the Goodyear window valances and outdoor signs predominate in Atlantic stations?

Mr. Ballard: Now, sir, I object to that question on the ground it goes beyond the scope of direct examination.
3382 This man was not put on the stand to testify about what other Atlantic stations do in the area. If Mr. Kelaher wants to call him for that purpose, it is a different matter.

Mr. Kelaher: They are calling this witness as a typical dealer from the New England region. I think I have a right to go into the question of how typical he is, and develop facts concerning the area in which he sells. I don't see where that is irrelevant or immaterial.

Hearing Examiner Kolb: Is he offered as a typical witness?

Mr. Ballard: Your Honor, he is offered as an Atlantic witness who carries—to demonstrate his own state of mind, not as a typical witness.

Hearing Examiner Kolb: It seems to me your attempt to show the course of conduct among the stations, and I assume this man would be presented as typical of how the stations are operated and what they do.

Mr. Ballard: Your Honor, I don't think I can choose or find a typical Atlantic witness. I can find witnesses of which this man is an example—

Hearing Examiner Kolb: But you expect me to find from the witnesses you produce that the others are probably about the same thing.

Mr. Ballard: Your Honor, on that basis, I would be delighted to have him answer the question.

3383 By Mr. Kelaher:

Q. You may answer.

A. Would you repeat the question, please.

Hearing Examiner Kolb: Read the question.

(The reporter read the question as follows: "Based on your observation of Atlantic stations in that area, isn't it true that the Goodyear window valances and outdoor signs predominate in Atlantic stations?")

A. I don't think they predominate.

By Mr. Kelaher:

Q. You say you don't think they predominate?

A. No.

Q. Isn't it true that Atlantic service stations in that area have the Goodyear window valance on the windows?

A. Some of them have, yes.

Q. Isn't it a fact that the majority of them have?

A. I can't answer that question.

Q. And isn't it a fact that the Atlantic service stations in that area have signs similar to yours, on the premises, the outdoor, Goodyear outdoor pole sign?

A. I think a good many of them have the outdoor pole

sign. That is the only Goodyear sign I have, is that outdoor pole sign.

Q. That is the only one you have. But isn't it a fact that the majority of Atlantic service stations in your
3384 area have a Goodyear outdoor pole sign, or they don't have any sign; is that right?

A. I haven't observed that closely. I can't say that; I can't answer that.

Q. You have seen Goodyear outdoor pole signs in Atlantic service stations?

A. Yes.

Q. You haven't seen Lee outdoor pole signs in your area, have you?

A. No.

Q. And you haven't seen outdoor Firestone pole signs in your area, in Atlantic stations, have you?

A. No, I don't remember seeing them.

Q. And you haven't seen outdoor pole signs of any other brand on Atlantic stations in your area, have you?

A. I can't remember, I spend so much time in my own station, I don't have too much chance to see the other ones.

Q. You have been in business for 24 years, so I assume you have seen some Atlantic stations?

A. That is right, but I have been in business mostly because I stay in my own station.

Q. I am not too clear on your testimony about the signs, Respondent's Exhibit A-19-A through F, in some respects.

A. As I understand your testimony, these exhibits,
3385 19-A for example, was run in 1952 or 1953. Is that right? (Handing document to the witness.)

A. Yes.

Q. Now, with respect to Respondent's Exhibit 19-A, B, and D, E, and F, the last one of these was run in 1954, I believe you testified. Was that right?

A. One of them was.

Q. Now, is it your testimony that you have continued to run these ads to date?

A. No, I am not running ads now as frequently as I used to.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Ballard.

Q. Mr. Gloth, returning to the dealer's meeting, at the time Atlantic began to sponsor the Goodyear brand, in the course of that meeting did the Atlantic representatives state to you that the program was a voluntary one?

A. Yes.

Q. Mr. Gloth, I show you these two pictures and ask you if these are pictures of your station?

A. Yes, they are.

Q. Now when were these pictures taken, sir?

A. Probably about three weeks ago.

Q. Were they taken on the occasion of the visit of one of my associates to your station?

3386 A. Yes.

Q. At that time did you have displayed along the wall of your station a sign reading "See Gloth for Goodyear or Firestone tires, batteries, wholesale discounts"?

A. Yes, I had that sign.

Q. Did you at that time have a display of eight Firestone tires in front of your station?

A. Well, I had eight tires there. I don't know if they were all Firestone tires, but some of them were.

Q. Were two of them in a Firestone stand?

A. Yes.

Mr. Ballard: No further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess at this time.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

HAROLD F. McCARTHY was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

3387 Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Harold F. McCarthy.

Direct Examination by Mr. Ballard.

Q. Mr. McCarthy, you are the lessee of an Atlantic service station, are you not?

A. Now, yes.

Q. Where is that station located, sir?

A. Belgrade Avenue, Roslyndale, Massachusetts.

Q. That is near Boston?

A. Just the other side, about seven miles or so.

Q. Now you have occupied that Atlantic station in two separate stretches, is that corect?

A. Yes, sir.

Q. What were the years you occupied that station?

A. I was there eight years, then I left and came back after five years, came back here, and I am back now four years.

Q. In other words, you have been there since 1952?

A. Yes.

Q. During that five years between times, what were you doing?

A. I was with the Texaco company.

Q. Were you operating a service station?

A. Yes.

3388 Q. Did you lease that service station from Texas?

A. Yes, I did.

Q. That would be five years, 1947 to 1952?

A. Let's see, four years I am back.

Q. That would be 1954, you have been back since about 1954?

A. Around there, yes.

Q. And you were with Texas about five years previous to that. And you were with Atlantic eight years previous to that?

A. Yes.

Q. Was your Texas station near your present Atlantic station?

A. About a block away from it.

Q. When you moved from your Texas station to your Atlantic station, did your customers come with you?

A. Right back with me, yes.

Q. Now, sir, what kind of tires do you sell?

A. Firestone, Goodyear, Kelly-Springfield, anything that the man wants, we get for him.

Q. If the man doesn't ask for a particular brand, what brand do you offer him?

A. Firestone.

Q. What brand did you sell at your Texas station?

A. Firestone.

Q. Where did you first become acquainted with

3389 the Firestone brand?

A. I worked for them for about fifteen years.

Q. Now, sir, are the Firestone tires visible in your station?

A. Yes, sir.

Q. Does your Atlantic salesman know they are there?

A. Oh, yes.

Q. Did he ever tell you to take them out of the station?

A. No, sir.

Q. Or to hide them?

A. No, he did not.

Mr. Ballard: I don't think I have any further questions.

Cross-Examination by Mr. Kelaher.

Q. I just have a few questions, Mr. McCarthy. Roslyndale, as you stated, is in metropolitan Boston, is it not?

A. Yes.

Q. And there are a lot of Atlantic serice stations up there, aren't there, in that area?

A. One, two, three—

Q. I mean in the metropolitan Boston area?

A. Yes, quite a few.

Q. Isn't it a fact that the Atlantic service stations have the Goodyear window valance and Goodyear outdoor 3390 pole sign on them?

A. I have two.

Q. You have two?

A. Yes.

Q. And do you stock Goodyear tires?

A. No, I don't stock them, but I can get them any time I want them. They are very handy to me.

Q. It would be to your advantage to have the Firestone sign up there, wouldn't it?

A. Well, it doesn't make too much difference, if I can't sell a man a Firestone, I will sell him a Goodyear, or a Kelly-Springfield or a Fisk, anything he wants.

Q. But if a motorist were coming along, he wouldn't know you handle Firestone from your outdoor sign, would he?

A. No, from my window, you have to pass me before you can see it on the window.

Mr. Kelaher: I have no further questions.

Mr. Ballard: Thank you very much, Mr. McCarthy.

(Witness excused.)

3391 GEORGE ZARELLA was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter, please.

The Witness: George Zarella, 7 Headland Way, Bedford, Massachusetts.

Direct Examination by Mr. Gordon.

Q. Mr. Zarella, Mr. Kelaher is counsel for the Federal Trade Commission, and he is sitting at this other table. Mr. Kolb is the Examiner in the case. And I will question you.

What is your home address?

A. 7 Headland Way, Bedford, Massachusetts.

Q. And the address of your station?

A. 206 Salem Street, Malden, Massachusetts.

Q. Malden is in Greater Boston, is it not?

A. Yes, it is considered the Greater Boston area.

Q. You lease an Atlantic station, do you not?

A. Yes, I do.

Q. How long have you leased one?

A. Thirteen years.

3392 Q. Since 1945?

A. Right.

Q. What is the term of your present lease?

A. The present term is a three-year lease.

Q. When did you get that?

A. Well, if I recall, it was probably say six or seven years ago. I was one of the first ones in Massachusetts to have this three-year lease.

Q. Would you tell me what kind of tires you now have in your station, what kind you stock in your station?

A. Well, I stock Pharris tires.

Q. Any other kind?

A. Well, I have some Goodrich tires.

Q. How long have you stocked Pharris tires?

A. I would say in the last two years.

3393 Q. Prior to that, what kind of tire did you have in your station?

A. Well, I had a consignment deal with a Pennsylvania tire company that I purchased through a local agency there. I think I purchased something like $800 worth of tires from him at the time on a consignment deal.

Q. Did you carry Pennsylvania tires for any length of time?

A. I would say roughly two years.

Q. Have you carried batteries in your station?

A. Yes.

Q. What kind?

A. Right at the present time I am carrying Surrette batteries. I have had those the last eight or nine years.

Q. How long have you carried Surrette?

A. I would say roughly eight or nine years.

Q. What portion of your battery sales would you say are Surrette batteries?

A. I would say most of the sales are Surrette batteries.

Q. Where do you purchase your accessories?

A. Well, I have several local dealers in the area. I have two fellows that come in to the station, with one of these

trucks loaded with merchandise, and they come in, say, once a week, and I purchase from them.

Q. Do you know their names?

3394 A. Eastern Auto Parts in Malden, Colburn Auto Parts in Malden, Schrager Auto Parts in Malden, and Ross Motor Parts in Medford is also another one.

Q. Could you estimate for me about how much you bought from the Goodyear store in the last year or so?

A. According to the records I get from one of my dealers, I think it was roughly $200 I purchased last year.

Q. During that same period—

A. (Interposing.) I mean I wouldn't want you to quote me, but I think that is what it was.

Q. During that same period, about how much TBA have you bought from all stores?

A. On a yearly basis?

Q. Yes.

A. I would say between four or five thousand dollars.

Q. Has this been your general TBA purchasing pattern for some time, what you have just described?

A. Yes, it has.

Q. Does it go back to practically when you began as an Atlantic dealer?

A. Yes.

Q. Do you display TBA?

A. Yes, I do.

Q. Do you display Surrette batteries?

A. I have a Surrette stand right in my office.

3395 Q. What kind of fanbelts do you carry?

A. Gates.

Q. Do you have a rack?

A. Yes, I have a rack with the Gates name on the rack.

Q. Do you ever place the TBA you carry on display in your window?

A. Yes, I do.

Q. The accessories you purchase, are they on display on the shelves in your station?

A. Yes, I have several shelves in my office.

Q. Are these visible to your Atlantic salesman?

A. Yes, they are.

Q. Is the TBA you carry visible to anyone?

A. It is.

Q. Do you sell TBA you carry on Atlantic credit cards?

A. Yes, I do, the purchase of tires and so forth, I put that on the Atlantic credit card.

Q. Have you ever been criticized for doing that?

A. No, not to my knowledge.

Q. Has anyone from Atlantic ever criticized you for carrying the TBA and selling the TBA you do?

A. Never.

Q. Has anyone from Atlantic ever told you to stop buying TBA that you have been buying?

A. Not to my knowledge.

3396 Q. Has anyone from Atlantic ever told you to remove that TBA from your station or hide it?

A. No.

Q. Who makes the decisions in your station as to what TBA you buy?

A. I do.

Q. Do you feel free to buy any TBA you want?

A. I do.

Q. Do you feel free to buy TBA from any source you want?

A. Yes.

Q. Have you ever been forced or pressured into buying Goodyear TBA?

A. No, never was.

Q. Now, Mr. Zarella, I would like to show you this letter marked Commission's Exhibit 150. It is a letter, dated March 1, 1951, on the stationery of Mr. Culley.

Would you examine that letter and tell me whether you have ever received it?

A. I think I do recall receiving a letter through the mail like this.

Q. Thank you.

Now, I show you this letter marked Commission's Exhibit 206. It is entitled "A Restatement of Atlantic's TBA Policy", again on Mr. Culley's stationery.

A. I do recall this, yes.

Q. Now, I show you this letter which is marked
3397 Commission's Exhibit 207. It is called "No Forcing", dated June 24, 1955.

A. Yes, I remember this distinctly.

Q. Do you know who the regional manager is in your particular region?

A. Gee, I don't recall who he is right now. There is a Mr. Wilson.

Q. Mr. Wilson?

A. Yes, I think that was he.

Q. Do you know a Mr. Jollie?

A. Yes.

Q. Did he send you that?

A. I think his signature was on the bottom of those letters, Mr. Jollie's.

Q. Mr. Zarella, your lease has been renewed many times, has it not?

A. Yes, it has been renewed.

Q. In connection with your lease renewals, has Atlantic ever discussed the brand of TBA you carry and sell in your station?

A. No.

Q. Are there many stations of other oil companies in your area that compete with your station?

A. Yes, several of them.

Q. Could you name a few of those?

A. Well, Socony, Gulf, Jenny, Omoco. I think
3398 Jenny is more of a local New England gas.

Q. Have you received offers from any other oil companies to take stations for them?

A. Yes.

Mr. Kelaher: Your Honor, I am going to object to this line of questioning.

Mr. Gordon: This is certainly admissible. We have followed this line of questioning many times before.

Mr. Kelaher: I have objected before, too. I can't see the relevancy of this type of testimony in this case at this time.

Mr. Gordon: I can give you many reasons for this if you are thinking of sustaining the objection.
line of questioning, your Honor, and I would like to do so,

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Gordon:

Q. You have received offers from—

A. (Interposing.) Yes, I received several offers from other stations, one very close by, the next corner to me. I was offered that station.

Q. Are qualified good dealers in demand?

A. Very much so.

* * * * *

3399 By Mr. Gordon:

Q. Do you have many personal credit customers?

A. My own personal, yes, I have several.

Q. Do you know Atlantic has a program by which it inspects its stations?

A. They do.

Q. Do they, shortly after those inspections, discuss the results with you?

A. Well, they have, for housekeeping, what they call a

mark they give you and usually after two or three weeks when the dealer salesman comes in, we usually ask him what the mark was we got for housekeeping and so forth, and drive-way inspection.

Q. They discuss it with you?

A. Yes, they do.

Q. Do they ever mention in connection with those discussions the brand of TBA you carry?

A. No.

3400 Mr. Gordon: I have no further questions.

Cross-Examination by Mr. Kelaher.

Q. Mr. Zarella, where is Malden, Massachusetts located in relation to Boston, Greater Boston?

A. Well, I would say—

Q. (Interposing.) How many miles?

A. I would say roughly between six and seven.

Q. You referred to a Goodyear service store, is that correct, in your testimony? Where is it located?

A. I think the nearest one to me, I think there is one in Lynne, that is the nearest one. Lynne, Massachusetts.

Q. How far away is Lynne from Malden?

A. I would say it is around five or six miles from Malden.

Q. There are no Goodyear supply points in Malden; is that right?

A. There is an independent Goodyear supplier in Malden and he operates the store himself.

Q. What is his name?

A. I think it is Kaufman.

Q. I take it he is not a designated supply point under the Atlantic set-up, is he?

A. Not that I know of. I think that Lynne is the nearest one.

Q. The nearest designated supply point?

3401 A. I think, to Malden, yes.

Q. Now, you have been an Atlantic lessee dealer since 1945?

A. That is right.

Q. Now, beginning in 1945, at that time did you make any purchases from Atlantic Refining Company, itself? Did you purchase Lee tires?

A. I was purchasing Lee tires from Atlantic at the time, but not too many. It was mostly—I would say some were Lees and mostly Firestones that I was purchasing from the Firestone dealer.

Q. Did you purchase Exide batteries from Atlantic?

A. I had some Exide, yes, and I also had the Surrette with Exide.

Q. Did you purchase Exide batteries from Atlantic?

A. Yes, I did.

Q. Where was the Atlantic warehouse?

A. I think at that time they were located in Cambridge, Massachusetts, or Brighton, I should say.

Q. Where?

A. I think it was Brighton. I am sorry, I take that back. That is Allston, Massachusetts.

Q. Is that in the Cambridge area, Allston?

A. Yes.

Q. That is way on the other end of Boston?

A. Right.

3402 Q. How many miles would you say that is from your place?

A. I would say probably 12 miles from my station.

Q. Now, at that time when you went into the station, was it a new station or did you replace another dealer?

A. When I went into the station, it was closed, it was closed during the war years. I was the first one—

Q. (Interposing.) You were the first one in it?

A. Yes, it was an old station and they fixed it up.

Q. At that time dealers were more difficult to find than they are today, is that true, in 1945?

A. If I recall, I think they were hard to find at the time.

Q. What?

A. I think the dealers were hard to find at that time, if I recall. A lot of them had defense jobs, and I, myself, was on a defense job, and I was doubting if I should leave it or not, and then I finally decided I had to go into the gas business.

Q. Now, at the time you opened your station, did you have a Lee sign outside the station, on the premises, or a Lee identification, window valance, in your station?

A. Gee, I don't recall. I know I bought Lee tires.

Q. You stocked Lee tires?

A. Yes.

Q. You don't recall whether you had a Lee or Exide sign in your station?

3403 A. I think I put a Lee up myself, one of those over hanging signs, or a decal.

Q. Are you talking about a window valance?

A. Yes, I did have one of those.

Q. Now, at the time Atlantic changed over to Goodyear, which was in or about March 1951, did you attend a dealer meeting in your area concerning the matter?

A. Well, I don't know. I have attended several dealers' meetings.

Q. Would it refresh your recollections to state that at that time Atlantic was holding dealer meetings, at which it announced the change-over to the Goodyear TBA line? Do you recall that at all?

A. I do recall it. I got a letter on that, that they were going to change over to Goodyear.

Q. That was the letter shown to you on direct examination?

A. Yes.

Q. At that time isn't it true there was a meeting of Atlantic dealers in your area?

A. Yes, they have had several meetings.

Q. I am talking about the 1951 period.

A. I don't recall. I think maybe I was. I don't remember that far back.

Q. Now, is Malden, Massachusetts—in what district of the New England region of Atlantic is Malden 3404 located? Is that in the Boston district?

A. It is what they call a suburb of Boston. I will put it that way. Like I live in the next town, which is Medford, and we call it a suburb of Boston, too. The counties may be different. Boston goes under Suffolk and we go under Middlesex County.

Q. I am referring to the Atlantic set-up. I understand from counsel that it is in the Boston district.

A. Yes.

Q. Now, at that time do you recall any meetings in or about Mar[illegible] '51 or after the change-over to Atlantic?

A. I think I did recall after 1951 they had dealers' meetings. I attended several.

Q. Was Goodyear TBA discussed at that time?

A. Yes, they had Goodyear TBA at the meetings.

Q. Did they have a Goodyear representative at the meetings sometimes?

A. I think they did have a Goodyear representative.

Q. Now, getting back to the change-over to Goodyear TBA, was your station identification changed to Goodyear identification?

A. Yes.

Q. And isn't that true of all the Atlantic dealers in your area?

A. No.

3405 Q. Aren't the majority of them identified with Goodyear window valances and outdoor pole signs?

A. My own station has. I don't know about the others. I never noticed too much the other Atlantic stations. I know some that carry other different brands.

Q. I am talking about an outdoor pole sign. Isn't it true that every station in your area either has a Goodyear outdoor pole sign or has not an outdoor pole sign?

A. Some do and some don't.

Q. But the ones that do, it is a Goodyear sign?

A. Right.

3406 Q. And isn't that true of the Goodyear valance in the window, also?

A. I never noticed.

Q. Do you have a Goodyear sign?

A. Just the overhead pole sign. But the decal I took out.

Q. You are advertising Goodyear tires in your station and you testified you don't carry Goodyear tires?

A. That is right. For one reason, I don't sell them, because I think there I am in a price area and I have to compete with competition and that is one reason I can't sell Goodyear tires.

Q. If you don't sell them, why do you advertise them?

A. Well, I just have the sign there. Some people occasionally ask for a Goodyear tire and I pick one up.

Q. Isn't it a fact you have a sign there because Atlantic put it there?

A. Well, I have other signs besides Atlantic. I have also a Penn sign in the window.

Q. I am talking about the Goodyear outdoor pole sign.

A. That was put up there and don't mean nothing to me.

Q. It wasn't put up at your request, was it?

A. Not that I recall.

Q. You wouldn't request it if you weren't selling Goodyear, would you?

A. No, but the—

3407 Q. Just answer the questions.

When was that sign put up there?

A. Probably five or six years back.

Q. Right after Atlantic changed over to Goodyear TBA, wasn't it?

A. Right.

Q. And since that time you haven't stocked Goodyear tires?

A. No.

Q. Have you sold Goodyear tires on a fill-in basis since that time?

A. I sell Goodyear tires on request only.

Q. You don't like to sell Goodyear tires, do you?

A. No, I am not a Goodyear man, definitely not.

Q. Who manufactures Pharris tires, do you know?

A. Well, the reason why I carry those tires, they give you a road hazard guarantee, which Goodyear doesn't give and I think it means a lot to protect the customers I sell a tire to, if somebody goes up the street and has a blow-out and comes back and I make the adjustment myself. I am well satisfied with the tires I sell. Goodyear doesn't do that.

Q. And you get a better price on Pharris tires?

A. I certainly do. I get them on a consignment basis.

Q. It is to your advantage as an Atlantic dealer to handle Pharris tires, isn't it, to your financial advantage to handle them, instead of Goodyear tires; is that right?

3408 A. Right.

Q. Now, getting down to batteries. You handle a Surette battery?

A. Yes.

Q. Is that a local battery?

A. That battery is made in Lynn, Massachusetts.

Q. That has consumer acceptance in your area, a local type?

A. It is a local outfit battery, that is right.

Q. Do you purchase any Goodyear batteries?

A. No. I have bought some, but I never had any luck with them.

Q. You don't like Goodyear batteries, either?

A. No, I sent two back for adjustment and I never got my credit on them yet.

* * * * * *

3409 By Mr. Kelaher:

Q. Have you had any conversation with your Atlantic salesman concerning your purchases of Goodyear TBA, your lack of purchases, I mean?

A. They have approached me on it, that they were going to sell Goodyear products, that Goodyear was taking over their products, if that is what you mean.

Q. I am talking about this year, or last year, or the previous year. Have you ever had any conversations with your Atlantic salesman, concerning your lack of purchases of Goodyear TBA?

A. They did mention to me why I didn't buy Goodyear products and I told them I didn't care too much for them.

Q. And you said you learned, through your Atlantic dealer, that you purchased approximately $200 worth of Goodyear TBA, last year, is that right?

A. I think through my salesman, if I recall, I don't know whether it was last year or the year before, I mentioned to him, I think it was $200 or $250 worth of tires I bought.

Q. Did he have a record of that? You mentioned on your direct examination, he had a record.

A. I could get a record of that. I think my sales supervisor can give me a record on that, from Atlantic.

Q. They keep a record of your purchases of Goodyear TBA?

A. I think they do.

Mr. Kelaher: No further questions.

3410 *Redirect Examination by Mr. Gordon.*

Q. Mr. Zarella, at the time of the change-over in 1951, to the Goodyear program, when Atlantic started to promote the sale of Goodyear TBA, did Atlantic make it clear to you that the purchase of TBA by you from Goodyear was voluntary?

A. They did.

Q. Isn't it true also that your Pharris salesman knows how much Pharris tires you buy from him?

A. Yes.

Recross Examination by Mr. Kelaher.

Q. Isn't it also true that your Atlantic salesman doesn't know how much tires you buy from Pharris?

A. He sees them when he comes in the station, he knows I sell them.

Q. I am talking about the dollar value, unless you tell him. Under your new lease, you pay a percentage to Atlantic on your gross sales.

A. I think they have a setup like that.

Q. Do you itemize it by brands?

A. No.

Q. So your Atlantic salesman does not know what your volume of purchases of Pharris tires or any other non-Goodyear TBA product is, does he?

3411 A. That is right.

Q. But he does know what your purchases of Goodyear TBA are?

A. I believe he does.
Q. Your answer is yes to that last one?
A. Yes.
Mr. Kelaher: No further questions.
Hearing Examiner Kolb: Thank you.

(Witness excused.)

Mr. Ballard: Could we have a brief recess, sir?
Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

EDWARD L. SNOW, was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Edward L. Snow, home address: No. 8, Moreland Street, Worcester.

Direct Examination by Mr. Ballard.

Q. What is the address of your Atlantic station?
3412 A. 1119 Pleasant Street, Worcester.
Q. How long have you been at that station?
A. Well, close to 20 years.
Q. You lease that station from Atlantic?
A. Yes, sir.
Q. What is the term of your present lease?
A. I can't get you.
Q. How long a term is your present lease, sir?
A. Three years.
Q. Do you carry any stock of tires in your station, sir?

A. No, sir.

Mr. Kelaher: No tires?

The Witness: No.

By Mr. Ballard:

Q. How about batteries?

A. Delco batteries.

Q. How long have you been carrying Delco batteries?

A. Oh, six or seven years.

Q. Do you have a Delco sign on your station?

A. Yes, sir, on the fence.

Q. Do you do any promotional activity to promote sales of your station?

A. Well, I used to but I don't now, because I am pretty well established.

Q. What kind of things did you used to do?

3413 A. Well, like lubrications and oil and stuff like that.

Q. Do you ever give calendars or Christmas cards or things?

A. Calendars.

Q. Do you still do that?

A. Nope, I switched to pencils.

Q. You give pencils now?

A. Yes.

Q. Did the Atlantic Refining Company publish an article about your station in their dealer news?

A. Yes, sir.

Q. They showed a picture of you in that article?

A. What?

Q. Did they show a picture of you in that article?

A. Yes, sir.

Q. Was that picture taken in your station?

A. Yes, sir.

Q. Did it show the Delco sign on your fence?

A. I think it did.

Q. Has any other oil company ever asked you to be a lessee for it?

A. Oh, yes, half a dozen of them.

Mr. Ballard: Cross-examination, Mr. Kelaher.

Cross-Examination by Mr. Kelaher.

Q. How long did I understand you to say you had 3414 been an Atlantic dealer, Mr. Snow?

A. About 20 years.

Q. Have you been at the same location for those 20 years?

A. Yes, sir.

Q. And that is in Worcester, Massachusetts, which is about—

A. Worcester, Massachusetts.

Q. How many miles west of Boston is that?

A. Forty-four.

Q. What is the population of Worcester?

A. I don't know, there are so many of them moving out now with high taxes; I don't know.

Q. It is a relatively small town, isn't it?

A. I think it is about 180,000, something like that.

Hearing Examiner Kolb: Did you say 180,000 or 200,000?

The Witness: About 180,000.

By Mr. Kelaher:

Q. Are there many other Atlantic stations in that area?

A. Not for a mile and a half.

Q. Which one of Atlantic's districts is Worcester located in, do you know?

A. Which what?

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3415 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, it is stipulated between counsel that Worcester, Massachusetts is in the Boston district of Atlantic's New England region.

By Mr. Kelaher:

Q. Is it your testimony that you carry no tires in stock today?

A. No.

Hearing Examiner Kolb: That is very confusing on the record. Does that mean you do carry or don't?

The Witness: I don't carry them; all on orders.

By Mr. Kelaher:

Q. You don't carry a stock of tires?

A. No, sir.

Q. Do you remember when Atlantic was selling Lee tires and Exide batteries and Thermoid fanbelts and Fram oil filters?

A. Yes, I do.

Q. Did Atlantic have a supply point up in your area, where you could buy them from?

A. Yes.

Q. Did you buy them?

A. No, sir.

Q. Where was there a supply point located, in Worcester?

A. No, a truck came by, out of Providence.

3416 Q. Providence, Rhode Island?

A. Yes.

Q. That is a long distance away, isn't it?

A. Yes.

Q. So you would have a delivery problem there, wouldn't you, a service problem?

A. Yes.

Q. Is that the reason—

A. Yes, I do, I never bought any, the only thing I ever bought off Atlantic is Lee tires.

Q. You did buy Lee tires at one time?

A. Yes, I bought them, because I liked the tires.

Q. Did you stock the tires?

A. No.

Q. But you did buy the Lee tires?

A. Yes.

Q. Did you like the road hazard guarantee with them?

A. They were all right, yes.

Q. Was the price good?

A. It was all right.

Q. Was the price lower on those than on Goodyear tires?

A. Well, today, there are so many cut-throats on tires, you can't figure that. That was 10 or 12 years ago.

Q. I mean your purchase price.

A. Well, the purchase price today is a little bit 3417 higher than it was then.

Q. Now you stated that you have been in the same station through these years. Did you ever have a Lee sign up on your station, a Lee window valance?

A. Yes.

Q. Did you have a Lee or Exide sign outside on your premises?

A. Yes, but I wasn't buying Exide batteries from Atlantic.

Q. But you had Lee and Exide signs up?

A. Yes.

Q. Why did you have them up? Was that because Atlantic put them there?

A. No, I put them there.

Q. But you weren't selling Lee tires?

A. No, after I got the Lee tire sign, I just had it in the window, it wasn't plastered to the window, it was off.

Q. You just had the Lee sign in the window?

A. That is all.

Q. You never had the outdoor pole sign in your station?

A. No.

Q. Does your station have a large frontage to it?

A. Mine?

Q. Yes.

A. I think I have the smallest frontage of any station Atlantic owns.

Q. So you don't have room for outdoor signs?

3418 A. It was built when they had model T cars.

Q. So you don't have room. Do you have an outdoor sign there now?

A. No, sir.

Q. There is no room for one, is there?

A. No, I used to have a sidewalk sign and I had to take it off, because we backed into it and either scratched the side of the car or busted the sign, so I had them take it out.

Q. You had who take it out?

A. Atlantic.

Q. Was that a Goodyear outdoor sign?

A. No, not a Goodyear. It was just a lubrication and stuff like that.

Q. Now, do you have any window valance—do you know what that is, a window decal?

A. Yes.

Q. Do you have the Goodyear one up there, I guess; don't you?

A. Yes.

Q. Was that put up after Atlantic changed over to the Goodyear TBA program?

A. I have forgot now whether it was or not.

Q. And all of the Atlantic stations that you know of around there have that Goodyear decal up, don't they?

3419 A. I couldn't tell you that, either.

Q. Do some of them have it up?

A. Some of them do and some don't.

Q. They either have that up or have nothing up?

A. That is it.

Q. And the same goes for the Goodyear pole outside, they either have a Goodyear sign up or nothing up?

A. They haven't got a Goodyear pole.

Q. I mean in the other stations?

A. I never saw a Goodyear pole.

Q. Around that area?

A. No.

Q. You don't do a very big business in TBA, do you?

A. No, I don't, because if I want anything, I have got a lot of stock, but I haven't got no stock just like Gates fanbelts, I have got them, but I buy them from Worchester Wheel and Rim, or City Auto Parts.

Q. But you don't carry—you carry no stock of tires, right?

A. No, no stock of tires at all.

Q. You carry very few batteries?

A. Delco batteries, and that is all.

Q. Very few?

A. Four or five.

Q. And do you purchase Goodyear batteries when
3420 a customer asks for Goodyear?

A. No.

Q. You don't like Goodyear?

A. Huh?

Q. Do you like Goodyear batteries?

A. I didn't say I didn't like them, I have nothing against them, but I sell Delco. I get a better deal on Delco than I can on them.

Q. It is to your advantage to handle Delco batteries in preference to Goodyear batteries, isn't it?

A. Delco is the best to me.

Q. From a financial standpoint?

A. Yes.

Q. Now you say you carry no stock of accessories. Do you carry DuPont polishes, for example, or Johnston's?

A. I carry a few DuPonts. I get that from City Auto Parts.

Q. Do you carry some Johnson—you carry very little stock of accessories, is that correct?

A. Yes. I get that either from Worcester Whell and Rim or City Auto Parts, or Christian Thompson.

Mr. Kelaher: No further questions.

Mr. Ballard: No further questions, your Honor.

Hearing Examiner Kolb: That is all. Thank you very much.

3421 (Witness excused.)

DOMINIC MOLINARO, JR. was called as a witness for The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Dominic Molinaro, Jr., Crowley Street, Burlington, Massachusetts.

By Mr. Gordon:

Q. The address you just gave, Mr. Molinaro, was that the address of your home or your station?

A. My home.

Q. What is the address of your station?

A. Cambridge Road, Burlington, Massachusetts.

Q. You lease an Atlantic station, do you not, Mr. Molinaro?

A. I do.

Q. When did you begin to lease it?

A. 1949.

Q. Have you been in that same station up at the present time?

A. Yes.

Q. What is the term of your present lease?

A. Three years.

3422 Q. What kind of tires are you now purchasing and stocking?

A. Goodyear.

Q. Where do you purchase those tires?

A. The Goodyear store, in Lowell, Massachusetts.

Q. What kind of batteries do you stock?

A. Bowers.

Q. Entirely?

A. Yes.

Q. How long have you been purchasing Bowers?

A. Six or seven years, around that.

Q. What kind of accessories—do you purchase your accessories from Goodyear?

A. No, very, very little.

Q. Where do you purchase your accessories?

A. You want the names in—

Q. (Interposing.) Your main suppliers.

A. Well, we have Suppliers Automotive Company, that is in Woburn; and, Cataldo Auto Parts, and they are in Medford.

Q. What portion of your accessories do you buy from Goodyear, would you say?

A. I would say less than ten percent.

Q. Now, before 1951, Atlantic was selling Lee and Exide, you note that?

A. Yes.

Q. What kind of tires did you stock then?

3423 A. I think I was stocking Lee and Goodrich.

Q. About what portion of each?

A. About 50/50.

Q. Where did you get your accessories?

A. I think I was still getting them from the peddlers and parts companies at that time, peddlers and the same companies I mentioned before.

Q. What kind of batteries did you then buy?

A. I think I had Exide, and Goodyear for a short time, at that time.

Q. Why do you buy Goodyear tires?

A. Well, I am the only Goodyear dealer in Burlington. Goodyear is not represented in any other store, and well, they are a good tire, and I get a good price on them.

Q. Does your Atlantic salesman sell Goodyear tires to you?

A. Yes, I guess so, indirectly.

Q. Does he help you in purchasing Goodyear tires?

A. He does.

Q. How does he do that?

A. Well, whenever I run into a price situation, I always contact him, and usually he does a little better.

Q. He gets a better price for you?

A. Yes.

Q. Now, do you openly display Bowers batteries?

A. Oh, yes.

3424 Q. How do you do that?

A. Well, I have a rack in my office.

Q. Is the name "Bowers" visible?

A. Oh, yes, the name is on the rack and on each battery.

Q. What kind of battery cables do you sell?

A. Bowes.

Q. How do you display those?

A. In a rack.

Q. The name of the company is visible on that rack?

A. Yes.

Q. What kind of fanbelts do you carry?

A. Dayton.

Q. Are they displayed?

A. Yes.

Q. How?

A. On a rack right on the side of the bay.

Q. Are the accessories that you purchase openly displayed in your station?

A. Yes.

Q. Are they on the shelves?

A. Yes.

Q. Are they visible to your Atlantic salesman?

A. Anyone else—who are you going to sell them?

Q. Do you sell these accessories and Bowers batteries on Atlantic credit cards?

3425 A. Yes.

Q. Did Atlantic ever criticize you for doing that?

A. No.

Q. Had Atlantic ever criticized you for carrying the batteries and accessories you do?

A. No.

Q. Did they ever tell you to stop buying those batteries and accessories?

A. Never, they had better not.

Q. Did they ever tell you to remove them from your station or hide them?

A. Never.

Q. Who makes the decisions in your station as to what to buy?

A. I think I do.

Q. You feel free to buy whatever TBA you want?

A. I certainly do.

Q. Have you ever been forced or pressured into buying Goodyear TBA?

A. Never.

Q. I show you now, Mr. Molinaro, Commission's Exhibit 150, which is a letter, dated March 1, 1951, on Mr. Colley's letterhead, and ask you to examine that letter, and tell me whether you recall receiving such a letter.

A. Yes, I think I did. Yes, I did.

Q. Now, I show you Commission's Exhibit 206, 3426 which is entitled "A Restatement of Atlantic's TBA Policy", a letter dated August 28, 1952, also on Mr. Colley's letterhead, and ask you to examine that and tell me whether you remember receiving it?

A. Yes.

Q. Now, I show you Commission's Exhibit 207, which is a letter entitled "No Forcing", and it is dated June 1955. That is on a regional manager's letterhead. Could you tell me whether you recall receiving that letter?

A. Yes, I think I recall this one, too. Yes.

Q. Has your lease been renewed many times, Mr. Molinaro?

A. Oh, yes, nine years.

Q. Tell me, in connection with the renewal of your lease, has Atlantic ever discussed your brand, the brand of TBA, that you carry?

A. Never.

Q. Are there many oil companies active in your area?

A. Oh, yes.

Q. Stations that compete with you?

A. Very much, for the size of the town, very many.

Q. Have you received offers from other companies to take stations?

A. Yes.

Q. How many companies?

A. Well, three or four of them.

3427 Q. Are good dealers in demand?

A. I think so.

Q. Do you feel that you could, if you wanted to, get a station for another company?

A. I know I could.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Gordon:

Q. If you took one of these stations, do you feel you could take a substantial portion of your business with you?

Mr. Kelaher: Objection, speculative.

Mr. Gordon: That goes to the state of mind of the dealer and I believe is perfectly admissible.

Hearing Examiner Kolb: I don't know that state of mind has anything to do with taking the customers with him.

Mr. Gordon: If he feels he can, he certainly has a freer state of mind than if he felt he couldn't.

Mr. Kelaher: That sounds very ingenious, but state of mind testimony isn't what you are getting out of this particular witness.

Mr. Gordon: It certainly is.

Mr. Kelaher: It isn't proper state of mind testimony.

Hearing Examiner Kolb: Well, let the witness answer. The objection will be overruled.

3428 Hearing Examiner Kolb: Read the question.

(The reporter read the question as follows: "If you took one of these stations, do you feel you could take a substantial portion of your business with you?")

The Witness: Yes, I believe I could.

By Mr. Gordon:

Q. Are you familiar with the fact Atlantic has a station inspection program?

A. Yes.

Q. Do they discuss the results of those inspections with you after they have the inspection? Does the salesman talk to you about it?

A. Sometimes, yes, most of the times.

Q. Did they ever mention the brand of TBA you are carrying in connection with those discussions?

A. No, never.

Mr. Gordon: I have no further questions.

Cross-Exdmination by Mr. Kelaher.

Q. Would you tell us where Burlington, Massochusetts is located?

A. Between Lowell and Boston, about the midway point, 12 miles from each city.

Q. Is that part of the Greater Boston area?

A. Yes, just on the outskirts.

3429 Q. Is that north of Boston?

A. Yes.

Q. You began station operations in 1949?

A. That is right.

Q. And at that time Atlantic was selling Lee tires, Exide batteries, Thermoid fanbelts, Fram filters, and other accessories; is that right?

A. If you say so, yes. I think so.

Q. I am asking you is that right.

A. I think so.

Q. Well, you purchased Lee tires from Atlantic, right?

A. I did.

Q. And you purchased Exide batteries from Atlantic?

A. I did.

Q. Did you purchase any accessories from Atlantic?

A. I don't recall, really.

Q. Now, at that time were there other service stations in your area also selling Lee tires?

A. No.

Q. There were no other Lee tire distributors in your area?

A. No.

Q. Were you satisfied with Lee tires?

A. Yes, and no. They were a good tire, but they weren't a name tire.

Q. Why did you handle them if you weren't en-
3430 tirely satisfied with them?

A. Well, I was buying Lee at a better price than Goodrich.

Q. You were buying Lee at a better price than you could have purchased Goodyear?

A. That is right.

Q. Weren't you handling Lee tires because Atlantic was selling them?

A. Well, sure, but still, if Atlantic didn't give me the price, I wouldn't have handled them. I am a price man, if you know me.

Q. I don't know, but I am glad to hear it.

Now, you gave us, you stated that after the change-over to Goodyear in 1951, you changed to Goodyear, because you were, one reason was price and you were the only Goodyear distributor in the area. Was that your reason?

A. That is right, and it was a big name.

Q. Why didn't you change over before that?

A. Because I had Goodrich.

Q. You had Lee, didn't you?

A. I had Lee and Goodrich. I had Goodrich for the big name and then Atlantic went along with Goodyear and I was buying Goodyear cheaper than I was buying Goodrich; so, I switched the major brand to Goodyear.

Q. Isn't it a fact that you could have continued purchasing Lee at a lower price than you began to purchase Goodyear?

3431 A. I was paying the same price for both Lee and Goodyear.

Q. Beg your pardon?

A. I was paying the same price for Lee and Goodyear, if I remember correctly.

Q. And if you remember correctly, you could have purchased Goodyear then, prior to 1951, at the same price you bought Lee; is that right? Is that what you are saying?

A. Well, no, before Atlantic went into Goodyear, I couldn't buy Goodyear as cheap as I could Lee. That is one of the reasons why I didn't handle it.

Q. Are you stating that you got a lower price because you were an Atlantic dealer, after the Atlantic sponsorship of Goodyear?

A. That is right.

Q. Now, isn't it also true that Lee had good consumer acceptance in your area?

A. No, not too good.

Q. It had the road hazard guarantee, did it not?

A. Yes, it did.

Q. Was that a guarantee that was, had consumer acceptance in preference to workmanship and defect guarantees of Goodyear and other tires?

A. How am I supposed to answer that one? Yes, that road hazard guarantee was a selling point. But still, I think that the average consumer that wants to buy
3432 a good product, he is going to pay just a little more and give a little bit up, to get that good product, name product, I should say.

Q. Isn't it a fact you were selling Lee because Atlantic was selling Lee?

A. Yes.

Q. The answer is Yes?

A. Yes.

Q. And now—

A. (Interposing.) Price-wise.

Q. Beg your pardon?

A. Price-wise.

Q. I would like to have you direct your attention to the change-over by Atlantic to Goodyear TBA. Do you recall attending a dealer meeting in 1951 concerning the change-over?

A. I don't remember if I did or not.

Q. Do you remember having a call made to your station by an Atlantic representative or by a Goodyear representative concerning the new program?

A. Yes.

Q. And at that time were you told where the designated supply point would be for Goodyear.

A. Yes, I believe so.

Q. You have testified that your Goodyear supply point is the Goodyear store in Lowell, Massachusetts.

A. That is right.

3433 Q. Now, was that when you began to purchase Goodyear tires?

A. I think close to that time. Shortly afterwards, put it that way.

Q. And since that time you have stocked Goodyear tires only?

A. A hundred percent.

• • • • •

By Mr. Kelaher:

Q. There are other Atlantic stations in your area, are there not?

A. Not in Burlington.

Q. In the Greater Boston area?

A. Oh, yes.

Q. You have lived in that area for some years apparently?

A. Yes.

Q. And in your travels in and about the area, you
3434 have noticed other Atlantic stations, I presume?

A. That is right.

Q. And isn't it a fact that after Atlantic changed to Goodyear TBA line in 1951, you noticed Goodyear window valances and Goodyear outdoor pole signs appearing in that area?

A. Well, I imagine so, I mean I never really look that closely.

Q. The answer is Yes?

A. Well, I honestly can't say. Honestly, I can't say. I don't look at other people's stations as close as I watch my own.

Q. Aren't their any other Atlantic stations in your town?

A. No.

Q. No others in your town?

A. No.

Q. Do you ever go into Boston?

A. Yes.

Q. And you mean to tell me you never noticed what identification appears in Atlantic stations?

A. Well, I don't look in the window and see if they have a valance or not.

Q. Do you ever look at the outside and see whether there is a pole up with a Goodyear sign on it?

A. Usually they have one on there, some of them.

Q. The answer is Yes, then?

3435 A. Oh, yes.

Q. You stated you purchased some accessories from Automotive Parts. Are you including in that accessories category so-called hard parts?

A. I don't—

Q. (Interposing.) Hard parts as distinguished from

chemicals and waxes, ignition parts, and things of that type?

A: Oh, yes.

Q. Do you do repair work at your station?

Mr. Gordon: I am not quite sure Mr. Kelaher defined it as we have all along in this case. Accessories include hard parts. I think accessories are distinguished from repair parts.

Hearing Examiner Kolb: Hard parts usually refers to repair parts, particularly fenders and things of that sort, in addition to parts of the motor.

Mr. Kelaher: I think that is pretty well established in this record.

Mr. Gordon: Spark plugs, for example, are definitely accessories.

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Well, let me—I am trying to find out what he buys anyway from these people. What do you buy from Automotive Parts?

3436 A. What?

Q. Did you say you bought from a company named Automotive Parts? I may have the name incorrectly. Located in Woburn?

A. Oh, yes, Suppliers Automotive.

Q. I beg your pardon?

A. Suppliers Automotive. Suppliers Automotive Parts Company.

Q. Do you buy so-called hard parts from that supplier?

A. I still don't get that hard parts.

Q. Do you do repair work in your station?

A. Yes.

Q. And you have to buy the parts with which you repair automobiles from somebody?

A. Yes, from him, yes.

Q. I am referring to that type of product.

A. You mean like clutches and stuff like that?

Q. That is right.

A. Yes, definitely.

Q. Do you buy those from Suppliers Automotive Parts?

A. That is right.

Q. And you mentioned several other suppliers. Do you also buy hard parts from those other suppliers?

A. Sometimes.

Q. When you purchase from the Goodyear service store in Lowell, Massachusetts, what do you purchase?

3437 A. Goodyear tires.

Q. And you stated you purchased some accessories from them?

A. Very, very little.

Q. What do you buy when you purchase?

A. Well, I have bought some sealed beams from them at one time and another, a few things when I am stuck short. Very little.

Q. What is the gallonage of your station per month?

A. Oh, I think we average about 28,000 to 30,000.

3438 Q. Would you say you were a medium-sized station—are you a fairly large station?

A. I am a big station.

Q. At least you are the biggest Atlantic station in that area, aren't you?

A. The biggest.

Q. You are the only one?

A. The only one.

Q. You stated you handled Exide batteries, prior to Atlantic's changeover to Goodyear TBA?

A. Right.

Q. Were the Exide batteries purchased from Atlantic?

A. Yes.

Q. And were you satisfied with the Exide batteries at the time?

A. I think I was, at the time, yes.

Q. Didn't you purchase Exide batteries because Atlantic was selling Exide batteries?

A. Price.

Q. Answer Yes or No, then expand, if you want to.

A. Well, Yes, because I got a good price on them.

Q. Is that true, was that the reason you were buying Goodyear batteries?

A. That is right.

Q. And you now, you stated, you haven't bought
3439 Goodyear batteries since the changeover to Goodyear TBA?

A. That is right.

Q. Do I understand you to mean you could get a better price from local suppliers, prior to the changeover than you can get, or could get from Goodyear after the changeover?

A. No, right now I am paying more for a battery than I would if I had been buying Goodyear, believe that or not.

Q. I don't know whether you answered my question. You stated that you were a price man, that seems to be your main theme?

A. That is right.

Q. Who were you buying the Goodyear batteries from, before 1951?

A. Oh, I don't know. I think it was Roy Johnson's, in Waltham.

Q. Roy Johnson, from where?

A. Waltham.

Q. And what was the reason you were buying Goodyear batteries at that time?

A. I don't know, just the salesman talked me into it, I guess.

Q. It wasn't because of price?

A. Well, the price was there, yes.

Q. Since the Atlantic began to sponsor Goodyear TBA, you stopped buying Goodyear batteries?

3440 A. That is right.

Q. You never bought a Goodyear battery since Atlantic began to sponsor Goodyear TBA?

A. That is right, five, six, seven years, whatever it is.

Q. Now is that because of price?

A. No.

Q. And now you are buying Bowers and paying a higher price for Bowers batteries than you would for Goodyear?

A. That is right, my loyalty got the best of me just once.

Q. You mean the loyalty to Goodyear?

A. No, to Bowers, this fellow that sells Bowers batteries is a very good friend of mine and that is why I buy Bowers batteries.

Q. You have testified that you were a price man. Now it develops that is not entirely true with all your TBA, is it?

A. With a few exceptions, of course. You can't be price all the way through. On the Bowers battery, a very good friend of mine, I have been buying from him six or seven years and I will continue to do so.

Q. You like the Bowers battery?

A. I like it very much.

Q. It is a good battery?

A. Yes, and good service with them.

Mr. Kelaher: No further questions.

3441 Mr. Gordon: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

Mr. Gordon: Can we recess for lunch at this time?

Hearing Examiner Kolb: All right. We will recess until 2:00 o'clock.

(Thereupon, at 12:32 o'clock p. m., the hearing was recessed, to reconvene at 2:00 o'clock p. m., this same date.)

3442 Afternoon Session.

(2:00 P. M.)

Hearing Examiner Kolb: The hearing will be in order.

CHARLES K. DETWILER was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address?

The Witness: Charles K. Detwiler, 225 Dogwood Lane, Berwyn, Pennsylvania.

By Mr. Ballard:

Q. Are you presently an employee of Atlantic Refining Company?

A. Yes, sir.

Q. When did you join the employment of that company?

A. In July 1939.

Q. And what was your capacity at that time?

A. I was a service station attendant in a company-operated station in Philadelphia.

Q. Did you thereafter go to the Binghamton district, in New York?

A. That is correct, sir. I went up there in the 3443 spring of 1940.

Q. In what capacity was that?

A. As a service salesman.

Q. Did you later become a general salesman there?

A. No, sir, about a year later I was transferred to Hamburg, which is in the Buffalo district, as a general salesman.

Q. And you were I believe a lieutenant senior grade in the Navy during the war?

A. That is correct. I went into the Navy in 1942, December, and came out three years later as Lieutenant, Senior Grade.

Q. When you came out of the Navy, did you resume your service with Atlantic?

A. Yes, in the Rochester district. That would be December 1945.

Q. What was your next assignment with Atlantic?

A. At that time, I was a general salesman in the Batavia district, the Batavia area, which was the Rochester district.

Q. What was your next assignment after that?

A. In 1949 I went on a special assignment in the City of Rochester, which consisted of a study or survey of competitive stations. I also attempted to acquire competitive stations for Atlantic during that one-year assignment.

Q. Were those contract dealers or lessee dealers?

A. Contract, sir.

3444 Q. Do I understand that you were trying to get them to switch to the Atlantic brand of gasoline?

A. That is correct.

Q. How long did that assignment last?

A. That was approximately a year. Then in 1950 I went on an assignment in real estate, to acquire sites for service station construction.

Q. What area was that?

A. Both Rochester and Buffalo districts.

Q. Do I understand that you were looking at potential sites for service stations?

A. That is correct.

Q. In that work, what were the factors you kept in mind?

A. Development in an area, both residential and commercial, highway changes, traffic potential.

Q. Would those sites have been for lessee operation?

A. That is right, they were undeveloped sites, Mr. Ballard.

Q. Now then, how long were you a site representative?

A. Two years.

Q. That would bring you to 1952?

A. In March, 1952 I was assigned to the Binghamton district, as a sales supervisor.

Q. Is that sometimes also called the Southeastern District?

A. That is correct.

Q. Which is the correct name?

3445 A. Southeastern Tier.

Q. Speaking generally, what is the area covered by the Southeastern Tier District?

A. If you can picture a half moon, with a diameter on the New York Pennsylvania state line, approximately in the center of the state, with Binghamton as the center and your radius being about a hundred miles, you have got that picture.

Q. Does it include Binghamton?

A. That is right.

Q. Does it include other metropolitan centers?

A. Yes, it goes over to Cooperstown, on the east, which is approximately a hundred miles east of Binghamton, and to Corning and Bath on the west, which is an equivalent distance to the west and then this arc, as I described it, would touch the Finger Lakes, including places like Penn Yan, Ithica, which are north of Binghamton.

Q. Does it include Johnson City and Endicott?

A. Yes, sir.

Q. The headquarters for the district is Binghamton, I believe?

A. That is right.

Q. Atlantic, of course, encounters competition with other oil companies there?

A. Very much so.

3446 Q. Would you name a few of them for us?

A. There are approximately 12 major suppliers, Amoco, Esso, Socony, Sun, Tidal, Richfield.

Q. Does Gulf market there?

A. Yes, sir; Gulf is there.

Q. Texas?

A. Texas.

Q. Shell?

A. Shell to a very limited degree, only in the eastern part of the southeastern tier district.

Q. Sinclair?

A. Yes, sir.

Q. Cities Service?

A. Yes.

Q. Mobil?

A. Mobil, that is correct.

Q. And Calso?

A. Yes.

Q. Are these companies and Atlantic building new stations all the time?

A. That is correct.

Q. About how many Atlantic lessee stations are there in the Southeastern Tier district?

A. Approximately 65 in the Southeastern Tier District.

Q. How many contract stations, about?

3447 A. Approximately 35.

Q. I think you have been in these hearings and know what we mean by a service station, basically one with full service station facilities. How many of these contract stations would you say were service stations?

A. Only about 12.

Q. Now starting with the year 1956, I believe that is the first year you were a sales supervisor in the Southeastern Tier District, is that correct?

A. No, I was a sales supervisor in March of 1952.

Q. At that time were you the only sales supervisor?

A. That is correct. In 1956 there was another sales supervisor assignment set up in the Southeastern Tier District, and as of that time I supervised strictly lessee dealer operations.

Q. Previous to that you had supervised lessee and contract operations both?

A. That is right.

Q. How many salesmen did you have reporting to you when you were the only sales supervisor?

A. I had three dealer/salesmen, two general salesmen, and anywhere from two to five service salesmen, that figure varied through that span of years.

Q. I take it when another supervisor was added that the general salesmen were no longer under your 3448 charge, is that correct?

A. That is correct.

Q. But I assume some of the service salesmen were moved to the other man's charge?

A. No, the service salesmen were still my responsibility.

Q. Briefly, what is the responsibility of the sale supervisor, at the time you were one?

A. To supervise the performance and activity of the dealer/salesmen, and the service salesmen, so that our stations can develop and increase their sales of petroleum products.

Q. Incidentally, I don't know whether I asked this question or not: You are no longer a sales supervisor with the Southeastern Tier District, is that right?

A. That is right. Approximately a year ago, October of 1957, I was assigned to headquarters office here in Philadelphia, as dealer training coordinator.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Was it the responsibility, primary responsibility of the salesmen in your district, to keep their stations manned with qualified dealers?

3449 A. That is right.

Q. Were dealer candidates scarce in your district?

A. They certainly were.

Q. Could you give us briefly the methods employed in locating potential dealers?

A. We would run newspaper ads, we would check our own dealers and competitive dealers, we would check among our own employees, we would also contact business men, preachers, priests, business organizations; in fact, door to door solicitation.

Q. Did you on occasion attract competitive dealers?

A. Yes.

Q. Did they on occasion attract some of your dealers?

A. That is right.

Q. Now when a salesman brought a dealer candidate to you, did you discuss with that dealer candidate the advantages and disadvantages of a dealers' business?

A. We did, we tried to spell out both advantages and disadvantages, so that he would have as complete an understanding as possible of the service station business.

Q. Was the book entitled "What a service station can mean to you" used in your district?

A. Yes, sir; it was.

Q. I show you a copy of Atlantic's Exhibit A-18, which is the booklet that was used in the Newark district,
3450 and allowing for changes in some of these letters between Newark and Binghamton, is this booklet the same as the booklet that was used in your district?

A. Yes, sir; it is the same.

Q. When you were talking to the dealer candidate, what disadvantages, if any, of a lessee service station business, would you mention to him?

A. Well, we pointed out to him that contrary to what he might have been used to, if he was working for industry, he, in the service station business, would have to work long hours. It would be hard work, it would involve working outside. He would also find out he would have to condition himself to minimum income, during the first year or first several years, depending on the situation.

Q. Would you also mention advantages of the business?

A. Absolutely.

Q. What advantages would you mention?

A. Briefly we discussed the fact that this would give him a chance to be independent, to make his own decisions, be his own boss. We would point out there was a good living to be made in the service station business if he applied himself and had the basic qualifications. We also pointed out there was job security in this particular work.

Q. By good living, what do you consider that a successful dealer, in your district, could make in a year?

3451 A. We have several dealers who are in the $12,000 to $15,000 category.

Q. Did you ever suggest that a dealer candidate visit Atlantic dealers in the area?

A. Yes, sir, that was part of my routine in my inter-

view with the dealer prospect. I felt that the prospect would feel free to talk to one of our dealers, and ask him questions as well as make observations.

Q. Did you give him a list of the dealers in the area, or let him pick his own?

A. I usually suggested certain stations specifically because they were somewhat near each other. For example, Bouongirne-Gay.

Q. Was the name of that station Bouongirne or was it Bouongirne-Gay?

A. And Gay, G-a-y, yes.

Q. Did you ever suggest Cooley's station?

A. Another one was Cooley's, because that was on the same street. Another was George Mascayko. The reason for that, if I may mention it, Mascayko was a dealer who had been with us, I guess at that time, 19 or 20 years. Bouongirne-Gay had previously been an Esso dealer. Mr. Cooley before he took over the Atlantic station had previously been a successful insurance salesman. I felt that would give the prospect a chance to talk to individuals who had had different starts in business.

3452 Q. Was TBA discussed in your interview with the dealer candidates?

A. Yes, it was.

Q. What did you tell them about it?

A. We told them we had a TBA program in the Southeastern tier specifically with Goodyear Tire and Rubber. We felt it was a good program, we wanted the prospect to understand it; however, he was free to accept or reject it.

Q. I show you Commission's Exhibit 207. This is a letter over the regional manager's signature, and addressed to "All Atlantic Dealers," entitled "No Forcing." I ask you whether that letter, whether it was the practice in your district to deliver that letter to dealers when they signed a lease.

A. Absolutely. This one is signed by the Philadelphia regional manager, but ours, of course, was signed by New York, and that was attached to the lease papers.

Q. And who was the New York regional manager at that time?

A. Mr. G. V. Ostrander.

Q. Now, Mr. Detwiler, does Atlantic have an interest in the business success of its leases?

A. Very much so.

Q. What is that interest?

A. Our dealers have to be successful, have to grow, and increase their sales of products, before we are successful.

Q. When Atlantic loses a dealer, does it cost 3453 Atlantic money?

A. It certainly does. We run into different problems when that occurs. If the outgoing dealer goes down the street to a competitive station and has a good personal following, he takes that along with him. We then have to start searching for a replacement, we have to train him, and then install him, all of which costs money, and there is a loss of gallons in that change-over.

Q. What does it cost on the average to train a replacement?

A. A minimum of seven to eight hundred dollars, and I am basing that on the actual out-of-pocket expenses we have in connection with training the dealer prospect.

Q. Dealers do, however, occasionally, leave Atlantic; is that not right?

A. That is right.

Q. What are the principal reasons for which they do that?

A. One of the main reasons is that they find they don't dislike—they don't like the business, or their wife doesn't like them to be in the business because of the hours away from home that are required. The dealer may find out

that he just can't manage men, can't manage his finances. A major problem in dealer operation is for the dealer to extend too much personal credit, which can bring about failure, probably quicker than anything else.

Then, you have the normal amount of illness, death,
3454 incidents, which also cause the end of a dealership.

Q. In such cases, is it Atlantic's policy to permit the lessee to leave in the middle of his term?

A. Yes, because if he has made that decision, we want to replace him as soon as we can. His hundred percent interest and his heart is not in the business. In those instances, we would accomplish that by mutual consent cancellation.

Q. In such cases, when a dealer goes out and a new dealer comes in, in your experience does the new dealer generally buy the old dealer's stock?

A. Generally, he does, providing if is salable, in good condition.

Q. Does he generally buy regardless of brand?

A. Yes, sir.

Q. What price does he generally pay for it?

A. He generally pays the same price the outgoing dealer paid for it. Again, providing it is in salable condition.

Q. In your experience do you know of any instances in which Atlantic itself refused to renew a lease or cancelled a lease when the dealer wished to stay on?

A. No, not when he wished to stay on. I can recall one instance where we did not want to renew, specifically. It involved a dealer by the name of George Shannon, Watkins Glen.

Q. What was the reason for that?

A. Mr. Shannon ran an absentee operation. He
3455 was a very likable, affable, individual. He was very active in community affairs in Watkins Glen, but he

also ran a taxi business out of the service station, and he had an interest in an undertaking business in town, so that he just wasn't around the station very much, and what brought that problem to a head was that he would not hire capable employees to run the station while he was gone.

Q. Was TBA a factor in his, in your disagreement with Mr. Shannon?

A. No, sir; in fact, as I recall, he bought certain items from the Goodyear supply store.

Q. Was Atlantic's three-year lease policy in operation, in effect, in your district?

A. That is right, and that, as you recall, is extended to a dealer after he has been in business for two years, a two-year period.

Q. Now, under that policy, if Atlantic wishes to cancel a lease, is it required to send a written warning letter?

A. Yes, sir; it is.

Q. Do you recall any such warning letters being sent while you were in your district?

A. I recall only one, Mr. Ballard. I think it was in 1955, and involved a dealer by the name of Duane Olthof, in Elmira.

Q. Did Mr. Olthof correct the deficiencies then?

A. As I recall, he did. The specific deficiency 3456 spelled out in the letter was that of housekeeping and Olthof left us, at the end of the lease expiration period, and went down the street and opened an Esso station.

Q. Is it a practice in the southeastern tier district for new Atlantic sales personnel to attend the dealer training course?

A. Yes, sir.

Q. And does Atlantic also attempt to try to have new dealers, lessee dealers, attend that course?

A. We attempt to have not only new lessee dealers attend it, but we also try to get competitive dealers, and our existing dealers to attend an abbreviated version of it.

Q. When you say "competitive dealers," you mean men who have had previous experience with other companies?

A. In competitive stations; that is correct.

Q. But they, when they attend this course, are going to be Atlantic dealers?

A. That is right.

Q. You don't invite—

A. (Interposing.) We are not training competitive dealers. I didn't mean to give that impression.

Q. Mr. Detwiler, when you were explaining the Atlantic-Goodyear TBA program to a dealer candidate, what were the advantages of that program that you would point out to the dealer candidate?

3457 A. We felt the advantages to the dealer candidate were many. It was a high quality product, manufactured by a reputable company. It was a nationally advertised product. It had excellent acceptance on the part of the public, and, incidentally, very good acceptance in the southeastern tier area. Goodyear products cover the complete line. They are competitively priced. The Goodyear store was handy as a source of supply for the dealer. They had excellent sales promotion, advertising helps. We just sincerely felt that it was a good program, and one which the dealer prospect should certainly consider.

Q. In your experience, is some sort of TBA essential to some sort of operation in the modern station?

A. Absolutely, just as is the service the dealer must render or have available for his customers, as experienced by the lubrications, washes, service work in the beys.

Q. Do the other oil companies that are competitive with Atlantic in the southeastern tier district offer TBA programs?

A. Yes.

Mr. Kelaher: Objection, your Honor. We are getting into the TBA programs of other oil companies. What is the purpose of that?

Hearing Examiner Kolb: Objection overruled. That is what he has been doing all the time in this case.

Mr. Kelaher: This is the first time they have gone 3458 into this phase of the case, the other oil companies.

Mr. Mason: Will you stipulate that is out of the case?

Hearing Examiner Kolb: I have overruled the objection.

Mr. Ballard: Would you read the question.

(The reporter read as follows: "Do the other oil companies that are competitive with Atlantic in the southeastern tier district offer TBA programs?")

The Witness: Yes, they do.

By Mr. Ballard:

Q. Would Atlantic attract dealers to its franchise if it didn't offer a TBA program?

A. I don't think so, certainly not the most desirable dealer prospects.

Q. Are there other TBA suppliers, and by that I mean TBA suppliers, other than Goodyear, calling on Atlantic dealers in the southeastern tier district?

A. Yes, sir, there are. There are approximately seven or eight who sell specifically tires. There are four who handle batteries. And then there are approximately eight who handle accessories and, incidentally, four of those handling accessories are the same four that handle the batteries.

Q. In other words, it is divided between the people who handle batteries and those who handle the accessories?

3459 A. That is correct.

Q. The tire suppliers you mentioned, do they handle batteries, to your knowledge?

A. Not to the best of my knowledge.

Q. What about accessories, do they handle that?

A. I don't recall so, Mr. Ballard. They were mainly tire suppliers.

Q. In your capacity as a sales supervisor, and previous to that as a salesman, you, of course, visited Atlantic dealers at their stations?

A. That is right.

Q. Did you see at the stations any non-sponsored TBA on display?

A. Yes, sir.

Q. Would you see it in many stations?

A. You would see it in all stations. I don't recall seeing any station where only sponsored TBA was displayed.

Q. Did you also—you also, of course, on occasion saw Goodyear on display?

A. That is right.

Q. Some stations, did you see some stations handling a good deal of Goodyear?

A. Yes, it would vary.

Q. Would there be any difference in the pattern between lessee stations and contract stations of the full

3460 facility type?

A. No, basically no, because both were being called on by our salesmen, and Goodyear.

Q. Now, I think you have told us that at the end of your stay in the southeastern tier, there were two sales supervisors, three promotable dealer salesmen, between two and five service salesmen, and two general salesmen?

A. That is right.

Q. About what percent of their time would they spend assisting the sale of Goodyear TBA?

A. I would say ten to fifteen percent, minimum.

Q. There also was a regional TBA coordinator in that region?

A. That is correct. He operated out of regional headquarters, which was Syracuse.

Q. What was his name?

A. L. K. Maisel.

Q. And he spent full time on TBA?

A. Yes, and he spent a lot of time visiting the various districts and, in turn, we had him a fair share of the time in the southeastern tier.

Q. Did Atlantic open dealer clinics in that region?

A. Yes, we did.

Q. Did it conduct dealer meetings?

A. Yes.

3461 Q. Did those clinics and meetings, on occasion, deal with Goodyear TBA?

A. Yes, Goodyear products would be used as props in carring out the particular message that was to be given to the dealer and their employees at that particular meeting.

Q. In your experience, is it helpful to the sale of Goodyear tires and batteries and accessories to have them used as props in those meetings?

A. I think it is certainly logical to use them. Certainly training is necessary, product information, changes, construction of items, and in using props to do that, it would certainly seem logical to me we would use Goodyear.

Q. Does it help the sale of Goodyear products to use Goodyear in that capacity?

A. Yes, because a man has to understand the features of his product, in order to be able to sell it.

Q. Where an Atlantic salesman, under your supervision, was calling on an Atlantic dealer who was handling Goodyear, what services would that salesman perform for the dealer in respect of Goodyear?

A. He would undoubtedly check stock when he got into the station to determine whether the dealer had a balanced stock of items. He would write orders. He would pass along product information, assist in promotions, assist the dealer, if requested, on solicitation,
3462 and working out his advertising. Perhaps the dealer had new employees and the salesman would attempt to help the dealer train his employees in that specific endeavor.

Q. By that you mean in respect of Goodyear?

A. That is right.

Q. Was it part of the job to know the price that Goodyear was charging, Goodyear supply point was charging?

A. It was part of the salesman's job. I wasn't too familiar with the prices.

• • • • •

3465 By Mr. Ballard:

Q. Now your present position is dealer training coordinator?

A. That is correct.

Q. What are your responsibilities in that job?

A. To coordinate the dealer training activities in our six marketing regions.

Q. I think you have already stated Atlantic's policies as to new sales employees, but perhaps you better—I will ask you, what is Atlantic's policies as to all its regions toward the training of new sales employees?

A. Every new sales employee must attend the dealer training school as part of his basic training.

Q. And I think you have also stated that—well, what is the policy with regard to new dealers, and now I am speaking company-wide, not simply this district?

A. We attempt to get all of our new dealers to attend the dealer training school. We also attempt to get our

experienced dealers to attend an abbreviated version of that dealer training school.

Q. Is the school open to contract dealers as well?

A. Yes, sir.

Q. Have you, yourself, observed these schools in operation?

A. Yes, I have.

Q. Have you ever taught in them?

A. I taught financial management in the regional 3466 school in Syracuse, while I was a sales supervisor in the Southeastern Tier.

Q. Are the schools substantially the same in the various regions?

A. Yes, they are, they all follow similar agendas, and use similar material. I guess the main difference would be in this field that we are discussing today, TBA, where three of the regions, New England, New York, Philadelphia-New Jersey, sponsor the Goodyear line and the other three regions sponsor Firestone.

Q. Is the TBA program explained in the training course?

A. Yes, it is; there is a script which spells that out specifically.

Mr. Ballard: Will you mark this exhibit for identification for me as Atlantic's Exhibit 20?

Hearing Examiner Kolb: It may be marked Respondent Atlantic's Exhibit 20 for identification.

(The document referred to was marked Respondent Atlantic's Exhibit 20 for identification.)

By Mr. Ballard:

Q. I am showing you this booklet entitled "TBA Program" which has been marked A-20 and ask you if that is the script that is used in the training schools at this time?

A. Yes, sir; it is.

Q. I notice that this particular script was revised 3467 in 1957. Are there any substantial differences between this and the previous script?

A. No, sir. I have checked this revision and except for changes of a word here and there, it follows the same basic procedure.

Q. Has there been any change in the description of the TBA policies of Atlantic?

A. No, sir.

Q. Now, through this script there are blanks with the word "Name" in them. I take it that in the New York, New England, and Philadelphia-New Jersey regions the word "Goodyear" would be put in where the word "Name" appears?

A. That is right, and "Firestone" in the other three regions.

Q. This is the script that the instructors use in talking to the trainees, is that correct?

A. That is correct.

Q. Did Atlantic prepare this script?

A. Yes, sir.

Incidentally, trying to find the page, the TBA policies is specifically spelled out as to acception or rejection, on page 7.

Mr. Kelaher: I think that answer is a little premature.

3468 By Mr. Ballard:

Q. Does the curriculum in those training schools also include a study of the sponsored TBA line items?

A. Yes, there is another script on TBA or tires and tubes orientation, which goes into more details about product construction, sales features, et cetera.

Mr. Ballard: May I have this marked Respondent A-21 for identification?

Hearing Examiner Kolb: It may be so marked.

(The document referred to was marked Respondent Atlantic's Exhibit 21 for identification.)

By Mr. Ballard:

Q. I show you a script or a document marked Respondent's Exhibit A-21 and ask you if that is the script on tires and tubes to which you just referred?

A. Yes, it is.

Q. And this script is used in the regions where Atlantic sponsored Goodyear, is that right?

A. That is correct.

Q. Was this script prepared by Atlantic?

A. Yes, sir.

Q. Is this script—it is followed by the instructors, just as the other one is?

A. That is correct.

Q. What do the instructors use for a battery script?

3469 A. In the battery script we have a manual which is put out by the Association of American Battery Manufacturers and that is the basis for instruction on batteries.

Q. Does the training department, you and your staff, also work on dealer training clinics?

A. Yes, sir; they do. It is our responsibility to make up those clinic packages and make them available to the field.

Q. Do those clinics relate—do some or any of those clinics relate to Goodyear TBA?

A. Some do; yes, sir.

Q. Could you give us an example, for instance?

A. Well, specifically, the clinic on tires, clinic on batteries, clinic on motor oil.

Q. Motor oil would not be TBA?

A. I beg your pardon. I was thinking of accessories items like air filters, motor oil cartridges.

Q. Who does the instruction? Whose employees do the instruction work in those clinics?

A. Atlantic's employees, and there may be Goodyear personnel there, if it involves products requiring specific explanation or a technical man to answer questions. It might be the supplier of the particular product.

Q. Would that be say DuPont or someone like that?

A. That is right.

3470 Q. I think you may have covered this. Who writes the scripts for those clinics?

A. We write them, we get the basic information, of course, from the particular manufacturer or supplier. But we prepare the scripts.

Q. Do you and your assistants ever make follow-up calls to trainees in their stations?

A. Yes, sir. The regional training coordinator, one to each region, and his assistants, make regular follow-up calls on graduated dealers, to note their progress.

Q. What is the primary purpose of that call?

A. To find out how the dealer is progressing, how he felt about the dealer training program, what criticism he might have had as to how we should have emphasized one subject more than the other, to improve it.

Q. You do sometimes get criticisms of your training program from your dealers?

A. Yes, sir, we feel that is healthy.

Q. Has any dealer ever complained that the TBA policies told to him in the school was not being followed in the field?

A. Not to my knowledge, Mr. Ballard.

Mr. Ballard: I have no further questions and I would like to offer in evidence Atlantic's Exhibits 20 and 21.

Mr. Kelaher: No objection.

3471 Hearing Examiner Kolb: The documents will be received in evidence, Respondent's Exhibits A-20 and A-21.

(The documents heretofore marked RESPONDENT ATLANTIC'S EXHIBITS A-20 and A-21 for identification were received in evidence.)

Mr. Ballard: Your Honor, may I suggest the witness has been on the stand for the best part of an hour and he may have a break before cross-examination?

Hearing Examiner Kolb: All right.

We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Detwiler, you have been with Atlantic since July 1939, excepting for your service in the Navy?

A. That is correct.

Q. Were you familiar with the fact that the Federal Trade Commission was investigating TBA commission plans of Goodyear and Firestone, respectively, in or about 1952 or 1953?

A. Yes, sir.

Q. And you have been aware of that since that time?

A. That is right.

Q. In response to a question on direct examina-
3472 tion, you referred to the fact that you have three dealer salesmen. Were you referring to those three as promotable dealer salesmen?

A. That is right.

Q. At the time you were sales supervisor in Binghamton?

A. That is correct.

Q. And two general salesmen, originally?

A. Yes.

Q. And two to five service salesmen?

A. That is right.

Q. Then the two general salesmen came under the supervision of the new sales supervisor, or the additional sales supervisor in 1956?

A. That is right.

Q. Now when you were asked what your responsibilities were as sales supervisor—you can correct me if I am incorrect—I understood you to say that primarily you are interested in a station dealer developing and selling petroleum products. Is that right?

A. I didn't use those words, but basically that is correct.

Q. And you made no reference to TBA?

A. No, nor did I to services, as such.

Q. And do you feel that it was part of your responsibility to assist station dealers in selling and developing TBA?

3473 A. Very definitely. I believe I qualified it at another point, Mr. Kelaher, that the sale of TBA was just as necessary as was the sale of other services as compared, let's say, to the fellow who just has a pump and pumps gas. You can't live on gas sales alone. Balance is what I was referring to.

Q. And isn't it a fact that in the New York region, Atlantic's leases were different for many years?

A. That is true.

Q. And under that lease that was in effect in New York region, Atlantic did get a percentage return on gross sales of Atlantic lessee dealers, including their sales of TBA?

A. That is correct, sales of everything, excluding gasoline, taxes excepted.

Q. Do you recall whether that type of lease was in effect when you went into that area or how long prior thereto it was in effect?

A. Mr. Kelaher, to the best of my knowledge it was in

effect when I first went to the New York region, back in 1940.

Q. Now you were also asked some questions concerning the availability of lessee dealers and you testified they are now scarce. Isn't it also true that during the post-war two years, sort of thereafter, it was just the opposite? At least there wasn't a scarcity of dealers at that time.

3474 A. Well, the only year period that I can account for, Mr. Kelaher, I mentioned that I got out of the Navy in December 1945, so I assume you are referring to—

Q. Starting with that period.

A. '46, '47, '48.

Q. Yes.

A. Well, as I recall, we had our problems then. True, there were men returning from the Services but to find a top notch dealer has always been a difficult thing to do.

Q. But you didn't have the problem then you have today, did you, with respect to dealer availability?

A. It is a matter of degree, Mr. Kelaher. I think it has always been an A-No. 1 problem for any salesman.

Q. Now you also testified that several of your dealers were in the $12,000 and $15,000 category. Are you referring to net income?

A. That is right.

Q. Per year, I assume. Your answer indicates that probably is high for that area. Is that correct?

A. Well, I mentioned that merely to show that there are specific instances of a couple of dealers who netted between $12,000 and $15,000 and I think that is recognized as a good income.

Q. It is also true there are numerous dealers who average less than that, isn't it?

3475 A. Absolutely.

Q. In fact, the average is less than that?

A. That is right. To be specific, I would say the average up there was probably in the neighborhood of $6,000, $6,500.

Q. You stated on direct that Atlantic has an interest in the business success of the lessees. Isn't your primary concern as an Atlantic representative to obtain a return on Atlantic's investment in its lessee stations?

A. No, I wouldn't say that is my prime return as a salesman or a sales supervisor. My prime interest, I beg your pardon. My prime interest is to see that sales are developed and we are not in the real estate business. We are in it only to have facilities available for dealers.

Q. Isn't it a fact that with 65 lessee stations, Atlantic's investment in those stations would run in excess of $3,000,000, approximately?

A. Well, it would be a considerable amount of money.

Q. And isn't it a fact that Atlantic's interest is to maintain dealers in these stations and to achieve maximum income from these stations in order to get a return on that investment in the stations?

Mr. Ballard: I will object to that question, your Honor. That question went for a half hour and there were a great many questions involved in it.

3476 Mr. Kelaher: I think he understands the question.

Hearing Examiner Kolb: Do you understand the question?

Mr. Ballard: Which part of the question do you think he understands?

The Witness: I think there were three specifics there, weren't there?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Ballard: I submit, your Honor, there are a great many questions involved there.

3477 Hearing Examiner Kolb: I think the witness can answer. The objection is overruled.

The Witness: Our maximum interest is to have successfull dealers in those stations who are growing so that Atlantic's income, if you will, both from the sales of products and return on the investment, increases.

By Mr. Kelaher:

Q. You also testified with respect to Mr. George Shannon, of Watkins Glenn, one of your lessee dealers.

A. That is right.

Q. Was a warning letter sent to Mr. Shannon?

A. I don't recall one being sent to him, Mr. Kelaher.

Q. Was his lease cancelled? Do you recall the length of time he was given under his lease cancellation notice to get out of the station?

A. It wasn't cancelled. It was the end of a lease period, Mr. Kelaher. It was not renewed.

Q. I see.

A. And he had been in that station for many years.

Q. In your direct testimony—I may have misunderstood you—but I understood you to say it was cancelled. But it was terminated?

A. It was not renewed. That is right. It was not renewed at the end of the lease period.

Q. What TBA did Mr. Shannon carry?

3478 A. He carried some Goodyear, Mr. Kelaher, and other non-sponsored products.

Q. Was anything ever said to him about the non-sponsored TBA?

A. No, sir.

Q. That had nothing to do with the termination of the lease?

A. No, I tried to explain it was diversified interest on his part, and absentee operation, and what brought it to a point was the fact that while he was away from the station

as much as he was, he did not have capable employees there to serve the public.

Q. He always had employees at the station, though, didn't he, when he was away?

A. Yes, sir.

Q. You also testified with respect to a warning letter sent to Mr. Olthop; for purposes of the record, I ask you to look at Commission's Exhibit 269 and ask you if that isn't the letter to which you referred (handing document to the witness).

A. Yes, sir, that looks like the letter.

Q. I am also going to ask you about several other warning letters in the record to ascertain whether they were in your district—the town of Irondequiot.

A. No, that is north of Rochester, and that is up on Lake Ontario, specifically in the Rochester district.

Q. Saranac Lake, New York.

3479 A. That is either Albany or Syracuse. It is in the Adirondack section.

Q. Utica, New York.

A. That is in the Syracuse district.

Q. Would that be in the southeastern tier?

A. No.

Q. The southeastern tier would be otherwise known as the Binghamton district, is that correct?

A. That is right.

Q. Mr. Detwiler, on direct examination you were asked a question concerning the Goodyear TBA program and the advantages to Atlantic dealers in the southeastern tier.

A. Yes.

Q. Among other things you stated that it was a high quality product. It was nationally advertised, had excellent acceptance, especially in the southeastern tier, covers the complete line, was competitively priced. Goodyear stores were handy and there was excellent advertising material. Do you recall that?

A. Yes, sir.

Q. Now, isn't it true that the same thing applies to other brands, such as Firestone, for one example?

A. Yes, I would say so.

Q. Isn't it true that the same thing applies to Goodrich or U. S., for example?

3480 A. Goodrich, Mr. Kelaher. I don't believe U. S. was active up there.

Q. But they both have high quality products, are nationally advertised, and so on; isn't that true?

A. That is true about the product; however, in the Binghamton area Goodyear was the only one that had a service store, as such, in Binghamton. The other nationally advertised brands that you mentioned were represented, but not by the supplier company direct. Do you follow me?

Q. But there were distributors of Firestone products in Binghamton?

A. That is correct.

Q. Do you remember the names of any of the Firestone distributors in Binghamton or that area?

A. I think T. J. Byrne, Fitzsimmons—I believe they were the only two.

Q. When you describe the Binghamton district, you use the Pennsylvania-New York state line as the diagonal under the half-moon you described; is that correct?

A. That is right.

Q. Now, you were not implying that this high acceptance of Goodyear stopped at that state line, were you?

A. I wasn't implying that. I said the acceptance was good in the Binghamton district.

Q. Wouldn't it be just as good on the other side of
3481 the Pennsylvania border as on the New York side?

I am not familiar with the other side, Mr. Kelaher. You have got a distance, geographically, of about 60 miles

down to the next city of any size, which is Scranton, and I had no occasion to get down there or—

Q. (Interposing.) Isn't it a fact that all the towns on the south side of that state line are in the Atlantic eastern region and that Firestone is the sponsored TBA program there?

A. That is correct.

Q. And I believe it is also a fact that Mr. Fitzsimmons' company is a Firestone supply point for Atlantic stations across the line?

A. That could be, I didn't realize it.

Q. Now, in your postion now as dealer training coordinator, when you are talking to dealers, Atlantic dealers, south of the New York-Pennsylvania state line, you tell them the same thing about Firestone as you tell them about Goodyear on the north side of the line; is that correct?

A. That is correct.

Q. Now, no questions were asked about this on direct examination, but I would like to ask you a question or two.

Mr. Ballard: Your Honor, I object to the question, because he has already disqualified it. It is bound to be outside the scope of the direct.

Mr. Kelaher: I will ask the question and then you 3482 can object.

By Mr. Kelaher:

Q. Aren't Atlantic service stations in the southeastern tier identified with Goodyear window valances, primarily, on the stations, and with the Goodyear outdoor pole sign on the premises?

Mr. Ballard: I don't think that question is objectionable.

Mr. Kelaher: I don't think so either.

Mr. Ballard: It was just your introduction that made it seem so.

The Witness: Most of them are, Mr. Kelaher. However, there is other advertising.

3483 By Mr. Kelaher:

Q. I am talking about window valances, and outdoor pole signs.

A. I am coming back to you on that. You referred specifically to window valances. There is a station over in Elmira, a lessee station, that has Firestone valances and Firestone pole sign.

Q. Is that the only one in the whole tier?

A. That is the most striking one, because it is solidly Firestone,

Q. Is that the only Atlantic station in the whole southern tier that you know of with that identification?

A. We are referring strictly to window valances and pole signs?

Q. I am referring to the one you just mentioned, the Firestone window valances and outdoor sign.

A. That is the only one that has both of those specific means of identification.

Q. In the whole southern tier?

A. Through the whole southern tier.

Q. Isn't it a fact that south of the New York-Pennsylvania line, that Atlantic stations have the Firestone window valances and Firestone outdoor sign primarily?

A. I believe so, those that I have passed, I think I have seen that, but they are few in number.

3484 Q. Now in connection with some questions concerning the type of TBA you see in Atlantic stations in the southern tier, I understood you to say that on occasions you would see Goodyear. Isn't it a fact that Goodyear TBA is the principal TBA handled in the southern tier by Atlantic stations?

A. Mr. Kelaher, I don't know how it would split down,

percentage-wise, because it varies by station, by product.

Q. You didn't mean to imply—when you stated "on occasion," wasn't that somewhat of an understatement? You find Goodyear TBA in Atlantic service stations in the southern tier, don't you?

A. You find both Goodyear TBA and non-sponsored TBA.

Q. I am asking about Goodyear TBA first.

A. In most of the stations.

Q. Now with respect to the time spent by servicemen, you estimated that 10 to 15 percent of the time of a salesman, rather, was spent by the salesman assisting dealers on TBA?

A. I stated that as a minimum, I believe.

Q. As a minimum, I am sorry.

A. That is correct.

Q. Are you grouping all classes of salesmen in that average? Or, let's put it this way: Does that average apply to service salesmen?

A. Yes, sir, it does.

Q. Does it apply to promotable dealer salesmen?

3485 A. Yes, sir.

Q. And to general salesmen?

A. Yes, sir.

Q. Now, isn't some of that time spent explaining to dealers the changes such as at the time the tubeless tire came out, or dry charged batteries came out?

A. Product information?

Q. Yes.

A. Yes, sir.

Q. Wouldn't that time be spent—that time is spent regardless of the brand of TBA involved, isn't that true?

A. Yes, that is true. However, certain suppliers make those changes at certain times, Mr. Kelaher. The only point I was trying to make was that when you said how

much time, I said a minimum of 10 to 15 percent was spent on a combination of things that they do for the dealer, including product information.

Q. And you didn't mean that to indicate that the 10 to 15 percent minimum applied to promoting or assisting in the sale of Goodyear TBA only, did you?

A. Yes, I would say on the promotion of Goodyear TBA.

Q. Isn't it necessary for your service station dealers to know certain things about TBA, regardless of brand?

A. Sure it is; they should know it.

Q. Wouldn't these services have to be rendered by
3486 Atlantic anyway, with respect to many of them, regardless of brand?

A. To a certain degree, yes.

Q. Isn't it true that in your region as in others, certain of your salesmen up there are on a bonus system with respect to TBA?

A. Yes, sir, I believe that came into effect shortly before I left.

Q. Does that include—it does include promotable dealer salesmen, does it not?

A. I believe that is all it includes, or was, as of that time. As I say, that was shortly before I left there.

Q. Without going into Respondent's exhibit A-20, which is the TBA Program-Dealer Training Program, you stated that this was checked with a previous script, if I recall?

A. Yes, sir.

Q. This exhibit A-20 was revised in 1957. What was the date of the previous script?

A. I believe it was 1953, which I think coincides with the date on the other script there.

Q. Did you check it with any script prior to 1953?

A. No, I don't know whether—no, I did not.

Q. I show you also Respondent's exhibit A-21, which is

the orientation script on tires and tubes in the Goodyear regions.

A. Yes.

Q. Do you have a similar script for orientation on
3487 tires and tubes in the Firestone regions?

A. Yes, sir.

Q. Is that basically the same as the one in the Goodyear regions with a change in names only, or primarily?

A. It is basically the same in outline or construction, unlike the other one which can be adapted to either region, because in this we go into more detail as to levels, lines, et cetera. There is a separate script.

Mr. Kelaher: Would it be possible to have that introduced into the record?

Mr. Ballard: I will be glad to furnish it to you, Mr. Kelaher, but it is not part of my case.

Mr. Kelaher: I ask counsel to furnish me with a copy of Firestone's script.

Mr. Ballard: I will be glad to do so.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions, your Honor.

Hearing Examiner Kolb: Thank you, that is all.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn at this time until 9:30 tomorrow morning.

* * * * *

3489 Hearing Examiner Kolb: The hearing will be in order.

Mr. Francis Ballard: Mr. Hayes?

THOMAS A. HAYES, JR. was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Thomas A. Hayes, Jr., 542 Clairmont Road, Springfield, Pennsylvania.

By Mr. Francis Ballard:

Q. You are presently a salesman for the Atlantic Refining Company?

A. Yes.

Q. What is your territory?

A. It is in Delaware County.

Q. How long have you been in the Delaware County area?

A. Since 1952.

Q. During that period you were a salesman in that area, for them?

A. Yes.

3490 Q. As a salesman, sir, am I not right in saying that it is part of your duties to sell Goodyear TBA?

A. That is right.

Q. Would you state, please, what you understand to be Atlantic's policies with respect to the purchases of Goodyear TBA by its dealers?

A. Well, it is our policy to offer Goodyear TBA to our dealers, for their purchase. It is also our policy to offer them the option of accepting or rejecting the Goodyear program.

Q. How long have you known this to be Atlantic's policy?

A. Well, since I have been a salesman.

Mr. Francis Ballard: Mr. Kelaher, to save time would you stipulate with me that this man has received and read the three exhibits, the numbers of which I can give for the record, the letters?

Mr. Kelaher: I have no objection.

Mr. Francis Ballard: It is stipulated that Mr. Hayes has received and read Exhibits 150, 206, and 207.

By Mr. Francis Ballard:

Q. Those exhibits, Mr. Hayes, are the letters from Mr. Colley to Atlantic dealers, stating Atlantic's policy. Have you heard that policy stated in any other fashion?

A. Yes.

Q. Could you tell us how?

3491 A. Well, it has been stated at dealer meetings, that we have held, at sales meetings that we have held, and it has been stated to me individually several times.

Q. I want you to go back to July of 1952, Mr. Hayes, when you started as a salesman and tell me whether or not you yourself have ever violated that policy?

A. No, I haven't.

Q. Mr. Hayes, do you know a gentleman named Francis J. Ballaron?

A. Yes.

Q. He was at one time an Atlantic lessee?

A. That is right.

Q. Were you ever his salesman?

A. Yes.

Q. Can you tell us for how long a period of time?

A. Well, I selected Mr. Ballaron for a service station in 1953.

Q. September 1953?

A. That is right. And we put him into the station. I was his salesman for about two and a half years.

Q. Let me interrupt again. Just tell us where the station was.

A. The station was in Newton Square.

Q. He was in that station you say for about two and a half years?

A. That is right.

3492-3494 Q. Did you at any time make a recommendation that Mr. Ballaron's lease not be renewed?

A. Yes, I did.

Q. Would you tell us the basis for that recommendation?

A. Well, from the beginning Mr. Ballaron proved a rather unsatisfactory dealer. He was a poor business man in a number of respects. The station did not meet our standards for cleanliness. We received many complaints about the location from customers, concerning poor service, attendance, and the dealer workout uniforms. We received several complaints about abusive language used on the station premises. Mr. Ballaron several times got into financial difficulty, gave us a number of bad checks.

Q. When you say "us", you mean Atlantic Refining?

A. Atlantic, yes. And generally speaking, his performance as a dealer was not satisfactory, and for those reasons I recommended that we not renew his lease.

Q. Mr. Hayes, during that two and a half year period, did Mr. Ballaron restrict his purchases of TBA to the Goodyear sponsored line?

A. No, he didn't.

Q. Did you know he was buying outside Goodyear TBA?

A. Yes, I did.

Q. Sir, I want you to go back to this recommendation that you made that his lease not be renewed.

3495 A. Yes.

Q. Did the fact that Mr. Ballaron bought some

TBA on the outside have any bearing on your recommendation?

A. No, it didn't.

Q. To whom did you communicate this recommendation that the lease not be renewed?

A. To my supervisor, who was Mr. George Arnholt.

Q. If you know, would you tell us how Mr. Ballaron found out that the recommendation had been made?

A. Mr. Arnholt and I visited Mr. Ballaron at his station and discussed it with him.

Q. In what detail did you discuss it, how long did the conversation last?

A. It was a very lengthy conversation, which lasted, to the best of my knowledge, from between two and three hours. We discussed Mr. Ballaron's performance with him, and told him at the end of that discussion that we were recommending that his lease not be renewed.

Q. Was this the first occasion, Mr. Hayes, that you had had to observe the relationship between Mr. Arnholt and Mr. Ballaron?

A. No.

Q. You had had prior occasions?

A. Yes.

Q. Would you just take a moment now and tell us 3496 what your observation of that relationship was?

Mr. Kelaher: Your Honor, I am going to object to testimony of this character as to his observation as to the relationship between two other men.

Hearing Examiner Kolb: Well, he can testify as to what he knows, but I don't think he can give any conversations or statements made by either party.

Mr. Francis Ballard: I was not seeking any conversation or statement, sir.

Hearing Examiner Kolb: All right. Objection overruled.

The Witness: I would say that there seemed to be a personality clash between Mr. Arnholt and Mr. Ballaron.

Q. Now, I believe your testimony to date, Mr. Hayes, brings us up to the fall of 1955?

A. That is right.

Q. At which time you made this recommendation?

A. Yes.

Q. Did Ballaron stay in that station?

A. Yes, he did.

Q. Did he continue to be one of the salesmen on whom you called?

A. Yes, he was.

Q. I mean dealers, excuse me.

How long did Mr. Ballaron stay in the station 3497 after the fall of 1955?

A. I believe about a year and a half.

Q. Was his lease cancelled?

A. No, it wasn't.

Q. Would you tell—were you still his salesman?

A. Yes, I was.

Q. Would you tell the Examiner the circumstances under which he left the station?

A. Mr. Ballaron left the station under what we term a mutual consent of cancellation. This is a form that we use when the dealer wishes to be relieved of his station. It was Mr. Ballaron's wish that we release him of this service station, which of course we did.

Q. Now did he, Mr. Ballaron, tell you why he wanted to be released from that station?

A. Yes, he did.

Q. Would you tell us what he told you?

A. His reasons, as he told me, were that, No. 1, he was having difficulty with his sons, who worked there with him, there was some family disagreement about the operation of the station. No. 2, Mr. Ballaron said he had been

advised by his doctor that he had best get out of the service station business. And No. 3, financial problems, which were still taking place.

Q. Can you tell us the reasons why Atlantic was
3498 willing to enter into a mutual cancellation?

A. Yes, because as far as we were concerned, he was still an unsatisfactory dealer for the same reasons I mentioned earlier.

Q. Mr. Hayes, as you know, Mr. Ballaron testified in this proceeding back in June 1957. I am going to read you a question and answer from his testimony, at page 867 of the record. And I will ask you some questions about this. The question was:

"Did anyone tell you what to buy or sell at the last station?

"Answer: Yes, they did. You couldn't sell anything in that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that is represented are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station. I know that, anybody knows that, the salesman knew it. That is why I left the station."

Mr. Hayes, is that testimony true?

A. No.

3499 Q. Was it against the rules of that station that he buy Firestone or Goodrich tires?

A. No.

Q. Did he, in fact, buy those tires?

A. Yes, he did.

Q. Was it because of those purchases of non-Goodyear TBA that he left the station?

A. No, it wasn't.

Q. Now, sir, another gentleman, Mr. Iacono, do you know that gentleman?

A. Yes, I do.

Q. Could you help me in pronouncing the name?

A. It is Iacono.

Q. Well, you know him?

A. Yes.

Q. And you were his salesman for a time?

A. That is right.

Q. He was an Atlantic lessee?

A. Yes.

Q. Can you tell us for how long a period of time you were his salesman?

A. I was his salesman for about a year and a half.

Q. Directing your attention, sir, to the fall of 1954, did you or did you not make any recommendation as to whether Mr. Iacono's lease should be renewed?

3500 A. Yes, I did.

Q. What was your recommendation?

A. I recommended that we not renew Mr. Iacono's lease, Atlantic.

Q. Would you take a moment now and tell us the basis for that recommendation?

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Francis Ballard:

Q. All right, proceed.

A. We had had a number of problems with Mr. Iacono. To begin with, the station again did not meet our standards for cleanliness and appearance. We had had several complaints from the authorities in the area—this station was in Secane, Pennsylvania—and the Board of Health had contacted us regarding refuse and dirt around the service station through complaints of people living in the neighborhood.

Mr. Iacono had another business. He owned a stable and spent quite a bit of time at the other business, and in my opinion, didn't devote enough of his time to the service station business. He constantly worked without proper uniforms, employed what I thought were unquailfied people to work in his station, youngsters who didn't know much about the service station business. He kept poor, inadequate records to reflect what was going on at his
3501 station, and, generally, was an unsatisfactory dealer in my eyes.

Q. While he was a dealer with Atlantic, did he buy non-Goodyear TBA?

A. Yes, he did.

Q. Were you aware of this fact?

A. Yes, I was.

Q. Once again I ask you: Go back to the fall of 1954 when you made the recommendation which you have told us about, and tell us whether or not that fact had anything to do with your recommendation.

A. No, it didn't.

Q. Is this the only lessee station that Iacono had had with Atlantic?

A. Yes, it is.

Q. Had the lease which you recommended not be renewed, had it been renewed at an earlier time?

A. Yes.

Q. And were you his salesman at the time of that earlier renewal?

A. Yes, I was.

Q. And at the time of the earlier renewal had Iacono been buying non-Goodyear TBA?

A. Yes, he did.

Q. Now, sir, we move on to another fellow, James
3502 Matthews. Do you recall that?

A. Yes.

Q. He was an Atlantic lessee?

A. Yes.

Q. You were his salesman for a period of time?

A. That is right.

Q. Do you remember how long a time that was?

A. To the best of my knowledge, about two or two and a half years.

Q. At that time where was his station located?

A. He was in Media, on the Baltimore Pike.

Q. During the two years he was your, one of your dealers, in the sense that you called on him, how were his operations at that station?

A. Very good.

Q. Could you tell us a little bit about that station? Is it unusual in any respect?

A. Yes, we had a very unusual case there, in that the former dealer at that station, whose name was Charles McCaffety, left our station and moved directly across the street into a brand new Esso service station. As a result, of course, Mr. McCaffety took some of the customers with him him and it was necessary that our dealer, Matthews, keep on his toes at all times in order to hold the business at our Atlantic station. Mr. McCaffety was an ex-
3503 cellent dealer also and gave Matthews very stiff competition.

Q. Would you have any idea, generally, of the inventory Mr. Matthews got?

A. Yes, he kept an inventory of approximately twelve or thirteen thousand dollars.

Q. In your experience, is that higher than usual?

A. Yes, it is higher than usual.

Q. That is a TBA inventory you are speaking of—excuse me, higher than usual, does that figure of twelve to thirteen thousand dollars, is that exclusively TBA or a portion of it only?

A. That is right, a portion.

Q. Was his TBA higher than ordinary?

A. Yes, a great deal higher.

Mr. Kelaher: What was the last question and answer.

(The reporter read the question and answer appearing on lines 13 and 14 of this page.)

By Mr. Francis Ballard:

Q. When Mr. McCaffety left to go across the street to take the Esso station, was it your job to fill the Atlantic station which he left?

A. Yes, it was.

Q. Was Mr. Matthews the first person you tried to get to take that station?

A. No.

3504 Q. How many others had you offered it to?

A. Two or three.

* * * * *

By Mr. Francis Ballard:

Q. Mr. Hayes, I believe you also know that Mr. Matthews testified in this proceeding, and at page 542 he stated as follows:

"In the fall of 1954 I purchased ten Auto-lite batteries, and I was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease."

Then, he was put this question:

"Who told you that?

"A. Mr. Hayes."

In the fall of 1954 you were Mr. Matthews' salesman?

A. Yes.

Q. Did you ever make this statement to Mr. Matthews?

A. No.

Q. Do you recall the fact that in the fall of 1954 he did purchase ten Auto-lite batteries, do you know that.

A. Yes.

3505 Q. Did you have a conversation with him about them?

A. Yes, I did.

Q. Did you say that if he did not—that if he bought any more, you would find somebody to take his station?

A. No.

Mr. Francis Ballard: Cross-examine, Mr. Kelaher.

Mr. Kelaher: Your Honor, may I have a few minutes to review the testimony of the dealers about whom this gentleman is testifying?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Hayes, how long have you been with Atlantic Refining Company?

A. Since July 1950.

Q. What was your first position with Atlantic?

A. I was a retail instructor.

Q. What does that mean, what were your duties there?

A. Well, the duties of a retail instructor were to work with a salesman in a given territory, in uniform, working in service stations, training dealers and dealers' employees in selling and performing the services related to the

3506 service station.

Q. In what area did you perform those duties?

A. In southeastern New Jersey.

Q. How long did you remain on that job?

A. One year.

Q. Then, what job did you assume?

A. Well, I then was given a job in our home office in Philadelphia as assistant to our regional marketing supervisor.

Q. Who was that at the time?

A. His name was Edwin Stanton.

Q. Was that—after that did you go on your job as a salesman.

A. Yes.

Q. About when did you start your duties as a salesman?

A. In July of 1952.

Q. And you were a promotable dealer salesman; is that right?

A. That is right.

Q. Have you been in the same territory since that time?

A. Well, I have been in the same general area. I haven't had the same group of dealers all that time.

Q. Did you state that was Delaware County, that was your area?

A. That is right.

Q. That includes Chester, and other—Chester on the south and goes north to some other—

3507 A. (Interposing.) Upper Darby.

Q. When you were a promotable dealer salesman—my questions are going to concern your period as a promotable dealer salesman—was your immediate supervisor Mr. Arnholt during all that time. Has he been your immediate supervisor during all that time?

A. Yes, he was until about three months ago. He is no longer.

Q. He is no longer your supervisor?

A. No, he is retired.

Q. Mr. Arnholt retired three months ago; is that right?

A. Yes.

Q. Now, you were asked some questions with respect to

Mr. Ballaron, and you said he was telling untruths when he testified here; is that correct?

A. That is right.

Q. Were you familiar with Mr. Ballaron's background when he became an Atlantic service station dealer?

A. Yes, I was.

Q. Did you know he had been in the Newton Square area for approximately 41 years?

A. Yes.

Q. Did you know he was very prominent in civic affairs in this community?

A. Yes.

3508 Q. Did you know he had been a scout master, fire chief, fire president, and had had other civic honors bestowed on him?

A. Yes.

Q. Did you know he served in World War I and World War II?

A. I know about War I, not World War II.

Q. Did you know certain members of his family served in World War II?

A. Yes.

By Mr. Kelaher:

Q. Now, you stated that you made a recommendation that his lease not be renewed, right?

A. Yes.

Q. That recommendation was made when?

A. I believe that was in September of 1955.

Q. And this is a fact, that you didn't give him any reason for making that recommendation? Isn't it a fact that you didn't tell him at that time that his lease would not be renewed?

Mr. Mason: Which question are you asking?

Mr. Kelaher: I was clarifying my original question.

3509 Hearing Examiner Kolb: You had better start again.

By Mr. Kelaher:

Q. At the time you made your recommendation to Atlantic that Mr. Ballaron's lease not be renewed, did you so advise him?

A. Yes.

Q. Did you give him the reasons why you were terminating his lease?

A. Yes.

Q. You have stated those reasons in your direct testimony. Is that correct?

A. That is right.

Q. Now, isn't it a fact that after your recommendation Atlantic offered Mr. Ballaron a three-year lease?

A. That is right.

Q. And he accepted the three-year lease?

A. That is right.

Q. So, your recommendation was overruled, apparently, wasn't it?

A. Yes, it was.

Q. You have listed a number of reasons as to why you thought he was an unsatisfactory dealer, haven't you?

A. Yes.

Q. And isn't it a fact that he is still an Atlantic dealer?

A. To the best of my knowledge he is, yes.

3510 Q. So, what you have said is that he, among other things, was having financial difficulties, passing bad checks; his performance was not satisfactory; he was using abusive and foul language; and, you threw everything in the book at him, didn't you? You said he was a very unsatisfactory dealer?

A. Yes.

Q. As soon as his lease was terminated he opened another Atlantic station. How do you square that with your testimony?

A. He didn't lease the second Atlantic station.

3511 Q. What difference does it make? Atlantic signed a contract with him, didn't they?

A. To the best of my knowledge they did.

Q. What you are saying here is purely your own personal opinion and not the opinion of Atlantic Refining Company, is it?

A. Well, I represent the Atlantic Refining Company and it is my job to make decisions such as that concerning the dealers I call.

Q. You have been consistently overruled with respect to Mr. Ballaron. Everything you said here today has been repudiated and refuted by Atlantic's relationships with Mr. Ballaron. Isn't that a fact?

Mr. Francis Ballard: I object, your Honor. I think this is argumentative.

Mr. Kelaher: This is cross-examination. I want to cross-examine.

Hearing Examiner Kolb: Objection overruled.

* * * * *

Mr. Kelaher: You can answer the question now.

3512 Mr. Francis Ballard: Can we have the question read?

(Question read.)

Mr. Mason: I submit that isn't a question, but an invitation to an argument.

Hearing Examiner Kolb: Overruled.

The Witness: I would say No.

By Mr. Kelaher:

Q. The answer is Yes, isn't it?

Mr. Francis Ballard: The witness just stated the answer is No.

Mr. Kelaher: Listen, you have a rare idea of cross-examination, my friend. I am stating to you that Atlantic has continued to negate contracts with Mr. Ballaron since the time of your recommendation; isn't that true?

The Witness: I am not sure of that.

By Mr. Kelaher:

Q. Don't you know he is still an Atlantic dealer, in Zieglerville, Pennsylvania?

A. I don't know that.

Q. The record here so states and you have made no inquiry, you don't know what happened to Mr. Ballaron after he left the other station?

A. Yes, I do.

Q. What happened?

3513 A. Mr. Ballaron then took an Atlantic contract location, but as to whether or not he still has it, I don't know.

Q. Now you are equivocating. But it is a fact, isn't it, that he did enter into a contract with Atlantic almost immediately after he discontinued being a lessee dealer in your area?

A. Yes.

Q. Now, isn't it also a fact that his sons, or at least one of his sons, went to that station with him?

A. Yes.

* * * * * * *

By Mr. Kelaher:

Q. On direct examination you were read an excerpt from Mr. Ballaron's testimony at page 867, I believe.

When you said that—do you recall that statement that was read to you by counsel?

3514 I will reread it to you. Beginning at line 11, page 767:

"Did anyone tell you what to buy or sell at the last station?

"Answer: Yes, they did. You couldn't sell anything to that station except what you bought from Goodyear or DuPont or an Atlanitc dealer can't sell anything but Atlantic products and the one that is represented are still supplying them. When I went to buy Firestone or Goodrich tires or anything like that, that was against the rules of that station. I know that, anybody knows that, the salesman knew it. That is why I left the station."

You said that whole statement was untrue, didn't you?

A. Yes.

Q. What you are saying is that in your opinion it is untrue?

that statement is untrue, because it is against the policy

A. No, I am saying that to the best of my knowledge of our company as it has been explained to me and as I explain it to our dealers.

3516 By Mr. Kelaher:

Q. Now, let's turn to Mr. Iacono. He was also one of your Atlantic dealer salesmen, is that right, one of your Atlantic dealers, I should say?

A. Yes.

Q. Now, you made certain recommendations with respect to Mr. Iacono. Were you his dealer salesman in the fall of 1953 or December 1953?

A. Yes.

Q. And at that time did you also recommend that or did you recommend at that time that his lease be termi-

nated if he didn't make certain adjustments in the service station operation?

A. Yes.

Q. Now, at that time a letter was sent to Mr. Iacono. I will show you the letter. It is Commission's Exhibit 257-A, and ask you if this is the result of your recommendation to your superiors?

A. Yes.

Q. And have you also been apprised of Mr. Iacono's attorney's reply to Atlantic Refining Company in connection with that letter, Exhibit 257-B in this record. Have you ever seen this letter before?

A. Yes, I have.

Q. Isn't it a fact that after that letter was sent, 3517 Mr. Iacono remained in that station for some time?

A. Yes, he did.

Q. So, all the complaints you have itemized and categorized—strike that. So your recommendation at that time was also overruled, wasn't it?

A. Not exactly, no.

Q. What do you mean by that "not exactly"?

A. Well, we have these letters that you mentioned there, which we send to the dealer, which gives him 15 days to correct these deficiencies that we call to his attention, or else he is breaching his lease. In Mr. Iacono's case he corrected those deficiencies to our satisfaction within the period of time and, therefore, we determined that he had not breached his lease.

Q. Now, you have testified, as I understand your testimony, that—now, you say he corrected the deficiencies and then on direct examination you stated that was the reason you didn't recommend renewal of his lease at a later date. Is that the substance of your testimony?

A. Yes. They were corrected only temporarily.

Q. Was he sent another warning letter concerning these so-called deficiencies?

A. No.

Q. However, he remained in the station about one year after this warning letter was sent, did he not?

3518 A. I am not exactly sure of that.

Q. You have also testified concerning Mr. James Matthews. Do you recall that testimony?

A. Yes.

Q. Isn't it a fact that Mr. Matthews was an Atlantic lessee dealer for ten years, approximately?

A. Yes, I think so.

Q. Isn't it a fact that he was a very good dealer, and I think you have so stated?

A. Yes, I thought highly of him.

Q. Well, you made some remark about his inventory being high. You referred to a figure of approximately twelve or thirteen thousand dollars. As I understand your answer, that included gasoline, oil, everything in the station, twelve or thirteen thousand dollars. Is that right?

A. That would include gasoline, motor oil, tires, batteries, and accessories.

Q. Yes. And then you said his TBA inventory was higher than something, higher than ordinary?

A. Yes.

Q. Wasn't his station a fairly large station at that particular location he was in Media?

A. Yes.

Q. And isn't it a fact that that TBA inventory was almost 100 percent Goodyear?

3519 A. I am sorry, I didn't hear you.

Q. Isn't it a fact that that TBA inventory was almost one hundred percent Goodyear?

A. Yes, it is.

Q. And isn't at a fact you got a bonus on that Goodyear

TBA inventory at the time on his purchase of Goodyear TBA?

A. No.

Q. Was there no promotable dealer bonus at that time?

A. No.

Q. When did that bonus begin to go into effect?

A. I believe it was January of 1957.

Q. And he was in the station until sometime in 1957, you will recall. To refresh your recollection, Mr. Matthews testified that he was an Atlantic lessee dealer until May 7, 1957. So, from January 1957 to May 1957 you were getting a bonus or you were getting an incentive award, you were under an incentive award program based on Goodyear TBA; is that right?

A. Well, I wouldn't want to say that was right without looking at my records. I am not sure.

Q. If my dates are correct, that would be so.

A. Except that I am not sure when the bonus plan started. I believe it was January 1957.

Q. And it was to your advantage when the bonus plan started to increase the purchases of TBA by Atlantic dealers because it inured to your financial benefit, 3520 did, it not?

A. Yes.

Q. You stated you had a conversation with Mr. Matthews concerning his purchase of ten Auto-lite batteries. Do you recall that testimony?

A. Yes.

Q. Why was it necessary for you to comment about Auto-lite batteries to Mr. Matthews?

A. Well, Mr. Matthews had been purchasing Goodyear batteries up until that time. I went into his station one day and observed Auto-lite batteries in his office. I think it was natural that I ask him why had he discon-

tinued buying our Goodyear batteries, and decided to buy Auto-lites.

Q. Was that—do you recall the conversation you had with him. Would you state it?

A. Yes, I asked him why he had chosen to purchase Auto-lite batteries, and asked if there was something wrong with our batteries and asked him why he chose to buy the Auto-lites. The explanation he gave me was that an automotive jobber with whom he had been doing business owed him some money. He had a credit on their books. They asked him if he would take these batteries in lieu of a refund in cash, and he agreed to do so.

Q. Otherwise, he was purchasing Goodyear batteries exclusively, is that correct?

3521 A. Well, no, I wouldn't say that.

Q. He was stocking Goodyear batteries, shall we say?

A. Yes.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Francis Ballard.

Q. Mr. Hayes, going back to your early experience with Atlantic, when you were hired did you attend a dealer training school?

A. Yes, I did.

Q. For how long?

A. It was ten weeks.

Q. And I believe you also stated to Mr. Kelaher that you were a retail instructor thereafter?

A. That is right.

Q. Is that retail instructor's position the same as a service salesman is today?

A. Yes, it is.

Q. Now, on Mr. Matthews, Mr. Kelaher asked you a

question which indicated that Mr. Matthews left his station in 1957. Were you Mr. Matthews' salesman at that time?

A. No, I wasn't.

Q. Were you Mr. Matthews' salesman at any time in 1957?

A. I don't believe so.

Q. Now, as to Mr. Matthews' inventory, in your
3522 experience would it be easy to find a replacement for a dealer who has an inventory of $12,000 to $13,000?

Mr. Kelaher: Objection, unless the question is limited to TBA.

Hearing Examiner Kolb: The objection is overruled.

The Witness: I would say Yes, it would be.

By Mr. Francis Ballard:

Q. It would be easy or difficult?

A. It would be difficult.

Mr. Francis Ballard: That is all.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

Mr. Kelaher: May we have a short recess.

Hearing Examiner Kolb: All right.

(A short recess was taken.)

3523 Hearing Examiner Kolb: The hearing will come to order.

ALBERT J. VAYDA, was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Albert J. Vayda.

By Mr. Francis Ballard:

Q. Mr. Vayda, who do you work for now?

A. Ford Division of the Ford Motor Company, sir.

Q. What is your position with them?

A. I am the fleet sales manager for the Philadelphia district.

Q. You were at one time employed by Atlantic?

A. Yes, sir.

Q. When did you go with the Atlantic Company?

A. I believe I started with Atlantic Refining Company in May 1946.

Q. Were you at any time a dealer salesman with Atlantic Refining?

A. Yes, sir.

3524 Q. Can you recall the period of time, approximately?

A. To the best of my recollection it was 1948 through around August of 1952.

Q. Was it in August of '52 you left Atlantic to go with Ford?

A. Yes, sir.

Q. During that period when you were a salesman for Atlantic Refining, did you have as one of your dealers a man named Pollock?

A. Yes, sir.

Q. Do you recall how long you were Pollock's salesman?

A. Approximately four years.

Q. Did you develop any personal relationship with Pollock at all over that time?

A. Oh, yes, sir, I visited his home and he had been to my home.

Q. Mr. Vayda, Mr. Pollock testified in these proceedings about a year and a half ago and I would like to read you some of his testimony and ask you a few questions about it. I am reading now from the record at page 690, starting at line 14. He asked this series of questions and gave these answers:

"Did you purchase any brands of batteries other than Goodyear brand after March 1951?

"Answer: Yes, Bowers batteries.

3525 "Question: Was anything ever said to you by an Atlantic representative in respect to your purchases of Bowers batteries?

"Answer: Yes, I had a large sign outside with batteries on display and they asked me to take them in, to remove them.

"Question: Was the large sign, did the large sign advertise Bowers batteries?

"Answer: That is right.

"Question: Can you fix the approximate time when this occurred?

"Answer: It was approximately, I would say the spring of 1952.

"Question: Do you recall the name of the Atlantic representative who made the statement to you?

"Answer: Mr. Vayda.

"Question: Did Mr. Vayda ever make any other comments to you with respect to the purchase of Goodyear TBA by you?

"Answer: In what respect?

"Question: Did he ever threaten you with cancellation?

"Answer: Well, with this battery deal through the heat of the argument I told him to get off the premises and he told me he was going to have the lease cancelled and
3526 that is the way it remained."

Now, Mr. Vayda, do you recall whether or not Mr. Pollock purchased Bowers batteries?

A. I remember that he had purchased Bowers batteries.

Q. Did you see them at his station?

A. Yes, I did.

Q. Where were they displayed?

A. Right in the office, in a prominent position.

Q. Do you know or remember whether or not Mr. Pollock had a large outdoor Bowers sign?

A. A large outdoor—

Q. Bowers sign, yes.

A. You know, a lot of gasoline has gone through the pumps since then. Vaguely, I would say Yes, I remember the sign.

Q. Now I ask you this question: Did you have an argument with Mr. Pollock concerning either Bowers batteries, or the sign, in the course of which argument you told him you were going to have his lease cancelled?

A. Again, to the best of my recollection, I vaguely remember it, but I honestly don't remember getting into any serious argument over it.

Q. Do you remember making a threat to cancel his lease?

A. I can't remember, honestly. I don't remember telling him that I would cancel his lease.

Q. Did you, have you ever threatened to cancel
3527 any dealer's lease in your experience with Atlantic?

A. No, sir.

Mr. Francis Ballard: Cross-examination.

Mr. Kelaher: No questions.

Hearing Examiner Kolb: Thank you very much.

(Witness excused.)

ROBERT KLEIN was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address?

The Witness: Robert Klein, 611 Jackson Avenue, Woodcrest, Wilmington 4, Delaware.

By Mr. Ballard:

Q. Mr. Klein, you are an employee of Atlantic Refining, are you?

A. Yes, I am.

Q. What is your present position with Atlantic?

A. Promotable dealer salesman.

Q. What district?

A. Wilmington, Delaware.

Q. Mr. Klein, when did you become promotable 3528 dealer salesman in the Wilmington district?

A. March 1956.

Q. At that time did you become a salesman or was one of the dealers on whom you called, a gentleman named Richard Brown?

A. Yes, it was.

Q. Now at that time had the extra compensation plan for promotable dealer salesmen just gone into effect?

A. It went into effect the first of April 1956.

Mr. Ballard: Off the record?

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Fred Ballard: It is stipulated that the extracompensation plan for promotable dealer salesmen became effective April 1, 1956.

The Witness: That is in the eastern Pennsylvania region. It may have been different for other regions.

Mr. Fred Ballard: I think it was in all regions at the same time.

By Mr. Fred Ballard:

Q. Do you recall a discussion between yourself and Mr. Brown with respect to that extra compensation plan?

A. Yes, at some time after the first of April, Mr. Brown asked me, nonchalantly one day if I was paid a commission on products I sold. I said Yes, and he said, 3529 "Does that include TBA?" and I said "It certainly does."

Q. Is that the extent of your conversation with him?

A. Yes.

Q. At that time was Mr. Brown buying Firestone TBA?

A. Yes, to a certain extent.

Q. Now moving to December of 1956, do you recall an incident involving Mr. Brown and a recap Goodrich tire sold on an Atlantic credit card?

A. Yes, I do.

Q. Would you describe that incident for us, please?

A. Certainly. The tire was sold to a credit card customer by the name of Mr. White. I don't know his first name. The tire was evidently defective, something was wrong with it and the customer brought it back about a month or two late and wanted an adjustment. He mentioned to Atlantic it was sold by the way on terms on the

credit card. I think he had made one or maybe two payments on the tire. He wrote us and told us he would refuse to pay for the remainder of the tire unless an adjustment was made.

Well, I went out and talked it over with Mr. Brown and he informed me that it was a Goodrich tire. I said it was perfectly legitimate for him to put a Goodrich tire on an Atlantic credit card, however, I felt in that case he, or Goodrich, should certainly back up the sale in case of an adjustment or something of that order.

3530 Q. Now, sir, Mr. Brown left his station at what date, do you recall?

A. He left his station on the 5th day of April 1957.

Q. When did he first tell you that he wanted to leave his station?

A. He told me on numerous occasions, I would say from the first of July 1956, at intervals of about six weeks; at one time he would say he wanted to leave and then he didn't want to leave and then he wanted to leave again and it went back and forth, and finally about the 5th of March he told me that he definitely was going to leave this time. And I said I will go to work and try to find a replacement for you.

Q. Did you go to work and find a replacement for him?

A. Yes, I did. I had been working with a Gulf dealer, trying to get him to take the station and he was debating whether he wanted to take it or not. However, I also had a man in the dealer training school who would graduate in time to get into Brown's station by the 5th of April, thirty days later. In the end I put the man from our dealer training school into the station, on the 5th of April.

Q. Was his name Bruton?

A. Johnny Bruton.

Q. Now when Mr. Bruton took over the station from

Mr. Brown, did Mr. Bruton buy Mr. Brown's TBA inventory?

A. Yes, he did.

3531 Q. Did that include some non-Firestone items?

A. Quite a bit of them.

Q. Did he also buy Mr. Brown's equipment?

A. He bought all of Mr. Brown's equipment except a battery charger. The reason he wouldn't buy the battery charger, was because he felt the price was exorbitant and he could get a comparable charger for a considerably lesser price.

Mr. Fred Ballard: No further questions.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

3532 Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Klein, was your first association with Atlantic as a promotable dealer salesman March 1956?

A. No.

Q. When did you begin with Atlantic?

A. I began with Atlantic in October 1951.

Q. What was your—would you just state what your jobs and experience has been with Atlantic?

A. I started as an employee in a company-operated station in 1951 and in 1953, and to July of 1954 I worked as a tax accountant in both Philadelphia and the Reading offices, and in July 1954 I attended the dealer training school in Allentown, Pennsylvania, after which I became a service salesman. I worked as a service salesman in Seaford, Delaware, until March 1956.

Q. At that time you assumed the present job?

A. Yes, sir.

Q. In the Wilmington district. Has your supervisor in the Wilmington district been Mr. Jones during your employment there?

A. Not entirely.

Q. Who was your supervisor?

A. Mr. J. M. Connelly had been supervisor prior
3533 to Mr. Jones.

Q. I believe you were present at these hearings two days ago when Mr. Jones testified, were you not?

A. Yes, I was.

Q. He referred to Mr. Robert Klein as having been the top Firestone TBA salesman in the Wilmington district during either 1956 or '57. He wasn't certain. You are that Mr. Klein, are you not?

A. Yes.

Q. What year was he referring to?

A. 1956.

Q. And are you still consistently one of the top Firestone TBA salesmen in the Wilmington district?

A. Yes, I would say so.

Q. And you receive a bonus, do you not, on the purchase of Firestone TBA by Atlantic dealers?

A. I work on an extra compensation plan and incentive program, yes.

Q. Yes. And have you consistently received a bonus under that plan, due to sales of Firestone TBA?

A. No, sir.

Q. 1956 you did?

A. Yes, and 1957 I didn't. 1958, up to this point, I haven't.

Q. How long have you been aware of the Federal
3534 Trade Commission investigation into the Firestone-Atlantic sales commission plan?

A. Since March 1956 when I became a salesman.

Q. You learned of it when you went to the Wilmington district, is that right?

A. Yes. I could elaborate on that a little bit. I knew of Federal Trade Commission activities, the investigator being in Wilmington in March '56. However, I knew prior to that time that an investigation had been going on.

Q. You knew prior to the time you went to the Wilmington district that such an investigation was underway?

A. Oh, yes, sir.

Q. You are always attempting to increase Atlantic dealers' purchases of Firestone TBA, are you not?

A. Yes, sir.

Q. Isn't it true that you, on your trips to stations, Atlantic dealer stations, you can spot non-Firestone TBA; isn't that true, with respect to tires and batteries and—

A. (Interposing.) Oh, yes, certainly, but accessories I can't.

Q. You can't where they are brands carried in the Firestone TBA line; is that what you mean?

A. Yes, sir.

Q. Were you implying in your direct examination that you never at any time made any comments to Mr.
3535 Brown concerning non-sponsored TBA?

A. I was.

Q. You never at any time during your calls on Mr. Brown, made any comment to him concerning the fact that a particular product was not in the Firestone TBA line?

A. The only comment I ever made to Mr. Brown regarding TBA was that I asked him to get TBA other than Firestone if he couldn't make the purchases from Firestone.

Q. However, if he could make the purchases from Firestone, he was to make them there, is that what you mean?

A. No, sir. He objected to me that Firestone didn't want to sell to him on several occasions because of his very poor credit record, and the fact that they run a truck across town with maybe three fanbelts and when the truck got there, he would throw up his arms about everytime and say he wanted it on credit or didn't have the money, and on one occasion he gave them 530- some pennies to pay for it.

Q. Isn't it a fact he was dissatisfied with the Firestone service store delivery, and with their service, and with their prices? Did he tell you about that?

A. May I take those items one at a time, please?

Q. I am asking you if—you may,—but I want you to answer the question Yes or No first.

A. Yes, he was.

Q. Now, as to each item, if you like.

A. He was dissatisfied with their service because
3536 they became a little antagonized with Mr. Brown and for what I felt was very good reason. The item I just referred to a moment ago, running a truck from one end of Wilmington to the other with one or two items, maybe totaling—maybe three or four oil filter cartridges and when the truck got there he knew he couldn't buy from them on credit, and he would insist that the truck driver give it to him on credit.

One time the driver told him you are either going to pay me money or I won't leave them. Those are my instructions from the store manager.

Q. Were you present during these conversations, at that particular one?

A. Yes, sir, and others.

Q. Isn't it true that he complained about the fact that the Firestone service store was underselling him?

A. I think he did, on one occasion, in my presence, yes.

Q. And that was a fact, wasn't it?

A. No, it wasn't.

Q. Isn't it true that the Firestone service store at times sells Firestone tires at a lower price than Atlantic dealers can afford to sell them?

A. No, sir.

Q. You were aware, in any event, of a friction between Brown and the Firestone service store?

A. Indeed I was.

3537 Q. Now, with respect to credit card adjustments, does Atlantic handle the credit card adjustments on Firestone tires?

A. No, sir, not directly. I, as a sales representative, oftentimes discuss it with the Firestone store manager, or the Firestone representative, for a dealer or with a dealer. But we don't make the adjustments.

Q. If the sale of Firestone tires is made on Atlantic credit cards by an Atlantic dealer, don't you repay, don't you, under your credit card set-up, immediately or shortly thereafter, repay the Atlantic dealer?

A. Yes.

Q. For that sale?

A. Yes, sir.

Q. And that is the end of his association with the matter, isn't it?

A. Yes. Insofar as Atlantic is concerned.

Mr. Kelaher: No further questions.

Mr. Fred Ballard: I have no further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

3538 WILLIAM L. WAY was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: William L. Way; 110 Brookside Road, Newton Square, Pennsylvania.

Direct Examination by Mr. Francis Ballard.

Q. You are presently an Atlantic lessee, is that correct?

A. Yes, sir.

Q. Could you tell us where your station is?

A. State Road and township line, Drexel Hill.

Q. When did you move into that station?

A. December, 1953.

Q. What had been your work before that time?

A. I was a salesman for Atlantic Refining Company.

Q. In the Philadelphia area?

A. Yes, sir.

Q. When did you start with Atlantic?

A. In December of 1946.

Q. When did you become a salesman for Atlantic?

A. A dealer salesman?

3539 Q. Yes.

A. In 1948 or 1949.

Q. And then you were a dealer salesman until 1953 when you left?

A. Yes.

Q. While you were a salesman, did you have a dealer named James Matthews?

A. I did.

Q. And you were his salesman?

A. Yes, sir.

Q. Do you remember how long, for how long a period of time he was one of the dealers you called on?

A. Approximately ten months, eleven months.

Q. Can you tell us what year that would have been?

A. 1953.

Q. Where was his station at that time?

A. In Yeadon.

Q. Would you tell us now, Mr. Way, something about Mr. Matthews' operations at that station when you first came to his territory in early 1953?

A. Yes. When I took over in that particular territory, Jim Matthews was having some kind of difficulty in operating his business. He was at that time operating two businesses, one a trucking concern and also a service station.

His figures were not good, and it was my opinion 3540 that Matthews should stick with one of the two businesses, that he was doing no good to either one of the businesses.

Q. What was the nature of the trucking business you mentioned?

A. He had several tractors, no trailers. He had contracts with several concerns, and he hauled these trailers to different parts of the country.

Q. Now, you stated what you—that it was your opinion that he ought to either go into the trucking business entirely or the service station business; is that right?

A. Yes, sir.

Q. Did you ever mention that to Mr. Matthews?

A. I did.

Q. Could you tell us about that conversation?

A. Yes, I mentioned the fact that he should pick one of the two; if he wanted to stay in the service station business, I felt that if he wanted to do justice to it, that he should give up the trucking business or vice versa. And

le more or less agreed that he had had trouble just prior to that. I believe one of his trucks was in a rather serious accident down South with a possible suit pending as a result of the accident, and he had trouble on different occasions with drivers not showing up, and just apparently wasn't working out too satisfactorily.

Q. In the course of this conversation, did you sug-
3541 gest the possibility of a mutual cancellation of his Atlantic lease?

A. At that time?

Q. Yes.

A. Yes.

Q. Or shortly thereafter?

A. Yes.

Q. What was—

Mr. Kelaher (Interposing): Which is the answer now?

By Mr. Francis Ballard:

Q. Was it at the time of the conversation that you have just told us about, or was it later on you mentioned a mutual cancellation deal?

A. I think it was a little bit later.

Q. Did Mr. Matthews sign the mutual cancellation?

A. No, he did not.

Q. What was the nature of your conversation with him at that time?

A. Well, we discussed this for probably an hour or so, and we hashed it back and forth, and I told him I felt he could do better in the service station if he devoted a hundred percent of his time to the station. I also submitted a mutual to him, told him he didn't have to sign it, it wasn't mandatory, and I felt that if he could devote one hundred percent of his time to the station, that he could develop the location, which would also increase
3542 his net profit.

Q. And he stayed on in the station?

A. Yes, he did.

3543 Q. What were the results of his operations after that conversation?

A. Well, due to a hundred percent attendance at the station, his over-all picture improved, the station appearance picked up. Well, the proof is that he was selected for another location, a better location, several months later.

Q. I think you said that he was devoting a hundred percent of his time to the station?

A. Yes.

Q. What happened to the trucking business?

A. He divorced himself completely from the trucking business.

Q. Did you also, while you were a salesman with Atlantic, a dealer salesman, have a dealer named James M. Meyers, Jr.?

A. I did.

Q. Do you recall how long a period of time he was a dealer you called on?

A. Approximately two years, I guess. I am not sure about that.

Q. Mr. Meyers testified in these proceedings in June 1957. At page 1,112 he was asked whether or not he received a letter from Atlantic Refining Company which said he had freedom of choice as to his TBA purchases. His answer was:

"Yes, I did receive a letter later than that, stating that I had freedom of choice.

"Question: Did you ever discuss that letter with 3544 Salesman Way?

"Answer: Yes, I did.

"Question: What did you state to Salesman Way?

"Answer: I said 'Bill, does that letter mean what it says?' and he said 'You try it and you will find out.' That was the answer I received."

Now do you recall the letter which is mentioned?

A. I recall the letter, yes.

Q. Do you recall by whom it was signed?

A. Mr. Colley.

Q. Did you have conversations with your dealers about that letter generally?

A. Yes, as we discussed many pieces of correspondence coming from the office.

Q. Did you have any conversation with Mr. Meyers of the nature that he testified about?

A. I believe the subject came up, yes.

Q. Did you ever tell him: "Try it and you will find out"?

A. No, sir.

Q. Did you ever tell either Mr. Meyers or any other dealer that the policy of the company was other than as stated in the letter?

A. No, sir.

Mr. Francis Ballard: Cross-examine.

3545 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Way, you were still an Atlantic lessee dealer at Drexel Hill, is that correct?

A. Yes, sir.

Q. And you have been in that station since December 1953?

A. Yes, sir.

Q. So you have been with Atlantic from December 1946, until the present time?

A. December 1945.

Q. You gave one date in your direct testimony concern-

ing December 1946, as I recall. What did you start with Atlantic as?

A. I started as a service salesman.

Q. That was in December 1945?

A. Yes, sir.

Q. When did you become a dealer salesman—were you a service salesman until you became a dealer salesman?

A. No, I was a commercial salesman, calling on fleet accounts.

Q. In any event you became a dealer salesman in 1948 or 1949?

A. Yes, sir.

Q. I want to ask you a question or two about Mr. Meyers. Do you recall the time when Mr. Meyers' 3546 station was used as a model station?

A. Yes, sir; I do.

Q. Do you recall the time when that happened?

A. No, I don't.

Q. Was that before or after the change-over to Goodyear TBA line?

A. Honestly, I don't know; I don't remember. I would say the model station program was probably around 1950 or '51.

Q. And the change-over to Goodyear TBA was in March 1951, if you recall?

A. Yes; I am not sure.

Q. It could have been after March 1951?

A. It could have been. I don't remember.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Way. Thank you.

(Witness excused.)

Mr. Fred Ballard: Sir, I have another witness who will take about, oh, half or three-quarters of an hour. I would

be glad to put him on now or after lunch, whichever you prefer.

Hearing Examiner Kolb: Let's put him on now.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3547 Hearing Examiner Kolb: On the record.

We will adjourn at this time until 1:30.

(Thereupon, at 11:57 a.m., the hearing was recessed, to reconvene at 1:30 p.m., this same date.)

3548 Afternoon Session. (1:30 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

JOSEPH M. CONNELLY was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination.

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Joseph M. Connelly, 2512 Prospect Street, Pennside, Reading, Pennsylvania.

By Mr. Fred Ballard:

Q. Mr. Connelly, you are an employee of Atlantic Refining Company?

A. Yes, I am.

Q. Will you tell the Examiner when you first joined that company?

A. May I refer to a note I have on my history with the company?

Q. Is that a list of your jobs?

A. Yes, of my jobs and when I was hired, from my personnel record.

3549 Mr. Kelaher: All right.

The Witness: I was hired as a retail merchandiser in February, 1946. I was made a retail instructor in April 1946, a commercial salesman in December 1946, and I held that job until October 1950. I was a dealer salesman from October 1950, until July 1952. I then became a promotable dealer salesman.

In February 1954 I became a site representative. I again was a promotable dealer salesman from February 1955 to August 1955. I then became a sales supervisor in Wilmington and I stayed in that job until November 1956. I then became contract dealer accounts coordinator in the eastern Pennsylvania region and I held that job until September of this year, when I became direct marketing manager.

By Mr. Fred Ballard:

Q. Now Mr. Connelly, do I understand correctly that until you became sales supervisor in the Wilmington district in August 1955, previous to that time all your service had been in the Philadelphia suburban district of Atlantic?

A. Yes, it had.

Q. You mentioned that you were a site representative. What is the duty of a site representative?

A. It is a, well, liaison job between sales and our real estate department in the selection of service station properties.

3550 Q. Did you yourself make the decision as to whether a particular property should be purchased for a service station?

A. No, sir, I didn't, that decision was actually made by several people.

Q. About how many?

A. Oh, I would say possibly eight or nine. Very briefly, I would recommend or investigate a piece of property and it would then go to the district manager, who would take it to what we called then a DLC, a sort of real estate manager for a region and then the regional manager, if it was approved at that point, then it would go to top company management for their inspection and approval.

Q. You also said you were contract dealer coordinator in the eastern Pennsylvania region?

A. Yes, sir.

Q. What was the nature of your duties there?

A. Well, it is a specialist for a class of trade, working in conjunction with everything concerning contract dealer business.

Q. About how many contract dealers were in that region?

A. I would say approximately 950 or a thousand.

Q. What proportion of them operated service stations with full station facilities?

A. I would say in the neighborhood of 550 to 600.

3551 Q. Does that region include Zieglerville, Pennsylvania?

A. Yes, sir; it does.

Q. Did you have any personal contacts with Francis Ballaron as a contract dealer in Zieglerville?

A. I did not.

Q. Have you at my request ascertained whether Mr. Ballaron is still a contract dealer there?

A. I have ascertained that.

Q. Is he?

A. He is not.

Q. According to Atlantic's records, why is he no longer a contract dealer there?

Mr. Kelaher: Objection your Honor.

Mr. Fred Ballard: You Honor, I didn't bring Mr. Ballaron into this thing as to his present whereabouts. Mr. Kelaher brought it in this morning and left a clear impression with your Honor that Mr. Ballaron is a fine, successful Atlantic contract dealer in Zieglerville today, I am entitled to explain that, I think, sir.

Mr. Kelaher: I think you are entitled to explain it, but not in this manner.

Hearing Examiner: I think the record would be the best evidence of that.

Mr. Fred Ballard: May I ask a few more questions?

Mr. Kelaher: I object to any further questions.

3552 Mr. Fred Ballard: I don't see how you can object to a question until it has been asked.

Mr. Kelaher: All right, go ahead and ask them.

By Mr. Fred Ballard:

* * * * *

3553 By Mr. Fred Ballard:

Q. Now, Mr. Connelly, when you were a promotable dealer salesman, and I believe the period was July 1952 through February 1954, what area did you cover?

A. I covered from Darby, south through the Chester area, and the majority of my stations were on the McDade Boulevard-Chester Pike route.

Q. Is that area what is called in the trade a price war areas?

A. Yes, sir; it is.

Q. Is the area affected by those price wars localized or does it include the entire Philadelphia suburban district?

A. It was certainly localized during the time I was there.

Q. I believe you were present at the hearings in June and July of 1957, and do you recall a number of ex-Atlantic dealers testifying in those hearings?

A. Yes, sir; I do.

Q. Do you remember which of those were in the area affected by these price wars?

A. I believe so. Jack Pollock, John Chambers, and Iacono, George Hill, Elmer Booz.

Q. Now, sir, what was Atlantic's practice when
3554 price wars would strike an area?

A. Before we gave support to the dealer we had to make certain that support was given by other companies, which meant that we had to examine through a competitive dealer's cooperation, a tank wagon ticket or on occasion would have our dealers go to a competitive dealer with us, that they knew, to get information as to what type of support he was getting.

After getting that information we had to relay it to our supervisor who in turn took it to his district manager who then petitioned the regional manager for some sort of equal support.

Q. As a result of that Atlantic was sometimes slower to reduce its price to dealers than other companies?

A. Yes, sir.

Q. Did the Atlantic dealers occasionally resent this practice?

A. Yes, sir.

Q. Now, I believe you have heard the testimony of various witnesses in this case regarding the difficulties experienced in locating qualified dealers and dealer candidates. Have you heard such testimony?

A. Would you mind repeating that?

(Question read.)

The Witness: Yes, sir, I have.

3555 By Mr. Fred Ballard:

Q. During your tour of duty in the Philadelphia suburban district, and the Wilmington district and eastern Pennsylvania region, has Atlantic experienced similar difficulties in those areas?

A. Yes, sir; they have.

If I may, that is the biggest difficulty we have, is finding good qualified prospects for service stations.

Q. Now, approximately how many retail petroleum outlets are there in the Philadelphia suburban district?

A. All companies, sir?

Q. Yes, sir.

A. Approximately 2600.

Q. Would you know what percentage of those had full service station facilities?

A. I believe about 2,000 of them have full facilities.

Mr. Kelaher: Is this answer, does this answer—let me ask it this way. What type of dealer are you referring to?

Mr. Fred Ballard: I asked him the number—would you read the question, please?

Mr. Kelaher: Strike that. Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3556 Hearing Examiner Kolb: On the record.

By Mr. Fred Ballard:

Q. Now, Mr. Connelly, when you first became a salesman for Atlantic, Atlantic was selling Lee tires and Exide batteries to its dealers?

A. Yes, sir.

Q. And some accessories?

A. Yes, sir.

Q. And then, in March 1951 Atlantic sponsored, or began to sponsor the Goodyear line in the Philadelphia suburban district; is that correct?

A. That is correct.

Q. Did you find the Goodyear brand easier to sell than the Lee and Exide brands?

A. Yes, I did.

Q. Did you find that your dealers welcomed the change?

Mr. Kelaher: I am going to object to this type of generalization.

Mr. Fred Ballard: I withdraw the question.

By Mr. Fred Ballard:

Q. What was the reaction of your dealers to the change?

A. The majority of my dealers liked the change.

Q. Now, Mr. Connelly, as you understand Atlantic's TBA policy, if a dealer can make more profit for himself handling some TBA other than the Atlantic recom-
3557 mended brand, what is Atlantic's attitude?

A. That he should certainly take advantage of the extra profits.

Q. Do you know any—can you give an example of where that might apply?

A. Well, I am not thinking of a particularly profitable angle, but for example, in Wilmington, and I am thinking of an acceptance standpoint here, where his volume is greater because of it—Wilmington is the home of the DuPont Company, as you are probably aware, and most all the Wilmington dealers handle, for example, Zerone and Zerex, DuPont products, because DuPont employees wish to buy them and in my opinion it would be foolish not to.

Q. Throughout the various areas where you have worked, the Philadelphia sub-district, Wilmington district, and Eastern Pennsylcania region, do the supply points for Goodyear or Firestone, depending on which is sponsored, encounter competition from other TBA suppliers in selling to Atlantic dealers?

A. Yes, they do.

Q. Does the success of the supply point in making sales to Atlantic dealers vary from one supply point to another?

A. Yes, sir.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

3558 By Mr. Fred Ballard:

Q: Did you answer?

A. It certainly does.

Q. What in your observation are the factors that influence the degree of success of the supply point?

Mr. Kelaher: Your Honor, he is testifying now, as I understand it, as to supply point in various regions which includes Eastern Pennsylvania region, Philadelphia subdistrict, Wilmington district, and he is going into reasons as to why a supply point will sell more sponsored brand than another. It seems to me that is a form of hearsay which is objectionable.

Mr. Fred Ballard: Your Honor, this man has served as the sales representative for these various supply points. Atlantic sponsors their products. He observes everyday how successful these points are. If he doesn't know if one is more successful than another and what makes that success, I don't know who does.

Mr. Kelaher: I might add, your Honor, that he would have to have access to the books and records of all the supply points and in all the areas he is testifying to and it seems to me this is strictly hearsay type of testimony he is talking about.

Hearing Examiner Kolb: Well, he would know what was being sold in his territory, where he is located.

3559 Mr. Kelaher: He is talking about the success of various supply points, as I understand it.

Mr. Fred Ballard: That is correct. He has seen a great many.

Mr. Kelaher: I say it is hearsay. I object.

Hearing Examiner Kolb: I overrule the objection.

Mr. Fred Ballard: Will you read the question?

(The reporter read the question as follows: "What in your observation are the factors that influence the degree of success of the supply point?")

Hearing Examiner Kolb: You are speaking of selling to Atlantic dealers?

Mr. Fred Ballard: Yes, sir.

The Witness: I think first and foremost would be delivery and service. Credit terms, proximity of the supply point to the Atlantic stations in that area, credit terms, the amount of stock, how well stocked the supply point is, whether it is completely and well stocked enough to take care of all their needs promptly. Those are some of the major factors.

By Mr. Fred Ballard:

Q. On that basis, which of the various areas you have worked in has the most outstanding supply points?

A. Philadelphia.

Mr. Kelaher: I beg your pardon; your Honor, before he answers, I object to that question unless it is stated 3560 with more specificity.

Mr. Fred Ballard: Your Honor, if Mr. Kelaher wants to be more specific, he has cross-examination.

Hearing Examiner Kolb: I overrule the objection.

By Mr. Fred Ballard:

Q. By your answer, you mean the Philadelphia suburban and region?

A. Yes, sir.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Fred Ballard:

Q. Now, Mr. Connelly, in your experience covering these various regions, districts and regions, does Atlantic comment in its investigation reports on dealers as to the brands of TBA they handle?

A. It most emphatically does not.

Q. Does it prevent the sale of non-sponsored TBA on credit cards?

A. It does not, sir.

Q. Does it penalyze its dealers in any way for handling non-sponsored TBA?

A. It does not.

Q. Are such dealers equally eligible for station improvements?

A. They certainly are.

3561 Q. For other benefits of the Atlantic dealer program?

A. Yes, they are.

Q. When you were in the Philadelphia suburb and district, was John Chambers one of your dealers?

A. Yes, he was.

Q. Did he at one time request a promotion to a—from his station at 2d and Lloyd Streets to a new and different station in Sharon Hill?

A. Yes.

Q. What was your recommendation on that?

A. My recommendation was that we give John Chambers the Sharon Hill station he wanted.

Q. What was your supervisor's recommendation?

A. Mr. Arnholt was my supervisor at that time. He felt that John Chambers' record, as far as appearance goes, of his station in Chester, did not qualify for the Sharon Hill station.

Q. Was Chambers finally given the Sharon Hill station?

A. Yes, sir.

Q. Did he know that Mr. Arnholt opposed his being given that station?

A. Yes, he did. I had a very—

Mr. Kelaher: (Interposing.) Just a minute. Your Honor—

Mr. Fred Ballard: (Interposing.) I withdraw the 3562 question, Mr. Kelaher.

By Mr. Fred Ballard:

Q. Did you tell Mr. Chambers that Mr. Arnholt opposed his taking the new station?

A. Yes, I did. In fairness to John Chambers and myself—

Mr. Kelaher: (Interposing.) Objection. I think he just asked what he told Mr. Chambers.

By Mr. Fred Ballard:

Q. Would you tell us what you told Mr. Chambers?

A. I told Mr. Chambers Mr. Arnholt felt the transfer should be made, because Mr. Chambers had kept a location that was shabby, as far as appearance goes. I also told Mr. Chambers that through my insistence, Mr. Arnholt had granted him the station and that I had told Mr. Arnholt that Mr. Chambers would keep a clean, orderly station.

Q. On one occasion or another, did you ever talk to Mr. Chambers about a product known as Bars Leak?

A. Yes, I did.

Q. Would you tell us approximately—would you tell us to the best of your recollection the substance of the conversations you had with Mr. Chambers on that subject?

A. Yes, I will. Bars Leak, to describe the product, if I may—

Mr. Kelaher: (Interposing.) You may not. Just tell him—just report the conversation.

3563 By Mr. Fred Ballard:

Q. Mr. Connelly, are you familiar with the product Bars Leak?

A. Yes, I am.

Q. Will you describe it to us as far as you know about it?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: It is a heavy, brownish-black liquid packaged in a glass container with a screw top, or was at that time.

By Mr. Fred Ballard:

Q. What did you say to Mr. Chambers about it?

A. I said I thought it had little resale value, that neither of us had any real knowledge of the quality of the product, that we had no idea as to how successfully it would do a sealing job in a radiator, and I thought he was very foolish when he was well stocked with DuPont sealer, which was packaged in a sealed container—and, of course, had public acceptance and had been well advertised—to stock both products, and I suggested to him that he was foolish to stock Bars Leak.

Q. Did you have on occasion substantially the same conversation with Elmer Booz?

A. Frankly, I could have, very easily. But I can't tell you specifically that I did or did not. But it could
3564 very well have been exactly the same one.

Q. Were you in the hearing room when Mr. Chambers described an incident involving himself and Mr. Arnhold and a red hat?

A. Yes, I was.

Q. Did you observe that incident?

A. Yes.

Q. Would you tell us what happened?

A. Yes, sir. Mr. Arnhold was a firm believer in uniforms and uniformity, of both dealers and their employees. He was particularly concerned with hats and particularly didn't like red hats. He, jokingly, tried to remove Chambers' hat, and pretended he was going to throw it away, hoping John would laugh and say "All right." And John became offended.

Q. Now, sir, at my request, you tried to locate a dealer named Denny Denshaw, who was at one time the Atlantic dealer at Decatur and Frankfort Avenues, in Philadelphia?

A. Yes, sir.

Q. Were you able to ascertain his whereabouts?

A. No, sir, I wasn't.

Q. Now, I submitted to you a list of dealers, telling you that they were mentioned in the testimony here and the record did not clearly indicate whether they were contract dealers or lessee dealers. Did you at my request ascertain whether they were contract or lessee dealers?

A. Yes. They are contract dealers.

3565 Q. In all cases.

Mr. Fred Ballard: Mr. Kelaher, I suggest we ask the reporter to copy this list into the record, so that we will have the status of these dealers accurately.

Hearing Examiner Kolb: The reporter may copy the list in the record.

Mr. Kelaher: No objection.

(The list referred to above is as follows:)

3566 (The list referred to is as follows:

Dealers Mentioned in Philadelphia Testimony Whose Status Was Not Clearly Indicated

Name—Address

Clarence Nelson, 4th & Main, Darby, Pa.
Ed Stowe, Woodland & Primos, Folcroft, Pa.
Green's Atlantic, 214 E. 5th Street, Chester, Pa.
Mahlon Craig, Rising Sun & Lardner, Phila., Pa.
Minka Brothers, 6th & Morton Avenue, Chester, Pa.
J. S. Patchell, Morton Avenue, Morton, Pa.
Sharon Hill Garage, Hook Road & Chester Pike, Sharon Hill, Pa.
J. Gill, 2142 Darby Road, Oakmont, Pa.
Laughead Serv. Station, Chichester & Huddle, Chester, Pa.

Mr. Kelaher: May I have a minute before cross, your Honor?

Hearing Examiner Kolb: Yes, we will take a short recess.

(Whereupon, a short recess was taken.)

3567 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. You became a dealer salesman in October 1950, is that correct?

A. May I refer to my notes again?

Q. Yes, go ahead. My question is whether or not you were a dealer salesman in the same area in which you later became a promotable dealer salesman?

A. No, sir, I was not.

Q. That wasn't clear from the questioning. Would you tell us where you were a dealer salesman beginning in October, 1950?

A. Yes, sir. From the Navy Yard, roughly, the most southern point in the central Philadelphia, north to approximately Gerard Avenue, on both sides of Broad Street as a boundary.

Q. In other words, in the City of Philadelphia?

A. Yes, sir, in the southeastern central Philadelphia, substantially.

Q. Then in July 1952 through February 1954 you became a promotable dealer salesman in Delaware County?

A. Right, sir.

Q. Does Atlantic sell antifreeze to its stations?

A. Yes, it does.

Q. Is that true in all regions?

A. It is true in the two I have had experience with.

3568 Q. As an Atlantic salesman, with respect to anti-

freeze, you would promote the sale of the antifreeze handled by Atlantic instead of other brands, isn't that true?

A. No, sir, that wouldn't be true.

Q. Let me ask you this: As an Atlantic salesman—what was the brand handled by Atlantic?

A. As I recall it when I was a salesman, it was Prestone and Super Pyro.

Q. You don't know of your own knowledge whether a commission is paid on purchases of antifreeze in the Firestone TBA line or Goodyear TBA line to Atlantic, do you?

A. No, sir, I don't.

Mr. Kelaher: No further questions.

Mr. Ballard: No questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

Hearing Examiner Kolb: The hearing is adjourned, to reconvene at two o'clock, Monday November 17, Jury Room 3, Room 3066, U. S. Court House, Philadelphia, Pennsylvania.

* * * * *

3570 Hearing Examiner Kolb: The hearing will be in order.

O. HARRIS RHOADES, was called as a witness for the Respondent and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Would you give the reporter your full name and home address, please, Mr. Rhoades?

A. My name is O. Harris Rhoades; I live at 902 Nottingham Road, Jamesville, New York.

Q. And you are a lessee of an Atlantic station, I believe?

A. That is right.

Q. And what is the address of that station?

A. 309 Nottingham Road.

Q. Also Jamesville?

A. Dewitt.

Q. And how long have you been a lessee of that station?

A. Since November 1952.

Q. What kind of a station is that? Where is it located?

A. It is in the middle of a shopping center, Nottingham Shopping Center.

Q. Do you happen to know the term of your cur-
3571 rent lease, how long the lease goes for?

A. Three years.

Q. Now, before you took that station did you go to Atlantic dealer training school?

A. Yes, I did; I was one of the first dealers.

Q. When you got out of the school did your Atlantic salesman introduce you to the Goodyear supply point in your district?

A. I think so.

Q. Did you buy your initial stock of TBA from the Goodyear supply point?

A. I did, I bought my original stock.

Q. Did you continue to buy from the Goodyear supply point?

A. No, I shopped around more or less for my TBA. I had four or five different people used to call on me, and one of them was a very good friend of mine from Onondaga Supply.

Q. Do you buy from Onondaga Supply today?

A. Yes.

Q. What do you buy from them?

A. Oh, about half of my TBA, I would say; the major portion of it.

Q. Would that be tires, batteries or accessories?

A. I don't buy any tires from them. I buy mostly accessories.

Q. Most accessories?

A. That is right.

3572 Q. Where do you buy your batteries?

A. I buy my batteries from J. P. Byrnes. They handle Auto-Lite.

Q. Where do you buy your tires from?

A. From J. P. Byrnes who handles Firestone.

Q. Do you buy some Goodyear tires?

A. I buy some.

Q. What is your reason for buying Firestone tires?

A. I get better service from Firestone than I do Goodyear.

Q. What about price?

A. I actually have a better buying price with Goodyear than I do Firestone, but it is just a service problem more or less; I can get tires from Firestone in 20 minutes and I sometimes have to wait two or three days from Goodyear.

Q. Now, do you display your Firestone tires at your station?

A. Yes, I do. I have a pile of tires all the time in front of my station.

Q. And do you display your—those are Firestone tires?

A. Firestone tires.

Q. And I think you said that you bought Auto-Lite batteries?

A. That is right.

Q. And do you display those at your station?

A. Inside my show room, yes.

Q. And do you advertise your Firestone tires?

A. Yes, very much.

3573 Mr. Ballard: Would you mark this RA Exhibit No. 22 for identification?

(The document referred to was marked Respondent Atlantic's Exhibit No. 22 for identification.)

By Mr. Ballard:

Q. I show you a document marked RA 22 and ask you whether that is a copy of a mailing piece—or it is a mailing piece that you have sent out to your customers (handing documents to the witness).

A. Yes, it is.

Q. Is that typical of mailing pieces that you generally send out? Is that a typical mailing piece?

A. That is a typical mailing piece, yes.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Do you know approximately how many of these go out in a mailing, Mr. Rhoades?

A. About 6500.

Q. Now, in addition to these mailing pieces do you also advertise in any local newspapers?

A. Yes, sir, I do.

Mr. Ballard: Will you mark that Exhibit 23, 24 3574 and 25 for identification.

(The documents referred to were marked Respondent Atlantic's Exhibits 23, 24, and 25 for identification.)

3575 By Mr. Ballard:

Q. Now, Mr. Rhoades, I show you a paper marked R-A-23 and ask you if you will tell me what that is (handing document to the witness).

A. That is an ad I ran in my little local paper.

Q. What is the name of that paper?

A. That is The Shopping Time.

Q. And this one is marked R-A-24 (handing document to the witness). Can you tell me what that is?

A. That is an ad from the same paper.

Q. And finally R-A-25 appears to be the front page of the paper.

A. That is the same paper.

Q. With one of your advertisements in it?

A. Yes.

Hearing Examiner Kolb: Do those show the dates on which they were run?

Mr. Ballard: "25" shows the date—

By Mr. Ballard:

Q. Could you give us the approximate date on R-A-24?

A. That would be in November or December of 1956 that was in.

Q. And could you give us the approximate date?

A. That should be dated, election day special, November 6.

Q. 1956. That is R-A-23, sir.

3576 And are these typical of advertisements that you ran from time to time?

A. That is right.

Q. Does Mr. Byrnes—he is your Firestone supplier?

A. That is right.

Q. Does Mr. Byrnes help you in promotions in your Goodyear station?

A. He helped me with my Labor Day promotion tire sale.

Q. What did his help consist of?

A. He decorated my whole station with penants, banners, tire stands, sent a man up to help me with the tire sale.

Mr. Kelaher: You mentioned Labor Day. Will you give us the year?

The Witness: Labor Day of this year, 1958.

By Mr. Ballard:

Q. Mr. Rhoades, have you ever participated in the National Brand Names Contest?

A. Yes, I have, for two years.

Q. And could you tell us a little bit of what that contest is about?

A. Well, the Brand Names Foundation has this contest every year for the promotion and sale of brand name items. About 1500 different companies belong to this Brand Names Foundation, and they run this contest every year for about 25 different categories, one of which is gasoline 3577 service stations. Your promotion and sale of brand names is taken into consideration, your community activities, any help you give schools or children is all taken into consideration for qualifying you for a finalist in this Brand Names Contest each year.

Q. How do you make your entry in that contest?

A. You save every bit of advertising and promotional material that you have had for a year and make a big portfolio or scrapbook which you send to the Brand Names Foundation in New York for judging.

Q. And in doing that did you include your Firestone advertisements and promotions?

A. Yes, I did.

Q. How did you make out, just as a matter of interest?

A. I was one of the finalists, there are about 15.

Q. Did anybody from Atlantic make any recognition of the fact that you were working in that contest?

A. Well, after it was all over with I had several phone calls from the Atlantic Refining people—Mr. Gilliam, Mr. Ostrander, who are district and regional manager; several

people, just clerks in the office called up because they know me and congratulated me.

Q. Mr. Ostrander also congratulated you. Was it Mr. Gilliam?

A. He is district manager.

Q. Will you spell that?

A. G-i-l-l-i-a-m.

3578 Q. Did he congratulate you?

A. That is right.

Q. Has Atlantic ever asked you to speak at dinners for new dealers?

A. Several times I have.

Q. Do you recall receiving a letter from Atlantic, dated 1955, with regard to Atlantic's no-forcing policy?

A. I can remember it, yes.

Q. Do you ever recall any discussions of that policy by Atlantic personnel?

A. At a meeting somewhere Mr. Ostrander—I don't remember where or what the meeting was about or anything else—but Mr. Ostrander was one of the speakers and he told us that if any time anybody from Atlantic ever pressured an Atlantic dealer into buying from one outlet or another, he wanted to know about it, that we were independent businessmen and were to be treated as such.

Q. And he was the regional manager, I think you said?

A. That is right.

Mr. Kelaher: Your Honor, I am going to move to strike unless some time or date is given.

Hearing Examiner Kolb: Can you give the date of this meeting?

The Witness: I can't. I can't remember what it was or what the situation was.

3579 By Mr. Ballard:

Q. Could you give us the approximate year?

A. It would be within the last three years, probably in '55.

Mr. Kelaher: I move to strike, your Honor.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Ballard:

Q. Mr. Rhoades, are there other oil companies active in and around your locality?

A. There are three other gasoline outlets.

Q. Have any of those companies ever asked you to take a lease from them?

A. Quite a few.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. What companies are they?

A. There is Socony and Gulf and Esso.

Q. Are those the companies that asked you to take a lease with them?

A. They have, yes, and other companies.

Mr. Ballard: I have no further questions.

Mr. Kelaher, representing the Federal Trade Commission, will probably have some.

3580 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Rhoades, did you say your station was located in DeWitt, New York?

A. That is right.

Q. Where is DeWitt located?

A. It is a suburb of Syracuse.

Q. How close is it to Syracuse?

A. Well, the city line runs up the middle of the road in front of my station.

Q. Right at the city line?

A. That is right. I actually get my mail at Syracuse.

Q. Are there other Atlantic stations in DeWitt?

A. Yes, there is one in the town. There may be more than that, but there is one right at the crossroads in DeWitt at the main artery.

Q. How about in Syracuse, are there other Atlantic stations in Syracuse?

A. That is right.

Q. Quite a number of them?

A. Quite a number.

Q. Does DeWitt come in Atlantic's southern tier district, do you know?

A. No.

Q. What district would it be in in Atlantic's division?

3581 A. I think it is called the central New York district; I am not sure.

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. I understand that DeWitt is in the Syracuse district of Atlantic.

A. That is right.

Q. How many miles are you north of Binghamton, approximately?

A. I haven't any idea.

Q. About 80 or 90?

A. I would guess 80 or 90.

Q. Now, you became an Atlantic dealer in November '52, is that correct?

A. That is right.

Q. Had you been employed by Atlantic before that time?

A. No, only in dealer training school, that is all.

Q. You applied for a lessee station and then went to an Atlantic dealer training school before you were given your station?

A. That is right.

Q. Was the station you operated a new station?

A. That is right, I was the first dealer.

Q. You were the first dealer. And when you went 3582 in I suppose they had the Goodyear window valances up and the Goodyear outdoor sign?

A. Yes.

Q. And I suppose it was also stocked with Goodyear TBA when you moved in?

A. No, they were brought in after I opened. I was actually opened four or five days before any stock was brought in.

Q. What were the circumstances leading up to the original stock you bought?

A. I think the stock—it is pretty much of a package they buy, more or less. So that you get coverage of items necessary to open your business.

Q. And who was your Atlantic salesman at that time?

A. John Roberts.

Q. And did Mr. Roberts introduce you to the Goodyear supply point at that time?

A. I had contact with them before through dealer training school and I worked in several stations waiting for my station to be opened and in this training course.

Q. Who is the Goodyear supply point?

A. Goodyear service store.

Q. Where is it located?

A. Townsend and Water Street.

Q. Is that in Syracuse?

A. That is right.

3583 Q. How many miles is that from your station?

A. I would guess three to four miles.

Q. You say you had some contact with the supply point when you were in the dealer training school. How did that come about?

A. Well, we were—it was so long waiting for my station to open, from February until November, that naturally the stations I was in, the Goodyear man came around, the TBA man, and we talked to him—

Q. (Interposing.) Was he supplying those stations that you were in?

A. Yes, he was.

Q. What were those stations? Do you remember the name of them?

A. I was in Warren Sloss'es station on Salina Street. I was in Harrold Barclay's station on West Onondaga Street, in Syracuse.. And I was in Arthur Cost's station.

Q. Where was it located?

A. That was on South Salina Street.

Q. Now, when you went to your station, did you yourself get in touch with your Goodyear supply point?

A. When I was ready to open my doors and get into business, I was, I contacted Goodyear and they brought up my opening inventory.

Q. And did that amount to a considerable amount?

3584 A. About $800.

Q. About $800?

A. Yes.

Q. With respect to Goodyear tires, how long did you continue to carry Goodyear tires?

A. I still carry them.

Q. You still carry them?

A. That is right.

Q. Do you still stock them?

A. Not too many.

Q. You do carry some tires, though?

A. That is right.

Q. How long did you carry Goodyear tires as your principal stock? Did you at one time carry Goodyear tires as your principal stock?

A. Yes, I did, when I first opened up.

Q. And how long did you continue—when did you begin to stock Firestone?

A. I started a little over two years ago with Firestone.

Q. So it wasn't until sometime in 1956 that you began to stock Firestone?

A. I had some Lee tires in between Goodyear and Firestone.

Q. You started with Goodyear—your principal stock of tires—beginning in 1952, that was Goodyear; is that right?

A. That is right.

3585 Q. And you have carried some Goodyear or you have carried Goodyear since that time; is that right?

A. That is right.

Q. Then, after '52 you began to—did you begin to stock Lee tires primarily?

A. Not primarily. I kept the two of them, mainly it is a service problem again. I could get delivery fast on the Lee tires, and it was a credit problem, too. I had a credit limit with Goodyear, and it meant running down with a check and when the other people would bring them without any problems, we bought 50 or 60 tires from Lee.

Q. You say you had a credit problem?

A. They put a credit limit on you when you are a new dealer.

Q. That was the reason you didn't buy more Goodyear tires from Goodyear, is that right, because of the credit limit?

A. No. It was just the idea that the man in the store wanted me to drop everything there and run down to the Goodyear store with a check and I told him to send up the tires and I would give the driver a check for them. He didn't want to do that. I had to come down there and pay for me. I dialed the Lee man and he dropped me off 50 tires without asking me.

Q. Were the Lee tires dropped on consignment?

A. They were billed 30 days.

Q. And the Goodyear tires, there was a COD problem?

A. After you reach a certain credit.

3586 Q. When did you start to carry Lee tires, do you recall?

A. Sometime in '53. I can't remember when I had the problem with Goodyear. In the spring I am sure it was, because we were piling them outdoors again for a big tire display.

Q. In '53 you began to carry some Lee, but you were also carrying Goodyear at that time?

A. That is right.

Q. And you continued to purchase from the Goodyear service store. Whatever Goodyear you have purchased has been from the Goodyear service store; is that right?

A. That is correct.

Q. Then, moving along, it wasn't until, did you say sometime in '56 when you began to purchase Firestone?

A. That is right.

Q. Does Firestone send the tires in on consignment?

A. No, they are billed to me.

Q. How many days do you have to pay for those?

A. Thirty days.

Q. But you have no credit—

A. Once in a while we have a spring dating or fall dating with your snow tires, but Goodyear has the same thing. I think most tire companies do.

Q. But you have no credit limit with the Firestone?

A. I have no credit limit with them, no.

Q. Now, with respect to your batteries, you origi-
3587 nally stocked Goodyear batteries; is that correct?

A. That is right.

Q. And how long did you continue to stock Goodyear batteries?

A. Up until about two years ago.

Q. Do you still carry some Goodyear batteries?

A. No, none at all.

Q. So, again in about 1956 you discontinued stocking Goodyear; is that right?

A. That is right.

Q. And at that time did you take on Auto-lite batteries?

A. That is right.

Q. From Mr. Byrnes?

A. That is right.

Q. Where is Mr. Byrnes located?

A. He is in downtown Syracuse. He is a little farther away, not too much, four or five blocks, than the Goodyear outfit.

Q. Now, with respect to accessories, do you purchase accessories from the Goodyear service store?

A. Not too many anymore, very few.

Q. Is that the result of the friction you had with the Goodyear?

A. That is right.

Q. Do you carry many accessories?

A. Quite a few.

Q. Are some of those purchased from Mr. Byrnes, too?

3588 A. I purchase some from him. I get the majority of them from Onondaga Supply.

Q. Do you have a mechanic at your station?

A. Yes, we do some tune-up work.

Q. Do you purchase hard parts from Onondaga Supply?

A. Yes, sir.

Q. Do they constitute the bulk of your purchases from Onondaga Supply?

A. No. I think plugs, points, mostly—you are talking about hard parts; you mean gears and clutches?

Q. That is right.

A. We don't do any major overhaul in that form. It would be just tune-ups, points, and condensers, and spark plugs, and so forth. It would be classed more than TBA probably than hard parts.

Q. You were shown some advertising matter, advertisements identified as R-A-22, 23, 24, and 25 for identification. I haven't examined these carefully, but do most of them include ads relating to Firestone tires?

A. Most of them do, within the last two years.

Q. Now, since 1956, have you stocked Firestone batteries, Auto-lite batteries, rather, only?

A. That is right.

Q. Would you look at RA-22 for identification, and tell me if this ad on the first page is an ad of your service
3589 station (handing document to the witness)?

A. It is.

Q. I call your attention to the fact that you are advertising Firestone batteries; is that right?

A. That is right.

Q. You were selling Auto-lite batteries?

A. I can sell either Auto-lite or Firestone. I can sell anything I want to actually, even Goodyear batteries.

Q. What is the purpose of advertising Firestone if you are selling Auto-lite?

A. I want the ad in there. This mailing piece is more

or less set up the way you want it, and I can sell Firestone batteries. There isn't anything that says I can't.

Q. Well, I understood you to say that you didn't carry Firestone, but do you carry that on a fill-in basis

A. If somebody came in and asks for a Firestone battery, I could get it.

Q. Was this ad paid in part by Firestone?

A. That is right.

3590 Q. Did they pay for the whole thing?

A. No, they didn't, I paid for part of it. The mailing cost more or less is my expense on the thing. They furnish the flyers and print them the way you want them printed and put in it what you want in it.

Q. The reason you put in Firestone batteries instead of Auto-Lite is because Firestone was sponsoring the ad in part, isn't that correct?

A. Probably.

Q. Well, that is a fact, isn't it?

A. Not necessarily, no.

Q. Now, the ad of the type identified as RA-22 is referred to as a mailing piece; is that correct, sir?

A. That is right.

Q. You have issued these just since 1956, is that right?

A. That is right.

Q. And how many have you issued?

A. I think a mailing consists of about 6500 of these.

Q. How many times have you issued this particular one?

A. This particular one just once.

Q. Now, let's take RA-23. Would you state what that is again?

A. That is an ad from the little local paper that we have in our section.

Q. As I understand your testimony this type of
3591 ad has only been placed since 1956, is that right?

A. That is right.

Q. And how many times have you placed an ad of that type?

A. I get one every fall along with the snow tire season.

Q. So you would have placed that—

A. Twice probably, not the same particular type of ad, not the identical ad, but an ad similar to that.

Q. An ad similar to that you would have placed how many times, once a year?

A. Yes, with snow tires, a big one. We run a little one, like the other one you have there, usually weekly.

Q. RA-24?

A. Something of this type or that type we run weekly just to keep our name in there.

Q. And RA-24 has only been run since 1956, is that right?

A. Yes, sir. Actually, this paper has only been in existence since 1956.

Q. And actually, you only handled Firestone since 1956?

A. That is right.

Q. And in RA-24 I notice that you also advertise Goodyear?

A. That is true.

Q. And isn't it true that in shopping time you also run ads advertising Goodyear tires from time to time?

A. I haven't lately. I am going to put a Goodyear snow tire ad but I haven't run an exclusive Goodyear 3592 ad. I usually mix the two like you see there.

Q. You usually mix Goodyear and Firestone?

A. That is right.

Q. You testified concerning the national brand names contest. We didn't have the year when that contest ran.

A. That was 1956 and 1957, I believe.

Q. Which was the year when you were the finalist?

A. Last year, I was finalist both years but I was quite a ways back the first year.

Q. You were also asked if you were called upon to speak at dinners for new dealers; do you recall that?

A. That is right.

Q. What type of a speech would you give? What subjects would you discuss?

A. I usually talked about pitfalls that they can get into and about selling brand names mostly, to keep from explaining why the thing is as good as a brand name.

Q. I didn't get your last answer. To keep—

A. To try to impress a new dealer in selling a brand name article instead of trying to sell an off-brand that is supposed to be just as good. It doesn't move as readily.

Q. Do you talk to them about advertising brand names?

A. Yes, I do.

Q. Do you believe in advertising brand names in your station?

A. Very much so.

3593 Q. In your station?

A. Yes, sir.

Q. Do you still have the Goodyear outdoor sign on your station?

A. I don't have a Goodyear pole sign or an outdoor sign.

Q. Do you have the Goodyear window valance?

A. Yes.

Q. Why is it you have Goodyear up there if you are selling Firestone tires?

A. I want it up there because I sell both kinds of tires.

Q. I understood you to say that you were stocking Firestone tires principally; is that correct or incorrect?

A. Principally, yes, but I still handle the Goodyears.

Q. When you say "principally" what do you mean? What in terms of percentages—

A. I still carry some Goodyear tires as I told you before.

Q. Well, what is the ratio of Firestone to Goodyear?

A. I would say about 90 percent Firestone.

Q. And you still prefer to advertise Goodyear?

A. Sure, because I sell both of them.

Q. How do you account for that?

A. Because everybody doesn't like Firestone tires.

Q. If you were selling them you would try to advertise them?

A. I take the lesser of two evils and if they don't 3594 like Firestone I will sell them Goodyear.

Q. Did you every try to put a Firestone sign up there?

A. No, I haven't had occasion to. I have got Firestone batteries outside.

Q. Isn't it a fact that you can't put the Firestone valance in your station?

A. I haven't been told I couldn't.

Mr. Ballard: I object to that.

Hearing Examiner Kolb: Objection will be overruled.

By Mr. Kelaher:

Q. I haven't asked you that you haven't been told that you can't. You know that you can't.

A. I don't know I can't put a Firestone tire.

Q. You haven't tried?

A. If I wanted a Firestone sign I would put it there.

Q. The fact remains that you have been selling Firestone for several years and you haven't tried to put it there?

A. No, I haven't had occasion to.

Q. You, of course, know that Atlantic is sponsoring Goodyear in that area?

A. It doesn't make any difference to me.

Q. Just answer the question Yes or No.

A. Yes, I know they sponsor Goodyear.

Q. And isn't it true that the Goodyear window valances appeared in the three stations at which you
3595 worked and the outdoor pole signs were up at those stations, Goodyear signs?

A. I would say Yes.

Q. Isn't that generally true of the Atlantic stations in the whole Syracuse areas?

A. I think that is one of the things they put in when they open the station doors and they remain there.

Mr. Kelaher: No further questions.

Mr. Ballard: I would like to offer in evidence Atlantic Exhibits 22, 23, 24, and 25.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-22 through A-25.

(The documents heretofore marked for identification RESPONDENT'S EXHIBITS Atlantic 22 through 25 were received in evidence.)

Mr. Ballard: Thank you very much, Mr. Rhoades. I have no further questions.

(Witness excused.)

Mr. Gordon: Mr. Cary.

3596 REUBEN CARY was called as a witness for the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gordon.

Q. What is your name?

A. Reuben Cary.

Q. What is your home address?

A. 801 First North Street, Syracuse, New York.

Q. What is your station address?

A. 1100 North Salina Street, Syracuse, New York.

Q. Now, Mr. Cary, when did you become associated with Atlantic?

A. June 1946.

Q. And in what capacity was that?

A. As an employee.

Q. Of what?

A. Service station.

Q. Service station employee?

A. Yes.

Q. You then became a lessee, when did you become a lessee?

A. Two years later, approximately a year and a half would be correct.

3597 Q. What year would that be?

A. That would be about 1948, during the year of '48.

Q. Where were you a lessee?

A. Originally at 3111 West Tennessee Street.

Q. Syracuse?

A. Syracuse.

Q. And how long were you a lessee there?

A. Nine months.

Q. Then did you move to another station?

A. That is right.

Q. As a lessee?

A. Right.

Q. Where did you move to?

A. To 1100 North Salina Street.

Q. That is your present station?

A. Present address.

Q. And you have been there ever since?

A. That is right.

Q. What is the term of your present lease?

A. Three years.

Q. What kind of tires are you now carrying in your station?

A. I have Goodyear and I have Pennsylvania and I have Coopers.

Q. Restricting yourself now to the past six to twelve months what percentage of your tire purchases have
3598 been Cooper and what Pennsylvania, and what Goodyear? Roughly?

A. Pennsylvania I haven't bought any recently in that period of time; Goodyears would be roughly five percent; the rest is all Coopers.

Q. What kind of batteries have you purchased in the last year or so?

A. Goodyear and Lee.

Q. About what portion of each?

A. About fifty-fifty.

Q. Now, where have you gotten your accessories and when I speak of accessories I am talking about spark plugs, fan belts, waxes, polishes, and the like. I am excluding hard parts or repair parts. Where have you purchased your accessories, let's say, since 1951?

A. Some Goodyear, Onondaga Auto Supply, Niles Auto

Supply; Unit Parts, Group Parts, those are two different outfits; Empire Auto Supply.

Q. Now, again restricting yourself just to accessories and I have defined them, what portion of your accessory purchases have come from the Goodyear service store signs, oh, roughly 1951?

A. Not over 10 or 15 percent.

Q. You became a lessee in about 1948. What kind of tires did you carry between '48 and '51?

A. Lee. I had Lees in there then.

3599 Q. Mainly Lee?

A. Yes.

Q. What kind of batteries did you carry during that period?

A. Exide.

Q. Then in 1951 when Atlantic took on the Goodyear program what kind of tires did you then purchase?

A. Then I started to buy Goodyear.

Q. Why did you buy Lees up to '51?

A. Well, I am a short distance from the bulk plant. I am the closest to it probably. It is just a matter of probably ten blocks, and they warehoused them there. So, Atlantic was affiliated with Lee tires and the plant was close by so I just went along with them and I compared them, it was easy to go in and pick them up day or night, there is always somebody in the bulk plant.

Q. In 1951 when you took on Goodyear why did you buy Goodyear tires?

A. Well, of course, mainly because I thought Goodyear was going to be a better deal in the Atlantic station, to tell you the truth.

Q. Then, did you continue to purchase Goodyear for any length of time?

A. '52, I believe is when I switched.

Q. What did you switch to?

A. Pennsylvania.

3600 Q. And how long did you carry Pennsylvania tires?

A. Up until last year and I still have some.

Q. What portion of your purchases from '52 until last year were Pennsylvania tires?

A. Pretty exclusive there for awhile.

Q. Why did you buy Pennsylvania tires?

A. Well, first of all I liked the people and I liked the deal. I thought I was getting a better deal with Pennsylvania than I was with Goodyear, and the service was another problem. Of course, that changed as time went on, but at that particular time that is what I was happy with.

Q. Why did you switch from Pennsylvania to Cooper?

A. Almost for the same reason. Because Cooper now has a bulk plant in Syracuse. Of course, price is always an item. And I also didn't want my name advertised in a Goodyear ad for $1.25 a week. I don't like to do business that way. So, therefore, I didn't go with the ad anymore and they just took it out, period.

Q. Now, did you have a tire rack on which you displayed tires?

A. Yes.

Q. What kind of a tire rack is that?

A. Cooper.

Q. Is it identified with Cooper?

A. Cooper is right on the top of it.

3601 Q. Large sign on top?

A. Large letters, that is right.

Q. Do you have a valance in your station?

A. Yes.

Q. Window valance?

A. Yes.

Q. What kind is that?

A. Pennsylvania

Q. Do you have tire stands on which to display tires?

A. Yes.

Q. What kind are they?

A. Lee, Cooper, Goodyear, Pennsylvania.

Q. Now, the accessories and TBA items are displayed openly then, aren't they?

A. Oh, yes.

Q. Anybody can see them?

A. Yes.

Q. I show you this document and ask you to identify it (handing document to the witness)?

A. Well, that is some billheads I had printed up by Pennsylvania. They supposedly had a good price on them so I bought them from them. It was the proper thing at the time.

Q. When was that?

A. About '53, I think it was I acquired them.

3602 Q. Have you used those since that time?

A. Oh, yes.

Hearing Examiner Kolb: Do you want an exhibit number on this?

Mr. Gordon: Yes, I think we had better mark that RA-26 for identification.

(The document referred to was marked RESPONDENT'S EXHIBIT 26 for identification.)

By Mr. Gordon:

Q. This is on the top of RA-26 the symbol for the Pennsylvania tire company.

A. The Pennsylvania Keystone, that is right.

Q. Now, let me show you this document and ask you to identify that (handing document tothe witness)?

A. That is a mailing card for a follow-up system that I mailed out to customers, to my regular customers.

Q. And it is to advertise what tire?

A. Pennsylvania tires.

Q. And you purchased these yourself?

A. Yes.

Q. And mailed them out yourself?

A. That is right.

Mr. Gordon: Will you mark this RA-27?

(The document referred to was marked Respondent's Exhibit 27 for identification.)

3603 By Mr. Gordon:

Q. Now, let me show you this document and ask you to identify this (handing document to the witness).

A. This is a printed up handout that you hand out in the station to customers as they come in. It is not mailed.

Q. Did you purchase that yourself?

A. Yes, I did, with the printing, you had to pay for the printing; that is right.

Q. And you distributed that yourself?

A. That is right.

Q. And it identifies itself with what tire?

A. Pennsylvania tires.

Mr. Gordon: Will you mark this RA-28 for identification.

(The document referred to was marked RA-28 for identification.)

By Mr. Gordon:

Q. Now, I ask you to examine this paper and identify it, please (handing document to the witness).

A. That is an ad I ran in a northside magazine called the Scotsman, neighborhood newspaper.

Q. And when was that ad run?

A. December 15, 1954,

Q. Was it run at any other time?

A. The one previously to this was nearly the same
3604 ad, the week before.

Q. And what does it advertise, what product?

A. Pennsylvania tires and batteries.

Mr. Gordon: Will you mark this RA-29?

(The document referred to was marked RA-29 for identification.)

Mr. Kelaher: For the record I don't think—I think inadvertently it advertised Pennsylvania tires and batteries, actually that is not correct. It advertises Pennsylvania tires but not Pennsylvania batteries.

Mr. Gordon: Well, we will let the document identify itself.

By Mr. Gordon:

Q. Now, did Atlantic ever tell you to stop distributing these documents or not to advertise as you have?

A. No, never have.

Q. Did Atlantic ever tell you to stop buying Pennsylvania or Cooper tires?

A. No.

Q. Did they ever tell you to take them out of your station or hide them?

A. No.

Q. Now, I show you this document identified as CX-150, which is a letter dated March 1, 1951, on the stationery of Mr. Colley and ask you to examine that letter and tell
3605 me whether you recall receiving it (handing document to the witness)?

A. Yes, I remember receiving it.

Q. Now I show you this document which is marked CX-206 and it is dated August 1952 on Mr. Colley's stationery, entitled "A restatement of Atlantic's TBA policy" and ask you whether you remember receiving that (handing document to the witness)?

A. Yes.

Q. I show you this document which is marked CX-207 and is identified as a no forcing letter, and it is dated

June 1955. In your case I believe you would have gotten that from your regional manager. Do you recall receiving such a letter as that (handing document to the witness)?

A. I remember the letter very well. I was probably one of the first dealers in that district to switch to other than Goodyear tires. So I would get the letter probably first.

Q. Do you have a sign in the window of your station indicating you are a member of the National Federation of Independent Business, Inc.?

A. Yes, there is.

Mr. Gordon: I have no other questions, but Mr. Kelaher may have some.

3606 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Cary, in what type of an area is your station located? Are you in the business section of Syracuse or residential section?

A. I am on Maine Route 11, that is north-south route, but on all other sides of me are strictly residential.

Q. Is that a low-cost residential area or high-cost?

A. It is medium, I would say.

Q. Now, you became an Atlantic lessee dealer in 1948, correct?

A. Right.

Q. And at that time you began to carry Lee tires and Exide batteries, is that correct?

A. That is correct.

Q. And that was the Atlantic TBA arrangement at that time, was it not?

A. There was a quantity of them in the station at that time and when I took the station, I mean, I bought the merchandise that was in it.

Q. Did you take over the station from another dealer?

A. Yes.

Q. It wasn't a new station?

A. No, I took it from the company, it was a company-operated station.

3607 Q. It was a company-operated station and you went in as the lessee of that station?

A. That is right.

Q. And it was stocked with Lee tires and Exide batteries?

A. Yes.

Q. And did it also have the accessories in the Atlantic program, Fram oil filters?

A. As I remember it had quite a few of them, yes.

Q. Now, you continued to carry Lee, Exide, and Atlantic accessories during the nine months you operated that first station as I understand your testimony, is that correct?

A. Yes.

Q. Then you moved to your present station. Was that a new station or did you take over from another dealer?

A. No, that is the company-operated station.

Q. Beg pardon?

A. That used to be the company-operated station, the one at 1100 North Salina Street. Not the one before that.

Q. Is that the one you have been talking about?

A. That is the one I was referring to; I am sorry.

Q. Let's go back to your first station. When you first became a lessee Atlantic dealer at 3111 West Tennesse Street?

A. Yes, I did.

Q. There, did you handle Lee tires, Exide batteries?

A. There weren't any in that one.

3608 Q. You mean there weren't any in stock?

A. That is right.

Q. Did you handle TBA in that station?

A. Yes, I grew into it.

Q. And it was Lee tires and Exide batteries?

A. That is right.

Q. And the Atlantic accessories?

A. Pretty much, that is true.

Q. Now, coming back to your present station, you stated that the reason you bought Lee—let me ask you this: Would you state again why you handled Lee tires?

A. At the 1100 North Salina Street address?

Q. Yes.

A. Of course, originally there were Lee tires and batteries in there.

Q. Exide batteries?

A. Exide batteries, that is right, they were buying Exide batteries.

Q. You testified the Lee warehouse and plant was near your station?

A. That is right.

Q. And is the Lee warehouse still there?

A. No, Atlantic was the distributor for Lee tires at that time.

Q. Is a bulk plant?

3609 A. The Atlantic bulk plant.

Q. An Atlantic bulk plant?

A. That is right.

Q. Isn't there a Lee warehouse in Syracuse?

A. There is now, yes.

Q. And it has been there for sometime, hasn't it?

A. Well, since the separation from Atlantic, yes.

Q. So, it goes back to 1951 approximately?

A. Approximately, I don't know the exact date, but somewhere in there.

Q. So you would have been able to get Lee tires?

A. Yes, I did, that is right. I could and did.

Q. You could and did after Atlantic swung over to the Goodyear TBA program?

A. That is right.

Q. At that time prior to the time when Atlantic began to sponsor TBA did you have a Lee tires window valance or an Exide standard in your station?

A. That is right. They were in the window.

Q. What happened after the changeover to Goodyear TBA?

A. They came down, of course; Goodyear went up. It didn't make any difference to me, so, of course, they put them up.

Q. You didn't ask for them?

A. As far as the conversation was concerned I couldn't say. But I know the Lee signs came down and the Goodyear went up.

3610 Q. And did the Exide go down?

A. All that said is batteries. My windows are too small. I have an older station I can't get all the things in it these new stations can.

Q. I was going to ask you what kind of a station. Was it one of the older Atlantic stations?

A. You have got one down here, about the same age I saw coming in; 1933 or '34 it was built.

3611 Q. Is that the type—

A. (Interposing.) Small front, I think that is what they called it. It is that type of structure.

Q. And it has the small frontage?

A. Small door in the front, and 2 small windows on the front, that is all.

Q. You don't have much room for displaying anything?

A. Not inside, except on the shelves which I have now which we didn't have then.

Q. Now, when Atlantic began to sponsor Goodyear

TBA, was that when you began to purchase Goodyear tires, batteries, and accessories?

A. That is right.

Q. Who was your supply point for Goodyear?

A. Goodyear service store.

Q. In Syracuse?

A. That is correct.

Q. Well, the reason you began to purchase Goodyear was because Atlantic began to sponsor Goodyear; isn't that correct?

A. I think indirectly that is probably true. I mean, I don't, there was no pressure on it, if there was I would have remembered it.

Q. But you thought it was the thing to do?

A. Yes, that is right. It was along with the company, so you naturally go along with it until something

3612 arises whereby you decide not to do it.

Q. I would like to clarify this point. You testified on direct examination that you didn't want to pay $1.25 a week for some Goodyear advertising. Will you explain that in a little more detail?

A. Well, a good many of the dealers, and they are still doing it, fellows who carry Goodyear tires exclusively, there usually is an ad run in the local newspaper, not small ones like these, and usually the dealers are listed in there who carry Goodyear tires, and there is probably a special of one nature or another. The dealers are listed in there and each one of them participates, I think a couple dollars, I believe in that. I am not sure of the exact amount. And it usually states that it is $1.25 down—now it is less than that, and $1.25 a week.

Q. This would be the selling price of the tire?

A. That is right. Exclusive of the price that it is listed at, and I didn't feel that I wanted to go along for $1.00 or $1.25 a week; so, I decided not to do it anymore.

Q. And if you had continued it—is your name put in that ad more or less automatically if you carry Goodyear at Atlantic stations?

A. Not unless you pay for it.

Q. And is the bill sent to you in a package-type of dealer from Goodyear or from Atlantic?

3613 A. I think it was included on the monthly statement. I couldn't be positive, but I think that is the way that was handled.

Q. But if you did want to put your name in the ad, you had to meet those terms; is that correct? If you wanted your name to appear in the ad?

A. If I put that advertising in, I have to go along with the advertising. I would have had to have done it there. I wanted my name taken out of that type of advertising because I didn't want to do it.

Q. And you say the only way you could do it was to stop buying Goodyear tires?

A. I would say that was the beginning of not buying Goodyear tires.

Q. And what happened after that?

A. Well, I didn't like the prices that they were being sold at. I couldn't make any money on it, at my buying price.

Q. And could you purchase Pennsylvania tires at a lower price?

A. That is right.

Q. And can you purchase Cooper at a lower price?

A. That is right.

Q. And can you sell them at a lower price?

A. I can, yes.

Q. So, it was to your financial advantage to handle some tire other than Goodyear?

3614 A. That is one reason, that is correct.

Q. Now, give us some other reasons. You say that is one reason. What are your other reasons?

A. Let's go back to the service problem again.

Q. All right. What was the service problem?

A. It is better today, but back in those days you might wait two days for a tire if you ordered it.

Q. That is from the Goodyear service store?

A. That is right.

Q. Did the same thing apply to batteries and accessories?

A. Pretty much the same across the line.

Q. So, the supply point supplying all the Atlantic dealers in your area, is that correct?

A. That is right.

Q. So that had a pretty stable market there, didn't it?

A. That is right. As far as I know you had to buy them from there. Of course, there is another dealer now, Kearney. You can buy from him now.

Q. You can buy from him instead of from the Goodyear service store?

A. That is right.

Q. Is Kearney a designated supply point under the Atlantic set-up, too, do you know?

A. I don't know how to answer that. I don't know for sure.

Mr. Gordon: I don't think the witness knows.

3615 By Mr. Kelaher:

Q. Now, you stated that you have somewhat of a small station. Do you have much space for stocking tires in there?

A. No, I have more now than I had. I have two racks in the back, iron type racks inside the building.

Q. When you stated that you, starting in 1952, you began to purchase Pennsylvania tires; is that correct?

A. That is correct.

Q. And did you continue to purchase some Goodyear tires?

A. Only as the customers demanded them.

Q. Now, what was your stock of Pennsylvania tires at that time?

A. In number of tires?

Q. Units, yes. Number. Approximately.

A. I would say about 250 or 300 tires.

Q. And you carry a fairly large stock?

A. Not at the time I am not now, no.

Q. What is your stock now?

A. It is down now to about a hundred.

Q. And they are mainly Coopers?

A. Yes.

Q. Five percent Goodyear?

A. That is right.

Q. So, you are carrying, you only have five Goodyear tires in stock?

3616 A. There might be seven. It has got to be an even number, it would have to be eight.

Q. All right, eight percent.

A. All right, eight percent, that was an approximate figure.

Q. How about your batteries? Do you carry a substantial stock of batteries?

A. Not too many, no, because I don't have the space again.

Q. How many batteries do you carry in stock?

A. There is about 12 there right now.

Q. So, when you say 50 percent Lee, you are referring to six batteries?

A. That is right.

Q. And the other 50 percent are Goodyear; that is, six batteries?

A. That is right.

Q. Now, how about your stock of accessories? Do you carry a large stock of accessories?

A. As much as the shelves will hold. A fair supply.

Q. You said among your suppliers, you mentioned that a couple of parts suppliers, Unit Parts was one, I believe?

A. That is right.

Q. What do you buy from Unit Parts? Are you referring to ignition parts and things of that type?

A. Things that they carry that the other places don't have. Nothing in hard parts, no, I don't deal in those.

3617 Q. You don't do any mechanics—do you have a mechanic at the station?

A. Only in ignition work of that nature, nothing in clutch work or brake work.

Q. So your purchases from these parts suppliers would be for work in the repair of automobiles, would it not?

A. They would be mufflers or something of that nature.

Q. Do you purchase your Cooper tires on consignment or outright?

A. Outright, 30 day billing.

Q. Do you have an outdoor poll sign on your station, or don't you have room for an outdoor pole sign?

A. Are you speaking of a Goodyear sign or any—

Q. (Interposing.) Do you have an outdoor pole sign?

A. There is no outdoor pole sign except the Atlantic sign. That is all there is right now.

Q. In other words, you never had a—you don't have a Cooper outdoor pole sign?

A. No, I don't.

Q. Do you have a Cooper sign in your station, on the windows?

A. It is right on that tire rack which is movable inside or outside. I can take it in or out as the weather permits. It is on the top of that.

Of course, the current literature that is out on snow tires is posted around the station.

3618 Q. You were shown a number of ads relating to Pennsylvania tires, and you say one that relates to Pennsylvania batteries. I am referring to RX-A 27, 28, and 29. Do you recall those? They all deal with Pennsylvania tires, and one refers to Pennsylvania batteries?

A. That is right.

Q. You don't use those anymore, do you?

A. Pennsylvania tires?

Q. Did you not say you stopped handling Pennsylvania tires?

A. No, I still have some, yes. I still have some in the station.

Q. Beg pardon?

A. I still have some in stock.

Q. You are just selling the inventory you have on hand before you switch completely over to Cooper?

A. That is right.

Q. Do you still advertise Pennsylvania tires?

A. Like this, no.

Q. Mr. Cary, you continued to purchase accessories from Goodyear service store, isn't that right?

A. Do I now?

Q. Do you now, yes.

A. Yes, some thing, yes.

Q. You have continuously since Atlantic began to sponsor Goodyear TBA, haven't you?

3619 A. There is probably months when I haven't, but I usually do get some now and then.

Q. And you estimated ten to fifteen percent were from Goodyear stores?

A. Not anymore than that.

Q. I am going to show you the ad, identified as RX-A-29, and did I understand you to say that that ad was just run one other time?

A. One before, yes.

Q. One before that?

A. Yes.

Mr. Kelaher: No further questions.

Mr. Gordon: First, I would like to offer RX-A-26, 27, 28, and 29.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-26, 27, 28, and 29.

(Whereupon, the documents, heretofore marked RESPONDENT (ATLANTIC) EXHIBITS 26, 27, 28, and 29 for identification, were received in evidence.)

Redirect Examination by Mr. Gordon.

Q. Now, Mr. Cary, I would like to show you this picture and ask you to identify it.

3620 A. Well, that is my station.

Q. When did your station look that way?

A. It looks like—that must be last fall or early spring—no, it must have been in the fall.

Q. In the fall of 1958 or '57?

A. That would have to be '57.

Q. Fall of 1957?

A. That is right, because of the merchandise there, it had to be.

Q. That is an accurate representation of your station in 1957?

A. That is right.

Mr. Kelaher: On a given day in 1957.

Hearing Examiner Kolb: Do you want this marked as an exhibit?

Mr. Gordon: Yes, I would like to have that marked.

Hearing Examiner Kolb: A-30.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 30 for identification.)

Hearing Examiner Kolb: Do you offer that in evidence?

Mr. Gordon: Yes, I would like to offer this in evidence.

Hearing Examiner Kolb: Any objection, Mr. Kelaher?

Mr. Kelaher: No objection.

3621 Hearing Examiner Kolb: Received in evidence as Respondent's A-30.

(Whereupon, the document, heretofore marked RESPONDENT (ATLANTIC) EXHIBIT 30 for identification, was received in evidence.)

Mr. Gordon: I have one other question.

By Mr. Gordon:

Q. The bills for the cooperative advertising that were discussed before, those bills were from Goodyear, were they not, Goodyear cooperative advertising?

A. Yes.

Q. And the Cooper tire rack that we discussed before, isn't that a large rack, about six feet high?

A. Yes, two tier rack, with ten tires to a rack. It is on wheels. It can be moved inside.

Q. Do you place that out on the driveway of your station?

A. That is right. It is rolled out and put out in front.

Mr. Gordon: I have no further questions.

Recross Examination by Mr. Kelaher.

Q. What time of day was RX-A-30 taken? What time of day was this taken?

A. Are you asking me my opinion? I wasn't there when that was taken.

Q. I notice the Cooper tire rack isn't out there. If
3622 it is there, I would like to have you show it to us.

A. No, it isn't. I didn't have the rack in '57, sir.

Q. All right. Show me a Pennsylvania tire rack then.

A. There isn't any in here.

Q. There isn't any on the picture, is it?

A. The Pennsylvania—

Q. (Interposing.) I am asking you now if there is a Pennsylvania rack out there?

A. No, it is not, sir.

Mr. Kelaher: No further questions.

Further Redirect Examination by Mr. Gordon.

Q. You weren't selling Cooper tires then, were you?

A. Yes, I was, but I didn't have a rack. He offered me the rack so I took it. When you get it for free, you take it.

Mr. Gordon: I don't have any further questions.

Hearing Examiner Kolb: That is all, Mr. Cary.

(Witness excused.)

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

3623 ALBERT H. SHAFER, was called as a witness on behalf of The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Shafer, have you given your name and address to the reporter?

A. No, I haven't. Albert H. Shafer; Present home address, 44 Cleveland Avenue, Colonial, New Jersey.

Q. Are you today, Mr. Shafer, a Goodyear employee?

A. Yes, sir.

Q. When did you first join Goodyear?

A. 1950.

Q. In what capacity?

A. I was a general line sales trainee.

Q. And what were you doing before that?

A. I worked with my father in a Shell service station.

Q. Your sales training lasted until when, sir?

A. July 27, 1950, to approximately January 1 of 1951.

Q. And what position did you then take?

A. As a general line salesman in the Goodyear Pittsburgh district.

Q. What were your duties as a general line salesman there?

3624 A. As a general line salesman, you are responsible for the development of the dealers in your territory in a given territory.

Q. Did that include service stations?

A. Yes, you contacted service stations in the interest of the direct accounts.

Q. By the direct accounts you would mean Goodyear stores or Goodyear direct dealers?

A. Yes.

Q. And how long did your tour of duty as a field representative last?

A. Until approximately May of 1952.

Q. And then what did you become then?

A. I became the petroleum representative for Goodyear in the Philadelphia district.

Q. And what is the duty of a petroleum representative?

A. Well, I contacted or was liaison between the Goodyear district management in Philadelphia and Newark and the Atlantic district management in those two areas.

Q. And would those two areas be what Atlantic calls its Philadelphia-New Jeresy region?

A. Yes, sir.

Q. Was your contact limited to Atlantic or did you also contact other oil companies?

A. No, I contacted Atlantic only.

3625 Q. And how long did that job last?

A. From May of 1952 until approximately December of '53.

Q. And what then transpired?

A. I was transferred to the Syracuse Goodyear district.

Q. In the same capacity?

A. In the same capacity, covering the New York region of Atlantic.

Q. And again counseling or service as liaison between Atlantic and Goodyear supply points?

A. Yes, sir.

Q. Was that your function? I don't mean to put words into your mouth.

A. That is right. In other words, in addition to keeping the Atlantic district management, the Atlantic salesmen aware of all the Goodyear promotions, we are responsible to the district to better service the Atlantic dealer through our supplying dealers.

Q. When you say "we are responsible to the district," are you now speaking of the Goodyear district?

A. The Goodyear district.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Mr. Kelaher: On the record.

3626 By Mr. Ballard:

Q. Now, then, how long did your job as petroleum representative in the New York region last?

A. Exactly one year.

Q. That would bring you to December of 1954.

A. That is correct, sir.

Q. And what job did you get then?

A. I was promoted to the division petroleum representative.

Q. And in terms of Atlantic, would that include Atlantic's three regions, Philadelphia-New Jersey, New York, and New England?

A. That is correct, sir.

Q. And what was the job of a divisional petroleum representative consist of?

A. Of course, in each region of Atlantic, we had a gentleman that performed the way I did in my previous two assignments, and then we had one man that headed up the entire program.

Q. That is you?

A. And that was myself.

Q. And who was your liaison in Atlantic?

A. Mr. Mulholland.

Q. The head of Atlantic—

A. (Interposing.) TBA sales department.

Q. And how long were you divisional petroleum representative?

A. Until I left in July of 1957.

3627 Q. And what job did you take then?

A. I became the store manager trainee.

Q. Trainee for management of a Goodyear store?

A. Good year service store.

Q. Now, going back to the time when you were petroleum representative to Atlantic region, either the Philadelphia-New Jersay region of the New York region, would you describe in a little more detail your functions in that capacity?

A. Well, number one, your responsibility was to make sure that the Atlantic district and region people were aware of all the current Goodyear TBA promotions. You assisted in the training of Atlantic salesmen by spending time with them either in the field or at their respective training schools and you developed a supplying dealer program to the point that it became more effective and more acceptable to the Atlantic dealers from the standpoint of service, price, delivery, and the things that the normal service station requires to do a good TBA job.

Q. Your duties then, I take it, would include riding in the field with Atlantic salesmen?

A. Definitely, as I said, you would spend time with them, considerable time with them, calling on their dealers.

Q. And what would your function be when they were calling on their dealers, what would you do?

A. Well, most of the time you would, as the At-
3628 lantic salesman made his TBA presentation, of course, you were there to help him. It was a form of training while you were working with them.

Q. Did you also take any part in the conduct of training meetings for Atlantic personnel?

A. Yes, sir, I did.

Q. And also for dealers?

A. Yes, sir, I did.

Q. Now, when you became a divisional petroleum representative, I take it your duties changed somewhat?

A. Somewhat. You were contacting, of course, Atlantic's TBA manager, the sales department; your basic assignment, of course, was to keep him well informed of any changes in sales programs or product, announcements of new products, to assist in the development of local TBA promotions. And, of course, to continue to work in the field with the Goodyear petroleum representatives and the Atlantic salesmen.

Q. You are, I take it, familiar with Atlantic's TBA policy?

A. Yes, sir.

Q. Do you recall a series of so-called football meetings in the fall of 1952?

A. Yes, sir.

Q. Was that policy discussed at those meetings?

A. Yes, sir.

Q Would you tell us what you remember about those meetings?

3629 A. Well, I attended three or four. And in each instance the Atlantic dealers were invited to attend, and Mr. Mulholland, who was conducting the meetings at that time, very strenuously reiterated Mr. Colley's policy letter and tried to find out from the dealer group whether at any time they had been subjected to any type of pressure, either from Atlantic and/or Goodyear.

By Mr. Ballard:

Q. Mr. Shafer, will you state to the best of your recollection what Mr. Mulholland said at the meetings?

A. To the best of my recollection, Mr. Mulholland 3630 operated the meeting by covering or re-reading the original letter that Mr. Colley had written to the Atlantic dealers and again stating that they had sponsored the TBA program, the Goodyear TBA program, on the

basis that Atlantic Refining felt that it best offered the best sales and profit opportunity to the dealer, but again it was at the dealer's own election as to what he wanted to buy.

Q. Is that what Mr. Mulholland said?

A. That is right. And then, he just kind of opened the meeting very broadly and asked for dealer comments or dealer objections.

Q. And did the dealers make comments or objections?

A. They certainly did.

Q. And what was the nature of their comments or objections?

A. Well, all the comments and all the complaints that we had were in regard to service, delivery, stocking, etc. The items that are involved in the distribution of the TBA program.

Q. Did you hear any comments or complaints about coercion?

Mr. Kelaher: Objection, your Honor. That is a leading question if I ever heard one.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. You may answer.

A. No, sir, I did not.

3631 Q. Now, Mr. Shafer, I think you have testified that you have participated in dealer training schools.

A. Yes, sir.

Q. Atlantic dealer training schools, I mean.

A. Yes, sir.

Q. Did you hear the Atlantic's TBA policy discussed in those schools?

A. Yes, sir.

Q. And was it discussed in approximately the same

terms as you have described it in Mr. Mulholland's statement?

A. Yes, sir.

Mr. Kelaher: I object to that—would you read the last question and answer.

(The reporter read the question and answer commencing at line 10 of this page.)

Mr. Kelaher: No objection.

By Mr. Ballard:

Q. Now, Mr. Shafer, in the course of your duties, have you talked to Atlantic dealers about the Atlantic-Goodyear TBA program?

A. Oh, yes, sir.

Q. On occasion, have they made comments and complaints to you about the program?

A. Oh, sure.

3632 Q. Have they ever made comments and complaints about coercion and forcing them—

A. (Interposing.) No, sir.

Mr. Kelaher: Your Honor, I am going to move to strike that answer.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Ballard:

Q. Do you observe what TBA Atlantic dealers stock and display in their station?

Mr. Kelaher: Objection, unless this man has been all over the three Atlantic regions. Unless we have more specificity, I am going to object.

Mr. Ballard: The question, so far, your Honor, is a perfectly simple one. It can be answered Yes or No. I simply asked him, Does he observe whether they stock them.

Mr. Kelaher: We haven't limited to any geographical area, not only his own area.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. Would you answer the question?

A. Would you ask it again, sir.

Mr. Ballard: Would you read the question.

(The reporter read the question commencing at line 8 of this page.)

The Witness: Yes, I do.

3633 By Mr. Ballard:

Q. Well, what kinds of TBA—strike the question.

Do you observe non-sponsored TBA on display in Atlantic stations?

Mr. Kelaher: Objection, your Honor. I think he is leading him. I am going to ask that he phrase his questions so as not to lead him.

Mr. Ballard: It seemed to be a perfectly simple question, your Honor. Again, it could be answered Yes or No. He knows the subject that we are talking about here. It is not a jury case.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. Do you?

A. Yes, I do.

Q. Now, in your experience, as you have described it, do Atlantic dealers on occasion buy Goodyear TBA from stores other than their designated supply points?

A. Yes, on occasion.

Q. Do—and again in your experience—do Atlantic dealers who are nominated to Goodyear, included on the list nominated to Goodyear, on occasion not purchase at all or very little from their supply point?

A. Oh, yes. There is a good many dealers in areas 3634 that are inactive in the TBA business.

Q. Would that include dealers who were nominated to Goodyear?

A. Oh, yes.

Q. Going back to the time when you were a petroleum representative in the Philadelphia-New Jersey region, did you observe the salesmen from other TBA suppliers calling on Atlantic dealers in the metropolitan Philadelphia area?

Mr. Kelaher: I am going to object to that question.

Hearing Examiner Kolb: On what grounds?

Mr. Kelaher: Unless he states the reason for the question, in this line of questioning.

Mr. Ballard: The reason seems to be a perfectly obvious question of competition.

Hearing Examiner Kolb: He said district. The objection will be overruled.

Mr. Ballard: Would you read the question.

(The reporter read the question commencing at line 5 of this page.)

The Witness: Yes, sir.

By Mr. Ballard:

Q. About how many TBA suppliers other than Goodyear are there in the Philadelphia metropolitan region?

A. I would estimate that there are approximately 150.

Q. Could you describe them by classification?

3635 A. Well, I think you could break them down very simply by saying that the majority of them are in the automotive parts, accessories, and battery business. Very few, if any, handle a major brand line of tire, some of a limited line.

Q. And you are speaking now of the people who are in the parts, batteries, and accessories business?

A. That is correct, sir.

Q. Now, that form—did you say that that formed the majority of the group?

A. I would say so, yes, sir, from my experiences.

Q. And what would the remainder of the group be?

A. There would be tire dealers, tire re-treaders, people who handled the tire and battery line but a limited or no line of accessories.

Q. Would that same general pattern apply to all three regions that you are familiar with?

A. Yes, sir.

Q. Going back to your experience as a representative for all three Atlantic regions, approximately how many Goodyear supply points were serving Atlantic dealers in the whole three regions together?

Mr. Kelaher: Your Honor, I think we have stipulated testimony on this point.

Mr. Ballard: If you will find it for me—

Mr. Kelaher: (Interposing.) With the statistics.

3636 Mr. Ballard: I don't think the number of supply points is stipulated.

Mr. Kelaher: Yes. I don't have the documents with me because they were the in-camera exhibits, if I recall.

Mr. Ballard: Do you have an objection to this man giving the approximate number so we can get on with it?

Mr. Kelaher: It seems to me if we have the number stipulated—off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Mr. Shafer, let me try this and see if we can get Mr. Kelaher satisfied on this. Mr. Shafer, the stipulation in this case indicates that there were about 160 Goodyear

stores and dealers supplying Atlantic accounts in June of 1956. Would that check with your recollection, sir?

A. That would be very, very close.

Q. It is not stipulated, I believe, how many supply points there were in the New England region. What would your recollection be as to how many there were in the New England region?

A. I would estimate in the New England region there would be close to 90 to 100.

Q. Now, sir, do those supply points encounter competition from the other TBA suppliers that you have described to us?

A. Yes sir.

3637 Q. Is there variation between the supply points in their success in meeting that competition?

Mr. Kelaher: Objection, your Honor. I am not certain where this is going to lead us.

Mr. Ballard: This is the same line of testimony to which Mr. Kelaher objected when Mr. Connolly raised it. It is simply to show the competitive situation; Mr. Kelaher doesn't like to show the competitive situation.

Mr. Kelaher: That is certainly incorrect. You are asking him, as I understand it, whether or not there are varying degrees of success among the Goodyear supply points arising from the competition of other jobbers.

Mr. Ballard: In meeting the competition of other jobbers.

Hearing Examiner Kolb: Read the question, please.

(Question read.)

Hearing Examiner Kolb: What do you mean by that?

Mr. Ballard: Well, let me withdraw the question and I will see if I can make it clearer because if I explain what I mean I am afraid I would be leading the witness, your Honor.

Hearing Examiner Kolb: All right, let's try it again.

Mr. Ballard: All right, sir.

3638 By Mr. Ballard:

Q. Do these various supply points differ from one another in their success in selling to Atlantic dealers?

A. Yes, sir; they do.

Q. What are the factors that influence their success in selling to Atlantic dealers?

A. The competitiveness of the market, their capacity and ability to service and sell and deliver the merchandise that the Atlantic dealer needs when he needs it.

Q. Now, in your experience which supply points have the greatest success in selling to Atlantic dealers?

Mr. Kelaher: Objection, unless a time is specified.

By Mr. Ballard:

Q. During the time when you were—well, let's say during the time when you were operating in all three regions?

Mr. Kelaher: When is that time?

Mr. Ballard: That is 1954 to 1957. During that period which group of supply points were the most successful in your estimation?

A. I would say that from my experience that the supply dealers in the Philadelphia area-South Jersey area of Atlantic were the most successful.

By Mr. Ballard:

Q. That would include Mr. Kaiser, Elwood Kaiser?

A. Yes, sir.

3639 Q. Mr. Parris?

A. Yes, sir.

Q. Now, is the price charged by the supply point a factor in its ability to sell Atlantic dealers?

A. Very definitely.

Q. Is it true that on occasion the dealer is offered other brands of tires at a lower price than a Goodyear price?

Mr. Kelaher: Objection. I don't know how he would be in a position to testify as to what a dealer was offered.

Hearing Examiner Kolb: I believe you are talking about a general competitive situation. I will overrule the objection.

A. Yes, sir, they are.

By Mr. Ballard:

Q. How are the Goodyear supply points able to compete in that situation?

A. Well, generally speaking we are equipped—the supplying dealer is equipped to offer a competitive price to the Atlantic dealer, but we all recognize that some of these lesser known brands do offer, let's say an extra 5 percent discount to the dealer. But we, in the sales organization and realistically so, try and impress the dealer with the fact that because of Goodyear's acceptance to the motoring public that by handling Goodyear he is going to sell 3640 more with a higher gross profit return; therefore, more money in the bank.

Mr. Kelaher: I don't think the last part of the answer is responsive to the question but I will let it stand.

Hearing Examiner Kolb: I think so, I will let it stand.

By Mr. Ballard:

Q. Now, Mr. Shafer, does Goodyear offer a guarantee on its tires?

A. Yes, sir; we do.

Q. Would you describe the guarantee that goes with the Goodyear tire?

A. Goodyear guarantee, a Goodyear tire bearing our serial number is guaranteed for the life of the tire to be free from defects and workmanship or material, if found

to be defective under these conditions we will either replace it or repair it based on pro rata use and mileage.

Q. Is that the only guarantee you have or is there another guarantee?

A. No, we have a guarantee which covers road hazard injuries which occur in the first 25 percent of the tire's life.

Q. Is that guarantee covering road hazard type injuries made known to dealers handling Goodyear?

A. Yes, sir.

Q. Is it published in your service policy and ad-
3641 justment program?

A. Yes, sir.

Q. Is that guarantee in your experience as beneficial to the dealer as the so-called road hazard guarantee offered by the other companies?

A. In my experience I have found it to be as good or more adequate in the protection to the dealer and the consumer.

Q. "Offered by" I am speaking now in comparison with the so-called road hazard guarantee.

A. Yes, sir, we feel that our guarantee is comparable or better.

Q. And specifically do you feel it is comparable or better to the Lee road hazard guarantee?

A. Oh, yes.

Q. Mr. Shafer, is the prestige of the Atlantic name a factor in the sales success of Goodyear supply points?

A. Would you repeat that?

Q. I say is the prestige of the Atlantic name, of the name Atlantic, a factor in their success?

A. In the Philadelphia market I would say it was definitely true.

Q. Would it be less true as you get further from Philadelphia?

A. Yes.

Q. About how many tires are there in the Goodyear line?

A. You refer to the complete line or the passenger line?

3642 Q. Let's take a representative passenger tire, take the most popular passenger tire. How many models or grades does Goodyear offer?

A. Well, in our complete passenger line, just taking the six or seven most popular 15 inch and 14 inch sizes which are now up for replacement sale, there is approximately 130 sizes and types.

Q. Is there development and change in that line from year to year?

A. Yes, sir; there is.

Q. Does Atlantic train its dealers in the knowledge of those changes?

A. Very definitely.

Q. Does it also train its salesmen?

A. Yes, sir. Many of those training meetings, of course, the Goodyear people participate in because of our first-hand knowledge of a new product.

Q. Would you describe for us what other things Atlantic salesmen do to promote the sale of Goodyear tires, batteries and accessories as you have observed them?

A. Well, in their normal routine call on the dealers, of course, they check his TBA stock, confer with him on his needs in those particular lines, discuss with him the current promotions, any additions, local advertising, assist the dealer to answer possibly a competitive ad that
3643 he might have seen in the newspaper, phone in orders to the supplying dealer.

I would say that those are the most important things that he does.

Q. On occasion does the Atlantic salesman adjust dealer complaints with the Goodyear store, Goodyear supply point?

A. If the dealer has a complaint at that time the Atlantic salesman is there it usually is brought back either to the dealer or the store, the supplying dealer or the store, either by the salesman himself or is called in over the phone and discussed with the store manager, whoever is responsible for the handling of that account.

Q. Returning for a moment to your capacity as divisional representative, did you find Atlantic helpful to the Goodyear TBA program in that capacity?

A. Yes, sir, they were, because in my time with them, working with them, they were able to supply us with many good ideas that were beneficial to the dealer either through the standard point of practical displays on the outside of a service station, the fact that the dealers through their inquiries had shown a preference for a particular type product that we did not have in our line, the fact that we sometimes ran into problems with credit limitations, things like that that they brought to our attention that were passed on to Akron where our management pass on them.

3644 Q. I believe you mentioned the development in tires from time to time. Could you go into a little more detail on how tire types and models have developed over the course of your experience with Goodyear?

A. Well, of course, probably the biggest development we have had is the announcement and the use of nylon cord in the passenger tires. In addition to that, we announced the captive air type tire.

Q. What is that?

A. That is the two chamber tire that gives the consumer positive blow-out and puncture protection to the effect that he does not have to stop immediately and have the tire repaired because the air is retained on an inside chamber and allows him to go on his way until he can stop at a safe place and have it repaired.

Q. Is that unique to the Goodyear line?

A. Yes, sir, it is. Then we had the announcement of tubeless in 1955. That is when Goodyear announced the tubeless in 1955. In the tire line I would say that that is about it. Of course, your tread designs are constantly changing to meet the demand of the motoring public, to give more safety and traction and so forth.

Q. Are there also changes in order items from time to time in the TBA line?

A. Yes, the big change, of course, in batteries 3645 occurred in about 19—I think it was around that same time, '55, when Goodyear announced the production of the dry-charged battery.

Q. Do filters change from time to time?

A. Yes, they have gone from cotton ways to this new type paper filter. They have new type of air cleaner filters for cars, new type of spark plugs from the standpoint of resistor. Polishes change.

Q. And does Atlantic assist Goodyear in bringing that product know-how to the Atlantic dealer?

A. Yes, sir.

Q. Are there also from time to time changes or new products in chemicals and waxes?

A. Yes, there are, and let's say that DuPont announces a new formula polish or Johnson announces a new formula polish.

Q. And Atlantic, of course, assists in disseminating that information?

A. Yes, sir.

Q. During your tenure as a petroleum representative were you generally familiar with the prices that Goodyear supply points were charging Atlantic dealers for Goodyear TBA?

A. Generally, yes.

Q. During that period was there a change in the level of prices?

Mr. Kelaher: What period are we in now?

3646 Mr. Ballard: Let's take the period 1952 through 1957. Was there a change in the price level during that period?

A. Well, there were price increases.

By Mr. Ballard:

Q. Over the span of the five-year period what would be the price increases on tires?

Mr. Kelaher: Your Honor, wouldn't the increases themselves be the best evidence in this? We are getting in a rather complicated subject if we get into price increases on tires over a five-year period.

Mr. Ballard: Your Honor, I don't want to get into a complicated subject if I can avoid it. I want a statement as to the increase in prices over the period. As your Honor knows, there are a great many dollar figures in the record and I thir they should be read against some indication of the price increases.

Mr. Kelaher: I don't think this is quite the way to do that.

Mr. Ballard: If Mr. Kelaher wants to have a full-scale cost study introduced, it will take me sometime to prepare it and introduce it. This man knows how much tires have gone up over the five-year period.

Hearing Examiner Kolb: What has that to do with the issues in this case?

3647 Mr. Ballard: Sir, it is simply this: Your Honor is going to have presented to him figures showing dollar sales and dollar commissions in '52, '53, '54 and '55, and so forth, and I assume some argument is going to be made based on those figures. Now, built into those figures is a price increase, and I simply would like to

show the magnitude of price increase that is built into those figures.

Mr. Kelaher: I think to such general type of testimony I am going to object

Mr. Ballard: Off the record just a minute?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Would you read the question?

(Question read.)

Mr. Ballard: Percentage.

The Witness: Twenty-five percent on tires.

By Mr. Ballard:

Q. On batteries?

A. Nothing.

Q. Accessories?

A. About 15 percent.

Mr. Ballard: Cross-examine.

Mr. Correa: I might have a question or two. I assume Mr. Kelaher would rather have my cross-examination 3648 preceding his than follow it.

Cross-Examination by Mr. Correa.

Q. Now, sir, you testified that there were certain lesser known brands of tires which Atlantic dealers and presumably others in the market could purchase at a deeper discount than they would receive on the Goodyear brand?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And you said as I recall your testimony, that in attempting to combat the competitive effect of these greater discounts given on lesser known brands of tires, one of the factors you stressed was the public acceptance which

the Goodyear tire has opposed to lesser known brands; is that correct?

A. Yes, sir.

Q. And you made the argument that the dealer could sell more tires even though his discount or his profit on each tire might be a little less, his gross profit from selling some more tires would be accordingly greater?

A. Yes, sir.

Q. Now, is there also with respect to some of these lesser known brands of tires a quality difference?

Mr. Kelaher: I object to that.

Mr. Correa: Goodyear tire.

3649 Mr. Kelaher: This is cross-examination. This man is an employee of respondent.

Mr. Correa: May the record be clear, if the Court please, that this witness has been tendered by the Respondent Atlantic. The Respondent Goodyear has tendered no testimony, no evidence of any kind or character in this case to this moment and I wish the record to be clear to that effect. This is cross-examination whether my learned friend likes it or not. We must observe the form of proper procedure.

Mr. Kelaher: We are conforming to the form of proper procedure but I think with the Respondent Goodyear a respondent in the case, and if we have an employee of Goodyear here counsel for Goodyear should not be permitted to cross-examine this witness.

Mr. Correa: Without yielding to the first point, great respect and all, this particular question is a good question of anyone, so I don't see why we have all the arguing about it.

Mr. Kelaher: Even if he were with another tire company I would object because I don't think he has been qualified as an expert on quality.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Correa:

Q. Do you have the question in mind?

3650 A. I think so.

Q. All right.

A. There is a difference in the quality; yes, sir.

Q. Now, is there any—let me withdraw that. Let me ask this question: Is weight a measure of quality at all in tires? Comparative weights?

A. Yes, sir.

Q. For example, does Goodyear put out more than one line of tires?

A. Yes, sir.

Q. They put out a first line, simetimes called the 100 line?

A. Yes, sir, super cushion.

Q. Are there cheaper lines below that?

A. Yes, sir, there are two, the deluxe line and the super cushion.

Q. Would they sometimes in the trade be called second and third lines, respectively? Is there a weight difference between the Goodyear 100 level or first line tire and Goodyear, let's say third line tire?

A. Yes, sir.

Q. For the same size of tire, what is the popular size today?

A. Well, 670x15.

Q. What would that weight difference run, if you

3651 know, approximately?

A. I am going to estimate that it would run in the neighborhood of four to five pounds.

Q. Would you find that same weight difference or a similar weight difference between Goodyear first line

tires and the first line of some of these lesser well-known brands?

Mr. Kelaher: Your Honor, I am going to object. His answer with respect to Goodyear tires, now we are getting into tires of many companies, apparently, and he is going to attempt to answer for all of them.

Hearing Examiner Kolb: I doubt if this man would be competent to testify as to the weight of tires.

Mr. Correa: I don't know why he shouldn't be, he has handled them every day of his life.

Hearing Examiner Kolb: You are talking about ply now or weight?

Mr. Correa: This is weight.

Hearing Examiner Kolb: Isn't that the same thing?

Mr. Correa: No, it is not.

Let me ask the witness. Ply is not the same as weight?

The Witness: No, sir.

Mr. Kelaher: Ply affects weight?

The Witness: Ply affects weight?

3652 Mr. Kelaher: Yes.

The Witness: Not generally.

By Mr. Correa:

Q. What is the significance of weight, tell us the—

A. Well, in a tire, in any given tire there is three component parts. There is your beads which is made up of high tensile steel wire; there is your body which is made up of cord; and the tread, under-tread and sidewalls are made of rubber. Those are the three parts.

Mr. Kelaher: I still have an objection to him testifying as to weight of non-Goodyear tires because I understand from his testimony—

Hearing Examiner Kolb: There is no question before him on that. He just answered the question about the—read the last question.

Mr. Kelaher: The other one is withdrawn then, all right.

Mr. Correa: The other was withdrawn and the last question was answered.

Hearing Examiner Kolb: All right.

By Mr. Correa:

Q. Is it true, sir, that the principal weight difference between a let's say 100 level tires and a third line tire is accounted for by the relatively thicker tread?

A. There is more rubber in the 100 level tire than 3653 there is in the let's say third line.

Q. And most of that more rubber will be on the tread, will it not?

A. It is in two places, the tread and the under-tread.

Q. So it adds up to the heavier tire being a longer-wearing tire, is that not so?

Mr. Kelaher: Objection, your Honor. I don't think he is qualified to get into this subject. They have tests and they have scientists and what have you in their laboratories going into this type of thing every day. This gentleman is a layman, he is not qualified to talk about the endurance tests of tires, whether or not one tire is better or longer lasting because it has more rubber than another, I think we get into all kinds of complications when you are on this subject. I am going to object.

Mr. Correa: It may come as a surprise to Mr. Kelaher, but the Goodyear Company, curiously enough, has a policy of keeping its salesmen knowledgeable of these points, because they want these salesmen to know what they are attempting to sell. He is more than a layman, he has been a salesman and I may say a very competent one, for years.

Mr. Kelaher: I have no doubt, but it is hearsay in so far as this hearing is concerned.

Hearing Examiner Kolb: Objection overruled.

3654 A. I would say the two component parts of the rubber, the tread and the under-tread, give you a longer-wearing tire without any doubt.

Mr. Correa: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. Now, sir, could you tell us whether or not there is any weight difference between Goodyear 100 level tires and the tire line, let's say Vanderbilt tire? There is such a tire, is there not?

Mr. Kelaher: Objection.

A. Vanderbilt?

Mr. Correa: Yes.

Mr. Kelaher: I am going to object to any comparisons.

Hearing Examiner Kolb: Do you know anything about Vanderbilt?

The Witness: The comparative weight we have with it.

Mr. Correa: The question was, is there a difference? That was the first question.

Mr. Kelaher: I am going to object to the question because it is distinctly—

Hearing Examiner Kolb: I don't see what this has to do with this case anyway.

3655 Mr. Correa: I will say this, since your Honor asks, that it seems to me we have been going along throughout these hearings on the basis that all tires are completely fungible and that if a dealer buys a Goodyear tire instead of a "Firecracker" tire then that must mean he can get it $5 cheaper, that must mean he is doing that because Atlantic is beating him over the head. The fact is, the XYZ tire, whatever you want to call it, is not quality-wise as good a tire as the Goodyear tire and this is known to the

dealers who are, after all, businessmen engaged among other things in the tire business.

Mr. Kelaher: I don't think that is so.

Hearing Examiner Kolb: That depends on your point of view.

Mr. Correa: I think the basic assumption underlying all of this testimony is false, in fact, and I think that ought to be brought out. That is all his testimony is designed to do.

Hearing Examiner Kolb: In other words, you are attempting to prove that Goodyear puts out the best tire on the market?

Mr. Correa: No, I am saying that you can't fairly compare a Goodyear tire to a Pharis or a Vanderbilt or some of these other weird brands that have been featured highly in this testimony. That is what I am saying, I think
3656 this is the fact as anybody who knows beans about the tire business, I am sure, will attest.

Hearing Examiner Kolb: Well, so far we haven't got into the quality of tires as I recall.

Mr. Correa: Well, that is—

Hearing Examiner Kolb: The proposition is this, the man has testified he can get a certain tire cheaper than he could get the Goodyear. He bought the tire cheaper because he could get it on price. He didn't say it was a better tire. It was a cheaper tire and he could sell that to his customers. In some places they have a greater acceptance for one tire than they have for another. Some buy on price, some buy on acceptance. I don't know why we have to get into the question as to the actual difference in construction of these various tires and so forth and so on.

Mr. Correa: Well, I can only repeat—

Hearing Examiner Kolb: I have a hard time figuring out what is your first line tire in the first place.

Mr. Correa: No difficulty by consulting price.

Hearing Examiner Kolb: All right, let's go ahead.

A. There is a difference.

Mr. Kelaher: There is a difference. What was the question now?

(Question read.)

3657 By Mr. Correa:

Q. What is the difference?

A. In weight?

Q. Yes, sir.

A. Two and a half to three pounds.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. Which is the lighter tire? You say there is a 2½ to 3 pound difference between them?

A. The Vanderbuilt, in relation to your custom super cushion line.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I think the pending question, was that answered?

Hearing Examiner Kolb: The pending question was answered.

Mr. Correa: All right.

3658 By Mr. Corea:

Q. Well, in your experience, Mr. Shafer, as you have described it, do service station dealers ever take quality into consideration in purchasing tires?

A. Oh, I think that by and large they do.

Q. Is that what they have indicated to you in these seven years or more that you have spent going around seeing service station dealers as your exclusive activity?

Mr. Kelaher: I object. In fact, your Honor, I think it is highly irregular for counsel for Goodyear to be cross-examining a Goodyear employee. I don't know whether this was prearranged, but I certainly don't appreciate it, I can tell you that.

Mr. Corea: If counsel cares to cite me some authority for his extraordinary statement, I would be delighted to receive it. In the absence of that, I suggest his remark is improper and out of order.

Have you any authority, counsel?

Mr. Kelaher: Do you admit it was prearranged?

Mr. Corea: Well, I trust you give us credit—

Mr. Ballard (Interposing.) Now, look, I think it is about time for me to get into the act.

Mr. Corea: Making some preparation of our case. Yes, everything we have presented here was prearranged in that case, counsel.

Mr. Ballard: I don't go along with that.

3659 Hearing Examiner Kolb: I think probably you are raising this question of cross-examination without any distinction, because Mr. Corea can use this witness as his own witness and ask as many questions as he wants to.

Mr. Kelaher: I have no objection to his using him as his own witness. He is cross-examining him.

Hearing Examiner Kolb: If ~~he is~~ cross-examining is improper, make the objection beyond the scope of the direct examination. That is all you have to do.

Mr. Kelaher: I made that objection before. If not, I will make it again. I did say he is going beyond the scope of the direct.

Hearing Examiner Kolb: I think he should be called

as your witness, Mr. Corea. This is beyond the scope of the direct examination.

Mr. Corea: I say with great respect the pending question is not. He was questioned intensively as to the factors which went into the competition to sell these service station dealers. Now, I am asking him on that very topic and in exploration of that same topic and amplification thereof, whether or not quality wasn't one of those factors which he failed to mention on direct. This is, indeed, a proper cross-examination, if your Honor please.

Mr. Kelaher: Before he answers that, I am going to move to strike all of his testimony on weights on the 3660 ground it was beyond the scope of the direct.

Mr. Corea: I resist the motion on the ground that it is untimely, among other grounds.

Hearing Examiner Kolb: I don't think it is proper cross-examination anyway. I think you should take this witness as your own witness as co-respondent in this case.

Mr. Corea: Well, I must respectfully—

Hearing Examiner Kolb (Interposing): You can follow the same line of examination. I don't see why we have to get into this hassle about cross-examination.

Mr. Corea: Let me state that because I am not doing it aggressively to be captious. I have up to this moment, at least, offered no evidence on behalf of Goodyear in this proceeding, and it is quite likely that I shall persist in the decision not to offer any evidence on the ground that we have certain objections to the procedure which we made heretofore, and which there is no need to burden the record with again.

I do not understand it to be the law, however, that a defendant, if you wish to call it that, or respondent, who does not wish to offer any testimony or any evidence on his or its own behalf, is thereby deprived of the right of cross-examination of any witness called on behalf of any

other respondent or on behalf of the attorneys supporting the complaint, and if that is the law I must confess
3661 I am not familiar with that. I think I am entitled to insist on my right of cross-examination, which I do insist on for the reason I have indicated.

Mr. Kelaher: I think the law, as I recall it—

Hearing Examiner Kolb: (Interposing.) What difference does it make? Let him go ahead and cross-examine. The objection is overruled. Go ahead. I don't think it is proper, but we will let you do it. You can't accuse me of denying the right of cross-examination even though you are not entitled to it.

Go ahead.

Mr. Corea: Is there a question pending?

Hearing Examiner Kolb: I don't think there is.

(The reporter read the record as requested.)

By Mr. Corea:

Q. In your principal activity instead of your exclusive activity?

Hearing Examiner Kolb: That is with regard to quality?

Mr. Kelaher: That is confusing.

Mr. Corea: The antecedent question contains the quality.

Hearing Examiner Kolb: All right; go ahead.

The Witness: Yes, sir, they have.

Mr. Kelaher: Let's have the question and answer.

3662 I don't know what they have. What is the last—I am getting lost.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Corea:

Q. Is it common knowledge in the trade and by the trade I include people who are engaged in the occupation

you were engaged in during these seven years and also service station dealers, is it common knowledge in the trade thus defined that these differences in quality exist between and among various brands of tires?

Mr. Kelaher: I object, your Honor. Now, we are getting into the whole United States instead of just Atlantic Refining Company, and this area, now he is going to what is common knowledge in the trade. I think that is —I object for a number of reasons. First, it is beyond the scope of the direct. Second, he shouldn't be cross-examining in the first place. And third, I don't think he is qualified to answer it.

Hearing Examiner Kolb: The objection is overruled. Let him answer.

The Witness: I believe that the tire dealers and the service station dealers accept the fact that Goodyear's quality and acceptance in the public's mind exceed the so-called lesser known brands.

3663 By Mr. Corea:

Q. You listed a number of—you were asked to list new developments in the tire line, and you listed captive air and a few others.

A. Yes.

Q. It is true, is it not, that captive air is designed for use on these thru-ways and express-ways where if a tire fails, you may have to go several miles before there will be a place where you can safely change them?

A. That was the basic thinking on which the principle was built.

Q. And I don't believe you mentioned Suburbanite, was the bringing out of Suburbanite tires one of the developments during the course of your seven years or not?

A. We brought on the Suburbanite during my time, and we had a tire called the Stud Sure-Grip tire.

Mr. Corea: You may examine.

Mr. Kelaher: I may cross-examine the testimony adduced through the cross-examination by respondent's counsel, I assume?

Hearing Examiner Kolb: You can cross-examine on everything that you see fit on.

We will take a recess before you do.

(A short recess was taken.)

3664 Hearing Examiner Kolb: The hearing will be in order.

By Mr. Kelaher:

Q. Mr. Shafer, you were a general line salesman beginning March 1, '51, is that correct, to about May '52?

A. January of '51.

Q. January 1 of '51?

A. Fifty-one, yes.

Q. Yes.

A. To approximately May of 1952.

Q. And during all of that time were you in the Pittsburgh Goodyear District?

A. Yes, sir.

Q. And at that time did you call on service stations?

A. Yes, sir.

Q. And beginning—during that time you were on a bonus, too, were you not? You were on a bonus with respect to sales of tires? Weren't you on a bonus system?

A. At one time.

Q. As a general line salesman?

A. Yes, sir.

Q. Now, as a petroleum representative were you also on a bonus with respect to the sale of TBA?

A. No, sir.

Q. Do Goodyear tires have good acceptance in the

3665 Pittsburgh area? Did they at the time you were there?

A. Yes, sir.

Q. You have said a lot of nice things about them. Do those things apply to the Pittsburgh area?

A. Yes, sir.

Q. How successful were you in selling Goodyear tires to Atlantic Service stations in the Pittsburgh area after March 1951?

A. In my territory which was in—my headquarters now were Greensburgh, I only had three active Atlantic dealers—

Q. I'm talking about the—

Mr. Mason: Let him finish his answer.

Mr. Kelaher: You go ahead.

The Witness: I only had three Atlantic dealers in my territory.

By Mr. Kelaher:

Q. You were—

Mr. Mason: Let him finish his answer.

Mr. Kelaher: I'm just defining—

Mr. Mason: Let him finish his answer.

The Witness: In my territory I had three active Atlantic dealers we were selling and I continued to sell after March of 1951.

By Mr. Kelaher:

Q. Now, in other words, you were in—I didn't 3666 understand this from your direct testimony because you didn't get into it, but—

Mr. Ballard: Then, your Honor, I move to strike the question and the answer because it's obviously beyond the scope of the direct.

Mr. Kelaher: I'm asking him about his territory as a general line salesman in the Pittsburgh Goodyear district. Let's put it that way. Where were your headquarters?

The Witness: Greensburgh, Pennsylvania.

By Mr. Kelaher:

Q. And how wide an area did you cover?

A. My southernmost town was Monessen and my northernmost town was Indiana. It covered about three counties.

Q. And you didn't get into the metropolitan Pittsburgh area at all?

A. No, sir; I was not in the metropolitan area.

Q. As you know in March '51 Atlantic began to sponsor Firestone-TBA in that area. Isn't that right?

A. Yes, sir.

Q. Are you familiar or were you familiar with conditions in the Pittsburgh metropolitan area during your term as a general line salesman?

A. No, sir; my major task was in my own territory.

Q. But you did get into Pittsburgh, didn't you?

A. Did I get into Pittsburgh?

3667 Q. Yes.

A. I got into Pittsburgh for conferences, possibly to go shopping.

Q. Did you call on Atlantic stations or were you familiar at all with the Atlantic stations in the Pittsburgh area?

A. In the City of Pittsburgh, no, sir.

Q. And in your whole territory or area you only had three Atlantic stations?

A. The only three dealers that I had that I was selling—

Q. How many Atlantic stations were there?

Mr. Mason: Let him finish his answer. I don't think he completed his answer.

The Witness: There were three Atlantic dealers that I can remember that I was selling when I was on the general line territory. How many more there were I couldn't tell you.

By Mr. Kelaher:

Q. That is the point I'm getting at.

Obviously there were more than three Atlantic dealers in your whole territory, weren't there?

A. At this point I couldn't say that there were more in any great quantity. There might have been some more, but in my territory Atlantic's activity at that time to my recollection was limited.

Q. And wasn't that due to the fact that Atlantic 3668 was sponsoring Firestone TBA in that territory after March '51?

A. No, sir.

Q. Isn't it a fact that Firestone predominated in Atlantic stations in your territory after March '51?

A. No, sir.

Q. You are only familiar with three stations out there, is that right?

A. That is what I am referring to.

Q. You didn't see the other stations in your territory at all?

A. Atlantic stations?

Q. I'm talking about Atlantic stations.

Mr. Mason: I object to the question because it misstates the prior or it proceeds on a misconception of the prior testimony of the witness. As I understand his testimony he said that he knew of three Atlantic stations in his territory and didn't know whether or not there were any more stations. Now to question him on some unknown quantity of stations that the witness hasn't identified I submit isn't proper.

Hearing Examiner Kolb: He said he sold three Atlantic stations.

Mr. Mason: And he said also that he didn't know how many other stations there were in his territory or whether there were any other stations in his territory.

3669 Mr. Kelaher: I don't mind saying to show you the irregularity of procedure we are following, a few minutes ago counsel for Goodyear were cross-examining this witness. Now they are objecting to my cross-examination.

Mr. Mason: Any party to a proceeding may object to an answer which may be prejudicial in a record. I don't know why my objection can't be heard.

Mr. Kelaher: You are playing both sides.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. We'll leave it. You were calling on three and there were more Atlantic stations in your area.

Mr. Mason: I submit that is a misstatement of his testimony.

Mr. Kelaher: I can ask him.

Mr. Mason: Ask him. Don't state.

Hearing Examiner Kolb: He can answer the question.

The Witness: I was calling on three Atlantic stations and how many more Atlantic stations were in my territory, there wasn't any great quantity. There might have been three more or six more, but there were not thirty-five more.

By Mr. Kelaher:

Q. But there were more, that's the point.

Now, on direct examination you estimated that 3670 there were about 160 supply points in the New England Region, the Pennsylvania-New Jersey Region and the New York Regions of Atlantic. Do you recall that testimony?

A. I think I—

Mr. Ballard: As a matter of fact, what happened was that you—

The Witness: My estimation.

By Mr. Kelaher:

Q. Possibly 160, which was the stipulated figure, that's all I'm saying.

Now, of that number you testified that there were close to 90 to 100 in the New England Region. Do you recall that testimony?

A. Yes, sir; I think that is what I said.

Q. Do you know how many there were in the Pennsylvania-New Jersey Region and in the New York Region?

A. Well, to my best recollection the Philadelphia-New Jersey Region which comprised our Philadelphia and Newark Districts—may I ask this, what year are we talking about?

Q. I'm talking about the figures you were quoting, you were quoting a figure from 90 to 100 in the New England Region, what year were you talking about?

A. I would say that in the Philadelphia-New Jersey Region there were approximately 25 and in the New York Region there would have been the balance or I would 3671 estimate that around 45 to 50.

Q. And what period are we talking about here?

A. That is 1953 and '54.

Q. 1953 and what?

A. '53 and '54.

Q. I may have misunderstood your testimony but I was under the impression that this constituted the current number of supplying dealers, was that your testimony?

A. I don't know what the current number is.

Mr. Ballard: Mr. Kelaher, it wasn't intended to be, that wasn't the question asked. The man hasn't been there since 1957.

Hearing Examiner Kolb: He's giving you the time, he's giving you 1953 to '54, the number of stations.

The Witness: Fifty-three, '54 and '55, it never changed much.

Mr. Kelaher: All right.

By Mr. Kelaher:

Q. You got into a discussion in your testimony concerning developments by Goodyear in tires if you will recall. Isn't it a fact that other tire companies at or about the same time also came out with similar developments; for example, you referred to the use of nylon as one of the Goodyear firsts, is that right?

3672 Mr. Mason: I object to the form of this question. It is at least two questions, and I would like to have it directly clear what question counsel intends the witness to address his answer to. The very last statement he made or the whole question.

Mr. Kelaher: I think he understands.

Mr. Mason: I would like to have the question reread.

(The reporter read the pending question.)

Hearing Examiner Kolb: The objection is overruled.

The Witness: Nylon in the industry to my information is attributed; the first commercial use of nylon in tires was a Goodyear.

By Mr. Kelaher:

Q. Now, isn't it true that shortly after that other tire companies came out with nylon tires?

A. Yes, it is true the leading brands, Firestone, Goodrich, U. S., and General.

Q. And possibly others?

A. The time difference would be longer when we get out of that category. There would be a greater length of time.

Q. And isn't the same thing true of any other development or improvement in tires by Goodyear?

A. Well, there are certain things, of course, such as the captive air principle which nobody has to this date,

3673 and we have had it on the market now two years. Nobody has duplicated that same principle to date.

Q. Well, do other companies have something similar but on a different principle? Is that what you mean?

A. No, as to my knowledge there is only one other concern that makes a tire that has a two chamber concept, and that is Firestone. It is called the Firestone Supreme.

Q. Isn't it true, as a general proposition, that any changes in the tire industry are generally industry-wide over a short period of time?

A. Could you just give me a little closer definition as to changes?

Q. Well, improvements. You mentioned nylon. You mentioned captive air tires. You say there is only one other in that. But as a general proposition, aren't most changes in the tire industry, whether innovated by Goodyear or Firestone or U. S. or Goodrich, don't they become a matter of industry technique?

A. On some occasions, but generally speaking, some of the things that Goodyear does or Firestone, or any of the other leading manufacturers, sometimes are not followed immediately by anybody else, such as our tread design. I mean, people don't copy our tread design. We don't copy anybody else's. I mean, they are our own concept of traction.

Q. Now, you also stated that Goodyear was the first to announce the dry charge battery. Did you make that statement?

3674 A. No, sir, I did not.

Q. Well, then, would you state what you did say in connection with dry charge battery?

Mr. Mason: I submit the record shows what he did say, if counsel has a question. This is not suppose to be a memory test.

By Mr. Kelaher:

Q. All right. On direct examination, according to my notes, you testified that Goodyear announced the try charge battery. Was that your testimony?

A. That is right. I said that Goodyear announced the dry charge battery.

Q. What did you mean by announced the dry charge battery?

A. That the Goodyear Tire and Rubber Company announced to its dealer trade that we were going to make available the Goodyear dry charge.

Q. You didn't mean to imply that it was the first to announce the dry charge battery?

A. No, sir, Firestone made the first announcement.

Q. As a matter of fact, Goodyear doesn't manufacture batteries?

A. No, sir, we do not; in our own factories, no.

Q. Just to keep the record straight, Goodyear purchases batteries under the Goodyear name, is that what you mean, under the Goodyear brand name from independent manufacturers?

A. Yes, sir.

3675 Q. I am just going to ask you one or two questions on the subject brought up by counsel for respondent Goodyear, but on this question of quality, isn't it a fact that there are many tire manufacturers other than Goodyear who manufacture tires of comparable grade and quality?

A. There are many?

Q. Yes.

A. Mr. Ballard: Would you like to have the answer to the question read? You can always have that privilege.

Mr. Kelaher: Let's say there are other manufacturers.

The Witness: There are other manufacturers of tires that are comparable in quality.

3676 Q. Grade and quality.

Mr. Mason: Let the record show the witness is restating the question.

Mr. Kelaher: I am not having any trouble. I don't know what the problem is.

Mr. Mason: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

A. That there are other companies that have comparable quality.

Hearing Examiner Kolb: That is the question. What is your answer?

The Witness: I would say in my opinion there are some that do approach Goodyear's quality; yes, sir.

By Mr. Kelaher:

Q. You say there are some that do approach Goodyear's quality. Does that apply to Firestone?

A. Yes, sir; it does.

Q. And you say they are not comparable in grade and quality but they just approach Goodyear's quality?

A. From my personal standpoint I would say they approach or equal Goodyear's quality, yes.

Q. Would you say the same thing about U. S., Goodrich, General, and others?

3677 A. Personally, no.

Q. You think that none of those equal Goodyear's grade and quality, is that right?

A. No, sir, I mean that is my personal opinion.

Q. That is strictly your personal opinion?

A. Yes, sir.

Q. Isn't it a fact that other tires also have good public acceptance in certain areas?

A. Good public acceptance?

Q. Yes.

A. Yes, they do.

Q. For example, Lee which is manufactured in the Philadelphia area has good consumer acceptance in Philadelphia, hasn't it, in the Philadelphia area?

A. I don't believe I have ever seen any figures on Lee's acceptance in the Philadelphia area.

Q. It is well known in this area, isn't it?

A. I mean the Lee Tire and Rubber Company is well known here; yes, sir.

Mr. Kelaher: I have nothing further.

Redirect Examination by Mr. Ballard.

Q. May I ask a couple of questions?

I think that this is clear on the record, but the three Atlantic service stations you were selling to in the Pitts-
3678 burgh area outside Pittsburgh, did you continue to sell them after March of 1951?

A. Yes, sir; I did.

Mr. Ballard: May I have one moment's recess?

I have no further questions.

Hearing Examiner Kolb: Off the record.

(Discussion off the record:)

Hearing Examiner Kolb: On the record.

The hearing will be adjourned until 10:00 o'clock tomorrow morning.

3680 Hearing Examiner Kolb: The hearing will be in order.

CHARLES A. WALSH, JR. was called as a witness for the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Would you give the reporter your name and home address?

A. Charles A. Walsh, Jr., 305 Forest Hills Circle, Devon, Pennsylvania.

Q. You are, as I understand it, an employee of the Atlantic Refining Company?

A. That is right.

Q. When did you first join Atlantic?

A. In March of 1939.

Q. And could you give us briefly your history with Atlantic?

A. Yes, I started in the New England area, Providence, Rhode Island, as a service station attendant in 1939. In the latter part of the year I went to Boston as a service station manager, stayed in the Boston area approximately a year and a half, operating as service station manager, dealer trainer, a promotable dealer salesman on the
3681 North Shore area of Boston. I had been returned to Providence as supervisor of training stations and then moved in to the regional office in Providence as a sales promotion clerk. Went into the service in '42, in the Army, was in until '46. When I came out went back to Providence area and operated as a field assistant to the sales promotion manager. From there went to sales supervisor in the Providence district.

Q. What year was that, sir? 1947?

A. That would be '47, that is correct. Then from sales supervisor in Providence went to direct marketing manager which was a staff job for the New England region.

After the sales supervisor's assignment in Providence I was put on the job of direct marketing manager for the New England region with headquarters in—

Q. That would be in 1949?

A. That would be in '49, sir. I stayed on that assignment until January of 1953 when I was assigned to the Springfield district as district manager. I was there for two years and in January of 1955 went to the New Haven district as district manager. I left New Haven in April of 1957 to come here to Philadelphia in my present position which is retail marketing manager for the Atlantic Refining Company.

Q. Now, sir, going back to 1947 when you were sales supervisor in the Providence district did you also at that time work on the model station committee?

3682 A. Yes, sir, I did. There was a committee formed at that time with Mr. Jack Eastlow, Philadelphia regional manager as chairman, to study the type of stations that we were operating, how they were operated, both from the point of view of design, station operation, station bookkeeping methods and so forth, to develop a more modern or more efficient method of doing it.

Q. There have been references in this record to the model AR-50 station. Is that the station that your committee designed?

A. A lot of our work went toward the design of that particular service station.

Q. Has that design been changed since the committee worked on it?

A. Yes, it has been modified from time to time.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. During the period 1949 to 1953 I believe you said that you were direct marketing manager for New England region?

A. That is correct, sir.

Q. Is that a line position or staff position?

A. That is a staff position.

Q. What is the basic function of a direct marketing
3683 manager?

A. Primarily the basic function is the development of the retail phase of the business, the service station phase of Atlantic's operation through promotional activity, sales development programs, and to some extent dealer training. Dealer-employee training in the basic services.

Q. I call to your attention that during that tour of duty Atlantic changed from the direct sale of Lee tires and Exide batteries and so forth to the sponsoring of Goodyear tires, batteries and accessories. As a staff man were you particularly concerned with the mechanics of that change-over?

A. No, I was not, sir.

Q. I believe you stated that in January of 1953 you became manager of the Springfield district?

A. That is correct.

Q. What is the approximate territory covered by that district?

A. Geographically?

Q. Yes.

A. From the Vermont border, the New York border and the Connecticut border on the western end of the State of Massachusetts to about Athol or Barre which is really about the western half of the state, not quite a half of the state.

3684 Q. Athol would be A-t-h-o-l?

A. That is right.

Q. And Barre?

A. B-a-r-r-e.

Q. Basically, it covers the western half of Massachusetts?

A. That is correct, sir.

Q. Do you recall about how many Atlantic dealers there were in that district?

A. At that time there were in the neighborhood of 90, 95 dealers.

Q. And about how many of them were lessee dealers?

A. Between 55 and 60 I would say, sir.

Q. Do you recall a dealer named Israel Gloth?

A. Yes, sir.

Q. Do you remember Mr. Gloth's advertising of his non-sponsored TBA products?

A. Yes, I do. Israel Gloth is a long-time Atlantic dealer in the Springfield district whom I knew quite well. There were occasions when I made calls on Gloth's station when he showed me both Pennsylvania's advertising and proposed advertising that he planned to run in the papers to get my opinion of whether I thought it had appeal.

Q. That would include non-Goodyear items?

A. Yes, sir.

Q. Now, in your experience have other Atlantic
3685 lessee dealers used the cooperative advertising of non-sponsored TBA products?

A. Yes, sir, they have, sir.

Mr. Kelaher: I object unless we get some definition of what is meant by cooperative advertising.

By Mr. Ballard:

Q. Would you explain to Mr. Kelaher what cooperative advertising is?

A. Well, cooperative advertising is generally, sir, where

the dealer would pay part of it and the supplier would pay part of the cost, bear the cost of, say, a newspaper ad.

Q. But the supplier would, for instance, Firestone would be a typical supplier?

A. Yes, Firestone would be.

Q. Now, again it is my recollection that in January of 1955 you became manager of the New Haven district?

A. That is correct, sir.

Q. Could you give us the approximate location or territory of the New Haven district?

A. Well, it would be approximately the southeastern third—the southwestern third of the State of Connecticut going from the coastline, running from the New York line to New London and then it goes north into the interior around Danbury on the west and then comes down fairly narrow down through Old Lyme, Wallingford, Yalesville, section.

3686 Q. About how many Atlantic dealers were there in that district?

A. There were about 135, approximately, at that time.

Q. How many would be lessee dealers?

A. Approximately a hundred.

Q. Now, your present post is manager of the retail marketing division?

A. That is correct, sir.

Q. What is your responsibility in this position?

A. Well, it is once again a staff assignment and my responsibility is, broadly speaking, the development of our retail marketing business which is primarily concerned with the development of service station business.

Q. Considering the New England region as a whole there are, of course, other oil companies besides Atlantic marketing in that region?

A. Yes, sir.

Q. Could you name the principal ones for us?

A. Well, Socony, Esso, Gulf, Sun, Tidewater, Texas, Richfield, American.

Q. Does Shell operate there?

A. Shell operates in New England.

Q. How about Cities Service?

A. Cities Service also.

Q. Calso?

3687 A. Calso is in New England.

Q. Are there also some lesser known or local brands?

A. Yes, there are some. An example of a lesser known national brand would be Crown Central that operates in a small part of New England. Then there are many private brand operators in the New England area, such as Quincy Oil in the Boston market, Merritt, Save Way. There are many, many others that operate just two or three stations, independents.

Q. In general, do these companies operate largely through lessee dealers?

A. Yes, particularly the greater number of the majors that I talked about originally.

Q. Is there competition between the companies in attracting qualified dealers?

A. Very definitely, sir.

3688 Q. In your experience, can a successful dealer get a lease from almost anyone of these companies?

A. Yes, successful good dealers are very definitely in demand in the industry today, and there is no question in my mind but what a well-qualified, proven dealer not only can get a lease from any supplier but is quite often solicited to change from his present brand to some other supplier.

Mr. Kelaher: I object to this testimony concerning the solicitation by other companies of any dealers unless he has more specific information.

Hearing Examiner Kolb: I think he testified as to the general fact. I will overrule the objection.

By Mr. Ballard:

Q. Mr. Walsh, can a successful contract dealer also change his supplier?

A. Yes, he can, sir.

Q. Speaking now, confining yourself to the New England region, is Atlantic able to compete on even terms with the other oil companies in attracting dealers?

Mr. Kelaher: Objection to that question. That is speculative.

Mr. Ballard: That is what the man does all the time. He has just testified to it, that there is constant competition, and I am now asking him what his competitive situation is with respect to other oil companies.

3689 Mr. Kelaher: You asked him if they compete on even terms. I say it is speculative.

Hearing Examiner Kolb: I think he can testify what he does to compete with the other companies. I will sustain the objection as far as the question in its present form.

By Mr. Kelaher:

Q. Mr. Walsh, are other oil companies better known to the public in New England than Atlantic?

Mr. Kelaher: Objection, your Honor. I don't think he can speak for the general public.

Mr. Ballard: Your Honor—

Hearing Examiner Kolb (interposing): Objection overruled.

By Mr. Ballard:

Q. You may answer the question, Mr. Walsh.

A. In my opinion, sir, there are other oil companies in the New England area that have greater acceptance and are better known to the public than Atlantic.

Q. Does the fact that they are better known and have greater acceptance make it easier for them to attract lessee dealers?

Mr. Kelaher: I object to that question, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: In my opinion, sir, it does make it easier for them to secure quality dealers.

3690 By Mr. Ballard:

Q. What does Atlantic do to counteract that competitive advantage?

A. Well, we attempt to counteract any competitive advantage through acceptance by, first of all, providing a complete program for any prospective dealers which would involve such things as modern stations, training programs, and complete stock and supply program.

Q. Does that include TBA?

A. Yes, it would, sir.

Q. Now, sir, turning for a minute to Atlantic as a whole, its over-all operations, do you know how many stations Atlantic has—that is, lessee stations—has built since World War II, approximately?

A. I can give you a figure for the last—from '48 to the present '58.

Q. For the last ten years.

A. In the last ten years we have contracted approximately 1300 service stations in our whole market.

Q. And have you in addition reconstructed or remodeled some?

A. Yes, we have, sir, approximately 285 have been remodeled.

Q. And I assume that some stations have been decommissioned?

A. That is correct, approximately 500.

Q. I believe it is stipulated that the approximate cost,

investment per service station is $50,000. Is that
3691 in accordance with your recollcetion?

A. Yes, it is.

Q. Now, Mr. Walsh, for the record, although I am sure it is not news to anybody here, where is Atlantic's principal office?

A. In Philadelphia, Pennsylvania.

Q. And where is its largest refinery?

A. In Philadelphia, Pennsylvania.

Q. Do you know about how many employees it has in this city?

A. In the metropolitan area of Philadelphia it is my understanding that there are approximately 7500 employees, Atlantic employees.

Q. Do you know approximately how many dollars of service station products and services they buy in your Philadelphia suburban district?

* * * * *

3694 By Mr. Ballard:

Q. Now, Mr. Walsh, do some Atlantic employees leave Atlantic's employ and take up the operation of Atlantic service stations?

A. Yes, sir, there have been a number of them.

Q. Do you know what percentage of the lessees in the Philadelphia suburban district are former Atlantic employees?

A. Yes, sir, approximately 25 percent.

Mr. Kelaher: Is that the Philadelphia suburban district?

Mr. Ballard: Yes, sir. I have been trying to make that very definite, Mr. Kelaher.

By Mr. Ballard:

Q. I take it that a substantial number of Atlantic's directors live in Philadelphia?

A. Yes, sir.

Q. And its officers?

A. Yes, sir.

Q. Now, Mr. Walsh, returning to the New England region, and specifically to the districts where you were district manager, was it a part of the procedure for
3695 the Atlantic franchise to be explained to new dealers and dealer prospects by the Atlantic salesmen and sales supervisor?

A. Yes, very definitely. The Atlantic franchise was provided for the purpose of giving an overall picture to any prospect by the salesman, first of all, as to what the company had to offer as well as what the particular location that he was interested in had to offer. The salesman, after coming to his conclusion that the man was worthwhile talking to or considering seriously as a prospect, would bring him to the sales supervisor and at that time the whole program would be once again reviewed.

Q. When you were district manager, did you try to see dealer prospects as well?

A. Yes, sir, as many as possible.

Q. Did the discussions with these dealer prospects include an outline of the TBA program?

A. Yes.

Q. And did they include a statement of Atlantic's TBA policy?

A. Yes, it did. I would like to say that in reference to that that it would usually be handled by the salesman and the sales supervisor. In my own particular instance, I would not always go into the TBA program in detail other than to ask in my interview with the prospect, whether it happened, whether he was aware of what was available.

Q. As district manager, were you satisfied that your salesmen and sales supervisors were properly ex-
3696 plaining it?

A. Yes, I was.

Q. Mr. Walsh, does Atlantic have an interest in the business success of its dealers?

A. Very definitely.

Q. Would you elaborate that a little bit?

A. Well, first of all, as I stated earlier good dealers are difficult to find. When a company has a good dealer, it is of vital interest to them that that man be successful for fairly obvious reasons. First of all, because the success of the dealer and his growth affects very definitely Atlantic's growth. The second thing is the replacement of dealers in service stations is an extremely expensive proposition. Our new dealers are trained and to send them through a training program will cost anywhere from $750 to $800 per man. In addition to that, when they are put in their service station, we assign what we call a retail specialist to work with them for a period of up to two weeks. That man is there to help him get set up, to help train his employees in proper drive-way service, and so forth, and that involves an expense of somewhere, oh, between $200 and $300.

And then, of course, in the case of losing a dealer, there is a tremendous amount of time and obvious expense on the salesman's part looking for a good replacement.

Those two factors, the growth of our sales volume that we, as sales people, are particularly interested in, plus the cost of replacement are two real important rea-
3697 sons why we are very much interested in the success of the dealer.

Q. When a dealer is replaced, is there a loss of gallonage at the station as a result of that?

A. In most instances, yes, because a well-established dealer has his own personality, he has developed his own following, people would like to do business with him. If he goes out of the service station, the new man has to

establish that liaison all over again. Particularly if the first dealer goes out and takes another station somewhere in the neighborhood, that makes it just that much more difficult.

Q. I take it, however, that regardless of your efforts, some dealers do become dissatisfied and want to leave their station?

A. That is correct, sir.

Q. Is it Atlantic's policy to hold the dealers to the term of his lease in such cases?

A. No, sir, what we hope will happen is that the dealer will stay there long enough for us to find a replacement for him, frankly, but if he doesn't want to we sign a mutual cancellation with him and he vacates the station prior to the expiration of his lease, in all instances that I know of.

Q. In your experience, are these terminations generally on a mutual basis?

A. Yes.

Q. Do you recall any case in which Atlantic terminated a dealer's lease when the dealer did not wish to leave
3698 the station?

A. Yes. I had one instance, talking of a personal instance, where a dealer did not particularly want to leave the station in Springfield and he did leave because his housekeeping and maintenance of his station didn't come anywhere near our standards. He had been talked to and he made no improvement and he went out of the station as a result of that.

Q. Is that the only experience of that kind?

A. That is the only experience of personal knowledge that I have.

Q. Did TBA have any part in that incident?

A. Definitely not.

Q. When a dealer leaves a station, what generally happens to his inventory of TBA?

A. Depending on its condition. If his TBA inventory is in salable condition, generally speaking, the incoming dealer will buy those articles, items from the outgoing dealer at the price that the outgoing dealer paid for them.

Q. Is that true regardless of the brand of the items?

A. Yes.

Q. Now, Atlantic has a so-called long-term dealer lease policy, is that not correct?

A. That is correct, sir.

Q. Has that been reduced to writing?

3699 A. Yes, sir, it has.

Mr. Ballard: Will you mark this R-A-31-A through -F.

(Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 31-A through 31-F for identification.)

By Mr. Ballard:

Q. Now, Mr. Walsh, I show you this document marked R-A-31-A through -F, and ask you is that Atlantic's long-term dealer lease policy (handing document to the witness)?

A. Yes, sir, it is.

Q. Now, is this policy in effect today?

A. Yes, it is.

Q. Do you recall the date when it was first adopted?

A. Not the exact date, but it was in 1953.

Q. I call your attention to the fact that it skips from Attachment 1 to Attachment 3. As I understand it—we will lead the witness now with your permission, Mr. Kelaher—Attachment No. 2 was the B3191 lease form. Is that correct, according to your recollection?

A. Yes, it is.

Mr. Kelaher: If you don't know, that is already in evidence, is it not?

Mr. Ballard: Yes, it is the form of B3191.

By Mr. Ballard:

Q. Now, referring for a moment to page B of this 3700 exhibit, which is Attachment No. 1, that appears to be a form of letter to be sent to Atlantic dealers. Is my understanding correct?

A. That is what its purpose is.

Q. Was that letter, in fact, sent to dealers by Atlantic or its regions?

A. Yes, I know specifically of two instances where it was sent to dealers at the regional level.

Q. In other words, two regions?

A. Yes.

Q. Attachment No. 3 is the so-called 11-point lease letter. Is it Atlantic's practice to give the letter containing those 11 points to each lessee?

A. Yes, it is.

Q. Attachment No. 4 is a proposed reporting procedure to be used—well, it is a proposed reporting procedure. Is that procedure being followed and carried out in Atlantic today?

A. Yes, it is.

Q. And has it been at all times since the policy was adopted?

A. To the best of my knowledge, it has.

Q. Now, Mr. Walsh, turning to the subject of station inspection programs. Would you describe briefly the various kinds of inspections that are made of Atlantic service stations?

A. Yes. There are formal inspections, to use that word, made at the regional level and at headquarters level by

what we call a shopper program. The shopper would
3701 be an employee that is not known to the dealer, drives in to the service station in a regular automobile, receives service at the pump island, looks the station over from an appearance point of view, and checks the restrooms for maintenance of supplies and standards of cleanliness. He then, still without identifying himself, if possible, to the dealer leaves the station and scores the results of that inspection on a form that he is provided.

The results of those inspections are forwarded to the region office, thence to the district, and then to the salesman to discuss with the dealer.

Q. Do those inspection forms contain a place to show the brand of TBA that the dealer happens to be handling?

A. They do not, sir.

Q. In your experience, do the reports, regardless of whether there is a place on the form, do the reports themselves show that information?

A. No, sir.

Q. Mr. Walsh, is the Atlantic credit card available for use by a dealer regardless of the TBA brand he handles?

A. Yes, it is.

Q. Are loans and station improvements also available regardless of the TBA brand he handles?

A. That is correct.

Q. Is it an object of your dealer program to develop a friendly relationship between your dealers and their Atlantic salesmen?

3702 A. Very definitely.

Q. Do you think you have been successful in obtaining that object?

A. Largely I believe we have.

Q. Mr. Walsh, do you recall the approximate number of Goodyear supply points who were serving Atlantic dealers in the Springfield district and the New Haven district when you were there?

A. The approximate number of Goodyear supply points?

Q. Yes.

A. Well, I will have to guess now.

Q. Would it refresh your recollection if I suggested that it was about a dozen in each district?

A. I was going to say something a little less than that.

Q. What were you going to say?

A. I was going to say around seven or eight.

Q. In each district?

A. Yes.

Mr. Kelaher: Is this at the time he was in those areas?

Mr. Ballard: Yes. Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

3703 By Mr. Ballard:

Q. In addition to those supply points, were there other TBA suppliers calling on your dealers?

A. Yes, there were.

Q. You recall the approximate number of other TBA suppliers in the Springfield district?

A. It would be somewhere in the neighborhood of eight or nine, maybe ten.

Q. In the New Haven district?

A. More than that, around 15, 13 to 15.

Q. And from your knowledge of the New England region, are there other TBA suppliers than Goodyear calling on Atlantic dealers?

A. That is right.

Q. That would be true throughout the region?

A. Yes, sir.

Q. Could you give us a description of the kinds of businesses that these suppliers are engaged in, general classification?

A. Oh, as a general classification, most of these people are automotive supply points that have carried the business beyond the supply of just automotive parts and have gone into accessories, some of them to carry batteries, and some of them have a short line of tires.

Q. By a short line you mean—

A. (Interposing.) Not a full stock and not cover-
3704 age all the way across the board.

Q. In your experience and observation, do Atlantic dealers make purchases from these other suppliers?

A. Yes, sir, they do.

Q. And do they display outwardly the things they purchase from them?

A. That is right.

Mr. Kelaher: I object. He is talking about his personal knowledge. I think it should be qualified to that extent.

By Mr. Ballard:

Q. Do the answers you have just given apply to the New England region?

A. Yes, sir, they do.

Q. Do you know of any Atlantic dealer why buys TBA exclusively through his Goodyear supply point?

Mr. Kelaher: Objection, your Honor. There is no qualification to this question either.

Hearing Examiner Kolb: If he knows any dealer that does buy, I think it is all right.

Mr. Ballard: I think you can guess the answer.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Ballard:

Q. You may answer, Mr. Walsh.

A. To my knowledge, I don't know of any Atlantic
3705 dealer that buys everything through the Goodyear supply point, TBA.

Q. Now, in your experience, and needless to say that includes the New England region—I will limit my question to the New England region—does the success of the Goodyear supply points in selling to Atlantic dealers vary from one supply point to another?

A. Very definitely. In fact, that is one of the key reasons why some are eminently successful and others are not. The dealer will buy, our dealers, any dealer will buy from a supply point that can give him quick service that carries an adequate stock of all the things that he can resell through his station so they don't have to back order, that is competitive on pricing, and that very definitely will give him this quick service that he is looking for.

Another thing, another factor that enters into it is a question of credit, of the credit limits that are offered to a dealer and the credit payment arrangements. If a supply point can satisfy the dealers on all of those things that I have just mentioned, they will do very well. I personally know of some that have done extremely well because of that.

Q. If they fail to measure up in those terms, do they not do so well?

A. In my opinion, they don't do as well as they could because the dealer just will try them once or twice and if they can't satisfy the needs, he goes elsewhere.

3706 Mr. Kelaher: I object, and move to strike unless he specifies the dealers.

Hearing Examiner Kolb: The objection will be overruled.

3707 By Mr. Ballard:

Q. Mr. Walsh, in your view is it necessary for Atlantic to supply a TBA program for its dealers?

A. Yes, I feel very strongly that we must provide a TBA program for our dealers.

Q. Would you expand a little on the reasons for that?

A. I would be happy to.

First of all, a man that is going into a service station business, it is not just a business now of selling gasoline and motor oil and lubricating a car. The customers are getting more and more used to getting one-stop service. That includes having your TBA items available at the location. The good dealers know this. The better dealers capitalize on this to try to keep their customer close to them at all times. People that are going into the business who are going to take over a service station would expect a supplier to have a complete program, that is the training, the modern facilities and your supply that I mentioned earlier, that there be a complete package for him. We must have that in order to have a dealer successful and have ourselves successful.

Q. Do you feel that you cannot rely on local distributors to supply these needs to your dealers?

A. In my opinion I don't believe we can rely on the local distributors because some of them do not carry
3708 a full line, some of them are not aware of the dealer's finances, the pattern of operation; they don't know him well enough to be able to advise him on proper stock levels to keep, and so forth. They might get him a little heavy on one thing and it is going to take him a long while to move. And a dealer today works on turnover, that is how the successful businessman operates. It is not how much he has got in stock, it is how rapidly he turns it over and the guidance and the proper balanced TBA program will determine how rapidly his turnover is and how much profit he makes.

Q. Now, sir, Atlantic has a so-called extra compensation plan, does it not, for promotable dealer salesmen?

A. It does.

Q. I believe that went into effect April 1, 1956?

A. Yes, sir.

Q. I recognize I am leading the witness, Mr. Kelaher. I will stop when I get past these introductory questions.

Do you know taking the year of 1957 how many promotable dealer salesmen were eligible to participate in that plan?

Mr. Kelaher: In what region?

By Mr. Ballard:

Q. In Atlantic, in the company?

Mr. Kelaher: In the company as a whole?

Mr. Ballard: Yes, sir.

Mr. Kelaher: Are you talking about the six mar-
3709 keting regions?

Mr. Ballard: Yes, Atlantic.

Mr. Kelaher: Just so we get the areas specified. Go ahead.

Mr. Ballard: Yes, sir.

The Witness: In the entire company as a whole, 138 promotable dealer men participated.

By Mr. Ballard:

Q. And do you know what the total compensation paid to them for all services and products was?

A. Total dollar volume?

Q. Yes.

A. It was in excess of $23,000.

Q. Do you know what the payments on account of TBA gains were?

A. Forty-eight hundred-odd—forty-eight hundred ninety or ninety-nine dollars, somewhere in that neighborhood.

Q. That is company-wide?

A. Yes, sir, this is company-wide.

Q. Mr. Walsh, in setting the percentages under its new percentage leases and in setting the per gallon charges

under the older leases, what was Atlantic's aim and policy in fixing those amounts?

A. Well, on setting the method or rate of paying rent we were primarily interested in two things, first of
3710 all keeping it fair so that it would not be an excessive rental from a dealer's point of view, and at the same time be at a level where we could attempt to recover our cost of investment in the—

Q. Over the years have your rents equalled or exceeded or fallen short of your costs in operating the program?

Mr. Kelaher: Your Honor, I am going to object to this line of inquiry. I think the records are the best evidence as to whether or not the rate of their return has exceeded, been the same or been lower than their investments in their stations.

Mr. Ballard: This man is a policy-making man of Atlantic, your Honor. He knows the answer.

Mr. Kelaher: He asked a very general question which isn't limited to any specific year or month, any specific region, and I think it is not the best evidence.

Hearing Examiner Kolb: Read the question, please.

(Question read.)

Mr. Ballard: I am not asking for figures, your Honor, I am simply asking whether the relationship—

Hearing Examiner Kolb: I will overrule the objection. The witness may answer.

A. In general our rental return has fallen somewhat short of our rent paid out.

3711 By Mr. Ballard:

Q. By your rent paid out you mean what?

A. That is, rent paid out would mean that amount of money paid to lessors in the instance where we lease properties, it covers taxes, and it would cover depreciation, also maintenance and what improvements might be made on the property.

Q. And we are speaking now of the stations that Atlantic leases to lessee dealers?

A. That is correct, sir.

Q. Now, in operating its TBA program does Atlantic aim for any particular portion of the total TBA purchases of its dealers?

A. No, sir, they do not.

Q. Does Atlantic keep statistics showing the portion of the total TBA purchases of its dealers represented by sponsored TBA?

A. No, they do not.

Q. Does Atlantic—you do, I assume—attempt to increase your sales of sponsored TBA to your dealers each year?

A. Very definitely, that is one of the reasons that I exist and a number of other people in the company exist, like any sales force we are trying to increase our sales to and through our dealers in all products which would include TBA.

3712 Q. In operating the program do you aim to recover the cost of operation of the TBA program from your TBA commissions?

A. We hope for that, yes.

Q. Do you keep a running account of the cost and the commissions?

A. No, sir, we don't.

. . . . . .

By Mr. Ballard:

Q. Now, Mr. Walsh, comparing the year 1952 with the year 1957 has there been an increase in the number of Atlantic lessee dealers? I am speaking company-wide now?

A. Yes, there has been; approximately 24 percent increases.

Mr. Kelaher: Your Honor, we have stipulated figures

showing specific numbers of lessee dealers from 1951 through 1956, I think.

Mr. Ballard: I am asking him '52-'57, Mr. Kelaher. You will find that the figures will go along with this. I am certainly entitled to ask these questions of the witness.

Do you have a motion?

3713 Mr. Kelaher: I am trying to save you some time. We already stipulated what the figures are.

Mr. Ballard: You have already consumed more time than my next three questions.

Mr. Kelaher: You go ahead.

By Mr. Ballard:

Q. During the same five-year period have gasoline sales per lessee dealer increased?

A. Yes, sir, approximately 20 percent.

Q. Now, making adjustment for price increases during that period amounting to 25 percent on tires, zero percent on batteries, and 15 percent on accessories—

Mr. Kelaher: I—you go ahead and ask the question, I am going to object.

By Mr. Ballard:

Q. (Continuing.) —after making those adjustments has a calculation been made to show the increase in sponsored TBA purchases per lessee dealer?

Mr. Kelaher: I object.

Mr. Ballard: He can answer.

Mr. Kelaher: I object because he—I have a right to object before he answers.

Mr. Ballard: I asked him if a calculation has been made.

Mr. Kelaher: I have a right to object before he
3714 answers. He is premising his answer on a proposed or purported set of figures which this witness has not testified to. He didn't ask this witness what the ratios

were of increases. No foundation has been laid for the question.

Mr. Mason: The foundation is already in the record.

Mr. Ballard: It was laid yesterday, Mr. Kelaher, I don't know whether you recall it or not, but Mr. Shafer testified those were the amounts.

Mr. Kelaher: He said some off the cuff increases.

Mr. Mason: I would like to speak to counsel's remark about they were off the cuff observations in the record. This particular question that came up in Mr. Shafer's question was the subject of argument, objection, and your Honor permitted the answer. I think the term "off the cuff answer" is a thoroughly improper statement of counsel in this record.

Mr. Kelaher: I would like to remind counsel yesterday you were cross-examining Mr. Shafer. Now today you are defending Mr. Shafer. I don't know where you stand with respect to Mr. Shafer.

Mr. Mason: All of Mr. Shafer's testimony will be throughly grounded.

Hearing Examiner Kolb: Objection overruled.

3715 Mr. Ballard: Has such a calculation been made, sir?

The Witness: To my knowledge it has been.

By Mr. Ballard:

Q. What did it show?

A. It showed that sponsored TBA sales have increased from '52 to '57 of approximately 12 percent.

Q. That is after making allowances for the price changes?

Mr. Kelaher: I move to strike his testimony. I don't think a proper basis has been laid for any such computation.

Mr. Ballard: Before your Honor rules may I say this:

Mr. Shafer of course, did give us these figures yesterday. I am prepared if your Honor wishes to have the witness testify as to what efforts he has made or have been made to check these figures, if your Honor feels that that would assist in his ruling.

Mr. Kelaher: Your Honor, there are many, many studies made by the government, by private individuals, showing instances in prices and there are variations between those prices and those price differentials. You have various types of indices to show these things. Now, we are entitled to know the basis for the computation being made by counsel. This is a very unique way of attempting 3716 to show this particular type of problem.

Mr. Ballard: Your Honor, may I suggest that if Mr. Kelaher feels that these are not the right figures he has the opportunity on rebuttal. He has the opportunity on cross-examination. His arguments, it seems to me, go to the weight and not admissibility. I should think your Honor would be interested in how much these sales have gone up.

Hearing Examiner Kolb: General information, that is one thing. If it means you are going to place a certain argument on the fact that the figure was 12 percent and not 13 percent or something of that sort then I say you haven't laid a basis for it.

Mr. Ballard: No, I will state to your Honor that the purpose of this testimony is to show that the increase in purchases of sponsored TBA over this five-year period has been in line with and not exceeded the increase in gallonage per dealer. It seems to me that those two are interesting and important information in the case and that your Honor is entitled to have them.

Hearing Examiner Kolb: I will let the answer stand.

Mr. Kelaher: Your Honor, I would like it to be—I want to hear no arguments at the conclusion of this case based

on cost of living increases other than as stated by counsel.

3717 Mr. Ballard: Now, Your Honor, I hope you are not going to foreclose me from any argument at this time. I may have foreclosed myself.

Mr. Kelaher: Unless it is specifically limited.

Hearing Examiner Kolb: I know what this testimony is worth on the basis of how it is given, so we will go on from there.

Mr. Ballard: Cross-examine.

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Mr. Ballard: Your Honor, before cross-examination begins I would like to offer Exhibit RA-31-A through F in evidence.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A31-A through F.

(The document heretofore marked RESPONDENT ATLANTIC'S EXHIBIT 31-A through F for identification was received in evidence.)

Cross-Examination by Mr. Kelaher.

Q. Mr. Walsh, you gave some testimony concern-
3718 ing your work on a model station committee. Do you recall that testimony?

A. Yes, sir, I did.

Q. And at that time you were sales supervisor in the Providence district, is that correct?

A. That is correct, sir, that was the title.

Q. And what was the objective of the model station program?

A. Well, primarily, sir, to develop more complete and efficient methods of marketing through service stations by looking at our station design, that is the physical layout, the physical equipment, to determine a simple and efficient method for the dealer to take care of his accounting records so that he would know where he stood, to investigate such things as lighting, display techniques, display cabinets, display shelving and things like that within the station.

Q. Did the appearance of the station enter into your work?

A. Yes, I would say it would.

Q. By that would you explain that?

A. Well, by the appearance it would be. We were looking for some simple means of making the housekeeping chores easier for the dealer such as design and placement of drains and things like that. Over-all appearance, of course, we had already adopted the porcelain enamel front for our stations but there was some more de-
3719 velopment along those lines.

Q. Did your color scheme enter into your work, too, or had that been pretty well set?

A. No, sir, that had been fairly well established.

Q. Would it be fair to say that you were striving for a degree of uniformity among your outlets with respect to the appearance?

A. Not so far as this particular committee was concerned, because that had been somewhat established beforehand with the adoption of the red, white, and blue porcelain enamel.

Q. So, from Atlantic's standpoint it is to its advantage to have uniformity among its stations, is it not, insofar as appearance is concerned?

A. From the point of view of customer recognition, I would say Yes.

Q. And that is an important part of service station

operations, is it not, among all service stations, among all companies?

A. The idea of uniformity.

Q. The idea of being easily recognizable from the color standpoint as the customer approaches it?

A. Well, I am not so sure it would be color as much as it would be insignia, frankly.

Q. For example, Shell has yellow and red, for example; Atlantic has the red and the white and the blue?

3720 A. Yes.

Q. And other stations have other designs?

A. Yes, just to expand for a moment on it sir, there are a number of major companies, of course, that have not duplicating but similar color schemes, so that the thing you work on would be the insignia.

Q. But the thing from the Atlantic standpoint is to fix in the consumer's mind what an Atlantic station looks like so that when he approaches it he will know it is an Atlantic station and if he wants Atlantic it will be easily recognizable?

A. That is correct.

Q. And that has advertising value, does it not?

A. To a limited degree I would say it does.

Q. Persons interested in Atlantic products would certainly be attracted by the insignia?

A. Yes.

Q. At that time in your work on the model station committee, did you get into service station identification?

A. No, I don't believe we did, sir.

Q. At that time—excuse me, were you finished?

A. I am trying to think to give you a complete answer. No. I am quite sure we didn't get into that.

Q. Was that pretty well established at that time, too?

A. Yes, I think it was. We had already established

3721 the what we call the 56 sign, the Atlantic sign at the curb, the red, white and blue porcelain.

Q. With respect to TBA was that pretty well established, with respect to Lee, Exide, at that time?

A. I would say that from the point of view of the material being in the station, the point of sale material, yes, that was pretty well established.

Q. I am talking about window valances and outdoor signs, too?

A. Yes.

Q. That was well established at that time?

A. Yes.

Q. Isn't it true that after that time, after 1951, when Atlantic began to sponsor the Goodyear TBA program that the service station identification program of Atlantic was changed to include the Goodyear TBA window valances and Goodyear outdoor pole signs in Atlantic stations?

A. That is right.

Q. That is correct, isn't it?

A. Yes.

Q. And that would be true also of the Firestone TBA program in the three marketing regions in which Atlantic sponsored Firestone TBA, isn't that correct?

A. At the time that you are talking about I had no contact with the Firestone region, sir; I presume that

3722 that would be true.

Q. It is true today, is it not?

A. Yes, it is.

Q. During your direct testimony you gave us an estimate of the number of lessee stations in the Springfield district when you were district manager. The remainder, of course, were contract stations?

A. Yes.

Q. Now, just to refresh on the figures, was 95 Atlantic dealers, of this number 55 to 60 were lessee dealers; that would leave approximately 35 as contract dealers?

A. About, yes, I believe.

Q. Of that number how many were so-called real service stations? That is service stations handling TBA?

A. I would say about, oh, 24 to 27, in that neighborhood.

Q. They were complete service stations?

A. They would be what we refer to as stations with facilities.

Q. They were promotable dealers, would you call them?

A. Not necessarily what you would call a promotable dealer. They would have service facilities so that they could lubricate, wash, do other service work. I know the actual differentiation, sir, the ones that we haven't accounted for at this point would be the grocery store operations where they just have a pump out in front.

3723 Q. With respect to the New Haven district the contract dealers there approximated 35 according to your figures. Of that number how many would be real or complete service stations similar to a lessee dealer station?

A. I would say about the same number. I am guessing at this point, but we have very few in New Haven that didn't have facilities.

Q. Do you mean that the number you referred to, 24 or 27 in each district carried TBA, sold TBA, or were they garages and things of that type?

A. Well, some would be garages, most of them, however, I would say, I am going back now, dredging a little, would be what you would call a service station outlet.

3724 Q. You testified on direct examination that there were other oil companies in the New England region having greater acceptance than Atlantic. Do you recall that testimony?

A. Yes, sir, I do.

Q. Isn't it true that there were also other oil companies with lesser acceptance than Atlantic?

A. Yes, sir.

Q. Actually, Atlantic is one of the majors in the New England region, is it not?

A. Yes, it would be classified as a major.

Q. So, it is easier for Atlantic to secure dealers than some of the oil companies with lesser acceptance in New England region, is it not?

A. Yes, I would agree to that. It is a question of relativity there.

Q. Now, you outlined the procedure for interviewing dealer prospects. As I recall your testimony, you stated that your TBA policy was explained at various levels, is that correct, in interviewing a dealer prospect?

A. Yes, it is explained at various levels, not necessarily according to a formal procedure; in other words, it doesn't necessarily mean that the salesman explains it, then the supervisor explains it, and then the district manager explains it in every instance. But during this interviewing process, the TBA program is explained.

3725 Q. The saleman makes it known initially to the dealer prospect that Atlantic in that region is sponsoring the Goodyear TBA program; is that correct?

A. Yes, he would.

Q. And that is repeated by the sales supervisor and then by the district manager at times?

A. In some instances.

Q. And then, when the dealer prospect goes to a training school, do you have a dealer training school in the New England region?

A. Yes, sir, we do.

Q. And at that time Atlantic's sponsorship of Goodyear TBA is again called to the dealer applicant's attention, isn't it?

A. That is correct.

Q. As I understand your testimony, you personally have

interviewed dealer applicants and discussed TBA with them?

A. Yes, sir, I have.

Q. Have you called their attention to the fact that Goodyear TBA or that other Atlantic dealers sell Goodyear TBA in the region?

A. I could well have. I don't remember having done it either omitted it or not. Ordinarily, sir, let me explain my answer to you a little bit.

Ordinarily, when we are talking to a prospect we 3726 talk about the need to have a balanced program in his station and usually the question of where, how does he get it, where does it come from what does he need, comes up in the course of these interviews and discussions. In many instances, the conversation would revolve around the supply point that he could talk to that would be closest to his particular service station.

Q. Are you referring to the Goodyear supply point?

A. That would be a Goodyear supply point.

Q. And you, as a selling point, make it known to him that other Atlantic stations in the region carry the Goodyear service station identification?

A. I think—no, I can't think of an instance where I did do that. I have talked, I am sure, however, of the Goodyear program as such, that is, indirectly.

Q. And haven't you talked of the Atlantic-Goodyear program as such?

A. Yes, I am sure I must have. I can't remember a specific instance but I am sure I must have in covering the whole program.

Q. In other words, haven't you told the dealer in one form or another, directly or indirectly, that Atlantic and Goodyear are identified together in the New England region?

A. Yes.

Q. Now, with respect to the initial stock you just
3727 mentioned, how do you normally handle that? Do you normally have the Goodyear salesman call on the dealer at the time he opens the station, or do you have the Goodyear TBA stock in the station when he opens, if it is a new station?

A. We are talking about a new station?

Q. Yes.

A. In the case of a new station, ordinarily our Atlantic salesman goes over the stock requirements of everything, going from gasoline through motor oil, TBA, equipment, supplies, everything else, and it depends, obviously, on the amount of finances that are available as to the stock level. The stock itself ordinarily when the dealer goes into a new service station he will have been to the supply point—

Q. (Interposing.) The Goodyear supply point?

A. Most likely the Goodyear supply point, yes, with the salesman. He would have been through our warehouse, of course, where our particular gear is, and then at the time that he moves in to the service station, there would be on that day, but not necessarily the day of opening, but the day when he actually goes in the materials according to what he has decided, he and the salesman have worked up this basic inventory list, that material would start being delivered during that day.

Q. Are you including in your answer Goodyear TBA?

A. Yes, sir, I am.

3728 Q. Now, do you require the dealer to invest any money in his station? Isn't a minimum investment required for a new Atlantic dealer?

A. Yes, the dealer has to make something.

Q. What is it in the New England region?

A. The minimum investment in the New England region is a thousand dollars.

Q. Isn't that the minimum in all of Atlantic's regions at this time?

A. Yes, it is.

Q. And at times do you loan money to new dealers, incoming dealers?

A. Yes, we do.

Q. And can that loan be in the form of stock of various types, gasoline, petroleum, Goodyear TBA, etc.? How does that operate?

A. Well, we finance the dealer through a regular financing program approved by our credit department for "X" number of dollars, and that money would be utilized to purchase stock.

Q. That would include Goodyear TBA?

A. It could very well include Goodyear TBA.

Q. Isn't Atlantic's primary concern with its lessee dealers to obtain a reasonable return on its investment in its lessee stations? Isn't that Atlantic's primary
3729 interest in the operation of its lessee stations?

A. I would like, if I may—

Q. (Interposing.) You can answer Yes or No, and then amplify if you want.

A. The answer is Yes. Now, if I may, I would like to amplify that.

Q. Sure, go right ahead.

A. We obviously, like any corporation, are in business to make a profit; however, the way that we are attempting, one of the jobs that I am trying to do is get the return on that investment through the increase in business that goes through those stations.

Q. So, from Atlantic's standpoint it is to your advantage to weed out the unprofitable dealers, is it not?

A. Yes.

Q. Yes?

A. Yes. What happens, sir, is that usually the unprofitable dealers weed out themselves. It is not necessarily a policing action through Atlantic.

Q. But if the need arises it becomes a policing action, does it not?

A. It could become a policing action, yes.

Q. I am going to refer you to RX-A-31-B and call your attention to the second paragraph of this long-term dealer lessee letter, as I understand it, which goes to each
3730 lessee dealer; is that right?

A. Yes, sir.

Q. "You know without being told that each Atlantic station which is well run helps all your fellow dealers operating Atlantic stations, and we also know what the 'dogs' do for us."

Now, by "dogs" are you referring to these unprofitable dealers?

A. No, sir. By "dogs", and I am going to have to give you a liberal interpretation of this because the phrase is not my own, we are talking, sir, about dealers who operate stations, whether profitable or unprofitable who hurt Atlantic's reputation, who hurt their own reputation, and make it distasteful for someone that trades with them to try another well-operated service station, and that, sir, has really nothing to do with whether it is profitable or unprofitable.

Q. Are you referring by the use of the term "dogs" to Atlantic dealers who do not conform to Atlantic's policies?

A. Definitely not, sir. What we are talking about—it is not a question I don't believe here of policy, Mr. Kelaher; it is a question of treatment of customers.

Q. When you become aware, in your opinion or in Atlantic's opinion, of the so-called "dog", don't you attempt to weed it out from your organization?

A. First of all—

Q. (Interposing.) You can answer Yes or No,
3731 and then you may amplify if you care to.

A. Yes, I would say we would. And the amplification that I would like to put on that, without going into too much detail, is the first thing that we are trying to do obviously with many of these stations is to correct them for the reason that I gave in direct testimony of the tremendous amount of money that is involved every time you make a change-over. If correction is impossible, they are alienating customers, they are alienating the public, and they are hurting both their own reputation and our own.

Q. That, of course, is represented by the investment of the dealer in his own particular station, is it not?

A. Yes.

Q. Now, you also referred to the fact that dealers build up a good business and then leave Atlantic. Do you recall that testimony?

A. Yes.

Q. Is it fair to say what you are referring to is goodwill built up by the service station operator, personal goodwill?

A. Yes.

Q. You also referred to one instance of the termination of a dealer's lease, and you referred to a Springfield dealer. What was the name of the Springfield dealer?

A. The name of the Springfield dealer was Fennessey
Brothers, and I don't think, I can't remember and
3732 I didn't go into it in too great a depth, I don't believe it was a lease cancellation, I believe it was a mutual cancellation in that particular instance.

Q. Isn't it true that the Fennessey Brothers built up the gallonage in their station tremendously?

A. No, sir, they did not.

Q. Isn't it true that they increased the gallonage in their station from the time they took it over until the time they left?

A. As I remember, sir, the Fennessey Brothers, the two brothers were doing about 11,000 gallons at the time they left. I am drawing strictly on my memory.

Q. Do you have any records available?

A. Not with me, sir, no. And they could have increased it from, say, somewhere around 7,000 or something like that, but I wouldn't call it a tremendous increase in gallonage.

Q. Well, it is a fact, is it not, that they increased it from the gallonage of the former dealer at that station?

A. I truthfully can't tell you that until I check it.

Q. Were you in that region at that time? You were in the Springfield region at that time?

A. I was in the Springfield region at that time.

Q. Isn't it true that the prior dealer's gallonage was low and the station wasn't being operated profitably?

A. Right at this point I can't tell you who the 3733 prior dealer was.

Q. Isn't it true that from time to time that Atlantic attempted to sell the Fennessey Brothers more stock then they required at their station?

A. Not to my knowledge.

Q. Do you have any—who was your salesman at that time?

A. His name was Parker.

Q. Now, with respect to your inspection program, you are referring to the phantom customer inspection program; is that right?

A. Yes.

Q. Now, I would like you to run your attention to the number of TBA suppliers other than Goodyear supply points in the Springfield district. I understood you to

say, and my notes may be incorrect, but I understood you to say there were only eight or nine or ten that were suppliers of TBA in that district; is that right?

A. That I know were calling on our particular accounts.

Q. Are you referring to the metropolitan Springfield alone or are you referring—

A. (Interposing.) I am not talking of the whole district. I am talking primarily of the metropolitan Springfield area.

Q. I assume that you weren't referring to the wholesale district because I think there were many more suppliers than that in the Springfield district, aren't there?

3734 A. There could well be.

Q. Then, when you were referring to about 15 in New Haven, were you just referring to the New Haven metropolitan area?

A. That is right.

Q. And there are many more TBA suppliers of one form or another in the New Haven district, are there not?

A. I would imagine that there would certainly be more than 15.

Q. And both in the Springfield district and the New Haven district, all these suppliers may call on Atlantic stations?

A. It could well be, yes.

Q. Isn't it a fact that Atlantic dealers in the New England Region buy substantial quantities of TBA from Goodyear supply points?

A. The words "substantial" is the only thing that throws me off.

Q. You can answer Yes or No unless you have difficulty with the word.

Mr. Ballard: He is trying to understand your question, Mr. Kelaher.

The Witness: What do you mean by "substantial," sir?

By Mr. Kelaher:

Q. You stated on direct examination that no Atlantic dealer buys all of its TBA from Goodyear. Now, I am asking you isn't it a fact—

3735 Mr. Ballard (Interposing.) I hate to object. That isn't exactly a correct characterization of his statement, Mr. Kelaher.

Mr. Kelaher: Mr. Examiner, my notes may be incorrect, but I have it down here in black and white that he said no Atlantic dealer buys all of his TBA from Goodyear.

Mr. Ballard: I think it was confined to the dealers that he knew, as I think you may have omitted in your notes.

By Mr. Kelaher:

Q. Well, isn't it a fact that Atlantic dealers in the New England region purchase, buy substantial, I mean, relatively large quantities of Goodyear TBA from from Goodyear supply points?

A. I would say Yes.

Q. You gave testimony with respect to your reasons why you believe, if I understand your testimony, Atlantic dealers are better off buying Goodyear TBA through the Atlantic arrangement than from local distributors. Do you remember that testimony?

Mr. Ballard. I object to that characterization, your Honor. I am sorry, I do not like to interrupt Mr. Kelaher's examination, but I don't think that that is a fair characterization.

Mr. Kelaher: Let's ask the witness wasn't that the substance of your testimony.

The Witness: Would you repeat your interpreta-

3736 tion again?

Hearing Examiner Kolb: You are only asking him about what he said before.

Mr. Kelaher: I will strike the question then.

By Mr. Kelaher:

Q. Didn't you say on direct examination that among other things local distributors might tend to over-stock Atlantic dealers?

A. No, sir, I don't believe I said that. I said on direct examination that local distributors may not be in a position to know, first, the finances of the dealer, second, of all the needs for the particular location, and, third, be acquainted with balance that is required in order to get rapid turn-over of stock, and that as a result it was possible—not necessarily deliberate, but it would be possible for them to have the dealer invest moneys in some articles that did not have a rapid turn-over.

* * * * *

By Mr. Kelaher:

Q. Now, were you implying that all of the local
3737 TBA distributors in all of Atlantic marketing regions might not properly be equipped to conduct profitable business relationships with Atlantic dealers?

Mr. Mason: May I have the question reread?

(The reporter read the pending question.)

The Witness: The answer to that one is No. I make no such implication.

By Mr. Kelaher:

Q. In other words, you are not saying that there are not TBA distributors who have the interest of the Atlantic dealers just as much at heart as Goodyear in that group?

A. I am saying that there are TBA distributors who do have the—who could well have the dealer's interest at heart. I am not saying that they don't.

Q. On that same point do you think that it is necessary for all Atlantic dealers to have the Atlantic Refining Company tell them how to run their TBA business?

A. I can answer that one Yes or No?

Q. Yes or No.

Mr. Mason: I submit there is no rule of order to require the witness to give a Yes or No answer.

Mr. Ballard: I think we had better have that question reread. Could I have the question read again?

Hearing Examiner Kolb: Read the question.

(The reporter read the question commencing at line 15 of this page.)

3738 The Witness: The answer is No. It is not necessary for all Atlantic dealers to have the Atlantic Refining Company tell them how to run their TBA business. May I expand a little on that?

Mr. Kelaher: You have expanded enough on that.

Mr. Mason: He is entitled to finish his answer.

Hearing Examiner Kolb: He is entitled to finish his answer.

The Witness: I would like to say, it is only fair to say, with a new dealer, inexperienced in the business, I don't know why he should look beyond the Atlantic salesman whom he knows the best.

The other thing I would like to say, the longer a dealer is in business and the more successful that he is in that business, the better he does on it, the less he has to look to Atlantic for his guidance because he has the use of his own good judgment.

By Mr. Kelaher:

Q. Your answer then on this point, in response to direct testimony, was limited to new dealers; do I understand you to mean that now?

Mr. Kelaher: I am not having any trouble with the witness. I don't see why I have to be interrupted every two minutes.

Mr. Ballard: Well, Mr. Kelaher—

3739 Mr. Kelaher: (Interposing) If that is not the case, he can say so, can't he?

Mr. Ballard: Mr. Kelaher, I don't think it is fair for you to misquote the witness and rely on his memory to correct you. He assumes you are trying to quote him correctly and so do I.

Mr. Kelaher: I made it very clear I am trying to interpret from the past notes what he said. If anything I say is not correct, he can correct it.

Mr. Ballard: There is a verbatim reporter, if you want to quote back to him, that is what she is here for.

Mr. Mason: Counsel proceeds by characterizing the testimony, and in many instances it is wholly unnecessary to proceed with the facts without trying to go back to the record or give his truncated characterization of the record.

Mr. Kelaher: I would like to say I am working under great pressure. I could have asked for deferred cross a week from now. I am attempting to expedite these proceedings instead of delaying them.

Mr. Mason: That doesn't excuse improper questions.

Mr. Ballard: If there isn't an objection to the question, I now make one, your Honor.

Hearing Examiner Kolb: What is the question?

Mr. Ballard: I don't know what the question is, your Honor, but I do recall it was objectionable.

3740 Hearing Examiner Kolb: Read the question.

(The reporter read the question commencing at line 19 on page 3738 of the record.)

Mr. Ballard: I object on the ground this question improperly characterizes the prior testimony when it says "Your answer then on this point," in that I do not recall any point or any such answer to which he can be referred.

Hearing Examiner Kolb: Well, I think it really amounts to arguing with the witness with what he said before without going into the facts we are trying to get to here, and I think on that ground this line of examination is improper. It may not be improper, but it certainly doesn't elicit any information.

Mr. Kelaher: As I understand the witness, you have testified that you think it is better for Atlantic dealers to deal with the Goodyear supply point than with local distributors. Am I right or wrong? Was that what you said? Is that your position?

The Witness: No, I don't think it was my position.

By Mr. Kelaher:

Q. What is your position, that is what I would like to know?

A. Let me try to reclarify it. I don't need to go back to the previous testimony. I don't believe I answered this one.

There are three classes of dealers really, or three types of dealers at stations: the new dealer who is looking
3741 for guidance and we think that it is Atlantic's responsibility and obligation to guide him as he goes into this station within the limits that he will accept that guidance; the second one is the dealer who is well established, knows his business, is doing an excellent job, and we also think that we should keep him aware of what our sponsored TBA program is and he accepts and rejects that part of it that he wants.

I don't think that I made any statement, sir, that it should be restricted solely to new dealers or that it should be forced testimony that it would be just on old dealers.

Q. In your direct examination you specifically said that dealers can't rely on local dealers. I can go back to the record and show it to you. We can stay here the rest of the day.

Mr. Ballard: Go ahead and find it for us, please.

Hearing Examiner Kolb: The record is gone.

Mr. Ballard: Off the record I will tell you what he did say.

Mr. Kelaher: No, you won't. I will tell you what he did say. I have it right here.

Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3742 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Let me ask it this way, then:

By Mr. Kelaher:

Q. Do you think Atlantic dealers can rely on local distributors of TBA for their supplies?

A. In practically all instances I guess I would say yes, they could rely on them. I am talking about the Atlantic dealers now.

Q. Do you think that Atlantic dealers can rely on local distributors to give them advice as to proper stock levels?

A. I would like to—I can answer that one Yes. I would like to qualify it, however, and say under certain circumstances they can. I don't think that—

Q. What do you mean by under certain circumstances?

A. All right, I think that a local supplier who is aware of the type of business that is done through the outlet, the volumes that have been done historically through the outlet, the type of neighborhood and so forth that this fellow was servicing, with that knowledge and with a competent man that he has on his payroll, would be in a position to give him proper advice as to stock levels and kinds of stock. That is why I say in certain instances.

Q. Do you think that all local distributors would tend to offer stock to Atlantic dealers?

A. No, sir.

3743 Mr. Ballard: I submit this is repetitious, your Honor.

By Mr. Kelaher:

Q. In fact, isn't it to Atlantic's financial advantage to have dealers sell TBA regardless of brand under its present leasing arrangement?

A. Well, I will say Yes, and then say what do you mean, sir, by financial advantage?

Q. Well, it is included in rental computation, is it not, the sales of all TBA by Atlantic lessee dealers, regardless of brand, are included in the computation of the rent he pays Atlantic, is that correct?

A. For those stations that are on a percentage lease, yes.

Q. Yes.

Let me ask you this: Does rental return fall short of rental paid out with respect to Atlantic lessee stations?

A. May I just explore that. I am not trying to be difficult, sir, I just want to make sure that we understand on rental paid out.

Q. That is what I am getting at. You testified to rental paid out on direct, but inasmuch as I can't mention it I am going at it this way. What do you mean by rental paid out?

Hearing Examiner Kolb: I think the witness did explain what he meant by rental paid out. Everything including amortization of the property.

3744 Mr. Ballard: Mr. Kelaher wants him to say it again, I believe.

Mr. Kelaher: Yes.

The Witness: I will be happy to. Rental paid out in my interpretation of it includes that rent that is paid to a lessor, individual or corporation from whom we rent premises, plus taxes, plus depreciation on buildings that we own or properties that we own, plus maintenance and improvements. That is rental paid out. Rental return, of course, is rent collected from those.

By Mr. Kelaher:

Q. Now, with respect to rental paid out, are you referring to a lease, rental lease type of situation?

A. Well, partially. yes. A rental paid out we have two

classifications of stations where we are putting them in, those that we own and those we lease. I am talking about where an individual owns a service station, a completed service station, we lease it from him at a monthly figure which we have to pay in the form of rent. That is rent paid out in that part of it.

Q. Now, is your answer limited to that type of station, that is what I am getting at?

A. No, sir; it isn't. The over-all rental incorporates both those stations we own and those stations that we lease and did in my original answer.

3745 Q. Well, included in rent paid out what stations you own? Where you own land and you own the station, what do you mean when you talk about rent paid out?

A. Well, that would be our cost.

Q. Cost of what?

A. The monthly cost for having that particular piece of property.

Q. What is in the cost?

A. Well, taxes, depreciation, maintenance on the owned properties.

Q. There is no rent involved at all, is there?

A. Not as rent payable to ourselves, No.

Q. Nor as rent paid to another party?

A. No, not on owned property.

Q. Are you saying and correct me if I misundersand your testimony, but is it fair to say that the rental income from Atlantic lessee stations does not compensate Atlantic for the operation of the stations?

A. This is all types of stations, owned and leased?

Q. The type we are talking about, lessee stations?

A. Yes, that is correct.

Q. In other words, are you testifying that Atlantic operates these stations at a loss?

A. From a rent paid out or from a cost versus rent return is concerned, yes.

3746 Q. Is there any income from the operation of lessee stations by Atlantic? Any gross income or net income?

A. I am afraid I don't understand exactly what you are talking about.

Q. As I understand your testimony you are saying that Atlantic operates all the lessee stations at a loss?

Hearing Examiner Kolb: Mr. Kelaher, you are dragging into this question now the question of profitable sale of gasoline, aren't you?

Mr. Ballard: I think he is trying to confuse the witness.

Hearing Examiner Kolb: I think the witness has very definitely testified he is talking about the rent that the dealer pays and the expense which the company is put to in operating or owning that station.

Mr. Kelaher: I am simply trying to show that there is a profit in the operation of a station, I don't know why he can't just say that.

Hearing Examiner Kolb: He is talking about the income from the rent and the outgo on the expense of owning the station.

Mr. Kelaher: I know what he is talking about.

Hearing Examiner Kolb: You put in there the question on the profit on the sale of gasoline which wasn't in the picture at all until this moment.

3747 Mr. Kelaher: I have a right to do that.

Hearing Examiner Kolb: Do it so the witness knows what you are doing.

Mr. Kelaher: I was attempting to be fair with the whole situation. From an over-all standpoint doesn't Atlantic operate its lessee stations at a profit?

A. I would say so, yes; over the long pull.

By Mr. Kelaher:

Q. Now, you were asked if Atlantic keeps a record of the sales of non-sponsored TBA by Atlantic lessee dealers. Do you recall that?

Mr. Ballard: I don't believe I asked exactly that question, Mr. Kelaher. Can't you do it without characterizing it?

By Mr. Kelaher:

Q. Let me ask you this: Do you keep a record of the sale of non-sponsored TBA by Atlantic lessee dealers?

A. No, sir.

Q. Or contract dealers as far as that goes?

A. No, sir.

Q. You say "No, sir"?

A. Yes.

Q. Now, with respect to lessee dealers who are operating under the percentage arrangement you do know the total amount of TBA sold by each lessee dealer, do you not?

3748 A. If they report it on their rental statement then we know what they report on their rental statement.

Q. You know what their total amount of TBA sales are for that particular rental period, isn't that true?

A. Right.

Q. And isn't it also true that Atlantic knows the specific amount of Goodyear TBA sold by each lessee station?

A. Not necessarily because the dealer that buys Goodyear products may buy them through certain convenient supply points in his particular area. He may buy them someplace else.

Q. I am talking about the sales through the supply points.

A. Through the supply points, yes.

Q. He knows specifically how much he buys under the commission plan program?

A. That is right.

Q. So you can tell by subtracting one from the other, if these, what the approximate amount of non-sponsored TBA is?

A. I think it could be determined. It would be extremely difficult. It is possible to be determined.

3749 Mr. Kelaher: I said just tell me why it is so difficult.

A. It depends on whether we are talking about an annual or monthly basis, in many instances a dealer would buy something and not sell it, he might buy sponsored or non-sponsored items in the month of November, that may not sell during the month of November, it might not show up on the rent statement for a period of two or three months.

By Mr. Kelaher:

Q. You certainly would have a fair approximation of his sponsored TBA sales?

A. It could be determined; yes, sir. We could get a fair approximation.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Ballard.

Q. Mr. Walsh, turning to this line of questioning that we have just gone through: When Atlantic receives re-
3750 ports from Goodyear of sales of sponsored TBA through Goodyear supply points to Atlantic dealers do those reports speak in terms of the dealer's buying price? The actual price paid by the dealer?

A. I am sorry to say that I can't answer that one. I

am afraid that Mr. Mulholland would be more familiar with that than I am.

Q. When Atlantic receives rental reports from its dealers do they speak in terms of the dealer's actual sales, selling price received by the dealer?

A. It is retail sales value in total, yes.

Q. Now I ask you again, reconsidering your previous answer, does the report from the Goodyear supply point speak of the retail sales value or the wholesale sales value?

A. To my knowledge it is the wholesale sales value.

Q. So they are different values?

A. So they are different levels; that is correct, sir.

Q. Now, sir, I believe you said that a comparison could be made between them, it would be difficult but it could be made; is that a correct characterization of your statement?

A. In my opinion I think it could be made.

Q. Now I ask you does Atlantic routinely make such comparisons?

A. No, sir, they do not.

3751 Q. Referring to the matter of dealer's good will: In your experience is it possible to transfer the good will, personal good will of the dealer from the outgoing dealer to the incoming dealer?

A. I have never seen it done successfully.

Mr. Ballard: I don't think I have any further questions. In fact, I have no further questions.

Hearing Examiner Kolb: That is all, Mr. Walsh.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:00 p.m.

(Thereupon, at 12:40 o'clock p.m., the hearing was recessed, to reconvene at 2:00 o'clock p.m., this same date.)

3752 Afternoon Session.

(2:00 p. m.)

Hearing Examiner Kolb: The hearing will be in order.

RICHARD G. MULHOLLAND was called as a witness on behalf of The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Mulholland, have you given your name and address to the reporter?

A. Richard G. Mulholland, 45 Server Lane, Springfield, Pennsylvania.

Q. When did you join the Atlantic Refining Company, Mr. Mulholland?

A. I joined Atlantic in 1938, February.

Q. And what was your occupation previous to that time?

A. After graduating from Warton School, I went immediately with Procter and Gamble Distributing Company in a training program where we were all supposed to be executives in ten years, and they started me in the advertising department with advertising crews, ringing door bells, and distributing coupons, and I graduated to dealer selling work, which quickly enfolded into handling the very large stores in Philadelphia and on through 3753 until I became office head salesman.

Q. Now, sir, I gather that after eight years of this ten year stint, you joined Atlantic; is that correct?

A. That is right. I resigned and joined Atlantic.

Q. In what capacity did you join Atlantic, sir?

A. As a dealer-salesman in York, Pennsylvania.

Q. That was 1938?

A. Yes, sir.

Q. And then, can you give us briefly your history with Atlantic since that time?

A. I moved to Allentown, Pennsylvania, as dealer-salesman, but with the understanding I would be the assistance district manager when that job cleared in 1942, and then in 1945, I was actually appointed assistant district manager. That, by the way, was the first district in Atlantic where they used this assistant district manager, outgrew this sales supervisor program.

Then, in 1949, I went in to the regional sales staff as direct marketing manager.

Q. That would be the eastern Pennsylvania region?

A. The eastern Pennsylvania region, which is the biggest region of the company in size and volume.

Q. And after being direct marketing supervisor for the eastern Pennsylvania region, what was your next assignment?

A. Then, I was made temporary sales manager of
3754 the region. It was to have been a year's basis where the incumbent sales manager was involved in this big company training program as training director, and I no more than got well started in that work than I was quickly brought into the Atlantic training program as a member of the top faculty with the job of developing a means of training Atlantic salesmen to sell at the wholesale level.

Q. In other words, to sell the Atlantic dealers?

A. To dealers.

Mr. Kelaher: I wonder if I could have the date when you became temporary sales manager as we go along.

By Mr. Ballard:

Q. Was that 1951; is that correct?

A. It was early in '51. On March 15, 1951, I pretty

well was pulled away from that work and went into Philadelphia at the Barclay Hotel where we spent the better part of a year in this big training program.

Q. What was your next job after that?

A. After that, in 1952, August, I was appointed in the present job as TBA section manager, they called it at that time, and now it is called, I believe, TBA—

Q. (Interposing.) Wasn't it previously TBA supervisor?

A. Supervisor. Now it is called TBA section manager.

Q. Now, as TBA section manager, who do you report to?

A. I now report to C. A. Walsh, Jr.

3755 Q. That is the gentleman that testified here this morning?

A. Yes, sir.

Q. Just so we get his position, who does he report to? I didn't ask him that.

A. He is manager of the retail marketing division, and he reports to Mr. H. H. Ingersoll, who is assistant sales manager of the domestic marketing department.

Q. And then, does Mr. Ingersoll report to Mr. Colley?

A. He reports to Mr. Colley.

Q. Now, there are, are there not, regional TBA coordinators?

A. Yes, there are six regional TBA coordinators, one in each region.

Q. Do they report to you or to the region?

A. They liaison with me, but they report and are directly responsible to the sales manager of the region, or in some cases [illegible]ort to the direct marketing manager of the region.

Q. They keep you informed of what they are doing?

A. Very much so. We work together and they are my entree to the region basically in furthering the dissemination of TBA information and all the things that I do from my office, although we do, of course, use the facility of

discussing TBA with regional managers, sales manager, and other personnel in the regions, too.

They are the staff men in the region who do nothing but work on TBA.

3756 Q. Is your job also a staff job?

A. Yes, it is.

Q. Now, in your job, what is your primary duty?

A. Well, primarily my job is to disseminate, after editing, all TBA information to the region. The tire company programs that come to me, and we disseminate the information to the coordinators in the regions with this benediction, so to speak: the coordinators spread it in the regional sales group. Also, my job is to be original and creative in developing TBA slants and touches on this program and big contributions, too, that we want to engage in in our own way aside from the tire company developed program.

Q. Now, in the course of your duties, do you have contact with the TBA suppliers?

A. That is another important function. My job is to maintain close personal contact with the upper level management people of Firestone and Goodyear with their field district managers and division managers, and just know the people, not only in the tire companies that we deal with, but within the whole fraternity of the TBA industry.

Q. By that, who do you include in this fraternity?

A. Well, we have TBA managers from all the other oil companies who we all cultivate acquaintance with each other. We meet together on councils in the TBA group and know what is going on by our contacts with each other.

3757 Then, there is another group that I have carefully cultivated as a responsibility, that is, the management people of the sub-suppliers, such as DuPont, AC, Johnson's Wax, Simonize, and all the other people who supply important automotive accessories to the tire companies who, in turn, supply our set-up.

Q. Do your activities include field trips?

A. Very definitely. I am charged with getting off the office seat and being out in the regions with the people. One great responsibility is to know of the problems and to work at them and assist the coordinators and other people in improving all siutations, such as supply and delivery, competitiveness of wholesale pricing, and the myriad things that come up.

Q. As part of your duties, do you check on the implementation of Atlantic's no-forcing policy?

A. I don't directly go out to seek any information, but I have my ear to the ground, and in my contacts with dealers who I stop in to see occasionally at meetings and what not, and with the coordinators contact and other sales people, I surely would hear about it if there were any dealer unhappiness in that direction.

Q. Have you ever received complaints from dealers about forcing—being forced or coerced in the course of these trips?

A. No, sir, I have not.

Q. Is it part of your job to know what programs
3758 are being offered by TBA suppliers other than Goodyear and Firestone?

A. Yes, my office function is to receive visitors calling on Atlantic because of their TBA interest, which would include a lot of people. People I can recall—the vice-president of the Cooper Tire Company came in to solicit our interest in their tire; Mansfield Tire and Rubber Company call every six months to keep contact on the possibility we might want to have an Atlantic private label tire; Auto-lite, Electric Auto-lite people call regularly. Oh, there are others.

3759 Q. Armstrong tires?

A. Armstrong's general manager called once. Gould-National batteries, some were solicited in a mild

way by interested manufacturers of TBA products, we already are in intimate contact with a lot of the people like the AC group, DuPont and others, that have known us for many years.

Q. Now, sir, you mentioned the TBA officials of other oil companies. To your knowledge do the other oil companies competing with Atlantic offer TBA programs to their dealers?

A. They most certainly do. I understand there is no oil company, major oil company in the United States, that doesn't have a TBA program today.

Q. Now, going back to 1950 at which time as I recall it you were direct marketing supervisor for the Eastern Pennsylvania region, is that correct, in 1950 now?

A. That is right.

Q. Does that region include Wilmington?

A. It does.

Q. Do you recall that in 1950 the Wilmington district was chosen for a test of the Firestone TBA program?

A. Very definitely, although I had nothing to do, as Mr. Walsh testified, consumer job in New England with the mechanics of setting up such a program in my position, I was well aware of the management's decision to test Firestone TBA distribution in our Wilmington district.

3760 Q. Did you attend the initial meeting down there?

A. I remember that very vividly because—

Q. Would you describe that kickoff meeting briefly to us?

A. The reason I remember it so vividly it was so impressive. Firestone didn't come with a handful of field people around the corner, they came with all the power they had, that was in the person of Mr. Earl Hathaway who is now vice president and general sales manager of the company, Mr. Sharkey who has passed away but was then

a tremendous person as a sales manager out of New York, and they brought with them a guy named Clyde Gischel who was probably the spell-binder of Firestone from dealer talking standpoint or sales meeting talking standpoint, and they put a show on there for our district sales group and I went there to hear it.

They also had their district manager, Mr. Frank Campbell, and the store manager, and the other people who would be involved in the personal mechanics of that local program but what they were there for was to tell us the glories of Firestone and show us the product, the promotional material, and it was a tremendous meeting with people like that that you don't forget.

Q. Would you say it was a sales meeting?

A. It was.

Q. Now, as I understand your testimony at the time that Atlantic went on to sales commission plan company-
3761 wide you were no longer in the line organization, is that right?

A. I can recall attending a few of the kickoff dealer meetings. I can recall going to one in Wilkes-Barre, one in Reading, then I just was pulled right out of the picture as it just got under way in the general spreading of the program throughout the region and was pulled in to this training program in Philadelphia where my sole job was to work on this bridge to sale.

Q. Mr. Mulholland, for Mr. Kelaher's benefit let's elucidate.

Mr. Kelaher: I got it, it is b-r-i-d-g-e.

Mr. Ballard: You asked for this.

By Mr. Ballard:

Q. Would you briefly, Mr. Mulholland, describe the bridge to sales program just so we do have it on the record?

A. I am right proud of this. This is 20-some years of

my life in this (laughter) and I can honestly say I wrote every word of it.

Mr. Kelaher: You are not holding up the bridge?

The Witness: I am talking about concept here. I developed this over this many years of sales experience.

Mr. Kelaher: He has just asked you to describe the—

The Witness: All right, it is a mechanical device used in lecture and training school form to show a salesman and teach a salesman the mechanics of selling, of
3762 good selling. It admonishes him to be careful to use the supporting things to a good sale which are his personality, enthusiasm, and what not, the mechanical aids to selling such as his use of pencil and pad and talk over pieces and what not, and how to approach the various types of dealers, dealer personalities that exist.

This isn't just applicable to Atlantic, it is applicable to any wholesale selling and I think one of the—it is recognized as one of the fine, unique methods of making young salesmen see how to sell rather than have a lost philosophy that they flounder around in for twenty years until some finally learn.

Mr. Kelaher: I know you are anxious to talk about it, but in the future I am going to ask that your answer be confined to the question.

Mr. Ballard: Could we go off the record for a minute?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Would you mark this as RA Exhibit 32.

(The document referred to was marked Respondent Atlantic's exhibit for identification 32.)

3763 By Mr. Ballard:

Q. Now, Mr. Mulholland, turning to August of 1952 which month I believe, I understand you were appointed

as TBA section manager or section supervisor as it was then called; is that the correct time on that?

A. Yes, sir.

Q. After your appointment as TBA section supervisor what was your first step in your new position?

A. Well, before I could take a step Mr. Colley had me come to a top staff meeting attended by his whole group and some of the regional managers and there, unbeknown to me they began to discuss the fact that Federal Trade Commission investigators had been reported to be talking to Atlantic dealers in some areas, and the discussion quickly led to a resolution on the management's part, particularly Mr. Colley, that he wanted Mulholland to go out to the dealers and talk to the dealers about this thing. It happened that it was an opportune time because we had these football meetings scheduled which covered all of the dealers of the company, or most of them, as part of a petroleum promotion.

So he said, we will have him go following this channel or avenue to the dealers, take part in these meetings and then they drilled into me the things he wanted me to cover, most honestly the big one was right in the beginning to find out if his policy of non-forcing was actually being 3764 followed out in the field.

Mr. Kelaher: Your Honor, I think if we are going to go into a conference that he should be limited to the conversation by Mr. Colley and by the others present.

Mr. Ballard: Mr. Kelaher, if you are not moving to strike the previous answer I intend to move on. Did I take that as a motion to strike or simply an admonition?

Mr. Kelaher: I interrupted him, he hasn't finished, I am sure.

Mr. Ballard: Do you move to strike or is it all right to have it stand?

Mr. Kelaher: I move to strike that portion of the dis-

cussion relating to what transpired at the staff meeting.

Hearing Examiner Kolb: I understood the witness was receiving his instructions that he received from Mr. Colley.

Mr. Ballard: That is what I understood he was giving, your Honor.

Mr. Kelaher: He didn't give the—

Mr. Ballard: Can I clarify that point, Your Honor?

Hearing Examiner Kolb: He did say he was instructed by Colley. Read the answer.

(Answer read.)

Mr. Ballard: I might, your Honor. That is a statement of his instructions, what was said to him.

3765 Mr. Kelaher: If it was a meeting, there were minutes taken; if there was a resolution I submit that would be the best evidence of the meeting.

Mr. Ballard: Your Honor, I submit the man should be able to state what his instructions were that he received from his superior.

Hearing Examiner Kolb: Is this a resolution or an agreement between the parties what you should do?

The Witness: This was an instruction directly by Mr. Colley which resulted from their discussion at the meeting.

Mr. Kelaher Was it in writing?

The Witness: No, it was my boss telling me what to do.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Mr. Mulholland, can you tell me approximately how many of these football meetings were held all told throughout the company?

A. Well, there were around forty-five or forty-six.

Q. And how many dealers all told attended those meetings?

A. About 1400.

Q. How many of the meetings did you personally attend?

A. Twenty.

I didn't just attend them, I took a part in them.

3766 Q. At the meetings that you personally attended and took part in could you tell us briefly what you said and did at those meetings and what happened at them?

A. Well, I first introduced myself as the new TBA manager to the dealers and the sales people, and then I explained the purpose of the meeting was to talk openly and directly about the Federal Trade Commission interest in Atlantic's TBA activity. I told everyone and I followed a careful card index so I hit every point in each meeting in the same fashion that if the Federal Commission people came to them for goodness sakes our management wanted it known without obviously, to be totally cooperative, and tell them anything and everything because we had nothing to hide.

Secondly, I reiterated the policy that Mr. Colley had sent out in his non-forcing letters of 1951 and then asked the dealers if anyone among them had found this policy was something we had in the home office and it didn't work that way in the field.

I didn't just ask, I walked in the aisles with these people, these were lively meetings, there was tremendous interest in this thing.

Then thirdly I dwelt heavily on the fact that let's say it all over again that the management won't stand for forcing, so therewith the dealer group and all sales people present they were told once again that our manage-

3767 ment wanted the policy to be activated in the field to the letter of the law, no forcing.

Q. Did you get comments from your dealers on the TBA program?

A. I got a lot of comment but it wasn't on the forcing

angle. I can only recall one dealer who really rose up and said he had been coerced, and that was in Wilmington, Delaware, and he stood right up and said "Yes, I am the guy, I have had my arm twisted." And he even pointed out the salesman, the Atlantic salesman that had done it, he was right there.

Q. For Mr. Kelaher's benefit will you give us the name of the dealer and the name of the Atlantic salesman?

A. I can remember him well because I used to stop there with the sales supervisor, the name was G-r-e-g-g-o.

Q. And could you give us the name of the salesman?

A. The salesman as I recall it was Jim Robinson who is now district manager at Harrisburg.

Q. Was Mr. Greggo the only dealer of those who attended the meetings you were at who made this kind of complaint?

A. Yes, as I said I had a lot of comment because we delve into whether they liked the program or not and whether they were satisfied with the supply and delivery situation, and that really brought the house down because in those early days they weren't satisfied with supply and delivery in many places, it was a new program, the
3768 gears were just beginning to mesh, and we had problems. So, they told us of these problems. It was very helpful.

Q. Now, sir, who gave this presentation at the meetings that you did not attend?

A. Well, it became obvious I couldn't physically keep up with this thing, it was unfolding so fast. I worked day and night at it, so we called in our TBA coordinators to Philadelphia and I told them what I had been doing. I gave them this format of probing these—

Mr. Kelaher: Mr. Examiner, the only question he asked him was who conducted the other meetings. I don't think he has gotten into this question.

3769 By Mr. Ballard:

Q. Mr. Mulholland, did you ascertain to your satisfaction that the instructions you gave to the TBA coordinators with regard to the conducting of these meetings were carried out?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: He can answer Yes or No.

A. Yes.

By Mr. Ballard:

Q. And were you satisfied that your instructions were carried out?

A. I was.

Q. Now, as a result of this program did you reach an over-all conclusion as to whether Atlantic dealers did, in fact, feel free to exercise freedom of choice?

Mr. Kelaher: Objection, your Honor, that is certainly a leading question. I don't think that is entirely objectionable.

Mr. Ballard: Now, your Honor, this man has testified he was sent out into the field.

Mr. Kelaher: You didn't ask him what his general conclusion was, you told him the answer.

Hearing Examiner Kolb: Objection overruled. Let's go ahead.

Mr. Ballard: Would you answer the question?

A. Yes, my total impression was that there was
3770 no dealer complaint about forcing except in this one instance?

By Mr. Ballard:

Q. And did you report this conclusion to your superiors?

A. Yes, sir.

Q. Specifically who did you tell it to?

A. To Dr. Hirschberger to whom I then reported, prod-

uct manager of the company. He took me to Mr. Colley and Mr. Colley talked with me for a half hour about the full happening at these meetings which I reported what he wanted to know, that the policy was being carried out—

Mr. Kelaher: Objection. He is going beyond the scope of the question again. I think we are going to have to have some kind of an understanding.

Hearing Examiner Kolb: It just means a couple more questions to get the same thing. Let's let it go at that. Objection overruled.

Mr. Kelaher: We are going to be here forever.

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Now, Mr. Mulholland, when you took over your responsibilities, I am returning again to this time when you first took over your responsibilities as TBA section 3771 supervisor, what were you instructed that your responsibilities were as manager of that section?

A. Specifically Mr. Colley in starting me off after these football meetings discussed two great areas he wanted me to work in primarily in developing this new program. The first to unceasingly work at bettering the supply and delivery situation so all Atlantic dealers could get material when they wanted it.

And secondly, to do everything possible to see that our dealer bought this material at competitive prices.

Q. Have those been your principal aims since that time?

A. Well, on the one being new, I thought the first thing to do was take a survey of what our people thought about supply points in the field.

Mr. Kelaher: Your Honor, it is obvious that this answer isn't responsive to the question.

Mr. Ballard: All right, I will ask another question, Mr. Kelaher. I will withdraw my previous question and say did you make a survey of the supply points in the field?

A. We did.

By Mr. Ballard:

Q. And—

A. The survey included four categories, the inventory the supply point carried, their attitude or policy on credit extension to the dealer, whether they offered sales
3772 assistance with our salesmen in the form of supply point salesmen, and what our people thought of their ability to deliver on time.

Q. And did you find that some supply points did not measure up in these respects?

A. Many, many of them.

Q. What did you do about it when you found that?

A. Then that gave us a target for working at this problem and the coordinators in the regional level worked unceasingly with the petroleum representatives of the tire companies in contacting supply points and our people and following through trying to solve these problems.

I participated when the need developed for a higher level discussion with managers of the tire companies or even Akron. So from the beginning we worked at this; we are still working at it.

Q. Could you describe your activities with respect to prices charged to Atlantic dealers by supply points?

A. Our objective was to have our dealer, be sure our dealer was buying tires basically and first of all at a price where he could retail competitively with bigger tire specialists, or other service station dealers. In our study of this we find that this is true in general, our average dealer buys at 22½ percent off the code price on tires; which is a

discount allowed by the tire company if a dealer
3773 bought direct from them necessitating the dealer doing an annual tire volume of from five to ten thousand dollars a year. So, in most places we found that our dealer is enjoying this level of discount which he really, in many cases, doesn't earn because he in his tire business does less than $5,000 a year in many, many cases.

Q. On that basis are the prices being charged to your dealers competitive, by the supply points competitive with those being offered by competing suppliers?

A. We think very much so in general, but we find spots where a supply point will only allow a discount of 20 percent and if it is not a matter of very distant delivery cost the tire company people let our people counsel with this fellow and plead the case of our dealer and that work has gone on continually until today I say our Atlantic dealer has a very competitive price and we can pretty well prove to him or to our salesman that he can compete at the retail level with almost anyone, even the big, huge buyers of Goodyear.

Q. Now, sir, does Atlantic train its own salesmen in the selling of TBA, how to sell TBA?

A. Yes, sir.

Q. Where do they get that training? Now I am speaking of an Atlantic salesman, where does he get his training?

A. Formally he goes into the dealer training
3774 schools not as a trainee but as an observer, all salesmen get that—

Q. Then does he go along to an additional school?

A. Then he goes into Philadelphia after he has been in the field six months or a year, to a product school which I personally teach with the assistance of tire company personnel. And we teach TBA product promotional angles and what they need to know to better sell and service our dealer.

Then this man goes back into the field and he picks up more training as he attends district sales meetings where our TBA coordinator and/or a tire company or outside manufacturer personality will tell them about product and information. He goes to these wonderful tire company meetings, Goodyear put on a tremendous spring meeting, and our people are all invited and they all go and they get this tire company training on the theme of those individual meetings.

3775 Q. Now, there are, I believe you said, dealer clinics and dealer meetings involving sponsored TBA?

A. Clinics?

Q. Clinics and meetings. I am speaking now of the dealer clinics and meetings, are there such things?

A. Yes. We have originated this clinic thing in our company. We feel one of the unending needs is for training dealers, and the first place to train them is on the most important part of the TBA program, tires, so we developed a tire clinic, sell-up-to-profit tire clinic.

Q. How long does that sell-up-to-profit clinic take to put on the full program?

A. Well, it takes two hours. You are lucky if you finish it in two hours.

Q. Was that program developed by Atlantic?

A. Yes, sir.

Q. This script was written by Atlantic?

A. The script was very carefully developed by drawing what our coordinators could give us from a meeting. We had staff men from Akron there, we got everything, we milked every idea we could get from everybody, and we finally got it down and I talked it into records to give it a sales flavor, dealer talk instead of stilted language, and then this thing was written up in the form of a script.

Q. Is this the script? I show you this document.

3776 Is this the script for that sell-up-to-profit?

A. Yes, sir.

Mr. Ballard: May we have that marked A-33 for identification.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 33 for identification.)

By Mr. Ballard:

Q. I ask you, for the record, is R-A-33 a copy of the script that is used in this sell-up-to-profit tire clinic? Is that what that is?

A. Yes, sir.

Q. Approximately, how often has that clinic been given by Atlantic?

A. The givers were the TBA coordinators teaming up with tire company personnel in their field. My job was to originate this, and having the ball, they gave this thing to dealer groups.

Q. Has it reached a large number of dealers?

A. A large number, yes, sir.

Q. Now, in the course of that TBA clinic, tire clinic, do you also give the dealer a booklet to carry away with him?

A. Yes, sir, a take home book.

Mr. Ballard: Will you mark this RX-A-34 for identification.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 34 for identification.)

3777 By Mr. Ballard:

Q. I show you a document that has been marked RX-A-34, and ask you if that is a copy of the booklet that is given to the dealer to carry home with him?

A. Yes, sir, it is.

Q. What does this booklet contain?

A. Well, it contains the slap-on development of the talk to the dealer.

Q. In other words, this first sheet is a picture of the chart that you use in talking to the dealer?

A. Of the flannel board after it had all be laid on there.

Then, we gave them some homely down to earth ways that this guy could comfortably talk tires to a customer. Instead of being tongue-tied, we said just tell him what you found or you saw when you looked at their tires. This hesitancy to talk is a dealer problem, new dealers, or ask him questions about his tires in the form of your desire to give service to him to start these tire selling conversations.

Then, we on the next page gave him something to think about which we had talked about in the clinic concerning other things besides the talking of tires that he must do. To look like a tire headquarters place through good display and use of promotional material, for goodness sakes subscribe to this tire company display package that gave him this wealth of material for less than the postage,
3778 sometimes. Set up a tire selling department to maintain a balanced stock and give decent tire service.

Then, to help him with display we had worked these out —this is new in the industry. We deplored the idea of everytime a dealer had to display tires on the driveway, he should own a $50.00 piece of display equipment; so, we began to work out—and Firestone sales staff worked with us on this. We actually went out in our stations ourselves and piled tires in various interesting arrangements which are placed against the window with only the use of a small tire standard as equipment.

So that the dealer could make his place like a merchant lived here instead of just setting them around along the wall and there are various pictures here which are new thinking, in fact, the tire companies are using this material in their national literature today. We originated that idea.

Then, we put in the book the product story of the Goodyear tire, and that was how you talked tires, they gave the dealers a real feel of how you go about selling tires at profit, sell up.

Q. Now, sir—

Mr. Kelaher: (Interposing.) I don't think he has finished yet.

Mr. Ballard: Would you like to have some more testimony?

3779 Mr. Kelaher: I am enjoying this.

The Witness: I went out in two regions because there were some guys that were a little bashful about this job and I talked to a thousand dealers myself with 12 big dealer meetings where we paid the bill and we didn't meet in cellars. We met in hotel ballrooms and we had groups there up to a hundred or more dealers, and all our sales people, and we talked intimately with those people about how to sell tires.

By Mr. Ballard:

Q. Now, Mulholland, if Mr. Kelaher will permit me a question, you have spoken of tires, and I think you stated that they were most important. Do you mean to imply by that that accessories and batteries are not also of importance to the dealer? I wanted to get your meaning straight on that.

A. No, sir, that was just the initial start.

Mr. Ballard: Will you mark this R-A-35 for identification?

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 35 for identification.)

By Mr. Ballard:

Q. Mr. Mulholland, I show you a folder, marked RX-A-35, which I take it from the title is a group of some so-called talk-over pieces; is that correct?

A. Yes, sir. A finally devised talk-over pieces.

Q. Would you explain briefly to Judge how a talk-
3780 over piece is used? You could perhaps use one of these as an example.

A. Well, this first one: in our "bridge to sales" for any good salesman he uses mechanical aids to sell to hold the attention of his dealer and to particularly make a good factual presentation. The two greatest mechanical aids to selling ever devised is a lead pencil and a talk-over piece, and something to scribble on.

So, this first one here is the talk-over piece, as all of these are, devised by Atlantic at our expense and distributed to our salesmen who have been trained in the "bridge to sales" to use a talk-over piece, and they would use it this way:

They go into the dealer and instead of some careless remark, they know why they are there and they say, "Joe, I have something interesting to show you. Let's go in the back room here where we can talk a minute. You are going to make money out of this."

He guides the salesman with his pencil to catching the dealer's interest by following this talk-over piece here that the tire companies are going to have these tremendous bursts of advertising for the Fourth of July sale. Other dealers are in this thing, other good, smart, aggressive dealers.

Here we appeal to the motivation, to imitate others.

Then we appeal to the profit motive. "Now Joe, you
3781 can cash in, if you will just avoid these possibilities of shortages, what I am here for is to sell you the tires you will need to engage in this profitable sale. Don't lay down here and fizzle like this." Then, we ask you to do these things to make a success of this promotion, and it guides the salesman to the many things they can talk about and look over and get a feeling for it.

Then, comes the time of not going on incessantly but we want to build an order. We want our salesman to write an order for tires. So, we put in here a shape up, and this "bridge to sales". you will find shape up, you can't go on forever; so, it helps him with the knowledge here of popularity of sizes to actually write with the pencil and figure with the dealer. He would say, "Joe, those 670 by 15s, what can you use, 20 or 10?" In a minute, Joe makes a mark or indicates an agreement. He's had it. He's buying it.

So, you build your assortment, transpose it to an order form for the tire company supply point to deliver, and the talk-over piece and the pencil have done a job.

On the back of all these talk-over pieces we put a planning guide. In our "bridge to sales" we say pre-plan. So, here the salesman plans what dealers he will call on, what he will suggest in the way of stock acquisition, and what they actually did. It gives him a chart to follow so he doesn't miss anyone and keeps a record so his sales
3782 supervisor can follow him up.

He can use this, too, to show a faltering dealer. "Well, gee, all the other guys are going in on this. Why not you?"

So, it is a wonderfully helpful thing to a salesman and we have devised a whole number of these.

Q. Mr. Mulholland, on that point, is this—

Mr. Kelaher: (Interposing.) I really don't think he is finishing explaining yet.

Mr. Ballard: Do you want more explanation?

Mr. Kelaher: I think he was getting to the next page.

Mr. Ballard: I will be glad to have him if you want him to explain all of them.

Mr. Kelaher: You go ahead.

By Mr. Ballard:

Q. Mr. Mulholland, do I understand correctly that these are sample talk-over pieces? Do they represent the only ones that are in your files or are these simply samples?

A. There are others. These are Atlantic devised and produced, and we have others.

Mr. Ballard: Will you mark this RX-A-36?

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 36 for identification.)

3783 By Mr. Ballard:

Q. I show you a document marked RX-A-36, and I will ask you what that is so that we can get it identified for the record.

A. Well, we call this a stock check and order form.

Q. That is a stock check and order form?

A. Yes. This has a little different purpose. An oil company salesman until he knows the number and nomenclatures of accessory items such as spark plugs, filter cartridges, fanbelts, and can look at the shelf stock in the service station and tell the dealer his needs on a number basis, he isn't giving him the sales service he should. This both trains the salesman and helps him write an order. So, we list here the plugs and filter cartridges, fanbelts, and radiator hose. We took those four items. We asked our salesmen to carefully check inventory and develop orders and here are the numbers and the order of popularity which we felt helped train our man and get business.

We attached to it some other information he had that was in the tire company catalog but it took a Goodyear man and 20 years of knowledge to find it. We brought it all out and tacked it altogether so that our salesman had a full specification chart of what these fanbelts and radiator hose fit, so that in his hand he had everything he needed

to do a thorough job of spot-checking and order servicing with his dealer on these items.

3784 Q. Do I understand this was developed by Atlantic?

A. Totally by Atlantic.

Q. Now, sir, we have had references in this record to double-teaming. Would you explain what double-teaming means to you?

A. Another means of helping our salesmen learn and become a better salesman and sell more is to use the wonderful opportunity for him to double team with specialists. Firestone and Goodyear have specialists in their supply points and sales organizations on tires and batteries. The AC people have a tremendous selling force of skilled people. DuPont and others. So, these people habitually work with automotive jobber salesmen; they rarely go alone. They go with either the automotive jobber sales force, or the oil company sales force, and their aim is to go to the service station dealer and sell and further their product.

We seek their help. In fact, I can remember at one period when we had practically our whole sales force working with DuPont from Maine to Florida on the spring deal, and we like it because it trains our man. It is interesting to the dealer because there are two personalities in the act and in my own experience in TBA, as a salesman, I learned my TBA nomenclature and lingo on each of these special items through a lot of double-teaming with the people I supplied.

Mr. Ballard: Will you mark this RX-A-37-A and -B for identification.

3785 (Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 37-A and -B for identification.)

By Mr. Ballard:

Q. Now, I show you some papers marked RX-A-37-A and -B, and I ask you if you will tell us what those are, please.

A. Well, these are relatively new, within the last year we got very real about our recommended TBA inventory suggestions to dealers. We arm our salesmen and our whole organization with this philosophy that Atlantic doesn't expect a new dealer who has this very limited working capital to buy all the TBA he could possibly have calls for at the start. For instance, if a dealer put in stock all the tires that Goodyear makes in all sizes, shapes, and forms, passenger, he would have 104. He couldn't hardly keep them in the station or pay for them. So, we got—this recommendation, the first one, the thousand dollar level—suggests to our people and our new dealers—this is for new starting dealers—to do without some of this upper level merchandise, to carry only at the most, say, 25 tires, in the lines he most usually will have calls for or can sell.

So, we go through in this thousand dollar level only the very necessary automotive items, such as tires, a few batteries, a coverage of spark plugs, a coverage of filter cartridges, fanbelts, radiator hose. When we get to polishes and chemicals, we get real humble, we get down to 3786 three cans instead of cases.

And even going without, so to speak, we consume a thousand dollars this quickly and he hasn't even got flash-lights or flash-light batteries or many other things.

Then, our philosophy is after the dealer has got a start and felt his way along and can afford to raise his inventory level, we recommend that he shoot to get to this $2,000 level which broadens the line but still doesn't have everything.

And then, we regard this fellow as pretty much on his own. He becomes a deal buyer or a tire specialist, but the

whole philosophy of this is to be helpful and not load up our dealer or get him out of balance.

I went in a new station in Baltimore a year or so ago and saw 20 cases of Turtle Wax, but he didn't have much of anything else. He met a good Turtle Wax salesman.

Mr. Kelaher: I move to strike the last remarks. They have no application to RX-A-37-A or 37-B.

The Witness: Well, the purpose of this is to guard against that.

Mr. Ballard: Just a minute. Let Judge Kolb rule on the motion.

Hearing Examiner Kolb: I will let it stand.

Mr. Ballard Will you mark this RX-A-38.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 38 for identification.)

3787 By Mr. Ballard:

Q. I show you a folder marked RX-A-38, entitled "Atlantic Sales Promotion Material." Would you tell us what these items are?

A. These are some pieces of promotional material involving TBA which Atlantic produced, originated, and delivered to dealers. We don't go into great volume on this, but we do some of it. The tire companies have tremendous amounts of promotional material available.

Mr. Ballard: Will you mark this RX-A-39 for identification.

By Mr. Ballard:

Q. I show you an additional folder, marked RX-A-39 and ask you is that the kind of tire company promotional material that you were just referring to that Atlantic mails out?

A. Yes, this is one piece of thousands of promotional pieces that come through the tire company program.

Q. As I understand it now, I am referring again to

RX-A-39, that is put out by Goodyear and distributed by Atlantic; is that correct?

A. Yes, sir.

Q. Now, Mr. Mulholland, I think you mentioned tire events. Could you briefly describe what you mean by tire events?

3788 A. We in Atlantic take claim to almost originating conception of teaching a dealer to sell tires as I can remember them 15 years ago. The factors are to get to the dealer a sufficient stock of tires to make a tire display that makes him look like tire headquarters is here, to give him tire atmosphere. To help the dealer that doesn't have capital, we in the old days used to consign tires for two weeks to use during the sale, and the tire company system we have introduced and many, many times the supply point has thus consigned or open billed tires to the dealers so they can make this display.

Another part of it is long effort by the dealer surrounded by this the atmosphere the use of promotional materials, the timing, and our salesman is heavily involved because you can't operate a tire event by just telling a dealer about it or asking him to run one. The salesman must participate in assisting and building displays in energizing this thing and keeping it going as hard as he can for a two or three-week period, and we found that when a dealer becomes involved without any financial pressure on himself, becomes involved with new tires, he suddenly begins to sell tires. Many times the tire event is the beginning of a new confidence and a step forward.

Q. I noted in the back of the room. Do you want to move it up so we can see it. Is this little model an example of a tire event, this model called "Swing to Safety"?

3789 A. Yes, sir. That is—we have had tire events for years—

Mr. Kelaher: (Interposing.) Does this have a number?

Mr. Ballard: Yes.

Will you mark this paper RX-A-40 for identification?

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 40 for identification.)

By Mr. Ballard:

Q. I show you, Mr. Mulholland, RX-A-40, which I see on the front is a picture of this little model that we have here entitled, "Swing to Safety." Is this a recent tire event sponsored by Atlantic?

A. That is the daddy of Atlantic tire events. We decided that we had had big sections of dealers go into this thing but early in 1958 we wanted 3500 dealers in the tire event, so we published this brochure—

Q. (Interposing.) That is this A-40?

A. This brochure, we coconceived this idea entirely ourselves and I took that model to Akron, Goodyear and Firestone top management, and I pleaded our case that we were giving every Atlantic dealer, that is 3500 Atlantic dealers, this fixture on a no-charge basis, delivering it to them. These fixtures cost us just short of $6.00 delivered into our warehouses. And the request from tire company management was to—on their side of the cost of this tire event, provide us with a special package, built around this "Swing to Safety" theme that was also our develop-
3790 ment, which they did; so, they provided these ex-
pensive Day Glo banners and the inserts that fit in the three tires. We put our whole show together and on May 15, 1958, we delivered 3500 of these to these dealers and our salesmen followed quickly to help them erect them after having attended meetings where the fixtures were shown.

I traveled six regions in four days to carry the first fixture. It was like Paul Revere, almost, to get this thing unfolding on time. So that before Memorial Day we had

this tire atmosphere in our station, and we had a theme song that our TV weather shows and our big TV baseball shows and our radio could pick up: Atlantic's Swing to Safety Tire Promotion. Which they did.

Q. Mr. Mulholland, what is the advantage of a—

Mr. Kelaher: (Interposing.) I don't think he has finished his answer.

The Witness: Well, the advantage of this was that we got a big show with a few tires. The dealer could leave the fixture out at night, but he could even use old tires if he didn't have enough new tires. He could make a big atmosphere and an unusual atmosphere with a minimum amount of merchandise.

By Mr. Ballard:

Q. Has this promotion proved successful, sir?

A. Very definitely. Dr. Hirschberger, who con-
3791 trols the product budget, told me he was more happy with the money he spent on this promotion where he could see visible sales results than most any in the company for a year.

We had a gain in the two key months when this was in operation. It was in operation from May 15 through July 4. And in the month of May and June, we had 19 percent tire sale increases across the board in Atlantic. Something happened.

Q. You attributed that to this promotion?

A. I do, and we are going to do it again in '59, bigger and better.

And the dealer didn't spend a nickel on it.

Mr. Ballard: Will you mark this RX-A-41-A through -E for identification?

(Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 41-A through -E for identification.)

By Mr. Ballard:

Q. I show you a group of papers which are marked RX-A-41-A through -E. Mr. Mulholland, without going into great detail, do I understand correctly that this exhibit RX-A-41-A through -E, is the papers in connection with a battery event prepared by Atlantic, or battery events?

A. There is really three pieces here. This is a battery event, your battery checking account that we ran in 1952.

3792 Q. By this, you are speaking of "B"? Is that right? Does that have a "B" on the front of it?

A. Yes, sir.

Q. What is "A"?

A. "A" is a piece we mailed out to all Atlantic dealers in about 1951, before I came into the program, showing the various qualities of batteries of Goodyear versus competition. Produced by Atlantic.

Q. Can you briefly tell us—

Hearing Examiner Kolb (Interposing.): Is that the correct date on that?

Mr. Ballard: He says it is 1951, before he came, and it is a Goodyear item, so it must be after March of '51.

The Witness: It might be early '51.

Mr. Ballard: It says Goodyear.

Hearing Examiner Kolb: It is after the change-over?

Mr. Ballard: Yes.

The Witness: Yes.

By Mr. Ballard:

Q. Let's take "C" next.

A. This is all part, "C" and "D", are parts of a concept we had to develop a battery event by display which had never been done. So we got Firestone and Goodyear to ship our dealers large quantities of their lithographed dry charge battery carton and we developed a stapler

that would put these things together without a battery
3793 in them, and we erected displays, provided window posters, and this gimmick, this battery checking and savings account, and a card to go on the top of the display to help the dealer sell the idea of checking batteries to his customer and having interest in battery service and inspection.

Mr. Kelaher: Was a date fixed on this event?

The Witness: The bigger event—

Mr. Kelaher: (Interposing.) On the event you were speaking of?

The Witness: This one I would say was around 1956.

3794 By Mr. Ballard:

Q. You are speaking now of the displays—

A. Of this special display.

Q. Special display event?

A. We lost this because tire companies got tired of supplying these cartons at 21 cents apiece cost. They do go on, though, with Firestone, they often use this idea.

By Mr. Ballard:

Q. Now, Mr. Mulholland, does Atlantic also promote the sale of the home lawn and garden items that are classified as accessories under the plan?

A. We worked hard at that about three years ago. Mr. Colley again prompted me to explore the opportunity of using other than automotive TBA to help our dealers make profit.

Mr. Ballard: Will you mark this RX A-42?

(The document referred to was marked Respondent's Exhibit Atlantic 42 for identification.)

By Mr. Ballard:

Q. I show you an item marked RX A-42 and ask you if that is the literature you developed with respect to the promotion of these things?

A. Yes, sir.

Q. Although these are housewares and appliances and outdoor living needs, are they covered by the sales commission plan as you understand it?

3795 A. Most of the items that—they are all available to the dealer, we get a commission on most of them. Our aim here was to teach the dealer how to display these materials, give him recommendations from actual tests of what items could be safely tried out, and admonish him in several things he did to be careful of such as closing out at season's end and we didn't say everybody should get in it. We said many Atlantic dealers, well established dealers, could make extra profit and some of the newer ones in beach areas and what not, through this Atlantic approved thing.

Now, this is interesting because most oil companies, and our own years ago—

Q. Mr. Mulholland—

Mr. Kelaher: I don't think he is finished.

Mr. Ballard: I don't think so, but I think that the practices of the other oil companies—

Hearing Examiner Kolb: What has this got to do—I thought we got away from the bug bombs and the brushes and the brooms and the lawn mowers; back at it again?

Mr. Ballard: I don't know whether it is back in it or not, your Honor. I will tell you what this is offered for. It is offered to show the activities that Atlantic engages in in earning its commission. These are commissionable items. They are included in the gross figures that Mr. Kelaher has put into the record. I don't want to make

3796 an exaggerated big thing out of them, but there is a tendency, I think, to imply that Atlantic doesn't do anything to earn this commission and I think Mr. Mulholland is amply demonstrating that they do. We have no breakdown, I think, of the amount of items covered by this.

Mr. Kelaher: May I ask if these are products of which company, Goodyear or Firestone or both?

The Witness: Both.

Mr. Kelaher: This particular exhibit is what?

The Witness: That was company-wide and articles of that nature were available in both programs.

Mr. Kelaher: Both programs.

Hearing Examiner Kolb: You have got skillets here and you have radios and you have got flour bins.

Mr. Ballard: It is doubtless apparent to your Honor that accessories encompasses a wide—

Mr. Mason: That is the way you will find it in the pleadings.

Mr. Ballard: The pleadings covered and the complaint has covered.

Mr. Ballard: Now, will you mark this RX A-43?

(The document referred to was marked Respondent's Exhibit A-43 for identification.)

By Mr. Ballard:

Q. RX A-43 I show you, Mr. Mulholland, and ask 3797 you if you will tell us what that is (handing document to the witness)?

A. Well, out of this experimentation and effort on other items we knew we needed a new piece of driveway display equipment. Surveys showed that the automobile customers don't get out of the car in many cases when he comes in for gasoline service so our management's philosophy was that we must wheel our show out to the customer.

We had eight or ten manufacturers bid and show their ideas of how this could be done after we roughed out a suggestion of what we wanted, and we finalized on this piece of equipment which we call our Atlantic driveway merchandiser. And it gives the dealer a means of displaying a myriad of things, tires. He can use it for all TBA items, motor oil, anti-freeze or anything.

Q. Do you change these suggested displays from time to time?

A. Yes. We have sold 500 of these units to our dealers on a no-profit to Atlantic basis where the dealer pays $5 a month until he has paid the $60, approximately.

Q. I intended to ask you, sir, whether this is a September 1958 suggested display? I asked you do you change the suggested displays from time to time?

A. Yes, we change these regularly and acquire this promotional material from various people, DuPont or AC or others, so that the dealer can follow this display
3798 suggestion on his driveway merchandiser the same way he follows it in his window display.

Mr. Ballard: Will you mark this RX-A-44-A and -B?

(The document referred to was marked Respondent Exhibit A-44 and B for identification.)

By Mr. Ballard:

Q. Now, I show you a document marked RX A-44-A which is a single sheet and RX A-44-B which is a series of several sheets clipped together. This is headed "Dealer Sales Calendar." Would you tell us what this dealer sales calendar is and how it is used?

A. Well, after these years of developing selling and promotional programs and trying in with tire company like programs or similar programs, our enlightened management agreed in 1958 to a complete integration of TBA selling and promotional activity right in with our major petroleum product, and I was given the job of putting this together in some form that would have real meaning. So we devised a Masonite wall calendar which is about 3x5, a beautiful thing, that we distributed to every district manager, regional manager, and headquarters product manager in the company. It hangs on his wall, and each month after it has been thoroughly pre-planned, we send him the slides that activate the calendar for the month,

giving the people in the district and the region 45 days—

3799 Q. Just a minute, sir, the slide that you send him is in the form of RX A-44-A, right?

A. Yes.

Q. This is the one for August of 1958? This particular slide?

A. Yes, this is the salesman piece, but the slides had the same information.

Q. Yes.

A. There are two parts to this calendar. On the left is the selling program to the dealer, you can't sell from an empty wagon, we want to sell our sponsored TBA and petroleum products to our dealers. On the right is the promotional activity by the dealer timed to move this material to the consumer. The upper section tells what's to be done both selling and promotion nationally that month, and the bottom section describes the coming programs for sale to dealers and promotion by dealers the next month.

Mr. Kelaher: Sort of like Playhouse 90?

The Witness: Yes, sir.

The responsibilities are spelled out, boost of the double team is pointed out on the selling side. The responsibility flows all through the company. On TBA my first job is when this is agreed to by management for the year I work with the tire company people and the other suppliers to send to the regions the selling materials in the

3800 form of mechanical aids for their selling programs, forty days in advance, and that the flow of this promotional material be in the regions at the right time.

So everybody has the stuff and the know-how and can go to district meetings.

Now, this little chart is the salesman's. All our work in Atlantic is aimed at this salesman doing this job and

here we have him at a district meeting with a planned, organized program from the top down, and he gets it in the form of complete information and energization at the district meeting as he gets this calendar. And he puts this little binder calendar in his book. The book he keeps his record of all sales to dealers in, so that he has a record of what he is supposed to be doing, and this is done.

Do you know, this is gospel. They do—we do business as usual, but these things are done well throughout the company.

By Mr. Ballard:

Q. Mr. Mulholland, turning for a moment to the longer one here, RX A-44-B, do I gather that this is in typed form the calendar inserts month by month for the entire year of 1958, is that right?

A. That is correct.

Q. And it shows for each activity for that month and the pre-planning for the next month?

3801 A. Yes, sir, and these were originated at the beginning of 1958. In other words, the whole year's tentative planning is laid out and then we go to work on it.

We now have our 1959 calendar laid out.

Mr. Ballard: Cross-examine, Mr. Kelaher.

Hearing Examiner Kolb: Do you want to offer these in evidence before the cross-examination?

Mr. Ballard: All right, your Honor, I offer in evidence the exhibits RX-A-32 through 44-B.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-32 through A-44-A and B.

(The documents heretofore marked for identification RESPONDENT'S EXHIBITS A-32, 33, 34, 35, 36, 37-A & B, 38, 39, 40, 41-A through E, 42, 43, and 44-A and B, were received in evidence.)

Hearing Examiner Kolb: We will now take a recess.

(A short recess was taken.)

3802 Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Kelaher

Q. Mr Mulholland, in August '52 you were the TBA Section Manager or Section Supervisor, is that correct?

A. Yes, sir.

Q. And as such were you in charge of Atlantic's TBA program—Let me ask you this. Did your duties involve Atlantic's entire TBA program in all six marketing regions at that time?

A. From a staff standpoint, yes, sir.

Q. About that time you have testified that you or Atlantic became aware of an FTC investigation concerning the sales commission plan and that meetings were held with Atlantic dealers. Do you recall that testimony?

A. Yes, sir.

Q. Did you say anything to—you personally—Atlantic dealers attending the so-called Football meetings concerning the FTC investigation other than what you have testified to?

A. Nothing that I can recall; no, sir.

Q. Did you ask Atlantic dealers to report to Atlantic any contact made by FTC investigators?

A. No, sir.

Q. Did Atlantic at that time adopt a plan or policy of following up FTC investigators to determine what

3803 the Atlantic dealers had told the FTC investigators?

A. Not through any organization of mine or contact of mine.

Q. Were you aware of such a follow-up policy?

A. I was aware that some of the legal people talked

with dealers who reported they had been interviewed by FTC examiners in the field.

Q. Did you, were you ever shown any of the reports that came in?

A. No, sir; I had no part of that.

Q. During the course of your direct examination you referred to a survey of supply points made during your period as TBA Section manager. When was that survey made, approximately?

A. I think early 1963.

Q. Do you have a copy of the survey available?

A. I believe—I don't have one, no, sir.

Mr. Kelaher: I would like to ask counsel to furnish the survey.

Mr. Ballard: We have a copy of it. It's up in our office, Mr. Kelaher.

Mr. Kelaher: Do you have an extra copy?

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Could we have a copy tomorrow?

3804 Mr. Ballard: We'll bring it down.

By Mr. Kelaher:

Q. You also testified concerning prices, the general subject of prices on Goodyear and Firestone tires. I am somewhat unclear as to the testimony at that point and I would like to ask you, at what discount off list price do Atlantic dealers generally buy Firestone and Goodyear tires?

A. Offlist. In answering your question we have to stick to let's say the original equipment level of tire. On that tire they buy at—that is the average dealer in any metropolitan market—they buy at the 11½ percent off list plus 22½ percent on the average.

Q. You referred in your direct testimony to the figure of 22½ percent. What was your reference to that figure, do you know?

A. As a discount off code, and code is 11½ percent off list on the upper levels of tires. It drops down in percentage as you get into the lower levels of tires.

Q. And is that the dealer classification which necessitates the purchase of the $5,000 to $10,000 a year?

A. Yes, sir. The 22½ percent off code, if the dealer were buying direct from the tire company, necessitates an annual purchase of from $5,000 to $10,000 in tires.

Q. Well, do you mean that this discount off of code, the 22½ percent off code, is given to Atlantic dealers on
3805 their purchases of Goodyear or Firestone tires from supply points?

A. From most supply points.

Q. From most supply points?

A. In metropolitan areas. And even more in some cases.

Q. Yes.

Is that given regardless of whether they purchase $5,000 worth of tires annually?

A. The usual situation is the supply point treats all dealers in that bracket, associate dealers. He may have a very large dealer in his group who he may give 25 percent off or even 27½ who buy in pressure on him as supply point. But our average Atlantic dealer in these metropolitan areas from a good supply point tries to keep competitive, lumps the thing and gives them about—gives them this 22½ off code.

Q. So there would be, as I understand your answer, Atlantic dealers purchasing less than $5,000 a year who would get that discount?

A. Many, many of them. The smaller dealers don't do that tire volume right off the bat.

Q. In those instances where a supply point is only giving 20 percent, for example, do you go to Goodyear or Firestone and attempt to get the discount increased?

Mr. Mason: May I have the question read?

(The reporter read the pending question.)

3806 The Witness: If it is a company-owned store we go to the tire company people who control the store and ask for this more competitive price. If it is an independent tire company supply point it's just a matter of counseling and suggestion, he can do as he pleases. But, we urge and push the idea of all our dealers to join this 22½ percent situation as an average situation. I want to qualify that. If a dealer is way up in the country and he has to run 30 miles for delivery, many supply points are certainly entitled to a longer profit on the wholesale end.

Q. Well, are your urgings or counselings or pleadings sometimes successful in getting a larger discount for your dealers?

A. Oh, very often.

Q. Now, just to ask you a general question with respect to RXA-33 through 44-B—

Mr. Ballard: Does that include all the exhibits he put in, that he identified?

Mr. Kelaher: Yes, I am including all the exhibits that went in during your testimony. My question only relates to this.

By Mr. Kelaher:

Q. Many of these are dealing with Goodyear TBA. Now, I would like to know if you have counterparts for Firestone TBA where applicable?

3807 A. Yes, sir.

Q. One exhibit I would like to ask you about, RXA-41-C which is a facsimile of a check pay to the order of Mr. Atlantic Customer, $7, dealing with purchases of

Goodyear batteries or $4 on any Goodyear Delux all-weather battery (handing documents to the witness). Let me ask you this, was that a discount given to a customer by Atlantic or Goodyear? What was the purpose of that?

A. This was merely a suggested or offered piece as part of a battery event. If a dealer wanted to allow the customer $7 for his old battery as he purchased Goodyear's top level battery or $4 if the customer only wished the original equipment level, we had this for his use to eulogize the thing with the customer, but there was no requirement that the dealer use it at all. A lot of dealers liked it, a lot didn't. It was at a time when old batteries were a very high exchange battery.

Q. This was not subsidized by Atlantic or Goodyear?

A. No, sir; it was purely a dealer—

Q. Arrangement?

A. Promotional piece if he wished to use it. Some did, some didn't.

Q. Now, with respect to your tire events. Do you or does Goodyear or Firestone consign tires to Atlantic dealers in connection with these tire events you testified about?

3808 A. Yes, sir; in many, many cases.

Q. And in other instances do the Atlantic dealers purchase the Goodyear or Firestone tires for the events, for the tire events?

A. Many dealers who have plenty of working capital don't want consignment, they want to use their own inventory or want to buy specially for the sale.

Q. As I understand your testimony there is a cost to the dealer in connection with these tire events, either initially when he purchases the tires or ultimate when the consigned tires are sold. Is that correct?

A. In the case of the consignment or open billing the

dealer can return the tires if he doesn't sell them during the course of the event. In case the dealer uses his own tires it's up to him what he wants to buy to support his promotional effort.

Q. During the course of these tire events do you call on your Atlantic dealers to increase their purchases or consignments of Goodyear or Firestone tires in keeping with the particular event that is being sponsored by Atlantic?

A. Yes, these are timed to fit in with the big tire company holiday sales so the dealer wants tire stock and he either has it with his own capital investment or we try to help him through inducing tire company supply points or independent supply points to give this open billing 3809 credit for the period of the event. But the whole purpose of the event is to sell tires to the retail customer.

Q. Now, with respect to these many promotions that you have been referring to during your testimony, do Atlantic salesmen go in to Atlantic stations and assist in the preparation of the displays for particular events?

A. Yes, they do. That is a prime part of the event to take part in it, our service salesmen also take part in the event.

Q. And you, yourself, have taken part in such events?

A. I have been out there with a hammer and saw putting up displays to test events in service stations.

Q. And you have also put Goodyear or Firestone tires in front of Atlantic stations, is that right, in connection with events?

A. In assisting in events, yes, in a few instances on test experimental basis I have personally handled tires and displayed tires in stations.

Q. And your salesmen do that as a regular thing?

A. Yes, sir.

Mr. Kelaher: May I have a minute, your Honor, I don't think I have anything else.

I have no further questions.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Thank you, Mr. Mulholland.

3810 (Witness excused.)

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Your Honor, Mr. Kelaher and I have provided three stipulations. With your Honor's permission I will ask the reporter to write into the record these three stipulations.

The first is a stipulation regarding the status of Warren County and Hunterdone County in the State of New Jersey.

(The stipulation is as follows:

It is stipulated between counsel for the Federal Trade Commission and counsel for the Respondent The Atlantic Refining Company that Warren County and Hunterdone County in the State of New Jersey were transferred from the Respondent's Eastern Pennsylvania Region to the Respondent's Philadelphia-New Jersey Region on January 1, 1955, and that the 15 day warning letter referred to in the testimony of Wilbur D. Gaestel at page 3140 of the record is of record in these proceedings as Exhibit 256-A through C.

Mr. Ballard: The next is a stipulation regarding the testimony of one Herman Gay, an Atlantic dealer, who could not be present at the hearings and I will ask the

3811 reporter if she will write into the record at this point beginning where I have made this mark over to the next mark.

(The stipulation is as follows:

Counsel for respondent, The Atlantic Refining Company

(Atlantic), and counsel supporting the complaint agree and stipulate that if Herman R. Gay, 26 Hudson Street, Johnson City, New York, were called as a witness by counsel for respondent Atlantic in this proceeding, such witness would testify as follows on (1) Direct examination and (2) Cross-examination, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witness had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

I. *Direct Examination.*

1. I operate the Atlantic service station at 401 Main Street in Johnson City under a three-year lease with The Atlantic Refining Company. I have been the lessee of this station since 1937 and understand that I am one of the oldest Atlantic dealers in New York State. From 1930 to 1937, before becoming an Atlantic lessee, I worked in Atlantic service stations as a company employee.

2. Before 1951, when Atlantic sold Lee tires, Exide batteries and various accessories, I bought most of
3812 my TBA from Atlantic. During that time, however, I also purchased TBA from other sources, if I could get a better price. Sometimes I bought directly from the Lee factory.

3. When Atlantic stopped selling Lee tires, Exide batteries and accessories and started to sell Goodyear TBA, I began to buy some Goodyear TBA. I continued to buy substantial quantities of non-Goodyear TBA, however, and now buy Exide batteries exclusively and practically all of my accessories from various supply houses other than the Goodyear store. I buy my batteries and accessories mainly from Auto Supply Distributing Company, United Auto Parts Inc., and Whipple's Automotive Equipment Inc.

4. In all my years as an Atlantic dealer I have never been forced to buy any particular kind of TBA and have never felt that I was under any pressure to buy the kind of TBA sold or sponsored by Atlantic. I buy whatever TBA my customers want and will purchase and carry any TBA products I believe I can most easily and profitably resell. I buy Goodyear tires and Exide batteries because I want to and because of their quality, price and public acceptance and because of the service I get from their suppliers. I have never hesitated to advertise or display any of the TBA I buy even though I didn't buy it from either Atlantic or Goodyear. Similarly, I have never hidden any TBA I have purchased.

5. Although I have been an Atlantic lessee since
3813 1937, I have never heard any Atlantic dealer say he was afraid that his lease would be cancelled if he didn't buy the TBA then sold by Atlantic.

6. I do about 10 percent to 12 percent of my business on Atlantic credit cards and have often sold Exide batteries and other non-Goodyear TBA items this way. It never occurred to me that it might be improper to do this.

7. A few companies other than Goodyear solicit my tire business, but I don't buy from them because I can't tell what I am getting. I bought some recaps once from a salesman who solicited me and they were so bad I had to give them away.

8. I still have Lee advertising signs on the back of the doors of my tire racks. These signs are visible and prominent when the doors are open. Atlantic has never said anything at all to me about these signs.

9. My Atlantic salesman and I are good friends. He helps me with any problems that I may have with the operation of my station which sometimes includes TBA. He also encourages me to run and assists me in running TBA events and displays.

10. I am familiar with the terms of my lease and know it does not require me to buy any Goodyear TBA.

11. I know I could leave my station at any time and get another station with some other oil company. 3814 Having been with Atlantic for more than 28 years, however, I am obviously satisfied with it and want to stay with it.

12. After as many years of successful operations and friendly relations with The Atlantic Refining Company as I have had, I imagine I am in good standing with the company and have nothing to fear with respect to the cancellation or non-renewal of my lease. I believe lease renewals are based primarily on adequate gasoline gallonage, cleanliness, service to customers and all around efficient operation. I have never thought the brand of TBA carried had anything to do with the renewal of my lease or with the cancellation or non-renewal of any other dealer's lease.

13. I consider myself and have always considered myself my own boss and an independent businessman who runs his own station. I know that whatever I earn from my station is based on my efforts and skill as an operator.

14. I remember talking to an agent of the FTC back in 1953. I don't now remember what I said to him, but I do recall that I told him some of the things stated above.

II. *Cross-Examination.*

1. I operated under a one-year lease (CX 88 E1-2) from 1944 to 1954. On June 1, 1954 I entered into a three-year lease, the form of which is identified in the record as CX 88 E1-2. On June 1, 1957 I entered a further three-year lease, the form of which is identified in the record as CX 3815 88 A-1-2.

2. Prior to 1944, my rental was computed on a cents per gallon basis. Between 1944 and 1957, my rental

was computed on a flat rate per month plus 6 percent of gross receipts from all sources, except gasoline, in the manner set forth in CX 88 E-1-2 referred to above. Since June of 1957, my rental has been computed as a percentage of gross receipts from all sources, in the manner set forth in CX 88 A-1-2 referred to above.

3. Each year I confer with the Sales Supervisor and my salesman at the Atlantic District Office, Binghamton, New York, at their request. We review the past year's sales of gasoline, oil, TBA, etc. The Sales Supervisor and my salesman stress among other things the importance of a balanced sales program for gasoline, oil and TBA, and review statistics concerning this matter. Prior to June of 1954, this conference was held each year about two months prior to the time my lease expired. Since I have been on a three-year lease this conference has been held each year about two months prior to the anniversary date of my lease.

4. For many years I purchased Lee tires from Atlantic and carried them in my station primarily. On or about March 1, 1951, Atlantic discontinued the sale of Lee tires. At that time I changed from Lee tires to Goodyear tires and tubes and have been carrying Goodyear tires and
3816 tubes primarily since that time. I purchase Goodyear tires and tubes from the Goodyear service store in Binghamton, New York, which is my designated "supply point."

5. My estimated annual volume of tire and battery sales in 1953 was $4,000 and $1,000 respectively. Currently, my estimated annual volume of tire and battery sales if $4,500 and $900 respectively.

6. My station is identified with Goodyear window valances and outdoor sign, and has been so identified since about March 1951. Goodyear personnel put up such signs.

III. *Redirect Examination.*

1. In connection with the annual reviews, the Atlantic personnel have never objected to my handling Exide batteries and non sponsored accessories and have never tried to make me buy more Goodyear TBA.

2. The Goodyear signs were put up in my station with my consent and approval.

Mr. Ballard: And the third is a statement of Crawford Bryant, an Atlantic service station operator mentioned in the testimony, and I'll ask her to copy into the record beginning at the mark and ending at this mark and disregarding the material that I have drawn a line through.

(The document is as follows:)

My name is Crawford Bryant. During the period from November 1, 1952 to September 30, 1958 I operated
3817 a service station at McDade Boulevard and Fairview Street, Woodlyn, Pennsylvania, under lease from The Atlantic Refining Company. I am presently operating a service station at Prospect Road and First Terrace, Fort Lauderdale, Florida under lease from The Atlantic Refining Company.

While I was operating the McDade Boulevard Atlantic station, I bought almost all my tires, batteries and accessories from Ed Parris, my Goodyear supply point, because I thought his prices were fair and I liked his credit terms. Credit was important to me because I was often short of cash at the end of a month as a result of gasoline price wars in the neighborhood.

I am informed that on January 26, 1957, William Lee Franks, a salesman for Auto Parts and Radiator Company, testified in the Federal Trade Commission proceeding involving Atlantic and Goodyear that in July 1956 I refused to buy batteries from him and stated, "I have to buy from Parris or I will be put out of my station." I remember Mr.

Franks and remember buying from him now and then. I don't remember making the exact remarks he mentioned; however, it is quite possible I gave him the impression I was obligated to buy from Parris. I was plagued by salesmen to the point of interfering with the operation of my station, and I used to use such statements as a brush-off.

As a matter of fact, I felt free to buy any TBA I 3818 wanted.

Mr. Ballard: I have nothing further.

Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: If your Honor please, Mr. Kelaher and I have agreed that although I'm planning to close my case tomorrow I may have leave to introduce into the record by stipulation within a reasonable time thereafter Goodyear price information for the year 1952.

That is all I have, sir, for today.

Hearing Examiner Kolb: You have nothing tomorrow morning, you want to adjourn until 2:00 o'clock tomorrow afternoon.

Mr. Ballard: If it pleases your Honor, yes sir.

Hearing Examiner Kolb: We will adjourn until 2:00 o'colck tomorrow afternoon.

3820 Hearing Examiner Kolb: The hearing will be in order.

DWIGHT T. COLLEY was called as a witness on behalf of The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Would you give the reporter your name and address?

A. Dwight T. Colley. My home address is 225 South Van Pelt Street, Philadelphia.

Q. And, now, sir, could you give us a resume of your history with Atlantic Refining Company?

A. Yes, sir. I came home from the First War in 1919 and went to work in the spring of 1919 as a salesman and the New England territory was opened the following winter. I was sent up there as a salesman in the Providence territory. I have been from then on district manager in Rhode Island, regional manager in New England, and in about 1948 was transferred down to Philadelphia as assistant sales manager of the company.

A couple years later I became the sales manager, and shortly thereafter, the vice-president of marketing 3821 for both domestic and foreign market.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. And I think it was in 1949 that you became general manager of domestic sales?

A. Like I said, I became a sales manager.

Q. Then, I believe it was in 1951 that you assumed your present position?

A. That is right, sir.

Q. Now, sir, turning to the history of The Atlantic Re-

fining Company, it was organized, as I understand it, in 1870; is that correct?

A. That is right.

Q. And what happened briefly thereafter?

A. Well, the organization was put together in 1870, and was picked up by the Standard Oil Company in 1911 as a—

Q. (Interposing.) Now, sir, I don't want to interrupt you. I suggest it was 1874 that it was picked up by Standard.

A. That's the time we were disorganized, 1911. In 1874 we were picked up by the Standard Oil Company and became a refining branch and handled the Pennsylvania business for a number of years.

3822 Q. Was that both refining and marketing in Pennsylvania?

A. Well, we started in as a refiner with some business abroad. As the years went on, we became the sole representative, both marketing and refining, for the parent company.

Q. And that was in Pennsylvania?

A. In Pennsylvania. And in Delaware.

Q. Then, I think you told us that the Standard group was dissolved in 1911?

A. I am ahead of my story. That is right. In 1911, at the time of the dissolution, we were cut free as a separate company and went about establishing our production and marketing and balance.

Q. Now, at that time, I mean by that 1911, was the domestic marketing organization of Atlantic confined to Pennsylvania and Delaware

A. Yes, at that time in 1911 it was confined to Pennsylvania and Delaware, with a little marketing abroad.

Q. And then, the growth to its present territory has been gradual thereafter, I assume?

A. That is right. You see, we were primarily a refiner

with just business within these two states. We had to buy all of our crude oil, and we started to grow in all directions, getting crude and spreading our marketing as our business increased.

Q. About when did Atlantic open its own first
3823 service station?

A. 1915 Atlantic opened what we believe was the first full-fledge drive-in service station in the Pittsburgh area. Before then, of course, the business had been through garages and grocery stores. This was a business devoted entirely to marketing gasoline in a service station designed for that purpose.

Q. Now, moving forward to 1919 and the nineteen twenties, which would be the date of your joining the company, by that time did Atlantic have substantial service station coverage?

A. Well, in 1919, or about that time, we had been building service stations throughout Pennsylvania and Delaware, and, of course, taking on additional garages and business of that kind.

As I said, I went to Rhode Island in that fall, and at that time, in 1919 and '20, we began to build service stations and take on business in the New England area and at the same time in the Southern area.

Mr. Kelaher: Mr. Examiner, I don't know how far we are going to pursue this history of Atlantic. I don't see the relevancy of it to this case. That is going back to the early period of Atlantic.

Mr. Ballard: I think the relevancy will become evident. We are entitled to show the history and what part the service stations played in our business.

3824 Hearing Examiner Kolb: All right; proceed.

By Mr. Ballard:

Q. Now, sir, during the nineteen-twenties, who operated these service stations that Atlantic was building?

A. Well, the service stations that we built, we operated on payroll, operated ourselves entirely for several years.

Q. Did you then change to the lessee method of operation?

A. At the beginning of the thirties, of course, the idea of service stations had caught on throughout the trade; that is, competitors were building them. We began to find we get more interest, more enthusiasm from dealer operation than from payroll.

Q. By dealer operations you mean lessee operations?

A. Yes, sir.

We found if we leased these stations to another individual—in many cases they were payroll operators of these stations—they took these stations and when they had a stake in it, the business improved rapidly. So, gradually over a period of years, they were all turned from company operation to dealer operation.

Q. And does the company today believe that less operation—and I take it when you say dealer operation, you are referring to lessee operation; we have been speaking here of lessee operations—is it the company's opinion that that is a better form of operation?

3825 A. I believe and the company believes and apparently the industry believes that the most satisfactory operation of a service station is by lessee dealer.

Q. Do you know, sir, what percent of your domestic gasoline sales are accounted for by lessee dealers today?

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The Witness: About 40 percent.

By Mr. Ballard:

Q. Mr. Colley, at various times in the course of these proceedings, the following companies have been named as

competing with Atlantic—I will list them off: Esso, Gulf, Amoco, Texas, Tidewater Oil, Sinclair, Cities Service, Mobile, Sun, Shell, Pure, Calso, and perhaps some others.

I ask if that list includes Atlantic's principal competitors?

A. That includes Atlantic's principal branded competitors.

Q. We have had reference to lesser known brands and unbranded companies. Do they also compete in Atlantic's territory?

A. Everybody competes in Atlantic's territory, sir.

Q. And do I understand from your previous testimony that the majority of these companies that I have named operate with lessee dealers?

3826 A. Practically all the branded companies operate principally with lessee dealers.

Q. Is there a competition to attract and hold the qualified lessee?

A. I would say that competition is the most serious competition in the industry, to hold good dealers.

Q. Can a qualified dealer get a lease from any of these companies?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

The Witness: Yes, we have lost a lot of our qualified dealers to other companies.

By Mr. Ballard:

Q. Now, in seeking to attract and hold dealers in competition with these other companies, is Atlantic as well known as some of these that I have mentioned to you?

A. Well, you would have to qualify that. In much of our area, of course, they are not as well-known. We refer to it as public acceptance. Here in Pennsylvania, we have good public acceptance. As we go away to New England

and to the South, many of the companies are much better known than Atlantic.

Q. And what steps does Atlantic take to offset its relative lack of public acceptance in areas such as the South?

A. Well, we have constantly produced a quality
3827 product. As a matter of fact, at many times ahead of the rest. But we must depend principally on the way the stations are run, on the service in those stations. We have found from lots of research that the public wants to buy a good brand at a convenient location from a good dealer. We measure the dealers as 70 percent of the influence. Therefore, we put our effort, as one of the smaller companies, on getting good trained dealers in these stations.

Q. And your dealer program, of course, includes the training program that has been described here and the building of attractive stations which has also been described. We have heard described your long-term dealer lease policy. Would you state for us the purpose of Atlantic in adopting that policy?

A. Yes, sir. Of course, the dealer that takes the service station today has a choice of service stations in a given town. As our representatives talk to him, he wants to know why he should take our station against a competitor's. Well, if we have a good location and he is satisfied with our advertising program, he wants to be sure he will not have that station on a temporary basis.

We were the first company to give long leases. We felt it was a strong point in selling the station; it gave assurance of continuity. If a man made a success of
3828 the station, he got a long lease and could feel he could enjoy that success. This is one of the things I am very sincere about and one of the things we led in. Many of the companies have followed. I am quite proud of it.

Q. We have also heard described, and there is intro-

duced in the record, your percentage lease, percentage rental program. Is that also part of the program of making the franchise attractive to dealers?

A. Yes, sir; it's hard to make rent attractive to anybody that has to pay it, sir. We have tried all methods. We finally adopted the percentage rental based on the business the dealer does, because we think it is the fairest way of collecting rent. We feel the real measure of a place is what it does and, therefore, percentage lease is again something that I think few have; few of our competitors have that. I think that is a good form of lease.

Q. Now, Mr. Colley, I would like to turn to the development of Atlantic's TBA program and go back again to the year 1919 and ask if any of the things we now think of as constituting TBA were being sold in Atlantic stations at that time?

A. No, sir. When we first opened the stations, and I had the responsibility of opening them in Providence, we built them that winter and opened them, we sold almost nothing in those stations that you would call TBA today.

As a matter of fact, the expression "TBA" I didn't 3829 hear until a good many years later.

Q. As a matter of interest, when do you recall the expression coming into the trade?

A. Well, it was pretty close to the Second War before it was glibly said around by our people.

Q. You did, however, before the Second War begin to sell, let us say, tires, batteries and some accessories at your stations, did you not?

A. This was trial and error as far as I am concerned, We opened these stations. Previously, gasoline had been sold at garages. A man went to the garage to get his car repaired, and usually went to a tire store in town for his tires, somewhere else for something else.

Well, we started out with gasoline alone and gave ex-

cellent service. But we soon found that the motorist wanted to get other things in connection with that. We had air compressors and an elaborate set-up for people, and so, trying piece at a time, tires and various things to sell, we began to buy and put those in the company-operated stations to sell. That was the beginning of TBA, I suppose.

Q. Now, then, when Atlantic began to lease those stations to the dealers instead of operating them, themselves, did they continue to buy these items that you have been describing and resell them?

A. We did it rather badly. You see, many of these 3830 original dealers were formerly company employees, and they wanted the station to run, and we leased it to them.

They wanted to get tires and batteries and goggles and dusters—those are the kinds of things that were sold originally. They didn't know where to turn for them. So, we set up mostly under local management, that is, we managers in the field found places to buy them and resell them to our dealers. That was the beginning.

I didn't know anything about buying them; so, we learned how to do it as we went along.

Q. At that time, and I am speaking now of the early thirties—was that the time you started in it?

A. Right.

The goggles and dusters I will tell you sold surprisingly well. Off the main roads, the roads got dusty in those days, sir.

Q. Nevertheless, referring to the early 1930's, at that time were the tire companies selling to oil company outlets and particularly to Atlantic outlets?

A. No, sir. I can remember very well those early days. The tire companies would take garage dealers usually, take them into their home offices and teach them how to repair tires. The first effort was to how to repair tires, and they

would set them up in tire stores. And you, the motorist, went to those stores to buy your tires and get repairs.
3831 In the service station there was no organization set up by the tire companies in those days to either sell or supply the service station.

Q. Now, there were, I assume, in existence suppliers of parts and equipment in those days?

A. Yes, there were part suppliers.

Q. Again, in the early thirties, did these parts distributors carry tires and batteries as a general rule?

A. No, you would have to go—you went to a tire place for your tires, and a parts place for your parts, and to a garage to get them assembled for your car.

Q. And it was against that background that Atlantic began to buy and resell to its dealers?

A. You see, all of us had pieces, sir, and the problem was who was going to put the pieces together into a central service.

Q. Our record here shows, and I think I am correct in this, that Atlantic's first contract with Lee was at some time in 1932; that its first contract with Exide—

A. (Interposing.) '37, wasn't it?

Q. Yes, sir. I believe that covered the Philadelphia region only, and the record shows that the Exide contract was expanded to the entire marketing area in 1945. Does that meet with your recollection?

A. That is what the records read as I read them
3832 through. From my own experience, all these things get to be the Lee deal and the Exide deal was excellent here in Philadelphia.

Mr. Kelaher: Objection, your Honor. I think he should be just responsive.

By Mr. Ballard:

Q. Would you describe for us the Lee and Exide deal in Philadelphia and elsewhere, sir?

Mr. Kelaher: Your Honor, I think the contracts speak for themselves.

By Mr. Ballard:

Q. By my previous question I had not meant for you to describe the terms of the contract, but how the deal worked out.

A. Well, the deal worked out—I was about to say as you got away from the home office—. Well, I came to the Philadelphia region prejudiced against these deals because in New England and New York state, I found that the supply of Lee tires was very scanty as you got out of Pennsylvania and the acceptance of Lee was very much less than it was here. An excellent tire but nobody knew about it as you got away from home.

Exide had an excellent name everywhere. But for us to buy the batteries as the Atlantic Refining Company, try to store them in our warehouses, and then resell them to the dealer, didn't work out well at all because we didn't have the facilities; we didn't have the charging battery, tables; we were just unable to give good delivery and
3833 good service on it as we got away from home. That's the way it worked out.

Q. What about your accessories in this program? Will you describe how that part of the program worked?

A. Again, Lee didn't have accessories at that time. This whole thing came about trying to get customers attracted in the station and the dealer to make money; therefore, we tried to find out what the customer wanted in accessories.

The first big accessory, as some of you will remember—

Mr. Kelaher: I am going to ask that the witness confine himself to the question being put.

Mr. Ballard: The question is a perfectly simple question and the answer is perfectly responsive.

Mr. Kelaher: It pertains to matters that are not being asked. I don't care to interrupt this gentleman. But I don't think the answers are responsive.

Mr. Ballard: I want a ruling on this matter.

Hearing Examiner Kolb: Will you read the question?

(The reporter read the question commencing at line 3 of this page.)

Hearing Examiner Kolb: All right; proceed.

By Mr. Ballard:

Q. If you had finished your answer, which I do not think you had, would you describe for us the kind of
3834 problems involved in the selling of accessories through service stations?

A. Yes, sir. I hadn't finished my answer. But the problem was that we would go to supply houses and buy light bulbs. Those were the days that light bulbs failed all the time in automobiles. They were all sizes. We would try to buy a range of sizes of light bulbs and try to have them in a central spot and to see that the dealers had a range of light bulbs in their hands when they needed them.

That was the thing I wanted to bring out. It was a very complicated problem. Spark plugs, the same way. We started with things we felt were in demand and we could handle. We found that spark plugs changed so rapidly that a dealer in Worcester would want spark plugs of a different size than he had.

The reason I am glad to testify to this is we were doing a very unsatisfactory job of supplying dealers under this method.

Q. Now, as a matter of fact, sir, taking the New England region—your own region—how many warehouses did Atlantic have for the distribution of accessories?

A. We started in—well, we had six main warehouses in New England roughly when we started in in which we handled our gasoline and lubricating oil. Well, of course,

they were not at all fitted for handling accessories. We finally got down to about three, and finally to one warehouse from which we attempted to ship by mail
3835 accessories throughout the southern New England area.

Q. And do I understand that the other five warehouses then did handle tires and batteries?

A. They handled tires and batteries, but they gave up the accessory end of it.

Q. And did you in addition have a few supplying dealers who handled these items for your other dealers?

A. That's the next stage. We found that was the beginning, I suppose, of local supply points. We had in some states, some areas, some dealers who would stock enough of these accessories so that they could supply dealers locally. Very spotily in New England.

Mr. Kelaher: I wonder if we could have some dates with respect to this type of testimony.

Hearing Examiner Kolb: I don't think you need dates, Mr. Kelaher. It is general information. I don't think you need to pinpoint it down any further.

Mr. Ballard: Mr. Kelaher, you have full rights of cross-examination if you feel dates are important.

By Mr. Ballard:

Q. To sum it up, sir, I gather you were not satisfied with Atlantic's TBA program?

A. There wasn't anybody satisfied, sir. Neither the dealers, the company, or me.

Q. Now, again, to avoid a repetition of what's in
3836 the record, it is shown in the record that in 1948 Atlantic directed an inquiry to certain tire manufacturers with regard to a possible change in the program. I believe it was about that time that you came to Philadelphia. Is that right, sir?

A. Yes, sir. I came down between '47 and '48.

Q. Were you in charge, in overall change of the investigation of other programs and the decision as to which program should be made?

A. Yes, I came down as assistant manager of domestic marketing with full responsibility for the regional field market, and immediately set about improving services, because I wanted to eliminate the problems in the field for other people that I had as a regional manager. So I made it my business.

Q. You will recall again the record shows that in 1950 the Firestone program was tested in the Wilmington and Erie districts, and the Goodyear program in the Newark district. Could I ask you what Atlantic's attitude was toward those tests?

A. Well, I was going to have the responsibility of improving a program that was unsatisfactory. I wanted to make up my mind before I made the move and committed a lot of sales people and affected the welfare of the dealers that it was thoroughly researched; so, following the request to the various big, large tire companies for information, we said the best way to do this is to field test it.

3837 It looks as though it would be better, but let's take two companies and test their program, one in one field and one in the other. And I felt that a good many people though, our own sales people thought that shifting from this long experience of working with Lee, for example, and Exide, might be damaging and the dealers wouldn't like it as they were used to this brand.

It didn't seem as much of a chance to me because I knew they weren't happy. We put on the actual test and in certain districts put the program on for tests, and, of course, the results were overwhelmingly in favor, the dealers were very much in favor of the way it worked out.

Q. Now, sir, it shows in the record, and you have men-

tioned, that Atlantic has these programs with two companies, Goodyear and Firestone. I ask you what is Atlantic's reason for having a program with the two different companies?

A. Yes, when I started out I suppose that I figured we would have one company and see which did the best. But I found many advantages in having two companies. For example, we had two very strong companies with excellent reputations, and they were competing for our acceptance. I told them I was interested in a program for our dealers that would help our dealers make more money and sell more product, and I was anxious to see how well—what their coverage was, what were their supply points.

As it grew and we spread the program, we found
3838 that in some territories, for example, Firestone had greater acceptance; in other territories, Goodyear did. In the process of the trials we came to the conclusion we would be very much better off with two companies and segregated so we could determine which one was doing the best job.

Q. There has been considerable testimony in the record about a number of TBA suppliers other than Goodyear and Firestone who are calling on Atlantic dealers in various parts of the country. I would like to ask, in view of that, those sources of supply, why is it necessary in your view for Atlantic to offer a TBA program, a sponsored TBA program for its dealers?

A. It was absolutely necessary. Everybody, of course, has their own axe to grind. We have found that the dealer to be successful must do what we call a balanced sales job. If he gets to doing an overwhelming repair business, he hurts the rest of his business and drives nice trade away. We find if he becomes obsessed with tires, he neglects something else. So, our job is to see that he doesn't

over-buy and he buys the kinds of things he can sell readily.

We have picked up a lot of know-how since 1919 when I began fumbling with it. We now have some experts, and I am sure that our ability to guide it and coach it is absolutely necessary.

Q. Now, sir, under Atlantic's—

Mr. Kelaher: (Interposing.) That last part of that 3839 last answer, could I have that, sir?

(The reporter read the record as follows: "We now have some experts, and I am sure that our ability to guide it and coach it is absolutely necessary.")

By Mr. Ballard:

Q. Under Atlantic's TBA policy—and I may say the March 1, 1951 letter outlining that policy is in the record—under that policy if a particular dealer can make a deal that is better for him under his particular circumstances, what is Atlantic's policy in that case?

A. By all means to urge him to do it, to make it.

Q. And by that, even if it involves non-sponsored TBA?

A. Oh, yes. That was true at the beginning. It began that way. I wasn't sure that here, for example, in Philadelphia, in the neighborhood of Conshohocken, that in many cases the dealer would want to change from what he had, as probably in cases could sell some other brand better. What I was anxious was that he have a good brand and that we provide a program and not shut him out from a better program.

You can see it was the problem. That was what I was most afraid of when I started. Therefore, we, from the very beginning, said that the dealer must have a chance in all cases to buy what he could do the best with.

Q. Does Atlantic extend the benefits of its dealer pro-

gram to all dealers, regardless of their TBA purchasing practices?

3840 A. Yes, sir.

Q. Yesterday afternoon, Mr. Mulholland described to us some of the things that Atlantic does in the operation of its TBA program. I won't attempt to summarize Mr. Mulholland's testimony. In any event, he did describe that, and we have had other descriptions of the program in action. I ask you whether the operation of that program costs Atlantic substantial sums of money?

A. Yes, sir, it certainly does.

Q. In your view and in your position with the company, how does the cost of operating the program compare with the commission's received thereunder?

A. My accountants tell me that it almost balances. That is not the objective. The objective of it is to help the dealer. But if I can tell my associates that the program is paid for by our commissions, then, it is very nice. And my accountants tell me that is about so.

Q. So, the commissions just about equal the cost?

A. That is right.

Mr. Ballard: I have no further questions. Cross-examine.

Mr. Kelaher: May I have a few minutes, your Honor?

Hearing Examiner Kolb: All right. Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

3841 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Colley, I would just like to ask you a few questions to straighten in my mind, at least, some matters.

Your attention was called to Esso, Gulf, Amoco, Tidewater Oil, and other oil companies, if you recall, and questions were asked concerning your competition with them for dealers. I believe you stated that you lost a lot of

dealers to these other companies. Isn't the reverse also true that Atlantic has gained dealers from these other companies?

A. I may be prejudiced, but I don't think we get our share, sir, but we try.

Q. Then, you do get some dealers?

A. Yes, sir.

Q. And it is not uncommon to raid one another's outlets for dealers, as I understand?

A. No, sir.

Q. Now, I would like to direct your attention to the field tests that were made when Atlantic decided to test the TBA programs. What is your recollection of the circumstances surrounding the companies selected for those tests in Wilmington, Erie, and Newark?

A. Well, this is from memory, but the purchasing department of our company had been asked to contact five or six of the major tire companies to see if they 3842 were interested before I got into it. Then, as we discussed it with my staff of what companies to use, we set up a criterion. We said we wanted companies that had good public acceptance in our territory. We wanted companies that had supply points. The big problem that had been eating me had been the storage and supply of batteries and accessories and tires, and we wanted tire companies, if we could, that also handled accessories, batteries. Of course, it was simpler for the dealer, simpler for us, if you could do business with one supplier. And the dealer who has very little cash to spend likes to keep it to buy from as few places as possible. This was shortly after the war when we had so many shortages. As a matter of fact, I remember—

Q. (Interposing.) My question, not to interrupt; you can elaborate—

A. (Interposing.) I don't want to elaborate. I thought you asked how we arrived at the ones.

Q. Yes.

A. As I say, when we applied those tests, there were very few that could comply that had the acceptance, that had the supply points, and that handled accessories as well. And we came down to the two main ones, two of the very few that did, which were Firestone and Goodyear.

So, we sent for them, or asked them to come in and discuss it with our people, my TBA specialists, whether
3843 or not they were interested in such a program. That's how we went about it.

Q. Isn't it a fact that you did not originally select Goodyear to test the TBA program in the Newark area?

A. I don't remember, sir.

Q. Isn't it a fact that Firestone was originally selected to test the TBA program in the Newark area, as well as the other two?

A. We can find that out.

Q. I am asking what your recollection is.

A. I don't recollect. I would like to help you. We asked the district managers—you see, we called for volunteers from district managers who would be willing to conduct these tests. And to my TBA man, I said I wanted a fair test. I wanted it done in territories where we would get fair results, where the district managers were interested. I know what the final selection was, but I didn't know, I had forgotten there had been a previous selection.

Q. You are willing—I will withdraw that.

You don't recall that on March 17, 1950 Atlantic was advised by Firestone, almost, by Firestone, that it would not go into the Newark area on a test basis?

A. I don't know that.

Q. You don't recall that at all?

A. No.

3844 Q. Was there dissatisfaction among your staff, all of your staff, concerning the change from Lee-Exide to the Goodyear and Firestone TBA programs?

Mr. Ballard: Before you answer that, could I ask do you mean to say "your staff" or "all of your staff"?

Mr. Kelaher: Your immediate staff.

Mr. Ballard: You said all.

Mr. Kelaher: I am limiting it to the immediate staff.

The Witness: You couldn't say all the staff was in favor of changing or not changing. You are asking me before?

By Mr. Kelaher:

Q. I am talking about the period before you changed to—

A. (Interposing.) The staff was divided as to how wise it was.

Q. And there were those who were satisfied with the Lee-Exide arrangement and wanted to continue it, weren't there?

A. Yes, the TBA manager himself.

Q. Who was that?

A. That was Heidman at that time. I think he felt it would be an awful lot of work to change. Of course, he didn't have to run the stations.

Q. Are you familiar with the TBA survey that was made in 1948 and '49 concerning Atlantic's program

3845 then in existence? I am referring now to the time they carried Lee tires, and Exide batteries, and a line of accessories?

A. Yes, I am.

Q. Are you familiar with the fact that that survey shows that 67 percent of Atlantic dealers preferred Lee tires?

A. Yes, I am.

Q. And that 79 percent of Atlantic dealers preferred Exide batteries?

A. Yes, I am. I am also familiar with who made the survey and how limited the survey was. As we went into it, we felt it was not a very thorough or expert job done by a very nice man who had never been a research man before. And it just didn't stand up as we dug into it.

Q. So, you place no reliance on the survey?

A. No, and experience has shown that I was right in not placing reliance on it.

Q. Isn't it a fact that Lee and Exide did have consumer acceptance in areas other than the immediate Philadelphia area?

A. Well, they had—when we talk about consumer acceptance, it's like gasoline, sir. They had varied acceptance. I would say as you went out from the perimeter of Philadelphia, it got less and less.

Q. Was that true of Exide batteries, too?

A. Exide had very much better national accept-
3846 ance. We didn't drop Exide because it didn't have good acceptance.

Q. What was your reason?

A. As I said, in the direct testimony, before the days of dry charges, when you would ship them from Maine to Florida and try to store them and resell them, you were in trouble, no matter how good the battery was.

Q. Isn't it a fact that one of the principal reasons you changed from Lee-Exide to Goodyear-Firestone TBA programs was financial in nature?

A. One of the principal reasons?

Q. One of the reasons that Atlantic changed.

A. The principal reason for changing was my anxiety to see that our dealers had a profitable program to handle. I would say it was a corollary. It would be a good deal

because it was one of the deals that was good because if it was good for the dealers, it would be good for Atlantic; if it was good for Atlantic, it would be good for the tire companies.

Q. Did you believe at the time you switched over to Goodyear and Firestone TBA that most of your lessee dealers would go along?

A. At the time we made the switch, I felt they would. The tests indicated they would.

Q. And didn't you feel that a good number of your contract dealers and distributors would also go along with the programs?

A. Yes, I felt it was so much better—everything 3847 is relative, sir—I felt it was so much better than what we had it would probably gain acceptance rapidly.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: You are through, Mr. Colley. Thank you.

(Witness excused.)

Mr. Ballard: Your Honor, it has been called to my attention that in yesterday's testimony at page 3713 I asked Mr. Walsh a question as to the percentage increase in "gasoline sales per lessee dealer". Mr. Kelaher and I have stipulated that that question was intended to refer to gallonage sales, sales of gallons, and not dollar sales, and that Mr. Walsh's answer likewise referred to gallonage and not to dollars.

Now, sir, I find that we have a number of exhibits which have been identified but not offered in evidence. They are Atlantic Exhibits 1 through 4 and 6 through 9. Number 5, I believe was withdrawn. But I think you will find that 1 through 4 and 6 through 9 were never formally offered in evidence.

Hearing Examiner Kolb: You are offering A-1 through -4 and -6 through -9.

Mr. Ballard: Yes, sir.

Hearing Examiner Kolb: Any objection?

3848 Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibit A-1 through A-4 and A-6 through A-9.

(Whereupon, the documents, heretofore marked RESPONDENT'S EXHIBIT A-1 through A-4 and A-6 through A-9 for identification, were received in evidence.)

Mr. Ballard: Mr. Kelaher asked yesterday for a survey (handing to counsel).

Now, except for the 1952 Goodyear price data that was referred to yesterday, I have nothing further to go into the record, sir.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Mason and Mr. Correa, I have G-2 through -4 and G-6 which have not been offered. They are the lease Sherwood MacMasters. Sherwood Oil Company.

Mr. Correa: As I recall it, those exhibits have not been offered. They were marked for identification in connection with cross-examination. We are not offering them.

Hearing Examiner Kolb: Not offering them? Then, let the record show that Respondent's Exhibits G-2 through G-4 and G-6 have been withdrawn.

3849 Mr. Correa: They are marked for identification in connection with cross-examination.

Hearing Examiner Kolb: They have been withdrawn as exhibits. They are either offered or withdrawn.

Mr. Correa: We don't withdraw them. They are marked for identification.

Hearing Examiner Kolb: They are marked for identification regardless of whether you withdraw them or not. The record will show that they are withdrawn as far as the record is concerned.

Mr. Correa: I object to that.

Hearing Examiner Kolb: Now, at this point I suppose Mr. Correa's statement will be incorporated in the record, Mr. Ballard's moving speech will be incorporated in the record, and my ruling, and the record now shows that the case has been closed as to the Respondents.

Mr. Correa: If your Honor please, on behalf of Goodyear, as your Honor will observe, we have offered no evidence, no affirmative case, and our present disposition is not to offer any such case. We do this on the basis that the procedure which has been followed in respect of this case, that is, the case against Goodyear, and particularly in respect of the Shell-Goodyear contracts involved in this case and in another case pending before your Honor concurrently to which Goodyear is not a party, has had the
3850 effect of depriving Goodyear of procedural due process, and has hence been fatally defective, and while we do not believe the defect would be cured by any participation by us affirmatively in these proceedings, we feel that nevertheless we should not engage in any such participation.

Now, having said all that, there are two points, and only two points, which would interfere with our resting at this moment. The first point is that we would like, in the words Mr. Kelaher used when he closed his case, to see if there may be anything we have overlooked on a review of the record. This was Mr. Kelaher's request made at the hearing of December 12, 1957, and it was granted, and he advised counsel and the Examiner on January 10, 1958, that he had made his review of the record, and your Honor will recall that thereafter on January 14, 1958, there was

filed an order entitled "Order Closing Case for the Taking of Testimony in Support of the Complaint and Fixing Time Within Which to File Motions."

We ask similar treatment to that in any event. I say "in any event" because we further ask that the cases of Goodyear be held open until the conclusion of the Shell-Firestone case because although we do not think this defect which we have alluded to, procedural defect, can be remedied, there, of course, always exists the possibility that there will something occur in the further proceeding of that case that we can not now foresee which would
3851 make it possible to offer evidence in this case, particularly respecting that particular contract.

Mr. Ballard: Are you through?

Mr. Correa: Yes.

Mr. Ballard: May it please your Honor, I would like to join in that motion on behalf of Atlantic except, of course, where Mr. Correa asks that the case be held open as to Goodyear I would, of course, ask that it be held open as to Atlantic as well.

Mr. Kelaher: Are you finished?

Mr. Ballard: Yes, sir.

Mr. Kelaher: For the record I would like to object to any attempt to keep the record open, and I would like to state that my remarks on December 12, 1957 were in connection with the evidence which was introduced into the record on that date, a great deal of which, or some of which at least, was admitted subject to check because of the nature of the documents introduced, and it was not intended to refer to all of the evidence in all of the other hearings that preceded that particular hearing.

I would also like to point out that counsel for respondents have had since January 10, 1958 to prepare their defenses, and that would appear to be ample time, and

any continuance would unduly and unnecessarily delay the closing of this case.

3852 Hearing Examiner Kolb: I think all counsel undoubtedly know what is in this record. You have been getting daily copy, split copy, and everything else, and I see no occasion for holding the case open on the proposition that maybe something may happen in one of the other cases which might reflect on this case. Should that occur, you would always have an opportunity to come in on a motion to reopen if you can show and give a basis for it if that is correct.

I will be frank with you. I do not intend to immediately issue the decision in this case, but I do want to get the case closed and out of the way and proceed with the other cases and get them closed. I don't want to have them all hanging open. My position here is expedience in getting these matters closed and not carrying them on indefinitely, and I think with the right to make a motion to reopen, if such occasion should occur, would fully protect the respondents in this case under any circumstances. Don't you agree with me on that, Mr. Correa?

Mr. Correa: With great respect, I do not, if your Honor please.

Hearing Examiner Kolb: Then, I will have to overrule your motion.

I understand Mr. Kelaher wishes to put on some rebuttal testimony, and before that is put on I think that the case should be definitely closed, and for that additional

3853 reason I am insisting that the case be closed at this time and that Mr. Kelaher proceed with the rebuttal testimony.

* * * * *

3854 Hearing Examiner Kolb: Now, Mr. Kelaher has some rebuttal testimony, I believe.

Mr. Kelaher: In connection with the closing, I discussed

this matter with counsel for respondent Goodyear and there is a possibility which they want to check as to whether or not they may release the confidentiality of certain statistics.

Hearing Examiner Kolb: Well, that can be discussed off the record. I also understand that you have one exhibit, the financial figures for 1952. Is that—

Mr. Ballard: (Interposing.) Price.

Hearing Examiner Kolb: Price information for 1952 which you wish to compile and incorporate in the record as your exhibit?

Mr. Ballard: Yes.

Hearing Examiner Kolb: That will be Exhibit No. A-45, which will be submitted later and received in evidence.

Mr. Ballard: All right.

Your Honor, before Mr. Kelaher puts on his rebuttal witness, I would like to call for an offer of proof or a statement as to the nature of the rebuttal witness' testimony, because from what I have heard of it I do not think it is admissible as rebuttal testimony. I would like to discuss it while the witness is not in the room.

Mr. Kelaher: I think the question of relevancy 3855 and materiality will come up when he testifies.

Mr. Ballard: If your Honor wishes to defer your ruling, it is perfectly all right.

Hearing Examiner Kolb: Well, the question is whether or not it is rebuttal testimony. I would like for you to tell me whether it comes within the scope of the rebuttal testimony or not.

Mr. Kelaher: This testimony will be given by an ex-Atlantic dealer in the Baltimore district as rebuttal to statements made in this case by Atlantic representatives in the Baltimore district, as well as in other districts, concerning the freedom of choice on the part of Atlantic

dealers with respect to the brands of TBA they may purchase.

Mr. Ballard: Mr. Kelaher, do I understand from that description that this is to be a dealer who is to testify as to some form of coercion or some threat of, or actual lease cancellation for TBA reasons?

Mr. Kelaher: Well, I would say Yes.

Mr. Ballard: And do I understand that this dealer is in the Atlantic's Baltimore district?

Mr. Kelaher: He is in Atlantic's Baltimore district.

Mr. Ballard: I submit that during the history of the case Mr. Kelaher chose the Atlantic Baltimore district: he had hearings there; he submitted such evidence as he 3856 cared on exactly this same point; that Atlantic in its defense made what efforts it could to rebut Mr. Kelaher's evidence and the inferences that could be derived from it; and, in regular orderly procedure that issue should rest. I see no need to burden this record and your Honor's time, and the time of the various other people here, to hear another witness, and then a surrebuttal rebutting that. I am perfectly willing to do it—

Hearing Examiner Kolb: (Interposing.) I think that the testimony of the respondent probably covered about everything that could be covered in this proceeding. I think the testimony which Mr. Kelaher has explained he wishes to put in would probably be proper rebuttal.

Mr. Correa: I didn't understand whether you said proper or improper.

Hearing Examiner Kolb: Proper.

When did you first obtain this witness?

Mr. Kelaher: I didn't obtain this witness until after the witnesses for Atlantic had testified in this matter. In fact, I didn't contact this witness personally until last week, and the termination of his lease is current.

Mr. Ballard: September 1958?

Mr. Kelaher: September 1958.

Mr. Mason: It couldn't relate to the period involved in the other testimony.

3857 Mr. Kelaher: It does indeed. He was a dealer when these very practices were going on, at that very time.

Mr. Ballard: It is cumulative testimony. I don't know whether Mr. Kelaher expects to find more dealers. It seems to me he made his case on this point.

Hearing Examiner Kolb: I think it would come under rebuttal testimony. Even if it didn't, if I didn't allow it, the Commission, upon proper request, would order that the case be reopened.

Mr. Ballard: In that case, all right.

Mr. Correa: I think from the description of it it is not being offered against respondent Goodyear?

Mr. Kelaher: It is being offered with regard to it, but there may be a ruling in connection with it.

Mr. Correa: It seems to me to be a round-about way, and we move to strike it. However, I would like to subjoin to my objection the further objection that I have never in my experience heard of rebuttal testimony, rebuttal evidence being properly offered where no evidence has been offered to which it is purportedly a rebuttal. We have offered no evidence. And we object to any rebuttal evidence being offered to rebut nothing.

Hearing Examiner Kolb: Since he is an ex-Atlantic dealer, it would rebut the testimony of Atlantic, at any rate.

We will take a short recess.

3858 (A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

JAMES W. SIEWIERSKI, was called as a witness by the Commission for rebuttal testimony, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Will you give your name and address to the reporter, please?

The Witness: I live on Route 7, Old Philadelphia Road, Joppa, Maryland.

Hearing Examiner Kolb: And your name.

The Witness: James Walter Siewierski.

Direct Examination by Mr. Kelaher.

Q. Mr. Siewierski, did you at one time operate an Atlantic service station as a lessee dealer?

A. Yes, sir.

Q. And where was that station located?

A. On Route 40, in Edgewood.

Q. Edgewood, Maryland?

A. Yes, sir.

Q. And when did you begin your service station operation there?

3859 A. February 1, 1956.

Q. And how long did you remain in that station under a lease arrangement?

A. 'Til September 2, October 6 of 1958.

Q. Was your lease terminated by Atlantic?

A. Yes, sir.

Q. I will come back to that later, but I wanted to ask you a few questions.

Now, about the time you were in the station, did you have any prior experience as a service station operator?

A. No, sir, I did not.

Q. And had you been employed at the Edgewood Arsenal in Edgewood, Maryland, prior to that time?

A. Yes.

Q. For how long a period?

A. About 12½ years.

Q. And when you became an Atlantic lessee operator, how much money did you personally invest in the station?

A. About $1600.

Q. Did you raise the fund yourself by mortgaging property?

A. Yes, sir. I had a thousand dollars coming to me from my retirement. I gave the Atlantic Company a mortgage of $2,000 to get property, the balance of the money until that thousand dollars arrived. I had to wait a while for it.

Q. You received no loans from Atlantic?

3860 A. No money loans, no, sir.

Q. When you first went into the station, what brand of TBA did you begin to carry?

A. Why, I think everything that was in there was Firestone. I bought everything that was in there.

Q. You are referring to the stock of the outgoing dealer?

A. Yes, sir.

Q. And after that from whom did you purchase your TBA?

A. Oh, from different dealers. I bought some from Kunkle, Sola, Cleaning Supply. I bought some from Replacement Parts.

Q. Who did you purchase your tires from?

A. The biggest part of it came from Firestone.

Q. And batteries?

A. Batteries come from Firestone.

Q. And accessories?

A. Most of them come from Firestone.

Q. And what was the location of your Firestone supply point? Was that Baltimore?

A. Yes, sir. Yes, sir.

Q. Was that at 21st and North Howard Streets?

A. Howard Street, yes, sir.

Q. Did your station have a Firestone identification?

A. Yes, sir.

Q. A decal?

A. Yes, sir. It had it on the windows and a sign outside.

3861 Q. You had the outdoor pole sign?

A. Yes, sir.

Q. Now, did you originally carry Firestone fanbelts and hoses?

A. I carried them for a length of time, yes, sir.

Q. And was there—

A. (Interposing.) I had trouble with the sizes getting them to fit the cars. And I changed them to Gates.

Q. Gates fanbelts?

A. Gates fanbelts and hoses.

Q. About what time was that? In what month? What year?

A. I think that was somewhere along July or August of 1957.

Q. What was your problem with the Firestone fanbelts?

A. They just wouldn't fit. There would be a confusion getting them to fit the cars.

Q. Were any comments made by Atlantic personnel with reference to your purchase of Gates?

A. They said I shouldn't have did it.

Mr. Ballard: I move to strike unless the Atlantic personnel are around.

By Mr. Kelaher:

Q. Who was the Atlantic personnel?

A. Mr. Crumbaker.

Q. Was he your Atlantic salesman at that time?

A. Yes, sir.

3862 Q. Was he replaced insofar as your station was concerned?

A. Yes, sir.

Q. And what was his name?

A. Mr. Toy.

Q. Is Mr. Toy in the room today?

A. Yes, sir.

Q. How long did you continue to carry Firestone tires?

A. I had them all the time.

Q. Was there a time when you stocked Firestone tires only?

A. There was a time when I had Firestone, yes, sir.

Q. For how long a period was that?

A. Oh, from the time I went in there up until '58, I think. Yes, sir. Up until '58.

Q. About that time did you begin to stock another brand of tires?

A. Yes, sir.

Q. And what brand was that?

A. The Gates.

Q. And about what month? Would you state the events which led up to your taking on the Gates tires?

A. I had taken on the Gates, I think, in May.

Q. May of 1958?

A. 1958.

Q. Why did you take on the Gates tires?

A. Well, they sent them on consignment and they 3863 financed the tires, and that helped me a lot. I couldn't finance them. I couldn't buy enough. I wasn't financially strong enough to buy them and put them out on time. I thought it was a good deal and I had taken it up.

Q. So, you are saying that Gates sold you tires on consignment?

A. Yes, sir.

Q. And were you able to get them from Firestone on consignment?

A. I didn't get them from Firestone on consignment.

Q. Now, in or about May 1958 did your Atlantic salesman discuss the purchase of Firestone tires with you?

A. Yes, sir.

Q. And would you state what transpired at that time?

Hearing Examiner Kolb: Who?

Mr. Kelaher: I think we identified the salesman. It was Mr. Toy?

The Witness: Mr. Toy. About the Gates tires?

By Mr. Kelaher:

Q. No, about the Firestone.

A. He told me that Firestone had a deal and all Atlantic dealers had to buy Firestone products. In the meantime the Gates people were approaching me—they had been there some time back—and they wanted me to take Gates tires. I was undecided what to do about it and they come along with this finance deal and I had taken it up.

3864 Mr. Toy didn't like it at all. So, he says that I had to dispose of them or I would be sorry for having them in there.

Q. Now, did Mr. Toy at the time he told you make any other statement with respect to a meeting—

A. (Interposing.) He came along, I think, a week later and he apologized for making that statement.

Q. In the meantime had he called on you with the Firestone representative?

A. Yes, sir.

Q. Concerning the purchase of Firestone tires?

A. Yes, sir.

Q. And at that time did you place an order with them for Firestone, too?

A. No, sir, we did not.

Q. Why didn't you?

A. I knew I was going to get the Gates tires in, and they insisted I give an order, and I didn't. I didn't buy anything.

Q. Was it after that Mr. Toy came around and apologized?

A. After he had made that statement about the meeting, he came by afterwards to apologize.

Q. Now, when did your first stock of Gates tires arrive?

A. I think it was—

Q. (Interposing.) Just the month.

A. The first of May. Along in the first week in May.

3865 Q. Who did you deal with in buying Gates tires?

A. Ross. He was the man assigned to me.

Q. Was he a direct factory representative?

A. Yes, sir.

Q. You were dealing directly with the Gates' representative?

A. Yes, sir.

Q. And your consignment tires came from the Gates Tire Company?

A. Yes, sir.

Q. At that time did they furnish you with any advertising materials for Gates tires?

A. They gave me three signs.

Q. Would you describe them for me?

A. One of them was a price sign—they had the sizes, the prices, and the discounts on them. It was about six foot tall, about four foot wide. And the other two were 5 by 18 inches wide. Just a small sign with Gates on it.

Q. What use did you make of the Gates' signs?

A. After?

Q. When you received the Gates' signs.

A. I posted them outside, put the price sign on, and nailed the two small signs. One at the lower right and one up next to the building.

Q. Were any comments made by Mr. Toy or any other Atlantic representative concerning those signs or Gates tires?

3866 A. Oh, yes, he said I shouldn't have them up there.

Q. Can you recall his exact words?

A. He says, "I don't know why you ever got those tires in there. You don't have to have those tires in there. I can't understand it, why you have to do it." I said, I was doing it for my own benefit. I think I was helping the business along by getting people with time to pay for it.

Mr. Ballard: I move to strike.

Hearing Examiner Kolb: He can give a conversation.

Mr. Ballard: Your Honor has ruled. But it is not responsive to the question asked.

Mr. Kelaher: It certainly is.

Hearing Examiner Kolb: It is the conversation had with Toy.

Mr. Ballard: Relating to signs? This seems to be something else.

By Mr. Kelaher:

Q. After that did Mr. Toy visit—after you took over on the Gates tires, how often did Mr. Toy visit your station?

A. Oh, he was there pretty near everyday. Sometimes twice a day.

Q. And do you recall any conversations you had with him during those visits?

A. Well, we never had good relations after that at no time.

Q. Do you recall any of the conversations you had
3867 with him, any comments he made?

A. Well, it was all over tires, why I did that. I shouldn't have did it. The company men and the big wheels don't like it. And I will be sorry for it. So I told him I would just have to be sorry. That's all.

Q. Were any of these comments made in the presence of any of your employees?

A. Yes, sir.

Q. Could you name the employees?

A. George was around most of the time. George Orem. He was around most of the time.

Q. Now, after that time did Mr. Toy make any comments concerning the appearance and the condition of the station?

A. Oh, yes. He also had a complaint about that. The men weren't clean. The mechanic wasn't any good. He couldn't see why I had him there. I was a poor manager. The place was dirty. So, I told him I was doing the best I could do with it. I thought it was clean and everybody else thought it was, too. Of course, he was the only one that had complaints against it.

Q. Did you think it was necessary to maintain a mechanic at the station?

A. Yes, sir.

Q. Did you continue to maintain a mechanic at the station?

A. He left. And I didn't pick up another.

3868 Q. Did you continue to keep the Gates signs outside your station?

A. Yes, sir.

Q. Did any comments similar to those concerning the condition of your station, the appearance of your station, take place before the time you took on the Gates tires by Mr. Toy?

A. Mr. Toy wasn't on very much before that. Mr.

Crumbacker—I think it was in April when Mr. Toy took over.

Q. And up to the time—

A. (Interposing.) I never had any trouble at all with Mr. Crumbacker.

Q. Did you have any trouble with Mr. Toy before the time you took over the Gates tires?

A. Well, he was complaining about the curbs not being clean and the men dirty and why I kept certain ones on. I didn't think it was any of his affairs.

Q. After you took on the Gates tires did those complaints increase or decrease?

A. They increased. It was worse.

Q. Do you recall receiving a letter from Atlantic entitled "No Forcing" concerning TBA?

A. Yes, sir.

Q. Was that letter received when your lease arrived?

A. I think that was in the first lease that I—

Mr. Kelaher: Your Honor, I think reference has
3869 been made to the "No Forcing" letter a number of times. There were three: CX-150, 206 and 207.

It is stipulated between counsel the witness received a copy of CX-207, dated March 22, 1956, signed by W. R. Holland, manager of marketing, southern region.

By Mr. Kelaher:

Q. Now, you recall receiving the "No Forcing" letter, didn't you, Mr. Siewierski?

A. Yes, sir.

Q. And after Mr. Toy began to make remarks to you concerning your Gates tires, did you contact anyone in the Atlantic organization?

A. Yes, sir. I called Mr. Munch one time and I asked him, I told him I had so much trouble with Mr. Toy that I would rather get out, and he said he would have a talk with Mr. Toy.

Q. Did anything occur?

A. I never heard more of it.

Q. When did you first learn that your lease would not be renewed?

A. I didn't until I got a notice.

Mr. Kelaher: I would like to have a letter marked for identification as CX-485-A and the registered envelop as CX-485-B.

3870 (Whereupon, the documents referred to were marked Commission's Exhibit 485-A and -B for identification.)

By Mr. Kelaher:

Q. I show you CX-485 for identification, the lease termination—

Mr. Ballard: (Interposing.) Mr. Kelaher, before you continue your examination, I ask if you will please read the letter and then consider not referring to this as a lease termination when it is perfectly apparent from the letter that the lease expired by is terms and was simply not renewed, which I may say is the fact.

Mr. Kelaher: I am using "lease termination" in a different sense than you are at this time. We were getting to that.

Mr. Ballard: If you make that clear in the record, that will be all right with me.

By Mr. Kelaher:

Q. Mr. Siewierski, before I ask you questions about this letter, when did your lease terminate? Do you recall that?

A. The 30th of September, 19—

Q. (Interposing.) '58?

A. '58.

Q. And on or before that date had you received any notice that your lease would not be renewed?

A. Mr. Toy spoke to me sometime before that, I think it was in August, about a new contract.

3871 Q. And what did he say?

A. I told him to let me think it over a couple of days, whether I wanted a 24-hour or some other contract.

Q. I show you CX-485-A. That was the first notice that you had that your lease would not be renewed?

A. This was the only notice that I had.

Q. When was that received?

A. That was received the 2d of September.

Q. 1958?

A. Yes, sir.

Mr. Kelaher: And the Edgewood, Maryland postmark appearing on the reverse side is dated September 2, 1958, for the record.

By Mr. Kelaher:

Q. Were you ever given any reason by Mr. Toy as—strike that.

Did Mr. Toy or any other Atlantic representative ever indicate that your lease might not be renewed?

A. No, sir.

Q. Now, at that time did Mr. Toy—did you stay on at the station for any length of time after you received this?

A. Mr. Toy asked me to stay on six more days, up to the 6th of October.

Q. And you left the station at that time?

A. Yes, sir.

3872 Q. Did you have a check-out, as they call it, with the incoming dealer? Were you present with the incoming dealer and the Atlantic representative when you left the station?

A. Yes, sir.

Q. Who was present first?

A. At that time, the time of the closing out?

Q. The closing out.

A. Mr. Toy, Mr. Crumbacker, Mr. Munch was there a little while..

Q. Was the incoming dealer present?

A. Yes, he was there.

Q. What was his name?

A. Bennett.

Q. And what transpired at that time?

A. Well, he only bought certain things. He only bought —most of it, all the Firestone. But he didn't buy any recaps of any other kind or any other brand of tires. Just certain things that he wanted to buy.

* * * * *

3873 By Mr. Kelaher:

Q. Did the incoming dealer purchase your Gates tires?

A. No, sir.

Mr. Ballard: Your Honor, I don't think that is a fair inference. Mr. Kelaher has already elicited from the witness they were on consignment. He couldn't sell them to the incoming dealer. They were on consignment. I think that question is highly objectionable.

The Witness: These tires were left there. They are mine.

Mr. Ballard: Would you let his Honor rule on the point?

Hearing Examiner Kolb: As I understand, the Gates tires were on consignment?

The Witness: When they first came, yes, sir. But I got them paid out. What's left, they are mine.

Hearing Examiner Kolb: They are your tires at this time?

The Witnes: Yes, sir.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. Mr. Siewierski, did Mr. Toy and a Firestone representative ever call on you jointly?

A. Yes, sir.

Q. And who was the name of the Firestone representative?

3874 A. Mr. Scheck. Henry Scheck.

Q. Do you recall any conversations with him concerning the first display card?

A. Yes, sir.

Q. Would you describe that?

A. It used to set in the front of the building. They moved it to the side of the building where the wind would upset it. They moved it around there. And the wind came along the following day, and as luck would have it Mr. Toy was there, and it blew down. It blew all of the stuff off of it. All the stuff fell off of it, rolled all over the place. I told Mr. Toy, "I told you not to move it." But he moved it anyhow. He got in his car and went away.

Q. Now, what was the approximate gallonage of the station when you first entered the station per month?

A. I think it was somewhere around 3,000 gallons.

Q. What was your gallonage about the time you left the station?

A. Somewhere around from fifteen to seventeen thousand.

Q. So, you increased your gallonage while you were operating your station?

A. Yes, sir.

Q. At the time of your check-out was there some disagreement between you and Atlantic concerning the amount of money owed you?

3875 A. Yes, sir.

Q. Is there still disagreement?

A. We have no statement for it. We have got two checks. We don't have a statement saying what the money was for. What was bought was to be paid for by the—the stuff that Mr. Bennett bought Atlantic was to pay for that. And there was an over-collection that had been taken for sometime, and there was some money on deposit for a long while, and I think there was a mistake in the gasoline there. Some money in that. So, what has come back don't seem to be just right.

Q. What has come back from—

A. (Interposing.) Yes, sir, from Atlantic.

Q. From Atlantic?

A. Yes, sir. There are two checks, but I think there are some more due.

Q. You have obtained an attorney to take care of that?

A. Yes, sir.

Q. Did Mr. Bennett, the incoming dealer, keep any equipment that you had when you were there?

A. Yes, sir. I left some there. I didn't know where to put that stuff. The cigarette machines and so on. I give him the benefit of using them until I could get a place to move. After I got a place I had them moved. I left some more stuff there.

3876 Mr. Ballard: I object to this simply because I can't conceive that the cigarette machines are relevant to the case.

Hearing Examiner Kolb: Overruled.

The Witness: After it got so I could move them, I moved the machines and I sent for the other stuff. Some tanks, and some trash cans and buckets, and he told me he couldn't give them to the boys; so, I went up there to see him.

Mr. Ballard: Again, my objection. It is simply going on. It has nothing to do with the case. It has to do with his dealings with his successor dealer after the change.

Mr. Kelaher: It has to do with his attempt to get some of his property after he left.

Hearing Examiner Kolb: Overruled.

The Witness: He told me I would have to see Mr. Toy. I owed him some lights; so, I took the lights up to him. I thought I owed him three, he said five; so, I gave him five. He said he would give me the buckets, the things I had. I didn't have anything to put them in; so, they are still there.

By Mr. Kelaher:

Q. You say you can get them?

A. Yes, sir; I can get them.

3877 Mr. Correa: I have a motion to strike the totality of this testimony, but this last answer is so outrageous that I think I must make a special motion directed to that.

Mr. Ballard: I think it goes to the state of mind.

By Mr. Kelaher:

Q. Did you ever learn either directly or through your attorney why Atlantic, what reason Atlantic gave for terminating your lease?

Mr. Ballard: I object to that.

Hearing Examiner Kolb: Read that question, please.

(The reporter read the question commencing at line 6 of this page.)

Hearing Examiner Kolb: He may answer Yes or No.

By Mr. Kelaher:

Q. Can you answer that Yes or No?

A. Yes.

Q. Now, will you please tell us the reasons that were given you directly by Atlantic? Did Atlantic tell you directly why they terminated your lease, why your lease expired?

Mr. Ballard: I move that the witness be instructed not to volunteer.

* * * * *

3878 Mr. Kelaher: No further questions.

Mr. Ballard: At the risk of being subject to ridicule, may I have a minute or two? And it will not be longer than two.

Hearing Examiner Kolb: All right. Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Mr. Ballard: I have no cross-examination of this witness.

Mr. Correa: In that event I will move on behalf of respondent Goodyear to strike the testimony of this witness as against the respondent Goodyear.

Hearing Examiner Kolb: Do you want this witness anymore?

Mr. Kelaher: No.

Hearing Examiner Kolb: You are excused. Thank you.

(The witness was excused.)

Mr. Kelaher: By agreement of counsel a photostated copy will be substituted for CX-485-A and -B by agreement of counsel.

I now offer it in evidence.

Mr. Ballard: No objection.

Hearing Examiner Kolb: It will be received in 3879 evidence as Commission's Exhibit 485-A and -B.

(Whereupon, the documents, heretofore marked COMMISSION'S EXHIBIT 485-A and -B for identification, were received in evidence.)

Hearing Examiner Kolb: Now, Mr. Correa, you have a motion?

Mr. Correa: I move to strike the testimony of the last witness as against the respondent Goodyear on the usual

grounds that the testimony does not involve in anyway respondent Goodyear, and on the additional ground that in any event it is improper rebuttal as to the respondent Goodyear.

Hearing Examiner Kolb: The motion will be sustained. The testimony will be stricken as to the Goodyear Tire and Rubber Company. It will remain as to Atlantic.

Mr. Ballard: May I call a witness in surrebuttal, your Honor?

Hearing Examiner Kolb: Yes.

Mr. Ballard: Mr. Hathaway.

HOLLAND M. HATHAWAY, was recalled as a witness on behalf of The Atlantic Refining Company for surrebuttal testimony, and, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ballard.

Q. Would you give your name to the reporter?

3880 A. Holland M. Hathaway.

Q. Mr. Hathaway, you have been previously sworn?

A. Yes, sir.

Q. And you have given your address to the reporter at a previous hearing?

A. Yes, sir.

Q. Mr. Hathaway, you were in this hearing room during the testimony of Mr. Siewierski, the witness who just testified, were you not?

A. Yes, sir.

Q. Referring to Commission's Exhibit 485-A, I see the statement that Mr. Siewierski's lease expired or was to expire on September 30, 1958; is that correct?

A. That's correct.

Q. Under Atlantic's lease policy, was it your duty to recommend renewal or non-renewal of that lease?

A. Yes, sir.

Q. If it had been renewed, what would have been the terms of the lease?

A. Three years.

Q. What recommendation did you make in regard to renewal or non-renewal?

A. I recommended that it not be renewed.

Q. Would you give us your reasons for that recommendation?

A. Yes, sir. The primary reason was be-
3881-3882 cause of the financial condition of the dealer. And in my opinion the dealer would not have survived the winter without going completely bankrupt.

Q. Had this dealer been purchasing his gas from The Atlantic Refining Company on consignment, getting his supply of gasoline on consignment?

A. His gasoline was on consignment. Yes, sir.

Q. During the time he was an Atlantic dealer, did he ever pay Atlantic for a tank full of gasoline when he got it?

A. No, he was on consignment continually.

Q. Under its procedures was Atlantic supplementing this dealer's income from his station?

A. Yes, sir, from the very beginning.

Q. In the last year of his operation, taking that for example, was there any month where Atlantic did not supplement this dealer's income?

Mr. Kelaher: What was that question? Read that question.

(The reporter read the question commencing at line 13 of this page.)

The Witness: I believe there was one month.

By Mr. Ballard:

Q. In that month the dealer made a reasonable minimum and did not require supplementation?

A. Yes.

Q. Had you received reports as to the dealer's
3883 housekeeping and cleanliness?

A. Continually, yes, sir.

Q. Were they adverse reports?

A. They were not good.

Q. Are the reasons you have given the principal reasons which motivated your decision not to recommend lease renewal?

A. Yes, sir.

Q. Did the fact that this dealer was handling Gates tires on consignment or in any other way—

Mr. Kelaher: (Interposing.) Objection, your Honor.

Mr. Ballard: I will withdraw the question.

By Mr. Ballard:

Q. Did the fact that this dealer was handling Gates tires have anything to do with your decision not to recommend renewal?

A. It had nothing to do with it whatsoever.

Mr. Ballard: Cross-examine.

Hearing Examiner Kolb: Let me ask a question first. What do you mean by supplementing the dealer's income?

Mr. Ballard: Let's have Mr. Hathaway answer that. Would you explain that to Judge Kolb?

The Witness: Well, it is a method we have for certain dealers and stations to help them get underway, so to speak, to build up the station, to a point where they can survive and make money, and while they are building
3884 up to that point, we help them by contributing to their profits and money until such a time as they are able to go on their own.

Hearing Examiner Kolb: Financial assistance, a loan or a gift or what?

The Witness: It is a financial payment each month. It's not a loan. I guess you could call it a gift.

Hearing Examiner Kolb: All right.

Cross-Examination by Mr. Kelaher.

Q. Do you have a copy of Mr. Siewierski's extension agreement, dated September 24, 1957, with you?

A. No, sir.

Mr. Ballard: I think we have a copy.

(The document was handed to counsel for the Commission.)

Mr. Kelaher: Excuse me.

By Mr. Kelaher:

Q. Mr. Hathaway, I note in your letter from Mr. Holland to Mr. Siewierski, CX-485-A, and I quote: "Although this lease requires no prior notice from Atlantic, we are nevertheless giving you thirty days notice that the lease will not be renewed at its expiration date of September 30, 1958."

At that time Mr. Siewierski's lease was what? I show you this, B-31917-56.

Mr. Kelaher: I am calling his attention to the type 3885 of lease that Mr. Siewierski had, because he said he didn't recall.

By Mr. Kelaher:

Q. I am asking now, is it Atlantic policy not to give notice to dealers when their leases are terminated?

A. I don't quite follow you, Mr. Kelaher.

Q. This is a letter to Mr. Siewierski in which it states: "Although this lease requires no prior notice from Atlan-

tic * * *" etc. I am asking you, is that a typical letter sent to a lessee concerning the termination of his lease?

A. This does give 30 days notice.

Q. It is stated in the letter that no prior notice is required. I am asking you, as a matter of Atlantic policy, is Atlantic required to give 30 days notice, or can they terminate a lease without notice?

Mr. Ballard: I object, your Honor: The lease speaks for itself.

Hearing Examiner Kolb: What does the lease say? Does the lease provide for notice or not?

Mr. Kelaher: I am asking what policy.

Hearing Examiner Kolb: No, no. What the lease specifies.

Mr. Ballard: The lease is in the record.

Mr. Kelaher: I haven't had a chance to check it. Sixty days.

3886 Mr. Ballard: I beg your pardon? Would you look at the lease? Read it.

Mr. Kelaher: Clause 2: "The term of this lease shall begin on the 'blank' day of 'blank', 'blank', and end on the 'blank' day of 'blank', 'blank', subject, however, in the event such term is longer than one year, to termination by lessee at any annual anniversary date by giving at least sixty days advance written notice to lessor."

Mr. Ballard: That's what the lease provides, your Honor. In the event it is a three-year lease it can be terminated on any anniversary date. Of course, this, sir, is a one-year lease, as my associates have pointed out to me.

Mr. Kelaher: Do I take it that counsel's remarks mean that without checking the lease form minutely at this point there is no provision of notice to a lessee dealer if Atlantic desires to terminate the lease?

Mr. Ballard: Mr. Kelaher, the lease is a lease for a

term, and it is not necessary to notify the dealer at the end of the term. The end of the term is stated in the date.

Hearing Examiner Kolb: What difference does it make?

By Mr. Kelaher:

Q. With respect to the consignment of gasoline to Mr. Siewierski, isn't it a fact that the first tankload of gasoline was consigned and, thereafter, he paid for the gasoline when it was delivered to replace whatever was sold each month?

3887 A. May I explain it to you, Mr. Kelaher?

Q. Yes.

A. The first load of gasoline is on consignment. From that time on what the dealer sells he holds the money for that and we replenish the tank in that amount, and he pays then for what he has sold, after he has sold it.

Q. That was the import of my question. So, he was making payments to you monthly from the time he came into the station except for the payment of the first load of gasoline in that station?

A. After he—

Q. (Interposing.) After he sold the first tankload, he was making payments every month?

A. After he sold our product, yes, sir.

Q. Are you aware that Mr. Siewierski is now a lessee of a Sinclair station in Edgewood, Maryland?

A. I heard that either yesterday or the day before.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no questions, your Honor.

Hearing Examiner Kolb: Thank you, you are excused.

(Witness excused.)

Hearing Examiner Kolb: Anything further?

Mr. Ballard: No, I have nothing further.

Hearing Examiner Kolb: The case is closed for the taking of testimony.

How much time do you want to file proposed findings?

Mr. Kelaher: Your Honor, I do have other cases pending. I have an oral argument coming up in December. I also have several cases which we are presently conferring with respondent's counsel on concerning possible stipulations, and I think I would make a real effort to have findings in in a supporting brief by February 1, as a target date, if that is agreeable.

Hearing Examiner Kolb: That would be two months and a half. Well, I will enter an order that Mr. Kelaher can file proposed findings and such briefs as he may wish to do by February 1, 1959.

Counsel for the respondent, will 30 days be sufficient?

Mr. Ballard: I would prefer 60. If Mr. Kelaher gets 60.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: I will give you to April 1 for respondents to file their proposed findings and brief.

Mr. Ballard: Thank you, very much, your Honor.

Hearing Examiner Kolb: And I guess I had better make a provision if Mr. Kelaher wishes to file a reply brief. I will allow 30 days for that.

The hearing is adjourned.

(Whereupon, at 4:50 p.m. o'clock, the hearing in the above entitled matter was adjourned.)

420 BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

STIPULATION RE GOODYEAR 1952 PRICES.

Counsel for respondent The Atlantic Refining Company ("Atlantic") and counsel supporting the Complaint stipulate that the exhibits accompanying this stipulation may be received in evidence in this proceeding as Exhibits RXA-45 through RXA-61. Such counsel further stipulate and agree that if appropriate officers and employees of The Goodyear Tire & Rubber Company were called as witnesses by counsel for Atlantic, such witnesses would testify as follows, and that the following may be accepted by the Commission for purposes of its determination and order herein as if such witnesses had so testified and in lieu of such testimony:

1. The prices shown in Exhibits RXA-45 through RXA-61 were in effect January 1, 1952 and for varying periods thereafter.

421 2. The 1952 price lists comprising Exhibits RXA-45 through RXA-61 correspond with the 1957 price lists comprising Exhibits CX-229 through CX-245 as follows, such correspondence being evidenced by the identifying Goodyear form numbers shown below:

Goodyear Form Number	1952 Goodyear Prices	1957 Goodyear Prices
B 198	RXA-45	CX-229
B 176	RXA-46	(1)
B 224	RXA-47	CX-230
B 225	(2)	CX-231
B 199	RXA-48	CX-232
B 196	RXA-49	(1)
B 338	RXA-50	(1)

Number	Prices	Prices
B 164	(2)	CX-233
B 170	RXA-51	CX-234
B 167	RXA-52	CX-235
B 383	RXA-53	CX-236
B 168	RXA-54	(3)
B 256	RXA-55	CX-237
B 272	RXA-56	CX-238
B 182	DXA-57 (4)	CX-239
B 304, 308, 309, 314, 332, 333, 334 and 337	RXA-58 (5)	CX-240A-H (5)
B 222	RXA-59	(3)
B 166	RXA-60	CX-241
M 734	RXA-61 (6)	CX-242-245 (6)

(1) No corresponding price list for 1957. All automobile tire and tube prices for 1957 are contained in CX-229.

(2) No corresponding price list for 1952.

(3) No corresponding price list for 1957.

(4) List entitled "Camelback & Repair Material." No form number shown.

(5) RXA-58 comprises Form B 309 only, showing in one document prices in effect for each class of customer defined in B 166 (RXA-60) instead of furnishing a separate price list for each such class. Separate price lists were not used for Goodyear's Western Division on January 1, 1952.

(6) RXA-61 shows "suggested retail," "dealer" and "distributor" prices, which were the price classifications in effect at January 1, 1952, in one document instead of furnishing separate price lists for each level. The 1957 price list most nearly corresponding to the "dealer" prices in RXA-61 was CX-244.

422 3. In 1952 the price categories of Goodyear passenger tires were as follows:

Price Category		Brand
Premium line	(1)	Double Eagle Super-Cushion (nylon)
	(2)	Double Eagle Super-Cushion (rayon)
First line	(1)	Deluxe Super-Cushion (also sold for original equipment purposes)
	(2)	Deluxe
Second line	(1)	Marathon Super-Cushion
	(2)	Marathon

The foregoing price categories correspond to the 1957 categories described at T 481.

4. The principal original equipment passenger tire in the Goodyear line in 1952 was the black, rayon, 4-ply Deluxe Super-Cushion tire (tube type), size 6.70-15, and in 1957 was the black, rayon, 4-ply Custom Super-Cushion (tubeless), size 7.50-14.

Frederic J. Ballard, Jr.
Counsel for The Atlantic Refining Company.

James L. Kelaher,
Counsel Supporting the Complaint.

Dated: January 26, 1959.

VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964

VOL. IV, pp. 2337 to 3281

In the

United States Court of Appeals

For the Seventh Circuit

No. 13340

THE ATLANTIC REFINING COMPANY, *Petitioner,* vs. FEDERAL TRADE COMMISSION, *Respondent.*	Petition to Review and Set Aside Order of the Federal Trade Commission.

JOINT APPENDIX.

THE BLAKELY-HARREN PRINTING COMPANY, CHICAGO.

INDEX.

Summary of Proceedings Below..... 1
Amended Complaint 5
Answer of Atlantic to Complaint as Amended..... 13
Answer of Goodyear to Complaint as Amended..... 22
Order Sustaining Interlocutory Appeal..... 29
Motion of Atlantic re Issues and Evidence, etc. 31
Answer to Motion of Atlantic, etc. 34
Order Denying Motion, etc. 36
Order on Motion to Strike Evidence, etc. 38
Initial Decision 41
Opinion of the Commission..... 61
Final Order 131
Petition for Review..... 135

TRANSCRIPT OF PROCEEDINGS.

Admissions of Respondents..... 145
Documents marked for identification..... 149
Colloquy 151, 614, 1178, 2303
Stipulation re testimony..... 266
Stipulation re Atlantic testimony..... 296
Stipulation re Goodyear testimony..... 322
Data re three marketing areas..... 332
Stipulation re Goodyear testimony..... 392
Offer of Exhibits..... 477
Stipulation re Warren and Hunterdone Counties in New Jersey 2276
Stipulation re Gay testimony.....2277
Statement of Crawford Bryant.....2281

Witnesses for the Commission.

Testimony of:

Adams, E. Scott..... 875
Adams, William E..... 892
Balloran, Francis J..... 645
Best, Rolland C..... 1116
Blumenthal, David B..... 209
Booz, Elmer H., Jr..... 631
Brown, Richard..... 952
Chambers, John..... 163
Colby, William..... 745
Connell, Conrad..... 588
Dashper, Herbert L..... 969
Drennan, Robert B..... 802
Duboff, Myer..... 412
Galle, John..... 924
Govoruhk, Nicholas..... 1046
Ferguson, Richard..... 754
Franks, William Lee..... 664
Freland, Edgar D., Jr..... 1148
Hawes, Harry Noble..... 935
Hayes, Sherman..... 740
Heald, Felix B..... 677
Heller, Edward C..... 378
Hill, George J., Jr..... 367
Hinderscheid, W. F..... 450, 565
Hoffman, Jack..... 197
Huether, Lewis A..... 1149
Iacona, Aniello L..... 514
Johnson, Charles H..... 1014
Johnson, Tyler L..... 617
Kelly, James R..... 1054
Kernaghan, Thomas J..... 545

Kevis, Douglas W. 215
Lang, Elmer 1128
Lanza, Michael Thomas 724
Lingenfelser, Frederick 811
Marabella, Joseph 690
Matthews, James 433, 481
McCandless, Robert H. 573
McIntyre, James L. 776
McMaster, Joseph B. 1054
Migan, John J. 1070
Myers, James M., Jr. 822
Norris, Oster 1065
Parag, James 984
Pollock, Isidore Jack 536
Sabo, Carl 845
Sander, Homer August 1174
Savage, Eugene 1076
Scheiner, Joseph 1151
Siewierski, James W. 2311
Stein, Morris 859
Sullivan, Thomas J., Jr. 900
Vick, John J. 553
Walker, George Stanley Drew 768
Wetzel, Glenn L. 224

WITNESSES FOR RESPONDENT.

Testimony of:

Buongiorne, Frank R. 1546
Carlson, Robert O. 1823
Cary, Reuben 2123
Colley, Dwight T. 2283
Connelly, Joseph M. 2089
Cooley, Russel E. 1519
Detwiler, Charles K. 2018
Eckhardt, John A. 1347

Eckhardt, Tom 1355
Elko, Donald 1875
Elleni, Albert 1404
Foster, George F. 1396
Gaestel, Wilbur D. 1750
Gloth, Israel 1963
Godino, Alfred 1861
Grossman, Sam 1675
Hathaway, Holland M. 1190, 1414, 1491, 2327
Hayes, Thomas A., Jr. 2050
Jones, Thomas E. 1907
Klein, Robert 2075
Koehler, Fred 1335
Landis, Norman 1372
Leonard, William Henry 1252
Lott, Charles Henry 1708
Lozanski, Adam 1320
Luongo, Rudolph N. 1899
Mann, Isadore 1888
Mapes, August 1727
Marino, Joseph A. 1687
Maseyko, George Paul 1603
McCarthy, Harold F. 1979
McKaig, Charles G. 1229
Molinaro, Dominic., Jr. 2003
Mulholland, Richard G. 2234
Munch, Edward B. 1487
Provost, Robert C. 1868
Rhoades, O. Harris 2103
Ringenary, Edward 1845
Sartoff, Herman 1288
Shafer, Albert H. 2143
Snow, Edward L. 1996
Soukup, Albert J. 1308

Tavina, Nicholas V. 1383
Thomas, Richard D. 1501
Tydings, Gabriel 1270
Varnadore, J. W. 1193
Vayda, Albert J. 2072
Walsh, Charles A., Jr. 2184
Wash, Joseph J. 1655
Way, William L. 2083
Wright, Harry W., Jr. 1622
Wyckoff, Charles P. 1640
Zarella, George 1982

Stipulation re Goodyear 1952 Prices 2334

COMMISSION EXHIBITS.

1 A-C—Letter, January 19, 1948, from J. S. Parks to Goodyear, with attached sheets 2337
2—Letter, February 27, 1948, from S. A. Gaylord to J. S. Parks 2340
3—Letter, March 29, 1948, from J. S. Parks to S. A. Gaylord 2341
3 A—Letter, April 6, 1948, from S. A. Gaylord to J. S. Parks 2342
4—Letter, May 4, 1949, from S. A. Gaylord to S. J. Heideman 2343
5—Goodyear inter-office memorandum, August 29, 1949, from S. A. Gaylord to J. E. Mayl, et al. .. 2345
6—Letter, May 23, 1950, from S. J. Heideman to Sam Gaylord 2347
7—Letter, May 23, 1950, from S. J. Heideman to E. R. Cox, Jr., et al. 2349
8—Letter, May 25, 1950, from S. A. Gaylord to S. J. Heideman 2350

9—Document, undated and unsigned, commencing "Here, then, are the important reasons for the company's preference for the Goodyear program:" 2351

Document, undated and unsigned, with heading "Conference of Atlantic and Goodyear Personnel in Connection with The Introduction of The Goodyear Commission Plan" 2355

11—Document, undated and unsigned, with heading "Goodyear—Atlantic Program Experimental" 2357

12—Letter, June 12, 1950, from A. R. Sanborn to Atlantic Dealers and Atlantic Petroleum Distributors 2359

13—Letter Agreement, June 1, 1950, from Goodyear to Atlantic, with Exhibit A attached 2360

14—Letter, July 5, 1950, from S. A. Gaylord to S. J. Heideman 2365

15—Memorandum, August 2, 1950, from S. A. Gaylord to L. W. Baker 2366

16—Letter Agreement, April 3, 1951, from D. T. Colley to Victor Holt, Jr. 2368

17—Letter, June 16, 1950, from S. A. Gaylord to S. J. Heideman 2370

18—Memorandum, July 25, 1950, from J. W. Basista to S. A. Gaylord 2372

19—Letter, November 2, 1950, from S. A. Gaylord to S. J. Heideman 2374

20—Letter, June 29, 1950, from S. A. Gaylord to S. J. Heideman 2375

21—Letter, July 10, 1950, from S. J. Heideman to S. A. Gaylord 2377

22—Letter, January 23, 1951, from J. W. Basista to S. J. Heideman.....2378

23—Undated memorandum by S. A. Gaylord with heading "Oil Company Sales Material 1950 Advance Information—Details to Follow"....2379

24—Goodyear confidential intra-company memorandum, undated, from S. A. Gaylord to seven District Managers 2381

25—Document, undated and unsigned, with heading "Proposed Outline of Meeting Atlantic-Goodyear Sales Organization Meeting".....2391

26—Document, undated and unsigned, with heading "Suggested Atlantic-Goodyear Introductory Dealer Meeting".....2392

27—Document, undated and unsigned, with heading "Goodyear District Manager Presentation (Atlantic Dealer Meeting) Outline".....2393

28—Document, undated and unsigned, with heading "The Atlantic Refining Company Sales Personnel Territory Assigned to Goodyear".....2394

29—Document, undated and unsigned, addressed to Atlantic dealers and Atlantic, Petroleum Distributors with heading "(Sample of Atlantic Letter to Dealers, Etc.)".....2397

30—Document, undated and unsigned, with heading "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials".....2398

31—Document, undated and unsigned, with heading "Goodyear Introductory Package for Atlantic Dealers" 2399

33—Memorandum, March 12, 1951, from G. L. Wright to District Operating Managers.....2400

34 A-D—Memorandum, March 12, 1951, from H. E. Ammerman to H. F. Aul, et al., with attachments 2402

35—Letter, May 1, 1951, from S. A. Gaylord to S. J. Heideman 2406

36—Letter, May 7, 1951, from W. C. Hoffman to S. A. Gaylord 2407

37—Letter, May 28, 1951, from S. J. Heideman to S. A. Gaylord 2408

38—Letter, June 1, 1951, from S. A. Gaylord to S. J. Heideman 2409

39—Document, March 1, 1951, unsigned, with heading "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries" 2410

40 A-B—Letter, February 9, 1951, from S. J. Heideman to J. E. Mayl, with enclosure 2412

41 A—Goodyear Form G-1209, with descriptive note. 2415

44 E—Goodyear Form B-61 (11-54), Associate Dealer Agreement 2416

44 F—Goodyear Form G-110 (1-51), Service Station Agreement 2417

44 G—Goodyear Form G-110 (5-56), Service Station Agreement 2418

46 A—Memorandum, March 7, 1951, from S. A. Gaylord to J. E. Mayl 2419

47 A-B—Letter, April 26, 1951, from J. P. Miller to R. S. Zinn, et al. 2421

47 C-D—Goodyear Sales Department Instructions, May 31, 1951 2424

47 E—Form of Lee-Atlantic Tire Guaranty, with date 9/30/50 2427

48 A-F—Transmittal note from W. C. Hoffman to S. A. Gaylord, with four pages numbered 2-5 dated June 29, 1951, designated as Goodyear T. B. A. Bulletin #22 and page with heading "The Atlantic Refining Company Progress Through June 25, 1951".....2429

49—Letter, July 31, 1951, from S. J. Heideman to S. A. Gaylord.....2436

50—Letter, August 6, 1951, from S. A. Gaylord to S. J. Heideman.....2437

51—Letter, August 7, 1951, from J. W. O'Neill to S. J. Heideman.....2439

51 A—Goodyear Form A98101L, "Request for Identification Field Service".....2441

52—Goodyear Tabulation, "Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company".....2443

54—Goodyear Tabulation, "Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953".....2444

56—Memorandum, August 3, 1951, from F. W. McConky, Jr. to S. A. Gaylord.....2444

56 A—Memorandum August 2, 1951, from E. C. Sauter to F. W. McConky, Jr. 2445

57—Letter, August 9, 1951, from S. A. Gaylord to S. J. Heideman.....2446

58—Letter, August 14, 1951, from S. J. Heideman to S. A. Gaylord.....2447

80 U—Map entitled "Goodyear Regions & Districts".....2449

84 A-C—Description of Atlantic's Domestic Marketing Regions and Customer Classifications, August 21, 1952.....2451
85 A-B—Atlantic Lease Form, B/3191, 6/49.....2454
86 A-B—Atlantic Lease Form, B/3191, 4-52.....2458
87—Atlantic Form B-3191B, 4-52, Atlantic Franchise Agreement 2463
88—Atlantic Form B-3191-A, 12/48, "Equipment and Apparatus Inventory—Class 2 Station".....2466
88 A1-2—Atlantic Form B-3191, 7/56, Dealer Lease 2466
88 A-3—Atlantic Form B-3191-D, 7/56, Attachment to Lease Form B-3191.....2472
88 B—Mimeographed Atlantic Form beginning "When you lease an Atlantic service station * * *".....2473
88 C—Atlantic Form B-3191-A, 10/54 "Equipment and Apparatus Inventory, Class 2 Station"..2474
88 D—Atlantic Form B-3105, 8/53, Atlantic Agreement for Purchase of Automobile Lubricants..2475
88 E1-2—Atlantic Lease Form B-3191Y, 5/55.....2477
89—Atlantic Form B-3194, 10/50, Atlantic Credit Card Agreement.....2483
89 A—Atlantic Form B-3194, 2/53, Atlantic Credit Card Agreement.....2484
90 A-B—Atlantic Form B-3107A, 11/50, Atlantic Equipment Loan Agreement.....2486
90 C-D—Atlantic Form B-3107A, 7/55, "Bailment Agreement" 2491
91—Atlantic Form B-3105, 10/50, Atlantic Agreement for Purchase of Automotive Lubricants.2496
92 A-B—Atlantic Form B-3121, 2/51, Atlantic Agreement for Purchase of Automotive Lubricants.2498
93—Atlantic Form of "Commission Agreement"...2502

94 A-D—Atlantic Form of "Commission Dealer Agreement" 2505
95 A-C—Atlantic Form B-3143, 4/52, "Authorized Distributor's Agreement" 2509
95 D-F—Atlantic Form B-3143, 8/54, "Authorized Distributor's Agreement" 2515
96—Atlantic Form B-3119, 10/50, "Authorized Dis-Distributor's Agreement" 2521
96 A—Atlantic Form B-3119, 11/53, "Authorized Distributor's Agreement" 2524
97—Atlantic Form B-42, 6/50, "Loaned Equipment Contract" 2527
97 A—Atlantic Form B-42, 8/53, "Loaned Equipment Contract" 2529
98 A-G—Atlantic Form of Distributor Contract 2531
98 H-L—Document Form of "Atlantic Commission Distributor Consignment Agreement", with rider 2537
98 M-Q—Atlantic Form of "Commission Agent Consignment Agreement", with rider 2543
98 R-T—Atlantic Form B-3137 J. L. 1M, 11/46, "Bulk Sales Agreement" 2548
98 U-V—Atlantic Form B-3188, 7/56, "Contract Sales Agreement Trained Dealers" 2553
98 W-X—Atlantic Form entitled "Contract Sales Agreement" 2556
99—Letter, January 19, 1948, from J. S. Parks to Goodyear, et al. 2559
100 A-B-C—Memorandum, August 24, 1948, prepared by S. J. Heideman 2560
101 A-Z 20—Document dated May 1949, entitled "T. B. A. Study" 2565
101 Z 21-Z 27—Document entitled "Gasoline Dealer Survey Classification Data" 2591

102 A-D—Memorandum, August 22, 1949, from K. M. Ford to T. E. Kelly with attachments.....2601
103 Letter, January 10, 1950, from F. E. Neall to G. V. Ostrander.....2607
104 A-C—Copy of Letter Agreement, March 30, 1950, from Firestone to Atlantic.....2609
105 A-C—Letter Agreement, January 12, 1954 from Firestone to Atlantic.....2612
106 A-B—Letter Agreement, April 20, 1951, from Atlantic to Firestone.....2616
107—Inter-office Memorandum, February 27, 1950, from F. M. Neall to D. T. Colley.....2618
108 A-J—Document, March 17, 1950, unsigned, entitled "Presentation to Atlantic Personnel in Connection with the Introduction of the Firestone Commission Plan".....2619
109 A-I—Document undated prepared by S. J. Heideman entitled "Report on Meeting for the Discussion of the Firestone Commission Plan"...2633
110—Letter, March 21, 1950, unsigned, to G. H. Milligan 2645
111—Letter, April 11, 1950, unsigned, to W. J. Griffiths.2646
112—Document, April 20, 1950, unsigned, entitled "Plan for Handling Adjustments for Atlantic Dealers on Lee Tires to be Replaced with Firestone Tires".....2647
113—Document, April 20, 1950, unsigned, entitled "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced by Firestone Batteries".....2648
114 A-D—Document, May 11, 1950, prepared by G. H. Milligan entitled "TBA-Firestone Commission Plan District Office Accounting Procedure....2650

115—Document, July 3, 1950, unsigned, entitled "TBA-Firestone Commission Plan District Office Accounting Procedure".....2656

116 A-B—Letter with enclosure, September 29, 1950, from G. M. Elliot to S. J. Heideman.....2657

117—Document undated and unsigned, entitled "Firestone Commission Plan Check List".....2658

118 A-B—Letter, March 13, 1950, unsigned, to Messrs. B. M. Boor, J. O. Estlow and W. J. Griffiths..2660

119 A-B—Letter, March 17, 1950, from S. J. Heideman to D. T. Colley.....2662

120—Letter, July 26, 1950, unsigned, to Messrs. B. M. Boor and W. J. Griffiths.....2664

121 A-D—Unsigned Letter Agreement, July 10, 1950 from Goodyear to Atlantic with attachment..2665

123—Letter, November 8, 1950, from S. J. Heideman to S. A. Gaylord.....2670

124—Letter, November 29, 1950, from S. A. Gaylord to S. J. Heideman.....2671

125—Letter, December 14, 1950, from S. J. Heideman to S. A. Gaylord.....2672

126 C—Letter Agreement, July 7, 1954, from Atlantic to Goodyear.....2673

126 D—Letter Agreement, September 15, 1954, from Atlantic to Goodyear.....2674

127 A-H—Documents dated May 31, 1950 with heading, "Atlantic Refining Company-Sales Commission".....2675

128 A-B—Unsigned letter, May 10, 1950, to F. M. Neall.....2688

129—Atlantic inter-office letter, May 17, 1950, from F. M. Neall to D. T. Colley.....2690

130 A-G—Memorandum, June 16, 1950, from S. J. Heideman to Accounting with three attached memoranda 2691

131—Atlantic inter-office letter, July 26, 1950, from T. B. A. Section to W. J. Jackson 2698

132—Atlantic inter-office letter, August 2, 1950, from R. Borden to B. M. Boor, et al. 2699

133—Atlantic inter-office letter, June 12, 1950, from E. D. Walter to all Sales Personnel, Philadelphia and New Jersey Region 2700

134—Undated Atlantic document beginning: "Recently you have been introduced to a new plan for marketing of Tires, * * *" 2703

135 A-B-C—Document undated and unsigned entitled "Commission Plan" 2705

136 A-E—Atlantic inter-office letter, March 21, 1951, from S. J. Heideman to D. T. Colley with attachment 2709

137 A-E—Document entitled "Duties of the Dealer Salesman" 2715

138—Unsigned memorandum, June 25, 1951, to F. M. Neall 2721

139 A-B—Excerpt from Memorandum, January 15, 1952, to Dr. A. B. Hersberger 2722

140—Letter, May 3, 1951, from M. G. Davis to S. J. Heideman 2725

140 A—Atlantic Form B-139, 10/51, Dealers' Credit Card Sales Slips 2727

141—Letter, May 10, 1951, from W. C. Hoffman to M. G. Davis 2729

142—Letter, June 20, 1951, from M. G. Davis to W. C. Hoffman 2730

143—Letter, July 9, 1951, to William Stockton.....2731
144—Atlantic inter-office letter, November 13, 1951, from W. Stockton to S. J. Heideman.....2732
145—Atlantic inter-office letter, June 18, 1952, from S. J. Heideman to William Stockton.....2733
145 A-D—Memorandum, February 11, 1952, from R. M. Taitt to William Stockton with attachment 2734
146 A-B—Document entitled "Staff meeting held 7/14/52" 2737
147—Document entitled "The Atlantic Refining Company Annual Report for the Year Ending December 31, 1951, dated March 12, 1952, pp. 12-13".....2739
148—Unsigned Atlantic inter-office letter, February 27, 1951, to E. R. Cox, Jr.....2740
149—Atlantic form letter, March 1, 1951, entitled "T. B. A. Program".....2741
150—Atlantic form letter, March 1, 1951, entitled "A Statement of Atlantics' T. B. A. Policy"....2742
151—Letter, March 26, 1951, from R. M. Taitt to C. Connell.....2743
153 A-B—Memorandum, April 5, 1951, from R. M. Taitt to Noble Hall.....2744
154—Letter, January 18, 1951, from R. W. Reed to S. M. Neall, et al. 2746
155 A-H—Document entitled "1951 Sales Plan New York Region Basis".....2747
155 I—Document entitled "1951 Sales Plan New York Region—Appendix C".....2753
155 J-K—Document entitled "1951 Sales Plan—Report of Progress—Appendix D".....2754
155 L—Document entitled "Appendix E".....2756

155 M—Document entitled "Summary of Results"...2757
156—Document dated January 5, 1951 entitled "Station Modelization Policy".....2758
157—Unsigned letter, February 21, 1951, to G. V. Ostrander 2759
158—Atlantic inter-office memorandum, January 26, 1951, from T. E. Estlow to S. J. Heideman...2760
159—Letter, March 28, 1951, from S. J. Heideman to S. A. Gaylord.....2762
160 A-P—Letter, June 5, 1951, from W. J. Jackson to W. C. Hoffman, with attachments.....2763
—Document entitled "Goodyear Associate Dealers—New Jersey".....2778
161—Unsigned letter, July 30, 1951, to W. J. Jackson.....2787
161 A-B—Document bearing two columns headed "Location" and "Reason".....2788
162—Atlantic inter-office memorandum, August 20, 1951, from W. J. Jackson to F. C. Bowman...2790
163—Letter, August 21, 1951, from S. J. Heideman to S. A. Gaylord.....2791
164—Letter, August 24, 1951, from J. W. Basista to S. J. Heideman.....2793
165—Letter, August 29, 1951, from J. W. O'Neill to S. J. Heideman.....2794
165 A—Letter, August 28, 1951, from A. P. DeWolf to J. O'Neill.....2795
166—Letter, October 11, 1951, from J. W. O'Neill to S. J. Heideman.....2797
167—Letter, October 15, 1951, from J. W. O'Neill to S. J. Heideman.....2798
167 A-M—Handwritten document entitled "Refusals" 2799

168—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to L. K. Maisel.....2810
169—Atlantic intra-company letter, October 17, 1951, from W. C. Hoffman to M. G. Davis.....2811
170 A-F—Atlantic inter-office letter, October 24, 1951, from W. C. Hoffman to W. J. Jackson, with attachment 2812
171 A-D—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to M. G. Davis, with attachment 2820
172 A-B—Atlantic intra-company letter, October 24, 1951, from W. C. Hoffman to L. K. Maisel, with attachment 2825
173—Atlantic intra-company letter, July 17, 1951, from W. C. Hoffman to M. G. Davis.....2827
173 A-E—Memorandum from S. J. Heideman to J. O. Estlow, et al., June 1, 1951, with attachment..2827
174—Atlantic intra-company letter, September 7, 1951, from M. G. Davis to S. J. Heideman.....2834
175—Atlantic intra-company letter, July 19, 1951, from L. K. Maisel to S. J. Heideman.....2835
176—Atlantic document signed S. J. Heideman, April 25, 1952, with heading "Goodyear T. B. A. Bulletion #17".....2836
177—Letter, August 20, 1951, from S. A. Gaylord to S. J. Heideman.....2837
178—Letter, August 24, 1951, from W. C. Hoffman to S. A. Gaylord.....2838
179 A-I—Document entitled "Goodyear Program—Minutes—Goodyear T. B. A. Coordinators' Meeting October 12, 1951, Syracuse, N. Y."..2839
179 J—Form entitled "Atlantic-Goodyear Accounts".2854
179 K—Document beginning "Petroleum Representative—(Review and Recommendation)."....2854

180—Atlantic intra-company letter, May 13, 1952, from L. E. Card to S. J. Heideman.....2856
181—Letter, May 19, 1952, from W. C. Hoffman to J. W. O'Neill.....2857
182—Letter, May 29, 1952, from J. W. O'Neill to W. C. Hoffman 2858
183—Document entitled "Internal Correspondence", dated May 1, 1952, from W. J. Butler to S. J. Heideman 2859
184—Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries".2861
185—Document, April 25, 1952, prepared by S. J. Heideman entitled "Firestone-TBA Bulletin No. 17" 2863
186—Letter, July 18, 1952, from G. M. Elliot to S. J. Heideman 2864
187—Letter, September 3, 1952, from J. O. Long to Messrs. W. L. Schmidt, E. E. Sickels and Fred Wanders 2865
188—Letter, April 19, 1950, from G. V. Ostrander to D. T. Colley.....2866
189—Letter, May 18, 1950, from M. G. Davis to S. J. Heideman 2868
190—Letter, June 8, 1950, unsigned, to H. E. Powell.2869
193—Handwritten chart entitled "Atlantic T. B. A. Marketing 1949 Through 1951".....2871
194—Document undated and unsigned, entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales, Erie and Wilmington Districts, April and May 1950).....2872
195 A-B-C—Letter with enclosures, June 2, 1950, from G. M. Elliot to Leon Serven.....2873
196 A-B—Letter with enclosure, June 6, 1950, from G. M. Elliot to S. J. Heideman.....2875

197 A-B—Letter with enclosure, June 23, 1950, from S. J. Heideman to J. A. Addison.....2876
198 A—Tabulation entitled "Final T. B. A. Sales—June, 1950".....2879
198 B—Tabulation entitled "Sales Comparison—Month of June 1950 vs. 1949".....2881
199 A—Tabulation entitled "Final T. B. A. Sales—July, 1950".....2883
199 B—Tabulation entitled "Sales Comparison—Month of July 1950 vs. 1949".....2885
200 A—Tabulation entitled "Final T. B. A. Sales—August 1950".....2887
200 B—Tabulation entitled "Sales Comparison—Month of August 1950 vs. 1949".....2889
201 A—Tabulation entitled "Final T. B. A. Sales—September 1950".....2891
201 B—Tabulation entitled "Sales Comparison—Month of September 1950 vs 1949".....2893
202—Tabulation entitled "Final T. B. A. Sales—October 1950".....2895
203 A—Tabulation entitled "Final T. B. A. Sales—November 1950".....2896
203 B—Tabulation entitled "Sales Comparison—Month of November 1950 vs. 1949".....2897
203 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through November 1950".....2898
204 A—Tabulation entitled "Final T. B. A. Sales—December 1950".....2899
204 B—Tabulation entitled "Sales Comparison—Month of December 1950 vs. 1949".....2901
204 C—Tabulation entitled "Dollars Per Thousand Gallons of Gasoline Class 2 Dealers Cumulative July through December 1950".....2902

205—Document unsigned and undated, entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Erie and Wilmington Districts, November and December 1950).....2903
206—Letter, August 28, 1952, from D. T. Colley.....2904
207—Letter June 24, 1955, from J. O. Estlow to all Atlantic dealers.....2905
208—Document entitled "The Atlantic Refining Company—Progress Through March 21, 1951"...2907
209—Document entitled "The Atlantic Refining Company—Progress Through May 28, 1951".....2907
210—Document entitled "The Atlantic Refining Company—Progress Through August 20, 1951"...2908
211—Document entitled "Atlantic Progress Report", October 29, 1951.....2909
212—Document entitled "Atlantic Progress Report", December 24, 1951.....2910
213 A-F—Letter with enclosures, May 14, 1951, from G. M. Elliot to Leon Serven.....2911
214 A—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Progress through 4/14/51".....2917
214 B—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Eastern Pennsylvania Region Progress Through 4/14/51".....2918
214 C—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Western Pennsylvania Region Progress Through 4/14/51".....2919
214 D—Document, April 19, 1951, unsigned, entitled "The Atlantic Refining Company Southern Region Progress Through 4/14/51".....2920

214 E—Document undated and unsigned, entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales for fiscal year 1951)..2921
214 F—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA Sales, November and December 1951).....2922
215 A-B—Atlantic Credit Card—1950.....2923
216 A-B—Atlantic Credit Card—1951.....2924
217 A-B—Atlantic Credit Card—1952.....2925
218 A-B—Atlantic Credit Card—1953.....2926
219 A-B—Atlantic Credit Card—1954.....2927
220 A-B—Atlantic Credit Card—1955.....2928
221 A-B—Atlantic Credit Card—1956.....2929
222—Document entitled "Credit Card Guide—Atlantic" (960R-10M-6-50).....2930
223—Document entitled "Credit Card Guide—Atlantic" (1028-14M-1-51).....2931
226 A—Letter, July 7, 1950, from Paul Castleberry, Jr. to Atlantic with attachments.....2932
227 A—Letter, August 18, 1950, from Assistant Controller, Atlantic to Goodyear.....2934
247 B—Booklet entitled "Goodyear T. B. A. Plan"...2935
250—Letter, November 2, 1955, from The Atlantic Refining Company to Norris A. Stein.....2963
251—Letter, February 7, 1956, from The Atlantic Refining Company to Alfred R. Trivits.....2964
252—Letter, December 21, 1956, from The Atlantic Refining Company to William A. White, Sr...2965
253—Letter, May 2, 1955, from H. M. Hathaway to Messrs. Abraham Berman and Morton Shor...2967
254 A—Letter, December 8, 1953, from J. G. Burns to Michael J. Clifford.....2968

254 B—Letter, January 4, 1954, from The Atlantic Refining Company to Michael J. Clifford.....2969
255—Letter, October 13, 1954, from A. R. Sanborn to G. B. Gason-Niebling.....2970
256 A—Letter, September 20, 1954, from Leslie Geer to Albert J. Hoffman.....2971
256 B—Letter, September 30, 1954, from Stanley W. Bradley to Atlantic.....2972
256 C—Atlantic Form B-765, 11/53, "Mutual Consent of Cancellation".....2973
257 A—Letter, November 12, 1953, Atlantic to Aniello L. Iacona.....2974
257 B—Letter, November 19, 1953, from Francis J. Catania to Atlantic.....2975
257 C—Letter, November 25, 1953, from Atlantic Legal Department to Francis J. Catania.....2976
258 A—Letter, May 22, 1956, from Leslie Geer to Thomas J. Policastro.....2977
258 B—Letter, June 4, 1956, from Leslie W. Geer to Thomas J. Policastro.....2979
259—Letter, July 5, 1956, from Atlantic to A. Bennett.....2980
260—Letter, July 13, 1956, from Atlantic to R. L. Bisson.....2981
261—Letter, October 21, 1955, from Atlantic to Charles Davis.....2982
262—Letter, April 1, 1954, from W. F. van Haagen to Herman DeFelice.....2983
263—Letter, February 21, 1956, from Atlantic to Leo F. DiMaio.....2984
264—Letter, January 12, 1956, from Atlantic to Howard F. Hambly.....2985
265—Letter, April 1, 1954, from W. F. van Haagen to Lawrence E. Noel.....2986

266—Letter, July 27, 1956, from R. P. Eldridge to J. B. Ouelette.....2987
267—Letter, February 21, 1956, from Atlantic to Joseph S. Smith.....2988
268 A—Letter, 5 November 1954, from Atlantic to Joseph D. Greco.....2989
268 B—Letter, November 10, 1954, Greco to Atlantic Refining Company.....2990
269—Letter, January 5, 1955, from W. J. McCambridge, Jr., to Duane Olthof.....2991
270 A—Letter, 11 January 1955, from G. V. Ostrander to Messrs. Walter F. Pawloski and Matthew W. Kowalski.....2992
270 B—Letter, 19 November 1954, from John S. Wall to Walter F. Pawloski and Matthew W. Kowalski.....2993
271—Letter, 30 June 1954, from J. S. Wall to Kenneth S. Shaw.....2995
272—Letter, 30 August 1954, from G. V. Ostrander to Joseph A. Stocco.....2996
274—Letter, October 14, 1954, from A. P. Sanborn to John Chambers.....2997
277—Letter, June 16, 1950, from W. F. Hinderscheid to S. J. Heideman.....2997
278—Document, 3/7/51, entitled "Monthly Sales to Atlantic Refining Accounts in Newark District", from D. R. McAvoy to Mr. Hinderscheid, et al.....2999
279 A-D—Memorandum from H. K. Paxson to Mr. Hinderscheid, et al., with attachments.....3000
280—Memorandum, February 16, 1951, from A. A. Garthwaite to Messrs. Brasaemle, et al.....3004
281 A-B—Document entitled "Sales Meeting February 19, 1951".....3006

282 A-B—Letter, February 20, 1951, from W. F. Hinderscheid to all Atlantic dealers, with enclosed business reply card.....3008

283 A-C—Letter, February 21, 1951, from A. G. P. Segur to Lee branch offices, with attachment..3011

284 A-B—Memorandum, February 26, 1951, from H. L. Pettingell to S. C. Iringer, et al. 3015

285—Letter, March 5, 1951, from E. W. McCreary to E. M. Finick, et al. 3018

286 A-B—Letter, March 5, 1951, from A. G. P. Segur to Regional Sales Managers and Branch Managers, with attachment.....3019

287—Memorandum, March 16, 1951, from E. W. McCreery to J. A. Simpson, et al. 3022

288 A-D—Memorandum, August 3, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers, with attachments.....3023

288 E—Memorandum, July 25, 1951, from E. W. McCreery to W. F. Hinderscheid.....3028

289—Memorandum, August 6, 1951, from W. S. Hinderscheid to Regional Managers and Branch Managers 3030

290 A-I—Memorandum, August 6, 1951, with attachments 3031

291 A-C—Memorandum, October 23, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3041

292 A-C—Memorandum, November 28, 1951, from H. K. Paxson to Mr. Hinderscheid, et al., with attachments 3044

293 A—Letter, August 14, 1952, from E. W. M. to B. M. Boor.....3047

293 B—Memorandum, August 12, 1952 unsigned, to E. W. McCreery.....3048
293 C—Letter, October 3, 1952, from E. W. McCreery to B. M. Boor.....3049
293 D—Letter, October 7, 1952, unsigned, to E. W. McCreery.....3050
294 A-B—Document entitled "Federal Trade Commission, Washington, D. C.", Statement of James B. Matthews.....3051
295—Document entitled "Branches as of January 1, 1950".....3053
296—Document entitled "Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950".....3053
297 A-B—Document entitled "Names and Positions of Lee Personnel Referred to in Items 1 to 19, Inclusive".....3054
298—Letter, June 15, 1950, from S. J. Heideman to C. Connell.....3056
300 A-B—Memorandum, 12-14-50, from E. E. Stevenson to A. D. DeMott.....3057
301—Letter, December 15, 1950, from J. S. Parks to The Electric Storage Battery Co.....3060
302—Letter, December 22, 1950, from C. Connell to J. S. Parks.....3061
303—Memorandum, 1-4-51, from C. Connell to R. L. Sommerville.....3062
304—Letter, February 5, 1951, from S. J. Heideman to C. Connell.....3063
305 A-B—Memorandum, 2-14-51, from C. Connell to R. Whitehurst.....3064
306 A-B—Excerpt from Memorandum, 2-22-51, from C. Connell to R. Whitehurst.....3066

307—Letter, February 23, 1951, from J. S. Parks to The Electric Storage Battery Co. 3069
308—Letter, March 7, 1951, from C. Connell to J. S. Parks 3071
309—The Electric Storage Battery Co. inter-office memorandum, 3-13-51, from C. Connell 3072
310—Memorandum, 8/16/51, from R. L. Sommerville to C. Connell 3073
311—Memorandum, 10/3/51, from C. Connell to R. L. Sommerville 3075
314 A—Letter, June 26, 1957, from William P. Cairo to James S. Kelaher 3077
314 C—Document entitled "Exide Wholesale Distributors by States and Cities July 15, 1951" 3079
315 A-B—Letter, December 14, 1955, from Francis J. Ballaron to Dwight T. Colley 3087
317 A-B—Atlantic Lease Form B-3191- 3/53 executed by The Atlantic Refining Company and Norris A. Stein 3090
317 C-D—Atlantic Form B-367, 7/52 executed by Norris A. Stein 3097
317 E—Atlantic Franchise Agreement Form B-3191 B, 4/52 executed by The Atlantic Refining Company and Norris A. Stein 3099
317 F—Atlantic Agreement Form B-3105, 8/53 executed by Norris A. Stein 3101
317 G-H—Atlantic Lease Form B-3191, 8/54 executed by The Atlantic Refining Company and Norris A. Stein 3104
318 A-B—Letter, July 26, 1954, from R. S. Zinn to Norris A. Stein 3110
319—Letter, June 22, 1955, to all Atlantic dealers from M. G. Davis 3112

320 A-B-C—Letter, February 1, 1956, from Norris A. Stein to M. G. Davis.....3113
320 D—Letter, February 2, 1956, from M. G. Davis to Norris A. Stein.....3118
321—Letter, February 6, 1956, unsigned to John Rule.3119
322—Letter, February 9, 1956, from E. E. Sickels to Howard M. Berg.....3121
323 A-B—Atlantic Lease Form B-3191, 3/53 executed by The Atlantic Refining Company and Thomas J. Sullivan, Jr. 3122
324 A-B—Atlantic Form B-367, 7/52 executed by Thomas J. Sullivan, Jr. 3128
325—Atlantic Agreement Form B-3194, 10/50 executed by The Atlantic Refining Company and Thomas J. Sullivan, Jr. 3131
326—Atlantic Equipment and Apparatus Form B-3191A, 10/52 executed by Thomas J. Sullivan, Jr. 3133
327—Firestone Associate Dealer Agreement executed by Thomas J. Sullivan, Jr., ...3134
338—Statement of Goodyear Service Stores bearing the date "12/21" in the left hand column.....3135
339—Goodyear Service Stores Invoice dated 12-27-55.3136
350 A-B—Atlantic inter-office letter, January 6, 1948, to J. S. Parks.....3137
351 A-L—Atlantic inter-office letter, June 22, 1948, to D. T. Colley, with attachments.....3139
352—Letter, May 17, 1950, from G. A. Fearn to R. S. Zinn 3152
353 A-B—Letter, October 30, 1950, from J. A. Addison to S. J. Heideman.....3153
354—Atlantic inter-office letter, December 21, 1950, from C. F. Bergh to S. J. Heideman.....3155

355 A-B—Letter, January 3, 1951, unsigned to D. T. Colley 3157
356 A-B—Letter, February 3, 1951, unsigned to D. T. Colley 3159
357 A-B—Letter with enclosure, March 4, 1953, from G. M. Elliot to R. G. Mulholland 3161
358—Letter, March 4, 1953, from G. M. Elliot to R. G. Mulholland 3165
359—Letter, March 23, 1953, from G. M. Elliot to R. G. Mulholland 3166
360—Letter, May 1, 1953, from G. M. Elliot to R. M. Taitt 3167
361—Letter, May 22, 1953, from G. M. Elliot to R. G. Mulholland 3168
362 A-B—Letter with enclosure, July 27, 1953, from G. M. Elliot to R. G. Mulholland 3169
363—Letter, April 28, 1955, from R. G. Mulholland to G. M. Elliot 3171
364—Letter, December 29, 1955, from G. A. Fearn to Jack Hyde 3173
365 A-B—Letter, January 31, 1956, from J. C. Heid to W. L. Zinn 3174
366—Letter, April 26, 1956, from G. A. Fearn to J. C. Heid 3175
367—Letter, May 1, 1956, from J. C. Heid to G. A. Fearn 3177
374—Document entitled "Number of Lessee & Contract Dealers on Dates Indicated by Regions" 3178
375—Document undated and unsigned entitled "Atlantic-Firestone TBA Sales" 3179
376—Document undated and unsigned entitled "Atlantic-Firestone TBA Sales by Class of Trade" 3180

377—Tabulation entitled "Atlantic-Goodyear T. B. A. Sales by Class of Trade" 3181
378—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, January 1953) 3183
379—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year and December 1953) 3184
380 A-B—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year and December 1954) 3185
381—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year 1955 through December 20, 1955 and December 1955) 3187
382 A-B—Document undated and unsigned entitled "The Atlantic Refining Company—Summary" (Firestone TBA sales, Calendar year 1956 through June 20, 1956 and June 1956) 3189
383 A—Letter, October 7, 1955, from G. M. Elliot to R. G. Mulholland 3191
383 B-C—Firestone inter-office memorandum, October 6, 1955, to District Managers 3192
384—Letter, February 1, 1955, from R. G. Mulholland to G. M. Elliot 3196
385—Memorandum, February 18, 1952, entitled "Report of Commissions March through November 1951" 3197
386—Document entitled "The Atlantic Refining Company Sales—Northeast Division by Goodyear Districts March 1, 1951 through October 20, 1951" 3198

387—Atlantic inter-company letter, August 15, 1952, from R. W. Taitt to L. K. Maisel.....3199

388 A-D—Firestone inter-office memorandum, February 2, 1956, to District Managers, Territory Salesmen, Store Managers.....3200

400 A-S—Memorandum dated March 7, 1957 entitled "Re Docket No. 6486—List C—Goodyear", with attachments.....3205

480—Document, March 17, 1953, entitled "Statement of Herman Sartoff" executed by Herman Sartoff.3221

481—Document, March 19, 1953, entitled "Statement of Adam Lozanski" executed by Adam Lozanski.3223

482—Document, March 26, 1953, entitled "Statement of Thomas C. Eckhardt" executed by Thomas Eckhardt 3225

483—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Russell E. Cooley 3227

484—Document entitled "Federal Trade Commission, Washington, D. C.", statement of Frank R. Buongiorne 3230

485 A—Letter, August 29, 1958, from the Atlantic Refining Company to James W. Siewierski....3233

RESPONDENT'S EXHIBITS.

1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow.....3234

2—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by John Chambers and J. O. Estlow 3240

3—Letter, February 26, 1953, from Jack Pollock to The Atlantic Refining Company.....3241

4—Atlantic Form B-765, 11/53, Mutual Consent of Cancellation, signed by Elmer H. Booz, Jr. and J. O. Estlow.....3242

6—Atlantic Mutual Consent of Concellation Form B-765 11/53 executed by James Parag, November 2, 1955.....3243

7—Atlantic Mutual Consent of Cancellation Form B-765, 11/53 executed by The Atlantic Refining Company and James Parag, March 2, 1956....3243

10 A-C—Document March 27, 1953, executed by Fred Koehler 3244

10 D—Letter, March 1, 1951, from D. T. Colley, unaddressed 3247

10 E—Letter, August 28, 1952, from D. T. Colley, unaddressed 3248

11 A-G—Document, March 27, 1953, executed by Thomas C. Eckhardt.....3249

20—Atlantic booklet entitled 'TBA Program".....3255

31 A-F—Document entitled "Policy Long Term Dealer Lease", with attachments.....3274

	Original	Print
Proceedings in the United States Court of Appeals for the Seventh Circuit	3282	3282
Opinion, Swygert, J.	3282	3282
Judgment	3298	3299
Final decree affirming and enforcing order to cease and desist	3299	3300
Clerk's certificate (omitted in printing)	3301	3301
Order allowing certiorari	3302	3301

1523 COMMISSION EXHIBIT NO. 1A.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

January 19, 1948.
File: JSP-Tires

Goodyear Tire & Rubber Co.,
Akron, Ohio.

Attention: Mr. S. Gaylord.

Gentlemen:

Our Sales Department Management has requested of us a complete exploration of the tire manufacturers to determine at this time what interest you may have in the sale of your tires and tubes through Atlantic outlets. In our study to determine whether any change in present arrangements may be desirable, we wish to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise.

To assist you in preparing your quotations, we give you on sheet #1 information we believe may be helpful. All of this data pertains to what we have to offer.

On sheet #2 attached we detail information we believe is needed to properly evaluate any deal you may propose. Some of our questions may be considered by you as confidential information. We assure you your answers will be held in strict confidence. You may wish to augment your story with further information as to why you believe your deal would best suit Atlantic's needs. The more complete your preparation of your proposition the better it will be considered.

Should our account be of interest to you, please forward in writing, in duplicate, your best proposition. Quotations should reach us at your earliest possible convenience. After we have an opportunity to digest your offering it is likely we shall wish to discuss details in a conference to be later arranged.

Thank you very much for your attention to the above.

Yours very truly,

J. S. Parks
Purchasing Agent.

1525 COMMISSION EXHIBIT NO. 1B.

Sheet No. 1.

Estimated Annual Requirements

Passenger Tires	300,000
Truck Tires	40,000
Tubes	70% of above figures

Approximate Number of Retailers Served 6500
Approximate Number of Wholesalers Served 200
Approximate Number of Warehouses Served 45
Approximate Number of Warehouses Taking Carload Deliveries 3
Percentage of Volume on Carload Delivery 30%
Number of Salesmen 350
Number of T.B.A. Specialists 24
Number of Divisions 6
Number of Districts 34
Marketing Area Massachusetts to Florida, including parts of Ohio and West Virginia

1527 COMMISSION EXHIBIT NO. 1C.

Sheet No. 2.

Industry Position

a. Original equipment. Percentage of this type of business handled by you.
b. Scope of advertising. Furnish as much detail as possible as to types and results. Our principal interest is in consumer advertising as it applies to our marketing territory.
c. Established distribution. Percentage in our marketing territory. Number of outlets.

Production

a. Number of plants and locations of same. Can stocks be drawn from warehouses? If so, where?
b. Research and development facilities. Extent, accomplishments, and other pertinent details.
c. Quality of product.
d. Completeness or simplicity of lines. Percentage of total represented by special lines.

Merchandising: Is it an aggressive program?

a. Point of sale equipment—(display & service)
b. Point of sale helps—(selling program, etc.)
c. Training (visual helps on all line?)—(physical assistance at what level?)
d. Field assistance—selling—complaints.
e. Any flexibility to suit our needs?

Profit Margins

a. To dealer (list to cost).
b. Company margin excluding cash discount.
c. Bonus arrangements.
d. All other allowances.

Adjustment Program
Shipping Terms
Consignment or Sales Terms
Returned Goods Privilege
Exclusive Privileges
Price Protection—at what levels?

1529 COMMISSION EXHIBIT NO. 2.

February 27, 1948

Mr J S Parks
Purchasing Agent
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Parks:

Confirming our conversation of yesterday. It has been my desire to express the interest of my company in your consideration of the question of determining what is the best Tire and Tube marketing arrangement for your company.

We recognize the importance and value of your account and we wish to thank you for the opportunity which you have given us in discussing the matter more in detail.

In keeping with our conversation, it is my intention to contact you again about April 1. In the meantime, if we can be of any service, please advise.

Yours very truly,

Manager—Petroleum Sales Dept.

S A Gaylord
lfm

1531 COMMISSION EXHIBIT NO. 3.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

March 29, 1948.
File: JSP-Tires

Mr. S. A. Gaylord,
Manager—Petroleum Sales Dept.,
The Goodyear Tire & Rubber Company, Inc.,
Akron 16, Ohio.

Dear Mr. Gaylord:

Reference is made to our letter of January 19th regarding a proposition from Goodyear on tires and tubes for resale. In your letter of February 27th you advised of your interest, and of your intention to contact us again about April 1st.

Our Sales Department is anxious to proceed with their study of the various marketing arrangements being offered, and accordingly we are very anxious to receive your offering at the earliest possible date. Efforts on your part to expedite required data will be appreciated.

Yours very truly,

J. S. Parks
Purchasing Agent.

JSP:R

(Hand written note:) Ans by phone 4/6 SAG.

1533 COMMISSION EXHIBIT NO. 3-A.

April 6, 1948

Mr J S Parks—Purchasing Agent
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Dear Mr Parks:

This is a further confirmation of our phone conversation today in reply to your favor of March 29.

In view of your leaving the city next week on an extended trip, making it impossible to see you and personally explain our position as I had hoped to do, the next best course, in all fairness, seemed to advise you that in the opinion of our management we are not in position at this time to offer your company a marketing proposal.

At the first opportune time after your return I am looking forward to personally explaining our position to you in more detail.

Thanking you for your consideration in the matter.

With kind regards.

Sincerely,

Signed: S. A. Gaylord
Manager—Petroleum Sales Dept

S A Gaylord
lfm

1535 COMMISSION EXHIBIT NO. 4.

May 4, 1949

Mr. S J Heideman
c/o Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr. Heideman:

First, would like to express my appreciation for the opportunity of discussing with you the subject which is so close to both of us, that of marketing Tires, Batteries and Accessories through Oil Company Service Stations.

You will probably remember that back in 1941 you consulted with us on the question of marketing Tires and we made a sales presentation to your company at Philadelphia on April 21 of that year. During the past week I have read a copy of that document with considerable interest and that is one reason why it is repeated here, because it was an impressive demonstration to me of the progress Goodyear has made since then to keep ahead of the parade.

The statements we made regarding Tires and Tubes then were sound and hold true today. Goodyear was the first company to market its brand through an Oil Company and it was true then as it is today that more Goodyear Tires are marketed through Oil Companies than any other standard brand. It is also noteworthy to mention that in 1948, when replacement sales in the industry were approximately 20% less than in 1947 and Oil Company sales in total were less by a similar percentage, Goodyear sales through Oil Companies showed an increase of more than 20% over 1947, which year, until 1948, was an all-time high.

Going back to our Atlantic Presentation and what was missing then; mainly our present-day Complete Franchise

T.B.A. Program, plus the refining and improvements in our Sales Commission Plan and our Purchase and Resale Plan.

Summarizing my reaction to the foregoing, plus the importance of any decision you and your company may make,

which, aside from the monetary consideration over a
1537 long period, would also directly involve the welfare

of thousands of your Dealers, I reached the conclusion that before going further in our discussions it would be mutually important if you and whomever you may elect would visit us at Akron to determine what we have to offer, get better acquainted and decide if we are the kind of folks you would like to be associated with, and I say this selfishly, because it would greatly assist us in our thinking if we can get closer acquainted with you and your problem.

As a matter of information I am submitting herewith a copy of our latest financial statement.

Also a copy of our current Car and Home Catalogue. You and your Dealers would be interested mainly as to its completeness—is it competitively priced with local Jobbers, Wagon Jobbers, and the immediate availability of stocking points.

You would be interested in our management of this part of our business, the large corps of buyers, each a specialist in his line, and the special large field warehouses set up to service these lines, as well as the profit available to your company.

Much of the same thinking applies to the Goodyear Battery line—and last, but not least, our "main line", Goodyear Tires.

We also have set up here at Akron our Store Planning and Display Laboratories, which I have previously spoken to you about, and we can assure you that a visit to Akron to see this department alone will pay plenty of dividends.

If my suggestion does not meet with your full endorse-

ment, then it will be our desire to work with you in any way you may suggest.

Please be assured of our continued interest.

Thanking you,

Most sincerely,

Manager—Petroleum Sales Dept

S.A Gaylord
lfm

1539 COMMISSION EXHIBIT NO. 5.

August 29, 1949

cc J E Mayl
Victor Holt Jr
C C Osmun
C L Metzger
H G Harper
W E Cameron
L R Narrab
S A Gaylord

Subject: Atlantic Refining

At our meeting August 10 several points were brought up and should be more completely discussed and answered at our next meeting.

Mr Colley, Vice President In Charge of Sales, commented in general (A) he stated they are definitely interested as prospects—(B) we should continue to work with Heideman—(C) he (Colley) would approve recommendations of Heideman and Neall—(General Sales Manager—Director of Advertising, etc.

Specific points raised and not completely answered follow:

(1) Estimated allocation of expenses as shown in presentation for Purchase-Resale Plan and for Commission Plan.

Question—Would like a more detailed explanation as to how we arrive at estimates shown. Do these estimates reflect Goodyear Experience? Oil Company Experience?

Actually estimates used are a combination of all known factors and we can give a more detailed explanation, however, recognizing they are still estimates and probably no two companies will agree on proper allocation of expense.

(2) Mr. Neall raised the question as to how many salesmen they could save under the Commission Plan versus Purchase-Resale Plan.

There is no inference in the presentation that a saving in salesmen can be made under the Commission Plan. The Commission Plan does reduce functional expense and the profit to the Oil Company is proportionately less. The Commission Plan eliminates sales detail and sales reports—thus allowing more time for sales work on major assignments.

(3) Mr. Heideman is looking for more detail on the question—What, in terms of value, does completeness of line mean to an Oil Company?

A. Complete lines of tires—competitively priced
B. Batteries
C. Car and Home Merchandise

1541 I felt that our presentation handled the above question fairly well, Mr. Neall raised these points—
If Goodyear undertakes the job with them

(A) What would be the procedure?
(B) What would be done and how? (Mechanics)
(C) What extra man-power would be furnished?

He mentioned some 300 stations in Greater Philadelphia as an example.

I covered the above in a general way with no commitment.

Mr. Heideman wants more detail relating to our experience in successfully servicing the average Dealer C & H M from Field Warehouses. What coverage? What area? etc.

He also wants more detail as to how we arrived at estimated Battery exposure and how we arrived at estimated Battery gross profit.

We will prepare information requested as far as we can go—would like your thinking to assist.

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1543 COMMISSION EXHIBIT NO. 6.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

May 23, 1950
TBA SJH

Mr. Sam Gaylord, Manager,
Petroleum Sales Department,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Sam:

Attached is copy of letter that has been addressed to members of the several departments in the company who will have an interest in the negotiations preceding the introduction of the Goodyear T.B.A. program into our Newark District. In addition to the people whose names ap-

pear on this letter, it is expected that the following will attend:

Mr. J. O. Estlow, Manager of the Philadelphia-New Jersey Region
Mr. E. D. Walter, Manager, Sales Group, Philadelphia-New Jersey Region
Mr. T. E. Breslin, Operations Manager, Philadelphia-New Jersey Region
Mr. W. J. Jackson, T.B.A. Coordinator, Philadelphia-New Jersey Region
Mr. A. R. Sanborn, Manager, Newark District

There may be some change in this list, but if so, I will be in position to acquaint you with it before the meeting on Friday. I, of course, will also attend.

It will be appreciated if you will send me by return mail a list of the Goodyear personnel whom you expect to have present at this meeting, together with their respective titles or positions. It will be helpful if you can also provide me with an outline of the presentation that will be made by Goodyear so that I can properly fit it into the Agenda for the afternoon.

Cordially yours,

S. J. Heideman

h
Enc.

1545 COMMISSION EXHIBIT NO. 7.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

May 23, 1950
TBA SJH

Messrs. E. R. Cox, Jr., Room 810
G. H. Milligan, Room 1500
Leon Serven, Room 1000
W. F. Stotz, Room 1313

Dear Sir:

A meeting will be held in Mr. J. O. Estlow's office, Room 1201, Friday, May 26th at 2:30 P.M. In this meeting, arrangements will be discussed concerning the introduction of Goodyear's T.B.A. program into our Newark District territory. Representatives of Goodyear's Akron Management, Eastern Division Management, and Newark District Management will be on hand to meet with Atlantic Management and to tell about their methods of operating under the commission plan. At that time they will also attempt to answer the various questions that may occur to representatives of Atlantic's Management. It is expected that plans will also be completed for a district sales meeting, and perhaps a series of dealer meetings so that the program can be quickly introduced to the whole Newark District territory.

It is hoped that you will be able to attend this meeting or, if this is inconvenient, that you will appoint an alternate. Please advise me promptly of yc..r plans.

Cordially yours,
S. J. Heideman.

h

1547 COMMISSION EXHIBIT NO. 8.

May 25, 1950

Mr S J Heideman
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Syd:

Have just received your favor of the 23rd regarding our meeting on Friday, and wish to thank you for the information.

Arrangements have been made for the following Goodyear personnel to attend:

Mr. J. E. Mayl—Vice President Akron
Mr F W McConky Jr—Mgr. Northeast Div. New York
Mr Henry G Harper—Mgr. Associated Mdse Akron
Mr I D Love—Newark District Mgr Newark, N J

In addition to the above I am planing to attend.

While at this moment I do not have an agenda worked out in detail, I think it would be a good idea to start off with a review, possibly by yourself, of what has led up to your decision to make this test. This, in turn, will bring up the Presentation which we prepared and submitted to you, which pretty well indicates the complete line offered by Goodyear—Tires—Batteries and Accessories and other important sales factors such as consumer acceptance, original equipment, distribution facilities, advertising, sales promotion, dealer training, sales assistance, etc.

Then I think we will want to discuss the mechanics of the sales commission plan and the form of agreement both companies should enter into. Also, we should discuss and agree if possible on a uniform type of identification for each Atlantic outlet handling Goodyear products.

With the foregoing details handled and as a background we can then proceed to mutually agree on a plan of action which will get the program underway quickly.

1549 It is my understanding that we will meet in your office at 2 P.M. and that the meeting will get underway about 2:30.

If you should desire to reach us by phone Friday morning, I will be at our Philadelphia District Office, care of Mr Sorn.

Sincerely yours,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1551 COMMISSION EXHIBIT NO 9.

Here, then, are the important reasons for the company's preference for the Goodyear program:

1. They are the most popular line.
2. They are the largest supplier of original equipment.
3. They have a very complete line of tires, batteries, accessories, and home supplies and services.
4. They have considerable experience in the "commission plan" of operation with oil companies.
5. They have the least amount of oil company activity on their brand in our main market.
6. They have an excellent training program.
7. They are strong and aggressive merchandisers and have available a bountiful supply of very excellent sales promotional material.
8. They have an experienced staff of buyers for procuring the products they don't manufacture and fine facilities for quality and sales testing such products.

9. They were one of the major companies to adopt a liberalized adjustment policy which to some extent minimizes the loss of the road hazard guaranty.

Advantages in the Goodyear Commission Plan for Atlantic's Dealers and petroleum distributors as well as for the company:

1. Complete line on tires and tubes. Complete battery, accessories and home supply program.
2. A tire brand which is either first or second in public acceptance.
3. National advertising: newspapers, radio, television and magazines.
4. Largest or second largest supplier of original tire equipment.
5. Up-to-date and competitive tire and tube lines.
6. Excellent sales promotion and "point of sale" assistance.
7. Excellent training program.
8. Good delivery from conveniently located distribution points.

1553 Then, from a company standpoint, are these advantages:

1. No. T.B.A. investment except stocks for salaried stations.
2. A portion of selling costs assumed by supplier.
3. All warehousing, delivery, credit extension and billing by supplier.
4. Reduced ARCo. accounting expense.
5. Fixed rate of gross profit.
6. Profit would apply on much broader lines and services: blow-out proof tubes, farm tires, tire recapping service, home supplies.
7. A profit on some dealer T.B.A. business presently enjoyed by Goodyear.

8. Practically all sales promotional expense assumed by supplier.
9. Major part of training expense assumed by supplier.
10. No purchasing function (except for salaried stations or for consumption).

Some complications or problems that we don't have under our present program from the dealer and distributor standpoint:

1. Without the road hazard guaranty, the dealer will not have the latitude that he presently enjoys. The Goodyear tire is guaranteed for life against defects in material and workmanship, but adjustments are also made on a pro-rata basis when bruise breaks are experienced within the first 25% of tread wear. Such adjustment, however, is only made on approval of a Goodyear adjuster. In the event the dealer wishes to satisfy a customer on the spot, he has to take his chances of getting proper support from Goodyear.
2. There will be a maximum amount of competition from established dealers and company stores, because it is reported that every county, marketing town and shopping center now has a Goodyear store or distributor.
3. Atlantic's petroleum promotions will not be so closely coordinated with Goodyear's promotions as they are with our present program.
4. Goodyear brand batteries and accessories will not have as good public acceptance as their tire brand nor as the nationally known brands of batteries and accessories that we are presently marketing.

1555 5. There is the possibility that the Goodyear plan cannot be utilized by all Atlantic dealers and distributors because of closely situated competitive

petroleum outlets who are already established with the Goodyear program, or even because of a highly competitive Goodyear outlet that may be in close proximity.

From the company's angle:

1. There will be a sharing with another manufacturer of the direct influence that we now enjoy with our dealers for the promotion of balanced sales.
2. Goodyear is a successful and aggressive tire marketer and tires must be recognized as that company's principal business.
3. Adjustments being limited as aforementioned could result in greater customer dissatisfaction with its resulting adverse effect on Atlantic's petroleum products.
4. Any policy adjustment deemed advisable because of this possibility would be entirely for the account of The Atlantic Refining Company.
5. We will not engage in direct sales to commercial accounts. This market would be eliminated with the Goodyear program and also any gross profits that may accrue from it.
6. Atlantic's gross income will, of course, be reduced under this plan and so-called "fixed charges" attributed to T.B.A. must either be reduced, eliminated or absorbed by petroleum products.
7. Goodyear has complete control over the establishment and changes in commission rates, but since it is a competitive business and their historical experience has been highly favorable, it is more probable that they will cultivate and encourage its further growth rather than take any steps to make the program less attractive.
8. There is, of course, the very real possibility that an Atlantic dealer or distributor is already on the

Goodyear plan, and that we will not be given any commission for such business. Such situations are to be negotiated between Atlantic and Goodyear in order to reach a fair agreement.

9. District supervisory personnel and salesmen must still be familiar with the T.B.A. program, its details and its principal promotions. Full cooperation with Goodyear in the conduct of the T.B.A. program is expected. Salesmen must accept dealers' orders and should be given a quota responsibility.

1557 Conference of Atlantic and Goodyear Personnel in Connection With the Introduction of the Goodyear Commission Plan

Introductions

No Sales Presentation

The representatives of the Goodyear Tire and Rubber Company are not going to make any formal sales presentation this afternoon. This has not been deemed necessary as our purpose is to acquire a better understanding of how to inaugurate and implement a program that has already been sold. I have had plenty of evidence of Goodyear's ability to make very excellent sales presentations, and have no doubt that the situation is the same with many of you. Of course, sales presentations are going to be made as and when they are needed, especially for the District Sales organization and if it is mutually agreed upon also for the Dealer organization.

Interests of Other Departments

In addition to Regional and District Management, Atlantic is represented by the Controller's office, the Legal Department and the Sales Promotion Section, and there are specific matters that each of these representatives are in-

terested in and which may either be explored to a conclusion in this session or for which definite lines of communication will at least be established.

Questions and Answers

There are undoubtedly many questions about the plan that could only properly be answered by Goodyear's representatives. Some of these questions will undoubtedly be answered as the Goodyear method of operation is unfolded. Those questions that are not answered as well as others which may occur to you will be covered in a question and answer period immediately following Goodyear's presentation.

1559 District Reports

Atlantic representation has brought to this conference some detailed information regarding the district in which the Goodyear Commission Plan is to be introduced. Additional information that may be desirable for Goodyear can either be brought out in questions or prepared and presented at a later date.

Opening Dates

Serious consideration has been given to the time that the Goodyear program should be introduced into the Newark District, and we are prepared this afternoon to complete arrangements for additional conferences or meetings at District level in order to get the plan under way.

Review of Goodyear's Operation

In deciding the best approach to our present problem, it was considered wise to draw upon Goodyear's past experience in introducing their Commission Plan into the operations of other oil companies. It is believed that by tracing the various steps that have been employed in the

other operations, we will all get a better idea of how to co-ordinate and handle our respective parts in the job that lies immediately ahead.

Mr Gaylord

For this purpose and at this time, I am going to turn the meeting over to Mr S Gaylord, Manager of Petroleum Sales Department, Goodyear Tire and Rubber Company.

1561 COMMISSION EXHIBIT NO. 11.

Goodyear-Atlantic Program

Experimental

Atlantic District lying within our Newark District territory.

Sales Commission Plan

Announcement of plan to Goodyear and Atlantic personnel involved by meeting in Newark of Goodyear and Atlantic local personnel and head office representation from both companies.

The announcement to cover the plan and operating procedure, also working arrangement for Goodyear and Atlantic local field sales force.

Goodyear Field Representatives and Atlantic salesmen together to make initial call on Atlantic Resellers.

A simple story should be given to these men to introduce the object of their visit and approach to the subject to be discussed with the Reseller. This same story to be used by all Goodyear and Atlantic representatives on this initial call.

Later calls to be made by the two company representatives together when possible and each representative to make individual calls on a definite program as used in their regular work with customers and prospects.

A Goodyear Representative should be placed in charge of the program to guide and assist the field man in keeping the solicitation on a sound basis and moving forward at a productive pace.

1563 Detail of Meeting

Atlantic home office representative opening the meeting introducing the subject of the meeting and outlining the plan. (Perhaps introducing the members of his organization present.)

Goodyear home office representative (Introducing his organization present) describing the operating procedure of the plan.

Goodyear District Manager giving his thoughts as to how the two field organizations should work together to accomplish the purpose of the plan. Propose an outline of the approach the field men will use with the Reseller, etc., etc.

Atlantic local manager to give his opinion of the program upon this point and follow with his further thought and suggestions.

1564 COMMISSION EXHIBIT NO. 12.

The Atlantic Refining Company
Petroleum Products
Newark 5, N. J.

A. R. Sanborn

June 12, 1950

To Atlantic Dealers:

To Atlantic Petroleum Distributors:

Atlantic wishes to inform you that on June 13, 1950 the complete Goodyear program will be available through your Atlantic salesman. Atlantic's fine petroleum products and the nationally accepted Goodyear lines can provide you with a very unusual opportunity for profit possibilities. The completeness of the Goodyear franchise offers an excellent merchandising program; products which Atlantic has not had available, such as tractor tires, home supplies and extended lines of automotive accessories should give you the opportunity to sell more products to more people. Complete details of this new and, in our opinion, very desirable Goodyear plan will be brought to you very shortly by your Atlantic salesman and the local Goodyear representative. We urge you to give the Goodyear franchise every consideration.

Atlantic will discontinue merchandising and distributing its present T. B. A. line in your territory. Of course we will continue to honor any T. B. A. contracts between us as long as they remain in effect.

A. R. Sanborn
District Manager

1566 COMMISSION EXHIBIT NO. 13.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

June 1, 1950

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pa

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until canceled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time at
1568 our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

With respect to outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month with a statement reflecting sales made by us from our own supply points (retail stores, factories, district warehouses, or other owned outlets) and sales made by and reported to us by our dealer supply points, all as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a commission of ten percent (10%) on all sales to your dealer outlets and seven and one-half percent (7½%) on all sales to your franchise petroleum distributors as covered by such statement, computed on the net amount

of invoices, excluding tax, after deducting, whether shown on invoice or subsequently allowed, annual volume bonus, and all applicable discounts and allowances, other than cash discount, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half percent (7½%) on all such sales whether to your dealer outlets or to your distributors.

We understand that you will retain for your own exclusive benefit all commission received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

1570 Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc
By Victor Holt, Jr.
Vice President

Attest: W. M. Merlin
Assistant Secretary

Accepted:
The Atlantic Refining Company
By R. H. Colley

1572 **Exhibit A—Page 1.**

Products Eligible under the Commission Plan

Sales of the following products to approved Atlantic accounts are subject to commission when delivery is taken from an authorized (G-1209) supply point as indicated below by the symbol x:

Product	Goodyear District	Field or Factory Warehouse	Goodyear Store	Goodyear Independent Dealer
All New Goodyear Tires & Tubes	x	•	x	x
All Second Goodyear Tires & Tubes	x	•	x	x
Goodyear Produced Recaps & Repairs	x	•	x	
Goodyear Automotive Batteries	x	•	x	x
Resolute Automotive Batteries	x	•	x	x
Goodyear Farmlight Batteries	x	•	x	x
Battery Cables	x	•	x	x
Car & Home Merchandise	•	x(1)	x(2)	x
Anti-freeze	•	x(1)	x(2)	x
Tire Chains	•	x(1)	x(2)	x
Goodyear Brake Lining-Rivets-Weights	•	x	•	•
Dill & Schrader Valve Products	x	•	x	x
Sea-Bee Outboard Motors	x	•(1)	x(2)	x
Goodyear Repair Material—Shelf or Resale Items—Car & Home Line, as listed in C & H M Catalogue, as follows:				
Small & Bicycle Tube Repair Kits	x	x(1)	x(2)	x
Rubber Bonding Cement	x	x(1)	x(2)	x
Emergency Self-Sealing Patches	x	x(1)	x(2)	x
Small Containers Cold Patch Cement	x	x(1)	x(2)	x
Gasket Compound	x	x(1)	x(2)	x
Bicycle Rim Cement	x	x(1)	x(2)	x
Motorists Vulc-Patch Kits	x	x(1)	x(2)	x

• Not stocked at these locations.

(1) Goodyear District Manager may appoint Goodyear Store as supply point after securing approval by Akron as a Car & Home Merchandise supply point, G-1209 to be issued and signed by Atlantic.

(2) Goodyear Dealer may be appointed by Goodyear District Manager as a Car and Home Merchandise supply point, also G-1209 to be issued and signed by Atlantic.

1574 Exhibit A—Page 2

Products not Eligible under Commission Plan

All products not listed above as eligible products including but not limited to—

General Electric and Hotpoint Major Appliances
General Electric Radios and Television Sets
Motorola Radios, Aerials and Accessories
Magic Chef Ranges
Coleman Major Appliances as supplied by Distributors
Admiral—Radios—Television & Major Appliances
All types of Equipment—Battery Chargers
Display, Service Station, etc.
Repair Material—Camelback
Advertising and Sales Promotion Items
Adjustment Sales and Credits.

Exhibit A, consisting of two pages, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc to The Atlantic Refining Company dated June 1, 1950.

The Goodyear Tire & Rubber Company, Inc
By Victor Holt, Jr.
Vice President

The Atlantic Refining Company
By R. H. Colley

1576 COMMISSION EXHIBIT NO. 14.

July 5, 1950

Mr S J Heideman
Atlantic Refining Company
260 South Broad St
Philadelphia, Pa

Dear Mr Heideman:

Wish to acknowledge your favor of June 29th, together with outline of agreement, with changes suggested by Mr Stotz of your Legal Department.

I am passing this on to Mr L W Baker of our Legal Department and will advise you further as promptly as possible.

Confirming my phone conversation of 27th (June) relative to your letter of June 22nd. It is our intent to pay commissions earned by you on various products listed under Exhibit "A" in accordance with the supply point designated on our form G-1209, which form is jointly executed by both companies and the supply point is agreed upon and acceptable to the Atlantic Dealer.

The agreed supply point may be a Goodyear Dealer, a Goodyear Store, a Goodyear Field Warehouse, or a Goodyear District.

We will make changes in our agreement to conform with the above.

Kind regards.

Sincerely,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1578 COMMISSION EXHIBIT NO. 15.

August 2, 1950

Subject: Atlantic Refining Co.

cc H G Harper

We have had considerable discussion with Mr Heideman and Mr Stotz of subject company relative to letter of agreement covering proposed arrangement as between our companies.

We went over the revised draft in considerable detail and we are pretty much in agreement now if the following changes are acceptable to you.

With reference to the fourth paragraph on Page I—Mr Stotz would not accept reinstatement of the paragraph as it was written as he felt that it might be interpreted as meaning exercise of control over certain customers. He did, however, agree that the paragraph should not be eliminated entirely as it did add something to the agreement. As a compromise the following is suggested:

> "We understand that your field representatives will suggest to these customers the maintenance of adequate stocks of merchandise purchased from us and will counsel them as to the maintenance of proper identification and advertising with respect thereto."

Mr. Stotz did not fully agree with our wording of the second full paragraph on Page II. However, he has agreed to the re-wording that we worked out with him, as follows:

> "With respect to the outlets on the approved list agreed upon with you, we will furnish you as soon as practicable after the end of each month a statement reflecting sales made by us through our retail stores, factory shipments, direct warehouses or other owned

outlets, and sales made at our dealer-operated supply points and reported to us by such dealers; such statements shall reflect sales of all material other than that listed in Exhibit A as exceptions to the commission plan."

Regarding Exhibit "A." This was a form we used originally when we were not paying any commission
1580 earned unless delivery was made by us to the Oil Company accounts in accordance with the exceptions noted in Exhibit "A." Inasmuch as we are now delivering this merchandise through supply points appointed by us—either Goodyear Stores or Goodyear Dealers, in addition to sources shown in Exhibit "A," they would recommend that paragraphs #1-2-3-4-5 be eliminated from Exhibit "A."

Keep in mind that our Form G-1209, which is signed by both the Oil Company and Goodyear, shows the supply point which we establish for deliveries of all merchandise and we agree to pay commission on all merchandise which is delivered through such appointed supply points.

If you agree on this change, then the only items that should appear on Exhibit "A" will be those not subject to commission.

We are sending a copy of this note and a copy of the agreement to Mr Harper for his agreement and also that items not subject to commission can be re-checked.

Will be glad to discuss.

Manager—Petroleum Sales Department

S A Gaylord
lfm

1582 COMMISSION EXHIBIT NO. 16.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

April 3, 1951

Mr. Victor Holt, Jr., Vice President
Goodyear Tire and Rubber Company
Akron 16, Ohio

Dear Mr. Holt:

By letter agreement of June 1, 1950 between Goodyear and Atlantic we agreed to perform certain services to promote the sale of certain Goodyear merchandise.

At that time we began a test of the Goodyear TBA commission plan in one of our sales districts. We have decided and you have agreed to extend this plan to our Philadelphia and New Jersey, our New York, and our New England sales regions on the same basis as is outlined in the letter of June 1, 1950:

It is understood that this extension will be effective as of March 1, 1951, at which time Goodyear will begin supplying the various products and services outlined in the letter of June 1, 1950 to such of our retail outlets and distributors as desire to purchase them from Goodyear. At the same time Atlantic, through its field representatives, will begin assisting Goodyear in the extended territory in the sale of the products and services outlined in said letter with the understanding that, as has been the practice in the test area, our resale outlets shall be free to choose whether, and to what extent, they shall avail themselves of the opportunity to purchase Goodyear products and

services and that any resale outlet which chooses to carry products other than Goodyear shall not be prejudiced in any manner. Of course, we both understand that our organization cannot and will not use any methods other than salesmanship to encourage our resale outlets to purchase your products and services.

In determining to extend the Goodyear commission plan to those sales regions we have done so upon your assurance that you will provide tires, batteries, and accessories in sufficient amounts to take care of the normal needs of those Atlantic resale outlets which desire to avail themselves of your products. We realize that such assurance from you is subject to conditions beyond your control, whether now or hereafter existing, including government restrictions on the manufacture or distribution of the products involved.

1584 We understand that whenever the products supply situation is such that you are unable to furnish all the needs of all your customers you will make available to Atlantic resale outlets as large a share of their needs as are available to your other like customers.

If the above correctly sets forth your understanding of the arrangement between us, please so indicate by signing and returning for our files the enclosed copy of this letter.

Very truly yours,

D. T. Colley

Accepted:

The Goodyear Tire & Rubber Company, Inc.

By: J. E. Mayl

Vice President

Attest: W. M. Menter

Assistant Secretary

1586 COMMISSION EXHIBIT NO. 17.

June 16, 1950

Mr S J Heideman
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Heideman:

Confirming our conversation of last Wednesday, wish to advise that Mr Fritsch, Manager of our Identification Division, Advertising Department, advises that an identification program has been agreed upon along the following lines with Mr Paxton and Mr Butler at a meeting held at Philadelphia, Monday, June 5.

1. The standard Goodyear window valance will be used in its regular form with these reservations.
   a. We will not use dealer names or any other special copy except Batteries Auto Accessories. Dealer's name is not desired because of the turn over in station operators which would necessitate changing of windows.
   b. Where space is available and dealer is agreeable, the additional copy Easy Pay Plan, or some similar phrase pertaining to time payment selling, may be employed.
2. A Goodyear diamond metal sign fastened either to a fence or to a post at the edge of the court. This may be either our 4′ or 5′ single face diamond sign—or, the 30″x52″ sign we have been experimenting with on Shell and Sinclair stations, especially those on main highways. Certain reservations are made in this program.
   a. Mr Burler does not want us to use two sign positions—as, for example, a single face sign on each

side of the court in order to catch traffic both ways. He wants us to use one single face sign, or a double face, but keep it in one location.

3. We agreed that the above program would be considered a beginning point and that changes could be made based on our experience in the Newark District.

1588 We do not like "fence" locations because they are so easily blocked. This is happening now on Texaco stations where Firestone and Goodrich use a rectangular sign fastened to a fence. Most of the time, cars are parked along the fence, which obliterates the identification. In metropolitan areas, signs on posts are sometimes difficult to handle because it means digging into a concrete court. But these are problems which we will know more about after we do some of the stations in the Newark group.

4. Since the Atlantic stations in the Newark area will not come to us as one lump group and will have to be identified as they are signed up individually, we will employ local services to handle the window valance installation and the signs.

We will wait until there are at least 8 stations signed up—then we will size them up and determine the exact identification and proceed with it.

After we have these 8, or possibly a few more, identified—then Mr Butler has agreed to go with me to the Newark area and look them over to see if we are getting along all right and if there are changes which should be considered.

We can provide a set up whereby the window valances are installed within two or three days after a station is signed up and we would use this arrangement if it would take any great length of time to sign up the first dozen,

so as to avoid having the first one wait for identification two or three weeks that might be taken to get other lined up.

Yours very truly,
Manager—Petroleum Sales Dept

S A Gaylord
lfm

1590 COMMISSION EXHIBIT NO. 18.

July 25, 1950

Mr S A Gaylord—Manager
Petroleum Sales Dept

Subject: Atlantic Refining Company Newark District

cc Victor Holt Jr
F W McConky Jr—New York
Harry Ryan—New York
I D Love—Newark

The first phase of the Atlantic conversion to Goodyear in the Newark-Atlantic District has been completed.

All but a few of the small #3 stations, namely, grocery stores and other miscellaneous units not primarily in the gas and oil business, have been contacted and our program installed.

The reception from Atlantic outlets of all types has been, generally, one of enthusiasm for the change-over to Goodyear.

This attitude plus the training and drive of the Atlantic District sales personnel should result in sizable sales performance of T.B.A. from this group.

During the last three weeks the supply position became the number one problem. On my departure, Friday, July 21, Mr Sanborn, Atlantic District Manager, was concerned only with our intention to cope with this problem.

Due to a change in Atlantic personnel, solicitation of the

only jobber handling T.B.A. in our New York District was deferred until last week.

Mr Sanborn of Atlantic, Charles Knight, Assistant District Manager, Goodyear-New York and I called on Boyce Esser, President of Suburban Oil Company at Mt Vernon, New York.

Suburban Oil has been a Firestone account for the past year, having pulled away from Lee because he could not get a competitive deal through Atlantic.

Their purchases from Firestone since the first of this year have been at the rate of $45,000 a year. In addition, however, they are taking over another jobber territory on Long Island and expect to increase their T.B.A. volume to $75,000. At present they have 42 stations, all in Westchester County.

This is a 100% Petroleum Jobber outlet with excellent stocking facilities, good capital structure and an aggressive outlook with respect to T.B.A. as part of their program.

1592 Our program was outlined in detail and our discount and resale structure submitted. In effect it is the same as Firestone's.

At the time Mr Esser did not have a firm commitment from Firestone as to supply, although he felt he would get his fair share of merchandise.

Atlantic Refining is very interested in getting this account handling Goodyear as it represents a sizable volume of T.B.A. on which Atlantic at present get no commission.

At the conclusion of our meeting Mr Esser indicated that he would take on Goodyear, but we made no commitment, as Charles Knight informed me that Harry Ryan had several problems to work out and wanted all the details.

This account is ready to go Goodyear and Atlantic is anxious that we take them on, so, if we elect to take on this account, we should move fast.

It would be my suggestion that Mr Sanborn accompany

our personnel for the signing up of this account, if it is so decided.

By taking on Suburban Oil we will strengthen our hand with Atlantic, help keep their morale high in this test area and eliminate the possibility of thei. making a claim for commission from Firestone, which could be done and would probably be paid just to keep us out.

J W B

J W Basista
lfm

Petroleum Sales Department

1594 COMMISSION EXHIBIT NO. 19.

cc L A Barnes
J W Basista

November 2, 1950

Mr S J Heideman
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Heideman:

With regard to the adjusted Lee Tires, wish to confirm that our understanding of the arrangement is that we will settle with your company on a 50-50 basis of the net loss.

I am suggesting to our Field Operating Department that a statement for the first quarter be submitted to you and a request for payment of your share on the above basis.

Yours very truly,

S A Gaylord
lfm

Manager—Petroleum Sales Dept

L A Barnes—Will thank you to proceed accordingly indicating where the check should be sent, etc.

S A G

1596 COMMISSION EXHIBIT NO. 20.

cc J W Basista—Newark
Victor Holt Jr
J E Mayl
I D Love—Newark
F W McConky Jr—New York

June 29, 1950

Mr S J Heideman
Atlantic Refining Company
260 S Broad Street
Philadelphia, Pa

Dear Mr Heideman:

Confirming our phone conversation.

We have a progress report from Mr Basista and Mr Love, covering the first ten days solicitation of Atlantic accounts.

A recapitulation of results:

Atlantic Dealers signed as Goodyear Associate Dealers as agreed supply points, either Goodyear Stores or Dealers	87
Atlantic Dealers signed as direct District Goodyear Dealers	4
Atlantic Distributors signed as direct Petroleum Jobbers	2
Total	93

Total special display packages sold 77

Orders reported for merchandise sold on direct basis:

Tires	193 units
Tubes	113 "
Batteries	36 "
Accessories C & H M	$655

Actual inventories of competitive merchandise of accounts signed:

Tires	3,176 units
Tubes	2,098 "
Batteries	610 "

General Comments

Good progress has been made during the first ten days. We can reasonably expect some real tangible evidence of merchandise movement within the next thirty days.

Initial contacts and presentations have been made 1598 with the majority of all accounts assigned and in every case supply points have been established and all details worked out to the mutual satisfaction of all concerned.

The general reaction of all types of Atlantic accounts has been very favorable and there has not been one single instance where the Goodyear program was not acceptable.

Competitive merchandise inventories were extremely heavy, which has affected our immediate sales during initial contacts.

Excellent cooperation is being received from the Atlantic-Newark organization.

As suggested by you, we will send you a weekly progress report and at the end of each month will get the sales figures to you at the earliest possible time which will be in advance of our official figures.

Sincerely,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1600 COMMISSION EXHIBIT NO. 21.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

July 10, 1950
TBA SJH
T.B.A. Goodyear Commission Plan

Mr. S. A. Gaylord, Manager,
Petroleum Sales Department,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Mr. Gaylord:

Thank you for your letter of July 5th and the reassurance that it contained about the several types of deliveries on which commissions are paid on the various products that comprise the T.B.A. line.

Another question comes up about chains. The instructions issued by your accounting people indicate that commissions will not be paid on chains except on direct factory shipment. Our service stations do quite a bit of chain business when we have ice and snow, but the majority of them are not in a position to order their requirements on a direct factory shipment basis. We expect, therefore, that our dealers' chain business will develop principally on a local delivery basis, and certainly think that some method should be devised whereby we can be properly credited for commissions on all such transactions.

Cordially yours,

S. J. Heideman

1602 COMMISSION EXHIBIT NO. 22.

January 23, 1951

Mr S J Heideman
Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Dear Syd:

We were pleased to receive your letter of January 19th and your comments with respect to our 1951 Advertising Book.

You certainly have proved that you looked it over pretty carefully as noted by your remarks concerning the absence of a T.B.A. Display Package.

This is the first year since shortly after the war that we have taken out the T.B.A. Display Package. The reason is quite obvious since our sales of this specific package did not justify its continuance in our advertising line.

As a substitute, however, we have decided on a small package Display Service, which is listed on Page 30 of our Dealer Advertising Book.

The reason that have been given us by our Field Organization and which largely influenced us in eliminating the regular T.B.A. package was the fact that there was too much material for the Service Station to use and the cost of $8.50 per year for the service.

The small Display Package mentioned above will give each Service Station some special display material at the three peak periods during the year which will adequately tie in with our national promotions. At the pitiful price of $1.50 delivered we hope that a substantial number of these packages will be sold.

The display package such as used during your changeover in the Newark District was supplied especially for this

occasion and we are advised by our Advertising Department that any future requirements for similar purposes will be taken care of.

In our phone conversation Saturday you mentioned that the identification problem was not yet settled. I have talked with Paul Fritsch and find that he will be in
1604 New York on February 6th and 7th and I would like to suggest that if convenient that we have Mr Fritsch drop by Philadelphia and discuss this phase of our activity with whomever is necessary in order to finalize this problem.

We will appreciate it if you will advise if this date is satisfactory.

I have discussed the rest of our conversation with Mr Holt and you undoubtedly have or will be contacted.

Kindest personal regards.

Yours very truly,

Petroleum Sales Department

J W Basista
lfm

1606 COMMISSION EXHIBIT NO. 23.

Oil Company Sales Material 1950

Advance Information--Details to Follow

We have in production three colored motion pictures, which will be ready with prints complete and ready to go no later than March 1st. These are designed primarily as Service Station Dealer Training Material.

We believe these three pictures will be the most effective that we have ever produced from the standpoint of more satisfactory sales results.

Our Oil Company material is designed primarily for

Dealer Meetings. We have planned this year to get our Oil Company accounts to conduct these meetings themselves as a part of their regular Sales Program and will furnish them with a reasonable number of prints for that purpose.

All three of the pictures can be run at the same meeting, or can be used separately for individual meetings.

Details, as follows:

Tire picture—title "Closing Time" 25 minutes
Battery picture—title "We, the Customer" 15 minutes.
Accessory picture—title "Just Between Us" 15 minutes
"Point of sale" material and Tire Buyer's Guide book as announced in our letter of January 10th.

Material of this type is the most effective ever used with Service Station accounts. The new book will sell to Dealers at $1.50, which does not cover the cost of the 3-ring binder used.

We are developing a colored slide film featuring the Tire Buyer's Guide, which can be used in connection with the above motion pictures or separately.

At the conclusion of Dealer Service meetings we intend to furnish attending Dealers copies of meeting material covered, also order blanks for Tire Buyer's Guide with the suggestion that Dealers attending may place their orders immediately for same.

We have a special Service Station Edition of the Goodyear 1950 Advertising Book outlining program, which will be furnished our Oil Company accounts in fair quantities. We want to feature Multiplex Display fixtures and poster service for Oil Company accounts again in 1950. This material is featured in the 1950 Advertising Program.

We also plan to furnish Oil Company accounts the 1608 Goodyear Merchandiser. There will be ten issues as in 1950. The first issue will be released during the

coming ten days, covering the main points of the 1950 Advertising Program in advance of Advertising Conferences.

There will be nine other issues featuring sales promotions, sales promotion recommendations, dealer meeting guides, etc.

S A Gaylord
Manager—Petroleum Sales Dept

1724 COMMISSION EXHIBIT NO. 24.

Confidential

District Managers
Philadelphia
Newark (Operation June 1950)
Albany
Hartford
Syracuse
Boston
Buffalo

Subject: Atlantic Refining Company

This outline supplements information given you by Mr McConky relative to additional territory assigned to us in the sale of Goodyear Tires, Batteries and Accessories under the Sales Commission Plan.

Due to urgency of getting this information to you as soon as possible Mr McConky has suggested it be sent you direct rather than through his office, which would be normal procedure.

Naturally, there will be a question in the minds of many as to why we are taking on this new distribution now. Since truth is always better than fiction we will give you the background which led up to the decision by our Management.

As you know, we have recognized the desirability of Atlantic distribution for many years and the need for more oil company distribution in the new territory now assigned to us, which represents more than 50% of the Atlantic T.B.A. sales and potential.

Early last year when supplies were plentiful and signs for the future pointed to over-production and increased competition, we mutually agreed on the marketing experiment with Atlantic in our respective Newark District territories with a commitment for expanded territory if the Goodyear Commission Plan proved successful—which it did.

It is true that even at a late date we could have withdrawn from our commitment to Atlantic, however, we would have been out of the account for keeps and our competition, which placed no restrictions on moving in, would have the account 100%.

While at the present time we have no assurance of any immediate improvement in the critical supply situation we all must fully recognize that the present shortage is an artificial one which, barring an all-out war, will end very suddenly when the government stops its stock piling program.

In the meantime we have a definite commitment with Atlantic and plan to live up to it to the best of our ability. The decision of our Management was made after consideration of all factors and particularly because it gave Goodyear the opportunity of entering into a long-term relationship with Atlantic, providing our performance is satisfactory. Naturally, Atlantic Management expects improved sales results as an important factor or would not consider making a change to Goodyear at this time.

Mr McConky will be talking with you during the coming week in regard to supplies and you will secure full cooperation from your Atlantic District Manager as to the 1950

sales results for Tires, Batteries and accessories in your territory in order to determine sales volume expectancy in your territory.

1726 We are working with Mr Harper and his staff toward augmenting our warehouse stocks of Batteries and C & H M to accommodate taking on Atlantic volume.

The Marketing Regions assigned to Goodyear are, as follows:

(1) Philadelphia and New Jersey
(2) New York
(3) New England

Attached you will find a listing of Atlantic Personnel showing break-down of each region by Districts, which you are already familiar with.

You have been advised of the Sales Organization Meetings to be held in each of these regions, as follows:

Feb. 27 Philadelphia—Ben Franklin Hotel
Feb. 28 Providence—Narragansett Hotel
Mch. 1 Syracuse—Onondaga Hotel

These meetings will be attended by Sales Personnel of both companies, commencing at 1 P.M. each day and followed by a Cocktail Hour and Dinner.

Program for these meetings is herewith attached.

You will attend this meeting so lengthy comment regarding it are unnecessary.

The meeting will be opened by an Atlantic Official who will make the announcement of the change to Goodyear and the reasons for it.

He will probably indicate plans of making announcement to Atlantic Dealers by letter and by joint Atlantic-Goodyear meetings for Atlantic Dealers, to be followed by solicitation and presentation of the Goodyear franchise.

Mr McConky will key-note for his Division. He will welcome the opportunity and pledge strong support and co-

operation. No doubt he will stress the importance of Atlantic and Goodyear personnel getting acquainted and teaming up together when presenting the Goodyear franchise to Atlantic Dealers. Because the Atlantic Sales Representative has the "in", but cannot be expected to know the Goodyear story at the start, so by team work the Goodyear Sales Representative will make the presentation and also assist in training the Atlantic Representatives.

Mr McConky will also introduce you—you in turn can speak for your District organization—seconding Mr McConky.

At those meetings attended by more than one District Manager Mr McConky will probably introduce each of you and also speak for you.

Balance of program is Goodyear presentation by Department Managers as shown.

Mr Mayl, speaking for Goodyear, will give full Management endorsement to the new Atlantic Marketing arrangement. Atlantic Head Office Management will do the same when closing the meeting.

1728 Three special displays for these three opening Organization Meetings at Philadelphia, Providence and Syracuse have been shipped for these meeting as you have been advised by Mr Jones.

Mr Jones will provide one or two of his men one day in advance of each of these meetings to supervise proper installation, stocking, displays, etc. In connection with this it will be advisable to secure from the hotels flood lights, spot lights for these displays as we have not provided any special lighting.

After these meetings the Districts are to hold these displays to be used in connection with Atlantic Dealer Meetings that follow.

Since Jones' men will not be available to assist in setting up these displays for the Atlantic Dealer Meetings we

suggest that the personnel that you assign to assist Mr Jones' Representative in setting up for the first meeting should then be given the responsibility of setting up the display for your Atlantic Dealer Meetings.

It will probably be necessary in most cases at least to hire a truck to transport this equipment from one town to another. The cost of this should be charged to Budget S-94A—Department 706.

Mr Jones is also shipping three additional and identical displays for the following Districts:

Albany—Buffalo—Hartford

These to be used for Atlantic Dealer Meetings.

Due to the limited space in some of the hotels it may not be practical to use the entire display at all meetings. There is also a possibility of duplication of meeting dates, in which case it will be necessary for the District to develop another display for the smaller meetings which may occur at the same time.

We understand the Newark District will only have one Dealer Meeting at Newburg, N Y. For that meeting we will suggest that the same display which was used at the Phillipsburg Meeting this week be set up.

Temporarily at least we are not charging the Districts for the cost of these displays. At the conclusion of your Dealer Meetings we will expect each District to sell the material. A separate letter is being written on this subject giving you the full detail and District Managers will be expected to follow this detail.

In connection with the meetings at Philadelphia, Providence and Syracuse it will be the responsibility of the District to furnish a 16 mm motion picture machine and slide film projector, also a large screen and experienced operator.

Equipment from the District should be inspected and put in first class condition, otherwise first class equipment

should be rented. The cost of this, plus the cost of a union operator, if necessary due to restrictions should be charged against Budget S-94A—Department 706.

In connection with the properties necessary for
1730 conducting the Sales Organization Meetings at these three points. We are showing motion picture "House of Goodyear". This film will be brought in from Akron to Philadelphia and from there to the other meetings by Mr Basista, also the slide film which will be used by Mr Harper.

We are also shipping to the attention of District Managers material shown on the attached list to be used by Mr Zonsius and Mr Harper.

We are also shipping, marked for your attention, 100 Goodyear pens which are to be used as favors at the dinner.

With reference to the Cocktail Hour, which will be announced by Mr Mayl, our suggestion would be that we have open bar service for a period of about an hour with proper facilities, help, etc to handle number attending.

General Information Regarding Atlantic-Goodyear Marketing Arrangement

Our agreement with Atlantic covering Goodyear Tires, Goodyear Batteries and Goodyear Car and Home Supplies will be the Sales Commission Plan.

Complete Operating Instructions will be issued to all Districts within the new marketing area assigned to Goodyear.

After your Dealer Meetings and when solicitation of Atlantic Dealers starts will suggest that you consult with your Operating Manager, also with the Atlantic local Management, your Representatives and the Petroleum Representative assigned to the account to coordinate and work plans so that the G-1209 forms will be promptly issued and signed at the time each account is sold. Then set up

proper mechanics so that the G-1204's will be issued monthly in accordance with our instructions.

We also used a special introductory advertising and display package at Newark which was sold Atlantic dealers at a cost of $2.50. A list of the material in this package is shown on the attached sheet. We are making up stock and will ship quantities to your District within a few days, advising you as to quantities, etc.

This package was sold Atlantic Dealers at Newark practically 100%, mainly because it is an outstanding value, and the same procedure should be followed when signing up Atlantic Dealers in your territory.

At Newark we also worked out an arrangement with Atlantic whereby we adjusted Lee Tires with Goodyear replacements. Atlantic are obligated with a Road Hazard Warranty. The general procedure has been to have the Lee Tires sent in to our Districts for adjustment under the Road Hazard Warranty, also under the Defective Workmanship and Material Guarantee.

Complete instructions as to handling this will be issued by our Field Operating Department, also our Service Department.

We are also planning for additional Goodyear personnel to handle and coordinate the Atlantic account.

One man headquartering at Philadelphia responsible for Atlantic Head Office contacts and also responsible for contacts with all Atlantic Districts assigned to Goodyear and proper coordination of the program as between Atlantic and Goodyear organizations.

1732 One man headquartering at Philadelphia working with Atlantic Philadelphia and Suburban District, South Jersey and Newark Districts.

One man headquartering at Providence working with Atlantic Districts in New England Regions—

Providence	Hartford	New Haven
Worcester	Fall River	Bridgeport
Springfield	Boston	

One man headquartering at Syracuse—New York Region contacting

Syracuse	Binghamton	Watertown
Buffalo	Rochester	Albany

Mr. McConky is working on these new assignments and we are hopeful that the men will be available at least to attend the three opening meetings.

In addition to the above personnel, Joe Basista and myself will be available to assist and we will probably have some extra personnel assigned particularly in the Philadelphia and South Jersey Regions to assist temporarily in the solicitation of Atlantic Dealer accounts.

Our Advertising Department are working on an identification program which will be submitted to Atlantic Head Office for approval shortly.

Handling Costs in Connection with all Atlantic Meetings

Please write this department a letter giving us confirmation of the estimated cost of all meetings which you have in most cases given us by long distance phone.

This should include all meetings and dates as soon as they are scheduled.

Charges for meetings are to be paid by Districts and journaled against Dept. 706-Akron, Budget #S-94A.

Goodyear will pay the cost of introductory Sales Meetings at Philadelphia, Providence, Syracuse, also Atlantic Dealer Meetings to follow.

Bulletin boards at hotels should indicate meetings, as follows:

"Atlantic-Goodyear Meeting"
Time and Location

The suggested outline for the Atlantic Dealer Meetings is herewith attached.

It need not be handled exactly as it is a program which you should work out with your Atlantic District Manager and agree on.

Based on experience, the meeting should not run later than 10:00 P M, though the Dealers should be invited to inspect the display and meet the Goodyear personnel, if they desire to do so.

1734 We understand Atlantic will issue invitations for the Dealer Meetings. We also understand it will announce the change to Goodyear by letter, similar to the one attached, so it will not be necessary to have the Goodyear display covered as is indicated in the meeting outline.

Immediately following the three introductory meetings at Philadelphia, Providence and Syracuse and after you have coordinated the entire program with your Atlantic District Manager, it will probably be advisable for you to have a meeting with your sales personnel and brief them on the entire Atlantic program in detail as to what will be done at the Dealer Meetings and the plan for soliciting the Atlantic Dealer immediately thereafter.

Based on our experience it will be necessary to have the Atlantic sales people and the Goodyear Representatives team up together and start solicitation immediately following the Dealer Meetings.

The Atlantic Representative will have the "in" with the account and the Goodyear Representative can then present the Goodyear Franchise. Each Goodyear Representative should have his copy of the Goodyear Franchise Presentation for this assignment.

Two purposes will be accomplished by this teaming activity—first—the Atlantic Salesman will learn the basic details of our Franchise Presentation and, secondly—our Goodyear Salesmen will be vary favorably introduced to

the account through the sales influence of the Atlantic Representative, also bring up this point with your men.

Head Office Management of Atlantic will make it clear to their organization that the Goodyear T.B.A. Franchise has been selected because by testing they have determined it is the best proposition for Atlantic Dealers. It will be presented to them on a straight sales basis. In other words, no unorthodox methods will be tolerated and our sales people should be governed accordingly.

Atlantic Dealer Meetings

In discussing this with Atlantic District Manager we believe that he will desire to open the meeting, as we have indicated on the program, placing special emphasis to his Dealers "Why Goodyear". In other words, Atlantic have for several years studies what is the best long-term arrangement for Atlantic Dealers and after several tests and experiments selected Goodyear.

The Atlantic District Manager will then tell his Dealers that the Atlantic Salesmen and his Goodyear counter-part will call on them and present the Goodyear proposition asking that it be given careful consideration.

From that point you will take over the program and it actually becomes a straight Dealer Meeting, which you are very familiar with. Suggested outline and some of the points you may want to cover is herewith attached.

The three pictures "House of Goodyear"—"Closing Time"—and "We the Customer" shown on the program will be furnished by us from Akron providing with have a complete schedule and dates far enough in advance of your meetings.

One of the most necessary things in all of these 1736 meetings is to be sure that the Goodyear and Atlantic personnel become well acquainted as quickly as possible and a close relationship be maintained.

As previously stated, the Petroleum Sales Department stands ready to assist you in every way possible in coordinating this entire program and, of course, we will see you at the three introductory meetings this week and discuss more in detail any questions or plans which you care to bring up.

S A Gaylord

1738 COMMISSION EXHIBIT NO. 25.

Proposed Outline of Meeting

Atlantic-Goodyear

Sales Organization Meeting

1:00	Atlantic Regional Manager announces program: also introduces Goodyear Division Manager	20 min.
1:20	F W McConky, Jr.—N E Division Mgr. Goodyear T & R Co	10 "
1:30	Goodyear District Mgr.	5 "
1:35	"House of Goodyear"—Motion Picture	35 "
2:10	Recess	10 "
2:20	Selling the Goodyear Franchise—J A Lewin	20 "
2:40	Goodyear Tire & Tube Sales—K C Zonsius	60 "
3:40	Recess	10 "
3:50	Goodyear Battery Sales—H G Harper—Mgr Associated Mdse. Goodyear C & H M (Accessories)—H G Harper	60 "
4:50	Goodyear Service Station—Dealer Training & Promotional Material—J A Lewin	20 "
5:10	Stretch	5 "
5:15	Goodyear—Akron Mr J E Mayl, Vice President	10 "
5:25	Atlantic Refining Company Close—District Mgr. or Head Office	10 "

Meeting to close at 5:35 P M

Mr Mayl to issue invitation to Goodyear Cocktail Hour and Dinner starting at 6:30 P M

1740 COMMISSION EXHIBIT NO. 26.

Suggested Atlantic-Goodyear Introductory Dealer Meeting

7—8:30 Dinner

8:30 Atlantic District Manager
Introduce ARCO Visitors
Announcement—"Atlantic is Going Goodyear"
Unveil Displays

9:00 Goodyear District Manager
Introduce Key, Liaison, Sales Personnel, etc.
"House of Goodyear"
"Closing Time"
"We The Customer"

9:45 Atlantic District Manager
Introduce TBA Manager—
A Natural for Plus Sales and Profits

10:00 Close Meeting
Meet Goodyear Representatives and Invite Questions and Answers and Inspection of Displays

1742 COMMISSION EXHIBIT NO. 27.

Goodyear District Manager Presentation
(Atlantic Dealer Meeting)

Outline

Introduction of Goodyear Personnel.

After years of courtship Atlantic and Goodyear have wed, and, believe us fellows, it wasn't a shot gun wedding. We are sure it will be a long and successful relationship.

Atlantic thoroughly studied and actually tested the Goodyear program in the Atlantic-Newark District.

It's unquestioned success is one of the main reasons for the decision to go Goodyear.

We welcome wholeheartedly this merger. Evidence of our sincerity—tying up with Atlantic at this crucial time.

Building for the future. We have recognized Atlantic is one of the largest and most aggressive companies in the Oil business.

As leaders in the rubber industry we are confident this can and will be a winning combination.

What we have to offer—

Best quality
Complete T.B.A. lines
Greatest Acceptance
Most advertising support and sales help
Convenience of supply
Competitive prices
Active, adequate sales training and cooperation

Atlantic and Goodyear will combine efforts to make your business bigger and more profitable.

Goodyear and your Atlantic salesman will call on you together to outline our franchise.

Your cooperation and patience in these days of shortages will be appreciated.

We pledge you we will do all in our power to make you Atlantic Dealers the envy of the Petroleum Industry.

1744 COMMISSION EXHIBIT NO. 28.

The Atlantic Refining Company

Sales Personnel

Territory Assigned to Goodyear

President

R H Colley 260 South Broad St., Philadelphia, Pa

Executive Vice President

H Supplee, Jr "

Domestic Sales Department

D T Colley, Vice President & General Manager "

Product Sales & Sales Development Division

F M Neall, Manager "

Sales Promotion Section

E R Cox, Jr., Manager "

T.B.A. Section

S J Heideman, Manager "

H K Paxson, Assistant Manager "

Sales Operations Division

William Keen, Manager "

Credit & Collection Division

William Stockton, Manager "

Marketing Regions

Philadelphia & New Jersey

J O Estlow, Regional Manager "

E D Walter, Manager, Sales Group "

E D Stanton, Direct Marketing Supervisor "

W J Jackson, T.B.A. Co-ordinator "

Philadelphia & Suburban District
F C Bowman, District Manager "

South Jersey District
C W Feld, District Manager "

Newark District—85 Doremus Avenue, Newark, New Jersey
A R Sanborn, District Manager

New York—Syracuse Savings Bank Building, Syracuse, New York
G V Ostrander, Regional Manager
W S Shockley, Manager, Sales Group
W T Bell, Direct Marketing Supervisor
L K Maisel, T.B.A. Co-ordinator

Syracuse District—540 Solar Street, Syracuse, N Y
R H Gillum, District Manager

1746 Buffalo District—P O Box 11, Station B, River Road, Buffalo, N Y
H J Van Nortwick, District Manager

Binghamton District—227 Front St, Binghamton, N Y
D F McSparran, District Manager

Rochester District—1840 Lyell Avenue, Rochester, N Y
W W Hamilton, District Manager

Watertown District—58 Public Square, Watertown, N Y
A C Walker, District Manager

Albany District—P O Box 71, Rensselaer, N Y
N A Butterfield, District Manager

New England—430 Hospital Trust Building, Providence, R I
H W Jollie, Regional Manager
M G Davis, Manager, Sales Group
C A Walsh, Jr., Direct Marketing Supervisor
T L Walsh, T.B.A. Co-ordinator

Providence District—Barrington Parkway, Kettle Point, R I
L E Wilson, District Manager

Worcester District—North Prescott & Byron Sts., Worcester, Mass
R A Batchelder, District Manager

Springfield District—1075 Page Boulevard, Springfield, Mass
O K Schmid, District Manager

Hartford District—1351 Main Street, East Hartford, Conn
L E Card, District Manager

Fall River District—51 Purchase Street, Fall River, Mass
A E Lofquist, District Manger

Boston District—Park Square Building, Boston, Mass
C F Favorite, District Manager

New Haven District—Alabama Avenue & Waterfront, New Haven, Conn.
W F van Haagen, District Manager

Bridgeport District—3 East Avenue, Bridgeport, Conn
B H Lasseter, District Manager

Purchasing Department

J S Parks, Purchasing Agent, 260 South Board St., Philadelphia, Pa
M S Charlton, Assistant Purchasing Agent
C. F Bergh, Buyer—T.B.A.

Note: Goodyear District Managers to contact at District Manager level, also Regional Marketing Supervisors and T.B.A. Co-ordinators.

Goodyear Petroleum Representatives work closely with Co-ordinators, District Managers and Sales Personnel.

1748 COMMISSION EXHIBIT NO. 29.

(Sample of Atlantic Letter to Dealers, Etc.)

To Atlantic Dealers
To Atlantic Petroleum Distributors

Here is the most important T.B.A. news ever sent you by Atlantic. Very shortly the complete Goodyear line will be available through your Atlantic salesman. You will be notified as to the exact date the new program will become effective. In the meantime, we will continue to supply you to the best of our ability with our present T.B.A. line.

The decision to make this change in the T.B.A. program to that of Goodyear was made only after thorough testing to determine the advantages for Atlantic dealers. The results of these tests showed that the Goodyear program offered very real benefits.

The Goodyear plan includes new sales possibilities. A complete line of tires, batteries, and Car and Home Merchandise is available. This change in policy opens a door to new profits. The reason for offering this new line of T.B.A. products is to present to dealers and distributors a program which, in our opinion, can provide the maxi-

mum in sales potential as well as better support for overall petroleum Marketing.

With the announcement of the effective date of the new program, the merchandising and distributing of the present T.B.A. line will be continued only to the extent of remaintaining inventories.

1750 COMMISSION EXHIBIT NO. 30.

Atlantic-Goodyear Sales Organization Meeting
Props and Meeting Materials

(1)	Display Equipment shipped Air Express to Hotel Display Merchandise—to be furnished by District and Suppliers.	
(2)	Chrome Pens—Shipped Air Express to Districts—Attention District Mgrs. Animated Pencils—Shipped Attention District Mgr. for Dealer Meetings	
(3)	Product Data Book (2) shipped P P to District—attention District Mgr.	
(4)	Car and Home Catalogues with Dealer & Distributor Price Lists shipped to District—Attention District Manager	
(5)	Introductory Advertising & Display Package shipped to District Mgr. for Dealer Meetings.	
(6)	B-256—Ready Reference Chart	Shipped Parcel Post to Districts—Attention District Manager
(7)	B-198—Price Lists—Auto Tires & Tubes	
(8)	B-224—Price Lists—Truck Tires & Tubes	
(9)	B-304—Consumer Prices Goodyear Battery	
(10)	B-166—Battery Policy and Sales Program	
(11)	B-309—Zone Wholesaler Price—Goodyear Batteries	
(12)	B-318—Consumer Prices—Resolute Batteries	
(13)	B-322—Service Distributor Prices—Resolute Batteries	

(14) Film "House of Goodyear" (Short Version)
(15) Film "We the People" } For Dealer
(16) Film "Closing Time" } Meetings } Akron to
(17) Film "Goodyear Battery Franchise Presentation" } supply
(18) 16 MM Motion Picture Projector—District to supply. Be sure it is in good working order. Also supply extra projector bulb.
(19) Slide Projector—District to supply. Be sure it is in good working condition.
(20) Large Motion Picture Screen. District to supply.
(21) Motion Picture Operator. Disrtict to supply. Can arrange through Bell and Howell.
(22) Speaker's stand with light. Ask the hotel to supply. If advisable public address system.

1752 COMMISSION EXHIBIT NO. 31.

Goodyear Introductory Package for Atlantic Dealers

(Contents)

1 Tire Buyer's Guide
1 Temporary Goodyear Sign 24x43 (Water Resistant Heavy Paper)
2 Metal Tire Stands
5 Tire Centers (Marathon out)
5-6 x 26 Streamers (paper)
4-14 x 42 Banners (paper)
2 Stack Signs "Let's Trade Tires" etc.
1 LifeGuard Demonstrator (S-2202)
1 Puncture Seal Demonstrator (S-1309)
Special introductory price to Atlantic Dealers $2.50 ($6.50 Value)
Packages shipped to all Districts from Akron—to be sold when signing Atlantic Dealers.
(Also sell Price Book and Service)

1756 COMMISSION EXHIBIT NO. 33.

Akron

March 12, 1951

District Operating Managers
CC: District Managers

Atlantic-Lee Adjustments

Goodyear and Atlantic have entered into an agreement whereby we will adjust Lee Tires for Atlantic Dealers. Further, that the adjustment loss incurred by this agreement will be divided equally between both companies.

Report

In view of the above and to insure proper handling, districts will prepare the following report at the end of each quarter.

1	2	3	4	5	6	7	8	9
Inv #	Dealer's Name	Item & Serial #	B-19A #	Defective Condition	Amt of Wear	Adjusted Price	Dealer's Normal Buying Price	Net Loss (Col 8 Less Col 7)

Note: In some instances the dealer's normal buying price (Column 8) will be unknown as the Atlantic Dealer may be buying Goodyear merchandise through a Supplying Dealer. In these cases, Districts are to contact the Supplying Dealer for the account's normal buying price. District Manager's assistance should be requested if needed.

Report will be prepared in triplicate and will be distributed as follows:

1—S J Heideman, Atlantic Refining Company Home Office
2—Applicable Atlantic Regional Office
3—District File Copy

Tires Scrapped at the District

All Lee adjusted tires will be scrapped locally at the District by cutting the beads and selling for scrap. The amount of revenue derived from the sale of these tires will be credited to Net Loss (Column 9) above.

Those Lee Tires, which are adjusted on the Time Guarantee Certificate, require attachment of this certificate to that copy of the above quarterly report forwarded to S J Heideman.

District Accounts Receivable

Immediately after preparation of the above report, districts will issue journal ticket debiting Atlantic for their share of adjustment loss. Journal ticket posted to the Sundries Account will debit 207 Accounts Receivable and credit account 007 Adjustment Loss. Acknowledge check from Atlantic covering their portion of this loss on G-1053C cash receipt. Send two extra copies of this journal ticket to Wholesale Field Operating.

G L Wright—Manager
Wholesale Field Operating

1758 COMMISSION EXHIBIT NO. 34.

March 12, 1951

H F Aul—District Service Rep—Philadelphia
R S Colton—District Service Rep—Albany
W O Reid—District Service Rep—Hartford
W W Evans—District Service Rep—Syracuse
J T Miller—District Service Rep—Boston
J W Silk—District Service Rep—Buffalo
cc—District Managers
F W McConky, Jr

Subject: Atlantic Refining Company

Early last year Goodyear entered into an experimental arrangement with the Atlantic Refining Company regarding the sale of Goodyear tires and tubes by a certain group of Atlantic outlets in the Newark District. The arrangement proved so successful that the plan is now being extended to Atlantic Refining Company outlets in the above Districts.

Atlantic outlets have heretofore sold Lee tires. Lee passenger Car Tires were covered by a Lee Time Guarantee. Lee Commercial Truck Tires in the 15" and 16" were also covered by the Lee Time Guarantee. Lee Truck Tires in other sizes were covered only by the regular Industry Warranty against defects in workmanship and material.

Until such time as the supply of Lee tires in Atlantic Refining Company outlets is exhausted, it will be necessary for the District Service Department at above Districts to handle adjustments on Lee tires by replacing Lee tires with Goodyear tires in accordance with the following instructions. Please read these instructions carefully, familiarize yourself with every detail.

H E Ammerman
Manager—Service Department

mh

1760 COMMISSION EXHIBIT NO. 34B.

Instructions for Acting for the Atlantic Refining Company in Negotiating Adjustments on Lee Tires

Lee Tires Shipped to the District

1. Atlantic Refining dealer handles a claim with a customer at the time it is presented to him. He will replace a Lee tire with a Goodyear tire providing the customer presents an authorized Lee certificate covering the Lee tire.
2. The Atlantic Refining dealer will refer the replaced Lee tire direct to the Goodyear District.
3. The Lee Guarantee Certificate must be presented with the Lee tire. No claim form is needed for the Lee tire, the certificate is sufficient.
4. If the transaction appears to be in order, the District Service Department will replace the Lee tire with a Goodyear tire after the used Lee tire has been received at the District Office and the B-19 form completed.
5. The new Goodyear tire will be shipped to the proper dealers. Lee tires in each case will be replaced with the comparable type of Goodyear tire. (For example—Double Eagle, Super-Cushion, DeLuxe, Marathon.)
6. Set aside a separate block of B-19 and B-19A numbers for Lee tires. Write "Atlantic" on the B-19 form in the space at top of form towards the right corner. Otherwise, make up the B-19 in the regular manner. Do not place any B-19A or B-19C stubs on any Lee tires. Mark the B-19A number with yellow crayon on the tire.
7. Use Goodyear tire condition code for Lee tires on B-19s marked "Atlantic."
8. Allow the 10% handling allowance to dealers on adjustment transactions completed on Lee tires.

1762 COMMISSION EXHIBIT NO. 34C.

Lee Tires Adjusted in the Field at Atlantic Refining Jobbers or Distributors Who Now Will Sell Goodyear Tires

1. There may be one or two Atlantic Jobbers in your territory on whom you will want to call regularly. When such calls are made, take along some of the Atlantic B-19s you have set aside for this purpose. Also notify Akron Service Department so that the call can be added to your Field Service Schedule.
2. Show B-19A number in yellow crayon on each tire.
3. Give dealer fourth copy of B-19 Form.
4. Use Goodyear tire condition code for Lee tires on B-19s marked "Atlantic."
5. All Lee tires will be returned to Goodyear District in the regular manner.
6. Process the B-19 Form at the District in the usual manner. Replacements will be made with Goodyear tires as explained for shipped-in tires.

Supplementary Information

In making any and all adjustments on Lee tires, Goodyear is acting for the Atlantic Refining Company.

No Lee Guarantee Cerificates covering Goodyear tires will be honored.

The Industry Standard Warranty applies to any Lee tubes which may be presented for adjustment. If defective, they will be replaced with Goodyear tubes. No claim forms are required for Lee tubes.

Any Goodyear tires or tubes which may be presented for adjustment consideration by Atlantic Refining dealers will be handling accordance with our regular Service Department Policy and in same manner as for any other Goodyear dealer.

1764 COMMISSION EXHIBIT NO. 34D.

A standard claim form is required for each Goodyear tire and tube. Do not use B-19 Forms marked "Atlantic" for replacing Goodyear tires or tubes.

Since the adjustment loss for the Replacement of Lee tires will not be shown on Reference #58, Replacement and Loss Report, it will be necessary to keep B-19s for Lee tires separate and apart from B-19s for Goodyear products. White copies of "Atlantic" B-19s should be stapled together and mailed to Akron with copies of B-19s covering Goodyear items. Operating Department should file in regular sequence in B-19 file when they are returned from Akron.

Staple together the canary copies of "Atlantic" B-19s in the same manner and send to the Attention of L Kohnz, Sales Accounting Department, Akron. Please be certain these copies are marked for L Kohnz' attention, otherwise adjustment loss records will be incorrect and loss on Lee tires may be included in your Reference #58 report.

File pink copies of Atlantic B-19s in claim form file under name "Atlantic." There will be no claim form. Certificate will be turned over to Operating Manager for attachment to quarterly report that must go to Atlantic.

Include "Atlantic" B-19 replacements and transactions in the statistical section of your B-66 monthly report.

Do not include Lee tire adjustment losses on Dealer & Store Loss Report, the B-19s coming to Akron covering Lee tires will provide this information.

Batteries

Atlantic Refining Company outlets now handle Exide Batteries. Since Atlantic Refining will receive the 1% allowance on Goodyear Batteries only defective Exide Batteries with less than 90 days of service will be submitted to Service Department for replacement. No other batteries are to be received for consideration.

1766 COMMISSION EXHIBIT NO. 35.

cc C C Ross
H G Harper
J W Basista
J W O'Neill—Philadelphia

May 1, 1951

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Subject: Schrader Inventory

Dear Syd:

You will recall that we stated to you verbally that Schrader agreed to accept your inventory and issue credit on basis of your acquisition cost less 10%. After consideration you stated the arrangement would be satisfactory.

Under the above plan Atlantic would ship to Schrader and a credit memo. would be issued which Atlantic would transfer to Goodyear and receive payment from us, which would be somewhat cumberson and expensive as it would require double handling of the stock in question.

Mr C C Ross, Manager of our Retread and Repair Material Sales, after due consideration and desiring to be fully cooperative with you, will go through with the original proposal on a direct basis. Specifically, he will issue Goodyear purchase order, which will be forwarded to you personally, covering your inventory at your acquisition prices less 10% (Jobber Prices). This offer is based on your acceptance and the quantities listed from inventory you previously submitted, with the understanding the material is new and unused and properly packaged. Shipments to be prepaid to Goodyear Warehouse specified on purchase order, which will probably be Philadelphia.

Under this arrangement the loss to Atlantic and Goodyear will be about equal.

Please advise.

Sincerely,

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1768 COMMISSION EXHIBIT NO. 36.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street

May 7, 1951

TBA WCH
Schrader Inventory

Mr. S. A. Gaylord, Manager
Petroleum Sales Dept.
The Goodyear Tire & Rubber Co., Inc.
Akron 16, Ohio

Dear Mr. Gaylord:

We will accept your offer for our inventory of Schrader merchandise, as set forth in your letter of May 1.

Will you please issue the Goodyear purchase order to cover the purchase of this material.

Cordially yours,

W. C. Hoffman

m

1770 COMMISSION EXHIBIT NO. 37

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pa.

May 28, 1951
TBA SJH
Goodyear Program
Exide Battery Adjustments

Mr. S. A. Gaylord, Manager,
Petroleum Company Sales,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Mr. Gaylord:

It was agreed last week that we would reconsider the basis on which Goodyear would handle adjustments of Exide batteries that had been sold by Atlantic and the claim handling for which, therefore, remained an Atlantic responsibility that must be handled to the satisfaction of both customer and dealer. Since we have the same problem in the other half of our territory which is being served by a different supplier, I am sure it will be of interest to you to review the satisfactory arrangement that has been employed to solve this problem.

We shall appreciate it if you will favor us with your comments or suggestions for a revision of the present battery adjustment program as soon as possible, so that further delays and complications in the field can be averted.

h Cordially yours,

Enc. S. J. Heideman

P.S. Atlantic shares with the supplier on a 50-50 basis in losses occurred under this arrangement. In other words, the same basis is used as pertains to tires.

(Written in margin:) Sam: Hulshizer would like to discuss this with Mr. Ammerman today if posible. Jack.

1772 COMMISSION EXHIBIT NO. 38.

cc H W Hulshizer

June 1, 1951

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Dear Syd:

Replying to your favor of the 28th on the subject of "Exide Battery Adjustments".

I am enclosing, herewith, a copy of our instructions to the field covering this subject, which will go forward either today or tomorrow.

Under this arrangement it is understood that Atlantic will pay 100% of the loss up to 90 days' service and Goodyear and Atlantic will share the loss on a 50-50 basis on batteries replaced beyond the 90 day service.

With reference to the sixth paragraph in the instruction letter, which will be understood by our people in the field, would like to clarify—for your information Goodyear Dealers will receive 10% of the adjusted price and Goodyear Battery Distributors will receive 20% of the adjusted price, provided they do not get the 1% battery allowance off the face of the battery invoices.

We trust that this arrangement will handle the situation to your entire satisfaction.

Yours very truly,

Manager—Petroleum Sales Dept.

S A Gaylord
lfm

1774 COMMISSION EXHIBIT NO. 39.

Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries To Be Replaced With Firestone Batteries

1. All batteries will be adjusted at retail list price on basis of the Exide guarantee.
   The number of service guarantee units or months on Exide batteries is exactly the same as on similar types of Firestone batteries.
2. There will be no reimbursement or handling commission allowed Dealer where replacement price to the customer is equal to or exceeds Dealer's buying price, on a Firestone battery of the same service guarantee.
3. Atlantic Dealer may adjust an Exide battery on the basis of the Exide guarantee by replacing with a comparable Firestone battery having the same service guarantee and charging customer for pro-rata service received on the Exide battery.
4. Firestone will replace Exide battery with a Firestone battery to Dealer on same basis Dealer replaced to customer less 50 cents handling commission where replacement price is less than the Dealer's cost.
5. On all such transactions customer's copy of guarantee certificate must be furnished Firestone together with the adjusted battery. All battery shipments to District Office for adjustment must be prepaid by Atlantic Dealer.
6. If the Exide battery becomes unserviceable within the 90 day service guarantee period, Firestone will honor any replacement the Atlantic Dealer makes. (Dealer will pay transportation costs.)
7. On all such transactions Firestone will deduct adjustment sales or credits in computing sales (monthly S468 reports) for sales commission to Atlantic.

8. Should there be any cases where a supply point replaces an Exide battery with a Firestone battery at a price below their buying cost, Firestone will reimburse supply point for the difference between replacement price less handling commission and the supply point's buying price. On all such transactions the supply point will be charged 1% to offset the adjustment allowance by Firestone (if supply point operating on allowance basis).

   Supply points will adjust batteries by replacing with Firestone batteries as outlined above and may obtain credit from District by shipping battery together with customer's certificate to District. However, supply point should handle all possible adjustments of batteries where replacement and handling commission are above their buying price and retain scrap batteries.

9. Where any adjustment is made and the replacement including the 50 cent handling commission is below Dealer's buying price on the Firestone battery—Firestone District Office will furnish monthly as a separate attachment to the monthly S468 reports, a tabulation of each service department credit memo showing the following information and totals:

Credit Memo	Type Battery	Replacement Price to Customer	Dealer Cost	Amount Credit

1776 COMMISSION EXHIBIT NO. 40A.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

February 9, 1951
TBA SJH

Mr. J. E. Mayl, Vice-President,
Goodyear Tire and Rubber Co.,
Akron 16, Ohio.

Dear Joe:

Our various marketing regions have asked for information concerning the number and locations of supply points that you have in the territory covered by Atlantic. In order to assist you in supplying us with this information by marketing region, we list on the attached page the states that comprise each of the several regions. It will be helpful, too, in supplying this information, if you will distinguish between individual wholesalers and your own controlled supply points.

It is hoped that you have such information assembled and that there will be no objection to supplying it promptly, as it will be one of many factors involved in the consideration of the Goodyear Commission Plan.

Cordially yours,

Syd
S. J. Heideman

h
Enc.

P.S. The maps forwarded Mr. Gaylord the latter part of December should be an aid in establishing these boundaries.

1778 COMMISSION EXHIBIT NO. 40B.

Atlantic Marketing Regions

Region	Territory
New England	Vermont New Hampshire Massachusetts Rhode Island Connecticut
New York	New York State
Philadelphia-New Jersey	New Jersey Pennsylvania as follows: All Philadelphia County Portions of Bucks, Delaware, Montgomery, Chester Counties
Eastern Pennsylvania	Eastern Half of Pennsylvania Delaware Eastern Shore of Maryland and Virginia
Western Pennsylvania	Western Half of Pennsylvania Panhandle of West Virginia Ohio Northern portion of Maryland
South	Maryland West Virginia Virginia North Carolina South Carolina Georgia Florida

COMMISSION EXHIBIT NO. 41A.

G-1209

This is the form used to evidence approval by the oil company and Goodyear of an account with respect to our sales to which commission will be paid to the oil company.

COMMISSION EXHIBIT NO. 44E 2416

ASSOCIATE DEALER AGREEMENT

FEDERAL TRADE COMMISSION CX 44 E

THIS MEMORANDUM OF AGREEMENT entered into this _____ day of _____, 19__, between _____ (Dealer) or _____, having its principal place of business at _____ (Address) _____, hereinafter called the "Dealer" and _____ (Associate Dealer) of _____ (Street) _____ (City) _____ (Unit No.) _____ (State), hereinafter called "Associate Dealer."

WITNESSETH, that:

1. The Dealer hereby agrees to sell to the Associate Dealer, and the Associate Dealer agrees to buy from the Dealer [illegible] acts handled by The Goodyear Tire & Rubber Company, Inc., of Akron, Ohio (hereinafter called "Goodyear"), in the [illegible] lines agreed upon between the parties from time to time, at the Dealer's prices and terms to its associate dealers [illegible] subject to change from time to time by the Dealer without notice to the Associate Dealer.

2. Upon failure by the Associate Dealer to make any payments as due, the Dealer may, at its option, cancel this [illegible] of defer additional shipments hereunder until overdue accounts have been paid. The Dealer may decline to make [illegible] except for cash whenever it is not satisfied with the Associate Dealer's financial responsibility. Neither the Dealer nor [illegible] year shall be liable for any delay in delivery or failure to deliver caused by fire, flood, strike, interruption of [illegible] facilities, restrictions imposed by any governmental agency, inability to obtain merchandise, or other cause, whether or [illegible] wise, beyond its control. During any such contingency Dealer will endeavor in good faith to allocate deliveries [illegible] its customers, but expressly reserves in its discretion, without liability to the Associate Dealer, the final determination [illegible] liveries to be made.

3. The Associate Dealer agrees to refer all claims for adjustment to the Dealer and not to warrant any [illegible] chased hereunder except as set forth in the manufacturer's warranty in effect thereon at the time of resale by [illegible] Dealer.

4. The Associate Dealer agrees not to use Goodyear's trade name or names or trade marks except in the normal [illegible] distributing such products under this agreement, and then only those trade names or trademarks referring to products [illegible] chased hereunder.

5. Upon termination of this agreement by cancellation, or otherwise, the Associate Dealer agrees, on demand, to [illegible] and return to the Dealer all signs furnished by Goodyear referring to Goodyear products or identifying the Associate [illegible] as a Goodyear Associate Dealer (the Associate Dealer agreeing that all such signs are the property of Goodyear) and [illegible] move all similar painted signs on windows or on inside or outside walls or attached thereto. The Associate Dealer [illegible] hold Goodyear and the Dealer harmless from any liability arising out of or connected with the erection, maintenance [illegible] moval of any of said signs.

6. This agreement shall expire five (5) years from date of execution unless otherwise previously terminated as herein provided. It shall automatically terminate if at any time the Dealer shall cease to be an authorized dealer in Goodyear products. It may be cancelled at any time upon five (5) days' written notice of intention to discontinue given by either party to the other. At the expiration of said five (5) days, Dealer shall have the right to cancel all unfilled orders, and during such time may [illegible] any orders in excess of the average five-day requirements of the Associate Dealer based upon orders actually given [illegible] during the term hereof.

7. This agreement shall cancel and supersede any and all existing agreements in effect between the parties hereto with respect to the same subject matter or covering the purchase of Goodyear merchandise by the Associate Dealer from the Dealer. This agreement is personal in character and not subject to assignment by the Associate Dealer. It does not constitute the Associate Dealer an agent for the Dealer.

8. The conditions of this agreement are fully and clearly explained herein. The terms and conditions hereof are not subject to change by any verbal agreement or custom.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly signed the day and year first above written.

Witness: _____ (Dealer)

By _____

Witness: _____ (Associate Dealer)

By _____

Original for Dealer — Duplicate for Associate Dealer

FOR INFORMATION ONLY — NOT A PART OF AGREEMENT

CHECK ONE:
Renewal ☐
New Assoc. Dlr. ☐

ASSOCIATE DEALER AGREEMENT STUB

District _____

Replacing _____

PRINT OR TYPE ALL INFORMATION REQUIRED

Dist. Terr. No. _____

SUPPLYING DEALER		ASSOCIATE DEALER	
Firm Name		Firm Name	
Street Address	County	Street Address	County
City	State	City	☐ State

Check Goodyear Products Stocked By Supplying Dealer		Check Goodyear Products Associate Dealer Will Stock	
Auto and Truck Tires and Tubes	☐	Auto and Truck Tires and Tubes	☐
Farm Tires and Tubes	☐	Farm Tires and Tubes	☐
Car and Home Merchandise	☐	Car and Home Merchandise	☐
Camelback and Repair Materials	☐	Camelback and Repair Materials	☐
Batteries	☐	Batteries	☐
Brake Lining	☐	Brake Lining	☐

Do not check products not stocked by Supplying Dealer.

Initial point [illegible] not [illegible] are supplied by the [illegible] direct or Dealer [illegible]

Price changes on [illegible] are automatically [illegible] Always to Associate [illegible]

Car and Home Catalogues to be supplied only for accounts importantly to Goodyear C & H Dealership.

4 Rep.—Fill out Agreement and Stub completely in Duplicate—Mail Stubs only to District Office—Original Agreement [illegible] Duplicate to Supplying Dealer.

District —File one Stub—send other to Office Service Dept., Akron. To cancel, check District Stub here ☐ and write [illegible]

G-119 (1-51)

GOODYEAR

SERVICE STATION AGREEMENT

BETWEEN THE GOODYEAR TIRE & RUBBER COMPANY, INC., having a place of business at Akron 16, Ohio, hereinafter called Goodyear, and .....,

.....,

located at .....,
Number Street Town Zone No. County State

hereinafter called Dealer.

1. The Dealer agrees to engage actively in the sale and distribution of the items of Goodyear merchandise listed below which are checked in the space opposite thereto, and to carry such merchandise in stock in sufficient quantities to insure prompt service, and to render Goodyear service to the consumer:

- ☐ Automobile Casings and Tubes
- ☐ Pneumatic Truck and Bus Casings and Tubes
- ☐ Industrial Tires and Tubes
- ☐ Farm Tractor and Implement Tires and Tubes
- ☐ Batteries and Battery Cables
- ☐ Brake Lining
- ☐ Car and Home Merchandise
- ☐ Camelback and Repair Material

Any item above listed not initially included may be added, and any item may be removed at the written request of the Dealer, approved by the Goodyear District Manager. The Dealer will not substitute or attempt to substitute other products when the consumer requests Goodyear products.

2. The Dealer is hereby designated a Goodyear Service Station Dealer. Goodyear will give the Dealer such assistance in advertising, instructions in Goodyear service, and such aid generally as Goodyear gives to such Service Station Dealers in carrying out its policy of distribution. The Dealer shall be entitled to purchase each such product at the prices specified in the list applicable thereto called "Goodyear Prices," or, with respect to any product to which such list does not apply, then at the prices in such other list as is applicable, less such discounts and allowances as Goodyear may from time to time allow to its Service Station Dealers in such products and subject to the conditions set forth in such list. It is understood that such prices, discounts, allowances, and conditions are subject to change by Goodyear from time to time without notice to the Dealer, and all shipments will be billed at prices (including amount of any Federal excise tax) in effect on date of shipment.

3. In case of a concurrent decline in "Goodyear Prices" or, with respect to any product to which such list does not apply, then in the prices in such other list as is applicable, and in Goodyear's net prices to its Service Station Dealers on casings and tubes, Goodyear will rebate to the Dealer by merchandise credit in accordance with Goodyear's regular policy then in effect on all new first class Goodyear casings and tubes invoiced by Goodyear to the Dealer hereunder within thirty (30) days prior to the date of such concurrent reduction, provided, however, that such rebates will not be granted with respect to casings or tubes sold pursuant to special announcement that rebates will not be made with respect thereto.

4. Delivery of goods sold hereunder shall be f. o. b. point of shipment. Otherwise, terms of shipment shall be governed by Goodyear's policy in effect at the time of shipment. Goodyear shall not be liable for any delay in delivery or failure to deliver caused by fire, flood, strike, war, interruption of transportation facilities, inability to obtain merchandise, restriction by any governmental authority, or other cause, similar or otherwise, beyond Goodyear's control. During any such contingency Goodyear will endeavor in good faith to allocate deliveries fairly among its customers, but expressly reserves in its discretion, without liability to the Dealer, the final determination of deliveries to be made.

5. Terms of settlement shall be: all invoices due 10th proximo, with cash discount as applicable from time to time under Goodyear's established policy.

6. Upon failure of the Dealer to make any payments when due, Goodyear may, at its option, cancel this agreement or defer additional shipments until overdue accounts have been paid. Goodyear may decline to make deliveries except for cash whenever it is not satisfied with Dealer's financial responsibility.

7. The Dealer agrees to refer all claims for adjustment to Goodyear, it being understood that this agreement does not confer on the Dealer any authority to make adjustments in behalf of Goodyear, nor any authority to warrant any merchandise purchased hereunder, except as set forth in the standard warranty thereon in effect on the date of resale by the Dealer.

8. The Dealer agrees not to exhibit products purchased from Goodyear at any show or exhibition without the consent of Goodyear.

9. It is understood that Goodyear retains the right to sell to other customers in the Dealer's city above mentioned and elsewhere.

10. The Dealer will not use Goodyear's trade names or trade-marks except in the normal course of distributing such products under this agreement, and then only those trade names or trade-marks referring to products purchased hereunder.

11. Upon any termination of this agreement, the Dealer agrees to remove permanently all signs on windows or on inside or outside walls or attached thereto referring to Goodyear products or identifying the Dealer with Goodyear, and, at Goodyear's request, to return to Goodyear all signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays a substantial part). Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance, use, or removal of any of said signs.

purchased hereunder.

11. Upon any termination of this agreement, the Dealer agrees to remove permanently all signs on windows or on inside or outside walls or attached thereto referring to Goodyear products or identifying the Dealer with Goodyear, and, at Goodyear's request, to return to Goodyear all signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays a substantial part). Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance, use, or removal of any of said signs.

12. The entire agreement regarding the subject matter is set forth herein. Any change in the printed terms, other than a change in the terms of settlement making all invoices payable C. O. D., shall make this agreement void. No modification or amendment shall be effective unless in writing signed by an authorized representative of the Dealer and by an executive officer of Goodyear either manually or with facsimile signature countersigned by an authorized District Manager.

13. This agreement shall become effective when countersigned by an authorized District Manager of Goodyear and shall expire five (5) years from date of execution unless otherwise previously terminated as hereinafter provided. It cancels and supersedes any other Service Station Agreement and any other sales agreement now in effect between the parties covering the sale by Goodyear to the Dealer of any product included hereunder.

14. This agreement may be cancelled upon thirty (30) days' written notice by the Dealer to Goodyear, or by Goodyear through its local manager to the Dealer. At the expiration of said thirty (30) days, Goodyear shall have the right to cancel all unfilled orders, and during such time may refuse any orders in excess of the average thirty-day requirements of the Dealer based on orders actually given hereunder during the term hereof.

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

Dated ....., 19.....

Per R O Wilson
Vice President

Accepted .....
Dealer

Countersigned .....
District Manager

Per .....
(Title)

....
City State

Printed in U. S. A.

For information only—not a part of Service Station Agreement

Check one—
New Account ☐
Renewal ☐

Date Dealer Started with Goodyear .....

Date Friendly Relations Plaque Due .....

SERVICE STATION AGREEMENT STUB

District ..... Dist. Terr. No. ..... Date of Contract .....

Firm Name
(Print same as on Contract)

Owner's or Official's Name
(Print same as on Contract)

Street Address
(Print same as on Contract)

Town ☐ County
(Print) P. O. Unit

State Akron P. P. Zone ☐
(Print)

Principal Business
Make of Car, Truck or Tractor Handled
Estimated Annual B-94 Volume $

Appliance Line Featured
Radio Line Featured
Brand of Gasoline Featured

Check following boxes to show which prices initially should be sent to Dealer—*First* set of prices is supplied by Salesman or District—Price *changes* are mailed by Akron to Dealer.

Products checked should be same as specified in agreement.

Auto & Truck Tires & Tubes ☐	Brake Lining ☐
Industrial Tires & Tubes ☐	Car & Home Merchandise Use G-964 Form to get Dealer on mailing list
Farm Tires & Tubes ☐	
Batteries & Battery Cables	Camelback & Repair Material ☐
Check one	
Contract Dealer ☐	
Distributor ☐	
Service Distributor ☐	
Preferred Distributor ☐	
Wholesaler ☐	
Zone Wholesaler ☐	

Field Repr.—Fill out completely in duplicate—Send both copies of contract with stubs to District Office.
District —Send original copy of Contract with stub to Wholesale Field Operating Dept., Akron. Retain other stub for District file and mail other copy of contract to Dealer. Remove stub as Contract is cancelled.

1805

COMMISSION EXHIBIT NO. 44F.

G-119 (5-56)

GOODYEAR

SERVICE STATION AGREEMENT

BETWEEN THE GOODYEAR TIRE & RUBBER COMPANY, INC., having a place of business at Akron 16, Ohio, hereinafter called Goodyear, and

.....,

.....,

located at

Number Street Town Zone No. County State

hereinafter called Dealer.

1. The Dealer agrees to engage actively in the sale and distribution of the items of Goodyear merchandise listed below which are checked in the space opposite thereto, and to carry such merchandise in stock in sufficient quantities to insure prompt service, and to render Goodyear service to the consumer:

- [ ] Automobile Casings and Tubes
- [ ] Pneumatic Truck and Bus Casings and Tubes
- [ ] Industrial Tires and Tubes
- [ ] Farm Tractor and Implement Tires and Tubes
- [ ] Batteries and Battery Cables
- [ ] Car and Home Merchandise
- [ ] Tread Rubber and Repair Material

Any item above listed not initially included may be added, and any item may be removed at the written request of the Dealer, approved by the Goodyear District Manager. The Dealer will not substitute or attempt to substitute other products when the consumer requests Goodyear products.

2. The Dealer is hereby designated a Goodyear Service Station Dealer. Goodyear will give the Dealer such assistance in advertising, instructions in Goodyear service, and such aid generally as Goodyear gives to such Service Station Dealers in carrying out its policy of distribution. The Dealer shall be entitled to purchase each such product at the prices specified in the list applicable thereto called "Goodyear Prices," or, with respect to any product to which such list does not apply, then at the prices in such other list as is applicable, less such discounts and allowances as Goodyear may from time to time allow to its Service Station Dealers in such products and subject to the conditions set forth in such list. It is understood that such prices, discounts, allowances, and conditions are subject to change by Goodyear from time to time without notice to the Dealer, and all shipments will be billed at prices (including amount of any Federal excise tax) in effect on date of shipment.

3. In case of a concurrent decline in "Goodyear Prices" or, with respect to any product to which such list does not apply, then in the prices in such other list as is applicable, and in Goodyear's net prices to its Service Station Dealers on casings and tubes, Goodyear will rebate to the Dealer by merchandise credit in accordance with Goodyear's regular policy then in effect on all new first class Goodyear casings and tubes invoiced by Goodyear to the Dealer hereunder within thirty (30) days prior to the date of such concurrent reduction, provided, however, that such rebates will not be granted with respect to casings or tubes sold pursuant to special announcement that rebates will not be made with respect thereto.

4. Delivery of goods sold hereunder shall be f. o. b. point of shipment. Otherwise, terms of shipment shall be governed by Goodyear's policy in effect at the time of shipment. Goodyear shall not be liable for any delay in delivery or failure to deliver caused by fire, flood, strike, war, interruption of transportation facilities, inability to obtain merchandise, restriction by any governmental authority, or other cause, similar or otherwise, beyond Goodyear's control. During any such contingency Goodyear will endeavor in good faith to allocate deliveries fairly among its customers, but expressly reserves in its discretion, without liability to the Dealer, the final determination of deliveries to be made.

5. Terms of settlement shall be: all invoices due 10th proximo, with cash discount as applicable from time to time under Goodyear's established policy.

6. Upon failure of the Dealer to make any payments when due, Goodyear may, at its option, cancel this agreement or defer additional shipments until overdue accounts have been paid. Goodyear may decline to make deliveries except for cash whenever it is not satisfied with Dealer's financial responsibility.

7. The Dealer agrees to refer all claims for adjustment to Goodyear, it being understood that this agreement does not confer on the Dealer any authority to make adjustments in behalf of Goodyear, nor any authority to warrant any merchandise purchased hereunder, except as set forth in the standard warranty thereon in effect on the date of resale by the Dealer.

8. The Dealer agrees not to exhibit products purchased from Goodyear at any show or exhibition without the consent of Goodyear.

9. It is understood that Goodyear retains the right to sell to other customers in the Dealer's city above mentioned and elsewhere.

10. The Dealer will not use Goodyear's trade names or trade-marks except in the normal course of distributing such products under this agreement, and then only those trade names or trade-marks referring to products purchased hereunder.

11. Upon any termination of this agreement, the Dealer agrees to remove permanently all signs on windows or on inside or outside walls or attached thereto referring to Goodyear products or identifying the Dealer with Goodyear, and, at Goodyear's request, to return to Goodyear all signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays a substantial part). Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance, use, or removal of any of said signs.

12. The entire agreement regarding the subject matter is set forth herein. Any change in the printed terms, other than a change in the terms of settlement making all invoices payable C. O. D., shall make this agreement void. No modification or amendment shall be effective unless in writing signed by an authorized representative of the Dealer and by an executive officer of Goodyear either manually or with facsimile signature countersigned by an authorized District Manager.

11. Upon any termination of this agreement, the Dealer agrees to remove permanently all signs on windows or on inside or outside walls or attached thereto referring to Goodyear products or identifying the Dealer with Goodyear, and, at Goodyear's request, to return to Goodyear all signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays a substantial part). Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance, use, or removal of any of said signs.

12. The entire agreement regarding the subject matter is set forth herein. Any change in the printed terms, other than a change in the terms of settlement making all invoices payable C. O. D., shall make this agreement void. No modification or amendment shall be effective unless in writing signed by an authorized representative of the Dealer and by an executive officer of Goodyear either manually or with facsimile signature countersigned by an authorized District Manager.

13. This agreement shall become effective when countersigned by an authorized District Manager of Goodyear and shall expire five (5) years from date of execution unless otherwise previously terminated as hereinafter provided. It cancels and supersedes any other Service Station Agreement and any other sales agreement now in effect between the parties covering the sale by Goodyear to the Dealer of any product included hereunder.

14. This agreement may be cancelled upon thirty (30) days' written notice by the Dealer to Goodyear, or by Goodyear through its local manager to the Dealer. At the expiration of said thirty (30) days, Goodyear shall have the right to cancel all unfilled orders, and during such time may refuse any orders in excess of the average thirty-day requirements of the Dealer based on orders actually given hereunder during the term hereof.

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

Dated ..... , 19 .....

Per ..... Vice President

Accepted ..... Countersigned .....

Dealer — District Manager

Per ..... (Title)

City ..... State

Printed in U. S. A.

For information only—not a part of Service Station Agreement

Check one—
New Account ☐
Renewal ☐

Date Dealer Started with Goodyear .....

Date Friendly Relations Plaque Due .....

SERVICE STATION AGREEMENT STUB

District ..... Dist. Terr. No. ..... Date of Contract .....

Firm Name ..... (Print same as on Contract)

Owner's or Official's Name ..... (Print same as on Contract)

Street Address ..... (Print same as on Contract)

Town ..... (Print) County ..... P. O. Unit

State ..... (Print) Akron P. P. Zone ....

Principal Business ..... Appliance Line Featured .....

Make of Car, Truck or Tractor Handled ..... Radio Line Featured .....

Estimated Annual B-94 Volume $ ..... Brand of Gasoline Featured .....

Check following boxes to show which prices initially should be sent to Dealer—*First* set of prices is supplied by Salesman or District—Price *changes* are mailed by Akron to Dealer.

Products checked should be same as specified in agreement.

Auto & Truck Tires & Tubes ☐	Car & Home Merchandise Use G-964 Form to get Dealer on mailing list
Industrial Tires & Tubes ☐	
Farm Tires & Tubes ☐	Tread Rubber & Repair Material ☐
Batteries & Battery Cables	
Check one	
Dealer No. 287 ☐	
Dealer No. 352 ☐	
Jobber "B" ☐	
Jobber "A" ☐	

1807

General Line Salesman—Fill out completely in duplicate—Send both copies of contract with stubs to District Office.

District —Send original copy of Contract with stub to Wholesale Field Operating Dept., Akron. Retain other stub for District file and mail other copy of contract to Dealer. Remove stub as Contract is cancelled.

COMMISSION EXHIBIT NO. 44G.

1813 COMMISSION EXHIBIT NO. 46A.

March 7, 1951

Mr J E Mayl
Vice President
cc Victor Holt
D T Buchanan
H F Cook
Paul Fritsch
H G Harper
Mr O'Neil
S A Gaylord

Subject: Atlantic Refining Co Philadelphia

Confirming our long distance conversation, Atlantic have set up a meeting at Philadelphia for 2 P. M., Wednesday, March 14, at which time Mr Heideman would like to have us present our Advertising, Sales Promotion and Identification programs to Atlantic head office personnel.

The meeting to start in Mr Heideman's Office, 12th Floor, Atlantic Bldg., 260 S Broad Street, Philadelphia.

Attending for Atlantic—

Mr Heideman and Mr Paxson—Mgr. and Ass't. Mgr. TBA Sales

Mr Cox—Sales Promotion Mgr.

Mr Butler—TBA Promotion Mgr.

Mr Raymond—Service Station Equipment

Mr Richard Borden—Advertising Mgr. & Station Identification, etc.

From conversation here today, my suggestions are, as follows:

1. We should present an outline of our plans for Magazine, Newspaper, Radio and Television advertising—with some of our current ads. etc.

Also, Dealer cooperative plan, plus special deals for station openings, etc. Also, review of Dealer 1951 Advertising Book. Dave Buchanan has a fine story on this.

2. Atlantic are in a rush to agree on identification program and get started quickly. Paul Fritsch should be in position to make our recommendations at this meeting.

Note: Firestone are changing color scheme and test stations are being identified and photographed in color this week.

1815 3. Atlantic are anxious to get entire outline of our Promotional program. They also want an advance calendar of our promotions so they can coordinate with Atlantic Service Bulletins, which they issue regularly. Hank Cook has been advised regarding this and has previously called on Atlantic, so if everyone is agreeable believe he should handle this part of the program.

4. Balance of meeting refers to changing over Exide Battery Merchandisers (now in the hands of Atlantic Dealers) to Goodyear identification. Henry Harper has been working on this. Atlantic want to see what we plan—approve it and get into action quickly.

Note: This come under Atlantic Sales Promotion Dept. Atlantic Sales Promotion Dept. have in stock 57 Exide DeLuxe Merchandisers consisting of trickle charger with 9 battery rack and 28 of Standard type—trickle charger and 6 battery capacity. These will be set up for this meeting. We have considered buying these for conversion account shortage of our material.

Atlantic cost is DeLuxe $24.95—Standard $19.95

Mr Harper or Mr Thomas should attend so these angles can be finalized.

Probably I will plan to attend this meeting. In any event will be in Akron next Monday to discuss in detail with interested departments.

Manager—Petroleum Sales Dept

S A Gaylord
lfm

1817 COMMISSION EXHIBIT NO. 47A-B.

The Atlantic Refining Company
Philadelphia, Pa.

April 26, 1951

SS:JMA

Tire Adjustments
Atlantic-Lee Road Hazard Guaranty

Messrs. R. S. Zinn, Wilmington, Del.
H. N. Bentz, Allentown, Pa.
A. N. Hare, Scranton, Pa.
G. L. Weer, Wilkes-Barre, Pa.
R. W. Engle, Harrisburg, Pa.
L. W. Slaughter, Reading, Pa.
R. M. Outland, Williamsport, Pa.
T. E. Hillyer, York, Pa.

This letter outlines the procedure under which Atlantic dealers and distributors may effect adjustments of Lee Tires under the new T.B.A. Programs we have established with the tire company.

Adjustments on Atlantic/Lee Guaranty Forms Issued Prior to May 1, 1951

Atlantic Dealers and Distributors who have elected to adopt our new Tire Company program may continue to honor all bona fide adjustment claims on Lee Tires which were sold prior to May 1, 1951 with the Atlantic/Lee Road Hazard Guaranty. Dealers will follow the same adjustment policy as heretofore by adhering to the terms stated on the guaranty form. Tires adjusted in this manner will be referred to the new tire supply point for adjustment with the tire companies' brand of tire, in accordance with the tire companies' policy.

Adjustments on Atlantic/Lee Guaranty Forms Dated on and After May 1, 1951

Atlantic Dealers and Distributors may continue to issue the Atlantic/Lee Road Hazard Guaranty to cover sales of Lee Tires (subject to Road Hazard Warranty) which were purchased from The Atlantic Refining Company. The "Company Copy" of each Atlantic/Lee Guaranty Form issued on and after May 1, 1951 must be mailed by the dealer to the local Atlantic District Office. District Offices are to forward these guaranty forms to their Region Office.

Dealers may accept these guaranty forms and satisfy bona fide adjustment claims in accordance with the terms of the Atlantic/Lee Guaranty provided the "Company Copy" of the guaranty form is in the possession of Region Office.

Due to the rapid movement of stocks, and the short supply position, there should be relatively few adjustments claimed on tires sold on and after May 1, 1951. However, Regional Offices will be required to maintain files of the "Company Copy" of these guaranty forms for an extended period of time, since there are a quantity of Winter/Sum-

mer tires and of slow-moving sizes of tires in conventional tread deisng in dealer's stocks.

1819 Dealers requested to make adjustments on guaranty forms dated May 1, 1951 and later, must determine that the "Company Copy" of the guaranty is on file with Atlantic prior to satisfying the adjustment claim.

Dealers who receive bona fide adjustment claims on tires sold by them May 1, 1951 and later, may with confidence make immediate adjustment, provided they had mailed the "Company Copy" of the guaranty form to the District Office.

Atlantic/Lee Guaranty Forms now in the possession of Atlantic Dealers should be picked up by Atlantic salesmen and forwarded to the District Office where they should be destroyed. The salesmen should leave with the dealers, however, a quantity of Atlantic/Lee Guaranty Forms exactly equal to the number of Lee Tires purchased from the Atlantic Refining Company which the dealer has on inventory..

Class I Service Stations—Atlantic/Lee Guaranty Forms

Service station personnel at Class I stations may make adjustments for Lee Tires in accordance with the procedure outlined for dealers and distributors except that approval must first be obtained from District Offices prior to making adjustments for tires covered by guaranty forms dated May 1, 1951 or later.

J. P. Miller

1821 COMMISSION EXHIBIT NO. 47C.

("A" Series)

Sales Department Instructions
Akron 16, Ohio

Date 5-31-51

Subject. Handling Exide Battery Adjustments for Atlantic Dealers

Deliver To District Manager. No.

cc District Service Reps
Following Districts—Philadelphia Hartford
Boston Newark Albany Syracuse Buffalo

Original instructions covering replacement of Defective Exide Batteries for Atlantic Refining Company dealers limited replacements to Defective Exide Batteries that failed within 90 days of service. This policy has now been broadened so that all Exide Batteries originally sold by Atlantic Refining Company Dealers will be adjusted if they fail prematurely.

Hereafter, a Defective Exide Battery will be replaced in the same manner as a Defective Goodyear Battery. Atlantic Refining Company dealers may present a Defective Exide Battery together with the proper Exide Warranty Certificate to the dealer who supplies them with Goodyear Batteries, or to the District Service Department for adjustment.

If the Exide Battery was originally sold by an Atlantic Refining Company dealer and fails within 90 days service it will be replaced with the corresponding size and type of Goodyear Battery free of charge.

If the Exide Battery has given more than 90 days service, but failed in normal service because of some defective

condition it will be adjusted by supplying a Goodyear Battery, of corresponding size and type, at a pro rata price based on current Goodyear List Price and miles or months of service as indicated on the Exide Battery Certificate accompanying the battery.

If the pro rata adjustment price plus scrap value of the battery amounts to as much or more than the Atlantic dealer's buying price of the battery, the Atlantic dealer will be expected to handle the adjustment without referring it to the supplying dealer or the District.

When the Exide adjustment is handled for the Atlantic dealer either by a Goodyear supplying dealer or the District the regular handling allowance will apply.

Exide Batteries will be replaced on a B-46 form. Write the word "Atlantic" at the top of the form in large letters. Staple Akron copies together and forward to Akron in the regular manner. Do not include both Goodyear Batteries and Exide Batteries on any one B-46 form.

All batteries adjusted by the District Service Department must be forwarded to the District, freight prepaid, where they will be disposed of in the regular manner. Operating instructions relative to the proper accounting and recovery will be received by the District shortly.

Approvals (Illegible)

Originated By (Illegible)
Department Manager—Service Department

1823 COMMISSION EXHIBIT NO. 47D.

Include Exide Battery replacements in your Monthly Report of Atlantic-Lee tire and tube replacements.

COMMISSION EXHIBIT NO. 47E. 2427

FEDERAL TRADE COMMISSION
DOCKET NO. 6961 COMMISSION EXHIBIT NO. 47E

THIS GUARANTY WILL BE HONORED BY ANY OF THE 8,000 LEE DEALERS FROM COAST TO COAST, EXCEPT WHEN IT COVERS 15" AND 16" COMMERCIAL TRUCK TIRES, IN WHICH CASE IT WILL BE HONORED ONLY BY ATLANTIC-LEE DEALERS.

Passenger Service ☐ Commercial Service ☐ TYPE TIRE { Super De Luxe ☐ De Luxe ☐ } Highroad ☑ Winter-Summer ☐ Commercial Truck sizes 15" and 16" only. ☐

No 124921

DATE 7/30/50

TO DAVID KELLY

ADDRESS Union N.J.

Purchaser of LEE of Conshohocken Tire

SERIAL No. 15-2386-23

SIZE 6.00-20 X 16

LEE of Conshohocken Tires

GUARANTEED UNDER THE TERMS STIPULATED ON THE BACK HEREOF.

(Dealer's Name or Stamp)

The Atlantic Refining Company

A (City) (State)

1825 CUSTOMER'S COPY

THIS GUARANTY DOES NOT COVER MUD & SNOW OR TRUCK AND BUS TIRES EXCEPT 15" AND 16" COMMERCIAL TRUCK TIRES.

LEE of Conshohocken Tires GUARANTY AGAINST ROAD HAZARDS AND DEFECTIVE WORKMANSHIP AND MATERIAL

The LEE of Conshohocken Tire identified on the reverse side is guaranteed for its life against defective workmanship and material and guaranteed from date of purchase in passenger car service or passenger car in commercial service or commercial light truck for the appropriate period indicated below, against any condition that may render the tire unfit for further service, where such condition is due to ordinary wear and tear, or damage thereto caused by blow-outs, cuts, bruises, rim cuts, under-inflation, wheel-out of alignment, faulty brakes, or any road hazard.

The liability under this guaranty is limited strictly, at the option of the LEE or ATLANTIC-LEE dealer, either to repairing the tire without charge or to replacing it with a new LEE of Conshohocken Tire of the same type and size. If so replaced Purchaser shall pay for the replacement tire at the applicable replacement rate shown below for each month or fraction thereof which has elapsed since the date of purchase. Such replacement charge shall be computed from the LEE or ATLANTIC-LEE dealer's then current retail price for the replacement tire. If claim is made under this guaranty on any day within the last month of the guaranty period, one month's allowance at the above replacement rate shall be credited to Purchaser against said replacement charge: PROVIDED, however, that if a cross appears in any of the following boxes:

Faulty Brakes ☐ Improperly Mounted ☐ Wheels out of Alignment ☐ Overloaded ☐

such cross indicates that the LEE Tire identified on the reverse side has been sold as a replacement tire under a previous guaranty, and this guaranty will not cover any damages to such tire resulting directly or indirectly from the cause or causes checked above. This guaranty does not cover repair or replacement of tubes under any circumstances; replacement of the tire if lost or stolen; repair or replacement of the tire if damaged by fire; repair of tire puncture damage; or any consequential damage. THIS GUARANTY AND THE TIRE DESCRIBED ON THE REVERSE SIDE SHALL BE DELIVERED TO THE LEE or ATLANTIC-LEE DEALER WHEN MAKING A CLAIM HEREUNDER.

PERIOD OF ROAD HAZARD GUARANTY

A	PASSENGER CAR SERVICE	REPLACEMENT RATE	COMMERCIAL SERVICE	REPLACEMENT RATE
Super De Luxe	18 months	1/18 per month	☐ 7 months	1/7 per month
De Luxe	12 months	1/12 per month	☐ 4 months	1/4 per month
Winter-Summer	12 months	1/12 per month	☐ 6 months	1/6 per month
Highroad	9 months	1/9 per month		none
15" and 16" Commercial Truck only	none		☐ 6 months	1/6 per month

THIS GUARANTY MUST BE PRESENTED WHEN MAKING CLAIM FOR ADJUSTMENT, AT ANY OF THE 8,000 LEE-DEALERS (OR AT TO-DATE LEE DEALERS WHEN IT COVERS 15" AND 16" COMMERCIAL TRUCK TIRES IN WHICH CASE IT WILL BE HONORED ONLY BY ATLANTIC-LEE DEALERS.

1825

1826 COMMISSION EXHIBIT NO. 48A.

Phone 662 Room 210

From

S. J. Heideman

Mr. S. A. Gaylord:

Enclosed is Bulletin released 6/29 for your perusal.

W. C. Hoffman

1827 Federal Trade Commission.

Docket No. 6486. Commission Exhibit 48-A.

In the Matter of Goodyear, et al.

Date 30 Oct. 1956. Witness .....

Ace Reporting Co., Official Reporter.

By Anderson

1828 COMMISSION EXHIBIT NO. 48B-E.

Goodyear T.B.A. Bulletin #22 June 29, 1951

Goodyear Program.

Goodyear has released on indicated date the following information:

T.B.A.

Goodyear Program for Station Identification: Goodyear now expects to begin their Identification Program in the New England and New York Regions the week of July 15th instead of the week of July 2nd, as mentioned in Goodyear T.B.A. Bulletin #21.

Progress Report. Attached is a Progress Report received from Goodyear which presents the results of activities through June 25, 1951 by Goodyear District. May we

please have the report requested in Goodyear T.B.A. Bulletin #17 dated June 1, 1951.

Price Books. 6/5/51. A letter was mailed to Goodyear Dealer Price Book subscribers attaching a recap list of price schedules. These schedules should be in the Price Book so that the Price Book will be up to date. Any obsolete price schedules found in the book should be removed. If any of the current price schedules listed in the recap are not in the book, the Goodyear Field Representative who carries a limited supply of list prices should be contacted.

Tires & Tubes

Direct Mail Advertising. 6/18/51. The #3 issue of "Motorist's Guide" in your dealer's Auto Tire Direct Mail Campaign has been mailed to those names on the mailing list or dealers who subscribe to this service.

Federal Excise Tax. 6/26/51. Price lists covering all tire and tube lines excepting bicycle tires and tubes are revised as of July 2, 1951, to show the new excise tax amounts. These price lists have been mailed to Price Book holders.

Batteries

Clarite Battery. 6/8/51. Goodyear has received numerous inquiries from the field regarding the real value of the so-called Clarite Battery. Laboratory tests have been made on these batteries and advertising claims also have been investigated. The results of the tests and investigations are listed on the attached release which is for your T.B.A. Coordinator.

Farm Tractor Batteries. 6/12/51. Since some competitors have a special "Tractor Battery," Goodyear has had several requests for the addition of such a battery in their line. Their YKL HD Dry-Proof is such a battery. It is built for extra or severe service, and is ideal for farm tractor use. They will make available "Tractor Type

(Code G-618) and "Commercial Type" (Code G-617) identifying stickers for those dealers who feel that a battery recommended for tractor, truck or taxicab use must be so identified. A copy of this release is attached for your T.B.A. Coordinator.

Accessories

Fan Belts, Radiator Hose and Car Mats. Goodyear has set up a program for handling sales of Fan Belts, Radiator Hose and Car Mats and Miscellaneous Products
1830 to Atlantic Refining Company outlets, as follows:

(1) The names of Atlantic Distributors and Dealers acting as Supplying Dealers, and Goodyear Dealers and Goodyear Stores acting as Supplying Dealers will be submitted to the Automotive Jobber Sales District Representative.

(2) Automotive Jobber Sales District Representative will contact each of the qualified Atlantic accounts referred to in (1) above, for the purpose of signing them on an "A" Jobber Agreement (Form 719-9 (3-50)), and, at the same time, securing information requested on Application for Approval (Form 719-14 (3-51)), forwarding same to Akron, Department 719, along with the signed "A" Jobber Agreement. It will not be necessary to forward Application for Approval (Form 719-14 (3-51)) in advance of "A" Jobber Agreement as both forms will be processed simultaneously.

(3) Atlantic accounts, when signed as "A" Jobbers and countersigned by Akron, will be extended Automotive Jobber Sales current Price Schedule 500A. The current Price Schedule 500A is Form 719-22, dated December 11, 1950. Shipments will be made from Goodyear Newark Automotive Jobber stocking warehouse to those accounts in the

Goodyear Newark, New York, and Philadelphia District, and from the Goodyear Boston Automotive Jobber stocking warehouse to those accounts in the Goodyear Albany, Boston, and Hartford Districts, and from the Massilon, Ohio Automotive Jobber stocking warehouse to those accounts in the Goodyear Syracuse and Buffalo Districts, until such a time as a satisfactory "AA" Automotive Jobber is appointed to render local service. Local service from "AA" Jobber will not change the price quoted the Atlantic accounts.

Goodyear will begin signing the eligible Atlantic accounts on the "A" Jobber program in the Philadelphia-New Jersey Region before introducing the program in the New England and New York Regions. It is estimated it will take them 30 to 45 days to complete this work in the Philadelphia-New Jersey Region.

(4) When Atlantic accounts have been duly signed, it shall be the duty of Automotive District Salesmen and/or Automotive Missionary Men to:

(a) Resleeve all belts on hand with Goodyear conversion sleeves properly marked with corresponding Goodyear belt number.

(b) Install fan belt racks as directed by the dealer.

(c) Hang the belts in consecutive number order.

(d) Properly instruct the dealer in the use of Goodyear catalog and price schedules, and also his cost and suggested resale price schedules.

(e) The proper amount of catalogs and price schedules will be sent from Akron, as per request on reverse side of Application for Approval (Form 719-14). At least one copy of

catalog and price schedules will be left with the dealer pending arrival of above.

1832 (f) Suggested Trade Resale schedules to be used by Atlantic "A" Jobber when selling the Atlantic accounts he serves are Schedules 502, 503, and 504.

It should be clearly explained to the Atlantic account signed as an "A" Jobber that these schedules are competitive with the industry and that he (the Atlantic "A" Jobber) is to determine which one of these schedules he desires to use when selling the dealer he serves.

(5) Atlantic dealers served by Atlantic accounts ("A" Jobbers):

(a) The Automotive Jobber District Man will secure from the Atlantic accounts ("A" Jobbers) a list of Atlantic dealers being served.

(b) He will then proceed with his Missionary Men to contact such dealers and change them over to Goodyear, the same as he changed over the Atlantic account ("A" Jobber).

(6) "A" Jobber profit:

When the above buys at Schedule 500A and sells at:

Schedule 502, the Gross profit on the sale is 30%
Schedule 503, the Gross profit on the sale is 37%
Schedule 504, the Gross profit on the sale is 43%

(7) Atlantic dealer being served by an "A" Jobber:

When the above buys at schedule shown below and sells at list Schedule 506:

Schedule 502, the Gross profit on the sale is 48%
Schedule 503, the Gross profit on the sale is 43%
Schedule 504, the Gross profit on the sale is 37%

(8) Schedule 504 is not generally used in selling dealers. It is primarily intended for the dealer who does not carry a stock and picks up a belt when needed.

Schedule 503 is mostly used for dealers who carry a small stock.

Schedule 504 is used for the large stocking dealer who carries a substantial stock of several sizes and is classed as a Service Stock Dealer.

(9) Summary:

With the "A" Jobber price extended to Atlantic accounts acting as Supplying Dealers showing an especially adequate profit when selling the dealer he serves, and a similar profit to the dealer when selling at list, plus the availability provided and the missionary work extended by Goodyear as well as placing the Atlantic Supplying Dealer competitive with the industry, the results should be gratifying to all concerned.

1834 We are mailing to your T.B.A. Coordinator, under separate cover, an Automotive Products Jobber Catalog #250.

Accessories

Ted Williams Car Nu/Car-Plate Deal. 6/15/51. A Sales Brochure, an ad reprint and dealer catalog page covering S. C. Johnson & Sons' Ted Williams Car Nu/Car-Plate Deal has been mailed to all names on the Car and Home Catalog mailing list.

S. J. Heideman

p

COMMISSION EXHIBIT NO. 48F.

The Atlantic Refining Company
Progress through June 25, 1951

	N. Y.	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points.	13	552	203	144	32	184	288	210	1625
2. Total number of Atlantic Supplying Dealers signed direct.	0	16	8	12	4	5	21	6	72
3. Total number of Goodyear Dealers & Stores acting as supply points.	2	0	19	15	12	13	22	22	105
4. Lee Tires Adjusted	0	302	32	83	29	107	149	64	766
5. Batteries Adjusted to Date	0	4	0	1	0	0	3	1	9
6. Introductory Display Packages Sold	13	439	7	143	33	99	230	125	1089

1838 COMMISSION EXHIBIT NO. 49.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

July 31, 1951

TBA SJH
Goodyear Program

Mr. S. A. Gaylord, Manager,
Petroleum Sales Department,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Mr. Gaylord:

We do not know whether sales of major home appliances represent any substantial sales volume; in fact we are inclined to think they do not. It is a fact, however, that Firestone's sales of these products to Atlantic dealers are reported and credited to The Atlantic Refining Co. This is another item that may have a bearing on the overall sales performance and the disparity that exists in the results secured in the two divisions of our marketing area.

I realize that the contract that we have jointly executed excludes these products from commission consideration, but believe at the present time it would be worthwhile to reconsider this point. It was my understanding that commissions could not be paid on these products because of the very narrow distributor margin that Goodyear enjoys. I don't know what the margin is, but the inference is there is some margin. This, you will admit, is far better than the situation that exists on Super Pyro anti-freeze, where you are willing to sell the product to our dealers at your cost and to pay us a full commission besides.

I don't quite see why you should refuse to pay commis-

sions on big ticket merchandise, where the possibility of some net profit exists, while you continue to commit yourself to payment of commissions on an anti-freeze deal that must of necessity involve a net loss.

Will you kindly advise me the results of your reconsideration of this question?

Cordially yours,

/s/ S. J. Heideman
S. J. Heideman

1840 COMMISSION EXHIBIT NO. 50.

August 6, 1951

H G Harper
J W Basista
J W O'Neill—Philadelphia
Mr. S. J. Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Subject: Major Home Appliances

Dear Mr. Heideman:

We have your favor of July 31 in which you ask that we reconsider the question of paying Atlantic sales commission on sales of Major Home Appliances.

Apparently there is some misunderstanding because Major Home Appliances are not carried in the Goodyear C & H M Line. By that I mean, we do not stock such merchandise in our warehouses or carry listings in our catalogue or price lists.

We do have a working arrangement with G-E, Motorola, Admiral, etc. in connection with our Retail Stores and Dealers to assist such accounts that may qualify in securing franchises from these companies for them if such an arrangement can be worked out.

It is true that Firestone does market these products under its own brand as a part of its regular line. However, outside of accommodation purchases we have no evidence of Service Stations selling or stocking the line.

In our various discussions with you Mr. Harper and myself have outlined our policy and the lines which we carry. While we do not carry Major Home Appliances we do offer a complete line of electrical traffic appliances, which no doubt you are familiar with.

Our Fall and Winter Car and Home Catalogue will be off the press and in the mail this week and I am attaching an advance copy to you herewith.

The question you raised in your letter regarding Super Pyro is not to our liking. It is simply a case of being competitive at the carload price which is offered by the manufacturer on a direct basis to any jobber or purchaser that qualifies.

We also quote Super Pyro in lesser quantities on a competitive basis and realize a profit on such sales.
1842 Car-load shipments are shipped direct by the manufacturer, therefore, do not require handling or warehousing on our part.

If you desire to discuss this question further we, of course, will be glad to do so.

Yours very truly,
Manager—Petroleum Sales Department.

S A Gaylord
lfm

1844 COMMISSION EXHIBIT NO. 51.

cc: Mr. S. A. Gaylord, Manager Petroleum Sales, Akron

August 7, 1951

Mr. S. J. Heideman, Manager
Tires, Batteries and Accessories Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pa.

Dear Mr. Heideman:

Having reviewed your letter of July 30th, I am pleased to outline below for your consideration steps that I suggest to be followed in the handling of a new Atlantic Dealer on the Goodyear T. B. A. Programs:

1. Arrange for double team contact by the Goodyear and Atlantic salesman.
2. Complete Form 1209 (Providing dealer is being signed direct through Goodyear District, Goodyear Service Store, Goodyear Independent Dealer.)
3. Complete contract (Associate or Direct Dealer.)
4. Prepare Goodyear financial statement for credit (Form G-39).
5. Take stock order (Tires, Batteries and Accessories).
6. Furnish initial price lists, tires, batteries and accessories. Claim forms, tires and battery warranty.
7. Take order for Atlantic Introductory Display Package.
8. Take order for Price Books, Specification literature, etc.
9. Complete identification (Form A-98101L for the installation of valances and signs).

10. Take equipment order (tire stands, battery display stands (PowR-SavR, Sr. and Jr.) battery chargers, used tire racks, etc.).

If I can be of any further assistance to you on this matter do not hesitate to contact me.

Yours very truly,

Joe O'Neill
Division Petroleum Representative

J. W. O'Neill
mmc

COMMISSION EXHIBIT NO. 51A. **2441**

REQUEST FOR IDENTIFICATION FIELD SERVICE (A98101L)

51

Petroleum Stations listed below as requiring identification, are serviced by— CX51A

SUPPLYING DEALER

ADDRESS PHONE

CITY STATE CONTACT MR.

Use this form to list calls which Supplying Dealer requests be made for new or improved identification.

Goodyear Identification Representatives will work with TBA Supplying Dealers and Goodyear field personnel; to demonstrate the use of valances and signs available for quick, permanent identification.

Thus, Supplying Dealers, in making their regular calls on petroleum stations, will be able to keep the identification right up to the minute using signs, valances and hardware supplied by Goodyear without charge.

	TOWN & STATE	DEALER NAME	ADDRESS	PETROL. APPL.	NEED SIGNS	NEED VAL.	COMMENTS
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

FEDERAL TRADE COMMISSION
DOCKET NO. 4411 COMMISSION EXHIBIT NO. 51A
IN THE MATTER OF Goodyear
DATE 4/21/57 WITNESS
ACE REPORTING CO. Official Reporters
BY

District General Line Salesman

Address Phone

1847 COMMISSION EXHIBIT NO. 52A-B.

Goodyear

Summary of Sales and Commissions Covered by the Sales Commission Plan Atlantic Refining Company.

Year and Month	Sales Volume
May 21, 1950 thru June 20, 1950	$ 271
June 21, 1950 thru July 20, 1950	13,344
July 21, 1950 thru Aug. 20, 1950	35,118
Aug. 21, 1950 thru Sept. 20, 1950	27,188
Sept. 21, 1950 thru Oct. 20, 1950	25,864
Oct. 21, 1950 thru Nov. 20, 1950	21,366
Nov. 21, 1950 thru Dec. 31, 1950	42,427
Jan. 1, 1951 thru Jan. 20, 1951	7,924
Jan. 21, 1951 thru Feb. 20, 1951	19,614
Feb. 21, 1951 thru Mar. 20, 1951	22,024
Mar. 21, 1951 thru Apr. 20, 1951	217,865
Apr. 21, 1951 thru May 20, 1951	281,982
May 21, 1951 thru June 20, 1951	306,475

	Commissions
May 21, 1950 thru June 20, 1950	$ 27.10
June 21, 1950 thru July 20, 1950	1,334.40
July 21, 1950 thru Aug. 20, 1950	3,492.63
Aug. 21, 1950 thru Sept. 20, 1950	2,195.93
Sept. 21, 1950 thru Oct. 20, 1950	2,424.95
1848 Oct. 21, 1950 thru Nov. 20, 1950	1,881.88
Nov. 21, 1950 thru Dec. 31, 1950	4,090.03
Jan. 1, 1951 thru Jan. 20, 1951	658.65
Jan. 21, 1951 thru Feb. 20, 1951	1,858.35
Feb. 21, 1951 thru Mar. 20, 1951	2,086.85
Mar. 21, 1951 thru Apr. 20, 1951	21,296.99
Apr. 21, 1951 thru May 20, 1951	27,792.79
May 21, 1951 thru June 20, 1951	29,972.53

1851 COMMISSION EXHIBIT 54.

Goodyear.

Dollar Volume of Sales to Atlantic Accounts Upon Which Commissions Were Paid, and the Amounts of Such Commissions, 1951, 1952 and the First Six Months of 1953.

	1951		1952		6 Mo. 1953	
	T.B.A. Volume	Commission	T.B.A. Volume	Commission	T.B.A. Volume	Commission
Atlantic	2,445,808	239,250.36	4,175,890	411,743.05	2,239,174	221,329.29

1854 COMMISSION EXHIBIT NO. 56.

Goodyear

To S A Gaylord, Manager
Dept. Petroleum Sales
At Akron
Terr. #
Copy to E C Sauter
From
Store.....Ter. #.....
District or Deport New York Terr. #.....
General Office.....

Date August 3, 1951
Answering Letter Dated .....

Subject Republic Oil Co.

The attached from Eddie Sauter regarding Republic Oil and the possibility of their handling our products is a matter, in my opinion, for Akron decision, inasmuch as they are distributors of Atlantic products.

I don't want to spend any time lining up with these people if for example, Atlantic—Philadelphia would prefer that

they handle Firestone, since this is the tire being handled by Atlantic in that area.

Of course, I am not acquainted with the influence Atlantic might be able to bring to bear in forcing these people to a decision as to the line of tires that they—Atlantic—would like them to handle.

At any rate, will you explore this from a management standpoint and advise so that we can proceed according to Atlantic's desires.

(Illegible)
Manager—Northeast Division.

F W McConky Jr.
A

1856 COMMISSION EXHIBIT NO. 56A.

F W McConky, Jr-Mgr
Northeast Division
New York N Y

Pittsburgh-13 1000
8-2-51

Republic Oil Co

This is a Pittsburgh concern who are acting as distributor of Atlantic products in parts of Pennsylvania and Northern West Virginia.

The retail division of this company operates about seventy-five (75) service stations. They have never gone into a TBA program and at present have no tire hook-ups. They are in the process, however, of trying to get a deal with one of the major tire companies and would like to entertain a proposition from Goodyear whereby we would sell their stations direct or through supplying dealers at a price which would be in line with each outlet's volume with an override to the oil company.

Possibly we could use this additional distribution in the Pittsburgh area, particularly on passenger tires and tubes, so if you are interested, possibly we should take the matter up with Petroleum Sales for their comments.

District Manager.

E C Sauter
mtm

P.S.—We are attaching latest Dun report on this concern.

1857 COMMISSION EXHIBIT NO. 57.

cc F W McConky Jr—New York
E A Sauter—Pittsburgh

August 9, 1951

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Subject: Republic Oil Company

Dear Syd:

Mr Sauter, our District manager at Pittsburgh, and Mr McConky, advises that subject account is considering marketing T.B.A. products and have invited us to submit a proposal.

Before taking any action in the matter we felt that we should take the matter up with you for further guidance and your good counsel in the matter.

Will appreciate hearing from you on this as soon as possible.

Thanking you, with kind regards.

Sincerely,

Manager—Petroleum Sales Dept.

S A Gaylord
lfm

1859 COMMISSION EXHIBIT NO. 58.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

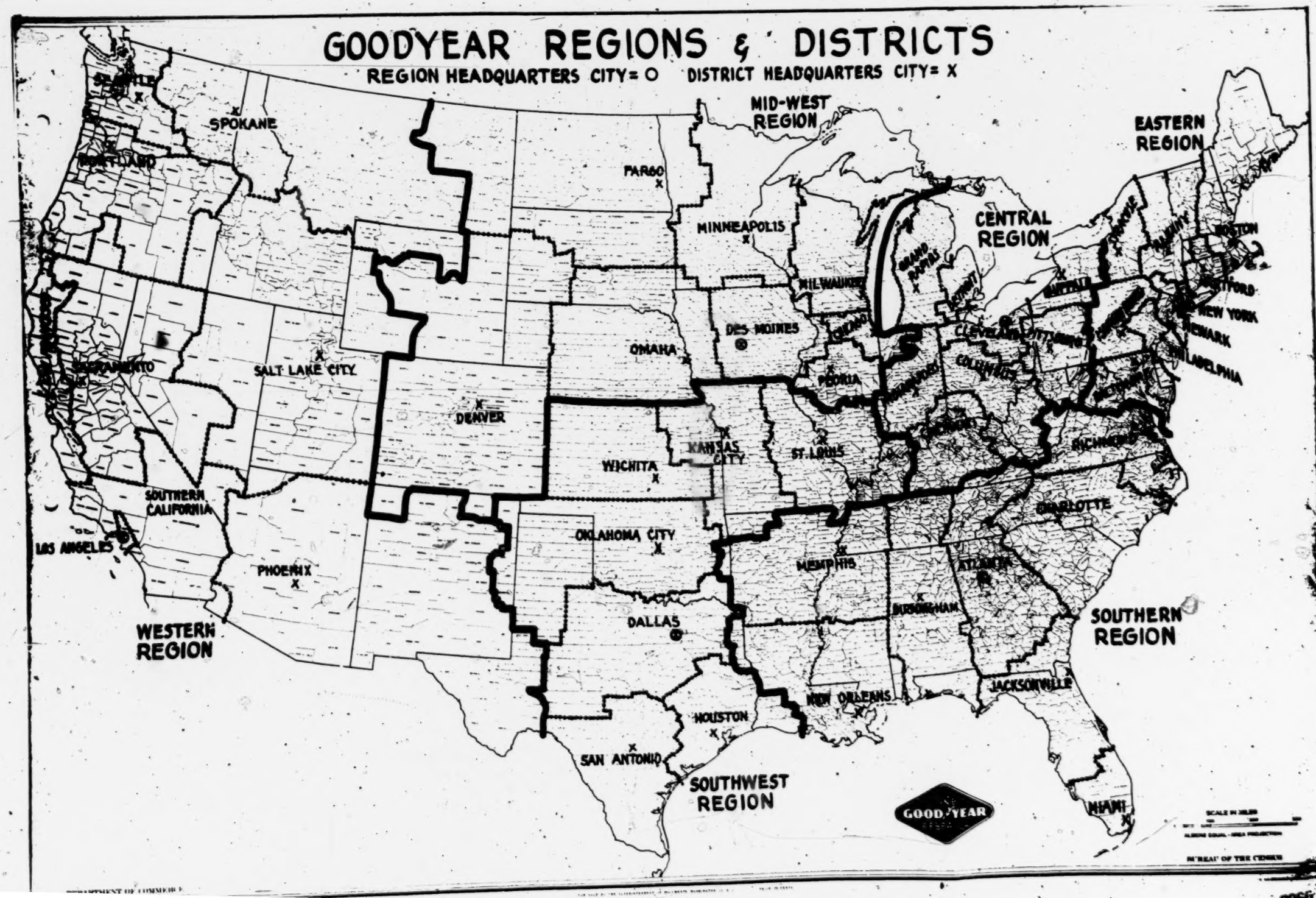
August 14, 1951
TBA SJH
Republic Oil Company

Mr. S. A. Gaylord, Manager
Petroleum Sales Department
Goodyear Tire & Rubber Company
Akron 16, Ohio

Dear Sam:

Your note of August 9th has been received. Any overtures on your company's part to the subject could upset negotiations that we have underway at present. It was thoughtful of you to consult us and needless to say we appreciate it as we will also appreciate your rejection of the invitation.

Cordially yours,
Syd
S. J. Heideman


GOODYEAR REGIONS & DISTRICTS
REGION HEADQUARTERS CITY= O DISTRICT HEADQUARTERS CITY= X
MID-WEST REGION
EASTERN REGION
CENTRAL REGION
SOUTHERN REGION
WESTERN REGION
SOUTHWEST REGION
SEATTLE
SPOKANE
PORTLAND
FARGO
MINNEAPOLIS
MILWAUKEE
GRAND RAPIDS
DETROIT
BUFFALO
BOSTON
HARTFORD
NEW YORK
NEWARK
PHILADELPHIA
DES MOINES
OMAHA
CLEVELAND
PITTSBURGH
COLUMBUS
PEORIA
SACRAMENTO
SALT LAKE CITY
DENVER
KANSAS CITY
ST. LOUIS
WICHITA
RICHMOND
CHARLOTTE
SOUTHERN CALIFORNIA
LOS ANGELES
OKLAHOMA CITY
MEMPHIS
ATLANTA
PHOENIX
BIRMINGHAM
DALLAS
JACKSONVILLE
NEW ORLEANS
HOUSTON
SAN ANTONIO
MIAMI
GOODYEAR

2088 COMMISSION EXHIBIT NO. 84A-B.

The Atlantic Refining Company's domestic marketing program covering automotive petroleum products is conducted by six Marketing Regions, consisting of—

1. New England Region, comprising the states of Rhode Island, Connecticut, Massachusetts, and portions of New Hampshire and Vermont. Headquarters are in Providence, R. I.
2. New York Region, comprising the state of New York. Headquarters are in Syracuse, N. Y.
3. Philadelphia-New Jersey Region, comprising the city of Philadelphia and the suburban area contiguous thereto, as well as the entire state of New Jersey. Headquarters are in Philadelphia, Pa.
4. Eastern Pennsylvania Region, comprising the eastern half of Pennsylvania except the Philadelphia and Suburban area; also comprising the entire state of Delaware and portions of Maryland and Virginia. Headquarters are in Reading, Pa.
5. Western Pennsylvania Region, comprising the western half of Pennsylvania and portions of Ohio, West Virginia and Maryland. Headquarters are in Pittsburgh, Pa.
6. Southern Region, comprising portions of Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia and Florida. Headquarters are in Charlotte, N. C.

Maps showing the approximate area covered by each Marketing Region are attached.

Method of Distribution of Automotive Petroleum Products

Automotive petroleum products (gasoline, motor oils & greases) are marketed through the following classes of trade—

Class I—Retail service station outlets operated by employees of the Company. In 1951, gasoline sales through this channel amounted to 1% of total regional gasoline sales.

Class II—Retail service station outlets operated by a dealer, where the Company owns or leases land and/or building. 1951 gasoline sales through such outlets amounted to 32% of total regional gasoline sales.

2090 Class III—Retail outlets operated by a dealer not included under Class II, i.e., who owns or leases the outlet himself. 1951 gasoline sales through such outlets amounted to 23% of total regional gasoline sales.

Class IV—Customers who purchase products for their own consumption and not for resale. 1951 gasoline sales to such customers amounted to 15% of total regional gasoline sales.

The foregoing four classes of trade constitute the direct marketing phase of the regional sales program and accounted for 71% of total regional gasoline sales in 1951.

Class V—Wholesale dealers, not under contract, who load at Company plants in their own trucks. Such sales are known as yard sales and accounted for 3% of total regional gasoline sales in 1951.

Class VI—Distributors who purchase automotive products for resale under Atlantic brand names and who maintain bulk plant storage capable of receiving truck transport deliveries of gasoline, who maintain and operate their own delivery equipment and who receive transport deliveries into their bulk plant storage tanks. These customers represented 24% of total regional gasoline sales in 1951.

Class VII—Customers who purchase products for resale and who do not resell under Atlantic's brand name. These customers represented 2% of total regional gasoline sales in 1951.

The foregoing three classes of trade represent the indirect marketing segment of regional sales activity and accounted for 29% of total regional gasoline sales in 1951.

Special Sales—In addition to regional sales, there are occasional special sales of automotive petroleum products which are administered by Division Headquarters in Philadelphia. Such sales in 1951 amounted to ½ of 1% of total Company domestic gasoline sales.

JVP:TMM
8/21/52

2092 COMMISSION EXHIBIT NO. 84C.

Addition to Description of
Atlantic's Domestic Marketing Program

Commission distributors who receive automotive products on consignment and upon sale of the product receive a commission from Atlantic as compensation for their activities. Sales percentage is small and included in Distributors—Class VI.

2094 COMMISSION EXHIBIT NO. 85A-B.

This Lease made as of the ..... day of ....., A. D. 19...., by and between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called "Atlantic," and .....

.....

of ....., County of ....., State of ....., hereinafter called "Lessee":

Witnesseth:

1—Atlantic hereby leases unto Lessee for a term of .....year beginning on the ..... day of ....., 19...., and ending on the .....day of ....., 19...., a parcel of land at ..... in ....., County of ..... State of ....., more particularly described as follows:

Together with all the buildings, improvements and appurtenances, all hereinafter called "leased premises," and together with all Atlantic's equipment and apparatus installed or to be installed thereon and used in connection with the gasoline service station business conducted on said leased premises.

2—Lessee shall pay to Atlantic rental at the rate of .....Dollars ($.....) per month. The first payment shall be made on or before the first day of said term and thereafter payments shall be made on or before the first day of each calendar month during the continuance of this lease. In addition thereto, on or before the fifteenth day of each calendar month, Lessee shall pay to Atlantic the sum of .....cent (c) per gallon on each gallon of gasoline and motor fuel delivered to said leased premises

during the preceding calendar month over and above .....gallons.

2096 3—Lessee shall pay all charges for telephone, sewerage, water, gas, and electricity consumed or used by Lessee, and all expense of heating, and also shall pay all privilege, license and other municipal charges levied against Lessee, the said equipment and apparatus or against the leased premises by reason of the conduct of Lessee's business thereon.

4—Atlantic shall pay all other taxes, assessments and governmental or municipal charges levied or assessed upon the leased premises.

5—Lessee shall maintain and make all repairs and replacements needed to the leased premises and the said equipment and apparatus and shall keep the same in an orderly, safe and operating condition. In case any of said equipment or apparatus is damaged, or is lost or stolen, Lessee shall replace or repair the same at Lessee's own cost and expense.

6—Lessee shall keep said leased premises clean and sanitary and shall keep free from snow, ice and all obstructions the sidewalks thereof and shall remove promptly all refuse of any kind therefrom.

7—Lessee shall not install or permit installation on the leased premises of electrical appliances of any kind, including radios, vulcanizers and similar apparatus, without complying with the rules and regulations of the National Board of Fire Underwriters.

8—Lessee shall not install or permit installation of any gambling devices or conduct or permit the conduct of any business or the sale of any products on the leased premises in violation of any local, state or federal laws.

9—Lessee shall be responsible for full and exclusive control of the leased premises and of the equipment and apparatus thereon, and shall indemnify and save harmless

Atlantic from and against any and all claims, suits, actions, damages and causes of action for any personal injury, loss of life and property damage sustained in or about the leased premises or upon the adjacent sidewalks and streets during the continuance of this lease, and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claims, the investigation thereof, or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and decrees that may be entered therein. Lessee shall procure, at Lessee's own cost and expense and from companies satisfactory to Atlantic such insurance as Atlantic may deem necessary for Atlantic's protection under the provisions of this paragraph.

10—Lessee, at Lessee's own expense, promptly shall observe and comply with all the laws, orders, regulations, rules, ordinances and requirements of the federal, state, county and municipal authorities affecting the said equipment and apparatus, the leased premises or the business conducted thereon. Lessee shall not use or permit the use of the leased premises or the equipment and apparatus in any manner which would or could cause an incr any insurance rates affecting the said premises.

11—If, during the continuance of this lease, Lessee shall die, shall become involved in any insolvency or bankruptcy proceedings, shall abandon or remove from the leased premises or shall fail to market petroleum products regularly therefrom, Atlantic, at Atlantic's option, may terminate this lease.

12—Lessee shall not assign this lease or sublet the whole or any part of the leased premises or make any alterations or improvements thereon without written permission from Atlantic.

13—At the termination of this lease, Lessee shall deliver to Atlantic the leased premises, together with the equip-

ment and apparatus in the condition in which Lessee is obliged to keep the same.

14—This lease is subject to the terms and conditions of any existing lease or contract governing Atlantic's rights to the leased premises. Lessee hereunder, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms, or beyond the period of Atlantic's right thereto, anything in this lease, or any extension thereof, to the contrary notwithstanding.

15—If Lessee shall fail to make any payment of rent hereunder for ten (10) days after the same shall fall due, or shall fail to perform any of Lessee's obligations hereunder, or shall violate any condition herein contained, Atlantic, at Atlantic's option, may terminate this lease and at any time thereafter re-enter the leased premises and expel Lessee therefrom, without prejudice to other remedies. Whenever this lease shall terminate, either by lapse of time or by virtue of any of the provisions herein contained, Lessee hereby waives all right to any notice to quit possession as prescribed by any statute then in force relating to summary process.

16—As of the beginning of the term hereof any prior lease between the parties hereto affecting the lased premises shall be terminated.

17—Either party hereto may terminate this lease at the end of the original term hereof by giving to the other written notice of termination at least..... ( ) days prior thereto, but in default of such notice, this lease shall continue upon the same terms and conditions as herein contained for another term of..... ( ) year and so on for like terms until terminated by either party giving to the other at least..... ( ) days notice of termination prior to the expiration of any term. Any notice by either party to the other may

be given by registered mail, postage prepaid, addressed to Atlantic at ....., and to Lessee at the leased premises, subject to the right of either party to designate in writing a new address to which such notice may be sent.

In Witness Whereof, the parties hereto have duly executed this lease as of the day and year first above written.

The Atlantic Refining Company

By .....

Regional Manager of Marketing

Lessee

.....

.....

Witnesses:

.....

.....

.....

2098 COMMISSION EXHIBIT NO. 86A-B.

Atlantic

This Lease made as of the ..... day of ....., A. D. 19...., by and between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called "Atlantic" and ..... of ....., County of ....., State of ....., hereinafter called "Lessee":

Witnesseth:

1—Atlantic hereby leases unto Lessee for a term of ..... year beginning on the ..... day of ....., 19....., and ending on the ..... day of ....., 19....., a parcel of land at ..... in ....., County of ..... State of ....., more particularly described as follows:

Together with all the buildings, improvements and appurtenances and all Atlantic's equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises."

2—Lessee shall occupy the leased premises for the sole purpose of operating a gasoline service station thereon and regularly shall engage in the sale of petroleum products therefrom.

3—Lessee shall pay to Atlantic rental at the rate of _____ cents (¢) per gallon on each gallon of gasoline and motor fuel delivered to said leased premises during the continuance of this lease,

Provided, However, that the minimum rental payable during each calendar month shall be _____ Dollars ($), such minimum rental to be payable on a pro rata basis for any portion of any calendar month during which this lease is in effect; And Provided Further, that the maximum rental payable for each complete calendar quarter during which this lease remains in effect and ending on the last days of March, June, September and December shall be, respectively, $____, $____, $____ and $____. Rental shall be payable at the time and times such gasoline and motor fuel is delivered to the leased premises and the minimum monthly rental shall be payable on or before the last day of each calendar month.

2099 4—Lessee shall pay all charges for telephone, sewerage, water, gas, and electricity consumed or used by Lessee, and all heating and cesspool cleaning expense, and also shall pay all privilege, license and other municipal charges levied against Lessee or against the leased premises by reason of the conduct of Lessee's business thereon.

5—Atlantic shall pay all other taxes, assessments and governmental or municipal charges levied or assessed upon the leased premises.

6—Lessee shall maintain and make all repairs and replacements to the leased premises and shall keep the same in an orderly and safe operating condition, provided, however, that if Lessee gives notice to Atlantic of the need thereof, Atlantic shall make necessary repairs or replacements to the leased premises. Where repairs or replacements are necessitated by Lessee's negligence, or that of his employees, the cost thereof to Atlantic shall be considered as additional rent and payable as such on the first day of the calendar month next succeeding the month in which such repairs are made.

7—Lessee shall keep the leased premises clean and sanitary and shall keep the adjacent sidewalks free from snow, ice, and obstructions, and shall remove promptly all refuse of any kind therefrom. If the service station building is faced with porcelain enamel, Lessee shall comply with such cleaning procedures and techniques as Atlantic may establish from time to time.

8—Lessee shall not install or permit installation on the leased premises of electrical appliances of any kind, including radios, vulcanizers and similar apparatus, without complying with the rules and regulations of the National Board of Fire Underwriters.

9—Lessee shall not install or permit installation of any gambling devices or conduct or permit the conduct of any business or the sale of any products on the leased premises in violation of any local, state or federal laws.

10—Lessee shall be responsi[illegible] for full and exclusive control of the leased premises and shall indemnify and save harmless Atlantic from and against any and all claims, suits, actions, damages and causes of action for any personal injury, loss of life and property damage sustained in or about the leased premises or upon the adjacent sidewalks and streets during the continuance of this lease, and from and against all costs, counsel fees, expenses and lia-

bilities incurred in and about any such claims, the investigation thereof, or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and decrees that may be entered therein. Lessee shall procure, at Lessee's own cost and expense and from companies satisfactory to Atlantic such insurance as Atlantic may deem necessary for Atlantic's protection under the provision of this paragraph.

11—Lessee, at Lessee's own expense, promptly shall observe and comply with all the laws, orders, regulations, rules, ordinances and requirements of the federal, state, county and municipal authorities affecting the leased premises or the business conducted thereon. Lessee shall not use or permit the use of the leased premises in any manner which would or could cause an increase in any insurance rates affecting the said premises.

12—If Lessee dies during the continuance of this lease, this lease shall terminate automatically without notice from Atlantic to Lessee. If during the continuance of this lease, Lessee abandons or removes from the leased premises, or becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Atlantic, at Atlantic's option, may terminate this lease forthwith by giving Lessee written notice of termination.

13—This lease shall not be assigned by Lessee, either voluntarily or by operation of law and Lessee shall not sublet the whole or any part of the leased premises. Without Atlantic's prior written consent, which shall not be unreasonably withheld, Lessee shall not make any alterations or improvements to the leased premises or alter, remove, deface or obliterate any signs, trademarks or color arrangements appearing on the leased premises, or add to the leased premises, including fences, any permanent signs which are nailed, screwed, bolted or otherwise attached thereto.

14—At the termination of this lease, Lessee shall deliver to Atlantic the leased premises in the condition in which Lessee is obligated to keep the same hereunder, reasonable wear and tear excepted.

15—This lease is subject to the terms and conditions of any existing lease or contract governing Atlantic's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms, or beyond the period of Atlantic's right thereto, anything in this lease, or any extension thereof, to the contrary notwithstanding.

16—If any rental shall be due and unpaid for 20 days or if Lessee shall default in any agreement hereunder, Atlantic, at Atlantic's option may terminate this lease forthwith by giving Lessee written notice of termination and at any time thereafter re-enter the leased premises and expel Lessee therefrom, without prejudice to other remedies. Whenever this lease shall terminate, either by lapse of time or by virtue of any of the provisions herein contained, Lessee hereby waives all right to any notice to quit possession as prescribed by any statute then in force relating to summary process.

17—As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

18—Either party hereto may terminate this lease at the end of the original term hereof by giving to the other written notice of termination at least ..... ( ) days prior thereto, but in default of such notice, this lease shall continue upon the same terms and conditions as herein contained for another term of ..... ( ) year and so on for like terms until terminated by either party giving to the other at least ..... ( ) days notice of termination prior to the expiration of any term.

19—Any notice from one party to the other shall be in

writing and shall be deemed to have been given if sent by registered mail addressed to Atlantic at .....
.....and to Lessee at the leased premises, subject to the right of either party to designate in writing a new address to which such notice may be sent.

20—Atlantic shall have the right to inspect the leased premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements contained herein.

In Witness Whereof, the parties hereto have duly executed this lease as of the day and year first above written.

The Atlantic Refining Company

By.....
Regional Manager of Marketing

Witnesses:

.....

.....

.....

B-3191 4-52

2100 COMMISSION EXHIBIT NO. 87.

Atlantic Franchise Agreement

Effective Date..... 19....

The Atlantic Refining Company,.....a Pennsylvania corporation, hereinafter call "Atlantic", and .....of
.....,
hereinafter caller "Dealer" lessee from Atlantic of a service station located at.....,
under lease dated....., agree as follows:

I. Atlantic shall sell and Dealer shall buy motor fuels and automotive lubricants (hereinafter referred to as petro-

leum products) in such quantities during the term hereof as Dealer may desire to buy and Atlantic may desire to sell; from time to time, provided that Atlantic shall not be obligated to make any delivery of petroleum products hereunder in quantities which do not conform to Atlantic's customary practice at the time and place of delivery.

II. Delivery of petroleum products purchased hereunder shall be at the Service Station at the above address. The prices Dealer shall pay Atlantic for petroleum products purchased hereunder shall be Atlantic's established Dealer prices therefor in effect at the time and for the place of delivery, together with all taxes which Atlantic may be required to pay or collect in respect to the manufacture, sale, delivery or use of such products. Payment shall be in cash at time of delivery.

III. Dealer shall sell all petroleum products purchased hereunder under the trade marks and designations indicated for such products by Atlantic. Dealer shall not adulterate any petroleum products purchased hereunder and shall not mix such products with any other product or grade of product.

IV. At all reasonable times Atlantic shall have the right to inspect any equipment used for storing or dispensing petroleum products purchased hereunder, and shall have the right to take samples and to test any petroleum products offered for sale by Dealer under the trade marks and designations indicated for such products by Atlantic.

V. Dealer shall have the right to avail himself of the following:

A. Such training in sales methods and procedures as Atlantic may provide from time to time.

B. The assistance of such trained personnel as Atlantic may make available from time to time to help Dealer in attractively displaying petroleum products and merchandise.

C. Such sales promotion programs as Atlantic may make available from time to time.

VI. The waiver by Atlantic or Dealer of a breach of a provision hereof shall not constitute a waiver by such party of any succeeding breach of the same provision, or any other provision.

VII. Dealer is an independent contractor in the performance of this agreement and accepts exclusive liability for the payment of all social security, unemployment compensation and other like taxes or payments, for himself and his employees. Except as expressly set forth in this agreement nothing herein contained shall be construed as granting Atlantic any right to control Dealer, or his employees, nor shall Atlantic at any time exercise such control.

VIII. This agreement cancels and supersedes all prior agreements between the parties with respect to the subject matter hereof. This agreement shall in no way affect any contract between the parties covering the purchase and sale of equipment. This agreement shall not be assigned by Dealer without Atlantic's prior written consent.

IX. This agreement shall become effective on the date first appearing and shall continue in effect for a period of one year therefrom, and from year to year thereafter, provided that this agreement shall terminate automatically upon termination of the aforementioned lease to Dealer.

In Witness Whereof, the parties have executed this agreement as of the day first mentioned above.

The Atlantic Refining Company

By.....

Regional Manager of Marketing

.....

.....

2102 COMMISSION EXHIBIT NO. 88.

B 3191—A 12/48

Equipment and Apparatus
Inventory—Class 2 Station

Received in good condition from The Atlantic Refining Company, this ..... day of ....., 19..., the following equipment and apparatus to be used by the undersigned in the gasoline service station business being conducted at ....., ...
Street or Number Town or City
....., under terms and conditions of a
State
current lease for said premises.

Dealer-Lessee

.....

Receipt in good condition of the following substitutions or additions is acknowledged for use as above noted.

Date	Items Substituted or Added	Items Removed from Inventory	Approval of Dealer

B 3191-A 12/48 Class 2 Station

2104 COMMISSION EXHIBIT NO. 88A1-2.

Atlantic Dealer Lease

This Lease, entered into as of the ..... day of ....., 19....., by and between The Atlantic Refining Company, a corporation of Pennsylvania, hereinafter called "Lessor" and .....
.....hereinafter called "Lessee":

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor hereby leases to Lessee that certain parcel of land at ..... in ....., County of ....., State of ....., more particularly described as follows:

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises".

2—The term of this lease shall begin on the ..... day of ....., 19..., and end on the ..... day of ....., 19..., subject, however, in the event such term is longer than one year, to termination by Lessee at any annual annivesary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay to Lessor as rental for the leased premises a sum equivalent to the applicable percentages specified in Schedule A, attached hereto and made a part hereof, of Lessee's gross sales from all sources during such month from the operation of said service station, excluding therefrom, however, sales of tires, batteries, and

accessories at wholesale to service station resellers, state and federal taxes on gasoline, Diesel fuels, motor oils, tires and tubes, any taxes which are stated separately and which are not included as part of the selling price of goods sold and gross receipts from the "special facilities" listed below, if any.

Rental shall be paid to Lessor at Lessor's office at ....., or to Lessor's authorized representative, as follows:

The sum of ..... Dollars ($.....) on the first day of the term hereof; and thereafter, on the 10th day of each succeeding calendar month and on the last day that this lease is effective, the rental as determined by Schedule A; provided, however, that Lessee may take credit for an amount equivalent to the initial rental payment in settlement for the last rental payment due hereunder.

For the "special facilities," namely.....
Lessee shall pay additional rental as follows.....
on .....

On or before the 10th day of each month, Lessee shall submit on forms supplied by Lessor a certified, detailed, itemized statement showing all information necessary for the proper calculation of the rental as above provided. Lessee shall keep a complete set of books and records of all business transacted at the leased premises. Such books and records shall be subject to inspection and audit by Lessor at any reasonable time or times. Lessor shall have the right at all times to set off any amounts owed to Lessee against rental due hereunder.

5—Lessee shall pay, when due, all charges for telephone, water, gas electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charges levied against Lessee or

against the leased premises by reason of the conduct of Lessee's business thereon. Lessor shall pay all other taxes, assessments, and governmental charges levied or assessed upon the leased premises.

2105 6—Should Lessee abandon the leased premises, or should the leased premises be closed for business for a period of seventy-two (72) successive hours Lessor shall have the right to terminate this lease herewith.

7—Lessee shall use the leased premises with due and reasonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable thereto as Lessor may establish from time to time.

Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs trade marks or color arrangements appearing thereon.

8—Maintenance. Lessee shall maintain and keep in good order and repair the leased premises; provided however, that if Lessee gives prompt written notice to Lessor of the need thereof, the responsibility for maintenance and repair shall then pass to Lessor with respect to the particular part of the leased premises specified in such notice; and provided further, that if Lessor is obliged to assume responsibility for any maintenance or repair which is neces-

sitated by the wilful misconduct or negligence of Lessee, Lessee's agents or employees, the cost thereof shall be paid to Lessor by Lessee upon demand as additional rental.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee, his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to any claim for damages it might have, shall have the right to terminate this lease without liability; provided, however, that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowledge of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to terminate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to summary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or

bankruptcy proceeding, or executes an assignment for the benefit of creditors, Lessor shall have the right to terminate this lease.

13—This lease is personal, does not permit absentee operation; shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

14—Subject to the terms and conditions of Lessor's credit card program, outlined by Lessor from time to time. Lessor will (1) accept from Lessee assignment of accounts which result from retail credit sales made by Lessee to holders of valid Atlantic credit cards or those of other companies coming under Atlantic's credit privilege program and (2) pay or credit Lessee the amount thereof. Either party may terminate this credit card arrangement by giving to the other not less than 48 hours' advance written notice without termination or cancellation of any other provisions of this lease.

15—A waiver of any breach hereunder shall not be deemed a continuing waiver, or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

16—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

17—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

18—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by certified mail addressed to Lessor at..... and to Lessee at the leased premises.

19—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

The Atlantic Refining Company,

By.....

Regional Manager of Marketing.

.....

Witnesses:

.....

.....

2106 COMMISSION EXHIBIT NO. 88A-3.

Atlantic

The Atlantic Refining Company

Incorporated—1870

Schedule A

(Attachment to B-3191 Lease)

Rent—Percentage of Lessee's Gross Sales

0%—First $500 Monthly

6%—Next $2000 Monthly

5%—Next $2000 Monthly

4%—Next $2000 Monthly

3%—Over $6500 Monthly

Effective August 15, 1956

2107 COMMISSION EXHIBIT NO. 88B.

When you lease an Atlantic service station you agree to undertake the lawful, diligent, and business-like operation of a first-class service station. Let us emphasize to you that this is your business. We, of course, are interested in your success, and will advise and counsel with you, but we cannot do your thinking nor work for you. Your success will depend on your own business judgment, skill, imagination, and initiative.

There are certain well-established standards which have proven by experience to be necessary for the business-like operation of a first-class station. They are:

1. Housekeeping—Clean, sanitary premises, inside and out.
2. Use and Upkeep—Careful use and upkeep of building and equipment in safe, good operating condition.
3. Display—Neat, orderly arrangement of merchandise and advertising in a manner reasonably calculated to attract and solicit the attention of the motoring public.
4. Illumination—Safe and adequate to attract customers during night operation.
5. Personnel—Sufficient manpower to give prompt service and allocated to handle peak operating hours. Clean uniforms, courteous, trained to sell, adequate knowledge of services to be rendered.
6. Hours of Operation—Uniform daily operating schedule based on buying habits of potential trade in the area.
7. Services—At least on a par with competition as to kinds of services rendered and efficiency of performance.
8. Adequate Inventory—Quality products and merchandise on hand to serve normal customer needs without delay.

9. Sales Promotion—Regular program for expanding sales, involving direct mail campaigns, personal solicitation, and advertising.
10. Prices—Competitive, quality and service considered.
11. Accounting—Maintenance on current basis of records adequate to reflect financial status and return from various phases of your business.

Every well-run Atlantic service station helps all dealers operating Atlantic Service Stations.

The Atlantic Refining Company

.....

Dealer's Signature

.....Date

2108 COMMISSION EXHIBIT NO. 88C.

Atlantic

Equipment and Apparatus

Inventory—Class 2 Station Number.....

Received in good condition from The Atlantic Refining Company, this.....day of....., 19....., the following equipment and apparatus to be used by the undersigned in the gasoline service station business being conducted at .....,

Street and number

....., ...

Town or City State

under terms and conditions of a current lease for said premises.

Dealer-Lessee

.....

Supplement No.....

Date of Original B13191-A.....

2109 COMMISSION EXHIBIT NO. 88D.

Atlantic

Agreement made this ..... day of ..... 195...., between The Atlantic Refining Company,....., a Pennsylvania Corporation, hereinafter called Atlantic, and .....
hereinafter called Buyer, Witnesseth:

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at ..... barrels, during the period between ....., 195...., and ....., 195....

Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (⅛) of the estimated 12-month purchases mentioned above.

Duration: Upon the expiration of the original term, this Agreement shall continue in effect from year to year, unless terminated at the end of the original or any subsequent term by either party giving to the other, at least thirty (30) days prior written notice, Except that if Buyer makes no purchases hereunder during twelve (12) consecutive months, this Agreement thereupon shall terminate without notice by either party.

Prices: Buyer shall pay for products purchased hereunder Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Price Schedule." A copy of the current schedule is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices and discounts specified in the "Atlantic Automotive Lubricants Price Schedule." Prices referred to, or pro-

vided for in this Agreement, do not apply to purchases by Buyer at service stations.

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this Agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this Agreement are to be made at par.

Force Majeure: Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery of any product due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This Agreement cannot be amended except by written instrument duly executed by both parties.

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the original term set forth above, all former Agreements now in effect between the parties relating to the purchase and sale of Atlantic Automotive Lubricants.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

Buyer .....

By .....

The Atlantic Refining Company

By .....

2110A COMMISSION EXHIBIT NO. 88E1-2.

Atlantic

This Lease, entered into as of the .....day of ....., 19....., by and between The Atlantic Refining Company, Incorporated, a Pennsylvania corporation, hereinafter called "Lessor" and ..... hereinafter called "Lessee":

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor here-

by leases to Lessee that certain parcel of land at..... in....., County of....., State of....., more particularly described as follows:

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises."

2—The term of this lease shall begin on the ..... day of ....., 19....., and end on the.....day of ....., 19....., subject, however, in the event such term is longer than one year, to termination by Lessee at any annual anniversary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay to Lessor rental for the leased premises in advance at the rate of.....Dollars ($.....) per month and shall pay as additional rental, by the tenth day of each month, a sum equivalent to 6% of Lessee's gross receipts at the leased premises from all sources during the calendar month immediately preceding such payment, excluding therefrom, however, receipts from the sale of gasoline and Diesel fuel and any taxes which are stated separately and which are not included as part of the selling price of goods sold.

Rental shall be payable at Lessor's Office at 120 West

Genesee Street, Syracuse, New York, and on or before each payment date Lessee shall submit on forms supplied by Lessor a certified, detailed, itemized statement showing all information necessary for the proper calculation of the rental as above provided. Lessee shall keep a complete set of books and records of all business transacted on the leased premises. Such books and records shall be subject to inspection and audit by Lessor at any reasonable time or times.

5—Lessee shall pay, when due, all charges for telephone, water, gas, electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charges levied against Lessee or against the leased premises by reason of the conduct of Lessee's business thereon. Lessor shall pay all other taxes, assessments, and governmental charges levied or assessed upon the leased premises.

6—Should Lessee abandon the leased premises, Lessor shall have the right to terminate this lease. Closing of the leased premises for business for a period of seventy-two (72) successive hours shall be considered as abandonment.

7—Lessee shall use the leased premises with due and reasonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease, Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable thereto as Lessor may establish from time to time.

2110 B

Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs, trade marks or color arrangements appearing thereon.

8—Lessee shall make all repairs and replacements to the leased premises; provided however, that if Lessee gives prompt notice to Lessor of the need thereof, the responsibility shall then pass to the Lessor to make such necessary repairs and replacements as are specified, and provided further, that if in such event the specified repairs and replacements are necessitated by the wilful misconduct or negligence of Lessee, his agents or employees, the cost thereof shall be considered as additional rent payable on the last day of the calendar month next succeeding the month during which such cost is incurred.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee, his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to a claim for damages it might have, shall have the right to terminate this lease without liability; provided, however, that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowledge of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to termi-

nate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to summary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—Lessee agrees that, if this lease is cancelled by Lessor because of breach thereof by Lessee, Lessee for a period of six (6) months thereafter will not engage, directly nor indirectly, in the service station business within two (2) miles of the leased premises.

13—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Lessor shall have the right to terminate this lease.

14—This lease is personal, does not permit absentee operation, shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

15—Subject to the terms and conditions of Lessor's credit card program, outlined by Lessor from time to time, Lessor will (1) accept from Lessee assignment of accounts which result from retail credit sales made by Lessee to holders of valid Atlantic credit cards or those of other companies coming under Atlantic's credit privilege program and (2) pay or credit Lessee the amount thereof. Either party may terminate this credit card arrangement by giving to the other not less than 48 hours' advance written notice without termination or cancellation of any other provisions of this lease.

16—A waiver of any breach hereunder shall not be deemed a continuing waiver, or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

17—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

18—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

19—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Lessor at ..... and to Lessee at the leased premises.

20—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

The Atlantic Refining Company
Incorporated

By .....
Regional Manager of Marketing

.....

Witnesses: .....

.....

.....

2111 COMMISSION EXHIBIT NO. 89.

Atlantic

This Agreement, made this ..... day of ....., 19..... between The Atlantic Refining Company, ... hereinafter called Atlantic, and ..... of ....., County of ....., State of ....., hereinafter called Dealer.

Whereas, Atlantic has established a credit privilege which may be used by dealers permitting the assignment to Atlantic of accounts resulting from the sale of specified merchandise and services to customers whose credit has been approved by Atlantic, and

Whereas, Dealer desires to avail himself of said privilege.

Now, Therefore, This Agreement Witnesseth:

Atlantic will accept assignment of accounts which result from sales made by Dealer at Dealer's discretion on credit and will pay or credit Dealer the amount thereof, subject to the following terms and conditions:

1. Credit to be extended only for merchandise or service specified by Atlantic as coming under the credit privilege.

2. Customer to present to Dealer a valid Atlantic credit card or to be otherwise authorized in writing by Atlantic to receive credit. Customer to sign the delivery ticket.

3. Such credit sales to be made at prices set by Dealer and recorded on forms supplied by Atlantic.

4. Dealer to assign to Atlantic the accounts for such sales at such times and under such procedure as Atlantic may establish from time to time.

Dealer agrees to the terms and conditions hereof, and, as to any account assigned by Dealer to Atlantic, authorizes Atlantic to refuse payment or charge back to Dealer for any of the following reasons:

1. Sale of merchandise or service not specified by Atlantic for credit card sale.

2. Sale made to person not authorized by Atlantic to receive credit or to person whose credit has been suspended.

3. Sale not assigned to Atlantic promptly or in accordance with procedure established by Atlantic from time to time.

This Agreement shall continue so long as Dealer continues as a dealer of products of Atlantic unless terminated prior thereto by either party hereto giving to the other 48 hours' notice in writing of such intention to terminate.

The Atlantic Refining Company

By.....

.....(Seal)

.....(Seal)

2113 COMMISSION EXHIBIT NO. 89A.

Atlantic

This Agreement, made as of this ..... day of ....., 19..... between The Atlantic Refining Company, ... hereinafter called Atlantic, and ..... of ....., County of ....., State of ....., hereinafter called Dealer.

Whereas, Atlantic has established a credit privilege program, which may be used by dealers, permitting the assignment to Atlantic of accounts resulting from the sale of authorized types of merchandise and services to customers whose credit has been approved by Atlantic, or such other companies as Atlantic shall specify, and

Whereas, Dealer desires to avail himself of said privilege.

Now, Therefore, This Agreement Witnesseth:

Atlantic will accept assignment of accounts which result from sales made by Dealer at Dealer's discretion on credit

and will pay or credit Dealer the amount thereof, subject to the following terms and conditions:

1. Credit to be extended only for merchandise and services authorized under the credit privilege program referred to above.

2. Customer to present to Dealer a valid credit card of Atlantic or other companies coming under Atlantic's credit privilege program, or to be otherwise authorized in writing by Atlantic to receive credit. Customer to sign the delivery ticket or other evidence of sale authorized by Atlantic.

3. Such credit sales to be made at prices set by Dealer and recorded on forms supplied or authorized by Atlantic.

4. Dealer to assign to Atlantic the accounts for such sales at such times and under such procedure as Atlantic may establish from time to time.

Dealer agrees to the terms and conditions hereof, and, as to any account assigned by Dealer to Atlantic, authorizes Atlantic to refuse payment or charge back to Dealer for any of the following reasons:

A. Sale of merchandise or service not authorized under the credit privilege program.

B. Sale made to person not authorized at time of sale to receive credit under the Atlantic credit privilege program.

C. Sale not assigned to Atlantic promptly or in accordance with procedure established by Atlantic from time to time.

D. Delivery tickets not prepared in accordance with instructions issued from time to time by Atlantic.

This Agreement shall continue so long as Dealer continues as a dealer of products of Atlantic, unless terminated by either party giving to the other not less than 48 hours' advance written notice of termination.

The Atlantic Refining Company

By .....

.....

.....

2114 COMMISSION EXHIBIT NO. 90A-B.

Atlantic

This Agreement, made as of ..... 195..., between The Atlantic Refining Company, ... a Pennsylvania corporation, hereinafter called Atlantic, and ....., hereinafter called Buyer, of ..... County of ..... State of ....., who represents that he is the ..... of certain premises at: ..... County of ..... State of .....

Witnesseth, That in consideration of the mutual promises and undertakings of the parties hereto, it is agreed as follows:

1. Equipment Loan. Atlantic, reserving the right of addition, change, substitution, and maintenance, lends to Buyer for the purpose of storage and sale of motor fuel purchased solely from Atlantic and for no other purpose, equipment that has been installed or which Atlantic may install, which shall remain personalty and the property of Atlantic, and which Buyer shall not remove, but shall repair and maintain, as follows:

2. Sale and Delivery. Buyer shall buy from Atlantic and Atlantic shall deliver to Buyer for sale from said equipment ..... gallons of motor fuel annually. Atlantic shall not be required to deliver and Buyer shall not be obliged to accept more than one-eighth of such annual gallonage in any calendar month. Atlantic shall deliver on Buyer's order and Buyer shall order and accept not less than one-twentieth of such annual gallonage in any calendar month. The times, manner and quantities of deliveries shall be in accordance with Atlantic's current practice in effect from time to time. Buyer is not and shall

not hold himself out as the agent of Atlantic. Buyer shall take such steps as may be necessary to so inform the public, and shall conduct all business in such motor fuel in Buyer's name, conspicuously displaying his name on the premises.

3. Price and Terms. Buyer shall pay for all products delivered hereunder the price established from time to time by Atlantic for buyers in the same classification as Buyer in effect at the time and place of delivery to Buyer, together with all taxes which Atlantic may be required to pay or collect with respect to the manufacture, sale, delivery or use of such products. Payment shall be in cash at the time of delivery unless credit has been extended; Atlantic, in its sole discretion, may modify or terminate the extension of credit terms.

4. Delivery Tolerance. Buyer shall not be obligated to accept deliveries if unable to operate his business upon said premises by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

2115 5. Indemnity. Buyer shall indemnify and save harmless Atlantic, its successors and assigns, agents or employees, from any and all liability or claims for loss, damage or injury to any person or property, including the person or property of Buyer, his agents, employees and all other persons and property, resulting directly or indirectly from any leakage, fire or explosion of any products stored or contained in, passing through or removed from equipment lent under this agreement, or resulting from the installation, maintenance, repair, use or condition of such equipment, and any attachments or appliances used, connected, installed or furnished therewith.

6. Quality. All products delivered to the premises by Atlantic shall be sold by Buyer under their respective trademarks and brands and shall not be adulterated, mixed or blended with any other substance. Atlantic, at any reasonable time, may enter upon the premises, inspect equipment used for storing or dispensing products purchased from Atlantic, test and take samples of such products.

7. Time. This Agreement shall be in effect from ...., 19..... to ..... 19..... or until ..... gallons of motor fuel are delivered to Buyer for sale from said equipment, whichever shall last occur, and from year to year thereafter unless cancelled as hereinafter provided.

8. Termination and Cancellation. This agreement may be terminated by either party, effective at the end of the original term or of any subsequent year, by sixty (60) days' prior written notice to the other party. At any time upon breach by either party the other party may cancel this agreement effective upon written notice to the other party. Issuance or entry against Buyer or the premises of any judgment, execution, distress for rent or other process, or financial embarrassment or insolvency or involvement in bankruptcy of Buyer, shall constitute a breach of this

agreement by Buyer. Any notice by Atlantic to Buyer shall be deemed to be sufficiently given if either delivered to Buyer or mailed by registered mail, postage prepaid, and addressed to Buyer at the above identified premises, whether or not received.

Upon termination or cancellation for any cause Atlantic shall have the right to enter upon the premises with or without legal process and remove the equipment or any part thereof without liability for injury or damage. Upon cancellation by Atlantic for any breach and exercise by Atlantic of its right to remove equipment Buyer shall pay to Atlantic the sum of _____ Dollars ($_____) as reinbursement for the agreed upon cost of installation and removal of the equipment and improvements, or, at its option, Atlantic may leave the equipment in place and upon demand Buyer shall pay the sum of _____ Dollars ($_____) the agreed upon value of the equipment and improvements and upon payment title thereto shall pass to Buyer.

At its election Atlantic may keep the equipment in place for a reasonable time to negotiate for its sale or other disposition. In no event shall Atlantic be obligated to remove any underground equipment.

9. General Provisions. Buyer shall secure all necessary licenses and permits, and all renewals thereof, now or hereafter necessary in connection with the possession or use of the equipment or conducting business on the premises, and shall pay all taxes, imposts or charges imposed by any governmental authority incident thereto or arising therefrom. Buyer shall promptly provide Atlantic with the written consents to this agreement of the owner and of all holders of liens secured by said premises, confirming Atlantic's title to and right of removal of the equipment and shall, in the event of any subsequent sale of the premises, or subsequent attachment of lien, provide Atlantic

with similar consents from such subsequent owners or lien holders. This agreement is not assignable, constitutes the entire understanding of the parties and may not be changed except by a written agreement executed by both parties.

In Witness Whereof, the parties have executed this agreement as of the day first mentioned.

The Atlantic Refining Company

By_____

_____(Seal)

_____(Seal)

_____(Seal)

Witnesses:

_____

_____

_____

_____

Consent and Confirmation

Each of the undersigned as owner, part owner, mortgagee, or lien holder, for himself, his legal representatives, successors and assigns, in consideration of the installation or continuance in place of equipment covered by the foregoing agreement, hereby consents thereto and agrees to be bound by the terms and conditions thereof with respect to installation, removal, substitution, maintenance or disposition, and hereby waives all right to hold, distrain, mortgage, claim or levy upon any of such equipment or any part thereof, and hereby agrees to accept title to any underground equipment not removed by Atlantic upon notice by Atlantic of its intention not to remove same.

_____(Seal)

_____(Seal)

Witness:

_____

_____

2116 COMMISSION EXHIBIT No. 90C-D.

Bailment Agreement.

Atlantic

The Atlantic Refining Company, ... a Pennsylvania corporation, hereinafter called Atlantic, and ..... hereinafter called Buyer, of ..... County of ..... State of ....., who represents that he is the ..... of certain premises at:

.....

County of ..... State of .....

Witnesseth, that in consideration of the mutual promises and undertakings of the parties hereto, it is agreed as follows:

1. Equipment Loan. Atlantic, reserving the right of addition, change, substitution, and maintenance, lends to Buyer for the purpose of storage and sale of motor fuel purchased solely from Atlantic and for no other purpose, equipment that has been installed or which Atlantic may install, which shall remain personalty and the property of Atlantic, and which Buyer shall not remove, but shall repair and maintain, as follows:

2. Sale and Delivery. Buyer shall buy from Atlantic and Atlantic shall deliver to Buyer for sale from said equipment ..... gallons of motor fuel annually. Atlantic shall not be required to deliver and Buyer shall not be obliged to accept more than one-eighth of such annual gallonage in any calendar month. Atlantic shall deliver on Buyer's order and Buyer shall order and accept not less than one-twentieth of such annual gallonage in any calendar month. The times, manner and quantities of deliveries shall be in accordance with Atlantic's current

practice in effect from time to time. Buyer is not and shall not hold himself out as the agent of Atlantic. Buyer shall take such steps as may be necessary to so inform the public, and shall conduct all business in such motor fuel in Buyer's name, conspicuously displaying his name on the premises.

3. Price and Terms. Buyer shall pay for all products delivered hereunder the price established from time to time by Atlantic for buyers in the same classification as Buyer in effect at the time and place of delivery to Buyer, together with all taxes which Atlantic may be required to pay or collect with respect to the manufacture, sale, delivery or use of such products. Payment shall be in cash at the time of delivery unless credit has been extended; Atlantic, in its sole discretion, may modify or terminate the extension of credit terms.

4. Delivery Tolerance. Buyer shall not be obligated to accept deliveries if unable to operate his business upon said premises by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right

in its sole discretion to restrict or cease deliveries hereunder.

2117 5. Indemnity. Buyer shall indemnify and save harmless Atlantic, its successors and assigns, agents or employees, from any and all liability or claims for loss, damage or injury to any person or property, including the person or property of Buyer, his agents, employees and all other persons and property, resulting directly or indirectly from any leakage, fire or explosion of any products stored or contained in, passing through or removed from equipment lent under this agreement, or resulting from the installation, maintenance, repair, use or condition of such equipment, and any attachments or appliances used, connected, installed or furnished therewith.

6. Quality. All products delivered to the premises by Atlantic shall be sold by Buyer under their respective trademarks and brands and shall not be adulterated, mixed or blended with any other substance. Atlantic, at any reasonable time, may enter upon the premises, inspect equipment used for storing or dispensing products purchased from Atlantic, test and take samples of such products.

7. Time. This Agreement shall be in effect from ....., 19..... to ....., 19..... or until.....gallons of motor fuel are delivered to Buyer for sale from said equipment, whichever shall last occur, and from year to year thereafter unless cancelled as hereinafter provided.

8. Termination and Cancellation. This agreement may be terminated by either party, effective at the end of the original term or of any subsequent year, by sixty (60) days' prior written notice to the other party. At any time upon breach by either party the other party may cancel this agreement effective upon written notice to the other party. Issuance or entry against Buyer or the

premises of any judgment, execution, distress for rent or other process, or financial embarrassment or insolvency or involvement in bankruptcy of Buyer, shall constitute a breach of this agreement by Buyer. Any notice by Atlantic to Buyer shall be deemed to be sufficiently given if either delivered to Buyer or mailed by registered mail, postage prepaid, and addressed to Buyer at the above identified premises, whether or not received.

Upon termination or cancellation for any cause Atlantic shall have the right to enter upon the premises with or without legal process and remove the equipment or any part thereof without liability for injury or damage. Upon cancellation by Atlantic for any breach and exercise by Atlantic of its right to remove equipment Buyer shall pay to Atlantic the sum of.....Dollars ($.....) as reimbursement for the agreed upon cost of installation and removal of the equipment and improvements, or, at its option, Atlantic may leave the equipment in place and upon demand Buyer shall pay the sum of ..... Dollars ($.....) the agreed upon value of the equipment and improvements and upon payment title thereto shall pass to Buyer.

At its election Atlantic may keep the equipment in place for a reasonable time to negotiate for its sale or other disposition. In no event shall Atlantic be obligated to remove any underground equipment.

9. General Provisions. Buyer shall secure all necessary licenses and permits, and all renewals thereof, now or hereafter necessary in connection with the possession or use of the equipment or conducting business on the premises, and shall pay all taxes, imposts or charges imposed by any governmental authority incident thereto or arising therefrom. Buyer shall promptly provide Atlantic with the written consents to this agreement of the owner and of all holders of liens secured by said premises, confirm-

ing Atlantic's title to and right of removal of the equipment and shall, in the event of any subsequent sale of the premises, or subsequent attachment of lien, provide Atlantic with similar consents from such subsequent owners or lien holders. This agreement is not assignable, constitutes the entire understanding of the parties and may not be changed except by a written agreement executed by both parties.

In Witness Whereof, the parties have executed this agreement as of the day first mentioned.

By .....

..... (Seal)

..... (Seal)

Witness: ..... (Seal)

.....

.....

.....

.....

Consent and Confirmation.

Each of the undersigned as owner, part owner, mortgagee, or lien holder, for himself, his legal representatives, successors and assigns, in consideration of the installation or continuance in place of equipment covered by the foregoing agreement hereby consents thereto and agrees to be bound by the terms and conditions thereof with respect to installation removal substitution maintenance or disposition and hereby waives all right to hold, distrain, mortgage, claim or levy upon any of such equipment or any part thereof, and hereby agrees to accept title to any underground equipment not removed by Atlantic upon notice by Atlantic of its intention not to remove same.

..... (Seal)

Witness: ..... (Seal)

.....

.....

2118 COMMISSION EXHIBIT No. 91.

Atlantic

Agreement made this ..... day of ..... 19 ....., between The Atlantic Refining Company, ..., a Pennsylvania Corporation, hereinafter called Atlantic, and .....

..... hereinafter called Buyer, Witnesseth:

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at ..... barrels, during the period between ....., 19....., and ....., 19.....

Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (⅛) of the estimated 12-month purchases mentioned above.

Duration: Upon the expiration of the original term, this Agreement shall continue in effect from year to year, unless terminated at the end of the original or any subsequent term by either party giving to the other, at least thirty (30) days prior written notice, Except that if Buyer makes no purchases hereunder during twelve (12) consecutive months, this Agreement hereupon shall terminate without notice by either party.

Prices: Buyer shall pay for products purchased hereunder at Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Price Schedule." A copy of the current schedule effective ..... is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices and discounts specified in the "Atlantic Automotive Lubricants Price Schedule." Prices referred to, or provided

for in this Agreement, do not apply to purchases by Buyer at service stations.

Terms: Cash, unless credit is established with Atlantic Credit Department. If credit is established, and during the continuance of this Agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this contract are to be made at par.

Force Majeure: Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery of any product due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement constitutes the full understanding between the parties hereto with reference to the

subject matter hereof. Neither party shall claim any amendment, modification, extension or release from any provision hereof by mutual agreement, acknowledgment, acceptance of purchase-order forms, or otherwise, unless the same is in writing, signed by the other party, and specifically, stating it is an amendment or extension of this Agreement.

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the 12-month period set forth above, all former Atlantic Automotive Lubricant Agreements now in effect between the parties.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company

Buyer .....

By .....

2120 COMMISSION EXHIBIT NO. 92A-B.

Agreement made this ..... day of ....., 19...., between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called Atlantic, and ..... hereinafter called Buyer, Witnesseth:

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at ..... barrels, during the period between ....., 19...., and ....., 19....

Upon the expiration of the original term, this Agreement

shall continue in effect from year to year, unless terminated at the end of the original or any subsequent term by either party giving to the other, at least thirty (30) days prior written notice, except that if Buyer makes no purchases hereunder during twelve (12) consecutive months, this Agreement hereupon shall terminate without notice by either party.

Atlantic shall not be required, without its written consent in any one month to deliver more than one-eighth (⅛) of the estimated 12-month purchases mentioned above.

	Price Per Gallon *					
		Drums*		5-Gal. Util.	24 1-Qt. Cans Per	4 5-Qt. Cans Per
	Bulk	55 Gal.	13 Gal.	Bkt.	Case	Case
Motor Oils						
Atlantic Motor Oil						
Atlantic Aviation Motor Oil						
Atlantic Ultramo Motor Oil						
Kearsarge Motor Oil						
Gear Lubricants						
Atlantic Gear Oil						
Atlantic Ultragear Oil						
Atlantic A. T. Fluid						
Automotive Specialties						
Atlantic Motor Valve Oil						
Atlantic Penetrating Oil						
Atlantic Zerol						
Atlantic Motor Flushing Oil						

Above prices do not include 6¢ per gallon Federal tax.

	Price Per Lb.		Price Per Pkg.	
	400-lb. Drums*	100-lb. Drums*	35-lb. Bkt.	5-lb. Tin
Automotive Greases				
Atlantic Chassis Lubricant				
Atlantic Lubricant "A"				
Atlantic Universal Joint Grease				
Atlantic Wheel Bearing Grease				
Atlantic Water Pump Lubricant				
Atlantic Motor Grease No. 1				
Atlantic Motor Grease No. 3				
Atlantic Lubricant "D"				
Atlantic Rust Preventive				

Other size cans and packages at prices established by Atlantic.

* Prices for shipment of products in steel barrels and drums are for the contents only. Atlantic reserves the right, at its option, to make deliveries

2121 Atlantic shall have the right to increase or decrease any price under this Agreement without notice at any time during the term of this Agreement. Prices provided for in this Agreement do not apply to purchases by Buyer at service stations. Prices shown herein are F.O.B. destination Atlantic's Distributing Territory. Prices for motor oils are for minimum shipments of 25 gallons in packages or 25 gallons in bulk.

Delivery Discount: A special discount of 3¢ per gallon on Atlantic Automotive Oils and 3¢ per pound on Atlantic Automotive Greases will be allowed on minimum deliveries of 300 gallons and over (8 pounds of grease equals one gallon) at one time to one destination. This discount does not apply to bulk deliveries.

Taxes: Any tax or other charge now or hereafter imposed by law, domestic or foreign, upon any product herein sold or on the production, manufacture, sale, transportation or delivery thereof, or on this Agreement, which Atlantic is required to pay or collect, shall be added to the price herein stated and paid by Buyer.

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this Agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this contract are to be made at par.

Force Majeure: Buyer shall not be obligated to accept

---

in drums or in steel barrels. Such barrels and drums remain the property of Atlantic, are for transportation purposes only and are to be returned promptly. A charge will be made for each steel barrel and for each drum at the rate established by Atlantic in effect at time of shipment. Upon return of such containers in good condition within 90 days of shipment an amount equal to the charge will be refunded. These charges are not subject to cash discount.

deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery of any product due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement constitutes the full understanding between the parties hereto with reference to the subject matter hereof. Neither party shall claim any amendment, modification, extension or release from any provision hereof by mutual agreement, acknowledgment, acceptance of purchase-order forms, or otherwise, unless the same is in writing, signed by the other party, and specifically stating it is an amendment or extension of this Agreement.

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the 12-month period set forth above, all former Atlantic Automotive Lubricant Agreements now in effect between the parties.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company

By.....

Buyer.....

By.....

2122 COMMISSION EXHIBIT NO. 93.

Commission Agreement

This Agreement made this day of 1951 between The Atlantic Refining Company, a Pennsylvania corporation, herein called "Atlantic" and of herein called "Dealer",

Witnesseth

That in consideration of the promises of the parties hereto it is mutually covenanted and agreed as follows:

1. The Atlantic agrees to deliver to the Dealer at the Atlantic service station leased to Dealer at within days after the date of this Agreement, upon consignment, for sale by the Dealer, gallons of gasoline. During each week thereafter the Atlantic will deliver to the Dealer at said service station that number of gallons of gasoline which when added to the number of gallons then in the Dealer's tanks shall equal gallons, thus replacing the gasoline sold by the Dealer since the preceding delivery.

2. At the time of each weekly delivery the Dealer will pay to the Atlantic an amount of money equal to the number of gallons then delivered, multiplied by the price per gallon then posted at the Dealer's service station, less a commission of on the number of gallons delivered, plus rent equal to for each gallon delivered. (The number of gallons delivered will equal the number of gallons sold since the preceding delivery.)

2124 3. At the end of each month the Atlantic will determine the number of gallons, exclusive of the first delivery, delivered by the Atlantic to the Dealer during that month. That number shall be multiplied by 3¢. If the result is less than $216.00, the Atlantic shall forthwith pay to the Dealer the difference between $216.00 and the result.

4. The Atlantic will fix the service station price which the Dealer will post and at which the Dealer will sell the gasoline consigned by the Atlantic to the Dealer hereunder.

5. The Atlantic shall have a right to enter upon the Dealer's premises at any time for the purpose of determining the number of gallons of Atlantic's gasoline then on hand.

6. If at the time of any weekly delivery when a weekly payment is due from the Dealer to the Atlantic the Dealer fails to pay the amount then due the Atlantic hereunder, the Atlantic may forthwith terminate this Agreement and may take possession of and title to a sufficient amount of personal property belonging to the Dealer, located on said premises, which at the invoice price thereof to the Dealer will equal the amount then due from the Dealer to the Atlantic, and the Atlantic shall apply said invoice price of said personal property in reduction of the indebtedness of the Dealer to the Atlantic.

7. The term of this Agreement is one year from the date hereof; provided, however, that either party may terminate this Agreement on thirty days' written notice delivered to the other party, and this Agreement shall terminate on the 30th day following the delivery of such written notice. Written notice may be delivered by depositing the same in the United States registered mail, postage prepaid, addressed to the Atlantic at
and to the Dealer at said service station.

8. This Agreement will terminate prior to the expiration of the term hereof if that certain lease of said service station from the Atlantic to the Dealer terminates prior to the expiration of the term of this Agreement.

2126 9. Except as herein specified, the Atlantic shall have no control whatsoever over the operation of said service station by the Dealer, the purchase and sale of other commodities by the Dealer, the number or nature of employees employed by the Dealer, or otherwise.

Executed the day and year first above written.

The Atlantic Refining Company

By.....

.....

2128 COMMISSION EXHIBIT NO. 94A to D.

Commission Dealer Agreement.

This Agreement made as of the day of , 195 , between The Atlantic Refining Company, a Pennsylvania corporation, herein called "Atlantic" and of herein called "Dealer".

Witnesseth:

That in consideration of the obligations of the parties hereto it is mutually agreed as follows:

1. Within ten (10) days after the date of this Agreement Atlantic shall furnish upon consignment to Dealer in tanks at the service station located at gallons of Atlantic gasoline (hereinafter referred to as "Consignment Inventory"), for sale by Dealer.

2. From time to time thereafter Atlantic shall deliver to Dealer into said tanks at said service station a quantity of gasoline which, when added to that then in the tanks, shall equal said Consignment Inventory. At the time of each delivery under this Paragraph 2 Dealer shall pay to Atlantic an amount of money equal to the number of gallons of gasoline then delivered multiplied by the price per gallon in effect at the time and place of delivery, as established by Atlantic under Paragraph 4 hereof, less a commission based upon the difference between the service station price and the Dealer Tank Wagon price in effect at the time and for the place of delivery, to be determined and applied in accordance with the following schedule:

Difference Between Service Station Price and Dealer Tank Wagon Price	Commission Allowed at Time of Delivery	Credited to Rent Account Provided Dealer Is Lessee From Atlantic
4.5 or more	3.0	1.5
4.4	2.9	1.5
4.3	2.8	1.5
4.2	2.7	1.5
4.1	2.6	1.5
4.0	2.5	1.5
3.9	2.4	1.5
3.8	2.3	1.5
3.7	2.2	1.5
3.6	2.1	1.5
3.5	2.0	1.5
3.4	1.9	1.5
3.3	1.8	1.5
3.2	1.7	1.5
3.1	1.6	1.5
3.0	1.5	1.5
2.9	1.4	1.5
2.8	1.3	1.5
2.7	1.2	1.5
2.6	1.1	1.5
2.5	1.0	1.5
2.4	.9	1.5
2.3	.8	1.5
2.2	.7	1.5
2.1	.6	1.5
2.0	.5	1.5
1.9	.4	1.5
1.8	.3	1.5
1.7	.2	1.5
1.6	.1	1.5
1.5 or less	.0	1.5

3. If, in any calendar month, Dealer's commission hereunder, based on the above schedule in Paragraph 2, is

less than Two Hundred and Sixteen Dollars ($216.00) excluding commission credited to the Dealer's rent account, Atlantic, by the twentieth day of the following month, shall pay to Dealer the difference between said amount and the commission already received for that month by Dealer. If this Agreement is in effect for a portion of any calendar month the amount of Two Hundred and Sixteen Dollars ($216.00) shall be adjusted ratably for such month to reflect the number of days that this Agreement is in effect during such month.

4. Atlantic shall establish the service station price which Dealer shall post and at which Dealer shall sell the gasoline consigned by Atlantic to Dealer hereunder.

5. Atlantic shall have the right to enter upon the premises at the above location at any time for the purpose
2132 of determining the number of gallons of Atlantic gasoline consigned hereunder then on hand.

6. Title to gasoline delivered from time to time to Dealer to replenish or augment the original Consignment Inventory shall not pass to Dealer, but it shall be considered as though said gasoline had been part of the original Consignment Inventory.

7. If Dealer is lessee from Atlantic of the above service station under a lease on Atlantic's B-3191 form, during the continuance of this Agreement, Atlantic shall reimburse Dealer for Dealer's expenditures covering charges for sewerage, water, gas and electricity consumed or used by Dealer at said service station and all expense of heating same. Atlantic shall also reimburse Dealer for expenditures covering any municipal licenses or charges based on the number of gasoline dispensing pumps on said service station and the storage of gasoline therein. In addition, during the continuance of this Agreement, paragraph 2 of said B-3191 lease and any amendment or modification thereof now in effect shall be suspended and in lieu thereof the following provision shall be in effect:

"2—Lessee shall pay to Atlantic rental at the rate of one and one-half cents (1½¢) per gallon on each gallon of gasoline delivered to said leased premises required to replenish the Consignment Inventory under lessee's then current Commission Dealer Agreement."

Upon termination of this Agreement the rental as provided for in said suspended paragraph 2 shall become reinstated, subject to any amendment or modification of said paragraph 2 which was in effect on the date hereof.

8. This Agreement may be terminated by either party upon giving thirty days' notice to the other party. Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Atlantic at 260 South Broad St., Philadelphia 1, Pennsylvania and to Dealer at the leased premises, subject to the right of either party to designate in writing a new address to which notices may be sent.

9. Notwithstanding the provisions of Paragraph 8 hereof, if the service station to which deliveries are made is leased by Dealer from Atlantic and if such lease is terminated, this Agreement shall terminate concurrently with said lease.

2134 10. Upon termination of this Agreement, Dealer shall account to Atlantic for the consigned gasoline as follows:

(a) Gasoline on hand shall be returned to Atlantic; or Dealer, at Dealer's option, shall purchase such gasoline at Atlantic's prevailing Dealer-Tank Wagon price applicable at that location on date of termination.

(b) The difference between Dealer's "Consignment Inventory" and the quantity of gasoline on hand on date of termination shall be settled for as provided in Paragraph 2 hereof on the basis of the service station price established by Atlantic and effective on date of termination.

11. Except as herein specified, Atlantic shall have no control whatsoever over the operation of said service station by Dealer, the purchase and sale of other commodities by Dealer, the number or nature of employees employed by Dealer, or otherwise.

Executed as of the day and year first above written.

The Atlantic Refining Company

By.....

Regional Manager of Marketing

Dealer

.....

2136 COMMISSION EXHIBIT NO. 95 A-C.

Authorized Distributor's Agreement.

This Agreement made this ..... day of ....., 195...., between The Atlantic Refining Company, ..., a corporation of the Commonwealth of Pennsylvania, hereinafter called Atlantic, and ..... of ....., County of ..... State of ....., hereinafter called Buyer, ...

Whereas Atlantic is a marketer of Atlantic branded petroleum products, and

Whereas Buyer is desirous of obtaining the privilege of acting as an authorized distributor for Atlantic of such petroleum products,

Witnesseth:

Product and Quantity. Atlantic agrees to sell and Buyer agrees to purchase, ... gallons of Atlantic White Flash and ..... gallons of Atlantic Hi-Arc and such additional quantities of each product as Buyer shall order from time to time, provided that Atlantic shall not be required to deliver in any one year more than ..... gallons of Atlantic White Flash or more than ..... gallons of Atlantic Hi-Arc.

Deliveries Deliveries hereunder shall be made in tank car or truck transport in approximate equal monthly quantities to the following bulk plant or plants of Buyer:

Resale In Authorized Territory In consideration of Atlantic's granting to Buyer the privilege of acting as an authorized distributor for Atlantic in and about the territory described below, Buyer's purchases under this agreement shall be only for resale to consumers and to regularly established dealers by tank truck delivery. Buyer shall diligently further the sale of Atlantic's products during the period this agreement is effective.

Period Of Time This agreement shall extend from ..... and from year to year thereafter unless terminated by either party at the end of the original term or at the end of any subsequent contract year by giving at least ninety (90) days prior written notice to the other party.

Price The price shall be determined as follows:

2137 Freight Charges When shipments are made "freight collect", allowance for freight will be made on the face of the invoice.

Terms of Payment

If credit is established, and during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this agreement are to be made at par.

Shipments Buyer shall give Atlantic shipping instructions at least ten (10) days prior to the time shipments are desired, and when possible inform Atlantic the quantity desired for any one month thirty (30) days before the first day thereof.

Tank cars or truck transports shipped hereunder are not to be diverted or reconsigned without written permission of Atlantic first obtained.

Taxes Any tax or other charge now or hereafter imposed by law, domestic or foreign, on any product herein sold, or on the production, manufacture, sale, transportation or delivery thereof, or on this agreement, which Atlantic is required to pay or collect, shall be added to the price herein provided for and paid by Buyer.

2138 Unloading Buyer promptly shall receive shipments or unload the transportation facilities employed, return empty cars as instructed and pay demurrage, tank car rental and all other charges or damages for delay in receipt or unloading.

Tetraethyl Lead Regulations Buyer shall distribute and sell any tetraethyl lead treated gasoline purchased under this agreement in accordance with the rules and regulations now or hereafter issued by Atlantic's suppliers of tetraethyl lead, United States Public Health Service or any governmental agency having jurisdiction thereof, and Buyer at all times shall keep any purchaser for resale of said gasoline informed of all said rules and regulations, and shall require that said purchaser for resale comply with said rules and regulations and that he inform all who purchase from him for resale of said rules and regulations. Buyer shall afford medical and mechanical representatives of such suppliers every reasonable facility to inspect any apparatus, equipment or other property used by Buyer in connection with the disfribution and sale of said treated gasoline; and Buyer shall require that each purchaser for resale afford similar facilities for medical and mechanical inspection by such suppliers.

Force Majeure Buyer shall not be obligated to accept deliveries if unable to operate Buyer's business by reason of fire, flood, war, civil commotion, strikes, blockade or causes beyond Buyer's control. Atlantic shall not be re-

sponsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or any other difference with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in Atlantic's sole discretion to restrict or cease deliveries hereunder.

Claims No claim of Buyer on account of shortage in quantity or defect in quality of the products delivered hereunder or for any other cause shall be allowed unless Buyer immediately upon receipt of the shipment and at least twenty-four (24) hours before the unloading thereof notifies Atlantic in writing or by telegram addressed to Atlantic at 260 South Broad Street, Philadelphia 1, Pa., of such claim and extends to Atlantic the opportunity of making an investigation.

Advertising Atlantic shall loan to Buyer, under separate bailment agreement, the globes or lenses required for gasoline dispensing equipment used by Buyer or Buyer's customers in the distribution of such products purchased from Atlantic. Atlantic, at Atlantic's option, may also loan to Buyer, under separate bailment agreement, Atlantic's approved advertising signs. Buyer shall supply all other dispensing equipment and advertising signs.

Trade Marks Atlantic grants to Buyer during the period of this agreement the right to use and display Atlantic's trade mark or marks, covering the products purchased

from Atlantic, but such right or privilege shall cease at the termination of this agreement.

Conflicting Laws Or Regulations This agreement contemplates full compliance with all laws, ordinances, and regulations, from whatever authority the same may emanate, having application to the parties hereto or subject matter hereof; and in the event this agreement, or any procedure or action therein imposed upon either party hereto, shall at any time appear to be determined to be in conflict with any legal requirements imposed by any such authority, then this agreement shall immediately become inoperative and ineffective with respect thereto; and in any such event either party hereto shall have the right to cancel this agreement, subject to the obligation of Buyer to settle any unpaid balances due hereunder; and any obligation of Atlantic to make further deliveries hereunder shall terminate on the date of such cancellation.

Default Except for causes referred to above under the title "Force Majeure" a default under this agreement shall occur upon the happening of any of the following events: (a) failure of Atlantic to make deliveries to Buyer as herein stated; (b) failure of Buyer to order, accept or pay promptly for material in accordance with the provisions hereof; and (c) any adulteration or misrepresentation by Buyer of the product or products of Atlantic.

Liquidated Damages In the event of any default, the party not in default may terminate this agreement by written notice to the other party given at any time within ten (10) days after knowledge of the existence of such default. If this agreement is so terminated Buyer shall be obligated to settle any unpaid balances due hereunder and the party in default shall be obligated to pay to the party so terminating the sum of one cent (1¢) for each gallon of product which for any reason is not delivered, or accepted, as provided herein up to the minimum quantities specified. Such sum shall be deemed full liquidated

damages for all losses resulting from such default. Waiver of any one or more defaults hereunder shall not preclude either party from exercising the right to terminate this agreement by reason of any subsequent default.

Sale of Business Should Buyer at any time during the period of this agreement desire to sell, lease or otherwise dispose of Buyer's petroleum business, or any substantial part thereof, Buyer shall give written notice to Atlantic of the price and terms of any offer to purchase, lease or otherwise acquire said business or part thereof, and Atlantic shall have the first option to purchase, lease or otherwise acquire such business or part thereof at the price and upon the terms of each such offer. Such option shall extend for a period of sixty (60) days following receipt of such notice by Atlantic, and if not exercised within said period it shall thereupon lapse. Any such sale, lease or other disposition by Buyer or failure of Atlantic to exercise any option hereunder shall not prejudice Atlantic's rights hereunder, and this agreement shall be and remain in full force and effect until its termination date.

Assignability This agreement shall not be assigned by either party without the written consent of the other party.

Constitutes Whole Agreement This instrument embodies the whole agreement between the parties and there are no oral promises or other understandings or conditions inducing its execution or qualifying its terms.

In Witness Whereof, the parties have caused these presents to be duly executed in duplicate the day and year above written.

The Atlantic Refining Company

By .....

.....

Buyer

Witness: By .....

.....

.....

2140 COMMISSION EXHIBIT NO. 95D-F.

Atlantic Authorized Distributor's Agreement

This Agreement made this day of , 195 . , between The Atlantic Refining Company, , a corporation of the Commonwealth of Pennsylvania, hereinafter called Atlantic, and of , County of State of , hereinafter called Buyer,

Whereas Atlantic is a marketer of Atlantic branded petroleum products, and

Whereas Buyer is desirous of obtaining the privilege of acting as an authorized distributor for Atlantic of such petroleum products,

Witnesseth:

Product and Quantity—Atlantic agrees to sell and Buyer agrees to purchase,

gallons of Atlantic Gasoline and
gallons of Atlantic Premium Gasoline

and such additional qualities of each product as Buyer shall order from time to time, provided that Atlantic shall not be required to deliver in any one year more than

gallons of Atlantic Gasoline or more than
gallons of Atlantic Premium Gasoline.

Deliveries—Deliveries hereunder shall be made in tank car or truck transport in approximately equal monthly quantities to the following bulk plant or plants of Buyer:

Resale In Authorized Territory—In consideration of Atlantic's granting to Buyer the privilege of acting as an authorized distributor for Atlantic in and about the territory described below, Buyer's purchases under this agreement shall be only for resale to consumers and to regularly established dealers by tank truck delivery. Buyer shall diligently further the sale of Atlantic's products during the period this agreement is effective.

Period of Time—This agreement shall extend from and from year to year thereafter unless terminated by either party at the end of the original term or at the end of any subsequent contract year by giving at least ninety (90) days prior written notice to the other party.

Price—The price shall be determined as follows:

Credit Card Privilege—Atlantic will accept from Buyer assignment of accounts which result from retail credit sales made by Buyer at its own service station retail outlets or by service station Dealers purchasing Atlantic petroleum products from Buyer and will pay or credit Buyer the amount thereof, subject to the terms and conditions outlined by Atlantic from time to time. This arrangement will continue so long as Buyer continues to handle Atlantic petroleum products, unless terminated by either party giving to the other not less than forty-eight (48) hours advance written notice of termination.

Freight Charges—When shipments are made "freight collect", allowance for freight will be made on the face of the invoice.

Terms of Payment

If credit is established, and during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this agreement are to be made at par.

Shipments—Buyer shall give Atlantic shipping instructions at least ten (10) days prior to the time shipments are desired, and when possible inform Atlantic the quantity desired for any one month thirty (30) days before the first day thereof.

Tank cars or truck transports shipped hereunder are not to be diverted or reconsigned without written permission of Atlantic first obtained.

Taxes—Any tax or other charge now or hereafter imposed by law, domestic or foreign, on any product herein sold, or on the production, manufacture, sale, transportation or delivery thereof, or on this agreement, which Atlantic is required to pay or collect, shall be added to the price herein provided for and paid by Buyer.

2141 Unloading—Buyer promptly shall receive shipments or unload the transportation facilities employed, return empty cars as instructed and pay demurrage, tank car rental and all other charges or damages for delay in receipt or unloading.

Tetraethyl Lead Regulations—Buyer shall distribute and sell any tetraethyl lead treated gasoline purchased under this agreement in accordance with the rules and regulations now or hereafter issued by Atlantic's supplies of tetraethyl lead, United States Public Health Service or any governmental agency having jurisdiction thereof, and Buyer at all times shall keep any purchaser for resale of said gasoline informed of all said rules and regulations, and shall require that said purchaser for resale comply with said rules and regulations and that he inform all who purchase from him for resale of said rules and regulations. Buyer shall afford medical and mechanical representatives of such suppliers every reasonable facility to inspect any apparatus, equipment or other property used by Buyer in connection with the distribution and sale of said treated gasoline; and Buyer shall require that each purchaser for resale afford similar facilities for medical and mechanical inspection by such suppliers.

Force Majeure—Buyer shall not be obligated to accept deliveries if unable to operate Buyer's business by reason of fire, flood, war, civil commotion, strikes, blockade or

causes beyond Buyer's control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or any other difference with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in Atlantic's sole discretion to restrict or cease deliveries hereunder.

Claims—No claim of Buyer on account of shortage of quantity or defect in quality of the products delivered hereunder or for any other causea shall be allowed unless Buyer immediately upon receipt of the shipment notifies Atlantic of such claim, with subsequent confirmation in writing, and extends to Atlantic the opportunity of making an investigation.

Advertising—Atlantic shall loan to Buyer, under separate bailment agreement, the globes or lenses required for gasoline dispensing equipment used by Buyer or Buyer's customers in the distribution of such products purchased from Atlantic. Atlantic, at Atlantic's option, may also loan to Buyer, under separate bailment agreement, Atlantic's approved advertising signs. Buyer shall supply all other dispensing equipment and advertising signs.

Trade Marks—Atlantic grants to Buyer during the term of this agreement the right to use and display Atlantic's

trade mark or trade marks, covering the products purchased from Atlantic, but such right and privilege shall cease at the termination of this agreement and Buyer shall discontinue the use and display of Atlantic's trade mark or trade marks.

Conflicting Laws or Regulations—This agreement contemplates full compliance with all laws, ordinances, and regulations, from whatever authority the same may emanate, having application to the parties hereto or subject matter hereof; and in the event this agreement, or any procedure or action therein imposed upon either party hereto, shall at any time appear or be determined to be in conflict with any legal requirements imposed by any such authority, then this agreement shall immediately become inoperative and ineffective with respect thereto; and in any such event either party hereto shall have the right to cancel this agreement, subject to the obligation of Buyer to settle any unpaid balances due hereunder; and any obligation of Atlantic to make further deliveries hereunder shall terminate on the date of such cancellation.

Default—Except for causes referred to above under the title "Force Majeure" a default under this agreement shall occur upon the happening of any of the following events: (a) failure of Atlantic to make deliveries to Buyer as herein stated; (b) failure of Buyer to order, accept or pay promptly for material in accordance with the provisions hereof; and (c) any adulteration or misrepresentation by Buyer of the product or products of Atlantic.

Liquidated Damages—In the event of any default, the party not in default may terminate this agreement by written notice to the other party given at any time within ten (10) days after knowledge of the existence of such default: If this agreement is so terminated Buyer shall be

obligated to settle any unpaid balances due here under and the party in default shall be obligated to pay to the party so terminating the sum of one cent (1c) for each gallon of product which for any reason is not delivered, or accepted, as provided herein up to the minimum quantities specified. Such sum shall be deemed full liquidated damages for all losses resulting from such default. Waiver of any one or more defaults hereunder shall not preclude either party from exercising the right to terminate this agreement by reason of any subsequent default.

Sale of Business—Should Buyer at any time during the period of this agreement desire to sell, lease or otherwise dispose of Buyer's petroleum business, or any substantial part thereof, Buyer shall give written notice to Atlantic of the price and terms of any offer to purchase, lease or otherwise acquire said business or part thereof, and Atlantic shall have the first option to purchase, lease or otherwise acquire such business or part thereof at the price and upon the terms of each such offer. Such option shall extend for a period of sixty (60) days following receipt of such notice by Atlantic, and if not exercised within said period it shall thereupon lapse. Any such sale, lease or other disposition by Buyer or failure of Atlantic to exercise any option hereunder shall not prejudice Atlantic's rights hereunder, and this agreement shall be and remain in full force and effect until its termination date.

Assignability—This agreement shall not be assigned by either party without the written consent of the other party.

Constitutes Whole Agreement—This instrument embodies the whole agreement between the parties and there are no oral promises or other understandings or conditions inducing its execution or qualifying its terms.

In Witness Whereof, the parties have caused these presents to be duly executed in duplicate the day and year above written.

The Atlantic Refining Company

By .....

.....

Buyer

By .....

Witness:

.....

.....

2142 COMMISSION EXHIBIT NO. 96.

Authorized Distributors Agreement

Atlantic

Agreement made as of this ..... day of ....., 19....., between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called "Atlantic," and ..... of ....., County of ..... State of ....., hereinafter called "Buyer."

Duration: This Agreement shall extend from ....., 19....., to ....., 19....., and from year to year thereafter unless terminated by either party at the end of the original term or at the end of any subsequent contract year by giving at least ninety (90) days prior written notice to the other party.

Products: Atlantic Motor Oils and Atlantic Automotive Lubricants.

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at ..... barrels, during the period between

....., 19....., and ....., 19....., but in no event shall Atlantic be required to deliver more than ..... barrels in any 12-month period. Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (1/8) of the estimated 12-month purchases mentioned above. Fifty (50) gallons of Atlantic Motor Oils or 400 pounds of Atlantic Automotive Greases shall be considered one (1) barrel.

Prices: Buyer shall pay for products purchased hereunder Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Authorized Distributor Price Schedule." A copy of the current schedule effective .....is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices specified in the "Atlantic Automotive Lubricants Authorized Distributor Price Schedule."

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this contract are to be made at par. Cash discount 1% for payment in 10 days, net 30 days. No discount on tax and freight.

Shipment: Buyer shall give Atlantic shipping instructions at least 10 days in advance of the time shipments are desired, and if possible shall notify Atlantic of the quantity desired for any one month thirty days in advance. Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil

commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation, or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Delivery: F. O. B.

.....

.....

Shipments are to be made transportation charges collect with the understanding that Atlantic shall deduct from the invoices the carload or truckload freight (not including transportation tax) depending upon carrier used. Any increase in freight rates over those in effect on the date hereof may be added to the prices stated above, in Atlantic's discretion.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: Atlantic shall not be responsible under any circumstances for any consequential damages or injury.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the 12-month period set forth above, all former Atlantic Authorized Distributors Agreements for Atlantic Motor Oils and Atlantic Automotive Lubricants now in effect between the parties.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company

By.....

Buyer.....

By.....

2144 COMMISSION EXHIBIT NO. 96A.

Authorized Distributors Agreement

Atlantic

Agreement made as of this.....day of....., 19....., between The Atlantic Refining Company, ..., a Pennsylvania corporation, hereinafter called "Atlantic", and ..... of ..... County of.....State of....., hereinafter called "Buyer".

Sale: Atlantic agrees to sell and Buyer agrees to purchase during the period between..... 19....., and ....., 19....., Atlantic Automotive Lubricants as ordered by Buyer, estimated for each successive 12-month period at.....barrels.

Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth ($\frac{1}{8}$) of the estimated 12-month purchases mentioned above.

Duration: Upon the expiration of the original term,

this Agreement shall continue in effect from year to year, unless terminated at the end of the original or any subsequent term by either party giving to the other, at least ninety (90) days prior written notice.

Prices: Buyer shall pay for products purchased hereunder Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Authorized Distributor Price Schedule." A copy of the current schedule is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices specified in the "Atlantic Automotive Lubricants Authorized Distributor Price Schedule."

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this contract are to be made at par. Cash discount 1% for payment in 10 days, net 30 days. No discount on tax and freight.

Shipment: Buyer shall give Atlantic shipping instructions at least 10 days in advance of the time shipments are desired, and if possible shall notify Atlantic of the quantity desired for any one month thirty days before the first day of such month.

Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery

due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation, or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Delivery: F. O. B.

Shipments are to be made transportation charges collect with the understanding that Atlantic shall deduct from the invoices the carload or truckload freight depending upon carrier used. Any increase in freight rates over those in effect on the date hereof may be added to the prices stated above, in Atlanic's discretion.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This Agreement cannot be amended by written instrument duly executed by both parties.

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the original term, all former agreements now in effect between the parties relating to the purchase and sale of Atlantic Automotive Lubricants.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company

By.....

Buyer.....

By.....

2145 COMMISSION EXHIBIT NO. 97.

Loaned Equipment Contract

The Atlantic Refining Company, , hereinafter called "Atlantic", reserving the right of addition, change, substitution and maintenance, lends to .... hereinafter called "Customer" to enable "Customer" to store and dispense petroleum products purchased from Atlantic pursuant to the terms of sundry contracts with Atlantic and for no other purpose, equipment now or hereafter to be installed at Street and Number ..... City ....., State ....., which shall remain personalty and the property of Atlantic, and which "Customer" shall not remove, but shall repair and maintain, as follows:

In consideration of Atlantic's lending said equipment to "Customer", "Customer" will maintain and keep in

good repair and assumes and agrees to be responsible for full and exclusive control of said equipment and any additions to or substitutions therefor and agrees to indemnify and save harmless Atlantic from and against any and all liability for personal injury and property damage, or either, resulting in any manner by reason of the condition or use of such equipment and any additions to or substitutions therefor. Upon termination or cancellation, for any cause, of any agreement between "Customer" and Atlantic affecting the above location, said equipment and any additions to or substitutions therefor will be returned to Atlantic. At Atlantic's option, Atlantic may keep said equipment in place for a reasonable time to negotiate for its sale or other disposition; but, Atlantic, in any event, shall not be obliged to remove any underground equipment.

Witness "Customer's" signature and seal this ..... day of ....., 19.....

.....(Seal)

.....(Seal)

Witness:

Consent and Confirmation

Each of the following signers as owner, part owner, mortgagee, or lien holder of the above noted premises, for himself, his legal representatives, successors and assigns, in consideration of the installation or continuance in place of the equipment covered by the above agreement, hereby consents and agrees to be bound by the terms and conditions thereof with respect to installation, removal, substitution, maintenance and disposition, and hereby waives all right to hold, distrain, mortgage, claim or levy upon any of such equipment or any part thereof, and hereby agrees to accept title to any underground equipment not removed by Atlantic upon written notice of Atlantic's intention not to remove the same.

Witness my and our signatures and seals this ..... day of ....., 19.....

.....(Seal)

.....(Seal)

Witness:

2147 COMMISSION EXHIBIT NO. 97A.

Atlantic

Loaned Equipment Contract

The Atlantic Refining Company, , hereinafter called "Atlantic", reserving the right of addition, change, substitution and maintenance, lends to .... hereinafter called "Customer" to enable Customer to store and dispense petroleum products purchased from Atlantic pursuant to the terms of sundry contracts with Atlantic and for no other purpose, equipment now or hereafter to be installed at Street and Number ..... City ..... State ....., which shall remain personalty and the property of Atlantic, and which Customer shall not remove, but shall repair and maintain, as follows:

In consideration of Atlantic's lending said equipment to Customer, Customer will maintain and keep in good repair and assumes and agrees to be responsible for full and exclusive control of said equipment and any additions to or substitutions therefor and agrees to indemnify and save harmless Atlantic from and against any and all liability for personal injury and property damage, or either, resulting in any manner by reason of the condition or use of such equipment and any additions to or substitutions therefor. Upon termination or cancellation, for any cause, of any agreement between Customer and Atlantic affecting

the above location, said equipment and any additions to or substitutions therefor will be returned to Atlantic. At Atlantic's option, Atlantic may keep said equipment in place for a reasonable time to negotiate for its sale or other disposition, but, Atlantic, in any event, shall not be obliged to remove any underground equipment.

Witness Customer's signature and seal this ..... day of ....., 19.....

Witness:

.....(Seal)

.....(Seal)

Consent and Confirmation

Each of the following signers as owner, part owner, mortgagee, or lien holder of the above noted premises, for himself, his legal representatives, successors and assigns, in consideration of the installation or continuance in place of the equipment covered by the above agreement, hereby consents and agrees to be bound by the terms and conditions thereof with respect to installation, removal, substitution, maintenance and disposition, and hereby waives all right to hold, distrain, mortgage, claim or levy upon any of such equipment or any part thereof, and hereby agrees to accept title to any underground equipment not removed by Atlantic upon written notice of Atlantic's intention not to remove the same.

Witness my and our signatures and seals this ..... day of ....., 19

Witness:

.....(Seal)

.....(Seal)

2148 COMMISSION EXHIBIT NO. 98A.-G.

This Agreement made as of this ..... day of ..... 19....., by and between The Atlantic Refining Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called "Atlantic", and ..... of ....., hereinafter called "Distributor".

Witnesseth:

1. Atlantic hereby constitutes Distributor a representative solely for the purpose of the sale, distribution and marketing of petroleum products, namely, gasoline, furnace oil, kerosene, motor oil and greases, of Atlantic upon the terms and conditions and within the territory hereinafter designated.

2. Distributor shall offer for sale and make sales of said products only in the vicinity of Lakewood, New Jersey.

3. Atlantic will ship to Distributor on consignment petroleum products, including gasoline, furnace oil, kerosene, motor oil and greases, which shall hereinafter be referred to as "consigned merchandise" for sale by Distributor in the territory covered by this agreement. All such consigned merchandise shall be received by Distributor and stored at the bulk plant which has been provided by Atlantic at Lakewood, New Jersey, and shall at all times remain the property of Atlantic until sold by Distributor. All tanks, drums or containers at said bulk and used for the storage of said consigned merchandise, shall always be marked so as to show that the contents thereof are the sole property of Atlantic. Distributor shall provide and pay for the necessary employees to properly handle, protect and safeguard the property of Atlantic and shall be liable for all losses, shortages or thefts of said property from said bulk plant.

2150 4. With respect to all persons at any time employed by, or on the payroll of Distributor, or performing any work for or on behalf of Distributor, or in connection with or arising out of the business thereof, Distributor agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for unemployment insurance or old age retirement benefits, pensions, or annuities, now or hereafter imposed by the government of the United States, or any State or political sub-divisions thereof, whether the same be measured by the wages, salaries or other remuneration paid to such persons, or the number of such persons, or otherwise; it being understood that no such persons shall be deemed the employees of Atlantic.

5. Distributor shall sell Atlantic's products at Atlantic's regular marketing prices as the same shall be announced from time to time by Atlantic to the Distributor and posted at the aforesaid bulk plant. Distributor shall be governed in all respects by the general marketing policy of Atlantic in respect to whole prices, discounts and other matters pertaining to price structure of Atlantic's products marketed by Atlantic.

6. Upon the sale by Distributor of any of the consigned merchandise, deliveries thereof shall be made by Distributor from the supply stored at said bulk plant.

7. Distributor, at all times, shall provide and maintain an adequate number of salesmen and other employees to carry on properly the business herein provided for and shall apply himself energetically to the management and direction of the sales organization employed by him hereunder and to the sale of Atlantic's products and building up of Atlantic's business in said territory, and, at all times, shall maintain the prestige of Atlantic for fair dealings and honorable business methods.

2151 8. Distributor shall pay all salaries and wages of

employees necessary to carry on said business and shall pay all other costs and expenses of said business, except those herein specifically required to be paid by Atlantic. Distributor shall provide and maintain suitable motor trucks for delivery of the aforesaid consigned merchandise.

9. Atlantic shall supply Distributor with equipment for dispensing gasoline and motor oils. Said equipment may be loaned to Distributor's customers only with the approval of Atlantic and under Atlantic's standard forms of agreement. Atlantic shall be the sole judge of the amount, kind or character of equipment to be furnished to Distributor.

10. Distributor shall be governed in granting credit to Distributor's customers by the credit policy of Atlantic and shall collect daily all money due for goods sold to Distributor's customers and make deposits daily of the money collected for Atlantic's account in a depository designated by Atlantic. The account of said depository shall be carried in Atlantic's name and subject to withdrawal only by Atlantic.

11. Distributor shall collect with due diligence all accounts from customers whose credit has been approved by Atlantic. If said accounts are not collected by Distributor and remitted to Atlantic within 90 days from the date of the sale of the products covered by such account, Distributor shall refund to Atlantic any commission or commissions paid Distributor on said accounts. The account of any customer to whom credit has been given by Distributor beyond the line of credit established for said customer by Atlantic, and the account of any customer to whom Atlantic has refused to extend any credit are to be charged to Distributor and the amounts thereof shall be deducted from any commissions due Distributor by Atlantic.

2153 12. Atlantic will allow and pay to Distributor com-

mission on the sale and delivery of the products herein mentioned as follows:

Atlantic Hi-Arc Gasoline—1¼¢ per gallon
Atlantic White Flash Gasoline—1¼¢ per gallon
Atlantic Rayolight Oil (Kerosene)—1¾¢ per gallon
Atlantic Furnace Oil—1½¢ per gallon
Atlantic Motor Oils—20% of the selling price thereof (exclusive of taxes) as established under the provisions of Paragraph 5.
Atlantic Package Goods—20% of the selling price thereof (exclusive of taxes) as established under the provisions of Paragraph 5.

These commissions are payable only upon the consigned merchandise sold by Distributor through the aforesaid bulk plant, and no commissions shall be payable upon any sales of gasoline, furnace oil, kerosene, motor oil and greases that may be made by Atlantic in tank car quantities or otherwise. All commissions due hereunder shall be paid on or before the 15th day of each month for business done during the preceding month, less any charges against same herein authorized.

13. With respect to any service or filling stations operated by Distributor within the territory covered by this agreement for the purpose of selling at retail products of Atlantic, Distributor shall make such withdrawals from the supply or stock of consigned merchandise as may be necessary for Distributor's said retail service station business, and shall pay for the consigned merchandise so withdrawn in cash at time of delivery at Atlantic's published wholesale price. Distributor shall be allowed and paid the same commission on all such consigned merchandise so withdrawn as Atlantic allows Distributor on like consigned merchandise sold to Distributor's customers.

14. Atlantic shall pay all Federal, State or other taxes based on ownership of property and levied or assessed

against the property of Atlantic used by Distributor
2155 and any license fees required by Federal, State or other laws or ordinances for carrying on the wholesale business contemplated by this agreement. Distributor shall pay all taxes or license fees imposed upon the use and operation of Atlantic's property in Distributor's retail business, as well as for such taxes and license fees or others imposed upon Distributor for carrying on Distributor's retail business and upon property owned or furnished by Distributor for either the wholesale or retail business.

15. Distributor shall not sell, offer for sale or handle within the territory herein provided for, in any manner, petroleum products, derivatives therefrom, or substitutes therefor, except those manufactured or offered for sale by Atlantic.

16. Distributor shall keep proper and adequate records of all receipts of consigned merchandise, of all sales made by Distributor and of all consigned merchandise withdrawn from said bulk plant, which said records shall be at all times open to the inspection of Atlantic.

17. Atlantic shall supply and furnish Distributor with the products necessary to carry on the business herein provided for, unless prevented by any cause or causes beyond the reasonable control of Atlantic.

18. If remittances are not made promptly for all consigned merchandise withdrawn by Distributor, or if, in the sole judgment of Atlantic, Distributor's financial responsibility is unsatisfactory or Distributor displays lack of business energy in carrying on the business herein provided for or Distributor violates or fails to comply with any of the terms and conditions of this agreement, Atlantic, at Atlantic's sole option, forthwith may cancel and terminate this agreement at any time, and Atlantic at once shall be entitled to receive back, and Distributor shall deliver

to Atlantic free of any liens, cost or expense at said
2157 bulk plant, all of Atlantic's property, including all said consigned merchandise.

19. This agreement or any interests therein may not be assigned or in any wise transferred by Distributor without written consent of Atlantic.

20. Failure of Atlantic to enforce any of the provisions hereof or to exercise any option or to require any performance by Distributor of such provisions herein contained shall in no wise be construed as a waiver of such provisions or in any way affect the validity of this agreement or any part thereof or Atlantic's right to enforce thereafter each and every provision.

21. Distributor shall not incur any indebtedness or assume any liability in the name of Atlantic or for Atlantic's account without first having received the written consent of Atlantic to incur such indebtedness, or liability.

22. Distributor hereby agrees to provide at Distributor's own expense Workmen's Compensation Insurance for Distributor's employees. Distributor shall indemnify and save harmless Atlantic in and from all suits, losses, claims, liability or damage which may arise out of any injuries to Distributor, Distributor's employees, and any persons or property for or by reason of the violation of any ordinances, laws or regulations or by reason of or resulting from or in any incident to the negligent acts or omissions of Distributor, Distributor's employees or servants in connection with the operation of the business herein contemplated, or in connection with the trucks and equipment used or to be used in connection herewith or arising in any manner in connection with the sale, distribution or marketing of consigned merchandise under this agreement.

2159 23. Distributor shall furnish Atlantic, at Distributor's expense, with bond or bonds acceptable to At-

lantic, and for such an amount as Atlantic from time to time may consider necessary and adequate for the faithful performance by Distributor of the terms and conditions of this contract.

24. This agreement, unless sooner terminated as provided in Paragraph 18 hereof, shall continue in full force and effect from ....., 19.... until terminated by either party giving to the other party sixty (60) days' written notice of intention to terminate the agreement. Immediately upon such termination, Distributor shall deliver to Atlantic, at Atlantic's bulk plant aforesaid, all of Atlantic's property, including all said consigned merchandise free of any lien, cost or expense to Atlantic.

In Witness Whereof, the parties hereto have duly executed this agreement as of the day and year first above written.

The Atlantic Refining Company

By .....

Regional Manager of Marketing

.....

Witness:

.....

2161 COMMISSION EXHIBIT No. 98H-K

Atlantic

Commission Distributor Consignment Agreement

First: The Atlantic refining Company, hereinafter called "Consignor", and .....of....., hereinafter called "Consignee", desiring to arrange for the sale and distribution of petroleum products at ..... and vicinity, agree as follows:

Second: Consignor shall deliver on consignment to Consignee stocks of gasoline at the bulk station operated

by Consignee at above address and will establish the prices at which said products are to be sold by Consignee.

Third: Consignee shall have charge of said stocks, take inventories of same as required by Consignor, and be responsible for all stocks and containers delivered to him by consignor.

Fourth: Consigned stocks shall remain the property of Consignor until sold in the regular course of business, but Consignee shall be responsible for all shortages of bulk stock in excess of one half of one per cent (½%) of the monthly throughput.

Fifth: Authorized representatives of Consignor may inventory and inspect Consignor's property, stocks, goods and merchandise of whatever kind at any time during business hours.

Sixth: Consignee shall sell and deliver in a diligent efficient and business like manner the aforementioned products, in accordance with Consignor's Direct Marketing policies, now in effect and as changed from time to time to the accounts designated by Consignor in the geographical territory described in the attached map. Consignee shall be responsible for all said products delivered, and settle with Consignor each day of said products delivered by him that day.

Seventh: All of said products shall be sold by Consignee in strict accordance with Consignor's established prices in effect at time and place of delivery for dealers and consumers in the territory covered by this Agreement. Consignee shall remit to Consignor cash for all deliveries of consigned products made by him except in the case of deliveries to customers whose credit has been previously approved in writing by Consignor; credit deliveries
2162 shall be at prices and upon terms specified in writing by Consignor.

Eighth: Consignee shall transmit daily to Consignor's office at ....., on such forms as required by Consignor, written statements, showing in detail all sales and deliveries of said products made by him and shall remit daily to Consignor all moneys received by him from the sale of said products, together with signed receipts for both cash and credit sales.

Ninth: As soon as practical after the first day of each month, Consignor shall render a written statement to Consignee showing sales and deliveries during the preceding month, as reported by Consignee, and shall premit to Consignee after deducting any amounts due the Consignor hereunder the commissions earned on such sales and deliveries at the following rates:

Atlantic Gasoline —One & Six-tenths cents (1.6¢) per gallon

Atlantic Premium Gasoline—One & Six-tenths cents (1.6¢) per gallon

When deliveries of Gasoline are made to dealers in an area in which the price to dealers established by Consignor is below Consignor's posted zone tank wagon price for that area, or when deliveries of Gasoline are made to consumers under contract with Consignor, at prices below Consignor's posted commercial tank wagon price for the products involved at time and place of delivery, the commission payable will be as follows:

Up to and including 1.00¢ below Consignor's posted zone tank wagon price at time and place of delivery ..... 1.60¢ per gallon

When such prices go below this level, Consignor will share this decline half and half with Consignee to the minimum commission of 1.10¢.

In no event shall Consignee receive less than $2.00 per delivery to consumers.

Consignor in consideration for use of Consignee's stor-

age facilities will pay the Consignee an additional commission of one quarter of a cent (.25¢) over and above the commission stated herein on each gallon of gasoline delivered by the Consignee from said storage facilities.

Tenth: Consignee shall have entire charge of the management and operation of his business; shall furnish and maintain all necessary buildings, improvements, storage and handling equipment and tools; shall furnish, 2163 maintain and operate his delivery equipment; shall have such equipment painted in conformance with Consignor's policy; and shall supply Consignor with gauge sheets properly calibrated for each truck loading at Atlantic Plants or Terminals that do not have printing meters at loading racks.

Eleventh: Consignee shall furnish all his own helpers and employees, and shall pay all expenses, labor, contributions, assessments, taxes, fees, licenses and other costs of like nature arising out of Consignee's business and upon his property, and Consignor shall in no event have any liability for the negligence of Consignee, or his employees, in conducting said business.

Twelfth: Consignor will buy from Consignee at prices agreed upon by the parties any and all Gasoline dispensing equipment that he may have installed at his own expense at locations of accounts to whom Consignee delivers gasoline hereunder, and will supply, maintain, and replace as needed all equipment for dispensing gasoline required by said accounts in accordance with Consignor's existing equipment program for Commission Distributors.

Thirteenth: Consignee may loan equipment to customers only with approval of Consignor and under Consignor's standard form of agreement.

Fourteenth: Consignee shall collect from customers and return to Consignor as directed all returnable containers without additional compensation, which service shall be included in the commissions specified in this agreement.

Fifteenth: Consignee agrees that he will procure and maintain workmen's compensation insurance and public liability insurance covering all equipment used by him in the operation of said business. Said public liability insurance shall carry liability of not less than $25,000.00 for one (1) person and $50,000.00 for one (1) accident, and a minimum of $5,000.00 property damage.

Satisfactory evidence of the existence of such insurance shall be furnished Consignor.

Sixteenth: It is expressly agreed and stipulated that neither Consignee nor the employees of Consignee shall be deemed or construed to be employees of Consignor.

Seventeenth: It is expressly agreed that Consignor shall have the right through salesmen, agents, drivers, or representatives to solicit business and make deliveries and 2164 sales of its products in any territory, and that Consignee shall not be entitled to any commission on sales and deliveries of Gasolines made by other than himself or his employees.

Eighteenth: This Agreement shall extend from..... to..... However, should Consignee fail to settle for any Gasolines delivered to him by Consignor as provided for in this Agreement, Consignor may immediately cancel this Agreement or suspend deliveries until settlement is made. Upon termination of this Agreement for any reason, Consignee shall delivery to Consignor all property, books and records in his possession or under his control by reason of this Agreement.

Nineteenth: If Consignee dies, the Agreement shall terminate automatically. If Consignee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Consignor shall have the right to terminate this agreement.

Twentieth: This written contract contains the entire agreement between the parties and its execution has not

been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This contract is personal and cannot be assigned without Consignor's prior consent nor can it be amended except by written instrument duly executed by both parties.

Executed in duplicate this.....day of ....., 195.....

The Atlantic Refining Company

By.....

.....

Consignee

2165 COMMISSION EXHIBIT No. 98L.

Rider to Commission Distributor Consignment Agreement

Effective this date, the following will supplement and be made the second paragraph of the ninth provision in the attached Commission Distributor Consignment Agreement executed between The Atlantic Refining Company and the Consignee on the ..... day of ..... 195.....

"When deliveries of Gasoline are made to Lessee Dealers, the commission payable by Consignor on such deliveries shall be at the rate of One and One-tenths cents (1.1¢) per gallon for both Atlantic Gasoline and Atlantic Premium Gasoline."

With the addition of the above paragraph as a part of the attached Agreement, it is further agreed by Consignor and Consignee that the term "dealers" used in the paragraph it immediately precedes, refers to and applies to Contract Dealers only.

The Atlantic Refining Company

By.....

Consignee.....

.....

2166 COMMISSION EXHIBIT No. 98M-P.

Atlantic

Commission Agent Consignment Agreement

This Agreement made and entered into this ..... day of ....., 195...., by and between The Atlantic Refining Company, a corporation, having its principal office in Philadelphia, Pennsylvania hereinafter referred to as "Consignor" and ..... of ....., hereinafter referred to as "Consignee",

Witnesseth:

Consignee shall sell and deliver to accounts specified by Consignor Atlantic Gasolines, Motor Oils and Lubricants delivered by Consignor on consignment into Consignee's delivery equipment at Consignor's bulk plant.

First: Consignee shall sell and deliver in a diligent, efficient and bussinesslike manner, the aforementioned products in accordance with Consignor's Direct Marketing policies, now in effect and as changed from time to time to accounts designated by Consignor in the geographical territory described in the attached map. Consignee shall be responsible for all said products delivered by him that day.

Second: Consigned stocks shall remain the property of Consignor until sold in the regular course of business, but Consignee shall be responsible therefore until sold.

Third: All of said products shall be sold by Consignee in strict accordance with Consignor's established prices in effect at time and place of delivery for dealers and consumers in the territory covered by this agreement. Consignee shall remit to Consignor cash for all deliveries of consigned products made by him, except in the case of deliveries to customers whose credit has been previously

approved in writing by Consignor; credit deliveries shall be at prices and upon terms specified in writing by Consignor.

Fourth: Consignee shall transmit daily to Consignor's office at ....., on such 2167 forms as required by Consignor, written statements, showing in detail all sales and deliveries of said products made by him and shall remit daily to Consignor all moneys received by him from the sale of said products, together with signed receipts for both cash and credit sales.

Fifth: As soon as practical after the first day of each month, Consignor shall render a written statement to Consignee showing sales and deliveries during the preceding month as reported by Consignee, and shall remit to Consignee after deducting any amount due the Consignor hereunder commissions earned on such sales and deliveries at the following rates:

Atlantic Gasoline	—One & Six-tenths cents (1.6¢) per gallon
Atlantic Premius Gasoline	—One & Six-tenths cents (1.6¢) per gallon
Atlantic Motor Oils and Lubricants	—Fifteen percent (15%) of invoice price excluding tax

When deliveries of Gasoline are made to dealers in an area in which the price to dealers established by Consignor is below Consignor's posted zone tank wagon price for that area or when deliveries of gasoline are made to consumers under contract with Consignor at prices below Consignor's posted Commercial Tank Wagon price for product involved at time and place of delivery, the commission payable will be as follows:

Up to and including 1.00¢ below Consignor's posted zone tank wagon price at time and place of delivery.....	1.60¢ per gallon

When such prices go below this level, Consignor will share this decline half and half with Consignee to the minimum commission of 1.10¢.

In no event shall Consignee receive less than $2.00 per delivery to consumers.

Sixth: Consignee shall have entire charge of the management and operation of his business; shall furnish, maintain and operate his delivery equipment; shall have such equipment painted in conformance with Consignor's policy; and shall supply Consignor with gauge sheets, properly calibrated, for each truck loading at Atlantic Plants or Terminals that do not have printing meters at loading racks.

Seventh: Consignee shall furnish all his own helpers and employees and shall pay all expenses, labor, contributions, assessments, taxes, fees, licenses and other costs
2168 of like nature arising out of Consignee's business and upon his property, and Consignor shall in no event have any liability for the negligence of Consignee, or his employees in conducting the business.

Eighth: Neither Consignee nor his employees shall be deemed or construed to be employees of Consignor.

Ninth: Consignor will buy from Consignee at prices agreed upon by the parties any and all gasoline dispensing equipment that he may have installed at his own expense, at locations of accounts to whom Consignee delivers gasoline hereunder, and will supply, install, maintain, and replace as needed all equipment for dispensing gasoline required by said accounts in accordance with Consignor's existing equipment program for Commission Agents.

Tenth: Consignee may loan equipment to customers only with approval of Consignor and under Consignor's standard form of agreement.

Eleventh: Consignee shall collect from customers and return to Consignor as directed all returnable containers

without additional compensation, which service shall be included in the commissions specified in this agreement.

Twelfth: Consignee agrees that he will procure and maintain workmen's compensation insurance and public liability insurance covering all equipment used by him in the operation of said business. Said public liability insurance shall carry liability of not less than $25,000.00 for one (1) person and $50,000.00 for one (1) accident, and a minimum of $5,000.00 property damage.

Satisfactory evidence of the existence of such insurance shall be furnished Consignor.

Thirteenth: It is expressly agreed that Consignor shall have the right through salesman, agents, drivers, or representatives to solicit business and made deliveries and sales of its products in any territory, and that Consignee shall not be entitled to any commission on sales and deliveries of Gasoline, Motor Oils and Lubricants made by other than himself or his employees.

Fourteenth: This Agreement shall extend from ..... to ..... However, should Consignee fail to settle for any Casolines, Motor Oils and Lu-
2169 bricants delivered to him by Consignor as provided for in this Agreement, Consignor may immediately cancel this Agreement or suspend deliveries until settlement is made. Upon termination of this Agreement for any reason, Consignee shall deliver to Consignor all property, books and records in his possession or under his control by reason of this Agreement.

Fifteenth: If Consignee dies, the agreement shall terminate automatically. If Consignee becomes involved in any insolvency, or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Consignor shall have the right to terminate this agreement.

Sixteenth: This written contract contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or

agreement of any kind other than those herein expressed. This contract is personal and cannot be assigned without Consignor's prior consent nor can it be amended except by written instrument duly executed by both parties.

Executed in duplicate this ..... day of ..... 195....

The Atlantic Refining Company

By .....

.....

Consignee.

2170 COMMISSION EXHIBIT NO. 98Q.

Rider to

Commission Agent

Consignment Agreement

Effective this date, the following will supplement and be made the second paragraph of the fifth provision in the attached Commission Agent Consignment Agreement executed between The Atlantic Refining Company and the Consignee on the .....day of..... 195....

"When deliveries of Gasoline are made to Lessee Dealers, the commission payable by Consignor on such deliveries shall be at the rate of One and One-tenths cents (1.1¢) per gallon for both Atlantic Gasoline and Atlantic Premium Gasoline."

With the addition of the above paragraph as a part of the attached Agreement, it is further agreed by Consignor and Consignee that the term "dealers" used in the paragraph it immediately precedes, refers to and applies to Contract Dealers only.

The Atlantic Refining Company

By .....

Consignee.....

.....

2171 COMMISSION EXHIBIT NO. 98R-T.

Bulk Sales Agreement

This Agreement made this day of 194 , by and between The Atlantic Refining Company, , a corporation of the Commonwealth of Pennsylvania, hereinafter called Atlantic, and of , County of , State of , hereinafter called Buyer,

Witnesseth:

Quantity and Product: Atlantic agrees to sell and Buyer agrees to purchase , during the

Period of Time: period commencing and ending with the understanding that Atlantic shall not be required to deliver and Buyer shall not be required to accept more than one-eighth (⅛) of the estimated maximum quantity specified in this agreement in any calendar month.

Price: The price shall be determined as follows:

2172-A Freight Charges

Terms of Payment

If during the continuance of this agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory, cash payments or satisfactory security may be required by Atlantic as a condition precedent to the shipment of orders under this agreement.

Taxes: Any tax or other charge now or hereafter imposed by law, domestic or foreign, on any product herein

sold, or on the production, manufacture, sale, transportation or delivery thereof, or on this agreement, which Atlantic is required to pay or collect, shall be added to the price herein provided for and paid by Buyer.

2172-B Tetraethyl Lead Regulation Buyer shall distribute and sell any tetraethyl lead treated gasoline purchased under this agreement in accordance with the rules and regulations now or hereafter issued by Ethyl Corporation or United States Public Health Service or any governmental agency having jurisdiction thereof, and Buyer at all times shall keep any purchaser for resale of said gasoline informed of all said rules and regulations, and shall require that said purchaser for resale comply with said rules and regulations and that he inform all who purchase from him for resale of said rules and regulations. Buyer shall afford medical and mechanical representatives of Ethyl Corporation every reasonable facility to inspect any apparatus, equipment or other property used by Buyer in connection with the distribution and sale of said treated gasoline; and Buyer shall require that each purchaser for resale afford similar facilities for medical and mechanical inspection by Ethyl Corporation.

Shipments Buyer shall give Atlantic shipping instructions at least ten (10) days prior to the time shipments are desired, and when possible inform Atlantic the quantity desired for any one month thirty (30) days before the first day thereof.

Shipments hereunder shall be made in tank cars or truck transports from to the distributing station of Buyer at the following location or locations:

Tank cars or truck transports shipped hereunder are not to be diverted or reconsigned without written permission of Atlantic first obtained.

Force Majeure Buyer shall not be obligated to accept

deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or any other difference with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition or request of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration or regulation, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Claims No claim of Buyer on account of shortages in quantity or defect in quality of the products delivered hereunder or for any other cause shall be allowed unless Buyer immediately upon receipt of the shipment and at least twenty-four (24) hours before the unloading thereof notifies Atlantic in writing or by telegram addressed to Atlantic at 260 South Broad Street, Philadelphia 1, Pa., of such claim and extends to Atlantic the opportunity of making an investigation.

Tank Car Rental Buyer shall pay Atlantic rental for use of tank cars on the basis of $2.00 per day, with free time allowance of the first two calendar days following the day of actual or constructive placement of the tank car. Rental shall be paid for Sundays and holidays except when such days fall within the two days' free time. Buyer shall also pay any railroad demurrage charges. Buyer

shall report to Atlantic the date of placement and release of tank cars on forms supplied by Atlantic.

Conflicting Laws or Regulations This agreement contemplates full compliance with all laws, ordinances and regulations, from whatever authority the same may emanate, having application to the parties hereto or subject matter hereof; and in the event this agreement, or any procedure or action therein imposed upon either party hereto, shall at any time appear or be determined to be in conflict with any legal requirements imposed by any such authority, then this agreement shall immediately become inoperative and ineffective with respect thereto; and in any such event either party hereto shall have the right to cancel this agreement, subject to the obligation of Buyer to settle any unpaid balances due hereunder; and any obligation of Atlantic to make further deliveries hereunder shall terminate on the date of such cancellation.

Default Except for causes referred to above under the title "Force Majeure" a default under this agreement shall occur upon the happening of any of the following events: (a) failure of Atlantic to make deliveries to Buyer as herein stated; (b) failure of Buyer to order, accept or pay promptly for material in accordance with the provisions hereof; (c) any adulteration or misrepresentation by Buyer of the product or products of Atlantic.

Liquidated Damages In the event of any default, the party not in default may terminate this agreement by written notice to the other party given at any time within ten (10) days after knowledge of the existence of such default. If this agreement is so terminated the party in default shall be obligated to pay to the party so terminating the sum of one cent (1¢) for each gallon of product which for any reason is not delivered, or accepted, as provided herein. Such sum shall be deemed full liquidated damages for all losses resulting from such default. Waiver of any one

or more defaults hereunder shall not preclude either party from exercising the right to terminate this agreement by reason of any subsequent default.

Sale of Business Should Buyer at any time during the period of this agreement desire to sell or in any manner to dispose of Buyer's business assets or capital stock, or any part thereof or interest therein, Buyer shall give written notice to Atlantic of the terms of any offer of sale or other disposition thereof, and Atlantic shall have the first option of acquiring the same, upon terms identical with said offer. Such option shall extend for a period of thirty (30) days following receipt of such notice by Atlantic, and if not exercised within said period it shall thereupon lapse. Any such sale or disposition by Buyer shall not prejudice Atlantic's rights hereunder, and this agreement shall be and remain in full force and effect until its termination date.

Assignability This agreement shall not be assignable without the written consent of both parties.

Constitutes Whole Agreement This instrument embodies the whole agreement between the parties and there are no oral promises or other understandings or conditions inducing its execution or qualifying its terms.

In Witness Whereof, the parties have caused these presents to be duly executed in duplicate the day and year above written.

The Atlantic Refining Company,
By .....
.....
(Buyer)
By .....

Witness:
.....
.....

2173 COMMISSION EXHIBIT NO. 98U-V.

Atlantic

Contract Sales Agreement Trained Dealers

This Agreement made this ..... day of ....., 195...., between The Atlantic Refining Company, a corporation of Pennsylvania, herein called Atlantic, and ....., herein called Dealer.

In consideration of the promises hereinafter set forth, Atlantic and Dealer agree as follows:

1. Subject to prior Credit Department approval, Atlantic will deliver on consignment to Dealer in tanks at the service station, located at ....., ... gallons of gasoline, hereinafter referred to as Consignment Inventory, for retail sale by Dealer at posted service station prices designated by Atlantic from time to time. Thereafter, Atlantic will deliver to Dealer into such tanks a number of gallons of gasoline, hereinafter called Replenishment Delivery, which when added to the quantity in the tanks shall equal the Consignment Inventory. All proceeds from the retail sale of Atlantic's gasoline shall be the property of Atlantic, and Dealer is hereby made a trustee of such proceeds for Atlantic's sole benefit. Dealer shall have no authority to disburse such trust funds except as follows: At the time of each Replenishment Delivery, Dealer will settle in cash with Atlantic for the number of gallons equal to such Replenishment Delivery on the basis of Atlantic's posted service station price at which the gasoline has been sold, less a commission equal to the Replenishment Delivery multiplied by 3.25¢ for Atlantic Gasoline and 3.75¢ for Atlantic Premium Gasoline when the difference between Atlantic's posted dealer price for Atlantic Gasoline and the posted service station price is 4.00¢ per

gallon or less, or multiplied by 3.75¢ for Atlantic Gasoline and 4.25¢ for Atlantic Premium Gasoline when the above-noted difference is more than 4.00¢ per gallon. If dealer leases his service station from Atlantic, Dealer shall pay as rent a sum equal to 6% of the gross sales at the service station from all sources, excluding therefrom sales of gasoline, sales of tires, batteries and accessories at wholesale to service station resellers, Federal taxes on motor oils, tires and tubes and any taxes which are stated separately and are not included as part of the selling price of the goods sold; such rent for any month or portion thereof shall be paid not later than the 10th day of the month immediately following, provided, however, that upon termination of the lease of the service station from Atlantic to Dealer, any rent accrued hereunder shall become due and payable upon the date of such termination.

If in any calendar month of operation under this Agreement the total commission received by Dealer under the provisions of the immediately preceding paragraph is less than $400.00, Atlantic, by the 20th day of the following month, shall pay to Dealer the amount of such deficiency. Any rent due Atlantic from Dealer at the time such deficiency is due shall be deducted therefrom before payment thereof. If this Agreement is in effect for a portion of any calendar month, the amount of $400.00 shall be adjusted ratably for such month to reflect the number of days that this Agreement shall have been in effect during such month.

2. Title to gasoline delivered from time to time to Dealer to replenish or augment the original Consignment Inventory shall not pass to Dealer, but it shall be considered as though said gasoline had been part of the original Consignment Inventory.

3. Upon termination of this Agreement, Dealer shall account to Atlantic for the consigned gasoline as follows:

(a) Gasoline on hand shall be returned to Atlantic; or Dealer, at Dealer's option, shall purchase such gasoline at Atlantic's prevailing Dealer price applicable at that location on date of termination.

(b) The difference between Dealer's "Consignment Inventory" and the quantity of gasoline on hand on date of termination shall be settled for as provided in Paragraph 1 hereof.

4. Dealer shall continue to be fully responsible for the operation of the above service station, the purchase and sale of all other commodities, and the persons he employs.

5. Any provisions of the existing Bailment Agreement (Form B-3107-A) or Lease Agreement (Form B-3191) between Dealer and Atlantic, wherein Dealer appears as Buyer or Lessee, as the case may be, at variance with this Agreement are suspended during the term of this Agreement. The term of this Agreement shall be nine (9) months provided, however, that either party may cancel at the end of six (6) months upon giving at least (10) days' notice to the other party. Notice from one party to the other shall be in writing and shall be deemed to have been given if sent by certified mail addressed to Atlantic at and to Dealer at his above-described location.

2174 6. Notwithstanding the provisions of Article 5 hereof, this Agreement shall terminate concurrently with the termination of the Bailment Agreement (B-3107-A) or Lease Agreement (B-3191), as the case may be.

7. When two copies of this Agreement have been duly executed by the parties hereto, the Agreement shall become effective and shall automatically cancel any outstanding Commission Dealer Agreements or Contract Sales Agreements between Atlantic and Dealer.

In Witness Whereof, the undersigned execute this Agreement.

Dealer,
By _____

The Atlantic Refining Company,
By _____

2175 COMMISSION EXHIBIT NO. 98W-X.

Contract Sales Agreement

This Agreement made this _____ day of _____ 195__, between The Atlantic Refining Company, a Pennsylvania corporation, herein called Atlantic, and _____ herein called Dealer.

In consideration of the promises hereinafter set forth, Atlantic and Dealer agree as follows:

1. Subject to prior Credit Department approval, Atlantic will deliver on consignment to Dealer in tanks at the service station, located at _____, _____ gallons of gasoline, hereinafter referred to as Consignment Inventory, for retail sales by Dealer at posted service station prices designated by Atlantic from time to time. Thereafter, Atlantic will deliver to Dealer into such tanks a number of gallons of gasoline, hereinafter called Replenishment Delivery, which when added to the quantity in the tanks shall equal the Consignment Inventory. All proceeds from the retail sale of Atlantic's gasoline shall be the property of Atlantic and Dealer is hereby made a trustee of such proceeds for Atlantic's sole benefit. Dealer shall have no authority to disburse such trust funds except as follows: At the time of each Replenishment Delivery, Dealer will settle in cash with Atlantic for the number of gallons equal to such Replenishment Delivery on the basis

of Atlantic's posted service station price at which the gasoline has been sold, less a commission equal to the Replenishment Delivery multiplied by 3.25¢ for Atlantic Gasoline and 3.75¢ for Atlantic Premium Gasoline. If Dealer leases his service station from Atlantic, Dealer shall pay as rent a sum equal to 6% of the gross receipts at the service station from all sources, excluding therefrom receipts from the sale of gasoline and any taxes which are stated separately and are not included as part of the selling price of the goods sold; such rent for any month or portion thereof shall be paid not later than the 15th day of the month immediately following, provided, however, that upon termination of the lease of the service station from Atlantic to Dealer, any rent accrued hereunder shall become due and payable upon the date of such termination.

If Dealer's average monthly gasoline gallonage for the preceding nine calendar months exceeds 5,999 gallons, then if in any calendar month of operation under this agreement the total commission received by Dealer under the provisions of the immediately preceding paragraph is less than $400.00 Atlantic, by the 20th day of the following month, shall pay to Dealer the amount of such deficiency. Any rent due Atlantic from Dealer at the time such deficiency is due shall be deducted therefrom before payment thereof. If this Agreement is in effect for a portion of any calendar month, the amount of $400.00 shall be adjusted ratably for such month to reflect the number of days that this Agreement shall have been in effect during such month.

2. Title to gasoline delivered from time to time to Dealer to replenish or augment the original Consignment Inventory shall not pass to Dealer, but it shall be considered as though said gasoline had been part of the original Consignment Inventory.

3. Upon termination of this Agreement, Dealer shall account to Atlantic for the consigned gasoline as follows:

(a) Gasoline on hand shall be returned to Atlantic; or Dealer, at Dealer's option, shall purchase such gasoline at Atlantic's prevailing Dealer price applicable at that location on date of termination.

(b) The difference between Dealer's "Consignment Inventory" and the quantity of gasoline on hand on date of termination shall be settled for as provided in Paragraph 1 hereof.

2176 4. Dealer shall continue to be fully responsible for the operation of the above service station, the purchase and sale of all other commodities, and the persons he employs.

5. Any provisions of the existing Bailment Agreement (Form B-3107A) or Lease Agreement (Form B-3191) between Dealer and Atlantic, wherein Dealer appears as Buyer or Lessee, as the case may be, at variance with this Agreement are suspended during the term of this Agreement. This Agreement may be terminated by either party at any time upon giving notice to the other party. Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Atlantic at and to Dealer at his above described location.

6. Notwithstanding the provisions of Article 5 hereof, this Agreement shall terminate concurrently with the termination of the Bailment Agreement (B-3107A) or Lease Agreement (B-3191), as the case may be.

7. When two copies of this Agreement have been duly executed by the parties hereto, the Agreement shall become effective and shall automatically cancel any outstanding Commission Dealer Agreements between Atlantic and Dealer.

In Witness Whereof, the undersigned execute this Agreement.

Dealer

By.....

The Atlantic Refining Company

By.....

Effective 3/26/56.

2177 COMMISSION EXHIBIT NO. 99.

January 19, 1948.

File: JSP—Tires

Goodyear Tire & Rubber Co., Akron, O.	Mr. S. Gaylord
U. S. Rubber Company, New York.	Mr. S. R. Milburn.
B. F. Goodrich Company, Akron	Mr. J. J. Hoban
Firestone Tire & Rubber Co., Akron.	Mr. J. Addison.
General Tire & Rubber Co., Akron.	Mr. L. A. McQueen.

Gentlemen:

Our Sales Department Management has requested of us a complete exploration of the tire manufacturers to determine at this time what interest you may have in the sale of your tires and tubes through Atlantic outlets. In our study to determine whether any change in present arrangements may be desirable, we wish to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise.

To assist you in preparing your quotations, we give you on sheet #1 information we believe may be helpful. All of this data pertains to what we have to offer.

On sheet #2 attached we detail information we believe is needed to properly evaluate any deal you may propose. Some of our questions may be considered by you as confi-

dential information. We assure you your answers will be held in strict confidence. You may wish to augment your story with further information as to why you believe your deal would best suit Atlantic's needs. The more complete your preparation of your proposition the better it will be considered.

Should our account be of interest to you, please forward in writing, in duplicate, your best proposition. Quotations should reach us at your earliest possible convenience. After we have an opportunity to digest your offering it is likely we shall wish to discuss details in a conference to be later arranged.

Thank you very much for your attention to the above.

Yours very truly,

(Signed) J. S. Parks

Purchasing Agent.

JSP:R

CC to—Mr. S. J. Heideman.

2179 COMMISSION EXHIBIT NO. 100A-C.

August 24, 1948
TBA SJH
Firestone Line

Memorandum.

In considering the experiment of selling Firestone tires in one of our districts, there are several points which we believe should be given full consideration before such a plan is adopted. Listed in our letter of June 22, were some of the points which we felt were against the Firestone plan. In addition and also in expansion of these points, we feel the following are worthy of consideration:

In face of a declining demand, Atlantic has enjoyed in 1948, their best position in the national market—better

than in any previous year. Since Atlantic's percentage of the national gasoline market is 2½%, and it is estimated that the petroleum industry does 21% of passenger tire replacement business; it follows that Atlantic's share should be .525. For the first six months of 1948, our position is .684.

As an example of the job done by our Philadelphia Region, we are attaching a study recently made covering their first six months sales. The maximum potential, which is the base for measuring Philadelphia's results, is an extremely high standard. Actually it is above the consumption rate of our customers. Potential as established is based on everyone's purchasing new tires and does not take into consideration used tire purchases, recaps, or new car purchases. From this comparison, you can see that the Philadelphia rate is well above their share of the market.

It is apparent from this that it would be unreasonable to expect too great an expansion of our present sales by the addition of a better known tire. As a matter of fact, it is our opinion that there is a very real possibility of a smaller market with Firestone due to their presently established company stores and distributors. Volume purchase requirements would leave a great number of our dealers in a poor competitive position.

It is probable that one of the apparent major advantages to the Firestone program is that it offers some solution to our present warehousing problem. In other words, batteries and accessories—more than tires—are contributing to this problem. If with this change we present to our dealer the viewpoint that he should handle these associated lines of Firestone, we quickly find
2181 the tire national acceptance point reversed as neither Firestone batteries nor accessories have the national acceptance of the lines we presently handle. A picture on

Firestone batteries was secured from Exide which indicated that their production of Firestone batteries is somewhere between 66⅔ and 75% of the amount of the batteries that are purchased by the Atlas Corporation. When it is considered that Atlas is a private brand battery sold only in Standard Oil service stations and that Firestone has the entire national market open for their solicitation, there is certainly an indication that consumer acceptance of the Firestone brand in batteries is very limited. This becomes more obvious when we consider Firestone's tire position, where they are either #1 or #2 in the industry in replacement sales.

Firestone's accessories present to our dealer a more complete line including large household appliances, washing machines, and deep freeze units, as well as the strictly automotive accessories now included in our program. It is possible from an overall purchase standpoint when such items as home appliances and radios are considered for us to increase our accessory volume with the Firestone line. If a comparison is made between Firestone's products and only those included in our program, we find that they have no major item which can compare on a consumer acceptance basis; and for this reason, it is our thinking that our dealer's sales would be reduced if he confined himself to Firestone exclusively. We do not believe that this would be his practice but that he would duplicate his inventory with national brands, very probably the ones we now include in our program. Competitive prices on Firestone accessories are predicated on a basis of volume purchase requirements. A comparison of some items which they handle, which are also in our program, would indicate that their "each" price is in most cases higher than those used by our company. In other words, our dealer would find himself in the position of being forced to buy the greater volume to maintain his

existing cost basis. Some items which are in this class are as follows:

	Firestone	ARCo.
Seat Covers	$13.20	$12.42
Horns	6.52	5.55
Lyon Whitewalls	4.80	4.60
Sealed Beam Lamps	.86	.78
Buss Fuses (Box 5)	.17	.15
Defroster Fans	5.96	4.95

Of particular importance to our company should be the competitive position that would be forced upon our Sales Promotion Department. Firestone's sales plan includes deluging the dealer with many promotions on several 2183 products each month. Our dealer would receive promotional material in volume approximately five to ten times our Sales Promotion Department's output. Their material exactly parallels our efforts in that posters, complete window displays, window streamers, price cards, all are forwarded to their dealers on a regular monthly basis. Actually Firestone's sales promotion and selling plans are not co-ordinated among their several departments as each one puts out its own material; consequently this presents a tremendous amount of advertising data. If it is our desire to closely co-ordinate the dealer's entire selling effort to be sure that his best interests and those of our company are best guided, the Firestone promotional program will present a difficult policing job for our salesmen.

Of great concern to our group is the impact that this proposed experiment will have on the present suppliers. For the most part, these manufacturers are large, substantial companies with whom, over a period of years, we have become accepted as a good outlet for their products. By reason of our established policies, we have gained their confidence and in general, have been able to make a change in their old established jobber programs to fit our par-

ticular operation. If this experiment is undertaken a great deal of this confidence and willingness to co-operate which has been developed will immediately be dissipated. This will undoubtedly increase our selling problems. If the Firestone program should prove unsuccessful and we wish to continue with our present program we have no doubt that none of these present suppliers would feel secure for the future.

The loss of Atlantic's control in handling consumer complaints on T.B.A. products should not be underestimated. Firestone adjustments on tires are confined strictly to workmanship and material. There is no road hazard warranty. Conservatively this would reduce present adjustments made by our company through our dealers by approximately 90%. We now are adjusting on an average approximately 250 tires per month; or in other words, we have potentially 250 dissatisfied customers who might decide not to continue to purchase petroleum products from us because of the handling of their tire complaint. We feel that this particular problem is entirely different from that of the oil companies who are presently handling Firestone or other major make tires because we have satisfied customer's tire complaints on a road hazard basis for some sixteen years while these other oil companies have never offered such a service.

S. J. Heideman.

2185 COMMISSION EXHIBIT NO. 101A-Z20.

TBA Study

Sales Research Section

May 1949 The Atlantic Refining Company

2187 This study represents the opinions and attitudes of 1071 dealers in 47 cities from Massachusetts to Florida. These dealers were chosen on a random basis within the following limits:

1. A quota for each brand, based on that brand's acceptance in the city.
2. Satisfy the definition of a promotable dealer.

In general, the study shows:

—A preference among Atlantic's dealers for Lee tires and Exide batteries that is very satisfactory.

—A supplier-dealer relationship on these two items that could be improved.

—Due to the multiplicity of brand names involved, no reliable deductions of a comparable nature can be made for accessory preferences.

—A definitely unsatisfactory supplier-dealer relationship on accessories.

—A superior supplier-dealer relationship on the part of Esso.

In 1948, Atlantic's gross sales of the items involved were as follows:

Tires	$5,226,675
Batteries	$1,354,330
Accessories	$1,640,275

2189 Question 1:

Do you think you would prefer to buy all your major TBA items from one or several sources?

Answer:

Prefer one source for TBA:

Gulf	44%
Sun	43%
Esso	41%
Socony	34%
Atlantic	33%
Amoco	24%
Texas	19%

Answer:

Prefer several sources for TBA:

Gulf	52%
Sun	53%
Esso	58%
Socony	63%
Atlantic	67%
Amoco	74%
Texas	77%

NB: Not shown are those who did not know.

2191 Question 2a:

Why do you prefer one source for your TBA? (asked only of those making this preference in question on page 1)

Answers: (requiring Petroleum Supplier action)

1. Service		2. Price		3. Guarantee	
Texas	38%	Sun	50%	Esso	11%
Atlantic	35%	Texas	47%	Socony	8%
Socony	32%	Gulf	43%	Atlantic)	
Amoco	28%	Atlantic	32%	Sun)	Less
Gulf	20%	Esso	29%	Gulf)	Than
Sun	19%	Amoco	28%	Texas)	4%
Esso	19%	Socony	19%	Amoco)	

4. Quality		5. Acceptance		6. Complete Line	
Esso	8%	Esso	8%	Gulf	11%
Socony)		Socony	6%	Esso)	
Atlantic)		Atlantic)		Atlantic)	
Sun)	Less	Sun)	Less	Socony)	Less
Gulf)	Than	Gulf)	Than	Sun)	Than
Texas)	4%	Texas)	4%	Texas)	4%
Amoco)		Amoco)		Amoco)	

~~N.B. Not shown are those who did not know.~~

2193 Question 2a:

~~Why do you prefer one source for your TBA?~~ (asked only of those making this preference in question on page 1)

Answer: (Requiring no Petroleum Supplier action)

Cooperating with Supplier		Prefers one source	
Esso	12%	Atlantic	12%
Sun	9%	Socony	8%
Amoco	9%	Esso)	
Socony	6%	Texas)	
Gulf	4%	Amoco)	Less than
Atlantic)	Less than	Sun)	4%
Texas)	4%	Gulf)	

2195 Question 2B:

Why do you prefer several sources for your TBA (asked only of those making this preference in 1 above)

Answers: (requiring Petroleum Supplier action)

Price		Variety of Brand	
Gulf	38%	Atlantic	18%
Socony	36%	Sun	18%
Atlantic	35%	Gulf	18%
Sun	30%	Texas	17%
Texas	30%	Amoco	17%
Esso	29%	Esso	16%
Amoco	22%	Socony	13%

Supply		Complete Line	
Esso	10%	Esso	5%
Texas	9%	Gulf	4%
Atlantic	8%	Sun)	
Socony	6%	Atlantic)	
Amoco)	Less than	Amoco)	Less than
Gulf)	4%	Texas)	4%
Sun)		Socony)	

2197 Question 2B:

Why do you prefer several sources for your TBA? (asked only of those making this preference in 1 above)

Answers: (requiring no petroleum supplier action)

Customer's Demand		Dealer's Preference	
Amoco	23%	Gulf	14%
Esso	17%	Amoco	14%
Sun	15%	Sun	13%
Texas	15%	Socony	12%
Atlantic	14%	Esso	11%
Socony	13%	Atlantic	10%
Gulf — Less than	4%	Texas	9%

2199 Question 3:

What do you consider the most important point in selecting the source of your TBA?

Answers:

High Quality		Price	
Atlantic	34%	Socony	27%
Esso	32%	Amoco	26%
Socony	29%	Sun	25%
Sun	27%	Gulf	24%
Gulf	26%	Texas	23%
Amoco	24%	Esso	23%
Texas	23%	Atlantic	21%

Public Acceptance		Guarantee	
Sun	27%	Texas	23%
Texas	21%	Gulf	21%
Socony	17%	Amoco	18%
Amoco	17%	Esso	16%
Esso	15%	Atlantic	13%
Gulf	14%	Socony	10%
Atlantic	13%	Sun	9%

2201 Question 4:

What brand of tires would you prefer to sell?

	Atlantic	Esso	Texas	Sun	Socony	Gulf	Amoco
Lee	67					4	
Atlas		64					
Firestone	4	6	62	4	7	8	10
Kelly				57			
Mobil					42		
Gulf						38	
Amoco							23
Goodyear	11	10	10	10	13	7	18
Goodrich			11		5	12	5
U. S.		8	4	8	8	5	19
More than 1	10	5		13		13	10

N. B. Preferences below 4% omitted.

2203 Question 5:

Why do you prefer this brand?

(Answers requiring Petroleum Supplier's action)

Quality		Guarantee	
Sun	46%	Esso	30%
Socony	41%	Atlantic	28%
Amoco	39%	Gulf	15%
Atlantic	39%	Texas	14%
Texas	37%	Sun	13%
Esso	36%	Socony	13%
Gulf	35%	Amoco	6%

Acceptance		Advertising	
Amoco	20%	Texas	11%
Socony	19%	Esso	10%
Texas	19%	Sun	7%
Gulf	13%	Socony	7%
Sun	13%	Amoco	5%
Atlantic	12%	Gulf	5%
Esso	11%	Atlantic—Less than	4%

2205 Question 6:

What brand of tires do you carry now?

Answer: (Single mentions only).

	Sun	Atlantic	Esso	Gulf	Socony	Amoco	Texas
Kelly	80						
Lee		78					
Atlas			74				
Gulf				69			
Mobil					69		
Amoco						64	
Firestone							51
Goodrich				4			13
Goodyear							6

Choices of less than 4% omitted.

2207 Question 6a:

What brand of tires do you carry now?

Answer: (More than 1).

	Esso	Gulf	Amoco	Texas	Atlantic	Sun	Socony
Atlas Plus	18						
Gulf Plus		18					
Amoco Plus			18				
Firestone Plus				17			
Lee Plus					15		
Kelly Plus						11	
Mobil Plus							6

Choices of less than 4% omitted.

2209 Question 7:

Why don't you carry your preferred brand?

Answers:

I do		Obligation to Pet. Sup.	
Texas	71%	Amoco	46%
Atlantic	60%	Gulf	36%
Esso	59%	Socony	30%
Sun	58%	Sun	26%
Socony	48%	Atlantic	21%
Gulf	35%	Esso	18%
Amoco	30%	Texas	4%

Customer Demand	
Texas	12%
Amoco	12%
Esso	10%
Atlantic	9%
Gulf	9%
Socony	9%
Sun	6%

2211 Question 8:

From what particular type of supplier would you prefer to buy your tires?

Answers:

a Petroleum Supplier		b Ind. Distributor		c Tire Manufacturer	
Esso	58%	Texas	36%	Texas	33%
Sun	49%	Amoco	32%	Amoco	23%
Gulf	48%	Gulf	21%	Socony	17%
Atlantic	44%	Sun	19%	Gulf	14%
Socony	43%	Atlantic	18%	Atlantic	13%
Amoco	23%	Socony	18%	Esso	12%
Texas	11%*	Esso	10%	Sun	11%

*Not significant.

d No Preference		e Jobber	
Atlantic	19%	Socony	8%
Sun	13%	Atlantic	6%
Gulf	12%	Esso	6%
Texas	12%	Texas	6%
Socony	11%	Amoco	6%
Esso	11%	Gulf	5%
Amoco	10%	Sun	4%

No conclusions should be drawn from the jobber figures because of the small numbers of dealers involved.

2213 Question 9:

Why do you prefer—

A. The Petroleum Supplier (asked only of those who preferred the Petroleum Supplier)

Answers:

Service		Price		Guarantee	
Amoco	32%	Sun	36%	Texas	22%
Atlantic	27%	Atlantic	24%	Gulf	19%
Socony	25%	Amoco	18%	Esso	19%
Texas	22%*	Gulf	15%	Socony	15%
Gulf	21%	Esso	13%	Atlantic	12%
Esso	21%	Socony	11%	Amoco	11%
Sun	18%	Texas—		Sun—	
		Below	4%	Below	4%

*Not significant.

Quality		Good Relations w/Supplier	
Amoco	11%	Texas	33%
Socony	9%	Amoco	18%
Esso	8%	Socony	17%
Gulf	6%	Atlantic	16%
Atlantic, Sun, Texas	Below 4%	Sun	15%
		Gulf	14%
		Esso	8%

2215 COMMISSION EXHIBIT NO. 101P.

Question 10:

Why do you prefer—

B. The Tire Distributor? (asked only of those who preferred the Tire Distributor)

Answers:

Service		Price	
Atlantic	41%	Amoco	33%
Gulf	39%	Esso	26%
Sun	38%	Sun	23%
Socony	37%	Atlantic	23%
Esso	34%	Gulf	22%
Texas	33%	Socony	21%
Amoco	30%	Texas	10%

2217 COMMISSION EXHIBIT NO. 101Q.

Question 11:

Why do you prefer—

C. The Tire Manufacturer? (asked only of those who preferred the Tire Manufacturer)

Answers:

	Price
Sun	79%
Esso	73%
Gulf	63%
Texas	63%
Atlantic	61%
Socony	61%
Amoco	50%

2219 COMMISSION EXHIBIT NO. 101R.

Question 12:

From what type of supplier do you buy your tires now?

Answers:

Petroleum Supplier		Ind. Distributor	
Sun	79%	Texas	45%
Esso	78%	Amoco	9%
Atlantic	74%	Gulf	6%
Gulf	73%	Atlantic	5%
Socony	73%	Socony	4%
Amoco	67%	Sun, Esso	Below 4%
Texas	19%		

More Than 1 Manufacturer		Tire Manufacturer	
Amoco	18%	Texas	17%
Gulf	18%	Amoco	5%
Esso	17%	Atlantic, Sun, Esso, Socony, Gulf	Below 4%
Socony	15%		
Atlantic	14%		
Sun	13%		
Texas	9%		

2221 Question 13:

Why don't you buy tires from your preferred source?

Answers:

I Do		Obligation to Pet. Sup.		Only Source Available	
Esso	59%	Amoco	51%	Esso	5%
Sun	57%	Gulf	37%	Socony	5%
Atlantic	54%	Socony	34%	Amoco	4%
Socony	53%	Atlantic	32%	Texas	4%
Texas	50%	Sun	26%	Atlantic)	
Gulf	47%	Texas	21%	Sun)	Below 4%
Amoco	35%	Esso	18%	Gulf)	

Customer Demand		Price	
Esso	5%	Sun	6%
Gulf	5%	Atlantic)	
Amoco)		Esso)	
Atlantic)		Gulf)	
Texas)	Below 4%	Socony)	Below 4%
Sun)		Texas)	
Socony)		Amoco)	

Reasons given by less than 4% omitted.

2223 Question 14:

What can a supplier do to better your tire business?

Answers:

Nothing Not Already Being Done		Price		Advertising & Promotion	
Atlantic	44%	Texas	32%	Sun	31%
Esso	44%	Amoco	27%	Amoco	26%
Socony	43%	Esso	26%	Atlantic	23%
Gulf	40%	Socony	24%	Gulf	20%
Texas	40%	Sun	24%	Socony	20%
Sun	36%	Gulf	20%	Texas	19%
Amoco	30%	Atlantic	17%	Esso	15%

2225 Question 15:

What brand of batteries would you prefer to sell?

Answers:

	Atlantic	Esso	Gulf	Sun	Socony	Amoco	Texas
Exide	79		14	17	14	17	14
Atlas		64					
Gulf			48				
Sun				43			
Mobil					43		
Amoco						22	
Firestone							17
Willard	5	9	10	14	19	28	21
Auto-Lite		4				5	5
Delco					5		11
Prestolite							4
More than 1	5	12	6	7	7	9	17
No Answer			8	9	9	9	10

N. B. Preferences below 4% omitted.

2227 Question 16:

Why would you prefer this brand of battery?

Answers:

Quality		Acceptance		Guarantee	
Atlantic	44%	Amoco	24%	Esso	30%
Gulf	35%	Socony	24%	Socony	16%
Socony	35%	Texas	23%	Gulf	15%
Amoco	35%	Sun	23%	Amoco	11%
Texas	32%	Atlantic	21%	Texas	10%
Esso	31%	Esso	15%	Sun	10%
Sun	31%	Gulf	10%	Atlantic	9%

Advertising		Price		Service	
Atlantic	9%	Gulf	8%	Texas	8%
Sun	9%	Sun	7%	Gulf	6%
Texas	6%	Socony	5%	Atlantic	)
Amoco	5%	Texas	4%	Esso	)
Socony	4%	Esso	4%	Sun	) Below
Esso	4%	Atlantic	) Below	Amoco	) 4%
Gulf	Below 4%	Amoco	) 4%	Socony	)

2229 Question 17:

What brand of battery do you carry now?

Answers: (1 Mention Only)

	Atlantic	Esso	Sun	Socony	Gulf	Amoco	Texas
Exide	76		5				7
Atlas		72					
Sun			71				
Mobil				69			
Gulf					67		
Amoco						60	
Firestone							21
Willard							7
Goodrich							6
No Answer		4		7			6

Mentions less than 4% omitted.

2231 Question:

What brand of battery do you carry now?

Answers: (More than 1 mention)

	Gulf	Amoco	Esso	Atlantic	Sun	Socony	Texas
Gulf Plus	19						
Amoco Plus		18					
Atlas Plus			16				
Exide Plus				15			
Sun Plus					15		
Mobil Plus						12	
Firestone Plus							8

Mentions less than 4% omitted.

2233 Question 18:

Why don't you carry your preferred band?

Answers:

I Do		Obligation to Pet. Supplier	
Atlantic	77%	Amoco	43%
Esso	64%	Socony	32%
Gulf	61%	Gulf	30%
Sun	52%	Sun	27%
Socony	51%	Texas	19%
Texas	50%	Esso	16%
Amoco	39%	Atlantic	9%

Customer Demand		Price	
Socony	9%	Sun	6%
Texas	8%	Atlantic	5%
Amoco	7%	Esso)	
Atlantic	7%	Texas)	
Esso	6%	Gulf)	Below 4%
Sun	6%	Amoco)	
Gulf	6%	Socony)	

Reasons less than 4% omitted.

2235 Question 19:

From what particular type of supplier would you prefer to buy your batteries?

Answers:

Petroleum Supplier		Ind. Distributor		Battery Manufacturer	
Esso	62%	Texas	49%	Amoco	19%
Sun	54%	Amoco	35%	Texas	19%
Socony	53%	Gulf	19%	Socony	13%
Gulf	51%	Sun	18%	Gulf	10%
Atlantic	49%	Atlantic	15%	Esso	10%
Amoco	23%	Socony	13%	Sun	9%
Texas	8%	Esso	12%	Atlantic	5%

No Preference		Jobber	
Atlantic	16%	Atlantic	13%
Gulf	14%	Texas	13%
Sun	10%	Amoco	9%*
Amoco	10%	Socony	8%*
Socony	9%	Gulf	6%*
Texas	7%	Sun	5%*
Esso	4%	Esso	5%*

* Not significant due to small base.

2237 Question 20:

Why do you prefer—

A. Petroleum Supplier? (asked only of those who preferred Petroleum Supplier)

Answers:

Service		Guarantee		Price	
Texas	57%*	Esso	20%	Sun	26%
Atlantic	25%	Socony	14%	Atlantic	21%
Amoco	25%	Atlantic	12%	Gulf	13%
Gulf	24%	Sun	12%	Esso	12%
Esso	19%	Gulf	10%	Amoco	11%
Sun	19%	Amoco	7%	Socony	8%
Socony	11%	Texas—Below	4%	Texas—Below	4%

Obligation		Quality		Good Relations With Supplier	
Socony	14%	Esso	11%	Gulf	18%
Amoco	9%	Sun	9%	Amoco	18%
Gulf	9%	Atlantic	8%	Socony	14%
Atlantic	6%	Gulf	7%	Sun	14%
Esso)		Socony	7%	Atlantic	13%
Texas)Below	4%	Amoco	7%	Esso	13%
Sun)		Texas—Below	4%	Texas—Below	4%

* Not Significant due to small base.

2239 Question 21:

Why do you prefer—

B. Independent Distributor? (asked only of those who preferred the Independent Distributor)

Answers:

Service		Price	
Texas	44%	Atlantic	25%
Gulf	43%	Esso	20%
Sun	39%	Amoco	20%
Atlantic	35%	Texas	17%
Esso	23%	Sun	17%
Socony	21%	Socony	14%
Amoco	15%	Gulf	10%

Guarantee		Supply	
Socony	21%	Atlantic	9%
Atlantic	6%	Gulf	8%
Texas	6%	Socony)	
Gulf	5%	Sun)	
Esso)		Esso)	Below 4%
Sun)	Below 4%	Texas)	
Amoco)		Amoco)	

Socony—mentioned (14%) cooperation with this type supplier and (14%) only source available.
Amoco—mentioned (9%) variety of brand and (9%) no answer.
Gulf—mentioned (10%) acceptance.
Sun—mentioned (13%) preference for more than 1 supplier.
Esso—mentioned (11%) credit.

2241 Question 22:

Why do you prefer—

C. Battery Manufacturer? (asked only of those who preferred the Battery Manufacturer)

Answers:

	Price
Esso	92%
Socony	79%
Gulf	64%*
Amoco	61%
Atlantic	55%
Texas	53%
Sun	45%*

* Not Significant due to small base.

Other reasons not significant also due to small base.
The Jobber is not significant for the same reason.

2243 Question 23:

From what type of supplier do you buy your batteries now?

Answers:

Petroleum Supplier		Ind. Distributor		More Than 1	
Sun	76%	Texas	52%	Esso	20%
Atlantic	73%	Amoco	8%*	Amoco	20%
Esso	72%	Socony	7%*	Gulf	18%
Gulf	72%	Atlantic	7%	Sun	15%
Socony	72%	Gulf	6%*	Socony	12%
Amoco	62%	Esso	4%*	Atlantic	9%
Texas	18%	Sun—Below	4%	Texas	5%*

* Not Significant.

Jobber and Battery Manufacturer are not significant due to small base.

2245 Question 24:

Why don't you buy batteries from your preferred source?

Answers:

I Do		Obligation to Pet. Supplier	
Texas	67%	Amoco	47%
Socony	66%	Atlantic	27%
Atlantic	64%	Socony	25%
Esso	63%	Sun	23%
Sun	61%	Gulf	23%
Gulf	59%	Texas	19%
Amoco	38%	Esso	12%

Esso mentioned (6%) "only source available" and (4%) "supply."

Gulf mentioned (6%) customer demand.

2247 Question 25:

What can a supplier do to better your battery business?

Answers:

Nothing Not Already Being Done		Advertising & Promotion		Price	
Socony	57%	Gulf	20%	Esso	25%
Texas	55%	Socony	20%	Atlantic	23%
Sun	53%	Amoco	20%	Sun	23%
Atlantic	51%	Atlantic	17%	Gulf	19%
Esso	51%	Sun	17%	Texas	19%
Amoco	49%	Esso	15%	Soconoy	19%
Gulf	48%	Texas	13%	Amoco	18%

2249 Question 26:

What accessories do you think your station should stock?

Answers:

Only Items Connected With the Car	
Socony	47%
Gulf	44%
Atlantic	43%
Sun	42%
Amoco	40%
Esso	36%
Texas	35%

Why Is That?

More Than This Not Applicable		Lack of Demand		Lack of Room		Requires Specialized Sales Effort	
Sun	39%	Texas	23%	Esso	17%	Amoco	14%
Amoco	37%	Sun	20%	Atlantic	16%	Esso	13%
Texas	33%	Gulf	19%	Amoco	14%	Texas	13%
Esso	29%	Atlantic	18%	Texas	13%	Socony	12%
Gulf	28%	Socony	16%	Socony	11%	Atlantic	11%
Socony	26%	Esso	11%	Sun	9%	Sun	9%
Atlantic	24%	Amoco	10%	Gulf	5%*	Gulf— Less than	4%

*Not Significant

2251 Question 27:

What accessories do you think your station should stock?

Answers:

Items With the Car Plus Related Items	
Esso	55%
Amoco	51%
Atlantic	49%
Texas	46%
Sun	46%
Gulf	39%
Socony	37%

Why Is That?

Customer Demand		More Than This Not Applicable		Extra Profits		Complete Line	
Sun	33%	Amoco	27%	Amoco	27%	Texas	13%
Gulf	29%	Gulf	24%	Atlantic	23%	Sun	12%
Texas	28%	Socony	22%	Texas	21%	Atlantic	10%
Socony	25%	Sun	21%	Socony	20%	Esso	7%*
Atlantic	23%	Texas	21%	Esso	18%	Socony	5%*
Esso	23%	Esso	20%	Sun	14%	Gulf	) Less
Amoco	23%	Atlantic	18%	Gulf	12%		) than
						Amoco	) 4%

* Not Significant

2253 Question 28:

What accessories do you think your station should stock?

Answers:

Items Connected With the Car Plus related items Plus nonrelated items (Tools, House Furnishings, etc.)	
Gulf	17%
Texas	17%
Socony	16%
Sun	12%
Esso	9%
Atlantic	8%
Amoco	7%*

Why Is That?

Extra Profits	
Amoco	86%*
Socony	83%
Atlantic	71%
Gulf	67%*
Texas	64%
Esso	53%
Sun	47%*

* Not Significant due to small base

2255 Question 29:

What types of items do you sell now?

Items Connected With Car	
Socony	57%
Gulf	57%
Sun	54%
Amoco	53%
Atlantic	50%
Esso	43%
Texas	38%

Why aren't you selling what you prefer?

Answers:

I Am		Lack of Room	
Texas	84%	Gulf	16%
Atlantic	83%	Amoco	16%
Esso	82%	Socony	13%
Socony	80%	Atlantic	10%
Sun	76%	Esso	10%
Gulf	75%	Sun	10%
Amoco	73%	Texas—less than	4%

2257 Question 30:

What types of items do you sell now?

Answers:

Items With the Car Plus Related Items	
Esso	55%
Texas	51%
Atlantic	47%
Sun	44%
Amoco	44%
Gulf	33%
Socony	32%

Why aren't you selling what you prefer?

Answers:

I Am	
Gulf	95%
Atlantic	93%
Amoco	90%
Esso	89%
Socony	88%
Sun	86%
Texas	75%

N. B. The number of dealers for all companies selling home appliances along with accessories is not significant because of the small number involved.

2259 Question 31:

Would you prefer manufacturer's or your oil company's brands?

Answers:

Manufacturer's Brands	
Texas	67%
Atlantic	59%
Amoco	55%
Sun	39%
Socony	38%
Gulf	37%
Esso	28%

Why?

Acceptance		Advertising		Variety of Brand	
Sun	59%	Sun	23%	Atlantic	8%
Gulf	57%	Esso	18%	Esso	8%
Socony	55%	Socony	16%	Amoco	8%
Amoco	50%	Atlantic	15%	Texas	7%
Atlantic	48%	Amoco	15%	Socony	5%
Texas	45%	Texas	12%	Sun)	
Esso	33%	Gulf	11%	) Below 4%	
				Gulf)	

2261 Question 31a:

Would you prefer manufacturer's or your oil company's brands?

Answer:

Oil Company's Brands	
Esso	59%
Sun	48%
Gulf	47%
Socony	38%
Amoco	30%
Atlantic	27%
Texas	19%

Why?

Quality		Acceptance		Cooperation With Petroleum Supplier	
Texas	25%*	Sun	16%	Sun	16%
Esso	22%	Amoco	16%	Socony	15%
Atlantic	19%	Texas	12%*	Amoco	14%
Gulf	19%	Esso	11%	Texas	12%*
Amoco	14%	Gulf	11%	Atlantic	11%
Socony	9%	Socony	11%	Esso	6%
Sun	8%	Atlantic	10%	Gulf—Below	4%

* Not Significant

2263 Question 31a: (Cont'd)

Complete Line		Price		Service	
Texas	19%	Atlantic	17%	Atlantic	14%
Sun	16%	Amoco	13%	Socony	12%
Amoco	14%	Gulf	10%	Gulf	10%
Gulf	14%	Esso	9%	Sun	9%
Esso	12%	Sun	5%	Amoco	9%
Socony	12%	Texas)		Esso	8%
		)	Below		
Atlantic	5%	Socony)	4%	Texas–Below	4%

Guarantee		Advertising	
Socony	15%	Socony	9%
Esso	14%	Gulf	7%
Gulf	8%	Sun	7%
Atlantic	7%	Esso	6%
Sun	7%	Atlantic)	
Texas)		Texas)	Below 4%
)	Below 4%	Amoco)	
Amoco)			

2265 Question 32:

From what particular type of supplier would you prefer to buy your accessories?

Answers:

a. Petroleum Supplier		b. Ind. Distributor	
Esso	54%	Texas	38%
Sun	49%	Amoco	30%
Gulf	45%	Sun	19%
Atlantic	33%	Atlantic	18%
Socony	30%	Gulf	18%
Amoco	23%	Socony	15%
Texas	10%	Esso	11%

c. No Preference		d. Jobber	
Socony	26%	Socony	23%
Atlantic	23%	Atlantic	20%
Gulf	17%	Texas	17%
Texas	17%	Amoco	15%
Amoco	16%	Esso	14%
Sun	15%	Gulf	10%
Esso	9%	Sun	9%

• Not Significant

2267 Question 33:

Why do you prefer—

A. The Petroleum Supplier? (asked only of those who preferred the Petroleum Supplier.)

Answers:

Price		Service	
Sun	31%	Atlantic	22%
Atlantic	28%	Esso	22%
Gulf	22%	Gulf	21%
Esso	20%	Amoco	21%
Amoco	20%	Socony	20%
Texas	19%	Sun	6%
Socony—below 4%		Texas—Below 4%	

Complete Line		Good Relations With Supplier	
Texas	37%	Socony	22%
Gulf	10%	Atlantic	19%
Sun	10%	Amoco	18%
Socony	9%	Esso	13%
Esso	4%	Sun	10%
Atlantic)		Gulf	10%
)	Below 4%		
Amoco)		Texas—Below 4%	

2269 Question 34:

Why do you prefer—

B. The Independent Distributor? (asked only of those who preferred the Independent Distributor.)

Answers:

Service		Price		Variety of Brand	
Texas	30%	Sun	33%	Gulf	32%
Atlantic	29%	Amoco	30%	Atlantic	22%
Amoco	20%	Socony	22%	Socony	19%
Sun	19%	Gulf	21%	Amoco	14%
Esso	15%	Esso	20%	Texas	12%
Socony	12%	Texas	19%	Sun	12%
Gulf	10%	Atlantic	15%	Esso—Below	4%

2271 Question 35:

From what type of supplier do you buy your accessories now?

Answers:

Petroleum Supplier		More than 1	
Gulf	55%	Sun	37%
Sun	49%	Esso	31%
Esso	45%	Atlantic	29%
Atlantic	41%	Socony	28%
Amoco	39%	Amoco	26%
Socony	38%	Gulf	20%
Texas	14%	Texas	18%

Ind. Distributor		Jobber	
Texas	33%	Texas	20%
Amoco	13%	Socony	11%
Socony	11%	Atlantic	10%
Atlantic	7%	Amoco	9%
Sun	7%	Gulf	6%
Gulf	7%	Sun	5%
Esso	5%	Esso	5%

2273 Question 43:

Why don't you buy accessories from your preferred source?

Answers:

"I Do"		Obligation to Pet. Supplier	
Texas	60%	Amoco	44%
Socony	58%	Atlantic	33%
Esso	56%	Gulf	27%
Sun	56%	Socony	27%
Gulf	54%	Sun	20%
Atlantic	50%	Texas	19%
Amoco	33%	Esso	14%

Oil Co. does not carry full line	
Esso	13%
Sun	11%
Socony	8%
Atlantic	7%
Gulf	7%
Amoco	6%
Texas	4%

2275 Question 37:

What can a supplier do to better your accessory business?

Answers:

Nothing that is not already being done		Advertising and Promotion		Price	
Texas	63%	Amoco	27%	Sun	16%
Gulf	58%	Atlantic	23%	Socony	16%
Socony	56%	Sun	22%	Esso	12%
Sun	53%	Esso	20%	Amoco	12%
Atlantic	51%	Gulf	18%	Atlantic	10%
Esso	51%	Socony	18%	Texas	10%
Amoco	48%	Texas	16%	Gulf	9%

2277 COMMISSION EXHIBIT NO. 101Z21-27.

Stewart, Dougall & Associates
30 Rockefeller Plaza
New York 20, New York

Gasoline Dealer Survey
Classification Data

Brand of Gasoline:.....

Status of Station: Owned.....
Leased.....

If Leased: Directly from Oil Company.....
From Distributor .....
From other Landlord .....

Type of Location: Heavy Traffic Artery .....
Average Traffic Street .....
Low Traffic (Local) Street .....

Division of Gasoline Volume: Neighborhood .....
Mainly— Transient .....
Commercial .....

Lubrication Facilities: Yes..... No.....
If Yes: Number of Bays.....

Special Facilities: Sells Tires: Yes..... No.....
Sells Batteries: Yes..... No.....
Sells Accessories: Yes..... No.....

Purchase of Gasoline: Directly from Oil Company
who owns the Brand Name .....
Through a Distributor .....
From an Agent .....
From Wholesale Dealer .....
Other: (Describe Fully) .....
.....
.....

Yearly Gasoline Volume (Gallons):

Under 10,000	75,000- 99,999
10,000-24,999	100,000-149,999
25,000-49,999	150,000-199,999
50,000-74,999	200,000 or Over

Name of Station_____

Address_____ City_____

Interviewer's Name_____ Date_____

2278

General

Assume for the moment that you did not carry a line of tires, batteries and accessories and that you were just about to put in a line of such merchandise.

1. a. Under such circumstances, do you think you would prefer to buy all your major TBA items from one source or from several sources?

One Source_____

Several Sources_____

Don't Know_____

b. Why is this? (Probe)_____

2. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, we would like to have you look through these cards and select the four (4) which you as a dealer would consider the four most important in selecting the source of your TBA merchandise. (Hand Dealer the Fourteen (14) Cards)

(Write in four (4) letters corresponding to letters on cards dealer selects.)

1._____ 2._____ 3._____ 4._____

b. Now, would you tell me which one (1) of those four you would rate first in importance?

(Write in one (1) letter corresponding to letter on card dealer selects.)

1._____

Tires

3. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, which of the following named brands of tires (these represent about 4 out of every 5 tires sold) would you prefer to sell?

Firestone____	Goodrich____	Seiberling ____
Goodyear ____	U. S. ____	Your oil com-
Lee ____	General ____	pany's brand____
	Kelly ____	

Other (Specify)_____

b. Why would you prefer this brand?_____

_____

_____

4. What brand(s) of tires do you carry now?

1._____ 2._____

If one or more brands are not the same as "Preferred Brand" (in question #3a), ask:

5. a. Why don't you carry your preferred brand (exclusively)? _____

_____

2279 5. b. If you were to carry your preferred brand (exclusively), do you think your tire sales would increase, decrease or remain about the same?

Increase____ Decrease____ Remain the same____

Don't know____

If "Increase" or "Decrease" in Question #5b, Ask:

c. Would you say that your sales would (increase) (decrease) slightly, moderately or quite a bit?

Slightly____ Moderately____ Quite a bit____
Don't know____

6. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your tires? For example, to name a few types, there are:

a. Your petroleum supplier _____
b. Tire manufacturer _____
c. Independent distributor of tires _____
d. Another dealer acting as a supplier _____
e. Automotive Jobber _____
f. Wagon peddler _____
g. Other (Describe) _____
_____
_____
h. No preference _____

b. Why is that? (Probe)_____
_____
_____

7. From what type(s) of supplier(s) do you buy your tires now?

Supplier for Brand 1 (Question 4)_____
Supplier for Brand 2 (Question 4)_____

If One or More Suppliers Are Not the Same as "Preferred Source" (In Question #6a), Ask:

8. Why don't you buy tires from your preferred source (exclusively)? (Probe) _____

_____

_____

_____

9. In the light of your experience and knowledge is there anything that a supplier could do to help you make your tire business a better part of your total business?

_____

_____

_____

_____

2280 Batteries

10. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, which of the following brands of batteries (these represent about 4 out of every 5 batteries sold) would you prefer to sell?

Exide ___	Autolite ___	Your tire supplier's brand ___
Willard ___	Prestolite ___	
Delco ___	Gould ___	Your oil company's brand ___

Other (Specify) _____

b. Why would you prefer this brand? _____

_____

_____

11. What brand(s) of batteries do you sell now?

1. _____ 2. _____

If One or More Brands Are Not the Same as "Preferred Brand" (In Question #10a), Ask:

12. a. Why don't you carry your preferred brand (exclusively)? _____

_____

b. If you were to carry your preferred brand (exclusively), do you think your battery sales would increase, decrease or remain about the same?

Increase..... Decrease..... Remain the same.....
Don't know.....

If "Increase" or "Decrease" in Question #12b, Ask:

c. Would you say that your sales would (increase) (decrease) slightly, moderately or a little bit?

Slightly..... Moderately..... Quite a bit.....
Don't know.....

13. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your batteries? For example, to name a few types, there are:

a. Your petroleum supplier .....
b. Battery manufacturer .....
c. Independent distributor of batteries .....
d. Another dealer acting as a supplier .....
e. Automotive jobber .....
f. Wagon peddler .....
g. Other (Describe) .....
.....
.....
.....
h. No preference .....

b. Why is that? (Probe).....
.....

2281 14. From what type(s) of supplier(s) do you buy your batteries now?

Supplier for Brand 1 (Question 11).....
Supplier for Brand 2 (Question 11).....

If One or More Suppliers Are Not the Same as "Preferred Source" (In Question #13a). Ask:

15. Why don't you buy batteries from your preferred source (exclusively)? (Probe) .....

.....

.....

16. In the light of your experience and knowledge is there anything that a supplier could do to help you make your battery business a better part of your total business?

.....

.....

Accessories

17. a. Some dealers feel that service stations should limit their line of accessory items to those having only a direct connection to the running of a car. Such items would be spark plugs, fan belts, chains, lights, etc. Other dealers feel that related items should also be carried. Such items would be seat covers, car radios, heaters, sun glasses, etc. Still others feel that they should carry other items such as home and garden tools, electrical appliances, home radios and the like. What is your opinion as to the type of accessories you feel your own station should stock?

(Check One)

Items only connected with running a car (plugs, fan belts, chains, lights, etc.) .....

Items connected with running a car Plus related items (seat covers, car radios, heaters, sun glasses, etc.) .....

Items connected with running a car Plus related items Plus non-related items (tools, appliances, home radios, etc.) .....

b. Why do you feel this way?.....

.....

.....

.....

18. a. What type of items do you sell now?

(Check One)

Items only connected with running a car (plugs, fan belts, lights, chains, etc.).....

Items connected with running a car Plus related items (seat covers, car radios, heaters, sun glasses, etc.).....

Items connected with running a car Plus related items Plus non-related items (tools, appliances, home radios, etc.).....

If Answer In Question #18a Is Not the Same Answer As That In Question #17a, Ask:

b. Why aren't you selling those accessories you feel you should carry? (Probe) .....

.....

.....

.....

2282 19. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, would you prefer to sell manufacturer's house brands or your oil company's brands?

Manufacturer's brands.....

Oil Company's brands.....

Other answer (Verbatim) .....

.....

.....

b. Why would you prefer to sell these brands over the other brands?

If "Manufacturer's Brands":

Prefer manufacturer's over oil company's brands because: .....

.....

.....

If "Oil Company's Brands":

Prefer oil company's over manufacturer's brands because: .....

.....

.....

20. a. Still assuming that you are about to put in a line of TBA and forgetting your present commitments, would you have a preference as to any one particular type of supplier from whom you would want to buy your accessories? For example, to name a few types, there are:

a. Your petroleum supplier .....
b. Direct from manufacturer .....
c. Independent distributor of accessories .....
d. Another dealer acting as a supplier .....
e. Automotive jobber .....
f. Wagon peddler .....
g. Other (Drescribe) .....
.....
.....
h. No preference .....

b. Why is that? (Probe) .....

.....

21. From what type(s) of supplier(s) do you buy your accessories now?

.....

If One Or More Suppliers Are Not the Same As "Preferred Source" (In Question #20a), Ask:

22. Why don't you buy accessories from your preferred source (exclusively)? (Probe) .....

.....

23. In the light of your experience and knowledge is there anything that a supplier could do to help you make your accessory business a better part of your total business?

.....

.....

2283

F.
Speed Of Delivery After Ordering

G.
Merchandising Assistant and Training

H.
A Rebate From Your Supplier

I.
Guarantee

J.
Price Protection

K.
Exclusive Territory

L.
Low Prices

M.
High Quality

N.
Advertising Support By the Supplier

O.
Completeness Of Line

P.
Established Public Acceptance

Q.
Obligation To Your Petroleum Supplier

R.
Long Margin Of Profit

S.
Extended Purchase Terms

2284 COMMISSION EXHIBIT NO. 102A-D.

August 22, 1949

Memorandum for
Mr. T. E. Kelly

As you suggested, I am outlining the additional considerations brought out in the TBA program meeting of August 12 in your office.

My supposition is that Mr. D. T. Colley wants dealers to have TBA but not of necessity through Atlantic, questions the results from system changes unless shown, but withal wants action. A reported loss of $162,791 on TBA in the January, 1949, P & L cannot be ignored

Additional information, not available during the major survey, could focus attention at once not only on the soundness of the P & L as an influence in deciding what marketing method to follow but as well on estimating the effect of the major changes proposed in the TBA report and what could be expected if other marketing methods were adopted.

To obtain this information, I suggest these steps be given immediate consideration:

1. a) Examination of Company T.B.A. P & L expense accounts to find the extent of the elements entering into each account as to soundness of allocation, accuracy of time distribution, and essentiality of the activity costed. For example, just what does "District Office Accounting & Marketing" include and what are the possibilities of reductions in these activities and costs? (I understand, so far as "time" is concerned, it is the consensus of the Sales Development Committee that the proportionate time spent on T.B.A. at an outlet should not be the basis for charging sales expense.)

b) Examination of the latest turnover ratios and inventory investment for possible hidden costs therein that could be corrected by better ordering.

2. Securing of industry expense ratios for comparative and corrective purposes. For example, if we are way out of line on some expense account, what can be done immediately, if anything, to bring it into line.

3. Securing of more knowledge than prospectuses offer on other marketing methods as the Goodyear Wholesale or Commission Plans, embracing the possibilities and pitfalls therein, for comparative purposes.

I believe this information would be of great value in arriving at any decision on just what line to pursue in the whole T.B.A. matter. At any rate it is my belief that the studies and proposals in the T.B.A. Report are essential no matter what final marketing method is accepted with the possible exception of a Commission Plan.

For your consideration, a primary analysis of the apparent marketing alternatives is appended.

K. M. Ford
Sales Industrial Engineers

KMF: gr
cc: Mr. J. M. McIlvain
Noble Hall

2286 Marketing Alternatives.

The marketing alternatives appear to be:

1. Dealers are supplied entirely by local jobbers.
2. A Wholesale Plan similar to Goodyear is adopted.
3. A Commission Plan similar to Goodyear is adopted.
4. The present Company method is retained.

Primary analysis of these alternatives promotes certain reflections:

Local Jobber

A question may well be—is uniformity of products handled, service given, reliability of product and like considerations of more purport than?

a. Faster deliveries to dealer of perhaps wider lines?
b. A desire of the Company to withdraw from the activity:

It would seem that at least for the Class 1 and 2 stations, representing the Company to the public, the answer would negate the use of local jobbers as main suppliers other than on incidentals.

Wholesale Plan (Goodyear)

1. It may well be that the gross profit allowed is not equal to what the Company should obtain—that Goodyear is taking out too much for its warehousing and delivery operations.

2. Removing the present Company physical distribution charges but retaining other expenses, as would seem necessary under the Wholesale Plan, would still leave a deficit. For example, on tires in the Company, January, 1949, P & L, Company operated Bulk Station expense was 3.2% of net sales; total expense was 28% of net sales. Taking 3.2% from 28% leaves 24.8% which is 8.7% above the proposed margin (16.13%) allowed by Goodyear on composite tire classes.

3. The proposed expense ratios developed by Goodyear are probably far too small.

4. If the Goodyear terms are not too attractive, does it point to a possibility Goodyear is emphasizing the Commission Plan and if so, why?

Commission Plan

1. The Company would still retain a significant sales expense, in all probability.

2. Would turning over Company outlets to Goodyear be detrimental to petroleum sales? There is not only the credit angle of possible tying up the dealers' ready money for Goodyear volume, if high pressured, but also possible emphasis of T.B.A. over petroleum by Goodyear for volume. There is also the counter possibility that Goodyear might not try to absorb all the volume the Company feels should pass through outlets.

2288 3. If Goodyear can allow a composite T.B.A. gross of 9.4% on net sales, is their expense allocation so much better than the Company's that their gross profit less 9.4% less their expenses still affords a net profit? It must be if, under their Wholesale Plan, they estimate Atlantic total expenses on tires and batteries should run 5.5% to net sales excluding physical distribution. If true, the position of the Company on expense is way out of line.

4. Once Goodyear is in the outlets what is the practicability of getting them out if the occasion warrants? The possibility of our return to operation depends upon their effort and maintenance of profit, not on ours.

5. Would not Lee struggle hard to keep its market (4 million or so volume) even to possible rough competition? As well, the recent Sales Research poll indicates a dealer satisfaction with Lee.

6. Will Goodyear give better delivery and general service than Atlantic?

7. Will dealers cooperate as well with Goodyear with the "obligation to petroleum supplier' 'status removed?

8. Just what expenses would the Company have to retain and what would be the final profit figure? Surely, much lower than 9.4%.

9. Will Goodyear satisfactorily maintain a productive volume to be allocated to Atlantic outlets?

10. Would Company outlets suffer severe competition from other Goodyear outlets?

11. The only secure chance of greater dealer volume is through our sales effort—not in relying on Goodyear sales effort.

Present Company Method

If this is retained, I believe it to be essential to carry through the recommendations of the T.B.A. report. One question to answer—is it to be just a dollars and cents proposition (that is, no loss or the greatest Company profit) or are there other factors to be considered?

One certainty is that sales must be increased and also the turnover rate without an accompanying increase in costs. Also, unessential activities and extreme expenses must be weeded out.

The aim of the T.B.A. report is to slash the inequities and cut the costs to the practical and workable.

K. M. Ford
Sales Industrial Engineers

2290

August 24, 1949
T.B.A. Marketing

Memorandum to
Mr. D. T. Colley

Following the transmittal to you on June 29, 1949, of Mr. Ford's "Report on T.B.A. Operations", we have given additional thought to the manner in which this problem might best be approached. Discussion between Messrs. McIlvain, Hall, Ford and myself resulted in the preparation of the attached memorandum of August 22 from Mr. Ford. Most of these same views were expressed by Mr. Ford during our discussion, and this preliminary approach now suggested was prompted by his review of figures only recently available on T.B.A. costs and profits and his discussion with you. What is now being proposed as a preliminary step would seem to be in keeping with your desire to do something quickly about the large indicated loss.

Until such time as it may be desirable to engage in the broader study as proposed in my letter of June 29, 1949, please feel free to call directly upon Messrs. Hall and Ford for any service you or Mr. Neall may desire.

T. E. Kelly

Enc.

TEK: mj
cc: Messrs. K. M.Ford
Noble Hall
J. M. McIlvain
F. M. Neall

2292 COMMISSION EXHIBIT NO. 103.

January 10, 1950

T. B. A.

Firestone Tire & Rubber Company

Mr. G. V. Ostrander
Syracuse, N. Y.

Dear Mr. Ostrander:

As you know, for the past year we have been studying T. B. A. as to its profitability to the Company. Our most recent findings indicate that it is questionable whether this venture is paying us to the degree that the effort expended warrants.

In our approaches to the subject, we have had discussions with various major tire manufacturers who, as you know, are interested in handling the entire T. B. A. line, paying us a commission.

We have now arrived at the conclusion that we should try out this commission plan in some Region and it has been suggested that your Region lends itself to this trial.

The proposition that seems most acceptable to us is one offered by Firestone. I will not attempt to go into detail covering this proposition, but when you come to Philadelphia for the Regional Managers' Meeting next week, Mr. Heideman plans to sit down with you and go over the proposition with the thought in mind that you will elect to have your Region be the guinea-pig.

May I suggest that you arm yourself with all possible information available as to: first, the value to your Region of selling T. B. A.; secondly, what, in your opinion, would be the effect of changing to Firestone from a volume standpoint; third, a comparison between the value of direct

marketing, thereby control of the products and the manner in which they are sold, versus the commission basis whereby your accounts are all supplied by Firestone distributors. I realize you will have many questions concerning this but assure you Mr. Heideman is well informed and capable of answering them.

In any event, it has been decided by the Staff that we will stay in the T. B. A. business for the present, pressing sales of these products. We believe this action is necessary in order to get out of the minds of our people the thought that this phase of our business is unimportant. I assure you we consider it very important and we are looking forward to working out a solution, whether it be by direct sales or on a commission basis, that will not only prove profitable to the company from a dollar and cents standpoint but also be beneficial to our dealers.

It so happens I will be away for a couple of weeks' vacation and will not have the pleasure of sitting down with you and Mr. Heideman to discuss this matter.

Cordially yours,

F. M. Neall

cc: Mr. S. J. Heideman

2294 COMMISSION EXHIBIT 104A-C.

The Firestone
Tire & Rubber Company
Harvey Firestone
Founder

March 30, 1950

Mr. D. T. Colley
Vice-President and General Manager
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pennsylvania

Dear Mr. Colley:

In consideration of the assistance and cooperation to be given to The Firestone Tire & Rubber Company by your sales organization in promoting the sale of Firestone products to and by Atlantic Lessees, Dealers, Commission Distributors and Distributors handling Atlantic gasoline, The Firestone Tire & Rubber Company will pay The Atlantic Refining Company a sales commission on all net sales of Firestone Tires, Tubes and Home and Auto Supplies, including Batteries, sold by Firestone to such accounts, who by mutual agreement are nominated by you and approved by us, according to the understanding and classifications set forth in this letter.

Firestone will report sales monthly on lists of such approved accounts furnished by Atlantic. Sales Commission rates currently in effect and which will continue until further notice, are as follows:

Classification of Account	Rate of Commission
Lessees—"C"	10%
Dealers—"D"	10%

(1) Atlantic Lessees and Dealers

Sales Commission will be paid on all net sales to the above of products subject to sales commission except where sales commission rate will be as shown below in (3).

Lessees ("C") are dealers operating stations where entire property is owned or leased by Atlantic. Dealers ("D") represent Atlantic's other Contract Dealers handling Atlantic's gasoline.

Also included are Atlantic's Lessees ("CE") and such other Atlantic Dealers ("DE") served by Atlantic Distributors on petroleum products, where the Distributor is not qualified or active under the Sales Commission arrangement, where these accounts are approved.

2296

Classification of Account	Rate of Commission
Commission Distributors "B"	7½%
Distributors "E"	7½%

(2) Atlantic Commission Distributors and Distributors

Sales Commission paid on all net sales subject to sales commission to approved qualified Commission Distributors ("B") and Distributors ("E") operating bulk plants and distributing Atlantic's gasoline therefrom who wholesale such products to dealers, except where sales commission rate will be as shown below in (3).

These classifications also apply to any retail business engaged in by these accounts in retail locations, in addition to wholesale activity.

(3) Home and Auto Supplies

Where net sales of Home and Auto Supplies to any of the above accounts were $25,000 or more in the previous calendar year, or reach $25,000 in current calendar year, (beginning in month this volume reached), sales commission will be paid on these products at the rate of (for each such account):—5%.

Sales will be reported and commissions paid on net sales of:

(1) Tires, Tubes and Retreads (Firestone produced retreads—and on "retreaded" casings when furnished by Firestone.)

(2) Home and Auto Supplies including Batteries and Anti-freeze, and Repair Materials.

Sales Commissions are computed from net sales arrived at after deduction of quantity discounts, bonuses, price rebates, billing corrections, returned goods, adjustment credits, and wholesale commissions.

Net Sales for Sales Commissions do not include: used tires and tubes, camelback, adjustment sales, wheels, rims and weights, mechanical goods, Home and Auto Supplies not purchased from Firestone, equipment and supplies, advertising material and supplies, delivery commissions, Federal Excise Taxes, and State and City Sales Taxes.

Where sales are made by one oil company's qualified outlet to a qualified outlet of another oil company, such sales are only reported for latter oil company so that there will be no duplication of the sales commission payments.

2298 All accounts in the above classifications who are desirable for sale of Firestone products, may be nominated and qualified except: accounts who were Firestone Dealers before becoming Atlantic's Dealers or Distributors or who have been substantial Firestone Dealers for a period of years, Firestone Dealer Warehouses, Firestone Aircraft Distributors or Dealers, Commercial Accounts, taxicab and bus companies.

Store front locations operated by Lessees and Dealers ("C"—"D"—"CE" or "DE") accounts will be included only when they are directly a part of the service station location. Store front locations operated by Commission Distributors ("B") or Distributors ("E") may be included where approved by Firestone.

Records pertaining to our business with your outlets covered herein will be made available to you in our Districts for reasonable inspection during ordinary business hours.

This agreement will continue in effect until terminated by either party on one hundred and twenty (120) days written notice to the other.

Very truly yours,

The Firestone Tire & Rubber Company

By: (Illegible),

Vice President

Accepted:
The Atlantic Refining Company
By: D. T. Colley

2300 COMMISSION EXHIBIT 105A-C.

The Firestone Tire & Rubber Company
Harvey S. Firestone, Founder
Akron 17, Ohio

January 12, 1954

Mr. D. T. Colley,
Vice President and General Manager
The Atlantic Refining Company,
260 Broad Street,
Philadelphia 1, Pennsylvania.

Dear Mr. Colley:

The Sales Commission Agreement between our respective companies, evidenced by letter agreements of March 30, 1950 and April 20, 1951, contains certain provisions as to products included for sales commission purposes and the establishment of sales commission rates.

Effective January 1, 1954 the above-referred to Sales

Commission Agreement is amended in the following particulars, all other provisions of our Agreement to remain in full force and effect.

1. Net sales of Home and Auto Supplies for sales commission will not include the sales of Home Supplies listed in our Wholesale Catalog in Department #5 (Major Appliances) and Department #13 (Television).

2. The present sales commission rate on Home and Auto Supplies, as set forth in clause 3 on page 2 of the March 30, 1950 letter agreement is cancelled and replaced by the following:

"However, where net sales of Home and Auto Supplies to any of the above accounts were $25,000 or more in the previous calendar year, or reach $25,000 in the current calendar year, or where the account is extended the current #325 or #440 price list on Home and Auto Supplies (beginning in month of current calendar year when $25,000 volume is reached or above prices are extended), sales commission will be paid on these products for such account at the rate of 5%

If in any subsequent calendar year thereafter, (A) net sales of Home and Auto Supplies to any such account who is not extended the current #325 and #440 price list is less than $25,000, or (B) if the current #325 or #440 price list is withdrawn from such account to whom net sales in such subsequent calendar year are less than $25,000, then the commission on sales to (A) shall be adjusted for such calendar year to provide for the 10% or 7½% rate, as the case may be, in lieu of the 5% rate, and in the case of (B), shall be increased on the first day of the calendar month immediately following the withdrawal. We will provide you prompt written notice of any change in status of such accounts."

2302

As evidence of your understanding and agreement to the changes listed above, please sign in the space provided below for signature and return one copy to this office.

Very truly yours,
The Firestone Tire & Rubber Company
By: (Illegible).

Accepted:
The Atlantic Refining Company
By D. T. Colley

2304 The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

November 3, 1954

Mr. H. D. Tompkins, Vice President
The Firestone Tire and Rubber Company
Akron 17, Ohio

Dear Mr. Tompkins:

The contract between our respective companies evidenced by letter agreements dated March 30, 1950, April 20, 1951 and January 12, 1954, and your letter of May 19, 1954 relating to the promotion and sale of TBA is hereby amended in one and only one particular, namely, from the date hereof until cancelled by either of our respective companies upon 365 days' written notice to the other, such contract shall continue in full force and effect.

As evidence of your understanding and agreement to the above, please execute the attached duplicate copy of this letter in the space provided for signature and return the same to this office.

Very truly yours,
The Atlantic Refining Company,
D. T. Colley.

Accepted and agreed to:
The Firestone Tire and Rubber Company,
By H. D. Tompkins.

2305 COMMISSION EXHIBIT NO. 106A-B.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

April 20, 1951

Mr. H. D. Tompkins, Vice President
Firestone Tire and Rubber Company
Akron 17, Ohio

Dear Mr. Tompkins:

By letter agreement of March 30, 1950 between Firestone and Atlantic we agreed to assist and cooperate in promoting the sale of Firestone products to Atlantic dealers and distributors and embarked on a test of the Firestone T.B.A. program in two of our sales districts. We have decided, and you have agreed, to extend this arrangement to include our Eastern Pennsylvania, our Western Pennsylvania, and our Southern Sales Regions on the same basis as outlined in the letter of March 30, 1950.

It is understood that this expansion to the areas mentioned will be effective as of March 1, 1951, at which time Firestone will begin supplying the various products and services, outlined in the letter of March 30, 1950, to such of our resale outlets, either dealers or distributors, as desire to purchase them. At the same time, Atlantic will begin, through its field representatives, to assist Firestone in the additional territory mentioned, in the sale of the products and services outlined to Atlantic outlets, as has been done in the test districts.

This means that Atlantic salesmen will call upon retail dealer outlets and distributors, either alone or in company

with your representatives, to promote the sale of such products and assist these resale outlets in reselling them. It is understood that all such Atlantic retail outlets or distributors are free to choose whether, and to what extent, they shall purchase Firestone products and services, and that Atlantic representatives cannot and will not use any methods other than salesmanship to encourage such dealer retail outlets or distributors to purchase Firestone products and services.

In determining to expand the Firestone sales commission plan to the larger areas mentioned, we have done so upon your assurance that you will provide tires, batteries, and accessories in quantities to take care of the reasonable needs of those Atlantic resale outlets who desire to purchase your products for resale. We realize that such an assurance from you is subject to conditions beyond your control, to the fair and equitable treatment of all customers, and any government restrictions on the manufacture or distribution of the products involved.

2307 If the above correctly sets forth your understanding of the arrangement between us, please so indicate by signing and returning for our files the enclosed copy of this letter.

Yours very truly,

D. T. Colley.

Accepted:

The Firestone Tire & Rubber Company,

By: H. D. Tompkins.

2309 COMMISSION EXHIBIT NO. 107

February 27, 1950

Firestone Tire & Rubber Company

Mr. D. T. Colley
17 Floor

Mr. Heideman has progressed to the point where he has agreement with the Regional Managers to set up Firestone T.B.A. sales at Newark, Erie and Wilmington, Del. These three locations were selected after discussion with Mr. Keen and me. We believe they represent three different pictures and should enable us to clearly evaluate the difference between our present method of operating versus the Firestone plan.

We were about ready to sit down with Firestone and discuss their taking over these three locations when on February 21 the Department of Justice asked the Sun Company the following:

"Whether the Sun Oil Company has received any fee, commission, or other consideration on the sale of automotive accessories to independent station operators, which automotive accessories have not been manufactured or purchased by the Sun Oil Co."

This was submitted to Mr. Stotz who threw up a red flag and we have told him that while we are ready to move in on the Firestone we will not do so until he obtains a definite ruling from Mr. Johns as to what course we should pursue. We will follow this closely to see that we get an answer but it is questionable whether Mr. Johns will be in a position to make a decision for the next week or two because of lack of information, which should be forthcoming as the Sun's problems develop.

We will keep you fully informed.

F. M. Neall.

m

cc: Mr. S. J. Heideman.

2311 COMMISSION EXHIBIT NO. 108A-J.

Presentation to Atlantic Personnel in Connection With the Introduction of the Firestone Commission Plan.

I want to thank you gentlemen for your very fine cooperation in arranging to be with us on this meeting that has been called on such short notice. I know there is a heavy demand on the time of everyone present, but since timing is an important factor in our problem and there is much co-ordinating work to be done, this conference session appeared to be the best and only solution. Unfortunately, it will not be possible to discuss Atlantic's use of the Firestone Commission Plan without exposing most of you to some repetition. Since there are many new and strange things about this subject, I am assuming that time will be well spent in giving you the whole story as I know it so that we all thoroughly understand it before we get to work.

Several Methods of Oil Company T. B. A. Marketing

It is a fact that there are in general usage five different plans from which oil companies may choose in selecting a T. B. A. marketing program. It is also a fact that in practice, parts of two or more basic plans are employed to put together an oil company T. B. A. program. Briefly, these are:

1. Our present plan of marketing.
2. An exclusive arrangement on a major tire company's support brand, or possibly an exclusive arrangement on a house brand of one of the small manufacturers.
3. Private brand.
4. Purchase and resale plan which differs from our present plan in that the manufacturer performs all warehousing and delivery functions.
5. The commission plan.

As we review each of the foregoing plans in greater detail, it will be observed that they are founded on tire and tube lines and not batteries or accessories. This is not difficult to understand since it is generally accepted that at least 55% of an oil company's T. B. A. volume comes from the tire and tube business. It follows, therefore, that batteries and accessories are not fitted into these several broad plans with any degree of uniformity.

There isn't very much we need say about our present plan except that our program is built upon nationally known branded goods and that the term "accessories," as we presently use it, is restricted to a short line of automotive necessities. Under this program we either enjoy a consignment or have to purchase goods. We also warehouse, sell and deliver goods. We also extend credit, issue billing, collect accounts, and engage in sales promotional activity and sales training activity. We usually use 2312 manufacturers' selling schedules, their sales promotional helps and their sales and training help. We receive a good gross margin in keeping with the duties left to us and those assumed by suppliers.

The second plan would involve us in all of these same duties but would eliminate for some prescribed period of time all or most of the competition on the same brand. Available programs of this nature are not so likely to include a complete T. B. A. program; also, when the tire brand name is applied to batteries and accessories, it does not have the acceptance of the national brand of goods which we now handle. There is also no apparent advantage in purchasing arrangements and there is a very definite disadvantage in switching brands if the new line does not have a considerably greater public acceptance. None of the available brands have such acceptance.

Private brand plan, of course, carries with it all the responsibilities that we have under the present plan of

marketing and such additional responsibilities, as definite commitments for merchandise, mold costs, special packaging costs, all advertising expenses and all sales promotional and training work, preparation and distribution of price schedules, etc. It involves a multiplicity of supplier contracts, and in some cases even requires a close contact with raw material markets. This plan does eliminate the competition factor on the same brand and does provide lower purchase costs. The extra margin, however, no more than compensates for the added duties and financial investments and risks that the marketer assumes.

Purchase and resale plan is a special one which is offered by the Goodyear Tire and Rubber Company, and to my knowledge is used by only one oil company. The principal difference of this plan in comparison to our present plan is that the marketer does not engage in the physical warehousing or delivery of merchandise. Other than that, all other functions that we presently engage in are also performed under the purchase and resale plan. However, the supplier does offer a substantial amount of selling assistance under this plan and it, of course, follows that the gross margin available to the marketer under this plan is smaller, roughly estimated at from 8 to 10% less, than under our plan. Under the purchase and resale plan we would still have to perform the lion's share of the marketing work.

Commission plan. Here the manufacturer performs all of the functions connected with the sale of T. B. A. He warehouses, makes delivery, makes sales, extends credit, bills and collects, provides schedules and sales tools, provides sales training and merchandising assistance. However, he looks for and expects the cooperation of the oil company in the task of guiding and training the dealer into the particular program, and for this purpose pays the oil company a commission. The commission amounts to

10% on dealer sales and 7½% on oil distributor sales. The commission is payable only on accounts on which it has been mutually agreed that the oil company and the tire company will solicit and develop. Commission is paid on the sales value received by the tire company. This plan eliminates practically all of the physical complications that an oil company may encounter in any other form of T. B. A. marketing.

2315 Atlantic T. B. A. Objectives.

Now, perhaps is a good time to consider Atlantic's T. B. A. objective. First of all, we must have a program that is most satisfactory to the Atlantic dealer. In order to be this, it must enable the dealer to best serve the Atlantic customer. For this purpose, well-known, high-quality merchandise coupled with necessary services competently performed, that can be sold to the motorists at fair and reasonable prices, appears to be essential. It is believed that the maximum amount of customer service and satisfaction with such a program will be a real factor in the dealer's growth and in his profits. There is strong support for this belief because T. B. A. and related services account for as much as 40% of a promotable dealer's profit. Another very important consideration is that we have a T. B. A. program which at least defrays the expenses correctly attributed to T. B. A., or better yet, which yields a profit.

The Reasons For A Test Program.

The thought must have occurred to you as to why this Firestone Commission Plan test is being undertaken. We are sure you are interested in what is behind Management's thinking in directing this test. To the best of my ability, I will try to give you some of this background that you may better appreciate the objectives and also the importance to

our Company of this experiment. Atlantic's T. B. A. program, as we know it now, is comparable to that of a great many other oil companies, but as has been previously indicated, the Commission Plan has also been undertaken and operated successfully by several very large petroleum corporations. The fact that Texas, Sinclair and Shell, to name the larger companies on this program, have found it satisfactory over a period of years is indicative of some value. We are not prepared at this time to say that the Commission Plan is a better or worse program than the one we have now, because we do not know. Exact knowledge is what the executives of our company are looking for. It is appreciated that we all have opinions. You may feel that the Firestone program is a better plan or you may disagree. We would like to ask you to adopt at this time the attitude that opinions are not important today, but at the conclusion of this test you will be prepared to offer conclusions which are based on the results of actually using this plan in the field. In other words, Atlantic is trying to remove the guess work before establishing a fixed program for the future. There have been many things which have occurred with our present program which have caused Management to make this decision to guide their thinking that our future action should be on the plan which will serve the best interests of the motorist, the dealer and the Company. Any business, as large as T. B. A. has grown with Atlantic, develops complications. I purposely do not use the word "problem" because personally I do not believe they are any different from those other marketers have had to face. But let's look at them: T. B. A. has been
2317 with Atlantic almost a separate business. Coordination with the petroleum program is being achieved but it is my belief that you will concur when we say it has not been completed.

The long and practical experience of those administering

the program including yourselves could not always be applicable to the T. B. A. program although it was excellent in the petroleum lines. Supervisory levels found themselves somewhat at a loss due to lack of knowledge and experience. The present T. B. A. plan must suffer when it cannot take advantage of the principal background of those men who must make it effective.

Then, there is the uncertainty regarding the profits which the company is securing from the present T. B. A. plan. The only published profit and loss statements on T. B. A. have indicated nothing but red figures. Personally, I do not entirely agree with the method used in preparing the P & L or with its conclusions. Nevertheless, I must admit it is certainly a study which neither Management nor any of us could disregard. It was indicative of apparent high operating costs. At this point, I should tell you that improvements are being made in the operating costs of the present T. B. A. plan and they will continue, with the thought that the fairest possible comparison can be made between the existing T. B. A. system and that which you gentlemen are going to test. The excessive operating charges, such as those that appear against warehousing, delivery, and accounting are apparently relieved with the Firestone Commission Plan. Whether the income from the Firestone program will meet as much of the fixed charges as will the present T. B. A. program is something we are trying to find out.

Certainly contributing to Management's thinking on the desirability of this experimental program is the physical limitation of our warehouses and delivery system. These are subjects which require capital investment. Unfortunately, on warehouses we are faced for the most part with older style buildings with definite space limitations. These buildings are in some cases insufficient even for the sale of petroleum products and probably in the immediate future

rebuilding will be required. It is obvious that if space for T. B. A. is also to be considered, the capital investment will be greater: A greater investment in drays for delivery service is also required if we are to give good competitive service to our dealers. This, again, requires capital investment strictly for the T. B. A. program. These are certainly not all of the reasons that were given consideration by our executives, but they probably do include the major items. We are sure you will agree that there was certainly sufficient reasons to undertake the experiment and that you will attach sufficient importance to your part in it that a further decision may be made on factual information.

2319 Why The Commission Plan and the Firestone Proposal In Particular Have Been Selected.

Since a test or check of our present plan of T. B. A. marketing has been decided upon and since there are very real physical limitations, it is quite plain that only the Commission Plan holds any real promise for us in seeking to find ways and means of avoiding some of the complications that are associated with T. B. A. The Commission Plan is currently being practiced with oil companies by all four major tire companies: Goodyear, Goodrich, Firestone and U. S., and they have all solicited our business. These companies' plans are all identical insofar as the basis of commission payment is concerned. Full consideration has been given to each of the proposals and only after a careful deliberation at all levels of Management was the Firestone proposal selected. You can appreciate that careful deliberation was given to this program since their only proposal was submitted early in 1948. Here, then, are the important reasons for the company's preference for the Firestone program:

1. They are either the most popular line or the second most popular line.

2. They either are the largest supplier of original equipment or they are the second largest.
3. They have the most complete line of tires, batteries, accessories, and home supplies and services of any of the companies.
4. They have the greatest experience in the "commission plan" of operation with oil companies. They are one of the first companies to offer this plan.
5. They have the least amount of oil company activity on their brand in our main market.
6. They are only a one brand tire manufacturer. Their entire interests, resources and efforts are back of the brand that would be offered to Atlantic dealers.
7. They have an excellent training program.
8. They are strong and aggressive merchandisers and have available a bountiful supply of very excellent sales promotional material.
9. They have an experienced staff of buyers for procuring the products they don't manufacture and fine facilities for quality and sales testing such products.
10. They were one of the first companies to adopt a liberalized adjustment policy which to some extent minimizes the loss of the road hazard guaranty.

2321 We have upon very careful analysis found that very real advantages exist in the Firestone Commission Plan for Atlantic's dealers and petroleum distributors as well as for the company. For the dealer or petroleum distributor, these are:

1. Complete line on tires and tubes. Complete battery, accessory and home supply program.
2. A tire brand which is either first or second in public acceptance.
3. National advertising: newspapers, radio, television and magazines.

4. Largest or second largest supplier of original tire equipment.
5. Up-to-date and competitive tire and tube lines.
6. Excellent sales promotion and "point of sale" assistance.
7. Recapping program available.
8. Excellent training program.
9. Good delivery from conveniently located distribution points.

Then, from a company standpoint, are these advantages:

1. No T. B. A. investment except stocks for salaried stations.
2. A portion of selling costs assumed by supplier.
3. All warehousing, delivery, credit extension and billing by supplier.
4. Reduced ARCo. accounting expense.
5. Fixed rate of gross profit.
6. Profit would apply on much broader lines and services: blow-out proof tubes, farm tires, tire recapping service, home supplies.
7. A profit on some dealer T. B. A. business presently enjoyed by Firestone.
8. Practically all sales promotional expense assumed by supplier.

2323 9. Major part of training expense assumed by supplier.

10. No purchasing function (except for salaried stations or for consumption).

A Review of New Problems.

We, of course, can hardly expect to get all these advantages without facing some complications or problems that we don't have under our present program. These we should recognize and plan to cope with. From the dealer and distributor standpoint consider the following.

1. Without the road hazard guaranty, the dealer will not have the latitude that he presently enjoys. The Firestone tire is guaranteed for life against defects in material and workmanship, but adjustments are also made on a pro-rata basis when bruise breaks are experienced within the first 25% of tread wear. Such adjustment, however, is only made on approval of a Firestone adjuster. In the event the dealer wishes to satisfy a customer on the spot, he has to take his chances of getting proper support from Firestone.
2. There will be a maximum amount of competition from established dealers and company stores, because it is reported that every county, marketing town and shopping center now has a Firestone store or distributor.
3. Atlantic's petroleum promotions will not be so closely coordinated with Firestone's promotions as they are with our present program.
4. Firestone brand batteries and accessories will not have as good public acceptance as their tire brand nor as the nationally known brands of batteries and accessories that we are presently marketing.
5. There is the possibility that the Firestone plan cannot be utilized by all Atlantic dealers and distributors because of closely situated competitive petroleum outlets who are already established with the Firestone program, or even because of a highly competitive Firestone outlet that may be in close proximity.

Then, too, from the company's angle, the following points must be considered:

1. There will be a sharing with another manufacturer of the direct influence that we now enjoy with our dealers for the promotion of balanced sales.

2325 2. Firestone is a successful and aggressive tire marketer and tires must be recognized as that company's principal business.

3. Adjustments being limited as aforementioned could result in greater customer dissatisfaction with its resulting adverse effect on Atlantic's petroleum products.

4. Any policy adjustments deemed advisable because of this possibility would be entirely for the account of The Atlantic Refining Company.

5. We will not engage in direct sales to commercial accounts. This market would be eliminated with the Firestone program and also any gross profits that may accrue from it.

6. Atlantic's gross income will, of course, be reduced under this plan and so-called "fixed charges" attributed to T.B.A. must either be reduced, eliminated or absorbed by petroleum products.

7. Firestone has complete control over the establishment and changes in commission rates, but since it is a competitive business and their historical experience has been highly favorable, it is more probable that they will cultivate and encourage its further growth rather than take any steps to make the program less attractive.

8. There is, of course, the very real possibility that an Atlantic dealer or distributor is already on the Firestone plan, and that we will not be given any commission for such business. Such situations are to be negotiated between Atlantic and Firestone in order to reach a fair agreement.

9. District supervisory personnel and salesmen must still be familiar with the T. B. A. program, its

details and its principal promotions. Full cooperation with Firestone in the conduct of the T. B. A. program is expected. Salesmen must accept dealers orders and should be given a quota responsibility.

The Selection of Test Districts.

You may wonder why it was decided to make the test of the Firestone Commission Plan in the three districts. It was considered advisable to have small units, therefore districts were selected rather than a region. It was felt that the district test would have less of an effect on the balance of our market. The districts were then selected with a view to getting a good cross-section of Atlantic's operation, and at the same time to secure territories 2327 geographically situated in a manner not to conflict with the remainder of our market. In the three districts of Wilmington, Newark and Erie, we have a number of outlets ranging from 206 to 273, a number of class two outlets ranging from 50 to 103, an annual T. B. A. volume ranging from $203,000 to $245,000, and dollars T. B. A. per thousand gallons of gasoline received in class 2 and 3 outlets ranging from $13.35 to $15.52. Based on a quick analysis of expenses for these districts for the last four months of 1949, we also come up with a range in T. B. A. cost to gross sales of T. B. A. that runs from 27.3% to 72.5%. These districts also represent different types of markets, and taking all these factors into consideration, we feel that we have a very excellent proving ground for the test. I may add that Firestone's wishes have not entered into any of the above considerations. They are solely the product of our own thoughts and most surely are not exactly in accord with Firestone's wishes.

General Information.

Now there are a few random points concerning the test and the selected districts that must be cleared up.

Firestone's plan provides anti-freeze products but we have not considered it desirable to adopt that phase of our business, and it is a fact that most oil companies on the Commission Plan think the same way, although not necessarily for the same reasons. Our reasons are that we are just getting established with the #1 brand permanent type product, and believe that our dealers will prefer it. We will also have a good evaporative anti-freeze program. We can handle the business with a minimum of difficulty, in much the same fashion that we handle petroleum. There is a good profit possibility for the company in this business.

The Firestone plan will have no bearing on Equipment and Supply items carried in some of your warehouses and often confused with T. B. A. in cost analysis work. Such items as motor oil and lubricating equipment, or sales promotional material, will continue in your lines as presently established or until future changes are effected.

Firestone has been informed of our tire adjustment responsibilities and those of our dealers and is prepared to stand behind our outstanding guaranties on Lee tires by offering Firestone tires in replacement on a pro-rata basis. The same problem with batteries has not been explored but should be this afternoon.

We have no contracts with suppliers that interfere with this test. We do have some tire contracts with dealers that run for a 12-month period. Most of these expire late in March or early in April. They, of course, can be cancelled any time by mutual consent. Our revised contract provides for cancellation upon 60 days' notice, in the event we discontinue marketing Lee tires in the dealer's territory. We may have some problems with tire contracts but I don't forsee any great difficulty.

2329 We have several contracts covering different products such as AC—Eveready—Fram—Auto-Lite, which are used for petroleum distributors that require notice of cancellation. These do not present any great problem and can be handled easily.

We must recognize that Lee, Exide and other suppliers will make a strong direct bid to retain Atlantic dealer business on their established brands. It is also a probability that some dealers will prefer the present lines.

We and Firestone must offset such competition and opposition solely on the basis of persuasive salesmanship. We definitely want to make an all out sales effort.

Steps to Effectuate The Program.

We should now consider how soon it will be practical to introduce the Firestone program in the districts and decide upon a date. The tire sales season is just ahead and a very big promotional program will soon be launched by Firestone. It will help us to ride the crest of the wave.

We should also consider and decide on a cut-off date for our present program. This date and the starting date need not necessarily coincide, but it is highly desirable to make the break as soon and as clean as possible after starting with Firestone. The longer we stay on our present program, the longer we have adjustment liability and Firestone would not assume these burdens indefinitely.

As you can well appreciate from the tenor of this presentation, this is not an attempt to sell the program. I have only tried to be brief, frank and factual in order to answer some anticipated questions and to lay the foundation for other unanswered questions. To-day we should concern ourselves principally with questions of policy involving the change or that may be anticipated as a result of the change.

March 17, 1950

2331 COMMISSION EXHIBIT NO. 109A-I.

Report on Meeting for the Discussion of the Firestone Commission Plan.

A morning session was held in Room 209, Friday, March 17th. This session was attended by the following Atlantic personnel:

W. G. Eissler, Controller's Office
S. J. Heideman, Manager, T. B. A. Section (Sales Dept.)
J. F. Sayers, Jr., Sales Promotion Section (Sales Dept.)
W. F. Stotz, Legal Department

Eastern Pennsylvania Region
W. J. Griffiths, Region Manager
C. P. Mumma, Region Sales Manager
L. Souder, Region Operations Manager
G. A. Fearn, Region T. B. A. Coordinator
R. S. Zinn, Wilmington District Manager

Western Pennsylvania Region
B. M. Boor, Region Manager
W. B. McConnel, Region Sales Direct Marketing Manager
J. C. Munch, Region T. B. A. Coordinator

The meeting was started with a presentation by Mr. S. J. Heideman, which covered T. B. A. background leading to the company's decision to test the Firestone Commission Plan. The following points were covered:

1. Several Methods of Oil Company T.B.A. Marketing
2. Atlantic T. B. A. Objectives
3. The Reasons for a Test Program

4. Why the Commission Plan and the Firestone Proposal in Particular have been Selected
5. A Review of New Problems
6. The Selection of Test Districts
7. General Information
8. Steps to Effectuate the Program

During the question and answer period, the following questions were advanced and disposed of as indicated:

a. Will we continue to require T. B. A. clerical and warehouse personnel in District offices? In reply to this question, it was pointed out that the company would continue to handle anti-freeze and miscel-
2333 laneous refinery products, and perhaps certain items presently classified as equipment and supply. Therefore, some of the functions now attributed to T. B. A. would be continued indefinitely, although presumably on a vastly reduced scale. It was believed that within a reasonable period of time after the inception of the Firestone Commission Plan present warehouse stocks of T. B. A. would be eliminated and that the principal amount of warehouse and clerical effort presently devoted to T. B. A. would have to be transferred to other activities or disposed of. In this discussion, it was also recognized that some percentage of dealer orders for T. B. A. even under the Commission Plan would be telephoned into the District office along with petroleum orders, and that it would be Atlantic's responsibility to relay these orders to the proper distribution point. This work would entail some relatively small amount of effort.

b. The question was asked, What will Atlantic do about dealer's stocks of T. B. A. purchased from the company in the event that the dealer discon-

tinued doing business with us? In discussing this question, it was brought out that Firestone had suggested that we accept the return of merchandise that we had sold to Atlantic dealers in order that they could sell the dealer on the Firestone program and supply him with his principal stock requirements at one time. It was generally agreed that Atlantic should not do this. In considering the discontinued dealer, it was generally agreed that the return of stocks that had been purchased outright would not present any real problem. It was recognized that there would be some exceptional instances where the outgoing dealer, because of financial limitations, might have to be assisted in disposing of some stocks which would be undesirable to the incoming dealer. The policy presently established which applies to the handling of "close-out" merchandise under such circumstances adequately governs this situation. Exceptional problems may arise and these will be disposed of on their individual merits.

c. The use of the Atlantic credit card under the Firestone arrangement was questioned. It was pointed out that competing oil companies operating under the Commission Plan permit the dealers to assign credit sales on tire, battery and accessory merchandise provided that it has been installed or applied on the motor vehicle. It has not been a competitive practice to permit the assignment of credit sales covering the extensive line of home supplies. This question has been referred to Mr. Stockton so that he can properly develop the matter and rule on it.

d. The next question concerned employees' discounts. Discussion revealed that under the present plan employees enjoy a 10% discount on the retail level,

whereas under the Firestone Commission Plan, Atlantic would only receive a maximum of 10% commission at the dealer level. It was believed that the present policy would also have to obtain in the test districts using the Commission Plan. It was believed that the volume secured in this fashion would not be considerable in either of the test districts. However, the problem has also been referred to Mr. Stockton for development and rule.

e. Another question for discussion concerned contracts presently in force with dealers on Lee and Exide batteries, and with additional contracts with distributors on Auto-Lite, AC, Anderson and Ever-ready products. The fact that the tire contracts printed early in 1949 provided for a full 12-months agreement without cancellation privilege was recognized. It was felt that the majority of these contracts were about to expire and that the only problem that may arise would be in regard to those that would continue in force for some time. It was not anticipated there would be any difficulty in securing cancellation of such contracts through mutual agreement. No difficulty was anticipated in the cancellation of the contracts with distributors on the other products because reasonable time periods of cancellation notice were provided in each of them. It was agreed that all these contracts would be reviewed immediately so that where necessary cancellation letters could be promptly issued. The T. B. A. Section will prepare, with Legal Department approval, the letters of cancellation that are to be signed and mailed by the District Manager. The T. B. A. Section also agreed to handle the review of contracts for the Wilmington District and to supply that District with information at the conclusion of that review.

f. The question about the time that the Commission Plan should be stated was next considered. It was generally agreed that the test should be gotten under way promptly in order to get the full benefits of the manufacturer's Spring and Summer promotional programs. It was tentatively advanced that the test should be started early in April and both plans of operation should be kept in force until complete dealer coverage had been secured by Firestone. Duel operation may extend for a period approximating 30 days. At the conclusion of such period, sales under the present program would be discontinued and only the Firestone program would be available to Atlantic dealers.

g. An important problem was raised concerning the use of Atlantic's monthly promotions, especially as they apply to the Acsellerator and the one-sheet poster. It was agreed that the development of T. B. A. required strong supports in the territories that were to continue under the present plan and that it was not desirable to simply discontinue present efforts. It was recommended for Sales Promotion Section's consideration that future T. B. A. treatment in the Acsellerator be handled on a flyer sheet which could simply be eliminated from dealers' mailings into either Erie or Wilmington Districts, and that it was also recommended that the use of the T. B. A. one sheets be continued at least on the present level, but that they be eliminated from the Erie and Wilmington mailing lists. It was also suggested that Firestone's current promotions be scanned for material that might be called to the attention of Atlantic dealers in the districts of Wilmington and Erie. The Sales Promotion Section will develop this problem.

h. The thought of overlapping territory coverage on Atlantic's radio and television advertising was advanced. It was decided that Mr. Borden should be notified of the territories on the Firestone plan as distinguished from those continuing under the present operation so that the use of any T. B. A. commercials could be carefully phrased as to avoid confusion where there is a possibility of overlapping coverage.

i. It was pointed out that we have sold Atlantic dealers Exide Battery Merchandisers and that unless they are converted to the Firestone product they are of little value. It was generally agreed that we did not want to accept the return of this equipment, and the Sales Promotion Section was asked to consider the possibility of supplying a Firestone backdrop that could be used to convert dealer's merchandisers to the use of the Firestone product.

Other matters were discussed but the conclusions reached were the same as developed later in the afternoon session, and so are not included here.

2339 The afternoon session was held in Rooms 209 and 210, and in addition to the Atlantic personnel who attended the morning session, the following Firestone personnel were present:

General Offices:

F. B. Hathaway, Sales Manager (for area served by Akron factory)

J. A. Addison, Sales Manager, Petroleum Company Sales

G. M. Elliott, Assistant to the Sales Manager, Petroleum Company Sales

Division Offices:

M. Engeman, Assistant to District Manager, Philadelphia, Pa.
Brooke Read, District Manager, Baltimore, Md.
P. B. Sewell, Central Division Manager
H. D. Weller, District Manager, Buffalo, N. Y.
R. D. Thomas, District Manager, Akron, Ohio.

Following general introductions, Mr. Addison, Manager of Petroleum Sales, Firestone Tire and Rubber Company, was asked to explain how Firestone works with an oil company on the Commission Plan of operation.

1. Mr. Addison first described that all of Firestone's business was done direct with dealers under two types of contracts, namely a Direct Dealer Franchise or an Associate Dealer Franchise. The principal difference is that the Associate Dealer secures his merchandise from a Direct Dealer rather than direct from the factory. He is usually a smaller type of dealer and for this reason doesn't qualify for as large volume discounts as the Direct Dealer. Another important point of consideration is that the Associate Dealer buying in smaller quantities could not avail himself of the prepaid transportation feature of direct factory shipments because the minimum quantity requirement would normally be beyond the Associate Dealer's reach.
2. Firestone usually assigns a special representative to each oil company district during the introductory or test period of the program. In addition to this, all other Firestone personnel operating in the territory also work on the oil company assignment, but this phase of the job is taken along in the stride with other responsibilities. The special representative has a direct contact with Akron administrative

offices and enables Firestone to keep the newly adopted program functioning smoothly and to the mutual satisfaction of Firestone and the oil company.

3. It was explained that an oil company usually sends an announcement letter to its trade in time to reach the dealer at the inception of the program.
4. The oil company submits to Firestone a list of dealers and petroleum distributors who are to be solicited for the Firestone plan.
   a. This list is thereafter revised monthly by the oil company. Firestone provides forms for this purpose.

2341 5. A district sales meeting is held for the indoctrination of all interested oil company personnel. At this time, oil company salesmen are equipped with the minimum quantity of catalog sales information deemed essential to the proper advancement of the program. The district sales meeting is usually of four or more hours duration and is therefore held during the day.

6. Immediately following the district sales meeting, dealer meetings are held. There are as many of these conducted as the territory size in area and in dealer density may require. This type of meeting is of 1½ or 2 hours duration and is therefore held in the evening.
7. Oil company dealers are assigned for service to the best distribution points. The selection is based either on the dealer's preference or on the basis of best service facilities.
8. Double-teaming activity with Firestone and oil company salesmen is then scheduled in order to sell the oil company's dealers on the Commission Plan.

9. Firestone reports sales made to each dealer or distributor account during a month. This report is available by the 9th of the following month. The report shows sales value split into two categories:
   a. Tires and Tubes
   b. Batteries and Accessories

   These are the only statistics that will be regularly supplied. Spot checks on unit sales are undertaken occasionally upon mutual agreement.
10. Summary sheet of the aforementioned report and check for commissions are sent to office designated by the oil company.

Mr. Addison also outlined Firestone's responsibilities under the Commission Plan. These are as follows:

1. Firestone must cooperate with the oil company in the selection of dealers to be solicited.
2. Firestone will strive to sell oil company's dealers on the Firestone program.
3. They will report sales and pay commissions to the oil company.
4. They will establish satisfactory supply points for dealers.
5. Oil company's dealers will be contacted regularly.
6. It will be their responsibility to organize all Firestone sales activity.
7. They will supply price schedules and make sales promotional material available.

2343 The oil company's responsibilities under the Commission Plan were also stated by Mr. Addison and are as follows:

1. Report to Firestone the names of dealers who are to be solicited.

2. Work closely with Firestone and cooperate with them fully in the solicitation and development of the Firestone program.
3. Supply monthly report of dealers' and distributors' names who are to be added or deleted from the reported list.
4. Supply sales effort. (Atlantic salesmen are to continue to solicit Atlantic dealers for T. B. A. business and to assist them in development of dealer's T. B. A. business).
5. Although not mandatory, it was expressed as highly desirable that quotas or sales objectives be established for salesmen.

During Mr. Addison's discussion, the following information was also covered in connection with the Firestone program:

a. Firestone has an all-purpose sales promotion package available to dealers. This package is prepared twice a year and is available to the dealers at $2.00 per package.
b. They also have a bi-monthly promotion package which is available to dealers at $1.00 per package.
c. Tire stands are for sale to dealers at 25¢ for the passenger type and 50¢ for the truck type.
d. Sales display and equipment service is available to dealers at no charge. The equipment, however, must be purchased although the prices are very reasonable.
e. An elaborate dealer training program was referred to and briefly described.
f. Cooperative advertising plan is available for dealer's use.
g. Station identification material is available to dealer at no cost.

During the question and answer period, the following information was either developed or questions placed in proper channels for development:

a. Firestone is to submit in letter form addressed to Mr. D. T. Colley an outline of the general and specific points that have been agreed upon. Special points involved are those that will provide for the discharge of Atlantic's and Atlantic dealers' responsibility for outstanding guaranties on Lee tires and Exide batteries.

b. The question of station identification was raised and it was agreed that Firestone should submit to Sales Promotion Section for examination and selection all available materials.

2345 c. Samples of all forms that are to be used by the Atlantic organization or by the Firestone Company in reporting to Atlantic are to be submitted and reviewed with all department concerned preliminary to the development and establishment of Atlantic procedures.

d. In connection with Direct Dealer Franchise and the Associate Dealer Franchise, it was agreed that copies of these contracts be submitted to our Legal Department for their general information.

e. Firestone representation stated that either three or four copies of reports would be available and that these would be distributed in accordance with our wishes. This matter will be explored with C. O. Domestic and after a decision is reached Firestone will be notified.

f. The same action was accorded to the question of the payment of commission checks.

g. The question of the announcement letter to dealers was again advanced, and it was agreed that this

be prepared by the T. B. A. Section, reviewed by the Legal Department, and forwarded to the District Manager who will send the letter out over his signature.

The following was accomplished with respect to the actual start of the program at District level:

a. Lists of dealers and distributors for each salesman's territory as well as District territorial maps were turned over to Firestone for both the Wilmington and Erie Districts. The information for the Wilmington District included the 1949 dealer T. B. A. volume, whereas the material from Erie did not include this information but it is to be provided promptly.

b. It was mutually agreed that indoctrination meetings for Atlantic personnel should be held at District level in accordance with the plan outlined by Firestone. A definite date was set for the Wilmington District, namely April 4th. The Erie date is to be decided and reported on next week.

c. It was also agreed that Firestone dealer meetings were to be held as soon after the District indoctrination meeting as possible. Three of these were definitely agreed upon for the Wilmington District; one to be conducted in Dover, Delaware; a second in Wilmington, Delaware; and another in Salisbury, Maryland. Definite dates were to be agreed upon next week. This plan was also agreed upon for the Erie District, but details were to be decided and reported on next week.

The meeting accomplished the purpose of bringing about a mutual acquaintance among Firestone and Atlantic personnel, and was concluded with the following general agreements:

1. Firestone will furnish us with necessary information or materials that have been requested some time during the week of March 20th.
2. Western Pennsylvania Region will supply us with the additional details necessary in order to get the Erie test program under way some time during the same week.

2347 3. The T. B. A. Section will coordinate all activities and maintain necessary contact with manufacturer, regions and other departments or sections that are involved.

S. J. Heideman

2349 COMMISSION EXHIBIT NO. 110.

March 21, 1950

TBA SJH
T. B. A. Firestone
Commission Plan

Mr. G. H. Milligan,
Room 1500.

Dear Sir:

We are planning to introduce the Firestone Commission Plan into the Wilmington District on April 4th. Before doing this, it is necessary that we review our contract position with dealers and distributors so that necessary measures of cancellation can be promptly taken. We have contracts on Lee tires with both dealers and distributors. We also may have contracts with distributors on Auto-Lite cables and wires, Anderson windshield wiper blades and arms, Eveready lamps and sealed beam units, and AC spark plugs.

Will you kindly arrange to have all contracts with deal-

ers or distributors on these several products that are presently in force in the Wilmington District removed from your files and turned over to me as soon as possible, so that I can develop with our Wilmington District the method of cancellation that is to be employed on each individual contract.

Very truly yours,

2351 COMMISSION EXHIBIT NO. 111.

April 11, 1950

TBA SJH

Mr. W. J. Griffiths,
Reading, Penna.

T. B. A. Firestone

Dear Sir:

Last evening I attended the Firestone sales meeting for Atlantic dealers of the Wilmington area. It was a very excellent and effective meeting. During the course of the evening, Mr. F. Campbell, Firestone's District Manager, mentioned the fact that the Firestone factory at Pottstown, Pennsylvania, was the largest tire manufacturing plant East of Akron and that a considerable amount of petroleum products were consumed in the course of manufacture. He referred definitely to such products as Bunker fuel oils and waxes. He also stated that this business was only available to oil companies with whom Firestone was enjoying some business. Atlantic is therefore eligible for some of this volume and Mr. Campbell has offered to meet with you and arrange for a personal visit through the plant and to establish a contact for you with the Purchasing Department. This, of course, can be arranged for at your convenience, and the invitation can be extended as you wish to include other members of your staff.

Very truly yours,

2353 COMMISSION EXHIBIT NO 112.

4/20/50

Plan for Handling Adjustments for Atlantic Dealers, on Lee Tires To Be Replaced With Firestone Tires.

1. All tires will be adjusted at retail list price on basis of Atlantic's guarantee on Lee tires.
2. There will be no reimbursement or handling commission allowed Dealer where replacement price to the customer is equal to or exceeds Dealer's buying price.
3. Atlantic Dealers may adjust a Lee tire by replacing with a comparable size, type and quality Firestone tire on basis of Atlantic's guarantee which is either 9, 12 or 15 months on passenger service and either 6 or 7 months on commercial service.
   Where replacement is made with a Firestone tire carrying a higher level price than the adjustable Lee tire the same pro-rata plan will apply. In other words if tire is replaced on a 50% basis then the higher level tire will be replaced on a 50% basis.
4. Firestone will replace Lee tire with a Firestone tire to dealer on same basis Dealer replaced to customer less 10% of the replacement price, as a handling commission.
5. On all such transactions customer's copy of guarantee certificate must be furnished Firestone District together with adjusted tire. All tire shipments to District Office for adjustment must be prepaid by Atlantic Dealer.
6. On all such transactions Firestone District will deduct adjustment sales or credits in computing sales (monthly reports) for sales commission to Atlantic.
7. Where any adjustment is made and the replacement including the 10% handling commission is below Dealer's

buying price on the Firestone tire, then Firestone district offices will furnish Akron monthly (together with their S468 reports) with a tabulation showing invoice or credit memo, size of tire involved, and the dealer's buying price.

2355 COMMISSION EXHIBIT NO. 113.

4/20/50

Plan for Handling Adjustments for Atlantic Dealers, on Exide Batteries To Be Replaced With Firestone Batteries.

1. All batteries will be adjusted at retail list price on basis of the Exide guarantee:
   The number of service guarantee units or months on Exide batteries is exactly the same as on similar types of Firestone batteries.
2. There will be no reimbursement or handling commission allowed Dealer where replacement price to the customer is equal to or exceeds Dealer's buying price, on a Firestone battery of the same service guarantee.
3. Atlantic Dealer may adjust an Exide battery on the basis of the Exide guarantee by replacing with a comparable Firestone battery having the same service guarantee and charging customer for pro-rata service received on the Exide battery.
4. Firestone will replace Exide battery with a Firestone battery to Dealer on same basis Dealer replaced to customer less 50 cents handling commission where replacement price is less than the Dealer's cost.
5. On all such transactions customer's copy of guarantee certificate must be furnished Firestone together with the adjusted battery. All battery shipments to District

Office for adjustment must be prepaid by Atlantic Dealer.

6. If the Exide battery becomes unservicable within the 90-day service guarantee period, Firestone will honor any replacement the Atlantic Dealer makes. (Dealer will pay transportation costs.)
7. On all such transactions Firestone will deduct adjustment sales or credits in computing sales commission to Atlantic.
8. Should there be any cases where a supply point replaces an Exide battery with a Firestone battery at a price below their buying cost, Firestone will reimburse supply point for the difference between replacement price less handling commission and the supply point's buying price. On all such transactions the supply point will be charged 1% to offset the adjustment allowance by Firestone (if supply point operating on allowance basis.)
   Supply points will adjust batteries by replacing with Firestone batteries as outlined above and may obtain credit from District by shipping battery together with customer's certificate to District. However, supply point should handle all possible adjustments of batteries where replacement and handling commission are above their buying price and retain scrap batteries.

   Where any adjustment is made and replacement including the 50 cent handling commission is below Dealer's buying price on the Firestone battery, then Firestone district offices will furnish Akron monthly (together with their S468 reports) with a tabulation showing invoice or credit memo, type of battery involved, and the dollar amount of difference between the replacement price to dealer and the dealer's buying price.

2357 **COMMISSION EXHIBIT 114A-D.**

Philadelphia, Penna.

May 11, 1950

SA:EES
TBA Firestone Commission Plan
District Office Accounting Procedure

Under the TBA Firestone Commission Plan, the Atlantic District Offices will follow a procedure that will enable them to maintain adequate records and reports to permit Firestone to establish the Commission due us and also to establish sales credit to the proper salesman for TBA sold in the salesman's respective sales territory.

There are two Firestone forms:

a. S-468—"Report of Oil Company Outlet Purchases"
b. S-757—"Changes in Oil Company Listings"

which the Atlantic District Offices will prepare in the following manner.

S-468—Report of Oil Company Outlet Purchases

1. This form is to originate in the District Office and is to be prepared in six (6) copies and mailed to the proper Firestone District Office by the 25th calendar day of each month, commencing with April—1950.
2. The various captions at the top of the form, e. g., "List Prepared By"—"Oil Company"—"Oil Company Office located at"—"Month ending", etc., are to be filled in by the Atlantic District Office.
3. The six (6) copies are to be sent to the proper Firestone District, depending upon the area in which Atlantic

Dealers are located. These areas will be established through consultation between Atlantic and Firestone's District Managers. Attached to this letter are the names and addresses of the Firestone District Managers and Firestone District Offices serving the Atlantic territories which are now on this plan. In order to get the plan started, from a list of dealers prepared by your office from B-503 Statistical Cards, each Atlantic dealer will be assigned to a Firestone District by a representative of the Firestone Tire and Rubber Co.

4. Firestone will retain three (3) copies and return completed:
   a. Original to Controller's Office, Domestic, in Philadelphia
   b. Duplicate to the Atlantic District Office
   c. Triplicate to the Atlantic Regional Manager's Office, attention: Manager of Sales Group
   d. The balance of forms will be retained by Firestone for distribution within their organization.
5. The accounts to be listed on form S-468 are limited to reseller accounts (Atlantic Dealers and Distributors). Do not list Commercial or Consuming Accounts on this form.

2359 TBA Firestone Commission Plan
District Office Accounting Procedure

6. The arrangements of the accounts on S-468 will be:
   A. Firestone District separated by
   B. Atlantic Salesman's territory further separated by
   C. Town or location of Dealer and within town, arranged
   D. Alphabetically by customer

E. Within each town a further separation should be made to identify

(1) Direct Dealer—A direct dealer is one who purchases Firestone products from a Firestone Warehouse or Firestone Store if the Firestone District Office designates it as a source of supply. His volume is usually large enough to permit dealer to order in minimum quantities for prepaid shipment.

(a) May be 100% retail outlet

(b) May be part retail and part wholesale outlet

(c) May be 100% wholesale outlet.

Note: Oil Company Petroleum Distributors and Commission Distributors would be classified as a Direct Dealer under (b) or (c) above.

(2) Associate Dealer—One who is wholly a retail outlet which purchases Firestone products from either an Atlantic Direct Dealer, a Firestone Dealer or a Firestone Store.

7. On each of the copies of form S-468, the Atlantic District Office is to show in the appropriate column, name of the proprietor, trade name, street address, city and state. In the column captioned "Acct. Type (Code)" show one of the following capital letters on line with each account: C, D, E, or B, identifying Class 2 Dealers with C, Class 3 Dealers—D, Distributors and Wholesale Dealers—E, and Commission Agents with a B.

8. The Firestone District Offices will insert in the two columns under "Amount of Purchases" on form S-468, the value of the purchases made by the various Atlantic

Direct Dealers from either the Firestone Warehouse or Firestone Store. For Associate Dealers, they will insert only the value of purchases made at a Firestone Store or a Direct Dealer that is not an Atlantic Account. The Firestone District Office will then distribute copies of form S-468 as indicated in paragraph 4. On receipt of the duplicate copy, the Atlantic District Office will enter the sales value on each dealer's B-503 statistical card under "TBA Value—Dollars" and under the special captions of either "Tires-Tubes" or "Auto Access." the nearest whole dollars, dropping the cents. Post the value shown on form S-468 in columns captioned "Tires, Tubes and Retreads" under "Tires and Tubes" and the value on S-468 in column captioned "Home & Auto Supplies and Repair Materials" under "Auto Access". The value entered under "Auto Access." will include batteries, auto accessories and home appliances or any other items. Firestone will not separate the sales value of batteries from auto accessories, home appliances and other items.

For sales made to Associate Dealers by a Firestone Direct Dealer that is an Atlantic Account, the Atlantic District Office will have to arrange with these direct dealers to supply the Atlantic District Office with a monthly report of the sales value covering such deliveries made to the Associate Dealers. Deduct the total value of sales made by these Direct Dealers to Associate Dealers from the amount shown on form S-468 before posting sales value to the Direct Dealer's B-503 card. Enter the value
2361 of sales to each Associate Dealer on the respective B-503 cards to nearest whole dollars.

Since Atlantic does not receive a commission on the sales of TBA material to commercial or consuming accounts, sales made to this type of account will not be recorded on

form S-468. This means that purchases from Firestone Tire & Rubber Co. by Commercial and Consumer Accounts can not be shown on the B-503 cards maintained for this type of customer.

The sales value on the B-503 cards should be used to accumulate sales value by salesman's territory in preparing form B-443—"Salesmen's Progress Report." In preparing the Salesmen's Progress Report, post the total tire and tube value both to Direct and Associate Dealers on line with caption "Tires and Tubes." All other items sold under the Firestone Plan should be posted on line with caption "Accessories."

Insofar as the B-443 is concerned, Miscellaneous Refinery Product sales are to be added to accessories value reported under the Firestone Plan. For Anti-Freeze, there will be no change; continue as heretofore.

In order to make the B-443 on a comparative basis, it will be necessary for the Atlantic District Office to go back to January 1949 and combine a monthly basis for the current sales territories, the value of batteries and accessories sales. After this adjustment is made, a memorandum outlining the details by salesmen's territory should be sent to the Regional Accounting Department in order that the salesman's activity statements will reflect the correct information.

The duplicate copy of the S-468 should be received from the Firestone District Office by the Atlantic District Office not later than the sixth calendar day of the following month. This should allow Atlantic District Office time to post the sales value to B-503's in order to prepare the B-443 on schedule. If the forms are not received on schedule, please advise the Regional Accounting Department. The duplicate copy of S-468 is to be retained in Atlantic District Office daily business file for two (2) years.

S-757—Changes in Oil Company Listings.

1. This form is to originate in the Atlantic District Office and is to be prepared in four (4) copies. The first three (3) copies are to be mailed to the Firestone District Office and the quadruplicate retained in accordance with instructions printed in the lower left corner of the form. These forms are to be prepared currently whenever a new dealer is secured or a change in proprietor of the present location. One copy will be returned to the Atlantic District Office by the Firestone District Office, with sufficient information to enable you to enter the account on the proper S-468 form. The copy returned by the Firestone District Office is to be retained for two (2) years, which is in accord with the retention of records period for the S-468. The quadruplicate copy can then be destroyed.

2. The various captions at the top of the S-757 form are to be filled in by the Atlantic District Office. These captions are self-explanatory and require no further details.

2363 3. The Atlantic District Office is to fill in the following spaces in the body of the form, leaving all others blank:

Firestone District	Name (Proprietor, Trade)
Oil Co.	Address (Street Town State)
Oil Co. Division	Dealer Replaced
Acct. Type (Code)	Date Effective.

4. It is important that S-757 form be issued, as mentioned before, on a current basis and would suggest that whenever you prepare a B-503 card for a new account or because of a change in proprietor, that an S-757 form be issued at the same time. In this way there will be a better control and it will be known exactly when these forms have been issued.

In a general way this is the procedure to account for purchases made by Atlantic Accounts on the Firestone Commission Plan. If, however, there is anything that is not quite clear, please do not hesitate to telephone or write the Regional Accounting Department, depending upon the urgency.

G. H. Milligan

cc: Mr. B. M. Boor
Mr. Leon Serven
Mr. S. J. Heideman
Mr. J. C. Rigby
Mr. J. M. MacAllister
Mr. J. P. Miller, Jr.
Mr. W. J. Griffiths
C. P. Mumma
G. A. Fearn
R. S. Zin

2365 COMMISSION EXHIBIT NO. 115.

July 3, 1950

TBA Firestone Commission Plan
District Office Accounting Procedure.

On page 2 of our letter of May 11, 1950, item #6, it was felt that arrangements for the monthly report S-468 are to list our accounts on separate sheets by Firestone District separated by Atlantic Salesmen's territories, further separated between direct and associate dealers.

I find that these forms should be prepared in the following manner: Our accounts should be listed by Firestone District or Store territory with separate sheets for "O" Type dealer supply points, which means that large ac-

counts must be listed on a separate S-468, depending upon their source of supply.

On each S-468 our accounts are to be broken down by Atlantic Salesmen's territories and listed alphabetically by town and customer under the Atlantic Salesmen.

While on this subject, I mentioned to Mr. Lower when we first adopted the Firestone Plan that whenever the S-468's seemed to be made up in its final form, that if he would send a set of them to Philadelphia, we would arrange to have ditto copies prepared for him in sufficient supply so that they could be used for possibly six months.

We have not as yet heard from him and assume that you are not yet satisfied with the arrangement of the accounts.

2367 COMMISSION EXHIBIT NO. 116A-B.

September 29, 1950

Mr. S. J. Heideman
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pennsylvania

Dear Mr. Heideman:

In accordance with your request of September 25, we attach summary showing the number of accounts signed on Firestone contracts and the amounts of the initial orders through September 22.

We have shown the number of accounts listed in the original lists and also the number in the August report lists after reflecting in the latter the deletions in process between your Erie District and our Akron and Buffalo Districts.

It would appear from the information that we have, that almost all of the accounts that represent TBA prospects for Atlantic and Firestone have now been signed on Firestone direct or associate dealer contracts.

Yours very truly,

G. M. Elliot,

GME: eo

Petroleum Sales.

2369 The Atlantic Refining Company
(Thru September 22, 1950)

Atlantic District	Firestone District	# Accounts Original Atlantic List	# Accounts Atlantic August Reports*	# Signed Firestone Contract	Amount Initial Order
Wilmington	Baltimore	102	97	96	18,861
	Philadelphia	92	99	90	8,556
	Total	194	196	186	27,417
Erie	Akron	102	67	67	12,854
	Buffalo	175	136	96	15,300
	Pittsburgh	6	6	3	3,362
	Total	283	209	166	31,516
Total both Atlantic Districts		477	405	352	58,933

(Illegible): HM September 29, 1950

* Number of accounts on August list in Erie District reflects deduction of accounts included in list Mr. Burkett supplied as representing accounts to be deleted as having little or no TBA potential. Expect September report list will reflect all these changes.

2371 COMMISSION EXHIBIT NO. 117.

Firestone Commission Plan Check List.

Outline of all Reasons for Selection of Test Districts

Test District	Wilmington	Newark	Erie	Company Average
Number of Outlets	261	206	273	
Number of Outlets	103	78	52	
% of 1-2 Outlets	40%	36% of 80%	20%	
$ T.B.A. Volume 1949 incl. antifreeze & misc. Ref. Prod.	$203,182	$212,293	$244,952	
$ T.B.A. per 1-2-3 1,000 gals. gas	$13.35	$15.39	$15.52	$12.46
% T.B.A. Cost to Gross Sales T.B.A.	41.5%	72.5%	27.3%	
% 1-2 Gallons	69.16%	71.61%	55.42%	54.38%
% of total 1-2 gallons.				

Additional Information

T.B.A. P & L Before Test and Total Cost of Cost Operation Showing Petroleum Share of Expenses.

T.B.A. P & L After Test and Total Cost of Cost Operation Showing Petroleum Share of Expenses.

Number of Active T.B.A. Accounts Before Test.

Number of Active T.B.A. Accounts After Test.

Interviews—Best 25 Before Test

Interviews—Best 25 After Test

Things To Do

Preliminary meeting between Regional management and T.B.A. Section

Meeting of management with Firestone

List of all Atlantic dealers and distributors to be solicited by Firestone
(By sales territory)

Agreement on how ARCo. dealers would best be served by Firestone distribution

Negotiation of any ARCo. accounts presently served by Firestone

Establishment of opening date

Cancellation of existing contracts or arrangements between ARCo. and dealers

Notification of present suppliers

Accounting Dept. notified regarding statistical reporting and payment of commission

Sales meetings—Sales work

Removal of inventories—stations and warehouses

Personnel transfer

Co-ordination with Sales Promotion Section.

2373 **COMMISSION EXHIBIT NO. 118A-B**

Messrs: D. T. Colley (2)
F. M. Neall
O. Long
W. d. Stotz
E. R. Cox

March 13, 1950

TBA SJH

T.B.A. Firestone
Commission Plan
for

Messrs: B. M. Boor — Erie, Pa. District
J. O. Estlow — Newark, N. J. District
W. J. Griffiths — Wilmington, Del. District

Dear Sir:

A meeting has been scheduled in Room 210, 260 South Broad Street, Friday, March 17th. The meeting will be divided into two sessions: the first will start at 10:30 A.M. and will be concluded about 12:00. This will consist of a confidential review for Atlantic personnel of the Firestone Commission Plan proposal. There will be a question and answer period in which the company's extent of participation under this plan of operation can be fully explored and wherein departures from current practice can be emphasized. The second part of the session will start at 2:00 P.M. and continue for two or three hours, and attendance will be augmented by four or five representatives of the Firestone Tire and Rubber Company. In this part of the session, there will be further explanations concerning the Firestone plan and our operation under it, and also the opportunity to complete arrangements for the start of the program in the test districts.

For the purposes of this meeting and discussion, it would be helpful to have a list of names and positions for all regional and district personnel who will be in any way involved in the Firestone relationship. Also a territorial map of the district selected for the test of this plan. The names of all dealer salesmen in the district and a list of all Atlantic dealers covered by each salesman would be desirable. On this list, dealers presently buying Atlantic T.B.A. or Firestone T.B.A. should be respectively identified. The same information should also be supplied by wholesale salesmen for jobbers or distributors who may be located within the district area.

For the purposes of this session, it would be desirable to have in attendance in addition to the Regional Manager, the Regional Sales Manager, the T.B.A. Coordinator and the District Manager or suitable alternates.

2375 Will you please advise by return mail or telephone the names of the people who will be present from your region? If there are any specific questions or problems on this matter, please state them in your communication.

Very truly yours,

h

2377 COMMISSION EXHIBIT NO. 119A-B.

March 17, 1950

TBA SJH
Firestone Program

Mr. D. T. Colley (2)
Room 1700.

Firestone Comm. Plan
(Procedures)

Dear Sir:

At 9:30 this morning, Mr. Addison of the Firestone Tire and Rubber Company visited me and informed me that his company would not undertake the test program in the Newark District. The explanation for this last minute action is that they have a very "touchy" situation with one of their larger distributors in that section, and it was their decision that the test program might cause them to lose the account. They made every effort to assure me that in the event Atlantic would take the Firestone program for all regions, the Newark District could then be included.

This situation occurs after Firestone's original assurance that they would be pleased to go along on a test plan in any area that we might select. Also, as recent as ten days ago, they were aware that Newark had been selected and at that time they had agreed to the test. As far as the selection of another district to replace Newark is concerned, they have made the blunt announcement that a district within the boundaries of the State of Pennsylvania must be selected. Districts in other areas will not be acceptable to them.

This leaves us in a very embarrassing situation. In addition, it may be an indication of the possible future relationship between the two companies. It certainly is not

reassuring when stipulations are delivered even before a program is undertaken. It appears to me that the following courses of action are possible:

Course of Action	Opinion
1. Start the test in Wilmington and Erie and select a Pennsylvania District to replace Newark as Firestone requests.	1. This places Atlantic in a very awkward situation and would not be conducive to maintain a strong bargaining position for future complications.
2. Confine the tests to Wilmington and Erie and base the final decision on the results secured by this smaller cross-section.	2. A small cross-section which may not necessarily provide sufficient information for your final decision.
3. Eliminate Firestone from consideration and make arrangements with either Goodyear or United States to conduct an experiment in the districts which we choose as those which will be most helpful in guiding a decision.	3. These are less aggressive companies than Firestone and would also delay the test by at least 30 days.

2379 Mr. D. T. Colley
Firestone Program

March 17, 1950

I will appreciate your consideration of these alternatives and your instructions as to the action you wish me to take.

natives and your instructions as to the action you wish me to take.

Very truly yours,

2381 COMMISSION EXHIBIT NO. 120.

July 26, 1950

TBA RMT
T.B. & A.
Equipment

Messrs: B. M. Boor, Pittsburgh
W. J. Griffiths, Reading

Firestone Comm. Plan
(Procedures)

Dear Sir:

The following policy should be adhered to in those districts operating under the Firestone Commission Plan.

Atlantic will recommend that dealers purchase all T.B.A., including T.B.A. tools and equipment, from the Firestone Tire & Rubber Company.

Very truly yours,

2383 COMMISSION EXHIBIT NO. 121A-D.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

July 10, 1950

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pa.

Gentlemen:

We now confirm our arrangement with you relative to services to be rendered by you in promoting the sale of certain Goodyear merchandise through such independent resale outlets as are otherwise engaged in or propose to engage in the sale of your products and as are agreed upon in writing with you from time to time on our form G-1209.

From the date hereof until cancelled by either party upon one hundred twenty (120) days' written notice to the other, these services shall continue with respect to Goodyear tires (casings and tubes, including Goodyear-produced recaps or retreads and repaired tires), batteries and certain car and home merchandise and related merchandise listed in Exhibit A attached to this letter and made a part hereof.

While this agreement remains in effect, it is understood that you will actively assist us in selling and promoting the sale of the above merchandise to your customers above referred to. You will see that your field offices work energetically with us with a view to assisting us to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements with all such customers.

We understand that in counseling with these customers with respect to the general management of their businesses, including accounting and operating practices, your

field representatives will give appropriate consideration to the maintenance of adequate stocks and to the distribution by such customers of merchandise purchased from us, and to the maintenance of proper identification and advertising with respect thereto.

You will instruct your field representatives that in their regular calls upon these accounts they shall encourage the accounts in undertaking and continuing vigorously their representation for us. To assist in the proper coordination of sales programs you will, from time to time
2385 at our mutual convenience, have your representatives call upon these customers in company with our salesmen. You will, throughout the term of our agreement, cooperate with and assist us in our efforts to promote and increase the sale of such merchandise by the customers to whom sales shall be made by us.

It is understood that you will maintain adequate dealer training programs in the sale of tires, batteries, and accessories, and qualified personnel to render the services called for hereunder regularly and efficiently. The right to accept or reject any order received from any customer shall at all times rest with us.

As soon as practicable after the end of each month, we will furnish you with a statement reflecting sales made by us through our retail stores, factory shipment, district warehouses or other owned outlets, and sales made by our dealer supply points and reported to us by our dealers, and in the case of car and home and related merchandise involving deliveries as shown on Exhibit A. While we cannot guarantee that all such sales by dealer supply points will be reported to us, or that in some instances cash or c.o.d. transactions may not be reported, we assure you that we will in good faith urge dealer supply points to keep us promptly advised of such sales and will endeavor to maintain a complete record of all such sales.

At the time each such statement is submitted, we will pay you a merchandise commission of ten per cent (10%) on all sales to your dealer outlets and seven and one-half per cent (7½%) on all sales to your franchise petroleum distributors as covered by such statement, computed on the net amount of invoices, excluding tax, after deducting all applicable discounts, allowances and bonuses, other than cash discount, whether shown on invoice or subsequently allowed, provided, however, that with respect to sales of Resolute batteries the commission shall be seven and one-half per cent (7½%) on all such sales whether to your dealer outlets or to your distributors.

We understand that you will retain for your own exclusive benefit all commission earnings received hereunder and that you will not directly or indirectly pay, credit, or in any other manner transfer any part of such commission to any customer of yours. Any violation of this understanding shall entitle us to terminate forthwith any further liability under this arrangement.

2387 . Our records pertaining to business under this arrangement will be made available in our districts for reasonable inspection by you during ordinary business hours.

If we have outlined correctly your understanding of this matter, will you please so indicate by signing and returning the enclosed copy of this letter.

Very truly yours,

The Goodyear Tire & Rubber Company, Inc.,

By .....

Vice President,

Attest: .....

Assistant Secretary.

Accepted:

The Atlantic Refining Company,

By .....

2389. Included items, subject to exceptions noted below:

1. Goodyear Battery Cables (when billed direct and delivered to the Atlantic dealer or distributor by the Goodyear District or from the manufacturer's factory or from the supply-point agreed upon on Form G-1209).

2. The following items (commonly called shelf items) of Goodyear Repair Material when delivered and billed either by the Goodyear District or factory or field warehouse:

Small & Bicycle Tube Repair Kits
Steptread Cement—Qts
Small Containers Cold Patch Cement
Emergency Self-Sealing Patches
Gasket Compound
Bicycle Rim Cement
Shaler M-50 Repair Kits
Motorist Vulc-Patch Kit.

3. The following items (designated in accordance with Goodyear's regular classification of such merchandise) of Goodyear Car and Home Merchandise when delivered from the manufacturer's factory or from the Goodyear field warehouse:

All radios, radio aerials, and radio accessories, except such items manufactured by General Electric, Motorola, and Admiral Corporation
Automotive Supplies
Hardware and Tools
Wheel Goods
Sporting Goods
Small Electrical Appliances
Housewares
Toys and Games.

4. Goodyear Brake Lining, Goodyear Wheel Weights, and Goodyear Brake Lining Rivets when delivered from the manufacturer's factory or from the Goodyear field warehouse.

5. All Dill and Schrader Merchandise when delivered from the manufacturer's factory or from the Goodyear District.

Exceptions—Items not subject to commission:

1. General Electric, Hot Point, and Major Appliances which are obtained by the dealers from the manufacturer's distributors.
2. Motorola Car Heaters
3. Battery Charging Equipment.
4. Brake Lining Equipment.
5. Camelback and recapping material.

Exhibit A, attached to and made a part of letter from The Goodyear Tire & Rubber Company, Inc. to The Atlantic Refining Company dated July 10, 1950

The Atlantic Refining Company
By_____

The Goodyear Tire & Rubber Company
By _____
Vice President

CX-122 same as CX-14.

2393 COMMISSION EXHIBIT NO. 123.

November 8, 1950

TBA SJH

T.B.A. Goodyear Commission Plan

Mr. S. A. Gaylord, Manager,
Petroleum Sales,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Sam:

I just had an opportunity to review with Mr. Stotz of our Legal Department the agreement which you submitted for the consideration of The Atlantic Refining Company.

In substance, this proposal describes our understanding of the responsibilities that we each have to discharge under the commission plan of operation. However, there are several places where a change or the elimination of a word would further clarify the subject matter.

I am returning herewith both the original and duplicate copy of the agreement and have indicated on the original the changes that we are recommending. Since these changes are very minor, I do not anticipate any objection to them on the part of your Legal Department, and hope that you will be able to send us a revised agreement, in duplicate, promptly.

Cordially yours,

S. J. Heideman

h
Enc.

2395 COMMISSION EXHIBIT NO. 124.

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

November 29, 1950

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Dear Syd:

As per your letter of the 8th I am pleased to send you, herewith, a revision of the agreement incorporating all of the changes suggested by you, which are entirely agreeable to us.

If you find it to be in order will thank you to have it signed, retaining the original and returning to us the duplicate signed copy. Am also attaching an extra unsigned copy which you may wish to retain for your files.

Looking forward to seeing you in Chicago, with kind regards.

Sincerely,
S. A. Gaylord
Manager--Petroleum Sales Dept

S A Gaylord
lfm

2397 COMMISSION EXHIBIT NO. 125.

CC: Mr. Stotz
Room 1313

Note: Mr. Stotz also received third copy of agreement

December 14, 1950

TBA SJH
T.B.A. Goodyear
Commission Plan

Mr. S. A. Gaylord, Manager,
Petroleum Sales,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio

Dear Sam:

In reply to your letter of November 29th, I am happy to inform you that the agreement which you submitted has now been accepted and signed by Mr. Colley, and I am now returning the duplicate copy as you have requested.

Cordially yours,

S. J. Heideman

h

CX-126A-B same as CX-16A-B.

2403 COMMISSION EXHIBIT 126C.

The Atlantic Refining Company
Incorporated—1870

Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

July 7, 1954

Mr. Victor Holt, Jr., Vice-President
The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

Dear Mr. Holt:

The contract between our respective companies, evidenced by letter agreements dated June 1, 1950 and April 3, 1951, relating to the promotion and sale of TBA, is hereby amended in one single particular, as follows:

Goodyear will not exercise its cancellation right in a manner that would cause the termination of the above referred to contract prior to December 31, 1954.

As evidence of your understanding and agreement to the above, please indicate your approval of the duplicate copy of this letter in the space provided for signature and return the same to this office.

Yours very truly,
The Atlantic Refining Company
By (Illegible)

Accepted and agreed to:
The Goodyear Tire and Rubber Company, Inc.
By: (Illegible)
Vice President
Attest: (Illegible)
Assistant Secretary

DTC/h

2404 COMMISSION EXHIBIT NO. 126D.

The Atlantic Refining Company

Incorporated 1870

Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

September 15, 1954

Mr. Victor Holt, Jr., Vice-President
The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

Dear Mr. Holt:

The Contract between our respective companies evidenced by letter agreements dated June 1, 1950, April 3, 1951, and July 7, 1954, relating to the promotion and sale of TBA is hereby amended in one and only one particular, namely, from the date hereof until cancelled by either of our respective companies upon 365 days written notice to the other, such contract shall continue in full force and effect.

As evidence of your understanding and agreement to the above, please execute the attached duplicate copy of this letter in the space provided for signature and return the same to this office.

Yours very truly,
The Atlantic Refining Company
By (Illegible)

Accepted and Agreed to
The Goodyear Tire & Rubber Company, Inc.
By R. S. Wilson, *Vice President*
Attest: W. M. Menter, *Assistant Secretary*

2405 COMMISSION EXHIBIT NO. 127A-H.

May 31, 1950

Atlantic Refining Company—Sales Commission

Sales Commission Plan

The Atlantic Refining Co will be paid a sales commission on net sales by authorized supply points of certain Goodyear products to Atlantic Refining Co Independent Dealers, (hereinafter referred to as Atlantic Accounts) as recommended by Atlantic and approved by Goodyear District Manager.

All sales under this plan are sales by an authorized supply point to the Independent Atlantic Account. Billing issued to Atlantic Refining Co covering purchases for "Own Consumption" purposes are not subject to sales commission.

Payment of commission will be made to Atlantic by Akron and will be based on sales reported to Akron by Districts on monthly G-1204 reports.

Establishment of Authorized Supply Points

District Manager will determine supply point for each Atlantic account approved.

Goodyear Districts, Field and Factory Warehouses, Goodyear Service Stores and Goodyear Independent Dealers may serve as authorized supply points for these accounts. See Page 1-A for products each class of supply point may deliver.

The supply point will make delivery of the merchandise, issue billing and carry the Accounts of the Atlantic Accounts they serve.

Master Record G-1209

Atlantic Refining Co will prepare G-1209 on each Atlantic account which is to participate under the plan.

All copies of the form should be approved and forwarded by Atlantic to the Goodyear District Manager for approval and completion.

The G-1209 must be filled in completely as provided on the form.

After G-1209 is completed and approved by both Atlantic and Goodyear District Manager Goodyear District Office will distribute copies as follows—

Original (white)—District Office File
Duplicate (canary)—Atlantic Refining Company District Office
Triplicate (pink)—Goodyear Field Representative
Quadruplicate (blue)—Supply Point where a Goodyear Store (other supply points handled by list—see below)

G-1209 provided to Stores which are not supply points for merchandise other than Car and Home Merchandise must be clearly marked "applies only to Car and Home Merchandise."

No more than one Store will act as a supply point, the additional Store (stores other than the regular supply point) should be notified of the approved Atlantic account by letter.

Independent dealer supply points should be furnished a list of the Atlantic accounts who will buy from them and on whom we ask them to report.

2407 Credit Policy

All Atlantic Accounts participating under this plan will establish credit with the Goodyear District, Store or Independent Dealer, which has been designated to serve them. Purchases may, of course be made on a cash or COD basis also. Districts must maintain separate B-80 on each COD or cash account.

Price Policy

Approved Atlantic Accounts under this plan will purchase their requirements on the same basis as any independent dealer at the prices and discounts for which they can qualify in accordance with our regular sales program for tires, tubes, batteries, C&H Mdse, etc.

Products Eligible Under Sales Commission Plan

Sales of the following listed products to approved Atlantic accounts are to be reported on the G-1204 reports when delivery is taken from authorized supply point as indicated below:

(A) When delivery is taken from and/or billing issued by District

All Goodyear Tire and Tubes (Except Airplane) including seconds.
Goodyear Automotive and Farlight Batteries and Battery Cables.
Resolute Batteries.
Goodyear produced Recaps & Repairs.
All Dill and Schrader Valve Merchandise.
Sea-Bee Outboard Motors.
Goodyear Repair Materials as follows—Small and Bicycle Tube Repair Kits, Quart size Steptread Cement, Emergency Self-Sealing Patches, Small Containers Cold Patch Cement, Gasket Compound, Bicycle Rim Cement, Shaler M-50 Repair Kits and Motorists Vulc-Patch Kits.

(B) When delivery is taken from and billing issued by Goodyear Stores

All Goodyear Tires and Tubes (Except Airplane) including Seconds.
Goodyear Automotive and Farlight Batteries and Battery Cables.
Resolute Batteries.
Goodyear Produced Recaps & Repairs.
All Dill and Schrader Valve Merchandise.

Sea-Bee Outboard Motors.
Goodyear Car & Home Mdse stocked at Goodyear Field Warehouse.

(C) When delivery is taken from a Field or Factory Warehouse.

Goodyear Car & Home Merchandise.
Goodyear Brake Lining, Rivets and Wheel Weights.
Goodyear Repair Materials—The same and only those items listed above under (A).
Includes merchandise shipped direct to dealer by manufacturer.

(D) When delivery is taken from and billing issued by an Independent Dealer

All Goodyear Tire and Tubes (Except Airplane) including seconds.
Goodyear Automotive and Farmlight Batteries and Cables.
Resolute Batteries.
Sea-Bee Outboard Motors.
Goodyear Car & Home Mdse stocked at Goodyear Field Warehouse.

2409 Products Not Eligible Under Sales Commission Plan

Billing covering products listed hereunder, regardless of delivery point is not subject to commission and is not to be recorded by Stores nor included in G-1204 volume on which commission is to be paid.

Adjustment billing of any of the eligible products listed above.

All products not listed above as eligible products including but not limited to

General Electric and Hotpoint Major Appliances
General Electric Radios
Motorola Radios, Aerials and Accessories
Motorola Car Heaters

Anti Freeze
Tire Chains unless delivered by Field Warehouse
All types of Equipment—Battery Chargers, Display Service Station, etc.
Advertising and Sales Promotion items.

Sales Commission Plan

General

All Goodyear shipments will be to the supplying dealer—we will not drop ship to the Atlantic dealer for account of the supplying dealer.

Important—Careful attention under the Independent Dealer Supply Point handling is required to avoid payment to Atlantic of duplicated commissions under the following circumstances.

When an Atlantic account is authorized under this plan, commissions are to be paid only on this Atlantic account's purchases from his supply point. If this authorized account is the supply point for other Atlantic accounts, then sales to such other accounts are not eligible for commission as such would result in our paying commission to Atlantic on the original sale and then paying a second commission on the same merchandise when it was resold to the other Atlantic account.

The instructions outlined above under "Independent Dealer Supply Point", therefore, are applicable only if the dealer supply point is not an oil company approved commission account.

Goodyear Store Supply Points

District Manager will provide stores that are to function as supply point with G-1209 of specified Atlantic Accounts for whom the store is the designated supply point. As any changes occur in the G-1209, District Manager will notify

store of change by copy of G-1209. Upon receipt, stores must immediately revise their records.

It is suggested that stores file the visible G-1209 form in their stock ledger binder for ready reference. Stores receiving lists of accounts from their District Manager should order supplies of blank G-1209 forms with which to establish their visible system.

Special Instructions Covering Store Car & Home Supply Points

Only those stores specifically approved by District Manager, (after approval by Akron) may operate as Car & Home Supply Points.

2411 When so approved supply point stores may sell and bill to specified Atlantic accounts any Goodyear Car and Home merchandise stocked at our Field Warehouse and Sea-Bee outboard motors. Brake lining and related merchandise, General Electric and Hotpoint Major appliances, GE Radios and Motorola Radios and Heaters are not involved under this arrangement.

The Atlantic Accounts' buying prices should be either dealer or distributor price net except for cash discount. Quantity shipping allowance will not apply. Annual Bonus will be paid if earned.

Payment of Commission

Akron will pay all commission to Atlantic in connection with this plan. Rates of commission varies by types of Atlantic account, and type of product, therefore it is of the utmost importance that all Atlantic accounts be correctly classified on G-1209 records and also when reported on G-1204 so that the correct amount of commission will be computed by Akron.

Rates of Commission Follow—

(A) Approved Petroleum Jobber or Petroleum Distributor

All Merchandise 7½%

(B) Approved Oil Company Dealer (not Jobber or Distributor)

All Merchandise (except Resolute Battery Volume) 10%

Resolute Battery Volume 7½%

Identified on G-1204 and G-1209 as Oil Company Dealer

Car and Home Merchandise—If account is approved

Car & Home Merchandise Wholesaler 7½%

G-1204—Reports

Volume subject to sales commission must be segregated under the following classifications:

(A) All new tires and tubes including seconds, recaps and repairs, special priced stock, motorcycle, bicycle, truck farm, industrial and wheelbarrow tires and tubes but excluding airplane tires and tubes.

(B) Goodyear batteries including farmlight, battery cables.

(C) Resolute batteries.

(D) Car & Home and other products subject to commission not detailed above.

Commission is payable on the above merchandise only if delivery is made in accordance with schedule in Special Account instructions. Credit memos should be deducted from respective commission volume accumulations.

Recording of Volume for Accounts on District Ledgers

Tire and Tube Volume

Post bonusable items including credits for experimental Truck Bonus to the B-80D statistical sheet as usual.

Non Bonusable Tire and Tube items such as Motorcycle, Bicycle Tires and Tubes, etc., which are eligible under the sales commission plan are to be posted in miscellaneous column of the B-80D at the time postings are made to the B-80. Post at merchandise net invoice level.

2413 Goodyear Automotive Batteries Including Farmlight

Post Bonusable items to B-80D statistical section in usual manner. On guaranteed accounts postings should be made to the B-80D at the level prior to deduction of guaranteed annual bonus. Show annual bonus allowed as a separate item in a miscellaneous column at top of B-80D. Enter net battery volume on G1204 (Battery Bonus Volume less Annual Bonus).

Resolute Batteries

Resolute volume should be entered on B-80D in appropriate column. This volume must be kept entirely separate from Goodyear Battery volume accumulations.

Car & Home Merchandise & Miscellaneous

Post to B-80D such volume which is subject to sales commission. Enter on B-80D at net invoice price after deduction of all allowances. Include only items specifically designated as applicable for sales commission.

Recording of Volume for Accounts Sold by Stores and Supplying Dealers

Sales of merchandise subject to commission by dealer and store supply points to approved G-1209 accounts is to be entered to B-80D statistical ledger sheet as outlined in Wholesale Field Operating Manual page C-308.

Distribution of G-1204

Copy #1 and #2—Oil Company District Office
#3—Statistical Division Sales—Accounting Dept Akron
#4—District Manager
#5—District File
#6—Petroleum Representative

2415 G-1204 Report of Sales—General Instructions

Districts will prepare G-1204 reports monthly covering sales to all accounts under the Oil Company Commission Plan for each Oil Company buying under this plan. Reports are to be mailed no later than 5th of month. Distribution of copies is outlined under Special Account Instructions Pertaining to each Oil Company.

All Oil Companies operating under the commission plan will prepare and submit to Districts G-1204 reports listing thereon accounts within the respective Goodyear District which have been approved to participate under the commission plan.

Where the Oil Company fails to list approved accounts on the G-1204, Districts should list such accounts thereon. Before transferring totals from B-80D to G-1204 verify account class indicated on G-1204 to classification shown on B-80D.

Once a sale has been made to any account include the accounts sales on each month's G-1204 (even though no sales are made in the current month—in this instance transfer to the G-1204 only year to date totals) until the close of the calendar year provided the account is not deleted by a G-1209 or a change in account classification in the meanwhile.

Delete from detailed G-1204's the account cancelled by

G-1209 removal notices in the month following the month in which cancellation occurs. (This means that the year to date total on the G-1204 for the month following date of deletion of any accounts will exclude all volume for such deleted accounts.)

When a change in account classification occurs indicate on the G-1204 the date of change immediately after the account class in the period the change takes place and show account on another line on G-1204 under new account classification with purchases on the new basis being reported on the new listing. On the following periods G-1204 delete from year to date totals volume reported under the former classification.

After posting B-80D totals to the G-1204, total the latter report according to classification of accounts and enter current and year to date on the respective lines at the bottom of each page of the G-1204.

After all G-1204's have been totaled make up a separate summary G-1204 for each Oil Company Division or District. Identify each as a summary report.

Prepare the summary reports by sorting G-1204's by Oil Company Division or District Office and run totals thereon of each total block (current and year to date) appearing at the bottom of the G-1204. Transfer respective totals to the body of the summary G-1204. Use separate line for each account classification and identify in account class column as "CHJ", "J" or "D". Show current month or year to date totals.

The summary G-1204 prepared at the end of each current period must include not only active account's volume but also the volume which has been dropped in the current year due to removal of accounts from participation in the Sales Commission Plan or due to change in account classification.

After determining and entering the current periods to-

tals shown on the summary G-1204 a separate listing in the year to date column only the individual accounts
2417 removed that month. Enter removed accounts accumulated volume in the proper product column. Enter on separate lines volume by each account classification and identify in account class column as "CHJ", "J", or "D". On the following month's summary G-1204 shows as a separate listing by proper product and account classification the grand totals of removed accounts per previous month's summary G-1204 and then list thereunder by name and volume the individual accounts removed during the current month. Total summary sheets and carry totals to respective blocks at the bottom of the sheets.

The total of the current months year to date figures and the "Removed Accounts" figures should reflect a grand total of all volume reported year to date for payment of sales commission.

Check all G-1204 figures by adding the summary G-1204 current month's totals to the previous month's summary G-1204 year to date totals.

District Operating Managers will sign summary sheets only. Many instances occur where figures on copies are illegible due to poor figures, worn out carbon paper and off register of forms. The District Operating Manager's signature on summary sheets will be construed to mean that he has inspected each copy of all G-1204 forms for imperfections.

General

(1) Oil Companies finding it necessary to question the accuracy of G-1204 reports contact the District.

All complaints should be checked out at once and reported back to Oil Company.

If errors are revealed on our part, show the correction on the B-80D and include with volume on the next month's G-1204 in the current month's column ever

though the corrections may involve a period of several months. This treatment applies to any year to date adjustment regardless of the source of correction.

Complaints registered by the Oil Company where store is the supply point should be forwarded to the store for check of store reports. If check by store does not reveal any errors, District should advise Oil Company by store invoice number and amount the volume included on G-1204 and request that they advise the invoice numbers covering any volume not included. Upon receipt of this information from the Oil Company, request the store to verify the claim, advising the District whether or not the additional volume is to be included in the next G-1204 report. District should advise the Oil Company definitely regarding the disposition of all claims.

(2) Where commission accounts are approved for retroactive handling, a report of sales from the effective date forward should be secured from the approved supply point and all volume so reported is to be shown under current month on B-80D and G-1204.

(3) It is preferred that G-1204 be typed, however, this is not a hard and fast rule—in the event the report is handwritten be sure all copies of the report are legible and in neat readable handwriting or hand printing.

G-1209 General Instructions.

G-1209 must be prepared on each independent Petroleum Reseller Account participating under an Oil Company Sales Commission Plan.

2419 Instructions peculiar to each Oil Company with respect to the G-1209 and its preparation, distribution and approvals required and other details will be found in Special Account Folder Instructions for the respective Oil Companies.

The G-1209 must be filled in completely as provided on the form. Under "Supply Points" list the supply point or points from which the account will secure its requirements. In spaces opposite caption "Type of Oil Company Ac-

count'' check appropriate block. In space opposite caption ''Is this Account an Approved Goodyear Car and Home Wholesaler'', check ''Yes'' or ''No'' whichever is appropriate.

Effective Date for Additions of New Accounts

The Goodyear District Manager will be entirely responsible for the effective date of any new accounts which are to participate in the Commission Plan.

In certain cases retroactive effective dates of the G-1209 may be approved by The Goodyear District Manager. Retroactive approval will become effective the first day of the month designated in such approval.

The number of retroactive approvals should be very limited because there is no reason why a Petroleum Company Account who is eligible to participate in the Commission Plan cannot be signed up by the Petroleum Company Representative at the time and date the account is eligible for participation in the Commission Plan.

Cancellation of or Changes in Approved Accounts

When the change or cancellation is to be made in status of an established account G-1209 will be prepared either by Goodyear or the Oil Company in the same manner as for a new account. Proper spaces on the form should be checked and the effective date shown.

District Manager should approve and submit all copies to Oil Company Office, requesting Oil Company to retain their copy for file and returning remaining approved copies to the District. Where Oil Company institutes changes Oil Company will forward all copies to Goodyear District Manager for completion and approval. Goodyear will distribute in usual manner.

Changes or cancellations must show proper reasons in ''Remarks'' space.

2421 COMMISSION EXHIBIT NO. 128A-B.

May 10, 1950

TBA SJH

T.B.A. Commission Plan

Mr. F. M. Neall,
Room 1706.

Dear Sir:

With further reference to my letters of April 12th and May 2nd, I have to report that the question of brand selection between Goodyear and U. S. has been discussed with both Mr. Estlow and Mr. Sanborn. Both of these gentlemen welcome the opportunity to test the commission plan in the Newark, New Jersey District, and they have expressed an overwhelming preference for the Goodyear brand. This preference is based on acceptance of Goodyear brand in the Newark District. They even prefer Goodyear over Firestone.

Last week I had an opportunity to discuss Goodyear and Firestone with George Switzer of Shell, and he expressed himself as being definitely in favor of relationship with Goodyear for best results over the long pull.

In considering the relative advantages of Goodyear versus U. S., it is recognized that U. S. has no company stores. However, this apparent advantage is more than offset by their extensive use of distributors inasmuch as their distributors have just as much latitude in the use of price in securing business as is enjoyed by company stores. U. S. favors nationally branded accessories and so does Goodyear. U. S. is following a policy of selective appointment of oil company representation. This is the type of policy that might be expected from those who do not have the business. Nevertheless, U. S. has aggressively solicited oil jobber business and with some reasonable degree of success.

Therefore, whether or not there is any immediate neighborhood competition with our stations in the selling of the same brand of T.B.A. depends on their past, present and future successes in establishing jobber distribution. U. S. is reputed to be the largest tire manufacturer in the world, but a considerable portion of their production is private brand. They are the largest manufacturer of private brand tires. While there is a definite advantage in size, from the standpoint of flexibility there is also the 2423 disadvantage of the larger, and perhaps more important, obligations that this manufacturer will have with private brand contractors. In times of emergency, these may very likely take precedence over the requirements of smaller marketers. This did happen during the recent war and the post war period. U. S. does not have as extensive an accessory line as Goodyear or Firestone. This does not appear to have any important advantage as in reality only those of our dealers who are able, and these will be relatively few, will attempt to merchandise other than automotive items. U. S. is making a considerable effort to sell premium quality merchandise. Goodyear and Firestone have premium lines for sale also. In my opinion, the latter are being a little more realistic about service station merchandising possibilities. It takes the exceptional type of merchant to handle a volume of business on high priced merchandise, and in the service station business we are essentially limited to the everyday-garden-variety type of service station operator.

The information that I have listed in this letter, and also my letters of April 12th and May 2nd, prompts me to recommend that Newark be selected for the third test district of the commission plan and that the Goodyear program be used for this purpose.

Very truly yours,

h

2425 COMMISSION EXHIBIT NO. 129.

May 17, 1950

T.B.A. Commission Plan

Mr. D. T. Colley
17 Floor

Mr. Heideman and I again sat down with the Goodyear and U. S. Tire people on the above subject.

After weighing and measuring the offers made by these people and discussing the matter with Messrs. Estlow and Sanborn, we have arrived at the conclusion that Newark would be an excellent place to try out the commission plan with a supplier other than Firestone, and because of the high acceptance of Goodyear in that area, they appear to give us more opportunity to get a better evaluation of the Commission Plan than U. S. All figures we have definitely give Goodyear the advantage over U. S. throughout our entire sales territory.

It is, therefore, our recommendation that we promptly make arrangements with Goodyear to take over the Newark area on a commission basis.

F. M. Neall.

m

cc: Mr. S. J. Heideman

2427 COMMISSION EXHIBIT NO. 130A-G.

June 16, 1950

Goodyear T.B.A. Bulletin #G-1

Accounting

Mr. G. H. Milligan's Letter dated June 6, 1950 subject: "Accounting Procedure in Connection with Goodyear Plan For Sale of T.B.A. Products in the Newark, N. J. District" has been mailed to the personnel concerned.

S. J. Heideman

w

2429 Philadelphia, Pa.

June 6, 1950

SA:FOW

Accounting Procedure in Connection With Goodyear Plan for Sale of TBA Products in the Newark, N. J. District

With the adoption of the Goodyear Plan in Newark which has to do with the Company's receiving a commission for sales made by Goodyear to Atlantic Dealers and Distributors, following is the accounting procedure:

A list of all Dealer and Distributor accounts in the Newark territory, including the New York Harbor accounts, has been prepared and it is planned that each of these accounts will be solicited in an effort to have them participate in this plan. As the accounts' acceptance are obtained, the Sales Statistical Section in Philadelphia will be informed by the Newark Office. This information should be communicated by letter or memorandum, stating the following:

1. Name of Proprietor

2. Trade Name
3. Address
4. Type of account—by type of account, we mean either a regular Dealer who purchases for resale on a retail basis or a Distributor who purchases for resale on a wholesale and/or retail basis.
5. Effective Date—this should be the date that the account agrees to participate in the plan.

Goodyear Form G-1204, Report of Purchases from Goodyear by Oil Company Accounts

The Sales Statistical Section in Philadelphia will prepare the above report monthly. This report consists of a listing of the accounts who are to participate in the plan. This form acts as a claim against Goodyear for the purpose of payments of commissions to The Atlantic Refining Company on sales made to Atlantic Account. Detailed procedure covering the use of this form is attached.

Goodyear Form G-1209

After the initial drive has been made, there will be instances where additional Accounts are to be established, removed or changed. When these changes occur, Form G-1209 is to be issued by the Newark District Office. For details pertaining to the use of this form, see attached procedure.

2431 **Philadelphia, Pa.**

June 6, 1950

Goodyear Form G-1204

Report Of Purchases From Goodyear By Oil Company Accounts

SA:FOW

Effective

Immediately.

Purpose

To report to the Goodyear Tire and Rubber Company, a list of Dealer and Distributor Accounts who purchase T.B.A. under the Goodyear Plan and for Goodyear to report to Atlantic the sales value of these purchases for statistical purposes and computing amount of commission.

Description

8½" x 13", white, 100 to pad.

Issued By

Philadelphia Region Office, Statistical Section.

Issued When

So that it will be in the Goodyear District Office not later than the 20th of the calendar month.

Number Of Copies

Seven (7).

Distribution Of Copies

First six (6) to Goodyear District Office.

Seventh retained by the Region Office, Statistical Section.

The Goodyear District Office, after the close of the month's business, will complete purchase information on the form and return the original and duplicate copies to Controller's Office Domestic, in Philadelphia, by the fifth

working day of the following month. The duplicate copy will be relayed from Controller's Office Domestic, to the Region Office, Statistical Section.

Retention Period

Two (2) years.

Procedure

A separate set of forms is to be prepared according to each Goodyear District Office.

Name of Oil Company—Show "The Atlantic Refining Company"

2433 Oil Company Division or District Office—Show "Newark"

All other spaces on the upper portion of the form leave blank.

#—Leave blank

Name of Proprietors—Show the proprietor's name

Trade Name—If the Account has a trade name, show it.

Address—Show the billing address of the Account.

Accounts are to be segregated according to classification; that is, all Dealers who resell at retail are to be placed in one group and all of those who are classified as Distributors in a separate group.

Balance of the form is to be left blank at the time it is issued.

Goodyear will report purchases as follows:

1. Goodyear District Warehouses—20th of the month to the 19th of the following month.
2. Goodyear Service Stores—25th of the month to the 24th of the following month.
3. Purchases from Goodyear Dealers—calendar month basis.

The forms, when returned by Goodyear, will indicate in the appropriate columns purchases made by each account. This information will be separated as follows:

a. New Tires and Tubes
b. Goodyear Batteries and Cables
c. Resolute Batteries
d. C & H Accessories and other Merchandise

This information will be shown for the current and/or fiscal month and cumulative for the year to date.

Upon receipt of the completed report, the G-1204 is to be used for posting to the B-503 statistical card. For this purpose, items b and c may be combined into one total.

After the posting is completed and the G-1204 has served its purpose, it should be sent to the District Manager in the Newark Office.

2435

Philadelphia, Pa.
June 6, 1950
SA:FOW
Goodyear Form G-1209

Effective

Immediately.

Purpose

To report to the Goodyear Tire and Rubber Company, Dealers and Distributors who have agreed to participate in the plan; also, to report Accounts to be removed from the plan and changes in proprietors.

Description

3¾" x 7", 4 copies to set—original, white; duplicate, yellow; triplicate, pink; quadruplicate, blue.

Issued By

Atlantic's Newark District Office or Goodyear's District Office.

Issued When

As new Accounts agree to participate or when changes in proprietors occur and when Accounts are to be removed.

Number Of Copies

Four (4).

Distribution Of Copies

When issued by Atlantic District Office, all 4 copies to be forwarded to the Goodyear District Office having jurisdiction over the Account. The yellow copy will be returned to the Atlantic Newark District Office by Goodyear as an indication that they have accepted the Account or have acknowledged the change in proprietors.

When issued by Goodyear, all 4 copies will be forwarded to Atlantic Newark District Office. After approval by Atlantic District Manager, retain the yellow copy and return the other three copies to the Goodyear District Office from which received.

Retention Period

Two (2) years.

Procedure

Goodyear District—Show name of the Goodyear District to which the form is to be sent.

Date Issued—Indicate the date on which the form was issued.

2437 Date Effective—Indicate the effective date of the Account's participation in the plan if a new Account or if the report is one covering change or removal of proprietors, indicate effective date.

Check One

New Acct. Remove Change—Three blocks are provided for the purpose of indicating whether the form covers:

1. New Account

2. An account to be removed from the plan.
3. A change in proprietors.

The appropriate block should be checked. In the event of a change of proprietors, the block headed "Change" should be checked and the form issued to show the name of the new proprietor. In the block headed "Special Instructions" a notation is to be made showing the name of the preceding proprietor.

Oil Company—Show "The Atlantic Refining Company"

Division or Dist. Office—Street & City Address—Show Atlantic's Newark Address.

Oil Company Sales Area—Show the code number of the Salesman's territory to which the Account is assigned.

List Supply Points Below—This is to be left blank at the time the form is issued, but it will be completed by the Goodyear District Office. They will indicate in this portion of the form the supply point or points from which the Account will receive his supplies. After this information is received, the Account should be so informed.

Is this Account an approved Goodyear Car & Home Jobber?—Leave blank.

Type of Oil Account—Indicate class of account by crossing out classification which does not apply.

Approved ..... (Goodyear District Manager)—The form, if accepted, will be approved by the Goodyear District Manager, whose signature will appear on the acknowledgment copy when returned to Atlantic's Newark District Office.

Approved ..... (Oil Co. Representative)—This space should be signed by Atlantic's Newark District Manager, or other person to whom he has delegated the authority, before the forms are sent to the Goodyear District Office.

2439 Participating Oil Company Account:—In the space immediately below this caption show the proprietor's name, street address, county, city and state.

Trade Name or Style (If any)—If the Account has a trade style or trade name, show this information in this space.

Goodyear Field Representative—Leave blank.

General

When the acknowledgment copy is received in Atlantic's Newark District Office, a record should be made for the benefit of the Order Clerk so that, in the event he receives orders for Goodyear products from the Account, he will be in a position to relay the infromation to the appropriate Goodyear supply point. The form should then be forwarded to the Region Office, Statistical Section, so that it may be included on the current G-1204 Claim Form.

2441 COMMISSION EXHIBIT NO. 131.

July 26, 1950

TBA RMT

Battery Charging Equipment

Newark, N. J.

Mr. W. J. Jackson
Room 1218

Dear Sir:

Mr. Fred Romer has inquired as to the policy to be followed in the Newark District in suggesting to dealers the equipment to be purchased by them.

Atlantic's recommendation to dealers in the Newark District will be that they purchase all T. B. A., including T. B. A. tools and equipment, from the Goodyear Tire & Rubber Company.

Very truly yours,

T. B. A. Section.

2443 **COMMISSION EXHIBIT NO. 132.**

August 2, 1950

GN-RB

Messrs. B. M. Boor, Pittsburgh
J. O. Estlow, 12th floor
W. J. Griffiths, Reading
H. H. Ingersoll, Charlotte
H. W. Jollie, Providence
G. V. Ostrander, Syracuse

cc: Messrs. E. R. Cox, Jr., Room 810
S. J. Heideman, 12th floor
C. P. Mumma, Reading
W. W. Pleasants, 17th floor
E. Stanton, 12th floor

Dear Sir:

It has been brought to our attention that there is some departure from policy taking place in the erection of signs in those stations being tested under the Firestone and Goodyear Plans. This policy as written to you on July 19, 1949, is as follows:

"No signs other than Atlantic signs, and this includes decalcomanias and small tack-up signs, may be placed on the buildings, poster boards, fences, supports, or poles, at our Company-owned and operated stations, with the exception of one Lee and one Exide decalcomania on the upper portion of our service station show windows, and one metal Lee sign outside.

With respect to leased stations, this same policy should be brought to the attention of the station manager and he should be shown that if this policy is adhered to, his station will not only be in line with other Atlantic stations, but, in addition, present a more acceptable appearance.

I think it might be well to explain to those who lease our stations that if representatives of any companies tell them that The Atlantic Refining Company has approved their placing their advertising signs at our service stations, it is a completely false statement, and if any changes in the sign policy are made by The Atlantic Refining Company our dealers will be so advised through our salesmen."

I am informed that the Service Station Committee have not recommended any changes to this policy. It seems, therefore, indicate that we should review the activities of Firestone and Goodyear in this connection to bring their signs in line with the above, substituting, of course, their names for the Lee and Exide names. Any desired change should be set forth in recommendation for exception to or alternation in existing policy.

We will be happy to work with you in any way possible in this matter,

Cordially yours,

md /s/ R. Borden

2445 COMMISSION EXHIBIT NO. 133.

Mr. S. J. Heideman
12th Floor

June 12, 1950
PNJ:EDW
TBA

To all Sales Personnel
Philadelphia & New Jersey Region

There appears to be some misunderstanding in certain territories regarding the Company's policy on T.B.A. sales. Complications of dual marketing with the Firestone Commission Program apparently have brought about this condition.

That there may be no misunderstandings, let it be clearly stated that your Company's interest in T.B.A. was never

higher. Atlantic intends to serve the best interest of the dealer to provide him with the best possible profit. To do this we must always be looking for better methods. The commission plan is an experiment to determine if it is of greater value to dealers than our present method.

It should be noted here that a third district is to be placed on the commission program—Newark, on June 12, with Goodyear as the supplier. This is not an expansion, but part of the original planning of the sales test. The delay in setting up this district was due to the necessary negotiations and preparations.

Our present suppliers are very much part of this sales test. They are fully informed on what we are doing and without exception they have indicated their willingness to increase their cooperation with our Company.

There should be no confusion—the T.B.A. program available in any territory is the one Atlantic recommends for dealer consideration. Future changes, if any, will be made only if they are proven to be to the dealer's advantage.

W E. D. Walter.

COMMISSION EXHIBIT NO. 134 2703

Figures encircled — No preference

Recently you have been introduced to a new plan for the marketing of Tires, Batteries, and Accessories. We know that you are in the best position to judge the advantages of the new and the old plans. Your opinion will be one of the most important factors in the future development of our T.B.A. program.

So that we may get a cross section of dealer opinion, we are asking your cooperation in the completion of the following questionnaire. The response is intentionally anonymous. We want to know your feeling about our program, not your name. Will you therefore please complete the information and although signing this sheet return it in the attached self-addressed stamped envelope. In return for the confidential treatment we would like to make this the undisposed opinions of yourself and your customers.

1. Which complete program do you personally prefer (Check one)

New Plan 56 Old Plan 49 (B)

2. Which plan do you think—

	TIRES		BATTERIES		ACCESSORIES	
	Old Plan	New Plan	Old Plan	New Plan	Old Plan	New Plan
a. will give you more sales of	(9) 49	66	(10) 45	48	(11) 38	56
b. gives you better delivery of	(12) 50	56	(13) 37	49	(14) 46	53
c. gives you the more useful promotional assistance at your station for	(15) 51	57	(16) 54	50	(17) 50	53
d. gives you the better general advertising support for your sales of	(18) 32	77	(19) 48	51	(20) 37	65
e. will give you the easiest way to satisfy customers when complaints arise on	(21) 72	39	(22) 62	40	(23) 53	44
f. has the greater customer acceptance at your station for	(24) 43	65	(25) 62	40	(26) 47	50

3. How do you prefer to buy your T.B.A. needs? (Check each column)

	T	B	A
a. From Atlantic direct	49	43	33
b. From the Tire Company (Store or Distributor)	65	38	26
c. From the Automotive Jobber	7	24	39
d. Other (List) _____	2	2	2
	(27)	(28)	(29)

4. Under the new plan to whom do you look for advise in developing your T.B.A. program? (Check each column)

	T	B	A
a. Atlantic Salesman	52	56	59
b. Tire Company Salesman	40	22	19
c. Other (List) _____	5	17	11
	(30)	(31)	(32)

To help us complete this kindly return before _____

THANK YOU FOR YOUR COOPERATION. From time to time the Sales Research Section may call for your assistance. In return, we solicit your comments or suggestions on TBA or any other phase of ATLANTIC'S marketing. Just drop a line with pertinent comments to—

THE ATLANTIC REFINING COMPANY
Sales Research Section
P.O. Box 7258, Philadelphia 1, Pa.

[redacted]

COMMISSION EXHIBIT NO. 135A-C.

Commission Plan.

In view of the contemplatetd adoption of the Commission Plan in one or more Sales Regions, the Chairman reviewed for the Committee steps to be taken in making the transition from Purchase and Resale Plan.

A. Regional Staff Meeting—This initial meeting will acquaint Atlantic's Regional Staff with the Tire Company Regional Staff and also act as the "Kick Off" for the program. It may include District Managers and Sales Supervisors if so desired.

B. District Meeting—This will acquaint Atlantic District Level personnel with Tire Company's District personnel.

1. Tire Company should be given preliminary information at this District Meeting to properly line up their program for conversion of Atlantic outlets.

(1) List of T.B.A. Dealers to be recommended for the Commission Plan—this list to be split by salesmen's territories.

(2) Provide a list for the Tire Company showing annual Tires and Batteries and Accessories volume by salesmen's territory.

(3) Show credit limit for each dealer recommended for the Commission Plan.

(4) Provide Tire Company with maps outlining salesmen's territory.

(5) Provide the Tire Company with a list of products by Sales District showing in some detail the approximate amount of Accessory Stocks which will be required to fill the unit requirements of the Atlantic dealers in each District.

(6) List for Tire Company the locations where we feel supply points are required.

(7) Determine effective date for starting Double Teaming activity in each District.

2. Tire Company will make a general presentation of their program reviewing products—policies—organization —advertising and sales promotional programs.

C. Atlantic Salesmen's Meeting With Tire Company Sales Personnel—These future meetings be arranged for at the District Meeting wherever possible. Atlantic and Firestone salesmen when together are to:—

1. Determine course of action and prepare itineraries.

2. Determine suggested supply points.

2451 3. Formulate plans for attendance at District dealer meetings. Such plans must be approved by Atlantic and Firestone Company District Managers. The meetings should be held to a minimum but must assure full coverage of all dealers concerned. The Tire Company conducts these meetings and usually assume the expense.

D. District Managers will mail letters of announcements to all dealers recommended for the Commission Plan, specimen to be provided by T.B.A. Section.

E. District Managers to be provided by Sales Promotion Section with a list of approved identification material and are to be sure that the limitations are observed by the Tire Company.

F. Atlantic salesmen begin solicitation of dealers in company with Tire Company sales personnel. All dealers should be contacted as promptly as possible.

G. Regions or Districts to review existing T.B.A. contracts and/or agreements. T.B.A. Section will submit specimen letter where notification of cancellation is required or specimen of form where release form is to be negotiated.

H. Regions or Districts to sell out to Atlantic dealers

existing stocks of purchased batteries and accessories. Consult T.B.A. Section if this procedure doesn't liquidate stocks within 60-90 days.

I. Region to review T.B.A. records and reports presently required and recommend discontinuance of those no longer required.

J. Sales Promotion Section and T.B.A. Section also Regions, to establish regular plans for integrating Tire Company's programs with Atlantic Regional Sales plans.

K. Sales Promotion and T.B.A. Section to arrange for revision of the service station Standards of Operation.

L. Regions to establish procedure for Class I service station purchases from Tire Companies with assistance of T.B.A. Section & Purchasing Department.

M. Regions and Districts to arrange for return of all unused signs, stands, merchandises, etc. to previous suppliers after approval has first been received from Supplier through T.B.A. Section.

N. Districts converting to Commission Plan will of a necessity be on dual operation for a period of time; those districts must:—

1. Curtail ordering into warehouse stock at once in anticipation of impending change.

2453 2. Cancel open Purchase Orders for material in excess of limited requirements.

3. Institute an intensive campaign to sell out through existing dealers remaining purchased stocks. Special prices are not to be given for inducing purchase of these stocks.

O. Credit Division to notify all concerned of the limitations stated on Atlantic Credit Cards.

P. District Salesmen and other Atlantic personnel should stress with Tire Company personnel and supply points that Atlantic dealer's name and address must show when reporting cash sales transactions—otherwise Atlan-

tic salesman and Districts will not receive credit for such sales.

Q. Regions and Districts to acquaint sales and dealer personnel with the Tire and Battery Adjustment Policies covering outstanding guarantees. T. B. A. Section will supply information on this subject.

Under the Firestone Commission Plan it is necessary that each qualified dealer must be listed on Firestone's form entitled "Change in Oil Company Listing". Only in this manner can the Atlantic dealer be registered with Firestone and Atlantic receive credit under the Commission Plan. This form is submitted to Firestone who will return it to the District Office either approved or disapproved.

The District Office must then list that dealer's name and address on the Firestone form "Report of Oil Company Outlay Purchases". These lists are forwarded each month by the District Office to Firestone District Office in order to claim Commission on products sold. This form will be completed with sales information by Firestone and returned to the District Office with copies to the Regional office. The form may be used for rating salesmen and for obtaining the information to be posted on the B-503 card.

Goodyear has a similar reporting requirement with different form numbers and procedure that is slightly varied from that of Firestone.

2455 COMMISSION EXHIBIT NO. 136A-E.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

S. J. Heideman
Manager

March 21, 1951
TBA SJH

Tires, Batteries and
Accessories Sales

T.B.A. Conversion to
Firestone & Goodyear Programs

Mr. D. T. Colley,
Room 1700.

Dear Sir:

On February 14th, the decision was made to swing over to the Commission Plan of T.B.A. marketing effective March 1st. It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania and the South) were to market the program of the Firestone Tire and Rubber Company. The split was largely a matter of regional selection, decided upon by local advantages enjoyed by the respective rubber companies but influenced by Staff determination to have the two rubber companies competing in different localities for an equal share in the development of the Atlantic dealer's T.B.A. business. Although this move was sudden, events leading up to it were developed in an orderly fashion over a period of several years.

The original step consisted of a comparison of our

T.B.A. program with those of other oil marketers. This revealed that there were only two plans in extensive use. These were:

A. The so-called "private brand" method where the oil company markets tires, batteries and accessories under their own house brand or under a brand name that they own. Secony-Vacuum Oil Company, with their Mobil tire and Mobil battery, is a good example of this plan. Or,

B. The major rubber companies' complete T.B.A. programs available under the so-called "Commission Plan". An example of this operation is evident with the Texas Company and the Shell Oil Company.

The first plan, although employed by large and successful oil marketers, has its drawbacks. A company that doesn't have national distribution cannot economically and efficiently popularize its T.B.A. products. More important, however, is the increased burdens that must be as-
2457 sumed in sales operations, the increased investment required for molds and for inventories, and the real hazard of commitments made in the fact of fluctuating markets. In addition, there is a heavy load on the dealer in creating public aceptance for a new line in a highly competitive field. There is the real threat of reduced sales and profits for the dealer at least during the early stages of such a program.

The second plan employing the major rubber company's brand name on a complete T.B.A. program appeared quite popular among the oil companies, and what is more important, especially popular with oil company dealers. We had access to confidential information from one large oil marketer (Shell) which indicated tremendous success with this type program over a period of several years.

Having established the fact that our T.B.A. program was somewhat unique among oil companies, we then em-

ployed an outside agency to sample opinions of both Atlantic dealers and competitive dealers in our area. The important finding from this survey was that our present program was far from flawless and that there was a great deal of dissatisfaction with it among our dealers. The dealers of other marketers appeared more content with the T.B.A. programs that were available to them.

Last Spring we decided upon a test, and for reasons now obvious, tried the Commission Plan. In arranging for this test, three districts were carefully selected so as to afford a good cross section of our marketing area. The districts selected were Newark, New Jersey; Wilmington, Delaware; and Erie, Pennsylvania. The first district was established on the Goodyear program and the other two on the Firestone program. These test districts were studied carefully from the inception of the new program. Dealers were contacted and asked about their preference and from the outset very favorable reports were received. A secret ballot was circularized by our Sales Research Section in all of the test districts, and again the replies showed a very strong preference for the new major rubber company program. Last, but very important, the sales figures in the test districts month after month showed gains over the previous year that outstripped the gains made in the remainder of the respective regions and also those made in the Marketing Department as a whole.

Last January, upon assurance from the Firestone Tire and Rubber Company that they could provide for our normal requirements, it was decided to broaden the test to at least one entire region in order to secure even more conclusive information. A volunteer was sought among the regions. Four regions indicated that they wanted the new program. Further negotiations were undertaken with both rubber companies so as to insure our supply position for the four regions as well as their complete and full sup-

port for the other two regions in the event that Lee decided that rather than continue to serve only two regions they would prefer to cancel their contract. On February 14th, Lee elected to cancel their contract effective March 1st.

2459 It will take several months to complete the conversion to the new program. Every effort will be made to sell the dealer on the advantages of the new program so that his ultimate decision will be in favor of it. During the conversion period we will have to dispose of approximately $425,000 of inventory. Inventory close-outs are always costly, but we feel because of the present market situation that the disposal program will yield us a return closely approximating our acquisition costs.

It will be interesting to review some of the advantages that we enjoy under the Commission Plan. We are relieved of the purchasing function except for our twelve Class I Stations and our own fleet requirements. We do not warehouse or deliver any merchandise; we are not involved in the handling of accounts, such as invoicing or credit and collection work; we do not issue catalogs or price books nor do we have to provide point-of-sale promotional helps. All of these responsibilities as well as sales training help are assumed by the rubber manufacturers. We assist in the selling job as well as in the dealer training and merchandising task, and for this effort receive a commission which varies according to class of account and type of merchandise, but which has been averaging well over 9%.

With Goodyear and Firestone we have the two best known manufacturers of tires; also, the two manufacturers having the greatest public acceptance not only in the United States but all over the world. They are leaders in research and development—in supplying original equipment and in the replacement market. Surveys reveal that between them they enjoy 50% of the renewal tire market. They both have extensive tire lines complete in every detail. They have

recapping service which is an increasingly important service in tire retailing. Their battery lines are good and competitively priced, and their accessory and home supply lines are far more extensive than is necessary to meet the requirements of our average present-day dealer. These broad lines, however, provide a safeguard for our dealer should the supply situation become tighter, and they also provide a growth and development opportunity that is so vital to the improvement of our overall program. These T.B.A. programs are complete, they are exceedingly well merchandised and they are backed up with exceptional dealer training and unparalleled national advertising. We are indeed fortunate in having these two companies competing against one another for a more secure or favorable position with Atlantic. We stand to gain from this arrangement whether we are in a buyer's or seller's market.

We have tried to estimate how our 1950 actual experience on T. B. A. would have compared with the same volume of performance if it were accomplished under the Commission Plan. Our T. B. A. volume excluding the three test districts amounted to seven and a half million dollars. Our gross profit ranging from 20 to 30% on the different products amounted to approximately $1,664,000. Estimated expenses chargeable to this operation total $2,-
071,000. This would indicate a loss of about $407,000.
2461 Under the new program based on our experience in the test districts, we would have received a commission of approximately $675,000 to apply against sales expense.

In addition to this favorable comparison, we would have secured much needed warehouse space and delivery facilities that could be used to advantage for our petroleum products. Some of our personnel could have been eliminated but much of it could have been assigned to other jobs where help is urgently needed. Our operational people

would have been free to effect greater improvements and efficiencies in the handling of petroleum where worthwhile savings can still be effected.

It is expected, however, that the greater benefits from the new T. B. A. program will come about through improved services and supply to our dealers, and as a result of their increased sales and profits we will enjoy direct benefits from increased commissions and indirect benefits in better dealer stability.

Very truly yours,

P.S. Attached is report showing development of estimates referred to in body of letter.

2463

1950 Sales Estimate

Based on best information obtainable through C O Domestic

	Tires	Batteries	Accessories	Total
	$5,300,697	$1,056,464	$1,132,168	$7,489,329
	@20%	@25%	@30%	
Estimated Gr. Profit	$1,060,139	264,111	339,630	1,663,880
Total Expense	876,153	427,327	767,941	2,071,421
Deficit	+183,986	—163,216	—428,311	—407,541

Under The Commission Plan

Estimated Expenses that Probably can be Eliminated				
100% Del. to Whse.	$ 2,092	$ 464	$ 3,200	$ 5,756
100% Del. to Trade	65,685	15,017	25,368	106,070
100% Whse.	93,240	69,957	105,467	268,664
90% Dist. Acctg.	81,000	40,000	81,000	202,000
50% Direct Expense	8,077	3,273	5,896	17,246
90% Reg. Acct.	140,000	49,000	165,000	354,000
90% Misc. Labor	10,904	5,918	11,389	28,211
100% Credit-Coll.	6,568	1,357	1,456	9,381
50% Selling	91,921	54,644	81,275	227,840
33⅓% Dist. Adminis.	10,577	5,963	9,315	25,855
33⅓% Reg. Adminis.	19,722	8,798	15,376	43,896
50% Adv.	12,301	2,608	2,911	17,820
25% Dir. Hdqtrs.	12,128	2,452	2,747	17,327
75% Indirect Hdqtrs.	34,323	16,905	30,397	81,625
Total	$ 588,538	$ 276,356	$ 540,797	$1,405,691
Est. Commission	$ 477,063	$ 95,082	$ 101,895	$ 675,000
Est. Chges. to TBA				665,000
Est. Net Profit				$ 10,000

2465 COMMISSION EXHIBIT NO. 137A-E

Duties of the Dealer Salesman.

I. General Responsibility to the Company

1. Act to the best interest of the Company at all times.
2. Insure proper use and care of Company property, including Company cars.
   a. Responsible for removal of excess equipment at dealer locations.
   b. See that dealer performs necessary maintenance functions for which he is responsible.
   c. Report necessary maintenance and repair work to be done by the Company.
   d. Make up list of equipment to be painted when required.
   e. Follow Atlantic operations procedures.
3. Recommend modernization of Company property.
4. Make up "New Construction Report" monthly.
5. Insure insofar as possible the operation of the Company's business in his territory on the most profitable and economical basis.
6. Keep Company Accounts Receivable at minimum, in line with announced credit terms.
   a. Recommend proper credit limits for dealers.
   b. Collect delinquent accounts.
7. Responsible for collection of dealer rents, or variations, reporting same on B-540.
8. Make periodic collection of B-30 tickets.
9. Keep himself thoroughly familiar with Company policy insofar as it relates to his assignments.
   a. Acquaint dealers immediately of any change in Company policy affecting them.

10. Plan daily activity to achieve maximum results.
    a. Route calls for minimum of driving.
11. Analyze territory to determine where distribution is needed.
    a. Report to manager recommendations for development.
2467 b. Work out plan to secure this development, concentrating upon large gallonage accounts.
    c. Report to Sales Supervisor or Manager all opportunities to acquire new desirable accounts and any new business opportunities which were rejected.
12. Keep all stations open and operating according to the best possible standards of housekeeping and service to the public.
    a. Make monthly check in evening and early morning on hours of station's operation and lighting.
    b. Recommend action to assist in maintaining maximum results at any outlet.
13. Not less than once a year, meet with Manager, Sales Supervisor, and Class II dealer to analyze dealer's success or failure.
    a. "Annual Review with Dealers" carried out in all details.
14. Keep dealer adequately stocked with motor oil, T.B.A., and other products sold by Company. Correct over-stock problems by special sales programs, campaigns, etc.
    a. "Unit Control", where used.
    b. Maintain inventory in accordance with minimum stock standards.
    c. Keep stock in salable condition.
15. Sell necessary equipment items handled by the Company to insure proper operation of his stations.

16. Be prepared personally to pass tests in all service station procedures, including dealer accounting to the extent determined by management.
17. Keep any employees working under him in harmony.
    a. Supervise any Class I stations in his territory, where feasible.
18. Keep Price Book, Sales Promotion Catalog, T.B.A. Price Book and Catalog, and equipment catalogs posted currently. Know what the Company is selling and its price.
19. Make all routine and special reports promptly and accurately.
    a. Maintain record of performance daily to insure he is getting the maximum amount of results.
    b. Take monthly inventories of any stock on consignment.
    c. Make "Competitive Activities" report as required and report any changes in it as they are noted.

2469 20. Have necessary leases, contracts, and other agreements signed and forwarded promptly.

21. Investigate complaints to Company and follow up as necessary to insure that a fair disposition of the matter has been made.
22. Pass along at Sales meetings knowledge gained from experience that would be helpful to other salesmen, and send to Advertising, Sales Promotion, or other staff activities any observations that may be of value to them.
23. Maintain good relations with the dealer in order to retain present outlets.
24. Make application for State or local permits where applicable.
25. Be familiar with Company safety regulations and

precautions, and see that they are enforced at stations in his territory.

26. Conduct service or other special assignments requested by proper authority.
    a. Assist Commercial Salesman on truck lubrication work.
27. Take part in Company—approved industry meetings.

II. Responsibility for Selection of Dealers and other Personnel.

1. Keep the best possible men as dealers in his station and be prepared to recommend any change which would improve the operation of a station.
2. Maintain a constant search for qualified men interested in becoming Atlantic dealers, whose names will be contributed to District Dealer Bank.
3. With the District Manager and/or Sales Supervisor, make dealer selection from available candidates.
4. Keep all stations adequately manned.
   a. Assist dealer in selecting personnel.

III. Responsibility for Indoctrination and Installation of Dealers

1. Handle details incident to indoctrinating and installing new dealers in accordance with, Dealer Indoctrination Guide, using check list provided in this Guide.

IV. Responsibility for Dealers' Record Keeping

1. Maintain constant check on dealer's accounting practices, accounts receivable, and inventory.

2471 2. Analyze dealer's operations from profit and loss standpoint periodically, pointing out existing weaknesses.

a. See that dealer maintains minimum cash balance.
b. See that dealer is properly insured.

3. Review dealer's books monthly, especially quota book and sales ratios.
4. Assist dealer in building a mailing list for lubrication follow-up and other promotions.
5. Assist dealer in setting up bonus plan for employees when desirable.

V. Responsibility for Constant Training of Dealers

1. Inject enthusiasm and personality in to station personnel necessary for success.
   a. Work constantly to build character into Service Station.
2. Urge dealer to train new employees properly.
3. Suggest that dealer take advantage of Service Station School for self and employees.
4. Request assignment of Retail Instructor in all phases of Atlantic Service Station operation. Make sure assignment is productive and objective is reached.
   a. Use Retail Instructor, where needed, to train and retrain dealer and employees.
   b. Make certain dealer understands function of instruction and his (dealer's) responsibilities.
5. With approval of Manager, plan and attend small dealer meetings designed to improve the dealer and his business.
6. Educate dealer so that he knows what he is selling and how to sell it.
   a. Keep dealer informed regarding products, prices, and their application.
7. School new employees and dealers in driveway service, housekeeping, lubrication, and all other

procedures, with the assistance of the Retail Instructor.

a. Aim to have all dealer personnel able to pass at any time tests in driveway service, lubrication, and housekeeping.

8. Instruct new employees and dealers on the proper use of displays, signs, local advertising and other merchandising and sales promotion helps.

2473 a. Keep dealer supplied with current Company advertising and promotional material.

9. Conduct various product and other demonstrations, such as rust corrosion and detergency motor oil tests.

10. Keep dealer abreast of competitive activities and prices—suggest to dealer intelligent course of action.

11. Establish sales objectives and quotas for individual dealers on all products not included and projected in "Annual Review".

a. Arrange monthly goals, special sales, solicitations, campaigns, etc.

12. Inspect each station weekly and list cleaning jobs to be done. Follow up to see that they are done.

a. Assist dealer to set up daily, weekly, and monthly housekeeping schedules.

13. Endeavor to keep physical operation at all of his stations conducted in accordance with Atlantic standards, in regard to hours or operation, illumination, housekeeping, lubrication and rest room equipment, uniforms, merchandising, sales promotion policies, painting, and accounting systems.

14. Insure that Atlantic dealers in his territory maintain the good will of the public at all times.

2475 COMMISSION EXHIBIT NO. 138.

June 25, 1951

TBA SJH

Staff Meeting Report

cc: W. J. Butler, Room 809

Mr. F. M. Neall
Room 1706

Dear Sir:

General

Both the Firestone and Goodyear Station Identification Programs are under way. Goodyear Decals are being applied by an outside agency however their own trucks are erecting signs. Goodyear has begun Station Identification in the Philadelphia-New Jersey Region and plan to start Station Identification in the New York and New England Regions both beginning July 2nd.

Firestone sign trucks are applying decals and erecting the signs in Eastern and Western Pennsylvania. Firestone Identification at Atlantic Stations will not begin in the South until late summer.

Tires

We continue to look for increased supply of tires in the replacement market although to date we have not been given tire allocations for the month of July.

Batteries, Accessories, Anti Freeze, Miscellaneous Refinery Products.

Nothing to report.

Very truly yours,

2477 COMMISSION EXHIBIT NO. 139A-B.

CC: W. J. Butler
Room 809

January 15, 1952

TBA SJH
File: L-4
Staff Meeting Report

Dr. A. B. Hersberger,
Room 1706.

Dear Sir:

General

We have secured agreement from five of the marketing regions to discontinue, effective March 31st, the supporting arrangements that we have with both Goodyear and Firestone on the adjustments of Lee tires and Exide batteries. We had an obligation incurred as a result of product sales effected under the old T. B. A. program to support Atlantic dealers in their adjustments of Lee tires and Exide batteries. An arrangement was worked out with Goodyear and Firestone whereby we shared the cost of this adjustment responsibility. Our cost during the first 9 months of 1951 totalled $11,000. It is believed that as of March 1st we will have effectively discharged with few exceptions our obligation in this direction. It is intended that special cases, of course, will be given the consideration they deserve.

Tires

The FTC Order, effective April 7th, which places a quantity discount limitation on the sale of tires, single orders of 20,000 pounds, one delivery, will undoubtedly have an effect on the entire pricing structure of the rubber indus-

try. Our suppliers' opinions on this subject are not yet clearly defined. I am still in the process of obtaining information to enable us to better evaluate the measure. The rubber industry is gravely concerned about the order and is seeking, first: an extension of the time limitation in order that the effects of the order can be more fully studied and evaluated, and second: if necessary, they threaten to seek an injunction. The Office of Price Stabilization is meeting with FTC in order to have the benefit of their thinking so that, if necessary, changes can be effected in ceiling price regulations.

The FTC is also studying the commission program that is extended to oil companies by major rubber companies. We should have cost justification information to support our commissions under the existi ıg marketing arrangement. A request for this information, upon management's approval, was placed with C. O. Domestic last fall, but to date we do not have this information. The subject is being pursued with Mr. Long's office,

2479 In order to permit salaried stations to sell tires in competition with dealers, several months ago we asked management's approval to experiment at Class I Stations in Philadelphia with a tire sales arrangement that was based on gross profit attained in monthly transactions rather than on a system of minimum selling prices for new merchandise and maximum trade-in allowances for old merchandise that had previously been obtained. There has not been sufficient experience with the experiment to properly evaluate it, but it definitely fills a competitive need and therefore the activity is being extended into Class I Stations in the New York and New England Regions.

Batteries

The Office of Price Stabilization authorized a price advance in the prices of batteries of from 4 to 6%, effective

January 14th. This action resulted from the recent action of OPS in advancing the ceiling price of lead. There are rumors to the effect that manufacturers will raise the price of batteries about the first of February.

Lead importers are seeking suspension of import duty. This action combined with the recent increase in ceiling price is expected to attract foreign lead in sufficient quantities to satisfy requirements.

Accessories

In order to try and close out the remaining stocks of chains, we are reducing prices on remaining inventory, effective January 14th. New prices are equivalent to 45% below list and will net us approximately a 10% return above our cost price. This, of course, is a close-out move.

Anti-Freeze

Preliminary arrangements completed with National Carbon Company provide for a total of 360,000 gallons of Prestone to be made available to us in the calendar year 1952. This is 36,000 gallons short of the regions' estimated requirements, but 38,000 gallons more than were shipped to us in 1951. Deliveries are to be accepted as follows: 60,000 gallons in the first quarter and the balance of 300,000 gallons in eight equal installments through the months of April to November, inclusive.

Arrangements for our requirements of evaporative type anti-freeze have not been completed, but it appears as though our needs will be well provided for through either National Carbon or U. S. I.

Very truly yours,

2481 COMMISSION EXHIBIT NO. 140.

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R. I.

M. G. Davis
Sales Manager
New England Marketing Region

May 3, 1951
GM:D:TLW

Lee Tires

Mr. S. J. Heideman
Philadelphia, Pa.

Dear Sir:

The Providence Manager for the Lee Tire & Rubber Company, a Mr. Earle, told me today that he understood, effective June 1st, we were not going to accept from our dealers B-139s covering sales of Lee tires and tubes.

This is news to me. Is it true?

Yours very truly,

M. G. Davis

TLW/sc

2727

COMMISSION EXHIBIT NO. 140A.

16148-20

ATLANTIC

FEDERAL TRADE COMMISSION

DOCKET NO. 6486 EXHIBIT NO. 140A

IN THE MATTER OF Goodyear et al

DATE 6/24/57 WITNESS

ACE REPORTING CO., Official Reporter

STREET By

TOWN State

Received Items Described Below

ITEMS	Quantity	Price Inc'l. Tax	AMOUNT
ATLANTIC White Flash	Gals.		
ATLANTIC Hi-Arc	Gals.		
ATLANTIC Axle Motor Oil	Qts.		
ATLANTIC Motor Oil	Qts.		
Transmission-Differential Service	Pts.		
Lubrication			
		TOTAL	

Liability for the State Tax has been assumed and will be paid as required by law.

State Tax of a and Federal Tax of a gallon on Liquid Fuels included in price.

2483 10/51

2487 COMMISSION EXHIBIT NO. 141.

May 10, 1951

TBA:WCH

Lee Tires

Mr. M. G. Davis,
Providence, R. I.

Att: Mr. T. L. Walsh

Dear Sir:

Your letter of May 3rd stated you had information that effective June 1st we are not going to accept from our dealers B-139s covering sales of Lee tires and tubes.

This information is not entirely correct. We suggest that the next time you are talking to us on the phone the subject be discussed further.

Very truly yours,

W. C. Hoffman

E

2489 COMMISSION EXHIBIT NO. 142.

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R. I.

M. G. Davis
Sales Manager
New England Marketing Region

June 20, 1951

GM:D:TLW

Lee Tires

Mr. W. C. Hoffman
Philadelphia, Pa.

Dear Sir:

Your letter of May 10.

This was discussed with you on the telephone and we appreciate the reasoning behind the ruling. However, tires are becoming very plentiful now, and we think that it is time to consider limiting the use of B-139s to Goodyear tires.

Yours very truly,

M. G. Davis

TLW/sc

2491 COMMISSION EXHIBIT NO. 143

CC: Mr. F. M. Neall
Room 1706

July 9, 1951

TBA SJH

Goodyear & Firestone Programs

Mr. William Stockton,
Room 1605.

Dear Sir:

The time is fast approaching when tires will be in good supply and when we will want every possible effort and attention of the Atlantic dealer focused on the subject programs. I believe, therefore, some consideration should be given to limiting the use of B-139's to the subject's tires. Reasonable time has been allowed for Atlantic dealers to dispose of the stocks of Lee tires which were sold to them by Atlantic.

Will you kindly advise a course of action at your convenience?

Very truly yours,

2493 COMMISSION EXHIBIT NO. 144.

The Atlantic Refining Company
Philadelphia, Pa.
SC-WS

November 13, 1951

Goodyear and Firestone Programs

Mr. S. J. Heideman
Room 1210

Dear Mr. Heideman:

The Staff has investigated the proposal which you made to limit the use of Atlantic credit cards to TBA sponsored by Atlantic.

The regions were about evenly divided on the question of adopting this suggestion.

At a meeting of the Staff held on November 12, it was decided to take no action at the present time but to reconsider the question July 1, 1952.

Will you let me have your thoughts about it prior to that date?

Cordially yours,

Wm. Stockton

WS:MRH

2495 COMMISSION EXHIBIT NO. 145.

June 18, 1952

TBA SJH

Credit Card Sales

Mr. William Stockton,
Room 1605.

Dear Sir:

Attached to Mr. Taitt's letter of February 11th were two copies of a list of T. B. A. products and services which we suggested be approved for credit card purchases. On that list, in addition to tires, batteries, anti-freeze, and services, was a lengthy list of items under the heading of "accessories".

In order to cover all of these accessory items without distributing a special list and to express them in terms that dealers and salesmen can readily identify, we feel that our purpose can best be served in the area served by Goodyear through use of the following descriptive terms:

Department 022, Auto Accessories
Department 71, Goodyear Fan Belts
Department 58, Goodyear Molded Hose
Department 55, Goodyear Radiator Hose
Department 61, Car Mats
Department 42, Repair Materials

and in the area served by Firestone, with the following terms:

Department 3, Auto Supplies
Department 16, Seat Covers
Department 50, Spark Plugs & Batteries

While these groupings will include a few more products than appear on the present list, we think that in the inter-

est of simplicity it will be just as economical as trying to exclude them.

May we please have your comments on this recommendation?

Very truly yours,

S. J. Heideman

h

2497 COMMISSION EXHIBIT NO. 145A-D.

The Atlantic Refining Company
Philadelphia, Pa.

February 11, 1952

TBA RMT
Credit Card Sales

Mr. William Stockton,
Room 1605.

Dear Sir:

Attached are two copies of a list of T.B.A. products and services which should be approved for credit card purchases.

Very truly yours,

R. M. Taitt

h
Enc.

2498 Credit card holders may charge the following T.B.A. Products and Services obtained at those stations authorized to honor Atlantic Credit Cards:

New and Used Tires and Tubes
Recapped Tires and Recapping Service
Automotive Storage Batteries
Anti-Freeze

Automotive Accessories:

Auto Finish Chemicals:

(a) Liquid Polish
(b) Liquid and Paste Wax
(c) Liquid and Paste Cleaner
(d) Tar Remover
(e) White Wall Cleaner
(f) Tire Paint
(g) Chrome Cleaner
(h) Convertible Top Dressing

Auto Compass
Auto Thermometer
Auto Top Carriers
Battery Cables
Battery Trays
Battery Holddowns
Chamois
Cooling System Chemicals

(a) Cleaner
(b) Sealer
(c) Acid and Rust Inhibitor

2499 Curb Finders
Cushions
Defrosting Fans
Exhaust Extensions
Fan Belts
Fender Flaps
Fender Guides
First Aid Kits
Flashlights
Flashlight Lamps and Cells
Floor Mats
Fuses
Gasoline and Radiator Caps

Heater Hose
Horns
Hose Clamps
Household Lubricant
Jacks (Bumper and Axle)
License Plate Frames
Miniature and Sealed Beam Lamps
Miscellaneous Chemicals
(a) Gasoline Anti-Freeze
(b) Brake Fluid
Oil Filter Cartridges
Pedal Pads
Polish Cloths
Pop-Out Lighter Units and Elements
2500 Radiator Hose
Rear Vision Mirrors
Seat Covers
Shock Absorbers
Spark Plugs
Sponges
Sun Visors
Thermostats
Tire Chains
Tire Repair Kits
Tow Chains
Trouble Lights
Vanity Visor Mirrors
Wash Mitts
Wind Deflectors
Windshield Wiper Blades and Arms

Services:

Complete Tire and Battery Service
Accessory (Illegible) Service
(Illegible) Service
Car Polishing Service

2501 COMMISSION EXHIBIT NO. 146A-B.

Staff Meeting Held 7/14/52

4. Credit Card Policy—1953

a. (1). Issue 1953 Credit Cards to all holders of 1952 cards who purchased in 1952 and have a good credit standing.

(2). Each region should set up a system so that this plan may be followed annually and where the time period may be shortened to six months if conditions warrant.

(3). Each region should inquire of government agencies who have not used their 1952 Credit Cards recently of their requirements for 1953 Credit Cards.

b. (1). Use "perforated" type credit card.

(2). Mail First Class mail in window envelope.

(3). Acetate container to be separately enclosed.

c. (1). All regions to assign permanent Credit Card numbers based on the alpha-numeric system.

(2). Addressograph Credit Card for annual reissuance and those issued currently during the year.

(3). Since c. (1) will change the sorting system, it is advisable that the use of 1953 cards be started early. 1953 Credit Cards should be mailed November 20, 1952.

(4). Regions should encourage customers and dealers to start using their 1953 Credit Cards when received. Salesmen should be informed of the effect of this change and asked to encourage dealers to follow the suggestions.

(5). 1953 Credit Cards should be issued to current applicants starting November 1, 1952.

(6). 1952 Credit Cards will cease to be valid after December 31, 1952.

d. (1). The regions are urged to build up their Credit Card business. The healthy growth in the number of good Credit Card customers is necessary for the development of our Class 2 program.

(2). Promotion of Credit Cards by use of "lists" has been found to be expensive and non-productive. This method is not to be used. However, where a former competitive dealer takes over an Atlantic Station, Credit Cards may be issued to his former customers subject to credit approval.

2503

e. (1). Form.

Revise the regular Credit Card as follows:

Under 4 after "Atlantic Petroleum Products" add "delivered into car to the capacity of the fuel tank or crank case only."

The next sentence reads, "Tires, tubes, recapping, batteries and automotive accessories recommended by Atlantic. (Mounting of tires and tubes and installation of batteries and mountable accessories required." Remove the words "Recommended by Atlantic."

No changes are recommended in the Credit Cards issued to government agencies.

2505 COMMISSION EXHIBIT NO. 147.

The Atlantic Refining Company
Annual Report for the year
ending December 31, 1951, dated
March 12, 1952, pp. 12-13.

"Marketing

• • • • •

"Continuing our program to modernize the retail outlets through which Atlantic products are supplied to the motorist, the 250 new or renovated outlets put in service in 1951 permitted the elimination of a number of non-representative locations. This program will be continued in 1952 to the extent that government regulations and material supplies permit.

"A major change in the method of marketing tires, batteries, and accessories was effected during the year. The former system of purchasing, warehousing and reselling items from numerous suppliers was replaced with arrangements with Firestone and Goodyear, whereby their products may be sold and delivered directly to our dealers. Each company services approximately half of our marketing territory, and their extensive distribution facilities permit more rapid delivery to our customers and substantial reductions in our expenses. Furthermore, our dealers and distributors are able to market products backed by national advertising and extensive sales promotion.

• • • • •

"

2506 COMMISSION EXHIBIT NO. 148.

February 27, 1951

TBA HKP

Mr. E. R. Cox, Jr.,
Room 810.

Dear Sir:

We attach two letters which are to be prepared and issued as follows:

Letter dated March 1, 1951, subject: "A Statement of Atlantic's T.B.A. Policy", is to be prepared on Mr. D. T. Colley's letterhead and sent to all Atlantic dealers and distributors.

Letter dated March 1, 1951, subject: "T.B.A. Program" is also to be prepared on Mr. D. T. Colley's letterhead and sent to Regional Managers, Sales Group Managers, Indirect Marketing Supervisors, Wholesale Marketing Supervisors, T.B.A. Coordinators, District Managers, Gasoline Salesmen and T.B.A. Salesmen. To this letter should be attached the letter, entitled, "A Statement of Atlantic's T.B.A. Policy".

Both letters will carry Mr. D. T. Colley's signature and should be of the same date.

It is important that these letters be prepared promptly and mailed as soon as possible.

Very truly yours,

h
Enc.

P.S. Please forward to this office 12 copies of each of the attached letters.

Note: Distribution to Staff Members

2508 COMMISSION EXHIBIT NO. 149.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

Dwight T. Colley
Vice President
General Manager
Domestic Sales

March 1, 1951

T.B.A. Program

Dear Mr.

The attached letter is being mailed to every Atlantic dealer and distributor. The expressed policy must be clearly understood by everyone in the Sales Department and then practiced.

I am sure that the new T.B.A. program which we have carefully selected has so many advantages that it will not be difficult to convince Atlantic dealers and distributors of its superior merit. This job is to be done with the use of all the sales equipment and knowledge that we, or our suppliers, have at our respective commands. I expect the results of our salesmanship to be highly successful.

You can appreciate the fact that under no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers. The sales you make must be made on the merits of the program and your ability to sell the dealer on its advantages to him. Any evidence that coercion or misrepresentation were used in securing acceptance would be most embarrassing to the Company. This program is a challenge to your sales ability. I am confident that you will do a fine selling job.

In conclusion, it is my personal belief that the new T.B.A. program, with all its breadth and strength, is the answer to a long felt need of the Sales Department. It is a program which I completely endorse and that everyone in the department can and should firmly support.

Very truly yours,

2510 COMMISSION EXHIBIT NO. 150.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

Dwight T. Colley
Vice President
General Manager
Domestic Sales

March 1, 1951

A Statement Of
Atlantic's T.B.A. Policy

Dear Sir:

The Atlantic Refining Company recognizes the trend of the motoring public to depend more and more upon the modern service station as a source of supply for tires, batteries, and accessories. Therefore, we are interested in making available that TBA line which will meet fully the needs of the public and our dealers, since we feel it will mean increased sales of our petroleum products.

The new TBA plan was adopted after a long and thorough study which had the sole purpose of finding out what sales program would mean the greatest sales and profits to the dealer. We found that the dealer could best serve the interests of the public when he was supplied

through the extensive distribution system of a major tire company.

Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. However, your acceptance or rejection of the program is a matter of your own choice.

Atlantic's growth is dependent upon your opportunity and ambition to expand and succeed. We offer this new TBA plan to you because we sincerely believe it will make your sales and profits grow through better TBA service to your customers.

Cordially,

2512 COMMISSION EXHIBIT NO. 151.

March 26, 1951

TBA RMT
A Statement of
Atlantic's T.B.A. Policy

Mr. C. Connell, Manager
Automotive Replacement Sales
Electric Storage Battery Company
19th Street & Allegheny Avenue
Philadelphia 32, Pa.

Dear Mr. Connell:

The attached letter over Mr. D. T. Colley's signature was sent to all Atlantic dealers on March 1st. The typed letter attached was the initial announcement made on our Regional Officers' letterheads. The latter letter was to have been mailed on or about February 20th.

Cordially yours,

p R. M. Taitt

2744 *Commission Exhibit No. 153A-B.*

2514 "CX-152 same as CX-59 except that blanks appear instead of Goodyear name"

2516 COMMISSION EXHIBIT NO. 153A-B.

April 5, 1951

TBA RMT

Firestone-Goodyear Warehousing

Memo to Noble-Hall

Goodyear Tire & Rubber Company

A. Goodyear Car & Home Merchandise (Accessories) are warehoused in Philadelphia and in Boston for serving Supplying Dealers in the New England, New York and Philadelphia-New Jersey Regions.

B. Tires, Tubes, Batteries and Battery Cables are shipped to Supplying Dealers from the Goodyear District Warehouses in New York, New England, Philadelphia-New Jersey Regions. These shipments will be made from the following points:

New York City	N. Y.
Buffalo	N. Y.
Syracuse	N. Y.
Albany	N. Y.
Newark	N. J.
Boston	Mass.
Hartford	Conn.

Goodyear states that if material is available shipment is made 48 hours after their receipt of our order.

Firestone Tire & Rubber Company

A. Firestone Home & Auto Supply (Accessories and Batteries) are shipped into Eastern, Pa., Western, Pa., and Southern Regions from 3 warehouses located in Akron, Ohio, Philadelphia, Pa., Memphis, Tenn. and Atlanta, Ga.

B. Tires and Tubes are shipped into Eastern, Pa., Western, Pa., and Southern Regions from the Firestone District warehouses. These are located in

Albany	New York
Baltimore	Maryland
Philadelphia	Pa.
Richmond	Va.
Akron (Service Ohio)	Ohio
Cleveland (Service Ohio)	Ohio
Columbus (Service Ohio)	Ohio
Buffalo	N. Y.
Harrisburg	Pa.
Pittsburgh	Pa.
Atlanta	Ga
Charlotte	N. Car.
Jacksonville	Fla.
Memphis	Tenn.

Firestone also states that if material is available shipment is made 48 hours after receipt of our orders.

2518 Memo to Noble Hall

It is possible that both of the tire companies may ship full carload orders of tires and tubes from one or more of their tire factories rather than from the District Office.

R. M. Taitt.

2520 COMMISSION EXHIBIT NO. 154.

January 18, 1951

1951 New York Region

Sales Plan

Messrs. F. M. Neall
P. B. Caldwell
S. J. Heideman
J. J. Mulvey
H. B. Stone

Gentlemen:

The attached booklet sets forth in considerable detail the 1951 sales plan of the New York Region. A copy is being forwarded to you in accordance with Mr. Ostrander's request.

Very truly yours,
R. W. Reed

RWR da

COMMISSION EXHIBIT NO. 155A-H.

2522 1951 Sales Plan

New York Region

Basis

Regional Objectives

1—To sell our products in the manner and place to bring the most credit and profit to the Company.

2—To strive toward lower sales and operating costs while improving service to our customers.

3—To make sure our employees are properly trained.

4—To make sure the job and the employee are a good investment on the part of the Company and the Employee.

2524 COMMISSION EXHIBIT NO. 155A-H.

1951 Sales Plan

New York Region

"The Job to Do"

	1950 Sales	1951 Expected Net Gain	Expected Sales, 1951 Total
I Gasoline			
a) Present Class 2 Outlets	29,032,000	1,589,000	30,621,000
b) Class 2 Outlets, Completed 1950	1,019,000	1,870,000	2,889,000
c) Lessor-Built, Completed 1951*		1,118,000	1,118,000
d) ARCO Owned-incl. Metro-1951**		5,222,000	5,222,000
e) Class 3 Dealers	12,943,000	395,000	13,338,000
f) New Class 3 Dealers	—	1,611,000	1,611,000
g) Commercial Accounts	10,882,000	803,000	11,685,000
h) New Commercial Accounts	—	1,675,000	1,675,000
i) C.R.S. Farm Gallonage	2,674,000	580,000	3,254,000
j) Present Distributors	27,916,000	1,335,000	29,251,000
k) New Distributors	—	900,000	900,000
l) Commission Distributors	1,687,000	107,000	1,794,000
m) Wholesale Dealers	440,000	(—50,000)	390,000
Total	86,593,000	17,155,000	103,748,000

* 25 new service stations— 3,066,000 justification gallons

** 70 new service stations—10,063,000 justification gallons

2526

VI Tires, Units, Wholesale

a) Class 2 Business—1 Unit per 1000 gallons	39,850
b) Class 3 Business—1 Unit per 2000 gallons	7,475
c) Class 4 Business—1 Unit per 4000 gallons	3,340
d) Class 6 Business—1 Unit per 6000 gallons	6,388*
Total	57,053

* For quota purposes Commission Distributors are included in Class 6.

2528

1951 Sales Plan
New York Region

	Total Expected Sales, 1951
VII Batteries, Units, Wholesale	
a) Class 2 Business—1 Unit per 3000 gallons	13,283
b) Class 3 Business—1 Unit per 6000 gallons	2,491
c) Class 4 Business—1 Unit per 9000 gallons	1,483
d) Class 6 Business—1 Unit per 12000 gallons	2,663*
Total	19,920
VIII Accessories, Dollars, Wholesale	
a) Class 2 Business—$9.00 per 1000 gallons	$358,650
b) Class 3 Business—$6.00 per 1000 gallons	89,694
c) Class 4 Business—$2.00 per 1000 gallons	26,720
d) Class 6 Business—$5.00 per 1000 gallons	159,730*
Total	$634,794

* For quota purposes Commission Distributors are included in Class 6.

2530 The plan represents an agreed upon attainable objective. Certain things, as set forth below, must be enthusiastically planned in detail and carefully coordinated between Regional and District Management.

I. Salesmen

A. Keep assignment free of complication. Spell out and mutually agree on his work plan and objectives. Work the plan.

B. Determine training he needs and work with the Regional and Headquarters' Departments to see that training needs are realized.

C. Semi-annual review of results between salesman and Manager followed by confirming letter copy to Regional Manager.

D. Issuance of current Commercial Sales Bulletins.

E. Sales Expansion in each territory is essential to our plan. Normal growth, no losses, is our 1951 aim.

II. Retail Instructors

A. Expand training beyond mechanics of Red, White & Blue course to include Product, Merchandising, Display.

B. Special Retail Instructor meetings as scheduled by Regional Office to discuss common problems.

C. Complete agreement on overall objective before assignment to location. Salesman to be with Instructor at least at start of assignment.

D. Use Four Step Method of Instruction.

E. Implement the DPA Case Plan.

III. Class 2 Dealers

A. Event openings to be a part of each new station going on stream, modelization, modernization and changeover as well as stimulation events to lift the level at "sick" stations.

B. Continue and accelerate Service Station Modelization until stations conform with "Standard of Operation" so far as physical conditions permit. Attached is current policy governing program.

C. Maintain Dealer Bank. Alert personnel for desirable dealers and dealer employees in every day pursuits. Conduct dealer selection and indoctrination as agreed upon.

2532 D. Continue to improve Dealer Annual Review. Search for better ways to improve our dealer relationship and increase receptivity to our ideas.

E. Provide and maintain training facilities for dealers and their employees.

F. Report dealer progress on quarterly report form provided.
G. Full participation in 1951 Shopping Program.
H. Carry out Approved Lubrication Program including every dealer employee.
I. Replace dealers keeping us from attainment of objectives.
J. Develop more intensive use of our merchandising aids.

IV. Class 3 Dealers

A. Continue agreed upon program for elimination of unprofitable and non-promotable dealers not a credit to Atlantic. Continue Manager supervision of prospect list and solicitation technique to acquire the kind of dealers fitting our program.
B. No change in present formula for acquiring dealers.
C. Promote use of term "Atlantic Dealer Franchise" and its value.

V. Commercial Accounts

A. Factual reports from field will be basis for our competitive sales policy.

VI. Farm Program

A. Activate 5 new routes to supplement present 16 established routes.
B. Minimum of 3 C.R.S. meetings in each district.
C. Annual C.R.S. review with letter of confirmation.
D. Expand training.
E. C.R.S. furnish semi-monthly explanatory report listing accounts gained and lost.

VII. Distributors

A. Continue present policy of interesting ourselves in any distributor with whom we can do business

at a profit and of whom we need not be ashamed, providing no confliction with direct marketing exists or results.

2534 B. Intensified field direction of wholesale salesmen, scheduled meetings for planning and activity review.

VIII. Heating Oils

A. Concentrate on direct marketing development with use of burner service exploration, Heat Insurance Plan, tank cleaning.

B. Define areas for wholesale dealer development in Metropolitan areas for Range Oil.

C. Promote and expand through C.R.S. with well defined training program.

D. Define potential and supervise solicitation of Bulk Consumer and Industrial business.

E. Obtain desirable distributors who will creditably promote our product.

IX. Technical Products

A. Solictation at present concentrated on truck and carload buyers for direct shipment.

B. Supervisor to work with and through managers to afford salesmen opportunity to develop selected territory accounts. Double-team with salesmen.

X. T. B. A. Program

A. Established goals are attainable, being based on actual experience with consideration for reasonable gain and proposed new construction.

B. Follow new accepted formula covering all classes of trade to determine that salesmen are developing this market in all departments.

C. Promote coordinator's plan for effective Field Assistance.

XI. Sales Meetings for 1951

A. Managers Meetings as necessary.

B. District Meetings monthly per agreed schedule—2nd full week of each month.

C. Regional plan for small group dealer meetings as programmed for specific problems and objectives.

2536 XII. Training

Training will have an important share of staff and District Management time.

XIII. Credit Policy

Our credit policy will aid not hinder in the acquisition of desirable business if necessary field cooperation is insisted upon.

Conclusion

Our goals are ambitious but realistic and attainable, and all of us have had a part in setting them.

Our results will reflect how well we follow the pattern of our own making.

2538 COMMISSION EXHIBIT NO. 155-I.

Appendix C

1951 Sales Plan
New York Region
T.B.A. Quotas

Balanced Selling Formula (Class 2 Outlets)

Retail—

Tires	$22.00 per 1000 gallons or 1 unit*
Batteries	$ 7.75 per 1000 gallons or ⅓ unit*
Accessories	$13.50 per 1000 gallons

Wholesale—

Tires	$16.00 per 1000 gallons or 1 unit*
Batteries	$ 5.00 per 1000 gallons or ⅓ unit*
Accessories	$ 9.00 per 1000 gallons

*Truck Tires regardless of size are vadued at 3 units each.

T.B.A. Quotas per Class of Salesman

Dealer Salesmen—

Balanced selling formula for Class 2 Outlets at wholesale level as indicated above.

General Salesmen—

Based on gasoline sales by Class of Trade as indicated on Page 4.

Commercial Salesmen—

Tires	1 unit per 4000 gallons
Batteries	1 unit per 9000 gallons
Accessories	$2.00 per 1000 gallons

Wholesale Salesmen—

Tires	1 unit per 5000 gallons
Batteries	1 unit per 12000 gallons
Accessories	$5.00 per 1000 gallons

2539 COMMISSION EXHIBIT NO. 155J-K.

Appendix D

1951 Sales Plan—Report of Progress

I. Gasoline	1951 Plan	Current Month	Cumulative	% of Plan
a) Present Class 2 Outlets				
b) Class 2 Outlets, Comp. 1950				
c) Lessor-Built, Comp. 1951				
d) ARCO Owned-incl. Metro. 1951				
e) Class 3 Dealers				
f) New Class 3 Dealers				
g) Commercial Accounts				
h) New Commercial Accounts				
i) C.R.S. Farm Gallonage				
j) Present Distributors				
k) New Distributor Gallonage				
l) Commission Distributors				
m) Wholesale Dealers				
Total				
II. Motor Oil				
a) All Direct Marketing—ratio 1-50				
1) Class 2 Outlets Only (supplemental)				
b) All Wholesale Marketing—ratio 1-75				
Total				
III. Kerosene				
a) Direct Marketing				
b) Wholesale Dealer				
c) Distributor				
d) Bulk Consumer				
Total				

2540 Appendix D (Cont'd)

1951 Sales Plan—Report of Progress

IV. Furnace Oil	1951 Plan	Current Month	Cumulative	% of Plan
a) Direct Marketing				
b) Wholesale Dealer				
c) Distributor				
d) Bulk Consumer				
Total				
V. Residual Oils				
a) #5				
b) #6				
Total				
VI. Tires, Units, Wholesale				
a) Class 2 Business				
b) Class 3 Business				
c) Class 4 Business				
d) Class 6 Business				
Total				
VII. Batteries, Units Wholesale				
a) Class 2 Business				
b) Class 3 Business				
c) Class 4 Business				
d) Class 6 Business				
Total				
VIII. Accessories, Dollars, Wholesale				
a) Class 2 Business				
b) Class 3 Business				
c) Class 4 Business				
d) Class 6 Business				
Total				
IX. (Illegible.)				

2541 COMMISSION EXHIBIT NO. 155L.

Appendix E

Salesman .....

Date .....

Salesman's Quarterly Report on.....

	Location	
	Driveway Service	Lubrication
Dealer	.....%	.....%
Employee	.....%	.....%
Employee	.....%	.....%
Employee	.....%	.....%
Employee	.....%	.....%
Employee	.....%	.....%

Station Housekeeping .....% Hours of Operation .....AM to .....PM

Restrooms .....% Last Quarter .....AM to .....PM
(if less than 85%, why?
(use remarks)

Atlantic Dealer Uniforms Yes—No—Other

Does Dealer Have Mailing List Yes—No—Uses it effectively? Yes—No

Does Dealer Have Follow-up System? Yes—No—Uses it effectively? Yes—No

Does Dealer Use Atlantic Window Displays Yes—No

How Do You Rate Dealer's Displays? Driveway .....% Inside .....%

Does Dealer Actually Solicit in His Neighborhood? Yes—No

By What Method(s) .....

Does Dealer Advertise in any Way? Yes—No

What Kind? .....

Is Dealer in Good Financial Position to Carry on the Business? Yes—No

Do We Enjoy a Complete Return of Rent Due? Yes—No

Is Dealer Approved for Lubrication? Yes—No Date.....

Considering a "Model" Service Station and Dealer as 100%, how do you rate 1) this service station .....%
2) this dealer .....%

What is posted pump price (incl. taxes)?.....

What are nearest competitors prices same date (at least 3)

Brand.....:

.....

.....

2542 COMMISSION EXHIBIT NO. 155-M.

Summary of Results

Share of the Market Objective for 1951 ..... gals.

Gasoline Sales—Previous Quarter by Months

.....	.....	Gallons
.....	.....	Gallons
.....	.....	Gallons
Total	.....	Gallons
S. O. M. Objective Same Quarter	.....	Gallons
Percent of Accomplishment	.....%	

Remarks: .....

.....

.....

.....

(Attach rating sheets to district office copy)

(To be completed in District Office from B-540)

Motor Oil Ratio (par 20-1000) .....

Lubrication Ratio (par 10-1000) .....

Tires (Par $22.00/1000) .....

Batteries (Par $7.75/1000) .....

Accessories ($13.50/1000) .....

Washing ($8.00/1000) .....

Service & Labor ($10.00/1000) .....

2543 COMMISSION EXHIBIT NO. 156.

Station Modelization Policy

It has become necessary to firm up our policy covering the Modelization Program so that all Districts will operate on a uniform basis. The following policy becomes effective immediately:

(1) The program must have the combined efforts of the Sales and Operations Groups, with the former determining, after the survey of the station is made, what is needed to modelize the station within the limits of its physical appointments.

Operations will supply the estimated cost and, if approved, make the necessary physical changes at the same time the station is being modelized. Modelization is to include a study of the dealer's lubrication equipment, restroom facilities, and both interior and exterior lighting.

No physical changes are to be made without the sanction of the Operations Department, and in any event, changes of a structural nature are to be avoided in unusual cases.

The Modelization Program must have the approval of all interested departments; therefore, salesmen should be cautioned to make no firm commitments until these approvals have been secured.

(2) Shelving—Dealers will purchase, and Atlantic will install any, of the currently recommended Murlin display shelving anywhere within the station.

(3) Lubrication Equipment—The dealer can buy under our current financing policy, any of the approved lubrication or Allied equipment through Atlantic, and we will install and maintain for the period of the manufacturer's guarantee. The Dealer may buy equipment from outside sources, but he will arrange for its installation and main-

tenance, only after the approval of our Operations Department.

(4) Washing Facilities—We will furnish and install the pipe for our currently recommended drop-hose installation, which is to be considered a part of the modelization package. The Dealer will pay for the hoses and nozzles and replace them as needed.

(5) Lighting—The Operations Department will inspect the lighting facilities, both inside and out, and make their recommendations in line with our present approved Lighting Installation Program, the cost both inside and out to be borne by Atlantic.

January 5, 1951

2545 COMMISSION EXHIBIT NO. 157.

February 21, 1951

TBA HKP

Goodyear Commission Plan 19[illegible] Sales Plan

Mr. G. V. Ostrander,
Syracuse, New York.

Dear Sir:

With the change in T. B. A. program in the New York Region to that of Goodyear, we would like to point out certain changes which appear necessary in your 1951 Sales Plan as far as T. B. A. is concerned:

On page 3, tire quotas have been established in units. Such information will not be available from Goodyear as your sales report will be in dollars.

On page 4, a unit objective has been established. Information on this line will also be in dollars and will not be provided in units.

Page 7—there are probably some changes which should be made in the points established under the T. B. A. Program.

In appendices 1a, 2a and 2c, district quotas would have to be changed in line with the above information. Appendix D, the report and review form, would also require some change in treatment.

These suggestions are offered for your information and with the thought that this change to the Goodyear program need not necessarily cause any interruption in your entire 1951 Sales Plan.

Very truly yours,

h

2547 COMMISSION EXHIBIT NO. 158.

January 26, 1951

PNJ:JOE

Proposed T. B. A. Program

Mr. S. J. Heideman
12th Floor.

This is to confirm to you our desire to inaugurate the Goodyear program for T. B. A. in the Philadelphia-New Jersey Region, which we discussed following our meeting with Mr. Colley today.

The following points have been considered in arriving at our final position. We look favorably upon the Goodyear program for these reasons:

(1) Higher volume
(2) Better profit
(3) Lower operating cost (warehouse, delivery, etc.)
(4) Completed Key Dealer Study shows better financial return to A. R. Co. but, we assume, lower volume.

(5) Better dealer and consumer product acceptance. With this program we could retain key dealers—thus maintaining volume on T. B. A. and petroleum products.

(6) Successful record on Goodyear in the Newark District

(7) Relationship with Goodyear is good; fine support in field and full supervisory cooperation.

(8) More selling time for salesmen on petroleum products and merchandising

It is also our belief that sufficient expression of opinion has been reported to make any brand preference survey with the dealers unnecessary. We further feel that with the Goodyear program in its embryonic state of development, we might be unwisely stirring up our dealer and sales organization were we to attempt a brand preference survey at this time.

CC: Mr. E. D. Walter

2549 COMMISSION EXHIBIT NO. 159.

CC: Messrs. J. O. Estlow, Chairman, Service Station Committee
Richard Borden
E. R. Cox, Jr.

March 28, 1951

TBA SJH

Goodyear Program Service Station Identification

Mr. S. A. Gaylord, Manager,
Petroleum Company Sales,
Goodyear Tire & Rubber Company,
Akron 16, Ohio.

Dear Mr. Gaylord:

You will be pleased to learn that the Service Station Committee has approved the use of the Goodyear transparancies that were presented by Mr. Fritsch, and also approved the use of the hanging sign at such locations where the installation would be practical. I am passing this information along to you promptly so that you can order the transparancies which will require some time to produce. For your guidance in ordering the transparancies, we list the following information:

Region	Active T.B.A. Dealers	Class 2* Dealers
New England	690	415
New York	400	194
Philadelphia	1300	353

The horizontal wall sign has been approved as an alternate for the hanging sign when the preferred type of installation cannot be employed. Will you arrange to reserve sufficient quantities of both types of signs so that

when the identification program finally gets under way it will not be delayed for lack of them.

It would also be appreciated if you will recommend and submit to us a format complete with detailed directions that Goodyear and Atlantic can mutually agree upon as the identification program.

Cordially yours,

S. J. Heideman

h

* Totals under Active T. B. A. Dealers include Class 2 Dealers.

2551 COMMISSION EXHIBIT NO. 160A-Y.

The Atlantic Refining Company
Philadelphia, Pa.

June 5, 1951

PNJ:WJJ

Goodyear Program Station Identification

Mr. W. C. Hoffman
12th

In answer to your letter of May 29 under the captioned subject:

Attached please find a list of the dealers in the Philadelphia-Suburban-South Jersey Districts who have signed Associate Dealer Contracts and whose stations are to be identified as Atlantic-Goodyear stations.

/s/ W. J. Jackson
W. J. Jackson

6/7 Original list given to J. O'Neill.
I
att: 3 copies

2553 **Phila & Suburban**

Territory	**7-G**	**10**
	22-G	**23**
	20-D	**20**
	11-CD	**2**
	6-CD	**2**
	21-D	**23**
	3-D	**23**
	5-D	**24**
	1-G	**21**
	10-D	**19**
	4-D	**19**
	9-G	**36**
	23-D	**23**
	25-D	**20**
	26-CD	**5**
	24-D	**20**
	2-G	**57**
	8-D	**14**
		361 Total
		208
		569

New Jersey		
	50-D	**28**
	55-6-55-D	**64**
	52-D	**27**
	54-D	**20**
	57-CD	**1**
	53-D	**21**
	51-D	**21**
	56-56-D	**26**
		208 Total

2555 Goodyear Associate Dealers

Phila.-& Suburban Dists.

Territory 7-G

Charles Schultz, York & Street Road, Warminster, Pa.
J. W. Stevens, 108 S. Keswick Ave., Glenside, Pa.
W. H. Weiss, Keswick & Paxson Ave., Glenside, Pa.
M. Serdikoff, 149 W. Chew Aye., Phila.
Eppy's, 8th & Wyoming Ave., Phila.
H. E. Neger, 200 W. Rosemar St., Phila.
Butler & Flacco, 209 Leedom St., Jenkintown, Pa.
G. I. Service Station, Maple Glen (near Ambler on Limekiln Pike)
W. & J. Lewis, Doylestown & Gilpin, Willow Grove, Pa.
L. C. Finney, Buck Road, Holland, Pa.

Territory 22-D

L. Curcio, S. W. Cor. Belmont & Levering Mill Rd., Bala Cynwyd, Pa.
Al DeCurtis, City Line & Conshohocken State Road, Bala, Pa.
E. Donley, Swede & Markley Sts., Norristown, Pa.
J. Eby, 925 Montgomery Ave., Narberth, Pa.
A. Fachiano, Belmont & Jefferson Sts., Phila.
K. Fink, 2nd & DeKalb Sts., Bridgeport, Pa.
A. Fritsch, Woodside & Montgomery Aves., Ardmore, Pa.
J. Nemetz, City Line & Oakland Terrace, Bala, Pa.
N. O'Brien, Fayette & North Lane, Conshohocken, Pa.
C. C. Ross, Montgomery & Old Lancaster Pike, Merion, Pa.
C. C. Ross, Montgomery Pike & Levering Mill Road, Cynwyd, Pa.
M. Surderski, 17 E. Lafayette St., Norristown, Pa.

R. Wood, Main & Haws Sts., Norristown, Pa.
W. Bean, Main & Forrest Sts., Jeffersonville, Pa.
2557 A. Cummins, Montgomery & DeKalb Sts., King of Prussia, Pa.
C. Danella, 700 Main St., Norristown, Pa.
C. Gambone, Main & Green Sts., Norristown, Pa.
J. Harrington, U. S. Route # 23, Valley Forge, Pa.
W. Moosland, Germantown & DeKalb Pike, Norristown, Pa.
T. McGuigan, Ridge & Butler, Harmonville, Pa.
J. Muskovic, Arch Street, Trooper, Pa. (Rt. 422)
Shaw & Heavner, Jeffersonville, Pa.
Dan's Service, Germantown Ave. & Plymouth, Norristown, Pa.

Territory 20-D

D. A. Carney, Oxford & Pine Road, Fox Chase, Pa.
R. Earnhart, Penn & 2nd Street Pike, Rockledge, Pa.
Leedom's S. S., Street Road & 2nd Street Pike, Southamption, Pa.
Joseph Groner, Super Highway & Highland, Parkland, Pa.
Harvey Furness, 150 South Main St., Yardley, Pa.
Louis Huber, York & Moreland, Hatboro, Pa.
John Black, 2nd Street Pike, Bethayres, Pa. (NEC Huntingdon Pike & Bethayres Road)
Frank Norman, Easton & Laurel Aves., Horsham, Pa.
Thomas Campion (York Rd. S. S.) 481 York Road, Jenkintown, Pa.
Robert Fallows, Moreland & York, Willow Grove, Pa.
Richard Keyser, York & Guernsey, Abington, Pa.
Joseph Malee, Bethlehem Pike & Wissahickon Ave., Flourtown, Pa.
Wm. Ward, Bethlehem Pike & Valley Green Road, Flourtown, Pa.

Robert Kelly, Bethlehem Pike & Township Road, Fort Washington, Pa.
Russell Tompkins, Butler & Lindenwold, Ambler, Pa.
Frank McDougall, 242 S. Easton Road, Glenside, Pa.
David White, Jenkintown & Easton Road, Glenside, Pa.
John Dieterly, Mt. Carmel Ave., North Hills, Pa.
Frank Moran, Limekiln Pike, North Hills, Pa.
Mile Smith, Easton & Bradfield, Roslyn, Pa.

2559 Territory 11-CD

Guy Hayden Motors, 912 Broad St., Phila.
Frankford Sales, 4800 Frankford Ave., Phila.

Territory 6-CD

A. Allen, 13 W. Highland Ave., Chestnut Hill, Pa.
O'Connell Motors, 6715 Ridge Ave., Roxboro, Pa.

Territory 21-D

Thomas Beale, 8101 Ridge Ave., Phila.
John Bean, Lincoln Drive & Mt. Pleasant Ave., Phila.
Wm. Bean, Cheltenham Ave. & Pittville, Phila.
Tom Connolly, Ogontz & Wyncote Ave., Phila.
Roy Craven, Germantown Pike & Church Road, Barren Hill, Pa.
M. Craig, Rising Sun & Lardner Sts., Phila.
W. Crowley, Germantown & Evergreen Aves., Phila.
Harry Doak, 5th & Godfrey Ave., Phila.
Bill Driskill, Germantown Ave. & Roumfort Road. Phila.
F. C. Glenn, McCallum & Ellet Sts., Phila.
C. P. Gravelle, Cheltenham Ave. & Easton Road, Phila.
J. Wayne Johnson, Washington Lane & Ogontz Ave., Phila.
George Kreider, Township Line & Cadwallader, Elkins Park, Pa.

Howard Laessig, Chelten, Stenton & Gratz, Phila.
Wm. Milsop, Haines St. & Stenton Ave., Phila.
Roy Morton, Rising Sun & Godfrey Ave., Phila.
John McElderry, York Road & City Line, Melrose Park, Pa.
I. E. Richman, Cheltenham Ave. & Oak Lane Road, Melrose Park, Pa.
George Schofield, 6201 Ridge Ave., Phila.
George Stevenson, Beechwood St. & Wyncote Ave., Phila.
Jos. Sullivan, 6101 Ridge Ave., Phila.
Joe Sullivan, Ridge Ave. & Shawmont Ave., Phila.
Max Weiner, 68th Ave. & York Road, Phila.

2561 Territory 3-D All in Philadelphia
Bob Senior, Belgrade & Aramingo Sts., Phila.
Tom Hanna, Front & Coral Sts.
John Hansen, Germantown & Girard Aves.
Sam Mullineaux, Glenwood Ave. & Cambria St.
M. J. McIntyre, Belgrade & Frankford Ave.
Charles Heinach, 9th & Germantown Ave.
Ed O'Brien, 2nd & Huntingdon Sts.
Norris Warren, 12th & Diamond Sts.
John Marsh, 21st & Ridge Avenue
Ed Ringenary, 5th & Spring Garden Sts.
Stan Goesswein, 10th & Ridge Ave.
Pip's Service Station, Delaware & Beach
Ben Lerner, 2034 Market Street
Russ Miller, 12th & Vine Sts.
Stan Shumoski, 2nd & Christian Sts.
P. & R. Service, 18th & Dickinson Sts.
Paul DiCicco, 26th & Snyder Avenue
Angelo Costello, Passyunk & Tasker
Louis Halod, 22nd & Bainbridge
Bob Moreland, Passyunk & Christian
Ed Jones, 23rd & South

Atlantic Auto, 12th & Porter Sts.
Bob Ritchie, 5th & Germantown Ave.

2563 Territory 5-D All in Philadelphia
Frank Bradfield, Frankford & Tyson
Carroll Brothers, 3001 N. 2nd St.
George's S. S., 3301 Princeton Avenue
Syd Gros, Frankford & Robbins
J. Guning, Oxford Pike & Penn St.
Pat Healy, Frankford & Devereaux
J. G. Hinderer, Torresdale & Levick
T. A. Kennedy, Roosevelt & Cottman
R. B. Lloyd, Kensington Ave. & Sedgley
Marianni Auto Service, Tulip & Ontario Sts.
A. Morongo, Frankford Ave. & Tyson St. (S. W. Cor.)
J. Nowell, Fishers & Mascher Sts.
Wm. & Geo. Pinkerton, "D" & Erie Ave.
Randy's S. S., Unity & Wingohocking Sts.
Reardon, Roosevelt Blvd. & Levick St.
Rubin, B., Oxford Pike & Foulkrod St.
F. Schlupp, Front & Louden Sts.
Tioga Service Center, "B" & Tioga Sts.
Tom's Service Station, Griscom & Orthodox Sts.
Joe Walls, Frankford & Torresdale Aves.
Al Weiner, Roosevelt Blvd. & Adams Ave.
F. Zabielski, Torresdale & Kennedy
A. Zabielski, Bridge & Thompson Sts.
A. Zabielski, 2nd & Erie Avenue

2565 Territory 1-G (All in Philadelphia)
Alger's Service Station, 857 N. Corinthian Ave.
Al's Garage, 1939 S. 17th St.
Apex Garage, 212 N. Juniper St.
Atlantic Motors, 2435 Passyunk Ave.
Bernie's Service, Randolph & Oregon Ave.
Brown's Garage, 1011 Race St.
John Calhoun, 2525 Moore St.

Center City Garage, 2031 Lombard St.
Frank's Service Station, 22nd & Ritner St.
Max Goldstein, 732 South Street
J. & H. Auto, 132 N. 3rd St.
John Keglee, Front & Moore Sts.
Loveler's Tire Shop, 2023 Christian St.
Leo's Service Station, 2325 Pennsylvania Blvd.
Howard Miller, 3321 Frankford Ave.
Morrone's Service Station, 1722 Ridge Avenue
Quaker City Garage, 939 Race St.
Harry Rambo, 2842 Dickinson St.
Segal & Son, 21st & Fitzwater St.
Walter Smith, 24th & Reed
Sylvania Auto, 1946 McKean Street

Territory 10-D

A. J. Breslin, Markoe & Chestnut Sts.
Casco Auto Service, 70th & Kingsessing Ave.
Harry Croker, 3842 Lancaster Ave.
V. D'Ascenso, 49th & Lancaster Ave.
J. Dreger, 68th & Woodland Ave.
Roy Duster, 5317 Warren St.
L. Fenner, 34th & Brandywine
J. Hart, 39th & Market Sts.
2567 J. Hudson, 49th & Market Sts.
H. Kennedy, 40th & Walnut Sts.
I. Mann, Haverford Ave. & Brookhaven Road
W. J. McDermott, Haverford & Vine Sts.
A. Piccoli, 66th & Haverford Ave.
Paul Rafferty, Baltimore & Woodland Ave.
C. K. Robertson, 55th & Walnut Sts.
Chas. B. Robinson, 63rd & Ludlow Sts.
Harry Straub, 62nd & Lancaster Ave.
Leo Wells, 52nd & Baltimore Ave.
Edward Wheaton, 63rd & Dicks Avenue

Territory 4-D

James C. Amos, Queen Lane & Greene
Sam Berman, 29th & Somerset
Tom Britt, Broad & Lycoming
Dan Carr, 26th & Huntingdon
Wilmer Cassel, Hunting Park Ave. & Pacific
Clock Service Station, Hunting Park Ave. & 30th
John Deegan, Belfield & Ogontz Ave.
Gerald Dougherty, 33rd & York Sts.
Anthony Fortunato, 29th & Hunting Park Ave.
Dave Furman, Jr., Midvale Ave. & River Drive
Fred Gohen, Germantown Ave. & Washington Lane
Dave Hamilton, 9th & Venango Sts.
Joe Hartnett, 5th & Bristol Sts.
Joe Hartnett, 5th & Somerville Sts.
Harold Mette, Germantown Ave. & Ashmead Sts.
Bob O'Donnell, Rittenhouse & Wissahickon Ave.
Fred Phillips, Midvale Ave. & Stanton St.
Sports Parking, 21st & Lehigh Ave.
Uncle Sam's Motors, York Road & Rising Sun Ave.

2569 Territory 9-G: Philadelphia & Suburban District

L. Anzalone, 74th & Buist Avenue
A. DeNardo, 78th & Island Road & Suffolk St.
John Lee, 52nd & Woodland Ave.
A. Plotnick, 60th & Springfield Ave.
N. Kitts, Cobbs Creek Blvd. & Upland St.
Dakota Garage, 246 S. 59th Street
H. Konkle, Marshall & Wycombe, Lansdowne, Pa.
H. S. Hoffman, Wildwood & Long Lane, E. Lansdowne, Pa.
E. Shank, McDade Blvd. & Ridley Ave., Folsom, Pa.
J. Stowe, Woodland & Primos Ave., Folcroft, Pa.
Marcus Hook Auto, 10th & Green Sts., Marcus Hook, Pa.
Mayover's Garage, 61st & Media Sts., Phila.

Bala Service, City Line & Golf Road, Phila.
Joseph Hudson, Lancaster & Girard Ave., Phila.
Wolf Brothers, 143 N. 56th Street, Phila.
Young and Wilson, 112 N. 63rd St., Phila.
T. Irvin, 60th & Warrington Avenue, Phila.
Dave and Sol, 6055 Hazel Avenue, Phila.
Sheer's Super Service, 2095 N. 63rd St,, Phila.
Don Keyser, Pennell & Lemni Roads, Lima, Pa.
A. Caccia, 1206 Lancaster Avenue, Rosemont, Pa.
H. & G. Service, Lancaster Pike, Berwyn, Pa.
J. Buffington, 218 E. King St., Malvern, Pa.
J. DiNenno, Route 202, Dilworthtown, Pa.
Cloverleaf Service, Baltimore Pike & Middletown Rd., Black Horse, Pa.
Doherty's Service, Baltimore Pike, Lima, Pa.
P. Del Collo, 60th & Baltimore Ave., Phila.
S. Bostwick, Market & Ridge Rds., Linwood, Pa.
Wynnefield Service, 54th & Montgomery Ave., Phila.
Worrall's Super Service, 52nd & Poplar Sts.
A. Tate, 1402 N. 51st St., Phila.
C. Nelson, Main & Water Sts., Colwyn, Pa.
Sharon Hill Garage, Hook Road & Chester Pike, Sharon Hill, Pa.
Ray Gaynor, 71st & Elmwood Ave., Phila.
John Rice, Kedron & Waverly Terrace, Morton, Pa.
G. & A. Service Station, Prospect Ave. & Chester Pike, Prospect Park, Pa.

2571 Territory 23-D (Phila. & Suburban Dist.)
Porter Brothers, 6215 Baltimore Ave., Yeadon, Pa.
Chappie's Auto Service, Garrett & Wambley, Upper Darby, Pa.
James Bradley, West Chester Pike & Keystone, Upper Darby, Pa.
J. Turney, Burmont Ave. & Jones, Drexel Hill, Pa.
L. Young, Burmont & Mary, Drexel Hill, Pa.

L. Gaukel, Marshall Road & Owens Avenue, Lansdowne, Pa.
W. Kyle, West Chester Pike & Naylors Run Road, Llanerch, Pa.
H. Kiefer, 3448 Garrett Road, Drexel Hill, Pa.
H. Rossi, City Line & Lynn Blvd., Highland Park, Pa.
M. Hawk, Darby & Manoa Road, Brookline, Pa.
E. Scott, Lancaster Ave. & Wynnewood Road, Wynnewood, Pa.
W. Crissman, 500 S. 69th St., Upper Darby, Pa.
T. Riter, Garrett & Huntley Rds., Upper Darby, Pa.
V. Carrow, Long Lane & Alderbrook Ave., Stonehurst, Pa.
J. Snively, Baltimore Pike & Penn Blvd., E. Lansdowne, Pa.
J. Nedelka, Lansdowne & Strafford, Lansdowne, Pa.
V. Heeren, Township Line & Wilson Drive, Llanerch, Pa.
H. Barnes, Manor Road & Darby Road, Upper Darby, Pa.
D. Fowler, Hampden & Marshall Rds., Upper Darby, Pa.
Brookline S. S., Darby Road & Brookline Road, Brookline, Pa.
W. T. MacDonald, Marlborough Road & West Chester Pike, Stonehurst, Pa.
W. White, 2142 Darby Road, Oakmont, Pa.
H. Cook, 61 E. Lancaster Ave., Ardmore, Pa.

2573 Territory 25-D (Phila. & Suburban Dist.)
Lloyd Ammon, State & Baltimore, Media, Pa.
Edw. Bartlett, State & Township Line, Drexel Hill, Pa.
Chris Boeker, Lancaster Pike & Aberdeen, Wayne, Pa.
G. Coveney, Mill Road & Lancaster Ave., Villanova, Pa.
C. Cooksey, E. Lancaster Avenue, Paoli, Pa.

Wm. Clark, Gay & Adams, West Chester, Pa.
R. J. Conner, High & Chestnut, West Chester, Pa.
J. K. Wilson, Baltimore & Oak Avenue, Clifton Heights, Pa.
N. Salmonsen, Saxer & Powell, Springfield, Pa.
Stanley H. Dalton, Baltimore Pike & Riverview Rd., Springfield, Pa.
B. N. LeBoutillier, Lancaster Ave., Devon, Pa.
I. K. Little, Baltimore Pike, Chester Heights, Pa.
Thomas Montgomery, Lincoln Highway, Exton, Pa.
James Moore, Baltimore & South Avenue, Media, Pa.
Art Mostardi, McDade Blvd. & Ashland, Glenolden, Pa.
Charles McCafferty, Baltimore & Providence, Media, Pa.
Parkes & Dawn, West Chester Pike, Broomall, Pa.
Edward Sprague, Chester & Fairview Road, Swarthmore, Pa.
Fred Powell, Bradford & Sharpless, West Chester, Pa.
A. Van Brunt, Burmont Rd. & Woodland Ave., Drexel Hill, Pa.

Territory 26-CD

Mac & Sam, Inc., 138 S. Springfield Road, Clifton Heights, Pa.
Sentman Motors, 56th & Chestnut Sts., Phila., Pa.
Callahan Motors, Clifton Ave., Collingdale, Pa.
M & H. Motors, Lancaster Pike, Ardmore, Pa.
Charles T. Leary, Lancaster Pike, Wayne, Pa.

2575 Territory 24-D: (Phila. & Suburban Dist.)

Joe Abel, Chester Pike & Fairview Road, Leiperville, Pa.
Joe Boice, Chester Pike & Oak Lane, Glenolden, Pa.
J. Chambers, 2nd & Lloyd Sts., Chester, Pa.
J. Dooley, MacDade & Fairview, Woodlyn, Pa.
C. Drozdowski, Chester Pike & Eddystone Ave., Eddystone, Pa.

L. Finnegan, MacDade & Wycombe, Darby, Pa.
Henry's Atlantic Service, Chester Pike & McKinley Ave., Norwood, Pa.
G. Hill, MacDade Below 12th, Darby, Pa.
Al Kahler, 22nd & Edgemont, Chester, Pa.
Laughead's Service, Chichester & Huddell, Linwood, Pa.
Matthews, James, Bailey Road & Church Lane, Yeadon, Pa.
F. E. Mohney, Springfield & Providence, Aldan, Pa.
Burt Rehill, 9th & Flower, Chester, Pa.
Jack Rehill, 4th & Highland, Chester, Pa.
J. Wittig, Industrial Highway, Lester, Pa.
S. K. Watson, Chichester Road, Boothwyn, Pa.
Highland Service Center, Chichester & Highland, Feltonville, Pa.
J. Pollock, 9th & Concord, Chester, Pa.
Sam Dugross, Main & Ridge Sts., Darby, Pa.
Green's Atlantic Service, 214 E. 5th St., Chester, Pa.

2577 Territory 2-G All in Philadelphia (except designated otherwise)

Arnold Garage, 1616 Master Street
Priestly Burwell, 1919 N. 21st Street
Harry's Hardware, 7 W. Girard Avenue
Hyman Heller, 334 W. Girard Avenue
John & George Atlantic Station, 2658 Frankford Avenue
W. E. Mager, Main & Trenton Aves., Hulmsville, Pa.
William Ruckrein, Front & Wingohocking Sts.
James Wasser, 4331 Roosevelt Blvd.
R. Spiegelman, Boudinot & Ruscomb Sts.
Albert C. Ruch, 6801 Torresdale Avenue
William Kiner, Longshore & Gillespie Sts.
James F. Trojan, 7243 Torresdale Avenue
Frank's S. S., 9th & Erie Avenue

Katz Garage, 1509 Germantown Avenue
Walsh Auto Repair, 999 Anchor Street
R. S. Rodgers, 5565 Miriam Road
Wm. A. Dettmer, Rt. 113 & Lewisville Avenue, Newportville, Pa.
Tullytown Garage, Tullytown, Pa. (Main Street)
J. Barton, A75 Pond Street, Bristol, Pa.
Naylor Brothers, Howard & Allegheny Avenue
George's Auto Supply, "G" & Allegheny Ave.
Ben's Auto Repair, "I" and Atlantic Sts.
Wm. J. O'Driscoll, Crystal & Tioga Sts.
Airlight Garage, 851 E. Tioga Street
Juniata Service Station, Erie Ave. & Bennington St.
Zimmerman's Auto Repair, 847 E. Luzerne St.
Lehigh Service Station, 341 E. Lehigh Avenue
Joseph Rose, 1940 E. Tioga Street
Len's S. S., Thompson & Westmoreland Streets
2579 Penn Service Station, Penn St. & Cheltenham Avenue
Sabath Garage, 1735 Wakeling Street
Bridesburg Garage, 4547 E. Thompson St.
Akron Service Station, Akron & Pratt Sts.
Pat's Service Station, 1201 Bridge Street
Lennox Auto Supply, 3121 Emerald St.
Samuel H. Roseman, 2901 N. Front St.
James P. Kelly, 3121 Memphis St.
George Salomskas, 3401 Richmond St.
Louis J. Zandel, Whitaker Ave. & Luray St.
A. Parone, 6th & Sedgley Avenue
Jan's Service Station, 975 Frankford Avenue
Cumberland Garage, 8th & Cumberland Sts.
R. Foehl, 2235 N. 10th St.
Richard Glanzman, 2nd & Diamond Sts.
Frank Carango, Bristol Pike, Edgely, Pa.
Stanley Budney, Bristol Pike & Park Ave., Eddington, Pa.

W. Becker, 1201 Cottman St.
Adam's Auto Service, Comly & Walker Sts.
Nick DiBello, Welsh Road & Frankford Avenue
A. K. Margerum, Route 13, Edgely, Pa.
Frank Conti, Bloomdale Road opposite M. & M. M. Plant, Bristol, Pa.
Philip Karponski, 2835 Tulip Street
John's Auto Service, 2318 E. Susquehanna Avenue
Carl Dolente, 2330 Frankford Avenue
Len's Auto Service, 9337 Torresdale Avenue
A. L. Keely, Bristol Pike, Edgely, Pa.
W. H. Stearn, Bristol Pike, Andalusia, Pa.
2581 Wm. Johnson, Croyden S. S. (State Road & Cedar Ave.), RFD 2, Croyden, Pa.
M. Denshaw, Frankford Ave. & Decatur, Phila.
A. B. Fehrenbach, Castor & Unruh, Phila.
Wm. Foster, 8759 Frankford Avenue, Phila.
George Hinds, Durham & Emily Roads, Newportville, Pa.
H. Humphreys, Roosevelt Blvd. & Comly, Phila.
J. Livesey, Roosevelt Blvd. & Rhawn St., Phila.
C. Miller, Bustleton Ave. & Welsh Road, Phila.
M. Phillips, Bustleton Ave. & Philmont Rd., Phila.
A. Raupp, Lincoln Highway, Penndel, Pa.
A. Salmonsen, Torresdale & Shelmire St., Phila.
H. Sooby, Eddington, Pa. (Bristol Pike & Street Road)
H. Vandegrift, Farragut & Bloomdale Ave., Bristol, Pa.
Lou Wehn, Bustleton & Byberry Rd., Somerton, Pa.

2583 Goodyear Associate Dealers

New Jersey

Territory 50-D

Don Allen, Pennington, N. J. (Rt. #30 & Washington's Crossing)
Harold Bechtel, Chambers & Liberty Sts., Trenton, N. J.
B. K. Motors, Trenton, N. J. (N. Clinton Avenue)
Norman Brown, Greenwood & Nottingham Way, Trenton, N. J.
Andrew Hazard, Broad & Park, Trenton, N. J.
T. Harrison, Trenton, N. J. (Forrest & Reeves Avenue)
Glenn R. Jamieson, Greenwood & Chambers, Trenton, N. J.
Voorhees Johnson, Olden & White Horse Aves., Trenton, N. J.
Charles Lutz, 2769 S. Broad St., Trenton, N. J.
Jasper Lucas, Rt. #33 & Crest Avenue, Hamilton Square, N. J.
Charles Mantel, Cedar Lane & Williams St., Trenton, N. J.
John Matuza, Bellevue & Calhoun Sts. Trenton, N. J.
George Mellevold, Route #25, Windsor, N. J.
H. Mohr, State Street & Whitehead, Trenton, N. J.
George MacKissic, River Rd. & Yardley Bridge, Trenton, N. J.
Ed McLoughlin, Robbinsville & Allentown Rd., Allentown, N. J.
H. Oliveri, 520 Brunswick Avenue, Trenton, N. J.
Jos. M. Quinn, 628-36 Perry St., Trenton, N. J.
William Riegel, Rose & Calhoun Sts., Trenton, N. J.
Lloyd W. Ruch, Pennington & Parkway, Trenton, N. J.
Deklyn Smith, Princeton Ave., east of Spruce, Trenton, N. J.

J. R. Sutphin, Rt. 26 & Washington Road, Penns Neck, N. J.
Ralph Weer, West End & Edgewood, Trenton, N. J.
William Worthington, Parkside & Homan, Trenton, N. J.
Young Brothers, Liberty & Olden Avenue, Trenton, N. J.
2584 Matthew Pasawicz, 1720 Brunswick Avenue, Slackwood, N. J.
C. Leming, Allentown, N. J.
B. Peart, Mercersville, N. J.

Territory 55-G 55-D

Robert Williams, Broadway & Silver Lake Ave., Westville, N. J.
James H. LaFlamm, Black Horse Pike & Evesham, Glendora, N. J.
Joseph Pennisi, Hilltop, N. J. (Black Horse Pk. & Landing Road)
William Anderson, White Horse Pike & Harker Lane, Berlin, N. J.
Frank Eastlack, Broad & Commerce Sts., Paulsboro, N. J.
Harry Young, Verga, N. J.
Albert R. Clifford, Glassboro & Evergreen, Woodbury Heights, N. J.
C. W. Tarrach, Broad & Dickinson St., Woodbury, N. J.
Bert Nicholls, Broad & West Sts., Woodbury, N. J.
Suburban Motors, Camden, N. J. (Fairview)
Joseph Polisero, Brooklawn, N. J. (Crescent & Haakon)
Joseph Delangowski, Gloucester, N. J. (SWC Broadway & Hunter)
Pat's Super Service, 1621 Broadway & Webster, Camden, N. J.

William De Filippo, 5th & Berkley, Camden, N. J.
Prospero Borreggine, 800 S. 2nd St., Camden, N. J.
Charles Graziosa, 1000 Ferry Ave., Camden, N. J.
Bart's Atlantic Service, 1714 Mt. Ephraim Ave., Camden, N. J.
Edward Zawacki, 900 Kaighn Ave., Camden, N. J.
Nick's Garage, 210 Mickle St., Camden, N. J.
Alex Laskawitch, 542-44 Main St., Camden, N. J.
Rauh & Clark, 817 Federal St., Camden, N. J.
C. C. Miller, 1153 Penn St., Camden, N. J.
Parkside Auto Service, NEC Princess Ave. & Walnut St., Camden, N. J.
2585 Theodore Kauffman, State St. & Cooper River Bridge, Camden, N. J.
Henry J. Lemmon, 18th & River Road, Camden, N. J.
Ward & Kehoe, 3144 Westfield Ave., Camden, N. J.
Michael Kozakewich, Jr., S. 3rd Avenue, Merchantville, N. J.
Adolph Schmidt, Rt. 38, 34th Ave. & S. Harvard, South Merchantville, N. J.
Samuel DePasquale, Marlton Pike & Delaware Township Line, S. Merchantville, N. J.
Edgar Lincoln, Cove Road & Westfield Ave., Pennsauken, N. J.
Alex George, 7725 Maple Ave., Pennsauken, N. J.
Dominic Sacca, Rt. 40, Deer Park, R. D. Haddonfield, N. J.
Joseph V. Neale, 221 S. Black Horse Pike, Mt. Ephraim, N. J.
Ben Smith, White Horse Pike & California, Clementon, N. J.
Clementon Atlantic Service, Park Blvd. & Gibbsboro Road, Clementon, N. J.
Jas. R. Woodbury, Rt. S-41 & O'Donnell's Lane, Palmyra, N. J.

L. R. Hammel, 206 Pavillion Av., Riverside, N. J.
Tieman's Atlantic Service, Burlington & Union Sts. Delanco, N. J.
Jenkins Atlantic Station, Burlington & West Aves., Delanco Gardens, N. J.
Adams Brothers, Federal & Locust Sts., Burlington, N. J.
Dares Service Station, 182 Hanover St., Pemberton, N. J.
Thomas Lattiere, Rt. 40 & State Highway, Medford, N. J.
Sexton's Restaurant, Rt. 40, R. D. Medford, N. J.
William C. Matlack, Hessian & Red Bank Aves., Thorofare (National Park) N. J.
James A. Gould, Salem Road, Mt. Royal, N. J.
R. R. Borden, Woodbury & Swedesford Road, Mickleton, N. J.
Earl Chamberlin, Woodbury & Mantua Rds., Mantua, N. J.
Roger Della Matta, Mantua-Pitman Road, Barnesboro, N. J.
Frank Monzo, Hurfville & County House Rds., Blackwood Terrace, N. J.
Wilmer Pleasanton, 11 Morris Avenue, Blackwood, N. J.
2586 Fanelli Atlantic Station, Black Horse Pike, Blackwood, N. J.
Moe's Atlantic Service, Black Horse Pike & Lakeland Road, Blackwood, N. J.
Mayer Wetherell, Black Horse Pike & Woodbury Road, Turnersville, N. J.
Barclay E. Zane, 16 W. Broad Street, Gibbstown, N. J.
Crown Service, Route 44, Gibbstown, N. J.
Thomas J. Slusor, Rts. 322 & 100, Swedesboro, N. J.
Edward Taylor, Rt. 100, Swedesboro, N. J.

Jay Vee Service, Virginia Avenue & Harmony, Penns Grove, N. J.
William Mesogianes, Rt. 40 & Plant St., Deepwater, N. J.
Joseph Swider, Salem, N. J. (Salem-Pennsville Road)
Harry Richie, 18 Front Street, Salem, N. J.
Sandy's Atlantic Service (Laren Saunderlin) 90 West Ave., Woodstown, N. J.
Florus Smith, 26 N. Main Street, Woodstown, N. J.
Mrs. E. Hubschmitt, State Highway, Rt. 46, Mullica Hill, N. J.

2587 Territory 52-D

Batlis, Nick, Broad & Morgan Sts., Palmyra, N. J.
Borocz, Julius, Rts. 25 & 39, Bordentown, N. J.
Eckman, Horace—Mill and Pine, Mt. Holly, N. J.
Fortnum Motors Co., Rt. 25, Bridgeboro, N. J.
Frank's Auto Service (Frank Giovanetti) Rt. S-41 & 5th St., Palmyra, N. J.
Fred's Atlantic Service, (Merritt Haines) Mt. Holly Rd. & Brimstone, Medford, N. J.
Garro, Nick—Main & Lippincott, Maple Shade, N. J.
Hoover, John—Rt. S-41 & Vanderveer, Palmyra, N. J.
Hutchinson, L.—Rt. 25 & W. High St., Burlington, N. J.
Kotula, Antoni—Fairview, R. D. Medford, N. J.
Lawson, William—Rt. 25 & Browning Road, Pennsauken, N. J.
Lipinsky, Walter—Rt. 25 & Fairview, Riverside, N. J.
Lott, Charles—Rt. 38 & Church St., Moorestown, N. J.
Melrose Service Station (E. & A. Bisignano), Rt. S-41, Medford, N. J.
Montgomery, Robert C.—N. W. Side Rt. S-41, Maple Shade Township, N. J.
Pettit, M. O.—Rt. S-41 & S-40, Marlton, N. J.
Ruggiano, Joseph—Camden & Cottage Avenue, Lenola, N. J.

Seward, George—Maple & Chapel Ave., Merchantville, N. J.
Schlatter, Paul H.—Rt. 25 & Hilton Rd., Pennsauken, N. J.
Stohner, George—W. Main & Union Sts., Moorestown, N. J.
Strohlein, Jacob—Rt. 25 & Burlington Pike, Riverton, N. J.
Watson, Jos.—Park and Cove Road, Merchantville, N. J.
Consolidated Sales—29th & Lafayette St., Riverside, N. J.
Quicksall, Wallace—Rt. 38, Mt. Holly, N. J.
Sekerske, Harry—Browns Mills, N. J.
Thompson's Atlantic Service, Rt. 25 & Myrtle Ave., Pennsauken, N. J.
Markwith's Atlantic Service, Rt. S-41, Kresson, N. J.

2588 Territory 54-D

Atwood, M. S., 96th St. & 3rd Ave., Stone Harbor, N. J.
Brestle, Daniel, Absecon Blvd. & Seymour, Atlantic City, N. J.
Correll, Charles, Bay Shore Road, Villas, N. J.
Cole, John Robert, Pacific & Missouri, Atlantic City, N. J.
Driver, Dewey, Delaware & Spruce, N. Wildwood, N. J.
Glass, James, Pacific & Colorado, Longport, N. J.
Heston, I. J., Maple & Atlantic, Wildwood, N. J.
Hostler, D. E., Curb City & Wildwood Road, Corbon City, N. J.
Kellmyer, Carl G., West End Ave. & Albany Blvd., Atlantic City, N. J.
Larish, C. V., Delsea Drive & Rt. 4, Rio Grande, N. J.
Mapes, A. E., 9th & Bay, Ocean City, N. J.
Miller, Jos. A., Haddon & Atlantic Blvd., Atlantic City, N. J.

Pessolano, Jos., 41st & Landis, Sea Isle City, N. J.
Ruane, Jos., Verona & Lyons Court, Pleasantville, N. J.
Stansell, H. J., 627 Washington St., Cape May, N. J.
Stanley, A. D., Ventnor & Delevan, Margate City, N. J.
Taylor, B. D., 3800 Atlantic Ave., Atlantic City, N. J.
Van Sant, Sam, Townsends Inlet, New Jersey
Wells, Leroy, 34th & Asbury, Ocean City, N. J.
Harold Smith, Rio Grande, Wildwood, N. J. (509 Rio Grande Ave.)

Territory 57-CD

John Stratton, Pitman, N. J. (Broadway)

2589 Territory 53-D

Birdsall, H. K., Laurel & Irving, Bridgeton, N. J.
Wm. J. Hadsell, East & Landis, Vineland, N. J.
Mark's Atlantic Station, 6th & Chestnut Sts., Vineland, N. J.
John Federanko, Main Street, Pennsgrove, N. J.
M. R. Hitchner, Holly & Woodbury Road, Pitman, N. J.
Joe's Atlantic Ser. (Jos. Federici) Virginia Ave., Pennsgrove, N. J.
Samuel Kelty, Quinton, N. J.
John W. Kennedy, Pearl & Washington, Bridgeton, N. J.
Kugler, Wm., 5th & Broadway, Salem, N. J.
Link, Arthur, Broad & Atlantic, Bridgeton, N. J.
Morris, Norman, Central Ave. & Center St., Clayton, N. J.
Pearson, Wilmer F., Elmer, N. J.
Shipley, Richard E., Delsea Drive & Pomona, Glassboro, N. J.
Smith, Clarence G., Grant & Market, Salem, N. J.
Somers, F. Edward, NEC 2nd & Vine Sts., Millville, N. J.

Suiter, J. W., Main St., Pennsville, N. J.
Van Schoick, Paul, 3rd & Landis, Vineland, N. J.
Vito's Service Station, Route 46, Seabrook, N. J.
Wright, R. H., 34th N. Broadway, Pitman, N. J.
King, Russell, High and Oak, Millville, N. J.
Foster, Charles, Main Street, Woodstown, N. J.

2590 Territory 51-D

Bartleson, E. T., Euclid & Tanner Sts., Haddonfield, N. J.
Bauer, Newlin L., Rt. 38 & Browning Rd., Pennsauken, N. J.
Brzuska, Chester, Kings Highway & Edgewood, Audubon, N. J.
Capozzi, S. J., White Horse Pike & Clinton Ave., Oaklyn, N. J.
Cliff's Atlantic (Clifford Partridge) Crescent Blvd. & Nicholson Road, Gloucester, N. J.
Conover, Wm., Marlton Pike & Baird Blvd., Camden, N. J.
DelSordo, Michael A., Crescent Blvd. & Taylor, Collingswood, N. J.
Fothergill, Samuel, Marlton Pike & Grove St., Merchantville, N. J.
Gibson, Wharton, Federal & Terrace, Camden, N. J.
Gregson, George, Admiral Wilson Blvd. & Thorndyke, Camden, N. J.
Harold's Atlantic Service, 879 Haddon Ave., Collingswood, N. J.
Harwood, K., 7th & Cooper St., Camden, N. J.
Jones, Harry, Crescent Blvd. & Park, Collingswood, N. J.
Little, Douglas,—Haddon, Maple & Locust, Westmont, N. J.
Long, William—White Horse Pike & Taylor, Audubon, N. J.

Parkview Garage, White Horse Pike & Collings Ave., Collingswood, N. J.
Santacapito, E. G., Haddon & Atlantic, Camden, N. J.
Stanton, John, Crescent Blvd. & Maple, Collingswood, N. J.
Stow, M.—Kings Highway & Linden, Haddonfield, N. J.
Tramutola, Jos.—Broadway & Woodland, Camden, N. J.
Whitaker, Wilbur—Haddon Heights (White Horse Pike & Clements Bridge Road) N. J.

2591 Territory 56-G and 56-D

A. DeMarco, White Horse Pike & Bellevue, Hammonton, N. J.
Jos. P. Zuba, White Horse Pike & London Ave., Egg Harbor, N. J.
Wittkamp's Service, Willard Road & Commonwealth Ave., Strathmara, N. J.
J. Wright, 21st Avenue, Avalon, N. J.
R. McPherson, W. Perry Street, Cape May, N. J.
Yearick Motors, Wildwood, N. J.
A. Forbes, Delsea Drive, Clayton, N. J.
R. H. Vassalle, Malaga, N. J.
Scafide Brothers, Cor. South Ave. & Willow St., Bridgeton, N. J.
Sam's Super, Railroad Ave. & Pleasant St., Hammonton, N. J.
D. A. Priestley, White Horse Pike, Elm, N. J.
P. Lyburn, N. Carolina & Baltic Aves., Atlantic City, N. J.
E. Moeller, 6th & Bay Avenue, Beach Haven, N. J.
H. Allatt, Harding Highway, Mays Landing, N. J.
F. Charlesworth, 164 S. 2nd Street, Millville, N. J.
S. Drozo, Harding Highway, Landisville, N. J.
Prestis & Sons, E. Blvd. & Catawba Avenue, Newfield, N. J.

Fingers Filling—Delsea Drive, Franklinville, N. J.
F. N. Giordani, Black Horse Pike, Folsom, N. J.
Frank Perri, 517 Shore Road, Northfield, N. J.
Wm. Gaskill, Shore Road & Johnson Ave., Somers Point, N. J.
R. Dills, SEC Ocean Hts. Ave., Route 4, Linwood, N. J.
A. Barrett, Maysland Road, Scullville, N. J.
J. Hall, Wildwood Villa, N. J.
Carl Roy, Wedwood, N. J.
Atlantic Auto Supply, Lincoln & Pacific Aves., Wildwood, N. J.

2592 COMMISSION EXHIBIT NO. 161.

July 30, 1951

TBA SJH

Goodyear Program
Atlantic Dealer Identification

Mr. W. J. Jackson,
Room 1218.

Dear sir:

I asked Mr. O'Neill of the Goodyear Tire & Rubber Company to supply me with a list of the Atlantic dealers in the Philadelphia Region who refused to be identified on the Goodyear program. Attached is a list of 46 dealers who, for reasons indicated, have refused this service.

You will probably wish to review the respective portions of this list with the District Managers concerned. Undoubtedly, facilities for identification are not the best at some of these locations, but with others it is apparent that the proprietors have not been sold on the Goodyear program. In such instances, I believe that additional sales

effort is called for. In any event, will you be kind enough to advise me at your convenience what action you have taken with regard to this list.

Very truly yours,

h

Enc.

2594 COMMISSION EXHIBIT NO. 161A-B.

Location and Reason

P. DiCicco, 26th & Snyder, Philadelphia—Alarm wire in way

C. Dolente, 2330 Frankford Ave., Phila.—Has own sign

H. Mohr, State & Whitehead Sts., Trenton, N. J.—Goodrich dealer

J. Dreger, 68th & Woodland Ave., Phila.—Neon sign in way

H. Bean, Main & Forrest, Jeffersonville, Pa.—Does not want

Sheer's, 2095 North 63rd St., Phila.—Won't handle Goodyear

R. Glanzman, "L" & Diamond Sts., Phila.—Has own sign

Neil O'Brien, North Lane & Fayette, Conshohocken, Pa.—Refused

V. D'Ascenz, 49th & Lancaster Ave., Phila.—Shelves in way

Frankford Sales, 4800 Frankford Ave., Phila.—Refused

Walsh, 999 Anchor, Phila.—Neon in way

B. Rubin, Oxford & Foulkrod, Phila.—Refused

Wm. J. O'Driscoll, Crystal & Tioga, Phila.—Does not want

John Callhoun, 2525 Moore St., Phila.—Wants on bottom

Ebby's, 8th & Wyoming St., Phila.—Wants on bottom

Sentman Motors, 5630 Chestnut St., Phila.—Auto Ageney

Dakota Garage, 246 S. 59th St., Phila.—Has own sign

A. E. Mapee, 9th & Bay, Ocean City, N. J.—Will still sell Lee

L. Wells, 34th & Asbury, Ocean City, N. J.—Lee distributor
T. Campion, York Rd. & Washington, Jenkintown, Pa.—Does not want
T. Campion, 481 York Rd., Jenkintown, Pa.—Does not want
D. White, Easton & Jenkintown, Glenside, Pa.—Want in transom
M. Craig, Rising Sun & Lardner, Phila.—Wants nothing on window
S. Van Sant, Townsend Inlet, N. J.—Does not sell
P. Burnwell, 1919 N. 21st St., Phila.—Doesn't handle tires
Marianni Auto, Tulip & Ontario, Phila.—Does not want
A. Van Brunt, Burmont & Woodland, Drexel Hill, Pa.—Refused
2595 Quaker City Garage, 929 Race St., Phila.—Does not want
A. K. Margerum, Edgely, Pa.—Has Coca Cola—Doesn't want change
Johnson, State Road & Cedar, Croyden, Pa.—Doesn't want to block view
Callahan Motors, Clifton Ave., Collingdale, Pa—No need for it
Green's, 214 E. 5th St., Chester, Pa.—Does not handle
Marcus Hook Auto, 10th & Green, Marcus Hook, Pa.—Does not handle
Sylvania Auto, 1946 McKean St., Phila.—Has own sign
Bernie's, Randolph & Oregon, Phila.—Lee distributor
Ben's Auto, I & Atlantic, Phila.—Does not own property
Guy Haden Motors, 912 North Broad, Phila.—Auto Agency—Does not want
S. DePasquale, Marlton & Delaware, S. Merchantville, N. J.—Not a Goodyear dealer
A. C. Caccia, 1206 Lancaster, Rosemont, Pa.—Refused
E. Shank, McDade & Ridley, Folsom, Pa.—Not Goodyear dealer

Chappie's, Garret & Wembley, Upper Darby, Pa.—Not Goodyear dealer
H & G Service, Lancaster Pike, Berwyn, Pa.—Refused
Leidon S. S., Street Road & 2nd St., Southampton, Pa.—Refused
Henry's, Chester & McKinley, Norwood, Pa.—Refused
Brookline, S. S., Darby Rd. & Brookline Blvd., Brookline, Pa.—Refused
J. Moore, Baltimore & South, Media, Pa.—Does not want

2596 COMMISSION EXHIBIT NO. 162.

August 20, 1951

PNJ:WJJ

Goodyear Identification—Dealer Locations.

Please refer to our letter of July 24th on the captioned subject.

Management is very definitely concerned about the refusal of dealers to permit Goodyear identification at their stations.

Kindly inform this office of the progress being made in correcting the situation—according to listing of locations forwarded to you with our letter of July 24th.

W. J. Jackson

r

cc: Mr. E. D. Walter
Mr. S. J. Heideman—Room 1210

2598 **COMMISSION EXHIBIT NO. 163.**

cc: Mr. Paul Fritsch
J. W. O'Neill

August 21, 1951
TBA SJH

Goodyear Program
Atlantic Station Identification

Mr. S. A. Gaylord, Manager,
Petroleum Sales Department,
Goodyear Tire & Rubber Co.,
Akron 16, Ohio.

Dear Mr. Gaylord:

I wonder if you can furnish me promptly with a report on the progress of the subject program. I should like to have this information broken down by our regional territories. As I understand it, the signs are being erected by Goodyear crews, but the decals are being erected by outside agencies. Furthermore, at the present time when we locate an Atlantic dealer who is without any Goodyear identification or without one or the other signs or decals, we do not know whether an unsuccessful attempt has been made to complete the assignment or whether all or part of the job, whatever the case may be, is scheduled for attention.

We should like to interest ourselves in the cases where an unsuccessful attempt has been made to provide the Goodyear identification. Perhaps, this information could be made available to us in simplest form by stating the Atlantic District areas that have been covered by either sign crews or agencies that are applying the decals, and by supplying us a list of the dealers where attempts to erect decals or signs were unsuccessful.

I have already received a list of this type for the Philadelphia and South Jersey areas, and this has been referred to our District Managers for further attention. However, I do not know if this is a partial or complete list of the dealers in that territory who could not be identified with Goodyear signs.

Your cooperation in this respect will be greatly appreciated.

Cordially yours,

S. J. Heideman

h

2600 **COMMISSION EXHIBIT NO. 164.**

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

August 24, 1951

Mr S J Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa

Subject: Atlantic-Goodyear
Identification

Dear Syd:

Your recent request for information on stations that our Identification Crews are unable to identify has been passed along to Joe O'Neill.

This information is obtainable from our District Offices because the Identification Crews work from a formal request made up for each station to be identified. In turn they report back advising our District Managers whether the work has been done or not.

We believe that Mr O'Neill can set up a program with our Districts through Petroleum Representatives to obtain this information for you on a specific time basis.

We are asking Mr O'Neill to report to you on this as soon as possible.

Yours very truly,

J W Basista
Petroleum Sales Department

J W Basista
lfm

2602 **COMMISSION EXHIBIT NO. 165.**

The Goodyear Tire & Rubber Company, Inc.
2750 North Broad Street
Philadelphia 32, Penna.

August 29, 1951

Mr. S. J. Heideman, Manager T.B.A. Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pa.

Subject: Goodyear Program—
Atlantic Station Identification

Dear Syd:

Per your request, I am attaching a list showing the Atlantic locations in the New England Region wherein the DeWolf Valance Company were unable to install Goodyear window valances.

In the event that you are successful in obtaining permission to install valances in these locations please inform the writer so that I can have DeWolf take care of the installations.

Yours very truly,

J W O'Neill
Division Petroleum Representative

J. W. O'Neill
mmc

2604 COMMISSION EXHIBIT NO. 165A.

August 28, 1951

The Goodyear Tire & Rubber Co.
2750 N. Broad Street
Phila., Pa.
Att: Mr. J. O'Neil

Gentlemen:

Enclosed you will find two lists showing those locations wherein we were unable to install Goodyear window valances.

I am inclined to think that those locations marked "windows too small" etc., can not be installed. However, something might be done about the other list.

Cordially yours,

A. P. DeWolf

APDW/meh

2605 COMMISSION EXHIBIT NO. 165B.

Name	Address	City	Reason
Anton	Dean & Exchange	Providence, R. I.	Small windows (factory ty.)
Caracola	392 Broadway	Providence, R. I.	Small windows (factory ty.)
Glenbridge	Glenbridge & Manton	Providence, R. I.	No window space
Pate	536 Branch Ave.	Providence, R. I.	No window space
Ferrara	700 Douglas	Providence, R. I.	No window in station
Marianetti	470 Valley St.	Providence, R. I.	No window space
Licciardi	144 Laurel Hill	Providence, R. I.	No window space
Triple Elm St.	Route 138	West Kingston, R. I.	Small windows
Grenier	Highland & Pleasant	Phenix, R. I.	Small windows
Quellatte	Eastern & Downing	Fall River, Mass.	Small windows
Old State House	Spring & Mill	Newport, R. I.	Small windows
Waite	Russell Mills	S. Dartmouth, Mass.	Small windows
Greenwood	Cape Road	Mattapoissett, Mass.	Small windows
Walsh	Main St.	Osterville, Mass.	Small windows
Whitney	Main St.	Barnstable, Mass.	Small windows
Hamlin		Sanwich, Mass.	Small windows
Nunnzio Svs.	21 Orchard St.	Laurence, Mass.	No windows
Bibbens	484 Broadway	Methuen, Mass.	No windows
Snell	573 Walnut	W. Lynn, Mass.	No windows

2606 COMMISSION EXHIBIT NO. 165C.

Name	Address	City	Reason
Tom's	Dean & Carpenter	Providence, R. I.	Painted valance on window
Trinity	Broad & Somerset	Providence, R. I.	Willard valance on window
Kane's	837 Allens	Providence, R. I.	Does not want
Veterans Svc.	990 Eddy	Providence, R. I.	Does not want Goodyear
Vita Bros.	Croom St.	Providence, R. I.	Oil dealer only
Esposito	Home & Chalkstone	Providence, R. I.	Mobile dealer
Tower	Putnam Pike	Chepachet, R. I.	No authority available
St. Angelo	244 County Rd.	Barrington, R. I.	Refused
Edwards	Wilbur & Macomber	Swansea, Mass.	Refused
Suspiro	Rt. 6 & Brayton	Somerset, Mass.	Refused
Dias	Stafford & Pelham	Fall River, Mass.	Refused
Janelle		W. Westport, Mass.	Refused
Falmouth Auto	Main St.	Falmouth, Mass.	Not interested
Huntting Mts.	850 Main St.	Falmouth, Mass.	Not interested
Stedman	Main St.	Wakefield, R. I.	Does not sell Goodyear
Vitali	210 High St.	Peacedale, R. I.	Does not sell Goodyear
Jususaume	Quaker & Center	Warwick, R. I.	Does not sell Goodyear
Lenachal	49 Elm St.	Auesbury, Mass.	Window just painted

2607 COMMISSION EXHIBIT NO. 166.

The Goodyear Tire & Rubber Company, Inc.
2750 North Broad Street
Philadelphia 32, Penna.

Mr. S. J. Heideman, Manager — October 11, 1951
T.B.A. Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pa.

Dear Mr. Heideman:

Per your request, we are listing below Atlantic accounts in our Albany District who refused to permit our Sign Crew to identify the station with Goodyear Signs and decals.

	Comments by Identification Field Representative
William Wilde Fort Johnson, N. Y.	Does not want Goodyear identification—dud.
Burks Garage Albany, N. Y.	Going Esso
Stalders Service Station Scotia, N. Y.	Dud
E. R. Dickinson Hudson Falls, N. Y.	After identifying several of Mr. Dickinson's stations, I find that he is not sure he is going Goodyear. He is trying to play both ends against the middle between Lee and Goodyear.
Stevens Motors Lebanon, Vt.	Refused Goodyear Identification.

Yours very truly,

J W O'Neill

J. W. O'Neill — *Division Petroleum Representative*

mmc

2609 COMMISSION EXHIBIT NO. 167.

The Goodyear Tire & Rubber Company, Inc.
2750 North Broad Street
Philadelphia 32, Penna.

October 15, 1951

Mr. S. J. Heideman, Manager
T.B.A. Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pa.

Dear Mr. Heideman:

Attached are lists of Atlantic dealers in the Philadelphia, South Jersey, Hartford, Boston, Syracuse and Newark Districts where either valances or diamond signs have not been installed for various reasons as listed.

As further reports come to my attention, I will advise you.

Yours very truly,

J W O'Neill
Division Petroleum Representative

J. W. O'Neill
mmc

2611 COMMISSION EXHIBIT NO. 167A-M.

Refusals Phila.

Akron Service Station—Akron & Pratt St.—Phila. Pa.
Ben's Auto Repair—I and Atlantic St.—Phila., Pa.
W J O'Driscoll—Crystal & Tioga—Phila., Pa.
Guy Haden Motors—912 N. Broad St.—Phila. Pa.
H. Allatt—Harding Highway—Mays Landing, N. J.
Callahan Motors—Clifton—Collingdale, Pa.
M & H Motors—Lancaster Pike—Ardmore, Pa.
W. Bean—Main & Forrest Sts.—Jeffersonville, Pa.
W. E. Mager—Main & Trenton Ave—Hulmeville, Pa.
A. K. Margerum—Rte #13—Edgely, Pa.
Johnson S S—State Rd & Cedar Ave—Croyden, Pa.
Sheer's Super Service—2095 N. 63rd St.—Phila., Pa.
Wynnefield Service—54th & Montgomery—Phila., Pa.
Seutman Motors—56th & Chestnut—Phila., Pa.
M. Craig—Rising Sun & Lardner—Phila., Pa.
Frankford Sales—4800 Frankford Ave—Phila., Pa.
Segal & Son—21st & Fitzwater—Phila., Pa.
Sylvania Auto—1946 McKean St.—Phila., Pa.
Quaker City Garage—929 Locust St.—Phila., Pa.
Rubin B.—Oxford Pk. & Foulkrad—Phila., Pa.
Marianni Auto Service—Tulip & Ontario—Phila., Pa.
Thomas Campion—Old York Rd & Washington Lane—Jenkintown, Pa.
Thomas Campion—481 York Road—Jenkintown, Pa.
Abram Van Brunt—Burmont Rd & Woodland Ave—Drexel Hill, Pa.
Neil O'Brien—North Lane & Fayette St.—Conshocken, Pa.
W C Mallard—Hessian & Red Bank—Thorofare, N. J.
Fred Regal—Black Horse Pike—W. Collingswood, N. J.
Wallace Bros—9th St.—Ocean City, N. J.
Charles T. Leary—Lancaster Pike—Wayne, Pa.

Acaccia—1206 Lancaster Ave—Rosemont, Pa.
2612 Leedon's S S—Street Rd & 2nd St.—Southampton, Pa.
James Moore—Baltimore & South Ave—Media, Pa.
J Turney—Burmont & Jones—Drexel Hill, Pa.
Parkes & Dawn—Westchester Pike—Broomal, Pa.
Brookline S S—Darby Rd & Brookline Blvd—Brookline, Pa.
H & G Service—Lancaster Pike—Berwyn, Pa.

Other Types of Refusals

S. De Pasquale—Marlton Pike & Delaware—South Merchantville, N. J.—(Not going Goodyear)
E. Shauk—McDade Blvd & Ridley—Folsom, Pa (Non Goodyear)
Chappies—Garrett & Hembley—Upper Darby, Pa (Non Goodyear)
P. Burwell—1919 N. 21st St.—Phila, Pa (Not handling tires or batteries)
Bernies Service—Randolph & Oregon—Phila., Pa (Lee Distributor)
Marcus Hook—10th & Green—Marcus Hook, Pa (Not handling line)
Green's—214 E 5th St.—Chester, Pa (Has not signed)
W. White—2142 Darby Rd—Oakmont, Pa. (Not handling line)
F. E. Somers—2nd & Vine Sts.—Millville, N. J. (Seiberling Distributor)
H. Mohr—State & Whitehead [illegible]—Trenton, N. J. (Goodrich Dealer)
Jas. Woodbury—O'Donnell Lane, Palmyra, N. J. (Impl. to Adv.)
J. Harrington—Route #23—Valley Forge, Pa. (Impl. to Adv.)
G. I. Service—Maple Glen—Maple Glen, Pa. (Impl. to Adv.)
Ed McLaughlin—Cobbinville & Allentown Rd.—Allentown, N. J. (out of business)

J K Wilson—69th & Buist Ave—Phila., Pa. (out of business)

2613 Valance-Structural Difficulties Phila

Wm Long—White Horse Pike & Taylor—Audubon, N. J.
Frank Monzo—Hafville & County House Rd.—Blackwood Terrace, N. J.
F G Santacapeto—Haddon & Atlantic—Camden, N. J.
Harry Jones—Crescent Blvd & Park—Collingwood, N. J.
J. V. Neale—221 S. Black Horse Pike—Mt. Ephriam, N. J.
Mrs E. Hubschmidt—Rte #46—Mullica Hill, N. J.
Harry Richie—18 Front St.—Salem, N. J.
Ed Taylor—Sweedsboro, N. J.
James A Gould—Salem Rd.—Mt. Royal, N. J.
Thomas Lattiere—Rte #40—Medford, N. J.
F. Pervi—517 Shore Road—Northfield, N. J.
R. H. Vassallo—Malaga, N. J.
Russell King—High Road—Millville, N. J.
Paul Van Schoick—3rd & Landis—Vineland, N. J.
J. W. Suiter—Main St.—Pennsville, N. J.
C. G. Smith—Grant & Market—Salem, N. J.
W. F. Pearson—Elmer, N. J.
A. Link—Broad & Atlantic—Bridgeton, N. J.
James Glass—Pacific & Colorado—Longport, N. J.
J. A. Miller—Haddon & Atlantic Blvd.—Atlantic City, N. J.
J. Ruane—Verona & Lyons Court—Pleasantville, N. J.
Joseph Groner—Super Highway & Highland—Parkland, N. J.
Harvey Furness—150 S. Main St.—Yardley, Pa.
L. C. Finney—Buck Rd.—Holland, Pa.
J. Barton—Pond St.—Bristol, Pa.
W. H. Stearn—Bristol Pike—Andalusia, Pa.
A. Raupp—Lincoln Hwy—Penndal, Pa.
A. Tate—1402 N. 51st St.—Phila., Pa.
2614 Sam Berman—29th & Somerset—Phila, Pa.

Wilmer Cassel—Hunting Park & Pacific—Phila., Pa.
Gerald Dougherty—33rd & York St.—Phila., Pa.
Dave Furman—Midvale & River Drive—Phila., Pa.
Dave Hamilton—9th & Venango—Phila., Pa.
Uncle Sam's Motors—York Rd & Rising Sun Ave—Phila., Pa.
Dakota Garage—246 S. 59th St.—Phila., Pa.
J. Sullivan—6101 Ridge Ave.—Phila., Pa.
George Stevenson—Beechwood St. & Wyncote—Phila., Pa.
O'Connell Motors—6715 Ridge Ave.—Phila., Pa.
H. E. Neger—200 W. Rosemar St.—Phila., Pa.
Eppy's—8th and Wyoming—Phila., Pa.
Len's S. S.—Thompson & Westmoreland—Phila., Pa.
Juanita Service—Erie Ave & Bennington St.—Phila., Pa.
Walsh Auto—999 Anchor St.—Phila., Pa.
R. S. Piegelman—Boudinot & Ruscomb St.—Phila., Pa.
Wm. Ruckrein—Front & Wingohocking St.—Phila., Pa.
R. B. Lloyd—Kensington & Sedgley—Phila., Pa.
Frank Braidfield—Frankford & Tyson—Phila., Pa.
Atlantic Auto—12th & Porter—Phila., Pa.
Rip's Service—Delaware & Beach—Phila., Pa.
E. O'Brien—2nd & Huntington—Phila., Pa.
Ray Duster—5317 Warren St.—Phila., Pa
J. Dreger—68th & Woodland—Phila., Pa.
V. D. Ascenz—49th and Lancaster—Phila., Pa.
Harry Corker—3842 Lancaster Ave.—Phila., Pa.
Howard Miller—3321 Frankford—Phila., Pa.
John Keglee—Front and Moore—Phila., Pa.
J & H Auto—132 N. 3rd St.—Phila., Pa.
Frank's Service—22nd and Ritner—Phila., Pa.
2615 John Calhoun—2525 Moore St.—Phila., Pa.
Apex Garage—212 N. Juniper St.—Phila., Pa.
Tom's Service—Griscom & Orthodox—Phila., Pa.
Randy's S S—Unity & Wingohocking—Phila., Pa.
John & George Atlantic—2658 Frankford Ave.—Phila., Pa.

Len's Auto Service—9337 Torresdale Ave—Phila., Pa.
Carl Dolerte—2330 Frankford—Phila., Pa.
P. Karpouski—2835 Tulip St.—Phila., Pa.
W. Becker—1201 Cottman St.—Phila., Pa.
R. Glanzman—2nd & Diamond—Phila., Pa.
R. Foehl—2235 N. 10th St.—Phila., Pa.
Jon's S S—975 Frankford Ave—Phila., Pa.
A. Parone—6th & Sedgley—Phila., Pa.
George Salomskas—3401 Richmond St.—Phila., Pa.
Pat's Service Station—1201 Bridge St.—Phila., Pa.
Harry Straub—62nd & Lancaster Ave—Phila., Pa.
John W Marsh—21st & Ridge Ave—Phila., Pa.
Ed Jones—23rd & South Sts.—Phila., Pa.
Paul J. Rafferty—39th & Woodland Ave—Phila., Pa.
M G Smith—Easton & Bradfield Roads, Roslyn, Pa.
J. P. Lee—52nd & Woodland—Phila., Pa.
E S Sprague—Chester & Fairview—Swarthmore, Pa.
T. Riter—Garrett & Huntley Rds—Upper Darby, Pa.
D. J. Fowler—Hampden & Marshall Rds.—Upper Darby, Pa.
W B Clark—Gay & Adams Sts.—West Chester, Pa.
D. W. White—Easton & Jenkintown—Glenside, Pa.
S. Dugross—Main & Ridge Aves.—Phila., Pa.
G. Hinds—Durham & Hulmeville Rds.—Newportsville, Pa.
Pinkerton's—Erie & "D" Streets—Phila., Pa.
E. T. Bartleson—Euclid & Tanner Sts.—Haddonfield, N. J.
2616 M. Stow—Kings Highway & Linden—Haddonfield, N. J.
M. Kozakewich, Jr.—S. 3rd Ave—Merchantville, N. J.
Sharon Hill Garage—Hook Rd & Chester Pike—Sharon Hill, Pa.
Dan's Service—Germantown Ave & Plymouth—Morristown, Pa.
John Rice—Kedson & Waverly—Morton, Pa.

Don Keyser—Pennel & Lenni Rds—Lima, Pa.
Doherty's Service—Baltimore Pike—Lima, Pa.
H Konkle—Marshall & Wycombe—Lansdowne, Pa.
J W Stevens—108 S. Keswick Ave—Glenside, Pa.
J Stowe—Woodland & Primus Ave—Folcroft, Pa.
Wm Ward—Bethlehem Pike & Valley Green Rd.—Flourtown, Pa.
Stanley Budney—Bristol Pike & Park Ave—Eddington, Pa.
J. Snively—Baltimore Pike—E. Lansdown, Pa.
Young & Wilson—112 N. 63rd St.—Phila., Pa.
James Wasser—4331 Roosevelt Blvd—Phila., Pa.
H. Humphries—Roosevelt Blvd—Phila., Pa.
M. Phillips—Bustleton Ave. & Philmont Rd—Phila., Pa.
Edgar Lincoln—Cove Rd & Westfield—Pennsauken, N. J.
Paul H Schlatter—Rte 25 & Hilton Rd.—Pennsauken, N. J.
George Seward — Maple & Chapel Ave. — Merchantville, N. J.
Zimmerman's Auto Repair—847 E. Luzione St.—Phila., Pa.

2617 Refusals Hartford

Gaynor-Taylor Inc—1345 Barnum Ave.—Stratford, Conn.
Frank's Sales—47 Railroad Ave.—South Norwalk, Conn.
Duke's Service—163 West St.—Seymour, Conn.
Jennings Atlantic—12 North St.—Danbury, Conn.
T. Mancini—Putnam Pike Rd.—Bethel, Conn.
Lines' Atlantic—New London & Pike & School—Glastonbury, Conn.

Other Types of Refusals

Cove Road S S—314 Cove Rd.—Stamford, Conn (Now a Calso Sta.)
Jack's S S—26 Richmond Hill Ave.—Stamford, Conn. (Not Goodyear)
C Nelson—RFD #2—River Rd.—Seymour, Conn. (Not Goodyear)

Fountain Garage—240 Putnam St.—New Haven, Conn. (Not Goodyear)

Junction Filling Sta.—Congress & Davenport—New Haven, Conn. (Not Goodyear)

Morrin's Auto Parts—Bridgeport Ave.—Milford Conn. (Not Goodyear)

Sherman's Service Center—1250 Kossuth St.—Bridgeport, Conn. (Not Goodyear)

Whitie's S S—129 Pine St.—Forestville, Conn. (Sells Lee)

J. Nathan—Mill Plain Rd.—Danbury, Conn. (Not operating)

G. Haddy—Hayestown Rd.—Danbury, Conn. (Not operating)

G Gross—564 Delwell Ave.—New Haven, Conn.—Refused

W. Bureau—Main St. Hampden, Mass.—Refused

Barlow Motors, Ward St. Rockville, Conn.—Refused

Padelford's Atl. Serv.—428 E. Main St.—Torrington, Conn.

Tac's Serv. Sta.—878 Dirivell Ave, Hampden, Conn.—Calso Station

N. Beaudsy—Main & Noble St., Springfield, Mass., Does not want valances

2618 Roberts Service—No. Sommers, Ct.

Vernon's Service—Vernon Center, Conn.

W. Grosseboom—67 E. Main & Neal Court—Plainville, Conn.

Carpenter's Auto—590 Noble Ave—Bridgeport, Conn.

Crain's Service—177 Post Road—Darien, Conn.

H. Pozzuoli—Campwell & Brown—West Haven, Conn.

F. H. Stolle—Main & Mill—Broodbrook, Conn.

Ed's Service—North Road—Broadbrook, Conn.

Midway Garage—1123 Main St.—S. Glastonbury, Conn.

Sceery's S S—47 Main St.—Winsted, Conn.

E. Warner—Boston Rd & Parker St.—Springfield, Mass.

Post & Facey—282 Locust St. Springfield, Mass.

Mayo Bros—250 Belmont Ave—Springfield, Mass.

Florence Motors—Depot St.—Florence, Mass.
M. J. Griffin, 65-69 Memorial Ave.—W. Springfield, Mass.
Petsch Bros.—Post Rd.—Warehouse Point, Conn.
Gregel Bros.—1429 Palsido Ave.—Windsor, Conn.
Litchfield Fuel Co.—Russell St.—Litchfield, Conn.
Geo. L. Parker—Boston Post Rd.—Old Saybrook, Conn.

2619 Refusal Boston

Edwards Motors — Wilbur & Macomber Sts. — Swansea, Mass.
Suspiro Bros—Rte #6 & Brayton—Somerset, Mass.
Kane's Atlantic—837 Allens & Carolina Ave.—Providence, R. I.
Trinity Battery—Broad & Somerset—Providence, R. I.
Janelle Bros—N. Westport, Mass.
Falmouth Auto Sales—Main St.—Falmouth, Mass.
Huntting Motors—850 Main St.—Falmouth, Mass.
A. Dias—Stafford Rd. & Pelham St.—Fall River, Mass.
W. Tower—Putnam Pike—Chepacket, R. I.
Plymouth County Motors—Church & Montello St.—Brockton, Mass.
St. Angelo Motors—244 County Rd.—Barrington, R. I.
A. Lenechal—49 E. Elm St.—Amesbury, Mass.

Other types of Refusals

Mills Radiator Service—585 Park Ave.—Worcester, Mass. (Does not sell gas or acces.)
A. Jussourne—Quaker Lane & Centerville Rd.—Warwick, R. I. (Non-Goodyear)
W. Stedman—Main St.—Wakefield, R. I. (Non-Goodyear)
Veterans Service—990 Eddy & Reeder Sts.—Providence, R. I. (Non-Goodyear)
Viti Bros.—Croom St.—Providence, R. I. (Atlantic Oil Dlr only)
M. Esposito—Home & Chalkstone Ave.—Providence, R. I. (Mobile Dealer)

J. Vitali—210 High St.—Peacedale, R. I. (Non-Goodyear)
W. Dumas—281 Pulaski Blvd.—So. Bellingham, Mass. (Out of business)

2620 Valance Structure Difficulties Boston

Triple Elm Station—Rte #138—West Kingston, R. I.
Ernest Waite—Russell Mills—S. Dartmouth, Mass.
H. Hamlin—Sandwich, Mass.
S. Ferrara—700 Douglas Ave.—Providence, R. I.
A. Caraccia—392 Broadway—Providence, R. I.
Sully Anton—Dean-Balbo-W. Exchange—Providence, R. I.
E. Licciardi—144 Laurel Hill Ave.—Providence, R. I.
Glenbridge Filling Sta.—Glenbridge & Manton Ave.—Providence, R. I.
Tom's Atlantic Sta.—Dean & Carpenter Sts.—Providence, R. I.
J. Pate—536 Branch Ave.—Providence, R. I.
C. Marianetti—470 Valley St.—Providence, R. I.
A. E. Grenier—Highland & Pleasant Sts.—Phenix, R. I.
J. Walsh—Main St.—Osterville, Mass.
J. MacCowan—East Main St.—Northboro, Mass.
Old State House Filling Station—Spring & Mills—Newport, R. I.
A. Bibbins—484 Broadway—Methuen, Mass.
C. Greenwood—Cape Road—Mallapoisett, Mass.
A. Snell—573 Walnut St.—W. Lynn, Mass.
N. Lapuppo—Nunzio Auto Serv.—21 Orchard St.—Lawrence, Mass.
Louis P. Ouellette—Eastern & Downing Sts.—Fall River, Mass.
R and T SS—977 Washington St.—E. Weymouth, Mass.
E. Whitney—Main St.—Barnstable, Mass.
Baker Chevrolet—33 Washington St.—Taunton, Mass.

2621 Refusals Syracuse

Hoag, Stanley—Genesee & Burdick—Fayetteville, N. Y.
Oscar Parrish—Main & Badger Sts.—Endicott, N. Y.
Frank Funk—75 N. Main St.—Cortland, N. Y.
F. H. Buongiorne—Chenango & Bromley Ave.—Binghamton, N. Y.

Other Refusals

Ken Alt—Rte US 11—Mattydale (Imp. to Adv.)
Atlantic SS—189 Madison Ave.—Oneida, N. Y. (Imp. to. Adv.)
L. J. Glass—Rte US 11—Adam Center, N. Y. (Imp. to. Adv.)
Ray Cochran—Rte 96 & Mill St.—Condor, N. Y. (Going out of bus.)
B. B. Johnson—Rte 17—Chester, N. Y. (Out of bus.)

2622 Valance Structure Difficulties Syracuse

Hugh Killam—Sandy Creek, N. Y.
Battle-Anthony—Court St. Ext.—E. Syracuse, N. Y.
J. A. Massey—Wellesley Island—Alexandria Bay, N. Y.
F. Churchill—Rte 9W—Marlboro, N. Y.
John Cawlin—Rte 208—Burnside, N. Y.
Ira H. Hosmer—Adams, N. Y.

2623 Valance Structure Difficulties Newark

Lally's—8th & Central—Ships Bottom, N. J.
Kardos Bros. — Hawk & New Brunswick — Phillipsburg, N. J.
Rufus Cramer—Route S-40—Manahawken, N. J.
Joe's SS—Main & Union St.—Lodi, N. J.
Ray's Auto Service—339 South Ave.—Fanwood, N. J.
Arthur Kenney—North Park & Springdale Ave.—E. Orange, N. J.
A. & V. Apicella—Route 22—Clinton, N. J.

R. Wright—Main & Bond Sts.—Chatham, N. J.
F. Gennell—Belleville & Union Ave.—Belleville, N. J.
Franklin Clark—Route 21—Stewartsville, N. J.
Lewis Richards—21 Vandemar Ave.—Somerville, N. J.
Melvin Perrine—123-39 E. Fifth—Plainfield, N. J.
Lincoln Garden Garage—298 Jersey Ave.—New Brunswick, N. J.
Mrs. Clarence Fox—Frenchtown Rd.—Milford, N. J.
John Gelger—Campbell Juct.—Belford, N. J.
Robert Voorhees—Main St.—Holmdel, N. J.
Paul Mercante, 318 Sip Ave.—Jersey City, N. J.

2624 COMMISSION EXHIBIT NO. 168.

October 17, 1951

TBA WCH
Goodyear Program
Atlantic Station Identification

Mr. L. K. Maisel
Syracuse, N. Y.

Dear Sir:

We are listing below Atlantic accounts in Goodyear's Albany district who refused to permit their sign crew to identify the stations with Goodyear signs and decals, for your appropriate action:

	Comments by Identification Field Representative
William Wilde Fort Johnson, N. Y.	Does not want Goodyear identification—dud.
Burks Garage Albany, N. Y.	Going Esso
Stalders Service Station Scotia, N. Y.	Dud
E. R. Dickinson Hudson Falls, N. Y.	After identifying several of Mr. Dickinson's stations, I find that he is not sure he is going Goodyear. He is trying to play both ends against the middle between Lee and Goodyear.

Very truly yours,

W. C. Hoffman

RI

2626 COMMISSION EXHIBIT NO. 169.

October 17, 1951

TBA WCH

Goodyear Program
Atlantic Station Identification

Mr. M. G. Davis
Att: Mr. T. L. Walsh
Providence, R. I.

Dear Sir:

Goodyear has reported that the Stevens Motors, Lebanon, Vt. had refused to permit their sign crew to identify the station with Goodyear signs and decals.

We are passing this information along for your appropriate action.

Very truly yours,

W. C. Hoffman

RI

2628 COMMISSION EXHIBIT NO. 170A.

October 24, 1951

TBA WCH

Goodyear Program
Atlantic Station Identification

Mr. W. J. Jackson
Room 1218

Dear Sir:

Attached is a report from Goodyear of Atlantic stations in the Philadelphia, South Jersey and Newark Districts to which they were unable to erect Goodyear signs either because dealers refused identification, or the stations could not be identified due to structural reasons.

We are passing this information along for your appropriate action.

Very truly yours,

W. C. Hoffman

H

Attachment

2630 COMMISSION'S EXHIBIT NO. 170B-F.

Refusal Philadelphia

Akron Service Station—Akron and Pratt St.—Philadelphia, Pa.
Ben's Auto Repair—I and Atlantic St.—Philadelphia, Pa.
W. J. O'Driscoll—Crystal and Tioga—Philadelphia, Pa.
Guy Haden Motors—912 North Broad St.—Philadelphia, Pa.
Hallatt—Harding Highway—Mays Landing, N. J.
Callahan Motors—Clifton—Collingdale, Pa.
M and H Motors—Lancaster Pike—Ardmore, Pa.
W. Bean—Main and Forrest Sts.—Jeffersonville, Pa.
W. E. Mager—Main and Trenton Ave.—Hulmeville, Pa.
A. K. Margerum—Route #13—Edgely, Pa.
Johnson Service Station—State Rd. and Cedar Ave.—Croyden, Pa.
Sheer's Snper Service—2095 North 63rd St.—Philadelphia, Pa.
Wynnefield Service—54th and Montgomery Ave.—Philadelphia, Pa.
Sentman Motors—56th and Chestnut Sts.—Philadelphia, Pa.
M. Craig—Rising Sun and Lardner—Philadelphia, Pa.
Frankford Sales—4800 Frankford Ave.—Philadelphia, Pa.
Segal and Son—21st and Fitzwater—Philadelphia, Pa.
Sylvania Auto—1946 McKean St.—Philadelphia, Pa.
Quaker City Garage—929 Lace St.—Philadelphia, Pa.
Rubin Brothers—Oxford Pk. and Foulkrod—Philadelphia, Pa.
Marianni Auto Service—Tulip and Ontario—Philadelphia, Pa.
Thomas Campion—Old York Rd. and Washington Lane—Jenkintown, Pa.

Thomas Campion—481 York Road—Jenkintown, Pa.
Abrain Van Brunt—Burmont Road and Woodland Ave.—Drexel Hill, Pa.
Neil O'Brien—North Lane and Fayette St.—Conshocken, Pa.
W. C. Matlack—Hessian and Red Bank—Thorofare, N. J.
Fred Regal—Black Horse Pike—W. Collingswood, N. J.
Wallace Brothers—9th Street—Ocean City, N. J.
Charles and Leary—Lancaster Pike—Wayne, Pa.
A. Caccia—1206 Lancaster Ave.—Rosemont, Pa.
Leedon's Service Station—Street Road and 2nd St.—Southhampton, Pa.
James Moore—Baltimore and South Ave.—Media, Pa.
J. Turney—Burmont and Jones—Drexel Hill, Pa.
Parkes and Dawn—Westchester Pike—Broomall, Pa.
Brookline Service Station—Darby Road and Brookline Blvd. —Brookline, Pa.
H and G Service—Lancaster Pike—Berwyn, Pa.

Other Types of Refusals.

S. DePasquale—Marlton Pike and Delaware—South—Merchantville, N. J. (Not going Goodyear)
E. Shank—McDede Blvd. and Ridley—Folsom, Pa. (Non Goodyear)
Chappies—Garrett and Wembley—Upper Darby, Pa. (Non Goodyear)
P. Burwell—1919 North 21st Street—Philadelphia, Pa. (Not handling tires or batt.)
Bede's Service—Randolph and Oregon—Philadelphia, Pa. (Lee Distributor)
Marcus Hook—10th and Green—Marcus Hook, Pa. (Not handling line)
Green's—214 East 5th Street—Chester, Pa. (Has not signed)
W. White—2142 Darby Road—Oakmont, Pa. (Not handling line)

2632 F. E. Somers—2nd and Vine Streets—Milville, N. J. (Seiberling Distributor)

H. Mohr—State and Whitehead Sts.—Trenton, N. J. (Goodrich Dealer)

Jas. Woodbury—O'Donnell Lane—Palmyra, N. J. (Impl. to Adv.)

J. Harrington—Route #23—Valley Forge, Pa. (Impl. to Adv.)

G. I. Service—Maple Glen—Maple Glen, Pa. (Impl. to Adv.)

Ed. McLaugalin—Cobbinville and Allentown Rd.—Allentown, N. J. (Out of business)

J. K. Wilson—69th and Buist Ave.—Philadelphia, Pa. (Out of business)

Valance Structural Difficulties

Wm. Long—White Horse Pike and Taylor—Audubon, N. J.

Frank Monzo—Hafville and County House Rd.—Blackwood Terrace, N. J.

F. G. Santacapeto—Haddon and Atlantic—Camden, N. J.

Harry Jones—Crescent Blvd. and Park—Collingswood, N. J.

J. V. Neale—221 S. Black Horse Pike—Mt. Epariam, N. J.

Mrs. E. Hubschmidt—Route #46—Mullica Hill, N. J.

Harry Richie—18 Front Street—Salem, N. J.

Ed Taylor—Sweedsboro, N. J.

James A. Gould—Salem Road—Mt. Royal, N. J.

Thomas Lattiere—Route #40—Medford, N. J.

F. Pervi—517 Shore Road—Northfield, N. J.

R. H. Vassallo—Malaga, N. J.

Russell King—High and Oak—Millville, N. J.

Paul Van S. Choick—3rd and Landis—Vineland, N. J.

J. W. Suiter—Main Street—Pennsville, N. J.

C. G. Smith—Grant and Market—Salem, N. J.

W. F. Pearson—Elmer, N. J.

A. Link—Broad and Atlantic—Bridgeton, N. J.

James Glass—Pacific and Colorado—Longport, N. J.
J. A. Miller—Haddon and Atlantic Blvd.—Atlantic City, N. J.
J. Ruane—Verona and Lyons Court—Pleasantville, N. J.
Joseph Groner—Superhighway and Highland—Parkland, N. J.
Harvey Furness—150 South Main St.—Yardley, Pa.
L. C. Finney—Buck Road—Holland, Pa.
J. Barton—Pond Street—Bristol, Pa.
W. H. Stearn—Bristol Pike—Andalusia, Pa
A. Raupp—Lincoln Highway—Penndel, Pa.
A. Tate—1402 North 51st Street—Philadelphia, Pa.
S. Berman—29th and Somerset—Philadelphia, Pa.
Wilmer Cassel—Hunting Park and Pacific—Philadelphia, Pa.
Gerald Dougherty—33rd and York Street—Philadelphia, Pa.
Dave Furman—Midvale and River Drive—Philadelphia, Pa.
Dave Hamilton—9th and Venango—Philadelphia, Pa.
Uncle Sam's Motors—York Road and Rising Sun Ave.—Philadelphia, Pa.
Dakota Garage—246 South 59th Street—Philadelphia, Pa.
2634 J. Sullivan—6101 Ridge Ave—Philadelphia, Pa.
George Stevenson—Beechwood Street and Wyncote—Philadelphia, Pa.
O'Connell Motors—6715 Ridge Ave—Philadelphia, Pa.
H. E. Neger—200 W. Rosemar Street—Philadelphia, Pa.
Eppy's—8th and Wyoming—Philadelphia, Pa.
——'s Service Station—Thompson and Westmoreland—Philadelphia, Pa.
Juanita Service—Erie Ave and Bennington St.—Philadelphia, Pa.
Walsh Auto—999 Anchor Street—Philadelphia, Pa.

R. Spiegelman—Boudinot and Ruscomb St.—Philadelphia, Pa.

Wm. Ruckrein—Front and Wingohocking St.—Philadelphia, Pa.

R. B. Lloyd—Kensington and Sedgley—Philadelphia, Pa.

Frank Braidfield—Frankford and Tyson—Philadelphia, Pa.

Atlantic Auto—12th and Porter—Philadelphia, Pa.

Rip's Service—Delaware and Beach—Philadelphia, Pa.

E. O'Brien—2nd and Huntington—Philadelphia, Pa.

Ray Duster—5317 Warren St.—Philadelphia, Pa.

J. Drager—68th and Woodland—Philadelphia, Pa.

V. C. Ascenz—49th and Lancaster—Philadelphia, Pa.

Harry Cooker—3842 Lancaster Ave.—Philadelphia, Pa.

Howard Miller—3321 Frankford—Philadelphia, Pa.

John Keglee—Front and Moore—Philadelphia, Pa.

J. and H. Auto—132 North 3rd St.—Philadelphia, Pa.

Frank's Service—22nd and Ritner—Philadelphia, Pa.

John Calhoun—2525 Moore St.—Philadelphia, Pa.

Apex Garage—212 North Juniper St.—Philadelphia, Pa.

Tom's Service—Griscom and Orthodox—Philadelphia, Pa.

Randy's Service Station—Unity and Wingohocking—Philadelphia, Pa.

John and George Atlantic—2658 Frankford Ave.—Philadelphia, Pa.

Lew's Auto Service—9337 Torresdale Ave.—Philadelphia, Pa.

Carl Dolente—2330 Frankford—Philadelphia, Pa.

P. Karpouski—2835 Tulip St.—Philadelphia, Pa.

W. Becher—1201 Cottman St.—Philadelphia, Pa.

R. Glanzmann—2nd and Diamond—Philadelphia, Pa.

R. Foehl—2235 North 10th Street—Philadelphia, Pa.

Jon's Service Station—975 Frankford Ave.—Philadelphia, Pa.

A. Parone—6th and Sedgley—Philadelphia, Pa.

George Salomskas—3401 Richmond St.—Philadelphia, Pa.
Pat's Service Station—1201 Bridge St.—Philadelphia, Pa.
Harry Straub—62nd and Lancaster Ave.—Philadelphia, Pa.
John W. Marsh—21st and Ridge Ave.—Philadelphia, Pa.
Ed Jones—23rd and South Sts.—Philadelphia, Pa.
Paul J. Rafferty—39th and Woodland Ave.—Philadelphia, Pa.
M. G. Smith—Easton and Bradfield Roads—Roslyn, Pa.
J. P. Lee—52nd and Woodland—Philadelphia, Pa.
E. S. Sprague—Chester and Fairview—Swarthmore, Pa.
T. Riter—Garrett and Huntley Roads—Upper Darby, Pa.
—. —. Fowler—Hampden and Marshall Roads—Upper Darby, Pa.
W. B. Clark—Gay and Adams Sts.—West Chester, Pa.
D. W. White—Easton and Jenkintown—Glenside Pa.
S. Dugross—Main and Ridge Aves.—Philadelphia, Pa.
G. Hinds—Durham and Hulmeville Rds.—Newportsville, Pa.
Pinkerton's—Erie and "D" Streets—Philadelphia, Pa.
2636 E. T. Bartelson—Euclid and Tanner Sts.—Haddonfield, N. J.
M. Stow—Kings Highway and Linden—Haddonfield, N. J.
M. Kozakewich, Jr.—South 3rd Ave.—Merchantville, N. J.
Sharon Hill Garage—Hook Rds. and Chester Pike—Sharon Hill, Pa.
Dan's Service—Germantown Ave. and Plymouth—Norristown, Pa.
John Rice—Kedron and Waverly—Morton, Pa.
Don Keyser—Pennel and Lenni Rds—Lima, Pa.
Doherty's Service—Baltimore Pike—Lima, Pa.
H. Konkle—Marshall and Wycombe—Lansdowne, Pa.
J. W. Stevens—108 South Keswick Ave.—Glenside, Pa.
J. Stowe—Woodland and Primus Ave.—Folcroft, Pa.

Wm. Ward—Bethlehem Pike and Valley Green Rd.—Flourtown, Pa.
Stanley Budney—Bristol Pike and Park Ave.—Eddington, Pa.
J. Snively—Baltimore Pike—E. Lansdowne, Pa.
Young and Wilson—112 North 63rd St.—Philadelphia, Pa.
James Wasser—4331 Roosevelt Blvd.—Philadelphia, Pa.
H. Humphries—Roosevelt Blvd.—Philadelphia, Pa.
M. Phillips—Bustleton Ave. and Philmont Rd.—Philadelphia, Pa.
Edgar Lincoln—Cove Road and Westfield—Pennsauken, N. J.
Paul H. Schlatter—Route #25 and Hilton Road—Pennsauken, N. J.
George Seward—Maple and Chapel Ave.—Merchantville, N. J.
Zimmerman's Auto Repair—847 East Luzerne St.—Philadelphia, Pa.

2638 Valance Structure Difficulties Newark.

Lally's—8th and Central—Shipsbottom, N. J.
Kardos Brothers—Hawk and New Brunswick—Phillipsburg, N. J.
Rufus Cramer—Route #S-40—Manhawken, N. J.
—'s Service Station—Main and Union St.—Lodi, N. J.
Ray's Auto Service—339 South Ave.—Fanwood, N. J.
Arthur Kenney—North Park and Springdale Ave.—East Orange, N. J.
A. and V. Apicella—Route #22—Clinton, N. J.
R. Wright—Main and Bond Sts.—Chatham, N. J.
F. Gennell—Belleville and Union Ave.—Belleville, N. J.
Franklin Clark—Route # 24—Stewartsville, N. J.
Lewis Richards—21 Vandeveer Ave.—Somerville, N. J.
Melvin Perrine—123-39 East Fifth—Plainfield, N. J.

Lincoln Garden Garage—298 Jersey Ave.—New Brunswick, N. J.
Mrs. Clarence Fox—Frenchtown Road—Milford, N. J.
John Gelger—Campbell Junction—Belford, N. J.
Robert Voohees—Main Street—Holmdel, N. J.
Paul Mercante—318 Sip Ave.—Jersey City, N. J.

2640 COMMISSION EXHIBIT NO. 171A.

October 24, 1951

TBA WCH

Goodyear Program
Atlantic Station Identification

Mr. M. G. Davis
Providence, R. I.

Attention: Mr. T. L. Walsh

Dear Sir:

Attached is a report from Goodyear of Atlantic stations in the Hartford and Boston Districts to which they were unable to erect Goodyear signs either because dealers refused identification, or the stations could not be identified due to structural reasons.

We are passing this information along for your appropriate action.

Very truly yours,

W. C. Hoffman.

H

Attachment

2642 COMMISSION EXHIBIT NO. 171B-D.

Refusals Hartford.

Gayner—Taylor Inc.—1345 Bamum Ave.—Stratford, Conn.
Frank's Sales—47 Railroad Ave.—South Norwalk, Conn.
Duke's Service—163 West Street—Seymour, Conn.
(Illegible) Atlantic—12 North Street—Danbury, Conn.
(Illegible) Mancini—Putnam Pike Road—Bethel, Conn.
Lines' Atlantic—New London Turnpike and School—Glastonbury, Conn.

Other Types of Refusals.

Cove Road Service Station—314 Cove Road—Stamford, Conn. (Now a Calso Station)
Jack's Service Station—26 Richmond Hill Ave.—Stamford, Conn. (Not Goodyear)
C. Nelson—RFD #2 River Road—Seymour, Conn. (Not Goodyear)
Fountain Garage—240 Putnam Street—New Haven, Conn. (Not Goodyear)
Junction Filling Station—Congress and Davenport—New Haven, Conn. (Not Goodyear)
Morrius' Auto Parts—Bridgeport Ave.—Milford, Conn. (Not Goodyear)
Sherman's Servicenter—1250 Kossuth Street—Bridgeport, Conn. (Not Goodyear)
Whitie's Service Station—129 Pine Street—Forestville, Conn. (Sells Lee)
J. Nathan—Mill Plain Road—Danbury, Conn. (Not Operating)
G. Haddy—Hayestown Road—Danbury, Conn. (Not Operating)
G. Gross—564 Dexwell Ave.—New Haven, Conn. (Refused)
W. Bureau—Main Street—Hampden, Mass. (Refused)

Barlow Motors—Ward Street—Rockville, Conn. (Refused)
Padelford's Atlantic Service—428 East Main Street—Torrington, Conn. (Refused)
Tac's Service Station—878 Driwell Ave.—Hampden, Conn. (Calso Station)
N. Beaudry—Main and Noble Street—Springfield, Mass. (Does not want valances)

2644 Valance Structure Difficulties Hartford.

Roberts Service—North Sommers, Conn.
Vernon's Service—Veron Center, Conn.
W. Grosseboom—67 East Main and Neal Court—Plainville, Conn.
Carpenter's Auto—590 Noble Ave.—Bridgeport, Conn.
(Illegible) Service—177 Post Road—Darien, Conn.
(Illegible) Pozzuoli—Campwell and Brown—West Haven, Conn.
F. H. Stolle—Main and Mill—Broadbrook, Conn.
Ed's Service—North Road—Broadbrook, Conn.
Midway Garage—1123 Main Street—S. Glastonbury, Conn.
Scelry's Service Station—47 Main Street—Winsted, Conn.
E. Warner—Boston Road and Parker Street—Springfield, Mass.
Post and Facey—282 Locust Street—Springfield, Mass.
Mayo Brothers—252 Belmont Ave.—Springfield, Mass.
Florence Motors—Depot Street—Florence, Mass.
M. J. Griffin—65-69 Memorial Ave.—W. Springfield, Mass.
Petsch Brothers—Post Road—Warehouse Point, Conn.
Gregel Brothers—1429 Palsido Ave.—Windsor, Conn.
Litchfield Fuel Co.—Russel Street—Litchfield, Conn.
George L. Parker—Boston Post Road—Old Saybrook, Conn.

Refusal Boston.

Edwards Motors—Wilbur and Macomber Sts.—Swansea, Mass.

Suspiro Brothers—Route #6 and Brayton—Somerset, Mass.

Kane's Atlantic—837 Allens and Carolina Ave.—Providence, R. I.

Trinity Battery—Broad and Somerset—Providence, R. I.

Janelle Brothers—North Westport—North Westport, Mass.

Falmouth Auto Sales—Main Street—Falmouth, Mass.

Hunting Motors—850 Main Street—Falmouth, Mass.

A. Dias—Stafford Road and Pelham Street—Fall River, Mass.

W: Tower—Putnam Pike—Chepachet, R. I.

Plymouth County Motors—Church and Montello St.—Brockton, Mass.

St. Angelo Motors—244 County Road—Barrington, R. I.

A. Lenechal—49 Elm Street—Amesbury, Mass.

Other Types of Refusals

Mills Radiator Service—585 Park Ave.—Worcester, Mass. (Does not sell gas or acces.)

A. Jussourne—Quaker Lane and Centerville Rd.—Warwick, R. I. (Non Goodyear)

(Illegible)—Main Street—Wakefield, R. I. (Non Goodyear)

Veterans Service—990 Eddy and Reeder Sts.—Providence, R. I. (Non Goodyear)

Viti Brothers—Croom Street—Providence, R. I. (Atlantic Oil Dealer only)

2646 M. Esposito—Home and Chalkstone Ave.—Providence, R. I. (Mobile Dealer)

J. Vitali—210 High Street—Peacedale, R. I. (Non Goodyear)

W. Dumas—281 Pulaski Blvd.—South Bellingham, Mass. (Out of business)

Valance Structure Difficulties

Triple Elm Station—Route #138—West Kingston, R. I.
Ernest Waite—Russel Mills—S. Dartmouth, Mass.
H. Hamlin—Sandwich, Mass.
S. Ferrara—700 Douglas Ave.—Providence, R. I.
A. Caraccia—392 Broadway—Providence, R. I.
Sully Anton—Dean-Balbo-W. Exchange—Providence, R. I.
R. I.
E. Licciardi—144 Laurel Hill Ave.—Providence, R. I.
Glenbridge Filling Station—Glenbridge and Manton Ave.—Providence, R. I.
Tom's Atlantic Station—Dean and Carpenter Streets—Providence, R. I.
J. Pate—536 Branch Ave.—Providence, R. I.
C. Marianetti—470 Valley Street—Providence, R. I.
A. E. Grenier—Highland and Pleasant Streets—Phenix, R. I.
J. Walsh—Main Street—Osterville, Mass.
J. MacCowan—East Main Street—Northboro, Mass.
Old State House Filling Station—Spring and Mills Roads—Newport, R. I.
A. Bibbins—484 Broadway—Methven, Mass.
C. Greenwood—Cape Road—Mattapoisett, Mass.
A. Snell—573 Walnut Street—W. Lynn, Mass.
N. Lapuppo-Nunzio Auto Service—21 Orchard Street—Lawrence, Mass.
Louis P. Oullette—Easter and Downing Streets—Fall River, Mass.
R and T Service Station—977 Washington Street—E. Weymouth, Mass.
E. Whitney—Main Street—Barnstable, Mass.
Baker Chevrolet—33 Washington Street—Taunton, Mass.

2648 COMMISSION EXHIBIT NO. 172A.

October 24, 1951

TBA WCH

Goodyear Program
Atlantic Station Identification

Mr. L. K. Maisel
Syracuse, N. Y.

Dear Sir:

Attached is a report from Goodyear of Atlantic stations in the Syracuse and Buffalo Districts to which they were unable to erect Goodyear signs either because dealers refused identification, or the stations could not be identified due to structural reasons.

We are passing this information along for your appropriate action.

Very truly yours,

W. C. Hoffman.

H

Attachment

2650 COMMISSION EXHIBIT NO. 172B.

Refusals. Syracuse.

Hoag, Stanley—Genesee and Burdick—Fayetteville, N. Y.
Illegible Parrish—Main and Badger Streets—Endicott, N. Y.
Frank Funk—75 North Main Street—Cortland, N. Y.
F. H. Buongiorne—Chenaugo and Bromley Ave—Binghamton, N. Y.

Other Types of Refusals.

Atlantic Service Station—189 Madison Ave—Oneida, N. Y. (Impl to Adv.)
L. J. Glass—Route U. S. #11—Adam Center, N. Y. (Impl. to Adv.)
Ray Cochran—Route # 96 and Mill Street—Condor, N. Y. (Going out of business)
B. B. Johnson—Route # 17—Chester, N. Y. (Out of business)
Ken Alt—Route U. S. #11—Mattydale, N. Y. (Impl. to Adv.)

Valance Structure Difficulties.

Hugh Killam—Sandy Creek, N. Y.
Battle-Anthony—Court Street Extension—East Syracuse, N. Y.
J. A. Massey—Wellesley Island—Alexandria Bay, N. Y.
F. Churchill—Route # 9 West—Marlboro, N. Y.
John Cawein—Route # 208—Burnside, N. Y.
Ira H. Hosmer—Adams, N. Y.

2652 COMMISSION EXHIBIT NO. 173.

July 17, 1951

TBA WCH

Goodyear Program
Progress Report

Messrs. M. G. Davis

Atten: T. L. Walsh—Providence, R. I.
L. K. Maisel—Syracuse, N. Y.

Dear Sir:

With further reference to T.B.A. Bulletin # 17 of June 1st the information that we now need is the number of Dealers by Atlantic District that were turned over to Goodyear at the inception of the Program for 1209 approval.

Very truly yours,
W. C. Hoffman

P

2654 COMMISSION EXHIBIT NO. 173A.

Goodyear T.B.A. Bulletin # 17

June 1, 1951

Messrs. J. O. Estlow
H. W. Jolie
G. V. Ostrander

Atlantic Marketing Program

T.B.A.

Fair Trade Agreements. The Wall Street Journal for May 22 contained the following article.

"The Supreme Court ruled yesterday in a 6 to 3 decision, that retailers who do not sign 'Fair Trade' agreements may ignore manufacturers' suggested retail prices. The decision jeopardized enforcement of

'fair trade' laws in 45 states because it invalidates the non-signer clause which provides that the signature of one retailer to a minimum price agreement makes all other retailers in the state subject to the agreement. Fair Trade laws written without a non-signer clause have proved ineffective.

Yesterday's decision was concerned with a New Orleans supermarket which refused to follow minimum prices set by two national distillers. The distillers based their action on the Miller-Tydings Act, which exempts businesses from anti-trust prosecutions in states permitting resale price maintenance, and which they said was intended to permit the use of non-signer clauses.

The Supreme Court ruled that since the Miller-Tydings Act does not mention the non-signer clause, it could not assume such a provision was meant to be allowed. The Court said, 'Certainly the words used connote a voluntary scheme. Contracts or agreements convey the idea of a cooperative arrangement, not a program whereby recalcitrants are dragged in by the heels and compelled to submit to price fixing'. The majority opinion went on to say that the Miller-Tydings Act specifically continues prohibition of the Sherman Act against 'horizontal' price fixing agreements between retailers or between wholesalers or among other competitors at the same level. 'Therefore', said the Court, 'when a state compels retailers to follow a parallel price policy, it demands private conduct which the Sherman Act forbids'.

Fair Trade laws are of particular importance to the liquor and drug industries, but also cover a wide range of products from soap and shortening to consumer durable goods such as vacuum cleaners and electric clocks. The Justice Department and the Federal Trade Commission have always considered Fair Trade laws as running counter to anti-trust and anti-inflation programs."

Fair traded products in the Goodyear line are identified by an asterisk (*) on the Catalog Page.

2655 COMMISSION EXHIBIT NO. 173B-C.

Goodyear T.B.A. Bulletin # 17 June 1, 1951

Goodyear Program

Bulletins. We are attaching an extra copy of this T.B.A. Bulletin, which we suggest be referred to the Goodyear Petroleum Representative in your Region, by your T.B.A. Coordinator.

We also suggest that information be deleted which would be of no interest to him.

Car & Home 1951 Spring and Summer Supplement No. 1 —5/25/51. Copies of Dealer and Distributor 1951 Spring and Summer Supplement No. 1 was mailed to all names on the Car & Home catalog mailing list.

Car & Home Merchandise Price Book Holders should make the necessary changes in the 1951 Spring and Summer Catalog and the Dealer and Distributors Price Lists.

Progress Report. We attach Progress Reports received from Goodyear which represent the results of activities through May 21, 1951 and through May 28, 1951, by Goodyear District.

Will you please arrange to forward to this office the net number of Atlantic Dealers, by Goodyear District, that have been nominated in your Region on the Goodyear G-1209 Form to date. Also, please notify us weekly of any changes that may be made thereafter, so that this report may be kept current.

Sales Promotion. The subscriptions to the Goodyear Small Display Package Service which was sold to dealers at $1.50, far outdistanced Goodyear's most optimistic expectations. Therefore, the # 1 Package will not be sent to Atlantic Dealers and the prorated cost for the two remaining kits in the small Display Package Service will be only $1.00.

If additional copies of the # 1 Package were run they would not be available much before the # 2 Package. However, Goodyear will mail miscellaneous point-of-sale promotional material to their Goodyear districts, which can be picked up by Atlantic Salesmen for distribution to their dealers, at no charge, and which can be used until the # 2 Package is available.

Station Equipment. Will you please supply this office, as promptly as possible, a list of service station locations in your Region that you expect to open in the following 90-day period, and also a list of equipment which can be ordered from Goodyear, that will be needed at each location.

Thereafter, it will be necessary to give us this information monthly, since it takes 60 to 90 days to obtain certain equipment from Goodyear for use in new stations that may be opened in your Region.

Tires & Tubes

June Tire Allocation. We have just received notice from Goodyear of the quantities of tires to be assigned to the Goodyear supply points for their distribution to Atlantic-Goodyear outlets during the month of June 1951. The quantity assigned for your Region is ..... Passenger Car Tires and ..... Truck Tires.

2656 Accessories

AC Oil Filters—5/21/51. A release was made to Price Book Holders in the Goodyear Boston, Hartford, Albany and Syracuse Districts only, except Oil Companies. This release was mailed direct to your T.B.A. Coordinator, by Akron.

The release listed a representative line of AC Oil Filters which has been placed in the Boston Car & Home Ware-

house, primarily for Atlantic Refining Company outlets, and also for other Car & Home accounts.

The AC basic requirements for eligibility as an AC Oil Filter Jobber are the same as those required for AC Spark Plug Jobber eligibility.

In the near future, a representative of the AC Spark Plug Company will call at each Goodyear District Office, for the purpose of investigating prospective AC Oil Filter Jobbers, and to make application for jobber compensation where eligibility is established.

Car & Home Merchandise Bulletin # 16—5/23/51. A copy of the Car & Home Merchandise Bulletin # 16 has been mailed to your T.B.A. Coordinator. We wish to call their attention to two items which will be of interest to your dealers.

Seat Cover Swatch Books. A shipment of the Goodyear 1951 Seat Cover Swatch Book 022-6995 has been sent to each Goodyear district office. These swatch books should be picked up by Atlantic Salesmen and passed out to their most likely seat cover account prospects, at no charge.

Johnson Heavy Duty Cleaner. The S. C. Johnson Company has just announced the immediate availability of their new product, Johnson Heavy Duty Cleaner—pints. This product will be nationally advertised and will be recommended for use preparatory to the application of Car Plate. We suggest that caution be used in promoting the sale of this product, since it is only necessary to use a Heavy Duty Cleaner on the older model cars.

Miscellaneous

Steam Bags—5/22/51. The addition of three Sectional Steam Bags for use in repairing large off-the-road truck tires was mailed to Price Book Subscribers and Recappers. This should be given only passing interest, and may be

discarded by Atlantic Salesmen.

Toys and Sporting Goods—4/25/51. We attach a copy of Goodyear's 1951 Holiday toys, bicycles, juvenile wheel goods and sporting goods wholesale catalog which was mailed to all Price Book Holders except oil companies. This is for your T.B.A. Coordinator's information.

A letter is also attached outlining the program and including the terms.

We suggest that distribution of this information be limited and given only to those of your accounts that may be interested in these lines, and that can handle such a program.

S. J. Heideman

2657

COMMISSION EXHIBIT NO. 173D.

The Atlantic Refining Company
Progress through May 21, 1951

	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	473	192	128	35	180	281	202	1491
2. Total number of Atlantic dealers and distributors signed to date as direct dealers	16	1	26	5	9	19	6	82
3. Total number of supplying dealers	0	6	2	5	8	33	27	81
4. Lee Tires adjusted	240	8	45	4	72	79	32	480
5. Batteries adjusted to date	0	0	0	0	0	0	0	0
6. Introductory Display Packages Sold	408	1	130	33	85	175	125	957

2658

COMMISSION EXHIBIT NO. 173E.

The Atlantic Refining Company
Progress through May 28, 1951

	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	517	302	136	29	180	281	202	1647
2. Total number of Atlantic Supplying Dealers signed direct	16	7	26	7	9	19	21	105
3. Total number of Goodyear dealers and stores acting as supply points	0	25	2	4	8	14	6	59
4. Lee Tires adjusted	270	6	50	2	74	116	51	569
5. Batteries adjusted to date	0	0	0	0	0	0	0	0
6. Introductory Display Packages Sold	427	1	131	33	85	225	125	1027

2659 COMMISSION EXHIBIT NO. 174.

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R. I.

Sept. 7, 1951

GM:D:TLW

Goodyear Program

Mr. S. J. Heideman
Philadelphia, Pa.

Dear Sir:

In accordance with telephone conversation, following is the number of accounts we have turned over to Goodyear, by district:

Providence—	103
Worcester—	57
Springfield—	98
Hartford—	74
Boston—	138
Fall River—	49
New Haven—	79
Bridgeport—	56

Yours very truly,

M. G. Davis

TLW/sc

2661 COMMISSION EXHIBIT NO. 175.

The Atlantic Refining Company
Incorporated
Petroleum Products
N. Salina & W. Genesee Sts.
Syracuse 2, N. Y.

July 19, 1951

S:D:JBW

Goodyear Program
Progress Report

Mr. S. J. Heideman
TBA:WCH
Philadelphia, Pa.

Dear Sir:

As requested by your letter of July 17, we are advising you of the number of Atlantic Accounts turned over to Goodyear at the inception of the program.

These figures include distributors as well as dealers as we assume you are interested in all resellers rather than dealers alone.

We are listing the accounts by Goodyear and Atlantic Districts.

	Atlantic District						
Goodyear District	Alb.	Buff.	Rcch.	S.T.	Syr.	Wtrn.	Total
Albany, N. Y.	25			3		27	55
Syracuse, N. Y.			1	99	108	68	276
Buffalo, N. Y.		82	100	33			215
Newark, N. J.	22						22
Totals	47	82	101	135	108	95	568

L. K. Maisel

rc

2663 COMMISSION EXHIBIT NO. 176.

Goodyear T.B.A. Bulletin #17

April 25, 1952

Goodyear Program

T.B.A.

Station Openings. We ask that you instruct your Districts to establish, as a regular practice, automatic and advance notice to the Goodyear District Office, of the openings of any new stations, or of change in proprietorship at any dealer location. Such notice will be mutually beneficial to both Goodyear and ourselves. It will enable Goodyear to complete any unfinished business with the outgoing dealer and, further, will enable them to anticipate and to move promptly in handling the new dealer's requirements.

This subject was initially mentioned in T.B.A. Bulletin #4 of February 1. The repetition merely adds "new stations", and will clarify the action desired.

S. J. Heideman

2665 **COMMISSION EXHIBIT NO. 177.**

The Goodyear Tire & Rubber Company, Inc.
Akron 16, Ohio

August 20, 1951

Mr. S. J. Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pa.

Subject: Jennings Bros.
Cranston, R. I.

Dear Syd:

Van Akin, our Boston District Manager, recommends subject Atlantic account be approved as a C & H M Wholesaler. The account is set up with a wholesale route truck, travels a full time wholesale salesman, contacting a minimum of 60 service station accounts, which qualifies the account for the arrangement if it is willing to place an initial order in accordance with our policy.

A-C, Purolator and Westinghouse have already approved on that basis.

Before taking action, which seems for the best interest of all concerned, I am clearing with you before advising Mr. Harper, as if the account is an Atlantic Dealer it will reduce the rate of commission earned on C & H M.

Will you please advise as promptly as possible.

Sincerely,

S. A. Gaylord
Manager—Petroleum Sales Dept.

S A Gaylord
lfm

2667 COMMISSION EXHIBIT NO. 178.

August 24, 1951

TBA WCH

Goodyear Program
Jennings Bros.
Cranston, R. I.

Mr. S. A. Gaylord, Manager
Petroleum Company Sales
Goodyear Tire & Rubber Company
Akron 16, Ohio

Dear Mr. Gaylord:

The New England Region Office does not wish to set the subject Atlantic account up as a C & H M Wholesaler. They would like to set this account up as an Oil Company Supplying Dealer.

We suggest that if there are any further questions concerning this, that Mr. Van Akin should contact Mr. T. L. Walsh.

Cordially yours,

W. C. Hoffman

2669 COMMISSION EXHIBIT NO. 179A-I.

Goodyear Program

Minutes Goodyear T.B.A. Coordinators' Meeting

October 12, 1951

Syracuse, N. Y.

The following were in attendance:

Messrs. S. J. Heideman, Chairman, T.B.A. Sales
L. K. Maisel, T.B.A. Coordinator, New York Region
T. L. Walsh, T.B.A. Coordinator, New England Region
W. C. Hoffman, Acting Secretary, T.B.A. Section

Mr. W. J. Jackson was absent due to illiness but was polled on several of the questions prior to the meeting.

Guests: Mr. G. V. Ostrander, Regional Manager, New York Region
Mr. W. S. Shockley, Manager, Sales Group, New York Region

The meeting convened at 9:15 A.M.

I. Next Meeting Date

December 14, 1951, Room 1210, Atlantic Building, Phila., Pa.

II. Report on September Sales

The chairman reported that two regions showed a decrease in tire sales, three regions showed a decrease in battery sales and two regions showed a decrease in accessories sales for September, 1951 from sales in September, 1950. Members commented as follows:

A. Tires—Mr. W. J. Jackson (Phila.-N.J.) reported that sales were off, due primarily, to reduction in purchasing capacity of associate dealers due to gas price war and lack of consumer demand.

Mr. Maisel (N.Y.) reported the following:

1. Lack of consumer demand.
2. Lee Competition.
3. Goodyear has not followed through on seeing that dealers are properly stocked.
4. Not as much effort put in, selling Goodyear, as under the old program.
5. Dealer credit difficulties.
6. Some sizes of tires still hard to get.

Mr. Walsh (New England) reported

1. Decline in consumer demand.
2. Sale of recaps has affected the new tire market.
3. Dealers bought ahead on certain sizes during the recent tire shortage.
4. Dealers are not "selling" tires.
5. Dealer credit difficulties.

Both New England and New York agreed that (a) Atlantic salesmen are putting in more time as a rule on the Goodyear T.B.A. Program than they did before; 2671 (b) some salesmen are getting a free ride where there is an aggressive Goodyear supplying dealer or store; (c) some areas are getting good support from year; (d) personnel are still enthusiastic.

Action:

a. Mr. Maisel is to advise T.B.A. Section of specific cases of shortages in tire sizes.
b. The Regions are to advise the T.B.A. Section of specific dealer credit difficulties which will be referred to Goodyear, Akron, for their handling.

New England reported that approximately 98% of their accounts have been signed on a Goodyear Program and that they are getting about 75% of the tire business they previously enjoyed from these accounts. New York reported that they had about 96% of their accounts signed on a Goodyear Program and that they were getting about 65% of their former tire business. Both Regions agreed that there were two main difficulties in selling Goodyear tires:

1. The lack of road hazard guarantee is a stumbling block for the small dealer.
2. Lee prices and discounts appeal to the larger Atlantic accounts.

The Chairman then asked the Committee members what they felt was needed to get the program operating properly. The New York Region felt that they had reached the turning point and that they were now looking for improvement. Both Regions agreed that a Goodyear tire story similar to the story of Goodyear battery advantage being prepared by Sales Promotion would be helpful.

There was some discussion as to whether Goodyear had an adjustment policy on bruise breaks on tires with less than 25% wear.

Action:

a. T.B.A. Section to investigate Goodyear's bruise break policy and then to develop with Goodyear a program for training dealers in handling tire adjustments.

b. T.B.A. Section will develop with Goodyear a method for proving that dealers can sell many more Goodyear tires than they can Lee's in order to offset extra discount offerings.

c. T.B.A. Section to request Sales Promotion Section up a tire selling program similar to the battery story now being prepared by Sales Promotion.

B. Batteries—New England and New York Regions agreed that the following factors had affected battery sales:

1. Dealers were overstocked.
2. Battery life is being extended.
3. Competition's sales were also off.
4. Replacement shipments were off.

2673 The Chairman announced that the Sales Promotion Section is preparing a battery story which will point out the advantages of Goodyear batteries. This information will be given to salesmen and dealers in order to improve battery sales.

C. Accessories—Mr. Walsh reported that the situation is improving but that there are still problems to be corrected. The supply problem, insofar as warehouse and stores are concerned, is generally satisfactory, although the Boston warehouse at the present time has no stock of DuPont Sealer. Goodyear supplying dealers are still a problem in some areas. For example, in New England one Goodyear supplying dealer refuses to deliver accessories and the Atlantic salesman solicits dealer orders and delivers them in his own car. Mr. Walsh recommended that Goodyear, Akron, set up their supplying dealers so that they can offer distributor prices to associate dealers. Mr. Maisel reported that New York still had a problem in setting up satisfactory supplying dealer service and that the poor service from the Massillon, Ohio warehouse had not yet been corrected.

Action:

a. The three Regions are to give the T. B. A. Section a detailed report of problems on accessories in their Regions.

b. T. B. A. Section to recommend to Goodyear the need for encouraging Oil Company supplying dealers to offer distributor prices to associate dealers.

T. B. A. Section will again follow up (third time) with Akron concerning service from Massillon, Ohio warehouse.

D. General—New York Region is using a form which lists the type of each account and also the purchase levels for all products. This information is supplied by Goodyear. A check on the progress of each account is made by comparing the activity reported on the G1204 form. If an account is not buying commensurate with the purchase level to which he is listed, this is quickly revealed in this comparison.

Action: The T. B. A. Section will request Goodyear's cooperation in furnishing this information for the other two Regions.

III. Fall Promotion—T. B. A. Flyers.

A report had previously been made to the Coordinators on the number of deals sold in their regions of the "bucket" promotion. Both New England and New York felt that the order blanks were late when received by salesmen, and apparently salesmen had not received sufficient information concerning the promotion. Both Regions received order blanks with Richfield Oil Company on them. New York Region suggested that a cover letter be mailed with future releases. New England reported that poor timing and bad mechanics were responsible for their poor showing.

Action: Goodyear is to be informed by T. B. A. Section about suggestions and complaints.

IV. Report on Warehouse Inventories.

The Chairman reported the company cost value of warehouse inventories on hand as of September 30, 1951.

2675 1. Tires—New York Region has most of the tire inventory which is made up of Lee tubes. Special price been given to sell out this inventory.

2. Batteries—The Chairman pointed out that it was imperative to dispose of our remaining battery inventory at once.

3. Battery Equipment—EX201 Chargers represents the major portion of this dollar inventory. Special prices on other battery equipment items appear to be satisfactory for quick movement at the present time.

4. Accessories—The major portion of this dollar inventory consists of tire chains. The New York Region was given special prices on certain accessory items.

Action:

a. Mr. Maisel is to advise the T. B. A. Section the tire inventory that he is unable to sell and also furnish T. B. A. Section with the special prices that were quoted on certain accessory items.

b. All three Regions are to advise the T. B. A. Section promptly what additional help, if any, is needed in selling the battery stocks.

V. Claimed Advantages for Goodyear Tires.

The Chairman exhibited a folder "Why Should I Buy Goodyear Tires" which was received in answer to our request for information as to the claimed advantages which are superior to other make tires. It was felt that more technical reasons should be obtained that these should be

used in the tire selling story referred to earlier in the meeting.

Action: The T. B. A. Section is to request these technical reasons and advantages from Goodyear.

VI. Batteries—Competitive Information.

The Chairman reported to the Committee members the information received from Goodyear in response to our request for information on combatting competition from Lee batteries. Some of this information will be incorporated in the sales story being prepared by the Sales Promotion Section referred to earlier in the meeting.

VII. Lee Tires and Batteries—Company Equipment.

A further discussion was held on this subject and it was agreed that since this factor is not a problem in the New York Region and since New England is making limited purchases of Goodyear tires for company equipment, no further action was needed at this time.

VIII. Lee and Exide Adjustments—Cutoff Date.

After considerable discussion it was recommended that March 31, 1952 be established as the cutoff date on Lee and Exide adjusfments.

2677 Action: If no objections are apparent to this course of action after development with other regions and management, it will be adopted as policy.

IX. Tires—Special Promotion or Deal.

The T. B. A. Section had requested from Goodyear information as to whether a promotion or deal could be arranged. Goodyear referred to the tire selling theme in the October Merchandiser which could be used. This infor-

mation will be incorporated in the tire sales story referred to earlier in the meeting. It was recognized in the discussion that there were certain difficulties in staging "tire events" under the tire company program.

Action: The T. B. A. Section will investigate the possibilities of "tire events".

X. Training Program.

The Chairman asked the Committee members when their training programs would be completed and what provisions, if any, were being made to pass this information on to dealers and also to keep salesmen informed.

1. New England reported that their training program would be completed in November and they plan to have the Goodyear petroleum representative double-team with each Atlantic salesman one-half day every two months.
2. New York Region has completed their training program and have held small dealer meetings and plan to continue these dealer meetings.
3. Phila.-N. J. Region reported that their training program would be completed in November.

It was agreed that a coordinated program should be inaugurated which would require participation by both Atlantic and Goodyear personnel.

Action:

a. Mr. Walsh will check with New England management on feasibility of holding dealer meetings.
b. Mr. Maisel will work out with New York Management the feasibility of the Goodyear petroleum representative double-teaming with Atlantic salesmen.
c. The T. B. A. Section will recommend to the Phila.-N. J. Region that the plans being used by New England and New York be used in continuing the training program.

XI. Budget Plan at Service Stations.

New England has nominated a station but it is not yet in operation. New York has a station now operating on the budget plan in Buffalo, N. Y. Phila.-N. J. Region has not as yet set up a model station.

2679 Action: T.B.A. Coordinators will maintain a check of progress advising the T. B. A. Section of the success of these model stations by means of a questionnaire to be provided by the T. B. A. Section.

XII. Truck Tire Sales at Service Stations.

New England has picked two candidates to operate as a model truck tire station. The New York Region has one model truck tire station in operation. Phila.-N. J. has not as yet set up a model station.

Action: T. B. A. Coordinators will advise T. B. A. Section on the progress of these stations by means of a questionnaire to be provided by the T. B. A. Section.

XIII. Used and Recapped Tire Sales at Service Stations.

The three Regions have not set up model stations for used and recapped tire sales. The Chairman pointed out the advantages of having a good used and recapped tire business. Sale of used and recapped tires represents additional income and if these sales are ignored, it is the same as "throwing" money away. If used and recapped tires are not properly cleaned and displayed, they give an unsightly appearance to the station. The Chairman stressed the importance of getting at least one station established in order to convince other dealers to follow the same program.

Action: Coordinators are to set up the model stations as soon as possible and keep the T. B. A. Section posted

on their progress by means of a questionnaire to be provided by the T. B. A. Section.

XIV. Budget Sales by Goodyear—Dealer Commissions.

Goodyear has a plan whereby they pay commissions to gasoline dealers of 10% or $10.00, whichever is less, on budget or deferred payment business sold to accounts sent into Goodyear stores by these dealers. The commissions apply only on original sales to new accounts. After considerable discussion it was agreed that this plan should not be publicized since only the dealer and not Atlantic would receive the benefit of this commission. Also there is always the possibility of the dealer losing the future business of this customer whenever he is referred to another source of supply.

XV. New York Region Manager's Comments on Goodyear Program Operations.

The Chairman invited Mr. Ostrander to give the Committee the benefit of his opinions for the improvement of the commission plan operation. Mr. Ostrander expressed dissatisfaction with the progress made in his region and suggested that if Goodyear had sent additional personnel to assist in the initial phases of the changeover, many of the problems could have been resolved and better performance would be evident. He also suggested that

1. Even now additional Goodyear personnel could be sent into the territory to spread the Goodyear story and secure a better understanding of the advantages by dealers and by salesmen in a manner similar to that which was employed by the New York Region last year when all of the personnel in the region assisted the Buffalo district with the work of opening eight new stations at one time.

2681 2. Mr. Ostrander stated that since T. B. A. sales were off, rentals were also off because the anticipated volume had not been enjoyed.

3. Mr. Ostrander recommended that the same $500.00 credit limit established on the service station commission operation be made available for dealers on Class 2 station operation.

4. Mr. Ostrander also recommended that the statement "only Goodyear tires will be honored" should not be included on the B139 credit card until such time as we were more firmly established on the Goodyear program. In the discussion that followed it was brought out that since the commission plan was being investigated by the Federal Trade Commission, this was another reason why we should delay recommending that only Goodyear tires be listed on the B139.

XVI. Anti-Freeze.

The Chairman gave the following report on the anti-freeze supply situation. U. S. I. can accept no additional orders for Super Pyro this season due to a government order which requires large quantities of Methanol which is the base of this material for jet fuel and other military needs. DuPont and Commercial Solvents have also been affected by this order. U. S. I. reported, however, that unfilled orders on hand will be shipped in three to four weeks.

National Carbon has stated that Trek is still available and orders will be shipped in three to four weeks. National Carbon has not guaranteed price protection this season. However, we have recommended to management that we continue our present protection policy since it would be rather difficult to administer two policies. Management agreed to this recommendation. The Chairman recom-

mended that if Trek anti-freeze was needed to fulfill additional requirements this season, it should be ordered immediately.

Thermo is available at a new higher price. We now have the option of buying our present inventory at the old price. This will be decided at a later meeting with Publicker officials. The Chairman also mentioned the fact that we may have to depend on Thermo entirely if Methanol is not available next season. There is a possibility that this may be the situation.

XVII. Petroleum Representative.

The recommendations made in the August 17th meeting concerning the duties and functions of the Goodyear petroleum representative were presented to Goodyear for their study. Goodyear has advised that they can see no reason why our suggestions cannot be incorporated in the program. The Coordinators reported that they were proceeding with these recommendations and that they were being carried out satisfactorily.

XVIII. Radiator Hose—Redi-Curv.

The Chairman reported that although there has been some instances of Redi-Curv hose failure, they have been so small considered in the light of the total number of pieces sold, that these failures would not represent a serious problem. Since all Regions were in agreement with this reasoning, T. B. A. Section recommended to Goodyear that a similar type hose be added to the Goodyear line.

2683 Goodyear has reported that their Development Department has had Thermoid Redi-Curv under study and in several tests it has proven unsatisfactory. However, they recognized the market for this Redi-Curv hose

and are presently experimenting on some ideas of their own.

Action: T.B.A. Section will follow up Goodyear on the progress made in adding this item to their line mentioning the fact that both Gulf and Sun can afford to feature this type hose which wouldn't be the case if the product wasn't satisfactory.

XIX. Defective Home Merchandise Policy.

Goodyear's policy on defective Small Home Appliances states that it is the dealer's problem and that he is to take the matter up directly with the manufacturer. Since there was an instance reported of a defective radio and the fact that it was inconvenient and expensive for our dealer to handle, this matter was referred to Goodyear.

Goodyear reported that their various suppliers had authorized repair stations listed in the Car Home Catalogue. These repair stations are conveniently set up in the principal cities and render efficient service. The Committee members felt that this program was not satisfactory on a new purchase because operation or test is not performed before delivery. This is similar to the outdated principle "let the buyer beware". However, there was some question as to whether the unit was tested or operated before it was delivered.

Action: T.B.A. Section will review the situations encountered to date, and if justified will reopen the matter with Goodyear for further consideration.

XX. Selling Petroleum Products to Goodyear Stores.

Mr. W. S. Shockley, New York Region Sales Group Manager, recommended that a standard program should be set up to be followed in obtaining petroleum business from Goodyear. The recommendations were that this should

be handled by the T. B. A. Coordinators and that the District Managers should make careful selections of locations that were to be approached, considering the nature of the store's facilities, possible volume and obtain information on the length of existing lease. After the locations have been carefully selected this information should be channelled through the T. B. A. Coordinator who would then request the T. B. A. Section to find out from Goodyear the necessary steps to obtain this type business.

Action: T.B.A. Section will recommend this program to other regions for soliciting this type of business.

XXI. Securing Associate Battery Dealer Business.

The Chairman stressed the importance of securing the associate dealers' battery business which can best be accomplished by the supplying dealer making regular calls keeping him well stocked and avoid the need for "fire engine" service.

2685 XXII. Comparable Products in the Goodyear Line.

The Chairman distributed a list of multiple products in the Goodyear line and asked that the Coordinators indicate the items they wished to concentrate on in order that an exerted effort might be applied for promotional purposes.

Action: T.B.A. Coordinators are to forward completed lists to T. B. A. Section.

XXIII. Analyze Accounts Active on the Goodyear Program.

The Chairman recommended that the accounts that are active on the Goodyear program should be analyzed and compared with those that were active on the former program. Those accounts that had $500.00 or more volume

last year and have not been signed to date should be pinpointed and special effort should be exerted in order to bring about their conversion to the new program.

XXIV. Analyze Job to be Done on a Special Product.

The Chairman recommended that specific products should be analyzed by comparing areas where results are good with areas were results are poor and determine whether it is supplying dealer or just what does account for the difference.

XXV. Support of Policies at all Selling Levels.

The Chairman suggested that some of the problems that confront us require local selling at salesman and dealer levels. It is necessary that they understand policies and prices and that poor sales results should not be due to the lack of knowledge of these prices and policies.

The meeting adjourned at 4:50 P.M.

W. C. Hoffman
Acting Secretary

2687 COMMISSION EXHIBIT NO. 179J.

Atlantic-Goodyear Accounts
(Signed on G-1209)

Atlantic District..... Date.....
Goodyear District.....

Atlantic Use	Name and address	Supply Point	Account Class "D" or "J"	Apprvd. C&H Whlsr.	Tires	Purchasing Level Batteries and Cables	Resolute Batteries	C&H Oth Md

2688 COMMISSION EXHIBIT NO. 179K.

Petroleum Representative—(Review and Recommendation.) The Chairman reviewed the duties and functions of a Goodyear Petroleum Representative as outlined by Goodyear and asked the members for their comments concerning their activities and how they could best be utilized to the mutual advantage of both Atlantic and Goodyear. After much discussion it was decided that the following recommendations be made to Goodyear Management:

1. It was the consensus of opinion that better coordination between Atlantic and Goodyear could be brought about if the following steps were taken:

a. The Atlantic T. B. A. Coordinator would channel any problems in the field through the Goodyear District Managers concerned since it would ultimately be the Goodyear's District Managers problem to correct, and by this action avoid the use of Petroleum Representatives as an "errand boy".

b. Coordinator would contact the Goodyear District Manager, if necessary, to have any Goodyear supply point carry additional stocks.

c. It was established that regular contacts with associated dealers at least once a week were being

made by Goodyear salesmen or supply points in some areas while in other areas contacts were as infrequent as a whole month. The practice of at least weekly contact should be expanded to include all areas.

2. It was felt that the Petroleum Representative could work best to the interests of both Atlantic and Goodyear by the following:

a. The Petroleum Representative should be impressed with the importance of follow through on any particular assignment.

b. Petroleum Representatives should train Goodyear territory men in their battery and accessory product lines so that they will be more familiar with these products and also with the different price schedules.

c. Petroleum Representatives should be acquainted with Goodyear's selling equipment such as price schedules, product data, advertising helps of all kinds that are available to the dealers, both on charge and no-charge basis, and see that the Districts maintain and distribute adequate stocks of this material for our dealers.

d. Petroleum Representative should be available for field work on a co-ordinated basis with Atlantic Coordinator, and preferably by the Atlantic T. B. A. Coördinator's direction.

Action: The T.B.A. Section is to make these recommendations known to Goodyear Management their approval.

2689 COMMISSION EXHIBIT NO. 180.

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R. I.

May 13, 1952

GM:C:TLW
Purolator

Mr. S. J. Heideman
Philadelphia, Pa.

Dear Sir:

Many of our dealers are objecting to the switch from Fram to Purolator because they feel that the re-education of their help on the Purolator numbers is too big a job. We suggested to the Petroleum Representative of Purolator that they supply us with stickers showing simply the Purolator number which could be placed on the outside of the Fram pieces and that this would help us in effecting a change-over. The Purolator Representative didn't seem too optimistic about being able to accomplish this through his Company and, therefore, we think it ought to be pushed from your office.

We could really do a job on eliminating Fram if we could identify their merchandise with Purolator numbers.

Yours very truly,

L. E. Card

TLW/sc

2691 COMMISSION EXHIBIT NO. 181.

May 19, 1952

TBA WCH

Purolator Products

Mr. J. W. O'Neill,
Division Petroleum Representative,
Goodyear Tire and Rubber Company,
2750 North Broad Street,
Philadelphia 32, Pennsylvania.

Dear Mr. O'Neill:

Many of our dealers in the New England Region are objecting to the switch from Fram to Purolator because they feel that the re-education of their employees on the Purolator numbers is too big a job.

New England suggested to the Petroleum Representative of Purolator that they supply them with stickers showing the Purolator number which could be placed on the outside of the Fram pieces and that that would help them in effecting a changeover. The Purolator representative was not too optimistic about being able to accomplish this through his company.

We believe that this idea has considerable merit and would appreciate anything that Goodyear can do to make this possible.

Cordially yours,

W. C. Hoffman

h

2693 COMMISSION EXHIBIT NO. 182.

Goodyear

The Goodyear Tire & Rubber Company, Inc.
2750 North Broad Street
Philadelphia 32, Penna.

May 29, 1952

Mr. W. C. Hoffman
T. B. A. Sales
The Atlantic Refining Company
260 S. Broad Street
Philadelphia, Pa.

Subject: Purolator Products

Dear Bill:

With further reference to your letter of May 19th, I am forwarding to you a sample roll of stickers which Mr. Walsh has requested.

The Purolator people indicated their willingness to make these available to any of your accounts. You will note that the numbers on these rolls are all the popular ones and should be of assistance in overcoming the problem Mr. Walsh mentioned.

I would appreciate hearing from you in order that I can pass on your requirements to Purolator.

Yours very truly,

J. W. O'Neill
Division Petroleum Representative

J.W.O'Neill
mmh

2695 COMMISSION EXHIBIT NO. 183.

Internal Correspondence

To: Mr. S. J. Heideman—Rm 1210
Subject: Goodyear Tire Display
From: W. J. Butler
Date: May 1, 1952

We have discussed the matter of fitting the Goodyear Tire Marketier into our service station display set-up with our people.

They felt that the Marketier could not readily be accommodated in an AR 50 design station without eliminating part of the present shelving. As you know, this is now being furnished by Operations Department automatically in Class 2 service stations. It was pointed out that the present shelving provides more space for tire stocks than the Marketier. The Marketier could be used if the station were not equipped with standard shelving and in a Class 3 station this would be up to the dealer. The Marketier could also be used in any Class 2 special design station which might have three or more service bays.

If it is your feeling that the sacrifice of existing accessory shelf space in the display room for the sales chart frames with no other advantage gained in tire storage space has merit, a case might be worked up to present to the Sales Development Committee for consideration since this is a course that would be necessary to revise the present Operations Department program. Please advise if you want us to try this.

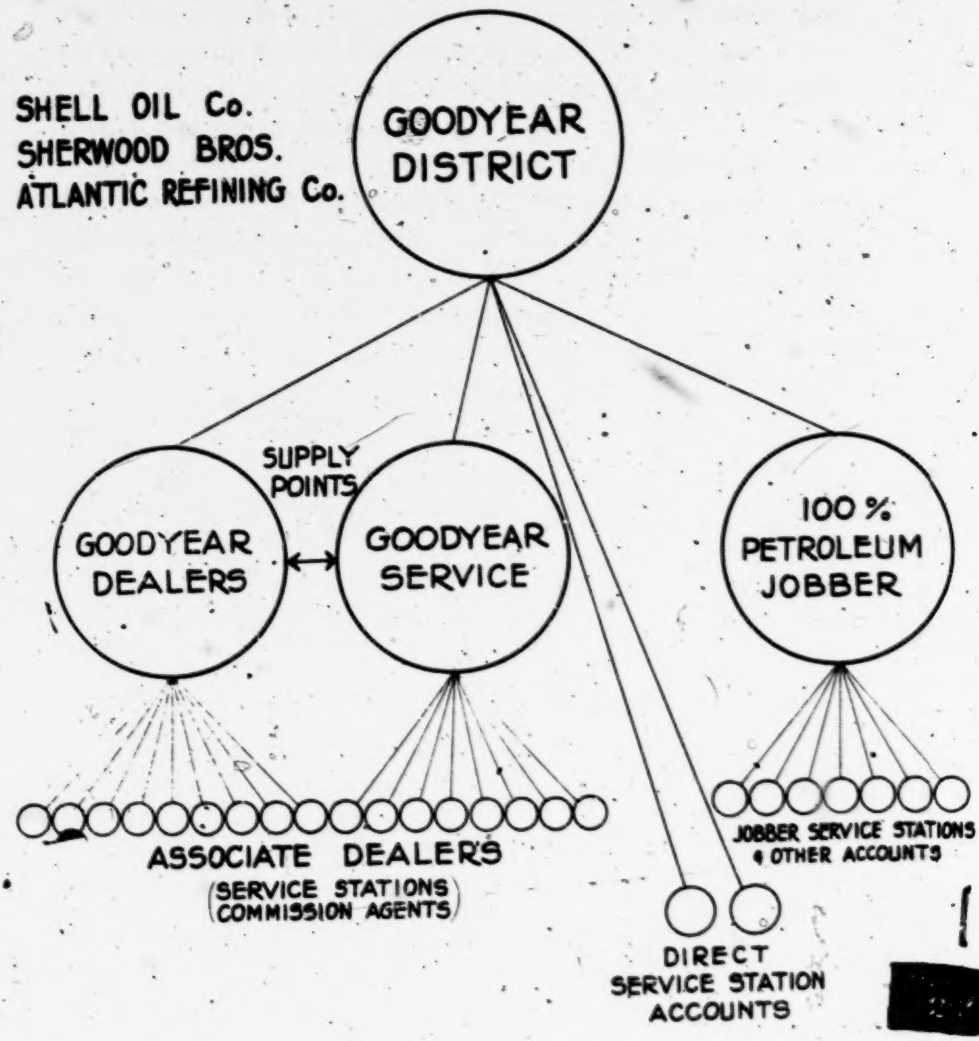
W. J. Butler

WJB:avg

(Written in margin) I think selling space is more important than storage space. The sales room doesn't provide adequate treatment for product having 50-70% of TBA volume.

COMMISSION EXHIBIT NO. 184. 2861

DISTRIBUTION FLOW CHART ON COMMISSION PLAN TIRES, TUBES & BATTERIES



2699 COMMISSION EXHIBIT NO. 185.

Firestone T.B.A. Bulletin #17

April 25, 1952

Firestone Program

T.B.A.

Station Openings. We ask that you instruct your Districts to establish, as a regular practice, automatic and advance notice to the Firestone District Office, of the openings of any new stations, or of change in proprietorship at any dealer location.

Such notice will be mutually beneficial to both Firestone and ourselves. It will enable Firestone to complete any unfinished business with the outgoing dealer and, further, will enable them to anticipate and to move promptly in handling the new dealer's requirements.

S. J. Heideman

p.

2701 COMMISSION EXHIBIT NO. 186.

The Firestone Tire & Rubber Company
Harvey S. Firestone
Founder

General Offices
Akron 17, Ohio

Akron 17, Ohio

July 18, 1952

Mr. S. J. Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Dear Mr. Heideman:

We have just had brought to our attention that in the June Report for the Erie District in our Akron District, there has been included a salaried station at North Broad Street, Grove City, Pa., on the sales commission report with sales of $222 tires and $250 Home & Auto Supplies.

Since these are sales to your company, we are deleting same from the sales commission report and asking our District to request that such salaried stations not be shown on the sales commission report. We have had a similar case in Buffalo on the two stations in Erie and are trying to clear up certain figures that were included in March and other reports.

We do not have any information here indicating that this station is on a salaried basis. As you know, Mr. Bergh has been advising us, by copy of letter to the Districts, of any additional salary operated stations but we do not seem to have received any information in this case. However, our Central Accounting Office in Akron advised that the billing has been to Atlantic and that they have

checked with the District and it is evident that we are billing your company for a salary operation at this point.

Perhaps the Western Pennsylvania Region have not been advising you or ourselves of the addition and changes in salary operation and it may be that you will want to review this and be sure that we are receiving this information.

Yours very truly,

G. M. Elliot,

Petroleum Sales

GME:558

2703 COMMISSION EXHIBIT NO. 187.

September 3, 1952

COD:WGE

Procedure: TBA Firestone

Company operated service stations should be deleted from current copies of the monthly S-468 reports.

If it should be necessary to supply your local Firestone Districts with listings of Atlantic Refining Co. stations for statistical purposes, separate S 468's should be prepared clearly marked:

"ARCo. Purchases—
Not to be included with commission plan sales."

We realize that station classifications may change in the middle of commission periods, therefore, it is necessary that the Purchasing Department be kept currently advised of the status of your company operated stations. This is necessary in order for them to maintain blanket orders with Firestone. Additions or deletions to the ARCo. stations on a blanket order which has been established are made through prompt notification to the Purchasing Department.

In the event Atlantic should purchase for resale at a particular location and the station should revert to dealer operation within a single commission period, we request that you verify the ARCo. purchases versus commission plan sales with the Firestone District.

We are notifying Firestone by copy of this letter of the procedure to be followed.

J. O. Long

CC. Messrs;
C. F. Bergh 722
J. P. Miller, Jr. (2) 1010
R. G. Mulholland 1210
G. M. Elliot, Firestone

2705 COMMISSION EXHIBIT NO. 188.

The Atlantic Refining Company
Incorporated
Petroleum Products
Syracuse Savings Bank Building
Syracuse 2, N. Y.

G. V. Ostrander
Manager
New York Marketing Region

April 19, 1950

RM:GVO
Firestone Tire & Rubber Co.

Mr. D. T. Colley
Philadelphia, Pa.

Dear Mr. Colley:

What I did not like was that Firestone was taking entirely too much for granted when they reached way up into Central New York to apply the propaganda that Atlantic

was in the process of changing to Firestone. The implication to the distributor was, why not change now, and you will be already on the band wagon when Atlantic goes 100% Firestone.

The distributor, J. L. Skinner, is the one I would use if I were about to write a new set of specifications for an ideal Atlantic distributor, and I want him happy. He was quite unhappy when he found that something was going on that would affect his business and his present relationship with Atlantic.

I have no objection to the Firestone experiment as such. In fact, we are considering seriously asking you to let us conduct another experiment, and that is to drop the accessories from T. B. A. and concentrate on tires and batteries. We are now trying to find out if we could make any kind of a deal with the local automotive supply houses who blanket our marketing area, for accessories only on a deal similar to Firestone's.

Very truly yours,
G. V. Ostrander em
G. V. Ostrander

2707 COMMISSION EXHIBIT NO. 189.

The Atlantic Refining Company
Petroleum Products
Hospital Trust Building
Providence 1, R.I.

May 18, 1950

GM:D:TLW

M. G. Davis
Manager of Sales Promotion
New England Marketing Region

Personal
Mr. S. J. Heideman
Philadelphia, Pa.

Dear Sir:

Referring to your letter of May 9, the original complaint has been investigated and we find that the information was spread around in the Springfield district by one of the big automotive distributors in that area, Tarbell Watters. We have not been able to determine where they got the information. However, since that time, that is within the last two weeks, James Jennings, a wholesale dealer for Atlantic located in Garden City, Cranston, R. I., whose volume with us is about 1,000 tires per year, was told by a Firestone representative that he (Jennings) could expect to be handling Firestone tires within a short time because Atlantic was going Firestone.

The Manager of the Firestone store in Providence located at 103 Aborn Street asked our Providence Sales Supervisor, Mr. J. J. Conway, "when Atlantic wanted him to stock its stations with Firestone tires in the Providence

area". When questioned about this he said he understood that Atlantic was going Firestone.

Another case is a dealer of ours named Jack Allen, located at North Main & Hillside Streets, Providence, who was called on by a Firestone representative who told Allen "We have been told to get friendly with Atlantic dealers because Atlantic is going Firestone".

This means then that the only area in which we can pin down the rumors is the Providence District and we suggest that you do something immediately, if possible, to correct this situation.

Yours very truly,
M. G. Davis

TLW/sc

2709 COMMISSION EXHIBIT NO. 190.

June 8, 1950

Mr. H. E. Powell, District Manager
The Firestone Tire & Rubber Company
Pittsburgh, Pennsylvania

Dear Mr. Powell:

Some of our District Managers and their organizations in those areas served by The Atlantic Refining Company, are misrepresenting the facts in connection with Atlantic's test program, in their contact with Atlantic representatives and dealers. This misrepresentation is endangering our present and future relationship with Atlantic.

In spite of the fact that Mr. Sewell has asked each of his District Managers to prevent these occurrences, some of our men are still soliciting Atlantic dealers, in areas other than Erie and Wilmington, and inferring, in some way or other, that Atlantic is going forward with Firestone, and that these dealers might as well start doing business with

us now—or words to that effect. This is very irritating and disturbing to The Atlantic Refining Company.

I am instructing you to immediately contact every Territory Salesman and Store Manager to see that they do not, under any circumstances talk to Atlantic dealers or the Atlantic field organization about Atlantic's test program with Firestone in the Erie and Wilmington areas, or what such a test may or may not indicate as to our relationship with Atlantic.

Our program, in Erie and Wilmington, is purely a test program with Atlantic, and we have no understanding or arrangement with them covering any other areas where they are handling Lee tires, Exide batteries or other automotive products on a purchase and resale basis. We are working hard in trying to make the test successful, and we don't want any more interference such as described in this letter. It is unfortunate that such blundering gossip, on the part of members of our organization, is hurting our relationship with Atlantic.

I am putting it up to you to handle this situation effectively in your District.

Very truly yours,

Vice President

HDT:KS

COMMISSION EXHIBIT NO. 193.

Atlantic T.B.A. Marketing
1949 Through 1951

In Dollars	Direct Marketing Class #1, 2 & 3 Dealers				Indirect Marketing Class #6 Distributors				All Classes Total Marketing			
	T/T	Batt.	Access.	Total	T/T	Batt.	Access.	Total	T/T	Batt.	Access.	Total
New England												
1949	589,092	176,644	192,212	957,948	36,168	3,185	1,843	41,196	625,260	179,829	194,055	999,144
1950	775,237	195,330	192,663	1,163,230	69,908	4,386	3,696	77,990	845,145	199,716	196,359	1,241,220
1951	—	—	—	—	—	—	—	—	206,019	54,943	93,846	354,808
New York												
1949	483,758	113,761	142,833	740,352	68,719	17,504	3,387	89,610	552,477	131,265	146,220	829,962
1950	621,853	121,610	146,150	889,613	100,235	22,422	6,850	135,507	728,088	144,032	153,000	1,025,120
1951	—	—	—	—	—	—	—	—	198,767	54,479	61,400	314,646
Phila.-N. J.												
1949	889,476	267,946	335,195	1,492,617	13,607	4,320	1,112	19,039	903,083	222,266	386,307	1,511,656
1950	994,065	271,133	297,496	1,562,694	10,900	605	295	11,800	1,004,965	271,738	297,791	1,574,494
1951	—	—	—	—	—	—	—	—	184,395	67,729	144,927	397,051
Eastern Pa.												
1949	905,161	233,979	286,879	1,426,019	56,200	14,741	11,950	82,891	961,361	248,720	298,829	1,508,910
1950	1,058,647	221,260	265,800	1,545,707	91,825	22,471	10,929	125,225	1,150,472	243,731	276,729	1,670,932
1951	—	—	—	—	—	—	—	—	254,740	79,501	122,302	456,543
Western Pa.												
1949	567,531	130,052	132,942	830,525	54,496	21,031	5,999	81,534	622,027	151,091	138,941	912,059
1950	649,837	119,930	116,827	886,594	56,756	14,501	7,037	78,384	706,593	134,521	123,864	964,978
1951	—	—	—	—	—	—	—	—	161,303	49,981	52,725	264,009
Southern												
1949	374,362	54,506	101,187	533,055	366,205	17,670	18,810	402,685	740,567	75,176	119,997	935,740
1950	444,145	53,213	76,113	573,471	486,226	22,398	22,941	531,545	930,371	75,591	99,054	1,105,016
1951	—	—	—	—	—	—	—	—	171,801	12,913	30,819	215,533
Total Company												
1949	3,809,315	979,888	1,101,248	5,980,516	595,395	78,459	43,101	716,955	4,404,775	1,058,347	1,234,349	6,697,471
1950	4,543,784	982,476	1,095,049	6,621,309	841,850	86,853	51,748	960,451	5,365,634	1,069,329	1,146,797	7,581,760
1951	—	—	—	—	—	—	—	—	1,177,025	319,546	506,019	2,002,590

DMA-JOB

Commission Exhibit No. 193.

2761 COMMISSION EXHIBIT NO. 194.

The Atlantic Refining Company

Summary

Atlantic District	May Sales: Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	2 Months Sales Thru May 1950: Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Erie District	353	17,664	4,753	22,417		27,302	5,956	33,258		
Wilmington Dist.	207	16,847	5,818	22,665		29,966	7,818	37,784		
Total Atlantic	560	34,511	10,571	45,082		57,268	13,774	71,042		
% of Total		76.6	23.4	100.0		80.6	19.4	100.0		

2763 COMMISSION EXHIBIT NO. 195A.

Mr. S. J. Heidman

bgn
HKP

June 2, 1950

Mr. Leon Serven
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pennsylvania

Dear Mr. Serven:

We are pleased to enclose sales commission check and statement for the month of April, prepared in the form discussed with you in Philadelphia. Separate statements are given for each of your Districts.

There were no adjustments of Lee tires or Exide batteries reported to us by our Districts for the month of April.

We also enclose sales summary, copy of which we are sending to Mr. Heideman.

Very truly yours,

G. M. Elliot
Petroleum Sales

GME:RW
cc: Mr. S. J. Heideman

2765 COMMISSION EXHIBIT NO. 195B.

The Atlantic Refining Company

Summary

Firestone District	April 1950 Total Stas. Assigned	Tires & Tubes	Home & Auto Sup.	Total
Erie District	277	9,638	1,203	10,841
Wilmington District	194	13,119	2,000	15,119
Total Atlantic	471	22,757	3,203	25,960
% of Total		87.7	12.3	100.0

2767 COMMISSION EXHIBIT NO. 195C.

The Atlantic Refining Company

Erie District

Firestone District	April 1950 Total Stas. Assigned	Tires & Tubes	Home & Auto Sup.	Total
Akron	87	3,206	529	3,735
Buffalo	175	6,028	674	6,702
Pittsburgh	15	404	—	404
Total	277	9,638	1,203	10,841
% of Total		88.9	11.1	100.0

2769 COMMISSION EXHIBIT NO. 196A-B.

The Firestone Tire & Rubber Company
Akron 17, Ohio

June 6, 1950

Mr. S. J. Heideman
The Atlantic Refining Company
260 South Broad Street
Philadelphia, Pennsylvania

Dear Mr. Heideman:

The attached summary shows you the number of accounts and initial orders through May 27, which we thought you would like to see. We will have another one ready in the next day or two carrying this through last Saturday and will send this to you when completed.

Very truly yours,

G. M. Elliot
Petroleum Sales

GME:RW

2770 The Atlantic Refining Company
(Thru May 27, 1950)

Atlantic District	Firestone District	# Acc'ts Orig. Atlantic List	Number Signed Fstn. Contract	Amount Initial Order
Wilmington	Baltimore	102	80	12,224
	Philadelphia	92	65	6,991*
	Total	194	145	19,215
Erie	Akron	102	64	9,900
	Buffalo	175	81	9,502
	Pittsburgh	6	1	1,018
	Total	283	146	20,420
Total both Atlantic Districts		477	291	39,615

* Corrected figure.

GME:hm June 2, 1950

2771 COMMISSION EXHIBIT NO. 197A-B.

June 23, 1950

TBA SJH

T. B. A. Firestone Commission Plan
May Sales Comparison

Mr. J. A. Addison, Sales Manager,
Petroleum Company Sales,
Firestone Tire & Rubber Company,
1200 Firestone Parkway,
Akron 17, Ohio.

Dear Mr. Addison:

Attached is comparative summary of T. B. A. results obtained in the Wilmington, Delaware and Erie, Pennsylvania Districts during the month of May for 1949 and 1950. The summary needs no explanation other than the abbreviation, "Dir.", which refers to the volume of business that was transacted on our direct program.

I believe you will find this report interesting.

Cordially yours,

S. J. Heideman

h
Enc.

2772

Sales Comparison—Month of May

1950 vs. 1949

Includes: Tires, Batteries, Accessories
Home Supplies, Anti-Freeze &
Misc. Refinery Products.

	1949		1950	Percentage Gain
Wilmington, Del. District		Dir.	$ 612	
		Comm.	22,665	
	Total $16,137	Total	$23,277	+44.2%
	1949		1950	
Erie, Pa. District		Dir.	$ 1,741	
		Comm.	22,417	
	Total $20,091	Total	$24,158	+20.2%

OBSERVATIONS

	Wilmington	Erie
Dealers signed to Firestone	145	149
Dealers Active on Firestone	115	91
% of Firestone Tire Sales to total Firestone Sales	74.2%	78.6%

2773

COMMISSION EXHIBIT NO. 198A.

Final T.B.A. Sales June, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$ 74,905	+ 8.06	$ 10,535	+14.42	$ 18,719	— 1.51	$ 324	+51.98	$ 1,752	—16.84	$106,235	+ 6.82
New York	72,438	+13.94	6,758	+35.57	11,636	— 9.70	1,131	+50.14	1,282	+ 2.50	93,245	+12.52
•Phila. & N. J.	117,297	—10.35	20,935	+20.95	27,494	—17.54	3,657#	+103.55	5,589#	— 6.90	174,972	— 7.71
•Eastern Pa.	142,297	+16.95	15,166	+21.90	25,732	—11.87	6,057#	+104.51	3,946#	+ 2.58	193,198	+12.51
•Western Pa.	89,752	+19.97	6,519	+14.87	10,916	—31.16	5,671#	+407.60	1,156#	—22.32	114,034	+16.00
South	101,367	— 1.60	4,678	—16.10	11,478	—30.96	22,641	+938.96	964	—13.08	141,128	— 2.35
•Company Total	$598,056	+ 5.96	$ 64,591	+16.81	$105,975	—15.98	39,501	+174.68	$ 14,689	— 7.34	$822,812	+ 4.74
•Company Total Same Month Last Year	$415,055		$ 52,191		$ 84,761		$ 1,757		$ 15,772		$569,536	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

• Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†Eastern Pa.	$ 18,149	+50.42	$ 6,677	—10.12	$ 24,826	+30.13
†Western Pa.	23,428	+12.26	7,108	— 5.49	30,536	+ 8.10
†Phila. & N. J.	208	—98.60	63	—98.45	271	—98.57
Company Total including Commission Plan					$878,445	+ 4.57

† Comparison to 1949—Cumulative from inception.

2775 **COMMISSION EXHIBIT NO. 198B.**

Sales Comparison—Month of June

1950 vs. 1949

Includes:—Tires, Batteries, Accessories Home Supplies, Anti-Freeze and Miscellaneous Refinery Products

Wilmington, Del. District	1949	1950	Percentage Gain
		Dir. $ 518	
		Com. 24,826	
Total	$21,714	$25,344	+ 16.7%

Erie, Pa. District	1949	1950	Percentage Gain
		Dir. $ 602	
		Com. 30,536	
Total	$21,535	$31,138	+ 44.6%

Newark, N. J. District*	1949	1950	Percentage Gain
		Dir. $14,420	
		Com. 271	
Total	$19,247	$14,691	— 23.6%

OBSERVATIONS

	Wilmington	Erie	Newark*
Dealers Signed to Rubber Company	161	164	93
Dealers Active on Rubber Company	107	118	2
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	73.1%	76.7%	76.7%

* Rubber Company's reported sales incomplete

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2777

COMMISSION EXHIBIT NO. 199A.

Final T. B. A. Sales—July, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$149,282	+30.08	$ 27,468	+34.20	$ 16,442	+ 1.18	$ 22,408	+345.52	$ 1,298	−18.74	$216,898	+27.97
New York	116,328	+36.28	10,489	+26.79	9,208	− 9.30	16,323	+200.64	1,057	+ 3.15	153,405	+31.02
*Phila.-New Jersey	129,886	+ 3.59	27,715	+23.43	23,094	−13.96	17,753#	+109.47	4,009#	− 5.57	202,455	+ 3.45
*Eastern Pa.	157,463	+29.44	15,373	+10.05	19,568	−10.07	30,260#	+388.02	3,621#	+ 2.95	226,285	+23.51
*Western Pa.	92,082	+32.98	9,125	+12.55	7,513	−26.85	17,499#	+681.75	1,515#	−16.63	127,734	+29.35
South	109,493	+ 9.23	5,305	−18.03	9,329	−25.46	5,746	+1210.67	1,280	− 5.65	131,153	+ 7.32
*Company Total	$754,534	+21.34	$ 95,473	+16.74	$ 85,154	−12.85	109,989	+332.81	$12,780	− 5.69	$1,057,930	+18.37
Company Total Same Month Last Year	$367,142		$ 81,974		$ 76,793		$ 10,193		$12,268		$ 548,370	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†E. Pa.	$ 27,479	+76.62	$ 6,955	− 4.27	$ 34,434	+48.82
†W. Pa.	28,515	+29.04	5,094	−10.03	33,609	+19.37
†Phila.-New Jersey	12,138	−52.53	1,226	−84.25	13,364	−60.13
Company Total including Commission Plan					$1,139,337	+18.21

†Comparison to 1949—Cumulative from inception

2779 COMMISSION EXHIBIT NO. 199B.

Sales Comparison—Month of July

1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Wilmington, Del. District	1949	1950	Percentage Gain
		Dir. $ 1,102	
		Com. 34,434	
Total	$17,576	$35,536	+102.2%

Erie, Pa. District	1949	1950	Percentage Gain
		Dir. $ 622	
		Com. 33,609	
Total	$22,662	$34,231	+ 51.1%

Newark, New Jersey District	1949	1950	Percentage Gain
		Dir. $ 7,784	
		Com. 13,364	
Total	$15,912	$21,148	+ 33.0%

OBSERVATIONS

	Wilmington	Erie	Newark
Dealers Signed to Rubber Company	161	164	93
Dealers Active on Rubber Company	115	81	56
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	79.9%	84.9%	90.7%

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2781

COMMISSION EXHIBIT NO. 200A.

Final T. B. A. Sales—August, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$121,201	+38.76	$ 15,186	+17.01	$ 15,145	+ .63	$ 24,821	+559.63	$ 2,458	—11.94	$178,814	+34.60
New York	109,595	+44.79	10,668	+11.06	19,141	— 2.84	23,500	+269.11	1,863	+ 7.67	164,767	+38.88
*Phila.-New Jersey	117,776	+ 8.85	38,269	+16.48	36,110	— 5.19	20,560#	+106.02	5,997#	— .25	218,712	+ 9.07
*Eastern Pa.	145,861	+35.39	26,292	+10.12	32,736	— 5.12	74,586#	+460.42	5,093#	+ 9.39	284,568	+34.07
*Western Pa.	81,817	+34.79	14,799	+13.17	9,728	—22.38	21,401#	+728.97	1,378#	—15.66	129,123	+33.96
South	172,160	+26.13	7,243	—22.42	8,081	—32.21	7,450	+1538.24	962	—11.37	195,896	+18.93
*Company Total	$748,410	+29.48	$112,457	+10.13	$120,944	— 9.04	$172,318	+382.71	$17,751	— 1.35	$7,171,880	+26.38
*Company Total Same Month Last Year	$428,473		$124,351		$105,109		$ 30,338		$14,227		$ 702,498	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†E. Pa.	$ 20,555	+89.13	$ 7,060	— 2.56	$ 27,615	+54.06
†W. Pa.	28,473	+59.19	7,377	+ 4.98	35,850	+44.14
†Phila.-N. J.	27,212	+56.32	7,866	— 3.80	35,098	+38.94
Company Total including Commission Plan					$1,270,443	+27.41

†Comparison to 1949—Cumulative from inception (includes some Direct Sales in the changeover period)

2783 COMMISSION EXHIBIT NO. 200B.

Sales Comparison—Month of August 1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Wilmington, Del. District	1949*	1950	Percentage Gain
		Dir. $10,611 Com. 27,615	
Total	$20,941	$38,226	+ 83.0%

Erie, Pa. District	1949*	1950	Percentage Gain
		Dir. $ 3,738 Com. 35,850	
Total	$25,206	$39,588	+ 57.0%

Newark, New Jersey, District	1949*	1950	Percentage Gain
		Dir. $ 7,196 Com. 35,098	
Total	$16,024	$42,284	+163.9%

* Fed. Excise Tax of 8.3% deducted from tire $ Sales

OBSERVATIONS

	Wilmington	Erie	Newark
Dealers Signed to Rubber Company	161	164	93
Dealers Active on Rubber Company	128	115	73
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	74.2%	79.5%	77.9%

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

COMMISSION EXHIBIT NO. 201A.

Final T. B. A. Sales—September, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$ 49,152	+32.43	$ 27,197	+15.03	$ 21,734	+ 1.44	$ 20,367	+171.83	$ 1,555	—16.38	$120,005	+28.39
New York	52,074	+37.22	24,483	+16.29	18,546	+ 1.38	19,546	+132.12	1,431	— .39	116,080	+33.07
*Phila.-New Jersey	103,750	+12.17	32,412	+ 9.80	31,233	— 6.44	35,054#	+ 90.05	2,942#	—12.90	205,391	+10.10
*Eastern Pa.	108,287	+37.77	23,471	+ 4.00	27,785	— 2.80	36,302#	+141.44	2,824#	+ 1.48	198,669	+31.18
*Western Pa.	74,685	+40.07	18,057	+ 9.26	11,067	—17.13	17,236#	+ 93.50	1,617#	—14.50	122,662	+30.81
South	62,699	+24.85	5,453	—22.27	12,009	—25.11	6,146	+592.02	644	—15.15	86,951	+18.67
*Company Total	$450,647	+29.30	$131,073	+ 7.18	$122,374	— 6.63	$134,651	+135.80	$11,013	— 9.01	$849,758	+24.09
*Company Total Same Month Last Year	$352,525		$135,938		$111,273		$143,162		$20,513		$763,411	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

*Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†E. Pa.	$18,080	+100.02	$9,578	— 3.88	$ 27,658	+56.87
†W. Pa.	14,638	+ 58.21	4,661	— 4.23	19,299	+39.40
†Phila.-N. J.	20,567	+ 57.82	6,621	—20.04	27,188	+30.33
Company Total including Commission Plan					$923,903	+25.13

†Comparison to 1949—Cumulative from inception (includes some Direct Sales in the changeover period)

2787 **COMMISSION EXHIBIT NO. 201B.**

Sales Comparison—Month of September

1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Wilmington, Del. District	1949*	1950	Percentage Gain
		Dir. $ 3,855 Com. 27,658	
Total	$19,021	$31,513	+ 65.7%

Erie, Pa. District	1949*	1950	Percentage Gain
		Dir. $ 7,737 Com. 19,299	
Total	$27,576	$27,036	— 2.0%

Newark, New Jersey District	1949*	1950	Percentage Gain
		Dir. $ 3,935 Com. 27,188	
Total	$23,388	$31,123	+ 33.1%

* Fed. Excise Tax of 8.3% deducted from tire $ Sales

OBSERVATIONS

	Wilmington	Erie	Newark
Dealers reported by Atlantic	196	209	180
Dealers Active with Rubber Company			
Tires & Tubes	121	82	67
Batteries & Accessories	121	71	46
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	65.3%	75.9%	75.6%

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2789

COMMISSION EXHIBIT NO. 202.

Final T. B. A. Sales—October, 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
1. New England	$ 78,456	+30.44	$ 22,107	+ 9.70	$ 18,213	— .14	$ 34,138	+126.42	$ 1,401	—16.86	$154,315	+29.62
2. New York	72,767	+40.25	15,498	+14.03	17,564	+ 8.26	47,562	+103.65	1,154	— 4.58	154,545	+36.51
3. *Phila.-New Jersey	80,365	+17.70	20,825	+ 4.77	21,396	— 8.49	47,261#	+ 42.44	3,613#	—13.92	173,460	+11.02
4. *Eastern Pa.	108,490	+39.76	39,793	+10.69	27,636	— 1.28	57,136#	+104.49	3,593#	+ 2.25	236,648	+32.80
5. *Western Pa.	65,269	+44.28	15,201	+ 5.82	7,970	—15.27	38,379#	+ 93.25	1,389#	—22.53	128,208	+33.98
6. South	91,078	+27.52	9,761	—15.73	9,247	—21.97	6,174	+465.15	1,051	—13.50	117,311	+21.69
7. *Company Total	$496,425	+33.02	$123,185	+ 6.35	$102,026	— 5.68	$230,650	+ 97.98	$12,201	—10.51	$964,487	+26.21
8. *Company Total Same Month Last Year	$284,807		$120,779		$ 99,342		$159,551		$15,649		$680,178	

Include sales in Districts on Commission Plan.

———Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
9. †Phila.-N. J.	$ 18,261	+ 64.18	$ 7,603	—19.40	$ 25,864	+32.33
10. †E. Penna.	17,613	+104.26	8,245	— 2.12	25,858	+58.79
11. †W. Penna.	19,312	+ 63.42	10,596	+ .39	29,908	+43.01
					$1,046,117	+26.81

†Comparison to 1949—Cumulative from inception (includes Direct Sales in the changeover period).

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2791

COMMISSION EXHIBIT NO. 203A.

Final T. B. A. Sales—November 1950.

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
1. New England	$ 40,487	+32.03	$ 22,618	+ 7.21	$ 20,333	— .45	$ 17,185	+ 86.22	$ 916	—17.39	$107,539	+25.02
2. New York	52,399	+38.39	22,790	+15.79	16,491	+ 7.68	24,464	+ 93.56	649	— 7.94	116,793	+34.92
3. *Phila.-New Jersey	57,690	+12.91	30,454	+ 4.38	24,810	— .91	37,530#	+ 44.95	4,873#	—11.20	155,366	+ 8.92
4. *Eastern Pa.	64,332	+33.70	26,690	+ 9.93	25,559	+ .71	66,713#	+118.63	2,941#	+ 2.28	186,235	+31.65
5. *Western Pa.	40,375	+40.61	18,301	+ 7.86	18,656	— 3.42	22,182#	+ 57.39	2,148#	—20.77	101,662	+30.91
6. South	64,879	+25.82	13,781	— 1.14	7,481	—18.42	12,190	+498.77	938	—14.32	99,269	+23.05
7. *Company Total	326,171	+29.06	134,634	+ 7.56	113,330	— 3.76	180,264	+ 88.93	12,465	— 0.86	766,864	+24.38
8. *Company Total Same Month Last Year	$358,443		$116,649		$ 98,240		$113,851		$12,849		$700,032	

\# Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

*Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
9. †Phila.-N. J.	$ 12,900	+ 56.30	$ 8,466	—19.43	$ 21,366	+25.83
10. †E. Penna.	9,743	+ 97.82	8,118	— .55	17,861	+54.88
11. †W. Penna.	14,765	+ 60.24	11,375	+ 3.41	26,140	+40.78
12. Company Total Including Commission Plan.					$832,231	+25.37

†Comparison to 1949—Cumulative from inception (includes Direct Sales in the changeover period)

2793 **COMMISSION EXHIBIT NO. 203B.**

Sales Comparison—Month of November 1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Newark, New Jersey District	1949*	1950	Percentage Gain
		Dir. 3,029	
		Com. 21,366	
Total	$27,175	$24,395	— 10.2%

Wilmington, Del. District	1949*	1950	Percentage Gain
		Dir. 2,910	
		Com. 17,861	
Total	$18,270	$20,771	+ 13.7%

Erie, Pa. District	1949*	1950	Percentage Gain
		Dir. 5,380	
		Com. 26,140	
Total	$26,514	$31,520	+ 18.9%

* Fed. Excise Tax of 8.3% deducted from tire & Sales.

Observations

	Newark	Wilmington	Erie
Dealers reported by Atlantic	146	194	193
Dealers Active with Rubber Company			
Tires & Tubes	52	100	91
Batteries & Accessories	48	85	91
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	60.5%	54.5%	56.6%

2795 **COMMISSION EXHIBIT NO. 203C.**

Dollars per Thousand Gallons of Gasoline
Class 2 Dealers
Cumulative July through November 1950

	Region	No. of Class 2 Dealers	Tires	Batteries	Accessories & Misc. Ref. Prod.	Sub-Total T.B.A. & M.R.P.	Anti-Freeze	Total
1.	New England	414	$12.34	$ 3.65	$ 3.25	$19.24	$ 3.96	$23.20
2.	New York	188	14.36	3.51	5.07	22.94	5.03	27.97
3.	Phila.-N. J.*	265	10.63	3.51	3.64	17.78	3.41	21.19
4.	Eastern Pa.*	363	12.40	3.25	4.17	19.82	4.59	24.41
5.	Western Pa.*	182	14.18	3.37	3.50	21.05	3.40	24.45
6.	South	251	16.66	2.13	2.78	21.57	.73	22.30
7.	Total Company*	1663	12.84	3.33	3.73	19.90	3.69	23.59

* Corrected for Commission Districts.

Dollars per Thousand Gallons of Gasoline
Class 2 Dealers in Commission Plan Districts
(Not Included Above)

	District	No. of Class 2 Dealers	Tires	Batteries & Accessories	Total
8.	Goodyear Newark	82	$ 9.27	$ 3.40	$12.67
9.	Firestone Wilmington	102	15.42	6.43	21.85
10.	Erie	55	14.17	8.02	22.19
11.	Total Comm. Districts	239	12.85	5.78	18.63

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

2797

COMMISSION EXHIBIT NO. 204A.

Final T.B.A. Sales—December 1950

	Tires and Tubes	Results to Date vs. 1949	Batteries	Results to Date vs. 1949	Automotive Accessories	Results to Date vs. 1949	Anti-Freeze	Results to Date vs. 1949	Misc. Refinery Products	Results to Date vs. 1949	Total	Results to Date vs. 1949
New England	$ 78,842	+35.17	$ 28,621	+11.06	$ 16,771	+ 1.19	$ 10,943	+91.48	$ 828	—15.98	$136,005	+27.94
New York	71,000	+41.49	18,173	+16.07	16,247	+11.97	8,299	+91.41	749	— 8.90	114,468	+37.07
*Phila.-New Jersey	99,484	+17.51	32,827	+ 7.90	20,925	— 7.74	7,353#	+43.59	1,603#	—13.60	162,192	+11.93
*Eastern Pa.	85,867	+31.66	28,352	+12.66	25,563	+ 4.00	21,705#	+125.35	2,262#	+ 2.28	163,749	+31.81
*Western Pa.	58,366	+42.19	19,817	+12.93	23,802	+13.42	14,045#	+63.94	973#	—20.54	117,003	+35.42
South	66,947	+25.63	7,273	+ .55	8,214	—17.45	840	+496.18	625	—16.40	83,899	+22.78
*Company Total	$460,506	+30.67	$135,063	+10.65	$111,522	— .17	$ 63,185	+110.67	$ 7,040	—10.71	$777,316	+26.42
*Company Total Same Month Last Year	$305,691		$ 97,820		$ 73,046		$ 25,991		$ 9,305		$511,853	

Include sales in Districts on Commission Plan.

——— Underline indicates performance below same month last year.

* Cumulative comparison to 1949 corrected for Districts on Commission Plan.
Rubber companies reported sales—See below for Commission Plan results and comparison.

	Tires and Tubes	Results to Date vs. 1949	Batteries & Accessories	Results to Date vs. 1949	Total	Results to Date vs. 1949
†Phila.-N. J.	$ 27,799	+ 64.26	$ 14,628	— .79	$ 42,427	+38.91
†E. Penna.	17,754	+103.54	7,620	+ 1.93	25,374	+58.81
†W. Penna.	19,918	+ 62.94	8,397	+ 4.75	28,315	+42.61
Company Total Including Commission Plan					$873,432	+27.66

† Comparison to 1949—Cumulative from inception (includes Direct Sales in the changeover period).

2799. COMMISSION EXHIBIT NO. 204B.

Sales Comparison—Month of December 1950 vs. 1949

Includes:—Tires, Batteries, Accessories, Home Supplies, Anti-Freeze, and Miscellaneous Refinery Products.

Newark, New Jersey District	1949*	1950	Percentage Gain
		Dir. $ 5,963	
		Com. 42,427	
Total	$21,494	$48,490	+102.8%

Wilmington, Del. District	1949*	1950	Percentage Gain
		Dir. $ 7,714	
		Com. 25,374	
Total	$13,530	$33,088	+144.9%

Erie, Pa. District	1949*	1950	Percentage Gain
		Dir. $ 3,929	
		Com. 28,315	
Total	$19,331	$32,244	+ 66.8%

* Federal Excise Tax of 8.3% deducted from Tire Dollar Sales.

Observations

	Newark	Wilmington	Erie
Dealers reported by Atlantic	146	202	209
Dealers Active with Rubber Company Tires & Tubes	80	100	94
Batteries & Accessories	60	105	94
% of Rubber Co. Tire Sales to Total Rubber Co. Sales	65.6%	70.2%	70.3%

1/24/50

COMMISSION EXHIBIT NO. 204C.

Dollars per Thousand Gallons of Gasoline

Class 2 Dealers

Cumulative July through December 1950

	Region	No. of Class 2 Dealers	Tires	Batteries	Accessories & Misc. Ref. Prod.	Total T.B.A. & M.R.F.	Anti-Freeze	Total
1.	New England	415	$12.06	$ 3.86	$ 3.20	$19.40	$ 3.59	$22.73
2.	New York	194	14.40	3.67	4.98	23.05	4.62	27.67
3.	Phila. N. J.*	266	10.64	3.51	3.52	17.67	2.94	20.61
4.	Eastern Pa.*	368	11.95	3.37	4.11	18.33	4.53	22.68
5.	Western Pa.*	184	13.77	3.71	3.92	21.40	3.29	24.69
6.	South	253	15.76	1.98	2.62	20.36	.62	20.98
7.	Total Company*	1600	$12.55	$ 3.44	$ 3.69	$19.68	$ 3.40	$23.08

* Corrected for Commission Districts.

Dollars per Thousand Gallons of Gasoline

Class 2 Dealers in Commission Plan Districts (Not included Above)

	Districts	No. of Class 2 Dealers	Tires	Batteries & Accessories	Total
8.	Goodyear, Newark	87	$12.10	$ 5.35	$17.45
9.	Firestone Wilmington	100	14.34	6.54	20.88
10.	Erie	55	14.15	8.84	22.99
11.	Total Comm. Districts	242	$13.47	$ 6.74	$20.21

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

COMMISSION EXHIBIT NO. 205.

The Atlantic Refining Company

Summary

Atlantic District	Number Outlets	DECEMBER SALES Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	2 MONTHS SALES THRU DECEMBER 1950 Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Erie	197	19,918	8,397	28,315	—	34,679	19,598	54,277	—	—
Wilmington	208	17,754	7,620	25,374	—	27,497	15,738	43,235	—	—
Total	405	37,672	16,017	53,689	—	62,176	35,336	97,512	—	—
% of Total		70.2	29.8	100.0		63.8	36.2	100.0		

Commission Exhibit No. 205.

2805 COMMISSION EXHIBIT NO. 206.

The Atlantic Refining Company
Petroleum Products.
260 South Broad Street
Philadelphia 1, Pa.

August 28, 1952

A Re-Statement of Atlantic's TBA Policy

Dear Sir:

The Federal Government is investigating all TBA relationships between certain tire companies, oil companies and their dealers.

Do you have a good TBA deal with The Atlantic Refining Company? Or are you forced against your will to carry a particular line of TBA? This seems to be the question involved.

In the Spring of 1951, The Atlantic Refining Company presented to you for your free acceptance or rejection a TBA sales program which long and intensive research had indicated would yield the greatest profit to you and would best serve the interest of the motoring public.

For the sales assistance which it renders, The Atlantic Refining Company receives in return a commission ranging from 5% to 10% from the tire company. Up to now, this barely covers the expenses involved.

We consider this arrangement with you businesslike and entirely proper and it is to our mutual interest that we so inform the public.

I consider it our duty to recommend to you, those services and products which experience and honest research have proven best for you and your customers.

However, when we originally adopted this program, I wrote to you and to our sales force stating that this was an elective program. I now reiterate—that this is Your program, instituted for Your benefit—Yours to accept or reject.

Yours very truly,

D. T. Colley.

2806 COMMISSION EXHIBIT NO. 207.

Atlantic

The Atlantic Refining Company

Petroleum Products

June 24, 1955

To All Atlantic Dealers

No Forcing

The Roosevelt Small Business Committee recently completed its nationwide investgation of Supplier-Dealer relations.

As we understand it, two main points concern the Committee, namely (1) Short-Term Dealer Leases; and (2) considerable doubt that Suppliers' home office policy of not forcing Dealers to buy certain items was actually being followed by the Suppliers' field organizations.

Over two years ago—voluntarily, without pressure of any kind, and months before any other Supplier in the Industry—your Company adopted a Long-Term Dealer Lease Policy. Substantial expenditures of money, time and effort have been made to assure that the policy was fully understood. The same course of action has been followed with respect to our long-standing policy of not forcing Dealers to buy certain items.

If any of our people at any time insist on your buying any certain products or merchandise against what you feel is to your best interest, I want you to call the matter directly to my attention.

All Atlantic Dealer Programs are based on our sincere belief that they will make your sales and profits grow through better service to the motoring public. We in Atlantic think it is our duty to continue to recommend to you those services and products which experience and scientific research have proven best for you and your customers.

Atlantic Dealer Programs are instituted for Your benefit—Yours to accept or reject.

Yours very truly,

J. O. Estlow.

2807

COMMISSION EXHIBIT NO. 208.

The Atlantic Refining Company

Progress through May 21, 1951

	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	473	192	128	35	180	281	202	1491
2. Total number of Atlantic dealers and distributors signed to date as direct dealers	16	1	26	5	9	19	6	82
3. Total number of supplying dealers	0	6	2	5	8	33	27	81
4. Lee Tires adjusted	240	8	45	4	72	79	32	480
5. Batteries adjusted to date	0	0	0	0	0	0	0	0
6. Introductory Display Packages Sold	408	1	130	33	85	175	125	957

2809

COMMISSION EXHIBIT NO. 209.

The Atlantic Refining Company

Progress through May 28, 1951

	Phila.	Newark	Buffalo	Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	517	302	136	29	180	281	202	1647
2. Total number of Atlantic Supplying Dealers signed direct	16	7	26	7	9	19	21	105
3. Total number of Goodyear dealers and stores acting as supply points	0	25	2	4	8	14	6	59
4. Lee Tires Adjusted	270	6	50	2	74	116	51	569
5. Batteries Adjusted to date	0	0	0	0	0	0	0	0
6. Introductory Display Packages sold.	427	1	131	33	85	225	125	1027

Commission Exhibit No. 209.

2907

COMMISSION EXHIBIT NO. 210.

The Atlantic Refining Company

Progress Through August 20, 1951

	N. Y.	Phila.	X Newark	Buffalo	X Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	13	571	203	146	[37]	186	296	228	[1680]
2. Total number of Atlantic dealers and distributors signed direct and acting as supplying dealers	2	14	6	12	2	5	11	5	57
3. Total number of Atlantic dealers signed direct not acting as supplying dealers	0	2	1	21	3	20	9	2	58
4. Total number of Goodyear dealers and stores acting as supply points	0	0	17	18	16	13	33	26	123
5. Lee Tires Adjusted to date	0	465	93	103	[40]	[181]	170	92	[1144]
6. Batteries Adjusted to date	0	11	8	2	0	1	7	1	30
7. Introductory Display Packages Sold	13	440	7	154	34	101	230	125	1104

COMMISSION EXHIBIT NO. 211.

Atlantic Progress Report

Date October 29, 1951

Distribution:

S. J. Heideman, Atlantic
F. W. McConky, Jr., NE Div. Mgr., N. Y.
S. A. Gaylord, Mgr., Petroleum Sales, Akron
J. W. O'Neill, Div. Petrol., Rep., Phila.

	N. Y.	Phila.	(X) Newark	Buffalo	(X) Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	13	[637]	203	[155]	42	220	[326]	[253]	[1849]
2. Total number of Atlantic dealers and distributors signed direct and acting as supplying dealers	2	14	6	12	4	5	11	4	58
3. Total number of Atlantic dealers signed direct not acting as supplying dealers	0	2	1	21	1	20	9	3	57
4. Total number of Goodyear dealers and stores acting as supply points	0	0	17	18	16	13	[35]	[30]	[129]
5. Lee Tires adjusted to date	0	[590]	100	[139]	66	[223]	[247]	[137]	[1502]
6. Batteries adjusted to date	0	[31]	8	[14]	1	13	[55]	[10]	[132]
7. Introductory Display Packages Sold	13	442	7	154	34	101	[267]	134	[1152]

Figures in [ ] indicate change since report of last week.

Commission Exhibit No. 211.

COMMISSION EXHIBIT NO. 212.

Atlantic Progress Report

Date December 24, 1951

Distribution:

S. J. Heideman, Atlantic
F. W. McConky, Jr., NE Div. Mgr., N. Y.
S. A. Gaylord, Mgr., Petroleum Sales, Akron
J. W. O'Neill, Div. Petrol, Rep., Phila.

	N. Y.	Phila.	(X) Newark	Buffalo	(X) Albany	Syracuse	Boston	Hartford	Total
1. Total number of Atlantic dealers signed to date as associate dealers through agreed supply points	13	[638]	203	[157]	[44]	[224]	326	[260]	[1865]
2. Total number of Atlantic dealers and distributors signed direct and acting as supplying dealers	2	14	6	12	4	6	11	4	59
3. Total number of Atlantic dealers signed direct not acting as supplying dealers	0	2	1	21	1	19	9	3	56
4. Total number of Goodyear dealers and stores acting as supply points	0	0	17	18	16	13	34	30	128
5. Lee Tires adjusted to date	0	[648]	100	[159]	[73]	[254]	[260]	[165]	[1659]
6. Batteries adjusted to date	0	[39]	8	[29]	1	[23]	[69]	[25]	[194]
7. Introductory Display Packages Sold	13	442	7	155	34	101	[268]	134	[1154]

2817 COMMISSION EXHIBIT NO. 213A.

S. J. Heideman

May 14, 1951

Dear Mr. Serven:
The Atlantic Refining Company
260 So. Broad Street
Philadelphia, Pennsylvania

Dear Mr. Severn:

We are pleased to enclose sales commission check for the month of March together with separate sales commission statements for each of your districts.

We also enclose sales summaries for March and the first five months of our fiscal year.

Copies of the above are being sent to Mr. S. J. Heideman.

Yours very truly,

G. M. Elliot
Petroleum Sales

GME:HM

CC: As requested by Mr. Taitt March 21 we are sending you sets of sales commission statements and sales summaries for March 1951.

COMMISSION EXHIBIT NO. 213B.

Atlantic Refining Company

Summary

Atlantic Region	Number Outlets	March Sales: Tires & Tubes	March Sales: Home & Auto Sup.	March Sales: Total	March Sales: % Inc. or Dec.	Fiscal Year Sales Thru March 1951: Tires & Tubes	Fiscal Year Sales Thru March 1951: Home & Auto Sup.	Fiscal Year Sales Thru March 1951: Total	Same Period Last Yr.	% Inc. or Dec.
Eastern Penna.	1,803	42,210	18,944	61,154	—	95,589	45,947	141,536	—	—
Western Penna.	292	28,992	8,924	37,916	—	99,902	39,021	138,923	—	—
Southern	439	46,809	2,821	49,630	—	46,809	2,821	49,630	—	—
Total	2,534	118,011	30,689	148,700	—	242,300	87,789	330,089	—	—
% of Total		79.4	20.6	100.0	—	73.4	26.6	100.0		

Atlantic Refining Company

Eastern Pennsylvania

Firestone District	March Sales: Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	Fiscal Year Sales Thru March 1951: Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Allentown										
Harrisburg	28	—	—	—						
Philadelphia	83	5,603	527	6,130		5,603	527	6,130		
Total	111	5,603	527	6,130	—	5,603	527	6,130	—	—
% of Total		91.4	8.6	100.0		91.4	8.6	100.0		
Harrisburg										
Harrisburg	232	1,164	31	1,195	—	1,164	31	1,195	—	—
% of Total		97.4	2.6	100.0		97.4	2.6	100.0		
Reading										
Harrisburg	259	3,002	61	3,063	—	3,002	61	3,063		
Philadelphia	86	10,779	1,536	12,315		10,779	1,536	12,315		
Total	345	13,781	1,597	15,378	—	13,781	1,597	15,378	—	—
% of Total		89.6	10.4	100.0		89.6	10.4	100.0		
Scranton										
Harrisburg	76	477	101	578		477	101	578		
Philadelphia	12	154	9	163		154	9	163		
Syracuse	58	—	—	—		—	—	—		
Total	146	631	110	741		631	110	741	—	—
% of Total		85.2	14.8	100.0		85.2	14.8	100.0		
Wilkes Barre										
Harrisburg	251	720	602	1,322		720	602	1,322		
Syracuse	25	—	—	—		—	—	—		
Total	276	720	602	1,322		720	602	1,322	—	—
% of Total		54.5	45.5	100.0		54.5	45.5	100.0		

COMMISSION EXHIBIT NO. 213D.

Atlantic Refining Company

Eastern Pennsylvania (Cont.)

Firestone District	March Sales Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	Fiscal Year Sales Thru March 1951 Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Williamsport										
Buffalo	0	—	—	—		—	—	—		
Harrisburg	222	445	190	635		445	190	635		
Pittsburgh	0	—	—	—		—	—	—		
Syracuse	45	—	—	—		—	—	—		
Total	267	445	190	635		445	190	635		
% of Total		70.1	29.9	100.0		70.1	29.9	100.0		
Wilmington										
Baltimore	108	7,099	3,000	10,099		36,551	15,557	52,108		
Philadelphia	108	7,608	6,321	13,929		31,535	20,767	52,302		
Total	216	14,707	9,321	24,028		68,086	36,324	104,410		
% of Total		61.2	38.8	100.0		65.02	34.8	100.0		
York										
Harrisburg	203	5,089	6,562	11,651		5,089	6,562	11,651		
Philadelphia	7	70	4	74		70	4	74		
Total	210	5,159	6,566	11,725		5,159	6,566	11,725		
% of Total		44.0	56.0	100.0		44.0	56.0	100.0		
Total Eastern	1,803	42,210	18,944	61,154		95,589	45,947	141,536		
% of Total		69.0	31.0	100.0		67.5	32.5	100.0		

COMMISSION EXHIBIT NO. 213E.

Atlantic Refining Company

Western Pennsylvania

Firestone District	March Sales Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	Fiscal Year Sales Thru March 1951 Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Altoona										
Harrisburg	24	—	—	—						
Pittsburgh	25	1,059	3	1,062						
Total	49	1,059	3	1,062	—	1,059	3	1,062		
% of Total		99.7	.3	100.0		99.7	.3	100.0		
Erie										
Akron	69	7,879	1,786	9,665		29,892	10,363	40,255		
Buffalo	114	7,130	4,526	11,656		54,708	25,475	80,183		
Pittsburgh	3	694	445	1,139		2,013	1,016	3,029		
Total	186	15,703	6,757	22,460	—	86,613	36,854	123,467	—	—
% of Total		69.9	30.1	100.0		70.1	29.9	100.0		
Greensburg										
Pittsburgh	9	2,769	375	3,144	—	2,769	375	3,144	—	—
% of Total		88.1	11.9	100.0		88.1	11.9	100.0		
Ohio										
Akron	10	—	—	—		—	—	—		
Cleveland	1	1,681	361	2,042		1,681	361	2,042		
Columbus	2	218	—	218		218	—	218		
Pittsburgh	2	—	—	—		—	—	—		
Total	15	1,899	361	2,260		1,899	361	2,260	—	—
% of Total		84.0	16.0	100.0		84.0	16.0	100.0		
Pittsburgh										
Akron	15	—	—	—		—	—	—		
Pittsburgh	18	7,562	1,428	8,990		7,562	1,428	8,990		
Total	33	7,562	1,428	8,990	—	7,562	1,428	8,990	—	—
Total Western	292	28,992	8,924	37,916	—	99,902	59,021	138,923	—	—
% of Total		76.5	23.5	100.0		71.9	28.1	100.0		

Commission Exhibit No. 213E: 2915

COMMISSION EXHIBIT NO. 213F.

Atlantic Refining Company

Southern Region

Firestone District	March Sales: Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	Fiscal Year Sales Thru March 1951: Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Baltimore										
Baltimore	106	9,653	1,352	11,005		9,653	1,352	11,005		
Pittsburgh	0	—	—	—		—	—	—		
Total	106	9,653	1,352	11,005	—	9,653	1,352	11,005	—	—
% of Total		87.7	12.3	100.0		87.7	12.3	100.0		
Charlotte										
Atlanta	0	—	—	—		—	—	—		
Charlotte	101	10,982	76	11,058		10,982	76	11,058		
Richmond	7	1,498	—	1,498		1,498	—	1,498		
Total	108	12,480	76	12,556	—	12,480	76	12,556	—	—
% of Total		99.4	.6	100.0		99.4	.6	100.0		
Jacksonville										
Atlanta	0	—	—	—		—	—	—		
Jacksonville	69	11,508	357	11,865		11,508	357	11,865		
Total	69	11,508	357	11,865	—	11,508	357	11,865	—	—
% of Total		97.0	3.0	100.0		97.0	3.0	100.0		
Miami										
Jacksonville	79	5,131	314	5,445	—	5,131	314	5,445	—	—
% of Total		94.2	5.8	100.0		94.2	5.8	100.0		
Richmond										
Baltimore	0	—	—	—		—	—	—		
Richmond	77	8,037	722	8,759		8,037	722	8,759		
Total	77	8,037	722	8,759	—	8,037	722	8,759	—	—
% of Total		91.8	8.2	100.0		91.8	8.2	100.0		
Total Southern	439	46,809	2,821	49,630	—	46,809	2,821	49,630	—	—
% of Total		94.3	5.7	100.0		94.3	5.7	100.0		

2829 **COMMISSION EXHIBIT NO. 214A.**

The Atlantic Refining Company

Progress Through 4/14/51

Atlantic Region	# Accounts Atlantic Listed	# Signed on Firestone Contract	Amount Initial Orders	
			Tires	H&AS
Eastern Pa.	2163	493	76,877	7,734
Western Pa.	779	208	81,278	6,339
Southern	509	246	181,144	21,035
Total	3451	947	339,299	35,108

April 19, 1951

2831 COMMISSION EXHIBIT NO. 214B.

The Atlantic Refining Company
Eastern Pennsylvania Region

Progress Thru 4/14/51

Atlantic District	Firestone District	# Accounts Atlantic Listed	# Signed on Firestone Contract	Amount Initial Orders Tires	Amount Initial Orders H&AS
Allentown	Philadelphia	318*	102	15.748	1.857
	Harrisburg	28	—	—	—
	Total	346	102	15.748	1.857
Harrisburg	Harrisburg	232	21	1.721	308
Reading	Harrisburg	259	63	13.982	2.001
	Philadelphia	322*	117	21.647	843
	Total	581	180	35.629	2.844
Scranton	Harrisburg	76	4	735	10
	Syracuse	58	12	3.816	79
	Philadelphia	35*	30	950	109
	Total	169	46	5.501	198
Wilkes Barre	Harrisburg	251	88	7.292	1.525
	Syracuse	25	—	—	—
	Total	276	38*	7.292	1.525
Williamsport	Harrisburg	221	46	3.909	880
	Syracuse	45	5	460	—
	Pittsburgh	20*	—	—	—
	Buffalo	25*	—	—	—
	Total	311	51	4.369	880
York	Harrisburg	202	41	4.888	43
	Philadelphia	46*	14*	1.729	79
	Total	248	55	6.617	122
	Total Region	2163	493	76.877	7.734

* Estimated

April 19, 1951

2833 COMMISSION EXHIBIT NO. 214C.

The Atlantic Refining Company
Western Pennsylvania Region

Progress Through 4-14-51

Atlantic District	Firestone District	# Accounts Atlantic Listed	# Signed on Firestone Contract	Amount Initial Orders Tires	Amount Initial Orders H&AS
Pittsburgh	Pittsburgh	299	68	46,239	3,541
	Akron	17	7	1,614	367
	Total	316	75	47,853	3,908
Altoona	Pittsburgh	186	41	10,764	38
	Harrisburg	24	1	140	4
	Total	210	42	10,904	42
Greensburg	Pittsburgh	234	88	12,889	130
Ohio Distributors	Akron	10	—	—	—
	Cleveland	6	2	7,832	1,706
	Pittsburgh	2	—	—	—
	Columbus	1	1	1,800	553
	Total	19	3	9,632	2,259
	Total Region	779	208	81,278	6,339

April 19, 1951

2835 COMMISSION EXHIBIT NO. 214D.

The Atlantic Refining Company
Southern Region

Progress Thru 4/14/51

Atlantic District	Firestone District	# Accounts Atlantic Listed	# Signed on Firestone Contract	Amount Initial Orders Tires	Amount Initial Orders H&AS
Baltimore	Baltimore	100	84	71,489	6,174
	Pittsburgh	27	24	1,370	60
	Total	127	108	72,859	6,234
Richmond	Richmond	69	51	22,911	2,073
	Baltimore	15	3	300	150
	Total	84	54	23,211	2 223
Charlotte	Charlotte*	98	36	41,592	—
	Richmond	7	3	12,020	—
	Total	105	39	53,612	—
Jacksonville) and Miami)	Jacksonville*	148	38	18,077	11,478
	Atlanta*	35	7	13,385	1,100
	Total	183	45	31,462	12,578
	Total Region	509	246	181,144	21,035

* Progress thru 4/7/51

April 19, 1951

COMMISSION EXHIBIT NO. 214E.

April, 1951

The Atlantic Refining Company

Summary

Atlantic Region	April Sales					Fiscal Year Sales Thru April 1951				
	Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Eastern Penna.	2,422	184,285	41,424	225,709	—	279,874	87,371	367,245	15,119	—
Western Penna.	941	82,839	17,357	100,196	824.3	182,741	56,378	239,119	10,841	—
Southern	494	91,382	10,320	101,702	—	138,191	13,141	151,332	—	—
Total	3,857	358,506	69,101	427,607	—	600,806	156,890	757,696	25,960	—
% of Total		83.8	16.2	100.0		79.3	20.7	100.0		
Last Year		22,757	3,203	25,960		22,757	3,203	25,960		

Commission Exhibit No. 214E.

COMMISSION EXHIBIT NO. 214F.

December, 1951

The Atlantic Refining Company

Summary

Firestone District	December 1951 Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	2 Months Sales Thru December 1951 Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Eastern Pennsylvania										
Sales Commission	2,261	94,936	68,598	163,534		184,736	121,486	306,222	43,285	
Sales To Atlantic	7	757	1,150	1,907		1,162	1,759	2,921	—	
Total	2,268	95,693	69,748	165,441		185,898	123,245	309,143	43,285	
Western Pennsylvania										
Sales Commission	946	22,674	36,124	59,798		81,767	80,950	162,717	54,277	
Southern Pennsylvania										
Sales Commission	550	23,827	18,113	41,940		55,437	34,945	90,382		
Sales To Atlantic	6	231	987	1,218		231	1,346	1,577		
Total	556	24,058	19,100	43,158		55,668	36,291	91,959		
Sales Commission	3,757	141,437	122,835	264,272		321,940	237,381	559,321	97,512	
Sales To Atlantic	13	988	2,137	3,125		1,393	3,105	4,498	—	
Total	3,770	142,425	124,972	267,397		323,333	240,486	563,819	97,512	
% of Total		53.3	46.7	100.0		57.3	42.7	100.0		
Last Year		37,672	16,017	53,689		62,176	35,336	97,512		

% of Increase by Product

(Handwritten in right lower margin:) Ck. Rec'd $24,616.48.

COMMISSION EXHIBIT NO. 215A-B. 2923

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 215A
IN THE MATTER OF Goodyear - Atlantic
DATE 6-16-67 WITNESS
ACE REPORTING CO., Official Reporter
By Rosiak

ATLANTIC

LED- 85251

CREDIT CARD 1950
EXPIRES DEC. 31

CX 215-A

VOID

2841

Subject to conditions on reverse side the above named customer is granted credit privileges of
THE ATLANTIC REFINING COMPANY

OVER

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 215B

215B

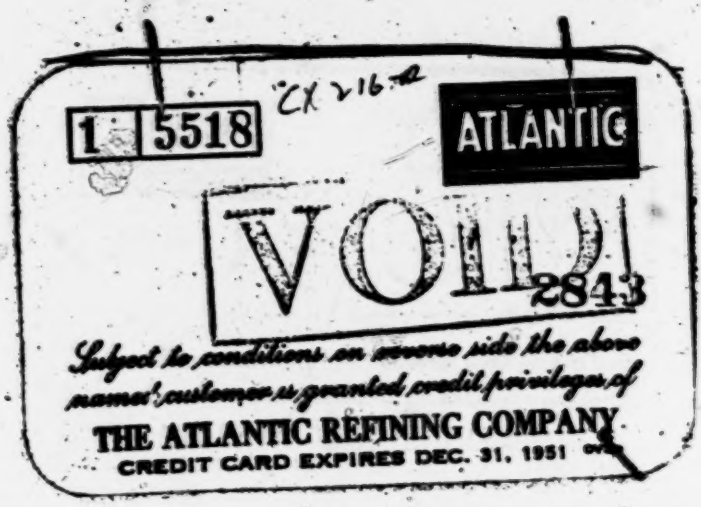
CONDITIONS

1. All purchases made upon presentation of this card shall be paid for by customer named on the face hereof.
2. Payment is due upon presentation of bill.
3. Acceptance of merchandise or service by holder of this credit card will constitute agreement as to correctness of price and quantity.
4. This card may be honored for purchase of the following at Service Stations displaying the sign, "Atlantic Credit Cards Honored Here":
   Atlantic Petroleum Products.
   Tires, tubes, batteries and accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Washing, lubrication, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
5. Credit may be cancelled or restricted at any time without notice.
6. If card is lost or stolen notify ATLANTIC in writing at once.

2842

92

FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION RESPONDENT EXHIBIT NO. 216-A
IN THE MATTER OF Goodyear v. Atlantic
DATE 9-16-57 WITNESS
ACE REPORTING CO., Official Reporter
By



FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION RESPONDENT EXHIBIT NO. 216-B

CONDITIONS

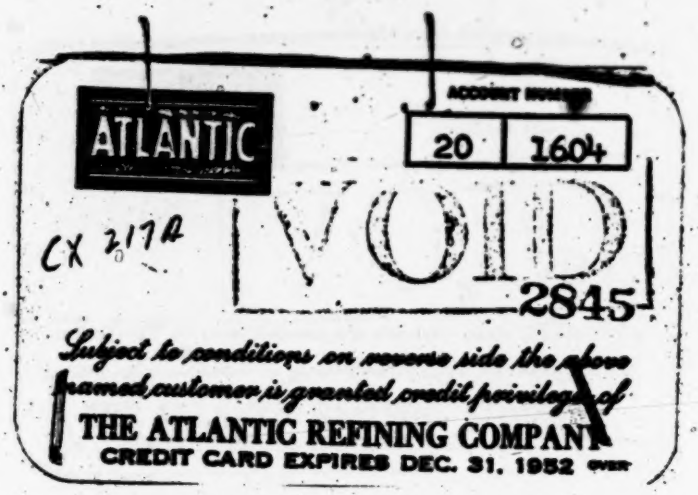
1. All purchases made upon presentation of this card shall be paid for by customer named on the face hereof.
2. Payment is due upon presentation of bill.
3. Acceptance of merchandise or service by holder of this credit card will constitute agreement as to correctness of price and quantity.
4. This card may be honored for purchase of the following at Service Stations displaying the sign, "Atlantic Credit Cards Honored Here":
   Atlantic Petroleum Products.
   Tires, tubes, batteries and accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Washing, lubrication, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
5. Credit may be cancelled or restricted at any time without notice.
6. If card is lost or stolen notify ATLANTIC in writing at once.

R3

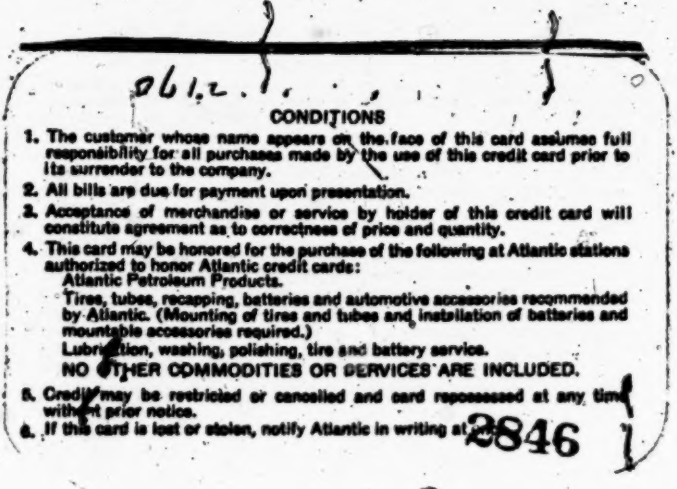
2844

COMMISSION EXHIBIT NO. 217A-B. 2925

FEDERAL TRADE COMMISSION
DOCKET NO. 6496 COMMISSION RESPONDENT EXHIBIT NO. 217-A
IN THE MATTER OF Goody ear - Atlantic
DATE 9-16-57 WITNESS
ACE REPORTING CO., Official Reporter
By Marie



FEDERAL TRADE COMMISSION
DOCKET NO. 6496 COMMISSION RESPONDENT EXHIBIT NO. 217B



COMMISSION EXHIBIT NO. 218A-B. 292

FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION RESPONDENT EXHIBIT NO. 218A
IN THE MATTER OF Goodyear - Atlantic
DATE 4/24/62 WITNESS
ACE REPORTING CO., Official Reporter
By Monett

ATLANTIC

ACCOUNT NUMBER
20-1390

CX 218A

VOID

2847

Subject to conditions on reverse side the above named customer is granted credit privileges of

THE ATLANTIC REFINING COMPANY

CREDIT CARD EXPIRES DEC. 31, 19[illegible] OVER

FEDERAL TRADE COMMISSION
DOCKET NO. 6488 COMMISSION RESPONDENT EXHIBIT NO. 218B

CONDITIONS

1. The customer whose name appears on the face of this card assumes full responsibility for all purchases made by the use of this credit card prior to its surrender to the company.
2. All bills are due for payment upon presentation.
3. Acceptance of merchandise or service by holder of this credit card will constitute agreement as to correctness of price and quantity.
4. This card may be honored for the purchase of the following at Atlantic stations authorized to honor Atlantic credit cards:
   Atlantic Petroleum Products delivered into car to the capacity of the fuel tank or crankcase only.
   Tires, tubes, recapping, batteries and automotive accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Lubrication, washing, polishing, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
5. Credit may be restricted or cancelled and card repossessed at any time without prior notice.
6. If this card is lost or stolen, notify Atlantic in writing at once.

2848

The credit privileges granted by this card may also be honored by dealers and stations of

	THE OHIO OIL CO.	ILLINOIS INDIANA KENTUCKY	MICHIGAN OHIO

CONDITIONS

1. Acceptance of merchandise or service by use of this credit card will constitute agreement as to correctness of price and quantity.
2. All bills are due for payment upon presentation.
3. Credit may be restricted or cancelled and card repossessed at any time without prior notice.
4. If this card is lost or stolen, notify Atlantic in writing at once. The customer whose name appears on the face of this card assumes full responsibility for all purchases made by the use of this credit card prior to its surrender to the company.
5. This card will be honored for the purchase of the following at Atlantic stations displaying the Atlantic sign:
   Atlantic Petroleum Products delivered into car to the capacity of the fuel tank or crankcase only.
   Tires, tubes, recapping, batteries and automotive accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Lubrication, washing, polishing, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.

C-219(X)

★ TIRES—BATTERIES—ACCESSORIES

(Minimum Sales $20.00)

With your Atlantic credit card, you may pay for your tires, batteries and accessories (minimum sales $20.00) one-third in 30, 60 and 90 days each. There is no charge for this service. Ask your Atlantic Dealer.

2850

Your Atlantic Credit Card will be honored at service stations displaying this sign.

Connecticut · New Hampshire · Rhode Island
Delaware · New Jersey · South Carolina
Florida · New York · Vermont
Georgia · North Carolina · Virginia
Maryland · Ohio (Eastern) · West Virginia
Massachusetts · Pennsylvania

ATLANTIC

It may also be honored for similar products and services by service stations and dealers of the following companies:

THE OHIO OIL COMPANY

Illinois · Kentucky · Ohio
Indiana · Michigan

SUPERTEST PETROLEUM CORPORATION, LTD.
in the Provinces of Ontario and Quebec in Canada.

ATLANTIC

EXPIRES DEC. 31, 1954

CREDIT CARD.

ACCOUNT NUMBER

C-219A

2849

THE ATLANTIC REFINING COMPANY
INCORPORATED-1870

COMMISSION EXHIBIT NO. 219A-B. 2927

CONDITIONS

1. Acceptance of merchandise or service by use of this credit card will constitute agreement as to correctness of price and quantity.
2. All bills are due for payment upon presentation.
3. Credit may be restricted or cancelled and card repossessed at any time without prior notice.
4. If this card is lost or stolen, notify Atlantic in writing at once. The customer whose name appears on the face of this card assumes full responsibility for all purchases made by the use of this credit card prior to its surrender to the company.
5. This card will be honored for the purchase of the following at Atlantic stations displaying the Atlantic sign:
   Atlantic Petroleum Products delivered into car to the capacity of the fuel tank or crankcase only. Tires, tubes, recapping, batteries and automotive accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Lubrication, washing, polishing, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
6. Keep this card in your possession at all times. Do not risk loss of it in the glove compartment.

★ EXTENDED CREDIT TERMS ON TIRES, BATTERIES, ACCESSORIES

With your Atlantic credit card, you may pay for your tires, batteries and accessories (minimum sales $20.00) one third in 30, 60 and 90 days each. There is no charge for this service. Ask your Atlantic Dealer.

Your Atlantic Credit Card will be honored at service stations displaying this sign.

ATLANTIC

Connecticut · New Hampshire · Rhode Island
Delaware · New Jersey · South Carolina
Florida · New York · Vermont
Georgia · North Carolina · Virginia
Maryland · Ohio (Eastern) · West Virginia
Massachusetts · Pennsylvania

It may also be honored for similar products and services by service stations and dealers of the following companies:

THE OHIO OIL COMPANY
Illinois · Kentucky
Indiana · Michigan

MARATHON

SUPERTEST PETROLEUM CORPORATION, LTD.
In the Provinces of Ontario and Quebec in Canada

ATLANTIC

EXPIRES DEC. 31, 1955

CREDIT CARD

ACCOUNT NUMBER

VOID

THE ATLANTIC REFINING COMPANY
INCORPORATED 1870

COMMISSION EXHIBIT NO. 220A-B. 29928

CONDITIONS

1. Acceptance of merchandise or service by use of this credit card will constitute agreement as to correctness of price and quantity.
2. All bills are due for payment upon presentation.
3. Credit may be restricted or cancelled and card repossessed at any time without prior notice.
4. If this card is lost or stolen, notify Atlantic in writing at once. The customer whose name appears on the face of this card assumes full responsibility for all purchases made by the use of this credit card prior to its surrender to the company.
5. This card will be honored for the purchase of the following at Atlantic stations displaying the Atlantic sign:
   Atlantic Petroleum Products delivered into car to the capacity of the fuel tank or crankcase only. Tires, tubes, recapping, batteries and automotive accessories. (Mounting of tires and tubes and installation of batteries and mountable accessories required.)
   Lubrication, washing, polishing, tire and battery service.
   NO OTHER COMMODITIES OR SERVICES ARE INCLUDED.
6. Keep this card in your possession at all times. Do not risk loss of it in the glove compartment.

★ EXTENDED CREDIT TERMS

No down payment . . . No carrying charge

With your Atlantic Credit Card, you may pay for your tires, batteries and accessories of $20.00 up to $50.00, one third in 30, 60 and 90 days each. On sales of $50.00 or more, you may pay one-sixth each month for 6 months. Ask your Atlantic Dealer.

2854

Your Atlantic Credit Card will be honored at service stations displaying this sign.

ATLANTIC

Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio (Eastern), Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia

It may also be honored for similar products and services by service stations and dealers of the following companies:

THE OHIO OIL COMPANY
Illinois, Indiana, Kentucky, Michigan, Ohio

SUPERTEST PETROLEUM CORPORATION, LTD.
In the Provinces of Ontario and Quebec in Canada.

ATLANTIC CREDIT CARD

EXPIRES DEC. 31, 1956 ACCOUNT NUMBER

CX 221A

THE ATLANTIC REFINING COMPANY
INCORPORATED 1870

2853
2853

COMMISSION EXHIBIT NO. 221A-B. 2929

COMMISSION EXHIBIT NO. 222. 2930

CREDIT CARD GUIDE

VERIFY THIS CARD

ATLANTIC 1 LED 4 90000
CREDIT CARD 1950
John J. Doe
Main St.,
Youtown, Pa.

Subject to conditions on reverse side the above named customer is granted credit privileges of
THE ATLANTIC REFINING COMPANY

ATLANTIC

Presentation of a currently valid Atlantic Credit Card is necessary for credit. Products sold on other identification are sold on your own risk.

WHAT YOU MAY SELL ON AN ATLANTIC CREDIT CARD

ATLANTIC PETROLEUM PRODUCTS

Hi-Arc, White Flash—Tank Capacity
Atlantic Motor Oil— Crankcase Capacity
12-gal. case goods
and all Atlantic Petroleum Products

SERVICE

Atlantic Lubrication, Tire & Battery Service, Washing and Polishing.

TIRES, BATTERIES & ACCESSORIES

NEW LEE TIRES & TUBES — Up to $30. Above $30, secure Credit Department approval. Tires must be mounted. Batteries must be installed. Accessories must be installed. Copy of Lee Tire Guaranty must be attached to invoice (S-139).
EXIDE BATTERIES
ACCESSORIES supplied by Atlantic.

ANTI-FREEZE—Vehicle Requirements

No other commodities or services to be included.

Such items as car repairs, radios, garage rent and parking charges, are not acceptable.

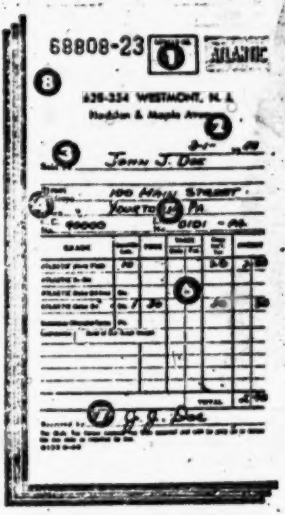
Send summary of Credit Card sales (Form S-268) to Atlantic weekly with an EXTRA one to reach company before the 25th of each month.

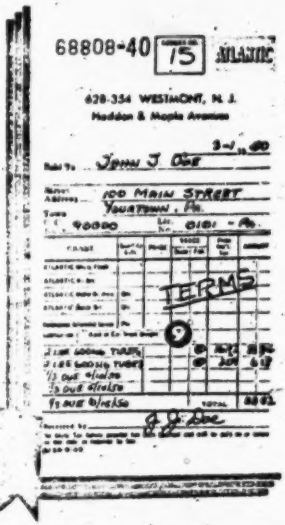
Sales made contrary to these instructions will be charged back to you.

1. Fill in ledger number.
2. Show date of sale.
3. Print name and address as shown on Credit Card.
4. Secure number from top of Credit Card.
5. Copy license number of vehicle and state.
6. Show products, quantity, price including tax and amount of sale.
7. Have customer sign.
8. Stamp dealer's station code number on four copies.

Check expiration date of Credit Card.

Four copies should be legible.





9. EXTENDED TERMS — Minimum sales — $15.00

These will help you make sales, which would be lost if it were necessary to sell on regular terms.

Extended terms apply to new Lee tires & tubes, Exide batteries and accessories supplied by Atlantic.

Subject to instructions in above.

Prepare separate S-139.
Maximum terms:
½ 10th 1st following mo.
½ 10th 2nd following mo.
½ 10th 3rd following mo.
Mark "TERMS" clearly on the invoice; otherwise regular terms will apply.
Attach copy of Lee Tire Guaranty.

2933

COMMISSION EXHIBIT NO. 223. 2931

CREDIT CARD GUIDE

VERIFY THIS CARD

1 66 7471 ATLANTIC

John J. Doe 3
100 Main Street
Youngtown, Pa.

Signed in accordance with the above
terms of credit agreement with the holder of
THE ATLANTIC REFINING COMPANY
CREDIT CARD EXPIRES DEC. 31, 1961

Presentation of a currently valid Atlantic Credit Card is necessary for credit. Products sold on other identification are sold at your own risk.

WHAT YOU MAY SELL ON AN ATLANTIC CREDIT CARD

ATLANTIC PETROLEUM PRODUCTS

Hi-Arc, White Flash—Tank Capacity
Atlantic Motor Oil— Crankcase Capacity / 12-qal. case goods
and other Atlantic Petroleum Products

SERVICE

Atlantic Lubrication, Tire & Battery Service, Washing and Polishing.

TIRES, BATTERIES AND AUTOMOTIVE ACCESSORIES

TIRES & TUBES
RECAPPING
BATTERIES
AUTOMOTIVE ACCESSORIES
recommended by Atlantic.

—Up to $100. Above $100, secure Credit Department approval. Tires must be mounted. Batteries must be installed. Accessories must be installed.

ANTI-FREEZE—Vehicle Requirements.

No other commodities or services to be included. Such items as car repairs, radios, heaters, garage rent, parking charges, etc. are not acceptable.

Sales made contrary to these instructions will be charged back to you.

1. Fill in credit card number
2. Show date of sale.
3. Print name and address as shown on Credit Card.
4. Show products, quantity, price, and amount of sale.
5. Copy license number of vehicle and state. Must be license number of car receiving merchandise
6. Have customer sign.
7. If customer requests, write tax rates in blanks at bottom of ticket.
8. Four copies should be legible

NOTE!

Items 9-139 as follows
Four copy and yellow in brass
signed or top formed copy on the
reverse side. Use only the stamp
provided by Atlantic showing
station number and address. Four
copies should be legible.

4992-30 ATLANTIC
628-334 WESTMONT, N. J.
Haddon & Maple Avenues

1 66 7471 3 AM 0101 2
4 John J. Doe
100 MAIN ST.
5 Youngtown state Pa.
6 J J Doe

ITEM	Quantity	Price Each Item	AMOUNT
ATLANTIC Motor Oil	20 Qts.	30¢	3 60
ATLANTIC Oil	Qts.		
ATLANTIC Anti-Freeze	Qts.		
ATLANTIC Motor Oil	1 Qts.	30¢	30
Transparent Windshield Cleaner	Qts.		
Lubrication			
		TOTAL	3 90

4992-30 ATLANTIC
628-334 WESTMONT, N. J.
Haddon & Maple Avenues

66 7471 AM 0101
John J. Doe
100 MAIN ST.
Youngtown state Pa.
J J Doe

ITEM	Quantity	Price Each Item	AMOUNT
ATLANTIC Motor Oil	Qts.		
ATLANTIC Oil	Qts.		
ATLANTIC Anti-Freeze	Qts.		
ATLANTIC Motor Oil	Qts.		
Transparent Windshield Cleaner	Qts.		
Lubrication			
		TOTAL	

TERMS

7 LEE 6.00/16 TUBES @ 4.19 49 14
2 LEE 6.00/16 TUBES @ 4.69 9 38
2 OLD TIRES TAKEN 2.00
TOTAL 61 76

7 EXTENDED TERMS—Minimum sales—$20.00

These will help you make sales which would be lost if it were necessary to sell on regular terms.

Extended terms apply to tires & tubes, batteries and automotive accessories recommended by Atlantic.

Subject to instructions above.

Program expenses 9-139

Maximum terms:
In 10th Ist following mo.
In 10th 2nd following mo.
In 10th 3rd following mo.

Mark "TERMS" clearly on invoices otherwise regular terms will apply.

2857

1038-1436-1-61

COMMISSION EXHIBIT NO. 226A. 2932

GOODYEAR

The Goodyear Tire & Rubber Company, Inc.

1160 BROAD ST.
NEWARK 5, N. J.

July 7, 1950

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Attention: Mr Leon Serven
Assistant Comptroller

Gentlemen:

A brief explanation is deemed necessary in connection with the attached G-1204.

Because the sales program did not get fully under way until the middle of June, and the necessary details in setting-up supply points, establishing credit limits, etc, plus the fact that our District books close on the 20th, sales credited for the month of June represent only a small fraction of the total actually made to Atlantic accounts.

These sales will, however, be picked up in July and reported, and we are confident that a satisfactory volume of business will be shown.

Very truly yours,

[illegible]

District Operating Manager

Paul Castleberry Jr

FEDERAL TRADE COMMISSION
DOCKET NO. 4788 EXHIBIT NO. 226A
IN THE MATTER OF Goodyear et al
DATE 4-17-57 WITNESS
ACE REPORTING CO., Official Reporter
By Merrick

2871

COMMISSION EXHIBIT NO. 226B. 2933

THE ATLANTIC REFINING COMPANY
JUNE 24 [illegible], 1950

	Volume	Commission Rate	Amount
COMMISSION			
New Tires & Tubes	268	10%	26.80
Batteries (Excl. Resolute) & Cables	0	10	0
Resolute Batteries	0	7½	0
Car & Home Supplies, Etc.	63	10	6.30
Total	331		$ 33.10

Issued July 14, 1950

FEDERAL TRADE COMMISSION
DOCKET NO. 4111 -- EXHIBIT NO. 226B

COMMISSION EXHIBIT NO. 227A. 2934

THE ATLANTIC REFINING COMPANY

PETROLEUM PRODUCTS

260 SOUTH BROAD STREET

PHILADELPHIA 1, PA.

August 18, 1950

ELLIOTT — CONTROLLER

C D:WGE

Good Year Tire & Rubber Co.
1144 East Market St.
Akron 16, Ohio

Gentlemen:

We thank you for your check [illegible] in the amount of $1,334.40 covering commission on purchases of Good Year products by our dealers for the period from June 21 through July 20.

We note however that evidently the 7 1/2% commission due on sales of Roseluto batteries was not included in your remittance. Roseluto battery sales were $20 which would entitle us to a commission of $1.50.

[redacted] find this to be in error, please include the $1.50 commission with your next remittance.

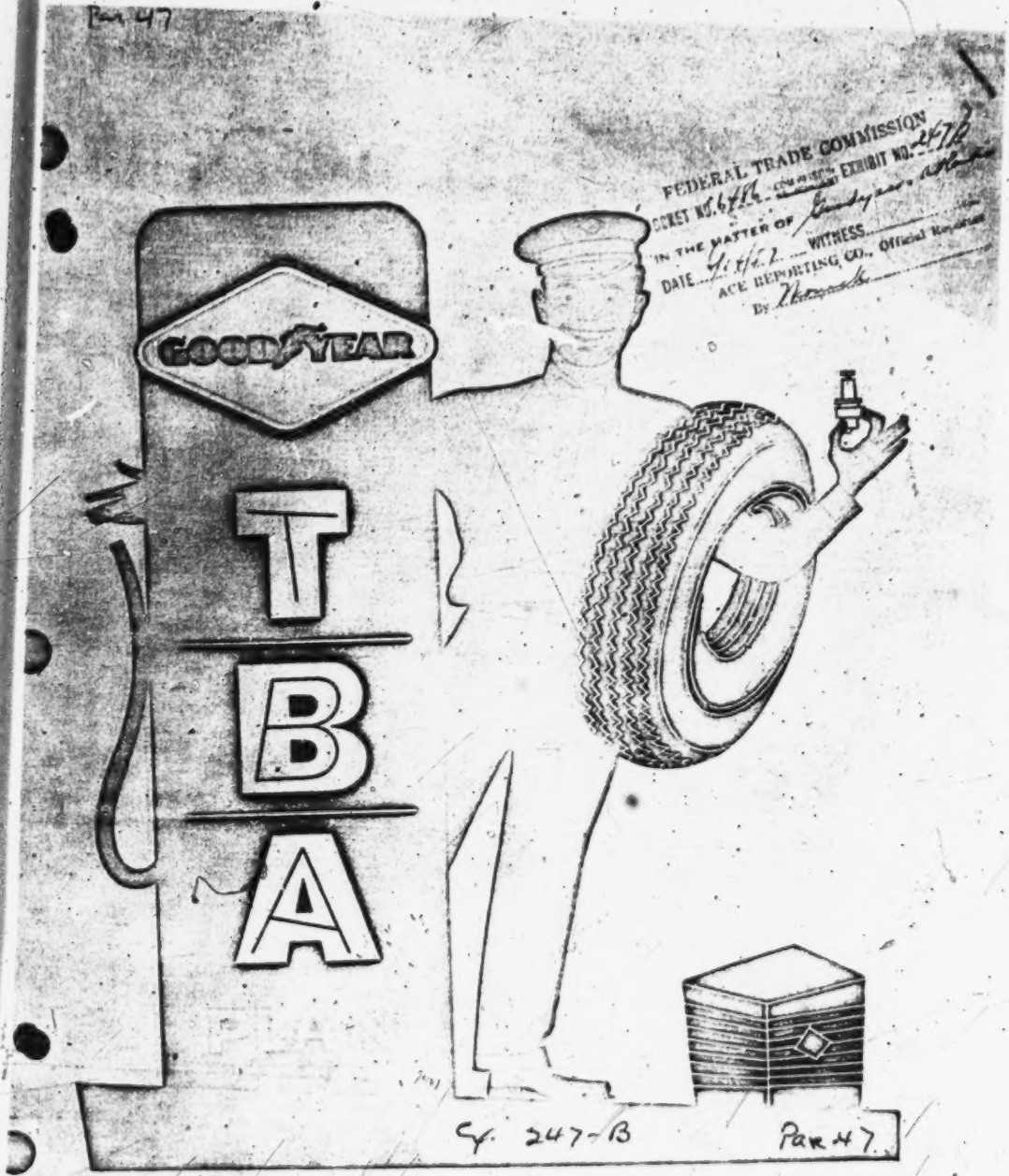
Very truly yours,

Assistant Controller

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 227A
IN THE MATTER OF Goodyear - Atlantic
DATE 4-4-57 WITNESS
ACE REPORTING CO., Official Reporter
By

Par 47

FEDERAL TRADE COMMISSION
DOCKET NO. 6411 COMMISSION EXHIBIT NO. 247B
IN THE MATTER OF Goodyear
DATE 4-16-62 WITNESS
ACE REPORTING CO., Official Reporters
By



DO YOU OPERATE
A SERVICE STATION
OR JUST
A "GAS" STATION?

The difference is the

profit you make!

Goodyear's T B A Plan has made Service Stations out of thousands of "Gas" Stations from coast to coast. Here's why...

GOODYEAR has:

1 An organized T B A Plan

2 The world's most acceptable T B A Products

3 The widest distribution of T B A Merchandise

4 The most experience with oil company marketing

5291 11

THE GOODYEAR TBA PLAN

1 Is tailored to fit YOUR individual requirements.

No need to guess at what items to order. Only the best selling items are on your shelves. There's no guesswork involved.

2 Simplifies your inventory problems—provides the "right" items at the "right" time.

You do only the selling. Goodyear provides you with a STOCK GUIDE that enables you to keep salable merchandise, in the right quantities, in stock at all times.

3 Can increase your profits 30 to 50%

4 It is short, simple and easy to follow

IN A NUTSHELL . . .

Goodyear offers Service Station Operators the world's first-choice line of tires and tubes. These are the tires that are preferred most and bought by more people than any other kind. Goodyear Batteries, both wet and dry charge, give the dependable service that makes and keeps your customers yours. Goodyear Car and Home Merchandise is the best and most acceptable of all national brands available.

With all the advantages of proven, customer accepted T B A products, Goodyear provides merchandising assistance based on many years of sound experience . . . **plus** prompt replenishment of out-of-stock merchandise.

134 3293

WITH GOODYEAR PRODUCTS AND GOODYEAR MERCHANDISING EXPERIENCE

BA offers you a great opportunity

Today, more tires, batteries, and accessories are sold by Service Stations than any other type of retailers. You can get your share, and more sales and more profits, if you—

1 OBSERVE your customers' needs and ASK for their business.

2 STOCK enough and stock the RIGHT kind of merchandise.

3 Keep your merchandise well DISPLAYED and COMPETITIVELY priced.

4 SERVICE the products you sell, properly.

THE Market FOR TBA THIS YEAR

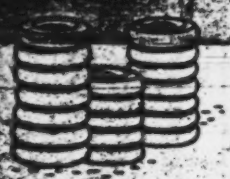
$4,000,000,000

FOUR BILLION dollars

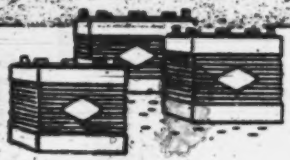
About $24.00 for every living man, woman, and child in the United States, today!

3294

SERVICE STATION TBA sales



TIRES
$630,000,000



BATTERIES
$180,000,000

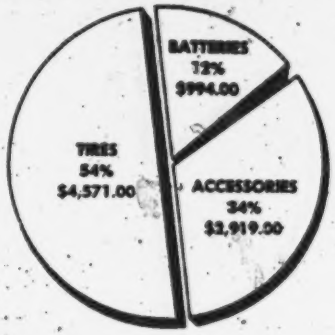
ACCESSORIES
$530,000,000

Based on U.S. Government census of the Service Station Business, this is what should be sold by Oil Company Outlets handling TBA.

The national average of T B A retail sales per station handling T B A merchandise will be—

$8,484.00 PER STATION

The average of $8,484.00 total T B A retail sales per station is divided among T B A products like this—



AVERAGE SERVICE STATION
(10,000 to 20,000 gallons per month)
TBA SALES PER 1000 GALLONS

Tires and Tubes	$32.44
Batteries	7.05
Accessories	20.72
Total Sales per 1000 gal.	$60.21

HIGH GALLONAGE SERVICE STATION
(25,000 and more gallons per month)
TBA SALES PER 1000 GALLONS

Tires and Tubes	$27.88
Batteries	5.33
Accessories	15.66
Total Sales per 1000 gal.	$48.87

High gallonage stations sell less TBA per 1,000 gallons but more in total dollars.

2942

What and When

DO YOUR CUSTOMERS BUY?

3296

136

Here are the two basic guides to help you make the most profit on a minimum investment, yet have the merchandise the customers want when they want it.

POPULARITY OF T B A MERCHANDISE

TIRES

Passenger	% of Total
6.70-15	42.0
6.00-16	12.0
7.10-15	20.0
7.60-15	14.0
6.50-16	2.0
6.00-15	5.0
6.20-15	2.0
6.40-15	1.5
Misc.	1.5
	100%
Truck	
6.00-16	7.3
6.50-16	12.2
7.00-15	6.3
7.00-16	3.2
7.50-16	2.6
All others	68.7
	100%

BATTERIES

Group	% of Total Goodyear Wet and Dry Charge
1	45.5%
2	11.8
2L	15.3
2F	3.2
2E	11.2
2N	2.0
12Y	5.2
Misc.	5.8
	100%

ACCESSORIES*

Items	% of Total	Items	% of Total
Battery Cables	3.2	Cleaner Supplies	2.3
Auto Lamps—Bulbs	5.3	Exhaust Extensions	0.8
Auto Fuses	0.4	Mirrors	2.3
Filters—Elements	15.2	Seat Cushions	2.3
Spark Plugs	18.3	Seat Covers	2.8
Wiper Blades & Accessories	4.5	Flashlights & Flashlight Batteries	2.4
Fan Belts	4.4	Friction Tape	0.6
Radiator Hose	2.2	Floor Mats	1.8
Radiator Caps	1.3	Thermostats	2.2
Radiator Chemicals	6.4	Miscellaneous	11.6
Polishes & Waxes	9.4		100.0%

*Popularity of auto accessories based on national sales reported by Oil Company outlets.

SEASONAL BUYING HABITS

	TIRES	BATTERIES	ACCESSORIES
Jan. Feb. March	18.9%	18%	Feature anti-freeze, chains, defrosters, thermostats, heater hose, ice scrapers, license plate accessories, fog lights, etc.
April May June	28.3%	16.5%	Promote sales of cleaners, polishes and supplies, cooling system cleansers and inhibitors, dress up items, seat covers, grill guards, colored floor mats, etc.
July Aug. Sept.	31.1%	33.7%	Emphasis on travel items, sun glasses, mirrors, cigarette lighters, horns, spot remover, garment carriers, jacks, fishing tackle, picnic and outdoor items.
Oct. Nov. Dec.	21.7%	31.8%	Check every car's battery, spark plugs, oil filter and element, wiper arms, auto bulbs and lamps, antifreeze, fan belt, radiator hose.
	100.0%	100.0%	

How much investment needed?

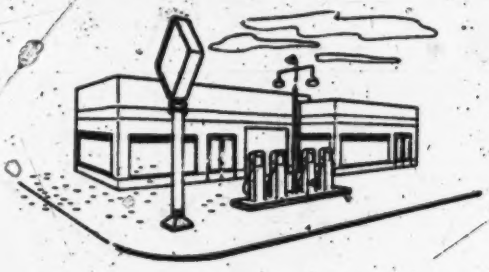
Conveniently located Goodyear warehouse and Supplying Dealer stocks minimize the need for large inventories in your station.

Here is an accurate formula of dollar investment required, determined by YOUR gasoline sales.

One of these two classifications will eliminate guessing how much you should invest and what quantities of T B A you should stock.

For the AVERAGE Service Station

The investment for stations selling under 20,000 gallons of gas per month should be based on these AVERAGE station cost figures.



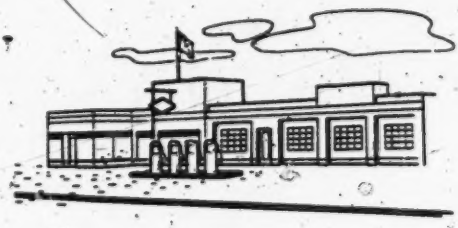
Per 1000 gallons of gas YOU sell	Cost
Tires and Tubes	$24.01
Batteries	4.93
Accessories	13.47
Investment per 1000 gallons	$42.41

EXAMPLE: Station pumping 11,700 gallons per month.

Tires and Tubes	— 11,700 gals. x $24.01 =	$280.92
Batteries	— 11,700 gals. x $ 4.93 =	57.68
Accessories	— 11,700 gals. x $13.47 =	157.60
Total Monthly Investment		$496.20

For the HIGH GALLONAGE Station

High gallonage stations (20,000 gallons or more per month) can follow the same formula with these average cost figures.



Per 1000 gallons gasoline	Cost
Tires and Tubes	$19.52
Batteries	3.57
Accessories	10.18
Total investment per 1000 gals.	$33.27

EXAMPLE: Station pumping 31,000 gallons per month.

Tires and Tubes	— 31,000 gals. x $19.52 =	$605.12
Batteries	— 31,000 gals. x $ 3.57 =	110.67
Accessories	— 31,000 gals. x $10.18 =	315.58
Total Monthly Investment		$1,031.37

Experience, based on industry turnover, shows that the opening inventories for new stations starting a T B A program should be approximately twice the monthly averages shown.

2946

HOW MUCH

profit

3300

138

The amount of profit you make is entirely up to YOU.

The answer is to SELL and SERVICE.

T B A profit
"per 1000 gallons of gasoline"
sold by the AVERAGE station,

	COST	RETAIL
Tires and Tubes	$24.01	$32.44
Batteries	4.93	7.05
Accessories	13.47	20.72
	$42.41	$60.21

$60.21 — $42.41 = $17.80 Profit per 1000 gals.

12,000 gallons per month — $213.60 PROFIT
144,000 gallons per year — $2,563.00 PROFIT

The profit for HIGH GALLONAGE stations

	COST	RETAIL
Tires and Tubes	$19.52	$27.88
Batteries	3.57	5.33
Accessories	10.18	15.66
	$33.27	$48.87

$48.87 — $33.27 = $15.60 Profit per 1000 gals.

31,000 gallons per month — $483.60 PROFIT
372,000 gallons per year — $5,803.20 PROFIT

This profit is purely from merchandise sales.

In addition, extra profit is earned from the servicing of these products — such as tire and tube repair, tire switching, battery charging and rentals, seat cover installation, wheel balancing, etc.

Here's the TBA SUCCESS PAMPHLET

3302

modern merchandising
modern equipment
Plus good service

CREATE SALES

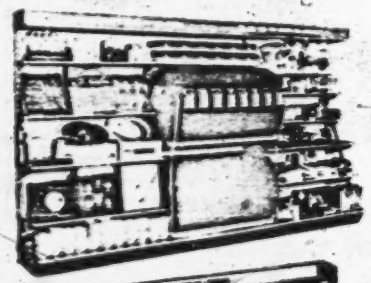
Make the most of your available display space with these sales-building, space-saving T B A fixtures.

They are compact . . . they are versatile . . . they display your merchandise front and center . . . they increase sales.

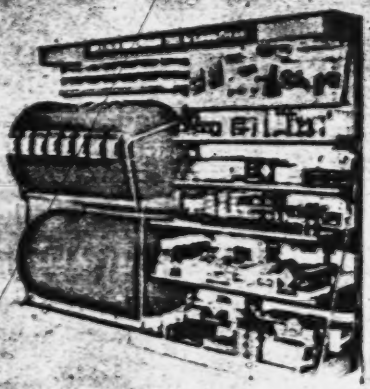
They are set at eye-level . . . all the other merchandise is in easy reach . . . the fixture puts the products in sight and in your customers' minds.

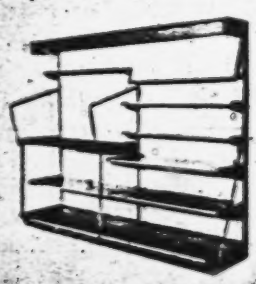
These fixtures can be used free-standing or attached to the wall. They are modern and attractive; of rugged steel construction; shelves and tire cradle are adjustable; they are flexible for almost any group of merchandise; the baked-on, enamel finish is easy to clean and wears through long, rugged service.

These display units are available in Eight-foot and Twelve-foot sizes. These are display and selling units expertly planned and created by Goodyear technicians to do a specific job of selling T B A products better. You can order these units through your regular Goodyear source.



TWELVE-FOOT TBA FIXTURE





EIGHT-FOOT TBA FIXTURE

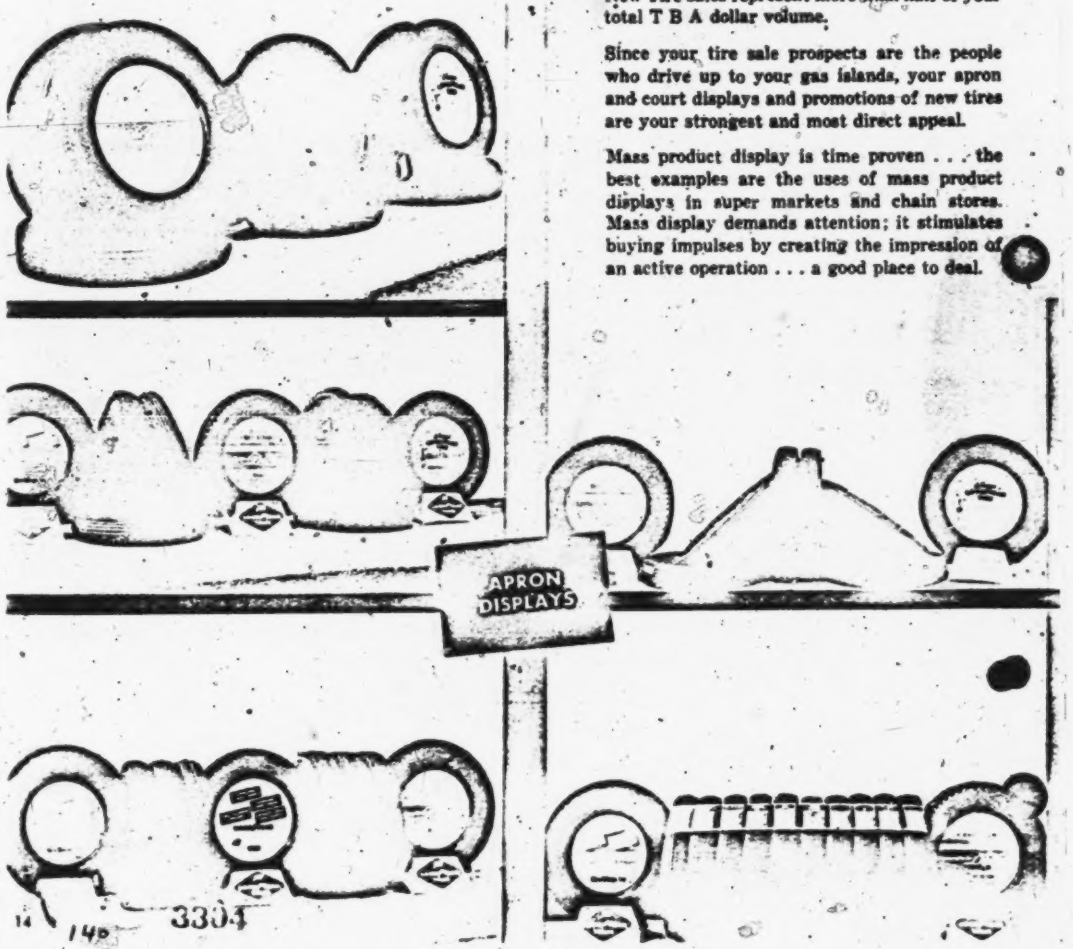
3303

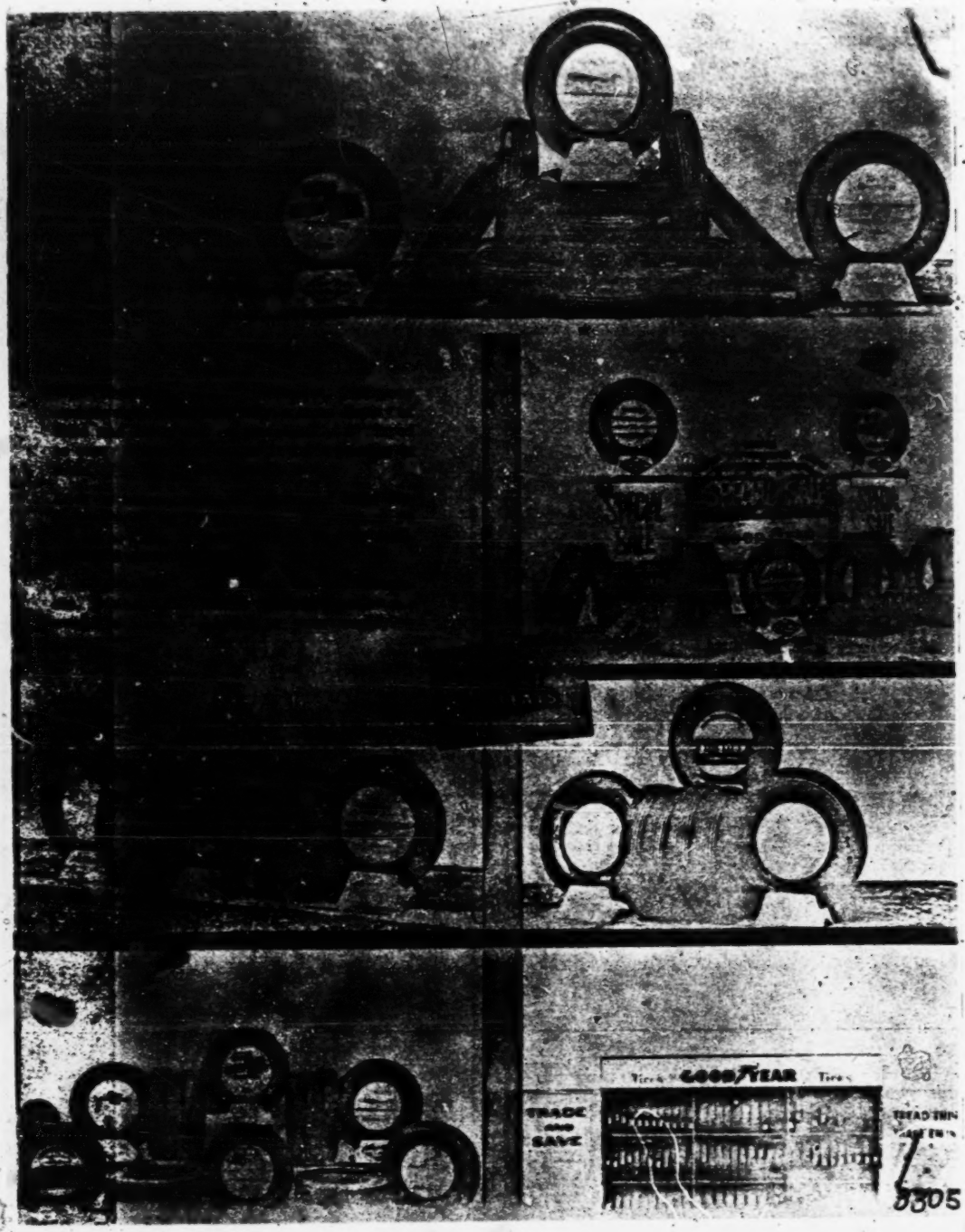
New Tire MERCHANDISI

New Tire sales represent more than half of your total T B A dollar volume.

Since your tire sale prospects are the people who drive up to your gas islands, your apron and court displays and promotions of new tires are your strongest and most direct appeal.

Mass product display is time proven . . . the best examples are the uses of mass product displays in super markets and chain stores. Mass display demands attention; it stimulates buying impulses by creating the impression of an active operation . . . a good place to deal.




GOODYEAR
TRADE AND SAVE
8305

USED TIRE MERCHANDISING

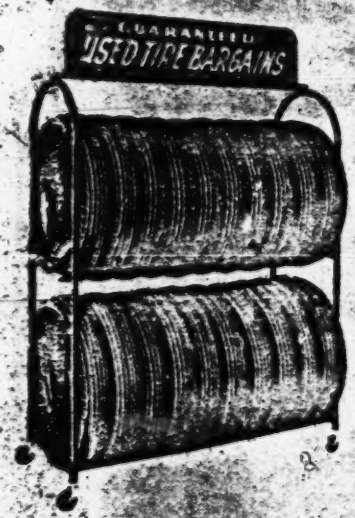
Almost every new tire you sell involves the trade-in of a used tire. A good part of your profit is tied up in the used tire until you sell it. The used tire can be sold, in many cases at a price greater than the trade-in allowance . . . if you merchandise it right.

DRESS UP USED TIRES

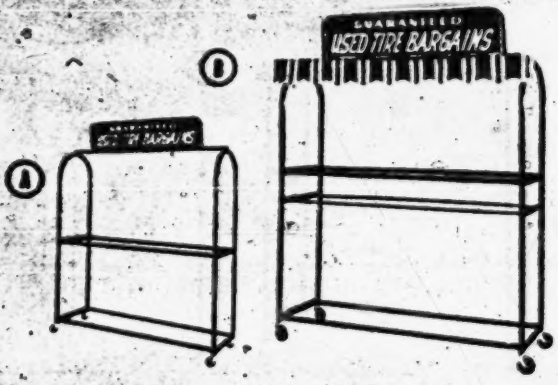
For *profitable* used tire turnover, follow this tested program:

1. Buy trade-in tires at the right price.
2. Re-condition all used tires that are still serviceable. Clean and dress them. Re-groove or recap those with sound bodies that are smooth. Scrap all others.
3. Set a price on used tires that matches or beats your competition.
4. Guarantee your used tires to give satisfactory service . . . and back it up!
5. Display clean, dressed used tires on your service court. Tag each tire with the price, size, and brand clearly shown. Group tires by sizes and price for easy comparison.
6. SELL . . . sell aggressively. Identify your used tires with a large sign or banner reading "GUARANTEED USED TIRES $1.00 and up". Spot the display prominently. Use the classified ads in your local newspaper . . . ASK FOR THE BUSINESS.

DRESS UP USED TIRE DISPLAYS



THEY WILL SELL BETTER



A Only 22" wide, 37" long and 68" high with a large 12" by 36", double-faced metal sign . . . mounted on easy rolling casters . . . holds twenty tires . . . equipped with lock chains.

B Holds 24 tires and 24 tube boxes . . . stands 73" high, 25" wide, and 36" long . . . 12" by 48" double-faced, metal sign . . . mounted on easy rolling casters . . . colorful awning . . . lock chain.

These Used Tire Display Merchandisers are available from Goodyear or your Goodyear supply point.

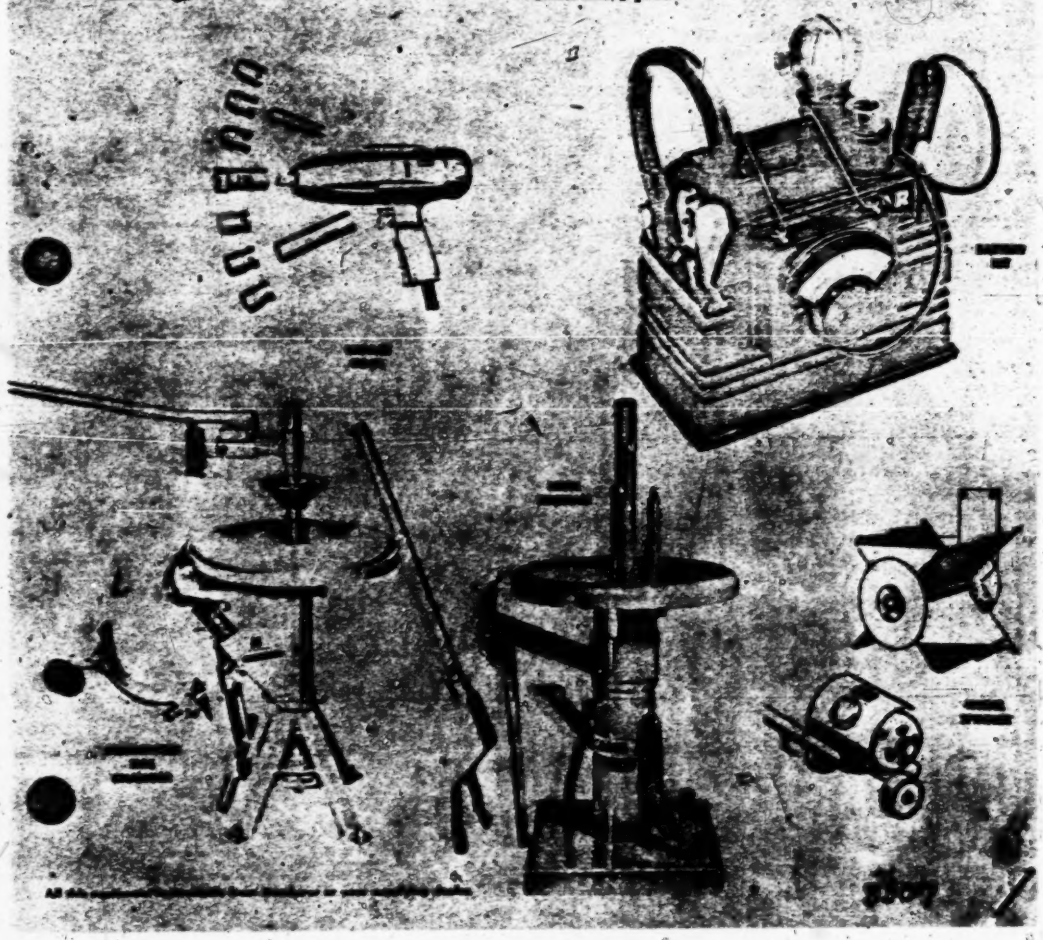
TAG THE TIRES . . . PUT THE FACTS ON THE TIRES — Goodyear offers you these tags to help you do a full selling job. Order them from Goodyear or your Goodyear supply point.

SERVICE IS A MAJOR REQUISITE OF MUCH TBA SELLING

Tires and tubes must be mounted . . . batteries installed or charged . . . spark plugs, oil filters, fan belts, wiper blades, auto lamps, [illegible] and [illegible] list of other accessories must be serviced.

Modern, labor-saving, time-saving equipment allows you to do these services quickly and efficiently.

With the right equipment you can—
Reduce actual labor
Do a neater job
Protect the customers' property
Impress the customer favorably with fast, efficient service
Saves time . . . lets you do more jobs . . . make more profit



here are the merchandising aids

To help you SELL

NATIONAL ADVERTISING . . . Goodyear's national advertising program is by far the largest in the industry. Every one of your customers is impressed and pre-sold by thousands of Goodyear sales messages every day, every week, every month through magazines, newspapers, radio, and television. These are the messages that help you sell more Goodyear products.

PROFIT TIPS . . . 5 times a year these publications are issued. Profit Tips provide you with a recommended sales and merchandising program for each peak sales period. It previews new selling aids, merchandising ideas and best-selling items to be featured during these peak seasons. Profit Tips are supplied at no charge.

TIRE MER-
CHANDISING CATALOG . . . manual is issued once a year. It

Goodyear tire line. It

In addition,

3308

...to wrap up the package deal

YOUR TBA INVENTORY

can be selected from the following list of high turnover T B A products supplied by Goodyear.

With Goodyear as the one, single source of T B A stock, you have one ordering procedure, one billing procedure, and one reliable re-order point.

Goodyear, the world's largest tire company, backs up its years of successful marketing through Oil Company outlets with assistance and counsel that pays off in profits for you.

Check the suggested T B A stock carefully; you can choose your stock with confidence.

HIGH GALLONAGE STATION

PASSENGER TIRES	DOUBLE EAGLE		NYLON CUSTOM				RAYON DELUXE				SUPER-CUSHION				MARATHON
	Tube-Type	Tubeless	Tube-Type		Tubeless		Tube-Type		Tubeless		Tube-Type		Tubeless		Tube-Type
	Rev.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Black
6.70-15	—	—	—	—	—	2	4	2	2	2	2	2	1	1	2
6.00-16	—	—	—	—	—	—	—	—	—	—	4	—	—	—	4
7.10-15	—	—	—	—	—	2	2	2	1	1	1	1	1	1	—
7.00-15	—	2	—	—	—	2	2	2	1	1	1	—	—	—	—
8.00-15	—	—	—	—	—	1	1	1	1	1	—	—	—	—	—
8.20-15	—	—	—	—	—	1	1	—	—	—	—	—	—	—	—
6.40-15	—	—	—	—	—	—	1	—	—	1	—	—	—	—	—

PASSENGER TUBES	Deluxe H. D. Black	LifeGuard Blowout Shields	TRUCK TIRES		Traction Hi-Miler Tubeless	Rib Hi-Miler	Grip Tread	Hi-Miler Commercial Tubeless	TRUCK TUBES	H. D. Black
6.00-16	6	—							6.00-16	2
6.25/6.50/6.70-16	2	—	6.00-16	6 Ply	—	2	—		6.50-16	4
6.00/6.40-15	2	—	6.50-16	6 Ply	1	2	2		7.00-15	2
6.50/6.70-15	6	2	6.70-15	6 Ply	—	—	—	2	7.50-16	1
7.10-15	6	2	7.00-15	6 Ply	1	2	—		7.00-20	1
7.00/7.60-15	6	2	7.50-16	6 Ply	—	1	—		7.50-20	1
8.00-15	6	2	7.50-20	10 Ply	—	1	—			
7.50/8.20-15	6	—								

AVERAGE GALLONAGE STATION

PASSENGER TIRES	NYLON CUSTOM				RAYON DELUXE				SUPER-CUSHION			
	Tube-Type		Tubeless		Tube-Type		Tubeless		Tube-Type		Tubeless	
	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.	Blk.	Rev.
6.70-15	—	—	—	2	2	2	1	2	1	1	1	1
6.00-16	—	—	—	—	—	—	—	—	2	—	—	—
7.10-15	—	—	—	2	2	2	1	1	1	—	1	1
7.00-15	—	—	—	2	2	2	1	1	—	—	—	—
8.00-15	—	—	—	—	—	1	—	1	—	—	—	—

PASSENGER TUBES	Deluxe H. D. Black	LifeGuard Blowout Shields	TRUCK TIRES		Traction Hi-Miler Tubeless	Hi-Miler Rib	Hi-Miler Commercial Tubeless	TRUCK TUBES	H. D. Black
6.00-16	6	—						6.00-16	2
6.25/6.50/6.70-16	2	—	6.00-16	6 Ply	—	2		6.50-16	4
6.00/6.40-15	2	—	6.50-16	6 Ply	—	2		7.00-15	2
6.50/6.70-15	6	—						7.00-16	1
7.10-15	4	2	6.70-15	6 Ply	—	—	2	7.50-16	1
7.00/7.60-15	4	2						7.00-20	1
8.00-15	2	—	7.00-15	6 Ply	2	—		7.50-20	1

AVERAGE GALLONAGE STATION

BATTERIES	Double Eagle	DeLuxe All Weather	All Weather	Special
Group 1	1	1	1	1
Group 2	1	1	—	—
Group 2L	—	1	—	—
Group 2F	—	—	1	—
Group 2E	—	—	1	—
Group 2N	—	1	—	—
Group 3EE	—	1	—	—
Group 24S	—	1	—	—
Group 60K	—	1	—	—

BATTERY CABLES	Insulated Cable	Ground Strap
G-12C	2	
G-14C	2	
G-19C	2	
G-22C	1	
G-27C	1	
G-31C	1	
G-38C	1	
G-7S		1
G-9S		1
G-13S		3
G-16S		1
G-23S		1

HIGH GALLONAGE STATION

BATTERIES	Double Eagle	DeLuxe All Weather	All Weather	Special
Group 1	2	4	1	1
Group 2	1	1	1	—
Group 2L	—	1	1	1
Group 2F	—	—	1	—
Group 2E	—	—	1	1
Group 2N	—	1	—	—
Group 3EE	—	2	—	—
Group 24S	—	1	—	—
Group 60K	—	1	—	—

BATTERY CABLES	Insulated Cable	Ground Strap
G-12C	4	
G-14C	4	
G-19C	2	
G-22C	2	
G-27C	2	
G-31C	2	
G-38C	2	
G-7S		2
G-9S		2
G-13S		6
G-16S		2
G-23S		2

WESTINGHOUSE AUTOMOTIVE LAMPS

		Av.	Sh-Cs.
Indicator #51	222-0102	10	20
Indicator, Instrument #53*	0165	10	10
Parking, Instrument #55	0102	20	20
Indicator, Marker, Instrument #57*	0108	10	10
License, Parking, Instrument #62	0104	20	20
Indicator, Marker, Instrument #67*	0128	10	20
Interior, Parking, Instrument #81	0129	10	10
Interior #82	0130	10	10
Interior, Signal #87	0106	10	10
Interior, #88	0105	10	10
Tail, Stop #1034*	0171	10	20
Turn Signal, Back Up #1073*	0168	10	10
Interior, Signal #1129	0110	10	10
Interior, Signal #1141*	0169	..	10
Stop, Tail #1154	0120	20	30
Stop, Tail #1158	0121	10	10
Dome, Step or Courtesy #1004	0173	10	10
Truck & Bus Replacement Chart	0159	1	1

FLASHLIGHT BULBS

Flashlight 2D Cells PR 2	22-0167	10	20
Flashlight 3D Cells PR 3	0168	10	10
Flashlight 3D Cells 13	0151	10	10
Flashlight 2D Cells 14	0152	10	10
Pen Light Bulb 222	0162	10	10

SEALED BEAM LAMPS

Headlamp #5040	222-0142	16	24
Headlamp #5400*	0143	8	16
12 Volt Lamps Westinghouse Wall Chart Passenger Cars	0149	1	1

BUSS AUTO FUSES

Contains the following:

Fuse 1 box (5 Fuses) AGA 3	222-1409		
Fuse 1 box (5 Fuses) AGC 10	1414		
Fuse 4 box (20 Fuses) AGC 30	1412		
Fuse 1 box (5 Fuses) AGC 15	1411		
Fuse 1 box (5 Fuses) SFE 7½	1418	1	1
Fuse 1 box (5 Fuses) SFE 4	1403	1	1*
Fuse 1 box (5 Fuses) SFE 6	1404		
Fuse 12 box (60 Fuses) SFE 9	1405		
Fuse 10 box (50 Fuses) SFE 14	1406		
Fuse 7 box (35 Fuses) SFE 20	1407		
Fuse 3 box (15 Fuses) SFE 30	1408		
Buss Fuse Asst.	-1421		

FLEXIBLE RADIATOR HOSE — GOODYEAR

Assortment	543-9002	1	1
Consists of the following:			
FH-2007	543-1001	3	
FH-2015	-1005	2	
FH-2407	-1011	1	
FH-2410	-1012	2	
FH-2413	-1013	2	
FH-2416	-1014	2	
FH-2806	-1021	2	
FH-2811	-1022	1	
FH-2813	-1024	1	
FH-2816	-1025	1	
FH-2818	-1026	1	
FH-2823	-1027	2	

Also includes a Chart, Set of Flexible Radiator Hose Rack Nos & 20 Hose Clips.

OIL FILTERS & ELEMENTS

A-C		Av.	Sh-Cs.
P-209 Element	222-3422	6	12
P-112 Element	3436	1	2
P-115 Element	3429	5	9
P-117 Element	3441	1	2
P-301 Element	3421	1	2
P-320 Element	3452	1	2
PF-210 Element	3455	4	8
PF-131 Element	3462	6	12
PF-336 Element	3463	2	4
P-316 Element	3427	4	8
P-303X Element	3439	1	2
PF-319 Element	3428	2	4
P-21 Element	3420	2	4
PF-122 Element	3431	5	9
P-127 Element	3432	3	6
C-231 Element	3425	1	2

Purolator			
PER 1/2 Filter	222-3303	1	2
P-34 Element	3305	5	10
P-37 Element	3306	1	2
P-51 Element	3317	3	4
PN-15 Element	3304	1	2
P-40 Element	3318	2	3
P-48 Element	3324	3	4
P-70 Element	3315	4	6
P-70FR Element	3308	1	2
P-82 Element	3316	1	2
P-124 Element	3320	3	4
P-125 Element	3321	2	3
P-76 Element	3323	2	4
P-131 Element	3332	6	12

A-C SPARK PLUGS

A-C Spark Plugs #48	222-2540	10	20
A-C Spark Plugs #48X	1297	10	20
A-C Spark Plugs #46-R	1263	30	40
A-C Spark Plugs #46-X	1296	20	30
A-C Spark Plugs #46	2524	10	20
A-C Spark Plugs #45-L	1265	20	30
A-C Spark Plugs #45	2523	30	40
A-C Spark Plugs #45-R	2502	10	20
A-C Spark Plugs #45-XLR	2503	10	10
A-C Spark Plugs #44-5	2525	30	40
A-C Spark Plugs #44	2522	10	20
A-C Spark Plugs #M-8	2536	10	20
A-C Spark Plugs #104	2533	10	10
A-C Spark Plugs #47-L	2545	10	10
A-C Spark Plugs #43-5	1262	10	10
A-C Spark Plugs #85-T	1277	10	20
A-C Spark Plugs #R-36	2506	10	10
A-C Spark Plugs #45-XL	2544	10	10
A-C Spark Plugs #43-L	1292	10	10

Commercial Types			
A-C Spark Plugs #44-5 Comm.	222-1264	10	10
A-C Spark Plugs #45 Comm.	1266	10	10
A-C Spark Plugs #44 Comm.	1267	10	10
A-C Spark Plugs #43-L Comm.	1292	10	10
A-C Spark Plugs #43-5 Comm.	1294	10	10
FM-24 Spark Plug Merchandiser	1246	1	1

STANT CLOSURE CAPS

		Av.	Bx-Qtd.
Stant Gas Caps, Radiator Caps — Display Merchandiser and Stock Assortment	222-1692	1	1
Consists of the following:			
Stant R-1 Under Hood Radiator Cap	222-1620	2	
Stant R-3 Under Hood Radiator Cap	1622	3	
Stant R-4 Under Hood Radiator Cap	1623	2	
Stant R-5 Under Hood Pressure Cap	1650	2	
Stant R-6 Under Hood Pressure Cap	1651	2	
Stant R-7 Under Hood Pressure Cap	1652	1	
Stant R-8 Under Hood Pressure Cap	1653	2	
Stant R-9 Under Hood Pressure Cap	1654	2	
Stant R-12 Under Hood Pressure Cap	1656	1	
Stant R-13 Under Hood Pressure Cap	1657	1	
Stant R-14 Under Hood Pressure Cap	1658	2	
Stant R-15 Under Hood Pressure Cap	1659	2	
Stant G70A Locking Gas Cap	1690	2	
Stant G-82 Locking Gas Cap	1684	1	
Stant G-73 Locking Gas Cap	1685	2	
Stant G20A Gas Cap	1683	6	
Stant G25B Gas Cap	1684	2	
Stant G-22 Gas Cap	1687	2	
Stant G-30 Fenderwell Gas Cap	1686	3	
Stant G-31 Fenderwell Gas Cap	1688	2	
Stant G35B Fenderwell Gas Cap	1687	2	
Stant G75B Locking Gas Cap	1691	1	
Stant Oil Filler Cap Assortment in Display Carton	222-1674	1	1
Consists of the following:			
Stant SO-61 Oil Filler Cap	222-1675	3	
Stant SO-62 Oil Filler Cap	1676	3	
Stant SO-63 Oil Filler Cap	1677	2	
Stant SO-64 Oil Filler Cap	1678	2	
Stant SO-65 Oil Filler Cap	1679	4	
Stant SO-66 Oil Filler Cap	1680	4	
Stant SO-67 Oil Filler Cap	1681	1	

Comparable Closure Cap Types also Available in AC.

FAN BELTS — GOODYEAR

#18 Fan Belt	520-1018	2	3
#60 Fan Belt	1060	2	3
#96 Fan Belt	1096	2	2
#450H Fan Belt	2450	2	2
#101 Fan Belt	1101	2	2
#76 Fan Belt	1076	2	2
#254 Fan Belt	1254	2	2
#32 Fan Belt	1032	2	2
#19 Fan Belt	1019	1	2
#467H Fan Belt	2467	1	2
#263 Fan Belt	1263	1	1
#402H Fan Belt	2402	1	1
#407H Fan Belt	2407	1	1
#258 Fan Belt	1258	1	1
#408H Fan Belt	2408	1	1
#404H Fan Belt	2404	1	1
#370 Fan Belt	1370	..	1
#406H Fan Belt	2406	..	1
#452H Fan Belt	2452	..	1
#460H Fan Belt	2460	..	1
#442H Fan Belt	1442	..	1
#403H Fan Belt	2403	..	1
#466H Fan Belt	2466	..	1
#3011H Fan Belt	3011	..	1
#3001H Fan Belt	3001	..	1

MIRRORS

		Av.	Bx-Qtd.
4½"Round Rear View Mirror	223-0824	2	3
Oblong Rear View Mirror	0814	2	3
Body Mount Mirror	0809	2	2
Rear View Mirror Display	0812	1	1
Body Mount Mirror	0826	2	3
Visor Vanity Mirror	0830	4	4

RADIATOR HOSE CLAMPS

Hose Clamp Assortment	223-4307	1	1
Consists of the following:			
⅝" to ¾" Hose Clamp	223-4301	20	
1" to 1¼" Hose Clamp	4302	20	
1¼" to 1⅝" Hose Clamp	4303	40	
2" to 2¼" Hose Clamp	4304	20	

HEATER HOSE

Heater Hose (50' roll)	846-3001	1	1

RADIATOR CHEMICALS

Warner Cooling System Protector	223-2380	6	12
Warner Liquid Solder	2381	6	12
Warner Radiator Dry Cleaner	2383	6	12
Warner Radiator Cleaner	2382	6	12
DuPont Cooling System Cleaner	2385	12	24
DuPont Fast Flush	2387		
DuPont Anti-Rust & Pump Lubricant	2386	12	24
DuPont Acid-Rust Inhibitor	2240	12	24
DuPont Cooling System Sealer	2384	12	24
DuPont Heavy Duty Sealer	2373	6	12
Mac's Cooling System Cleanser	2386	6	12
Mac's Stop Leak	2252	6	12
Mac's No. "13" Rust Preventive	2294	6	12

*Select Brand Popular in Your Trading Area.

CLEANERS, POLISHES & SUPPLIES

Simoniz Vista	223-2271	6	12
Simoniz Bodysheen	2122	6	12
Simoniz Paste Wax	2218	6	12
Simoniz Liquid Kleener	2217	6	12
Simoniz EZ-2 Chrome Cleaner	2213	6	12
Simoniz Liquid Bodygard	2223	6	12
Johnson "J" Wax	2265	6	12
Johnson Deep Gloss Carnu	2263	6	12
Johnson Car Plate Cleaner	2270	6	12
Johnson Car Plate Wax	2262	6	12
Johnson H D Cleaner	2250	4	6
Johnson Chrome Cleaner	2257	6	12
DuPont "7" Polish & Cleaner	2252	6	12
DuPont New Car Wax	2260	6	12
DuPont Dissolvo	2118	4	6
DuPont Cellulose Sponge	3014	6	12
DuPont Cellulose Sponge	3015	6	12
DuPont Car Wash	2202	4	6
Mac's Mild Blend Cleaner	2291	6	12
Mac's Special Cleaner	2296	6	12
Mac's "Resin Coat" Polish	2125	6	12
Mac's Super Gloss Car Wash	2298	6	12
Mac's Super Glaze Car Polish	2295	6	12
Goodyear Spot Remover	2208	6	6
Goodyear Tar Remover	2115	6	6

CLEANERS, POLISHES & SUPPLIES (Cont.)

			Av.	Bx-Gal.
Goodyear Chrome Cleaner	222-	2234	6	6
Goodyear Car Wash 6 oz.		2233	6	12
Goodyear White Side Wall Cleaner		2137	6	6
Rymplecloth		2228	12	24
All Purpose Polish Cloth		2148	6	12
Las Stik Polish Cloth		2225	6	12
Las Stik Polish Mitt		2227	6	12
Chamois 13" x 17"		4011	3	3
Chamois 20" x 26"		4006	3	3
Chamois 27" x 29"		4013	2	4

Select the brands most popular in your trading area.

EXHAUST EXTENSIONS

Jeweled Super Exhaust Deflector	222-0305	2	4
Tubular Exhaust Extension	0309	4	6
Turbo Jet Exhaust Deflector	0312	2	4
Downdraft Tubular Exhaust Extension	0313	2	4
Caprice Extension	0314	2	4

SEAT CUSHIONS

Fibre Cushion	222-3503	2	4
DeLuxe Wedge Cushion	3504	2	4
Shredded Foam Cushion	3510	2	4
Air Cool Seat Cushion	3509	3	6
Large Air Cooled Seat Cushion	3512	2	3
Air Cooled Cushion Display Rack	3513	1	1

ANCO WINDSHIELD WIPER ACCESSORIES

Windshield Wiper Blades			
Anco Super Service Clear Flex Blades — 9"	222-2882		
Anco Super Service Clear Flex Blades 10"	2883		
Anco Super Service Clear Flex Blades 11"	2884		
Anco Super Service Clear Flex Blades 12"	2885		
Anco Super Service Rainmaster Blades 8¼"	2887		
Anco Super Service Rainmaster Blades 9"	2888		
Anco Super Service Rainmaster Blades 10"	2889		
Anco Super Service Rainmaster Blades 11"	2890		
Anco Super Service Rainmaster Blades 12"	2891		
Anco Turtleback Blade — 12"	2895		
Anco Turtleback Blade Refills — 12"	2896		
Anco Clear Flex Blade Refills — 9"	2867		
Anco Clear Flex Blade Refills — 10"	2868		
Anco Clear Flex Blade Refills — 11"	2869		
Anco Clear Flex Blade Refills — 12"	2870		
Anco Washer Fluid (Ctn 12)	2875	1	1
Anco ¼" Wiper Hose — 90"	2897	1	1
Anco ¼" Wiper Hose — 50"	2898	1	1
Anco Servisella Portable Service Cabinet	2850	1	1
Wiper Arms			
Super-Service 6" — 10"	2903	4	6
Super-Service 10" — 14"	2904	6	8
Anco "Service Seller" Stand	2850	1	1
Without Stock	2939	1	1
Anco Big-Shot Windshield Washer		1	2

DOLE THERMOSTATS

Dole Sale Maker Assortment	222-31117	1	1

Consists of the following:

DVI	222-3101	Quantity 1
DVIH	3102	Quantity 3
DVF	3103	Quantity 2
DVFH	3104	Quantity 2
DV 2	3105	Quantity 1
DV 2 H	3106	Quantity 1
DV 3	3107	Quantity 1
DV 3H	3108	Quantity 1
DV 20	3129	Quantity 1
DV 20H	3130	Quantity 3

FLASHLIGHT BATTERIES

		Av.	Bx-Gal.
Size D Standard (Box 48)	23-0107	48	48
Size C Junior	0108	12	12
AA Penlite	0110	24	24

FRICTION & PLASTIC TAPE

#1 Friction Tape (Display — 32 rolls)	222-0341	1	1
#2 Friction Tape (Display — 16 rolls)	0342	1	1
#4 Friction Tape (Rolls only)	0343	6	12
#8 Friction Tape (Rolls only)	0344	2	4
Goodyear Plastic Tape ½" x 10' (Display — 18)	0345	1	1

FLOOR MATS

Protecto Mat 18" x 16" Blue	222-1532	2	2
Protector Mat 18" x 16" Green	1533	2	2
Protector Mat 18" x 16" Coral	1534	2	2
Protecto Mat 18" x 16" Black	1535	2	4
Twin Mats — Ebony Black	1536	1 pr.	2 pr.
Twin Mats — Sky Blue	1537	1 pr.	3 pr.
Twin Mats — Emerald Green	1538	1 pr.	3 pr.
Twin Mats — Coral	1539	1 pr.	2 pr.
Twin Mats — Blue Gray	1540	1 pr.	2 pr.
Twin Mats — Desert Tan	1541	1 pr.	2 pr.
Twin Mats — White	1542	1 pr.	2 pr.

BRAKE FLUID

Goodyear Moderate Duty Brake Fluid — 12 oz.	222-2220	12	24
Goodyear Moderate Duty Brake Fluid — Gal.	2237	1	1
Goodyear Heavy Duty Brake Fluid — 12 oz.	2131	12	24
Goodyear Heavy Duty Brake Fluid — Gal.	2134	1	1
Goodyear Heavy Duty Brake Fluid — 5 Gal.	2238		

FLASHLIGHTS

Flashlight & Battery Display Deal	23-0217	1	1

Consists of the following:

2 D.P Flashlight Batteries Size D	23-0107	48	
Jet Beam 2 Cell Junior Flashlights	0210	3	
Jet Beam 2 Cell Flashlights	0211	6	
Jet Beam 3 Cell Flashlights	0212	3	
Jet Beam Penlight (Display Card of 12)	0209	1	1
Flashlight Holders	0553	3	3

MISCELLANEOUS AUTOMOTIVE CHEMICALS

DuPont Multi Service Cleaner	222-2210	1	1
DuPont Gas Guard	4324	3	6
DuPont Clear Windshield Sealer	2110	3	6
Rugiyde Rubber Lubricant	4331	1	1
Las Stik Leather Cleaner	2140	3	6
Lock Ease Lock Fluid	4302	3	6
Door Ease Stick Lubricant (Box of 6)	4301	1	1
Flex-O-Fix (Ctn-12)	4308	1	1
Quickee Hand Cleaner	2261	2	4
Goodyear General Use Oil	4303	6	6

2960

GOOD SERVICE combined with the Goodyear TBA Plan gives you the key to full PROFITS

and now

3714

145

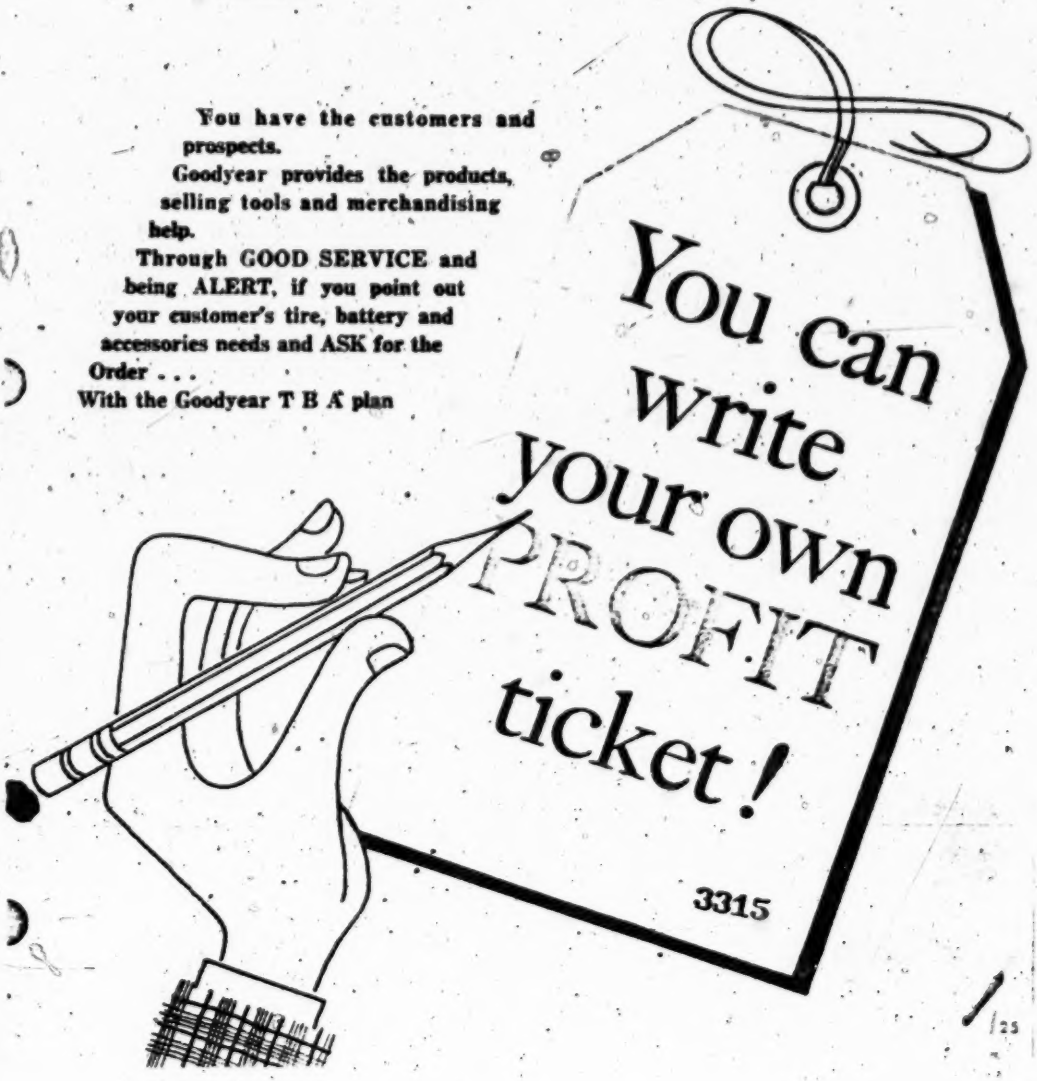
TO SIMILAR

You have the customers and prospects.

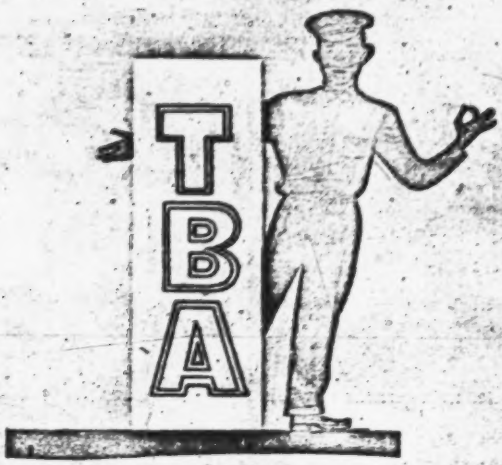
Goodyear provides the products, selling tools and merchandising help.

Through GOOD SERVICE and being ALERT, if you point out your customer's tire, battery and accessories needs and ASK for the Order . . .

With the Goodyear T B A plan



2962



THE GOODYEAR TIRE & RUBBER COMPANY, INC.
AKRON 16, OHIO

3316

3321 COMMISSION EXHIBIT NO. 250.

The Atlantic Refining Company
Incorporated—1870
Petroleum Products

M. G. Davis
Manager of Marketing
Eastern Pennsylvania Region

First and Penn Avenue
West Reading, Pa.

November 2, 1955

RM:GD
Lancaster & Ford Avenues
Wilmington, Delaware
#361-218

Mr. Morris A. Stein
Lancaster & Ford Avenues
Wilmington, Delaware

Registered Mail

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company, dated July 29, 1955, this is to inform you of a default(s) in compliance with Clause 3 (Purpose and Use Clause) of that lease.

You have not complied with item #1 of letter dated July 26, 1951 attached to your lease. This reads as follows:

"1—Housekeeping—Clean, sanitary premises inside and out."

You are further required that in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice to remedy this default(s), other-

wise you will not have complied with your lease obligations.

Yours very truly,
The Atlantic Refining Company
By: MGD
Regional Manager of Marketing

MGD:HS
bd: Mr. R. S. Zinn, Wilmington

3322 COMMISSION EXHIBIT NO. 251.

The Atlantic Refining Company
Incorporated—1870
Petroleum Products

M. G. Davis
Manager of Marketing
Eastern Pennsylvania Region

First and Penn Avenue
West Reading, Pa.

February 7, 1956

RM:MGD

Mr. Alfred R. Trivits
East Side Rt. #13 & Oak Lane
Laurel, Delaware

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company, dated June 21, 1955, this is to inform you of a default(s) in compliance with Clause 3 (Purpose and Use Clause) of that lease. You are in default with reference to the following standards set forth in our letter dated Jan. 6, 1955, which letter was attached to your original lease.

1—Housekeeping

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice to remedy this default(s), otherwise you will not have complied with your lease obligations.

Yours very truly,
The Atlantic Refining Company
By:.....
Regional Manager of Marketing

MGD:HS
CC: Mr. R. S. Zinn, Wilmington

3323 COMMISSION EXHIBIT NO. 252.

The Atlantic Refining Company
Incorporated—1870
Petroleum Products

M. G. Davis
Manager of Marketing
Eastern Pennsylvania Region

First and Penn Avenue
West Reading, Pa.

December 21, 1956

RM:MGD

Mr. William A. White, Sr.
205-09 French Street
Wilmington, Delaware

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company, dated Nov. 30, 1955, this is to inform you of a default(s) in compliance with Clause 3 (Purpose and Use Clause) of that lease. You are in default with reference to the following standards set forth

in our letter dated Dec. 20, 1955, which letter was attached to your original lease.

1—Housekeeping: Default in appearance of station

6—Hours of Operation: Location not open sufficiently long hours

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice to remedy this default(s), otherwise you will not have complied with your lease obligations.

Yours very truly,
The Atlantic Refining Company
By: M. G. Dodson
Regional Manager of Marketing

MGD:HS

3324 COMMISSION EXHIBIT NO. 253.

Registered Mail

May 2, 1955

Messrs. Abraham Berman & Horton Shor
Atlantic Service Station
Reisterstown Road and Fordleigh Lane
Baltimore, Maryland

Gentlemen:

In accordance with the terms of your lease with The Atlantic Refining Company dated January 27, 1955, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. You have not maintained a satisfactory standard of housekeeping.

2. From our observations, we note that hours of operation of your station are such that we believe that your marketing area is not being properly served.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,
H. M. Hathaway
District Manager

hmh/dv
cc: Mr. W. R. Holland

3325 COMMISSION EXHIBIT NO. 254-A.

Registered Mail

December 8, 1953

Mr. Michael J. Clifford
Park Heights and Garrison Avenues
Baltimore, Maryland

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated September 1, 1953, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. From observation, we note that your regular hours of operation are such that we believe your market area is not being properly served.

2. We also note from observations that inventories maintained in your station are not adequate to serve normal customer needs without delay.

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Cordially yours,

J. G. Burns,
District Manager.

jgb/dv
12-30-53

(The following notation in longhand is found at the bottom of this exhibit:)

The above conditions have not been corrected.

J. G. Burns.

3326 COMMISSION EXHIBIT NO. 254-B.

The Atlantic Refining Company
Petroleum Products
112 South Boulevard
Charlotte 1, N. C.

M. G. Davis
Manager of Marketing
Southern Region

January 4, 1954

IM-MGD
Park Heights & Garrison Aves.
Baltimore, Maryland
Station #523-???

Via Registered Mail
Return Receipt Requested
Mr. Michael J. Clifford
Park Heights & Garrison Aves.
Baltimore, Maryland

Dear Sir:

You are hereby notified that our service station lease dated September 1, 1953 is terminated effective today. Although there may be other grounds justifying this termination in accordance with the lease provisions, we are specifying particularly your failure to:

1. Maintain uniform daily operating schedule based on the buying habits of potential trade in the area.
2. Maintain adequate inventories to serve customer needs.

Yours very truly,
The Atlantic Refining Company,
By: _____
Regional Manager of Marketing.

nal

CC: Messrs. J. C. Burns
D. McMillen

3327 COMMISSION EXHIBIT NO. 255.

October 13, 1954

Mr. G. B. Gason-Niebling
Carlisle St. & Hunting Park Ave.
Phila. Pa.

Dear Mr. Gason-Niebling:

In accordance with the terms of your lease with The Atlantic Refining Company dated June 30, 1954, this is to inform you of the faults in compliance with the obligations imposed by that lease.

1. The standard of housekeeping maintained by you is deficient.

2. You do not maintain records adequate enough to reflect financial status and return from various phases of your business.

3. Your hours of operation are not consistent and are not in line with your neighborhood competition.

You are further reminded that, in accordance with the terms of your lease, you have 15 days from the day you receive this notice to remedy these faults; otherwise your lease will have been breached.

Cordially yours,

A. R. Sanporn
District Manager

E McC-mb
Registered Letter.

3328 COMMISSION EXHIBIT NO. 256A.

September 20, 1954

Registered Mail
Return Receipt
Mr. Albert J. Hoffman
1502 Tonnelle Avenue
North Bergen, N. J.

Dear Mr. Hoffman:

In accordance with the terms of your lease with The Atlantic Refining Company, dated April 1, 1954, this is to inform you of defaults in compliance with Clause 3 (Purpose and Use Clause) of that lease.

1. The standard of housekeeping established by Atlantic has not been maintained satisfactorily by you.
2. From our observations, we note irregular hours of operation of your station to the point that we believe your market area is not being properly served.
3. You are conducting a repair garage rather than a service station.
4. As a result of this repair work, there are numerous wrecks parked on the property.
5. You are using the premises for the sale of used cars.

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice to remedy these defaults, otherwise your lease will have been breached.

Yours truly,

The Atlantic Refining Company
/s/ Leslie Geer
Leslie Geer

LG:el

3329 COMMISSION EXHIBIT NO. 256B.

Copy

Law Offices
Bradley and Heck
7 Hillside Avenue
Tenafly, New Jersey

September 30, 1954

Atlantic Refining Company
1111 Delancy Street
Newark 5, N. J.

Attn: Mr. Leslie Geer

Dear Sir:

Your letter of September 20th, 1954 addressed to Mr. Albert J. Hoffman of North Bergen has been referred to me. After an investigation and inspection of the premises, we have come to the conclusion that there is no reasonable basis for your allegations of defaults under Mr. Hoffman's lease.

The standard of housekeeping appears to be good, and I understand that you have made no effort to take care of any maintenance work or painting of the premises, in spite of requests by the lessee to that effect. The allegation that he is conducting a repair garage is frivolous, as is the assertion that the premises are being used for the sale of used cars. The only used cars on the premises are those belonging to the lessee, and licensed in his name, and being used by him in connection with his business. It is possibly true that a customer's car may be parked here from time to time awaiting service, but I would hardly construe that as a breach.

I would suggest that a little cooperation from your

field representative would do a great deal to improve your company's relationships with this dealer. That angle might bear some looking into.

Very truly yours,

/s/ Stanley W. Bradley

B:B

3330 COMMISSION EXHIBIT NO. 256C.

Atlantic

Copy
B-765 11/53

Mutual Consent of Cancellation

For and in consideration of the sum of One Dollar ($1.00) in hand paid by each of the parties to the other, The Atlantic Refining Company, and Albert J. Hoffman of North Bergen, State of New Jersey hereby agree that their certain Lease Agreement dated March 11, 1954 affecting premises situated at 1502 Tonnelle Avenue in North Bergen County of Hudson State of New Jersey A. J. H. (Initialed in ink) shall by mutual consent expire as of November 15,-E.J. 1954, because .....

In Witness Whereof the parties hereto have duly executed this agreement as of the 15th day of November 1954.

The Atlantic Refining Company

Witnesses:
H. A. Millerick
E. J. Keierleber

By: J. O. Estlow
Regional Manager of Marketing
Albert J. Hoffman

3331 COMMISSION EXHIBIT NO. 257A.

The Atlantic Refining Company

November 12, 1953

Registered Mail PNJ:EMcC
(Return Receipt Requested)
Mr. Aniello L. Iacona
Providence Road and South Avenue
Secane, Pennsylvania

Dear Mr. Iacona:

In accordance with the terms of your lease with The Atlantic Refining Company, dated September 28, 1953, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. The standard of housekeeping maintained by you is deficient.
2. The efficiency of services performed at your station is not on a par with competition.
3. You have not met the minimum requirements for display.
4. Personnel are poorly trained.
5. You do not have a regular program for expanding sales, involving direct mail campaigns, personal solicitation, etc.
6. You do not maintain records adequate to reflect financial status and return from various phases of your business.

You are further reminded that, in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice, to remedy these defaults; otherwise, your lease will have been breached.

Very truly yours,

rmc

3332 COMMISSION EXHIBIT NO. 257B.

Copy

Law Offices
Catania & Gorbey
106 East Fifth Street
Chester Del. Co. Penna.
Phone Chester 4-4391

Francis J. Catania
James H. Gorbey

November 19, 1953

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Attention: A. R. Sanborn

Dear Sir:

Please be advised that I represent Mr. Aniello L. Iacona who operates the station at Providence Road and South Avenue, Secane, Pennsylvania.

Your tenant has handed me your letter of November 12, 1953 outlining six alleged deficiencies under his lease dated September 28, 1953.

I have investigated the facts set forth in your letter, and I have determined that the charges contained therein are without foundation. In fact, it appears that the real reason for the charges in your letter are based on my client's refusal to purchase T. B. A. supplies from Mr. Parris who appears to have a local monopoly on T. B. A. supplies and equipment.

If you persist in the conditions set forth in your letter of November 12, 1953, I shall be obliged to contact the federal authorities dealing with this type of monopolistic practices.

If you have anything further in reference to this case, will you kindly contact me and have your salesman refrain from annoying my client at his place of business.

Very truly yours,

/s/ Francis J. Catania
Francis J. Catania

FJC/c

3333 COMMISSION EXHIBIT NO. 257C.

November 25, 1953

Francis J. Catania, Esquire
106 East Fifth Street
Chester, Pennsylvania

Dear Sir:

The accusation that Atlantic is threatening lease cancellation to coerce your client into purchasing TBA from a designated source is rejected because

1. It has no basis in suit.
2. Atlantic has not, cannot, and will not coerce Dealers to do, or not to do, anything, at any time.

Perhaps the clearest proof that your client has mislead you lies in the fact that if he remedies, within the period of time designated in the lease, the specified deficiencies in his business performance existing at the time our September 28, 1953 warning letter was issued, the lease will not be cancelled. In fact, I am certain that if he even evidenced an honest intention to improve his business performance, Atlantic would gladly give him both opportunity and assistance.

Atlantic's position is simply this: Atlantic Dealers will lawfully and diligently carry on a first-class competitive service station operation or they will not be Atlantic

Dealers. We are confident that our policy and practice are one and the same—and entirely legal. It follows that our concern about informers, as well as threats from potential informers, is nil, as evidenced by the copies of this letter and your correspondence which have been sent directly to the Federal Trade Commission.

Very truly yours,

Legal Department

RDJ:lh

cc: Bartley T. Garvey, Esq.
Federal Trade Commission
Washington 25, D. C.

3334 COMMISSION EXHIBIT NO. 258A.

cc—Mr. R. D. Jackson
Mr. T. J. Breslin
Mr. W. D. Gaestel
Mr. W. B. Knapp

Registered Mail
Return Receipt
Mr. Thomas J. Policastro
Hudson Blvd. and 88th St.
North Bergen, N. J.

Dear Mr. Policastro:

In accordance with the terms of your lease with The Atlantic Refining Company, dated April 1, 1956, this is to inform you of defaults in compliance with Clause 3 (Purpose and Use Clause) of that lease.

1. The standard of housekeeping established by Atlantic has not been maintained satisfactorily by you.

2. From our observations, we note irregular hours of operation of your station to the point that we believe your market area is not being properly served.
3. You are conducting a repair garage rather than a service station.
4. As a result of this repair work, there are numerous discarded parts scattered over the station premises.
5. You have multilated Company property. Specifically, you cut two holes through the overhead door in the wash bay side of the station where we are informed you ran exhaust tubes from cars you were running inside the station.

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the day you receive this notice to remedy these defaults, otherwise your lease will have been breached.

Yours truly,

The Atlantic Refining Company

Leslie Geer.

3335 COMMISSION EXHIBIT NO. 258B.

June 4, 1956

Mr. Thomas J. Policastro
Hudson Blvd. and 88th St.
North Bergen, N. J.

Dear Mr. Policastro:

It was extremely gratifying to both Mr. Gaestel and myself to find your spirit of cooperation manifested in your having done such an outstanding job in cleaning your station and to hear you say you were not yet satisfied and were going to continue to improve it.

We were also pleased to receive your promise to operate your station under normal station hours.

I am sure that with this cooperation and our working together that your gallons will rapidly increase and you can be sure that we will do all within our policies to help you achieve this goal.

Sincerely,

Leslie Geer

LG:el

cc-Mr. R. D. Jackson
Mr. T. J. Breslin
Mr. W. D. Gaesstel
Mr. W. B. Knapp

3336 COMMISSION EXHIBIT NO. 259.

July 5, 1956

Mr. A. Bennett
Pawtucket and Ferris
Rumford 16, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated October 1, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not kept an adequate inventory on tires, batteries, and accessories to serve normal customer needs without delay.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company
District Manager

LEC:MEM

CC Messrs. T. A. Wagner
O. K. Schmid

3337 COMMISSION EXHIBIT NO. 260.

July 13, 1956

Mr. R. L. Bisson
469 Benefit Street
Pawtucket, R. I.

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated December 18, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have failed to maintain on a current basis records adequate to reflect financial status and return from various phases of your business.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company
District Manager.

LEC:MEM

CC Messrs. T. A. Wagner
O. K. Schmid

3336 COMMISSION EXHIBIT NO. 259.

July 5, 1956

Mr. A. Bennett
Pawtucket and Ferris
Rumford 16, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated October 1, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not kept an adequate inventory on tires, batteries, and accessories to serve normal customer needs without delay.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company
District Manager

LEC:MEM
CC Messrs. T. A. Wagner
O. K. Schmid

3337 COMMISSION EXHIBIT NO. 260.

July 13, 1956

Mr. R. L. Bisson
469 Benefit Street
Pawtucket, R. I.

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated December 18, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have failed to maintain on a current basis records adequate to reflect financial status and return from various phases of your business.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company
District Manager.

LEC:MEM

CC Messrs. T. A. Wagner
O. K. Schmid

3338 COMMISSION EXHIBIT NO. 261.

October 21, 1955

Mr. Charles Davis
West Shore Road & Carpenter St.
Warwick, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated January 1, 1954, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company
By.....
District Manager.

LEC/mw

Copy:—
T. S. Davis
O. K. Schmid

3339 COMMISSION EXHIBIT NO. 262.

April 1st, 1954

Mr. Herman DeFelice
c/o Herm's Atlantic Serv. Sta.
Willow & Nicoll Streets
New Haven, Connecticut

Dear Mr. DeFelice:

In accordance with the terms of your lease with The Atlantic Refining Company dated July 1, 1953, this is to inform you of defaults in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping in the rest room as revealed by the customer inspection report of March 23, 1954 wherein you scored 42%.

You have not maintained a satisfactory level of service on the driveway as revealed by the customer inspection report of March 23, 1954 wherein you scored 60%.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Very truly yours,

The Atlantic Refining Company
W. F. van Haagen,
District Sales Manager.

WFvH:vk

CC: H. W. Jollie
C. H. Pence

3340 COMMISSION EXHIBIT NO. 263.

February 21, 1956

Mr. Leo F. DiMaio
392 Broadway & Courtland Street,
Providence, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated July 7, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained clean, sanitary premises inside and out.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company,
District Manager.

LEC:MEM

CC Messrs. A. G. Lyle
O. K. Schmid

3341 COMMISSION EXHIBIT NO. 264

January 12, 1956

Mr. Howard F. Hambly
Atlantic Super Service
205 Meeting Street
Providence, Rhode Island

Dear Sir:

In accordance with the terms of your lease with the Atlantic Refining Company dated January 25, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Very truly yours,

The Atlantic Refining Company,
District Manager.

LEC:MEM

CC Messrs. A. G. Lyle
O. K. Schmid

3342 COMMISSION EXHIBIT NO. 265.

April 1st, 1954

Mr. Lawrence E. Noel
c/o Larry's Atlantic Serv. Sta.
Watertown & Bunker Hill Aves.
Waterbury, Connecticut

Dear Mr. Noel:

In accordance with the terms of your lease with The Atlantic Refining Company dated January 16, 1953, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping and station appearance as revealed by the customer inspection report of March 15, 1954 wherein you attained a station appearance score of 60.

You are further reminded that you have, in accordance with the terms of your lease, fifteen (15) days from the time you receive this notice in which to remedy the default specified above.

Very truly yours,

The Atlantic Refining Company,
W. F. van Haagen,
District Sales Manager.

WFvH/vk

CC: H. W. Jollie
C. H. Pence

3343 COMMISSION EXHIBIT NO. 266.

Registered Letter
Return Receipt Requested

July 27, 1956

Mr. J. D. Ouelette
Main & Bancroft Sts.
Springfield, Mass.

Dear Sir:

In accordance with the terms of your lease with the Atlantic Refining Company dated November 21, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

An inspection of the station on June 25th revealed the fact that the appearance of your service station was not in accordance with the standards of the Atlantic Refining Company.

You are further reminded that in accordance with the terms of your lease you will have fifteen (15) days from the time of receipt of this notice to remedy the default specified above.

Very truly yours,

The Atlantic Refining Company
R. P. Eldridge

RPE:eah

cc: Mr. Euart

3344 **COMMISSION EXHIBIT NO. 267.**

February 21, 1956

Mr. Joseph S. Smith
Hartford Avenue & Killingly Street
Providence, Rhode Island

Dear Sir:

In accordance with the terms of your lease with The Atlantic Refining Company dated March 22, 1955, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained uniform daily operating schedule based on buying habits of potential trade in the area.

You are further reminded that in accordance with the terms of your lease you will be expected to correct this and you will be visited from time to time to see that you have remedied the default specified above.

Yours very truly,

The Atlantic Refining Company

District Manager

LEC:MEM

CC: Messrs. A. G. Lyle
O. K. Schmid

3345 **COMMISSION EXHIBIT NO. 268A.**

5 November 1954
A:K:LMB

Registered Mail
Return Receipt Requested

Mr. Joseph D. Greco
Culver Parkway and Shelford Road
Irondequoit, New York

Dear Mr. Greco:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated July 17, 1953, this is to inform you of a default in compliance with the obligations imposed by that lease. You have violated Clause 13 of said lease which does not permit absentee operation.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the default specified above.

Yours very truly,

Regional Manager of Marketing

jap

bcc: J. C. Funck
A. C. Walker
J. S. Wall
R. E. Glendening

3346 COMMISSION EXHIBIT NO. 268B.

Culver Parkway and Shelford Road
Rochester, New York

November 10, 1954

The Atlantic Refining Company
120 West Genesee Street
Syracuse 1, New York
Attention: G. V. Ostrander

Dear Sir:

Please be advised that there has been substantial compliance with the obligations of the lease with Atlantic Refining Company, Inc., dated July 17th, 1953 on my part, to be performed.

You are further advised that I herewith tender my sixty (60) days notice of termination pursuant to said lease agreement.

If you so desire, I will train a new man to replace me for either 60 or 90 days or more if required.

Very trulys yours,

Joseph D. Greco

3347 **COMMISSION EXHIBIT NO. 269.**

January 5, 1955

Mr. Duane Olthof
Atlantic Service Station
502 Broadway
Elmira, New York

Dear Mr. Olthof:

In accordance with the terms of your lease with The Atlantic Refining Company dated June 1, 1954, this is to inform you of a default in compliance with the obligations imposed by that lease.

You have not maintained a satisfactory standard of housekeeping.

You are further reminded that in accordance with the terms of your lease, you have fifteen (15) days from the time you receive this notice in which to remedy the default specified above.

Very truly yours,

The Atlantic Refining Company,
incorporated
W. J. McCambridge, Jr.
District Manager

WJM/ak

bc: Messrs. G. V. Ostrander
J. C. Funck

3348 COMMISSION EXHIBIT NO. 270A-B.

bcc: J. C. Funck
H. J. Van Nortwick
J. S. Walf
R. E. Glendening

11 January 1955

Registered Mail
Return Receipt Requested

Mr. Walter F. Pawloski & Mr. Matthew W. Kowalski
d/b/a Walt & Matt's Service
Bailey Avenue and Genesee Street
Buffalo, New York

Gentlemen:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated June 3, 1954, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. From our observation, the hours of operation at your station are limited to the point where we believe your market is not being properly served. This was previously brought to your attention in our warning letter of November 19, 1954.
2. You are not rendering the services required for the businesslike operation of a first-class service station.
3. You have no regular program for expanding sales, which involves direct mail campaigns, personal solicitation and advertising, to secure the market potential in your area.

4. You have not maintained adequate and competent manpower to properly serve your trade.

5. You have not maintained a satisfactory standard of housekeeping.

You are further reminded that in accordance with the terms of your lease, you are fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,

/s/ G. V. Ostrander
Manager of Marketing

jap

3349

19 November 1954

A:K:LMB

Registered Mail
Return Receipt Requested

Mr. Walter F. Pawloski & Mr. Matthew W. Kowalski
d/b/a Walt & Matt's Service
Bailey Avenue and Genesee Street
Buffalo, New York

Gentlemen:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated June 3, 1954, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. From our observations, the hours of operation at your station are limited to the point where we believe your market is not being properly served.

2. You are not using the leased premises with reasonable care, and are not keeping the premises in an orderly condition.

3. You are not rendering the services required for the businesslike operation of a first-class service station.

4. You have no regular program for expanding sales, which involves direct mail compaigns, personal solicitation and advertising, to secure the market potential in your area.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,

/s/ John S. Wall
Acting Manager of Marketing

jap

bcc: J. C. Funck
H. J. Van Nortwick
J. S. Wall
R. E. Glendening

3350 COMMISSION EXHIBIT NO. 271.

30 June 1954

A:K:LMB

92-98 Broadway
Saranac Lake, New York

Registered Mail

Mr. Kenneth S. Shaw
92-98 Broadway
Saranac Lake, New York

Dear Mr. Shaw:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated April 23, 1954, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. You have not maintained the premises in a clean and orderly condition.
2. You have not maintained adequate booking records.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,

/s/ J. S. Wall
Acting Manager of Marketing

jap

bc: J. C. Funck
G. L. Weber
J. S. Wall
W. J. McCambridge

3351 **COMMISSION EXHIBIT NO. 272.**

30 August 1954

A:K:LMB

230 Elizabeth Street
Utica, New York

Registered Mail

Mr. Joseph A. Stocco
230 Elizabeth Street
Utica, New York

Dear Mr. Stocco:

In accordance with the terms of your lease with The Atlantic Refining Company, incorporated, dated January 28, 1954, this is to inform you of defaults in compliance with the obligations imposed by that lease.

1. You have not maintained the premises in a clean and orderly condition.
2. You have not maintained a safe station.

You are further reminded that in accordance with the terms of your lease you have fifteen (15) days from the time you receive this notice in which to remedy the defaults specified above.

Yours very truly,

/s/ G. V. Ostrander
Manager of Marketing

jap

bcc: J. C. Funck
R. H. Gillum
J. S. Wall
W. J. McCambridge

3352 **COMMISSION EXHIBIT NO. 274.**

(Letterhead of The Atlantic Refining Company, Philadelphia 1, Pa.)

October 14, 1954

Mr. John Chambers
Chester Pk. & Clifton Ave.
Sharon Hill, Pa.

Dear John:

Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

This is the kind of job which makes us all very happy and certainly is an important factor in running a profitable service station.

Keep up the good work!

Cordially yours,

(Illegible)

3354 **COMMISSION EXHIBIT NO. 277.**

June 16, 1950

Mr. S. J. Heideman
Manager, T. B. A. Sales
The Atlantic Refining Company
Philadelphia, Pennsylvania

Dear Mr. Heideman:

It was my understanding when you inaugurated the test on tires and other T. B. A. Products that it was to be conducted on an equitable basis. In the beginning of the test, we had a little difficulty in determining the buying price of some of your dealers and on a few, I will admit,

we extended longer discounts than they should have received. However, this has been corrected.

I find now that Firestone in Erie has reclassified some of the dealers there into a larger volume bracket than originally was set up by you. We have been maintaining your program and now find ourselves in a position where our prices are not in line with those being offered by Firestone.

I was of the impression, also, where dealers wanted to continue to handle Lee Tires through us it would be allright for them to do so and we could still have our identification on those locations, however, I find that even though the dealers continue to handle our tires their stations are identified with competitive signs. For instance, in the Newark District our identification is being taken down and Goodyear will be erected even though the dealer still wants to handle Lee Tires.

I personally do not think these are instructions put out by you or your General Office and am of the opinion there may be a misunderstanding as far as your District Offices are concerned.

I am calling this to your attention only with the thought in mind that you have mentioned to me on several occasions that this test would be conducted on an equitable basis.

Very truly yours,

W. F. Hinderscheid

wfh:a

3356 COMMISSION EXHIBIT NO. 278.

Messrs. Hinderscheid
Pettingell
Segur

Monthly Sales to Atlantic Refining Accounts In Newark District

	$ Sales		Pass. Tires		Truck Tires		Pass. Tubes		Truck Tubes	
	Month	Acc.	Month	Acc.	Month	Acc.	Month	Acc.	Month	Acc.
arles W. Krieg Company										
June										
July	7,378.74		676		8		178		—	
Aug.	7,064.60		467		4		253		4	
Sept.	5,632.08		391		8		66		—	
Oct.	2,917.47		152		20		6		—	
Nov.	5,272.61		194		7		20		—	
Dec.	2,809.67	31,075.17	178	2,058	3	50	68	591	5	18
w York Branch										
June	123.91		6		—		36		—	
July	224.09		14		1		—		—	
August	268.27		12		—		18		—	
Sept.	470.36		23		—		24		—	
Oct.	142.76		10		—		—		—	
Nov.	103.66		5		—		—		—	
Dec.	58.78	1,391.83	4	74	—	1	—	78	—	—
oral Park Branch										
June	43.65		1		—		2		—	
July	101.63		8		—		4		—	
August	215.06		3		—		35		—	
Sept.	183.43		11		—		3		—	
Oct.	——		—		—		—		—	
Nov.	——	543.77	—	22	—		—		—	
Dec.	——		—		—	—	—	44	—	—
tal Lee Sales to A. R. Co. Accounts Newark District										
June	167.56		7		—		38		—	
July	7,704.46		698		9		182		—	
Aug.	7,547.93		481		4		306		4	
Sept.	6,285.87		425		8		93		—	
Oct.	3,060.23		162		20		6		—	
Nov.	5,376.27		199		7		20		9	
Dec.	2,868.45	33,010.77	182	2,154	3	51	68	713	5	18
49 A. R. Co. Sales Based On 13.7% Regional Sales (Last 6 Mos. 1949)										
June	11,336.85		989		41		955		30	
July	8,419.71		778		37		780		32	
Aug.	10,686.00		1,020		43		850		29	
Sept.	9,999.56		892		45		697		31	
Oct.	5,385.19		427		30		342		20	
Nov.	9,820.39		929		33		697		15	
Dec.	7,173.83	62,821.53	592	5,627	27	256	536	4,857	22	179

D. R. McAvoy
3/7/51

3358 COMMISSION EXHIBIT NO. 279A.

To: Messrs. Hinderscheid
McCreery
Segur

This will complete the record for Atlantic's test districts up to the date of the cancellation of their contract with the whole company; therefore, this will be the final issue.

H. K. P.
H. K. Paxson

PG

3360 COMMISSION EXHIBIT NO. 279B.

Messrs. Hinderscheid
McCreery
Segur

Month by Month Sales to Atlantic Refining Co. Acct's In Erie District

	Sales to A. R. Co. Accounts		
	No. of Accounts Sold in Month	$ Sales	
Erie Branch			
April	6	211.16	
May	33	4,806.91	
June	42	6,400.34	
July	54	9,738.89	
August	55	14,258.39	
September	49	8,183.06	
October	47	9,455.76	
November	37	4,122.96	
December	37	5,592.21	
January	40	5,512.52	
February	32	3,897.36	
To Date Erie	75	72,179.56	
Youngstown Branch			
April	1	172.62	
May	2	700.23	
June	4	2,841.36	
July	5	5,198.13	
August	2	2,702.23	
September	3	497.28	
October	4	1,011.30	
November	5	3,372.98	
December	5	5,194.92	
January	3	982.58	
February	—	—	
To Date Youngstown	5	22,673.73	
Combined Total Erie and Youngstown Branches Sales to A. R. Co. Accounts In Erie District			* 1949-50 A. R. Co. Sales in Erie District
April	7	383.78	9,017.02
May	35	5,507.24	12,215.11**
June	46	9,241.70	13,260.80**
July	59	14,937.02	11,747.14**
August	57	16,960.62	13,108.27**
September	52	8,680.34	9,868.95**
October	51	10,467.06	8,211.04**
November	42	7,495.94	10,043.30**
December	42	10,787.13	7,913.49**
January	43	6,495.10	6,881.79**
February	32	3,897.36	6,349.60**
To Date Both Branches	80	94,853.29	1949-50 Total

**10 Mos. 99,599.39
11 Mos. 108,616.41

*Based on 26.66% sales Western Penna. Region first 6 Months 1949.

H. K. Paxson
3/16/51

3362 COMMISSION EXHIBIT NO. 279C.

Lee Tire & Rubber Company
of New York, Inc.,
Conshohocken, Pa.

Final Report.

Month by Month Sales to Atlantic Accounts in Wilmington District.

	Wilmington Branch Sales		1949 Atlantic Refining Sales
	No. of Accts. Sold	$ Sales	Based on 12% Region Sales (first 6 Months 1949)
March	17	$ 1,541.78	
April	46	3,708.10	$ 7,317.26
May	48	8,306.46	9,033.84
June	47	4,461.88	9,078.78
July	38	5,480.65	8,423.90
August	43	9,732.47	8,908.63
September	41	7,302.92	7,058.21
October	31	5,960.41	6,683.14
November	21	2,808.42	7,921.76
December	28	4,270.23	7,526.75
January	30	3,017.71	4,627.87
February	27	2,903.91	3,542.23
Total	92	$59,694.94	$80,120.37

Messrs. Hinderscheid
Segur
Niedringhaus

H. K. Paxson
4/2/51

3364 **COMMISSION EXHIBIT NO. 279D.**

Messrs. Hinderscheid
Pettingell
Segur

Monthly Sales to Atlantic Refining Accounts in Newark District.

	$ Sales Month	$ Sales Acc.	Pass. Tires Month	Pass. Tires Acc.	Truck Tires Month	Truck Tires Acc.	Pass. Tubes Month	Pass. Tubes Acc.	Truck Tubes Month	Truck Tubes Acc.
harles W. Krieg Company										
June										
July	7,378.74		676		8		178		—	
Aug.	7,064.60		467		4		253		4	
Sept.	5,632.08		391		8		66		—	
Oct.	2,917.47		152		20		6		—	
Nov.	5,272.61		194		7		20		—	
Dec.	2,809.67		178		3		68		5	
Jan.	5,101.96		133		30		196		—	
Feb.	2,475.03	$8,652.16	76	2,267	14	94	151	938	12	30
ew York Branch										
June	123.91		6		—		36		—	
July	224.09		14		1		—		—	
August	268.27		12		—		18		—	
Sept.	470.36		23		—		24		—	
Oct.	142.76		10		—		—		—	
Nov.	103.66		5		—		—		—	
Dec.	58.78		4		—		—		—	
Jan.	139.04		2		—		24		—	
Feb.	274.66	1,805.53	15	91	—	1	—	102	—	—
oral Park Branch										
June	43.65		1		—		2		—	
July	101.63		8		—		4		—	
August	215.06		2		—		35		—	
Sept.	183.43		11		—		3		—	
Oct.	——		—		—		—		—	
Nov.	——		—		—		—		—	
Dec.	——		—		—		—		—	
Jan.	——		—		—		—		—	
Feb.	——	543.77	—	22	—	—	—	44	—	—
otal Lee Sales to A. R. Co. Accounts Newark District										
June	167.56		7		—		38	—	—	
July	7,704.46		698		9		182		—	
Aug.	7,547.93		481		4		306		4	
Sept.	6,285.87		425		8		93		—	
Oct.	3,060.23		162		20		6		—	
Nov.	5,376.27		199		7		20		9	
Dec.	2,868.45		182		3		68		5	
Jan.	5,241.00		135		30		220		—	
Feb.	2,749.69	41,001.46	91	2,380	14	95	151	1,084	12	30
49 A. R. Co. Sales Based on 13.7% Regional Sales (Last 6 Mos. 1949)										
June thru Dec.		62,821.53		5,627		256		4,857		179
Jan.	4,975.11		442		21		201		25	
Feb.	4,274.89	72,071.53	316	6,385	23	300	369	5,427	16	220

H. K. Paxson
4/11/51

3366 COMMISSION EXHIBIT NO. 280.

Lee Rubber & Tire Corporation
Conshohocken, Pa.

February 16, 1951

Memorandum For
Lee Operating Staff
Messrs. Brasaemle
Garthwaite, Jr.
Hinderscheid
Leach
Nellen
Pouchot

The Atlantic Refining Company, for a number of years, has operated a Tire, Battery and Accessory Sales Department which has marketed Lee Tires, Exide Batteries and other accessories to Atlantic dealers and jobbers.

Under this arrangement Lee Branches and Sales Organization refrained from selling any Atlantic dealers or jobbers and also refrained from soliciting other oil outlets in the Atlantic area, which covered somewhat spottedly the entire Eastern Seaboard from Maine to Florida.

Atlantic has their marketing area divided into six regions. They have been experimenting in one district each in three regions on a program of eliminating the own T.B.A. Sales Department and made arrangements with two major tire companies to directly solicit by the tire company salesmen and sell, ship and bill the Atlantic Company stations, dealers and distributors. The two major tire companies carried the accounts with the dealers and distributors, serviced the accounts out of their branches or warehouses and paid a commission to Atlantic for the

business done. This is a program that two or three of the major rubber companies have had in force for several years with certain oil companies.

In a meeting with the Atlantic management this week they advised us that some of their regional managers preferred this commission or override deal to direct marketing and some preferred the direct marketing method. Atlantic management advised us of this and asked whether we would be willing to modify our contract so that the regions which preferred the commission or override deal could put it in force and the regions that preferred the direct marketing method on Lee could continue the same as heretofore.

Careful study of this proposal was considered by me and in view of our friendly relations with Atlantic and the current tire situation prevailing it was mutually agreed to terminate our contract arrangements now, which frees our branches and sales organization to solicit direct not only Atlantic dealers and jobbers, but also other oil chains, dealers and jobbers in the above mentioned area.

A. A. Garthwaite
President

cc: Conway
Dollison
Ikirt
Ingersoll

3368 COMMISSION EXHIBIT NO. 281A-B.

Sales Meeting -

February 19, 1951

1. Atlantic Refining Co. contract cancelled effective March 1, 1951. Atlantic will handle Goodyear and Firestone tires, batteries and accessories on override commission:

10%—Sales to dealers
7½%—Sales to distributors
5%—On certain accessories

Goodyear

Philadelphia & Suburban Region
New York Region
New England Region

Firestone

Eastern Pennsylvania Region
Western Pennsylvania Region
Southern Region

We will start to solicit Atlantic accounts immediately.

2. Letter to all Atlantic Dealers on John Anthony's list of those receiving drop shipments:

Suggestions:

a. Atlantic has discontinued direct sale of TBA merchandise

b. We understand that they have made a deal with Goodyear and Firestone by which they will receive commission on all sales to their dealers and distributors

c. Atlantic dealers and distributors are free to handle Lee Tires and other accessories once bought through Atlantic

d. We can handle dealers and distributors direct

e. Post card enclosed

3. Letter to Branch Managers.

Suggestions:

a. Hold salesmen's meeting

b. Concentrate on Atlantic accounts

c. Talk about override commission

4. Regional Sales Managers hold Branch Managers meetings immediately

5. Additional business will be handled as follows:

a. Through branches already established in the Atlantic marketing area.

1. Allocations will be increased but additional tires must go to Atlantic Refining Co. accounts

3370 2. Atlantic accounts to be keyed "AR" on purchase report

3. Regional Sales Managers will supervise closely

b. Through new branches, tentatively, as follows:

Region #1 Providence
Hartford
Rochester
Syracuse
(Schenectady through Albany)

Region #2 Wilkes-Barre

Region #3 Charlotte

Region #4 Altoona
West Virginia

Region #5 Jacksonville

c. Messrs. Harbaugh and Thompson will "bird dog" locations for Mr. Pettingell in Region #1.

d. Factory will be prepared to organize branches as soon as located (Harbaugh, Thompson and Anderson available)

e. Regional Sales Managers will contact Atlantic Personnel in their regions regarding jobs

f. Regional Sales Managers and/or Branch Managers should contact all large Atlantic accounts immediately. Mr. Anthony can supply names

6. Available list of accounts being prepared for Regional Sales Managers, Branch Managers and Salesmen.

7. Check on all accounts once sold by Lee transferred to Atlantic

8. Push Batteries and all accessories to Atlantic dealers

9. Strengthen sales organization

3372 COMMISSION EXHIBIT NO. 282A.

Lee Tire & Rubber Company
of New York, Inc.
Conshohocken, Pennsylvania

February 20, 1951

To All Atlantic Dealers:

The Atlantic Refining Company has discontinued the direct sales of tires, batteries and accessories from their home office and divisions, to Atlantic dealers. This means that we can now fill your requirements for Lee Tires, Tubes and other products, such as Lee Batteries, directly from our Factory Branches located in your area.

This move will be of great help to you and to your customers. It will mean prompt service and deliveries, and

real assistance from our men who are trained in tire sales and in helping dealers sell tires to their customers.

We know that you have been satisfied Lee Tire customers in the past and we know that your customers have also been satisfied—not only because of the superiority of our products, but also by virtue of the Lee Tire Road Hazard Guaranty, which enables you to make any necessary adjustments on the spot.

Our company wants to serve you in every way possible and we believe that under this new set-up both you and your customers will be more pleased with Lee Products and Service.

We would also like to remind you that you are free to handle any products of your choosing. If anyone insists that you discontinue Lee products in preference to some other make, we suggest you contact us.

It will be appreciated if you will fill out the attached post card and send it to us today so that we can have one of our representatives call on you without delay.

Very truly yours,

W. F. Hinderscheid
Vice President in Charge of Sales

3374 COMMISSION EXHIBIT NO. 282B.

First Class
Permit No. 3
Sec. 34.9, P. L. & R.
Conshohocken, Pa.

Business Reply Card
No Postage Stamp Necessary If Mailed in United States

2c — Postage Will Be Paid By —

W. F. Hinderscheid
Vice President
Lee Tire & Rubber Company
of New York, Inc.
Conshohocken, Pennsylvania

Dear Mr. Hinderscheid:

Yes, I want to continue selling Lee Tires and would like to have your representative call on me as soon as possible.

☑ Dealer

☐ Distributor

Name

Street Address

City State

3376 COMMISSION EXHIBIT NO. 283A.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pa.

February 21, 1951

Cincinnati Branch
Columbus Branch
Louisville Branch
Memphis Branch
Dallas Branch
Ft. Worth Branch
New Orleans Branch

We attach hereto copy of a letter being mailed today to all branches in the Lee-Atlantic dual marketing area.

We feel that you should be familiar with this situation even though you are not directly concerned by it.

We see no reason for discussing the contents of the letter with people in your organization or with people outside of the organization, except, of course, to answer any direct questions.

A. G. P. Segur

AGPS:rk

cc: Messrs. Hinderscheid
Anthony
Pettingell
Niedringhaus
Foraker
McCreery
Riddick

3378 COMMISSION EXHIBIT NO. 283B-C.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pa.

February 21, 1951

To All Branch Managers:

Effective March 1, 1951 our tire marketing agreement with the Atlantic Refining Company has been cancelled by mutual consent.

Over the past several years Atlantic has been reducing their TBA sales expense and concentrating virtually all of their sales efforts on the various petroleum products which they manufacture. Last April they tested the Goodyear and Firestone Petroleum Sales Program with their dealers and distributors in three Districts. Under this program the Atlantic Refining Co. received a commission on sales to dealers and distributors in these Districts, and all of the sales effort, billing, deliveries, etc. of TBA merchandise was handled by the tire company servicing the particular district.

In the past few days they decided to extend this program to other districts and our Company felt that in view of the lack of aggressive sales effort behind their tire and tube program, we did not care to modify their contract beyond the three preliminary test districts, and accordingly it was mutually agreed that the contract would be cancelled.

This action means that it will be necessary for us to sell, through our branch and distributor sales organization, the tires which, over the past seventeen years, have been sold both by our organization and the Atlantic Refining Co. This is a real opportunity and a challenge, and we

have complete confidence that our sales organization is able to take full advantage of the opportunity offered, and to meet the challenge directly.

The Regional Sales Managers have already made arrangements for meetings with their branch organizations, but there are some points which we feel must be emphasized to our Managers and Salesmen. The additional tires which will be made available to our branches must go to new business, and most, if not all, of this new business, will be accounts formerly serviced by the Atlantic Refining Co.

We must take over our share of these accounts if we are going to hold our position in the branch and distributing marketing area. We know that you can take all the tires we can ship you and give them to accounts which you are already selling, but if this is done we will lose the expansion of our branch sales which must take place.

Accordingly, we must insist that each one of our branches in the former Atlantic-Lee dual marketing area, take on enough former Atlantic service accounts to offset the loss of direct Atlantic business.

For your information, the deal Atlantic has made with Goodyear and Firestone will be broken down as follows:

Goodyear	Atlantic Phil. & Suburban Region
	Atlantic New York Region
	Atlantic New England Region
Firestone	Atlantic Eastern Pennsylvania Region
	Atlantic Western Pennsylvania Region
	Atlantic Southern Region

Under this deal Atlantic will receive from Goodyear and Firestone a commission of 7½% on sales to Atlantic jobbers and distributors and 10% on sales to Atlantic 3380 dealers. You and your salesmen must understand this arrangement, since it unquestionably will be discussed with the Atlantic accounts that you are contact-

ing. We think that these accounts will be interested to know that Atlantic receives this substantial commission for what, on the surface, appears to be no effort on their part.

It is quite obvious that Atlantic is expected to put pressure on their dealer and distributor organization, to handle either Goodyear or Firestone Tires in return for this commission. It must be made clear to Atlantic dealers and distributors that they cannot be forced to handle any merchandise, aside from Atlantic petroleum products, which they do not care to handle. There are numerous Court decisions on this subject, and while we fully appreciate the fact that there will be pressure brought to bear on them by Atlantic, the dealer can and should resist this pressure where he wants to handle Lee Tires, Tubes, Batteries, etc.

While the cancellation of the Atlantic agreement was made effective March 1, we will start to solicit Atlantic dealers and distributors immediately upon receipt of this letter. You probably already know the more important Atlantic accounts in your territory and, of course, these should be contacted first. Any information which you may require from time to time can be obtained from your Regional Sales Manager or from the factory Sales Department, and any information which you feel we should have should be forwarded without delay. Speed is of the essence, and you must get your entire sales organization hitting the ball without any delay whatsoever.

Until further notice we want a close record kept of all shipments to Atlantic accounts. This means a record of unit tire and tube shipments and the dollar volume, exclusive of Federal Excise Tax. Identify Atlantic dealers on the monthly purchase reports by the symbol "AR".

We have a partial list of Atlantic accounts which has been made up from the names sent to us on drop shipment orders, and these are being prepared for each branch, and

will be forwarded just as quickly as possible. However, you don't have to wait for the list, to start your efforts. We are mailing a letter to this list today, copy of which is attached. Check the classified section of your local telephone directory for the names of additional Atlantic accounts.

Mr. Anthony is working on allocations for this business, and this information will be given to you as soon as available.

We suggest that any orders you accept from Atlantic accounts be for delivery after March 1.

/s/ A. G. P. Segur
A. G. P. Segur

AGPS:rk

cc: Messrs. Hinderscheid, Pettingell, Niedringhaus, Foraker, McCreary, Riddick, Anthony, Lee, Touey, Niles, Warring

3382 COMMISSION EXHIBIT NO. 284A-B

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Penn.

February 26, 1951

Mr. F. C. Iringer, New York
Mr. R. P. Polson, Boston
Mr. S. A. Copeland, Buffalo
Mr. G. S. Thompson, Albany

1. By now you all have the Atlantic Program.
2. We feel that it is best to judge what an Atlantic Account has been getting to dove-tail it into ours.
3. For example their—

1 to 84 tire units would be our Pick-up Dealer at Franchise.

85 to 149 tire units would be our #1 Franchise less 5%.

150 to 399 tire units would be our #2 Franchise less 5-2½%.

400 to 749 tire units would be our #3 Franchise less 10%.

750 or more tire units would be our #4 Franchise less 10-2½%.

They have, as you have seen in their program, a 5% for direct factory shipment on orders for 10 or more tires (or 200 lbs. min.). Purchases limited to two orders a month. It should be noted that where it is practical, this 5% could be eliminated, if it could be done cheaper from a Branch, and with the scarcity of tires, long delays might become necessary as partial shipments might be necessary from a Branch, rather than from the factory.

Please Note: They use the words "Confidential Dealer Cost". This actually is our Franchise—printed on white paper with black ink.

On their program 1% to 5% on "Wholesale", we must check this carefully, for it could have been abused in the past.

Actually what we want to do is to get on the Lee Program and dove-tail their dealers into it. For example, a large account, say $10 to $15 thousand could qualify for our #3 deal of . . .

2½—10% from Franchise on Passenger Tires
5 —10%, and Special 5% on Truck Tires

We want to eliminate all of the direct factory shipments possible, as the factory shortage will cause delays, and will also confuse the special allotment for Atlantic Dealers.

Smaller accounts qualifying for less than our #3 deal should fall into the proper place.

They have had an extra 7½% to some Truck Tire Dealers, as against our Special 5% Truck Tire discount. I feel that 5%, with the market as it is, is sufficient.

Messrs. Garthwaite and Hinderscheid feel that a real test of loyalty of an Atlantic Dealer who is going along with us is that he put up at least one Decal and one Lee Sign, and by all means take on our Battery, and give you an order for a supply of Batteries.

3384 Allocations for Atlantic business, I assume are on the way, and we have a job to do—and do well—by keeping all records accurately that have been requested by the factory. This is serious business, boys, and I am depending on you to do a job.

We will, as I told you, open branches as soon as possible in Syracuse, Hartford and Providence, and they will be opened in this order. In the meantime, your sales force, regardless of their regular duties, must get on this Atlantic solicitation aggressively. When cards are sent to you (showing interest on the part of Atlantic Dealers) get on the job quickly.

I will be "all over the lot" for a while, but don't fail to contact me on anything that you are not clear on.

Very truly yours,

/s/ H. L. Pettingell
H. L. Pettingell

HLP:H

cc: Mr. Hinderscheid
Mr. Segur
Mr. Anthony

3386 COMMISSION EXHIBIT NO. 285.

March 5, 1951.

Mr. E. N. Fiffick.
Mr. H. J. McGinn, Jr.
Mr. J. F. Bartley
Mr. J. A. Simpson

In analysing salesmen's reports on their calls on Atlantic accounts and with other information that we have, we are doubtful that any of the #2 type stations will stay on Lee tires. Because these stations are leased from Atlantic, some on a month-to-month basis, others on 90 days or longer basis, they are not in a position to take an independent stand and as a result will probably find it expedient to handle Firestone tires.

In the meantime, they will probably not be able to get Firestone tires and get set up with the stock for several weeks. They will be inclined to kid you along in order to get tires from us. It looks to me as though there are going to be plenty of Atlantic distributors and independent dealers who are in a position to go along with us and we cannot afford to take chances with any doubtful #2 stations.

I would caution your salesmen to be very careful before giving tires to those types of stations. We already insist that any Atlantic station continuing with our line must put up and leave up, our identification signs.

This, however, is not the answer to the problem. Many of these stations are already identified by Lee signs and it will probably be several weeks before an effort is made to replace them with Firestone signs so the assurance that our signs will be left up should not be accepted as a criterion but the salesman should carefully analyse the account and make up his own mind as to its possibilities of becoming a permanent Lee account.

Some of these dealers have drop shipment orders in with us now and of course, are anxious to get these tires. Where there is any doubt as to their permanency, have the salesman notify us as we will cancel the drop shipment and cancel the order on hand.

Sincerely,

E. W. McCreary

EWK:McC

cc: Messrs. Hinderscheid, Segur

3388 COMMISSION EXHIBIT NO. 286A.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pa.

March 5, 1951

Regional Sales Managers
& Branch Managers

We attach hereto copy of Atlantic Refining Company's letter of March 1, 1951, which is, in effect, a statement of Atlantic's TBA policy. We particularly call your attention to the last sentence of paragraph 3, which states, "However, your acceptance or rejection of the program is a matter of your own choice."

This should make it clear that Atlantic will permit those dealers and distributors who wish to do so, to continue to handle Lee Tires and other accessories independent of the Firestone or Goodyear program.

In this connection we should point out that this attitude on the part of Atlantic reflects recent Court decisions on the subject of oil company domination of their dealers and distributors, including leased outlets. However, we should also point out that there may be some effort on the part

of Atlantic's individual salesmen and District Managers to apply pressure on their organization to follow Atlantic's sponsored program. The dealer or distributor who states that he wishes to continue to handle our products certainly is allowed to do so under this letter, and should be willing to resist any local pressure to do otherwise.

We want to again remind you of the necessity for carefully screening former Atlantic accounts before diverting tires to them during this period of shortages. We believe that there may be considerable delay in getting Atlantic's new TBA program going, and that in the interim period Atlantic accounts will be desperate in their efforts to secure our tires, or for that matter, anybody elses tires. This screening must be done at the local branch level, and will require extreme discretion on the part of you and your salesmen. We think that one of the best yardsticks to determine an Atlantic account's sincerity in his expressed desire to handle Lee Tires and Tubes, is his willingness to be identified as a Lee Tire outlet. Naturally there can be no iron-bound set of rules established to gauge a dealer's sincerity, but we think this is one which merits very careful consideration.

A. G. P. Segur

AGPS:rk

cc: Messrs. Hinderscheid, Garthwaite, Lee, Anthony, Rooney, Leach, Limbert, Pouchot, Warring, Tauey, Niles

3390 COMMISSION EXHIBIT NO. 286B.

The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pa.

March 1, 1951

A Statement Of
Atlantic's T.B.A. Policy

Dear Sir:

The Atlantic Refining Company recognizes the trend of the motoring public to depend more and more upon the modern service station as a source of supply for tires, batteries, and accessories. Therefore, we are interested in making available that TBA line which will meet fully the needs of the public and our dealers, since we feel it will mean increased sales of our petroleum products.

The new TBA plan was adopted after a long and thorough study which had the sole purpose of finding out what sales program would mean the greatest sales and profits to the dealer. We found that the dealer could best serve the interests of the public when he was supplied through the extensive distribution system of a major tire company.

Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. However, your acceptance or rejection of the program is a matter of your own choice.

Atlantic's growth is dependent upon your opportunity and ambition to expand and succeed. We offer this new TBA plan to you because we sincerely believe it will make your sales and profits grow through better TBA service to your customers.

Cordially,

D. T. Colley

3392 COMMISSION EXHIBIT NO. 287.

Lee Tire & Rubber Company
of New York, Inc.
Conshohocken, Pennsylvania

National Accounts

E. W. McCreery
Vice President

March 16, 1951.

Mr. J. A. Simpson	Mr. H. R. Stephens
Mr. H. J. McGinn, Jr.	Mr. R. L. Druien
Mr. S. D. McPeak	Mr. J. F. Bartley
Mr. A. H. Allen	Mr. E. N. Fiffick

As a general thing, we are receiving very few Dealer Contracts on either tires or batteries. It makes me wonder whether we are bothering to sign up a contract with the dealers or not.

In those territories where Atlantic operated, we should be signing a lot of new contracts as we decide to do business with these Atlantic dealers and distributors.

I wrote you previously that we must, in all cases, have a contract, especially on these Atlantic accounts, as well as other new accounts so that the dealer feels that he has a contract or obligation that may prevent him, morally, from signing a contract later with Firestone or some other competitor.

A contract also provides for identification which we also insist upon, especially with Atlantic dealers. Why is it that we do not get more Dealer Contracts if we are making progress in developing new accounts for the future on both batteries and tires.

Wish each of you would drop me a line and let me know just what you are doing about it.

Sincerely,

E. W. McCreery

EWM:McC

cc: Messrs. Hinderscheid
Segur

3394 COMMISSION EXHIBIT NO. 288A-B.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pennsylvania

Confidential August 3, 1951

Regional Managers
And Branch Managers

I am attaching hereto copy of letter I wrote to Mr. D. T. Colley, Vice-President in Charge of Sales of The Atlantic Refining Company and also his reply. I want you to keep these letters for your personal guidance. I do not want copies made of them for circulation.

The most important part of the letter received from Mr. Colley is that portion in the third paragraph which reads "it is, of course, proper for those dealers that choose to handle Lee to identify this with signs appropriately placed at the point of display" and also that part in the last paragraph which reads "bring these dealers' names directly to the Regional Manager in whose territory the situation develops, he will see that one of our sales representatives calls on the dealer with one of your representatives and explains our position thoroughly".

Our course of action should be as follows: wherever you anxious to do business with us but is having trouble in

find a good dealer handling Atlantic products that is keeping his location identified with Lee decals or Lee signs, you should then refer such name of dealer with address to your Regional Manager. He in turn will take the matter up with the Regional Manager of The Atlantic Refining Co. who will appoint a representative to visit such dealer with you. That is, we do not want to leave this up to our salesmen. We want the Branch Manager to personally visit the dealer with the Atlantic representative. We want to keep this on a Regional Manager level up to the point where a representative of Atlantic is appointed to visit the dealer with our Branch Manager.

In identifying dealers handling Atlantic products, we should place our signs or decals in similar position to where such stations are identified with either Goodyear or Firestone signs.

We have received some complaints from our Branch Managers where Atlantic dealers were identified with Lee identification and this identification was removed by either Goodyear, Firestone or Atlantic representatives. This was the reason we took the matter up directly with the Vice-President in Charge of Sales of The Atlantic Refining Company and the result is the answer attached hereto.

Therefore, it is entirely up to our Branch Managers to see to it that any dealers handling Atlantic products who are anxious to continue handling Lee products are properly identified and where there is trouble in getting the identification up due to our competitors or representatives of The Atlantic Refining Company, these stations should be called to the attention by writing to your Regional Manager.

3396 It is absolutely necessary that these particular cases are screened and we are sure that the dealer wants to handle our products and wants his place of business to be properly identified with Lee identification. I am

sure if the dealer handling Atlantic products tells his story to our Branch Manager and the Atlantic representative that the entire matter can be handled very satisfactorily.

If there is anything in this letter that is not absolutely clear to you, get in touch with your Regional Manager immediately.

For the information of the Branches and Regional Managers, I am giving you below the names of the Regional Managers of The Atlantic Refining Company and their addresses:

Regions #3 and #5

Mr. H. H. Ingersoll, The Atlantic Refining Co.
1112 South Boulevard, Charlotte, N. C.

Region #4

Mr. B. M. Boor, The Atlantic Refining Co.
Chamber of Commerce Bldg., Pittsburgh, Pa.

Region #2

Mr. W. J. Griffiths, The Atlantic Refining Co.
1st & Penn Sts., W. Reading, Pa.
(Eastern Pennsylvania)

Mr. J. O. Estlow, The Atlantic Refining Co.
260 S. Broad Street, Philadelphia, Pa.
(Phila. & Suburban and New Jersey)

Region #1

Mr. G. V. Ostrander, The Atlantic Refining Co.
411 Savings Bank Bldg., Syracuse, N. Y.

Mr. H. W. Jollie, The Atlantic Refining Co.
430 Hospital Trust Bldg., Providence, R. I.

W. F. Hinderscheid

WFH:A

c Messrs. Garthwaite
Lee
Paxson
Segur

3398 COMMISSION EXHIBIT NO. 288C.

July 31, 1951

Mr. Dwight Colley
Vice President In Charge of Sales
The Atlantic Refining Company
Philadelphia, Pennsylvania

Dear Mr. Colley:

I regret it is necessary to write to you in order to bring to your attention the pressure being exerted on some dealers handling Atlantic Gasoline to discontinue the sale of Lee Tires and Tubes.

This is brought out very vividly by the tactics used by some people in your sales organization. We have received numerous complaints from dealers that have been handling Lee products along with Atlantic Gasoline and Motor Oil for quite a number of years. They have built up a very sizeable volume of business on Lee tires and tubes; they have many satisfied customers whom they have been serving for quite a number of years and from information I personally get from some of them, they have made a very nice profit on the sale of Lee Tires and Tubes.

Although we have had a large number of complaints about the practices used by your sales organization and also some of our competitors, which we are told have been brought about by the sanction of some of your District Managers, we did not feel inclined to say anything to you about it because it was more or less general. However, I have some specific instances here which I think you should definitely know about as I am sure from what you, Mr. Neall and Mr. Heideman told Mr. Garthwaite and I last February, it was not the intention of the Management of The Atlantic Refining Compa to force dealers handling Atlantic products to use a particular brand of tire to which the dealer objected.

I am attaching a copy of a memorandum I received from one of the Executives in our sales organization which definitely mentions several locations and which I am sure you will be pleased to know about.

After you have had an opportunity of checking into the above, I would appreciate hearing from you as to whether or not you have issued definite instructions to your sales organization or to some of our competitors to remove Lee identification from dealer locations.

Very truly yours,

W. F. Hinderscheid

WFH:A

3400 COMMISSION EXHIBIT NO. 288D.

August 2, 1951

Mr. W. F. Hinderscheid
Vice-President in Charge of Sales
Lee Tire & Rubber Company
Conshohocken, Penna.

Dear Mr. Hinderscheid:

Thank you for your letter of July 31. I am certainly glad you wrote to me so frankly.

I am sure that our organization understands fully just what our position is on TBA. We want the dealers to choose the TBA that they want to sell, but we are using all proper sales steps to put before our dealers the advantages of handling either the Goodyear or Firestone line.

You have worked with The Atlantic Refining Company long enough to know our rules regarding the display of unauthorized signs at our service stations. We only permit certain signs displayed in approved manner on the service

stations which we own. It is, of course, proper for those dealers that choose to handle Lee to identify this with signs appropriately placed at the point of display.

I know of no way to settle this problem to your satisfaction except that as you find dealers who make the statement that we will not permit them to handle Lee tires if you will bring these dealers' names directly to the Regional Manager in whose territory the situation develops, he will see that one of our sales representatives calls on the dealer with one of your representatives and explains our position thoroughly.

Very truly yours,

/s/ D. T. Colley

DTC da

3402 COMMISSION EXHIBIT NO. 288E.

Lee Tire & Rubber Co.
of New York, Inc.
Conshohocken, Pa.

July 25, 1951.

Mr. W. F. Hinderscheid:

Re: Atlantic Stations' Identification

We would like to know definitely what Atlantic's policy is on station identification so that we can adjust our activities accordingly. The following incidents will indicate the reason for this request:

We have advised our branches in Pittsburgh, Altoona and Erie, Pennsylvania that all Lee contract dealers should identify their place of business with Lee signs and during the past six or seven weeks we have erected a large number of signs on these stations, however, in the Pittsburgh

area, for example, a Firestone truck has been visiting Atlantic stations and tearing down our signs.

Oskin Service Station, First & Hamilton, Duquesne, Pa., and Howard Hess, West Street, Homestead, Pa. were recently identified with Lee signs but the Firestone truck's crew tore these signs down saying they were under instructions from the Atlantic Refining Company to remove Lee identification and install Firestone.

Both of these dealers protested that they were stocking Lee tires and wanted to leave the Lee signs up but as these were #2 type stations, they felt, after considerable argument, that they were required to go along with this procedure.

Another incident: Sharro Atlantic Service, Smithport, Pa., which is in the Erie district, had a Lee decal on his door. During an absence from his station, Atlantic Refining Company salesman Fred Bauman removed this decal. There was considerable discussion about it between the dealer and Bauman but Bauman said it was the policy of Atlantic, and the dealer, although he still handles Lee tires, is afraid to replace the decal.

We have several dealers in Western Pennsylvania area, particularly in Erie territory, who are stocking our tires and doing a good job for us but state that they are afraid to show any Lee identification on their place of business because of the policy of the Erie office. We would like some clarification on Atlantic's policy and particularly to know whether Firestone have the authority to take down Lee signs from Lee contract dealers' places of business.

E. W. McCreery

EWM:McC
cc: Mr. Paxson

(Admitted against Atlantic only to show filing of complaint and not the truth of the facts stated.)

3404 COMMISSION EXHIBIT NO. 289.

Lee Tire & Rubber Company of New York
Conshohocken, Pennsylvania

August 6, 1951

Regional Managers
& Branch Managers

Since writing the attached letter on Friday, I found that Atlantic dealers operating stations controlled by Atlantic can be identified only by one brand of tire and one brand of battery.

In other words, an Atlantic leased station can either be identified by Goodyear or Firestone or Lee or some other brand, but not more than one.

The same applies to batteries. If the stations are identified with Exide batteries, they cannot be identified with Goodyear or Firestone batteries.

I found, also, that their leased stations are not identified by Firestone unless there is an identification order signed by the dealer. In the case of Goodyear, when they sign up for a Goodyear Franchise, Goodyear is automatically permitted to identify that location.

It is very important to keep this in mind as we certainly do not want to make accusations in regard to identification unless they can be definitely backed up.

W. F. Hinderscheid

WFH:A

c.Messrs. Garthwaite
Lee
Paxson
Segur

3406 COMMISSION EXHIBIT NO. 290A.

Lee Tire & Rubber Company of New York, Inc.
Conshohocken, Pennsylvania

August 6, 1951

Mr. M. G. Foraker
Mr. E. W. McCreery
Mr. P. E. Niedringhaus
Mr. H. L. Pettingell
Mr. J. L. Riddick

Attached is information relative to sales made to AR and DAR accounts for the months of March, April, May and June by branches in your Region, showing the number of accounts, volume of business we received, percentage of dollar business each branch did compared with the total dollar volume for the entire branch and the number of tires allocated to the AR and DAR accounts out of the total individual branch allocation.

You can readily see what progress has been made, the number of accounts sold by months and also where the spots are weak and where aggressive work should be done.

I think this is an opportune time to again advise your Branch Managers that they and their Salesmen should again make a complete solicitation of dealers handling Atlantic products. These dealers have now had sufficient time to determine the advantages or disadvantages of handling either Goodyear or Firestone tires. They have had sufficient time to make a comparison of the treatment and service they have received from these companies. By this I mean attention for new sales channels, adjustments, acceptance, etc.

I am sure that some of these accounts that went along with Goodyear or Firestone did so upon the advice from

Atlantic and also upon information they received from meetings held by Atlantic, Firestone or Goodyear and it is our opinion that the majority of these accounts that did give Firestone and Goodyear a trial have found they were considerably better off when they were handling Lee products.

With the market beginning to loosen up and more tires being available, we should again put on an extensive drive to sign up dealers handling Atlantic products. I think, also, that the Branch Manager should get out with his salesmen more and call on Atlantic accounts, especially the good ones, as I am sure that in our haste to solicit these accounts last February and March we were skeptical about some and over-looked others. I know a few accounts in particular we had an opportunity to take on but did not because our salesmen felt the Atlantic account would interfere with an account we had already set up. We were also skeptical as to whether or not some of these Atlantic dealers would continue to do business with us when the tire shortage is over. I feel that by a complete solicitation at this time, any account we would sign up now would be serious about handling Lee tires and tubes and will go along with us in the future.

85

	No. Accts. Sold			No. Accts. Sold				
Albany	2	1,408	4,364	2	837	2,610	2,245	7,114
Boston	6	7,119	14,221	22	1,960	23,715	1,991	90,[illegible]
Buffalo	26	3,875	8,875	[illegible]	4,151	8,[illegible]38	[illegible]	15,[illegible]
Hartford	11	6,476	16,[illegible]	9	[illegible]	11,175	11,[illegible]	27,937
New York	2	279	2,451	5	3,537	10,[illegible]05	3,[illegible]	17,456
Providence	20	7,[illegible]	2[illegible],117	19	9,662	40,[illegible]	[illegible]	[illegible]
Syracuse	36	8,442	12,732	43	16,[illegible]	22,9[illegible]	[illegible]	[illegible]
Siding (April)	10	979	17,489	-	-	-	[illegible]	[illegible]
TOTAL #'s	113	36,574	126,033	107	52,677	116,0[illegible]1	[illegible]	[illegible]
% of Total Fire Sales		13.[illegible]			[illegible].6		[illegible].6	
$ Unit Sales, Fee Accts.							[illegible]	
Albany	2	716	[illegible],380	3	1,444	3,[illegible]54	[illegible],[illegible]0	[illegible]
Boston	7	2,784	21,[illegible]09	17	1,657	[illegible],372	[illegible],[illegible]61	55,377
Buffalo	26	4,682	13,[illegible]09	[illegible]	[illegible],985	9,[illegible]32	[illegible],[illegible]17	22,9[illegible]
Hartford	30	5,412	20,[illegible]74	[illegible]	[illegible],[illegible]53	17,[illegible]2	[illegible],[illegible]65	37,[illegible]32
New York	1	30	1,683	7	1,618	11,[illegible]23	1,[illegible]59	13,[illegible]
Providence	19	3,725	23,742	15	[illegible],716	29,[illegible]99	21,9[illegible]	53,[illegible]
Syracuse	37	8,323	24,[illegible]45	59	15,518	48,[illegible]05	23,[illegible]1	72,[illegible]
Siding (May & June)	15	2,940	19,[illegible]89	-	-	-	1,[illegible]40	19,[illegible]89
TOTAL #'s	135	27,114	127,147	111	38,211	154,[illegible]52	[illegible],[illegible]25	281,[illegible]99
% of Total $ Fire Sales							26.5	
$ Unit Sales, Non Accts.							[illegible]6	

COMMISSION EXHIBIT NO. 290D

3035

FAY 1951 - AR & 24R AGENTS

	No. Agents Sold	Month	Cum.	No. Agents Sold	Month	Cum.	Month	Cum. (3 Mos.)
REGION #2								
Allentown	33	3,673	12,665	4	724	3,991	4,397	16,656
Bryn Mawr	24	3,603	14,281	-	-	1,342	3,603	15,623
Camden	15	4,682	15,880	10	2,354	4,971	7,036	20,851
Harrisburg	19	6,278	27,432	1	1,744	3,988	8,122	31,250
Morristown	32	5,007	18,752	-	-	1,683	5,007	20,435
Philadelphia	37	4,424	22,330	27	6,457	15,464	10,881	37,974
Reading	37	12,[illegible]	37,968	2	328	766	12,941	38,734
Wilkes-Barre	15	4,775	13,466	15	5,834	14,195	10,609	28,861
Wilmington	26	4,[illegible]32	26,[illegible]29	6	6,129	13,041	10,981	37,970
York	15	1,[illegible]96	5,625	3	3,678	8,734	4,774	13,959
TOTAL #2	353	51,[illegible]685	192,788	68	27,266	69,286	78,331	269,083
% of Total 4 Tire Sales		16.3			8.7		25.0	
% Unit Alloc. Raw Accts.							44.4	

MAY 1951 - AR & AR AGENTS

Allentown	27	4,317	17,582	5	1,381	5,322	6,228	22,904
Bryn Mawr	34	3,515	17,795	-	-	1,382	3,515	19,177
Camden	16	4,925	20,045	10	1,653	4,654	6,608	26,699
Harrisburg	24	7,283	35,015	1	1,074	4,474	8,358	39,489
Morristown	24	3,650	22,402	-	-	1,683	3,650	24,085
Philadelphia	36	5,182	27,292	37	6,752	22,216	11,934	49,508
Reading	36	13,840	51,789	3	190	995	14,030	52,784
Wilkes-Barre	11	2,933	16,599	21	7,303	23,498	10,236	44,097
Wilmington	34	5,356	30,284	-	-	13,041	5,356	43,325
York*	19	1,904	9,129	1	1,197	9,531	3,101	18,660
TOTAL #2	261	53,005	265,792	78	19,512	88,736	72,517	354,528
% of Total 4 Tire Sales							22.6	
% Unit Alloc. Raw Accts.							45.2	

*Rel. to /s by distr. 67 tires

COMMISSION EXHIBIT NO. 290E.

30136

[illegible] 1953 - All & Day Accounts

	$ Sales - All			$ Sales - Day			$ Sales Year to Date All & Day Accounts 1950-1	
	No. Accts. Sold	Month	Cum.	No. Accts. Sold	Month	Cum.	Month	Cumulative (4 Mos.)
[illegible] (1)								
Baltimore	21	4,292	22,897	3	417	1,050	4,[illegible]	23,9[illegible]
Charlotte	27	12,456	50,[illegible]	1	1,[illegible]	1,[illegible]	14,[illegible]	52,5[illegible]
Norfolk	24	13,303	44,[illegible]	-	-	-	13,[illegible]	46,[illegible]
Spartanburg	11	2,991	31,[illegible]	2	[illegible]	4,[illegible]	3,191	35,[illegible]
Washington	13	6,032	30,111	-	-	-	6,[illegible]	30,1.1
TOTAL (5)	96	39,274	181,253	6	2,640	7,203	43,[illegible]	186,556
% of Total ! Tire Sales							No. -.1	
% Unit Alloc. Tire Accts.								

COMMISSION EXHIBIT NO. 2804 30039

	Accts. Sold	Month	Cumula.	Accts. Sold	Month	Cumula.	Month	Cumulative
[redacted]	-	-	-	-				
[redacted]	34	5,413	24,600	-			5,413	24,6
Pittsburgh	14	6,013	8,145	-	-	-	6,013	8,145
Youngstown	2	646	10,297	2	111	111	757	10,408
TOTAL A&	70	14,072	48,942	2	111	111	14,183	45,053
% of Total) Tire Sales		9.9					912	
% Unit Alloc. New Accts.							7.1	

APRIL 1951 - AK & PA ACCOUNTS

Altoona	45	17,283	17,283	1	762	762	[illegible]	18,045
Erie	40	5,[illegible]	29,462	-	-	-	[illegible]	29,972
Pittsburgh	33	10,001	18,146	-	-	-	10,001	28,146
Youngstown	2	439	10,[illegible]	1	83	193	521	10,389
TOTAL A&	120	33,033	76,025	2	845	956	[illegible]	76,[illegible]
% of Total) Tire Sales		16.9			[illegible]		17.[illegible]	
% Unit Alloc. New Accts.							27.9	

MAY 1951 - AK & PA ACCOUNTS

Altoona	30	13,17[illegible]	30,477	7	3,268	4,010	[illegible]	34,487
Erie	38	4,[illegible]	34,585	-	-	-	[illegible]	34,585
Pittsburgh	48	11,05[illegible]	29,202	2	1,447	1,447	12,[illegible]	30,649
Youngstown	2	779	11,494	-	-	[illegible]	779	11,[illegible]
TOTAL A&	138	29,[illegible]	105,758	9	4,[illegible]	5,[illegible]	[illegible]	[illegible]
% of Total) Tire Sales		19.8			[illegible]		[illegible]	
% Unit Alloc. New Accts.							[illegible]	

JUNE 1951 - AK & PA ACCOUNTS

Altoona	41	14,520	[illegible],997	11	[illegible],[illegible]	4,058	[illegible]	51,[illegible]
Erie	39	[illegible]	[illegible],997	-	-	-	[illegible]	[illegible]
Pittsburgh	47	13,[illegible]	42,388	-	-	[illegible],447	[illegible]	43,835
Youngstown	2	[illegible]	11,[illegible]40	-	-	194	[illegible]	12,[illegible]
TOTAL A&	139	34,[illegible]	140,222	11	[illegible],[illegible]	9,[illegible]	[illegible]	149,[illegible]
% of Total) Tire Sales							[illegible]	
% Unit Alloc. New Accts.							[illegible].3	

[redacted]

	No. Accts. Sold			No. Accts. Sold				
REGION #5								
Atlanta	2	1,[illegible]	1,832	-	-	-	1,[illegible]	
Jacksonville	12	6,113	6,113	1	3,717	3,717	9,[illegible]	
Miami	4	5,019	5,019	-	-	-	5,019	
TOTAL #5	18	12,964	12,964	1	3,717	3,717	16,[illegible]	16,[illegible]
% of Total 5 Tire Sales		9.3			2.7		[illegible]	
% Unit Alloc. Rec Accts.							[illegible]	
APRIL 1971 - A4 & DAR ACCOUNTS								
Atlanta	4	2,223	4,855	-	-	-	2,[illegible]	
Jacksonville	11	5,643	11,[illegible]	8	10,[illegible]	10,[illegible]	14,[illegible]	
Miami	11	9,379	11,[illegible]	9	7,[illegible]	7,[illegible]	14,[illegible]	
TOTAL #5	26	17,245	30,[illegible]	17	17,[illegible]	17,[illegible]	30,[illegible]	30,[illegible]
% of Total 5 Tire Sales		10.7			11.1		[illegible]	
% Unit Alloc. Rec Accts.							[illegible]	
MAY 1971 - A4 & DAR ACCOUNTS								
Atlanta	3	1,453	5,[illegible]	-	-	-	1,[illegible]	
Jacksonville	12	9,491	21,[illegible]	17	14,[illegible]	20,[illegible]	[illegible]	
Miami	17	5,[illegible]	24,[illegible]	15	8,[illegible]	15,[illegible]	10,[illegible]	
TOTAL #5	32	21,114	51,323	32	28,[illegible]	44,[illegible]	14,[illegible]	35,[illegible]
% of Total 5 Tire Sales		12.0			13.0		[illegible]	
% Unit Alloc. Rec Accts.							[illegible]	
JUNE 1971 - A4 & DAR ACCOUNTS								
Atlanta	1	322	6,[illegible]	-	-	-	[illegible]	
Jacksonville	11	6,919	28,[illegible]	33	15,[illegible]	15,[illegible]	[illegible]	
Miami	11	3,[illegible]	27,[illegible]	33	8,[illegible]	23,[illegible]	11,[illegible]	
TOTAL #5	23	10,761	62,[illegible]	66	[illegible]	[illegible]	[illegible]	
% of Total 5 Tire Sales							[illegible]	
% Unit Alloc. Rec Accts.							[illegible]	

COMMISSION EXHIBIT NO. 291A. 3041

[illegible] RUBBER COMPANY

INTER OFFICE COMMUNICATION

October 23, 1951.

Messrs. Hinderscheid
Seger
Anthony

Re: AR and DAR Accounts.

Attached you will find the AR and DAR report for the month of August. A fairly steady pattern is beginning to reveal itself in these reports. Apparently, about 550 AR accounts are being sold on a regular basis. Correspondingly in the DAR classification between 300 and 325 accounts are included. Although there are variations each month in the individual regions, they appear to balance out over a period of months. Total sales are also leveling out to $225,000 per month. This may be worthy of attention since it is only approximately 30% of the dollar volume which had been secured from the Atlantic Refining Company.

W.F. PEIRCE

PFC
Attn.

Messrs. Minderman, Segur, Anthony

AUGUST 1951 AR & DAR ACCOUNTS

	No. Accts. Sold	$ Sales - AR Month	$ Sales - AR Cum.	No. Accts. Sold	$ Sales - DAR Month	$ Sales - DAR Cum.	$ SALES TOTAL AR & DAR ACCOUNTS 1950-1 Month	$ SALES TOTAL AR & DAR ACCOUNTS 1950-1 Cum. (9 Mos.)
Albany	2	917	7,341	2	104	4,122	1,021	12,063
Boston	8	1,137	23,347	10	2,264	40,565	3,401	63,912
Buffalo	24	2,557	19,748	5	1,990	17,181	4,547	36,929
Hartford	28	5,053	31,439	30	6,307	31,872	11,360	63,311
New York	-	-	1,505	5	1,658	15,908	1,658	17,413
Providence	18	5,157	33,753	37	7,632	48,792	12,789	82,545
Syracuse	37	7,764	38,586	49	8,877	70,129	16,641	108,715
Erieg	6	650	22,677	-	-	-	650	22,677
TOTAL #1	118	23,235	178,996	138	28,932	228,569	52,067	407,565
% Total $ Tire Sales							26.1%	
% Unit Alloc. New Accts.							50.2%	
Allentown	28	1,927	21,980	5	1,295	9,487	3,222	31,467
Bryn Mawr	21	1,300	20,865	5	756	2,138	2,056	23,003
Camden	12	2,349	28,745	7	2,031	9,888	4,380	38,633
Harrisburg	24	8,277	50,652	-	-	4,474	8,277	55,126
Norristown	23	2,377	26,978	-	-	1,683	2,377	28,661
Philadelphia	22	5,382	40,340	22	2,910	32,266	8,292	72,607
Reading	29	7,290	68,251	1	344	1,422	7,634	69,673
Wilkes-Barre	10	1,988	20,263	14	9,747	39,564	11,735	59,827
Wilmington	31	6,118	40,666	2	59	13,250	6,177	53,916
York	19	2,328	12,370	-	-	10,241	2,328	22,611
TOTAL #2	211	39,336	331,110	56	17,142	124,413	56,478	455,523
% Total $ Tire Sales							19.4%	
% Unit Alloc. New Accts.							46.4%	
Baltimore	21	1,985	27,157	-	-	1,225	1,985	28,382
Charlotte	21	8,889	71,898	25	15,591	18,504	24,480	90,402
Norfolk	20	11,718	73,968	-	-	-	11,718	73,968
Spartanburg	11	3,974	37,381	4	1,540	7,290	5,514	44,671
Washington	13	6,253	43,629	-	-	-	6,253	43,629
TOTAL #3	86	32,819	254,027	29	17,131	27,019	49,950	281,046
% Total $ Tire Sales							32.1%	
% Unit Alloc. New Accts.							52.3%	

COMMISSION EXHIBIT NO. 291B.

30422

AUGUST 1951 - AR & DAR ACCOUNTS

	No. Accts.	$ Sales - AR Month	$ Sales - AR Age	No. Accts. Sold	$ Sales - DAR Month	$ Sales - DAR Age	$ Sales Total AR & DAR Accounts Month	$ Sales Total AR & DAR Accounts Age (6 Mos.)
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	10,545	22,759	18,[redacted]	[redacted],717
	27	3,395	49,948	-	-	-	3,395	49,948
	43	10,826	62,034	-	-	1,447	10,826	62,481
	5	2,009	14,232	-	-	-	2,009	14,232
	114	24,619	186,172	23	10,545	24,206	35,162	210,378
% of Total $ Tire Sales							17.0%	
Unit Allocation New Accts.							49.2%	
[redacted]	1	124	9,766	4	3,680	9,628	3,804	19,394
[redacted]ville	10	3,755	36,881	37	10,010	66,651	13,765	103,532
[redacted]	12	256	30,409	27	5,803	35,070	6,059	65,479
[redacted]	25	4,135	77,056	68	19,493	111,349	23,628	188,405
% of Total $ Tire Sales							14.0%	
Unit Allocation New Accts.							43.6%	
TOTAL BRANCHES	545	124,142	1027,361	314	93,143	515,556	217,285	1542,917
% of Total $ Tire Sales							21.3%	
Unit Allocation New Accts.							48.2%	

H.K. Farmer.
10/18/51 G

41 81

COMMISSION EXHIBIT NO. 291C 3043

COMMISSION EXHIBIT NO. 292A. 3044

[redacted] & BROTHER COMPANY

INTER-OFFICE COMMUNICATION

November 28, 1951.

Messrs. Hinderscheid
Segur
Anthony

Re: AR and D&R Accounts.

Attached you will find the AR and D&R report for the month of September.

While there are a few less accounts sold as previous months, the sales pattern remains fairly steady.

It begins to be apparent that approximately 25% of the Atlantic Refining business on a dollar basis will be salvaged this year. With the addition of the D&R Accounts approximately 40% should be realized. This would appear to be a good performance since it is known that Electric Storage Battery originally set their goal to hold 25% of Atlantic's business which it now appears we will secure for this year.

H. L. Paxson

[redacted]

Messrs. Hinderscheid, Segur, Anthony

	No. Accts. Sold	Sales - All Month	Sales - All Cum.	No. Accts. Sold	Sales - Int. Month	Sales - Int. Cum.	Total Sales and Misc. Accts. 1951 Month	Total Sales and Misc. Accts. 1951 Cum. (7 mos.)
	3	796	8,737	1	26	4,148	822	12,885
	12	1,640	24,927	54	18,185	58,724	19,825	[illegible]
	22	2,842	24,590	7	[illegible]	22,164	9,125	[illegible]
	33	3,569	35,[illegible]8	6	1,018	34,890	[illegible]	6[illegible]
	-	-	1,305	-	-	12,908	-	17,[illegible]
	15	2,911	30,604	37	9,523	[illegible]	12,43[illegible]	94,979
	24	3,605	42,191	46	14,243	[illegible]	17,748	126,463
	-	-	22,677	-	-	-	-	22,677
	109	15,363	191,359	151	47,478	276,047	62,341	470,406
& Tire Sales							2[illegible].14	
Misc. New Accts.							50.14	
	23	2,795	24,773	6	1,657	11,124	4,[illegible]0	[illegible],867
	9	636	21,501	-	-	2,138	[illegible]26	[illegible],639
	10	[illegible],526	31,[illegible]71	7	1,032	10,[illegible]0	3,558	42,[illegible]71
	21	4,975	55,[illegible]27	-	-	[illegible],474	4,975	60,101
	22	1,[illegible]37	2[illegible], 15	-	-	1,683	1,837	[illegible],[illegible]98
	17	5,730	[illegible],070	20	[illegible],111	[illegible],277	[illegible],840	81,447
	29	[illegible],276	[illegible],827	1	30	[illegible],[illegible]72	1,626	7[illegible],[illegible]99
	12	2,314	[illegible],777	15	[illegible],[illegible]73	54,[illegible]37	[illegible],[illegible]09	75[illegible],[illegible]16
	26	6,155	[illegible],[illegible]21	2	[illegible]1	[illegible],[illegible]92	[illegible],196	60,112
	19	2,364	[illegible],[illegible]24	-	-	[illegible],[illegible]1	[illegible],364	[illegible],[illegible]75
	288	33,906	[illegible],016	51	19,[illegible]4	[illegible],557	53,021	503,545
Sales							[illegible]	
Misc. Accts.							[illegible]	
	[illegible]9	4,225	31,382	2	199	1,424	[illegible],424	32,806
	[illegible]	13,009	84,907	38	14,975	33,479	[illegible],[illegible]34	[illegible]18,[illegible]26
	[illegible]	12,571	8[illegible],539	-	-	-	[illegible],571	8[illegible],539
	[illegible]	[illegible],824	46,205	2	1,391	[illegible],881	[illegible],[illegible]15	47,[illegible]86
	[illegible]	[illegible],[illegible]94	49,167	-	-	-	[illegible],544	47,167
	[illegible]	58,173	[illegible]2[illegible],200	42	[illegible],[illegible]65	[illegible],[illegible]78	[illegible],[illegible]38	335,984
	[illegible]						[illegible].7	
Accts.							[illegible].3[illegible]	

70 16

COMMISSION EXHIBIT NO. 282B 3045

SEPT. 1951 A & D ACCOUNTS

	No. Accts. Sold	$ Sales - A&B Units	$ Sales - A&B Dollars	No. Accts. Sold	$ Sales - D&B Units	$ Sales - D&B Dollars	$ SALES TOTAL A&B & D&B ACCOUNTS Units	$ SALES TOTAL A&B & D&B ACCOUNTS Dollars (1,504) (7,084)
	19	11,286	7[illegible],244	4	1,128	23,887	12,414	90,131
	35	6,217	5[illegible],165	-	-	-	6,217	56,165
	48	12,004	72,038	-	-	1,447	12,004	7[illegible],485
	2	962	15,[illegible]00	1	1,046	1,840	2,614	1[illegible],046
	104	30,475	215,647	5	[illegible],774	37,174	33,249	243,627
Total $ Tire Sales							10.2%	
Credit Alloc. New Accts.							43.2%	
[illegible]ville	4	2,057	11,[illegible]23	2	[illegible],621	12,349	4,678	24,072
	10	[illegible],490	3[illegible],[illegible]1	50	23,[illegible]25	[illegible],570	16,[illegible]15	119,9[illegible]
	10	1,350	31,759	47	10,436	45,506	11,786	77,265
[illegible]	24	5,897	84,753	77	20,982	2[illegible],331	3[illegible],[illegible]79	221,2[illegible]4
Total $ Tire Sales							20.6[illegible]	
Credit Alloc. New Accts.							43.5[illegible]	
[illegible] BRANCHES	508	123,[illegible]14	1,1[illegible]0,175	328	11,[illegible]13	6[illegible],[illegible]99	236,928	1,779,846
Total $ Tire Sales							2[illegible].5%	
Credit Alloc. New Accts.							43.[illegible]	

[illegible] Paxson
11/23/51

COMMISSION EXHIBIT NO. 2920 3046

17

3436 COMMISSION EXHIBIT NO 293A.

cc: Mr. Hinderscheid
Mr. Stephens

August 14, 1952.

Mr. B. M. Boor
The Atlantic Refining Co.
Pittsburgh, Penna.

Personal

Dear Mr. Boor:

Another situation has come up with reference to identification of Atlantic stations which I thought warranted bringing to your personal attention.

I am attaching copy of report from our branch office just as I received it. I know that those two instances are not in line with the Atlantic policy and anything you can do to straighten out these situations will be appreciated.

Kindest regards.

Sincerely,

EWH
Vice President

EWH:G
Encl.

3438 COMMISSION EXHIBIT NO. 293B.

Copy

Erie, Pa.

August 12, 1952.

Mr. E. W. McCreery:

Atlantic Refining Co.

Leased Stations

It seems that some representatives of the above company ignore instructions that they receive from the home and regional offices.

Bob & Vic's Atlantic Service, Penn and Schantz Sts., Warren, Pa. took over this station about three months ago and decided to buy and sell Lee tires and batteries. Some pressure was put on them by the Atlantic salesman F. Bauman not to handle Lee tires but they ignored this and went on buying and selling our products. They are the first dealers in over two years to do any kind of a job at this location. Our salesman Nicholas and the dealer went out last Wednesday and called on some commerical accounts to sell them some Lee truck tires and when they returned to the station, two representatives of the Atlantic Company were there.

Bob & Vic the day before put up a 1½ × 6 Lee tire sign in place of the Firestone sign and these men informed the boys they would have to take our sign down. Nicholas called me on the phone giving me this information. I told him to tell the boys to keep the sign up; that they were within their rights (according to Atlantic); permitted to display the sign, if they handled our product.

I was surprised to learn from our salesman Nicholas that the two men from Atlantic were the District Instructor

H. M. Calhoun and District Sales Supervisor C. B. Sproull. (These men certainly know better) as they are direct representatives of Mr. Burkett. These tactics should be stopped. These two boys are trying to do a job there but this kind of pressure being put on them is going to force them out.

At the Davis Atlantic Service, Edinboro, Pa., the Atlantic salesman R. L. Dildine picked up our tire price sheet and tore it up and told the dealer he had better forget about Lee.

3440 COMMISSION EXHIBIT NO. 293C.

Lee Tire & Rubber Company
of New York, Inc.
Conshohocken, Pennsylvania

E. W. McCreery
Vice-President

October 3, 1952.

Mr. B. M. Boor
The Atlantic Refining Co.
Pittsburgh, Penna.

Dear Mr. Boor:

I am wondering if my letter to you of August 14 became misldid as I have not, to date, had a reply concerning the complaints at Warren and Edinboro.

Kindest regards.

Sincerely,
E W McCreery
Vice President

EWM:G

3441 COMMISSION EXHIBIT NO. 293D

October 7, 1952

GM

Mr. E. W. McCreery, Vice President
Lee Tire & Rubber Company
Conshohocken, Pennsylvania

Dear Mr. McCreery:

I have your letter of October 3. I am sorry but I did not think you expected a reply to your letter of August 14.

Upon receipt of your letter and report of August 14, I asked our people to make an immediate investigation and straighten out any situations which may have developed at the Warren and Edinboro stations. It was my understanding the matter had all been cleared up.

As a matter of information, the reports I received on the Warren situation indicated that a Lee Sign was installed at this station; and it seemed the difficulty here was caused by Lee men actually removing a Firestone Sign and erecting a Lee Sign on the Firestone posts or support.

In regard to the Edinboro incident, report made to me on this was that apparently someone was misinformed and the statements made were incorrect; with the further comment that Salesman Dildine had never destroyed a Lee Price Sheet here or at any other station.

Cordially yours,

BMB-MB

3442 COMMISSION EXHIBIT NO. 294A-B.

Federal Trade Commission

Washington, D. C.

Statement of James B. Matthews
Trading as James B. Matthews Atlantic Service
Located at Church Lane & Bailey Rd., Yeadon, Pa.

1. Type of outlet Lease 1½ min $251 max fluctuates quarterly

   Terms of Lease Lease was year to year, expires June 30, 1953. Threatened to cancel 2 or 3 weeks ago because refused to sign mutual cancellation agreement.

   Here since August '49. Formerly at Darby from 47 to 49 for Atlantic.

   Credit Cards Yes. Can buy T.B.A. on them.

2. Brands of TBA carried Goodyear
   Tires and tubes Goodyear.
   Batteries Goodyear & Auto light (hidden behind GY)
   Other TBA told to get rid of Autolite & not buy any more.

   Remarks:

3. Estimated monthly volume: Gasoline 17-18,000 gals.
   TBA $700 dollars

4. TBA suppliers Parris, Ashland Ave & McDade
   Tires Blvd., Glen Alden, Pa. Can buy 10% cheaper at
   Auto—Gear for accessories.
   Price information Sore spot (10% which Atlantic gets)
   Batteries Parris—only
   Price Information Dealers prices

3443 Other TBA Auto-lite from Auto-Gear. If handled solely his quantity would put him in price class as a distributor but can't handle Auto-lite alone without serious trouble.

Price Information

5. Reason for choosing line of TBA carried: For every $100 month of shelving rent increased $1 per month. Spend 4-5 building up Fram and then Atlantic changes sponsorship and expects its dealers to follow suit.

Has a few Lee tires & catches it for handling them and is asked to get them out of the way.

Had meeting last summer in which dealers were told what to say if the dealers were investigated—at 69th & Marshall morning and afternoon sessions. Place called Kastiks.

When Atlantic switched to GYT it just didn't go over, and meetings were held to sell program. Dealers told to tell investigators that Atlantic was only asking them to buy. That they were not forced into it. Told in so many words that he had to go along with TBA program or else.

If switched over to Goodrich is certain that lease would be cancelled. Not even diplomatic.

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

James B. Matthews 3-3-1953

L. E. Janson
Attorney Examiner
Federal Trade Commission

3444 COMMISSION EXHIBIT NO. 295.

Branches as of January 1, 1950

Albany	Harrisburg
Allentown	Louisville
Atlanta	Memphis
Baltimore	New Orleans
Boston	New York
Brooklyn	Norfolk
Bryn Mawr	Norristown
Buffalo	Philadelphia
Bronx	Pittsburgh
Camden	Reading
Cincinnati	Spartanburg
Columbus	Washington
Dallas	Wilmington
Floral Park	York
Fort Worth	Youngstown

3446 COMMISSION EXHIBIT NO. 296.

Lee Branches Set Up in Atlantic Refining Company Marketing Area Subsequent to January 1, 1950

Branch	Month and Year Opened
Erie, Penna.	March 1950
Altoona, Pa	March 1951
Charlotte, N. C.	April 1951
Hartford, Conn.	April 1951
Jacksonville, Fla.	April 1951
Miami, Fla.	April 1951
Providence, R. I.	March 1951
Syracuse, N. Y.	April 1951
Wilkes-Barre, Pa.	April 1951

3448 COMMISSION EXHIBIT NO. 297A-B.

Names and Positions of Lee Personnel Referred to in Items 1 to 19 Inclusive

P. E. Niedringhaus—Regional Sales Manager—Region #2
Lewis F. Jarrell—Branch Manager, Wilmington, Del. Branch
E. W. McCreery—Vice President & Regional Sales Manager—Region #4
J. A. Murphy—Branch Manager, Harrisburg, Pa. Branch
H. L. Pettingell—Vice President & Regional Sales Manager—Region #1
A. G. P. Segur—Assistant to Vice President in Charge of Sales
D. R. McAvoy—Manager Market Research
H. K. Paxson—Manager Market Research
R. M. Brasaemle—Vice President in Charge of Production
A. A. Garthwaite, Jr.—Asst. Vice President in Charge of Plants
E. E. Leach—Vice President in Charge of Plants
A. H. Nellen—Vice President in Charge of Development & Research
A. S. Pouchot—Treasurer and Comptroller
J. H. Anthony—Manager—Stock Distribution
M. G. Foraker—Regional Sales Manager—Region #3
J. L. Riddick—Regional Sales Manager—Region #5
F. C. Iringer—Branch Manager, New York, N. Y. Branch
R. P. Polson—Branch Manager, Boston, Mass. Branch
S. A. Copeland—Branch Manager, Buffalo, N. Y. Branch
G. S. Thompson—Branch Manager, Albany, N. Y. Branch
E. N. Fiffick—Branch Manager, Youngstown, Ohio Branch
H. J. McGinn, Jr.—Branch Manager, Charleston, W. Va. Branch

J. P. Bartley—Branch Manager, Pittsburgh, Pa. Branch
J. A. Simpson—Branch Manager, Altoona, Pa. Branch
A. A. Garthwaite—President
H. B. Lee—Advertising Manager
3450 J. J. Rooney—General Credit Manager
R. J. Limbert—Manager Accessory Sales
J. C. Warring—Special Representative—South Carolina
J. B. Touey—Special Representative—Wilkes-Barre, Pa.
G. D. Niles—Special Representative—Boston, Mass.
S. D. McPeak—Branch Manager, Cincinnati, Ohio Branch
A. H. Allen—Branch Manager, Columbus, Ohio Branch
H. R. Stephens—Branch Manager, Erie, Pa. Branch
R. L. Druien—Branch Manager, Louisville, Ky. Branch
W. F. Hinderscheid—Vice President in Charge of Sales

3452 COMMISSION EXHIBIT NO. 298.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

June 15, 1950

TBA SJH

Mr. C. Connell, Manager,
Automotive Replacement Sales,
Electric Storage Battery Co.,
19th St. & Allegheny Avenue,
Philadelphia 32, Penna.

Dear Mr. Connell:

The third district has been chosen for our experiment on the commission resale program. This is not an expansion of this plan as, if you will recall, our original discussion indicated there would be three districts on the program. It will be of interest to you to know that the Goodyear Tire and Rubber Company has been selected for this experiment in our Newark, New Jersey District. As Atlantic will no longer offer your products in this area, we are attaching a map indicating the boundaries of the Newark territory.

Cordially yours,

S. J. Heideman

h
Enc.

3455 COMMISSION EXHIBIT NO. 300A-B.

The Electric Storage Battery Co.

12-14-50 Atlantic Refining Co.

A R Sales
A. D. DeMott

The following is a result of a survey of ten Atlantic stations which I have covered recently:

Lenahan & McKaig
12th & Grove Streets
Jersey City, N. J.

I called on this account December 6 with Mr. Van Tuno to secure their battery business. I was advised that they stock no batteries at this station.

Lenahan & McKaig
14th & Erie Sts.
Jersey City, N. J.

This station carried a stock of 5 batteries, 4 of which were Goodyear and 1 Exide. They advised that they do very little battery business but we endeavored to impress upon them the desire for stocking Exides. This account will be served by Electric Battery Co.

DeFerrari Bros.
Washington Terr. & Grandview Blvd.
Hasbrouck Heights, N. J.

This account had 9 batteries in stock of the following types: 3 Edison, 3 Ajax, 2 Delco, 1 Presto-o-Lite, 1 Exide. They advised that the Edison and Presto-Lite are bought locally from Miller Auto Gear and Parts in Rutherford, N. J. I will have reliable Magneto call on this account.

Randolph Jensen
Jackson & Gordon Sts.
South River, N. J.

This account carried no batteries in stock but picks up the Exides they use from Hardy Tire Supply.

Joseph Wash
254 South Street
Newark 5, N. J.

This account carried 6 Goodyear batteries purchased from R. A. McDonough. 1 Willard and 2 Scranton batteries. When I called December 6 with Mr. Van Tuno, the proprietor advised us that he has to stock Goodyears since this is a leased station.

Rudzik Bros.
Canal Road
South Bound Brook, N. J.

This account had 5 Rebat, 1 Delco, 1 Goodyear, and 1 Lee Battery in stock. They advised that they are primarily interested in only cheaper grades of batteries but I requested Bound Brook Auto Supply to call on this account and endeavor to sell them on Exides.

3457 Brook Chevrolet Co.
Main St.
Bound Brook, N. J.

I called on this account on Nov. 30. They are no longer affiliated with Atl. Refining and buy Delco batteries through United Motor Service.

Mr. Joseph Kilsby
c/o Bakelite Corp.
River Road
Bound Brook, N. J.

This account buys batteries on a quotation basis as needed.

Joseph Marino
35th & Market St.
Paterson 3, N. J.

I called on this account December 13 and found that they had 5 Goodyears and 1 Exide battery which was purchased from Clement DePope. They advised that the majority of the batteries they sell are still Exides but do not stock any number because of constant pressure being exerted by the salesman for the Atlantic Refining Co.

Clement P. DePope
E. 33rd Street & McLean Blvd.
Paterson 4, N. J.

This is an Exide W account, through Reliable Magneto. They had the following batteries in stock: 20 Exides, 13 Goodyears (purchased from Farley Glass Co., Paterson) 3 Lee, 1 Willard. This account supplies majority of the Atlantic stations in the Paterson vicinity with Exide batteries.

Charles C. Smith
155 Front St. & E. Clinton Ave.
Tenafly, N. J.

I called on this account on December 13 with Mr. Orville Melchior and found that they had 14 Auto Lite and 1 Goodrich battery in stock. The 14 Auto Lite are purchased on a preferred distributor basis from Fleet Tire Co. We do not believe that this station's volume is sufficient to meet this price.

E. E. S.
E. E. Stevenson

3459 COMMISSION EXHIBIT NO. 301.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

December 15, 1950

File: Batteries

The Electric Storage Battery Co.
Allegheny Ave. and 19th St.
Philadelphia 32, Pa.

Attention: Mr. C. A. Connell, Manager

Automotive Replacement
Sales Div.

Gentlemen:

We are most anxious to know if you have at present a direct dealer selling organization, or contemplating in the near future the inclusion of such a group in your marketing plans. In short, have you given any consideration to a battery program for direct dealer merchandising by you similar to the commission plan offered to national oil accounts by certain tire manufacturers?

If at all possible we would appreciate a reply by Wednesday, December 20.

Very truly yours,

J. S. Parks
Purchasing Agent

By: Chas. F. Bergh

CFBergh/eme

3461 COMMISSION EXHIBIT NO. 302.

December 22, 1950

Mr. J. S. Parks, Purchasing Agent
The Atlantic Refining Co.
260 S. Broad St.
Philadelphia 1, Pa.

Dear Mr. Parks:

Currently all Exide automotive replacement battery sales to dealers are made through our Wholesale Distributors, thus affording prompt delivery through many warehouses.

Your letter of December 15 inquires as to our plans for a commission arrangement to be offered national oil accounts on direct sales to dealers. We believe our experience with this type of operation in past years should be of great value to you. Therefore, I suggest that immediately after the first of January you arrange for a meeting with interested members of your organization for a complete discussion of the many phases of this subject.

With kindest personal regards and best wishes for the holidays, I am

Sincerely yours,
C. Connell, Manager
Automotive Replacement Sales Div.

CC:CR

3464 COMMISSION EXHIBIT NO. 303.

1-4-51

The Atlantic Refining Company
AR Sales

Asst. Gen. Sales Mgr.
R. L. Sommerville

Arrangements have been completed to meet with Messrs. Heideman and Bergh of the Atlantic Refining Company at 10:00 a.m. Monday, January 15, in Mr. Heideman's office.

As per my conversation with you, the meeting is for the purpose of discussing the possibility and advisability of our making some arrangements for the Atlantic Refining Company covering the sale of Exide batteries direct to Atlantic dealers and providing a commission arrangement to the Atlantic Refining Company. Your past experience with a somewhat similar arrangement with the Texaco Company I am sure will prove very valuable at the meeting.

C. Connell

CC:CR

3467 COMMISSION EXHIBIT NO. 304.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

February 5, 1951

TBA SJH
T.B.A. Exide Batteries

Mr. C. Connell, Manager,
Automotive Replacement Sales,
Electric Storage Battery Co.
19th St. & Allegheny Avenue,
Philadelphia 32, Pennsylvania.

Dear Mr. Connell:

I am confirming our phone conversation of February 2nd to the effect that in the month of February the Firestone Commission Plan of marketing T.B.A. is thereafter to be employed by Atlantic in the State of Ohio and in the Panhandle section of the State of West Virginia.

Although in effect, this action is an extension of the Commission Plan, it is being undertaken as a practical solution to several aggravating problems and not as a direct result of the tests currently being conducted by us.

Cordially yours,

S. J. Heideman

b

3470 COMMISSION EXHIBIT NO. 305A-B.

Date 2-14-51

Subject Atlantic Refining Company
From AR Sales

To Vice President
Mr. R. Whitehurst

Mr. S. J. Heideman, T.B.A. manager of the Atlantic Refining Company called today to give me advance confidential information regarding a decision made this morning by top management of the Atlantic Refining Company regarding future handling of T.B.A. sales to Atlantic dealers.

Effective as quickly as the changeover can be made, all T.B.A. sales to Atlantic dealers will be handled on a commission arrangement. It is planned that four of the six regions will operate under the Firestone arrangement and the remaining two under the Goodyear commission plan. Under both plans, the Atlantic Refining Company will be paid approximately 10% commission on all sales to Atlantic dealers and 8% on all sales to Atlantic distributors on the items handled by Firestone and Goodyear; tires, batteries, accessories, refrigerators, electrical appliances, toys, garden supplies, sporting goods, etc. Orders will be written either by Firestone or Goodyear who will handle the entire transaction, including delivery, credit, billing, etc., leaving the Atlantic Refining Company with only the problem of promoting sales.

The Atlantic Refining Company first sold Exide batteries under a Wholesale Distributor contract in 1937 and then only in their Philadelphia Division. Their T.B.A. program was greatly enlarged both as to the items sold and territory covered until in 1950 the total T.B.A. sales amounted to between nine and ten million dollars.

The accounting procedure set up by the Atlantic Refining Company was such that expenses charged against T.B.A. sales appeared to make this operation unprofitable. As a result of this and because the top management of the Atlantic Refining Company believed that their own men should participate only in the sales of petroleum products, it was decided early in 1950 to try out the Firestone and Goodyear commission plan in three Atlantic Refining Company districts. Firestone in the Erie, Pennsylvania and Wilmington, Delaware districts and Goodyear in the Newark, New Jersey district. We were advised of this move and accordingly made plans to retain the Exide business in these districts. We actually materially increased our business in the Erie district during 1950 and were reasonably successful in the Wilmington and Newark districts. Atlantic Refining Company's own records for the year show a greater increase in the sale of batteries in the district continuing to sell Exides than in the district changed over to Firestone and Goodyear. I have been told that a complete report was submitted to management indicating that the plan was not successful: however, since management desires to get out of active participation in T.B.A. sales,

3472 the recommendation was made that the commission plan be tried in one of their six regions.

Tires being the largest dollar item of T.B.A. sales, the plan was discussed yesterday afternoon with Lee Tire and Rubber Company, whose product they have handled in all territories except the three districts on the commission plan. Lee apparently made it clear that if Atlantic were planning further expansion of the commission plan, they had no further interest in the Atlantic Refining Company's business. Both Firestone and Goodyear had previously been approached regarding a plan whereby they would sell tires only to the Atlantic Refining Company accounts on a commission arrangement and had flatly refused such a

plan insisting that either the complete program or none be sold by them. Naturally the immediate need for a tire program as a result of Lee's decision precipitated Atlantic Refining Company's move. As a result, they have decided, as outlined above, to go 100% on the commission plan.

Mr. Heidman has informed me that we will receive Atlantic Refining Company's formal notification of the change in their program.

C. Connell

CC:rll

3474 COMMISSION EXHIBIT NO. 306A-B.

Date 2-22-51

Subject Atlantic Refining Company
From AR Sales

To Vice President
Mr. R. Whitehurst
cc: R. L. Sommerville

My letter of February 14 advised you of the Atlantic Refining Company's change in policy for the handling of TBA sales to their dealers. Additional information has been received from the Atlantic Refining Company and steps have been taken with our branches to insure our retaining the maximum possible share of this business.

All Exide branches concerned—Atlanta, Boston, Cleveland, New York, Philadelphia, Pittsburgh, and Washington—were notified of the change and instructed to immediately adjust their sales schedules so that their number one job would be complete coverage of the Atlantic Refining Company dealers and distributors. All Atlantic Refining distributors of TBA products are to be personally contacted

by our men in an effort to sign them up either direct as wholesale distributors or as wholesalers, depending upon their operation and the volume of business involved. Letters will go out from all branches to wholesale distributor management and salesmen advising of this change and recommending that they immediately contact all Atlantic dealers in their territory and aggressively solicit their Exide battery business. The branches will make up a list of Atlantic Refining Company dealers through the Advertising Department and have them placed on our prospect dealer list to be included in the eight mailings already planned.

Mr. D. T. Colley, Vice-President and General Manager of the Atlantic Refining Company, has already requested their Purchasing Department to formally notify us of the cancellation of our Warehouse Distributor contract with them. All other TBA suppliers will be similarly notified. There has been a change in the original plan to have Firestone handle the commission arrangement in four districts and Goodyear in two. The current plans call for three regions each—Firestone in Eastern Pennsylvania, Western Pennsylvania and the Southern Regions and Goodyear in Philadelphia and New Jersey, New York and New England Regions.

Mr. Heideman is now preparing two letters to go out over Mr. Colley's signature, one to all of their dealers and the second to their salesmen, district managers, and regional managers, with which will be enclosed a copy of the dealer letter. I am told that the dealer letter will introduce the Firestone or Goodyear program and explain the Atlantic Refining Company's confidence in the wisdom of their decision. It will, however, state that there is no obligation on the part of the dealer to go along with the program. The final decision as to which TBA items he sells rests with him. The letter to the salesmen and managers will stress

the need for good salesmanship and complete confi-
3476 dence in the Firestone or Goodyear program but, at the same time, prohibit the use of pressure in influencing the dealer's decision at the risk of the Atlantic Refining Company salesman's losing his position. Atlantic Refining has not agreed to give me copies of these letters, but every effort will be made to pick up copies for our information.

Mr. Colley has clearly indicated to Mr. Heideman that the one TBA item he would prefer to retain is Exide batteries. He likes our company, he likes our way of doing business, and believes our product is one of the best.

C. Connell

CC:CR

3478 COMMISSION EXHIBIT NO. 307.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

J. S. Parks
Purchasing Agent

M. S. Charlton
Ass't Purchasing Agent

February 23, 1951

File: 5A-ES

The Electric Storage Battery Co.
Allegheny Ave. & 19th St.
Philadelphia 32, Pa.

Attention: Mr. C. Connell, Manager Automotive Replacement Sales Division.

Gentlemen:

After very careful study, over an extended period, the management of our Domestic Sales Department has decided to accept Firestone and Goodyear marketing deals to supply our dealers with tires, batteries and accessories. To the extent possible we plan to make his new operation effective March 1, 1951.

Our Exide Battery Warehouse Distributor Contract with you dated November 1, 1949, covering Exide Automotive Replacement Batteries, Parts, and Battery Service Equipment, extends to either party the option of cancelling the contract upon 90 days' written notice.

In accordance with the terms of our agreement, we hereby notify you of our desire to cancel same. Because the

change, as it affects other products, is being made immediately, we should like you to consider waiving the 90 day period of notice and agree to cancellation as of February 28, 1951.

Our regional sales offices have been instructed to forward to you request for cancellation of all their unshipped orders.

At this time we should like to express our appreciation for the finest kind of cooperation received from your organization over these many years.

To complete the record, may we have your acknowledgment of this letter.

Very truly yours,

J. S. Parks,
Purchasing Agent,.

CFBergh/eme

By: Chas F. Bergh.

3480 COMMISSION EXHIBIT NO. 308.

The Electric Storage Battery Co.

March 7, 1951

Mr. J. S. Parks, Purchasing Agent
The Atlantic Refining Co.
260 S. Broad St.
Philadelphia 1, Pa.

Attention: Mr. C. F. Bergh

Gentlemen:

We regret to learn that your Domestic Sales Department has decided to use Firestone and Goodyear to supply your dealers with tires, batteries, and accessories. However, as requested in your letter of February 23, 1951, we agree to accept cancellation of your Exide Warehouse Distributor contract as of February 28, 1951 and waive the 90 day cancellation clause.

Our business association since 1937 has been both pleasant and profitable and we hope the many inter-company friendships formed during this period will continue.

Your past performance in the sale of Exide batteries speaks for itself. In the event, at some future date, you contemplate a change from the current arrangements for the sale of batteries, we will welcome the opportunity to discuss a program with you.

Very truly yours,

C. Connell,
Manager Automotive Replacement
Sales Division

CC:CR

3482 COMMISSION EXHIBIT NO. 309.

Inter-Office Letter

The Electric Storage Battery Co.

Date 3-13-51

Subject The Atlantic Refining Company
From AR Sales

Atlanta Branch, J. A. Cronk
Boston Branch, T. G. Tynan
Cleveland Branch, W. P. Roche
New York Branch, J. W. Weigt
Philadelphia Branch, W. C. Hooven
Pittsburgh Branch, C. H. Leet
Washington Branch, J. A. Klingensmith

cc: Credit Div., J. A. Kennedy
Sales Order Div., J. W. Damon
Vice-Pres. & Compt., D. N. Smith
Customers' Accounting Div., D. J. Hendrickson
Advertising Div., A. N. Dingee

Our Warehouse Distributor contract with the Atlantic Refining Company, effective November 1, 1949, has been cancelled in its entirety effective February 28, 1951.

All complete or balance orders still unshipped should be cancelled. We should no longer accept batteries for inspection under the 90-day warranty provision of our SGA Policy.

To clear our records, we will require Cancellation-Replacement Sales Agreement, Forms 4072, for every Atlantic Company listing shown on Form 3265, List of Distributors by States and Cities, effective November 1, 1950. Therefore, each individual branch should forward to us cancellation notices for Atlantic Refining Company listings

in their territories by return mail. All addressograph plates in branch offices should be immediately destroyed.

A complete list of Atlantic Refining Company accounts will be forwarded to each branch as soon as it is possible to process the list. The complete list of Atlantic accounts will be put on our prospect list and will receive our eight prospect mailings. Therefore, it will not be necessary for you to include the names of Atlantic accounts in the list of dealer prospects you are mailing to the Advertising Division.

C. C.
C. Connell

CC:CR

3485 COMMISSION EXHIBIT NO. 310.

The Electric Storage Battery Co.

8/16/51 Atlantic Refining Co.

Replacement Sales — Asst. Genl. Sales Manager
C. Connell
cc: Mr. R. Whitehurst

Whereas your reports on the retention of the Atlantic Refining Co. accounts show that we are continuing to make numerical progress in signing them up, I cannot get any indication as to the sales strength of the accounts that we are closing. In other words, are we signing the "seventy percenters" who do 30% of the business or are we signing the "thirty percenters" who do 70% of the business? Is there not some way that we can appraise the work we are doing in changing over Atlantic accounts so that we have a definite measure of what success we are obtaining in getting business of Atlantic outlets.

Take one small example: I called on Glenn in Mt. Airy two or three weeks ago and found that he had gone 100% down the line with Atlantic on Goodyear. He naturally would be listed as one Atlantic account but from the volume standpoint he has always been far above average; therefore, we have undoubtedly failed in this single instance to retain a good battery outlet. If your figures could be revamped in some way so that we could know what the battery potentials are of these accounts that we are changing, it would certainly give us some important and factual information.

R. L. Sommerville

RLS:IMB

3487 COMMISSION EXHIBIT NO. 311.

Inter-Office Letter

The Electric Storage Battery Co.

Date 10-3-51

Subject The Atlantic Refining Company

To Asst. Gen. Sales Mgr. From AR Sales Dept.
Mr. R. L. Sommerville Answering Letter 8-16-51

Supp. Letter 8-7-51

By R. L. S.
C. C.

cc. R. Whitehurst

With further reference to our reports of progress to you of June 18 and 29 and August 7 on our retention of the Atlantic Refining Company accounts, we now submit to you the following definite report of the number of accounts retained by classification as of October 1, 1951:

Branch	No. of Accounts Referred to Branches Original AR List	No. of Accts. Signed—WD	No. of Accts. Signed—W	No. of Accts. Signed—AD	Composite Total
Atlanta	548	—	3	32	35
Boston	526	—	18	292	310
Cleveland	266	3	3	68	74
New York	1094	2	22	418	442
Philadelphia	2696	4	9	567	580
Pittsburgh	1141	—	5	170	175
Washington	525	—	6	57	63
Total	6796	9	66	1604	1679

Comparing this with our previous report, you will note an increase of three additional Wholesalers and 97 Authorized Dealers, making a total gain of 100 acounts; thus we have retained all or part of the business of 24.7% of this customer's accounts.

To evaluate the type of Atlantic account we have been able to retain and in reply to your letter of August 16, 1951, we have had a check made of the key Atlantic accounts, i. e., those who were of sufficient size to receive direct shipment of Lee tires from the Lee factory. This survey indicates that we have retained all or part of the business of 238 of the 1,060 accounts that were considered to be the best Atlantic outlets. This means we have retained 22.5% of the better accounts.

It is evident from the above, therefore, that we have retained approximately the same percentage of the accounts of Atlantic across-the-board as we have their key accounts.

C. Connell

RJL:CR

3489 COMMISSION EXHIBIT NO. 314A.

The Electric Storage Battery Company
Philadelphia 2, Pennsylvania

Executive Offices 42 S. Fifteenth Street
LOcust 4-4030

June 26, 1957

James S. Kelaher, Esquire,
Trial Attorney
Federal Trade Commission
c/o Benjamin Franklin Hotel
Ninth & Chestnut Sts.
Philadelphia 6, Penna.

Re: The Goodyear Tire & Rubber Co., et al
Docket 6486

Dear Mr. Kelaher:

Pursuant to Specification II of your subpoena issued in connection with the above proceedings, please be advised that as of May 31, 1957, we had 1,163 Wholesale Distributors who operated through 1,398 Wholesale Distributor Branches.

You will understand, of course, that all sales of Exide automotive replacement batteries made by The Electric Storage Battery Company are to wholesale distributors. These distributors are independent business organizations in no way owned by or related to or affiliated with The Electric Storage Battery Company other than merchandisers of our products. These distributors in turn resell to some jobbers, or wholesalers and to dealers.

Very truly yours,

William P. Cairo, MS
Assistant Secretary.

WPC:MS

COMMISSION EXHIBIT NO. 314C. 3079

FEDERAL TRADE COMMISSION
6480 EXHIBIT NO. 314-C

Exide

Wholesale Distributors

by

STATES and CITIES

July 15, 1951

▼

THE ELECTRIC STORAGE BATTERY COMPANY

42 South 15th Street
PHILADELPHIA 2, PA.

Branches

ATLANTA . . . . . 1246 Allene Ave., S. W.	MINNEAPOLIS 3 . . . . 1750 Hennepin Ave.
BOSTON 34 . . . . . 100 Ashford St.	NEW ORLEANS 12, 406 Industries Bldg., 238 S. Saratoga St.
CHICAGO 9 . . . . . 5335 S. Western Blvd.	NEW YORK 18 . . . . . 23-31 West 43d St.
CINCINNATI 6 . . . . . 2212 Victory Parkway	PHILADELPHIA 32 . . 17th St. & Indiana Ave.
CLEVELAND 14 . . . Room 1012 Engineers Bldg.	PITTSBURGH 22 . . 701 First National Bank Bldg.
DALLAS 1 . . . . . 2133 McKinney Ave.	ST. LOUIS 3 . . . . . 1218 Olive St.
DENVER 2 . . . . . 810 - 14th Street	SAN FRANCISCO 24 . . . . . 6150 Third St.
DETROIT 4 . . . . . 8051 W. Chicago Blvd.	SEATTLE 4 . . . . . 1919 Smith Tower Bldg.
KANSAS CITY 3-E . . . 129 Belmont Boulevard	WASHINGTON 6 . . . . . 1819 L St., N. W.
LOS ANGELES 15 . . . . . 1043 S. Grand Ave.	

In Canada: Exide Batteries of Canada, Ltd., 153 Dufferin Street, Toronto, Canada.

EXIDE WHOLESALE DISTRIBUTORS

Numbers following address denote Postal Zone.

ALABAMA

Bessemer
Long-Lewis Hardware Co.
2014 Second Ave., N.
Birmingham
Long-Lewis Hardware Co.
420 N. 9th St.
P. O. Box 2653 (2)
Decatur
Motor Supply Co.
Ferry & Davis Streets
Mobile
McGowin-Lyons Hdwe. & Sup. Co.
P. O. Box 1209 (7)
Montgomery
Teague Hdwe. Co.
132 Commerce St. (1)
Tuscaloosa
The Battery Shop
2213-9th Pl., Box 652

ARIZONA

Douglas
Devore Auto Supply Co.
1122 G Ave.
Phoenix
Denton's Tire Co.
232 N. Seventh Ave.
Tucson
Stern's Auto Accessories
211 East Broadway

ARKANSAS

Benton
Quality Auto Parts Co.
110 E. Sevier
Camden
Winchester Auto Stores, Inc.
216 East Washington St.
Eldorado
Rex & Bob's Tire Service
1515 E. Hillsboro
Fayetteville
Fayetteville Auto Supply Co.
Little Rock
Winchester Auto Stores, Inc.
411-15 W. 7th St.
North Little Rock
Quality Auto Parts Co.
116 W. 2nd St.
Pine Bluff
Winchester Auto Stores, Inc.
905 Main St.

CALIFORNIA

Bakersfield
Bakersfield Bearing & Motor Supply
2009 "H" St.
Bishop
Boyd's Auto Parts
126 West Line St.
Brawley
Imperial Valley Auto Electricians
136 North Plaza
Burney
Burney Auto Parts
Main St.
Calexico
Implementos De Mexicali Sa.
Box 827
Chico
Chico Auto Parts
830 Main St.
El Centro
Auto Gear & Supply Co.
127 S. 4th St.
Eureka
Ogden's
Sixth & "G" Sts.
Exeter
Crown Motor Parts
203 W. Pine St.

CALIFORNIA—Cont'd

Fresno
Electric Laboratories, Inc.
1422 Van Ness Ave.
Garden Grove
R. B. & H. Motor Parts
13011 Century Blvd.
Garvey
Anderson's Automotive Supply
416 W. Garvey Blvd.
Gonzales
Johnson Motor Co.
2nd & Alta Sts.
Hanford
Green Motor Parts
206 E. 7th St.
Hayward
Kerr Snyder
385 Castro St.
La Crescenta
Arthur Milner
2550 Kemper Ave.
Lancaster
Monte's Auto Parts Co.
715 Sierra Highway
Lindsay
Green Motor Parts
185 Elmwood
Los Angeles
*The Electric Storage Battery Co.
1542 S. Grand Ave. (15)
Barr Wynns Co.
1930 S. Central Ave. (11)
Al Farley Service
1157 West 25th Place
Leiland Irish, Inc.
911 East 8th St. (21)
Juell's Auto Parts
501 W. Imperial Highway (44)
Charles Morgan & Son
1038 E. Olympic Blvd. (21)
Pathfinder Petroleum Co.
3970 Medford St. (33)
Smith Auto Supply Co.
4436 Whittier Blvd. (22)
Smith & Thies
1348 W. Manchester Ave.
Standard Auto Parts
1225 So. Flower St.
Manteca
Manteca Auto Parts Co.
134 Maple St.
Marysville
Hamon Bros.
4th & G Sts.
Maywood
Bill's Super Service
3727 East Slauson Ave.
Modesto
Beeson & Zimmerman
11th & H Sts.
Monterey
Ets-Hokin & Galvan
434 Washington St.
Mount Shasta
Shasta Auto Supply Co.
Walnut St., Howe Bldg.
Newport Beach
The Boatswain's Locker
1603 Coast Highway
North Hollywood
Cragg Bros. Auto Parts
11050 Magnolia Blvd.
Hollaker Auto Parts
5406 Lankershim Blvd.
Oakdale
Beeson & Zimmerman
227 W. Third Ave.
Oakland
Cameron's
1418 Webster St.
Ets-Hokin & Galvan
4730 E. 14th St.
United Auto Service
2300 Webster St.
Ontario
Drew Carriage Co.
115 E. B St.
Pasadena
Powerhouse Battery Co.
960 E. Washington St. (6)
Patterson
Beeson & Zimmerman
S. Third & E. Sts.

CALIFORNIA—Cont'd

Placerville
C & H Motor Parts
Main & Coloma Sts.
Porterville
Green Motor Parts
112 N. Main St.
Redding
Automobile Accessories Co.
1420 Butte St.
Richmond
Herrick Brothers
1427 MacDonald Ave.
Ridgecrest
Boyd's Auto Parts
Riverside
Service Supply Co.
3234 8th St.
Sacramento
Schaap-Brenner Tire Co.
Jay at 17th St.
Salinas
Deane Tire Service
Monterey & Gabilan Sts.
San Bernardino
San Bernardino Motor Parts, Inc.
196 F St.
San Diego
Auto Gear & Supply Co.
1269 State St. (1)
Dorman's, Inc.
9th & B Sts. (1)
12th & Island
Ets-Hokin & Galvan
Foot of Sampson St.
San Fernando
Monte's Auto Parts Co.
1230 San Fernando Rd.
San Francisco
*The Electric Storage Battery Co.
6150 Third St. (24)
Larry Barrett Tire Co.
916 & Howard Sts. (3)
Bosquet Service Station
6199 Third St. (24)
Dunham, Carrigan & Hayden
Kansas & Division Sts.
Ets-Hokin & Galvan
551 Mission St.
H. G. Mahelm Magneto Repair Co.
1582 Howard St. (3)
Pine Auto Parts Inc.
534 Pine St.
Charles P. Wakefield
1001 Noe St. (14)
San Jose
Cook's Automotive Service
6th & E. Santa Clara St.
San Luis Obispo
Universal Auto Parts Co.
969 Monterey St.
San Pedro
McConnell Mtr. Parts Co.
203 S. Pacific Ave.
San Rafael
Park's Auto Electric
2nd & Lincoln Sts.
San Ysidro
Auto Gear & Supply Co.
199 San Ysidro Blvd.
Santa Barbara
Cox Petroleum Company
1307 San Andres St.
Santa Cruz
Santa Cruz Auto Parts, Inc.
703 Front St.
Santa Rosa
Harry B. Trombley
Third & B Sts.
Sonora
Opera Hall Garage
238 Washington St.
South San Francisco
Howard-Martin Automotive Distributors
305 Bayshore Blvd.
Stockton
Automotive Parts Co.
244 North Hunter St.
Ets-Hokin & Galvan
233 N. San Joaquin St.
Kraft Service
Eldorado & Park St.
Taft
Taft Bearing & Motor Supply
136 Center St.

CALIFORNIA—Cont'd

Tulare
Green Motor Parts
145 S. "K" St.
Ukiah
Porter's Tire Service
902 S. State St.
Vallejo
Al Young's Automotive Service
1401 Sonoma Blvd.
Ventura
Anderson Auto Electric
Oak & Santa Clara Sts.
Visalia
Automotive Parts Co.
400 E. Main St.
P. O. Box 573
Watsonville
Townsend's Auto Electric Service
205 Van Ness Ave.
West Los Angeles
Boggs & McBurney
11650 Santa Monica Blvd. (25)
Wilmington
Ets-Hokin & Galvan
218 Avalon Blvd.

COLORADO

Alamosa
Clark & Davidson
620 4th St. P. O. Box 137
Colorado Springs
The Auto Equipment Co.
212 E. Colorado Ave.
Denver
The Auto Equipment Co.
14th & Lawrence
P. O. Box 5230
Terminal Station (17)
1318 Lincoln St. (3)
Colorado Jobbers Supply, Co.
875 Broadway
Durango
The Auto Equipment Co.
1149 Main St.
Fort Collins
Auto Equipment Co.
159 Linden Ave.
Grand Junction
Mountain Supply Co.
228 S. Seventh St.
Greeley
The Auto Equipment Co.
924 8th Ave.
Pueblo
The Zook Tire Co.
Fifth at Grand

CONNECTICUT

Bridgeport
Bridgeport Auto Parts Inc.
577-583 Fairfield Ave. (3)
Collins & Leary Inc.
1026 North Ave.
Canaan
Knight's Battery & Radio Service
Railroad Ave.
Danbury
Murray's Auto Parts
161 White St.
Hartford
Auto Tire Co., Inc.
168 High St. (5)
Grinold Auto Parts, Inc.
354-72 Hudson St. (5)
Meriden
Frank's Auto Parts, Inc.
77 Grove St.
Middletown
Grinold Auto Parts, Inc.
650 Main St.
Milldale
Paul Schwenk Automotive Supplies
50 Norton St.

*Factory Branch Depot.

165

3199

List of Exide Wholesale Distributors (Continued)

CONNECTICUT—Cont'd

New Britain
Grinold Auto Parts, Inc.
153 Arch St.

New Haven
The Elm City Auto Electric, Inc.
617 State St. (11)
The Horton-Gallo-Cranmer Co., Inc.
96 State St.

New London
Grinold Auto Parts, Inc.
14 Bank St.

South Norwalk
Knowles & Smith, Inc.
67 Connecticut Ave.

Stamford
The Horton-Gallo-Cranmer Co., Inc.
838 Main St.

Torrington
Grinold Auto Parts, Inc.
55 S. Main St.

Waterbury
Shaw's Auto Parts, Inc.
477 W. Main St. (35)

DELAWARE

Dover
Motorcar Service Co.
S. Governor's Ave. Blvd.

Wilmington
Motorcar Service Co.
900 French St.

DISTRICT OF COLUMBIA

Washington
E. J. Payne
1819 L St., N. W. (6)

FLORIDA

Jacksonville
Joseph H. Walsh Co.
591 Park St.

Miami
Pearse-Shepard Tire Co.
429 N. W. 6th St. (8)

Tampa
Floyd Wholesale Tire & Supply Co.
1403 5th Ave.

GEORGIA

Alma
Butler Supply Co.

Atlanta
The Electric Storage Battery Co.
1246 Allene Ave., S. W.
Prior Tire Co., Inc.
458 Peachtree St., N. E. (3)

Augusta
Skinner Auto Supply Co.
564 Broad St.

Baxley
Butler Supply Co.

Columbus
C & B Parts Service Co.
1315 First Ave.

Macon
Butler Supply Co.
660 Broadway
Chapman's Garage, Inc.
439 Mulberry St.

Rome
Wit's Goodyear Tire Store
416 Broad St.

Savannah
The Frank Corporation
322 Broughton St., W.

Valdosta
Le Fils Automotive Service
309 N. Ashley St.

Waycross
Motor Parts Co.
500 Albany Ave.

Waynesboro
Skinner Auto Supply Co.

IDAHO

Boise
Bertram Motor Supply Co.
814 Jefferson

Lewiston
Erb Hardware Co.
411 D St., P. O. Box 616

ILLINOIS

Alton
Walls Tire Co., Inc.
833 E. Broadway

Aurora
Phillips Auto Parts Co.
229 Holbrook St.
Robinson's Auto Supply Co.
128 S. Broadway

Belleville
H. B. Pritzinger Distributor
Smithton Rd.

Bloomington
Auto Hotel, Inc.
East & Jefferson Sts.

Carbondale
Kelley's Automotive Supply Co.
515 N. Oakland Ave.

Champaign
E. E. Collins Co.
9 E. Logan St.

Chicago
The Electric Storage Battery Co.
5335 S. Western Blvd. (9)
Allied Tire & Battery Co.
610 W. 35th St. (16)
Grimm-Hansen-Troland, Inc.
2810 S. Michigan Ave. (16)
4634 W. Madison St. (44)
Al B. Maier & Co.
6019 Broadway (40)
Triangle Machine Works, Inc.
3650 N. Ashland Ave.
Universal Automotive Supply Co.
4021 Washington Blvd. (24)

Chicago Heights
Lang's Auto Parts
2801 Chicago Rd.

Cicero
Universal Automotive Supply Co.
5401 W. Cermak Road

Collinsville
Walls Tire & Battery Co.
319 W. Main St.

Danville
E. E. Collins Co.
214 W. Main St.

Decatur
Anderson Tire Co.
1454 E. Eldorado St.

Dixon
Smith Goodyear Service

East Moline
Stevenson Auto Supply
611 15th Ave.

East St. Louis
Coffey-Schreiber Tire & Gasoline Co.
10th & Broadway

Edwardsville
Walls Tire Sales, Inc.
125 W. Vandalia St.

Effingham
Keller Oil Co.
South Banker St.

Elgin
Phillips Auto Parts Co.
370 Brook St.
Robinson's Auto Supply Co.
Cor. State & Chicago Sts.

Elmhurst
DuPage Automotive Supply Co., Inc.
111 E. First St.

Evanston
Evanston Battery & Tire Service
1461 Elmwood Ave.
Grimm-Hansen-Troland, Inc.
922 Davis St.

Granite City
Walls-Schiff Tire Sales, Inc.
21st & Niedringhouse

Jacksonville
Klamp Tire Company
602 N. Main St.

ILLINOIS—Cont'd

Jerseyville
Walls Motor, Inc.
300 S. State St.

Joliet
Joliet Auto Supply Co.
314 Henderson Ave.
Grimm-Hansen-Troland, Inc.
1 S. Joliet St.

Kankakee
Christiansen Auto Parts
139 E. Station St.
Grimm-Hansen-Troland, Inc.
276 E. End Ave.

Kewanee
Kewanee Auto Supply
113 E. 2nd St.

La Grange
La Grange Motor Parts Co.
17 N. Brainard Ave.

La Salle
La Salle Automotive Supply Co.
160 Bucklin St.

Lincoln
Shaw's Auto Supply Co.
716 Broadway

Macomb
Macomb Tire & Battery Distributors
517 E. Washington St.

Mattoon
Freeman & Johnson Auto Supply
1913 Broadway

Maywood
West Suburban Auto Parts, Inc.
511 W. Lake St.

Moline
Farries W. Shattuck
2312 5th Ave.

Pekin
Automotive Parts & Machine Co.
229 Court St.

Peoria
Peoria Machine & Parts Co.
605 Franklin St.
Sweney Gasoline & Oil Co.
301 S. Adams St.

Pontiac
Fred's Service
425 W. Madison St.

Quincy
Green's Auto Parts
1024-26 Maine St.

Rockford
The Ridge-Rockford Co.
211 S. Winnebago St.
Smith Oil & Refining Co.
1132 Kilbourn Ave.

Rock Island
Midway Oil Co.
4301 1st Ave.

Springfield
Thomas Auto Supply
927 E. Jackson St.

St. Peter
Auto Parts Co.
120 S. Bloomington St.

Waukegan
Washington Tire & Battery Service
542 Washington Ave.

Wheaton
Wheaton Auto Parts
112 N. Wheaton Ave.

Wood River
Wells-Schmidt Tire Sales
101 E. Ferguson Ave.

INDIANA

Columbia City
H. J. Schrader Co.

Crown Point
Dud Pounds 111 W. Joliet St.

Elwood
H. J. Schrader Co. 1316 Main St.

Evansville
Bertsch Parts Service
900 N. Fares Ave.

Fort Wayne
B. M. Keough Co.
224 W. Main St. (2)

INDIANA—Cont'd

Gary
Monarch Oil & Supply Co.
10th & Virginia Sts.

Goshen
Genuine Motor Parts Supply
208 N. Main St.

Hammond
Coleman-Walsh Auto Supply, Inc.
638 State St.
Grimm-Hansen-Troland
5503 Hohman Ave.

Indianapolis
The Central Rubber & Supply Co.
Rorkell Building
30 E. Georgia St. (9)

Kokomo
H. J. Schrader Co.
125 E. Walnut St.

La Porte
The Ridge Co., Inc. 607 Michigan

Logansport
H. J. Schrader Co.
116-118 S. 6th St.

Madison
The Automotive Supply Co.
325 E. Main St.

Marion
G. C. Baber Motor Supply
117 W. 4th St.

Mishawaka
The Ridge Co., Inc.
110 S. Main St.

Peru
G. C. Baber Motor Supply
20-24 E. 5th St.

Richmond
Brown Motor Co. 12 N. 8th St.

South Bend
The Ridge Co., Inc.
315 W. Jefferson St. (2)
H. J. Schrader Co.
315 W. Jefferson Blvd.

Terre Haute
Loeser & Son 11th & Ohio

Wabash
G. C. Baber Motor Supply
20-26 E. Canal St.

Warsaw
H. J. Schrader Co.

IOWA

Burlington
Sherik Parts Service Co.
512 N. Main St.

Cedar Rapids
Allen Motor Co.
2nd Ave. & 10th St.
Fleet Equipment Co.
811 2nd Ave., S. E.

Cherokee
United Wholesalers
423 W. Main St.

Clinton
Lehman & Co. 712 S. Second St.

Des Moines
Magneto Carburetor & Electric Co.
1308 Grand Ave. (9)

Dubuque
Belsky Motor Co.
8th & Iowa Sts.

Fort Dodge
Hall's Automotive Parts
19 N. 12th St.

Fort Madison
Cushman Foundry & Machine Co.
1032 Avenue "H"

La Mars
United Wholesalers
33 Plymouth St., N. W.

Marshalltown
Arnold Motor Supply Co.
8 W. Church St.

Mason City
Jacoby Battery & Electric Co., Inc.
101 First St., S.E.

3500

Page 6

List of Exide Wholesale Distributors (Continued)

IOWA—Cont'd

Ottumwa
Consumer Supply Co.
Div. of Central Service Co.
832 W. Second St.
Price's Inc.
135-23 S. Washington St.
Rock Rapids
United Wholesalers Inc.
Sioux City
United Wholesalers
7th & Water Sts. (15)
Spencer
Arnold Motor Supply
470 First Ave., W.
Waterloo
Lewis Motor Supply, Inc.
312 W. Park Ave.

KANSAS

Arkansas City
Arkansas City Motor Parts Co.
122 N. Summit St.
Belleville
L. J. Mesner Co.
1206 18th St.
Beloit
Birney Motor Supply Co.
229 Main St.
Coffeyville
Dusing Supply Co.
116 E. Eighth
Colby
Birney Motor Supply Co.
Emporia
Smithson Supply Co., Inc.
317 Commercial
Ft. Scott
Bryan Auto Supply Co.
117 Market St.
Great Bend
Automotive Parts Co., Inc.
3100 Main St.
Hutchinson
Kissling-Wagner Motor Supply, Inc.
113 E. Sherman
Independence
The Motor Equipment Co.
118 East Main
Hanley
Automotive Parts Co., Inc.
McPherson
Automotive Parts Co., Inc.
Newton
Dressing Supply Co.
Norton
L. J. Mesner Co.
102 South 2nd.
Oakley
Automotive Parts Co., Inc.
Pratt
The Motor Equipment Co.
762 S. Main St.
Salina
Motor Service Co.
8th & Parish Sts.
Scott City
Automotive Parts Co., Inc.
Topeka
W. A. L. Thompson Hardware Co.
3rd & Kansas Ave.
Wichita
The Motor Equipment Co.
216 W. Douglas
The Whitsell Company, Inc.
320 S. Commerce (2)

KENTUCKY

Ashland
Ashland Auto Parts Co., Inc.
2600 Greenup Ave.
Bowling Green
Warren Motor Service, Inc.
1218 Broadway
Elizabethtown
Hunter Hansen
Glasgow
Main Auto Supply
E. Main St.
Lexington
Lexington Automotive Supply Corp.
375 E. Main St.
Jack Fisher
123 E. Short St.

KENTUCKY—Cont'd

Louisville
Automotive Service Co., Inc.
917 W. Main St.
General Rubber & Supply Co.
1149 S. Seventh St.
Maysville
Tenery Auto Parts
402 E. Second St.
Newport
Northern Kentucky Auto. Parts Co.
409 W. Fifth St.
Owensboro
Gate Motor Supply Co.
310 W. Fourth St.
Paducah
The Ferguson Co., Inc.
10th & Broadway
Paintsville
Mountain Petroleum Co.
Pikeville
Pikeville Oil & Tire Co., Inc.
Shelbyville
Tire Sales Corporation
222 E. Main St.
Shively
Automotive Service Company, Inc.

LOUISIANA

Alexandria
Farr Auto Supply
329 10th St.
Algiers
West Side Auto Supply Co.
418 Opelousas Ave.
Baton Rouge
Cairns Welding Supply Co.
2307 N. Third St.
Bunkie
Farr Auto Supply
Crowley
Republic Wholesale Co.
123 Front St. at Ave. G
De Ridder
Farr Auto Supply Co., Inc.
Eunice
Farr Auto Supply
220 West Vine Avenue
Harvey
West Side Auto Supply Store
Box 236
Lafayette
Morgan Supply House, Inc.
601 St. John St.
Lake Charles
Lake Auto Parts Co.
1103 Ryan St.
Marksville
Farr Auto Supply
Monroe
Monroe Automobile & Supply Co., Inc.
Morgan City
Morgan City Motor Supply, Inc.
213 Everett St.
New Orleans
Byrne & Rice Supply Co.
3122 Gajennie
W. J. Westerfield Co., Inc.
225 North Peters
The New Orleans Auto Supply Co.
1529-41 Dryades St. (13)
Owssen & Co., Inc.
238 Charires St.
Harry Stevens
811 St. Charles
Weber's, Inc.
825 Baronne St.
1419 St. Bernard
Oakdale
Farr Auto Supply
113 S. 10th St.
Shreveport
Interstate Electrical Co. of Shreveport, Inc.
616 Spring St.
Sulphur
Lake Auto Parts Co.
Winnfield
Farr Auto Supply

MAINE

Bangor
N. H. Bragg & Sons
24-46 Broad St.
Rice & Miller Co.
78 Rice St.

MAINE—Cont'd

Lewiston
Palmer King Motor Co., Inc.
167-173 Middle St.
Portland
Commonwealth Oil Co., Inc.
204 Kennebec St. (3)
Dyer-Knight Co., Inc.
42 Preble St. (3)
Emery-Waterhouse Co.
145 Middle St. (6)
Rumford
The Front Motor Supply Co.
202 Prospect Ave.
Waterville
Bailey Auto Parts, Inc.
107 College Ave.

MARYLAND

Baltimore
J. R. Hunt & Co., Inc.
Calvert & Saratoga Sts.
B. R. Smith
1100 Cathedral St. (1)
Cambridge
Cambridge Automotive Branch of Salisbury Automotive, Inc.
Chestertown
The Watkins Auto Supply Co., Inc.
Washington Ave. Extended
Easton
The Watkins Auto Supply Co., Inc.
Washington & Goldsboro Sts.
Hagerstown
L. H. Cordeman & Son, Inc.
718 W. Washington St.
Salisbury
Salisbury Automotive, Inc.
Salisbury Blvd. & Caroll Ave.

MASSACHUSETTS

Allston
Giant Battery Service Co.
355 Brighton Ave. (34)
Hunt-Marquardt, Inc.
244 Brighton Ave.
Boston
*The Electric Storage Battery Co.
100 Ashford St. (34)
Merchants Distributors, Inc.
1210 Boylston St. (15)
Shanahan Tire & Supply Co., Inc.
1270 Columbus Ave.
Brockton
A. F. German Company, Inc.
1759 Main St. (28)
Hunt-Marquardt, Inc.
303 Warren Ave. (49)
Fall River
W. W. Leach & Co.
196-202 Bedford St.
Haverhill
Kessel Auto Parts Co.
88 Water St.
Holyoke
J. Russell & Co., Inc.
361 Dwight St. (1)
Hyannis
A. F. German Company, Inc.
Barnstable Rd.
Lawrence
Hunt-Marquardt, Inc.
218 S. Broadway
Lowell
Bouton Auto Supply Co.
18-30 First St.
Lynn
Liberty Battery & Radio Co.
140 Liberty St.
Hunt-Marquardt, Inc.
29 Mt. Vernon St.
Malden
Malden Motor Parts Co.
145 Exchange St. (48)
Milford
Milford Auto Parts, Inc.
331 Main St.
New Bedford
W. W. Leach & Co.
501 County St.
Newtonville
Bram Battery & Tire Service
252 Walnut St. (60)

MASSACHUSETTS—Cont'd

Pittsfield
May's Auto Parts, Inc.
12 Adam St.
Quincy
Hunt-Marquardt, Inc.
98 Washington St. (69)
Springfield
Charles Broad Tire Co.
77 Dwight St. (3)
Parmenter Auto Parts Co., Inc.
611 Main St. (5)
Taunton
W. W. Leach & Co.
32 Cohannet St.
Worcester
George F. Blake, Inc.
121 Commercial St. (8)
The Worcester Rim & Wheel Co.
138 Southbridge St. (3)

MICHIGAN

Alma
Ray C. Joyce, Inc.
319-21 E. Superior St.
Alpena
Neumanns Tire & Battery Shop
703 N. Second Ave.
Battle Creek
The Motor Shop & Priest Tool & Mfg. Co.
103 South Ave.
Bay City
The Lowery Co.
705-7 Saginaw St.
Benton Harbor
Ridge & Kramer Motor Supply, Inc.
221 W. Main St.
Big Rapids
Binney Auto Parts Co.
114 N. Michigan Ave.
Carsonville
Harold J. Fix Company
4030 E. Chandler St.
Charlotte
Charlotte Auto Parts
416 N. Washington Ave.
Cheboygan
Cheboygan Auto Supply Co.
215 S. Main St.
Coldwater
Trust Auto Parts Co.
24-28 S. Hudson
Dearborn
Parts & Equipment Corp.
5540 Schaefer Rd.
Detroit
*The Electric Storage Battery Co.
8051 W. Chicago Blvd. (4).
Citron Kolb Oil Co.
14445 Linwood Ave. (6)
L. M. Dechar
450 Dickerson
Deluxe Motor Service, Inc
41 Harper Ave. (2)
Detroit Cylinder Grinding Co.
4433-Cass Ave. (1)
264 N. Morrell St. (9)
Henderson Tire Co.
45 Selden Ave.
Harry Mellerson Rubber Co.
7745 Grand-River (4)
Motor Parts & Machine Co.
6118 W. Fort St.
Taylor Automotive Supply Co.
10200 E. Warren Ave. (13)
Victor Oil Co.
11511 E. Warren Ave. (13)
Dowagiac
The Ridge Co., Inc.
107 S. Front St.
Durand
Durand Auto Parts
810 N. Oak St.
Escanaba
Chatfield Machine & Foundry Co.
718 Stephenson St.
Ferndale
Johnson Auto Parts Co.
23127-9 Woodward Ave.
Grand Rapids
Bergman Auto Supply
512 Leonard St., N.W. (4)
Grand Rapids Warehousing Co.
592 Jefferson Ave., S. E. (3)
Fay Wyn & Co.
32-34 Crescent St., N. W. (2)

*Denotes Branch Depot

766 & 3501

List of Exide Wholesale Distributors (Continued)

MICHIGAN—Cont'd

Hancock
Sargent Brothers
811 Ethel Ave.

Holland
Automotive Replacement Parts
107 E. 8th St.

Iron Mountain
Home & Auto Supply
411 Stephenson St.
Iron Mountain Auto Supply Co.
306 Hughitt St.

Ironwood
Bubba Tire Shop
205 W. Aurora St.

Jackson
C. E. Hamlin Co.
225-27 N. Jackson St.

Kalamazoo
Midway Auto Supply
415 W. Kalamazoo Ave.

Lansing
Capital Automotive Supply Corp.
504 E. Michigan Ave. (29)

Manistee
Northern Auto Parts Co.
426 River St.

Menominee
Automotive Products Co.
633 Sheridan Rd.

Monroe
Ellert's, Inc.
28 S. Macomb St.

Mt. Pleasant
Ben Trainer Auto Parts
802 N. Main St.

Muskegon
Motor Service & Supply Co.
1169 Third St. (4)

Newberry
Newberry Automotive Parts
203 East Helen

Niles
The Ridge Co., Inc.
220 N. Front St.

Owosso
Shapiro Automotive Parts
209 S. Washington

Petoskey
Northern Auto Parts Co.
476 W. Mitchell

Pontiac
Eastern State Supply Co.
382 So. Saginaw St.

River Rouge
Parts & Equipment Corp.
10288 W. Jefferson Ave. (18)

Sault St. Marie
Cheboygan Auto Supply Co.

Traverse City
Northern Auto Parts Co.
324 E. Front St.

Wyandotte
Parts & Equipment Corp.
204 Eureka Rd.

MINNESOTA

Albert Lea
Motor Supply Inc.
113 S. Newton

Alexandria
Oman Supply Co., Inc.
616 Hawthorne St.

Arnold
Arnold's Auto Parts Co.
307 Third St.

Duluth
Mac Donald Motor Co.
120 Second Ave., W.

Fairmont
D. S. Milne Co.

Hibbing
Boreo Equipment
29th & 1st Ave.

International Falls
Northern Parts & Equipment Co.
616 Third Ave.

Marshall
D. S. Milne Co.

MINNESOTA—Cont'd

Minneapolis
Auto Gear Co.
1616 Harmon Place
The Automotive Supply Co.
122 Washington Ave., No.
Factory Sales Co., Inc.
1124 Harmon Place
Herold Auto Supply Co.
314 East Lake St.
The Lang Co.
127-129 E. Hennepin Ave.
Elmer N. Olson Tire Co.
309 S. 11th St.
Rite Fit Auto Supply
1220 Harmon Place
Sanborn Bros. Electric Co.
1811 Riverside Ave.

Owatonna
Motor Supply Inc.

Red Wing
Holquist's Battery Service Co.
220 Main St.

Rochester
Schael Auto Supply
620 1st Ave., S.W.

St. Paul
Parts Machine, Inc.
193 West 6th St.

South Center
Oman Supply Co., Inc.
333 Maine St.

Waseca
Motor Supply Inc.

Willmar
Oman Supply Co., Inc.
327 Third St.

MISSISSIPPI

Batesville
Dunlap & Kyle Co.
Highway 51

Gulfport
Kramer Motor Co.
22nd Ave. & 15th St.

Indianola
W. W. Gresham, Distributor

Isola
W. W. Gresham, Distributor

Jackson
Central Auto Parts Co.
227 S. Roach St.

Meridian
Moulds Serv. Station & Battery Co.
9-31-24th Ave.

Pascagoula
Bell Auto Parts
735 Telephone Rd.

Tupelo
Bryans Auto Parts

MISSOURI

Cape Girardeau
Krim Auto Supply
525 N. Main St.

Charleston
Simpson Oil Co.
246 E. Commercial St.

Chillicothe
Motor Supply Co.
710 Locust St.

Ferguson
Moline Storage Battery Co.
720 Carson Rd.

Jefferson City
City Tire & Battery Co.
1629 W. Main St.

Joplin
Joplin Auto Supply Co.
3rd & Joplin

Kansas City
*The Electric Storage Battery Co.
129 Belmont Blvd. (3-E)
B. B. & B. Company
2605 Warwick Trafficway
Kansas City Auto Supply Co.
1818 McGee St. (8)
Lobb Brothers, Inc.
3756 Broadway

Kennett
Airline Oil Co.
P. O. Box 19

MISSOURI—Cont'd

Maplewood
Genuine Motor Parts, Inc.
7560 Manchester Ave.

Maryville
Motor Parts & Equipment Co.
118 West 3rd

St. Charles
H. C. Cook & Co.
1147 Clay St.

St. Joseph
Motor Parts & Equipment Co.
1221 Frederick Ave.

St. Louis
Community Tire Co., Inc.
6130 Delmar Blvd. (12)
Paul Oil Co. of St. Louis
4470 Duncan Ave.
St. Louis Auto Parts Co.
3400 Gravois Ave. (18)
South Broadway Auto Parts Co.
7610 S. Broadway

Sedalia
Sedalia Supply Co.
212-214 E. Osage St.

Springfield
Thompson Sales Co.
P. O. Box 1413

MONTANA

Billings
Hines Motor Supply Co.
15 N. 31st St.

Bozeman
Montana Motor Supply Inc.
20 W. Main St.

Dillon
Montana Motor Supply Inc.

Great Falls
Hines Motor Supply Co.

Hamilton
Missoula Motor Parts
Hamilton Branch

Helena
Montana Motor Supply Inc.
430 N. Main St.

Kalispell
Kalispell Motor Supply Co.
27 Second St. East

Lewistown
Hines Motor Supply Co.
119-121 W. Main St.

Libby
Kalispell Motor Supply Co.

Livingston
Montana Motor Supply Inc.
223 S. Main St.

Miles City
Hines Motor Supply Co.
605 Bridge St.

Missoula
Missoula Motor Supply Co.
128 W. Main St.

NEBRASKA

Beatrice
L. J. Mesner Co.
1146 North 7th

Chadron
Bilfer-Chambers Co.
206 Chadron Ave.

Fairbury
L. J. Mesner Co.
536-38 Fourth St.

Fremont
Brucker Motor Supply
211 E. 4th St.

Grand Island
Red Bronner Sales Co.
129 E. Third St.

Hastings
L. J. Mesner Co.
207 N. Lexington St.

Holdrege
L. J. Mesner Co.
320 East Ave.

Kearney
Kearney Auto Parts

Lincoln
L. J. Mesner Co.
1941 O St.

McCook
L. J. Mesner Co.
110-12 W. Third St.

NEBRASKA—Cont'd

Norfolk
O. L. Schaer Co.
309 South 4th

Omaha
Auto Electric Service
2737 Farnam
Carburetor Oil Co.
Dekins Bldg.
16th & Leavenworth (2)

Scottsbluff
Bilfer-Chambers Co.

Valentine
Bilfer-Chambers Co.

NEVADA

Reno
Nevada Auto Supply Co.
301 S. Virginia St.

NEW HAMPSHIRE

Gorham
Community Oil Co., Inc., Station A

Manchester
Bailey Distributing Corp.
325-29 Elm St.
The Keene-Winchester Co.
Turner & Douglas Sts.

Nashua
Nashua Battery Shop
2 Osgood St.

Portsmouth
Community Oil Company, Inc.
610 Islington Street

Rochester
Community Oil Company, Inc.
36 Autumn Street

NEW JERSEY

Asbury Park
All Auto Parts Co., Inc.
705-707 Main St.

Atlantic City
J. C. Miller Co.
2701 Arctic Ave.

Bridgeton
Motorist Service Co.
21 E. Commerce St.

Camden
Jersey Supply Co.
934 Haddon Ave.

Collingswood
Repmet, Inc.
Kresson Blvd. at Haddon Ave.

Elizabeth
King Brothers
Stony Highway No. 25

Hackensack
Carburetor & Ignition Repair Co.
Passaic & First Sts.

Hammonton
J. C. Miller Co.
12th St. at Bellevue Ave.

Morristown
W. H. Bowes Co.
117 Speedwell Ave.

New Brunswick
Hardy Tire Supply, Inc.
64 Albany St.

Newark
Electric Battery Co.
373 Central Ave. (4)
National Oil & Supply Co., Inc.
173-180 Frelinghuysen Ave.

Newton
J. R. Reed
41 Main St.

Orange
Richard G. Pfeiffer, Inc.
18 Park St.

Paterson
Reliable Magneto Repair Co.
29-32 Prince St. (1)

Plainfield
Thal Auto Parts, Inc.
325 E. Third St.

South Amboy
South Amboy Auto Parts Co.
128 N. Broadway

Trenton
The Wholesale Distributors
10 E. Front St.

*Factory Branch

3502

List of Exide Wholesale Distributors (Continued)

NEW MEXICO

Albuquerque
Conservancy Oil Co.
2120 S. Second St., P. O. Box 865
Hill Auto Electric Service
415 W. Marquette Ave.
Motor Equipment Co.
109-120 E. Marquette St.
Clovis
General Parts & Equipment Co.
305 Pile St.
Gallup
Motor Equipment Co.
106 West Highway 66
Roswell
Ned Revelle Co.
Main at Walnut Sts.
Santa Fe
Ancient City Oil Corp.
1515 Cerrillos Rd.
Santa Rosa
Santa Rosa Automotive Parts
P. O. Box 34
Tucumcari
Tucumcari Automotive Parts
P. O. Box 746

NEW YORK

Albany
Peerless Auto Parts Co.
261 Central Ave. (6)
Auburn
Auburn Unit Parts
21 Dill St.
Binghamton
Auto Supply Distributing Co.
2 Hawley St.
Brooklyn
Benson Auto Electrical & Carburetor Service
8666-18th Ave.
D & H Auto Parts
397 Empire Blvd.
A. Jungkind
556 St. Marks Ave. (17)
K & G Auto Parts, Inc.
600 Bushwick Ave. (6)
Madison Magneto Co., Inc.
1147 Bedford Ave. (16)
Buffalo
Balco-Pedrick Parts Corp.
1454 Main St. (9)
Unit Parts Corp.
1339 Main St. (8)
Catskill
Pitcher Accessories, Inc.
48 Bridge St.
Cortland
Kellogg Auto Supply Co.
155 Main St.
Glens Falls
Air-Land Motor Parts, Inc.
23-25 Bay St.
Gouverneur
Jess L. Skinner
263 W. Main St.
Hornell
Frank B. Peck Co.
7-11 Seneca
Hudson
Pitcher Accessories, Inc.
726 Columbia St.
Ithaca
Tioga Auto Parts
424 W. State St.
Jamestown
J. S. Auto Supply Co.
1082 E. Second St.
Kingston
Shield Petroleum Products
P. O. Box 201
Whse.—130 Cedar St.
Long Island City
Max Finkelstein, Inc.
36-20 Newtown Ave.
Regesbo Corp.
50-01 Northern Blvd.
Lawrence Stahl & Co., Inc.
19-17 43rd Rd.
Malone
Plattsburgh Motor Service, Inc.
21 Mill St.
Middletown
Electric Auto Systems Service
1 Centre St.
New Hyde Park
C. Wesville & Co.
Jericho Turnpike & Denton Ave.

NEW YORK—Cont'd

New Rochelle
County Motor Products, Inc.
144 Huguenot St.
New York
Broadway Ignition Co., Inc.
366 Tenth Ave.
The Electric Storage Battery Co.
201-3 W. 64th St. (23)
Lee Sales Corporation
1416 Boston Rd. (56)
Newburgh
National Oil & Supply Co., Inc.
178 S. Robinson Ave.
Town Automotive Distributors, Inc.
242 Ann St.
Niagara Falls
Niagara Auto Supply
3105 Pine St.
Olean
Olean Unit Parts, Inc.
323-325 W. State St.
Oneonta
W. E. Cipes
32-34 Broad St.
Oswego
Oswego Petroleum Co., Inc.
90 W. First St.
Patchogue
George Waldbauer & Son
21-25 Havens Ave.
Plattsburg
Plattsburg Motor Service
93 Bridge St.
Port Jervis
N. E. Mulley Auto Parts
18 Fowler St.
Port Richmond
Chris Tire Stores
464 Richmond Ave. (2)
Poughkeepsie
Pitcher Accessories, Inc.
393 Mill St.
Queen City Oil Co.
239 Mill St.
Richmond Hill
Sheda Battery & Equipment Corp.
85-20 Van Wyck Blvd.
Rochester
Hahn Tire & Accessory Co., Inc.
418 St. Paul St. (3)
Rockville Centre
Schmitt Service Center, Inc.
151 Sunrise Highway
Roslyn
Jordan Tire Co., Inc.
3 Bryant Ave.
Saranac Lake
Plattsburgh Mtr. Service
Saranac Lake Corp.
37 Woodruff St.
Standard Tire & Supply
120 Broadway
Schenectady
Drew F. Beekman
17 S. Church St. (5)
Syracuse
Niles Auto Supply, Inc.
766 W. Genesee St. (4)
Ticonderoga
Air-Land Motor Parts, Inc.
118 Montcalm St.
Tompkinsville
D & M Motive Parts Co.
290 Bay St.
Troy
Clark D. Parry
2617 6th Ave.
Utica
Cahill Auto Supply Co., Inc.
211-213 Elizabeth St. (2)
Watertown
Garland City Parts Corp.
460 Mill St.
Yonkers
John J. Lynch Automotive Supplies
61 Vineyard Ave. (3)

NORTH CAROLINA

Asheville
Bronco Automotive Supply, Inc.
67 Biltmore Ave.
Charlotte
Carolina Auto Supply House
221 N. College St. (1)
Durham
Southern Parts & Electric, Inc.
302 Morgan St.

NORTH CAROLINA—Cont'd

Elizabeth City
Albemarle Auto. Supply Co., Inc.
303-305 N. Water St.
Gastonia
Moore & Stewart, Inc.
125-127 E. Franklin St.
Goldsboro
Standard Automotive Parts Co.
East Center St.
Greensboro
Motor Supply Co., Inc.
222 Commerce Place
P. O. Drawer 1890
Hendersonville
Standard Motor Parts Co.
421 S. Garnett St., P. O. Box 162
Hickory
The Flowers Co.
1121 Ninth Ave.
High Point
Collins Auto Supply Co., Inc.
151 S. Wrenn St.
Kinston
S. & A. Parts Co.
127 W. Gordon St.
Lenoir
The Flowers Co.
Morganton
The Flowers Co.
211 E. Union
New Bern
Craven Foundry & Machine Co.
206 Craven St.
Raleigh
Carolina Auto Parts Co., Inc.
420 South Salisbury St.
Reidsville
Standard Motor Parts Co.
Harrison & Scales
Shelby
Dickson Auto Supply, Inc.
116 W. Marion St.
Statesville
The Flowers Company
213 S. Meeting St.
Thomasville
Collins Auto Supply Co., Inc.
10 E. Winston St.
Wilmington
Jewell & Strickland Auto Parts Co.
5 North 3rd St.

NORTH DAKOTA

Bismarck
Hedahl Motor Supply
202 W. Main St.
Fargo
Bero Supply Co.
402 Northern Pacific Ave.
Grand Forks
Economy Wholesale Supply
124 S. 3rd St.
RCA Auto & Welding Supply
313 10th Ave., No.
Jamestown
Jamestown Motor Supply Co.
121 West First St.
Minot
Minot Parts & Service Co.
302 First Ave., S.W.
Westlie Motor Co.
113-119 Central Ave., W.

OHIO

Akron
The Hardware & Supply Co.
473 S. High St.
Thrush Oil Co.
1230 Newton St.
Alliance
The Ohio Battery & Ignition Co.
225 Hester St.
Ashland
Met's Auto Supply
88 E. Main St.
Ashtabula
Battery Sales & Service
5303 Main St.
Bowling Green
Cass Electric Co.
328 S. Main St.
Bryan
Isaac Motor Sales
418 N. Lyon St.
Cambridge
The Peoples Oil Co.
240 Woodlawn Ave.
213 Dewey Ave.

OHIO—Cont'd

Canton
Bowles Service Co.
409 Third St., S. W. (11)
Celina
Cron Tire & Supply Co.
215 S. Main St.
Cincinnati
Auto Rad Supply Company
Central Parkway & Race St.
Brinkman-Gelhot Parts Co.
6024 Montgomery Rd. (13)
Dorman Automotive Parts Co.
1695 Walnut St. (2)
Spreen Automotive Parts Co.
4132 Hamilton Ave.
Cleveland
The Electric Storage Battery Co.
Room 1012
Engineers Bldg. (14)
Broadway Petroleum Corp.
9106 Miles Ave.
Cleveland Ignition Co.
1301 Superior Ave. (14)
The Parker Refining Co.
945 E. 83rd St.
Parkwood Tire & Supply Co.
11011 Superior Ave.
The Steeds Rubber & Supply Co.
2401 Chester Ave. (14)
The Sussen Rubber & Supply Co.
2017 E. 65th St. (3)
Town Tire & Battery Service
2225 Broadway (4)
The Yale Auto Parts Co.
8819 St. Clair Ave. (8)
Columbus
Don S. Morris
1409 Grand View Ave. (12)
Dayton
Mays Oil & Supply Co.
315 Kirkham St.
Standard Parts Co.
28 Washington St.
Dover
Dover Auto Parts, Inc.
121 Wooster Ave.
East Liverpool
Hays Oil Co.
Fifth & Broadway
Findlay
Allison Parts & Equipment Co.
211 N. Main St.
Frazeysburg
Layman's Tire Service
Fremont
The Fremont Oil Co.
1649 W. State St.
Grafton
Roland Hendrix
902 Main St.
Greenville
Cedar Point Auto Supply
RR. 2, U. S. Route 36
Kenton
Dixie Auto Parts Co.
210 W. Columbus St.
Lakewood
Lakewood Batt. & Ignition Co.
16213 Madison Ave. (7)
Lima
Gearhart Automotive
211 S. Union St.
Lorain
Hageman Supply Co.
1750 Broadway
Mansfield
Clark Distributing Co.
148 E. Fifth St.
Met's Auto Supply
64 N. Walnut St.
Marietta
D. A. Kuhn
167 Front St.
Massillon
The Hardware & Supply Co.
S. Erie St.
Norwalk
Price & Sons Inc.
58 E. Monroe St.
Norwood
Dorman Auto Parts Co.
3816 Montgomery Rd.
Painesville
Hatch Auto Service, Inc.
259 E. Jackson St.
Piqua
Mays Oil & Supply Co.
111 College St.
Salem
Hoppes Tire Service
116-134 W. State St.
Sandusky
Automotive & Marine Supply Co.
730 Hancock Ave.

167 — 3593

List of Exide Wholesale Distributors (Concluded)

OHIO—Cont'd

Sidney
Dixie Auto Parts Co.
N. Dixie Highway

Springfield
Springfield Tire & Battery Co.
216-18-20 W. Main St.

Steubenville
Shaffer's General Tires, Inc.
Cor. N. Fourth & North Sts.
Standard Welding & Spring Co.
244 N. Sixth St.

Sugar Tree Ridge
R. W. Marconette

Toledo
Hankey Sales Co.
110-112 14th St. (2)
Huebner Supply Co.
20 Erie St.
Miller Oil, Inc.
1933 South Ave. (9)

Warren
Lang & Rodkey, Inc.
875 Niles Rd.
Pittler Automotive Supply, Inc.
522 E. Market St.

Wellington
Wellington Auto Parts, Inc.
119 Herrick Ave.

Youngstown
J. A. Barber & Son
13-19 E. Wyoming Ave.
The Vahey-Marsh-Woods Co.
1028 W. Rayen Ave.

Zanesville
Layman's Tire Service
130 Main St.
Earl Miller Factory Distributor
921 Merrick Ave.

OKLAHOMA

Ada
Ada Auto Supply
216 E. Main

Altus
Badger Oil Co.
621 S. Main

Alva
Hackett Auto Supply
220 College

Ardmore
Lyndon Lindley
304 W. Main St.

Bartlesville
The Motor Equipment Co.
313-15 Osage

Chickasha
The Motor Equipment Co.
524 Chickasha

Enid
Chappell Oil Co.
230 West Maine
P. O. Box 1469
Hackett Auto Supply
218 W. Randolph

Guthrie
T. S. Wood Supply Co.
114 N. Wentz

Lawton
The Motor Equipment Co.
of Wichita, Kansas
402-403 Ave. "E"

Oklahoma City
Dwyer Clark & Dwyer Oil Co.
501 W. Noble

Ponca City
Mires Tire Co.
122 N. First St.

Tulsa
Tom P. McDermott, Inc.
1400 S. Boston

Woodward
Hackett Auto Supply
510 Main St.
The Motor Equipment Co.
517 E. Main

OREGON

Albany
Konsleman's
420 W. Second Ave.

Corvallis
Corvallis Auto Parts
112 N. Second St.

Eugene
Wyatt's
101 W. Broadway

La Grande
Roy Farnum Supply Co.
1414 Adams

OREGON—Cont'd

Medford
Sam Jennings Tire Co.
229 N. Riverside Ave.

Portland
Wiggins Company, Inc.
S. W. Park & Couch Sts.

PENNSYLVANIA

Allentown
Bee Incorporated
718 Allen St.
Philadelphia Wholesale
Distributors, Inc.
Penn & Green Sts.

Altoona
Lyons Battery & Electric Co.
2501 Union Ave.

Beaver Falls
Superior Auto Accessories Co.
1820 Seventh Ave.

Bradford
Campbell-Johnson, Inc.
59 Barbour St.

Brownsville
Superior Auto Accessories Co.
105 Market St.

Butler
Superior Auto Accessories Co.
125 W. Wayne St.

Canonsburg
Canon Auto Parts Co.
1 S. Jefferson St.

Carnegie
Tri-State Mfg. & Supply Co., Inc.
251 E. Main St.

Charleroi
Superior Auto Accessories
228 McKean Ave.

Chester
Motor Car Service Co.
505 Sproul St.

Clairton
Kee Auto Parts Co.
1104 St. Clair Ave.

Clearfield
Keller & Wolfel, Distributors
C. H. Miller Hardware Co.
23 N. 2nd St.

Coatesville
Motorcar Service Co.
219 E. Chestnut St.

Donora
Kee Auto Parts Co.
263 McKean Ave.

Doylestown
Doylestown Auto Parts Co.
North Main St.

Ephrata
Earl R. Sandoe, Inc.
107 W. Main St.

Erie
G. J. Miller Auto Supply
1911 State St.

Everett
Service Electric Co.
McKee Ave. & Main St.

Greensburg
Superior Auto Accessories Co.
214 E. Pittsburgh St.

Harrisburg
V. D. Leisure Co.
20th & Derry Sts.

Hazleton
Samuel Gildenberg
39 W. Diamond Ave.

Huntingdon
C. W. Miller Hardware Co.
520 Washington St.

Jenkintown
P & C Automotive Specialties, Inc.
167 Jericho Manor

Johnstown
Cambria Equipment Co.
17-27 Johns St.

Kingston
Paramount Oil & Supply Co
Market & Wright Sts.

Lancaster
Herr Thompson Oil Co., Inc.
453 N. Prince St.
Jerome H. Rhoads
213 N. Prince St.
Sandoe Automotive, Inc.
Lincoln Highway East, RD #4

Lebanon
Krall Battery & Ignition Co.
5th & Cumberland Sts.

PENNSYLVANIA—Cont'd

Lock Haven
Economy Tire & Auto Parts Co.
16 W. Church St.

McKeesport
McKeesport Auto Parts Co.
620 Market St.

Meadville
Sandberg Bros.
813-819 Park Ave.

Mount Carmel
Big Boys Auto Parts Co., Inc.
45 Oak St.

New Castle
Storage Battery & Electric
Service Co.
113 N. Mercer St.

New Oxford
Arro Oil Company, Inc.
Lincoln Way, East

Philadelphia
The Electric Storage Battery Co.
General Offices:
12 S. 13th St. (2)
Philadelphia Branch Office:
417th St. & Indiana Ave. (32)
Philadelphia Service Station:
Rising Sun & Adam Ave. (20)
Berrodin Auto Supply Co.
713 N. Broad St. (23)
Germantown Battery Service
4336 Greene St. (44)
Lancaster Auto Supply Co.
Lancaster Ave. (31)
Motor Ignition Co.
1526 Fairmount Ave.
Philadelphia Wholesale
Distributors, Inc.
Girard Ave. & 6th St. (31)
Supple-Biddle-Stietz Company, Inc.
5th & Bristol Sts. (5)
Tri-State Distributors
Lehigh Ave. & 17th St. (32)

Phoenixville
Phoenix Auto Parts
Nutt Road

Pittsburgh
Superior Auto Accessories Co.
5117-5121 Baum Blvd.
1200 W. Ohio St.
Tri-State Mfg. & Supply Co., Inc.
34 Wabash Ave.

Pottstown
Nettle Auto Parts
416 Chestnut St.

Pottsville
Battery Service Co
5th & Arch Sts.

Reading
Arlington Hoffert
1050 Buttonwood St.

St. Thomas
E. C. Barnes & Son
P. O. Box 195

Scranton
Charles B. Scott Co.
119-123 Franklin St.

Smethport
Smethport Auto Parts
102 Main St.

Somerset
Cambria Equipment Co.
227 E. Main St.

Stroudsburg
Pocono Distributing Co.
525 Main St.

Sunbury
Big Boys Auto Parts Co., Inc.
125-127 S. Second St.

Towanda
A. C. Smith
112 William St.

Uniontown
Superior Auto Accessories Co.
128 Dunbar St.

Warren
Parish Battery & Electric Service
6 Market St.

Washington
Superior Auto Accessories Co.
148 N. Main St.

Waynesburg
Sexton's Automotive Replacements
163 W. High St.

Williamsport
Clark & Hoag Tire Sales, Inc
505 Market St. (8)

Windber
Cambria Equipment Co.
1105 Graham Ave.

York
Lee Williams Auto Supply
88 N. Belmont St.

RHODE ISLAND

Newport
J. F. O'Connell, Inc.
89 Long Wharf

Pawtucket
W. E. Davis Co.
84 Montgomery St.

Providence
W. E. Davis Co.
343 Broad St. (7)

Woonsocket
W. E. Davis Co.
172 Front St.

SOUTH CAROLINA

Anderson
Moorhead Oil Co.
500 Murphy Ave.

Charleston
Cameron & Barkley Co.
160 Meeting St. (H) P. O. Box 906

Columbia
Cato-McLaurin, Inc.
1233 Hampton St. (C)

Florence
Carolinas Auto Supply House
129 N. Irby St.

Spartanburg
Lee Tire & Rubber Co. of
N. Y., Inc.
120 Bobo St.

SOUTH DAKOTA

Aberdeen
Arno Supply Co.
1017 S. Main

Huron
Automotive Supply Co.

Mitchell
Automotive Supply Co.
500 N. Main St.

Rapid City
Puritan Oil Co., Inc.

Sioux Falls
Sioux Falls Machine Works
214 N. Dakota Ave.

Watertown
Automotive Supply Co.
W. Kemp Ave.

TENNESSEE

Bristol
Southern Auto Supply Co. of Bristol
18 7th St.

Chattanooga
Barker Oil Company
744 E. 11th St.

Dyersburg
J. M. Collins Auto Parts Co.
E. Court St.

Johnson City
Southern Auto Supply Co.
247 W. Market St. P. O. Box 269

Knoxville
Service Auto Parts Co., Inc.
Emory Park & Central Ave. (17)

McKenzie
Standard Auto Supply
Huntington Rd.

Memphis
Steepleton General Tire Co.
246 Monroe Ave.

Nashville
Wholesale Supply Co., Inc.
110 Broadway (3)
Wilson Coile Tire & Battery Co.
1314 Church St. (3)

Paris
Motor Parts Co. of Tenn., Inc.
P. O. Box 142.

Union City
Automotive Parts Service

TEXAS

Abilene
Barrett's Automotive
933 S. Third St.

Amarillo
Dalton Auto Supply Co.
109 Polk St.

3504

List of Exide Wholesale Distributors (Continued)

TEXAS—Cont'd

Athens
E. & T. Auto Supply Co.
316 S. Prairieville St.

Austin
O. C. Olle Distributing Co.
1206 W. 6th St. (21)

Beaumont
Darner Supply Co.
597 College St.

Borger
Motor Inn Auto Supply
600 N. Weatherly

Brownsville
Barker's Supply Co.
1257 E. Levee St.
Burton Auto Supply
1001 S. E. Adams

Dallas
English Equipment Co.
3016 Gaston Ave.
Greater Dallas Automotive
4153 McKinney Ave.
South Dallas Battery Service
1805 S. Ervay (1)

El Paso
R. B. Wicker Co.
314-322 Mills St.
2702 N. Mesa
Virginia & Paisano

Fort Worth
Clarence Mathis Battery Service
N.W. 25th St. & Gould

Houston
Allen-Cooper Battery & Electric Co.
1019 Caroline St.
Miller's Battery Service
1205 Smith St.
Mountjoy Parts Co. of Houston
1420 Dallas Ave.
7243 Harrisburg Blvd.

Lamesa
Whitlow Battery & Electric Service
104 N. Dallas

Levelland
Levelland Auto Supply
602 Houston St.

Livingston
Automotive Parts & Service Co.
P. O. Box 49

Lubbock
Barrett's Automotive
1012-17th St.
P. O. Box 938
Rabun Battery & Electric
1816 Texas Ave.

Lufkin
Automotive Parts Depot
118 E. Shepherd St.

Markel
Hicks Auto Supply Box 151

Mission
Barrera's Supply Co.
500 Conway Blvd.

Nacogdoches
Corbett Spradley Auto Supply
Rt. No. 3, Lufkin Highway

Odessa
Barrett's Automotive
111 N. Hancock

Orange
McGill Supply Co.
21 Front St. P. O. Box 1781

Pampa
Motor Inn Auto Supply
416 W. Foster St.

Raymondville
Burton Auto Supply
N. 7th St. & Hi-Way

San Angelo
Walter E. DeHaan Co.
P. O. Box 942

San Antonio
Sunantex Oil Co.
422 Ruiz St.
Station A, P. O. Box 4156

Waco
Equipment Sales & Supply Co.
927 Franklin St.

Weslaco
Burton Auto Supply
3rd & Kansas

Wharton
T. S. Clements Co. P. O. Box 669

Wichita Falls
Clay Smith Equipment Co.
704 Scott St.

Woodville
Automotive Parts & Service Co.

UTAH

Murray
Motor Mercantile Co.
4778 South State St.

Salt Lake City
Motor Mercantile Co.
124 S. W. Temple St.
34 W. 7th South St. (10)

VERMONT

Burlington
Hagar Hardware & Paint Co.
164 St. Paul St.

St. Johnsbury
Hagar Hardware & Paint Co.
13 Portland St.

VIRGINIA

Danville
Auto Bearing & Parts Co.
509 Loyal St.

Emporia
Chesapeake Auto Supply Co.
of Emporia, Inc. North Main St.

Franklin
Chesapeake Auto Supply Co., Inc.
214 Mechanic St.

Harrisonburg
Bear Auto Parts Company
14 N. Liberty St.

Newport News
Chesapeake Auto Supply Co.
314 28th St.

Norfolk
Chesapeake Auto Supply Co., Inc.
200-210 W. 21st St.

Onley
H. C. Watson

Portsmouth
Chesapeake Auto Supply Co.
821 High St.

Richmond
The Kline Co.
2725 W. Broad St. (20)

Roanoke
Engleby Auto Supply Co., Inc.
339 Luck Ave., S. W.

Staunton
Simmons Parts Co.
119-123 S. Augusta St.

Suffolk
Chesapeake Auto Supply Co.
200 E. Washington St.

Winchester
Truck Suppliers, Inc.
22 W. Germain St.

WASHINGTON

Aberdeen
Caldwell Bearing & Parts Co.
303 W. Market St.

Anacortes
Skagit Auto Parts

Bellingham
Automotive Parts Service
1222 State St.

Ellensburg
Heinrich Auto Electric
405 N. Main St.

Mt. Vernon
Skagit Auto Parts
607 2nd Ave.

Richland
Auto Supply & Machine, Inc.
843 Stevens Drive

WASHINGTON—Cont'd

Seattle
Lohman & Clark
13741 Bothell Way
Motor Car Supply Co.
1621 12th Ave.

Spokane
Bearing & Rim Supply Co.
1204 W. Second Ave.
True's Oil Co.
717 N. Hamilton (11)

Tacoma
Reynolds-Hunt Tire Co.
314 Puyallup Ave.
Mayberry Motor Parts, Inc.
1938 Market Street (21)

Walla Walla
Johnson Auto Electric Co.
35 S. Spokane Ave.

Wenatchee
Jennings Tire Service
318 S. Wenatchee Ave.

Yakima
Yakima Grinding Co.
120 S. Second St.

WEST VIRGINIA

Beckley
Auto Parts Service, Inc.
832 Neville St.

Bluefield
Superior-Sterling Co.
200 Bluefield Ave.

Charleston
Southern Hardware Co.
12-14-16 McFarland St. (25)

Clarksburg
Clarksburg Tire Co.
431 W. Pike St.

East Rainelle
Carper Parts Co.

Elkins
S & A Supply Co.
Center St. & Randolph Ave.

Franklin
Glover's Auto Supply Co.
Main St.

Huntington
Veterans Auto Supply
1122 Fourth Ave.

Parkersburg
Couch Tire Co.
614 Juliana St.

Princeton
Chambers Automotive Supply
102 S. Sixth St.

Summersville
Carper Parts Co.

Weirton
Tri-State Mfg. & Supply Co., Inc.
4000 Main St.

Welch
McDowell-Auto Parts, Inc.
156 McDowell St.

Wheeling
Wheeling Auto Supply Co.
1-3 South St.

WISCONSIN

Appleton
Kramer Ridge Co.
316 N. Appleton St.

Ashland
Northland Auto Supply

Beloit
Kuches Motor Parts
416 Broad St.

Eau Claire
Automotive Distributing Co.
317 Barstow St.

Fond du Lac
Schroeder Machine & Supply Co.
12-14 W. Second St.

Green Bay
L. Schuster & Sons, Inc.
420 N. Jefferson St.

Janesville
Ridge-Janesville Co.
11 N. Bluff St.
Smith Goodyear Service
215 Milwaukee St.

La Crosse
George Tire & Battery Depot
218-220 S. Third St.

WISCONSIN—Cont'd

Madison
Holmes Tire & Supply
431 W. Main St. (3)
Ridge-Madison Co.
826 E. Washington St.

Manitowoc
Ridge Motor Supply
Cor. 19th & Jay Sts.
Timm's Tire & Battery Service
720 Commercial St.

Marinette
Automotive Products Co.
2118 Hall Ave.

Milwaukee
Storage Battery Service Co.
1118 N. Jefferson St. (2)

Monroe
Crandall Oil Co., Inc.
1705 16th Ave.

New London
Krause Ridge Co.

Oconto
Automotive Products Co.
906 Main St.

Oshkosh
The Cook & Brown Lime Co.
70 Marion St.

Racine
Pro Auto Parts, Inc.
954 Washington Ave.

Rice Lake
Oliver Chevrolet Co.
9-11 E. Eau Claire St.

Sheboygan
Auto Electric Co.
417 Indiana Ave.

Superior
Holden's Tire & Battery Service
1702 N. 13th St.

Tomah
Kennedy Auto Supply Co.
906 Superior

Waukesha
Ridge Motor Parts, Inc.
237-239 W. Broadway

Waupaca
Gray Cushisha Oil Co.

Wausau
Jansen Supply Co.
417-419 Jackson St.

WYOMING

Casper
Wyoming Automotive Co.
626 W. Yellowstone Ave.
P. O. Box 1071

Cheyenne
Wyoming Automotive Co.
1712 Pioneer Ave.

Powell
Wyoming Automotive Co.
Box 4 1st Bus.

Rawlins
Wyoming Automotive Co.
412 W. Buffalo St.

Riverton
Wyoming Automotive Co.

Rock Springs
Wyoming Automotive Co.
602 4th St.

Sheridan
Wyoming Automotive Co.
316 N. Main St.

Torrington
Wyoming Automotive Co.

Warland
Wyoming Automotive Co.
406 Big Horn Ave.

ALASKA

Anchorage
Automotive Parts & Equipment Co.
P. O. Box 840

Fairbanks
Automotive Parts & Equipment Co.

TERRITORY OF HAWAII

Honolulu
The Schuman Carriage Co., Ltd.
P. O. Box 2420

168

3505

3527 COMMISSION EXHIBIT NO. 315A-B.

4312 Florida Avenue
Newtown Square, Penna.

December 14, 1955

Mr. Dwight T. Colley
Vice President of Marketing
260 South Broad Street
Phila., Penna.

Dear Sir:

I have received your letter on "Lets talk about gas prices," and I am taking this opportunity to let you know that we have followed your letter to a "T" for the past two years.

The only time that we cheapened our product was back in 1953 when a Company supervisor and salesman told us to drop our price to meet Sunoco's drop. We made a mistake by doing so at that time, but to this day with three other Atlantic stations along with other competitors, we have kept our price where it belonged—at the top. They are all, at this time, selling below our price.

I have lived in this township for almost forty years, and all of my family was raised here. I am a service man, and I am asking no quarter. I have served in both the Army and Navy and in two wars. My sons and I took over the station from its very beginning in 1953 and have worked hard to build up a good community business, first with a product that we are proud of and a service that would be hard to beat.

On November 28, I was notified that my lease with the Atlantic would not be renewed as of December 31, 1955. When a fellow like myself is condemned and told I am on

the way out without a letter of explanation of what was wrong, it just doesn't seem fair. I wonder why a large Company is run by such "little" men, who call themselves salesmen and supervisors.

For the past eight months we have had to pump our gas with just one pump, because of a road construction which caused one of our pumps to be removed, and because of this construction we had only one entrance. When the going was tough with the one pump and with the road under construction we worked all the harder to keep our gas and oil sales up around 50,000 gallons a month, which you can see by the company records.

If I have slipped on certain small things as the supervisors told me was the reason for not getting my lease renewed, it was not done to hurt the Company policy or the service that goes with it.

Mr. Colley, selling today is a lot different than back a few years ago. The service man or salesman that
3528 knows where he is going and has good common sense, with his feet on the ground is important, for we to this day have not found a substitute that can replace him.

On my station, we have done more than just sell gas and oil and automobile service, we also have sold the Company that produced our product and this you can verify by a few of our business men and women whose names I am sending you.

I have a list of approximately 470 customers which I am personally sending each a letter stating the facts as I found them in dealing with company supervisors and salesmen.

The following is a list of doctors, brokers, and a lot of other prominent people in our community who are our customers that you can call on to verify the statements in this letter.

Along with my attorney we are asking for a hearing before the NCPR through William D. Snow, General Counselor at Washington, D. C.

Joseph T. Mullray, Atty.
John Gable, Township President & Warden
W. L. Butler, Vice President of Phila. & Western R. R.
Paul Harron, owner WHIP
Sen. Geo. W. Pepper
Gibson & McIlvian
Dr. John B. Carson
W. W. Battles
W. P. Battles
John B. Carter, Atty.
Victor C. Barry

Sincerely,

Francis J. Ballaron

FJB:hom

3529 COMMISSION EXHIBIT NO. 317A-B.

Atlantic

This Lease, entered into as of the 27th day of July, 1954, by and between The Atlantic Refining Company, a Pennsylvania corporation, hereinafter called "Lessor" and Norris A. Stein FEJ NS hereinafter called "Lessee":

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor hereby leases to Lessee that certain parcel of land at Lancaster and Ford Avenues in Wilmington, County of New Castle, State of Delaware, more particularly described as follows:

Beginning at a point on the northerly side of Lancaster Ave., said point being distant 150 ft. Northwestwardly from the westerly side of Green Hill Ave.; thence extending along said Northerly side of Lancaster Ave. Northwestwardly 150 ft. to a point; thence extending between parallel lines (parallel to Green Hill Ave.) from Lancaster Ave. 100 ft. to the southerly side of an alley 3 ft. wide running from Green Hill Ave. to Ford Ave.

It is understood and agreed that for the first six months of the life of this lease, the rental will be one and one-half cents per gallon on each gallon of gasoline and motor fuel delivered to said premises with no minimum. FEJ NS

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises".

2—The term of this lease shall begin on the 27th day of July, 1954, and end on the 26th day of July, 1955, subject however, in the event such term is longer than one year, to

termination by Lessee at any annual anniversary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay rental at the rate of one and one-half cents (1½¢) per gallon on each gallon of gasoline or motor fuel delivered to the leased premises during the continuance of this lease; provided, however that the minimum rental payable during each calendar month shall be Two Hundred Fifty Dollars ($250.00), such minimum rental to be payable on a pro rata basis for any portion of a calendar month during which this lease is in effect; Rental shall become due at the time gasoline or motor fuel is delivered to the leased premises and shall be paid not later than twelve (12) hours thereafter. The minimum monthly rental, when applicable, shall be payable on or before the last day of each calendar month. Lessee shall maintain on a current basis accurate records of all gasoline or motor fuel delivered to the leased premises, and Lessor shall have the right to audit such records at all reasonable times to verify rentals payable hereunder.

5—Lessee shall pay, when due, all charges for telephone, water, gas, electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charges levied against Lessee or against the

leased premises by reason of the conduct of Lessee's business there. Lessor shall pay all other taxes, assessments, and governmental charges levied or assessed upon the leased premises.

6—Should Lessee abandon the leased premises, Lessor shall have the right to terminate this lease. Closing of the leased premises for business for a period of seventy-two (72) successive hours shall be considered as abandonment.

7—Lessee shall use the leased premises with due and reasonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease, Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable thereto as Lessor may establish from time to time.

3531 Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs, trade marks or color arrangements appearing thereon.

8—Lessee shall make all repairs and replacements to the leased premises; provided however, that if Lessee gives prompt notice to Lessor of the need thereof, the responsibility shall then pass to the Lessor to make such necessary repairs and replacements as are specified, and provided further, that if in such event the specified repairs and replacements are necessitated by the wilful misconduct

or negligence of Lessee, his agents or employees, the cost thereof shall be considered as additional rent payable on the last day of the calendar month next succeeding the month during which such cost is incurred.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee, his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to any claim for damages it might have, shall have the right to terminate this lease without liability; provided, however, that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowledge of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises and shall save harmless Lessor against all claims, legal proceedings, and damages for personal injury, loss of life, and property damage sustained in or about the leased premises, or upon the adjacent sidewalks and streets, arising during the continuance of this lease, as well as all costs, counsel fees, expenses and liabilities incurred in connection with such claims, the investigation thereof, or the defense of any proceeding brought thereon, and from any orders, judgments and decrees that may be entered therein. Lessee shall maintain, at Lessee's own cost and expense, such insurance as Lessor may deem necessary for Lessor's protection under the provisions of this paragraph.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to ter-

minate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to summary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Lessor shall have the right to terminate this lease.

13—This lease is personal, does not permit absentee operation, shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

14—A waiver of any breach hereunder shall not be deemed a continuing waiver, or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

15—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

16—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

17—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Lessor at First & Penn Avenues, West Reading, Penna. and to Lessee at the leased premises.

18—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

The Atlantic Refining Company

By.....

Regional Manager of Marketing

Norris A. Stein

Witnesses:

Jean M. McAlanis

F. E. Jones

3533 COMMISSION EXHIBIT NO. 317C.

Atlantic

Atlantic Housekeeping Standards
Class II Locations

Paragraph 7 of the B-3191 lease of The Atlantic Refining Company provides as follows:

"Lessee shall keep said leased premises clean and sanitary and shall keep free from snow, ice and all obstructions the sidewalks thereof and shall remove promptly all refuse of any kind therefrom."

Atlantic's interpretation of the meaning of this condition, of your obligation under this Paragraph, and an explanation of how this Paragraph will be administered follow:

An authorized representative or representatives of The Atlantic Refining Company will conduct unannounced inspections at the Atlantic Service Station located at Lancaster and Ford Avenues, Wilmington, Delaware during the term of the lease. These inspections will be based on the Housekeeping Rating Form shown on the reverse side of this statment. An inspection rating of 65 or better is required to indicate compliance with Paragraph 7 of the lease.

Norris A. Stein, having executed the lease for the above identified Service Station, indicates by signing below that the purpose of the Housekeeping Rating Form and Atlantic's interpretation of Paragraph 7 of lease form B-3191 are understood.

F E Jones
Witness

Norris A. Stein
Signature

7/20/54
Date

3535 COMMISSION EXHIBIT NO. 317D.

Atlantic

Housekeeping Rating

Dealer's Name .....
Address .....
Town .....
Rated by .....
Salesman .....
District ..... Date .....

	Points	Rating
Driveway		
Driveway clean	4	.....
Islands clean and curbs painted	4	.....
Meter cases and faces clean	4	.....
Driveway display clean and orderly	4	.....
Water buckets filled	2	.....
Building		
Exterior clean	4	.....
Fence—Lawns and premises clean and orderly	2	.....
Rear of building—orderly—(rubbish in containers)	4	.....
Temporary advertising current and clean	2	.....
Salesroom		
Floor—walls and ceiling clean	4	.....
Windows and display clean and orderly	4	.....
General neatness	4	.....
Display on shelves or show cases clean and orderly	4	.....

Restroom—Ladies'		
Floor — walls, windows, and ceiling clean	4	.....
Wash basin—toilet clean and in working order	4	.....
All supplies in dispensers	4	.....
Waste basket not too full	2	.....
Light working	1	.....
Restroom—Men's		
Floor — walls, windows, and ceiling clean	4	.....
Wash basin—toilet clean and in working order	4	.....
All supplies in dispensers	4	.....
Waste basket not too full	2	.....
Light working	1	.....
Stockroom		
Floor — walls, windows, and ceiling clean	2	.....
Stock clean and orderly	2	.....
Boiler Room or Space Heater		
Clean and orderly	2	.....
Free of all fire hazards	2	.....
Lubrication Room		
Floor—walls and ceiling clean	4	.....
Windows clean	4	.....
Lift or pit and area clean	4	.....
Equipment clean	4	.....
Total	100	.....

3537 COMMISSION EXHIBIT NO. 317E.

Atlantic

Atlantic Franchise Agreement

Effective Date July 27 1954

The Atlantic Refining Company, ...
a Pennsylvania corporation, hereinafter called "Atlantic", and Norris A. Stein of Wilmington, Delaware, hereinafter called "Dealer", lessee from Atlantic of a service station located at Lancaster and Ford Avenues, Wilmington, Delaware, under lease dated July 27, 1954, agrees as follows:

I. Atlantic shall sell and Dealer shall buy motor fuels and automotive lubricants (hereinafter referred to as petroleum products) in such quantities during the term hereof as Dealer may desire to buy and Atlantic may desire to sell, from time to time, provided that Atlantic shall not be obligated to make any delivery of petroleum products hereunder in quantities which do not conform to Atlantic's customary practice at the time and place of delivery.

II. Delivery of petroleum products purchased hereunder shall be at the Service Station at the above address. The prices Dealer shall pay Atlantic for petroleum products purchased hereunder shall be Atlantic's established Dealer prices therefor in effect at the time and for the place of delivery, together with all taxes which Atlantic may be required to pay or collect in respect to the manufacture, sale, delivery or use of such products. Payment shall be in cash at time of delivery.

III. Dealer shall sell all petroleum products purchased hereunder under the trade marks and designations indicated for such products by Atlantic. Dealer shall not adulterate any petroleum products purchased hereunder

and shall not mix such products with any other product or grade of product.

IV. At all reasonable times Atlantic shall have the right to inspect any equipment used for storing or dispensing petroleum products purchased hereunder, and shall have the right to take samples and to test any petroleum products offered for sale by Dealer under the trade marks and designations indicated for such products by Atlantic.

V. Dealer shall have the right to avail himself of the following:

A. Such training in sales methods and procedures as Atlantic may provide from time to time.

B. The assistance of such trained personnel as Atlantic may make available from time to time to help Dealer in attractively displaying petroleum products and merchandise.

C. Such sales promotion programs as Atlantic may make available from time to time.

VI. The waiver by Atlantic or Dealer of a breach of a provision hereof shall not constitute a waiver by such party of any succeeding breach of the same provision, or any other provision.

VII. Dealer is an independent contractor in the performance of this agreement and accepts exclusive liability for the payment of all social security, unemployment compensation and other like taxes or payments, for himself and his employees. Except as expressly set forth in this agreement nothing herein contained shall be construed as granting Atlantic any right to control Dealer, or his employees, nor shall Atlantic at any time exercise such control.

VIII. This agreement cancels and supersedes all prior agreements between the parties with respect to the subject matter hereof. This agreement shall in no way affect any contract between the parties covering the purchase and sale

of equipment. This agreement shall not be assigned by Dealer without Atlantic's prior written consent.

IX. This agreement shall become effective on the date first appearing and shall continue in effect for a period of one year therefrom, and from year to year thereafter, provided that this agreement shall terminate automatically upon termination of the aforementioned lease to Dealer.

In Witness Whereof, the parties have executed this agreement as of the day first mentioned above.

The Atlantic Refining Company
By Wm. H. Quay
Regional Manager of Marketing
F E Jones
Norris A. Stein

3539 COMMISSION EXHIBIT NO. 317F.

Atlantic

Agreement made this ..... day of ..... 1954, between The Atlantic Refining Company, ..., a Pennsylvania Corporation, hereinafter called Atlantic, and Norris A. Stein, Lancaster and Ford Avenues, Wilmington, Delaware hereinafter called Buyer, Witnesseth:

Sale: Atlantic agrees to sell and Buyer agrees to purchase Atlantic Automotive Lubricants herein named as ordered by Buyer estimated for each successive 12-month period at ..... barrels during the period between July 26, 1954, and July 25, 1955.

Atlantic shall not be required, without its written consent, in any one month to deliver more than one-eighth (⅛) of the estimated 12-month purchases mentioned above.

Duration: Upon the expiration of the original term, this Agreement shall continue in effect from year to year, unless terminated at the end of the original or any sub-

sequent term by either party giving to the other, at least thirty (30) days prior written notice, Except that if Buyer makes no purchases hereunder during twelve (12) consecutive months, this Agreement thereupon shall terminate without notice by either party.

Prices: Buyer shall pay for products purchased hereunder Atlantic's established prices therefor in effect at the time and for the place of delivery as shown in the "Atlantic Automotive Lubricants Price Schedule." A copy of the current schedule is attached to this Agreement and made a part hereof. Atlantic reserves the right to change without notice at any time during the term of this Agreement the prices and discounts specified in the "Atlantic Automotive Lubricants Price Schedule." Prices referred to, or provided for in this Agreement, do not apply to purchases by Buyer at service stations.

Terms: Cash, unless credit is established with Atlantic's Credit Department. If credit is established, and during the continuance of this Agreement, in the opinion of Atlantic, the financial responsibility of Buyer becomes impaired or unsatisfactory to Atlantic, deliveries may be suspended until arrangements are made for security satisfactory to Atlantic or for the payment of cash on delivery and until any money owing to Atlantic hereunder is paid. All payments under this Agreement are to be made at par.

Force Majeure: Buyer shall not be obligated to accept deliveries if unable to operate his business by reason of fire, flood, war, civil commotion, strikes, blockade or other causes beyond his control. Atlantic shall not be responsible for any loss or damage resulting from any delay or failure in delivery of any product due to fire, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes, or other differences with workmen or unions, or from any delay or failure in delivery when the supplies of Atlantic, or the facilities of production, manufacture, transportation or distribution

which otherwise would be available to Atlantic, are impaired by causes beyond Atlantic's control or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Atlantic's compliance therewith, or by governmental proration, regulation or priority, or from any other delay or failure due to any cause beyond Atlantic's control, similar or dissimilar to any such causes. When such cause or causes exist, Atlantic shall have the right in its sole discretion to restrict or cease deliveries hereunder.

Assignment: This Agreement shall not be assigned or transferred by Buyer, in whole or in part, without the written consent of Atlantic.

General: This Agreement contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This Agreement cannot be amended except by written instrument duly executed by both parties.

Failure of Atlantic to deliver in the packages ordered shall not be considered a breach of this Agreement.

Atlantic shall not be responsible under any circumstances for any consequential damages or injuries.

All products when shipped shall be uniform in quality and up to Atlantic's standards.

This Agreement cancels and supersedes as of the beginning of the original term set forth above, all former Agreements now in effect between the parties relating to the purchase and sale of Atlantic Automotive Lubricants.

In Witness Whereof the parties have executed this Agreement as of the day and year aforesaid.

The Atlantic Refining Company
By.....

Buyer Norris A. Stein
By (Illegible)

3541 COMMISSION EXHIBIT NO. 317G-H.

Atlantic

This Lease, entered into as of the 29th day of July, 1955, by and between The Atlantic Refining Company, a Pennsylvania corporation, hereinafter called "Lessor" and Norris A. Stein, hereinafter called "Lessee";

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor hereby leases to Lessee that certain parcel of land at Lancaster and Ford Avenues in Wilmington, County of New Castle, State of Delaware, more particularly described as follows:

Beginning at a point on the northerly side of Lancaster Avenue, said point being distant 150 ft. Northwestwardly from the westerly side of Green Hill Ave.; thence extending along said Northerly side of Lancaster Ave. Northwestwardly 150 ft. to a point; thence extending between parallel lines (parallel to Green Hill Ave.) from Lancaster Ave. 100 ft. to the southerly side of an alley 3 ft. wide running from Green Hill Ave. to Ford Ave.

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all he.einafter called "leased premises".

2—The term of this lease shall begin on the 27th day of July, 1955, and end on the 31st day of July, 1956, subject, however, in the event such term is longer than one year, to termination by Lessee at any annual anniversary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay rental at the rate of one and one-half cents (1½¢) per gallon on each gallon of gasoline or motor fuel delivered to the leased premises during the continuance of this lease; provided, however, that the minimum rental payable during each calendar month shall be Two Hundred Dollars ($200.00), such minimum rental to be payable on a pro rata basis for any portion of a calendar month during which this lease is in effect. Rental shall become due at the time gasoline or motor fuel is delivered to the leased premises and shall be paid not later than twelve (12) hours thereafter. The minimum monthly rental, when applicable, shall be payable on or before the last day of each calendar month. Lessee shall maintain on a current basis accurate records of all gasoline or motor fuel delivered to the leased premises, and Lessor shall have the right to audit such records at all reasonable times to verify rentals payable hereunder.

5—Lessee shall pay, when due, all charges for telephone, water, gas, electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charges levied against Lessee or against the leased premises by reason of the conduct of Lessee's business thereon. Lessor shall pay all other taxes, assessments,

and governmental charges levied or assessed upon the leased premises.

6—Should Lessee abandon the leased premises, Lessor shall have the right to terminate this lease. Closing of the leased premises for business for a period of seventy-two (72) successive hours shall be considered as abandonment.

7—Lessee shall use the leased premises with due and reasonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease, Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable 3343 thereto as Lessor may establish from time to time.

Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs, trade marks or color arrangements appearing thereon.

8—Lessee shall make all repairs and replacements to the leased premises; provided however, that if Lessee gives prompt notice to Lessor of the need thereof, the responsibility shall then pass to the Lessor to make such necessary repairs and replacements as are specified, and provided further, that if in such event the specified repairs and replacements are necessitated by the wilful misconduct or negligence of Lessee, his agents or employees, the cost thereof shall be considered as additional rent payable on

the last day of the calendar month next succeeding the month during which such cost is incurred.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee, his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to any claim for damages it might have, shall have the right to terminate this lease without liability; provided, however, that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowingly of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to terminate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to summary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the

benefit of creditors, Lessor shall have the right to terminate this lease.

13—This lease is personal, does not permit absentee operation, shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

14—Subject to the terms and conditions of Lessor's credit card program, outlined by Lessor from time to time, Lessor will (1) accept from Lessee assignment of accounts which result from retail credit sales made by Lessee to holders of valid Atlantic credit cards or those of other companies coming under Atlantic's credit privilege program and (2) pay or credit Lessee the amount thereof. Either party may terminate this credit card arrangement by giving to the other not less than 48 hours' advance written notice without termination or cancellation of any other provisions of this lease.

15—A waiver of any breach hereunder shall not be deemed a continuing waiver, or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

16—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

17—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

18—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Lessor at First & Penn Avenues, West Reading, Pennsylvania and to Lessee at the leased premises.

19—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

The Atlantic Refining Company
By M. E. Davis
Regional Manager of Marketing
Norris A. Stein

Witnesses:
K. Griffin
F. E. Jones

3545 COMMISSION EXHIBIT NO. 318A-B.

The Atlantic Refining Company
Petroleum Products

R. S. Zinn
District Sales Manager
Wilmington, Del.

505 S. Market Street
Wilmington, Del.

July 26, 1954

Mr. Norris A. Stein
Lancaster and Ford Avenues
Wilmington, Delaware

Dear Mr. Stein:

When you accept an Atlantic service station, you agree to undertake the lawful, diligent, and businesslike operation of a first-class service station. Let us emphasize to you that this is *your* business. We, of course, are interested in your success, and will advise and counsel with you, but we cannot do your thinking nor your work for you. Your success will depend on your own business judgment, skill, imagination, and initiative.

There are certain well-established standards which have proven by experience to be necessary for the businesslike operation of a first-class station. They are:

1. Housekeeping—Clean, sanitary premises, inside and out.

2. Use and Upkeep—Careful use and upkeep of building and equipment in safe, good operating condition.

3. Display—Neat, orderly arrangement of merchandise and advertising in a manner reasonably calculated to attract and solicit the attention of the motoring public.

4. Illumination—Safe and adequate to attract customers during night operations.

5. Personnel—Sufficient manpower to give prompt service and allocated to handle peak operating hours. Clean uniforms, courteous, trained to sell, adequate knowledge of services to be rendered.

3546 6. Hours of Operation—Uniform daily operating schedule based on buying habits of potential trade in the area.

7. Services—At least on a par with competition as to kinds of services rendered and efficiency of performance.

8. Adequate Inventory—Quality products and merchandise on hand to serve normal customer needs without delay.

9. Sales Promotion—Regular program for expanding sales, involving direct mail campaigns, personal solicitation, and advertising.

10. Prices—Competitive, quality and service considered.

11. Accounting—Maintenance on current basis of records adequate to reflect financial status and return from various phases of your business.

Every well-run Atlantic service station helps all dealers operating Atlantic service stations.

Cordially yours,

R. S. Zinn

District Sales Manager

RSZ:cma

cc: Mr. A. S. Rein, Reading

3547 COMMISSION EXHIBIT NO. 319.

The Atlantic Refining Company
Incorporated—1870
Petroleum Products

M. G. Davis
Manager of Marketing
Eastern Pennsylvania Region

First and Penn Avenue
West Reading, Pa.

June 22, 1955

RM:MGD
No Forcing

To All Atlantic Dealers
Eastern Pa. Marketing Region

Gentlemen:

The Roosevelt Small Business Committee recently completed its nationwide investigation of Supplier-Dealer relations.

As we understand it, two main points concern the Committee, namely (1) Short-Term Dealer Leases; and (2) considerable doubt that Suppliers' home office policy of not forcing Dealers to buy certain items was actually being followed by the Suppliers' field organizations.

Over two years ago—voluntarily, without pressure of any kind, and months before any other Supplier in the Industry—your Company adopted a Long-Term Dealer Lease Policy. Substantial expenditures of money, time and effort have been made to assure that the policy was fully understood. The same course of action has been followed with respect to our long-standing policy of not forcing Dealers to buy certain items.

If any of our people at any time insist on your buying

any certain products or merchandise against what you feel is to your best interest, I want you to call the matter directly to my attention.

All Atlantic Dealer Programs are based on our sincere belief that they will make your sales and profits grow through better service to the motoring public. We in Atlantic think it is our duty to continue to recommend to you those services and products which experience and scientific research have proven best for you and your customers.

Atlantic Dealer Programs are instituted for Your benefit—Yours to accept or reject.

Yours very truly,
M. G. Davis

dsd

3548 COMMISSION EXHIBIT NO. 320A-C.

February 1, 1956

Dear Mr. Davis,

I have in my possession a letter with your signature, dated June 22, 1955 concerning "Forcing". I have assumed from the intonation of said letter, that you are the gentleman to whom I should aim this letter. It is indeed unfortunate that I cannot take the time to see you personally in Reading, but if we cannot come to some sort of basic agreement resulting from my letter, I shall be forced to come to see you. In prefacing my remarks, I want you to understand that I have given this letter ample consideration, and that it is free from conjecture and innuendos. I have five points to discuss, and I shall endeavor to treat them one at a time.

1. Forcing.

I believe that my relationship with my Atlantic representative is hazarded by the fact that I do not purchase all

my TBA items from the Firestone Store. One year ago, I was told by my salesman that "If you do not remain a Firestone Dealer, you will not remain an Atlantic. Since that time, of course, nothing has been said pertaining to this matter. My belief is, however, that my lease and my relationship remain in jeopardy because of this statement and attitude.

2. Rent.

When I was first contemplating becoming an Atlantic dealer, the salesman assured me in the presence of my wife in my home, that rental on my station would always be subject to adjustment. For the first six months, I had no minimum. After that, my rent has varied from $180 to $250 per month minimum. At the present time, it has been affixed at $200. Listed here are my sales, or rather my purchases.

1954		1955			
July	5540	Jan	11227	July	14960
Aug	11815	Feb	11799	Aug	13452
Sept	13415	Mar	11458	Sept	12870
Oct	13537	Apr	12746	Oct	11432
Nov	12917	May	13420	Nov	11301
Dec	14993	June	12082	Dec	14906

As you can readily see, in only seven of eighteen months of operation, I have exceeded a minimum of 13,333 gal. which would be $200 per month. I have an extensive advertising program which includes "Welcome Wagon", direct mail, Yellow pages, personal calls, phone solicitation, etc. I have tried every method I can think of and some that Atlantic have thought of to increase my business. The only method left, which I refuse to do, is to extend personal credit. I have attempted many times to contact your Mr. Zinn in regard to this, but to this day, he refuses to answer my calls. I am going, of course, on the promise your salesman made to me before.

3550 3. Repairs.

My station, at the present time, is in a terrible state of repair. I realize that it is over fifteen years old, but that is no excuse from reality. As a small example, shortly after I moved in, the building was recaulked. During the operation, I pleaded with your Mr. Beech to come up and observe the unholy mess. Now, the exterior of the building is in such a state, that I could wash it down every morning and it still wouldn't look right. I have a fence around the property which was broken and unsightly for six months before it was finally fixed in a half-hearted way. It needs painting badly, but it doesn't get painted. I discussed the matter of the fence with your sales supervisor. He said that he would endeavor to have the fence torn down and replaced with a modern, metal fence. Nothing has been done. Previously, when it rained, water ran in two cracks in the rear of the building. After eighteen months of requests, complaints, etc., it was finally repaired. I have had a broken air tower for eighteen months. I am actually sick of asking to have it fixed. Your Mr. Conly came here one day several months ago and informed me that I could dress up the station without Atlantic's help, or get the hell out, so to speak. He assured me that he would see to it that I got some cooperation from the company in the way of repairs. Not wanting to get the hell out, I complied with his ultimatum. I am still waiting for said repairs. Believe it or not, I waited four weeks for Atlantic to replace a 10 cents part on my front door closer, just a few weeks ago. Six months ago, I agreed to take an active part in a "Park and Ride" plan, in cooperation with the local bus company. Last week I received a sign acknowledging my participation, and at this writing, the sign is still in my office, waiting to be installed outside. One of my tanks has a well around the fill pipe which fills up with water, which in turn seeps into the gasoline. This situation has remained

prevalent for sixteen months, without repair. There are many other instances, but the few I have outlined probably will give you an idea of what I am up against.

4. Lease.

It came to my attention from a reliable source that your salesman was trying to "peddle" my station at the last expiration of my lease. When I questioned him about this underhanded tactic, he did not even bother to deny it. His attitude was, "how do I know you won't leave? I always have to have a backlog of potential dealers." Unfortunately, his attitude toward me has always been in this vein. It seems that we made a friendly wager a little over a year ago. I won, he refused to pay, and our attitudes have cooled toward each other tremendously. For example, he hasn't taken an oil order from me in the last eight months. I have to phone them in. I didn't even know that you were selling anti-freeze this last year, since I was not approached to buy it. This situation is certainly not conducive to good dealer-company relations. There exists a gap or rupture of personalities which apparently will continue to clash.

3552 5. Change of Station.

When your Mr Julian White was sales supervisor, there existed a mutual respect between him and me. Speaking for myself, I had great admiration for Mr White. We are neighbors and we see each other frequently. I have taken the opportunity to seek his advice and guidance to good end results. He and I often discussed a change for the better concerning me. There were two stations in particular I was interested in. They are both much closer to my community than the station I presently operate. I am familiar with the people and have a lot in common with them. He and I agreed that it would be a good move for me if there ever was an opening in either one of them.

At 40th & Washington Sts., there have already been two changes, and at Marsh and Wilson Rds., there has been one change. My requests haven't only been unheeded, but they have been ignored. I feel that a change to one of these would have been advantageous to both Atlantic and myself. Since my calls are unanswered and my requests ignored, it seems that I have been put into a situation of stalemate. I will not deny that my prime interest is for myself. I do feel, however, that as I advance, so does Atlantic's interest become enhanced.

Please try to understand, Mr Davis, that I am not writing this letter solely to complain. I am trying to eject understanding and a sort of compassion from a large company toward a small individual. The small individual happens to be the most important person in the world to me. I have invested good money and valuable time into my business. I have tried to grow with my community in both stature and financial position. This is my only means of supporting my family. I am not attempting to 'count your money' and advise you to spend ten thousand dollars for improvements in this location. I am not trying to get everyone in the Wilmington office fired. I am merely trying to earn a living the best way I know. I honestly and sincerely believe if I fail in the service station business . . it will be the fault of the Atlantic Refining Company more than my own. I believe that these differences can come to an amicable settlement, if you are desirous of obtaining and retaining good dealers to operate your stations. If you can possibly understand and appreciate my plight, I feel comforted that you will take the necessary steps to rectify the unpleasant state of affairs which exists. If you feel that it would be to our mutual interest to have a personal discussion, I shall be most happy to comply. I feel that you would not have attained such a position of importance with such an important company without a

knowledge of men and their thoughts. Please try to understand mine. This situation is a constant boil to me and my family, and any equitable solution which can be justified, will be deeply appreciated.

I shall take this opportunity to thank you in advance for your kind consideration of my letter.

Very truly yours,

Norris A Stein

3554 COMMISSION EXHIBIT NO. 320D.

The Atlantic Refining Company
Incorporated—1870
Petroleum Products

M. G. Davis
Manager of Marketing
Eastern Pennsylvania Region

First and Penn Avenue
West Reading, Pa.

February 2, 1956

Mr. Norris A. Stein
Lancaster & Ford Avenues
Wilmington, Delaware

Dear Sir:

I wish to acknowledge receipt of your letter of February 1. I have discussed this matter with Mr. Zinn and he will call on you promptly, with the members of his organization concerned, to attempt to resolve the problems you outlined to me.

I hope that in this way we can find an amicable solution to whatever difficulties might exist on both sides.

Very truly yours,

MGD:ls

M G Davis

3555 COMMISSION EXHIBIT NO. 321

Law Offices

312 Odd Fellows Building
Wilmington, Delaware

107 North Broad Street
Middletown, Delaware

Howard M. Berg

Wilmington 8-6501
Middletown 4651

February 6, 1956

Mr. John Rule
c/o Atlantic Refining Company
Reading, Pennsylvania

Re: Norris Stein
Lancaster & Fordham Avenues, Wilm., Del.

Dear Mr. Rule:

I am writing this letter on behalf of Mr. Stein to clarify his position and the position of the Atlantic Refining Company in regard to rental payments for his Atlantic Service Station in Wilmington. I am advised by Mr. Stein that the company has repeatedly, despite his objections, deducted his rental payments for the service station from the moneys due him under Credit Card Sales. I don't believe that this is standard policy with the Atlantic Refining and at any rate it should not be.

Mr. Stein has objected to this type of deduction, and I have informed him that legally there is no basis for the Atlantic Refining Company to deduct his rental payments. The rental of his service station and the moneys which are

due him under Credit Card Sales are completely separate and different items. I have advised Mr. Stein that he could bring legal action against you to recover the sums of money due him as a result of the Credit Card Sales. By the same token, the Atlantic Refining Company could, of course, counterclaim or bring legal action against Mr. Stein for rental payments which were due them.

However, there is no legal basis for the sums of money to be deducted as they have done in the past. To the best of my knowledge, there is nothing contained in the contract between Atlantic Refining and Mr. Stein which would authorize the company to deduct these payments. Your deducting the rental payments from the moneys under Credit Card Sales due Mr. Stein have resulted in great inconvenience to him. You have created additional bookkeeping problems for him and his accountant and have caused him other inconveniences. Therefore, I am demanding on behalf of Mr. Stein that this practice be discontinued and that Mr. Stein hereafter receive all moneys which are due him for Credit Card Sales.

Upon your failure to comply with this demand, and in the event that any rental payments are again deducted from moneys due Mr. Stein, I shall bring appropriate legal action.

Very truly yours,

HMB:hlw
cc: Mr. Norris Stein

3556 COMMISSION EXHIBIT NO. 322.

February 9, 1956

A:EES

Re: Norris Stein
Lancaster & Fordham
Avenues
Wilmington, Delaware

Howard M. Berg, Esquire
312 Odd Fellows Building
Wilmington, Delaware

Dear Sir:

This letter is in reply to yours of February 6 addressed to Mr. John Rule, our Credit manager.

We agree to comply with your demand to refrain from deducting any sums of money due your client and applying it to delinquent rentals of merchandise account.

We wish to point out, however, that your client is in direct violation of Clause 4 of the dealer lease signed with our Company dated July 29, 1955 which specific sentence is quoted:

> "The minimum monthly rental when applicable shall be payable on or before the last day of each calendar month."

To cite the specific violation, your client owed the Atlantic Refining Company $28.52 delinquent rent for the month of October, 1955, and $2.42 for the month of November. I am assuming that his bookkeeper advised him that this amount was owing, but your client failed to pay this amount and consequently on January 31 we applied like amounts from his credit card sales.

Please point out this violation to the dealer in order to avert further violations on rent delinquencies.

Cordially yours,

EES:dsd

E. E. Sickels

3557 COMMISSION EXHIBIT NO. 323A-B.

Atlantic

This Lease, entered into as of the 10 day of November, 1958, by and between The Atlantic Refining Company, a Pennsylvania corporation, hereinafter called "Lessor" and Thomas J. Sullivan, Jr. hereinafter called "Lessee":

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor hereby leases to Lessee that certain parcel of land at 1600 Newport Pike, Newport Heights in Newport, County of New Castle, State of Delaware, more particularly described as follows:

Beginning at a pipe on the Southerly side of Wilmington-Christiana Turnpike 136.94 feet measured Southwestwardly from the intersection of said Turnpike and Larch Avenue; thence along said Turnpike Southwestwardly 125 feet to a pipe; thence along land of Greenhill Dairies, Inc. Southeastwardly 85.58 feet to a point; thence along other lands of Charles L. Murphy Northeastwardly 125.30 feet to a point; thence along other lands of Greenhill Dairies, Inc. Northwestwardly 84.79 feet to the place of beginning.

It is understood and agreed that for the first six months of the life of this lease, the rental will be one and one-half cents per gallon on each gallon of gasoline and motor fuel delivered to said leased premises, with no minimum.

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises".

2—The term of this lease shall begin on the 3 day of

November, 1953, and end on the 4 day of November, 1954, subject, however, in the event such term is longer than one year, to termination by Lessee at any annual anniversary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay rental at the rate of one and one-half cents (1-½¢) per gallon on each gallon of gasoline or motor fuel delivered to the leased premises during the continuance of this lease; provided, however, that the minimum rental payable during each calendar month shall be Two Hundred Ten Dollars ($210.00), such minimum rental to be payable on a pro rata basis for any portion of a calendar month during which this lease is in effect ~~*and provided further, that the maximum rental payable for each complete calendar quarter during which this lease remains in effect and ending on the last days of March, June, September and December shall be respectively* $....., $....., $..... *and* $.....~~. Rental shall become due at the time gasoline or motor fuel is delivered to the leased premises and shall be paid not later than twelve (12) hours thereafter. The minimum monthly rental, when applicable, shall be payable on or before the last day of each calendar month. Lessee shall maintain on a current basis accurate records of all gasoline or motor fuel de-

livered to the leased premises, and Lessor shall have the right to audit such records at all reasonable times to verify rentals payable hereunder.

5—Lessee shall pay, when due, all charges for telephone, water, gas, electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charges levied against Lessee or against the leased premises by reason of the conduct of Lessee's business thereon. Lessor shall pay all other taxes, assessments, and governmental charges levied or assessed upon the leased premises.

6—Should Lessee abandon the leased premises, Lessor shall have the right to terminate this lease. Closing of the leased premises for business for a period of seventy-two (72) successive hours shall be considered as abandonment.

7—Lessee shall use the leased premises with due and reasonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease, Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable thereto
3558 as Lessor may establish from time to time.

Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs, trade marks or color arrangements appearing thereon.

8—Lessee shall make all repairs and replacements to the

leased premises; provided however, that if Lessee gives prompt notice to Lessor of the need thereof, the responsibility shall then pass to the Lessor to make such necessary repairs and replacements as are specified, and provided further, that if in such event the specified repairs and replacements are necessitated by the wilful misconduct or negligence of Lessee, his agents or employees, the cost thereof shall be considered as additional rent payable on the last day of the calendar month next succeeding the month during which such cost is incurred.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to any claim for damages it might have, shall have the right to terminate this lease without liability; provided, however, that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowledge of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises and shall save harmless Lessor against all claims, legal proceedings, and damages for personal injury, loss of life, and property damage sustained in or about the leased premises, or upon the adjacent sidewalks and streets, arising during the continuance of this lease, as well as all costs, counsel fees, expenses and liabilities incurred in connection with such claims, the investigation thereof, or the defense of any proceeding brought thereon, and from any orders, judgments and decrees that may be entered therein. Lessee shall maintain, at Lessee's own cost and expense, such insurance as Lessor may deem necessary for Lessor's protection under the provisions of this paragraph.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to terminate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to summary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Lessor shall have the right to terminate this lease.

13—This lease is personal, does not permit absentee operation, shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

14—A waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

15—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

16—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to the leased premises. Lessee, in no event shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

17—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Lessor at First & Penn Avenue, West Reading, Pennsylvania and to Lessee at the leased premises.

18—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

Thomas J. Sullivan, Jr.

Witnesses:
George W. Battorf,
F. E. Jones.

3559 COMMISSION EXHIBIT NO. 324A-B.

Atlantic

Atlantic Housekeeping Standards

Class II Locations

Paragraph 7 of the B-3191 of The Atlantic Refining Company provides as follows:

> "Lessee shall keep said leased premises clean and sanitary and shall keep free from snow, ice and all obstructions the sidewalks thereof and shall remove promptly all refuse of any kind therefrom."

Atlantic's interpretation of the meaning of this condition, of your obligation under this Paragraph, and an explanation of how this Paragraph will be administered follow:

An authorized representative or representatives of The Atlantic Refining Company will conduct unannounced inspections at the Atlantic Service Station located at 1600 Newport Pike, Newport Heights, Newport, Delaware during the term of the lease. These inspections will be based on the Housekeeping Rating Form shown on the reverse side of this statement. An inspection rating of 65 or better is required to indicate compliance with Paragraph 7 of the lease.

Thomas J. Sullivan, Jr., having executed the lease for the above identified Service Station, indicates by signing below that the purpose of the Housekeeping Rating Form and Atlantic's interpretation of Paragraph 7 of lease form B-3191 are understood.

Thomas J. Sullivan, Jr.

G. E. Jones
Witness

November 10, 1953

3560 **Atlantic Housekeeping Rating**

Dealer's Name _____
Address _____
Town _____
Rated by _____
Salesman _____
District _____ Date _____

	Points	Rating
Driveway		
Driveway clean	4	
Islands clean and curbs painted	4	
Meter cases and faces clean	4	
Driveway display clean and orderly	4	
Water buckets filled	2	
Building		
Exterior clean	4	
Fence—Lawns and premises clean and orderly	2	
Rear of building—orderly—(rubbish in containers)	4	
Temporary advertising current and clean	2	
Salesroom		
Floor—walls and ceiling clean	4	
Windows and display clean and orderly	4	
General neatness	4	
Display on shelves or show cases clean and orderly	4	
Restroom—Ladies'		
Floor—walls, windows, and ceiling clean.	4	
Wash basin—toilet clean and in working order	4	

All supplies in dispensers	4	.....
Waste basket not too full	2	.....
Light working	1	.....
Restroom—Men's		
Floor—walls, windows, and ceiling clean	4	.....
Wash basin—toilet clean and in working order	4	.....
All supplies in dispensers	4	.....
Waste basket not too full	2	.....
Light working	1	.....
Stockroom		
Floor—walls, windows, and ceiling clean	2	.....
Stock clean and orderly	2	.....
Boiler Room or Space Heater		
Clean and orderly	2	.....
Free of all fire hazards	2	.....
Lubrication Room		
Floor—walls and ceiling clean	4	.....
Windows clean	4	.....
Lift or pit area clean	4	.....
Equipment clean	4	.....
Total	100	

3561 COMMISSION EXHIBIT NO. 325.

Atlantic

This Agreement, made this 16th day of November 1953 between The Atlantic Refining Company, hereinafter called Atlantic, and Thomas J. Sullivan, Jr. of Newport, County of New Castle, State of Delaware, hereinafter called Dealer.

Whereas, Atlantic has established a credit privilege which may be used by dealers permitting the assignment to Atlantic of accounts resulting from the sale of specified merchandise and services to customers whose credit has been approved by Atlantic, and

Whereas, Dealer desires to avail himself of said privilege.

Now, Therefore, This Agreement Witnesseth:

Atlantic will accept assignment of accounts which result from sales made by Dealer at Dealer's discretion on credit and will pay or credit Dealer the amount thereof, subject to the following terms and conditions:

1. Credit to be extended only for merchandise or service specified by Atlantic as coming under the credit privilege.

2. Customer to present to Dealer a valid Atlantic credit card or to be otherwise authorized in writing by Atlantic to receive credit. Customer to sign the delivery ticket.

3. Such credit sales to be made at prices set by Dealer and recorded on forms supplied by Atlantic.

4. Dealer to assign to Atlantic the accounts for such sales at such times and under such procedure as Atlantic may establish from time to time.

Dealer agrees to the terms and conditions hereof, and, as to any account assigned by Dealer to Atlantic, authorizes Atlantic to refuse payment or charge back to Dealer for any of the following reasons:

1. Sale of merchandise or service not specified by Atlantic for credit card sale.

2. Sale made to person not authorized by Atlantic to receive credit or to person whose credit has been suspended.

3. Sale not assigned to Atlantic promptly or in accordance with procedure established by Atlantic from time to time.

This Agreement shall continue so long as Dealer continues as a dealer of products of Atlantic unless terminated prior thereto by either party hereto giving to the other 48 hours' notice in writing of such intention to terminate.

The Atlantic Refining Company
By F. E. Jones
Thomas J. Sullivan, Jr. (Seal)
Thomas J. Sullivan, Jr. (Seal)

3562 COMMISSION EXHIBIT NO. 326.

Equipment and Apparatus

B-3191A 10/52

Inventory—Class 2 Station Number 361-459

Received in good condition from The Atlantic Refining Company, this 3rd day of November, 1953, the following equipment and apparatus to be used by the undersigned in the gasoline service station business being conducted at 1600 Newport Pike, Newport Heights, Newport, Delaware, under terms and conditions of a current lease for said premises.

1—Lift
1—550-gallon Tank
3—3,000-gallon Tanks
1—#36 Sign complete
3—Wayne Computing Pumps
2—Pumplights complete
1—Air Tower
1—Ceiling Reel
1—Floodlight Pole
2—Floodlights
1—Air Compressor
1—Electric Pump
1—550-gallon Tank

Supplement No. .....

Date of Original B-3191-A .....

Dealer-Lessee
Thomas J. Sullivan, Jr.
Thomas J. Sullivan, Jr.
B-3191A 10/52

3563 COMMISSION EXHIBIT NO. 327.

Firestone

Associate Dealer Agreement

Agreement, between Firestone Dealer, Firestone Stores of 1008 West Street, Wilmington, Delaware and Firestone Associate Dealer, Thomas J. Sullivan, Jr. T/A of Sullivan's Atlantic, 1600 Newport Pike, Newport, Delaware, covering Firestone products.

Firestone Associate Dealer agrees to buy from Firestone Dealer such Firestone products as are mutually agreed upon from time to time and to vigorously merchandise them and to conspicuously display Firestone signs. Firestone Dealer agrees to sell such products to Firestone Associate Dealer in accordance with Firestone Dealer prices and policies, subject to change without notice.

Firestone Dealer may at his discretion decline to make deliveries, except for cash.

This agreement does not give Firestone Associate Dealer the right to represent Firestone Dealer as his agent, and may be terminated by either party upon notice to the other. This agreement may not be assigned or transferred. Upon termination, Firestone Dealer shall have the right to remove all Firestone identification, including all signs.

Evan V. Hensley
Firestone Dealer
Thomas J. Sullivan, Jr.
Firestone Associate Dealer

11-12-53

COMMISSION EXHIBIT NO. 338.

DATE	INV. OR CM	DUE DATE	CHARGES	CREDITS	BALANCE
		BALANCE FORWARD CX-338			
12/21	41114	1/10/56	53 24	- Paid 1/9/56 ck #780	
27	41376	"	777 31		
	41498	1/20-2/10-3/10-4/10	53 24		
	41481	"	64470		15999
				FEDERAL TRADE COMMISSION	
		53.24 30 18	53 24 6488	EXHIBIT NO. 338	
		106	1.06	Goodyear Atlantic	
			53 30	MATTER OF	
			DATE 11/7/57	WITNESS	
				ACE REPORTING CO., Official Reporters	
				By	

PURCHASES AFTER 24TH OF MONTH WILL APPEAR ON NEXT STATEMENT. GOODYEAR SERVICE STORES.

31

COMMISSION EXHIBIT NO. 339. 3136

GOODYEAR SERVICE STORES

A DIVISION OF
THE GOODYEAR TIRE & RUBBER COMPANY, INC.

C. A.

MT. ROYAL & OLIVER STS.
PH. SA 7-7711 BALTIMORE 17, MD.
TERR. NO. 0220

DATE 12-17-55

SOLD TO
Baltimore Battery Co
25th & Harford
Baltimore 11, Md

PHONE

CASH ☐ CHARGE ☑

DUE DATE 1/3 2/10 3/10 4/10

SALES CODE 1 2 2X (CIRCLE)

Time Promised | Order No. | Salesman
License No. | Mileage | Make of Car

S 41326

BY	QUAN.	SIZE	ARTICLE	FLT	UNIT PRICE	EXTENSION
✓	5	Y117	Batteries		16 30	81 50
✓	5	A115	"		11 64	58 20
✓	15	G-Y15	"		10 75	161 25
✓	5	A-Y17L	"		11 64	58 20
✓	10	G-Y15L	"		10 75	107 50
✓	3	A-Y17E	"		13 97	41 91
✓	25	G115	"		10 75	268 75

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 EXHIBIT NO. 339
IN THE MATTER OF Goodyear-Atlanta
DATE 11/14/57 WITNESS
ACE REPORTING CO., Official Reporter
BY

SERVICE DEPARTMENTS—INSERT PROPER SUB ACCT. LISTED BELOW TOTALS XX XX

100—	TAG NO.	
100+	WORK ORDER NO.	
100+	WORK ORDER NO.	
100—	WORK ORDER NO.	3595

041 — VULC., REPAIR 043 — ALIGN. 045 — LUB. 047 — TUNE UP 049 — SOL. 100
042 — BRAKE 044 — BALANCING 046 — BATTERY 048 — TV & MAJ. APPL. SERV. & INST. 050 — MISC.

AMOUNT SUBJECT TO SALES TAX

SALES TAX

TOTAL INVOICE 777 31

Above Merchandise received in good order by

G-1158 (6-55) This is Your INVOICE. Please Do Not Destroy.

3608 COMMISSION EXHIBIT NO. 350A-B.

January 6, 1948

TBA SJH

Tire & Tube Sales

Mr. J. S. Parks
Room 1105

Dear Sir:

Some time ago I informed you that Mr. Supplee had requested a thorough exploration of tire propositions of various tire companies in order that the Sales Department would have an opportunity to determine whether or not there were more desirable programs than those that we are presently operating under. At the time, you suggested that the matter be deferred until the new year. Since this assignment is quite a considerable task, I should like to have it started at once and, if possible, completed before the end of February. I think we should invite all of the majors; i.e., Goodyear, Firestone, U. S. Goodrich, and General, to present their propositions on their name brands. In addition to that, I think we should also have propositions submitted, if possible, on certain of the desirable brands that are controlled by these majors, such as Kelly-Springfield, Fisk, Federal, Miller, and Hood.

We should also explore thoroughly the possibility of marketing our private brand and in this connection, should get proposals or refusals from the five majors, as well as from the Mansfield Tire & Rubber Company and the Lee Tire & Rubber Company. I do not believe that there are any other brands on which we would be interested in entertaining proposals.

I already have contacts with Mr. S. Gaylord of the Good-

year Tire & Rubber Company, Akron, Ohio; Mr. S. R. Milburn, U. S. Rubber Company, New York, New York; Mr. M. G. Huntington of the Allied Lines Division of the B. F. Goodrich Company, Akron, Ohio; Mr. G. W. Stephens, President of the Mansfield Tire & Rubber Company, Mansfield, Ohio; and Mr. J. Addison, Firestone Tire & Rubber Company, Akron, Ohio. Mr. Charleston already has Mr. Stephens' proposal on the United brand, as well as on a private brand. If you wish me to do so I can make the necessary arrangements through these contacts that
3610 I have, for definite appointments.

I am attaching hereto a list of the principal points that must be explored in each proposal and also a list of the pertinent facts regarding our operation that you will probably have to have for discussion with representatives of the various manufacturers.

Very truly yours,

Enc.

3612 COMMISSION EXHIBIT NO. 351 A-C.

June 22, 1948

TBA SJH

Tires

Mr. D. T. Colley
Room 1702

Dear Sir:

There are several broad choices that should be considered by an oil company that wishes to market a line of tires. These are:

1. Major brands—Otherwise known as the original equipment lines—represented by Goodyear, Firestone, United States, and Goodrich.
   A. The manufacturers in this group with the exception of Firestone also offer allied brands. Goodyear ~~rich~~ has Kelly-Springfield. United States has Fisk, Federal, Gillette, G & J, and others. Goodrich Hood, Miller, Brunswick, and Diamond. Some of these brands have been offered to all companies for their exclusive use during a contract period.
2. Minor brands—These include General, Seiberling, Lee, Mansfield, Dunlop, Cooper, Pharis, Dayton, Armstrong, and a number of other lines that are not nearly so well known.
   A. Some of these manufacturers also have allied brands. For example: Mansfield Tire & Rubber Company manufacture, in addition to the Mansfield tire, Century, Richland, and United. The allied lines of this group of manufacturers have in some cases been offered to oil companies on an exclusive basis.
3. Private brands—a name that is owned by the oil company or other mass marketer and used on a product that is made for the company by some tire manufacturer.

Following is a listing of some of the major oil companies and an indication of the type of tire marketing that they are employing:

PRIVATE BRAND		MINOR & ALLIED BRANDS		MAJOR BRAND	
Oil Company	Brand	Oil Company	Brand	Oil Company	Brand
Standard Oil (Ohio)	Atlas	Phillips Petrol.	Lee	Shell Oil (E. Coast)	Firestone & Goodyear
Standard Oil (N.J. & Subsidiaries	Atlas	Atlantic Ref.	Lee	Texas Co.	Firestone & Goodrich
Standard Oil (Ind.)	Atlas	Signal Oil	Lee	Kelly-Springfield	Firestone
Standard Oil (Cal.)	Atlas	Sun Oil	India (General)	Mid-Continent	Firestone
Standard Oil (Kty.)	Atlas	*Shell Oil (West Coast)	Federal (US)	Union Oil Co.	Firestone
Socony-Vacuum	Mobil	*Tide-Water Associated Oil		Sinclair	Goodyear
Cities Service	Acme				
Gulf Oil Corp.	Gulf				
Pure Oil Co.	Yale				
American Oil Co.	Amoco				

*Companies have exclusive use of allied brands.

3613 Acceptance

The big four have far more public acceptance by virtue of their original equipment policy, national advertising programs and their dominant position in the industry than any of the other brands. Majors, including their production of allied and private brands, supply approximately eighty per cent of the replacement passenger tires. Among the well-known allied brands are Kelly-Springfield, Fisk, Miller, and Hood. The outstanding minor brands are General, Seiberling, and Lee. The better established private brands include All-State, Riverside, Atlas, and Yale. Atlas is an oil company brand that has been on the market for twenty years. During this time, it has been nationally advertised and nationally distributed. Yale originated by an old New England Tire Company and subsequently pushed by General as an allied line, was finally purchased by Pure Oil Company after a period of exclusive marketing.

Completeness of Line

Only the major brands offer a complete line. Even their allied lines are not complete in the strictest sense of the word. Under the "Cons" of the Lee analysis is shown the number of sizes and types not available in their line, which gives a picture of the significance of a complete program. As is indicated, it would require unreasonable inventories to obtain 100% coverage with a considerable portion of this inventory provided for only a relatively small percentage of the total national tire business.

Availability

All of the majors were invited to submit proposals to The Atlantic Refining Company. Only one has been advanced on a house brand and that by the Firestone Tire

& Rubber Company. They are aggressively soliciting our business. All of the majors were also invited to submit proposals on their allied brands. The B. F. Goodrich Company is the only company that presented such a proposal and this was restricted to one brand; namely, Diamond.

We did not canvass all of the minor brand manufacturers for the obvious reason that the majority of them afforded us no improvement over our present supply arrangements. We did contact General but they indicated that they would prefer to see us complete negotiations with The Mansfield Tire & Rubber Company, in which company General holds a substantial interest. Seiberling was not approached because of their publicly proclaimed policy to do business only with the independent dealer. A proposition was submitted by the Cooper Tire & Rubber Company.

All manufacturers that were contacted, including our present suppliers, were invited to submit private brand proposals. Only one manufacturer; i.e., the Mansfield Tire & Rubber Company, was interested.

Attached to this presentation is a price comparison of passenger and truck tires which shows Atlantic's profit margins with the resale schedules that could be used for each of the several companies that have submitted proposals. This includes a price comparison using our present Lee price structure as the one hundred per cent base.

3614 The "Pros" and "Cons" of our opportunities in doing business with each of these manufacturers are also included. Cooper's proposition is not submitted in this presentation as it has no apparent advantages for Atlantic which are not better handled by the other companies.

This presentation and Atlantic's benefits with the sev-

eral companies has been discussed at length with the members of the T. B. A. Products Committee. It was their unanimous opinion that Lee appeared to be the best choice for our company. To their approval, I would like to add my own since it is also my opinion after careful analysis that the Lee franchise is the best available at the present time for Atlantic.

Very truly yours,

Enc.

3615 COMMISSION EXHIBIT NO. 351D.

June 14, 1948

Passenger Tires
6.00 x 16 (100 Level)
Exclusive of Tax

Net Dealer		
Atlantic-Lee	(List less 25–2½)	Dealer can make up to 26.8% profit on Retail Sales
Atlantic-United	(List less 25–5)	Dealer can make up to 28.8% profit on Retail Sales
Diamond	(List less 25–2½)	Dealer can make up to 26.8% profit on Retail Sales
Firestone	(List less 25–2½)	Dealer can make up to 26.8% profit on Retail Sales
Volume Dealer		
Atlantic-Lee	(List less 25–2½–5)	Dealer can make up to 30.6% profit on Retail Sales
Atlantic-United	(List less 25–5 –5)	Dealer can make up to 32.3% profit on Retail Sales
Diamond	(List less 25–6)	Dealer can make up to 29.5% profit on Retail Sales
Firestone	(List less 25–6)	Dealer can make up to 29.5% profit on Retail Sales
Wholesale Dealer		
Atlantic-Lee	(List less 25–2½–10)	Dealer can make up to 34.2% profit on Retail Sales
Atlantic-United	(List less 25–25–10)	Dealer can make up to 35.8% profit on Retail Sales
Diamond	(List less 25–9)	Dealer can make up to 31.7% profit on Retail Sales
Firestone	(List less 25–9)	Dealer can make up to 31.7% profit on Retail Sales
Distributor		
Atlantic-Lee	(List less 25–2½–15)	Distributor can make either 5–10–15% on Sales to above three types of dealers and upto 37.8% on Retail Sales
Atlantic-United	(List less 25–5 –15)	Distributor can make either 5–10–15% on Sales to above three types of dealers and up to 39.4% on Retail Sales
Diamond	(List less 25–11)	Distributor can make either 4.1, 7.2, 10.4% on Sales to 9% Dealer, 6% Dealer and Dealer and up to 33.2% on Retail Sales
Firestone	(List less 25–11)	Distributor can make either 4.1, 7.2, 10.4% on Sales to 9% Dealer, 6% Dealer and Dealer and up to 33.2% on Retail Sales
Distributor—C/L		
Atlantic-Lee	(2% additional)	Distributor can make either 6.9, 11.8, 16.8% on Sales to above three types of dealers and up to 38.5% on Retail Sales
Atlantic-United	(2% additional)	Distributor can make either 6.9, 11.8, 16.8% on Sales to above three types of dealers and up to 40.6% on Retail Sales
Diamond	(Associate Dealer & enjoying 3½% Volume Bonus)	Distributor can make either 7.5, 10.5, 13.6% on Sales to above three types of dealers and up to 36.9% on Retail Sales
Firestone	(Associate Dealer & enjoying 3½% Volume Bonus)	Distributor can make either 7.5, 10.5, 13.6% on Sales to above three types of dealers and up to 36.9% on Retail Sales

3616 COMMISSION EXHIBIT NO. 351E.

June 14, 1948

Truck Tires
8.25 x 20—10 Ply
Exclusive of Tax

Net Dealer		
Atlantic-Lee	(List less 20–5)	Dealer can make up to 24.0% profit on Retail Sales
Atlantic-United	(List less 20–5–5)	Dealer can make up to 27.8% profit on Retail Sales
Diamond	(List less 20–5)	Dealer can make up to 24.0% profit on Retail Sales
Firestone	(List less 20–5)	Dealer can make up to 24.0% profit on Retail Sales
Volume Dealer		
Atlantic-Lee	(List less 20–5–5)	Dealer can make up to 27.8% profit on Retail Sales
Atlantic-United	(List less 20–5–5–5)	Dealer can make up to 31.4% profit on Retail Sales
Diamond	(List less 20–6–2)	Dealer can make up to 26.4% profit on Retail Sales
Firestone	(List less 20–6–2)	Dealer can make up to 26.4% profit on Retail Sales
Wholesale Dealer		
Atlantic-Lee	(List less 20–5–10)	Dealer can make up to 31.7% profit on Retail Sales
Atlantic-United	(List less 20–5–5–10)	Dealer can make up to 35.0% profit on Retail Sales
Diamond Includes Associate Dealer Commission	(List less 20–9–3)	Dealer can make up to 30.6% profit on Retail Sales
Firestone Includes Associate Dealer Commission	(List less 20–9–3)	Dealer can make up to 30.6% profit on Retail Sales
Distributor—Truck Tire		
Atlantic-Lee	(List less 20–5–15)	Distributor can make either 5–10–15% on Sales to above three types of dealers and up to 35.4% on Retail Sales
Atlantic-United	(List less 20–5–5–15)	Distributor can make either 5–10–15% on Sales to above three types of dealers and up to 38.7% on Retail Sales
Diamond Includes Associate Dealer Commission	(List less 20–11–5)	Distributor can make either 7.2, 12.5, 15.2% on Sales to above three types of dealers and up to 34.2% on Retail Sales
Firestone Includes Associate Dealer Commission	(List less 20–11–5)	Distributor can make either 7.2, 12.5, 15.2% on Sales to above three types of dealers and up to 34.2% on Retail Sales
Distributor—C/L		
Atlantic-Lee	(List less 20–5–15–2)	Distributor can make either 6.9, 11.8, 16.8% on Sales to above three types of dealers and up to 36.7% on Retail Sales
Atlantic-United	(List less 20–5–5–15–2)	Distributor can make either 6.9, 11.8, 16.8% on Sales to above three types of dealers and up to 39.8% on Retail Sales
Diamond Includes 3½% Volume Bonus & Associate Dealer Commission	(List less 20–11–5)	Distributor can make either 9.6, 14.8, 17.5% on Sales to above three types of dealers and up to 37.2% on Retail Sales
Firestone Includes 3½% Volume Bonus & Associate Dealer Commission	(List less 20–11–5)	Distributor can make either 9.6, 14.8, 17.5% on Sales to above three types of dealers and up to 37.2% on Retail Sales

3617 COMMISSION EXHIBIT NO. 351F.

June 14, 1948

Comparison Company Tire Costs
(Using Lee as 100 level)

Lee Cost

Pass. (100%)
Truck (100%)
includes consignment, advertising assistance, training, adjustment allowance, cash discount allowance and prepaid shipments.

United Cost

Pass. (101.0%)
Truck (96.5%)
We have added 5.2% for average freight charge plus 1½% the estimated value of consignment, plus 1% for equivalent advertising assistance.

Diamond Cost

Pass. (99.4%)
Truck (97.2%)
We have deducted 1% for C/L shipments (2% is allowance but only about 50% of our deliveries would be C/L).
The following have also been deducted from Atlantic Confidential Cost:
2% Adjustment Allowance
1% Advertising Allowance
½ of 1% Anticipation Allowance
2% Cash Discount
We have added 1½% which is the estimated value of consignment.

3618 COMMISSION EXHIBIT NO. 351G.

June 14, 1948

Passenger Tires
6.00 x 16 (100 Level)
Exclusive of Tax

Regular (Net) Dealer

Atlantic makes 30.0% on sales of Lee tires.
Atlantic makes 26.7% on sales of United tires.
(29.0% on sales of Diamond tires ($250. order).
(27.2% on sales of Diamond tires ($500. order).
Atlantic would make 10.0% on sales of Firestone tires.

Volume Dealer

Atlantic makes 26.2% on sales of Lee tires.
Atlantic makes 22.8% on sales of United tires.
Atlantic would make 26.4% on sales of Diamond tires.
Atlantic would make 10.0% on sales of Firestone tires.

Wholesale Dealer

Atlantic makes 22.2% on sales of Lee tires.
Atlantic makes 18.5% on sales of United tires.
Atlantic would make 23.9% on sales of Diamond tires.
Atlantic would make 10.0% on sales of Firestone tires.

Distributor (Maximum)

Atlantic makes 16.7% on sales of Lee tires. (Note)
Atlantic makes 12.1% on sales of United tires.
Atlantic would make 17.6% on sales of Diamond tires.
Atlantic would make 7.5% on sales of Firestone tires.

Note: On sales to Authorized Petroleum Distributors Atlantic enjoys an additional 5% of Wholesale Dealer's price.

3619 COMMISSION EXHIBIT NO. 351H.

June 14, 1948

Truck Tires
8.25 x 20—10 Ply
Exclusive of Tax

Regular (Net) Dealer

Atlantic makes 27.6% on sales of Lee tires.
Atlantic makes 26.6% on sales of United tires.
Atlantic would make
(31.5% on sales of Diamond tires ($250. order).
(29.8% on sales of Diamond tires ($500. order).
Atlantic would make 10.0% on sales of Firestone tires.

Volume Dealer

Atlantic makes 24.0% on sales of Lee tires.
Atlantic makes 22.8% on sales of United tires.
Atlantic would make 29.0% on sales of Diamond tires.
Atlantic would make 10.0% on sales of Firestone tires.

Wholesale Dealer

Atlantic makes 19.6% on sales of Lee tires.
Atlantic makes 18.5% on sales of United tires.
Atlantic would make 24.3% on sales of Diamond tires.
Atlantic would make 10.0% on sales of Firestone tires.

Distributor (Maximum)

Atlantic makes 13.2% on sales of Lee tires. (See Note)
Atlantic makes 12.0% on sales of United tires.
Atlantic would make 14.9% on sales of Diamond tires.
Atlantic would make 7.5% on sales of Firestone tires.

Note: On sales to Authorized Petroleum Distributors Atlantic enjoys an additional 5% of Wholesale Dealer's price.

3620 COMMISSION EXHIBIT NO. 351I.

Lee

PRO

1. Presently established and accepted by dealer and consumer.
2. Good purchase costs.
3. Profitable selling structure.
4. Competitive quality.
5. Adjustment allowance to assist in handling "Road Hazard" guarantee.
6. Limited competition with some control from other Lee channels.
7. Local company, giving quick handling on most problems.
8. Fourteen years of business relationship.
9. Assurance of continuing present total volume at a rate dependent upon our own salesmanship.
10. No inventory investment.
11. Unusually good public acceptance in E. Pa. and Phila.
12. Eliminate investment in present company-owned inventory. C.O.D. estimate is $470,000.

CON

1. Limited line—missing sizes and designs represent approx. 4% of National output in units but probably 10 to 15% in dollar volume. (Diamond estimates Tractor Tires dollar potential in our area as 20% of Truck.) Full line would include about 35 additional on and off highway truck tires and tube and 150 tractor and implement tire and tube sizes.
2. Branch competition and friction in certain areas. This may be reduced as a plan is being developed to give the branches some credit for our business.
3. Minimum sales promotion assistance. A new Sales Promotion dept. at Lee may improve this situation.
4. Minimum field assistance.
5. Not as progressive a company as some competing manufacturers.
6. Smaller company with limited manufacturing facilities, affecting their promptness in shipping certain size and design tires.
7. Reluctance to admit defects in workmanship and material has created field problems.
8. Not allowed by contract to cover the full Atlantic Marketing territory. Ohio is not included. This matter is under further consideration now.

3621 COMMISSION EXHIBIT NO. 351J.

United

PRO	CON
1. Presently established and in inventory throughout most of our territory.	1. Limited line. Approximately equal to Lee although we are told tractor tires will be added to their program.
2. Purchase price on a cost plus basis without authorization of mold cost.	2. No assistance in advertising or promotional expense. Estimated necessary expenditure: approximately 5% of sales value.
3. Excellent product performance record.	3. Loss in sales volume if it were the sole tire marketed by Atlantic estimated at 20% the first year.
4. Exclusive distribution in our territory.	4. The probability of needing five more years to establish the brand with dealers and consumers before volume equaled the present total sales level.
5. Moderate amount of consumer acceptance already established.	5. Inventory investment — estimated: $1,000,000.
6. Some obligation by Atlantic because of this company's assistance during the tire shortage.	6. Lowered profits due to increased merchandising expenditure.
7. Maximum control of profit margins and resale prices.	7. Assumption of all adjustment costs or approximately 2½% of the sales value.
8. Full benefit of advertising and sales promotion expenditures.	8. Considerably less public acceptance than Lee after 3 years sale by our company.
9. Assistance in training costs.	
10. Continuation of present road hazard guarantee.	
11. Less expense to company to establish in place of Lee than other preferred lines.	

3622 COMMSSION EXHIBIT NO. 351K-L.

Private Brand

PRO	CON
1. Purchase on cost plus basis should give the lowest cost price over a long period.	1. Mold costs estimated 11/26/47 at $63,000—includes 70 Passenger molds covering 9 sizes and 20 Truck molds covering 17 sizes. Not included are white walls, second line, cushion types or special purpose truck.
2. Maximum control of profit margins and resale prices.	2. Present passenger tire prices on cost plus basis—not as favorable as maximum distributor deals.
3. Full merchandising flexibility.	3. All advertising and promotion costs at company expense—estimated at 5% of sales value.
4. Complete control of adjustment policies.	4. Continuous and intensive publicity required before Atlantic and private brand are associated in the consumer's mind.
5. Full benefit of advertising and sales promotion expenditures.	5. Lowered profits due to increased merchandising expenditures.
6. Sole source for inventory replacement.	6. Limited line of sizes and styles. Would not be as complete as present Lee line.
7. Increased company prestige as private brand is a current trend among Oil Companies.	7. Direct reflection on the company with consumer product dissatisfa ion.
8. Ability to change supplier without disturbing Marketing program.	8. Assumption of all adjustment costs or approx. 2½% of sales value.
9. Possible increased salesmen's interest and activity because of company label.	9. No field assistance by manufacturer.
	10. All training costs at company expense. Estimated present cost to suppliers is $7500 per year.
	11. Lower volume for period necessary to build dealer and consumer acceptance—estimated at 15% below present volume in first year.
	12. Inventory investment — estimated at $1,000,000.
	13. Reduced truck tire volume even after establishing brand name. It is estimated that this would be at least a 25% reduction from our present level.
	14. Deviation from established policy of marketing only manufacturers' branded products.

3623

3624 COMMISSION EXHIBIT NO. 352.

May 17, 1950

EP:GAF

Firestone Anti-Freeze

Mr. R. S. Zinn
Wilmington, Del.

We recently mailed you Firestone T. B. A. Bulletin F-2 dated May 3, 1950, in which was outlined the Firestone anti-freeze program.

Please be sure that your organization understands that we are not obligated to sell Firestone anti-freeze in the Wilmington District, and have reserved the right to continue to sell Prestone—Trek—Thermo on the same basis that we do in our other districts.

You should therefore review the commitments that you have on requisition for your 1950-51 requirements and make sure that all your salesmen direct their efforts toward selling the Prestone—Trek—Thermo program.

We are not sure that you have all the price information you need regarding this program. If you will kindly check into the matter and advise us, we will be very happy to furnish any information you need in this respect.

G. A. Fearn.

GAF:PH

cc: Mr. S. J. Heideman, Philadelphia, Pa.

3625 COMMISSION EXHIBIT NO. 353A-B.

The Firestone Tire & Rubber Company
Harvey S. Firestone
Founder

General Offices
Akron 17, Ohio

Akron 17, Ohio
October 30, 1950

Mr. S. J. Heideman
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pennsylvania

Dear Mr. Heideman:

This will acknowledge your letter of October 24 regarding the sales figures reported by us for your Wilmington and Erie Districts for September in which you asked for my comments regarding the situation in the Erie District as compared with Wilmington, and any recommendations which we cared to make in order to affect an improvement in that area.

Immediately following my return from our Philadelphia meeting, we started to analyze our performance record particularly in the sale of batteries and home and auto supplies in the Erie District, as we too are concerned about the trend which developed in September in that area. We made a detailed study of the individual sales made to each and every Atlantic dealer since the inception of our program, and I also asked Mr. Elliot to spend considerable time in that area to find out specifically what was wrong from the standpoint of our own operations and make the necessary recommendations to us in that connection.

Mr. Sewell had Mr. Colwell come to Akron for discussion of this subject after the investigation was concluded, and

we did find that there are certain things that we can do to help improve our sales picture and obtain greater success in that area, particularly in the sale of home and auto supplies. For instance, our stock situation in two of the major supply points involved was not adequate, and in the past few days we have authorized and shipped several thousand dollars worth of merchandise to them in order to make sure that any difficulty regarding adequate stocks was overcome. This was not left to anyone in the field organization, but specifically handled from here after getting into agreement with the people involved principally our Buffalo District organization who are concerned.

Mr. Sewell, our Division Manager, has taken steps to ensure that there will be no repetition of inadequate stock conditions to the limit of our ability as a company, and in addition he is following our field organization concerned specifically in such a way that I am confident that any of the ordinary difficulties will be overcome.

3626 We have set up quotas for each of our supply points and the salesmen involved, and in addition we are making comparisons of individual sales to Atlantic dealers as compared with last year, which should bring our sales to the majority of the accounts up to the desired performance level.

It is true that we have encountered some difficulties in the Erie area from competitive sources that did not seem to be as active in the Wilmington area, and, of course, you are familiar with some of their activities in Erie. On the other hand, we must accept this as a challenge and that is the manner in which it is being approached by our supervisory organization.

I am glad to report to you that we are seemingly making considerable progress now in battery sales, and Mr. Elliot reports to me that a substantial number of the dealers are now stocking and selling Firestone batteries.

I am confident that the steps we have taken during the past two or three weeks will serve to definitely improve our performance in the Erie District. We have been receiving excellent support from Mr. Burkett and we feel very strongly that the present sales record will be improved very shortly through the close cooperation of our respective field organizations.

Very truly yours,

J. A. Addison,

Manager Petroleum Sales.

JAA:eo

(Admitted only to prove that the letter was sent by Firestone to Atlantic and not truth of the contents.)

3627 COMMISSION EXHIBIT NO. 354.

December 21, 1950

File: Batteries

Mr. S. J. Heideman
Room 1210

Dear Sir:

As per your request we contacted the following storage battery companies in an attempt to discover whether they had at present or contemplated in the future a battery program for direct dealer merchandising similar to the commission plan offered by certain tire manufacturers.

Prest-O-Lite Battery Company Inc.
Globe-Union Inc.
Delco-Remy Division General Motors Corp.
Electric Auto-Lite Company
Willard Storage Battery Co.
Electric Storage Battery Co.
See under "OK 11 A.M." Jan 10th Gould-National Batteries, Inc.

Replies to our inquiry were received by phone or letter from everyone with the exception of Exide and Auto-Lite. We understand Mr. Connell of Exide talked to Mr. Paxson and believe Auto-Lite prefers that any consideration of a national oil account be handled by Prest-O-Lite.

Prest-O-Lite, Willard and Gould-National believe that they could offer us something through their distributor organization, and would like to discuss the matter further. We attach their replies to our inquiry. The Delco people believe that their distributors would be willing to negotiate with us individually but they would not care to act for the individual distributors, or to play any part in the program. The other concerns which replied have no acceptable program nor have they given consideration to any.

When the attachments have served your purpose will you please return same for our files.

Very truly yours,
Purchasing Department
By: Chas. F. Bergh

CFBergh/eme
Atchmts

3628 COMMISSION EXHIBIT NO. 355A-B.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

January 3, 1951

CC: Mr. F. M. Neall
Room 1706

TBA SJM
Firestone Commission Plan

Mr. D. T. Colley,
Room 1700.

Dear Sir:

Mr. Addison didn't indicate that Mr. Tompkins' call, scheduled for January 4th, was to cover any specific problem. I am of the opinion that cultivation of closer relationship with Atlantic is Mr. Tompkins' main objective. There will probably be some discussion about Firestone's progress in Wilmington and Erie, as well as some outline of the 1951 rubber outlook for the industry and for Firestone.

I have questioned Mr. Addison about Firestone's interest in handling Atlantic's tire business only on a commission basis and he has indicated that Firestone is not interested in such an operation. Addison points out that their whole Sales Department is trained to sell T B & A, and that a departure from policy would impose a hardship on their organization and that it would be an exceedingly difficult arrangement to enforce.

We are ready to turn the Ohio territory over to the Firestone Commission Plan. Lee can't sell us in Ohio, and since our arrangements on United tires are unsatisfactory our present T.B.A. program is very weak. Mr. Neall and Mr. Boor agree that the Firestone program as a matter of expe-

diency under these circumstances would be a definite asset for us. I intend to mention this matter to Addison on Thursday.

Attached are the T.B.A. commission plan reports covering sales through November. As mentioned in my letter of December 15th, I have included a fourth report covering only the direct marketing operation. Perhaps this report will adequately serve your purpose hereafter and permit elimination of the other three reports. I await your advice in this respect. These reports as well as information received from the regions indicate general satisfaction with the Firestone operation. On Mr. Tompkins' last
3629 call, need for additional development of battery and accessory sales was discussed. Progress is being made in that direction as evidenced by improved sales in this category.

We are currently completing additional analyses of the commission plan operation. One compares change in total T.B.A. sales, 1950 versus 1949, on a district basis. It is interesting to note that three Eastern Pennsylvania districts exceed Wilmington's performance, whereas a fourth trails by a very slight margin. All of the Western Pennsylvania districts exceed Erie's change in position. As soon as charts are prepared, they will be submitted for your examination.

Other analyses of Class 2 Dealer operation and of direct marketing operation do not indicate as satisfactory progress for the Firestone commission plan as comparison of total sales. This information is also being charted and will be submitted to you. I believe that this information, as well as the developments on the supply situation, should cause us to defer indefinitely any decision for the extension of the plan based solely on its merits.

Very truly yours,

h

Enc.

3630 COMMISSION EXHIBIT NO. 356A-B.

February 3, 1951

Mr. D. T. Colley, Vice President
The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Dear Mr. Colley:

At the request of Messrs. Hathaway and Addison of our Company, I am writing to you regarding the discussions which you and members of your staff had recently with Mr. Tompkins, our Vice President, and their discussion with Mr. Heideman last week.

No doubt Mr. Heideman has told you that Mr. Tompkins has been seriously ill in Florida, in fact he was stricken a few days after his visit with you in Philadelphia. I am very happy to tell you he is now well on the road to recovery, and we expect to fly him to Akron in a day or so.

I am, of course, quite familiar with the progress of our business with your Company, and was informed by Mr. Tompkins of his discussion in Philadelphia on January 4. Likewise, Mr. Hathaway and Mr. Addison have advised me concerning their meeting with Mr. Heideman last week.

It is my understanding that Mr. Tompkins told you that we wanted to improve our position as a supplier to Atlantic dealers, and were prepared to assume that responsibility, either in part or entirely—in delivering T.B.A. products to them. This meant, of course, reasonable quantities of such merchandise, as compared with normal conditions, and that which might be expected from your present supplier, under today's conditions.

Mr. Heideman talked with Mr. Addison and Mr. Hathaway last week about the possibility of going forward im-

mediately in seven additional districts in your Eastern Pennsylvania region, and also indicated that some thought was being given to expanding our distribution to include two other regions. Our reply was to the effect that we could satisfactorily handle that part of your business starting on March 1, and that by the end of April we could finish the introduction of the Firestone program in those areas.

I am quite sure we can do that, barring unusual conditions which cannot be foreseen at present, such as a crippling freezing of our products—or unexpected government regulations applying to our business.

The introduction of our products to your organization and dealers does require some preparation and organization of our efforts in establishing proper supply points for your dealers.

After his visit with you Mr. Tompkins mentioned to me that he had overlooked telling you about our strong
3631 position in the retreading field. We operate a very large number of shops and manufacture our own retread rubber. This has proved invaluable to Firestone dealers, and if the government regulates the industry to manufacture only one line of new tires, as may happen, it will give Firestone dealers a choice of two price lines of tires to offer the car owner.

I recall with pleasure my visit with you in October, and I am looking forward to my next visit in Philadelphia.

With kindest regards, I am,

Very truly yours,

General Sales Manager

LCF:C:mbc

3632 COMMISSION EXHIBIT NO. 357A

March 4, 1953

Mr. R. G. Mulholland
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pennsylvania

Dear Mr. Mulholland:

We attach a summary of dealer activity in the fourth quarter of our fiscal year as discussed with you in Philadelphia.

This analysis by Firestone districts shows for each district total number of accounts listed in the October reports after eliminating duplication, the total number actively buying in the fourth quarter, and the total number which purchased in the three month period ending in October shows that in total 2,641 accounts were listed, 1,910 purchased, and 731 were inactive.

The further analysis of inactive accounts as given by district shows that of the 731 accounts who did not purchase in the fourth quarter, 23 purchased in November, 224 were out of business, no longer handling your gasoline, or did not have T. B. A. potential, leaving 484 accounts who made no purchases for our two organizations to sell and develop.

As was pointed out, it will be helpful for your districts and ours to come to an agreement on the deletion of the 224 accounts to keep our lists on a current basis for sales direction for accounts that they can agree have potential for T. B. A. Of course, in addition to the 484 accounts who represent "target" accounts as not purchasing any products, we recognize that there are a number of other accounts who may have purchased in the fourth quarter, but who

represent accounts for "targeting" to increase our business with these accounts.

I am sure it will help for your T. B. A. coordinators to know what their respective Firestone district reports to our management have shown as to the analysis of dealer activity, and that you will want to give them this information for the districts with whom they are working.

Very truly yours,

G. M. Elliot,
Petroleum Sales.

GME: cc

Atlantic (4th Quarter)

		# Acc'ts	# Purch.	# Inactive	# Activated	Competitive	Pick Up	Financial	Dissatisfied.	Supply Pt.	Out of Bus.	No Potential	Misc.	New Acc'ts
East														
01	Albany													
13	Baltimore	230	145	85		1	62			1	2	7	9	3
02	Boston													
06	Hartford													
07	Newark													
08	New York													
09	Philadelphia	535	360	175		17	25	4			19	91	19	
18	Richmond	90	60	30		8		7			4	11		
19	Syracuse	62	33	29		11	1			1	1	10	5	
	Total	917	598	319		37	88	11		2	25	119	33	3
Central														
11	Akron	60	42	18		1	11					6		
14	Buffalo	104	55	49	4	24				5	2	14		
33	Cincinnati													
15	Cleveland	7	4	3	1	1						1		
34	Columbus													
35	Detroit													
36	Grand Rapids													
16	Harrisburg	762	502	260	18	43	142	9	2		34		7	5
37	Indianapolis													
17	Pittsburgh	515	488	27			20			6		1		
	Total	1448	1091	357	23	69	173	9	2	11	36	22	7	5

	Subject	# Acc'ts	# Purch.	# In-active	# Acti-vated	Com-petitive	Pick Up	Finan-cial	Dissat-isfied.	Sup-ply Pt.	Out of Bus.	No Po-tential	Misc.	New Acc'ts
West														
60	Chicago													
62	Des Moines													
64	Fargo													
43	Kansas City													
66	Milwaukee													
65	Minneapolis													
49	Omaha													
61	Peoria													
48	St. Louis													
68	Wichita													
	Total													
South														
21	Atlanta	24	22	2								2		
22	Birmingham													
23	Charlotte	86	61	25		1	1	2			1	5	15	
40	Dallas													
41	Houston													
27	Jacksonville	166	138	28		2	3	3			1	12	7	
28	Memphis													
29	New Orleans													
47	Oklahoma City													
	Total	276	221	55		3	4	5			2	19	22	
Coast														
77	Denver													
71	Los Angeles													
79	Phoenix													
73	Portland													
72	Sacramento													
70	Salt Lake City													
75	San Francisco													
76	Seattle													
	Total	2641	1910	711	23	109	265	25	2	13	64	160	62	8
	Grand Total													

3636 COMMISSION EXHIBIT NO. 358

March 4, 1953

Mr. R. G. Malholland
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1, Pennsylvania

Mr. R. G. Mulholland

Supplementing letter of March 4 which had been dictated prior to receipt of Mr. Taitt's letter of February 26, I think it would be more helpful to pass on to your T. B. A. men the dealer activity figures for the districts for which they are interested. However, at the same time, I suggest that you point out that our districts have an analysis by individual account that can be reviewed by your T. B. A. coordinators and our petroleum representatives with our district managers concerned.

A review of this information should be of assistance in the "targeting" program that we are mutually working on.

Very truly yours,
G. M. Elliot,
Petroleum Sales.

GME: cc

3638 COMMISSION EXHIBIT NO. 359.

March 23, 1953

Mr. R. G. Mulholland
The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Dear Mr. Mulholland:

I was very pleased to read Mr. A. A. Shaw's report for last week of the excellent accomplishments on a new dealer account for Firestone as a result of the "targeting" program, and quote from this report as follows:

> "Thursday, March 12. I worked with our territory salesman Gillespie today calling on direct accounts. We met the Atlantic salesman at Minelli's in Peckville and were successful in selling this dealer a $6,200 tire and tube dating order. The dealer up to this time has been buying Lee tires and tubes and picking up Firestone in emergencies only. This dealer was one of the target accounts on our list."

This is an example of the fine results that can be obtained through the joint teamwork of your organization and ours on the "target" accounts.

Yours very truly,

G. M. Elliot,
Petroleum Sales.

GME: 558

cc: Mr. R. D. Thomas
Mr. J. A. Straits, Harrisburg
Mr. A. A. Shaw

3640 COMMISSION EXHIBIT NO. 360.

May 1, 1953

Mr. R. W. Taitt
The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Dear Mr. Taitt:

Many thanks for your sending me the Sales Training Orientation Script on Firestone Tires and Tubes, also the TBA Orientation script previously supplied me by Mr. Mulholland, which I mentioned as having received, in discussions in Pittsburgh.

We have advised our petroleum representatives working with your company, suggesting they acquaint themselves with the regional training plans and be of help wherever possible.

Yours very truly,

G. M. Elliot,
Petroleum Sales.

GME: 558

3642 COMMISSION EXHIBIT NO. 361.

May 22, 1953

Mr. R. G. Mulholland
The Atlantic Refining Company
260 South Broad Street
Philadelphia 1, Pennsylvania

Dear Mr. Mulholland:

We are enclosing the complete "Firestone Battery and Accessory Sales Plan For Petroleum Distributors" that is being mailed to our district managers and territory salesmen on May 25th. This includes our letter to these men together with the complete envelope of material, as attached.

We will send you under separate cover the 60 envelopes of this sales plan that you requested for your field organization.

However, so that you can get this into the hands of your key regional and TBA and promotional men promptly we are today mailing you envelopes. You can use these, as desired, to make announcement of this plan at once incorporating in such announcement letter any of the information given in our district letter attached hereto.

We are looking forward to some outstanding sales results thru the effective use of this sales plan by our two organizations.

Yours very truly,

G. M. Elliot,
Petroleum Sales.

GME: HM

3644 COMMISSION EXHIBIT NO. 362A.

July 27, 1953

Mr. R. G. Mulholland
260 South Broad Street
Philadelphia 1, Pennsylvania

Dear Dick:

In connection with recent discussions of the training material available and the training films used by our field organization with your dealers, we have written each of our petroleum sales representatives giving them the attached listing of current training material available for use.

We are attaching several copies so that you can if you wish send one to each of your TBA Coordinators, so that they will be familiar with the material that is currently available in our districts through our training division.

Yours very truly,

G. M. Elliot

3646 COMMISSION EXHIBIT NO. 362B.

Firestone Current Training Material

Employee Selling Guides

27A Firestone 3-Point Lower Cost Per Mile Program
37A Doubling Budget Business is Easy
39A How to Sell More Truck Tires to Operators of Delivery Type Trucks
41A How to Sell More Firestone Batteries in 4 Easy Steps

42 How to Sell the Budget Customer
45 How to Sell More Passenger Tires in 3 Easy Steps
45A How to Sell More Firestone New Treads
48 How to Sell the New Firestone Town & Country Tire
50 How to Sell Passenger Tires in 4 Easy Steps
52 How to Sell Firestone New Treads
54 How to Sell More Passenger Tires
55 How to Sell Firestone Seat Covers
56 How to Sell Retreads and Used Tires
P.G.1 Firestone Polar Grip Treads
Outside Salesman's Guide to Sell More Farm Tires

Sound-Slide Training Films

Big Business—A Complete T.B.A. Franchise
Art & Let's Know How of Trade Tires
How to Increase your Battery Sales
Hoods Up—T.B.A. under the Hood
Round He Goes—T.B.A.—Around the Car
No Cents in Swapping Dollars—How to Handle Used Tires
How to make More Money Selling Farm Tires
Customer Satisfaction Guaranteed
Servicing & Selling Commercial Accounts
Firestone Certified Plus Mileage
Building Better Farms Through Soil Conservation
More Profit-time, Less down-time—Off-the-highway Tires

Motion Pictures in Sound—16 M.M.

The Building of a Tire—Walt Disney
Liberia, Africa's Only Republic—institutional
Realm of the Wild—institutional
The Miracle of Rubber—March of Time
The Fabulous 500—Indianapolis Speedway
Champions All—motorcycle
Better & Safer Hiways—P.A.R.

Life is Priceless—Supreme Tire
For Your Safety—Life Protector
Serving Truckers is Our Business—New Transport Tire
You Can Do It Too—Tire Selling & Service
Not Enough Time—Firestone Franchise

On the Job Training Programs

Self-Training Guide for Retail Salesmen
Self-Training Guide for Outside Salesman

3647 COMMISSION EXHIBIT NO. 363.

The Atlantic Refining Company
Tire, Battery and Accessory Sales

April 28, 1955

TBA RGM

W. C. Emmart
Winchester, Va.

Mr. G. M. Elliot
Petroleum Sales Dept.
Firestone Tire & Rubber Co.
Akron 17, Ohio

Dear Mr. Elliot

Mr. W. C. Emmart, an Atlantic Petroleum Distributor operating out of Winchester, Va., stopped in to see me today, while attending a Distributors' Conference in the Atlantic Building. Mr. Emmart formerly handled Lee Tires and Exide Batteries, under the old T.B.A. program, but currently has discontinued all T.B.A. warehousing activity.

He is very much interested in developing his dealers in T.B.A. merchandising, however, and prompts them to purchase Firestone T.B.A. from the Firestone Store at Winchester. The difficulty is that his dealers are complaining that they find it possible to buy competitive top-brand tires at prices lower than the price allowed them by the manager of your store.

Would you kindly direct your Petroleum Representative to look into this, and determine if it is not possible for these dealers of Mr. Emmart to receive a competitive price? We want to be careful not to offend your manager, because he has been very helpful to our distributor, and is one of his petroleum customers.

I know you will find this an interesting angle in our program, wherein an Atlantic Distributor is prompting us to do a better job of solicitation and service to his dealers, and actually wants us to classify them as dealers of a distributor in our commission over-ride program.

I'd appreciate a reply as to what is done to handle this.

Cordially yours,

R. G. Mulholland

cc: Mr. W. C. Emmart, Winchester, Va.
Mr. E. M. Singleton, Charlotte, N. C.

3648 COMMISSION EXHIBIT NO. 364.

The Atlantic Refining Company
Incorporated—1870
Petroluem Products

December 29, 1955

S:TB:GAF
Firestone Double Teaming

Mr. Jack Hyde
Firestone Tire & Rubber Co.
526 Light Street
Baltimore 2, Maryland

Dear Jack:

I have unconfirmed information to the effect that you will assume the dealer responsibilities in the Dover, Cambridge, Easton and Salisbury areas January 1, 1956, which responsibility was formerly Mr. Normile's.

Because Firestone double teaming is a part of our 1956 plan, it will be necessary for you to contact our Mr. J. M. Connelly, Atlantic Wilmington district Sales Supervisor who can be reached at 505 South Market Street, Wilmington, Del. (Phone: 8-7101). You should arrange to make this contact as soon as possible so that proper schedules can be set up on a recurring basis for each month and our Wilmington people will welcome the opportunity to cooperate with you to get this coverage on a permanent basis.

Will you kindly advise me when you have the situation under control?

Very truly yours,
Illegible

csb
cc: Mr. R. G. Mulholland, Philadelphia
Mr. J. A. Normile, Firestone

3649 COMMISSION EXHIBIT NO. 365A-B.

January 31, 1956

Mr. W. L. Zinn,
The Atlantic Refining Co.,
Wilmington, Delaware

Dear Mr. Zinn:

I am listing below, the agreed upon number of days for dual sales solicitation in your District:

Mr. Suggs	—1	day each month with Buchanan—Dover, Del.
Mr. Durstine	—1	day each month with Laurel H&AS, Laurel, Del.
"	1	day each month with Buchanan—Milford, Del.
"	½	day each month with Firestone Store, Salis.
Mr. Jordan	—1	day every other month with Buchanan, Dover
Mr. Hughes	—2	days every other month with Salis. store
"	2	days every other month with Easton Sales & Salisbury Store
Mr. Stewart	—1	day every other month with Buchanan, Milford.
"	1	day every other month with Salisbury Store

It was agreed upon that your office would initiate the days and dates for the dual sales solicitation program between your sales representatives and the supply points, as listed.

I thank you for your fine cooperation that you and your organization, with Mr. Fearn, gave us in the re-aligning of the accounts which we have agreed to immediately start an aggressive sales solicitation program.

3650 As you know, Mr. Fearn is going to revise the names of the dealers by the supply points agreed upon, and just as soon as feasible, I suggest that we get together again for a short meeting to ascertain the progress being made, or any changes recommended.

Yours truly,
J. C. Heid,
Mgr. of Oil Co. Sales

JCH:CHG
cc: Mr. Fearn

3651 COMMISSION EXHIBIT NO. 366.

Atlantic
The Atlantic Refining Company
Incorporated—1870
Petroleum Products

M. G. Davis
Manager of Marketing
Eastern Pennsylvania Region

First and Penn Avenue
West Reading, Pa.

April 26, 1956

S:TB:GAF
Robert M. Harper & Son
Preston, Maryland
(Firestone AW Deal)

Mr. J. C. Heid
Firestone Tire & Rubber Co.
526 Light Street
Baltimore 2, Md.

Dear Mr. Heid:

As a result of continued solicitation of the above Atlantic distributor account in our Wilmington district wholesale salesman, it has finally resulted in a request by Mr. Harper for the approval of the AW deal (100% wholesaler) to

cover his purchases, initially, of Firestone tires and Firestone dri-charge batteries.

I discussed this matter in detail with Mr. Harper on April 25th, at which time our Wilmington Supervisor, Mr. Julian White and our Wholesale Salesman, Mr. William Price, were in attendance. As a result of Mr. Harper's favorable reaction, I am formally requesting that you set in motion the necessary follow-up arrrangements so that complete information can be obtained and your final request presented to Akron for approval of this deal.

Will you kindly contact Mr. Robert M. Harper (Telephone Preston, Md. 2721) and arrange to meet with him, together with your Mr. Ed Sakers, at a suitable time and then advise me by letter sufficiently in advance so that I can make arrangements to meet with you to see that everything works out satisfactorily. At this time I will also arrange to have our Mr. Price in attendance. Will you kindly advise me as soon as the above arrangements are made.

Very truly yours,

G. A. Fearn.

csb

cc: Mr. R. S. Zinn, Wilmington
Mr. Julian White, Wilmington
Mr. Robert M. Harper

3652 COMMISSION EXHIBIT NO. 367.

May 1, 1956

Mr. G. A. Fearn,
The Atlantic Refining Co.,
First & Penna. Ave.,
West Reading, Pa.

Subject: Robert M. Harper & Son
Preston, Md.
Firestone AW deal

Dear Mr. Fearn:

Thank you for your letter of April 26th, in regards to the above mentioned account.

Mr. Sakers has been contacted, and made an appointment to meet Mr. Harper at his place of business, in Preston, on Wednesday morning, May 9th.

I trust that this arrangement will be satisfactory to you, and I am looking forward to meeting you when we contact Mr. Harper.

Very truly yours,

J. C. Heid,
Mgr. Oil Co. Sales.

JCH:CHG
cc: Messrs. Zinn, White & Harper

3665 COMMISSION EXHIBIT NO. 374.

Number Of Lessee & Contract Dealers on Dates Indicated By Regions

Lessee Dealers

		N. E.	N. Y.	E. Pa.	W. Pa.	S.	Phila.	Total
March	1950	397	179	451	234	249	332	1,842
Dec.	1950	415	194	468	239	253	353	1,922
Apr.	1951	425	202	468	244	263	363	1,965
Dec.	1951	443	215	469	258	261	383	2,029
Dec.	1952	469	232	484	270	268	409	2,132
Dec.	1953	481	252	478	284	301	429	2,225
Dec.	1954	492	278	487	298	362	456	2,373
Dec.	1955	495	316	496	312	392	475	2,486
June	1956	495	321	480	317	399	481	2,493

Contract Dealers

		N. E.	N. Y.	E. Pa.	W. Pa.	S.	Phila.	Total
March	1950	244	428	1854	1341	548	1100	5,515
Dec.	1950	240	400	1776	1305	476	1046	5,243
Apr.	1951	233	382	1770	1246	465	1009	5,105
Dec.	1951	219	336	1739	1113	429	925	4,761
Dec.	1952	213	289	1617	1059	366	821	4,365
Dec.	1953	222	272	1179	929	318	713	3,633
Dec.	1954	223	265	1054	853	194	690	3,276
Dec.	1955	219	259	1096	749	134	667	3,124
June	1956	220	263	1075	725	121	640	3,044

(Petitioner takes the position that certain portions of this exhibit relating to Firestone were stricken as against Goodyear by the Hearing Examiner's Order filed March 24, 1958.)

ATLANTIC

FIRESTONE T. B. A SALES

NOTE: BATT. AND ACCESS. ARE SEPARATE (NOT INCLUDED IN TOTAL DOLLARS)
ALL CHANGES MADE IN COLUMNS TO INCLUDE ALL DISCOUNTS

IN DOLLARS

	DEALERS				DISTRIBUTORS				TOTAL TBA SALES			
	T/T	BATT.	ACCESS.	TOTAL	T/T	BATT.	ACCESS.	TOTAL	T/T	BATT.	ACCESS.	TOTAL
EAST PA.												
1950 A	142,736		52,842	241,542	16,615		3,496	19,911	159,351		56,338	261,453
1951 B	238,182		38,714	1253,993	36,458		10,518	47,676	1229,642		41,232	1301,670
WEST PA.												
1950 A	128,551		52,441	182,991	53,358		2,401	55,759	181,909		54,842	238,751
1951 B	521,572		29,762	772,351	114,783		25,234	140,017	636,355		54,996	912,368
SOUTH												
1950	—		—	—	—		—	—	—		—	—
1951 B	269,694		121,081	390,775	248,668		122,550	466,918	518,362		243,631	857,693

3666

COMMISSION EXHIBIT NO. 375. 3179

ATLANTIC

FIRESTONE T.C.A. SALES
BY CLASS OF TRADE

Ed. Dwards		Dealers				Contract Dealers				Distributors				Total T&A Sales			
	T/T	Batt.	Access.	Total	T/T	Batt.	Access.	Total	T/T	Batt.	Access.	Total	T/T	Batt.	Access.	Total
Eastern Pa.																
1952	706,594	-	306,619	1,136,773	46,752		139,559	186,311	499,838		168,479	668,317	1,253,184		615,657	2,991,101
1953	961,286		462,194	1,423,480	490,503		166,005	656,508	636,967		167,103	804,070	2,088,756		795,302	2,884,058
1954	968,018		392,276	1,360,294	486,416		171,071	657,487	566,238		91,061	657,299	2,020,668		654,016	2,677,284
1955	1,110,722	137,201	296,816	1,544,739	528,881	22,704	104,838	656,423	781,881	41,568	67,437	890,886	2,421,484	179,871	468,091	3,091,448
1956 (1st 6 mos)	514,838	42,012	139,326	696,177	226,267	10,462	78,720	315,449	274,812	13,338	32,780	320,930	1,015,917	65,812	250,796	1,332,525
Western Pa.																
1952	442,969		244,054	687,023	221,822		108,482	330,304	106,136		62,214	168,350	770,926		387,749	1,186,004
1953	622,007		270,458	892,465	238,071		97,284	335,355	94,842		41,832	136,675	954,921		395,374	1,344,913
1954	634,582		262,346	896,928	243,978		108,814	352,792	120,282		38,851	159,133	998,842		409,011	1,407,853
1955	774,000	97,287	146,414	1,017,702	344,562	15,408	42,184	402,154	123,570	7,937	8,508	140,015	1,242,132	120,633	196,106	1,559,871
1956 (1st 6 mos)	394,501	42,524	73,746	510,773	193,571	8,534	31,016	233,121	52,090	3,141	8,316	63,547	640,162	54,199	113,078	807,441
Southern																
1952	342,885		187,795	530,680	42,845		15,463	58,308	268,277		68,211	336,488	653,977		271,469	925,446
1953	463,228		207,248	670,476	47,638		18,836	66,474	268,972		84,211	353,183	779,838		310,295	1,090,133
1954	453,384		209,648	663,032	39,001		9,706	48,707	238,606		35,542	266,148	731,091		254,896	985,987
1955	433,734	74,707	156,097	654,538	45,039	755	20,022	65,816	238,760	10,428	16,027	265,215	717,533	85,890	192,146	985,569
1956 (1st 6 mos)	255,961	41,502	76,848	374,311	19,624	323	8,186	28,133	101,367	5,849	15,246	122,462	376,952	47,674	100,280	524,906
Total Firestone																
1952	1,581,778		737,468	2,284,246	671,228		253,504	924,732	874,251		218,904	1,093,155	3,127,257		1,244,774	4,377,031
1953	1,994,661		939,900	2,934,337	776,209		253,125	1,029,334	731,809		285,146	1,016,955	3,502,679		1,480,607	5,184,286
1954	2,034,984		864,270	2,899,254	769,395		289,591	1,058,986	925,126		164,454	1,089,580	3,729,505		1,253,861	5,009,366
1955	2,316,457	309,718	599,436	3,225,611	894,532	52,905	175,671	1,123,108	1,144,726	64,982	93,972	1,303,680	4,355,715	426,494	869,079	5,651,289

3909

COMMISSION EXHIBIT NO. 376 · 3180

ATLANTIC

GOODYEAR TBA SALES

BY CLASS OF TRADE (SEE NOTE)

IN DOLLARS	LESSEE DEALERS				CONTRACT DEALERS				DISTRIBUTORS			
1955 ATLANTIC REGION	T/T	BATT.	ACCESS.	TOTAL	T/T	BATT.	ACCESS.	TOTAL	T/T	BATT.	ACCESS.	TOTAL
NEW ENGLAND	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	20612	34797	245553	[illegible]	[illegible]	[illegible]	[illegible]
NEW YORK	700114	105165	170196	975475	141661	10190	28695	180546	247502	15472	21061	284035
PHILA.-NEW JERSEY	1152886	227654	263900	2644440	442996	49519	135186	627701	0	0	0	0
TOTAL GOODYEAR	2735182	425849	1182599	4553630	773100	100621	188676	1062402	326749	21823	25629	374196

DEALERS

(REPRESENTS BETWEEN LESSEE AND CONTRACT DEALERS INTERCHANGEABLE)

	T/T	BATT.	ACCESS	TOTAL
NEW ENGLAND				
NEW YORK				
PHILA.-NEW JERSEY	25926	995	3168	28094
TOTAL GOODYEAR	25926	995	3143	28062

TOTAL TBA SALES

	T/T	BATT.	ACCESS.	TOTAL
NEW ENGLAND	1146750	209905	397768	1754423
NEW YORK	1089400	131215	220658	1440665
PHILA.-NEW JERSEY	1619806	405168	782024	2818208
TOTAL GOODYEAR	3856956	746288	1400947	6004191

NOTE: SALES TO CUSTOMERS OF OIL COMPANY SUPPLYING DEALERS ARE INCLUDED AT THE PRICE TO THE CUSTOMER AND NOT AT THE PRICE TO THE SUPPLYING SUPPLIER WITH THE RESULT THAT THE SALES FIGURES SHOWN ARE DIFFERENT FROM THOSE ON WHICH COMMISSION WAS PAID.

3570

COMMISSION EXHIBIT NO. 3181

3570

3672 COMMISSION EXHIBIT NO. 378

The Atlantic Refining Company

Summary

Firestone District	Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	January, 1953 Same Month Last Yr.	% Inc. or Dec.
Eastern Pennsylvania Region.						
Sales Commission	1,488	184,315	51,644	235,959	149,016	58.3
Sales to Atlantic	14	378	160	538	1,665	(67.7)
Total	1,502	184,693	51,804	236,497	150,681	56.9
Western Pennsylvania Region.						
Sales Commission	965	99,626	19,061	118,687	105,329	12.7
Sales to Atlantic	2	..	..	..	869	..
Total	967	99,626	19,061	118,687	106,198	11.8
Southern Region.						
Sales Commission	612	67,906	17,108	85,014	76,539	11.1
Sales to Atlantic	1	71	..	71	568	(87.5)
Total	613	67,977	17,108	85,085	77,107	10.3
Sales Commission	3,065	351,847	87,813	439,660	330,884	32.9
Sales to Atlantic	17	449	160	609	3,102	(80.4)
Total	3,082	352,296	87,973	440,269	333,986	31.8
% of Total		80.0	20.0	100.00		
Last Year		262,458	71,528	333,986		
% of Increase by Product		34.2	23.0	31.8		

COMMISSION EXHIBIT NO. 379.

The Atlantic Refining Company

Summary

Firestone District	December Sales: Number Outlets	Tires & Tubes	Home & Auto Sup.	Total	% Inc. or Dec.	12 Months Sales Thru December 1953: Tires & Tubes	Home & Auto Sup.	Total	Same Period Last Yr.	% Inc. or Dec.
Eastern Pennsylvania Regions										
Sales Commission	1,475	117,850	74,450	192,300	(4.4)	1,985,607	752,012	2,737,619	2,342,303	16.9
Sales to Atlantic	4	56	7	63	(96.8)	1,762	1,674	3,436	24,285	(85.8)
Total	1,479	117,906	74,457	192,363		1,987,369	753,686	2,741,055	2,366,588	15.8
Western Pennsylvania Region										
Sales Commission	1,169	74,850	41,750	116,600	37.0	968,547	373,787	1,342,334	1,159,588	15.8
Sales to Atlantic	1	28	75	103	—	323	827	1,150	6,678	(82.8)
Total	1,170	74,878	41,825	116,703	37.0	968,870	374,614	1,343,484	1,166,266	15.2
Southern Region										
Sales Commission	600	34,201	21,988	56,189	(15.2)	705,168	265,268	970,436	848,346	14.4
Sales to Atlantic		1		180	—	203	429	632	1,046	(39.6)
Total	601	34,201	22,168	56,369	(15.0)	705,371	265,697	971,068	849,392	14.3
Sales Commission	3,244	226,901	138,188	365,089		3,659,322	1,391,067	5,050,389	4,350,237	16.1
Sales to Atlantic	6	84	262	346		2,288	2,930	5,218	32,009	(83.7)
Total	3,250	226,985	138,450	365,435	3.1	3,661,610	1,393,997	5,055,607	4,382,246	15.4
% of Total		62.1	37.9	100.0		72.4	27.6	100.0		
Last Year		202,604	151,865	354,469		3,140,246	1,242,000	4,382,246		
% of Increase by Product		12.0	(8.9)	3.1		16.6	12.2	15.4		

The Atlantic Refining Company

Summary

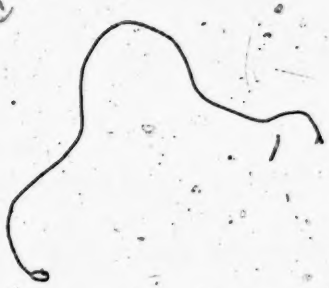
Firestone District	December Sales: Number Outlets	Tires & Tubes	Batteries	Other H & A Supplies	Total	% Inc. or Dec.	12 Months Sales Thru December 1954: Tires & Tubes	H & A Supplies	Total	Same Period Last Yr.	% Inc. or Dec.
Eastern Pennsylvania Region											
Sales to Atlantic	0	—	—	—	—	—	1,945,607	621,996	2,567,603	2,737,619	(6.2)
Sales Commission	1,427	160,625	18,512	45,654	224.791	16.9	342	555	897	3,436	(73.9)
Total	1,427	160,625	18,512	45,654	224,791	16.9	1,945,949	622,551	2,568,500	2,741,055	(6.3)
% of Total		71.5	8.2	20.3	100.0		75.8	24.2	100.0		
Last Year		117.906		74,457	192,363		1,987,369	753,686	2,741,055		
% of Inc. by Prod.		36.2		(13.8)	16.9		(2.1)	(17.4)	(6.3)		
Western Region											
Sales Commission	1,170	79,439	13,603	20,472	113,514	(2.6)	1,019,288	323,838	1,343,126	1,342,334	.1
Sales to Atlantic	1	—	—	—	—	—	—	3	3	1,150	(99.7)
Total	1,171	79,439	13,603	20,472	113,514	(2.7)	1,019.288	323,841	1,343,129	1,343,484	—
% of Total		70.0	12.0	18.0	100.0		75.9	24.1	100.0		
Last Year		74,878		41,825	116,703		968,870	374,614	1,343,484		
% of Inc. by Prod.		6.1		(18.5)	(2.7)		5.2	(13.6)	—		
Southern Region											
Sales Commission	640	51,399	7,697	11,898	70,994	26.3	704,812	254,179	958,991	970,436	(1.2)
Sales to Atlantic	7	84	20	660	764	324.4	746	1,652	2,398	632	279.4
Total	647	51,483	7,717	12,558	71,758	27.3	705,558	255,831	961,389	971,068	(1.0)
% of Total		71.7	10.8	17.5	100.0		73.4	26.6	100.0		
Last Year		34,201		22,168	56,369		705,371	265,697	971,068		
% of Inc. by Prod.		50.5		(8.5)	27.3		—	(3.7)	(1.0)		

Ck. Rec'd $38,382.29.

3677

Summary

Firestone District	Number Outlets	December Sales Tires & Tubes	Batteries	Other H & A Supplies	Total	% Inc. or Dec.	12 Months Sales Thru December 1954 Tires & Tubes	H & A Supplies	Total	Same Period Last Yr.	% Inc. or Dec.
Sales Commission	3,237	291,463	39,812	78,024	409,299	12.1	3,669,707	1,200,013	4,869,720	5,050,389	(3.6)
Sales to Atlantic	8	84	20	660	764	120.8	1,088	2,210	3,298	5,218	(36.8)
Total Atlantic	3,245	291,547	39,832	78,684	410,063	12.2	3,670,795	1,202,223	4,873,018	5,055,607	(3.6)
							75.3	24.7	100.0		
				118,516			3,661,610	1,393,997	5,055,607		
% of Total		71.1	9.7	19.2	100.0		.2	(13.8)	(3.6)		
Last Year		226,985		138,450	365,435						
% of Inc. by Prod.		28.4		(14.4)	12.2						



3679 COMMISSION EXHIBIT NO. 381.

The Atlantic Refining Company

Summary

Firestone District	December 1955 Sales: No. Outlets	Tires & Tubes	Retreads	Batteries	Other H & A Supplies	Total	% Inc. or Dec.	Year to Date Sales 1-1-55 Thru 12-20-55: Tires & Tubes	Batteries	Other H & A Supplies	Total	Last Year 1-1-54-12-31-54	% Inc. or Dec.
Eastern Pennsylvania Region													
Sls. Commission	1,500	204,239	46,414	32,562	45,173	328,388	46.1	2,311,785	204,785	459,519	2,976,089	2,567,603	15.9
Sls. to Atlantic	3	—	—	151	120	271		971	572	1,365	2,914	897	224.9
Total	1,503	204,239	46,414	32,713	45,293	328,659	46.2	2,312,756	205,363	460,884	2,979,003	2,568,500	16.0
			250,653							666,247			
% of Total		62.2	14.1	10.0	13.7	100.0		77.6	6.9	15.5	100.0		
Last Year		160,625		18,512	45,654	224,791		1,945,949		622,551	2,568,500		
% Increase		56.0		76.7	(0.8)	46.2		18.8		7.0	16.0		
Western Pennsylvania Region													
Sls. Commission	1,215	99,045	27,970	16,115	18,948	162,078	42.8	1,279,697	125,827	186,340	1,591,864	1,343,126	18.5
Sls. to Atlantic	2	—	—	—	9	9	—	65	18	74	157	3	—
Total	1,217	99,045	27,970	16,115	18,957	162,087	42.8	1,279,762	125,845	186,414	1,592,021	1,343,129	18.5
			127,015							312,259			
% of Total		61.1	17.3	9.9	11.7	100.0		80.4	7.9	11.7	100.0		
Last Year		79,439		13,603	20,472	113,514		1,019,288		323,841	1,343,129		
% of Increase		60.0		18.5	(7.4)	42.8		25.6		(3.6)	18.5		
Southern Region													
Sls. Commission	772	73,967	11,918	14,521	22,041	122,447	72.5	728,639	92,258	175,109	996,006	958,991	3.9
Sls. to Atlantic	1	42	0	0	12	54	(92.9)	1,222	549	1,747	3,518	2,398	46.7
Total	773	74,009	11,918	14,521	22,053	122,501	70.7	729,861	92,807	176,856	999,524	961,389	4.0
			85,927							269,663			
% of Total		60.4	9.7	11.9	18.0	100.0		73.0	9.3	17.7	100.0		
Last Year		51,483		7,717	12,558	71,758		705,558		255,831	961,389		
% of Increase		66.7		88.2	75.6	70.7		3.4		5.4	4.0		
Sls. Commission	3,487	377,251	86,302	63,198	86,162	612,913	49.7	4,320,121	422,870	820,968	5,563,959	4,869,720	14.2
Sls. to Atlantic	6	42	—	151	141	334	(56.3)	2,258	1,145	3,186	6,589	3,298	99.8
Total Atlantic	3,493	377,293	86,302	63,349	86,303	613,247	49.5	4,322,379	424,015	824,154	5,570,548	4,873,018	14.3
			463,595							1,248,169			
% of Total		61.5	14.1	10.3	14.1	100.0		77.6	7.6	14.8	100.0		
Last Year		291,547		39,832	78,684	410,063		3,670,795		1,202,223	4,873,018		
% of Increase		59.0		59.0	9.7	49.5		17.8		3.8	14.3		

3681 COMMISSION EXHIBIT NO. 382A-B.

The Atlantic Refining Company

Summary

Firestone District	No. Outlets	June 1956 Sales: Tires & Tubes	Retreads	Batteries	Other H & A Supplies	Total	% Inc. or Dec.	Year to Date Sales 1/1/56 Thru 6/20/56: Tires & Tubes	Retreads	Batteries	Other H & A Supplies	Total	Last Year 1/1/55-6/20/55	% Inc. or Dec.
Eastern Pennsylvania Region														
Sls. Commission	1,383	232,312	15,409	12,292	41,923	301,936	28.9	917,022	71,981	62,511	232,245	1,283,759	1,166,392	10.1
Sls. to Atlantic	4	—	—	—	(14)	(14)	—	364	74	275	701	1,414	2,418	(41.5)
Total	1,387	232,312	15,409	12,292	41,909	301,922	28.5	917,386	72,055	62,786	232,946	1,285,173	1,168,810	9.9
			247,721						989,441					
% of Total		76.9	5.1	4.1	13.9	100.0		71.4	5.6	4.9	18.1	100.0		
Last Year		190,792		12,212	31,900	234,904		891,078		65,536	212,196	1,168,810		
% of Increase		29.8		.7	31.4	28.5		11.0		(4.2)	9.8	9.9		
Western Pennsylvania Region														
Sls. Commission	1,105	127,763	6,700	7,178	22,689	164,330	24.9	551,814	42,883	45,766	105,750	746,213	627,832	18.9
Sls. to Atlantic	2	—	—	—	—	—	—	385	12	—	282	679	130	422.3
Total	1,107	127,763	6,700	7,178	22,689	164,330	24.8	552,199	42,895	45,766	106,032	746,892	627,962	18.9
			134,463											
% of Total		77.8	4.1	4.3	13.8	100.0		73.9	5.8	6.1	14.2	100.0		
Last Year		110,596		4,572	16,518	131,686		495,936		40,933	91,093	627,962		
% of Increase		21.6		57.0	37.3	24.8		12.2		11.8	16.4	18.9		
Southern Region														
Sls. Commission	797	85,099	9,399	10,602	16,021	121,121	61.7	333,807	40,956	51,784	88,695	515,242	407,456	26.4
Sls. to Atlantic	2	—	—	—	—	—	—	268	16	49	257	590	3,248	(81.8)
Total	799	85,099	9,399	10,602	16,021	121,121	61.3	334,075	40,972	51,833	88,952	515,832	410,704	25.7
			94,498						375,047					
% of Total		70.3	7.8	8.7	13.2	100.0		64.8	7.9	10.1	17.2	100.0		
Last Year		56,707		6,327	12,054	75,088		308,540		29,780	72,384	410,704		
% of Increase		66.6		67.6	33.1	61.3		21.6		74.0	22.9	25.7		

3683

Summary

Firestone District	No. Outlets	June 1956 Sales: Tires & Tubes	Retreads	Batteries	Other H & A Supplies	Total	% Inc. Or Dec.	Year to Date Sales 1/1/56 Thru 6/20/56: Tires & Tubes	Retreads	Batteries	Other H & A Supplies	Total	Last Year 1/1/55-6/20/55	% Inc. or Dec.
		Total Atlantic												
Sls. Commission	3,285	445,174	31,508	30,072	80,633	587,387	33.3	1,802,643	155,820	160,061	426,690	2,545,214	2,201,680	15.6
Sls. to Atlantic	8	—	—	—	(14)	(14)	—	1,017	102	324	1,240	2,683	5,796	(53.7)
Total Atlantic	3,293	445,174	31,508	30,072	80,619	587,373	33.0	1,803,660	155,922	160,385	427,930	2,547,897	2,207,476	15.4
			476,682						1,959,582					
% of Total		75.8	5.4	5.1	13.7	100.0		70.8	6.1	6.3	16.8	100.0		
Last Year		358,095		23,111	60,472	441,678		1,695,554		136,249	375,673	2,207,476		
% of Increase		33.1		30.1	33.3	33.0		15.6		17.7	13.9	15.4		

3685 COMMISSION EXHIBIT NO. 383A

October 7, 1955

Dear Mr. Muhlholland:
The Atlantic Refining Company
260 S. Broad Street
Philadelphia 1. Pennsylvania

Dear Mr. Mulholland:

Confirming our recent discussions, arrangements have been made for separate reporting of sales of Firestone produced retreads and for the inclusion of dealer produced retreads sold your dealers by our dealer supply points as covered by the attached letter of October 6 to our District Managers. The full details covering these arrangements are clearly set forth in this letter.

We have also provided in these revised instructions for all supply point reports to be returned directly to our districts as discussed with you. We feel that this will be very helpful in getting more complete and accurate reports by having our districts responsible to follow and get these reports to the Central Operating Offices in complete form. Under this revised program, the reports will be mailed to you one day later, not later than the seventh working day.

Enclosed you will find copy of the new S468A report form, "Report of Dealer Produced Retread Purchases by Oil Company Outlets from Dealer Supply Points," to be used only for those supply points approved for this program. We will furnish this form to you in quantities needed and would appreciate this form being prepared monthly by your regions and districts in the same manner as the regular S468 form as soon as possible after the October report and notification from our District Man-

agers as to the approved supply points for this supplemental report.

We are also enclosing a copy of the revised S468 which we will supply to your regions and districts in quantities needed and would appreciate your arranging for them to start using this new form as soon as possible. This report form will now have a separate column for Firestone produced retreads.

It would be appreciated if you would arrange for your field to be advised of these changes so that they will be familiar with these new procedures and assist us in getting the new report forms in use.

Very truly yours,
G. M. Elliot,
Assistant Manager,
Petroleum Sales.

GME; ml

3687 COMMISSION EXHIBIT NO. 383B-C

October 6, 1955

Firestone

Interoffice

To District Managers From Home Office
Referring to letter of

Subject Sales to Oil Company Outlets

Effective September 21, 1955 sales of Firestone produced retreads to Oil Company outlets are to be reported separately from Firestone tires and tubes on the Monthly Oil Company Report—Form S468 or equivalent.

Arrangements are being made with the Oil Companies for revision of their forms used for "Report of Oil Com-

pany Outlets Purchases" which they will start using as soon as available.

Starting with the October report (9/21-10/20) and until the new forms are in use, it will be necessary to show two totals in the column headed "Tires and Tubes":

1. Firestone tires, tubes, camelback and tread stocks. Identify with Code "T".
2. Firestone produced retreads (including casing when furnished by Firestone). Identify with Code "R".

A separate grand total of each of the above classifications must be shown on each sheet and on the summary and be coded in the same manner. New summary sheets are being prepared, which will provide for these totals.

It is very important that the product breakdown shown on the Monthly Report of Oil Company sales correctly reflect actual sales by product. We call your attention to the reporting of Batteries separately from other Home & Auto Supplies, in addition to the separate Retread sales. See that proper procedures are established and make sure they are being followed.

Store and Dealer Supply Points are to follow the above instructions without exception in reporting sales to Oil Company Outlets. The District Office must see that this is covered with each Supply Point and that October and subsequent reports are on the correct basis. Cover in detail with all employees concerned.

Also effective with the October report we will include sales of retreads (including carcass when furnished by Dealer Supply Point) produced by Firestone supply point dealers who operate their own retread shops. The following program must be followed:

1. District Managers must personally approve the supply point dealers who will report such sales and

no reports will be accepted by district for any supply point until such approval is given.

2. Sales will only be reported by the supply point dealers who purchase their camelback 100% from Firestone.
3. A new separate and supplemental report form (S468A) will be supplied monthly to each of these approved supply point dealers for this supplemental report, and sales will be reported according to the instructions on this report form, copy of which is attached.

3689 4. District Manager will notify Oil Company of Dealers Supply Points approved for this supplemental report so that oil companies can prepare and send this form monthly. District will then instruct these approved supply points dealers how to prepare these supplemental reports.

Until such time as the oil companies can prepare and send you the supplemental report forms (S468A) in the same manner as the regular report forms S468 (or equivalent) you will prepare these in the district, inserting the complete list of accounts appearing in the regular report form. We are sending you a supply of these forms S468A for this purpose and additional supplies should be ordered from Akron stationery stores.

5. When you include camelback sales on an oil company report on those dealers having their own retread shops, do not report any sales of the dealer's produced retreads to this same oil company.

However, should this "oil company" dealer supply point sell approved outlets of another oil company you will report sales of dealer produced retreads to the outlets of the other oil company.

You must however reduce the sales reported for the dealer producing these retreads, in the tire and camelback column on the report for the first oil company, by the amount of such retread sales reported to the other oil companies—on the basis of 25% of the value of such retread sales—if the dealer producing retreads is a C or D account of the first oil company—or on basis of 3-⅓% if dealer producing retreads is a B or E account.

Example:

Dealer Smith, D account of Oil Company #1, purchases $2,000 in tires, tubes and camelback from Firestone and sells $400 worth of retreads produced in his own shop to outlets of Oil Company #2. You will deduct 25% of 400 or $100 from the $2,000 purchases and show net purchases of $1,900 on the report for Oil Company #1.

Effective with the October reports you will instruct Supply Point Stores and Dealers to return their report forms to your District Office, no later than the 2nd working day. It will be the responsibility of your district office manager to approve the reports for correctness, approve the inclusion of sales to accounts "written-in" by supply points and follow for immediate receipt of reports not received by the fourth working day. Districts in Centralized areas will see that all supply point reports have been mailed to Central Operating Office no later than the 5th working day. Complete reports to be mailed to oil companies, etc. not later than the 7th working day.

Operating letters are being revised to reflect these changes. We are also revising the instruction and certification sheet (S2181M), sample attached, sent to the Supply Points with the Monthly Report forms, and a supply of these sheets is being sent to your district. You must start using these with the October report.

The Firestone Tire & Rubber Company

3691 COMMISSION EXHIBIT NO. 384.

The Atlantic Refining Company
Incorporated 1870
Tire, Battery and Accessory Sales

260 South Broad Street
Philadelphia 1, Pa.

R. G. Mulholland
Manager

February 1, 1955

TBA RGM
Flashlight Battery Pricing

Mr. G. M. Elliot
Petroleum Sales Dept.
Firestone Tire & Rubber Co.
Akron 17, Ohio

Dear Mr. Elliot:

Although the subject product is not of great volume, it certainly is psychologically important to Atlantic Dealers' thinking regarding competitive pricing in our program, that flashlight batteries be offered to them at the same price as that quoted by Automotive Jobbers.

Apparently your CD price per case is $6.12, and the general competitive price on similar brands from Automotive Jobbers runs as low as $4.68 per case.

For your information, the Goodyear CD price quoted in their catalog, is $5.05 per case. Cannot this item be lined up more favorably?

Cordially yours,
R. G. Mulholland

h

cc: Mr. G. A. Fearn, Reading Office
Mr. J. A. Normile, Firestone Tire & Rubber Co.

3692 COMMISSION EXHIBIT NO. 385.

February 18, 1952

TBA RMT

Report of Commissions
March through November 1951

Memo To: Staff Meeting File:

Goodyear Sales	$2,097,291.00
Commission Paid	205,515.91
Average Commission Rate	9.80%
Firestone Sales	2,936,577.00
Commission Paid	266,832.83
Average Commission Rate	9.09%
Totals	5,033,868.00
Commission Paid	472,348.74
Average Commission Rate	9.38%

3694 COMMISSION EXHIBIT NO. 386.

The Atlantic Refining Company
Sales—Northeast Division by Goodyear Districts
March 1, 1951 Thru October 20, 1951

Commission Sales

Goodyear Districts	New Tires and Tubes Excl. Marathon Truck	Pneu. Truck T&T[1]	Batteries (Excl Res) & Cables	Resol. Batt.	C & H Supp. Etc.	Total
New England Region						
Albany	19,850		3,613	411	2,453	26,327
Boston	181,648		24,119	3,389	46,144	255,300
Hartford	149,048		16,827	5,003	42,474	213,352
New York	4,324		1,318	0	2,042	7,684
Total	354,870		45,877	8,803	93,113	502,663
New York Region						
Albany	23,907		1,369	69	6,132	31,477
Buffalo	124,898		8,097	3,335	31,948	168,278
Newark	24,848		733	0	4,814	30,395
Syracuse	212,398		13,199	1,838	28,375	255,810
Total	386,051		23,398	5,242	71,269	485,960
Philadelphia & N. J. Region						
Philadelphia	460,434		73,943	6,701	144,005	685,083
Newark[2]	144,499		22,461	2,661	37,481	207,102
Total	604,933		96,404	9,362	181,486	892,185
Total Commission	1,345,854		165,679	23,407	345,868	1,880,808

OWN CONSUMPTION AND COMPANY OPERATED STATIONS

Boston	1,327	8	219	27	828	2,401
Buffalo	830	39	158	0	658	1,646
Hartford	3,567	89	0	0	0	3,567
Newark	39	18	0	0	0	39
Philadelphia	23,753	138	4,731	0	17,565	46,049
Syracuse	2,676	680	547	0	1,969	5,192
Total	32,192	972	5,655	27	21,020	58,894
Grand Total	1,378,046	972	171,334	23,434	366,888	1,939,702

1. Included in New Tires & Tubes — Statistics Division
2. January 1, 1951 Thru October 20, 1951 — Sales Accounting Dept.

Issued: 11-16-1951

3696 COMMISSION EXHIBIT NO. 387.

August 15, 1952

TBA WCH

Goodyear Program—
Dealers and Supply Points

Mr. L. K. Maisel
Syracuse, N. Y.

Dear Sir:

With reference to our telephone conversation of August 14, listed below is as much information as was available on your request:

	New England	New York	Phila.
#1—Number of dealers on Goodyear Program	654	588	842
#2—Number of Goodyear stores and Goodyear dealers supplying Atlantic	66	41	2
#3—Number of Atlantic dealers acting as Supplying Dealers	13	20	18
#4—Number of supply points by Region	79	61	20

R. M. Taitt

3698 COMMISSION EXHIBIT NO. 388A-D.

Firestone

Interoffice

February 2, 1956

To District Managers
Territory Salesmen
Store Managers

From Home Office
Referring to Letter of

Subject Firestone Identification for Atlantic Dealers.

Attached is revised identification program illustrating the uniform method recommended for identifying Atlantic dealer's stations.

The use of "Tire & Battery Service" and "Tubeless Tire Service" panels, erected 2" beneath 1-A-776 and 1-A-774 signs, has been included and recommendations made for merchandise display atmosphere at all stations.

Atlantic stations not presently so identified should receive immediate attention so they conform to the recommended uniform identification program.

As new Atlantic dealers are signed on Firestone contract they should be promptly identified in the same manner by Territory Sales[illegible]n and stores.

Atlantic are advising their field organization of this program by sending them copies of the attached sheets. Place these sheets in the Advertising Section of your Sales and Product book for ready reference.

You should discuss this new identification program with the Atlantic Refining Company men in your area and work closely with them to make sure that all Atlantic stations are properly identified.

The Firestone Tire & Rubber Company.

COMMISSION EXHIBIT NO. 388B-D.

Recommended Firestone IDENTIFICATION for ATLANTIC DEALERS

EVERY STATION MUST BE IDENTIFIED WITH SIGNS, VALANCES AND MERCHANDISE DISPLAYS AS SOON AS STOCK IS RECEIVED.

14

RECOMMENDED SIGNS

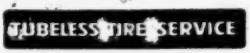
The 4' bracket hang-out, 1-A-776, must be installed on light pole only or its own pole support. Installation should always be made so that the sign is hung on the service station side of the pole.

Hang 1-A-779 44" x 7" "TIRE & BATTERY SERVICE" panel beneath 1-A-776 sign as illustrated at right. Optional panel 1-A-500-12 44" x 7" "TUBELESS TIRE SERVICE" (illustrated below) available if desired.

The center line of the hanging signs must be 9'7" from the base plate of the pole. Signs should only be hung on poles that are situated on the property line and where there will be no problem of vehicular clearance.

See print on reverse side and diagram at right.

No signs of any type to be installed on Atlantic sign pole or buildings, or latticework of any existing 24 Sheet Poster board.



ALTERNATE SIGNS

The 6' horizontal sign, 1-A-774, may be used as an alternate where it is not possible to erect a 1-A-776 bracket hang-out on a flood light pole to provide good readability from all directions.

Erect 1-A-781 65" x 9" "TIRE & BATTERY SERVICE" panel beneath 1-A-774 sign as illustrated at right. Optional panel 1-A-501-12 65" x 9" "TUBELESS TIRE SERVICE" (illustrated above) available if desired.

When the alternate sign is mounted on a fence it should be centered between the top and bottom of the fence. If no fence is available it may be mounted on its own pole supports. In this case the tops of the pole supports should be pyramid shaped and shown above sign. (See illustration at right.) The sign should be at least 6' from the property line. The center line of the Firestone sign (post-type erection) should be 4' above ground level.

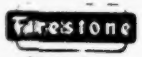
RECOMMENDED AND ALTERNATE SIGNS

Two signs are permitted on corner locations where the station is situated on a prominent corner. One sign may be mounted on each street. The installation may consist of two of the recommended signs, or two alternate signs, or one recommended and one alternate sign.

RECOMMENDED VALANCES (9" HIGH)

"FIRESTONE" Center Panel	40" Long	12-A-741	"AUTO SUPPLIES"	30" Long	12-A-747
"FIRESTONE" Center Panel	30" Long	12-A-759	"RETREADING"	25" Long	12-A-745
"TIRES"	15" Long	12-A-742	"SPARK PLUGS"	27" Long	12-A-744
"BATTERIES"	24" Long	12-A-743	Filler Panel	30" Long	12-A-758

The recommended order for installing valances on windows, where space permits, is to have them read from left to right, "TIRES" — "BATTERIES" — "AUTO SUPPLIES" — "RETREADING" — "SPARK PLUGS." These panels would be separated by the Firestone panel as illustrated on the reverse side.



CENTER PANEL VALANCE

Valances are to be installed only on windows . . . never on service doors, or interior glass.

Recommended by The ATLANTIC REFINING COMPANY

R T Muebland

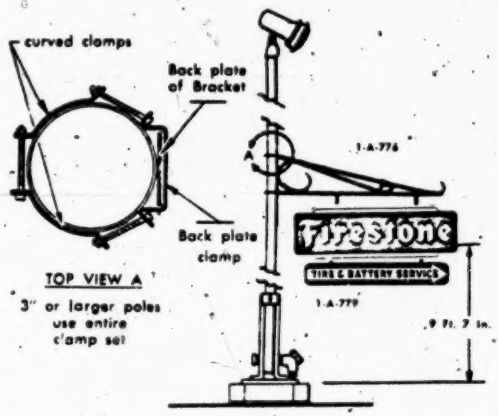
Approved by THE FIRESTONE TIRE & RUBBER CO.

C B Ryan 3202

Supplement to Recommended Firestone Identification for Atlantic Dealers.

How to Properly Install the 1-A-776 BRACKET HANGOUT SIGN ON ATLANTIC LIGHT POLES

1—On Any Poles Larger in Diameter than 2"

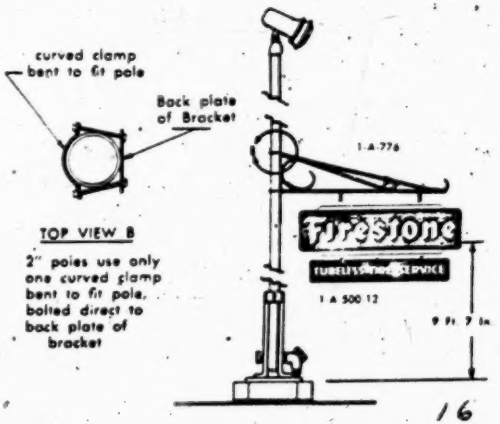


(a) Use pole clamp 1-A-776-A to securely clamp back plate of bracket to pole.

(b) Place center line of signs 9'7" above base plate of pole.

(c) Tighten clamps securely and paint clamps and brackets to match the pole.

2—On 2" Atlantic Light Poles



(a) Use only one section of the curved clamps—bend with hammer to fit the contour of the pole.

(b) Insert 2½" bolts through the holes in the back plate of the bracket. Attach clamp (bent to fit pole) to these bolts and tighten nuts securely to insure against the brackets turning on the pole.

(c) Keep center line of signs at 9'7" above base plate. Paint clamp and bracket to match pole.

16

3704

3759 COMMISSION EXHIBIT NO. 400A-B.

Confidential

March 7, 1957

Memorandum

Re: Docket No. 6486—List C—Goodyear

Set forth below are comments with respect to the various items included in the Commission's typewritten request for material and data, undated, entitled "List C—Goodyear."

Item No.	Comments
5A.	Note: Goodyear has no knowledge or information whereby it can classify oil company retail outlets as "lessee, contract, etc." or oil company distributors as "consignees, etc."
5C(c).	Note: Column headed "Number of Retail Accounts" includes Goodyear dealers and associate dealers which are served by Goodyear stores.
5D.	Note: There is some duplication of associate dealers and dealers which cannot be avoided. Dealer figures do not include distributors or associate dealers served by Goodyear stores.
7A.	Note: There is a possibility of duplication in the number of stores acting as "O. C. S. D.'s" due to the fact that the same store may be acting as "O. C. S. D." for both the parent oil company and its subsidiaries or affiliates.
3760 7B.	Note: There is a possibility of duplication in the number of dealers acting as "O. C. S. D.'s" due to the fact that the same dealer may be acting as "O. C. S. D." for both the parent oil company and its subsidiaries or affiliates.

8A. Note: There is some duplication in items 2 (warehouses) and 4 (Goodyear dealers) which cannot be avoided.

8B. Note: Due to the fact that Goodyear districts overlap Atlantic Refining Company marketing regions and both companies' districts overlap state boundaries there are a number of states serviced by more than one warehouse.

8C. Note: Column headed "Total Number Dealers Signed" includes both Atlantic retailers and distributors.

Cahill, Gordon, Reindel & Ohl

3761

COMMISSION EXHIBIT NO. 400C.

The Goodyear Tire & Rubber Company, Inc.

Domestic Sales Data

Contract Sales and Commissions to Oil Company Customers Under the Sales Commission Plan
Tires, Tubes, Batteries & Equipment and Other TBA Products

	1953		1954		1955		January 1, 1956 Thru June 20, 1956	
	Volume	Commission Paid	Volume	Commission Paid	Volume	Commission Paid	Volume	Commission Paid
Anderson-Prichard Oil Corp					$ 356,815	$ 29,817.38	$ 420,099	$ 34,065.24
Ashland Oil and Refining Company and Subsidiaries	$ 1,000,549	$ 89,747.66	$ 979,491	$ 90,442.94	1,524,068	134,069.55	850,452	75,745.61
Atlantic Refining Company	5,067,565	500,436.61	5,284,743	523,047.71	5,700,121	557,598.75	3,133,905	296,988.15
The Carter Oil Company	1,209,079	101,974.46	1,304,769	112,276.47	1,646,224	143,237.02	801,552	68,091.18
The Frontier Refining Company	225,269	18,877.02*	164,659	13,695.38	30,293	2,487.77	—	—
Mid-Continent Petroleum Corp*	1,362,259	125,579.13	1,730,233	158,606.06	2,131,277	197,683.91	1,172,946	108,013.74
Quaker State Refining Co—Sterling Oil Div	67,095	6,672.39	47,459	4,745.90	210,095	20,873.23	114,931	11,474.44
Richfield Oil Company and Rio Grande	533,681	52,308.57	482,469	47,853.48	549,740	54,248.51	256,072	25,150.33
The Shamrock Oil and Gas Corporation	461,647	42,250.52	556,965	49,792.15	605,061	52,421.77	323,031	26,631.50
Shell Oil Company and Subsidiaries	17,984,085	1,644,916.52	18,444,530	1,684,368.08	21,298,612	1,929,209.93	11,212,306	1,007,977.92
Sinclair Refining Co and Subsidiaries	1,699,655	156,664.39	1,649,932	153,236.85	2,052,435	187,212.94	576,304	47,864.10**
Total	$29,600,884	$2,739,427.27	$30,645,250	$2,838,065.02	$36,104,741	$3,308,860.76	$18,861,598	$1,702,002.21

* Effective May 16, 1955, this corporation became D-X Sunray Oil Company.

** Commission Earned Thru 6-20-56, Payment to be made at the end of the year.

1-7-57

(References as to other oil companies stricken as against Atlantic.)

3762 COMMISSION EXHIBIT NO. 400D-E.

Confidential List C

Item 4

The Goodyear Tire & Rubber Company, Inc.

Summary of Sales and Commissions Covered by the Sales Commission Plan With Atlantic Refining Company

Year and Month	Sales Volume	Commissions
June 21, 1951 thru July 20, 1951	$303,319	$29,616.51
July 21, 1951 thru August 20, 1951	237,297	23,534.90
August 21, 1951 thru September 20, 1951	239,745	23,410.93
September 21, 1951 thru October 20, 1951	244,563	23,942.50
October 21, 1951 thru November 20, 1951	267,658	26,095.83
November 21, 1951 thru December 31, 1951	297,342	28,983.53
January 1, 1952 thru January 20, 1952	235,148	23,557.54
January 21, 1952 thru February 20, 1952	264,676	25,899.71
February 21, 1952 thru March 20, 1952	206,193	20,259.45
March 21, 1952 thru April 20, 1952	264,709	26,063.68
April 21, 1952 thru May 20, 1952	325,333	32,240.81
May 21, 1952 thru June 20, 1952	366,398	36,227.26
June 21, 1952 thru July 20, 1952	451,616	44,723.73
July 21, 1952 thru August 20, 1952	466,773	45,935.58
August 21, 1952 thru September 20, 1952	444,167	43,701.60
September 21, 1952 thru October 20, 1952	391,857	38,715.83
October 21, 1952 thru November 20, 1952	370,975	36,284.98
November 21, 1952 thru December 31, 1952	388,046	38,132.88
January 1, 1953 thru January 20, 1953	359,563	35,578.73
January 21, 1953 thru February 20, 1953	363,740	25,932.35
February 21, 1953 thru March 20, 1953	282,375	27,994.15
March 21, 1953 thru April 20, 1953	311,233	30,549.25
April 21, 1953 thru May 20, 1953	461,429	45,556.33
May 21, 1953 thru June 20, 1953	460,834	45,718.48
June 21, 1953 thru July 20, 1953	491,075	48,258.25
July 21, 1953 thru August 20, 1953	530,202	52,224.83
August 21, 1953 thru September 20, 1953	569,430	56,593.23
September 21, 1953 thru October 20, 1953	435,578	43,182.95
October 21, 1953 thru November 20, 1953	441,971	43,675.38
November 21, 1953 thru December 31, 1953	360,135	35,172.68
January 1, 1954 thru January 20, 1954	409,801	40,727.33
January 21, 1954 thru February 20, 1954	466,977	46,146.23
February 21, 1954 thru March 20, 1954	355,699	35,070.58
March 21, 1954 thru April 20, 1954	354,330	35,126.80
April 21, 1954 thru May 20, 1954	354,904	35,072.78
May 21, 1954 thru June 20, 1954	481,401	47,751.98
June 21, 1954 thru July 20, 1954	562,388	55,524.45
July 21, 1954 thru August 20, 1954	463,372	45,834.58
August 21, 1954 thru September 20, 1954	412,389	40,859.30
September 21, 1954 thru October 20, 1954	480,761	47,478.98
October 21, 1954 thru November 20, 1954	478,928	47,554.00
November 21, 1954 thru December 31, 1954	463,793	45,900.70

3763

Year and Month	Sales Volume	Commissions
January 1, 1955 thru January 20, 1955	$432,423	$43,080.65
January 21, 1955 thru February 20, 1955	473,637	47,002.68
February 21, 1955 thru March 20, 1955	331,458	32,696.30
March 21, 1955 thru April 20, 1955	440,182	43,002.75
April 21, 1955 thru May 20, 1955	403,770	40,001.03
May 21, 1955 thru June 20, 1955	480,106	47,470.65
June 21, 1955 thru July 20, 1955	482,369	47,883.90
July 21, 1955 thru August 20, 1955	522,087	51,397.00
August 21, 1955 thru September 20, 1955	577,018	57,115.58
September 21, 1955 thru October 20, 1955	517,134	51,328.70
October 21, 1955 thru November 20, 1955	522,469	48,356.81
November 21, 1955 thru December 31, 1955	517,468	48,262.70
January 1, 1956 thru January 20, 1956	540,522	52,326.43
January 21, 1956 thru February 20, 1956	571,176	55,577.40
February 21, 1956 thru March 20, 1956	378,765	37,115.08
March 21, 1956 thru April 20, 1956	519,834	42,924.06
April 21, 1956 thru May 20, 1956	544,576	52,390.13
May 21, 1956 thru June 20, 1956	579,032	56,655.05

3764. COMMISSION EXHIBIT NO. 400F-G.

Confidential

List C
Item 5A

Number of Oil Company Accounts to Whom Sales Were Made Subdivided by Retail Outlets and Distributors With Dollar Volume of Sales to Each Class

Year	Number of Retail Outlets	Sales Volume (Dollar)	Number of Distributor Outlets	Sales Volume (Dollar)
1950				
Ashland Oil Company	26	$ 38,597	15	$ 217,999
Atlantic Refining Company	104	121,142	3	44,436
Richfield Oil & Rio Grande	251	419,981	—	10,032
Shell Oil Co & Subsidiaries	4,813	10,299,946	399	3,005,114
Sinclair Refining Company & Subsidiaries	945	997,186	67	127,077
Total	6,139	$11,876,852	484	$ 3,404,658
1951				
Ashland Oil Company	36	$ 138,470	22	$ 280,670
Atlantic Refining Company	1,003	2,232,588	23	213,220
Richfield Oil & Rio Grande	167	548,763	1	17,003
Shell Oil Co. & Subsidiaries	4,233	8,327,627	335	3,536,898
Sinclair Refining Company & Subsidiaries	963	1,137,544	104	264,541
Total	6,402	$12,384,992	485	$ 4,312,332

Year	Number of Retail Outlets	Sales Volume (Dollar)	Number of Distributor Outlets	Sales Volume (Dollar)
1952				
Ashland Oil Company	78	$ 526,668	35	$ 411,455
Atlantic Refining Company	1,093	3,928,399	21	247,491
Carter Oil Company	52	25,389	83	110,900
Mid-Continent Petroleum Corp	218	343,403	55	156,800
Richfield Oil & Rio Grande	203	529,198	1	—
Shamrock Oil & Gas Corp	50	200,000	8	68,394
Shell Oil Co & Subsidiaries	4,074	11,522,537	340	5,083,133
Sinclair Refining Company & Subsidiaries	820	1,149,045	122	456,064
Total	6,588	$18,224,639	665	$ 6,534,237
1953				
Ashland Oil Company	125	$ 675,505	47	$ 550,313
Atlantic Refining Company	1,254	4,814,768	21	252,797
Carter Oil Company	160	451,739	119	757,340
Mid-Continent Petroleum Corp	458	945,994	72	416,265
Quaker State Oil Refining Co	24	65,610	—	1,485
Richfield Oil & Rio Grande	194	521,299	1	2,382
Shamrock Oil & Gas Co	67	311,512	14	150,135
Shell Oil Co	4,913	12,483,882	368	5,500,203
Sinclair	923	1,167,610	155	532,045
Total	8,118	$21,437,919	797	$ 8,162,965

3765

Year	Number of Retail Outlets	Sales Volume (Dollar)	Number of Distributor Outlets	Sales Volume (Dollar)
1954				
Ashland Oil Company	166	$ 637,953	45	$ 506,197
Atlantic Refining Co	1,420	5,067,678	20	217,065
Carter Oil Company	188	614,961	98	683,808
Mid-Continent Petroleum Corp	595	1,182,755	81	547,478
Quaker State Oil Refining Co	23	47,459	—	—
Richfield Oil & Rio Grande	175	466,731	1	15,738
Shamrock Oil & Gas Co	67	326,383	26	230,582
Shell	4,845	12,568,831	392	5,875,699
Sinclair	799	1,179,678	133	470,254
Total	8,278	$22,092,429	796	$ 8,552,821
1955				
Anderson-Prichard	79	$ 122,274	37	$ 234,541
Ashland Oil Co & Subsidiaries	260	965,904	50	588,457
Atlantic Refining Co.	1,790	5,385,834	22	314,287
Carter Oil Company	326	837,505	98	808,719
Mid-Continent Petroleum Corp	797	1,569,304	89	561,973
Quaker State Oil Refining Co	30	208,278	—	1,817
Richfield Oil & Rio Grande	251	532,575	2	17,165
Shamrock Oil & Gas Co	68	309,175	48	295,886
Shell	5,931	14,292,735	401	7,005,877
Sinclair Refining Company & Subsidiaries	993	1,366,656	158	685,779
Total	10,525	$25,590,240	905	$10,514,501

1956 (First Six Months)				
*Anderson-Prichard	83	$ 125,743	51	$ 294,356
Ashland Oil Company	237	913,843	41	302,953
Atlantic Refining Co	1,419	2,982,272	21	151,633
Carter Oil Company	213	254,467	81	447,085
Quaker State Oil Refining Co	17	114,892	—	39
Richfield	212	246,194	—	9,878
Shamrock Oil & Gas Co	51	129,124	39	193,547
Shell	5,757	7,563,949	449	3,649,540
Sinclair	532	425,320	117	403,765
D-X Sunray	797	842,279	83	330,712
Total	9,318	$13,698,083	882	$ 5,783,238

* Effective May 16, 1955, this corporation became D-X Sunray.

(References as to other oil companies stricken as against Atlantic.)

3766 COMMISSION EXHIBIT NO. 400H-K.

Confidential

List C
Item 5C(c)

Number of Retail Accounts and Distributors Signed to SCP Agreements for the Period June 1950 Thru June 1956

Name of Oil Company	Date (Year)	Accounts Signed: Number of Retail Accounts	Accounts Signed: Number of Distributors
Ashland Oil & Refining Company	1950	38	74
Atlantic Refining Company			
Philadelphia & New Jersey Region	1950	152	3
Richfield Oil Corporation	1950	310	—
Shell Oil Company	1950	7,599	499
Sinclair Refining Company	1950	1,307	77
Ashland Oil & Refining Company	1951	51	105
Atlantic Refining Company			
New England Region	1951	604	3
New York Region	1951	423	19
Philadelphia & New Jersey Region	1951	310	1
Total Atlantic—All 3 Regions		1,337	23
Richfield Oil Corporation	1951	204	1
Shell Oil Company	1951	6,703	407
Sinclair Refining Company	1951	1,348	108
Ashland Oil & Refining Company	1952	118	138
Atlantic Refining Company			
New England Region	1952	644	3
New York Region	1952	431	17
Philadelphia & New Jersey Region	1952	261	1
Total Atlantic—All 3 Regions		1,336	21
The Carter Oil Company	1952	96	123
Mid-Continent Petroleum Corp	1952	541	68
Richfield Oil Corporation	1952	241	1

3767

Name of Oil Company	Date (Year)	Accounts Signed: Number of Retail Accounts	Accounts Signed: Number of Distributors
The Shamrock Oil & Gas Corp	1952	69	9
Shell Oil Company	1952	7,581	441
Sinclair Refining Company	1952	1,154	165
Ashland Oil & Refining Company	1953	221	162
Atlantic Refining Company			
New England Region	1953	658	3
New York Region	1953	479	18
Philadelphia & New Jersey Region	1953	383	—
Total Atlantic—All 3 Regions		1,520	21
The Carter Oil Company	1953	221	119
Mid-Continent Petroleum Corp	1953	718	81
Quaker State Oil Refining Company	1953	75	—
Richfield Oil Corporation	1953	237	1
The Shamrock Oil & Gas Corporation	1953	86	17
Shell Oil Company	1953	7,426	454
Sinclair Refining Company	1953	1,334	184
Ashland Oil & Refining Company	1954	345	173
Atlantic Refining Company			
New England Region	1954	742	2
New York Region	1954	487	17
Philadelphia & New Jersey Region	1954	554	1
Total Atlantic—All 3 Regions		1,783	20
The Carter Oil Company	1954	270	117
Mid-Continent Petroleum Corp	1954	866	100
Quaker State Oil Refining Co	1954	87	—
Richfield Oil Corporation	1954	241	1

3768

The Shamrock Oil & Gas Corp	1954	80	31
Shell Oil Company	1954	7,072	466
Sinclair Refining Company	1954	1,115	186
Anderson-Prichard Oil Corp	1955	104	39
Ashland Oil & Refining Company	1955	465	155
Atlantic Refining Company			
New England Region	1955	1,005	4
New York Region	1955	558	19
Philadelphia & New Jersey Region	1955	620	2
Total Atlantic—All 3 Regions		2,183	25
The Carter Oil Company	1955	398	125
D-X Sunray Oil Company	1955	1,150	113
Quaker State Oil Refining Company	1955	89	—
Richfield Oil Corp	1955	325	2
The Shamrock Oil & Gas Corp	1955	84	49
Shell Oil Company	1955	8,361	519
Sinclair Refining Company	1955	1,419	198

Name of Oil Company	Date (Year)	Accounts Signed: Number of Retail Accounts	Accounts Signed: Number of Distributors
Anderson-Prichard Oil Corp	Jan-June 1956	130	55
Ashland Oil & Refining Co	1956	517	162
Atlantic Refining Co			
New England Region	1956	710	3
New York Region	1956	547	21
Philadelphia & New Jersey Region	1956	679	—
Total Atlantic—All 3 Regions		1,936	24
The Carter Oil Company	1956	335	119
D-X Sunray Oil Company	1956	1,357	113

3769

Name of Oil Company	Date (Year)	Accounts Signed: Number of Retail Accounts	Accounts Signed: Number of Distributors
Quaker State Oil Refining Co	1956	82	—
Richfield Oil Corporation	1956	300	—
The Shamrock Oil & Gas Corp	1956	70	41
Shell Oil Company	1956	9,248	556
Sinclair Refining Co	1956	805	169

(Reference as to other oil companies stricken as against Atlantic.)

3770 COMMISSION EXHIBIT NO. 400L.

Confidential

List C
Item 5D

Number of Associate Dealers and Dealers Signed Under Each SCP Agreement as of June 1956

Oil Company	Number of Associate Dealers	Number of Dealers
Anderson-Prichard	87	79
Ashland & Subsidiaries	467	400
Carter	311	260
D-X Sunray	1,059	915
Quaker State	78	82
Richfield	3	300
Shamrock	53	64
Shell	9,467	6,510
Sinclair	190	672
Atlantic	2,500	1,272

(References as to other oil companies stricken as against Atlantic.)

3771 COMMISSION EXHIBIT NO. 400M.

Confidential

List C
Items 7A & 7B

Total Number of Goodyear Service Stores and Goodyear Independent Dealers in Oil Company Marketing Area and Total Number Thereof Acting as O.C.S.D.'s

Oil Companies	Number of Stores	Number Acting as O.C.S.D.'s	Number of Dealers	Number Acting as O.C.S.D.'s
Anderson-Prichard	116	19	3,825	28
Ashland & Subsidiaries	120	34	2,387	87
Carter	18	5	1,509	73
D-X Sunray	240	95	6,772	162
Quaker State	20	1	482	14
Richfield	56	—	1,691	3
Shamrock	70	1	1,717	25
Shell	446	264	10,756	679
Sinclair	452	15	10,963	10
Atlantic	49	34	1,155	128

(References to other oil companies stricken as against Atlantic.)

3772 COMMISSION EXHIBIT NO. 400N.

Confidential

List C
Item 8A

Number of Atlantic Refining Company Retail Outlets and Distributors to Whom Shipments of TBA Products Are Made as of June 30, 1956

	Atlantic Refining Company Retail Outlets	Atlantic Refining Company Distributor Outlets
1. Factory	None	None
2. Warehouse	1,007	22
3. Goodyear Stores	412	None
4. Goodyear Dealers	1,139	None
5. Atlantic Refining Company Dealers Acting as O.C.S.D.'s	477	None

3773 COMMISSION EXHIBIT NO. 400-O.

Confidential List C

Item 8B

Location of Goodyear District Warehouses Making Direct Shipments To Atlantic Dealers and Distributors

Boston, Massachusetts
Hartford, Connecticut
New York, New York
Albany, New York
Buffalo, New York
Syracuse, New York
Philadelphia, Pennsylvania
Newark, New Jersey

NUMBER OF ATLANTIC REFINING COMPANY DEALERS AND DISTRIBUTORS RECEIVING DIRECT SHIPMENTS, THEIR LOCATION BY STATE AND THE GOODYEAR DISTRICT WAREHOUSES WHERE SHIPMENTS ORIGINATED.

State	Dealers	Distributors	District Warehouses
New Hampshire	14	—	Boston
Massachusetts	302	—	Boston, Albany & Hartford
New York	381	19	Newark, Albany, Buffalo & New York City
Vermont	1	1	Albany
Rhode Island	67	—	Boston
Connecticut	184	2	Hartford, Boston & New York City
New Jersey	140	—	Newark & Philadelphia
Pennsylvania	330	—	Philadelphia

The above data are as of June 30, 1956.

Confidential

Statistical Data As To Number Of Atlantic Refining Company Dealers Signed Under SCP, Volume Of Sales, Commissions

	New England Region			New York Region			Philadelphia & New Jersey Region		
	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed
1950									
June							$ 271	$ 27.10	
July							13,344	1,344.40	
August							35,118	3,492.63	
September							27,188	2,195.93	
October							25,864	2,424.95	
November							21,366	1,881.88	
December							42,427	4,090.03	
Total							$ 165,578	$ 15,456.92	155
1951									
January							$ 7,924	$ 658.65	
February							19,614	1,858.35	
March							22,024	2,086.85	
April	$ 59,204	$ 5,730.43		$ 54,517	$ 5,310.28		104,144	10,256.28	
May	54,986	5,357.13		63,552	6,260.83		163,444	16,174.83	
June	98,856	9,556.35		89,892	8,708.00		117,727	11,708.18	
July	93,744	8,976.98		70,707	6,773.03		138,868	13,866.50	
August	53,587	5,413.30		66,847	6,474.97		116,863	11,646.63	
September	66,969	6,533.23		78,597	7,539.25		94,179	9,338.45	
October	75,317	7,289.74		61,848	5,963.53		107,398	10,689.26	
November	77,434	7,463.10		74,768	7,225.88		115,456	11,406.85	
December	108,203	10,660.48		65,282	6,246.85		123,857	12,076.20	
Total	$ 688,300	$ 66,980.74	607	$ 626,010	$ 60,502.62	442	$1,131,498	$111,767.03	311
1952									
January	$ 59,452	$ 6,178.13		$ 59,198	$ 5,774.43		$ 116,498	$ 11,604.98	
February	88,364	8,476.10		63,066	6,165.80		113,245	11,257.80	
March	73,990	7,204.00		47,372	4,657.28		84,830	8,433.58	
April	82,065	8,015.95		89,605	8,784.23		93,039	9,263.50	

	New England Region			New York Region			Philadelphia & New Jersey Region		
	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed
1952—Cont'd									
May	$ 106,085	$ 10,487.08		$ 81,999	$ 8,059.48		$ 137,249	$ 13,694.25	
June	116,754	11,481.68		75,821	7,415.23		173,823	17,330.35	
July	130,012	12,769.03		105,962	10,431.90		215,642	21,522.80	
August	153,413	14,905.25		104,119	10,203.83		209,241	20,826.50	
September	139,245	13,523.40		117,349	11,504.90		187,573	18,673.30	
October	115,965	11,341.25		91,731	8,987.00		184,161	18,352.18	
November	112,958	10,945.86		102,553	9,948.93		155,466	15,390.20	
December	137,904	13,475.07		102,810	10,002.73		147,331	14,655.08	
Total	$1,316,207	$128,802.80	647	$1,041,585	$101,935.74	448	$1,818,098	$181,004.52	262
1953									
January	$ 94,696	$ 9,266.28		$ 89,817	$ 8,819.15		$ 175,050	$ 17,493.30	
February	100,302	9,872.45		86,762	8,490.95		176,676	17,578.95	
March	89,537	8,850.33		62,158	6,115.87		130,680	13,027.95	
April	106,183	10,294.70		70,125	6,787.42		134,925	13,467.13	
May	143,060	14,049.78		112,007	10,896.58		206,362	20,609.97	
June	154,634	15,200.95		98,134	9,637.83		208,066	20,789.70	
July	131,956	12,729.13		134,580	13,092.80		224,539	22,435.72	
August	178,067	17,346.35		150,564	14,797.55		201,571	20,080.93	
September	159,961	15,861.20		138,408	13,636.70		271,061	27,095.33	
October	124,051	12,225.57		110,118	10,825.73		201,409	20,131.65	
November	132,657	12,989.80		131,828	12,941.90		177,486	17,743.68	
December	131,371	12,879.95		101,547	9,579.45		127,217	12,713.28	
Total	$1,546,475	$151,656.49	661	$1,286,048	$125,621.93	497	$2,235,042	$223,167.59	383
1954							$ 195,707	$ 19,527.18	
January	$ 88,976	$ 8,828.63		$ 125,118	$ 12,371.52		269,551	26,955.10	
February	87,967	8,652.23		109,459	10,538.90		175,482	17,590.48	
March	107,835	10,377.30		72,382	7,102.80		159,171	15,860.02	
April	111,398	11,049.78		83,761	8,217.00		158,650	15,861.55	
May	103,413	10,222.08		92,841	8,989.15		231,271	23,126.37	
June	142,923	14,129.08		107,207	10,496.53				

	New England Region			New York Region			Philadelphia & New Jersey Region		
	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed	Total Sales TBA	Total Commission	Total Number Dealers Signed
1954—Cont'd									
July	$ 154,781	$ 15,073.88		$ 147,289	$ 14,430.35		$ 260,318	$ 26,020.22	
August	144,430	14,217.63		131,109	12,839.92		187,833	18,777.03	
September	119,271	11,736.40		107,611	10,572.20		185,507	18,550.70	
October	120,147	11,644.88		147,460	14,518.72		213,154	21,315.38	
November	141,641	13,960.50		121,746	12,066.10		215,541	21,527.40	
December	161,674	16,076.40		119,465	11,562.10		182,654	18,262.20	
Total	$1,484,456	$145,968.79	744	$1,365,448	$133,705.29	504	$2,434,839	$243,373.63	555
1955									
January	$ 81,400	$ 8,127.38		$ 102,553	$ 10,128.22		$ 248,470	$ 24,825.05	
February	126,916	12,623.83		94,741	9,182.55		251,980	25,196.30	
March	84,740	8,201.40		87,359	8,570.63		159,359	15,924.27	
April	141,559	13,941.97		109,279	10,646.65		189,344	18,928.63	
May	134,496	13,242.93		99,723	9,805.02		169,551	16,953.08	
June	134,266	13,255.47		133,159	12,950.00		212,681	21,265.18	
July	135,510	13,459.70		115,719	11,315.80		231,140	23,108.40	
August	150,589	14,589.45		137,844	13,445.62		233,654	23,361.93	
September	158,050	15,564.32		165,764	16,231.38		253,204	25,319.88	
October	132,293	12,878.28		143,775	13,890.02		241,066	24,103.85	
November	186,538	15,308.31		121,326	11,817.00		214,605	21,231.50	
December	224,617	19,553.94		101,162	9,801.76		191,689	18,907.00	
Total	$1,690,974	$160,746.98	1,009	$1,412,404	$137,784.65	577	$2,596,743	$259,125.07	622
1956									
January	$ 136,639	$ 12,585.33		$ 132,839	$ 12,782.83		$ 271,044	$ 26,958.27	
February	155,501	14,331.21		104,284	10,159.97		311,391	31,086.22	
March	106,707	10,115.10		84,085	8,254.96		187,973	18,745.02	
April	163,340	15,517.61		127,990	12,107.36		228,504	22,799.09	
May	167,695	15,539.17		139,486	13,180.83		237,395	23,670.13	
June	186,547	17,640.07		132,621	13,108.93		259,864	25,906.05	
Total	$ 916,429	$ 85,728.49	713	$ 721,305	$ 69,594.88	568	$1,496,171	$149,164.78	600

3777 COMMISSION EXHIBIT NO. 400S.

List C

Confidential

Item 8D

Commission Sales By Product Classification
By Atlantic Refining Company Marketing Regions
June 1950 Thru June 1956

	Total Tires and Tubes	Batteries (Including "X" and Cables)	Miscellaneous Repair & Recap Materials	Car & Home Accessories	Total
New England					
1950	—	—	—	—	—
1951	$ 439,837	$ 109,872	—	$ 138,591	$ 688,300
1952	899,644	163,002	—	253,561	1,316,207
1953	1,048,017	194,192	—	304,266	1,546,475
1954	989,907	173,552	—	320,997	1,484,456
1955	1,036,002	201,047	$ 82,006	371,919	1,690,974
1956	594,057	76,036	62,183	184,153	916,429
Total	$5,007,464	$ 917,701	$144,189	$1,573,487	$ 7,642,841
New York					
1950	—	—	—	—	—
1951	$ 466,499	$ 58,035	—	$ 101,476	$ 626,010
1952	799,691	102,962	—	138,932	1,041,585
1953	989,149	113,118	—	183,781	1,286,048
1954	1,033,714	131,344	—	200,390	1,365,448
1955	1,069,464	130,760	$ 6,353	205,827	1,412,404
1956	548,974	58,898	13,840	99,593	721,305
Total	$4,907,491	$ 595,117	$ 20,193	$ 929,999	$ 6,452,800
New Jersey & Philadelphia					
1950	$ 119,085	$ 21,375	—	$ 25,118	$ 165,578
1951	696,739	178,536	—	256,222	1,131,498
1952	1,168,655	259,928	—	389,516	1,818,098
1953	1,375,028	325,314	—	534,700	2,235,042
1954	1,458,993	362,389	—	613,457	2,434,839
1955	1,539,426	362,551	$ 28,507	666,259	2,596,743
1956	1,017,137	143,365	12,517	323,152	1,496,171
Total	$7,375,063	$1,653,458	$ 41,024	$2,808,424	$11,877,969

COMMISSION EXHIBIT NO. 480. 3221

FEDERAL TRADE COMMISSION
Washington, D. C.

FEDERAL TRADE COMMISSION
DOCKET NO. 6711 EXHIBIT NO. 480
IN THE MATTER OF Goodyear Tire & Rubber Co.
DATE 7/1/58 WITNESS Cassidy
ACE REPORTING CO., Official Reporter
By Gemmill

Statement of HERMAN SHERMAN

Trading as "

Located at 4700 W. FORT ST. (CORR. JOSEPHINE BOWLES)

1. Contractual arrangement with oil company

2. Estimated Monthly Volume: Gasoline [illegible] TBA [illegible]

3. T.B.A.: Brands, Suppliers and Prices:

a) Tires

b) Batteries

c) Accessories

H671

4. Particulars on T.B.A. line

I certify that the information recorded above and which I have read, was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission, whose name appears below, and said information is, to the best of my knowledge, factual and correct.

_____ _____ 1953

Attorney Examiner
Federal Trade Commi. on

COMMISSION EXHIBIT NO. 481. **3223**

FEDERAL TRADE COMMISSION
Washington, D. C.

Statement of Adam Legenski

Trading as Atlantic Service Sta.

Located at 23rd and Howard Streets

1. Contractual arrangement with oil company

Lessee - 1 yr.
30 day cancellation clause
11/5 ¢ per gal - 11 gpg delivered
A/C - I
as rec

FEDERAL TRADE COMMISSION
COMMISSION EXHIBIT NO. 481
DOCKET NO. 6744 OF Goodyear
IN THE MATTER OF WITNESS
DATE 7/1/57 ACE REPORTING CO. OFFICIAL REPORTERS
BY

2. Estimated Monthly Volume: Gasoline 10,000 TBA approx $25.

3. T.B.A.: Brands, Suppliers and Prices:

a) Tires principally Firestone

b) Batteries Firestone principally

c) Accessories misc

4073

3

4. Particulars on T.B.A. line [illegible] 1203

Operated at this location
for 9 years - Atlantic has never
[illegible] since taking over this
[illegible] -

Of course this is a bad
season for a dealer - his T.B.A. is
not a good percent of his sales
[illegible] down the hill - he is not in
a position to [illegible] - and afford
to sell on credit as cheaply.

Not handle much T.B.A. -
owner had no difficulty - my bill
from Atlantic on [illegible] T.B.A. stocked
for sale -

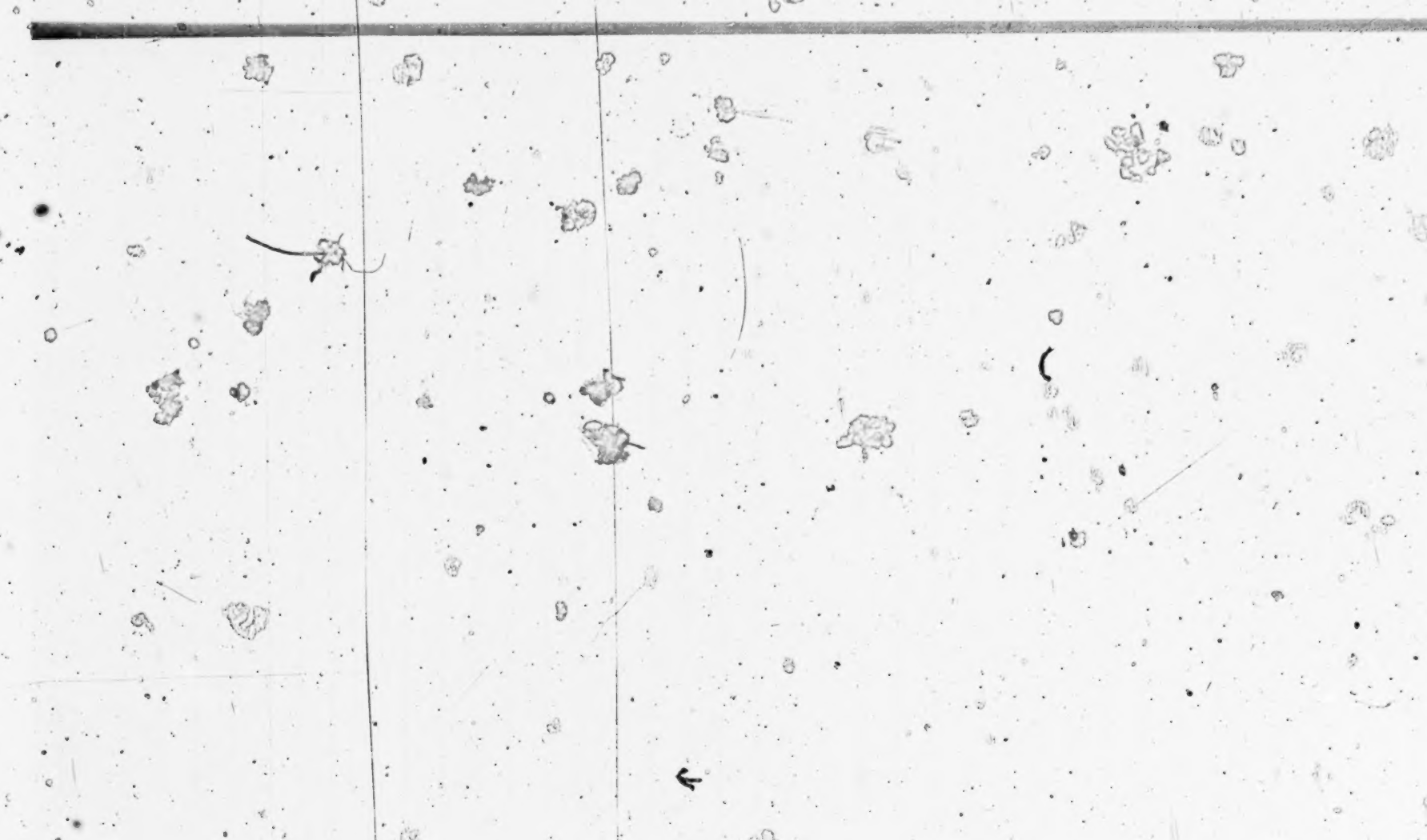
It would be Atlantic's gain
if I have any [illegible] at this location
as I can make it pay at all -

I certify that the information recorded above and which I have read, was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission, whose name appears below, and said information is, to the best of my knowledge, factual and correct.

Adam C. Legandre 1953

Bartley T. Harvey
Attorney Examiner
Federal Trade Commission

4



COMMISSION EXHIBIT NO. 482. 3225

FEDERAL TRADE COMMISSION
WASHINGTON, D. C.

FEDERAL TRADE COMMISSION
DOCKET NO. 6426 COMMISSION EXHIBIT NO. 482
IN THE MATTER OF Goodyear Tire & Rubber
DATE 7/1/57 WITNESS T. Lehmann
ACE REPORTING CO., Official Reporter
By [illegible]

Statement of _____

Trading as _____

Located at _____

1. Type of outlet _____

Terms of Lease _____

Terms of Sales Contract _____

Credit Cards _____

2. Brands of TBA carried _____

Tires and tubes _____

Batteries _____

Other TBA _____

Remarks: _____

3. Estimated monthly volume: Gasoline _____ gals.

TBA _____ dollars

4. TBA suppliers _____

Tires _____

Price information _____

Batteries _____

Price Information _____

4075

5

4. (Cont.)

Other TBA

Price Information

5. Reason for choosing line of TBA carried:

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

_____, _____ 1953

Attorney Examiner
Federal Trade Commission

COMMISSION EHXIBIT NO. 483

3227

FEDERAL TRADE COMMISSION
WASHINGTON, D. C.

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. CX 483
IN THE MATTER OF Goodyear
DATE 7/8/58 WITNESS Cooley
ACE REPORTING CO. Official Repo
By [illegible]

Statement of RUSSELL E. COOLEY

Trading as RUSS COOLEY ATL

Located at 1104 CHENANGO ST

BINGHAMTON, N.Y. (PORT DICKINSON)

1. Type of outlet Class A - Leased

Terms of Lease Since 12/1/58 - on basis type lease "as is basis" At this location for 7 yrs; prior until '53, year to year lease and each year-lease renewed, and week room added in 1950 yearly also increased. Now has two bays and 4 Stalls & Wall below

Terms of Sales Contract Has agreement for pipeline [illegible] agreement for franchise dealership dated 2/1/53 plus [illegible] addendum

Credit Cards Authorized credit card dealer - Stated that he can sell other brands but credit card basis

2. Brands of TBA carried

Tires and tubes Goodyear Tires (Accounts are Goodyear Stock)

Batteries Goodyear & Exide (only stocks Goodyear batteries, Exide only if customer requests, now all delivered from Binghamton)

Other TBA All lines of tires, batteries, accessories

Remarks: Chevrolet dealership - Has open bills

3. Estimated monthly volume: Gasoline 1½ car gals.

TBA $ 4 800 Dollars per year

4. TBA suppliers Dealer stated that according to his report the manufacturers for summer amounts to 1½ of his gallons

Tires Goodyear Super Sup-r-10 Cotton 6.70 - good stock good service

Price information "C" dealer - 70% off list

Batteries Goodyear - Frontier Store
Exide - Binghamton Auto Supply & Hamburg St

Price Information

FEDERAL TRADE COMMISSION
DOCKET NO. 6486 COMMISSION EXHIBIT NO. 483
IN THE MATTER OF Goodyear
DATE 7-8-58 WITNESS Cooley
ACE REPORTING CO. Official Repo
By [illegible]

4077

1773

4. (Cont.)

Other TBA Whipple's Auto Supply

Purchases & Prices from Mfg. Factory Store

Price Information Statistical exhibit with competitive service store prices, prepared by Philip Weintraub, trade practice analyst, FTC, from data collected by field representatives of the Commission.

5. Reason for choosing line of TBA carried:

Dr 950, ARC Dist Mgr introduced Dist Mgr per Mfg, explained that ARC current TBA business. Mr. Kunell, ARC salesman for the Gulf Mfg representative, would like to see Mfg per TBA. Never handled Mfg's TBA. "Bit is "supposed" to handle Mfg's TBA. Changed in 1950 from Firestone

ARC salesman visited Mfg's various dealers - did not ask dealers for invoices - could find out little during visit - decided anything to do with handling Mfg's TBA, by putting up other advertising

- Dealer explained the new arrangement that Mfg's wants his supply TBA. ARC's current & most discontinued. Survey conducted ARC that Mfg's was more favorable

- Salesman ARC collects rent - rent is payable by the 10th of each mo.

- At present 4 dealers transferred - Crest & Hayford Sta (Rent Free) Now @ Gasoline & Oil Co. Nearby. ARC wants to buy upon request & took over tanks: (2) Ebenezer Robinson (Carl); (3) Kleine Sta (Formerly) (4) Penna & Vigstill formerly operated by J. King. Feb 1951 - ARC contracted to equip Kleine Sta. This employee has duties of operating S. [illegible] permanently Feb mo. & will continue to function as sales assistant.

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

Russ Cooley 1/8/ 1953

Attorney Examiner
Federal Trade Commission

page 2

4. (Cont'd)

Other TBA

Price Information

5. Reason for choosing line of TBA carried:

Does not know how flat rental is calculated.

Co's is put in everything a sales of everything except the sale Lyseline Flat rental is now $150 plus 6% of "gross" - subject to "use rental" of $25 per quarter

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

Russ Cooley 1/8 1953

Henry J. Lipsky
Attorney Examiner
Federal Trade Commission

4079

373

9

·3230

C-484-10

COMMISSION EXHIBIT NO. 484.

FEDERAL TRADE COMMISSION
WASHINGTON, D. C.

Statement of FRANK R. BUONGIORNE

Trading as BUONGIORNE & GAY

Located at 638 CHENANGO ST., PORT DICKINSON
BINGHAMTON, N.Y.

1. Type of outlet. Clear Market - Lessee of this location (222-214) prior to their operation as a retail

Terms of Lease 1 year term - both 30 days clause - either party to terminate stated thereof, it is 30 day. Except after 1 year.

~~Terms of Sales Contract~~ Rental - flat rent $70 mo. plus cost of the gasoline thereon (gasoline about $35 per month. Do not pay cost into the tanks but are weighed in local garage

~~Credit Cards~~ Sells Lee tires to S.S. Beardsley, contractor @ Endicott Sells - Lee - Gilyr. & Ellis at wholesale

Also consigns Ellis to 3 Arlo stations & 4 new stations are consigned Lee.

2. Brands of TBA carried Lee stored @ Chenango St. 155-640 Chenango and a Lee stored @ other address

Tires and tubes Lee, Gilyr & Ellis

Batteries Exide & Gilyr.

Other TBA

Remarks: Lee tires are stored in garage & distributed to service station, ARC (wherever ~~the~~ ~~most~~ ~~in~~ minimum - from major ~~in~~ ~~that~~ ~~are~~ these tires going down."

3. Estimated monthly volume: Gasoline 30,000 (car) gals.

TBA 3000 plus dollars

4. TBA suppliers

Tires Gilyr. - Gilyr. Serv Store - 11th & Collier

Lee - Factory Branch (Syracuse)

Price information "A" deal - Gilyr

2½-10-5-5-5 - Lee

One unit equated Anniv. Rebate

Batteries Gilyr - Gilyr Serv Store

Exide - (Central Supply Distributing (Hawley Street)

Price Information

Gilyr. - Serv Distrib.

Exide - 22-W (Distrib.)

4331

FEDERAL TRADE COMMISSION
DOCKET NO. 6456
IN THE MATTER OF
DATE 7-8-57
WITNESS
ACE REPORTING CO., OFFICIAL REPORTERS
By

4. (Cont.)

Other TBA Usual assortment - Trans-Oil filters, Polishes, chemicals (Wdyp); Wdyp fan belts

Price Information The things that hurts is this - Wyoming states that he is being told how to run the business operations and TBA should. It is not like returning over from an [illegible] when you are told what to do.

5. Reason for choosing line of TBA carried:

We treasure as such -

Keller stated that the Wdyp set-up at first made him make think he should get out of ARC & getting. He believes it is 5% television don't sell. Clerks came about 2 yrs ago. ARC discontinued Lee & Eaidi; dealer kept stalling change & went into Lee heavy & distributed. Lee is 5 dealers where without our supply. Finally Wdyp Lee & Eaidi carried by (sales from this truck) took down Lee & replaced with Wdyp. Can't install a advertising in prospect. How long do you think we would be in business if we did as you do (Lee) out front & stock Lee tires & service them. Jobbers, because of volume of business ARC takes a little more than we. Now sell Lee tire business - better than in years. Big volume down in Wdyp - could buy for Eaidi cheaper. Would not be here today, I would compete with Wdyp. A car & load purchase discrimination. All we say is ARC & Eaidi bargain for that 5%. Same as Jean bargained with Lee distributor Rose"

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

12/8 1953

Attorney Examiner
Federal Trade Commission

3 of 3

11

4. (Cont.)

Other TBA Natl rental probably would be higher if TBA sales were lower. This place is an exception.

Price Information Partnership operation - leased only to Frank R. Buongiorno. Partner is Frank Guy - registered partnership.

5. Reason for choosing line of TBA carried:

Also ARCo. has been asking dealer lowest price. When ARCo. had Goldwater S.S. @ Cost ++, upped it; the price was lowered to "go parity" - other dealers followed. This dealer has been asked to increase gas price. Will listen to ARCo plan.

- Minor repairs done in service station.
- Penzoil stored in bathroom.

credit card delivery tickets - mailed to Lyons & check for same returned.

Believes credit card sales limited to Atlas tires to the extent that when the salesman (Lee) delivers ticket identification as Atlas

What other reasons is there for all ARCo service stations handling Atlas TBA

Dealers who moved to better

Kleins Inc - Main & Mowry primarily

Howard Bros. - Count it (obtained from ARCo)

I certify that the information recorded above and which I have read was given by me in response to the questions of the Attorney Examiner, Federal Trade Commission whose name appears below, and said information is to the best of my knowledge factual and correct.

Frank Buongiorno 12/8 1953

Henry J. Lipsky
Attorney Examiner
Federal Trade Commission

4083

3/3

4085 COMMISSION EXHIBIT NO. 485A.

Atlantic

The Atlantic Refining Company
Incorporated—1870
Petroleum Products

W. R. Holland
Manager of Marketing
Southern Region

1112 South Boulevard
Charlotte 1, N. C.

August 29, 1958

Registered Mail
Return Receipt Requested

RM-WRH
B-3191 Lease Agreement

Mr. James W. Siewierski
Atlantic Service Station
U. S. Route #40
Edgewood, Maryland

U. S. Route #40
Edgewood, Maryland

Dear Mr. Siewierski:

Please take notice that your lease dated September 30, 1956 and extension agreement dated September 24, 1957 covering the Atlantic Service Station on U. S. Route #40, Edgewood, Maryland, will expire September 30, 1958.

Although this lease requires no prior notice from Atlantic, we are nevertheless giving you thirty days notice that the lease will not be renewed at its expiration date of September 30, 1958.

Yours very truly,
The Atlantic Refining Company,
By: W. R. Holland,
Regional Manager of Marketing.

WRH/mel
CC: Messrs. H. M. Hathaway
B. McMillan.

4086 COMMISSION EXHIBIT NO. 485B.

(Facsimile of Envelope of Registered Letter)

Atlantic Safety-Service Lubrication

Atlantic
The Atlantic Refining Co.
Incorporated–1870
P. O. Box 1629
Charlotte 1, N. C.

Postage Stamp
Charlotte N. C.
Aug. 29 '58
U. S. Postage 64¢
P.B. Meter 107353

Registered Mail
Return Receipt Requested

Mr. James W. Siewierski
Atlantic Service Station
U. S. Route #40
Edgewood, Maryland

Stamped: Registered Return Receipt Requested 2147

4138 RESPONDENT'S EXHIBIT NO. A1.

Atlantic

This Lease, entered into as of the 1st day of Oct., 1954, by and between The Atlantic Refining Company, a Pennsylvania corporation, hereinafter called "Lessor" and John Chambers hereinafter called "Lessee":

Witnesseth:

1—In consideration of Lessee's payment of rental and performance of the obligations herein set forth, Lessor hereby leases to Lessee that certain parcel of land at Chester Pike and Clifton Avenue in Sharon Hill, County of Delaware, State of Pennsylvania, more particularly described as follows:

All That Certain piece or parcel of land Situate in the Borough of Sharon Hill, County of Delaware, Commonwealth of Pennsylvania, more particularly described as follows:

Beginning at the intersection of the Northwesterly side of Chester Pike and the Southwesterly side of Clifton Avenue; thence (1) Southwestwardly along said Chester Pike 156 feet more or less to a point; thence (2) Northwestwardly along Florence Avenue 106 feet more or less to a point; thence (3) Northeastwardly 160 feet more or less to a point; thence (4) Southeastwardly along Clifton Avenue 107 feet more or less to the point and place of beginning.

Together with all buildings, improvements and appurtenances situated thereon, as well as all Lessor owned equipment and apparatus installed or to be installed thereon, all hereinafter called "leased premises".

2—The term of this lease shall begin on the 1st day of October, 1954, and end on the 31st day of December, 1954, subject, however, in the event such term is longer than one year, to termination by Lessee at any annual anniversary date by giving at least sixty days advance written notice to Lessor.

3—The sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets. Recognizing that compliance with such authorized purpose and use is essential for the accomplishment of Lessor's desire to obtain a fair rental consistent with the reasonable value of the service station business potential of the leased premises, Lessee agrees that he will use the leased premises only for the purpose and in the manner above designated.

4—Lessee shall pay rental at the rate of one and one-half

cents (1½¢) per gallon on each gallon of gasoline or motor fuel delivered to the leased premises during the continuance of this lease; provided, however, that the minimum rental payable during each calendar month shall be Two Hundred Seventy-Five Dollars ($275.00), such minimum rental to be payable on a pro rata basis for any portion of a calendar month during which this lease is in effect; and provided further, that the maximum rental payable for each complete calendar quarter during which this lease remains in effect and ending on the last days of March, June, September and December shall be respectively $....., $....., $..... and $1200.00. Rental shall become due at the time gasoline or motor fuel is delivered to the leased premises and shall be paid not later than twelve (12) hours thereafter. The minimum monthly rental, when applicable, shall be payable on or before the last day of each calendar month. Lessee shall maintain on a current basis accurate records of all gasoline or motor fuel delivered to the leased premises, and Lessor shall have the right to audit such records at all reasonable times to verify rentals payable hereunder.

5—Lessee shall pay, when due, all charges for telephone, water, gas, electricity, heating, sewage disposal and cesspool cleaning resulting from Lessee's occupancy of the leased premises, as well as all privilege, license, and other governmental charge levied against Lessee or against the leased premises by reason of the conduct of Lessee's business thereon. Lessor shall pay all other taxes, assessments, and governmental charges levied or assessed upon the leased premises.

6—Should Lessee abandon the leased premises, Lessor shall have the right to terminate this lease. Closing of the leased premises for business for a period of seventy-two (72) successive hours shall be considered as abandonment.

7—Lessee shall use the leased premises with due and rea-

sonable care and shall maintain the same, as well as the adjacent sidewalks, in a clean, orderly, sanitary and safe condition. On termination of the lease, Lessee shall deliver the leased premises to Lessor in the same condition in which Lessee is obligated to use and maintain the same hereunder, reasonable wear and tear and damage due to matters beyond the control of Lessee excepted.

Because of the special need for proper care of porcelain enamel, Lessee agrees that if the service station building is faced with porcelain enamel, Lessee will comply with such cleaning procedures and techniques applicable thereto
4139 as Lessor may establish from time to time.

Without Lessor's prior written consent, which will not be unreasonably withheld, Lessee shall not make any additions, alterations, or improvements to the leased premises nor place, alter, remove, deface, or obliterate any signs, trade marks or color arrangements appearing thereon.

8—Lessee shall make all repairs and replacements to the leased premises; provided however, that if Lessee gives prompt notice to Lessor of the need thereof, the responsibility shall then pass to the Lessor to make such necessary repairs and replacements as are specified, and provided further, that if in such event the specified repairs and replacements are necessitated by the wilful misconduct or negligence of Lessee, his agents or employees, the cost thereof shall be considered as additional rent payable on the last day of the calendar month next succeeding the month during which such cost is incurred.

9—Should a substantial portion of the leased premises be damaged by the negligence or wilful misconduct of Lessee, his agents or employees, or any cause beyond the reasonable control of Lessor, Lessor, without prejudice to any claim for damages it might have, shall have the right to terminate this lease without liability, provided, however,

that such termination right can only be exercised during a period of not more than ten (10) days following the date Lessor acquired knowledge of such damages and the cause thereof.

10—Lessee shall exercise and be responsible for exclusive control of the leased premises.

11—Should Lessee fail to make payment of any rentals when due and fail to remedy such default within five (5) days thereafter, Lessor can terminate this lease.

Should Lessee at any time fail to comply with any of his other obligations hereunder, excepting those provisions wherein Lessor is already given an express right to terminate the lease, and fail to remedy such default within fifteen (15) days after receipt of notice from Lessor specifying the default, Lessor can terminate the lease.

Whenever this lease shall terminate, Lessee hereby waives all right to any notice or demand to quit possession as prescribed by any statute then in force relating to summary process, and Lessor shall have the right to retake possession of the leased premises, together with products and merchandise located thereon, such products and merchandise to be accounted for in accordance with law and the respective rights of the parties at such time.

12—If Lessee dies, the lease shall terminate automatically. If Lessee becomes involved in any insolvency or bankruptcy proceeding, or executes an assignment for the benefit of creditors, Lessor shall have the right to terminate this lease.

13—This lease is personal, does not permit absentee operation, shall not be assigned by Lessee either voluntarily or by operation of law, and Lessee shall not sublet the whole or any part of the leased premises.

14—Subject to the terms and conditions of Lessor's credit card program, outlined by Lessor from time to time, Lessor will (1) accept from Lessee assignment of accounts

which result from retail credit sales made by Lessee to holders of valid Atlantic credit cards or those of other companies coming under Atlantic's credit privilege program and (2) pay or credit Lessee the amount thereof. Either party may terminate this credit card arrangement by giving to the other not less than 48 hours' advance written notice without termination or cancellation of any other provisions of this lease.

15—A waiver of any breach hereunder shall not be deemed a continuing waiver, or a waiver of any subsequent breach whether of the same or of a different provision of this lease.

16—Lessor reserves the right to enter the premises at all reasonable times for the purpose of ascertaining Lessee's compliance with the agreements herein contained and for making necessary repairs and replacements.

17—This lease is subject to the terms and conditions of any existing lease or contract governing Lessor's rights to the leased premises. Lessee, in no event, shall have or claim any right of possession or occupation of said leased premises at variance with the terms or beyond the period of Lessor's right thereto.

As of the beginning of the term hereof any prior lease between the parties hereto affecting the leased premises shall be terminated.

18—Any notice from one party to the other shall be in writing and shall be deemed to have been given if sent by registered mail addressed to Lessor at 260 S. Broad Street, Philadelphia 1, Pennsylvania and to Lessee at the leased premises.

19—This lease contains the entire agreement between the parties and its execution has not been induced by any representation, understanding, or agreement of any kind other than those herein expressed. This lease cannot be amended except by written instrument duly executed by both parties.

In Witness Whereof, the parties have executed this lease as of the day and year first hereinabove written.

The Atlantic Refining Company
By J. O. Estlow,
Regional Manager of Marketing.

Witnesses:
H. H. Millerick,
J. F. Muldoon.

John Chambers.

Gaa MB 10/13/54

4140 RESPONDENT'S EXHIBIT NO. A-2.

Atlantic

Mutual Consent of Cancellation

For and in consideration of the sum of One Dollar ($1.00) in hand paid by each of the parties to the other, The Atlantic Refining Company, and John Chambers of Sharon Hill, State of Pennsylvania hereby agree that their certain Lease Agreement dated Oct. 1, 1954 affecting premises situated at Chester Pike and Clifton Avenue in Sharon Hill County of Delaware, State of Pennsylvania shall by mutual consent expire as of November 28, 1954, because Dealer going with competitive oil company.

In Witness Whereof the parties hereto have duly executed this agreement as of the 29th day of Nov. 1954.

The Atlantic Refining Company
By J. O. Estlow
Regional Manager of Marketing

Witnesses:
H. H. Millerick
Steven Petrison.

John Chambers.

B-765 11/53

4141 RESPONDENT'S EXHIBIT NO. A-3.

A. R. Tombson:

Lease expiration is 3/31/53—this letter is due notice.
N. F. N.

February 26, 1953

To the Atlantic Refining Co.,
260 S. Broad Street,
Phila. 1, Penna.

Gentlemen:

You are hereby notified, in accordance with the terms of your lease of the parcel of land upon which is located your Service Station, located at 9th Street, Concord & Kerlin Avenues, in the City of Chester, Delaware County, Pennsylvania, that I desire to determine the lease of said property at the end of the term thereof, to wit: at the end of the 31st day of March, 1953, and that the lease will end at that time; and that thereupon I will deliver up and surrender possession of the said premises to you in accordance with the terms of said lease.

Very truly yours,
John Pollack.

JP:RRW

R-ex-A-3-id

4142 RESPONDENT'S EXHIBIT NO. A-4.

B-765 11/53

Atlantic

Mutual Consent of Cancellation

For and in consideration of the sum of One Dollar ($1.00) in hand paid by each of the parties to the other, The Atlantic Refining Company, and Elmer H. Booz, Jr. of Ogden, State of Pennsylvania, hereby agree that their certain Lease Agreement dated June 14, 1956, affecting premises situated at Naamans Creek and Meeting House Roads in Ogden (Upper Chichester Twp.), County of Delaware, State of Pennsylvania, shall by mutual consent expire as of November 14, 1956, because Dealer received better offer from competition.

In Witness Whereof the parties hereto have duly executed this agreement as of the 15th day of Nov., 1956.

The Atlantic Refining Company
By: J. O. Estlow,
Regional Manager of Marketing
Elmer H. Booz, Jr.

Witnesses:
H. A. Millerick
Steven Petrison

B-765 11/53

(Respondents' Exhibit A5 was withdrawn and admitted as C-X 101 Z21 through Z27.)

4143 RESPONDENT'S EXHIBIT NO. A-6.

Atlantic

B-765 11/53

Mutual Consent of Cancellation

For and in consideration of the sum of One Dollar ($1.00) in hand paid by each of the parties to the other, The Atlantic Refining Company, and James Parag, 505 So. Market St. of Wilmington, State of Delaware, hereby agree that their certain lease Agreement dated Aug. 1, 1955, affecting premises situated at 505 So. Market St., in Wilmington, County of New Castle, State of Delaware, shall by mutual consent expire as of Janpary 3, 1956, because leaving state to open business interests in Florida.

In Witness Whereof the parties hereto have duly executed this agreement as of the 2nd day of November, 1955.

The Atlantic Refining Company

By: .....

James Parag

Witnesses:

F. E. Jones

B-765 11/53

4144 RESPONDENT'S EXHIBIT NO. A-7.

Atlantic

B-765 11/53

Mutual Consent of Cancellation

For and in consideration of the sum of One Dollar ($1.00) in hand paid by each of the parties to the other, The Atlantic Refining Company, and James Parag, of Wilmington, State of Delaware, hereby agree that their certain Lease Agreement dated Aug. 1, 1955, affecting premises situated

at 505 South Market Street, in Wilmington, County of New Castle, State of Delaware, shall by mutual consent expire as of March 8, 1956, because not sufficient capability to operate this type of business.

In Witness Whereof the parties hereto have duly executed this agreement as of the 2nd day of March, 1956.

The Atlantic Refining Company
By: M. E. Lewis.
James Parag

Witnesses:
R. E. Stevens
F. E. Jones

B-765 11/53

4147 RESPONDENT'S EXHIBIT NO. A-10A-C

I, Fred Koehler, make the following statement this 27th day of March, 1953:

I lease a service station from The Atlantic Refining Company at Nortn and Woodbrook Avenues. I have been in this location for 12 years and prior to that time was a truck driver for Atlantic and Red "C" Oil Company.

On March 20th a representative of the Federal Trade visited my station and presented his credentials. He asked me a number of questions after which he requested I sign a statement which he had prepared. After reading the statement I signed it.

He asked me what TBA I buy from Firestone and I told him none. He asked whether I deal with Firestone and I told him no. He asked whether I had been told that I had to buy from Firestone or that I should buy from Firestone or whether pressure had been put on me to buy from Firestone. I told him there was nothing to that, no one had told me I had to buy Firestone products. I showed him my TBA stock and said, "Can you find any Firestone prod-

ucts?" I carry no Firestone stock. He asked why do you not carry Firestone products. I told him nobody had ever told me I had to. I buy what my customers want. I have dealt with them for so many years it is not good business to change. I carry Lee tires, Auto-Lite and Edison Batteries. He said, "You must have a drag." I replied "No more than the average." He said, "It looks funny. I don't believe you don't handle Firestone and I don't believe they did not put pressure on you." He then said that 4148 Atlantic has pressured other dealers and I said, "That's a damn lie, I don't believe it." He said, "You mean that?" and I replied "Yes, I am no different from other dealers. If they pressured them, they would pressure me." He said, "You don't have a damn thing here from Firestone." He then said that his boss wouldn't believe that I didn't carry Firestone products and someone higher up may be in to see me. I told him that was o.k. with me. My station is always open.

He asked me what was in my lease and I told him I don't know—I don't have a lease. The last one I saw was at the time of the changeover to Firestone. I signed it, but don't know where it is. He asked me whether I wasn't afraid that Atlantic would put clauses in the lease and I told him that I was not.

Nothing was asked about the cancellation provisions of the lease and nothing was asked about any dealer meetings.

I remember receiving letters from Mr. D. T. Colley dated March 1, 1951 and August 28, 1952, referring to Atlantic's TBA policy. The attached copies of those letters are the same as the ones that I received.

He asked about the volume of business which I do and I told him that I did not know because I have an auditor who takes care of my business. He did not ask anything about motor oil but I did say to him, "The lease states I am to handle Atlantic Gasoline and Oil—that is natural."

4149 He asked me whether Atlantic still handles TBA and I told him it would be a good thing if Atlantic did. He asked why and I told him that it would be easier for me because I could then go down to the plant at night and get tires and batteries as I needed them, whereas my present suppliers are closed after ordinary business hours. He asked whether I bought TBA from the Company when it handled them and I told him I did but that I also bought on the outside when necessary if a customer wanted another brand. When the changeover to Firestone was made I stuck with Lee because of the Road Hazard Guarantee which my customers prefer. I stock Lee tires and Auto Lite batteries and recently added Edison batteries. He asked where I buy TBA and I gave the following list to him: R. J. Loock, S & S Tire, Service Parts, Quaker City, R. J. Hunt, Baltimore Gas Light.

F G Koehler

Witness:
Jack Crawford

4150 RESPONDENT EXHIBIT NO. A-10D.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

Dwight T. Colley
Vice President
General Manager
Domestic Sales

March 1, 1951

A Statement Of Atlantic's T. B. A. Policy.

Dear Sir:

The Atlantic Refining Company recognizes the trend of the motoring public to depend more and more upon the modern service station as a source of supply for tires, batteries, and accessories. Therefore, we are interested in making available that TBA line which will meet fully the needs of the public and our dealers, since we feel it will mean increased sales of our petroleum products.

The new TBA plan was adopted after a long and thorough study which had the sole purpose of finding out what sales program would mean the greatest sales and profits to the dealer. We found that the dealer could best serve the interests of the public when he was supplied through the extensive distribution system of a major tire company.

Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. However, your acceptance or rejection of the program is a matter of your own choice.

Atlantic's growth is dependent upon your opportunity and ambition to expand and succeed. We offer this new TBA plan to you because we sincerely believe it will make your sales and profits grow through better TBA service to your customers.

Cordially,

D T Colley

4151 RESPONDENT EXHIBIT NO. A-10E.

The Atlantic Refining Company
Petroleum Products
260 South Broad Street
Philadelphia 1, Pa.

Dwight T. Colley
Vice President
General Manager
Domestic Sales

August 28, 1952

A Re-Statement of Atlantic's TBA Policy

Dear Sir:

The Federal Government is investigating all TBA relationships between certain tire companies, oil companies and their dealers.

Do you have a good TBA deal with The Atlantic Refining Company? Or are you forced against your will to carry a particular line of TBA? This seems to be the question involved.

In the Spring of 1951, The Atlantic Refining Company presented to you for your free acceptance or rejection a TBA sales program which long and intensive research had indicated would yield the greatest profit to you and would best serve the interest of the motoring public.

For the sales assistance which it renders, The Atlantic Refining Company receives in return a commission ranging from 5% to 10% from the tire company. Up to now, this barely covers the expenses involved.

We consider this arrangement with you businesslike and entirely proper and it is to our mutual interest that we so inform the public.

I consider it our duty to recommend to you, those services and products which experience and honest research have proven best for you and your customers.

However, when we originally adopted this program, I wrote to you and to our sales force stating that this was an elective program. I now reiterate—that this is Your program, instituted for Your benefit—Yours to accept or reject.

Yours very truly,

D T Colley

cc C I T
: AHL
ME
DD
JH-AD-TM-RC

4152 RESPONDENT'S EXHIBIT A-11A-G.

I, Thomas C. Eckhardt, make the following statement this 27th day of March, 1953:

I lease from The Atlantic Refining Company a service station at Fleet and Fagley Streets, Baltimore, which I have operated since 1937.

On March 26th a representative of the Federal Trade Commission whose name I believe is Lipsky called at my station, showed me his credentials and asked me questions about TBA, spending about 45 minutes and at the end of

his questioning he asked me to sign a statement which had been prepared by filling in blanks in a set of mimeographed questions. I read and signed the statement.

The investigator began to ask a number of questions about TBA and I stopped him and asked him why he was asking me these questions, telling him that there must be some reason. He told me that the Federal Trade Commission has reason to believe that Firestone and Atlantic are working together and that Atlantic is putting pressure on dealers. He then went on to say that he didn't mind telling me why he was here in particular, the reason being that I was one of the main ones that Atlantic was putting pressure on. It is my impression that the reason he felt Atlantic was putting pressure on me is because of questions which he then asked about prices that I pay for tires and I told him that I pay 6% off the key dealer price. He then asked me whether I didn't know that I could get 10-10-5% off from Burke Savage. I told him that I knew I could, but it was a second-grade tire. I also know that I can get better prices from Plotkin, from whom I bought tires years ago, but I no longer do because he has changed to a poorer grade. I give Savage all my vulcanizing.

4153

I told FTC agent that so far as accessories I don't see where anyone is putting pressure on me since I have only purchased one order of sealed beam lights and one case of Car-Nu since Atlantic changed to Firestone. I told him that I buy accessories from R. W. Norris, North Auto and Baltimore Auto Parts.

The FTC agent asked how come you don't buy all your tires from Firestone. I told him that I buy from other suppliers such as C. E. Kimmel, 3611 Fleet Street because they do business with me. I told him that I buy U. S. Royals and Generals and any other tire that a customer would want. He then referred to the fact that I have Fire-

stone signs and decalcomanias. He then asked who put up the Firestone signs and I told him Firestone had done so, and that they had asked me before they put them up. The FTC agent then said, "Suppose you took them down?" and I replied, "I don't see what they could do." He said, "Don't you think Atlantic would want you to keep those signs?" and I told him I was only obligated to Atlantic for two things: (1) to sell Atlantic gasoline and (2) to sell Atlantic oil. I told the FTC agent that, "If I was in Atlantic's position and someone rented a station from me and I could give competitive prices I would feel hurt if they did not buy from me". He then asked me what I thought would happen if I threw Firestone tires out,

4154 and I told him I didn't know what they could do.

He asked whether I pay the taxes for the Firestone and Atlantic signs and I told him that I did not because Atlantic pays all taxes for signs.

He then asked me what kind of lease do you have and I told him it was for one year. He asked if I had always had a one year lease and I told him that at one time I had had a five year lease, to which he remarked, "They're getting tougher all the time." I explained the reason for the five year lease. In 1944 I wanted to put a building on the lot adjacent to the station I was then leasing and suggested to Atlantic that if they would give me a five year lease and accept the building as payment for rent for the five years, that I would put up the building. After some discussion this was agreed to and the lease was prepared in that manner.

He asked whether Atlantic would throw me out of the station and I told him that if a man was doing a good job I don't see why they should. He then said, "All in all, what has been your relation with Atlantic over all these years?" and I replied, "Damn good.". He asked what rent I paid and I told him 1½¢ per gallon up to 20,000 per

month and one cent per gallon for all in excess of 20,000. He asked about the volume of gasoline sold and I told him 32,000 gallons per month and told him that the TBA volume was about $1,000 a month. He said, "I guess a good bit of that is tires" and I answered "Yes". He asked about batteries and I told him that if he would look around he would see Delco and Willard and one Firestone battery. While the FTC agent did not ask what proportion of TBA is Firestone, it would be not more than 10% exclud-
4155 ing tires. Tires are about 50% Firestone.

The FTC agent asked what tires I sold before Firestone and I told him Lee. He then said, "When the Company got rid of Lee you went to Firestone?" I told him I got rid of Lee before the Company did because I did not like the quality. He then asked where I bought from when I discontinued Lee and I told him I bought mostly from Kimmel, who sold U. S. Royal and Goodyear. He asked why I do so much business with Kimmel and I told him that I get lots of business from them.

He asked whether anyone from Atlantic had been in touch with me and told me that the Federal Trade Commission representatives were coming and I told him that no one had. He asked me who was in Charge of Atlantic's business in Baltimore and I told him Gordon Burns. He asked me Mr. Bu[illegible]' title and I told him I thought it was District Manager.

He asked whether I had seen him lately and I told him not for three or four weeks. He wanted to know whether I remembered receiving a letter from Philadelphia about the Federal Trade Commission and I told him I did not remember.

I remember receiving the letters of March 1, 1951 and August 28, 1952 from Mr. D. T. Colley relating to Atlantic's TBA policy. The attached copies of those letters are the same as the ones which I received.

The FTC agent said, "You know the tie-up between Atlantic and Firestone under which Atlantic gets a 10% commission. Do you think that is right?" I replied I don't know anything about the agreement. He then went on to say that you dealers ought to get that commission. Atlantic is getting a lot of money for nothing. I told him 4156 again that I did not know what the arrangement was between Atlantic and Firestone. He then told me that he was here only to help me and I told him I appreciated that. I then told him that big business was not the only one at fault, that the government was also at fault, because by taxes and controls it is knocking out individual initiative.

In connection with the lease, he gave me an example of how a salesman may have approached me. He would say, your lease is about up now, don't you think you ought to buy more TBA from Atlantic? I said they had never approached me like that. He ended this part of the discussion by saying, "They didn't?" During that questioning he asked me my salesman's name and I told him Pete Kelly.

He did not ask to see the lease.

He said, "You haven't been contacted recently about the Federal Trade Commission calling? How often does your salesman call?" I told him once a week. He then asked whether the salesman had said anything about FTC and I told him no. He then said, "What about the luncheon meeting?" I said yes we had a meeting. He asked what happened and I said it was a regular dealer meeting.

Although the Federal Trade Commission agent did not ask this question, it is my impression that the purpose of the meeting was for management to find out whether salesmen were putting pressure on the dealers. I was the first of the dealers to talk at that meeting and I said, "Lots of you fellows are new with Atlantic. I am older and can

truthfully say that no one has put pressure on me." Most of the comments were gripes about Firestone service.

4157 Nothing was asked me by the FTC representative about meetings held at the time of the changeover from Lee and Exide to Firestone. He did, however, ask who I bought Lee tires and Exide batteries from when I was selling Lee tires and Exide batteries. I told him that I bought from Charley Johnson and Exide batteries from J. R. Hunt. He then said, "How the hell could Johnson being a dealer be a wholesale distributor for Lee." I told him I didn't know what the arrangement was between them. He replied, "It doesn't look right to me." I told him that Johnson must be big because he buys direct from Lee. He then asked why I bought tires from Firestone and I told him that the price was right. He then told me that if I talked to Savage I can get bigger discounts. I agreed but said it was an off-brand tire.

He asked whether there had been any meetings recently and I told him, yes, one had been held next door in February which was a sales promotion meeting where 10 dealers were invited to give Atlantic their suggestions and comments upon what Atlantic is doing in the way of advertising, including radio and television.

No questions were asked about motor oil, nor what the Atlantic salesman does for me, nor whether I order my Firestone tires from the salesman or direct from Firestone. In connection with credit cards he asked how we worked credit cards. I told him that the delivery tickets are delayed cash to me, I accumulate them and deduct from my gasoline bill. He asked whether I can sell tires on credit cards and I told him that I can, but it is necessary to get approval of the Company if the amount is over $100 He asked whether the customers can get terms

4158 and I told him they can up to 90 days. He asked what I put on the delivery ticket if I sell a Goodyear tire.

I told him that I would put the size, the brand name and the price. On his statement he had written, "Puts brand names." Nothing was asked about credit by either the Company or Firestone.

The above is all I can recall that was asked me by the FTC agent.

Thomas C. Eckhardt.

Witness:

William M. Kelly.

4209 RESPONDENT'S EXHIBIT NO. A-20.

$

TBA Program

Atlantic Dealer Training Program

4210 TBA Program & Orientation

Atlantic Dealer Training Program
Revised 1957

4211 Props:

Easel Pad and Crayon
Sample Tires and Batteries
Tire and Battery Illustrations (from TBA Catalog)
TBA Sales Promotion Pieces (from TBA Supplier)
Balanced Stock Recommendations (from TBA Supplier)
Tire Spotting Cards
Solicitation Give-Aways (Door Openers) (from TBA Supplier)
TBA Dealer Catalogs
Sample Supplier's Ads
Sample Dealer Ads and Mats

Note:

This outline is purposely written in general terms to make it adaptable for all regions. You should add any important features of your Supplier's Franchise to the outline, under the appropriate heading.

Time:

4 Hours.

4212 Introduction

This afternoon we want to talk with you about one of the most important features of your Atlantic Franchise—the Tire, Battery and Accessory business. We in the business call it TBA. It's a term you'll want to know more about because TBA merchandise plays a vital part in your business success.

Two Dealer Operations

Probably the best way to show you the importance of TBA's effect on your station's profit is to examine some facts about Two Typical Dealer operations. We'll discuss the significance of these facts as we go along.

Let's call our dealers John and Bill. Remember that these names are fictional—but the facts and figures involved are typical of hundreds of real dealers whose records we've studied.

15,000 a Month

John and Bill both have modern service stations in similar neighborhoods and they both sell about 15,000 gallons of gasoline a month. Let's write this on the pad.

Pad

	John	Bill
Gallons Per Month	15,000	15,000

(See Pad Diagram)

Pad Work

Of course, these dealers sell many other things beside gasoline. We're not going to discuss them here be-
4213 cause later your instructors will cover the sale of all products and services. But for our purpose here, let's put everything else these dealers sold in October in one pile. When we do, we see from our records that John enjoyed a gross profit on all business of $1157.00—and Bill's gross profit went to $1802.00.

(Pad Work Sample Attached)

Why the Difference?

The question is—Why? When two dealers having the same type facilities in similar neighborhoods sell the same amount of gasoline—why does one gross $645.00 more than the other?

Service Station Needs More
Than Gasoline Sales

The answer lies in the sale of Other products and services in addition to gasoline. The Bible says "Man does not live by bread alone."—and believe me, a service station doesn't exist on the sale of gasoline alone. We have to have a balanced diet—in our business we call it "Balanced Selling."

Balanced Selling

Your instructor will cover the entire subject later, but here we're interested in how TBA helped earn $645.00 more profit for our dealer Bill. Let's put these figures down. In October, John sold $246.00 of TBA while Bill's gross sales were $740.00. Here's the profit story.

4214 Pad

(TBA Gross Profit)

TBA Gross

There's the picture—through aggressive selling Bill piled up $645.00 more gross profit in October than John—even though they both sold 15,000 gallons of gasoline! And TBA provided $121.00 of that increase—better than 18%!

TBA More Than 18% of Difference
Is TBA Worth Selling?

Is TBA worth selling?

(Get agreement from group)

Well, how did all this come about? Some of you no doubt remember the time when you couldn't even get a tire repaired in a service station—and stations selling batteries were unheard of.

Evolution in Marketing TBA

During the last two decades an evolution in the marketing of TBA products has taken place. As late as 1930 Gasoline and Motor Oil were about the only commodities carried by service stations. Motorists purchased their gasoline and oil from the service station and then shopped around for their other needs. Tires were purchased and repaired in tire shops; battery shops, hardware and electric stores filled other wants.

As the number of service stations increased, dealers began to realize that in order to stay in the business they must provide for additional motoring needs and offer one-stop service to their customers. Through the years the motorist came to rely more
4215 and more on the service station for all his motoring

needs until today the motorist will not take the time to make more than one stop to get his car completely serviced down to the last detail. For this reason and to improve profit possibility, service stations must handle a complete T.B.A. line.

Gasoline and oil are still the fundamental products —they are to the service station what bread and sugar are to the grocer. However, neither the service station or the grocer will ever get very wealthy selling just staples. It is only after a substantial volume of TBA has been built up that the dealer begins to realize his full sales expectancy and makes the most of his opportunity in a highly profitable enterprise.

So, while gasoline and oil are the foundation of a service station business, the products that draw customers into the station, dealers cannot keep these customers coming back until they can fill all their other driving needs.

A service station today can realize all its potential profit only through balanced merchandising. That means, briefly, balancing all the motorist's needs against gasoline sales—and then selling those needs through complete service.

4216 (Note to Instructor Use more up-to-date figure—if available)

The trend in consumer buying of automobile tires and tubes is very definitely to oil company outlets. In 1929, 6/10 of 1% of the motorist's tire purchases were handled through service stations. In 1956, the figure has risen to 35%. It's expected that this replacement figure will reach over 40%.

TBA Is Big Business
3 Billion TBA

(To Instructor) Use more up-to-date figure—if available

Those figures mean business—big business—for you as a service station TBA dealer. In dollars and cents, the industry estimates that service stations will sell over 3 billion dollars worth of TBA this year. Think of it—250 million monthly—over 8 million daily—over $90 00 every time the clock ticks. While we're talking here this afternoon dealers like yourselves will sell over 1¼ million dollars worth of somebody's TBA!

TBA Your Business

Any wonder why we say TBA is big business? And it's Your business. Now your next question should be "How can I cut a slice of that melon for My Station?" Well, Atlantic is ready to answer that one—with one of the most complete and profitable TBA programs the industry has to offer.

Atlantic's TBA Associate

In order to provide the best possible TBA program, Atlantic is associated with the best TBA marketer, the (Name) Tire and Rubber Company.

4217 Advertising

Everybody knows (Name) because of its powerful, nation-wide advertising drives in newspapers, magazines, radio and TV. You probably couldn't find a community in the country where (Name)'s name isn't known and respected.

Public Confidence in Familiar Brand

Thousands of dealers all over the country display the (Name) sign in their windows and driveways. They're cashing in on the natural desire of the buying public to do business at a familiar place and to buy familiar merchandise. A customer has to have confidence in you and in your product before you can sell him anything. You get a lot of that confidence ready made when you carry (Name).

Public Acceptance

The buying public accepts Atlantic as a leader in the petroleum field and (Name) as a leader in TBA. That is a powerful combination which is one of the most valuable aspects of your Atlantic Franchise.

J. Q. Public and Rumors

But before we go any further, let's take a minute to clear up one important point. Most people—Mr. average John Public—know very little about the oil business and they're inclined to believe any of the rumors or stories that are circulated about it. One of those "tall tales" is the claim that service sta-
4218 tion dealers are forced by threat of lease cancellation to buy their TBA merchandise from whomever the supplying oil company specifies.

You Are Free to Buy TBA
of Any Kind
We Think the .....
the Best for You

Here are the facts: Atlantic offers you the (Name) TBA franchise because after exhaustive study and years of our own experience in the TBA business

we sincerely believe it to be the best for you and the best for your customers.

Let me quote from a letter addressed to all Atlantic dealers in August, 1952 by Mr. D. T. Colley, Vice President and General Manager in Charge of Marketing of Atlantic.

Letter from Vice-President

"In the Spring of 1951, The Atlantic Refining Company presented to its dealers for their free acceptance or rejection a TBA sales program which long and intensive research had indicated would yield the greatest profit to you and would best serve the interest of the motoring public.

"I consider it our duty to recommend to you, those services and products which experience and honest research have proven best for you and your customers. However, when we originally adopted this program, I wrote to you and to our sales force stating that this was an elective program. I now re-
4219 iterate—that this is Your program, instituted for Your benefit—Yours to accept or reject."

Why Best?

We've said the ..... Franchise is best for you. Why? We've already mentioned a few reasons briefly but let's take a closer look at some of the features that make the Franchise valuable.

Probably the best way to start is to find out what you men think. We realize that this matter of TBA still is rather strange to you but no doubt you have some opinion of your own on just what you'd expect to find in a good TBA program. Suppose you tell me some of these features you'd want and I'll write them on the pad.

What Would You Want

What features would you want in any TBA program you bought?

Pad

(Draw from group—

1. Public Acceptance
2. Quality Merchandise
3. Competitive Price Structure
4. Complete Market Coverage
5. Convenient Supply
6. Advertising Support
7. Sales Promotion Support
8. Budget Plan

4220 How ..... Meets Your Needs

That looks like a list of pretty stiff requirements. Let's see how well the ..... Franchise fills the bill on each one of them. First,

Public Acceptance

Public Acceptance
(Discuss)

The ..... name world-famous. One of world's largest rubber Co's. Stores and Dealers nation-wide.

Multi-million dollar advertising program.

Major tire supplier to new-car manufacturers; creating ready-made replacement market.

Quality

Quality Merchandise
(Discuss)

The ..... name a symbol of quality in the industry.

(Exhibit Sample Tire & Battery)

Tremendous research and development program.

Quality testing labs approve all products.

Road-test fleets check tire quality.

Most important—your customers believe in ..... quality.

Competitive Price

Competitive Price Structure
(Discuss)

Huge volume permits attractive dealer margins.

Tire and battery lines meet all ranges of price demand —from premium lines to mail-order house competition. You need not fear competition.

Volume discount policy lowers your cost as your sales increase.

4221 Complete Coverage

Complete Market Coverage
(Discuss)

A tire for every type of service. Passenger car—truck—farm—industrial—aircraft. Every size and design.

Distribute Illustrations of Tire &
Battery Line (Available from Supplier)

Batteries—every size and price range passenger car, truck and industrial.

Accessories—one of the broadest lines in the business (Hold up and leaf through Accessory Catalog. Stress coverage of major items—oil filter cartridges, spark plugs, etc.)

Best of all, products are grouped in size and price ranges which enable you to obtain broadest popular coverage at minimum inventory investment.

Convenient

Convenient Supply
(Discuss)

Wherever you go in U. S. you're Near a ..... supply point. One near Your station.

Convenient delivery service.

Stocks at nearby supply point enable you to invest in only fast-moving merchandise. Rely on supply point for less popular items. This speeds up turnover and increases net profit to you. We're going to visit one of these supply points this afternoon.

4222 Advertising

(Show sample Magazine or Newspaper Ad)

Advertising Support
(Discuss)

Nation-wide coverage—radio—TV—magazines—newspapers.

Millions of motorists are pre-sold on your TBA line before they enter your station. Makes job easier. More sales.

Even distant transient customers know and accept your TBA—through advertising. More transient sales.

Promotion
(Distribute Sample Promotion Pieces)

Sales Promotion Support
(Discuss)

Campaign—Special sales—seasonal promotions specially designed for service stations.

Display and promotion kits include Banners—pennants —signs—hand outs—ad mats.

All help you tie-in with national campaigns.

Mass production makes professional material available to you at only fraction of cost.

Budget Buying

Budget Plan
(Discuss)

Millions in TBA sold on retail Budget Plans—chain stores—mail order houses—"$1.00 down and $1.00 a week" customer.

Budget sales return highest margin on merchandise—almost always at full list price.

The ..... Co. provides complete Budget selling plans—forms—ads—point of sale displays.

4223 Budget plan your opportunity to get into "Big Time" TBA. Your ..... Franchise includes complete program.

Sell Atlantic Credit Card
Time Payment Plan

Stress the advantages of Atlantic 30-60-90 day terms and the 6 month plan.

Does ..... Fill the Bill?

Now let's go back to our original list of desirable features that you helped make up. Don't you agree that the ..... Franchise fulfills every requirement?

(Review list briefly)

That's why we've said ..... is the best for you and best for your customers.

Stock

But just having an excellent Franchise available isn't enough. Before the profits start to jingle in your cash register you must first get the stocks of merchandise into your station and then sell TBA to your customers. These are two mighty important steps so let's see how we can handle them. First, the problem of stocks. You might start asking yourselves

"How many tires should I carry?"

"What sizes?"

"What price range?"

"What kind of accessories—how many of each?"

4224 Complete Line Huge
Avoid Dead Merchandise
Rely on Advice from Experience
Talk Stock Over

As you can see by now, the complete TBA line includes literally thousands of different items—and it takes years of experience to learn how to buy wisely. You probably can imagine the dangers of making ill-advised purchases. A dealer who stocks his station with slow moving or "dead" merchandise soon finds his profits suffering. Don't let that happen to you. And it won't if you just take advantage of Atlantic's and ..... 's years of experience in TBA and the assistance they're ready to give. Each one of you will want to talk over your own TBA stock situation with the Atlantic and ..... representatives who will call on you. We can't solve individual problems here but we do want to give you some sound and basic principles of profitable TBA purchasing that will apply to all of you.

No Empty Wagon
(Write on Pad) (Discuss)

1. You can't do business from an empty wagon; must have sufficient stocks.
   —customers won't wait while you run to supplier for some popular item.

Diversify (Distribute and Discuss
Bal. Stock Recommendations—
from Supplier) (Discuss)

2. Keep stocks balanced—(diversify your capital to get broadest coverage of popular items).
   —The ..... Co. has planned assortments to fit your station—use them.

4225 Get "Deals" (Discuss)

3. Take advantage of "Deals"—("Dating Plans"—"Season Specials" when available. Special prices on these programs cut your costs and increase profits).

Buy "Packages" (Discuss)

4. Buy "Packages" or Assortments when recommended. Usually these carry a special price or incentive offer and are made up of popular, fast moving merchandise.

Avoid Unknown Brands (Discuss)

5. Beware of unknown brands—fly-by-night salesmen —dead stock doesn't earn money—it costs money.

Get Competent Advice (Discuss)

6. Seek competent advice—your Atlantic salesman—your ..... representative.

If You Don't Know Jewels—.
Know Your Jeweler

Probably this last one is the most important. There's an advertising slogan somewhere that says "If you don't know jewels—know your jeweler." That's awfully sound advice and it's true of the TBA business. Atlantic and ..... are ready to help you build a profitable TBA business and the best step you can take is to let them work with you.

Let's Sell It

As we move along with our TBA program let's assume now that we have a well balanced stock of fast moving merchandise in our station and now we're ready for the pay-off. Let's sell it!

4226 Other Subjects

Later in your school other instructors will go into detail on the subjects of Display—Solicitation and Retail selling that are so important to your TBA program so we won't attempt a detailed discussion here. But again we'll help you lay down several fundamental rules that are essential to any successful retail TBA sales program.

Take Advantage of Identification
(Write on Pad) (Discuss)

1. Identification
   Use approved signs and decals.
   Customers recognize you as one-stop ..... dealer.
   Makes ..... acceptance work for you.
   Identify billheads, ads, stationery, service truck.

Display (Discuss)

2. Display

Follow principles you'll learn in display course.

Use TBA supplier's display aids where practicable but don't make your station look like a bargain basement.

Train (Discuss)

3. Train

Your course includes "Training in a Service Station."

Use what you learn. Train your men to know their products and to sell!

4227 Solicit (Distribute Spotting Cards, Door-openers, etc.) (Discuss)

4. Solicit

Use prospect lists—direct mail—neighborhood calls and tire spotting.

Use TBA supplier's solicitation materials.

Use what you learn in your "Solicitation" course.

Advertise (Discuss)

5. Advertise

Course coming on "Dealer Advertising."

Use .....'s free mat service.

Ask Atlantic salesman's aid in planning advertising.

Sell (Discuss)

6. Sell!

This is the one that counts—

Tomorrow you'll begin your work in Retail Selling—make the most of it!

Without sales know-how you just can't have a successful TBA program.

Follow-Up (Discuss)

7. Follow-Up

To insure customer satisfaction.

Be ready for repeat sales.

Look for sale of other items to the same customer.

Course coming in "Follow-Up System"—it's a powerful TBA selling tool.

4228 All Fits Together to Make Successful Dealership

We probably could talk for the rest of the day about How to Sell TBA and get a lot out of it. But as I've pointed out nearly all the other subjects in this course are important to TBA sales—and you'll deal with each one individually during the program. I'd like you to notice particularly how each part of this program dovetails into all the other parts. And they all build a successful dealership. If you'll apply what you learn in these other subjects to TBA you just can't help being an outstanding TBA merchant. And that's where you'll find those Extra profits we talked about in the beginning.

TBA Movie

Now we're going to look at a TBA movie. You'll like it I'm sure and you'll find many of the points we've discussed are emphasized in the picture.

(Point out particular things to look for) (Show Firestone "TBA is Big Business" or Goodyear "We the Customer")

Review

That picture pretty well proves the points we've established ourselves. Before we move on let's briefly go over them again.

(Review 7 Selling Fundamentals briefly)—discuss in terms of movie.

4229 Catalog

How to Use

One of the most important tools we have to help us sell TBA is the dealer catalog. No one could possibly remember all the thousands of prices and specifications we have to deal with but we must know how to find the answers quickly in the catalog. These catalogs will be available to keep in your own station and you'll find them easy and simple to use after you've tried it a few times. Let's go through it briefly right now. (Distribute Dealer Catalogs)

Instruction

Proceed to instruct in each of the following:

a—use of index

b—how to find particular items

c—how to find prices

d—any important data peculiar to your supplier's catalog

Examples

Example—Premium tire for 1950 Plymouth—Original equipment replacement battery for 1948 Buick Series 60, etc.

Problems

(Give trainees several problems similar to those mentioned and have them continue to search the catalog until they use it properly)—collect catalogs.

4230 Tour

Now we're going to take you right into the TBA business so you'll get a first hand look at some of the things we've talked about this afternoon. We've arranged a visit to one of ..... 's nearby supply points and we think you'll enjoy seeing how the business operates.

Suggestion

(Take trainees to supply point). Introduce them to manager and if possible have manager accompany you on tour of store. Point out and briefly discuss the following:

New Tires (different types)
Recaps
Batteries
Major Accessories
Displays
Point of Sale Advertising
Any current campaign or promotion.

4231 Pad Work—Sample

October

	John	Bill
Gasoline	15,000	15,000
Total Gross Profit	$1157.00	$1802.00
	|	|
	Why?	
TBA Gross Sales	$246	$740
TBA Gross Profit	$ 60	$181
Gross Profit Per Gal.	7.7¢	12¢

4298 RESPONDENT'S EXHIBIT NO. 31A.

Policy

Long Term Dealer Lease

1. Upon the expiration of his current lease term, any Dealer who has operated his station during the preceding two years in conformance with the standard established by the "purpose and use" clause of Atlantic's revised lease form (Clause 3), shall be eligible for a three year lease. The three year lease shall provide an exclusive option on the Dealer's part to cancel on any annual anniversary date thereof by giving Atlantic at least sixty days advance written notice. The original specified rental shall remain the same during the entire three year period.
2. Any Dealer not eligible for a long term lease in accordance with the above may be eligible for a one year lease only if upon the expiration of any subsequent lease he shall have a record of having operated his station for two consecutive years without receiving any written warnings specifying a default in compliance with the "purpose and use" clause under the revised lease form and failing to remedy such default within fifteen days following receipt of the corresponding warning.

   In those cases where it seems desirable from a business viewpoint to afford a dealer a longer period than the usual fifteen days, the longer period should be specified in the warning letter.
3. Any Dealer whose record of operation during a three year lease shall not involve any unremedied defaults of the type specified in the preceding paragraph shall be eligible for another three year lease.

4. The above shall not be construed as meaning that Dealers will, upon termination of current or future leases, become automatically entitled to a new lease of either one year or three years duration. The policy is intended to mean that if Atlantic in its own discretion decides to enter into another lease arrangement with the Dealer upon the expiration of current or future leases, then, in such event, the Dealer's new lease will be either a one year lease or a three year lease in accordance with the policy described above.
5. This Policy is subject to change at Atlantic's sole discretion. Any change will not, however, affect leases outstanding at such time.

Domestic Marketing Dept. (attachments)
Revised June 21, 1955.

4299 RESPONDENT'S EXHIBIT NO. 31B.

Policy

Long Term Dealer Lease

Attachment No. 1

....., 1953

Dear Sir:

Atlantic's basic policy with Atlantic Dealers can be summarized in four words—Completely Fair, Businesslike Treatment.

You know without being told that each Atlantic station which is well run helps all your fellow Dealers operating Atlantic stations. And we also know what the "dogs" do for us.

Atlantic is adopting a new lease policy which is intended

to reward Dealers who have demonstrated their capacity to operate superior service stations with the security that goes with the possession of a longer lease.

The attached page summarizes the new policy, and an Atlantic representative will be available to discuss both it and our new Service Station Lease form with you prior to the expiration of the current annual term of your particular lease.

The object of the new plan is simply to encourage superior Dealer performance by rewarding it.

.....

Domestic Marketing Dept.
January 2, 1953

4300 RESPONDENT'S EXHIBIT NO. 31C-D.

Policy

Long Term Dealer Lease

Attachment No. 3

(Suggested form letter to be discussed with Dealers and sent contemporaneously with execution of each revised lease form)

....., 195....
(Same date as lease execution)

Atlantic welcomes you as the Lessee of one of its service stations.

We have leased to you a modern, functional physical plant at a location carefully selected to produce profitable business in volume.

You have agreed to undertake the lawful, diligent and business-like operation of a first-class service station.

How can you do it?

First, let us emphasize that it is your business. We can't do your thinking nor your work. Your success or failure will depend upon your own business judgment, skill, imagination and initiative.

Secondly, we want to summarize some of the well-established standards which have been proved by experience to be necessary for the businesslike operation of a first-class service station. They are:

1. Housekeeping — Clean, sanitary premises — inside and out.
2. Use and Upkeep—Careful use and upkeep of building and equipment in safe, good operating condition.
3. Display—Neat, orderly arrangement of merchandise and advertising in a manner reasonably calculated to attract and solicit the attention of the motoring public.
4. Illumination—Safe and adequate to attract customers during night operations.
5. Personnel—Sufficient manpower to give prompt service and allocated to handle peak operating hours. Clean uniforms, courteous, trained to sell, adequate knowledge of services to be rendered.

4301 6. Hours of Operation—Uniform daily operating schedule based on buying habits of potential trade in the area.

7. Services—At least on a par with competition as to kinds of services rendered and efficiency of performance.
8. Adequate Inventory—Quality products and merchandise on hand to serve normal customer needs without delay.
9. Sales Promotion—Regular program for expanding sales, involving direct mail campaigns, personal solicitation, and advertising.

10. Prices—Competitive, quality and service considered.
11. Accounting—Maintenance on current basis of records adequate to reflect financial status and return from various phases of your business.

We wish you success. And remember that each station which is well run helps all your fellow dealers operating Atlantic service stations.

.....

Regional Manager

Domestic Marketing Dept.
January 2, 1953

4302 RESPONDENT'S EXHIBIT NO. 31E-F.

Policy

Long Term Dealer Lease

Attachment No. 4

Proposed Reporting Procedure

A. General—In every case where a service station lease is terminated, or where upon expiration of the lease we do not execute a new lease with the same dealer, the District will make a written report to the Region of the principal reason or reasons for termination or failure to continue the lease relationship. Data supporting the reasons can be kept at the District Office.

B. Mutual Cancellations—Most of our lease relationships are terminated via the mutual cancellation route. It is proposed that our present mutual cancellation form be amended to include a space for statement of reasons for cancellation. Such statement will represent the mutually agreed upon reasons for cancellation. In

such cases; the requirements of the suggested Reporting Procedure will be met by the Regional Office merely retaining an executed copy of the mutual cancellation form.

The amendment to the present form will be handled by adding at the end of the part which describes the lease, the following words:

"... shall by mutual consent expire as of.....
....., 19...., because....."

Examples of how the "because" blank in the revised form might be filled in, dependent, of course, on the facts involved in each case, are:

(1) Because the parties are not in agreement as to whether Joe Smith has maintained clean, sanitary restrooms.

(2) Because the parties are not in agreement as to whether Joe Smith has taken proper care of the station equipment.

(3) Because of disagreement as to the standard of cleanliness that ought to be maintained at the station.

(4) Because of disagreement as to whether Joe Smith has had adequate manpower at the station.

(5) Because of disagreement as to whether Joe Smith has maintained competitive business hours of operation.

(6) Because construction work is scheduled for the station.

(7) Because street repairs have reduced station revenue.

(8) Because of Joe Smith's poor financial position.

(9) Because of personal reasons of Joe Smith.

4303 (10) Because of disagreement as to whether Joe Smith has maintained an adequate inventory of merchandise to serve customers without delay.

C. Termination because of breach—Normally there will be a formal written notice to the lessee. A copy of such notice and any preceding warning letters specifying a default will satisfy the Reporting Procedure.

Example: You are hereby notified that our service station lease dated ....., 19.... is terminated effective today. Although there may be other grounds justifying this termination in accordance with the lease provisions, we are specifying particularly your failure to:

(1) Pay rent when due, or
(2) Maintain a safe station, or
(3) Maintain continuous operations, or
(4) Maintain a clean station, or
(5) Maintain adequate, competent manpower, or
(6) Maintain adequate bookkeeping records, or
(7) Etc.

In cases of abandonment we should have a short, concise written report setting forth the facts.

D. Expiration of lease and we don't execute a new one with outgoing dealer—A short written report somewhat along the following lines:

We did not continue our lease relationship with Joe Smith after expiration of the lease dated ....., 19.... because:

(1) Joe expressed a desire to get in some other kind of business, or
(2) Joe's performance has been below average. With the right kind of lessee, this station should sell a considerably increased gallonage, or

(3) Joe consistently ran a dirty station, or
(4) Joe was always in financial trouble, had difficulty paying his bills, or
(5) Joe never did take proper care of our equipment, or
(6) Joe could never maintain pleasant relations with his customers and this hurt his sales performance, or
(7) Etc.

Domestic Marketing Dept.
January 2, 1953

[fol. 3282]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 13339 and 13340

September Term, 1963—January Session, 1964

Petitions to Review and Set Aside Order of the Federal Trade Commission.

THE GOODYEAR TIRE & RUBBER COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent.

THE ATLANTIC REFINING COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent.

OPINION—April 24, 1964

Before Schnackenberg, Castle, and Swygert, Circuit Judges.

SWYGERT, Circuit Judge. The Goodyear Tire & Rubber Company and the Atlantic Refining Company request a review of the Federal Trade Commission order based upon a complaint charging a violation of section 5 of the Federal Trade Commission Act[1] and which challenged the legality of distribution of tires, batteries, and automobile accessories (TBA) to service stations under a sales commission agreement between petitioners.

[fol. 3283] Goodyear is an Ohio corporation engaged in the manufacture, sale, and distribution of rubber products, in-

---

[1] Federal Trade Commission Act § 5(a)(1), 66 Stat. 632 (1952), 15 U.S.C. § 45(a)(1) (1958), reads as follows:

> Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are declared unlawful.

cluding tires and inner tubes. It is the largest manufacturer of these products in the United States.

Atlantic, a Pennsylvania corporation, is a major producer, refiner, and distributor of gasoline and other petroleum products. It markets its products in seventeen states along the eastern seaboard.

The complaint issued by the Commission alleged that Atlantic produces and sells petroleum in commerce to wholesale distributors, automobile service stations, and others; that the distributors and retailers, ostensibly independent, nevertheless, are under the domination and control of Atlantic; that Goodyear and Atlantic entered into a sales commission contract whereby Atlantic agreed to promote the sale of Goodyear products, that is, tires, batteries, and accessories (TBA), to Atlantic's distributors and service station dealers located in a part of Atlantic's sales territory; that Atlantic had a similar contract with Firestone Tire & Rubber Company for the balance of Atlantic's territory; and that Goodyear had similar contracts with a number of other oil companies which, like Atlantic, dominate and control their distributors and service station dealers. The complaint further alleged that Atlantic is paid a sales commission by Goodyear and Firestone on their products which are sold by Atlantic's distributors and service station dealers. The complaint charged that by the use of the sales commission agreement and the practices of the two companies thereunder, Atlantic and Goodyear have restrained competition in the sale of TBA, and committed unfair acts and practices proscribed by section 5 of the Federal Trade Commission Act.

The hearing examiner dismissed the complaint against Goodyear, upholding the legality of the sales commission contract, but found that Atlantic had violated section 5 of the act by forcing a substantial number of its dealers to purchase Goodyear TBA. The examiner's order against Atlantic prohibited future actions of coercion.

Both Atlantic and general counsel for the Commission appealed from the examiner's ruling. The Commission sustained the examiner's finding that Atlantic had coerced its dealers to purchase sponsored TBA but held that the co-

ercion was symptomatic of a more fundamental restraint of trade, inherent in the sales commission plan itself. The [fol. 3284] Commission said that the principal issue raised by the complaint was the legality of the Goodyear-Atlantic contract. It noted, however, that Atlantic had a similar agreement with Firestone and that Goodyear had like agreements with a number of oil companies other than Atlantic.

The Commission determined that the sales commission method of marketing TBA is "a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." It found that Atlantic, which sells gasoline, has used its economic power over its dealers to cause them to carry substantial amounts of a different product, TBA; also, that the effects of the sales commission system are anticompetitive at the manufacturing, wholesale, and retail levels. It found that Goodyear's manufacturing competitors have been substantially precluded from selling TBA to the Atlantic service stations assigned to Goodyear; that wholesalers of TBA have also been substantially precluded from selling to Atlantic's service stations; that Goodyear wholesalers who are not supply points have been similarly restricted; and that Atlantic service station dealers have been restrained in marketing nonsponsored TBA. Finally, the Commission found that the public has suffered because lack of competition among the service stations' suppliers of TBA has precluded the possibility of price reductions to the consumer.

The Commission based these conclusions on the components of the sales commission system which include advance notice to Goodyear and Firestone of the selection of new dealers by Atlantic, training schools for Atlantic dealers in which Goodyear and Firestone TBA are used in demonstrations, sales solicitation by Atlantic salesmen of sponsored TBA from dealers, double teaming, use of a reporting technique whereby the tire company reports to Atlantic the TBA purchases of each dealer, Atlantic's recommendation to each dealer of a minimum Goodyear or Firestone TBA inventory, and Atlantic's assistance in ad-

vertising, and providing credit card facilities for the sale of sponsored TBA.

Upon finding the sales commission system an unfair method of competition, the Commission revised and expanded the examiner's order. The order of the Commission not only prohibits Atlantic from coercing its distributors and dealers to purchase a particular brand of TBA [fol. 3285] but also forbids its participation in any sales commission arrangement for the distribution of TBA. Further, the order prohibits Goodyear's participation in any sales commission arrangement with Atlantic or any other oil company for marketing its TBA.

Upon a consideration of the record as a whole, we conclude there was substantial evidence to support the Commission's ultimate findings and conclusions and that its order should be affirmed in all respects.

To narrate all relevant facts would extend our discussion unduly; we undertake a summary.

Atlantic's Operations.

Atlantic has three major kinds of customers: wholesale distributors, retailers, and commercial accounts; the last class was not involved in the administrative proceeding.

Wholesale distributors maintain their own storage facilities and resell Atlantic's products under its brand names to their retail customers, including service stations. In 1956 there were 236 Atlantic distributors selling to 2,897 service stations.

Retail dealers who purchase directly from Atlantic are of two classes: lessee-dealers, that is, service station operators who do not own their stations; and contract dealers, station operators who own their stations or lease from parties other than Atlantic, or operate garages, grocery stores, and similar establishments. The company had 5,537 direct retail dealers in 1956. Lessee-dealers accounted for approximately thirty-nine per cent of Atlantic's total gasoline sales in 1955 and the contract dealers eighteen per cent.

The usual lease between Atlantic and its lessee-dealers provides for a one year term with automatic renewal from year to year unless written notice is given before the ex-

piration of any term. When the lease is executed the dealer is required to sign an "Eleven Point Lease Letter" which prescribes operational standards for the service station. These include housekeeping, use and upkeep, display, illumination, personnel, hours of operation, services, adequate inventory, sales promotion, prices, and accounting. The standards are enforced by Atlantic through the surveillance of its sales personnel and so-called "phantom customer inspectors."

The Commission found that the eleven point letter is an [fol. 3286] integral part of the lease; that Atlantic at its option may terminate the lease in the event of its breach; and further, if a dealer violates any of the requirements of the letter, he is warned that the lease will be cancelled unless the noncompliance is remedied within fifteen days.

Atlantic adopted a policy in 1953 providing that any lessee-dealer who establishes a two year record of satisfactory operation is eligible for a three year lease. Moreover, Atlantic after 1953 no longer required its dealers to purchase Atlantic products except lubricants. The record shows, however, Atlantic's dealers handle its products exclusively.

In 1956 fifty per cent of the 3,044 Atlantic contract dealers operated service stations; the others operated grocery stores, garages, and similar outlets (outlets other than service stations ordinarily do not handle TBA).

Although contract dealers do not lease their stations from Atlantic, they usually enter into two kinds of agreements with the company, one providing for loans of station equipment and the other for the purchase of a minimum amount of gasoline. The loan agreements for equipment provide that Atlantic will install but the dealer must maintain the equipment (gasoline pumps, storage tanks, signs, compressors, etc.). The agreements ordinarily are for a one year term but may be terminated by notice of either party at the end of the original or any subsequent term. Atlantic may repossess its equipment upon termination of the contract; however, if the agreement is cancelled because of a breach by the dealer, Atlantic requires him to pay both the cost of installation and removal of the

equipment or Atlantic has the option to leave the equipment and require him to pay for it.

Atlantic makes the same type of contract with its wholesale distributors for the purchase of gasoline as required of its contract dealers. The company, moreover, reserves the right to change the service stations' source of supply from Atlantic itself to its distributors.

Goodyear's Operations.

Goodyear has tire factories in five states. It also has fifty-seven warehouses from which its tires and the accessories it markets are distributed to wholesale and retail outlets. The batteries which Goodyear sells are distributed directly by the companies manufacturing them.
[fol. 3287] Goodyear operates approximately 500 company owned wholesale-retail stores throughout the United States. It also has more than 12,000 independent franchised dealers as well as a number of unfranchised dealers; both sell at wholesale and retail.

TBA.

TBA is an integral part of service station operations. Dealers must carry it in order to give complete service to motorists and to operate their stations at a profit. There are a large number of TBA items available to dealers, and there are constant changes and production developments in TBA of which the dealers must be trained and kept informed. Every major oil company offers some kind of TBA program to give training and advice to its service station dealers.

Atlantic's Purchase-Resale Plan.

For a number of years before Atlantic entered into sales commission contracts with Goodyear and Firestone, it merchandised TBA under a plan known as "purchase-resale."

Under this plan the oil company sells to its dealers at wholesale TBA products which it has purchased and warehoused. The products are merchandised either under the labels of various manufacturers or under the oil company's own labels. Atlantic under its purchase-resale plan bought

Lee tires from the Lee Tire and Rubber Corporation, Exide batteries from the Electric Storage Battery Company, and various accessories from other suppliers, and sold these products to its wholesale distributors and retail dealers. Between 1948 and 1950 Atlantic's sales of TBA to its distributors and dealers amounted to $22,000,000.

Atlantic became increasingly dissatisfied with the purchase-resale plan. It asserts that outside of the Philadelphia area the ready availability of Lee tires diminished and it could not give good delivery on batteries or keep them properly charged. It asserts further, that its warehouses were unsuited for handling accessories, and it was difficult to maintain an adequate supply of TBA to meet the demands of its dealers.

In 1948 and 1949 Atlantic conducted a survey of its dealers to determine their preferences of brands, sources of supply, and other aspects of TBA marketing. Sixty-[fol. 3288] seven per cent of the dealers interviewed preferred Lee tires and seventy-nine per cent preferred Exide batteries over competing brands. Only eleven per cent preferred carrying Goodyear tires and four per cent Firestone. A majority preferred to purchase their TBA from more than one source because of price advantage and variety of brands. Nevertheless, Atlantic, after conducting experiments under sales commission arrangements with both Firestone and Goodyear, entered into sales commission contracts with these companies, effective March 1, 1951, covering its entire marketing area and assigning a portion of its sales territory to each company.

While negotiating the Goodyear and Firestone contracts, Atlantic asked certain battery manufacturers whether they would offer a program similar to that of Goodyear or Firestone. Several manufacturers indicated an interest. However, both Goodyear and Firestone said they would refuse to sell only tires under the sales commission plan and insisted that they be allowed to handle batteries and accessories as well as their own products.

In order to effect the transition to the new plan, Atlantic held numerous meetings with its dealers at which its own representatives and those of Goodyear or Firestone ex-

plained the new program. The dealers were told that the plan was a change in company policy; that Atlantic wanted them to carry Goodyear or Firestone TBA rather than Lee tires and Exide batteries and that the switch would be to the dealers' benefit. Letters were also sent to the dealers advising them of the availability of the new TBA program and urging them to take advantage of it. A Goodyear representative commented on the arrangement with Atlantic, "After years of courtship Atlantic and Goodyear have wed," and "We welcome wholeheartedly this merger."

To commence the plan, Atlantic gave Goodyear and Firestone the names of its dealers in their respective territories so that their advertising could be installed at the service stations. Under Atlantic's policy this meant that only Goodyear or Firestone identifications were to be displayed at Atlantic stations. Atlantic salesmen accompanied either by Goodyear or Firestone salesmen contacted the dealers concerning the change-over to sponsored TBA, and Atlantic received progress reports from Goodyear and Firestone. [fol. 3289] The reports included the names of dealers who refused to permit the installation of Goodyear or Firestone signs.

Within nine months after the sales commission system was inaugurated, Lee and Exide lost seventy-five per cent of their Atlantic sales notwithstanding the dealers' previous indication of a preference for these products. By October, 1951 ninety-seven per cent of Atlantic's New England region dealers and ninety-six per cent of its New York region dealers had signed with Goodyear. Firestone also signed virtually all the Atlantic dealers in its territory.

The Sales Commission System.

The sales commission contract between Goodyear and Atlantic and the contract between Firestone and Atlantic are similar. Under the contracts, Atlantic assigned to Goodyear its New England, New York, and Philadelphia-New Jersey marketing regions and to Firestone its eastern Pennsylvania, western Pennsylvania, and southern regions.

By the terms of the Goodyear contract, Atlantic receives a commission on all Goodyear TBA sold to Atlantic dealers in the territory assigned to Goodyear in return for Atlantic's efforts and cooperation in promoting the sale of Goodyear TBA to those dealers. Atlantic's contractual assistance to Goodyear includes continuous efforts, suggestions, and counseling its dealers that they maintain adequate Goodyear stock, joint calls with Goodyear salesmen upon the dealers, and the institution of a dealer TBA training program.

An important part of the Goodyear contract is the assignment of each Atlantic dealer to a specific supply point designated by the tire company. The supply point is a TBA wholesaler who may be a Goodyear company operated store, a franchised Goodyear dealer, or an Atlantic service station dealer or distributor who at the same time is a franchised Goodyear wholesaler. Atlantic receives ten per cent commission[2] on all purchases of Goodyear TBA made by its retail dealers from the tire company's supply points and, seven and one-half per cent on purchases by Atlantic's wholesale distributors.

When Atlantic selects a new retail dealer, at least three [fol. 3290] separate interviews are held with the applicant at which the sales commission program with Goodyear is explained. The dealer is told that most Atlantic stations in the Goodyear territory are identified "Goodyear" and that it would be to his advantage to carry that company's products. When an applicant is selected but before he is given a lease, he attends an Atlantic training school where extensive discussions and demonstrations of Goodyear TBA are conducted. Atlantic's sponsorship of Goodyear TBA is explained. The prospective dealer is told what Goodyear inventory he should carry and that he should use approved Goodyear signs, decals, and advertising mats. Goodyear is advised of the opening of the applicant's station, and the new dealer is informed of the Goodyear supply point to which he has been assigned.

---

[2] Although termed a sales commission contract, the payments to Atlantic are not commissions on sales made by it but are override payments on sales made by Goodyear supply points to Atlantic's dealers.

Atlantic establishes TBA quotas for its dealers which are considered "an agreed upon obtainable objective." Goodyear reports to Atlantic the monthly purchases of its products by each Atlantic dealer. This procedure enables the oil company to check on the dealers' progress in selling sponsored TBA and also serves as an accounting method for ascertaining the sales upon which Goodyear pays Atlantic its commission.

Atlantic salesmen police the dealers' contractual obligations with the oil company by contacting the dealers regularly. It is the salesman who makes the initial recommendation whether a dealer's lease or contract is to be renewed. Atlantic salesmen not only promote the sale of their own company's products but also Goodyear TBA; they help plan sponsored TBA promotions, they write up TBA orders, and they check the dealer's books to ascertain whether nonsponsored TBA has been purchased.

Under the sales commission system, the dealers are visited regularly by a Goodyear salesman accompanied by an Atlantic salesman. Goodyear considers "double teaming" an effective means of selling its TBA. This duality of sales effort is continued at dealer meetings by the presence of representatives of the tire company and the oil company.

Atlantic reserves control over the advertising and identification that may be displayed at its service stations. Its policy is that only sponsored TBA identification should be displayed. Moreover, Atlantic credit cards include TBA. From 1951 to 1953 the credit card facility was limited in Goodyear territory to Goodyear TBA.

[fol. 3291] The Supreme Court in *F.T.C.* v. *Cement Institute*, 333 U. S. 683, 693 (1948), indicated the the Federal Trade Commission Act grants "the Commission and the courts . . . adequate powers to hit at every trade practice then existing or thereafter contained, which restrained competition or might lead to such restraint if not stopped in its incipient stages." The Commission has a latitude of flexibility within which it can restrain any new unfair method of competition "which the ingenuity of competitors may devise."[3]

---

[3] S. Rep. No. 597, 63d Cong., 2d Sess. 13 (1914).

Unfair methods of competition proscribed by section 5 of the Federal Trade Commission Act cannot be classified rigidly into categories of business methods that stifle competition. Labeling at times is more harmful than helpful in formulating conceptions that correspond with reality.

Although petitioners contest the view of the general counsel that the Commission grounded its order on the existence of an illegal tying arrangement, the Commission found that the sales commission system is, *in effect*, such an arrangement. It went on to explain, however, that because of the peculiar features of the system, it did not rest its decision on a "mechanical application of the rule of the *Northern Pacific* and *Osborn* cases."[4] The Commission said:

> The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The heart of this case is the economic power Atlantic possesses over its service station dealers. Ostensibly, they [fol. 3292] are independent businessmen; but behind the legalistic facade of independence, there exists a servitude caused by the coercive pressures which Atlantic exerts upon its dealers. The keystone of the actual relationship between Atlantic and its dealers is the lease and the equipment loan contract with their short term and cancellation provisions. Without repeating all the components of the relationship, it is evident that the service station dealer is more of an

---

[4] *Northern Pac. Ry.* v. *United States*, 356 U. S. 1 (1958); *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960).

economic serf than a businessman free to purchase the TBA of his choice. We believe the Commission, in evaluating the evidence, correctly found that if a dealer wishes to continue in good standing with the company and retain his lease or contract, it is advantageous that he carry sponsored TBA.

On the issue of coercion the examiner said:

> It is clear from the record in this proceeding that the Atlantic dealers did not consider the nonforcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the change-over and prospective dealers thereafter had the right to select or reject the TBA sales program offered by Atlantic. The prospective dealer making application for an Atlantic station would not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salesmen insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

He concluded that "coercion and pressure were used [by Atlantic] on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of nonsponsored items."

The Commission affirmed the examiner's finding of coercion. It said that although the proclaimed policy of Atlantic has been to permit its dealers to carry whatever TBA they choose, the policy in practice is ignored and the dealers [fol. 3293] "have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA."

The Commission referred in particular to witnesses representing suppliers competing with Goodyear and Firestone who testified that the dealers responded negatively to their sales efforts because the dealers felt they were required to purchase sponsored TBA. There was evidence that if the dealers purchased nonsponsored TBA, they were told by Atlantic to return it or, in any event, not to display it. There was also testimony that leases had been cancelled or allowed to terminate because dealers had purchased nonsponsored TBA.

Atlantic contends that the finding of coercion is not supported by substantial evidence. It says that the finding rests on the testimony of only thirteen dealers out of more than five thousand; that these isolated instances of "unauthorized" coercion are insufficient to establish a violation of Atlantic's "free choice policy." We disagree. The evidence relating to overt coercive tactics, although not extensive, must be considered with the testimony of the witnesses representing competing suppliers to the effect that the dealers felt that if they did not carry sponsored TBA they risked reprisal. Also to be considered are the policing tactics of Atlantic's salesmen and the surveillance by the so-called phantom customer inspectors. Moreover, it should be noted that the examiner, in considering the testimony of the dealers who testified for Atlantic, recognized that these witnesses "were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases."

Atlantic's contention that sporadic reprisals against dealers are an insufficient basis for finding coercion is answered in *United States* v. *Loew's Inc.*, 371 U. S. 38, 50 (1962). There, the Court said:

> Appellants . . . make the . . . argument that each of them was found to have entered into such a small number of illegal contracts as to make it improper to enter injunctive relief. . . . We disagree. Illegality having been properly found, appellants cannot now complain that its incidence was too scattered to warrant injunctive relief.

[fol. 3294] Atlantic's power to cause its dealers to carry either Goodyear or Firestone TBA does not depend upon overt coercive methods. The totality of facts surrounding the relationship between the oil company and the dealers points to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA.

Atlantic says that its influence over its dealers to purchase sponsored TBA short of force, threat, or intimidation is lawful; that it may recommend high quality TBA to its dealers; and that such action serves a legitimate business purpose in the promotion of the sale of gasoline. This would be a persuasive argument except for the dealers' economic dependency upon the oil company. In that setting, recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats.

Osborn v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), although a private suit under the antitrust laws, dealt with a sales commission contract similar to the one before us. Osborn, a dealer, charged that his lease was cancelled because he had not purchased sufficient quantities of Goodyear TBA. The court of appeals held that an illegal "arrangement or condition," a tie-in, existed between the oil company and its dealers which permitted the plaintiff to recover. Although the court was not specifically concerned with the legality of the Goodyear-Sinclair sales commission contract, it held that, "the Goodyear TBA was tied to the lease and the sale of the gasoline." Chief Judge Sobeloff characterized the arrangement thus:

> The perniciousness of the imposed tie-in is aggravated by the fact that the defendant [Sinclair] is not even in the business of selling the tied products, but is employing its economic power in the gasoline industry to force his dealers to do business with a supplier in another industry under an arrangement that yields the defendant an extraneous revenue. The defendant in this case goes a step further than the supplier in the

> usual tie-in case, for here the tied product is not even handled or sold by the defendant, but it farms out to another, for a price, its coercive economic power.

[fol. 3295] We think this an apt characterization of the Goodyear-Atlantic sales commission system.

It is true that Goodyear's contract with Atlantic in itself has no tying features. Only when the contract is considered contextually with the oil company-dealer relationship and the economic power that Atlantic has over its dealers does its tying feature emerge. Manifestly, the system was designed to exploit Atlantic's created and controlled service station market. The Commission properly, we think, decided that the system integrates Atlantic's economic power over its service station market into the Goodyear TBA distribution system, thus giving Goodyear, for a price, a captive market.

As pointed out in *McElhenney Co.* v. *Western Auto Supply Co.*, 269 F. 2d 332 (4th Cir. 1959), an illegal understanding (such as a tying arrangement) may be implied from a course of dealing between the parties. Here, the tying arrangement *is* the sales commission system operated by Goodyear and Atlantic. In its narrower aspects the system is a tying arrangement because it requires the buyer of one product, the service station dealer who purchases Atlantic gasoline, to buy another line of merchandise, Goodyear TBA. Surrender by the dealer of his freedom to choose between brands of TBA is *per se* illegal if a "not insubstantial" amount of interstate commerce is affected. *Northern Pac. Ry.* v. *United States*, 356 U. S. 1 (1958); *International Salt Co.* v. *United States*, 332 U. S. 392 (1947).

Appraising the broader aspects of the system as a tying arrangement, we think the Commission correctly determined that the system injures competition in the distribution of TBA at the manufacturing, wholesale, and retail levels. Interbrand competition for the Atlantic service station TBA market is foreclosed to Firestone in Goodyear's territory and Goodyear is foreclosed from selling to the service stations in Firestone's territory. Moreover, the record substantiates the Commission's finding that suppliers

of TBA competing with Goodyear and Firestone are substantially foreclosed from selling their products to Atlantic dealers. Atlantic's service station market is fenced off so as to make it unavailable to both manufacturers and wholesalers of competing brands.

Intrabrand competition is perniciously affected. Restraint results inevitably from the designation of a single [fol. 3296] supply point for TBA sales to the Atlantic dealer. Other Goodyear wholesalers cannot compete with the supply point dealer for the business of the Atlantic service stations in his territory.[5]

We are convinced that the Commission correctly analyzed the sales commission system and found, in effect, a tying arrangement inherently anticompetitive. It is anticompetitive largely because competition for the business of the individual service station is replaced by competition for the oil company's domination of its dealers.

The Commission found that service stations constitute a large and necessary market for TBA and evaluated the Goodyear-Atlantic sales commission system in relation to Atlantic's seventeen-state service station TBA market. Atlantic has nearly seven thousand service stations in this territory. As of 1955 Goodyear had signed TBA contracts with 2,183 of the 2,248 Atlantic service stations in the eight-state territory assigned it. As of 1955 Firestone had signed virtually all the 4,698 Atlantic stations in the ten-state area assigned it. Goodyear's TBA sales to Atlantic dealers rose from approximately two and one-half million dollars in 1951 to more than five and one-half million dollars in 1955. Firestone's sales to Atlantic dealers increased from $3,243,350 in 1951 to $5,562,936 in 1955. Total Goodyear and Firestone sales under the Atlantic contracts from June, 1950 to June, 1956 was more than $52,000,000. Atlantic's stations constitute 3.4 per cent of the total number of service stations in the United States and it sells 2.5 per cent of the gasoline sold in the nation.

---

[5] Of the 1,155 independent Goodyear dealers in Atlantic's marketing area, only 128 were acting as supply points for Atlantic service stations.

We believe the foregoing facts adequately demonstrate that a substantial amount of commerce has been affected by Atlantic's contracts with Goodyear and Firestone. These facts also demonstrate that Atlantic has sufficient economic power in the gasoline market to restrain a substantial amount of commerce in the service station TBA market within the territory serviced by Atlantic. Therefore, the Goodyear-Atlantic sales commission system is within the "substantiality of economic effect on commerce" test defined in *Northern Pac. Ry.* v. *United States, supra,* and *Standard Oil Co.* v. *United States,* 337 U. S. 293 (1949). *Cf. Osborn* v. *Sinclair Refining Co., supra.*

[fol. 3297] Goodyear contends that the provision in the Commission's order prohibiting it from entering into sales commission contracts with any oil company is not supported by substantial evidence. Atlantic makes a similar contention that the order is too broad because it prohibits the oil company's participation in a sales commission arrangement with any TBA supplier.

We think the Supreme Court answered petitioners' contentions in *F.T.C.* v. *Ruberoid Co.,* 343 U. S. 470, 473 (1952), when it said:

> Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. In carrying out this function the Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.

Petitioners' contention that the Commission's findings are inadequate and do not meet the requirements of section 8 of the Administrative Procedure Act, 5 U.S.C. § 1007(b), is without merit.

Moreover, we are not persuaded by Atlantic's contention that the hearing examiner, in making his decision, considered evidence outside the record since he heard a similar complaint filed against Firestone and Shell Oil Company; nor are we persuaded by Goodyear's contention that the finding of the violation against it is based on evidence admitted against Atlantic but struck as to Goodyear. While the examiner received evidence concerning both the Firestone-Atlantic and the Firestone-Shell sales commission contracts, we are satisfied that the findings of both the examiner and the Commission were based on proper and sufficient evidence and that there was no denial of procedural due process.

The Commission's order is affirmed and will be enforced.

[fol. 3298]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Before Hon. Elmer J. Schnackenberg, Circuit Judge, Hon. Latham Castle, Circuit Judge, Hon. Luther M. Swygert, Circuit Judge.

Petitions for review of an order of the Federal Trade Commission.

Nos. 13339, 13340

THE GOODYEAR TIRE & RUBBER COMPANY, THE ATLANTIC REFINING COMPANY, Petitioners,

vs.

FEDERAL TRADE COMMISSION, Respondent.

JUDGMENT—April 24, 1964

This cause came on to be heard on the petitions for review of an order of the Federal Trade Commission and the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is ordered by this Court that the order entered in this cause by the Federal Trade Commission on March 9, 1961, be, and the same is hereby Affirmed, and the order will be enforced, in accordance with the opinion of this Court filed this day. Upon presentation an appropriate decree will be entered.

[fol. 3299]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13340

THE ATLANTIC REFINING COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent.

FINAL DECREE AFFIRMING AND ENFORCING ORDER TO CEASE AND DESIST—May 20, 1964

The Atlantic Refining Company, a corporation, petitioner herein, having filed in this Court on May 10, 1961, a petition to review and set aside an order to cease and desist issued against it on March 9, 1961, by the Federal Trade Commission, respondent herein, in a proceeding before it entitled "In the Matter of The Goodyear Tire & Rubber Company, a corporation, and The Atlantic Refining Company, a corporation, Docket No. 6486;" and a copy of said petition having been served upon respondent; and the respondent having thereafter certified and filed in this Court a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument on January 9, 1964, and this Court having [fol. 3300] rendered its decision on April 24, 1964:

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the prayer of the aforesaid petition to set

aside the order of the Federal Trade Commission as to the petitioner herein be, and it hereby is, denied;

It Is Further Ordered, Adjudged and Decreed that the order to cease and desist of the Federal Trade Commission be, and it hereby is, affirmed, and that petitioner be, and it hereby is, commanded forthwith to obey said order and to comply therewith.

By the Court.

Elmer J. Schnackenberg, Circuit Judge, Latham Castle, Circuit Judge, Luther M. Swygert, Circuit Judge.

Entered: May 20, 1964.

[File endorsement omitted]

[fol. 3301] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 3302]

SUPREME COURT OF THE UNITED STATES

No. 292—October Term, 1964

THE ATLANTIC REFINING COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION.

ORDER ALLOWING CERTIORARI—December 14, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S.
FILED
JUL 17 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964.

No. 292

THE ATLANTIC REFINING COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FREDERIC L. BALLARD, JR.,
CHARLES I. THOMPSON, JR.,
Land Title Building,
Philadelphia, Pa. 19110,

ROY W. JOHNS,
JOEL L. CARR,
260 South Broad Street,
Philadelphia, Pa. 19101,
Attorneys for Petitioner.

BALLARD, SPAHR, ANDREWS & INGERSOLL,
Land Title Building,
Philadelphia, Pa. 19110,
Of Counsel.

International, 717 So. 50th St., Phila., Pa. 19143

INDEX.

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTE INVOLVED	3
STATEMENT OF THE CASE	4
I. Basic Facts	4
II. Proceedings Before the Commission	5
III. Review by the Court of Appeals	8
IV. Companion Cases	9
REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT	11
I. The Case Presents Important Questions Which Should Be Settled by This Court	11
A. Is the Sales Commission Method of Distributing TBA an Unfair Method of Competition?	11
B. May the Commission, Under Section 5 of the Federal Trade Commission Act, Outlaw a Method of Competition Because of Its Competitive Effects Without Meeting the Standards of Market Significance Established by This Court Under the Antitrust Laws?	12
C. Is the Commission's Order Illogical and Inappropriate in That, Having Specifically Preserved Atlantic's Right to Distribute TBA, It Prevents Atlantic From Using the Method of Distribution Which Atlantic Has Found Most Advantageous for Itself and Its Dealers?	17
D. May the Commission Outlaw All Sales Commission Contracts on the Basis of the Competitive Effects of a Particular Contract Between the Individual Respondents?	20

INDEX (Continued).

	Page
II. The Decisions Below Are in Conflict With Decisions of This Court	21
A. In Contravention of the *White Motor* Decision, the Court of Appeals Affirmed the Commission's Creation of a New Category of *Per Se* Violation Without Considering the Business Justifications Involved	21
B. In Contravention of the *Chenery* Decisions, the Court of Appeals Invoked a New Ground for Affirming the Commission	23
CONCLUSION	25
APPENDIX A—Opinion of USCA(7)	1a
APPENDIX B—Order of USCA(7)	20a
APPENDIX C—Final Decree of USCA(7) Affirming and Enforcing Order to Cease and Desist	21a

TABLE OF CASES CITED.

Page

Asheville Tobacco Board of Trade, Inc. v. Federal Trade Commission, 263 F. 2d 502 (4th Cir. 1959) 15

Brown Shoe Co. v. United States, 370 U. S. 294 (1962) 14

Federal Trade Commission v. Gratz, 253 U. S. 421 (1920) 15

Federal Trade Commission v. Motion Picture Advertising Service Co., 344 U. S. 392 (1953) 15

Federal Trade Commission v. Raladam Co., 283 U. S. 643 (1931) 15

Federal Trade Commission v. Ruberoid Co., 343 U. S. 470 (1952) 21

Firestone Tire & Rubber Co., 58 F. T. C. 371 (1961) 9

B. F. Goodrich Co. and The Texas Co., F. T. C. Docket No. 6485, Order to Cease and Desist April 15, 1963 9

NLRB v. Mackay Radio & Telegraph Co., 304 U. S. 333 (1938) 18

Northern Pacific Ry. v. United States, 356 U. S. 1 (1958) ... 7, 21

Osborn v. Sinclair Refining Co., 286 F. 2d 832 (4th Cir. 1960), cert. denied, 366 U. S. 963 (1961) 7, 9

SEC v. Chenery Corporation, 318 U. S. 80 (1943), 332 U. S. 194 (1947) 23, 24

Standard Oil Co. of New Jersey v. United States, 221 U. S. 1 (1911) 14

Tampa Electric Co. v. Nashville Coal Co., 365 U. S. 320 (1961) 15

United States v. American Tobacco Co., 221 U. S. 106 (1911) 14

United States v. Continental Can Co., 32 U. S. L. Week 4642, June 22, 1964 14

United States v. Standard Oil Co. of California, 1959 Trade Cases ¶ 69,399 (S. D. Cal. 1959) 9

White Motor Co. v. United States, 372 U. S. 253 (1963) 21, 23

MISCELLANEOUS.

Page

Oppenheim, Guides to Harmonizing Section 5 of The Federal Trade Commission Act With the Sherman and Clayton Acts, 59 Mich. L. Rev. 821 (1961) 16

Report of the Attorney General's National Committee to Study the Antitrust Laws, March 31, 1955 ..... 15, 16

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1964.

No.

THE ATLANTIC REFINING COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Atlantic Refining Company ("Atlantic") prays that a Writ of Certiorari issue to review an order and decree of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW.

There are three opinions below: namely, the Initial Decision of the Hearing Examiner of the Federal Trade Commission, filed on October 23, 1959; the Opinion of the Commission on appeal from the Hearing Examiner, filed on March 9, 1961; and the Opinion of the Court of Appeals on petition for review of the Commission's order, filed on April 24, 1964.

The Initial Decision of the Examiner (41) [1] and the Opinion of the Commission (61) are reported at 58 F. T. C. 309 (1961). The Opinion of the Court of Appeals is printed in Appendix A, *infra,* page 1a, and is reported at 331 F. 2d 394.

1. This and similar references are to page numbers of the Joint Appendix filed with the Court of Appeals.

JURISDICTION.

The Order of the Court of Appeals was entered on April 24, 1964 and is printed in Appendix B, *infra*, page 20a. The Final Decree of the Court of Appeals was entered on May 20, 1964 and is printed in Appendix C; *infra*, page 22a. Petitioner invokes the jurisdiction of this Court under Section 1254(1) of the Judicial Code.

QUESTIONS PRESENTED.

The Atlantic Refining Company ("Atlantic"), a gasoline marketer, has a contract with Goodyear Tire & Rubber Company ("Goodyear") under which Atlantic has agreed, in return for a commission, to act as sales representative for Goodyear in the sale of Goodyear tires, batteries and accessories ("TBA") to Atlantic gasoline dealers, and to assist those dealers in selling the TBA to the motoring public. This contract was challenged by the Federal Trade Commission as an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

The Commission has entered an order prohibiting Atlantic from continuing its arrangement with Goodyear and, in addition, from having such an arrangement with any other TBA supplier. From the Commission's opinion it appears that the basis for the order is the supposed anti-competitive effects of the contract.

On appeal, the Court of Appeals affirmed the Commission and held the contract, by reason of Atlantic's relationship with its dealers, to be an illegal tying agreement. The Court attributed the same theory to the Commission.

The general question presented is whether the Court of Appeals erred in affirming the Commission's decision that the Atlantic-Goodyear contract is an unfair method of competition. If, as seems clear from the Commission's opinion, the actual basis of the Commission's decision was the sup-

posedly anticompetitive effects of the Atlantic-Goodyear contract, the Court of Appeals erred in adopting a different ground, and the following questions are presented by the Commission's order:

Did the Commission (and the Court of Appeals, in affirming) err when—

(a) the Commission, in finding a violation of Section 5 of the Federal Trade Commission Act, failed to meet the standards of market significance which would be applicable in analogous cases under the antitrust laws;

(b) the Commission's order, while preserving Atlantic's right to distribute TBA, requires Atlantic to discontinue the method of distribution which is most advantageous to its dealers;

(c) the Commission's order, though based on the competitive effects of a particular contract, prohibits all similar arrangements regardless of differences which might change the competitive effects; and

(d) the Commission's order, in effect, creates a new *per se* violation of the antitrust laws without consideration of the business justifications for the prohibited practices.

STATUTE INVOLVED.

The statute involved is Section 5(a)(1) of the Federal Trade Commission Act, 15 U. S. C. § 45(a)(1), which reads in full as follows:

"Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

STATEMENT OF THE CASE.

I. Basic Facts.

Atlantic markets gasoline under the "Atlantic" brand along the Eastern Seaboard. Its principal customers are independent retail dealers operating service stations under leases or supply contracts.

The handling of tires, batteries and accessories is essential to successful service station operation, and every major oil company offers a TBA program to its dealers. Some of these companies purchase TBA and resell it to the dealers, this type of program being known as "purchase-resale." Other oil companies do not take title to the TBA, but act as sales representative in the sale from the TBA supplier to the dealers. This type of program is known as "sales commission." Under purchase-resale, distribution facilities are generally the responsibility of the oil company. Under sales commission, the facilities are the responsibility of the TBA supplier.

Atlantic, like its competitors, has offered a TBA program since the 1920's. For many years Atlantic operated on the purchase-resale basis. However, its purchase-resale program proved unsatisfactory to Atlantic dealers, primarily because Atlantic was unable to provide adequate distribution facilities and services. Consequently, in 1951 Atlantic made a sales commission arrangement with Goodyear.[2]

The adoption of the sales commission plan solved Atlantic's distribution problems because, under the plan, certain Goodyear outlets are available as supply points for Atlantic dealers.

---

2. Concurrently, Atlantic made a similar arrangement with The Firestone Tire & Rubber Company. Atlantic elected to sell Goodyear in part of its marketing area, and Firestone in the remainder. Firestone was not made a party to this proceeding; but the legality of the Firestone contract was challenged in the complaint.

II. Proceedings Before the Commission.

In January 1956, the Federal Trade Commission issued a complaint against Atlantic and Goodyear, charging that their sales commission contract is an unfair method of competition. The complaint alleged that Atlantic has inherent control over its dealers which it exercises in favor of Goodyear, and that this adversely affects competition because other TBA wholesalers are unable to sell to Atlantic dealers (5).

After extensive hearings, the Commission's Examiner upheld the legality of the sales commission contract and dismissed the complaint as to Goodyear. The Examiner entered Conclusions finding, *inter alia*, that there is no conspiracy between Atlantic and Goodyear to restrain the sale and distribution of TBA; that neither the sales commission contract nor Atlantic's contractual arrangements with its dealers require them to purchase Goodyear TBA; and that Atlantic's commission is based on substantial services rendered by Atlantic to Goodyear. The Examiner rejected any inference or implication from Atlantic's contractual relationships with its dealers that Atlantic controls the dealers' TBA purchases; and he held that the Atlantic-Goodyear contract is not illegal (57-9).

However, the Examiner also found that Atlantic salesmen have, on occasion, intimidated dealers and forced them to purchase Goodyear TBA. Accordingly, he entered an initial order against Atlantic prohibiting such coercion (41).

Both sides appealed to the Commission. Atlantic contested the factual basis for the Examiner's finding regarding coercion, and also contended that the coercive acts so found were too isolated to support an order against the Company. The Commission's Staff, on the other hand, disputed the Examiner's finding that Atlantic does not control its dealers; argued that Atlantic's position alone, without coercion, causes dealers to buy substantial quantities of Goodyear TBA; and sought an extreme order which would prohibit Atlantic from selling TBA at all.

Otherwise, argued the Staff, "the mere inhibition of the sales commission plan without more can be easily circumvented by the use of other TBA marketing plans by respondents, such as the Lee-Exide TBA purchase-resale plan used by Atlantic prior to its adoption of the sales commission plan, which would again have the same adverse competitive effects".[3]

The Commission sustained the Examiner on the issue of coercion. [While Atlantic again contested this point before the Court of Appeals, it no longer does, so that the issue of coercion is now out of the case.]

On the broader issue, the Commission reversed the Examiner and held the sales commission contract illegal. The Commission refused, however, to grant the full relief sought by its Staff, *i.e.*, it refused to prohibit all TBA selling by Atlantic. The Commission's order only prevents Atlantic from selling TBA to Atlantic dealers on behalf of persons other than itself; it permits Atlantic to return to purchase-resale.[4]

Thus, the unfairness of Atlantic's activities is made to depend on the narrow distinction between selling for Atlantic's account (legal), and selling for another's account (illegal). Atlantic's right to offer a TBA program to its dealers is preserved, but Atlantic is forced to exercise this right in a manner which its experience has shown to be uneconomic.

In its opinion, the Commission said that the coercion by Atlantic salesmen with respect to TBA resulted in implied tie-in agreements which were unlawful under this

3. Staff Br. to Commission 104.

4. The Commission's order is in two parts, reflecting the two issues which had developed in the case. The first four paragraphs deal with the issue of sales commission and prohibit all sales commission contracts between Atlantic and any supplier of tires, batteries or accessories. The last two paragraphs deal with the issue of coercion and prohibit Atlantic from forcing its dealers to purchase sponsored TBA or refrain from purchasing non-sponsored TBA (131).

Court's decision in *Northern Pacific Ry. v. United States*,[5] and the decision of the Court of Appeals for the Fourth Circuit in *Osborn v. Sinclair Refining Co.* (122-4).[6]

This being only a subsidiary question,[7] the Commission turned to what it called the "issue here," the legality of a "particular method" of TBA distribution. It agreed with the Staff's theory that Atlantic has the power to cause Atlantic dealers to purchase substantial Goodyear TBA without coercion, but said that "this power is a fact existing independently of the particular method of distributing" used by Atlantic.

"Determination of illegality in this context," said the Commission, "requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA" (124).

The Commission's opinion then proceeded to describe the supposed effects of the sales commission plan which the Commission considered anticompetitive. Most of these effects relate to the alleged "foreclosure" of competing wholesalers from doing business with Atlantic dealers and would therefore be present under purchase-resale to the same extent as under sales commission. However, the Commission identified two effects which it considered unique to sales commission: (a) the supposed competitive advantage conferred upon Goodyear supply points; and (b) the supposed competitive disadvantage of small tire companies which cannot offer an extensive distribution system in competition with Goodyear (126 *et seq.*)

In making its "evaluation of competitive effects," the Commission was content to rest on generalities. No effort

5. 356 U. S. 1 (1958).

6. 286 F. 2d 832 (4th Cir. 1960), *cert. denied*, 366 U. S. 963 (1961).

7. Earlier in its opinion the Commission said that, although the "more dramatic and immediate" impact is upon *dealers*, it is "the competitive effects of the sales commission system on *competitors of Goodyear* . . . which raise the most grave questions in this proceeding." (100, emphasis added.)

was made to measure the "foreclosure" against any relevant market at any level. Indeed, no relevant market was specified.

The Commission's order is not confined to the immediate parties or facts of the proceeding. It prohibits Atlantic from having a sales commission arrangement with any supplier of tires, batteries or accessories regardless of whether or not the same competitive effects would be present. The order against Goodyear similarly prevents Goodyear from having a sales commission arrangement with any oil company.[8]

The Commission received no evidence and made no findings in support of the scope of its order. No reason is advanced to justify banning all sales commission plans.

III. Review by the Court of Appeals.

In affirming the Commission's order, the Court of Appeals took a different tack. The Court said that although admittedly the sales commission contract between Atlantic and Goodyear "has no tying features," the contract becomes an illegal tying arrangement when considered "contextually" with the Atlantic-dealer relationship (*infra*, 16a). It attributed this same tying rationale to the Commission, saying that the Commission had "in effect" so found, apparently because the Commission cited tying cases in its discussion of coercion (*infra*, 12a).

Since the Court of Appeals considered that the case involves a tying practice which would be *per se* illegal, it did not reach the question whether the Commission had erred in failing to measure the alleged anticompetitive effects of the contract against any relevant market.

The attempt by the Court of Appeals to read a tying theory into the Commission's opinion ignores two facts:

---

8. The order against Goodyear was also affirmed by the Court of Appeals, and we are advised that Goodyear intends to file a petition for writ of certiorari.

1. The tying proposition is a simple one. If the Commission had intended to rely on it, the Commission would have said so. It would not have insisted that the case depends on an evaluation of competitive effects, nor would it have devoted such a substantial portion of its opinion to that evaluation.

2. The tying proposition must start with the premise that, even without coercion, any selling of TBA by Atlantic is, *ipso facto*, illegal tying. But this is precisely what the Commission refused to say.[9] Despite the Staff's request for a prohibition against all selling, the Commission's order preserves Atlantic's right to sell and promote TBA to dealers under purchase-resale. If there is no illegal tying when Atlantic sells for its own account under purchase-resale, there cannot be any illegal tying when it sells for Goodyear's account under sales commission.

IV. Companion Cases.

Contemporaneously with the filing of this case against Atlantic and Goodyear, the Commission also instituted identical proceedings with respect to sales commission agreements between The Firestone Tire & Rubber Company and Shell Oil Company,[10] and between The B. F. Goodrich Company and The Texas Company.[11] Broad orders have been issued against those companies forbidding their use of sales commission plans under any circumstances.

---

9. Every court having occasion to consider the question has recognized and preserved an oil company's freedom to sell TBA, provided it does not coerce. See *Osborn v. Sinclair Refining Co.*, 286 F. 2d 832, 836 (4th Cir. 1960); and consent decree in *United States v. Standard Oil Co. of California*, 1959 Trade Cases ¶ 69,399 (S. D. Cal. 1959). Any tying is cured by the paragraphs of the order which prohibit coercion.

10. 58 F. T. C. 371 (1961).

11. F. T. C. Docket No. 6485, Order to Cease and Desist April 15, 1963.

The order against Goodyear in the present case outlaws twelve Goodyear contracts with non-respondent oil companies of varying sizes in many different marketing areas. The orders in the other proceedings likewise blanket numerous other oil companies and TBA suppliers, large and small, throughout the United States. The Commission has no regard for the kaleidoscopic competitive situation involved; its attitude is that no sales commission plan can ever be lawful in this industry. The practical effect is to legislate sales commission distribution out of the petroleum industry, and require all oil companies to adopt purchase-resale distribution or abandon their TBA programs.

The Firestone-Shell and Goodrich-Texas cases are now pending before the Courts of Appeals for the Fifth Circuit and District of Columbia Circuit, respectively.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I. The Case Presents Important Questions Which Should Be Settled by This Court.

The impact of this case and the companion cases is not limited to the parties or the circumstances. It affects major segments of the petroleum industry, including all the oil companies and TBA suppliers now distributing through the sales commission method. It affects thousands of gasoline dealers and hundreds of supply points, as well as the motoring public. The sweep of the orders is so broad that henceforth no oil company, regardless of its relationship with its dealers, can safely enter into a sales commission plan with any supplier of tires, or of batteries, or of any accessory.

The fundamental question is:

A. Is the Sales Commission Method of Distributing TBA an Unfair Method of Competition?

Because of the long standing, industry-wide acceptance of the sales commission method, and the large number of oil companies, gasoline dealers and TBA supply points whose business has been built upon this method, the broad question of its legality should be settled by this Court. This question alone justifies review.

If the Court of Appeals were correct in its view that the Commission found the sales commission method to be "in effect" a tying arrangement (a view which, as indicated above, we believe to be incorrect), an important subsidiary question would be presented: namely, whether a sales commission contract becomes a tying agreement because the salesman is already supplying other goods and facilities to his customers under short term leases and supply contracts. The answer would have important implications for every manufacturer who distributes branded merchandise through franchised dealers.

In this connection, it should be noted that, as a matter of policy, Atlantic did not condone tying. Atlantic's policy was that dealers were free to buy TBA of their choice from suppliers of their choice.[12] Despite the Court of Appeals' discussion of coercive practices in violation of this policy, we believe that the Court, in the last analysis, based its conclusion that this is a tying case on the mere existence of Atlantic's position, of which it said the lease and supply agreements, "with their short term and cancellation provisions," are the "keystone" (*infra*, 13a).

However, we have already demonstrated that the Commission did not consider this a tying case. Consequently, we turn to the important subsidiary questions actually posed by the Commission's opinion and order. They are:

B. May the Commission, Under Section 5 of the Federal Trade Commission Act, Outlaw a Method of Competition Because of Its Competitive Effects Without Meeting the Standards of Market Significance Established by This Court Under the Antitrust Laws?

This question arises out of the Commission's failure to relate the competitive effects on which it relies to any relevant market. The Commission says, in essence, that a portion of the Atlantic dealers' TBA purchases is "foreclosed" by Atlantic's power over its dealers; that under the Goodyear-Atlantic agreement Goodyear acquires these sales for its supply points; and that this benefits the supply points and Goodyear and hurts their competitors. But the Commission never attempts to measure the extent of the benefit or the burden by any recognized legal criteria. For example—

12. Atlantic advised its dealers in writing that acceptance or rejection of Atlantic's TBA program is a matter of the dealer's choice (CX 150). It instructed its salesmen in writing that dealers were not to be made to feel they must buy the program just because they are Atlantic dealers (CX 149). It advised its dealers in writing to report violations of these instructions (CX 207). It followed up these written statements of policy with oral presentations at dealer meetings attended by dealers and salesmen.

1. As to the extent of the "foreclosure," the record shows that Atlantic dealers have purchased annually about $6,000,000 of Goodyear TBA under the Atlantic program in recent years. But the record is silent on whether this represents 100% or 1% of their purchases of *all* TBA.

2. With respect to the Goodyear supply points, the record does not indicate their share of the total TBA market or the share of their business represented by sales to Atlantic dealers under Atlantic's program.

3. As for Goodyear's competitors, there is no evidence of Goodyear's share of the total TBA market,[13] although it is stated that Goodyear is the largest manufacturer of rubber products in the United States. There is no evidence that competitors of Goodyear do not have adequate outlets for their TBA. There is no evidence as to the relative use of the sales commission method and the purchase-resale method by Goodyear's competitors and Atlantic's competitors, nor of any industry trend towards one method or the other.

4. There is no evidence concerning the competition encountered by Atlantic dealers from mail order stores, discount houses, department stores and other aggressive TBA marketers. Atlantic showed that the Atlantic dealers' ability to compete depends in large measure on the quality of Atlantic's TBA program, including the method of TBA distribution.

The foregoing cannot be oversight. It is clear, although the Commission did not say as much, that the Commission did not feel required to measure the competi-

13. The only evidence of the market for TBA generally relates to the national market, which is approximately four billion dollars annually.

tive effects against any market and made no attempt to do so.

It is equally clear that in an analogous proceeding under the Sherman Act or the Clayton Act, a measurement of the competitive effects against the relevant market would be required.[14] It is elementary that a contract is not an illegal restraint unless it is significant to the market. That is the test under Sections 1 and 2 of the Sherman Act. *Standard Oil Co. of New Jersey v. United States*, 221 U. S. 1 (1911); *United States v. American Tobacco Co.*, 221 U. S. 106 (1911). It is also the test under Section 7 of the Clayton Act:

> "Market shares are the primary indicia of market power . . . The merger must be viewed functionally in the context of the particular market involved, its structure, history and probable future." *United States v. Continental Can Co.*, 32 U. S. L. Week 4642, 4646 (June 22, 1964).[15]

It is also the test under Section 3 of the Clayton Act:

> "To determine substantiality in a given case, it is necessary to weigh the probable effect of the contract

---

14. The case could not involve a violation of Section 3 of the Clayton Act, because the Atlantic-Goodyear contract does not involve a lease or sale; nor could it involve a violation of Section 7, because there is no merger or acquisition of stock or assets. However, both the Commission and the Court of Appeals spoke generally in Clayton Act terms. They said that the Atlantic-Goodyear contract results in an "integration" of Atlantic's power over its dealers into Goodyear's distribution system, thus likening the contract to an acquisition or merger. Atlantic has always contended that the merger analogy overstates the facts and that the proper measure of legality is Section 1 of the Sherman Act.

There are also inferences in the Commission's frequent references to "foreclosure" that the sales commission plan should be likened to exclusive dealing.

15. As this Court said in *Brown Shoe Co. v. United States*, 370 U. S. 294, 343 (1962): "The market share which companies may control by merging is one of the most important factors to be considered when determining the probable effects of the combination on effective competition in the relevant market."

on the relevant area of effective competition, taking into account the relative strength of the parties, the proportionate volume of commerce involved in relation to the total volume of commerce in the relevant market area, and the probable immediate and future effects which pre-emption of that share of the market might have on effective competition therein. It follows that a mere showing that the contract itself involves a substantial number of dollars is ordinarily of little consequence." *Tampa Electric Co. v. Nashville Coal Co.*, 365 U. S. 320, 329 (1961).

Thus, the Commission's failure to meet normal antitrust standards is apparent and virtually admitted. The question is: was it required to do so when proceeding under Section 5?

Although the question has not yet been squarely decided, Atlantic believes that a fair reading of this Court's opinions construing Section 5 leads to an affirmative answer. *Federal Trade Commission v. Gratz*, 253 U. S. 421 (1920); *Federal Trade Commission v. Motion Picture Advertising Service Co.*, 344 U. S. 392, 395 (1953); and *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 647 (1931), all indicate that where a method of competition is challenged on the ground that it is anticompetitive, normal antitrust standards prevail.

The Court of Appeals for the Fourth Circuit adopted this view in reviewing a Section 5 proceeding, saying:

". . . Every restraint of trade is not a violation of the antitrust laws; the decisive question is whether it is an unreasonable restraint, and this depends on the significance of the restraint in relation to the particular market under investigation." *Asheville Tobacco Board of Trade, Inc. v. Federal Trade Commission*, 263 F. 2d 502, 511 (4th Cir. 1959).

The Attorney General's National Committee to Study the Antitrust Laws was of the same view. It said that

"proceedings thus brought under Section 5 ought not, in our opinion, circumvent the essential criteria of illegality prescribed by the express provisions of the Clayton Act" (Report of the Committee, p. 149). The same view has been taken by eminent authority.[16]

We appreciate the contention of the Commission that it must have broad powers to deal with practices outside the technical confines of other antitrust statutes, particularly in the case of incipient offenses. But this is not an incipiency case. When these proceedings were instituted, the sales commission plan had been used by Atlantic for five years and by other oil companies for decades. There had been ample opportunity for the effects of sales commission plans to manifest themselves. The Commission could, for example, have examined the percentage of Atlantic dealers' TBA purchases made under the plan to see whether it was increasing or decreasing. Or the Commission could have examined the shares of all oil company dealers' TBA purchases under all sales commission plans in a given market over a given period. But it chose to ignore these objective measures and to rely entirely on characterization.

The Commission will no doubt also argue that it need not "mathematically measure" any market shares. This misses the point. We are talking of a more fundamental requirement: that when an order in an antitrust case seeks justification in competitive effects, there must be *some* area of competition (the relevant market) in relation to which the effects are to be measured. And there must be

16. In the area of Sherman Act offenses, "harmonization of the Commission's exercise of section 5 jurisdiction requires the Commission to be held to the same substantive criteria as those established by judicial interpretations of the Sherman Act." Also, "Section 5 should impose upon the Commission the same burden of proof as the particular Clayton Act provision covering the 'economically equivalent' anticompetitive transaction or practice." Oppenheim, *Guides to Harmonizing Section 5 of The Federal Trade Commission Act with the Sherman and Clayton Acts*, 59 Mich. L. Rev. 821, 826, 836 (1961).

some measure to show the relationship between the effects and competition within the market. This is not a case of proof falling somewhat short of Sherman or Clayton Act standards. This is a case of no proof at all.

If the Commission is authorized by Section 5 of the Federal Trade Commission Act to enter sweeping orders affecting broad segments of American industry, it should be required to compile a record and an analysis showing the actual state of the market, the evils sought to be corrected, and the results to be anticipated from the order.

Ironically, if the Commission were to make such an investigation today, it might well find that the one significant market trend which was established by the record in 1956 has subsequently reversed itself. Both the Commission (65) and the Court of Appeals (*infra*, 18a) noted that service stations generally then constituted a large and increasingly important market for TBA. Trade surveys in more recent years indicate that service station operators have been falling behind in their competitive race with discount houses, mail order stores and department stores—as evidenced by a declining share of replacement tires passing through service stations. This makes it all the more important for service station operators to have the best possible TBA distribution system.

C. Is the Commission's Order Illogical and Inappropriate in That, Having Specifically Preserved Atlantic's Right to Distribute TBA, It Prevents Atlantic From Using the Method of Distribution Which Atlantic Has Found Most Advantageous for Itself and Its Dealers?

Atlantic dealers buy Goodyear TBA under the Atlantic program for many reasons. The merchandise is of excellent quality; the brand is well and favorably known to the motoring public; Atlantic provides technical training and product information not available from others; Atlantic also provides sales promotion assistance through display materials and promotional "events" to attract the motor-

ists to Atlantic stations in preference to discount houses, mail order stores and like competitors; Atlantic dealers have confidence in Atlantic's recommendations; and, finally, the program provides quick delivery from a convenient source—the Goodyear supply point. By requiring Atlantic to discontinue its sales commission arrangement with Goodyear, the Commission seeks to change none of the foregoing except the convenient source of supply. Thus the question is whether it is appropriate for the Commission to enter an order which will require Atlantic to offer a less attractive program to its dealers and will deprive many dealers of the distribution facilities that are vital to their TBA business. Is it logical for the Commission, having preserved TBA distribution by Atlantic, to outlaw the best method of accomplishing that distribution?[17]

In discussing Atlantic's argument that the first four paragraphs of the order (those that outlaw sales commission) are illogical, the Commission mentioned two alleged differences which it said justify prohibition of the sales commission method of distribution while permitting purchase-resale to stand (126 *et seq.*). These two differences are:

1. Under sales commission, the Commission said, Goodyear supply points have a competitive advantage.

2. According to the Commission, small tire companies cannot offer extensive distribution facilities, and therefore are at a disadvantage in competing with Goodyear for Atlantic's business.

In the last analysis, it is upon these two points that the Commission rests its case. Yet, as will be shown below, these points will not support the crucial distinction which the Commission assigns them.

---

17. The order of an administrative body should "be adapted to the situation which calls for redress." *NLRB v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348 (1938).

Claimed advantage to supply points. The Commission said that by reason of the business they acquire under the sales commission plan, Goodyear supply points obtain an advantage over their competitors. As indicated earlier, the Commission did not attempt to prove the relative amount of business involved. Moreover, the Commission overlooked the fact that under the purchase-resale plan, Atlantic also availed itself of supply points. Indeed, many of the Atlantic dealers who served as Atlantic supply points under purchase-resale became Goodyear supply points under sales commission.

Furthermore, the Commission assumes, without proof, that the status of supply point confers a competitive advantage. What scanty material is available in the record indicates that supply point business may well be neither attractive nor profitable. The Commission rested its order on the assumption that the status of supply point conveys a decisive competitive advantage, yet it did not produce a single Goodyear dealer who desired to be a supply point and was not afforded that opportunity.

Claimed disadvantage of small manufacturers. The Commission said that small tire companies lack distribution systems to implement sales commission plans, and are therefore unable to offer such plans to oil companies in competition with larger tire companies like Goodyear. In this concern for small tire companies, the Commission wholly ignored the competitive problems of small oil companies, and this despite the fact that the record before it was replete with the problems of just such a company. Atlantic, a company much smaller than the industry giants, found itself unable to provide under purchase-resale the extensive distribution needed by its dealers. Its distribution problems are just as deserving of consideration as those of a small tire company.

Industry's answer to the distribution problems of small tire companies and small oil companies has been to develop the two alternate distribution methods. Small oil companies

without distribution facilities can avail themselves of TBA supply points through the sales commission plan. Small tire companies without distribution facilities can avail themselves of the distribution facilities of large oil companies by purchase-resale. The Commission's argument provides no basis for distinguishing between the two methods.

Additionally, the Commission's order, while penalizing Atlantic in its competition with other oil companies, will not necessarily or even probably assist small tire companies in their competitive efforts. There is no reason to expect that Atlantic, if forced to return to purchase-resale, will do so with a small tire company. As a matter of fact, Atlantic's previous purchase-resale experience with a relatively small tire company indicates quite clearly that Atlantic would be better off, if it is forced to resume purchase-resale, to choose as its supplier a nationally known company with wide consumer acceptance.

D. May the Commission Outlaw All Sales Commission Contracts on the Basis of the Competitive Effects of a Particular Contract Between the Individual Respondents?

The scope of the order should be reviewed in the light of the grounds advanced by the Commission to support it. The order purports to be founded upon an analysis of the competitive effects of a particular sales commission contract between a particular oil company (Atlantic) and a particular TBA supplier (Goodyear). However, the Commission makes no effort, and on this record none could be made, to show that the facts it recites about Atlantic and Goodyear are applicable to oil companies generally or to TBA suppliers generally.[18] Many of them, by their very nature, must be unique to the respondents in this proceeding. Nevertheless, the order outlaws all sales commission plans.

18. The Commission was careful to state that its order was based solely on the record in this case and did not include consideration of the companion cases (130).

The only precedent cited by the Court of Appeals in upholding the scope of the order is this Court's decision in *Federal Trade Commission v. Ruberoid Co.*, 343 U. S. 470 (1952), which says that the Commission is not limited to prohibiting illegal practices in the precise form in which they are found to have existed in the past, but must be allowed to close all roads to the prohibited goal so that its order may not be bypassed with impunity. In this case the Commission has far exceeded its authority under *Ruberoid*. The order not only prevents bypass by the same parties under substantially the same circumstances, it outlaws the practice for all parties under all circumstances and without regard to the presence or absence of the competitive factors which the Commission, itself, said were decisive.

II. The Decisions Below Are in Conflict With Decisions of This Court.

A. In Contravention of the White Motor Decision, the Court of Appeals Affirmed the Commission's Creation of a New Category of Per Se Violation Without Considering the Business Justifications Involved.

The Commission's order, taken with its orders in Firestone-Shell and Goodrich-Texas, creates, in practical effect, a new category of *per se* violation—sales commission plans in the oil industry.

Per se violations are those which "because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *Northern Pacific Ry. v. United States*, 356 U. S. 1, 5 (1958). Under this Court's decision in *White Motor Co. v. United States*, 372 U. S. 253 (1963), no practice not previously examined by this Court should be outlawed *per se* without a full examination of the busi-

ness purposes advanced in justification thereof, to see whether a conclusive presumption is warranted. Neither the Commission nor the Court of Appeals addressed itself to this question. They were content to recite the supposed anticompetitive effects of the Atlantic-Goodyear sales commission contract. They made no examination of the business purposes advanced in its support, which are briefly outlined below.

In the first place, it should be noted that neither the Commission nor the Court disputed the legitimate interest that an oil company has in the marketing of TBA through its dealers. The Court of Appeals found that:

> "TBA is an integral part of service station operations. Dealers must carry it in order to give complete service to motorists and to operate their stations at a profit. There are a large number of TBA items available to dealers, and there are constant changes and production developments in TBA of which the dealers must be trained and kept informed. Every major oil company offers some kind of TBA program to give training and advice to its service station dealers" (*infra*, 7a).

The primary reason for Atlantic's change from purchase-resale to sales commission was to assure that every dealer, no matter how small or remote, would have a convenient source of supply for TBA. Obviously, this benefits the dealer. It also benefits the public. When a motorist burns out a headlight on a country road, he wants a replacement tonight, not tomorrow. Under purchase-resale Atlantic was unable to fill this need. Under sales commission it was in a better position to do so.

The plan is ancillary to Atlantic's primary business. Its object is not to exploit TBA—Atlantic's commissions scarcely pay the cost of the program—but to stimulate the

sale of gasoline.[19] The motorists who are the ultimate market for Atlantic gasoline cannot be expected to patronize Atlantic stations unless the stations are in a position to meet all the motorists' needs—and promptly.

The sales commission plan also benefits Atlantic in its competition with other oil companies. Atlantic is not a giant in the industry, but a comparatively small regional company. Because it lacks the resources for a distribution network of its own, Atlantic must resort to the sales commission plan to meet the competition of the majors. In the oil industry, sales commission plans are typically the competitive weapon of the lesser lights.

Under this Court's decision in *White Motor*, these facts should not have been ignored.

B. In Contravention of the Chenery Decisions, the Court of Appeals Invoked a New Ground for Affirming the Commission.

The Court of Appeals affirmed the Commission, not on the basis that the Commission's analysis of competitive effects was legally sufficient, but rather on the basis that the sales commission plan is inherently a tying arrangement. This is flatly contrary to this Court's holdings in *SEC v. Chenery Corporation*, 318 U. S. 80 (1943), 332 U. S. 194 (1947), that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.

In the instant proceeding the Court of Appeals said that when the Commission analyzed the sales commission

19. This distinguishes the case from a tying contract. It is not legitimate for a manufacturer to exact a profit from the sale of an unwanted product as a condition of selling the desired product. It is quite legitimate for Atlantic to offer an ancillary service (at no profit) in order to increase its sales of its principal product. It is all the more legitimate when the arrangement benefits every Atlantic dealer, since all of them have a mutual interest in promoting sales of Atlantic gasoline.

plan, it "found, in effect, a tying arrangement inherently anticompetitive" (*infra,* 17a). But, as shown above, the Commission (absent coercion) made no such finding. The heart of the Commission's legal theory is this paragraph from its opinion:

> "But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases. The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents." (124)

The Commission is not saying that the sales commission plan is a tying arrangement, and it is not saying that the sales commission plan is inherently anticompetitive. Instead, it is explicitly recognizing that any power Atlantic may have is independent of the method of distribution used; and that the method selected is only illegal if an evaluation of competitive effects proves it so.

The battleground chosen by the Commission was competitive effects. Under *Chenery,* the Court of Appeals may not choose another.

CONCLUSION.

For the foregoing reasons, it is submitted that this petition for certiorari should be granted.

Respectfully submitted,

FREDERIC L. BALLARD, JR.
CHARLES I. THOMPSON, JR.
Land Title Building
Philadelphia, Pa. 19110

ROY W. JOHNS
JOEL L. CARR
260 South Broad Street
Philadelphia, Pa. 19101

Attorneys for Petitioner, The Atlantic Refining Company

BALLARD, SPAHR, ANDREWS & INGERSOLL
Land Title Building
Philadelphia, Pa. 19110
Of Counsel.

APPENDIX A.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 13339 AND 13340

SEPTEMBER TERM, 1963 JANUARY SESSION, 1964

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner,* v. FEDERAL TRADE COMMISSION, *Respondent.* THE ATLANTIC REFINING COMPANY, *Petitioner,* v. FEDERAL TRADE COMMISSION; *Respondent.*	Petitions to Review and Set Aside Order of the Federal Trade Commission.

April 24, 1964

Before SCHNACKENBERG, CASTLE, and SWYGERT, *Circuit Judges.*

SWYGERT, *Circuit Judge.* The Goodyear Tire & Rubber Company and the Atlantic Refining Company request a review of the Federal Trade Commission order based upon

a complaint charging a violation of section 5 of the Federal Trade Commission Act [1] and which challenged the legality of distribution of tires, batteries, and automobile accessories (TBA) to service stations under a sales commission agreement between petitioners.

Goodyear is an Ohio corporation engaged in the manufacture, sale, and distribution of rubber products, including tires and inner tubes. It is the largest manufacturer of these products in the United States.

Atlantic, a Pennsylvania corporation, is a major producer, refiner, and distributor of gasoline and other petroleum products. It markets its products in seventeen states along the eastern seaboard.

The complaint issued by the Commission alleged that Atlantic produces and sells petroleum in commerce to wholesale distributors, automobile service stations, and others; that the distributors and retailers, ostensibly independent, nevertheless, are under the domination and control of Atlantic; that Goodyear and Atlantic entered into a sales commission contract whereby Atlantic agreed to promote the sale of Goodyear products, that is, tires, batteries, and accessories (TBA), to Atlantic's distributors and service station dealers located in a part of Atlantic's sales territory; that Atlantic had a similar contract with Firestone Tire & Rubber Company for the balance of Atlantic's territory; and that Goodyear had similar contracts with a number of other oil companies which, like Atlantic, dominate and control their distributors and service station dealers. The complaint further alleged that Atlantic is paid a sales commission by Goodyear and Firestone on their products which are sold by Atlantic's distributors and service station dealers. The complaint charged that

---

[1] Federal Trade Commission Act § 5(a)(1), 66 Stat. 632 (1952), 15 U.S.C. § 45(a)(1) (1958), reads as follows:

> Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are declared unlawful.

by the use of the sales commission agreement and the practices of the two companies thereunder, Atlantic and Goodyear have restrained competition in the sale of TBA, and committed unfair acts and practices proscribed by section 5 of the Federal Trade Commission Act.

The hearing examiner dismissed the complaint against Goodyear, upholding the legality of the sales commission contract, but found that Atlantic had violated section 5 of the act by forcing a substantial number of its dealers to purchase Goodyear TBA. The examiner's order against Atlantic prohibited future actions of coercion.

Both Atlantic and general counsel for the Commission appealed from the examiner's ruling. The Commission sustained the examiner's finding that Atlantic had coerced its dealers to purchase sponsored TBA but held that the coercion was symptomatic of a more fundamental restraint of trade, inherent in the sales commission plan itself. The Commission said that the principal issue raised by the complaint was the legality of the Goodyear-Atlantic contract. It noted, however, that Atlantic had a similar agreement with Firestone and that Goodyear had like agreements with a number of oil companies other than Atlantic.

The Commission determined that the sales commission method of marketing TBA is "a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." It found that Atlantic, which sells gasoline, has used its economic power over its dealers to cause them to carry substantial amounts of a different product, TBA; also, that the effects of the sales commission system are anticompetitive at the manufacturing, wholesale, and retail levels. It found that Goodyear's manufacturing competitors have been substantially precluded from selling TBA to the Atlantic service stations assigned to Goodyear; that wholesalers of TBA have also been substantially precluded from selling to Atlantic's service stations;

that Goodyear wholesalers who are not supply points have been similarly restricted; and that Atlantic service station dealers have been restrained in marketing nonsponsored TBA. Finally, the Commission found that the public has suffered because lack of competition among the service stations' suppliers of TBA has precluded the possibility of price reductions to the consumer.

The Commission based these conclusions on the components of the sales commission system which include advance notice to Goodyear and Firestone of the selection of new dealers by Atlantic, training schools for Atlantic dealers in which Goodyear and Firestone TBA are used in demonstrations, sales solicitation by Atlantic salesmen of sponsored TBA from dealers, double teaming, use of a reporting technique whereby the tire company reports to Atlantic the TBA purchases of each dealer, Atlantic's recommendation to each dealer of a minimum Goodyear or Firestone TBA inventory, and Atlantic's assistance in advertising, and providing credit card facilities for the sale of sponsored TBA.

Upon finding the sales commission system an unfair method of competition, the Commission revised and expanded the examiner's order. The order of the Commission not only prohibits Atlantic from coercing its distributors and dealers to purchase a particular brand of TBA but also forbids its participation in any sales commission arrangement for the distribution of TBA. Further, the order prohibits Goodyear's participation in any sales commission arrangement with Atlantic or any other oil company for marketing its TBA.

Upon a consideration of the record as a whole, we conclude there was substantial evidence to support the Commission's ultimate findings and conclusions and that its order should be affirmed in all respects.

To narrate all relevant facts would extend our discussion unduly; we undertake a summary.

Atlantic's Operations.

Atlantic has three major kinds of customers: wholesale distributors, retailers, and commercial accounts; the last class was not involved in the administrative proceeding.

Wholesale distributors maintain their own storage facilities and resell Atlantic's products under its brand names to their retail customers, including service stations. In 1956 there were 236 Atlantic distributors selling to 2,897 service stations.

Retail dealers who purchase directly from Atlantic are of two classes: lessee-dealers, that is, service station operators who do not own their stations; and contract dealers, station operators who own their stations or lease from parties other than Atlantic, or operate garages, grocery stores, and similar establishments. The company had 5,537 direct retail dealers in 1956. Lessee-dealers accounted for approximately thirty-nine per cent of Atlantic's total gasoline sales in 1955 and the contract dealers eighteen per cent.

The usual lease between Atlantic and its lessee-dealers provides for a one year term with automatic renewal from year to year unless written notice is given before the expiration of any term. When the lease is executed the dealer is required to sign an "Eleven Point Lease Letter" which prescribes operational standards for the service station. These include housekeeping, use and upkeep, display, illumination, personnel, hours of operation, services, adequate inventory, sales promotion, prices, and accounting. The standards are enforced by Atlantic through the surveillance of its sales personnel and so-called "phantom customer inspectors."

The Commission found that the eleven point letter is an integral part of the lease; that Atlantic at its option may terminate the lease in the event of its breach; and further, if a dealer violates any of the requirements of the letter, he is warned that the lease will be cancelled unless the noncompliance is remedied within fifteen days.

Atlantic adopted a policy in 1953 providing that any lessee-dealer who establishes a two year record of satisfactory operation is eligible for a three year lease. Moreover, Atlantic after 1953 no longer required its dealers to purchase Atlantic products except lubricants. The record shows, however, Atlantic's dealers handle its products exclusively.

In 1956 fifty per cent of the 3,044 Atlantic contract dealers operated service stations; the others operated grocery stores, garages, and similar outlets (outlets other than service stations ordinarily do not handle TBA).

Although contract dealers do not lease their stations from Atlantic, they usually enter into two kinds of agreements with the company, one providing for loans of station equipment and the other for the purchase of a minimum amount of gasoline. The loan agreements for equipment provide that Atlantic will install but the dealer must maintain the equipment (gasoline pumps, storage tanks, signs, compressors, etc.). The agreements ordinarily are for a one year term but may be terminated by notice of either party at the end of the original or any subsequent term. Atlantic may repossess its equipment upon termination of the contract; however, if the agreement is cancelled because of a breach by the dealer, Atlantic requires him to pay both the cost of installation and removal of the equipment or Atlantic has the option to leave the equipment and require him to pay for it.

Atlantic makes the same type of contract with its wholesale distributors for the purchase of gasoline as required of its contract dealers. The company, moreover, reserves the right to change the service stations' source of supply from Atlantic itself to its distributors.

Goodyear's Operations.

Goodyear has tire factories in five states. It also has fifty-seven warehouses from which its tires and the accessories it markets are distributed to wholesale and retail

outlets. The batteries which Goodyear sells are distributed directly by the companies manufacturing them.

Goodyear operates approximately 500 company owned wholesale-retail stores throughout the United States. It also has more than 12,000 independent franchised dealers as well as a number of unfranchised dealers; both sell at wholesale and retail.

TBA.

TBA is an integral part of service station operations. Dealers must carry it in order to give complete service to motorists and to operate their stations at a profit. There are a large number of TBA items available to dealers, and there are constant changes and production developments in TBA of which the dealers must be trained and kept informed. Every major oil company offers some kind of TBA program to give training and advice to its service station dealers.

Atlantic's Purchase-Resale Plan.

For a number of years before Atlantic entered into sales commission contracts with Goodyear and Firestone, it merchandised TBA under a plan known as "purchase-resale."

Under this plan the oil company sells to its dealers at wholesale TBA products which it has purchased and warehoused. The products are merchandised either under the labels of various manufacturers or under the oil company's own labels. Atlantic under its purchase-resale plan bought Lee tires from the Lee Tire and Rubber Corporation, Exide batteries from the Electric Storage Battery Company, and various accessories from other suppliers, and sold these products to its wholesale distributors and retail dealers. Between 1948 and 1950 Atlantic's sales of TBA to its distributors and dealers amounted to $22,000,000.

Atlantic became increasingly dissatisfied with the purchase-resale plan. It asserts that outside of the Phila-

delphia area the ready availability of Lee tires diminished and it could not give a good delivery on batteries or keep them properly charged. It asserts further, that its warehouses were unsuited for handling accessories, and it was difficult to maintain an adequate supply of TBA to meet the demands of its dealers.

In 1948 and 1949 Atlantic conducted a survey of its dealers to determine their preferences of brands, sources of supply, and other aspects of TBA marketing. Sixty-seven per cent of the dealers interviewed preferred Lee tires and seventy-nine per cent preferred Exide batteries over competing brands. Only eleven per cent preferred carrying Goodyear tires and four per cent Firestone. A majority preferred to purchase their TBA from more than one source because of price advantage and variety of brands. Nevertheless, Atlantic, after conducting experiments under sales commission arrangements with both Firestone and Goodyear, entered into sales commission contracts with these companies, effective March 1, 1951, covering its entire marketing area and assigning a portion of its sales territory to each company.

While negotiating the Goodyear and Firestone contracts, Atlantic asked certain battery manufacturers whether they would offer a program similar to that of Goodyear or Firestone. Several manufacturers indicated an interest. However, both Goodyear and Firestone said they would refuse to sell only tires under the sales commission plan and insisted that they be allowed to handle batteries and accessories as well as their own products.

In order to effect the transition to the new plan, Atlantic held numerous meetings with its dealers at which its own representatives and those of Goodyear or Firestone explained the new program. The dealers were told that the plan was a change in company policy; that Atlantic wanted them to carry Goodyear or Firestone TBA rather than Lee tires and Exide batteries and that the switch would be to the dealers' benefit. Letters were also sent to the

dealers advising them of the availability of the new TBA program and urging them to take advantage of it. A Goodyear representative commented on the arrangement with Atlantic, "After years of courtship Atlantic and Goodyear have wed," and "We welcome wholeheartedly this merger."

To commence the plan, Atlantic gave Goodyear and Firestone the names of its dealers in their respective territories so that their advertising could be installed at the service stations. Under Atlantic's policy this meant that only Goodyear or Firestone identifications were to be displayed at Atlantic stations. Atlantic salesmen accompanied either by Goodyear or Firestone salesmen contacted the dealers concerning the change-over to sponsored TBA, and Atlantic received progress reports from Goodyear and Firestone. The reports included the names of dealers who refused to permit the installation of Goodyear or Firestone signs.

Within nine months after the sales commission system was inaugurated, Lee and Exide lost seventy-five per cent of their Atlantic sales notwithstanding the dealers' previous indication of a preference for these products. By October, 1951 ninety-seven per cent of Atlantic's New England region dealers and ninety-six per cent of its New York region dealers had signed with Goodyear. Firestone also signed virtually all the Atlantic dealers in its territory.

The Sales Commission System.

The sales commission contract between Goodyear and Atlantic and the contract between Firestone and Atlantic are similar. Under the contracts, Atlantic assigned to Goodyear its New England, New York, and Philadelphia-New Jersey marketing regions and to Firestone its eastern Pennsylvania, western Pennsylvania, and southern regions.

By the terms of the Goodyear contract, Atlantic receives a commission on all Goodyear TBA sold to Atlantic

dealers in the territory assigned to Goodyear in return for Atlantic's efforts and cooperation in promoting the sale of Goodyear TBA to those dealers. Atlantic's contractual assistance to Goodyear includes continuous efforts, suggestions, and counseling its dealers that they maintain adequate Goodyear stock, joint calls with Goodyear salesmen upon the dealers, and the institution of a dealer TBA training program.

An important part of the Goodyear contract is the assignment of each Atlantic dealer to a specific supply point designated by the tire company. The supply point is a TBA wholesaler who may be a Goodyear company operated store, a franchised Goodyear dealer, or an Atlantic service station dealer or distributor who at the same time is a franchised Goodyear wholesaler. Atlantic receives ten per cent commission [2] on all purchases of Goodyear TBA made by its retail dealers from the tire company's supply points and seven and one-half per cent on purchases by Atlantic's wholesale distributors.

When Atlantic selects a new retail dealer, at least three separate interviews are held with the applicant at which the sales commission program with Goodyear is explained. The dealer is told that most Atlantic stations in the Goodyear territory are identified "Goodyear" and that it would be to his advantage to carry that company's products. When an applicant is selected but before he is given a lease, he attends an Atlantic training school where extensive discussions and demonstrations of Goodyear TBA are conducted. Atlantic's sponsorship of Goodyear TBA is explained. The prospective dealer is told what Goodyear inventory he should carry and that he should use approved Goodyear signs, decals, and advertising mats. Goodyear is advised of the opening of the applicant's station, and the

[2] Although termed a sales commission contract, the payments to Atlantic are not commissions on sales made by it but are override payments on sales made by Goodyear supply points to Atlantic's dealers.

new dealer is informed of the Goodyear supply point to which he has been assigned.

Atlantic establishes TBA quotas for its dealers which are considered "an agreed upon obtainable objective." Goodyear reports to Atlantic the monthly purchases of its products by each Atlantic dealer. This procedure enables the oil company to check on the dealers' progress in selling sponsored TBA and also serves as an accounting method for ascertaining the sales upon which Goodyear pays Atlantic its commission.

Atlantic salesmen police the dealers' contractual obligations with the oil company by contacting the dealers regularly. It is the salesman who makes the initial recommendation whether a dealer's lease or contract is to be renewed. Atlantic salesmen not only promote the sale of their own company's products but also Goodyear TBA; they help plan sponsored TBA promotions, they write up TBA orders, and they check the dealer's books to ascertain whether nonsponsored TBA has been purchased.

Under the sales commission system, the dealers are visited regularly by a Goodyear salesman accompanied by an Atlantic salesman. Goodyear considers "double teaming" an effective means of selling its TBA. This duality of sales effort is continued at dealer meetings by the presence of representatives of the tire company and the oil company.

Atlantic reserves control over the advertising and identification that may be displayed at its service stations. Its policy is that only sponsored TBA identification should be displayed. Moreover, Atlantic credit cards include TBA. From 1951 to 1953 the credit card facility was limited in Goodyear territory to Goodyear TBA.

The Supreme Court in *F. T. C. v. Cement Institute*, 333 U. S. 683, 693 (1948), indicated that the Federal Trade Commission Act grants "the Commission and the courts . . . adequate powers to hit at every trade practice then existing or thereafter contained, which restrained competition or might lead to such restraint if not stopped in

its incipient stages." The Commission has a latitude of flexibility within which it can restrain any new unfair method of competition "which the ingenuity of competitors may devise." [3]

Unfair methods of competition proscribed by section 5 of the Federal Trade Commission Act cannot be classified rigidly into categories of business methods that stifle competition. Labeling at times is more harmful than helpful in formulating conceptions that correspond with reality.

Although petitioners contest the view of the general counsel that the Commission grounded its order on the existence of an illegal tying arrangement, the Commission found that the sales commission system is, *in effect,* such an arrangement. It went on to explain, however, that because of the peculiar features of the system, it did not rest its decision on a "mechanical application of the rule of the *Northern Pacific* and *Osborn* cases." [4] The Commission said:

> The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The heart of this case is the economic power Atlantic possesses over its service station dealers. Ostensibly, they

---

[3] S. Rep. No. 597, 63d Cong., 2d Sess. 13 (1914).

[4] *Northern Pac. Ry. v. United States,* 356 U. S. 1 (1958); *Osborn v. Sinclair Refining Co.,* 286 F. 2d 832 (4th Cir. 1960).

are independent businessmen; but behind the legalistic facade of independence, there exists a servitude caused by the coercive pressures which Atlantic exerts upon its dealers. The keystone of the actual relationship between Atlantic and its dealers is the lease and the equipment loan contract with their short term and cancellation provisions. Without repeating all the components of the relationship, it is evident that the service station dealer is more of an economic serf than a businessman free to purchase the TBA of his choice. We believe the Commission, in evaluating the evidence, correctly found that if a dealer wishes to continue in good standing with the company and retain his lease or contract, it is advantageous that he carry sponsored TBA.

On the issue of coercion the examiner said:

> It is clear from the record in this proceeding that the Atlantic dealers did not consider the nonforcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the change-over and prospective dealers thereafter had the right to select or reject the TBA sales program offered by Atlantic. The prospective dealer making application for an Atlantic station would not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salesmen insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

He concluded that "coercion and pressure were used [by Atlantic] on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of nonsponsored items."

The Commission affirmed the examiner's finding of coercion. It said that although the proclaimed policy of Atlantic has been to permit its dealers to carry whatever TBA they choose, the policy in practice is ignored and the dealers "have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA."

The Commission referred in particular to witnesses representing suppliers competing with Goodyear and Firestone who testified that the dealers responded negatively to their sales efforts because the dealers felt they were required to purchase sponsored TBA. There was evidence that if the dealers purchased nonsponsored TBA, they were told by Atlantic to return it or, in any event, not to display it. There was also testimony that leases had been cancelled or allowed to terminate because dealers had purchased nonsponsored TBA.

Atlantic contends that the finding of coercion is not supported by substantial evidence. It says that the finding rests on the testimony of only thirteen dealers out of more than five thousand; that these isolated instances of "unauthorized" coercion are insufficient to establish a violation of Atlantic's "free choice policy." We disagree. The evidence relating to overt coercive tactics, although not extensive, must be considered with the testimony of the witnesses representing competing suppliers to the effect that the dealers felt that if they did not carry sponsored TBA they risked reprisal. Also to be considered are the policing tactics of Atlantic's salesmen and the surveillance by the so-called phantom customer inspectors. Moreover, it should be noted that the examiner, in considering the testimony of the dealers who testified for Atlantic, recog-

nized that these witnesses "were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases."

Atlantic's contention that sporadic reprisals against dealers are an insufficient basis for finding coercion is answered in *United States v. Loew's Inc.*, 371 U. S. 38, 50 (1962). There, the Court said:

> Appellants . . . make the . . . argument that each of them was found to have entered into such a small number of illegal contracts as to make it improper to enter injunctive relief. . . . We disagree. Illegality having been properly found, appellants cannot now complain that its incidence was too scattered to warrant injunctive relief.

Atlantic's power to cause its dealers to carry either Goodyear or Firestone TBA does not depend upon overt coercive methods. The totality of facts surrounding the relationship between the oil company and the dealers points to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA.

Atlantic says that its influence over its dealers to purchase sponsored TBA short of force, threat, or intimidation is lawful; that it may recommend high quality TBA to its dealers; and that such action serves as a legitimate business purpose in the promotion of the sale of gasoline. This would be a persuasive argument except for the dealers' economic dependency upon the oil company. In that setting, recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats.

Osborn v. Sinclair Refining Co., 286 F. 2d 832 (4th Cir. 1960), although a private suit under the antitrust laws, dealt with a sales commission contract similar to the one before us. Osborn, a dealer, charged that his lease was

cancelled because he had not purchased sufficient quantities of Goodyear TBA. The court of appeals held that an illegal "arrangement or condition," a tie-in, existed between the oil company and its dealers which permitted the plaintiff to recover. Although the court was not specifically concerned with the legality of the Goodyear-Sinclair sales commission contract, it held that, "the Goodyear TBA was tied to the lease and the sale of the gasoline." Chief Judge Sobeloff characterized the arrangement thus:

> The perniciousness of the imposed tie-in is aggravated by the fact that the defendant [Sinclair] is not even in the business of selling the tied products, but is employing its economic power in the gasoline industry to force his dealers to do business with a supplier in another industry under an arrangement that yields the defendant an extraneous revenue. The defendant in this case goes a step further than the supplier in the usual tie-in case, for here the tied product is not even handled or sold by the defendant, but it farms out to another, for a price, its coercive economic power.

We think this an apt characterization of the Goodyear-Atlantic sales commission system.

It is true that Goodyear's contract with Atlantic in itself has no tying features. Only when the contract is considered contextually with the oil company-dealer relationship and the economic power that Atlantic has over its dealers does its tying feature emerge. Manifestly, the system was designed to exploit Atlantic's created and controlled service station market. The Commission properly, we think, decided that the system integrates Atlantic's economic power over its service station market into the Goodyear TBA distribution system, thus giving Goodyear, for a price, a captive market.

As pointed out in *McElhenney Co. v. Western Auto Supply Co.*, 269 F. 2d 332 (4th Cir. 1959), an illegal understanding (such as a tying arrangement) may be implied

from a course of dealing between the parties. Here, the tying arrangement *is* the sales commission system operated by Goodyear and Atlantic. In its narrower aspects the system is a tying arrangement because it requires the buyer of one product, the service station dealer who purchases Atlantic gasoline, to buy another line of merchandise, Goodyear TBA. Surrender by the dealer of his freedom to choose between brands of TBA is *per se* illegal if a "not insubstantial" amount of interstate commerce is affected. *Northern Pac. Ry. v. United States*, 356 U. S. 1 (1958); *International Salt Co. v. United States*, 332 U. S. 392 (1947).

Appraising the broader aspects of the system as a tying arrangement, we think the Commission correctly determined that the system injures competition in the distribution of TBA at the manufacturing, wholesale, and retail levels. Interbrand competition for the Atlantic service station TBA market is foreclosed to Firestone in Goodyear's territory and Goodyear is foreclosed from selling to the service stations in Firestone's territory. Moreover, the record substantiates the Commission's finding that suppliers of TBA competing with Goodyear and Firestone are substantially foreclosed from selling their products to Atlantic dealers. Atlantic's service station market is fenced off so as to make it unavailable to both manufacturers and wholesalers of competing brands.

Intrabrand competition is perniciously affected. Restraint results inevitably from the designation of a single supply point for TBA sales to the Atlantic dealer. Other Goodyear wholesalers cannot compete with the supply point dealer for the business of the Atlantic service stations in his territory.[5]

We are convinced that the Commission correctly analyzed the sales commission system and found, in effect, a tying arrangement inherently anticompetitive. It is anti-

[5] Of the 1,155 independent Goodyear dealers in Atlantic's marketing area, only 128 were acting as supply points for Atlantic service stations.

competitive largely because competition for the business of the individual service station is replaced by competition for the oil company's domination of its dealers.

The Commission found that service stations constitute a large and necessary market for TBA and evaluated the Goodyear-Atlantic sales commission system in relation to Atlantic's seventeen-state service station TBA market. Atlantic has nearly seven thousand service stations in this territory. As of 1955 Goodyear had signed TBA contracts with 2,183 of the 2,248 Atlantic service stations in the eight-state territory assigned it. As of 1955 Firestone had signed virtually all the 4,698 Atlantic stations in the ten-state area assigned it. Goodyear's TBA sales to Atlantic dealers rose from approximately two and one-half million dollars in 1951 to more than five and one-half million dollars in 1955. Firestone's sales to Atlantic dealers increased from $3,243,350 in 1951 to $5,562,936 in 1955. Total Goodyear and Firestone sales under the Atlantic contracts from June, 1950 to June, 1956 was more than $52,000,000. Atlantic's stations constitute 3.4 per cent of the total number of service stations in the United States and it sells 2.5 per cent of the gasoline sold in the nation.

We believe the foregoing facts adequately demonstrate that a substantial amount of commerce has been affected by Atlantic's contracts with Goodyear and Firestone. These facts also demonstrate that Atlantic has sufficient economic power in the gasoline market to restrain a substantial amount of commerce in the service station TBA market within the territory serviced by Atlantic. Therefore, the Goodyear-Atlantic sales commission system is within the "substantiality of economic effect on commerce" test defined in *Northern Pac. Ry. v. United States, supra,* and *Standard Oil Co. v. United States,* 337 U. S. 293 (1949). *Cf. Osborn v. Sinclair Refining Co., supra.*

Goodyear contends that the provision in the Commission's order prohibiting it from entering into sales commission contracts with any oil company is not supported by substantial evidence. Atlantic makes a similar contention that the order is too broad because it prohibits the oil

company's participation in a sales commission arrangement with any TBA supplier.

We think the Supreme Court answered petitioners' contentions in *F. T. C. v. Ruberoid Co.*, 343 U. S. 470, 473 (1952), when it said:

> Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. In carrying out this function the Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.

Petitioners' contention that the Commission's findings are inadequate and do not meet the requirements of section 8 of the Administrative Procedure Act, 5 U. S. C. § 1007(b), is without merit.

Moreover, we are not persuaded by Atlantic's contention that the hearing examiner, in making his decision, considered evidence outside the record since he heard a similar complaint filed against Firestone and Shell Oil Company; nor are we persuaded by Goodyear's contention that the finding of the violation against it is based on evidence admitted against Atlantic but struck as to Goodyear. While the examiner received evidence concerning both the Firestone-Atlantic and the Firestone-Shell sales commission contracts, we are satisfied that the findings of both the examiner and the Commission were based on proper and sufficient evidence and that there was no denial of procedural due process.

The Commission's order is affirmed and will be enforced.

APPENDIX B.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.
Chicago, Illinois, 60610

Friday, April 24, 1964.

Before

HON. ELMER J. SCHNACKENBERG, *Circuit Judge.*

HON. LATHAM CASTLE, *Circuit Judge.*

HON. LUTHER M. SWYGERT, *Circuit Judge.*

Nos. 13339, 13340.

THE GOODYEAR TIRE & RUBBER COMPANY, THE ATLANTIC REFINING COMPANY, *Petitioners,* *v.* FEDERAL TRADE COMMISSION, *Respondent.*	Petitions for review of an order of the Federal Trade Commission.

This cause came on to be heard on the petitions for review of an order of the Federal Trade Commission and the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is ordered by this Court that the order entered in this cause by the Federal Trade Commission on March 9, 1961, be, and the same is hereby AFFIRMED, and the order will be enforced, in accordance with the opinion of this Court filed this day. Upon presentation an appropriate decree will be entered.

APPENDIX C.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

THE ATLANTIC REFINING COMPANY,
Petitioner,
v.
FEDERAL TRADE COMMISSION,
Respondent.
No. 13340.

FINAL DECREE AFFIRMING AND ENFORCING ORDER TO CEASE AND DESIST.

The Atlantic Refining Company, a corporation, petitioner herein, having filed in this Court on May 10, 1961, a petition to review and set aside an order to cease and desist issued against it on March 9, 1961, by the Federal Trade Commission, respondent herein, in a proceeding before it entitled "In the Matter of The Goodyear Tire & Rubber Company, a corporation, and The Atlantic Refining Company, a corporation, Docket No. 6486;" and a copy of said petition having been served upon respondent; and the respondent having thereafter certified and filed in this Court a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument on January 9, 1964, and this Court having rendered its decision on April 24, 1964:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the prayer of the aforesaid petition to set aside the order of the Federal Trade Commission as to the petitioner herein be, and it hereby is, denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the order to cease and desist of the Federal Trade Commission be, and it hereby is, affirmed, and that petitioner be, and it hereby is, commanded forthwith to obey said order and to comply therewith.

By THE COURT:

ELMER J. SCHNACKENBERG,
Elmer J. Schnackenberg,
Circuit Judge.

LATHAM CASTLE,
Latham Castle,
Circuit Judge.

LUTHER M. SWYGERT,
Luther M. Swygert,
Circuit Judge.

Entered: May 20, 1964.

A True Copy:

Teste:

KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

Office-Supreme Court, U.S.
FILED
OCT 16 1964
JOHN F. DAVIS, CLERK

Nos. 292 and 296

In the Supreme Court of the United States

OCTOBER TERM, 1964

THE ATLANTIC REFINING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

THE GOODYEAR TIRE & RUBBER COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington, D.C., 20530.

JAMES McI. HENDERSON,
General Counsel,
Federal Trade Commission,
Washington, D.C., 20580.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION

These cases primarily involve the validity, under Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, of a so-called "sales commission agreement" between the petitioners Atlantic Refining Company ("Atlantic"), a large marketer of petroleum products (Pet. App. A–5),[1] and Goodyear Tire & Rubber Company ("Goodyear"), one of the nation's largest tire com-

[1] "Pet. App." refers to the separate appendix volume filed with the petition for a writ of certiorari in No. 296.

747-576—64——1

panies. Pursuant to this agreement, Atlantic promotes the sale of Goodyear tires, batteries and automotive accessories ("TBA") to Atlantic gasoline dealers in the northeast United States, in exchange for the payment of a commission to Atlantic measured by the amount of Goodyear sales to such dealers.[2]

The Federal Trade Commission, describing the Atlantic-Goodyear sales commission agreement as "a classic example of the use of economic power in one market [gasoline distribution] to destroy competition in another market [TBA distribution]" (Pet. App. B–64), held that the agreement and its implementation constituted an unfair method of competition in violation of Section 5; and entered an order prohibiting either company from entering into or continuing any such agreements (Pet. App. B–67–71). In two companion cases, *Federal Trade Commission* v. *Texaco, Inc. and The B. F. Goodrich Co.* (FTC Docket 6485) and *Federal Trade Commission* v. *Shell Oil Company and The Firestone Tire & Rubber Company* (FTC Docket 6487), the Commission held other sales commission agreements similarly illegal and entered similar orders. In the present cases the Court of Appeals for the Seventh Circuit unanimously upheld the Com-

[2] The agreement provides for the payment of a 10 percent commission on all sales of TBA to Atlantic dealer outlets, and a commission of 7½ percent on all sales of TBA to Atlantic franchise petroleum distributors. Atlantic entered into a similar agreement with the Firestone Tire & Rubber Co. covering its dealers in another part of the country (Pet. App. A–7–8). Petitioner Goodyear also had similar sales commission arrangements for distribution of its TBA through the outlets of 11 other oil companies (Pet. App. B–2). The validity of these other distribution arrangements also is involved in these cases.

mission's orders (331 F. 2d 394; Pet. App. C–1–19). In the *Texaco-Goodrich* cases however, the Court of Appeals for the District of Columbia Circuit (Judge Washington concurring in part and dissenting in part) reversed the Commission and remanded the cause to the agency with instructions to dismiss the complaint (*Texaco, Inc. et al.* v. *Federal Trade Commission,* Nos. 17,915 and 17,923, C.A.D.C., July 30, 1964).[2] The opinion in the *Texaco* cases is reprinted in the Appendix (App. pp. 1a–27a).

The Seventh and the District of Columbia Circuits, in respectively upholding and condemning the sales commission contracts, each looked to the evidence of the oil company's economic power over its dealers and the impact of the sales-commission agreement in the particular market involved. Because the decisions rest upon different records, they might not appear to involve any conflict as to the governing legal principles. There is, however, a basic inconsistency in the rationale of the two courts which underlies the differing results. This conflict in approach is epitomized, we believe, by contrasting the majority's statement in *Texaco-Goodrich,* that Texaco's "contracts with the dealers do not give rise" to "controlling economic power over its dealers" (App. p. 15a), with the Seventh Circuit's assertion, in *Atlantic-Goodyear,* that Atlantic had controlling economic power over its dealers and that the "keystone" of this power was the lease and equipment loan contracts between Atlantic and its dealers (Pet. App. C–12). The conflicting approaches are further

[2] In a proceeding to review the Commission's decision in *Shell-Firestone,* the Fifth Circuit has heard oral argument and the case is pending decision.

illustrated in the response of the two courts to the argument that an oil company should be permitted to "recommend" sponsored TBA to its dealers. The Seventh Circuit stated that because of the dealers' "economic dependency upon the oil company * * * recommendation [by Atlantic] is tantamount to command" (Pet. App. C–14–15) and agreed with the Commission that, viewed in the context of the oil company-dealer relationship, Atlantic's recommendation made the sales commission system of TBA distribution "in effect, a tying arrangement inherently anticompetitive" (Pet. App. C–17).[4] The *Texaco-Goodrich* majority, on the other hand, stated (App. p. 16a):

> An oil marketing company's recommendation to its dealers that they purchase a particular line of TBA, even though it receives a commission for doing so, is not incompatible with its primary business of selling petroleum products.

The government believes that in view of the conflicting rationale of these two courts of appeals, review by this Court is appropriate.[5] Moreover, the validity of these sales commission agreements presents an important question. Such agreements are widely

[4] See, also, *Osborn* v. *Sinclair Refining Company*, 286 F. 2d 832, 838–841 (C.A. 4), certiorari denied, 366 U.S. 963, and *Lessig* v. *Tidewater Oil Co.*, 327 F. 2d 459, 469 (C.A. 9), certiorari denied, 377 U.S. 993, where the courts indicated that the sales commission system of TBA distribution when utilized by an oil company with controlling power over its dealers is illegal.

[5] It is, moreover, inevitable that the pending decision of the Fifth Circuit in *Shell-Firestone* will be inconsistent with either the Seventh or the District of Columbia Circuit decision.

used and have a substantial economic impact in the marketing of tires, batteries and accessories and upon the relations of petroleum companies with their dealers. The uncertainties and inconsistencies that would result if these two decisions were permitted to stand, are readily apparent.

The government intends to file a petition for a writ of certiorari to review the decision of the District of Columbia Circuit. While we believe that the decision below in the present cases is correct we join with the petitioners in urging this Court to review it.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JAMES MCI. HENDERSON,
General Counsel,
Federal Trade Commission.

OCTOBER 1964.

APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,915

TEXACO, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

No. 17,923

THE B. F. GOODRICH COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Petitions to Review Order of the Federal Trade Commission

Decided July 30, 1964

Before WILBUR K. MILLER, WASHINGTON and BURGER, *Circuit Judges.*

WILBUR K. MILLER, *Circuit Judge:* Texaco, Inc. (formerly The Texas Company) and The B. F. Goodrich Company have filed separate petitions for review of an order of the Federal Trade Commission which was issued April 15, 1963, after proceedings which

will be described. The cases were heard together and will be disposed of in a single opinion.

On January 11, 1956, after an investigation which began at least as early as 1952, the Federal Trade Commission issued a complaint against the petitioners charging them with violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by engaging in unfair methods of competition in interstate commerce. Specifically, the object of the Commission's attack was the implementation of a contract between the two companies, entered into in 1940, in which Texaco undertook, in return for a commission, to promote the sale of Goodrich tires, batteries and accessories (TBA) to its thousands of dealers in its petroleum products. It was alleged that Texaco has entered into a similar contract with Firestone Tire & Rubber Company.

The complaint stated that influence and control over the purchasing and marketing activities of its dealers has been and is being exercised by Texaco "by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodrich and Firestone, the sellers designated by it." The acts and practices of Goodrich and Texaco under the commission contract, the complaint said,

> ". . . have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act."

Essentially, the complaint was that Texaco coerces its dealers, through economic pressure, to distribute Goodrich TBA and thus unfairly and unlawfully prevents Goodrich's competitors from selling TBA to Texaco's outlets.

Answers by the companies placed the essential allegations of the complaint in issue, after which evidentiary hearings were conducted over a period of nearly three years. They were concluded December 10, 1958. The examiner, in his initial decision issued October 23, 1959, found that Goodrich had not done anything to force Texaco outlets to buy its products; that there was neither charge nor proof that Goodrich had conspired with Texaco to restrain competition; and that the commissions paid by it under the contract were for substantial services rendered by Texaco in promoting the sale of its products. Accordingly, the initial decision of October 23, 1959, dismissed the complaint against Goodrich.

With respect to Texaco, the examiner found that the contracts between Texaco and its dealers do not contain any provision requiring the latter to purchase only Goodrich TBA. He said the commission paid to Texaco by Goodrich is based on substantial services rendered by Texaco in promoting the sale of Goodrich TBA, and added:

> "No inference or implication can be drawn, simply from the contractual relationship between Texas and its dealers, that the degree of control by Texas over its dealers is sufficient to force its dealers to purchase only sponsored TBA."

The examiner found, however, that

> ". . . the record in this proceeding *as a whole* indicates that coercion and pressure was [*sic*], in fact, brought on *a substantial number*

> *of dealers* to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items."[1] (Emphasis supplied.)

Pursuant to this, the examiner's initial decision of October 23, 1959, ordered Texaco to cease and desist from coercing its dealers into purchasing TBA from any particular supplier.

In keeping with the deliberate progress of this proceeding, the Commission did not act on the initial decision of October 23, 1959, until March 9, 1961. On that day it handed down an opinion in which it not only reversed the examiner's dismissal of Goodrich but also found

> ". . . that Texaco had sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. . ."

Proceeding from its assumption that Texaco had controlling economic power over its dealers, "even without the use of overt coercive tactics," the Commission said:

> ". . . The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the*

[1] This was a rather extraordinary conclusion in view of the fact that not one of Texaco's more than 38,000 dealers was called to testify before the examiner in support of the complaint. The examiner based the statement on the testimony of five former Texaco dealers who said they had been coerced, although five other former dealers and 54 active dealers called by Texaco said they had never been coerced or influenced in any way as to Goodrich TBA.

competitive effects of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

"At issue in this litigation, then, is the legality of a particular method of distributing TBA used by respondents. A key fact in evaluating the competitive effects of respondents' use of the sales commission method of distributing TBA is the fact that Texaco has sufficient economic power with respect to its retail and wholesale petroleum distributors to cause them to purchase substantial quantities of the brand of TBA sponsored or sold by Texaco. But such economic power is a fact existing independently of any particular method of distributing TBA which Texaco may use. Whether the sales commission agreements between Firestone and Texaco and Goodrich and Texaco are unlawful must depend, therefore, upon the characteristics and the competitive effects of these sales commission agreements. For reasons set forth hereinafter, we conclude that this case must be remanded in order that market data may be introduced to show the competitive effects of Texaco's sales commission agreements with Goodrich and Firestone upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels."

Having thus concluded that the legality of the sales commission agreements depends upon the "characteristics[2] and the competitive effects" of the agreements, the Commission closed its opinion by saying:

"However, the record in this case does not contain sufficient market data to enable the

[2] The "characteristics" of the agreements were of course fully known to the Commission, which had before it their complete text.

> Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents. The case will be remanded to the hearing examiner for the taking of evidence indicating the competitive effects of the sales commission contracts at the manufacturing, wholesale and retail levels of TBA distribution."

More than a year after the remand of March 9, 1961,[3] the examiner conducted hearings from July 16 to July 19, 1962, at which the only proof introduced was in the form of exhibits received over the objection of the petitioners. A new initial decision was filed by the examiner September 24, 1962. In it he incorporated the findings of fact of his first initial decision and made additional findings of fact based on the record as supplemented after remand. The examiner noted that he was bound by the Commission's reversal of his dismissal of Goodrich, and by its finding that Texaco has sufficient economic power over its dealers to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. He conluded that

> ". . . the only issue left for consideration of the hearing examiner under the terms of the Commission's opinion and order of remand, is the competitive effects of the sales commission plan used by Goodrich with The Texas Company, and whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice."

[3] A part of this period was consumed in the petitioners' unsuccessful attempt to enjoin further hearings.

The examiner disposed of the "only issue left for [his] consideration" by concluding that

> "The use of the sales commission plan of distribution of TBA by the respondents, The Texas Company and The B. F. Goodrich Company as herein found, has a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act."

In obedience to the Commission's order on remand, the examiner abandoned his former position, held Goodrich as a respondent, and concluded:

> "The use of the sales commission method of distribution by Goodrich was designed to take advantage of the economic control which Texaco had over its dealers, and by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers."

Although he had the first time dismissed Goodrich, and had merely ordered Texaco to cease and desist from the coercive practices he had found from the testimony of five ex-dealers, this time the examiner entered a broad order as to both respondents. He ordered Texaco to cease and desist from entering into or continuing in effect any contract with Goodrich or any other rubber company or tire manufacturer, or

any other supplier of tires, batteries or accessories, by the terms of which Texaco receives anything of value in connection with the sale of TBA to its dealers. The examiner ordered Goodrich to cease and desist from operating under its contract with Texaco and prohibited it from entering into a similar contract with any other marketing oil company.

The order of remand of March 9, 1961, was entered by a Commission composed of Chairman Kintner and Commissioners Secrest, Anderson and Kern. Accompanying it was the opinion to which we have referred, written by Chairman Kintner and concurred in by the other three members of the Commission. Shortly thereafter—on March 21, 1961—Earl W. Kintner was replaced as Chairman by Paul Rand Dixon, who had not been a member of the Commission theretofore. One of the acts of the new Chairman when he had been in office only a short time led to the phase of the proceeding which we shall now consider.

On February 18, 1963, before the Commission had acted on the examiner's new initial decision of September 24, 1962, Texaco filed a motion that Chairman Dixon withdraw from participation in the proceeding or that the Commission determine him to be disqualified. The basis of the motion was a speech made by Dixon before the National Congress of Petroleum Retailers, Inc., in Denver, Colorado, on July 25, 1961, while the case was pending before the examiner after remand and before any steps had been taken by him. In the course of his address, according to a press release issued by the Commission itself, the then newly appointed Chairman of the Commission said:

> "Your problems are many, and many of them are the problems of the Federal Trade Commission, too; for the Commission is concerned with promoting fair competition. More par-

ticularly, many of your problems are ours because they arise from practices prohibited by two of the most important statutes administered by the Commission—discriminatory pricing, prohibited by the Robinson-Patman Act, and other unfair acts, practices, and methods of competition, prohibited by the Federal Trade Commission Act.

* * * * * *

"We at the Commission are well aware of the practices which plague you and we have challenged their legality in many important cases.

"You know the practices—price fixing, price discrimination, and overriding commissions on TBA.

"You know the companies—Atlantic, Texas, Pure, Shell, Sun, Standard of Indiana, American, Goodyear, Goodrich, and Firestone.

* * * * * *

"Some of these cases are still pending before the Commission; some have been decided by the Commission and are in the courts on appeal. You may be sure that the Commission will continue and, to the extent that increased funds and efficiency permit, will increase its efforts to promote fair competition in your industry."

The Commission denied the motion that it determine Chairman Dixon to be disqualified, and he declined to withdraw from participation. Instead, he took part in the entry of the order of April 15, 1963, more than two years after the remand, which adopted the examiner's initial decision and order of September 25, 1962, which as we have seen, was adverse to Texaco and Goodrich and which is now under review. Before turning to the question whether the order of April 15, 1963, was supported by the record, we consider the propriety of Chairman Dixon's participation in that decision.

In *Gilligan, Will & Co.* v. *Securities and Exchange Comm'n*, 267 F. (2d) 461 (1959), the Commission, three days after commencing proceedings, issued a press release stating in effect that Gilligan, Will & Co. and others had violated Section 5 of the Securities Act of 1933. Although the Second Circuit held that petitioners' failure to make timely objection had waived their right to assert the defect of prejudgment, the Court strongly disapproved of the Commission's behavior. It said, at pages 468–9:

> "* * * [T]he Commission's reputation for objectivity and impartiality is opened to challenge by the adoption of a procedure from which a disinterested observer may conclude that it has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it. * * *"

In this case, a disinterested reader of Chairman Dixon's speech could hardly fail to conclude that he had in some measure decided in advance that Texaco had violated the Act.

We said in *Amos Treat & Co.* v. *Securities and Exchange Comm'n*, 113 U.S. App. D.C. 100, 107, 306 F. (2d) 260, 267 (1962):

> ". . . [A]n administrative hearing of such importance and vast potential consequences must be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a quasi-adjudicatory proceeding meet the basic requirement of due process."

The administrative hearing in the present case was certainly as important as that in the *Amos Treat* case, and has perhaps even greater potential consequences. We conclude that Chairman Dixon's participation in the hearing amounted in the circumstances to a denial

of due process which invalidated the order under review. If that were the only infirmity in the order, we should be constrained to remand the cases to the Commission for a *de novo* consideration in which Chairman Dixon does not take part. His Denver speech, made before the matter was submitted to the Commission but while it was before the examiner, plainly reveals that he had already concluded that Texaco and Goodrich were violating the Act, and that he would protect the petroleum retailers from such abuses.

But that is not all. The Supreme Court has said that in reviewing the substantiality of the evidence we must consider all the evidence including "the body of evidence opposed to the Board's view." *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 487–8 (1951). Viewed in this way we are convinced that the order of April 15, 1963, is not supported by substantial evidence on the record as a whole. The order under review, as we have said, adopted the examiner's initial decision and order of September 24, 1962, after slight modification. In it, the Commission said:

> "Respondents contend that the tables, surveys, and matters officially noticed by the examiner on remand were improperly admitted both because they are inappropriate objects for official notice and because respondents were afforded inadequate opportunity to rebut them.
>
> "It is not necessary to pass upon the correctness of these contentions, since the Commission excludes from its present decision any reliance upon the challenged evidence. It finds that the other evidence of record amply supports the conclusions and the order of the hearing examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber Co., et*

al., Docket 6486, March 9, 1961, and *Firestone Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961. . . ."[4]

Thus, in its consideration of the revised initial decision and order, the Commission expressly disclaimed any reliance upon the evidence introduced after remand and held that the evidence or record before the remand "amply supports the conclusions and order of the hearing examiner." This was the same record which the Commission on March 9, 1961, had said "does not contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents."

But, in successfully resisting an action in the District Court by Texaco and Goodrich to enjoin the remand, the new Commission contended that it "needed additional evidence in order to decide the issues presented." It asserted that the opinion of March 9, 1961, ordering the remand showed that the Commission "is not seeking a retrial of matters already tried but rather envisions supplementary evidence on what it considered to be significant facts in any assessment of the competitive effects of the sales commission agreements. . . ."

Despite these representations, the Commission on April 15, 1963, contrary to the former Commission's determination that the record did not justify such a finding, found the petitioners in violation of Section 5 of the Federal Trade Commission Act on the basis of that record. It adopted the examiner's revised

[4] It is perhaps not without significance that Commissioner Anderson, the only member of the Commission as constituted on April 15, 1963, who had participated in the remand of March 9, 1961, did not concur "for the reason that the command of the remand order of March 9, 1961, has not been met and complied with . . . ."

order which prohibited Goodrich from entering into sales commission agreements with Texaco or any other marketing oil company, and prohibited Texaco from entering into such agreements with Goodrich or any other rubber company or tire manufacturer, or any other supplier of tires, batteries or accessories.

The new Commission placed itself in an anomalous position: first, it vigorously asserted (as the former Commission had held when it remanded the proceeding) that it could not find against the petitioners without additional evidence as to the competitive effects of the sales commission contracts; then, it decided that same issue against the petitioners without any consideration of the record made after remand, and without repudiating or even commenting upon its confessed inability to reach that issue previously.

Although the two Commissions reached diametrically opposite conclusions from the same record as to whether unfair competition had been shown, both based their action upon their conclusion that

> "Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA *even without the use of overt coercive tactics. . . .*"[5] (Emphasis supplied.)

---

[5] Although the examiner concluded in his first initial decision that the record "as a whole" indicated coercion had been brought on "a substantial number of dealers" (five former dealers out of many thousands of former and active dealers), the remanding Commission apparently did not regard such meager proof as convincing, for it expressly discarded it as a basis of decision, and concluded as stated in the text above that Texaco had controlling economic power over its dealers without the use of coercive tactics.

The examiner's first initial decision had not so concluded, but the remanding Commission's conclusion as to Texaco's economic

But neither Commission referred to any evidence in support of this finding, and neither made any finding of fact which would sustain a conclusion that Texaco had such economic power over its dealers, and we are unable to see substantial evidence on the record as a whole to sustain that conclusion. The Commission did not reject its examiner's statement that no inference can be drawn from the contracts between Texaco and its dealers that the former has sufficient economic power over the latter to force them to purchase only sponsored TBA. And it did not say (for there was no proof from which it could conclude) that Texaco's treatment of its dealers and their reaction indicated that Texaco had, or had attempted to exercise, the controlling economic power over its dealers that the Commission found. Indeed, the examiner found as a fact that Texaco's policy, announced to all its salesmen as long ago as June 1, 1948, is that it has neither the right nor the desire to dictate to the dealer or to influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it.[6] This finding was adopted by the Commission.

---

power was parroted by him in his initial decision after remand. He added thereto the following sentence selected from another portion of the remanding Commission's opinion: "Such economic power exists independent of any particular method of distributing TBA which Texaco might use." This new conclusion was adopted by the Commission in its decision of April 15, 1963. Consequently, both Commissions concluded that Texaco had controlling economic power without the use of coercive tactics.

[6] Finding of Fact No. 8 in the examiner's post-remand initial decision is as follows:

> "As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial man-

Consequently, we find no basis in the record for the Commission's conclusion that Texaco has controlling economic power over its dealers. The contracts with the dealers do not give rise to it, and it is the announced policy of Texaco to respect the independence of its dealers; as the evidence overwhelmingly shows, its practice has followed its policy. The mere fact that Texaco is a giant corporation and the dealers are in the main small businessmen cannot be said to demonstrate controlling economic power over the latter, particularly when, as here, the evidence is to the contrary. We hold, therefore, that the Commission erred in concluding that Texaco has sufficient economic power over its dealers, without the use of coercive tactics, to cause them to buy substantial quantities of Goodrich TBA. We have already noted that the Commission did not find coercive tactics had been used, and that the record as a whole demonstrates the contrary.

From its unwarranted assumption that Texaco had such economic power, the Commission proceeded to the conclusion that the question whether the exercise of that power in Goodrich's behalf amounts to an unfair method of competition depends on the "competitive effects" of the sales commission agreements. It

---

agers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a right to recommend certain lines, but that Texas has neither the right nor the desire to dictate to the dealer or to influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal."

said that Texaco's controlling economic power is a "key fact" in evaluating the competitive effects of the sales commission contracts. Thus, the Commission itself said that the supposed need to examine the "competitive effects" was due entirely to its conclusion that Texaco not only had, but exercised, controlling economic power over its dealers without using coercive tactics. This conclusion was indeed the keystone of the Commission's ultimate decision, without which it cannot stand. That being true, our holding that there is not a substantial evidentiary basis in the record for the Commission's assumption that Texaco had and exercised coercive economic power causes its conclusion based thereon to collapse.

The Commission's sweeping order not only condemned the Texaco-Goodrich contract but also held illegal any sales commission arrangement between an oil marketing company and a TBA supplier. This either attributes to all such oil companies inherent controlling economic power over their dealers, or implies there is basic illegality in such arrangements. Our view is that, in any case, there must be substantial evidence on the whole record of the supposed economic power of the oil marketing company before a prohibiting order can be based upon it. As to the implication that sales commission agreements between oil companies and TBA suppliers are basically illegal regardless of their terms, we disagree. There is no reason to condemn such contracts unless they result in unfair competition. An oil marketing company's recommendation to its dealers that they purchase a particular line of TBA, even though it receives a commission for doing so, is not incompatible with its primary business of selling petroleum products. The dealers, at least in the situation here involved, are quite free to accept or reject the recommendation, and to handle

a different line if they think it would be more acceptable to their customers.

The Commission's broad order prohibited contracts for sponsorship of TBA sales to oil marketing company dealers only when the company receives compensation for the sponsorship. The vice found by the Commission in the arrangement seems therefore to be the payment of commissions. Yet the Commission adopted the findings of the examiner which described in detail the services performed by Texaco under its contract with Goodrich and also adopted his conclusions that

> "The consideration for the payment of a commission to Texas under the sales commission contract is based upon substantial services rendered by Texas in promoting the sale of Goodrich TBA to Texaco dealers and distributors."

We see nothing illegal or even unethical in the payment of commissions for such services, except in instances where an oil marketing company forces its dealers through coercive tactics or controlling economic power to buy the sponsored products. Neither of those influences was proved in this case, and it may not be presumed that either will exist in future similar situations.

After four years of preliminary investigation followed by eight years of litigation, including the remand for additional evidence said to have been necessary but never used, the Commission has not been able to show illegality in the Texaco-Goodrich contract of 1940. During that long period, the companies necessarily have devoted much time and money to their defense. Although the Commission must be allowed considerable leeway in developing a record, its efforts in this case—fruitless after a dozen years—have exceeded permissible limits and have had unreasonably

harassing and oppressive effects upon the companies under attack. Because the Commission's drastic orders are not supported by the record as a whole and because of the undue protraction of the administrative process, we are of the opinion that this long drawn out proceeding should now be terminated. Accordingly, the order under review will be set aside, and the matter will be remanded to the Commission with instructions to dismiss the complaint.

It is so ordered.

WASHINGTON, *Circuit Judge, concurring in part and dissenting in part:*

I agree with the majority that Chairman Dixon's conduct disqualified him from participating in the Commission's order, and that the order must be set aside for that reason. I would not, however, dismiss the entire proceeding, either on the merits or because of the Commission's delays. I would remand for further consideration of the case by the Commission, without the participation of Chairman Dixon, and on a basis which I will outline later on.

I

With reference to Chairman Dixon's conduct, I would add only this. Federal Trade Commissioners, like other adjudicators, are entitled to hold and express views on the laws they are charged with enforcing and applying. They "do not stand aloof on . . . chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."[1] We do not equate impartiality with utter indifference. A judge does not deny litigants a fair hearing by sitting in a case "after he had expressed an opinion as to whether certain types of conduct

[1] CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 168 (1921).

were prohibited by law."[2] We do not expect a Trade Commissioner to be neutral on anti-monopoly policies.

A fair hearing is denied, however, if the administrative judge, prior to examining the evidence and findings, has indicated his belief that named individuals or firms are violating the statute, and the "guilt" or "innocence" of such parties depends on certain factual findings which are in dispute. Once an adjudicator has taken a position apparently inconsistent with an ability to judge the facts fairly, subsequent protestations of open-mindedness on his part cannot restore a presumption of impartiality. Whether justice was in fact done is not the issue; an administrative hearing "must be attended, not only with every element of fairness but with the very appearance of complete fairness."[4] We must presume that a fair hearing was denied if a disinterested observer would have reason to believe that the Commissioner had "in some measure adjudged the facts . . . of a particular case in advance of hearing it."[5]

Chairman Dixon's speech leaves a clear impression that his belief that petitioners had violated the Act was far stronger than the "reason to believe" which

---

[2] *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683 at 703 (1948).

[3] *Amos Treat & Co.* v. *Securities and Exchange Commission*, 113 U.S. App. D.C. 100, 107, 306 F. 2d 260, 267 (1962).

[4] "[J]ustice must satisfy the appearance of justice." *Offutt* v. *United States*, 348 U.S. 11, 14 (1954).

[5] *Gilligan, Will and Co.* v. *Securities and Exchange Commission*, 267 F. 2d 461, 469 (2d Cir. 1959). In that case the Securities and Exchange Commission, three days after commencing adjudicatory proceedings, had issued a press release, stating that the parties involved had violated the relevant Act. The Second Circuit, in dicta, strongly disapproved of the Commission's behavior, but held that petitioners had waived their right to object by failing to make a timely motion.

justifies the issuance of a complaint. Indeed, his speech suggests not only a substantial conviction that Texaco and Goodrich are violating the Act but an implied promise to support the petroleum retailers in their struggle against alleged abuses by their suppliers. An independent observer could fairly conclude that Chairman Dixon was in some measure pre-committed to a determination adverse to petitioners. We must therefore—at the least—vacate the Commission's order and remand to the Commission for a de novo consideration of the record and the arguments without the participation of Chairman Dixon.[6]

II

The Absence of Reviewable Findings

The Commission's decision consisted of an assertion that the "other evidence of record[7] amply supports the conclusions and the order of the Hearing Examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber Co.* * * * and *Firestone Tire & Rubber Co.* * * *."

---

[6] *Federal Trade Commission* v. *Cement Institute*, *supra*, is to be distinguished on the grounds that (a) the disqualification of the entire Commission, which was there sought, would have effectively precluded any enforcement of the Act against the respondent (the "necessity doctrine"); and (b) the opinion does not indicate that the Commissioners had expressed a focussed bias against the respondent, rather a general "policy" bias against basing point systems.

[7] That is, exclusive of certain evidence adduced in the remand proceeding, which petitioners claimed was improperly admitted, and which the Commission in fact stated that it would not consider.

Section 8(b) of the Administrative Procedure Act, 5 U.S.C. § 1007(b) (1958), provides in part that all decisions "shall * * * include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record * * *." Recently, the Supreme Court set aside an order of the Interstate Commerce Commission, partly on the ground that—

> "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such adjudicatory practice."[8]

The mere citation of earlier opinions does not provide a sufficient basis to understand and evaluate the Commission's decision on the facts of this case. There are a variety of facts and findings relied on by the Commission in the *Goodyear* and *Firestone* cases which cannot be readily assumed here. For example, on the issue of coercion, in *Goodyear* the Commission found that "Atlantic dealers have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA."[9] In *Firestone* the Commission pointed to internal memoranda of the Shell Oil Company to support the conclusion of coercion. In both cases the Commission purported to make an examination of the competitive effects of the sales commission plan, saying, "Determination of illegality

---

[8] *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 167 (1962).

[9] 58 F.T.C. 309, 342 (1961).

in this context requires an evaluation of competitive effects resulting from respondents' use of the sales commission method of distributing TBA," [10] and, in pursuing an alternative theory of a tie-in arrangement, purported to make findings on Atlantic's and Shell's economic power in the "tying" commodity.

Also to be noted is the fact that on the same day that the Commission decided *Goodyear* and *Firestone*—March 9, 1961—it considered this case, and did not affirm the findings of actual coercion but remanded to the Examiner for the taking of further evidence on "competitive effects":

> "[T]he record in this case does not contain sufficient *market data* to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents." [11] (Emphasis supplied.)

On April 15, 1963, the Commission, reviewing the Hearing Examiner's remand decision, affirmed his conclusions of a statutory violation, even though it excluded from consideration any new evidence adduced on the remand, and cited the *Goodyear* and *Firestone* cases, even though the Commission had previously declined to find a violation on this record, when it remanded simultaneously with its formulation and ap-

---

[10] *Firestone*, 58 F.T.C. 371, 408 (1961); *Goodyear*, *supra* at 365. *E.g.*, Shell accounted for about 5% of the total gasoline sold at retail in the United States in 1955, 58 F.T.C. at 407; Firestone accounted for 15.3% and Goodyear 21.4% of total replacement tire sales at consumer level in 1954. 58 F.T.C. at 409.

[11] In *Goodyear* and *Firestone* the Commission considered such "competitive effects" as division of markets between manufacturers, foreclosure of battery and accessory manufacturers, foreclosure of smaller tire manufacturers, restraint on expansion of smaller tire manufacturers' distribution systems, foreclosure of wholesalers, preemption in favor of wholesalers selling sponsored products, and the impact on wholesalers who also sell at retail.

plication of legal theories in the companion cases. The one Commissioner who had participated in the earlier decision and was on the Commission on April 15, 1963, dissented from the decision rendered on that date.

These considerations indicate, not that the evidence, as a whole, fails to support a finding of a Section 5 violation under a proper interpretation of that section, but that the Commission failed to perform its function of articulating the facts and spelling out its theories. The Commission's decision falls short of the standards required for judicial review, for we are unable to discern with a fair degree of certainty the facts or the theories relied on below.[11] Under the circumstances, we should express no opinion on the merits.

In my view, we should hold simply that a court must know why a Commission acted in order to fulfill the function of judicial review (*Secretary of Agriculture* v. *United States*, 347 U.S. 645 (1954)), and that businessmen and other parties subject to administrative regulation are entitled to an explanation of their duties and obligations. Thus, even in the absence of the disqualification issue, we would—in my view—find it necessary to remand for a proper opinion. See *Radio Station KFH Co.* v. *Federal Communications Commission*, 101 U.S. App. D.C. 164, 247 F. 2d 570 (1957).

For the reasons given, I would set aside the Commission's order but would pass neither on the merits nor on other issues argued by the parties. The Commission could then be required to produce a new opinion within a reasonable time, such as sixty days, meeting the standard for judicial review.

---

[11] See *e.g.*, *Interstate Commerce Commission* v. *Mechling*, 330 U.S. 567 (1947); *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515, 532 (1945).

III

Though, as I have indicated, I do not think we should pass on the merits, the majority has done so. Under the circumstances, I am constrained to say that in my view the majority's conclusion that the record does not contain sufficient evidence to support a finding of a Section 5 violation is very doubtful. The crucial failing, in the court's view, is the lack of evidence to establish that Texaco has sufficient economic power over its dealers to compel them to handle Goodrich tires exclusively. I submit that under the antitrust laws, Texaco's relationship to its dealers must probably be deemed inherently coercive. See, e.g., *Simpson* v. *Union Oil Company of California*,—— U.S.——(April 20, 1964); *Standard Oil Company of California* v. *United States*, 337 U.S. 293 (opinion for the Court per Frankfurter, J.), 323 (concurring opinion of Jackson, J.) (1949); *Federal Trade Commission* v. *Motion Picture Advertising Service Co.*, 344 U.S. at 402 (1953) (Frankfurter, J., in dissent, explaining his opinion in *Standard Stations, supra*); *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1961); *United States* v. *Sun Oil Co.*, 176 F. Supp. 715, 719–20 (E.D. Pa. 1959); *Schwing Motor Co.* v *Hudson Sales Corp.*, 138 F. Supp. 899 (D. Md. 1956); *United States* v. *General Motors Corp.*, 121 F.2d 376, 398 (7th Cir.), cert. denied, 314 U.S. 618 (1941). See, also, the recent opinion of the Seventh Circuit in *Goodyear, Tire & Rubber Co.* v. *Federal Trade Commission*, —— F. 2d ——, ——, (April 24, 1964). See, generally, S. Rep. No. 2073, 84th Cong., 2d Sess. (1956); H.R. Rep. No. 2850, 84th Cong. 2d Sess. (1956), relating to the Automobile Dealers' Franchise Act, 70 Stat. 1125, 15 U.S.C. § 1221.

Evidence which might tend to show coercive power in this case includes (a) one year leases and sales

agreements, terminable at the year's end upon 10 days' notice; (b) substantial contractual control by Texaco over the use, maintenance and appearance of stations (the obligations imposed by Texaco, in addition to being evidence of Texaco's bargaining power, are means by which Texaco could prematurely terminate the lease through enforcement of one of those obligations, under cancellation provisions); (c) high personal investments by the lessees in their stations; (d) close dealer supervision by Texaco salesmen; (e) Goodrich's manifest understanding that Texaco controls its dealers (e.g., Goodrich's books refer to the dealers as "oil company controlled dealers"); (f) testimony of competing TBA suppliers that Texaco dealers felt they risked reprisal if they did not carry sponsored TBA, and (g) testimony of former Texaco dealers of the existence of a pattern of coercive conduct throughout their tenure. Other evidence in the record that Texaco imposed a course of purchasing behavior on the dealers may be summarized by quoting from page 51 of Respondent's brief:

> ". . . the services performed by Texaco pursuant to its contracts include: Stressing the importance of TBA to *prospective* dealers and recommending BFG and Firestone; giving advance notice of dealer selection to BFG or Firestone and introducing new dealers to their salesmen; assisting new dealers with adequate TBA inventories; encouraging its salesmen to write sponsored TBA orders without awaiting formal dealer request; calling on dealers with BFG or Firestone salesmen ('double teaming'); conducting frequent dealer meetings and training courses, with active BFG and Firestone participation; arranging for and participating in BFG and Firestone advertising and promotions; and permitting sponsored TBA purchases on its credit cards. Texaco training schools are conducted at company-owned serv-

ice stations where only BFG or Firestone TBA is used. This can only solidify the dealer's 'choice' of sponsored TBA."

Thus, I suggest that it may well be the record as a whole would support findings of both the existence and the utilization of coercive economic power by Texaco over its dealers. Were we reviewing the Hearing Examiner's findings, and formulating the appropriate legal theory in the first instance, I suggest that we might also properly conclude that there was sufficient evidence of anti-competitive effect to warrant finding a violation under a tie-in theory.[13] But in the first instance it is the Commission, not this court, which must indicate what facts and what legal theories constrained it to find a violation. We could of course select those legal doctrines appearing in the cases cited in the Commission's opinion—*Goodyear*

[13] On the appropriate test of anti-competitive effect necessary to sustain a finding that a tie-in violates Section 1 of the Sherman Act (which generally puts a more stringent burden on the Government than does Section 5 of the FTC Act), see, *e.g.*, *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1 at 5–6 (1958). The percentage of the gasoline station market for TBA controlled by Texaco, on any reading of the record, certainly affects a "not insubstantial" amount of interstate commerce. *See International Salt Co.* v. *United States*, 332 U.S. 392 (1947), and *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 330 (1962).

On utilization of a tie-in theory under circumstances similar to those of the instant case, see *Osborn* v. *Sinclair Refining Co.*, *supra*, 286 F. 2d 832 (4th Cir. 1961). The fact that Texaco's power and practices resulted in something less than exclusive dealer use of sponsored TBA would not seem to require a different result. *Id.* at 838–39. See, also, the decision of the Seventh Circuit, in an appeal from a parallel decision of the Federal Trade Commission relied on below, *Goodyear Tire & Rubber Co.* v. *Federal Trade Commission*, —— F. 2d —— (April 24, 1964).

and *Firestone*—and those facts in the record before the Hearing Examiner, which would sustain the Commission's conclusions, and then affirm. But aside from the fact that such an approach would be less than faithful to the appropriate institutional relationship between this court and the Commission, it would not be possible in this case because of Chairman Dixon's disqualifying conduct.

The delays in this case are serious.[14] But I would not terminate the proceedings because of them. The public interest in effective competition should not lightly be subordinated to Texaco's interest in speedy adjudication.

---

[14] See, generally, *Note, Judicial Acceleration of the Administrative Process; The Right to Relief from Unduly Protracted Proceedings*, 72 YALE L.J. 574 (1963).

U.S. GOVERNMENT PRINTING OFFICE: 1964

Office-Supreme Court, U.S.
FILED
FEB 4 1965
JOHN F. DAVIS, CLERK

No. 292

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

THE ATLANTIC REFINING COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION, *Respondent*

On Writ of Certiorari to the United States Court of Appeals
For the Seventh Circuit

Amicus Curiae Brief of Champlin Petroleum Company

CECIL E. MUNN
1800 First National Bank Building
Fort Worth, Texas 76102
Attorney for
Champlin Petroleum Company

Brief concurred in by the
following marketing oil companies:

ASHLAND OIL & REFINING COMPANY
JENNEY MANUFACTURING COMPANY, INC.
KERR-McGEE OIL INDUSTRIES, INC.
LEONARD REFINERIES, INC.
SKELLY OIL COMPANY
SUNRAY D-X OIL COMPANY
TENNECO COMPANY
THE SHAMROCK OIL AND GAS CORPORATION

Fort Worth Brief Printing Co., 610 S. Jennings Street Phone ED 2-4070

INDEX

	Page
DIRECT INTEREST OF AMICUS	1–3
ARGUMENT	3–11
The Commission's Action is a Promulgation of Its Philosophy — Not an Expert Conclusion Based on Findings Supported by Evidence	3–4
The Competitive Effects of the Sales Commission Plan Must Be Evaluated in the Context of the Realistic Market Alternatives	4–11
CONCLUSION	12

No. 292

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

THE ATLANTIC REFINING COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION, *Respondent*

On Writ of Certiorari to the United States Court of Appeals
For the Seventh Circuit

Amicus Curiae Brief of Champlin Petroleum Company

DIRECT INTEREST OF AMICUS

The order on review reaches far beyond the immediate parties to this case. It not only finds the use, by Goodyear and Atlantic, of the TBA sales commission plan to be an "unfair method of competition"; it completely outlaws this type of plan for *all* marketing oil companies. Specifically Goodyear is commanded to cease and desist from:

> "Entering into or continuing in operation or effect any contract, agreement, or combination, express or implied, with The Atlantic Refining Company or with ANY OTHER MARKETING OIL COMPANY whereby Goodyear, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection

with the sale of TBA products * * *." 58 FTC 309, 370 (1961).

In related litigation Firestone[1] and B. F. Goodrich[2] have similarly been ordered to withdraw their sales commission plans from, not only the parties who were heard by the Commission, but also "any other marketing oil company." Champlin Petroleum Company currently operates under sales commission plans with both Goodyear and Firestone. Thus it, and similarly the other marketing oil companies who concur in this brief, have a vital and immediate interest in the proper decision of this case.

Champlin Petroleum Company, Fort Worth, Texas, is a relatively small marketing oil company which has operated exclusively on the TBA sales commission plan since 1955. For over thirty-six years Champlin has found it prudent, if not commercially essential, to provide a TBA program for its sales outlets. The other marketing oil companies who concur in this brief have also operated on the TBA sales commission plan for a number of years and have the same vital interest as Champlin in the case at bar.

The necessary result of upholding the Commission's orders would be to deny the sales commission plan to all oil companies, small, medium, and large, including Champlin and the other marketing oil companies con-

[1]Review pending in *The Firestone Tire & Rubber Company v. F.T.C.*, No. 18969, and *Shell Oil Company v. F.T.C.*, No. 18967, U. S. Court of Appeals, 5th Cir., argued in January, 1964, and awaiting decision

[2]Reversed in *Texaco Inc. & B. F. Goodrich Co. v. F.T.C.*, 336 F.2d 754 (D.C. Cir. 1964), pet. for cert. pending in No. 635, October Term, 1964.

curring in this brief. Hopefully the views herein expressed, based as they are upon years of experience with TBA programs, will be of some assistance to the Court in its search for the soundest resolution of the issue before it.

ARGUMENT

The Commission's Action Is a Promulgation of Its Philosophy — Not an Expert Conclusion Based on Findings Supported by Evidence

From the fact that the Commission's orders undertake to proscribe the TBA sales commission plan for an entire industry, it is obvious that the real attack has only a philosophical, not an evidentiary, basis.

Champlin and the other concurring companies were not made parties in any of the litigated cases, and the Commission put virtually no evidence in the respective records pertaining to these oil companies. The Commission did not call any of the executives or dealers of these companies as witnesses, and offered *no* evidence whatever regarding the "characteristics and competitive effects of the sales commission plan as engaged in by them." Yet, the Commission, in its several opinions, stated that "characteristics and competitive effects" were the key inquiries in evaluating the legality or illegality of the sales commission plan as engaged in by the respondent companies. *A fortiori*, the Commission made no findings or conclusions as to Champlin and the other nonrespondents.

The surprising industry-wide indictment of the court below "that the service station dealer is

more of an economic serf than a [free] business man" is the dominant theme pervading the Commission's opinions in these cases. But, if the private enterprise system in this country had reached an ebb that low — and certainly it has not — then the prohibition of the TBA sales commission plan would hardly be the answer. Indeed it would aggravate the problem.

The Competitive Effects of the Sales Commission Plan Must Be Evaluated in the Context of the Realistic Market Alternatives

Every marketing oil company in America provides a TBA program for its dealers because the traveling public demands it. It is an unquestioned fact that a marketing oil company cannot effectively compete in the retail distribution of petroleum products without a definite and well organized TBA program. And, of equal importance, a company without such a program could not compete in the increasingly difficult effort to obtain and even to retain dealers. Anyone who asserts that the service station dealer of today is a "mere economic serf" is far removed from the very real problem of finding and keeping good dealers. The demand for them greatly exceeds their supply.

It is equally beyond dispute that there are only two known TBA plans available to the marketing oil company channels of distribution. Under the one, the marketing oil company buys TBA and sells it to its dealer-customers — this is known as the "purchase-resale plan." Under the other the marketing oil company, for a reasonable sales commission, promotes the TBA

manufactured and distributed by tire manufacturers who sell direct to the oil company sales outlets — this is known as the "sales commission plan." In point of fact the essential difference is that the purchase-resale plan involves the marketing oil company much more deeply in the TBA business, which is really incident to its principal product line.

Champlin has had substantial experience with both plans and so have several of the other concurring companies. While many of the larger oil companies have been able to operate successfully on the TBA purchase-resale plan, Champlin and many of the other smaller companies have concluded, on the basis of practical experience with both, that the sales commission plan is administratively and economically more successful for them and their dealer-customers.

The practical effect of the Commission orders is to direct all oil companies, regardless of their size and resources, to utilize the purchase-resale plan, contrary to their best business judgment and despite the lessons of their past experience. Competition will be decreased by reducing the methods of competing; greater integration will be inevitable. There is simply no rational foundation for the Commission's hope that its compulsive narrowing of the choice of TBA programs will increase the volume of business done by competing local TBA jobbers or by smaller tire manufacturers. Because the Commission's restrictive order will adversely affect all competitive segments concerned, ultimate injury to the consumer is inevitable.

It may well be possible for Gulf or Esso to operate

more economically and successfully on the purchase-resale plan (which they have elected to do) because of their greater size, resources, and national distribution systems. But Champlin, and at least some of the other regional oil companies, cannot operate as economically or successfully under the purchase-resale plan as under the sales commission plan. They have learned this by experience. And to speculate that the dealers of those companies which choose the purchase-resale plan will be free business men while the dealers of those companies which choose the sales commission plan will be economic serfs is to weave a quilt of fantasy from the fine-spun yarn of economic theory. On this subject, as with so many others, "A page of experience is worth a volume of logic."

Since the Commission is asking this Court to hold unfair our method of competing, we ask careful consideration of our problem in competing. All factual statements made in this brief are based on the sworn testimony of Mr. R. B. Thomas, a Senior Vice President of the company, who testified as a witness in the Firestone-Shell proceedings. His testimony is not in the record before this Court but neither is any other evidence concerning Champlin. Yet Goodyear is ordered to cease and desist its sales commission program with Champlin.

Champlin is one-twentieth the size of such majors as Shell, Gulf, Texaco, and Standard Oil, and is considerably smaller even than a number of regional companies.

Unlike the bigger companies, Champlin markets in

less than a dozen states. The bigger companies each have many thousands of service stations, but Champlin markets in a much more limited area and on a much smaller scale.

Champlin, beginning in 1929, entered TBA marketing as a competitive necessity in its own interest and in the interest of its independent petroleum dealers. For a period of years, it had an unusually varied trial-and-error experience on purchase-resale, with large and small tire manufacturers, and a number of battery and accessory manufacturers, on "standard" brands and on "private" brands. It went through all the headaches and financial problems of selecting the right items of TBA, in the right quantities, warehousing, and selling and delivering to its petroleum outlets. The purchase-resale plan required more personnel, more distribution facilities, more capital investment and current funds, and more know-how in the TBA business itself. As a small company Champlin found these distinct competitive disadvantages.

In early 1950 Champlin even tried a dual arrangement, partly purchase-resale (Dayton) and partly sales commission (U. S. Rubber). By 1955 Champlin's mind was made up; it had enough of purchase-resale and from then to date it has been exclusively on sales commission and is doing a good job — beneficial to its dealers and the public.

Champlin has little interest in TBA as such, regardless of brands or sources, or purchase-resale or sales commission. Its principal concern is with the sale of more petroleum products through its outlets; and good

TBA with good merchandising programs and efficient service help achieve that goal. In 1957 the gross TBA sales commission revenue of Champlin was 1/10 of 1% of its gross revenue from the sale of petroleum products; the dollar amount of sales commission earned and received was less than Champlin's TBA expense.

Champlin does not want to involve itself more deeply in TBA than at present. It could afford to do so only at the expense of other aspects of its business. It wants to continue to recommend and promote TBA of its choice to Champlin outlets and to offset the expense of that program in whole or in part by a sales commission. But it would be business suicide to ignore TBA. If the sales commission plan is outlawed, Champlin necessarily but reluctantly would revert to the purchase-resale plan and thus get into TBA. "with both feet." This would mean more investment in inventories, far more warehouse space, more sales personnel, less liberal credit programs, and could easily divert concentration from its bread and butter business—petroleum products. Thus Champlin's ability to grow and to expand its distributive outlets could be impaired as the direct result of an administrative fiat. The government itself may well have made this company a less effective competitor.

Certainly the antitrust laws do not compel a company within an industry to confine its distribution only to its own manufactured products. No one would contend that it is illegal for an oil company to provide TBA for its sales outlets. The Commission professed

to be examining into the sales commission plan as a "particular method" of distributing TBA products but then in effect condemned it by means of an alleged evil which it asserted existed independently of that particular method of distribution. The reasoning utilized by the Commission, as well as by the court below, would be equally applicable to the sale of any product by a marketing oil company to one of its service station dealers. Specifically, the Commission said:

> "The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing INDEPENDENTLY OF THE PARTICULAR METHOD *of distributing or sponsoring TBA* used by Atlantic."

And the court below also feared overpersuasion:

> "The heart of this case is the economic power Atlantic possesses over its service station dealers."

Assuming, for the sake of argument only, that there is danger of undue sales influence by all marketing oil companies over all of their dealers, is there any reason to believe that imposition on the dealers will be more significant as to products sponsored but not purchased and resold than it would be as to products purchased or manufactured by the oil company? Of course not. Coercion is wrong. If coercion exists, it should be

stopped. But limiting TBA distribution methods would not be a remedy for coercion even if it did exist.

And if, as the court below asserts, the *heart* of the case is the "economic power *Atlantic* possesses over *its* service station dealers", then by what right does the Trade Commission limit *Champlin's* right to do business with *its* dealers? We do not know whether Atlantic possesses economic power over its service station dealers that makes them "serfs." We do know Champlin possesses no such power nor is there any evidence in this record, or any other record, that Champlin has or could have coerced its dealers or done anything else wrong. There is no evidence of "tying" (a legal concept which the Commission mentions but does not rely upon since there is no tying here involved); there is no evidence that Champlin's leases or other contracts pertaining to any commodity have any unlawfully restrictive clauses or could be or are used to abuse any service station dealer. Thus the Commission's fallacy in sounding the death knell for the sales commission plan throughout an industry — actually because of a philosophical bias against it — is best exposed in the light of the obvious fact that Champlin has been put out of a particular business without trial and without an adjudication based on an evidentiary record. Is the right to do business no longer even that substantial?

The degree of success or failure of Champlin's sales promotion activities under its TBA sales commission plan ought not to be the determinant of legality or illegality but, if it were, the cold fact is that over seventy percent of the TBA going through Champlin's

outlets was nonsponsored TBA even after years of promotional effort on sponsored TBA. What stronger evidence could there be that Champlin's dealer-customers are "free" and not "serfs"? Furthermore not a single Champlin outlet handles sponsored TBA exclusively; many handle nonsponsored TBA exclusively.

CONCLUSION

Champlin believes that the sales commission plan of TBA distribution meets a legitimate marketing oil company need — particularly for the smaller marketing oil companies, that it is not an "unfair method of competition", and that its prohibition would not eliminate a single one of the supposed evils of which the Commission and the court below have accused the marketing oil industry. Denial of Champlin's freedom to use the sales commission TBA plan will injure, not promote, competition. The antitrust laws do not compel that result.

The final decree of the Court of Appeals for the Seventh Circuit should be set aside with instructions to remand to the Federal Trade Commission for dismissal of its complaint.

Respectfully submitted,

CECIL E. MUNN
1800 First National Bank Building
Fort Worth, Texas 76102

The Amicus views and positions urged herein by Champlin Petroleum Company are concurred in by the marketing oil companies by and through their respective attorneys listed below:

ASHLAND OIL & REFINING COMPANY
Ashland, Kentucky
By Arloe W. Mayne

JENNEY MANUFACTURING COMPANY, INC.
Newton, Massachusetts
By Carlisle Cravens

KERR-McGEE OIL INDUSTRIES, INC.
Oklahoma City, Oklahoma
By Lynn Adams

LEONARD REFINERIES, INC.
Alma, Michigan
By Bethel B. Kelley

SKELLY OIL COMPANY
Tulsa, Oklahoma
By John Fred Smith

SUNRAY D-X OIL COMPANY
Tulsa, Oklahoma
By Paul Greve

TENNECO OIL COMPANY
Houston, Texas
By Frank R. McWhorter

THE SHAMROCK OIL AND GAS CORPORATION
Amarillo, Texas
By Avery Rush Jr.

CERTIFICATE OF SERVICE

This will certify that a copy of the foregoing brief has been served on the Solicitor General and on The Atlantic Refining Company by mailing same on February 3, 1965, to the Solicitor General of the United States, Department of Justice, Washington, D.C., and to Frederic L. Ballard, Jr., 1035 Land Title Building, Philadelphia, Pennsylvania 19110, one of the attorneys for The Atlantic Refining Company.

CECIL E. MUNN

Office-Supreme Court, U.S.
FILED
FEB 5 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964.

No. 292.

THE ATLANTIC REFINING COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

BRIEF OF PETITIONER THE ATLANTIC REFINING COMPANY.

FREDERIC L. BALLARD, JR.,
CHARLES I. THOMPSON, JR.,
TYSON W. COUGHLIN,
Land Title Building,
Philadelphia, Pa. 19110

ROY W. JOHNS,
JOEL L. CARR,
HARRY W. GILL, JR.,
260 South Broad Street,
Philadelphia, Pa. 19101

Attorneys for Petitioner, The Atlantic Refining Company.

BALLARD, SPAHR, ANDREWS & INGERSOLL,
Land Title Building,
Philadelphia, Pa. 19110
Of Counsel.

February 5, 1965

International, 711 So. 50th St., Phila., Pa. 19143

INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
STATUTE INVOLVED	2
QUESTIONS PRESENTED FOR REVIEW	3
STATEMENT OF THE CASE	7
I. The Issues	7
A. Issues Eliminated From The Case	7
II. The Facts	8
A. Atlantic's Relationship With Its Dealers	8
B. Reasons For Atlantic's TBA Program	10
C. Development Of Atlantic's TBA Program	11
D. The Change To The Sales Commission Plan	12
E. Operation Of The Sales Commission Plan	15
F. Atlantic's Free Choice TBA Policy	17
G. Effects On Competition—The Oil Industry	20
H. Effects On Competition—The TBA Industry	23
III. Proceedings Before The Federal Trade Commission	26
IV. Review By The Court Of Appeals	29
V. Companion Cases	30
A. Firestone-Shell Proceeding	31
B. Goodrich-Texaco Proceeding	31
VI. Comparison of Goodyear-Atlantic and Goodrich-Texaco Cases	34
VII. The Staleness Of The Record	37
SUMMARY OF ARGUMENT	40
1. The Commission Did Not Have A Rational Basis For Denying Atlantic The Use Of The Sales Commission Plan	40
2. The Commission Did Not Consider The Benefits And Business Necessity Of The Sales Commission Plan	40

INDEX (Continued).

	Page
3. The Commission Erred In Condemning The Sales Commission Plan On The Grounds Of Competitive Effects Without Measuring These Effects Against Any Market	40
4. The Court Of Appeals Erred In Condemning The Sales Commission Plan As A Tying Arrangement	41
ARGUMENT	42
I. The Commission Had No Rational Basis For Outlawing The Sales Commission Plan	42
II. The Commission And The Court of Appeals Failed To Weigh The Redeeming Virtues Of The Sales Commission Plan	46
III. The Sales Commission Plan Is Not An Unfair Method of Competition	49
A. The Sales Commission Contracts Are Not Unreasonable	50
B. The Commission Did Not Measure The Competitive Effects Of The Sales Commission Contracts By Any Criteria	51
C. Competitive Effects Should Have Been Measured By Normal Antitrust Standards	54
IV. The Sales Commission Plan Is Not A Tying Arrangement	56
A. If The Dealer's Legal Freedom Of Choice Is Preserved, Multiple-Line Selling Is Not Tying	58
B. Atlantic's Other Relationships With Its Dealers Do Not Deprive Them Of Their Freedom Of Choice	61
C. Atlantic's TBA Program Does Not Exploit The Dealers	62
CONCLUSION	65

TABLE OF CASES CITED.

Page

Asheville Tobacco Board of Trade, Inc. v. Federal Trade Commission, 263 F. 2d 502 (4th Cir. 1959) 48, 55

Atlas Supply Co., 48 F. T. C. 53 (1951) 59

B. F. Goodrich Co., 58 F. T. C. 1176 (1961) 30, 31, 32, 34, 35, 39, 46, 51, 57

Brown Shoe Co. v. United States, 370 U. S. 294 (1962) 53

Brown Shoe Co., CCH Trade Reg. Rep., 1961-63 Transfer Binder No. 7606 ¶ 16,316, rev'd on other grounds, 1964 Trade Cases ¶ 71,312 (8th Cir. 1964) 54, 64

Crawford Transport Company, Inc. v. Chrysler Corp., et al., 1964 Trade Cases ¶ 71,260 (6th Cir. 1964) 63

Eastern-Central Motor Carriers Ass'n, et al. v. United States, 321 U. S. 194 (1944) 43

Federal Trade Commission v. Gratz, 253 U. S. 421 (1920) 48, 50, 54

Federal Trade Commission v. Motion Picture Advertising Service Co., 344 U. S. 392 (1953) 48, 54

Federal Trade Commission v. Raladam Co., 283 U. S. 643 (1931) 49, 54

Federal Trade Commission v. Sinclair Refining Company, 261 U. S. 463 (1923) 49

Firestone Tire & Rubber Co., 58 F. T. C. 371 (1961) 30, 31, 46

Ford Motor Co. v. United States, 335 U. S. 303 (1948) 58

Jacob Siegel Co. v. F. T. C. 327 U. S. 608 (1946) 37

Re Luria Brothers and Company, Docket 6156, reported in CCH Trade Reg. Rep. ¶ 16,183 at p. 20,986 54

Northern Pacific Ry. v. United States, 356 U. S. 1 (1958) 46, 56

Osborn v. Sinclair Refining Co., 286 F. 2d 832 (4th Cir. 1960), cert. den. 366 U. S. 963 ..... 56, 60

Sandura Co. v. Federal Trade Commission, 1965 Trade Cases ¶ 71,332 (6th Cir. 1964) 47

Securities and Exchange Commission v. Chenery Corporation, 318 U. S. 80 (1943), 332 U. S. 194 (1947) 43, 57

TABLE OF CASES CITED (Continued).

	Page
Standard Oil Co. of New Jersey v. United States, 221 U. S. 1 (1911)	53
Tampa Electric Co. v. Nashville Coal Co., 365 U. S. 320 (1961)	54
Texaco, Inc. v. F. T. C., 336 F. 2d 754 (D. C. Cir. 1964)	33
United States v. American Tobacco Co., 221 U. S. 106 (1911)	53
United States, et al. v. Chicago, Milwaukee, St. Paul & Pacific R. Co., et al., 294 U. S. 499 (1935)	42
United States v. Continental Can Co., 378 U. S. 441 (1964)	53
United States v. Richfield Oil Corp., 99 F. Supp. 280 (S. D. Cal. 1951), aff'd per curiam, 343 U. S. 922 (1952)	36, 59
United States v. Standard Oil Co. of California, 78 F. Supp. 850 (S. D. Cal. 1948), aff'd, 337 U. S. 293 (1949)	36, 59
United States v. Standard Oil Co. of California, 1959 Trade Cases ¶ 63,399 (S. D. Cal. 1959)	59
United States v. Sun Oil Co., 176 F. Supp. 715 (E. D. Pa. 1959)	59
United States Rubber Co., 28 F. T. C. 1489 (1939)	59
White Motor Co. v. United States, 372 U. S. 253 (1963)	46, 47

STATUTES.

	Page
Automobile Dealers' Day in Court Act, 15 U. S. C. §§ 1221-25 (1958)	59
Federal Trade Commission Act, 15 U. S. C. § 54(a)(1)	2 et seq.
28 U. S. C. § 1254(1)	2

OTHER AUTHORITIES.

	Page
Oppenheim, Guides to Harmonizing Section 5 of The Federal Trade Commission Act With the Sherman and Clayton Acts, 59 Mich. L. Rev. 821 (1961)	55
Report of the Attorney General's National Committee to Study the Antitrust Laws, March 31, 1955	55

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1964.

No. 292.

THE ATLANTIC REFINING COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

BRIEF OF PETITIONER THE ATLANTIC REFINING COMPANY.

This case is before the Court on certiorari to review a judgment of the United States Court of Appeals for the Seventh Circuit affirming and enforcing an order of the Federal Trade Commission.

The Petition for Writ of Certiorari was filed on July 17, 1964. Thereafter, the Solicitor General filed a Memorandum for the Federal Trade Commission joining with the Petitioner in urging this Court to review the judgment in question. Certiorari was granted on December 14, 1964.

OPINIONS BELOW.

There are three opinions below: the initial decision of the Hearing Examiner of the Federal Trade Commission, filed on October 23, 1959; the opinion of the Commission on appeal from the Hearing Examiner, filed on March 9, 1961; and the opinion of the Court of Appeals on petition for review of the Commission's order, filed on April 24, 1964.

The initial decision of the Examiner (R. 41) and the opinion of the Commission (R. 61) are reported at 58 F. T. C. 309 (1961). The opinion of the Court of Appeals (R. 3282) is reported at 331 F. 2d 394.

JURISDICTION.

The order of the Court of Appeals was entered on April 24, 1964 (R. 3299). The final decree of the Court of Appeals was entered on May 20, 1964 (R. 3300-1). Petitioner filed its petition on July 17, 1964 invoking the jurisdiction of this Court under Section 1254(1) of the Judicial Code, 28 U. S. C. § 1254(1).

STATUTE INVOLVED.

The statute involved is Section 5(a)(1) of the Federal Trade Commission Act, 15 U. S. C. § 45(a)(1), which reads in full as follows:

> "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

QUESTIONS PRESENTED FOR REVIEW.

The broad question presented for review is whether it is an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, for an oil company and a tire company to enter into an agreement under which the oil company, in return for a commission, sponsors the sale of the tire company's products to the oil company's retail dealers. Within this broad question lie a number of more specific questions, which are set forth below.

The terms and circumstances of the case—in which these specific questions are presented—are as follows:

The Atlantic Refining Company ("Atlantic") is one of the smallest integrated oil companies. It markets gasoline, lubricating oils and greases in a seventeen-state region along the eastern seaboard.

Atlantic does not sell directly to the motoring public. It sells to service station operators known as "dealers," who resell to consumers.

The goods involved in this proceeding are tires, batteries and automotive accessories—fan belts, radiator hose, seat covers, waxes, polishes, chains, antifreeze, etc.—known in the industry as "TBA."

Since the nineteen-twenties, Atlantic has been selling TBA to its dealers along with Atlantic petroleum products. All other oil companies likewise sell or sponsor the sale of TBA to their service station operators, and the TBA sold or endorsed by an oil company is known as "sponsored" TBA.

Before 1951, Atlantic-sponsored TBA was purchased by Atlantic from various manufacturers and distributed to the Atlantic dealers through warehouses owned by Atlantic. In some areas the warehouses were supplemented by Atlantic dealers who acted as sub-distributors to other dealers, such sub-distributors being known in the industry as

"supply points." This arrangement, in which the oil company purchases the sponsored TBA and resells and distributes it to the dealers, is known in the industry as "purchase-resale."

Purchase-resale proved inefficient for Atlantic dealers because of the physical limitations of Atlantic warehouses and the difficulty of building a network of supply points. Consequently, in March 1951, Atlantic changed to the other TBA arrangement used in the oil industry—the sales commission plan.

Under the sales commission plan, the tire company—rather than the oil company—performs the distribution function. The sponsored TBA is manufactured or purchased by the tire company and is distributed through warehouses owned by the tire company. Also, the tire company uses as supply points a large number of its own outlets (both company-owned and independent) as well as some oil company supplying dealers, who are franchised by the tire company for this purpose. This network of warehouses and supply points provided better deliveries to Atlantic dealers than had been provided by purchase-resale.

Under both purchase-resale and the sales commission plan, Atlantic is primarily responsible for selling the TBA to the Atlantic dealers and assisting them in selling it to their motorist customers. The tire company salesman occasionally accompanies the Atlantic salesman to explain new TBA products, but the day-to-day promoting and selling are done by the Atlantic salesman.

Under purchase-resale, Atlantic attempted to recoup its cost of sales and distribution out of the margin between its buying price and its selling price, but found that it was suffering substantial losses. Under the sales commission plan, the tire company bears the cost of distribution and pays Atlantic a commission to compensate Atlantic for its selling expenses. In practice, these commissions have approximately equalled Atlantic's selling costs.

Atlantic has two sales commission contracts, one with The Goodyear Tire & Rubber Company ("Goodyear") for a portion of Atlantic's marketing territory, the other with The Firestone Tire & Rubber Company ("Firestone") for the remainder of the territory.

The Federal Trade Commission challenged the sales commission contract between Atlantic and Goodyear as an unfair method of competition under Section 5 of the Federal Trade Commission Act.[1]

The Hearing Examiner upheld the legality of the sales commission plan. The Federal Trade Commission reversed the Examiner and entered an order which prohibits Atlantic from using the sales commission plan with Goodyear or Firestone. Furthermore, the order prohibits Atlantic from using the plan with any other tire company, and also prohibits Goodyear from using the plan with any other oil company. The order, however, would permit Atlantic to resume purchase-resale of Goodyear TBA or any other TBA.

Similar orders were entered in two companion cases (discussed below).

The result is to outlaw the sales commission method of distribution for all oil companies dealing with any of the tire company respondents in the three cases. This includes a very large proportion of the smaller regional and local companies in the oil industry.

The basis for the Commission's order in each case is the supposed anticompetitive effects of the sales commission contract. The Commission said that abolition of the sales commission plan would (a) terminate the supposed competitive advantage enjoyed by Goodyear supply points, and (b) supposedly enable small tire manufacturers to compete for Atlantic's sponsorship.

On appeal in this case, the Court of Appeals affirmed the Commission and held the TBA sales commission con-

1. Firestone was not made a party to the proceedings, but the legality of Atlantic's sales commission contract with Firestone was challenged by the complaint.

tract to be, in effect, an illegal tying agreement. The Court —mistakenly, in Atlantic's view—said that the Commission had followed this same tying rationale.

The specific questions presented are:

(a) Is there any substantial competitive effect of the sales commission arrangement—which the Commission forbade—that differentiates the sales commission plan from purchase-resale—which the Commission permitted? Specifically, would abolition of the sales commission plan accomplish the purposes claimed by the Commission? If not, does the Commission have a rational basis for its order as required by the decisions of this Court? (Discussed in Part I of the Argument at page 42 of this brief.)

(b) Where a time-honored business arrangement (the sales commission plan) is defended on the grounds of superior efficiency and practical necessity, may the Commission forbid it *per se* without consideration of this defense? (Discussed in Part II of the Argument at page 46 of this brief.)

(c) May the Commission, in challenging a contract under Section 5 of the Federal Trade Commission Act on the basis of competitive effects, ignore the standards of competitive effect and market significance which would be applicable in analogous cases under the antitrust laws? (Discussed in Part III of the Argument at page 49 of this brief.)

(d) Did the Court of Appeals err in attributing a tying rationale to the Commission? If not, has the Court (and the Commission) disclosed adequate grounds for characterizing the sales commission plan as a tying arrangement? (Discussed in Part IV of the Argument at page 56 of this brief.)

STATEMENT OF THE CASE.

I. THE ISSUES.

The sole issue in the case at this stage of the proceedings is, to use the words of the Commission, "the legality of respondents' use of a *particular method* of distributing TBA products" (R. 124, italics are the Commission's). The method to which the Commission refers is the sales commission plan.

Atlantic's fundamental position is that the Commission's order outlawing the sales commission plan does not make sense. The Commission's opinion does not disclose any substantial reason for denying Atlantic the use of the sales commission arrangement it has found more efficient for its dealers and thus forcing it to use the purchase-resale arrangement it has found less efficient and more costly.

Atlantic also contends that the Commission erred in not considering the business justification for the sales commission plan and in not measuring the supposed anticompetitive effects of the plan in any market.

A. Issues Eliminated From The Case.

The legality of the sales commission method of distribution was not always the single issue in the case. At earlier stages two other issues were presented:

First, the legality of TBA selling by Atlantic. Counsel supporting the complaint sought an order which would have outlawed purchase-resale as well as the sales commission plan. The practical effect would have been to prevent Atlantic from selling TBA to its dealers under any arrangement. The Staff's request for such an order was refused by the Examiner and the Commission.

Second, the issue of coercion. The Examiner ruled that the record contained instances of pressure on Atlantic dealers which would support an order prohibiting coercion. This was upheld by the Commission and affirmed by the Court of Appeals. The Commission's order prohibits Atlantic from "intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of Atlantic petroleum products to purchase any brand or brands of TBA products." It further prohibits Atlantic from "preventing or attempting to prevent any wholesaler or retailer of Atlantic petroleum products from purchasing and reselling, merchandising or displaying TBA products of his own independent choice" (R. 133).

Atlantic has not sought review of the coercion paragraphs of the Commission's order. Its policy has always been that its dealers are free to buy the TBA of their choice.[2] By reason of this policy and the paragraphs of the Commission's order not under review, this Court may assume that no Atlantic dealer will be forced to handle TBA he does not want or prevented from handling the TBA he prefers.

II. THE FACTS.

A. Atlantic's Relationship With Its Dealers.

Atlantic markets its petroleum products under the "Atlantic" brand. The service stations of the Atlantic dealers are marked with distinctive "Atlantic" signs, and their gasoline is sold through distinctive "Atlantic" pumps, so that their service stations are recognizable by the motoring public as "Atlantic" stations.

The sale of Atlantic gasoline to motorists is the principal business of Atlantic dealers, and the bulk of Atlantic's

2. The handful of coercive incidents described by the Examiner—insofar as they represented pressure by the Atlantic salesmen rather than a clash of personalities—were unauthorized.

gasoline sales is through these dealers. Thus, the dealers and Atlantic are mutually dependent on one another for important segments of their businesses. Business is attracted and retained, not only by the goodwill associated with the "Atlantic" brand, but also by the confidence which motorists derive from favorable experience at Atlantic stations (R. 273, 1774, 2287-8).

There are two kinds of arrangement between Atlantic and its dealers. In the first, Atlantic provides the station and basic equipment and leases it to the dealer. After a trial period of two one-year leases, successful lessee dealers operate under successive three-year leases.[3] The lease requires the dealer to operate a first-class service station, including the handling of TBA normally handled at competitive service station outlets. It does not specify any particular brand or brands of TBA. A supplementary letter advises the dealer of the standards (such as sanitary conditions, hours of operation and display of merchandise) which Atlantic believes are essential to successful operation (R. 274, 280; CX 88B, N. T. 284,[4] R. 2466-74).

In the second kind of arrangement, the dealer provides his own station and obtains his Atlantic sign and pumps and his petroleum products under a supply contract, which runs for a specified term or until a specified gallonage has been purchased (R. 274; CX 90A-B, 90C-D, N. T. 35 and 285, R. 2486-95).

Qualified dealers are scarce and always have been. One of the primary tasks of the Atlantic marketing organization is to recruit and hold able dealers. As a matter of competitive necessity, Atlantic must and does offer an

3. When the hearings were held in this case, Atlantic's three-year lease program was just beginning and only a few dealers had three-year leases (R. 46-7, 276; RXA 31A-F, R. 2209, 3274-81). Unquestionably, the proportion is much higher today.

4. The printed record does not contain the portions of the notes of testimony at which certain exhibits were offered in evidence. In such cases, reference is made to the original notes of testimony, designated "N. T."

All the oil companies offer TBA. Without TBA programs, they could not attract dealers (R. 2239, 2029-30).

The national oil companies such as Esso, Gulf and Mobil sell TBA under their own names or private brands in competition with the national tire companies.[16] Because they operate nationally, these oil companies can provide the national warranty on tires and major accessories which modern motorists demand.

By contrast, regional oil companies like Atlantic cannot successfully sell TBA under their own names. They cannot use national advertising or provide a national warranty (CX 136A-E, N. T. 63, R. 2710). Few motorists would buy an "Atlantic" tire in preference to Goodyear, Firestone, Sears or Atlas. There is no one to fulfill the warranty on an "Atlantic" tire outside Atlantic's marketing area. Because of the difficulty of selling local brands of tires, most regional oil companies sponsor national brands.

In theory, regional oil companies could supply national brand TBA to their dealers by either purchase-resale or the sales commission plan. In practice, most of them operate on sales commission. The distribution of TBA, which is complex, changeable, seasonal, and subject to the consumer's taste, is very different from the distribution of petroleum products (R. 2292-4). Apparently, national oil companies can master both the petroleum business and the TBA business.[17] Regional oil companies stick to the oil business. They leave the problems of TBA distribution to

16. Gulf and Mobil use their own names. Esso and the other Standard companies sell the Atlas brand.

17. The Commission did not put into the record which oil companies were using sales commission and which were using purchase-resale. The brief filed by Goodyear in No. 296 lists twenty-one oil companies currently using the sales commission plan with Goodyear and says that 14 of them are not deemed to be "major" companies (pp. 47-48). Statistics received in evidence in *Goodrich-Texaco* list 18 oil companies selling private brand tires under purchase-resale. The list is primarily made up of companies which would be deemed to be "majors". See page R. 222 of the printed record filed in No. 635.

the tire companies, who have the specialized facilities and trained personnel to handle it.

Atlantic's sales commission arrangements with Goodyear and Firestone enable Atlantic to hold its own against national oil companies five times it size in the competition for dealers and, through them, in the competition for the motorists' business.

Conversely, the effect of the Commission's order outlawing the sales commission plan will be to handicap Atlantic and other regional oil companies, to deprive their dealers of the most efficient and economical TBA distribution, and to enhance the competitive advantages of the national companies and their dealers.

H. Effects On Competition—The TBA Industry.

The Commission and the Court of Appeals ignored the beneficial effects—indeed the necessity—of the sales commission plan in the oil industry. They considered only the tire, battery and accessory industries and, moreover, only that small portion of the tire, battery and accessory industries which consists of selling TBA to service stations. Even there, they paid no attention to the competition which the service station operators encounter from tire stores, automotive stores, chain stores, mail order houses,[18] garages, car dealers, discount marts and department stores.

In its consideration of the tire, battery and accessory industries, the Commission did not identify any relevant market. The Court of Appeals fixed upon "Atlantic's seventeen-state service station TBA market" (R. 3297). Within this market, the record proves nothing as to competitive effects. There is no evidence as to:

18. Statistics received in evidence in *Goodrich-Texaco* (but explicitly disregarded by the Commission) show that in replacement tire sales Sears' share of the market increased from 5.8% to 12.1% in the period 1946-55, and that in the latter year the Sears brand was the third largest in this market—larger than all oil company brands and larger than all but two rubber company brands. The Riverside brand marketed by Montgomery Ward also increased its share of the market by more than one-third during the period. See page R. 224 of the printed record filed in No. 635.

attractive dealer program, including training, financing, business coaching, advertising, sales promotion assistance, and the aid of Atlantic credit cards. Other oil companies offer competitive programs (R. 1430-1, 1918-9, 2040, 2189-90, 2287).

B. Reasons For Atlantic's TBA Program.

With the evolution from the "filling station" selling only petroleum products to the "service station" offering all goods and services needed by the motorist, the public has come to expect oil company dealers to sell, install and service TBA. The Hearing Examiner found that the handling of TBA is a necessary part of the dealers' operations. He further found that Atlantic has a legitimate interest in having its dealers engage in the sale of TBA, as this builds a stronger dealer organization and increases the sale of gasoline, and that TBA is essential to the dealers' profitable operation (R. 47). For many dealers, TBA profits are the difference between success and failure (R. 1441; RXA 20, R. 2038, 3257-9; CX 247B, N, T. 314, R. 2935, et seq.).

It is not easy for dealers to market TBA. TBA is complex and ever-changing. A full assortment of tires would number in the hundreds, yet a dealer with a small station may have to choose the 25 most saleable for his limited inventory. He needs quick delivery when a motorist asks for a size he does not stock. Characteristics of tires and batteries change from year to year. New accessories are constantly being developed. Inexperienced dealers need training and help in getting started. All dealers, regardless of experience, need sales promotion assistance. Training, sales promotion, and ready availability of all items are the fundamentals of Atlantic's program (R. 1442-3, 1609, 1677, 1921-2, 2030, 2201-2).

Because oil company dealers maintain small inventories, buy in small quantities, and frequently demand emergency deliveries, they are not particularly attractive

customers for most TBA distributors. No one but the oil companies offers a TBA program tailored to the service station operator's needs. None of the competitive distributors of TBA who testified in this proceeding offered training. None offered more than rudimentary sales promotion. None offered a full and balanced TBA line. None made it a point to provide speedy deliveries to small, isolated dealers as well as to large ones.

C. Development Of Atlantic's TBA Program.

Atlantic's TBA program began in the nineteen twenties, when the company was still operating its own service stations. Even in those early days, Atlantic found that the motorist needed not only gasoline, but also tires, batteries, goggles, dusters and other items which would be classified as TBA today. So Atlantic began to stock these items in its stations (R. 2290).

Later, when Atlantic moved away from company operation of its service stations, the independent dealers who took over the stations continued to look to Atlantic for TBA as well as petroleum products. No one else was offering them TBA. Tire companies were more interested in selling to garages and tire stores than in selling to service stations. The automotive parts suppliers who were calling on service stations with other merchandise did not carry TBA (R. 2290-1).

Thus, Atlantic developed its purchase-resale TBA program to fill an unmet need. There was no question of diverting established trade or lessening established competition. The emerging market represented by the motorists calling at Atlantic service stations was not being adequately served by anyone. Atlantic stepped forward to help the dealers serve it (R. 2289-90).

TBA was, and is, a service which Atlantic has found necessary for successful station operation. Atlantic's TBA commissions are less than ¼ of 1% of its revenues from

petroleum products (R. 146-7, 50). Atlantic's object is to sell petroleum products and strengthen its dealers (R. 1443, 2201-2).

D. The Change To The Sales Commission Plan.

As automobile travel increased and the problems of supplying the motoring public's needs became more complex, Atlantic's purchase-resale program was no longer satisfactory. One reason for this was the limited public acceptance of the "Lee" brand tires then handled by Atlantic. But the principal reason was that Atlantic's distribution system, organized to deliver petroleum products on a regular schedule, was completely unsuited to the unpredictable demand for TBA, particularly batteries and accessories.[5] Atlantic was losing money at the rate of $400,000 a year in its efforts to meet its dealers' needs (CX 136A-E, N. T. 63, R. 2714). But more important, it was not succeeding in these efforts. The dealers' needs were not being met (R. 2290-4).

Faced with monetary losses and an inefficient TBA distribution system, Atlantic began to shop around for a better program. Its original inquiries, sent out in 1948, contemplated a change of suppliers under purchase-resale. However, Goodyear and Firestone, instead of quoting on a purchase-resale contract, offered sales commission plans which would solve both of Atlantic's major problems—distribution and consumer acceptance. Under these plans, Goodyear and Firestone, through their established distribution systems, would fill the crying need of Atlantic dealers for a ready source of supply. Furthermore, they both had

5. A contemporaneous Atlantic document explaining the reasons for the change to the sales commission plan calls attention to "the physical limitation of our warehouses and delivery system." It notes that, "if space for TBA is also to be considered, the capital investment will be greater" and "A greater investment in drays [sic] for delivery service is also required if we are to give good competitive service to our dealers. This, again, requires capital investment strictly for the TBA program." (CX 108A-J, N. T. 66, R. 2624-5)

brand names with a wide public acceptance throughout Atlantic's marketing territory (R. 2300).[6]

After an investigation lasting more than two years, Atlantic elected to take on the Goodyear and Firestone lines[7] and turn over the distribution function to the two tire companies, believing that the change was best for Atlantic and best for its dealers.

The effect of this change in distribution function can be seen in the following table based upon a contemporaneous Atlantic document (CX 136A-E, N. T. 63, R. 2714). The figures were compiled in March 1951 and were based on the best obtainable information as to the actual results of operating Atlantic's purchase-resale program in 1950.

Deficit under Purchase-Resale

Total 1950 TBA sales by Atlantic to Atlantic dealers under purchase-resale	$7,489,329
Estimated gross profit on these sales (i.e., margin between Atlantic's buying price and selling price)	$1,663,880
Total expense of operating purchase-resale program	$2,071,421
Deficit under purchase-resale	$ (407,541)

6. Neither Goodyear nor Firestone manufactures a full line of TBA. Both of them purchase batteries and most accessories from others. In some cases, such as duPont chemicals, the accessories handled by Goodyear are the same as those previously handled by Atlantic under purchase-resale. (R. 67, 81)

7. Atlantic took on the Goodyear line for a portion of its marketing area and Firestone for the balance. Atlantic believed that both would do a better job if they were competing for its representation in the entire territory (R. 2296). The split was a matter of selection by Atlantic regional personnel "decided upon by local advantages enjoyed by the respective rubber companies . . ." (CX 136A-E, N. T. 63, R. 2709).

Savings under Sales Commission Plan

Expenses expected to be eliminated under the sales commission plan:

Delivery to Atlantic warehouses	$ 5,756
Delivery to Atlantic dealers	106,070
Warehousing	268,664
Accounting in Atlantic's sales districts	202,000
50% of direct expense	17,246
Regular accounting	354,000
Miscellaneous labor	28,211
Credit-collection	9,381
50% of selling expense	227,840
33⅓% of district administration	25,855
33⅓% of regular administration	43,896
50% of advertising	17,820
25% of direct headquarters expense	17,327
75% of indirect headquarters expense	81,625
Total savings	$1,405,691

The savings of $1,405,691 listed above would have reduced Atlantic's TBA expenses from $2,071,421 to $665,000. Atlantic estimated that its TBA commissions would have been $675,000. Thus, the $407,000 loss under purchase-resale would have been converted into a $10,000 gain under the sales commission plan.

The memorandum accompanying the calculation points out (R. 2713-4):

> "In addition to this favorable comparison, we [Atlantic] would have secured much needed warehouse space and delivery facilities that could be used to advantage for our petroleum products. Some of our personnel could have been eliminated but much of it could have been assigned to other jobs where help is urgently needed. Our operational people would have been free to effect greater improvements and efficien-

cies in the handling of petroleum products where worthwhile savings can still be effected.

"It is expected, however, that the greater benefits from the new TBA program will come about through improved services and supply to our dealers, and as a result of their increased sales and profits we will enjoy direct benefits from increased commissions and indirect benefits in better dealer stability."

E. Operation Of The Sales Commission Plan.

Under the sales commission plans, a number of outlets in the Goodyear and Firestone distribution systems, in addition to warehouses, serve as supply points for Atlantic dealers (R. 78-9, 100). These supply points include company stores owned by Goodyear and Firestone, independent distributors or dealers franchised by Goodyear and Firestone, and also Atlantic distributors and dealers franchised for this purpose by Goodyear or Firestone. Whatever their status, the supply points assume responsibility for carrying adequate inventories, making deliveries to Atlantic dealers, and maintaining records. Franchised supply points buy from Goodyear or Firestone, as the case may be, and sell to Atlantic dealers. They buy on the same terms as other Goodyear and Firestone outlets, and receive no extra discount or payment for servicing Atlantic accounts (R. 395, 403-5).

The change to Goodyear and Firestone was welcomed by Atlantic's dealers.[8] The same familiar Atlantic sales-

8. Dealer preference for the new brands was established in a preliminary test held in three of Atlantic's sales districts for six to nine months before the new brands were adopted on a company-wide basis. Reports from the test districts showed that purchases of Goodyear and Firestone under sales commission were substantially higher than purchases of Lee under purchase-resale (CX 198A-204B, N. T. 296-300, R. 2881-2901), and a poll of the dealers in these districts understandably showed an overall preference for the new arrangement (CX 134, N. T. 71, R. 2703). The contrary conclusions of the Commission and the Court of Appeals are based on a 1948 survey (CX 101A-Z20, R. 801, 2565-90) which was not directed at the questions at issue in this case. Significantly, the Hearing Examiner, after hearing a full description of this survey, ignored it.

man continued to call on them, just as he had under purchase-resale. But the line of tires he offered after the change (Goodyear or Firestone) was more complete and enjoyed better public acceptance than the Lee tires he had offered previously. Also, the Goodyear and Firestone lines included a better balanced assortment of accessories; the Goodyear and Firestone distribution systems included more efficient networks of supply points, and the Goodyear and Firestone programs provided more promotional assistance and the potential for increased profits (R. 2302-3, 2094-5, 1689-90).

Under the sales commission plans, as under purchase-resale, Atlantic's job is to persuade its dealers of the advantages of the Goodyear and Firestone lines. Since a dealer is a reseller, who buys only as much TBA as he can sell to his customers, Atlantic also helps him in promoting his sales to motorists. Atlantic's selling and promotion efforts include:

(a) product information as to the characteristics, sizes, advantages and disadvantages of the various grades and kinds of TBA, which Atlantic provides in its dealer training schools and follow-up clinics;

(b) technical training on installation and service, again provided by Atlantic in its schools and clinics;

(c) business advice, particularly with regard to inventory control, which is of crucial importance to dealers;

(d) sales promotion assistance, provided by Atlantic through display materials and arrangements for promotional "events" to attract the motorists' attention and to build the motorists' confidence that they will find the items they need at an Atlantic station; and

(e) efficient distribution, which Atlantic assures by helping Goodyear and its supply points improve

deliveries to Atlantic dealers (R. 277-9, 1532, 1927-8, 2036-7, 2249-53, 2260-4).

For performing these services, which the Hearing Examiner found to be "substantial" (R. 58), Goodyear and Firestone pay Atlantic commissions of 10% of sales of sponsored TBA to Atlantic dealers.[9]

On Atlantic's side, the program requires the full time of nine specialists and 10% to 20% of the time of all salesmen. Some 58 other officials, together with their executive, administrative, secretarial, accounting and sales supervisory personnel, are also concerned to a greater or lesser degree with TBA (R. 271-3). The cost of operating the TBA program on the sales commission basis approximately equals the commissions received (R. 2298).

Atlantic could make a profit on TBA if it confined its efforts to those dealers who sell large quantities and produce large commissions. But Atlantic does not do this. It extends its TBA efforts to every Atlantic dealer, regardless of whether his TBA potential is sufficient to justify the expense. This is the essence of Atlantic's TBA program—the belief that Atlantic dealers (and through them, Atlantic) can sell more gasoline if motorists are confident they will find a complete stock of reliable TBA at every Atlantic station (RXA 20, R. 2038, 3258-9).

F. Atlantic's Free Choice TBA Policy.

Atlantic's TBA programs, both purchase-resale and sales commission, have always been offered for the dealer's acceptance or rejection as a matter of the dealer's choice. There has never been any contractual or other obligation on the part of the dealer to buy sponsored TBA or refrain from buying non-sponsored items.[10] To the contrary—

9. Atlantic is paid a commission of 7½% on sales of sponsored TBA to its wholesale distributors for resale to their dealers.

10. The Hearing Examiner found that there are in fact no Atlantic dealers who handle Goodyear or Firestone TBA exclusively (R. 56).

Atlantic's letter confirming the Goodyear arrangement CX 16, N. T. 35, R. 2368-9) said:

> "Goodyear will begin supplying the various products and services outlined in the letter of June 1, 1950 to such of our retail outlets and distributors as desire to purchase them from Goodyear. At the same time Atlantic, through its field representatives, will begin assisting Goodyear in the extended territory in the sale of the products and services outlined in said letter *with the understanding that, as has been the practice in the test area, our resale outlets shall be free to choose whether, and to what extent, they shall avail themselves of the opportunity to purchase Goodyear products and services and that any resale outlet which chooses to carry products other than Goodyear shall not be prejudiced in any manner.* Of course, we both understand that our organization cannot and will not use any methods other than salesmanship to encourage our resale outlets to purchase your products and services." (Emphasis supplied)

The policy is clear: Atlantic dealers are to buy TBA of their choice from suppliers of their choice.

Atlantic's free choice policy is published in writing to all dealers and all sales personnel. There is no evidence that it was countermanded; there are no company records inconsistent with it; no official of the company is alleged ever to have instructed a salesman to disregard it.[11]

In March 1951, when Atlantic adopted the sales commission plan, it explained its decision in a letter sent to all dealers (CX 150, N. T. 35, R. 2742-3). The letter said:

> "Our sales organization has been instructed to explain and demonstrate to you the many advantages of

11. The suggestions of the Commission and the Court that the policy was ignored in practice are not cited to the record. The only testimony which Atlantic has been able to find which would tend to support these findings is a single equivocal statement attributed to a salesman by a hostile and vindictive ex-dealer (R. 826).

> the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. However, your acceptance or rejection of the program is a matter of your own choice."

Concurrently, Atlantic gave written instructions to all sales personnel that sales were to be made on the merits and that "under no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers" (CX 149, N. T. 35, R. 2741).

In 1955, Atlantic's regional managers wrote their dealers (CX 207, N. T. 35, R. 2905-6):

> "If any of our people at any time insist on your buying any certain products or merchandise against what you feel is to your best interest, I want you to call the matter directly to my attention."

This letter is contained in Atlantic's franchise manual, which is reviewed with all prospective dealers (R. 1438-40, 1508-9, 1774, 1828, 1920). A copy of the letter is given to all new dealers (R. 1780, 1921, 2025-6).

In addition, the free choice policy is part of the required text for Atlantic's dealer training course in service station management (RXA 20, R. 2038, 3255-73)—a course which is attended by most new Atlantic dealers and all new Atlantic sales personnel. In this course, dealers and salesmen hear the policy side by side. The dealer knows exactly what his salesman's instructions and authority are (R. 1488-9, 1508, 1779, 2033-5).[12]

---

12. A year after the adoption of the sales commission plan, Atlantic's principal TBA officials went to dealer meetings (attended *in toto* by more than 1400 dealers) to learn how the program was working in the field. Among other things, they inquired if the free choice policy was being observed. They found that it was (R. 2842-5).

Atlantic sales personnel testified that they know and endorse the policy. One district manager said: "It isn't good business to force a dealer to do anything. He is only going to leave you. And if a good dealer leaves you then we lose business." (R. 1444)

If Atlantic's free choice policy did not mean what it says, one would expect that fact to be reflected in such things as countermanding instructions from Atlantic management to its sales personnel, records in Atlantic's files showing which dealers were handling non-sponsored TBA and how much, or a pattern of discrimination by Atlantic against dealers who handle non-sponsored TBA in substantial degree.[13] However, although the Commission staff scoured Atlantic's files and put into the record voluminous exhibits concerning Atlantic's TBA administration, not a single document contradicted Atlantic's free choice policy.[14]

G. Effects On Competition—The Oil Industry.

The primary effect of Atlantic's sales commission plan on competition is within the oil industry, and here the plan is beneficial to all concerned.

The advantages to the motorist are obvious. The sales commission plan provides more economical and efficient dis-

13. Such manifestations are the hallmark of coercion cases. See, for example, *United States v. Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959), in which the oil company's service station inspection report forms called for a statement "whether competitive motor oils and TBA are being displayed and sold, and the brands of those competitive products." 176 F. Supp. at 736. District officers were instructed to correct "deficiencies" which "in almost every instance included the matter of dealers advertising, displaying and selling competitive products." 176 F. Supp. at 736. After salesmen had taken action to correct deficiencies, they reported their efforts to their supervisors. The reports "in almost every instance related to what had been done and was being done to eliminate the advertisement, display and sale of competing products at Sun stations." 176 F. Supp. at 737-8. *No such indicia of coercion are found in the instant case.*

14. Atlantic called to the stand a wide selection of dealers who were specializing in non-sponsored TBA, featuring it at their stations and advertising it by radio, television and direct mail (R. 1968-9, 2105-8). All agreed that they had continued in this pattern for years and had suffered no threats or reprisals. Two had been singled out by Atlantic as outstanding dealers (R. 1997, 2105-9). Dealers Buongiorne and Cooley, both of whom specialized in non-sponsored TBA (R. 1550-1, 1523-4), were used by Atlantic as models to whom prospective dealers were referred (R. 2024-5).

tribution of TBA at Atlantic service stations. This assures the motorist that his needs will be met promptly and at reasonable prices. A driver who burns out a headlight on a country road wants a replacement tonight, not tomorrow. He needs that replacement from the first dealer along the road. Sales commission distribution helps the Atlantic dealer to fill the motorist's need.

The advantages to the dealers are the reciprocal of those to the motorists. One Atlantic dealer's ability to replace the motorist's burned-out headlight may win a permanent customer for that dealer and all others who handle the Atlantic brand. And every Atlantic dealer's chances of having a replacement available when needed are greater under sales commission than they were under purchase-resale. For example, under sales commission there are 79 Goodyear supply points of all kinds serving Atlantic dealers in the New England states (CX 387, N. T. 2251, R. 3199). Under purchase-resale, Atlantic could never provide in the New England area more than six warehouses for tires and batteries, a single warehouse for accessories, and a few Atlantic dealers acting as supply points (R. 2293-4).

Whatever benefits the Atlantic dealers must also benefit Atlantic, and this alone would justify the sales commission plan from Atlantic's point of view. But there are other competitive advantages as well.

Atlantic encounters competition from fifteen or twenty other oil companies, many of which are larger and better known than Atlantic.[15] All these companies operate largely through dealers. Since qualified service station operators have always been in short supply, the struggle for dealers is the keenest competition in gasoline marketing (R. 2189, 2287).

---

15. Atlantic sales representatives listed the following competitors: Esso, Gulf, Amoco, Texas, Tidewater, Sinclair, Cities Service, Mobil, Sun, Shell, Pure, Calso, Crown, Saveway, Spur, Save, Crown Central, Quincy, Merit (R. 1478, 1908-9, 2188-9, 2287).

(a) the size in dollars or units of the service station TBA market or the sub-markets for tires, batteries and accessories;

(b) the relationship of the service station TBA market to other outlets for TBA;

(c) the portion of the total service station TBA market accounted for by oil company TBA programs;

(d) the portion of oil company TBA sales accounted for by Atlantic;

(e) the portion of the Atlantic dealers' TBA purchases made under the Atlantic program;

(f) the portion of all oil company TBA sales made under the sales commission plan generally;

(g) the differences between the markets for tires, batteries and accessories; or

(h) market trends or developments.

The only evidence on TBA market effect relied on by the Commission (R. 124-6) was:

(i) A showing that Atlantic dealers purchase annually about six million dollars worth of TBA through the Goodyear plan and about the same amount through the Firestone plan (R. 76). The only base to which this can be referred is a rough national figure of four billion dollars for replacement TBA (CX 247B, N. T. 314, R. 2940).

(ii) The testimony of certain wholesalers of tires, batteries and accessories that they experienced difficulty in selling to Atlantic dealers (R. 91). None offered a TBA program comparable to Atlantic's. All had other outlets for their merchandise.

(iii) Testimony that Lee Rubber & Tire Corporation and The Electric Storage Battery Company, Atlantic's tire and battery suppliers under purchase-

resale, lost Atlantic's account in 1951 (R. 77). Actually, Lee turned down Atlantic's offer to continue buying Lee on a limited basis, Lee's reason being that it wished to free its organization to solicit other potential customers in Atlantic's marketing area (CX 280, R. 472, 3005).

(iv) The fact that Atlantic has chosen to sponsor Goodyear in part of its territory and Firestone in the remainder. As stated above, the reason for this decision was Atlantic's desire to sharpen competition between the two tire companies.[19]

The effects complained of by the Commission are based on the Commission's notion of economic power and "foreclosure." They are all independent of whether the TBA reaches the dealer through purchase-resale or under the sales commission plan. The Atlantic dealer does not care how the TBA reaches him as long as it reaches him promptly; wholesalers who complain that Atlantic dealers are "foreclosed" through Atlantic's program don't know or care whether the program is purchase-resale or sales commission.[20]

---

19. See footnote 7, *supra*. The Commission inferred that Goodyear dealers are "foreclosed" from Atlantic outlets in areas where Atlantic is promoting Firestone, and vice versa. The record is to the contrary. See, for example, the testimony of Rhoades, an Atlantic dealer in a district where Atlantic sponsored Goodyear TBA. Rhoades nevertheless specialized in Firestone and was congratulated by Atlantic for his outstanding performance in selling this brand (R. 2103, 2108-9).

20. The Commission also found that Goodyear and Firestone would not execute sales commission agreements relating only to tires and tubes. This likewise has nothing to do with the distribution method by which Atlantic dealers get the merchandise. More important, the finding has no significance with respect to Atlantic. Although Atlantic has agreed to promote the entire Goodyear line, it is free under its agreement to promote any other product it wishes, either together with or in preference to Goodyear. It has in fact done so in the case of antifreeze, an important TBA product. Atlantic handles antifreeze on purchase-resale (R. 299), notwithstanding that antifreeze is included in the Goodyear and Firestone lines (R. 2363, 2611).

III. PROCEEDINGS BEFORE THE FEDERAL TRADE COMMISSION.

The Commission's complaint alleged that by reason of Atlantic's contractual relationships with its dealers, Atlantic has an inherent control, which it exercises in favor of Goodyear under the sales commission plan, and that this adversely affects competition (R. 5-12). On this basis, counsel supporting the complaint sought to prevent Atlantic from exercising its alleged control under either purchase-resale or the sales commission plan, arguing that the competitive effects would be the same.

After extensive hearings, the Commission's Hearing Examiner refused to outlaw either purchase-resale or the sales commission plan. He upheld the legality of the sales commission contract (R. 59) and dismissed the complaint as to Goodyear (R. 60).

The Examiner's conclusions, which have not been explicitly reversed or amended, included the following:

(a) There is no conspiracy between Atlantic and Goodyear to restrain the sale and distribution of TBA.

(b) Neither the sales commission contract nor Atlantic's contractual arrangements with its dealers contain any provision requiring them to purchase Goodyear TBA.

(c) The housekeeping provisions of the leases are not unreasonable or oppressive, and the renewal and cancellation provisions of the leases are in conformity with those which ordinarily appear in many leases of property.

(d) Atlantic's commission is based on substantial services rendered by Atlantic to Goodyear.

(e) No inference or implication can be drawn from Atlantic's contractual relationships with its dealers that Atlantic's control over its dealers is sufficient to force them to purchase only sponsored TBA.

(f) The Atlantic-Goodyear contract is not illegal (R. 57-9).

However, the Examiner also found that, on occasion, Atlantic intimidated dealers and forced them to purchase Goodyear TBA (R. 58).[21] Accordingly he entered an order against Atlantic prohibiting such coercion (R. 59).

Both sides appealed to the Commission, Atlantic contesting the finding of coercion and the Commission Staff renewing its request for an order outlawing Atlantic's TBA program completely. In support of its request for this broad order, the Staff argued that "the mere inhibition of the sales commission plan without more can be easily circumvented by the use of other TBA marketing plans by respondents, such as the Lee-Exide TBA purchase-resale plan used by Atlantic prior to its adoption of the sales commission plan, which would again have the same adverse competitive effects."[22]

The Commission denied Atlantic's appeal and sustained the Examiner on the issue of coercion—not under review by this Court.

On the broader issue, the Commission granted its Staff's appeal in part and denied it in part, thus taking a position different than either the Examiner or the Staff. It held the sales commission contract illegal, but refused to prohibit purchase-resale.

The Commission's order may be divided into two parts, reflecting the two issues which had developed in the case. The first four paragraphs deal with the issue of sales commission and prohibit all sales commission contracts between Atlantic and any supplier of tires, batteries or accessories. Each of these paragraphs contains an exception to permit

21. The Examiner listed 13 ex-dealers who said they were coerced. This compares with a total of more than 5500 dealers (R. 45-6). The Examiner discounted the testimony of 36 Atlantic dealers and 2 ex-dealers called by Atlantic who said they sold non-sponsored TBA without objection by Atlantic (R. 55).

22. Staff Br. to Commission 104.

purchase-resale. The last two paragraphs deal with the issue of coercion and prohibit Atlantic from forcing its dealers to purchase sponsored TBA or to refrain from purchasing non-sponsored TBA (R. 131). These two paragraphs are applicable to purchase-resale as well as to sales commission.

Thus, the unfairness of Atlantic's program is made to depend on the narrow distinction between selling for Atlantic's account (legal), and selling for another's account (illegal). Atlantic's right to offer TBA to its dealers is preserved, but Atlantic is forced to deliver the merchandise to the dealers in a manner which its experience has shown to be noncompetitive.

The analysis which led the Commission to outlaw the sales commission plan is as follows (R. 124):

> "Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents."

Having thus elected to base its decision on competitive effects, the Commission recognized that it must identify effects which are unique to the sales commission plan. It posed this problem as follows (R. 126):

> "Counsel for Atlantic contend, however, that no competitive consequences attend the sales commission plan which did not characterize the purchase-resale program employed by Atlantic prior to 1951. This point deserves consideration since it implies that no useful pur-

pose would be served by outlawing the sales commission plan between Goodyear and Atlantic as Atlantic would merely return to the purchase-resale method of distributing TBA, with the result that Goodyear and Firestone dealers would lose a substantial volume of sales, but without improving the lot of competing TBA suppliers as they would still be unable to sell TBA to Atlantic dealers. We believe this argument to be without merit for several reasons."

The two reasons which the Commission advanced to support its decision were: (a) the supposed competitive advantage conferred on Goodyear supply points by the sales commission plan and (b) the supposed disadvantage of small tire companies which cannot offer extensive distribution facilities (R. 125-6). These points had not been developed in the record nor argued by counsel supporting the complaint. Counsel supporting the complaint were not trying to differentiate the sales commission plan from purchase-resale. As will be shown in detail below, the two key points were improvisations of the Commission, inadequate to support the crucial distinction which the Commission rested on them.

IV. REVIEW BY THE COURT OF APPEALS.

In affirming the Commission's order, the Court of Appeals said that "the heart of this case is the economic power Atlantic possesses over its service station dealers." The Court's rationale was that this "economic power" makes the sales commission contract in effect an illegal tying arrangement (R. 3292, 3296).

In its analysis the Court of Appeals conceded that Atlantic would be free to sell and promote Goodyear TBA to Atlantic dealers under the sales commission plan, "except for the dealer's economic dependency on the oil company" (R. 3295). However, it ignored the fact that under the Commission's order, Atlantic remained free to sell and

promote Goodyear TBA to Atlantic dealers under purchase-resale despite the same assumed "economic dependency."

The Court of Appeals never addressed itself to the necessity of justifying the Commission's distinction between purchase-resale and the sales commission plan. Indeed, the ground on which the Court most relied—Atlantic's supposed "economic power"—was the one ground which the Commission had said would not support the distinction. In the Commission's words, this power "is a fact existing independently of the method of TBA distribution used by Atlantic" (R. 124).

The Court of Appeals was also mistaken in attributing the tying rationale to the Commission. The Commission did not spell out any such rationale. Moreover, the emphasis on competitive effects in the Commission's opinion in this case and in the related *Goodrich-Texaco* case discussed below is antithetical to the concept of tying. Tying is generally approached as inherently illegal without regard to competitive effects.

V. COMPANION CASES.

Contemporaneously with the filing of this case against Atlantic and Goodyear, the Commission instituted two other proceedings with respect to sales commission agreements between Firestone and Shell Oil Company, and between The B. F. Goodrich Company and The Texas Company.[23] The complaints were the same in all three cases, and all three cases were tried concurrently before the same Hearing Examiner.

---

23. The *Firestone-Shell* opinion is reported in *Firestone Tire & Rubber Co.*, 58 F. T. C. 371 (1961). The first opinion in *Goodrich-Texaco* is reported in *B. F. Goodrich Co.*, 58 F. T. C. 1176 (1961). The second is unreported but may be found at pages R. 200-233 of the printed record filed in No. 635. It is worthy of remark that the Commission chose as oil company respondents in those cases Shell and Texaco, the only two companies using the sales commission plan which might be considered national in the scope of their operations. Whether or not intended, the effect was to minimize the importance of the plan to regional companies.

A. Firestone-Shell Proceeding.

The Examiner's initial decision in *Firestone-Shell* paralleled his decision in the present case. Correspondingly, on appeal, the Commission entered a broad order prohibiting sales commission plans under any circumstances.

Firestone and Shell have appealed to the Court of Appeals for the Fifth Circuit, where the case has been argued and is now under advisement.

B. Goodrich-Texaco Proceeding.

The Examiner also rendered in the *Goodrich-Texaco* proceeding an initial decision substantially identical to his initial decision in this case. That is to say, the Examiner ordered Texaco to cease coercion and refused to outlaw the sales commission plan.

On appeal, the Commission made the same finding as to economic power as in the Atlantic case—namely, that Texaco has the power to cause its dealers to purchase sponsored TBA without the use of coercion. However, the Commission did not at that time outlaw the use of the sales commission plan by Texaco because it said the record contained insufficient "market data" to form a judgment as to effects on competition (58 F. T. C. at 1178-79):

> "Although there is evidence in the record tending to show that Texaco has in fact coerced its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, we find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear [sic] under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon

the competitive effects of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

"At issue in this litigation, then, is the legality of a particular method of distributing TBA used by respondents. A key fact in evaluating the competitive effects of respondents' use of the sales commission method of distributing TBA is the fact that Texaco has sufficient economic power with respect to its retail and wholesale petroleum distributors to cause them to purchase substantial quantities of the brand of TBA sponsored or sold by Texaco. But such economic power is a fact existing independently of any particular method of distributing TBA which Texaco may use. Whether the sales commission agreements between Firestone and Texaco and Goodrich and Texaco are unlawful must depend, therefore, upon the characteristics and the competitive effects of these sales commission agreements. For reasons set forth hereinafter, we conclude that this case must be remanded in order that market data may be introduced to show the competitive effects of Texaco's sales commission agreements with Goodrich and Firestone upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels."[24] (Italics are the Commission's.)

On remand, the Examiner took official notice of certain matters presented by counsel supporting the complaint. He then entered a new initial decision and order which, like the Commission's order in the instant case, pro-

24. The Commission would never have written these two paragraphs and sent *Goodrich-Texaco* back to the Examiner for more evidence on competitive effects if it had adopted the tying rationale attributed to it by the Court of Appeals in the instant case.

hibited Texaco from entering into any sales commission plan with any supplier of tires, batteries or accessories.

In its review of the Examiner's second initial decision, the Commission excluded any reliance on the new matters that had been presented to the Examiner. It decided that the Examiner's conclusions and order were supported by the original record. Consequently, it affirmed the Examiner's decision and order.

The Court of Appeals for the District of Columbia reversed the Commission and ordered the complaint dismissed. *Texaco, Inc. v. F. T. C.*, 336 F. 2d 754 (D. C. Cir. 1964).

The first reason for the reversal by the Court of Appeals was its finding that the Chairman of the Commission should have disqualified himself for reasons having no applicability to the instant case. Moving beyond this to the merits of the case, the Court rejected the Commission's finding regarding Texaco's economic power over its dealers, saying (336 F. 2d at 762):

> "Consequently, we find no basis in the record for the Commission's conclusion that Texaco has controlling economic power over its dealers. The contracts with the dealers do not give rise to it, and it is the announced policy of Texaco to respect the independence of its dealers; as the evidence overwhelmingly shows, its practice has followed its policy. The mere fact that Texaco is a giant corporation and the dealers are in the main small businessmen cannot be said to demonstrate controlling economic power over the latter, particularly when, as here, the evidence is to the contrary."

Since the Commission had said that its finding of economic power was a "key fact" in evaluating any effect of the Goodrich-Texaco sales commission plan on competition, and since this key finding was now reversed, the Court of Appeals did not reach the question of alleged anticompetitive effects. It simply said that overturning the Commis-

sion's finding of controlling economic power causes the conclusion regarding anticompetitive effects to "collapse."

Finally, the Court pointed out that the respondents had endured four years of investigation and eight years of litigation. It said that these twelve years of fruitless effort by the Commission exceeded permissible limits and unreasonably harassed and oppressed the respondents. For this reason it decided to terminate the proceedings by ordering the complaint dismissed.

VI. COMPARISON OF GOODYEAR-ATLANTIC AND GOODRICH-TEXACO CASES.

Atlantic and the Solicitor General are in agreement that the result in the *Goodyear-Atlantic* and the *Goodrich-Texaco* cases should be the same.[25]

The order in each of the two cases represents a rule of general application, not the disposition of an isolated controversy.[26] The rule should be uniform throughout the industry. Moreover, Atlantic and Texaco are competitors; and Atlantic, the smaller company, should not be under a marketing handicap as against Texaco, which is three times larger.

The two Courts of Appeals reached different results because they took different views on the Commission's finding of "economic control." While Atlantic believes there are other more fatal infirmities in the Commission's order, we agree with the District of Columbia Court that the Commission erred in this regard.

---

25. The petition for writ of certiorari filed by the Solicitor General in *Goodrich-Texaco*, No. 635, says that the conflict between the two cases, if unresolved, "would create an anomalous situation in which one major oil company and a large tire company were permitted to employ essentially the same marketing practice that their competitors were prohibited from using" (p. 12).

26. At the time of the hearings, Goodyear had sales commission contracts with 12 nonrespondent oil companies, Goodrich with five, and Firestone with an undisclosed number.

In the first place, the Commission never explained its finding of controlling economic power. It appeared to feel that such power follows from the disparity in size between the oil company and the individual dealer and from the fact that the dealer does not have permanent legal tenure. The Commission's unspoken assumption is that a dealer lives in constant fear of losing his lease or his contract and that such loss will mean financial ruin.

With regard to the disparity in size, the proposition cannot be put more succinctly than it was by the Court of Appeals in its review of *Goodrich-Texaco* (336 F. 2d at 762):

> "The mere fact that Texaco is a giant corporation and the dealers are in the main small businessmen cannot be said to demonstrate controlling economic power over the latter, particularly when, as here, the evidence is to the contrary."

The contrary evidence in Atlantic's case, which is substantially the same as in the *Texaco* case, is:

> First, Atlantic and Texaco and every other oil company are just as dependent economically on their dealers as the dealers are on their oil company suppliers. Atlantic relies on its dealers for 57% of its gasoline sales (R. 46). A lessee dealer is entrusted with a station representing an investment by the oil company of $50,000 or more [27] (R. 111). Every time an oil company loses a dealer, it loses business and incurs expense in locating and training a replacement. Oil companies can't afford to lose dealers. They compete

27. The Commission's notion that Atlantic's expenditure of $50,000 for an average service station is a source of power over the dealer is completely illogical. This is simply one more investment which Atlantic makes in the dealer—in addition to training costs, financing costs, and costs of promotional assistance. It is one more reason why Atlantic depends on the dealer for gasoline sales to amortize that investment. It is one more reason why Atlantic suffers if the dealer quits and leaves the investment idle.

to offer the most attractive dealer franchise. In practice, successful dealers hold their stations as long as they wish.[28]

Second, dealers are in short supply. The economics of the oil industry are such that they can readily change suppliers without financial loss. They are constantly receiving tempting offers from other oil companies.[29] They know that neither Atlantic nor Texaco nor any other oil company can afford to alienate them. They realize that their supplier must respect their rights.

Third, Atlantic, Texaco and other oil companies all have free choice policies in respect of TBA. Under this Court's decisions in *Standard Stations* and *Richfield*,[30] no oil company can require its dealers to purchase sponsored TBA or prevent them from handling the TBA of their choice. There are, in fact, no exclusive TBA dealers.

Fourth, the lessee dealer invests as little as $1,000 in his station (R. 111). His investment is generally represented by his inventory of petroleum products and TBA. When he terminates his lease, he can sell this inventory to the incoming replacement dealer at cost (R. 2027). Any successful Atlantic dealer knows that he can get a lease from one of Atlantic's competitors at the drop of a hat and with no financial sacri-

28. The lessee dealers who testified in this proceeding had been in their stations an average of more than 13 years, one as long as 24 years.

29. Twenty-one Atlantic dealers and ex-dealers testified they had received offers from Atlantic's competitors while operating Atlantic stations. Eleven Atlantic dealer and ex-dealer witnesses operated lessee stations for other oil companies before or after their association with Atlantic.

30. *United States v. Standard Oil Co. of California*, 78 F. Supp. 850 (S. D. Cal. 1948), *aff'd*, 337 U. S. 293 (1949); *United States v. Richfield Oil Corp.*, 99 F. Supp. 280 (S. D. Cal. 1951), *aff'd per curiam*, 343 U. S. 922 (1952).

fice. Outside the realm of fiction, landlords are not necessarily bullies. When tenants are scarce, it is the tenant, not the landlord, who holds the whip hand.

Finally, more than 3,000 of the dealers are contract dealers who own their own stations and were described as "independent" by the Commission's own witnesses (*e.g.* R. 218).

The second basis for the Commission's finding of economic power in Atlantic's case was the Commission's belief that Atlantic was putting pressure on its dealers in various ways to purchase sponsored TBA. The Court of Appeals reflected the same belief in its statement that "behind the legalistic facade of [dealer] independence, there exists a servitude caused by the coercive pressures which Atlantic exerts upon its dealers" (R. 3292).

However the matter may have appeared to the Commission and the Court of Appeals, as presented to this Court it involves no overtones of coercion. Atlantic has not sought further review of the paragraphs of the Commission's order dealing with this issue. Compliance with those paragraphs will eliminate coercive pressures.[31]

VII. THE STALENESS OF THE RECORD.

The proceedings against Goodyear and Atlantic are just as stale as those against Goodrich and Texaco. The two started on the same day and reached this Court within a few weeks of one another.

But staleness is not the only defect of the record. There have been important developments in the marketing of TBA since the hearings in these cases. In 1956 Atlantic

31. Neither the Commission nor the Court of Appeals even considered the possibility that these paragraphs might constitute the complete answer to the case. Under this Court's decision in *Jacob Siegel Co. v. F. T. C.*, 327 U. S. 608 (1946), the Commission's order should go no further than reasonably necessary to cure the condition complained of.

and Goodyear were willing to admit that service stations constituted an increasingly important market for TBA (R. 147). Atlantic told its dealers that 35% of the motorists' replacement tire purchases were handled through service stations in 1956 and that this figure was expected to exceed 40% in later years (RXA-20, R. 2038, 3259). Contrary to this expectation, the trend has apparently reversed. Published surveys [32] indicate that the service station share of the replacement tire market fell from 35% in 1956 to about 25% in 1963.

As shown above, service station TBA is ancillary to gasoline marketing, and gasoline marketing, too, is rapidly changing. The Commission has recognized as much in an order which it issued on December 28, 1964 dismissing the matters of Pure Oil Company, The Texas Company, Standard Oil Company (Indiana) and Shell Oil Company, respectively dockets 6640, 6898, 7567 and 8537. That order, and the concurrent statement of the Commission announcing a broad inquiry into the problems of competition in the marketing of gasoline, are printed as an annex to Goodyear's brief before this Court in No. 296.

In its order of December 28, 1964, the Commission noted that certain gasoline marketing practices challenged in those cases "occurred almost a decade ago, in the mid-1950's, and competitive conditions in this dynamic and rapidly changing industry appear to have altered significantly since then." The Commission also noted that it was concurrently initiating a broad inquiry into the problems of gasoline marketing; that orders to cease and desist in individual cases could not provide a complete or effective solution to the competitive problems of the gasoline

---

32. National Automobile and Tire Surveys, No. 27 for 1963 and No. 28 for 1964, conducted by Alfred Politz Research, Inc. for Look magazine, Cowles Magazines and Broadcasting, Inc., 488 Madison Avenue, New York 22; NTDRA Dealer News, Annual Marketing Issue, January 25, 1965, National Tire Dealers and Retreaders Association, Inc., 1343 L Street, N. W., Washington 5, D. C.

industry; and that it would be more desirable to concentrate on a comprehensive industry-wide approach.

Whether or not TBA is to be covered in the Commission's industry-wide inquiry, the same considerations apply to TBA marketing as to gasoline marketing. The standards governing TBA marketing should be established on an industry-wide basis after an industry-wide examination. This examination should include the other major kinds of outlet for TBA in addition to service stations. In this way the interests of national and regional oil companies can be taken into account, and the paramount needs of the service station operators and the motorists can be respected.

The staleness of the record and the inadequacy of the Commission's case-by-case approach to TBA fully justify the Court of Appeals for the District of Columbia in dismissing the *Goodrich-Texaco* proceedings instead of remanding. And they call for similar disposition of the *Goodyear-Atlantic* proceedings.

SUMMARY OF ARGUMENT.

1. The Commission Did Not Have A Rational Basis For Denying Atlantic The Use Of The Sales Commission Plan. (Part I of Argument, Page 42 Below.)

The Commission's order denies Atlantic the use of the sales commission plan, which Atlantic has found best for itself and its dealers. The practical effect of the order is to force Atlantic to return to purchase-resale, which has proved to be a competitive handicap for Atlantic and its dealers. Under the decisions of this Court, the Commission was required to have a rational basis for making this crucial distinction.

The reasons given by the Commission will not stand up under the most casual inspection. In actuality the Commission's order helps no one and hurts Atlantic and Atlantic dealers. This is irrational.

2. The Commission Did Not Consider The Benefits And Business Necessity Of The Sales Commission Plan. (Part II of Argument, Page 46 Below.)

Although the Commission did not explicitly say so, its orders in the three cases outlawed the sales commission plan *per se* without considering the business necessity offered by Atlantic to justify its use of the plan.

Under the decisions of this Court, no business practice should be condemned *per se* unless, after full investigation, it has been shown to have no redeeming virtues under any circumstances. The Commission made no effort to comply with this requirement.

3. The Commission Erred In Condemning The Sales Commission Plan On The Grounds Of Competitive Effects Without Measuring These Effects Against Any Market. (Part III of Argument, Page 49 Below.)

The Commission rested its condemnation of the sales commission plan on supposed anticompetitive effects. It

relied entirely on characterization of these effects and did not identify any relevant market or measure the effects against any market.

In a proceeding under Section 5 of the Federal Trade Commission Act, alleged anticompetitive effects should be shown to be substantial in relation to a relevant market. The Commission erred in failing to make this showing.

4. The Court of Appeals Erred In Condemning The Sales Commission Plan As A Tying Arrangement. (Part IV of Argument, Page 56 Below.)

The first error by the Court of Appeals is its mistake in attributing the tying rationale to the Commission. Under this Court's decisions, the Court of Appeals was bound to review the Commission's action solely on the grounds invoked by the Commission.

Secondly, the Court of Appeals erred in holding that the sales commission plan is a tying arrangement. If there were any tying in the case, it would lie between Atlantic and its dealers and would be wholly independent of the sales commission plan.

In fact, there can be no tying. Atlantic's free choice policy prohibits tying, and the Commission's order against coercion reinforces the prohibition.

The attempt by the Court of Appeals to infer a tying arrangement from the fact that Atlantic is providing its dealers with stations and equipment as well as several related lines of products is unprecedented and erroneous.

Finally, this Court's decisions against tying have been made in cases where the practice represented the exploitation of a commanding market position for no other purpose than profit. There is no such exploitation in Atlantic's TBA program. Over the years it has operated on a break-even basis or at a loss. It is really an ancillary service. This Court has never outlawed such a service as constituting "tying," and the decisions of lower courts are to the contrary.

ARGUMENT.

I. THE COMMISSION HAD NO RATIONAL BASIS FOR OUTLAWING THE SALES COMMISSION PLAN.

The Commission recognizes that oil companies have a vital interest in selling TBA to their dealers. It recognizes that there are two types of arrangement which oil companies may make with TBA suppliers to get the TBA into the hands of the dealers. It forbids one of these arrangements—the sales commission plan—while permitting the other—purchase-resale.

To Atlantic, the change from purchase-resale to the sales commission plan meant a substantial saving in operating and capital costs, plus a substantial improvement in service to Atlantic dealers. The effect of the Commission's order is to reverse these benefits, to put Atlantic to unnecessary expense, and to saddle the Atlantic dealers with an unsatisfactory delivery arrangement.

More than this, Atlantic's national competitors can and do use purchase-resale successfully, so the order puts no handicap on them. This compounds the competitive disadvantage to Atlantic and the many other regional oil companies which have been using the sales commission plan.

The decisions of administrative agencies must make sense. The agency must articulate the grounds for its order, and these grounds must be sufficient to sustain the order. As this Court has said:

> "We must know what a decision means before the duty becomes ours to say whether it is right or wrong." *United States, et al. v. Chicago, Milwaukee, St. Paul & Pacific R. Co., et al.*, 294 U. S. 499, 511 (1935).

> "In either event the orderly functioning of the process of review requires that the grounds upon which the

administrative agency acted be clearly disclosed and adequately sustained." *Securities and Exchange Commission v. Chenery Corporation*, 318 U. S. 80, 94 (1943).

In other words, the Commission was required to disclose and sustain a controlling reason for differentiating between the sales commission plan and purchase-resale.

This rule is all the more applicable here because the Commission in the TBA proceedings is not passing on an isolated situation. It is laying down an order of such general application as to be tantamount to legislation. It is arbitrarily invalidating the TBA marketing arrangement of a large number of small oil companies without giving them an opportunity to be heard. Under these circumstances it is vital that the purported basis for such a sweeping rule, affecting more than half the competitors in an industry, be adequately sustained. See *Eastern-Central Motor Carriers Ass'n., et al. v. United States*, 321 U. S. 194, 209-10 (1944).

In attempting to differentiate the sales commission plan from purchase-resale, the Commission relied on two alleged anticompetitive effects which it said are unique to the sales commission plan. These two effects are:

(1) Under the sales commission plan, Goodyear's supply points make substantial sales to Atlantic dealers. This, the Commission says, gives the supply points a competitive advantage which injures competition at the wholesale level (R. 127).

(2) According to the Commission, small tire companies cannot offer extensive distribution facilities as an inducement and, therefore, are at a disadvantage in competing for Atlantic's business. This, says the Commission, injures competition at the manufacturing level (R. 127-8).

The following analysis will show that these two points do not provide a rational basis for the Commission's order.

Claimed advantage to supply points. The Commission said that by reason of the business they acquire under the sales commission plan, Goodyear supply points have an advantage over their competitors. The Commission apparently forgot that many of the supply points are Goodyear company-owned stores and Atlantic supplying dealers. If Atlantic changed its arrangement with Goodyear from the sales commission plan to purchase-resale, the Goodyear company stores would presumably continue to be used as sub-warehouses for drop shipments to Atlantic dealers, and the Atlantic supplying dealers would continue to act as supply points for Atlantic. With respect to these two kinds of supply points, the Commission's order would change nothing.

However, the Commission's order would drastically affect the remainder of the supply points, the independent Goodyear dealers. By the Commission's fiat, they would be deprived of the business they now do with Atlantic dealers and their investment in that business would be rendered unproductive.

The Commission's justification for this blow at the Goodyear supply points is that this will "terminate the unjust advantage presently enjoyed by distributors of Firestone and Goodyear over local competitors representing other tire manufacturers and TBA suppliers" (R. 127).

Granting, for argument, that the independent supply points do enjoy an advantage (and this is by no means proved, as will be shown below), the Commission is wrong in believing that the advantage will be "terminated" if Atlantic is forced to return to purchase-resale. In actuality, the abolition of the sales commission plan does not mean the abolition of independent supply points, it merely means a change in their identities. The Commission forgot that if Atlantic cannot use Goodyear dealers as supply points, it will have to find Atlantic dealers to serve in their stead. And these Atlantic dealers, to the extent they can be found, will enjoy the same "advantage" (if such it be) previously

enjoyed by the Goodyear dealers. The names will be different; the "advantage" will be the same. As far as the "local competitors" mentioned by the Commission are concerned, this is a distinction without a difference.

The real difference, which the Commission ignored, is that if Atlantic must franchise the independent supply points, it is Atlantic who must bear the credit risk; it is Atlantic who must finance inventories; and it is Atlantic who must pay for delivery. Because it lacks background knowledge and personnel skilled in the TBA business, as well as the specialized distribution facilities required for TBA, Atlantic will be unable to perform these functions as well as they are performed today. The result will be less efficient distribution for Atlantic dealers.

Moreover, the Commission's underlying premise that the supply point status offers a competitive advantage is completely unfounded. Actually, the record, though scant, indicates that supply point business is neither attractive nor profitable.[33] The Commission did not produce a single dealer who desired to be a supply point and was not given that opportunity.

Claimed disadvantage of small tire manufacturers. The Commission said that small tire companies lack distribution systems to implement sales commission plans and are therefore unable to offer such plans to oil companies in competition with larger tire companies like Goodyear. Because Atlantic had once bought Lee tires under purchase-resale, the Commission assumed that smaller tire manufacturers would be able to compete for Atlantic's business if Atlantic were forced to use the purchase-resale method again. This confuses changes in brand with changes in distribution method.

Lee lost Atlantic's business before Atlantic switched to Goodyear and Firestone because the Lee brand had poor

33. The fact that a considerable number of Atlantic dealers were called on to serve as supply points shows that Goodyear dealers were not scrambling for the opportunity.

consumer acceptance outside Philadelphia. The sales commission plan had nothing to do with it.[34]

Furthermore, if Atlantic is required to return to purchase-resale, it could not afford to choose a local tire manufacturer. Tire marketing today is done very differently than it was in the 1950's when this case was tried. National advertising has made it almost impossible to sell a local product. Motorists who drive throughout the nation want a nationwide warranty. If Atlantic is forced to return to purchase-resale, it is inevitable that it will continue to sell Goodyear or Firestone, or comparable national brands with national warranties.

In sum, the Commission's order will not help the "local" TBA distributors or the small tire manufacturers for whom the Commission expressed concern. The order will hurt Atlantic and its dealers. This is a senseless result. It should not be allowed to stand.

II. THE COMMISSION AND THE COURT OF APPEALS FAILED TO WEIGH THE REDEEMING VIRTUES OF THE SALES COMMISSION PLAN.

The Commission's order, taken with its orders in *Firestone-Shell* and *Goodrich-Texas,* creates, in practical effect, a new category of *per se* violation—sales commission plans in the oil industry.

Per se violations are those which "because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *Northern Pacific Ry. v. United States,* 356 U. S. 1, 5 (1958). Under this Court's decision in *White Motor Co. v. United States,* 372 U. S. 253 (1963), no practice not previously examined by this Court should be outlawed *per se* without a full examination of the business purposes advanced in

34. Lee does, in fact, have a sales commission arrangement with another small oil company—as do Dayton, Dunlop and General, three smaller tire companies (58 F. T. C. at 408, n. 13).

justification thereof to see whether a conclusive presumption is warranted. Neither the Commission nor the Court of Appeals addressed itself to this question. They were content to recite the supposed anticompetitive effects of the Atlantic-Goodyear sales commission contract. They made no examination of the business purposes advanced in its support.

The primary reason for Atlantic's adoption of the sales commission plan was to assure that every dealer, no matter how small or remote, would have a convenient source of supply for TBA. This benefits dealers and the public. Under purchase-resale Atlantic was unable to fill this need. Under sales commission it was in a better position to do so.

The plan is ancillary to Atlantic's primary business. Its object is not to exploit TBA—Atlantic's commissions scarcely pay the cost of the program—but to stimulate the sale of gasoline. Motorists cannot be expected to patronize Atlantic stations unless the stations are in a position to meet all the motorists' needs—and promptly.

The sales commission plan also benefits Atlantic in its competition with other oil companies. Atlantic is not a giant in the industry, but a comparatively small regional company. Because it lacks the resources for a TBA distribution network of its own, Atlantic must resort to the sales commission plan to meet the competition of larger oil companies. In the oil industry, sales commission plans are typically the competitive weapon of the lesser lights.

Under this Court's decision in *White Motor,* these facts should not have been ignored.

The teaching of *White Motor* was recently followed by the Court of Appeals for the Sixth Circuit in *Sandura Co. v. Federal Trade Commission,* 1965 Trade Cases ¶ 71,332 (6th Cir. 1964). Sandura, like White Motor Company, has a territorial system of distribution under which distributors are prohibited from selling outside their assigned areas. This restriction was found by the Trade Commission to be an unfair method of competition.

On appeal, the Court of Appeals reversed the Commission. The Court of Appeals first noted that not every practice which restrains competition is an unfair method of competition, citing this Court's decisions in *Motion Picture Advertising* and *Gratz*,[35] and the Fourth Circuit's decision in *Asheville*.[36] The Court then said that, as in *White Motor*, "so must we here refuse to find Sandura's arrangements illegal without examining their particular effect on competition and the facts offered to justify the resulting restraint." 1965 Trade Cases ¶ 71,332 at page 80,396.

The Court of Appeals noted that Sandura "is a relatively small concern competing with and losing ground to the 'giants' in the floor-covering industry," and found that Sandura could not compete effectively with the giants unless it could offer its distributors closed territories. The Court concluded (¶ 71,332 at page 80,404):

> "In summary, we feel constrained to uphold the legal sufficiency of the justification made by Sandura. We are of the opinion that the Commission's rejection of its sufficiency was without supporting factual foundation. We are satisfied that the record in this case is barren of credible evidence that the public would be benefited by requiring that Sandura distributors be allowed to intrude on each other's territory. The distributors, the dealers and the public will best be served by the continued economic health and competitive existence of Sandura as well as its distributors. We are of the opinion that on this record, the only justified conclusion is that elimination of the closed territory arrangement would impair competition, rather than foster it."

---

35. *F. T. C. v. Motion Picture Advertising Service Co.*, 344 U. S. 392, 396 (1953) and *F. T. C. v. Gratz*, 253 U. S. 421, 427 (1920).

36. *Asheville Tobacco Board of Trade v. F. T. C.*, 263 F. 2d 502, 511 (4th Cir. 1959).

In the present case the Commission wholly ignored the competitive problems of small oil companies and their dealers, and this despite the fact that the record before it was replete with the problems of just such a company. Atlantic, a regional company much smaller than the industry giants, found itself unable to provide under purchase-resale the extensive distribution needed by its dealers. The business necessity which led Atlantic to adopt the sales commission plan should have been taken into account.

III. THE SALES COMMISSION PLAN IS NOT AN UNFAIR METHOD OF COMPETITION.

Section 5 of the Federal Trade Commission Act authorizes the Commission to prohibit only "unfair" methods of competition:

> "The powers of the Commission are limited by the statutes. It has no general authority to compel competitors to a common level, to interfere with ordinary business methods or to prescribe arbitrary standards for those engaged in the conflict for advantage called competition. The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill and capital should have large freedom of action in the conduct of their own affairs." *Federal Trade Commission v. Sinclair Refining Company*, 261 U. S. 463, 475-6 (1923).

Whether particular acts are unfair competition within the meaning of the statute is for the Court, not the Commission, to decide. *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 648 (1931).

The broad question in this case is whether the sales commission plan is an unfair method of competition in the oil industry. The answer to this question should be no.

A. The Sales Commission Contracts Are Not Unreasonable.

While the decision on the factual situation presented by *Federal Trade Commission v. Gratz*[37] would probably not be followed today, this Court's formulation in that case of the scope of Section 5 of the Federal Trade Commission Act is still controlling. That formulation, of course, is that Section 5 does not apply except to practices "opposed to good morals because characterized by deception, bad faith, fraud or oppression" and to practices "against public policy because of their dangerous tendency unduly to hinder competition or create monopoly" (253 U. S. at 427).

There is nothing immoral in the sales commission arrangement. Nor do the contract terms unduly hinder competition. The contracts are nonexclusive and cancellable by either party on a year's notice. There is nothing to prevent suppliers of tires, batteries or accessories from competing for Atlantic's business on either a sales commission or a purchase-resale basis at the end of the notice period. Indeed, suppliers can also compete during the contract term. Atlantic handles antifreeze on a purchase-resale basis even though antifreeze is also included in the sales commission arrangements with Goodyear and Firestone. Atlantic could take on other purchase-resale items if they were offered on sufficiently attractive terms.

Moreover, there is no territorial exclusivity or rigidity. Atlantic can change the territories in which it sponsors Goodyear and Firestone at the end of any one-year period; it can take on another supplier in any part of its marketing area at any time; and it can elect to sponsor more than one supplier in a single territory as did Shell and Texaco.

Nor is there anything unusual in the basic arrangement. The idea of selling or promoting another's goods or services on commission is fundamental to American business. Every distributor of tires, batteries and accessories who

37. 253 U. S. 421 (1920).

testified in this proceeding compensated his salesmen by commission in whole or in part. Vast industries, like the insurance industry, are built on commission selling. Manufacturers' representatives perform functions for the companies they represent almost identical with those performed by Atlantic for Goodyear—and are compensated by commission.

Finally, there is nothing improper in the consideration for the commission payments. The Examiner found that the consideration is the services rendered by the Atlantic sales organization, described these services in detail (R. 48-9), and concluded that they are "substantial" (R. 58).

The matter is well summed up in the words of the Court of Appeals for the District of Columbia in the *Goodrich-Texaco* case (336 F. 2d at 763):

> "As to the implication that sales commission agreements between oil companies and TBA suppliers are basically illegal regardless of their terms, we disagree. There is no reason to condemn such contracts unless they result in unfair competition. An oil marketing company's recommendation to its dealers that they purchase a particular line of TBA, even though it re-receives a commission for doing so, is not incompatible with its primary business of selling petroleum products."

B. The Commission Did Not Measure The Competitive Effects Of The Sales Commission Contracts By Any Criteria.

The Commission does not take specific issue with the terms of the sales commission contracts. It says that the sales commission contracts are illegal because of their competitive effects. It argues, in essence, that a portion of the Atlantic dealers' TBA purchases is "foreclosed" by Atlantic's power over its dealers; that under the Goodyear-Atlantic agreement Goodyear acquires these sales for its

supply points; and that this benefits the supply points and Goodyear and hurts their competitors, the "local" TBA distributors and smaller tire manufacturers.

But the Commission never attempts to measure the extent of the benefit or burden by any recognized legal criteria. For example:

1. As to the extent of the "foreclosure," the record shows that Atlantic dealers have purchased annually about $6,000,000 of Goodyear TBA under the Atlantic program in recent years. But the record is silent on whether this represents 100% or 1% of their purchases of *all* TBA.

2. With respect to the Goodyear supply points, the record does not indicate their share of the total TBA market or the share of their business represented by sales to Atlantic dealers under Atlantic's program. Nor is there any indication how much of the Atlantic dealer purchases passes through independent Goodyear supply points as compared with Goodyear-owned facilities and Atlantic supplying dealers.

3. As for Goodyear's tire company competitors, there is no evidence of Goodyear's share of the total TBA market nationally or in Atlantic's region, although it is stated that Goodyear is the largest manufacturer of rubber products in the United States. There is no evidence that competitors of Goodyear do not have adequate outlets for their TBA. There is no evidence as to the relative use of the sales commission method and the purchase-resale method by Goodyear's competitors and Atlantic's competitors, nor of any industry trend towards one method or the other.

4. There is no evidence concerning the competition encountered by Atlantic dealers from mail order stores, discount houses, department stores and other aggressive TBA marketers.

The foregoing cannot be oversight. It is clear, although the Commission did not say as much, that the Commission did not feel required to measure the competitive effects against any market and made no attempt to do so.

It is equally clear that in an analogous proceeding under the Sherman Act or the Clayton Act, a measurement of the competitive effects against the relevant market would be required.[38] It is elementary that a contract is not an illegal restraint unless it is significant to the market. That is the test under Sections 1 and 2 of the Sherman Act. *Standard Oil Co. of New Jersey v. United States*, 221 U. S. 1 (1911); *United States v. American Tobacco Co.*, 221 U. S. 106 (1911). It is also the test under Section 7 of the Clayton Act:

> "Market shares are the primary indicia of market power . . . The merger must be viewed functionally in the context of the particular market involved, its structure, history and probable future." *United States v. Continental Can Co.*, 377 U. S. 441, 458 (1964).[39]

It is also the test under Section 3 of the Clayton Act.

> "To determine substantiality in a given case, it is necessary to weigh the probable effect of the contract

---

38. The sales commission contract could not be a violation of Section 3 of the Clayton Act, because it does not involve a lease or sale; nor could the sales commission contract be a violation of Section 7, because there is no merger or acquisition of stock or assets. However, both the Commission and the Court of Appeals spoke generally in Clayton Act terms. They said that the Atlantic-Goodyear contract results in an "integration" of Atlantic's "market control" into Goodyear's distribution system (R. 82, 3296), thus likening the contract to an acquisition or merger.

Atlantic has always contended that the merger analogy overstates the facts and that the proper measure of legality is Section 1 of the Sherman Act.

39. As this Court said in *Brown Shoe Co. v. United States*, 370 U. S. 294, 343 (1962): "The market share which companies may control by merging is one of the most important factors to be considered when determining the probable effects of the combination on effective competition in the relevant market."

> on the relevant area of effective competition, taking into account the relative strength of the parties, the proportionate volume of commerce involved in relation to the total volume of commerce in the relevant market area, and the probable immediate and future effects which pre-emption of that share of the market might have on effective competition therein. It follows that a mere showing that the contract itself involves a substantial number of dollars is ordinarily of little consequence." *Tampa Electric Co. v. Nashville Coal Co.*, 365 U. S. 320, 329 (1961).

Thus, the Commission's failure to meet normal antitrust standards is apparent and virtually admitted.[40] The question is: was it required to do so when proceeding under Section 5?

C. Competitive Effects Should Have Been Measured By Normal Antitrust Standards.

Although the question presented above has not yet been squarely decided, Atlantic believes that a fair reading of this Court's opinions construing Section 5 leads to an affirmative answer. *Federal Trade Commission v. Gratz*, 253 U. S. 421 (1920); *Federal Trade Commission v. Motion Picture Advertising Service Co.*, 344 U. S. 392, 395 (1953); and *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 647 (1931), all indicate that where a method of competition is challenged on the ground that it is anticompetitive, normal antitrust standards prevail.

---

40. In its decision in *Brown Shoe Co.*, CCH Trade Reg. Rep., 1961-63 Transfer Binder No. 7606 ¶ 16,316, rev'd on other grounds, 1964 Trade Cases ¶ 71,312 (8th Cir. 1964), the Commission rejected the argument that it should apply, in a proceeding under Section 5 of the Federal Trade Commission Act, the test of illegality applicable to Section 3 of the Clayton Act where the challenged practices were analogous to those encompassed by the Clayton Act. It referred to its own similar ruling in *Luria Brothers and Company*, No. 6156 (1962), CCH Trade Reg. Rep. ¶ 16,183.

The Court of Appeals for the Fourth Circuit adopted this view in reviewing a Section 5 proceeding, saying:

> "Every restraint of trade is not a violation of the antitrust laws; the decisive question is whether it is an unreasonable restraint, and this depends on the significance of the restraint in relation to the particular market under investigation." *Asheville Tobacco Board of Trade, Inc. v. Federal Trade Commission,* 263 F. 2d 502, 511 (4th Cir. 1959).

The Attorney General's National Committee to Study the Antitrust Laws was of the same view. In its report, issued in 1955, it said that "proceedings thus brought under Section 5 ought not, in our opinion, circumvent the essential criteria of illegality prescribed by the express provisions of the Clayton Act" (Report of the Committee, p. 149). The same view has been taken by eminent authority.[41]

We appreciate the contention of the Commission that it must have broad powers to deal with practices outside the technical confines of other antitrust statutes in the case of incipient offenses. But this is not an incipiency case. When these proceedings were instituted, the sales commission plan had been used by Atlantic for five years and by other oil companies for decades. There had been ample opportunity for the effects of sales commission plans to manifest themselves. The Commission could, for example, have examined the percentage of Atlantic dealers' TBA purchases made under the plan to see whether it was

41. In the area of Sherman Act offenses, "harmonization of the Commission's exercise of Section 5 jurisdiction requires the Commission to be held to the same substantive criteria as those established by judicial interpretations of the Sherman Act." Also, "Section 5 should impose upon the Commission the same burden of proof as the particular Clayton Act provision covering the 'economically equivalent' anticompetitive transaction or practice." Oppenheim, *Guides to Harmonizing Section 5 of The Federal Trade Commission Act with the Sherman and Clayton Acts,* 59 Mich. L. Rev. 821, 826, 836 (1961).

increasing or decreasing. Or the Commission could have examined the shares of all oil company dealers' TBA purchases under all sales commission plans in a given market over a given period. But it chose to ignore these objective measures and to rely entirely on characterization.

The Commission will no doubt also argue that it need not "mathematically measure" any market shares. This misses the point. We are talking of a more fundamental requirement: that when an order in an antitrust case seeks justification in competitive effects, there must be *some* area of competition (the relevant market) in relation to which the effects are to be measured. And there must be *some* measure to show the relationship between the effects and competition within the market. This is not a case of proof falling somewhat short of Sherman or Clayton Act standards. This is a case of no proof at all.

IV. THE SALES COMMISSION PLAN IS NOT A TYING ARRANGEMENT.

The Court of Appeals affirmed the Commission, not on the basis that the Commission's analysis of competitive effects was legally sufficient, but rather on the basis that the sales commission plan is inherently a tying arrangement. The Court of Appeals said that when the Commission analyzed the sales commission plan, it "found, in effect, a tying arrangement inherently anticompetitive" (R. 3297).

In point of fact, the Commission made no such finding. The Commission mentioned tying only in its discussion of coercion—not in its discussion of the sales commission plan. In talking about coercion, the Commission cited the *Northern Pacific* and *Osborn* cases[42] for the proposition that coercion, if successful, results in an implied tying agreement. Several paragraphs later the Commission took up

42. *Northern Pacific Ry. v. United States*, 356 U. S. 1 (1958); *Osborn v. Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960), *cert. den.* 366 U. S. 963.

the separate question of the legality of the sales commission plan. The heart of the Commission's legal theory on this point is contained in this paragraph from its opinion (R. 124):

> "But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases. The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents."

In the passage quoted above, the Commission is not saying that the sales commission plan is a tying arrangement, and it is not saying that the sales commission plan is inherently anticompetitive. Instead, it is explicitly recognizing that any economic power Atlantic may have with respect to its dealers is independent of the type of arrangement between Atlantic and its TBA supplier, and that the sales commission type of arrangement which Atlantic actually selected is illegal only if an evaluation of competitive effects proves it so.[43]

The decision of the Court of Appeals is flatly contrary to this Court's holding in *SEC v. Chenery Corporation*, 318 U. S. 80 (1943), 332 U. S. 194 (1947), that a reviewing court, in dealing with a determination or judgment which

43. This conclusion is strengthened by a reading of the corresponding passages in the Commission's opinions in *Goodrich-Texaco* quoted earlier in this brief at pp. 31-2.

an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. For this reason alone, the decision of the Court of Appeals should be reversed.

Furthermore, the notion that the sales commission plan is a tying arrangement is fallacious.

A. If The Dealer's Legal Freedom Of Choice Is Preserved, Multiple-Line Selling Is Not Tying.

In legal analysis, tying is to be distinguished from selling. Whenever a seller offers more than one line, there is the theoretical possibility that he will condition sales of one upon purchases of another. But the existence of this possibility does not lead the antitrust laws to forbid multiple-line selling. What the law forbids is affirmative action which deprives the buyer of his freedom to buy the second line or not, as he may choose.

Where a seller offers multiple lines to his customers, the law is not concerned with the likelihood that the buyer may choose to buy the second line, or with the considerations influencing his decision if he chooses to do so. The antitrust laws are violated only when the buyer surrenders his freedom of choice by entering into a tying agreement or is deprived of his freedom of choice by coercion.

The classic statement of the distinction between salesmanship and coercion is the trial judge's instructions to the jury in the *General Motors* case, which was before this Court in *Ford Motor Co. v. United States*, 335 U. S. 303 (1948). The Commission itself quoted (R. 99) this Court's commentary on those instructions (335 U. S. at 316-17):

> "Their plain effect is to draw a line between such practices as cancellation of a dealer's contract, or refusal to renew it, or discrimination in the shipment of automobiles, as a means of influencing dealers to use GMAC, all of which fall within the common understanding of 'coercion,' and other practices for which 'persuasion,' 'exposition' or 'argument' are fair characterizations."

The rule has been codified in the Automobile Dealers' Day in Court Act, 15 U. S. C. § 1221-25 (1958), which requires manufacturers to treat their dealers in a fair and equitable manner "so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party." The Act then provides that "recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith". 15 U. S. C. § 1221(e).

Every court which has considered the matter has upheld the right of an oil company to sell TBA to its dealers so long as the dealers' freedom of choice is preserved. In *United States v. Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959), a proceeding under Section 3 of the Clayton Act, the court struck down exclusive dealing contracts under which Sun dealers were required to buy TBA from Sun, including Kelly-Springfield tires and Sun batteries and accessories. The Court's decree (unreported) said "it is not the intendment and purpose of this decree to in any wise prohibit any Sun dealer, of his own free choice, from dealing exclusively in Sun's products and in the line of 'tires, batteries and accessories' sponsored by Sun."

A similar provision appears in the consent decree in *United States v. Standard Oil Co. of California*, 1959 Trade Cases ¶ 69,399 (S. D. Cal. 1959). The decrees affirmed by this Court in the *Standard Stations* and *Richfield* cases[44] did not prevent the oil companies from selling TBA to their dealers, absent exclusive dealing contracts. There is a clear implication to the same effect in the Commission's orders in *United States Rubber Co.*, 28 F. T. C. 1489 (1939) and *Atlas Supply Co.*, 48 F. T. C. 53 (1951).

More recently, the Court of Appeals for the Fourth Circuit recognized the right of an oil company to sell TBA

44. *United States v. Standard Oil Co.*, 78 F. Supp. 850 (S. D. Cal. 1948), *aff'd* 337 U. S. 293 (1949); and *United States v. Richfield Oil Corp.*, 99 F. Supp. 280 (S. D. Cal. 1951), *aff'd per curiam* 343 U. S. 922 (1952).

to its dealers in *Osborn v. Sinclair Refining Co.*, 286 F. 2d 832 (4th Cir. 1960). The Court held that the particular dealer who was the plaintiff in the case had been forced to buy sponsored TBA as a condition of lease renewal—which was unlawful. However, the Court went on to say (286 F. 2d at 836):

> "Of course, a seller may attempt to persuade a buyer to purchase his products rather than those of his competitors, and such salesmanship efforts do not run afoul of the antitrust laws, unless the sale of one product (the tying product) is made under an agreement, arrangement or condition under which the buyer must also purchase another (the tied) product."

The rule of all these authorities is clear: *preservation of the dealers' freedom of choice is the touchstone of legality in dealings between manufacturers and their dealers.*

Atlantic's contracts with Goodyear and Firestone recognized the essentiality of the distinction between selling and tying. Atlantic's confirming letter to Goodyear says (CX 16, N. T. 35, R. 2369):

> "Of course, we both understand that our [i.e., the Atlantic] organization cannot and will not use any methods other than salesmanship to encourage our resale outlets to purchase your products and services."

Atlantic's letter to Firestone says (CX 106A-B, N. T. 35, R. 2617):

> "It is understood that all such Atlantic retail outlets or distributors are free to choose whether, and to what extent, they shall purchase Firestone products and services, and that Atlantic representatives cannot and will not use any methods other than salesmanship to encourage such retail dealer outlets or distributors to purchase Firestone products and services."

Through its published and reiterated policy, Atlantic made known to its dealers its determination to respect their freedom of choice.

Moreover, as the case is presented to this Court, the dealers' freedom of choice is protected not only by Atlantic's policy, but by the explicit provisions of the Commission's order regarding coercion. Under these proscriptions there can be no tying, and the Commission so recognized by permitting Atlantic to return to purchase-resale.

B. Atlantic's Other Relationships With Its Dealers Do Not Deprive Them Of Their Freedom Of Choice.

The Court of Appeals took a novel approach which has sweeping implications for all marketers of branded merchandise. Like the Commission, the Court of Appeals said that Atlantic's "economic power" is sufficient, without coercion, to cause dealers to buy substantial amounts of sponsored TBA. But whereas the Commission said that Atlantic's exercise of this "economic power" by selling TBA to the dealers is illegal only if it has anticompetitive effects, the Court of Appeals said that such selling is automatically illegal tying (R. 3295-6).

Simply translated, the theory of the Court of Appeals is that whenever a salesman has other business relationships with a customer which may cause the customer to prefer to deal with that salesman, a sale by that salesman to that customer automatically becomes a tie-in.

In the instant case, Atlantic has relationships with its dealers extending over many years. Out of these relationships flows a feeling on the dealers' part which can be characterized as loyalty, confidence or goodwill. Atlantic's sponsorship means something to these dealers. They know from experience that Atlantic will stand behind the merchandise it endorses. They tend to buy the TBA that Atlantic recommends. This is all that supports the tying theory of the Court of Appeals.

The effects of this theory reach further than the sales commission plan. Every manufacturer enjoys the goodwill of his dealer customers. Every salesman enjoys the goodwill of those to whom he sells. Many salesmen are engaged because they have a good list of established customers. Surely the Court of Appeals does not consider this unfair.

The fact that Atlantic's goodwill stems from other relationships with its dealers as lessor and gasoline supplier is likewise immaterial. Most successful business relationships lead to other relationships between the parties. Satisfied borrowers deposit money with the bank that has advanced them credit. Does the Court of Appeals wish to prevent the bank's trust department from offering them services relating to their estates?

Private business is not done on sealed bids. Often a sale is based on prior dealings. Often the basis is reputation of its maker. Often, as in the case of Atlantic-sponsored TBA, it is the superior sales promotion or other services accompanying the product. This is part of the goodwill which is the stock in trade of every successful salesman.

As pointed out above, the key question is not whether Atlantic enjoys the goodwill of its dealers or whether the dealers tend to buy the TBA that Atlantic sponsors. The key question is whether Atlantic has preserved the dealers' legal freedom to buy other TBA of their own choice. This Atlantic has scrupulously done.

C. Atlantic's TBA Program Does Not Exploit The Dealers.

The Court of Appeals completely failed to appreciate the commercial realities of the situation. Atlantic is a gasoline marketer; it is not in the TBA business. Its only interest in TBA is as a means of strengthening its dealers and increasing gasoline sales. It makes no profit on TBA.

Thus, Atlantic's sales commission program lacks the feature of exploitation which characterizes most tying prac-

tices and underlies this Court's decisions outlawing them. Admittedly, it is not legitimate for a manufacturer to exact a profit from the sale of an unwanted product as a condition of selling the desired product. But it is quite legitimate for Atlantic to offer an ancillary product at no profit as part of its franchise in order to increase its sales of its principal product. It is all the more legitimate when the arrangement benefits every Atlantic dealer, since all of them have a mutual interest in promoting sales of Atlantic gasoline.

The statements by the Court of Appeals that "the system [meaning the sales commission plan] was designed to exploit Atlantic's created and controlled service station market" (R. 3296), and that "It [the sales commission plan] is anticompetitive largely because competition for the business of the individual service station is replaced by competition for the oil company's domination of its dealers" (R. 3297) are both contrary to the record. The history of Atlantic's TBA program shows that it was designed to help the dealers, not to exploit them. Because the dealers, from the beginning, looked to Atlantic for TBA assistance and preferred to buy TBA through Atlantic's program, there has always been competition for Atlantic's account, as distinguished from the separate accounts of the dealers. Under purchase-resale all Atlantic-sponsored TBA was purchased by Atlantic and TBA manufacturers competed for Atlantic's account. Under the sales commission plan they compete for Atlantic's sponsorship.

The difference between the exploitation of market leverage and the incorporation of an ancillary service into a franchise program was recently recognized by the Court of Appeals for the Sixth Circuit in *Crawford Transport Company, Inc. v. Chrysler Corp., et al.*, 1964 Trade Cases ¶ 71,260 (6th Cir. 1964). In that case, Chrysler, in order to streamline its delivery network, undertook to select the carriers to make deliveries to dealers, even though the dealers paid the costs of delivery. This arrangement was

attacked as an illegal tie-in by a carrier not on Chrysler's selected list. The contention was rejected by the Court of Appeals on the ground that Chrysler had no financial interest in the selected carriers, did not seek to invade or dominate the trucking field, and was only trying to save money for itself and its dealers.[45] The Court concluded (1964 Trade Cases ¶ 71,260 at 80,123):

> "The purpose of the Sherman Act is to preserve for industry free access to competitive markets and to prevent monopolies in restraint of trade. It is well to take a look at the commodity and at the nature of the business with which we are dealing here. Chrysler is a manufacturer of automobiles. Its two great competitors are Ford and General Motors. The public interest lies in the protection of that competition. Chrysler found it necessary to centrally control the delivery of automobiles to dealers in order to compete more effectively with Ford and General Motors in all areas of the country. To allow Chrysler's financial position in the field of automobile manufacture to be sapped and drained through unnecessary transportation costs would be unreasonable. To subordinate Chrysler's interest to that of the transportation companies, would, so to speak, permit the tail to wag the dog. What benefits Chrysler ultimately inures to the benefit of Chrysler dealers and to the public."

So, here, what benefits Atlantic and its dealers in the struggle with the titans of the oil industry ultimately benefits the motoring public.

---

45. See also *Brown Shoe Co. v. F. T. C.*, 1964 Trade Cases ¶ 71,312 (8th Cir. 1964), in which the Court of Appeals held that Section 5 of the Federal Trade Commission Act was not intended to prevent a manufacturer from offering sales promotion services to its franchisees, even on a basis that could be analogized to tying.

CONCLUSION.

The Commission has promulgated a broad rule outlawing a time-honored way of doing business. It has done this without analyzing the market and without weighing the effects its order will have on competition. Its order discriminates against small oil companies, militates against independent supply points, and helps no one. In short, the Commission's order is irrational.

The Court of Appeals has ignored the issues in the case.

The record in this case was made eight years ago. By the Commission's own admission, market conditions have changed drastically in the meanwhile.

In a wholly separate proceeding the Commission is undertaking an industry-wide examination which can appropriately include the subject matter of these proceedings.

Wherefore, Atlantic submits that these proceedings should be dismissed.

Respectfully submitted,

FREDERIC L. BALLARD, JR.,
CHARLES I. THOMPSON, JR.,
TYSON W. COUGHLIN,
Land Title Building,
Philadelphia, Pa. 19110,

ROY W. JOHNS,
JOEL L. CARR,
HARRY W. GILL, JR.,
260 South Broad Street,
Philadelphia, Pa. 19101,
Attorneys for Petitioner, The Atlantic Refining Company.

BALLARD, SPAHR, ANDREWS & INGERSOLL,
Land Title Building,
Philadelphia, Pa. 19110,
Of Counsel.

February 5, 1965.

Office-Supreme Court, U.S.
FILED
MAR 16 1965
JOHN F. DAVIS, CLERK

Nos. 292 and 296

In the Supreme Court of the United States

OCTOBER TERM, 1964

THE ATLANTIC REFINING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

THE GOODYEAR TIRE & RUBBER COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

ARCHIBALD COX,
Solicitor General,
WILLIAM H. ORRICK, Jr.,
Assistant Attorney General,
DANIEL M. FRIEDMAN,
Assistant to the Solicitor General,
LIONEL KESTENBAUM,
LAWRENCE R. VELVEL,
Attorneys,
Department of Justice,
Washington, D.C., 20530.

JAMES McI. HENDERSON,
General Counsel,
J. B. TRULY,
Assistant General Counsel,
ALVIN L. BERMAN,
LESTER A. KLAUS,
Attorneys,
Federal Trade Commission,
Washington, D.C., 20580.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	4
1. The companies involved:	
(a) The Atlantic Refining Company	5
(b) The Goodyear Tire & Rubber Company	6
2. The relationship between Atlantic and its dealers and distributors	7
(a) The leases and contracts between Atlantic and its dealers and distributors	7
(b) Atlantic's loans to its dealers	11
(c) Atlantic's control over advertising displays at service stations	11
3. The sales commission plan	11
4. The operation of the sales commission plan	15
(a) The change-over to Atlantic and Goodyear TBA	15
(b) The present operation of the sales commission plan	19
5. The effect of the sales commission plan upon competition	25
6. The Commission decision	28
7. The court of appeals decision	30
Summary of argument	32

767-124—65——1

MICRO CARD 22
TRADE MARK ®

MATTHEW BENDER & COMPANY

525

59-5

microcard

Argument: Page

I. The Commission correctly held that Atlantic's sales commission agreements with Goodyear and Firestone constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act 36

A. Atlantic has the power to require its dealers to purchase substantial quantities of TBA and, pursuant to its agreements with Goodyear and Firestone, has exercised the power to accomplish that result 38

1. Atlantic's relationship with its dealers gives it the power to require them to purchase substantial quantities of TBA 38

2. In performing the sales commission agreements Atlantic exercised its power over its dealers to require them to purchase substantial amounts of sponsored TBA 44

B. The sales commission plan injured competition in the distribution of TBA 52

C. The Commission correctly held that the sales commission plan is an unfair method of competition because it causes Atlantic to use its economic power over its retail gasoline dealers to restrain competition in TBA 54

1. Section 5 of the Federal Trade Commission Act gives the Commission broad discretion to define unfair methods of competition, and at a minimum the Commission may prohibit conduct that has the same kind of anticompetitive effect as violations of the Sherman and Clayton Acts. 54

Argument—Continued
I. The Commission correctly held, etc.—Continued
C. The Commission correctly held, etc.—Con. Page
2. The sales commission plan, by utilizing Atlantic's controlling economic power over its gasoline dealers to preempt for Goodyear and Firestone a substantial TBA market, causes the same kind of competitive injury as an illegal tying agreement 59
II. The Commission's order properly prohibits Atlantic and Goodyear from performing their sales commission agreement or from entering into or performing any similar agreement with any TBA or oil company, respectively 69
A. The Commission, upon holding that the Atlantic-Goodyear agreement was an unfair method of competition, properly enjoined its performance 69
B. The Commission properly enjoined Atlantic from entering into or performing similar contracts with companies other than Goodyear 72
C. The Commission properly enjoined Goodyear from entering into or performing similar contracts with companies other than Atlantic 73
1. The record shows that other oil companies have the same kind of power over their dealers as Atlantic 75
2. In performing their sales commission agreements with Goodyear, other oil companies used the same kind of pressure techniques that Atlantic did 76
Conclusion 84

CITATIONS

Cases:

	Page
American Column & Lumber Co. v. *United States*, 257 U.S. 377	43
Brown Shoe Co. v. *United States*, 370 U.S. 294	63
Fashion Originators' Guild v. *Federal Trade Commission*, 312 U.S. 457	58
Federal Trade Commission v. *Broch Co.*, 368 U.S. 360	73
Federal Trade Commission v. *Cement Institute*, 333 U.S. 683	33, 56, 57, 58, 73
Federal Trade Commission v. *Motion Picture Advertising Service Co., Inc.*, 344 U.S. 392	56, 58
Federal Trade Commission v. *National Lead Co.*, 352 U.S. 419	35, 74, 83
Federal Trade Commission v. *Ruberoid Co.*, 343 U.S. 470	84
Ford Motor Co v. *United States*, 335 U.S. 303	44
Gray v. *Powell*, 314 U.S. 402	56, 57
International Salt Co. v. *United States*, 332 U.S. 392	54, 63, 68, 83
Jacob Siegel Co. v. *Federal Trade Commission*, 327 U.S. 608	75, 84
Lessig v. *Tidewater Oil Co.*, 327 F. 2d 459, certiorari denied, 377 U.S. 993	40, 42, 47
Motion Picture Patents Company v. *Universal Film Manufacturing Company*, 243 U.S. 502	61
National Labor Relations Board v. *Hearst Publications*, 322 U.S. 111	56, 57, 58, 61
National Licorice Co. v. *National Labor Relations Board*, 309 U.S. 350	73
Northern Pacific Ry. Co. v. *United States*, 356 U.S. 1	34, 47, 60, 61, 72, 63, 65, 68
Osborn v. *Sinclair Refining Co.*, 286 F. 2d 832, certiorari denied, 366 U.S. 963	42, 66, 68, 82
Securities and Exchange Commission v. *Chenery Corp.*, 318 U.S. 80	61
Simpson v. *Union Oil Co.*, 377 U.S. 13	32, 41
Shell Oil Company and The Firestone Tire & Rubber Company, In the Matter of, 58 FTC 371	5
Standard Oil Co. v. *United States*, 337 U.S. 293	43, 63, 68
Tampa Electric Co. v. *Nashville Coal Co*, 365 U.S. 320	63
Texaco, Inc., and the B. F. Goodrich Co., In the Matter of, 58 FTC 1176	5

Cases—Continued

Texaco, Inc., et al. v. *Federal Trade Commission*, 336 F. 2d 754, petition for writ of certiorari pending, No. 635, this Term ..... Page

United States v. *Bausch & Lomb Co.*, 321 U.S. 707 61

United States v. *Loew's, Inc.*, 371 U.S. 38 ..... 34, 54, 60, 61, 63, 65

United States v. *Richfield Oil Corp.*, 99 F. Supp. 280, affirmed, 343 U.S. 922 ..... 54, 61

United States v. *Sun Oil Company*, 176 F. Supp. 714 ..... 39, 41, 42, 43

Vanity Fair Paper Mills, Inc. v. *Federal Trade Commission*, 311 F. 2d 480 83

Statute:

Federal Trade Commission Act:

Section 5, 15 U.S.C. 45 ..... 3, 4, 5, 28, 33, 36, 37, 54, 69, 70, 77, 83

Miscellaneous:

American Petroleum Institute, *Petroleum Facts and Figures*, pp. 13–14 5

H. Rept. No. 1142, 63d Cong., 2d Sess., pp. 18–19 55

S. Rept. No. 592, 63d Cong., 2d Sess., p. 13 54

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINIONS BELOW

The opinion of the court of appeals (A.R. 3282–3299, G.R. 3681–3697 [1]) is reported at 331 F. 2d 394.

[1] The record in this Court in No. 292 (*Atlantic Refining Co.*) is cited as "A.R.", and the record in No. 296 (*Goodyear Tire & Rubber Co.*) is cited as "G.R." These are the two records filed in the court below upon petitions to review the same Commission decision and order, and they contain much overlapping evidence. We have used the *Atlantic* record as our primary

The opinion of the Federal Trade Commission (A.R. 61–130; G.R. 118–187) is reported at 58 F.T.C. 309.

JURISDICTION

The judgment of the court of appeals was entered on April 24, 1964 (A.R. 3299). The petitions for writ of certiorari were filed on July 17, 1964, and were granted on December 14, 1964 (A.R. 3301, G.R. 3699; 379 U.S. 943). The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Federal Trade Commission properly held that it is an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, for a major rubber company and a major oil company to enter into an agreement under which the oil company, in return for a commission, promotes the sale to its dealers of the rubber company's products.

2. Whether having found that such an agreement between petitioners The Atlantic Refining Company and The Goodyear Tire & Rubber Company violated Section 5, the Commission properly entered an order

---

source and cite it alone for material duplicated in the two records.

The reason there are separate but overlapping records is that the Commission received evidence relating not only to the Atlantic-Goodyear contract (which evidence involves both petitioners and is contained in both records), but also to Atlantic's contract with Firestone (printed in the *Atlantic* record) and Goodyear's contracts with other oil companies (printed in the *Goodyear* record). The effect of the hearing examiner's order limiting the admissibility of the two latter categories of evidence to the party involved, is discussed *infra*, pp. 15–16, fn. 10.

prohibiting each petitioner from entering into or performing any similar agreement with any other company.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, provides in pertinent part:

> (a)(1) Unfair methods of competition in commerce, and unfair * * * acts or practices in commerce, are declared unlawful.
>
> * * * * * *
>
> (6) The Commission is empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair * * * acts or practices in commerce.
>
> (b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair * * * act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. * * * If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partner-

> ship, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. * * * After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require * * *.

STATEMENT

These cases present the question whether the so-called "sales commission" plan of distributing tires, batteries and accessories ("TBA") is an unfair method of competition under Section 5 of the Federal Trade Commission Act. Under the plan, an oil company agrees to promote the sale to its dealers of a tire company's TBA (known as "sponsored TBA") in return for a commission on the goods sold. The complaint of the Federal Trade Commission charged that The Atlantic Refining Company ("Atlantic") and The Goodyear Tire & Rubber Company ("Goodyear") violated Section 5 by entering into such a sales commission plan; and that like agreements between Atlantic and The Firestone Tire & Rubber Company ("Firestone") and between Goodyear and oil companies other than Atlantic were similarly illegal (A.R. 5–13). After full administrative proceedings, the

Commission in a lengthy opinion (A.R. 61–130) held that the sales commission method of distributing TBA violates Section 5, and ordered Atlantic and Goodyear to terminate their existing sales commission agreements and to refrain from entering into or performing any similar agreements with others (A.R. 131–134).[2]

1. THE COMPANIES INVOLVED

(a). *The Atlantic Refining Company.* Atlantic is a major producer, refiner and distributor of gasoline and other petroleum products (A.R. 82) which it sells in 17 states along the Eastern Seaboard (A.R. 2451). It divides the area into six marketing regions which, in turn, are subdivided into 29 districts (A.R. 43–44, 75, 83). In 1948 its sales in this area constituted 2½ percent of total national gasoline sales (A.R. 82, 2560–2561).[3] In 1954 Atlantic's total operating revenues exceeded $500 million (A.R. 82).

---

[2] In two companion cases, *In the Matter of Texaco, Inc. and The B. F. Goodrich Co.*, 58 FTC 1176; and *In the Matter of Shell Oil Company and The Firestone Tire & Rubber Company*, 58 FTC 371, the Commission held other sales commission agreements illegal and entered similar orders. In the *Texaco-Goodrich* case, the Court of Appeals for the District of Columbia Circuit (Judge Washington concurring in part and dissenting in part) reversed the Commission and remanded the cause to the agency with instructions to dismiss the complaint (*Texaco, Inc. et al.* v. *Federal Trade Commission*, 336 F. 2d 754, petition for writ of certiorari pending, No. 635, this Term). In a proceeding to review the Commission's decision in *Shell-Firestone*, the Fifth Circuit has heard oral argument. The clerk of that court has advised that the court intends to withhold decision until this Court has decided the present cases.

[3] Since Atlantic's 17-state marketing area accounted for about 36.7 percent of the gasoline sold in 1948 (American Petroleum Institute, Petroleum Facts and Figures, pp. 13–14), Atlantic's

Atlantic distributes its products to the general public through wholesale distributors and retail service station dealers (A.R. 82–83, 273).[4] Wholesale distributors maintain and operate bulk plants and delivery equipment (A.R. 88) and enter into contracts with Atlantic to purchase gasoline and lubricants (A.R. 89, 274, 2515, 2524). Retail dealers are subdivided into lessee dealers, who lease their service stations from Atlantic, and contract dealers, who either own their stations or lease them from someone other than Atlantic (A.R. 83, 87). (The relationship between Atlantic and its dealers is discussed below, pp. 7–11). In 1955 Atlantic had 2,493 lessee dealers, who purchased 39.1 percent of the gasoline sold by Atlantic, and 3,044 contract dealers, who bought 18.1 percent of such gasoline (A.R. 83, 273). Approximately 50 percent of the contract dealers operate service stations. The other 50 percent operate grocery stores, garages and other types of outlets which have gasoline pumps but which, in general, do not sell TBA (A.R. 86–87).

(b) *The Goodyear Tire & Rubber Company.* Goodyear is the largest manufacturer of rubber products in the United States. In 1954 its sales were more than $1 billion (A.R. 100).

Goodyear distributes tires, tubes and accessories

2.5 percent share of the national market represents about 6.8 percent of gasoline sales within the 17-state marketing area. Actually, Atlantic's share of its marketing area was somewhat higher because it covers only parts of some of these 17 states (A.R. 43, 75).

[4] Atlantic also sells to commercial accounts, who purchase for their own consumption rather than for resale (A.R. 82).

through 57 warehouses located throughout the country (A.R. 100). It does not warehouse batteries; "Goodyear" batteries are manufactured and directly distributed to Goodyear outlets by the Electric Auto-Lite Company and Gould-National Batteries, Inc. (A.R. 100–101).

Goodyear sells its products at wholesale and retail through approximately 500 company-owned stores and through numerous independent dealers (A.R. 101–102, 394). Its franchised dealers include more than 12,000 independent dealers, and some Atlantic wholesale petroleum distributors and retail petroleum jobbers (A.R. 101). Goodyear also has a substantial number of nonfranchised dealers; most service station customers, including Atlantic stations, are in this category (A.R. 101–102).

2. THE RELATIONSHIP BETWEEN ATLANTIC AND ITS DEALERS AND DISTRIBUTORS

The Commission found (A.R. 64; see the almost identical finding at A.R. 124) that "Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA***." This power flows primarily from three sources: (a) the short-term leases and gasoline contracts under which the dealers operate; (b) the loans of money and equipment that Atlantic makes to the dealers; (c) the control that Atlantic has over the advertising that may be displayed at its service stations.

(a) *The leases and contracts between Atlantic and its dealers and distributors.* The leases of Atlantic

service stations are standard documents prepared by Atlantic (A.R. 274; CX 86A–B, A.R. 2458; CX 88A1–2, A.R. 2466; CX 88E1–2, A.R. 2477[5]). The lease provides that the "sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets" (A.R. 83–85; CX 88A1–2, A.R. 2467; CX 88E 1–2, A.R. 2478).

Although the terms of the leases range from three months to three years, the usual period is one year (A.R. 83 see A.R. 276, AX 31A, A.R. 3274–3275; AX 18 (unprinted). In addition to signing a lease, the dealer also is required to sign a document known as the "Eleven Point Lease Letter," which obligates him to maintain his station in accordance with designated standards covering eleven categories of operations

[5] "CX" refers to Commission exhibits, and "AX" to Atlantic exhibits. There are no Goodyear exhibits.

[6] The letter specifies the following standards (CX 88B, A.R. 2473–2474):

"1. Housekeeping—Clean, sanitary premises, inside and out.

"2. Use and Upkeep—Careful use and upkeep of building and equipment in safe, good operating condition.

"3. Display—Neat, orderly arrangement of merchandise and advertising in a manner reasonably calculated to attract and solicit the attention of the motoring public.

"4. Illumination—Safe and adequate to attract customers during night operation.

"5. Personnel—Sufficient manpower to give prompt service and allocated to handle peak operating hours. Clean uniforms, courteous, trained to sell, adequate knowledge of services to be rendered.

"6. Hours of Operation—Uniform daily operating sched-

(A.R. 84–85, 274). Atlantic may cancel the lease for various reasons, including delinquency in paying the rent for five days, and failure to comply with the requirements of the Eleven Point Lease Letter (A.R. 85; CX 250–272, A.R. 2963–2996). Atlantic has both threatened to cancel, and has cancelled, leases for these reasons (A.R. 85, CX 250–272, A.R. 2963–2996); some of these threats were made to dealers who had been with the company a long time or had sold large volumes of gasoline (A.R. 433, 439, 441, 536, 540–541). Atlantic reserves the right in all instances to decide whether to renew a lease (AX 31A, A.R. 3275).

Atlantic requires its lessee dealers to enter into contracts for the purchase from it of automotive lubricants (A.R. 85). While the dealers are not required by contract to handle only Atlantic gasoline, in fact they "purchase and resell Atlantic motor fuels exclusively" (A.R. 85–86).

Contract dealers also sign a standard form of agreement, usually for one year, under which they agree to purchase a specified annual amount of gasoline at

---

ule based on buying habits of potential trade in the area.

"7. Services—At least on a par with competition as to kinds of services rendered and efficiency of performance.

"8. Adequate Inventory—Quality products and merchandise on hand to serve normal customer needs without delay.

"9. Sales Promotion—Regular program for expanding sales, involving direct mail campaigns, personal solicitation, and advertising.

"10. Prices—Competitive, quality and service considered.

"11. Accounting—Maintenance on current basis of records adequate to reflect financial status and return from various phases of your business."

prices which Atlantic sets from time to time (A.R. 87, 274; CX 90A–B, A.R. 2486–2487; CX 90C–D, A.R. 2491–2492). Atlantic agrees to loan to the dealer equipment such as gasoline pumps, storage tanks and compressors, to be used "for the purpose of storage and sale of motor fuel purchased solely from Atlantic," and the dealer agrees to indemnify Atlantic for any damages caused by or done to such equipment (A.R. 87, 274, 280; CX 90A–B, A.R. 2486–2490; CX 90C–D, A.R. 2491–2495). Either party may cancel the agreement for breach by the other, and the dealer commits a breach if any judgment is entered or process issued against him, or if he suffers "financial embarrassment," insolvency or bankruptcy (CX 90 A–B, A.R. 2488–2489; CX 90C–D, A.R. 2493–2494). In case of a breach by the dealer, Atlantic has the option of removing its equipment and requiring the dealer to pay the costs of installation and removal, or of leaving the equipment and requiring the dealer to pay therefor (A.R. 87–88; CX 90A–B, A.R. 2489; CX 90C–D, A.R. 2494). Like the lease with a lessee dealer, Atlantic is under no obligation to renew its agreement with a contract dealer (CX 90A–B, A.R. 2488; CX 90 C–D, A.R. 2493).

Wholesale distributors sign an annual agreement specifying the territory in which they may sell (CX 95D–F, A.R. 2515). Atlantic may suspend deliveries made to the distributor on credit if, in Atlantic's opinion, his financial responsibility becomes unsatisfactory (CX 95D–F, A.R. 2516). Atlantic has no obligation to renew a distributor's contract (see CX

95D–F, A.R. 2516), and it has eliminated many distributors (A.R. 295). Atlantic can, and does, increase or decrease a distributor's volume of business by changing the distribution outlet to which various dealers are assigned (A.R. 89–90, 350–351, 361–362; see A.R. 295).

(b) *Atlantic's loans to its dealers.* It costs between three and fifteen thousand dollars to purchase the initial stock of products and the equipment with which to open a new service station (A.R. 281). Many dealers cannot afford these costs, and in such situations Atlantic loans them the money (A.R. 277, 281, 953, 1057–1058, 1633–1634, 1961–1962, 2216–2217). As noted above, Atlantic loans equipment to contract dealers.

(c) *Atlantic's control over advertising displays at service stations.* Dealer leases require the lessee to have Atlantic's prior written consent (which it is stated will not be unreasonably withheld) before he places, alters, removes, defaces or obliterates any signs, trademarks or color arrangements appearing on the leased premises (CX 88A1–2, A.R. 2469; CX 88E1–2, A.R. 2480). Atlantic's policy is to have all its stations look uniform, including uniformity of advertising (A.R. 1056–1057, 1059, 2210–2212). The importance of gasoline station advertising is discussed *infra*, pp. 16–17, 23–24, 42.

3. THE SALES COMMISSION PLAN

Retail gasoline service stations are, by the very nature of their business, particularly well adapted to sell TBA (A.R. 147), and they constitute a large and

important market for such products (A.R. 16).[7] Since at least 1932 Atlantic has been distributing TBA to its dealers (A.R. 66–67). Prior to 1951, it did so under the so-called "purchase-resale" plan, under which it bought Lee tires, Exide Batteries and various accessories directly from the manufacturers, and resold them to its dealers and distributors (A.R. 66–78, 285–291).

In 1948 and 1949 Atlantic made a TBA brand preference survey among dealers representing seven major oil companies. The survey showed that 67 percent of the Atlantic dealers preferred Lee Tires, and that 79 percent preferred Exide batteries, over competing brands; and that only 11 percent preferred Goodyear tires and only 4 percent preferred Firestone tires (A.R. 67–68; CX 101A–Z20, A.R. 2569; CX 101Q, A.R. 2576). Atlantic stated that the study showed "A preference among Atlantic's dealers for Lee tires and Exide batteries that is very satisfactory" (CX 101A–Z20, A.R. 2565). In addition, 67 percent of the Atlantic dealers preferred to buy their TBA from several sources, and only 33 percent preferred to have a single source (A.R. 68; CX 101A–Z20, A.R. 2566).

While this study was under way, Atlantic also con-

[7] A Goodyear official stated in 1952 that 30 percent of all TBA had been sold through service stations in 1951, and estimated that the share would increase to 35 percent in 1952 (CX 66A–L, G.R. 2538). Goodyear also estimated that the service stations' share of total national TBA sales of $4 billion should be $1,540,000,000, or 37½ percent (CX 247B, A.R. 2940–2941). Atlantic stated that 35 percent of motorists' tire purchases in 1956 had been made through service stations (AX A–20, A.R. 3259).

sidered entering into a sales commission contract with a tire company by which the latter, rather than Atlantic, would sell TBA to Atlantic dealers and distributors. It sent letters to five major tire manufacturers (Goodyear, Firestone, the United States Rubber Co., The B. F. Goodrich Company, and General Tire & Rubber Company) inquiring "what interest you may have in the sale of your tires and tubes through Atlantic outlets" (SX 1A, A.R. 2337–2338; CX 99, A.R. 2559–2560). To assist the companies in preparing quotations Atlantic inclosed "data pertain[ing] to what we have to offer" (CX 1A–1B, A.R. 2337–2338; CX 99, A.R. 2559), which set forth "Estimated Annual Requirements," number of retailers and wholesalers "Served," and Atlantic's marketing area (CX 1B, A.R. 2338). Although Goodyear "recognize[d] the importance and valtie of your account" (CX 2, A.R. 2340), both it and Firestone refused to enter into any agreement covering tires alone, and they insisted on selling their full line of TBA to Atlantic (CX 103, A.R. 2607; CX 305A–B, A.R. 3065–3066; CX 355A–B, A.R. 3157).

In 1950 Atlantic tested the Goodyear and Firestone sales commission programs in three districts (A.R. 70–71). Apparently satisfied with the results,[8] Atlantic in February 1951 decided to "swing over to the Commission Plan of T.B.A. marketing * * *"

[8] Shortly after the test programs were instituted, Atlantic conducted a poll of its dealers in the test areas to determine their preference as between the Lee-Exide program and the new sales commission plan. Of those responding, 45 percent favored the new plan, 40 percent preferred the old program, and 15 percent had no preference (A.R. 71).

(A.R. 72–73), and entered into contracts for such plans with Goodyear and Firestone (CX 13, A.R. 2360; CX 16, A.R. 2368; CX 104A–C, A.R. 2609; CX 106A–B, A.R. 2616). "It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania, and the South) were to market the program of the Firestone Tire and Rubber Company" (A.R. 73; CX 16, A.R. 2368; CX 106A–B, A.R. 2616).

The Atlantic-Goodyear contract requires Atlantic "actively [to] assist" Goodyear in "selling and promoting" Goodyear TBA (CX 13, A.R. 2360).[1] Atlantic agreed, among other things: to have its field offices "work energetically" with Goodyear in order to assist it "to the fullest practicable extent in perfecting sales, credit, and merchandising arrangements" with Atlantic outlets; to have its field representatives "suggest" to dealers "the maintenance of adequate stocks of [sponsored] merchandise" and counsel dealers "as to the maintenance of proper identification and advertising" of such merchandise; to instruct its salesmen to encourage dealers "vigorously" to represent Goodyear; to have its "representatives call upon these customers [Atlantic outlets] in company with our

[1] CX 13 was the agreement covering the 1950 test of the Goodyear plan. In 1951 its terms were extended to cover the entire area in which the Goodyear plan was to operate (CX 16, A.R. 2368–2369). The Firestone contract cited in the text similarly originally covered only the 1950 test, but was extended in 1951 to the entire area assigned to Firestone (CX 104A–C, A.R. 2609; CX 106A–B, A.R. 2616).

[Goodyear's] salesmen"; to "cooperate with and assist" Goodyear in its "efforts to promote and increase the sale" by Atlantic dealers of sponsored merchandise; and to "maintain adequate dealer training programs in the sale of tires, batteries and accessories" (CX 13, A.R. 2360–2362). Atlantic's contract with Firestone similarly requires the oil company's sales organization to give "assistance and cooperation * * * in promoting the sale" of Firestone TBA, but it does not give specific details (CX 104A–C, A.R. 2609).

In return for these services, Goodyear and Firestone agreed to pay Atlantic a commission equal to 10 percent of their net sales to Atlantic's retail dealers and 7½ percent of their net sales to its wholesalers (A.R. 79–80). Under the plan, each Atlantic dealer or wholesaler is assigned to a particular "supply point" which is his source for sponsored TBA; this supply point may be a Goodyear (or Firestone) store, an independent Goodyear (or Firestone) dealer, or, occasionally, an Atlantic distributor or even an Atlantic retail dealer (A.R. 102–105; CX 13, A.R. 2361). No commission is paid "unless the Atlantic outlet purchases from the designated supply point to which it has been assigned" (A.R. 103).

4. THE OPERATION OF THE SALES COMMISSION PLAN [10]

(a) *The change-over to Goodyear and Firestone TBA.* Atlantic took immediate steps to carry out its

[10] While the hearing examiner entered an order (G.R. 90–93) which limited the use of evidence concerning the Atlantic-Firestone plan to the case against Atlantic and struck such evidence as against Goodyear, the latter does not rely on the order in challenging the Commission's case against it. Atlantic,

contractual obligations to promote the sale of sponsored TBA. It sent its dealers a letter announcing the change to the sales commission plan and describing its alleged virtues (CX 12, A.R. 2359; CX 29, A.R. 2397). Atlantic also held numerous meetings with its dealers at which both its and the tire company's representatives explained the new program and urged the dealers to promote the sponsored TBA (A.R. 165, 369, 2240; CX 27, A.R. 2393, CX 109A–I, A.R. 2640; CX 135A–C, A.R. 2706). A Goodyear outline of the presentation which its district managers were to make at such meetings included these statements: "After years of courtship Atlantic and Goodyear have wed"; "We welcome wholeheartedly this merger"; Atlantic and Goodyear "will combine orts" and "can and will be a winning combination"; the dealers' "cooperation and patience in these days of shortages will be appreciated" (CX 27, A.R. 2393–2394). As noted above, Atlantic's leases gave it control over advertis-

---

in discussing its relations with its dealers and its implementation of the sales commission system (Atlantic Br. pp. 8–10, 15–17), does not distinguish between the Goodyear and Firestone plans. Petitioners thus do not question that the Goodyear and Firestone systems constitute a single interrelated plan of operation, so that evidence as to Atlantic's operations under either plan is relevant to its overall course of conduct and the latter's effect on competition. We shall therefore refer to the evidence under both plans in discussing Atlantic's activities, although, of course, Goodyear is not bound by the evidence as to Firestone's agreement with Atlantic. The examiner entered a similar order (A.R. 38–41) limiting the evidence respecting Goodyear's plans with other oil companies to the case against Goodyear, and striking it as to Atlantic. That evidence is pertinent only as to the scope of the order against Goodyear, discussed below, pp. 73–84.

ing displayed at the service stations. Atlantic gave Goodyear and Firestone lists of its dealers who handled TBA, so that the tire companies could remove the identification and advertising of other TBA and install their own (A.R. 291–292, 436, 538, 1532; CX 138, A.R. 2721; CX 277, A.R. 2998). Advertising of competing products was replaced by Goodyear advertising even though the dealers did not request the change, were opposed to it, or wished to carry the products whose advertising was removed (A.R. 436–437, 538, 1532; CX 277, A.R. 2998; see A.R. 910). Goodyear sent Atlantic the names of dealers who refused to permit installation of Goodyear advertising (CX 161–172B, A.R. 2787–2826), and Atlantic, which was "very definitely concerned about the refusal of dealers to permit Goodyear identification at their stations" (CX 162, A.R. 2790), forwarded their names to its district offices for "appropriate action" (CX 170A, A.R. 2812; CX 171A, A.R. 2820; CX 172A, A.R. 2825; see CX 163, A.R. 2792).

Atlantic salesmen, in company with Goodyear or Firestone personnel, called on dealers and discussed the switchover to the sales commission program (A.R. 1461; CX 24, A.R. 2384, 2389–2390; CX 109A–I, A.R. 2640; CX 135A–C, A.R. 2706). Goodyear considers such joint action "necessary" because the Atlantic salesman has "the 'in' with the account" (CX 24, A.R. 2389). Atlantic, which was required to protect its dealers against losses from defective Lee Tires, replaced such tires with Goodyear or Firestone instead of with Lee products (A.R. 293; CX 33, A.R. 2400–2401; CX 34–34C, A.R. 2402–2404; CX 139A–B, A.R.

2722). Similar steps were taken with respect to Exide batteries (A.R. 293; CX 37–39, A.R. 2408–2411; CX 139A–B, A.R. 2722). Goodyear and Atlantic relabeled unsponsored merchandise on dealers' shelves so that it would bear the Goodyear name (A.R. 167, 680, 1724; CX 48B–E, A.R. 2432). During 1951 and 1952 Atlantic credit cards were expressly limited to TBA "recommended by Atlantic"; credit card sales account for as much as 25 to 35 percent of a dealer's business (A.R. 293, 871, 950; CX 217A–B, A.R. 2925; see CX 146A–B, A.R. 2738).

By October, 1951—approximately seven months after the sales commission plans had gone into effect—Goodyear had signed contracts with 98 percent of Atlantic's outlets in its New England marketing area and with 96 percent of the outlets in its New York area (CX 179A–I, A.R. 2841).

In 1949, the last full year in which Atlantic operated its purchase-resale plan, its total TBA sales to its dealers were $6,697,471; and in 1950, when it operated the plan in all but the 3 of its 29 districts in which it was testing the sales commission program, its sales to dealers were $7,581,760 (A.R. 76–77). The sales commission plan became effective March 1, 1951; in that year Goodyear and Firestone made sales to Atlantic outlets of $5,689,158 (A.R. 76). In the latter part of that same year Lee and Exide estimated that, despite a greatly increased sales effort, they would be able to obtain from Atlantic only about 25 percent of their former business (CX 292A, A.R. 3044; CX 311, A.R. 3075–3076). In 1952, the first full year under the sales commission plan, total TBA

sales by Goodyear and Firestone to Atlantic outlets increased to $8,525,506 (A.R. 76).

(b) *The present operation of the sales commission plan.* Atlantic has continued its efforts to promote the sale of sponsored TBA to its dealers and distributors. These efforts begin with the selection and training of new dealers.

Prospective dealers are given three separate interviews—with an Atlantic salesman, the sales supervisor and the district manager—and sponsored TBA is thoroughly discussed and recommended on each occasion (A.R. 1438–1439, 1459, 1768, 1772, 1913, 1920, 2193–2194). If an applicant is tentatively selected to be a dealer, prior to his final selection he attends a five-week training school run by Atlantic (A.R. 277–278, 1433). Sponsored TBA is strongly emphasized during this course and sponsored products are used as props in TBA demonstrations (see CX 357A–364, A.R. 3260–3273 for the outline of the TBA material presented in this course, and A.R. 278–279). The discussion of TBA, which is conducted by representatives of both Atlantic and the tire company, is in terms of the sponsored products (A.R. 863, 864, 903, 937, 914–915; see 1868, 2034). Instructors stated that sponsored TBA was the dealers' "best bet," and that "when things got rough * * * the independent jobbers wouldn't be of any use to us or any help to us at all" (A.R. 864). While the Atlantic instructors indicated that the dealers would not be forced to buy sponsored TBA, "[t]hey did, however, stress that Atlantic more or less expected us to" (A.R. 915, 917, 918); that it was

"more or less I think understood" that dealers had to handle sponsored products (A.R. 937).[11] Atlantic representatives at the training course said that "they tried to keep all their stations uniform", which, in Firestone territory, meant "using Firestone products" (A.R. 1056).

Atlantic gives Goodyear and Firestone advance notice of station openings and reassignments (A.R. 1811; CX 176, A.R. 2836; CX 185, A.R. 2863). This notice is designed to enable the tire companies "to anticipate and to move promptly in handling the new dealer's requirements" (CX 176, A.R. 2836; CX 185, A.R. 2863). Atlantic also introduces a new dealer to his supply point before his station opens (A.R. 1811–1812). At times Atlantic has made a loan to a new dealer (see *supra*, p. 11) in the form of supplying sponsored TBA rather than providing cash (A.R. 953, 1058). The result of these activities by Atlantic is that Goodyear and Firestone generally obtain a deal-

[11] The testimony on this point of witness Hawes, a dealer in Firestone territory, who has been partially quoted above, was as follows (A.R. 937–938):

> Q. Which tire were they talking about [at the dealer training school]?
>
> A. Firestone. That is all we ever heard in there, Firestone.
>
> Q. Did anyone ever tell you that you were supposed to handle Firestone when you were in your station?
>
> A. Well, that is a question I wouldn't like to say that it was put to me that I had to. But it was more or less I think understood. For instance, when I was called back to Wilmington to buy all my accessories and so forth, it was a Firestone dealer who was there. There was nobody else there. It was a man that I was expected to buy from.

er's initial stocking orders of TBA (A.R. 207–208, 382–383, 707, 760, 895–896).

Once a dealer is established in his station, Atlantic continues to promote the sale to him of sponsored TBA. Atlantic and tire company salesmen regularly visit the dealer together (A.R. 314, 1461, 1791, 1831, 2323; CX 11, A.R. 2357; CX 364, A.R. 3173; CX 365A–B, A.R. 3174; CX 13, A.R. 2361). Atlantic salesmen, who make the initial recommendation as to whether a dealer's lease should be renewed (A.R. 1506; see A.R. 2718), promote dealer purchases of sponsored TBA (A.R. 270, 1453, 1787–1788, 1920, 2050), check dealers' stocks of TBA (A.R. 1459, 1498–1499, 1790) and actually solicit orders of sponsored products (A.R. 181, 409, 905, 1459, 1492, 1790, 1817; CX 109A–I, A.R. 2642).[12] Atlantic has established

[12] Matthews, a dealer in Goodyear territory, gave the following descriptions of how Atlantic salesmen sold him sponsored TBA (A.R. 444):

> Q. Did Atlantic salesmen or Mr. Parris [who owned a supply point] ever write up tire orders without your request?
>
> A. The salesman did, he sent in oil filters one time without my request and there were so many complaints from other dealers that Mr. Parris called me a day later and after he had sent them and said he understood that was the situation and he wanted to know if I wanted to send them back.
>
> * * * * * *
>
> Q. Now, with respect to tire orders, did Atlantic salesmen write up tire orders for you?
>
> A. Usually Mr. Parris did.
>
> Q. And would you request certain purchases or how was this done?
>
> A. Uusually they'd come in and say "What sizes do you want?" It wasn't how many, they knew if you had a

"agreed upon attainable objective[s]" which represent the amounts of TBA the oil company expects each dealer to purchase (CX 155A–H, A.R. 2747–2748; CX 155I–M, A.R. 2753–2757; CX 157, A.R. 2759). Atlantic receives periodic reports showing the actual purchases, which permit a quick check on the attainment of these objectives (A.R. 407; CX 127A–H, A.R. 2675–2687; CX 130A–G, A.R. 2692; CX 42B–43B; G.R. 2458–2459; CX 44C, G.R. 2461; CX 227C–228K, G.R. 3064–3083.[13] An Atlantic dealer who sells Goodyear testified that his Atlantic salesman had a record book showing his TBA purchases from the assigned Goodyear supply point, and that the salesman would urge him to increase his purchases by references to the "attainable objective" (A.R. 636):

> They would say, "You're a little low this month, you're going to be a little under this year; can we get it up to show a little bit of an increase."

Atlantic salesmen have severely questioned and criticized the presence of unsponsored merchandise (A.R. 169–170, 438, 442–443, 485, 496, 498, 518, 539, 540, 635, 905, 906, 907, 928, 942), have told dealers not to

---

buck why they—and could afford to pay for them they were going to send them.

To the same effect, see the testimony of witness Balloran, at A.R. 657–658.

[13] An Atlantic document states that "A check on the progress of each account is made by comparing the activity reported * * * [on the reports showing each dealer's purchases]. If an account is not buying commensurate with the purchase level to which he is listed, this is quickly revealed in this comparison" (CX 179A–I, A.R. 2843).

display it (A.R. 496, 498, 540, 906, 910, see 653, 634), have told them to get rid of it (A.R. 438, 485, 518), have stated that Atlantic would like and expects dealers to purchase sponsored products (A.R. 905, 915; see 438, 986–987), and have stated that dealers are breaking their TBA agreements when they purchase unsponsored products (A.R. 910, 928).[14] In addition, from time to time Atlantic holds dealer meetings—which both the tire company and Atlantic representatives attend—at which sponsored TBA is discussed and promoted (A.R. 911–912, 937, 949–950).

Atlantic permits little or no advertising of unsponsored TBA at its stations (A.R. 1059). Atlantic

[14] A high Atlantic official described the duties of salesmen under the sales commission program as "a difficult policing job" because of the need "to closely co-ordinate the dealer's entire selling effort to be sure that his interest and those of our company are best guarded" (CX 100A–C, A.R. 2563). (This was in specific reference to the Firestone contract.) Policing the dealer in the company's interest is illustrated by this episode described by a dealer in Goodyear territory (A.R. 518):

> Q. Can you tell us who it was that complained [that the dealer witness was selling unsponsored merchandise]——
>
> A. (Interposing.) It was Tom Hayes [Atlantic salesman], George Arnholt [Atlantic official] and Ed Parris [Goodyear supply point dealer].
>
> Q. Do you recall their conversation relative to those problems?
>
> A. Well I remember one time he walked in behind Mr. Arnholt and I had Century tires and Tom Hayes was in front of him and he says to Tom Hayes—I recall this question—he said, "What kind of salesman are you with this man having Century tires in here," and Tom gave me a dirty look. And when it blew over, Tom came in and said, "I got the devil and you have to get rid of these tires. * * *"

salesmen told various dealers to remove or not to install such advertising (A.R. 173, 540; see 436, 538, 1532, 1598, and see 2998) and numerous witnesses testified that practically all Atlantic stations primarily or exclusively advertise Goodyear or Firestone TBA (A.R. 173, 203, 211, 242, 261, 382, 417, 728, 747, 850, 880, 895, 975, 1082, 1131). Atlantic has a package advertising arrangement which is available only to those dealers who carry sponsored TBA (A.R. 172–173). Although after 1952 Atlantic credit cards could be used to charge non-sponsored TBA, some dealers remained under the impression that the earlier prohibition on such use (see *supra*, p. 18) was still in effect (A.R. 174, 541, 951–952, 1061–1065, 1576–1578). While Atlantic ordinarily will repurchase a dealer's stock of TBA if the lease expires or is cancelled, it may refuse to repurchase unsponsored products (A.R. 171, 181–182, 949, 958).

Finally, Atlantic representatives threatened dealers with cancellation or non-renewal of their leases if they refused to purchase sponsored TBA or continued to handle non-sponsored brands. For example, Atlantic dealers were warned "to get rid of the Lee tires or else they would get rid of me * * *" (A.R. 485); that "if I didn't handle Firestone products I wouldn't long be an Atlantic operator-dealer" (A.R. 866); that "I couldn't handle" non-sponsored batteries and accessories and that "if I didn't handle according to what Atlantic handled, * * * I would lose my lease * * *" (A.R. 986–987); and that "If you do not remain a Firestone Dealer, you will not remain an Atlantic" (CX 320A–C, A.R. 3114). One

dealer testified that although he wanted to "continue to handle Lee tires," he did not do so because "I didn't want my lease cancelled"; that Atlantic asked him to agree to cancel his lease because "I wasn't buying [TBA] from the company as I was supposed to so they figured it was better for everyone concerned if I signed a mutual [cancellation] and they cancel my lease. * * *"; that he refused such cancellation but, after being told that his lease would not be renewed, he agreed to "be a good boy" and "went one hundred percent Goodyear"; and that when he subsequently purchased ten non-sponsored batteries, he "was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease" (A.R. 438–441). Other instances of such threats are set forth in the hearing examiner's findings (A.R. 51–55), which the Commission adopted (A.R. 98).

5. THE EFFECT OF THE SALES COMMISSION PLAN UPON COMPETITION

As noted above (pp. 18–19), in the first full year of operation of the sales commission plan (1952), the sales by Goodyear and Firestone of TBA to Atlantic dealers were approximately 40 percent greater than the sales Atlantic had made during the last full year of the purchase-resale plan.

By June 1956, Goodyear had TBA contracts with 1960 of the 2420 Atlantic dealers in the areas allocated to it (CX 374, A.R. 3178; CX 400P–R, A.R. 3219). Although the record does not show the total number of dealers who had contracts with Firestone, Atlantic

believed that "virtually all" of its dealers in its Wilmington and Baltimore areas who were potential purchasers of sponsored TBA had signed initial franchise agreements with Firestone (A.R. 348, 359). During the six-year period between June, 1950 (when the sales commission plan was put into operation in three areas on a test basis) and June 1956, Goodyear sold more than $25 million, and Firestone more than $26 million worth of TBA to Atlantic outlets (A.R. 76, 294; CX 400D–E, A.R. 3209–3210).[15]

The effect of the sales commission plan has been to prevent wholesale suppliers of unsponsored TBA from selling their products to Atlantic stations (A.R. 210–211, 218, 230–233, 235, 237–239, 246, 381, 382, 383, 415–416, 422, 555–556, 557, 559, 619, 671, 680–681, 685, 694–705, 726–727, 742, 806, 817, 889–890, 893, 906–907, 971, 974, 1071–1072, 1082, 1120, 1129, 1130). Dealers and competing suppliers of TBA testified that it is difficult or impossible to sell to Atlantic dealers because the latter group felt that they were required to purchase sponsored TBA and feared reprisal by Atlantic if they purchased non-sponsored items (A.R. 182, 237, 239, 383, 415–416, 422, 427, 438–439, 444–445, 446, 557, 659, 671, 681, 695–704, 708, 742, 906–907, 910, 937–938, 970–971, 1059–1060, 1083, 1084, 1104, 1109, 1113, 1132–1134, 1157). Indeed, it is so difficult to sell competing TBA to Atlantic dealers that many wholesalers do not even try to solicit business from substantial numbers of such dealers (A.R. 200–201, 211, 414, 546–547, 766,

[15] Approximately 70 percent of these sales represented tires and tubes, with the remaining 30 percent equally divided between batteries and accessories (A.R. 80).

1031, 1101–1102, 1150.) In addition, wholesalers of sponsored products who are not designated as supply points were unable to sell such products to Atlantic dealers (A.R. 210–211, 230, 235, 383, 397–398, 556–557, 559, 634, 691–710, 726, 974, 1128–1130, 1153, 1157). Both categories of wholesalers were unable to sell to Atlantic dealers even though they offered a better price than is available under the sales commission plan (A.R. 559, 634, 1085).[16] Finally, as a result of Atlantic's separate contracts with Goodyear and Firestone covering different areas, Goodyear and Firestone limit their efforts to the assigned areas and do not compete with each other for sales to Atlantic dealers (A.R. 113–115, 124–125).[17]

Under the sales commission method, small TBA manufacturers find it difficult to sell to Atlantic (A.R. 128). An Atlantic vice president indicated that his company preferred to do business with a single supplier having many supply points and handling a full line of TBA than with many suppliers (A.R. 2299–3000; see CX 9, A.R. 2351; CX 136A–E, A.R. 2710; CX 147, A.R. 2739; CX 150, A.R. 2742–2743; CX 286B, A.R. 3021; CX 351A–C, A.R. 3141). Indeed, when Atlantic made its initial inquiries about the possibility of shifting to a sales commission plan, it ad-

[16] Atlantic sends so-called "spooks" into its stations who "offer merchandise at lower prices just to see if you would buy from someone else" (A.R. 556).

[17] As an example of this division of territories see the correspondence in which Goodyear requested Atlantic's advice before soliciting business from an Atlantic distributor in Firestone territory, and Atlantic disapproved such solicitation. CX 56–58, A.R. 2444–2447.

dressed them only to five major tire companies (see *supra,* p. 13). Small suppliers that do not have distributional facilities that fully cover the oil company's marketing area cannot meet Atlantic's requirements (A.R. 2300; CX 136A–E, A.R. 2710; CX 147, A.R. 2739; CX 150, A.R. 2742–2743; CX 286B, A.R. 3021; CX 351A–C, A.R. 3141), and thus are denied access to Atlantic outlets even in areas where their products have good consumer acceptance (A.R. 1541, 1615; see A.R. 829).

6. THE COMMISSION DECISION

The Commission held that, by their use of the sales commission plan of distributing TBA, Atlantic and Goodyear engaged in unfair methods of competition and unfair acts and practices, in violation of Section 5 of the Federal Trade Commission Act.

The Commission affirmed the hearing examiner's finding that Atlantic had coerced its dealers into buying sponsored TBA through threats of cancellation or of non-renewal of leases or other retaliatory action (A.R. 64, 98–100; see A.R. 51–59).[18] But it "regard[ed] these overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself [* * *, namely, its] competitive effects * * * on competitors of Goodyear and Firestone * * * [and its] impact upon whole-

[18] The examiner had held that Atlantic violated Section 5 by coercing a number of dealers to purchase sponsored TBA, and proposed a cease-and-desist order prohibiting only such coercion. He further held, however, that the sales commission agreement itself was not illegal, and dismissed the complaint as against Goodyear (A.R. 41–60).

sale and retail distributors of TBA engaged in competition with wholesale and retail distributors of Goodyear and Firestone" (A.R. 100).

Reviewing in detail the relationships between Atlantic and its dealers (A.R. 83–100, 107–113, 116–117), the Commission ruled that Atlantic "has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral tying agreements * * *" (A.R. 124; see also A.R. 65); and that Atlantic "has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous retail gasoline distribution facilities to cause its dealers to purchase very substantial amounts of a different class of products, TBA" (G.R. 179; several words are missing from this sentence of the opinion as reprinted at A.R. 122).

The Commission ruled that Atlantic's sales commission contracts had restrained competition in various ways. Among them were: other manufacturers and distributors of TBA were foreclosed from selling to Atlantic outlets—a foreclosure that was particularly injurious to the smaller TBA manufacturers (A.R. 118, 119–121, 125–126, 128); Goodyear and Firestone wholesalers who were not designated as supply points were foreclosed from Atlantic's business (A.R. 113–119, 125); service station operators were denied the benefits of competition between TBA sellers and the right to purchase from the seller who offered them the lowest price (A.R. 129); and "Firestone dealers are

foreclosed from Atlantic outlets in regions assigned to Goodyear, and Goodyear dealers are foreclosed from Atlantic outlets in regions assigned to Firestone" (A.R. 124–125; see A.R. 113–115). The Commission concluded (A.R. 128–129) that "the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)."

The Commission entered an order prohibiting Atlantic and Goodyear from entering into or carrying out such sales commission contracts with each other or with any other TBA or oil company, and prohibiting Atlantic from coercing its dealers to purchase TBA (A.R. 131–134).

7. THE COURT OF APPEALS DECISION

The Court of Appeals for the Seventh Circuit unanimously affirmed. It ruled (A.R. 3285) that "the record as a whole" contained substantial evidence "to support the Commission's ultimate findings and conclusions," and that its order was valid "in all respects."

The court held that the "heart of this case is the economic power Atlantic possesses over its service station dealers," and, in turn, "The keystone of the actual relationship between Atlantic and its dealers is the lease and the equipment loan contract with their short term and cancellation provisions" (A.R. 3292). While holding that the Commission's finding that Atlantic had co-

erced its dealers was supported by substantial evidence (R. 3293–3294), the court agreed that "Atlantic's power to cause its dealers to carry either Goodyear or Firestone TBA does not depend upon overt coercive methods. The totality of facts surrounding the relationship between the oil company and the dealers point to one conclusion: the oil company is able to exert sufficient economic power over its dealers so that for all practical purposes they are required to carry sponsored TBA" (A.R. 3295). In the setting of such "economic dependency," the court stated, "recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effective as express covenants and open threats" (A.R. 3295).

The court concluded that the Commission had correctly ruled that the sales commission system is "in effect, a tying arrangement inherently anticompetitive" (A.R. 3297), which utilizes Atlantic's economic power over its dealers to foreclose competition for a substantial amount of commerce (R. 3296–3297):

> The Commission properly, we think, decided that the system integrates Atlantic's economic power over its service station market into the Goodyear TBA distribution system, thus giving Goodyear, for a price, a captive market.
>
> * * * the record substantiates the Commission's finding that suppliers of TBA competing with Goodyear and Firestone are substantially foreclosed from selling their products to Atlantic dealers. * * *

SUMMARY OF ARGUMENT

I

A. The unlawfulness of Atlantic's sales commission agreements with Goodyear and Firestone rests upon the Commission's findings that (1) Atlantic has the power to require its dealers to purchase substantial quantities of tires, batteries and accessories ("TBA") even without overt coercion; and (2) Atlantic's performance of its sales commission agreements constitute the exercise of its power to require such substantial purchases of sponsored TBA. Atlantic's power, based upon its disparately large size and financial resources, is embodied in leases of service stations and loans of equipment which are generally short-term, are subject to cancellation for various acts or defaults under vague operational standards, and the renewal of which is within Atlantic's discretion. The serious economic impact of cancellation or nonrenewal makes dealers subservient to an oil company's wishes (*Simpson* v. *Union Oil Co.*, 377 U.S. 13, 17). The dealers also depend upon Atlantic for supply of their principal commodity, gasoline. Atlantic's control over advertising at its dealers' service stations is a further element which, in particular, impedes dealers' freedom of choice with regard to TBA.

As required by its sales commission agreements, Atlantic took vigorous action to begin the sale of sponsored TBA to its dealers, by use of letters, meetings, salesmen's visits and control of display advertising and credit card sales. The striking and rapid shift

of Atlantic dealers to sponsored TBA from brands which they had previously preferred is the clearest evidence of the effectiveness of Atlantic's sponsorship. Atlantic's promotion of Goodyear and Firestone has continued through, *inter alia*, stress on sponsored TBA in the selection and training of new dealers; various pressures exerted by salesmen upon dealers to purchase sponsored TBA; and even resort to threats of cancellation or nonrenewal of dealer licenses. There is substantial evidence in the record that Atlantic dealers believe—as Atlantic obviously wants them to—that they are required to purchase their TBA from Goodyear and Firestone.

B. As a result of Atlantic's power and promotional activities, the sales commission plan injured competition in the distribution of TBA. It foreclosed manufacturers and suppliers of TBA competing with Goodyear and Firestone from a substantial market represented by Atlantic dealer outlets. Moreover, even wholesalers of sponsored TBA cannot sell to Atlantic dealers unless they are designated as authorized supply points. Finally, the division of the Atlantic marketing territory between Goodyear and Firestone eliminates competition between these two major firms in selling TBA to Atlantic dealers.

C. The Commission properly held that Atlantic's sales commission plan, having the above results, is an unfair method of competition violating Section 5 of the Federal Trade Commission Act. In administering Section 5, the Commission has authority to define unfair competitive practices and its conclusion is entitled to great weight (*Federal Trade Commission* v.

Cement Institute, 333 U.S. 683, 708–709, 720). The Commission found that Atlantic's plan, by pre-empting a substantial TBA market for Goodyear and Firestone, causes the same kind of competitive injury as an illegal tying agreement. This finding justifies the conclusion that the plan is an unfair method of competition, since it covered a very substantial amount of commerce—$50 million in sales of sponsored TBA in the first six years of operation. As in the analogous tying cases, no elaborate market analysis is required when foreclosure of a substantial market is demonstrated (*Northern Pacific Ry. Co.* v. *United States,* 356 U.S. 1; *United States* v. *Loew's, Inc.,* 371 U.S. 38). The argument that the sales commission plan is most economical for Atlantic cannot justify the restraint upon competition. This is especially so since Atlantic's TBA program is merely ancillary to its petroleum business and since there are other, less restrictive means of distributing TBA through oil company dealers.

II

A. Having held that the Atlantic-Goodyear agreement was an unfair method of competition, the Commission properly enjoined its performance. The Commission ruled that the illegality inhered in the agreement because it induces, even requires, Atlantic to engage in a course of conduct which has the effect of compelling its dealers to purchase sponsored TBA. It was for this integrated course of conduct that Goodyear undertook to pay a substantial commission. The Commission's prohibition against use of this

particular method of distributing TBA is obviously a far less drastic remedy than Goodyear's suggestion to change the basic relationship between Atlantic and its dealers.

B. Atlantic's conduct in performing its sales commission agreements with Goodyear and Firestone was essentially the same, and both contracts were found by the Commission to have unlawfully injured competition in the distribution of TBA. Atlantic's use of economic power would be equally present in any similar contract which Atlantic might enter with any other TBA firm. The Commission properly enjoined Atlantic from entering into or performing any similar sales commission agreement.

C. The Commission also properly enjoined Goodyear from entering into or performing similar contracts with oil companies other than Atlantic. Goodyear has been an active participant in the illegal program found in this case and "must expect some fencing in" (*Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 431). The record provided the Commission with sufficient basis to conclude (1) that the other oil companies with whom Goodyear had sales commission agreements had the same kind of economic power over their dealers as Atlantic; and (2) that in performing such agreements those companies did and were likely to do the same things that Atlantic had done, with the same adverse effect upon competition. The record shows that oil companies generally use the same lease and contract arrangements. Goodyear's sales commission contracts are

in standard form, and the record shows that oil companies other than Atlantic with whom Goodyear had contracts also used coercive tactics to require their dealers to purchase sponsored TBA. If, as Goodyear suggests, there are individual oil companies who either do not have power over their dealers or would not exercise it, Goodyear may ask the Commission to modify the present order on the basis of the special facts of the particular case.

ARGUMENT

I

THE COMMISSION CORRECTLY HELD THAT ATLANTIC'S SALES COMMISSION AGREEMENTS WITH GOODYEAR AND FIRESTONE CONSTITUTE UNFAIR METHODS OF COMPETITION IN VIOLATION OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

The theory upon which the Federal Trade Commission held that Atlantic's sales commission agreements with Goodyear and Firestone violate Section 5 of the Federal Trade Commission Act was as follows: The various controls and pressures that Atlantic is able to exert on its dealers give it the power to require them to purchase substantial amounts of sponsored TBA. In performing its sales commission agreements with Goodyear and Firestone, Atlantic undertakes promotional activities which, because of its power over the dealers, has the effect of requiring them to make such purchases. The effect of thus preempting this substantial TBA market for Goodyear and Firestone has been to injure, among others: (1) competing

TBA manufacturers and suppliers who are foreclosed from selling in the market; (2) Goodyear and Firestone wholesalers who, because they are not authorized supply points, cannot sell to Atlantic dealers; and (3) the Atlantic dealers themselves, who are denied the right either to purchase competing brands of TBA or to purchase Goodyear and Firestone TBA from other distributors at lower prices than the authorized supply points offer. In short, the sales commission plan constitutes an unfair method of competition because it involves "the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)" (A.R. 128–129).

We shall show that the record fully supports the Commission's findings (1) that Atlantic does have such power over its dealers and has used it to require them to purchase substantial amounts of sponsored TBA, and (2) that the effect of such exercise of that power has been to injure competition at various levels of the TBA industry. We shall then show that the Commission correctly concluded that a distribution system having such anticompetitive consequences constitutes an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act.[19]

[19] The Commission held (A.R. 64) that the Atlantic-Goodyear agreement constitutes both an "unfair method of competition" and an "unfair act or practice" under that Section. Whatever may be the distinction between those two concepts—and we express no opinion thereon—it is unimportant for this case, and we therefore rest on the holding that the sales commission plan is an unfair method of competition.

A. ATLANTIC HAS THE POWER TO REQUIRE ITS DEALERS TO PURCHASE SUBSTANTIAL QUANTITIES OF TBA AND, PURSUANT TO ITS AGREEMENTS WITH GOODYEAR AND FIRESTONE, HAS EXERCISED THE POWER TO ACCOMPLISH THAT RESULT

1. ATLANTIC'S RELATIONSHIP WITH ITS DEALERS GIVES IT THE POWER TO REQUIRE THEM TO PURCHASE SUBSTANTIAL QUANTITIES OF TBA

The basic fact of the relationship between Atlantic and its service station operators is that they do not deal with each other as economic equals. There is an obvious gross disparity in bargaining power.[20] Atlantic is a large company; its operating revenues in 1954 were more than half a billion dollars (A.R. 146–147). The average Atlantic dealer is a small businessman whose average net income is between six and ten thousand dollars (A.R. 112) and who, to an unusual extent, is dependent upon Atlantic for his economic well being. The cost of constructing a typical Atlantic service station is about $50,000, and few dealers have that much money (A.R. 111). Oil companies, therefore, have been forced to build a large number of their own stations and to lease them to operators (A.R. 112). Many dealers start in business with no more than $1,000, and few have as much as $15,000 (A.R. 111–112). Many do not even have the funds to purchase their initial inventory, and have to turn to Atlantic for a loan of several thousand dollars to finance it (A.R. 112). Atlantic also frequently loans dealers the equipment necessary to operate. It is in the light of these circumstances that

[20] While it is unquestionably true, as Atlantic states (Br. pp. 35–36), that it depends upon its dealers collectively to market its products, the critical question in determining Atlantic's power over its dealers is the relative economic strength of Atlantic and the individual dealer.

the relationship between Atlantic and its dealers must be appraised.

The court of appeals pointed out (A.R. 3292) that "[t]he heart of this case is the economic power Atlantic possesses over its service station dealers." The bases upon which this power rests are developed at length in the Statement, *supra*, pp. 7–11, 19–25.

"The keystone of the actual relationship between Atlantic and its dealers" as the court of appeals correctly observed (A.R. 3292), "is the lease and the equipment loan contract with their short term and cancellation provisions."[21] Although some of the service station leases run for three years, the usual term is only one year,[22] and Atlantic has complete discretion to decide whether to renew. In addition, Atlantic may cancel the lease for any violation of the necessarily vague operational standards set forth in the "Eleven Point Lease Letter" which every lessee dealer is required to sign. Contract dealers, who either own their stations or lease them from persons other than Atlantic, and to whom Atlantic loans various equipment needed to run the station, similarly operate under contracts that usually run for only a

[21] Since the leases are standardized, their provisions are not the result of negotiation but are imposed upon the dealers as a condition of doing business (see *United States* v. *Sun Oil Co.*, 176 F. Supp. 715, 722 (E.D. Pa.), a circumstance which itself is indicative of disparate bargaining power.

[22] Although Atlantic states (Br. p. 9, fn. 3) that the proportion of lessees having three-year leases "[u]nquestionably" is "much higher" today than when the hearings were held, the record shows that in 1955 no more than "several hundred" of about 2,500 lessees had the longer term contracts (AX 18 (unprinted), CX 374, A.R. 3178). At that time, in 1955, there was a 30% annual turnover of Atlantic dealers (A.R. 285).

year, and the renewal of which lies in Atlantic's discretion. Such contracts are subject to cancellation by Atlantic for various acts or defaults of the dealer, including such conduct as suffering "financial embarrassment," and in the event of such cancellation Atlantic has the option of removing the leased equipment at the dealer's expense (which also includes the cost of its earlier installation) or requiring him to buy it. See *supra*, pp. 9–10.

The effect of cancellation or non-renewal of a dealer's franchise is particularly serious in the retail gasoline business. Since that business is largely local, the dealer's good will is closely tied to and dependent upon the particular station he has been operating and the particular brand of gasoline he has been selling. Thus, as the Ninth Circuit recognized in recently holding that similar lease and contract arrangements gave an oil company the requisite economic power to force its dealers to buy TBA (*Lessig* v. *Tidewater Oil Co.*, 327 F. 2d 459, 470, certiorari denied, 377 U.S. 993), the consequences of termination of a dealer's lease or contract

> were disproportionately grave to the dealer. Tidewater could substitute one dealer for another readily, or operate the station for itself. The dealer was economically bound to his station and to Tidewater's petroleum products; they were to him unique. The good will of his business attached to them; moreover, he was bound by contract to purchase his requirements of petroleum products from Tidewater; and even if he were free to shift, a change would

involve substantial expense, and the dealer's economic resources were usually limited.

Indeed, even "[t]he changing over from one brand of petroleum products to another by a dealer [who owns his own station or leases it from a non-oil company source] subjects him to an economic hardship and even to the risk of a business failure" (*United States* v. *Sun Oil Co.*, 176 F. Supp. 714, 719 (E.D. Pa.)).[23]

This Court pointed out last term in *Simpson* v. *Union Oil Co.*, 377 U.S. 13, 17, a case involving resale price maintenance, that retail gasoline dealers' "fear of nonrenewal of short-term leases" by their oil company supplier may be a powerful and effective induce-

[23] The district court in *Sun Oil* explained this economic risk as follows (176 F. Supp. at 719–720):

> To begin with, the major suppliers of petroleum products scrupulously respect the contractual arrangements of their competitors and will not supply a dealer with its brand of products unless it is certain that the full term of a previous supply contract has been legally terminated. And the dealer will not always be able to obtain the brand of petroleum products of his choice for his station may not fit into the distribution plan of the supplier. Even when a new supplier is secured a time lag between the removal of Sun's dispensing equipment and signs and the installation of the new and the repainting of the station inevitably takes place. Moreover it takes time before all the motorists in the locality who have a preference for the newly installed brand of gasoline become acquainted with the fact that it is being sold at the location. And there is always the chance that the new brand of gasoline and motor oil will not attract customers as well as the former brand did. Consequently the supplier's threat of cancellation of a supply agreement is not lightly received by a dealer, and he will usually hesitate before accepting an ultimatum to discontinue an established business under the banner of a proven profitable product.

ment to the dealers to follow the oil company's wishes. Other courts similarly have recognized that the disparity between the economic power of a large oil company and its dealers, coupled with the dealers' concern over the possibility of cancellation or non-renewal of their leases and operating contracts, makes them subservient to the oil company's wishes. *Lessig* and *Sun Oil, supra; Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832 (C.A. 4), certiorari denied, 366 U.S. 963.

A second source of Atlantic's power over its dealers, which is particularly relevant in compelling TBA purchases, is its control over advertising at service stations. For it is difficult to sell TBA that is not advertised and displayed, and a dealer is unlikely to purchase products that he cannot advertise.[24] Atlantic's authority to prevent its dealers from advertising non-sponsored TBA was a powerful weapon in preventing them from handling such products.

---

[24] A wholesale supplier of competing TBA who operated in Atlantic's Goodyear territory testified as follows (A.R. 696):

> * * * I asked him [a Goodyear dealer], how about another case of Barsleak for stock, and he proceeded to tell me that if he bought it he would have to put it in the back room. He couldn't display it any more because he was told by his Atlantic representative salesman to take it off the shelf and only put the line which was carried by Atlantic on the shelf.
>
> So he said, "If I have to hide it in the back room, I would lose half of its saleability, so why should I continue to buy it?"

An Atlantic dealer similarly testified about the importance display advertising had upon his purchases (A.R. 634):

> A. After all, when a man sees a Goodyear sign up, he expects to buy Goodyear tires, so you try to deplete it

Third, Atlantic's control over the supply of gasoline gave it additional leverage over its outlets.[25]

The Commission thus reflected the realities of the retail gasoline business when it found that "Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics" (A.R. 64). For, as the court of appeals stated (A.R. 3295), because of the Atlantic "dealers' economic dependency upon the oil company * * * recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats." Cf. *American Column & Lumber Company* v. *United States*, 257

[stocks of Goodrich tires and batteries] as fast as you can * * *.

Q. And after that you never purchased Goodrich tires or batteries?

A. No.

In *United States* v. *Sun Oil Co.*, 176 F. Supp. 714, 719 (E.D. Pa.) the court stated: "Displaying a product and advertising it at service stations facilitates its sale. Hence, inconspicuous, undisplayed and non-advertised products cannot be effectively sold at such stations. Compelling the removal of signs displaying the fact that a particularly branded product is for sale at a dealer's station at least retards its sale, since motorists will not, as a rule, drive from station to station for the purpose of inquiring whether the brand of motor oil or TBA of their preference is being sold on the premises."

[25] As Mr. Justice Jackson has pointed out "[n]o retailer * * * can * * * remain in business if he does not always, and not just intermittently, have gas to sell" (*Standard Oil Co.* v. *United States*, 337 U.S. 293, 323) (dissenting opinion).

U.S. 377, 414; *Ford Motor Co.* v. *United States*, 335 U.S. 303, 323–326 (Mr. Justice Black, dissenting).

But any possible doubt as to Atlantic's power to compel its dealers to buy sponsored TBA is dispelled by the very fact that Goodyear and Firestone were willing to pay Atlantic substantial sums in return for the latter's services in "promoting" such purchases. The tire companies would not have paid commissions to Atlantic amounting to almost $5 million from 1950 to 1956 (A.R. 76) unless they were satisfied that Atlantic in fact was able to require its dealers to purchase sponsored TBA. As we now show, the actual operating practices and results under the sales commission contracts leave no doubt that Atlantic can, and did, require its dealers to purchase substantial quantities of Goodyear and Firestone TBA.

2. *In performing the sales commission agreements, Atlantic exercised its power over its dealers to require them to purchase substantial amounts of sponsored TBA*

As soon as Atlantic signed the sales commission agreements, it took vigorous action to perform its duty to promote the sale of sponsored TBA. It informed its dealers of the new plan;[26] held meetings with them at which its representatives joined with those of Goodyear and Firestone in explaining the program and urging the dealers to adopt it;[27] and

[26] A dealer described Atlantic's letter announcing the new plan as stating that "after a certain time, that Goodyear would be our distributor for accessories * * * [a]nd tires and batteries" (A.R. 1737).

[27] An Atlantic dealer described what happened at one meeting as follows (A.R. 182):

Q. Mr. Chambers, referring back to the time, to the dealer meeting when the switch-over to Goodyear TBA

had its salesmen join with tire company representatives in calling upon the dealers and urging them to shift to the new brands. Products of other manufacturers in the hands of Atlantic dealers were relabelled to bear the Goodyear or Firestone names, and defective Lee tires and Exide batteries were replaced by Goodyear and Firestone brands. During 1951 and 1952 Atlantic limited the use of credit cards, which accounted for as much as 25 percent to 35 percen of a dealer's business, to sponsored TBA; and even after that time, some dealers still believed that this limitation was still in effect. See *supra,* pp. 15–18, 24.

Under its leases and contracts with its dealers, Atlantic has broad control over the advertising displayed at the service stations. See *supra,* pp. 11, 42. Atlantic assisted Goodyear and Firestone in substituting their advertising for that of products previously featured by the dealers, and did so even at stations where the dealers wished to continue to advertise the competing brands. See *supra,* pp. 17, 23–24. Goodyear sent Atlantic the names of dealers who refused to permit the installation of Goodyear advertising, and Atlantic forwarded these names to its district offices for "appropriate action." The effectiveness of this action was demonstrated in Atlantic's Philadelphia and South Jersey districts, where 46 dealers who had refused to permit Goodyear advertising accepted it

line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?

A. No there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

after Atlantic referred the matter to the district offices (A.R. 316–317, 2763–2787).

In view of the pressures to which Atlantic subjected its dealers and their awareness of the possible consequences of opposition (see *supra*, pp. 38–44), it is hardly surprising that the program was highly successful in transferring to Goodyear and Firestone most of the TBA business that Atlantic itself previously had handled under the purchase-resale plan for Lee Tires, Exide Batteries and other products. A 1948–1949 Atlantic survey of dealer TBA preferences showed that 67 percent of its dealers preferred Lee tires and 79 percent preferred Exide batteries; and that only 11 percent preferred Goodyear tires and only 4 percent preferred Firestone tires. See *supra*, p. 12. Despite these strong dealer preferences for Lee and Exide, by October, 1951—only 7 months after the new plans had gone into effect—Goodyear had signed contracts with 98 and 96 percent, respectively, of Atlantic's outlets in two of the three marketing areas assigned to Goodyear (A.R. 2841). In that same year, Lee and Exide lost approximately 75 percent of their former Atlantic business (CX 292A; A.R. 3C 4, CX 311, 3075–3076). By 1952, the first full year under the sales commission plan, total TBA sales by Goodyear and Firestone to Atlantic outlets were 40 percent greater than Atlantic's own TBA sales had been in 1949, the last full year in which Atlantic operated its purchase-resale plan (A.R. 76–77).

This striking shift in a short period of the dealers' purchases from Lee and Exide, the brands for which

they previously had shown a strong preference, to Goodyear and Firestone, the brands they had disfavored, is the clearest evidence of how effectively Atlantic was able to use its economic power over its dealers to compel them to purchase sponsored TBA.[28] Cf. *Northern Pacific R. Co.* v. *United States*, 356 U.S. 1, 7–8; *Lessig* v. *Tidewater Oil Co.*, 327 F. 2d 459, 470 (C.A. 9), certiorari denied, 377 U.S. 993.

Atlantic has continued its vigorous "sponsorship" of Goodyear and Firestone products, and has used various techniques to insure that its dealers handle those brands rather than competing ones. Atlantic's program for selecting, training and installing new dealers emphasizes that it wants its stations to carry

[28] Atlantic asserts (Br. pp. 12, 15, 45–46) that its dealers bought sponsored TBA because Lee tires lacked public acceptance. To support this statement it relies on the testimony of two Atlantic officials and one dealer. One of those officials, the vice-president in charge of marketing, stated that the Lee product had "varied acceptance," that it was quite successful in the Philadelphia area, and that Exide batteries had national acceptance and that Atlantic did not drop that product for such failing (A.R. 2302). The record indicates the Lee tire has certain advantages over Goodyear: it provides a road hazard guarantee, while Goodyear does not (A.R. 370, 437, 1580; CX 9, A.R. 2353; cf. CX 108A–J, A.R. 2628); it is more profitable for dealers (A.R. 370, 1598; G.R. see A.R. 1580; CX 9, A.R. 2353; CX 108 A–J, A.R. 2628); Lee provides better terms on advertising (A.R. 373, 443–446); and some dealers were dissatisfied with Goodyear service and adjustments (A.R. 652, 654, 1633, 1738–1739, 2148). Atlantic's suggestion (Br. p. 25) that Lee rejected an opportunity to enter into a sales commission contract with it is refuted by the document cited (CX 280, A.R. 3005), which shows that Atlantic offered Lee only the opportunity to continue purchase-resale arrangements in any areas to which the sales commission plan might not be made applicable.

only sponsored TBA, and assures that the dealers begin operations with the sponsored products. Atlantic salesmen often accompany Goodyear and Firestone representatives when the latter call on Atlantic accounts. Atlantic salesmen themselves solicit orders for sponsored TBA, encourage its purchase to meet a specified quota, criticize the purchase of unsponsored goods and direct dealers to get rid of such goods and not to display them. Atlantic controls display advertising at its stations to feature sponsored TBA, and prevents the display or advertising of other goods. Indeed, Atlantic salesmen even have resorted to threats of cancellation or nonrenewal of licenses to enforce the purchase of sponsored TBA. These and other acts which Atlantic has done in the performance of its contracts with Goodyear and Firestone are detailed in the Statement, *supra,* pp. 19–25.

Although Atlantic informed its dealers that they had a "free choice" in selecting TBA and were not required to buy sponsored products (see Atlantic Br. pp. 17–20, Goodyear Br. p. 13), Atlantic's actual practice refutes this claim. There were a number of instances in which Atlantic salesmen resorted to direct threats to cancel or not to renew leases in order to force a dealer to buy sponsored TBA (see the Statement, *supra,* pp. 24–25). In addition, the record shows that despite what Atlantic *said,* what Atlantic *did* led dealers to understand and believe that they

were required to purchase substantial amounts of sponsored TBA.[29]

Dealer Matthews stated that he did not carry unsponsored TBA because "I didn't want my lease cancelled. I wanted my lease renewed when it terminated" (A.R. 438–439); and because "* * * I wanted to stay a dealer and knew I couldn't [carry unsponsored TBA]" (A.R. 445). Dealer Balloran said (A.R. 659):

> * * * You couldn't sell anything on that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that its representatives are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station, I know that. Anybody knows that. The salesman knew it. That's why I left the station.

Dealer Sullivan stated that he discontinued selling unsponsored products "Because I was afraid that if I rubbed Atlantic the wrong way by continuing to sell them, that I may be in their disfavor, and I had

---

[29] An Atlantic dealer described what happened when he pointed out to his salesman that Atlantic had stated that dealers were not required to purchase sponsored TBA (A.R. 826):

Q. Did you ever discuss that [no forcing] letter with salesman Way?

A. Yes I did.

Q. What did you state to salesman Way?

A. I said "Bill, does that letter mean what it says?" and he said, "You try it and you will find out". That was the answer I received.

Q. So you continued to purchase Goodyear TBA?

A. That's right.

been—at the time the discussion came up about the batteries, it was my—I guess it was my first warning that the company expected me to buy Firestone products and that if I did not buy Firestone products, chances were that my lease would not be renewed" (A.R. 906–907). Dealer Hawes said that "* * * it was more or less I think understood" that Atlantic outlets had to carry sponsored TBA (A.R. 937).

The testimony of suppliers also showed that the dealers believed that they had to purchase sponsored TBA. Several wholesalers said that their attempts to sell unsponsored TBA to Atlantic dealers met with comments such as these: "Sorry Glenn, but I have to reserve this for Ed Parris [a Goodyear supply point]. You understand the situation. I am in an Atlantic station. I must buy from an Atlantic TBA distributor" (A.R. 237); "Glenn, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax" (A.R. 239); "Joe, I would like to buy the batteries from you, but you know what I have been running into and what every Atlantic man has been running into. I cannot put anything but a Goodyear battery in here" (A.R. 704–705); "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes" (A.R. 708); "What do you want, the roof to cave in on me? I would lose my lease immediately" (A.R. 557); "I wish I could buy those deals, but I am not allowed to" (A.R. 556). Other explanations which wholesalers received from

dealers for their refusal to purchase non-sponsored TBA included:

"The same reason that most of these other fellows have given us whenever they have stopped buying any merchandise from us, pressure from Atlantic" (A.R. 699); "As one dealer told me, that he was to save it for the Atlantic salesman the next time he came around" (A.R. 383); "* * * at that time he told me that he is going to handle Firestone tires because the oil company has a tie-in with them" (A.R. 1083); "He said it is awful tough for him to buy any products except those he is supposed to buy through the oil company" (A.R. 1113); "He said he would no longer be able to buy merchandise from me; that this Atlantic salesman was applying pressure; that he would have to stock merchandise bought from them only" (A.R. 1157); "They told me then that Atlantic Refining Company had given them some additional outlets in their territory and they were practically compelled to go along with the Atlantic proposition program" (A.R. 817); "* * * and they told him he should stick with Firestone and he wouldn't buy them [unsponsored batteries]. I never did sell him" (A.R. 971): "He said he was mostly obligated to buy his TBA items from Firestone" (A.R. 1132).

In the face of this kind of pressure, it was hardly surprising that Atlantic's efforts to require its dealers to purchase Goodyear and Firestone TBA were highly successful. The extent of that success is shown by the fact that in the first six years of the program, each of those companies had total TBA sales to Atlantic outlets of more than $25 million

(A.R. 76). This success is not surprising in view of the substantial evidence in the record that Atlantic dealers believe—as Atlantic obviously wants them to—that, if they wish to remain in Atlantic's good graces, they are required to purchase their TBA from Goodyear and Firestone. See *supra*, pp. 26–27, 49–51. As the court of appeals stated (A.R. 3293), "the Commission, in evaluating the evidence, correctly found that if a dealer wishes to continue in good standing with the company and retain his lease or contract, it is advantageous that he carry sponsored TBA."

B. THE SALES COMMISSION PLAN INJURED COMPETITION IN THE DISTRIBUTION OF TBA

The Commission found that the sales commission plan injured competition at all three levels of the TBA industry: manufacturing, wholesaling, and retailing (A.R. 113–129). The court of appeals upheld the Commission's findings of such competitive injury, and specifically ruled that "the record substantiates the Commission's finding that suppliers of TBA competing with Goodyear and Firestone are substantially foreclosed from selling their products to Atlantic dealers. Atlantic's service station market is fenced off so as to make it unavailable to both manufacturers and wholesalers of competing brands" (A.R. 3296–3297).

As set forth in the Statement, *supra*, pp. 25–28, the record fully supports the Commission's conclusions on injury to competition. It shows that small manufacturers who either do not have distribution points throughout Atlantic's territory or do not have a full

line of TBA, are unable to sell to Atlantic because the latter insists on dealing with a single supplier who has an extensive distribution system and handles a complete TBA line—even though the smaller manufacturers' products have good consumer acceptance in the areas where they are sold. Wholesalers of unsponsored TBA have been precluded from selling their products to Atlantic dealers—not because the latter in the exercise of independent business judgment prefer Goodyear and Firestone, but because they believe that they run the risk of losing their leases or contracts if they buy other products. Indeed, many of such wholesalers do not even attempt to solicit business from many Atlantic dealers, since they have learned that such endeavors are fruitless. Moreover, even wholesalers of sponsored products cannot sell to Atlantic dealers unless they are authorized supply points for such dealers, even though such wholesalers offer lower prices than the supply points. Finally, the division of the Atlantic marketing territory between Goodyear and Firestone eliminates competition between these two major firms in selling TBA to Atlantic.

The market from which this competition was foreclosed was a substantial one. During the first six years of the Atlantic sales commission plans, Goodyear and Firestone together sold it more than $50 million worth of TBA; in 1955 (the last full year for which the record contains data) their total TBA sales to Atlantic were more than $11 million (A.R. 76, 78). In cases involving the validity of tying agreements under Section 1 of the Sherman Act, which are *per se*

illegal if they restrain a "not insubstantial" volume of commerce, far smaller amounts have been deemed substantial. See *United States* v. *Loew's, Inc.*, 371 U.S. 38, 49 (25 tying contracts of six companies, involving $60,000 to $2½ million each); *International Salt Co.* v. *United States*, 332 U.S. 392, 395 ($500,000 annually); *United States* v. *Richfield Oil Corp.*, 99 F. Supp. 280, 285–286 (S.D. Cal.), affirmed, 343 U.S. 922 ($3,600,000 of TBA).

C. THE COMMISSION CORRECTLY HELD THAT THE SALES COMMISSION PLAN IS AN UNFAIR METHOD OF COMPETITION BECAUSE IT CAUSES ATLANTIC TO USE ITS ECONOMIC POWER OVER ITS RETAIL GASOLINE DEALERS TO RESTRAIN COMPETITION IN TBA

1. *Section 5 of the Federal Trade Commission Act gives the Commission broad discretion to define unfair methods of competition, and at a minimum the Commission may prohibit conduct that has the same kind of anticompetitive effect as violations of the Sherman and Clayton Acts*

When Congress in 1914 enacted the prohibition in Section 5 of the Federal Trade Commission Act against "unfair methods of competition," it intentionally refrained from defining the term so that the Commission might develop the meaning with experience to meet changing competitive conditions. As the Senate Committee Report explained (S. Rep. No. 592, 63d Cong., 2d Sess., p. 13):

> The committee gave careful consideration to the question as to whether it would attempt to define the many and variable unfair practices which prevail in commerce and to forbid their continuance or whether it would, by a general declaration condemning unfair practices, leave it to the commission to determine

what practices were unfair. It concluded that the latter course would be the better, for the reason, as stated by one of the representatives of the Illinois Manufacturers' Association, that there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.

* * * * *

* * * The committee was of the opinion that it would be better to put in a general provision condemning unfair competition than to attempt to define the numerous unfair practices * * *.

See also H.R. Rep. No. 1142, 63d Cong., 2d Sess., pp. 18–19 (conference report), where the House managers stated:

* * * The most certain way to stop monopoly at the threshold is to prevent unfair competition. This can best be accomplished through the action of an administrative body of practical men thoroughly informed in regard to business, who will be able to apply the rule enacted by Congress to particular business situations, so as to eradicate evils with the least risk of interfering with legitimate business operations.

It is impossible to frame definitions which embrace all unfair practices. * * * It is also practically impossible to define unfair practices so that the definition will fit business of every sort in every part of this country. Whether the competition is unfair or not generally depends upon the surrounding circumstances of the particular case. * * *

This Court has recognized that Congress left it to the Commission to give precise content to the concept of "unfair method of competition." Thus, in *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, the Court stated (p. 708–709):

> * * * This general language [unfair method of competition] was deliberately left to the "commission and the courts" for definition because it was thought that "There is no limit to human inventiveness in this field"; that consequently, a definition that fitted practices known to lead towards an unlawful restraint of trade today would not fit tomorrow's new inventions in the field; and that for Congress to try to keep its precise definitions abreast of this course of conduct would be an "endless task." See *Federal Trade Commission* v. *R. F. Keppel & Bro.,* 291 U.S. 304, 310–312, and congressional committee reports there quoted.

Similarly, in *Federal Trade Commission* v. *Motion Picture Advertising Service Co.;* 344 U.S. 392, 394, the Court noted: "Congress advisedly left the concept flexible to be defined with particularity by the myriad of cases from the field of business."

In the Federal Trade Commission Act, Congress thus adopted the legislative principle, now thoroughly familiar, of enunciating broad but necessarily generalized standards, and leaving it to the specialized agency that enforces the statute to particularize those standards through their application to individual factual situations. Cf. *National Labor Relations Board* v. *Hearst Publications,* 322 U.S. 111, 130; *Gray* v. *Powell,* 314 U.S. 402, 411–412.

An important feature of this type of legislation is that great weight is accorded to the decisions of the expert body in performing its function of applying the statutory standards to particular situations. *Hearst, supra,* at 130–131; *Gray, supra,* at 412. In *Hearst* the Court stated (p. 131) that "where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. * * * [T]he Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

In the *Cement Institute* case, *supra,* this Court specifically applied that rule when it

> sustain[ed] the Commission's holding that concerted maintenance of the basing point delivered price system is an unfair method of competition prohibited by the Federal Trade Commission Act. *In so doing we give great weight to the Commission's conclusion, as this Court has done in other cases. Federal Trade Comm'n* v. *R. F. Keppel & Bro.,* 291 U.S. 304, 314; *Federal Trade Comm'n* v. *Pacific States Paper Trade Assn.,* 273 U.S. 52, 63. In the *Keppel* case the Court called attention to the express intention of Congress to create an agency whose membership would at all times be experienced, so that its conclusions would be the result of an expertness coming from experience. We are persuaded that the Commission's long and close examination of the questions it here decided has provided it with precisely the experience that fits it for per-

formance of its statutory duty. [333 U.S. at 720, emphasis supplied.]

Furthermore, "[i]t has long been recognized that there are many unfair methods of competition that do not assume the proportions of Sherman Act [or Clayton Act] violations." *Federal Trade Commission* v. *Cement Institute*, 333 U.S. at 694; *Federal Trade Commission* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392, 394–395. Conduct may constitute an unfair method of competition if it "runs counter to the public policy declared" in those Acts (*Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U.S. 457, 463).

As the case comes before this Court, therefore, the question is relatively narrow: whether the Commission's holding that the sales commission plan is an unfair method of competition "has 'warrant in the record' and a reasonable basis in law" (*National Labor Relations Board* v. *Hearst Publications, supra*, 322 U.S. at 131). As we now show, it has both. It has "warrant in the record" because the Commission's findings, which the court of appeals held were supported by substantial evidence, show that the plan resulted in the use of Atlantic's economic control over its dealers to foreclose competition in a substantial segment of the TBA market. It has "a reasonable basis in law" because the plan had the same kind of adverse effect on competition as an illegal tying agreement, and therefore properly was held to be an unfair method of competition.

2. The sales commission plan, by utilizing Atlantic's controlling economic power over its gasoline dealers to preempt for Goodyear and Firestone a substantial TBA market, causes the same kind of competitive injury as an illegal tying agreement

The Commission found—and the court of appeals upheld the findings—that the sales commission plan injured competition in the following respects, among others:

(a) Manufacturers and wholesalers of competing brands of TBA, and Goodyear and Firestone wholesalers who were not authorized supply points under the plan, were foreclosed from a significant market.

(b) Dealers were denied freedom of choice to select brands to sell and sources from which to buy.

(c) Goodyear and Firestone were each foreclosed from access to Atlantic outlets in the areas assigned to the other, and to that extent competition between them was eliminated.

These restraints upon competition were the result of the basic character of the sales commission plan. Under it Atlantic undertook to use its economic power in the retail gasoline business, stemming from its control over its dealers, to require them to purchase sponsored TBA. Although Atlantic usually did not explicitly require its dealers to purchase Goodyear and Firestone TBA as a condition to becoming or remaining an Atlantic dealer (but see the numerous instances where dealers were actually threatened with cancellation or non-renewal of leases or contracts unless they bought sponsored TBA, *supra,* pp. 24–25), Atlantic's sponsorship of those companies' products had that effect in practical operation. For, as the court of ap-

peals correctly pointed out (A.R. 3295), in the setting of the "dealers' economic dependency upon the oil company * * * recommendation is tantamount to command. Covert practices are as efficient as overt action. Sophisticated methods of pressuring the dealers into carrying sponsored TBA are as effectual as express covenants and open threats." Considering the vigor and thoroughness with which Atlantic hammered home its desire that its dealers handle sponsored TBA (see *supra*, pp. 15–18, 19–25), it was hardly surprising that Goodyear and Firestone quickly took over, and apparently retained, virtually the entire TBA market that Atlantic formerly had controlled through its direct sales to its dealers (see *supra*, pp. 18–19, 25–26, 46).

The net effect of the sales commission plan upon competition, therefore, was as though Atlantic had agreed with Goodyear and Firestone that it would require its dealers to purchase TBA. For that arrangement would cause the same major restriction upon competition that the present plans effect: the foreclosure of competing TBA manufacturers and distributors from a major segment of the substantial Atlantic TBA market—a segment that during the first six years of the plans' operation amounted to approximately $50 million.

If the sales commission plan had provided for express tying agreements between Atlantic and its dealers, there would be no doubt that such agreements, covering $50 million worth of commerce, would be illegal *per se* under Section 1 of the Sherman Act, *United States* v. *Loew's*, Inc., 371 U.S. 38; *Northern*

Pacific Ry. Co. v. *United States*, 356 U.S. 1; *United States* v. *Richfield Oil Corp.*, 99 F. Supp. 280 (S.D. Calif.), affirmed, 343 U.S. 922. An agreement requiring Atlantic to engage in such practices obviously would itself unreasonably restrain trade (*Motion Picture Patents Company* v. *Universal Film Manufacturing Company*, 243 U.S. 502; *United States* v. *Bausch & Lomb Co.*, 321 U.S. 707) and the Commission certainly could condemn such contract as an unfair method of competition (*supra*, p. 58).

The basic vices of tying agreements which this Court described in *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 6, are equally applicable to the sales commission plans involved in the present cases: "They deny competitors free access to the market for the tied product [TBA], not because the party imposing the tying requirements has a better product or a lower price but because of his power or leverage in another market. At the same time buyers are forced to forego their free choice between competing products." See, also, *United States* v. *Loew's, Inc.*, 371 U.S. 38, 45. The Commission's decision to treat as an unfair method of competition the present type of plan, which does not have an express tying requirement but nevertheless accomplishes the same result and causes the same injury to competition as if it did, surely had a "reasonable basis in law" (*National Labor Relations Board* v. *Hearst Publications, supra*).[30]

[30] Petitioners contend (Atlantic Br. pp. 56–58, Goodyear Br. p. 41) that the court of appeals, insofar as it relied on a tying theory, decided the case on a different basis than the Commission, contrary to the rule of *Securities and Exchange Commis-*

The petitioners contend (Atlantic Br. pp. 51–56; Goodyear Br. pp. 31–36), however, that the Commission could not rest its conclusion that the plan is an unfair method of competition upon the fact that it foreclosed competition from a substantial market ($50 million worth of TBA during a six-year period), but was required to make an elaborate economic analysis into such questions as the percentage of the total TBA market that the Atlantic business represented, the effect of the plan on that broader market, the avail-

---

sion v. *Chenery Corp.*, 318 U.S. 80. Citing the following statement in the Commission's opinion—"But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases" (A.R. 124)—they contend that the Commission thereby disavowed any reliance on a tying theory.

Petitioners misread the Commission's opinion. All that the Commission said in the quoted sentence was that it would not rest on the rule that tying agreements are illegal *per se* "whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected" (*Northern Pacific R. Co.* v. *United States*, 356 U.S. 1, 6. Rather, as it stated in the third sentence following that quoted, it would make "an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents."

While the Commission thus eschewed a "mechanical application" of the rule governing tying agreements, it repeatedly recognized the analogy between such agreements and the sales commission plan. Indeed, following the sentence that petitioners quote, the Commission summed up the basic vice of the sales commission plan in words that plainly reflected a tying theory: "We believe that the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)" (A.R. 128–129).

ability of other markets to competing TBA manufacturers and distributors, etc. To prove that a tying agreement is illegal, however, the only market impact that need be shown is that "a 'not insubstantial' amount of interstate commerce is affected" (*Northern Pacific, supra; International Salt Co.* v. *United States*, 332 U.S. 392); there is no occasion to make "a full-scale factual inquiry into the scope of the relevant market for the tying product and into the corollary problem of the seller's percentage share in that market" (*United States* v. *Loew's Inc.*, 371 U.S. 38, 45, fn. 4). The reason for this rule is that because tying agreements are inherently anticompetitive the mere fact that they cover a significant volume of commerce itself establishes that they injure competition. Since, as we have shown, the sales commission plan has the same anticompetitive effects as a tying agreement, the Commission properly applied the standards governing the latter in determining the validity of the former.[21]

Petitioners also argue (Atlantic Br. pp. 46–49; Goodyear Br. pp. 23–27) that the Commission was

[21] While petitioners rely upon *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320, that case involved a requirements contract. This Court has distinguished between tying agreements, which are "inherently anticompetitive" and serve "hardly any purpose beyond the suppression of competition", and requirements contracts, which are governed by a less stringent rule (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 330–331; *Standard Oil Co.* v. *United States*, 337 U.S. 293, 305, 307). In *Standard Oil*, the Court specifically noted that an oil company's exclusive supply arrangements with its dealers for TBA (as distinct from gasoline) "should perhaps be considered * * * tying rather than requirements agreements" (337 U.S. at 305, fn. 8).

required to balance the asserted benefits of the sales commission plan against its competitive evils before condemning it as an unfair method of competition. As a corollary, they urge (Atlantic Br. pp. 42–46, Goodyear Br. pp. 36–37) that the Commission acted arbitrarily in prohibiting the sales commission plan while simultaneously approving the purchase-resale method of TBA distribution (under which Atlantic itself purchases the products and then resells them to its dealers), since the latter method has the same anticompetitive effects and also is a less effective method of distribution for Atlantic and other regional oil companies who are not large enough to maintain a comprehensive network of distribution outlets for TBA.

The latter argument rests on an erroneous factual premise. In prohibiting the sales commission plan, the Commission did not approve the purchase-resale method. The Commission's complaint challenged only the sales commission system, not the purchase-resale plan (A.R. 5–12), and its lengthy opinion stressed at several points that only the legality of the former method of distributing TBA was at issue (*e.g.*, A.R. 61–62, 124). In their appeal from the hearing examiner's decision, counsel supporting the complaint did seek an order enjoining Atlantic from purchasing TBA for resale to its wholesalers or retailers (A.R. 64), but this was obviously sought as relief that would be appropriate if the Commission reversed the examiner and condemned the sales commission plan. While the Commission did not grant

this broader relief sought by the staff,[32] such action merely represented a determination that a ban on use of the purchase-resale plan was not a proper remedy to cure the violation found. It cannot fairly be interpreted as an affirmative adjudication that the purchase-resale plan itself, whose substantive validity had not been challenged in the proceeding, was valid. Nor can the Commission be deemed to have validated the purchase-resale plan because it indicated (A.R. 127–128) that this plan was likely to have less severe anticompetitive consequences for smaller TBA manufacturers than the sales commission program it condemned.

Atlantic's argument that the sales commission plan is more economical for it than other systems of TBA distribution is no ground for invalidating the Commission's decision. In view of the demonstrated anticompetitive effects of the plan, it cannot be justified because it may be "beneficial to [Atlantic's] business" by reducing costs. *Northern Pacific Ry. Co.* v. *United States,* 356 U.S. 1, 6–7; *United States* v. *Loew's, Inc.,* 371 U.S. 38, 51–52. Indeed, the costs of Atlantic's TBA distribution program are properly viewed as part of the costs of its petroleum business. Petitioners state (Atlantic Br. pp. 11–12; Goodyear Br. p. 11) that Atlantic's receipts from its TBA contracts with Goodyear and Firestone are less than one-quarter of one percent of its total revenues from

[32] The provisions of the cease and desist order applicable to Atlantic prohibit it from entering into contracts, or using various devices, to promote the sale of TBA products to Atlantic outlets by any TBA distributor or marketer "other than The Atlantic Refining Company" (A.R. 132–133).

petroleum products. Atlantic apparently makes no profit on those sales commission contracts, since its receipts therefrom just about cover its expenses in sponsoring Goodyear and Firestone TBA (A.R. 2298).[33] It asserts (Atlantic Br. pp. 10–12; A.R. 1443; see A.R. 1444) that it seeks to develop the marketing of TBA by its dealers to strengthen them and thereby to increase its sales of gasoline and other petroleum products. In fact, TBA sales are so important to gasoline sales that Atlantic officials have stated that they will continue to train their dealers in TBA operations even if the company were not to be paid therefor (A.R. 1499–1500, 1819–1820; see A.R. 1442–1443).[34] In short, Atlantic conducts its TBA operations primarily as a necessary appendage of its petroleum business, and it cannot justify the restrictive consequences of the former on the ground that they

[33] While Atlantic disclaims any interest in revenues from the sales commission plan, it should be noted that recouping the costs of its TBA program represents a considerable saving of money for Atlantic over the previous purchase-resale program (Atlantic Br. pp. 13–15). Moreover, once the sales commission system was launched, the oil company had the strongest financial motive to increase the sales subject to commission (see *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d at 834). The record shows that Atlantic sought to increase the number of items on which it receives commissions (A.R. 2377, 2436–2437; and see R. 2608).

[34] If Atlantic dealers were to deal independently with TBA manufacturers and wholesalers (see text, *infra*, pp. 67–68), some of the costs would be borne by the latter instead of by Atlantic. The record shows that the tire companies circulate advertising material that tells dealers how much and what kind of products to purchase as well as how to display such products (CX 247B, A.R. 2935–2962).

are outweighed by a reduction in the operating costs of the latter.

Contrary to petitioners' apparent assumption, the sales commission and purchase-resale plans are not the only alternatives available for distributing TBA through oil company dealers. Another method would be to permit Atlantic dealers to make an independent decision as to TBA, thus allowing them to deal directly with the TBA wholesaler of their choice. The record shows that there are numerous independent TBA wholesalers desirous of selling to Atlantic stations and conveniently located for that purpose.[35] These wholesalers carry every type and brand of TBA product, including Goodyear and Firestone.[36] They call on their customers regularly, possess fully adequate delivery equipment, and give excellent service[37]—indeed, sometimes better than Goodyear or Firestone supply points (A.R. 652–653). Their prices are competitive:[38] they sometimes charge less for Goodyear, Firestone and competing products than the authorized supply points charge for sponsored prod-

[35] One supplier estimated that there are more than 60 TBA suppliers in his marketing area (A.R. 1068). The large number of aggrieved wholesalers who testified for the Commission itself indicates the ready availability of numerous sources of supply.

[36] A.R. 225, 379–380, 412–413, 573–574, 618, 669, 678, 691, 725, 741, 755, 845, 876–877, 972, 974, 1048–1049, 1067, 1077, 1117, 1128, 1152, 1156.

[37] A.R. 199–200, 225, 226, 380, 381, 413, 574, 666, 678, 692, 693, 725, 726, 746, 755, 769, 846, 878, 1050, 1067, 1078, 1085, 1117, 1683.

[38] A.R. 222, 559, 634, 643–644, 652, 692, 726, 847, 878, 1068, 1085, 1175, 1683, 2135.

ucts (A.R. 559, 634, 643–644, 652, 1085, 1175, 1683, 2134–2135). And, in addition to being served by wholesalers, Atlantic dealers can also be served by stores owned by TBA manufacturers, and by local company branches (A.R. 394, 1175, 2125, 2126, 3008–3009, 3215; G.R. 1294).

Atlantic has a legitimate business interest in assuring that its dealers carry TBA of high quality, and know how to stock, display and use it. But this interest can be protected by requiring the dealers to meet certain standards in conducting their TBA business (*Standard Oil Co.* v. *United States,* 337 U.S. 293, 306; *International Salt Co.* v. *United States,* 332 U.S. 392, 397–398; *Osborn* v. *Sinclair Refining Co.,* 286 F. 2d 832, 834 (C.A. 4), certiorari denied, 366 U.S. 963). If Goodyear and Firestone TBA are "in fact superior to that of [their] competitors, [Atlantic dealers] will presumably choose it anyway" (*Standard Oil Co.* v. *United States,* 337 U.S. at 306; *Northern Pacific Ry. Co.* v. *United States,* 356 U.S. at 9). Atlantic officials have recognized, however, that other brands of TBA are as good as Goodyear or Firestone (see A.R. 1493–1496, 1812–1813, 1815); see also *Osborn* v. *Sinclair Refining Co.,* 286 F. 2d at 834.[39] Atlantic cannot,

[39] Although petitioners and the *amici curiae* claim that the sales commission plan is essential effectively to meet their dealers' TBA needs, they assert at the same time that their dealers have and exercise free choice, and the *amicus* Champlin contends that unsponsored TBA constitutes over 70 percent of the total sold by their dealers. We fail to understand how the sales commission program can, at one and the same time, be both crucially necessary and unsuccessful. In any event, the claim of Atlantic dealers' free choice is refuted by the record (*supra,* pp. 24–25, 48–51).

through the sales commission plan, deny its dealers the freedom of choice that the antitrust laws are designed to protect.

II

THE COMMISSION'S ORDER PROPERLY PROHIBITS ATLANTIC AND GOODYEAR FROM PERFORMING THEIR SALES COMMISSION AGREEMENT OR FROM ENTERING INTO OR PERFORMING ANY SIMILAR AGREEMENT WITH ANY TBA OR OIL COMPANY, RESPECTIVELY

A. THE COMMISSION, UPON HOLDING THAT THE ATLANTIC-GOODYEAR AGREEMENT WAS AN UNFAIR METHOD OF COMPETITION, PROPERLY ENJOINED ITS PERFORMANCE

The complaint charged that the sales commission agreement between Atlantic and Goodyear (as well as the former's similar agreement with Firestone, and the latter's agreement with other oil companies) constituted unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act (Pars. 7–12, A.R. 8–12). The Commission specifically held (A.R. 64) that Atlantic's exercise of its economic power over its wholesale and retail distributors "through the use of the sales commission plan in favor of Goodyear constitutes an unfair method of competition," and it characterized the "sales commission method of distributing TBA" as a "classic example of the use of economic power in one market * * * to destroy competition in another market * * *" (A.R. 128–129). In short, the Commission held that it was the sales commission agreement itself, and not merely the steps taken to implement it, which constituted an unfair method of competition.

The Commission's order prohibits both Atlantic and Goodyear from performing the illegal agreement (A.R. 131–134). The literal terms of the statute justify the order. Section 5 (*supra*, p. 4) directs the Commission, upon finding that any person has used any unfair method of competition, to order him "to cease and desist from using such method of competition * * *." The Commission found that Atlantic and Goodyear had used an unfair method of competition, namely, the sales commission plan, and its order is directed against the precise violation found, as the statute contemplates.

The Commission was fully justified in prohibiting the sales commission plan itself rather than attempting to change the basic relationship between Atlantic and its dealers or to interdict only particular misconduct in executing the agreement. For, as we have shown, the crux of the illegality of the Atlantic-Goodyear agreement is that it induces, if not requires, Atlantic to engage in a course of conduct which, because of the oil company's power over its dealers, has the effect of compelling them to purchase sponsored TBA. The Commission properly viewed everything that Atlantic did under the sales commission plan as a single integrated program, since these were the steps by which Atlantic satisfied its contractual obligation to sponsor and promote Goodyear products, and for which Goodyear undertook to pay it a substantial commission. These steps included the various activities described at length in the Statement (*supra*, pp. 16–18, 19–25), such as promotion of sponsored TBA at

dealer training schools and dealer meetings; giving Goodyear advance notice of the opening of new stations; refusal to permit dealers to display advertising for nonsponsored products; joint calls on dealers by Atlantic and Goodyear salesmen; solicitation of TBA orders by Atlantic salesmen; limitations on the use of credit cards to purchase non-sponsored products; and finally, threatening dealers who refused to purchase Goodyear TBA with cancellation or non-renewal of their leases or contracts. In sum, Atlantic marshaled the full measure of its economic power over its dealers to carry out a pressure campaign designed to get them to handle Goodyear and Firestone products and, because of the extent of that power, the campaign was highly successful.

In these circumstances, if the plan itself were to be permitted to continue, its anticompetitive effects could be dissipated only through some fundamental change in the relationship between Atlantic and its dealers that would eliminate the former's power to coerce them to buy TBA. The Commission noted (A.R. 100) that the overt acts of coercion which Atlantic committed against its dealers were "mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself." Elimination of that "inherent" restraint is the only remedy that would effectively cure the system's anticompetitive effects.

A prohibition against the use of a particular method of distributing TBA, which is a relatively minor portion of Atlantic's business, obviously is a far less drastic remedy than attempting, as Goodyear suggests,

to change the basic relationship between Atlantic and its dealers. Indeed, if the Commission were to follow Goodyear's suggestion—which, to be effective in opening up the Atlantic's TBA market to competition, would have to strike at the heart of Atlantic's control over its dealers—it would seem that Goodyear itself would no longer desire the sales commission arrangement. For, as the court of appeals stated (A.R. 3296), "the system integrates Atlantic's economic power over its service station market into the Goodyear TBA distribution system, thus giving Goodyear, for a price, a captive market," and the market no longer would be "captive" if Atlantic ceased to control it.

B. THE COMMISSION PROPERLY ENJOINED ATLANTIC FROM ENTERING INTO OR PERFORMING SIMILAR CONTRACTS WITH COMPANIES OTHER THAN GOODYEAR

Atlantic apparently challenges the remedy only insofar as it goes beyond the Atlantic-Goodyear contract to prohibit Atlantic from performing its present contract with Firestone and from entering into or performing similar contracts with other TBA companies.

The complaint alleged that both the Atlantic-Goodyear and the Atlantic-Firestone contracts were illegal (A.R. 8–12), and the Commission held (A.R. 124) that "the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels." Atlantic did the same things under both contracts, and the anticompetitive effects of the Firestone plan were no less serious than those of the Goodyear plan. As

the Commission ruled, the Firestone contract was just as illegal as the Goodyear arrangement, and the commission properly enjoined Atlantic from performing both of them. The fact that Firestone was not a party to this proceeding does not preclude the Commission from enjoining Atlantic, which was a party, from performing its illegal contract with Firestone. See *National Licorice Co.* v. *National Labor Relations Board,* 309 U.S. 350, 365–366, and cases there cited.

Since the basic vice of the sales commission plan is Atlantic's exercise of its economic power over its dealers to require them to purchase sponsored TBA, and since that same vice would be equally present in any similar contract that Atlantic might enter into with any other TBA firm, the Commission was fully warranted in making its cease-and-desist order run against such other agreements as well. *Federal Trade Commission* v. *Henry Broch & Co.,* 368 U.S. 360, 364; *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 728–729. Indeed, an order prohibiting a law violator from committing the same violation with others is a normal and usual form of administrative remedy.

C. THE COMMISSION PROPERLY ENJOINED GOODYEAR FROM ENTERING INTO OR PERFORMING SIMILAR CONTRACTS WITH COMPANIES OTHER THAN ATLANTIC

The prohibitions in the Commission's order directed against Goodyear are basically the same as those directed against Atlantic. That is, Goodyear is prohibited from performing its sales commission agreement with Atlantic, and from entering into or

performing similar contracts with any other oil company (A.R. 133–134). Goodyear was not only a party to an illegal agreement, but played an active role in carrying it out. Thus Goodyear representatives joined with Atlantic personnel in such activities as installing Goodyear signs and removing those of competitors, urging at Atlantic training schools that dealers use Goodyear products, and calling on Atlantic dealers to sell them TBA. Goodyear having been thus "caught violating the Act must expect some fencing in" (*Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 431).

Goodyear argues (Br. 44–53), however, that since the Commission's holding that the Goodyear-Atlantic sales commission plan is illegal rests upon Atlantic's use of its controlling power over its dealers to require them to purchase TBA, the Commission could not prohibit Goodyear from performing or entering into similar arrangements with other oil companies without proof (1) that such other companies had similar power over their dealers and (2) that the sales commission agreements with those companies resulted in a similar misuse of oil company power to force dealers to carry sponsored TBA. While the Commission's opinion did not articulate the reasons for the scope of the order, we submit that the record provided the Commission with a sufficient basis to conclude: (1) that the other oil companies with whom Goodyear had sales commission agreements had the same kind of economic power over their dealers as Atlantic; and (2) that in performing such agreements those companies did and were likely to do the same things that

Atlantic had done in performing its contract, with the same adverse effect upon competition. In these circumstances, the Commission did not exceed its "wide discretion in the choice of a remedy deemed adequate to cope with the unlawful practices" (*Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 611) when it barred Goodyear from performing similar contracts with other oil companies.

1. *The record shows that other oil companies have the same kind of power over their dealers as Atlantic*

In its opinion, the Commission referred to Goodyear's sales commission contracts with nine oil companies beside Atlantic (A.R. 62, fn. 1). While the record does not show the size of those companies, it is hardly open to question that each of them has incomparably greater power than any of the service stations through whom they distribute their products. The general sales manager of Atlantic, who obviously is familiar with general industry conditions, testified (G.R. 2353) that "[p]ractically all the branded companies operate principally with lessee dealers," and he further stated that only three oil companies were using long-term leases of three years' duration (AX 18, unprinted). The record contains evidence dealing specifically with the short term features of the leases and contracts between Shell Oil Company ("Shell") and Sinclair Oil Company ("Sinclair") and their dealers. Shell has leases with more than 4,000 dealers which run for only one year and are cancelable on 30 days' notice (G.R. 1310), and contracts with consignment dealers which may be terminated upon 24 hours'

notice (G.R. 3221–3224). Sherwood Brothers, a Sinclair subsidiary, has a dealer sales agreement cancelable upon 30 days' notice (G.R. 3470, 3473), and Sinclair itself rents necessary equipment to dealers under an agreement which is cancelable upon 5 days' notice (G.R. 3596, 3599).

2. In performing their sales commission agreements with Goodyear, other oil companies used the same kind of pressure techniques that Atlantic did

The Commission found that Goodyear's sales commission contracts with "other marketing oil companies * * * are in all material respects identical with the Goodyear-Atlantic contract" (A.R. 105), and that "The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA" (A.R. 105).[40]

Most of Goodyear's contracts with other oil companies that are in the record are identical with Atlantic's.[41] These contracts thus impose upon those companies the same obligations that the Goodyear-Atlantic contract imposes upon Atlantic—"actively

[40] The Commission also indicated the substantiality of the commerce involved in Goodyear's arrangements with other oil companies, since Goodyear's sales under such contracts were about $16.7 million in 1951, and about $36 million in 1955 (A.R. 105, G.R. 3402–3403). Furthermore, the Commission referred to the anticompetitive effect of these sales commission programs in eliminating competition between Goodyear wholesalers, by the designation of supply points (A.R. 115–116, 3215).

[41] See contracts with Shell (G.R. 2498, 2503), Shamrock (G.R. 2515), Carter (G.R. 2522), Mid-Continent (G.R. 2558), D-X Sunray (G.R. 2569), Frontier (G.R. 2573), Quaker State (G.R. 2583), and Anderson-Pritchard (G.R. 2590).

[to] assist" in "selling and promoting" Goodyear products, and all the subsidiary actions which that duty comprehends, as defined in the contracts. See the Statement, *supra*, pp. 14–15." In short, these contracts, like the Atlantic contract, require the other oil companies to bring to bear their full power over their dealers to require the latter to purchase Goodyear TBA. There is no reason to suppose that the other oil companies are any less vigorous than Atlantic in promoting sponsored TBA, or that the anticompetitive effects of their activities are any less significant. To the contrary, the record contains affirmative evidence that several companies pursued some of the very activities upon which the Commission rested its finding that the Atlantic-Goodyear arrangement violated Section 5.

When the Carter Oil Company (a division of Standard Oil Co. of New Jersey) signed a sales commission agreement with Goodyear, it arranged a series

---

" Goodyear's contracts with Sherwood (G.R. 2547), Sinclair (G.R. 2551) and Ashland (G.R. 2598), dating from an earlier period than those cited in the preceding footnote, are in different form. However, these three contracts also incorporate several of the provisions appearing in the later contracts, and similarly require the oil companies to push the sale of Goodyear products. They call for the oil companies to "actively assist" Goodyear in "selling and in promoting" sponsored TBA, to have their "field representatives call upon * * * [dealers] in company with our [Goodyear's] salesmen, to "cooperate and assist us [Goodyear] in our efforts to promote and encourage the sale of" sponsored merchandise, to see that its "field offices work energetically and efficiently with" Goodyear "with the view to assisting" Goodyear "in perfecting arrangements" with dealers, and to "at all times maintain adequate qualified personnel to render the services called for hereunder regularly and efficiently."

of dealer meetings (G.R. 2529), advised dealers peremptorily that, "As fast as current stocks of tires and other merchandise now in Carter warehouses and distribution points are disposed of, Goodyear merchandise will replace them, and your orders will be filled with Goodyear products" (G.R. 2534), and directed the swift installation of Goodyear identification and display advertising (G.R. 2531). Instructions to the dealers as to the latter program made it clear that they were expected to participate (CX 66A-L, G.R. 2543):

> One of the biggest chores connected with the new Carter-Goodyear T.B.A. arrangement is that of identifying service stations with Goodyear signs and window valences.
>
> Within the next few weeks your station will be visited by one of Goodyear's identification trucks, two of which are changing Carter stations over to the new T.B.A. identification.
>
> The identification trucks will be at your station about half a day, if it has not arrived already, and when they leave, your station will have much the same appearance as the one pictured above, with the Goodyear sign hanging prominently and Goodyear valences in the window.
>
> * * * * *
>
> You can help the changeover by preparing for the visit of the Goodyear truck. Scrape off the old Miller valence in your window and wash the windows thoroughly. Then when the Goodyear man arrives, he'll be in position to place Goodyear material in your windows in a minimum of time.

An important aspect of an effective program to push sponsored TBA is the selection and training of new dealers. A former Shell salesman stated that under his company's program "it is a must that they carry Goodyear tires and batteries and accessories. In fact you don't even have to ask the question, you just put them in or you don't accept the dealer as a Shell dealer" (G.R. 1324). The same salesman testified that he received instructions that a particular new dealer "had to purchase a supply of gasoline and motor oil, specialties, Goodyear tires and fan belts and accessories, which I seen to it that he had the proper product to sell gasoline, oil and tires" (G.R. 1327); that "My policy [as a Shell representative] was to place Goodyear tires and batteries in the stations" (G.R. 1329); that his superior told him, "If you can't get Goodyear tires in there, maybe you better start looking for another dealer" (G.R. 1316, see also G.R. 1319, 1356); and that "I told Mr. Laybold [a dealer] that he was to put Goodyear tires and batteries in, as it was a company policy" (G.R. 1330). Shell salesmen have instructed dealers to get rid of unsponsored goods (G.R. 1322, 1336). They can be relied upon to implement company policy, since the company sets quotas for them (G.R. 1422).

Sinclair also sets TBA quotas for its salesmen (G.R. 978–979), who visited dealers continuously and promoted Goodyear products during such visits (G.R. 1116–1117). Sinclair salesmen solicited orders for sponsored merchandise (G.R. 1117), and commented critically on the fact that a dealer was not purchas-

ing from his supply point (G.R. 1116, 1117, 1119–1120). A former Sinclair dealer testified as follows:

> Elmore [the Sinclair salesman] would come in there and say, "Mac, come here, I want to see you in the back room a minute."
>
> You would go in and you knew what he meant when he said "the back room." He would say, "Mac, we are checking over the inventories and so forth, and you are not purchasing so and so," or "I see something out front there. *You know you owe this business to the company.*" And they would lay down the law to you, real good. [G.R. 1117, emphasis added.]

The manager of the Tire and Merchandise Division of Sherwood (a Sinclair subsidiary) (G.R. 3518) stated that the "campaign to sell Goodyear" includes a plan that "each territory salesman must bring in to this office every two weeks an order for" Goodyear merchandise, which was expected to accelerate sales. A Sherwood salesman urged his superiors to put pressure upon a recalcitrant dealer, recommending that he be called into "the office for a thorough understanding as to his responsibility in merchandising our complete line" (CX 456A–B, G.R. 3567). A dealer was called into the Sherwood office, and confronted in a conference room by three Sherwood officials. The witness described the meeting (G.R. 1112–1113):

> A. * * * So to make the conversation short, Mr. McCauley [a Sherwood official] was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers, because they took care of me during the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our [Goodyear] batteries or else."

And that was the end of the meeting.

A former Shell salesman testified that Goodyear window advertising is the only TBA advertising in Shell stations in certain territories (G.R. 1325) and that "Instructions were that if non-sponsored advertising were exhibited in these stations, it was to take them down" (G.R. 1325). Shell's efforts to control advertising were successful; witnesses testified that only sponsored advertising appears in Shell stations and that such stations refuse to permit the installation of unsponsored advertising (G.R. 1156, 1178, 1222, 1228). The same situation existed in regard to Sinclair and Sherwood stations (G.R. 340, 1060, 1151, 1167, 1176, 1228). One Sherwood dealer testified that a pole sign was taken down without his request and replaced by a Goodyear sign (G.R. 983-984). And Sherwood, which exhorted its dealers to take advantage of the company's modernization plan, installed Goodyear fixtures and hardware as a part of this plan (G.R. 3541-3545). Shell, Sinclair and Sherwood limit credit card purchases to sponsored products, a practice that results in compelling dealers—

who recognize the importance of credit card sales—to carry sponsored TBA (G.R. 984, 1105, 1127, 3622–3623, 3625, 3490–3491, 3535).

Finally, the record shows instances in which Shell and Sinclair threatened to cancel the leases of dealers who carried unsponsored products (G.R. 971, 1112–1113, 1284, 1320–1321, 1326). One such incident reviewed in the Commission's opinion (A.R. 105–106, 122–123), was Sinclair's threat to cancel dealer Osborn for buying Firestone tires (available to him at lower prices than the sponsored Goodyear TBA).[43]

The result of these practices is that dealers of other oil companies that have Goodyear sales commission contracts understand and believe, as do the Atlantic dealers, that they are required to purchase sponsored Goodyear TBA and may not purchase other products;[44] and that sellers of unsponsored TBA are able to make only insubstantial sales to such dealers (G.R. 331, 339, 834–835, 1020–1021, 1040–1042, 1148–1149, 1154–1155, 1168–1170, 1173, 1174, 1179, 1222–1226, 1247–1248, 1255, 1282–1283, 1286, 1294–1296).[45]

In the light of this evidence in the record, and in the absence of any contrary evidence on this point

---

[43] This threat led to an overt tying agreement for the purchase of sponsored TBA, which the Fourth Circuit held illegal in *Osborn* v. *Sinclair Refining Co.*, 286 F. 2d 832, certiorari denied, 366 U.S. 963.

[44] For instances of dealers' failure to buy from such competitors even though the latter sell at lower prices, see G.R. 1175, 1178–1179, 1294; see also G.R. 1114–1116.

[45] The record shows that Goodyear sales commission plans had the following additional anticompetitive effects: territories were divided when other oil companies agreed (as did Atlantic) to sponsor Goodyear TBA to some of its dealers, another brand to others (*e.g.*, Shell, D–X Sunray, Ashland, G.R. 455, 2563, 2605); and intrabrand competition between Goodyear TBA

(Goodyear introduced no evidence at all in this case, see G.R. 2370-2371), the Commission did not act unreasonably or arbitrarily in drawing the inference that other oil companies, in performing their sales commission agreements with Goodyear, had engaged, and were likely to engage, in the same practices as Atlantic; and that those other agreements therefore resulted in sufficiently serious injuries to competition to warrant prohibiting Goodyear from performing them or entering into others. If, as Goodyear suggests, there are individual oil companies who either do not have the same power over their dealers or would not similarly exercise it in carrying out their plans, Goodyear may always seek from the Commission an exception to the order for the particular case. Thus "[a]s actual situations arise they can be presented to the Commission in evidentiary form rather than as fantasies" (*Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 431; see *International Salt Co.* v. *United States*, 332 U.S. 392, 401). Despite the breadth of the present order, "[t]he Commission's offices will still be open for discussion" (*Vanity Fair Paper Mills, Inc.* v. *Federal Trade Commission*, 311 F. 2d 480, 488 (C.A. 2)). See the Commission's power to reopen and modify orders in Section 5(b) of the Act, supra, p. 4.

The Commission, of course, "has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices" disclosed, and "the courts will not interfere except where the remedy selected has

---

wholesalers was restrained through the assignment of supply points (A.R. 115–116, G.R. 1114–1116, 1057–1061; see CX 400M, GR. 3407).

no reasonable relation to the unlawful practices found to exist." *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611, 613; *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 473. The Commission's conclusion that in all the circumstances of this case effective relief required that Goodyear should be barred generally from using the sales commission plan at all, and not just prohibited from using it with Atlantic, cannot fairly be said to have "no reasonable relation to the unlawful practices found to exist."

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
WILLIAM H. ORRICK, JR.,
Assistant Attorney General.
DANIEL M. FRIEDMAN,
Assistant to the Solicitor General.
LIONEL KESTENBAUM,
LAWRENCE R. VELVEL,
Attorneys.

JAMES MC.I. HENDERSON,
General Counsel,
J. E. TRULY,
Assistant General Counsel,
ALVIN L. BERMAN,
LESTER A. KLAUS,
Attorneys,
Federal Trade Commission.

MARCH 1965.

U.S. GOVERNMENT PRINTING OFFICE: 1965

Office-Supreme Court, U.S.
FILED
MAR 25 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964.

No. 292.

THE ATLANTIC REFINING COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

REPLY BRIEF OF PETITIONER THE ATLANTIC REFINING COMPANY.

FREDERIC L. BALLARD, JR.,
CHARLES I. THOMPSON, JR.,
TYSON W. COUGHLIN,
Land Title Building,
Philadelphia, Pa. 19110
ROY W. JOHNS,
JOEL L. CARR,
HARRY W. GILL, JR.,
260 South Broad Street,
Philadelphia, Pa. 19101
Attorneys for Petitioner, The Atlantic Refining Company.

BALLARD, SPAHR, ANDREWS & INGERSOLL,
Land Title Building,
Philadelphia, Pa. 19110
Of Counsel.

March 25, 1965

International, 711 So. 50th St., Phila., Pa. 19143

IN THE

Supreme Court of the United States.

October Term, 1964.

No. 292.

THE ATLANTIC REFINING COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

REPLY BRIEF OF PETITIONER THE ATLANTIC REFINING COMPANY.

ARGUMENT.

Atlantic is filing this reply brief to point out that the argument of the Solicitor General in his Brief for the Federal Trade Commission—while arguably appropriate in the proceedings before the Commission and the Court of Appeals—is beside the point at issue in this Court. The reason is that the Solicitor General overlooks the important change in the case between the review by the Court of Appeals and the filing of the petition for certiorari here. That change was Atlantic's decision not to contest the issue of coercion; in other words, to accept the

paragraphs of the Commission's order designed to eliminate coercion.[1]

The Solicitor General says that the "crux of illegality" of the Atlantic-Goodyear agreement is that it "induces, even requires" Atlantic to "compel" its dealers to purchase sponsored TBA (FTC Br. 70, see also 34). He concludes that the net effect is "as though Atlantic had agreed with Goodyear and Firestone that it would require its dealers to purchase TBA" (FTC Br. 60), and he asserts that the effect of such an agreement would be the same as the effect of a tying agreement, namely, to deprive Atlantic dealers of their freedom of choice and foreclose competition in a substantial segment of the TBA market (FTC Br. 58, 59).

This argument misses the question presented to this Court:

1. The Government's argument overlooks paragraphs 5 and 6 of the Commission's order which are not under review and are therefore binding upon Atlantic. The

---

1. While Atlantic has no desire to reopen the coercion issue, its acceptance of the applicable paragraphs of the Commission's order does not mean that it accepts all the statements and implications in the Commission's Brief regarding coercion and control. For instance:

Contrary to the statements on page 17 of the Commission's Brief, Goodyear signs were not forced upon Atlantic dealers. Commission Exhibit 289 (R. 3030), written by the same official of Lee Tire & Rubber Company who wrote the exhibit cited in the Commission's Brief (CX 277, R. 2998), says that after investigation "I found, also, that their [Atlantic's] leased stations are not identified by Firestone unless there is an identification order signed by the dealer. In the case of Goodyear, when they sign up for a Goodyear Franchise, Goodyear is automatically permitted to identify that location."

Contrary to the implications of the Commission's Brief, "The handling of recommended TBA is not a requisite for obtaining a loan, and no records are kept as to whether distributors or dealers who obtain loans do or do not sell recommended TBA" (R. 277).

Contrary to the statement on page 24 of the Commission's Brief, Atlantic's advertising and promotional assistance is made available to dealers regardless of the brands of TBA handled by the dealers, and Atlantic reimburses dealers for a part of their advertising costs "without regard to the brand of TBA which may be included" (R. 280-1).

order (R. 132-3) prohibits Atlantic from directly or indirectly:

> 5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of Atlantic petroleum products to purchase any brand or brands of TBA products;
>
> 6. Preventing or attempting to prevent any wholesaler or retailer of Atlantic petroleum products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

Under the foregoing interdictions Atlantic cannot "require" or "compel" its dealers to purchase sponsored TBA. In short, under the order Atlantic cannot tie TBA to its petroleum products or to its stations.

If, as the Court of Appeals found, Atlantic dealers were formerly held in "servitude caused by the coercive pressures which Atlantic exerts upon its dealers" (R. 3292), those coercive pressures will be eliminated by the Commission's order.

If, as the Solicitor General argues, Atlantic dealers used to "believe that they were required to purchase substantial amounts of sponsored TBA" (FTC Br. 48-9, see also 52), they will no longer be justified in that belief.

The Solicitor General fails to recognize that the broad issue of coercion (whether "overt" or "covert," "sophisticated" or otherwise)—which took up the bulk of the Examiner's Initial Decision as well as the opinions of the Commission and the Court of Appeals—is no longer in the case. It is paradoxical for the Solicitor General to argue that the sales commission agreement is unlawful because it requires Atlantic to tie sponsored TBA to its petroleum products—when the Commission has already issued an order to prohibit this same tying.

2. Implicit in the Government's argument is the premise that Atlantic's efforts in selling TBA to its dealers, and indeed its very relationship with its dealers, were

"induced" by, or "undertaken" in response to, or "caused" by the Atlantic-Goodyear agreement.[2] (See, e.g., FTC Br. 36, 54, 58-9.) In fact, Atlantic's dealer relationships and its program of selling TBA to its dealers developed many years before Atlantic had its first dealings with Goodyear. There is no claim that the dealer relationship or the TBA selling efforts were changed in any way by reason of the sales commission plan.

The Commission recognized that Atlantic's dealer relationship, which the Commission equated with "economic power" over the dealers, "is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic" (R. 124). The same is true of Atlantic's TBA sales efforts.

The fact that Atlantic enjoyed established relationships with its dealer customers and had an expert sales force selling TBA to these customers was an inducement to Goodyear to enter into the sales commission arrangement. Neither the dealer relationship nor the TBA selling program can be considered an effect of the sales commission plan.

3. The Brief for the Federal Trade Commission does not face up to the crucial question posed by Atlantic's Brief. That question is this—once the dealers' freedom of choice has been assured by paragraphs 5 and 6 of the Commission's order, what remains to be accomplished by enforcing paragraphs 1 through 4 of the order and abolishing the sales commission plan?[3]

---

2. The Commission's Brief says that "everything" Atlantic did in respect of TBA was done "to satisfy its contractual obligation to sponsor and promote Goodyear products" (FTC Br. 70).

3. At the very least, the Commission should not abolish the plan until it has had an opportunity to reappraise it in the light of Atlantic's compliance with paragraphs 5 and 6 and, more importantly, in the light of up-to-date marketing information. Such information will be forthcoming from the Commission's industry-wide inquiry into the competitive problems of marketing gasoline discussed in

The futility of enforcing paragraphs 1 through 4 after paragraphs 5 and 6 have gone into effect can be simply demonstrated.

The Solicitor General recognizes (FTC Br. 65, fn. 32) that paragraphs 1 through 4 do not prevent Atlantic from "entering into contracts, or using various devices, to promote the sale of TBA products" so long as Atlantic itself is acting as the "TBA distributor or marketer." In short, the order does not prohibit Atlantic from selling TBA to its dealers; it merely requires that Atlantic act as the "distributor or marketer" (R. 132-3), i.e., that Atlantic assume responsibility for the distribution function.

The logic of the situation points inevitably to the conclusion that, if the sales commission plan is abolished, Atlantic will avail itself of the exception in the order and will resume the distribution of TBA to its dealers under the purchase-resale plan. The Solicitor General's suggestion (FTC Br. 67) that Atlantic might abandon its TBA program and hope that its dealers' needs would be filled by so-called "independent wholesalers," flies in the face of economics.[4] All Atlantic's competitors provide TBA programs. The dealers expect it. Atlantic could not attract dealers or market its products if it did not offer an attractive and fully competitive TBA program.

It is reasonable, then, to assume that, if sales commission distribution is forbidden, Atlantic will establish with Goodyear a purchase-resale program covering the same products and the same territory as are now covered by their sales commission arrangement, that under this

---

Atlantic's Brief, p. 38, and in Goodyear's Brief, pp. 51-2. That inquiry should cover TBA because, as the Solicitor General recognizes, TBA is a "necessary appendage" of the petroleum business (FTC Br. 65-6).

4. Of course, under paragraphs 5 and 6 of the Commission's order, Atlantic dealers will have full freedom to deal with any wholesalers they please. But this is a far cry from leaving them without the assistance which only Atlantic provides.

purchase-resale program supply points will be franchised by Atlantic rather than by Goodyear, and that there will be no change in Atlantic's efforts to sell and promote sponsored TBA to its dealers except such as required to guarantee their freedom of choice.[5]

The abolition of the sales commission plan will change only the responsibility for TBA distribution and delivery and the identity of some (but not all) of the supply points for deliveries to Atlantic dealers. How do these changes affect the competitive effects outlined on page 53 of the Brief for the Commission, these being the effects relied upon to justify abolition of the sales commission plan?

(a) If, as the Commission's Brief states, it is true today that small manufacturers are unable to sell to Atlantic because Atlantic "insists on dealing with a single supplier who has an extensive distribution system and handles a complete TBA line", that will not be affected by a change in the method of distributing TBA from sales commission to purchase-resale. Under either method Atlantic has the right to choose its TBA suppliers. The Commission's order abolishing the sales commission plan does not and could not require Atlantic, when it returns to purchase-resale, to deal with manufacturers who handle incomplete lines of products and provide inadequate distribution.

(b) If, as the Commission's Brief states, it is a fact that wholesalers of nonsponsored TBA "have been precluded from selling their products to Atlantic dealers," that will be cured by paragraphs 5 and 6 of

5. The Commission's Brief implies that Goodyear's willingness to pay a commission on sales gives Atlantic extra inducement to force its dealers to buy Goodyear TBA. The Brief overlooks the fact that under the sales commission plan a lost sale means simply a lost commission to Atlantic, whereas under purchase-resale Atlantic stands to lose the entire price of any TBA it buys and cannot resell. The sales commission plan, by relieving Atlantic of the necessity for selling, lessens the temptation to Atlantic to force the goods upon the dealers.

the Commission's order. It will not be affected by a change from sales commission to purchase-resale. Wholesalers of nonsponsored TBA neither know nor care whether Goodyear TBA reaches Atlantic dealers through an Atlantic distribution system under purchase-resale or through the Goodyear distribution system under sales commission.

(c) If, as the Commission's Brief charges, "wholesalers of sponsored products cannot sell to Atlantic dealers unless they are authorized supply points," that situation, too, will be cured by paragraphs 5 and 6 insofar as the Atlantic dealers' freedom of choice is concerned. Enforcement of paragraphs 1 through 4 will not affect the matter except to necessitate a change in the identities of some supply points.

(d) If it is true, as the Commission's Brief charges, that Atlantic's decision to divide its sponsorship between Goodyear and Firestone "eliminates competition between these two major firms in selling TBA to Atlantic," the situation will not be affected by a change from sales commission to purchase-resale. Again, Atlantic has the right to choose its TBA suppliers under either plan and to deal with one or more as it may deem best. The order does not seek to change this. Moreover, there is nothing in either the sales commission plan or the purchase-resale plan which forbids Goodyear and Firestone from competing with each other.

Insofar as the order affects the supposed competitive ills which the Commission recited to justify it, the results desired by the Commission are achieved by paragraphs 5 and 6. Nothing is added by paragraphs 1 through 4.

The thrust of the case, as it emerges from the three opinions below and from the Brief for the Commission, is to assure Atlantic dealers their freedom of choice and thus

assure all TBA wholesalers an opportunity to sell to Atlantic dealers. This has already been accomplished by the portion of the Commission's order not under review. Enforcement of the remainder of the order will help no one.

On the other hand, abolition of the sales commission plan will force Atlantic to return to TBA distribution, and thus to incur needless distribution expense on the order of $1,500,000 a year,[6] it will handicap Atlantic in its competition with larger oil companies; it will penalize thousands of Atlantic dealers in their competition with the dealers of those larger companies; and it will impair the efficiency of TBA distribution through Atlantic dealers to the motoring public. This result is senseless. It should not be allowed to stand.

Respectfully submitted,

FREDERIC L. BALLARD, JR.,
CHARLES I. THOMPSON, JR.,
TYSON W. COUGHLIN,
Land Title Building,
Philadelphia, Pa. 19110,
ROY W. JOHNS,
JOEL L. CARR,
HARRY W. GILL, JR.,
260 South Broad Street,
Philadelphia, Pa. 19101,
Attorneys for Petitioner, The Atlantic Refining Company.

BALLARD, SPAHR, ANDREWS & INGERSOLL,
Land Title Building,
Philadelphia, Pa. 19110,
Of Counsel.

March 25, 1965.

---

6. Based on the figures compiled in 1950 and discussed on pages 13 and 14 of Atlantic's Brief.

Office-Supreme Court, U.S.
FILED
MAR 26 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

~~MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND~~ BRIEF AMICUS CURIAE OF SHELL OIL COMPANY

WILLIAM F. KENNEY
Vice President and General Counsel
Shell Oil Company
50 West 50th Street
New York 20, New York

WILLIAM SIMON
JOHN BODNER, JR.
Howrey, Simon, Baker & Murchison
1707 H Street, Northwest
Washington 6, D. C.

Attorneys for Shell Oil Company

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

THE ATLANTIC REFINING COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION

No. 296

THE GOODYEAR TIRE & RUBBER COMPANY, *Petitioner*

v.

FEDERAL TRADE COMMISSION

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Shell Oil Company respectfully moves the Court for leave to file the attached brief *amicus curiae* for the reasons stated therein. All parties have given their consent in writing to the filing of this brief. It is filed at this time because it responds to views expressed by the Government in its brief filed on March 15, 1965.

Respectfully submitted,

WILLIAM F. KENNEY
Vice President and General Counsel
Shell Oil Company
50 West 50th Street
New York 20, New York

WILLIAM SIMON
JOHN BODNER, JR.
Howrey, Simon, Baker & Murchison
1707 H Street, Northwest
Washington 6, D. C.

Attorneys for Shell Oil Company

BRIEF AMICUS CURIAE ON BEHALF OF SHELL OIL COMPANY

Shell Oil Company respectfully submits this brief *amicus curiae* because it is party to an appeal in a related case in the Court of Appeals for the Fifth Circuit (*Shell Oil Company* v. *Federal Trade Commission*, No. 18,967), and its position in that appeal may be prejudged by this Court if certain views expressed in the Government's brief filed in this case on March 15, 1965, are uncritically adopted. In submitting this brief, Shell neither discusses nor expresses any opinion on the merits of the instant appeal.

Nine years ago the Federal Trade Commission instituted three separate law suits challenging the use of the sales commission method for marketing tires, batteries and accessory items by three oil companies. *B. F. Goodrich Company and The Texas Company*, Docket No. 6485; *Goodyear Tire & Rubber Company and The Atlantic Refining Company*, Docket No. 6486; *Firestone Tire & Rubber Company and Shell Oil Company*, Docket No. 6487.*

These three cases were separately tried, separately decided at the hearing examiner level on the basis of the individual records in each case, and separately reviewed by the Commission, which issued separate opinions in each case.

---

* For the Hearing Examiner's Initial Decisions and the Commission's opinions and orders see *Goodyear Tire & Rubber Co.* (Atlantic Refining Co.), 58 F.T.C. 309 (1961); *Firestone Tire & Rubber Co.* (Shell Oil Co.), 58 F.T.C. 371 (1961); and *B. F. Goodrich* (The Texas Co.), 58 F.T.C. 1176 (1961) (remand by the Commission to the Hearing Examiner), after remand, Commission decision and order, Docket No. 6485, April 15, 1963.

The *Atlantic-Goodyear* opinion was reviewed and affirmed by the Court of Appeals for the Seventh Circuit, and that decision is now before this Court.

The *Texaco-Goodrich* opinion was reviewed and set aside by the Court of Appeals for the District of Columbia (*Texaco, Inc.* v. *Federal Trade Commission*, 336 F. 2d 754 (D.C. Cir. 1964)), and a petition for writ of certiorari has been filed, but not acted upon, in this Court (No. 635, October Term, 1964).

The *Shell-Firestone* opinion is presently on review in the Court of Appeals for the Fifth Circuit. At the time of the oral argument, the Fifth Circuit asked the parties to apprise the Court of any action taken in the judicial review of the other two cases; and the Fifth Circuit has since indicated that its decision will not be delivered until after this Court disposes of the instant appeals by Atlantic and Goodyear.

The Commission's order against Goodyear before this Court in the instant appeal is not confined to the Atlantic-Goodyear sales commission plan, but contains an unconditional prohibition against Goodyear having a sales commission arrangement with any other oil company. This sweeping order would, among other things, outlaw the sales commission agreement Goodyear has had with Shell for more than 25 years under which the parties currently market more than $25 million of TBA merchandise each year. Shell's concern arises because the Government, in attempting to defend this broad order against Goodyear, takes a position, which if adopted in the manner stated, would prejudge in a material way the factual issues in the appeal now pending in the Fifth Circuit in the *Shell* case.

The Government in the instant case is forced to admit that "the Commission's opinion did not articulate the reasons for the scope of the [Goodyear] order" (Br. 74), but it attempts to save the broad order by arguing "(1) that the other oil companies with whom Goodyear had sales commission agreements had the same kind of economic power over their dealers as Atlantic; and (2) that in performing such agreements those companies did and were likely to do the same things that Atlantic had done in performing its contracts, with the same adverse effect upon competition." (Br. 74-75)

Of course, neither of the above propositions was the subject of adjudication in the *Atlantic-Goodyear* proceeding. Hence there is no substantial evidence on these points in that record; and neither the examiner nor the Commission made any such findings of fact. In its brief in this Court, the Government tries to support the propositions by "inferences" drawn from incidental testimony in the *Atlantic-Goodyear* record relating to other oil companies.

We submit that in passing on the scope of the Goodyear order it is inappropriate for this Court to adjudicate, for the first time (since neither the Commission nor the Court of Appeals undertook to do so), the legality of the sales commission arrangement between Goodyear and Shell: first, because the legality of that arrangement is the specific subject matter of another law suit presently pending review before the Fifth Circuit; and second, because the incidental evidence in the *Atlantic-Goodyear* record does not support the inferences asserted by the Government, particularly as they relate to Shell.

1. In the *Shell* proceeding, the Commission challenged the legality of both of Shell's sales commission plans—one with Firestone and the other with Goodyear. The allegations of the complaint related to both plans. In a trial lasting three years, the parties introduced substantial evidence on both plans, calling over 200 witnesses and introducing over 700 documentary exhibits. The testimonial transcript alone contains more than 6,000 pages. It is this gigantic record, consisting of 9 printed volumes, which is on review before the Fifth Circuit, where it has been already comprehensively briefed and orally argued before that Court.

In its *Shell* opinion, the Commission said that it was "concerned primarily with the sales commission contracts between Firestone and Shell and between Goodyear and Shell". (58 F.T.C. at 416). It specifically adjudicated the legality of both plans and issued a cease and desist order prohibiting their further use by Shell. It is this opinion and order that are on review before the Fifth Circuit.

In view of this situation, it would be manifestly unfair, as well as a denial of the due process requirements of the Administrative Procedure Act, for this Court to prejudge the legality of the Shell-Goodyear plan before the Fifth Circuit has had an opportunity to review the order, decision and record in the *Shell* proceeding. This Court has declined to pass upon administrative actions until the appropriate Court of Appeals has first completed its reviewing function. In *Federal Trade Commission* v. *Anheuser-Busch, Inc.*, 363 U.S. 536 (1960), this Court, after construing the meaning of the Robinson-Patman Act, refused to review the other issues raised on the appeal because "the Court of Appeals did not consider whether the record sup-

ported a finding of requisite competitive injury, whether respondent's good faith defense was valid, or whether the Commission's order was unduly broad." (*Id.* at 542). In remanding, this Court said that "we believe that it would be unwise for us to grapple with these intricate problems, a solution to which requires a careful examination of a voluminous record, before they have been dealt with by the Court of Appeals." (*Ibid.*)

2. The unfairness and dangers inherent in adjudicating the legality of a sales commission agreement on the basis of inferences drawn from fragmentary evidence in one proceeding where the very factual issue of the legality of the same agreement has been fully tried in another proceeding is illustrated by the arguments of the Government in its brief regarding the Shell-Goodyear plan.

On the question of the power oil companies other than Atlantic have over their dealers, the Government's brief quotes a generalized statement by an Atlantic official that "[p]ractically all the branded companies operate principally with lessee dealers". (Br. 75) Whatever its validity as to other oil companies, the implications of this statement do not apply to Shell: lessees are but one of five classes of Shell dealers. Shell uses a variety of leases, contracts and supply agreements with its dealers and distributors, but none of these agreements limits or in any way restricts TBA purchases. Nor does Shell restrict dealers' TBA advertising or product display or use of credit cards.

On the question of the performance of the sales commission agreements between Goodyear and oil companies other than Atlantic, the Government makes

several references to testimony purporting to show the practices under the Shell-Goodyear plan. These statements are inaccurate and misleading. The Government, for example, flatly states that Shell limits its credit cards to sponsored TBA. "Shell, Sinclair and Sherwood limit credit card purchases to sponsored products, a practice that results in compelling dealers—who recognize the importance of credit card sales—to carry sponsored TBA. . . ." (Br. 81-82) This statement about Shell, as the *Shell* record establishes, is indisputably wrong. We quote the Commission's own finding in its opinion in the *Shell* case: "Then, too, sponsored as well as non-sponsored TBA may be sold on Shell credit cards, including up to six months' extended credit without any charge to the motorist or the dealer." (58 F.T.C. at 402)

The Government also refers to isolated portions of testimony of one former Shell salesman who testified in the *Atlantic-Goodyear* proceeding. (Since the witness is not identified by name, the references in the Government's brief, first at page 79 and then at page 81, may leave the impression that there were two such witnesses.) This same witness, Edwards, testified at great length in the *Shell* proceeding; on cross examination his testimony was thoroughly discredited;* and the Commission, in its *Shell* opinion, neither mentioned nor relied on his testimony.

---

* This is neither the time nor place to review the more than 150 pages of Edward's testimony establishing its unreliability, but we may give one example here. Edwards, who worked as a salesman for Shell over 12 years ago, openly admitted on cross-examination the inaccuracy of his prior testimony given before a Subcommittee of the House Small Business Committee, where he stated under oath that he had, as a Shell salesman, cancelled eight dealers who failed to purchase sponsored TBA. Asked about this testimony in the *Shell* case, Edwards said: "I testified to that, but that was wrong." Then he added: "I was excited." (Shell Record 670)

In its brief, the Government recognizes that all sales commission plans are not necessarily bad since the legality of an individual oil company's plan depends upon whether the oil company in fact possesses power to control its dealers and has exercised such power in carrying out the plan so as to adversely affect competition. (See Br. 36, 83) These are the very factual questions on review in the Fifth Circuit as to Shell's two plans with Firestone and Goodyear.

For the foregoing reasons, we submit that this Court, in passing on the scope of the Goodyear order, (1) should not prejudge the basic factual issues present in the *Shell* case now on review before the Fifth Circuit regarding Shell's relationship with its dealers and its performance under its sales commission plans with Firestone and Goodyear and (2) should in no event affirm the Goodyear order insofar as that order prohibits the continuation of the Shell-Goodyear sales commission arrangement.

Respectfully submitted,

WILLIAM F. KENNEY
Vice President and
General Counsel
Shell Oil Company
50 West 50th Street
New York 20, New York

WILLIAM SIMON
JOHN BODNER, JR.
Howrey, Simon, Baker &
Murchison
1707 H Street, Northwest
Washington 6, D. C.

Attorneys for Shell Oil
Company